

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

RANGEN, INC.,

Petitioner,

vs.

THE IDAHO DEPARTMENT OF WATER
RESOURCES and GARY SPACKMAN, in
his capacity as Director of the Idaho
Department of Water Resources,

Respondents,

and

IDAHO GROUND WATER
APPROPRIATORS, INC., A&B
IRRIGATION DISTRICT, BURLEY
IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, AMERICAN
FALLS RESERVOIR DISTRICT #2,
MINIDOKA IRRIGATION DISTRICT,
NORTH SIDE CANAL COMPANY, and
TWIN FALLS CANAL COMPANY,

Intervenors.

Case No. CV-2014-2446

**IDAHO DEPARTMENT OF WATER RESOURCES'
BRIEF IN RESPONSE TO RANGEN, INC.'S OPENING BRIEF**

Judicial Review from the Idaho Department of Water Resources

Honorable Eric J. Wildman, District Judge, Presiding

ATTORNEYS FOR RESPONDENTS

LAWRENCE G. WASDEN
ATTORNEY GENERAL

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

GARRICK L. BAXTER, ISB #6301
EMMI L. BLADES, ISB #8682
Deputy Attorneys General
Idaho Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 287-4800
Facsimile: (208) 287-6700
garrick.baxter@idwr.idaho.gov
emmi.blades@idwr.idaho.gov

*Deputy Attorneys General for Gary Spackman,
Director, and the Idaho Department of
Water Resources*

ATTORNEYS FOR PETITIONER

J. JUSTIN MAY
MAY BROWNING
1419 W. Washington
Boise, Idaho 83702
jmay@maybrowning.com

ROBYN BRODY
BRODY LAW OFFICE
P.O. Box 554
Rupert, Idaho 83350
robynbrody@hotmail.com

FRITZ HAEMMERLE
HAEMMERLE & HAEMMERLE
P.O. Box 1800
Hailey, Idaho 83333
fxh@haemlaw.com

Attorneys for Rangen, Inc.

ATTORNEYS FOR INTERVENORS

JOHN K. SIMPSON
TRAVIS L. THOMPSON
PAUL L. ARRINGTON
BARKER ROSHOLT & SIMPSON, LLP
195 River Vista Place, Suite 204
Twin Falls, Idaho 83301-3029
tlt@idahowaters.com
jks@idahowaters.com
pla@idahowaters.com

*Attorneys for A&B Irrigation District, Burley
Irrigation District, Milner Irrigation District,
North Side Canal Company, and Twin Falls Canal
Company*

W. KENT FLETCHER
Fletcher Law Office
P.O. Box 248
Burley, Idaho 83318
wkf@pmt.org

*Attorneys for American Falls Reservoir District #2
and Minidoka Irrigation District*

RANDALL C. BUDGE
T.J. BUDGE
RACINE OLSON
P.O. Box 1391
Pocatello, Idaho 83204-1391
rcb@racinelaw.net
tjb@racinelaw.net

*Attorneys for the Idaho Ground Water
Appropriators, Inc.*

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... ii

STATEMENT OF THE CASE 1

 A. NATURE OF THE CASE & PROCEDURAL BACKGROUND 1

 B. STATEMENT OF FACTS..... 4

 I. History and Layout of the Rangen Facility 4

 II. Source of Water and Diversions..... 5

 III. Martin-Curren Tunnel Water Rights 6

 C. ISSUES PRESENTED ON APPEAL 7

STANDARD OF REVIEW..... 8

ARGUMENT 9

 A. THE DIRECTOR CORRECTLY CALCULATED MITIGATION CREDIT FOR IGWA’S AQUIFER ENHANCEMENT ACTIVITIES..... 9

 1. Method used to determine mitigation credit for aquifer enhancement activities 9

 2. Rangen’s arguments on appeal..... 12

 B. THE DIRECTOR CORRECTLY DETERMINED THE MITIGATION CREDIT FOR THE MORRIS EXCHANGE..... 14

 1. The Director’s approval of credit for the Morris exchange is consistent with the prior appropriation doctrine and the Director’s legal duties under Idaho Code § 42-602 14

 2. The Director acted within his discretion when using average irrigation season annual flow data to determine predicted flows at the Martin-Curren Tunnel..... 17

 C. RANGEN IS NOT ENTITLED TO ATTORNEY FEES 21

CONCLUSION 22

TABLE OF CASES AND AUTHORITIES

Cases

<u>Barron v. Idaho Dept. of Water Resources</u> , 135 Idaho 414, 417, 18 P.3d 219, 222 (2001)	8
<u>Carroll v. MBNA Am. Bank</u> , 148 Idaho 261, 270, 220 P.3d 1080, 1089 (2009)	21
<u>Clear Springs Foods, Inc. v. Spackman</u> , 150 Idaho 790, 794, 804, 807-10, 813, 816, 252 P.3d 71, 75, 85, 88-91, 94, 98 (2011).....	16
<u>Dovel v. Dobson</u> , 122 Idaho 59, 61, 831 P.2d 57, 529 (1992).....	8
<u>Idaho Power Co. v. Idaho Dep’t of Water Res.</u> , 151 Idaho 266, 272, 255 P.3d 1152, 1158 (2011)	8
<u>In the Matter of Distribution of Water to Various Water Rights Held by or for Ben. of A & B Irrigation Dist.</u> , 155 Idaho 640, 651, 315 P.3d 828, 839 (2013)	19
<u>Jenkins v. State, Dept. of Water Resources</u> , 103 Idaho 384, 388, 647 P.2d 1256, 1260 (1982)	16
<u>Rayl v. Salmon River Canal Co.</u> , 66 Idaho 199, 215, 157 P.2d 76, 83 (1945)	16
<u>Tupper v. State Farm Inc.</u> , 131 Idaho 724, 727, 963 P.2d 1161, 1164 (1998)	8

Statutes

I.C. §12-177.....	21
I.C. § 42-602.....	14
I.C. § 42-1701A(4).....	8
I.C. § 67-5277.....	8
I.C. § 67-5279(3).....	8
I.C. § 67-5279(4).....	8

Rules

IDAPA 37.01.01.760.....	1
IDAPA 37.03.11	1
IDAPA 37.03.11.043.03(d)-(e)	19
I.R.C.P. 54.....	21

STATEMENT OF CASE

A. NATURE OF THE CASE & PROCEDURAL BACKGROUND

This is a judicial review proceeding in which Rangen, Inc. (“Rangen”), appeals three orders issued by the Director (“Director”) of the Idaho Department of Water Resources (“Department”) responding to a mitigation plan filed by the Idaho Ground Water Appropriators, Inc. (“IGWA”), pursuant to the Conjunctive Management Rules (“CM Rules”).¹ The three orders are: 1) the April 11, 2014, *Order Approving in Part and Rejecting in Part IGWA’s Mitigation Plan; Order Lifting Stay Issued February 21, 2014; Amended Curtailment Order* (“Mitigation Plan Order”);² 2) the May 16, 2014, *Final Order on Reconsideration* (“Order on Reconsideration”); and 3) the May 16, 2014, *Amended Order Approving in Part and Rejecting in Part IGWA’s Mitigation Plan; Order Lifting Stay Issued February 21, 2014; Amended Curtailment Order* (“Amended Mitigation Plan Order”). *Opening Brief* at 3.

Issues raised in this appeal stem from the *Petition for Delivery Call* (“Petition”) filed with the Department by Rangen on December 13, 2011, alleging Rangen is not receiving all of the water it is entitled to pursuant to water right nos. 36-2551 and 36-7694, and is being materially injured by junior-priority ground water pumping. On January 4, 2012, IGWA petitioned to be designated as a respondent or alternatively to intervene in the proceeding. The Director granted IGWA’s petition to intervene on January 13, 2012.

¹ The term “Conjunctive Management Rules” or “CM Rules” refers to the *Rules for Conjunctive Management of Surface and Ground Water Resources*, IDAPA 37.03.11.

² The Mitigation Plan Order was withdrawn and replaced by the May 16, 2014, *Amended Order Approving in Part and Rejecting in Part IGWA’s Mitigation Plan; Order Lifting Stay Issued February 21, 2014; Amended Curtailment Order*. See *Final Order on Reconsideration* at 16 (“Based on the foregoing discussion, some modifications to the [Mitigation Plan Order] are necessary. An amended order will be issued supplementing the findings of facts, conclusions of law and order section and incorporating the modifications identified above.”); see also IDAPA 37.01.01.760 (“The agency head may modify or amend a final order ... by withdrawing the earlier final order and substituting a new final order for it.”). Because the Mitigation Plan Order has been withdrawn and replaced, it is not subject to appeal.

In the delivery call proceeding, the Director issued the *Final Order Regarding Rangen, Inc.'s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962* (“Curtailment Order”). The Director concluded his material injury determination could only focus on water diverted by Rangen from the Martin-Curren Tunnel (sometimes referred to as “Curren Tunnel”) because the source element on Rangen’s partial decrees is unambiguously described as “Martin-Curren Tunnel.” *Curtailment Order* at 32-33; Ex. 2042. The Director also concluded that Rangen is being materially injured by junior-priority ground water pumping. *Id.* at 36; Ex. 2042.

The Eastern Snake Plain Aquifer Model (“ESPAM”) is a calibrated regional ground water model representing the Eastern Snake Plain Aquifer (“ESPA”). In the Curtailment Order, the Director adopted ESPAM 2.1 to model the stresses to the ESPA related to Rangen’s delivery call. ESPAM 2.1 simulations predicted that 9.1 cfs of the decline in the flow from the Martin-Curren Tunnel are attributable to junior-priority ground water pumping west of the Great Rift and in the area of common ground water supply. *Id.* at 35; Ex. 2042. The Director ordered that holders of junior-priority ground water rights be curtailed, but that such curtailment could be avoided if the junior ground water users participate in a mitigation plan that would provide “simulated steady state benefits of 9.1 cfs to Curren Tunnel or direct flow of 9.1 cfs to Rangen.” *Id.* at 42; Ex. 2042. The Curtailment Order explains that mitigation provided by direct flow to Rangen “may be phased-in over not more than a five-year period pursuant to CM Rule 40 as follows: 3.4 cfs the first year, 5.2 cfs the second year, 6.0 cfs the third year, 6.6 cfs the fourth year, and 9.1 cfs the fifth year.” *Id.*

On February 11, 2014, IGWA filed with the Department *IGWA’s Mitigation Plan and Request for Hearing* (“Mitigation Plan”) which set forth nine proposals to avoid curtailment

imposed by the Curtailment Order.³ *Mitigation Plan* at 1-4 (R. p. 1-4). A hearing was held on the Mitigation Plan on March 17-19, 2014, at the Department's State office in Boise, Idaho.

On April 11, 2014, the Director issued the Mitigation Plan Order which approved partial mitigation credit for only two Mitigation Plan proposals: (1) IGWA's past and ongoing aquifer enhancement activities (conversions from ground water irrigation to surface water irrigation, voluntary "dry-ups" of acreage irrigated with ground water through the Conservation Reserve Enhanced Program ("CREP") or other cessation of irrigation with ground water, and ground water recharge; and (2) exchange of irrigation water diverted from the Martin-Curren Tunnel by Howard (Butch) and Rhonda Morris (hereafter referred to in the singular as "Morris") with operational spill water from the North Side Canal Company. *Amended Mitigation Plan Order* at 4 (R. p. 600).

The Director granted IGWA 1.2 cfs of transient mitigation credit for the annual period from April 1, 2014, through March 31, 2015, because of its past and ongoing aquifer enhancement activities. *Id.* at 21 (R. p. 617). The Director also granted IGWA 1.8 cfs of transient mitigation credit for the annual period from April 1, 2014, through March 31, 2015, for direct delivery of surface water from the Martin-Curren Tunnel to Rangen as a result of the Morris exchange agreement. *Id.* In total, the Director granted IGWA 3.0 cfs of total annual transient mitigation credit for the annual period from April 1, 2014, through March 31, 2015. *Id.* This was 0.4 cfs less than the 3.4 cfs annual mitigation requirement for that period as set forth in the Curtailment Order. *Id.* Accordingly, the Director used ESPAM 2.1 to calculate the priority date of junior ground water rights that must be curtailed during the 2014 irrigation season to

³ IGWA submitted the Mitigation Plan on behalf of "its members and non-member participants in IGWA-sponsored mitigation activities." *Mitigation Plan* at 1 (R. p. 1).

provide 0.4 cfs to Rangen. The Director determined that ground water rights bearing priority dates junior or equal to July 1, 1983, must be curtailed to provide 0.4 cfs to Rangen. *Id.*

On April 25, 2014, Rangen filed *Rangen's Motion for Reconsideration of Order Re: IGWA's Mitigation Plan; Order Lifting Stay; Amended Curtailment Order* ("Motion for Reconsideration") challenging the Director's method of determining mitigation credit for the Morris exchange agreement. *Motion for Reconsideration* at 1-6 (R. p. 552-57). On May 16, 2014, the Director issued both the Order on Reconsideration denying Rangen's Motion for Reconsideration and the Amended Mitigation Plan Order.⁴ This appeal challenges the Director's determination of mitigation credit for IGWA's past and ongoing aquifer enhancement activities and the Director's determination of mitigation credit for the Morris exchange agreement.

B. STATEMENT OF FACTS

I. History and Layout of the Rangen Facility

Rangen owns and operates a fish research and propagation facility ("Rangen Facility") in the Thousands Springs area near Hagerman, Idaho. The Rangen Facility initially consisted of a hatchery for incubation of fish eggs and a series of concrete channels for fish rearing, now commonly referred to as the "small raceways" and "large raceways." The facility was expanded in 1976 when the raceways now referred to as the "CTR raceways" were constructed. In approximately 1992, a greenhouse was added to the back of the hatch house to expand Rangen's hatching and research capabilities. Other buildings were added over time, but their addition is not relevant to this proceeding.

⁴ A *Petition for Reconsideration and Clarification* was also filed by IGWA. R. p. 537-51. In addressing this petition, the Director determined some modifications to the Mitigation Plan Order were necessary but denied the bulk of the petition. *Order on Reconsideration* at 16. IGWA has not appealed the *Order on Reconsideration* or the Amended Mitigation Plan Order.

II. Source of Water and Diversions

Immediately east of the Rangen Facility, water emanates from numerous springs on the talus slopes just below the canyon rim. Water also emanates from the Martin-Curren Tunnel. The tunnel is a large, excavated conduit constructed high on the canyon rim and extends approximately 300 feet into the canyon wall. The record does not establish when the Martin-Curren Tunnel was built, but it predates the construction of the Rangen Facility.

A concrete collection box located near the mouth of the Martin-Curren Tunnel collects water for delivery not only to Rangen, but also to holders of early priority irrigation water rights via pipelines. The concrete box is commonly referred to as the “Farmers’ Box.” The holders of the early priority irrigation water rights are Morris, Walter and Margaret Candy (hereafter referred to in the singular as “Candy”) and the Alvin and Hope Musser Living Trust (hereafter referred to as “Musser”).

Since 2003, water historically diverted from the Martin-Curren Tunnel by Morris, Candy, and Musser has been exchanged with surface water delivered by the Sandy Pipeline based on an informal agreement with North Snake Ground Water District (“NSGWD”). Tr. Vol II, p. 369, 379-81. Morris entered into a written contract with NSGWD in 2014 formally authorizing NSGWD to use Morris’s water right numbers 36-134D, 36-134E, 36-135D, 36-135E, 36-10141A and 36-10141B “as needed to provide mitigation water to Rangen to satisfy the [[Curtailment Order] curtailing 157,000 acres of ground water rights junior to July 13, 1962.” Ex. 1016. In exchange, NSGWD agreed Morris may continue to use the Sandy Pipeline without expense to deliver irrigation water and replace the full 6.05 cfs available under the Morris rights. *Id.* This agreement is referred to herein as the “Morris exchange agreement.”

III. Martin-Curren Tunnel Water Rights

Rangen holds five water rights for the Rangen Facility decreed through the Snake River Basin Adjudication with the source identified as “Martin-Curren Tunnel.” The following chart taken from Exhibit 1049 illustrates the fourteen water rights, including Rangen’s, that identify “Martin-Curren Tunnel” as their source:

Table 3.1: Water Rights at Head of Billingsley Creek

User Name	Water Right Number	Priority Date	Amount (cfs)	Source*	Use
Candy	36-134A	10/9/1884	0.49	Martin-Curren Tunnel	Domestic, Irrigation
Rangen, Inc.	36-134B	10/9/1884	0.09	Martin-Curren Tunnel	Irrigation and domestic use
Morris	36-134D	10/9/1884	1.58	Martin-Curren Tunnel	Irrigation, Stockwater
Morris	36-134E	10/9/1884	0.82	Martin-Curren Tunnel	Irrigation, Stockwater
Musser	36-102	4/1/1892	4.1	Martin-Curren Tunnel	Domestic, Irrigation, Stockwater
Rangen, Inc.	36-135A	4/1/1908	0.05	Martin-Curren Tunnel	Irrigation and domestic use
Candy	36-135B	4/1/1908	0.51	Martin-Curren Tunnel	Irrigation
Morris	36-135D	4/1/1908	1.58	Martin-Curren Tunnel	Irrigation, Stockwater
Morris	36-135E	4/1/1908	0.82	Martin-Curren Tunnel	Irrigation, Stockwater
Morris	36-10141A	12/1/1908	0.82	Martin-Curren Tunnel	Irrigation, Stockwater
Morris	36-10141B	12/1/1908	0.43	Martin-Curren Tunnel	Irrigation, Stockwater
Rangen, Inc.	36-15501	7/1/1957	1.46	Martin-Curren Tunnel	Fish propagation use at the hatchery and research facility on Billingsley Creek.
Rangen, Inc.	36-2551	7/13/1962	48.54	Martin-Curren Tunnel	Fish propagation use at the hatchery and research facility on Billingsley Creek. (Includes 0.1 cfs for domestic use.)
Rangen, Inc.	36-7694**	4/12/1977	26.00	Martin-Curren Tunnel	Fish propagation use at the hatchery and research facility on Billingsley Creek.

* SRBA Partial Decree.

** According to a memorandum from Cindy Yenter to Karl Dreher dated December 15, 2003, Rangen’s submitted historical flow numbers show that flows have not been available to support water right number 36-7694 since October 1972, which predates the priority year of the right by nearly 5 years. Additionally, during the water right development period flows did not exceed 50 cfs, which is the total of water rights 36-15501 and 36-2551.

ISSUES PRESENTED ON APPEAL

Respondents' formulation of the issues presented on appeal by Rangen is as follows:

1. Whether the Director erred in granting IGWA 1.2 cfs of transient mitigation credit for past and ongoing aquifer enhancement activities.
2. Whether the Director erred in granting IGWA 1.8 cfs of mitigation credit for direct delivery of surface water from the Martin-Curren Tunnel to Rangen as a result of the Morris exchange agreement.

STANDARD OF REVIEW

Judicial review of a final decision of the Department is governed by the Idaho Administrative Procedure Act (“IDAPA”), chapter 52, title 67, Idaho Code. I.C. § 42-1701A(4). Under IDAPA, the court reviews an appeal from an agency decision based upon the record created before the agency. Idaho Code § 67-5277; *Dovel v. Dobson*, 122 Idaho 59, 61, 831 P.2d 527, 529 (1992). The Court shall affirm the agency decision unless it finds the agency’s findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion. Idaho Code § 67-5279(3); *Barron v. Idaho Dept. of Water Resources*, 135 Idaho 414, 417, 18 P.3d 219, 222 (2001). The party challenging the agency decision must show that the agency erred in a manner specified in Idaho Code § 67-5279(3), and that a substantial right of the petitioner has been prejudiced. Idaho Code § 67-5279(4); *Barron*, 135 Idaho at 417, 18 P.3d at 222. “Where conflicting evidence is presented that is supported by substantial and competent evidence, the findings of the [agency] must be sustained on appeal regardless of whether this Court may have reached a different conclusion.” *Tupper v. State Farm Ins.*, 131 Idaho 724, 727, 963 P.2d 1161, 1164 (1998). If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary. *Idaho Power Co. v. Idaho Dep’t of Water Res.*, 151 Idaho 266, 272, 255 P.3d 1152, 1158 (2011).

ARGUMENT

A. THE DIRECTOR CORRECTLY CALCULATED MITIGATION CREDIT FOR IGWA'S AQUIFER ENHANCEMENT ACTIVITIES

Since 2005, IGWA and its members have regularly undertaken aquifer enhancement activities to offset impacts of ground water pumping on the ESPA. *Amended Mitigation Plan Order* at 7 (R. p. 603). For example, IGWA has converted ground water irrigation to surface water irrigation, voluntarily dried up acreage irrigated with ground water through the CREP or other cessation of irrigation with ground water, and recharged ground water with surface water. *Id.* In its Mitigation Plan, IGWA sought credit for these past and ongoing aquifer enhancement activities. *Id.* Based upon the testimony and data presented at hearing and the fact that data for aquifer enhancement activities “have been recognized by the Department in other conjunctive management contested cases as a reliable representation of previous aquifer enhancement activities of IGWA,” the Director determined IGWA is entitled to mitigation credit for these activities. *Id.* at 7-8, 18 (R. p. 603-04, 614).

Rangen challenges the Director's approval of credit for ongoing aquifer enhancement activities, suggesting the Director cannot grant credit for future mitigation activities because there is uncertainty as to whether they will occur. Rangen argues “this impermissibly places the entire risk of whether those future activities will actually occur on Rangen.” *Opening Brief* at 6. The Court should reject Rangen's argument because the plan does not shift the burden of non-compliance to Rangen. The Department monitors IGWA's compliance with its mitigation plans and if IGWA fails to comply, junior-priority ground water pumpers will be curtailed.

1. Method used to determine mitigation credit for aquifer enhancement activities

When determining credit for aquifer enhancement activities, the Department inputs data for the activities into ESPAM as a stress in the model to simulate benefits accruing to spring/Snake River reaches. These springs/Snake River reaches supply water to senior surface water right holders who called for delivery of water pursuant to their senior surface water rights against junior ground water right holders. These data have been recognized by the Department in other conjunctive management contested cases as a reliable representation of previous aquifer enhancement activities of IGWA. *See Final Order Approving Mitigation Credits Regarding SWC Delivery Call, In the Matter of the Idaho Ground Water Appropriators, Inc.'s Mitigation Plan for Conversions, Dry-ups, and Recharge, Doc. No. CM-MP-2009-006 (July 19, 2010), aff'd on appeal in Memorandum Decision and Order on Petition for Judicial Review, CV-2010-3822 (Fifth Jud. Dist., Twin Falls County, April 22, 2011).*

Here, the Director used ESPAM 2.1 to determine the simulated benefits to Rangen of aquifer enhancement activities conducted by IGWA and other private entities. ESPAM 2.1 can simulate impacts resulting from applying a constant stress to the aquifer over an extended period of time until equilibrium is reached. This is called a “steady-state run.” Alternatively, ESPAM 2.1 can simulate the impacts of constant or time-variable stresses during a specific period of time. A model simulation that analyzes impacts over a specific time period is called a “transient run.” The length of the simulation is dependent on the time period of interest.

The Curtailment Order outlined two ways for IGWA to avoid curtailment of junior-priority ground water pumpers this year. IGWA was required to either (1) provide simulated steady state benefits or direct flow of 9.1 cfs to Rangen, or (2) provide direct or simulated transient flows of 3.4 cfs to Rangen during the first year of the five-year phase-in period outlined in the Curtailment Order. *Curtailment Order* at 42; Ex. 2042. The Director considered the effect

of IGWA's aquifer enhancement activities by examining both the steady state and transient approaches.

To predict the benefit of aquifer enhancement activities in a steady state, ESPAM 2.1 was run once to determine the steady state benefits assuming constant implementation of fixed aquifer enhancement activities by IGWA.⁵ Pursuant to this approach, IGWA is entitled to a mitigation credit of 1.7 cfs. *Amended Mitigation Plan Order* at 18 (R. p. 614). However, the full steady state benefit of 1.7 cfs is not predicted to be available during year 2014, and is only appropriate for mitigation credit toward the 9.1 cfs steady state obligation.

The Director also predicted transient benefits of aquifer enhancement activities that would accrue to the Martin-Curren Tunnel between April 1, 2014, and March 31, 2015. Using data entered into evidence at the hearing, ESPAM 2.1 was run once in transient mode with a stress period for each year of aquifer enhancement activities (2005 – 2013 plus projected future activities for the first year of the five-year phase-in period).⁶ For projected future activities, conversions, CREP, and voluntary curtailment projects were assumed to be identical to 2013, and private party managed recharge was assumed to be zero. *Amended Mitigation Plan Order* at 8 (R. p. 604); Data CD accompanying Mitigation Plan Order ("Data CD"), Excel file identified as 2005_2013 Transient.xlsx, n. 10. The Department determined the average annual benefit

⁵ Exhibit 3001 in the hearing record contains data compiled by the Department that quantifies the aquifer enhancement activities of IGWA and other private entities during the time period beginning in 2005 through 2010. Data for 2011 - 2013 private aquifer enhancement activities were received into evidence as Exhibits 1022, 1023, 1082 and 1083. Exhibit 1025 summarizes model runs predicting benefits to Rangen resulting from steady state simulations of activities in 2011, 2012, and 2013. The predicted flow benefits to Rangen in Exhibit 1025 were accepted and referred to by all parties in the presentation of evidence.

⁶ The Director notes that Rangen also evaluated IGWA's aquifer enhancement activities using an annual stress period approach. *See Ex. 2071*. Rangen's evaluation neglected aquifer enhancement activities performed by Southwest Irrigation District and the ongoing transient effects of aquifer enhancement activities performed by IGWA in prior years; thus, Rangen's evaluation did not include all of the transient benefits predicted to accrue to the Curren Tunnel after April 2014.

from aquifer enhancement activities predicted to accrue to the Martin-Curren Tunnel between April 1, 2014, and March 31, 2015, is 871 acre feet, which is equivalent to an average rate of 1.2 cfs for 365 days. Based on this analysis, the Director granted 1.2 cfs of mitigation credit towards IGWA's first year mitigation obligation of 3.4 cfs. *Id.*⁷

2. Rangen's arguments on appeal

Rangen asserts the Director cannot consider future aquifer enhancement activities in his calculation of mitigation credit for IGWA's aquifer enhancement activities. Specifically, Rangen argues this consideration "impermissibly places the entire risk of whether those future activities will actually occur on Rangen." *Opening Brief* at 6. Rangen also argues the Director erred by failing to identify provisions to ensure the future activities will occur and contingency provisions if the future activities cannot occur. *Id.* at 9.

Rangen cites no authority precluding the Director from considering future aquifer enhancement activities proposed in the Mitigation Plan in determining mitigation credit. The very concept of a mitigation plan is that it may propose future activities in order to mitigate for material injury. *See* CM Rule 43.03.d-e (providing that a mitigation plan may propose artificial recharge as a means of protecting ground water levels and a mitigation plan may be based upon computer simulations and calculations). The ability of a junior water user to receive credit for future mitigation activities is a fundamental aspect of mitigation plans and without the ability to consider future proposed activities most mitigation plans could never be approved. In many cases, the mitigation for which an entity seeks to earn mitigation credit has yet to be built. *See* Ex. 1020 (*Final Order Concerning the Over-the-Rim Mitigation Plan* at 9, Doc. No. CM-MP-2009-004 (Mar. 18, 2011)). While it is through future implementation of the mitigation plan that

⁷ The modeling files and a summary table of the model results for 2005 - March 2019 are included on the Data CD.

credit is earned, credit must be calculated in advance to determine whether it will satisfy the required mitigation obligation.

Approval of mitigation plans based upon future activities does not place an undue risk on Rangen that those activities might not occur. The Department monitors activities conducted pursuant to approved mitigation plans in order to ensure compliance with mitigation requirements and if IGWA fails to comply with those requirements junior ground water right holders will be curtailed. *See Order Curtailing Ground Water Rights in Water District Nos. 130 & 140 Junior to January 8, 1981*, In the Matter of Distribution of Water to Water Rights Nos. 36-04013A, 36-04013B, and 36-07148 (Snake River Farm)(July 22, 2009)⁸; *see also* Tr. Vol I, pp. 231, 234-36, 240, 242, 244-45, 257-58.

Contrary to Rangen's assertion, the Director has not failed to identify contingency provisions if future aquifer enhancement activities for which IGWA received mitigation credit do not occur. As the Director stated in the Amended Mitigation Plan Order: "If the proposed mitigation falls short of the annual mitigation requirement, the deficiency can be calculated at the beginning of the irrigation season. Diversion of water by junior water right holders will be curtailed to address the deficiency." *Amended Mitigation Plan Order* at 6 (R. p. 602).

Rangen also asserts the Director failed to identify in the Amended Mitigation Plan Order "the converted acres or other future activities for which IGWA has already been given mitigation credit." *Opening Brief* at 9. Rangen's assertion is misplaced. The record is replete with

⁸ A copy of this decision is attached hereto as Appendix A. This decision was the subject of a *Motion for Stay* filed by North Snake Ground Water District and Magic Valley Ground Water District in Gooding County Case No. CV 2009-431 and was included in the record of that case as Exhibit 14 to the Affidavit of Randal C. Budge (Aug. 11, 2009). The Court may take judicial notice of this decision pursuant to IRE 201(d). If a party moves the Court to "take judicial notice of records, exhibits or transcripts from the court file in the same or a separate case, the party shall identify the specific documents or items for which the judicial notice is requested or shall proffer to the court and serve on all the parties copies of such documents or items. A court shall take judicial notice if requested by a party and supplied with the necessary information." IRE 201(d) emphasis added. "Judicial notice may be taken at any stage of the proceeding." IRE 201(f).

evidence regarding the aquifer enhancement activities for which IGWA received mitigation credit. See Exhibits 3001, 1022, 1023, 1082, 1083, 1025, and the Data CD. As Rangen points out in its opening brief, footnote ten in a table included in the Data CD explains the predicted average benefit to the Martin-Curren Tunnel for April 2014 through March 2019 “assumes that conversions, voluntary curtailment, and CREP in 2014 - 2018 will be identical to 2013 mitigation activities.” *Data CD at 2005_2013 Transient.xlsx*.⁹ The Director identified future activities that were considered in determination of mitigation credit for IGWA’s aquifer enhancement activities. Therefore, the Director did not err in his determination that IGWA is entitled to 1.2 cfs of transient mitigation credit for the annual period from April 1, 2014, through March 31, 2015, based on ongoing aquifer enhancement activities.

B. THE DIRECTOR CORRECTLY DETERMINED THE MITIGATION CREDIT FOR THE MORRIS EXCHANGE AGREEMENT

IGWA sought credit in its Mitigation Plan for NSGWD’s agreement with Morris to exchange irrigation water diverted from the Martin-Curren Tunnel by Morris with water delivered through the Sandy Pipeline. The Director granted IGWA 1.8 cfs of mitigation credit for direct delivery of surface water from the Martin-Curren Tunnel to Rangen as a result of the Morris exchange agreement. Rangen challenges this determination on appeal.

1. The Director’s approval of credit for the Morris exchange agreement is consistent with the prior appropriation doctrine and the Director’s legal duties under Idaho Code § 42-602.

⁹ Rangen incorrectly asserts the table is included with Exhibit 3001. *Opening Brief* at 7. The table is included on the Data CD in the Excel file identified as 2005_2013 Transient.xlsx.

Morris holds six decreed water rights that are senior to Rangen’s fish propagation water rights (Water right nos. 36-134D¹⁰, 36-134E, 36-135D, 36-135E, 36-10141A, and 36-10141B hereafter referred to as “Morris Water Rights”). In 2014, Morris entered into a five-year contract with NSGWD formally authorizing NSGWD to use the Morris Water Rights “as needed to provide mitigation water to Rangen to satisfy the IDWR Director’s January 29, 2014 Order curtailing 157,000 acres of ground water rights junior to July 13, 1962.” Ex. 1016. In exchange, NSGWD agreed Morris may continue to use the Sandy Pipeline to deliver irrigation water to his lands without expense and replace the full 6.05 cfs available under the Morris Water Rights. *Id.* This agreement entered into by Morris to exchange his senior decreed water rights with NSGWD results in actual “wet” water being made available to Rangen that would have been diverted and used by Morris (and thus not available to Rangen) but for the agreement. *See* Ex. 1016 (“Were it not for the Sandy Pipeline, Morris would take all water available from the Martin-Curren Tunnel under the Morris Rights for irrigation purposes.”)

Rangen argues that, in determining IGWA is entitled to 1.8 cfs of mitigation credit as a result of the Morris exchange agreement, “the Director violated his clear legal duty to distribute water in accordance with priority. . . .” *Opening Brief* at 10. Rangen argues if Morris is not exercising his senior decreed water rights, the prior appropriation doctrine requires that water go to the next user in priority, which in this case is Rangen. *Id.* at 11. Rangen argues that, because Morris has “forgone” his diversion of water, the Director “must distribute 1.6 cfs of [the Martin Curren Tunnel] flow to Rangen’s early priority date.” *Id.* at 12.

¹⁰ This water right was mistakenly identified in the Mitigation Plan Order and Amended Mitigation Plan Order as water right no. 36-123D (p.8 ¶ 8 and p. 9 ¶ 13 in both orders). However, the water right was correctly identified in both orders as water right no. 36-134D thereafter (p. 10 ¶ 19, p. 11 ¶ 25, and table on p. 12).

The flaw in Rangen's argument is that Morris is in fact using his senior decreed water rights; he is exercising his legal right to contract with others for the use of his decreed water rights. Here, Morris has entered into an agreement with NSGWD whereby he agrees to exchange his senior decreed water rights for another source of water. Ex. 1016. While Morris does not directly divert and use the water, he is still exercising his right to contract with NSGWD to use his water rights, and NSGWD is in turn using the water for a beneficial use.

In Idaho, water rights are real property. *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 797, 252 P.3d 71, 78 (2011). One of the sticks in the bundle of rights associated with ownership of water rights is the ability to contract with others for the sale or use of the water. Water users are free to contract with others to use their water rights so long as the change does not cause injury to other water users. *See Rayl v. Salmon River Canal Co.*, 66 Idaho 199, 215, 157 P.2d 76, 83 (1945). Adoption of Rangen's argument would wrongly diminish Morris's senior water right as it would prevent Morris from exercising his right to enter into an agreement with another water user to use his senior water rights. The Morris Water Rights are senior to Rangen's water rights on the Martin-Curren Tunnel and preventing Morris from exercising his senior water rights in a legally permissible manner is inconsistent with the prior appropriation doctrine. Rangen suggests the Director must allocate water that would have been available to Morris to Rangen's junior water rights before allocating any credit to IGWA, but this ignores the fact that water is only available because Morris chose to enter an agreement with NSGWD to exchange his senior water rights *in order to provide mitigation water to Rangen*. Because Morris is exercising his water rights in a legally permissible manner that in turn provides a direct benefit to Rangen, the Director did not err by concluding IGWA is entitled to 1.8 cfs of mitigation credit as a result of the Morris exchange agreement.

2. The Director acted within his discretion when using average irrigation season flow data to determine predicted flows at the Martin-Curren Tunnel.

Once the Director determined IGWA was entitled to mitigation credit because of the Morris exchange agreement, the Director had to forecast the anticipated discharge from the Martin-Curren Tunnel. To do this, the Director reviewed flow data from the Martin-Curren Tunnel dating back nearly twenty years. *Amended Mitigation Plan Order* at 9-10 (R. p. 605-606). Martin-Curren Tunnel discharge is the sum of the average monthly flow measured at the mouth of the tunnel by the Department (Exhibit 2045) and the average monthly flow diverted into Rangen's six-inch PVC pipe (Exhibit 3000).¹¹ This data was reflected in Table 1 of the Amended Mitigation Plan Order:

¹¹ In its Opening Brief, Rangen claims "the actual flow of water in the Martin-Curren Tunnel was as low as 0.74 cfs" and cites Exhibit 2045. Exhibit 2045 is not the complete record of the flow measurements at the Curren Tunnel. To determine the actual flows, the water measured through the six-inch PVC pipe must also be taken into consideration.

Year	Average Curren Tunnel discharge, April 15 - October 15
1996	12.4
1997	17.9
1998	17.0
1999	15.2
2000	13.9
2001	8.0
2002	4.5
2003	3.9
2004	4.4
2005	2.3
2006	5.7
2007	4.9
2008	3.2
2009	2.8
2010	2.3
2011	3.4
2012	4.1
2013	2.8
2002-2013 average	3.7

Amended Mitigation Plan Order at 10 (R. p. 606). The Director found there is a distinct change in the magnitude of average irrigation season flow values starting in 2002. *Id.* at 9 (R. p. 605). The Director concluded the average discharge from the Martin-Curren Tunnel during the 2014 irrigation season will be within the range represented by the 2002 - 2013 conditions. *Id.* As the table demonstrates, from 2002 through 2013, the average irrigation season flow has varied between 2.3 cfs and 5.7 cfs. The Director used the years of 2002 through 2013 as a historical data set to predict the flows from the Martin-Curren Tunnel for 2014 and computed the average of the average irrigation season values for each year from 2002 through 2013 which is 3.7 cfs. *Id.*

On appeal, Rangen challenges the Director’s use of an average irrigation season flow rate: “The use of average past flows is not appropriate for the evaluation of a mitigation proposal

based upon delivery of actual water.” *Opening Brief* at 13. Rangen argues the Director must rely on “the actual flow of water from the Tunnel” to determine credit instead of using a predicted average and that “[t]here is insufficient evidence to conclude that flows in the Martin-Curren Tunnel will be 3.7 cfs or greater in 2014.” *Id.* at 13-14. Rangen’s argument again confuses the time frame in which consideration of the Mitigation Plan occurs. The very nature of a mitigation plan is that it is forward looking and the Director must predict the effects of the proposed mitigation activities. The use of historical data as a predictive tool is common in water right delivery calls. For example, the Idaho Supreme Court has affirmed the Director’s use of a baseline methodology that uses predictive tools to forecast injury to senior water right holders. *In Matter of Distribution of Water to Various Water Rights Held By or For Ben. of A & B Irrigation Dist.*, 155 Idaho 640, 651, 315 P.3d 828, 839 (2013). The Director cannot use “actual flow” data because it does not exist when consideration of the mitigation plan takes place.

In this case, the Director examined the existing historical data and provided a reasoned and considered prediction of discharge rates for the Martin-Curren Tunnel. The years 2002-2013 were chosen as analogous years to 2014 because (a) the years are the most recent years with measured data, (b) average irrigation season flows from the Martin-Curren Tunnel during this period do not trend upward or downward and represent the range of flows that may be available from the Martin-Curren Tunnel during the 2014 irrigation season, (c) there is a discernible change in average irrigation season flows prior to 2002 such that data prior to 2002 should not be used, and (d) the 2002 – 2013 period is a long enough period of data to represent the range of flows that may occur. *Order on Reconsideration* at 3-4 (R. p. 623-24). The twelve average irrigation season flow rates for the years 2002 – 2013 were averaged, resulting in a predicted average flow rate for the 2014 irrigation season of 3.7 cfs. *Id.* Averaging the most recent twelve

years of historical irrigation season flow data is both a practical and scientifically supportable approach to predicting the future flows of the Martin-Curren Tunnel. Because the Director's decision to utilize an average of historical flow data was reached through an exercise of reason, it is within the limits of the Director's discretion and must be affirmed.

Rangen also appears to challenge the use of an annual time period to evaluate the average benefit of IGWA's proposal to deliver water resulting from the Morris exchange agreement to Rangen. Rangen asserts:

The flow in the Martin-Curren Tunnel during a substantial portion of the year is less than the 1.6 cfs needed to satisfy senior water rights as discussed above. (Exhibit 2045). Rangen's 1962 water right receives no benefit from the Morris Agreement during those times. The Director did not properly consider whether the delivery of any water as a result of the agreement with Morris would actually result in water at a time and place that provides a benefit and what that benefit might be. The benefit, if any, would not necessarily be equal to the average predicted by the Director.

Opening Brief at 14.

The justification for using an annual time period to evaluate the benefits of the Morris exchange agreement is twofold. First, the Director can compare the benefits of mitigation to the calculated mitigation obligation. IGWA's mitigation obligation was calculated using the ESPAM model to determine predicted **annual** volume accruing to the Martin-Curren Tunnel within each year of the five-year phase in period. The mitigation obligation was calculated by dividing the total volume predicted to accrue over a one year period by 365 days and converting the units to cubic feet per second. Employing a annual time period to evaluate the average benefit of IGWA's delivery of water pursuant to the Morris exchange agreement allows for consistency and direct comparison to the annual mitigation requirement and to the average annual benefit provided by IGWA's aquifer enhancement activities.

Second, if mitigation credit is recognized for only the irrigation season as suggested by Rangen, this would result in injury to Rangen because there is no mitigation plan to make up the obligation at the end of the irrigation season. The effects of junior ground water pumping do not just manifest themselves during the irrigation season but over an entire year. Establishing a curtailment date at the end of the irrigation season with no mitigation plan to cover the remainder of the year could result in IGWA not fully mitigating its depletions to spring flows caused by irrigation season diversions of ground water. The spreading of the mitigation credit for water delivered as a result of the Morris exchange agreement over 365 days: a) recognized IGWA's mitigation obligation was determined based on the average annual predicted benefit of curtailment; b) recognized IGWA delivered water to Rangen, and Rangen derived value from the water delivered; c) prevented establishment of a curtailment date at the end of the irrigation season with no mitigation plan to cover the remainder of the year.

C. RANGEN IS NOT ENTITLED TO ATTORNEY FEES

In order for attorney fees to be awarded, authority and argument establishing a right to attorney fees must be presented in the first brief filed by a party on appeal. *Carroll v. MBNA Am. Bank*, 148 Idaho 261, 270, 220 P.3d 1080, 1089 (2009). While Rangen demanded attorney fees pursuant to Idaho Code § 12-117 and Idaho Rule of Civil Procedure 54 in its *Petition for Judicial Review* filed on June 13, 2014, Rangen presents no argument in support of this demand in its opening brief on appeal. Even if the Court considers Rangen's request for attorney fees, the Director's factual findings are supported by substantial and competent evidence and his determinations of legal issues are not clearly erroneous. Therefore, Rangen is not entitled to an award of attorney fees in this matter.

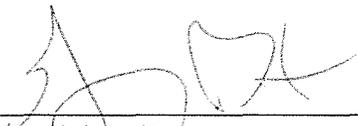
CONCLUSION

The Director correctly determined IGWA is entitled to 1.2 cfs of transient mitigation credit for the annual period from April 1, 2014, through March 31, 2015, because of its past and ongoing aquifer enhancement activities. The Director correctly determined IGWA is entitled to 1.8 cfs of mitigation credit for direct delivery of surface water from the Martin-Curren Tunnel to Rangen as a result of the Morris exchange agreement. Rangen is not entitled to attorney fees on appeal. The Court should affirm the Director's determinations in the Order on Reconsideration and the Amended Mitigation Plan Order.

DATED this 8 day of October 2014.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

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



Garrick L. Baxter
Emmi L. Blades
Deputy Attorneys General
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of October 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated, to the following:

<i>Original to:</i> SRBA DISTRICT COURT 253 3 RD AVE. NORTH P.O. BOX 2707 TWIN FALLS, ID 83303-2707 FAX: (208) 736-2121	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
J. JUSTIN MAY MAY BROWNING 1419 W. WASHINGTON BOISE, ID 83702 jmay@maybrowning.com	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail
ROBYN BRODY BRODY LAW OFFICE P.O. BOX 554 RUPERT, ID 83350 robynbrody@hotmail.com	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail
FRITZ HAEMMERLE HAEMMERLE & HAEMMERLE P.O. BOX 1800 HAILEY, ID 83333 fxh@haemlaw.com	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail
RANDALL C. BUDGE T.J. BUDGE RACINE OLSON P.O. BOX 1391 POCATELLO, ID 83204-1391 rbc@racinelaw.net tjb@racinelaw.net	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail
JOHN K. SIMPSON TRAVIS L. THOMPSON PAUL L. ARRINGTON BARKER ROSHOLT & SIMPSON, LLP 195 RIVER VISTA PLACE, SUITE 204 TWIN FALLS, IDAHO 83301-3029 flt@idahowaters.com jks@idahowaters.com pla@idahowaters.com	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail

W. KENT FLETCHER
FLETCHER LAW OFFICE
P.O. BOX 248
BURLEY, IDAHO 83318
wkf@pmt.org

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



GARRICK L. BAXTER
Deputy Attorney General

Appendix A

*Order Curtailing Ground Water Rights in Water District Nos. 130 & 140 Junior to
January 8, 1981, In the Matter of Distribution of Water to Water Rights
Nos. 36-04013A, 36-04013B, and 36-07148 (Snake River Farm)*

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

IN THE MATTER OF DISTRIBUTION OF)	
WATER TO WATER RIGHTS NOS. 36-04013A,)	
36-04013B, AND 36-07148 (SNAKE RIVER)	ORDER CURTAILING GROUND
FARM))	WATER RIGHTS IN WATER
) DISTRICT NOS. 130 AND 140
) JUNIOR TO JANUARY 8, 1981
(Water District Nos. 130 and 140))	
_____)	

FINDINGS OF FACT

Procedural Background

1. This matter was originally commenced in 2005 with the filing of a delivery call for administration of junior ground water rights by Clear Springs Foods, Inc. (“Clear Springs”). On July 8, 2005, the Director of the Department of Water Resources (“Director” or “Department”) issued an order in this matter (“July 2005 Order”) finding that certain water rights held by Clear Springs were materially injured in accordance with the Department’s Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11 *et seq.* (“CM Rules”). The Director ordered curtailment of ground water rights junior to the most senior of Clear Springs’ injured water rights (36-4013B; February 4, 1964), unless those users could replace the depletions that were causing injury to Clear Springs. Consistent with CM Rule 40.01.a, curtailment was phased-in over a period of five years to lessen the economic impact of curtailment.

2. At the time the July 2005 Order was issued, ground water depletions from Water District No. 140 had not yet been taken into account. With the inclusion of Water District No. 140, the Eastern Snake Plain Aquifer (“ESPA”) Model simulates that the benefits of curtailing ground water rights junior to February 4, 1964 would increase reach gains in the 11-mile Buhl Gage to Thousand Springs reach by 38.72 cfs. *Final Order Accepting Ground Water Districts’ Withdrawal of Amended Mitigation Plan, Denying Motion to Strike, Denying Second Mitigation Plan and Amended Second Mitigation Plan in Part; and Notice of Curtailment* at 6, ¶ 23 (March 5, 2009) (“March 5 Order”).

3. Clear Springs diverts from discrete springs located in the Buhl Gage to Thousand Springs reach. The Director has determined that 6.9% of the benefits of curtailment will accrue directly to Clear Springs at its facility. *Id.* at 2, ¶ 2.

4. In 2009, the fifth year of the phased-in period of curtailment, junior ground water users are required to provide 38.72 cfs to the Buhl Gage to Thousand Springs reach, or 2.67 cfs directly to Clear Springs (6.9% of 38.72 cfs). *Id.* at 6, ¶ 24.

5. Since 2005, junior ground water users, represented by the Idaho Ground Water Appropriators, Inc. (“IGWA” or “Ground Water Districts”), have responded to the requirements of the July 2005 Order by submitting replacement plans to offset depletions to the Buhl Gage to Thousand Springs reach. Water has been replaced by conversion of acres irrigated by ground water to surface water, conveyance losses, idling of lands through the Conservation Enhancement Reserve Program (“CREP”), and recharge.

6. In 2009, IGWA proposed to replace its depletions through conversion of approximately 9,300 acres that had been converted in previous years, continued enrollment of acres in CREP, and other activities.¹ In the March 5 Order, the Department determined that the benefits of conversion and CREP would result in a 9.88 cfs benefit to the Buhl Gage to Thousand Springs reach. *Id.* at 6, ¶ 23. The Director accepted those portions of IGWA’s 2009 replacement plan in the March 5 Order. *Id.* at 13, ¶ 2. The resulting shortfall at the time of the March 5 Order was 28.84 cfs to the reach (38.72 cfs – 9.88 cfs), or 1.99 cfs directly to Clear Springs (6.9% of 28.84 cfs). *Id.* at 6, ¶ 23.

7. Based on the shortfall, the Director provided notice to holders of ground water rights junior to November 16, 1972, that curtailment would occur if no action was taken by March 16, 2009. The resulting curtailment would have impacted approximately 860 ground water rights that irrigate approximately 41,000 acres in Cassia, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls counties.

8. On March 12, 2009, IGWA submitted its *2009 Replacement Water Plan and Third Mitigation Plan (Over-the-Rim) of North Snake Ground Water District and Magic Valley Ground Water District* (“2009 Plan”). The 2009 Plan proposed to eliminate the 1.99 cfs shortfall to Clear Springs by providing “direct delivery of ground water from existing wells to Snake River Farm’s intake.” *2009 Plan* at 6. The lands that were served by the wells that would comprise the over-the-rim component of direct replacement supply to Clear Springs would be converted from ground water irrigation to surface water irrigation. “The total acres proposed to be converted is approximately 1,060 acres.” *Id.* at 7. The over-the-rim pipeline would provide between 1.99 to 3.0 cfs directly to Clear Springs.

¹ IGWA had proposed to offset the remainder of its depletions by requesting that the Director order Clear Springs to accept direct monetary payment or replacement fish. For reasons discussed in the March 5 Order, the Director denied the request. This and other determinations made in the March 5 Order are on judicial review before the Honorable John M. Melanson of the Fifth Judicial District.

9. Upon receipt of the 2009 Plan, the Director held in abeyance the notice of curtailment in the March 5 Order until making a determination on the 2009 Plan. *Order on Scheduling and Holding Notice of Curtailment in Abeyance* (March 16, 2009).

10. On March 26, 2009, the Director approved the 2009 Plan, which required IGWA to construct the over-the-rim pipeline and implement the associated 1,060 new conversion acres. *Order Approving Ground Water Districts' Replacement Water Plan for 2009* (March 26, 2009) ("March 26 Order"). The order required construction of the pipeline and new conversion acres no later than June 1, 2009. Nothing in the March 26 Order altered the requirement of the March 5 Order that IGWA continue conversion of the existing 9,300 conversion acres and maintain enrollment of lands in CREP. The notice of curtailment continued to be held in abeyance.

11. On April 27, 2009, Clear Springs filed its *Motion for Partial Stay of Implementation of Directors' March 26, 2009 Order Approving Ground Water Districts' Replacement Water Plan for 2009* ("Partial Stay Motion"). For several legal and practical reasons, Clear Springs requested that the Director partially stay implementation of the March 26 Order for one year, "so as not to require construction and installation of the GWD's 'over-the-rim' project at this time." *Partial Stay Motion* at 9. Clear Springs stated it would "accept the remainder of the 2009 Plan as acceptable mitigation for this year" and that "Clear Springs' acceptance of this mitigation would be for the sole purpose of proceeding to an immediate hearing on the 2009 Plan on the issues identified by Clear Springs' protest" to the Ground Water Districts' Third Mitigation Plan (Over-the-Rim). *Id.* at 6-7.

12. On May 4, 2009, the Director conducted a status conference with the parties to discuss their positions regarding the requested partial stay. At the status conference, an officer of Clear Springs and the attorney for the Ground Water Districts stated that each party respectively agreed to a two-year partial stay of the requirement for completion of the over-the-rim project, "while continuing with the other approved replacement water requirements for the two-year period. The parties were not able to reach agreement at the status conference on the timing for holding a hearing on the Ground Water Districts' Third Mitigation Plan." *Order Granting Partial Stay of Ground Water Districts' Replacement Water Plan for 2009* at 1 (May 15, 2009) ("May 15 Partial Stay Order"). "[B]ased upon Clear Springs' acceptance of the terms of the two-year partial stay, satisfaction of the remainder of the 2009 Plan, approved by the March 26, 2009 Order of the Director, shall constitute acceptable and sufficient replacement water or mitigation by the Ground Water Districts for the 2009 and 2010 calendar years." *May 15 Partial Stay Order* at 2.

13. On May 15, 2009, Gerald F. Schroeder was appointed to serve as independent hearing officer and conduct a hearing on the stayed portion of the 2009 Plan, as well as conduct a post-audit of the Ground Water Districts' prior replacement activities. *Order Appointing Hearing Officer; Granting Petition to Intervene; and Consolidating Matters for Hearing*.

14. On June 19, 2009, the Director sent a letter to attorneys for the Ground Water Districts regarding compliance with the non-stayed portions of the 2009 Plan: new conversions of 1,060 acres; continued conversion of 9,300 acres; and continued participation in CREP. In the letter, the Director stated that a field examination of the 1,060 new conversion acres was

performed by the watermaster for Water District Nos. 130 and 140 on June 2, 2009. One concern raised in the letter was a potential shortfall in the number of new conversion acres. The Director requested additional information on the new conversion acres by June 25, 2009.

15. On June 25, 2009, attorneys for the Ground Water Districts provided an initial response to the Director's June 19 letter. In the response letter, attorneys for the Ground Water Districts stated that, "When the 2009 Plan was filed, the exact number of acres to be converted was unknown." Actual implementation of the new conversions led to fewer acres. Secondly, attorneys for the Ground Water Districts notified the Director that, of the 9,300 existing conversion acres, fewer of those acres were converted than in previous years. Third, attorneys for the Ground Water Districts stated that participation in CREP is continuing and that more acres may be enrolled than in previous years. Finally, attorneys for the Ground Water Districts stated that if the actions taken thus far are "not acceptable and the Director determines to remove the two-year partial stay, the Ground Water Districts are prepared to proceed with the construction of the over-the-rim delivery portion of the 2009 Plan."

16. On June 29, 2009, Clear Springs filed its *Response to Ground Water Districts' June 25, 2009 Letter* ("Response"). In its Response, Clear Springs stated its concerns with the Ground Water Districts' failure to follow the requirements of the March 26 Order and May 15 Partial Stay Order regarding continued conversion of 9,300 acres and conversion of 1,060 new acres.

17. On June 30, 2009, the Director² responded by letter to attorneys for the Ground Water Districts. The Director stated that even if the two-year stay on construction of the pipeline were removed, there would be too few new conversion acres and the 2009 Plan would not be in compliance. Additionally, the Director requested additional information on how many of the existing 9,300 conversion acres would be irrigated with rented storage water.

18. On July 9, 2009, attorneys for the Ground Water Districts responded to the Director's June 30, 2009 letter. Attorneys for the Ground Water Districts reiterated the position on the new conversion acres from the June 25, 2009 letter. In the July 9, 2009 letter, attorneys for the Ground Water Districts explained a number of reasons that fewer than the existing 9,300 conversion acres would be irrigated by surface water this season. Ultimately, the letter stated "that surface water is being delivered to approximately 3,500 of the 9,300 previously converted acres, as well as to the new conversions under the 2009 Plan."

19. On July 16, 2009, attorneys for the Ground Water Districts supplemented the July 9, 2009 letter with additional information.

Technical Review of Non-Stayed Requirements of the 2009 Plan

20. In 2009, the final year of the phased-in period of curtailment, junior ground water users were to provide 38.72 cfs to the Buhl Gage to Thousand Springs reach, or 2.67 cfs directly

² On June 30, 2009, after thirty-three years of service to the Department, Director David R. Tuthill, Jr. retired. This was the final document issued by Director Tuthill in this proceeding. Gary Spackman was subsequently appointed Interim Director by the Governor on July 17, 2009.

to Clear Springs (6.9% of 38.72 cfs). In the March 5 Order, the Director accepted the Ground Water Districts' 2009 proposal to enroll the same number of acres in CREP and continue the same conversions as in 2008. Acceptance of the existing CREP and conversion acres reduced the 2009 obligation to "28.84 cfs to the reach, or 1.99 cfs to Clear Springs (6.9% or 28.8[4] cfs)." *March 5 Order* at 8, ¶ 6.

21. According to the orders of March 5, March 26, and the May 15 Partial Stay Order, acceptable and sufficient replacement water or mitigation by the Ground Water Districts for the 2009 and 2010 calendar years was to consist of: (1) continued conversion of 9,300 acres; (2) conversion of 1,060 new acres; and (3) continued enrollment of acres in CREP.

22. Using the ESPA Model, the simulations of above-mentioned efforts predict a reach gain of 12.23 cfs to the Buhl Gage to Thousand Springs reach, or 0.84 cfs directly to Clear Springs. But for the May 15 Partial Stay Order, the remaining difference of 26.49 to the reach, or 1.83 to Clear Springs, was to be made up by the Ground Water Districts via construction of the over-the-rim pipeline.

23. In accordance with the May 15 Partial Stay Order, the Ground Water Districts are required to provide 12.23 cfs to the Buhl Gage to Thousand Springs reach during the 2009 and 2010 calendar years through existing conversions, new conversions, and CREP.

(1) Continued Conversion of 9,300 Acres

24. In the March 5 and March 26 orders, the Director accepted the Ground Water Districts' proposal to continue surface water delivery to 9,300 conversion acres. The 9,300 conversion acres accepted in the March 5 and March 26 orders were the same conversion acres as in 2006, 2007, and 2008. *March 5 Order* at 6, ¶ 22. In order to irrigate the 9,300 conversion acres with surface water, the Ground Water Districts secured 35,000 acre-feet of storage water to be conveyed through the North Side Canal Co.'s delivery system. *2009 Plan* at 6.

25. As stated in the March 5 Order, the Department has reviewed the Ground Water Districts' reporting and has independently reviewed the number of conversion acres from previous years. Using the ESPA Model, the Department has determined the resulting benefit to the Buhl Gage to Thousand Springs reach from existing conversion acres is 9.44 cfs. *March 5 Order* at 6, ¶ 23.

26. The Ground Water Districts' June 25, 2009 letter stated that fewer than 9,300 acres were expected to be converted this season. The Ground Water Districts' July 9, 2009 letter stated that "surface water is being delivered to approximately 3,500 of the 9,300 previously converted acres"

27. In reviewing data provided by the North Snake Ground Water District, the Department determined that approximately 4,202.6 of the original 9,300 conversion acres have received or will receive some surface water in 2009 for conversion purposes. The volume of water that has been delivered or has been ordered for those acres is 9,249.96 acre-feet.

28. The Department used the above-mentioned volume and the physical location of the particular acres within the ESPA Model that have received or will receive surface water deliveries to determine the benefit to the Buhl Gage to Thousand Springs reach. The anticipated benefit to the Buhl Gage to the Thousand Springs reach is 3.54 cfs, resulting in a shortfall of 5.90 cfs (9.44 cfs – 3.54 cfs).

(2) Conversion of 1,060 New Acres

29. The March 26 Order and May 15 Partial Stay Order required 1,060 new conversion acres. The ESPA Model predicted that the benefit of these new conversion acres to the Buhl Gage to Thousand Springs reach would be 2.35 cfs. *March 26 Order* at 3-4, ¶ 16.

30. The model simulation performed by the Department for the March 26 Order assumed that the location of the new conversion acres would be consistent with the 2009 Plan, and that the number of acres converted would be 1,060. The model simulations assumed that the required irrigation volume for the new conversion acres would be four acre-feet per acre.

31. Subsequent to the March 26 Order, the watermaster determined that there were fewer acres converted than required, and that the location of the acres was different than expected.³ As found by the watermaster, 920 of the expected 1,060 acres have been converted to surface water irrigation. Assuming delivery of four acre-feet per acre, the expected delivery to the 920 converted acres during the 2009 irrigation season is 3,680 acre-feet.

32. The most significant changes in the new conversion acres were the substitution of 74 Van Dyke acres for 80 Brown acres, and the loss of 132 acres which were originally thought to be owned by Box Canyon. The location of the Van Dyke acres in the ESPA Model results in an approximately 10% greater benefit to the Buhl Gage to Thousand Springs reach; therefore, despite fewer new conversion acres than required, the simulated benefit to the reach is 2.82 cfs, which is 0.47 cfs more than anticipated in the March 26 Order.

(3) Continued Enrollment of Acres in CREP

33. In the March 5 and March 26 orders, the Director accepted the Ground Water Districts' proposal to continue enrollment of acres in CREP. The Department has reviewed the Ground Water Districts' reporting and has independently reviewed the number of acres enrolled in CREP. As of the issuance of the March 5 and March 26 orders, the modeled benefit to the Buhl Gage to Thousand Springs reach was 0.44 cfs. *March 5 Order* at 6, ¶ 23; *March 26 Order* at 4, ¶ 17. Based on the Department's present understanding of the acres enrolled in CREP, the simulated benefit to the Buhl Gage to Thousand Springs reach is 0.68 cfs, or 0.24 cfs more than anticipated in the March 5 and March 26 orders.

³ The report of the watermaster is attached to the Director's June 19, 2009 letter.

Shortfall to the Buhl Gage to Thousand Springs Reach;
Curtailment of Ground Water Rights Junior to January 8, 1981

34. While the benefit to the Buhl Gage to Thousand Springs reach is greater than anticipated for CREP and the new conversion acres, there exists a shortfall as a result of the Ground Water Districts converting fewer than the existing 9,300 conversion acres.

Existing Conversions	New Conversions	CREP	Total Provided	Required	Shortfall
3.54 cfs	2.82 cfs	0.68 cfs	7.04 cfs	12.23 cfs	5.19 cfs

35. As a result of fewer existing conversions, the ESPA Model predicts a shortfall of 5.19 cfs to the Buhl Gage to Thousand Springs reach. The parties agreed and the Director ordered that 12.23 cfs would “constitute acceptable and sufficient replacement water or mitigation by the Ground Water Districts for the 2009 and 2010 calendar years.” *May 15 Partial Stay Order* at 2.

36. Using the ESPA Model, and taking into account 10% model uncertainty and only those rights located within the area of common ground water supply, curtailment of ground water rights junior to January 8, 1981 will result in a 5.24 cfs benefit to the Buhl Gage to Thousand Springs reach, or 0.36 cfs directly to Clear Springs. Selecting a more junior priority date for curtailment will not satisfy the 5.19 cfs shortfall.

37. Included with this order is a map depicting the area of curtailment and a list of all junior priority ground water rights that are subject to curtailment. In Water District No. 130, there are approximately 302 junior priority ground water rights that are subject to curtailment. Curtailment of junior priority ground water rights in Water District No. 130 would result in the curtailment of approximately 8,425 acres. In Water District No. 140, there are approximately 13 junior priority ground water rights that are subject to curtailment. Curtailment of junior priority ground water rights in Water District No. 140 would result in the curtailment of approximately 464 acres.

38. In total, the curtailment will impact the holders of approximately 315 ground water rights that irrigate approximately 8,889 acres in portions of Blaine, Cassia, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls counties.

CONCLUSIONS OF LAW

1. Idaho Code § 42-602, addressing the authority of the Director over the supervision of water distribution within water districts, provides:

The director of the department of water resources shall have direction and control of the distribution of water from all natural water sources within a water district to

the canals, ditches, pumps and other facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho Code, shall be accomplished by watermasters as provided in this chapter and supervised by the director. The director of the department of water resources shall distribute water in water districts in accordance with the prior appropriation doctrine. The provisions of chapter 6, title 42, Idaho Code, shall apply only to distribution of water within a water district.

In addition, Idaho Code § 42-1805(8) provides the Director with authority to “promulgate, adopt, modify, repeal and enforce rules implementing or effectuating the powers and duties of the department.”

2. Idaho Code § 42-603 grants the Director authority to adopt rules governing water distribution. In accordance with chapter 52, title 67, Idaho Code, the Department adopted the CM Rules. The CM Rules prescribe procedures for responding to a delivery call made by the holder of a senior priority surface or ground water right against junior priority ground water rights in an area having a common ground water supply. CM Rule 1.

3. In the fifth and final year of the phased-in period of curtailment, the Ground Water Districts were to provide 38.72 cfs to the Buhl Gage to Thousand Springs reach, or 2.67 cfs directly to Clear Springs.

4. As agreed to by the parties and required by the Director in the May 15 Partial Stay Order, 12.23 cfs to the Buhl Gage to Thousand Springs reach shall “constitute acceptable and sufficient replacement water or mitigation by the Ground Water Districts for the 2009 and 2010 calendar years.” *May 15 Partial Stay Order* at 2.

5. For 2009, the Ground Water Districts have provided 7.04 cfs to the Buhl Gage to Thousand Springs reach, resulting in a shortfall of 5.19 cfs.

6. As stated in the Findings of Fact, these proceedings were initiated in 2005 by Clear Springs as a call for delivery of water under the CM Rules. Under the July 2005 Order, it was stated as follows:

If at any time the mitigation or substitute curtailment is not provided as required herein, the water rights subject to curtailment as provided herein shall be immediately curtailed by the watermaster for Water District No. 130, based on the priorities of the rights, to the extent mitigation or substitute curtailment has not been provided.

July 2005 Order at 38, ¶ 5.

7. The ESPA 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 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.

8. Using the ESPA Model, and taking into account 10% model uncertainty and only those rights located within the area of common ground water supply, curtailment of ground water rights junior to January 8, 1981 is simulated to result in at least 5.19 cfs benefit to the Buhl Gage to Thousand Springs reach. The curtailment will impact the holders of approximately 315 ground water rights that irrigate approximately 8,889 acres in portions of Blaine, Cassia, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls counties.

9. In their June 25 and July 9, 2009 letters to the Director, attorneys for the Ground Water Districts state that the Director could lift his May 15 Partial Stay Order and instruct the Ground Water Districts to move forward with construction of the over-the-rim pipeline in order to alleviate the shortfall to Clear Springs. As stated by the Director in his June 30, 2009 letter, the Ground Water Districts are not in compliance with the non-stayed portions of the 2009 Plan, which was agreed to by the parties and ordered by the Director. The Ground Water Districts were specifically required to construct 1,060 new conversion acres, continue conversion of the existing 9,300 conversion acres, and continue enrollment of acres in CREP. A shortfall to the Buhl Gage to Thousand Springs reach exists and the appropriate remedy is curtailment of junior ground water rights, not removal of the two-year partial stay.

10. Description of actions to comply with the terms of the May 15 Partial Stay Order may be submitted on behalf of holders of junior priority ground water rights by the ground water district(s) in which such water rights are located within six (6) days of the issuance of this order. If a plan of action submitted by a ground water district to comply with the terms of the May 15 Partial Stay Order is received by the Department on or before July 28, 2009 and the plan is deemed acceptable by the Director, in whole or in part, the Director should modify the priority date identified for curtailment and reduce the number of curtailed junior priority ground water rights in the affected water district(s), or possibly rescind the ordered curtailment. The Director will only accept a plan to comply with the terms of the May 15 Partial Stay Order that is submitted by a ground water district.

11. On July 31, 2009, at 12:01 a.m., unless notified by the Department that the order of curtailment has been modified or rescinded as to their water rights, users of ground water within Water District Nos. 130 and 140 holding consumptive water rights bearing priority dates junior to January 8, 1981, listed in the attachment to this order, shall curtail/refrain from diversion and use of ground water pursuant to those water rights.

12. In 2007, a mitigation plan was submitted by the Idaho Dairymen's Association ("IDA") and approved by the Director to mitigate for ground water depletions caused by its members. Based on acceptance of the IDA mitigation plan, participating members of the IDA are not subject to curtailment, provided the terms of the plan are being followed.

13. Ground water users who hold junior priority ground water rights and are not members of a ground water district that is providing approved mitigation, replacement water supply, or substitute curtailment, should be deemed a non-member participant for mitigation

purposes pursuant to H.B. 737 (*Act Relating to the Administration of Ground Water Rights within the Eastern Snake River Plain*, ch. 356, 2006 Idaho Sess. Laws 1089) and should be required to pay the ground water district that is providing approved mitigation, replacement water supply, or substitute curtailment nearest the lands to which the water right is appurtenant for mitigation purposes pursuant to Idaho Code § 42-5259. If the holder of such a junior priority ground water right elects not to join the ground water district, the Director should order curtailment.

14. Curtailment will apply to consumptive ground water rights for agricultural, commercial, industrial, and municipal uses, excluding ground water rights used for *de minimis* domestic purposes where such domestic use is within the limits of the definition set forth in Idaho Code § 42-111 and ground water rights used for *de minimis* stock watering where such stock watering use is within the limits of the definitions set forth in Idaho Code § 42-1401A(12), pursuant to IDAPA 37.03.11.020.11.

15. In the event that junior priority ground water users do not voluntarily comply with ordered curtailment, the Director should enforce the terms of this order in accordance with Idaho law, which includes, but is not limited to, the procedures outlined in Idaho Code §§ 42-351 (Illegal diversion or use of water—Enforcement procedure—Injunctive relief), 42-607 (Distribution of Water), and 42-1701B (Enforcement procedure—Notice—Consent order).

ORDER

Based on the foregoing, IT IS HEREBY ORDERED as follows:

IT IS HEREBY ORDERED that, at 12:01 a.m. on July 31, 2009, users of ground water within Water District Nos. 130 and 140 holding consumptive water rights bearing priority dates junior to January 8, 1981, listed in the attachment to this order, shall curtail/refrain from diversion and use of ground water pursuant to those water rights unless notified by the Department that the order of curtailment has been modified or rescinded as to their water rights. This order shall apply to consumptive ground water rights for agricultural, commercial, industrial, and municipal uses, excluding ground water rights used for *de minimis* domestic purposes where such domestic use is within the limits of the definition set forth in Idaho Code § 42-111 and ground water rights used for *de minimis* stock watering where such stock watering use is within the limits of the definitions set forth in Idaho Code § 42-1401A(12), pursuant to IDAPA 37.03.11.020.11.

IT IS FURTHER ORDERED that the watermaster for Water District Nos. 130 and 140 is directed to issue written notices to the holders of the consumptive ground water rights located in Water District Nos. 130 and 140, listed in the attachment to this order, and bearing priority dates junior to January 8, 1981. The written notices are to advise the holders of the identified ground water rights that their rights are subject to curtailment in accordance with the terms of this order.

IT IS FURTHER ORDERED that description of actions to comply with the terms of the May 15 Partial Stay Order may be submitted on behalf of holders of junior priority ground water

rights by the ground water district(s) in which such water rights are located within six (6) days of the issuance of this order. If a plan of action submitted by a ground water district to comply with the terms of the May 15 Partial Stay Order is received by the Department on or before July 28, 2009 and the plan is deemed acceptable by the Director, in whole or in part, the Director should modify the priority date identified for curtailment and reduce the number of curtailed junior priority ground water rights in the affected water district(s), or possibly rescind the ordered curtailment. The Director will only accept a plan to comply with the terms of the May 15 Partial Stay Order that is submitted by a ground water district.

IT IS FURTHER ORDERED that a mitigation plan was previously approved by the Director for the Idaho Dairymen's Association ("IDA") to mitigate for ground water depletions caused by its members. Based on acceptance of the IDA mitigation plan, participating members of the IDA are not subject to curtailment, provided the terms of the plan are being followed.

IT IS FURTHER ORDERED that if junior priority ground water right holders for whom curtailment is ordered do not comply with this order, the Director shall immediately enforce the terms of this order in accordance with Idaho law.

IT IS FURTHER ORDERED that this is a final order of the agency effective upon issuance. A hearing was previously held on the mitigation obligations of the Ground Water Districts. The mitigation obligation for the 2009 and 2010 calendar years, as agreed to by the parties and ordered by the Director, is less than the obligation for the final year of the five-year, phased-in period of curtailment. This order is entered to enforce the terms of the Director's previous orders. The decision made in this order is final and subject to review by reconsideration or judicial review.

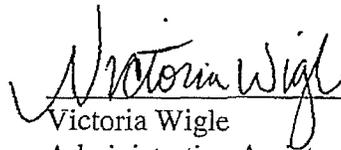
Dated this 22nd day of July, 2009.


GARY SPACKMAN
Interim Director

CERTIFICATE OF SERVICE

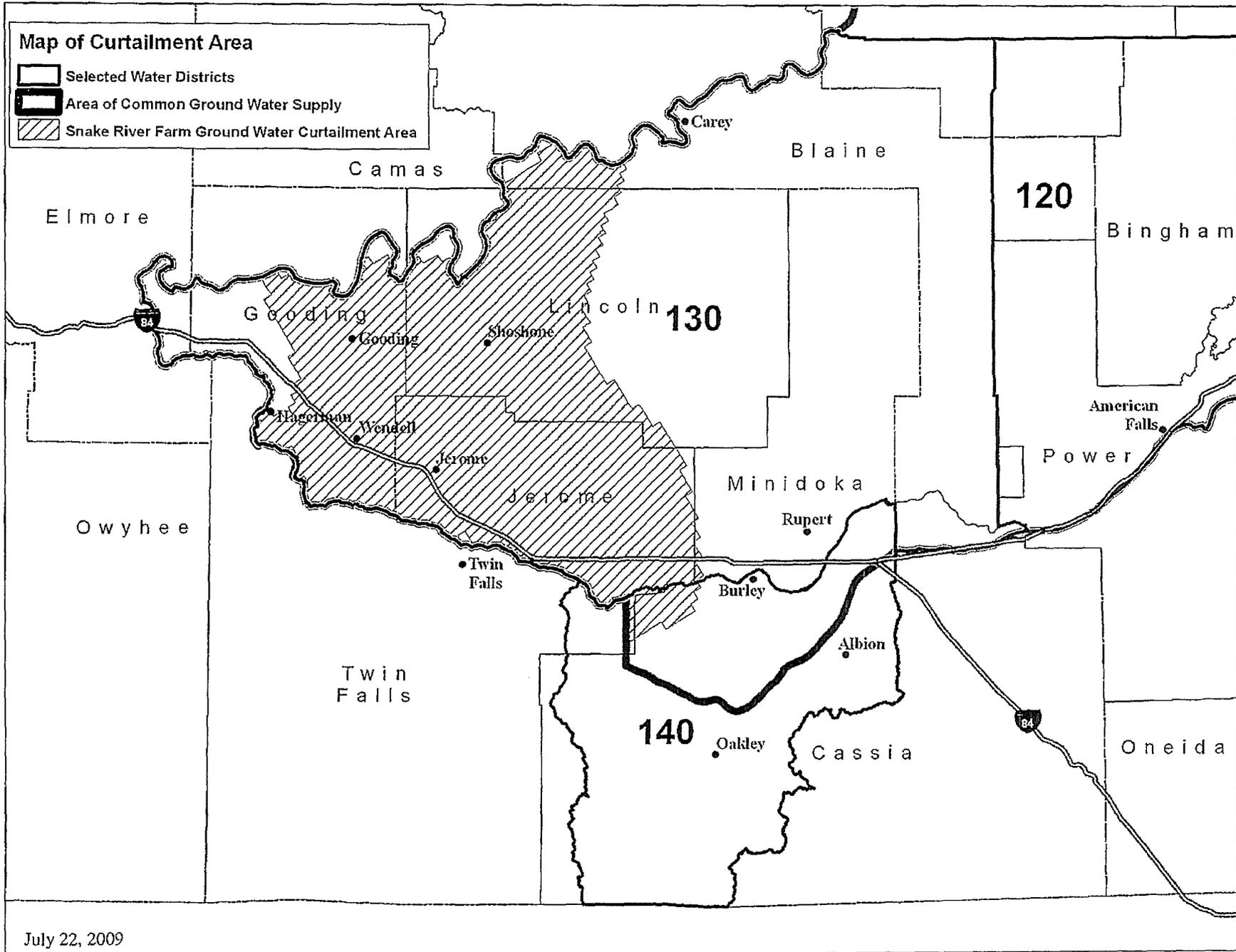
I HEREBY CERTIFY that on this 22nd day of July 2009, the above and foregoing, was served by first class U.S. Mail and electronic mail to the following:

RANDY BUDGE RACINE OLSON PO BOX 1391 POCATELLO ID 83204-1391 rcb@racinelaw.net	CANDICE M. MCHUGH RACINE OLSON 101 S. CAPITOL BLVD., STE. 208 BOISE ID 83702 cmm@racinelaw.net	JOHN SIMPSON BARKER ROSHOLT PO BOX 2139 BOISE ID 83701-2139 jks@idahowaters.com
TRAVIS THOMPSON PAUL ARRINGTON BARKER ROSHOLT 113 MAIN AVE. WEST, STE. 303 TWIN FALLS ID 83301-6167 tlt@idahowaters.com pla@idahowaters.com	DANIEL V. STEENSON CHARLES L. HONSINGER RINGERT LAW PO BOX 2773 BOISE ID 83701-2773 dan@ringertlaw.com clh@ringertlaw.com	MIKE CREAMER JEFF FEREDAY GIVENS PURSLEY PO BOX 2720 BOISE ID 83701-2720 mcc@givenspursley.com jeffereday@givenspursley.com
MICHAEL S. GILMORE ATTORNEY GENERAL'S OFFICE PO BOX 83720 BOISE ID 83720-0010 mike.gilmore@ag.idaho.gov	J. JUSTIN MAY MAY SUDWEEKS & BROWNING 1419 W. WASHINGTON BOISE ID 83702 jmay@may-law.com	ROBERT E. WILLIAMS FREDERICKSEN WILLIAMS MESERVY 153 E. MAIN ST. P.O. BOX 168 JEROME ID 83338-0168 rewilliams@cableone.net
ALLEN MERRITT CINDY YENTER WATERMASTER - WD 130, 140 IDWR - SOUTHERN REGION 1341 FILLMORE ST., STE. 200 TWIN FALLS ID 83301-3380 allen.merritt@idwr.idaho.gov cindy.yenter@idwr.idaho.gov		



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

Attachment 1



Attachment 2
Water Rights Subject to Curtailment - Snake River Farm Delivery Call

Current Owner	Water Right Number	Priority Date	Diversion Rate (cfs)	Acres	Purpose of Use
4 BROS DAIRY INC	37-7033	7/5/1988	3.2	160	IRRIGATION
A & B IRRIGATION DISTRICT; UNITED STATES OF AMERICA ACTING THROUGH	36-15127B*	4/1/1984	28.89	1751.5	IRRIGATION
A & B IRRIGATION DISTRICT; UNITED STATES OF AMERICA ACTING THROUGH	36-15193B*	4/1/1965	0.31	18.9	IRRIGATION
A & B IRRIGATION DISTRICT; UNITED STATES OF AMERICA ACTING THROUGH	36-15194B*	4/1/1968	2.51	152.4	IRRIGATION
A & B IRRIGATION DISTRICT; UNITED STATES OF AMERICA ACTING THROUGH	36-15195B*	4/1/1978	2.24	135.6	IRRIGATION
A & B IRRIGATION DISTRICT; UNITED STATES OF AMERICA ACTING THROUGH	36-15196B*	4/1/1981	0.08	4.7	IRRIGATION
AARDEMA FARMS LTD PARTNERSHIP	36-8179	1/10/1997	0.06		STOCKWATER, DOMESTIC
AARDEMA, CORNELIA; AARDEMA, FRANS; BOX CANYON DAIRY; HEIDA, MARY JANE; HEIDA, THOMAS	36-15181*	3/15/1982	0.23	54	IRRIGATION
AARDEMA, CORNELIA; AARDEMA, FRANS; BOX CANYON DAIRY; HEIDA, MARY JANE; HEIDA, THOMAS	36-8305	2/14/1986	1.9	95	IRRIGATION
AARDEMA, DONALD J; AARDEMA, DONALD JOHN; AARDEMA, EVELYN L; AARDEMA, GAYLE; AARDEMA, KRISTYN; AARDEMA, MICHAEL D; AARDEMA, RONALD J; AARDEMA, SARAH J	36-10225F	5/1/1985	0.01		STOCKWATER
AARDEMA, DONALD J; AARDEMA, DONALD JOHN; AARDEMA, EVELYN L; AARDEMA, GAYLE; AARDEMA, KRISTYN; AARDEMA, MICHAEL D; AARDEMA, RONALD J; AARDEMA, SARAH J	36-16283*	5/1/1985	0.17	302.7	IRRIGATION
AARDEMA, DONALD JOHN	36-10225H*	5/1/1985	0.01	3	IRRIGATION
AARDEMA, DONALD JOHN	36-15256C*	3/15/1975	0.92	524.4	IRRIGATION
ABC AGRA LLC	36-8484	12/11/1989	0.08		COMMERCIAL, DOMESTIC
ADKINS, GINA; ADKINS, RICK	36-8525	3/2/1990	0.06	1	IRRIGATION, DOMESTIC
ALLEN, HERB; ALLEN, MARY CHUGG; LLOYD, DANIEL; TIERNEY LLOYD, MONA LISA	36-8523	4/25/1990	1.89	115	IRRIGATION
ANDERSON, DONALD M; ANDERSON, JOAN	36-8285	6/14/1985	0.04	2	IRRIGATION
ANDERSON, LARRY; ANDERSON, RETHA	36-8232	9/27/1983	0.09	1	IRRIGATION, COMMERCIAL, DOMESTIC
ANDERSON, LARRY; ANDERSON, RETHA	36-8233	12/17/1991	0.93		HEATING, RECREATION
ASTLE, DOUGLAS D; ASTLE, JANIS L	37-8296	5/11/1987	5	491	IRRIGATION
ASTORQUIA, FRANK	37-7460	7/3/2002	4	199.5	IRRIGATION
ASTORQUIA, FRANK	37-8338	5/19/1994	0.6	72	IRRIGATION
BARNES, T H; COLLINS, LARRY	36-8780	4/17/1998	0.04	1	IRRIGATION, DOMESTIC
BARRYMORE EST SUBDIVISION WATER USERS	36-8155	3/4/1983	0.07		STOCKWATER, DOMESTIC
BECKLEY, BONNIE B; BECKLEY, R K	37-8138	6/29/1983	0.12		STOCKWATER, COMMERCIAL
BENNETT, CAROL R; BENNETT, JOHN D	37-20931	5/5/2003	0.12	4.3	IRRIGATION
BEORCHIA PROPERTIES AND HOLDINGS LLC	36-8108	8/16/1982	0.03	5	IRRIGATION, STOCKWATER, DOMESTIC
BETTENCOURT, LUIS M	36-14285*	5/1/1977	0.32	274	IRRIGATION
BETTENCOURT, LUIS M	36-15161*	3/15/1977	0.14	258	IRRIGATION

* Enlargement right subordinate to rights earlier than April 12, 1994

Attachment 2
Water Rights Subject to Curtailment - Snake River Farm Delivery Call

BETTENCOURT, LUIS M	36-8081	3/7/1983	0.42	22	IRRIGATION
BETTENCOURT, LUIS M	36-8302	11/14/1985	0.96	193.4	IRRIGATION
BETTENCOURT, LUIS M	36-8739	5/10/1995	1	108.6	IRRIGATION
BETTENCOURT, LUIS M	36-8740	5/10/1995	0.53	126.5	IRRIGATION
BETTENCOURT, LUIS M; BETTENCOURT, SHARON L	36-14394*	6/28/1967	0.16	618	IRRIGATION
BETTENCOURT, LUIS M; BETTENCOURT, SHARON L	36-14595A*	5/1/1978	1.31	414.8	IRRIGATION
BHB FARMS INC	36-8144	2/2/1983	0.84	42	IRRIGATION
BICKETT, HARVEY B; BICKETT, MYRNA	37-8366	7/14/1988	0.06	0.8	IRRIGATION, DOMESTIC
BIG SKY DAIRY	37-8054	7/1/1983	3.34	167	IRRIGATION
BLACK BUTTE HILLS LLC	36-15233*	4/6/1980	0.73	180	IRRIGATION
BLALACK, JOANN K; SCHMIDT, CHESTER A	36-8208	5/20/1985	0.1	2	IRRIGATION, DOMESTIC
BLUE SKY RANCH; KRUCKER, KATHLEEN; KRUCKER, ROBERT	36-16184	6/30/1983	0.13		STOCKWATER, DOMESTIC
BLUE SKY RANCH; KRUCKER, KATHLEEN; KRUCKER, ROBERT	36-8482	11/7/1989	0.05		STOCKWATER
BOLINGBROKE, EDNA	36-16499*	4/1/1984	0.04	24	IRRIGATION
BONAWITZ, DANI; BONAWITZ, DUKE	36-8065	2/17/1982	0.12	5	IRRIGATION, DOMESTIC
BOOT JACK DAIRY PARTNERSHIP	37-20395	3/16/1982	2.1	277.4	IRRIGATION
BORBA, JOSE; BORBA, MARIA	36-8731	7/13/1994	0.08		STOCKWATER, DOMESTIC
BOTHOF, GERALD A; BOTHOF, ROGER W	36-8805	10/31/2000	0.03	0.8	IRRIGATION
BOX CANYON DAIRY	36-10044*	3/1/1984	0.55	124	IRRIGATION
BOX CANYON DAIRY	36-16282*	5/1/1985	0.26	444	IRRIGATION
BRADLEY, DAWN ANN; BRADLEY, R BRUCE	36-8112	9/7/1982	0.04	1	IRRIGATION, COMMERCIAL, DOMESTIC
BRANCHFLOWER, KATHERINE L; BRANCHFLOWER, MICHAEL G	36-8581	3/13/1991	0.74	39	IRRIGATION
BRANDSMA, ANN; BRANDSMA, HILL A	36-16036*	5/1/1985	0.18	318	IRRIGATION
BRANDSMA, DEBRA K; BRANDSMA, KENNETH A	36-8787	1/22/1999	1.05	152	IRRIGATION
BRANDSMA, HILL A	36-8063D	3/18/1982	0.28		STOCKWATER, COMMERCIAL
BREAULT, LEONARD; BREAULT, RUTH	36-8372	8/3/1988	0.06	3	IRRIGATION
BROWN, JAY A; BROWN, MARIE H	36-8111	8/20/1982	0.76	312	IRRIGATION
BURGOYNE, GLENDA; BURGOYNE, J H	36-8114	6/16/1982	0.04	3	IRRIGATION, DOMESTIC
CALLEN, JERRY; CALLEN, PATRICIA	36-7975	3/20/1981	0.03		STOCKWATER
CAMPBELL, ANNIE M.; CAMPBELL, WILLIAM ROY	36-8535	4/12/1990	0.13	4	IRRIGATION, DOMESTIC
CANNEDY, BARRY S	36-8503	2/21/1990	0.04	2	IRRIGATION
CARNEY FARMS	36-16395	12/8/1981	0.62	524	IRRIGATION
CARNEY FARMS	36-7949	2/4/1981	1.41	524	IRRIGATION
CARRELL, F DUANE	36-8342	1/5/1988	0.02		COMMERCIAL
CARRILLO, CUTBERTO	36-8407	1/19/1989	0.08	3	IRRIGATION, DOMESTIC
CHATTERTON, DANIEL GROVER; CHATTERTON, RONDA D	36-8537	4/12/1990	0.16	5	IRRIGATION, STOCKWATER, DOMESTIC
CHURCH OF JESUS CHRIST OF THE LATTER DAY SAINTS	36-11278*	4/1/1977	2.55	1610	IRRIGATION
CIOCCA, ANN A; CIOCCA, EDWARD M	36-8219	6/30/1983	1.72	86	IRRIGATION
CIOCCA, TONY M; CIOCCA, TRINA A	36-8255	12/7/1984	1.16	154	IRRIGATION
CITY OF DIETRICH	37-8783	2/21/1992	0.45		MUNICIPAL
CITY OF JEROME	36-8237	12/22/1983	2.71		MUNICIPAL
CITY OF WENDELL	36-8421	9/14/1998	2.76		MUNICIPAL
CITY OF WENDELL	36-8764	3/28/1997	1.27		MUNICIPAL

* Enlargement right subordinate to rights earlier than April 12, 1994

Attachment 2
Water Rights Subject to Curtailment - Snake River Farm Delivery Call

CLARK, BETTE L; CLARK, RAYMOND G	36-15253*	3/15/1985	0.34	211	IRRIGATION
CLARK, RAYMOND G	36-8286	6/26/1985	0.21	225	IRRIGATION
CNOSSEN BROTHERS CO INC	36-8468	9/26/1989	0.86		COMMERCIAL
CNOSSEN BROTHERS CO INC; NORTHWEST FARM CREDIT SERVICES FLCA	36-8417	3/1/1989	0.76		STOCKWATER, DOMESTIC
CORP OF THE PRESIDING BISHOP	36-8145	2/14/1983	0.04	0.5	IRRIGATION, DOMESTIC
CORP OF THE PRESIDING BISHOP	36-8239	1/12/1984	0.88	630	IRRIGATION
COUNTRY CLUB ESTATES WATER ASSN INC	36-8607	11/18/1991	0.5		STOCKWATER, DOMESTIC, FIRE PROTECTION
CROCKER, BRENT; CROCKER, TONIA	36-8375	7/18/1988	0.04	2	IRRIGATION, DOMESTIC
DANSIE, BERTHA D; DANSIE, ELVOY H	37-8363	8/6/1988	0.05		STOCKWATER, COMMERCIAL, DOMESTIC
DAVIDSON, JOSEPH E	36-8790	4/12/1999	0.05		DOMESTIC
DE KRUYF, ALICE RUTH; DE KRUYF, CALVIN	36-10082A*	3/15/1976	0.21	162.7	IRRIGATION
DEVELOPMENT WEST CORPORATION	37-8379	8/22/1988	0.36	17	IRRIGATION, DOMESTIC
DICKINSON, DALE; DICKINSON, MARSHA	36-8681	10/16/1992	0.03	1	IRRIGATION, DOMESTIC
DINOS LLC; DINOS LLC	36-8680	10/21/1992	0.1		DOMESTIC
DOTSON, MARK; HOLLANDER, LEWIS	37-8944	11/30/2000	0.2		DOMESTIC
DOUBLE V LLC	37-8756A	2/4/1987	2.41	146.5	IRRIGATION
DOUBLE V LLC	37-8756B	2/4/1987	2.41	146.5	IRRIGATION
DOUBLE V LLC; VANDERVEGT, RAY	36-8047E	12/9/1981	0.8	81	IRRIGATION
DOUBLE V LLC; VANDERVEGT, RAY	36-8313B	8/20/1986	0.32	16	IRRIGATION
DURAND, DANIEL G; DURAND, VICKY S	37-8410	10/4/1988	0.03		STOCKWATER, COMMERCIAL, DOMESTIC
DURFEE, BRENDA J; DURFEE, JAMES M	36-8367	6/21/1988	0.11		STOCKWATER, COMMERCIAL
DURFEE, DEWEY D	36-7641	5/19/1983	1.19	64	IRRIGATION
EDWARDS, KENT F	36-8628	11/26/1991	0.18	8	IRRIGATION, STOCKWATER, DOMESTIC
EQUITY LIVESTOCK CREDIT CORP	36-14988	12/31/1983	0.07		STOCKWATER, COMMERCIAL, DOMESTIC
ESTATE OF RAY CHUGG	36-8266	3/18/1985	0.12		STOCKWATER, COMMERCIAL, DOMESTIC
EVERS BROTHERS PARTNERSHIP; NORTHWEST FARM CREDIT SERVICES FLCA	36-8584	2/26/1991	2.08	144	IRRIGATION
FAIRVIEW POULTRY FARM	37-8112	6/2/1983	0.02		COMMERCIAL, COOLING
FATTIG, PATSY; FATTIG, WAYNE	36-8637	12/6/1991	0.23	245	IRRIGATION
FAULKNER LAND & LIVESTOCK CO INC	37-8005B	3/20/1982	2.02	264	IRRIGATION
FAULKNER LAND & LIVESTOCK CO INC	37-8005C	3/20/1982	1.6	264	IRRIGATION
FAULKNER LAND & LIVESTOCK CO INC	37-8005D	3/20/1982	0.41	264	IRRIGATION
FAULKNER LAND & LIVESTOCK CO INC	37-8720	4/23/1991	3.2	324	IRRIGATION
FORD, JOYCE A; FORD, THOMAS RAY	36-14617*	5/1/1982	0.9	378	IRRIGATION
FORD, JOYCE A; FORD, THOMAS RAY	36-14619*	5/1/1965	1.32	311	IRRIGATION
FORSYTH, DANNY R; FORSYTH, GINGER	36-8531	4/24/1990	0.05	0.8	IRRIGATION, DOMESTIC
FRANCIS, MARK	36-8371	7/20/1988	0.06	2	IRRIGATION, DOMESTIC
FRAZIER FAMILY TRUST DTD 6/19/80 4% UNDIVIDED INT; FRAZIER, JAMES F; FRAZIER, JEFFREY W; FRAZIER, JOE K; FRAZIER, JORDAN P	36-8049	12/21/1981	0.94	47	IRRIGATION

* Enlargement right subordinate to rights earlier than April 12, 1994

Attachment 2
Water Rights Subject to Curtailment - Snake River Farm Delivery Call

FREDERICKSEN, BETTY; FREDERICKSEN, CRAIG	37-22386	10/16/2008	0.04		DOMESTIC
FUNK, DARRELL M	45-13657	1/1/1983	0.06		STOCKWATER
FUNK, DARRELL M	45-4103	6/30/1985	1.6	305	IRRIGATION
FUNK, DARRELL M; FUNK, PATRICIA M	45-13917	6/8/1982	0.06		STOCKWATER, COMMERCIAL
GILLETTE, CINDY L; GILLETTE, LARRY R	37-8742	3/28/1991	4.21	995.5	IRRIGATION
GLANBIA FOODS INC	37-8903	9/17/1999	1.67		COMMERCIAL
GLEN CAPPS INC	36-8176	3/31/1983	0.04		COMMERCIAL, DOMESTIC
GOEDHART, HUGO; GOEDHART, MARY	36-8774	3/10/1998	0.13		STOCKWATER, DOMESTIC
GOOCH, BEATRICE; GOOCH, ELLIS	37-8839	11/22/1994	0.1		STOCKWATER
GOODING URBAN RENEWAL AGENCY	37-8289	2/23/1987	0.11		COMMERCIAL
GOTT, MIKE	36-8534	4/27/1990	0.1	2.5	IRRIGATION, DOMESTIC
GRANT, ANGELA; GRANT, RANDY; HAGAN, ROCKY	36-14202*	5/1/1975	0.2	130	IRRIGATION
GULICK, LARRY	36-8507	2/1/1990	0.06		STOCKWATER, COMMERCIAL
GULLEY, JUDY L; GULLEY, WILLIAM F	36-8789	3/23/1999	0.39	12	IRRIGATION
GUNNING, F F; GUNNING, G C	36-8063A	2/16/1982	2.14	329	IRRIGATION
H & S FARMS INC	36-8401	11/28/1988	0.68	360	IRRIGATION
H & S FARMS INC	36-8402	11/28/1988	0.84	314	IRRIGATION
HAAGSMA FAMILY TRUST	36-8345	4/9/2001	1		STOCKWATER, COMMERCIAL
HANEY SEED CO	36-8416	3/30/1989	0.04		COMMERCIAL
HEIDA, MARY JANE; HEIDA, THOMAS	36-8276	6/6/1985	0.14	121	IRRIGATION
HENRY FARMS	36-15163*	5/1/1981	0.66	286	IRRIGATION
HENRY, AUDREY; HENRY, ROBERT P	36-14844*	3/15/1983	0.25	94	IRRIGATION
HIRAI, JACK J; MATTHEWS, J W	36-8585	8/11/1988	0.22	171	IRRIGATION
HOLTZEN FARMS INC	36-8603	6/14/1991	0.14		STOCKWATER
HORIZON ORGANIC DAIRY LLC	36-16045	10/19/1981	1.95	182	IRRIGATION
HORIZON ORGANIC DAIRY LLC	36-16055	12/8/1981	4.12	522.6	IRRIGATION
HORIZON ORGANIC DAIRY LLC	36-8008	12/8/1981	0.84	314	IRRIGATION
HORIZON ORGANIC DAIRY LLC	36-8011A	12/24/1981	0.15		DOMESTIC
HUBSMITH, IRIS B; HUBSMITH, LOUIS L	37-8093	3/17/1984	0.08		STOCKWATER, COMMERCIAL
INFANGER, DEBRA A; INFANGER, JOHN N	37-20800	9/10/2002	0.14		DOMESTIC
J R SIMPLOT CO	36-8471	10/4/1989	0.18		COMMERCIAL
JACKSON, LAVAR R; VEENSTRA, FRANK W; VEENSTRA, MARY JANE	36-8101	7/13/1982	0.8	40	IRRIGATION
JEROME COUNTRY CLUB INC	36-8344	2/12/1988	0.41	104	IRRIGATION
JEROME COUNTY ROD & GUN CLUB	36-8620	11/14/1991	0.02	0.5	IRRIGATION, COMMERCIAL
JEROME JOINT SCHOOL DISTRICT NO 261	36-16440	7/10/2006	1.07		HEATING
JEROME JOINT SCHOOL DISTRICT NO 261	36-16441	7/10/2006	0.45		HEATING
JOE & MARTIN TRUCKING INC	37-8355	8/9/1988	0.04		COMMERCIAL, DOMESTIC
JOHN L WARREN TRUST; WARREN, ARTHELLA U	45-13567*	11/14/1983	0.21	163	IRRIGATION
JOHN, GLORIA; JOHN, KIT M	37-8346	6/21/1988	0.03		COMMERCIAL
JOHNSON, BECKY; JOHNSON, CHARLES; NELSON, JACK; NELSON, KATHY	37-21644	2/2/2006	0.12		DOMESTIC
K & W DAIRY	36-10225K*	5/1/1985	0.58	1064.7	IRRIGATION
KEARLEY, SUSAN L; KEARLEY, WILLIAM P	36-10547*	4/1/1980	0.25	154	IRRIGATION
KEARLEY, WILLIAM P	36-8200	5/26/1983	0.28	154	IRRIGATION
KECHTER, RICHARD L	45-10679*	4/1/1977	0.52	729.5	IRRIGATION
KECHTER, RICHARD L	45-10777B*	3/15/1976	0.23	151	IRRIGATION

* Enlargement right subordinate to rights earlier than April 12, 1994

Attachment 2
Water Rights Subject to Curtailment - Snake River Farm Delivery Call

KERNER, HERSHEL	37-8361	6/16/1988	0.03		COMMERCIAL
KIME, MARK	37-7998	1/29/1982	0.04		STOCKWATER, COMMERCIAL
KISLING FARMS	37-8078	5/15/1983	2	116	IRRIGATION
KLOSTERMAN, KENT L	36-7974	3/25/1981	2.6	201	IRRIGATION
KUNSMAN, SHIRLEY	36-8249	7/12/1984	0.09	2.5	IRRIGATION, DOMESTIC
KUNSMAN, SHIRLEY	36-8306	2/26/1986	0.08	2.5	IRRIGATION
LANIER, BLANCHE; LANIER, MELVIN	36-8501	2/21/1990	0.07	1.5	IRRIGATION, DOMESTIC
LAST RANCH LLC	36-16140*	3/15/1974	0.03	32	IRRIGATION
LAZY P FARMS; PAULS, DEBBRAH; PAULS, EMIL V; PAULS, RONALD	37-8147	6/27/1983	0.04	1.8	IRRIGATION, STOCKWATER, DOMESTIC
LEE, MARTIN R	36-8410	2/10/1989	0.03		COMMERCIAL
LEED CORP	37-21952	9/26/2006	0.44		DOMESTIC
LENORE HUETTIG FAMILY LIMITED PARTNERSHIP	36-8147	3/1/1983	1.6	511	IRRIGATION
LIND, ELDEN; LIND, MELBA JEAN	36-8583	2/22/1991	3.99	238.9	IRRIGATION
LLOYD, CARL; LLOYD, JANICE	36-8580	2/19/1991	0.7	35	IRRIGATION
LONG VIEW DAIRY	36-16185	6/30/1983	2.03	131	IRRIGATION
MAY, DAVID C; MAY, DEBRA J	36-15226*	6/15/1973	0.36	658	IRRIGATION
MC CABE, LINDA JOY; MC CABE, ROBERT	37-20747*	4/1/1978	0.56	300	IRRIGATION
MC CAUGHEY, MARGARET; MC CAUGHEY, WALTER L	36-8579	2/8/1991	0.68	52	IRRIGATION
MC DONALD, FRANK F	36-8516	3/2/1990	0.11	3	IRRIGATION, DOMESTIC
MC KNIGHT, SPARR	37-22201	7/5/2007	0.2		DOMESTIC
MCKEAN, EDWARD; MCKEAN, LYNETTE	36-8186	5/17/1983	0.04		COMMERCIAL, DOMESTIC
MEEKS, DIANE SAWYER; MEEKS, JAMES D	36-7336	8/8/1986	0.88	87	IRRIGATION
MEYERS, ROBERT J	36-7854	2/16/1990	2.71	142	IRRIGATION
MEYERS, ROBERT J	37-8801	10/20/1992	0.1		DOMESTIC
MILLARD, DAVID; SLIGAR, KEITH; STANLEY, RONALD L	36-8234	1/11/1984	1.23	14	IRRIGATION, COMMERCIAL, DOMESTIC, RECREATION
MILLENKAMP, SUSAN; MILLENKAMP, WILLIAM J	36-8054	4/24/1990	2.3	217.8	IRRIGATION
MILLER, DIANE M; MILLER, GUS E	37-8373	8/10/1988	0.04	2	IRRIGATION, STOCKWATER, DOMESTIC
MIPAD LIMITED PARTNERSHIP	37-8707	3/26/1991	2	100	IRRIGATION
MORGAN, CODY G; MORGAN, KATHY J	36-16094	3/10/1992	0.03		STOCKWATER
MORGAN, CODY G; MORGAN, KATHY J	36-16407	3/10/1992	1.53	390.5	IRRIGATION
MORGAN, CODY G; MORGAN, KATHY J	36-16408	3/10/1992	0.08		STOCKWATER, COMMERCIAL
MOSS GREENHOUSES INC; MOSS, CAROLYN A	36-8298	9/23/1985	0.27		COMMERCIAL
MOUNTAIN VIEW WATER CORP	37-21278	3/22/2004	0.06		DOMESTIC
MOYLE, ALLEN; MOYLE, KARLA	36-8768	6/16/1997	0.17		STOCKWATER, COMMERCIAL
MUNSEE, G K; MUNSEE, LAREE; MUNSEE, MARK	36-8559	9/4/1990	1.86	93	IRRIGATION
MURPHY, LA VERN A	36-8361	5/31/1988	0.09	3	IRRIGATION
NALLEY, TINA L	37-8750	7/12/1991	0.13	6	IRRIGATION, STOCKWATER, DOMESTIC
NAPIER, DIANNA K	36-8521	12/19/1991	0.03	1	IRRIGATION, DOMESTIC
NELSON, JACK; NELSON, KATHY	37-8717	3/1/1991	0.08	2.6	IRRIGATION
NELSON, JACK; NELSON, KATHY	37-8740	3/14/1991	0.09	3	IRRIGATION

* Enlargement right subordinate to rights earlier than April 12, 1994

Attachment 2
Water Rights Subject to Curtailment - Snake River Farm Delivery Call

NORTH RIM FAIRWAYS OWNERS ASSN INC	36-8399	1/5/1995	0.41		DOMESTIC
NORTHSIDE DAIRY	36-8490	11/7/1989	0.27		STOCKWATER, COMMERCIAL, DOMESTIC
NORTHVIEW WATER ASSN INC	36-16204	2/9/2004	0.18	9	IRRIGATION
NORTHVIEW WATER ASSN INC	36-8747	2/2/1996	0.35	8	IRRIGATION, DOMESTIC
NORTHWEST FARM CREDIT SERVICES FLCA; VAN DYK, MARIE C; VAN DYK, RICHARD B	36-8547	4/25/1990	0.33		STOCKWATER, COMMERCIAL, DOMESTIC
NOTCH BUTTE FARMS LLC	36-16139*	3/15/1974	0.18	188	IRRIGATION
NOTCH BUTTE FARMS LLC	37-20816	11/12/1981	0.49	195.4	IRRIGATION
NOTCH BUTTE FARMS LLC	37-20817	11/12/1981	0.47	187	IRRIGATION
NOTCH BUTTE FARMS LLC	37-8909*	3/15/1974	0.02		STOCKWATER
OAK VALLEY LAND CO LLC	45-13930	6/30/1985	1.29	3844.4	IRRIGATION
OAK VALLEY LAND CO LLC	45-13934	6/30/1985	2.3	3844.4	IRRIGATION
OAK VALLEY LAND CO LLC	45-13944	11/24/1981	6.09	3844.4	IRRIGATION
OAK VALLEY LAND COMPANY LLC	45-10777A*	3/15/1976	0.47	463	IRRIGATION
OAK VALLEY LAND COMPANY LLC	45-4176*	3/15/1976	0.18	463	IRRIGATION
OLSEN, BETTY M; OLSEN, GEORGE L	36-8605	5/23/1991	0.04	1.4	IRRIGATION
OLSEN, RICHARD ARTHUR	37-8374	7/8/1988	0.15	3	IRRIGATION, STOCKWATER, DOMESTIC
OPPIO FAMILY LIMITED PARTNERSHIP	37-19848*	4/15/1987	0.29	142.4	IRRIGATION
OPPIO FAMILY LIMITED PARTNERSHIP	37-8010	12/5/1982	2.52	142.4	IRRIGATION
OPPIO FAMILY LIMITED PARTNERSHIP	37-8756C	2/4/1987	1.34	67	IRRIGATION
PARKINSON, ROBERT J	36-8591	3/6/1991	1	66	IRRIGATION
PATTERSON LAND & LIVESTOCK INC	37-7952	11/18/1981	0.15	10	IRRIGATION
PETERS, THOMAS R	36-8577	2/28/1991	1.68	94	IRRIGATION
POPA, DAN; POPA, PAM	36-8197	6/7/1983	0.08	2.5	IRRIGATION, DOMESTIC
PRICE, BERTHA; PRICE, EUGENE F	45-10000*	4/1/1971	0.74	202.1	IRRIGATION
RANGEN INC	36-8048	12/21/1981	0.41	20.2	IRRIGATION
RAY, JUDITH K; RAY, LEO E	36-7995	7/17/1981	0.2		COMMERCIAL, DOMESTIC
REED, CAROL A; REED, ROBERT W	36-15227*	8/27/1973	0.7	163	IRRIGATION
RESERVOIR LAND CO INC	36-8466	10/4/1989	0.03		COMMERCIAL
RITCHIE, JAMES M; RITCHIE, KARLYN	36-8077	7/12/1984	1.6	330	IRRIGATION
RODRIGUEZ, EMMA J; RODRIGUEZ, RAFAEL	37-8033	8/6/1982	0.06	1	IRRIGATION, DOMESTIC
ROOST POTATO CO INC	36-15152*	8/30/1984	0.08	633	IRRIGATION
ROTH INVESTMENTS LLC	36-15222*	7/5/1985	0.52	235	IRRIGATION
ROYCE, DAN; ROYCE, JO ANNE	36-8609	10/21/1991	0.02	2.5	IRRIGATION, STOCKWATER, DOMESTIC
SALMON FALLS LAND & LIVESTOCK CO INC	36-10033*	3/15/1975	1.07	370	IRRIGATION
SALMON FALLS LAND & LIVESTOCK CO INC	36-10035*	3/15/1981	0.47	370	IRRIGATION
SALMON FALLS LAND & LIVESTOCK CO INC	36-10037*	3/15/1974	1.65	404	IRRIGATION
SAWTOOTH SHEEP CO INC	37-8702	1/31/1991	2.5	260	IRRIGATION
SCARROW, JIM D	36-8164	6/27/1985	2.08	104	IRRIGATION
SCARROW, JIM D	36-8263	2/3/1985	0.85	128	IRRIGATION
SCARROW, JIM D	37-8152	6/30/1983	0.25		STOCKWATER
SCHAEFFER, DAN; SCHAEFFER, JAMES K	36-8220B	2/7/1990	1.2	162	IRRIGATION
SCHOTH, WARREN E	36-8589	5/9/1991	0.13	3	IRRIGATION, DOMESTIC
SEYMOUR, JOHN R	45-13542*	3/15/1976	1.28	479	IRRIGATION
SHAW, WILLIAM HUBERT	37-8705	2/21/1991	7	420	IRRIGATION
SIRUCEK, BECKY; SIRUCEK, MIKE	36-8569	12/10/1990	0.46	67	IRRIGATION
SLADE, DELILAH; SLADE, KEVIN L	36-15229*	8/17/1972	0.3	153	IRRIGATION
SLADE, WILLIAM J; SLADE, WYLENE	36-15228*	3/15/1973	0.1	459	IRRIGATION
SLIMAN, MICHAEL E; SLIMAN, MIKE G	37-8060	12/9/1982	0.01		COMMERCIAL

* Enlargement right subordinate to rights earlier than April 12, 1994

Attachment 2
Water Rights Subject to Curtailment - Snake River Farm Delivery Call

SLIMAN, MICHAEL E; SLIMAN, MIKE G	37-8061	12/9/1982	0.07	1	IRRIGATION, DOMESTIC
SLUDER, GILBERT T; SLUDER, GONDA O; SLUDER, RONALD E	37-8108	6/1/1983	0.08		DOMESTIC
SMITH, RONNIE D; SMITH, SHARLENE M	36-8333	8/25/1987	3.66	183	IRRIGATION
SOUTH VIEW DAIRY	36-10225B*	5/1/1985	0.17	273	IRRIGATION
SOUTHFIELD DAIRY	36-2907	4/26/1990	0.8	436	IRRIGATION
SOUTHFIELD DAIRY	36-8387	8/31/1988	2.48	149	IRRIGATION
SOUTHFIELD DAIRY	37-8326	1/6/1988	1.36	602	IRRIGATION
SOUTHFIELD PROPERTIES LLC	36-10666*	5/1/1987	0.19	142	IRRIGATION
SOUTHFIELD PROPERTIES LLC	36-8063C	2/21/1982	0.3	99	IRRIGATION
SOUTHFIELD PROPERTIES LLC	36-8252E	10/17/1984	0.1	99	IRRIGATION
SOUTHFIELD PROPERTIES LLC	36-8313A	8/20/1986	1.2	60	IRRIGATION
SOUTHFIELD PROPERTIES LLC	36-8529	4/5/1990	0.66	33	IRRIGATION
SOUTHFIELD PROPERTIES LLC	36-8560A	9/7/1990	1.03	135	IRRIGATION
SOUTHFIELD PROPERTIES LLC	36-8560B	9/7/1990	0.12	6	IRRIGATION
SOUTHFIELD PROPERTIES LLC	36-8582	2/20/1991	0.46	23	IRRIGATION
SOUTHFIELD PROPERTIES LLC	36-8760	12/4/1990	1.52	436	IRRIGATION
SOUTHFIELD PROPERTIES LLC	37-8732	4/13/1991	3	587	IRRIGATION
SPENCER, GLEN D	36-8536	4/12/1990	0.03	1	IRRIGATION, DOMESTIC
STANDLEE, MIKE; STANDLEE, WHENDY	36-15119*	3/1/1975	1.31	417	IRRIGATION
STANDLEE, MIKE; STANDLEE, WHENDY	36-15178*	3/1/1975	0.04	456	IRRIGATION
STANDLEE, MIKE; STANDLEE, WHENDY	36-16500*	4/1/1984	0.51	348	IRRIGATION
STAR FALLS FARMS LLC; THE ESTATE OF GERALD HUETTIG DECEASED	36-8289	6/26/1985	0.04	511	IRRIGATION
STATE OF IDAHO; STATE OF IDAHO	37-7372	6/30/1999	6.54	320	IRRIGATION, STOCKWATER
STEVENSON, SCOTT A; STEVENSON, TAMARA LYNN	36-8161	3/31/1983	1.8	446	IRRIGATION
STEWART, FRED R; STEWART, PHYLLIS L	36-8568	11/7/1990	0.79	240	IRRIGATION
STOKES, SHIRLEY W	36-8409	1/23/1989	0.2	10	IRRIGATION
SUHR, DANIEL A; SUHR, DONNA DEE	36-14317*	3/20/1976	0.67	153	IRRIGATION
TABER, BEVERLY	37-7877A	2/5/1981	0.02	1	IRRIGATION
TABER, DONALD	37-10158*	4/1/1974	1.78	466	IRRIGATION
TABER, DONALD	37-8401	9/20/1988	6.68	334	IRRIGATION
TANNER, BARBARA; TANNER, ROBERT	36-8512	2/27/1990	0.02		COMMERCIAL STOCKWATER, COMMERCIAL
TELFORD, MICHAEL S	37-7949	11/4/1981	0.25		
THE ALTON & PAULA HUYSER TRUST UNDER TRUST AGREEMENT DTD 4-1-2001	37-8679	8/23/1990	0.16	8	IRRIGATION
THOMPSON, KURT; THOMPSON, LINDA B	36-8615	10/30/1991	0.05	1.5	IRRIGATION
TOWNE, DELORIS E; TOWNE, RALPH W P	37-8211	5/16/1983	0.05		STOCKWATER, COMMERCIAL
TRAVELERS OASIS TRUCK PLAZA; WILLIE, DANIEL L	36-8766	6/8/1997	0.11		COMMERCIAL
TRAVELERS OASIS TRUCK PLAZA; WILLIE, DANIEL L	36-8767	6/19/1997	0.11		COMMERCIAL
TRIPLE C CONCRETE INC	36-16401	3/31/2006	0.04		DOMESTIC
UNIT 3 WATER ASSN INC	36-8090	6/16/1982	0.51	24	IRRIGATION, STOCKWATER, DOMESTIC, FIRE PROTECTION
UNIT 3 WATER ASSN INC	36-8727	5/5/1994	0.45		DOMESTIC
UNITED STATES OF AMERICA ACTING THROUGH	37-20851*	3/15/1983	0.02	30	IRRIGATION

* Enlargement right subordinate to rights earlier than April 12, 1994

Attachment 2
Water Rights Subject to Curtailment - Snake River Farm Delivery Call

U-U RANCH LLC	36-8050	12/11/1981	4.06	699	IRRIGATION
V & L DAIRY	36-15211*	1/30/1970	0.33	75	IRRIGATION
VALLEY CO-OPS INC	36-8452	8/22/1989	0.16		COMMERCIAL
VALLEY SCHOOL DISTRICT #262	36-16299	9/22/2004	2		DOMESTIC, FIRE PROTECTION
VAN BEEK, DIANNE; VAN BEEK, JACK	36-7958	1/9/1981	5.8	290	IRRIGATION
VAN DYK, RICHARD B; VAN DYK, TAMMY D	36-8389	9/1/1988	0.18		STOCKWATER, COMMERCIAL
VAN TASSELL, AFTON; VAN TASSELL, GAIL	36-7966	2/23/1981	0.37	837	IRRIGATION
VANDERHAM, KEN	36-16101	5/9/1988	0.04		DOMESTIC
VASQUAZ, DUFIA; VASQUAZ, J REUBEN	36-10243*	5/1/1985	0.4	205	IRRIGATION
VEENSTRA, CHERYL; VEENSTRA, PETE	36-8803	7/13/2000	0.13		STOCKWATER, COMMERCIAL
VEENSTRA, FRANK W	36-15077*	4/1/1982	0.91	198.5	IRRIGATION
VERBREE JR, JACK; VERBREE, MARGARET	36-8351	6/15/1988	0.19		STOCKWATER, COMMERCIAL, DOMESTIC
VICTOR, SALLY; VICTOR, STEVE	36-8128	12/30/1982	0.03		COMMERCIAL
WAHLSTROM, LESLIE; WAHLSTROM, RON	36-8612	10/24/1991	0.03	1	IRRIGATION
WARTLUFT, HAROLD; WARTLUFT, LOIS	37-8375	8/11/1988	0.15	3.5	IRRIGATION, DOMESTIC
WEBER, JEFF L; WEBER, KERI JO	37-20850*	3/15/1983	0.4	634	IRRIGATION
WERT, LOREN; WERT, RITA	36-8000	9/11/1981	0.8	40	IRRIGATION
WEST ONE BANK IDAHO	36-15215*	3/15/1972	1.1	609	IRRIGATION
WESTERN IDAHO POTATO PROCESSING CO	36-8324	4/3/1987	2		FIRE PROTECTION
WHITTAKER, JAMES A	37-8063	1/6/1983	2	658	IRRIGATION
WHITTAKER, KEITH	36-8553	7/9/1990	0.13	4.3	IRRIGATION
WICKEL, ARDEL W; WICKEL, JUDY M	36-15165*	3/15/1970	2.2	2785	IRRIGATION
WICKEL, ARDEL W; WICKEL, JUDY M	36-16421	12/30/1983	0.13	2785	IRRIGATION
WICKEL, ARDEL W; WICKEL, JUDY M	36-16425*	5/1/1976	0.15	2785	IRRIGATION
WICKEL, ARDEL W; WICKEL, JUDY M	36-4200*	3/15/1974	0.84	2785	IRRIGATION
WICKEL, ARDEL W; WICKEL, JUDY M	36-8403	11/28/1988	0.31	2785	IRRIGATION
WILCOX, FRANCIS; WILCOX, MARGARET	36-8515	3/2/1990	0.03	1	IRRIGATION
WILD WEST INC	37-21719	3/22/2006	0.11		DOMESTIC
WILDMAN, LINDA; WILDMAN, MAURICE	37-8377	8/19/1988	0.03	1	IRRIGATION
WISE, EARL; WISE, INEZ	36-8638	1/7/1992	0.04	1	IRRIGATION, DOMESTIC
WOOD RIVER RANCH CO INC	36-8312	8/15/1986	0.05		STOCKWATER
YERION, GEORGE A; YERION, SUSAN F	37-20717	4/29/2002	0.1	4	IRRIGATION

* Enlargement right subordinate to rights earlier than April 12, 1994