



April 7, 2025

Idaho Department of Water Resources
c/o Mr. Brian Ragan
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Five Rivers' Comments in response to the Director's Notice of Proposed Action, Public Hearing, and Written Comment Period for the Proposed Expansion of the Eastern Snake Plain Aquifer Area of Common Ground Water Supply to Include the Raft Tributary Basin

Dear Mr. Ragan:

I write on behalf of Five Rivers Cattle Feeding, LLC ("Five Rivers") in response to the Director's Notice of Proposed Action potentially expanding the Eastern Snake Plain Aquifer Area's ("ESPA") footprint. Five Rivers operates the Interstate Feedlot, located near Malta, Idaho in the Raft River Valley. At Interstate Feedlot, Five Rivers operates a cattle-feeding operation, feed mill, and irrigates over 850 acres of farmland.

Five Rivers urges the Idaho Department of Water Resources ("IDWR") to not extend the ESPA "Area of Common Ground Water Supply" ("ACGWS") to tributary basins located in the State Water District Number 143 (Raft River Basin) shaded blue in the below image, including those areas that are already designated as critical groundwater management areas ("CGWMAs").



Including Five Rivers water rights within the ESPA ACGWS boundary poses a substantial risk of injury not only to Five Rivers, but also the Raft River Valley community. Five Rivers' water rights are essential to operating its cattle and crop business. Without consistent access to groundwater, in the full volumes and rates allowed under its water rights, Five Rivers cannot maintain its current production capacity, or otherwise derive full economic value from its properties.

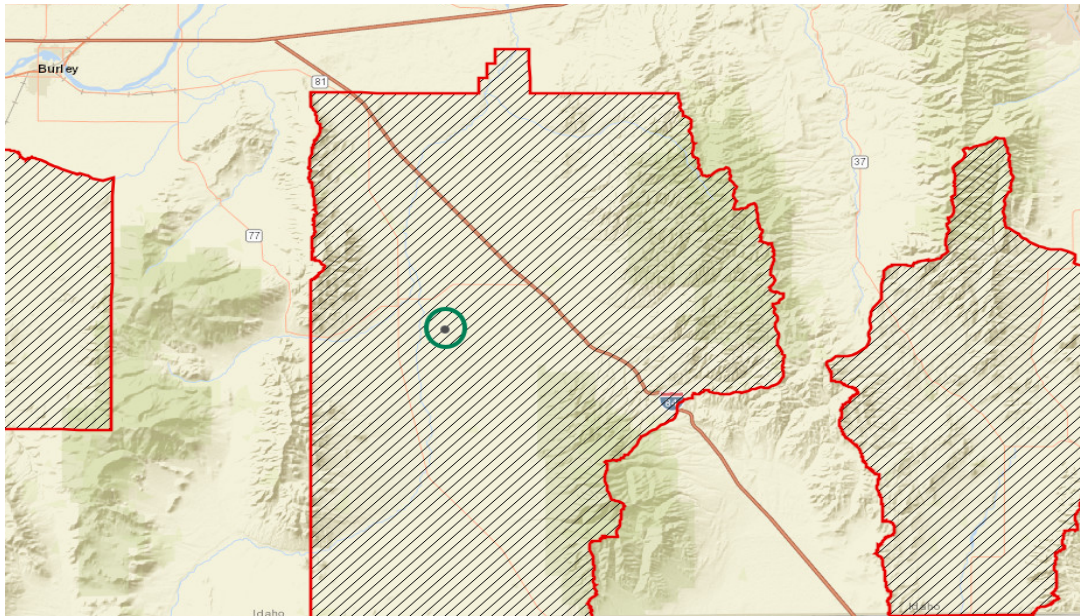
The Raft River Valley is a small community and Interstate Feedlot is a core community supporter. Interstate Feedlot employs 38 people, providing these employees with stable careers and advancement opportunities. Further, Five Rivers maintains extensive contracts with local farmers, crop producers, and product suppliers, supporting the community's economy. If Five Rivers' water rights are impaired and it cannot maintain operations at current levels, the harm or threat of harm from potential reduced operations would be felt beyond the Five Rivers' fence line. Five Rivers urges IDWR to not expand the ESPA ACGW reach at this time because groundwater users in the Raft River District should be afforded the opportunity to coordinate their own groundwater management prescriptions prior to IDWR's ESPA ACGWS expansion, as more fully detailed below.

I. Five Rivers' Property Interests

Five Rivers holds the following groundwater rights that have points of diversion and/or places of use covered by the Director's Notice of Proposed Action: 43-2436A (priority date Jan. 4, 1957); 43-2437 (priority date Mar. 5, 1956); 43-2438A (priority date Jan. 1, 1957); 43-2442 (priority date Mar. 5, 1956); and 43-4006 (priority date Apr. 29, 1952).

There are already limiting conditions associated with each of these rights. For example, each of Five Rivers' water rights is conditioned upon being included in State Water District No. 143. Another condition requires Five Rivers to maintain an IDWR-approved measuring device and lockable controlling works that provide a watermaster with suitable control of the water diversions.

Further, Interstate Feedlot is located within a CGWMA. By virtue of being located within a CGWMA, Five Rivers is already subject to certain oversight, regulation, and prohibitions that other water users may not be subject to. Under Idaho Code, a CGWMA designation creates a three-fold management approach. First, new appropriations even outside the CGWMA boundaries can be limited by the Director. In this instance, Idaho Code § 42-233a empowers the Director to require groundwater recharge when a permit applicant seeks to appropriate more than 10,000 acre-feet of water per year and that the withdrawal of such amount will "substantially and adversely affect existing pumping levels" or will "substantially and adversely affect water available for withdrawal from such basin or basins under existing water rights." Second, when there has been an application to appropriate water within the CGWMA and there are insufficient water resources available, the Director may deny the application for permit. Idaho Code § 42-233a. Third, the Director may also require all water right holders within the CGWA to report withdrawals and other necessary information for determining available groundwater supplies for their usage. *Id.* These restrictions do not apply to those water users located outside the CGWMA's boundaries, as shown below.



1 Critical Groundwater Management Area Boundary (with Five Rivers' location indicated by green circle)

Under Idaho's Groundwater District Act, Idaho Code § 42-5201, et seq., landowners holding groundwater irrigation rights may organize their own groundwater districts. Here, the relevant district is the Raft River Groundwater District ("RRGWD"), created in 2006. RRGWD performs ground water measurement, monitoring, and study; "develop[s], operate[s], implement[s] and maintain[s] mitigation and recharge plans designed to mitigate any material injury caused by ground water use within the district upon senior water uses within and/or without the district," and other duties outlined in Idaho Code § 42-5224.

Five Rivers works cooperatively with RRGWD to conduct measurements and perform inspections at least annually. If RRGWD identifies inefficiencies, it communicates with Five Rivers so that Five Rivers can make necessary repairs or updates to its diversion equipment. Beyond its involvement with Five Rivers, the RRGWD is currently engaged in substantive, meaningful efforts to conserve groundwater, including developing a new groundwater management plan. It is important that these plans be allowed to proceed to completion before the Raft River Basin is wholesale included within the ESPA ACGWS as detailed below.

II. A groundwater management plan should be completed and evaluated before expanding the ESPA ACGWS.

Under Idaho Code § 42-233c, IDWR's Director "shall not expand the area having a common ground water supply for the eastern Snake plain aquifer to include areas that have been designated as a critical ground water area" unless the Director first determines that "the existing ground water management plan for such tributary basin is insufficient to manage the effects of ground water withdrawals on the aquifer from which withdrawals are made and on any other hydraulically connected sources of water, including the eastern Snake plain aquifer."

In 2016, the RRGWD approved a Critical Ground Water Management Plan ("2016 Plan") which created a three-fold approach to groundwater management. First, the 2016 Plan created a volume reduction program based on priority date. Second, the 2016 Plan involved voluntary land

following. And third, the 2016 Plan created a recharge program.¹ It is Five Rivers’ understanding that IDWR never approved the 2016 Plan, and that the IDWR has not engaged with groundwater users or the public to determine the sufficiency of the 2016 Plan. It is further Five Rivers’ understanding that RRGWD intends to submit a new groundwater management plan in the near future and is currently working with groundwater users in such development.

IDWR has no specific rules outlining what must be included in a “ground water management plan” contemplated under Idaho Code § 42-233c. Nor are there any rules specifying when a ground water management plan is “sufficient.” See Idaho Code § 42-233a (providing that IDWR’s Director “may approve a ground water management plan for the area”). Generally, a ground water management plan must “provide for managing the effects of ground water withdrawals on the aquifer from which withdrawals are made and any hydraulically connected sources of water.” *Id.* IDWR’s approach has been to utilize technical expertise to determine when the groundwater budget is balanced. When the groundwater budget is balanced, a groundwater management plan is considered sufficient.

IDWR is not without guidance here. IDWR’s Conjunctive Management of Surface and Ground Water Resources Rules, IDAPA 37.03.11 (“CM Rules”) create a comprehensive framework by which IDWR handles a senior water user’s delivery call. *S. Valley Ground Water Dist. v. Idaho Dep’t of Water Res.*, 548 P.3d 734, 752 (Idaho 2024). Under the CM Rule framework, IDWR undergoes certain procedures in response to a water delivery call. See, e.g., procedures when there is a ground water management area (Rule 41). Generally, under these rules, water users may submit “mitigation plans” for approval by the Director to avoid curtailment. IDAPA 37.03.11.043 (Rule 43). A mitigation plan is a document “submitted by the holder(s) of a junior-priority ground water right and approved by the Director as provided in Rule 043 that identifies actions and measures to prevent, or compensate holders of senior-priority water rights for, material injury caused by the diversion and use of water by the holders of junior-priority ground water rights within an area having a common ground water supply.” IDAPA 37.03.11.010.15.

Here, it is not clear that IDWR ever determined whether the RRGWD’s 2016 groundwater management plan was insufficient to “manag[e] the effects of ground water withdrawals on the aquifer from which withdrawals are made and any hydraulically connected sources of water.” And, since then, there have been major factual developments. For example, in 2019, the Idaho Geologic Survey partnered with IDWR and the Idaho Water Resource Board to conduct a four-year hydrologic characterization of the Raft River Basin. The results of this study were released in August 2024.² The RRGWD and water users, including Five Rivers, should therefore be given the opportunity to implement study findings into an updated groundwater management plan prior to IDWR’s expansion of the ESPA ACGWS. Further, more information should be evaluated to understand how water use on the Raft River in Utah impacts Idaho water supply.

¹RRGWD, Critical Groundwater Area Management Plan (June 13, 2016), available at <https://idwr.idaho.gov/wp-content/uploads/sites/2/groundwater-mgmt/20160615-Raft-River-GWD-Management-Plan.pdf>,

² Alexis Clark, Idaho Geological Survey, Hydrogeologic Framework and Groundwater Budget for the Raft River Basin, Idaho - Utah (August 2024), <https://www.idahogeology.org/pub/Bulletins/B-32.pdf>.

Here, including the Raft River Basin CGWMA within the ESPA ACGWS boundary seemingly puts the cart before the horse. Given that a groundwater management plan and mitigation plan have common goals, RRGWD should be afforded the opportunity to create a current ground water management plan protective to those senior-priority groundwater right holders, to be evaluated by IDWR under the same or similar standards to those outlined for mitigation plans under the CM Rules.

III. Five Rivers' sustainability efforts merit consideration before being included in the ESPA ACGWS.

Five Rivers consistently strives to use its groundwater efficiently. For example, Five Rivers uses high-efficiency irrigation methods. Instead of using traditional flood irrigation, Five Rivers has converted to a pivot system. Five Rivers operates the sprinklers on its irrigation pivots as close-to-the-ground as possible to minimize evaporation. Five Rivers also uses meters to track how much water is used to ensure and alert feedlot managers if there are any water loss issues.

Five Rivers is also a charter member of the U.S. Roundtable for Sustainable Beef, a multi-stakeholder initiative developed to advance sustainability improvements in the U.S. beef value chain. This organization has created elaborate frameworks for different beef industry sectors to improve sustainability, including one for the feedyard sector.³ Five Rivers implements the Roundtable's Feedyard Framework to the best of its ability to improve water-related sustainability at the Interstate Feedlot.

Five Rivers is not alone in these efforts. Many other junior groundwater users within the Raft River Basin implement similar controls given their location in the arid west. Further there are currently substantial efforts underway to evaluate and improve recharge in this area, including the United States Department of Agriculture's Natural Resource Conservation Service's Raft River Watershed Project, the Raft River Recharge Group's Raft River Pipeline Project, and the Idaho Water Resources Board's grant to the RRGWD for the improvement of existing agricultural wells. Yet, despite these efforts, the Director's Proposed Action including Raft River Basin water users within the ESPA ACGWS puts these users at risk for disproportionate restrictions, given their location alone.

IV. Conclusion

Water rights are an important property interest. *Nettleton v. Higginson*, 98 Idaho 87, 90, 558 P.2d 1048, 1051 (1977). Inclusion within the ESPA ACGWS could leave Five Rivers susceptible to further limits on its water use. Thus, Five Rivers urges IDWR to pause this action at least until the RRGWD has an opportunity to develop a groundwater management plan in communication and consultation with groundwater users, especially those with more senior water rights.

Thank you for the opportunity to provide these comments. If you have questions on these comments, please let me know. Five Rivers requests that these comments be made a part of the official administrative record in this matter. Please also include Five Rivers on any mailing lists, so that it may receive further notifications or communications regarding this matter. This request includes, without limitation, receiving copies of any preliminary or final Director's orders, or any

³ See U.S. Roundtable for Sustainable Beef, U.S. Beef Industry Sustainability Framework (Mar. 1, 2019), https://www.usrsb.org/media/usrsb2024/docs/master_030220_framework_-final.pdf.

instructions directing groundwater districts to coordinate the creation of a groundwater management plan.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom McDonald", is positioned above the typed name.

Tom McDonald
Senior Vice President, Environmental
and Sustainability
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