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Director Spackman
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Sent via electronic mail

RE: Lack of Need to Create an ESPA Ground Water Management Area.

Dear Director Spackman,

As you are aware, this firm represents both surface water and ground water interests in the upper Snake River Valley, including Fremont Madison Irrigation District and Madison Ground Water District. We received your July 7, 2016 letter which provided that the Department "is considering creating a ground water management area for the Eastern Snake Plain Aquifer (ESPA)," and invited "[p]otentially affected water users" to attend one or more often (10) meetings scheduled across Eastern Idaho between July 25, 2016 and July 28, 2016. Many of our clients were in attendance to those meetings. Our clients were there to recommend AGAINST the designation of a GWMA. Following each meeting, those attending were encouraged to file written comments in addition to their oral comments. Therefore, this letter is being sent in order to further those several comments made at the various meetings (especially those in the upper valley) and add some addition reasoning as to why we do not believe that there is a need to create the GWMA for the ESPA.
As stated above, our clients do not believe that it is necessary or appropriate to create the proposed GWMA for the ESPA at this time. Some of our reasons for this position are briefly stated as follows:

1. Based upon the settlement agreement between IGWA and the various Ground Water Districts (Settlement), we believe that to create a GWMA would be disruptive to the present mitigation and the actions parties have already undertaken to comply with the overall objectives set for in the Settlement. Based upon the Settlement, the parties have taken actions assuming that to comply with the terms of the Settlement and the further interactions and decisions of IGWA and their respective Ground Water Districts was all that would be required of them. To now add

additional decisions, rules and regulations on top of the Settlement and those interactions they have taken would be similar to changing the Settlement terms after it has not only been signed but actions have been taken at great expense to both ground water users and to those surface water users who are supplying them mitigation waters.

2. The Legislative authorized Conjunctive Management Rules (CM Rules) are a sufficient mechanism and provide the necessary tools to the Director in order to determine to what extent diversions impact each other. They have been appropriately used in the hearings before the Director to date and have lead to the Settlement which is well into its first year of compliance. We recognize that Rule 50 of the CM Rules is being challenged as to whether it's ESPA outer boundary should be extended to cover additional areas claimed to have a common ground water supply. However, we would argue that addressing that issue within the CM Rules themselves is the appropriate way to treat this matter, including going to the process of rulemaking if necessary which gives all users the right to be heard and present their evidence.

3. As you, the Director, have inferred in earlier meetings on this subject, we too are very concerned with the lack of details and the seemingly unbridled authority granted to the Director under Sec. 42-233b. Although one could argue that the Department and the Director will closely follow and support the Settlement, there is nothing in the GWMA statute which places any shoulders upon the direction another Director might go with the power granted. Because this particular statue is lacking in historical use and its very terms, then until it is modified by the legislature to provide for further protection to all water users, on either side of the issue, it should not be used in the ESPA, especially when there is already a Settlement which is committed to "fixing" the aquifer.

4. The argument that a GWMA is necessary to get all users to come to the table and be part of the "fix" of the aquifer should not be the rationale for creating a GWMA. Although not everyone is presently participating in the Settlement, those who are not are mostly either outside of the present CM Rule 50 or are in the process of petitioning into their nearest Ground Water District. The Ground Water Districts are doing what is necessary in order to comply with the Settlement and in so doing, are undertaking exactly what should be the goal of a GWMA anyway. As stated above, if CM Rule 50's boundary needs to be addressed, the CM Rules already provide for that.

5. Furthermore, the area which this firm represent, has worked out a mitigation plan with IGWA under the Agreement which more than compensates for the groundwater withdrawals of All lands within Fremont Madison Irrigation District, ALL of District 100 and ALL of Madison Ground Water District. In other words, even though not required to do so until and unless CM Rule 50 is modified to include a larger area, we have nevertheless undertaken to fully mitigate our ground water diversions of the entire area. To continue to claim that our area, because it isn't yet fully covered by an organized Ground Water District, is part of the diversions not contributing to the "fix" is incorrect.

6. Finally, because the present mitigation being undertaken by the GWDs and others as stated above, the argument by those supporting the GWMA makes one ask - where is the need for any additional protection? We fully support Sun Valley Company in its present Petition for Declaratory Ruling as to its claims that: "Any attempt by the Director or the Department to expand the boundaries of the ESPA area of common ground water supply to include the entirety of Basin 37 [or any basin or reach outside of the present CM Rule 50] by designating Basin 37 [or any basin or reach outside of the present CM Rule 50] as part of an ESPA GWMA outside the context of a formal rulemaking or contested case proceeding is in contravention of the Groundwater Act, the CM Rules, and the common law set forth by Idaho trial and appellate courts derived therefrom." (brackets added).

Therefore, for the reasons stated above together with the arguments made by the upper valley water users at the various hearings by the Department, we recommend that the Director NOT designate the ESPA or its tributaries as a Ground Water Management Area.

Sincerely,

Jerry R. Rigby

JRR/md
sb/spackmangary.ltr