

Big Wood River GWMA Advisory Committee

Proposed Process Steps: History, Issues¹, Positions², Problem Solving & Agreement

1. Focus on Issues, Background & Technical Data (first few meetings)

- A. Review background information including
 - i. Summarize recent settlement discussions between parties
 - ii. Water sources and delivery systems
 - 1. Understand who gets what and where
 - a. Overview (already covered to some extent by Kevin)
 - b. Address exchange contracts
 - c. Address conversion water (Dietrich track/other areas)
 - d. Kevin follow-up: review typical main surface water deliveries to Richfield Canal and Lincoln By-pass plus system losses/gains
 - iii. Water administration and legal system
 - 1. Delivery calls & Conjunctive Management Rules (CMRs)
 - a. Criteria for calls
 - b. Areas of Common Ground Water Supply
 - c. Review some CMR delivery calls and court decisions
 - 2. GWMA and GWMA Plans – legal requirements
 - 3. Address additional questions
 - iv. Technical Data
 - 1. Current/Recent water use (ground water & surface water)
 - a. Surface water deliveries in WD37 & 37B
 - b. Ground water use in WD37 & 37B
 - c. Magic Reservoir fill
 - d. Milner-Gooding deliveries, injections
 - 2. Ground Water Trends & Ground Water Model
 - a. GW level trends in BWGWMA (Upper Wood & Camas)
 - b. Overview of Ground Water Model
 - c. GW Model Curtailment/Reduction Scenarios
 - i. impacts to aquifer
 - ii. impacts to hydraulically connected sources
 - d. Sufficiency of ground water supply
 - 3. Address data gaps and additional questions

¹ **Issue:** A topic to be discussed, a problem to be solved or a question to be answered.

² **Position:** A party's stated, desired outcome

2. Narrow Issues, Form Positions (additional meetings)

- A. Summary of Issues
- B. Reframe or Narrow Issues
 - i. Revisit information and data as needed
- C. Identify Positions & Problem Solve
 - i. Discuss and propose solutions
 - ii. Strawman proposal(s)
 - 1. solutions brainstorming
 - 2. written proposals

3. Draft Plan & Agreement

- A. Draft Management Plan & Draft Agreement
 - i. Move from strawman proposal to draft plan & agreement

4. Reach Final Agreement

- A. Parties finalize Management Plan & Agreement



Ground Water Management Areas vs Delivery Calls: What is the difference?

Presentation to the Big Wood Ground Water Management
Area Advisory Committee

NOVEMBER 18, 2020



Ground Water Management Areas

Definition of a GWMA

- ▶ A "ground water management area," is a ground water basin or part thereof that the Director determines may be approaching the condition of not having sufficient ground water to provide a reasonably safe supply for irrigation and other uses in the basin under current or projected rates of withdrawal
- ▶ Big Wood GWMA created on June 28, 1991

Ground Water Management Areas

- ▶ I.C. 42-233b authorizes the Director of IDWR to designate a GWMA
- ▶ The Director can create on own initiative or as a result of a petition
- ▶ No requirement to hold hearing first
- ▶ Upon designation of a GWMA, the Director shall publish notice in newspaper for two weeks
 - ▶ If a hearing is requested, the Director must hold a hearing

Utility of a GWMA: Additional water management mechanisms

- ▶ Director can require all water right holders in the area to report withdrawals of ground water and other necessary information
- ▶ Director can order water right holders in the area to cease or reduce withdrawals on a time priority basis upon the determination that the supply is insufficient to meet the demands of water rights within the area
- ▶ Director can limit approval of new water right applications

Utility of a GWMA: Additional water management mechanisms

- ▶ Director can approve a management plan for the area
 - ▶ The plan must provide for managing the effects of ground water withdrawals on the aquifer from which withdrawals are made and on any other hydraulically connected sources of water
 - ▶ Water right holders participating in an approved plan are not subject to curtailment so long as they are in compliance with the ground water management plan

Delivery Calls

Delivery Calls

- ▶ Delivery calls are commenced by the filing of a petition with the Director.
- ▶ When a delivery call is made, the Director turns to the *Rules for Conjunctive Management of Surface and Ground Water Resources* (“Conjunctive Management Rules or CM Rules”), IDAPA 37.03.11.
- ▶ The CM Rules “prescribe the procedures for responding to a delivery call made by the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right in an area having a common ground water supply.”

First Big/Little Wood Delivery Call:

- ▶ In February of 2015, members of the Big Wood and Little Wood Water Users Association (“the Association”) submitted letters to the Director requesting administration of ground water rights hydraulically connected to the Big and Little Wood rivers
 - ▶ Director commenced a contested case
 - ▶ A *Motion for Summary Judgment* was filed by Sun Valley Company (“SVC”), alleging that Director must dismiss the petition because the Association failed to serve notice of the filing consistent with CM Rule 30
 - ▶ The Director denied the motion, saying that CM Rule 40 applied and the filing met the requirements of CM Rule 40
 - ▶ SVC appealed the decision and the District Court sided with SVC

First Big/Little Wood Delivery Call: continued

- ▶ The Court held that neither Rule 30 nor Rule 40 squarely applied to the Association's call...
- ▶ but because the Big Wood basin had not been designated an area having a common ground water supply yet, Rule 30 (and Rule 31) were the rules that should be followed...
- ▶ this is because Rules 30 and 31 provide a procedure for establishing an area of common ground water supply.

First Big/Little Wood Delivery Call: continued

- ▶ Rule 30 provides a list of certain things that must be in a petition:
 - ▶ The senior must allege the area he believes to be the area of common ground water supply
 - ▶ The senior must identify the junior users within that area
 - ▶ The senior must serve his petition on the junior users within that area
- ▶ Because the petition filed by the Association did not comply with Rule 30, it was dismissed

Second Big/Little Wood Delivery Call:

- ▶ In March of 2017, the Association filed a second delivery call, this time under CM Rule 30
- ▶ The petition:
 - ▶ Identified the Wood River Valley Aquifer Model study area as the area of common ground water supply
 - ▶ Identified the names and water rights of the juniors allegedly causing injury
- ▶ Petitioners served the petition on the juniors

Second Big/Little Wood Delivery

Call: continued

- ▶ SVC again challenged the filing but this time on standing grounds
- ▶ SVC argued that the claims asserted by the Association require the participation of the individual members of the Association in the contested case.
- ▶ The Association argued its Petition seeks a form of prospective relief, and consequently, does not require the direct participation of its members.

Second Big/Little Wood Delivery Call: continued

- ▶ The Director agreed with SVC:
 - ▶ “The Association does not have standing to petition for delivery of its members' senior priority water rights and to seek a general remedy for all the senior priority water right holders.”
 - ▶ “The holders of the individual senior priority water rights must petition for delivery of their water rights.”
- ▶ The Director dismissed the petition, holding that the delivery call must be filed in the name of the individual members
- ▶ No appeal of this decision

Area of Common Ground Water Supply

- ▶ Definition of an Area of Common Ground Water Supply (“ACGWS”) per CM Rule 10.01:
 - ▶ A ground water source within which the diversion and use of ground water, or changes in ground water recharge, affect the flow of water in a surface water source,

ACGWS: continued

- ▶ An ACGWS applies only to delivery calls (not to GWMA)
- ▶ Only one area of the state has designated an area of common ground water supply
- ▶ We learned in the first BW delivery call case that if there is no ACGWS designated for the area in which the delivery call is made, the Director determines the ACGWS through the process outlined in CM Rule 31
 - ▶ Rule 31 contemplates a hearing process where data are presented and the Director makes a determination

Water Supplies (Delivery Call)

- ▶ In a delivery call, the Director must evaluate whether the senior water right holder has suffered material injury.
- ▶ The CM Rules provide a list of the factors that the Director may consider in his determination of a senior right holder's material injury.
- ▶ CM Rule 42.01 (g) allows the Director to consider “[t]he extent to which the requirements of the holder of a senior-priority water right could be met with the user's existing facilities **and water supplies** by employing reasonable diversion and conveyance efficiency and conservation practices.”

Water Supplies (Delivery Call): continued

- ▶ In SWC delivery call, Director considered seniors use of storage water
- ▶ Court confirmed that the Director can consider storage
- ▶ Reasonable Carryover of stored water
- ▶ “Neither the Idaho Constitution, nor statutes, permit irrigation districts and individual water right holders to waste water or unnecessarily hoard it without putting it to some beneficial use.”
 - ▶ Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res., 143 Idaho 862, 880, 154 P.3d 433, 451 (2007)
- ▶ “Somewhere between the absolute right to use a decreed water right and an obligation not to waste it and to protect the public's interest in this valuable commodity, lies an area for the exercise of discretion by the Director.”
 - ▶ Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res., 143 Idaho 862, 880, 154 P.3d 433, 451 (2007)

Extent of Beneficial Use (Delivery Call)

- ▶ Because the amount of water necessary for beneficial use can be less than decreed or licensed quantities, it is possible for a senior to receive less than the decreed or licensed amount, but not suffer injury
- ▶ The Director may, consistent with Idaho law, employ a baseline methodology for management of water resources and as a starting point in administration proceedings
- ▶ The baseline can look to amount of water necessary for beneficial use

In Matter of Distribution of Water to Various Water Rights Held By or For Ben. of A & B Irrigation Dist., 155 Idaho 640, 650, 315 P.3d 828, 838 (2013)

Mitigation Plan in a Delivery Call

- ▶ Defined in CM Rule 10.15:
- ▶ A document submitted by the holder(s) of a junior-priority ground water right, and approved by the Director as provided in Rule 43, that identifies actions and measures to prevent, or compensate holders of senior-priority water rights for, material injury caused by the diversion and use of water by the holders of junior-priority ground water rights within an area having a common ground water supply
- ▶ Reviewed and approved under CM Rule 43
- ▶ A water user in compliance with a mitigation plan is not subject to curtailment in a delivery call

GWMA vs. Delivery Call

- ▶ If a junior ground water user is in compliance with a GWMA plan, are they then protected from curtailment in a delivery call?
 - ▶ 42-233b says “Water right holders participating in an approved ground water management plan *shall not be subject to administration on a time priority basis* so long as they are in compliance with the ground water management plan.



Questions?



Big Wood River Ground Water Management Area

Advisory Committee Meeting

IDWR Presentation – Historical Review

Shoshone, ID; 11/18/2020

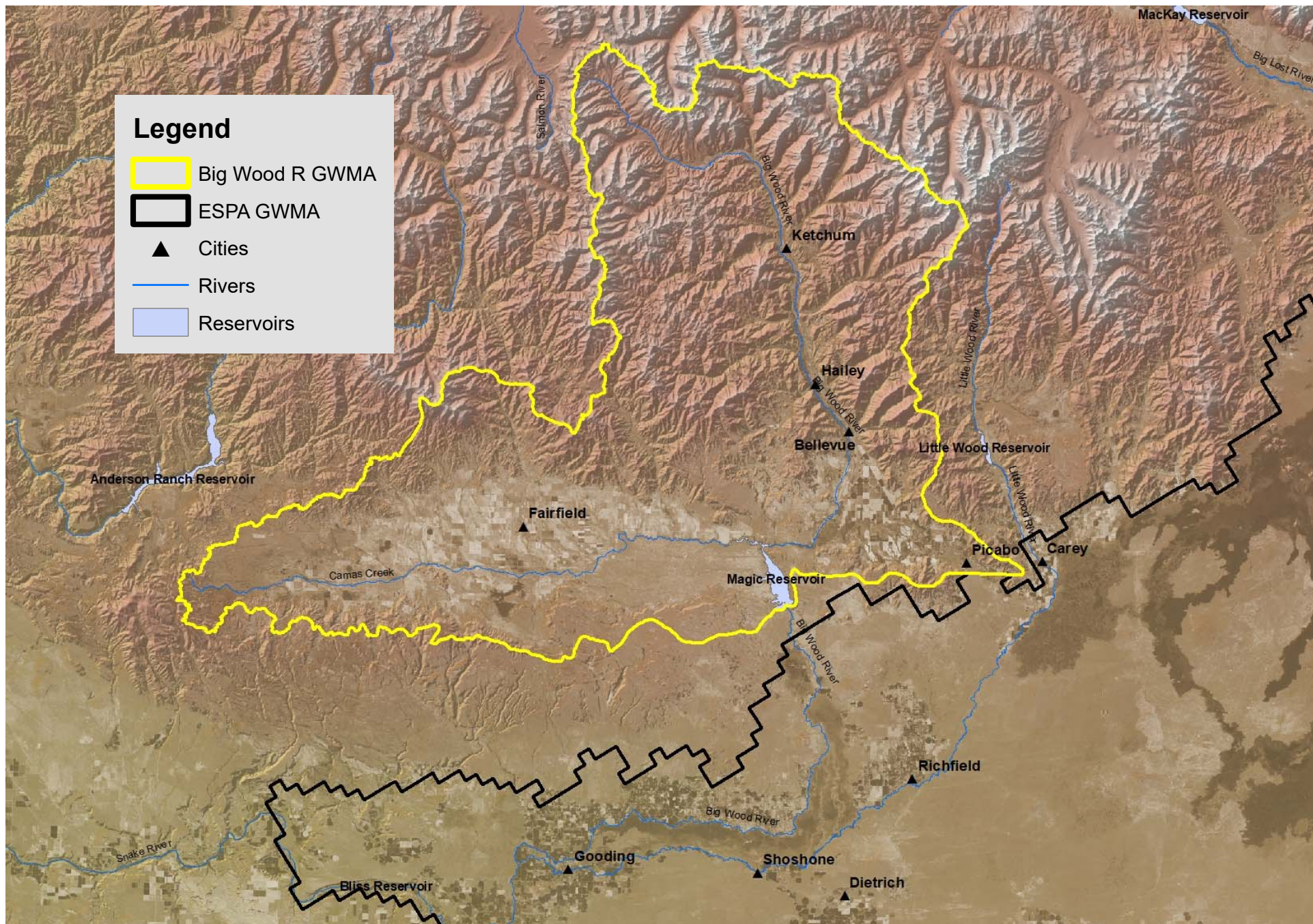


History: GWMA Designation

- 1961: Idaho Dept. of Reclamation designates Silver Creek Critical Ground Water Area
 - Primary Concern: Loss of artesian pressure in wells
 - Area: Bellevue Triangle
 - Rescinded 1966
- 1980: IDWR policy memo declares surface water upstream of Magic Reservoir fully appropriated
 - Moratorium on new surface water rights above Magic Res.
 - No moratorium on new ground water rights

History: GWMA Designation

- 1982 – 1988: Swan Falls Moratorium
- 1991: IDWR Designates Big Wood River GWMA
 - Primary Concern: Potential injury to senior surface and ground water rights including Magic Res.
 - Area: Big Wood River drainage above Magic Res., including Camas Creek drainage and Silver Creek drainage in Bellevue triangle area



History: GWMA Designation

- 1991 Big Wood River GWMA Management Policy
 - GWMA is preferred
 - Potential meas. & reporting post SRBA
 - Potential conjunctive mgmt. post SRBA
 - Moratorium on new water rights (ground & surface)
 - Exceptions: domestic, non-consumptive, municipal with limits, new consumptive use applications if no injury or acceptable mitigation

History: GWMA Designation

➤ GWMA Defined – Idaho Code § 42-233b:

“any ground water basin or designated part thereof which the director has determined may be approaching a critical ground water area.”

➤ CGWA Defined – Idaho Code § 42-233a:

“any ground water basin or designated part thereof, not having sufficient ground water to provide a reasonably safe supply for irrigation of cultivated lands, or other uses in the basin at the then current rates of withdrawal,”

History: Additional Moratoriums

- 1992 - present: ESPA Moratorium
 - Moratorium on new water rights (gw & sw) in Snake River basin upstream of Weiser, including ESPA & tributary basins (includes Big Wood River & Camas Creek drainages above Magic Res., & Silver Creek/Little Wood River drainages)
 - Amended 1993 to ESPA & tributary basins + Boise River basin

History: BWRGWMA

- 1994: IDWR proposes Conjunctive Management Rules
 - Legislature adopts in 1995

History: BWRGWMA & SRBA

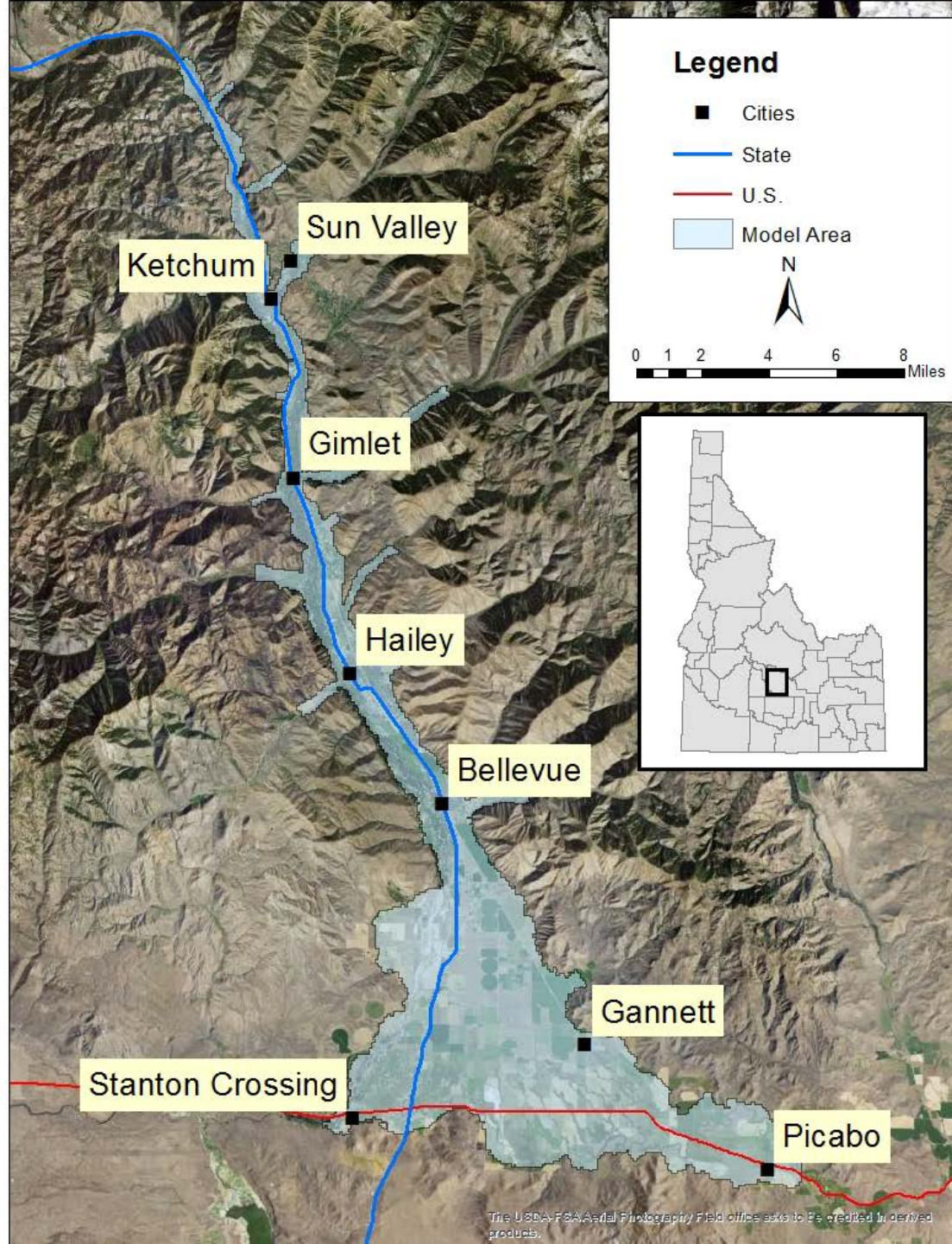
- Partial Decrees for ground water rights issued between 2009 - 2011
- 2011: Water Measurement District Created
 - Ground water rights/wells in BWRGWMA & portions of Basin 37 outside of ESPA
 - Flow meters required by 2013 (or 2014 if irrig. ≤ 5 acres)
- 2013: SRBA Court issues Interim Administration Order
 - Authorizes IDWR to distribute water in water districts in accordance with partial decrees & SRBA Director's Reports

History: BWRGWMA & SRBA

- 2013: IDWR modifies WD37 and WD37B
 - WD37 & WD37M consolidated
 - Ground water rights within Big Wood R. drainage above Magic Res. & Silver Creek drainage added to WD37
 - WD37B: one district for Camas Creek/Camas Prairie drainage area including surface & ground water rights
- 2014: SRBA Final Unifying Decree

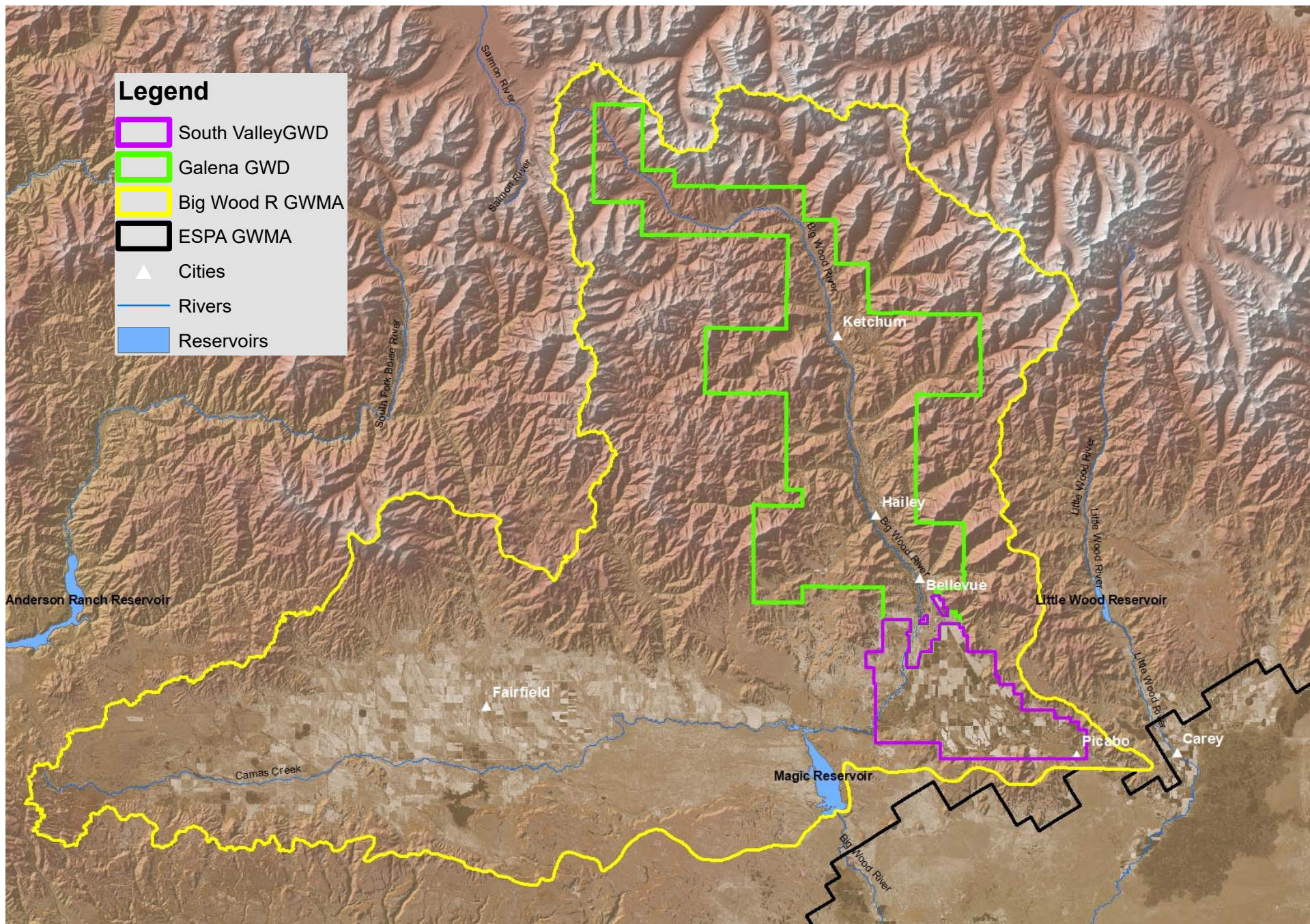
History: BWRGWMA – Post-SRBA

- 2013: GW Model Development begins
 - IDWR-USGS partnership
 - Why Model needed?
 - Big Wood R upstream of Magic Res fully appropriated (1980)
 - GW/SW are hydraulically connected (1991)
 - Evaluate gw/sw interaction
 - Tool of choice for planning, water resource management, and conjunctive administration
- 2016: GW Model completed



History: BWRGWMA – Post-SRBA

- 2015: Ground Water Districts formed
 - South Valley GWD (Bellevue Triangle area)
 - Galena GWD (upper valley area, north of triangle)



History: BWRGWMA – Post-SRBA

- 2015: Delivery Call by Big Wood & Little Wood Water Users Association (BWLWWUA)
 - Treated as delivery call pursuant to Conjunctive Management Rules (CMRs)
 - Two cases created (Big Wood & Little Wood)
 - Both cases dismissed in 2016 by IDWR after litigation among parties over CMR procedural issues

History: BWRGWMA - Post-SRBA

- 2017: Second Delivery Call by BWLWWUA
 - Treated as two delivery calls per CMRs
 - Both cases dismissed by IDWR in 2017 due to procedural issues under CMRs

History: BWRGWMA - Post-SRBA

- 2018-2020: Settlement Discussions - gw/sw users
 - Miscellaneous/on & off?
 - Management/Mitigation Plans discussed?
- 2020: GW Mgmt. Plan submitted to IDWR by GWDs
 - Director forms GWMA Advisory Committee

Summary of Recent GW-SW User Settlement Discussions

- **Committee Member Participation**
 - **Summary from GW User Perspective**
 - **Summary from SW User Perspective**

