



## State of Idaho

# DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C. L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Interim Director

FEBRUARY 10, 2010

**TO: WATER DISTRICT NO. 170 WATER RIGHT HOLDER**

**RE: FINAL ORDERS CREATING SUB-DISTRICT NO. 72-D AND MODIFYING 72-F**

Dear Water Right Holder:

Enclosed please find copies of the Final Order Creating Sub-district No. 72-D and the Final Order Modifying Sub-district 72-F. The first order creates a sub-district within Water District No. 170 for the purpose of administering water rights in the Clayton area, and the second order modifies the Morgan Creek Sub-district to include water rights diverted from the Salmon River and tributaries downstream of McNabbs point. Also enclosed is an informational sheet that explains options for responding to final orders. Please note that any party subject to a final order may file a petition for reconsideration within fourteen (14) days of the service date of the order, which is the date of this letter. The Department will act upon petitions within twenty-one (21) days of their receipt.

A sub-district is an organizational structure within Water District No. 170 that provides for users within that sub-district to select and fund a local watermaster to administer water rights in the sub-district. When Water District No. 170 was created, existing water districts in the area were designated as sub-districts within the larger district. Additionally, IDWR created a sub-district in the Stanley area that became functional in 2009. Although water rights within a sub-district remain a part of Water District No. 170, the users within a sub-district control how the water district operates in their area. This is beneficial to the users as it provides a measure of local control, and it is beneficial to the water district as a whole in that it provides for consistent and effective administration of water rights through local expertise, while preserving the benefits of the larger water district.

A description of the two enclosed orders is included below.

### **Order Creating Sub-district 72-D – The Clayton Area Sub-district**

Under this order, water rights administered by Water District No. 170 with points of diversion within the boundaries of the sub-district remain under the authority of the Water District No. 170 Watermaster, but a local watermaster selected by the users will perform the day-to-day activities. Water users in the sub-district will meet annually to set a budget, select a local watermaster, and adopt any resolutions necessary to govern operation of the sub-district. This is similar to the existing situation with Challis and Garden Creeks, and Morgan Creek; these areas were formerly water districts, but now operate as sub-districts within Water District No. 170.

Details of the sub-district operation, such as the compensation and specific duties of the local watermaster are to be formulated during one or more meetings of a steering committee in

early 2010 and will be subject to approval by the water users during the first annual meeting. The date of the first annual meeting is anticipated to be March 9, 2010. Notice of the meeting place, date, and time will be sent separately to holders of water rights within the Clayton Area Sub-district.

**Order modifying Sub-district 72-F – The Morgan Creek Sub-district**

This order modifies Sub-district 72-F to administer those ground water and surface water rights in Administrative Basin 72 administered by Water District No. 170 with points of diversion from the Main Salmon or tributaries below McNabbs Point. Previously, 72-F delivered water to water rights only from surface water sources within the Morgan Creek drainage and to certain water rights from the Salmon River to lands also irrigated by water from Morgan Creek. As a result of this order, the 72-F sub-district will deliver water to ground and surface water rights (except domestic and stockwater rights, as defined by Idaho Code § 42-111 and 42-1401A(11)) from sources tributary to the Salmon River below McNabbs Point and above the confluence of the Salmon River with the Pahsimeroi River. The effect of this order is that the 72-F watermaster will deliver water to an additional four (4) active diversions.

Please contact this office, the IDWR regional office in Twin Falls, or the Salmon Field Office in Salmon if you have any questions concerning this matter.

Sincerely



Gary Spackman  
Interim Director, Idaho Department of Water  
Resources

Enclosures

- *Final Order Modifying Sub-District No. 72-F*
- *Final Order Creating Sub-District No. 72-D*
- *Explanatory Information To Accompany A Final Order*

Cc: Bob Foster, Salmon Field Office  
IDWR Southern Region

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

IN THE MATTER OF THE PROPOSED )	
MODIFICATION OF THE MORGAN CREEK )	
SUB-DISTRICT WITHIN )	<b>FINAL ORDER</b>
<u>WATER DISTRICT NO. 170</u> )	<b>MODIFYING</b>
	<b>SUB-DISTRICT NO. 72-F</b>

On April 6, 2006, the Director of the Idaho Department of Water Resources ("Department" or "Director") issued *Amended Final Order Creating Water District No. 170*. A copy of the order is posted on the Department's website:

<http://www.idwr.idaho.gov/WaterManagement/WaterDistricts/UpperSalmon/UpperSalmon.htm>

The April 6, 2006 order established Water District No. 170 to include all surface water and ground water rights in the Idaho Department of Water Resources Administrative Basins 71 and 72, other than de minimis domestic and stockwater rights as defined by Idaho Code § 42-111 and 42-1401A(11). That order assimilated existing water districts into Water District No. 170, but provided that they would continue to function largely independently as sub-districts of Water District No. 170. Furthermore, the order contemplated additional sub-districts would be created within Water District No. 170 as needed.

On December 16, 2009, Department staff met with representatives of Sub-district 72-F to discuss modifying the sub-district to include additional water rights from the Salmon River and tributaries in the vicinity of Morgan Creek and downstream to the confluence with the Pahsimeroi River. Representatives of Morgan Creek had suggested to IDWR previously that the Department consider expanding the sub-district. Furthermore, the 72-F watermaster has been delivering water and assessing some of the users in the proposed expansion area in anticipation of an expansion.

On January 13, 2010 Gary Spackman, Interim Director of the Idaho Department of Water Resources conducted a public hearing in Challis, Idaho regarding the proposed modification of Sub-district 72-F. This Final Order revises the boundaries of Sub-district 72-F within Water District No. 170 and refines the description of the water rights administered by that sub-district.

**FINDINGS OF FACT**

1. In a January 27, 1971 order re-designating the water district boundaries and numbering system, the Director of the Idaho Department of Water Administration (the predecessor of the Idaho Department of Water Resources) described Water District 72-F as follows:

"Water District 72-F is composed of the entire Morgan Creek drainage basin to its junction with the Salmon River and is located in Custer County"

2. Water District 72-F had become inactive for a number of years before becoming active in 2005, at which time the 72-F watermaster began administering water rights from the Morgan Creek drainage, as well as certain water rights from the Salmon River near the mouth of Morgan Creek that are not within the boundaries of the district.

3. Since 2005, the annual budget for the 72-F district has included funds to deliver water to, and has been collected from the owners of, the Morgan Creek and tributary water rights, as well as the Salmon River water rights.

4. On May 23, 2005, the Department received a petition from Mr. James Hawkins dated May 19, 2005, on behalf of Water District No. 72-F. The petition from Mr. Hawkins sought inclusion of certain water rights and diversions from the Salmon River near its confluence with Morgan Creek. This petition was submitted to the Department following a meeting that the Department held with representatives of existing water districts in the Upper Salmon River Basin in February of 2005 regarding the potential establishment of the Upper Salmon Water District.

5. On April 6, 2006, the Director of the Idaho Department of Water Resources issued *Amended Final Order Creating Water District No. 170*.

6. The Order created Water District No. 170 to include all surface water and ground water rights in the Idaho Department of Water Resources Administrative Basins 71 and 72, other than de minimis domestic and stockwater rights as defined by Idaho Code § 42-111 and 42-1401A(11).

7. The Morgan Creek drainage basin is within administrative basin no. 72. The April 6, 2006 order creating Water District 170 stated that existing water districts within water district 170 would become sub-districts of the larger upper Salmon River Water District. Water District 72-F became a sub-district of Water District 170 by action of that order.

8. The April 6, 2006 order states that the watermaster for Water District No. 170 shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director: (1) Measure, record, and report the diversions under water rights; (2) Enforce the water rights in priority; (3) Curtail unauthorized or excessive diversions as necessary (i.e., any diversion without a water right or in excess of the elements or conditions of a water right); and (4) Consult with and coordinate the work activities of deputy watermasters, including the elected and appointed watermasters for sub-districts within Water District No. 170.

9. On December 22, 2009 the interim director signed a notice proposing to modify Sub-district 72-F to include water rights in basin 72 downstream of the confluence of the Salmon River with Challis Creek. The interim director sent the notice of the proposed action by regular U. S. Mail to each holder of a water right within the boundaries of Water District No. 170. The notice described the proposed sub-district modifications, the reasons therefore, and the time and place for a hearing to be held on January 13, 2010 concerning the proposed sub-district modification. The notice also provided a time period within which written comments on the proposed action would be accepted.

10. In addition, the interim director caused notice of the proposed sub-district modification to be published once a week for two (2) weeks in the Challis Messenger, a newspaper having general circulation within the area of the proposed action. The notice was published in that newspaper on December 24 and 31, 2009.

11. The notice mailed to water right holders proposed that the sub-district would be modified to include all water rights administered by Water District No. 170 with points of diversion located downstream of the confluence of the Salmon River with Challis Creek. The modified sub-district would include water rights from all surface and ground water sources within the proposed area, and for all beneficial uses, except water rights used solely for domestic and/or stock water purposes as defined by Idaho Code § 42-111 and 42-1401A(11).

12. On January 13, 2010, at approximately 9:00 a.m. at the Custer County Courthouse in Challis, Idaho, the interim director conducted a hearing concerning the proposed modification of the sub-district. Approximately 8 people attended the hearing.

13. The interim director initiated the hearing with an introduction and a brief description of the purpose of the hearing. This was followed by an approximately 10-minute presentation by Nick Miller, an employee of IDWR and the watermaster for Water District No. 170. Mr. Miller's presentation provided a general description of the proposed sub-district modification. During and following the presentation, Mr. Miller and the interim director answered questions from the meeting attendees prior to taking testimony.

14. Persons attending the hearing were provided opportunity to make oral statements for the record. In addition, the interim director held the record open through January 22, 2010, for the submittal of written comments.

15. Due to the small number of hearing attendees, oral testimony at the hearing took the form of an open discussion that was recorded for the record. Additionally, one (1) person submitted a written statement to the Department on or before the deadline of January 22, 2010.

16. The oral testimony did not oppose the modification of the sub-district and centered primarily on two issues; 1) whether two of the most downstream diversions should be included in 72-F, and 2) questions regarding administration/assessment of diversions that are not equipped with measuring devices.

17. The written comment submitted to the Department was a request from Clay A. Jones that water right 75-2169 be included in Sub-district 72-F. Water Right 75-2169 is diverted from Panther Creek in Administrative Basin 75 (outside the Water District No. 170 boundary) into Morgan Creek and is rediverted at several locations from Morgan Creek by the 72-F watermaster. Although the Sub-district 72-F watermaster delivers the water to the rediversions, the sub-district has not historically charged the owner of that water right for such delivery.

## **CONCLUSIONS OF LAW**

1. Idaho Code Section 42-604 states, in pertinent part:

The director may create, revise the boundaries of, or abolish a water district or combine two (2) or more water districts by entry of an order if such action is required in order to properly administer uses of the water resource. Copies of the order shall be sent by regular mail to all holders of rights in the waters affect by the order. The director's order is subject to judicial review as provided in section 42-1701A, Idaho Code.

Before entering an order creating, modifying, or abolishing a district, the director

shall, by regular mail, send notice of the proposed action to each water user in the district or proposed district. The notice shall describe the proposed action to be taken, the reasons therefore, the time and place of a hearing to be held concerning the proposed action, and provide a time period within which written comment on the action will be accepted.

2. Based upon the order creating Water District No. 170, the statutory authorities provided by Idaho law, and the record in this proceeding, the Director should modify sub-district 72-F to administer those ground water and surface water rights in Administrative Basin 72 administered by Water District No. 170 with points of diversion from the Main Salmon or tributaries below McNabbs Point, located in the Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 35, Township 15 North, Range 19 East, as shown on the map appended hereto as Attachment A. Creation of the sub-district will provide users of these water rights with local control and will facilitate consistent and efficient administration within Water District No. 170.

3. Water right 75-2169 is diverted from a source not administered by Water District No. 170 watermaster, but is injected into, commingled with, and rediverted from a source that is administered by the Water District No. 170 watermaster. The water right is not a part of Water District No. 170, but the sub-district has and will incur expense in delivering the right at the points of rediversion from Morgan Creek and should be compensated for that expense.

4. The Director concludes that the sub-district as modified by this order is an organizational feature within Water District No. 170 to support a local watermaster that will, on behalf of, and under the supervision of the Water District No. 170 Watermaster, perform the following duties within the sub-district:

- a. Administer and enforce water rights in priority;
- b. Measure and report the diversions under water rights;
- c. Curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);
- d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or a mitigation plan approved by the Director.

5. The Director further concludes the following with respect to the sub-district as modified by this order:


- a. The water users will hold an annual meeting each spring prior to the start of the irrigation season on May 1 to adopt a budget, set the local watermaster's compensation, select a local watermaster, and adopt resolutions as necessary to govern operation of the sub-district.
- b. The local watermaster, with approval from the Director, will be appointed as a deputy watermaster of Water District No. 170. The deputy watermaster shall work pursuant to instructions of the Water District No. 170 Watermaster.
- c. Water rights within the sub-district shall not be subject to assessments from Water District No. 170 unless the Director determines that the sub-district is not providing for adequate distribution of water and the watermaster of Water District No. 170 is required to directly expend time or resources to deliver, measure, report, and/or regulate water in the sub-district.

## ORDER

IT IS HEREBY ORDERED that:

1. Sub-district 72-F shall administer all water rights administered by Water District No. 170 with points of diversion located within the area depicted on the map appended hereto as Attachment A and incorporated herein by reference. This includes water rights from all surface and ground water sources with points of diversion from the Main Salmon or tributaries in Basin 72 downstream of McNabbs Point, located in the Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 35, Township 15 North, Range 19 East. This includes water rights for all beneficial uses, except water rights used solely for domestic and/or stock water purposes as defined by Idaho Code § 42-111 and 42-1401A(11).
2. The sub-district shall meet annually at a time and place to be determined and noticed by the Director for purposes of: (1) selecting a sub-district watermaster; (2) selecting an advisory committee, if desired; and (3) setting a budget and corresponding assessments to be collected for operating the sub-district. For 2010, water right holders within the sub-district shall meet in on or before the third Monday in March, 2010.
3. If the sub-district becomes inactive, water rights in the sub-district shall be administered directly by the watermaster of Water District No. 170 and the water users shall be responsible for their pro-rata share of the Water District No. 170 budget. While the sub-district is active, water rights within the sub-district shall not be subject to assessments from Water District No. 170 unless the Director determines that the sub-district is not providing for adequate distribution of water and the watermaster of Water District No. 170 is required to directly expend time or resources to deliver, measure, report, and/or regulate water in the sub-district.
4. The sub-district is an organizational feature within Water District No. 170 to support a deputy watermaster that will, on behalf of, and under the supervision of the Water District No. 170 Watermaster, perform the following duties within the boundaries depicted on Attachment A:
  - a. Administer and enforce water rights in priority;
  - b. Measure and report the diversions under water rights;
  - c. Curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);
  - d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or a mitigation plan approved by the Director.

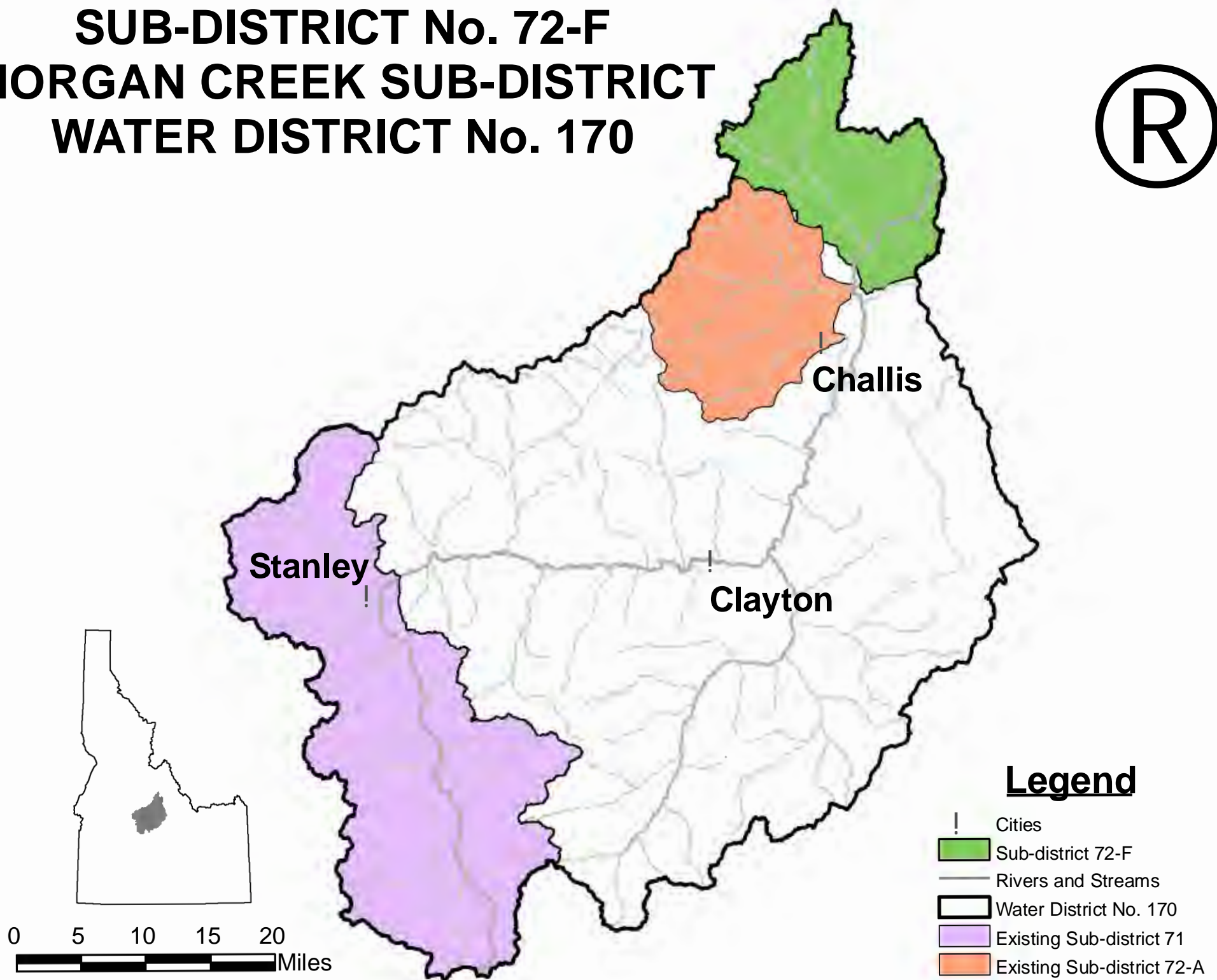
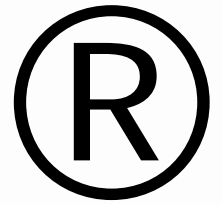
DATED this 10<sup>th</sup> day of February, 2010.

  
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Gary Spackman  
Interim Director

# SUB-DISTRICT No. 72-F

## MORGAN CREEK SUB-DISTRICT

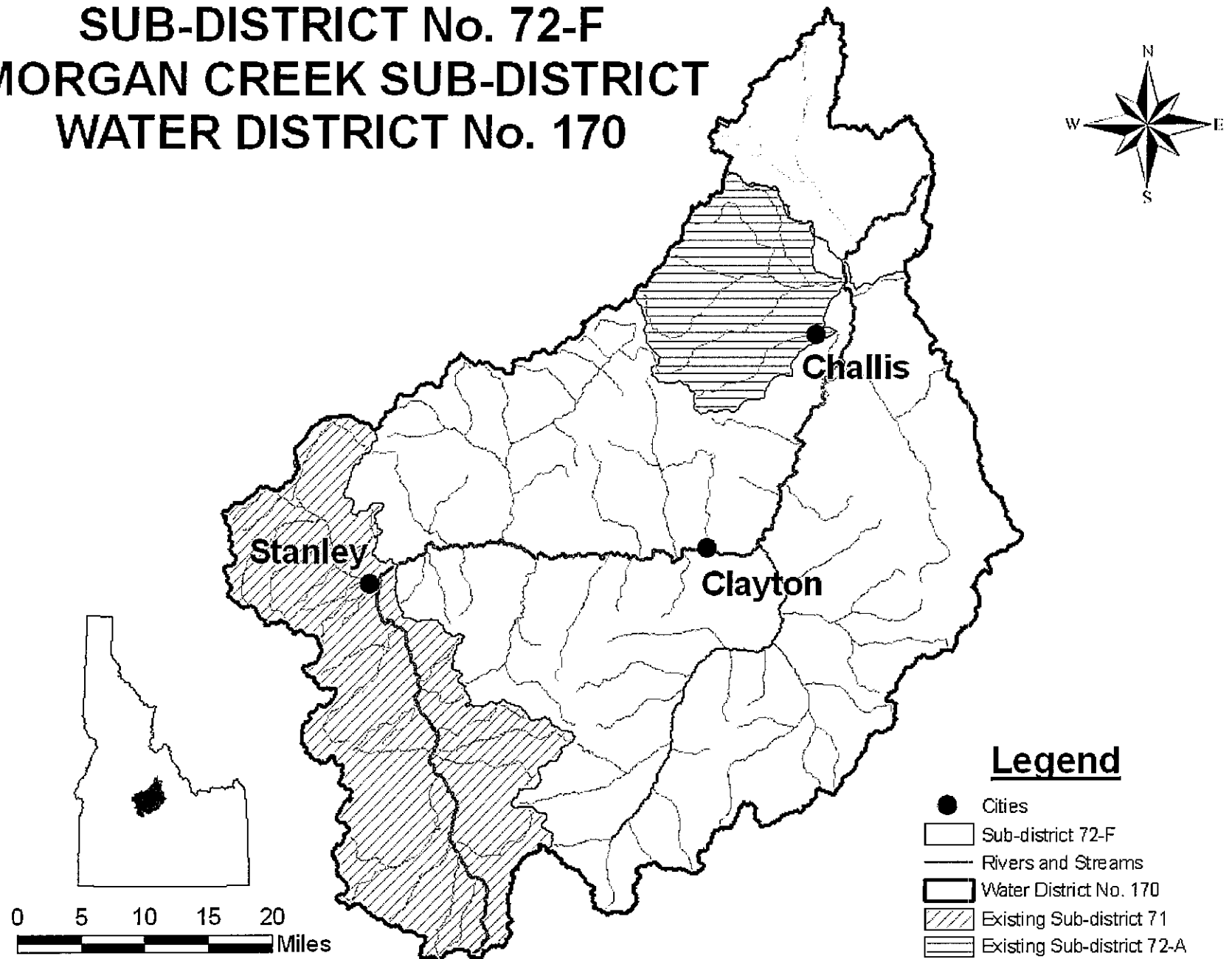
### WATER DISTRICT No. 170





ATTACHMENT A

**SUB-DISTRICT No. 72-F  
MORGAN CREEK SUB-DISTRICT  
WATER DISTRICT No. 170**



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

IN THE MATTER OF THE PROPOSED	)	
CREATION OF A CLAYTON AREA	)	<b>FINAL ORDER</b>
SUB-DISTRICT WITHIN	)	<b>CREATING</b>
<u>WATER DISTRICT NO. 170</u>	)	<b>SUB-DISTRICT NO. 72-D</b>

On April 6, 2006, the Director of the Idaho Department of Water Resources (“Department” or “Director”) issued *Amended Final Order Creating Water District No. 170*. A copy of the order is posted on the Department’s website:

<http://www.idwr.idaho.gov/WaterManagement/WaterDistricts/UpperSalmon/UpperSalmon.htm>

The April 6, 2006 order established Water District No. 170 to include all surface water and ground water rights in the Idaho Department of Water Resources Administrative Basins 71 and 72, other than de minimis domestic and stockwater rights as defined by Idaho Code § 42-111 and 42-1401A(11). The order assimilated existing water districts into Water District No. 170, but provided that they would continue to function largely independently as sub-districts of Water District No. 170. Furthermore, the order contemplated additional sub-districts would be created within Water District No. 170 as needed.

On December 16, 2009, Department staff held a public meeting to discuss whether users in the Clayton area would benefit from organizing as a sub-district within Water District No. 170. The majority of those attending the meeting were water right holders in Basin 72. Those users expressed the opinion that the Director should move forward with formally creating a sub-district in the Clayton area.

On January 12, 2010, the Gary Spackman, Interim Director of the Idaho Department of Water Resources, conducted a public hearing in Clayton, Idaho regarding creation of a sub-district in the Clayton area. This Final Order creates a Clayton area sub-district within Water District No. 170.

**FINDINGS OF FACT**

1. On April 6, 2006, the Director of the Idaho Department of Water Resources issued *Amended Final Order Creating Water District No. 170*.

2. The order created Water District No. 170 to include all surface water and ground water rights in the Idaho Department of Water Resources Administrative Basins 71 and 72, other than de minimis domestic and stockwater rights as defined by Idaho Code § 42-111 and 42-1401A(11).

3. The order states that the watermaster for Water District No. 170 shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director: (1) Measure, record, and report the diversions under water rights; (2) Enforce the water rights in priority; (3) Curtail unauthorized or excessive diversions as necessary (i.e., any diversion without a water right or in excess of the elements or conditions of a water right); and (4) Consult with and coordinate the work activities of deputy watermasters, including the elected and appointed watermasters for sub-districts within Water District No. 170.

4. Idaho Code § 42-605(3) provides that watermasters may be authorized to employ assistants as deemed necessary by the water users and that such assistants, upon appointment by the Director, shall be responsible for distribution of water within the water district.

5. Conclusion of Law no. 31(d) of the order creating Water District No. 170 authorizes the watermaster to appoint assistants or deputy watermasters as deemed necessary by the water users and that these assistants may be watermasters elected by sub-districts.

6. Water District No. 170 encompasses a large (greater than 2,400 square miles) geographic area and administers water rights from more than 100 different sources of water. The variety in climate, economics, and terrain within Water District No. 170 results in varying regional needs and local interests within Water District No. 170 that are best served through local control.

7. The proposed sub-district area is distinct from other areas of Basin 72 with respect to the water right owners and users (i.e. users and water right holders within the boundaries generally do not own or operate lands in other parts of Water District No. 170).

8. On December 22, 2009, the interim director signed a notice proposing to establish a sub-district within Water District No. 170 to include water rights in the Clayton area. The interim director sent the notice of the proposed action by regular U. S. Mail to each holder of a water right within the boundaries of Water District No. 170. The notice described the sub-district proposed to be established, the reasons therefore, and the time and place for a hearing to be held on January 12, 2010 concerning establishment of the proposed sub-district. The notice also provided a time period within which written comments on the proposed action would be accepted.

9. In addition, the interim director caused notice of the proposed action establishing the sub-district to be published once a week for two (2) weeks in the Challis Messenger, a newspaper having general circulation within the area of the proposed sub-district. The notice was published in that newspaper on December 24 and 31, 2009.

10. The notice mailed to water right holders proposed that the sub-district would include all water rights administered by Water District No. 170 with points of diversion located within the drainage basin of the East Fork Salmon River or from the Main Salmon or tributaries above the Challis Irrigation Company diversion upstream to and including the Warm Springs Creek drainage at Robinson Bar. This includes water rights from all surface and ground water sources within the proposed area, and for all beneficial uses, except water rights used solely for domestic and/or stock water purposes as defined by Idaho Code § 42-111 and 42-1401A(11).

11. The interim director's notice also described that the proposed sub-district will remain a part of Water District No. 170 but will operate similar to an independent water district and will fund one or more seasonal or full-time deputy watermasters who will serve as deputy watermasters under the watermaster for Water District No. 170.

12. The interim director's notice further described that the proposed sub-district would adopt its own budget for purposes of measuring, recording, reporting, and regulating diversions within the sub-district. The notice described that the sub-district would meet annually to adopt a budget and conduct other business necessary to operate the sub-district, such as adopting resolutions and selecting a deputy watermaster.

13. The interim director's notice described also that a sub-district that adequately measures, records, reports, and controls diversions should not be subject to future assessments to fund the Water District No. 170 watermaster for purposes of measuring, recording, reporting, and regulating surface water diversions within that sub-district. However, the sub-district may be subject to future assessments for costs associated with oversight of the sub-district. Oversight costs may include, but may not be limited to, technical assistance, enforcement assistance, training of deputy watermasters, collection and quality control review of diversion data, periodic field checks of diversions, periodic or miscellaneous field-calibration measurements of measuring devices, review of annual sub-district and budget reports, coordinating distribution of water to the Wild and Scenic River minimum instream flow water rights for the Salmon River as necessary, and general coordination with federal, state, and local agencies regarding water district operations, water use, and water right administration issues.

14. On January 12, 2010, at approximately 6:00 p.m. at the Clayton Community Center in Clayton, Idaho, the interim director conducted a hearing concerning the proposed creation of the sub-district. Approximately 10 people attended the hearing.

15. The interim director initiated the hearing with an introduction and a brief description of the purpose of the hearing. This was followed by an approximately 30-minute presentation by Nick Miller, an employee of IDWR and the Watermaster for Water District No. 170. Mr. Miller's presentation provided background information on Water District No. 170 and a general description of the proposed sub-district. During the presentation, Mr. Miller and the Director answered questions from the meeting attendees prior to taking testimony.

16. Persons attending the hearing were provided opportunity to make oral statements for the record. In addition, the interim director held the record open through January 25, 2010, for the submittal of written comments.

17. Seven (7) individuals made oral statements for the record at the hearing. One (1) person who did not testify at the hearing on January 12, 2010, submitted a written statement to the Department on or before the deadline of January 25, 2010.

18. The oral testimony centered on discussions of the upstream boundary of the proposed sub-district, but did not otherwise oppose creation of the proposed sub-district. The users did not support an upstream boundary that included diversions above Thompson Creek, citing an increase in costs associated with administering those diversions that they felt was not offset by the assessments that would be collected by those users.

19. On January 25, 2010, the US Fish and Wildlife Service submitted a written comment to the Department requesting that the water right associated with the Sawtooth Satellite Facility be excluded from the proposed sub-district and from Water District No. 170 because the service believes the water district and sub-district will not provide a benefit to them.

20. The Sawtooth Satellite Facility is a fish hatchery owned by the US Fish and Wildlife Service that is operated by the State of Idaho Department of Fish and Game. The facility is located on the East Fork Salmon River on land owned by the US Bureau of Land Management.

21. Water right number 72-7185 authorizes the diversion of 15 cubic feet per second of water from the East Fork Salmon River for fish propagation at the Sawtooth Satellite Facility and is held in the name of the United States of America Acting through USDI Bureau of Land Management.

### CONCLUSIONS OF LAW

1. Based upon the order creating Water District No. 170, the statutory authorities provided by Idaho law, and the record in this proceeding, the Director should create a sub-district to administer those ground water and surface water rights administered by Water District No. 170 with points of diversion from the Main Salmon or tributaries above the Challis Irrigation Company diversion upstream to and including the Thompson Creek drainage, as well as those water rights within the drainage basin of the East Fork Salmon River, as shown on the map appended hereto as Attachment A. Creation of the sub-district will provide users of these water rights with local control and will facilitate consistent and efficient administration within Water District No. 170.

2. Given that: (1) water right 72-7185 is not a de minimis domestic or stockwater right and therefore is included in Water District No. 170 per *Amended Final Order Creating Water District No. 170*; (2) the US Fish and Wildlife Service did not file a petition for reconsideration following issuance of that order; (3) the holders of water right 72-7185 benefit from the measurement and regulation of upstream water rights, whether junior or senior to 72-7185; and (4) existing and future water rights that divert upstream of 72-7185 would be administered by the proposed sub-district watermaster; the Director concludes that water right 72-7185 is a part of Water District No. 170 and that the water right should be included in the proposed sub-district as well.

3. A Clayton area sub-district within Water District No. 170 that is under the authority of the Water District No. 170, but sets and collects its own budget and selects a local watermaster will best serve the needs of the users in that area, and will allow the Water District No. 170 to provide consistent and effective administration of water rights throughout Water District No. 170.

4. The interim director concludes that the sub-district should be formed on a permanent basis and be used to administer the affected water rights in accordance with the prior appropriation doctrine as established by Idaho law.

5. The interim director also concludes that the sub-district created by this order is an organizational feature within Water District No. 170 to support a local watermaster that will, on

behalf of, and under the supervision of the Water District No. 170 Watermaster, perform the following duties within the sub-district:

- a. Administer and enforce water rights in priority;
- b. Measure and report the diversions under water rights;
- c. Curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);
- d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or a mitigation plan approved by the Director.

6. The interim director further concludes the following with respect to the sub-district created by this order:

- a. The water users will hold an annual meeting each spring prior to the start of the irrigation season on May 1 to adopt a budget, set the local watermaster's compensation, select a local watermaster, and adopt resolutions as necessary to govern operation of the sub-district.
- b. The local watermaster, with approval from the Director, will be appointed as a deputy watermaster of Water District No. 170. The deputy watermaster shall work pursuant to instructions of the Water District No. 170 Watermaster.
- c. Water rights within the sub-district shall not be subject to assessments from Water District No. 170 unless the Director determines that the sub-district is not providing for adequate distribution of water and the watermaster of Water District No. 170 is required to directly expend time or resources to deliver, measure, report, and/or regulate water in the sub-district.
- d. Operational features of the sub-district will be formulated by a steering committee during meetings to be held in early 2010 and will be subject to approval by the users at the first annual meeting. The steering committee should be composed of water right holders within the sub-district and should consult with the Water District No. 170 Watermaster and IDWR representatives as operational features of the sub-district are developed.

## **ORDER**

IT IS HEREBY ORDERED that:

1. The Clayton Area Sub-district, designated as Sub-district No. 72-D, is created to include all water rights administered by Water District No. 170 with points of diversion located within the area depicted on the map appended hereto as Attachment A and incorporated herein by reference. This includes water rights from all surface and groundwater sources with points of diversion within the Thompson Creek drainage or downstream of the Thompson Creek Drainage and upstream of the Challis Irrigation Company diversion, as well as those water rights within the drainage basin of the East Fork Salmon River, and includes water rights for all beneficial uses, except water rights used solely for domestic and/or stock water purposes as defined by Idaho Code § 42-111 and 42-1401A(11).

2. The sub-district shall meet annually at a time and place to be determined and noticed by the Director for purposes of: (1) selecting a sub-district watermaster; (2) selecting an advisory committee, if desired; and (3) setting a budget and corresponding assessments to be collected for operating the sub-district. For 2010, water right holders within the sub-district shall meet in on or before the third Monday in March, 2010.


3. If the sub-district becomes inactive, water rights in the sub-district shall be administered directly by the watermaster of Water District No. 170 and the water users shall be responsible for their pro-rata share of the Water District No. 170 budget. While the sub-district is active, water rights within the sub-district shall not be subject to assessments from Water District No. 170 unless the Director determines that the sub-district is not providing for adequate distribution of water and the watermaster of Water District No. 170 is required to directly expend time or resources to deliver, measure, report, and/or regulate water in the sub-district.

4. The interim director also concludes that the sub-district created by this order is an organizational feature within Water District No. 170 to support a deputy watermaster that will, on behalf of, and under the supervision of the Water District No. 170 Watermaster, perform the following duties within the boundaries depicted on Attachment A:

- a. Administer and enforce water rights in priority;
- b. Measure and report the diversions under water rights;
- c. Curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);
- d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or a mitigation plan approved by the Director.

5. The request by US Fish and Wildlife Service to exclude water right 71-7185 from Water District No. 170 and the proposed sub-district, is denied.

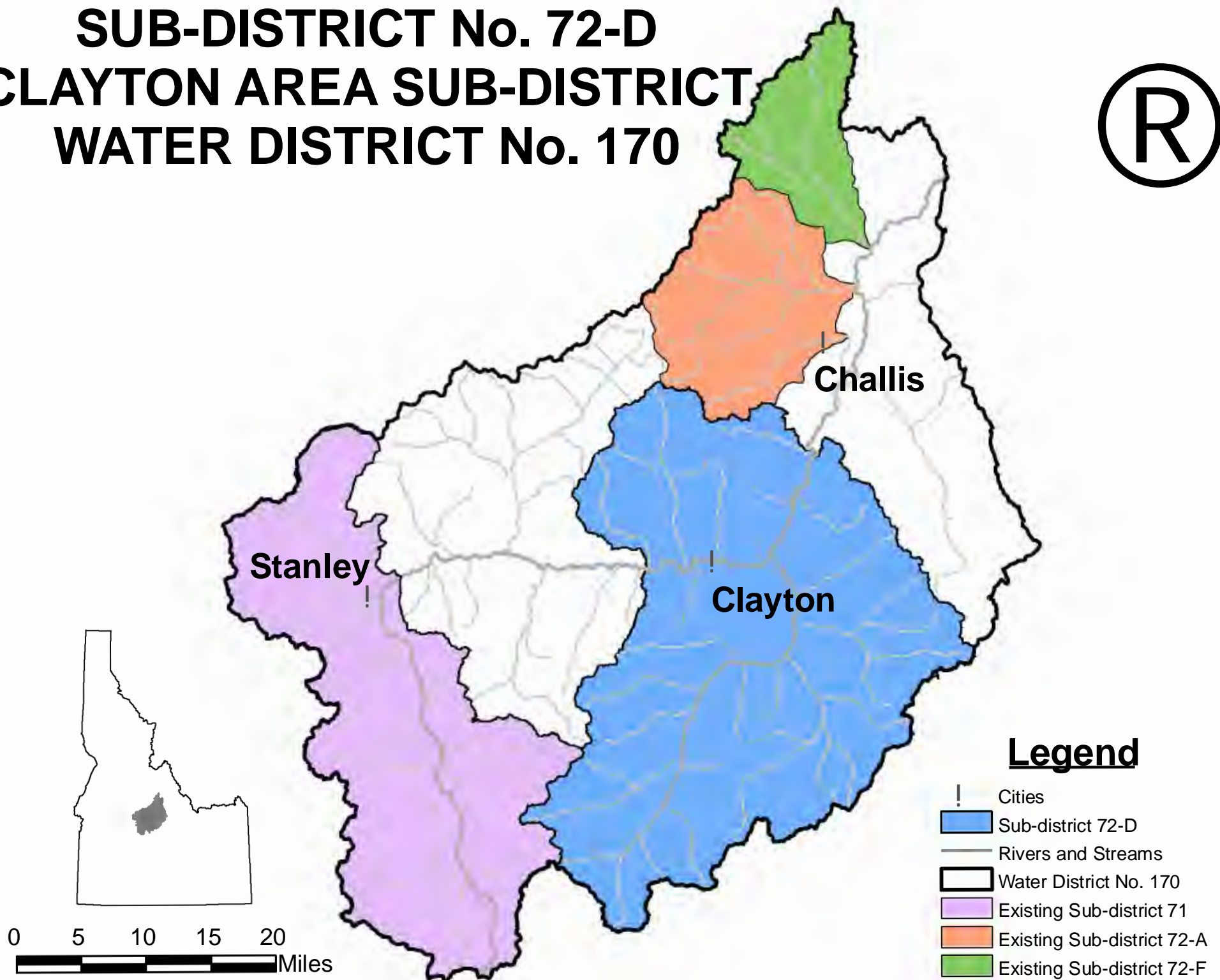
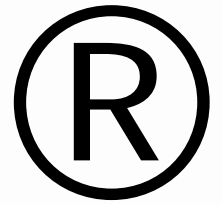
DATED this 10<sup>th</sup> day of February, 2010

  
Gary Spackman  
Interim Director

# SUB-DISTRICT No. 72-D

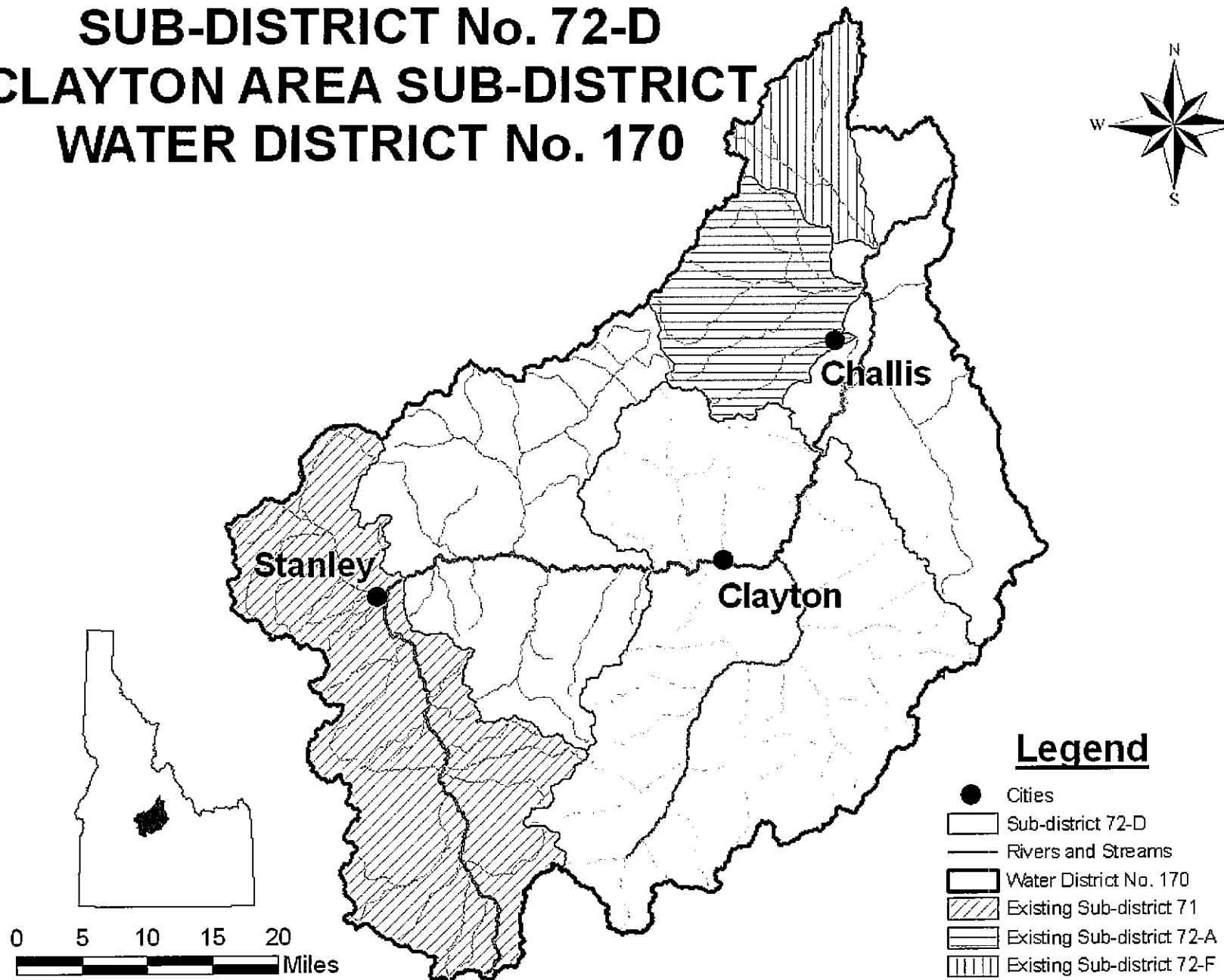
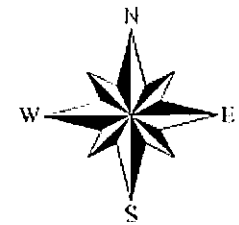
## CLAYTON AREA SUB-DISTRICT

### WATER DISTRICT No. 170





# SUB-DISTRICT No. 72-D CLAYTON AREA SUB-DISTRICT WATER DISTRICT No. 170



**EXPLANATORY INFORMATION  
TO ACCOMPANY A  
FINAL ORDER**

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
  - (a) the petition for reconsideration is disposed of; or
  - (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.
- (7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

### **PETITION FOR RECONSIDERATION**

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(4) Idaho Code.

### **APPEAL OF FINAL ORDER TO DISTRICT COURT**

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days a) of the date of issuance (not service) of the final order, b) the date of issuance of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11 day of February, 2010, the above and foregoing document was served on each individual or entity on the service list for this matter on file at the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho, and posted on the Department's website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov). Each individual or entity on the service list was served by placing a copy of the above and foregoing document in the United States mail, postage prepaid and properly addressed.



Christine Roberts  
Office Records Specialist  
Idaho Department of Water Resources

A H MUNSON  
HC 63 BOX 1757  
CHALLIS, ID 83226

AEGIS RESOURCES INC  
C/O ROBERT AND MARILYN BRUCE  
PO BOX 27740  
LAS VEGAS, NV 89118

ALAN AND HARRIET HENDERSON  
PO BOX 645  
CHALLIS, ID 83226

ALAN ERNEST, ERIC LYLE, JANICE LEE,  
AND LOUDON ROBERTS STANFORD  
318 S MONROE  
MOSCOW, ID 83843

ALBERT RAY FOX JR AND MICHELLE DIANE  
FOX  
335 W 350 N  
BLACKFOOT, ID 83221

ALICE R AND W DEAN BOYLE  
4298 W DAWSON DR  
MERIDIAN, ID 83647

ALISON L BEECHERT  
PO BOX 42  
STANLEY, ID 83278

ALLEN B ROBINS  
430 ROD & GUN CLUB LP  
CHALLIS, ID 83226

ALLEN BOYD AND BARBARA A ELLIS  
PO BOX 388  
BOISE, ID 83701

ALLEN R ANDERSON  
HC 68 BOX 353  
CLAYTON, ID 83227

ALLICYN AND JACK LATIMER  
HC 61 BOX 3029  
CHALLIS, ID 83226

ALMA MARIE OSBORN  
2439 N BIRCHGROVE LN  
BOISE, ID 83703

ALY M BRUNER AND NANCY A DEL  
COLLETTI  
PO BOX 1146  
CHALLIS, ID 83226

AMY AND KRIS ANDERSON  
HC 63 BOX 1542  
CHALLIS, ID 83226

ANDREA L AND DAVID E REEDER  
PO BOX 1128  
CHALLIS, ID 83226

ANDREW JACKSON AND GWENDOLYN O  
WOOLWINE  
PO BOX 942  
CHALLIS, ID 83226

ANDREW L AND PEGGY A JACOBS  
357 BLAINE ST  
ARCO, ID 83213

ANDREW M AND CHERYL LYNN CALLISTINI  
PO BOX 909  
CHALLIS, ID 83226

ANITA L JULIAN  
HC 68 BOX 355  
CLAYTON, ID 83227

ANN FINLAYSON  
374 FAIRWAY DR  
POCATELLO, ID 83201

ANN LEGG  
KNEELAND KORB COLLIER & LEGG  
PO BOX 249  
KETCHUM, ID 83340

ANN P AND PAUL D HILL  
PO BOX 281  
STANLEY, ID 83278

ANN P AND PAUL D HILL  
975 WALKER AVE  
ASHLAND, OR 97520

ANN S AND WILLIAM H VANDERBILT  
2651 COCONUT DR  
SANIBEL, FL 33957

ANNA F AND KEVIN L LLOYD  
660 ROD & GUN CLUB LP  
CHALLIS, ID 83226

ANNA M AND JACOB JAMES HAWKINS  
PO BOX 1074  
CHALLIS, ID 83226

ANNE M GILHULY  
HC 67 BOX 725  
CLAYTON, ID 83227

ANNIE E AND LAWRENCE G PARSONS  
10425 W CAROLINA DR  
BOISE, ID 83709

ANTHONY D, THOMAS, AND WILLIAM T  
GAMMACHE  
PO BOX 146  
CHALLIS, ID 83226

ANTONIO M AND LINDA L BIAIN  
4121 N 2600 E  
FILER, ID 83328

ANTONY R, BILL ROY, MADGE E, THOMAS  
LEE, AND TONY S YACOMELLA  
PO BOX 51  
CHALLIS, ID 83226

ARCHIE SHERWOOD  
PO BOX 163  
CLAYTON, ID 83227

ARLENE LYNN AND PETE LEGRANDE  
NELSON  
HC 61 BOX 3025  
CHALLIS, ID 83226

ARROW A RANCH LLLP  
5821 MORNING DOVE DR  
NAMPA, ID 83686

ARTHUR AND BETTY RUSTIN LUSHER  
PO BOX 349  
CHALLIS, ID 83226

ARTHUR J AND DIANA I WILL  
PO BOX 163  
CHALLIS, ID 83226

ARTHUR W AND KATHLEEN ANDERSON  
PO BOX 1177  
CHALLIS, ID 83226

BACK COUNTRY L L C  
DBA SMILEY CREEK LODGE  
HC 64 PO BOX 9102  
KETCHUM, ID 83340

BARBARA AND ROBERT ANDREWS  
PO BOX 22  
CHALLIS, ID 83226

BARBARA J AND PHILLIP N INGWERSEN  
HC 67 BOX 2053  
CHALLIS, ID 83226

BARBARA J AND RICHARD E MAC MILLEN  
705 FOSS RD  
TALENT, OR 97540

BARKER ROSHOLT & SIMPSON LLP  
1010 W JEFFERSON STE 102  
PO BOX 2139  
BOISE, ID 83701

BBB ASSETS LLC  
150 LIMELIGHT WAY  
OROVILLE, CA 95966

BECKY J AND THOMAS V MC GOWAN  
PO BOX 1040  
CHALLIS, ID 83226

BERNADINE AND CLAYTON HURLESS  
HC 67 BOX 556  
CLAYTON, ID 83227

BERT L CHESNEY  
16 RONDEL DR  
WEWOKA, OK 74884

BESSIE I AND WILLIAM L HAMMOND AND  
HAMMOND FAMILY CORP  
HC 63 BOX 1544  
CHALLIS, ID 83226

BETH N STEPHENS  
HC 61 BOX 3028  
CHALLIS, ID 83226

BETTE Y AND KENNETH C PHILLIPS  
9293 WOODLARK  
BOISE, ID 83709

BETTY M AND RONALD VINAL CURTIS  
214 MYRL ST  
POCATELLO, ID 83201

BEVERLY I GREEN  
859 W LANDER  
POCATELLO, ID 83204

BILLY SCHLUNEGGER  
PO BOX 374  
HAILEY, ID 83333

BLICK BROTHERS PARTNERSHIP  
PO BOX 635  
CASTLEFORD, ID 83321

BONNIE AND LON THOMAS JARVIS  
PO BOX 1117  
CHALLIS, ID 83226

BONNIE LYNN AND STEVEN P GARMAN  
PO BOX 4029  
KETCHUM, ID 83340

BRECKENRIDGE FAMILY LIMITED  
PARTNERSHIP  
C/O KATIE BRECKENRIDGE  
PO BOX 685  
PICABO, ID 83348

BRENDA AND MARK STARK  
HC 63 BOX 1778  
CHALLIS, ID 83226

BRENDA AND TRAVIS BULLOCK  
PO BOX 1189  
CHALLIS, ID 83226

BRENT J AND RUTH E ROUNDS BRUNKER  
HC 68 BOX 303  
CLAYTON, ID 83227

BRETT WOOLLEY  
PO BOX 23  
STANLEY, ID 83278

BRIAN AND NANCY KELLY  
PO BOX 4474  
KETCHUM, ID 83340

BRIDGET AND DONNIE G MOORE  
PO BOX 522  
CHALLIS, ID 83226

BRUCE M HAYSE  
PO BOX 1884  
JACKSON, WY 83007

BRUCE M SMITH  
MOORE SMITH BUXTON & TURCKE  
950 W BANNOCK ST STE 520  
BOISE, ID 83702

BRUNO, MARY C, AND PIERO PIVA  
PO BOX 176  
CHALLIS, ID 83226

BYRON R AND RENEE M BIRD  
896 68TH AVE  
AMERY, WI 54001

C L , CLIFF M, AND MATTIE HANSEN  
HC 64 BOX 9910  
STANLEY, ID 83278

C PETRE, CANDACE P, AND W MICHAEL  
HUMPHREYS  
636 IVY LN  
SAN ANTONIO, TX 78209

C ROD AND CHRISTINE L THORNTON  
PO BOX 246  
KETCHUM, ID 83340

CARLA AND TOBIN WILLIAMS  
PO BOX 2572  
TWIN FALLS, ID 83303

CARMEN M ROMANOWSKI TRUST AND  
THOMAS A ROMANOWSKI TRUST  
319 TANO RD  
SANTA FE, NM 87501

CARM-IDA LIVESTOCK  
PO BOX 73  
CARMEN, ID 83462

CAROL AND JAMES R REYNOLDS  
544 LAKE MEAD WAY  
EMERALD HILLS, CA 94062

CAROL MENDIOLA  
1050 PARK HILL  
BOISE, ID 83702

CAROLE K SORENSEN AND CAROLE KLEIN  
PO BOX 146  
STANLEY, ID 83278

CAROLINE AND ORLANDO A CORDOVA  
PO BOX 978  
CHALLIS, ID 83226

CATHERINE A AND LAWRENCE J KRATZ  
5352 W BUCKSKIN  
POCATELLO, ID 83201

CATHERINE SUE AND DUANE LEE  
FREEMAN  
PO BOX 212  
STANLEY, ID 83278

CATHY AND CRAIG ANDREWS  
PO BOX 1405  
CHALLIS, ID 83226

CATHY AND JOHN CRANNEY  
204 LARSON ST  
SALMON, ID 83467

CATHY AND TED ROBERTS  
7216 APPLGATE DR  
HELENA, MT 59602

CHALLIS CREEK REUNION LLC  
C/O WILLIAM HASSKAMP PRESIDENT  
PO BOX 765  
CHALLIS, ID 83226

CHALLIS IRRIGATION CO  
PO BOX 71  
CHALLIS, ID 83226

CHALLIS JOINT SCHOOL DISTRICT #181  
PO BOX 304  
CHALLIS, ID 83226

CHALLIS RECREATION & DEVELOPMENT  
CO  
PO BOX 81  
CHALLIS, ID 83226

CHARLES AND NADINE GRIFFITH  
PO BOX 1098  
CHALLIS, ID 83226

CHARLES E CAMPBELL AND MICHELLE MC  
GINLEY  
PO BOX 182  
CLAYTON, ID 83227

CHARLES L AND LINDA B ANDERSON  
3148 WHITNEY DR  
MONTGOMERY, AL 36109

CHARLES M CORRIGAN  
PO BOX 731  
CHALLIS, ID 83226

CHARLOTTE J SINCLAIR  
2503 COSTERO MAGESTUOSO  
SAN CLEMENTE, CA 92673

CHARLOTTE M AND JOHN S SMITH  
1691 OLD AHSAHKA GRADE RD  
AHSAHKA, ID 83520

CHERYL K AND RICHARD DOUGLAS BAKER  
HC 68 BOX 350  
CLAYTON, ID 83227

CHERYL L SIMON  
1446 E GREEN HAVEN  
MERIDIAN, ID 83646

CHERYL LAVERTY AND MICHAEL A CUTLER  
PO BOX 8  
CHALLIS, ID 83226

CHERYL PHILPS  
HC 63 BOX 1630  
CHALLIS, ID 83226

CHRISTINE E AND RICHARD W  
SCHOWENGERDT  
2794 HWY 93 S  
SALMON, ID 83467

CHRISTOPHER W AND DEBRA E JAMES  
PO BOX 1190  
CHALLIS, ID 83226

CHRISTOPHER W JAMES TRUST  
CHRISTOPHER JAMES TRUSTEE  
PO BOX 510  
CHALLIS, ID 83226

CINDY AND DWIGHT SIMMONS  
HC 63 BOX 1552  
CHALLIS, ID 83226

CINDY AND KURT W VAN PELT  
HC 67 BOX 2015  
CHALLIS, ID 83226

CITY OF CHALLIS  
PO BOX 587  
CHALLIS, ID 83226

CITY OF CLAYTON  
PO BOX 33  
CLAYTON, ID 83227

CITY OF STANLEY  
PO BOX 53  
STANLEY, ID 83278

CLARELYN ELGAN  
4787 N 1115 E  
BUHL, ID 83316

CLARENCE LEUZINGER  
PO BOX 271  
CHALLIS, ID 83226

CLARICE BLECHMANN FAMILY TRUST  
PO BOX 12063  
SEATTLE, WA 98102

CLEO ROBERTS AND CLYDE FULLER  
PO BOX 151  
SUNDANCE, WY 82729

CLYDE O AND LOIS T RIGBY  
PO BOX 345  
CHALLIS, ID 83226

COLLEEN A COYNE  
PO BOX 2062  
KETCHUM, ID 83340

COOPER & LARSEN  
REED W LARSEN  
151 N 3RD AVE. 2ND FLOOR  
PO BOX 4229  
POCATELLO, ID 83205

CORINE AND ERNEST LEE GREGERSEN  
HC 61 BOX 3047  
CHALLIS, ID 83226

CORINNE AND RONALD T JONES  
PO BOX 59  
CHALLIS, ID 83226

CORP OF THE PRESIDING BISHOP  
CHURCH OF JESUS CHRIST OF LATTER  
DAY SAINTS  
50 E NORTH TEMPLE ST  
SALT LAKE CITY, UT 84150

CRAIG L KEMMERER  
HC 63 BOX 1530  
CHALLIS, ID 83226

CRAIG V REMBER  
HC 60 BOX 9928  
STANLEY, ID 83278

CYNTHIA A AND JOHN E DMOCHOWSKI  
PO BOX 773  
CHALLIS, ID 83226

CYNTHIA T DEININGER  
PO BOX Y  
CLAYTON, ID 83227

D ELAINE AND THEODORE M WELP  
13123 E SPEEDWAY BLVD  
TUCSON, AZ 85748

D L EVANS BANK  
PO BOX 87  
TWIN FALLS, ID 83303

DALE BRUNO  
PO BOX 1053  
CHALLIS, ID 83226



DALE MIZER  
PO BOX 728  
HAILEY, ID 83333

DAN J URBAN AND LYNDA L DALE  
PO BOX 1391  
CHALLIS, ID 83226

DANA C HURLESS  
HC 67 BOX 621  
CLAYTON, ID 83227

DANIEL C TANNER  
905 W MONTERAY  
ORLAND, CA 95963

DANIEL J MAHONEY III  
14 BERESFORD HILL  
BLOOMFIELD HILLS, MI 48304

DANIEL L BERMAN  
170 S MAIN  
SALT LAKE CITY, UT 84101

DANIEL WOOLLEY  
PO BOX 1204  
CHALLIS, ID 83226

DANNY AND DENNIS BILLET  
48430 W 85TH  
LANCASTER, CA 93536

DAVID C, DEBBIE E, AND DIANA K  
GOODWIN AND DEBORAH HARRIS  
1730 N WHITE OAK WAY  
MERIDIAN, ID 83642

DAVID K AND SUSAN D BENNION AND  
STANLEY LAKE CREEK WATER USERS  
ASSOCIATION  
2212 RIDGE POINT WAY  
BOISE, ID 83712

DAVID LOUIS HAINES AND JENNIFER JUNE  
HAINES JOINT LIVING TRUST  
PO BOX A  
CHALLIS, ID 83226

DAVID M AND DEBORAH K WOOD  
PO BOX 946  
CHALLIS, ID 83226

DAVID O KINGSTON  
477 SHOUP AVE #207  
IDAHO FALLS, ID 83402

DAVID P AND SANDRA S ROSENKRANCE  
PO BOX 628  
CHALLIS, ID 83226

DE MARIA E AND STEVEN R TANNER  
129 TANNER WY  
ORLAND, CA 95963

DEAN PETERSON  
PO BOX 723  
CHALLIS, ID 83226

DEBORAH AND WAYNE SIMPSON  
PO BOX 1056  
CHALLIS, ID 83226

DEBRA AND JOHN DIKEMAN  
PO BOX 68  
CHALLIS, ID 83226

DEBRA J AND DONALD W PETERS  
510 ROD & GUN CLUB LOOP  
CHALLIS, ID 83226

DEBRA L AND KENT S WATSON  
PO BOX 650  
CHALLIS, ID 83226

DELBERT M AND DONNA LENOR HUGHES  
HC 61 BOX 3054  
CHALLIS, ID 83226

DENISE AND MORGAN THOMAS  
102 HORSESHOE CIR  
HAILEY, ID 83333

DENNIS HERSHALL AND MIMI MARY BLACK  
HC 63 BOX 1605  
CHALLIS, ID 83226

DIANE C AND JULIAN O NICHOLSON  
PO BOX 5378  
TWIN FALLS, ID 83301

DIANE W AND LEONARD L FISHER  
HC 67 BOX 619  
CLAYTON, ID 83227

DOLLY STERLING  
PO BOX 195  
CHALLIS, ID 83226

DONNA L AND THOMAS A BUTTS  
PO BOX 6  
CHALLIS, ID 83226

DONNA M AND RICHARD L HARRIMAN  
PO BOX 1279  
CHALLIS, ID 83226

DORIS I AND RICHARD L SCHNEIDER  
PO BOX 103  
STANLEY, ID 83278

DOT LLP  
581 E PROVIDENT DR  
BOISE, ID 83706

DOYLE AND JUDI LEUZINGER  
HC 67 BOX 2085  
CHALLIS, ID 83226

DRIGGS FAMILY RANCH TRUST  
1619 SHETLAND CT  
MOSCOW, ID 83843

DUNFEE LAND CO LP  
4204 STONE CRK CIR  
KERRVILLE , TX 78028

EAST FORK LAND & CATTLE LLC  
C/O HOMER B AND DEBRA B SAYE  
17102 S DR  
CYPRESS, TX 77433

EDDIE BAKER JR AND EDDIE E BAKER  
HC 68 BOX 375  
CLAYTON, ID 83227

EDGAR T AND TIMOTHY W RANDOL AND  
MELODIE RENE VOORHEES  
PO BOX 50502  
IDAHO FALLS, ID 83405

EDWARD WAYNE AND JULIA MARIE  
HUGHES  
11681 LEONIDAS HORTON RD  
CONROE, TX 77304

EDWINA, LEE, MIKE, AND SANDY THOMAS  
HC 63 BOX 1575-4  
CHALLIS, ID 83226

ELAINE, JERRY S, AND TAB J STUART  
PO BOX 1092  
CHALLIS, ID 83226

ELIZABETH C TIERNEY  
2832 DOW AVE  
TUSTIN, CA 92780

ELIZABETH L REMBER  
HC 64 BOX 9928  
STANLEY, ID 83278

ELIZABETH N AND GEORGE F PHILLIPS  
PO BOX 544  
CHALLIS, ID 83226

ERIC KLEPFER  
C/O KLEPFER MINING SERVICE LLC  
13058 SHERWOOD CT  
HAYDEN LAKE, ID 83835

ESTELLE A AND GEORGE E COOK  
PO BOX 400  
STANLEY, ID 83278

ESTHER A AND FRED E STRICKLER  
2480 E HUBBARD RD  
MERIDIAN, ID 83642

ESTHER AND RAY KEPPNER  
PO BOX 243  
CHALLIS, ID 83226

EUGENE DURELL MOON  
677 GREENBRIER DR  
HEYBURN, ID 83336

EUGENE M AND MARY E COX  
HC 63 BOX 1583  
CHALLIS, ID 83226

EVERETT P AND MARY E ENZENAUER AND  
THE EVERETT P ENZENAUER FAMILY  
TRUST  
PO BOX 1776  
HEALDSBURG, CA 95448

FALMA MOYE AND RAY CULLINANE  
PO BOX 969  
CHALLIS, ID 83226

FAYE AND JERRY W KNOX  
PO BOX 301  
CHALLIS, ID 83226

FIRSTFRUITS FOUNDATION  
PO BOX 510  
CHALLIS, ID 83226

FISHER CREEK PARTNERS LLC  
AN IDAHO LIMITED LIABILITY CO  
HC64 BOX 9934  
STANLEY, ID 83278

FRANCES AND MICHAEL TUPPER  
HC 63 BOX 1814  
CHALLIS, ID 83226

FRANK P WILLEY  
601 RIVERSIDE AVE 12TH FLOOR  
JACKSONVILLE, FL 32204

FRANK R AND FRANK R BERLAGE  
PO BOX 1771  
LA JOLLA, CA 92038

FRED R STEWART  
277 S EDEN RD  
JEROME, ID 83338

FRED SILVA  
1923 N 25TH ST  
BOISE, ID 83702

FREDERICK H BLECHMANN TRUST  
PO BOX 184  
SUN VALLEY, ID 83353

G LYNN AND SHARON L BACKUS  
PO BOX 5138  
ETNA, WY 83118

GARTH T AND GLENIS M CHIVERS  
HC 63 BOX 1771  
CHALLIS, ID 83226

GARY AND JACKIE INGRAM  
HC 68 BOX 320  
CLAYTON, ID 83227

GARY AND SANDRA M KIMBLE  
PO BOX 376  
CHALLIS, ID 83226

GARY HANSON & BEVERLY HANSON  
FAMILY TRUST  
2 NEWCOMBE AVE  
YERINGTON, NV 89447

GARY LEUZINGER  
23 OLIVER DRIVE  
SALMON, ID 83467

GEORGE E SANTEE JR  
PO BOX 2341  
IDAHO FALLS, ID 83403

GERALD D AND KATHRYN S HERRICK  
C/O TRACEY KEHNE  
2209 S CROSSCREEK LN  
BOISE, ID 83706

GERALD D AND PATRICIA M HAWKINS  
HC 61 BOX 3050  
CHALLIS, ID 83226

GERALD K AND NANCY GUNTER  
3244 W CANYON RIDGE DR  
TWIN FALLS, ID 83301

GERALDINE M HEINER  
4846 NANILOA DR  
SALT LAKE CITY, UT 84117

GINI DITCH CO INC  
C/O CHARLES R BOGUE  
1452 THREE FOUNTAINS DR  
IDAHO FALLS, ID 83404

GINI DITCH CO INC  
C/O HOLDEN KIDWELL HAHN & CRAPO  
PO BOX 50130  
IDAHO FALLS, ID 83405

GIVENS PURSLEY LLP  
C/O JEFFREY C FEREDAY  
601 W BANNOCK ST  
PO BOX 2720  
BOISE, ID 83701

GLENDON H HUNT  
HC 61 BOX 3021  
CHALLIS, ID 83226

GLORIA J AND ROBERT E BAKER  
PO BOX 69  
CHALLIS, ID 83226

GOLDE WALLINGFORD  
PO BOX 150  
CLAYTON, ID 83227

GRACE A JOSLYN  
1130 N ALLUMBAUGH APT 223  
BOISE, ID 83704

GWENDOLYN L MOORE  
PO BOX 730  
CHALLIS, ID 83226

HALLI AND RUSSELL HAMILTON  
PO BOX 144  
CHALLIS, ID 83226

HANNAH C ROVETTO FAMILY TRUST  
PO BOX 31  
CLAYTON, ID 83227

HANS L AND MARY S CARSTENSEN III  
PO BOX 4846  
POCATELLO, ID 83205

HAROLD AND RUTH LEATON  
PO BOX 589  
DOUGLAS, WY 82633

HAROLD D WILSON  
PO BOX 343  
CHALLIS, ID 83226

HAROLD G AND VIRGINIA PHARRIS  
PO BOX 9  
HAZELTON, ID 83335

HEADWATERS RANCH  
C/O SALLY ROLAND MAC NICHOL  
LYME, CT 06371

HEATHER DAWNSTAR AND KURT W  
GINDLING  
PO BOX 1110  
IDAHO CITY, ID 83631

HEATHER KATHERINE AND THOMAS E  
MACK  
MYSTIC CANYON RANCH  
PO BOX 597  
MOUNTAIN HOME, ID 83647

HECLA MINING CO  
GROUSE CREEK PROJECT  
PO BOX 647  
CHALLIS, ID 83226

HECLA MINING COMPANY  
PO BOX 647  
CHALLIS, ID 83226

HELEN A CUTLER  
2233 HILLCREST DR  
TWIN FALLS, ID 83301

HELEN MAHONEY PARDOE  
439 E 51ST ST  
APT 10F  
NEW YORK, NY 10022

HELEN P AND TED L MALONE  
HC 63 BOX 1749  
CHALLIS, ID 83226

HIGH MOUNTAIN RANCHES LTD  
PARTNERSHIP  
12992 N TOWNRIDGE RD  
BOISE, ID 83714

HOLDEN KIDWELL HAHN & CRAPO  
C/O KENT W FOSTER  
PO BOX 50130  
IDAHO FALLS, ID 83405

HOLLY B AND RICHARD D SMITH  
PO BOX 675  
EMMETT, ID 83617

HOWARD R AND ZELLA M CUTLER  
HC 67 BOX 2066  
CHALLIS, ID 83226

IDAHO AG CREDIT FLCA  
PO BOX 386  
REXBURG, ID 83440

INGRID AND MARVIN B STROPE  
PO BOX 34  
CLAYTON, ID 83227

J MICHAEL MAHONEY  
77 MURRY AVE  
LARKSPUR, CA 94939

J R SIMPLOT CO  
C/O TERRY UHLING  
999 MAIN ST STE 1300  
PO BOX 27  
BOISE, ID 83707

JACK AND RUTH V NIECE  
PO BOX 45  
STANLEY, ID 83278

JACK B FUREY  
PO BOX 280  
CHALLIS, ID 83226

JACQUE L AND JOSEPH M JIMENEZ  
8921 SUNSET TRAIL  
PASCO, WA 99301

JACQUELINE A AND WILLIAM A MATTHEWS  
PO BOX 116  
CHALLIS, ID 83226

JAMES A AND WALTRAUD R DUNKLE  
PO BOX 1072  
CHALLIS, ID 83226

JAMES AND VICKIE BOLEN  
9190 AQUARIUS ST  
BOISE, ID 83709

JAMES B AND MARY J MITCHELL  
10502 JAY RD  
BOISE, ID 83703

JAMES D CAROTA TRUST  
PO BOX 1909  
WILMINGTON, DE 19899

JAMES K PENINGER  
PO BOX 781  
CHALLIS, ID 83226

JAMES L SHUPE  
296 S 250 EAST  
HYDE PARK, UT 84318

JAMES P SPECK  
SPECK & AANESTAD  
PO BOX 987  
KETCHUM, ID 83340

JAMES R AND JO ANN BENNETTS  
PO BOX 36  
CHALLIS, ID 83226

JAMES R AND MICHELLE WETZEL  
PO BOX 167  
STANLEY, ID 83278

JAN AND RONALD CLYDE GREEN  
4884 JOHANNSEN PL  
CHUBBUCK, ID 83202

JANE N AND WILLIAM J SLATTERY  
401 BITTERROOT DR  
BOISE, ID 83709

JANICE AND STEVEN G LONG  
PO BOX 981  
CHALLIS, ID 83226

JAY AND KAY CRESTO  
835 N 18TH E  
MOUNTAIN HOME, ID 83647

JAY D AND RICHARD GIAMPEDRAGLIA  
HC 67 BOX 2093  
CHALLIS, ID 83226

JAY L AND PETER W BRADSHAW  
PO BOX 155  
CHALLIS, ID 83226

JAY P AND LINDA M NORRIS  
504 9TH AVE  
MENLO PARK, CA 94025

JEAN ANN FROST  
PO BOX 318  
CHALLIS, ID 83226

JEANETTE WOLFLEY  
ATTORNEY AT LAW  
202 N ARTHUR  
POCATELLO, ID 83204

JEFFERY J AND MARY E EIDSON  
1148 W OSPREY RIDGE DR  
EAGLE, ID 83616

JEFFREY J YEO AND JETTE MORACHE  
PO BOX 299  
CHALLIS, ID 83226

JENNESS R BUTTERFIELD  
PO BOX 87  
CHALLIS, ID 83226

JIM L AND WATANA DUNGAN  
598 MEADOW RD  
CHALLIS, ID 83226

JIM SILVA  
PO BOX 743  
SHOSHONE, ID 83352

JIM T AND MAE KOPP  
PO BOX 98  
CHALLIS, ID 83226

JOANNE AND MICHAEL BRAUN  
PO BOX 474  
CLAYTON, ID 83227

JOE AND TONI K SULLIVAN  
PO BOX 119  
CHALLIS, ID 83226

JOE D AND NANCY L CHESTER  
PO BOX 759  
CHALLIS, ID 83226

JOHN A ROSHOLT  
BARKER ROSHOLT & SIMPSON LLP  
113 MAIN AVE W STE 303  
PO BOX 485  
TWIN FALLS, ID 83303

JOHN AND KATHY PIVA  
PO BOX 1219  
CHALLIS, ID 83226

JOHN AND LYNN SIMPSON  
309 MANUELLA  
WOODSIDE, CA 94062

JOHN AND PATRICIA O CONNOR  
3102 E HILERY DR  
PHOENIX, AZ 85032

JOHN F AND VERNA M JONES  
PO BOX 1252  
CHALLIS, ID 83226

JOHN K VAN ALFEN  
PO BOX 1390  
CHALLIS, ID 83226

JOHN M MOORE  
PO BOX 730  
CHALLIS, ID 83226

JOHN R AND PATRICIA W CHALLIS  
CHALLIS CREEK RANCH  
PO BOX 1220  
CHALLIS, ID 83226

JOHN T BROWN  
PO BOX 61  
SUN VALLEY, ID 83353

JOHN W R LANGERMANN  
6 ASH PL  
CAMBRIDGE, MA 02138

JOLENE AND MARSHALL D OGDEN  
54-179 KAWAIPUNA ST  
HAUULA, HI 96717

JON AND WEI CHRISTIANSON  
HC 64  
BOX 9958  
STANLEY, ID 83278

JON L CHRISTIANSON  
C/O JON L CHRISTIANSON  
FOUR TIMES SQUARE  
NEW YORK CITY, NY 10036

JONATHAN H MARVEL  
PO BOX 1602  
HAILEY, ID 83333

JONES INVESTMENT CO. LLC  
344 W PLEASANT VIEW DR  
OGDEN, UT 84414

JONI D AND PIERRE C CAIN  
PO BOX 1132  
CHALLIS, ID 83226

JOSE DITCH CO INC  
PO BOX 274  
CHALLIS, ID 83226

JOSEPH AND MARIE SAMPINO  
375 DARLING CREEK RD  
CHALLIS, ID 83226

JOSEPH L AND REBECCA J PARKINSON  
123 W HIGHLAND VIEW DR  
BOISE, ID 83702

JOSEPH N ANDERSEN  
PO BOX 816  
CHALLIS, ID 83226

JOYCE C AND TED J ROTHBAUER  
40 CHIMILES TL  
GORDON VALLEY  
SUISUN, CA 94585

JUDITH AND KEVIN MEYER  
3 LUNAR LNDG  
FORT DAVIS, TX 79734

JUDY A AND LARRY G SIDLO  
HC 63 BOX 1580  
CHALLIS, ID 83226

JUDY AND LOYEL DEAN SMITH  
PO BOX 734  
CHALLIS, ID 83226

JULAIN D AND MICHAEL GRAHAM  
24179 HWY 75  
HC 67 BOX 2039  
CHALLIS, ID 83226

JULIAN AND MARION PIVA  
PO BOX 94  
CHALLIS, ID 83226

JULIE I MEISSNER AND PATRICK RUSSELL  
PO BOX 11  
STANLEY, ID 83278

K F AND LILLIAN B MORGAN REVOCABLE  
TRUST  
710 FILMORE ST  
AMERICAN FALLS, ID 83211

KAREN A AND SYDNEY L DOWTON  
PO BOX 7  
ELLIS, ID 83235

KAREN ADAMS AND THAD GERHEIM  
HC 63 BOX 1589  
CHALLIS, ID 83226

KAREN AND ROBERT J PORTER II  
1346 CANDLERIDGE DR  
BOISE, ID 83712

KARLENE AND RODNEY E EVANS  
HC 63 BOX 1855  
CHALLIS, ID 83226

KARMA BRAGG  
PO BOX 305  
CHALLIS, ID 83226

KATHARINE A FORSTER  
38 SUNNYSIDE DR  
JEROME, ID 83338

KATHERINE A AND ROGER A BROWNING  
AND ROGER A BROWNING TRUST  
360 N BEDFORD DR STE 204  
BEVERLY HILLS, CA 90210

KATHLEEN D HARDING  
PO BOX 180  
CLAYTON, ID 83227

KATHLEEN J PLUMMER  
PO BOX 525  
CHALLIS, ID 83226

KATHRIN S AND ROBERT L TAYLOR  
PO BOX 771  
CHALLIS, ID 83226

KAY A AND ROBERT A PIVA  
HC 63 BOX 1641  
CHALLIS, ID 83226

KEITH, PATRICIA, AND SCOTT AXLINE  
PO BOX 733  
CHALLIS, ID 83226

KEN E NAGY AND NANCY J DRAZNIN  
508 W CHESTNUT ST  
GENESEE, ID 83832

KENNETH AND LETA F BRADSHAW  
PO BOX 58  
CLAYTON, ID 83226

KENNETH C RYAN  
631 S 7TH ST  
POCATELLO, ID 83201

KENNETH GILMORE SMITH AND STEVEN  
ROBERT APPLETON  
PO BOX 15508  
BOISE, ID 83715

KENNETH H AND PATRICIA M HYATT  
PO BOX 753  
CHALLIS, ID 83226

KENNETH J AND WENDY A RODGERS  
PO BOX 659  
CHALLIS, ID 83226

KENT AND KATHRYN BROWNING FAMILY  
TRUST  
18803 STUDEBAKER RD  
CERRITOS, CA 90703

KENT K KOEPPEN  
PO BOX 7  
CHALLIS, ID 83226

KETCHUM LONG ISLAND LLC  
PO BOX 2238  
KETCHUM, ID 83340

KIT H AND ROSEMARY SUMMERS  
PO BOX 121  
DRIGGS, ID 83422

KRISTEN S MARTINSON  
PO BOX 278  
CHALLIS, ID 83226

L & W STONE CORP  
PO BOX 789  
CHALLIS, ID 83226

LANI M AND STEPHEN D REMBELSKI  
PO BOX 235  
CHALLIS, ID 83226

LARRY L AND PHYLLIS W MC DOWELL  
HC 67 BOX 2030  
CHALLIS, ID 83226

LAURIE AND THOMAS SECHRIST  
106 WADSWORTH AVE  
ALBANY, GA 31721

LAVON D LOYND  
HC 67 BOX 2097  
CHALLIS, ID 83226

LAWANA G AND WILLIAM L KNOX  
HC 67 BOX 2089  
CHALLIS, ID 83226

LENORE H AND R M BARRETT  
PO BOX 347  
CHALLIS, ID 83226

LESLIE AND THOMAS VAN KAMPEN  
PO BOX 361  
CHALLIS, ID 83226

LILAC THREE LLC/LILAC SIX LLC  
C/O JOAN MARTINKO MGR  
1118 S BRADDOCK AVE (REAR)  
PITTSBURGH, PA 15218

LINDA ANN ZOLLINGER  
HC 63 BOX 1170 SP 10  
CHALLIS, ID 83226

LINDA CURTIS  
PO BOX 207  
CHALLIS, ID 83226

LINDA H AND WILLIAM C BEIN  
15000 FALL RIVER DR  
BEND, OR 97707

LINDA J, LYLE, AND ROBERT L GUFFY  
223 RANCH VIEW RD W  
JEROME, ID 83338

LINDA L AND ROBERT M STEEVER  
PO BOX 118  
CHALLIS, ID 83226

LING & ROBINSON  
C/O ROGER D LING  
PO BOX 396  
RUPERT, ID 83350

LLOYD J WALKER  
131 GOODING ST W  
TWIN FALLS, ID 83301

LLOYD J WEBB  
155 2ND AVE N  
PO BOX 1768  
TWIN FALLS, ID 83303

LOIS VON MORGANROTH  
1223 MONTANA AVE  
SANTA MONICA, CA 90403

LOUIS F RECINE JR  
PO BOX 1391  
POCATELLO, ID 83204

LUCILLE WEBB AND PAUL SCHUT  
2620 N US HWY 93  
ARCO, ID 83213

LULA AND RICHARD SWINDELL  
PO BOX 236  
CHALLIS, ID 83226

LUTHER B HARTSHORN  
PO BOX 507  
CHALLIS, ID 83226

LYNDELLA A AND STEPHEN G BAUCHMAN  
AND CHALLIS CREEK CATTLE CO LLC  
PO BOX 10  
CHALLIS, ID 83226

LYNN T STEVENSON  
4610 MALLARD CT  
WEST RICHLAND, WA 99353

MADI LEVINSON  
4503 HOOVER  
BOISE, ID 83705

MARCY T MORGAN AND ROBERT PAUL  
LIND  
HC 67 BOX 2060  
CHALLIS, ID 83226

MARGARET C BREMER CASEY  
HC 61 BOX 3058  
CHALLIS, ID 83226

MARGARET HUTCHENS  
HC 67 BOX 2088  
CHALLIS, ID 83226

MARGARET J AND ROBERT J VALNOSKI  
AND MARK WILLIAM DEEN  
PO BOX 796  
CHALLIS, ID 83226

MARGARET WATKINS  
60027 NEWTON RD  
AMORY, MS 38821

MARGUERITE C AND WILLIAM S GODFREY  
HC 67 BOX 745  
CLAYTON, ID 83227

MARILYN ANN MUELLER  
HC 64 BOX 9475  
KETCHUM, ID 83340

MARJORIE D AND ROBERT R BOREN  
1002 E BANNOCK  
BOISE, ID 83702

MARJORIE J AND STEVE F PHILLIPS  
PO BOX 1235  
CHALLIS, ID 83226

MARK A AND VICKI ARMBRUSTER  
PO BOX 1127  
CHALLIS, ID 83226

MARK T AND PATRICIA A NICKUM  
PO BOX 1565  
HAILEY, ID 83333

MARTHA ELLEN AND RONALD KEITH  
HANSEN  
PO BOX 28  
CHALLIS, ID 83226

MARY A. SHAUL  
2317 E 49TH N  
IDAHO FALLS, ID 83401

MARY LUCACHICK AND TONY ENGLEMAN  
671 N MORNINGSIDE WAY  
BOISE, ID 83712

MAYANNA J CHIVERS  
39 SOUTH LEROY LANE  
NAMPA, ID 83687

MEADOW CREEK PROPERTIES  
PO BOX 129  
STANLEY, ID 83278

MEITA D WILSON  
PO BOX 188  
BELLEVUE, ID 83313

MELBOURNE H JENSEN  
2615 FALLS AVE E  
TWIN FALLS, ID 83301

MELISSA E AND ROLF J GUERRERO  
PO BOX 342  
DURHAM, CA 95938

MERRILL G SHUPE  
183 N 1100 W  
WEST BOUNTIFUL, UT 84087

MICHAEL D SHANNON  
PO BOX 121  
CHALLIS, ID 83226

MICHAEL D SHANNON  
PO BOX 1039  
CHALLIS, ID 83226

MICHAEL HARDY BARRETT  
PO BOX 1104  
CHALLIS, ID 83226

MICHAEL M AND PATRICIA A MALONEY  
PO BOX 108  
CLAYTON, ID 83227

MICHAEL M AND PATRICIA A MALONEY  
BOX 487  
SMITHERS, BC V0J2N0

MICHAEL PIVA  
PO BOX 308  
STANLEY, ID 83278

MICKY ROSKELLEY  
HC 67 BOX 2051  
CHALLIS, ID 83226

MILLEMANN & PITTENGER  
PO BOX 1066  
706 N 1ST ST  
MC CALL, ID 83638

MILLEMANN PITTENGER & MC MAHAN LLP  
BRIAN L MC MAHAN AND/OR  
STEVEN J MILLEMANN  
PO BOX 1066  
MC CALL, ID 83638

MOFFATT THOMAS BARRETT ROCK &  
FIELD CHTD  
C/O SCOTT L CAMPBELL  
PO BOX 829  
BOISE, ID 83701

MORGAN CREEK CATTLE ASSN  
C/O DELBERT HUGHES  
HC 61 BOX 3054  
CHALLIS, ID 83226

MOUNTAIN SPRINGS RANCH  
5550 BARTON FLAT RD  
MACKAY, ID 83251

MYLA R AND WILLIAM M NALLION  
HC 63 BOX 1812  
CHALLIS, ID 83226



MYRA AND TED STRICKLER  
PO BOX 191  
CHALLIS, ID 83226

NANCY B WHITE AND WILLIAM H MC KEE  
PO BOX 940  
CHALLIS, ID 83226

NIKKI L AND NORMAN D DOLL  
PO BOX 154  
CHALLIS, ID 83226

NORTHWEST FARM CREDIT SERVICES  
FLCA  
2225 W BROADWAY #A  
IDAHO FALLS, ID 83402

OWEN K SHUPE  
470 E 750 S  
LOGAN, UT 84321

PARKINSON FOUNDATION SEED FARM  
C/O BOB PARKINSON  
PO BOX 65  
ELLIS, ID 83235

PATRICIA I AND R C COOPER  
588 BUCKINGHAM  
TWIN FALLS, ID 83301

PATRICK D BROWN PC  
109 S ADAMS  
JEROME, ID 83338

PATRICK W LEE  
C/O JOHN T BROWN  
PO BOX 61  
SUN VALLEY, ID 83353

PAUL W AND RUTH N MATUSKY  
HC 63 BOX 1519  
CHALLIS, ID 83226

PETE L AND SHILEY L NELSON  
PO BOX 563  
CHALLIS, ID 83226

PETERSEN RANCH TRUST  
C/O GARY PETERSEN  
207 PAINTED HILLS DR  
IVINS, UT 84738

R RICHARD AND RUTH E BURCHILL  
HC 63 BOX 1575-3  
CHALLIS, ID 83226

RALPH W HUTCHISON  
HC 61 BOX 3039  
CHALLIS, ID 83226

REDFISH LAKE LODGE INC  
C/O JACK SEE  
PO BOX 9  
STANLEY, ID 83278

RICHARD A KHAN  
17200 MONTEREY ROAD  
SUITE B  
MORGAN, CA 95037

RICK C PARKS  
PO BOX 801  
TWIN FALLS, ID 83303

RICK PHILPS  
PO BOX 910  
CHALLIS, ID 83226

RIVCO LLC  
PO BOX 640  
SALMON, ID 83467

ROBERT AND SHAWNA SCHNABEL  
HC 63 BOX 1750  
CHALLIS, ID 83226

ROBERT C HAMMOND  
PO BOX 40  
CHALLIS, ID 83226

ROBERT C ST CLAIR  
PO BOX 8  
DAVENPORT, WA 99122

ROBERT D AND SHARON SKROH BRADLEY  
PO BOX 241  
CHALLIS, ID 83226

ROBERT E AND SANDRA L TURNER  
HC 67 BOX 692  
CLAYTON, ID 83227

ROBERT G GRISWOLD  
PO BOX 4957  
KETCHUM, ID 83340

ROBERT H BRYSON  
HC 67 BOX 350  
STANLEY, ID 83278

ROBERT J DIZES  
PO BOX 117  
CHALLIS, ID 83226

ROBERT JARRETT  
HC 64 BOX 9927  
STANLEY, ID 83278

ROBERT N SAVAGE  
HC 63 BOX 1687  
CHALLIS, ID 83226

ROBERTA H GREEN  
PO BOX 213  
CHALLIS, ID 83226

ROBIN J WEGNER  
HC 63 BOX 1576  
CHALLIS, ID 83226

ROJOEMCO  
PO BOX 4  
C/O RON SMITH  
STANLEY, ID 83278

ROLF ENGH  
1928 HUMBOLDT AVE S  
MINNEAPOLIS, MN 55403

RONALD G YACOMELLA AND SANDRA K  
HILL  
PO BOX 29  
CHALLIS, ID 83226

RONALD W AND SHELLEY E BLOXHAM  
PO BOX 359  
CHALLIS, ID 83226

ROSANNA CHAMBERS  
407 10TH  
IDAHO FALLS, ID 83404

ROSS AND VELMA BEALE  
647 W 24TH  
BURLEY, ID 83318

ROUND VALLEY ACRES WATER ASSN INC  
PO BOX 941  
CHALLIS, ID 83226

RUBY H AND VERNE A MC GOWAN  
PO BOX 852  
CHALLIS, ID 83226

RYAN N HUNT  
PO BOX 719  
CHALLIS, ID 83226

SAATHOFF FAMILY TRUST  
6310 S 530 E  
MURRAY, UT 84107

SALLY A FIDDYMENT  
6128 CARRIAGE HOME  
RENO, NV 89509

SALMON FALLS LAND & LIVESTOCK CO INC  
95A BELL RAPIDS RD  
HAGERMAN, ID 83332

SAMUEL F ARMOUR  
944 E 1300 N  
SHELLEY, ID 83274

SAWTOOTH FISH HATCHERY  
HC 64 BOX 9905  
STANLEY, ID 83278

SAWTOOTH INTERPRETIVE & HISTORICAL  
ASSN  
PO BOX 75  
STANLEY, ID 83278

SHARON ARLENE ENDERLIN  
PO BOX 1210  
ALTURAS, CA 96101

SHERI E KEMMERER  
HC 63 BOC 1530  
CHALLIS, ID 83226

SHERRILL M BAIRD  
PO BOX 312  
STANLEY, ID 83278

SHOSHONE BANNOCK TRIBES  
PO BOX 306  
FORT HALL, ID 83203

SMILEY CREEK WATER USERS ASSN  
HC 64 BOX 9108  
KETCHUM, ID 83340

SPENCER A JOSLYN  
3213 N 39TH ST  
BOISE, ID 83703

STAN HARRAH CORP  
PO BOX 12968  
RENO, NV 89510

STANLEY FAMILY REVOCABLE TRUST  
PO BOX 273  
COPPEROPOLIS, CA 95228

STANLEY SEWER ASSN  
PO BOX 71  
STANLEY, ID 83278

STATE OF IDAHO  
DEPT OF TRANSPORTATION  
BUREAU OF AERONAUTICS  
3483 RICKENBACKER  
BOISE, ID 83705

STATE OF IDAHO  
DEPT OF FISH & GAME  
PO BOX 1336  
SALMON, ID 83467

STATE OF IDAHO  
DEPT OF FISH & GAME  
PO BOX 25  
BOISE, ID 83707

STATE OF IDAHO  
DEPT OF LANDS  
300 N 6TH ST, STE 103  
PO BOX 83720  
BOISE, ID 83720

STEPHEN G COPE  
PO BOX 1348  
CHALLIS, ID 83226

STEPHEN WREN  
HC 63 BOX 1573  
CHALLIS, ID 83226

STEVE RANKIN  
PO BOX 1114  
CHALLIS, ID 83226

STEVEN K WORKMAN  
272 RIVER DR  
HC67 BOX 2077  
CHALLIS, ID 83226

SUNRISE ACRES HOMEOWNERS ASSN  
PO BOX 1115  
CHALLIS, ID 83226

SUSAN P PERIN  
PO BOX 480  
SUN VALLEY, ID 83353

TAIT P JOHNSON  
PO BOX 680792  
PARK CITY, UT 84068

TERRI S AND THOMAS L YACOMELLA  
PO BOX 769  
CHALLIS, ID 83226

THE ANDREW & LINDA LAWLER FAMILY  
TRUST  
2691 BAYSHORE DR  
NEWPORT BEACH, CA 92663

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PORTLAND, OR 97232

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IDAHO STATE OFFICE  
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