

issued by IDWR on January 6, 1993 for the non-trust water area.

Further your affiant sayeth naught.

Subscribed and sworn to this 15th day of August, 2013.



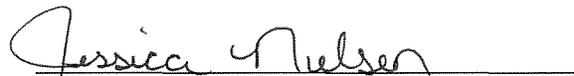
Travis L. Thompson
Attorneys for A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company

STATE OF IDAHO)
) ss.
County of Twin Falls)

On this 15th day of August, 2013, before me, a Notary Public in and for said County and State, personally appeared Travis L. Thompson, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.




NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls
My Commission Expires: 4/3/18

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of August, 2013, I served a true and correct copy of the foregoing **AFFIDAVIT OF TRAVIS L. THOMPSON** on the persons listed below by electronic and U.S. Mail, postage prepaid:

Director Gary Spackman
Deborah Gibson
IDWR
322 E. Front St.
Boise, Idaho 83720-0098
gary.spackman@idwr.idaho.gov
deborah.gibson@idwr.idaho.gov



Travis L. Thompson

Exhibit

A

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR)
PERMITS FOR THE DIVERSION AND USE)
OF SURFACE AND GROUND WATER WITHIN)
THE EASTERN SNAKE RIVER PLAIN AREA)
AND THE BOISE RIVER DRAINAGE AREA)
_____)

AMENDED
MORATORIUM ORDER

The Director of the Department of Water Resources, having responsibility for the administration of the appropriation of the water of the state of Idaho, the protection of rights to the use of water within the state, the protection of the public interest in the waters of the state, and the conservation of the water resources of the state, enters the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

1. The Director of the Department of Water Resources is responsible for administration of the appropriation and use of the water of the state of Idaho. Section 42-202, Idaho Code, reads in pertinent part:

For the purpose of regulating the use of the public waters and of establishing by direct means the priority right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, shall, before commencing of the construction, enlargement or extension of the ditch, canal, well, or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel, make an application to the department of water resources for a permit to make such appropriation.

2. The Director of the Department of Water Resources is responsible for supervision of water distribution in the state of Idaho. Section 42-602, Idaho Code, reads, in pertinent part,

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

3. The Director of the Department of Water Resources is authorized under the provisions of Section 42-1805(7), Idaho Code, as follows:

After notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, or to prevent violation of the minimum flow provisions of the state water plan.

4. Rule 7,1. of the Department of Water Resources Rules and Regulations for Water Appropriation provides that a moratorium on processing of applications for permit shall be entered by issuance of an order of the Director of the Department of Water Resources.

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

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

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

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

ORDER

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

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

- The following provisions apply to the administration of the moratorium:

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

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

3. The moratorium applies to all applications proposing a

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

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

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

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

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

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

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

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

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

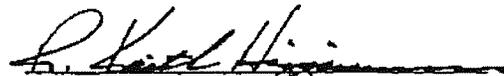
10. This moratorium does not change or supercede any of the

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

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

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

Dated this 30TH day of April, 1993.


R. KEITH HIGGINSON
Director

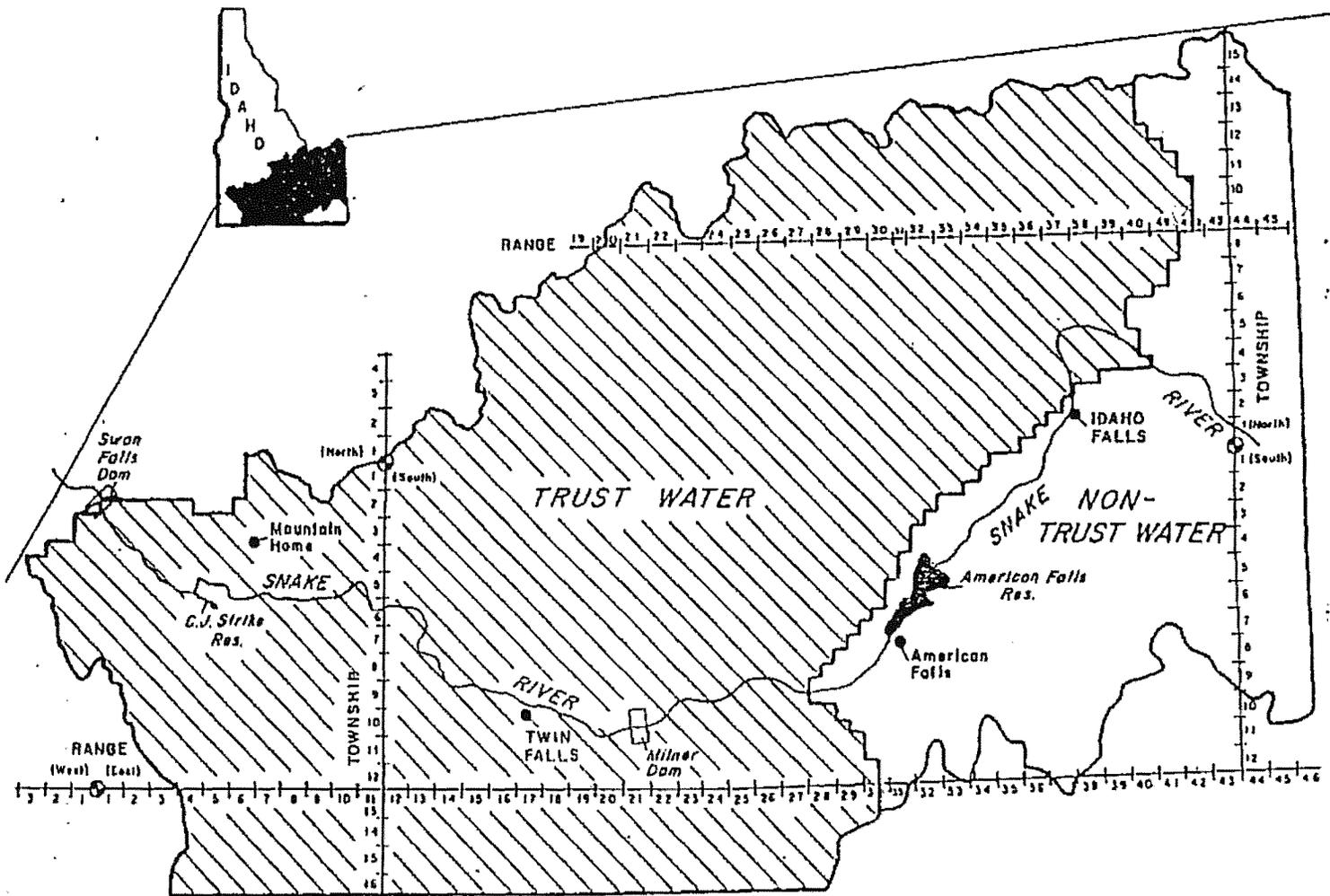


EXHIBIT A

Exhibit B

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) MORATORIUM ORDER
THE SNAKE RIVER BASIN UPSTREAM)
FROM MILNER DAM)
_____)

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 has experienced six consecutive years of drought, and a drought emergency exists within the Snake River Basin.

2. The Director entered on May 15, 1992 a Moratorium Order regarding 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 in response to the drought emergency.

3. The term "nontrust water area" means that area depicted as such on Exhibit "A" attached hereto and by this reference incorporated herein.

4. The Director entered on January 6, 1993 an Order Amending Moratorium Order Dated May 15, 1992 to exclude the non-trust water area from its geographic scope. This present Moratorium Order is entered to replace the May 15, 1992 Moratorium Order for the non-trust water area.

5. During the 1992 irrigation season, flows in many streams, springs and rivers in the non-trust water area were at or near record low levels.

6. Ground water aquifers have been 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. As a consequence, ground water levels have fallen. The lowered water levels in the aquifers of the non-trust water area have resulted in numerous wells, often 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.

7. In order to supplement or replace inadequate surface supplies, many waterusers have been prompted 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 competition for water supplies.

8. The Twin Falls Canal Company and the North Side Canal Company filed a COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION in *Twin Falls Canal Company and the North Side Canal Company v. The Idaho Department of Water Resources*, an agency of the State of Idaho on July 24, 1992. This Complaint, in part, requested:

That the District Court issue a preliminary injunction pursuant to Idaho Rule of Civil Procedure 65, ordering the IDWR, its officers, agents, employees, successors, attorneys, and all those in active concert or participation with IDWR to refrain immediately, pending final hearing in determination of this action, from taking any action that would impact the natural flow or storage rights of the TFCC [Twin Falls Canal Company] and NSCC [North Side Canal Company], including, but not limited to, the processing, approval or issuance of or action upon presently pending and new permit applications for ground or surface waters for other than domestic, commercial, municipal or industrial use ("DCMI") in the non-trust water area of the Snake Plain Aquifer"

Complaint at 11.

9. The position of the IDWR is that it can approve additional permits within the non-trust water area without injury to the claimed water rights of TFCC and NSCC.

10. Both parties recognize that a substantial factual dispute exists and that additional technical studies are needed to resolve this dispute.

11. Both parties agree that a study period of up to five years would be sufficient to complete the necessary studies, if adequately funded.

12. The parties agree that the criteria set forth in paragraph 9 of the order sets a procedure for approval of water diversions which minimizes the potential injury to the water rights of TFCC and NSCC.

13. The IDWR held public information meetings on the proposed settlement agreement and draft moratoriums on December 21, 22, 1992 in Twin Falls, Pocatello, and Rexburg.

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. Section 42-237a, Idaho Code, provides, in part, as follows:

g. To supervise and control the exercise and administration of all rights hereafter acquired to the use of ground waters and in the exercise of this power he may by summary order, prohibit or limit the withdrawal of water from any well during any period that he determines that water to fill any water right in said well is not there available. To assist the director of the department of water resources in the administration and enforcement of this act, and in making determinations upon which said orders shall be based, he may establish a ground water pumping level or levels in an area or areas having a common ground water supply as determined by him as hereinafter provided. Water in a well shall not be deemed available to fill a water right therein if withdrawal therefrom of the amount called for by such right would affect, contrary to the declared policy of this act, the present or future use of any prior surface or ground water right or result in the withdrawing of the ground water supply at a rate beyond the reasonably anticipated rate of future natural recharge. However, the director may allow withdrawal at a rate exceeding the reasonably anticipated rate of future natural recharge if the

director finds it is in the public interest and if it satisfies the following criteria:

1. A program exists or likely will exist which will increase recharge or decrease withdrawals within a time period acceptable to the director to bring withdrawals into balance with recharge.
2. Holders of senior rights to use ground water will not be caused thereby to pump water from below the established reasonable pumping level or levels.

In connection with his supervision and control of the exercise of ground water rights the director of the department of water resources shall also have the power to determine what areas of the state have a common ground water supply and whenever it is determined that any area has a ground water supply which affects the flow of water in any stream or streams in an organized water district, to incorporate such area in said water district The administration of water rights within water districts created or enlarged pursuant to this act shall be carried out in accordance with the provisions of title 42, Idaho Code, as the same have been or may hereafter be amended

3. 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.

4. 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.

5. Rules 7,1 and 7,1,2,1 of the Department of Water Resources Rules and Regulations for Water Appropriation provide 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 sent

by certified mail to affected applicants by publishing a legal notice in newspapers of general circulation in the area.

6. A moratorium on issuance of permits to divert and use water from the Snake River Basin upstream from Milner Dam in the non-trust water area for new consumptive uses should be established to protect existing water rights and established minimum stream flows because of the need to conduct studies regarding the interrelationship between the Snake Plain Aquifer and the Snake River and because of the present drought emergency.

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 in the non-trust water area. 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 December 31, 1997.

2. The moratorium includes applications filed on all public water sources, including surface and ground water, located in the non-trust water area.

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

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

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

8(a). The moratorium does not apply to applications to appropriate ground water as a supplemental water supply for irrigation or other consumptive beneficial use on lands which have an existing normally-full water supply from a surface water source. Approval of such applications, which also comply with Idaho Code Section 42-203, will be conditioned:

(1) To allow the use of the water only when and to the extent that the original sources are not available due to drought conditions;

(2) To allow the diversion of only the amount of ground water necessary for the customary use on the land, after the application of accepted conservation practices;

(3) To require, as the director determines necessary, monitoring of the effect of pumping of the new well or wells on nearby domestic wells, if any;

(4) To require mitigation or compensation as necessary for such affected domestic wells;

(5) To expire at the conclusion of the irrigation season for which such approval was given; and

(6). To not exceed the annual limitation contained in Paragraph 9(a).

(b) The provisions of paragraph 8(a) shall apply until the Director has issued an Order declaring an end to the drought emergency for the Snake River Basin upstream from the USGS gauge on the Snake River near Weiser.

9. After the Director has issued an Order declaring an end to the drought emergency for the Snake River Basin upstream from the USGS gauge on the Snake River near Weiser, the following criteria shall apply to approval of applications to appropriate ground water for any consumptive use, except for domestic uses, from the non-trust water area:

a. The amount annually authorized by approved applications for consumptive use will not exceed 10,000 acre feet in any one year. In the event that the annual amount approved for new consumptive use is less than 10,000 acre feet in any one year, the difference between the amount authorized for consumptive use and 10,000 acre feet shall not carry over into subsequent years so as to exceed the annual allotment authorized for consumptive use in any one calendar year.

b. The IDWR will submit an annual report to the TFCC and NSCC of the number of permits issued and amount of water authorized for diversion.

10. 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 or a ground water management area pursuant to
Section 42-233b, Idaho Code.

Dated this 6th day of January, 1993.


R. KEITH HIGGINSON
Director

A2317HBC

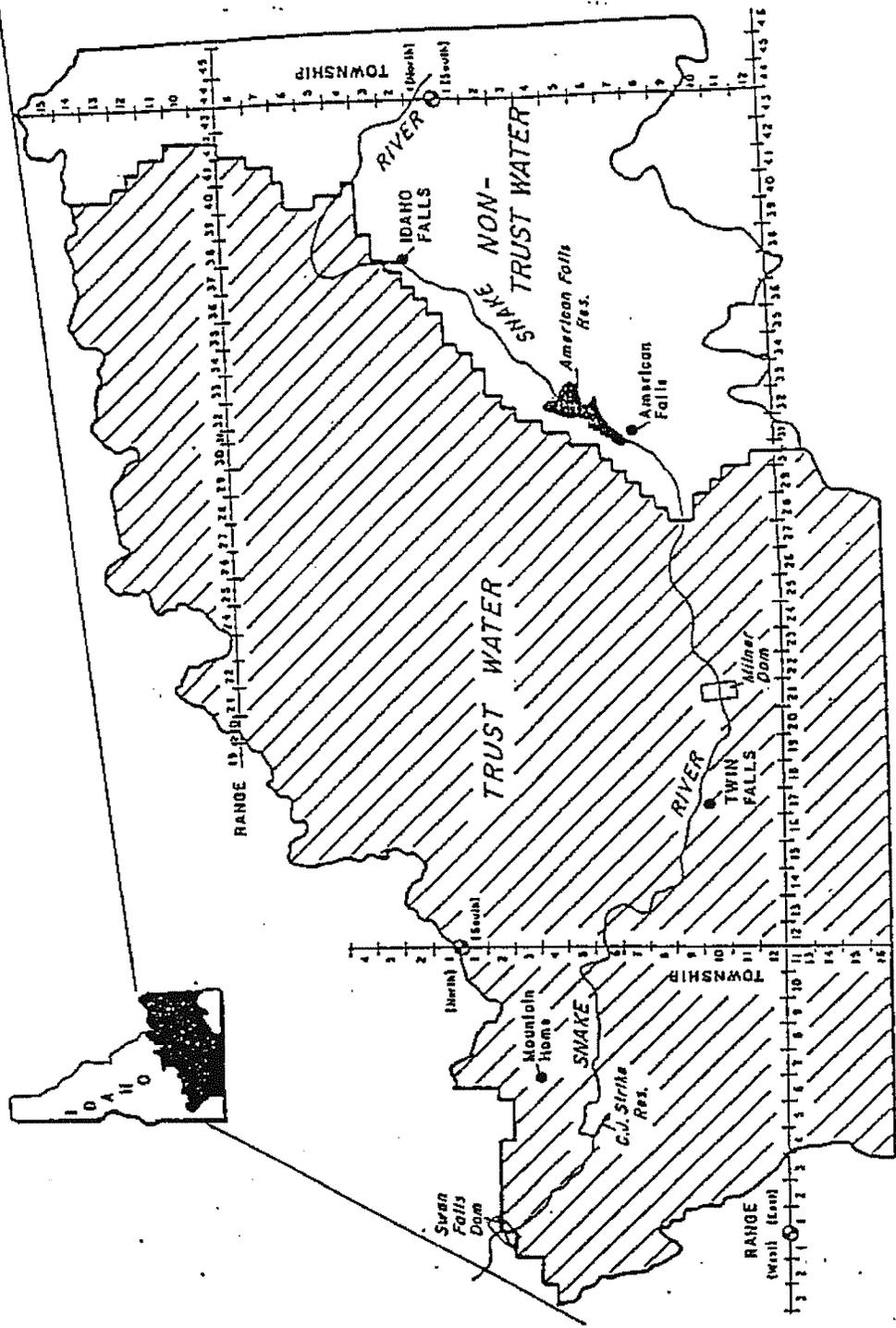


EXHIBIT A

Gibson, Deborah

From: Jessica Forbis [jf@idahowaters.com]
Sent: Thursday, August 15, 2013 2:51 PM
To: John Simpson; Travis Thompson; Paul Arrington; 'Kent Fletcher'; Spackman, Gary; Gibson, Deborah
Subject: In the Matter of Applications for Permits for Diversion and Use of Surface and Ground Water Within the Snake River Basin Upstream from Milner Dam
Attachments: 20130815 Petition to Renew Moratorium Order.pdf; 20130815 Affidavit of Travis L. Thompson.pdf

Attached please find a copy of the *Petition to Renew Moratorium Order for Non-Trust Water Area* and *Affidavit of Travis L. Thompson* regarding the above reference matter.

The originals will be mailed to the Department today.

*Jessica Nielsen
Barker, Rosholt & Simpson
195 River Vista Place, Suite 204
Twin Falls, Idaho 83301
(208) 733-0700
(208) 735-2444 fax*

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