

State of Idaho
County of Twin Falls ss.
I hereby certify the foregoing to be a full,
true and correct copy of the original on
file in the above entitled action.

ROBERT S. FORT
CLERK OF THE DISTRICT COURT

By Robin Wyatt
DEPUTY CLERK

2002 JAN -8 PM 3:19

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA) Subcase 92-00021
) (Interim Administration)
Case No. 39576)
) ORDER GRANTING STATE OF IDAHO'S
) MOTION FOR ORDER OF INTERIM
) ADMINISTRATION

On November 19, 2001, the State of Idaho filed a *Motion for Order of Interim Administration and Motion for Order Expediting Hearing*, pursuant to I.C. § 42-1417, seeking administration of water rights located in all or portions of Administrative Basins 35, 36, 41, and 43, in accordance with the Director's Reports for those water rights or in accordance with partial decrees that have superseded the Director's Reports.

On November 19, 2001, the Court issued its *Order Setting Hearings on State of Idaho's Motion for Order of Interim Administration and Motion for Order Expediting Hearing; I.C. § 42-1417, AOI 6f(2)* (Subcase 92-00021), which established the service procedures and hearing schedule for the State of Idaho's *Motion*.

On November 23, 2001, the State of Idaho served copies of the *Motion* and supporting briefing and affidavits and the *Order Setting Hearings on State of Idaho's Motion for Order of Interim Administration and Motion for Order Expediting Hearing; I.C. § 42-1417, AOI 6f(2)* (Subcase 92-00021) on all affected parties by U.S. Mail.¹ The State of Idaho filed the Certificate of Service with the Court on November 26, 2001.

¹ The "affected parties" are claimants in Basins 35, 36, 41, and 43 with water rights within the area shown on Attachment 1, other than small domestic and stockwater rights as defined under Idaho Code §§ 42-111 and 42-1401A(11).

On January 8, 2002, the Court held a hearing on the State of Idaho's *Motion*.

This Court, having heard the *Motion* and reviewed the pleadings, makes the following findings of fact and conclusion of law and enters its *Order* as follows:

A. FINDINGS OF FACT

1. The State of Idaho has complied with the service requirements of I.C. § 42-1417(2)(b) and this Court's *Order Setting Hearings on State of Idaho's Motion for Order of Interim Administration and Motion for Order Expediting Hearing; I.C. § 42-1417, AO1 6f(2)* (Subcase 92-00021) (Issued November 19, 2001).
2. The available water supply in all or portions of Administrative Basins 35, 36, 41, and 43 is currently not adequate to satisfy some senior priority water rights and is projected in the future to be insufficient, at times, to satisfy these water rights.

B. CONCLUSION OF LAW

1. Interim administration in those portions of Administrative Basins 35, 36, 41, and 43 shown on Attachment 1 in accordance with the Director's Reports and the partial decrees for water rights is reasonably necessary to protect senior water rights in accordance with the prior appropriation doctrine as established by Idaho law.

C. ORDER

The State of Idaho's *Motion for Interim Administration* is hereby GRANTED. Pursuant to Idaho Code § 42-1417, the Court authorizes distribution of water pursuant to chapter 6, title 42, Idaho Code in accordance with the Director's Reports and the partial decrees that have superseded the Director's Reports, in those portions of Administrative Basins 35, 36, 41, and 43 shown on Attachment 1.

This *Order* shall continue in force and effect until modified or dissolved by this Court.

DATED this 8th day of January 2002.

R. Burdick

ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication

State of Idaho
County of Twin Falls ss.
I hereby certify the foregoing to be a full,
true and correct copy of the original on
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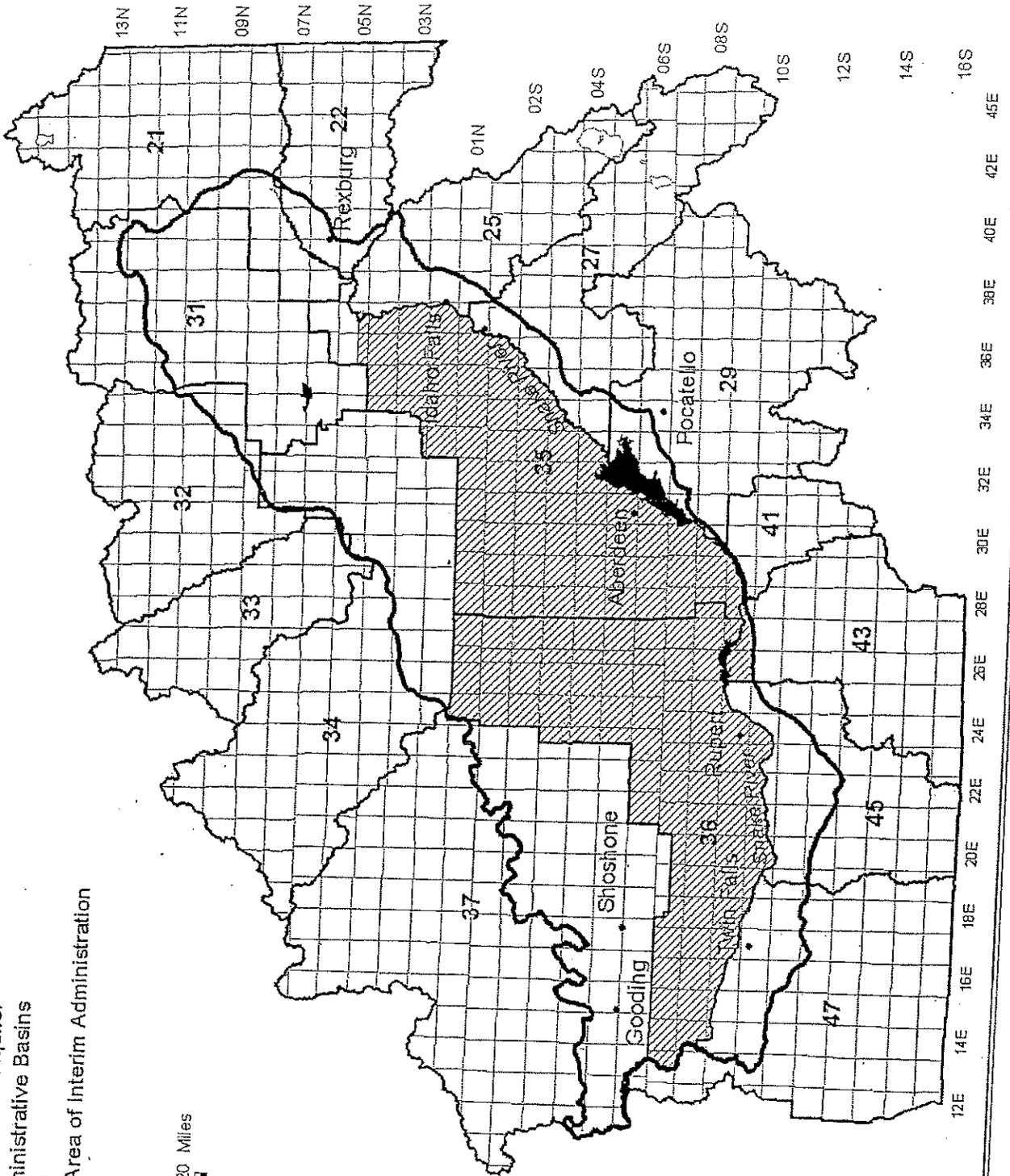
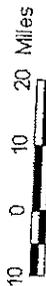
ROBERT S. FORT
CLERK OF THE DISTRICT COURT

By Robbin Hultz

ATTACHMENT 1

PROPOSED AREA OF INTERIM ADMINISTRATION

-  Eastern Snake Plain Aquifer
-  IDWR Administrative Basins
-  Townships
-  Proposed Area of Interim Administration



ALAN G. LANCE
Attorney General

CLIVE J. STRONG
Chief, Natural Resources Division
Deputy Attorney General
Office of the Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-4124
Fax: (208) 334-2690
ISB # 2207

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)	Subcase No. 92-00021
)	MOTION FOR ORDER OF
Case No. 39576)	INTERIM ADMINISTRATION AND
)	MOTION FOR ORDER EXPEDITING
)	HEARING
_____)	

DESCRIPTIVE SUMMARY

This document is the State's motion requesting the Snake River Basin Adjudication ("SRBA") District Court to authorize the Director of the Idaho Department of Water Resources ("Director") to implement interim administration of water rights in all or parts of Basins 35, 36, 41 and 43 in accordance with the most current Director's Reports for Basins 35, 36, 41 and 43, or in accordance with partial decrees that have superseded the Director's Reports. This document further requests the District Court to provide an expedited hearing for this motion with a hearing set for January 8, 2002.

MOTION FOR ORDER TO EXPEDITE HEARING

The State of Idaho further moves the court for an order to expedite the hearing for consideration of the MOTION FOR ORDER OF INTERIM ADMINISTRATION. The grounds for this motion are as follows:

1. SRBA ADMINISTRATIVE ORDER 1 ("AO1") governs notice of documents filed in the SRBA. Under AO1, this MOTION FOR ORDER OF INTERIM ADMINISTRATION will first appear on the docket sheet issued December, 2001, and, thus, this motion would come on for hearing in February 2002, if heard without an expedited hearing schedule.
2. AO1 also provides that the court may order an expedited hearing. This motion requests the court to shorten the time for the hearing date on the State's MOTION FOR ORDER OF INTERIM ADMINISTRATION to January 8, 2002.
3. As the BRIEF IN SUPPORT OF MOTION FOR ORDER OF INTERIM ADMINISTRATION demonstrates, the need for interim administration of the water rights is pressing and immediate. Expedited consideration of this motion, with a hearing set for January 8, 2002, will provide sufficient time for interested parties to respond.

THEREFORE, the State respectfully moves this Court for an order shortening time for consideration of this matter and for an order permitting interim administration of water rights in all or parts of Basins 35, 36, 41 and 43 in accordance with the most current Director's Reports for these Basins, or in accordance with partial decrees that have superseded the Director's Reports. The Affidavit of Timothy J. Luke and a brief in support of these motions are submitted herewith. Oral argument on this motion is requested.

for seeking interim administration is to permit immediate administration of water rights³ in the affected areas pursuant to chapter 6, title 42, Idaho Code, and to enable the Director and participating water right holders to take further steps toward long-term administration of the resource.

B. There Is An Insufficient Water Supply Available to Satisfy Senior Surface Water Rights Supplied By Springs In The American Falls and Thousand Springs Reaches of the Snake River.

The ESPA underlies much of the Eastern Snake River Plain. Natural discharge from the ESPA occurs primarily proximate to American Falls Reservoir, and through the Thousand Springs. The spring discharges have fluctuated significantly over time. The major factor in this fluctuation in spring discharges is irrigated agriculture.

Because of the hydrogeology of the ESPA, the impacts of changes in aquifer recharge and pumping are often not apparent in aquifer discharge and river flows for periods of years, or decades in some cases. This delayed and dispersed effect makes administration of the water rights from the hydraulically connected ground water and surface water sources extremely complex. Resolving this legal relationship was one of the main reasons for commencement of the SRBA. "In fact, the Snake River Basin Adjudication was filed in 1987 pursuant to I.C. § 42-1406A, in large part to resolve the legal relationship between the rights of ground water pumpers on the Snake River Plain and the rights of Idaho Power at its Swan Falls Dam." 1994 *Interim Legislative Committee on the Snake River Basin Adjudication* at 36. Upon completion of the SRBA, water districts will be created pursuant to chapter 6, title 42, Idaho Code, to, among other functions, protect senior water rights from injury caused by junior water rights diverting from hydraulically connected sources within the Snake River Basin in Idaho. The legislature

³ The State of Idaho's motion for interim administration does not seek administration of domestic and stockwater rights as defined under Idaho Code §§ 42-111 and 42-1401A(11).

C. Creation Of Water Districts In All Or Parts Of Basins 35, 36, 41 And 43 Is Reasonably Necessary to Protect Senior Surface Water Rights.

"Administration of water rights" is the distribution of water to water users in accordance with the prior appropriation doctrine as set forth in Idaho law. Chapter 6, title 42, Idaho Code, sets forth the provisions of law that govern such administration in Idaho. Chapter 6 assigns to the Director the responsibility for supervising the distribution of water from all natural water sources. Chapter 6 provides that the Director will exercise this duty through the creation and function of water districts.

As Tim Luke, Section Manager for the Water Distribution Section for IDWR, states in his affidavit, ~~the existing water districts in Basins 35, 36, 41 and 43 include only part of the rights from surface sources, and none of the rights from ground water sources.~~ See Attachment A, *Affidavit of Timothy J. Luke In Support of Motion for Order of interim Administration*, at 3. While IDWR has created water measurement districts in these areas, the measurement districts' authority is limited to measurement and reporting of diversions and ~~does not include authority for the administration of water rights, or the enforcement of water right conditions.~~ *Id.* at 3. The formation of water districts will allow water to be distributed in accordance with the prior appropriation doctrine as established by Idaho law.

The creation of water districts is an important step in the administration of water rights. Water districts provide mechanisms for administration, regulation, and enforcement of water rights. *Id.* They also provide a means for incorporating regular measurement and reporting of diversions, including ground water diversions. *Id.* In addition, water districts provide for local and timely response to general calls for water distribution and provide a system whereby a local watermaster can provide timely assistance and expertise to water users and respond to their complaints. *Id.* Furthermore, water districts provide for improved management of water rights

can a system be administered." *Id.* at 91, 558 P.2d at 1052, quoting *DeRousse v. Higginson*, 95 Idaho 173, 505 P.2d 321 (1973).

Before the court can issue the order of interim administration, the court must find that the individual partial decrees that supersede the Director's Report for individual recommendations and the latest filing of Director's Reports where partial decrees have not been issued are an adequate listing of the owners of and the elements of the water rights for the purposes of interim administration of a water source. Idaho Code § 42-1417 contemplates that the Director's Reports constitute an adequate listing, since all the claims have been investigated by state officials and reported to the court. The statute assures procedural due process by requiring notice to the claimants and by allowing the court to modify the Director's Report for purposes of interim administration. The statute also contemplates that the partial decrees provide an adequate listing of water rights for purposes of interim administration because these rights have not only been investigated by state officials, but have also withstood the scrutiny of court review. Thus, the Director's Reports and the partial decrees meet the need for administration pending the completion of the adjudication. Upon entry of an order for interim administration, the creation of water districts and the distribution of water thereunder will occur in accordance with the normal administrative mechanism created by chapter 6, title 42, Idaho Code.

III. NOTICE IS BEING PROVIDED TO EACH CLAIMANT THAT WILL BE SUBJECT TO THE INTERIM ADMINISTRATION ORDER.

Idaho Code § 42-1417 requires that notice be given to "each claimant of water from the water system or portion thereof that could reasonably be determined to be adversely affected by entry of the order" The State of Idaho is mailing notice of this motion to all claimants who will be subject to interim administration if this motion is granted. Therefore, the notice provisions of Idaho Code § 42-1417 are satisfied.

8. The general reasons for the creation or enlargement of a water district are:

- Provide a mechanism for administration, regulation and enforcement of water rights;
- Provide a means for regular measurement and reporting of diversions, including ground water diversions.
- Provide a more local and immediate response to general calls for water delivery;
- Provide for improved management of water rights and keeping water rights current with respect to ownership and water use;
- Provide a system whereby local watermasters or deputy watermasters can provide for local and timely response to general calls for water distribution; and
- Water district administration and regulation can be accomplished by assessing water users directly through the districts.

9. The specific reasons for creation or enlargement of water districts in Basins 35, 36, 41 and 43 are:

- Existing water districts in these basins are limited to surface water sources and do not include ground water sources. Additionally, some surface water sources in these basins are not included in any water district.
- All of the water rights claimed in Basins 35, 36, 41 and 43 have been reported or partially decreed in the SRBA as required under I.C. § 42-1417.
- IDWR has already created Water Measurement Districts in these areas, but the Measurement Districts' authority is limited to measurement and reporting of water use and does not include authority to regulate water rights, including enforcement of water right conditions.
- The establishment of water districts will provide the watermasters with the ability to administer water rights in accordance with the prior appropriation doctrine as established by Idaho law.
- The available water supply is currently not adequate to satisfy some senior priority water rights and is projected, in the future, to be insufficient, at times, to satisfy these water rights.