



2. I am the Director of the Idaho Department of Water Resources (“Department”), an executive agency of the State of Idaho. The statements in this affidavit are made in my capacity as Director of the Department.

3. As Director, I have authority and responsibility for the direction and control of the distribution of water within water districts in the state of Idaho pursuant to the provisions of Chapter 6, Title 42, Idaho Code.

4. Before A&B filed its March 16, 2007 *Motion to Proceed* (“Motion to Proceed”), the Department received delivery calls from the following senior surface water users that divert water that is hydraulically connected to the ESPA: Rangen, Inc. (“Rangen”), September 23, 2003; the Surface Water Coalition, January 14, 2005; Billingsley Creek Ranch (“Billingsley Creek”), March 16, 2005; Blue Lakes Trout Farm, Inc. (“Blue Lakes”), March 22, 2005; Clear Springs Foods, Inc. (“Clear Springs”), May 2, 2005; and John W. Jones (“Jones”), May 10, 2005.

5. Substantive and procedural orders involving Billingsley Creek, Blue Lakes, Clear Springs, Jones, and Rangen may be found at the following link on the Department’s website:

<http://www.idwr.idaho.gov/Calls/Spring%20Users%20Calls/default.htm>.

6. In 2005, the calls filed by Rangen, Billingsley Creek, and Jones were deemed futile by order of then-Director Karl J. Dreher; while hearings have been requested, no dates have been set.

7. Substantive and procedural orders involving the Surface Water Coalition may be found at the following link on the Department’s website:

<http://www.idwr.idaho.gov/Calls/Surface%20Coalition%20Call/default.htm>.

8. As agreed upon by the parties, a joint hearing on the delivery calls filed by Blue Lakes and Clear Springs is scheduled to run from November 28, 2007 to December 18, 2007; the hearing on the delivery call filed by the Surface Water Coalition is scheduled to run from January 16, 2008 to February 6, 2008. Attached hereto as **Attachment A** are true and correct copies of the *Order Approving Stipulation and Joint Motion for Rescheduled Hearing (Blue Lakes and Clear Springs Delivery Calls)* and *Order Approving Stipulation and Joint Motion for Rescheduled Hearing (Surface Water Coalition Delivery Call)*. A&B is a member of the Surface Water Coalition.

9. Having retained jurisdiction over the A&B Irrigation District's ("A&B") July 27, 1994 *Petition for Delivery Call* ("Delivery Call") through then-Director R. Keith Higginson's May 1, 1995 order ("May 1995 Order"), on May 7, 2007, I held an informal status conference, which was not recorded, on A&B's Motion to Proceed. Among others present at the status conference, either in person or by telephone, were A&B's attorney, Roger Ling, and A&B's manager, Dan Temple. During the status conference, issues relating to the Delivery Call were discussed.

10. On July 26, 2007, I traveled to Rupert, Idaho for a meeting with the A&B Board of Directors and Manager, Dan Temple. I was invited to attend the meeting by invitation of the Board. A&B's attorneys were not present at the meeting. I informed the attendees that the Department did not anticipate curtailing junior priority ground water rights in response to the Delivery Call in 2007, and that I would not designate a GWMA. I did explain to the attendees that I would respond to the Delivery Call by scheduling a hearing in spring 2008, after the scheduled hearings in delivery calls filed by Blue Lakes and Clear Springs (November 28, 2007 through December 18, 2007), and the Surface Water Coalition (January 16, 2008 through

February 6, 2008) were completed. I left the meeting with the understanding that the attendees were satisfied with the proposed schedule for responding to the Delivery Call. Like the A&B Delivery Call, the delivery calls filed by Blue Lakes, Clear Springs, and the Surface Water Coalition were brought under the Department's Rules for Conjunctive Management of Surface and Ground Water Resources. It has been agreed that the hearings on the delivery calls filed by Blue Lakes, Clear Springs, and the Surface Water Coalition will be presided over by Gerald F. Schroeder. Mr. Schroeder has agreed, if requested, to preside over the A&B Delivery Call.

11. On September 13, 2007, a *Notice of Status Conference* ("Notice") was sent to attorneys and other potentially interested parties to the Delivery Call and Motion to Proceed. Attached hereto as **Attachment B** is a true and correct copy of the *Notice of Status Conference*. The Notice stated that a status conference would occur on September 20, 2008 at which time parties to the Delivery Call and Motion to Proceed would discuss proper service of A&B's Motion to Proceed and the creation of an updated service list. The Notice set a March 18, 2008 hearing date for the Delivery Call, which would occur after completion of the previously scheduled hearings in Blue Lakes and Clear Springs, and the Surface Water Coalition. The parties were requested to be prepared to discuss a prehearing schedule consistent with the commencement of the hearing on March 18, 2008. The recipients of the Notice were informed that an alternate hearing date could be set if agreed upon.

12. On September 20, 2007, I conducted a formal, recorded status conference at which counsel for A&B were present either in person or by telephone. When I asked A&B's attorneys, Travis Thompson and Roger Ling, if the Motion to Proceed was served on anyone other than the Department, both replied that it had not. A&B's attorneys stated that it was their belief that the Department was obligated to serve the Motion to Proceed. The topic of setting a

March 18, 2008 hearing on the Delivery Call was also discussed. I informed the participants that March 18, 2008 is the earliest date, in my opinion, that would be feasible given the hearing settings in Blue Lakes and Clear Springs, and the Surface Water Coalition, as most of the participants at the status conference will be involved in those proceedings. I asked participants to the status conference to provide me, within two weeks, proposed prehearing schedules. The participants stated that they would comply with this request. Participants were also informed that if an alternate agreed upon hearing date could be reached, I would likely accommodate the request.

13. In 1993, the Idaho Water Resource Board (“Board”) began a study to inventory water resources in the Upper Snake Basin (“Inventory Study”). Because of the voluminous nature of the Inventory Study, the document is not attached. A true and correct copy of the Inventory Study may be found at the following link on the Department’s website:

[http://www.idwr.idaho.gov/waterboard/Planning/Documents/Resource\\_Inventory\\_Upper\\_SRB.pdf](http://www.idwr.idaho.gov/waterboard/Planning/Documents/Resource_Inventory_Upper_SRB.pdf).

14. In January 1997, the Department issued a study that was begun in 1993 entitled *Upper Snake River Basin Study* (“1997 Study”). Because of the voluminous nature of the 1997 Study, the document is not attached. The 1997 Study may be found at the following link on the Department’s website:

<http://www.idwr.idaho.gov/water/srba/BW5/main.htm>.

15. Rules for Conjunctive Management of Surface and Ground Water Resources (“CM Rules”) were adopted on October 7, 1995.

16. On October 24, 1996, a *Final Order Creating Water Measurement Districts and Notice of Annual Meeting* was issued by then-Director Karl J. Dreher. Attached hereto as **Attachment C** is a true and correct copy of the *Final Order Creating Water Measurement*

*Districts and Notice of Annual Meeting.* The districts were created “to insure that water users are diverting water within the limits of their water rights” and to “facilitate the measurement of water diverted from the ESPA and reports of the diversions.” *Id.* at 4-5. The order created the North, East, and West water measurement districts, which overlay virtually all of the ESPA. Water measurement districts were created by the Director in accordance with authority contained in chapter 7, title 42 of the Idaho Code. On October 2, 1996, A&B filed a *Petition for Exclusion from Water Measurement District*, which was granted by the Director on December 30, 1996. Attached hereto as **Attachment D** are true and correct copies of the *Petition for Exclusion from Water Measurement District* and the *Order* granting A&B’s petition. A map depicting the boundaries of the water measurement districts may be found at the following link on the Department’s website:

<http://www.idwr.idaho.gov/water/districts/measure.htm>.

17. In early 1996, the Magic Valley Ground Water District (“MVGWD”) and North Snake Ground Water District (“NSGWD”) were created by order of the Minidoka and Gooding county commissioners, respectively. Attached hereto as **Attachment E** are true and correct copies of the orders creating the ground water districts. The creation of ground water districts in accordance with Idaho Code §§ 42-5201-5276, allows for additional protection of the ESPA, as the boards of directors for those districts have the authority “To monitor, measure, study, and implement programs in the interests of the district’s members regarding the protection of ground water diversions, depth of water in wells, aquifer water levels and characteristics.” Idaho Code § 42-5225(17). A map depicting the boundaries of organized ground water districts that overlay the ESPA, including the MVGWD and the NSGWD may be found at the following link on the Department’s website:

<http://www.idwr.idaho.gov/water/districts/GWD%20WEB%20Map.pdf>.

A&B is located within the boundaries of the MVGWD and the NSGWD and its shareholders use water within Minidoka and Gooding counties.

18. On August 3, 2001, pursuant to Idaho Code § 42-233b, then-Director Karl J. Dreher entered orders designating the American Falls GWMA and the Thousand Springs GWMA. Attached hereto as **Attachment F** are a true and correct copies of the *Order Designating the American Falls Ground Water Management Area, Order Designating Thousand Springs Ground Water Management Area, Final Order Modifying the Boundaries of the American Falls Ground Water Management Area, and the Final Order Dissolving the Thousand Springs Ground Water Management Area*. The GWMA's overlay much of the ESPA. With the creation of Water District Nos. 120 and 130, then-Director Dreher rescinded the order creating the Thousand Springs GWMA and, to the extent that the American Falls GWMA overlapped Water District Nos. 120 and 130, that portion of the order creating the American Falls GWMA was rescinded. With the creation of water districts, GWMA's are no longer necessary for administration of water rights. The orders rescinding the GWMA's have been challenged but a hearing date has not been set. A&B is located wholly within Water District No. 130.

19. The state of Idaho moved the Snake River Basin Adjudication ("SRBA") District Court for interim administration of the ESPA. The motion, which included the affidavit of Timothy J. Luke ("Luke Affidavit"), was granted by the SRBA District Court on January 8, 2002. Attached hereto as **Attachment G** are true and correct copies of a November 20, 2001 letter from Clive J. Strong, deputy attorney general, regarding *Motion for Order of Interim Administration in the Eastern Snake Plain Aquifer*, with attached Certificate of Service

indicating that Motion was served on A&B; *Luke Affidavit*; and *Order Granting State of Idaho's Motion for Order of Interim Administration*.

20. Recently, the Legislature authorized the Board to undertake a Comprehensive Aquifer Management Plan ("CAMP") for the ESPA. Attached hereto as **Attachment H** are true and correct copies of House Bill 320 and Senate Concurrent Resolution No. 136. The CAMP will aid not only in administration and enforcement of water rights, but also in long-term planning and management of the ESPA. Representatives of Water District No. 130, in which A&B is located, are Advisory Committee members of the CAMP. Attached hereto as **Attachment I** is a true and correct copy of the list of membership in the Advisory Committee.

21. In accordance with the May 1995 Order, "the amended moratorium order on appropriations of surface and ground water from the Eastern Snake River Plain Area" has not been rescinded. Attached hereto as **Attachment J** is a true and correct copy of the April 30, 1992 *Amended Moratorium Order*. Since 1997, the Department has not processed permits in areas that overlay the ESPA for consumptive uses, absent approved mitigation.

22. Since the May 1995 Order, the Department has not issued new drought-related permits to divert ground water from the ESPA, except as provided in section 42-202A, Idaho Code. In 1992, the Department issued thirty drought-related permits to divert ground water from the ESPA. The Department renewed one of the thirty permits, 47-8296, in 1993, for a diversion rate of 4.00 cfs. Since 1995, the Department has renewed three of the original thirty drought-related permits to divert ground water from the ESPA. The Department renewed 21-7510 in 2001 and 2002 for a diversion rate of 7.00 cfs; 22-7734 was renewed in 2001-2003 for a diversion rate of 3.20 cfs; and 22-7737 was renewed in 2001-2004 for a diversion rate of 5.60 cfs.

23. Beginning in 1995 and again in 1997, the Department has, through the Idaho Administrative Procedure Act, attempted to propose rule(s) defining the term “supplemental water right.” Attached hereto as **Attachment K** are true and correct copies of the Department’s notice of intent to vacate proceedings in 1995; intent to promulgate rules in 1997; notice of proposed rule in 1998; notice of continuation of negotiated rulemaking in 2000; and a letter dated October 30, 2001 from Roger D. Ling, attorney for A&B, to Norman C. Young regarding Draft Statewide Water Management Rules. Due to opposition to the proposals, the attempts have never resulted in the adoption of rules.

24. Attached hereto as **Attachment L** are true and correct copies of letters dated October 22, 1993 and March 21, 1994 from Roger D. Ling, attorney for A&B, to R. Keith Higginson regarding the CM Rules; letter from Roger D. Ling, attorney for A&B, to Karl J. Dreher regarding a petition filed by A&B regarding the American Falls GWMA; an Order Staying Proceedings, dated September 14, 2001, indicating A&B’s involvement in the proceedings regarding the American Falls and Thousand Springs GWMA; and minutes of the Water District 130 2006 annual meeting, which was attended by Dan Temple for A&B, who, according to the minutes, is also a member of the Water District No. 130 advisory committee. The attachment indicates A&B’s knowledge of actions undertaken by the Director or Department regarding management of the ESPA.

25. *The information contained in my affidavit is information that was either directly known by A&B, or information that could have been readily known by A&B through request of the Department.*

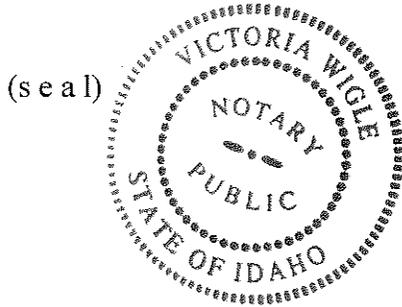
Further your Affiant sayeth naught.

DATED this 20<sup>th</sup> day of September, 2007.

David R Tuthill  
DAVID R. TUTHILL, JR.  
Director, Idaho Department of Water Resources

SUBSCRIBED AND SWORN TO BEFORE ME this 20<sup>th</sup> day of September, 2007.

Victoria Wigle  
NOTARY PUBLIC for Idaho  
Residing at: Boise  
My Commission Expires: 5/29/10



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am a duly licensed attorney in the State of Idaho, employed by the Attorney General of the State of Idaho and residing in Boise, Idaho; and that I served one (1) true and correct copy of the following described document on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on this 21<sup>st</sup> day of September 2007.

Document(s) served: **AFFIDAVIT OF DAVID R. TUTHILL, JR., DIRECTOR,  
IDAHO DEPARTMENT OF WATER RESOURCES**

Person(s) served:

John K. Simpson  
Travis L. Thompson  
BARKER ROSHOLT & SIMPSON, LLP  
P.O. Box 485  
113 Main Ave., West, Suite 303  
Twin Falls, ID 83303  
[jar@idahowaters.com](mailto:jar@idahowaters.com)  
[tlt@idahowaters.com](mailto:tlt@idahowaters.com)

U.S. Mail, postage prepaid  
 Federal Express  
 E-Mail

Roger D. Ling  
P.O. Box 396  
Rupert, ID 83350  
[lnrlaw@pmt.org](mailto:lnrlaw@pmt.org)

U.S. Mail, postage prepaid  
 Federal Express  
 E-Mail



CHRIS M. BROMLEY  
Deputy Attorney General  
Idaho Department of Water Resources

# **ATTACHMENT A**

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER )  
TO WATER RIGHTS NOS. 36-02356A, 36-07210, )  
AND 36-07427 )  
(Blue Lakes Delivery Call) )

**ORDER APPROVING  
STIPULATION AND  
JOINT MOTION FOR  
RESCHEDULED HEARING**

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IN THE MATTER OF DISTRIBUTION OF WATER )  
TO WATER RIGHTS NOS. 36-04013A, 36-04013B, )  
AND 36-07148 )  
(Clear Springs, Snake River Farm Delivery Call) )

On July 5, 2007, the Director of the Department of Water Resources ("Director" or "Department") issued separate orders in the above-entitled matters setting a combined hearing and prehearing schedule providing for a joint hearing to commence on October 10, 2007.

On July 26, 2007, the Idaho Ground Water Appropriators, Inc. ("IGWA"), Blue Lakes Trout Farm, Inc. ("Blue Lakes"), and Clear Springs Foods, Inc. ("Clear Springs"), three of the five parties to the two matters, filed with the Department a *Stipulation and Joint Motion for Rescheduled Hearing and Order* ("Stipulation"). The Idaho Dairymen's Association ("IDA") and the State Agency Ground Water Users ("SAGWU"), the other two parties to the proceedings, did not sign the Stipulation.

On August 1, 2007, IDA filed *Idaho Dairymen's Association Response to Stipulation and Joint Motion for Rescheduled Hearing and Order* ("IDA Response"). The IDA Response states, "IDA joins in paragraphs 3 and 4 of the Stipulation, and takes no position with respect to the balance of the Stipulation concerning the proposed amended hearing schedule."

On August 1, 2007, SAGWU filed *State Agency Ground Water Users' Joinder in Stipulation and Motion for Rescheduled Hearing and Order* ("SAGWU Response"). The SAGWU Response joins in the Stipulation.

The Stipulation entered into between IGWA, Blue Lakes, and Clear Springs provides as follows:

1. That the existing hearing schedule and pre-hearing deadlines be revised and the following schedule be adopted:

|                                     |   |
|-------------------------------------|---|
| September 12, 2007                  | Deadline for submitting expert reports; deadline for pre-filed direct testimony (required for retained consultants / optional for others), and all exhibits to be used at hearing with experts; |
| October 10, 2007                    | Deadline for rebuttal reports; deadline for pre-filed rebuttal testimony and all exhibits to be used in rebuttal;   |
| October 17, 2007                    | Deadline to disclose all lay witnesses / identify all exhibits to be used at hearing with lay witnesses (as well as any pre-filed direct testimony for lay witnesses, if desired);              |
| November 1, 2007                    | Deposition deadline / discovery completed deadline;   |
| November 15, 2007                   | Written opening brief / trial brief (if desired);   |
| November 16, 2007                   | Prehearing conference and hearing on prehearing motions; and  |
| November 28 to<br>December 18, 2007 | Hearing.  |

2. No party to this stipulation will seek a continuance of the above schedule, unless for death, illness, or similar circumstances beyond their control.

3. No party to this stipulation will seek to disqualify the proposed designated hearing officer identified to the parties' counsel either with or without cause.

4. The parties to this stipulation agree to cooperate in good faith to timely complete prehearing discovery.

5. With respect to this consolidated proceeding, the parties to this stipulation agree not to oppose intervention by other water users who are not parties for the purpose of presenting briefs and argument on common issues of law, including responding to IGWA's motion for summary judgment and petition for declaratory ruling filed on June 18, 2007. This non-opposition is conditioned upon those intervening water users accepting the designated hearing officer and the schedule addressing those issues of law.

6. That the Director or Hearing Officer enter an Order approving this Stipulation and Joint Motion for Rescheduled Hearing and Order without oral argument or hearing.

7. If the Director or the Hearing Officer does not enter an Order approving the Stipulation and granting this Motion and the motion filed by the Surface Water Coalition and IGWA in the proceeding regarding the Coalition's Delivery Call, this Stipulation shall not be binding upon any party, shall be deemed withdrawn, with the hearing remaining as scheduled by previous Order.

8. This Stipulation and Joint Motion for Rescheduled Hearing and Order is made upon the grounds and for the reasons that the foregoing Stipulation will avoid scheduling conflicts with the hearing on the Surface Water Coalition Delivery Call, enable the parties to fully prepare for the hearings, and facilitate a timely and orderly disposition of all proceedings.

### ORDER

Based upon the *Stipulation and Joint Motion for Rescheduled Hearing and Order* filed by IGWA, Blue Lakes, and Clear Springs, and the responses thereto filed by IDA and SAGWU, and good cause appearing therefor,

IT IS HEREBY ORDERED that all provisions of the foregoing Stipulation, including the revised hearing schedule and prehearing requirements, be and are hereby approved and shall bind the parties in accordance with their respective agreement to the same.

IT IS FURTHER ORDERED that any petition for intervention by additional persons or entities to become a party to these proceeding shall be considered only if they accept the designated hearing officer and the existing hearing and prehearing schedule.

Dated this 1<sup>st</sup> day of August, 2007.

  
\_\_\_\_\_  
DAVID R. TUTHILL, JR.  
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1<sup>st</sup> day of August 2007, the above and foregoing, was served by the method indicated below, and addressed to the following:

RANDY BUDGE  
CANDICE M. MCHUGH  
RACINE OLSON  
PO BOX 1391  
POCATELLO ID 83204-1391  
[rcb@racinelaw.net](mailto:rcb@racinelaw.net)  
[cmm@racinelaw.net](mailto:cmm@racinelaw.net)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

JOHN SIMPSON  
BARKER ROSHOLT  
PO BOX 2139  
BOISE ID 83701-2139  
(208) 344-6034  
[jks@idahowaters.com](mailto:jks@idahowaters.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

DANIEL V. STEENSON  
CHARLES L. HONSINGER  
RINGERT CLARK  
PO BOX 2773  
BOISE ID 83701-2773  
(208) 342-4657  
[dvs@ringertclark.com](mailto:dvs@ringertclark.com)  
[clh@ringertclark.com](mailto:clh@ringertclark.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

MIKE CREAMER  
JEFF FEREDAY  
GIVENS PURSLEY  
PO BOX 2720  
BOISE ID 83701-2720  
(208) 388-1300  
[mcc@givenspursley.com](mailto:mcc@givenspursley.com)  
[jeffereday@givenspursley.com](mailto:jeffereday@givenspursley.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

MICHAEL S. GILMORE  
ATTORNEY GENERAL'S OFFICE  
PO BOX 83720  
BOISE ID 83720-0010  
(208) 334-2830  
[mike.gilmore@ag.idaho.gov](mailto:mike.gilmore@ag.idaho.gov)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

COURTESY COPIES:

LARRY COPE  
CLEAR SPRINGS FOODS, INC.  
PO BOX 712  
BUHL ID 83303-1237  
(208) 543-5608

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

GREGORY KASLO  
BLUE LAKES TROUT FARM  
PO BOX 72  
BUHL ID 83316-0072  
(208) 543-8476  
[gkaslo@rmci.net](mailto:gkaslo@rmci.net)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

NORTH SNAKE GWD  
152 EAST MAIN STREET  
JEROME ID 83338  
(208) 388-1300

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

MAGIC VALLEY GWD  
809 EAST 1000 NORTH  
RUPERT ID 83350-9537

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

FRANK ERWIN  
WATERMASTER  
WATER DIST 36  
2628 SOUTH 975 EAST  
HAGERMAN ID 83332

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

BOB SHAFFER  
WATERMASTER  
WATER DIST 34  
PO BOX 53  
MACKAY ID 83251

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

ALLEN MERRITT  
CINDY YENTER  
WATERMASTER - WD 130  
IDWR - SOUTHERN REGION  
1341 FILLMORE STREET SUITE 200  
TWIN FALLS ID 83301-3380  
(208) 736-3037  
[allen.merritt@idwr.idaho.gov](mailto:allen.merritt@idwr.idaho.gov)  
[cindy.yenter@idwr.idaho.gov](mailto:cindy.yenter@idwr.idaho.gov)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail



Victoria Wigle  
Administrative Assistant to the Director  
Idaho Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER )  
TO VARIOUS WATER RIGHTS HELD BY OR FOR )  
THE BENEFIT OF A&B IRRIGATION DISTRICT, )  
AMERICAN FALLS RESERVOIR DISTRICT #2, )  
BURLEY IRRIGATION DISTRICT, MILNER )  
IRRIGATION DISTRICT, MINIDOKA IRRIGATION )  
DISTRICT, NORTH SIDE CANAL COMPANY, )  
AND TWIN FALLS CANAL COMPANY )  
)  
(Water District Nos. 34, 110, 120, and 130) )  
\_\_\_\_\_ )

**ORDER APPROVING  
STIPULATION AND  
JOINT MOTION FOR  
RESCHEDULED HEARING**

On June 20, 2007, the Director of the Department of Water Resources (“Director” or “Department”) issued an order in the above-entitled matter approving a stipulated hearing schedule and the use of pre-filed testimony and exhibits. The schedule provided for a hearing to commence on November 28, 2007.

On July 27, 2007, the Idaho Ground Water Appropriators, Inc. (“IGWA”), A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (collectively referred to as the “Surface Water Coalition” or “Coalition”), filed with the Department a *Stipulation and Joint Motion for Rescheduled Hearing and Order* (“Stipulation”). The City of Pocatello and the United States Bureau of Reclamation did not sign the Stipulation but authorized the signing parties to represent that they will not object to the proposed rescheduling. Two other parties to the matter, the Idaho Dairymen’s Association (“IDA”) and the State Agency Ground Water Users (“SAGWU”), did not sign the Stipulation.

On July 31, 2007, IDA filed *Idaho Dairymen’s Association Response to Stipulation and Joint Motion for Revised Hearing Schedule and Order* (“IDA Response”). The IDA Response states, “IDA joins in paragraphs 3 and 4 of the Stipulation, and takes no position with respect to the balance of the Stipulation concerning the proposed amended hearing schedule.”

On August 1, 2007, SAGWU filed *State Agency Ground Water Users’ Joinder in Stipulation and Joint Motion for Rescheduled Hearing and Order* (“SAGWU Response”). The SAGWU Response joins in the Stipulation.

The Stipulation entered into between IGWA and the Surface Water Coalition provides as follows:

1. That the existing hearing schedule and prehearing deadlines be revised and the following schedule be adopted:

|                                   |  |
|-----------------------------------|--|
| September 26, 2007                | Deadline for updating expert reports previously disclosed; deadline for pre-filed direct testimony (required for retained consultants / optional for others), and all exhibits to be used at hearing with experts; |
| November 7, 2007                  | Deadline for rebuttal reports; deadline for pre-filed rebuttal testimony and all exhibits to be used in rebuttal;  |
| November 14, 2007                 | Deadline to disclose all lay witnesses / identify all exhibits to be used at hearing with lay witnesses (as well as any pre-filed direct testimony for lay witnesses, if desired);                                 |
| November 28, 2007                 | Deposition deadline / discovery completed deadline;  |
| December 21, 2007                 | Written opening brief / trial brief (if desired);  |
| January 4, 2008                   | Prehearing conference and hearing on prehearing motions; and   |
| January 16 to<br>February 6, 2008 | Hearing.   |

2. No party to this stipulation will seek a continuance of the above schedule, unless for death, illness, or similar circumstances beyond their control.

3. No party to this stipulation will seek to disqualify the proposed designated hearing officer identified to the parties' counsel either with or without cause.

4. The parties to this stipulation agree to cooperate in good faith to timely complete prehearing discovery.

5. That the Director or Hearing Officer enter an Order approving this Stipulation and Joint Motion for Rescheduled Hearing and Order without oral argument or hearing. Counsel for the parties have contacted counsel for the City of Pocatello and the United States Bureau of Reclamation. The city and Reclamation do not join in this Stipulation and Motion, but authorize the parties to represent that they will not object to the proposed rescheduling.

6. If the Director or the Hearing Officer does not enter an Order approving the Stipulation and granting this Motion and the motion filed by Blue Lakes Trout Farm, Inc., Clear Springs Foods, Inc., and IGWA in the proceeding regarding Blue Lakes' Delivery Call and Clear Springs' Delivery Call, this

Stipulation shall not be binding upon any party, shall be deemed withdrawn, with the hearing remaining as scheduled by previous Order.

7. This Stipulation and Joint Motion for Rescheduled Hearing and Order is made upon the grounds and for the reasons that the foregoing Stipulation will avoid scheduling conflicts with the hearing schedule in the Blue Lakes and Clear Springs delivery calls, enable the parties to fully prepare for the hearings, and facilitate a timely and orderly disposition of all proceedings.

### ORDER

Based upon the *Stipulation and Joint Motion for Rescheduled Hearing and Order* filed by IGWA and the Surface Water Coalition, and the responses thereto filed by IDA and SAGWU, and good cause appearing therefor,

IT IS HEREBY ORDERED that the provisions of the foregoing Stipulation, including the revised hearing schedule and prehearing requirements, be and are hereby approved and shall bind the parties in accordance with their respective agreement to the same.

IT IS FURTHER ORDERED that any petition for intervention by additional persons or entities to become a party to this proceeding shall be considered only if they accept the designated hearing officer and the existing hearing and prehearing schedule.

Dated this 1<sup>st</sup> day of August, 2007.

  
\_\_\_\_\_  
DAVID R. TUTHILL, JR.  
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15<sup>th</sup> day of August, 2007, the above and foregoing, was served by the method indicated below, and addressed to the following:

TOM ARKOOSH  
ARKOOSH LAW OFFICES  
PO BOX 32  
GOODING ID 83330  
(208) 934-8873  
[alo@cableone.net](mailto:alo@cableone.net)

(x) U.S Mail, Postage Prepaid  
( ) Facsimile  
(x) E-mail

W. KENT FLETCHER  
FLETCHER LAW OFFICE  
PO BOX 248  
BURLEY ID 83318-0248  
(208) 878-2548  
[wkf@pmt.org](mailto:wkf@pmt.org)

(x) U.S. Mail, Postage Prepaid  
( ) Facsimile  
(x) E-mail

ROGER D. LING  
LING ROBINSON  
PO BOX 396  
RUPERT ID 83350-0396  
(208) 436-6804  
[lnrlaw@pmt.org](mailto:lnrlaw@pmt.org)

(x) U.S. Mail, Postage Prepaid  
( ) Facsimile  
(x) E-mail

JOHN ROSHOLT  
TRAVIS THOMPSON  
BARKER ROSHOLT  
113 MAIN AVE WEST STE 303  
TWIN FALLS ID 83301-6167  
(208) 735-2444  
[jar@idahowaters.com](mailto:jar@idahowaters.com)  
[tlr@idahowaters.com](mailto:tlr@idahowaters.com)

(x) U.S. Mail, Postage Prepaid  
( ) Facsimile  
(x) E-mail

JOHN SIMPSON  
BARKER ROSHOLT  
PO BOX 2139  
BOISE ID 83701-2139  
(208) 344-6034  
[jks@idahowaters.com](mailto:jks@idahowaters.com)

(x) U.S. Mail, Postage Prepaid  
( ) Facsimile  
(x) E-mail

RANDY BUDGE  
CANDICE MCHUGH  
RACINE OLSON  
PO BOX 1391  
POCATELLO ID 83204-1391  
[rcb@racinelaw.net](mailto:rcb@racinelaw.net)  
[cmm@racinelaw.net](mailto:cmm@racinelaw.net)

(x) U.S. Mail, Postage Prepaid  
( ) Facsimile  
(x) E-mail

KATHLEEN CARR  
U.S. DEPT INTERIOR  
960 BROADWAY STE 400  
BOISE ID 83706  
(208) 334-1378

(x) U.S. Mail, Postage Prepaid  
( ) Facsimile  
( ) E-mail

JOSEPHINE BEEMAN  
BEEMAN & ASSOC.  
409 W JEFFERSON  
BOISE ID 83702  
(208) 331-0954  
[jo.beeman@beemanlaw.com](mailto:jo.beeman@beemanlaw.com)

(x) U.S. Mail, Postage Prepaid  
( ) Facsimile  
(x) E-mail

MICHAEL GILMORE  
ATTORNEY GENERAL'S OFFC  
PO BOX 83720  
BOISE ID 83720-0010  
(208) 334-2830  
[mike.gilmore@ag.idaho.gov](mailto:mike.gilmore@ag.idaho.gov)

(x) U.S. Mail, Postage Prepaid  
( ) Facsimile  
(x) E-mail

SARAH KLAHN  
WILLIAM A HILLHOUSE II  
AMY W BEATIE  
WHITE JANKOWSKI  
511 16<sup>TH</sup> ST STE 500  
DENVER CO 80202  
[sarahk@white-jankowski.com](mailto:sarahk@white-jankowski.com)  
[billh@white-jankowski.com](mailto:billh@white-jankowski.com)  
[amyb@white-jankowski.com](mailto:amyb@white-jankowski.com)

(x) U.S. Mail, Postage Prepaid  
( ) Facsimile  
(x) E-mail

MICHAEL C. CREAMER  
GIVENS PURSLEY  
601 W BANNOCK  
PO BOX 2720  
BOISE ID 83701-2720  
[mcc@givenspursley.com](mailto:mcc@givenspursley.com)

(x) U.S. Mail, Postage Prepaid  
( ) Facsimile  
(x) E-mail

COURTESY COPIES:

LYLE SWANK  
IDWR  
900 N SKYLINE DR  
IDAHO FALLS ID 83402-6105  
(208) 525-7177  
[lyle.swank@idwr.idaho.gov](mailto:lyle.swank@idwr.idaho.gov)

(x) U.S. Mail, Postage Prepaid  
( ) Facsimile  
(x) E-mail

ALLEN MERRITT  
CINDY YENTER  
IDWR  
1341 FILLMORE ST STE 200  
TWIN FALLS ID 83301-3033  
(208) 736-3037  
[allen.merritt@idwr.idaho.gov](mailto:allen.merritt@idwr.idaho.gov)  
[cindy.yenter@idwr.idaho.gov](mailto:cindy.yenter@idwr.idaho.gov)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

MATT HOWARD  
US BUREAU OF RECLAMATION  
1150 N CURTIS ROAD  
BOISE ID 83706-1234  
(208) 378-5003  
[mhoward@pn.usbr.gov](mailto:mhoward@pn.usbr.gov)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

TERRY UHLING  
JR SIMPLOT CO  
999 MAIN STREET  
BOISE ID 83702  
[tuhling@simplot.com](mailto:tuhling@simplot.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

JAMES TUCKER  
IDAHO POWER CO  
1221 W IDAHO ST  
BOISE ID 83702  
[jamestucker@idahopower.com](mailto:jamestucker@idahopower.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

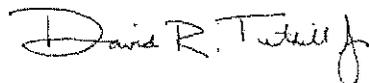
JAMES LOCHHEAD  
ADAM DEVOE  
BROWNSTEIN HYATT  
410 17<sup>TH</sup> ST 22<sup>ND</sup> FLOOR  
DENVER CO 80202  
[jlochhead@bhf-law.com](mailto:jlochhead@bhf-law.com)  
[adevoe@bhf-law.com](mailto:adevoe@bhf-law.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

  
Victoria Wigle  
Administrative Assistant to the Director  
Idaho Department of Water Resources

Assistant to the Director, Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho  
83720-0098, telephone: (208) 287-4803, fax: (208) 287-6700.

Dated this 13<sup>th</sup> day of September 2007.



---

DAVID R. TUTHILL, JR.  
Director

# **ATTACHMENT B**

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

IN THE MATTER OF THE PETITION FOR )  
DELIVERY CALL OF A&B IRRIGATION )  
DISTRICT FOR THE DELIVERY OF GROUND )  
WATER AND FOR THE CREATION OF A )  
GROUND WATER MANAGEMENT AREA )  
\_\_\_\_\_ )

**NOTICE OF STATUS  
CONFERENCE**

**PLEASE TAKE NOTICE** that the Director of the Department of Water Resources (“Director” or “Department”) has set a status conference in this matter for **September 20, 2007, starting at 10:00 a.m. (MST)** at the Department’s offices located at 322 E. Front Street, Boise, Idaho, in Conference Rooms C and D. The status conference will be recorded.

Parties provided with notice must be represented at the conference in person or by telephone. If participating by telephone, please dial 713-577-1201 and provide participant code 260503.

The purpose of the status conference is to discuss the *Motion to Proceed* filed by A&B Irrigation District (“A&B”) on its *Petition for Delivery Call* initially filed on July 26, 1994. A&B agreed to entry of an order staying action on the *Petition for Delivery Call*, which was issued on May 1, 1995. Under the stay order, A&B reserved the right to request the Director to resume administration of junior ground water rights under the *Petition*.

The *Motion to Proceed* does not indicate that it was served upon the approximately 200 respondents in this matter who filed responses to the *Petition* in 1994. Moreover, more than 12 years have elapsed since the commencement of this action. Numerous new junior ground water users are now subject to curtailment if the relief requested in the *Petition* is granted, yet these

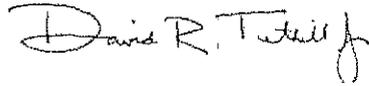
new users have never been provided notice of the pendency of this action. Thus, while the Department is serving the present *Notice of Status Conference* only upon counsel for A&B, and other select counsel who are active in the two delivery call proceedings currently set for hearing before the Department or who otherwise are expected to represent parties in the matter, A&B will be directed to serve its *Motion to Proceed* upon all parties to the proceeding pursuant to Department Rule of Procedure 203 before the Director takes formal action on the motion. IDAPA 37.01.01.203. At the status conference an updated service list will be developed to provide notice to the organizations representing water users including new water users that have emerged since 1994.

Given the complexity of the factual determinations that must be made in determining material injury and the extent of the hydraulic connection between the ground water supplies lying below the A&B Irrigation District and the Eastern Snake Plain Aquifer and the need to afford all participants an opportunity to gather the pertinent information and data necessary to the prosecution of this case, the Director has determined that the earliest feasible date for a hearing in this matter is March 18, 2008. Therefore, the participants at the status conference to be held on September 20, 2007 shall be prepared to recommend a pre-hearing scheduling order consistent with conducting a hearing in this matter to commence on March 18, 2008, unless the parties agree upon an acceptable alternate date for commencement of the hearing.

The conference will be conducted in accordance with the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the Department prior to the conference. Inquires for special accommodations should be directed to Victoria Wigle, Administrative

Assistant to the Director, Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho  
83720-0098, telephone: (208) 287-4803, fax: (208) 287-6700.

Dated this 13<sup>th</sup> day of September 2007.



---

DAVID R. TUTHILL, JR.  
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13<sup>th</sup> day of September 2007, the above and foregoing, was served by the method indicated below, and addressed to the following:

ROGER D. LING  
LING ROBINSON  
PO BOX 396  
RUPERT ID 83350-0396  
(208) 436-6804  
[lnrlaw@pmt.org](mailto:lnrlaw@pmt.org)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

JOHN ROSHOLT  
TRAVIS THOMPSON  
BARKER ROSHOLT  
113 MAIN AVE WEST STE 303  
TWIN FALLS ID 83301-6167  
(208) 735-2444  
[jar@idahowaters.com](mailto:jar@idahowaters.com)  
[tft@idahowaters.com](mailto:tft@idahowaters.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

JOHN SIMPSON  
BARKER ROSHOLT  
PO BOX 2139  
BOISE ID 83701-2139  
(208) 344-6034  
[jks@idahowaters.com](mailto:jks@idahowaters.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

TOM ARKOOSH  
ARKOOSH LAW OFFICES  
PO BOX 32  
GOODING ID 83330  
(208) 934-8873  
[alo@cableone.net](mailto:alo@cableone.net)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

W. KENT FLETCHER  
FLETCHER LAW OFFICE  
PO BOX 248  
BURLEY ID 83318-0248  
(208) 878-2548  
[wkf@pmt.org](mailto:wkf@pmt.org)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

RANDY BUDGE  
CANDICE MCHUGH  
RACINE OLSON  
PO BOX 1391  
POCATELLO ID 83204-1391  
[rcb@racinelaw.net](mailto:rcb@racinelaw.net)  
[cmm@racinelaw.net](mailto:cmm@racinelaw.net)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

DANIEL V. STEENSON  
CHARLES L. HONSINGER  
RINGERT CLARK  
PO BOX 2773  
BOISE ID 83701-2773  
(208) 342-4657  
[dvs@ringertclark.com](mailto:dvs@ringertclark.com)  
[clh@ringertclark.com](mailto:clh@ringertclark.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

J. JUSTIN MAY  
MAY SUDWEEKS & BROWNING  
1419 W. WASHINGTON  
BOISE ID 83702  
(208) 429-0905  
[jmay@may-law.com](mailto:jmay@may-law.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

KATHLEEN CARR  
U.S. DEPT INTERIOR  
960 BROADWAY STE 400  
BOISE ID 83706  
(208) 334-1378

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

JOSEPHINE BEEMAN  
BEEMAN & ASSOC.  
409 W JEFFERSON  
BOISE ID 83702  
(208) 331-0954  
[jo.beeman@beemanlaw.com](mailto:jo.beeman@beemanlaw.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

MICHAEL GILMORE  
ATTORNEY GENERAL'S OFFICE  
PO BOX 83720  
BOISE ID 83720-0010  
(208) 334-2830  
[mike.gilmore@ag.idaho.gov](mailto:mike.gilmore@ag.idaho.gov)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

SARAH KLAHN  
WILLIAM A HILLHOUSE II  
AMY W BEATIE  
WHITE JANKOWSKI  
511 16<sup>TH</sup> ST STE 500  
DENVER CO 80202  
[sarahk@white-jankowski.com](mailto:sarahk@white-jankowski.com)  
[billh@white-jankowski.com](mailto:billh@white-jankowski.com)  
[amyb@white-jankowski.com](mailto:amyb@white-jankowski.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

MICHAEL C. CREAMER  
GIVENS PURSLEY  
601 W BANNOCK  
PO BOX 2720  
BOISE ID 83701-2720  
[mcc@givenspursley.com](mailto:mcc@givenspursley.com)

(x) U.S. Mail, Postage Prepaid  
( ) Facsimile  
(x) E-mail

ROBERT E. WILLIAMS  
FREDERICKSEN WILLIAMS MESERVY  
153 E. MAIN ST.  
P.O. BOX 168  
JEROME, ID 83338-0168  
[rewilliams@cableone.net](mailto:rewilliams@cableone.net)

(x) U.S. Mail, Postage Prepaid  
( ) Facsimile  
(x) E-mail

WILLIAM A. PARSONS  
PARSONS, SMITH & STONE, LLP  
137 WEST 13TH STREET  
P.O. BOX 910  
BURLEY, ID 83318  
[wparsons@pmt.org](mailto:wparsons@pmt.org)

(x) U.S. Mail, Postage Prepaid  
( ) Facsimile  
(x) E-mail

Kent W. Foster  
Robert L. Harris  
HOLDEN, KIDWELL  
P.O. Box 50130  
Idaho Falls, ID 83405  
[kfoster@holdenlegal.com](mailto:kfoster@holdenlegal.com)  
[rharris@holdenlegal.com](mailto:rharris@holdenlegal.com)

(x) U.S. Mail, Postage Prepaid  
( ) Facsimile  
(x) E-mail

COURTESY COPIES:

LYLE SWANK  
IDWR  
900 N SKYLINE DR  
IDAHO FALLS ID 83402-6105  
(208) 525-7177  
[lyle.swank@idwr.idaho.gov](mailto:lyle.swank@idwr.idaho.gov)

(x) U.S. Mail, Postage Prepaid  
( ) Facsimile  
(x) E-mail

ALLEN MERRITT  
CINDY YENTER  
IDWR  
1341 FILLMORE ST STE 200  
TWIN FALLS ID 83301-3033  
(208) 736-3037  
[allen.merritt@idwr.idaho.gov](mailto:allen.merritt@idwr.idaho.gov)  
[cindy.yenter@idwr.idaho.gov](mailto:cindy.yenter@idwr.idaho.gov)

(x) U.S. Mail, Postage Prepaid  
( ) Facsimile  
(x) E-mail

MATT HOWARD  
US BUREAU OF RECLAMATION  
1150 N CURTIS ROAD  
BOISE ID 83706-1234  
(208) 378-5003  
[mhoward@pn.usbr.gov](mailto:mhoward@pn.usbr.gov)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

TERRY UHLING  
JR SIMPLOT CO  
999 MAIN STREET  
BOISE ID 83702  
[tuhling@simplot.com](mailto:tuhling@simplot.com)

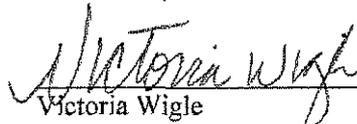
U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

JAMES TUCKER  
IDAHO POWER CO  
1221 W IDAHO ST  
BOISE ID 83702  
[jamestucker@idahopower.com](mailto:jamestucker@idahopower.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

JAMES LOCHHEAD  
ADAM DEVOE  
BROWNSTEIN HYATT  
410 17<sup>TH</sup> ST 22<sup>ND</sup> FLOOR  
DENVER CO 80202  
[jlochhead@bhf-law.com](mailto:jlochhead@bhf-law.com)  
[adevoe@bhf-law.com](mailto:adevoe@bhf-law.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

  
Victoria Wigle  
Administrative Assistant to the Director  
Idaho Department of Water Resources

# **ATTACHMENT C**

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

|   |                                 |  |
|---|---------------------------------|--|
| IN THE MATTER OF CREATION OF<br>WATER MEASUREMENT DISTRICTS<br>FOR THE EASTERN SNAKE PLAIN<br>AQUIFER | )<br>)<br>)<br>)<br>)<br>_____) | FINAL ORDER CREATING<br>WATER MEASUREMENT<br>DISTRICTS and NOTICE OF<br>ANNUAL MEETING |
|---|---------------------------------|--|

On September 16, 1996, a recommended order was issued recommending the creation of three (3) water measurement districts and measurement by the districts of diversions of water within the boundaries of the Eastern Snake Plain Aquifer (ESPA). Copies of the order were mailed to owners of the diversions on September 17-20, 1996.

No petitions for reconsideration were received. Exceptions were filed by the cities of Aberdeen, American Falls, Basalt, Blackfoot, Firth, Jerome, Rigby, Ririe, Rupert, St. Anthony, and the Fort Hall Water & Sewer District. The exceptions requested that municipalities, including the Fort Hall Water & Sewer District, be excluded from the water measurement districts.

The director, having reviewed the recommended order and the exceptions, issues the following findings of fact, conclusions of law, and order.

**FINDINGS OF FACT**

1. During 1995, the Idaho Legislature enacted laws authorizing the director to form water measurement districts to measure and report diversions of water. The legislation encouraged the director to form water measurement districts within the area defined as the Eastern Snake Plain Aquifer (ESPA) as rapidly as possible. The area of common ground water supply within the ESPA is depicted on the accompanying map titled Attachment A.

2. The ESPA is an area of common ground water supply as defined by Rule 50.01 of the Conjunctive Management Rules of the department. IDAPA 37.03.11050.01.

3. Water diversions must be measured to determine that water users are diverting within the limits of their water rights. Other data must also be gathered to better manage the water resources of Idaho. It is presently not necessary to measure certain small diversions of water, as further described in this order.

4. Ground water districts authorized by chapter 52, title 42, Idaho Code, are being formed in many parts of the ESPA. Upon formation and a proper showing that a ground water district will acceptably measure and report diversions of water within its boundaries, the ground water district can petition to have the diversions which it will measure removed from the water measurement district. The boundaries of the water measurement districts should not divide an existing ground water district.

5. Diversions measured and regulated by a watermaster within an active water district are excluded by statute from a water measurement district.

6. The director originally proposed creation of two water measurement districts in the ESPA, one for wells which divert ground water classified as trust water and for surface water flowing within the trust water boundaries; and one for wells which divert ground water classified as non-trust water and for surface water sources flowing within the non-trust water boundaries. Trust water is defined by Rule 30 of the Water Appropriation Rules. IDAPA 37.03.08030.

7. The trust water boundaries were proposed as boundaries because the mitigation and regulation demands on the water users within the two proposed areas are different even though water measurement districts are formed only for the purpose of measurement and reporting. After further reviewing a land use map of the entire ESPA, it was determined that the important factors in defining water measurement district boundaries are easy access for those conducting the measurement work and avoiding overlapping areas of administration. The proposed boundaries were changed by the hearing officer to those depicted on Attachment A.

8. Establishment of water measurement district boundaries which do not correspond with the trust/nontrust boundaries will not prevent future regulation, if necessary, of individual diversions in accordance with the trust/nontrust water boundaries.

9. Some water users diverting water from the ESPA or from surface water sources within the boundary defining the aquifer may not participate in a ground water district because:

a. The water users have not shown an interest in creating a ground water district;

b. The water users may choose not to participate in a ground water district;

c. The water users divert water for municipal, commercial, or industrial purposes, and are exempt from participating in a ground water district by statute; and

d. Surface water users diverting water within the boundaries of a ground water district cannot participate in the ground water district.

10. Measurement and reporting of diversions by water users not participating in a ground water district can be accomplished by a water measurement district, or by provision requiring measuring, reporting, and payment of fees pursuant to section 42-701, Idaho Code.

11. Agreements have been entered into between the state of Idaho and the Shoshone-Bannock Tribes and the United States Department of Energy addressing the administration of water rights.

## CONCLUSIONS OF LAW

1. The provisions of sections 42-705 through 42-715, Idaho Code, provide for the creation and operation of water measurement districts to assist water users in satisfying the water measurement requirements imposed by section 42-701, Idaho Code.

2. Idaho Code § 42-706 states in part:

(1) The director of the department of water resources is authorized to divide the state into water measurement districts in such manner that each public water source or sources or part thereof shall constitute a water measurement district; provided, that any appropriation or use included in a water district created pursuant to chapter 6, title 42, Idaho Code, shall not be included in a water measurement district. Appropriators or users of water for hydropower, instream flow, aquaculture purposes and irrigation districts . . . holding water rights for distribution to landowners within the irrigation district, and ground water districts . . . may petition to be excluded from the water measurement district at the time the water measurement district is created or modified, or at a later time, upon a showing to the satisfaction of the director that they are currently making and recording sufficient measurements of their diversions with measuring methods acceptable to the director and upon their agreement to provide an annual report of their diversions to the director . . . . Copies of the order and notice of the first meeting of the water measurement district shall be sent by regular mail to all holders of rights to the waters affected by the order.

3. Idaho Code § 42-701 states in part:

(1) . . . . Each . . . appropriator shall construct and maintain, when required by the director of the department of water resources, a rating flume or other measuring device at such point as is most practical in such canal, ditch, wellhead or pipeline for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said canal, ditch, wellhead or pipeline from the stream, well or other source of public water. . . .

(2) If an appropriator determines that installation and maintenance of a measuring device required by the director would be burdensome for his diversion, the appropriator may, upon approval of the director, execute an agreement with the director and submit to the director such information and technical data concerning the diversion and pumping facilities as the director determines necessary to establish the relationship of power usage to water withdrawal by any pump used to divert public water.

. . . .

(7) All domestic uses, as defined in section 42-111, Idaho Code, and all stock watering uses, as defined in section 42-1401A(12), Idaho Code, shall be

exempt from the measuring device installation and maintenance, measuring and reporting requirements of this section.

4. Idaho Code § 42-709 provides in part:

(1) It shall be the duty of the district hydrographer to:

(a) Measure the diversion from the water supply within the district by each appropriator or water user, or as the director of the department of water resources may otherwise require, and report the results as provided in section 42-708, Idaho.

....

(4) Appropriators or water users [diverting water within a water measurement district] may be required by the director, pursuant to subsections (1) through (4) of section 42-701, Idaho Code, or section 42-702 or 42-703, Idaho Code, to install measuring devices to facilitate the measurement of water required [within the water measurement district] in this section. (parentheticals added)

5. Idaho Code § 42-707 states in part:

(1) There shall be held, except as provided in subsection (2) of this section, on the first Monday in November in each year commencing at two o'clock P.M., a meeting of all persons owning or having the use of a water right in the waters of the stream or water supply comprising such district.

....

(3) At the meeting of the appropriators or water users of a district there shall be elected a qualified district hydrographer for such water measurement district, . . . who, upon qualification and appointment by the director of the department of water resources, shall be responsible for measurement of water . . . within the water measurement district, and the appropriators or water users shall, prior to the election of such district hydrographer . . . fix the compensation to be paid . . . during the time actually engaged in the performance of [his] duties. (parentheticals added)

6. Idaho Code § 42-713 states in part:

At any annual meeting the appropriators or water users must adopt a budget covering the estimated expenses of water measurements and data collection . . . of the district for the ensuing year . . . .

7. Water measurement is necessary to insure that water users are diverting water within the limits of their water rights.

described as follows and as depicted on the attached map, labeled as Attachment A.

IT IS FURTHER ORDERED that the boundaries of the respective districts shall be

or "NBL" lands of the U.S. Department of Energy.

d. Wells or other diversions located upon the Idaho National Engineering Laboratory

Tribal or Fort Hall Indian Irrigation Project water rights;

c. Wells or other diversions described as points of diversion by Fort Hall Agency,

42-604;

b. Diversions controlled by an active water district created pursuant to Idaho Code §

42-1401A(12);

a. Domestic and stock water uses as defined by Idaho Code § 42-111 and §

and ground water diversions within their boundaries except the following:

to this order: the West ESPA Water Measurement District, the East ESPA Water Measurement District and the North ESPA Water Measurement District. The districts shall include all surface water

IT IS HEREBY ORDERED that three water measurement districts are created pursuant

**ORDER**

or Fort Hall Indian Irrigation Project water rights.

state law within the Reservation that are not a part of the Fort Hall Agency, Tribal

The State shall administer the distribution of those rights acquired under

within the Reservation." Article 8.6 describes the administration of non-Tribal water rights:

generally recognizes the right of the Tribes to "administer the distribution of all Tribal water rights Bannock Tribes, and defined how the water rights should be administered. The agreement

Water Rights Agreement." The agreement described the water rights owned by the Shoshone-

State of Idaho, and the United States, executed an agreement titled "The 1990 Fort Hall Indian

10. In 1990, the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, the

district.

which diversions of water by municipalities are not required to be measured and reported by the pursuant to section 42-709(1)(a), Idaho Code, the director may determine the conditions under

not explicitly provide for an exclusion of municipalities from water measurement districts but

9. The statutes governing creation and operation of water measurement districts do

water diverted from the ESPA and reports of the diversions.

8. The creation of water measurement districts will facilitate the measurement of

**East ESPA Water Measurement District area:**

Those portions of administrative basins 21, 22, 25, 27, 29, 35 and 41 which overlie the Eastern Snake Plain Aquifer as defined by Rule 50.01 of the Conjunctive Management Rules depicted on the map labeled Attachment A.

**West ESPA Water Measurement District area:**

Those portions of administrative basins 36, 37, 43, and 45 which overlie the Eastern Snake Plain Aquifer as defined by Rule 50.01 of the Conjunctive Management Rules depicted on the map labeled Attachment A.

**North ESPA Water Measurement District area:**

Those portions of administrative basins 31, 32, 33, and 34 which overlie the Eastern Snake Plain Aquifer as defined by Rule 50.01 of the Rules of Conjunctive Management depicted on the map labeled Attachment A.

IT IS FURTHER ORDERED that annual meetings for the following water measurement districts shall be conducted at 2:00 p.m. on **November 4, 1996** as provided by Idaho Code § 42-707 at the following places:

|                                       |                                      |
|---------------------------------------|--------------------------------------|
| North ESPA Water Measurement District | East ESPA Water Measurement District |
| West Jefferson High School Auditorium | Bingham County Civic Auditorium      |
| 1260 E 1500 N                         | 132 S Shilling                       |
| Terreton, ID 83450                    | Blackfoot, ID 83221                  |

IT IS FURTHER ORDERED that the annual meeting of the West ESPA Water Measurement District shall be conducted at 3:30 p.m. on **November 4, 1996** at the following place:

West ESPA Water Measurement District  
Jerome High School Auditorium  
104 Tiger Drive North  
Jerome, ID 83338

IT IS FURTHER ORDERED that a budget for the water measurement districts must be developed for consideration at the annual meeting for the water measurement districts scheduled for November 4, 1996, and the water users must consider qualified candidates for election as district hydrographer. The annual meeting may be continued to subsequent dates in order to finalize the adoption of a budget and election of a district hydrographer.

IT IS FURTHER ORDERED that all diversions of water or all water systems with multiple diversions irrigating less than or equal to five (5) acres, or all diversions of water or all water systems with multiple diversions delivering water for any purpose other than irrigation which divert less than or equal to 0.24 cfs (approximately 108 gallons per minute), are not subject

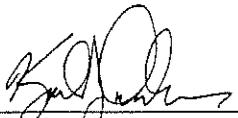
to measuring and reporting requirements and district expense, unless the owners of the diversions are notified by the department of the requirement to measure and report their diversions.

IT IS FURTHER ORDERED that municipalities and other specific appropriators or users of water described in section 42-706, Idaho Code, upon a showing to the satisfaction of the director that they are currently making and recording sufficient measurements of their diversions and that they agree to report annually to the director in substantial accordance with section 42-708, Idaho Code, and to pay the fee provided for under section 42-701, Idaho Code, shall be entitled to petition for exclusion from a water measurement district.

IT IS FURTHER ORDERED that, before the beginning of the 1997 irrigation season, or before April 1, 1997 for non-irrigation uses, and every year thereafter, all water users diverting water from ground water and surface water diversions within the boundaries of the water measurement districts which are not exempt by statute or excused by this order must have installed and maintain a measuring device for each diversion according to department guidelines. As an alternative, irrigators may avoid installation of a measuring device if an agreement is executed by the department and the water user to estimate the diversion with power records. For calendar year 1997 and every year thereafter, the water measurement district shall measure and report flow rate and annual flow volume from all points of diversion required to be measured and reported pursuant to this order. The department will entertain a proposal at the annual meeting to completely implement the required measurement and reporting in stages over a period of three years from the first annual meeting. The plan must describe a method for measuring at least one-third of the power consumption coefficients in the first year, one-third in the second year, and one-third in the third year. If a water diversion cannot be estimated with power records, a meter must be installed the first year unless the water user can show that he must reconstruct the wellhead piping at a significant cost. If sufficient hardship is shown, a one year deferment for installation of the measuring device can be approved by the department.

IT IS FURTHER ORDERED that the water measurement districts shall measure ground water levels within their respective boundaries to the satisfaction of the director. The water measurement districts must submit a proposal for a network of monitoring wells, and a proposal for the frequency of measurement. Adequacy of the plan will be determined by the director.

DATED this 24<sup>th</sup> day of October, 1996.

  
\_\_\_\_\_  
KARL V. DREHER  
Director



# **ATTACHMENT D**

LING, NIELSEN & ROBINSON

ROGER D. LING  
ROBERT M. NIELSEN  
BRENT T. ROBINSON  
BRENT C. TINGEY

ATTORNEYS AT LAW  
615 "H" STREET  
P. O. BOX 396  
RUPERT, IDAHO 83350

AREA CODE 208  
TELEPHONE 436-4717  
FAX 436-6804

October 2, 1996

Karl J. Dreher, Director  
Idaho Department of Water Resources  
1301 North Orchard Street  
Statehouse Mail  
Boise, ID 83720

RECEIVED

OCT 03 1996

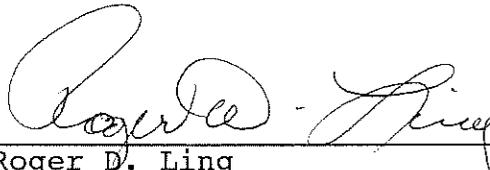
Department of Water Resources  
Eastern Region

RE: Eastern Snake Plain Aquifer Water Measurement Districts

Dear Director Dreher:

I have enclosed a Petition of A & B Irrigation District seeking to be excluded from any ground measurement district that may ultimately be created by the Director in compliance with the Recommended Order of September 16, 1996 and any amendments or alterations thereto. The Petition is self-explanatory and the exclusion of A & B Irrigation District in any Final Order would expedite this matter.

Very truly yours,



Roger D. Ling  
Attorney for A & B Irrigation District

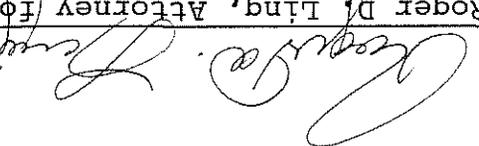
RDL/jb

enclosure

pc w/enc: A & B Irrigation District

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LING, NIELSEN & ROBINSON  
ATTORNEYS AT LAW  
RUPERT, IDAHO 83350

By:   
Roger D. Ling, Attorney for  
A & B Irrigation District

LING, NIELSEN & ROBINSON

Respectfully submitted this 2nd day of October, 1996.

COMES NOW A & B Irrigation District, a duly organized irrigation district under the laws of the State of Idaho, and petitions the Director of the Idaho Department of Water Resources to be excluded from any water measurement district that may be created pursuant to the Recommended Order issued in the above-entitled matter on September 16, 1996, and specifically from the recommended West ESPA Water Measurement District, on the grounds and for the reasons that all ground water diversions of A & B Irrigation District pursuant to water rights held for the diversion of water and distribution to landowners within the irrigation district are currently measured by A & B Irrigation District and duly recorded, and said irrigation district does agree to enter into an agreement with the Idaho Department of Water Resources to provide an annual report of its diversions to the Director.

This petition is based upon the records of A & B Irrigation District and the records of the Idaho Department of Water Resources which show the methods of measurement used by the irrigation district, the recording of such measurements, and the reporting of such measurements to the Director for previous irrigation seasons.

IN THE MATTER OF CREATION OF  
WATER MEASUREMENT DISTRICTS FOR  
THE EASTERN SNAKE PLAIN AQUIFER )  
)  
)  
)  
)  
FROM  
WATER MEASUREMENT DISTRICT

OF THE STATE OF IDAHO

BEFORE THE DEPARTMENT OF WATER RESOURCES

Department of Water Resources  
Eastern Region

RECEIVED  
OCT 9 3 1996

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

IN THE MATTER OF PETITION )  
TO EXCUSE A&B IRRIGATION )  
DISTRICT FROM THE FEE AND )  
REPORTING REQUIREMENTS OF ) ORDER  
IDAHO CODE § 42-701 AND TO )  
EXEMPT THE PETITIONER )  
FROM THE WEST ESPA WATER )  
MEASUREMENT DISTRICT )  
\_\_\_\_\_ )

A&B Irrigation District petitioned the Department of Water Resources to exclude the irrigation district from the West ESPA Water Measurement District pursuant to Idaho Code § 42-706, and also to exclude the irrigation district from the requirements of measurement and payment of a reporting fee described in Idaho Code § 42-701(a) and § 42-701(6). A&B Irrigation District has demonstrated in the past that it is appropriately measuring and reporting diversions of water, and that the measurements and reporting will be acceptable and in substantially the same form as required by Idaho Code § 42-708.

**ORDER**

IT IS HEREBY ORDERED that A&B Irrigation District is excused from the measurement and reporting requirements described in Idaho Code § 42-701(5) and the requirement for payment of an annual reporting fee described in Idaho Code § 42-701(6) beginning in 1996 and every year thereafter until further ordered. Release of A&B Irrigation District from these requirements for measuring, reporting and payment of fees is contingent upon A&B Irrigation District continuing to measure its diversions with the frequency and accuracy demonstrated in past reports and submit reports in substantial compliance with reporting requirements set forth in Idaho Code § 42-708.

IT IS FURTHER ORDERED that the appropriators or users of water delivered by A&B Irrigation District are excluded from the West ESPA Water Measurement District because A&B Irrigation District is currently making and recording sufficient measurements of their diversions in an acceptable manner and have agreed to annually report their diversions in the same form as required in Idaho Code § 42-708.

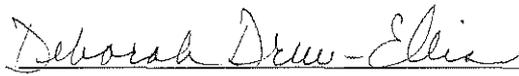
Dated this 30<sup>th</sup> day of December, 1996.

  
\_\_\_\_\_  
KARL J. DREHER  
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30<sup>th</sup> day of December, 1996, I mailed a true and correct copy of the foregoing **ORDER** on the following person listed below by U.S. mail, postage prepaid and addressed as follows:

Roger D. Ling  
615 "H" Street  
P.O. Box 396  
Rupert, Idaho 83350

  
\_\_\_\_\_  
Deborah Drew-Ellis  
Legal Secretary

# **ATTACHMENT E**

422430

MINIDOKA COUNTY

Board of County Commissioners

Rupert, Idaho 83350

RECEIVED

FEB 16 1996

Department of Public Administration

Based on the following facts:

- (1) A petition for organization of a ground water district was presented to the Board of Minidoka County Commissioners pursuant to Idaho Code, Section 42-5203
- (2) A public hearing was duly advertised and held on January 4, 1996
- (3) An election was duly advertised and held on February 6, 1996
- (4) The election ballots were canvassed on February 12, 1996 showing the following results:

|   |     |       |
|---|-----|-------|
| SHALL THE FORMATION OF THE MAGIC VALLEY | Yes | 989.7 |
| GROUND WATER DISTRICT BE APPROVED?      | No  | 45.2  |

|          |            |                    |    |
|----------|------------|--------------------|----|
| DIRECTOR | DIVISION 1 | Mack W. Neibaur    | 89 |
| DIRECTOR | DIVISION 2 | Richard D. Blincoe | 86 |
| DIRECTOR | DIVISION 3 | Douglas E. Grant   | 89 |

The Board of Minidoka County Commissioners unanimously approved the following:

ORDER

The Magic Valley Ground Water District is hereby duly organized and a map showing the area of the district shall be kept on file in the office of the Minidoka County Clerk. The Board also declares that Mack W. Neibaur, Richard D. Blincoe and Douglas E. Grant are duly elected as directors of the newly formed district.

The above ORDER was unanimously approved on February 12, 1996.

422430

RECORDED BY REQUEST OF  
Minidoka Co. - Commissioner

FILM NO. \_\_\_\_\_

'96 FEB 15 16 : 01

MINIDOKA COUNTY, IDAHO  
CLERK OF COUNTY RECORDS  
DEPUTY

*[Handwritten Signature]*

John Reinsberg, III - Chairman  
Minidoka County Commissioners



State of Idaho }  
County of Minidoka } 55

I hereby certify the foregoing to be a true and  
correct copy of the original M-V. Ground Water Dist. Order  
now on file or recorded in my office in

Rupert, Idaho. Dated Feb. 15 19 96

Duane Smith  
Clerk, Auditor & Recorder

By Lilly Palmer Deputy

JAN- 4-96 THU 16:35

GOODING DISTRICT COURT FAX NO. 9344408

P.01

**GOODING COUNTY**  
**BOARD OF COUNTY COMMISSIONERS**  
P.O. Box 417  
Gooding, Idaho 83330

Win Hensler, Dist III 536-2259  
John C. Gough, Dist II 352-4275  
Mitch Arkoosh, Dist I 934-4817

Helen P. Edwards, Clerk 934-4221

January 2, 1996

PLEASE DELIVER THE FOLLOWING PAGES TO:

NORM YOUNG  
IDAHO DEPT. OF WATER RESOURCES

FAX 327-7866

RE: Order on Petition to Form North Snake Ground  
Water District DBD&B No. 1790-WA01

Helen P. Edwards  
Gooding County Clerk

NUMBER OF PAGES BEING TRANSMITTED (INCLUDING THIS PAGE) - 8

IF ALL PAGES ARE NOT RECEIVED, PLEASE TELEPHONE (208) 934-4221

BEFORE THE BOARD OF COMMISSIONERS OF  
GOODING COUNTY, IDAHO

In the Matter of the Petition to form the )  
North Snake Ground Water District )  
 )  
 )  
\_\_\_\_\_ )

ORDER ON PETITION TO FORM )  
NORTH SNAKE GROUND WATER )  
DISTRICT )

DESCRIPTIVE SUMMARY

This order establishes February 6, 1996 as the date for ground water users within described areas of Lincoln, Jerome, and Gooding counties to vote for the organization of the North Snake Ground Water District (the "District") pursuant to the Ground Water District Act in Title 42, Chapter 52 of the Idaho Code.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Thursday, December 28, 1995, the Board of Commissioners for Gooding County met at 7:00 P.M. in the large courtroom of the Gooding County Courthouse to hear the Petition to form the North Snake Ground Water District (the "Petition"). The Petition had been filed and presented earlier and complied with the form, content and signature requirements of the Ground Water District Act.

Although the proposed district encompasses land within Gooding, Jerome, and Lincoln Counties, Gooding County contains the greatest proportion of cubic feet per second of ground water rights of the proposed district, and the Ground Water District Act requires Gooding County to conduct the hearing on the Petition.

Tom Ambrose and others filed the Petition with Helen Edwards, the Gooding County Clerk, on November 16, 1996, and then presented the Petition to the Board of Commissioners for Gooding County on November 30, 1996, following publication of notice on November 22 and November 29 in the *Gooding County Leader*, the *Jerome North Side News*, and the *Lincoln County Journal*. The Board of Commissioners for Gooding County set December 28, 1995 as the hearing date for the Petition and the Notice of Hearing on Petition for the Organization of the North Snake Ground Water District was published December 13, December 20, and December

27, 1995 in the *Gooding County Leader*, the *Jerome North Side News*, and the *Lincoln County Journal*.

On December 14, 1995, the Idaho Department of Water Resources filed a report with Helen Edwards, responding to the Petition. An Addendum to the Report was filed December 21, 1995.

During the hearing, the Petitioners, through Tom Ambrose, John R. Marshall, Ken Martin, Lynn Carlquist, Jack Hirai, and Mike Faulkner explained the purposes for organizing the North Snake Ground Water District and the location of the exterior boundaries and the seven proposed district divisions. Tim Luke, a hydrologist from the Idaho Department of Water Resources, stated that the proposed boundaries do not include ground water users between the canyon rim and the Snake River. Mike Branchflower asked what the size of assessments might be (per acre) if the District is formed. Josephine Beeman, an attorney from Boise representing the proposed North Snake Ground Water District, explained that the Ground Water District Act allows the District to be greater than 30 miles long for "good cause."

The Petitioners did not ask to change the proposed boundaries and no one else either at the hearing or in writing asked to be included or excluded from the proposed boundaries. No additional nominations were filed for directors of the proposed District.

The proposed boundaries and divisions are acceptable and proper. There is good cause for the District to be more than 30 miles long. The proceedings have complied with the requirements of the Ground Water District Act.

#### DECISION AND ORDER

Upon motions duly made, seconded and unanimously adopted, the Board of Commissioners of Gooding County decides and orders that:

1. Boundaries of the proposed district. If the vote of the electors accepts organization of the District, the lands of ground water users within the District will be organized into a ground water district. The boundaries for the proposed North Snake Ground Water District shall include the lands described in the legal notice published December 13, 20, and 27, 1995, as set forth below:

Township 5 South, Range 14 East: the portions of sections 26, 27, 34, 35 and 36 South of the Little Wood River, and the portion of section 33 East of the Malad River and South of the Little Wood River;

Township 5 South, Range 15 East: the portions of sections 25, 32, 33, 35 and 36 South of the Little Wood River;

Township 5 South, Range 16 East: the portions of sections 25 through 32 inclusive South of the Little Wood River, and all of sections 33, 34, 35 and 36;

Township 5 South, Range 17 East: the portions of sections 28 through 30 and 32 through 36 inclusive South of the Little Wood River, and all of section 31;

Township 5 South, Range 18 East: the portions of sections 13, 14, 22, 23, 24, 27, 28, 29, 31, 32 and 33 South of the Little Wood River, and all of sections 25, 26 and 34 through 36 inclusive;

Township 5 South, Range 19 East: all of sections 13 through 17 and 19 through 36 inclusive, and the portion of section 18 South of the Little Wood River;

Township 5 South, Range 20 East: all of sections 15 through 22, and 27 through 34 inclusive;

\* \* \* \* \*

Township 6 South, Range 13 East: the portions of sections 25, 26 and 36 South of the Malad River, and the portion of section 35 East of the canyon rim;

Township 6 South, Range 14 East: the portion of section 1 South of the Little Wood River, all of sections 2, 3, 10 through 15, 22 through 27, 31 and 33 through 36 inclusive, the portions of sections 4, 9, 16, 21 and 28 East of the Malad River and the portions of sections 29, 30 and 32 South of the Malad River;

Township 6 South, Range 15 East: all of sections 1 and 7 through 36 inclusive, and the portions of sections 2, 3, 4, 5 and 6 South of the Little Wood River;

Township 6 South, Range 16 East: all of sections 1 through 36 inclusive;

Township 6 South, Range 17 East: all of sections 1 and 3 through 36 inclusive, and the portion of section 2 South of the Little Wood River;

Township 6 South, Range 18 East: all of sections 1 through 36 inclusive;

Township 6 South, Range 19 East: all of sections 1 through 36 inclusive;

Township 6 South, Range 20 East: all of sections 3 through 10, 15 through 22, and 27 through 34 inclusive;

\* \* \* \* \*

Township 7 South, Range 13 East: the portions of sections 1, 2, 12 and 13 East of the canyon rim;

Township 7 South, Range 14 East: all of sections 1 through 17, 20 through 29, and 33 through 36 inclusive, and the portions of sections 18, 19, 30, 31 and 32 East of the canyon rim;

Township 7 South, Range 15 East: all of sections 1 through 36 inclusive;

Township 7 South, Range 16 East: all of sections 1 through 36 inclusive;

Township 7 South, Range 17 East: all of sections 1 through 36 inclusive;

Township 7 South, Range 18 East: all of sections 1 through 36 inclusive;

Township 7 South, Range 19 East: all of sections 1 through 36 inclusive;

Township 7 South, Range 20 East: all of sections 2 through 11, 14 through 23, and 26 through 35 inclusive;

\* \* \* \* \*

Township 8 South, Range 14 East: all of sections 1 through 4, 9 through 16, 22 through 27 and 34 through 36 inclusive, the portions of sections 5, 8, 17, 20 and 33 East of the canyon rim, the portions of sections 21 and 29 North of the canyon rim, and the portions of sections 27 and 28 above the canyon rim;

Township 8 South, Range 15 East: all of sections 1 through 36 inclusive;

Township 8 South, Range 16 East: all of sections 1 through 36 inclusive;

Township 8 South, Range 17 East: all of sections 1 through 36 inclusive;

Township 8 South, Range 18 East: all of sections 1 through 36 inclusive;

Township 8 South, Range 19 East: all of sections 1 through 36 inclusive;

Township 8 South, Range 20 East: all of sections 2 through 11, 14 through 23, and 26 through 35 inclusive;

\*\*\*\*\*

Township 9 South, Range 14 East: the portions of sections 1 through 4 inclusive North of the canyon rim;

Township 9 South, Range 15 East: all of sections 1 and 2, and the portions of sections 3 through 6, and 10 through 12 inclusive North of the canyon rim;

Township 9 South, Range 16 East: all of sections 1 through 6, and 8 through 13 inclusive, and the portions of sections 7, 14, 15, 16, 17, 23 and 24 North of the canyon rim;

Township 9 South, Range 17 East: all of sections 1 through 18, and 21 through 27 inclusive, and the portions of sections 19, 20, 28, 29, 34, 35 and 36 North of the canyon rim;

Township 9 South, Range 18 East: all of sections 1 through 30, and 34 through 36 inclusive, and the portions of sections 31, 32 and 33 North of the canyon rim;

Township 9 South, Range 19 East: all of sections 1 through 36 inclusive;

Township 9 South, Range 20 East: all of sections 2 through 11, 14 through 23, and 25 through 36 inclusive;

\*\*\*\*\*

Township 10 South, Range 18 East: all of sections 1 and 2, and the portions of sections 3, 4, 10, 11 and 12 North of the canyon rim;

Township 10 South, Range 19 East: all of sections 1 through 6 and 8 through 14 inclusive, and the portions of sections 7, 15, 16, 17, 23 and 24 North of the canyon rim, and the portion of section 25 East of the canyon rim;

Township 10 South, Range 20 East: all of sections 1 through 24, 27, 28, 29, 30 and 32 inclusive, the portions of sections 25, 26, 33, 34 and 35 North of the canyon rim, and the portion of section 31 East of the canyon rim;

\*\*\*\*\*

Township 10 South, Range 21 East; all of sections 7 through 20 inclusive, and the portions of sections 21 through 30 inclusive North of the canyon rim; and

\* \* \* \* \*

Township 11 South, Range 20 East; the portions of sections 4, 5 and 6 North of the canyon rim.

\* \* \* \* \*

2. Proposed District divisions. The proposed North Snake Ground Water District shall be divided into seven (7) divisions, as drawn on Exhibit C (the map) to the Petition. The nominations for directors contained the requisite 6 signatures for the Ground Water District Act. The nominated directors and their divisions shall be as follows:

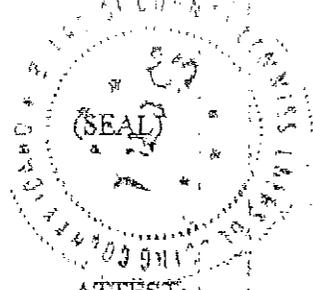
- Division 1 Mike Faulkner
- Division 2 Jack Hirai
- Division 3 Tom Ambrose
- Division 4 John R. Marshall
- Division 5 Floyd Kisling
- Division 6 Ken Martin
- Division 7 Lynn Carlquist

3. Election. In accordance with Idaho Code §§ 42-5209 and 34-106, Tuesday, February 6, 1996 shall be the date set for the election to determine whether the North Snake Ground Water District shall be organized and who shall be its initial directors. Notice shall be published as required by the Ground Water District Act.

4. Authorization. The chairman of the board is authorized to sign this order on behalf of the board.

DATED this 4 day of January, 1996.

Win Henslee  
 WIN HENSLEE  
 Chairman  
 Board of Commissioners  
 Gooding County, Idaho



ATTEST:

E:\1790\WA01\29DEC95.ORD

Helen Edwards  
HELEN EDWARDS  
County clerk  
Gooding County

# **ATTACHMENT F**



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
ALAN G. LANCE

November 20, 2001

RE: Motion for Order of Interim Administration in the Eastern Snake Plain Aquifer

Dear Water User:

In response to the drought, the Director of the Idaho Department of Water Resources issued orders creating the American Falls and Thousand Springs Ground Water Management Areas for the purpose of administering certain ground water rights. In reaction to these orders, representatives of ground water and surface water users signed stipulated agreements that provide a frame work for the administration of hydrologically connected water rights for the next two irrigation seasons.

The Director intends to create water districts to implement these stipulated agreements and to provide for long-term administration of the hydrologically connected surface and ground water rights. The Office of the Attorney General has agreed to initiate this process through the Snake River Basin Adjudication Court. Part of this process requires notification of potentially impacted water users. Therefore, this mailing is being sent to all recorded users of water (except those whose use is solely for domestic and/or stockwater purposes) in the affected portions of Basins 35, 36, 41 and 43.

Enclosed are the following documents: (1) Motion for Order of Interim Administration and Motion for Expedited Hearing and Notice of Hearing; (2) Brief in Support of Motion for Order of Interim Administration; (3) Affidavit of Tim Luke, Section Manager for the IDWR Water Distribution Section; (4) the SRBA District Court Order and Notice of Hearings; and (5) an area map showing the affected portions of the Eastern Snake Plain Aquifer.

An informational meeting to address any questions on this topic is scheduled for **Monday, December 3 at 7:00 pm at Declo High School, 550 E. Main, Declo, Idaho.** Director Karl Dreher will host the meeting. By working cooperatively, we look toward establishing mechanisms that will ensure orderly and fair delivery of water within the Eastern Snake Plain Aquifer.

Sincerely,

A handwritten signature in cursive script that reads "Clive J. Strong".

CLIVE J. STRONG  
Deputy Attorney General  
Chief, Natural Resources Division

Enclosures



generated from the SRBA district court website on November 20, 2001, and is attached hereto as Exhibit 2.

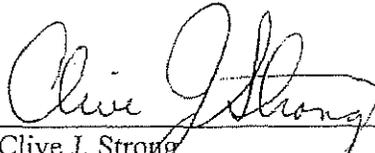
3. Copies to:

Karl Dreher  
Director  
Idaho Department of Water Resources  
P.O. Box 83720  
Boise, ID 83720-0098.

IDWR Document Repository  
P.O. Box 83720  
Boise, ID 83720-0098

U.S. Department of Justice  
Environment & Natural Resources Division  
550 West Fort Street, MSC Box 033  
Boise, ID 83724

DATED this 27th day of November, 2001.



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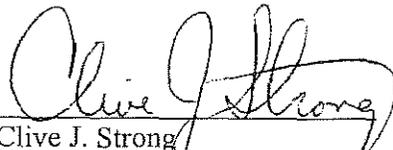
Clive J. Strong  
Chief, Natural Resource Division  
Office of the Attorney General

**CERTIFICATE OF MAILING**

I hereby certify that on the 27th day of November, 2001, I served a true and correct copy of the CERTIFICATE OF SERVICE on the following persons by mailing in the U.S. Mail, with correct postage affixed thereto.

U.S. Department of Justice  
Environment and Natural Resources Division  
550 West Fort Street  
Box 033  
Boise, ID 83706

IDWR Document Depository  
P.O. Box 83720  
Boise, ID 83720-0098



Clive J. Strong  
Chief, Natural Resource Division  
Office of the Attorney General

Exhibit 1

|   |  |
|---|--|
| AUTUMN COVE TRAILER PARK<br>PO BOX 900818<br>SANDY UT 84090               | 4 BROTHERS DAIRY INC<br>425 N 250 W<br>SHOSHONE ID 83352                       |
| 4 H FARMS INC<br>RT 1 BOX 70A<br>HAZELTON ID 83335                        | 4-BROS DAIRY INC<br>C/O ANDREW FITZGERALD<br>4250 N 250 W<br>SHOSHONE ID 83352 |
| A & B IRRIGATION DISTRICT<br>PO BOX 675<br>RUPERT ID 83350                | A L L FARMS<br>PO BOX 204<br>AMERICAN FALLS ID 832110204                       |
| A S & G RANCHES<br>PO BOX 789<br>BURLEY ID 83318                          | AARDEMA, DON<br>132A W 500 S<br>JEROME ID 83338                                |
| AARDEMA, DONALD<br>144 W 400 S<br>JEROME ID 83338                         | AARDEMA, RON<br>144 WEST 400 SOUTH<br>JEROME ID 83338                          |
| AARDEMA, RON<br>400 SOUTH 144 WEST<br>JEROME ID 83338                     | ABERDEEN CEMETERY MAINTENANCE DISTRICT<br>PO BOX 335<br>ABERDEEN ID 83210      |
| ABERDEEN SPRINGFIELD CANAL CO<br>PO BOX Y<br>ABERDEEN ID 83210            | ACEQUIA INC<br>PO BOX 1678<br>KETCHUM ID 83340                                 |
| ACEQUIA INC<br>PO BOX 226<br>SUN VALLEY ID 83353                          | ACKERMAN, MARVIN<br>PO BOX 327<br>BURLEY ID 83318                              |
| ACOR JR, EVERETT T<br>RT 1 BOX 13<br>MOORE ID 83255                       | ADAMS, CHERYL<br>548 N 650 W<br>SHOSHONE ID 83352                              |
| ADAMS, LYLE<br>RT 1 BOX 77<br>SHOSHONE ID 83352                           | ADAMS, RUTH MAE<br>2201 W 1200 S<br>STERLING ID 83210                          |
| ADAMSON, DIXIE<br>PO BOX 82<br>FILER ID 83328                             | ADAMSON, JONATHAN<br>1531 S LENTER ST APT 6<br>MOSCOW ID 838434465             |
| ADAMSON, KEVIN<br>RURAL RT BOX 24<br>STERLING ID 83279                    | ADAMSON, LAURIE<br>14223 S. E. 283 PLACE<br>KENT WA 98042                      |
| ADKINS, WILLIAM W<br>3249 S PLEASANT VALLEY RD<br>AMERICAN FALLS ID 83211 | ADKISON, ALBERT L<br>PO BOX 607<br>HAGERMAN ID 83332                           |
| ADOLFSON, ED<br>1045 N 575 E<br>FIRTH ID 83236                            | ADOLPH COORS CO<br>WATER RESOURCES OPERATION<br>GOLDEN CO 80401                |

ALAN G. LANCE  
Attorney General

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

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

In Re SRBA )  
 )  
Case No. 39576 )  
 )  
 )  
 )  
 )  
\_\_\_\_\_ )

Subcase No. 92-00021

**AFFIDAVIT OF TIMOTHY J. LUKE  
IN SUPPORT OF MOTION FOR ORDER  
OF INTERIM ADMINISTRATION**

STATE OF IDAHO )  
 ) ss.  
County of Ada )

Timothy J. Luke, being first duly sworn upon oath deposes and states as follows:

1. My name is Timothy J. Luke. I am the Section Manager for the Water Distribution Section for the Idaho Department of Water Resources (IDWR). My work address is Idaho Department of Water Resources, 1301 North Orchard, Boise, Idaho 83706. I reside in Boise, Idaho.
2. My education background includes a Bachelor of Arts degree in Geography from West Virginia University in 1982 and a Master of Science degree in Geography and Natural Resource Management from the University of Idaho in 1992. My education/training since college has included, but is not limited to, participation in seminars and courses

related to water management such as Ground Water and Surface Water Relationships, Hydraulics, Water Management Workshop, Field Hydrogeology, Irrigation System Design and several water law workshops.

3. I worked from September 1988 to August 1991 for IDWR as a Senior Water Rights Agent. My duties included, but were not limited to the review, analysis, recommendation and processing of water right transfers, and the review and processing of applications to reallocate water held in trust under the Swan Falls agreement.
4. From September 1991 to February 1992, I worked for IDWR as a Hydrologist-in-Training, in the Water Permits Section. My duties included, but were not limited to water district assistance, field inventory and measurement of diversions, and water right analysis.
5. I worked from March 1992 to February 1997 for IDWR as a Hydrologist in the Water Permits and Water Distribution Sections. My duties included, but were not limited to, assisting in the implementation of the water measurement program, field inventory and measurement of diversions, water district assistance, water right analysis, reduction and analysis of hydrologic data and preparation of reports, and investigation of water distribution complaints and water right disputes.
6. From March 1997 to the present, I have served as the Section Manager for the Water Distribution Section. My primary responsibilities are the implementation and management of the water measurement program, provide assistance to water districts, periodic training of watermasters, and assistance or resolution of water distribution/water right disputes.
7. I have personal knowledge of the water supply conditions and water rights in Basins 35, 36, 41 and 43 through my work with IDWR's Water Distribution Section.

8. The general reasons for the creation or enlargement of a water district are:
- Provide a mechanism for administration, regulation and enforcement of water rights;
  - Provide a means for regular measurement and reporting of diversions, including ground water diversions.
  - Provide a more local and immediate response to general calls for water delivery;
  - Provide for improved management of water rights and keeping water rights current with respect to ownership and water use;
  - Provide a system whereby local watermasters or deputy watermasters can provide for local and timely response to general calls for water distribution; and
  - Water district administration and regulation can be accomplished by assessing water users directly through the districts.
9. The specific reasons for creation or enlargement of water districts in Basins 35, 36, 41 and 43 are:
- Existing water districts in these basins are limited to surface water sources and do not include ground water sources. Additionally, some surface water sources in these basins are not included in any water district.
  - All of the water rights claimed in Basins 35, 36, 41 and 43 have been reported or partially decreed in the SRBA as required under I.C. § 42-1417.
  - IDWR has already created Water Measurement Districts in these areas, but the Measurement Districts' authority is limited to measurement and reporting of water use and does not include authority to regulate water rights, including enforcement of water right conditions.
  - The establishment of water districts will provide the watermasters with the ability to administer water rights in accordance with the prior appropriation doctrine as established by Idaho law.
  - The available water supply is currently not adequate to satisfy some senior priority water rights and is projected, in the future, to be insufficient, at times, to satisfy these water rights.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
TIMOTHY J. LUKE

SUBSCRIBED AND SWORN to before me this 19<sup>th</sup> day of NOVEMBER, 2001.



  
Notary Public for Idaho  
Residing at: Boise, Idaho  
My commission expires: 12/5/06



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

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

#### **A. FINDINGS OF FACT**

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

#### **B. CONCLUSION OF LAW**

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

#### **C. ORDER**

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

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

DATED this 8<sup>th</sup> day of January 2002.

R. Burdick

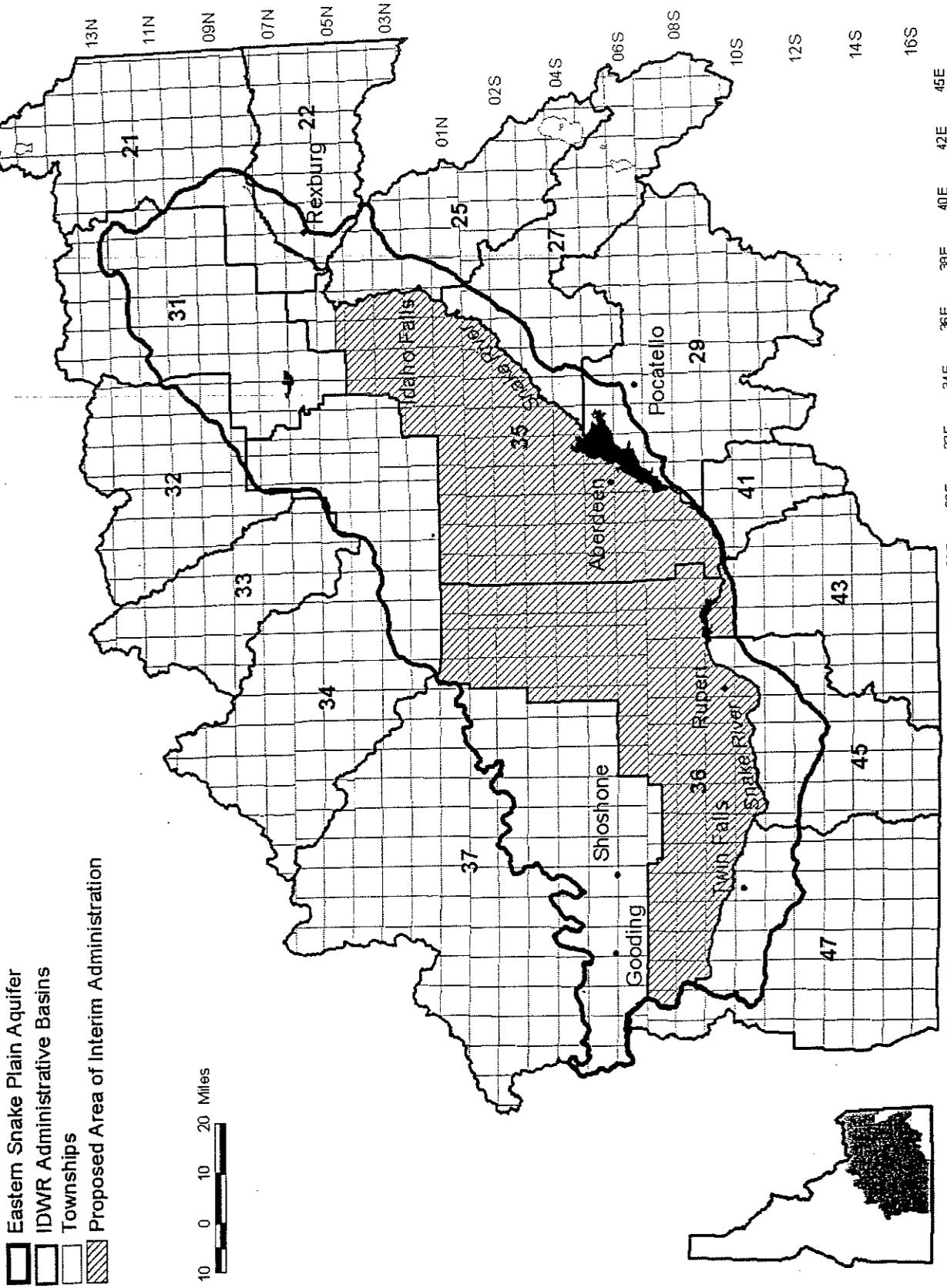
ROGER S. BURDICK  
Presiding Judge  
Snake River Basin Adjudication

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

ROBERT S. FORT  
CLERK OF THE DISTRICT COURT

By Robin Clark  
DEPUTY CLERK

# PROPOSED AREA OF INTERIM ADMINISTRATION



# **ATTACHMENT G**

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF DESIGNATING )  
THE AMERICAN FALLS GROUND )  
WATER MANAGEMENT AREA )  
\_\_\_\_\_ )

**ORDER**

This matter comes before the Director of the Department of Water Resources ("Director" or "Department") as a result of the severe drought conditions being experienced across the Snake River Basin and the possibility that the drought conditions could continue into the 2002 irrigation season and beyond. The Director initiates this matter in response to his recognition that he has a responsibility, subject to the confines of existing knowledge and technology, to exercise his statutory authorities to administer rights to the use of ground water in a manner that recognizes and protects senior priority surface water rights in accordance with the directives of Idaho law. The Director enters the following Findings of Fact, Conclusions of Law and Order in furtherance of those directives.

**FINDINGS OF FACT**

1. The Eastern Snake River Plain Aquifer ("ESPA") is defined as the aquifer underlying the Eastern Snake River Plain as delineated in the report "Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho," 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 ESPA is also defined as an area having a common ground water supply (see Rule 50, IDAPA 37.03.11050).

2. 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. One of the locations at which a direct hydraulic connection exists between the ESPA and the Snake River, including tributary surface water sources, is in the Shelley to Minidoka reach of the river, herein termed the "American Falls reach" located along the southeastern edge of the ESPA in the vicinity of American Falls Reservoir.

3. Simulations using the Department's calibrated computer model of the ESPA show that ground water withdrawals from the ESPA for irrigation and other consumptive purposes, which occur in relatively close proximity to the area of the American Falls reach, cause significant reductions in the gains to this reach of the Snake River that result from hydraulic connection with the ESPA (herein termed "reach gains") within six (6) months or less from the time the withdrawals occur.

4. Although all consumptive ground water diversions from the ESPA eventually affect surface water flows to varying degrees, the Department's model simulations and other analytical calculations demonstrate that ground water diversions occurring within a band on both sides of the American Falls reach varying in width from 1.6 kilometers to five (5) kilometers on each side of the river result in seasonal reach gain reductions equal to fifty percent (50 percent) or more of the amount of water diverted and consumptively used, and such reductions occur within six (6) months of the diversions.

5. Surface and ground water studies for the Eastern Snake River Plain, funded in part by the Idaho Legislature, are presently being performed by or on behalf of the Department, with the participation of other public and private entities. These studies will provide additional data that will be used to further refine and calibrate the ground water model used by the Department to calculate the amount, location, and timing of surface water depletions caused by the withdrawal and use of ground water throughout the plain overlying the ESPA. The purpose for the additional data collection and model refinement/calibration is to reduce uncertainty in the model and increase acceptance of the Department's use of the model to implement long-term, conjunctive administration of rights to the use of interconnected surface and ground waters within the Eastern Snake River Plain. Although efforts are underway to improve the Department's ground water model, the results from simulations using the ground water model as it presently exists provide a suitable basis for making some water management decisions when the uncertainties of the existing model are appropriately addressed.

6. The Department presently does not have a sufficient basis to undertake full conjunctive administration of rights to the use of interconnected surface and ground waters within the Eastern Snake River Plain. The Department is confident, however, that the results of simulations from its existing ground water model and other analytical calculations are suitable for determining the area containing those ground water diversions for which the depletion of water from the ESPA results in the most direct and significant reduction in reach gains with an acceptable degree of accuracy. For the purposes of this order and to account for the uncertainties in the Department's present ground water model, a ground water diversion is considered to cause a direct and significant reduction in reach gains if, based on simulations using the Department's ground water model or other analytical calculations, the reach gains are reduced by an amount equal to fifty percent (50 percent) or more of the ground water depletion associated with the ground water diversion, and such reduction occurs within six (6) months of the ground water diversion.

7. The water supply available, including both natural flow and reservoir storage, for use under senior surface water rights that in part rely on reach gains is expected to be further diminished, should the drought continue, and inadequate to fully satisfy all senior surface water rights during the next irrigation season. This water supply is also expected to be reduced as a result of ground water withdrawals from the ESPA for irrigation and other consumptive purposes that are diverted in close proximity to the area of the American Falls reach without mitigating the effects of the associated ground water depletions.

8. Based upon the depletionary effects of ground water withdrawals on the reach gains and the inadequate water supply expected to be available for senior surface water rights, that portion of the ESPA along the American Falls reach may be approaching the conditions of a critical ground water area.

9. On July 13, 2001, the Twin Falls Canal Company and the North Side Canal Company ("Canal Companies") submitted to the Department through their attorney a written request asking for the Director "to promptly designate a Groundwater Management Area for Basin 35 pursuant to I.C. § 42-233(b)." The Department will proceed under the Department's Rules of Procedure, IDAPA 37.01.01, to consider the request of the Canal Companies as a petition for creation of a ground water management area including all of Basin 35 in accordance with Rule 30.06, IDAPA 37.03.11030.06.

10. The action of the Director in the present matter relates only to that portion of the ESPA, as depicted on the map identified as Attachment A, that contains all or parts of the townships along the Snake River that encompass or are adjacent to the 1.6 kilometer to five (5) kilometer wide band on each side of the American Falls reach described in Finding of Fact No. 4. The action is taken as a result of the Director's independent initiative and is not taken in response to the petition of the Canal Companies.

#### CONCLUSIONS OF LAW

1. Idaho law declares all ground waters in this state to be the property of the state of Idaho, whose duty it is to supervise the appropriation and allotment of the water to those diverting the same for beneficial use. I.C. § 42-226.

2. The Director of the Department has a statutory responsibility to administer the use of ground water in the state so as to protect prior surface and ground water rights and yet allow full economic development of the state's underground water resources in the public interest. See I.C. §§ 42-226 and 42-237a.g.

3. Section 42-233a, Idaho Code, authorizes the Director to designate a "critical ground water area" which is defined as any ground water basin, or designated part thereof, not having sufficient ground water to provide a reasonably safe supply for irrigation of cultivated lands, or other uses in the basin at the then current rates of withdrawal, or rates of withdrawal projected by consideration of valid and outstanding applications and permits, as may be determined and designated, from time to time by the Director.

4. Section 42-233b, Idaho Code, authorizes the Director to designate a "ground water management area" which is defined as any ground water basin or designated part thereof which the Director has determined may be approaching the conditions of a critical ground water area.

5. Although Rule 30.06, IDAPA 37.03.11030.06, provides a procedure that the Department may follow in a proceeding upon a petition for designation of a ground water management area, the present action is taken as a result of the Director's independent initiative and is not taken in response to a petition.

6. When a ground water management area is designated by the Director, or at any time thereafter during the existence of the designation, the Director may approve a ground water management plan for the area. The ground water management plan shall provide for managing the effects of ground water withdrawals on the aquifer from which withdrawals are made and on any other hydraulically connected sources of water. I.C. § 42-233b.

7. The Director may require all water right holders within a designated water management area to report withdrawals of ground water and other necessary information for the purpose of assisting the Department in determining available ground water supplies and their usage. I.C. § 42-233b.

8. The Director, upon determination that the ground water supply is insufficient to meet the demands of water rights within all or portions of a water management area, shall order those water right holders on a time priority basis, within the area determined by the Director, to cease or reduce withdrawal of water until such time as the Director determines there is sufficient ground water. Such order shall be given only before September 1 and shall be effective for the growing season during the year following the date the order is given. I.C. § 42-233b.

9. Based upon the foregoing findings, the Director determines that the portion of the ESPA located in the area of the American Falls reach may be approaching the conditions of a critical ground water area.

10. The Director should designate a ground water management area for the area of the ESPA near the American Falls reach as ordered below.

11. Upon designation of a ground water management area the Director shall publish notice in two (2) consecutive weekly issues of one or more newspapers of general circulation in the area. I.C. § 42-233b.

12. Any person aggrieved by this decision shall be entitled to a hearing before the Director to contest the action taken provided the person files with the Director, within fifteen (15) days following published notice of the order, a written petition stating the grounds for contesting the action and requesting a hearing. Any hearing conducted shall be in accordance with the provisions of chapter 52, title 67, Idaho Code, and the Rules of Procedure of the Department, IDAPA 37.01.01. Judicial review of any final order of the Director issued following the hearing may be had pursuant to Section 42-1701A(4), Idaho Code.

**ORDER**

IT IS, THEREFORE, HEREBY ORDERED that the following described area be included within and designated as the "American Falls Ground Water Management Area."

That portion of the Eastern Snake Plain Aquifer within all or parts of the following townships along the Snake River in Cassia, Minidoka, Blaine, Power, Bingham, and Bannock Counties:

T8S and T9S, R25E, Boise Meridian (B.M.); T8S and T9S, R26E, B.M.; T8S and T9S, R27E, B.M.; T8S and T9S, R28E, B.M.; T8S and T9S, R29E, B.M.; T6S, T7S, T8S and T9S, R30E, B.M.; T4S, T5S, T6S, T7S and T8S, R31E, B.M.; T3S, T4S, T5S, T6S and T7S, R32E, B.M.; T2S, T3S, T4S, T5S, T6S and T7S, R33E, B.M.; T2S, T3S, T4S, T5S and T6S, R34E, B.M.; T1S, T2S, T3S, T4S and T5S, T35E, B.M.; and T1S, T2S and T3S, R36E, B.M.

Attached to this Order is a map identified as Attachment A, that graphically shows the boundaries of the "American Falls Ground Water Management Area."

DATED this 3rd day of August 2001.

  
KARL J. DREHER  
Director



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

IN THE MATTER OF DESIGNATING     )  
THE THOUSAND SPRINGS GROUND     )  
WATER MANAGEMENT AREA            )  
\_\_\_\_\_                                  )

**ORDER**

This matter comes before the Director of the Department of Water Resources (“Director” or “Department”) as a result of the severe drought conditions being experienced across the Snake River Basin and the possibility that the drought conditions could continue into the 2002 irrigation season and beyond. The Director initiates this matter in response to his recognition that he has a responsibility, subject to the confines of existing knowledge and technology, to exercise his statutory authorities to administer rights to the use of ground water in a manner that recognizes and protects senior priority surface water rights in accordance with the directives of Idaho law. The Director enters the following Findings of Fact, Conclusions of Law and Order in furtherance of those directives.

**FINDINGS OF FACT**

1. The Eastern Snake River Plain Aquifer (“ESPA”) is defined as the aquifer underlying the Eastern Snake River Plain as delineated in the report “Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho,” 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 ESPA is also defined as an area having a common ground water supply (see Rule 50, IDAPA 37.03.11050).

2. 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. One of the locations at which a direct hydraulic connection exists between the ESPA and surface water sources tributary to the Snake River is in the Thousand Springs area located at the western edge of the ESPA in the vicinity of Hagerman, Idaho.

3. Simulations using the Department’s calibrated computer model of the ESPA show that ground water withdrawals from the ESPA for irrigation and other consumptive purposes, which occur in relatively close proximity to the Thousand Springs area, cause significant reductions in spring flows tributary to the Kimberly to King Hill, or Thousand Springs, reach of the Snake River within six (6) months or less from the time the withdrawals occur.

4. Although all consumptive ground water diversions from the ESPA eventually affect surface water flows to varying degrees, the Department's model simulations demonstrate that ground water diversions occurring within a five (5) to ten (10) kilometer band from the canyon wall along the north side of the Snake River in the Thousand Springs reach result in seasonal spring flow reductions equal to fifty percent (50 percent) or more of the amount of water diverted and consumptively used, and such reductions occur within six (6) months of the diversions.

5. Surface and ground water studies for the Eastern Snake River Plain, funded in part by the Idaho Legislature, are presently being performed by or on behalf of the Department, with the participation of other public and private entities. These studies will provide additional data that will be used to further refine and calibrate the ground water model used by the Department to calculate the amount, location, and timing of surface water depletions caused by the withdrawal and use of ground water throughout the plain overlying the ESPA. The purpose for the additional data collection and model refinement/calibration is to reduce uncertainty in the model and increase acceptance of the Department's use of the model to implement long-term, conjunctive administration of rights to the use of interconnected surface and ground waters within the Eastern Snake River Plain. Although efforts are underway to improve the Department's ground water model, the results from simulations using the ground water model as it presently exists provide a suitable basis for making some water management decisions when the uncertainties of the existing model are appropriately addressed.

6. The Department presently does not have a sufficient basis to undertake full conjunctive administration of rights to the use of interconnected surface and ground waters within the Eastern Snake River Plain. The Department is confident, however, that the results of simulations from its existing ground water model are suitable for determining the area containing those ground water diversions for which the depletion of water from the ESPA results in the most direct and significant reduction in the flow of water from springs tributary to the Snake River in the Thousand Springs reach with an acceptable degree of accuracy. For the purposes of this order and to account for the uncertainties in the Department's present ground water model, a ground water diversion is considered to cause a direct and significant reduction in the flow of water from springs tributary to the Snake River if, based on simulations using the Department's ground water model, the flow of water from the springs is reduced by an amount equal to fifty percent (50 percent) or more of the ground water depletion associated with the ground water diversion, and such reduction occurs within six (6) months of the ground water diversion.

7. The water supply available for use under senior surface water rights from spring sources in the Thousand Springs area is expected to be further diminished because of the drought and inadequate to fully satisfy all senior surface water rights during the next irrigation season. This water supply is also expected to be reduced as a result of ground water withdrawals from the ESPA for irrigation and other consumptive purposes that are diverted in close proximity to the area of the springs without mitigating the effects of the associated ground water depletions.

8. Based upon the depletionary effects of ground water withdrawals on the flow of water from springs tributary to the Snake River in the Thousand Springs area and the inadequate water supply expected to be available for senior surface water rights, that portion of the ESPA in the Thousand Springs area may be approaching the conditions of a critical ground water area. The Director also bases this finding, in part, upon flow measurements showing a pronounced diminishment in spring flows in the Thousand Springs area during the current drought period.

9. On July 13, 2001, Clear Springs Foods, Inc. ("Clear Springs") submitted to the Department through its attorney a written request asking for the "designation of Basin 36 as a Groundwater Management Area pursuant to I.C. § 42-233(b)." The Department will proceed under the Department's Rules of Procedure, IDAPA 37.01.01, to consider the Clear Springs request as a petition for creation of a ground water management area including all of Basin 36 in accordance with Rule 30.06, IDAPA 37.03.11030.06.

10. The action of the Director in the present matter relates only to that portion of the ESPA, as depicted on the map identified as Attachment A, that contains all or parts of the townships north of the Snake River that encompass or are adjacent to the five (5) to ten (10) kilometer band described in Finding of Fact No. 4. The action is taken as a result of the Director's independent initiative and is not taken in response to the Clear Springs petition.

#### CONCLUSIONS OF LAW

1. Idaho law declares all ground waters in this state to be the property of the state of Idaho, whose duty it is to supervise the appropriation and allotment of the water to those diverting the same for beneficial use. I.C. § 42-226.

2. The Director of the Department has a statutory responsibility to administer the use of ground water in the state so as to protect prior surface and ground water rights and yet allow full economic development of the state's underground water resources in the public interest. See I.C. §§ 42-226 and 42-237a.g.

3. Section 42-233a, Idaho Code, authorizes the Director to designate a "critical ground water area" which is defined as any ground water basin, or designated part thereof, not having sufficient ground water to provide a reasonably safe supply for irrigation of cultivated lands, or other uses in the basin at the then current rates of withdrawal, or rates of withdrawal projected by consideration of valid and outstanding applications and permits, as may be determined and designated, from time to time by the Director.

4. Section 42-233b, Idaho Code, authorizes the Director to designate a "ground water management area" which is defined as any ground water basin or designated part thereof which the Director has determined may be approaching the conditions of a critical ground water area.

5. Although Rule 30.06, IDAPA 37.03.11030.06, provides a procedure that the Department may follow in a proceeding upon a petition for designation of a ground water management area, the present action is taken as a result of the Director's independent initiative and is not taken in response to a petition.

6. When a ground water management area is designated by the Director, or at any time thereafter during the existence of the designation, the Director may approve a ground water management plan for the area. The ground water management plan shall provide for managing the effects of ground water withdrawals on the aquifer from which withdrawals are made and on any other hydraulically connected sources of water. I.C. § 42-233b.

7. The Director may require all water right holders within a designated water management area to report withdrawals of ground water and other necessary information for the purpose of assisting the Department in determining available ground water supplies and their usage. I.C. § 42-233b.

8. The Director, upon determination that the ground water supply is insufficient to meet the demands of water rights within all or portions of a water management area, shall order those water right holders on a time priority basis, within the area determined by the Director, to cease or reduce withdrawal of water until such time as the Director determines there is sufficient ground water. Such order shall be given only before September 1 and shall be effective for the growing season during the year following the date the order is given. I.C. § 42-233b.

9. Based upon the foregoing findings, the Director determines that the portion of the ESPA located in the Thousand Springs area in the vicinity of Hagerman, Idaho may be approaching the conditions of a critical ground water area.

10. The Director should designate a ground water management area for the Thousand Springs area of the ESPA as ordered below.

11. Upon designation of a ground water management area the Director shall publish notice in two (2) consecutive weekly issues of one or more newspapers of general circulation in the area. I.C. § 42-233b.

12. Any person aggrieved by this decision shall be entitled to a hearing before the Director to contest the action taken provided the person files with the Director, within fifteen (15) days following published notice of the order, a written petition stating the grounds for contesting the action and requesting a hearing. Any hearing conducted shall be in accordance with the provisions of chapter 52, title 67, Idaho Code, and the Rules of Procedure of the Department, IDAPA 37.01.01. Judicial review of any final order of the Director issued following the hearing may be had pursuant to Section 42-1701A(4), Idaho Code.

**ORDER**

IT IS, THEREFORE, HEREBY ORDERED that the following described area be included within and designated as the "Thousand Spring Ground Water Management Area."

That portion of the Eastern Snake Plain Aquifer within all or parts of the following townships north of the Snake River in Gooding and Jerome Counties:

T5S and T6S, R12E, Boise Meridian (B.M.); T5S, T6S, T7S and T8S, R13E, B.M.; T5S, T6S, T7S, T8S and T9S, R14E, B.M.; T7S, T8S and T9S, R15E, B.M.; T8S and T9S, R16E, B.M.; T8S and T9S, R17E, B.M.; and T8S, T9S and T10S, R18E, B.M.

Attached to this Order is a map identified as Attachment A, that graphically shows the boundaries of the "Thousand Springs Ground Water Management Area."

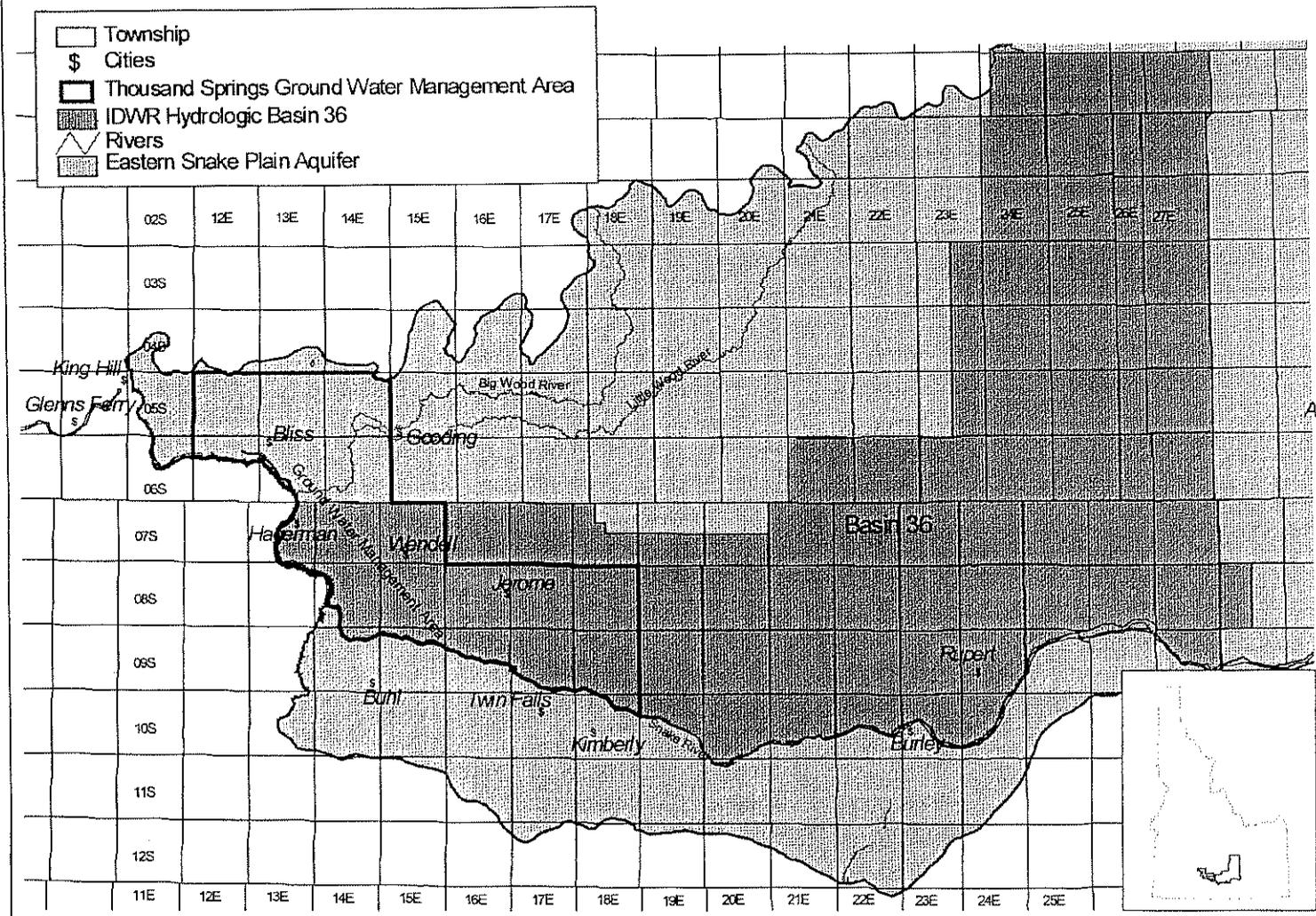
DATED this 3rd day of August 2001.



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KARL J. DREHER  
Director

# Thousand Springs Ground Water Management Area and Basin 36



BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

|                              |                                   |
|------------------------------|-----------------------------------|
| IN THE MATTER OF MODIFYING ) |                                   |
| THE BOUNDARIES OF THE )      |                                   |
| AMERICAN FALLS GROUND )      | <b>FINAL ORDER MODIFYING THE</b>  |
| WATER MANAGEMENT AREA )      | <b>BOUNDARIES OF THE AMERICAN</b> |
| _____ )                      | <b>FALLS GROUND WATER</b>         |
|                              | <b>MANAGEMENT AREA</b>            |

The Director of the Department of Water Resources (“Director” or “Department”) on August 3, 2001, entered an order designating the American Falls Ground Water Management Area (“American Falls GWMA”) pursuant to Idaho Code § 42-233b. The Director made the designation pursuant to his statutory authorities to administer rights to the use of ground water in a manner that recognizes and protects senior priority water rights in accordance with the directives of Idaho law. *The severe drought conditions in 2001, which caused the Director to designate the ground water management area, have continued to exist across the Snake River Basin and, therefore, administration of the ground water rights is still necessary.* However, Water District Nos. 120 and 130 have been established for the purpose of administration of water rights, and these districts overlay portions of the GWMA located in Administrative Basins 35, 36, 41, and 43, which is most of the GWMA. Thus, the need for the GWMA no longer exists in those portions of the GWMA overlain by Water District Nos. 120 and 130, and its continued existence within the Water District boundaries may cause confusion in the administration of water rights. Therefore, the Director enters the following Findings of Fact, Conclusions of Law and Order modifying the boundaries of the American Falls GWMA.

**FINDINGS OF FACT**

1. On August 3, 2001, the Director established the American Falls GWMA pursuant to Idaho Code § 42-233b. The Director designated the American Falls GWMA due to concerns about the depletionary effects of ground water withdrawals under junior priority water rights and the availability of water supplies for senior priority water rights from connected surface and ground water sources during the severe drought conditions experienced across the Snake River Basin. The Director issued the order in response to his recognition that he has a responsibility, subject to the confines of existing knowledge and technology, to exercise his statutory authorities to administer water rights for the use of ground water in a manner that recognizes and protects senior priority surface water and ground water rights in accordance with the provisions of Idaho law. In establishing the American Falls GWMA, the Director stated his intent to curtail diversions under certain junior ground water rights that caused significant depletions to

hydraulically connected surface water sources thereby causing injury to senior priority water rights.

2. Findings of Fact one through seven of the Director's order of August 3, 2001, describe the general hydrologic features of the Eastern Snake River Plain Aquifer ("ESPA") and the level of confidence that the Director places upon simulations using the Department's calibrated computer model of the ESPA and are incorporated in this order by reference.

3. On January 8, 2002, the SRBA District Court issued an order authorizing the interim administration of water rights by the Director in all, or parts, of Administrative Basins 35, 36, 41 and 43 overlying the ESPA, pursuant to chapter 6, title 42, Idaho Code, based upon a determination that such interim administration is necessary to protect senior water rights.

4. On February 19, 2002, the Director entered an order pursuant to Idaho Code § 42-604 creating the American Falls Area Water District, designated as Water District No. 120, and the Thousand Springs Area Water District, designated as Water District No. 130.

7. The boundaries of Water District Nos. 120 and 130 encompass the area over the ESPA covered by the American Falls GWMA in Administrative Basins 35, 36, 41 and 43.

#### CONCLUSIONS OF LAW

1. The Director has a statutory responsibility to administer the use of ground water in the state so as to protect prior surface and ground water rights and yet allow full economic development of the state's underground water resources in the public interest. See Idaho Code §§ 42-226, 42-237a.g, and 42-602.

2. The Director has general 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, as provided in chapter 6, title 42, Idaho Code and IDWR regulations.

3. The establishment of Water District Nos. 120 and 130, which includes the area within the boundaries of the American Falls GWMA over the ESPA located in Administrative Basins 35, 36, 41, and 43, provides the Director with the more comprehensive water administration authorities available under chapter 6, title 42, Idaho Code. These authorities together with the "Rules for Conjunctive Management of Surface and Ground Water Resources" (IDAPA 37.03.11) make it unnecessary to retain the current boundaries of the American Falls GWMA.

4. The Director should modify the boundaries of the American Falls GWMA area because it is no longer necessary to retain the current boundaries for water administration purposes.

5. Because publication of notice in two (2) consecutive weekly issues of one or more newspapers of general circulation in the area is required by Idaho Code § 42-233b upon the designation of a ground water management area, the Director will provide similar published notice of the modification of the boundaries of the American Falls GWMA.

6. Any person aggrieved by this order shall be entitled to a hearing before the Director to contest the action taken provided the person files with the Director, within fifteen (15) days following published notice of the order, a written petition stating the grounds for contesting the action and requesting a hearing. Any hearing conducted shall be in accordance with the provisions of chapter 52, title 67, Idaho Code, and the Rules of Procedure of the Department, IDAPA 37.01.01. Judicial review of any final order of the Director issued following the hearing may be had pursuant to Idaho Code § 42-1701A(4).

### ORDER

IT IS, THEREFORE, HEREBY ORDERED that the boundaries of the American Falls Ground Water Management Area designated by order of the Director on August 3, 2001, are hereby modified as depicted on the map appended hereto as Attachment A and incorporated herein by reference.

DATED this 29th day of August 2003.

  
\_\_\_\_\_  
KARL J. DREHER  
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of August, 2003, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Tim Deeg  
Aberdeen/American Falls GWD  
2957 Deeg Road  
American Falls, Idaho 83211

Ray Duffin  
Aberdeen/American Falls GWD  
3152 West 2000 South  
Aberdeen, Idaho 83210

Kevin Michaelson  
Aberdeen/American Falls GWD  
2590 Quigley  
American Falls, Idaho 83211

Richard Meyer  
Aberdeen/American Falls GWD  
17 North Main Street  
Aberdeen, Idaho 83210

Craig Evans  
Bingham GWD  
1523 West 300 North  
Blackfoot, Idaho 83221

Scott Clawson  
Bingham GWD  
2754 West 3000 North  
Rexburg, Idaho 83440

Neal Powell  
Bingham GWD  
252 East 100 North  
Blackfoot, Idaho 83221

Gaylen Van Orden  
Bingham GWD  
682 South 1400 West  
Pingree, Idaho 83262

Bill Taylor  
Bonneville-Jefferson GWD  
PO Box 51121  
Idaho Falls, Idaho 83405

Stephanie Mickelsen  
Bonneville-Jefferson GWD  
1050 West Riverview Drive  
Idaho Falls, Idaho 83401

Dane Watkins  
Bonneville-Jefferson GWD  
385 River Parkway  
Idaho Falls, Idaho 83402

Gay Walter  
40 North 400 West  
Blackfoot, Idaho 83221

Larry Elliott  
Aberdeen/American Falls GWD  
2988 W 1400 S  
Aberdeen, Idaho 83210

Douglas Grant  
Magic Valley GWD  
724 E 600 N  
Rupert, Idaho 83350

Marc Foster  
Aberdeen/American Falls GWD  
3018 W 1700 S  
Aberdeen, Idaho 83210

Phyllis Beard  
Amalgamated Sugar  
Box 127  
Twin Falls, Idaho 83303-0127

Brock Driscoll  
Aberdeen/American Falls GWD  
2250 S 3200 W  
Aberdeen, Idaho 83210

Jon Bowling  
Idaho Power Co.  
PO Box 706  
Boise, Idaho 83707

Randy Polatis  
Bingham GWD  
453 S 1100 W  
Pingree, Idaho 83262

Lynn Carlquist  
North Snake GWD  
1092 S 2500 E  
Hazelton, Idaho 83335

Calvin Lloyd  
Bingham GWD  
383 N 840 W  
Blackfoot, Idaho 83221

Larry Cope  
Clear Springs Trout  
PO Box 712  
Buhl, Idaho 83316

Dean Stevenson  
Magic Valley GWD  
575 W 600 N  
Paul, Idaho 83347

Dick Elliot  
Little Sky Farms  
HC 60 Box 1745  
Bliss, Idaho 83314

Orlo Maughan  
Magic Valley GWD  
900 N 450 W  
Rupert, Idaho 83350

Dwayne Knigge  
Banbury Pipe Co.  
4799A River Road  
Buhl, Idaho 83316

Gary Lemmon  
Blind Canyon Aquaranch  
2775 S 1050 E  
Hagerman, Idaho 83332

Rex Minchey  
Jerome Cheese  
47 W 100 S  
Jerome, Idaho 83338

Dean Stevenson  
Magic Valley GWD  
575 W 600 N  
Paul, Idaho 83347

Dan Temple  
A & B Irrigation  
PO Box 675  
Rupert, Idaho 83350

Cindy Yenter  
Water District 130  
1341 Fillmore St. Ste 200  
Twin Falls, Idaho 83301

Adrian Boer  
Canyonside Dairy  
472 S 200 W  
Jerome, Idaho 83338

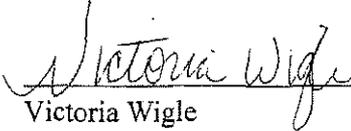
Gary Bowman  
Basin 37 Ground Water Users  
216 S 850 E  
Dietrich, Idaho 83324

Mike Greene  
Blue Lakes Trout Co.  
PO Box 1237  
Twin Falls, Idaho 83303-1237

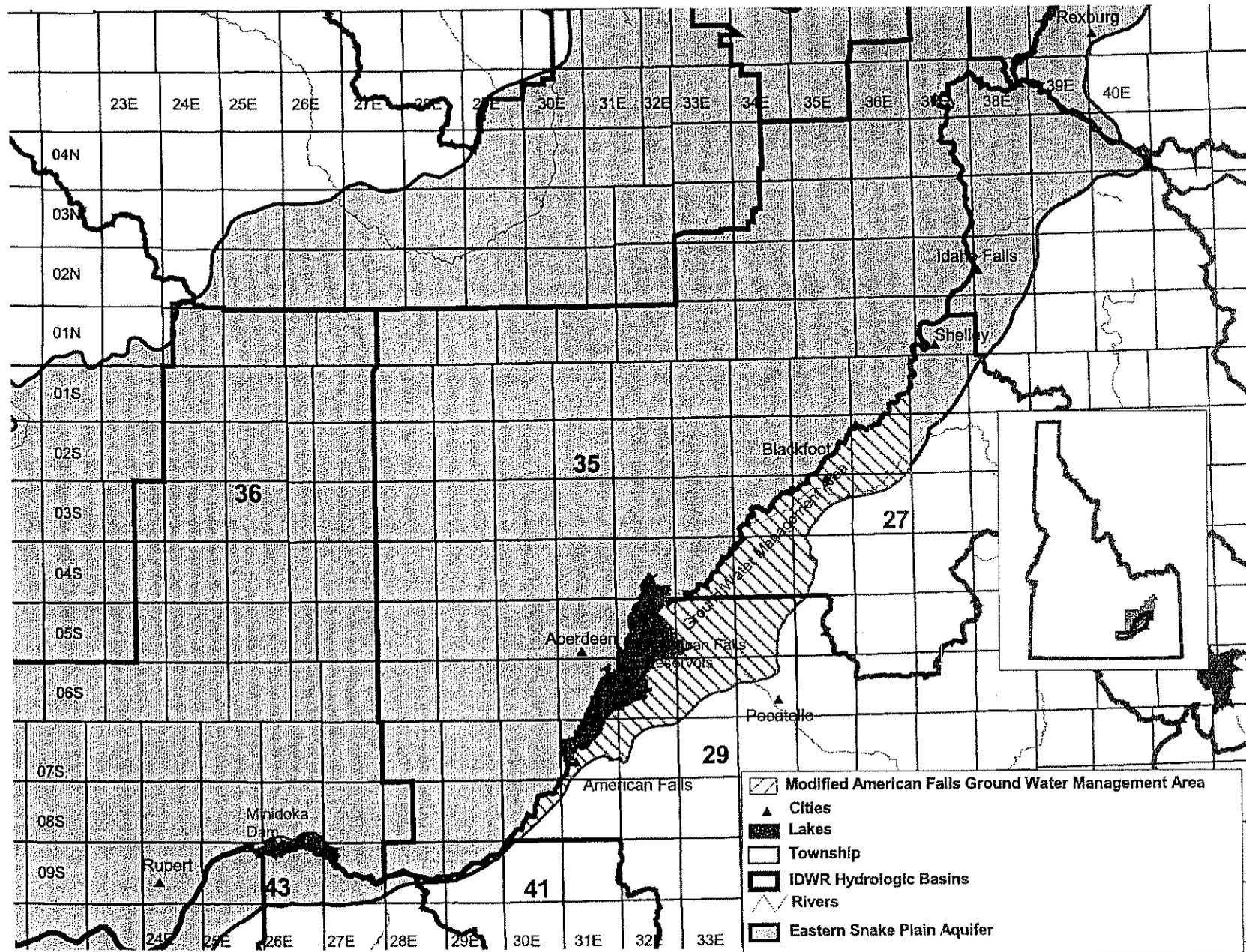
PJ Greene  
Blue Lakes Trout Co.  
PO Box 1237  
Twin Falls, Idaho 83303-1237

Harold Mohlman  
A & B Irrigation  
PO Box 675  
Rupert, Idaho 83350

Arie Roeloff  
Southfield Dairy  
3340 S 1600 E  
Wendell, Idaho 83355

  
Victoria Wigle  
Administrative Assistant to the Director  
Idaho Department of Water Resources

# Modified American Falls Ground Water Management Area



- Modified American Falls Ground Water Management Area
- Cities
- Lakes
- Township
- IDWR Hydrologic Basins
- Rivers
- Eastern Snake Plain Aquifer

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

|                               |                                   |
|-------------------------------|-----------------------------------|
| IN THE MATTER OF DISSOLVING ) |                                   |
| THE THOUSAND SPRINGS GROUND ) |                                   |
| WATER MANAGEMENT AREA )       |                                   |
| DESIGNATION )                 |                                   |
| _____ )                       | <b>FINAL ORDER DISSOLVING THE</b> |
|                               | <b>THOUSAND SPRINGS GROUND</b>    |
|                               | <b>WATER MANAGEMENT AREA</b>      |
|                               | <b>DESIGNATION</b>                |

The Director of the Department of Water Resources ("Director" or "Department") on August 3, 2001, entered an order designating the Thousand Springs Ground Water Management Area ("Thousand Springs GWMA") pursuant to Idaho Code § 42-233b. The Director made the designation pursuant to his statutory authorities to administer rights to the use of ground water in a manner that recognizes and protects senior priority water rights in accordance with the directives of Idaho law. The severe drought conditions in 2001, which caused the Director to designate the ground water management area, have continued to exist across the Snake River Basin and, therefore, administration of the ground water rights is still necessary. However, Water District No. 130 has been established for the purpose of administration of water rights and it overlays the GWMA. Thus, the need for the establishment of the GWMA no longer exists, and its continued existence may cause confusion in the administration of water rights. Therefore, the Director enters the following Findings of Fact, Conclusions of Law and Order dissolving the Thousand Springs GWMA.

**FINDINGS OF FACT**

1. On August 3, 2001, the Director established the Thousand Springs GWMA pursuant to Idaho Code § 42-233b. The Director designated the Thousand Springs GWMA due to concerns about the depletionary effects of ground water withdrawals under junior priority water rights and the availability of water supplies for senior priority water rights from connected surface and ground water sources during the severe drought conditions experienced across the Snake River Basin. The Director issued the order in response to his recognition that he has a responsibility, subject to the confines of existing knowledge and technology, to exercise his statutory authorities to administer water rights for the use of ground water in a manner that recognizes and protects senior priority surface water and ground water rights in accordance with the provisions of Idaho law. In establishing the Thousand Springs GWMA, the Director stated his intent to curtail diversions under certain junior ground water rights that caused significant depletions to hydraulically connected surface water sources thereby causing injury to senior priority water rights.

2. Findings of Fact one through seven of the Director's order of August 3, 2001, describe the general hydrologic features of the Eastern Snake River Plain Aquifer ("ESPA") and the level of confidence that the Director places upon simulations using the Department's calibrated computer model of the ESPA and are incorporated in this order by reference.

3. On January 8, 2002, the SRBA District Court issued an order authorizing the interim administration of water rights by the Director in all, or parts, of Administrative Basins 36 and 43 overlying the ESPA, pursuant to chapter 6, title 42, Idaho Code, based upon a determination that such interim administration is necessary to protect senior water rights.

4. On February 19, 2002, the Director entered an order pursuant to Idaho Code § 42-604 creating the Thousand Springs Area Water District, designated as Water District No. 130.

5. On November 19, 2002, the SRBA District Court issued an order authorizing the interim administration of water rights by the Director within that portion of Basin 37 overlying the ESPA, pursuant to chapter 6, title 42, Idaho Code.

6. On January 8, 2003, the Director entered an order pursuant to Idaho Code § 42-604 revising the boundaries of Water District No. 130 to include the administration of ground water rights, other than small domestic and stockwater rights as defined by statute, within Basin 37 overlying the ESPA to protect senior priority water rights.

7. The boundaries of Water District No. 130 fully encompass the area covered by the Thousand Springs GWMA.

### CONCLUSIONS OF LAW

1. The Director has a statutory responsibility to administer the use of ground water in the state so as to protect prior surface and ground water rights and yet allow full economic development of the state's underground water resources in the public interest. See Idaho Code §§ 42-226, 42-237a.g, and 42-602.

2. The Director has general 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, as provided in chapter 6, title 42, Idaho Code and IDWR regulations.

3. The establishment of Water District No. 130, which includes all of the area within the boundaries of the Thousand Springs GWMA, provides the Director with the more comprehensive water administration authorities available under chapter 6, title 42, Idaho Code. These authorities together with the "Rules for Conjunctive Management of Surface and Ground Water Resources" (IDAPA 37.03.11) make it unnecessary to retain the Thousand Springs GWMA designation.

4. The Director should dissolve the Thousand Springs GWMA because it is no longer necessary for water administration purposes.

5. Because publication of notice in two (2) consecutive weekly issues of one or more newspapers of general circulation in the area is required by Idaho Code § 42-233b upon the designation of a ground water management area, the Director will provide similar published notice of the dissolution of the Thousand Spring GWMA.

6. Any person aggrieved by this order shall be entitled to a hearing before the Director to contest the action taken provided the person files with the Director, within fifteen (15) days following published notice of the order, a written petition stating the grounds for contesting the action and requesting a hearing. Any hearing conducted shall be in accordance with the provisions of chapter 52, title 67, Idaho Code, and the Rules of Procedure of the Department, IDAPA 37.01.01. Judicial review of any final order of the Director issued following the hearing may be had pursuant to Idaho Code § 42-1701A(4).

#### ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Thousand Springs Ground Water Management Area designated by order of the Director on August 3, 2001, is hereby dissolved.

DATED this 29th day of August 2003.

  
\_\_\_\_\_  
KARL J. DREHER  
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of August, 2003, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Phyllis Beard  
Amalgamated Sugar  
Box 127  
Twin Falls, Idaho 83303-0127

Gary Lemmon  
Blind Canyon Aquaranch  
2775 S 1050 E  
Hagerman, Idaho 83332

Jon Bowling  
Idaho Power Co.  
PO Box 706  
Boise, Idaho 83707

Rex Minchey  
Jerome Cheese  
47 W 100 S  
Jerome, Idaho 83338

Lynn Carlquist  
North Snake GWD  
1092 S 2500 E  
Hazelton, Idaho 83335

Dean Stevenson  
Magic Valley GWD  
575 W 600 N  
Paul, Idaho 83347

Larry Cope  
Clear Springs Trout  
PO Box 712  
Buhl, Idaho 83316

Dan Temple  
A & B Irrigation  
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Little Sky Farms  
HC 60 Box 1745  
Bliss, Idaho 83314

Cindy Yenter  
Water District 130  
1341 Fillmore St. Ste 200  
Twin Falls, Idaho 83301

Dwayne Knigge  
Banbury Pipe Co.  
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Buhl, Idaho 83316

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Twin Falls, Idaho 83303-1237

PJ Greene  
Blue Lakes Trout Co.  
PO Box 1237  
Twin Falls, Idaho 83303-1237

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Magic Valley GWD  
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Rupert, Idaho 83350

Harold Mohlman  
A & B Irrigation  
PO Box 675  
Rupert, Idaho 83350

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Wendell, Idaho 83355

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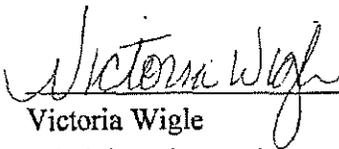
Don Aadema  
North Snake GWD  
2105 E 3600 S  
Wendell, Idaho 83338

Dan Forsyth  
North Snake GWD  
240 E 100 N  
Jerome, Idaho 83338

Rodney Bolich  
North Snake GWD  
748-A E 175 N  
Jerome, Idaho 83338

Mike Faulkner  
North Snake GWD  
1989 S 1875 E  
Gooding, Idaho 83330

David Suchan  
Magic Valley GWD  
607-B N 1050 W  
Paul, Idaho 83347

  
Victoria Wigle  
Administrative Assistant to the Director  
Idaho Department of Water Resources

**ATTACHMENT H**

# HOUSE BILL NO. 320

[View Bill Status](#)

[View Bill Text](#)

[View Statement of Purpose / Fiscal Impact](#)

Text to be added within a bill has been marked with Bold and Underline. Text to be removed has been marked with Strikethrough and Italic. How these codes are actually displayed will vary based on the browser software you are using.

**This sentence is marked with bold and underline to show added text.**

~~*This sentence is marked with strikethrough and italic, indicating text to be removed.*~~

## Bill Status

H0320.....by APPROPRIATIONS  
APPROPRIATIONS - WATER MANAGEMENT FUND - Directs the transfer of  
\$849,936.99 to the Water Management Fund and provides intent regarding use  
of the moneys.

03/14 House intro - 1st rdg - to printing

03/15 Rpt prt - to 2nd rdg

03/16 2nd rdg - to 3rd rdg

Rls susp - PASSED - 65-0-5

AYES -- Anderson, Andrus, Barrett, Bell, Bilbao, Black, Block, Bock,  
Boe, Bolz, Brackett, Bradford, Chadderdon, Chavez, Chew, Clark,  
Collins, Crane, Durst, Edmunson, Eskridge, Hagedorn, Hart, Harwood,  
Henbest, Henderson, Jaquet, Killen, King, Kren, LeFavour, Loertscher,  
Luker, Marriott, Mathews, Mortimer, Moyle, Nielsen, Nonini,  
Pasley-Stuart, Patrick, Pence, Raybould, Ring, Ringo, Roberts,  
Ruchti, Rusche, Saylor, Schaefer, Shepherd(2), Shepherd(8), Shirley,  
Shively, Smith(30), Smith(24), Snodgrass, Stevenson, Thayn, Trail,  
Vander Woude, Wills, Wood(27), Wood(35), Mr. Speaker

NAYS -- None

Absent and excused -- Bayer, Bedke, Labrador, Lake, McGeachin

Floor Sponsor - Brackett

Title apvd - to Senate

03/19 Senate intro - 1st rdg - to Fin

03/20 Rpt out - rec d/p - to 2nd rdg

03/21 2nd rdg - to 3rd rdg

03/22 3rd rdg - PASSED - 35-0-0

AYES -- Andreason, Bair, Bastian, Bilyeu, Broadsword, Burkett,  
Cameron, Coiner, Corder, Darrington, Davis, Fulcher, Gannon, Geddes,  
Goedde, Hammond, Heinrich, Hill, Jorgenson, Kelly, Keough, Langhorst,  
Little, Lodge, Malepeai, McGee, McKague, McKenzie, Pearce,  
Richardson, Schroeder, Siddoway, Stegner, Stennett, Werk

NAYS -- None

Absent and excused -- None

Floor Sponsor - Bair

Title apvd - to House

03/22 To enrol - Rpt enrol - Sp signed  
03/23 Pres signed  
03/26 To Governor  
03/30 Governor signed  
Session Law Chapter 303  
Effective: 07/01/07

## Bill Text

]]]] LEGISLATURE OF THE STATE OF IDAHO ]]]]  
Fifty-ninth Legislature First Regular Session - 2007

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 320

BY APPROPRIATIONS COMMITTEE

1 AN ACT  
2 DIRECTING THE STATE CONTROLLER TO TRANSFER MONEYS TO THE WATER MANAGEMENT  
3 FUND.

4 Be It Enacted by the Legislature of the State of Idaho:

5 SECTION 1. On July 2, 2007, or as soon thereafter as possible, the State  
6 Controller shall transfer \$638,000 from the General Fund to the Water Manage-  
7 ment Fund. On July 2, 2007, or as soon thereafter as possible, the State Con-  
8 troller, with the cooperation of the Department of Water Resources, shall  
9 transfer \$211,936.99 from the Department's Miscellaneous Revenue Fund to the  
10 Water Management Fund. It is legislative intent that the Idaho Water Resource  
11 Board use the sum of such moneys for technical studies, facilitation services,  
12 and interim measures as described in the Eastern Snake Comprehensive Manage-  
13 ment Plan Framework.

## Statement of Purpose / Fiscal Impact

### Statement of Purpose

RS17176

This is a trailer appropriation bill to HCR28. HCR28 recommends approval of funding to the Idaho Water Resource Board for technical studies, facilitation services and interim measures as described in the Eastern Snake River Plain Comprehensive Aquifer Management Plan Framework. Costs are estimated at \$400,000 for facilitation services and \$450,000 for seventeen interim measure studies.

## Fiscal Note

This bill transfers \$638,000 from the General Fund and \$212,000 in dedicated funds for a total of \$850,000 to the Water Board's *Water Management Fund* to be used for the purposes stated in HCR28.

The source of the dedicated funds is the remainder of the \$300,000 appropriated, in Section 11 of H843 of 2004, to develop and implement a *long-term aquifer management plan*. That \$300,000 was transferred back from Water District 01 to the Department from encumbered moneys originally appropriated for aquifer recharge in 1995. The other \$88,000 was expended for technical assistance to the Natural Resource Legislative Interim Committee in 2004. That appropriation has expired so that \$212,000 remains.

The Water Management Fund is continuously appropriated to the Water Board pursuant to Section 42-1760, Idaho Code. Appropriations do not lapse. Interest accrues to the General Fund.

Contact: Ray Houston 334-4741  
Legislative Services Office, Budget & Policy Analysis

Statement of Purpose/Fiscal Note

Bill No. **H320**

# SENATE CONCURRENT RESOLUTION NO. 136

View [Bill Status](#)

View [Bill Text](#)

View [Statement of Purpose / Fiscal Impact](#)

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Text to be added within a bill has been marked with Bold and Underline. Text to be removed has been marked with Strikethrough and Italic. How these codes are actually displayed will vary based on the browser software you are using.

**This sentence is marked with bold and underline to show added text.**

~~*This sentence is marked with strikethrough and italic, indicating text to be removed.*~~

## Bill Status

---

SCR136.....by STATE  
AFFAIRS

AQUIFER MANAGEMENT PLAN - Stating findings of the Legislature and requesting the Idaho Water Resource Board to prepare and submit a comprehensive aquifer management plant for the Eastern Snake River Plain

for legislative review and approval.

03/31 Senate intro - 1st rdg - to printing

04/03 Rpt prt - to 10th Ord

Rls susp - ADOPTED - 33-0-2

AYES -- Andreason, Brandt, Broadsword, Bunderson, Burkett, Burtenshaw, Cameron, Coiner, Compton, Corder, Darrington, Davis, Fulcher, Geddes, Goedde, Hill, Jorgenson, Kelly, Keough,

Langhorst,

Little, Lodge, Malepeai, Marley, McGee, McKenzie, Pearce,

Richardson,

Schroeder, Stennett, Sweet, Werk, Williams

NAYS -- None

Absent and excused -- Gannon, Stegner

Floor Sponsor - Davis

Title apvd - to House

04/04 House intro - 1st rdg - to 2nd rdg

04/05 2nd rdg - to 3rd rdg

Rls susp - ADOPTED - voice vote

Floor Sponsor - Raybould

Title apvd - to Senate

04/05 To enrol

04/06 Rpt enrol - Pres signed - Sp signed

04/07 To Secretary of State

## Bill Text



26 Snake River Plain Aquifer for the purpose of conjunctively  
administering all  
27 surface and ground water rights diverting from the  
interconnected sources; and  
28 WHEREAS, the Idaho Legislature provided funding to  
facilitate implementa-  
29 tion of water supply projects through the Idaho Department of  
Commerce and to  
30 ground water users for implementation of the Sandy Pipeline  
Project in 2004;  
31 and  
32 WHEREAS, the Idaho Legislature's Natural Resource Interim  
Committee in  
33 2004 and 2005 sought resolution of the Eastern Snake River Plain  
Aquifer water  
34 supply conflicts and has provided support for voluntary  
mediation between  
35 affected parties; and  
36 WHEREAS, Section 42-1734, Idaho Code, provides authority  
to the Idaho  
37 Water Resource Board to cooperate in water studies, planning and  
research; and  
38 WHEREAS, the Idaho Water Resource Board prepared an  
inventory of data and  
39 information as part of the Board's comprehensive basin planning  
study of the  
40 Eastern Snake River Plain Aquifer and tributary basins entitled  
the "Resource  
41 Inventory Upper Snake River Basin," in 1998, which provides  
information for  
42 the development of a comprehensive aquifer management plan; and  
43 WHEREAS, the state of Idaho has taken initial steps to  
address the Eastern  
44 Snake River Plain water supply conflict through funding and  
development of,

2

1 among other things, a Conservation Reserve Enhancement Program;  
and  
2 WHEREAS, the Idaho Legislature enacted Section 42-620,  
Idaho Code, in  
3 2005, to provide for funding necessary to support and to  
expand the Eastern  
4 Snake River Plain monitoring and data gathering activities  
of the Idaho  
5 Department of Water Resources; and  
6 WHEREAS, certain holders of surface and ground water  
rights have been  
7 engaged in good faith negotiations to develop a potential  
framework for reso-  
8 lution of the Eastern Snake River Plain surface/ground water  
rights conflict;  
9 and  
10 WHEREAS, the Idaho Legislature is determined to facilitate  
and encourage a

11 resolution of the surface/ground water rights conflict that  
12 respects existing  
13 water rights.  
14 NOW, THEREFORE, BE IT RESOLVED by the members of the  
15 Second Regular Ses-  
16 sion of the Fifty-eighth Idaho Legislature, the Senate and the  
17 House of Repre-  
18 sentatives concurring therein, that we request that the Idaho  
19 Water Resource  
20 Board expeditiously pursue, with support from the Idaho  
21 Department of Water  
22 Resources, development of a comprehensive aquifer management  
23 plan for the  
24 Eastern Snake River Plain Aquifer for submission to and  
25 approval by the Idaho  
26 Legislature.  
27 BE IT FURTHER RESOLVED that the Idaho Water Resource Board  
28 receive public  
29 input regarding the development of goals, objectives and  
30 methods for manage-  
31 ment of the Eastern Snake River Plain Aquifer from affected  
water right hold-  
ers, cities and counties, the general public and relevant  
state and federal  
agencies; and  
BE IT FURTHER RESOLVED that the Idaho Water Resource Board  
is requested to  
report to the First Regular Session of the Fifty-ninth Idaho  
Legislature on  
the status of the development of the comprehensive Eastern  
Snake River Plain  
Aquifer management plan. The report should set forth a framework  
for the plan,  
including appropriate interim goals and objectives in  
accordance with state  
law, a method to fund implementation of the plan and a  
time schedule for  
finalization of the plan.

## **Statement of Purpose / Fiscal Impact**

### STATEMENT OF PURPOSE

RS 16310C1

The primary parties who are in dispute over the use of surface and groundwater hydraulically connected to the Snake Plain Aquifer system have been negotiating to settle their differences outside of litigation. These parties are negotiating a framework for that settlement that makes it critical that the State of Idaho Water Resource Board establish public policy with regard to future management of the aquifer system, under state water law. This Senate Concurrent Resolution directs the IWRB to begin that plan of

development under their water planning authority, and to report  
it's progress to the next session of the Idaho Legislature.  
Adoption of the resolution, and direction to the IWRB is critical  
to the continued progress to settle the dispute outside of  
litigation and is in the public interest.

FISCAL NOTE

There is no fiscal impact anticipated beyond FY2007 appropriated  
funds.

Contact

Name: Senator Bart M. Davis  
Phone: 332-1305

STATEMENT OF PURPOSE/FISCAL NOTE

SCR 136

# **ATTACHMENT I**

The following is the Idaho Water Resources Board approved list of Advisory Committee members.

Municipalities/Counties (Two representatives)

Representative

Mayor Lance Clow, Twin Falls

Mayor Jared Fuhriman, Idaho Falls

Alternate

Mayor Charles Correll, Jerome

Mayor Roger Chase, Pocatello

Business (One representative)

Representative

Alex S. LaBeau, IACI President

Alternate

Arie Roeloff, Idaho Dairy Association

Land developers (One representative)

Representative

Rebecca Casper, Ball Ventures

Resource Commission

Alternate

Bob Muffley, Mid-Snake Water

Surface water users (Three representatives)

Representative

Jeff Raybould, Fremont-Madison Irrigation Dist  
Company

Randy Bingham, Burley Irrigation District  
Canal Company

Vince Alberdi, Twin Falls Canal Company  
Company

Alternate

Lloyd Hicks, Burgess Canal

Steve Howser, Aberdeen-Springfield

Albert Lockwood, Northside Canal

Groundwater users (Three representatives)

Representative

Don Parker, water district 110-100

Tim Deeg, water district 120

Dean Stevenson, water district 130-140

Alternate

Scott Clawson, water district 110-100

Craig Evans, water district 120,

Lynn Carlquist, water district 130

Spring water users (One representative)

Representative

Randy MacMillan, Clear Springs Foods, Inc.  
Water Users Assn.

Alternate

Linda Lemmon, Thousand Springs

Hydropower (One representative)

Representative

James Tucker, Idaho Power

Alternate

Dee Reynolds, Fall River Electric

Domestic well owners (One representative)

Representative

George Katseanes, Blackfoot  
Association

Alternate

Roger Buchanan, Idaho Well Drillers

Environmental and Conservation Interests (One representative)

Representative

Kim Goodman, Trout Unlimited

Alternate

Will Whelan, The Nature Conservancy

# **ATTACHMENT J**

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.

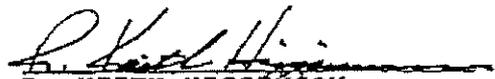
10. This moratorium does not change or supercede any of the

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 30<sup>TH</sup> day of April, 1993.

  
R. KEITH HIGGINSON  
Director

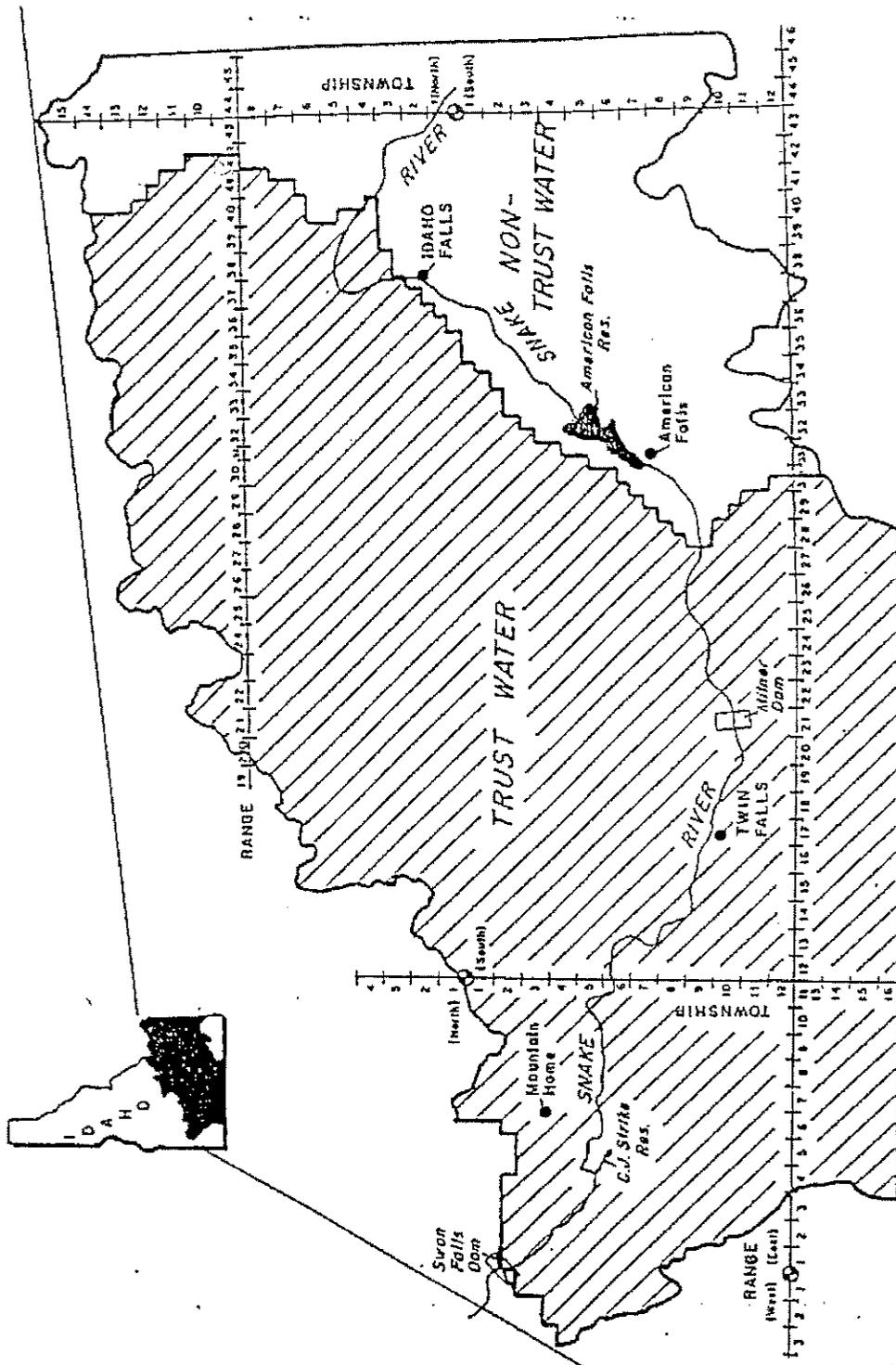


EXHIBIT A

# **ATTACHMENT K**

IDAPA 37 - DEPARTMENT OF WATER RESOURCES  
37.03.13 - WATER USE, MEASUREMENT AND ENFORCEMENT  
DOCKET NO. 37-0313-9501

**NOTICE OF VACATION OF NEGOTIATED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has vacated the Rule-making previously initiated under this docket. The action is authorized pursuant to Section 42-1805(8), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a summary of the reasons for vacating this rule-making:

IDWR started the negotiated rule-making process in December 1995 intending to develop rules which applied to the Eastern Snake Plain Aquifer area. As the process has developed, parts of the rules to be negotiated will apply statewide. Because the scope of the rules being negotiated will be statewide, the original negotiated rule-making is no longer applicable and is being vacated. This rule-making is being replaced by a new negotiated rule-making being published in this Bulletin under Docket No. 37-0313-9701 immediately following this Docket.

The original Docket No. 37-0313-9501 was published in the December 6, 1995, Volume 95-12, Idaho Administrative Bulletin on page 209.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rule-making, contact Norman C. Young at (208) 327-7900.

Dated this 22nd day of October, 1997.

Karl J. Dreher, Director  
Department of Water Resources  
1301 N. Orchard St.  
Boise, ID 83706  
Fax No. (208) 327-7866

IDAPA 37 - DEPARTMENT OF WATER RESOURCES  
37.03.13 - WATER USE, MEASUREMENT AND ENFORCEMENT

DOCKET NO. 37-0313-9701

NOTICE OF NEGOTIATED RULE MAKING

**AUTHORITY:** In compliance with section 67-5220, Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rule-making procedures. This action is authorized pursuant to section 42-1805(8), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the purpose and substance of the negotiated rule making and the principal issues involved:

The Department of Water Resources (IDWR) plans to develop and establish rules to enforce laws prohibiting unauthorized use of water; governing the use of supplemental water rights; and providing standards and procedures for the measurement and reporting of water diversion and use. The rule making is responsive to an agreement which arose from efforts initiated by the A & B Irrigation District seeking conjunctive management of surface and ground water supplies used in the Eastern Snake Plain Aquifer area. IDWR may include rules for the establishment and operation of ground water districts and water measurement districts.

IDWR expects to develop rules through negotiation with and among the parties to the A & B Irrigation District proceedings and others having an interest in participating in rule development.

IDWR started the negotiated rule making process in December 1995 intending to develop rules which applied to the Eastern Snake Plain Aquifer area. As the process has developed, parts of the rules to be negotiated will apply statewide.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the negotiated rule making, contact Norman C. Young at (208) 327-7900.

Anyone may submit written comment regarding this negotiated rule making.

DATED this 22nd day of October, 1997.

Karl J. Dreher, Director  
Department of Water Resources  
1301 N. Orchard St.  
Boise, ID 83706  
Fax No. (208) 327-7866

IDAPA 37 – DEPARTMENT OF WATER RESOURCES

37.03.13 - WATER MANAGEMENT RULES

DOCKET NO. 37-0313-9701

NOTICE OF PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Sections 42-603 and 42-1805(8), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing concerning this rule-making will be held as follows:

October 19, 1998, 1:30 p.m., Lewiston Community Center  
1424 Main Street, Lewiston, Idaho;

October 21, 1998, 1:30 p.m., Idaho Department of Water Resources,  
1301 North Orchard Street, Conference Room A & B, Boise, Idaho;

October 27, 1998, 7:00 p.m. Cavanaugh's on the Falls,  
475 River Parkway, Idaho Falls;

October 29, 1998, 7:00 p.m., College of Southern Idaho,  
Room 108, Aspen Vo-Tec Building, 315 Falls Avenue, Twin Falls, Idaho

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rules are proposed to guide enforcement of laws prohibiting unauthorized uses of water, governing the use of water from surface water sources prior to using water from ground water where rights exist from both sources for the same use, and providing procedures for measuring and reporting diversion and use of water. The proposed rules are intended to apply statewide.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: The rule-making does not propose to impose or increase fees or charges.

**NEGOTIATED RULE-MAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rule-making was conducted. The Notice of Negotiated Rule-making was published in the Idaho Administrative Bulletin No. 97-12, Page 210. The negotiators were not able to reach agreement on all issues. The proposed rules incorporate the proposals as last reviewed by the negotiators concerning the unresolved issues. Public review and comment is particularly solicited on the following rules: 1) Enforcement of Diversion Rate and Volume (Rule 033); 2) Enforcement of the Use of Water Rights from Surface Water Sources Prior to Using Water from Ground Water Sources (Rule 039); and 3) Enforcement Methods - Diversions from Sources of Public Water not within a Water District (Rule 040.02).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OR WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Norman C. Young at (208) 327-7910.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before November 10, 1998.

Dated this 26th day of August, 1998.

Karl J. Dreher  
Director  
Idaho Department of Water Resources  
1301 North Orchard Street  
Boise, ID 83706  
Phone: (208) 327-7910 Fax: (208) 327-7866

IDAPA 37 - DEPARTMENT OF WATER RESOURCES

37.03.13 - THE WATER MANAGEMENT RULES

DOCKET NO. 37-0313-9701

NOTICE OF CONTINUATION OF NEGOTIATED RULEMAKING

**AUTHORITY:** In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency intends to continue its efforts to develop rules through negotiation under this docket. The action is authorized pursuant to Sections 42-603 and 42-1805(8), Idaho Code.

**PUBLIC HEARING SCHEDULE:** The agency intends to provide notice of the date, time and place of the next negotiation meeting to previous participants in this rulemaking docket and to participants in the Basin-Wide Issue 5 Mediation (SRBA Subcase 91-00005) before the Snake River Basin Adjudication District Court.

**DESCRIPTIVE SUMMARY:** The following is a summary of the reasons for this notice:

*The agency published Notice of Negotiated Rulemaking under this docket number in the December 3, 1997, Idaho Administrative Bulletin, Volume No. 97-12, Page 210. Notice of a Proposed Rule and the text of the Proposed Rule were published in the October 7, 1998, Idaho Administrative Bulletin, Volume No. 98-10, pages 411 through 419.*

Rather than adopt the rule as a pending rule in its present form, the agency intends to continue the negotiation with persons interested in the rule making and to address additional potential issues within the scope of the rulemaking. The agency intends to incorporate in the rule a description of how the rule relates to other existing and proposed rules governing water administration, including the conjunctive management of surface and ground water.

The purpose and substance of the rule making, as previously published in the first Notice of Negotiated Rulemaking, is to establish rules of statewide application to enforce laws prohibiting unauthorized use of water; governing the use of supplemental water rights; and providing standards and procedures for the measurement and reporting of water diversion and use. The rule making is responsive to an agreement that arose from efforts initiated by the A&B Irrigation District seeking conjunctive management of surface and ground water supplies used in the Eastern Snake Plain Aquifer area. The notice stated the rule might address the formation and operation of ground water districts and water measurement districts.

**ASSISTANCE ON TECHNICAL QUESTIONS:** The agency intends to provide notice of the date, time and place of the next negotiation meeting to previous participants in this rule making docket and to participants in the Basin-Wide Issue 5 Mediation (SRBA Subcase 91-00005) before the Snake River Basin Adjudication District Court.

Other persons interested in participating in the negotiated rulemaking should notify the agency of their interest. For assistance on technical questions concerning this notice, contact Norman C. Young at (208) 327-7910.

DATED this 25th day of September, 2000.

Karl J. Dreher, Director  
Department of Water Resources  
1301 N. Orchard St.  
Boise, ID 83706  
Phone: (208) 327-7910  
Facsimile: (208) 327-7866

ROGER D. LING  
BRENT T. ROBINSON

JASON D. WALKER  
TIMOTHY J. SCHNEIDER  
ASSOCIATES

LING & ROBINSON  
ATTORNEYS AT LAW  
615 'H' STREET  
P. O. BOX 396  
RUPERT, IDAHO 83350-0396

AREA CODE 208  
TELEPHONE 436-4717  
FAX 436-6804

RECEIVED

October 30, 2001

OCT 31 2001

Department of Water Resources

Norman C. Young, Administrator  
Water Management Division  
Department of Water Resources  
P. O. Box 83720  
Boise, ID 83720-0098

RE: Draft Statewide Water Management Rules of July 10, 2001

Dear Norm:

Pursuant to the Notice of the Director of IDWR dated August 24, 2001, I am hereby submitting my comments for your consideration in regard to the Draft State Water Management Rules above referred to. For ease of comparing my comments with the Draft Rules themselves, I will attempt to make my comments to specific proposed rules.

**RULE 0 - LEGAL AUTHORITY.** In attempting to identify the statutory authority of the Department to control the appropriation and use of surface and ground waters within the State of Idaho, you have either intentionally or inadvertently omitted statutes which are part of the laws of the State of Idaho which control the appropriation and use of surface and ground waters, whether or not such statutes are viewed as favorable to the Department. You should include Sections 42-227 and 42-228, Idaho Code. It is also suggested that the appropriation and use of surface and ground waters is also controlled by the Constitution of the State of Idaho and case law, including the prior appropriation doctrine as noted in Section 42-601, Idaho Code. Finally the rules should apply only to surface and ground waters of the state, not within the state.

**RULE 1 - TITLE AND SCOPE.** No comment.

**RULE 2 - WRITTEN INTERPRETATIONS.** No comment.

**RULE 3 - ADMINISTRATIVE APPEALS.** No comment.

**RULE 4 - IDAHO LAW AND PRIOR APPROPRIATION DOCTRINE.** This rule should be incorporated into Rule 0.

**RULE 5 - OTHER AUTHORITIES REMAIN APPLICABLE.** No comment.

**RULE 10 - DEFINITIONS.**

**01. Beneficial Use Claim.** It is unclear as to the need for a reference to Section 42-1409(2), Idaho Code, as this refers only to an amendment of a notice of claim, whereas the entire Section 42-1409 deals with the filing of a notice of claim in an adjudication proceeding.

**02. Conjunctive Administration.** I would suggest that this definition be expanded. Conjunctive administration occurs when there are separate surface water rights that are hydraulically connected and separate ground water sources that are hydraulically connected, as well as hydraulically connected surface and ground water sources. It is difficult to identify all of the factors which must be considered in administering connected water sources. It does not seem to be appropriate to attempt to identify these factors in the definition.

**03. Critical Ground Water Area.** It seems that a reference to the statute would be sufficient. This would allow the rule to automatically change should the statute be changed.

**04. Department.** No comment.

**05. Director.** No comment.

**06. Diversion Rate.** No comment.

**07. Domestic.** No comment.

**08. Elements.** It seems that this definition should follow Section 42-1411, Idaho Code. The quantity of water can be defined as the rate of diversion, the rate of flow instream, or the annual volume of diversion. The "extent of use" is unclear and should be deleted. There should be added, "other Matters as are necessary for definition of the right or for clarification of any element of the right."

**09. Exchange.** It seems that "rotation" is a form of "exchange" and should be so noted in this definition.

**10. Expansion.** No comment.

**11. Ground Water.** Although the definition is consistent with Section 42-230(a), Idaho Code, does this mean that if one desires to build a drain to capture ground water to improve the utility of his land, it cannot be rediverted and used unless there is an appropriation under Section 42-229, Idaho Code?

**12. Ground Water Management Area.** I would again suggest that reference to the statute would be the appropriate definition, so that if the statute is changed, the definition automatically changes.

**13. Hydraulically Connected Ground Water and Surface Water.** This definition is incomplete and, to some extent, inaccurate. Changes in water levels within the ground water source may affect the flow of the ground water to the surface water source, but does not necessarily change the flow of water from the surface water source to the ground water source. Such waters would still be interconnected.

**14. Idaho Law.** No comment.

**15. Injury.** Rather than describe when an injury occurs, injury should be defined as a diminishment in the amount of water that otherwise would have been physically and legally available under a senior water right as the result of the acts of a third party, including but not limited to junior appropriators. There is no reason to discuss waste. If unlawful waste is occurring, the water being illegally wasted is not legally available.

**16. In-Kind Mitigation.** It is immaterial as to who provides in-kind mitigation. In-kind mitigation should merely be defined as: "Replacement water provided to or for the benefit of the holder of a senior priority water right which prevents injury to the senior priority water right holder."

**17. Mitigation.** No comment.

**18. Mitigation Plan.** A mitigation plan should not be merely a document that identifies actions to provide mitigation, but must be a plan in writing that provides the method by which mitigation for the injury to a senior priority water right by the acts of a third party, including diversions by a junior priority water right holder, will be provided. It is doubtful that the Director has the authority to approve such a plan unless it is mutually agreeable or is "in-kind mitigation."

**19. Person.** No comment.

**20. Power Consumption Coefficient (PCC).** No comment.

**21. Presumptive Depletion.** If the rules are to provide authority to the Director to make a finding of "depletion," it must be based on something other than "available information." There must be some standard of proof, the minimum of which would be a "preponderance of the evidence."

**22. Presumptive Injury.** Again, the definition must include some standard of proof. In view of the definition of "injury," a "presumptive injury" would be established when the preponderance of evidence shows that the amount of water which would have been physically or legally available under the senior water right was diminished by the diversion of a junior priority water right holder.

**23. Reasonable Pumping Lift.** This definition does not address the concerns that the Director should address in the enforcement of Section 42-226, Idaho Code. A "reasonable ground water pumping level or levels" may consist of numerous factors, only one of which would be the lift. Even if the lift is reasonable, economically, it may not provide the water that was available prior to the lowering of the ground water table. Therefore the term being defined should be the "reasonable ground water pumping levels."

**24. Response Zone.** Again, the standard should be something more than "available information." Available information may consist of nothing more than hearsay. If nothing more, the standard should be the "best evidence available."

**25. Rotation Agreement.** No comment.

**26. Stockwater.** No comment.

**27. Surface Water.** Reference to Section 42-103, Idaho Code, should be deleted, as this section of the Code provides no definition whatsoever of "surface water."

**28. Unauthorized Use.** The "elements" of a water right include the terms or conditions included in the right, and it is redundant to again refer to the terms or conditions of a valid water right.

**29. Waste.** No comment.

**30. Water District.** Is a water district an "instrumentality of the State" or is it a political subdivision with established boundaries, established by the Director for the purpose of performing the essential government function of distribution, under state law, of the state's water among appropriators within that district? (It is the distribution that occurs under state law, not the appropriation, such as federal reserved water rights.)

**31. Water Management.** It appears that the "prior appropriation doctrine" and the "economic development of the water resources of the state" may be inconsistent. It seems that the

control and regulation of the rights to use of the surface and ground water resources of the state should be provided to obtain full economic development of the water resources of the state, within the principles of the "prior appropriation doctrine."

32. **Watermaster.** No comment.

33. **Water Measurement District.** No comment.

34. **Water Measurement Guidelines.** No comment.

35. **Water Right.** I would change the words "a right based upon federal law" to "a water right reserved under federal law."

36. **Waters of the State or Public Water.** Should be defined as surface or ground water, as herein defined, that has not been appropriated and diverted and retained in private ownership.

#### **RULE 20 - PRINCIPLES FOR WATER MANAGEMENT**

01. **Authorized Uses.** No comment.

02. **Unauthorized Use.** No comment.

03. **Regulation of Diversions.** No comment.

04. **Ground Water Management.** No comment.

05. **Surface Water Management.** No comment.

06. **Use of Surface Water First.** No comment.

07. **Reuse and Drainage of Water.** The second sentence of this proposed rule is contrary to the laws of the State of Idaho and should not be adopted in its present form, as there is no legal authority for such a rule. There is no legal basis by which the reuse of drain or waste water (ground water) diverted for drainage must be returned to a source of public water. (Under the definitions provided, ground water is water under the surface.) If the water diverted for drainage is used by the original diverter, it is being returned, in part, to a source of public water, i.e., ground water. In any event, if the water drained is from the irrigation of the land, it is not public water, but private water and a part of the water originally diverted for the irrigation of the land. Under this provision, any water diverted and applied to beneficial use such as irrigation becomes public water once it is applied to the land and sinks into the ground, whether or not it sinks in one inch, one foot, or 300 feet. This is not the law. This section is

also inconsistent with section 42-228, Idaho Code. It is clear under this Idaho law that when water is diverted for drainage purposes to improve or preserve the utility of the land, such water may be used on the project which brought the foreign water to the lands that resulted in a need for drainage. It is also impossible to meet the provisions of this rule, even if it were lawful, as in some instances, the water diverted from a drain cannot be returned to a public water source without application to beneficial use. Evidence exists that establishes that in some instances the application of drain water for irrigation is the best means by which the water can be returned to the source of public water, especially where the original water applied to the land is ground water, and there is no natural drainage to any other public water other than the ground water from which it was diverted.

**08. Establishment and use of Response Zones.** No comment.

**09. Establishment and Use of Presumptive Depletions.** It is difficult to understand how a depletion by a junior appropriator, whether actual or presumptive, would not establish "injury" to a senior appropriator who is thus denied the right to divert the depleted portion of the water source. On the other hand, if the depletion in the surface water source caused by the diversion and use of hydraulically connected ground water does not cause injury, why would there be a need to determine a "presumptive depletion"? In the same vein, a presumptive depletion should not be established where the diversion and use of the connected ground water is based upon a senior right.

**10. Establishment and Use of Presumptive Injury.** It is impossible to understand how the Director or any other person could establish a "presumption of injury" resulting from the diversion and use of surface or ground water under a junior priority water right by looking at only stream flow measurements or measurements of ground water levels. It would be the cause of any reduced stream flow or ground water level that would presume injury by a junior diverter. It is also impossible to understand how the amount of stored water controlled by the holder of a senior priority water right can relate to injury. Stored water has a value, whether or not it is required for use in that particular year, and the reliance upon storage when not otherwise required constitutes injury. It is also unlawful for the Director to establish a presumptive injury by rulemaking, rather than through a due process hearing if sufficient evidence is not otherwise available. Under the presumptive depletion and presumptive injury proposed rules, would a watermaster be prohibited from administering the distribution of water under a priority system if the Director has not made a presumptive depletion or presumptive injury rule? It is also clear that the

Director has no authority to alter an established water right through his rulemaking authority by reviewing consumptive irrigation and field headgate requirements, actual diversions and other sources of water to establish injury.

11. **Notice.** No comment.

12. **Challenge to Response Zones and Rebuttal of Presumptions.** No comment.

13. **Use of Mitigation.** No comment.

14. **Primary Enforcement Through Water Districts.** No comment.

**RULE 21 - AUTHORIZED AND UNAUTHORIZED DIVERSION AND USE OF WATER**

01. **Use in Accordance with a Water Right.** This rule could be substantially simplified if it referred to the diversion and use of waters of the State.

02. **Other Authorized Uses.** The Director has no authority to eliminate the right of recapture for reuse provided by Section 42-228, Idaho Code, by referring to only Rule 20.07, which fails to address the full import of Section 42-228, I.C. The rule should recognize that certain ground water is not waters of the State of Idaho, where it is recaptured by the diverter of the water within a project and the water recaptured from the ground is clearly water from project diversions.

03. **Unauthorized Diversion and Use of Water.** No comment.

**RULE 22 - ROTATION AGREEMENTS.** No comment.

**RULE 23 - WATER QUALITY REMEDIATION AND RESEARCH PROJECTS.** No comment.

**RULE 24 - DIVERSION OF WATER DURING FLOODING** No comment.

**RULE 25 - ENFORCEMENT OF THE USE OF WATER RIGHTS FROM SURFACE WATER SOURCES PRIOR TO USING WATER FROM GROUND WATER SOURCES.** No comment.

**RULE 30 - ENFORCEMENT MECHANISMS** No comment.

**RULE 40 - CREATION, MODIFICATION, AND OPERATION OF WATER DISTRICTS**

01. **Separate Districts.** No comment.

**02. Operation of Water Districts.**

a. This provision is contrary to state law. A watermaster is elected by the waterusers of the district, who is authorized to employ such other regular assistants as the waterusers shall deem necessary under Section 42-605(3), Idaho Code. If that elected watermaster is appointed by the Director, the watermaster shall be responsible for distribution of water within said water district. If the watermaster is not appointed by the Director, it would appear that the watermaster elected would not be responsible for distribution of water within the water district. If the watermaster is not elected or his compensation is not fixed at the annual meeting of the waterusers, then, the Director is authorized to appoint a watermaster and fix the watermaster's compensation. I can find no provision in the law which allows the Director to set a budget or collect assessments.

b. I can find no authority by which the bylaws of the water district are subject to the approval by the Director.

**RULE 41 - GENERAL DUTIES OF WATER DISTRICT WATERMASTERS.** No comment.

**RULE 42 - ENFORCEMENT DUTIES OF WATER DISTRICT WATERMASTERS.** No comment.

**RULE 43 - DIVERSION RATE FROM GROUND WATER SOURCES.** No comment.

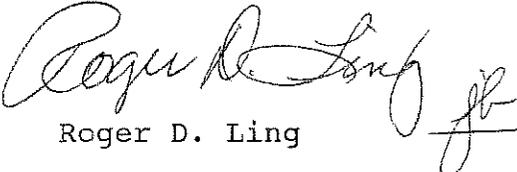
**RULE 80 - MEASUREMENT AND ENFORCEMENT OF WATER RIGHTS NOT IN A WATER DISTRICT.** No comment.

**RULE 90 - MEASUREMENT AND REPORTING OF WATER DIVERSION AND USE.** No comment.

**RULE 91 - MEASUREMENT AND REPORTING OF GROUND WATER LEVELS.** No comment.

**RULE 100 - MANAGEMENT OF WATER USES IN CRITICAL GROUND WATER AREAS AND GROUND WATER MANAGEMENT AREAS.** No comment.

Very truly yours,



Roger D. Ling

SIGNED IN THE ABSENCE OF  
MR. LING TO AVOID DELAY

# **ATTACHMENT L**

ROGER D. LING  
ROBERT M. NIELSEN  
BRENT T. ROBINSON  
BRENT C. TINGEY

LING, NIELSEN & ROBINSON

ATTORNEYS AT LAW  
615 "H" STREET  
P. O. BOX 396  
RUPERT, IDAHO 83350

AREA CODE 208  
TELEPHONE 436-4717  
FAX 436-6804

RECEIVED

OCT 25 1993

Department of Water Resources

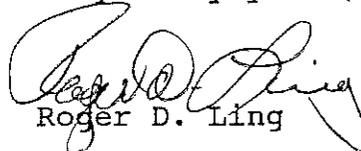
October 22, 1993

R. Keith Higginson  
Idaho Department of Water Resources  
1301 North Orchard Street  
Statehouse Mail  
Boise, ID 83720

Dear Mr. Higginson:

Please find enclosed my comments on proposed Conjunctive Water Management Rules and Regulations. I would hope that my comments may be of some benefit to the Department in proposing rules and regulations for the conjunctive water management of ground water and surface water. It is obvious that this is a monumental task that will affect the future uses of the water resources of this state in a manner that has not been previously experienced in this state. The long term effects of such rules may be the most significant development in water appropriation in the State of Idaho since statehood. If you or the Department require further explanations of my comments, I would certainly be glad to provide them to you.

Very truly yours,

  
Roger D. Ling

RDL:slg

## LING, NIELSEN &amp; ROBINSON

ROGER D. LING  
ROBERT M. NIELSEN  
BRENT T. ROBINSON  
BRENT C. TINCEY

ATTORNEYS AT LAW  
815 "H" STREET  
P. O. BOX 306  
RUPERT, IDAHO 83350

AREA CODE 208  
TELEPHONE 438-4717  
FAX 438-8804

**Date:** March 21, 1994

**From:** Roger D. Ling, Attorney for A & B Irrigation  
District, Falls Irrigation District, Burley  
Irrigation District, Aberdeen-Springfield  
Canal Company and North Snake Pumpers Assoc.

**To:** R. Keith Higginson, Director, Idaho Department of  
Water Resources

**Subject:** Rules for Conjunctive Management of Surface and  
Ground Water (Draft--February 7, 1994)

COMMENTS

## 010. DEFINITIONS (Rule 10)

07. Valid Water Right. This definition is a misstatement of the law. A constitutional appropriation of water is a valid water right. If it is the purpose of the rule to deny a constitutionally created water right holder the right to make a delivery call, the definition should define a callable water right, not a valid water right. On the other hand, once a constitutional claim to a water right has been made and is included in a Director's Report for which an interim order of administration has been entered, such right should be entitled to a delivery call. This definition would also seem to be inconsistent with the definition of material injury under sub-paragraph 16 of Rule 10.

08. Area of Common Ground Water Supply. This definition is too narrow, in that it identifies an area of common ground water supply only as it relates to surface water sources. A preferred definition would read: "A ground water source within which the use of ground water or changes in recharge appreciably affects, alone or cumulative with other uses, water in a surface water source or ground water source."

11. Reasonably Anticipated Average Rate of Future Natural Recharge. For clarification, this definition should recognize that the average annual natural discharge from a ground water source or area of common ground water supply, if appropriated, must be considered.

16. Material Injury. This definition must be expanded to address material injury of a pre 1951 ground water right and the

injury that may occur as a result of the use of water under a junior-priority water right. Sub-part (c) of this definition should be deleted, as water quality is not a part of a water right, and should not be protected under these rules. The Director of the Idaho Department of Water Resources has no authority to protect water quality under these rules. It is inconceivable that a use of water under a junior-priority water right would change the quality of water available to the holder of the senior-priority right, unless one considers the dilution of pollution a right. Such matters are better determined under minimum stream flow criteria.

020. GENERAL STATEMENTS OF PURPOSE AND POLICIES FOR CONJUNCTIVE MANAGEMENT (Rule 20).

04. Calls for priority delivery. The last sentence of this sub-paragraph of Rule 20 should be amended to include the word "appreciable" before the word "effect," and should include words that establish that ground water use may have some appreciable effect upon water available to a senior surface water user or ground water user in instances where the hydrologic connection may be remote, the resources large and no direct immediate relief would be achieved even if the ground water use was discontinued.

Additional provisions -- general statements of purpose and policies for conjunctive management should have included rules with the stated purpose of proceeding under Section 42-233b, Idaho Code, and the exercise of powers of the Director under Section 42-237a, Idaho Code. It is suggested that management of a ground water area, including an area of common ground water supplies, may be more effective under these sections than under the rules being adopted.

030. RESPONSES TO CALLS FOR WATER DELIVERY BY SENIOR-PRIORITY WATER RIGHTS AGAINST JUNIOR-PRIORITY GROUND WATER RIGHTS WITHIN AREAS NOT IN ORGANIZED WATER DISTRICTS (Rule 30).

05. Petition for Creation of a New Water District. It is suggested that as an alternative to the creation of a new water district, the rules should provide for consideration of a delivery call petition to be treated as a petition for the creation of a ground water management area under Section 42-233b, Idaho Code.

06. Order. It should be added to this sub-rule the authority of the Director to designate an area of common ground water supply as a ground water management area as provided by Section 42-233b, Idaho Code. The order should also provide a provision whereby the Director may determine an area of common ground water supply which appreciably effects the water supply in that ground water source. In addition, sub-paragraph (c) of paragraph 06 should be amended to read "appreciably effects" the water....

031. DETERMINING AREAS OF COMMON GROUND WATER SUPPLY (Rule 31). - It is recommended that a common ground water supply should not be limited to those areas which affect the flow of water in the surface water source.

03. Criteria for Findings. This should be expanded providing an additional sub-paragraph (c), to read as follows:

"c. the ground water source is interconnected and withdrawal of water from one part of the ground water source will appreciably affect the ground water in another part of the ground water source."

There is little basis to include a confined ground water source into a larger common ground water source, even if both sources may appreciably affect the same surface water source. This is especially true if the Director desires to accomplish management of a ground water source alone, under these rules.

040. RESPONSES TO CALLS FOR WATER DELIVERY -- IN AN ORGANIZED WATER DISTRICT (Rule 40).

02. Regulation of Uses of Water by Watermaster.

c. This paragraph must be amended, as it provides for management between a surface water user and ground water user, and provides no management between ground water users when a call is made. It also fails to address the issue of mitigation plans when there has been a call by a senior ground water user who is suffering material injury.

03. Reasonable Exercise of Rights. The word "injury" must be changed to "material injury."

04. Determining Injury....

g. This must be expanded to address mitigation plans between senior-priority ground water rights and junior-priority ground water rights.

050. AREAS DETERMINED TO HAVE A COMMON GROUND WATER SUPPLY WHICH AFFECTS THE FLOW OF WATER IN A SURFACE WATER SOURCE (Rule 50).

Although the Eastern Snake Plain Aquifer may be an interconnected aquifer, and therefore a common ground water supply as to withdrawals or diversions from the aquifer, it is clear that this common ground water supply is not a common ground water supply to all stretches of the Snake River upstream of the USGS gaging station at King Hill, Idaho. It is therefore inappropriate at this time to determine whether or not the Eastern Snake Plain Aquifer

should be included into a single water district or incorporated into an existing or expanded water district. Upon further studies being completed, it may be apparent that portions of the Eastern Snake Plain Aquifer may be a common ground water supply with portions of the Snake River and other portions of the Eastern Snake Plain Aquifer may have a common ground water supply with other portions of the Snake River, and that the ground water supply is not in all instances interconnected. However, it is also recognized that the rule can be changed should further information so indicate.

ROGER D. LING  
BRENT T. ROBINSON

JASON D. WALKER  
TIMOTHY J. SCHNEIDER  
ASSOCIATES

LING & ROBINSON  
ATTORNEYS AT LAW  
615 "H" STREET  
P. O. BOX 396  
RUPERT, IDAHO 83350-0396

AREA CODE 208  
TELEPHONE 436-4717  
FAX 436-6804

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AUG 22 2001

Department of Water Resources

August 20, 2001

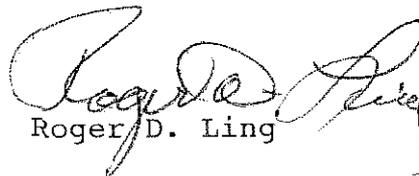
Karl J. Dreher, Director  
Idaho Department of Water Resources  
1301 North Orchard Street  
Statehouse Mail  
Boise, ID 83720

RE: American Falls Ground Water Management Area

Dear Director Dreher:

Enclosed please find the Petitions of Falls Irrigation District and A & B Irrigation District relating to your Order designating the American Falls Ground Water Management Area.

Very truly yours,

  
Roger D. Ling

RDL/jb

enclosures

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTERS OF DESIGNATING THE )  
AMERICAN FALLS GROUND WATER )  
MANAGEMENT AREA AND THE )  
THOUSAND SPRINGS GROUND WATER )  
MANAGEMENT AREA )  
\_\_\_\_\_ )

**ORDER STAYING  
PROCEEDINGS**

On August 3, 2001, the Director of the Idaho Department of Water Resources ("Director") issued separate orders establishing the American Falls Ground Water Management Area ("American Falls GWMA") and the Thousand Springs Ground Water Management Area ("Thousand Springs GWMA") pursuant to Idaho Code § 42-233b. The Director designated the two ground water management areas due to the depletionary effects of ground water withdrawals under junior priority water rights on the already inadequate water supplies expected to be available for senior priority water rights from connected surface water sources because of the severe drought conditions being experienced across the Snake River Plain. Notice of the establishment of the two ground water management areas was published for two weeks in newspapers of general circulation in the affected areas.

In response to requests for hearing, the Director on August 12, 2001, set the two GWMA designations for hearing on September 24, 25, 26, and 27, 2001, at the Department's main office in Boise. The following entities have entered appearances or moved to intervene in one or both of the proceedings: Idaho Ground Water Appropriators, Inc.; Jerome Cheese Company; Milk Producers of Idaho, Inc.; Unit Three Water Users Association; Aberdeen-American Falls Ground Water District; and Bingham Ground Water District (all through the law firm of Givens Pursley LLP); Aberdeen-Springfield Canal Company; A & B Irrigation District; and Falls Irrigation District (all through the law firm of Ling and Robinson); Basic American Foods; Lamb-Weston; North Snake Ground Water District; J. R. Simplot Company; and the City of Pocatello (all through the law firm of Beeman & Associates, P.C.); Idaho Dairymen's Association through the law firm of Moffatt Thomas Barrett Rock & Fields; and Western Legends LC through its co-manager, Michael McCarthy (petition to intervene in Thousand Springs only).

Upon designation of a GWMA, Idaho Code § 42-233b authorizes the curtailment of water rights on a time priority basis within an area determined by the Director, provided the order of curtailment is issued prior to September 1 for the following irrigation season. On August 31, 2001, the Director announced that because of agreements in principle reached between holders of junior priority ground water rights and holders of senior priority surface water rights, no curtailment orders would be issued for the American Falls GWMA or the Thousand Springs GWMA, provided the agreements in principle are followed by detailed written agreements that provide for increases in surface water supplies similar to those that the Department sought to achieve through designation of the ground water management areas and curtailment of ground water diversions under certain junior priority water rights. Because of

these agreements, the Director has determined to stay further action in these proceedings challenging the designation of the ground water management areas until the designations are withdrawn or the parties to the agreements in principle and subsequent written agreements fail to implement their commitments.

**ORDER**

IT IS THEREFORE ORDERED that the entities identified above who have filed petitions contesting the American Falls or Thousand Springs Ground Water Management Area designations, or who have filed notices of appearance or petitions to intervene in one or both of the proceedings are hereby recognized as full parties through timely appearance or intervention in the respective proceedings.

IT IS FURTHER ORDERED that the hearing presently set in these proceedings to commence on September 24, 2001, is hereby vacated, and all matters associated with the proceedings shall be stayed until further order of the Director. The existing rights of the parties to raise issues regarding these matters shall not be diminished by the issuance of this order.

IT IS FURTHER ORDERED that pursuant to Department Rule of Procedure 710, IDAPA 37.01.01710, this is an interlocutory order that does not decide substantive issues presented in the proceedings and is not subject to review by reconsideration or appeal. The Director may review this interlocutory order pursuant to Rule 711, IDAPA 37.01.01711.

DATED this 14<sup>th</sup> day of September 2001.

  
\_\_\_\_\_  
KARL J. DREHER  
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14<sup>th</sup> day of September 2001, I caused a true and correct copy of the foregoing Order Staying Proceedings to be sent by U.S. Mail, postage paid to the following:

Jeffrey C. Fereday, Esq.  
Michael C. Creamer, Esq.  
John M. Marshall, Esq.  
Givens, Pursley, LLP  
277 N. 6th Street, Suite 200  
P.O. Box 2720  
Boise, ID 83701-2720

John A. Rosholt, Esq.  
Barker Rosholt & Simpson LLP  
142 3rd Avenue North  
P.O. Box 1906  
Twin Falls, ID 83303-1906

John K. Simpson  
Barker Rosholt & Simpson LLP  
1221 W. Idaho Street, Suite 600  
P.O. Box 2139  
Boise, ID 83701-2139

Scott L. Campbell, Esq.  
Moffatt Thomas  
101 S. Capitol Boulevard, 10th Floor  
P.O. Box 829  
Boise, ID 83701-0829

Josephine P. Beeman  
Beeman & Associates, P.C.  
409 W. Jefferson Street  
Boise, ID 83702

Roger D. Ling  
Ling & Robinson  
615 "H" Street  
P.O. Box 396  
Rupert, ID 83350-0396

Michael J. McCarthy  
Co-Manager  
Western Legends LC  
P.O. Box 5656  
Twin Falls, ID 83303

Ronald D. Carlson, Manager  
Department of Water Resources  
Eastern Regional Office  
900 North Skyline Drive  
Idaho Falls, ID 83402-6105

Allen D. Merritt, Manager  
Department of Water Resources  
Southern Regional Office  
1341 Fillmore Street, Suite 20  
Twin Falls, ID 83301

*Lisa A. Hall*

---

Lisa A. Hall  
Administrative Assistant  
Director's Office

Minutes of the Water District 130 Annual Meeting  
Tuesday, February 7, 2006  
Fish and Game Regional Office  
Jerome, Idaho

Chairman Rex Minchey opened the meeting at 2:05 p.m. and introduced members of the Water District 130 advisory committee that were present at the meeting.

The first order of business was the election of the Water District 130 Chairman. Rex opened nominations for Water District 130 meeting Chairman. **Dean Stevenson nominated Rex Minchey, Chairman. Seconded by Dan Temple.** With no further nominations before the group, Minchey was elected chairman on a voice vote.

The next order of business was the election of Water District 130 Secretary, **Dean Stevenson nominated Lynn Tominaga, who had previously served as secretary. Seconded by Rodney Bolich.** With no further nominations before the group, Tominaga was elected Secretary on a voice vote.

Tominaga read the minutes of the February 1, 2005 Water District annual meeting. (See attached minutes). **Phyllis Beard moved to accept last year minutes as read. Seconded by Dean Stevenson. Passed voice vote.**

Rex introduced Idaho Department of Water Resources staff: Cindy Yenter (Watermaster), Tim Luke (IDWR, Boise), Corbin Knowles (Deputy Watermaster), and Troy Winward (IDWR, Engineer, Twin Falls).

**Sub district reports:**

Rodney Bolich, North Snake Groundwater District had no report.

Dean Stevenson, Magic Valley Groundwater District had no report.

Larry Cope, Surface Water Users had no report.

Dan Temple, A& BD Irrigation District, said that as a result of another estimated 2.5 ft. of decline in aquifer, the district spent money to deepen wells to meet pumping demands.

**Watermaster Report**

Cindy Yenter presented the 2005 Watermaster report covering the following topics:

**2005 Summary of Activities**

- Surface Water Distribution
- Ground Water Distribution
- Mitigation Plans

### **WD 130 Report Statistics**

1800 reporting diversions

Four active reporting subdistricts

- *North Snake Ground Water District*
- *Magic Valley Ground Water District*
- *A&B Irrigation District*
- *City of Rupert*

2,651,585 acre-feet average annual diversions (2000-2004)

- *709,000 AF to consumptive uses*
- *1.94 million AF to nonconsumptive uses*

### **Surface Water Distribution**

- *Alpheus Creek/Blue Lakes*  
*Early regulation; restoration of curtailed rights occurred slightly earlier in fall 2005*
- *Niagara Springs*  
*Below base flows most of the summer but flows were up by October*
- *Clear Lakes*  
*Regulation resumed in March 2005 at the shared diversion; flows are still low but stable this winter*

### **Ground Water Distribution**

Three water calls in spring 2005 affected ground water users in WD130:

- *Surface Water Coalition, January 14, 2005*
- *Blue Lakes Trout, March 22, 2005*
- *Clear Springs Foods, May 2, 2005*

IDWR Orders in response to the calls required curtailment of ground water unless mitigation plans were approved

### **Mitigation Plans**

Mitigation Plans proposed actions taken *in lieu of curtailment* during 2005 and beyond:

- *For surface water coalition call, plan involved the purchase of water in the upper Snake River system*
- *For BLT and CSF calls in the thousand springs reaches, plan involved voluntary reductions in gw irrigated acres, plus conversion of acres to surface water irrigation, and the delivery of rental water in the NSCC system*

### **Pending Changes for Water District 130**

- Corbin Knowles is relocating to Boise and will no longer serve as deputy, but will provide technical assistance from Water Distribution Section
- New Ground Water District proposed for the Carey Valley
- Proposed expansion of WD130 to include surface water rights in B37. Diversions are located mostly in the River Road area south of Bliss

### **Goals for 2006**

- Continue to increase accuracy of measurement and reporting
  - Required data logger installations will begin this year*
  - Some flow meter replacement/relocation required*
  - Re-evaluate measurement options for irrigation wells - pcc method may no longer be valid for some systems (particularly conversion systems)*
- Create a comprehensive evaluation of water use analysis for all diversions
- Increase field presence and compliance activity
- Complete review and verification of 2006 mitigation plans by July 1
- Increase number of measurement audits conducted
- Eliminate the measurement backlogs
  - NSG*
  - Non-subdistrict diversions*

### **2006 Proposed Budget Presentation**

#### **Recommendations for 2006:**

- Watermaster should continue to be funded at 100%
- Part-time / seasonal Watermaster Assistant dedicated to measurement and reporting
- Retention of clerical position
- Carry-over of 2005 savings to 2006

#### **Budget categories:**

- *Administrative Costs – applicable to all users*
- *Measurement/Reporting Costs – applicable to only those water users not reporting to a subdistrict*

#### **2006 Budget Highlights**

- *Increase in salary and insurance costs*
- *Increases in both budget categories will be offset by carryover money*

## Water District 130 2006 Assessments

- Administrative costs will be split in the following manner:
  - 50% to consumptive uses*
  - 50% to non-consumptive uses*For each reported diversion, an average of actual diversions during 2000-2004 will be used to calculate a pro-rata charge of administrative costs
- By resolution, water users with pro-rata charges totaling less than \$25, will be charged at the minimum rate of \$25.
- Water users reporting directly to WD130 will also be billed for measurement and reporting. The 2006 charge is anticipated to be approximately \$50 per device.
- Subdistricts will receive an aggregate billing containing all pro-rata administrative charges for their reporting members or diversions – minimums will not apply
- Non-reporter administrative charges will continue to be billed directly by WD130 at the minimum rate of \$25.
- Any water user reporting to a subdistrict *will not* receive a separate assessment.
- Water users not reporting to subdistricts will be assessed directly by WD130.

Cindy and members of the advisory committee raised an issue about the necessity of having changes to resolutions 30 days prior to the annual meeting and posted on the internet. Members of the advisory committee didn't believe there was a need to have the 30 day period because most of the changes were only minor and it placed a burden on the watermaster.

**Dean Stevenson moved to change "30 days prior to" to "5 days prior to".  
Seconded by Dan Temple. Passed on voice vote.**

**Dan Temple moved to add the word "present" on line 23b. Seconded by Dean Stevenson. Passed on voice vote.**

**Dean Stevenson moved to adopt all the resolutions as amended. Seconded by Phyllis Beard. Passed on voice vote.**

Rex Minchey recessed the meeting at 3:10 p.m. to allow for subdistrict caucus.

Rex reconvened the water district meeting at 3:20 p.m.

The slate of members for the advisory committee is as follows:

NSG Lynn Carlquist, Rodney Bolich (alt)  
MVG Dean Stevenson, Orlo Maughan (alt)  
A&B Dan Temple, Dan Schaeffer (alt)  
B37 Dick Elliot, Rich Dinges (alt)  
C/I Rex Minchey, Phyllis Beard  
Dave Moore, Karen Cummings, or City Representative (alts)  
SW Larry Cope, Gary Lemmon, Dwayne Knigge, Jon Bowling  
Randy McMillan, Linda Lemmon (alts)

Tim Luke, IDWR explained I.C. 42-620 and the appointment of an Eastern Snake Plain aquifer advisory committee to oversee and recommend programs to the director. The committee shall include representatives from water districts hydraulically connected to the ESPA (ESPA water districts, plus WD01 and WD36-A). Tim explained the history and recommendation from the 2004 interim Legislative Committee. The committee recommended funding of the IDWR groundwater model, monitoring of sentinel wells and springs, recalibration of surface water model and other programs that would be based on assessments to the water districts. Costs would be apportioned among the districts based on water use. Tim mentioned that the committee might provide an additional opportunity to further negotiations between surface and ground water users.

Tim talked about the expansion of WD 120 and the creation of WD 110, WD 140, and WD 100. These expansions and creations coincide with the director's reports being filed in the Snake River Basin Adjudication court. WD 120, WD 110, and WD 140 have had public information meetings and formal public hearings and the director will be issuing orders in the near future.

Presently, the ground water districts (GWD) or water districts (WD) must measure the PCC or water meter of wells every three years. IDWR will study PCC measurement data to address water users' questions about frequency of required measurements, and consider whether those requirements can be relaxed if no change has been made to the irrigation system. Some water users have questioned the need to continue the three year frequency, indicating that wells have been measured three times or more in the last ten years and there has been little or no change in the amount of water diverted. Users feel this change would reduce the costs of water measurement for GWDs or WDs but not significantly change the reported water diversion.

Tim Luke also mentioned that IDWR will be updating the measurement database (WMIS) this year to an Internet application whereby ground water districts or other reporting entities will enter measurement data directly to the IDWR database and diversions linked to water rights. IDWR will begin testing the application this month and will schedule meetings in March with staff from districts to solicit their input.

**Dean Stevenson moved to adjourn the WD meeting at 3:40 p.m. Seconded by Phyllis Beard. Passed on a voice vote.**

Lynn Tominaga, WD130 Secretary