State of Idaho
DEPARTMENT OF WATER RESOURCES
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C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

September 5, 2008

Re: Amended Final Order Creating the Oakley Valley Area Water District

Dear Water Right Holder:

The records of the Idaho Department of Water Resources ("IDWR") show that you are the holder of one or more water rights with points of diversion located within IDWR Administrative Basin 45.

Enclosed please find a copy of the Amended Final Order Creating the Oakley Valley Area Water District, Water District No. 140. Pages one and two of the attached order provide a chronological background and explanation as to why this Amended Final Order has been issued.

Please contact this office or Water District No. 140 Watermaster Cindy Yenter at the IDWR regional office in Twin Falls (208-736-3033) if you have any questions concerning this matter. Copies of this order and other information regarding Water District No. 140 may be found on IDWR's web site using the following link: http://www.idwr.idaho.gov/water/districts/Oakley.htm

Sincerely,

Tim Luke
Manager, Water Distribution Section

Enclosures

Cc: Cindy Yenter, Watermaster, Water District No. 140
IDWR Southern Region

EXPLANATORY INFORMATION
TO ACCOMPANY A
FINAL ORDER

(Required by Rule of Procedure 740.02)

The accompanying order is a "**Final Order**" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

(1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

(5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

(a) the petition for reconsideration is disposed of; or

(b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

i. A hearing was held,
ii. The final agency action was taken,
iii. The party seeking review of the order resides, or
iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF CREATING THE OAKLEY VALLEY AREA WATER DISTRICT, DESIGNATED AS WATER DISTRICT NO. 140, FOR THE ADMINISTRATION OF WATER RIGHTS IN ADMINISTRATIVE BASIN 45	)	**AMENDED FINAL ORDER CREATING WATER DISTRICT NO. 140**

The Director of the Idaho Department of Water Resources ("Director" or "Department") is required by Idaho statutes to divide the state into water districts for the purpose of performing the essential governmental function of distributing water among appropriators under the laws of the State of Idaho. The requirement to create water districts applies to those streams, or other water sources, for which the priorities of appropriation have been adjudicated by court decree. By statute, during the pendency of a water rights adjudication, the district court having jurisdiction for the adjudication can authorize interim administration of the water rights by the Director if reasonably necessary to protect senior water rights. The district court may authorize the distribution of water pursuant to chapter 6, title 42, Idaho Code, in accordance with partial decrees entered by the court or in accordance with one or more Director's Reports as may be modified by the court's order.

The Director issued the Final Order Creating Water District No. 140 on December 28, 2006. On January 11, 2007, the Department received a Petition of Reconsideration signed by individual water users within Water District No. 45-F, Marsh Creek and tributaries, regarding their concern about that portion of the Director's Final Order Creating Water District No. 140 that designated Water District No. 45-F as a sub-district of Water District No. 140. Separate Petitions of Reconsideration regarding this same issue were received by the Department on January 11, 2007 from Earl Warthen, a Water District No. 45-F water user, and Don Gunderson, the watermaster of Water District 45-F who is also a water user in Water District No. 45-F.

On January 12, 2007, Southwest Irrigation District, Goose Creek Irrigation District, Jack Duncan, Paul Duncan, Bill Hepworth, Bruce Newcomb, Mark Newcomb, Mark Sanderson, Dan Walton, Gary Fowler, William McManus, Ron Heib, Ardel Wickel, Lynn Mitchell and Del Mitchell (collectively referred to as "Southwest-Goose Creek Petitioners") filed with the Director of the Idaho Department of Water Resources (Director or Department) a Petition for Reconsideration regarding the Director's Final Order Creating Water District No. 140. A single petition was submitted on behalf of these users by their legal counsel, William A. Parsons. The petition raised concerns regarding the potential *res judicata* effect that could be given to certain findings and references to the Eastern Snake Plain Aquifer in the Final Order Creating Water District No. 140.

The petitions of January 11 and 12, 2007 were denied by operation of law because the Director did not dispose of the petitions within twenty-one (21) days of filing. On February 27, 2007, Southwest-Goose Creek Petitioners filed an appeal of the Director's final order with the

Idaho Fifth Judicial District Court in Cassia County. On April 5, 2007, District Judge Monte B. Carlson, pursuant to a stipulation and joint motion of the parties, remanded the matter to the Department to resolve Southwest-Goose Creek Petitioners' appeal.

On August 9, 2007 the Director sent a Notice of Pre-Hearing Conference on Remand to all of the petitioners. The notice scheduled a meeting between the Director and all of the petitioners on September 10, 2007 in Burley, Idaho. On September 4, 2007, the A&B Irrigation District ("A&B") submitted to the Department a Petition to Intervene in the Director's pre-hearing conference and the matter of the Final Order Creating Water District No. 140. A&B participated in the September 10 pre-hearing conference and the Director granted A&B's Petition to Intervene on September 13, 2007. During the September 10 pre-hearing conference, the Director and Southwest-Goose Creek Petitioners agreed that the Department would amend the Final Order Creating Water District No. 140 in order to address the specific concerns raised by the Southwest-Goose Creek Petitioners regarding the potential *res judicata* effect that could be given to certain findings and references to the Eastern Snake Plain Aquifer. The Director and Water District No. 45-F petitioners agreed to proceed with a hearing on October 3, 2007 in Albion, Idaho to address the Petitions of Reconsideration filed by the Marsh Creek water users. The Director conducted a hearing on the Petitions of Reconsideration filed by the Water District No. 45-F water users on October 3, 2007 in Albion, Idaho.

On November 19, 2007, Department staff circulated to counsel for the parties a *Draft Amended Final Order Creating Water District No. 140*, which removed certain findings and references to the Eastern Snake Plain Aquifer that the Southwest-Goose Creek Petitioners objected to in their appeal to the district court. On December 3, 2007, A&B filed *A&B Irrigation District's Response to "Draft" Amended Final Order Creating Water District No. 140.* A&B requested that the Department's *Draft Amended Order* be modified to include the previous findings regarding the Eastern Snake Plain Aquifer.

This Amended Final Order retains several references to the Eastern Snake Plain Aquifer or ESPA in findings of fact 11, 25, 26, 27, 28 and 39. The inclusion of these references to the ESPA as presently defined in the Department's Conjunctive Management Rules, IDAPA 37.03.11, is not intended by the Director to preclude or limit any issues or defenses that the Southwest-Goose Creek Petitioners or other water right holders in Water District No. 140 could otherwise raise in response to a water delivery call by the holders of more senior priority surface or ground water rights or to preclude the initiation of proceedings for amendment of the Conjunctive Management Rules.

FINDINGS OF FACT

1. On April 18, 2005, the State of Idaho ("State") filed with the Snake River Basin Adjudication ("SRBA") District Court a motion requesting an order authorizing the interim administration of water rights by the Director in the Department's Administrative Basin 45 ("Basin 45").

2. On April 19, 2005, the State served copies of its motion and supporting briefing and affidavits on all affected parties by regular U. S. Mail. The State's motion included a Notice of Hearing setting the matter for hearing before the SRBA District Court on July 21, 2005. The SRBA District Court designated the matter as SRBA Subcase 92-00021 (Interim

Administration). The State's motion and supporting briefing and affidavits are a part of the record in the matter of creating Water District No. 140 within Basin 45.

3. On July 21, 2005, the SRBA District Court held a hearing on the State's motion. No objections were filed in opposition to the motion, and no party appeared in opposition to the State's motion.

4. On July 21, 2005, the SRBA District Court issued an order authorizing the interim administration of water rights by the Director in Basin 45, pursuant to chapter 6, title 42, Idaho Code, based upon a determination that such interim administration is necessary to protect senior water rights.

5. On November 2, 2005, the Director signed a notice proposing to establish a water district in Basin 45 pursuant to the provisions of Idaho Code § 42-604. On November 8, 2005, the Director sent notice of the proposed action by regular U. S. Mail to each holder of a water right within the boundaries of the proposed water district. The notice described the water district proposed to be established, the reasons therefor, and the time and place for a hearing to be held on December 15, 2005, concerning establishment of the proposed water district. The notice also provided a time period within which written comments on the proposed action would be accepted.

6. In addition, the Director caused notice of the proposed action establishing the water district to be published once a week for two (2) weeks in the following newspapers having general circulation within the area of the proposed water district: *The Times News* of Twin Falls and the *South Side Press* of Cassia County, both on November 17 and 24, 2005.

7. The notice mailed to water right holders proposed that Water District No. 140 would include all water rights with points of diversion located within the boundaries of Basin 45, except those used solely for domestic and/or stock water purposes as defined by Idaho Code §§ 42-111 and 42-1401A(11).

8. The Director's notice also described that the watermaster for the water district would be responsible for certain duties under the direction and supervision of the Director including: (1) measurement and reporting of diversions under water rights; (2) administration of water rights in priority; (3) curtailment and enforcement against unauthorized or excessive diversions; and (4) enforcement of stipulated agreements or mitigation plans approved by the Director.

9. The Director's notice further described that existing water districts in Basin 45 are proposed to be converted to sub-districts within Water District No. 140. There are currently seven water districts located within the proposed Water District No 140 including: Water District No. 45-A, Basin Creek and tributaries; Water District No. 45-B, Birch Creek and tributaries; Water District No. 45-C, Goose Creek and tributaries; Water District No. 45-F, Marsh Creek and tributaries; Water District No. 45-K, Cottonwood Creek and tributaries; Water District No. 45-N, Dry Creek and tributaries; and Water District No. 45-O, Golden Valley (ground water in the Cottonwood Critical Ground Water Area). All of these water districts are currently active except Water District No. 45-N, which is currently inactive. Water District No. 45-C has been inactive in certain years.

10. None of the existing water districts listed above, except Water District No. 45-O, include water rights from ground water sources. None of these water districts administer water rights from surface water sources outside the irrigation season for those rights included within the districts, nor do these districts administer water rights during the irrigation season when the surface water sources are not under watermaster regulation.

11. The Director's notice also stated that the water district would replace the measurement and reporting responsibilities of the Eastern Snake Plain Aquifer ("ESPA") West Water Measurement District ("WWMD") that currently exists within that portion of Basin 45 overlying the ESPA.

12. On December 15, 2005, at approximately 8:00 p.m., the Director conducted a hearing concerning the proposed creation of the water district at the Burley City Hall in Burley, Idaho. Approximately 35 people attended the hearing.

13. Prior to commencing the hearing, the Director gave a presentation and answered questions for approximately 90 minutes addressing the reasons for creation of the proposed water district and how the district would operate.

14. Persons attending the hearing were provided opportunity to make oral statements for the record. In addition, the Director held the record open through December 28, 2005, for the submittal of written comments.

15. Seven (7) individuals made oral statements for the record at the hearing. Two (2) persons who testified at the hearing on December 15, 2005, also submitted written statements to the Department on or before the deadline of December 28, 2005. Written statements were also submitted to the Department prior to the deadline of December 28, 2005, by a group of holders of water rights from ground water in the northeast portion of Basin 45.

16. Mr. Randy Brown of Murtaugh, Idaho, testified on behalf of the Southwest Irrigation District ("SWID"). Mr. Brown testified that SWID supports formation of a water district south of the Snake River that is separate from Water District No. 130, which is located north of the Snake River. Mr. Brown stated that SWID believes the hydrology north of the river is not the same as the hydrology south of the river where SWID is located. Mr. Brown stated that SWID believes a separate district south of the river better serves the interests of the irrigation district. Mr. Brown further stated that some wells included in SWID are located within Administrative Basin 47, and SWID recommends that those wells be included in Water District No. 140 when the Department implements administration of ground water rights in Administrative Basin 47.

17. Mr. Grant Wyatt of Burley, Idaho, also testified on behalf of SWID. Mr. Wyatt stated that SWID supports being included in the proposed Water District No. 140 rather than being included in Water District No. 130. Mr. Wyatt also stated that water management issues and ground water hydrology south of the Snake River in Basin 45 are different than those north of the Snake River. In particular, Mr. Wyatt stated, some of the aquifers located in Basin 45 may not be hydraulically connected to the Snake River. Mr. Wyatt stated that SWID has been able to use some of the nearby streams from the South Hills for recharge of local aquifers.

18. Mr. Carl Austin of Oakley, Idaho, testified on his own behalf, as the owner of the Double Diamond Ranch located south of Oakley. Mr. Austin is a mining and geological engineer with extensive background in geothermal resource exploration and development. Mr. Austin testified that geothermal water tapped by deep wells located on the Double Diamond Ranch upstream of the Oakley Reservoir should not be considered hydraulically connected to the ground water of the Oakley Basin or the Snake River Plain. Mr. Austin supplemented his testimony with a technical report he authored on the occurrence of geothermal fluids in the Goose Creek Basin. A copy of this report was also submitted to the Department on December 13, 2005.

19. Mr. David Pickett of Oakley, Idaho, testified on behalf of the Goose Creek Irrigation District ("GCID") and the Oakley Canal Company ("OCC"). Mr. Pickett testified in support of the proposed Water District No. 140 rather than including Basin 45 in Water District No. 130. Mr. Pickett requested that the Department consider the current duties of field agents employed by GCID, SWID, OCC, and other small water districts near Oakley, when assigning the duties of the watermaster of the proposed Water District No. 140. Mr. Pickett cautioned that the watermaster for Water District No. 140 should not duplicate the duties of the field agents working for these other water delivery entities. Mr. Pickett also suggested that the watermaster for Water District No. 140 should be an information gatherer and should provide oversight of the existing water delivery entities in the area.

20. Mr. Randy Robinson of Oakley, Idaho, testified as the chairman of the Board of Directors for the OCC. Mr. Robinson stated that he concurred with the testimony provided by Mr. Pickett.

21. Mr. Earl Warthen of Albion, Idaho, testified that holders of surface and ground water rights located within the Albion Basin (Marsh Creek drainage) had met on December 10, 2005, to discuss the proposed formation of Water District No. 140. Mr. Warthen stated that the right holders present at this meeting supported formation of a separate water district for the Albion Basin for the following reasons:

> The Albion Basin sits by itself in an uplifted area bordered on the East and West by major tertiary faults in an uplift, and separate from the Oakley fan and the Malta area.... Second, the Oakley Valley falls in the West Cassia Soil Water Conservation District whereas the Albion Basin is in the East Cassia Soil Water Conservation District. Third, both the Malta and Oakley fans are connected to the interstate waters of Utah and Nevada, Utah on the Malta side and Utah and Nevada on the Oakley side. Furthermore, number 4, both the Malta and the Oakley area have been designated critical groundwater areas. Fifth, approximately fifteen years ago the East Cassia Soil Water Conservation District petitioned the State of Idaho for a groundwater recharge district and still hopes to further that goal as these problems continue.

Mr. Warthen submitted a written version of his testimony to the Department at the hearing on December 15, 2005.

22. Mr. Don Bowden of Albion, Idaho, testified on behalf of the City of Albion.

Mr. Bowden requested that the Department recognize that the Albion Basin is an isolated basin that is not hydraulically connected to any other water sources in the proposed water district. Mr. Bowden expressed concern about a previous change in point of diversion from outside the Albion Basin to within the Basin that Mr. Bowden alleged to have caused injury to existing water rights in the Albion Basin. Mr. Bowden requested that the Department recognize the Albion Basin as "an isolated system" and to avoid such changes in points of diversion in the future "in order to equitably administer" the Albion Basin. Mr. Bowden stated the City is not adverse to working with its neighbors and paying its share for the administrative overhead of a watermaster, but requested that the Albion Basin be designated as a separate district.

23. The Director received a written petition from thirteen individual holders of ground water rights for diversions located in Basin 45 south of the Snake River, north of Interstate 86, and within the Magic Valley Ground Water District. The petitioners include Jack Duncan, Paul Duncan, Bill Hepworth, Bruce Newcomb, Mark Newcomb, Mark Sanderson, Dan Walton, Gary Fowler, William McManus, Ron Hieb, Ardel Wickel, Lynn Mitchell, and Dell Mitchell. The petition asks the Director to include the ground water rights in this area in the proposed Water District No. 140 for the following reasons:

1. According to the water model used by the state of Idaho, the hydrology south of the Snake River is substantially different than the hydrology north of the Snake River.

2. The south side canal from Minidoka Dam (which supplies surface water to the ground south of Burley) runs through the middle of our farms. We feel this vital artery between us and the rest of Cassia County will prove to be a very positive advantage for water management.

3. The Snake River forms a natural boundary for separation of these two state water districts [Water District No. 130 and Water District No. 140].

24. The above referenced petition also states that if the lands owned by the petitioners are included in Water District No. 140, then the petitioners intend to join SWID for purposes of measurement and reporting. The petitioners also state that they are prepared to create a new irrigation or ground water district if necessary to represent the northeast portion of Cassia County.

25. The ESPA is defined as the aquifer underlying an area of the Eastern Snake Plain that is about 170 miles long and 60 miles wide as delineated in the report "Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho," U. S. Geological Survey ("USGS") Professional Paper 1408-F, 1992, excluding areas lying south of the Snake River and west of the line separating sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian. See Rule 50.01, Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11.050.01.

26. The ESPA as defined extends across the northern portion of Basin 45 between Minidoka Dam in the northeast, Churchill Knolls in the south (approximately 7 miles north of Oakley), and Murtaugh Lake in the northwest.

27. The Department uses a calibrated ground water model to determine the effects on the ESPA and hydraulically connected reaches of the Snake River and its tributaries from pumping a single well in the ESPA, from pumping selected groups of wells in the ESPA, and from surface water uses on lands above the ESPA.

28. The ground water model reflects that ground water in the ESPA is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees.

29. Different aquifers exist within Basin 45. Throughout much of the Basin 45 valley lowlands, ground water occurs in two unconfined aquifers comprised of fractured basalt and alluvium. Confined rhyolite and limestone aquifers exist in the south and west portions of the Basin 45 valley lowlands. These confined aquifers are deeper and overlain by basalt and alluvium. Water levels in the shallower unconfined basalt and alluvium aquifers appear to be more responsive to periods of above-average and below-average precipitation. Geologic faulting and surface water in Basin 45 also affect ground water movement.

30. Four (4) separate critical ground water areas ("CGWAs") have been designated by the Department in Basin 45 pursuant to Idaho Code § 42-233a. A CGWA is defined as all or part of a ground water basin that does not have sufficient ground water to provide a reasonably safe supply for irrigation or other uses at current or projected rates of withdrawal. The Director can deny applications for new water right appropriations located within a CGWA and may require water users to report diversions or other information.

31. The four CGWAs designated by the Department in Basin 45 are collectively known as the Oakley Fan CGWAs. The Goose Creek-Rock Creek CGWA was first designated in 1962 but subdivided in 1967 into three separate CGWAs: Artesian City, Cottonwood, and Oakley-Kenyon. The fourth, the West-Oakley Fan CGWA, was established in 1982. The four CGWAs are contiguous and have been managed as a single unit. The orders designating the CGWAs set forth the basis for determining that ground water within the areas is either limited or not available for appropriation. New appropriations of ground water are not allowed in the Artesian, Cottonwood, and Oakley-Kenyon CGWAs. New appropriations in the West-Oakley Fan CGWA may only be considered upon submittal of an acceptable mitigation plan.

32. The contiguous boundary of the Oakley Fan CGWAs in Basin 45 is delineated on the map in Attachment A to this Order.

33. Continuous monitoring of ground water levels in the Oakley Fan CGWAs indicates that ground water levels continue to generally decline. The declining trend suggests that overdraft conditions still exist throughout the four CGWAs, although water levels in the shallower basalt and alluvium aquifers have generally declined less and are more stable.

34. Idaho Code § 42-1416B provides that claims to expanded use of water within CGWAs may be decreed in the SRBA if the expansion occurred after the designation of the CGWA and before the commencement of the SRBA. The priority date of such decreed rights is June 30, 1985.

35. Idaho Code § 42-1416B further provides that water in a CGWA shall be deemed

unavailable to fill such decreed expansion rights unless the Director finds that a management program exists that will limit the annual average withdrawals from the aquifer to the average annual recharge of the aquifer. Within two (2) years after a decree determining the water rights within a CGWA, the Director must find that a management plan exists that would bring withdrawals into balance with recharge. If an adequate management plan does not exist, the Director shall order holders of expansion rights in a CGWA to cease or reduce withdrawal of ground water until withdrawals are brought into balance with recharge.

36. There are approximately 60 expansion ground water rights within the four (4) CGWAs in Basin 45 appurtenant to over 11,500 acres of irrigated land.

37. Ground water pumping in Basin 45 may potentially affect surface water sources in Basin 45 or other Department administrative basins, including perhaps flows of the Snake River or springs tributary to the Snake River. Ground water pumping in Basin 45 may also potentially affect ground water levels in local or regional aquifers, including aquifers that extend into other Department administrative basins.

38. The available water supply in all or portions of Basin 45 may not be adequate to consistently satisfy some senior priority water rights.

39. The administration of ground water rights within the portion of Basin 45 overlying the ESPA is necessary for the protection of prior surface and ground water rights.

40. Ground water rights, and some surface water rights in Basin 45 currently are not subject to administration through water districts by watermasters.

41. Administration of ground water rights and surface water rights within the CGWAs and all of Basin 45 is necessary for the protection of prior surface and ground water rights.

42. Administration of water rights and management of water in Basin 45 would be properly and efficiently provided by including all of Basin 45 in one water district.

43. Well logs and published literature indicate the presence of a shallow unconfined alluvium aquifer in the Albion Basin that is hydraulically connected to Marsh Creek. Available literature indicates that the unconfined ground water in the basin moves northward and discharges either to Marsh Creek or leaves the basin as underflow beneath Marsh Creek (*see* Crosthwaite, E.G., "Ground Water Possibilities South of the Snake River Between Twin Falls and Pocatello," USGS, 1956).

CONCLUSIONS OF LAW

Statutory Authorities

1. Idaho law declares all surface water, when in natural channels or springs or lakes, and all ground water within the State of Idaho to be the property of the state, whose duty it is to supervise the appropriation and allotment of the water to those diverting the same for beneficial

use. *See* Idaho Code §§ 42-101, 42-103, and 42-226.

2. The Director, acting on behalf of the State of Idaho, has the statutory authority to control the appropriation and use of all surface and ground waters within the state in accordance with, but not limited to, Idaho Code §§ 42-101, 42-103, 42-202(1), 42-220, 42-226, 42-237a.g., 42-351, and 42-602 et seq.

3. Idaho Code §§ 42-226 and 42-237a.g., assign the authority and responsibility to the Director for the administration of ground water rights in the state in accordance with the prior appropriation doctrine as established by Idaho law so as to protect prior surface and ground water rights.

4. The Director has responsibility for direction and control over the distribution of water in accordance with the prior appropriation doctrine as established by Idaho law within water districts to be accomplished through watermasters supervised by the Director, and subject to removal by the Director, as provided in chapter 6, title 42, Idaho Code.

5. Idaho Code § 42-604 authorizes the Director to form water districts as necessary to properly administer uses of water from public streams, or other independent sources of water supply, for which a court having jurisdiction thereof has adjudicated the priorities of appropriation. The Director may also revise the boundaries of a water district, abolish a water district, or combine two (2) or more water districts, by entry of an order, if such action is required in order to properly administer the users of the water resource.

6. In addition, Idaho Code § 42-1417 provides that the district court having jurisdiction over a general water rights adjudication may authorize the interim administration of water rights pursuant to chapter 6, title 42, Idaho Code, prior to the entry of a final decree, in accordance with Director's Reports filed with the court, with or without modification by the court, or in accordance with partial decrees that have superseded the Director's Reports.

Response to Testimony and Written Comments

7. Most of the oral testimony and written comments submitted to the Department generally supported creation of the proposed Water District No. 140. Much of the testimony supported the concept that any water district created to include ground water rights in Basin 45 should be limited to Basin 45, and not included with Water District No. 130 located north of the Snake River. Some testimony and written comments did not support inclusion of certain areas or water rights in the proposed water district.

8. In response to the hearing testimony and written comments, the Director concludes that during the irrigation season for the water rights in some of the existing water districts in Basin 45, the statutory requirements of Chapter 6, Title 42, Idaho Code, are mostly being met; while in other water districts in Basin 45, some or many of the statutory requirements are not being satisfied. For example, surface water diversions in some of the existing districts lack adequate measuring devices and controlling head gates, are not measured or recorded on a regular basis, or are not monitored or regulated during portions of the irrigation season. Additionally, some of the existing water districts do not maintain adequate measurement records,

annual watermaster reports are not always complete or timely submitted, and some existing water districts have been periodically inactive or inactive for many years. None of the existing water districts enforce limitations of surface water rights outside of the irrigation season for the rights, and only one (1) of the existing water districts regulates water rights diverting from ground water.

9. Given that: (1) water districts do not exist in large areas of Basin 45; (2) the administration of surface water rights in the existing water districts in Basin 45 is often inconsistent; (3) none of the existing water districts in Basin 45 administer surface water rights outside of the irrigation season for those rights or during the irrigation season when the surface water sources are not in regulation; and (4) only one of the existing water districts in Basin 45 regulates diversions from ground water; the Director concludes that there should be one water district created that encompasses all of the water rights within Basin 45, and that the existing surface water districts in Basin 45 should be designated as sub-districts, in order to provide consistent and effective administration of water rights from both surface water sources and ground water sources year-round throughout Basin 45.

10. Existing water districts in Basin 45, which now will be sub-districts within Water District No. 140, will each continue to elect their own watermasters, and adopt their own budgets for purposes of water distribution within their districts, including measurement reporting and regulation of water diversions. A sub-district that provides for the adequate distribution of water in accordance with Idaho law and guidance from the Director should not be subject to future assessments from Water District No. 140 for purposes of water distribution within that sub-district. However, each existing water district designated as a sub-district may be subject to future assessments for costs associated with oversight of that sub-district if the sub-district is not satisfactorily distributing water to the water rights for which it has immediate responsibility. Oversight costs relative to existing water districts that are designated as sub-districts of Water District No. 140 may include, but may not be limited to, regulation and enforcement of water rights, measurement and reporting of diversions, and monitoring and implementation of mitigation plans as may be necessary for junior ground water rights that are determined to be causing injury to senior water rights.

11. There is no evidence available that suggests the Albion Basin is a closed basin. However, the Director concurs with testimony that changes in water rights in the Albion Basin or other areas of Basin 45 should not cause injury to other water rights.

12. Although not decreed as separate sources, the Director concludes that the geothermal sources located in the Goose Creek and Trapper Creek drainages above the Oakley Reservoir are not hydraulically connected to a sufficient degree to other ground or surface water sources in Basin 45 to justify treating them as connected for normal water distribution purposes. Some of the water delivered from geothermal wells located above the Oakley Reservoir are either commingled with surface water rights or used in combination with surface water rights or ground water rights diverted from shallower aquifers for irrigation of a common place of use.

13. Water rights diverted from geothermal wells located above the Oakley Reservoir may be administered separately from other sources of water in Basin 45. However, these geothermal rights may still require measurement and regulation by a local watermaster when such rights are used in combination with water rights from other sources for the same purpose of

use. Additionally, the Director may require measurement and regulation of water rights from these geothermal sources in the future if such action is necessary to protect the geothermal resource.

District Creation

14. Based upon the above statutory authorities, the order of the SRBA District Court authorizing the interim administration of water rights pursuant to chapter 6, title 42, Idaho Code, and the record in this proceeding, the Director should create a water district to administer ground water and surface water rights within Basin 45, as shown on the map appended hereto as Attachment A, to protect senior priority water rights.

15. The Director concludes that the water district should be formed on a permanent basis and be used to administer the affected water rights in accordance with the prior appropriation doctrine as established by Idaho law.

Administration of Affected Water Rights

16. The Director concludes that immediate administration of water rights, other than domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A(11), pursuant to chapter 6, title 42, Idaho Code, is necessary for the protection of prior surface and ground water rights.

17. The Director concludes that the watermaster of the water district created by this order shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director:

a. Administer and enforce water rights in priority;

b. Measure and report the diversions under water rights;

c. Curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);

d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or a mitigation plan approved by the Director; and

e. Enforce the provisions of any stipulated agreements or mitigation plans approved by the Director.

18. Additional instructions to the watermaster for the administration of water rights from hydraulically connected sources will be based upon available data, ground water and surface water models, and the Director's best professional judgment.

19. The Director concludes that the water district created by this order includes the designation of sub-districts consisting of existing water districts.

20. The Director further concludes that the water district created by this order shall include the following organizational features:

a. Election and appointment of a single watermaster for the water district. The water right holders may elect to have the district contract with the Department to provide watermaster services. Under a district contract with the Department, the watermaster will be a direct employee of the Department.

b. Existing water districts located within Administrative Basin 45 and Water District No. 140 created by the Department pursuant to Section 42-604, Idaho Code, shall be designated as sub-districts of Water District No. 140.

c. Selection of a Water District Advisory Committee that includes, but need not be limited to, representation from boards of directors of ground water districts, irrigation districts, canal companies, or representatives of other water use entities, as well as advisory committee members from existing water districts.

d. Appointment of deputy watermasters by the watermaster, with approval from the Director. Deputy watermasters shall work pursuant to instructions of the watermaster. Deputy watermasters may be employees of existing water districts, ground water districts, irrigation districts, canal companies, or other water use entities that are located within Water District No. 140.

e. Water rights in a designated sub-district shall not be subject to assessments from Water District No. 140 unless the Director determines that the sub-district is not providing for adequate distribution of water and the watermaster of Water District No. 140 is required to directly expend time or resources to deliver and/or regulate water in that sub-district. Water rights in an inactive water district shall also be assessed costs directly by the water district watermaster.

f. Ground water districts, irrigation districts, or other water use entities may measure and report on behalf of their members ground water diversions within the boundaries of the district provided that the district or other water use entity measures and reports diversions in accordance with guidelines and direction provided by the Director.

g. Ground water districts, irrigation districts, canal companies, or other water entities may collect and pay the pro-rata expenses on behalf of the diversions and users within their respective district or organization (this will avoid billing of individual water rights or diversions by both the water entity and the water district).

ORDER

IT IS HEREBY ORDERED that:

1. The Oakley Valley Area Water District, designated as Water District No. 140, is created to include all surface and ground water rights in Basin 45 within the area depicted on the map appended hereto as Attachment A and incorporated herein by reference, except small domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A(11) for which authorization for interim administration was not obtained from the SRBA District Court and for which notice of this action was not provided.

2. Water District No. 45-A, Basin Creek and tributaries; Water District No. 45-B, Birch Creek and tributaries; Water District No. 45-C, Goose Creek and tributaries; Water District No. 45-F, Marsh Creek and tributaries; Water District No. 45-K, Cottonwood Creek and tributaries; Water District No. 45-N, Dry Creek and tributaries; and Water District No. 45-O, Golden Valley (ground water in the Cottonwood Critical Ground Water Area), are designated as sub-districts within Water District No. 140. These sub-districts shall continue to meet annually to elect a sub-district watermaster, adopt a budget, and select an advisory committee. These sub-districts, except for Water District No. 45-O, shall be responsible for distribution of surface water rights that have been reported or partially decreed in the SRBA and located within the respective sub-districts. Water District No. 45-O shall be responsible for distribution and administration of ground water rights within the district that have been reported or partially decreed in the SRBA. For 2008, water right holders within the sub-districts shall meet at a time and place as normally determined by the district. Water rights in any existing water district designated herein as a sub-district that is or becomes inactive shall be administered directly by the watermaster of Water District No. 140. Water rights in an existing active water district designated herein as a sub-district shall not be subject to assessments from Water District No. 140 unless the Director determines that the sub-district is not providing for adequate distribution of water and the watermaster of Water District No. 140 is required to directly expend time or resources to deliver and/or regulate water in that sub-district.

3. Water rights diverted from geothermal sources upstream of Oakley Reservoir are included in Water District No. 140 but shall be administered separately from water rights diverted from other ground and surface water sources in Water District No. 140. The watermaster of Water District No. 140 shall monitor or coordinate monitoring of the geothermal diversions above Oakley Reservoir with the watermaster of Water District No. 45-C as necessary to ensure proper delivery of water when geothermal and surface water rights are used in combination for the same use.

4. As soon as practicable in calendar year 2007, the holders of water rights within Water District No. 140 shall meet at a time and place to be determined and noticed by the Director for purposes of: (1) electing a watermaster; (2) selecting an advisory committee, if desired; and (3) setting a budget and corresponding assessments to be collected for operating the district. In future years, the annual meeting shall be held as provided in Idaho Code §42-605.

5. Ground water districts, irrigation districts, or other water use entities may measure and report on behalf of their members ground water diversions within their organizational boundaries provided that the district or other water use entity measures and reports diversions in

accordance with guidelines and direction provided by the Director.

6. The watermaster for Water District No. 140 shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director:

a. Measure, collect, and record the diversions under water rights;

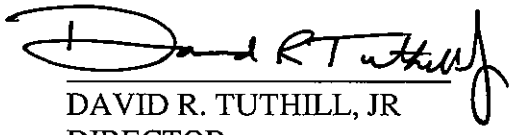
b. Administer and enforce the water rights in priority;

c. Curtail unauthorized or excessive diversions as necessary (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);

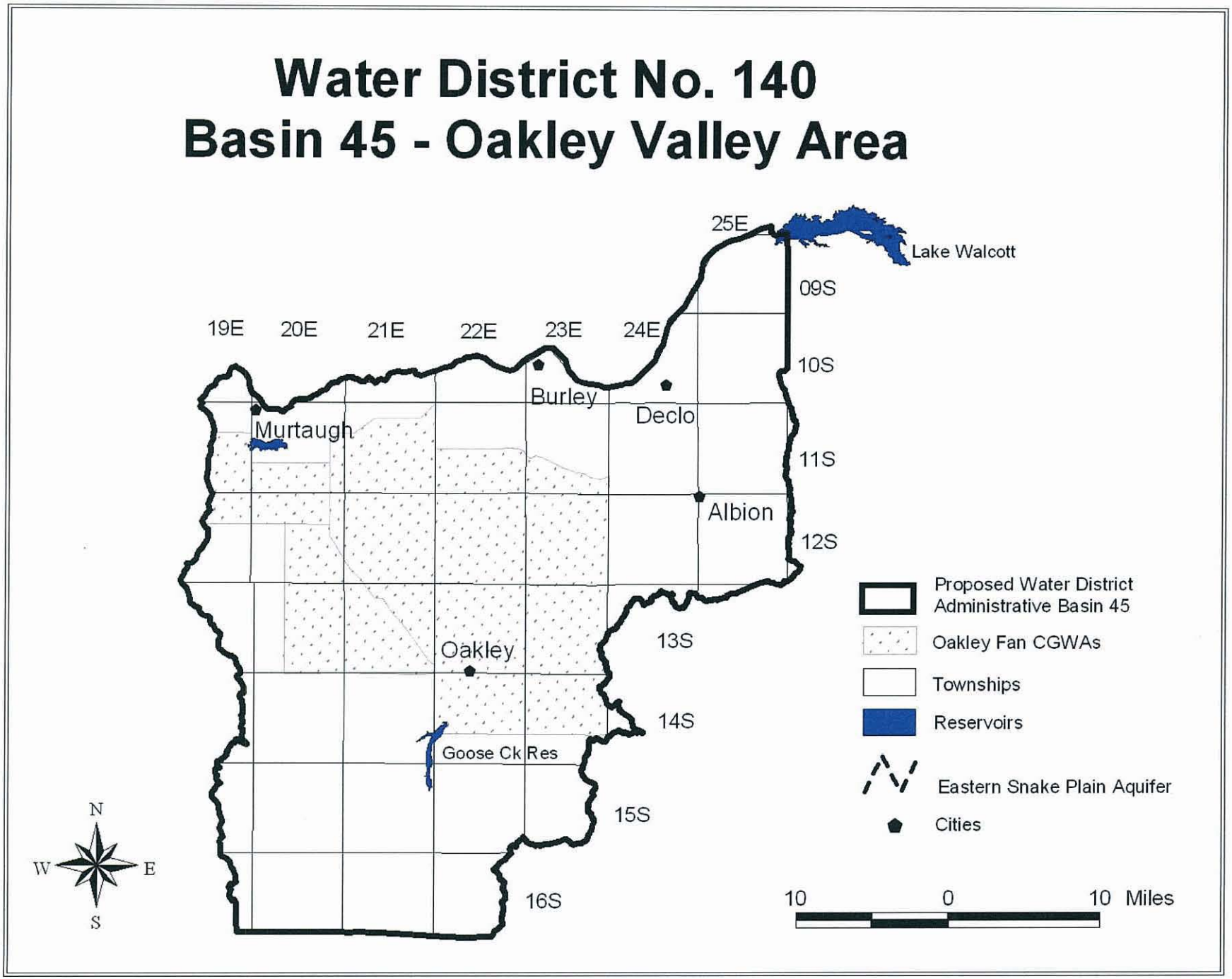
d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or mitigation plan approved by the Director; and

e. Enforce the provisions of any stipulated agreements or mitigation plans approved by the Director.

DATED this 4th day of September, 2008.



DAVID R. TUTHILL, JR
DIRECTOR


Water District No. 140
Basin 45 - Oakley Valley Area
25E
Lake Walcott
09S
19E
20E
21E
22E
23E
24E
10S
Burley
Declo
Murtaugh
11S
Albion
12S
Oakley
13S
14S
Goose Ck Res
15S
16S
N
W
E
S
Proposed Water District Administrative Basin 45
Oakley Fan CGWAs
Townships
Reservoirs
Eastern Snake Plain Aquifer
Cities
10
0
10 Miles

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 05 day of September, 2008, the above and foregoing document was served on each individual or entity on the service list for this matter on file at the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho, and posted on the Department's website: www.idwr.idaho.gov. Each individual or entity on the service list was served by placing a copy of the above and foregoing document in the United States mail, postage prepaid and properly addressed.

Christine Roberts

Christine Roberts
Office Records Specialist
Idaho Department of Water Resources