

Cindy

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

IN THE MATTER OF DESIGNATING)
THE SOUTHEAST BOISE) ORDER
GROUND WATER MANAGEMENT AREA)

This matter having come before the Director of the Idaho Department of Water Resources as a result of concern over the effect of additional ground water pumping on the availability of water to existing wells in the Southeast Boise area in Ada County, the Director Finds, Concludes and Orders as follows:

FINDINGS OF FACT

1. On October 12, 1993, Boise Water Corporation submitted a petition to the Director of the Department of Water Resources (Department), requesting designation of a ground water management area in the vicinity of the Boise-Fan aquifer.

2. On December 9, 1993, the Department held a public meeting for the purpose of disseminating information about the petition, ground water levels, the potential for establishing a ground water management area in southeast Boise, and the proposed area boundaries. All known holders of ground water rights with rates of flow in excess of 0.10 cubic feet per second were mailed notice of the meeting and proposed area boundaries.

3. The Department solicited responses to the petition with an initial deadline of December 31, 1993. This deadline was later extended to January 18, 1994 based on requests from respondents. Input ranged from support of the designation, to requests for more extensive designation, to one request for no designation. Information provided in responses and all available technical data were reviewed by Department staff. Based on this technical review, Department staff recommended that a ground water management area be established, but that

the area designated should be only part of the area proposed in the petition. The area for which designation is proposed is shown on Attachment 1. This area is described as the Southeast Boise Ground Water Management Area (SBGWMA).

4. Management of ground water within the Boise River basin is directed toward specific aquifer units as they become identified and defined. The Boise-Fan aquifer is a large buried alluvial-fan located at the head of the Boise River Valley. Depth to water within the aquifer ranges from 300 feet to 600 feet depending on location. Technical descriptions of the aquifer are provided in two studies funded primarily by Boise Water Corporation and prepared by Edward Squires and others.¹ Based on information provided by these studies and an independent review by Idaho Department of Water Resources (IDWR) staff, geologic and hydrogeologic evidence suggests that ground water recharge from the Boise River to the Boise-Fan aquifer is restricted by subsurface structural features.

5. Ground water withdrawals from the Boise-Fan aquifer are presently contributing to a lowering of the water table within part of the aquifer. This lowering has caused several domestic wells to become inoperable and has affected existing production wells by reducing yield and increasing pumping costs. Continued lowering of water levels will cause more shallow domestic wells to become inoperable thus requiring deepening or re-drilling. Most large-bore production wells are already completed throughout the entire usable water-bearing section and cannot be successfully deepened. Based on declining water level trends, the ability to maintain the present level of withdrawal from the aquifer is doubtful.

1. Squires, Edward, Spencer H. Wood and James L. Osiensky, "Hydrogeologic Framework of the Boise Aquifer System, Ada County, Idaho", Idaho Water Resources Research Institute, Moscow, Idaho, March, 1992.

Squires, Edward, Spencer H. Wood, James L. Osiensky, and Roger D. Dittus, "Groundwater Conditions and Hydraulic Testing of the Boise-Fan Aquifer of Southeast Boise River Valley, Ada County, Idaho". Report prepared for Boise Water Corporation, October, 1993.

6. Data are insufficient to compute a projected reasonably anticipated average rate of future natural recharge which would be the foundation for a water balance computation. However, the rapid increases in declines in water levels in recent years provide the basis for the determination that conditions in the Boise-Fan cold water aquifer are found to be approaching the conditions of a critical ground water area.

7. A summary of water diversions within the Boise-Fan aquifer has been prepared. Attachment 2 is a listing of recorded ground water rights with rate of flow greater than 0.10 cubic feet per second (cfs) within the area.

8. The boundaries of the SBGWMA partially overlap the boundaries of the Boise Front Low Temperature Geothermal Ground Water Management Area, which was designated on June 15, 1987.

9. The SBGWMA is totally contained within the area impacted by the Boise River Basin Moratorium. This moratorium on certain water right development was declared on May 15, 1992, and an amended moratorium order was issued on April 30, 1993.

CONCLUSIONS OF LAW

1. As between appropriators, the first in time is first in right. I.C. Sec. 42-106.

2. The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such purpose, the right ceases. I.C. Sec. 42-104.

3. All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of Chapter 2, Title 42, Idaho Code, and not otherwise. Such appropriation shall be perfected only by means of the application, permit and license procedure as provided in this title; provided, however, that in the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of

this act it may be perfected under such method of appropriation. I.C. Sec. 42-201(1).

4. All ground waters are property of the state, whose duty it is to supervise the appropriation and allotment of the same. Aquifers are to be administered to assure that early appropriations of ground water are protected in the maintenance of reasonable ground water pumping levels as may be established by the Director. I.C. Sec. 42-226.

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

6. "Ground water management area" is defined as any ground water basin or designated part thereof which the Director has determined may be approaching the conditions of a critical ground water area. I.C. Sec. 42-233b.

7. The Director may allow withdrawal at a rate exceeding the reasonably anticipated rate of future natural recharge if the Director finds it is in the public interest and if it satisfies the following criteria: (1) A program exists or likely will exist which will increase recharge or decrease withdrawals within a time period acceptable to the Director to bring withdrawals into balance with recharge, and (2) Holders of senior rights to use ground water will not be caused thereby to pump water from below the established reasonable pumping level or levels. I.C. 42-237a(g).

8. In connection with his supervision and control of the exercise of ground water rights the Director has the power to determine what areas of the state have a common ground water supply. I.C. Sec. 42-237a(g).

9. To assist the Director in the administration and enforcement of this act, and in making determinations upon

which said orders shall be based, he may establish a ground water pumping level or levels in an area or areas having a common ground water supply as determined by him as hereinafter provided. I.C. Sec. 42-237a(g).

10. The Director is empowered to order the installation and maintenance of approved measuring devices consistent with the purposes of Section 42-701, Idaho Code. I.C. Sec. 42-237a(h).

11. If the Director finds, on the basis of available information, that a person is diverting water or has diverted water from a natural watercourse or from a ground water source without having obtained a water right to do so or is applying water or has applied water not in conformance with a water right, then the Director may file an action seeking injunctive relief or may commence an administrative enforcement action by issuing the person a written notice of violation directing the person to cease or desist the activity or activities alleged to be in violation of applicable law or any existing water right. I.C. Sec. 42-351(1).

12. After notice, the Director may suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, or to prevent violation of minimum flow provisions of the State Water Plan. I.C. Sec. 42-1805(7) and Water Appropriation Rule 7.

13. The Director may seek a preliminary or permanent injunction, or both, or a temporary restraining order restraining any person from violating or attempting to violate: a) those provisions of law relating to all aspects of the appropriation of water, distribution of water, headgates and measuring devices; or b) the administrative or judicial orders entered in accordance with the provisions of law. I.C. Sec. 42-1805(9).

14. "Rules for Conjunctive Management of Surface and Ground Water Resources" have been promulgated in accordance with the the Idaho Administrative Procedure Act. Many of these

rules can be applied within the SBGWMA, particularly IDAPA rule 37.03.11.0411 which provides for administration of diversion and use of water within a ground water management area, and provides that in order to establish whether withdrawals from the wells are exceeding the capacity of the system and to protect early appropriators, all existing and future wells within the area designated must be controlled and monitored.

15. The Director should designate a ground water management area for the Southeast Boise area in Ada County, Idaho, to be identified as the SBGWMA.

16. The SBGWMA pertains to the cold water aquifer, having temperature of less than or equal to eighty-five (85) degrees Fahrenheit. The Boise Front Low Temperature Geothermal Ground Water Management Area pertains to low temperature geothermal water, having temperature of greater than eighty-five (85) degrees Fahrenheit.

17. The SBGWMA will supplant or replace the Boise River Basin Moratorium with respect to regulation of the cold water aquifer within the boundaries of the area.

18. Establishment of the SBGWMA should be accompanied by a statement of specific management goals and objectives to meet the purposes for which the ground water management area is designated. For convenience of discussion and implementation, these goals and objectives are identified below in outline form. A primary aspect of implementation of goals and objectives is the establishment of an Advisory Committee. Formative information for this Committee is also provided in the statement of goals and objectives.

STATEMENT OF GOALS AND OBJECTIVES

I. MANAGEMENT GOALS

The goals for management of the SBGWMA are:

A. Obtain accurate information about:

1. Water supply,

2. Withdrawals (current and future), and
3. Uses.

B. Provide clear, understandable management policies for the resource.

Idaho Department of Water Resources (IDWR) management policies need to be available in written form and available to existing and potential future users of the resource as well as to the public. These policies must:

1. Maintain consistency in IDWR actions,
2. Minimize administrative documentation,
3. Minimize management cost to users and the public,
4. Provide a reliable basis for actions of both users and IDWR, and
5. Result in the compilation of a water balance, identification of a reasonable pumping lift, and preparation of a Ground Water Management Plan.

C. Stabilize depletion from the aquifer at the existing or a reasonable rate (whichever is less), until a new equilibrium condition can be accurately predicted.

D. Protect existing ground water users.

E. Maximize public benefit from the ground water resource.

The goals of protecting existing ground water users and maximizing public benefit from the ground water resource may appear to be in conflict, one seeking to minimize the number of users and the other seeking to maximize development. IDWR must balance these goals to obtain a workable management plan.

II. OBJECTIVES TO MEET GOALS

A. Existing Uses

1. Each use should be limited to the lesser of the recorded right, or beneficial use being made of the water, or sustained historic diversion rate and/or volume.
2. Well and system construction should be required to prevent waste above and below ground.
3. IDWR-approved monitoring equipment, data collection, and reporting should be required where practical.

B. Permits

All water right permits within the SBGWMA pertain to systems that have been either substantially or completely developed. Therefore, permit holders should not be required to submit any development information to the Department in addition to timely proof of beneficial use.

C. Applications

1. Future applications should be rejected unless information is provided by the applicant to demonstrate the use will not cause:

- a) Additional depletion of the aquifer, and
- b) An increase in pumping lift to existing users or undeveloped permit holders, pending determination of a reasonable pumping level.

2. The applicant should be responsible to provide all existing users and holders of undeveloped permits a copy of the application and supporting information upon request.

3. Domestic uses (exempted from the filing of a water appropriation permit by Sec. 42-227, Idaho Code) should be authorized only after approval of a drilling prospectus submitted with the application for the required drilling permit.

D. Delivery

1. A water user who operates a well at a diversion in excess of water rights will be ordered by the Director to cease and desist based on the authorities in Sections 42-237a(g), 42-311, 42-350 and 42-351, Idaho Code.

2. IDWR may create a water district and appoint a watermaster upon entry of an interim administrative order or a decree in the Snake River Basin Adjudication (or other adjudication) to measure and deliver water to the users.

III. CREATION OF THE SBGWMA ADVISORY COMMITTEE

A. Introduction

The SBGWMA is the source of water for three major water users, none of which holds senior priority water rights. These three water users, J.R. Simplot Co. (doing business as Golden Development Company), Micron Technology Inc., and Boise Water Corporation, have determined that it is in their best interest to coordinate efforts to satisfy the needs of senior water right holders in order to continue to fully utilize the

aquifer to satisfy their diversion requirements.

B. Objectives

This combination of large water users lends itself to the formation of a SBGWMA Advisory Committee, which has the following objectives:

1. Serve as a forum for collecting and reviewing data obtained relative to the SBGWMA.
2. Serve as a forum for mediating water related issues involving water users within the SBGWMA.
3. Develop a ground water management plan for the SBGWMA as a proposal to the Director.

C. Guidelines

Because there is no known precedent for this group within the State of Idaho, implementation and development of the group will be a dynamic process. The group should develop written guidelines which describe its operational procedures, and submit these guidelines for review and approval by the Director.

D. Composition

The SBGWMA Advisory Committee should initially be comprised of representatives from J.R. Simplot Co., Micron Technology Inc., Boise Water Corporation, the City of Boise, Boise State University, IDWR, and two representatives of independent water users, to be selected by IDWR.

E. Authority

The SBGWMA Advisory Committee should seek consensus on solutions that are mutually beneficial to all parties. The Committee does not have formal enforcement authority. Establishment of the Advisory Committee is not intended to limit or divest the statutory enforcement responsibilities of IDWR.

F. Dispute Resolution

IDWR encourages disputes regarding pumpage of ground water within the SBGWMA to be first referred to the Advisory Committee. Matters on which consensus with all Advisory Committee members and the contesting parties is not achieved will be referred to IDWR and will first be set for informal resolution, under the provisions of section 67-5241, Idaho Code, if doing so will expedite the case without prejudicing the interests of any party. Matters not resolved in this manner will be set for a formal hearing, in accordance with

the provisions of IDAPA rule 37.03.11 and the Administrative Procedure Act.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The following described area is included within and designated as the "Southeast Boise Ground Water Management Area" (SBGWMA) pursuant to the provisions of Section 42-233b, Idaho Code:

Sections 25 and 36, Township 3 North, Range 2 East, B.M.
Sections 1, 12 and 13, Township 2 North, Range 2 East, B.M.
Sections 30, 31 and 32, Township 3 North, Range 3 East, B.M.
Sections 4, 5, 6, 7, 8, 9, 16, 17 and 18, Township 2 North, Range 3 East, B.M.

2. Water users who divert ground water at a rate in excess of 0.20 cfs within the SBGWMA are required to install Department-approved monitoring equipment, and to participate in a data collection and reporting process, to be established by the Department in cooperation with the Advisory Committee.

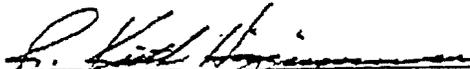
3. A water user or an applicant who proposes to construct, repair, deepen or enlarge a well located within the SBGWMA is required to submit for review and approval a drilling prospectus with each application for a drilling permit.

4. An applicant for appropriation of ground water within the SBGWMA is required to furnish sufficient technical data and plans to allow a preliminary determination by the Director that water is available, that existing users will not be injured, and that depletion of the aquifer will not be increased. Applications will not be advertised and protest hearings will not be scheduled until an affirmative preliminary determination is made by the Department.

5. The Southeast Boise Ground Water Management Area

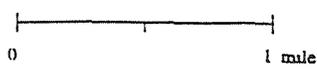
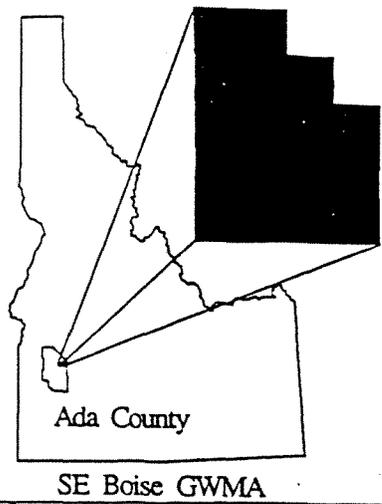
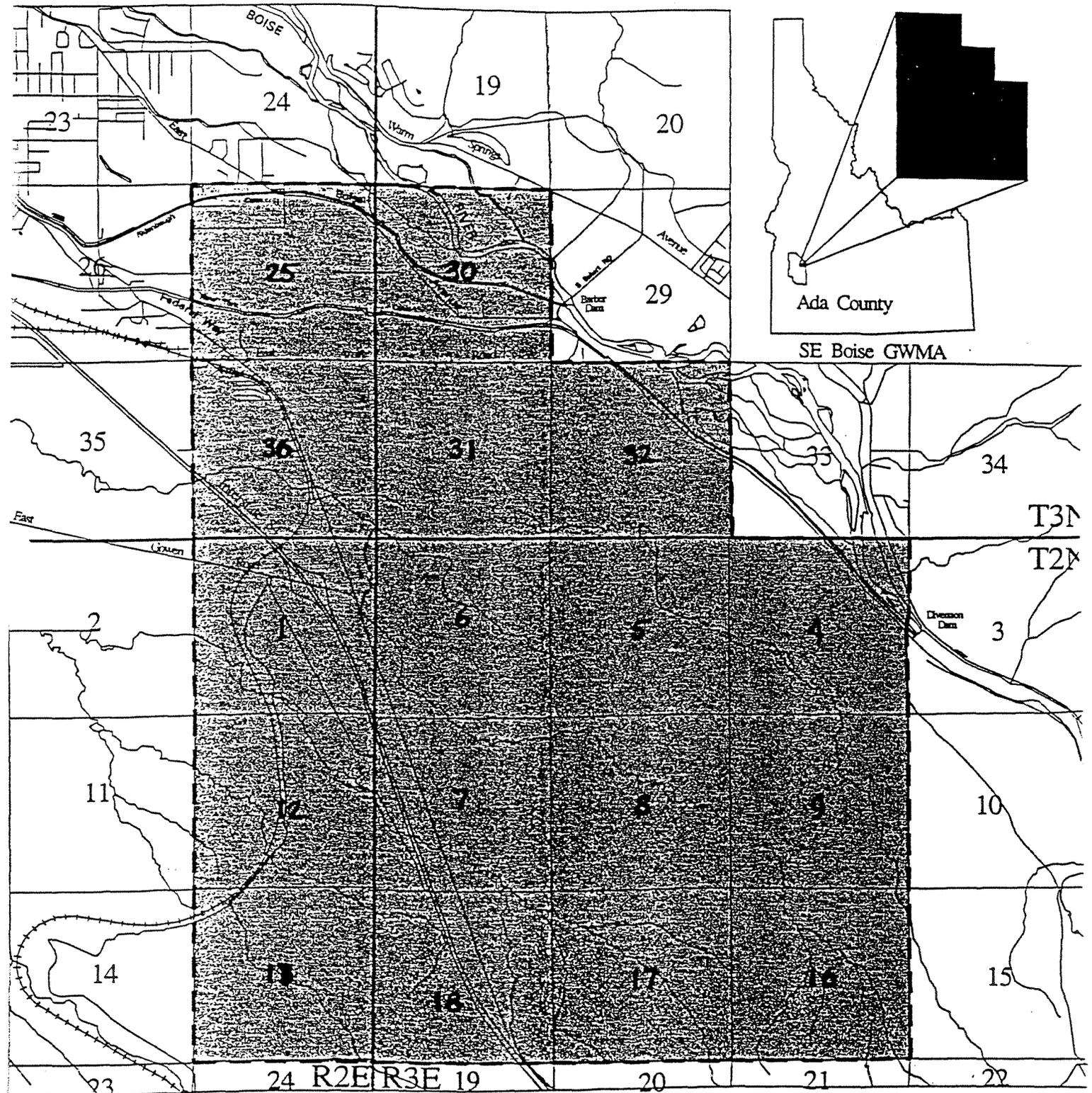
Advisory Committee is hereby established, in accordance with the provisions identified herein. The Committee is hereby directed to develop written guidelines which describe its operational procedures, and to submit these guidelines for review and approval by the Director, no later than June 1, 1995.

Dated this 14TH day of OCTOBER, 1994.



R. Keith Higginson, Director
Idaho Department of Water Resources

Southeast Boise Ground Water Management Area



Attachment 1



IOWA GEOGRAPHIC
INFORMATION CENTER

Iowa Department of Water Resources
1301 North Grand Street
Boone, Iowa 52008
(515) 327-7660

WATER RIGHT RECORDINGS FOR GROUND WATER DIVERSIONS
GREATER THAN 0.10 CFS WITHIN THE
SOUTHEAST BOISE GROUNDWATER MANAGEMENT AREA

	<u>W/R #</u>	<u>Use*</u>	<u>cfs</u>	<u>Stage</u>	<u>Priority</u>	<u>Name</u>
1.	63-04388	I	.11	Stat Claim	06/01/1910	Johnson
2.	63-04999	I	.32	Stat Claim	03/15/1927	Guiles
3.	63-04360	I	.64	Stat Claim	06/01/1931	Prickett
4.	63-04947	I,D	.16	Stat Claim	01/01/1933	Myers
5.	63-02501	I,D	.20	License	09/20/1934	Rodgers
6.	63-04478	I,D	.12	Stat Claim	05/01/1947	Viani
7.	63-02666	I,D,C,Cl	.11	License	06/11/1947	Idaho Power Co
8.	63-04084	D	.14	Stat Claim	06/01/1949	Kirwan
9.	63-02914	Ind,D	.33	License	11/15/1952	Bunting Tractor
10.	63-03118	D,Cl	1.40	License	01/14/1958	Idaho Power Co
11.	63-03197	I	.51	License	05/12/1960	Idaho Power Co
12.	63-05061	I,S	.12	Stat Claim	06/01/1960	Meyer
13.	63-03416	D,F	.56	License	12/07/1964	Security Industries
14.	63-03544	D,F,Cl	2.67	License	09/22/1966	Idaho Power Co
15.	63-07199	Ind	1.09	License	02/21/1969	Emkay Development
16.	63-07304	I,D	.36	License	02/19/1971	Thunderbird Dev
17.	63-07577	M	2.01	License	04/06/1972	Boise Water Corp
18.	63-07606	D	.22	License	05/30/1972	Showalter
19.	63-08006	I,D,F	.82	License	07/15/1974	Granger
20.	63-08181	I,D	.14	License	07/24/1975	County of Ada
21.	63-08236	M	3.63	License	11/28/1975	Boise Water Corp
22.	63-08401	D	.70	License	01/06/1977	Blue Valley MH Park
23.	63-08992	D,F	7.00	Permit	07/25/1977	Boise Water Corp
24.	L63-08992	M	1.97	License	07/25/1977	Boise Water Corp
25.	63-09029	I,C,F,Ind	4.00	Permit	09/09/1977	Boise Water Corp
26.	63-09025	I,S	.14	License	10/12/1977	Spiers
27.	63-09137	D,Ind	.26	License	04/17/1978	Riddle
28.	63-09357	Ind,F	.60	License	03/12/1980	Micron Technology
29.	63-10208	Ind,D	.61	License	11/22/1983	Micron Technology
30.	63-10617	I,D	.20	Permit	04/19/1988	Beymer
31.	63-11195	I	.13	License	03/06/1990	Ada County Parks
32.	63-11293	Ind	2.25	Permit	04/19/1990	Micron Technology
33.	63-11546	C	0.29	License	05/30/1991	Croman Corp
34.	63-11541	I,M	2.90	Permit	05/31/1991	Boise Water Corp
35.	63-11610	I	1.10	Permit	07/15/1991	Golden Development
36.	63-11566	I	.30	Permit	07/24/1991	Indep. School Dist
37.	63-11816	I	.25	Application	04/28/1992	Boise Park System
38.	63-11949	M	1.10	Permit	10/14/1992	Boise Water Corp
39.	63-12062	I	.22	Permit	10/01/1993	Indep. School Dist

* Use: I - Irrigation, D - Domestic, M - Municipal, C - Commercial,
Ind - Industrial, Cl - Cooling, F - Fire Protection, S - Stockwater