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

IN THE MATTER OF BASIN 37
ADMINISTRATIVE PROCEEDING

STATE OF IDAHO
COUNTY OF ADA

OWEN H. MORONEY, being first duly sworn upon her oath, deposes and states that:

AFFIDAVIT OF OWEN H. MORONEY – 1
1. I am a Deputy Attorney General in the Idaho Office of the Attorney General and one of the attorneys of record for the Idaho Department of Fish and Game in the above-entitled proceedings.

2. The following is based upon my personal knowledge.

3. Attached hereto as the individual exhibits identified below are true and correct copies of the following:
   f. Exhibit F: a true and correct copy of a letter from Gary Spackman, Director of IDWR to Water Right Holders in the Eastern Snake Plain Aquifer RE: Notice of Potential Curtailment of Ground Water Rights in
the Eastern Snake Plain Aquifer dated Nov. 2, 2009, printed from the IDWR website.


h. Exhibit H: a true and correct copy of Amended Moratorium Order, In the Matter of Applications for Permits for the Diversion and Use of Surface and Ground Water Within the Eastern Snake River Plain Area and the Boise River Drainage dated April 30, 1993, printed from the IDWR website.

i. Exhibit I: a true and correct copy of Memorandum from Norman C. Young to Regional Offices Water Allocation Bureau RE: Approval Policy—Supplement to Application Processing Memo 47, Amended May 20, 1992 dated September 17, 1992, printed from IDWR’s website.


Further your affiant sayeth naught.

DATED this 2nd day of June 2021.
SUBSCRIBED AND SWORN to before me this 2 day of June 2021.

[Signature]

Notary Public for Idaho
Residing at: Ada County
My commission expires: 6/19/2026
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of June 2021, I caused to be served a true and correct copy of the foregoing AFFIDAVIT OF OWEN H. MORONEY IN SUPPORT OF IDFG MOTION TO EXCLUDE by placing a copy thereof in the manner listed below:

1. Original to:

| Idaho Department of Water Resources  | □ U.S. Mail, postage prepaid | ☒ Hand Delivery |
| Director Spackman                   | □ Federal Express            |                 |
| PO Box 83720                        | □ Facsimile:                 | □ Email:        |
| Boise ID 83720-0098                 | megan.jenkins@idwr.idaho.gov |                 |

1. Copies to:

| James R. Laski                      | □ U.S. Mail, postage prepaid | □ Hand Delivery |
| Heather E. O’Leary                  | □ Federal Express            | □ Facsimile:    |
| Lawson Laski Clark, PLLC            | □ Email                      | □ Email:        |
| 675 Sun Valley Rd., Ste. A         |                             |                 |
| P.O. Box 3310                       |                             |                 |
| jrl@lawsonlaski.com                 |                             |                 |
| heo@lawsonlaski.com                 |                             |                 |
| efiling@lawsonlaski.com             |                             |                 |

| Matthew A. Johnson                  | □ U.S. Mail, postage prepaid |                   |
| Brian T. O’Bannon                   | □ Hand Delivery              |                   |
| White, Peterson, Gigray & Nichols, P.A. | □ Overnight Mail          |                   |
| 5700 East Franklin Road, Suite 200 | □ Facsimile                 |                   |
| Nampa, Idaho 83687-7901             | □ Email                      |                   |
| mjjohnson@whitepeterson.com         |                             |                 |
| bobannon@whitepeterson.com          |                             |                 |

| Laird B. Stone                     | □ U.S. Mail, postage prepaid |                   |
| Stephan, Kvanvig, Stone, & Trainor | □ Hand Delivery              |                   |
| P.O. Box 83                        | □ Federal Express            |                   |
| Twin Falls, Idaho 83303-0083        | □ Facsimile                 |                   |
| skst@idaho-law.com                 | □ Email                      |                   |
| cynthia@idaho-law.com              |                             |                 |

| Jerry R. Rigby                     | □ U.S. Mail, postage prepaid |                   |
| Rigby, Andrus & Rigby, Chartered   | □ Hand Delivery              |                   |
| 25 North Second East               | □ Federal Express            |                   |
| Rexburg, ID 83440                  | □ Facsimile                 |                   |
| jrigby@rex-law.com                 | □ Email                      |                   |

AFFIDAVIT OF OWEN H. MORONEY – 5
<table>
<thead>
<tr>
<th>Name</th>
<th>Firm/Specialty</th>
<th>Address Details</th>
<th>Contact Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joseph F. James</td>
<td>James Law Office, PLLC</td>
<td>125 5th Ave. West Gooding, ID 83330</td>
<td>Email</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:joe@jamesmvlaw.com">joe@jamesmvlaw.com</a></td>
<td></td>
</tr>
<tr>
<td>Robert L. Harris</td>
<td>Holden, Kidwell, Hahn &amp; Crapo, P.L.L.C.</td>
<td>P.O. Box 50130 1000 Riverwalk Drive, Suite 200 Idaho Falls, ID 83405</td>
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<td><a href="mailto:rharris@holdenlegal.com">rharris@holdenlegal.com</a></td>
<td></td>
</tr>
<tr>
<td>Rusty Kramer, Secretary</td>
<td></td>
<td>PO Box 507 Fairfield, ID 83327</td>
<td>Email</td>
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<tr>
<td></td>
<td></td>
<td><a href="mailto:waterdistrict37b@outlook.com">waterdistrict37b@outlook.com</a></td>
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<tr>
<td>Brendan L. Ash</td>
<td>James Law Office, PLLC</td>
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<td>Email</td>
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<td></td>
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<tr>
<td>Richard T. Roats</td>
<td>Lincoln County Prosecuting Attorney</td>
<td>P.O. Box 860 Shoshone, ID 83352</td>
<td>Email</td>
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<tr>
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<td><a href="mailto:rtr@roatlaw.com">rtr@roatlaw.com</a></td>
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<tr>
<td>Paul Bennett</td>
<td></td>
<td>114 Calypso Lane Bellevue, ID 83313</td>
<td>Email</td>
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<tr>
<td></td>
<td></td>
<td><a href="mailto:info@swiftsureranch.org">info@swiftsureranch.org</a></td>
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<tr>
<td>J. Evan Robertson</td>
<td>Robertson &amp; Slette, PLLC</td>
<td>P.O. Box 1906 Twin Falls, Idaho 83303-1906</td>
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</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:erobertson@rsidaholaw.com">erobertson@rsidaholaw.com</a></td>
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AFFIDAVIT OF OWEN H. MORONEY – 6
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<th>Name</th>
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<td>James P. Speck</td>
<td>Speck &amp; Aanestad&lt;br&gt;P.O. Box 987&lt;br&gt;Ketchum, ID 83340&lt;br&gt;<a href="mailto:jim@speckandaanestad.com">jim@speckandaanestad.com</a></td>
<td>U.S. Mail, postage prepaid&lt;br&gt;Hand Delivery&lt;br&gt;Overnight Mail&lt;br&gt;Facsimile&lt;br&gt;Email</td>
</tr>
<tr>
<td>John K. Simpson</td>
<td>Barker Rosholt &amp; Simpson LLP&lt;br&gt;1010 Jefferson St., Ste. 102&lt;br&gt;P.O. Box 2139&lt;br&gt;Boise Idaho 83701-2139</td>
<td>U.S. Mail, postage prepaid&lt;br&gt;Hand Delivery&lt;br&gt;Overnight Mail&lt;br&gt;Facsimile&lt;br&gt;Email</td>
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<tr>
<td>Lawrence Schoen</td>
<td>Napuisunäiš&lt;br&gt;18351 U.S. Highway 20&lt;br&gt;Bellevue, ID 83313&lt;br&gt;<a href="mailto:lschoen@naramail.net">lschoen@naramail.net</a></td>
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<tr>
<td>Idaho Ranch Hands Property Management</td>
<td>218 Meadowbrook&lt;br&gt;Hailey, ID 83333&lt;br&gt;<a href="mailto:idahoranchhands@gmail.com">idahoranchhands@gmail.com</a></td>
<td>U.S. Mail, postage prepaid&lt;br&gt;Hand Delivery&lt;br&gt;Overnight Mail&lt;br&gt;Facsimile&lt;br&gt;Email</td>
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<tr>
<td>Southern Comfort Homeowner’s Assoc.</td>
<td>P.O. Box 2739&lt;br&gt;Ketchum, ID 83340</td>
<td>U.S. Mail, postage prepaid&lt;br&gt;Hand Delivery&lt;br&gt;Overnight Mail&lt;br&gt;Facsimile&lt;br&gt;Email</td>
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<tr>
<td>W. Kent Fletcher</td>
<td>Fletcher Law Office&lt;br&gt;P.O. Box 248&lt;br&gt;Burley, Idaho 83318&lt;br&gt;<a href="mailto:wkf@12mt.org">wkf@12mt.org</a></td>
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<tr>
<td>Albert P. Barker</td>
<td>Travis L. Thompson&lt;br&gt;Barker Rosholt &amp; Simpson LLP&lt;br&gt;1010 W. Jefferson St., Ste. 102&lt;br&gt;PO Box 2139&lt;br&gt;Boise, ID 83701-2139&lt;br&gt;<a href="mailto:apb@idahowaters.com">apb@idahowaters.com</a>&lt;br&gt;<a href="mailto:tlt@idahowaters.com">tlt@idahowaters.com</a></td>
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<tr>
<td>Candice McHugh</td>
<td>380 S. 4th St., Ste. 103, Boise, ID 83702</td>
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<td>Chris M. Bromley</td>
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<td><a href="mailto:cbromley@mchughbromley.com">cbromley@mchughbromley.com</a></td>
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<td>2033 11th St., Suite 5, Boulder, CO 80302</td>
<td><a href="mailto:sklahn@somachlaw.com">sklahn@somachlaw.com</a></td>
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<td>Randall C. Budge</td>
<td>201 E. Center St., P.O. Box 1391, Pocatello, Idaho 83204</td>
<td><a href="mailto:randy@racineolson.com">randy@racineolson.com</a>, <a href="mailto:tj@racineolson.com">tj@racineolson.com</a></td>
</tr>
<tr>
<td>Michael C. Creamer</td>
<td>601 W. Bannock St., P.O. Box 2720, Boise, Idaho 83701-2720</td>
<td><a href="mailto:mpl@givenspursley.com">mpl@givenspursley.com</a>, <a href="mailto:mcc@givenspursley.com">mcc@givenspursley.com</a>, <a href="mailto:csb@givenspursley.com">csb@givenspursley.com</a></td>
</tr>
</tbody>
</table>
OWEN H. MORONEY
Deputy Attorney General
EXHIBIT A
In Re SRBA

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) FOR

Water Right 37-07038

STATE OF IDAHO
DEPT OF FISH & GAME
PO BOX 25
BOISE, ID 83707

GROUND WATER

2.00 CFS

11/19/1968

T01S R19E S13

Fishing Propagation

01-01 TO 12-31

2.00 CFS

Within Blaine County

WITHIN BLAINE COUNTY

Eric J. Malman
Presiding Judge of the
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Erin J. Malman
Presiding Judge of the
Snake River Basin Adjudication
EXHIBIT B
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA                              PARTIAL DECREE PURSUANT TO
Case No. 39576                              I.R.C.P. 54(b) FOR

STATE OF IDAHO                             Water Right 37-08271
DEPT OF FISH & GAME
PO BOX 25
BOISE, ID 83707

GROUND WATER

1.00 CFS
724.00 AFO

08/23/1986

TOI S R19E S13 SRNW Within Blaine County

PURPOSE OF USE
Fish Propagation

PERIOD OF USE
01-01 TO 12-31

1.00 CFS
724.00 AFO

Use of water under this right shall be non-consumptive.

Fish Propagation
TOI S R19E S13 SRNW Within Blaine County

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Eric J. Willsman
Presiding Judge of the Snake River Basin Adjudication
EXHIBIT C
State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 37-08331
Priority: May 4, 1988
Maximum Diversion Rate: 3.00 CFS
Maximum Diversion Volume: 2,170.0 AF

It is hereby certified that STATE OF IDAHO
DEPT OF FISH & GAME
PO BOX 25
BOISE ID 83707
has complied with the terms and
conditions of the permit, issued pursuant to Application for Permit dated March 9, 1988; and has
submitted Proof of Beneficial Use on February 25, 1993. An examination indicates that the works have
a diversion capacity of 3.00 cfs of water from:

SOURCE
GROUND WATER

and a water right has been established as follows:

<table>
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<tr>
<th>BENEFICIAL USE</th>
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<th>DIVERSION RATE</th>
<th>DIVERSION VOLUME</th>
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<td>2,170.0 AF</td>
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LOCATION OF POINT(S) OF DIVERSION:
GROUND WATER SW¼ SW¼ NE¼ Sec. 13, Twp 01S, Rge 19E, B.M. BLAINE County
GROUND WATER SE¼ SE¼ NW¼ Sec. 13, Twp 01S, Rge 19E, B.M. BLAINE County

PLACE OF USE: FISH PROPAGATION

<table>
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<tr>
<th>Twp</th>
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<th>SW</th>
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CONDITIONS OF APPROVAL
1. The place of use is also known as Hayspur State Fish Hatchery.
2. Use of water under this right shall be non-consumptive.
3. Effluent from the fish hatchery is appropriated water of Silver Creek and its tributaries.
4. The right holder shall not divert water at a rate exceeding what is reasonably necessary for the
   beneficial use authorized by this right.
5. Should the use of the water on this right reduce the quality of water available to prior water rights
   and make it unusable to satisfy the prior appropriations, the right holder shall cease diversion under
   this right.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right
confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho
law and applicable rules of the Department of Water Resources.

Signed and sealed this 30th day of November, 2006.

[Signature]
KARL J. DREHER
Director
EXHIBIT D
MEMORANDUM

DATE: August 4, 2009

TO: Water Right File 37-8252

FROM: Shelley W. Keen

RE: Water Right 37-8252 -- non-consumptive use condition

Standard approval condition 027, which appears on Water Right License 37-8252, says, “Use of water under this right shall be non-consumptive.” IDWR has applied approval condition 027 to water right permits, licenses, and transfer approvals for non-consumptive water uses for at least 20 years. Identifying non-consumptive water rights has a number of purposes:

- It indicates why mitigation is not required for certain new water rights in moratorium areas.
- It indicates which water rights cannot result in the consumption of water now or after a change in nature of use.
- It indicates water rights that may not have to be regulated by priority in a curtailment scenario because they do not deplete the amount of water available to holders of senior water rights.
- It indicates which water rights are subject to special assessment and voting provisions in water districts pursuant to Idaho Code § 42-605A.

When reviewing an application for a new water right, a water right to be licensed, or a transfer application, IDWR staff members must determine whether the authorized water uses are non-consumptive. IDWR has usually considered non-consumptive water uses to be those that return all the diverted water to a natural water body, either through a direct flow to a surface water body or through seepage into the ground. Under some circumstances, a water right could be considered consumptive to the source, even if the water is returned to a natural water body. For example, water diverted from a stream, conveyed out of basin, and then returned to a non-tributary source would be considered consumptive to the original stream or basin.

Nearly every water use is consumptive to some extent. Some water uses are considered non-consumptive, however, because the fraction of water evaporated is so small as to be negligible. In other cases, the authorized water use is not more consumptive than the water in its natural state. For example, routing water through a canal or ditch and back into the source stream, often for aesthetic or wildlife purposes, could be considered non-consumptive if the amount of water evaporating from the canal or ditch is not likely to be more than would evaporate if the water continued to flow in the source stream.

IDWR usually considers storage water rights to be consumptive uses, even when the impoundment is for aesthetic, recreation, or wildlife purposes. Impounding water slows its velocity, exposes it to the atmosphere, and causes a significant portion of the water to evaporate.
For off-stream diversions, however, it can be difficult to discern when the velocity of water is slowed to the point of impoundment. In other words, how slowly must the water flow in a canal or ditch to be considered an impoundment, and thus a consumptive use? To answer this question, IDWR employs a rule-of-thumb that an off-stream basin is not storage if it can fill in less than 24 hours and it allows water to pass through to a natural surface water body thereafter. When licensing Water Right 37-8252, IDWR did not consider the 0.9 acre foot "pond" identified in the field exam to be an impoundment because the authorized diversion rate of 2.0 cfs would fill it in less than 24 hours and the water would continue down the man-made channel and back to the source stream thereafter.
EXHIBIT E
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF
WATER TO WATER RIGHT NOS. 36-02551
AND 36-07694
(RANGEN, INC.)¹

CM-DC-2011-004
ORDER REAFFIRMING
CURTAILMENT OF GROUND
WATER RIGHTS JUNIOR TO
JULY 13, 1962

BACKGROUND

On January 29, 2014, the Director of the Idaho Department of Water Resources
("Department") issued a Final Order Regarding Rangen, Inc.'s Petition for Delivery Call;
Curtailing Ground Water Rights Junior to July 13, 1962 ("Final Order") in the above captioned
matter. In the Final Order, the Director concluded that water rights nos. 36-02551 and 36-07694,
then held by Rangen, Inc. ("Rangen"), were being materially injured by ground water pumping
and ordered the curtailment of holders of ground water rights junior to July 13, 1962, within the
Eastern Snake Plain Aquifer ("ESPA") area of common ground water supply and west of the
Great Rift. Final Order at 36, 42.²

To avoid curtailment imposed by the Final Order, the Idaho Ground Water Appropriators,
Inc. ("IGWA"), filed mitigation plans that proposed multiple mitigation activities. See Amended
Order Approving in Part and Rejecting in Part IGWA's Mitigation Plan; Order Lifting Stay
Issued February 21, 2014; Amended Curtailment Order ("First Mitigation Plan Order") (May 16,
2014); Order Approving IGWA's Second Mitigation Plan; Order Lifting Stay Issued April 28,
2014; Second Amended Curtailment Order ("Second Mitigation Plan Order") (June 20, 2014);
Order Approving IGWA's Fourth Mitigation Plan ("Fourth Mitigation Plan Order") (Oct. 29,
2014).

¹ As discussed later in this order, water right nos. 36-02551 and 36-07694 were purchased from Rangen, Inc., by a
group of ground water districts. However, for purposes of this order, the Director will maintain the original caption
in this matter.

² On March 23, 2016, the Idaho Supreme Court affirmed the scope of curtailment in the case Idaho Ground Water
The Director's First Mitigation Plan Order revised the curtailment date to July 1, 1983, based on IGWA completing certain mitigation activities. First Mitigation Plan Order at 21. The Director's Second Mitigation Plan Order revised the curtailment date to August 12, 1973, due to updated information regarding flows at the Curren Tunnel. Second Mitigation Plan Order at 4. The Director's Fourth Mitigation Plan Order maintained the August 12, 1973 curtailment date contingent on delivery of additional water directly to Rangen. Fourth Mitigation Plan Order at 21.

In 2017, various ground water districts and irrigation districts (collectively the "Districts") purchased the Rangen water rights and fish hatchery. On April 5, 2018, IGWA, on behalf of the Districts, requested the Director approve the Districts' ownership of the Rangen water rights "as a mitigation plan to protect the ground water rights of District members from curtailment, with the Rangen delivery calls remaining in place as against water rights that do not belong to or are not in good standing with the Districts." Stipulated Mitigation Plan and Request for Order ("2018 Mitigation Plan") at 2. Thereafter, the Director approved the 2018 Mitigation Plan. Order Approving IGWA's 2018 Mitigation (Mar. 11, 2019).

ANALYSIS

Water right nos. 36-02551 and 36-07694, now owned by the Districts, continue to be materially injured due to ground water pumping by junior priority ground water rights within the ESPA area of common ground water supply and west of the Great Rift. The 2018 Mitigation Plan was intended to replace the earlier mitigation plans. 2018 Mitigation Plan at 2. IGWA has ceased mitigation activities under the First, Second and Fourth Mitigation Plans and junior-priority ground water rights are no longer entitled to mitigation protection under the First, Second and Fourth Mitigation Plans. Accordingly, the amended curtailment dates in these orders are no longer in effect. Because the First Mitigation Plan Order and the Second Mitigation Plan Order modified the original July 13, 1962 curtailment date, the Director concludes an order reaffirming curtailment of ground water rights junior to July 13, 1962, is necessary.

Pursuant to Rule 40.01.b of the Department's Rules for Conjunctive Management of Surface and Ground Water Resources, ground water rights junior to July 13, 1962, located in the ESPA area of common ground water supply and west of the Great Rift, that are not protected by an approved mitigation plan should be curtailed and should remain curtailed until further notice. IDAPA 37.03.11.40. Only junior priority ground water right holders that are in good standing with the Districts are entitled to claim protection from curtailment under the 2018 Mitigation Plan. According to records of the Department and information obtained from the Districts, the ground water rights listed in Attachment A of this order are located in the ESPA area of common ground water supply and west of the Great Rift, and are not protected by the Districts' 2018 Mitigation Plan or any other approved mitigation plan.

ORDER REAFFIRMING CURTAILMENT OF GROUND WATER RIGHTS JUNIOR TO JULY 13, 1962 - Page 2

3 The entities that participated in the purchase are: American Falls-Aberdeen Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Carey Valley Ground Water District, Jefferson-Clark Groundwater District, Madison Ground Water District, Magic Valley Ground Water District, North Snake Ground Water District, Fremont-Madison Irrigation District and Southwest Irrigation District.
ORDER

IT IS HEREBY ORDERED that, at 12:01 a.m. on or before May 13, 2020, users of ground water holding consumptive water rights bearing priority dates junior to July 13, 1962, listed in Attachment A to this order, located within the ESPA area of common ground water supply, west of the Great Rift, and within a water district that regulates ground water, shall curtail/refrain from diversion and use of ground water pursuant to those water rights unless notified by the Department that the order of curtailment has been modified or rescinded as to their water rights. This order shall apply to all consumptive ground water rights, including agricultural, commercial, industrial, and municipal uses, but excluding ground water rights used for de minimis domestic purposes where such domestic use is within the limits of the definition set forth in Idaho Code § 42-111 and ground water rights used for de minimis stock watering where such stock watering use is within the limits of the definitions set forth in Idaho Code § 42-1401A(11), pursuant to IDAPA 37.03.11.020.11.

IT IS FURTHER ORDERED that the watermasters for the water districts that regulate ground water use within the ESPA area of common ground water supply and west of the Great Rift are directed to issue written notices to the holders of the consumptive ground water rights listed in Attachment A to this order. The written notices shall advise the holders of the identified ground water rights that their rights are curtailed in accordance with the terms of this order.

Dated this 29th day of April, 2020.

GARY SPACKMAN
Director

ORDER REAFFIRMING CURTAILMENT OF GROUND WATER RIGHTS JUNIOR TO JULY 13, 1962 - Page 3
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of April, 2020, I served a true and correct copy of the
forgoing document on the following parties by the methods indicated:

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ORDER REAFFIRMING CURTAILMENT OF GROUND WATER RIGHTS JUNIOR TO JULY 13, 1962 - Page 4
ORDER REAFFIRMING CURTAILMENT OF GROUND WATER RIGHTS JUNIOR TO JULY 13, 1962 - Page 5
ATTACHMENT A
## Attachment A

### Curtailed Ground Water Rights with Priority Dates Junior to July 13, 1962 and Not Covered by a Mitigation Plan – Rangen Delivery Call

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<td>8/10/1973</td>
<td>0.04</td>
<td>4</td>
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<td></td>
<td></td>
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</tbody>
</table>

IDWR 4/28/2020
### Attachment A

**Curtailed Ground Water Rights with Priority Dates Junior to July 13, 1962 and Not Covered by a Mitigation Plan – Rangen Delivery Call**

<table>
<thead>
<tr>
<th>Owner</th>
<th>Water Right No.</th>
<th>Basis</th>
<th>Priority Date</th>
<th>Div Rate [cfs]</th>
<th>Volume [acre-feet]</th>
<th>Uses</th>
<th>Total Acres</th>
<th>Water District</th>
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<tr>
<td>TED MILLER DAIRY</td>
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<td>VAN EVERY, BRENT; VAN EVERY, EMMA</td>
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<td>License</td>
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<td>WARTLUFT, HAROLD; WARTLUFT, LOIS</td>
<td>37-8175</td>
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<td>15.2</td>
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<td>WAYSIDE ESTATES INC</td>
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<td>Decreed</td>
<td>3/10/1981</td>
<td>0.2</td>
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</table>
EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER
(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. Note: The petition must be received by the Department within this fourteen (14) day period. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4), Idaho Code.

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. Note: The request must be received by the Department within this fifteen (15) day period.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

i. A hearing was held,
ii. The final agency action was taken,
iii. The party seeking review of the order resides, or
iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Revised July 1, 2010
EXHIBIT F
TO: Water Right Holder in the Eastern Snake Plain Aquifer

Re: Notice of Potential Curtailment of Ground Water Rights in the Eastern Snake Plain Aquifer

Dear Water Right Holder:

This letter is provided to inform you that you are the water right holder of record for one or more water rights that could be subject to curtailment during 2010. The enclosed map depicts areas of potential curtailment based on three water right calls, described below. The delivery calls were made under the Idaho Department of Water Resources’ (IDWR) Rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11). The calls apply to ground water rights for irrigation, commercial, industrial, municipal, non-exempt domestic uses, and other consumptive uses. Non-consumptive uses and culinary in-house uses of water are not subject to curtailment under the orders.

Clear Springs Call

Clear Springs Foods, Inc. (Clear Springs) holds several water rights for fish propagation at its Snake River Farm facility near Buhl. These rights authorize the diversion of water from springs tributary to Clear Lakes located in the Buhl Gage to Thousand Springs reach east of Buhl. An order issued on July 8, 2005, determined that diversion and use of ground water under water rights with junior priority dates causes material injury to Clear Springs’ water right no. 36-04013B (February 4, 1964). A copy of the order can be found on the IDWR website at:


As of 2009, the fifth and final year of phased curtailment, junior ground water users were required to provide 39 cfs of replacement water to the Buhl Gage to Thousand Springs reach, or 2.68 cfs of direct and suitable quality replacement water to the Clear Springs Snake River Farm facility (6.9 percent of 38.9 cfs), or a combination thereof. In 2009, Clear Springs and the Idaho Ground Water Appropriators, Inc. (IGWA), who represent the North Snake and Magic Valley Ground Water Districts, agreed upon a level of mitigation to be implemented by IGWA during the 2009 and 2010 calendar years, pending a hearing and determination of a permanent mitigation plan filed by IGWA to provide direct delivery of ground water to Clear Springs via a pipeline over the canyon rim. In July of 2009, IDWR found that IGWA was not providing all of the mitigation that it had agreed to and IDWR subsequently ordered curtailment of certain junior priority ground water rights. IGWA then filed a motion with the Idaho Fifth District Court to stay IDWR’s curtailment order. District Court Judge John Melanson conditionally granted IGWA’s request for stay on August 24, 2009. Judge Melanson has since granted requests by Clear Springs seeking clarification of his conditional stay order. The Court has scheduled a second status conference on this matter for November 6, 2009.

Pending further clarification or decision from the District Court, IDWR may require curtailment of ground water rights having a priority date junior to August 11, 1990 if IGWA provides no additional mitigation in 2010 as it did in 2009.

Water users are further advised that IDWR has scheduled a hearing on December 7, 2009 regarding IGWA’s pipeline mitigation plan. If the mitigation plan is not approved, ground water rights junior to February 4, 1964 could be subject to curtailment.
Blue Lakes Call

The Blue Lakes Trout Farm, Inc. (Blue Lakes) water rights authorize the diversion of water from Alpheus Creek located in the Devil’s Washbowl to Buhl Gage spring reach north of Twin Falls. An order issued on May 19, 2005 determined that diversion and use of ground water under water rights with junior priority dates causes material injury to Blue Lakes’ water right no. 36-07427 (December 28, 1973). A copy of the order can be found on the IDWR website at:


IGWA has provided direct and continuous delivery of 10 cfs additional flow to Blue Lakes since 2008 through the purchase of a 1964 priority water right from Alpheus Creek formerly held by Pristine Springs, Inc. The approved plan and 10 cfs delivery provides relief to holders of ground water rights junior to Blue Lakes’ December 28, 1973 priority water right who are located within the Blue Lakes delivery call area from potential curtailment if the right holders are members of ground water districts or irrigation districts participating in the IGWA plan. As of 2009, the fifth and final year of phased curtailment, junior ground water users were required to provide 61 cfs of replacement water to the Devils Washbowl to Buhl spring reach, 12.2 cfs of direct and suitable quality replacement water to Blue Lakes (20 percent of 61 cfs), or a combination thereof. The on-going direct delivery of 10 cfs to Blue Lakes, combined with conversion projects and enrollment of lands in the Conservation Reserve Enhancement Program (CREP), has provided the required 12.2 cfs amount of replacement water to Blue Lakes.

IDWR plans to conduct a hearing as required by IDWR Conjunctive Management Rules regarding mitigation plans submitted by IGWA and the A&B Irrigation District for the Blue Lakes call. IDWR anticipates that a hearing will be scheduled after the Clear Springs mitigation plan hearing. A separate curtailment date has not been selected for the Blue Lakes call based on the on-going mitigation being provided to Blue Lakes.

Surface Water Coalition Call

The Surface Water Coalition call applies to ground water rights that impact the Snake River in the American Falls area where the aquifer and river are hydraulically connected. This priority administration of water rights is occurring as required by the order of May 2, 2005, issued in response to the water delivery call made by members of the Surface Water Coalition, which includes A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company. A copy of the order can be found on IDWR’s website:

http://www.idwr.idaho.gov/Calls/Surface%20Coalition%20Call/Edited%20Amended%20Order%202005-2-05.pdf

Under the 2005 order, I am required to make a determination of the extent of material injury reasonably likely to occur to members of the Surface Water Coalition during the 2010 irrigation season as a result of depletions caused by the diversion of water under junior priority ground water rights. This determination will be made with forecasts of the expected runoff based on the snow survey conducted on April 1, 2010. Depending on the expected snow pack, the determination could result in the curtailment of consumptive ground water rights during the 2010 irrigation season. IDWR computations predict that if the expected runoff is at least 65 percent of normal, no curtailment will be required. If the predicted runoff is the same as in 1977, the lowest runoff year on record (48 percent of normal), ground water rights with priority dates junior to March 29, 1978 could be subject to curtailment. A mitigation plan has not yet been submitted by IGWA in response to this delivery call.

Sincerely,

Gary Stackman
Interim Director

Enclosure: Location Map of Curtailment Areas

IDFG0101
Map of Curtailment Areas

- Selected Water Districts
- Area of Common Ground Water Supply
- Snake River Farm Ground Water Curtailment Area
- Blue Lakes Trout Ground Water Curtailment Area
- Blue Lakes Trout and Snake River Farm Ground Water Curtailment Areas
- Surface Water Coalition Ground Water Curtailment Area

October 1, 2007
EXHIBIT G
January 28, 2014


Dear Water Right Holder,

The purpose of this letter is to inform you that you are the water right holder of record for one or more water rights that could be subject to curtailment during the 2014 irrigation year (November 1, 2013 – October 31, 2014) as a result of the Surface Water Coalition (SWC) delivery call. The SWC delivery call applies to ground water rights that affect reaches of the Snake River in the American Falls area that are hydraulically connected to the Eastern Snake Plain Aquifer (ESPA). The Director of the Idaho Department of Water Resources (Department) is administering water rights by priority as required in the order of June 23, 2010, issued in response to the water delivery call made by members of the SWC, which includes the A&B Irrigation District, the American Falls Reservoir District #2, the Burley Irrigation District, the Milner Irrigation District, the Minidoka Irrigation District, the North Side Canal Company, and the Twin Falls Canal Company. A copy of the order can be found on the Department’s website:

www.idwr.idaho.gov/News/WaterCalls/Surface%20Coalition%20Call/2010/06Jun/20100623_AmendedFinalOrder.pdf

The SWC called for delivery of their water rights under the Department’s Rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11). The call applies to ground water rights for irrigation, commercial, industrial, municipal, non-exempt domestic uses, and other consumptive uses. Non-consumptive uses and culinary in-house uses of water are not subject to curtailment under the order.

The Director is required to predict the extent of material injury reasonably likely to occur to members of the SWC during the 2014 water year as a result of depletions caused by the diversion of water under junior priority ground water rights. The Director will issue his first prediction in April 2014 following the issuance of the United States Bureau of Reclamation (USBR) and United States Army Corps of Engineers Joint Forecast of unregulated inflow volume at the Heise Gage for the period of April 1 through July 31. Depending on the forecasted runoff, the determination could result in the curtailment of consumptive ground water rights during the 2014 irrigation season.

The Department has completed preliminary curtailment predictions based on the water supply conditions presented at the Department’s January Idaho Water Supply Committee by the USBR and the Natural Resource Conservation Service (NRCS). Curtailment predictions were based on years with similar carryover conditions as presented by the USBR coupled with years of similar runoff forecasts as presented by the NRCS for the Snake River at Heise. Based on those
predictions, there is a 50% chance that no curtailment will be required and a 30% chance that ground water rights with priority dates junior to May 31, 1989, may be curtailed. If the predicted runoff is the same as in 2001, the lowest runoff water year since 1981, ground water rights with priority dates junior to September 23, 1974, may be subject to curtailment. All curtailment predictions assume that no mitigation water is provided by junior ground water users.1

A copy of this notice has been sent to affected ground water right holders in the SWC delivery call curtailment area. A map showing the location of the SWC curtailment area and a list of ground water rights within the curtailment area junior to September 23, 1974, may be accessed from the Department’s website: www.idwr.idaho.gov (select the link ESPA 2014 Curtailment Warning Notice under the What’s New tab).

I hope this letter assists you in planning your beneficial use of water during the remainder of the year.

Respectfully,

Gary Spackman
Director

---

1 On November 25, 2013, the Department approved an interim mitigation plan for Southwest Irrigation District (SWID) and Goose Creek Irrigation District (GCID). Accordingly, junior ground water users who are members of SWID and GCID will be excluded from any potential curtailment ordered this year in response to the SWC delivery call.
The Director of the Department of Water Resources, having responsibility for the administration of the appropriation of the water of the state of Idaho, the protection of rights to the use of water within the state, the protection of the public interest in the waters of the state, and the conservation of the water resources of the state, enters the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On May 15, 1992, the Director of the department issued a moratorium order against the approval of certain new applications in the Snake River Basin upstream from the USGS gaging station at Weiser, Idaho. On January 6, 1993, the Director amended the moratorium order to eliminate the non-trust water area from the scope of the May 15, 1992 moratorium order. Conditions have since changed making further amendment of the May 15, 1992 order appropriate.

2. The Snake River Basin in Idaho has experienced six consecutive years of drought, and while the snowpack and precipitation are now near or above average across much of southern Idaho, residual effects of the drought are still evident in ground water levels, spring flows and anticipated stream flows.

3. Ground water aquifers have become stressed by the reduction in natural recharge due to changes in diversion and use of surface waters throughout the basin and by the increased volume of pumping occurring to augment scarce surface water supplies during the drought period. The lowered water levels in the
aquifers across much of the Snake River Basin in southern Idaho have resulted in numerous wells, often those used for domestic and municipal water supply purposes becoming unusable. Lowered ground water levels also reduce spring and base flow discharge needed to maintain stream and river flows.

4. The need to supplement or replace inadequate surface supplies has prompted many water users to pursue ground water as an alternative source of supply.

5. Many wells throughout the Snake River Basin, including domestic wells in the Boise River Area, have either been replaced or drilled deeper during the duration of the drought.

6. The 1993 Idaho legislature authorized a three year study to determine the relationship between the Snake Plain Aquifer and the flow of the Snake River.

7. Even though the water supplies in the state are approaching normal for the 1993 irrigation season, ground water levels which have been declining will not fully recover in 1993.

8. The term "non-trust water area" means that area depicted as such on Exhibit "A" attached hereto and by this reference incorporated herein.

9. The term "Eastern Snake River Plain Area" means the trust water area of the Snake Plain Aquifer upstream from the USGS gaging station on the Snake River at King Hill. To further define the western boundary of this area, department designated hydrologic basin nos. 37 and 47, among other basins, are included in the area and hydrologic basin nos. 51 and 61, among other basins, are not included in the area.

10. The term "Boise River Drainage Area" means hydrologic basin no. 63 as designated in department records.

11. This Amended Moratorium Order does not pertain to the non-trust water area.

12. The Snake River Basin Moratorium Order issued by the department on May 15, 1992 and amended on January 6, 1993, includes and overlaps both the Big Lost River drainage for which the department has previously issued a moratorium order on August 7,
1990 and the Mud Lake and Vicinity Area for which the department issued a moratorium order on December 1, 1989.

CONCLUSIONS OF LAW

1. The Director of the Department of Water Resources is responsible for administration of the appropriation and use of the water of the state of Idaho. Section 42-202, Idaho Code, reads in pertinent part:

   For the purpose of regulating the use of the public waters and of establishing by direct means the priority right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, shall, before commencing of the construction, enlargement or extension of the ditch, canal, well, or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel, make an application to the department of water resources for a permit to make such appropriation.

2. The Director of the Department of Water Resources is responsible for supervision of water distribution in the state of Idaho. Section 42-602, Idaho Code, reads, in pertinent part,

   It shall be the duty of the department of water resources to have immediate direction and control of the distribution of water from all of the streams to the canals and ditches diverting therefrom. The department must execute the laws relative to the distribution of water in accordance with rights of prior appropriation.

3. The Director of the Department of Water Resources is authorized under the provisions of Section 42-1805(7), Idaho Code, as follows:

   After notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, or to prevent violation of the minimum flow provisions of the state water plan.

4. Rule 7,1. of the Department of Water Resources Rules and Regulations for Water Appropriation provides that a moratorium on processing of applications for permit shall be entered by issuance of an order of the Director of the Department of Water Resources.

ORDER - Pg 3
Notice of the order shall be by certified mail to affected applicants and permit holders and by publishing a legal notice in newspapers of general circulation in the area.

5. A moratorium on issuance of permits to divert and use surface and ground water from the Eastern Snake River Plain Area and tributary drainages and the Boise River Drainage Area should be established to protect existing water rights.

6. The department should rescind the moratorium order issued on August 7, 1990 for the Big Lost River drainage and the moratorium order issued on December 1, 1989 for the Mud Lake and Vicinity Area to remove the duplicate effect associated with this Amended Moratorium Order.

7. This amended moratorium order is not intended to affect the provisions of the moratorium order issued by the department on January 6, 1993 in the non-trust water area.

ORDER

IT IS, THEREFORE HEREBY ORDERED that prior order of the department dated May 15, 1992 and amended January 6, 1993 in connection with the Snake River Basin upstream from the USGS gaging station at Weiser, Idaho is superceded by this Amended Moratorium Order.

IT IS, FURTHER HEREBY ORDERED that a moratorium is established on the processing and approval of presently pending and new applications for permits to appropriate water from all surface and ground water sources within the Eastern Snake River Plain Area and all tributaries thereto and within the Boise River Drainage Area.

The following provisions apply to the administration of the moratorium:

1. The moratorium shall be in effect on and after its entry and shall remain in effect until withdrawn or modified by order of the Director.

2. The moratorium includes applications filed on all public water sources within the Eastern Snake River Plain Area and all tributaries thereto and within the Boise River Drainage Area.

3. The moratorium applies to all applications proposing a
consumptive use of water filed after the date of the order and to all applications filed prior to the entry of the order for which approval has not been given, except as herein provided.

4. The moratorium does not affect the authorization to continue development of any existing approved application (permit).

5. The moratorium does not apply to any application for domestic purposes as such term is defined in Section 42-111, Idaho Code. For the purposes of this exception, applications for ground water permits seeking water for multiple ownership subdivisions or mobile home parks will be considered provided each unit satisfies the definition for the exception of requirement to file an application for permit as described in said section.

6. The moratorium does not apply to any application proposing a non-consumptive use of water as the term is used in Section 42-605A, Idaho Code.

7. The moratorium does not apply to applications for drilling permits to replace or deepen existing wells having valid existing water rights nor to applications for transfer of existing water rights.

8. This moratorium does not change or affect the administration of any area that has been previously designated as a critical ground water area, pursuant to Section 42-233a, Idaho Code, or a ground water management area pursuant to Section 42-233b, Idaho Code.

9. The moratorium does not prevent the Director from reviewing for approval on a case-by-case basis an application which otherwise would not be approved under terms of this moratorium if:
   a) Protection and furtherance of the public interest as determined by the Director, requires consideration and approval of the application irrespective of the general drought related moratorium; or
   b) The Director determines that the development and use of the water pursuant to an application will have no effect on prior surface and ground water rights because of its location, insignificant consumption of water or mitigation provided by the applicant to offset injury to other rights.

10. This moratorium does not change or supercede any of the
provisions of the moratorium order issued by the department on January 6, 1993 in the non-trust water area of the Snake River Basin and shall not be interpreted as declaring an end to the drought emergency as referenced in provision 8(b) of the moratorium order for the non-trust water area.

11. This moratorium supercedes and rescinds the Moratorium Order issued on December 1, 1989 for the Mud Lake and Vicinity Area. Pending applications for permit or applications for transfer will be treated under the terms of this amended moratorium order.

12. This moratorium supercedes and rescinds the Final Order of the department issued on August 7, 1990 which established a moratorium on the issuance of new permits within the Big Lost River drainage. Pending applications for permit or applications for transfer will be treated under terms of this amended moratorium order and may be considered for approval by the department in connection with proposed mitigation or compensation for prior water rights.

Dated this ___ day of ________________, 1993.

R. KEITH HIGGONSON
Director
EXHIBIT I
MEMORANDUM

To: Regional Offices  
Water Allocation Bureau

From: Norman C. Young

RE: APPROVAL POLICY – SUPPLEMENT TO APPLICATION PROCESSING  
MEMO NO. 47, AMENDED MAY 20, 1992

Date: September 17, 1992

Clarification of Application Processing Memo. No. 47 (Amended)  
issued on May 20, 1992 as contrasted with the Application  
Processing Memo No. 47 issued on February 1, 1990 has been  
requested by regional office staff.

The 1990 memo provided that the department would issue permits  
for domestic, stockwater and non-consumptive uses within the  
boundaries of Ground Water Management Areas (GWMAs) and Critical  
Ground Water Areas (CGWAs) provided that domestic uses were limited  
to inhouse use.

The 1992 memo was intended to supercede the prior memo and  
provided that the department would issue a permit in GWMAs if the  
use was within the limits of "domestic purposes" as described in  
Section 42-111, Idaho Code. Note that this was a "loosening" of  
the prior memo since the approvable domestic use no longer was  
limited to inhouse use. The 1992 memo also provided that the  
department would not issue water right permits in a CGWA.

Neither memo addressed treatment of a "community" well where  
a community well means a well which provides domestic water to more  
than one domestic unit.

Department policy with respect to the filing of applications  
for permit and subsequent department action on the applications in  
GWMAs and CGWAs is as follows:

GROUND WATER MANAGEMENT AREAS

- Department staff should follow provisions of any existing  
  management plan which has been prepared for a specific GWMA.  
  If a plan does not exist, the provisions of this memo apply.

- The department will issue a water right permit for non-  
  consumptive uses and for other uses which do not exceed the  
  rate and volume limitations of the "domestic purposes"  
  definition described in Section 42-111, Idaho Code. Note that
these approvable uses are not limited to inhouse use.

- The department will issue a water right permit for "community" domestic wells provided that each domestic unit served by the community well does not exceed the rate and volume limitations of the "domestic purposes" definition described in Section 42-111, Idaho Code and individually would be exempt from the filing of an application for permit as provided in Section 42-227, Idaho Code. Note that these approvable uses also are not limited to inhouse use.

CRITICAL GROUND WATER AREAS

- Staff should follow provisions of any existing management plan which has been prepared for a specific CGWA. If a plan does not exist, the provisions of this memo apply.

- The department will issue a water right permit for non-consumptive uses.

- The department will issue a water right permit for uses which do not exceed the rate and volume limitations of the "domestic purposes" definition described in Section 42-111, Idaho Code. Note, however, that these approvals will not provide for the irrigation of any land.

- The department will not issue a water right permit for community domestic wells in CGWAs.
MEMORANDUM

To:       Water Management Division Staff
From:     Norman C. Young
RE:       DOMESTIC USE IN MORATORIUM AREAS, GROUND WATER MANAGEMENT AREAS AND CRITICAL GROUND WATER AREAS
Date:     May 20, 1992

A question recently arose inquiring whether a prospective water user is required to obtain a water right permit for the construction of a well for stockwater use in a moratorium area, ground water management area or critical ground water area (administrative areas) and the limits, if any, which may apply to the stockwater use.

A water user is not required to file for a water right permit if the proposed ground water diversion will not exceed an instantaneous discharge of 0.04 cubic feet per second (18 gallons per minute) and a daily diversion of 2,500 gallons per day, or a daily diversion volume of 13,000 gallons per day and otherwise meets the domestic purpose definition of Section 42-111, Idaho Code. The department will, however, issue a water right permit if the use is within a ground water management area, but not in a critical ground water area. The water user must obtain a drilling permit from the Department for construction of the well.

If a water user represents that the instantaneous rate of diversion will exceed 0.04 cfs and a daily volume of 2,500 gallons per day or the daily volume will exceed 13,000 gallons per day, the use will not be allowed without a water right permit.

To determine if the proposed stockwater use meets the domestic purposes definition, information on the number and kind of livestock must be known. i.e. A daily diversion volume of 13,000 gallons will supply the water requirement for approximately 1,000 head of range cattle at 12 gallons per day per animal.

To determine the daily water requirement volume for various types of livestock, refer to Table 3, "Non-Irrigation Water Requirements" in the Field Examiner Handbook.
EXHIBIT J
This memorandum establishes IDWR's practices for processing applications to appropriate trust water flows as defined in Water Appropriation Rule 30.01 ("Trust Water"). These practices include:

- Notifying applicants of the special nature of Trust Water appropriations.
- Identifying applications to appropriate Trust Water in legal notices.
- Placing identifying conditions on permits to appropriate Trust Water.

This memorandum supersedes the guidance in Shelley Keen's October 16, 2015, memorandum Update to IDWR's Trust Water Conditions.

Notifying Applicants

For all applications to appropriate Trust Water, IDWR will notify the applicant in writing before advertising that the proposed appropriation is for Trust Water. The notice will explain that:

1. The application process may involve additional evaluation and submittal of information compared to applications that do not propose the use of Trust Water.
2. If approved, the water right will be subject to future public interest review that could affect the future use of the right.
3. If approved, the water right will be curtailed when necessary to satisfy senior minimum stream flow water rights.
4. If approved, the water right will be subject to a periodic term review that may impact the future use of the right.

The intent of the notification letter is to inform the applicant of the nature of Trust Water and to afford the applicant the option of withdrawing the application and receiving a refund of the filing fee prior to publication of the required legal notice. When sending

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1 For more on the nature and location of Trust Water, see Idaho Code § 42-203B and Water Appropriation Rules 17 and 30.
the notification letter to the applicant, IDWR should also scan the copy of the letter in the application file so it is available for public review when the legal notice is published.

A letter template is attached to this memorandum. The template will also be made available in electronic form in IDWR’s Workflow software applications.

Identifying Applications in Legal Notices

IDWR will include the following remark in the legal notice for all Trust Water applications:

This application proposes to appropriate trust water and will be evaluated in compliance with Section 42-203C, Idaho Code, and IDWR’s Water Appropriation Rules, IDAPA 37.03.08.

This remark is available as a standard remark in IDWR’s Workflow software applications.

Applications proposing mitigation will also include IDWR’s standard mitigation remark in the legal notice:

Mitigation is proposed for consumptive use.

Placing Identifying Conditions on Trust Water Appropriations

Conditions specific to appropriations of Trust Water serve several objectives, including:

1. Identifying the right as diverting Trust Water.
2. Communicating and establishing the opportunity for a periodic (term) review of the right to re-evaluate the availability of water and the public interest.
3. Communicating to the right holder the potential for curtailment when the minimum stream flow water rights in the Snake River at Murphy Gage are not being satisfied. The curtailment obligation depends on whether the uses under the right are consumptive or non-consumptive and whether consumptive uses are mitigated in accordance with an approved mitigation plan.

To meet the objectives identified above, each new appropriation of Trust Water will have one condition addressing Objectives 1 and 2. In addition, each non-de minimis2 appropriation of Trust water will have another condition addressing Objective 3.3

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2 This memo does not address administration of de minimis appropriations by priority. IDWR will address administration of de minimis appropriations separately.

3 Some rights that appropriate Trust Water have been issued without conditions meeting these objectives or with similar (but not identical) conditions. When staff encounter these situations during licensing or amending a permit, staff should update the conditions to the standard conditions established by this memo. When processing proposed transfers or exchanges of rights with non-conforming conditions or rights lacking conditions identifying them as Trust Water,
- **For Objectives 1 and 2** — IDWR will place the following condition on all new appropriations of Trust Water, including consumptive uses, non-consumptive uses, and mitigated consumptive uses.

  This right is for the use of trust water, and it is subject to review 5 years after its initial approval (date of permit approval) to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.

- **For Objective 3 (Use is Consumptive)** — IDWR will place the following condition on all new appropriations of Trust Water with consumptive uses, or mixes of consumptive and non-consumptive uses, not subject to moratorium-related mitigation requirements.

  When the minimum stream flow water rights in the Snake River at Murphy Gage are not being satisfied, the right holder shall cease diverting water for the consumptive uses authorized by this right. The minimum stream flow water rights are for 3,900 cfs from April 1 through October 31 and 5,600 cfs from November 1 through March 31. See IDAPA 37.03.08.030.

- **For Objective 3 (Use is Non-Consumptive or Mitigated)** — IDWR will place the following condition on all new Trust Water appropriations for non-consumptive uses of water and consumptive uses subject to mitigation.

  Administration of this right to satisfy the minimum stream flow water rights in the Snake River at Murphy Gage shall not be required because use of water pursuant to this right is either non-consumptive or the right holder is required to provide ongoing mitigation to offset the depletion of water resulting from the use of this right.

**Monitoring and Reporting**

IDWR is developing a general water right policy for measurement, monitoring, and reporting to ensure mitigation and other required actions are accomplished efficiently. IDWR will implement measurement, monitoring, and reporting for Trust Water appropriations consistent with the general policy.

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Mitigation may be moratorium-related or may be implemented to avoid curtailment when the minimum Snake River flows at Murphy Gage are not satisfied.

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Staff members should consult their supervisors, who may also consult legal staff regarding whether to update or add the conditions.
Notification Letter to Applicants Proposing to Appropriate Trust Water

<< Applicant Name >>
<< Address >>

RE: Application for Permit to Appropriate Trust Water – No. X-XXX

Dear Applicant:

The Department of Water Resources ("Department") has received your application for permit to appropriate water and has accepted it for filing. Your application has been assigned the identification number referenced in the subject line of this letter. Please refer to that number in all future correspondence regarding this application.

Your application proposes to appropriate Trust Water as described in this letter. The special nature of the trust affects how the Department will process your application as well as some aspects of the water right that may result. The purpose of this letter is to inform you of three items specific to applications proposing to appropriate Trust Water:

1. Your application will be subject to additional evaluation compared to applications that do not propose the use of Trust Water. This may require you to submit additional information and to demonstrate that your application meets the statutory evaluation criteria for appropriating Trust Water.
2. If a water right is issued to you, it could be subject to curtailment to satisfy senior minimum stream flow water rights on the Snake River at the Murphy Gage.
3. If a water right is issued to you, it will be subject to a periodic term review that may impact the future use of the right.

To understand better these three items and why they apply to your application, it helps to understand what Trust Water is and how it came about.

Trust Water arose from the 1984 Swan Falls Settlement between Idaho Power Company ("IPC") and the State of Idaho ("State"). Prior to the Swan Falls Settlement, the Idaho Supreme Court determined IPC held water rights for use at Swan Falls Dam that exceeded the entire flow of the Snake River at times. This limited future upstream development of water resources in the Snake River Basin. The Swan Falls Settlement resulted in changes to Idaho Law and to IPC’s water rights. As a result of the Swan Falls Settlement and subsequent legislation and court decrees, IPC’s hydropower water rights in excess of the minimum flows at Murphy Gage are held in trust by the State. This change allows future development using water that would have previously been delivered to satisfy IPC water rights at Swan Falls Dam and, therefore, would have been

1 For more information, including a more complete description of the Swan Falls Settlement and resulting legislation, please see the Department’s web page: https://idwr.idaho.gov/legal-actions/settlements/swan-falls/.
2 Although several sections of the Idaho Code were affected, the addition of Sections 42-203B and 42-203C, Idaho Code are the changes most relevant to this discussion.
The purposes of the trust established by this section are to assure an adequate supply of water for all future beneficial uses and to clarify and protect the right of a user of water for power purposes to continue using the water pending approval of depletionary future beneficial uses.

Your application proposes a use of water that could deplete the rights placed in trust, so the State, through the Department must evaluate your proposal under the laws and rules that came after the Swan Falls Settlement. In addition to the usual statutory process and evaluation criteria, the Department must also evaluate whether your application will deplete Trust Water and, if so, whether your depletion of Trust Water is in the public interest.

In addition, the availability of Trust Water and the public's interest in the use of Trust Water could change over time. The Department will periodically review rights to use Trust Water to determine if Trust Water remains available for use and if the continued use of Trust Water is in the public interest. The periodic review will occur for any right that issues from your application. A future review by the Department could terminate or limit your ability to use the right in the future.

An important aspect of the Swan Falls Settlement is that the State agreed to protect the minimum stream flows in the Snake River at the Murphy Gage. Should the flows at the Murphy Gage fall below these minimums, the water rights that use Trust Water could be curtailed to restore flow to meet those minimums.

The Department will hold your application for 14 days to allow you time to contact us if you have further questions on this topic or if you choose to withdraw your application. If the Department does not hear from you within 14 days, the Department will process your application and prepare it for publication. If you choose to withdraw your application before it is submitted for publication, you will receive a full refund of your filing fee. Refunds are not available if an application is withdrawn after advertising.

Please contact this office if you have questions regarding this matter.

Sincerely,

IDWR Water Rights Staff.

Enclosure: Withdrawal of Application form

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3 See Sections 42-203C and the Department's Water Appropriation Rules (IDAPA 37.03.08).