

Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707

**BEFORE THE IDAHO STATE
DEPARTMENT OF AGRICULTURE**

IN THE MATTER OF:)
UPPER VALLEY LIVESTOCK AUCTION) FINDINGS OF FACT, CONCLUSIONS
APPLICATION FOR A PUBLIC) OF LAW, AND PRELIMINARY ORDER
LIVESTOCK MARKET CHARTER)
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This is a proceeding before the Idaho State Department of Agriculture (“ISDA”) to consider the issuance of a Public Livestock Market Charter to Upper Valley Livestock Auction. The parties to the proceeding are the Applicants, Cade K. Carter and Robert K. Remington as unincorporated business partners (hereinafter “Applicants”); Producers Livestock Marketing Association in Jerome, Idaho through its manager Dan Schiffler; Idaho Livestock Auction in Idaho Falls, Idaho through its business manager Sharee Palmer; and Blackfoot Livestock Auction in Blackfoot, Idaho through its President Cole Erb. A public hearing on the Application was originally scheduled for March 26, 2020, in Idaho Falls, Idaho. Due to the immediate danger to public health from the identification and potential spread of COVID-19 and according to recommendations from public health officials to limit public meetings, the ISDA amended the public hearing procedure to written testimony only. Written testimony was accepted by the ISDA beginning on March 26, 2020, through the close of business on April 09, 2020. Applicants were allowed to respond to written comments received through the close of business on April 16, 2020. The undersigned Hearing Officer, having considered the information submitted by each of the parties and

having reviewed the record and governing law and rules makes the following:

Findings of Fact and Conclusions of Law

1. On March 04, 2020, the ISDA received an Application for a Public Livestock Market Charter from Cade K. Carter and Robert K. Remington with a proposed location to be in Roberts, Idaho.
2. Applicants proposed sale dates of Tuesday and Thursday weekly, with special sales to be conducted on Saturdays. Applicants proposed the name of the sale yard to be Upper Valley Livestock Auction.
3. The ISDA, upon its own motion, issued a Notice of Public Hearing on March 11, 2020, scheduling a public hearing to be conducted in Idaho Falls, Idaho on March 26, 2020. The ISDA properly served the Notice of Public Hearing to the Applicants; the operators of all statewide public livestock markets in Idaho; and the Idaho Cattle Association, Idaho Farm Bureau, Idaho Dairy Association and Milk Producers of Idaho on March 11, 2020. Additionally, the Notice of Public Hearing was published in the following newspapers: Jefferson Star, Idaho State Journal and Post Register in March 2020, in advance of the March 26, 2020 public hearing.
4. On March 19, 2020, again on its own motion, the ISDA issued a Notice of Amended Public Hearing. The March 19, 2020 Amended Notice, amended the procedure for the public hearing informing the stakeholders that written testimony would be accepted by interested stakeholders in lieu of an in-person public hearing. The cancellation of the in-person meeting was necessitated by the recommendation of public health officials to limit public gatherings due to concerns related to the spread of COVID-19. Subsequently, the State of Idaho issued an Order dated March 25, 2020, directing Idaho citizens to self-

isolate at their place of residence and prohibited, among other things, non-essential travel and non-essential public gatherings.

5. The ISDA contacted the Applicants, operators of all public livestock markets in Idaho and the duly organized statewide livestock organizations informing them of the amended hearing procedure and properly served the Amended Notice by email dated March 19, 2020.
6. The ISDA did not receive any objection to the Amended Notice or procedure requiring testimony to be submitted in writing.
7. The ISDA met the notice requirements outlined in Idaho Code § 25-1725 by notifying the duly organized statewide livestock associations and all operators of public livestock markets in Idaho directly on March 11, 2020, fifteen (15) days in advance of the scheduled hearing on the application. Stakeholders were also provided notice by the publication of the Notice of Public Hearing in three newspapers circulated in and around the Roberts, Idaho area. Notice requirements were further fulfilled by providing notice to the above- mentioned stakeholders of the amended procedure to be utilized during the hearing.
8. A hearing on the application, as required by Idaho Code § 25-1726, was conducted by providing interested stakeholders the opportunity to submit written comments on the application from March 26, 2020, through April 09, 2020. Applicants were provided the opportunity to respond or rebut information received on the application in writing through April 16, 2020.
9. Three written comments were received within the allotted time frame allowed for information on the application. The comments are summarized as follows:

- a. The first commenter did not object to issuing a new charter for the eastern Idaho area. The commenter stated that there was at one time four markets in the eastern Idaho area and it is now down to just one. The commenter recommended that the sale day be Wednesday for the new charter to avoid competing with other existing markets' sale days.
 - b. A second commenter stated that they "strongly" object to issuing a new livestock market charter to Applicants. The commenter stated, although their business is not currently conducting sales at their facility, the sale yard is still in business. The comment expressed concern about the impact a new market charter in the area would have on their existing business. The comment further stated that "the area cannot support two livestock markets located so close to each other."
 - c. A third commenter stated that there is no need for another sale yard in the region, suggesting that the service area where the new market charter is proposed is adequately covered. The commenter stated that the marketplace is already diluted due to the increasing trend of cattle being marketed through internet and video sales, direct sales through classifieds or social media. The commenter also questioned whether the Applicants can build a new facility to satisfy the animal health requirements. Finally, the commenter questioned whether sufficient financing was available to operate a market charter that is compliant with federal Packer and Stockyards Act requirements once the facility is operational.
10. The Applicants submitted a rebuttal letter within the allotted time frame for a written response. Their comments are summarized as follows:

Applicants have prior experience with a livestock auction in the area and know and work closely with the local ranching industry. Applicants stated experience includes special stock cow sales, feeder sales, replacement heifer sales, all black sales, all red sales, sheep, goats, hogs, and horse and tack sales. Applicants state they are aware of a “desperate need” of a new livestock facility in the area. Applicants state that local ranchers are traveling out of state and to Twin Falls to market their cattle. Applicants, themselves have traveled to Wyoming, Nebraska and Iowa to sell their breeding stock. Applicants state they have discussed the idea of a new auction facility in the proposed area with local feedlots and ranchers and have received “tremendous support” to build a new facility.

11. The following documents were marked as Exhibits and accepted into evidence for the hearing on the application:
 - a. Exhibit 1: Application for Public Livestock Market Charter;
 - b. Exhibit 2: Notice of Public Hearing;
 - c. Exhibit 3: Email advising statewide livestock associations and operators of public livestock markets of public hearing;
 - d. Exhibit 4: Amended Notice of Public Hearing;
 - e. Exhibit 5: Email dated March 19, 2020, advising statewide livestock associations and operators of public livestock markets of amended hearing procedure;
 - f. Exhibit 6: Email dated March 19, 2020, advising Applicants of amended hearing procedure;
 - g. Exhibit 7: Email dated March 30, 2020, reminding statewide livestock associations and operators of public livestock markets of amended hearing procedure;

- h. Exhibit 8: Publication Notice;
- i. Exhibit 9: Written comments received from Producers Livestock dated April 06, 2020;
- j. Exhibit 10: Written comments received from Idaho Livestock Auction dated April 09, 2020;
- k. Exhibit 11: Written comments received from Blackfoot Livestock dated April 09, 2020;
- l. Exhibit 12: Written rebuttal received from Applicants dated April 15, 2020.

The Hearing Officer has reviewed the documents submitted and incorporates by reference the admitted Exhibits into this Preliminary Order.

- 12. The Idaho Public Livestock Development Act, Idaho Code Title 25, Chapter 17, requires a showing, in part, of the following.
 - a. Any person making application for such market charter shall do so to the director in writing, verified by the applicant, in the form as prescribed by the director, showing the following:
 - 1. The name and address of the applicant, with a statement of the names and addresses of all persons having any financial interest in the applicant and the amount of such interest. This statement shall include the legal names of all members of a partnership; the officers and members of the governing board of an association; and five (5) principal stockholders of a corporation. If, during the period of a market charter issued hereunder, any change shall take place in the personnel identified herein, the holder of the market charter shall forthwith make a verified report of any such change to the director.
 - 2. Financial responsibility of the applicant in the form of a statement of all assets and liabilities.
 - 3. A legal description of the property and its exact location with a complete description of the facilities proposed to be used in connection with such public livestock market.
 - 4. The schedule of charges applicant proposes to charge for all services proposed to be rendered.
 - 5. A detailed statement of the facts upon which the applicant relies showing the

general confines of the trade area proposed to be served by such public livestock market, the benefits to be derived by the livestock industry and the services proposed to be rendered.

6. Such application shall be accompanied by the annual charter fee as prescribed in section 25-1728, Idaho Code. In addition, the application shall be accompanied by a hearing fee of five hundred dollars (\$500) which shall not be returnable to the applicant. Said annual charter fee and hearing fee shall be remitted separately. The director shall remit said hearing fee to the state treasurer of the state of Idaho to be credited to the "Public Livestock Market Fund."
13. The Act further provides for a hearing on the proposed application by the ISDA. Upon hearing on the application, if the ISDA finds from the evidence presented that such public livestock market for which the Market Charter is sought, would beneficially serve the livestock economy, such Market Charter shall be issued to the applicant. In determining whether or not to grant or deny the application, the ISDA shall give reasonable consideration to:
 - a. The ability of the applicant to comply with that certain act of the congress of the United States known as the Packers and Stockyards Act, as amended (7 USC 181, et seq.).
 - b. The financial stability, business integrity and fiduciary responsibility of the applicant.
 - c. The livestock industry marketing benefits to be derived from the establishment and operation of the public livestock market proposed in the application.
 - d. The adequacy of the facilities set forth in the application, to permit the performance of market services proposed in the application.
 - e. The present market services elsewhere available to the trade area proposed to be served.
 - f. Whether the proposed public livestock market would be permanent and continuous.
 - g. The economic feasibility of the proposed market services based on competent evidence in respect to such aspects.

- h. Proper facilities for health inspection and testing of livestock.
14. The Applicants have complied with all applicable provisions of the Idaho Public Livestock Market Development Act.
 15. The ISDA has given proper notice of hearing on the Application to all interested parties and the modified procedures for conducting the required hearing through acceptance of written evidence meets the applicable requirements of Idaho Code.
 16. The ISDA is vested with the authority to administer and implement the Idaho Public Livestock Market Development Act. Its stated purpose is to “encourage, stimulate and stabilize the agricultural economy of the state in general, and the livestock economy in particular, *by encouraging the construction, development and productive operation of public livestock markets as key industries* of the state and those markets’ particular trade areas, with all benefits of fully open, free, competitive factors, in respect to sale and purchases of livestock. Idaho Code § 25-1720 (emphasis added).
 17. Having carefully reviewed the record and being apprised of the purpose and requirements of the Idaho Public Livestock Market Development Act, I conclude that the objections raised under the Application do not outweigh the benefits to the livestock industry and agricultural economy as a whole by granting the market charter requested. There is no basis under the applicable law to justify denial of the application.
 18. With respect to the certain days of the week the Applicants may operate, the ISDA’s authority to consider the application for a market charter does not extend to restricting or limiting which days a market may operate. Once all requirements for a livestock market charter are met, Applicants may choose which days to conduct sales at their facility. In so choosing, it is the Hearing Officers recommendation that Applicants work

cooperatively with livestock markets in the surrounding area.

19. The Applicant has shown that the issuance of the Charter would beneficially serve the livestock economy and has complied with all requirements under the law for its issuance.

PRELIMINARY ORDER

Therefore, I find that,

The application submitted for a Public Livestock Market Charter to Upper Valley Livestock Auction is granted.

Appeal Process

This Preliminary Order can and will become final without further action of the Hearing Officer unless any party petitions for reconsideration to the Hearing Officer issuing this Preliminary Order or petitions for review to the Director.

Any party may file a petition for the Hearing Officer's reconsideration of this Preliminary Order within fourteen (14) days of the service date of this Order. The Hearing Officer issuing this Preliminary Order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Idaho Code § 67-5243(3) (Parties should not combine a petition for reconsideration to the Hearing Officer with a petition for review to the Director. If a party wishes to petition the Director after receiving a ruling from the Hearing Officer on a petition for reconsideration, the petition to the Director should be filed according to the following provisions. See IDAPA 04.11.01.730 Idaho Rules of Administrative Procedure.)

Within fourteen (14) days after:

- (a) the service date of this Preliminary Order,
- (b) the service date of the Hearing Officer's denial of a petition for reconsideration from this Preliminary Order, or
- (c) the failure within twenty-one (21) days of the Hearing Officer to grant or deny a petition for reconsideration from this Preliminary Order, any party may in writing petition for review or take exceptions to any part of this Preliminary Order and file briefs in support of the party's position on any issue in this proceeding to the Director. Otherwise, this Preliminary Order will become a Final Order of the Department. See Idaho Code § 67-5246.

If any party petitions for review before or takes exceptions to this Preliminary Order to the Director, opposing parties shall have twenty-one (21) days to respond before the Director to the petition for review or exceptions. Written briefs in support of or taking exceptions to this Preliminary Order shall be filed with the Director. The Director may review this Preliminary Order on its own motion.

If the Director reviews this Preliminary Order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to this Preliminary Order and may schedule oral argument in the matter before issuing a Final Order. The Director will issue a Final Order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter to the Hearing Officer for further evidentiary hearings if further factual development of the record is necessary before issuing a Final Order. See Idaho Code Section 67-5245.

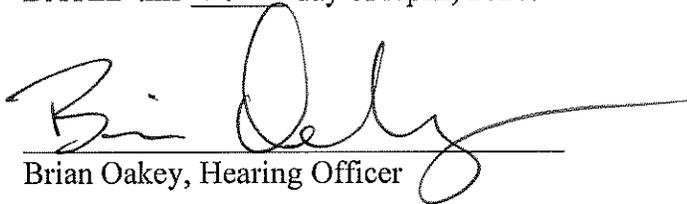
Pursuant to Idaho Code §§ 67-5270 and 67-5272, if this Preliminary Order becomes final, any party aggrieved by the Final Order or Orders previously issued in this case may appeal the

Final Order and all previously issued Orders in this case to district court by filing a petition in the district court of the county in which:

- (a) A hearing was held,
- (b) The final agency action was taken,
- (c) The party seeking review of the Order resides, or
- (d) The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this Preliminary Order becoming final. See Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the Order under appeal.

DATED this 27th day of April, 2020.



Brian Oakey, Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 27, 2020, I caused a true and correct copy of the above to be sent by mail and by email to:

Producers Livestock, P.O. Box 380, Jerome, Idaho 83338; Jerome@producerslivestock.com

Blackfoot Livestock Auction, 93 Rich Ln, Blackfoot, ID 83221; blackfootlivestock@gmail.com

Idaho Livestock Auction, P.O. Box 2187, Idaho Falls, Idaho 83403; ilsa@ida.net

Cade Carter, 51 N. 2nd W, Teton, Idaho 83451; cartercade1@gmail.com

Robert Remington, 2443 E. Yellowstone Hwy., St. Anthony, Idaho 83445;

remingtonlivestock@gmail.com



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