

Reed W. Larsen (3427)
Cooper & Larsen Chartered
151 N. 3rd Ave., Suite 200
Pocatello, Idaho 83201
Telephone: (208) 235-1145
Facsimile: (208) 235-1182
reed@cooper-larsen.com

Bradley R. Cahoon (8558)
Dentons Durham Jones Pinegar P.C.
111 S. Main St., Suite 2400
Salt Lake City, Utah 84111
Telephone: (801) 375-6600
brad.cahoon@dentons.com

Simpson, Darren B.

Damien M. Schiff* (Cal. Bar No. 235101)
Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento, California 95814
Telephone: (916) 419-7111
dschiff@pacificlegal.org

**Pro hac vice pending*

Attorneys for Petitioners

**DISTRICT COURT OF THE STATE OF IDAHO
SEVENTH JUDICIAL DISTRICT
BINGHAM COUNTY**

JERRY D. BINGHAM and VALERIE H.
BINGHAM,

Petitioners,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondent.

Case No. CV06-26-1801

**JERRY D. BINGHAM'S AND
VALERIE H. BINGHAM'S
PETITION FOR JUDICIAL REVIEW**

Fee Category L.3: \$221.00

Jerry D. Bingham and Valerie H. Bingham submit this petition for review pursuant to the judicial review provisions of the Idaho Administrative Procedure Act, Idaho Code §§ 67-5270 to 67-5279, and Rule 84 of the Idaho Rules of Civil Procedure.

1. This petition seeks judicial review of final agency action taken by the Idaho Department of Water Resources and its Director. *Cf.* Idaho Code § 42-1701A(4).
2. This petition is taken to the District Court of the State of Idaho, Seventh Judicial District, Bingham County. Venue is proper in this district because Petitioners reside in this district, and because their principal place of business and the real property at issue in the agency decision are in this district. *Cf.* Idaho Code § 67-5272(1)(c)-(d).
3. This petition seeks judicial review of the following orders issued by the Director of the Department, all in Docket No. CM-DC-2010-001:
 - a. *Order Denying Jerry D. and Valerie H. Bingham's Petition for Reconsideration and Request for Hearing*, issued August 24, 2026; and
 - b. *Order Revising April 2026 Forecast Supply and Continuing May 14, 2026 Curtailment Order (Methodology Steps 5 & 6)*, issued July 21, 2026.
4. This petition also seeks judicial review of the following orders issued by the Director of the Department, all in Docket No. CM-DC-2010-001, to the extent that such review is necessary and collateral to review of the above-referenced orders:
 - a. *Order Amending Curtailment List to Include Unmitigated Ground Water Rights*, issued June 17, 2026;
 - b. *Final Order Curtailing Ground Water Rights Junior to October 11, 1900*, issued May 14, 2026;
 - c. *Final Order Regarding April 2026 Forecast Supply (Methodology Steps 1–3)*, issued April 16, 2026;
 - d. *Final Order Curtailing Ground Water Rights Junior to August 15, 1952*, issued December 8, 2025;
 - e. *Final Order Establishing 2025 Reasonable Carryover (Methodology Step 9)*, issued November 21, 2025;

- f. *Order Revising July 2025 Forecast Supply (Methodology Steps 7–8)*, issued September 11, 2025;
 - g. *Final Order Curtailing Ground Water Rights Junior to October 11, 1900*, issued July 25, 2025; and
 - h. *Sixth Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover*, issued July 19, 2023.
5. Pursuant to the Idaho Supreme Court’s Administrative Order issued on December 9, 2009, and the Fifth Judicial District’s Administrative Order Adopting Procedures for the Implementation of the Idaho Supreme Court Administrative Order dated December 9, 2009, this case should eventually be reassigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District. However, Petitioners request that the reassignment not occur until the Seventh Judicial District has been able to adjudicate Petitioners’ concurrently filed motion to stay.
 6. The Department did not hold a hearing prior to issuing the above-referenced orders, except that a hearing was held prior to the issuance of the *Sixth Final Methodology Order*. The hearing, held June 5 to June 9, 2023, was recorded by M&M Court Reporting Service, P.O. Box 2636, Boise, Idaho 83701.
 7. Petitioners submit the following preliminary statement of issues for judicial review:
 - a. Whether the Department’s *Order Denying Petition of Jerry D. and Valerie H. Bingham for Reconsideration and Request for Hearing*, which denied the Bingham’s petition on the proffered ground that the petition did not directly challenge any aspect of the *July 2026 Curtailment Order*, is unlawful because the petition directly challenged the *July 2026 Curtailment Order* as necessarily based on, and incorporating, a decision-making framework that violates the Idaho law of prior appropriation.
 - b. Whether the Department’s *July 2026 Curtailment Order* and preceding curtailment orders violate the Idaho law of prior appropriation by assigning

mitigation obligations among junior groundwater users irrespective of the relative priority of their water rights.

- c. Whether the Department's *July 2026 Curtailment Order* and preceding curtailment orders violate the Idaho law of prior appropriation by assigning mitigation obligations to groundwater users exclusively rather than among all users, surface and groundwater, according to the priority of their water rights.
 - d. Whether the Department's *July 2026 Curtailment Order* and preceding curtailment orders take water rights without payment of just compensation in violation of article I, section 14 of the Idaho Constitution, and the Fifth Amendment, as incorporated by the Fourteenth Amendment, of the United States Constitution.
 - e. Whether the Department's *Sixth Final Methodology Order* violates the Idaho law of prior appropriation to the extent that the order requires the Department to assign mitigation obligations irrespective of the priority rights of junior groundwater users.
 - f. Whether the Department's *Sixth Final Methodology Order* violates the Idaho law of prior appropriation to the extent that the order requires the Department to assign mitigation obligations to groundwater users exclusively rather than among all users, surface and groundwater, according to the priority of their water rights.
 - g. Whether the Department's orders are void because they violate the Idaho law of prior appropriation and are thus subject to collateral attack. *Cf. Wernecke v. St. Maries Joint School Dist. No. 401*, 147 Idaho 277, 286 n.10, 207 P.3d 1008, 1017 n.10 (2009).
8. Petitioners request that the transcript of the hearing for the *Sixth Final Methodology Order* become part of the agency record for judicial review. *See* Idaho Code § 67-5249(3)(i).
9. The undersigned attorney certifies as follows:
- a. Service of this Petition has been made on the Department.

- b. Counsel for Petitioners has contacted counsel for the Department and has been informed that there will likely be no cost for the preparation of the transcript and record because these materials have largely been assembled already in connection with other petitions for review.
- c. Petitioners will promptly pay any fee for transcript or record preparation.

Dated: September 15, 2026.

Respectfully submitted,

Reed W. Larsen
Cooper & Larsen Chartered

Bradley R. Cahoon
Dentons Durham Jones Pinegar P.C.

Damien M. Schiff*
Pacific Legal Foundation
**Pro hac vice pending*

By: /s/ Reed W. Larsen
Reed W. Larsen
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of September, 2026, I caused a true and correct copy of the foregoing JERRY D. BINGHAM'S AND VALERIE H. BINGHAM'S PETITION FOR JUDICIAL REVIEW to be served upon the following individuals by the designated method:

Director of IDWR 322 E. Front Street, Suite 648 Boise, ID 83702 file@idwr.idaho.gov mathew.weaver@idwr.idaho.gov garrick.baxter@idwr.idaho.gov	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ iCourt E-File & Serve
John K. Simpson IdaH20, PLLC PO Box 152 Boise, ID 83701-0152 jks@idahowaters.com	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ iCourt E-File & Serve
Travis L. Thompson Abby R. Bitzenburg PARSONS BEHLE & LATIMER PO Box 63 Twin Falls, ID 83303-0063 tthompson@parsonsbehle.com abitzenburg@parsonsbehle.com	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ iCourt E-File & Serve
Norman M. Semanko Garrett M. Kitamura PARSONS BEHLE & LATIMER 800 W. Main Street, Suite 1300 Boise, Idaho 83702 nsemanko@parsonsbehle.com gkitamura@parsonsbehle.com	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ iCourt E-File & Serve
Thomas J. Budge RACINE OLSON PO Box 1391 Pocatello, ID 83204-1391 tj@racineolson.com	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ iCourt E-File & Serve

David W. Gehlert Natural Resources Section U.S. DOJ, Environment and Natural Resources Div. 999 18th St., South Terrace, Suite 370 Denver, CO 80202 david.gehlert@usdoj.gov	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ iCourt E-File & Serve
Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234 mhoward@usbr.gov	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ iCourt E-File & Serve
Sarah A Klahn Maximilian C. Bricker Somach Simmons & Dunn 1155 Canyon Blvd, Ste. 110 Boulder, CO 80302 sklahn@somachlaw.com mbricker@somachlaw.com	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ iCourt E-File & Serve
Rich Diehl City of Pocatello PO Box 4169 Pocatello, ID 83205 rdiehl@pocatello.us	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ iCourt E-File & Serve
Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC PO Box 107 Boise, ID 83701 cmchugh@mchughbromley.com cbromley@mchughbromley.com	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ iCourt E-File & Serve
Robert E. Williams WILLIAMS, MESERVY, & LOTHSPEICH, LLP PO Box 168 Jerome, ID 83338 rewilliams@wmlattys.com	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ iCourt E-File & Serve

Robert L. Harris HOLDEN, KIDWELL, HAHN & CRAPO, PLLC PO Box 50130 Idaho Falls, ID 83405 rharris@holdenlegal.com	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ iCourt E-File & Serve
Zachary H. Jones City Attorney, City of Idaho Falls PO Box 50220 Idaho Falls, ID 83405 zjones@idahofalls.gov	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ iCourt E-File & Serve
Skyler C. Johns Nathan M. Olsen Steven L. Taggart OLSEN TAGGART PLLC PO Box 3005 Idaho Falls, ID 83403 sjohns@olsentaggart.com nolsen@olsentaggart.com staggart@olsentaggart.com	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ iCourt E-File & Serve
Dylan Anderson DYLAN ANDERSON LAW PLLC PO Box 35 Rexburg, Idaho 83440 dylan@dylanandersonlaw.com	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ iCourt E-File & Serve

Courtesy copy sent via First-Class U.S. Mail to:

Snake River Basin Adjudication District Court
of the Fifth Judicial District
P.O. Box 2707
Twin Falls, Idaho 83303-2707

/s/ Reed W. Larsen
Reed W. Larsen