

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

IN THE MATTER OF BASIN 37  
ADMINISTRATIVE PROCEEDING

Docket No. AA-WRA-2021-001

**FINAL ORDER**

**INTRODUCTION**

The Director of the Idaho Department of Water Resources (“Department” or “IDWR”) commenced this administrative proceeding in response to an exceptionally dry year in the Wood River Basin. This order is issued after a six-day hearing in which senior surface water users argued that junior ground water pumpers are interfering with their water rights and junior ground water pumpers raised various defenses and argued they should not be curtailed. In this order, the Director concludes that the effects of ground water withdrawals in the Bellevue Triangle on senior water rights diverting from Silver Creek and the Little Wood River during the 2021 irrigation season are contrary to prior appropriation doctrine. The Director orders that junior priority ground water rights within the Bellevue Triangle listed in Exhibit A to this order should be curtailed for the 2021 irrigation season starting July 1, 2021.

**PROCEDURAL BACKGROUND**

On May 4, 2021, the Director issued a *Notice of Administrative Proceeding, Pre-Hearing Conference, and Hearing* (“Notice”). The *Notice* stated that a drought is predicted for 2021 irrigation season, and the water supply in Silver Creek and its tributaries may be inadequate to meet the needs of surface water users. *Id.* at 1. The *Notice* also stated that curtailment model runs of the Wood River Valley Groundwater Flow Model v.1.1 (“WRV1.1 Model” or “Model”) showed that curtailment of ground water rights during the 2021 irrigation season would result in increased surface water flows for the holders of senior surface water rights during the 2021 irrigation season. *Id.*

The *Notice* cited Idaho Code § 42-237a.g.’s provision that “water in a well shall not be deemed available to fill a water right therein if withdrawal of the amount called for by the right would affect . . . the present or future use of any prior surface or ground water right,” and stated that, based on the information from the Model, the Director believes “that the withdrawal of water from ground water wells in the Wood River Valley south of Bellevue (commonly referred to as the Bellevue Triangle) would affect the use of senior surface water rights on Silver Creek and its tributaries during the 2021 irrigation season.” *Id.* The *Notice* stated the Director was therefore initiating an administrative proceeding, pursuant to Idaho Code § 42-237a.g. and IDAPA 37.01.01.104, to determine whether water is available to fill the ground water rights within the Wood River Valley south of Bellevue, as depicted in the map attached to the *Notice*. *Id.* The map defined this as the “Potential Area of Curtailment.” The *Notice* stated “[i]f the

Director concludes that water is not available to fill the ground water rights, the Director may order the ground water rights curtailed for the 2021 irrigation seasons.” *Id.*<sup>1</sup>

The *Notice* instructed parties wishing to participate in the administrative proceeding to send written notice the Department by May 19, 2021. *Id.* The *Notice* scheduled a pre-hearing conference for May 24, 2021, and scheduled the hearing for June 7-11, 2021, at the Department’s state office. *Id.*

On May 11, 2021, the Director issued a *Request for Staff Memorandum* (“*Request*”). The *Request* described ten subjects to be addressed in the staff memoranda, and directed that the memoranda be submitted to the Director on or before May 17, 2021. *Id.* at 1-3.

Four staff memoranda responding to the *Request* were submitted to the Director on May 17, 2021, and posted on IDWR’s website the next day.<sup>2</sup> Also posted on the Department’s website were supporting files for the staff memorandum addressing the Model’s predictions of the hydrologic response in Silver Creek to curtailment of ground rights in the Bellevue Triangle.<sup>3</sup>

A large number of parties filed notices of intent to participate in the administrative proceeding. The persons and entities who filed notices of participation are identified in the *Scheduling Order*, *Order Granting Party Status* and *Order Granting Party Status and Closing the Proceeding to Additional Parties*. The participants are individually identified in this order only as needed for clarity and to avoid confusion.

The Prehearing Conference was held on May 24, 2021. At the Prehearing Conference and in the subsequently issued *Scheduling Order* the Director discussed a number of issues related to party status. It was pointed out at the Prehearing Conference that the area analyzed by Jennifer Sukow in her staff memorandum was slightly smaller than the “Potential Area of Curtailment” depicted in the map attached to the *Notice*. *Scheduling Order* at 3. The Director therefore limited the “Potential Area of Curtailment” to the area considered in Sukow’s staff memorandum. *Id.* The boundary for the updated “Potential Area of Curtailment” is reflected in Figure 17 of Sukow’s staff memorandum. IDWR Ex. 2, Figure 17.

Prior to the hearing, the parties engaged in discovery, depositions, and filed various motions. The hearing began on Monday, June 7, 2021, and concluded on Saturday, June 12, 2021. Various lay and expert witnesses testified and exhibits were admitted into the record.

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<sup>1</sup> Ground water rights for domestic and stock watering uses as defined in Idaho Code §§ 42-111 and 42-1401A(11) were excluded from the administrative proceeding. *Notice* at 1.

<sup>2</sup> The *Request for Staff Memorandum* was issued, and the staff memoranda were submitted, before the May 19, 2021, deadline for filings notices of participation. On the day after the deadline for filing notices of participation, the Department sent emails to the parties who had filed notices, informing them that the *Request* and the staff memoranda were available on the Department’s website.

<sup>3</sup> One of the supporting GIS files could not be opened when posted. This was corrected on May 21, 2021.



## **FINDINGS OF FACT**

The relationship between ground water in the Bellevue Triangle and surface water flowing in Silver Creek and the Little Wood River is a central focus of the underlying contested case. A description of the hydrology of the Upper Big Wood River Basin is necessary to understand the hydrologic relationships between ground water in the Bellevue Triangle and surface water in Silver Creek and the Little Wood River.

The Upper Big Wood River Basin hydrologic system is comprised of three main arterial streams: the Big Wood River, Silver Creek, and Camas Creek.

Silver Creek originates from various springs emitting from the shallow aquifer underlying an area of irrigated cropland south and east of the community of Bellevue, Idaho.

### **Hydrology of the Wood River Basin**

#### **Big Wood River**

The Big Wood River begins in the Boulder Mountains near Galena, Idaho. The river flows mostly south and occasionally east to the community of Ketchum. At Ketchum, Trail Creek flows into the Big Wood River from the east through Sun Valley, Idaho. Other streams drain snowmelt to the Big Wood River from the Boulder and Pioneer Mountains, located to the east, and the Smoky Mountains located to the west. The Big Wood River gathers flow as it courses south through the communities of Hailey and Bellevue. Just south of Bellevue, the Big Wood River Valley broadens into an expanse of agricultural land shaped like a triangle. The vertices of the triangle are roughly located at Bellevue on the north, Stanton Crossing (where Highway 20 crosses the river) on the southwest, and Picabo, Idaho on the southeast. This area is locally known as the “Bellevue Triangle.”

Early settlers of Bellevue Triangle land diverted water from the Big Wood River through canals and flood irrigated land within the Bellevue Triangle. Much of the canal water is delivered from the Big Wood River southeasterly through the Bellevue Triangle.

In recent decades, farmers converted flood irrigation systems to pressurized pipes and to sprinkler applications of water to crops.

The Big Wood River flows south to Stanton Crossing, turns west at approximately Stanton Crossing, and discharges into Magic Reservoir. Magic Reservoir can store 191,500 acre feet of water, primarily for irrigation.

While some of the water diverted for irrigation in the Wood River Valley returns as ground water inflow to the Big Wood River, this decision only addresses the relationship between ground water underlying the Bellevue Triangle and hydraulically connected surface water flows in Silver Creek and the Little Wood River.

#### **Camas Creek**

Camas Creek flows into Magic Reservoir from the west. The hydrologic relationship of ground water pumping in the Camas Creek Basin to other surface water sources in the Wood River Basin is not evaluated by this decision.

### Silver Creek and Tributary Spring Creeks

Silver Creek and its tributary spring creeks derive their water from springs emitting from the shallow aquifer underlying the Bellevue Triangle. Emergent spring flows gather in various open channels that ultimately flow into Silver Creek.

A portion of the water diverted from the Big Wood River and applied for flood irrigation in the Bellevue Triangle historically enhanced the flows of Silver Creek. Changes to pressurized sprinkler systems in recent years increased efficiencies of water application to agricultural fields, reducing the amount of incidental recharge to ground water. Nonetheless, Big Wood River water delivered through surface water canals continues to percolate into the ground water underlying the Bellevue Triangle.

Silver Creek meanders through the Bellevue Triangle, generally in an easterly direction. Near Picabo, Silver Creek flows out of the Bellevue Triangle in a southeasterly direction for 10-15 miles into the desert of the northern Eastern Snake Plain. As it flows into the desert, Silver Creek approaches the stream channel of the Little Wood River.

The Little Wood River headwaters are located north of Carey, Idaho. From Carey, the Little Wood River carves a streambed in a southwesterly direction along the boundary between the Eastern Snake Plain and the uplifted surrounding geography to the northwest.

As the Little Wood River and Silver Creek channels approach each other, Silver Creek turns southwesterly and parallels the Little Wood River for approximately three miles. The two stream channels converge 2.5 miles southwest of where Silver Creek crosses State Highway 93. IDWR Ex. 4 at 8. The Little Wood River continues to flow in a southwesterly direction after its confluence with Silver Creek.

### Little Wood River

Water users in the Carey, Idaho area divert all or most of the flow of the Little Wood River except during high water events. The Little Wood River channel is often dry downstream from Carey, Idaho. As a result, Silver Creek sustains flows in the Little Wood River continuously from its confluence downstream to where the Milner Gooding Canal contributes additional surface water to the Little Wood River from the Snake River. *See map on page 7, Sukow 2015 report attached to Ex. 2, see also testimony from Kevin Lakey, Tr. p. 892.*

The Little Wood River flows southwesterly through the town of Richfield. The Little Wood River then turns westerly and subsequently flows through the towns of Shoshone and Gooding.

## **Water Development and Water Rights**

### Surface Water Development

Initial development of irrigation water rights in the Wood River Basin started in the 1870's and 1880's. Many of the earliest water rights bear priority dates of this vintage.

Early priority water rights authorizing diversion and beneficial use from Silver Creek and the Little Wood River bear priority dates of 1877 to 1883. In a normal or average water year,

water rights bearing a priority date of 1883 and earlier are deliverable for the entire irrigation season. IDWR Ex. 4 at 12, 15.

In a normal or average water year, water rights bearing a priority date of 1884 are deliverable until mid-to-late July. *Id.*

In average and above average water years, water from Magic Reservoir water on the Big Wood River is delivered and injected into the Little Wood River by the Big Wood Canal Company. Much of this Magic Reservoir storage water is diverted from the Little Wood River near Richfield and delivered south to the Dietrich Tract.

In the early 1930's, the U.S. Bureau of Reclamation ("the BOR") completed the Milner Gooding Canal, which delivers Snake River natural flow and storage water for irrigation of farm land located in the Lower Little Wood River Basin and the Lower Big Wood River Basin. The Milner Gooding Canal crosses the Little Wood River northeast of Shoshone, Idaho through a siphon under the Little Wood River bed. At the canal siphon crossing of the Little Wood River, a portion of the Snake River water flowing in the Milner Gooding Canal can be discharged directly into the Little Wood River through a bifurcation at the head of the siphon to enhance water supplies in the Little Wood River. The contracts for the Snake River water deliveries will be discussed later in this decision.

#### Ground Water Development in the Wood River Valley

Ground water development for irrigation in the Bellevue Triangle began around 1930. IDWR Ex. 2 at 12.

Some of the earliest wells were constructed in an artesian aquifer located in the southern part of the Bellevue Triangle. Significant development of the artesian aquifer for irrigation began in the late 1940s. IDWR Ex. 2 at 12. The artesian pressures are created by a confining layer of clay above the ground water.

Ground water in wells completed in the artesian aquifer would rise in the well column above the level where the ground water was encountered, and would sometimes rise high enough to free flow above the level of the ground.

With the advent of modern drilling equipment, rural electrification, and efficient pumping systems, diversion of ground water increased until the early 1990's when regulatory action by IDWR restricted further ground water development.

#### Regulatory Activities

On June 28, 1991, Keith Higginson, Director of IDWR, issued an order designating the Big Wood River Ground Water Management Area ("Management Area Order"). Three findings of fact from the order designating the ground water management area are important for this decision:

2. The surface and ground waters of the Big Wood River drainage are interconnected. Diversion of ground water from wells can deplete the surface water flow in streams and rivers. New ground water uses can also deplete available supplies for other users and affect basin underflow which presently accumulates in the Magic Reservoir.

3. There are a number of Applications for Permit to Appropriate Water pending before the department which propose additional consumptive uses of ground water within the Big Wood River drainage.

4. Injury could occur to prior surface and ground water rights including the storage right in Magic Reservoir if the flows of streams, rivers and ground water underflow in the Big Wood River Basin are intercepted by junior priority ground water diversions.

The Management Area Order contained a Management Policy that stated IDWR would not approve a new application for consumptive use unless there was a showing that the use proposed by the application would not injure existing water rights. Approvals of new applications to appropriate ground water for consumptive uses other than domestic largely ceased after issuance of the Management Area Order.

Because of continued concerns about the impact of ground water diversions on both ground water and surface water sources in the Wood River Basin, IDWR, in coordination with the water users in the Wood River Basin, has initiated or addressed the following activities since issuance of the Management Area Order:

- 2010 – In cooperation with the U.S. Geological Survey, began a program to expand the existing hydrologic monitoring network in the Wood River Valley with the installation of four stream gages in the Wood River Valley
- September 21, 2011 – Issued order (a) creating the Upper Wood Rivers Water Measurement District, and (b) requiring all ground water users to install measuring devices prior to the 2014 irrigation season
- 2012 – In cooperation with the U.S. Geological Survey, began work on development and calibration of a numerical groundwater-flow model for the Wood River Valley, including Silver Creek and ground water underlying the Bellevue Triangle
- September 17, 2013 – Issued order (a) combining water districts for the Big Wood River, the Little Wood River, and Silver Creek; and (b) adding ground water rights from the Upper Big Wood River valley above Magic Reservoir and the Silver Creek drainage to the water district (Water District 37), and (c) abolishing the Upper Wood Rivers Water Measurement District
- February 2015 to June 2016 – First conjunctive management delivery call by surface water users against ground water users dismissed on procedural grounds
- 2016 – Published final report documenting version 1.0 of the Wood River Valley Groundwater-Flow Model (IDWR Ex. 2 at 14)
- March 2017 to June 2017 – Second delivery call dismissed on procedural grounds
- 2018 through 2020 – Proposals for Ground Water Management Plans submitted by ground water users to Director of IDWR

- 2019 – Published final report documenting recalibrated version 1.1 of the Wood River Groundwater-Flow Model (IDWR Ex. 2 at 14)
- 2019 - Published a summary of groundwater conditions in the Big Wood Ground Water Management Area and a summary of Silver Creek Flow Measurements by IDWR staff between 2014 and 2018.
- 2020 – Published a summary of seepage surveys by IDWR staff between 2017 and 2019 on Trail Creek near Ketchum.
- Fall 2020 through spring 2021 – Approximately biweekly meetings of Big Wood River Ground Water Management Area Advisory Committee; at these committee meetings, analyses of the hydrology and hydrogeology of the Wood River Basin were presented by experts and by those who had personally observed facts related to water availability and use.
- May 4, 2021 – Director initiates administrative proceeding for Basin 37

### **The Wood River Valley Ground Water Flow Model**

The Wood River Valley aquifer system is hydraulically connected to Silver Creek and its tributaries above the Sportsman Access gage. IDWR Ex. 2 at 2. Water 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. *Id.*

Discharge from the Wood River Valley aquifer system is the primary source of water for Silver Creek. *Id.* at 4.

The WRV1.1 Model was developed to serve as a tool for water rights administration and water resource management and planning. *Id.* at 15.

Twenty-two Modeling Technical Advisory Committee (“MTAC”) meetings were convened between March 2013 and January 2019 to facilitate a transparent and open process of data collection, model construction, and model calibration. *Id.* at 14. With input from the MTAC, the final report documenting the present version of the model was published in 2019.

In 2019, Allan Wylie, one of the model developers, wrote the following:

“Although every groundwater model is a simplification of a complex hydrologic system, WRV Aquifer Model Version 1.1 is the best available tool for evaluating the interaction between groundwater and surface water in the Wood River Valley. The science underlying the production and calibration of the WRV Aquifer Model Version 1.1 reflects the best knowledge of the aquifer system available at this time. The WRV Aquifer Model Version 1.1 was calibrated to 1,314 aquifer water-level measurements and 1,026 river gain-and loss calculations. Calibration statistics indicate a good fit to the observed data, providing confidence that the updated model provides an acceptable representation of the hydrologic system in the Wood River Valley.”

*Id.* at 15



Expert witnesses Erick Powell and Greg Sullivan acknowledged that, despite the need for improvement to the WRV1.1 Model, the model is the best available tool to evaluate the effects of ground water pumping on flows of Silver Creek (Tr. at 1320; 1452).

In 2019, Sukow published a report on a model simulation of the cumulative impacts to streamflow resulting from full curtailment of consumptive use ground water diversions from 1995 through 2014. *Id.* at 16.

### **2021 Drought Year**

The Surface Water Supply Index (SWSI) is a predictive indicator of surface water availability in a river basin compared to historic supply. IDWR Ex. 1 at 1. The Natural Resources Conservation Service (“NRCS”) computes the SWSI by summing the two major sources of surface water supply for irrigation: streamflow runoff and reservoir carryover. *Id.*

The NRCS determines SWSI values by “normalizing the magnitude of annual water supply variability between basins. The non-exceedance values are then rescaled to range from +4.1 (extremely wet) to -4.1 (extremely dry). A SWSI value of 0.0 indicates a median water supply as compared to historic occurrences.” *Id.*

At the beginning of each month (excluding November and December), the NRCS publishes a table with 10-, 30-, 50-, 70-, and 90-percent exceedance forecasts for the current season along with measured volumes for the previous 30 years. *Id.*

There is a strong correlation between the SWSI for the Big Wood River above Hailey and flows in Silver Creek. IDWR Ex. 6. The SWSI for the Big Wood River above Hailey is a good predictor of the available supply for surface water users in the Wood River Valley as well as downstream users that don’t have access to water from Magic Reservoir but instead divert water from Silver Creek or the Little Wood River. IDWR Ex. 1 at 2.

The April SWSI for the Big Wood River above Hailey was -2.7 with a predicted April through September runoff volume of 127 KAF. *Id.* at 3.

Based on the April SWSI, for the period 1991 to 2020, the years with the most similar total supplies to the 50% exceedance forecast for 2021 were 2004 (SWSI = -2.6) and 2020 (SWSI = -2.8). *Id.*

In early June 2021, the NRCS published a SWSI table for June through September 2021 for the Big Wood River at Hailey. *See* IDWR Ex. 5. The SWSI value corresponding to the June through September 2021 50% exceedance forecast volume was -4.0, which is worse than the June through September SWSI for any of the previous 30 years. Tr. at 48, 50; IDWR Ex 5. The next closest SWSI is -3.9 in 1994. Tr. 50.

Water District 37 watermaster Kevin Lakey testified that this year’s flows at the Sportsman’s Access gage and Station 10 are lower than the flows on comparable dates in any analogous water supply year, and agreed that the water supply conditions this year are the “worst” he has seen since taking over as watermaster in 2003. Tr. p.766. Lakey predicted that, based on current conditions, all 1884 priorities on the Little Wood River would be cut during June 2021, and that the April 1, 1883 priority would be cut by June 30, 2021. Tr. pp. 771-72 788-89; Rigby Ex. 2.

As a result of the predicted dismal surface water supply, surface water rights from Silver Creek and the Little Wood River senior in priority to ground water rights in the Bellevue Triangle will be curtailed unusually early during the 2021 irrigation season.

### **2021 Model Simulation**

The WRV1.1 Model was used to simulate the impact of curtailing consumptive use of groundwater for agricultural, municipal, residential, commercial, and irrigation uses during the 2021 irrigation season. IDWR Ex. 2 at 17. The year 2002 was used as a baseline dry year for the model simulation. *Id.*

Curtailment of irrigation was simulated with different starting dates of May 1, June 1, July 1, and August 1. *Id.*

Curtailment was simulated within two areas. *See Id.*, Figure 15. The first area was the WRV1.1 Model boundary. Although the effects of the curtailment were simulated with the model for a period of approximately 12 years, the WRV1.1 Model predicts most of the impacts to streamflow are realized in less than 2 years. *Id.*, Figure 16.

The second area for which curtailment was simulated comprised most of the model area south of Glendale Bridge. *See Id.*, Figure 15, Figure 17. The second area excludes areas where groundwater pumping has minimal impact on streamflow in Silver Creek. Glendale Bridge crosses the Big Wood River at the north end of the Dry Bed. *Id.* at 22. Aquifer water levels deepen at the northern margin of the triangle between Bellevue and Glendale Bridge. *Id.*

Because the Basin 37 Administrative Proceeding was initiated to address water delivery during the 2021 irrigation season, the simulation results focus on the hydrologic responses that are predicted to occur by the end of September 2021. *Id.* at 17.

Predicted increases to the average monthly Silver Creek streamflow during the 2021 irrigation season, starting July 1 through September, range from 23 to 28 cfs. *Id.*

The simulation of curtailment indicates that 99% of the predicted in-season benefit to Silver Creek streamflow can be achieved by curtailing 70% of the consumptive groundwater use within the model domain by reducing the area of curtailment to the area south of Glendale Bridge. IDWR Ex. 2 at 22-23. This area coincides with the Bellevue Triangle area identified as the 2021 potential curtailment area. The remaining 30% of the consumptive groundwater use has minimal impact on Silver Creek.

### **Surface Water Flow Outside of the Model Boundaries**

The Little Wood River and part of Silver Creek are outside the WRV1.1 Model boundary. IDWR Ex. 2, Figure 19. Many of the senior surface water rights potentially affected by ground water diversions in the Bellevue Triangle are outside the model boundary.

For the 2020 irrigation season, average monthly seepage losses between the Sportsman Access gage and Little Wood River Station 10 were calculated using the USGS recorded streamflow at the Sportsman Access gage and Water District 37 records of streamflow (Little Wood River Station 10, thirty diversions from Silver Creek, and two inflows to Silver Creek). IDWR Ex. 2 at 26, and Table 3. Estimated seepage losses range from 16 cfs to 46 cfs and from 20% to 37% of the inflow to the reach. *Id.* at 26. Gains to Silver Creek, between Highway 20

Bridge and Station 10, resulting from curtailment of groundwater will likely incur similar rates of seepage loss. *Id.* at 30.

Kevin Lakey testified that he had observed the discharge at Station 10 increase within five to ten days after voluntary curtailment of some upstream ground water rights. Tr. p.785-87. The surface water users and one of the ground water users also testified that, based on their observations, flows in the Little Wood River and Silver Creek respond to changes in ground water pumping in the Bellevue Triangle. Tr. pp. 404, 493-94, 612-13, 1130. The range is a few days to two weeks.

### **Injury**

The Director's request for staff memoranda sought, among other things, an analysis identifying lands irrigated by water from Silver Creek and the Little Wood River "that could be injured by depletions caused by ground water pumping." *Request* at 2. The Request also sought an explanation of "methods of analysis for identifying possible injury" to senior water rights arising from depletions caused by ground water pumping. *Id.* at 3.

#### Pre-ground Water Pumping vs. Post-ground Water Pumping

The staff memorandum prepared by Tim Luke ("Luke Memorandum") compares water right priorities on Silver Creek and the Little Wood River deliverable in a year before the advent of ground water pumping but having a water supply year analogous to 2021, with priorities that may be deliverable in 2021. The Luke Memorandum also included an analysis of watermaster records to determine water right deliveries for water rights in water supply years analogous to 2021. IDWR Ex. 4 at 11-27. The Luke Memorandum identifies lands potentially injured by ground water pumping using IDWR's water rights spatial data, including GIS feature layers, that identify the places of use ("POU") for water rights diverting from Silver Creek and the Little Wood River. *Id.* at 18. The resulting list of water rights was modified to exclude: 1) all water rights with POUs that are also irrigated by ground water, 2) water rights having a "drain" or "wastewater" source, 3) water rights owned by BWCC or AFRD2 that may receive water from another source, and 4) all water rights having the "Exchange Condition" that authorizes the exchange of water from the Big Wood and Little Wood Rivers for Snake River water injected into the Wood River system via the Milner-Gooding Canal. *Id.* at 7, 18. The list of potentially injured water rights is attached to the Luke Memorandum as "Attachment A." *Id.* at 18.

The Exchange Condition rights were excluded from Attachment A based on the understanding that "the Exchange Condition water rights, to the extent they are in priority, shall receive Snake River water conveyed by the Milner-Gooding Canal in coordination with AFRD2." *Id.*, Attachment B, p. 2. Testimony at the hearing, however, established that when an exchange right is out of priority, the exchange no longer applies and the water user must then look to a supplemental supply, if the water users has one. Tr. p. 291-92. Not all Exchange Condition water rights also have a "supplemental" supply of water, and even those that do may not have a sufficient supplemental supply to replace the amounts of water that would have been available under the water rights had they not been curtailed. Tr. pp. 289-97, 778-80. Thus, even Little Wood River water rights with the Exchange Condition can be injured by ground water pumping in the Bellevue Triangle.

The years 1937 and 1939 are the two years “in the pre-groundwater development period” for which priority delivery records exist that are “closest” to the 2021 April SWSI, based on the NRCS’s historical SWSI analysis of the 104-year period of record for the Big Wood River above Hailey. 2004 and 2020 are analog years for the post-ground water development period, based on the staff memorandum of Sean Vincent. *Id.* at 23.<sup>4</sup>

Comparison of the 2004 and 2020 water right priority cuts with the 1937 and 1939 priority cuts “generally indicates that the 1884 priority rights were cut more frequently and longer in 2020/2004 than 1939/37.” *Id.* at 23.<sup>5</sup> While most 1884 priority dates were cut for multiple weeks or months in 2004 and 2020, most 1884 priority dates were not cut at all in the years 1937 and 1939. *Id.* at 24-25. When 1884 priority dates were cut in the years 1937 and 1939, they were cut for shorter periods of time: 1 to 2 weeks. *Id.*; *see also* Tr. p. 374. The relatively junior April 1, 1885, priority was also cut for significantly shorter periods in 1937 and 1939 (25 days) than in 2004 and 2020 (66-69 days). IDWR Ex. 4 at 23-25.

### Evapotranspiration

The staff memorandum prepared by Philip Blankenau (“Blankenau Memorandum”) compares evapotranspiration (“ET”) values for water right places of use during years of adequate water supply and reduced water supply. IDWR Ex. 3. The Blankenau Memorandum looks at water right POUs in five areas during recent years of above-median, below-median, and near-median SWSIs for the Big Wood River above Hailey (2011, 2013, and 2016, respectively). *Id.* The five areas are:

1. Irrigated fields within ground water POUs and within the Bellevue Triangle, which were assumed to have a full water supply;
2. Irrigated fields north of Shoshone and east of the Milner-Gooding Canal (“North Shoshone Area”) which are supplied primarily from Magic Reservoir, and do not receive a full supply when the reservoir does not fill;
3. Irrigated fields northwest of Richfield and the Little Wood River (“Richfield Area”), which are known to have an insufficient water supply when Magic Reservoir does not fill;
4. Irrigated fields within the area west of the Milner-Gooding Canal supplied by American Falls Reservoir District No. 2 (“AFRD2”) and not overlapping the North Side Canal Company’s service area or other surface or ground water right POUs, which were also assumed to have a full supply;

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<sup>4</sup> The Luke Memorandum noted that while the SWSIs for the years 1961 and 1988 were actually closer to 2021 April SWSI, the years 2004 and 2021 were selected because they are more recent and should be more representative of ground water pumping in 2021. IDWR Ex. 4 at 23-24.

<sup>5</sup> Water rights diverting from Silver Creek and the Little Wood River under 1883 and 1884 priority dates are considered “good priority rights that are not cut often.” Tr. p.367.

5. Irrigated fields within POU's for water rights diverting from Silver Creek and the Little Wood River and having no overlapping ground water right POU's. These water rights could potentially be injured by ground water use during the 2021 irrigation season.

IDWR Ex. 3 at 3; Tr. pp.238-41.

The Blankenau Memorandum determined that ET values for the Richfield and North Shoshone areas in 2013 (the below-median SWSI year) showed a widespread and deep decrease in ET values as compared to the above- and near-median years of 2011 and 2016, and that these decreases can safely be attributed to fields being dried down due to a water shortage. IDWR Ex. 3 at 6, 9-10; Tr. p.242. The Blankenau Memorandum did not find similar ET value decreases in the Little Wood and Silver Creek area during 2013, however. IDWR Ex. 3 at 9; Tr. p.249. The Blankenau Memorandum concluded, therefore, that the ET analysis "did not clearly identify water shortage in the Little Wood and Silver Creek area during the 2013 drought." IDWR Ex. 3 at 10.

Blankenau noted in his testimony that "in this analysis, [I] wasn't going to call an area water-short unless it was pretty clearly water-short," and that "individual fields could have water supply issues, but this analysis I don't think is sensitive enough to detect that." Tr. p.243. The Blankenau Memorandum also identified several factors that might limit the ability of the ET analysis to identify a water shortage at individual fields, including, among others, purchases of supplemental water by water users whose rights had been curtailed. IDWR Ex. 3 at 9-10. Subsequent testimony established that some water users in the Little Wood and Silver Creek area had purchased supplemental water during 2013 that could have affected the ET analysis. Tr. pp.904-06.

#### Ground Water use Within the Bellevue Triangle

The majority of irrigation and municipal ground water diversions within the Potential Area of Curtailment have priority dates later than 1940. IDWR Ex. 2, Figure 13. The majority of surface water rights on Silver Creek and its tributaries have priority dates prior to 1925. IDWR Ex. 4, Figure 3. The ground water rights in the Potential Area of Curtailment are junior to the surface water rights on Silver Creek and its tributaries.

The Potential Area of Curtailment contains a small portion of Galena's and the majority of South Valley's irrigated land. IDWR Ex. 2, Figure 17; SVGWD & GGWD Ex. 23 at 5; SVGWD & GGWD Ex. 41; Tr. pp. 1272-1273. Galena members hold twenty-one ground water rights, for a total of 4.04 cfs, within the Potential Area of Curtailment. SVGWD & GGWD Ex. 41; Tr. pp. 1272-1273. South Valley's members use ground water to irrigate approximately 22,000 acres of land. Tr. pp. 1158-1159. South Valley members use their ground water to grow grain, alfalfa, pasture, seed potatoes, and mustard, among other things. Tr. pp. 1159-1160. South Valley members have improved their irrigation efficiencies. Tr. pp. 1075, 1113-1125.

IDFG operates Hayspur Fish Hatchery, which is located within the Potential Area of Curtailment. Tr. p. 1008. The Hatchery uses three ground water rights in its operation. Tr. pp. 1011. Two of the water rights say they are non-consumptive on their face. IDFG Exs. 4, 6. The Hatchery pipes water through a series of concrete raceways and ponds, discharging the water to settling basins which flow into Butte Creek. Tr. pp. 1015-1026. Butte Creek flows to Loving



Creek which flows to Silver Creek. Tr. p. 1026. Measurements of the inflow to the Hatchery (IDFG Ex. 23) and measurements of the outflow of the Hatchery (IDFG Ex. 26) indicate the Hatchery discharges more water to Butte Creek than it diverts in ground water. The increase of flow can be attributed to spring seepage in the settling basin. Tr. pp. 1034-1035.

#### Water Supplies for Water Right Holders Diverting from Silver Creek or the Little Wood River

Fred Brossy owns and manages Barbara Farms, which is located near Shoshone.<sup>6</sup> Barbara Farms holds several surface water rights, including water rights 37-344A (Barbara Exs. 6, 7) and 37-973 (Barbara Exs. 4, 5), which authorize diversions of 4 cfs and 2 cfs from the Little Wood River under priorities of April 6, 1883, and April 1, 1884. This year, Brossy is growing organic potatoes, organic garden bean seed, organic pinto beans, barley, alfalfa, and various small acreages of seed crops. Tr. p. 442. In normal water supply years, Barbara Farms' water rights are sufficient to irrigate the farm's crops, although in recent years they have been curtailed more frequently. Tr. pp. 442-443. Brossy expects that his 1883 and 1884 water rights will be curtailed within one or two weeks of the hearing, and his water rights will not provide enough water to irrigate his crops during the 2021 irrigation season. Tr. p. 449. Brossy has rented 100 shares of AFRD#2 storage water from the City of Shoshone as a supplemental supply, and made some changes to his plantings to conserve and extend his water supply. Tr. pp. 441, 442, 453. Brossy testified he will need additional supplemental water to fully irrigate his crops this year, and has been attempting to secure it. *Id.* If he cannot, Brossy expects the water supply shortfall will adversely affect his 2021 crop production and revenue.

Brossy submitted estimates of his expected 2021 water supply shortfall, and the effects the shortfall would have on his crop production and revenue. Barbara Ex. 1. Brossy projected a total injury of approximately \$220,000 as a result of water shortage in 2021. Barbara 1: Tr. pp. 448-451. Brossy's water supply shortage estimates and loss projections may be high because they are based on existing conditions, which are subject to change, and on assumptions and computations that may not be entirely accurate or correct. Even so, the record supports a finding that a shortage of water in 2021 has already impacted Brossy's farming activities, and will likely cause significant economic injury by the end of the 2021 irrigation season.

Brossy believes that ground water pumping in the Bellevue Triangle reduces the amount of Little Wood River water available for diversion under his water rights, and that curtailing junior water rights in the Bellevue Triangle would provide additional water for diversion. Tr. pp. 445-447. Brossy believes that curtailment on July 1 will provide water in time to save his crops. Tr. pp. 467-471.

Rodney Hubsmith owns and operates a farm and ranch near Richfield. Tr. p. 481. A portion of this land is irrigated under water right 37-472, which authorizes diversion of 1.2 cfs from the Little Wood River under a priority date of April 1, 1884. Hubsmith Exs. 2, 3. Hubsmith bought his farm in 1981 from his grandfather who had owned it for 40 years previously, and considered the farm's water right to be "the best water right in Richfield" prior to

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<sup>6</sup> Brossy is the managing member of the entities that own and operate Barbara Farms: Barbara Farms LLC and Ernie's Organics LLC.

large-scale ground water pumping. Tr. p.487, 491. Since the 1990s, it has become increasingly common for Hubsmith's water right to be curtailed. Tr. pp. 484-486.

This year, Hubsmith is using the water right to irrigate alfalfa, Timothy grass, and pasture lands. Hubsmith's water right provides a full supply of water for these purposes if the right is not curtailed. Hubsmith anticipates that his water right will be curtailed in June this year, however, and that he will not have a full supply of water to grow his crops and irrigate his pasture land during the 2021 irrigation season. Hubsmith does not have an alternative or supplemental water supply for this land, and will take losses on his 2021 crop and livestock production if his water right is curtailed.

Hubsmith submitted estimates of his expected 2021 water supply shortfall, and the effects the shortfall would have on his crop production and livestock revenue. Hubsmith Ex. 1. Hubsmith projected a total injury of approximately \$68,000 as a result of water shortage in 2021. *Id.*; Tr. pp. 495-497. Hubsmith's water supply shortage estimates and loss projections may be high because they are based on existing conditions, which are subject to change, and on assumptions and computations that may not be entirely accurate or correct. Even so, the record supports a finding that a shortage of water in 2021 has already impacted Hubsmith's farming activities, and will probably cause significant economic injury by the end of the 2021 irrigation season.

Hubsmith has lived and worked near the Little Wood River and Station 10 for many years, and is familiar with both. Tr. pp. 489-490. Hubsmith testified that the flows of the Little Wood River in the area of Station 10 have become increasingly lower in recent years, and he believes the reduction in flows is due in part to ground water pumping in the Bellevue Triangle. Tr. pp. 490-494. Hubsmith believes that ground water pumping in the Bellevue Triangle is injuring his water right. Tr. pp. 499-500. Hubsmith testified that when pumping in the Bellevue Triangle is reduced, flows in the Little Wood River near Station 10 increase within a few days. Tr. p. 493.

Carl Pendleton is a farmer-rancher who owns and rents farmland north of Shoshone. Pendleton is also the chairman of the board of the Big Wood Canal Company ("BWCC") and appeared on behalf of the company. Tr. p. 520. BWCC holds a number of water rights to divert from the Little Wood River for irrigation purposes, ranging in priority from April 6, 1883, to June 1, 1920. Fletcher Ex. 1. The most junior water rights (those later than 1885) are curtailed relatively early in most years, and are primarily used to send spring runoff flows to the Dietrich Tract, which helps conserve the storage supply in Magic Reservoir. Tr. p. 529. The most reliable of BWCC's Little Wood River water rights are 37-21402, 37-21405, and 37-21401, which have priority dates of April 6, 1883, April 1, 1884, and May 15, 1885. Tr. pp. 528-529. In normal years, the 1883 and 1884 water rights generally stay in priority until late in the irrigation season (Tr. p. 547.), and the 1885 water right stays in priority until midsummer (Tr. p. 546.).

When these water rights are in priority, BWCC diverts them into the Dietrich Main Canal (Tr. p. 529.), but only if storage water from Magic Reservoir is being injected into the Little Wood River upstream, via the Richfield Canal and the Jim Burns Slough (Tr. p. 535.). If no storage is being released from Magic Reservoir, BWCC does not divert these water rights into the Dietrich Main Canal because the relatively small quantity of water they cover would not make it to BWCC's water users at the end of the canal on its own. Tr. pp. 531-533. BWCC therefore allows its Little Wood River water to remain in the river after Magic Reservoir releases

have ended for the season. Tr. p. 542. BWCC rents this water to users seeking a supplemental supply, or allows it to become part of the natural flow supply available for diversion under water rights diverting downstream. *Id.*

If BWCC's Little Wood River water rights are curtailed in June, as predicted, the curtailment would prevent BWCC from renting its water to water users in need of a supplemental water supply, or would reduce the supply available for downstream water rights that may be senior to ground water rights diverting in the Bellevue Triangle. Tr. p. 556. Pendleton testified that, based on his observations, the flows of the Little Wood River at Station 10 near Richfield increase substantially within 48 hours of when ground water pumps in the Bellevue Triangle are shut off. Tr. p. 537.

John Arkoosh ("John") is a farmer and stockman who operates several farm properties owned by himself and his father, William Arkoosh ("William"), in a loose partnership with his father. Tr. p. 571. John testified regarding both his and his father's farms, water rights, and water uses.

William owns two farms, one in Gooding County and one in Lincoln County, for which he holds water rights to divert from the Little Wood River. The Gooding farm has two such water rights, 37-176 (W. Arkoosh Exs. 4 and 5) and 37-1131 (W. Arkoosh Exs. 6 and 7), which authorize diversions of 2 cfs and 2.4 cfs from the Little Wood River under priority dates of April 1, 1890, and August 1, 1906. Both water rights have the Exchange Condition, and William also has two supplemental water supplies for the Gooding farm: 100 inches of American Falls Reservoir District No. 2 storage water, and approximately 4.4 cfs of ground water under a 1977 priority date.<sup>7</sup> Tr. pp. 581-582, 586-587. The Lincoln farm is irrigated by water rights 37-327 (W. Arkoosh Exs. 6 and 7) and 37-329 (W. Arkoosh Exs. 8 and 9), which authorize diversions of 2.2 cfs and 2 cfs from the Little Wood River under priority dates of May 15, 1884, and May 15, 1886.<sup>8</sup> These two water rights have the Exchange Condition, and William also has a supplemental supply of 30 inches of AFRD2 storage water for the Lincoln farm. Tr. p. 589. William raises alfalfa and silage corn on both the Gooding and Lincoln properties, and for part of the year these lands also support William's livestock. Tr. p. 590.

All of the Little Wood River water rights for William's Gooding and Lincoln farms have been curtailed this irrigation season, and these farms are now being irrigated with William's supplemental water alone. Tr. p. 592. While William's water rights for the Little Wood River have been curtailed in previous years, the curtailments have become increasingly earlier and more frequent in recent years. Tr. pp. 593-594. William's supplemental storage and ground water supplies are sufficient to fully irrigate the Gooding farm during the 2021 irrigation season, although curtailment has increased William's electrical costs as a result of the need to pump

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<sup>7</sup> The record does not appear to include the water right number for William's ground water right.

<sup>8</sup> The Lincoln farm is supplied by a Big Wood River water right, 37-59M, but this water right is relevant to this proceeding only for purposes of describing the total water supply for the Lincoln farm.

ground water. Tr. pp. 587-588. The supplemental supply for the Lincoln farm is not sufficient to fully irrigate the Lincoln farm in 2021, however. Tr. pp. 592-593.

John submitted an estimate of the expected 2021 water supply shortfall for the Lincoln farm in 2021, and the effects the shortfall would have on crop production and revenue. W. Arkoosh Ex. 1. John projected a total injury for the Lincoln farm of approximately \$55,000 as a result of water shortage in 2021, and pumping costs of approximately \$2,000 for the Gooding farm. *Id.* John's water supply shortage estimates and loss projections for William's farms may be high because they are based on existing conditions, which are subject to change, and on assumptions and computations that may not be entirely accurate or correct. Even so, the record supports a finding that a shortage of water in 2021 has already impacted William's farming activities, and will probably cause significant economic injury by the end of the 2021 irrigation season.

John also testified as to two farms he owns in Lincoln County, which he referred to as the Varin farm and the Ohlinger farm, both of which are supplied by water rights to divert from the Little Wood River.<sup>9</sup> John is raising alfalfa on the Varin farm, and has leased the Ohlinger farm to a farmer who is raising organic potatoes. Tr. pp. 599-600, 605. The Varin farm is supplied by water rights 37-326 (J. Arkoosh Exs. 2 and 3), 37-328 (J. Arkoosh Exs. 4 and 5), and 37-1127 (J. Arkoosh Exs. 10 and 11), which authorize diversions of 0.4 cfs, 0.6 cfs, and 1.6 cfs from the Little Wood River, under priority dates of November 1, 1882, April 1, 1885, and April 1, 1905. The Ohlinger farm is supplied by water rights 37-460 (J. Arkoosh Exs. 6 and 7) and 37-461 (J. Arkoosh Exs. 8 and 9), which authorize diversions of 4 cfs and 1.4 cfs from the Little Wood River under priority dates of June 3, 1884, and July 17, 1884.

All of the decreed water rights for the Varin and Ohlinger farms have been curtailed this irrigation season, with the exception of a portion of the 1882 water right for the Varin property. Tr. p. 606. This water right apparently has never been curtailed before, but will probably be fully curtailed within a month. Tr. pp. 601-602. The Ohlinger farm is also being supplied by 46.8 inches of American Falls storage water ("Carey Act Water"), but otherwise there are no supplemental water supplies for the Varin farm or the Ohlinger farm. At present, the water supplies for the Varin farm and the Ohlinger farm are not sufficient to properly grow and finalize their crops. John is attempting to secure several different supplies of additional water for the Varin and Ohlinger farms, but to date nothing has been finalized.

John submitted an estimate of the expected 2021 water supply shortfall for the Varin and Ohlinger farms in 2021, and the effects the shortfall would have on crop production and revenue. J. Arkoosh Ex. 1. John projected a total injury of approximately \$40,000 for the Varin farm, and \$611,000 for the Ohlinger farm, as a result of water shortage in 2021. *Id.*; Tr. pp 610-611. John's water supply shortage estimates and loss projections may be high because they are based on existing conditions, which are subject to change, and on assumptions and computations that may not be entirely accurate or correct. Even so, the record supports a finding that a shortage of

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<sup>9</sup> The Varin and Ohlinger farms are also supplied by two water rights for the Big Wood River, 37-10343 and 37-21485, but these water rights are only relevant to this proceeding for purposes of describing the farms' total water supply.



water in 2021 has already impacted John's farming activities, and will probably cause significant economic injury by the end of the 2021 irrigation season.

John testified that, based on his personal observations and experience, he believes that groundwater pumping in the Bellevue Triangle has decreased the supply of water in the Little Wood River that would otherwise be available for diversion under water rights held by himself and his father. John also testified that he believed their Little Wood River water rights would remain in priority longer and there would be less damage to their crops, if there were additional flows in the Little Wood River. Tr. pp.612-13. John testified that he believes that ground water pumping in the Bellevue Triangle is injuring his and William's water rights. Tr. p.632.

Alton Huyser is a farmer who testified as a principal of the Big Wood Farms LLC, which owns and operates Big Wood Farms. Huyser raises winter and spring wheat and alfalfa, and irrigates his crops with water rights 37-10561A (Big Wood Farms Exs. 6 and 7) and 37-10561B (Big Wood Farms Exs. 8 and 9), which authorize diversions of 4 cfs and 2.2 cfs from the Little Wood River under the common priority date of April 5, 1884.<sup>10</sup> In normal water supply years, Huyser's Little Wood River water rights are curtailed in mid-August, and in combination with Huyser's Big Wood River water right provide a sufficient water supply for his crops. Tr. pp. 652-653. This year, however, Huyser's decreed water rights were curtailed on June 2, and at this point he has no water to irrigate his crops for the rest of the 2021 irrigation season. *Id.* Huyser has been attempting to secure supplemental water, but nothing has been finalized. Tr. p. 654.

Huyser submitted an estimate of the expected 2021 water supply shortfall for Big Wood Farms, and the effects the shortfall would have on crop production and revenue. Big Wood Farms Ex. 1. Huyser projected a total injury of approximately \$38,800 for 2021. *Id.* Huyser's water supply shortage estimates and loss projections may be high because they are based on existing conditions, which are subject to change, and on assumptions and computations that may not be entirely accurate or correct. Even so, the record supports a finding that a shortage of water in 2021 has already impacted Huyser's farming activities, and will probably cause significant economic injury by the end of the 2021 irrigation season.

Huyser testified that he believes ground water pumping in the Bellevue Triangle is part of the reason that the flows of the Little Wood River are insufficient to fill his water rights, and that ground water pumping is injuring his water rights. Tr. p. 657. Huyser also believes that if ground water rights in the Bellevue Triangle junior in priority to his Little Wood River water rights are curtailed, his Little Wood River water rights would be reinstated for a sufficient period of time to finalize his wheat crop. *Id.*

Don Taber is a dairy farmer who owns and operates three contiguous farms near Shoshone: the Taber or Home farm, the 7 Mile farm, and the Ritter farm. Tr. p. 673. Taber's farms focus primarily on raising feed for his dairy herd, but also have some acres in malt barley, sugar beets, and wheat. Taber Ex.1; 7 Mile Ex. 1; Ritter Ex. 1. The three farms are supplied with water from a number of water rights, including several that authorize diversions from the Little Wood River

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<sup>10</sup> The water rights are held by the Alton & Huyser Trust. Huyser also relies on Big Wood River water right 37-59K, but this water right is relevant to this proceeding only for purposes of describing the total water supply for Big Wood Farms.



under priorities ranging from April 1, 1883, to April 1, 1887. Taber's 1887 Little Wood River water rights have been curtailed, and while his 1884 water rights normally last most of the irrigation season, this year he expects the 1884 water rights will be curtailed in mid-June. Until recently, Taber's 1883 water rights remained in priority all season, but in recent years they have increasingly been curtailed for short periods. Tr. pp. 682-684. Taber is unsure of whether his 1883 water rights will be curtailed this year, and even if they remain in priority, he will not have a sufficient water supply to fully irrigate his farm lands. Tr. pp. 673-714.

Taber submitted estimates of the expected 2021 water supply shortfalls for the Taber farm, the 7 Mile farm, and the Ritter farm, and the effects the shortfall would have on crop production and revenue. Taber Ex. 1; 7 Mile Ex. 1; Ritter Ex. 1. Taber projected total injuries in 2021 of approximately \$82,000 for the Taber farm, \$126,000 for the 7 Mile farm, and \$177,600 for the Ritter farm. *Id.* Taber's water supply shortage estimates and loss projections may be high because they are based on existing conditions, which are subject to change, and on assumptions and computations that may not be entirely accurate or correct. Even so, the record supports a finding that a shortage of water in 2021 has already impacted Taber's farming activities, and will probably cause significant economic injury by the end of the 2021 irrigation season.

Taber testified that he believes that ground water pumping in the Bellevue Triangle is a significant cause of the reduced flows available for diversion under his Little Wood River water rights. Taber testified that based on his observations, flows in the Little Wood River increase within a few days after ground water pumping in the Bellevue Triangle is reduced. Taber also testified that, in his opinion, curtailment of ground water rights in the Bellevue Triangle junior in priority to his water rights would benefit his farms even if the water did not become available until August. Taber testified that he seeks to have water rights in the Bellevue Triangle curtailed based on the priority system. Tr. pp. 691-92, 697-98.

Charles Newell owns a 160-acre farm on which he is raising oats and grain to feed his cattle. Tr. p. 737-738. Newell irrigates his lands with several water rights, including water right 37-432, which authorizes diversion of 2.6 cfs from the Little Wood River under a priority date of April 15, 1885. Newell Exs. 4 and 5. Newell testified that his 1885 water right was expected to be curtailed on June 10 or 11. Tr. p. 736. Newell's other water rights had already been curtailed, and while he was trying to secure supplemental water supplies, prices are "very high and scary," and he had not been able to finalize any arrangements for additional water. Tr. pp. 732-48.

Newell submitted an estimate of the expected 2021 water supply shortfall for his farm, and the effects the shortfall would have on crop production and revenue. Newell Ex. 1. Newell projected a total injury of approximately \$55,000 for 2021. *Id.* Newell's water supply shortage estimate and loss projection may be high because they are based on existing conditions, which are subject to change, and on assumptions and computations that may not be entirely accurate or correct. Even so, the record supports a finding that a shortage of water in 2021 has already impacted Newell's farming activities, and will probably cause significant economic injury by the end of the 2021 irrigation season.

Lawrence Schoen owns 306 acres adjacent to the Silver Creek Preserve. Tr. p. 390. He irrigates a total of 14.4 acres with water rights 37-351B (priority June 1, 1886) and 37-352B (priority June 15, 1887). Tr. p. 391. He testified that he raises horse hay and pasture on the land. *Id.* As a result of a transfer from a surface water source to a ground water source, Schoen diverts his water through a well on his property. *See* Water Right 37-351B and 37-352B.

Schoen's well is shut off when the June 1, 1886, and June 15, 1887, surface water rights are curtailed on Silver Creek. *Id.* Schoen expressed frustration that a well "across the road" with "a water right 94 years junior" to his water rights gets to pump water when his rights are curtailed. *Id.* He testified that "the ground water and the surface water are one and the same water source here, and they should be managed on the continuum according to the priority doctrine." *Id.* at 398-99.

Most or all of these surface water right holders also testified as to the measures they have taken, and investments they have made, to increase the efficiencies of their irrigation systems and conserve water, such as converting to pivot irrigation systems, and piping their water from the point of diversion to the place of use. The surface water users also testified to the steps they have taken in 2021, and in earlier drought years, to conserve and extend their water supplies, such as securing supplemental water, planting less water intensive crops, and minimizing losses by selecting which fields and crops to continue watering and which to dry out.

Lakey also testified that, based on his experience and interactions with water users on Silver Creek and the Little Wood River, they have adequate water supplies when there is enough water to fill water rights with priorities equal to April 1, 1884, until September 1st. Tr. pp. 780-84, 819-20, 882-84; BV Ex. 1. Lakey also estimated that in an average year, 40,000 acre-feet is an adequate water supply for Silver Creek and Little Wood River water users, and that at least 35,000 are-feet of this supply must come from sources other than Magic Reservoir. Tr. p. 783-84; BV Ex. 1. When these conditions are met, the discharge at Station 10 during the period from April 1 to September 30 ranges from 25,000 to 33,000 acre-feet. Tr. p. 781; BV Ex. 1.

## **ANALYSIS AND CONCLUSIONS OF LAW**

This case presents a question of distributing water in a year of drought and shortage. The ultimate issue is whether ground water rights diverting in the Bellevue Triangle should be curtailed this year in favor of senior water rights diverting from Silver Creek and the Little Wood River. The Bellevue Triangle is within Water District 37 and the Big Wood Ground Water Management Area ("BWGMA"). Sections 42-602 and 42-237a.g. of the Idaho Code guide the Director's analysis in this case.

### **I. Ground Water Pumping in the Bellevue Triangle Adversely Affects Senior Surface Water Uses in Silver Creek and the Little Wood River and Should be Curtailed.**

Section 42-602 states that the Director "shall distribute water in water districts in accordance with the prior appropriation doctrine." Idaho Code § 42-602. The Idaho Supreme Court has held that this statute "gives the Director a 'clear legal duty' to distribute water," but "the details of the performance of the duty are left to the director's discretion." *In re SRBA*, 157 Idaho 385, 393, 336 P.3d 792, 800 (2014) (citations omitted).

Section 42-237a.g. authorizes the Director "to supervise and control the exercise and administration of all right to the use of ground waters," and states that in the exercise of this "discretionary power," may "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." Idaho Code § 42-237a.g. The statute further states, in pertinent part, that "[w]ater in a well shall not be deemed available to fill a water right

therein if withdrawal therefrom of the amount called for by such right would affect, contrary to the declared policy of this act, the present or future use of any prior surface or ground water right[.]” *Id.* This statute gives the Director “broad powers” to prohibit or limit ground water withdrawals that adversely affect the use of senior surface water rights. *Stevenson v. Steele*, 93 Idaho 4, 11-12, 453 P.2d 819, 826-27 (1969).

The central legal inquiry in this case is 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. Idaho Code § 42-237a.g. The “declared policy” of the Ground Water Act, *id.*, is set forth in Idaho Code § 42-226. This statute expressly affirms Idaho’s “traditional policy” of “requiring the water resources of this state to be devoted to beneficial use in reasonable amounts through appropriation[.]” Idaho Code § 42-226. The statute further states that “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.” *Id.* This last provision was added to Idaho Code § 42-226 through an amendment passed in 1953. *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 801, 252 P.3d 71, 82 (2011).<sup>11</sup>

The Idaho Supreme Court considered the meaning and intent of the 1953 amendment in the *Clear Springs* decision. 150 Idaho at 800-04, 252 P.3d at 81-85. The Court held that while the phrase “full economic development of underground water resources” had “modified the doctrine of first in time is first in right,” the modification did not mean that an appropriator “who is producing the greater economic benefit or would suffer greater economic loss” has the better right to the use of the water. *Id.* at 801-02, 252 P.3d at 82-83. Rather, the 1953 amendment was intended “to change the holding in *Noh v. Stoner* . . . that a prior appropriator of ground water was protected in his historic pumping level.” *Id.* at 802, 252 P.3d at 83. The Court explained that the phrase “full economic development of underground water resources” refers “to promoting full development of ground water by not permitting a ground water appropriator with an unreasonably shallow well to block further use of the aquifer,” *id.* at 803, 252 P.3d at 84, and held that “[b]y its terms, section 42-226 only applies to appropriators of ground water.” *Id.* at 804, 252 P.3d at 85.

The senior water rights in this case, however, are not ground water rights, but rather are surface water rights to divert from Silver Creek and the Little Wood River. Section 42-226’s “modification” of the doctrine that first in time is first in right, *Id.* at 801-02, 252 P.3d at 82-83, does not apply to surface water rights. *Id.* at 804, 252 P.3d at 85. Thus, the provision that “a reasonable exercise of this right shall not block full economic development of underground water resources” does not apply in this case, contrary to the ground water users’ arguments.

In this case, rather, the “declared policy” of the Ground Water Act, Idaho Code § 42-237a.g., is limited to Section 42-226’s affirmance of the requirement that Idaho’s water resources

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<sup>11</sup> Idaho Code § 42-226 was originally enacted in 1951. 1951 Idaho Sess. Laws 423-24. The 1953 legislation that amended Idaho Code § 42-226 also added Idaho Code § 42-237a.g. to the Ground Water Act. 1953 Idaho Sess. Laws 278, 285.

are “to be devoted to beneficial use in reasonable amounts through appropriation,” and its recognition of the doctrine that “first in time is first in right.” Idaho Code § 42-226.

In this case, the Director must 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.’” Idaho Code §§ 42-226, 42-237a.g. These questions are addressed in sequence below.

**a. Water Uses in the Bellevue Triangle and from Silver Creek and the Little Wood River are not Contrary to the Traditional Policy of “Beneficial Use in Reasonable Amounts Through Appropriation.”**

The requirement that water be put to beneficial use “in reasonable amounts through appropriation,” Idaho Code § 42-226, has two components. The beneficial use must be authorized by a valid “appropriation,” and it must be in a “reasonable amount.”

The uses of the ground water and surface water involved in this proceeding have been authorized “through appropriation.” Idaho water rights are defined by elements, including the “particular purpose” or purposes for which the water may be used. *In re SRBA*, 157 Idaho 385, 389, 336 P.3d 792, 796 (2014). The record establishes that the ground water users in the Bellevue Triangle and surface water users on Silver Creek and the Little Wood River are diverting pursuant to decreed water rights. There have been no assertions that the ground water or the surface water is being used for purposes other than the beneficial uses authorized in the water rights, and there is no evidence in the record that would support such a conclusion.

Water rights decrees, however, do not answer the question of whether diversions are “in reasonable amounts” for purposes of an administrative proceeding under Idaho Code § 42-237a.g. “Reasonableness” is not an element of a water right, and an administrative determination of whether the quantity diverted is a “reasonable amount” depends upon the facts of the case. *AFRD2*, 143 Idaho at 877, 154 P.3d at 448. The record establishes that both ground water and surface water users have continuously striven to improve the efficiencies of their diversion, conveyance, and irrigation systems, and continue to do so. Water users in both groups have invested considerable amounts of time and money in connection with these efforts, and continue to do so. The record also establishes that, when a shortage of water is predicted or materializes, water users in both groups make planning and management decisions accordingly, in order to conserve and extend their water supplies, and prevent or minimize crop and revenue losses as much as possible.

The record, therefore, does not support a conclusion that ground water uses in the Bellevue Triangle, or surface water uses on Silver Creek and the Little Wood River, 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.” Idaho Code § 42-226. The Director concludes ground water and surface water diversions in the Bellevue Triangle and from Silver Creek and the Little Wood River are putting water to beneficial use in reasonable amounts through valid appropriations. Idaho Code § 42-226.



**b. Ground Water Use in the Bellevue Triangle is Contrary to the Doctrine That “First in Time is First in Right.”**

The rule that “first in time is first in right” is one of the “bedrock” principles of Idaho’s prior appropriation doctrine. *In Matter of Distribution of Water to Various Water Rts. Held By or For Ben. of A & B Irrigation Dist.*, 155 Idaho 640, 650, 315 P.3d 828, 838 (2013). “Priority in time is an essential part of western water law and to diminish one’s priority works an undeniable injury to that water right holder.” *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 797–98, 252 P.3d 71, 78–79 (2011).

“The presumption under Idaho law is that the senior is entitled to his decreed water right, but there certainly may be some post-adjudication factors which are relevant to the determination of how much water is actually needed.” *AFRD2*, 143 Idaho at 878, 154 P.3d at 449. Once an initial determination is made that the senior appropriator is or will be injured by diversions under a junior priority water right, the junior appropriator bears the burden of proving that curtailment would be futile, or otherwise challenging the injury determination. *Id.* Further, junior appropriators who claim their diversions do not injure a senior appropriator are required to establish that claim by “clear and convincing evidence.” *A&B Irr. Dist., et al., v. IDWR*, 153 Idaho 500, 516-20, 284 P.3d 225, 241-45 (2012). This requirement “gives the ‘proper presumptive weight to a decree.’” *Id.* at 517, 284 P.3d at 242.

In this case, almost all of the water rights to divert from Silver Creek and the Little Wood River are “first in time” and therefore “first in right.” The vast majority of the surface water rights for lands irrigated by Silver Creek and the Little Wood River bear priority dates pre-dating 1900. IDWR Ex. 3 at 18 & Attachment A. The vast majority of the ground water rights in the Bellevue Triangle bear priority dates later than 1940. *See, e.g.*, IDWR Ex. 2 at 12-13 (discussing ground water development). Only one of the surface water rights for lands irrigated by Silver Creek and the Little Wood River in Attachment A to the Luke Memorandum has a priority date later than 1940. IDWR Ex. 3 at 18 & Attachment A.

Sukow’s modelling analyses, as explained in her staff memorandum and testimony, show that the Wood River Valley aquifer system is hydraulically connected to Silver Creek and its tributaries above the Sportsman’s Access gage, and that ground water pumping in the Bellevue Triangle has a significant impact on stream flows in Silver Creek. Sukow used the WRV1.1 Model to simulate the effects of curtailment of ground water rights diverting within the Bellevue Triangle on July 1 of this year. This analysis predicted that the curtailment would increase flows in Silver Creek by approximately 23-27 cfs during the months of July, August, and September. These conclusions are supported by the testimony of the watermaster and the surface water users on Silver Creek and the Little Wood River. They testified that, based on their observations, flows in Silver Creek and the Little Wood River respond to changes in ground water pumping in the Bellevue Triangle within a few days, or a week at most.

Most of the water rights to divert from Silver Creek and the Little Wood River have already been curtailed, or will be curtailed soon. Silver Creek and Little Wood River water rights having priority dates of 1885 or later have already been curtailed, 1884 water rights will likely be curtailed sometime before the end of June, and even the April 1, 1883 priority—which is among the most senior—will likely be cut by the end of June, or soon thereafter. *See, e.g.*, Tr. pp. Tr. pp. 771-72 788-89 (Lakey test.); Rigby Ex. 2 (Lakey memorandum); IDWR Ex. 3 at 18



& Attachment A (list of potentially injured water rights). The junior priority ground water rights in the Bellevue Triangle have not been curtailed this year, and apparently have never been curtailed in the past. Tr. p.764.

Consistent with the Director's instructions at the Prehearing Conference, the surface water right holders did not simply rely on the presumption that as senior appropriators they are entitled to their full amount of their decreed water rights before junior water rights are allowed to divert. The surface water users also submitted considerable testimony and exhibits showing that curtailment of their senior water rights will result in substantial crop and revenue losses during the 2021 irrigation season. The surface water users, therefore, 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 water rights.

The ground water users did not carry their burden of showing by clear and convincing evidence that ground water pumping in the Bellevue Triangle does not injure senior appropriators diverting from Silver Creek and the Little Wood River. The ground water users offered no support for their summary assertion that "the modeled boundary of curtailment is arbitrary and capricious as it is not based upon actual groundwater hydrology in the basin." *South Valley Groundwater District and Galena Ground Water District's Post Hearing Memorandum* ("SVGWD-GGWD Brief") at 29. The Sukow Memorandum's explanation of the area modeled for curtailment purposes, in contrast, shows that the modeled area of curtailment is based on the ground water hydrology of the Wood River basin. IDWR Ex. 2 at 22.

The ground water users also relied on evidence that WRV1.1 Model has a predictive uncertainty of  $\pm 22\%$  over a ten-month span, and the predictive uncertainty may increase for shorter time periods, such as Sukow's curtailment simulations. *SVGWD-GGWD Brief* at 29. All ground water models are simplifications with inherent predictive uncertainty, however, Tr. p. 82, and it is undisputed that the WRV1.1 Model is the best scientifically-based tool currently available for predicting Silver Creek's hydraulic responses to ground water curtailment in the Bellevue Triangle. Tr. pp. 156-57, 231, 1299-1300, 1320, 1452.

Further, the Model's predictive uncertainty does not mean the Model is overestimating Silver Creek's hydraulic responses to ground water curtailment. It means that it is equally possible that the Model is underestimating Silver Creek's hydraulic responses to ground water curtailment. *Id.* The risk of any uncertainty in this regard must be allocated to the ground water users. "Equality in sharing the risk does not adequately protect the senior priority surface water right holder from injury." *Memorandum Decision and Order on Petition for Judicial Review, Rangen, Inc. v. IDWR*, p. 13 (5<sup>th</sup> Jud. Dist. Case No. CV 2014-2446) (Dec. 3, 2014) ("*Rangen Dec.*").

The ground water users also assert the WRV1.1 Model is unreliable because it is allegedly based on "assumed values for pumping prior to 2014, especially in the proposed curtailment area," and because "additional data has been collected since that time which includes pumping data, ET, stream measurements, aquifer levels and efficiency." *SVGWD-GGWD Brief* at 20. The record shows, however, that values for pumping prior to 2014 were not "assumed" but rather calculated from available data including ET, precipitation, and surface water diversion data. Canal seepage and surface water irrigation efficiency had to be estimated. IDWR Exhibit

2 at 26 (Appendix A at 15); Tr. pp.97-98. Surface water irrigation efficiency values were adjusted within an allowable range during model calibration. Tr. p.109.<sup>12</sup>

The ground water users also relied on the testimony of their expert witness Erick Powell that the hydraulic conductivity estimates for some of the Model's "cells" are "outrageously high." Tr. p.1270; *SVGWD-GGWD Brief* at 31.<sup>13</sup> Powell conceded that no model is perfect, however, and that every model has problems. *Id.* Further, the WRV1.1 Model has over 55,000 cells, each of which represents an area of 100 meters by 100 meters, but only 200 cells had the high hydraulic conductivity estimates. Tr. pp.1244, 1308. The ground water users' expert did not agree that this proportion constituted a significant issue, but rather only raised questions as to the constraints used in calibrating the model. Tr. p.1308. The expert also affirmed that the Model, as calibrated, remains "the best tool" currently available, "warts and all." Tr. pp. 1300-01, 1320.<sup>14</sup>

The ground water users also assert the WRV1.1 Model "is unable to predict whether water will actually make it downstream to senior surface water users if curtailment occurs" and is unable to account for conveyance losses in Silver Creek and the Little Wood River. *SVGWD-GGWD Brief* at 31. The record shows, however, that Silver Creek above the Sportsman Access gage is a gaining reach, and the reach between the Sportsman Access gage and the Model boundary has minimal gain or loss. IDWR Ex. 2 at 8, 26; *SVGWD & GGWD Ex. 14* at 16; *SVGWD & GGWD Ex. 14* at 5. Thus, there are no seepage losses to simulate in these reaches.

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<sup>12</sup> The methods used to develop and calibrate the Model were developed with the input of a Modeling Technical Advisory Committee (MTAC), which was established to provide transparency in model development and to serve as a vehicle for stakeholder input. Twenty-two MTAC meetings were convened between March 2013 and January 2019 to facilitate a transparent and open process of data collection, model construction, and model calibration. IDWR Exhibit 2 at 14.

<sup>13</sup> South Valley and Galena appear to argue that Powell "specifically" testified that the hydraulic conductivity values for two of the Model's three "layers" were 500,000 feet per day and 950,000 feet per day. *SVGWD-GGWD Brief* at 31. This argument mischaracterizes the Powell's testimony, which referred to the "maximum" hydraulic conductivity value in individual cells, not the overall conductivity for the layers. Tr. p.1270. That is, Powell was referring to the individual cell in each layer having the highest conductivity value for that particular layer. The overall hydraulic conductivity value for all cells across each layer was much lower, as Powell's testimony confirms. *See* Tr. p.1308 ("the average for layer one was at somewhere in the order of 3,000 feet per day").

<sup>14</sup> The record contradicts the ground water users' assertion that the Model's predictive uncertainty estimate of  $\pm 22\%$  "does not even include the undisputed deficiencies in the model's hydraulic transmissivity rates." *SVGWD-GGWD Brief* at 48. The record shows that the results of the predictive uncertainty analyses performed by Wylie (2019) do include the uncertainty associated with the calibration of hydraulic conductivity. These results also include the uncertainty associated with the range of other calibrated parameters. Tr. pp. 163-64; *SVGWD & GGWD Ex. 16* at 3, 5.

Some seepage losses of additional flow are expected to occur in downstream reaches of Silver Creek and the Little Wood River between the Highway 20 Bridge and Station 10, IDWR Ex. 2 at 26-29, but these reaches are downstream of the ground water flow model boundary. The effects of seepage and potential diversions of additional flow in these reaches will be accounted for in the watermaster's priority cut determination and does not need to be predicted by the Model. Tr. 826, 889.

The ground water users also rely on evidence that channel seepage in portions of Silver Creek and the Little Wood River downstream of Sportsman's Gage reduce the flows available to surface water users, and that, in some locations, beaver dams and "holes" in levees or embankments cause water in Silver Creek and the Little Wood River to overflow or spill out of the stream channel. Tr. pp.833, 858-61, 1392. The ground water users did not provide evidence, however, that these losses and flow depletions dry up any portion of Silver Creek or the Little Wood River, or prevent usable quantities of water from reaching the surface water users' points of diversion. To the contrary, the evidence shows that there is a continuous flow of water in Silver Creek and the Little Wood River downstream from the Sportsman's Access gage. *See, e.g.,* Tr. pp. 764, 792, 886-93. At best the ground water users' evidence raises questions about how much water is lost through seepage and other mechanism in the reaches the Sportsman's Access gage and the senior surface water right holders' points of diversion. Further, these factors are "built into priority cuts. They are already within the system." Tr. p. 826; *see also id.*, p. 889 (similar). The junior ground water users must bear the risk of any uncertainty regarding these channel losses. *Rangen Dec.* at 13-14.

The ground water users further rely on evidence that an increase in stream flow the watermaster had once observed at Station 10 on the Little Wood River was not caused by reduced ground water pumping in the Bellevue Triangle, but rather by the direct pumping of ground water into Silver Creek by an upstream water user. Tr. pp.854-55. Other testimony established, however, that the upstream water user typically re-diverted the pumped water back out of the creek, and that this was done "to avoid getting our September 1883 cut" rather than to enhance stream flows generally. Tr. pp. 1409-10, 1413-14.

"Clear and convince evidence" is "evidence indicating that a thing to be proved is highly probable or reasonably certain." *A&B Irr. Dist.*, 153 Idaho at 516, 284 P.3d at 241 (citation omitted). The ground water users' evidence regarding the WRV1.1 Model raises questions about the Model's calibration and predictions of the hydraulic response in Silver Creek and the Little Wood River to curtailment of ground water pumping in the Bellevue Triangle. The ground water users have not shown, however, that it is highly probable or reasonably certain that the Model is so flawed that it cannot be relied upon for purposes of this proceeding. To the contrary, it is essentially undisputed that the Model is the best scientifically-based tool currently available for predicting the hydraulic response in Silver Creek and the Little Wood River to curtailment of ground water pumping in the Bellevue Triangle. Certainly the Model can be and should be improved and refined, and would benefit from having more data, but this is true of all models, and these risks must be borne by the ground water users in order to avoid imposing "an unlawful risk" on the senior surface water users. *Rangen Dec* at 6, 13-14. The ground water users have not carried their burden of showing by clear and convincing evidence that the WRV1.1 Model cannot be relied upon to show that ground water pumping in the Bellevue Triangle reduces flows in Silver Creek and the Little Wood River.

The ground water users' evidence that the flows of Silver Creek and the Little Wood River are depleted by channel seepage, "holes" in levees or embankments, and beaver dams does not show that it is highly probable or reasonably certain that curtailment of ground water pumping in the Bellevue Triangle will not result in usable quantities of water reaching senior surface water users on Silver Creek and the Little Wood River. *See Sylte v. Idaho Dep't of Water Res.*, 165 Idaho 238, 245, 443 P.3d 252, 259 (2019) (explaining the "futile call doctrine"). At best, the evidence regarding channel seepage, "holes," and beaver dams shows that there will be some losses between the Sportsman's Access gage and surface water users' points of diversion.

Further, the watermaster testified that curtailment of ground water pumping in the Bellevue Triangle would increase the amount of water available for diversion by at least some of the senior surface water users on Silver Creek and the Little Wood River, and the ground water users did not rebut or undermine this testimony. Tr. pp.787-92. Any risk of uncertainty on these questions falls upon the junior ground water users. The ground water users have not carried their burden of showing by clear and convincing evidence that curtailment of ground water pumping in the Bellevue Triangle will not result in "a sufficient quantity" of water for senior surface water users on Silver Creek and the Little Wood River to apply to beneficial use. *Sylte*, 165 Idaho at 245, 443 P.3d at 259.

The record, therefore, supports a conclusion that the effects of ground water withdrawals in the Bellevue Triangle on senior water rights diverting from Silver Creek and the Little Wood River during the 2021 irrigation season are contrary to "the doctrine of 'first in time is first in right.'" Idaho Code Idaho Code § 42-226. The Director, therefore, is authorized to prohibit or limit ground water withdrawals in the Bellevue Triangle on this basis. Idaho Code § 42-237a.g.

**c. Ground Water Use in the Bellevue Triangle Should be Curtailed to Protect Senior Surface Water Rights on Silver Creek and the Little Wood River.**

The Idaho Supreme Court has stated that the drafters of the Idaho Constitution "intended that there be no unnecessary delays in the delivery of water pursuant to a valid water right." *AFRD2*, 143 Idaho at 874, 153 P.3d at 445. "Clearly, it was important to the drafters of our Constitution that there be a timely resolution of disputes relating to water." *Id.* at 875, 153 P.3d at 446. The District Court for Twin Falls County has also emphasized the need for prompt administrative action to address a water supply deficiency "in the year in which it occurs." *Rangen Dec.* at 10. "Curtailling ground water rights the following irrigation season is too late. The injury [to the senior appropriator], and corresponding out-of-priority use, will have already occurred." *Rangen Dec.* at 10.

A drought has been predicted for the 2021 irrigation season, and the most recent SWSI suggests that the 2021 water supply shortage in Basin 37 will be even worse than originally predicted. IDWR Ex. 5. Many surface water rights on Silver Creek and the Little Wood River have already been curtailed, including some of the most senior priorities, and further curtailments are expected within the coming days and weeks. Some fields and crops have already dried up, and so will many more without prompt action to protect the senior water rights.



The Director concludes that consumptive ground water pumping in the Bellevue Triangle<sup>15</sup> for purposes other than domestic and stock watering uses pursuant to Idaho Code §§ 42-111 and 42-1401A(11) should be curtailed as soon as possible in order to protect senior surface water rights diverting from Silver Creek and the Little Wood River.

The Director disagrees with the argument of the Idaho Ground Water Users Association, Inc. (“IGWA”), that there is no need for “prompt action” in this case because ground water pumping from the Eastern Snake Plain Aquifer (“ESPA”) does “‘not cause a sudden loss of water discharge from the springs’ and ‘curtailment would not quickly restore the spring flows.’” *IGWA’s Post-Hearing Brief* at 4 (quoting *Clear Springs*, 150 Idaho at 815, 252 P.3d at 96). This case involves pumping from the Wood River Valley aquifer within the Bellevue Triangle, not from the ESPA. The ESPA delivery calls involved many more ground water diversions and a far larger area than this case. The vast majority of the ESPA diversions were much farther away from the Snake River than ground water diversions in the Bellevue Triangle are from Silver Creek and its tributaries. The impacts of the ESPA diversions on surface flows of the Snake River are far more diffuse, delayed, and attenuated than the impacts of ground water diversions in the Bellevue Triangle are on the surface flows of Silver Creek and its tributaries. Further, the record shows that ground water pumping in the Bellevue Triangle has significant impacts on flows in Silver Creek and the Little River within a few days of when pumping begins or ends.

The Director also disagrees with the arguments of South Valley and Galena that curtailing ground water pumping in the Bellevue Triangle would be futile. South Valley and Galena argue that curtailment of ground water pumping in the Bellevue Triangle would be futile because:

- 23,000 acres would be curtailed to provide usable water to three senior surface water rights;
- the Exchange Condition ensures a full water supply to the holders of senior surface rights having the Exchange Condition;
- curtailment would not provide usable quantities of water to surface water rights junior to April 1, 1884;
- it is “too late” to protect some senior water rights; and
- most of the water produced by curtailment of ground water pumping would remain in the Wood River Valley aquifer during the 2021 irrigation season.

Curtailment is “futile” if due to “‘seepage, evaporation, channel absorption or other conditions beyond the control of the appropriators the water in the stream will not reach the point of the prior appropriator in sufficient quantity for him to apply it to beneficial use.’” *Sylte*, 165 Idaho at 245, 443 P.3d at 259. As previously discussed, the record establishes that curtailment of junior ground water pumping in the Bellevue Triangle will provide water in usable quantities for at least some of the senior surface water users, a fact that South Valley and Galena concede. The fact that curtailment will not provide usable quantities to all senior surface water right holders who have an insufficient supply, therefore, does not render the curtailment “futile.” It simply means that, in this year of drought, some senior water right holders would have been curtailed

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<sup>15</sup> As previously noted, the term “Bellevue Triangle” as used in this order refers to the potential area of curtailment identified in the Sukow Memorandum.



regardless of ground water pumping in the Bellevue Triangle. That does not change the fact that curtailment will provide usable quantities of water to some senior surface water users.

South Valley's and Galena's argument that it is futile to curtail 23,000 acres in the Bellevue Triangle in order to provide 8.5 cfs of water to senior water users also lacks merit. *SVGWD-GGWD Brief* at 19. As Idaho courts have recognized, protecting senior surface water rights from junior ground water pumping can require curtailment of extensive acreages. *See, e.g., IGWA*, 160 Idaho at 132, 369 P.3d at 910 ("Indeed, as the district court accurately and aptly noted, the very nature of conjunctive management involves a large disparity between the number of acres curtailed and the accrued benefit to a senior surface right."). In the Rangen delivery call case, for instance, the Idaho Supreme Court upheld an order requiring "curtailment of 17,000 acres per cfs predicted to benefit Rangen." *Id.* 135, 369 P.3d at 913. In this case, many fewer acres must be curtailed "per cfs," even using South Valley's and Galena's numbers. Curtailing 23,000 acres to provide 8.5 cfs of benefit to three senior water rights requires curtailing only 2,706 acres per cfs of benefit to senior water rights.

Further, South Valley's and Galena's argument that curtailment would be futile incorrectly assumes that the Director may only consider the benefits of curtailment to the senior water rights held by water users who appeared in this proceeding. This case is not a response to a delivery call by individual senior water right holders, however, and Idaho Code § 42-237a.g., does not limit the Director to considering the benefits of curtailment to senior water users who have appeared in an administrative proceeding. In addition, the senior water right holders who appeared in this proceeding are not necessarily the only water users on Silver Creek and the Little Wood River who would benefit from curtailment. Almost all water rights on Silver Creek and the Little Wood River are senior to ground water rights in the Bellevue Triangle. Any of these surface water rights would be allowed to divert flows resulting from curtailment, within the limits of their individual priorities. *Tr.* p.898

Even assuming, simply for the sake of argument, that this proceeding was intended to address a "delivery call"—which it was not—curtailment of ground water pumping in the Bellevue Triangle is consistent with the futile call doctrine. Ground water pumping from the Wood River Valley aquifer is not limited to the Bellevue Triangle. Approximately one-third of the consumptive ground water use within the model domain comes from the aquifer area located outside the Bellevue Triangle. *IDWR Ex. 2* at 22-23; *Tr.* pp.86-87. Further, limiting curtailment to the Bellevue Triangle will provide senior surface water users with 99% of the predicted benefit of curtailing all ground water uses within the domain of the WRV1.1 Model. *Id.* Limiting curtailment to the Bellevue Triangle, therefore, gives effect to the beneficial use principles underlying the futile call doctrine. *See IGWA v. IDWR*, 160 Idaho 119, 128, 369 P.3d 897, 906 (2016) (discussing the "trim line").

South Valley and Galena also argue that "full" curtailment of all ground water pumping in the Bellevue Triangle is not justified because it would not provide usable water to surface water rights equal or junior in priority to April 1, 1884. *SVGWD-GGWD Brief* at 18-22. South Valley and Galena therefore argue the Director should limit curtailment of junior ground water rights within the Bellevue Triangle to those necessary "to satisfy surface water rights with priorities April 1, 1884 and junior." *Id.* at 22. This assertion is a logically flawed because it contradicts the very assumption upon which it is based. South Valley and Galena begin with the assumption, based on the watermaster's testimony, that curtailing all junior water rights within

the Bellevue Triangle will produce enough water to satisfy only two water rights senior to April 1, 1884, and partially satisfy a third. *Id.* at 18. This premise does not support a conclusion that curtailing fewer ground water rights will still protect surface water rights senior to April 1, 1884, however. Rather it confirms that curtailment of all junior ground water rights in the Bellevue Triangle is the minimum necessary to protect these three water rights, as well as any other surface water rights senior to April 1, 1884. Even that amount of curtailment is not sufficient fully satisfy the September 1883 priority. *Id.* at 18 (watermaster testimony).

The record does not support South Valley's and Galena's assertion that the Exchange Condition ensures a full supply of water to the holders of senior surface rights having the Exchange Condition. To the contrary, the record confirms that the Exchange Condition does not prevent priority-based curtailment, and that it also does not guarantee a fully supply of supplemental water after the water right is curtailed. *See, e.g.,* Tr. pp. 288-97.

While the record does appear to support South Valleys and Galena's assertion that some of the surface water users' fields and crops have dried up to the point that it may be "too late" to save them, *SVGWD-GGWD Brief* at 20, that is not true for all of their fields and crops. The testimony of the watermaster and the surface water users establishes that curtailment of ground water pumping in the Bellevue Triangle will help minimize surface water users' crop and revenue losses, 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.

The Director also disagrees with South Valley's and Galena's argument that curtailment would be futile because most of the curtailed water would remain in the aquifer during the 2021 irrigation season. The futile call doctrine does not require all or even most of the curtailed water to reach senior water users' points of diversion. All that is required is a "sufficient quantity for [the senior water user] to apply it to beneficial use." *Sylte*, 165 Idaho at 245, 443 P.3d at 259. While the record shows that the majority of the curtailed water would remain in the Wood River Valley aquifer during the 2021 irrigation season, the record also supports a conclusion that curtailment of ground water pumping in the Bellevue Triangle would result in useable quantities of water reaching the points of diversion for some senior surface water rights. South Valley and Galena also concede that curtailment of ground water pumping in the Bellevue Triangle would produce sufficient water to fully or partially satisfy at least three senior surface water rights. *SVGWD-GGWD Brief* at 18-20.

South Valley and Galena also point to the economic benefits resulting from ground water pumping in the Bellevue Triangle, and to the economic losses and that will result from curtailing ground water pumping in the Bellevue Triangle. The Director recognizes the substantial benefits that ground water pumping in the Bellevue Triangle provide. The Director also recognizes that curtailment of ground water pumping in the Bellevue Triangle will cause significant economic impacts. The record also establishes, however, that surface water uses on Silver Creek and the Little Wood River have substantial economic benefits. The record further establishes that many of the surface water rights on Silver Creek and the Little Wood River have been, and will be, curtailed due to a water shortage that is due, in part, to ground water pumping in the Bellevue Triangle.

Moreover, "full economic development of underground water resources," does not mean that "the ground water appropriator who is producing the greater economic benefit or would

suffer the greater economic loss is entitled to the use of the ground water when there is insufficient water for both the senior and junior appropriators.” *Clear Springs*, 150 Idaho at 802, 252 P.3d at 83. As the Idaho Supreme Court has recognized, the prior appropriation doctrine as established by Idaho law can be “harsh,” especially in “times of drought.” *AFRD2*, 143 Idaho at 869, 154 P.3d at 440. “First in time is first in right” among those beneficially using the water, Id. Const. XV § 3; Idaho Code § 42-106, and “it is obvious that in times of water shortage someone is not going to receive water.” *Nettleton v. Higginson*, 98 Idaho 87, 91, 558 P.2d 1048, 1052 (1977).

## **II. This Proceeding Did Not Exceed Director’s Statutory Authority or Violate Due Process Requirements.**

Several parties make various overlapping procedural arguments that the Director exceeded or misinterpreted his statutory authority in initiating this administrative proceeding, that this proceeding should have been governed by the Rules for the Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.011.000--051 (“CM Rules”), and that this proceeding violated their rights to due process. *See Cities/SVC’s Post-Hearing Brief; Coalition of Cities Corrected Cities List and Notice of Joinder in Cities/SVC’s Post-hearing Brief; City of Pocatello’s Post-Hearing Brief and Joinder in Cities/SVC’s Post-Hearing Brief; IGWA’s Post-Hearing Brief; South Valley Groundwater District and Galena Groundwater District’s Post Hearing Memorandum; and Notice of Intent to Rely Upon Post-hearing Briefs of Galena Ground Water Users Association, South Valley Ground Water Users Association & IGWA* (Dean R. Rogers, III, and Dean R. Rogers, Inc.).<sup>16</sup> The Director disagrees with these arguments for reasons discussed below.

### **a. This Proceeding Is Not a Response to a Delivery Call and is Not Governed by the CM Rules.**

South Valley, Galena, IGWA and Pocatello argue the Director was legally required to apply and follow the procedures, standards, and requirements of the CM Rules in this administrative proceeding. IGWA argues that under CM Rule 20, the CM Rules apply to “all situations” involving administration between or among ground water rights and surface water rights. *IGWA Post-Hearing Brief* at 1. Pocatello argues that “in all respects this was a delivery call case.” *Pocatello’s Post-Hearing Brief* at 4. South Valley and Galena assert that the CM Rules apply because the testimony of the senior surface water users amounted to conjunctive management “delivery calls.” *SVGWD-GGWD Brief* at 44. These arguments lack merit.

CM Rule 1 plainly states that the CM 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 . . . .” IDAPA 37.03.11.001 (underlining added). The District Court for Twin Falls County has affirmed that the CM Rules are limited to cases respond to a “delivery call” as that term is defined and treated in the CM Rules. *Memorandum*

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<sup>16</sup> The Director assumes that the references in Rogers’ filing to “Galena Ground Water Users Association” and “South Valley Ground Water Users Association” were intended to identify Galena Ground Water District and South Valley Ground Water District.

*Decision and Order, Basin 33 Water Users, et al., v. IDWR*, Ada County Case No. CV01-20-8069, at 8-9 (Nov. 6, 2020) (“the CM Rules are limited in scope to prescribing the basis and procedure for responding to delivery calls . . . . No such delivery call has been made in this case.”).

The record shows that no delivery call was filed in this case, as some of the ground water users concede. *See Cities/SVC’s Brief* at 11 (“this is not a water delivery call (let alone a delivery call under the CM Rules)”) (parenthetical in original). The record shows, rather, that this proceeding was initiated by the Director, *sua sponte*, pursuant to Idaho Code § 42-237a.g. *Notice* at 1. This statute authorizes the Director “[t]o “supervise and control the exercise and administration of all rights to the use of ground water.” Idaho Code § 42-237a.g. This code section states that “in the exercise of this discretionary power,” the Director “may initiate administrative proceedings to prohibit or limit the withdrawal of water from any well” during any period the Director determines “that water to fill any water right in said well is not there available.” *Id.* “Water in a well shall not be deemed available to fill a water right therein,” in turn, “if withdrawal of the amount called for by such right” would affect, contrary to the policy of the Ground Water Act, “the present or future use of any prior surface or ground water right . . . .” *Id.* (underlining added).

Nothing in Idaho Code § 42-237a.g. makes initiation of such an administrative proceeding contingent upon the filing of a delivery call or request for administration of ground water rights. Nothing in Idaho Code § 42-237a.g. or the CM Rules requires the Director to apply the CM Rules in conducting an administrative proceeding under Idaho Code § 42-237a.g. *See Memorandum Decision and Order, Basin 33 Water Users, et al., v. IDWR*, supra, at 8-12 (rejecting the argument that “the CM Rules preclude the Director from exercising his authority under the [Ground Water] Act”). Further, the statute expressly committed the determination of whether to initiate this administrative proceeding to the Director’s discretion. *See* Idaho Code § 42-237a.g. (“discretionary power”).<sup>17</sup> As the Idaho Supreme Court recognized, in a 1969 case involving curtailment of junior ground water pumping in favor of senior surface water users, Idaho Code § 42-237a.g. grants “broad powers” to the Director in cases such as this one. *Stevenson*, 93 Idaho at 11-12, 453 P.2d at 826-27.

These authorities, and the timeline in this case, undermine South Valley’s and Galena’s argument that the surface water users’ filed “delivery calls” simply by stating that they sought to have all water rights in Basin 37, including ground water rights, administered according to the prior appropriation doctrine. Prior to the hearing, 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. This was the purpose for which the surface water users provided testimony and exhibits, and the Director had “broad power” to impose this requirement upon the surface water users. *Stevenson*, 93 Idaho at 11-12, 453 P.2d at 826-27.

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<sup>17</sup> The Director’s exercise of this discretionary authority is subject to judicial review under applicable legal standards. *See, e.g., Rangen, Inc. v. IDWR*, 160 Idaho 251, 255, 371 P.3d 305, 309 (2016) (discussing the standards for reviewing “[d]iscretionary determinations of an agency”).



Fulfilling this requirement, and in so doing clarifying their positions in this proceeding (some surface water users did not take a position on whether the Director should take any action) did not amount to filing “delivery calls.”<sup>18</sup>

Further, and contrary to Pocatello’s argument, the fact that this administrative proceeding used the same presumptions, burdens, and evidentiary standards as those that apply under the CM Rules did not convert this proceeding into a delivery call case. The CM Rules did not create these presumptions, burdens, and evidentiary standards, but rather simply acknowledged and incorporated the existing presumptions, burdens, and evidentiary standards long required by Idaho’s prior appropriation doctrine. CM Rule 20.02; *AFRD2*, 143 Idaho at 873-74, 154 P.3d at 444-45. These standards are not unique to the CM Rules, and were well-established components of Idaho’s prior appropriation doctrine long before the CM Rules were promulgated. *Id.*; *see also A & B Irr. Dist.*, 153 Idaho at 516-20, 284 P.3d at 241-45 (explaining development and application of the “clear and convincing evidence” in Idaho water law).

**b. This Proceeding Must Adhere to the Well-Established Presumptions, Burdens, and Evidentiary Standards of Idaho’s Prior Appropriation Doctrine.**

The Cities and Sun Valley argue that because this case is a proceeding under Idaho Code § 42-237a.g. rather than the CM Rules, the presumptions, burdens of proof, and evidentiary standards of the CM Rules “do not clearly apply,” and that “any determination by the Director to curtail ground water rights must be supported by ‘clear and convincing evidence’ or some other heightened proof[.]” *Cities /SVC Brief* at 13. These arguments are contrary to Idaho law.

As discussed above, the CM Rules did not create new or different presumptions, burdens, and evidentiary standards. They simply acknowledge and incorporate well-established presumptions, burdens, and evidentiary standards that were well-established components of Idaho’s prior appropriation doctrine long before the CM Rules were promulgated. CM Rule 290.02; *AFRD2*, 143 Idaho at 873-74, 154 P.3d at 444-45; *A & B Irr. Dist.*, 153 Idaho at 516-20, 284 P.3d at 241-45. There is no merit in the arguments that the well-established presumptions, burdens, and evidentiary standards of Idaho’s prior appropriation doctrine “do not clearly apply,” and that junior ground water rights may not be curtailed in the absence of “clear and convincing evidence” that curtailment will benefit senior surface water users. These arguments nullify the presumption that senior water right holders are entitled to their decreed water rights, and impermissibly shift the risk of water shortage to senior water users.

**c. “Full Economic Development of Underground Water Resources” is not at Issue in This Proceeding.**

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<sup>18</sup> South Valley and Galena also re-assert arguments they made in their prehearing motion to dismiss. The Director disagrees with these arguments for the reasons explained in the *Order Denying Motions to Dismiss, for Continuance or Postponement, and for Clarification or More Definite Statement* (May 22, 2021), which is incorporated herein by this reference



South Valley, Galena, the Cities, and Sun Valley argue that curtailment, or curtailment without allowing time for mitigation to be secured, would violate Idaho Code § 42-226's "a reasonable exercise" of a senior priority "shall not block full economic development of underground water resources." Idaho Code § 42-226. *SVGWD-GGWD Brief* at 24, 41, 48; *Cities/SVC Brief* at 7-8, 14. The Director disagrees because this "modification" to the doctrine that "first in time is first in right," *Clear Springs*, 150 Idaho at 801-02, 252 P.3d at 82-83, has no application in this case.

In the *Clear Springs* case, junior ground water users also relied on Idaho Code § 42-226's "reference to 'full development of underground water resources'" to limit or avoid a curtailment in favor of senior surface water appropriators. *Id.* The Idaho Supreme Court rejected this argument. The Court explained that "the reference to 'full development of underground water resources' refers to promoting full development of ground water by not permitting a ground water appropriator with an unreasonably shallow well to block further use of the aquifer." *Id.* at 803, 252 P.3d at 84. The Court thus held that "[b]y its terms, section 42-226 only applies to appropriators of ground water," and the senior water right holders were "not appropriators of ground water." *Id.* The Court therefore affirmed the district court's holding that the curtailment orders did not violate Idaho Code § 42-226. *Id.*<sup>19</sup>

This case, like *Clear Springs*, involves the question of whether junior ground water rights should be curtailed in favor of senior surface water rights. The Idaho Supreme Court's decision in *Clear Springs* confirms that Idaho Code § 42-226's "reference to 'full development of underground water resources'" does not apply in questions of priority administration between senior surface water rights and junior ground water rights. *Clear Springs*, 150 Idaho at 801-04, 252 P.3d at 82-85. While this case is a proceeding under Idaho Code § 42-237a.g. rather than the CM Rules, the reasoning and holding of *Clear Springs* apply even more directly in this case, because the question is whether junior ground water pumping will affect, contrary to the "declared policy" of Idaho Code § 42-226, the present or future use of senior surface water rights. Idaho Code § 42-237a.g. Under *Clear Springs*, the "declared policy" of Idaho Code § 42-226 does not modify or limit "the doctrine of 'first in time is first in right'" with respect to senior surface water rights, and they are not subject to the admonishment that "a reasonable exercise" of senior priority "shall not block full economic development of underground water resources." *Clear Springs*, 150 Idaho at 801-04, 252 P.3d at 82-85.

**d. Section 42-237a.g. Does Not Require the Director to Establish a Reasonable Pumping Level or the Reasonably Anticipated Rate of Future Natural Recharge Before Curtailing Ground Water Rights.**

Pocatello, the Cities, and Sun Valley argue that the Director exceeded his authority under Idaho Code § 42-237a.g. by initiating an administrative proceeding without first determining whether the Wood River Valley aquifer is being "mined." This argument refers to Section 42-237a.g.'s prohibition against allowing ground water withdrawals to exceed "the reasonably

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<sup>19</sup> The Idaho Supreme Court also affirmed the district court's holding that the curtailment order did not violate Idaho Code § 42-237a. *Id.*

anticipated average rate of future natural recharge,” which prohibits “mining the aquifer.” *Clear Springs*, 150 Idaho at 804, 252 P.3d at 85; *Baker v. Ore-Ida Foods, Inc.*, 95 Idaho 575, 583, 513 P.2d 627, 635 (1973). The Cities and Sun Valley also argue that it is “inappropriate” to curtail ground water pumping before establishing a “reasonable ground water pumping level.” Both of these argument are contrary to the statutory language.

Under the plain language of Idaho Code § 42-237a.g., establishing “the reasonably anticipated average rate of future natural recharge” is an option, not a requirement. The statute authorizes the Director to prohibit or limit ground water withdrawals in two different sets of circumstances: (1) when such withdrawals “would affect, contrary to the declared policy of [the Ground Water Act], the present or future use of any prior surface or ground water right”; *or* (2) when such withdrawals would exceed “the reasonably anticipated average rate of future natural recharge.” Idaho Code § 42-237a.g. This focus of this administrative proceeding is the first set of circumstances. Nothing in Idaho Code § 42-237a.g. requires the Director to also consider the second set of circumstances and make a determination of whether the Wood River Valley aquifer is being “mined.”

There is also no requirement in Idaho Code § 42-237a.g. that the Director must determine a “reasonable ground water pumping level” before curtailing junior ground water rights. The applicable language of the statute is discretionary rather than mandatory: the Director “*may* establish a ground water pumping level or levels . . .” Idaho Code § 42-237a.g. (italics and underlining added); *see also A & B Irr. Dist.*, 153 Idaho at 511, 284 P.3d at 236 (“he is not obligated to establish a reasonable ground water pumping level”). While the Cities and Sun Valley nominally concede this point, they then pivot to argue that “the lack of any evidence discussing” a reasonable ground water pumping level means the Director committed fatal legal error by failing to consider “other provisions” of the Ground Water Act. *Cities/SVC Post-Hearing Brief* at 9-10. The Cities and Sun Valley do not provide any authority for this conclusion or try to reconcile it the above-cited holding in the *A&B* case, and do not identify the “other provisions” or explain why they allegedly were essential to the administrative proceeding. There is no merit in the argument that the Director was required to establish a “reasonable ground water pumping level” before curtailing junior ground water rights.<sup>20</sup>

**e. The Determination of Whether Water is “Available” in a Well is Determined by the Effects of Withdrawals.**

The Cities and Sun Valley also argue that the Director exceeded his authority under Idaho Code § 42-237a.g. because there was “no evidence about the amount of water in wells.” *Cities/SVC Post-Hearing Brief* at 9. They argue that without such evidence, it is impossible to determine whether water in a well is “available” for use by the ground water right holder. *Id.*

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<sup>20</sup> The Cities and Sun Valley also purport to “renew” a number of prehearing motions that were denied. *Cities/SVC Post-Hearing Brief* at 17-19. The Director denies the implied request for reconsideration of the denial of those motions.

This argument is contrary to the plain language of Idaho Code § 42-237a.g., which includes a provision specifically defining the two sets of circumstances (discussed above) in which water in a well “shall not be deemed available.” Idaho Code § 42-237a.g. Under the first set of circumstances, the determination of whether water in a well is “available” for use by the ground water right holder depends on whether withdrawals “would affect” the present or future use of a senior surface or ground water right in a way contrary to the declared policy of the Ground Water Act. *Id.* In short, it is the effect of withdrawals on the use of other water rights that determines whether well water is “available” for use by a junior ground water right holder, *id.*, not “the amount of water in wells.” *Cities/SVC Brief* at 9.

**f. Junior Water Users Must Provide Mitigation to Avoid Curtailment.**

The Cities and Sun Valley argue that curtailment cannot be ordered until junior ground water users have had the opportunity to secure mitigation. *Cities/SVC Brief* at 13-15.<sup>21</sup> This argument is based in large part on the reference in Idaho Code § 42-226 to “full economic development of underground water resources” and therefore is incorrect for the reason previously discussed: Idaho Code § 42-226’s admonishment that “a reasonable exercise” of senior priority “shall not block full economic development of underground water resources” has no application to senior surface water rights. *Clear Springs*, 150 Idaho at 801-04, 252 P.3d at 82-85.

The argument that curtailment cannot be ordered until the junior ground water users secure mitigation is also contrary to the holdings of the District Court for in the second Rangen decision. *Memorandum Decision and Order* (5<sup>th</sup> Jud. Dist. Case No. CV 2014-4970) (June 3, 2015) (“*Second Rangen Dec.*”). In *Second Rangen Dec.*, the Director delayed curtailment to allow junior ground water users “sufficient time ... to prepare for curtailment.” *Second Rangen Dec.*, at 4. The District Court rejected the Director’s approach because it resulted in Rangen’s senior rights being “prejudiced and subjected to unmitigated material injury while junior users were permitted to continue out-of-priority diversions.” *Id.* at 7-8. The District Court held that “under the Director’s rationale, the senior user’s water use and operations should be disrupted so as to not unduly disrupt the juniors,” which was contrary to Idaho’s prior appropriation doctrine. *Id.* at 8. The argument that curtailment cannot be ordered in this case until junior ground water users secure mitigation is contrary to Idaho’s prior appropriation doctrine for the same reasons.

The Director recognizes that it may take time to secure mitigation; it may also be that mitigation is simply not available, or not available at what the ground water users consider to be reasonable cost. Under Idaho’s prior appropriation doctrine, however, this risk falls on the junior ground water right holders. The argument of the Cities and Sun Valley turns priority on its head by “unreasonably shift[ing] the risk of shortage to the senior surface water right holder.” *First Rangen Dec.* at 13-14.

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<sup>21</sup> IGWA asserts Department staff member Tim Luke “reportedly” testified “that the right to provide mitigation under the CM Rules is not available in this proceeding.” *IGWA’s Brief* at 2. Luke did not testify that “the right to provide mitigation . . . is not available.” His testimony was that he was not aware of what mitigation options were available in this case. Tr. p.378.

**g. This Proceedings Satisfied the Requirements of Due Process.**

The Cities, Sun Valley, and IGWA argue that the schedule the Director established for this proceeding violated the requirements of due process because it was too compressed and denied them the opportunity to adequately prepare for the hearing. *Cities/SVC Brief* at 15-17; *IGWA Brief* at 5. The Cities and Sun Valley focus in particular on the fact that the Department did not provide information in response to a request by Sun Valley on the third day of the hearing. *Cities/SVC Brief* at 16-17. IGWA focuses on the time allegedly required to understand and scrutinize seniors' claims of injury, the reasonableness of seniors' diversions and uses of water, and "other complexities of conjunctive management." *IGWA Brief* at 5. South Valley and Galena note their concern with "this shortened hearing schedule and how it impacted their ability to have a meaningful opportunity to be heard," but "reserve all rights" on these matters rather than arguing that the hearing schedule violated any legal requirements or standards. *SVGWD-GGWD Brief* at 9 n.4.<sup>22</sup>

"Due process is not a concept to be rigidly applied, but is a flexible concept calling for such procedural protections as are warranted by the particular situation." *Neighbors for Pres. of Big & Little Creek Cmty. v. Bd. of Cty. Comm'rs of Payette Cty.*, 159 Idaho 182, 190, 358 P.3d 67, 75 (2015) (citation omitted). Procedural due process requirements are met when notice and an opportunity to be heard are provided, and "the opportunity to be heard must occur at a meaningful time and in a meaningful manner." *Id.* "The procedure required is merely that to ensure that a person is not arbitrarily deprived of his or her rights." *Telford v. Nye*, 154 Idaho 606, 611, 301 P.3d 264, 269 (2013).

In this proceeding, the Cities, Sun Valley, and IGWA were never at risk of being "arbitrarily deprived" of any of their rights. It is undisputed that these entities hold no ground water rights diverting with the "Potential Area of Curtailment" originally described and depicted in the *Notice*, or within the smaller "Potential Area of Curtailment" subsequently described in Sukow's staff memorandum. Further, none of these entities' ground water rights will be curtailed pursuant to this order. The Cities, Sun Valley, and IGWA have not been injured or prejudiced by any of the due process violations they allege.

Further, this administrative proceeding provided both notice and a meaningful opportunity to be heard. The *Notice* was issued on May 4, 2021, and stated that the Director was initiating an administrative proceeding under Idaho Code § 42-237a.g. "to determine whether water is available to fill the ground water rights" within the Bellevue Triangle, which was depicted on a map attached to the *Notice*. The *Notice* stated that "if the Director concludes that water is not available to fill the ground water rights, the Director may order the ground water rights curtailed for the 2021 irrigation season." The *Notice* invited interested parties to file notices of participation and scheduled a prehearing conference to discuss, among other things, the hearing procedure, remote participation at the hearing, discovery, witnesses, and burdens.

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<sup>22</sup> South Valley and Galena argued in their prehearing motion to dismiss that the hearing schedule violated their rights to due process. The Director addressed these arguments in the *Order Denying Motions to Dismiss, for Continuance or Postponement, and for Clarification or More Definite Statement* (May 22, 2021), which is incorporated herein by this reference.



The *Notice* scheduled the hearing for June 7-11, 2021.<sup>23</sup> Pursuant to the *Notice* and the prehearing conference, the parties conducted discovery, deposed witnesses, and filed a number of prehearing motions. At the hearing, which lasted six days, multiple witnesses testified, including expert witnesses, and many exhibits were submitted into the record. The parties were also afforded the opportunity to file post-hearing briefs.

None of this is disputed by the Cities, Sun Valley, or IGWA. Their arguments, rather, are that a much more extended prehearing schedule was required to fully identify and develop the issues and the evidence, and to otherwise prepare for the hearing. *Cities/SVC Brief* at 17; *IGWA Brief* at 5. These arguments are largely based on analogizing this case to the cases involving conjunctive management delivery calls on the Eastern Snake Plain Aquifer (“ESPA”). IGWA asserts that those cases “did not present a special need for very prompt action” because ground water pumping did not “cause a sudden loss of water discharge from the springs” and “curtailment would not quickly restore the spring flows.” *IGWA Brief* at 4. The Cities’ expert witness testified that, as in the ESPA cases, he would have needed “many months” to prepare for this proceeding. Tr. p. 1442.

The assertions that this case is analogous to a delivery call in the ESPA are contrary to the record. This proceeding involves an aquifer that is far smaller than the ESPA in geographical extent and volume. The record shows that changes in ground water pumping from the Bellevue Triangle are quite rapidly reflected changes in the flows of Silver Creek and the Little Wood River, and that the amount of change is substantial. Moreover, there is a need for prompt action to protect senior surface water rights on Silver Creek and the Little Wood River. Many of these rights have been curtailed due water shortages and more likely will be soon; yet out-of-priority ground water pumping in the Bellevue Triangle continues. Under these circumstances, requiring “many months” of prehearing preparation would be far in excess of what is “warranted by the particular situation.” *Neighbors*, 159 Idaho at 190, 358 P.3d at 75. It also would effectively preclude in-season protection of senior surface water rights while allowing junior ground water right to continue pumping. See *Second Rangen Dec.* at 8 (rejecting the rationale that “the senior user’s water use and operations should be disrupted so as to not unduly disrupt the juniors”). In the circumstances of this case, the extended prehearing schedule that the Cities, Sun Valley, and IGWA seek “unreasonably shifts the risk of shortage to the senior surface water right holder.” *First Rangen Dec.* at 13-14. *Id.*

#### **h. IDFG’s Ground Water Rights are Non-Consumptive and Should Not Be Curtailed.**

IDFG holds three ground water rights in the Bellevue Triangle for fish propagation purposes, which are used at IDFG’s Hayspur Fish Hatchery. IDFG argues that these water rights should not be curtailed because they have are non-consumptive and have no adverse effects on senior surface water rights on Silver Creek and the Little Wood River. *IDFG Brief* at 3-12.

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<sup>23</sup> On the third day of the hearing, the Director extended the hearing to June 12 in order to allow for all witnesses to be examined and exhibits submitted, and also left open the option of extending the hearing into the following week, although that turned out to be unnecessary.



IDFG's ground water rights have a condition that expressly limits them to "non-consumptive" use of water. Tr. pp. 1009-14. At the hearing, IDFG's witness described in some detail how water is used and measured at the hatchery, relying upon and explaining several illustrative and quantitative exhibits. Tr. pp. 1015-44. IDFG argues that the exhibits and testimony demonstrate the IDFG's use of water at the hatchery is non-consumptive and should not be curtailed. *IDFG Brief* at 3-12.

The Director concludes that IDFG has provided evidence showing that it is highly probable or reasonably certain that IDFG's use of ground water at the Hayspur Fish Hatchery is non-consumptive. IDFG has therefore provided clear and convincing evidence that its use of ground water in the Bellevue Triangle will not affect, contrary to the declared policy of the Ground Water Act, the use of senior surface water rights on Silver Creek and the Little Wood River during the 2021 irrigation season. *A&B Irr. Dist.*, 153 Idaho at 516, 284 P.3d at 24; Idaho Code § 42-237a.g. IDFG's ground water rights for the Hayspur Fish Hatchery, therefore, will be excluded from the curtailment order.

## ORDER

Based on the forgoing discussion, IT IS HEREBY ORDERED that on July 1, 2021, starting at 12:01 a.m., ground water rights listed in Exhibit A to this order shall be curtailed. The holders of the water rights shall refrain from diversion and use of ground water pursuant to those water rights. The curtailment shall run through the 2021 irrigation season unless notified by the Department that this order of curtailment has been modified or rescinded as to their water rights. This order applies to all consumptive ground water rights, including agricultural, commercial, industrial, and municipal uses, but excludes 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 right used for *de minimis* stockwatering where such stock watering is within the limits of the definitions set for in Idaho Code § 42-1401A(11).

IT IS FURTHER ORDERED that the watermaster for Water District 37, on July 1, 2021, and thereafter through the irrigation season of 2021, is directed to curtail the ground water rights listed in Exhibit A to this order unless notified by the Department that this order of curtailment has been modified or rescinded.

DATED this 28<sup>th</sup> day of June, 2021.

  
\_\_\_\_\_  
Gary Spackman  
Director

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 28<sup>th</sup> day of June, 2021, the above and foregoing FINAL ORDER was served by the method indicated below, and address to the following:

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Idaho Ranch Hands Property Management 218 Meadowbrook Hailey, ID 83333 <a href="mailto:idahoranchhands@gmail.com">idahoranchhands@gmail.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Southern Comfort Homeowner's Association P.O. Box 2739 Ketchum, ID 83340	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, Idaho 83318 <a href="mailto:wkf@pmt.org">wkf@pmt.org</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Albert P. Barker Travis L. Thompson Barker Rosholt & Simpson LLP 1010 W. Jefferson St., Ste. 102 PO Box 2139 Boise, ID 83701-2139 <a href="mailto:apb@idahowaters.com">apb@idahowaters.com</a> <a href="mailto:tlr@idahowaters.com">tlr@idahowaters.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Candice McHugh McHugh Bromley, PLLC 380 S. 4th St., Ste. 103 Boise, ID 83702 <a href="mailto:cmchugh@mchughbromley.com">cmchugh@mchughbromley.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Chris M. Bromley McHugh Bromley, PLLC 380 S. 4th St., Ste. 103 Boise, ID 83702 <a href="mailto:cbromley@mchughbromley.com">cbromley@mchughbromley.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Norman M. Semanko Parsons Behle & Latimer 800 West Main Street, Ste 1300 Boise, ID 83702 <a href="mailto:NSemanko@parsonsbehle.com">NSemanko@parsonsbehle.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email

Sarah A. Klahn Somach Simmons & Dunn 2033 11th St., Suite 5 Boulder, CO 80302 <a href="mailto:sklahn@somachlaw.com">sklahn@somachlaw.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Randall C. Budge Thomas J. Budge Racine Olson, PLLP 201 E. Center St. P.O. Box 1391 Pocatello, Idaho 83204 <a href="mailto:randy@racineolson.com">randy@racineolson.com</a> <a href="mailto:tj@racineolson.com">tj@racineolson.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Michael C. Creamer Michael P. Lawrence Charlie S. Baser Givens Pursley LLP 601 W. Bannock St. P.O. Box 2720 Boise, Idaho 83701-2720 <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>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
GARY D. SLETTE ROBERTSON & SLETTE PLLC PO Box 1906 Twin Falls, Idaho 83303 <a href="mailto:gslette@rsidaholaw.com">gslette@rsidaholaw.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email

  


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**Megan Jenkins**  
Administrative Assistant



Exhibit A  
List of Ground Water Rights Subject to Curtailment  
Sorted by Owner

Owner	Water Right No.	Basis	Priority Date	Usage	Diversion Rate (cfs)	Total Acres
187 SLUDER DR LLC	37-8451	License	10/31/1988	COMMERCIAL	0.08	
5BISON LLC	37-21474	Decreed	7/18/1960	IRRIGATION	0.87	43.5
ABJ2 LLC; STEVENSON, JOHN F	37-2631	Decreed	2/8/1960	IRRIGATION	5.72	602
ABJ2 LLC; STEVENSON, JOHN F	37-2664A	Decreed	6/5/1961	IRRIGATION	2.5	602
ABJ2 LLC; STEVENSON, JOHN F	37-2668	Decreed	8/12/1961	IRRIGATION	1.11	602
ABJ2 LLC; STEVENSON, JOHN F	37-19735	Decreed	4/12/1964	IRRIGATION	0.51	602
ANDERSON ASPHALT PAVING INC	37-8856	License	7/15/1996	INDUSTRIAL	0.23	
ANDERSON, CYNTHIA E; ANDERSON, GREGORY L	37-22360	Decreed	1/29/1965	IRRIGATION	2.53	126.3
ANDERSON, JASON V; ANDERSON, WHITNIE A	37-21603	Decreed	4/21/1970	IRRIGATION	0.46	24.2
ANDREA STEVESON WARD IRREVOCABLE TRUST; BELLE RANCH LLC; JOHN FELL STEVENSON JR IRREVOCABLE TRUST	37-4133	Decreed	4/15/1956	IRRIGATION	2.12	106
APPLEGATE, TONYA; ARAMBARRI, GARY DAVID; ARAMBARRI, RON; HALL, JEFF; HALL, RANDY; REBISCHKE, LORI L	37-22390	Decreed	7/18/1960	IRRIGATION	0.05	4.9
ARGUEDAS, DANIEL JOHN; ARGUEDAS, GRETCHEN KATHLEEN	37-7064E	Decreed	4/21/1970	IRRIGATION	0.46	25.3
AUBREY SPRING RANCH LLC	37-2553A	Decreed	6/28/1954	IRRIGATION	2	100
AUBREY SPRING RANCH LLC	37-2686D	Decreed	12/11/1962	IRRIGATION	0.16	19
AUBREY SPRING RANCH LLC	37-7598D	Decreed	7/8/1977	IRRIGATION	0.22	19
AUBREY SPRING RANCH LLC	37-22777	License	12/5/1979	IRRIGATION	3.18	158.9
AUBREY SPRING RANCH LLC	37-22778	License	12/5/1979	IRRIGATION	0.06	2.4
AUBREY SPRING RANCH LLC	37-8571	License	9/22/1989	WILDLIFE	5	
BAIRD, CAROLYN; BAIRD, RUSTY	37-8408	License	10/6/1988	IRRIGATION	0.06	2
BAKER, JEREMY WAYNE; BAKER, TAMARA KATRINA	37-20822	Decreed	9/21/1954	IRRIGATION	0.25	20
BAKER, JEREMY WAYNE; BAKER, TAMARA KATRINA	37-20824	Decreed	12/12/1979	IRRIGATION	0.15	20
BALL, PATRICIA LATHAM; BALL, ROBERT R	37-2557V	Decreed	9/25/1954	IRRIGATION	0.2	10
BARFUSS, DARIN; BARFUSS, KATHLEEN	37-2557D	Decreed	9/25/1954	IRRIGATION	0.1	4
BASLINE CANAL CO; BASELINE PUMP ASSN # 1	37-4109	Decreed	6/18/1955	IRRIGATION	6	
BASLINE CANAL CO; BASELINE PUMP ASSN # 2	37-2556A	Decreed	9/21/1954	IRRIGATION	6.76	
BASHAW FAMILY TRUST	37-2566A	Decreed	2/26/1955	IRRIGATION	0.07	841.1
BASHAW FAMILY TRUST	37-2594A	Decreed	2/25/1957	IRRIGATION	0.07	841.1
BASHAW FAMILY TRUST	37-2612A	Decreed	4/1/1959	IRRIGATION	0.07	841.1
BASHAW FAMILY TRUST	37-7239A	Decreed	6/5/1973	IRRIGATION	0.04	841.1
BASHAW FAMILY TRUST; THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-22559	Decreed	2/26/1955	IRRIGATION	2.86	841.1
BASHAW FAMILY TRUST; THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-22560	Decreed	2/26/1955	IRRIGATION	0.11	200.1
BASHAW FAMILY TRUST; THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-22561	Decreed	2/25/1957	IRRIGATION	2.32	841.1
BASHAW FAMILY TRUST; THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-22562	Decreed	2/25/1957	IRRIGATION	0.09	200.1
BASHAW FAMILY TRUST; THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-22563	Decreed	4/1/1959	IRRIGATION	3.07	841.1
BASHAW FAMILY TRUST; THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-22564	Decreed	4/1/1959	IRRIGATION	0.11	200.1
BASHAW FAMILY TRUST; THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-2615	Decreed	5/28/1959	IRRIGATION	1.8	841.1
BASHAW FAMILY TRUST; THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-22565	Decreed	6/5/1973	IRRIGATION, STOCKWATER	1.55	841.1
BASHAW FAMILY TRUST; THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-22566	Decreed	6/5/1973	IRRIGATION	0.06	200.1
BASHAW, AUDREY; BASHAW, GERALD B	37-800	Decreed	4/1/1930	IRRIGATION, STOCKWATER	2	434
BASHAW, AUDREY; BASHAW, GERALD B	37-801	Decreed	4/1/1950	IRRIGATION	2	434
BASHAW, GERALD B	37-22389	Decreed	7/18/1960	IRRIGATION	0.52	51.4
BASHAW, GERALD B	37-22572	Decreed	7/18/1960	IRRIGATION	0.23	200.1
BASHAW, GERALD B	37-22587	Decreed	7/18/1960	IRRIGATION	0.13	12.6
BECK, THOMAS M	37-2732	Decreed	4/11/1966	IRRIGATION	1.9	90.2
BECK, WILLIAM M	37-2559B	Decreed	10/4/1954	IRRIGATION	0.18	20
BECK, WILLIAM M	37-20737	Decreed	4/15/1985	IRRIGATION	0.03	20
BELLE RANCH LLC	37-23055	Decreed	8/12/1961	IRRIGATION	0.43	21.5
BELLE RANCH LLC; STEVENSON, JOHN F	37-4362	Decreed	6/1/1940	IRRIGATION, COMMERCIAL, DOMESTIC	0.08	1

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BENSON, BARBARA	37-8384	License	8/29/1988	IRRIGATION	0.09	3
BENSON, BARBARA	37-8660	License	8/9/1990	IRRIGATION	0.02	0.7
BLACKBURN FARMING LLC	37-2625B	Decreed	11/13/1959	IRRIGATION	0.04	1.8
BLACKBURN FARMING LLC	37-23090	Decreed	11/13/1959	IRRIGATION	7.16	1291.6
BLACKBURN FARMING LLC	37-23091	Decreed	8/1/1960	IRRIGATION	3.61	1291.6
BLACKBURN FARMING LLC	37-23092	Decreed	8/20/1964	IRRIGATION	8.89	1291.6
BLACKBURN FARMING LLC	37-23093	Decreed	4/1/1984	IRRIGATION	2.65	1291.6
BLACKBURN, BRIAN	37-20896	Decreed	4/21/1970	IRRIGATION	0.35	20.9
BLAINE COUNTY RECREATION DISTRICT	37-21569	Decreed	10/22/1959	IRRIGATION	0.02	0.8
BOND, HELEN H	37-20621	Decreed	9/21/1954	IRRIGATION	0.17	12
BOND, HELEN H	37-20619	Decreed	12/12/1979	IRRIGATION	0.11	12
BORDENKIRCHER, MICHAEL P	37-8011A	Decreed	5/31/1982	IRRIGATION	0.06	3
C W & R H GARDNER FAMILY LIMITED PARTNERSHIP	37-802	Decreed	4/1/1935	IRRIGATION	5	484
C W & R H GARDNER FAMILY LIMITED PARTNERSHIP	37-4433	Decreed	4/1/1952	IRRIGATION	2.86	143
C W & R H GARDNER FAMILY LIMITED PARTNERSHIP	37-2684	Decreed	10/29/1962	IRRIGATION	6.4	321
C W & R H GARDNER FAMILY LIMITED PARTNERSHIP	37-21974	Decreed	4/15/1981	IRRIGATION	5.76	288
C W & R H GARDNER FAMILY LIMITED PARTNERSHIP	37-8218	License	6/11/1985	IRRIGATION	1	58
C W & R H GARDNER FAMILY LIMITED PARTNERSHIP	37-8219	License	6/11/1985	IRRIGATION	4.5	864
CAMERON, GEORGE E; CAMERON, MARGARET J	37-7243	Decreed	6/19/1973	IRRIGATION, DOMESTIC	0.22	23.9
CAMERON, GEORGE E; CAMERON, MARGARET J	37-7995	Decreed	2/4/1982	IRRIGATION	0.32	23.9
CAMERON, LESLIE H; CAMERON, THELMA CLOUGHTON	37-7373	Decreed	8/25/1974	IRRIGATION	0.18	9
CAMERON, LESLIE H; CAMERON, THELMA CLOUGHTON	37-23245	Decreed	8/25/1974	IRRIGATION, DOMESTIC	0.06	1
CASEY, MARGARET C	37-21500	Decreed	1/29/1965	IRRIGATION	0.05	2.5
CASH, JUDY	37-21666	Decreed	9/25/1954	IRRIGATION	0.1	5
CEMMRM PARTNERS LLC	37-2739	Decreed	7/8/1966	IRRIGATION, STOCKWATER	1.23	60
CHANEY CREEK RANCH LLC	37-2608	Decreed	10/8/1958	IRRIGATION	2	454
CHANEY CREEK RANCH LLC	37-2609A	Decreed	10/8/1958	IRRIGATION, WILDLIFE STORAGE, RECREATION STORAGE, AESTHETIC STORAGE, DIVERSION TO STORAGE	0.48	12
CHANEY CREEK RANCH LLC	37-2685	Decreed	12/8/1961	IRRIGATION	2.46	454
CHANEY CREEK RANCH LLC	37-7284	Decreed	9/25/1973	IRRIGATION	1.98	454
CHASE, MC KENNA; WHEELER, CODY	37-7616	Decreed	5/31/1977	IRRIGATION, DOMESTIC	0.18	6.1
CONNAUTON, SHANNON M; SMITH, FRANK M	37-22254	License	6/30/1985	IRRIGATION	0.18	9
CORSO-HARRIS, PEPIN; HARRIS, MICHAEL A	37-7609	Decreed	5/18/1977	IRRIGATION	0.29	17.2
CROCE, JERRY L	37-7486	Decreed	4/19/1976	IRRIGATION	0.2	10
DAVID GARST REVOCABLE TRUST	37-20928	Decreed	7/9/1956	IRRIGATION	1.38	69.1
DE CHEVRIEUX, AARON M; EISENBARTH, STEPHANIE J	37-8553	License	9/25/1989	IRRIGATION, DOMESTIC	0.09	3
DEAN R ROGERS INC	37-2600	Decreed	12/27/1957	IRRIGATION	0.72	458
DEAN R ROGERS INC	37-2641A	Decreed	9/27/1960	IRRIGATION	4.07	458
DEAN R ROGERS INC	37-2641B	Decreed	9/27/1960	IRRIGATION	0.93	458
DEAN R ROGERS INC	37-2642	Decreed	9/27/1960	IRRIGATION	3	699.5
DEAN R ROGERS INC	37-2643	Decreed	9/27/1960	IRRIGATION	3.4	699.5
DEAN R ROGERS INC	37-2661	Decreed	5/24/1961	IRRIGATION	2.32	699.5
DEAN R ROGERS INC	37-2662A	Decreed	5/24/1961	IRRIGATION	2.1	458
DEAN R ROGERS INC	37-2662B	Decreed	5/24/1961	IRRIGATION	1.32	458
DEAN R ROGERS INC	37-4289A	Decreed	6/1/1961	IRRIGATION	0.16	458
DEAN R ROGERS INC	37-4289B	Decreed	6/1/1961	IRRIGATION	0.08	458
DEAN R ROGERS INC; NORTHWEST FARM CREDIT SERVICES FLCA	37-7633	Decreed	6/20/1977	IRRIGATION	4.06	699.5
DEAN R ROGERS INC; NORTHWEST FARM CREDIT SERVICES FLCA	37-8091	Decreed	4/29/1983	IRRIGATION	2.22	111
DEAN, PAUL A; DEAN, TANA L	37-7708	Decreed	3/30/1978	IRRIGATION, STOCKWATER, DOMESTIC	0.19	16.5
DENZEL R & MARY S ROWLAND REVOCABLE LIVING TRUST	37-7747	Decreed	11/16/1978	IRRIGATION, DOMESTIC	0.3	18

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Owner	Water Right No.	Basis	Priority Date	Usage	Diversion Rate (cfs)	Total Acres
DIGES, ANDREW	37-20828	Decreed	9/21/1954	IRRIGATION	0.25	20
DIGES, ANDREW	37-20826	Decreed	12/12/1979	IRRIGATION	0.15	20
DILWORTH, BRYAN K; ROCKWOOD, KELLY M	37-7775G	Decreed	8/2/1988	IRRIGATION	0.4	20
DREYER, ROBERT P	37-2614	Decreed	5/18/1959	IRRIGATION	2	164.5
DREYER, ROBERT P	37-14289	Decreed	4/15/1978	IRRIGATION	0.29	164.5
DRISCOLL, TRISHA; PAGE, JEFFREY A	37-2557P	Decreed	9/25/1954	IRRIGATION	0.2	10
DRUSSEL, DIANE L; DRUSSEL, LARRY	37-23103	Decreed	7/9/1956	IRRIGATION	0.08	3.9
EAKIN, GRACE; ESTATE OF JAMES IVAN EAKIN	37-21807	Decreed	4/21/1970	IRRIGATION	3.08	154
EGE, JESSICA A; EGE, LYLE G; TRUXAL 2019 REVOCABLE TRUST	37-2546A	Decreed	9/28/1953	IRRIGATION, DOMESTIC	0.32	18
FARMERS NATIONAL BANK WENDELL OFFICE	37-7310	Decreed	6/10/1983	IRRIGATION, STOCKWATER, DOMESTIC	0.08	6.8
FERY LC RANCH LLC; GATES FAMILY PARTNERSHIP LP; WLCR LLC	37-2686C	Decreed	12/11/1962	IRRIGATION	1.618	196
FERY LC RANCH LLC; GATES FAMILY PARTNERSHIP LP; WLCR LLC	37-7598C	Decreed	7/8/1977	IRRIGATION	2.302	196
FERY LC RANCH LLC; GATES FAMILY PARTNERSHIP LP; WLCR LLC	37-7799	Decreed	10/2/1979	IRRIGATION, DOMESTIC	2.78	136
FIFE, ARLENE; FIFE, MILTON D	37-7923	Decreed	7/22/1981	IRRIGATION, DOMESTIC	0.12	3
FINNEY, DIANA K; FINNEY, HIRAM	37-21808	Decreed	4/21/1970	IRRIGATION	0.72	36
FLOLO, JOHN M; FLOLO, JULIE C	37-2611D	Decreed	3/26/1959	IRRIGATION	0.12	6
FLOOD, DIANA L; FLOOD, JOHN D	37-2479	Decreed	5/31/1947	IRRIGATION	5.88	294
FLOOD, DIANA L; FLOOD, JOHN D	37-21568	Decreed	10/22/1959	IRRIGATION	0.56	28
FLOOD, DIANA L; FLOOD, JOHN D	37-7676	Decreed	12/29/1977	IRRIGATION	0.4	20
FLOOD, JOHN D	37-2573	Decreed	6/16/1955	IRRIGATION	1.42	549.3
FLOOD, JOHN D	37-7014	Decreed	3/11/1968	IRRIGATION	5	549.3
FLOOD, JOHN D	37-11932	Decreed	4/15/1987	IRRIGATION	0.72	549.3
FOLEY, CHARLES T	37-22453	Decreed	5/19/1964	IRRIGATION	3.33	167.6
FOLEY, CHARLES T	37-22454	Decreed	5/19/1964	RECREATION STORAGE, AESTHETIC STORAGE	0	
FOLEY, CHARLES T; FOLEY, KATHLEEN MAHER	37-2686E	Decreed	12/11/1962	IRRIGATION	0.21	25.4
FOLEY, CHARLES T; FOLEY, KATHLEEN MAHER	37-2686F	Decreed	12/11/1962	RECREATION STORAGE, AESTHETIC STORAGE	0	
FOLEY, CHARLES T; FOLEY, KATHLEEN MAHER	37-7598E	Decreed	7/8/1977	IRRIGATION	0.29	25.4
FOLEY, CHARLES T; FOLEY, KATHLEEN MAHER	37-7598F	Decreed	7/8/1977	RECREATION STORAGE, AESTHETIC STORAGE	0	
FOLEY, CHARLES T; FOLEY, KATHLEEN MAHER	37-8225A	Decreed	6/26/1985	IRRIGATION	0.36	19
FREDRICKSON, EDITH	37-22627	Decreed	3/26/1959	IRRIGATION, DOMESTIC	0.46	21
GARDNER, SARAH R; HARRISON, RONALD T	37-22874	Decreed	10/29/1962	IRRIGATION	0.4	20
GARNER, MATTHEW A; LEAH, KATE L	37-7775D	Decreed	8/2/1988	IRRIGATION	0.4	20
GARY & JUDITH FRUGARD TRUST	37-21511	Decreed	9/25/1954	IRRIGATION	0.1	5
GOVE, JAY; GOVE, NANCY	37-7064D	Decreed	4/21/1970	IRRIGATION	0.36	18
GREEN, LARRY G; GREEN, LUANNE	37-2705B	Decreed	1/29/1965	IRRIGATION	0.78	39
GRIGSBY, JUDITH P	37-8012	Decreed	6/2/1982	IRRIGATION, DOMESTIC	0.16	4.5
HALE, JOHNNY; WATTS, JOAN	37-20895	Decreed	4/21/1970	IRRIGATION	0.35	20.3
HANSON, MELISSA; KELLER, JASON	37-20413	Decreed	10/22/1959	IRRIGATION	0.4	20
HAYWARD, JERRY P; HAYWARD, STEPHANIE A	37-4160	Decreed	4/1/1956	IRRIGATION, STOCKWATER	0.19	7.9
HEART ROCK RANCH LLC	37-2492	Decreed	9/16/1948	IRRIGATION, WILDLIFE, RECREATION, AESTHETIC	2.75	122.5
HEART ROCK RANCH LLC	37-22051	Decreed	9/16/1948	STOCKWATER, WILDLIFE, AESTHETIC	2.75	
HEART ROCK RANCH LLC	37-22050	Decreed	4/15/1950	IRRIGATION, STOCKWATER, WILDLIFE, RECREATION, AESTHETIC	3.1	369.4
HEART ROCK RANCH LLC	37-22052	Decreed	4/15/1950	STOCKWATER, WILDLIFE, AESTHETIC	1.65	
HEART ROCK RANCH LLC	37-22533	Decreed	4/15/1950	STOCKWATER, WILDLIFE, AESTHETIC	2.18	
HEART ROCK RANCH LLC	37-22749	Decreed	6/1/1950	IRRIGATION, STOCKWATER	0.62	34.8
HEART ROCK RANCH LLC	37-2538	Decreed	6/20/1953	IRRIGATION, WILDLIFE, RECREATION, AESTHETIC	1.65	151.1
HEART ROCK RANCH LLC	37-2597	Decreed	7/9/1957	IRRIGATION, WILDLIFE, DOMESTIC, RECREATION, AESTHETIC	1.36	166.1
HEART ROCK RANCH LLC	37-2764	Decreed	11/19/1963	IRRIGATION, WILDLIFE, DOMESTIC, RECREATION, AESTHETIC	1.98	166.1

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HEART ROCK RANCH LLC	37-22459	Permit	1/19/2010	WILDLIFE STORAGE, RECREATION STORAGE, AESTHETIC STORAGE, DIVERSION TO STORAGE	76.36	
HEMINGWAYS BLIND LLC	37-26838	Decreed	8/23/1961	IRRIGATION	1.12	152
HEMINGWAYS BLIND LLC	37-73498	License	3/7/1974	IRRIGATION	0.43	152
HENEGHAN, JULIE; HENEGHAN, TERRANCE	37-8168	License	3/19/1984	IRRIGATION, DOMESTIC	0.09	2.4
HENEGHAN, JULIE; HENEGHAN, TERRANCE	37-8488	License	1/30/1989	IRRIGATION	0.04	2
HENSON, BRADLEY	37-22361	Decreed	1/29/1965	IRRIGATION	0.04	2
HOOK & TEE LLC	37-23019	Decreed	2/1/1957	IRRIGATION	1.4	70
IVERSON, CLIFTON R; IVERSON, RHONDA L	37-20929	Decreed	7/9/1956	IRRIGATION	0.08	4
JASKOWSKI, MICHAEL; JASKOWSKI, STEPHANIE	37-21459	Decreed	10/22/1959	IRRIGATION	0.4	20
JESSEN, MICHAEL	37-7406	Decreed	11/21/1974	IRRIGATION, DOMESTIC	0.2	15
JOHN D & DIANA L FLOOD TRUST	37-21175	Decreed	10/22/1959	IRRIGATION	0.4	20
JOHNSON, JILL; JOHNSON, MARK	37-2682	Decreed	7/31/1961	IRRIGATION	3.44	198
JORGENSEN, TRAVIS H	37-7775F	Decreed	8/2/1988	IRRIGATION	0.4	20
KIMBALL, DEBORAH; KIMBALL, KENNETH; KIMBALL, KYLE	37-7409	Decreed	1/1/1975	IRRIGATION, STOCKWATER, DOMESTIC	0.19	20
LAKESIDE INDUSTRIES INC	37-2493	Decreed	12/21/1948	IRRIGATION	2	100
LAKESIDE INDUSTRIES INC	37-2747	Decreed	8/11/1966	IRRIGATION	1.06	56
LAKESIDE INDUSTRIES INC	37-7002	Decreed	8/8/1967	IRRIGATION	1.24	507.6
LAKESIDE INDUSTRIES INC	37-7210	Decreed	3/14/1973	IRRIGATION	0.89	102
LAKESIDE INDUSTRIES INC	37-7225	Decreed	5/4/1973	IRRIGATION	4.62	230.8
LAKESIDE INDUSTRIES INC	37-7309	Decreed	10/31/1973	IRRIGATION, STOCKWATER	3.93	507.6
LAKESIDE INDUSTRIES INC	37-12089	Decreed	5/1/1981	IRRIGATION	3.93	507.6
LARSON, CHRISTOPHER; LARSON, LUCIA	37-23078	Decreed	6/10/1983	IRRIGATION, STOCKWATER	0.06	5.1
LOOMIS, MARK; LOOMIS, STEVE	37-4336	Decreed	4/1/1940	IRRIGATION	0.28	14
LOVAS TRUST	37-2625A	Decreed	11/13/1959	IRRIGATION	0.8	143.5
LOVAS TRUST	37-2638	Decreed	8/1/1960	IRRIGATION	0.4	143.5
LOVAS TRUST	37-2700	Decreed	8/20/1964	IRRIGATION	0.99	143.5
LOVAS TRUST	37-21463	Decreed	4/1/1984	IRRIGATION	0.3	143.5
LOVING SPRINGS RANCH LP	37-23289	Decreed	8/23/1961	IRRIGATION	0.72	38
LUNCEFORD, MARGARET; LUNCEFORD, WILLIAM J	37-2664B	Decreed	6/5/1961	IRRIGATION	0.6	19
MADSEN, PETER; MADSEN, VICTORIA	37-21604	Decreed	4/21/1970	IRRIGATION	0.26	20.1
MARLOW, MICHAEL H; MARLOW, NATASHA	37-7764	Decreed	2/16/1979	IRRIGATION, DOMESTIC	0.2	9.2
MC GOWAN, CHRISTOPHER D; MC GOWAN, SUSAN M	37-22571	Decreed	7/18/1960	IRRIGATION	0.2	10
MC INNIS, MARSHAL	37-7775C	Decreed	8/2/1988	IRRIGATION	0.4	20
MOLYNEUX, A W	37-8068	License	1/24/1983	IRRIGATION	1.04	52
MOLYNEUX, A W; MOLYNEUX, MAXINE	37-2629	Decreed	1/14/1960	IRRIGATION	2.5	138.9
MOLYNEUX, A W; MOLYNEUX, MAXINE	37-7584	Decreed	6/28/1977	IRRIGATION	0.86	134
MOLYNEUX, JOHN I; MOLYNEUX, KRISTY	37-11387	Decreed	6/1/1950	IRRIGATION, STOCKWATER	1.94	140.9
MOLYNEUX, JOHN I; MOLYNEUX, KRISTY	37-4421B	Decreed	1/1/1955	IRRIGATION	0.48	591
MOLYNEUX, JOHN I; MOLYNEUX, KRISTY	37-2658	Decreed	5/3/1961	IRRIGATION	6.71	591
MOLYNEUX, JOHN I; MOLYNEUX, KRISTY	37-7651	Decreed	8/2/1977	IRRIGATION	2.05	591
MOLYNEUX, JOHN I; MOLYNEUX, KRISTY	37-11430	Decreed	5/1/1982	IRRIGATION	2.4	591
MOLYNEUX, WILLIAM L	37-2570	Decreed	6/13/1955	IRRIGATION	1.75	110
MOLYNEUX, WILLIAM L	37-11426	Decreed	6/13/1970	IRRIGATION	0.3	110
NACHTMAN, FRANK; NACHTMAN, JANET	37-20704	License	4/8/2002	COMMERCIAL STORAGE, DOMESTIC, FIRE PROTECTION, FIRE PROTECTION STORAGE, DIVERSION TO STORAGE	0.07	
NISSON, JESSE A; NISSON, JIM L	37-2496	Decreed	9/4/1950	IRRIGATION	2.36	78
NOBLE, KATHY	37-22253	License	6/30/1985	IRRIGATION	0.18	9
O BRIEN, DENNIS P	37-7775B	Decreed	8/2/1988	IRRIGATION	0.4	20
PHELPS, MATTHEW ALLEN; PHELPS, SHERRIE M	37-2624B	Decreed	10/22/1959	IRRIGATION	0.44	20



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Owner	Water Right No.	Basis	Priority Date	Usage	Diversion Rate (cfs)	Total Acres
PICABO LIVESTOCK CO	37-8875	License	5/11/1998	DOMESTIC	0.08	
PICABO LIVESTOCK CO INC	37-11911	Decreed	7/28/1959	IRRIGATION	6.18	3037.4
PICABO LIVESTOCK CO INC	37-2627A	Decreed	12/9/1959	IRRIGATION	10.65	3037.4
PICABO LIVESTOCK CO INC	37-11914	Decreed	5/1/1972	IRRIGATION	6.18	3037.4
POINT OF ROCKS RANCH LLC	37-2591	Decreed	12/24/1956	IRRIGATION	1.54	127
POINT OF ROCKS RANCH LLC	37-22129	Decreed	11/1/1960	WILDLIFE, RECREATION	0.15	
POINT OF ROCKS RANCH LLC	37-4427	Decreed	10/31/1961	IRRIGATION	1	127
PORTER, SCOTT C	37-2557H	Decreed	9/25/1954	IRRIGATION	0.12	6
PRAIRIE SUN RANCH OWNERS ASSN INC	37-21046	Decreed	10/4/1954	IRRIGATION	5.99	511
PRAIRIE SUN RANCH OWNERS ASSN INC	37-21050	Decreed	10/4/1954	IRRIGATION	0.35	28.7
PRAIRIE SUN RANCH OWNERS ASSN INC	37-21084	Decreed	4/15/1985	IRRIGATION	0.86	511
PRAIRIE SUN RANCH OWNERS ASSN INC	37-21088	Decreed	4/15/1985	IRRIGATION	0.05	28.7
RALPH W & KANDI L GIRTON 1999 REVOCABLE TRUST	37-22692	Decreed	1/29/1965	IRRIGATION	0.03	2.1
RALPH W & KANDI L GIRTON 1999 REVOCABLE TRUST	37-22693	Decreed	1/29/1965	IRRIGATION	0.03	2.1
RALPH W & KANDI L GIRTON 1999 REVOCABLE TRUST	37-22695	Decreed	1/29/1965	IRRIGATION	0.03	2
RALPH W & KANDI L GIRTON 1999 REVOCABLE TRUST	37-22696	Decreed	1/29/1965	IRRIGATION	0.03	2.1
REED, LINDA K; SAMPLE, WILLIAM K	37-604E	Decreed	6/3/1887	IRRIGATION	1.04	36
REED, LINDA K; SAMPLE, WILLIAM K	37-7775E	Decreed	8/2/1988	IRRIGATION	0.72	36
RENEGADE MC GLOCHLIN LLC	37-2444	Decreed	10/26/1931	IRRIGATION	2.52	608
RENEGADE MC GLOCHLIN LLC	37-7551	Decreed	3/20/1978	IRRIGATION	2.8	608
SANGHA, KEN; SANGHA, MALINDER	37-2518	Decreed	12/11/1950	IRRIGATION	1.8	127.2
SANGHA, KEN; SANGHA, MALINDER	37-22628	Decreed	3/26/1959	IRRIGATION	0.32	127.2
SCHMID, KATHRYN; SCHMID, STEPHEN	37-22039	Decreed	3/24/1883	IRRIGATION, MITIGATION	0.04	27.9
SCHMID, KATHRYN; SCHMID, STEPHEN	37-22041	Decreed	3/24/1883	IRRIGATION, MITIGATION	0.24	27.9
SCHMID, KATHRYN; SCHMID, STEPHEN	37-22035	Decreed	6/30/1884	IRRIGATION, MITIGATION	0.12	27.9
SCHMID, KATHRYN; SCHMID, STEPHEN	37-22033	Decreed	5/15/1885	IRRIGATION, MITIGATION	0.11	27.9
SCHMID, KATHRYN; SCHMID, STEPHEN	37-22027	Decreed	5/31/1887	IRRIGATION, MITIGATION	0.06	27.9
SCHMID, KATHRYN; SCHMID, STEPHEN	37-22031	Decreed	5/31/1887	IRRIGATION, MITIGATION	0.34	27.9
SCHMID, KATHRYN; SCHMID, STEPHEN	37-22037	Decreed	6/15/1891	IRRIGATION, MITIGATION	0.02	27.9
SCHMID, KATHRYN; SCHMID, STEPHEN	37-22029	Decreed	5/15/1892	IRRIGATION, MITIGATION	0.18	27.9
SCHMIDT, DANIEL E	37-22694	Decreed	1/29/1965	IRRIGATION	0.03	2
SCHOESSLER, KATHY	37-7612	Decreed	5/23/1977	STOCKWATER	0.05	
SHERBINE, THERESA L; SHERBINE, WILLIAM T "ROCKY"	37-2554	Decreed	8/15/1954	IRRIGATION	3.2	277
SHERBINE, THERESA L; SHERBINE, WILLIAM T "ROCKY"	37-21273	Decreed	9/21/1954	IRRIGATION	0.4	31
SHERBINE, THERESA L; SHERBINE, WILLIAM T "ROCKY"	37-21274	Decreed	9/21/1954	IRRIGATION	0.4	31
SHERBINE, THERESA L; SHERBINE, WILLIAM T "ROCKY"	37-2561	Decreed	10/13/1954	IRRIGATION	3.82	191
SHERBINE, THERESA L; SHERBINE, WILLIAM T "ROCKY"	37-2582	Decreed	9/14/1955	IRRIGATION	2.8	137
SHERBINE, THERESA L; SHERBINE, WILLIAM T "ROCKY"	37-4114	Decreed	8/18/1960	IRRIGATION	1.4	277
SHERBINE, THERESA L; SHERBINE, WILLIAM T "ROCKY"	37-21271	Decreed	12/12/1979	IRRIGATION	0.23	31
SHERBINE, THERESA L; SHERBINE, WILLIAM T "ROCKY"	37-21272	Decreed	12/12/1979	IRRIGATION	0.23	31
SHERBINE, THERESA L; SHERBINE, WILLIAM T "ROCKY"	37-22016	Decreed	5/1/1987	IRRIGATION	0.94	277
SILVER SAGE PROPERTIES LLC	37-22586	Decreed	3/29/1979	IRRIGATION	5.6	400
SLUDER, C D; SLUDER, M JOAN	37-8213	Decreed	5/21/1985	COMMERCIAL	0.09	
SLUDER, C D; SLUDER, M JOAN	37-8214	Decreed	5/21/1985	COMMERCIAL	0.81	
SLUDER, C D; SLUDER, MYRA JOAN	37-8476	License	12/2/1988	IRRIGATION, STOCKWATER, DOMESTIC	0.18	2.5
SMITH, GARY M; SMITH, PATRICIA M	37-21496	Decreed	1/29/1965	IRRIGATION	0.05	2.5
SMITH, GEOFFREY C	37-2552	Decreed	6/28/1954	IRRIGATION, DOMESTIC	1.44	97
SMITH, GEOFFREY C	37-4159	Decreed	6/22/1959	IRRIGATION	0.32	33
SMITH, GEOFFREY C	37-20629	Decreed	6/22/1959	IRRIGATION	0.34	33
SPRINGS III, RICHARD	37-7812	Decreed	1/1/1980	IRRIGATION	1.26	63

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Owner	Water Right No.	Basis	Priority Date	Usage	Diversion Rate (cfs)	Total Acres
STALKER CREEK RANCH LLC	37-2609B	Decreed	10/8/1958	IRRIGATION	1.41	75.8
STALKER CREEK RANCH LLC	37-2618	Decreed	6/29/1959	IRRIGATION	2.39	162.8
STALKER CREEK RANCH LLC	37-7800	Decreed	10/9/1979	IRRIGATION	3.75	212
STASZ, MARK A; STASZ, MEAGAN R	37-14290	Decreed	6/22/1959	IRRIGATION	0.22	11
STEVENSON JR, JOHN F; WARD, ANDREA S	37-7020	Decreed	4/30/1968	IRRIGATION	3.2	160
STEVENSON JR, JOHN F; WARD, ANDREA S	37-8003	Decreed	5/1/1982	IRRIGATION	2.68	134
STEVENSON, JOHN F	37-2576	Decreed	7/13/1955	IRRIGATION	4.69	521.1
STEVENSON, JOHN F	37-2649A	Decreed	1/27/1961	IRRIGATION	4.24	397
STEVENSON, JOHN F	37-2649B	Decreed	1/27/1961	IRRIGATION	3.2	397
STEVENSON, JOHN F	37-2656	Decreed	4/27/1961	IRRIGATION	3.02	152
STEVENSON, JOHN F	37-2681	Decreed	12/8/1961	IRRIGATION	4.5	521.1
STEVENSON, JOHN F	37-22736	Decreed	10/28/1974	IRRIGATION	2.88	146
STEVENSON, JOHN F	37-7645	Decreed	8/8/1977	IRRIGATION	3	158
STEVENSON, JOHN F	37-7644	Decreed	8/20/1977	IRRIGATION	2.02	139.5
STEVENSON, JOHN F	37-22738	Decreed	9/20/1977	IRRIGATION	5.91	295.3
STEVENSON, JOHN F	37-22740	Decreed	10/18/1980	IRRIGATION	1.56	78
STEVENSON, JOHN F	37-8117	License	6/2/1983	IRRIGATION	1.24	77
STEVENSON, JOHN F	37-8196	Decreed	10/29/1984	IRRIGATION	1.83	152
STRUTHERS, ROBERT J	37-2593	Decreed	2/1/1957	IRRIGATION	0.05	2.5
TEDESCO, JOHN A; TEDESCO, MEGAN; TEDESCO, SAMANTHA	37-20494	Decreed	1/29/1965	IRRIGATION	1.1	55.9
THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-2683A	Decreed	8/23/1961	IRRIGATION	1.16	200.1
THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-7349A	License	3/7/1974	IRRIGATION	1.17	200.1
THE NATURE CONSERVANCY	37-2580	Decreed	9/1/1955	IRRIGATION	2.01	160
THE NATURE CONSERVANCY	37-2609C	Decreed	10/8/1958	IRRIGATION	2.02	120
THOMAS M O GARA FAMILY TRUST	37-20639	Decreed	6/15/1946	IRRIGATION	2.45	3437
THOMAS M O GARA FAMILY TRUST	37-20640	Decreed	6/15/1946	WILDLIFE STORAGE, DIVERSION TO STORAGE	0.09	
THOMAS M O GARA FAMILY TRUST	37-20637	Decreed	2/12/1947	IRRIGATION	1.58	3437
THOMAS M O GARA FAMILY TRUST	37-20638	Decreed	2/12/1947	WILDLIFE STORAGE, DIVERSION TO STORAGE	0.06	
THOMAS M O GARA FAMILY TRUST	37-804	Decreed	4/1/1947	IRRIGATION	1.82	3437
THOMAS M O GARA FAMILY TRUST	37-2502	Decreed	5/3/1949	IRRIGATION	5	3437
THOMAS M O GARA FAMILY TRUST	37-2568	Decreed	4/25/1955	IRRIGATION	3.2	3437
THOMAS M O GARA FAMILY TRUST	37-2581	Decreed	8/16/1955	IRRIGATION	3	3437
THOMAS M O GARA FAMILY TRUST	37-2599	Decreed	9/30/1957	IRRIGATION	1.5	3437
THOMAS M O GARA FAMILY TRUST	37-2604	Decreed	7/29/1958	IRRIGATION	2.5	3437
THOMAS M O GARA FAMILY TRUST	37-2616	Decreed	6/3/1959	IRRIGATION	2.98	3437
THOMAS M O GARA FAMILY TRUST	37-20635	Decreed	3/8/1977	IRRIGATION	8.88	3437
THOMAS M O GARA FAMILY TRUST	37-20636	Decreed	3/8/1977	WILDLIFE STORAGE, DIVERSION TO STORAGE	0.32	
THOMAS M O GARA FAMILY TRUST	37-7663	Decreed	8/25/1977	IRRIGATION, STOCKWATER, DOMESTIC	0.1	1
THOMAS M O GARA FAMILY TRUST	37-7758	Decreed	2/6/1979	IRRIGATION	3.5	3437
THOMAS M O GARA FAMILY TRUST	37-8116	License	6/6/1983	IRRIGATION	0.03	1.6
THOMAS M O GARA FAMILY TRUST	37-20899	License	12/16/2002	WILDLIFE STORAGE, RECREATION STORAGE	0	
THREE CREEKS RANCH LLC	37-7811	License	12/5/1979	IRRIGATION	3.36	168
TRASK, TERRANCE P	37-8011B	Decreed	5/31/1982	IRRIGATION	0.1	5
WALBERT, CINDRA L PALMER; WALBERT, MICHAEL E	37-8536	License	7/27/1989	IRRIGATION, STOCKWATER	1.85	108
WALKER SAND & GRAVEL LTD CO	37-8136	Decreed	6/1/1983	INDUSTRIAL	0.97	
WALKER SAND & GRAVEL LTD CO	37-8532	License	7/20/1989	INDUSTRIAL	1.43	
WALKER SAND & GRAVEL LTD CO	37-20833	License	11/15/2002	IRRIGATION	0.48	24.1
WALKER SAND & GRAVEL LTD CO	37-20834	License	11/15/2002	INDUSTRIAL	3.47	
WALKER SAND & GRAVEL LTD CO	37-22380	License	9/27/2008	INDUSTRIAL, DOMESTIC	3.61	
WALTERS READY MIX INC	37-23202	Decreed	12/14/1974	INDUSTRIAL	0.02	

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WALTERS, CHARLENE B; WALTERS, DAVID	37-23100	License	7/15/1996	INDUSTRIAL	0.92	
WARBERG, ANN MARIE	37-22829	Decreed	6/10/1983	IRRIGATION, STOCKWATER	0.06	5.1
WEBB LANDSCAPE INC	37-22328	Decreed	12/14/1974	IRRIGATION	0.12	9
WEBB, DOUG	37-8411	License	10/6/1988	COMMERCIAL	0.18	
WEBB, DOUG	37-8412	License	10/6/1988	COMMERCIAL, DOMESTIC	0.11	
WEBER, ANNETTE	37-21667	Decreed	9/25/1954	IRRIGATION	0.1	5
WEEMS, MICHAEL J; WEEMS, RUTH	37-7452	Decreed	8/20/1975	IRRIGATION, DOMESTIC	0.22	9
WICKED GAMES INC	37-23257	Decreed	5/18/1977	IRRIGATION	2.03	122.8
WOOD RIVER LAND TRUST CO	37-2505	Decreed	6/9/1949	IRRIGATION	1.4	70
WOOD RIVER LAND TRUST CO	37-25468	Decreed	9/28/1953	IRRIGATION	0.66	33
WORTHINGTON, JUNE I; WORTHINGTON, KENNETH D	37-8137	Decreed	6/30/1983	IRRIGATION, STOCKWATER, DOMESTIC	0.13	13

## EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the service date of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
  - (a) The petition for reconsideration is disposed of; or
  - (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.
- (7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.



(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, 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.

### **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: a) of 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.