

LING & ROBINSON  
ATTORNEYS AT LAW  
RUPERT, IDAHO 83350-0396

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ISB No. 1018

Attorneys for Petitioner,  
Falls Irrigation District

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

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

COMES NOW the petitioner, Falls Irrigation District, an irrigation district duly organized and existing under the laws of the State of Idaho, hereinafter referred to as "FID," and petitions the Director of Idaho Department of Water Resources ("IDWR"), and in opposition to the action taken by the Director by the issuance of his Order of August 3, 2001 creating the "American Falls Ground Water Management Area" ("AFGWMA") as it relates to the inclusion of the area in which ground water withdrawals are being made by FID, and in support of this Petition, alleges:

**STANDING OF PETITIONER**

1. That Falls Irrigation District is an irrigation district duly organized under the laws of the State of Idaho and is a beneficial owner of surface water rights consisting of natural

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flow and storage water and ground water rights, by which the lands within Falls Irrigation District are irrigated.

2. The lands of FID consist of approximately thirteen thousand (13,000) acres, seventy-one percent (71%) of which are served by surface water diverted from the Snake River and approximately twenty-nine percent (29%) are served and irrigated by water from ground water diversions by the District.

3. That as the result of the irrigation of lands within FID with surface water sources from the Snake River, return flows to the Snake River and to the aquifer from which ground water is diverted exceeds the consumptive use of ground water by the irrigation district.

4. That ground water diversions by FID under its rights with priorities from 1946 to 1956 are senior to most ground water diversion rights within the Eastern Snake Plain Aquifer, and any curtailment of diversion under the proposed American Falls Ground Water Management Area will cause irreparable harm to the lands upon which said waters are beneficially used, in derogation of the rights of the irrigation district and the landowners within the irrigation district.

**FINDINGS OF FACT**

The Findings of Fact of the Director in his Order of August 3, 2001, designating the American Falls Ground Water Management Area, as it relates to the area in which ground water

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3 diversions are made by FID, is neither supported by the law nor  
4 competent, substantial and relevant evidence.

5           5. That there is no substantial or competent evidence  
6 to support the finding by the Director of IDWR that there is a  
7 direct hydraulic connection between the area in which ground water  
8 withdrawals are made by FID from its wells for the service of lands  
9 within the service area of FID described in Exhibit "A" attached  
10 hereto and made a part hereof as though fully set forth herein, and  
11 the portion of the Snake River termed by the Director as the  
12 "American Falls reach."

13           6. That there is no substantial or competent evidence  
14 to conclude that simulations using IDWR's calibrated computer model  
15 of the ESPA has been programmed to use existing data, and that upon  
16 the use of such existing data, the model would not show that ground  
17 water withdrawals by FID within its boundaries cause any reductions  
18 in the gains to the "American Falls reach" of the Snake River  
19 within six (6) months or any other time frame from the time the  
20 withdrawals occur.

21           7. That IDWR's model simulations and analytical  
22 calculations do not include existing data which clearly shows that  
23 the ground water diversions by FID do not result in seasonal reach  
24 gain reductions equal to fifty percent (50%) or more of the amount  
25 of water diverted and consumptively used. That there is a lack of  
26 substantial or competent evidence to support the Department's model  
27 simulations and other analytical calculations to support its

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2 findings in paragraph 4 as it relates to consumptive ground water  
3 diversions by FID.

4           8. That the Department's ground water model is not  
5 sufficient to run simulations of ground water recharge and  
6 withdrawals within the FID to establish or calculate the amount and  
7 location of surface water depletions, if any, caused by the ground  
8 water withdrawal by FID, and said simulations using the ground  
9 water model is not presently programmed to provide a suitable basis  
10 for making ground water management decisions relating to the  
11 withdrawals by FID.

12           9. It is denied that the results of simulations from  
13 its existing ground water model and other analytical calculations  
14 are adequate or sufficient for determining that the area in which  
15 ground water diversions are made by FID results in a direct or  
16 significant reduction in reach gains with an acceptable degree of  
17 accuracy. It is further alleged that IDWR and the Director have  
18 failed to make other analytical calculations using presently  
19 available data as to surface water use within the service area of  
20 Falls Irrigation District which results in recharge and return  
21 flows and the effect upon ground water tables within Falls  
22 Irrigation District by the diversion of ground water.

23           10. The Director has failed and refused to recognize  
24 existing mitigation resulting from surface water diversions and use  
25 within FID which fully mitigates the effects of any ground water  
26 depletions by FID.

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3 11. That there is no substantial or competent evidence  
4 to support a finding that the depletionary effects of ground water  
5 withdrawals by FID, if any, has or will cause or result in the  
6 conditions of a critical ground water area and denies that there is  
7 any factual or legal basis upon which the Director may rely to  
8 include the lands within FID in a ground water management area.

9 **CONCLUSIONS OF LAW**

10 12. FID denies that all ground waters in the State of  
11 Idaho are property of the State of Idaho.

12 13. That the Director of IDWR has failed to meet his  
13 statutory responsibility to administer the use of ground water in  
14 the State so as to protect senior ground water rights.

15 14. That the Director has failed to determine the  
16 effects, if any, of ground water withdrawals and surface water use  
17 within the service area by the FID, necessary to implement or  
18 develop a ground water management plan for the area within FID.

19 15. That the Director has failed to analyze or consider  
20 information presently available to determine available ground water  
21 supplies within FID and their usage, or to conclude that such area  
22 may be approaching the conditions of a critical ground water area.  
23 As the result, the Conclusions of the Director are not based upon  
24 relevant and competent evidence.

25 16. That the Director has acted beyond his statutory  
26 authority in attempting to establish a ground water management area  
27 for the purposes of protecting surface water users, and has refused

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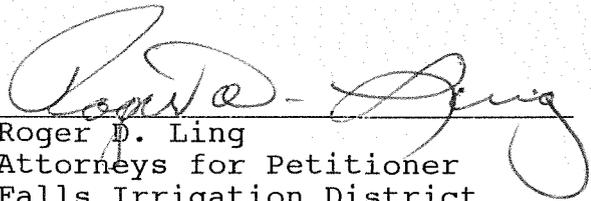
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to exercise his statutory authority to provide water management of ground water diversions for the protection of senior ground water rights, and has abused his discretion in including any lands of FID in the AFGWMA.

WHEREFORE, petitioner prays that a hearing be held after a reasonable time for completion of discovery as provided by law and required to provide procedural due process to petitioner, and that the Director amend his Order and delete the lands served by FID from any ground water management area.

DATED this 20<sup>th</sup> day of August, 2001.

LING & ROBINSON

By:   
Roger D. Ling  
Attorneys for Petitioner  
Falls Irrigation District

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**CERTIFICATE OF MAILING**

I hereby certify that on the 20th day of August, 2001, I served the original of the foregoing **Petition Opposing Order** upon:

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

and copies of said **Petition Opposing Order** upon:

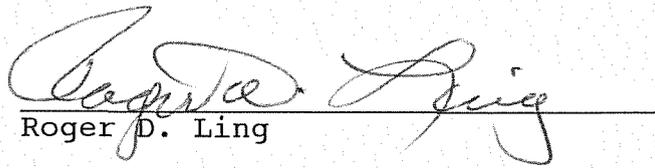
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by depositing said document in the United States mail, postage prepaid, in envelopes addressed to said parties at the foregoing addresses.

  
Roger D. Ling

**GENERAL DESCRIPTION OF SERVICE AREA  
OF  
FALLS IRRIGATION DISTRICT  
-  
POWER COUNTY, IDAHO**

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The area located within the following boundary, to-wit:

Beginning at a point on the highwater mark of the Southeast bank of the American Falls Reservoir in Section 29, Township 6 South, Range 32 East of the Boise Meridian where the West boundary of the Fort Hall Indian Reservation intersects said highwater mark, which point is approximately 990' North of the Southwest corner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of said Section 29, which shall be known as the TRUE POINT OF BEGINNING;

Thence South along the West boundary line of said Fort Hall Indian Reservation, being the line along the mid-quarter section line of the East half (E $\frac{1}{2}$ ) of Sections 29 and 32 in Township 6 South, Range 32 East of the Boise Meridian and Sections 5 and 8 in Township 7 South, Range 32 East of the Boise Meridian, to the Southeast corner of Lot 4 in said Section 8;

Thence West along the South section line of said Section 8 to the South quarter corner of said Section 8, also known as the Southwest corner of Lot 4 in said Section 8;

Thence South along the mid-section line of Section 17 in Township 7 South, Range 32 East of the Boise Meridian to the Southeast corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of said Section 17;

Thence West along the South line of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of said Section 17 to the Southwest corner of said NE $\frac{1}{4}$ NW $\frac{1}{4}$ ;

Thence South along the mid-line of the West half (W $\frac{1}{2}$ ) of said Section 17 to the Southeast corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 17;

Thence West along the South section lines of Sections 17 and 18 in Township 7 South, Range 32 East of the Boise Meridian to the South quarter corner of said Section 18;

Thence South along the mid-section line of Section 19 in Township 7 South, Range 32 East of the Boise Meridian to the South quarter corner of said Section 19;

Thence West along the South section line of said Section 19 and the South section line of Section 24 in Township 7 South, Range 31 East of the Boise Meridian to the Southwest corner of said Section 24;

General Description of Service Area - Falls Irrigation District, Power County, Idaho (continued)

- Thence South along the East section line of Sections 26 and 35 in Township 7 South, Range 31 East of the Boise Meridian and the East section line of Section 2 in Township 8 South, Range 31 East of the Boise Meridian to the Southeast corner of said Section 2;
- Thence West along the South section line of Sections 2 and 3 in Township 8 South, Range 31 East of the Boise Meridian to the Southwest corner of said Section 3;
- Thence South along the East section line of Section 9 in Township 8 South, Range 31 East of the Boise Meridian to the Southeast corner of said Section 9;
- Thence West along the South section line of Sections 8 and 9 in Township 8 South, Range 31 East of the Boise Meridian to the South quarter corner of said Section 8;
- Thence South along the mid-section line of Section 17 to the South quarter corner of said Section 17;
- Thence West along the South section line of Sections 17 and 18 in Township 8 South, Range 31 East of the Boise Meridian to the Southwest corner of said Section 18;
- Thence South along the East section line of Sections 24, 25 and 36 in Township 8 South, Range 30 East of the Boise Meridian to the Southeast corner of said Section 36;
- Thence West along the South section line of Sections 35 and 36 in Township 8 South, Range 30 East of the Boise Meridian to the Southwest corner of said Section 35;
- Thence North along the West section line of said Section 35 to the Northwest corner of said Section 35;
- Thence West along the South boundary of Sections 27 and 28 in Township 8 South, Range 30 East of the Boise Meridian to the Southwest corner of said Section 28;
- Thence North a distance of 950', more or less, to the East bank of the Snake River in said Section 28;
- Thence in a northeasterly direction along the meander line of the highwater mark of the Snake River to the American Falls Reservoir, and thence along the meander line of the highwater mark of American Falls Reservoir in a northeasterly direction to the POINT OF BEGINNING.