

**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)** )

IN THE MATTER OF DISTRIBUTION OF WATER )  
TO WATER RIGHTS NOS. 36-04013A, 36-04013B, )  
AND 36-07148. )

**(Clear Springs Delivery Call)** )

---

**FINAL ORDER REGARDING  
BLUE LAKES AND CLEAR  
SPRINGS DELIVERY CALLS**

**FINDINGS OF FACT**

**I. Procedural Background**

1. These matters came before the Director of the Department of Water Resources (“Director” or “Department”) in the spring of 2005 with the filing of letters from Gregory Kaslo of Blue Lakes Trout Farm, Inc. (“Blue Lakes”) and Larry Cope of Clear Springs Foods, Inc. (“Clear Springs”), requesting that then-Director Karl J. Dreher administer junior priority water rights to supply Blue Lakes and Clear Springs senior surface water rights. On May 19, 2005 and July 8, 2005, respectively, the Director issued orders finding that senior surface water rights held by Blue Lakes’ and Clear Springs’ had been injured by diversions by junior ground water users. The May 19, 2005 Blue Lakes order is hereinafter referred to as the “Blue Lakes Order.” The July 8, 2005 Clear Springs order is hereinafter referred to as the “Clear Springs Order.” The cities of Hazelton, Heyburn, Jerome, Shoshone, Paul, and Wendell, Idaho Dairymen’s Association, Idaho Ground Water Appropriators, Inc. (“IGWA”),<sup>1</sup> Rangen, Inc., and the State Agency Ground Water Users<sup>2</sup> sought intervention, which was granted by order of the Director. Hearings were requested on the Blue Lakes and Clear Springs orders.

---

<sup>1</sup> IGWA is comprised of member ground water districts, including Aberdeen-American Falls, Bingham, Bonneville-Jefferson, Madison, Magic Valley, Southwest Irrigation District, and North Snake.

<sup>2</sup> SAGWU is made up of the departments of Fish & Game, Health & Welfare, Juvenile Corrections, Lands, and Transportation.

2. Because of requests by the parties for schedule changes, and matters wholly unrelated to the delivery call proceedings initiated by Blue Lakes and Clear Springs, *see American Falls Res. Dist. No. 2 v. Idaho Dept. of Water Resources*, 143 Idaho 862 (2007), it was not until the summer of 2007 that the parties agreed to a joint hearing schedule and the appointment of an independent hearing officer.

3. On August 1, 2007, the Director appointed Gerald F. Schroeder to preside as independent hearing officer in these matters for the purpose of developing a record and to prepare a recommended order for review by the Director. *Order Appointing Hearing Officer*. The Director “maintain[ed] jurisdiction of these matters for the ongoing administration of water rights.” *Id.* at 1.

4. On November 28, 2007, the joint hearing was commenced before the hearing officer at the Department. Over the course of approximately twelve days, evidence and testimony was presented to the hearing officer by the Department and parties. On January 11, 2008, the hearing officer entered his *Opinion Constituting Findings of Fact, Conclusions of Law, and Recommendation* (“Recommended Order”). Petitions for reconsideration were filed and considered by the hearing officer. *Responses to Petitions for Reconsideration and Clarification and Dairymens’ Stipulated Agreement* (February 29, 2008) (“Response Order”). Petitions for clarification were subsequently filed to the Response Order and disposed of by order of the hearing officer. *Order Regarding Joint Petition for Clarification* (March 26, 2008) (“Clarification Order”).

5. In his Response Order, the hearing officer stated, “The Recommended Order did not state clearly that the findings by the former Director were accepted by the Hearing Officer and recommended to the current Director unless explicitly recommended otherwise. That proposition is now stated explicitly, subject to any modifications in the recommendations set forth in this response.” *Response Order* at 1.

## **II. Exceptions Filed with the Director**

6. Exceptions to the hearing officer’s orders were filed with the Director by IGWA and jointly by Blue Lakes and Clear Springs. *Memorandum of Exceptions to the Summary Judgment Order, Recommended Order and Response Order* (April 10, 2008); *Spring Users’ Joint Memorandum Regarding Exceptions to the Hearing Officer’s Recommended Order* (April 10, 2008). The exceptions filed by the parties have been reviewed and considered by the Director. The record developed at the hearing has been reviewed and considered by the Director.

7. Findings of Fact set forth in the Director’s orders in the above-captioned matters, unless expressly discussed and modified herein, are incorporated into this order by reference. Unless discussed, the recommendations of the hearing officer are accepted. If an exception is not discussed herein, the Findings of Fact entered previously by the Director and recommendations of the hearing officer govern.

## A. Percent of Reach Gains to Clear Springs

8. In his Recommended Order, the hearing officer concluded that the proper percentage of curtailed water that would arrive at Clear Springs' discrete point of diversion, based on simulated curtailment of ground water rights that would accrue to the Buhl Gage to Thousand Springs reach of the Snake River was 6.9 percent, not 7 percent, as found by the Director. *Recommended Order* at 21; *see Clear Springs Order* at 5, ¶ 15. It was the hearing officer's determination, based on evidence presented at hearing, that the former Director likely rounded 6.9 percent to 7 percent.

9. The Director agrees with the hearing officer's finding that "The 6.9% figure should be used as the only one supported by evidence." *Recommended Order* at 21. Therefore, any reference in the Clear Springs Order to the 7 percent figure should be changed to 6.9 percent. *See Clear Springs Order* at 5, ¶ 15 and 33, ¶ 29. The amount of direct replacement water to be provided to Clear Springs should be reduced by 0.1 percent. Consequently, in the final year of the five-year phased-in period of substitute curtailment, the steady state reach gain of 38 cubic feet per second ("cfs") to the Buhl Gage to Thousand Springs reach would result in 2.6 cfs (6.9 percent of 38 cfs) arriving at Clear Springs' discrete point of diversion, not 2.7 (7 percent of 38 cfs).

10. In the Director's Blue Lakes Order, it was stated on page 28, paragraph (1), that IGWA could "provide Blue Lakes Trout with a direct replacement supply of suitable water quality of 10 cfs (20 percent of 51 cfs), reduced by 20 percent of the average amount simulated to accrue to the Devil's Washbowl to Buhl Gage spring reach at steady state conditions resulting from approved mitigation plan(s), if any . . . ." The same language was not incorporated in the Clear Springs Order. *See Clear Springs Order* at 36-39. It is the Director's finding that it was an oversight not to include the "direct replacement supply" language that appears in the Clear Springs Order. The finding that the omission of this language was an oversight is supported by the Director's discussion of the direct benefit that would accrue to Clear Springs as a result of curtailment in Finding of Fact 72 in the Clear Springs Order. Therefore, language that is similar in the Blue Lakes Order should appear in the Clear Springs Order as follows (underline represents new language):

- (2) Involuntary curtailment will be phased-in over a five-year period, offset by substitute curtailment (conversions and voluntary curtailment) provided through the ground water district(s) or irrigation district through which mitigation can be provided and verified by the Department. Involuntary curtailment and substitute curtailment together must be implemented in 2005, 2006, 2007, 2008, and 2009, such that based on simulations using the Department's ground water model for the ESPA, phased curtailment will result in simulated cumulative increases to the average discharge of springs in the Buhl Gage to Thousand Springs spring reach, which includes the springs that provide the source of water for the water rights held by Clear Springs for its Snake River Farm, at steady state conditions of at least 8 cfs, 16 cfs, 23 cfs, 31 cfs, and 38 cfs, for each year respectively. The ground water districts may submit a plan or plans to the Director to provide Clear

Springs for its Snake River Farm, with a replacement water supply of suitable water quality of 2.6 cfs (6.9 percent of 38 cfs), reduced by 6.9 percent of the average amount simulated to accrue to the Buhl Gage to Thousand Springs reach at steady state conditions resulting from approved mitigation plan(s), if any.

*Clear Springs Order* at 37, ¶(2).

**B. Water Right Nos. 36-04013A and 36-07210**

11. The Director found that while water right no. 36-04013A held by Clear Springs and water right no. 36-07210 held by Blue Lakes were not filled year-round, those water rights were not materially injured by junior ground water diversions due to inherent seasonal variations (also referred to as intra- and inter-year variations) in spring discharge. *Blue Lakes Order* at 14, ¶ 64; *Clear Springs Order* at 14, ¶ 61.

12. After consideration of evidence presented at hearing, the hearing officer agreed with the Director's findings that it was appropriate to consider seasonal variation in determining whether a water right was materially injured by junior ground water diversions. *Recommended Order* at 18-19. "In context the sense of the Director's finding is that the Spring Users cannot be guaranteed the full amount of the water rights adjudicated every day of the year or every year when that condition has not existed during any relevant time. Consequently, seasonal variations must be considered to determine what the Spring Users would have received throughout the year absent junior water users' appropriations." *Id.* at 19. The hearing officer agreed with the Director that water right nos. 36-04013A held by Clear Springs and 36-07210 held by Blue Lakes were not injured.

13. Responding to petitions for reconsideration filed by Blue Lakes, Clear Springs, and IGWA, the hearing officer clarified his position regarding seasonal variation and alleged injury to water right nos. 36-04013A and 36-07210:

The former Director determined that the record of flow measurements maintained by the Department, beginning in 1995, showed that the Blue Lakes 1971 right [water right no. 36-07210] and the Clear Springs 1955 right [water right no. 36-04013A] were filled at the authorized diversion rates when the flows were at their seasonal highs, and, consequently Blue Lakes and Clear Springs did not suffer material injury to these rights. Upon reconsideration it appears that the hearing recommendation on this point should be revised.

Seasonal variations are appropriate to consider in determining if an injury occurs as a consequence of weather, incidental recharge, ground water depletions from pumping or any other factor that might cause more or less water to flow at a particular time. However, the fact that a water right is filled at a seasonal high period does not lead to the conclusion that there is no material injury for the remainder of the year when there is less water flowing than the decreed right. Material injury cannot be determined or rejected from these facts alone. There

must be an examination of the cause or causes of the decline below the decreed right. If ground water pumping contributes to the decline in water that would be applied to beneficial use, there is material injury.

In this case the evidence indicates that the Blue Lakes 1971 right and the Clear Springs 1955 right were filled throughout the year at the decreed levels at the times of appropriation. In the recent past they have been filled for only a portion of the years, ranging from a high of twelve months for Blue Lakes in 1977 and seven months in 1995 to lows of two months in 2004, three months in 2005, and three months in 2006. Clear Springs' 1955 right was filled year round from 1988 through 2001 and filled for six months in 2004, two months in 2005, and four months in 2006. A portion of the declines is attributable to ground water pumping. Consequently, there should be a finding of injury to those water rights.

The Spring Users seek an order that the curtailment order be pushed back to the earlier times encompassing the two water rights in issue. However, it is not recommended that the curtailments extend to those dates. The curtailment orders, and the replacement water plans in their stead, should fill the 1955 and 1971 rights. Those orders addressed the combined total of the water rights of the Spring Users and the remediation was calculated against those combined totals. The 1955 and 1971 rights were calculated in determining the full extent of the Spring Users' rights and the injury to those totals. The analysis limiting the scope of curtailment has been articulated in the recommended order previously issued and will not be reiterated.

*Response Order* at 8-9.

14. When asked by Blue Lakes and Clear Springs to clarify his response, the hearing officer declined, stating that "No further explanation of the recommendation would add clarity to the record, and consideration of the matters argued in the Joint Petition does not lead to an alteration of the recommendations that have been made to the Director." *Clarification Order* at 1.

15. The Director agrees with the hearing officer's ultimate finding that curtailment should not extend to water right nos. 36-04013A held by Clear Springs and 36-07210 held by Blue Lakes, but arrives at this finding differently. In the Spring Users' Joint Memorandum Regarding Exceptions to the Hearing Officer's Recommended Order and their Joint Petition, Blue Lakes and Clear Springs allege injury to water right nos. 36-04013A and 36-07210. According to Blue Lakes and Clear Springs, water right nos. 36-04013A and 36-07210 were filled continuously at the times of appropriation and should have been found to be injured by the former Director.

16. Blue Lakes relies primarily upon Exhibit 205 for its assertion that water right no. 36-07210 (November 17, 1971) is injured. Exhibit 205 plots diversion measurements from March 1, 1977, March 3, 1977, and October 31, 1977. The March 3, 1977 measurement was considered by the former Director in the Blue Lakes Order. *Blue Lakes Order* at 12, ¶ 57. The former Director also considered other miscellaneous measurements dating back to April 1, 1958.

*Id.* at 12-13, ¶ 58. During the hearing, the former Director was cross-examined by Blue Lakes on Exhibit 205. The former Director testified that the measurements from 1977 were anomalous because, typically, seasonal low flows occur in the spring and seasonal highs occur in the fall. It was the former Director's testimony that the measurements from 1977 plotted in Exhibit 205 were opposite of what should be expected and therefore unreliable. Reliable diversion measurements were not kept by Blue Lakes until 1995. *Blue Lakes Order* at 12, ¶¶ 56-57 and *Attachment C*. The former Director used the most reliable measurements available to him in arriving at his finding that water right no. 36-07210 was not injured. Based on review of the record developed at the hearing, there is insufficient credible evidence presented to find that water right no. 36-07210 was injured.

17. Clear Springs relies primarily upon Exhibit 128A for its assertion that water right no. 36-04013A (September 15, 1955) is injured. Exhibit 128A is a memorandum dated August 2, 1973, depicting measurements at Snake River Farm in April 1971, May 1972, June 1972, and July 1972. The memorandum in Exhibit 128A was reviewed by the former Director in the Clear Springs Order. *Clear Springs Order* at 14, ¶ 58.<sup>3</sup> During the hearing, the former Director was cross-examined by Clear Springs on Exhibit 128A. While Clear Springs argued that Exhibit 128A was sufficient to establish that water right no. 36-04013A was filled at the time of appropriation, the former Director disagreed, testifying that measurements from one month in 1971 and two months in 1972 should not be used to extrapolate a general trend to assume that water right no. 36-04013A was filled continuously in the 1970s or at the time of appropriation. Reliable diversion measurements were not kept by Clear Springs until 1988. *Clear Springs Order* at 14, ¶ 59 and *Attachment C*. Under cross-examination, the former Director did not alter his position that water right no. 36-04013A was not injured. Based on review of the record developed at the hearing, there is insufficient credible evidence presented to find that water right no. 36-04013A was injured.

18. The Director's findings that curtailment can be required for water rights junior to water right nos. 36-36-04013B (February 4, 1964) held by Clear Springs and 36-07427 (December 28, 1973) held by Blue Lakes is correct. Insufficient credible evidence was presented at hearing to support a finding that water right nos. 36-04013A (September 15, 1955) and 36-07210 (November 17, 1971) are injured.

### **C. Blue Lakes Agreement with Blue Lakes Country Club**

19. In the Blue Lakes Order, the Director reviewed an agreement between Blue Lakes and the Blue Lakes Country Club ("Country Club") that allowed the Country Club to divert .7 cfs out-of-priority under water right no. 36-08593. *Blue Lakes Order* at 16, ¶¶ 72-75. The Blue Lakes Order characterized the agreement as a subordination agreement, meaning that Blue Lakes could not call for delivery of the .7 cfs that it allows the Country Club to divert out-of-priority. *Id.* at 25, ¶ 21.<sup>4</sup>

---

<sup>3</sup> Clear Springs also relies on Exhibit 156, which contains the same data used by the former Director to create Attachment C to the Clear Springs Order.

<sup>4</sup> In the Blue Lakes Order, Finding of Fact 73 states that water right no. 36-08593, the water right through which the Country Club diverts out-of-priority, is for 0.7 cfs and that the Country Club's senior water rights, 36-02083A (1.15

20. Blue Lakes asserted that the Director mischaracterized the agreement as one of subordination, when, in fact, it was a rotation agreement.

21. In the Recommended Order, the hearing officer disagreed with Blue Lakes, finding that the agreement was best characterized as a subordination agreement. *Recommended Order* at 25.

22. In the Response Order, the hearing officer reconsidered his finding and determined that the agreement between Blue Lakes and the Country Club was best characterized as a rotation agreement. The hearing officer found that the agreement was best characterized as one of rotation since Blue Lakes continued to make beneficial use of the water for purposes of fish propagation during the daytime hours when the Country Club was not using the .7 cfs for irrigation of its golf course. *Response Order* at 9. The hearing officer found that the Country Club used the water for irrigation for eight hours at night. *Id.*

23. It is immaterial for purposes of this proceeding whether the agreement between Blue Lakes and the Country Club is a rotation or subordination agreement, as the 0.7 cfs that the Country Club is allowed to divert is not additive to IGWA's replacement water obligation to the Devil's Washbowl to Buhl Gage spring reach. In the Blue Lakes Order, the total replacement water obligation in the final year of the five-year phased-in period of substitute curtailment was 51 cfs. *Blue Lakes Order* at 17, ¶ 77. For purposes of modeling simulated depletion, the model only considers curtailment of junior-priority ground water rights that, if curtailed, would provide 10 percent or more of their diverted quantity to the targeted reach. *Blue Lakes Order* at 17, ¶ 76; *Clear Springs* at 17-18, ¶ 71. Ten percent is the degree of uncertainty attribute by the Director to the Eastern Snake Plain Aquifer ("ESPA") ground water model for purposes of administration. *Blue Lakes Order* at 5, ¶ 16; 17, ¶ 76; *Clear Springs* at 5, ¶ 71; 17-18, ¶ 71. *See also Recommended Order* at 22-23; *Response Order* at 2-3. The accrual to the reach is therefore the result of curtailment of junior priority ground water rights. *Blue Lakes Order* at 17, ¶ 77; *Clear Springs* at 17, ¶ 71. The 0.7 cfs cannot be added onto the simulated reach gain because all depletionary impacts from junior ground water diversions have already been included in the model run. IGWA can only be responsible for replacing the amount of water that the ESPA ground water model predicts would accrue to a particular spring reach as a result of curtailment. *See Blue Lakes Order* at 17-18, ¶¶ 76-80; *Clear Springs Order* at 16-17, ¶¶ 71-74.

#### **D. IGWA's Replacement Water Obligations to Blue Lakes and Clear Springs**

24. In the Blue Lakes Order, the Director found that curtailment of ground water rights junior to December 28, 1973 was warranted and that modeled curtailment using the ESPA

---

cfs) and 36-02083B (.05 cfs), authorize the diversion of 1.2 cfs, for a combined total of 1.9 cfs. Citing Finding of Fact 73, Conclusion of Law 21 states that the quantity of water subordinated by Blue Lakes to the Country Club under water right no. 36-08593 is 1.7 cfs. Emphasis added. Conclusion of Law 31 similarly states that the quantity subordinated by Blue Lakes to the Country Club is 1.7 cfs. Emphasis added. The references in quantity in Conclusions of Law 21 and 31 are incorrect and should be modified to state that the agreement is for 0.7 cfs, which is consistent with Finding of Fact 73 and the authorized quantity that may be diverted by the Country Club under water right no. 36-08593, 0.7 cfs.

ground water model would produce 51 cfs to the Devil's Washbowl to Buhl Gage spring reach. *Blue Lakes Order* at 28. In the Clear Springs Order, the Director found that curtailment of ground water rights junior to February 4, 1964 was warranted and that modeled curtailment using the ESPA ground water model would produce 38 cfs to the Buhl Gage to Thousand Springs reach. *Clear Springs Order* at 37.

25. In their *Joint Memorandum Regarding Exceptions to the Hearing Officer's Recommended Order* ("Joint Memorandum"), Blue Lakes and Clear Springs request "a full accounting of the IGWA's 2005 through 2007 replacement water plans and their implementation (or lack thereof), and identify and carryover the remaining mitigation obligation into 2008." *Joint Memorandum* at 2. Information regarding replacement water from 2005 to the present may be found in the plans submitted by IGWA, responses submitted by Blue Lakes and Clear Springs, and subsequent orders issued by the Director.

26. The Director has completed a post-audit of replacement water activities undertaken by IGWA for the benefit of Blue Lakes in the Devil's Washbowl to Buhl Gage spring reach. *See Order Approving IGWA's 2008 Replacement Water Plan (Blue Lakes Delivery Call)* (July 1, 2008).

27. On June 13, 2008, IGWA submitted a mitigation plan in accordance with Rule 43 of the Department's Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11 *et. seq.* Notice of the mitigation plan and associated application for transfer and applications for permit have been processed by the Department and will be published for review on July 17 and 24, 2008, with a protest deadline of August 4, 2008. It is anticipated that a post-audit of the replacement water activities undertaken by IGWA for the benefit of Clear Springs in the Buhl Gage to Thousand Springs reach will be performed during those proceedings.

28. Findings of Fact later determined to be Conclusions of Law are herein made as Conclusions of Law.

## CONCLUSIONS OF LAW

1. Conclusions of Law set forth in the Director's orders in the above-captioned matters, unless expressly discussed and modified herein, are incorporated into this order by reference. Unless discussed, the recommendations of the hearing officer are accepted. If an exception is not discussed herein, the Conclusions of Law entered previously by the Director and recommendations of the hearing officer govern.

2. The independent hearing officer in this matter was appointed by the Director pursuant to IDAPA 37.01.01.410, -413, and the provisions of chapter 52, title 67, Idaho Code. According to IDAPA 37.01.01.720, "Recommended Orders," "Recommended orders are orders issued by a person other than the agency head that will become a final order of the agency only after review of the agency head (or the agency head's designee) pursuant to Section 67-5244, Idaho Code.



3. Idaho Code § 67-5244(3), “Review of recommended orders,” states that “The agency head on review of the recommended decision shall exercise all the decision-making power that he would have had if the agency head had presided over the hearing.”

4. “The agency’s experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.” Idaho Code § 67-5251; IDAPA 37.01.01.600.

5. The percentage of water that will arrive at Clear Springs’ discrete point of diversion, based on simulated curtailment of ground water rights that would accrue to the Buhl Gage to Thousand Springs reach, is 6.9 percent, not 7 percent.

6. The omission of language in the Clear Springs Order regarding IGWA’s ability to provide direct replacement water, as allowed in the Blue Lakes Order, was an oversight. Page 37, ¶ (2) of the Clear Springs Order should be modified as stated in Finding of Fact 10.

7. The Director properly ordered curtailment of ground water rights junior to water right nos. 36-0413B (February 4, 1964) held by Clear Springs and 36-07427 (December 28, 1973) held by Blue Lakes. Unreliable and insufficient evidence was presented at hearing to support a finding of injury to water right nos. 36-04013A (September 15, 1955) held by Clear Springs and 36-07210 (November 17, 1971) held by Blue Lakes. Seasonal variability in spring flows is a necessary factor for the Director to consider in determining the extent to which to curtail junior ground water rights.

8. It is immaterial for purposes of this proceeding whether the agreement between Blue Lakes and the Country Club is a rotation or subordination agreement. The 0.7 cfs that the Country Club is allowed to divert is not additive to IGWA’s replacement water obligation in the Devil’s Washbowl to Buhl Gage spring reach. The most water IGWA can be ordered to provide is the amount of water simulated by the ESPA ground water model to accrue to the reach as a result of curtailment of ground water rights junior to Blue Lakes’ injured water right no. 36-07427 (December 28, 1973).

9. As stated previously by the Director and affirmed by the hearing officer, the ESPA ground water model represents the best available science for determining the effects of ground water diversions and surface water uses on the ESPA and hydraulically-connected reaches of the Snake River and its tributaries. There currently is no other technical basis as reliable as the simulations from the ESPA ground water model that can be used to determine the effects of ground water diversions and surface water uses on the ESPA and hydraulically-connected reaches of the Snake River and its tributaries.

10. As stated previously by the Director and affirmed by the hearing officer, the degree of uncertainty associated with application of the ESPA ground water model is 10 percent.

## ORDER

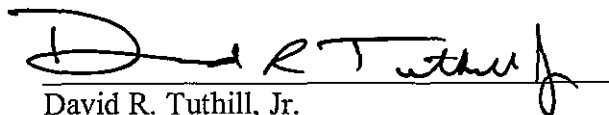
Based upon consideration of the foregoing, the Director hereby orders as follows:

That the findings of fact and conclusions of law entered herein, and the finding of facts and conclusions of law entered by the former Director and the hearing officer in these matters, unless discussed and modified in this FINAL ORDER, are hereby accepted.

That this is a FINAL ORDER of the agency. Any party may file a petition for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law pursuant to Idaho Code § 67-5246.

IT IS FURTHER ORDERED that pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by the final order or orders previously issued in this matter may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which a hearing was held, the final agency action was taken, the party seeking review of the order resides, or the real property or personal property that was the subject of the agency action is located. The appeal must be filed within twenty-eight (28) days: (a) of the service date of the final order; (b) of an order denying petition for reconsideration; or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

DATED this 11<sup>th</sup> day of July, 2008.

  
David R. Tuthill, Jr.  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11<sup>th</sup> day of July 2008, 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

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

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)

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