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IN THE SUPREME COURT FOR THE STATE OF IDAHO

Supreme Court Docket No. 49632-2022

SOUTH VALLEY GROUND WATER DISTRICT and GALENA GROUND WATER DISTRICT,

Petitioners-Respondents-Cross Appellants,

v.

THE IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN, in his official capacity as Director of the Idaho Department of Water Resources,

Respondents-Appellants-Cross Respondents,

and

SUN VALLEY COMPANY, CITY OF BELLEVUE, BIG WOOD CANAL COMPANY, BIG WOOD & LITTLE WOOD WATER USERS ASSOCIATION, CITY OF POCATELLO, CITY OF KETCHUM, and CITY OF HAILEY,

Intervenors-Respondents.

IDWR APPELLANTS' COMBINED REPLY & CROSS-RESPONSE BRIEF

On Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine, Case No. CV07-21-00243

Honorable Eric J. Wildman, District Judge, Presiding

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I. INTRODUCTION

Idaho's prior appropriation doctrine allocates the risk of water shortage, a risk junior ground water users in the Bellevue Triangle never faced before this case. The juniors withdraw water from the aquifer that supplies Silver Creek, the Little Wood River, and ultimately senior surface water users' diversions. In 2021, water was scarce as anyone on those streams could remember. The watermaster shut off senior surface water rights dating to the 1880s, earlier than ever before, risking crops and livelihoods in the process. As is tradition in water districts across Idaho, those senior surface rights were curtailed with minimal notice and no hearing. The watermaster simply measured the seniors' rights against the dwindling surface water supply and adjusted headgates accordingly. Meanwhile, the juniors continued to pump.

Seeking to prolong this untenable status quo, junior ground water appropriators in South Valley Ground Water District and Galena Ground Water District ("Districts") argue the Director unlawfully curtailed their pumping. The Districts and their supporters insist the Director cannot administer interconnected surface and ground water rights by any means other than the Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11 ("CM Rules"). They are wrong. Protracted delivery call litigation under the CM Rules is not the only way to uphold the principle that, as between appropriators beneficially using water from interconnected sources, the first in time is first in right. The district court held the Director may enforce that principle without a delivery call by initiating a proceeding under Idaho Code § 42-237a.g. The district court also held the CM Rules do not limit or supersede the Director's authority under § 42-237a.g. This Court should affirm both holdings.

Beyond those threshold issues lies the heart of the matter: Whether curtailing junior ground water rights in-season for the benefit of interconnected senior surface water rights—in a water district suffering unprecedented drought—accords with the prior appropriation doctrine. To ensure curtailment will benefit a senior appropriator, the prior appropriation doctrine requires analysis of both priority of right and beneficial use of water. However, this Court has repeatedly emphasized the curtailment analysis must follow longstanding presumptions, burdens, and evidentiary standards. *Am. Falls Reservoir Dist. No. 2* ("*AFRD2*") *v. IDWR*, 143 Idaho 862, 873–74, 154 P.3d 433, 444–45 (2007); *A&B Irr. Dist. v. IDWR*, 153 Idaho 500, 516–20, 284 P.3d 225, 241–45 (2012). The analysis starts with the presumption that a senior appropriator is entitled to the full measure of their decreed water right before any junior appropriator. *AFRD2* at 877–78, 154 P.3d at 448–49. Senior appropriators may then bolster their presumed entitlement with evidence of actual injury to their water use. *Id*. Junior appropriators may seek to prove a defense to curtailment. *Id*. But the junior's burden is heavy; they must produce clear and convincing evidence that senior appropriators are not injured or will not beneficially use the water generated by curtailment. *A&B*, 153 Idaho at 516–20, 284 P.3d at 241–45.

Here, the Director provided due process and met the prior appropriation doctrine's requirements through a pre-curtailment proceeding under § 42-237a.g. After a six-day hearing, he reached three key conclusions: (1) surface and ground water users alike were beneficially using water in reasonable amounts under valid appropriations, (2) surface water rights on Silver Creek and the Little Wood River are undeniably senior to ground water rights in the interconnected aquifer beneath the Bellevue Triangle, and (3) the junior ground water users did

not prove any defenses to curtailment with clear and convincing evidence. In other words, juniors' pumping in the Bellevue Triangle "affects, contrary to the declared policy of [the Ground Water] Act, the present or future use" of senior surface water rights on Silver Creek and the Little Wood River. I.C. § 42-237a.g. That is a circumstance when "[w]ater in a well shall not be deemed available to fill a water right therein." *Id*. And the Director identified it by faithfully applying the same presumptions, burdens, and evidentiary standards that "are to be read into the CM Rules." *AFRD2*, 143 Idaho at 878, 154 P.3d at 449.

The district court ignored this, instead concluding (contrary to its own logic) that curtailment is impossible until the Director satisfies two requirements in the CM Rules—formally establishing an area of common ground water supply and making findings of "material injury." But an area of common ground water supply is not legally or practically necessary in Water District 37. And the Director addressed the beneficial use principles underlying "material injury" by applying the statutory test for curtailment consistent with the prior appropriation doctrine's presumptions, burdens, and evidentiary standards. The Department urges this Court to reverse the district court's prior appropriation holdings and uphold the Director's *Final Order*.

II. ADDITIONAL ISSUES ON CROSS-APPEAL

1. Whether the Court should disregard the six addenda to the Districts' opening brief because the addenda impermissibly attempt to augment the record.

2. Whether the Districts are jurisdictionally barred from challenging the Director's disapproval of their first mitigation plan because they failed to do so in a timely petition for judicial review.

III. ARGUMENT

A. The district court correctly held that the CM Rules do not apply.

The applicability of the CM Rules is a threshold question in this appeal. A constant refrain from the Districts and their supporters is that the CM Rules control this case. This premise is the foundation of the Districts' cross-appeal. And it is false. As the district court correctly held, the CM Rules do not apply and thus "did not supersede" and "do not limit the Director's authority under the Ground Water Act." R. 686.

1. The CM Rules apply to delivery calls against junior ground water rights only.

The CM Rules have been a critical tool for resolving disputes over rights to interconnected surface and ground water, but they are not universally applicable. Rule 1 expressly limits the rules' scope: "The rules prescribe 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." IDAPA 37.03.11.001 (1994) (emphasis added).[1] In light of Rule 1's "plain" language, the district court recognized that the CM Rules apply only "when one water user makes an adverse claim against another (i.e., makes a delivery call)." R. 685. CM Rule 3 reinforces Rule 1's express limitation to delivery calls: "Nothing in these rules limits the Director's authority to take alternative or

[1] Addendum 1 to this brief contains the 1994 version of the CM Rules, which was the version in effect during the administrative proceeding. The versions of the CM Rules that were re-promulgated on July 1, 2021, and March 31, 2022, contain minor, non-substantive changes to certain provisions in the 1994 version. Citations to and quotations of the CM Rules in this brief are to the 1994 version.

additional actions relating to the water resources as provided by Idaho Law." IDAPA 37.03.11.003 (1994).

Reading these provisions together, the district court concluded "the scope and application of the CM Rules is limited to scenarios where an adverse claim is made by one water user against another." R. 686. This Court reached the same conclusion in 1997. *A&B Irr. Dist. v. Idaho Conservation League* ("*A&B v. ICL*"), 131 Idaho 411, 422, 958 P.2d 568, 579 (1997) (noting the "[CM] Rules adopted by the IDWR are primarily directed toward an instance when a 'call' is made by a senior water right holder"). The district court's reading of the CM Rules is correct and should be affirmed.

In fact, the district court's determination that the CM Rules are limited to delivery calls is uncontested by any party to this appeal. Only amicus IGWA argues, based on language in Rule 20.01, that the CM Rules apply to "all conjunctive management situations." IGWA Br. at 10 (citing IDAPA 37.03.11.020.01). The Districts made the same argument to the district court, and the district court rejected it, correctly reasoning that the reference to "all situations" in Rule 20.01 had to be "read harmoniously with CM Rule 1" to avoid "needlessly rendering the two Rules in conflict with one another." R. 686. IGWA's reliance on other CM Rule provisions is misplaced for the same reason—the rules operate only within the scope of CM Rule 1. On appeal, the Districts have abandoned the argument that the rules apply to "all situations" and instead argue only that the rules apply because there was a delivery call.

2. There was no delivery call in 2021.

Both the Director and the district court concluded that there was no delivery call that could have triggered the CM Rules in 2021. AR. 440–42, 1911–13; R. 685. The rules define a delivery call as a "request from the holder of a water right for administration of water rights under the prior appropriation doctrine." IDAPA 37.03.11.010.04 (1994). In the pre-hearing notice for the proceeding, however, the Director stated he was initiating the proceeding "pursuant to Idaho Code § 42-237a.g. and IDAPA 37.01.01.104 . . . to determine whether water is available to fill" non-exempt ground water rights in the Bellevue Triangle. AR. 1. The notice demonstrates that the Director did not initiate the administrative proceeding in response to a water user's request for priority administration.

The Districts nevertheless claim there was a delivery call because senior surface water users have sought priority administration at various times in the past. The Districts' position on appeal amounts to a complete reversal of the position South Valley Ground Water District took early in the proceedings, when it admitted the seniors "did not file a delivery call that satisfied the requirements of CM Rule 30." AR. 133. South Valley's admission is telling. While the Districts now assert there is "no particular form" for a delivery call, South Valley clearly understood the CM Rules have detailed requirements for a written delivery call petition. *Compare* Districts' Br. at 41, *with* IDAPA 37.01.11.030.01–.02 (1994) (listing content and service requirements, including requirement of a "petition in writing").

Nothing in the record meets the rules' requirements for a written delivery call petition. Certainly, the senior water users' previous delivery calls—which were both dismissed—do not

establish they filed a petition in 2021. Senior surface water users organized as the Big Wood and Little Wood River Water Users Association attempted a delivery call in February 2015, which was dismissed on remand from the district court because it did not meet the filing and service requirements of CM Rule 30. *See* AR. 2403–18 (district court's decision in *Sun Valley Co. v. Spackman*). The Association's second attempt at a delivery call in 2017 was dismissed for lack of standing. These are the only conjunctive management delivery calls made in Water District 37 to date.

Despite the CM Rules' requirements for a written delivery call petition, the Districts claim that statements somewhere in the record amount to delivery calls under the CM Rules. But, as South Valley previously admitted, none of these statements meet the requirements for a delivery call petition. Even if the senior water users' comments at a meeting or statements in a "draft agreement" were in the record, they would not qualify as delivery call petitions. *Cf.* Districts' Br. at 42 (citing meeting notice and minutes). Nor would senior water users' testimony at the hearing in this proceeding. *Cf. id.* at 43 (citing hearing testimony). As the *Final Order* notes, "the Director had informed the parties the surface water users would be required to provide some evidence of water shortage or injury traceable to junior ground water pumping." AR. 1912. The seniors' testimony was their response to the Director's request for evidence in a proceeding the Director initiated. That testimony was not a delivery call under the CM Rules.

The Districts made the same "delivery call" claims to the Director and the district court. AR. 1642–1644 (Districts' post-hearing brief); R. 357–60 (district court opening brief). The Director explained that the "record shows that no delivery call was filed in this case, as some of

the ground water users concede." AR. 1912. The district court was likewise unmoved: "Although the Director initiated the underlying administrative proceeding for purposes of providing relief to potentially injured seniors, he was not responding to a delivery call at the time." R. 685 n.10. This Court should affirm that the CM Rules do not apply because there was no delivery call.

3. The Director cannot implement the CM Rules absent a delivery call.

No law allows, let alone requires, the Director to implement the CM Rules when they do not apply. It is axiomatic that administrative "rules apply comprehensively to the class of persons or course of conduct *covered* by the rule." *Pizzuto v. Idaho Dep't of Corr.*, 170 Idaho 94, 508 P.3d 293, 296 (2022) (emphasis added). It follows that administrative rules do not apply to a class of persons or course of conduct *not covered* by the rule. The reason is straightforward. As a quasi-legislative undertaking, rulemaking necessarily entails delineating the rule's coverage. *Id*. Doing so ensures the rule not only meets the agency's underlying policy objectives but, more importantly, fits within the agency's statutory powers. Thus, the limitations on the scope of an administrative rule are just as important—and binding—as the rules' other provisions. *See, e.g.,* IDAPA 37.03.11.001 (1994) (limiting the CM Rules to certain types of delivery calls).

Ignoring both the plain statutory text and the CM Rules' limited scope, the Districts claim "the requirements of the CM Rules and section 42-237a.g are identical" such that definitions and requirements in the rules must also be imported, verbatim into the statute. Districts' Br. at 28. Not so. For example, the CM Rules mandate an area of common ground water supply for a delivery call, but the statute plainly makes such areas discretionary. *Compare* IDAPA 37.03.11.040 (1994) *with* I.C. § 42-237a.g (stating the Director "may establish" and "shall also

have the power to determine what areas of the state have a common ground water supply"). Similarly, the rules require a determination that "holders of water rights are suffering material injury and using water efficiently and without waste" under Rule 42, IDAPA 37.03.11.042 (1994)), whereas the statute has a distinct test for when "[w]ater in a well shall not be deemed available to fill a water right therein . . . ." I.C. § 42-237a.g. Rule 42 focuses on the senior's injury, but the statute focuses on the junior's impact. A simple comparison reveals the CM Rules' requirements are not identical to those in § 42-237a.g.

These textual differences matter. The CM Rules make that clear: "Nothing in these rules limits the Director's authority to take alternative or additional actions relating to the management of water resources as provided by Idaho law." IDAPA 37.03.11.003 (1994). The differing text also matters because Idaho courts construe statutes and rules based on their plain language, "giv[ing] effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant." *Melton v. Alt*, 163 Idaho 158, 162–63, 408 P.3d 913, 917–18 (2018) (cleaned up); *see also Mason v. Donnelly Club*, 135 Idaho 581, 586, 21 P.3d 903, 908 (2001) (holding administrative rules are construed in the same way as statutes).

Accordingly, the Court should not void the Director's statutory discretion or the statute's distinct test for curtailment merely because the CM Rules approach delivery calls differently. Section 42-237a.g and the CM Rules are distinct, not redundant, tools for conjunctive administration. In this statutory proceeding, the question is not whether the Director complied with inapplicable rules that expressly preserve his authority to take alternative actions. The

question is whether the Director's actions comply with the governing statute and the prior appropriation doctrine.

4. The district court's interpretation of the CM Rules in a delivery call under the CM Rules does not control this case.

Because the CM Rules do not apply, the outcome of this case is not controlled by the district court decision in *Sun Valley Co. v. Spackman*, No. CV-WA-2015-14500 (Ada Cnty. Dist. Ct. Idaho Apr. 22, 2016).[2] *Sun Valley* arose from the senior surface water users' first attempt at a delivery call under the CM Rules in 2015. The district court set aside the Director's decision to process the seniors' call under CM Rule 40, holding that the call instead had to comply with the filing and service requirements in Rule 30. As noted in the Department's opening brief, the logic and legal basis for that holding is confined to the CM Rules. IDWR Br. at 28. The dispositive analysis relies on the CM Rules' filing and service requirements—not constitutional provisions, statutes, or decisions of this Court. AR. 2410–14. Simply put, *Sun Valley* is a decision about the CM Rules' requirements for a delivery call filed under the CM Rules.

Running with the false premise that the CM Rules apply, the Districts and Sun Valley Company argue *Sun Valley* somehow binds the Director in this proceeding under § 42-237a.g. For its part, Sun Valley Company believes *Sun Valley* "is binding as 'law of the case'" even though "the district court was not presented in this case with the law of the case doctrine." Sun

[2] The 2016 district court decision in *Sun Valley Co. v. Spackman* is in the record at AR. 2403–19.

Valley Br. at 12.[3] The law of the case doctrine provides that when an appellate court states a "principle or rule of law necessary to the decision" on appeal, that principal or rule "control[s] the case on remand." *Berrett v. Clark Cnty. Sch. Dist. No. 161*, 165 Idaho 913, 922, 454 P.3d 555, 564 (2019) (cleaned up). "The underlying purpose of the doctrine is to maintain consistency and avoid reconsideration of matters once decided *during the course of a single, continuing lawsuit*." *Id*. (cleaned up) (emphasis added). In light of these principles, *Sun Valley* is not the law of this case for two reasons. First, *Sun Valley* addresses the requirements of the CM Rules specifically, not the requirements of § 42-237a.g or the prior appropriation doctrine generally. AR. 2410–16. Second, this proceeding is not a continuation of the 2015 delivery call in which *Sun Valley* was decided. On the contrary, the Director dismissed the 2015 delivery call on remand, and the seniors responded by filing a second delivery call petition in 2017, which also was dismissed.

This proceeding was not a continuation of any previous delivery call. It was a separate proceeding initiated by the Director under a distinct legal authority that *Sun Valley* did not address. *Sun Valley* is not binding because it did not address the legal standards for a proceeding under § 42-237a.g.

[3] As Sun Valley concedes, it failed to present its "law of the case" theory to the district court, and the district court did not rule on it. Thus, the issue is not properly before the Court on appeal. *See State v. Miramontes*, — Idaho —, 517 P.3d 849, 853–54 (2022) ("[A] party preserves an issue for appeal by properly presenting the issue with argument and authority to the trial court below and noticing it for hearing or a party preserves an issue for appeal if the trial court issues an adverse ruling.").

B. The district court correctly held that Idaho Code § 42-237a.g authorized the Director to initiate the underlying administrative proceeding.

Idaho Code § 42-237a.g unambiguously grants the Director the "discretionary power" to "initiate administrative proceedings to prohibit or limit the withdrawal of water from any well during any period that he determines that water to fill any water right in said well is not there available." This authority not only ensures the Director has meaningful "direction and control of the distribution of water from all natural water sources within a water district . . . in accordance with the prior appropriation doctrine." I.C. § 42-602. It also compliments the CM Rules' procedures for delivery calls initiated by water users, as the district court recognized. R. 683–84. Section 42-237a.g thus serves as a critical administrative backstop when water is scarce but individual water users cannot or do not file delivery calls under the CM Rules. This Court should affirm the district court's holding that § 42-237a.g authorizes the Director to "conjunctively administer interconnected ground and surface water rights in times of shortage . . . ." R. 683.

1. Section 42-237a.g grants the discretion to regulate the withdrawal of water from "any well" that affects senior rights, regardless of the well's location.

The district court correctly recognized that Idaho law establishes two paths, or prongs, for conjunctive administration. R. 683–84. One applies when a water user makes a delivery call against one or more ground water rights under the CM Rules. The other applies when the Director exercises his discretion under § 42-237a.g to limit or prohibit the withdrawal of water from "any well." The district court's understanding is grounded in the plain language of § 42-237a.g and clear-eyed analysis of the Ground Water Act's legislative history.

The Districts, however, insist the Director cannot administer their ground water rights under Idaho Code § 42-237a.g because it authorizes discretionary administration only in areas outside a water district. Although the Districts concede the "legislature did create two-prong administration," they claim the "district court misconstrued the Ground Water Act" by holding the distinction between the two prongs depends on whether there is a delivery call. Districts' Br. At 34–35. According to the Districts, the distinguishing factor is "location"—i.e., the CM Rules apply inside and § 42-237a.g applies outside a water district. *Id*. at 35.

This inside/outside distinction has no basis in the Ground Water Act's text. Idaho Code § 42-237a.g originated in the 1953 amendments to the Ground Water Act. 1953 Idaho Sess. Laws Ch. 182, § 15.[4] Then, as now, the statute authorized the Director (formerly the State Reclamation Engineer) to "prohibit or limit the withdrawal of water from *any well*" whenever he determines water is "not *there* available." *Id*.; I.C. § 42-237a.g (emphasis added). This authority to regulate withdrawals from "any well" is not, as the Districts claim, limited to only wells outside a water district. Moreover, § 42-237a.g instructs "either the director . . . or the watermaster *in a water district* or the director . . . *outside of a water district*" to post a copy of any order limiting or prohibiting well withdrawals "at the place where such water is withdrawn." (emphasis added). Consistent with the Director's authority to administer "any well," this instruction plainly anticipates that orders restricting well withdrawals may be issued "either . . . in a water district or . . . outside of a water district." If, as the Districts claim, § 42-237a.g is limited to wells outside a

[4] Addendum 2 to this brief contains the 1953 amendments to the Ground Water Act.

water district, the statute's instructions for officials "in a water district" would be pointless surplusage. *But see Potlatch Corp. v. United States*, 134 Idaho 912, 915, 12 P.3d 1256, 1259 (2000). Because § 42-237a.g unambiguously applies to any well regardless of location, the Districts' inside/outside distinction is meritless.

Arguing another meritless distinction, amicus IGWA asserts the Director cannot curtail ground water pumping absent an adverse claim to water because the statute "is silent as to whether an adverse claim to water *is not required* . . . ." IGWA Br. at 11 (emphasis added). IGWA misreads § 42-237a.g, assuming it silently requires an adverse claim despite expressly granting the Director "discretionary power" to "initiate administrative proceedings to prohibit or limit the withdrawal of water from any well." IGWA also asserts the prior appropriation doctrine prohibits curtailment absent an adverse claim, but none of its cited authorities say so. No such prohibition is expressed or implied in the Idaho Constitution, Idaho Code § 42-602, or *AFRD2 v. IDWR*, 143 Idaho 862, 880, 154 P.3d 433, 451 (2007). The district court rightly rejected IGWA's adverse claim theory, explaining: "the Director may initiate such a proceeding [under § 42-237a.g] when no adverse claim is made by one water user against another." R. 683. The distinguishing factor is whether the Director is responding to a delivery call against ground water rights—if so, he must proceed under the CM Rules; if not, he may initiate a proceeding under § 42-237a.g. And, because there was no delivery call in 2021, the Director had the statutory authority to initiate the underlying administrative proceeding.

2. Nothing in Chapter 6, Title 42 mandates the use of the CM Rules in administrative proceedings under § 42-237a.g.

Against the statute's plain language, the Districts argue that the Director cannot initiate a proceeding under § 42-237a.g to administer ground water rights in a water district. They claim this limitation emanates from Idaho Code § 42-239, which directs the "executive and judicial departments" to construe the Ground Water Act "wherever possible in harmony with the provisions of title 42, Idaho Code, as amended . . . ." According to the Districts, construing the Ground Water Act "wherever possible in harmony with the provisions of title 42, Idaho Code" means the Director has no choice but to use the CM Rules for conjunctive administration in a water district. The Districts attempt to support this logical leap by gesturing vaguely at Chapter 6 of Title 42. But nothing in Chapter 6 prohibits the Director from initiating proceedings under § 42-237a.g, nor mandates the use of the CM Rules if the Director does so.

Chapter 6, and § 42-602 in particular, mandate conjunctive administration on a priority basis, even if there is no delivery call to trigger the CM Rules. Any other conclusion is foreclosed by *Musser v. Higginson*, 125 Idaho 392, 871 P.2d 809 (1994). *Musser* recognized—before the CM Rules were promulgated—that § 42-602 creates a "clear legal duty" to administer interconnected ground water and surface water rights conjunctively. 125 Idaho at 394, 871 P.2d at 813, *accord Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 808, 252 P.3d 71, 89 (2011) ("As we held in *Musser* . . ., hydrologically connected surface and ground waters must be managed conjunctively."). The statutory duty was so clear that *Musser* upheld a writ of mandate compelling the Director to immediately comply with § 42-602 and distribute water in accordance

with the prior appropriation doctrine. *Id*. This shows the Director's duty to conjunctively administer water rights lies in statute and thus does not arise from the CM Rules—which had not been promulgated, implemented, or judicially reviewed when *Musser* was decided.[5] The Director's statutory duty and authority is independent of the CM Rules, so it must be implemented even where, as here, the Rules do not apply. That is why the Director's *Final Order* specifically recognizes that §§ 42-602 and 42-237a.g. "guide the Director's analysis in this case." AR. 1900.

The Districts nonetheless assert the Director violated the "express directives of chapter 6, title 42" by "failing to follow the CM Rules." Districts' Br. at 39. "*See* I.C. §§ 42-602, 603, 604, 607" is their only support for this bold claim. *Id*. But none of those provisions compel the Director to apply the CM Rules outside their defined scope. Section 42-602, as recognized in *Musser*, mandates the distribution water in water districts "in accordance with the prior appropriation doctrine"—not, as the Districts suggest, pursuant to the CM Rules in every case. Section 42-603 authorizes the Director to adopt rules for water distribution such as the CM Rules, but it does not say the Director must implement those rules outside their defined scope. Section 42-604 sets procedures for creating, modifying, or abolishing a water district "for the purpose of performing the essential governmental function of distribution of water among appropriators under the laws of the state of Idaho"—laws that include § 42-237a.g. Lastly, § 42-

[5] Sun Valley Company notes that in *Musser* the Director took the position that conjunctive administration was possible only after the then-proposed CM Rules took effect. Sun Valley Br. at 24–25 (quoting *Musser*, 125 Idaho at 394, 871 P.2d at 811). But the Court rejected that position, holding the Director's statutory duty to distribute water required him to engage in conjunctive administration before the CM Rules were finalized. *Musser*, 125 Idaho at 395–96, 871 P.2d at 812–13.

607 defines watermasters' duties within water districts, which are carried out "under the direction of the department of water resources." Nothing in these statutes amounts to an "express directive" to follow the CM Rules where, as here, they do not apply.

The district court recognized as much. After noting that § 42-237a.g authorizes the Director to initiate administrative proceedings in the absence of an adverse claim (i.e., a delivery call), the district court held "[t]his authority is consistent with the Director's duty under Idaho Code § 42-602 . . . ." R. 683 n.6. The district court explained § 42-602 "does not limit the Director's duty to circumstances involving adverse claims between water users within the [water] district." *Id*. This highlights the fatal flaw in the Districts' "harmony" argument.

Chapter 6 broadly empowers the Director and watermasters to distribute water in water districts according to the prior appropriation doctrine. Nothing in Title 42, let alone Chapter 6, makes their duty to distribute water contingent on a delivery call between water users. Indeed, the watermaster testified how he administers surface water rights in priority, and it is not by merely waiting for delivery calls. ATr. vol. IV, 764:1–765:24; *see also* I.C. § 42-607. Construing the Ground Water Act "wherever possible in harmony" with Chapter 6 requires recognition that the Director's duty to distribute water in a water district is independent of, not contingent on, a water user's decision to pursue a delivery call under the CM Rules. I.C. § 42-239. Section 42-237a.g plainly grants the Director discretion to proceed without a delivery call and, as the district court recognized, that authority compliments the CM Rules' procedures for delivery calls.

3. The Director was not required to implement the Ground Water Act sections repealed in 2021.

During the 2021 session, the Legislature repealed sections of the Ground Water Act that, among other things, authorized local ground water boards to hear and decide adverse claims against holders of junior ground water rights. 2021 Idaho Sess. Laws Ch. 36 (repealing I.C. §§ 42-237b, -237c, -237d, -237g). The Department supported this legislation because the statutory process for resolving adverse claims had become outdated and obsolete since the adoption of the CM Rules. The Districts and Sun Valley Company attempt to stretch the Department's support for the repeal into an iron-clad commitment to use the CM Rules, and nothing but the CM Rules, for conjunctive administration.

The Department made no such commitment, as the legislation's statement of purpose[6] and the Director's committee testimony[7] demonstrate. Supporting the repeal of the obsolete adverse claims process is not tantamount to waiving or disclaiming the authority to act under § 42-237a.g.

The district court recognized the repeal's true significance: "Had the legislature believed Idaho Code § 42-237a.g. was superseded by the CM Rules, it would have repealed that code section as well." R. 686. In other words, the Legislature consciously preserved the Director's independent authority to initiate conjunctive administration via § 42-237a.g. Accordingly,

[6] Statement of Purpose, H.B. 43, 66th Idaho Leg., 1st Reg. Sess. (2021), https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2021/legislation/H0043SOP.pdf.

[7] H. Res. & Conservation Comm. Meeting Audio/Video, 66th Idaho Leg., 1st Reg. Sess., at 00:02:20–00:09:00 (daily ed. Feb. 3, 2021) (presentation of Director Spackman), https://legislature.idaho.gov/sessioninfo/2021/standingcommittees/HRES/.

"[w]here no adverse claim is filed, the Director may initiate an administrative proceeding under the Ground Water Act," and "[w]here an adverse claim is filed, conjunctive administration implicates the CM Rules." R. 686.

Struggling against this outcome, the Districts assert the Director "was required" to follow the statutory adverse claim process despite its repeal. Districts' Br. at 53 (citing I.C. § 42-237b (repealed 2021)). But this argument overlooks two important facts. First, the repeal was enacted before the administrative proceeding began in May 2021, and it took effect July 1, the same day the one-week curtailment began. 2021 Idaho Sess. Laws Ch. 36 (stating the repeal was "[a]pproved March 12, 2021"); 2021 Idaho Sess. Laws Ch. 358, § 18 (declaring an emergency and giving the repeal "full force and effect on and after July 1, 2021").[8] Second, even when it was effective, § 42-237b required a water user to initiate the process with a "written statement under oath of such claim." No such written statement under oath is in the record. There is no merit to the Districts' claim that the Director was required to implement the repealed adverse claims procedure.

4. The Department has consistently argued that § 42-237a.g authorized curtailment, and that argument is justiciable.

The Districts and Sun Valley Company wrongly assert the statutory test for curtailment was "never identified" or "never addressed" before this appeal. Districts' Br. at 22 n.19; Sun Valley Br. at 30. The Districts theorize that the Department should be estopped from arguing the Director found sufficient injury for curtailment under § 42-237a.g. *But see Rangen v. IDWR*, 159

[8] Addendum 3 to this brief contains the legislation repealing the obsolete portions of the Ground Water Act and the emergency declaration making the repeal effective July 1, 2021.

Idaho 798, 808–09, 367 P.3d 193, 203–04 (2015); *see also Sagewillow, Inc. v. IDWR*, 138 Idaho 831, 845, 70 P.3d 669, 683 (2003) ("Equitable estoppel may not ordinarily be invoked against a government or public agency functioning in a sovereign or governmental capacity."). For its part, Sun Valley Company asserts this Court would be rendering an "advisory opinion." Sun Valley Br. at 30. Both claims are meritless.[9]

To be sure, the Department is arguing on appeal that Idaho Code § 42-237a.g authorized the curtailment of junior ground water rights in the Bellevue Triangle during the extreme 2021 drought. That has been the Department's position at every level of this case. *Compare* IDWR Br. at 16–17, *with* AR. 1 (pre-hearing Notice), AR. 1900–11 (*Final Order*), R. 550–75 (Department's district court brief). The test for curtailment articulated in the Department's opening brief is the same test the Director cited in the pre-hearing Notice, applied in the *Final Order*, and defended in the district court. *See State v. Miramontes*, — Idaho —, 517 P.3d 849, 853 (2022) (holding an issue is preserved for appeal "so long as the party's position on that issue was presented to the trial court with argument and authority and noticed for hearing."). In fact, the Director's authority to curtail based on the statutory test is integral to multiple issues in both

[9] The Districts base their estoppel claim on de-contextualized quotes from the pre-hearing conference. Districts' Br. at 22. They claim the Director made "representations" that CM Rule 42 would be the "applicable standard in this case." *Id*. Here is what the Director actually said: "*without adopting . . . the Conjunctive Management Rules as the rules that will govern* what the Director is doing in this proceeding, I would say that those factors are a guide, certainly a very important guide, in the establishment and putting on the burden of proof." PATr. 50:14–20 (emphasis added). Not only did the Director specifically disclaim that he was "adopting" the CM Rules to "govern" the proceeding, he also said the rules were a "guide" only for the "burden of proof." That is anything but a "promise or representation" that the material injury standard in the CM Rules would govern the case. *Hollingsworth v. Thompson*, 168 Idaho 13, 22, 478 P.3d 312, 321 (2020).

the Department's appeal and the Districts' cross-appeal. IDWR Br. at 13, Districts' Br. at 11. The statutory test for curtailment is properly before this Court.

Moreover, the parties' dispute over the curtailment test is justiciable. A dispute is not justiciable if it is "hypothetical or abstract," seeking an "opinion advising what the law would be upon a hypothetical state of facts." *Westover v. Idaho Cntys. Risk Mgmt. Program*, 164 Idaho 385, 390, 430 P.3d 1284, 1289 (2018) (cleaned up). Here, in vivid contrast, the Court faces a "definite and concrete" legal controversy rooted in a well-developed record, "touching the legal relations of parties having adverse legal interests." *Id*. The dispute may be hypothetical or abstract for water users who were not curtailed, such as Sun Valley Company, the City of Hailey, and the amici. But the district court certainly considered it a definite and concrete controversy between the Department and the Districts: "Whether the Director may act under Idaho Code § 42-237a.g. to conjunctively administer interconnected ground and surface water rights in times of shortage, and if so how, are issues not previously addressed by Idaho Courts." R. 681. This Court should consider and decide these important questions.

C. The Director's decision to curtail pumping in the Bellevue Triangle accords with the Ground Water Act and the prior appropriation doctrine.

"'First in time is first in right' among those beneficially using the water." AR. 1911 (quoting Idaho Const. Art. XV, § 3; I.C. § 42-106; *AFRD2*, 143 Idaho at 869, 154 P.3d at 440). These bedrock principles—priority and beneficial use—form the core of Idaho's prior appropriation doctrine. Section 42-237a.g's test for curtailment incorporates both principles by referencing "prior" rights and the Ground Water Act's "declared policy." The declared policy of

the Ground Water Act is set out in § 42-226, which affirms Idaho's "traditional policy" of "requiring the water resources of this state to be devoted to beneficial use in reasonable amounts" and further states "while the doctrine of 'first in time is first in right' is recognized, a reasonable exercise of this right shall not block full economic development of underground water resources." The Director recognized, analyzed, and faithfully applied these prior appropriation principles, concluding that they required him to curtail junior ground water pumping in the Bellevue Triangle. AR. 1900–1911.

The Director's findings of fact are largely uncontested, supported by substantial evidence, and, thus, may not be second-guessed on judicial review. I.C. § 67-5279(1). There is no dispute about the general hydrology, the specific interconnection between the aquifer and the springs feeding Silver Creek, or the fact that Silver Creek feeds the lower reaches of the Little Wood River. *See* AR. 1884–85. The Districts and their supporters do not doubt that "[w]ater use within the Wood River Valley aquifer system affects Silver Creek reach gains from ground water, and thus affects streamflow in Silver Creek and in the Little Wood River downstream of Silver Creek." AR. 1888 (citing AR. 2093). Nor do they dispute that pumping from the aquifer causes senior rights on Silver Creek and the Little Wood River to be curtailed "more frequently and longer," AR 1892, especially in 2021, when 1880s-vintage rights were curtailed "unusually early." AR. 1890. They cannot dispute the vast discrepancy in the priorities of junior ground water rights in the Bellevue Triangle and senior surface water rights on Silver Creek and the Little Wood River. AR. 1885–86. Their experts agree the Wood River Valley Groundwater Flow Model v.1.1 ("Model") is the best available science, so they have no grounds to dispute the results

showing "99% of the predicted in-season benefit to Silver Creek streamflow can be achieved by curtailing . . . the Bellevue Triangle area identified as the 2021 potential curtailment area." AR. 1890. They do not rebut the senior surface water users' testimony about the injuries they suffered in 2021 due to the pumping-induced reduction of their water supplies. AR. 1894–1900. And there is no question the flows in Silver Creek and the Little Wood River respond to changes in ground water pumping within "a few days to two weeks." AR. 1891.

Yet the Districts and their supporters argue the prior appropriation doctrine blocks the Director from addressing the seniors' injuries. They claim two more hurdles remain—(1) formally designating an area of common ground water supply and (2) applying the material injury factors in CM Rule 42. These claims are rooted in the CM Rules and judicial statements about delivery calls under the CM Rules. The district court erred by accepting these claims despite rejecting the premise on which they depend (i.e., that the CM Rules limit the Director's authority under § 42-237a.g). This Court should correct that error and clarify what the prior appropriation doctrine does and does not require in proceedings under § 42-237a.g.

1. An area of common ground water supply is not legally or practically necessary in Water District 37.

The Director did not need to formally designate an area of common ground water supply to notify water users potentially subject to curtailment, determine the proper order of curtailment, or comply with the prior appropriation doctrine. The district court's holding to the contrary has no support in the statutory text, the caselaw, or the record. Instead, the district court's only

support for the holding is its own *Sun Valley* decision, which, as explained above, does not control. On appeal, the same flaws permeate the Districts' and their supporters' briefing.

a. *Water District 37 already incorporates all ground water rights that affect the flow of Silver Creek and the Little Wood River.*

The district court erred by failing to recognize the Ground Water Act grants the Director discretion that is not available in a delivery call under the CM Rules. That was a significant misstep because this case falls outside the CM Rules' defined scope and thus presents a question of statutory interpretation. Here, the "literal words of the statute" are unambiguous, so the district court should have "simply follow[ed] the law as written." *Elsaesser v. Black Diamond Compost, LLC*, — Idaho —, 513 P.3d 447, 453 (2022) (cleaned up).

Section 42-237a.g is the only Idaho Code provision that employs the phrase "area or areas having a common ground water supply." Although the statute uses the phrase twice, neither instance makes the area a prerequisite for prohibiting or limiting well withdrawals. First, the Director "may establish a ground water pumping level or levels in an area or areas having a common ground water supply as determined by him as hereinafter provided."[10] I.C. § 42-237a.g. Second, the Director "shall also have the power to determine what areas of the state have a common ground water supply" and, if he does, include the area in a water district. *Id*. These are not mandates. Both instances of the phrase are embedded in permissive language—"sole discretion," "discretionary power," "may," "shall also have the power to determine." *Id*. The

[10] Ground water pumping levels are not at issue in this appeal. Districts' Br. at 18 n.16. And, in any event, the Director "is not obligated to establish a reasonable ground water pumping level." *A & B Irr. Dist. v. IDWR*, 153 Idaho 500, 511, 284 P.3d 225, 236 (2012).

Legislature added much of that permissive language to the statute in 1994, plainly demonstrating its intent to *bolster* the Director's discretion in administering ground water rights. 1994 Idaho Sess. Laws Ch. 450, § 3.[11] The literal words of the statute unambiguously make the decision to establish an area of common ground water supply discretionary. The district court erred by holding the Director has no choice whatsoever.

The Districts and their supporters do not offer another, plausible reading of the statute. Instead, they parrot the district court's inapplicable *Sun Valley* decision, falling back to the false premise that the CM Rules apply. This exposes their misunderstanding of how areas of common ground water supply, as a statutory concept, fit into the broader statutory scheme for distributing water in water districts.

"The legislature has mandated that IDWR manage water resources in Idaho, and has provided IDWR with the water district as its principal tool in carrying out this mandate." *Thompson Creek Mining Co. v. IDWR*, 148 Idaho 200, 212, 220 P.3d 318, 330 (2009). The Districts and their supporters, however, claim the Director cannot fulfill his mandate in Water District 37 unless and until he designates an area of common ground water supply. *E.g.*, Districts' Br. at 30–31. They have it backwards.

Under the Ground Water Act, areas of common ground water supply are simply discretionary tools for incorporating ground water rights *into* water districts. If a ground water supply "affects the flow of water in any stream or streams in an organized water district," it is to

[11] Addendum 4 to this brief contains the 1994 amendments to Idaho Code § 42-237a.g.

be incorporated into that district. I.C. § 42-237a.g. If not, then the ground water supply goes in a "separate water district." *Id*. These sorting instructions apply if the Director elects to designate an area of common ground water supply.[12] If he does not, the Director still has the authority—indeed, the duty—to distribute water among interconnected surface and ground water rights included in a water district. *Musser v. Higginson*, 125 Idaho 392, 871 P.2d 809 (1994).

Context confirms this reading. Nothing in § 42-237a.g or Chapter 6 of Title 42 suggests that an area of common ground water supply has any relevance to the distribution of water among appropriators. Certainly, § 42-237a.g expresses no requirement to establish an area of common ground water supply before determining if water is "available to fill any water right" for a well. And § 42-602 does not make the Director's duty to distribute water in a water district contingent on the existence of an area of common ground water supply. "The director's duty pursuant to I.C. § 42–602 is clear and executive." *Musser*, 125 Idaho at 395, 871 P.2d at 812.

That is particularly important in Water District 37, which already includes "ground water and all streams tributary to the Big Wood River and Little Wood River," except for Camas Creek and other sources included in separate districts. AR. 2494. That decision was made in 2013 in part because "inclusion of surface and ground water rights in one water district will provide for proper conjunctive administration . . . and the protection of senior priority water rights." AR. 2484. Ground water users in the Bellevue Triangle, the City of Hailey, and Sun Valley Company all were aware of this and the fact that it was done without formally establishing an area of

[12] The CM Rules include the same sorting instructions for areas of common ground water supply identified in delivery call proceedings. IDAPA 37.03.11.030.07.d–.e (1994).

common ground water supply. Yet the preliminary order setting the current Water District 37 boundary went unchallenged and became final by operation of law. *See* I.C. § 67-5246(3). Now that ground water rights are incorporated into Water District 37, they are subject to administration "in accordance with the prior appropriation doctrine," just like the surface water rights. I.C. § 42-602. An area of common ground water supply is unnecessary because the water district already sets the boundary for priority administration of all included rights.[13]

b. ***This Court has never held an area of common ground water supply is an element of the prior appropriation doctrine, even in cases under the CM Rules.***

This Court has expounded on the prior appropriation doctrine for over a century. Not once has it held (or implied) that an area of common ground water supply is a prerequisite for administering interconnected surface and ground water rights. This dearth of authority led the district court to rely on its *Sun Valley* decision, transmuting what had been "a necessary pre-condition to conjunctive administration . . . under the plain language of the CM Rules" into "a necessary pre-condition to conjunctive administration . . . under the prior appropriation doctrine." R. 688–90. Again, *Sun Valley* does not control in this statutory proceeding because its reasoning is confined to the CM Rules. More fundamentally, it did not and cannot bootstrap filing requirements for delivery calls under the CM Rules into generally applicable doctrine. This

[13] Sun Valley Company claims "an ACGWS is consistent with the prior appropriation doctrine" because various Idaho Code provisions call for geographic boundaries. Sun Valley Br. at 15 (citing I.C. §§ 42-233a, -233b, -602, -604). To be sure, those statutes all authorize the Director to establish predefined areas and curtail water rights within those areas on a priority basis. But none of them mention, let alone require, an area of common ground water supply. Rather, they authorize priority administration in ground water management areas, critical ground water areas, and water districts, regardless of whether the Director elects to designate an area of common ground water supply under § 42-237a.g.

Court's decisions reveal that the district court erred in concluding otherwise. IDWR Br. at 24–27. Cases both before the CM Rules (*Tappan* and *Baker*) and after (*Clear Springs* and *IGWA*) demonstrate an area of common ground water supply is neither a prerequisite for curtailment under § 42-237a.g, nor a limit on the Director's discretion to set the scope of curtailment under the CM Rules.

The Districts' attempts to distinguish *Tappan* and *Baker* are unpersuasive. Both decisions upheld injunctions against ground water pumping under § 42-237a.g even though an area of common ground water supply was not established beforehand. *State ex rel. Tappan v. Smith*, 92 Idaho 451, 444 P.2d 412 (1968); *Baker v. Ore-Ida Foods, Inc.*, 95 Idaho 575, 513 P.2d 627 (1973). The Districts emphasize that *Tappan* addressed dangerous depletions in a designated critical ground water area, but they do not acknowledge such designation was absent in *Baker*. Both injunctions stood, demonstrating that the critical ground water area was not dispositive in *Tappan*.[14] Instead, *Tappan* is instructive because it upheld an injunction under § 42-237a.g without a designated area of common ground water supply.

Baker is instructive for the same reason. True, the injunction in *Baker* prohibited ground water mining by junior appropriators. But ground water mining is just one of the two circumstances when "[w]ater in a well shall not be deemed available to fill a water right therein .

[14] A "critical ground water area" is a ground water basin, or 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 current or projected rates of withdrawal, as determined by the Director. I.C. § 42-233a. While the Districts suggest *Tappan* applies only where these designations exist, they do not explain why the Director must wait for critical conditions. Districts' Br. at 29. Such inaction cannot be squared with the Director's authority to establish a ground water management area—such as the Big Wood River Ground Water Management Area—for ground water basins "approaching the conditions of a critical ground water area." I.C. § 42-233b.

. . .” I.C. § 42-237a.g. *Baker* demonstrates ground water mining can be enjoined without an area of common ground water supply, and there is no textual basis for a different rule when well withdrawals “affect, contrary to the declared policy of this act, the present or future use of any prior surface or ground water right . . . .” *Id*.; *see also Saint Alphonsus Reg’l Med. Ctr. v. Elmore Cnty.*, 158 Idaho 648, 653, 350 P.3d 1025, 1030 (2015) (“Statutes that [relate to the same subject] are construed together to effect legislative intent.”). If the prior appropriation doctrine mandated an area of common ground water supply before curtailing pumping under § 42-237a.g, *Baker*—this Court’s most detailed analysis of the Ground Water Act’s role within the doctrine—would have said so. It did not.

This Court’s decisions under the CM Rules further undermine the district court’s conclusion that an area of common ground water supply plays an essential role in the prior appropriation doctrine. For reasons the district court explained in its *Sun Valley* decision, an area of common ground water supply is a prerequisite for a delivery call under the CM Rules. Yet, in the Rangen delivery call, the district court concluded the Director must curtail “all junior ground water pumping in the ESPA [Eastern Snake Plain Aquifer] within the area of common ground water supply,” and this Court *reversed*. *IGWA v. IDWR*, 160 Idaho 119, 128, 369 P.3d 897, 906 (2016). Far from a “*non sequitur*,” Districts’ Br. at 29, *IGWA* highlights that an area of common ground water supply does not set the boundary for curtailment—even in a CM Rules proceeding, where the area is mandatory.

Likewise, *Clear Springs* upholds the Director’s discretion to limit curtailment based on ground water model analysis. 150 Idaho 790, 816–17, 252 P.3d 71, 97–98 (2011). Attempting to

downplay this holding, the Districts suggest it somehow pertains to an argument "the Court declined to address . . . because it had not been raised below." Districts' Br. at 30 (citing *id*.). The Court should not be misled. In *Clear Springs*, the seniors argued the Director abused his discretion by reducing the curtailment area to account for the margin of error in stream gages incorporated in the ground water model. 150 Idaho at 816, 252 P.3d at 97. This Court reached the issue and held there was no abuse of discretion.[15] *Id*. at 817, 252 P.3d at 97. Like the trim line in *IGWA*, the trim line in *Clear Springs* was a discretionary reduction of the curtailment area that was not limited by the established ESPA area of common ground water supply.

Together, these four cases show that an area of common ground water supply is not a "vital" element of the prior appropriation doctrine. Districts' Br. at 30. In *IGWA* and *Clear Springs*, the presence of such an area did not limit the Director's discretion to tailor the scope of curtailment. And the absence of such an area was not a reason to withhold injunctive relief in *Tappan* or *Baker*. Like this case, both *Tappan* and *Baker* involved the regulation of well withdrawals under § 42-237a.g, and neither suggests an area of common ground water supply is a necessary pre-condition for regulation. Rather, these cases underscore that the boundary for conjunctive administration entails fact-intensive judgments within the Director's expertise and discretion.

[15] The Court declined to reach the seniors' argument "that the Director's decision not to curtail appropriator[s] within the margin of error results in a shifting of the burden of proof from the junior appropriator to the senior appropriator." *Clear Springs*, 150 Idaho at 817, 252 P.3d at 97. The Department has not cited *Clear Springs* for any proposition related to that argument.

c. *All the relevant legal and hydrological relationships are entirely within Water District 37.*

The Director acted within his discretion by limiting curtailment to non-exempt, consumptive ground water rights in the Bellevue Triangle. AR. 1919. Every curtailed right was not only part of Water District 37, but also entirely within the Model boundary. That is significant because water districts exist to facilitate priority administration of all rights diverting from the sources included in the district. *See* I.C. § 42-602. Adjudicated water rights are a prerequisite for a water district, so every water right in Water District 37 has a known source and priority. I.C. § 42-604; *see also* I.C. § 42-1420 ("The decree entered in a general adjudication shall be conclusive as to the nature and extent of all water rights in the adjudicated water system" except in circumstances not present here). The Model provides vital insight on how ground water pumping affects other connected sources in the water district. Together, Water District 37 and the Model supply the requisite "good understanding of both the hydrological relationship and legal relationship between ground and surface water rights." *A&B v. ICL*, 131 Idaho 411, 422, 958 P.2d 568, 579 (1997) (quoting 1994 Interim Leg. Comm. Rpt. on the SRBA 36–37). In this context, an area of common ground water supply is a procedural step that would add nothing to the equation.

The ESPA presents a useful counterexample. Unlike the Wood River Valley aquifer system, the ESPA stretches across many organized water districts and also underlies areas outside organized water districts. The ground water model used to evaluate pumping effects in the ESPA covers multiple water districts, whereas the Model used in this proceeding is entirely

within a single district. Delivery calls in the ESPA routinely seek curtailment of junior ground water rights in one water district for the benefit of surface water rights in another, distant water district. The district court recognized this challenge in *Sun Valley*, explaining that the ESPA "area of common ground water supply extends beyond the boundaries of the water district." AR. 2409 n. 5.[16] Consequently, conjunctive administration on the ESPA requires the integration of water right priorities for distant but interconnected water sources *across water district boundaries*.

The ESPA is so massive and the effects of pumping the ESPA so pervasive that an area of common ground water supply becomes a useful and necessary administrative tool. The district court's concerns about notice and the proper order of curtailment are valid in the ESPA context. There, an area of common ground water supply does facilitate "proper notice and an opportunity to be heard" and does ensure "the proper order of curtailment" because it integrates multiple water districts. R. 689.

Here, however, the district court's concerns are unfounded because the relevant "legal relationship between ground and surface water rights" is entirely inside Water District 37. *A&B v. ICL*, 131 Idaho at 422, 958 P.2d at 579 (cleaned up). The record shows that Water District 37 encompasses all relevant water sources and all the water rights diverting from those sources. *Compare* AR. 2094 (map of aquifers and interconnected surface water) *with* AR. 2496 (map of

[16] The Districts use this quote to argue the district court "previously rejected" the Department's argument that "groundwater rights incorporated into Water District 37 share a common ground water supply." Districts' Br. at 31. But they take the district court's words out of context. The district court clearly was referring to the fact that "ground water rights located in the *ESPA* area of common ground water supply have been incorporated into many water districts." AR. 2409 (emphasis added).

Water District 37). Aquifers outside Water District 37, "including the Camas prairie aquifer system and the Eastern Snake Plain Aquifer, *do not interact* with Silver Creek or the Little Wood River; therefore, water use within the other aquifers *does not affect* streamflow in Silver Creek or the Little Wood River below Silver Creek." AR. 2093 (emphasis added). And, as explained in the Department's opening brief, the water district readily facilitates both notice to water right holders and a proper understanding of their relative priorities. IDWR Br. at 30–33. These are straightforward ministerial acts in any water district.

With Water District 37's administrative foundation in place, the Model provides the necessary understanding of the "hydrological relationship . . . between ground and surface water rights . . ." *A&B v. ICL*, 131 Idaho at 422, 958 P.2d at 579. The Districts quibble over the model boundary and calibration parameters, and Sun Valley Company suggests its expert established the Model is unreliable. But the Districts and their supporters do not dispute that the Model is, as their experts admitted and the Director found, "the best available tool to evaluate the effects of ground water pumping on flows of Silver Creek." AR. 1889 (citing testimony ATr. vol. V, 1320; 1452); *see also* AR. 1904–06 (concluding juniors failed to present clear and convincing evidence that the Model is not sufficiently accurate or reliable). That best available science is the sum of all its parts, including its boundaries and its calibration.

The Model establishes that "[w]ater use within the Wood River Valley aquifer system affects Silver Creek reach gains from ground water, and thus affects streamflow in Silver Creek and in the Little Wood River downstream of Silver Creek." AR. 1888. The Model also establishes that "curtailment would increase flows in Silver Creek by approximately 23-27 cfs

during the months of July, August, and September" of 2021. AR. 1903. And the Model supports the Director's decision to limit the curtailment area to the portion of the Bellevue Triangle south of the Glendale Bridge. AR. 2113–14. Compared to curtailing all pumping within the Model boundary, the Model showed that "99% of the predicted in-season benefit to Silver Creek" would be achieved by limiting curtailment to the area south of the Glendale Bridge. *Id*. The Director needed knowledge of "how the various ground and surface water sources are interconnected, and how, when, where and to what extent the diversion and use of water from one source impacts the water flows in that source and other sources." *A&B v. ICL*, 131 Idaho at 422, 958 P.2d at 579. The Model supplied those insights.

The Director had the necessary legal and hydrological knowledge for conjunctive administration under § 42-237a.g. The prior appropriation doctrine does not compel the Director to disregard that knowledge until he formally designates an area of common ground water supply. The district court erred by concluding that it does.

2. The Director had sufficient proof of actual injury and insufficient proof of waste, lack of beneficial use, futile call, or any other curtailment defense.

The Director acted in accordance with law by applying the test for curtailment in § 42-237a.g consistent with the prior appropriation doctrine's presumptions, burdens, and evidentiary standards. As the statute requires, the Director focused on "whether withdrawals of ground water from wells in the Bellevue Triangle 'would affect, contrary to the declared policy of [the Ground Water Act],' the present use of senior water rights diverting from Silver Creek and the Little Wood River, or their future use during the remainder of the 2021 irrigation season." AR. 1901

(quoting I.C. § 42-237a.g). Based on the policies declared in Idaho Code § 42-226, the Director concluded the Ground Water Act required him to determine: (a) "whether ground water and surface water diversions in the Bellevue Triangle and from Silver Creek and the Little Wood River are 'contrary' to the 'traditional policy' of 'beneficial use in reasonable amounts through appropriation'" or (b) "whether withdrawals of ground water in the Bellevue Triangle are contrary to the 'doctrine of first in time is first in right.'" AR. 1902 (quoting I.C. §§ 42-226, -237a.g). This was not a novel or unknown test; it is the plain text of the statutes authorizing the proceeding—which are themselves parts the prior appropriation doctrine. *AFRD2 v. IDWR*, 143 Idaho 862, 869, 154 P.3d 433, 440 (2007) ("[T]he Constitution, statutes and case law in Idaho set forth the principles of the prior appropriation doctrine . . . ."). Implementing the Act as written is complying with, not violating, the doctrine.

However, the Districts and their supporters claim the Director failed to account for beneficial use because he did not apply the "material injury" factors in CM Rule 42. Similarly, the district court held the Director "must administer to material injury" as defined in the CM Rules—even though the rules do not apply to this proceeding and do not limit the Director's authority under § 42-237a.g. R. 690. This was error.

The Director made sufficient findings of injury to justify curtailment under the plain language of § 42-237a.g. Further, the Director recognized and honored the beneficial use principles underlying the concept of "material injury" in three ways. First, the Director addressed the surface and ground water users' efficiencies, finding they all put water to beneficial use in reasonable amounts through valid appropriations. AR. 1902 (citing I.C. § 42-226). Second, the

Director properly evaluated the Districts' defenses to curtailment under the prior appropriation doctrine's well-established presumptions, burdens, and evidentiary standards. AR. 1904–11, 1913. Third, the Director exercised his discretion to limit curtailment to the Bellevue Triangle, where 99% of the predicted in-season curtailment benefits would originate. AR. 1909. The Director's findings and conclusions satisfy not only the statutory test for curtailment, but also the prior appropriation doctrine.

a. *The Director properly applied the statutory test for curtailment rather than dicta from* Clear Springs.

Applying the statute as written, the Director concluded he could "prohibit or limit ground water withdrawals in the Bellevue Triangle" because the juniors' pumping affected the seniors' water use contrary to the doctrine of first in time is first in right. AR. 1907 (citing § 42-237a.g). Notably, that conclusion did not rest on the "presumption under Idaho law . . . that the senior is entitled to his decreed water right"—even though the presumption went unrebutted. *AFRD2 v. IDWR*, 143 Idaho 862, 878, 154 P.3d 433, 449 (2007). From the outset, the Director insisted that the seniors "show that they hold water rights and at least bring forward some evidence of injury" and then "the burden shifts to -- fully to the junior." PATr. 42:1–15. The seniors obliged, which is why the *Final Order* contains nine pages of findings on the senior surface water users' injuries in 2021. AR. 1891–1900. Substantial evidence in the record backs up all those findings, so they are "binding on the reviewing court." *A&B Irr. Dist. v. IDWR*, 153 Idaho 500, 506, 284 P.3d 225, 231 (2012) (cleaned up).

The Director's findings accord with both the Ground Water Act and the injury standard this Court has recognized for over a century. As the Districts emphasize, caselaw fleshed out the concept of injury to a water right long before the CM Rules. Describing the proof needed to permanently enjoin a junior ground water appropriation, this Court explained the senior had to establish a "permanent injury . . . by the loss, in whole or in part, of the waters flowing" to their rights. *Bower v. Moorman*, 27 Idaho 162, 182, 147 P. 496, 503 (1915). "Such injury must be material and actual, and not fanciful, theoretical, or merely possible." *Id*. Fifty years before the CM Rules, it was settled that injury to water right means "substantially injured, not merely a fanciful injury but a real and actual injury." *Beecher v. Cassia Creek Irr. Co.*, 66 Idaho 1, 7, 154 P.2d 507, 509 (1944).

The Districts cannot credibly claim the seniors on Silver Creek and the Little Wood River had—during the worst drought in living memory—fanciful, theoretical, or merely possible injuries. The record shows the watermaster cut off surface water rights dating to the 1880s early in the growing season while the juniors continued to pump the aquifer that supplies Silver Creek. AR. 2989–91; ATr. vol. IV, 771–72. Even the Districts concede that curtailment would benefit some of the seniors, including some of their members who also hold surface water rights. Districts' Br. at 23–24. Moreover, the benefit would not stop with the seniors who testified at hearing. "Almost all water rights on Silver Creek and the Little Wood River are senior," meaning "[a]ny of these surface rights would be allowed to divert flows resulting from curtailment, within the limits of their individual priorities." AR. 1909 (citing ATr. vol. IV, 898 (watermaster testimony)). This was not a mere depletion to the seniors' source. The juniors' pumping caused

real and actual injury to the seniors' water use in an extreme drought—so extreme, that the watermaster was curtailing, in the spring, surface water rights that are normally sufficient for the entire irrigation season. AR. 1894–1900. The Director determined curtailing the juniors' pumping would help "by preventing curtailment of some surface water rights and allowing some surface water rights that have been curtailed to come back on sooner than would otherwise have been the case." AR. 1910.

The district court acknowledged that § 42-237a.g does not mention "material injury" and the "Director is not required to apply the CM Rules when conjunctively administering water rights under the Ground Water Act." R. 687. Yet it held curtailment is impossible without finding "material injury to senior surface water rights" or "analysis of the factors listed in CM Rule 42." R. 691. How could that be? For the district court, the only reason was one sentence in *Clear Springs* that characterizes, without analyzing, the test for curtailment in § 42-237a.g. *Id*. (quoting *Clear Springs*, 150 Idaho at 804, 252 P.3d at 85). The Districts and their supporters follow suit, declaring "*stare decisis*"—as if, in one sentence, this Court resolved for all time the meaning of a statute barely relevant to the case at bar. Districts' Br. at 19; Sun Valley Br. at 28.

That is not how *stare decisis* works. *Stare decisis* operates on statements of law "necessary to the decision" in an earlier case. *Regan v. Owen*, 163 Idaho 359, 363, 413 P.3d 759, 763 (2018). That is why "dicta is not binding authority." *Id*.

An interpretation of § 42-237a.g was not necessary to decide any issue in *Clear Springs*. The Court mentioned § 42-237a.g as an aside in a passage addressing whether a curtailment order violated the "full economic development" provision in § 42-226. *Clear Springs*, 150 Idaho

at 800–04, 252 P.3d at 82–85. Significantly, the Court discussed § 42-226's text, context, history, and related caselaw for more than 10 paragraphs before mentioning § 42-237a.g in passing. *Id*. Section 42-237a.g came up because the juniors argued it exempted them from curtailment as long as they were not mining the aquifer. *Id*. at 84, 252 P.2d at 803. The Court easily dispatched that argument because "absolutely nothing in the statute" supported it. *Id*. Then the Court returned to § 42-226: "By its terms, section 42–226 only applies to appropriators of ground water[,]" the seniors in the case were not ground water appropriators, so the curtailment order was valid. *Id*.

Nothing in that decision depends on reading the CM Rules' "material injury" standard into § 42-237a.g. The holdings of *Clear Springs* would not change if the Court's passing discussion of § 42-237a.g omitted the words "material injury." The reference "is dicta when viewed in context." *A&B Irr. Dist. v. IDWR*, 153 Idaho 500, 509, 284 P.3d 225, 234 (2012).

The context for *Clear Springs* was a delivery call under the CM Rules. It is understandable that the Court would use the CM Rules' terminology in that case. But in the context of a proceeding under § 42-237a.g, the reference to "material injury" is inconsistent with § 42-237a.g's plain text. The Court in *Clear Springs* reached a similar conclusion, observing that "absolutely nothing in" § 42-237a.g "could be interpreted as providing that ground water users are exempt from the doctrine of prior appropriation as long as they are not mining the aquifer." 150 Idaho at 804, 252 P.3d at 85. The same logic applies here: Nothing in the statute requires finding "material injury" as defined in the CM Rules.

The district court nevertheless held that *Clear Springs* required it to read into § 42-237a.g "a term of art" that "is not used or defined in Idaho Code § 42-237a.g." R. 690. This led the district court to contradict itself, bootstrapping the CM Rules back into the analysis after they had, correctly, been found inapplicable. Doing so was not only legal error, but unnecessary because the Legislature provided a distinct test for curtailment in § 42-237a.g. "The public policy of legislative enactments cannot be questioned by the courts and avoided simply because the courts might not agree with the public policy so announced." *State v. Vill. of Garden City*, 74 Idaho 513, 525, 265 P.2d 328, 334 (1953).

Thus, a preference for the CM Rules' "extensive rules, definitions, procedures, and criteria," R. 687, does not justify "add[ing] by judicial interpretation words that are not found in the statute as written." *City of Huetter v. Keene*, 150 Idaho 13, 15, 244 P.3d 157, 159 (2010). Nor does it mean the Ground Water Act cannot be implemented on its own terms consistent with the prior appropriation doctrine. To the contrary, the Ground Water Act was implemented consistent with the doctrine decades before the CM Rules existed. *Baker*, 95 Idaho at 583–84, 513 P.2d at 635–36. The *Final Order* demonstrates that remains feasible today through application of the prior appropriation doctrine's "[r]equirements pertaining to the standard of proof and who bears it." *AFRD2*, 143 Idaho at 874, 154 P.3d at 445.

b. *The Districts failed to present clear and convincing evidence of waste, lack of beneficial use, futile call, or any other defense to curtailment.*

The Districts, their supporters, and the district court all emphasize that this Court held the CM Rules are facially constitutional in *AFRD2*. *E.g.*, R. 687 (citing *id*. at 872–80, 154 P.3d at

443–51). That is beside the point. The CM Rules do not "permit or direct the shifting of the burden of proof," and neither does § 42-237a.g. *AFRD2*, 143 Idaho at 874, 154 P.3d at 445. In any curtailment, the prior appropriation doctrine requires the same presumptions, burdens, and evidentiary standards.

Chief among these is: "In Idaho, '[a] subsequent appropriator attempting to justify his diversion has the burden of providing that it will not injure prior appropriations.'" *A&B Irr. Dist. v. IDWR*, 153 Idaho 500, 516, 284 P.3d 225, 241 (2012) (quoting *Cantlin v. Carter*, 88 Idaho 179, 186, 397 P.2d 761, 765–66 (1964)). "It is Idaho's longstanding rule that proof of 'no injury' by a junior appropriator in a water delivery call must be by clear and convincing evidence." *Id*. at 524, 284 P.3d at 249. These principles are "read into the CM Rules." *AFRD2*, 143 Idaho at 874, 154 P.3d at 445. Likewise, the *Final Order* employs the same principles, ensuring the juniors' burden of proving "no injury" did not transform into a burden for the seniors to re-prove their decreed water rights. *See id*.

The Districts do not deny their burden; they simply hope it goes unnoticed on appeal, as it did in the district court. The Districts concede "moving a water right to a lower step in order of priority would be an undeniable injury." Districts' Br. at 20 (citing *Jenkins v. Dep't of Water Res.*, 103 Idaho 384, 388, 647 P.2d 1256, 1260 (1982)). They tout the principles of "beneficial use, economy and reasonable use of water," admitting that "[r]easonable use *is a question of fact*." *Id*. at 16 (emphasis added). Then they insinuate the seniors will waste water while, in the same breath, claiming curtailment provided too little water to make a difference. *Id*. at 23–24.

But when it comes time to explain how their rhetoric squares with the prior appropriation doctrine's presumptions, burdens, and evidentiary standards, the Districts are silent.

And for good reason. Although the Districts' brief studiously avoids the phrase "futile call," their curtailment defenses are all derivatives of the futile call doctrine or the related policy against waste. *Id*. In fact, the "futile call doctrine in Idaho 'embodies a policy against the waste of irrigation water.'" *Sylte v. IDWR*, 165 Idaho 238, 245, 443 P.3d 252, 259 (2019) (quoting *Gilbert v. Smith*, 97 Idaho 735, 739, 552 P.2d 1220, 1224 (1976)). Important as that policy is, it does not "permit an upstream junior appropriator to interfere with the water right of a downstream senior appropriator so long as the water flowing in its natural channels would reach the point of downstream diversion." *Gilbert*, 97 Idaho at 739, 552 P.2d at 1224. Moreover, this Court has consistently held that junior appropriators have the burden of proving waste, futile call, and other curtailment defenses by clear and convincing evidence. *A&B*, 153 Idaho at 516–20, 284 P.3d at 241–45 (collecting cases). Thus, while a senior's entitlement may be limited to prevent waste, the junior must overcome "the presumption . . . that the senior is entitled to his decreed water right" with clear and convincing evidence. *AFRD2*, 143 Idaho at 878, 154 P.3d at 449. Otherwise, the risk of water shortage impermissibly falls on senior appropriators.

This is not favorable law for the Districts, as their evidence is hardly clear or convincing. For starters, the Districts do not deny their well withdrawals "affect . . . the present or future use" of senior rights—indeed, they tacitly concede their pumping depletes the seniors' water source. I.C. § 42-237a.g. They recognize "prospects for the water year looked increasingly bleak" before

this proceeding began. Districts' Br. at 8. And they admit that seniors would benefit from curtailment. *Id*. at 23. The Districts built their defenses on this shaky foundation.

For example, the Districts point to a disparity in the acreage curtailed versus the volume of water generated for the seniors, without acknowledging this Court has approved far greater disparities. *See IGWA v. IDWR*, 160 Idaho 119, 132, 369 P.3d 897, 910 (2016) ("[T]he very nature of conjunctive management involves a large disparity between the number of acres curtailed and the accrued benefit to a senior surface right."). They suggest something is amiss because the Model analysis showed 67% of the curtailed water would remain in the aquifer—while over 20 additional cubic feet *per second* would flow to the seniors *in-season*. AR. 2116. They quibble over individual farmers' crop water needs in an extreme drought without clear evidence the farmers would not beneficially use additional water. They poke at the Model despite their expert's admission that it is "the best tool" available. ATr. vol. V, 1300:21–1301:1, 1320:2–4. They even argued curtailment would be futile because of beaver dams. *See* AR. 1906.

The Director analyzed all these defenses and more in great detail. AR. 1904–11, 1913. The Districts' unproven defenses hinged on the same "question[s] of fact" they emphasize on appeal—"the amount of water available from the source; effort and expense of diverting water; whether the exercise of junior rights 'affects' the quantity and timing of water availability; comparison of rate of diversion and acres irrigated; amount of water being diverted; and, the existence of measuring devices." Districts' Br. at 16 (citing IDAPA 37.03.11.42.1.a–.h). Those questions are embedded in CM Rule 42. And the same questions were fair game in this case, as

the Districts' exhaustive briefing and the Director's detailed analysis make clear. The Districts simply did not carry their burden.

c. ***With no viable defense to curtailment, out-of-priority ground water pumping in the Bellevue Triangle violated the prior appropriation doctrine and the Ground Water Act.***

Conjunctive administration entails a "balancing act" because the "prior appropriation doctrine sanctifies priority of right, but subject to the limitations imposed by beneficial use." *IGWA*, 160 Idaho at 132, 369 P.3d at 910. This fundamental challenge is no different for a decade-long delivery call under the CM Rules than for in-season priority administration under § 42-237a.g. "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." *AFRD2*, 143 Idaho at 880, 154 P.3d at 451. The sideboards for the Director's discretion are, as this Court has emphasized over and over, the prior appropriation doctrine's presumptions, burdens of proof, and evidentiary standards. *A&B*, 153 Idaho at 516–20, 284 P.3d at 241–45. Without these guiding principles, a senior affected by out-of-priority ground water use would continually face the prospect of "re-prov[ing] or re-adjudicat[ing] the right which he already has." *AFRD2*, 143 Idaho at 878, 154 P.3d at 449.

Accordingly, conjunctive administration starts with the "presumption under Idaho law . . . that the senior is entitled to his decreed water right . . . ." *Id*. To the extent there are "post-adjudication factors . . . relevant to the determination of how much water is actually needed," it is the junior's burden to prove them with clear and convincing evidence. *Id*. This is "Idaho's longstanding rule" for any actual or functional change to a decreed water right, whether

"permanent or temporary." *A&B*, 153 Idaho at 524, 284 P.3d at 249. And if the junior fails to carry their burden, the result is not some unlawful "'strict priority' and absolute 'depletion' to the resource standard . . . ." Districts' Br. at 49. It is the exact outcome our Constitution *requires*: "Priority of appropriation shall give the better right as between those using the water." Idaho Const. Art. XV, § 3.

The record shows out-of-priority ground water pumping in the Bellevue Triangle was not just "depleting the source" during the 2021 drought. It was instead affecting, contrary to the Ground Water Act, the use of water under dozens of senior water rights presumptively entitled to the water first. *See* I.C. § 42-237a.g; *see also* AR. 2389–91 (listing potentially injured rights). Critically, nobody was wasting water. "The record . . . does not support a conclusion that ground water uses in the Bellevue Triangle, or surface water uses on Silver Creek and the Little Wood, are contrary to Idaho's 'traditional policy' of requiring the state's water resources 'to be devoted to beneficial use in reasonable amounts through appropriation.'" AR. 1902 (quoting I.C. § 42-226). And the senior surface water users did not just rely on their presumptive entitlements (which are sufficient absent contrary proof). Rather, the seniors "carried their burden of providing evidence to support an initial determination that during the 2021 irrigation season, the surface water users have been and will continue to be injured by a shortage of water resulting, in part, from ground water pumping in the Bellevue Triangle under junior priority rights." AR. 1904; *see also* AR. 1891–1900 (findings of fact on seniors' injuries). With actual injury established on top of the seniors' presumptive entitlements to water, the Districts faced a high evidentiary hurdle and came up short. AR. 1904–11, 1913. The result was a one-week

curtailment—halted when the Director approved a mitigation plan that, for the first time, effectively resolved longstanding tension between ground and surface water users in the Wood River Valley.

This achievement is the product of following the prior appropriation doctrine's guiding principles all the way through. No doubt, the doctrine is "difficult, and harsh . . . in times of drought." *AFRD2*, 143 Idaho at 869, 154 P.3d at 440. But that is by design. Idaho law has always privileged senior appropriators in times of scarcity, subject to a junior appropriator's clear and convincing proof that the senior will not receive, or can get by with less, water.

"[T]he Director cannot distribute water however he pleases at any time in any way; he must follow the law." *In re SRBA Basin-Wide Issue 17*, 157 Idaho 385, 393, 336 P.3d 792, 800 (2014). The law states "the Director must abide by established evidentiary standards, presumptions, and burdens of proof." *In re Distrib. of Water to Various Water Rts. ex rel. A&B Irr. Dist.*, 155 Idaho 640, 650, 315 P.3d 828, 838 (2013). It does not make the Director responsible for proving or bolstering a junior's defenses to curtailment. Following the law, the Director implemented § 42-237a.g in accordance with the prior appropriation doctrine's evidentiary presumptions, standards, and burdens. The district court erred by requiring the Director to find "material injury" when, under the prior appropriation doctrine, it was the Districts' burden to prove curtailment would be ineffectual or disprove the seniors' injury clearly and convincingly.

D. The administrative proceeding afforded the Districts due process.

The district court did not find a due process violation, and on appeal no party argues they lacked notice or an opportunity to be heard *before* curtailment. Nor could they. The Department twice mailed notice to all water right holders in Water District 37, it also published notice in several regional newspapers, and, in response, interested parties from across southern Idaho flocked to the proceeding. The administrative proceeding featured a pre-hearing conference, generous standards for joinder and intervention, extensive motion practice, weeks of discovery, expert witness disclosures, a six-day evidentiary hearing featuring testimony from 25 witnesses and over 6,000 pages of documentary evidence, plus post-hearing briefs—all before the Director ordered curtailment for reasons detailed in a 38-page *Final Order*. While that process unfolded for nearly two months, the drought deepened, ground water pumping continued unabated, and senior surface water rights were curtailed—with zero hearings—earlier than anyone could remember. Curtailed for only one week, the Districts claim they were entitled to *more* process as their out-of-priority pumping continued in the face of a deep and worsening drought.

Water rights are property rights, so the holder of a curtailed water right is entitled to due process.[17] But procedural due process is not the rigid construct the Districts suggest. *Neighbors for a Healthy Gold Fork v. Valley Cnty.*, 145 Idaho 121, 127, 176 P.3d 126, 132 (2007). It "is a flexible concept calling for such procedural protections as are warranted by the particular

[17] For the same reason, water right holders who were not curtailed—such as Sun Valley Company—have no basis for a due process challenge. Despite its lengthy arguments to this Court, Sun Valley Company's "substantial rights" were not prejudiced in this proceeding. I.C. § 67-5279(4). Therefore, the Court should disregard Sun Valley Company's claims that the Director "ignore[d] due process" or somehow gave insufficient notice of the rights potentially subject to curtailment. Sun Valley Br. at 10, 18–20.

situation." *Id*. The procedures are sufficient when there is notice and the opportunity to be heard "at a meaningful time and in a meaningful manner." *Id*. That said, "[a] water user has no property interest in being free from the State's regulation of water distribution in accordance with the prior appropriation doctrine . . . ." *Thompson Creek Mining Co. v. IDWR*, 148 Idaho 200, 213–14, 220 P.3d 318, 331–32 (2009). Because the "water itself is the property of the state" and the Department has "constitutionally based" authority to regulate water rights in times of scarcity, this Court has not mandated rigid curtailment procedures. *Nettleton v. Higginson*, 98 Idaho 87, 90–91, 558 P.2d 1048, 1051–52 (1977).

On the contrary, "the determination of what due process is required" for a particular curtailment "requires a balancing of both the nature of the governmental function involved and the private interests affected." *Id*. at 90, 558 P.2d at 1051. Three factors guide this balancing: (1) "the importance of the private interest at stake;" (2) "the risk of an erroneous deprivation of rights given the processes at hand and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, 'including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.'" *Lu Ranching Co. v. U.S.*, 138 Idaho 606, 608, 67 P.3d 85, 87 (2003) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). The Districts must show these factors weigh in favor of lengthier proceedings in the context of the 2021 drought. Their procedural complaints hardly move the scale.

1. Seniors and juniors alike had important private interests at stake during the 2021 drought.

The first *Mathews* factor is a wash because important private interests were at stake for every water user affected by the proceeding. Senior surface water users and junior ground water users alike had their property rights on the line. This dynamic presents a quandary: Procedures that maximally protect junior appropriators' private interests in a secure water supply necessarily impair senior appropriators' identical interests. Yet the Director must "equally guard all the various interests involved," to the extent the prior appropriation doctrine permits. I.C. § 42-101. In this connection, it is essential to recognize that the prior appropriation doctrine favors the senior appropriator when water is scarce. *E.g.*, *Moe v. Harger*, 10 Idaho 302, 305–06, 77 P. 645, 646–47 (1905) ("[I]t would take more than a theory, and in fact clear and convincing evidence, in any given case, showing that the prior appropriator would not be injured or affected by the diversion of a subsequent appropriator . . . ."). Otherwise, a junior's interest in fairer curtailment procedures could, by delay alone, devour a senior's *right* to use water first.

During the 2021 drought, scarcity was a fact of life for water users in the Wood River Valley, or at least those less fortunate than ground water users in the Bellevue Triangle who "apparently ha[d] never been curtailed in the past." AR. 1904. Like the Districts' members, senior surface water users *also* faced curtailment with crops in the ground. AR. 1894–1900. Like the Districts' members, senior surface water users *also* stood to lose crop production and revenue. *Id*. Further, those seniors who could access and afford supplemental water were being forced to bear the cost of renting or pumping it, as formerly dependable surface rights—

including "the best water right in Richfield"—were proving unreliable. AR. 1894. While these facts do not diminish the Districts' members' interests in uninterrupted water supplies, they do show those interests were neither unique nor uniquely vulnerable during the 2021 drought.

The Districts attempt to elevate their members' interests, claiming they "stood to lose upwards of $12 million dollars [sic] . . . ." Districts' Br. at 47. But even if that *potential* loss had materialized after one week of curtailment (a fact not in the record), it would be irrelevant. Indeed, this Court roundly rejected the notion that curtailment decisions depend on which appropriator produces the greatest economic benefit. "The right to appropriate water is for 'beneficial uses,' Idaho Const. Art XV, § 3, not merely for profitable businesses." *Clear Springs*, 150 Idaho at 811, 252 P.3d at 92. "If business profitability was the basis for appropriation, decreed water rights would become meaningless. The issue would be which appropriator at the time could make the greater profit by using the water." *Id*. That is simply not the law in Idaho. *Id.*

"The right to water is a permanent concern to farmers, ranchers and other users," whether junior or senior. *Lu Ranching*, 138 Idaho at 608, 67 P.3d at 87. No doubt curtailment is strong medicine, but "it is obvious that in time of water shortage someone is not going to receive water." *Nettleton*, 98 Idaho at 91, 558 P.2d at 1052. These realities mean that the private interests are equipoised and do not support the Districts' quest for more procedure.

2. Additional procedures would have delayed administration without any assurance of a different outcome.

The offsetting private interests also mean any additional procedural safeguards for junior appropriators would be double-edged. A lengthy pre-curtailment process has obvious appeal for juniors—particularly the Districts' members, who have enjoyed curtailment-free ground water pumping for decades. On the other hand, "[d]eprivation of water for the time it would take for a hearing may cause serious economic or other harm to the senior appropriator." *Clear Springs*, 150 Idaho at 815, 252 P.3d at 96. Every additional opportunity for the juniors to be heard inevitably delays resolution of the proceeding. Because of this dynamic and other reasons below, the second *Mathews* factor—the probable value of additional or substitute procedures—also weighs against additional procedures.

In a deep drought with irrigation water at stake, the potential for delay cannot be ignored. The drafters of Idaho's Constitution "intended that there be no unnecessary delays in the delivery of water pursuant to a valid water right." *AFRD2*, 143 Idaho at 874, 154 P.3d at 445. That is why priority administration of surface water rights routinely occurs with little or no legal process in water districts. Here too, the situation arguably warranted a curtail-now-hearing-later approach, which this Court has permitted in appropriate cases. *Nettleton*, 98 Idaho at 92–93, 558 P.2d at 1053–54; *see also Clear Springs*, 150 Idaho at 814, 252 P.3d at 95 (recognizing "there are circumstances that justify postponing notice and an opportunity for a hearing" on curtailment).

Instead, the Director opted for an efficient yet thorough pre-curtailment process complete with advance notice, a full panoply of pre- and post-hearing procedures, and a six-day hearing.

As the Districts note, the proceeding started in early May, so it was even more important to proceed with reasonable dispatch. AR. 1. By that point, two things were apparent. First, the April SWSI (surface water supply index) showed the Wood River Valley's water supply would most likely be inadequate. AR. 1889 (citing AR. 2089–91). While there were signs of this mid-winter, the water supply picture does not come into focus until the spring and the Director prudently sought confirmation in the April data. Second, senior surface water users on Silver Creek and the Little Wood River had not filed a delivery call under the CM Rules, the only substitute procedure available. Time was of the essence and in-season administration was required—curtailing out-of-priority water use the following irrigation season would be too late.

The Districts, however, suggest they might have conjured a viable factual defense if only they had more time for discovery. The record paints a different picture. Instead of marshalling their facts, the Districts spent weeks papering the administrative proceeding with meritless legal arguments and prematurely petitioning the district court. AR. 111–76, 116–20, 453–56; R. 11–39, 52–53, 65–68. Even so, the Districts' experts were prepared to hold forth on myriad relevant and complex technical subjects, based on their years of experience working in the Wood River Valley. ATr. vol. IV, 1236–1326 (Powell), 1329–78 (Shaw). Yet, when it came time to attack the technical centerpiece of the proceeding, their expert admitted the Model is "the best tool we have . . . warts and all." ATr. vol. IV, 1320:2–4. The Districts' lay witnesses also testified at length, and their attorneys cross-examined with gusto. Beyond testimony, the Districts offered and the Director admitted over 25 exhibits covering over 450 pages. To top it off, the Districts submitted

a 48-page post-hearing brief. There was no shortage of meaningful opportunities for the Districts to be heard.

Nor is there any reason to believe more discovery time would have reduced the Districts' risk of curtailment. Throughout this case, the Districts' primary (albeit incorrect) contention has been that the administrative proceeding is unlawful, a position that does not require detailed, if any, factual support. And, while the Districts allege insufficient time to investigate non-participating senior surface water users, they do not explain why party status matters or why they did not investigate the senior rights the Department identified before the hearing. *See* AR. 2389–91. "The presumption under Idaho law is that the senior is entitled to his decreed water right," whether that senior joined the proceeding or not. *AFRD2*, 143 Idaho at 878, 154 P.3d at 449. That presumption has no practical value if it does not operate to seniors' benefit in an extreme drought. The probable value to the Districts of additional discovery is uncertain at best. But the consequences of delaying administration were clear to the Director: Out-of-priority pumping would continue, and "water in useable quantities for at least some of the senior surface water users" would go undelivered. AR. 1908.

Pointing to water right permitting and transfer processes, the Districts suggest this proceeding should have taken several months or more. This analogy is flawed. Permits or transfers are mere inchoate rights, lacking legal effect until the Department approves them. I.C. §§ 42-202, -222. In stark contrast, fully adjudicated rights are at stake when distributing water in a water district. *See* I.C. § 42-604 (requiring adjudicated "priorities of appropriation" to form a water district). The apt analogy is to surface water distribution in water districts, a process that is

routinized, fast, and above all based on supply and priority. I.C. § 42-607 (directing watermasters to "shut and fasten" diversion facilities "during times of water scarcity, in order to supply the prior rights of others"); *see also* ATr. Vol. IV, 764:1–765:24 (describing surface water distribution in Water District 37).

Idaho's junior surface water users are routinely curtailed with minimal legal process because time is of the essence when water is scarce. Yet the Districts claim their members are constitutionally entitled to the kind of lengthy, complicated proceedings typical of delivery calls under the CM Rules in the ESPA. This is another flawed analogy, as the Director recognized. AR. 1918. In the ESPA, the benefits of reduced pumping are attenuated, potentially taking years to manifest on the surface. *IGWA v. IDWR*, 160 Idaho 119, 132, 369 P.3d 897, 910 (2016). In Water District 37, reduced pumping from the Bellevue Triangle increases the flow of Silver Creek and the Little Wood River within days. AR. 1890–91. In the ESPA, conjunctive administration operates in a vast area, across the boundaries of many water districts. Here, the task is confined to one portion of Water District 37, where the best available science indicated curtailment benefits would be greatest and most immediate. In this context, additional, time-consuming procedures have dubious value for the Districts and would clearly prejudice the seniors.

3. Within a water district, in-season priority administration is an essential governmental function that would be impaired by additional pre-curtailment procedures.

The third *Mathews* factor, the government's interest, tips the balance against the Districts decisively. In resolving due process challenges to water right administration, this Court has

consistently emphasized the State's interest in, and the Director's duty to distribute, water. "It is well-settled that the water itself is the property of the state, which has the duty to supervise the allotment of those waters with minimal waste to the private appropriators." *Nettleton*, 98 Idaho at 90, 558 P.2d at 1051. The "state's authority to regulate the distribution of water is constitutionally based" and "the entire water distribution system under Title 42 of the Idaho Code is to further the state policy of securing the maximum use and benefit of its water resources." *Id*. at 90–91, 558 P.2d at 1051–52. "Just apportionment to, and economical use by, those who have appropriated water for a beneficial use furthers the important governmental interest of securing the maximum use and benefit of Idaho's scarce water resources." *Clear Springs*, 150 Idaho at 815, 252 P.3d at 96 (citing *Nettleton*, 98 Idaho at 91, 558 P.2d at 1052).

The Legislature has likewise declared that distributing water among appropriators in a water district is an "essential governmental function." I.C. § 42-604. To serve that function, the Legislature gave the "clear and executive duty" to distribute water in a water district to the Director. *Musser*, 125 Idaho at 395, 871 P.2d at 812 (citing I.C. § 42-602). The Legislature also granted the Director "sole discretion" to "supervise and control the exercise and administration of all rights to the use of ground waters," including the "discretionary power" the Director utilized in this case. I.C. § 42-237a.g. These powers and duties will be impaired if in-season administration of interconnected surface and ground water rights must wait for protracted pre-curtailment litigation. The irrigation season is too short for that—especially in extreme drought.

Despite all the due process rhetoric in the Districts' opening brief, they do not attempt to show how their interest in lengthier pre-curtailment procedures outweighs the seniors' and the

State's powerful interests in timely water distribution. The Districts received all the process due under the circumstances.

E. The Court should disregard the Districts' attempts to augment the record with addenda to their opening brief.

The Districts impermissibly seek to augment the record with six addenda attached to their opening brief. The addenda are excerpts of larger documents, none of which are in the record. The Director did not review those documents in this case, nor did the district court. The Districts had multiple opportunities to properly present their addenda in the administrative proceeding and in the district court, yet they did not. *See, e.g.*, R. 275–78 (Districts' objection to the agency record under IRCP 84(j)); Notice of Cross-Appeal ¶ 4–6 (indicating no additional documents, transcripts, or exhibits beyond those designated in the Department's Notice of Appeal).

Judicial review of agency action is "appellate in nature" and, therefore, "is to be conducted on the record, absent specific authorization." *Euclid Ave. Trust v. City of Boise*, 146 Idaho 306, 309, 193 P.3d 853, 856 (2008) (citing I.C. § 67-5276). Even if there were "good reasons" (lacking here) to supplement the administrative record after the fact, § 67-5276(1) requires an application to the district court "before the date set for hearing." That did not happen.

This Court "cannot consider" the addenda because "[a]ttaching documents to a brief is not a substitute for a motion under Idaho Appellate Rule 30 to augment the record on appeal." *W. Cmty. Ins. Co. v. Kickers, Inc.*, 137 Idaho 305, 306, 48 P.3d 634, 635 (2002). Notably, such a motion would be futile. The Districts' addenda were never "presented to the district court," let alone the agency under § 67-5226(1)(a). I.A.R. 30(a). Further, the addenda are not authorized

under Appellate Rule 35(f), as it permits only addenda containing "statutes, rules, regulations, recent court decisions not yet published, or relevant parts thereof"—not de-contextualized snippets of briefs, transcripts, and district court decisions from long-past cases.

The Districts' addenda were not the subject of a timely motion under § 67-5276, cannot be admitted under Appellate Rule 30, and do not fit any of the categories set out in Appellate Rule 35(f). The addenda are outside the record and should be disregarded.

F. The Director's order disapproving the Districts' first mitigation plan is outside the Court's jurisdiction.

The Districts attempt to challenge the Director's June 29, 2021 order disapproving their initial, insufficient mitigation plan. That order is not before the Court, however. Judicial review of a final order in a contested case can be had only if an aggrieved party "complies with the requirements of sections 67-5271 through 67-5279, Idaho Code." I.C. § 67-5270(3). One of the basic requirements is identifying the order being challenged in a timely petition for judicial review. I.C. § 67-5273(2). "Idaho Code § 67–5273(2) confines the courts' jurisdiction to those petitions filed within the prescribed time period." *City of Eagle v. IDWR*, 150 Idaho 449, 454, 247 P.3d 1037, 1042 (2011). Failure to timely challenge a final order "is jurisdictional," barring review of that order entirely. *Id*.

The Districts filed their initial petition for judicial review on May 24, 2021, which obviously did not challenge the Director's June 29 order. R. 11–30. The Districts also did not challenge the June 29 order in their first amended petition for judicial review, filed June 30, 2021. R. 135–56. The case went forward on a portion of the first amended petition, and the 28-

day window to challenge the June 29 order closed. *See* R. 264–68 (order on motion to amend petition). Naturally, the district court did not review or mention the Director's June 29 order because the Districts failed to challenge it in a timely petition for judicial review. Consequently, the June 29 order lies outside the courts' jurisdiction.

G. The Districts and their un-curtailed supporters are not entitled to attorney fees.

The Districts seek attorney fees under Idaho Code § 12-117. Sun Valley Company and the City of Hailey make the same claim—even though they were not curtailed and thus cannot achieve a more favorable result by appearing in this Court voluntarily. The statute authorizes a fee award in adversary proceedings involving a person and state agency if the Court "finds that the nonprevailing party acted without a reasonable basis in fact or law." I.C. § 12-117(1). Even if the Districts and their supporters could qualify as prevailing parties, they would not be entitled to attorney fees because the Department is acting with a reasonable basis in fact and law.

This case presents novel questions of whether, and how, the Director may administer interconnected surface and ground water rights in-season under § 42-237a.g. R. 692 (recognizing these "issues of first impression"). While novelty may not outright prohibit an award under § 12-117, it surely widens the envelope for reasonable positions. *DEQ v. Gibson*, 166 Idaho 424, 448, 461 P.3d 706, 730 (2020). The district court recognized as much when it found attorney fees "not warranted" because "all the parties involved presented legitimate questions," a conclusion no party challenges on appeal. R. 692. The same questions now confront this Court.

Heedless, the Districts and their supporters contend the Department lacks a reasonable basis merely because the proceeding did not apply the CM Rules and related caselaw—in the

absence of a delivery call to trigger them. This is insufficient to justify a fee award. What, if any, constraint the CM Rules impose on proceedings under § 42-237a.g is far from obvious and certainly not established in cases arising under the CM Rules themselves. *See City of Ririe v. Gilgen*, 170 Idaho 619, —, 515 P.3d 255, 265 (2022) (awarding fees when cases "directly on point" established that "no statute" authorized the agency action). Also far from obvious is the district court's conclusion that the prior appropriation doctrine somehow mandates an area of common ground water supply and "material injury" findings when the governing statute plainly does not. Like any other litigant, the Department may seek this Court's guidance on legitimate questions of law. *See 3G Ag, LLC v. IDWR*, 170 Idaho 251, —, 509 P.3d 1180, 1194–95 (2022). It should not be penalized for doing so here.

IV. CONCLUSION

The Director's decision to curtail pumping in the Bellevue Triangle during the unprecedented 2021 drought is supported by substantial evidence and consistent with Idaho law. The Director did not violate the prior appropriation doctrine by applying the test for curtailment written in Idaho Code § 42-237a.g according to longstanding presumptions, burdens, and evidentiary standards. Absent clear and convincing proof that senior appropriators are not injured or will not beneficially use the water delivered through curtailment, the prior appropriation doctrine allocates a drought-limited water supply by priority. The Director faithfully followed these principles in a proceeding authorized by statute and consistent with due process.

For these and other reasons above, the Department respectfully requests that this Court uphold the Director's *Final Order* in all respects by: (1) affirming the district court's holding that

§ 42-237a.g authorized the administrative proceeding, (2) affirming the district court's holding that the CM Rules do not supersede or limit the Director's authority under § 42-237a.g, (3) affirming that the administrative proceeding complied with procedural due process, and (4) reversing the district court's holding that the *Final Order* does not comply with the prior appropriation doctrine.

DATED this 28th day of October 2022.

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ATTORNEY GENERAL

DARRELL G. EARLY
Chief of Natural Resources Division

_____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of October 2022, I caused to be served a true and correct copy of the foregoing *IDWR Appellants' Reply & Cross-Response Brief*, via iCourt E-File and Serve, upon the following:

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ADDENDUM 1

1994 version of the CM Rules
IDAPA 37.03.11 (1994)

Table of Contents

37.03.11 – Rules for Conjunctive Management of Surface and Ground Water Resources

000. LEGAL AUTHORITY (RULE 0).
These rules are promulgated pursuant to Chapter 52, Title 67, Idaho Code, the Idaho Administrative Procedure Act, and Section 42-603, Idaho Code, which provides that the Director of the Department of Water Resources is authorized to adopt rules and regulations for the distribution of water from the streams, rivers, lakes, ground water and other natural water sources as necessary to carry out the laws in accordance with the priorities of the rights of the users thereof. These rules are also issued pursuant to Section 42-1805(8), Idaho Code, which provides the Director with authority to promulgate rules implementing or effectuating the powers and duties of the department. (10-7-94)

001. TITLE AND SCOPE (RULE 1).
These rules may be cited as "Rules for Conjunctive Management of Surface and Ground Water Resources." The rules prescribe 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. It is intended that these rules be incorporated into general rules governing water distribution in Idaho when such rules are adopted subsequently. (10-7-94)

003. OTHER AUTHORITIES REMAIN APPLICABLE (RULE 3).
Nothing in these rules limits the Director's authority to take alternative or additional actions relating to the management of water resources as provided by Idaho law. (10-7-94)

004. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).
For the purposes of these rules, the following terms will be used as defined below. (10-7-94)

01. Area Having a Common Ground Water Supply. 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 or within which the diversion and use of water by a holder of a ground water right affects the ground water supply available to the holders of other ground water rights. (Section 42-237a.g., Idaho Code) (10-7-94)

02. Artificial Ground Water Recharge. A deliberate and purposeful activity or project that is performed in accordance with Section 42-234(2), Idaho Code, and that diverts, distributes, injects, stores or spreads water to areas from which such water will enter into and recharge a ground water source in an area having a common ground water supply. (10-7-94)

03. Conjunctive Management. Legal and hydrologic integration of administration of the diversion and use of water under water rights from surface and ground water sources, including areas having a common ground water supply. (10-7-94)

04. Delivery Call. A request from the holder of a water right for administration of water rights under the prior appropriation doctrine. (10-7-94)

05. Department. The Department of Water Resources created by Section 42-1701, Idaho Code. (10-7-94)

06. Director. The Director of the Department of Water Resources appointed as provided by Section 42-1801, Idaho Code, or an employee, hearing officer or other appointee of the Department who has been delegated to act for the Director as provided by Section 42-1701, Idaho Code. (10-7-94)

07. Full Economic Development of Underground Water Resources. The diversion and use of water from a ground water source for beneficial uses in the public interest at a rate that does not exceed the reasonably anticipated average rate of future natural recharge, in a manner that does not result in material injury to senior-priority surface or ground water rights, and that furthers the principle of reasonable use of surface and ground water as set forth in Rule 42. (10-7-94)

08. Futile Call. A delivery call made by the holder of a senior-priority surface or ground water right that, for physical and hydrologic reasons, cannot be satisfied within a reasonable time of the call by immediately curtailing diversions under junior-priority ground water rights or that would result in waste of the water resource. (10-7-94)

09. Ground Water Management Area. Any ground water basin or designated part thereof as

designated by the Director pursuant to Section 42-233(b), Idaho Code. (10-7-94)

10. Ground Water. Water under the surface of the ground whatever may be the geological structure in which it is standing or moving as provided in Section 42-230(a), Idaho Code. (10-7-94)

11. Holder of a Water Right. The legal or beneficial owner or user pursuant to lease or contract of a right to divert or to protect in place surface or ground water of the state for a beneficial use or purpose. (10-7-94)

12. Idaho Law. The constitution, statutes, administrative rules and case law of Idaho. (10-7-94)

13. Junior-Priority. A water right priority date later in time than the priority date of other water rights being considered. (10-7-94)

14. Material Injury. Hindrance to or impact upon the exercise of a water right caused by the use of water by another person as determined in accordance with Idaho Law, as set forth in Rule 42. (10-7-94)

15. Mitigation Plan. A document submitted by the holder(s) of a junior-priority ground water right and approved by the Director as provided in Rule 043 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. (10-7-94)

16. Person. Any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character. (10-7-94)

17. Petitioner. Person who asks the Department to initiate a contested case or to otherwise take action that will result in the issuance of an order or rule. (10-7-94)

18. Reasonable Ground Water Pumping Level. A level established by the Director pursuant to Sections 42-226, and 42-237a.g., Idaho Code, either generally for an area or aquifer or for individual water rights on a case-by-case basis, for the purpose of protecting the holders of senior-priority ground water rights against unreasonable lowering of ground water levels caused by diversion and use of surface or ground water by the holders of junior-priority surface or ground water rights under Idaho law. (10-7-94)

19. Reasonably Anticipated Average Rate of Future Natural Recharge. The estimated average annual volume of water recharged to an area having a common ground water supply from precipitation, underflow from tributary sources, and stream losses and also water incidentally recharged to an area having a common ground water supply as a result of the diversion and use of water for irrigation and other purposes. The estimate will be based on available data regarding conditions of diversion and use of water existing at the time the estimate is made and may vary as these conditions and available information change. (10-7-94)

20. Respondent. Persons against whom complaints or petitions are filed or about whom investigations are initiated. (10-7-94)

21. Senior-Priority. A water right priority date earlier in time than the priority dates of other water rights being considered. (10-7-94)

22. Surface Water. Rivers, streams, lakes and springs when flowing in their natural channels as provided in Sections 42-101 and 42-103, Idaho Code. (10-7-94)

23. Water District. An instrumentality of the state of Idaho created by the Director as provided in Section 42-604, Idaho Code, for the purpose of performing the essential governmental function of distribution of water among appropriators under Idaho law. (10-7-94)

24. Watermaster. A person elected and appointed as provided in Section 42-605, and Section 42-801, Idaho Code, to distribute water within a water district. (10-7-94)

25. Water Right. The legal right to divert and use or to protect in place the public waters of the state of

Idaho where such right is evidenced by a decree, a permit or license issued by the Department, a beneficial or constitutional use right or a right based on federal law. (10-7-94)

011. -- 019. (RESERVED)

020. GENERAL STATEMENTS OF PURPOSE AND POLICIES FOR CONJUNCTIVE MANAGEMENT OF SURFACE AND GROUND WATER RESOURCES (RULE 20).

01. Distribution of Water Among the Holders of Senior and Junior-Priority Rights. These rules apply to all situations in the state where the diversion and use of water under junior-priority ground water rights either individually or collectively causes material injury to uses of water under senior-priority water rights. The rules govern the distribution of water from ground water sources and areas having a common ground water supply. (10-7-94)

02. Prior Appropriation Doctrine. These rules acknowledge all elements of the prior appropriation doctrine as established by Idaho law. (10-7-94)

03. Reasonable Use of Surface and Ground Water. These rules integrate the administration and use of surface and ground water in a manner consistent with the traditional policy of reasonable use of both surface and ground water. The policy of reasonable use includes the concepts of priority in time and superiority in right being subject to conditions of reasonable use as the legislature may by law prescribe as provided in Article XV, Section 5, Idaho Constitution, optimum development of water resources in the public interest prescribed in Article XV, Section 7, Idaho Constitution, and full economic development as defined by Idaho law. An appropriator is not entitled to command the entirety of large volumes of water in a surface or ground water source to support his appropriation contrary to the public policy of reasonable use of water as described in this rule. (10-7-94)

04. Delivery Calls. These rules provide the basis and procedure for responding to delivery calls made by the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right. The principle of the futile call applies to the distribution of water under these rules. Although a call may be denied under the futile call doctrine, these rules may require mitigation or staged or phased curtailment of a junior-priority use if diversion and use of water by the holder of the junior-priority water right causes material injury, even though not immediately measurable, to the holder of a senior-priority surface or ground water right in instances where the hydrologic connection may be remote, the resource is large and no direct immediate relief would be achieved if the junior-priority water use was discontinued. (10-7-94)

05. Exercise of Water Rights. These rules provide the basis for determining the reasonableness of the diversion and use of water by both the holder of a senior-priority water right who requests priority delivery and the holder of a junior-priority water right against whom the call is made. (10-7-94)

06. Areas Having a Common Ground Water Supply. These rules provide the basis for the designation of areas of the state that have a common ground water supply and the procedures that will be followed in incorporating the water rights within such areas into existing water districts or creating new districts as provided in Section 42-237a.g., and Section 42-604, Idaho Code, or designating such areas as ground water management areas as provided in Section 42-233(b), Idaho Code. (10-7-94)

07. Sequence of Actions for Responding to Delivery Calls. Rule 30 provides procedures for responding to delivery calls within areas having a common ground water supply that have not been incorporated into an existing or new water district or designated a ground water management area. Rule 40 provides procedures for responding to delivery calls within water districts where areas having a common ground water supply have been incorporated into the district or a new district has been created. Rule 41 provides procedures for responding to delivery calls within areas that have been designated as ground water management areas. Rule 50 designates specific known areas having a common ground water supply within the state. (10-7-94)

08. Reasonably Anticipated Average Rate of Future Natural Recharge. These rules provide for administration of the use of ground water resources to achieve the goal that withdrawals of ground water not exceed the reasonably anticipated average rate of future natural recharge. (Section 42-237a.g., Idaho Code) (10-7-94)

09. Saving of Defenses. Nothing in these rules affects or in any way limit any person's entitlement to

assert any defense or claim based upon fact or law in any contested case or other proceeding. (10-7-94)

10. Wells as Alternate or Changed Points of Diversion for Water Rights from a Surface Water Source. Nothing in these rules prohibits any holder of a water right from a surface water source from seeking, pursuant to Idaho law, to change the point of diversion of the water to an inter-connected area having a common ground water supply. (10-7-94)

11. Domestic and Stock Watering Ground Water Rights Exempt. A delivery call shall not be effective against any ground water right used for domestic purposes regardless of priority date where such domestic use is within the limits of the definition set forth in Section 42-111, Idaho Code, nor against any ground water right used for stock watering where such stock watering use is within the limits of the definition set forth in Section 42-1401A(11), Idaho Code; provided, however, this exemption shall not prohibit the holder of a water right for domestic or stock watering uses from making a delivery call, including a delivery call against the holders of other domestic or stockwatering rights, where the holder of such right is suffering material injury. (10-7-94)

021. -- 029. (RESERVED)

030. RESPONSES TO CALLS FOR WATER DELIVERY IN AN UNORGANIZED WATER DISTRICT OR WITH NO GROUND WATER REGULATION (RULE 30).
Responses to calls for water delivery made by the holders of senior-priority surface or ground water rights against the holders of junior-priority ground water rights within areas of the state not in organized water districts or within water districts where ground water regulation has not been included in the functions of such districts or within areas that have not been designated ground water management areas shall be as follows: (10-7-94)

01. Delivery Call (Petition). When a delivery call is made by the holder of a surface or ground water right (petitioner) alleging that by reason of diversion of water by the holders of one (1) or more junior-priority ground water rights (respondents) the petitioner is suffering material injury, the petitioner shall file with the Director a petition in writing containing, at least, the following in addition to the information required by IDAPA 37.01.01, "Rules of Procedure of the Department of Water Resources," Rule 230: (10-7-94)

a. A description of the water rights of the petitioner including a listing of the decree, license, permit, claim or other documentation of such right, the water diversion and delivery system being used by petitioner and the beneficial use being made of the water. (10-7-94)

b. The names, addresses and description of the water rights of the ground water users (respondents) who are alleged to be causing material injury to the rights of the petitioner in so far as such information is known by the petitioner or can be reasonably determined by a search of public records. (10-7-94)

c. All information, measurements, data or study results available to the petitioner to support the claim of material injury. (10-7-94)

d. A description of the area having a common ground water supply within which petitioner desires junior-priority ground water diversion and use to be regulated. (10-7-94)

02. Contested Case. The Department will consider the matter as a petition for contested case under the Department's Rules of Procedure, IDAPA 37.01.01. The petitioner shall serve the petition upon all known respondents as required by IDAPA 37.01.01, "Rules of Procedure of the Department of Water Resources," Rule 203. In addition to such direct service by petitioner, the Department will give such general notice by publication or news release as will advise ground water users within the petitioned area of the matter. (10-7-94)

03. Informal Resolution. The Department may initially consider the contested case for informal resolution under the provisions of Section 67-5241, Idaho Code, if doing so will expedite the case without prejudicing the interests of any party. (10-7-94)

04. Petition for Modification of an Existing Water District. In the event the petition proposes regulation of ground water rights conjunctively with surface water rights in an organized water district, and the water rights have been adjudicated, the Department may consider such to be a petition for modification of the organized

water district and notice of proposed modification of the water district shall be provided by the Director pursuant to Section 42-604, Idaho Code. The Department will proceed to consider the matter addressed by the petition under the Department's Rules of Procedure. (10-7-94)

05. Petition for Creation of a New Water District. In the event the petition proposes regulation of ground water rights from a ground water source or conjunctively with surface water rights within an area having a common ground water supply which is not in an existing water district, and the water rights have been adjudicated, the Department may consider such to be a petition for creation of a new water district and notice of proposed creation of a water district shall be provided by the Director pursuant to Section 42-604, Idaho Code. The Department will proceed to consider the matter under the Department's Rules of Procedure. (10-7-94)

06. Petition for Designation of a Ground Water Management Area. In the event the petition proposes regulation of ground water rights from an area having a common ground water supply within which the water rights have not been adjudicated, the Department may consider such to be a petition for designation of a ground water management area pursuant to Section 42-233(b), Idaho Code. The Department will proceed to consider the matter under the Department's Rules of Procedure. (10-7-94)

07. Order. Following consideration of the contested case under the Department's Rules of Procedure, the Director may, by order, take any or all of the following actions: (10-7-94)

a. Deny the petition in whole or in part; (10-7-94)

b. Grant the petition in whole or in part or upon conditions; (10-7-94)

c. Determine an area having a common ground water supply which affects the flow of water in a surface water source in an organized water district; (10-7-94)

d. Incorporate an area having a common ground water supply into an organized water district following the procedures of Section 42-604, Idaho Code, provided that the ground water rights that would be incorporated into the water district have been adjudicated relative to the rights already encompassed within the district; (10-7-94)

e. Create a new water district following the procedures of Section 42-604, Idaho Code, provided that the water rights to be included in the new water district have been adjudicated; (10-7-94)

f. Determine the need for an adjudication of the priorities and permissible rates and volumes of diversion and consumptive use under the surface and ground water rights of the petitioner and respondents and initiate such adjudication pursuant to Section 42-1406, Idaho Code; (10-7-94)

g. By summary order as provided in Section 42-237 a.g., Idaho Code, prohibit or limit the withdrawal of water from any well during any period it is determined that water to fill any water right is not there available without causing ground water levels to be drawn below the reasonable ground water pumping level, or would affect the present or future use of any prior surface or ground water right or result in the withdrawing of the ground water supply at a rate beyond the reasonably anticipated average rate of future natural recharge. The Director will take into consideration the existence of any approved mitigation plan before issuing any order prohibiting or limiting withdrawal of water from any well; or (10-7-94)

h. Designate a ground water management area under the provisions of Section 42-233(b), Idaho Code, if it appears that administration of the diversion and use of water from an area having a common ground water supply is required because the ground water supply is insufficient to meet the demands of water rights or the diversion and use of water is at a rate beyond the reasonably anticipated average rate of future natural recharge and modification of an existing water district or creation of a new water district cannot be readily accomplished due to the need to first obtain an adjudication of the water rights. (10-7-94)

08. Orders for Interim Administration. For the purposes of Rule Subsections 030.07.d. and 030.07.e., an outstanding order for interim administration of water rights issued by the court pursuant to Section 42-1417, Idaho Code, in a general adjudication proceeding shall be considered as an adjudication of the water rights

involved. (10-7-94)

09. Administration Pursuant to Rule 40. Upon a finding of an area of common ground water supply and upon the incorporation of such area into an organized water district, or the creation of a new water district, the use of water shall be administered in accordance with the priorities of the various water rights as provided in Rule 40. (10-7-94)

10. Administration Pursuant to Rule 41. Upon the designation of a ground water management area, the diversion and use of water within such area shall be administered in accordance with the priorities of the various water rights as provided in Rule 41. (10-7-94)

031. DETERMINING AREAS HAVING A COMMON GROUND WATER SUPPLY (RULE 31).

01. Director to Consider Information. The Director will consider all available data and information that describes the relationship between ground water and surface water in making a finding of an area of common ground water supply. (10-7-94)

02. Kinds of Information. The information considered may include, but is not limited to, any or all of the following: (10-7-94)

a. Water level measurements, studies, reports, computer simulations, pumping tests, hydrographs of stream flow and ground water levels and other such data; and (10-7-94)

b. The testimony and opinion of expert witnesses at a hearing on a petition for expansion of a water district or organization of a new water district or designation of a ground water management area. (10-7-94)

03. Criteria for Findings. A ground water source will be determined to be an area having a common ground water supply if: (10-7-94)

a. The ground water source supplies water to or receives water from a surface water source; or (10-7-94)

b. Diversion and use of water from the ground water source will cause water to move from the surface water source to the ground water source. (10-7-94)

c. Diversion and use of water from the ground water source has an impact upon the ground water supply available to other persons who divert and use water from the same ground water source. (10-7-94)

04. Reasonably Anticipated Average Rate of Future Natural Recharge. The Director will estimate the reasonably anticipated average rate of future natural recharge for an area having a common ground water supply. Such estimates will be made and updated periodically as new data and information are available and conditions of diversion and use change. (10-7-94)

05. Findings. The findings of the Director will be included in the Order issued pursuant to Rule Subsection 030.07. (10-7-94)

032. -- 039. (RESERVED)

040. RESPONSES TO CALLS FOR WATER DELIVERY IN AN ORGANIZED WATER DISTRICT (RULE 40).

Responses to calls for water delivery made by the holders of senior-priority surface or ground water rights against the holders of junior-priority ground water rights from areas having a common ground water supply in an organized water district shall be as follows: (10-7-94)

01. Responding to a Delivery Call. When a delivery call is made by the holder of a senior-priority water right (petitioner) alleging that by reason of diversion of water by the holders of one (1) or more junior-priority ground water rights (respondents) from an area having a common ground water supply in an organized water district

the petitioner is suffering material injury, and upon a finding by the Director as provided in Rule 42 that material injury is occurring, the Director, through the watermaster, shall: (10-7-94)

a. Regulate the diversion and use of water in accordance with the priorities of rights of the various surface or ground water users whose rights are included within the district, provided, that regulation of junior-priority ground water diversion and use where the material injury is delayed or long range may, by order of the Director, be phased-in over not more than a five-year (5) period to lessen the economic impact of immediate and complete curtailment; or (10-7-94)

b. Allow out-of-priority diversion of water by junior-priority ground water users pursuant to a mitigation plan that has been approved by the Director. (10-7-94)

02. Regulation of Uses of Water by Watermaster. The Director, through the watermaster, shall regulate use of water within the water district pursuant to Idaho law and the priorities of water rights as provided in Section 42-604, Idaho Code, and under the following procedures: (10-7-94)

a. The watermaster shall determine the quantity of surface water of any stream included within the water district which is available for diversion and shall shut the headgates of the holders of junior-priority surface water rights as necessary to assure that water is being diverted and used in accordance with the priorities of the respective water rights from the surface water source. (10-7-94)

b. The watermaster shall regulate the diversion and use of ground water in accordance with the rights thereto, approved mitigation plans and orders issued by the Director. (10-7-94)

c. Where a call is made by the holder of a senior-priority water right against the holder of a junior-priority ground water right in the water district the watermaster shall first determine whether a mitigation plan has been approved by the Director whereby diversion of ground water may be allowed to continue out of priority order. If the holder of a junior-priority ground water right is a participant in such approved mitigation plan, and is operating in conformance therewith, the watermaster shall allow the ground water use to continue out of priority. (10-7-94)

d. The watermaster shall maintain records of the diversions of water by surface and ground water users within the water district and records of water provided and other compensation supplied under the approved mitigation plan which shall be compiled into the annual report which is required by Section 42-606, Idaho Code. (10-7-94)

e. Under the direction of the Department, watermasters of separate water districts shall cooperate and reciprocate in assisting each other in assuring that diversion and use of water under water rights is administered in a manner to assure protection of senior-priority water rights provided the relative priorities of the water rights within the separate water districts have been adjudicated. (10-7-94)

03. Reasonable Exercise of Rights. In determining whether diversion and use of water under rights will be regulated under Rule Subsection 040.01.a. or 040.01.b., the Director shall consider whether the petitioner making the delivery call is suffering material injury to a senior-priority water right and is diverting and using water efficiently and without waste, and in a manner consistent with the goal of reasonable use of surface and ground waters as described in Rule 42. The Director will also consider whether the respondent junior-priority water right holder is using water efficiently and without waste. (10-7-94)

04. Actions of the Watermaster Under a Mitigation Plan. Where a mitigation plan has been approved as provided in Rule 42, the watermaster may permit the diversion and use of ground water to continue out of priority order within the water district provided the holder of the junior-priority ground water right operates in accordance with such approved mitigation plan. (10-7-94)

05. Curtailment of Use Where Diversions Not in Accord With Mitigation Plan or Mitigation Plan Is Not Effective. Where a mitigation plan has been approved and the junior-priority ground water user fails to operate in accordance with such approved plan or the plan fails to mitigate the material injury resulting from diversion and use of water by holders of junior-priority water rights, the watermaster will notify the Director who will immediately issue cease and desist orders and direct the watermaster to terminate the out-of-priority use of ground water rights

otherwise benefiting from such plan or take such other actions as provided in the mitigation plan to ensure protection of senior-priority water rights. (10-7-94)

06. Collection of Assessments Within Water District. Where a mitigation plan has been approved, the watermaster of the water district shall include the costs of administration of the plan within the proposed annual operation budget of the district; and, upon approval by the water users at the annual water district meeting, the water district shall provide for the collection of assessment of ground water users as provided by the plan, collect the assessments and expend funds for the operation of the plan; and the watermaster shall maintain records of the volumes of water or other compensation made available by the plan and the disposition of such water or other compensation. (10-7-94)

041. ADMINISTRATION OF DIVERSION AND USE OF WATER WITHIN A GROUND WATER MANAGEMENT AREA (RULE 41).

01. Responding to a Delivery Call. When a delivery call is made by the holder of a senior-priority ground water right against holders of junior-priority ground water rights in a designated ground water management area alleging that the ground water supply is insufficient to meet the demands of water rights within all or portions of the ground water management area and requesting the Director to order water right holders, on a time priority basis, to cease or reduce withdrawal of water, the Director shall proceed as follows: (10-7-94)

a. The petitioner shall be required to submit all information available to petitioner on which the claim is based that the water supply is insufficient. (10-7-94)

b. The Director will conduct a fact-finding hearing on the petition at which the petitioner and respondents may present evidence on the water supply, and the diversion and use of water from the ground water management area. (10-7-94)

02. Order. Following the hearing, the Director may take any or all of the following actions: (10-7-94)

a. Deny the petition in whole or in part; (10-7-94)

b. Grant the petition in whole or in part or upon conditions; (10-7-94)

c. Find that the water supply of the ground water management area is insufficient to meet the demands of water rights within all or portions of the ground water management area and order water right holders on a time priority basis to cease or reduce withdrawal of water, provided that the Director shall consider the expected benefits of an approved mitigation plan in making such finding. (10-7-94)

d. Require the installation of measuring devices and the reporting of water diversions pursuant to Section 42-701, Idaho Code. (10-7-94)

03. Date and Effect of Order. Any order to cease or reduce withdrawal of water will be issued prior to September 1 and shall be effective for the growing season during the year following the date the order is given and until such order is revoked or modified by further order of the Director. (10-7-94)

04. Preparation of Water Right Priority Schedule. For the purposes of the Order provided in Rule Subsections 041.02 and 041.03, the Director will utilize all available water right records, claims, permits, licenses and decrees to prepare a water right priority schedule. (10-7-94)

042. DETERMINING MATERIAL INJURY AND REASONABLENESS OF WATER DIVERSIONS (RULE 42).

01. Factors. Factors the Director may consider in determining whether the holders of water rights are suffering material injury and using water efficiently and without waste include, but are not limited to, the following: (10-7-94)

a. The amount of water available in the source from which the water right is diverted. (10-7-94)

b. The effort or expense of the holder of the water right to divert water from the source. (10-7-94)

c. Whether the exercise of junior-priority ground water rights individually or collectively affects the quantity and timing of when water is available to, and the cost of exercising, a senior-priority surface or ground water right. This may include the seasonal as well as the multi-year and cumulative impacts of all ground water withdrawals from the area having a common ground water supply. (10-7-94)

d. If for irrigation, the rate of diversion compared to the acreage of land served, the annual volume of water diverted, the system diversion and conveyance efficiency, and the method of irrigation water application. (10-7-94)

e. The amount of water being diverted and used compared to the water rights. (10-7-94)

f. The existence of water measuring and recording devices. (10-7-94)

g. The 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; provided, however, the holder of a surface water storage right shall be entitled to maintain a reasonable amount of carry-over storage to assure water supplies for future dry years. In determining a reasonable amount of carry-over storage water, the Director shall consider the average annual rate of fill of storage reservoirs and the average annual carry-over for prior comparable water conditions and the projected water supply for the system. (10-7-94)

h. The extent to which the requirements of the senior-priority surface water right could be met using alternate reasonable means of diversion or alternate points of diversion, including the construction of wells or the use of existing wells to divert and use water from the area having a common ground water supply under the petitioner's surface water right priority. (10-7-94)

02. Delivery Call for Curtailment of Pumping. The holder of a senior-priority surface or ground water right will be prevented from making a delivery call for curtailment of pumping of any well used by the holder of a junior-priority ground water right where use of water under the junior-priority right is covered by an approved and effectively operating mitigation plan. (10-7-94)

043. MITIGATION PLANS (RULE 43).

01. Submission of Mitigation Plans. A proposed mitigation plan shall be submitted to the Director in writing and shall contain the following information: (10-7-94)

a. The name and mailing address of the person or persons submitting the plan. (10-7-94)

b. Identification of the water rights for which benefit the mitigation plan is proposed. (10-7-94)

c. A description of the plan setting forth the water supplies proposed to be used for mitigation and any circumstances or limitations on the availability of such supplies. (10-7-94)

d. Such information as shall allow the Director to evaluate the factors set forth in Rule Subsection 043.03. (10-7-94)

02. Notice and Hearing. Upon receipt of a proposed mitigation plan the Director will provide notice, hold a hearing as determined necessary, and consider the plan under the procedural provisions of Section 42-222, Idaho Code, in the same manner as applications to transfer water rights. (10-7-94)

03. Factors to Be Considered. Factors that may be considered by the Director in determining whether a proposed mitigation plan will prevent injury to senior rights include, but are not limited to, the following: (10-7-94)

a. Whether delivery, storage and use of water pursuant to the mitigation plan is in compliance with Idaho law. (10-7-94)

b. Whether the mitigation plan will provide replacement water, at the time and place required by the senior-priority water right, sufficient to offset the depletive effect of ground water withdrawal on the water available in the surface or ground water source at such time and place as necessary to satisfy the rights of diversion from the surface or ground water source. Consideration will be given to the history and seasonal availability of water for diversion so as not to require replacement water at times when the surface right historically has not received a full supply, such as during annual low-flow periods and extended drought periods. (10-7-94)

c. Whether the mitigation plan provides replacement water supplies or other appropriate compensation to the senior-priority water right when needed during a time of shortage even if the effect of pumping is spread over many years and will continue for years after pumping is curtailed. A mitigation plan may allow for multi-season accounting of ground water withdrawals and provide for replacement water to take advantage of variability in seasonal water supply. The mitigation plan must include contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable. (10-7-94)

d. Whether the mitigation plan proposes artificial recharge of an area of common ground water supply as a means of protecting ground water pumping levels, compensating senior-priority water rights, or providing aquifer storage for exchange or other purposes related to the mitigation plan. (10-7-94)

e. Where a mitigation plan is based upon computer simulations and calculations, whether such plan uses generally accepted and appropriate engineering and hydrogeologic formulae for calculating the depletive effect of the ground water withdrawal. (10-7-94)

f. Whether the mitigation plan uses generally accepted and appropriate values for aquifer characteristics such as transmissivity, specific yield, and other relevant factors. (10-7-94)

g. Whether the mitigation plan reasonably calculates the consumptive use component of ground water diversion and use. (10-7-94)

h. The reliability of the source of replacement water over the term in which it is proposed to be used under the mitigation plan. (10-7-94)

i. Whether the mitigation plan proposes enlargement of the rate of diversion, seasonal quantity or time of diversion under any water right being proposed for use in the mitigation plan. (10-7-94)

j. Whether the mitigation plan is consistent with the conservation of water resources, the public interest or injures other water rights, or would result in the diversion and use of ground water at a rate beyond the reasonably anticipated average rate of future natural recharge. (10-7-94)

k. Whether the mitigation plan provides for monitoring and adjustment as necessary to protect senior-priority water rights from material injury. (10-7-94)

l. Whether the plan provides for mitigation of the effects of pumping of existing wells and the effects of pumping of any new wells which may be proposed to take water from the areas of common ground water supply. (10-7-94)

m. Whether the mitigation plan provides for future participation on an equitable basis by ground water pumpers who divert water under junior-priority rights but who do not initially participate in such mitigation plan. (10-7-94)

n. A mitigation plan may propose division of the area of common ground water supply into zones or segments for the purpose of consideration of local impacts, timing of depletions, and replacement supplies. (10-7-94)

o. Whether the petitioners and respondents have entered into an agreement on an acceptable mitigation plan even though such plan may not otherwise be fully in compliance with these provisions. (10-7-94)

044. -- 049. (RESERVED)

050. AREAS DETERMINED TO HAVE A COMMON GROUND WATER SUPPLY (RULE 50).

01. Eastern Snake Plain Aquifer. The area of coverage of this rule is the aquifer underlying the Eastern Snake River Plain as the aquifer is defined in the report, Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho, USGS Professional Paper 1408-F, 1992 excluding areas south of the Snake River and west of the line separating Sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian. (10-7-94)

a. The Eastern Snake Plain Aquifer supplies water to and receives water from the Snake River. (10-7-94)

b. The Eastern Snake Plain Aquifer is found to be an area having a common ground water supply. (10-7-94)

c. The reasonably anticipated average rate of future natural recharge of the Eastern Snake Plain Aquifer will be estimated in any order issued pursuant to Rule 30. (10-7-94)

d. The Eastern Snake Plain Aquifer area of common ground water supply will be created as a new water district or incorporated into an existing or expanded water district as provided in Section 42-604, Idaho Code, when the rights to the diversion and use of water from the aquifer have been adjudicated, or will be designated a ground water management area. (10-7-94)

051. -- 999. (RESERVED)

Subject Index

ADDENDUM 2

1953 amendments to the Ground Water Act
1953 Idaho Session Laws ch. 182, § 15

ADDENDUM 3

2021 legislation repealing portions of the Ground Water Act, effective July 1, 2021
2021 Idaho Session Laws ch. 36 & 358, § 18

GENERAL LAWS

OF THE

STATE OF IDAHO

PASSED AND PUBLISHED BY
THE FIRST REGULAR SESSION OF THE
SIXTY-SIXTH IDAHO LEGISLATURE

Convened January 11, 2021
Adjourned November 17, 2021

Volume 2

Idaho Official Directory and Roster of State Officials and Members of State Legislature follows the Index.

Chairman Lakey
Senate Judiciary & Rules
Chairman Chaney
House Judiciary, Rules & Administration

(c) Obligate the state to pay the balance of the nonfederal share of eligible costs within local taxing entities qualifying for federal assistance; and

(d) Enter into agreements with the federal government for the sharing of disaster assistance expenses to include individual and family grant programs.

(7) During the continuance of any state of disaster emergency, neither the governor nor any agency of any governmental entity or political subdivision of the state shall impose or enforce any additional restrictions on the lawful manufacturing, possession, transfer, sale, transport, storage, display or use of firearms or ammunition or otherwise limit or suspend any rights guaranteed by the United States constitution or the constitution of the state of Idaho, including but not limited to the right to peaceable assembly or free exercise of religion.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved May 10, 2021

CHAPTER 358
(H.B. No. 394)

AN ACT

RELATING TO EFFECTIVE DATES; AMENDING CHAPTER 3, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 3, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 7, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 6, CHAPTER 7, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 9, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 9, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 10, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 10, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 11, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 6, CHAPTER 11, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 18, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 18, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 19, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 5, CHAPTER 19, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 21, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 21, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 22, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 8, CHAPTER 22, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 27, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 27, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 28, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 28, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 29, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 29, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 31, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 31, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 32, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 32, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 33, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 33, LAWS OF 2021, TO

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2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 80, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 81, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 81, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 82, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 6, CHAPTER 82, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 83, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 83, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 85, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 85, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 87, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 87, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING SECTION 22, CHAPTER 89, LAWS OF 2021, TO DECLARE AN EMERGENCY; AMENDING CHAPTER 91, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 91, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 93, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 93, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 94, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 94, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 95, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 95, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 96, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 96, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 97, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 97, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 98, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 98, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 99, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 99, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 100, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 100, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 101, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 101, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 102, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 102, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 103, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 103, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 104, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 104, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 106, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 106, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 107, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 107, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 108, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 108, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 109, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 109, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 111, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 111, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 112, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 112, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 113, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 113, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 114, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 5, CHAPTER 114, LAWS OF 2021, TO DECLARE AN

EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 115, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 115, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 117, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 117, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 118, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 118, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 119, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 119, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 120, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 120, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 121, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 121, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 122, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 122, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 123, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 123, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 124, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 5, CHAPTER 124, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 125, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 125, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 126, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 126, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 128, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 128, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 129, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 129, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING SECTION 5, CHAPTER 130, LAWS OF 2021, TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 131, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 5, CHAPTER 131, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 132, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 132, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 133, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 133, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 134, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 5, CHAPTER 134, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 135, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 135, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 136, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 136, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 138, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 138, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 140, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 5, CHAPTER 140, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 141, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 141, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING SECTION 4, CHAPTER 142, LAWS OF 2021, TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 143, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 143, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 145, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 145, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 146, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 146, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 147, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 147, LAWS OF 2021,

TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 148, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 148, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 149, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 31, CHAPTER 149, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 150, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 150, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 151, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 9, CHAPTER 151, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 152, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 5, CHAPTER 152, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 153, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 153, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 154, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 154, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 155, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 155, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 156, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 156, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 157, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 157, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 158, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 158, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 159, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 159, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING SECTION 24, CHAPTER 160, LAWS OF 2021, TO DECLARE AN EMERGENCY; AMENDING CHAPTER 161, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 161, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 162, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 162, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 163, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 9, CHAPTER 163, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 164, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 164, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 165, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 165, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 166, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 166, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 167, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 167, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 168, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 5, CHAPTER 168, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 169, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 169, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 170, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 8, CHAPTER 170, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 171, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 5, CHAPTER 171, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 172, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 172, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 173, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 5, CHAPTER 173, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 174, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 17, CHAPTER 174, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE;

AMENDING CHAPTER 176, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 176, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 177, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 177, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 178, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 178, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 179, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 179, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 180, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 6, CHAPTER 180, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 181, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 181, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 182, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 182, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 183, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 183, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 184, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 184, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 185, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 185, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 186, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 5, CHAPTER 186, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 188, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 11, CHAPTER 188, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 189, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 189, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 190, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 190, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 191, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 191, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 192, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 192, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 193, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 193, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 194, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 194, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 195, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 195, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 196, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 27, CHAPTER 196, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 197, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 197, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 198, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 198, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 199, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 199, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 200, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 200, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 201, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 201, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 202, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 202, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 203, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 203, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO

PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 205, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 205, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 206, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 206, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 207, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 8, CHAPTER 207, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 208, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 208, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 209, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 209, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 210, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 210, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 212, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 212, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 215, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 5, CHAPTER 215, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 216, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 5, CHAPTER 216, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 217, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 217, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 218, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 218, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 219, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 219, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 220, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 220, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 221, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 12, CHAPTER 221, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 222, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 44, CHAPTER 222, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 223, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 223, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 226, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 226, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 227, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 8, CHAPTER 227, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING SECTION 10, CHAPTER 228, LAWS OF 2021, TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 229, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 229, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 230, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 8, CHAPTER 230, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 231, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 231, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 232, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 5, CHAPTER 232, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 233, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 233, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 235, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 235, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 236, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 236, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 237, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 237, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 240, LAWS

OF 2021, BY THE ADDITION OF A NEW SECTION 6, CHAPTER 240, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 241, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 241, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 243, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 6, CHAPTER 243, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 245, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 245, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 246, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 7, CHAPTER 246, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 247, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 247, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 249, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 249, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 250, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 250, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 251, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 251, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 252, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 252, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING SECTION 7, CHAPTER 253, LAWS OF 2021, TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 254, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 6, CHAPTER 254, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 256, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 256, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 257, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 257, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 258, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 6, CHAPTER 258, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 259, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 259, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 260, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 260, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 261, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 261, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 263, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 263, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 264, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 264, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 265, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 5, CHAPTER 265, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 266, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 5, CHAPTER 266, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 267, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 267, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 269, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 269, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 270, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 270, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 271, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 271, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 272, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 272, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 273, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 273,

LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 274, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 274, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 275, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 275, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 276, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 276, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 277, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 277, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 278, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 3, CHAPTER 278, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 279, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 4, CHAPTER 279, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING SECTION 9, CHAPTER 280, LAWS OF 2021, TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 281, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 8, CHAPTER 281, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 282, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 282, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 284, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 284, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING SECTION 5, CHAPTER 285, LAWS OF 2021, TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 287, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 2, CHAPTER 287, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AMENDING CHAPTER 288, LAWS OF 2021, BY THE ADDITION OF A NEW SECTION 7, CHAPTER 288, LAWS OF 2021, TO DECLARE AN EMERGENCY AND TO PROVIDE AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 3, Laws of 2021 (S.B. 1004, relating to the twenty-seventh payroll fund), be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 2, Chapter 3, Laws of 2021, and to read as follows:

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2021.

SECTION 2. That Chapter 7, Laws of 2021 (S.B. 1012, relating to dentists), be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 6, Chapter 7, Laws of 2021, and to read as follows:

SECTION 6. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2021.

SECTION 3. That Chapter 9, Laws of 2021 (S.B. 1037, relating to hospitalization of the mentally ill), be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 2, Chapter 9, Laws of 2021, and to read as follows:

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2021.

SECTION 16. That Chapter 34, Laws of 2021 (H.B. 37, relating to nurses), be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 2, Chapter 34, Laws of 2021, and to read as follows:

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2021.

SECTION 17. That Chapter 35, Laws of 2021 (H.B. 39, relating to controlled substances), be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 6, Chapter 35, Laws of 2021, and to read as follows:

SECTION 6. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2021.

SECTION 18. That Chapter 36, Laws of 2021 (H.B. 43, relating to water), be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 7, Chapter 36, Laws of 2021, and to read as follows:

SECTION 7. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2021.

SECTION 19. That Chapter 38, Laws of 2021 (H.B. 50, relating to the Idaho food quality assurance institute), be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 2, Chapter 38, Laws of 2021, and to read as follows:

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2021.

SECTION 20. That Chapter 40, Laws of 2021 (H.B. 64, relating to veterinary medicine), be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 14, Chapter 40, Laws of 2021, and to read as follows:

SECTION 14. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2021.

SECTION 21. That Chapter 41, Laws of 2021 (H.B. 79, relating to the annuity consumer protections act), be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 11, Chapter 41, Laws of 2021, and to read as follows:

SECTION 11. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2021.

ADDENDUM 4

1994 amendments to Idaho Code § 42-237a.g
1994 Idaho Session Laws ch. 450, § 3