BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMITS FOR DIVERSION AND USE OF SURFACE AND GROUND WATER WITHIN THE SNAKE RIVER BASIN UPSTREAM FROM THE USGS GAUGE ON THE SNAKE RIVER NEAR WEISER	)	MORATORIUM ORDER

The Director of the Department of Water Resources, having responsibility for 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. The Snake River Basin in Idaho is experiencing the sixth consecutive year of drought.

2. Flows of many streams, springs, and rivers in the Snake River Basin are anticipated to be at or near record low levels because of the cumulative effect of the extended drought, the record low snow pack in the mountain watersheds of the basin during the winter of 1991-1992, and the unusually early runoff caused by record setting spring temperatures. As a result, water will not be available to fill many existing water rights that normally have an adequate supply. There will also be difficulty in providing for minimum streamflow rights, particularly the flow of 4750 cfs established by Idaho law for the Snake River at Weiser, Idaho.

3. Ground water aquifers are being stressed by the reduction in natural recharge, from reduced 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. 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 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 alternate source of supply. Many more users are likely to seek to do likewise in response to continuing drought and water supply conditions.

5. The department has received petitions, letters and telephone inquiries expressing the need for tightened administration during the drought.

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. Section 42-1805(7), Idaho Code, authorizes the Director of the Department of Water Resources 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 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 water from the Snake River Basin upstream from the USGS gauging station on the Snake River near Weiser for new consumptive uses should be established to protect existing water rights and established minimum stream flows.

ORDER

IT IS, THEREFORE, 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 Snake River Basin upstream from the USGS gaging station on the Snake River near Weiser, Idaho. The following provisions apply to 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 located in the Snake River Basin upstream from the USGS gauging station on the Snake River near Weiser, located in Section 31, Township 11 North, Range 5 West, Boise Meridian.

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 nonconsumptive use of water as that term is used in Section 42-605A, Idaho Code.

7. The moratorium does not apply to applications seeking to appropriate ground water as a supplemental water supply for irrigation or other use on lands which have an existing normally-full water right from a surface water source. Approval of such applications, when otherwise in conformance with the requirements of Section 42-203, Idaho Code, will be conditioned to allow use only when the appurtenant surface sources are not available due to drought conditions, to allow only the amount of ground water to be diverted necessary for the ordinary use of the land using accepted conservation practices, to require, as the director determines necessary, monitoring of the effect of pumping of proposed new wells on nearby domestic wells, if any, and to require mitigation or compensation for any changes that such wells or their associated pumping equipment require because of use of the new supplemental supply well.

8. 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.

9. The 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, a ground water management area pursuant to Section 42-233b, Idaho Code, or a moratorium area pursuant to Section 42-1805(7), Idaho Code.

Dated this 15TH day of May, 1992.

R. KEITH HIGGINSON
Director