

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

IN THE MATTER OF THE PROPOSED REVISION OF THE BOUNDARY OF WATER DISTRICT 170, TO INCLUDE SURFACE AND GROUNDWATER RIGHTS IN ADMINISTRATIVE BASIN 75, CREATING A NEW WATER DISTRICT, COMBINING TWO OR MORE WATER DISTRICTS, ABOLISHING A WATER DISTRICT, AND DESIGNATING ADMINISTRATIVE BASIN 75 WATER DISTRICTS AS SUB-DISTRICTS WITHIN WATER DISTRICT 170

**PRELIMINARY ORDER EXPANDING,
MODIFYING, COMBINING, AND
ABOLISHING WATER DISTRICTS**

COURSE OF PROCEEDINGS

The Director of the Idaho Department of Water Resources (“IDWR” or “Department”) is authorized to divide the state into water districts for the purpose of distributing water among appropriators under the laws of the State of Idaho. Idaho Code § 42-604 authorizes the Director to create, revise the boundaries of, or abolish a water district or combine two (2) or more water districts as required to properly administer the uses of water resources. The authority to revise or expand the boundaries of water districts applies to those streams, or other water sources including groundwater, for which the priorities of appropriation have been adjudicated by court decree. Idaho Code § 42-604 directs that before entering such an order, the Department must provide notice to each water user in the district describing the proposed action, providing the time and place of a hearing on the proposed action, and establishing a time period for submission of written comments.

On May 2, 2022, the Department sent Notice of Proposed Action, Public Hearing, and Written Comment Period to water users in Water District 170 (“WD 170”) and the Department’s Administrative Basin 75 (“Basin 75”),¹ which proposed the following actions (“Proposed Actions”):

- Modify the boundary of WD 170 (Upper Salmon River) to include all surface water and groundwater rights in Basin 75 except domestic and stockwater uses as defined by Idaho Code §§ 42-111 and 42-1401(11), and rights used for in-stream watering of livestock as defined by Idaho Code § 42-113;

¹ Notices were mailed to water right holders in both the current boundary of WD 170 and Basin 75. If the water right or rights on a ditch are held by a ditch company, canal company, or other delivery entity, then company “shareholders” or individual users on such ditch, not owning a right in their name on the ditch, did not receive notice. In addition to sending notice to individual right holders, the Department posted the hearing notice on the IDWR website and the Townhall Idaho website.

- Modify the boundary of Water District 75A to include streams tributary to the Salmon River located west of the Salmon River from the Perreau Creek drainage to and including the Wallace Creek drainage, and streams east of the Salmon River from the Lemhi River drainage boundary to and including the Hyde Creek drainage, and combine these areas with Water Districts 75C (Runtzen-Minzer Ditch) and 75E (Wallace Creek and tributaries), and add groundwater rights within the modified boundary of Water District 75A;
- Modify the boundary of Water District 75D to include groundwater rights within Water District 75D, and surface water and groundwater rights within drainages just north and south of Water District 75D between the Lemhi River drainage and the Tower Creek drainage;
- Create a new water district 75F, including surface water rights and groundwater rights within the Tower Creek, Fourth of July Creek, and the North Fork of the Salmon River drainages; and
- Designate all Basin 75 water districts as WD 170 sub-districts.

The Department held a public hearing regarding the Proposed Actions on Monday, May 23, 2022, and accepted written comments until June 2, 2022. IDWR Hearing Officer Peter Anderson was the presiding officer. David Graybill, IDWR Analyst 3 and WD 170 Watermaster, presented the Proposed Actions and the reasons for them. He then answered questions from the public and provided additional information regarding the Proposed Actions.

The following individuals provided public testimony at the hearing: Scott Ziegler, Virginia Perry, Jerry Perry, Susan Jensen, Brian Morton, Lynn Bennett, Edward Tolman, Robert Blackadar, Rob Halen, Dick Williams, Roy Barrett, Kathy Tolman, Barry Klinger, and Cindy Yenter. The following documents were submitted at the hearing: David Graybill PowerPoint presentation, with notes. The Department received written comments from the following: Scott Ziegler, Roy Barrett, Sally and Paul Edwards, Dick Williams, Sally and William Thomas, Rob Halen, Justin Williams, Edward R. and Kathy Tolman, Virginia and Jerry Perry, Jamie and William Clawson, Lynn and Evalyn Bennett, Myrna and Jerry Harris, and David and Kathy Van Waardenberg.

The Department also takes official notice of the Amended Final Order Creating Water District 170, *In re Creating the Upper Salmon River Basin Water District (Designated as Water District No. 170) for Administration of Rights to the Use of Surface Water and Ground Water in Administrative Basins 71 and 72* (IDWR April 6, 2006); Preliminary Order, *In re Proposed Revision of Water District Nos. 73 and 170, By Including Administrative Basin 73 Ground Water Rights in Water Districts 73 and Designating Water District 73 as a Sub-District of Water District No. 170* (IDWR December 10, 2012); Preliminary Order Expanding, Modifying and Combining Water Districts, *In re Proposed Expansion of Water District 170, the Proposed Modification of All Water Districts Within Administrative Basin 74 to Include Ground Water Diversions and the Proposed Combination of Water Districts 74, 74K, 74U and 74Y* (IDWR April 10, 2018); Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees, *In re SRBA Case No. 39576 Subcase No. 75-13316* (Twin Falls Cnty. Dist. Ct. Idaho effective September 1, 2003); and Amended Order Approving Stipulation and Entry of

Partial Decrees, *In re SRBA Case No. 39576 Subcase No. 75-13316* (Twin Falls County Dist. Ct. Idaho November 17, 2004).

Based upon the record in this matter, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Basin 75, as depicted on the map labeled Attachment A, includes the Salmon River and its tributaries downstream of its confluence with the Pahsimeroi River to its confluence with the Middle Fork Salmon River, excepting the Lemhi River and its tributaries.

2. Basin 75 was included in the Snake River Basin Adjudication (“SRBA”). A Final Unified Decree was issued on August 26, 2014, *In re SRBA Case No. 39576*, which includes a Partial Decree Pursuant to I.R.C.P. 54(b) for General Provisions in Basin 75 in Attachment 3.

3. There are currently five water districts in Basin 75: 75A (Jesse Creek, Gorley Creek, and their tributaries), 75B (Williams Creek and tributaries), 75C (Runsten-Minzer Ditch), 75D (Carmen Creek and tributaries), and 75E (Wallace Creek and tributaries).

4. Many surface water rights in Basin 75 are not located within or are not administered by any of the existing Basin 75 water districts. Groundwater rights in Basin 75 are not administered by any water district.

5. The Department has received complaints from water users in recent years regarding proper water use and delivery of water rights on drainages in Basin 75, including the North Fork of the Salmon River, the main stem Salmon River, Fourth of July Creek, Tower Creek, and Perreau Creek. Complaints are prevalent during periods of drought. The Department lacks an efficient administrative mechanism to resolve these complaints since these drainages or water sources are not included in water districts.

6. The Department has found, based on experience working with many water districts in the state, that combining several small water districts in one area offers benefits and certain economies of scale. For example, Water District 75E, which is in close proximity to Water District 75A, currently administers just eight diversions, while Water District 75A administers up to 18 diversions. Combining Water Districts 75A and 75E with other nearby drainages not currently included in any water district will promote efficient delivery and administration of water rights by reducing redundancy of operational tasks and costs that may occur across separate water districts. Examples of redundant operations and costs include annual meetings, budget development and reporting, assessments, accounts payable and receivable, workers’ compensation insurance, office or field equipment/supplies, and recording/reporting water deliveries and water use.

7. Larger water districts with more water users have a broader assessment base that can support higher watermaster salaries and more full-time seasonal or annual employment. This results in improved recruitment and retention of watermasters. It can take several years for a

watermaster to build working relationships with water users and to fully understand complex or unique water delivery systems. Long term watermaster retention incrementally results in more efficient, consistent, and effective water right administration by the watermaster, ultimately saving time and money.

8. The Perreau Creek, Deriar Creek, Fenster Creek, Bob Moore Creek, and Hyde Creek drainages are not currently in a water district. These drainages are in close proximity to Water District 75A. Water delivery disputes between water users on these creeks can be addressed by including them in a water district. The total number of diversions on these creeks, if combined with Water Districts 75A and 75E, can be managed by one water district with a single budget.

9. The Tower Creek, Fourth of July Creek and the North Fork of the Salmon River drainages are not currently included in a water district. *See* Attachment C. Water delivery disputes between water users on these creeks can be addressed by including them in a water district. The diversions in this area can be managed by one water district with a single budget.

10. Water District 75D currently administers surface water rights and diversions in the Carmen Creek drainage basin. Groundwater rights within the Carmen Creek drainage are not currently administered by Water District 75D. Additionally, there are a small number of water rights from water sources just north and south of the Carmen Creek drainage and tributary to the Salmon River, that are not included in any water district. The proposed Water District 75D modification would add several dozen surface and groundwater diversions from these areas to Water District 75D.

11. Water District 75C, Runsten-Minzer Ditch, currently administers just one diversion from the main stem Salmon River. Water diverted to the ditch is conveyed to several water users with individually owned water rights.

12. On April 6, 2006, the Director of the Department issued an Amended Final Order Creating Water District No. 170 (“2006 Order”), *In re Creating the Upper Salmon River Basin Water District (Designated as Water District No. 170) for Administration of Rights to the Use of Surface Water and Ground Water in Administrative Basins 71 and 72*. Pursuant to the 2006 Order, WD 170 included all surface water and groundwater rights in Administrative Basins 71 and 72, other than domestic and stockwater rights as defined by Idaho Code §§ 42-111 and 42-1401A(11).

13. Finding of Fact No. 10 in the 2006 Order states, in pertinent part:

The Director’s [hearing] notice also included a description of the Director’s proposal to expand the Upper Salmon Water District by 2007 to encompass all of Basins 73, 74, and 75, after the water rights in those basins have been decreed by the [SRBA] District Court.

14. On December 10, 2012, the Department issued a Preliminary Order, *In re Proposed Revision of Water District Nos. 73 and 170, By Including Administrative Basin 73 Ground Water Rights in Water Districts 73 and Designating Water District 73 as a Sub-District of Water*

District No. 170, expanding WD 170 to include Administrative Basin 73 (Pahsimeroi River) and designating Water District 73 as a sub-district of WD 170. Water District 73 was also modified to include the administration of certain groundwater rights within the district.

15. On April 10, 2018, the Department issued a Preliminary Order Expanding, Modifying and Combining Water Districts, *In re Proposed Expansion of Water District 170, the Proposed Modification of All Water Districts Within Administrative Basin 74 to Include Ground Water Diversions and the Proposed Combination of Water Districts 74, 74K, 74U and 74Y*, expanding WD 170 to include Administrative Basin 74 (Lemhi River) within WD 170, and designating and modifying water districts within Administrative Basin 74 as sub-districts within WD 170.

16. The WD 170 watermaster is elected annually by the holders of water rights in WD 170 and appointed by the Director. The current WD 170 watermaster is a Department employee who is compensated by the Department. WD 170 currently does not collect assessments from water users in WD 170 or water districts that are designated as WD 170 sub-districts. The WD 170 watermaster, working under the supervision of the Director, oversees and assists sub-districts.

17. In 2004, a Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees (“W&S Stipulation”), *In re SRBA Case No. 39576 Subcase No. 75-13316*, was filed with the SRBA Court, resolving objections to Wild & Scenic River claims filed by the United States for federal reserved water rights in the Salmon River drainage.²

18. Idaho Attorney General Lawrence Wasden signed the W&S Stipulation on behalf of the State of Idaho (including the Idaho Water Resources Board). *W&S Stipulation* at 21. The W&S Stipulation was also signed by a representative of the United States Department of Justice and by other objectors to the contested SRBA claims. *Id.* at 20–27.

19. The following provisions of the W&S Stipulation are relevant to the water district changes proposed by the Department:

a. Enforcement. The State, through [IDWR] and local water districts created and supervised by IDWR pursuant to Idaho Code §§ 42-604 et seq., shall distribute water to the federal reserved water rights set forth in this Stipulation and the Partial Decrees and all other hydraulically connected water rights, regardless of subbasin location, above the ending point of the respective federal reserved water rights in accordance with priority dates, quantities and all other elements of the rights as provided in this Stipulation and the Partial Decrees, and applicable law at all times when there is a hydraulic connection between the federal reserved water right and the right to be regulated. While this paragraph does not affect the present administration of existing water rights from tributary sources that are administered separately, all new water rights that are hydraulically connected with the Wild and Scenic Rivers federal reserved water right will

² On November 17, 2004, the SRBA Court issued an Amended Order Approving Stipulation and Entry of Partial Decrees, *In re SRBA Case No. 39576 Subcase No. 75-13316* (Twin Falls County. Dist. Ct. Idaho).

be administered as a single source.

b. Creation of Water Districts.

(1) IDWR will establish water districts as necessary to assist IDWR in the administration of water rights. The parties agree that, regardless of whether a water district has been established for an area, IDWR will: A) collect and record diversion data; B) enforce the water rights in priority; and C) curtail unauthorized or excessive diversions as necessary.

(2) Within six months of the filing of Director's Reports for administrative basins 73, 74 and 75, the parties will file a joint petition with the SRBA Court, pursuant to Idaho Code § 42-1417, for an order for interim administration of those basins and IDWR will incorporate those basins into the [Upper Salmon Water District "USWD," a.k.a. Water District 170]. Existing water districts within the basins will be converted to subdistricts within the USWD as appropriate to facilitate management. Other subdistricts will be formed as deemed necessary to accomplish the purposes of the USWD. Creation of the USWD shall involve full participation by water users in the area in accordance with state law, and the existing water districts will have an important role. The resulting organization will be fully under the supervision of IDWR.

....

d. Prevention of Unauthorized Uses. IDWR and the watermaster will utilize all appropriate techniques, including but not limited to remote-sensing, field observation and inventory, coordination with local water users and citizens, and input from other agencies, to identify unauthorized uses of water. IDWR and/or the watermaster will curtail identified unauthorized uses of water based on the authorities of Chapter 6, Title 42, Idaho Code, and IDWR will pursue appropriate civil enforcement action as provided in Idaho Code §§ 42-351 and 42-1701B.

e. Administration of Existing Water Rights. . . . IDWR will evaluate the staffing requirement for operation of the water district and will identify needs for subdistricts and deputy watermasters as required. IDWR and the watermaster will specifically identify and curtail unauthorized uses. . . . IDWR will require installation of lockable controlling works and measurement devices for any existing diversion if it is determined that the water right holder is refusing or failing to comply with IDWR's or the watermaster's instructions and will pursue appropriate civil enforcement action as provided in Idaho Code §§ 42-351 and 42-1701B.

....

i. Remedies. In the event the State fails to administer water rights in accordance with the terms of this Stipulation, the Partial Decrees and applicable law, any party to this Stipulation, upon a satisfactory showing to

the SRBA Court, or any successor state court with jurisdiction to enforce the final decree issued by the SRBA Court, of such failure to administer, shall be entitled to an order under the Court's continuing jurisdiction, as described in paragraph 5, compelling the State to properly administer the water rights.

W&S Stipulation ¶ 2.

RELEVANT LEGAL PROVISIONS

Idaho law declares all surface water, when in natural channels or springs or lakes, and all groundwater within the State of Idaho to be the property of the state, whose duty it is to supervise the appropriation and allotment of the water to those diverting the same for beneficial use. *See* I.C. §§ 42-101, 42-103, 42-226.

The Director, acting on behalf of the State of Idaho, has the statutory authority to control the appropriation and use of all surface water and groundwater within the state in accordance with, but not limited to, Idaho Code §§ 42-101, 42-103, 42-202(1), 42-220, 42-226, 42-237a.g., 42-351, and 42-602 et seq.

Idaho Code §§ 42-226 and 42-237a.g., assign the authority and responsibility to the Director for the administration of groundwater rights in the state in accordance with the prior appropriation doctrine as established by Idaho law so as to protect prior surface and groundwater rights.

The Director has responsibility for direction and control over the distribution of water in accordance with the prior appropriation doctrine as established by Idaho law within water districts to be accomplished through watermasters supervised by the Director, and subject to removal by the Director, as provided in Chapter 6, Title 42, Idaho Code.

Idaho Code § 42-604 authorizes the Director to form water districts as necessary to properly administer uses of water from public streams, or other independent sources of water supply, for which a court having jurisdiction thereof has adjudicated the priorities of appropriation. The Director has discretion to determine how the "mandatory water districts shall be structured" and may "create new districts, revise existing districts, or even abolish districts, as the Director finds necessary for the efficient distribution of water resources." *In re Idaho Dep't of Water Resources Amended Final Order Creating Water Dist. No. 170*, 148 Idaho 200, 211, (2009). "[E]fficient distribution of water . . . requires that IDWR implement sufficient administrative oversight to prevent conflicts from arising, where possible, and to furnish a framework of evenhanded oversight which allows for consistent planning by water users." *Id.* The creation of sub-districts is implicitly authorized under Idaho Code § 42-604. 148 Idaho at 212.

ANALYSIS

Inclusion of Basin 75 in WD 170 and Designation of Sub-Districts

Under the W&S Stipulation, the State of Idaho agreed to facilitate the administration of water rights in the Upper Salmon River Basin. Specifically, the State agreed to create a water district, and designate sub-districts as necessary, to administer water rights within the basin. Moreover, Idaho Code § 42-604 requires the Director to form water districts as necessary to properly administer water rights from streams and other independent water supplies upon the formal adjudication of those rights.

Water rights issued after September 1, 2003, in the Upper Salmon River Basin, including Basin 75, are subject to specific administrative provisions of the W&S Stipulation. Administration of such rights requires coordination across water district boundaries. The W&S Stipulation also sets forth standards for measurement and reporting of surface and groundwater diversions within the Upper Salmon River Basin. Creation of WD 170, with oversight of those water districts within its boundary designated as sub-districts, including Water District 75B, will promote uniformity in measurement and reporting of diversions and will facilitate uniform and efficient distribution of water rights across all basins and sub-districts in the Upper Salmon River Basin, including Basin 75. Moreover, WD 170 will assist watermasters where necessary to ensure that each sub-district is measuring, reporting, and administering water rights properly and consistently.

Large ditches diverting water directly from the Salmon River are currently managed by canal or ditch companies, or by lateral ditch associations. These entities have managers that deliver water to shareholders or individual water right holders. These diversions may have adequate measuring devices at the canal headings that are read and recorded by ditch managers. Those managers can report ditch measurements directly to the WD 170 watermaster. Inclusion of these ditches in tributary sub-districts may force water users on the ditches to disproportionately bear the costs for water delivery. As a result, these ditches, and other diversions from the main Salmon River in Basin 75, should be excluded from any tributary sub-districts at this time. However, all diversions from the main stem Salmon River in Basin 75 should be included in Water District 170, unless water rights from such diversions include conditions requiring regulation by the watermaster of any WD 170 sub-district. Some main stem Salmon River diversions may be included in future sub-districts with other large Salmon River diversions, leading to a more balanced district.

Abolish Water District 75C

Water District 75C consists of one diversion—the Runsten-Minzer Ditch. Ditch systems like this are typically managed as lateral ditches pursuant to Chapter 13, Title 42, Idaho Code. Water users on the Runtzen-Minzer Ditch can manage the system as a lateral ditch association and avoid water district requirements set forth in Chapter 6, Title 42, Idaho Code. Abolishing Water District 75C will remove operational and reporting procedures required by Chapter 6, Title 42, Idaho Code. Abolishing Water District 75C will also simplify ditch operations and administration. The ditch should not be designated as a separate WD 170 sub-district. The ditch

diversion should be included in WD 170 with other main stem Salmon River diversions.

Water District 75A Modification

Combining Water District 75A, Water District 75E, and other streams and tributaries located both east and west of the Salmon River, including the Perreau Creek, Deriar Creek, Fenster Creek, Bob Moore Creek, Hyde Creek, and Hot Springs Creek drainages, as shown in Attachment B, into new Water District 75A, and designating it as a WD 170 sub-district will promote efficient administration of surface and groundwater rights within this area of Basin 75. Combining these drainages into a single water district will create a broader assessment base with a single budget to compensate a watermaster and related water district expenses. Adequate watermaster compensation will promote watermaster retention, allow efficient administration of water rights, and help resolve long-standing water delivery disputes.

Water District 75D Modification

Expanding Water District 75D and designating it as a WD 170 sub-district, including groundwater rights within the Carmen Creek drainage and groundwater rights and surface water rights in small drainages just north and south of the Carmen Creek drainage, between the Lemhi River and the Tower Creek drainages, as shown in Attachment D, will promote efficient administration of surface and groundwater rights within this area. Several dozen diversions not previously administered by a watermaster, including groundwater rights, will be administered by Water District 75D.

Water District 75F Creation

Creating Water District 75F, as a WD 170 sub-district, as shown in Attachment C, will lead to the administration of more than 150 groundwater and surface water diversions within its boundary, and aid in the resolution of long-standing water delivery disputes. The creation of a water district in this area will promote efficient administration of surface and groundwater rights. Combining the drainages in this area into one water district will create a broader assessment base with one budget to compensate a watermaster and related water district expenses.

Response to Testimony and Written Comments

Testimony at the public hearing held on May 23, 2022, and in subsequently filed written comments, is summarized below and consists of the following general points³:

- a. **Comment:** Water users will be assessed for diverting water that is returned unused to the public water source.⁴

Department Response: Idaho Code §§ 42-610 through 42-613 establish the

³ Some comments addressed items outside the jurisdiction of the Department, such as the name of a creek and the management of United States Forest Service and Bureau of Land Management lands. The Department will not address these comments.

⁴ Summary derived from comments by Ziegler, Bennett, Edwards, and Barrett

procedures for water district budgeting and assessments. Modifying these procedures is not within the Department's authority. There are no provisions in Idaho Code to accommodate credit for returned flows. Return flows from irrigation diversions is common in most irrigated areas and water districts in Idaho. Assessment credits are not assigned or awarded in other water districts in Idaho. Water users are required to divert no more water than is authorized by their water rights and should divert only as much as they need for the intended beneficial use.

- b. **Comment:** Assessing for water use will reduce the incidental recharge from flood irrigation, which has environmental and water supply benefits.⁵

Department Response: Flood irrigation is a common irrigation practice in Idaho. Irrigation water rights typically include some important elements such as a point of diversion, a place of use, a season of use, and a flow rate at which water can be diverted, and those parameters are enforced by the Department and water districts created by the Department. Any potential disincentive to flood irrigation created by the water district assessment process is a function of the statutorily established assessment process. Modifying those procedures is not within the Department's authority.

- c. **Comment:** Part of the Rainbow Ditch place of use is in proposed District 75A, but not its point of diversion.⁶

Department Response: The Rainbow Ditch (water right no. 75-4062) has a portion of its place of use in Water District 75A. A water right is determined to be in a water district by its point of diversion and not its place of use. The Rainbow Ditch point of diversion is not within Water District 75A, and the Department does not recommend inclusion of this diversion in Water District 75A.

- d. **Comment:** Laterals already have water right administration; sub-districts would just add cost without providing any benefit. Laterals may also pay a disproportionate share of the cost.⁷

Department Response: As a result of testimony from water users on lateral ditches from the Salmon River, the Department determines that diversions from the main stem Salmon River should be excluded from Water Districts 75A, 75D, and 75F. Main stem Salmon River water right diversions will be included in WD 170 and must comply with measurement and reporting requirements established by Idaho law. These diversions may be included in future WD 170 sub-districts with other large mainstem diversions, leading to a more balanced district.

- e. **Comment:** If water districts are required, Water District 75C should be retained and

⁵ Summary derived from comments by Bennett, Edwards, and Clawson.

⁶ Summary of comment made by Ziegler.

⁷ Summary derived from comments by Ziegler and Morton.

expanded to include all Salmon River surface water points of diversion and associated lateral ditch systems for the Salmon River section between Water Districts 75D (Carmen Creek) and 75B (Williams Creek).⁸

Department Response: See response to comment d. above.

- f. **Comment:** Water District 75C should include the proposed Water District 75A surface and groundwater rights points of diversion east of the Salmon River and Highway 93. Proposed Water District 75A should contain all remaining surface and groundwater points of diversion in the proposed 75A/75E combined sub-district.⁹

Department Response: For the reasons stated, the Department has determined in its discretion that the formation and revisions of Water Districts 75A, 75D, and 75F as described in this Order, is an appropriate and efficient course of action.

- g. **Comment:** Fees to monitor groundwater source irrigation systems should be assessed separately to those users by IDWR, not apportioned among the surface water users of the sub-district or the collection responsibility of watermasters administering surface water sources and rights.¹⁰

Department Response: Idaho Code §§ 42-610 through 42-613 establish the procedures for water district budgeting and assessments. Modifying these procedures is not within the Department's authority. Groundwater users will be members of water districts that are designated WD 170 sub-districts, and subject to the same laws. Moreover, the holders of some groundwater rights proposed to be included in a water district often own surface water rights in the same district. Separating administration, regulation and assessments of water rights located in the same area and often owned by the same users diminishes administrative efficiency.

- h. **Comment:** For the upper Cole Ranch, which receives water out of Perreau Creek, the proposed changes will not prevent a water user on the creek from taking too much water.¹¹

Department Response: Revised Water District 75A, including Perreau Creek, will be subject to a measurement order that will require all irrigation diversions to have a lockable headgate and a Department-approved measuring device. This order will give the Water District 75A watermaster the necessary tools to deliver and regulate water consistent with water rights.

- i. **Comment:** The proposed changes will result in an undue financial burden for small water users by combining them with the much larger Water District 75A as related to

⁸ Summary of comment made by Bennett.

⁹ Summary of comment made by Bennett.

¹⁰ Summary of comment made by Bennett.

¹¹ Summary of comment made by Edwards.

projects that do not benefit us.¹²

Department Response: Water districts are directed by statute to use water district funds to cover expenses of delivering water, including compensation for the watermaster and watermaster’s assistants. Water district funds may not be used for “projects” unrelated to water delivery expenses.

- j. **Comment:** General opposition to combining Water District 75A and Water District 75E.¹³

Department Response: Water District 75E currently is a small water district that has a small number of assessed diversions and limited funding with which to retain a watermaster. Combining Water District 75E with Water District 75A will result in more efficient water right administration on Wallace Creek and other streams in modified Water District 75A.

- k. **Comment:** Williams Creek and Seventeen¹⁴ Creek should be included in Water District 75A.¹⁵

Department Response: For the reasons stated, the Department has determined in its discretion that the modification of Water Districts 75A and 75D, and creation of Water District 75F as described in this Order is an appropriate and efficient course of action. Water District 75B will not be modified but will be designated as a WD 170 sub-district.

- l. **Comment:** Water users should be able to elect the watermasters for the sub-districts under the WD 170 watermaster. The State of Idaho must pay for the WD 170 watermaster.¹⁶

Department Response: Water users in WD 170 have historically elected IDWR to provide watermaster services for the entire water district. IDWR has agreed to pay the WD 170 watermaster’s compensation. Water users in WD 170 may elect a different watermaster but would be responsible to compensate the WD 170 watermaster. Watermasters in water districts designated as WD 170 sub-districts are compensated by the water right holders in the sub-districts.

- m. **Comment:** Minimum stream flow water rights should not take any priority on sections of the Salmon River that are not designated Wild and Scenic.¹⁷

¹² Summary of comment made by Dick Williams.

¹³ Summary of comment made by Dick Williams.

¹⁴ The Department is not familiar with “Seventeen” Creek. It does not propose to include Sevenmile Creek in Sub-District 75A.

¹⁵ Summary of comment made by Perry.

¹⁶ Summary derived from comments by Perry and Clawson.

¹⁷ Summary derived from comments by Clawson and Bennett.

Department Response: Minimum stream flow water rights are administered in priority by the watermaster and the Department in the same fashion as all other water rights.

- n. **Comment:** Water District 75D should not administer main stem Salmon River rights on the west side of the river because there are water users in that area who divert water from Wallace Creek, and then inject it to and re-divert it from the Salmon River.¹⁸

Department Response: See response to comment d. above.

CONCLUSIONS OF LAW

1. The Department should expand the boundary of WD 170 to include Administrative Basin 75 to properly administer water rights and uses. This expansion will create administrative consistency throughout the entire Upper Salmon River Basin. The Department and WD 170, through coordination with sub-district watermasters, will have a greater ability to ensure compliance with the measurement and reporting terms of the W&S Stipulation and Idaho law. The Department and WD 170, through coordination with sub-district watermasters, will have a greater ability to identify and curtail unauthorized water uses within Basin 75. WD 170 will also be able to consistently administer water rights junior to September 1, 2003, across the entire Upper Salmon River drainage.

2. The Department should establish Water Districts 75A, 75D, and 75F, and designate Water Districts 75A, 75B, 75D, and 75F as WD 170 sub-districts, and should abolish Water District 75C, as described in the Analysis above. These actions are necessary for the efficient distribution of water resources in Basin 75.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that:

1. The boundary of Water District 170 is revised to include all surface and groundwater rights in Administrative Basin 75, as shown in Attachment A, with the exception of stockwater and domestic water rights as defined by Idaho Code §§ 42-111 and 42-1401A(1 1), and rights used for in-stream watering of livestock as defined by Idaho Code § 42-113.

2. Effective November 1, 2022, Water District 75C is abolished.

3. Effective November 1, 2022, Water District 75A, Water District 75E, the Perreau Creek, Deriar Creek, Fenster Creek, Bob Moore Creek, Hyde Creek, and Hot Springs Creek drainages, and all other Basin 75 tributaries located west and east of the Salmon River, as shown in Attachment B, are combined into Water District 75A, including all surface and groundwater rights, with the exception of stockwater and domestic water rights as defined by Idaho Code §§ 42-111 and 42-1401A(11), and rights used for in-stream watering of livestock as defined by

¹⁸ Summary of comment made by Yenter.

Idaho Code § 42-113.

4. Effective November 1, 2022, Water District 75D is modified to include all surface water and groundwater rights in the Salmon River tributary drainages east of the Salmon River between the northern boundary of the Lemhi River drainage and the southern boundary of the Tower Creek drainage, as shown in Attachment D, with the exception of stockwater and domestic water rights as defined by Idaho Code §§ 42-111 and 42-1401A(11), and rights used for in-stream watering of livestock as defined by Idaho Code § 42-113.

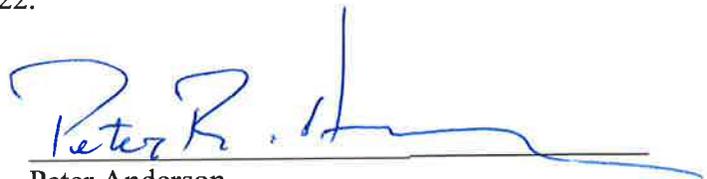
5. Effective November 1, 2022, Water District 75F is created to include all Salmon River tributary drainages east of the river from and including the Tower Creek drainage on the south, Fourth of July Creek, and including the entire North Fork of the Salmon River drainage on the north, as shown in Attachment C, with the exception of stockwater and domestic water rights as defined by Idaho Code §§ 42-111 and 42-1401A(11), and rights used for in-stream watering of livestock as defined by Idaho Code § 42-113.

6. Water Districts 75A, 75B, 75D, and 75F are designated WD 170 sub-districts. These sub-districts shall be responsible for distribution of decreed, licensed and permitted surface and groundwater rights within their respective boundaries, and shall be subject to oversight by the Department and the WD 170 watermaster. Each sub-district shall meet annually to elect a watermaster, adopt a budget, and select an advisory committee, and otherwise operate in a manner consistent with the provisions of Chapter 6, Title 42, Idaho Code.

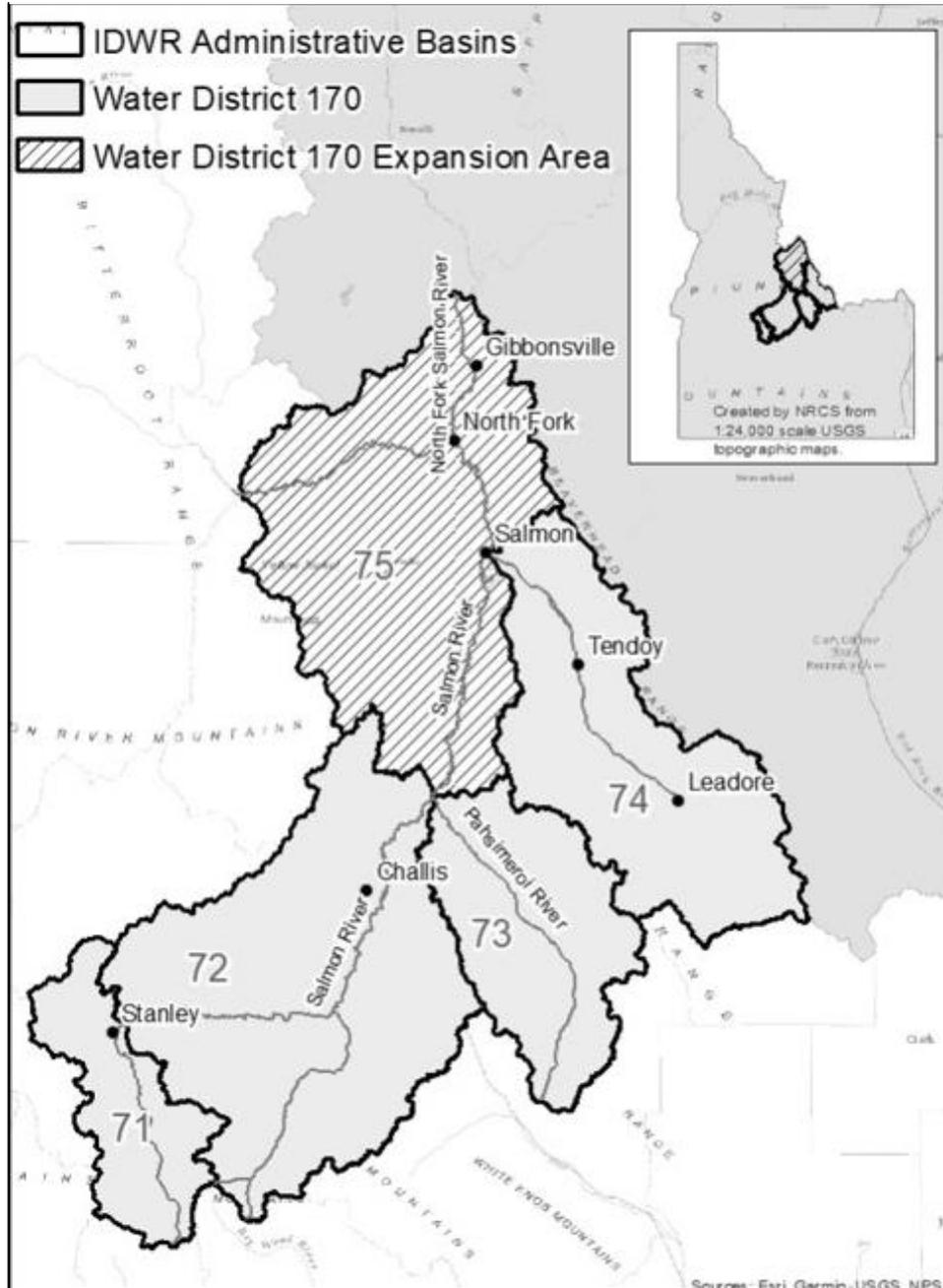
7. Holders of water rights that are diverted from the main stem Salmon River between the Pahsimeroi River and the Middle Fork Salmon River, except those diversions that are administered by the watermaster of any WD 170 sub-district, shall be responsible for measuring diversions from the Salmon River (at ditch headings or pump intakes), and reporting diversions to WD 170 as specified or required by the WD 170 watermaster. The Director shall issue a separate order requiring the installation of approved measuring devices for main Salmon River diversions, groundwater diversions, and other diversions in WD 170 as necessary.

8. The holders of water rights in WD 170, including holders of water rights in WD 170 sub-districts, shall meet annually to elect a WD 170 watermaster, adopt a budget, and select an advisory committee. The holders of water rights in WD 170, including those in Basin 75, shall not be subject to WD 170 assessments unless an annual budget is approved by the water users present at an annual meeting.

DATED this 18th day of August 2022.

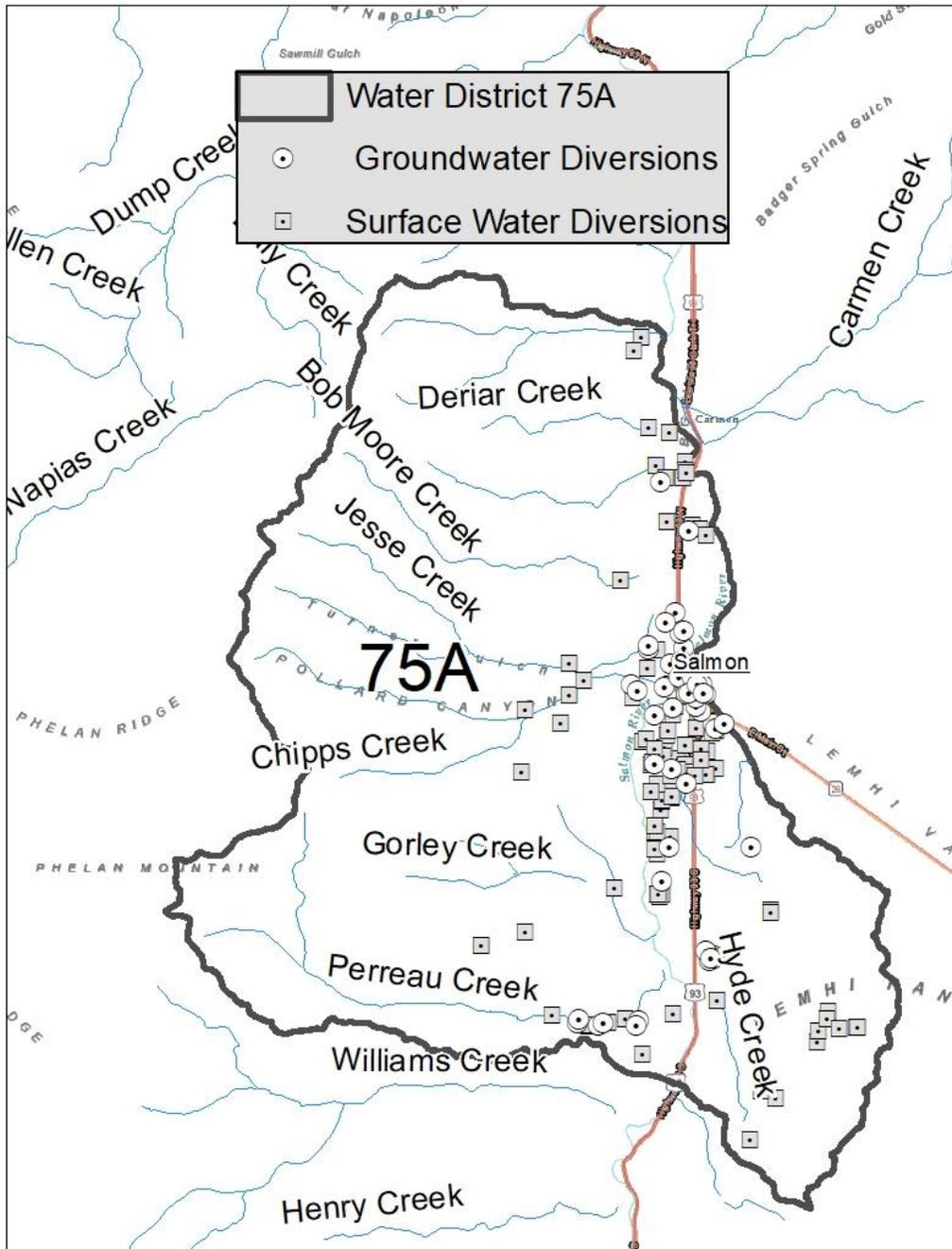

Peter Anderson
Presiding Officer

Attachment A
Idaho Department of Water Resources Administrative
Basins and Water District 170 Expansion Area



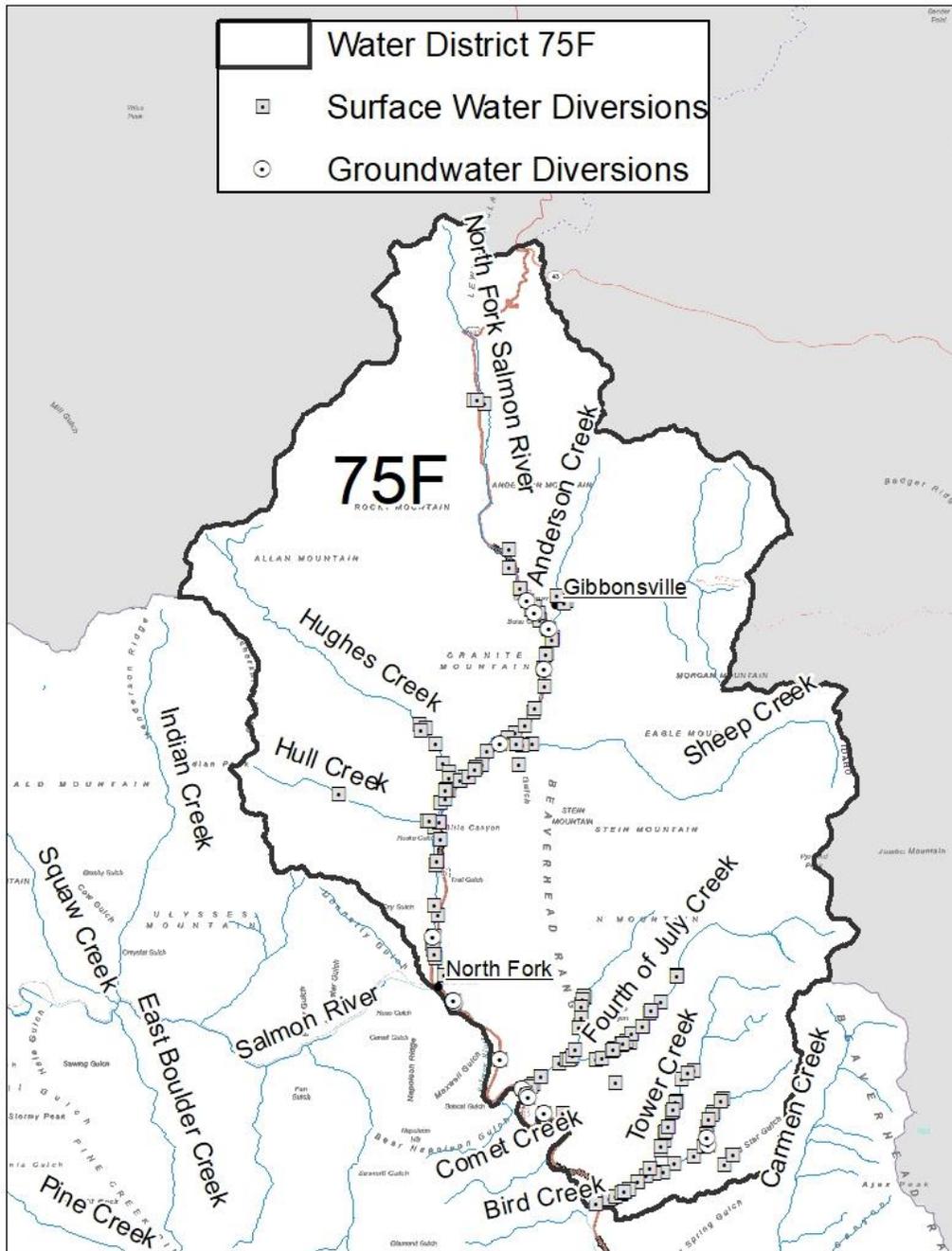
Attachment B

Water District 75A Surface and Groundwater Diversions



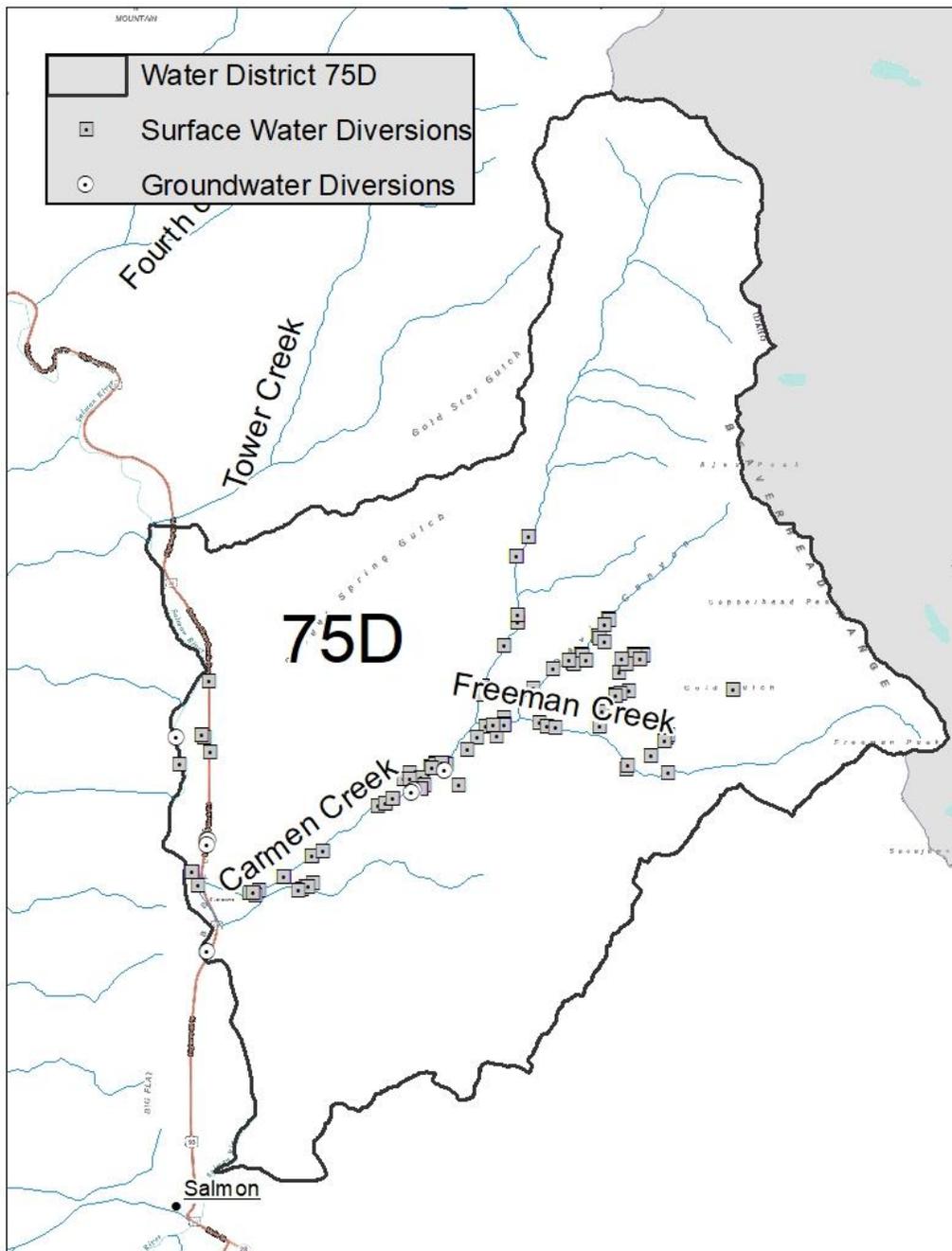
Attachment C

Water District 75F Surface and Groundwater Diversions



Attachment D

Water District 75D Surface and Groundwater Diversions



EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was held)

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and brief as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer 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(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, request for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The Department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date 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.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case 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 of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.