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July 17, 2025

Ivan L. London  
Mountain States Legal Foundation  
2596 South Lewis Way  
Lakewood, CO 80227  
Via email: [ilondon@mslegal.org](mailto:ilondon@mslegal.org)

**Re: Response to July 11, 2025, Letter Regarding IFBF Petition to Initiate Rulemaking for I.C. § 38-1304(1)(f)**

Dear Mr. London,

The Idaho Department of Lands (Department) is in receipt of your letter dated July 11, 2025, regarding the Idaho Farm Bureau Federation's (IFBF)'s petition dated April 22<sup>nd</sup>, 2025 (Petition) to the Department to initiate rulemaking pursuant to I.C. § 38-1304(1)(f). For the reasons set forth herein your requests that the Petition be addressed at the July 15<sup>th</sup>, 2025, meeting of the State Board of Land Commissioners (Land Board) and that the Department and Land Board initiate rulemaking by July 23<sup>rd</sup>, 2025, are denied. The Department's response to the Petition was timely and a proper exercise of the Department's discretion pursuant to I.C. § 67-5230. Additionally, for reasons explained in more detail below, bringing the proposal before the Forest Practice Advisory Committee (FPAC) is a necessary next step prior to initiating any formal rulemaking procedures.

First, the Department rejects the assertion that it was not timely in responding to the Petition. I.C. § 67-5230 expressly states in relevant part that "[i]f an agency requests additional information from the petitioner, *the time period specified in this subsection shall begin anew.*" (emphasis added) I.C. § 67-5230(4). As outlined in the Department's July 2<sup>nd</sup>, 2025, response letter, subsequent to the receipt of the Petition the Department reached out to IFBF to request additional information. Such additional information was provided to the Department on June 4<sup>th</sup>, 2025, when the Department met with a representative of the IFBF to further discuss the details of the Petition. Thus, the time period to respond to the Petition began anew on June 4<sup>th</sup>, 2025, and the Department's response was delivered within the required 28 days of the applicable deadline in compliance with I.C. § 67-5230(4).

Secondly, the Department's denial of the Petition was a proper exercise of discretion pursuant to I.C. § 67-5230. Pursuant to I.C. § 67-5230 an agency has only two options to respond to a petition to initiate rulemaking; "a) [d]eny the petition in writing stating its reasons for the denial; or b) [i]nitiate rulemaking proceedings in accordance with this chapter." I.C. § 67-5230(1)(a-b). The Department exercised the statutorily authorized option of denying the Petition and provided its reasoning as to why initiating formal rulemaking was not appropriate at the time. It is standard practice for the Department to have its subject matter experts on the FPAC review rulemaking proposals prior to initiating formal rulemaking. Importantly, the July 2<sup>nd</sup> decision letter does not foreclose formal rulemaking in the future. Rather, it simply states that rulemaking is not appropriate at this time because the proposal requires full consideration to

determine the necessity and scope of any proposed rulemaking. Pursuant to the Department's regular rulemaking practices under the Forest Practices Act (FPA), this requires assessment by the FPAC.

Moreover, all rulemaking must be conducted within the full context of the APA and regulatory landscape of the State of Idaho. As you may be aware, Idaho has undergone a monumental effort in reducing the footprint of the administrative state through comprehensive review and paring back of all administrative rules. See Idaho Exec Orders Nos 2019-02, 2020-01. This state-led directive has continued with the 2024 amendments to the Idaho Administrative Procedures Act (APA) requiring ongoing review and justification of administrative rules the recent passage of HB 14 during the 2025 legislative session directing agencies to take the next step in the administrative reduction process by reviewing their titles and chapters of Idaho Code to identify unnecessary, obsolete, and outdated provisions of Idaho Code with recommendations for removal. See I.C. §§ 67-5292, 67-3701 et seq. All of this is to simply illustrate that the State of Idaho does not condone rulemaking for rulemaking's sake and additions to Idaho's regulatory scheme are heavily scrutinized. Given this clear directive it is imperative that proposed rulemakings receive adequate consideration as to their necessity and appropriate scope prior to initiating the formal rulemaking process. As the Department has explained, pursuant to I.C. 38-1305 FPAC serves this purpose in the Department's regular rulemaking process under the FPA.

Contrary to your assertion neither the Land Board nor the Department are refusing to implement I.C. § 1304(1)(f). The substance of I.C. § 1304(1)(f) is already being implemented under the existing regulatory framework as is evident from the fact that the Department regularly receives notice of and approves salvage projects on timber lands in Idaho. However, in response to your client's petition the Department is willing to bring this matter before the FPAC to receive their advice to help determine the necessity of providing more express rules for implementation I.C. § 38-1304(1)(f) and, if found necessary, the appropriate scope and justification of a proposed rule given Idaho's express directive to minimize unnecessary regulation.

The Department understands IFBF's desire for this process to move forward expeditiously. In an effort to expedite this process, the Department has contacted the FPAC to schedule a special meeting to consider this matter prior to its regularly scheduled meeting in November. The FPAC shall meet on **August 26<sup>th</sup>, 2025, at 12:30 PDT** to review this matter and provide its input on proposed rulemaking. The FPAC will meet in the Department office in Coeur d'Alene and there shall be an option for remote attendance at the Department's Director's Office in Boise. The Department would like to formally invite the IFBF to attend the FPAC meeting and present its perspective on the necessity and appropriate scope of a proposed rule. IFBF's participation could be extremely valuable to the FPAC's consideration.

In sum, nothing in the APA or the FPA mandates that the Department grant a petition to initiate formal rulemaking. The Department has the discretion to determine whether proceeding with formal rulemaking is appropriate at the time of the petition. In this circumstance, while the Department determined that formal rulemaking is not appropriate, it has taken concrete steps to initiate its regular rulemaking process under the FPA in relation to the Petition by setting a meeting to bring this proposal before the FPAC.

In light of the foregoing, your requests that IFBF's Petition be addressed at the July 15, 2025, meeting of the State Board of Land Commissioners and that the Land Board and Department initiate rulemaking no later than July 23, 2025, are denied. The Department will proceed to bring this matter before the FPAC at its August 26<sup>th</sup>, 2025, meeting to assess the Petition, the necessity for rulemaking, and the appropriate scope of any proposed rule. IFBF is highly encouraged to attend this meeting and provide their input on the proposal for the FPAC's

consideration. The Department will proceed accordingly after receiving the FPAC's assessment of the proposal.

As you may already be aware, the Department's denial of the Petition constitutes a final agency action under I.C. § 67-5230 and is therefore subject to judicial review in accordance with I.C. § 67-5270. Pursuant to I.C. § 67-5273, any such petition for judicial review must be filed within twenty-eight (28) days of the service of the denial of the petition to initiate rulemaking.

If your client needs any additional information regarding the upcoming FPAC meeting or if you would like to discuss this matter further, please feel free to contact me at the information below.

Very Truly Yours,

*/s/ John Richards*

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John Richards

General Counsel

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