BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMITS FOR THE DIVERSION AND USE OF SURFACE AND GROUND WATER WITHIN THE BOISE RIVER DRAINAGE AREA	)	**AMENDED MORATORIUM ORDER**

The Director of the Department of Water Resources, having responsibility for the administration of the appropriation of the water of the state of Idaho, the protection of rights to the use of water within the state, the protection of the public interest in the waters of the state, and the conservation of the water resources of the state, enters the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On May 15, 1992, the Director issued a moratorium order under the authority of Section 42-1805, Idaho Code, against the approval of new appropriations of water in the Snake River Basin upstream from the U.S.G.S. gaging station at Weiser, Idaho. On January 6, 1993, the Director amended the moratorium order to eliminate the non-trust water area from which water is tributary to the Snake River upstream from Milner Dam from the scope of the May 15, 1992 moratorium order. On April 30, 1993, the Director again amended the moratorium order to remove some additional river basins and areas from the moratorium. Conditions have since changed making further amendment of the April 30, 1993 order appropriate.

2. The term "Boise River Drainage Area" means hydrologic basin No. 63 as designated in department records.

3. The department has conducted an extensive evaluation of the surface and ground water supplies of the Boise River Drainage Area and has found that water supplies appear adequate to allow further appropriations. Public interest surveys demonstrate that while the public desires a continuation of water supply studies, monitoring and water quality protection, most people sense that water supplies within the area are not being fully utilized.

4. Within the Boise River Drainage Area, the department has identified the following specific areas where water supplies are limited: the Boise Front Low Temperature Geothermal Ground Water Management Area, the Southeast Boise Ground Water Management Area, and the surface water system upstream from Lucky Peak Dam. In addition some streams and aquifers

have limited water supplies during specified periods or in specified locations.

5. Standard application processing provides that each new application for a water right permit is advertised to allow public scrutiny, and is reviewed for adequacy by department staff. Applications, which propose to divert from limited water sources or in excessive quantities, can be either denied or restricted on a case-by-case basis.

CONCLUSIONS OF LAW

1. The Director of the Department of Water Resources is responsible for administration of the appropriation and use of the water of the state of Idaho. Section 42-202, Idaho Code, reads in pertinent part:

> For the purpose of regulating the use of the public waters and of establishing by direct means the priority right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, shall, before commencing of the construction, enlargement or extension of the ditch, canal, well, or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel, make an application to the department of water resources for a permit to make such appropriation.

2. The Director of the Department of Water Resources is authorized under the provisions of Section 42-1805(7), Idaho Code, as follows:

> After notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, or to prevent violation of the minimum flow provisions of the state water plan.

3. Rule 55. of the Water Appropriation Rules of the Department of Water Resources provides that a moratorium on processing of applications for permit shall be entered by issuance of an order of the Director of the Department of Water Resources, IDAPA 37.03.080.55. Notice of the order shall be sent by certified mail to affected applicants and permit holders and by publishing a legal notice in newspapers of general circulation in the area.

4. The department should amend the moratorium order issued on April 30, 1993, to remove the Boise River Drainage Area from the moratorium, subject to conditions designed to provide protection to existing water users within the basin, and ensure that water quality factors are fully considered.

ORDER

IT IS, THEREFORE HEREBY ORDERED that the prior order of the department dated May 15, 1992, as amended January 6, 1993, and April 30, 1993, in connection with the Snake River Basin upstream from the U.S.G.S. gaging station at Weiser, Idaho is modified by this Amended Moratorium Order.

IT IS, FURTHER HEREBY ORDERED that the moratorium is removed from the Boise River Drainage Area, and that applications for permit filed within this area shall be subject to the following provisions:

1. This moratorium removal does not change or affect the administration of any area within the Boise River Drainage Area that has been previously designated as a ground water management area pursuant to Section 42-233b, Idaho Code.

2. Processing of applications for permit within the Boise River Drainage Area that had been withheld by the moratorium shall proceed at a rate not to exceed thirty (30) applications for permit per month, in priority date order. All applications for which the applicants desire to proceed shall be advertised, or readvertised if notice has previously been made. The advertisement for each application which indicates the intended water source to be ground water shall include an indication of the proposed depth interval from which the applicant proposes to withdraw water by means of a well.

3. Applications, which indicate the intended source to be ground water, shall be further reviewed and screened within the department. During this review, the water right application shall be considered along with the well drilling application, if applicable. The review may result in conditions of approval to: (a) prevent development and use of water from any known water-limited aquifers, (b) prevent material injury to prior surface and ground water rights, (c) encourage use of lower-quality water for irrigation and higher-quality water for domestic purposes, (d) enhance protection of water quality in the aquifer, (e) ensure that subdivision proposals for presently irrigated land consider the need for the continuation of aquifer recharge, (f) require wells to be constructed to a sufficient depth to withstand expected fluctuations in the ground water level caused by drought, conservation or other factors, and (g) well location (spacing) requirements to prevent direct lowering of water levels in nearby existing wells.

4. Applications which propose use of surface water upstream from the Star Bridge will be denied unless the applicant files an acceptable plan to mitigate or avoid any material injury to existing water rights.

5. Applications that are protested shall be processed in accordance with the Rules of Procedure of the Department of Water Resources, IDAPA 37.01.01.

IT IS FURTHER ORDERED that this order shall not affect the moratorium on appropriation of surface and ground water within the Eastern Snake Plain Aquifer, which moratorium was extended by legislative action through December 31, 1997, and all requirements of the April 30, 1993 order with respect to the Eastern Snake Plain Aquifer remain fully in effect until modified by subsequent order of the Director of the Idaho Department of Water Resources.

Dated this 3rd day of May, 1995.

R. KEITH HIGGINSON
Director