BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DESIGNATING THE AMERICAN FALLS GROUND WATER MANAGEMENT AREA	))))	**ORDER**

This matter comes before the Director of the Department of Water Resources ("Director" or "Department") as a result of the severe drought conditions being experienced across the Snake River Basin and the possibility that the drought conditions could continue into the 2002 irrigation season and beyond. The Director initiates this matter in response to his recognition that he has a responsibility, subject to the confines of existing knowledge and technology, to exercise his statutory authorities to administer rights to the use of ground water in a manner that recognizes and protects senior priority surface water rights in accordance with the directives of Idaho law. The Director enters the following Findings of Fact, Conclusions of Law and Order in furtherance of those directives.

FINDINGS OF FACT

1. The Eastern Snake River Plain Aquifer ("ESPA") is defined as the aquifer underlying the Eastern Snake River Plain as delineated in the report "Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho," 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 ESPA is also defined as an area having a common ground water supply (see Rule 50, IDAPA 37.03.11050).

2. The water supply 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 locations at which a direct hydraulic connection exists between the ESPA and the Snake River, including tributary surface water sources, is in the Shelley to Minidoka reach of the river, herein termed the "American Falls reach" located along the southeastern edge of the ESPA in the vicinity of American Falls Reservoir.

3. Simulations using the Department's calibrated computer model of the ESPA show that ground water withdrawals from the ESPA for irrigation and other consumptive purposes, which occur in relatively close proximity to the area of the American Falls reach, cause significant reductions in the gains to this reach of the Snake River that result from hydraulic connection with the ESPA (herein termed "reach gains") within six (6) months or less from the time the withdrawals occur.

4. Although all consumptive ground water diversions from the ESPA eventually affect surface water flows to varying degrees, the Department's model simulations and other analytical calculations demonstrate that ground water diversions occurring within a band on both sides of the American Falls reach varying in width from 1.6 kilometers to five (5) kilometers on each side of the river result in seasonal reach gain reductions equal to fifty percent (50 percent) or more of the amount of water diverted and consumptively used, and such reductions occur within six (6) months of the diversions.

5. Surface and ground water studies for the Eastern Snake River Plain, funded in part by the Idaho Legislature, are presently being performed by or on behalf of the Department, with the participation of other public and private entities. These studies will provide additional data that will be used to further refine and calibrate the ground water model used by the Department to calculate the amount, location, and timing of surface water depletions caused by the withdrawal and use of ground water throughout the plain overlying the ESPA. The purpose for the additional data collection and model refinement/calibration is to reduce uncertainty in the model and increase acceptance of the Department's use of the model to implement long-term, conjunctive administration of rights to the use of interconnected surface and ground waters within the Eastern Snake River Plain. Although efforts are underway to improve the Department's ground water model, the results from simulations using the ground water model as it presently exists provide a suitable basis for making some water management decisions when the uncertainties of the existing model are appropriately addressed.

6. The Department presently does not have a sufficient basis to undertake full conjunctive administration of rights to the use of interconnected surface and ground waters within the Eastern Snake River Plain. The Department is confident, however, that the results of simulations from its existing ground water model and other analytical calculations are suitable for determining the area containing those ground water diversions for which the depletion of water from the ESPA results in the most direct and significant reduction in reach gains with an acceptable degree of accuracy. For the purposes of this order and to account for the uncertainties in the Department's present ground water model, a ground water diversion is considered to cause a direct and significant reduction in reach gains if, based on simulations using the Department's ground water model or other analytical calculations, the reach gains are reduced by an amount equal to fifty percent (50 percent) or more of the ground water depletion associated with the ground water diversion, and such reduction occurs within six (6) months of the ground water diversion.

7. The water supply available, including both natural flow and reservoir storage, for use under senior surface water rights that in part rely on reach gains is expected to be further diminished, should the drought continue, and inadequate to fully satisfy all senior surface water rights during the next irrigation season. This water supply is also expected to be reduced as a result of ground water withdrawals from the ESPA for irrigation and other consumptive purposes that are diverted in close proximity to the area of the American Falls reach without mitigating the effects of the associated ground water depletions.

8. Based upon the depletionary effects of ground water withdrawals on the reach gains and the inadequate water supply expected to be available for senior surface water rights, that portion of the ESPA along the American Falls reach may be approaching the conditions of a critical ground water area.

9. On July 13, 2001, the Twin Falls Canal Company and the North Side Canal Company ("Canal Companies") submitted to the Department through their attorney a written request asking for the Director "to promptly designate a Groundwater Management Area for Basin 35 pursuant to I.C. § 42-233(b)." The Department will proceed under the Department's Rules of Procedure, IDAPA 37.01.01, to consider the request of the Canal Companies as a petition for creation of a ground water management area including all of Basin 35 in accordance with Rule 30.06, IDAPA 37.03.11030.06.

10. The action of the Director in the present matter relates only to that portion of the ESPA, as depicted on the map identified as Attachment A, that contains all or parts of the townships along the Snake River that encompass or are adjacent to the 1.6 kilometer to five (5) kilometer wide band on each side of the American Falls reach described in Finding of Fact No. 4. The action is taken as a result of the Director's independent initiative and is not taken in response to the petition of the Canal Companies.

CONCLUSIONS OF LAW

1. Idaho law declares all ground waters in this state to be the property of the state of Idaho, whose duty it is to supervise the appropriation and allotment of the water to those diverting the same for beneficial use. I.C. § 42-226.

2. The Director of the Department has a statutory responsibility to administer the use of ground water in the state so as to protect prior surface and ground water rights and yet allow full economic development of the state's underground water resources in the public interest. See I.C. §§ 42-226 and 42-237a.g.

3. Section 42-233a, Idaho Code, authorizes the Director to designate a "critical ground water area" which is defined as any ground water basin, or designated part thereof, not having sufficient ground water to provide a reasonably safe supply for irrigation of cultivated lands, or other uses in the basin at the then current rates of withdrawal, or rates of withdrawal projected by consideration of valid and outstanding applications and permits, as may be determined and designated, from time to time by the Director.

4. Section 42-233b, Idaho Code, authorizes the Director to designate a "ground water management area" which is defined as any ground water basin or designated part thereof which the Director has determined may be approaching the conditions of a critical ground water area.

5. Although Rule 30.06, IDAPA 37.03.11030.06, provides a procedure that the Department may follow in a proceeding upon a petition for designation of a ground water management area, the present action is taken as a result of the Director's independent initiative and is not taken in response to a petition.

6. When a ground water management area is designated by the Director, or at any time thereafter during the existence of the designation, the Director may approve a ground water management plan for the area. The ground water management plan shall provide for managing the effects of ground water withdrawals on the aquifer from which withdrawals are made and on any other hydraulically connected sources of water. I.C. § 42-233b.

7. The Director may require all water right holders within a designated water management area to report withdrawals of ground water and other necessary information for the purpose of assisting the Department in determining available ground water supplies and their usage. I.C. § 42-233b.

8. The Director, upon determination that the ground water supply is insufficient to meet the demands of water rights within all or portions of a water management area, shall order those water right holders on a time priority basis, within the area determined by the Director, to cease or reduce withdrawal of water until such time as the Director determines there is sufficient ground water. Such order shall be given only before September 1 and shall be effective for the growing season during the year following the date the order is given. I.C. § 42-233b.

9. Based upon the foregoing findings, the Director determines that the portion of the ESPA located in the area of the American Falls reach may be approaching the conditions of a critical ground water area.

10. The Director should designate a ground water management area for the area of the ESPA near the American Falls reach as ordered below.

11. Upon designation of a ground water management area the Director shall publish notice in two (2) consecutive weekly issues of one or more newspapers of general circulation in the area. I.C. § 42-233b.

12. Any person aggrieved by this decision shall be entitled to a hearing before the Director to contest the action taken provided the person files with the Director, within fifteen (15) days following published notice of the order, a written petition stating the grounds for contesting the action and requesting a hearing. Any hearing conducted shall be in accordance with the provisions of chapter 52, title 67, Idaho Code, and the Rules of Procedure of the Department, IDAPA 37.01.01. Judicial review of any final order of the Director issued following the hearing may be had pursuant to Section 42-1701A(4), Idaho Code.

ORDER

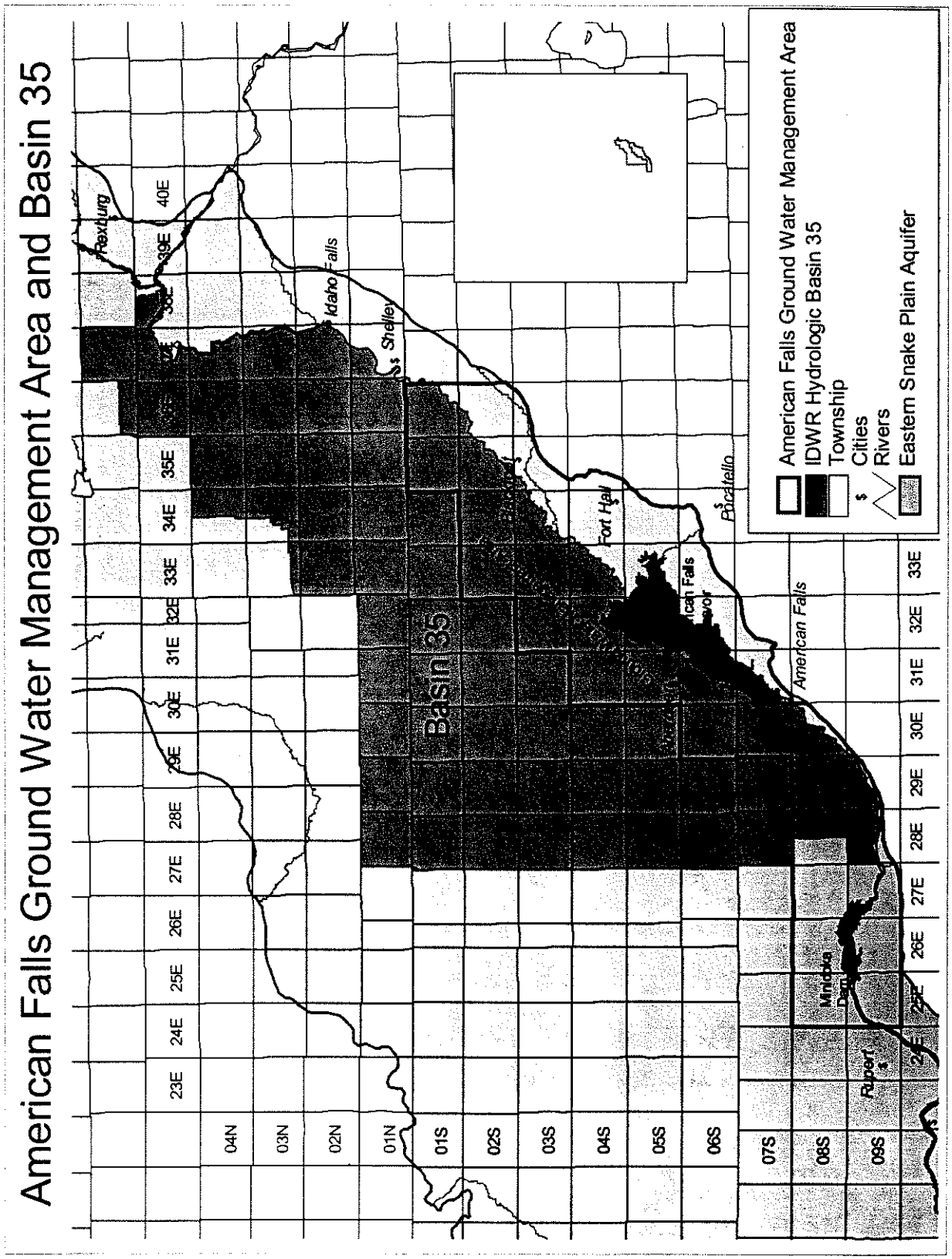
IT IS, THEREFORE, HEREBY ORDERED that the following described area be included within and designated as the "American Falls Ground Water Management Area."

That portion of the Eastern Snake Plain Aquifer within all or parts of the following townships along the Snake River in Cassia, Minidoka, Blaine, Power, Bingham, and Bannock Counties:

> T8S and T9S, R25E, Boise Meridian (B.M.); T8S and T9S, R26E, B.M.; T8S and T9S, R27E, B.M.; T8S and T9S, R28E, B.M.; T8S and T9S, R29E, B.M.; T6S, T7S, T8S and T9S, R30E, B.M.; T4S, T5S, T6S, T7S and T8S, R31E, B.M.; T3S, T4S, T5S, T6S and T7S, R32E, B.M.; T2S, T3S, T4S, T5S, T6S and T7S, R33E, B.M.; T2S, T3S, T4S, T5S and T6S, R34E, B.M.; T1S, T2S, T3S, T4S and T5S, T35E, B.M.; and T1S, T2S and T3S, R36E, B.M.

Attached to this Order is a map identified as Attachment A, that graphically shows the boundaries of the "American Falls Ground Water Management Area."

DATED this 3rd day of August 2001.

KARL J. DREHER
Director

Attachment A