IDAHO WATER RESOURCE BOARD
ESPA MANAGEMENT PLAN
FACILITATOR BRIEFING

History of Past Litigation and Mediation Processes

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Boise, ID

Musser v. Higginson

- Complaint for writ of mandate filed in the Snake River Basin Adjudication ("SRBA") District Court on June 22, 1993.
- Sought administration of junior priority ground water rights from the Eastern Snake Plain Aquifer ("ESPA") to deliver water to senior rights from the Curran Tunnel for irrigation.
- The District Court issued a writ of mandate, which was affirmed on appeal by the Idaho Supreme Court. *Musser v. Higginson,* 125 Idaho 392, 871 P.2d 809 (1994).

Conjunctive Management Rules

- The SRBA District Court in *Musser* held that without duly promulgated rules in place, any attempt by the Director to conjunctively administer water rights was arbitrary and capricious.
- The Director initiated a rulemaking to develop negotiated rules for the conjunctive administration of interconnected surface and ground water rights, which were adopted on October 7, 1994.

GROUND WATER MANAGEMENT AREAS

- On August 3, 2001, the Director designated the Thousand Springs and the American Falls Ground Water Management Areas.
- The Director announced his intention to issue curtailment orders prior to September 1, 2001, pursuant to section 42-233b, Idaho Code.
- On August 31, 2001, the ground and surface water users announced an agreement had been reached.
- The ground water users agreed to provide 68,500 acre-feet of replacement water during each of the next two years.
- The agreements expired December 31, 2003.

WATER DISTRICTS ESTABLISHED

- On January 8, 2002, the SRBA District Court authorized interim administration of certain rights from the ESPA.
- On February 19, 2002, the Director created Water District No. 120 in the American Falls area, and Water District No. 130 in the Thousand Springs area.
- In January 2003, the Director revised the boundaries of both districts to include additional area.

Ground Water Management Areas Dissolved

- On August 29, 2003, the Director issued orders dissolving the Thousand Springs Ground Water Management Area, and reducing the area of the American Falls Ground Water Management Area.
- The Director determined that the creation of water districts made the continued existence of the ground water management areas unnecessary.

Rangen, Inc. Delivery Call

- Initial delivery call made Sept. 23, and Oct. 6, 2003, for administration of all junior water rights impacting Rangen's water right nos. 36-15501, 36-02551, and 36-07694 used at fish hatchery facilities near Hagerman, Idaho

- The Director issued an Amended Order on March 10, 2004, calling for the curtailment of approximately 1,300 wells diverting water from the ESPA.

THE MITIGATION, RECOVERY AND RESTORATION AGREEMENT OF 2004

- Curtailment under the Rangen delivery call was averted when the State of Idaho and the parties entered into "The Eastern Snake Plain Aquifer Mitigation, Recovery and Restoration Agreement for 2004" on March 20, 2004. By its terms, the Agreement expired on March 15, 2005.

REFORMULATED GROUND WATER MODEL

- In May 2004, the Department and its contractors completed work on a reformulated and recalibrated ground water model for the ESPA.
- The reformulated ground water model completed in May 2004 includes significant refinement allowing for the allocation of calculated depletions to springs in the Thousand Springs area to be apportioned among six separate spring complexes, including the Curran Spring from which the Rangen rights are diverted.

Rangen Revisited

- Based on the reformulated ground water model, the Director rescinded the 2004 Rangen order on March 14, 2005. The Director issued a Second Amended Order for the Rangen call on May 16, 2005, which denied the Rangen call.

- The Director, determined the delivery call was futile because curtailing all affected ground water rights junior in priority to July 13, 1962, would increase the spring discharge in the Thousand Springs to Malad Gorge spring reach, which includes Curran Spring, by a total average amount of only 0.4 cfs at steady state conditions.

Surface Water Coalition Delivery Call

- On January 14, 2005, A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (collectively the "Surface Water Coalition" or "Coalition") filed a Letter and a Petition seeking the administration and curtailment of junior priority ground water rights on the ESPA.

SWC Relief Sought

- Curtailment within Water District No. 120.
- Other relief sought:
  - » Curtailment in American Falls Ground Water Management Area (GWMA)
  - » Areas not in a water district or GWMA
  - » Designation of ESPA as a GWMA

Response to SWC Call

- The Director issued an Order on February 14, 2005, denying the Petition to designate the ESPA as a Ground Water Management Area, and designating the other three matters as contested cases.

- On April 19, 2005, the Director issued an Order responding to the delivery call for curtailment of junior priority ground water rights within Water District No. 120. The Director issued an Amended Order on May 2, 2005.

The May 2 Order

- The May 2 Amended Order required consumptive ground water rights in Water Districts No. 120 and No. 130 with priority dates of February 27, 1979 and later to provide replacement water to the members of the Surface Water Coalition for depletions to reach gains in the Snake River between the Near Blackfoot Gage and the Minidoka Gage or be curtailed.

Material Injury Determined

- Based upon water supply forecasts available at the time of the Amended Order, the Director determined that the material injury represented by water shortages plus storage carryover shortfalls for the Coalition members caused by junior priority ground water depletions in 2005 would be equal to 133,000 acre feet, over time.

- The Director further determined the amount of the 133,000 acre feet of depletion over time that would be experienced as shortages by the Coalition members in 2005 and thus required to be provided through mitigation in 2005 was 27,700 acre feet.

Rules Litigation

- The Surface Water Coalition filed a complaint for declaratory relief on August 15, 2005, against the Department of Water Resources and the Director seeking a declaration that the Conjunctive Management Rules were unconstitutional both "on their face" and "as applied" by the Director.
- The Plaintiffs are the American Falls Reservoir District #2, the A&B Irrigation District, Burley Irrigation District, Minidoka Irrigation District, and Twin Falls Canal Company.

Stay of Agency Hearing Schedule

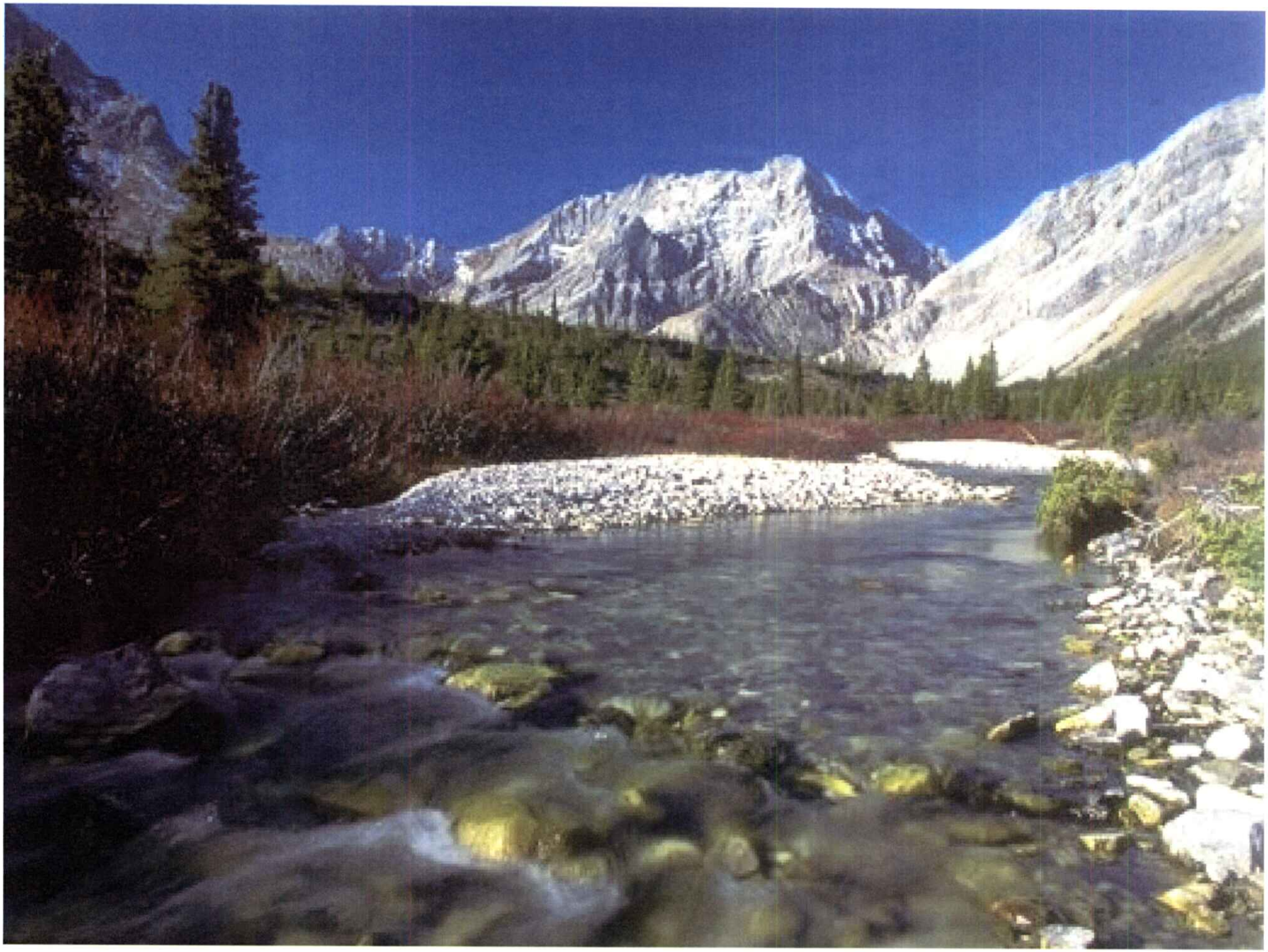
- On February 10, 2006, the Director at the request of the parties issued an order staying the agency hearing schedule for sixty (60) days to allow the parties to investigate settlement.
- The 60-day stay expired on April 11, 2006, without a settlement being reached.

Judge Wood's Decision

- June 2, 2006 — Order on Plaintiffs' Motion for Summary Judgment
- June 30, 2006 — Judgment Granting Partial Summary Judgment
- July 11, 2006 — Judgment Certified as Final
- July 11, 2006 — Appeal to Idaho Supreme Court
- August 8, 2006 — Stay Denied by District Court
- August , 2006 — Supreme Court Stay Request

Blue LakesTrout Farm, Inc.

- Water Delivery Call made March 22, 2005
- Director's Order issued May 19, 2005
- Material Injury in the amount of 33 c.f.s.
- Material Injury allowed to be addressed over a five-year time period
- A minimum of 10 c.f.s. required to be provided in mitigation in 2005.

Other Pending Delivery Calls

- Clear Springs' Snake River Farm
- Crystal Springs Trout Farm
- Billingsley Creek Ranch
- John W. Jones Ranch