



IDAHO DEPARTMENT OF
WATER RESOURCES

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Governor Brad Little

Director Mathew Weaver

June 20, 2025

RE: Preliminary Order Designating an Area of Drilling Concern Near the City of Soda Springs

Dear Water User,

The Idaho Department of Water Resources (“Department”) has issued the enclosed Preliminary Order (“Order”) designating the Soda Springs Area of Drilling Concern (“SSADC”). Pursuant to Section 67-5243, Idaho Code, the preliminary order will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as explained in the enclosed information sheet.

Additional information regarding the SSADC is available on the Department’s website at the following address: <https://idwr.idaho.gov/wells/areas-of-drilling-concern/>

If you have questions concerning the Order or the enclosed information, please contact me at 208-287-4800.

Respectfully,

Erik Boe, P.E.
Water Compliance Bureau Chief, IDWR

Enclosures:

*Preliminary Order Designating the Soda Springs Area of Drilling Concern
Explanatory Information to Accompany a Preliminary Order*

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

IN THE MATTER OF DESIGNATING)	
AN AREA OF DRILLING CONCERN)	PRELIMINARY ORDER
NEAR THE CITY OF SODA SPRINGS)	
_____)	

On February 2, 2023, the Greenfield Environmental Multistate Trust (“Greenfield Trust”) petitioned the Idaho Department of Water Resources (“Department”) to designate an Area of Drilling Concern (“ADC”) near the city of Soda Springs in Caribou County, Idaho, pursuant to Idaho Code § 42-238(15). *Petition to Designate an Area of Drilling Concern, KMCC Soda Springs Superfund Site, Caribou County, Idaho*, (January 2023) (“ADC Petition”). The purpose for the designation is to protect public health and to prevent the spread of contamination resulting from past industrial practices at Kerr-McGee Chemical Company’s (“KMCC”) former chemical manufacturing site. *Id.* at 1-1. Greenfield Trust completed a detailed ground water investigation to document the hydrogeologic conditions and contaminant plumes in the Soda Springs area. The ground water investigation resulted in the following conclusions:

1. The vertical extent of ground water contamination appears to be limited to the Blackfoot Basalt formation or aquifer.
2. Current well industry practices are insufficient to protect public health and ground water quality. Specific drilling and well construction methods and well sealing requirements are necessary to protect ground water resources.
3. The designation of the ADC is necessary to protect public health and prevent the vertical movement of contamination to deeper confined aquifers.

ADC Petition, at 5-1.

On November 2, 2023, the Department conducted a public hearing in Soda Springs, Idaho, regarding the designation of the proposed Soda Springs Area of Drilling Concern (“SSADC”). Notice of the hearing was given, and the hearing was held in accordance with Idaho Code § 42-238(15) and the Department’s Rules of Procedures (IDAPA 37.01.01). Public comments were accepted until November 16, 2023.

FINDINGS OF FACT

ADC Petition and Hydrogeologic Investigation

1. Greenfield Trust submitted the *ADC Petition* to the Department for designation of an ADC to protect public health and prevent the spread of contamination resulting from past industrial practices at KMCC’s former chemical manufacturing superfund site (“KMCC Site”). *ADC Petition*, at 1-1. The *ADC Petition* summarized a detailed ground water investigation based

on groundwater and surface water long-term monitoring between 1995 and 2022. *Id.* at 3-1. The *ADC Petition* includes the following findings and conclusions:

- A. The subsurface geology underlying the KMCC Site and surrounding Soda Springs vicinity is heterogenous, comprised of 1 to 57 feet of overburden material above a sequence of basalt flows and sedimentary interbeds known as the Blackfoot Basalt Formation. Individual basalt flows range in thickness from 12 to 52 feet separated by sedimentary interbeds that form a sequence approximately 230 feet thick. *ADC Petition*, at 2-3.
- B. Long-term monitoring of ground water levels and water quality document south-southwest trending groundwater plumes within the Blackfoot Basalt Formation, between the KMCC Site and the Bear River, containing molybdenum and vanadium at concentrations exceeding the United States Environmental Protection Agency (“EPA”) tap water regional screening levels (“RSLs”) for molybdenum and vanadium. *Id.* at 3-8. The molybdenum plume extends approximately 3 miles, and the vanadium plume extends approximately 1.5 miles from the KMCC Site; the plumes migrating off-site are approximately 1,400 feet wide. *Id.* at 5-1. EPA RSLs for molybdenum and vanadium are 100 ug/L and 86 ug/L, respectively. *Id.* at 3-8. Exceedance of EPA RSLs poses a human health risk.
- C. The vertical extent of groundwater contamination is limited to the unconfined aquifer within the Blackfoot Basalt Formation. *Id.* at 4-1. The Blackfoot Basalt Formation is underlain by the Salt Lake Formation consisting of tuffaceous sandstone, conglomerate, and limestone. *Id.* at 2-3. Sampling results indicate the confined aquifer within the Salt Lake Formation is unaffected by contamination in the Blackfoot Basalt Aquifer. *Id.* at 4-1.
- D. “[KMCC] Site remedial actions have been successful in reducing molybdenum and vanadium loading to groundwater. While molybdenum and vanadium concentrations are decreasing at many on-Site and off-Site monitoring locations, the plume configurations in terms of the extent of RSL exceedances for both molybdenum and vanadium have remained stable for the last several years.” *Id.* at 5-1.
- E. The proposed SSADC boundaries are based on property boundaries that lie within or intersect the molybdenum and vanadium contamination plumes identified by long-term ground water monitoring studies.
- F. Greenfield Trust identified 103 known monitoring wells and two known domestic wells within the proposed SSADC boundary. *Id.* at 5-3. The two domestic wells within the ADC have previously been sampled and have site-related contaminants of concern below EPA tap water RSLs. *Id.*
- G. The City of Soda Springs (“City”) water service area overlaps the majority of the proposed SSADC boundary. *Id.* at 5-3. The City’s public water system receives water from 6 springs that appear unaffected by the contamination based on long-term

monitoring results. *Id.*

- H. The *ADC Petition* proposes the following administrative, drilling, and well construction procedures be implemented within the proposed SSADC:
- i. Require a long form drilling permit for all wells and eliminate the use of domestic start card permit applications.
 - ii. Require a drilling prospectus with each permit application, prepared by an engineer or geologist licensed in the State of Idaho.
 - iii. Require appropriate drilling methods to prevent commingling of the Blackfoot Basalt Aquifer with ground water in underlying formations.
 - iv. Require all new wells be designed and constructed to draw water from a water bearing unit below the Blackfoot Basalt Aquifer.
 - v. Require the top of any well screen be installed a minimum of 10 feet below the Blackfoot Basalt Formation.
 - vi. Require a full-length annular grout seal be placed from the top of the screened production zone to ground surface.
 - vii. Require special well decommissioning procedures.

Id. at 5-4.

2. Department staff reviewed the proposed *ADC Petition* and hydrogeologic investigation. Department staff prepared a memorandum, dated September 1, 2023, that concluded the *ADC Petition* included sufficient technical data to support consideration for designating an ADC.

Public Hearing

1. The Department scheduled a public hearing as required under Idaho Code § 42-238(15). The hearing was advertised in the Caribou Sun newspaper on October 19 and October 26, 2023. Local elected officials, the Idaho Ground Water Association, local licensed well drilling companies, and other interested parties were provided written notice concerning the public hearing. Notice of the scheduled public meeting was also posted on the Department's website and the State of Idaho's public meeting townhall website.
2. A public hearing was held on November 2, 2023, at City Hall in Soda Springs, Idaho. Erik Boe, Ground Water Protection Section Manager, presided as the Hearing Officer concerning designation of the SSADC proposed by Greenfield Trust.
3. The Hearing Officer initiated the meeting by stating that the hearing was being held regarding the proposed SSADC. The Hearing Officer explained the Department hearing process and stated that the hearing was being recorded. Department representative Chad Hersley, Technical Hydrogeologist, provided a presentation describing the proposed request, the regulatory process for establishing an ADC, a summary of the findings from Greenfield Trust's hydrogeologic investigation, and a description of well construction methods and procedures to prevent the vertical movement of contamination across a confining layer separating distinct water bearing units.

4. Lars Peterson, Greenfield Trust Senior Project Manager, presented information regarding the hydrogeologic investigation in support of the petition to designate the SSADC. Information presented documented south-southwest trending plumes of molybdenum and vanadium that originated from unlined storage ponds holding process water from the former KMCC manufacturing facility. Plumes are located within the Blackfoot Basalt Aquifer, generally running from the KMCC Site through Soda Springs towards the Bear River. The plumes were characterized using 28 monitoring wells and 48 multiport wells installed along six transects.
5. Hearing participants asked Greenfield Trust and Department representatives questions about new requirements if an ADC is designated, the proposed boundaries of the ADC, and water chemistry of both the Blackfoot Basalt Aquifer and the deeper Salt Lake Formation Aquifer.
6. The Hearing Officer allowed time for oral testimony from hearing participants.
7. Cody Thompson, resident of Soda Springs, testified in opposition to using property boundaries to define the area of impact and proposed ADC. Mr. Thompson commented that the federal government is giving large amounts of money to the corporation, while local property owners' lands will be less valuable. Mr. Thompson also noted that impacted homeowners were not financially compensated.
8. Rod Worthington, Soda Springs City Councilman, testified that the KMCC cleanup effort has been ongoing for 35 years, and may continue another 35 years. Money should be set aside through Greenfield Trust to fund water infrastructure projects to support future development in the area.
9. Jason Maughan, representing Baer P4 facilities, testified that the proposed ADC boundary should be modified to remove all Baer P4 facilities since they are engaged with EPA as part of the cleanup process.
10. Rowdy Larkins, resident of Soda Springs, testified that residents impacted by the groundwater contamination and ADC should receive compensation. Mr. Larkins also noted that the proposed ADC boundary impacts county land.
11. Ryan Carpenter, Soda Springs City Councilman, testified that Greenfield Trust should use available funding to expand the City's water supply to all property owners and future developments impacted by the contamination.
12. Mark Steele, resident of Soda Springs, testified that designation of the SSADC may constitute a regulatory taking since owners will not be able to develop their property after the designation. Mr. Steele asked if a regulatory analysis for taking had been completed.
13. Hearing Officer Boe concluded the record and stated that written comments would be accepted until November 16, 2023.

Written Comments

1. The Department collected written comments through November 16, 2023.
2. Justin Steele, resident of Soda Springs, submitted written comments via email on November 7, 2023.
3. The following individuals, all residents of Soda Springs, submitted written comments via mail on November 15, 2023:
 - a. Kyle Parker
 - b. Mark Steele
 - c. Amanda Steele
4. Mitchell Hart, Soda Springs City Council President, submitted written comments via email on November 15, 2023.
5. The written comments received were similar to the testimony given at the public hearing and may be summarized as follows:
 - a. Designation of an ADC may devalue property and potentially constitute a “regulatory taking” of private and public property.
 - b. Designation of an ADC will require specific well drilling construction methods and equipment, including a requirement to drill and seal wells to a deeper aquifer. The additional requirements will increase well drilling costs, and some of the additional requirements may not be feasible.
 - c. Designation of an ADC will restrict drilling of wells for domestic and municipal use in the upper Blackfoot Basalt Aquifer where water quality is generally good and require development of such wells in the deeper Salt Lake formation where water quality is generally poor.
 - d. Increased well drilling costs, or costs to extend the City of Soda Springs’ water service area or infrastructure to areas within the ADC, should be mitigated by the parties responsible for creating the contamination plumes. Property owners should be compensated for any increased costs to obtain water for their property, or a mitigation fund should be created to cover such costs if an ADC is created.
 - e. The ADC boundary proposed by Greenfield Trust is an overreach and does not provide added protection to public health. If the Department designates an ADC, it should consider a boundary that is closer or more proximate to the contamination plume.
 - f. Pumping of an agricultural well located east of the proposed ADC, between the ADC boundary and the City airport, may influence the contamination plume and cause it to move further east.
 - g. Concerns that ADC results in a ‘no-drill’ area. Only two ADCs in the State have been created and neither area has been modified or reduced over time.

GOVERNING LAW

1. Idaho Code § 42-226 states, in pertinent part:

All ground waters in this state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same for beneficial use.

2. Idaho Code § 42-229 states, in pertinent part:

The right to the use of ground water of this state may be acquired only by appropriation. Such appropriation may be perfected by means of the application permit and license procedure as provided in this act

3. Idaho Code § 42-235 states, in pertinent part:

Prior to beginning construction of any well, or changing the construction of any well, the driller or well owner shall obtain a permit from the director of the department of water resources to protect the public health, safety and welfare and the environment, and to prevent the waste of water or mixture of water from different aquifers. . . .

4. Idaho Code § 42-238(12) states, in pertinent part:

The water resource board shall adopt minimum standards for new well construction, modification, and abandonment of existing wells, low temperature geothermal resource well construction and geothermal well construction in this state under the provisions of chapter 52, title 67, Idaho Code. Such standards shall require each well to be so constructed as to protect the ground water of the state from waste and contamination and may include additional requirements for wells drilled in "areas of drilling concern" as designated in accordance with subsection (15) of this section. . . .

5. Idaho Code § 42-238(15) states, in pertinent part:

The director of the department of water resources may designate, as he determines necessary, "areas of drilling concern" on an aquifer-by-aquifer basis within which drillers must comply with the additional requirements of this section. The director shall designate "areas of drilling concern" to protect the public health and to prevent waste or contamination of ground or surface water because of factors such as aquifer pressure, vertical depth of the aquifer, warm or hot ground water, or contaminated ground or surface waters. It is unlawful for any person not meeting the requirements of this subsection to drill a well for any purpose in a designated "area of drilling concern." Any person drilling a new well or deepening or modifying an existing well for any purpose in an "area of drilling concern" as

designated by the director as herein provided shall comply with the following additional requirements:

- (a) Additional bonding requirements as determined by the director, to ensure that the well is constructed or abandoned in compliance with the adopted standards for well construction.
- (b) Additional experience and knowledge in drilling wells encountering warm water or pressurized aquifers as required by rules and regulations adopted by the water resource board.
- (c) Document that specialized equipment needed to drill wells in "areas of drilling concern" as determined by the director, is or will be available to the driller.
- (d) Provide a notice of intent to drill, deepen or modify a well, submit plans and specifications for the well and a description of the drilling methods that will be used, as required by the director; and receive the written approval of the director before commencing to drill, deepen, or modify any well in a designated "area of drilling concern."

Prior to designating an "area of drilling concern," the director shall conduct a public hearing in or near the area to determine the public interest concerning the designation. Notice of the hearing shall be published in two (2) consecutive weekly issues of a newspaper of general circulation in the area prior to the date set for hearing. . . .

- 6. Idaho Code § 42-230(b) defines a "well" as "an artificial excavation or opening in the ground more than eighteen (18) feet in vertical depth below land surface by which ground water of any temperature is sought or obtained."
- 7. Rule 40.01.a of the Well Construction Standards Rules (IDAPA 37.03.09) ("Well Construction Rules") states the following:

The Director may designate an "area of drilling concern" to protect public health, or to prevent waste and contamination of ground or surface water, or both, because of factors such as aquifer pressure, vertical depth to the aquifer, warm or hot ground water, or contaminated ground or surface waters.
- 8. Rule 40.01.c of the Well Construction Rules states the following:

"The designation of an area of drilling concern can include certain aquifers or portions thereof while excluding others."
- 9. Rule 50.01.g of the Well Driller Licensing Rules (IDAPA 37.03.10) ("Well Driller Rules") requires well drillers to obtain written authorization from the Director to drill in ADCs designated by the Department.

10. Rule 10.14 of the Well Driller Rules defines "Drilling or Well Drilling" as "[t]he act of constructing a new well, or modifying the construction, or decommissioning of an existing well."

11. Rule 60.01.b of the Well Driller Rules states the following:

The amount of the bond required prior to drilling in an area of drilling concern, and/or drilling monitoring wells, public water supply wells, or wells with a bottom hole temperature meeting the definition of a low temperature geothermal resource as defined by Section 42-233, Idaho Code, shall be the maximum amount allowed by Section 42-238, Idaho Code.

12. Rule 45.01.e. of the Well Construction Rules states as follows:

The Director will not give verbal approval or allow the use of a start card permit for wells constructed in a designated Area of Drilling Concern, Critical Ground Water Area, or Ground Water Management Area.

13. Rule 25.07 of the Well Construction Rules states, in pertinent part:

Well casings must be sealed in the required annular space with approved material to prevent the possible downward movement of contaminated surface waters or other fluids in any annular space around the well casing . . . Proper sealing is also required to prevent the movement of ground water either upward or downward from zones of different pressure, temperature or quality within the well or outside the casing. . . .

14. Rule 25.07.b of the Well Construction Rules states the following:

"Seals are required at depths greater than thirty-eight (38) feet in artesian wells or to seal through confining layers separating aquifers of differing pressure, temperature, or quality in any well."

15. Rule 25.08 of the Well Construction Rules states the following:

Sealing requirements described herein are minimum standards that apply to all wells. The Director may establish alternative minimum sealing requirements in specific areas when it can be determined through detailed studies of the local hydrogeology that a specific alternative minimum will provide protection of the ground water from waste and contamination.

ANALYSIS

A. Designating an ADC does not result in a regulatory taking because water users may still drill wells and use groundwater in accordance with the well construction requirements.

Some hearing testimony and written public comments suggest that the Department's designation of an ADC and enforcement of related well construction requirements may constitute a regulatory taking.

The United States Constitution and the Idaho Constitution prohibit the taking of private property "without due process of law . . . for public use, without just compensation." *Boise Tower Assocs., LLC v. Hogland*, 147 Idaho 774, 782–83 (2009) (quoting the Fifth Amendment of the United States Constitution as applied to the states through the Fourteenth Amendment); *see also* Idaho Const. art. I, §§ 13–14. Traditionally, the Takings Clause was understood to only apply to the physical direct appropriation of property by the government. *Id.* at 783 (citing *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537 (2005)). However, over time "neither a physical appropriation nor a public use" was a necessary component to constitute a regulatory taking. *Id.* (quoting *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 336 (2002)). A regulatory taking may be broken up into categorical or non-categorical takings. *Id.*

First, a regulatory taking may consist of "two types of regulatory action that constitute categorical or *per se* takings." *City of Coeur d'Alene v. Simpson*, 142 Idaho 839, 848 (2006). The first type of categorical taking exists when the "government requires an owner to suffer a permanent physical invasion of her property—however minor—it must provide just compensation." *Boise Tower Assocs.*, 147 Idaho at 783 (quoting *Lingle*, 544 U.S. at 537). The second type of categorical taking "applies to regulations that completely deprive an owner of *all* economical beneficial use of her property." *Id.* (quoting *Lingle*, 544 U.S. at 538) (cleaned up) (emphasis in original). In other words, the first type of categorical taking occurs when a permanent physical invasion of property by the government eliminates an "owner's right to exclude others from entering and using her property . . ." *Lingle*, 544 U.S. at 539. The second type of categorical taking occurs when the government's action results in "the complete elimination of a property's value . . ." *Id.*

Here, the Department is authorized to supervise and manage the appropriation and allotment of the State's water resources. *Clear Springs Food, Inc. v. Spackman*, 150 Idaho 790, 815 (2011); *see also* I.C. §§ 42-101 & 42-226; Idaho Const. art. XV, § 1, 3. This includes the Department's duty to control the "use of the ground water of this state." I.C. § 42-231. Controlling the use of ground water includes the Department's authority to issue well drilling permits to well drillers and property owners prior to the construction of any well "to protect the health, safety and welfare and the environment." I.C. § 42-235; *see also* IDAPA 37.03.09, 37.03.10. It also includes the Department's authority to designate ADCs and require well drillers to meet well specific well construction standards within an ADC. I.C. § 42-238(15). The first type of categorical taking does not apply because the Department does not physically invade private property and require property owners to drill wells when designating an ADC. The second type of categorical taking also does not apply because designating an ADC and requiring

certain well drilling construction standards does not economically deprive property owners of *all* economic use of their property. Property owners may still drill a well and use the groundwater; however, the well drillers must simply meet the well construction requirements.

Second, most regulatory takings claims are analyzed under the non-categorical catch-all standard. *City of Coeur d'Alene*, 142 Idaho at 848. The factors to consider when deciding whether a non-categorical taking occurs include: “(1) the character of the government action, (2) the economic impact of that action on the property owner, and (3) the extent to which the regulation has interfered with distinct investment-backed expectations.” *Boise Tower Assocs.*, 147 Idaho at 783 (quoting *Penn. Central Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978)). In other words, the third non-categorical taking examines “the magnitude of a regulation’s economic impact and the degree to which it interferes with legitimate property interests.” *Lingle*, 544 U.S. at 540.

Here, designating an ADC does not seek a prohibition against drilling wells within the proposed ADC. *Id.* Rather, designating an ADC requires well drillers to meet certain construction requirements for new domestic wells within the proposed ADC, including drilling to the deeper Salt Lake Formation Aquifer and sealing through the upper Blackfoot Basalt Aquifer. *ADC Petition*, at 5-4. Designation of an ADC by the Department does not result in a “no-drill zone” and does not prohibit the owner of private or public property from drilling a well and using groundwater. Designation of an ADC only adds well construction and bonding requirements outlined in Idaho Code § 42-238(15) to protect public health and groundwater resources. Therefore, the Hearing Officer concludes that designating an ADC in the Soda Springs area with well construction requirements authorized by Idaho Code § 42-238(15) does not constitute a regulatory taking because property owners are still entitled to drill wells in the SSADC and beneficially use that groundwater for its authorized purpose of use.¹

B. The ADC boundary includes the lateral and vertical extent of the ground water contamination plumes and a reasonable buffer for a margin of safety along the plumes.

Hearing testimony and written public comments state that Greenfield Trust’s proposed ADC boundary is either arbitrary or an overreach because the boundary is placed along property line boundaries and not closer to documented contaminated plume boundaries. Some written comments noted that placing ADC boundaries further away from the contamination plumes does nothing to protect public health or groundwater resources.

According to the *ADC Petition*, the proposed ADC boundary has a total area of about 1,800 acres “with a lateral buffer of approximately 300 to 1,000 feet for a margin of safety along the plume edges.” *ADC Petition*, at 5-2. The Greenfield Trust proposed the ADC boundary based on a groundwater investigation that sampled contaminant concentration levels to develop the extent of the boundary. *Id.* at 5-1. The study revealed:

¹ One written comment referenced the Office of the Attorney General Idaho Regulatory Takings Act Guidelines when claiming the designation of an ADC constitutes a regulatory taking. The Hearing Officer’s conclusion is consistent with the takings analysis in those guidelines.

The lateral and vertical extents of the [contaminated] Site ground water plumes have been well-characterized through multiple [long-term] well installation and sampling programs. . . . Site remedial actions have been successful in reducing molybdenum and vanadium loading to groundwater. While molybdenum and vanadium concentrations are decreasing at many on-Site and off-Site monitoring locations, *the plume configurations in terms of the extent of RSL exceedances for both molybdenum and vanadium have remained stable for the last several years.*

Id. (emphasis added). In other words, the study revealed that the proposed ADC boundary should encompass the groundwater plume configurations that reflect consistent contaminant concentration levels over the years.

The Hearing Officer concurs that the ADC boundary should include the areal extent of the groundwater contamination plumes identified by Greenfield Trust plus a reasonable buffer for a margin of safety along the edges of the combined plumes. Instead of using property boundaries, the Hearing Officer will use an ADC boundary determined by locating the nearest public land survey (“PLS”) quarter-quarter (“QQ”) section line boundary outside of a 100-foot wide buffer around the combined contamination plumes. The nearest PLS QQ boundary is recommended because that is the common and smallest legal description unit used by the Department for locating wells in well construction permit applications; well construction reports (well logs); ground water studies; and water rights applications, claims, permits, licenses and decrees.

Wells constructed within the 100-foot contamination plume buffer must comply with additional drilling requirements to protect public health and groundwater resources for new domestic and municipal wells within the ADC. The Hearing Officer recognizes that the PLS QQ boundary may expand beyond the 100-foot buffer. As described in Section 3 of the order section below, the Department may waive certain ADC well construction requirements for any domestic or municipal well proposed to be drilled between the 100-foot contamination plume buffer and the ADC or PLS QQ boundary, provided certain conditions are met. The opportunity to receive a waiver addresses the public concerns about increased drilling requirements and costs within the ADC boundary and outside of the contamination plume. The ADC boundary is identified in Attachment A.²

C. The Department does not have the authority to require Greenfield Trust to establish a mitigation fund to pay for increased drilling costs.

Hearing testimony and public comments proposed that Greenfield Trust or others responsible for groundwater contamination should establish a mitigation fund to pay for either extension of city water infrastructure services, development of reliable future water supplies, or

² Two public comments also raised a concern that an irrigation well located on private property east of the proposed ADC and west of the Soda Springs airport may influence the contamination plume boundary in that area. However, individuals submitting this comment offered no study or evidence regarding the extent of influence on the plume boundary from pumping the irrigation well in question. No testimony or evidence was presented to confirm whether pumping of the irrigation well influences the contamination plume.

directly compensate private and public property owners for any increased drilling costs that may be associated with proposed ADC well construction requirements.

While the *ADC Petition* did not propose any mitigation fund or direct compensation strategy related to extending or developing water supplies for private domestic or public municipal use, the Greenfield Trust stated:

If any additional [existing] private wells are discovered (within or outside of the ADC) and determined to be impacted by Site-related groundwater contamination, the [Greenfield] Trust will evaluate the most feasible option for providing clean potable water (e.g., well abandonment, deepening an existing well, drilling a new well, or connecting the user to city water).

ADC Petition, at 5-3.

Idaho law limits the Department's jurisdiction to the designation of an ADC within which drillers must comply with additional requirements to protect public health and prevent waste or contamination of ground or surface water. I.C. § 42-238(15). Idaho law does not authorize the Department to require parties responsible for groundwater contamination to create mitigation funds for delivery or development of potable water supplies, or to directly compensate property owners for potential increased well construction costs associated with additional drilling requirements resulting from an ADC designation.

ORDER

IT IS HEREBY ORDERED THAT:

1. Pursuant to Idaho Code § 42-238(15), an Area of Drilling Concern is hereby designated for the Soda Springs area ("Soda Springs Area of Drilling Concern" or SSADC"). The boundary of the SSADC is set forth in Attachment A of this Order. The SSADC encompasses an area of approximately three square miles. The SSADC Boundary was determined by locating the nearest public land survey quarter-quarter section line boundary outside of a 100-foot wide buffer to the contamination plume documented in the *ADC Petition*, or the closest recognizable surface water feature (i.e., Bear River).
2. Any person or driller who proposes to drill a new well; modify or change the construction of an existing well; or decommission an existing well for any purpose in the SSADC shall comply with the additional requirements of Idaho Code § 42-238(15) as follows:
 - A. A driller proposing to drill a well within the SSADC shall have on file with the Department the additional bonding required by Rule 60.01.b of the Well Driller Licensing Rules (IDAPA 37.03.10). The amount of the bond, as determined by the Director, shall be adequate to abandon or reconstruct the well to protect the resource and in no event shall the bond be less than \$20,000.
 - B. A driller proposing to drill a well within the SSADC shall have additional experience and

knowledge in drilling wells as required by Rule 40.03 of the Well Construction Standards Rules (IDAPA 37.03.09), and shall provide documentation of such experience and knowledge when requested by the Director.

- C. A driller proposing to drill a well in the SSADC shall receive written approval from the Director before commencing well drilling in the SSADC in accordance with the following provisions:
1. Prior to commencing any well drilling activity (including decommissioning of an existing well) in the SSADC, an application for drilling permit shall be submitted to the Director. The practice of issuing the "start card" procedure is not applicable in the SSADC, as provided in Rule 45.01.e of the Well Construction Rules (IDAPA 37.03.09).
 2. An application to drill a well in the SSADC shall include a drilling prospectus prepared by an engineer or geologist licensed in Idaho. The Director may waive the requirement for the prospectus to be prepared by an engineer or geologist if the well depth will not exceed the depth of the Blackfoot Basalt formation. IDAPA 37.03.09.025.02. The prospectus shall include a diagram of the finished well showing all pertinent dimensions, a narrative describing the materials, methods, and timing/sequence to be used in the drilling operation, and an aerial photograph (8 inch to the mile scale) or a plat of similar scale showing the well site relative to the "Affected Area" and other wells within a 500 foot radius of the proposed well, and the ownership of the adjoining properties. The prospectus shall be signed by the owner, well driller, and the engineer or geologist preparing it. Unless waived by the Director, the prospectus shall provide for the following:
 - a. Wells to be used for human consumption shall be designed and drilled to assure that water is not withdrawn from the shallow or Blackfoot Basalt aquifers within the SSADC. A well may be drilled or modified to withdraw water from the shallow aquifer (1) for irrigation if the place of use is inside the boundaries of the SSADC or (2) for other uses outside of the boundaries if the water is treated to meet drinking water standards and the public health and the environment are protected.
 - b. Wells drilled for production of water below the Blackfoot Basalt aquifers within the SSADC shall be drilled using methods described in the drilling prospectus and approved by the Director. Wells that penetrate only the shallow or Blackfoot Basalt aquifers may be drilled using other methods to meet the conditions of the drilling permit and this order.
 - c. If the drilling permit application is for decommissioning of a well, the prospectus shall provide for decommissioning using a tremie pipe or pressure grouting procedure to place a high solids bentonite grout or a non-shrinking cement grout from the bottom of the well to the top. If the casing is to be left in place, the prospectus shall include procedures to assure that bentonite grout or

non-shrinking cement grout fills the annular space outside of the casing to prevent vertical movement of water.

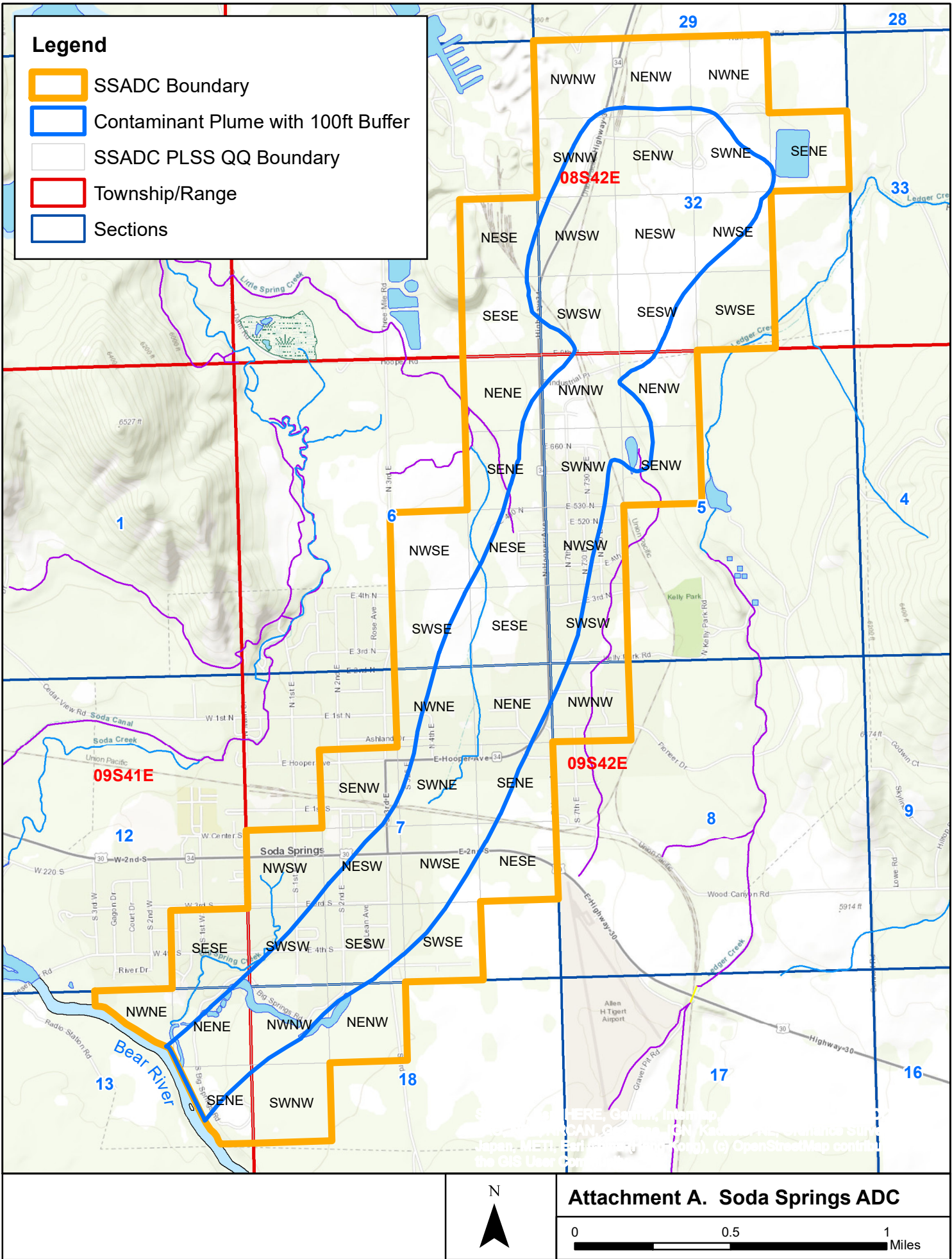
- d. A prospectus will provide that any drilling permit issued by the Department in the SSADC shall reflect that the owner and well driller acknowledge that they have read and understand the permit requirements in writing.
3. The Department may waive certain ADC well construction requirements for any domestic well proposed to be drilled between the 100-foot contamination plume buffer and the ADC or PLS QQ boundary, provided the following two conditions are met: (1) the well location is sited outside of the 100-foot buffer contamination plume by any person licensed as a Professional Land Surveyor or Professional Engineer by the Idaho Board of Professional Engineers and Land Surveyors, and (2) water from the completed well is sampled and tested to verify that site related contaminants of concern are below EPA tap water RSLs. If the water quality sample exceeds EPA tap water RSLs, then the well should be decommissioned in accordance with Department's Well Construction Rules. Similarly, the Department may waive ADC well construction requirements for any well used for municipal purposes provided the well is located outside of the 100-foot contamination plume buffer, and the well is tested to assure water quality is below EPA tap water RSLs and Idaho groundwater quality standards and public water supply requirements.

Dated this 20th day of June 2025.



Erik Boe, Hearing Officer

Water Compliance Bureau Chief, IDWR



CERTIFICATE OF SERVICE

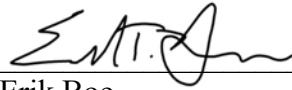
I HEREBY CERTIFY that on this 20th day of June 2025, I caused to be served a true and correct copy of the foregoing *Preliminary Order* via email and U.S. Mail, upon the following:

Lars Peterson	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid
Senior Project Manager	<input type="checkbox"/> Hand Delivery
Greenfield Environmental Multistate Trust LLC	<input type="checkbox"/> Overnight Mail
Trustee of the Multistate Environmental	<input type="checkbox"/> Facsimile
Response Trust	<input checked="" type="checkbox"/> Email
3601 W Golden Lane	
Chandler, AZ 85226	
lp@g-etg.com	

Courtesy copies via email to:

Theo Von Wallmenich – Greenfield Environmental Multistate Trust LLC
Cindy Brooks – Greenfield Environmental Multistate Trust LLC
Anna Grace – Greenfield Environmental Multistate Trust LLC
Nick Nielsen – Idaho Department of Environmental Quality
Stan Christensen – Idaho Department of Environmental Quality
Gina Dixon – Idaho Department of Environmental Quality
Mitch Hart – City of Soda Springs
Shalynn Hennefer – City of Soda Springs
Mark Mathews – Caribou County Commissioners
Bryce Somsen – Caribou County Commissioners
Marty McCullough – Caribou County Commissioners
Roger Batt – Idaho Ground Water Association
Sam Kingrey – Idaho Ground Water Association
Bill Tanner – Idaho Ground Water Association
Jake Kingrey – Idaho Ground Water Association
Anthony Broadie – Idaho Ground Water Association
John Bishop – Idaho Ground Water Association
Andy Clark – Idaho Ground Water Association
Monte Post – Idaho Ground Water Association
Rod Hendricks – Idaho Ground Water Association
Garrett Post – Idaho Ground Water Association
Kenny Vollmer – Idaho Ground Water Association
Zoë Lipowski – US Environmental Protection Agency
Maria Lopez – US Environmental Protection Agency
Nick Vidargas – US Environmental Protection Agency
Ed Moreen – US Environmental Protection Agency
Joel Gerhart – Gerhart Engineering
Terry Biere – Pioneer

Mark Rhodes – Hydrometrics
Mark Walker – Hydrometrics
Amanda Steele – Resident
Justin Steele – Resident
Kyle Parker – Resident
Mark Steele – Resident
Mitch Hart – Resident
Senator Mark Harris – Senator
Representative Kevin Andrus – Representative
Representative Josh Wheeler – Representative
Mayor Austin Robinson – Mayor
Scott Corn – Drilling Contractor

A handwritten signature in black ink, appearing to read 'Erik Boe', positioned above a horizontal line.

Erik Boe
Water Compliance Bureau Chief

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 53 and 202.

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 67-5246(3), and 67-5270 through 67-5279, 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.