

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF CREATING THE)
ST. ANTHONY – REXBURG AREA WATER DISTRICT)
(DESIGNATED AS WATER DISTRICT NO. 100) FOR)
ADMINISTRATION OF RIGHTS TO THE USE OF)
GROUND WATER IN THE EASTERN SNAKE PLAIN)
AQUIFER IN ADMINISTRATIVE BASINS 21 AND 22)
_____)

**FINAL ORDER
CREATING WATER
DISTRICT NO. 100**

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.

FINDINGS OF FACT

1. On January 17, 2006, the State of Idaho (“State”) filed a motion with the Snake River Basin Adjudication (“SRBA”) District Court requesting an order authorizing the interim administration of water rights by the Director in the Department’s Administrative Basin (“Basin”) 21.

2. On January 18, 2006, 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 by the SRBA District Court on April 18, 2006. The SRBA District Court designated the matter as SRBA Subcase 92-00021-21 (Interim Administration).

3. On February 27, 2006, the State filed a motion with the SRBA District Court requesting an order authorizing the interim administration of water rights by the Director in Basin 22, Part 1, Ground Water, or ground water in that portion of Basin 22 overlying the Eastern Snake Plain Aquifer (“ESPA”).

4. Also on February 27, 2006, 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 by the SRBA District Court on May 25, 2006. The SRBA District Court designated the matter as SRBA Subcase 92-00021-22 Part 1 GW (Interim Administration).

5. The State's motions, supporting briefing, and affidavits described in Findings 1 through 4 are a part of the record in the matter of creating Water District No. 100 within Basins 21 and 22.

6. All of the water rights claimed in Basin 21 and Basin 22, Part 1, Ground Water, have been reported in Director's Reports to the SRBA District Court or have been partially decreed, superceding the Director's Reports, as required under Idaho Code § 42-1417.

7. The State's motions for interim administration described in Findings 1 and 3 state that: "interim administration of water rights ... is reasonably necessary because an efficient means of administering water rights from ground water sources ... does not exist. The establishment of a water district ... will provide the watermasters with the ability to administer water rights in accordance with the prior appropriation doctrine as established by Idaho law."

8. On April 18, 2006, the SRBA District Court held a hearing on the State's motion for interim administration in Basin 21. No objections were filed in opposition to the motion and no party appeared in opposition to the State's motion.

9. On May 1, 2006, the SRBA District Court issued an order authorizing the interim administration of water rights by the Director in Basin 21, pursuant to chapter 6, title 42, Idaho Code, based upon a determination that such interim administration is necessary to protect senior water rights.

10. On May 25, 2006, the SRBA District Court held a hearing on the State's motion for interim administration in Basin 22, Part 1, Ground Water. No objections were filed in opposition to the motion and no party appeared in opposition to the State's motion.

11. Also on May 25, 2006, the SRBA District Court issued an order authorizing the interim administration of water rights by the Director in Basin 22, Part 1, Ground Water, pursuant to chapter 6, title 42, Idaho Code, based upon a determination that such interim administration is necessary to protect senior water rights.

12. On October 18, 2006, the Director signed a notice proposing to establish the St. Anthony – Rexburg Area Water District in the portions of Basins 21 and 22 overlying the ESPA, pursuant to the provisions of Idaho Code § 42-604. Notice was mailed on October 26, 2006, by regular U. S. Mail to each holder of a water right within the boundaries of the proposed water district. The notice described the proposed water district to be established (Water District No. 100), the reasons therefor, and the time and place for a public hearing to be held on November 14, 2006, concerning the establishment of the proposed water district. The notice also provided a time period within which written comment on the proposed action would be accepted.

13. In addition, the Director caused notice to be published of the proposed action establishing the St. Anthony – Rexburg Area Water District once a week for two (2) weeks in the following newspapers having general circulation within the area covered by the proposed water district: *The Post Register* of Idaho Falls and the *Rexburg Standard Journal* of Rexburg, both on October 25, and November 1, 2006.

14. The notice mailed to water right holders proposed that establishment of Water District No. 100 include all water rights authorizing the use of ground water with points of diversion located within the boundaries of Basins 21 and 22 overlying the ESPA, except those used solely for domestic and/or stock water purposes as defined by Idaho Code §§ 42-111 and 42-1401A(11).

15. The Director's notice also proposed that the water district watermaster 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.

16. The Director's notice also proposed that the water district would replace the measurement and reporting responsibilities of the ESPA East Water Measurement District ("EWMD") that currently exists within those portions of Basins 21 and 22 overlying the ESPA.

17. On November 14, 2006, at approximately 8:40 p.m., the Director conducted a hearing concerning the proposed establishment of Water District No. 100 at the Best Western Cotton Tree Inn, 450 W 4th S, Rexburg, Idaho. Approximately 23 people attended the hearing.

18. For a period of approximately 90 minutes prior to commencing the hearing, the Director described factors he considered in proposing to establish Water District No. 100 and answered questions about the creation of the proposed water district and how the district was envisioned to function.

19. Persons attending the hearing were provided an opportunity to make oral statements for the record. In addition, the Director held the record open through November 24, 2006, for the submission of written comments.

20. Four (4) individuals gave oral statements for the record at the hearing in Rexburg, Idaho.

21. Mr. Jeff Raybould of St. Anthony, Idaho, testified on behalf of the Fremont-Madison Irrigation District ("FMID"), which holds several ground water rights within the boundaries of the proposed water district. Mr. Raybould testified in support of formation of the proposed Water District No. 100. Mr. Raybould also testified that FMID supports including those portions of Basins 21 and 22 in the Rexburg Bench area in Water District No. 100 once the rights in that area are "adjudicated" and the timing is appropriate for inclusion in the water district.

22. Mr. Willard ("Bill") Dale Beck, Mayor of the City of St. Anthony, Idaho, testified on behalf of the City of St. Anthony. Mr. Beck testified that he supported the formation of the proposed water district and stated "the plans and suggestions as laid out to us" by the Director "appear reasonable."

23. Mr. Gary Ball of Rexburg, Idaho, testified on his own behalf. Mr. Ball testified that he owns a water right on the Rexburg Bench. Mr. Ball supported formation of the proposed water district but also supported including the Rexburg Bench area in the water district. Mr. Ball stated that water rights in the Rexburg Bench area should be included in Water District No. 100 "in the beginning" and "all at once" with the rest of the area and water rights that the Department proposed to be included in Water District No. 100.

24. Mr. Jerry L. Mumm of Rexburg, Idaho testified on his own behalf. Mr. Mumm stated that he owns ground water rights in the "Teton River meadows." Mr. Mumm stated that he "is in favor of forming Water District No. 100" but that he also favors including parts of Basins 21 and 22 in the water district, including the Rexburg Bench and Ashton areas. Mr. Mumm asked if anything could be done to "speed up" the inclusion of these areas in Water District No. 100.

25. The Department did not receive any written comments regarding the proposed creation of Water District No. 100 before the close of the written comment period on November 24, 2006.

26. 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 both south of the Snake River and west of the line separating Sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian. The boundary of the ESPA is referenced in the map on Attachment A to this Order (labeled as the Eastern Snake Plain Aquifer).

27. The Rexburg Bench is an upland area that slopes northwestward from the Big Hole Mountains to the margin of the Snake River Plain. The bench encompasses the Moody Creek drainage area southwest of Newdale and east of Rexburg.

28. The proposed boundaries of Water District No. 100 and the ESPA boundary described in Finding 26 do not include the Rexburg Bench. The Rexburg Bench area was excluded from the ESPA boundary delineated by the USGS because it is an upland area, Moody Creek (the principal drainage) is perched above the regional ESPA, and because the aquifer or principal water bearing unit of the Rexburg Bench is rhyolite as opposed to the basalt of the regional ESPA.

29. Ground water rights located outside of the ESPA in Basin 22 (including the Rexburg Bench) were reported in a Director's Report filed with the SRBA District Court on December 22, 2006. However, a motion has not yet been filed with the SRBA District Court

requesting an order authorizing the interim administration of water rights by the Director in that portion of Basin 22 located outside of the ESPA.

30. 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.

31. The Eastern Snake Hydrologic Modeling Committee (“ESHMC”) is a committee of engineers and hydrologists representing different state and Federal agencies and water right holder groups who have an interest in the use and results of the Department’s ESPA ground water model. Committee members have technical expertise in various subject areas including, but not limited to, ground water modeling, surface water hydrology, reservoir operations, climatology, and agricultural and irrigation engineering. The ESHMC provides technical advice and peer review for the development, use, and maintenance of the Department’s ESPA ground water model.

32. The ESPA ground water model described in Finding 30 has a boundary that varies in places from the ESPA boundary delineated by the USGS and described in Finding 26. One of the locations where the two boundaries are different is in the vicinity of the Rexburg Bench. The ESPA ground water model boundary includes all of the irrigated lands within the Rexburg Bench, as well as some irrigated areas north of the Rexburg Bench and the Teton River, and irrigated areas south of the Rexburg Bench and north of the Snake River.

33. The ESHMC concluded in 2002 that the Rexburg Bench is hydraulically connected to the ESPA and recommended inclusion of the area in the ESPA ground water model. The calibrated ESPA ground water model described in Finding 30 includes the Rexburg Bench.

34. The water supply in the ESPA is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees. Two of the locations at which a direct hydraulic connection exists between the ESPA and the Snake River, or between the ESPA and water sources tributary to the Snake River, include the reach of the Snake River between the USGS stream gage located near Ashton and the USGS stream gage located near Rexburg (“Ashton to Rexburg reach”) and the reach of the South Fork Snake River between the USGS stream gage located near Heise and the USGS stream gage located near Rexburg (“Heise to Rexburg reach”), located along the northeastern edge of the ESPA in the vicinity of St. Anthony, Rexburg, and Roberts, Idaho.

35. The available water supply in portions of Basins 21 and 22 overlying the ESPA is, at times, not adequate to satisfy some senior priority water rights that are hydraulically connected to the ESPA. The available water supply is also projected in the future to be insufficient, at times, to satisfy these water rights.

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. 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, 42-201(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 the authority and 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. The oral testimony provided at the hearing on November 14, 2006, supported creation of the proposed Water District No. 100. The testimony also supported including additional areas and ground water rights in the proposed district. Specifically, the testimony supported inclusion of the Rexburg Bench area in Water District No. 100. Some of the testimony supporting inclusion of the Rexburg Bench favored immediate inclusion of the area into the water district.

8. In response to the hearing testimony, the Director concludes that it may be appropriate to include ground water rights located in the Rexburg Bench in Water District No. 100, but the inclusion of those ground water rights must be delayed until after a party to the SRBA moves the SRBA District Court to authorize interim administration based on the Director's Report filed on December 22, 2006, or subsequent partial decrees, and the SRBA District Court authorizes the interim administration of those ground water rights by the Director in that area. In addition, the Director must again publish notice and hold another hearing in order to include ground water rights from the Rexburg Bench or other areas of Basin 22 in Water District No. 100.

9. The Director concludes that it is not appropriate to further delay creation of the proposed Water District No. 100 in order to include ground water rights from the Rexburg Bench or other areas of Basin 22, particularly when such action may delay creation of the district after the start of the 2007 irrigation season. Water District No. 100 can be revised to include ground water rights from the Rexburg Bench later in 2007 or prior to the 2008 irrigation season as necessary.

District Creation

10. 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 rights within Basins 21 and 22 overlying the ESPA, as shown on the map appended hereto as Attachment A, to protect senior priority water rights.

11. The Director concludes that Water District No. 100 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

12. The Director concludes that immediate administration of ground water rights, other than domestic and stockwater 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.

13. 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 mitigated 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.

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

15. The Director concludes that the water district created by this order may provide for the designation of sub-districts that match the boundaries of existing surface water districts, new or existing ground water districts, canal companies, irrigation districts, or other water use entities as otherwise determined by the Director.

16. 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 users 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. Selection of a Water District Advisory Committee that may include, but need not be limited to, representation from boards of directors for ground water districts or representatives of other water use entities.
- c. Deputy watermasters may be appointed by the watermaster, with approval from the Director. Deputy watermasters would work pursuant to supervision by the watermaster consistent with instructions from the Director. Deputy watermasters, if any, may be employees of existing water districts, ground water districts, or other water use entities that are located within the boundaries of the water district. Duties of deputy watermasters that are also employees of an existing water district, ground water district, or other water use entity should be limited to measuring and reporting of diversions.

ORDER

IT IS HEREBY ORDERED that:

1. The St. Anthony – Rexburg Area Water District, designated as Water District No. 100, is created to include all ground water rights in Basins 21 and 22 overlying the ESPA 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. Ground water rights located in Township 7 North, Range 38 East, Section 6 of Basin 21, are also excluded from Water District No. 100 since ground water rights in that location are already included in the Mud Lake Area Water District, designated as Water District No. 110.

2. As soon as practicable in calendar year 2007, the holders of water rights within Water District No. 100 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.

3. The Director will consider revising the boundaries of Water District No. 100 to include ground water rights in the Rexburg Bench and/or other areas of Basin 22 after the SRBA District Court authorizes interim administration of water rights in response to a motion filed by a party to the SRBA.

4. The watermaster of Water District No. 100 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 mitigated 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.

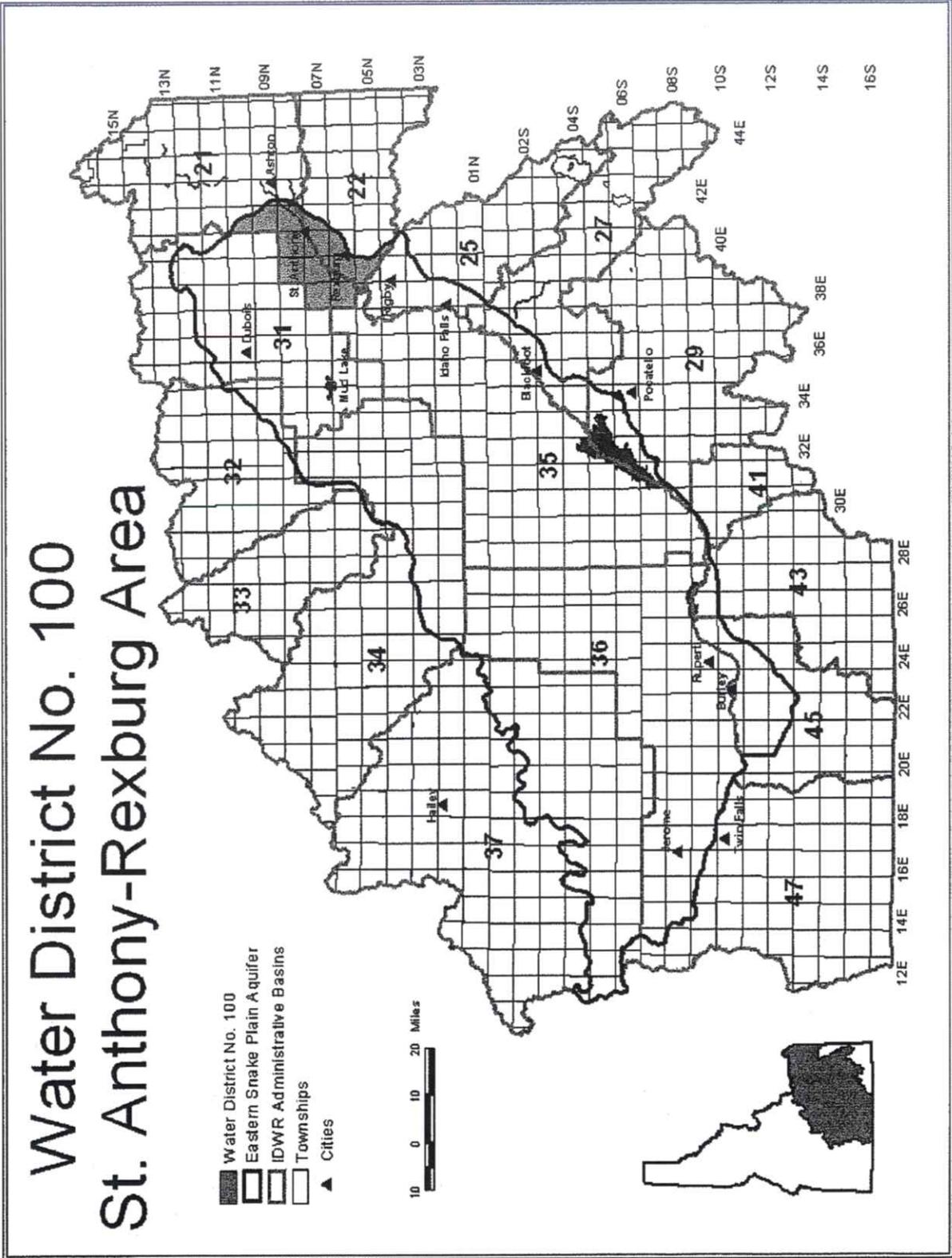
DATED this 29th day of December, 2006.



KARL J. DREHER
Director

ATTACHMENT A

Water District No. 100 St. Anthony-Rexburg Area



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of December, 2006, 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