

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

<b>IN THE MATTER OF WATER MANAGEMENT WITHIN THE SOUTHEAST BOISE GROUND WATER MANAGEMENT AREA</b>	) ) ) ) ) <hr/>	<b>PRELIMINARY ORDER APPROVING GROUND WATER MANAGEMENT PLAN</b>
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The Southeast Boise Ground Water Advisory Committee (“advisory committee”) submitted a ground water management plan to the Idaho Department of Water Resources (“IDWR”) for management of the Southeast Boise Ground Water Management Area, and requested that the plan be approved. Based on its review, IDWR issues the following Findings of Fact, Conclusions of Law, and Order.

**FINDINGS OF FACT**

1. The Southeast Boise Ground Water Management Area (“SBGWMA”) was designated by order of IDWR on October 14, 1994, in response to declining ground water levels.
2. The order created an advisory committee to assist management of the ground water resource. The committee was charged with the following duties: (a) Serve as a forum for collecting and reviewing data obtained relative to the SBGWMA; (b) Serve as a forum for mediating water related issues involving water users within the SBGWMA; and (c) Develop a ground water management plan for the SBGWMA as a proposal to the Director.
3. On March 9, 2001, the committee submitted a ground water management plan for the SBGWMA (hereafter referred to as “the plan”).
4. Information submitted with the plan demonstrates that the water users within the management area, and specifically the water users represented on the advisory committee, have taken significant actions to balance the ground water withdrawals with ground water recharge within the management area.
5. The plan identifies water use policies including a requirement to monitor and report water diversion and aquifer condition.
6. The plan proposes protection from forfeiture of a water right when one of the following actions is taken by one of the water right holders:

Development and use of alternate water sources;

Reduced ground water use;

Improvements in water management techniques; or

Any other case-specific condition acknowledged by statute, regulation, a court, or the Director.

7. The plan calls for submittal of individual water management plans by all water users who divert more than 50 acre feet annually and who are required to report annually.

8. Summary documents attached to the plan describe specific actions by Micron Technology, Inc., and United Water Idaho to accomplish these tasks. The documents are characterized as summaries. Other water users have not yet submitted individual plans. Preparation of a detailed, individual plan by each of the users is contemplated by the plan.

9. The plan does not discuss procedures for recommending changes in the boundaries of the ground water management area.

10. The plan asks the Director to continue requiring monitoring and reporting by all water users having rights authorizing diversion exceeding 0.20 cfs.

11. A letter transmitting the plan to the Director requested consideration and action by the Director related to the drilling of exempted domestic wells. The letter asked the following:

Should IDWR require a predetermination of water availability before approving a well drilling application for an exempted well in the management area?

Should IDWR curtail or otherwise limit the drilling of exempted wells in the management area?

Should IDWR request that local building permit approvals include consumer information about well drilling concerns, water availability, depths to water in the aquifer or other relevant information?

### CONCLUSIONS OF LAW

1. The Southeast Boise Ground Water Management Area was properly created under Idaho Code § 42-233b.

2. Idaho Code § 42-233b states, in pertinent part:

When the director of the department of water resources designates a ground water management area, or at any time thereafter during the existence of the designation, the director may approve a ground water management plan for the area. The ground water management plan should provide for managing the effects of ground water withdrawals on the aquifer from which withdrawals are made and on any other hydraulically connected sources of water.

3. Idaho Code § 42-223 (4) states:

A water right shall not be lost or forfeited by a failure to divert and apply the water to beneficial use if the reason for the nonuse of the water is to comply with the provisions of a ground water management plan approved by the director of the department of water resources pursuant to section . . . 42-233b, Idaho Code.

4. Nonuse of water in the SBGWMA is not protected from forfeiture unless the nonuse is related to the purposes of the plan or other defenses to forfeiture recognized under Section 42-223, Idaho Code or other Idaho law.

5. The Southeast Boise Ground Water Advisory Committee has presented an acceptable general management plan to the Director that can be conditionally approved. Conditions related to additional submittals, IDWR review of specific proposals, and additional administrative proceedings are set forth in the order below.

6. Drilling of exempted domestic wells in the management area is a concern. The advisory committee should develop and recommend to the Director a public process for addressing the concern.

### **ORDER**

IT IS HEREBY ORDERED that the management plan submitted by the Southeast Boise Ground Water Advisory Committee is APPROVED and ADOPTED AS A MANAGEMENT PLAN in accordance with Section 46-233b, Idaho Code, under the following conditions:

1. Any portion of a valid water right authorizing the beneficial use of ground water is protected from forfeiture if the equivalent level of beneficial use is continued with water from an alternative source of water obtained in accordance with Idaho law.

2. Any portion of a valid water right authorizing the beneficial use of ground water is protected from forfeiture if the equivalent level of beneficial use is continued even though less water is diverted because of demonstrated conservation methods employed by the water user.

3. If the reduction in ground water diversion and use is not the result of conservation or replacement as described above, the nonuse of water when a valid water right authorizes use is not protected from forfeiture unless the specific proposal for nonuse is pre-approved by IDWR. Preapproval could be obtained through individual plans submitted by the water users.


4. Water right holders within the SBGWMA averaging diversion in excess of 50 acre feet shall submit individual water use plans within one year of the date of this order. After submittal, the plans should be reviewed by the advisory committee, amended based on recommendations of the committee, and submitted to the Director for approval.

5. Monitoring and reporting shall continue as set forth in the order creating the management areas and in the plan unless changed by order of the Director.

6. At its annual meeting, the advisory committee shall review the data from the reports of the various water users, and shall submit to the Director any recommendations, in writing, regarding administration of the water rights, changes in the diversion monitoring and reporting requirements, changes in the network of water level monitoring wells, and changes in the boundaries of the management area based on the data reviewed.

IT IS FURTHER ORDERED that the advisory committee shall develop and recommend a public participation process to address concerns expressed about the drilling of exempt domestic wells. The recommendation should include any formal pleading from the advisory committee to initiate the process; any procedures for giving notice to and gathering input from the public, including the need for seeking participation by other interested persons outside the boundary of the SBGWMA and any recommendations for legislation or by rule making.

Dated this 29<sup>TH</sup> day of August, 2002.

  
Norman C. Young  
Administrator  
Water Management Division