BEFORE THE DEPARMENT 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 EASTERN SNAKE RIVER PLAIN AREA) AND 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 of the department issued a moratorium order against the approval of certain new applications in the Snake River Basin upstream from the USGS gaging station at Weiser, Idaho. On January 6, 1993, the Director amended the moratorium order to eliminate the non-trust water area from the scope of the May 15, 1992 moratorium order. Conditions have since changed making further amendment of the May 15, 1992 order appropriate.

2. The Snake River Basin in Idaho has experienced six consecutive years of drought, and while the snowpack and precipitation are now near or above average across much of southern Idaho, residual effects of the drought are still evident in ground water levels, spring flows and anticipated stream flows.

3. Ground water aquifers have become stressed by the reduction in natural recharge due to changes in diversion and use of surface waters throughout the basin and by the increased volume of pumping occurring to augment scarce surface water supplies during the drought period. The lowered water levels in the

aquifers across much of the Snake River Basin in southern Idaho have resulted in numerous wells, often those used for domestic and municipal water supply purposes becoming unusable. Lowered ground water levels also reduce spring and base flow discharge needed to maintain stream and river flows.

4. The need to supplement or replace inadequate surface supplies has prompted many waterusers to pursue ground water as an alternative source of supply.

5. Many wells throughout the Snake River Basin, including domestic wells in the Boise River Area, have either been replaced or drilled deeper during the duration of the drought.

6. The 1993 Idaho legislature authorized a three year study to determine the relationship between the Snake Plain Aquifer and the flow of the Snake River.

7. Even though the water supplies in the state are approaching normal for the 1993 irrigation season, ground water levels which have been declining will not fully recover in 1993.

8. The term "non-trust water area" means that area depicted as such on Exhibit "A" attached hereto and by this reference incorporated herein.

9. The term "Eastern Snake River Plain Area" means the trust water area of the Snake Plain Aquifer upstream from the USGS gaging station on the Snake River at King Hill. To further define the western boundary of this area, department designated hydrologic basin nos. 37 and 47, among other basins, are included in the area and hydrologic basin nos. 51 and 61, among other basins, are not included in the area.

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

11. This Amended Moratorium Order does not pertain to the non-trust water area.

12. The Snake River Basin Moratorium Order issued by the department on May 15, 1992 and amended on January 6, 1993, includes and overlaps both the Big Lost River drainage for which the department has previously issued a moratorium order on August 7,

1990 and the Mud Lake and Vicinity Area for which the department issued a moratorium order on December 1, 1989.

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 responsible for supervision of water distribution in the state of Idaho. Section 42-602, Idaho Code, reads, in pertinent part,

> It shall be the duty of the department of water resources to have immediate direction and control of the distribution of water from all of the streams to the canals and ditches diverting therefrom. The department must execute the laws relative to the distribution of water in accordance with rights of prior appropriation.

3. 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.

4. Rule 7,1. of the Department of Water Resources Rules and Regulations for Water Appropriation 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.

Notice of the order shall be by certified mail to affected applicants and permit holders and by publishing a legal notice in newspapers of general circulation in the area.

5. A moratorium on issuance of permits to divert and use surface and ground water from the Eastern Snake River Plain Area and tributary drainages and the Boise River Drainage Area should be established to protect existing water rights.

6. The department should rescind the moratorium order issued on August 7, 1990 for the Big Lost River drainage and the moratorium order issued on December 1, 1989 for the Mud Lake and Vicinity Area to remove the duplicate effect associated with this Amended Moratorium Order.

7. This amended moratorium order is not intended to affect the provisions of the moratorium order issued by the department on January 6, 1993 in the non-trust water area.

ORDER

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

IT IS, FURTHER HEREBY ORDERED that a moratorium is established on the processing and approval of presently pending and new applications for permits to appropriate water from all surface and ground water sources within the Eastern Snake River Plain Area and all tributaries thereto and within the Boise River Drainage Area. The following provisions apply to the administration of the moratorium:

1. The moratorium shall be in effect on and after its entry and shall remain in effect until withdrawn or modified by order of the Director.

2. The moratorium includes applications filed on all public water sources within the Eastern Snake River Plain Area and all tributaries thereto and within the Boise River Drainage Area.

3. The moratorium applies to all applications proposing a

consumptive use of water filed after the date of the order and to all applications filed prior to the entry of the order for which approval has not been given, except as herein provided.

4. The moratorium does not affect the authorization to continue development of any existing approved application (permit).

5. The moratorium does not apply to any application for domestic purposes as such term is defined in Section 42-111, Idaho Code. For the purposes of this exception, applications for ground water permits seeking water for multiple ownership subdivisions or mobile home parks will be considered provided each unit satisfies the definition for the exception of requirement to file an application for permit as described in said section.

6. The moratorium does not apply to any application proposing a non-consumptive use of water as the term is used in Section 42-605A, Idaho Code.

7. The moratorium does not apply to applications for drilling permits to replace or deepen existing wells having valid existing water rights nor to applications for transfer of existing water rights.

8. This moratorium does not change or affect the administration of any area that has been previously designated as a critical ground water area, pursuant to Section 42-233a, Idaho Code, or a ground water management area pursuant to Section 42-233b, Idaho Code.

9. The moratorium does not prevent the Director from reviewing for approval on a case-by-case basis an application which otherwise would not be approved under terms of this moratorium if,

a) Protection and furtherance of the public interest as determined by the Director, requires consideration and approval of the application irrespective of the general drought related moratorium; or

b) The Director determines that the development and use of the water pursuant to an application will have no effect on prior surface and ground water rights because of its location, insignificant consumption of water or mitigation provided by the applicant to offset injury to other rights.

10. This moratorium does not change or supercede any of the

provisions of the moratorium order issued by the department on January 6, 1993 in the non-trust water area of the Snake River Basin and shall not be interpreted as declaring an end to the drought emergency as referenced in provision 8(b) of the moratorium order for the non-trust water area.

11. This moratorium supercedes and rescinds the Moratorium Order issued on December 1, 1989 for the Mud Lake and Vicinity Area. Pending applications for permit or applications for transfer will be treated under the terms of this amended moratorium order.

12. This moratorium supercedes and rescinds the Final Order of the department issued on August 7, 1990 which established a moratorium on the issuance of new permits within the Big Lost River drainage. Pending applications for permit or applications for transfer will be treated under terms of this amended moratorium order and may be considered for approval by the department in connection with proposed mitigation or compensation for prior water rights.

Dated this 30TH day of April, 1993.

R. KEITH HIGGINSON
Director

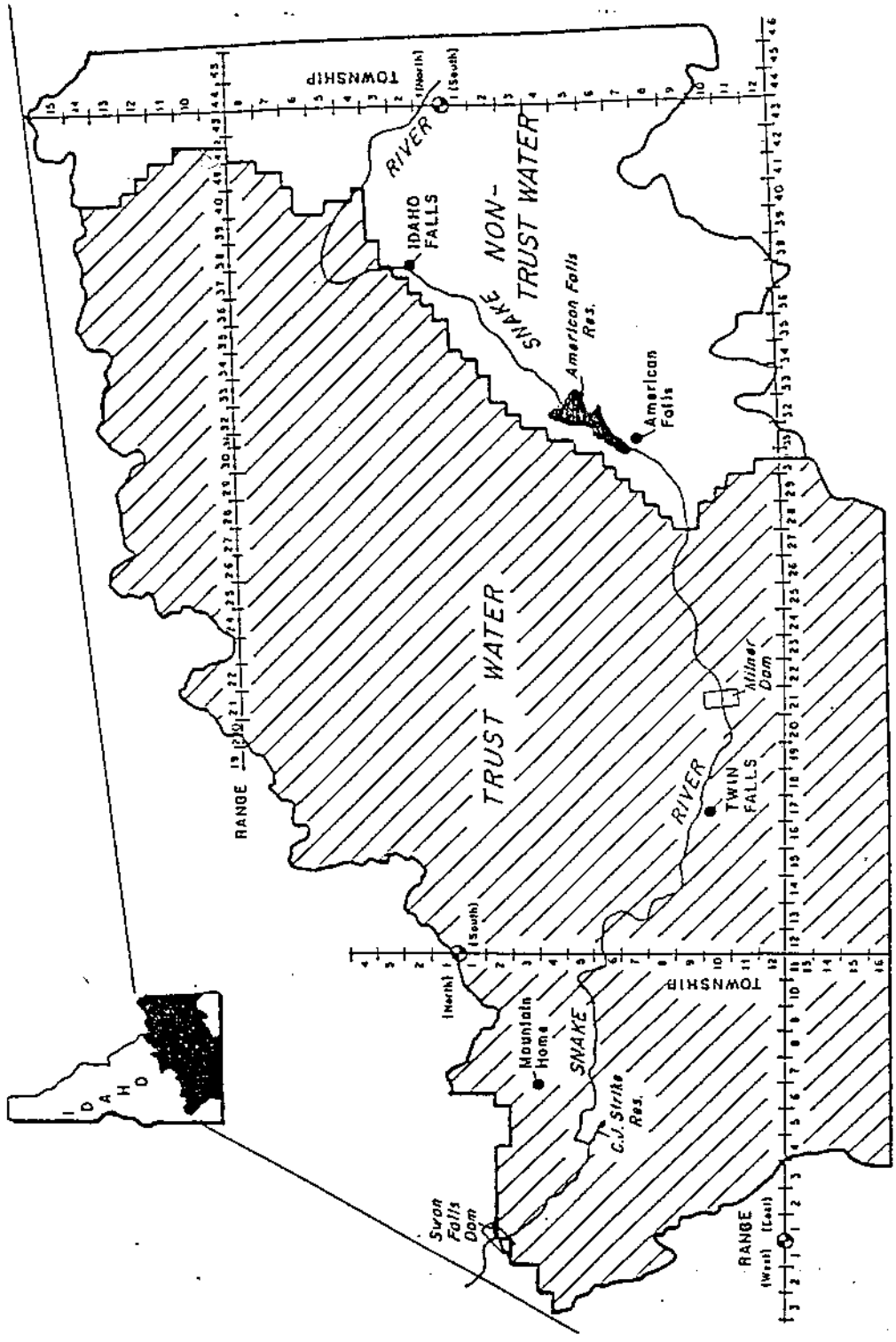
TOWNSHIP
(North)
(South)
RIVER
IDAHO FALLS
SNAKE NON-TRUST WATER
American Falls Res.
American Falls
TRUST WATER
RANGE
Milner Dam
RIVER
TWIN FALLS
TOWNSHIP
(North)
(South)
Mountain Home
SNAKE
C.J. Strike Res.
Swan Falls Dam
RANGE
(West)
(East)
IDAHO

EXHIBIT A