BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF CREATING THE OAKLEY VALLEY AREA WATER DISTRICT, DESIGNATED AS WATER DISTRICT NO. 140, FOR THE ADMINISTRATION OF WATER RIGHTS IN ADMINISTRATIVE BASIN 45	))))))	**FINAL ORDER CREATING WATER DISTRICT NO. 140**

The Director of the Idaho Department of Water Resources ("Director" or "Department") is required by Idaho statutes to divide the state into water districts for the purpose of performing the essential governmental function of distributing water among appropriators under the laws of the State of Idaho. The requirement to create water districts applies to those streams, or other water sources, for which the priorities of appropriation have been adjudicated by court decree. By statute, during the pendency of a water rights adjudication, the district court having jurisdiction for the adjudication can authorize interim administration of the water rights by the Director if reasonably necessary to protect senior water rights. The district court may authorize the distribution of water pursuant to chapter 6, title 42, Idaho Code, in accordance with partial decrees entered by the court or in accordance with one or more Director's Reports as may be modified by the court's order.

FINDINGS OF FACT

1. On April 18, 2005, the State of Idaho ("State") filed with the Snake River Basin Adjudication ("SRBA") District Court a motion requesting an order authorizing the interim administration of water rights by the Director in the Department's Administrative Basin 45 ("Basin 45").

2. On April 19, 2005, the State served copies of its motion and supporting briefing and affidavits on all affected parties by regular U. S. Mail. The State's motion included a Notice of Hearing setting the matter for hearing before the SRBA District Court on July 21, 2005. The SRBA District Court designated the matter as SRBA Subcase 92-00021 (Interim Administration). The State's motion and supporting briefing and affidavits are a part of the public record in the matter of creating Water District No. 140 within Basin 45.

3. On July 21, 2005, the SRBA District Court held a hearing on the State's motion. No objections were filed in opposition to the motion, and no party appeared in opposition to the State's motion.

4. On July 21, 2005, the SRBA District Court issued an order authorizing the interim administration of water rights by the Director in Basin 45, pursuant to chapter 6, title 42, Idaho

Code, based upon a determination that such interim administration is necessary to protect senior water rights.

5. On November 2, 2005, the Director signed a notice proposing to establish a water district in Basin 45 pursuant to the provisions of Idaho Code § 42-604. On November 8, 2005, the Director sent notice of the proposed action by regular U. S. Mail to each holder of a water right within the boundaries of the proposed water district. The notice described the water district proposed to be established, the reasons therefor, and the time and place for a hearing to be held on December 15, 2005, concerning establishment of the proposed water district. The notice also provided a time period within which written comments on the proposed action would be accepted.

6. In addition, the Director caused notice of the proposed action establishing the water district to be published once a week for two (2) weeks in the following newspapers having general circulation within the area of the proposed water district: *The Times News* of Twin Falls and the *South Side Press* of Cassia County, both on November 17 and 24, 2005.

7. The notice mailed to water right holders proposed that Water District No. 140 would include all water rights with points of diversion located within the boundaries of Basin 45, except those used solely for domestic and/or stock water purposes as defined by Idaho Code §§ 42-111 and 42-1401A(11).

8. The Director's notice also described that the watermaster for the water district would be responsible for certain duties under the direction and supervision of the Director including: (1) measurement and reporting of diversions under water rights; (2) administration of water rights in priority; (3) curtailment and enforcement against unauthorized or excessive diversions; and (4) enforcement of stipulated agreements or mitigation plans approved by the Director.

9. The Director's notice further described that existing water districts in Basin 45 are proposed to be converted to sub-districts within Water District No. 140. There are currently seven water districts located within the proposed Water District No 140 including: Water District No. 45-A, Basin Creek and tributaries; Water District No. 45-B, Birch Creek and tributaries; Water District No. 45-C, Goose Creek and tributaries; Water District No. 45-F, Marsh Creek and tributaries; Water District No. 45-K, Cottonwood Creek and tributaries; Water District No. 45-N, Dry Creek and tributaries; and Water District No. 45-O, Golden Valley (ground water in the Cottonwood Critical Ground Water Area). All of these water districts are currently active except Water District No. 45-N, which is currently inactive. Water District No. 45-C has been inactive in certain years.

10. None of the existing water districts listed above, except Water District No. 45-O, include water rights from ground water sources. None of these water districts administer water rights from surface water sources outside the irrigation season for those rights included within the districts, nor do these districts administer water rights during the irrigation season when the surface water sources are not under watermaster regulation.

11. The Director's notice also stated that the water district would replace the measurement and reporting responsibilities of the Eastern Snake Plain Aquifer ("ESPA") West Water Measurement District ("WWMD") that currently exists within that portion of Basin 45 overlying the ESPA.

12. On December 15, 2005, at approximately 8:00 p.m., the Director conducted a hearing concerning the proposed creation of the water district at the Burley City Hall in Burley, Idaho. Approximately 35 people attended the hearing.

13. Prior to commencing the hearing, the Director gave a presentation and answered questions for approximately 90 minutes addressing the reasons for creation of the proposed water district and how the district would operate.

14. Persons attending the hearing were provided opportunity to make oral statements for the record. In addition, the Director held the record open through December 28, 2005, for the submittal of written comments.

15. Seven (7) individuals made oral statements for the record at the hearing. Two (2) persons who testified at the hearing on December 15, 2005, also submitted written statements to the Department on or before the deadline of December 28, 2005. Written statements were also submitted to the Department prior to the deadline of December 28, 2005, by a group of holders of water rights from ground water in the northeast portion of Basin 45.

16. Mr. Randy Brown of Murtaugh, Idaho, testified on behalf of the Southwest Irrigation District ("SWID"). Mr. Brown testified that SWID supports formation of a water district south of the Snake River that is separate from Water District No. 130, which is located north of the Snake River. Mr. Brown stated that SWID believes the hydrology north of the river is not the same as the hydrology south of the river where SWID is located. Mr. Brown stated that SWID believes a separate district south of the river better serves the interests of the irrigation district. Mr. Brown further stated that some wells included in SWID are located within Administrative Basin 47, and SWID recommends that those wells be included in Water District No. 140 when the Department implements administration of ground water rights in Administrative Basin 47.

17. Mr. Grant Wyatt of Burley, Idaho, also testified on behalf of SWID. Mr. Wyatt stated that SWID supports being included in the proposed Water District No. 140 rather than being included in Water District No. 130. Mr. Wyatt also stated that water management issues and ground water hydrology south of the Snake River in Basin 45 are different than those north of the Snake River. In particular, some of the aquifers located in Basin 45 may not be hydraulically connected to the Snake River. Mr. Wyatt stated that SWID has been able to use some of the nearby streams from the South Hills for recharge of local aquifers.

18. Mr. Carl Austin of Oakley, Idaho, testified on his own behalf, as the owner of the Double Diamond Ranch located south of Oakley. Mr. Austin is a mining and geological engineer with extensive background in geothermal resource exploration and development. Mr. Austin testified that geothermal water tapped by deep wells located on the Double Diamond

Ranch upstream of the Oakley Reservoir should not be considered to be hydraulically connected to the ground water of the Oakley Basin or the Snake River Plain. Mr. Austin supplemented his testimony with a technical report he authored on the occurrence of geothermal fluids in the Goose Creek Basin. A copy of this report was also submitted to the Department on December 13, 2005.

19. Mr. David Pickett of Oakley, Idaho, testified on behalf of the Goose Creek Irrigation District ("GCID") and the Oakley Canal Company ("OCC"). Mr. Pickett testified in support of the proposed Water District No. 140 rather than including Basin 45 in Water District No. 130. Mr. Pickett requested that the Department consider the current duties of field agents employed by GCID, SWID, OCC, and other small water districts near Oakley, when assigning the duties of the watermaster of the proposed Water District No. 140. Mr. Pickett cautioned that the watermaster for Water District No. 140 should not duplicate the duties of the field agents working for these other water delivery entities. Mr. Pickett also suggested that the watermaster for Water District No. 140 should be an information gatherer and should provide oversight of the existing water delivery entities in the area.

20. Mr. Randy Robinson of Oakley, Idaho, testified as the chairman of the Board of Directors for the OCC. Mr. Robinson stated that he concurred with the testimony provided by Mr. Pickett.

21. Mr. Earl Warthen of Albion, Idaho, testified that holders of surface and ground water rights located within the Albion Basin (Marsh Creek drainage) had met on December 10, 2005, to discuss the proposed formation of Water District No. 140. Mr. Warthen stated that the right holders present at this meeting supported formation of a separate water district for the Albion Basin for the following reasons:

> The Albion Basin sits by itself in an uplifted area bordered on the East and West by major tertiary faults in an uplift, and separate from the Oakley fan and the Malta area.... Second, the Oakley Valley falls in the West Cassia Soil Water Conservation District whereas the Albion Basin is in the East Cassia Soil Water Conservation District. Third, both the Malta and Oakley fans are connected to the interstate waters of Utah and Nevada, Utah on the Malta side and Utah and Nevada on the Oakley side. Furthermore, number 4, both the Malta and the Oakley area have been designated critical groundwater areas. Fifth, approximately fifteen years ago the East Cassia Soil Water Conservation District petitioned the State of Idaho for a groundwater recharge district and still hopes to further that goal as these problems continue.

Mr. Warthen submitted a written version of his testimony to the Department at the hearing on December 15, 2005.

22. Mr. Don Bowden of Albion, Idaho, testified on behalf of the City of Albion. Mr. Bowden requested that the Department recognize that the Albion Basin is an isolated basin that is not hydraulically connected to any other water sources in the proposed water district. Mr. Bowden expressed concern about a previous change in point of diversion from outside the Albion Basin to within the Basin that Mr. Bowden alleged to have caused injury to existing water rights in the Albion Basin. Mr. Bowden requested that the Department recognize the

Albion Basin as "an isolated system" and to avoid such changes in points of diversion in the future "in order to equitably administer" the Albion Basin. Mr. Bowden stated the City is not adverse to working with its neighbors and paying its share for the administrative overhead of a watermaster, but requested that the Albion Basin be designated as a separate district.

23. The Director received a written petition from thirteen individual holders of ground water rights for diversions located in Basin 45 south of the Snake River, north of Interstate 86, and within the Magic Valley Ground Water District. The petitioners include Jack Duncan, Paul Duncan, Bill Hepworth, Bruce Newcomb, Mark Newcomb, Mark Sanderson, Dan Walton, Gary Fowler, William McManus, Ron Hieb, Ardel Wickel, Lynn Mitchell, and Dell Mitchell. The petition asks the Director to include the ground water rights in this area in the proposed Water District No. 140 for the following reasons:

1. According to the water model used by the state of Idaho, the hydrology south of the Snake river is substantially different than the hydrology north of the Snake river.

2. The south side canal from Minidoka Dam (which supplies surface water to the ground south of Burley) runs through the middle of our farms. We feel this vital artery between us and the rest of Cassia county will prove to be a very positive advantage for water management.

3. The Snake River forms a natural boundary for separation of these two state water districts [Water District No. 130 and Water District No. 140].

24. The above referenced petition also states that if the lands owned by the petitioners are included in Water District No. 140, then the petitioners intend to join SWID for purposes of measurement and reporting. The petitioners also state that they are prepared to create a new irrigation or ground water district if necessary to represent the northeast portion of Cassia County.

25. The ESPA is defined as the aquifer underlying an area of the Eastern Snake Plain that is about 170 miles long and 60 miles wide as delineated in the report "Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho," U. S. Geological Survey ("USGS") Professional Paper 1408-F, 1992, excluding areas lying both south of the Snake River and west of the line separating sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian. The boundary of the ESPA within Basin 45 is referenced in the map on Attachment A of this order (labeled as the "Eastern Snake Plain Aquifer").

26. The ESPA extends across the northern portion of Basin 45 between Minidoka Dam in the northeast, Churchill Knolls in the south (approximately 7 miles north of Oakley), and Murtaugh Lake in the northwest.

27. Although there is uncertainty regarding the degree of connection between the different aquifers within Basin 45, ground water in that portion of Basin 45 that is within the ESPA is primarily in two unconfined aquifers comprised of fractured basalt and alluvium. South and west of the ESPA boundary in Basin 45, the principal aquifers are confined in ryholite or limestone and unconfined in alluvium. The confined aquifers in ryholite and limestone are

deeper and overlain by basalt and alluvium. Water levels in the shallower unconfined basalt and alluvium aquifers appear to be more responsive to periods of above-average and below-average precipitation. Geologic faulting and surface water in Basin 45 also affect ground water movement.

28. The Department uses a calibrated ground water model to determine the effects on the ESPA and hydraulically connected reaches of the Snake River and its tributaries from pumping a single well in the ESPA, from pumping selected groups of wells in the ESPA, and from surface water uses on lands above the ESPA.

29. The ground water in the ESPA is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees. One of the river reaches where a direct hydraulic connection exists between the ESPA and the Snake River is between the USGS stream gage located about 1 mile downstream of American Falls Dam and the USGS stream gage located at Minidoka Dam ("Neeley to Minidoka reach").

30. Results from the Department's calibrated ground water model indicate that diverting ground water from that portion of Basin 45 overlying the ESPA for consumptive uses affects flows in the Neeley to Minidoka reach of the Snake River, as well as ground water levels in the ESPA north of the Snake River. That portion of the ESPA south of the Snake River in Basin 45 is hydraulically connected to the ESPA north of the Snake River and to the Neeley to Minidoka reach of the Snake River.

31. Four (4) separate critical ground water areas ("CGWAs") have been designated by the Department in Basin 45 pursuant to Idaho Code § 42-233a. A CGWA is defined as all or part of a ground water basin that does not have sufficient ground water to provide a reasonably safe supply for irrigation or other uses at current or projected rates of withdrawal. The Director can deny applications for new water right appropriations located within a CGWA and may require water users to report diversions or other information.

32. The four CGWAs designated by the Department in Basin 45 are collectively known as the Oakley Fan CGWAs. The Goose Creek-Rock Creek CGWA was first designated in 1962 but subdivided in 1967 into three separate CGWAs: Artesian City, Cottonwood, and Oakley-Kenyon. The fourth, the West-Oakley Fan CGWA, was established in 1982. The four CGWAs are contiguous and have been managed as a single unit. The orders designating the CGWAs set forth the basis for determining that ground water within the areas is either limited or not available for appropriation. New appropriations of ground water are not allowed in the Artesian, Cottonwood, and Oakley-Kenyon CGWAs. New appropriations in the West-Oakley Fan CGWA may only be considered upon submittal of an acceptable mitigation plan.

33. Approximately half of the Oakley-Kenyon and West Oakley Fan CGWAs, plus a portion of the Artesian City CGWA, overlap the ESPA. The contiguous boundary of the Oakley Fan CGWAs and the ESPA boundary in Basin 45 are delineated on the map in Attachment A to this Order.

34. Continuous monitoring of ground water levels in the Oakley Fan CGWAs indicates that ground water levels continue to generally decline. The declining trend suggests that overdraft conditions still exist throughout the four CGWAs, although water levels in the shallower basalt and alluvium aquifers have generally declined less and are more stable.

35. Idaho Code § 42-1416B provides that claims to expanded use of water within CGWAs may be decreed in the SRBA if the expansion occurred after the designation of the CGWA and before the commencement of the SRBA. The priority date of such decreed rights is June 30, 1985.

36. Idaho Code § 42-1416B further provides that water in a CGWA shall be deemed unavailable to fill such decreed expansion rights unless the Director finds that a management program exists that will limit the annual average withdrawals from the aquifer to the average annual recharge of the aquifer. Within two (2) years after a decree determining the water rights within a CGWA, the Director must find that a management plan exists that would bring withdrawals into balance with recharge. If an adequate management plan does not exist, the Director shall order holders of expansion rights in a CGWA to cease or reduce withdrawal of ground water until withdrawals are brought into balance with recharge.

37. There are approximately 60 expansion ground water rights within the four (4) CGWAs in Basin 45 appurtenant to over 11,500 acres of irrigated land. These rights and lands lie within and outside of the ESPA boundary in Basin 45.

38. Several irrigation districts and canal companies in Basin 45 have service area boundaries that lie within and outside the ESPA boundary and represent water users who hold ground water rights located within the Basin 45 CGWAs.

39. Several of the existing water districts in Basin 45 that administer surface water rights also overlap portions of the CGWAs, as well as the service areas of certain irrigation districts and canal companies. Some water right holders have both surface water rights in these water districts and ground water rights within the CGWAs and irrigation districts.

40. The available water supply in all or portions of Basin 45 overlying the ESPA is not adequate to consistently satisfy some senior priority water rights from sources that are hydraulically connected to the ESPA. The available water supply is also projected in the future to be insufficient, at times, to satisfy these water rights.

41. The administration of ground water rights within the portion of Basin 45 overlying the ESPA is necessary for the protection of prior surface and ground water rights.

42. The remaining areas of Basin 45 outside of the ESPA may not have a direct hydraulic connection to the Snake River or sources tributary to the Snake River. However, significant portions of the CGWAs in Basin 45 overlap the ESPA and some irrigation districts and surface water districts. The CGWAs were designated because average annual withdrawals of water in those areas exceed the average rate of recharge. Water supplies in the CGWAs are fully appropriated and ground water levels generally continue to decline.

43. Ground water rights, and some surface water rights in Basin 45 currently are not subject to administration through water districts by watermasters.

44. Administration of ground water rights and surface water rights within the CGWAs and all of Basin 45 is necessary for the protection of prior surface and ground water rights.

45. Administration of water rights and management of water in Basin 45 would be properly and efficiently provided by including all of Basin 45 in one water district.

46. Well logs and published literature indicate the presence of a shallow unconfined alluvium aquifer in the Albion Basin that is hydraulically connected to Marsh Creek. Available literature indicates that the unconfined ground water in the basin moves northward and discharges either to Marsh Creek or leaves the basin as underflow beneath Marsh Creek to the ESPA (*see* Crosthwaite, E.G., "Ground Water Possibilities South of the Snake River Between Twin Falls and Pocatello," USGS, 1956).

CONCLUSIONS OF LAW

Statutory Authorities

1. Idaho law declares all surface water, when in natural channels or springs or lakes, and all ground water within the State of Idaho to be the property of the state, whose duty it is to supervise the appropriation and allotment of the water to those diverting the same for beneficial use. *See* Idaho Code §§ 42-101, 42-103, and 42-226.

2. The Director, acting on behalf of the State of Idaho, has the statutory authority to control the appropriation and use of all surface and ground waters within the state in accordance with, but not limited to, Idaho Code §§ 42-101, 42-103, 42-202(1), 42-220, 42-226, 42-237a.g., 42-351, and 42-602 et seq.

3. Idaho Code §§ 42-226 and 42-237a.g., assign the authority and responsibility to the Director for the administration of ground water rights in the state in accordance with the prior appropriation doctrine as established by Idaho law so as to protect prior surface and ground water rights.

4. The Director has responsibility for direction and control over the distribution of water in accordance with the prior appropriation doctrine as established by Idaho law within water districts to be accomplished through watermasters supervised by the Director, and subject to removal by the Director, as provided in chapter 6, title 42, Idaho Code.

5. Idaho Code § 42-604 authorizes the Director to form water districts as necessary to properly administer uses of water from public streams, or other independent sources of water supply, for which a court having jurisdiction thereof has adjudicated the priorities of

appropriation. The Director may also revise the boundaries of a water district, abolish a water district, or combine two (2) or more water districts, by entry of an order, if such action is required in order to properly administer the users of the water resource.

6. In addition, Idaho Code § 42-1417 provides that the district court having jurisdiction over a general water rights adjudication may authorize the interim administration of water rights pursuant to chapter 6, title 42, Idaho Code, prior to the entry of a final decree, in accordance with Director's Reports filed with the court, with or without modification by the court, or in accordance with partial decrees that have superseded the Director's Reports.

Response to Testimony and Written Comments

7. Most of the oral testimony and written comments submitted to the Department generally supported creation of the proposed Water District No. 140. Much of the testimony supported the concept that any water district created to include ground water rights in Basin 45 should be limited to Basin 45, and not included with Water District No. 130 located north of the Snake River. Some testimony and written comments did not support inclusion of certain areas or water rights in the proposed water district.

8. In response to the hearing testimony and written comments, the Director concludes that during the irrigation season for the water rights in some of the existing water districts in Basin 45, the statutory requirements of Chapter 6, Title 42, Idaho Code, are mostly being met; while in other water districts in Basin 45, some or many of the statutory requirements are not being satisfied. For example, surface water diversions in some of the existing districts lack adequate measuring devices and controlling headgates, are not measured or recorded on a regular basis, or are not monitored or regulated during portions of the irrigation season. Additionally, some of the existing water districts do not maintain adequate measurement records, annual watermaster reports are not always complete or timely submitted, and some existing water districts have been periodically inactive or inactive for many years. None of the existing water districts enforce limitations of surface water rights outside of the irrigation season for the rights, and only one (1) of the existing water districts regulates water rights diverting from ground water.

9. Given that: (1) water districts do not exist in large areas of Basin 45; (2) the administration of surface water rights in the existing water districts in Basin 45 is often inconsistent; (3) none of the existing water districts in Basin 45 administer surface water rights outside of the irrigation season for those rights or during the irrigation season when the surface water sources are not in regulation; and (4) only one of the existing water districts in Basin 45 regulates diversions from ground water; the Director concludes that there should be one water district created that encompasses all of the water rights within Basin 45, and that the existing surface water districts in Basin 45 should be designated as sub-districts, in order to provide consistent and effective administration of water rights from both surface water sources and ground water sources year-round throughout Basin 45.

10. Existing water districts in Basin 45, which now will be sub-districts within Water District No. 140, will each continue to elect their own watermasters, who will serve as deputy watermasters under the watermaster for Water District No. 140, and adopt their own budgets for purposes of measuring, recording, reporting, and regulating surface water diversions within their districts. A sub-district that adequately measures, records, reports, and controls diversions should not be subject to future assessments to fund the watermaster of Water District No. 140 for purposes of measuring, recording, reporting, and regulating surface water diversions within that sub-district. However, each sub-district may be subject to future assessments for costs associated with oversight of that sub-district. Oversight costs may include, but may not be limited to, technical assistance, enforcement assistance, training of deputy watermasters, collection and review of diversion data, periodic field checks of diversions, periodic or miscellaneous field calibration measurements of measuring devices, review of annual sub-district water diversion and budget reports, and monitoring and implementation of mitigation plans as necessary for ground water rights.

11. There is no evidence available that suggests the Albion Basin is a closed basin. The Director concurs with testimony that changes in water rights in the Albion Basin or other areas of Basin 45 should not cause injury to other water rights.

12. The Director recognizes that ground water rights in some areas or drainages of Basin 45 are not included within the boundaries of the ESPA or any of the Basin 45 CGWAs. Ground water diversions in these areas, however, may potentially contribute to reductions in discharge to local streams or reductions in underflow discharging to the ESPA.

13. The Director concludes that the geothermal sources located in the Goose Creek and Trapper Creek drainages above the Oakley Reservoir are not hydraulically connected to other ground or surface water sources in Basin 45. Some of the water delivered from geothermal wells located above the Oakley Reservoir are either commingled with surface water rights or used in combination with surface water rights or ground water rights diverted from shallower aquifers for irrigation of a common place of use.

14. Water rights diverted from geothermal wells located above the Oakley Reservoir may be administered separately from other sources of water in Basin 45. However, these geothermal rights may still require measurement and regulation by a local watermaster when such rights are used in combination with water rights from other sources for the same purpose of use. Additionally, the Director may require measurement and regulation of water rights from these geothermal sources in the future if such action is necessary to protect the geothermal resource.

District Creation

15. Based upon the above statutory authorities, the order of the SRBA District Court authorizing the interim administration of water rights pursuant to chapter 6, title 42, Idaho Code, and the record in this proceeding, the Director should create a water district to administer ground

water and surface water rights within Basin 45, as shown on the map appended hereto as Attachment A, to protect senior priority water rights.

16. The Director concludes that the water district should be formed on a permanent basis and be used to administer the affected water rights in accordance with the prior appropriation doctrine as established by Idaho law.

Administration of Affected Water Rights

17. The Director concludes that immediate administration of ground water rights, other than domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A(11), pursuant to chapter 6, title 42, Idaho Code, is necessary for the protection of prior surface and ground water rights.

18. The Director concludes that the watermaster of the water district created by this order shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director:

a. Administer and enforce water rights in priority;

b. Measure and report the diversions under water rights;

c. Curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);

d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or a mitigation plan approved by the Director; and

e. Enforce the provisions of any stipulated agreements or mitigation plans approved by the Director.

19. Additional instructions to the watermaster for the administration of water rights from hydraulically connected sources will be based upon available data, ground water and surface water models, and the Director's best professional judgment.

20. The Director concludes that the water district created by this order includes the designation of sub-districts consisting of existing surface water districts, and may include new or existing ground water districts, canal companies, or other water use entities.

21. The Director further concludes that the water district created by this order shall include the following organizational features:

a. Election and appointment of a single watermaster for the water district. The water right holders may elect to have the district contract with the Department to

provide watermaster services. Under a district contract with the Department, the watermaster will be a direct employee of the Department;

b. Selection of a Water District Advisory Committee that includes, but need not be limited to, representation from boards of directors of ground water districts, irrigation districts, canal companies, or representatives of other water use entities, as well as advisory committee members from existing surface water districts;

c. Appointment of deputy watermasters by the watermaster, with approval from the Director. Deputy watermasters shall work pursuant to instructions of the watermaster. Deputy watermasters may be employees of existing water districts, ground water districts, irrigation districts, canal companies, or other water use entities that are located within the water district.

d. Water rights not included in an existing water district, ground water district, irrigation district, or canal company, shall be assessed costs directly by the water district watermaster. Water rights in an inactive water district shall also be assessed costs directly by the water district watermaster; and

e. Ground water districts, irrigation districts, canal companies, or other water use entities that are organized as sub-districts, may collect and pay the pro-rata expenses on behalf of the diversions and users within their respective district or organization (this will avoid billing of individual water rights or diversions by both the sub-district and the water district).

ORDER

IT IS HEREBY ORDERED that:

1. The Oakley Valley Area Water District, designated as Water District No. 140, is created to include all surface and ground water rights in Basin 45 within the area depicted on the map appended hereto as Attachment A and incorporated herein by reference, except small domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A(11) for which authorization for interim administration was not obtained from the SRBA District Court and for which notice of this action was not provided.

2. Water District No. 45-A, Basin Creek and tributaries; Water District No. 45-B, Birch Creek and tributaries; Water District No. 45-C, Goose Creek and tributaries; Water District No. 45-F, Marsh Creek and tributaries; Water District No. 45-K, Cottonwood Creek and tributaries; Water District No. 45-N, Dry Creek and tributaries; and Water District No. 45-O, Golden Valley (ground water in the Cottonwood Critical Ground Water Area), are designated as sub-districts within Water District No. 140. These sub-districts shall continue to meet annually to elect a sub-district watermaster, adopt a budget, and select an advisory committee. These sub-districts, except for Water District No. 45-O, shall be responsible for distribution of surface water rights that have been reported or partially decreed in the SRBA and located within the

respective sub-districts. Water District No. 45-O shall be responsible for distribution and administration of ground water rights within the district that have been reported or partially decreed in the SRBA. For 2007, water right holders within the sub-districts shall meet at a time and place as normally determined by the district. Water rights in any sub-district that is or becomes inactive shall be administered directly by the watermaster of Water District No. 140.

3. Water rights diverted from geothermal sources upstream of Oakley Reservoir are included in Water District No. 140 but shall be administered separately from water rights diverted from other ground and surface water sources in Water District No. 140, the Snake River, and the ESPA. The watermaster of Water District No. 140 shall monitor or coordinate monitoring of the geothermal diversions above Oakley Reservoir with the watermaster of Water District No. 45-C as necessary to ensure proper delivery of water when geothermal and surface water rights are used in combination for the same use.

4. As soon as practicable in calendar year 2007, the holders of water rights within Water District No. 140 shall meet at a time and place to be determined and noticed by the Director for purposes of: (1) electing a watermaster; (2) selecting an advisory committee, if desired; and (3) setting a budget and corresponding assessments to be collected for operating the district. In future years, the annual meeting shall be held as provided in Idaho Code §42-605.

5. The watermaster for Water District No. 140 shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director:

a. Measure, collect, and record the diversions under water rights;

b. Administer and enforce the water rights in priority;

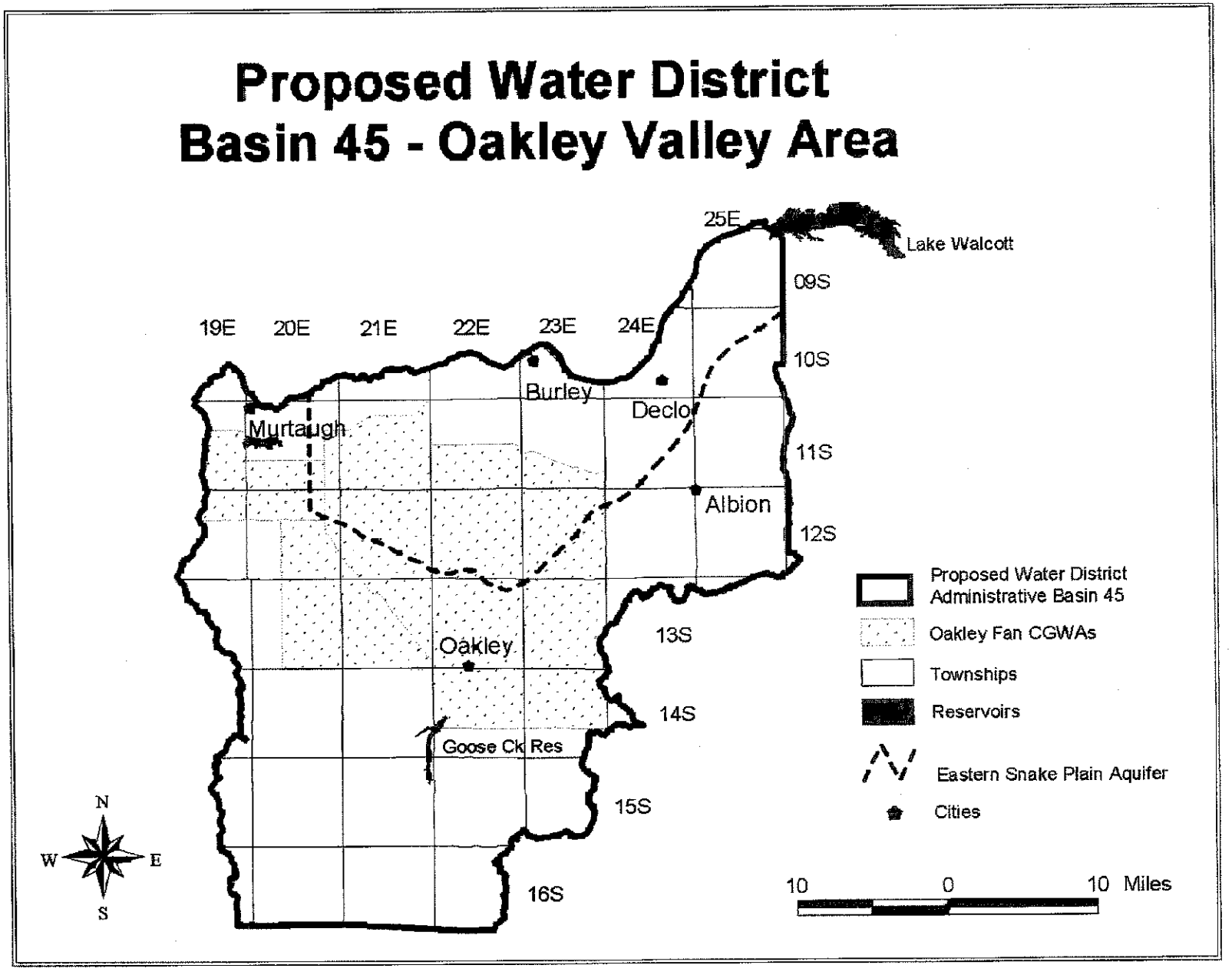
c. Curtail unauthorized or excessive diversions as necessary (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);

d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or mitigation plan approved by the Director; and

e. Enforce the provisions of any stipulated agreements or mitigation plans approved by the Director.

DATED this 28th day of December, 2006.

KARL J. DREHER
Director


Proposed Water District
Basin 45 - Oakley Valley Area
25E
Lake Walcott
09S
19E
20E
21E
22E
23E
24E
10S
Burley
Declo
Murtaugh
11S
Albion
12S
Oakley
13S
14S
Goose Ck Res
15S
16S
N
W
E
S
Proposed Water District
Administrative Basin 45
Oakley Fan CGWAs
Townships
Reservoirs
Eastern Snake Plain Aquifer
Cities
10
0
10 Miles

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of December, 2006, the above and foregoing document was served on each individual or entity on the service list for this matter on file at the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho, and posted on the Department's website: www.idwr.idaho.gov. Each individual or entity on the service list was served by placing a copy of the above and foregoing document in the United States mail, postage prepaid and properly addressed.

Christine Roberts

Christine Roberts
Office Records Specialist
Idaho Department of Water Resources

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