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Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF A DECLARATION OF DROUGHT EMERGENCY FOR LINCOLN COUNTY	))))	**ORDER DECLARING DROUGHT EMERGENCY**

WHEREAS, Lincoln County water users depend on the Big Wood River, Little Wood River, Magic Reservoir, and ground water for their water supplies; and

WHEREAS, as of April 1, 2004 storage in Magic Reservoir is 25 percent of capacity, and inflow to Magic Reservoir from the Big Wood River and other sources is predicted to be 44 percent of average. Forecasters predict that water stored in Magic Reservoir for irrigation will be depleted in July 2004; and

WHEREAS, the Little Wood River flows are predicted to be 52 percent of normal in 2004; and

WHEREAS, several years of drought have caused declines in ground water levels, spring flows, and base flows of streams; and

WHEREAS, the Lincoln County Commissioners have requested declaration of a drought emergency to allow administrative actions to lessen the severe impacts of the drought conditions in the county; and

WHEREAS, section 42-222A, Idaho Code, provides that upon declaration of a drought emergency for an area designated by the Director of the Department of Water Resources ("Director") and approved by the Governor, the Director is authorized to allow temporary changes in the point of diversion, the place of use, and the purpose of use for valid existing water rights and temporary exchanges of water rights when the Director determines that such changes can be accomplished in accordance with the provisions of section 42-222A, Idaho Code; and

WHEREAS, the existing Amended Moratorium Order of the Director of the Department of Water Resources, dated April 30, 1993, applicable to the Eastern Snake River Plain Area, including Lincoln County, does not prohibit the processing or approval of applications for transfer of existing water rights;

NOW, THEREFORE, IT IS HEREBY ORDERED that pursuant to the authority of the Director provided in section 42-222A, Idaho Code, a drought emergency for purposes of section 42-222A, Idaho Code, is hereby declared for Lincoln County, Idaho.

IT IS FURTHER HEREBY ORDERED that pursuant to this declared drought emergency and the provisions of section 42-222A, Idaho Code, the following procedures and requirements shall apply to the filing, processing, and approval of any application for a temporary change to an existing water right within Lincoln County during the pendency of this declared drought emergency:

1. An application for a temporary change to an existing water right shall be made upon forms provided by the department and shall be accompanied by an application fee of fifty dollars ($50.00) per application.

2. The Director is not required to publish notice of the proposed change pursuant to the provisions of section 42-211, 42-222(1), or 42-240, Idaho Code, and is not required to make findings as provided in said sections. A temporary change may be approved upon completion of the application form, payment of the filing fee, and a determination by the Director that the proposed change can be properly administered and there is no information that the change will injure any other water right. If the right to be changed is administered by a watermaster within a water district, the Director shall obtain and consider the recommendations of the watermaster before approving the temporary change application.

3. All temporary changes approved pursuant to the provisions of this order shall expire on the date shown in the approval which shall not be later than December 31, 2004, and thereafter, the water right shall revert to the point of diversion and place of use existing prior to the temporary change. Nothing herein shall be construed as approval to authorize construction of a new well as a new point of diversion or to alter a stream channel.

4. The recipient of an approved temporary change issued pursuant to this order shall assume all risk of curtailment or mitigation should the diversion and use of water under the temporary change cause injury to other water rights or result in an enlargement in use of the original right.

5. Temporary changes shall only be approved for the purpose of providing a replacement water supply to lands or other uses that normally have a full water supply, except for the drought condition. Temporary changes may not be approved to provide water for new development or to allow expansion of the use of water under existing water rights. If the right to use the water is represented by shares of stock in a corporation, or if the diversion works or delivery system for such right is owned or managed by an irrigation district, no change in point of diversion, place or nature of use of such water shall be made or allowed without the written consent of such corporation or irrigation district.

6. Any applicant for a temporary change who is aggrieved by a denial of the Director for a temporary change pursuant to this order and the provisions of section 42-

222A, Idaho Code, may request a hearing pursuant to section 42-1701A(3), Idaho Code, and may seek judicial review of the final order of the Director pursuant to the provisions of section 42-1701A(4), Idaho Code.

IT IS FURTHER HEREBY ORDERED that this order is effective upon approval of the Governor and expires on December 31, 2004, unless extended or terminated by order of the Director.

DATED this 16th day of April, 2004.

KARL J. DREHER
Director

APPROVED this 19th day of April, 2004.

DIRK KEMPTHORNE
Governor