BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF MODIFYING THE BOUNDARIES OF THE AMERICAN FALLS GROUND WATER MANAGEMENT AREA	)))))	**FINAL ORDER MODIFYING THE BOUNDARIES OF THE AMERICAN FALLS GROUND WATER MANAGEMENT AREA**

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 and130 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).

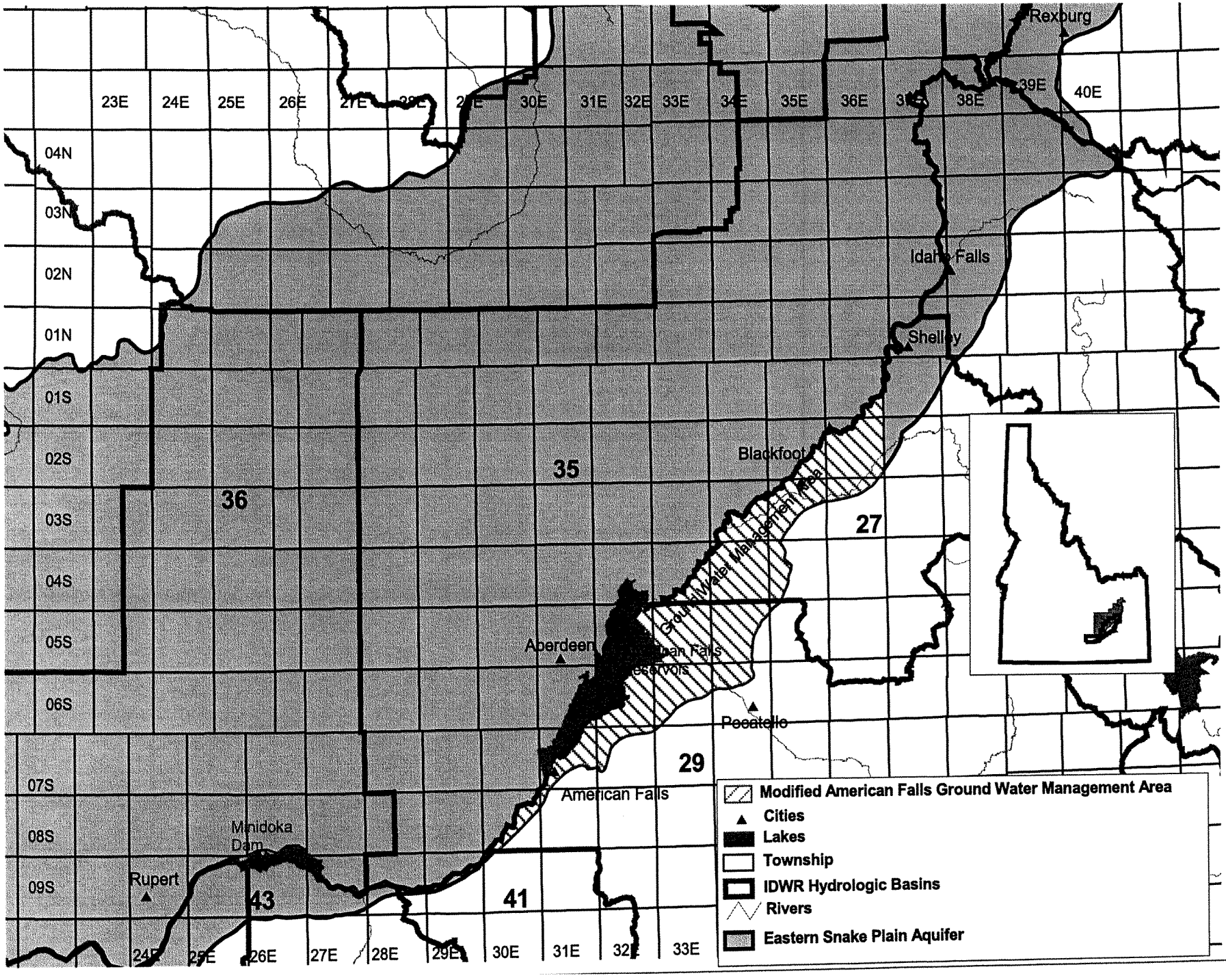
ORDER

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.

/Signed/
KARL J. DREHER
Director

Modified American Falls Ground Water Management Area



Attachment A