

JUN 26 2015

DEPARTMENT OF
WATER RESOURCES

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

**IN THE MATTERS OF THE BIG WOOD
 RIVER AND LITTLE WOOD RIVER
 DELIVERY CALLS**

**DOCKET NOS. CM-DC-2015-001 &
 CM-DC-2015-002**

AFFIDAVIT OF CHRIS M. BROMLEY

STATE OF IDAHO)
) ss.
 County of Ada)

CHRIS M. BROMLEY, being first duly sworn upon oath, deposes and says:

1. I am an attorney representing the City of Bellevue, am over the age of 18, and state the following based upon my own personal knowledge.
2. Attached hereto as **Exhibit A** is a true and correct copy of the Idaho Department of Water Resources' ("IDWR") *Preliminary Order, In the Matter of The Proposed Combination of Water District Nos. 37, 37A, 37C and 37M and the Inclusion of Both Surface and Ground Water Rights in the Combined Water District; and In the Matter of Abolishing the Upper Wood Rivers Water Management District*, dated September 17, 2013 ("Preliminary Order"). The Preliminary Order became a Final Order, by operation of law on October 4, 2013.

3. Attached hereto as **Exhibit B** is a true and correct copy of the pertinent pages of the October 1, 2014, *Idaho Administrative Bulletin*, Volume 14-10, in which IDWR notified the public of its adoption of its pending rulemaking, repealing CM Rule 50.

4. Attached hereto as **Exhibit C** is a true and correct copy of the pertinent pages of the December 3, 2014, *Idaho Administrative Bulletin*, Volume 14-12, in which IDWR notified the public of its adoption of its pending rulemaking, repealing CM Rule 50, and striking reference to CM Rule 50 in CM Rule 20.07.

5. Attached hereto as **Exhibit D** is a CD of the audio recording of the February 9, 2015, House Resources & Conservation Committee Meeting, and the February 11, 2015 Senate Resources & Environment Committee Meeting, at which the IDWR Director and a member of his staff testified about Docket No. 37-031101101 – the Director’s proposed repeal of IDAPA 37.03.11.050 (“CM Rule 50”). The audio recordings were obtained from the Idaho Legislature’s website at http://164.165.67.41/IIS/2015/Senate/Committee/Resources%20&%20Environment/150211_sr&e_0130PM-Meeting.mp4 and http://164.165.67.41/IIS/2015/House/Committee/Resources%20&%20Conservation/150209_hres_0130PM-Meeting.mp4.

6. Attached hereto as **Exhibit E** is a true and correct copy of a transcript of portions of the February 9, 2015, House Resources & Conservation Committee Meeting, at which the IDWR Director and a member of his staff testified about Docket No. 37-031101101 – the Director’s proposed repeal of IDAPA 37.03.11.050 (“CM Rule 50”). The transcript was created from the audio recording, obtained from the Idaho Legislative Services Office, by staff at Givens Pursley, LLP.

7. Attached hereto as **Exhibit F** is a true and correct copy of the minutes from the February 9, 2015, House Resources & Conservation Committee Meeting at which the Director

and a member of his staff testified about Docket No. 37-031101101 – the Director’s proposed repeal of CM Rule 50.

8. Attached hereto as **Exhibit G** is a true and correct copy of the Idaho Department of Water Resources’ (“IDWR”) *Final Order, In the Matter of Petition to Amend Rule 50*, dated August 29, 2014.

9. Attached hereto as **Exhibit H** is a true and correct copy of a transcript of portions of the February 11, 2015 Senate Resources & Environment Committee Meeting, at which the IDWR Director and a member of his staff testified about Docket No. 37-031101101 – the Director’s proposed repeal of CM Rule 50. The transcript was created from the audio recording, obtained from the Idaho Legislative Services Office, by staff at Givens Pursley, LLP.

10. Attached hereto as **Exhibit I** is a true and correct copy of the minutes from the February 11, 2015, Senate Resources & Environment Committee Meeting at which the Director and a member of his staff testified about Docket No. 37-031101101 – the Director’s proposed repeal of CM Rule 50.

11. Attached hereto as **Exhibit J** is a true and correct copy of House Concurrent Resolution No. 10, 63rd Legislature, First Regular Session, 2015, in which the Legislature declared IDWR’s proposed rulemaking regarding CM Rule 50 not consistent with legislative intent; thus declaring the proposed rulemaking null, void and of no force and effect.

12. Attached hereto as **Exhibit K** is a true and correct copy of the Statement of Purpose / Fiscal Note, RS23634, related to IDWR’s proposed rulemaking regarding repeal of CM Rule 50.

13. Attached hereto as Exhibit L is a true and correct copy of the pertinent pages of a PowerPoint prepared by IDWR staff, and presented at the Director's May 4, 2015 status conference in the above-captioned delivery calls in Shoshone, Idaho.

14. Attached hereto as Exhibit M is a true and correct copy of a letter from Director Gary Spackman to Water Users re: Petition to Amend Rule 50 Filed by Clear Springs Foods, Inc., p. 1 (Apr. 11, 2014) ("April 2014 Letter").

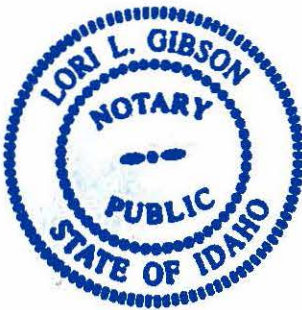
DATED this 26th day of June, 2015.


MCHUGH BROMLEY, PLLC



Chris M. Bromley
Attorneys for City of Bellevue

SUBSCRIBED AND SWORN to before me this 26th day of June, 2015.




Notary Public for the State Of Idaho
Residing at Bose
My Commission Expires: Aug. 23 2019

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of June, 2015, the foregoing was filed, served, and copied as follows:

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EXHIBIT A



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

September 19, 2013

RE: Preliminary Order Combining Water Districts in Basin 37 and Inclusion of both Surface and Ground Water Rights in the Combined Water District; and Abolishing the Upper Wood Rivers Water Measurement District

Dear Water Right Holder,

Enclosed please find a copy of the Preliminary Order regarding the above referenced matter. This order creates a new water district for administration of surface water and ground water rights in the Camas Creek drainage area, including merger of Water Districts 37A and 37C with the new district; combines Water Districts 37 and 37M and includes ground water rights from the Upper Wood River Valley and the Silver Creek drainage in the combined district; and abolishes the Upper Wood Rivers Water Measurement District. The records of the Idaho Department of Water Resources ("Department" or "IDWR") show that you own or have an interest in one or more water rights that are located within the water districts or water measurement district affected by the enclosed Preliminary Order.

Also enclosed is an informational sheet that explains options for responding to preliminary orders. Please note that any party subject to the order may file a petition for reconsideration within fourteen (14) days of the service date of the order, which is the date of this letter. The Department will act upon petitions within twenty-one (21) days of their receipt.

The Department will send a separate notice to water users specifying a date, time and location of annual meetings for the new or revised water districts. The water users present at the meetings must consider election of a watermaster, selection of an advisory committee and adoption of a budget. IDWR will organize a steering committee of representative water users within the districts to assist with preparation for the annual meetings. IDWR is considering scheduling at least one steering committee for each water district prior to the annual meetings. If you are interested in participating in a steering committee, please contact Tim Luke, IDWR at 208-287-4959 or by e-mail at tim.luke@idwr.idaho.gov.

Please contact this office or the IDWR regional office in Twin Falls (208-736-3033) if you have any questions concerning the attached order.

Sincerely,

Tim Luke
Water Compliance Bureau

Enclosures: *Preliminary Order*
Responding to Preliminary Orders issued by IDWR

c: IDWR Southern Region

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

IN THE MATTER OF THE PROPOSED)
COMBINATION OF WATER DISTRICT NOS.)
37, 37A, 37C AND 37M AND THE INCLUSION)
OF BOTH SURFACE WATER AND GROUND)
WATER RIGHTS IN THE COMBINED WATER)
DISTRICT; AND IN THE MATTER OF)
ABOLISHING THE UPPER WOOD RIVERS)
WATER MEASUREMENT DISTRICT)
_____)

PRELIMINARY ORDER

The Director ("Director") of the Idaho Department of Water Resources ("Department") is required by statute to divide the state into water districts for the purpose of performing the essential governmental function of distributing water among appropriators under the laws of the State of Idaho. *In re Idaho Dept. of Water Res. Amended Final Order Creating Water Dist. No. 170*, 148 Idaho 200, 211, 220 P.3d 318, 329 (2009). Idaho Code § 42-604 provides the Director with discretion in determining how these mandatory water districts shall be structured, allowing the Director to create new districts, revise existing districts, or even abolish districts, as the Director finds necessary for the efficient distribution of water resources. *Id.* Idaho Code § 42-706 authorizes the Director to create or abolish a water measurement district if such action is required to properly administer water uses. Based upon the record in this matter, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. Water District No. 37 ("WD37") includes surface water sources and water rights in the Big Wood and Malad River drainages excluding Water District Nos. 37M, 37A and 37C, and is located within portions of Blaine, Camas, Lincoln and Gooding Counties. WD37 annually elects a watermaster and adopts a budget to provide for the distribution of water from the Big Wood River and tributaries in accordance with the priorities of the water rights from those sources. WD37 has provided annual water delivery reports since 1920.
2. Water District No. 37M ("WD37M") includes surface water sources and water rights in the Little Wood River drainage area from the mouth of Silver Creek to the confluence of the Big Wood River, including the Silver Creek drainage, and is located within portions of Blaine, Camas, Lincoln and Gooding Counties. WD37M annually elects a watermaster and adopts a budget to provide for the distribution of water from the Little Wood River and Silver Creek drainage in accordance with the priorities of the water rights from those sources. WD37M has provided annual water delivery reports since 1920.
3. WD37 and WD37M share the same watermaster, administrative staff and office. This practice of sharing staff and office resources along with submittal of combined annual reports for the two districts has occurred since 1921. Although the two districts still maintain separate budgets, they have in recent years combined their annual meetings to jointly adopt the same resolutions and select a common advisory committee.

4. Water District No. 37A (“WD37A”) includes surface water sources and water rights in the Corral Creek drainage located in Camas County. Corral Creek is tributary to Camas Creek. WD37A has been an inactive water district for over 33 years.

5. Water District No. 37C (“WD37C”) includes surface water sources and water rights in the Soldier Creek drainage located in Camas County. Soldier Creek is tributary to Camas Creek. WD37C has been an active water district over the past twenty years. The district holds annual meetings and elects a watermaster but does not consistently provide annual meeting minutes or other reports required of water districts pursuant to chapter 6, title 42, Idaho Code.

6. In 1980, the Director issued a policy memorandum declaring surface water in the Big Wood River basin upstream from Magic Reservoir, including Camas Creek, was fully appropriated.

7. On June 28, 1991, the Director issued an order creating the Big Wood River Ground Water Management Area pursuant to Idaho Code § 42-233b. The management area included ground water located within the Wood River Valley and the Camas Creek drainage above Magic Reservoir, and the Silver Creek/Bellevue triangle area. Finding of Fact 2 from the order stated the following:

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.

8. On September 21, 2011, the Department created the Upper Wood Rivers Water Measurement District (“UWRWMD”) for the purpose of measuring and reporting ground water diversions located within the Department’s Administrative Basin No. 37 (“Basin 37”) and the Upper Big and Little Wood River drainages outside of the Eastern Snake Plain Aquifer (“ESPA”).¹ The measurement district included ground water rights in the Camas Creek drainage area. Camas Creek is tributary to the Big Wood River at Magic Reservoir.

9. On February 20, 2013, the Snake River Basin Adjudication (“SRBA”) District Court issued an order authorizing the Director to distribute water pursuant to chapter 6, title 42, Idaho Code, in accordance with the Director’s Reports and partial decrees that have superseded the Director’s Reports for those surface and ground water rights located in Basin 37, part 2 (Camas and Clover Creek drainage areas) and part 3 (Upper Big and Little Wood River drainage areas). The District Court’s order found that “interim administration ... is reasonably necessary to efficiently administer water rights and to protect senior water rights.”

10. On July 10, 2013, the Director prepared a notice of public hearing proposing the following actions pursuant to the provisions of Idaho Code §§ 42-604 and 42-706:

- i. Combine WD37, WD37M, WD37A and WD37C;
- ii. Include surface water rights from the Camas Creek drainage in the combined water district, except surface water rights used for domestic and stock water purposes as defined by Idaho Code §§ 42-111 and 42-1401A(11) and surface water rights used for in-stream watering of livestock as defined by Idaho Code § 42-113;

¹ The UWRWMD included ground water rights located within the Snake River Basin Adjudication reporting areas of Basin 37, Parts 2 and 3.

- iii. Include in the combined water district ground water rights from the UWRWMD overlying the combined district in that portion of Basin 37 outside of the ESPA, except ground water rights for domestic and stock water uses as defined by Idaho Code §§ 42-111 and 42-1401A(11); and,
- iv. Abolish the UWRWMD.

The notice was sent by regular U.S. Mail on July 12, 2013, to each holder of a water right affected by the proposed actions above except holders of ground water rights used for domestic and stock water purposes as defined by Idaho Code §§ 42-111 and 42-1401A(11), and surface water rights used for in-stream watering of livestock as defined by Idaho Code § 42-113. The hearing notice described the proposed actions, the reasons therefore, and the time and place for a hearing to be held on July 30, 2013 concerning the proposed actions. The notice also provided a time period within which written comments on the proposed action would be accepted.

11. The notice explained that the proposed combination and revision of water districts is necessary in order to properly administer the water uses and water rights from both surface water and ground water sources in the combined water district area. The notice also explained that the UWRWMD was created in 2011 for the purpose of measuring and reporting ground water right diversions only and that regulation of ground water rights within the UWRWMD can only be accomplished through a water district created or modified pursuant to Idaho Code § 42-604.

12. On July 30, 2013, commencing at approximately 6:30 p.m. at the Blaine County School District Community Campus Auditorium in Hailey, Idaho, the Department conducted a public hearing concerning the proposed combination and revisions of water districts, and the abolishment of the UWRWMD. Allen Merritt, the Department's Southern Regional Manager, presided as hearing officer. Approximately 65 people attended the hearing.

13. The hearing officer initiated the hearing by explaining the hearing process. Department representative Tim Luke gave a presentation that described the proposed water district combination and revisions, the features and operation of water districts, the reasons for the proposed actions, and the rights and uses proposed to be included in the combined water district. The Department presented the following reasons for the proposed actions:

- Combining surface water rights from WD37 and WD37M will formalize a merger that has essentially been accomplished for a number of years. Combining the two districts will promote efficiency by eliminating dual budgets and duplication of certain processes.
- Ground water rights in the UWRWMD and most surface water rights in the Camas Creek drainage are not currently included in a water district subject to administration by a watermaster in an active water district. The UWRWMD has no authority to regulate ground water rights and is limited to measurement and reporting of ground water diversions only. Water rights not currently included in a water district whose sources of water have been adjudicated must be placed in a water district pursuant to Idaho Code § 42-604 "to properly administer uses of the water resource."
- The proposed combination of water districts and inclusion of surface water and ground water rights in one water district will provide for proper conjunctive administration of surface and ground water rights and the protection of senior priority water rights.
- The proposed combination of water districts and inclusion of surface water and ground water rights in one water district will provide for consistent, cost effective and efficient water district operations.
- Maintaining all of the ground water rights from the UWRWMD in one water district with surface water rights from WD37/37M will provide a consistent organizational structure

that can manage the measurement of ground water diversions as required by the Department.

- About 100 ground water rights in the Wood River Valley above Magic Reservoir and in the Silver Creek drainage are already regulated by the WD37/WD37M watermaster. Most of these rights require WD37/37M watermaster control because they are mitigated by surface water rights or because ground water is commingled with surface water sources. The Department believes it is more efficient and practical for all the ground water rights in the same area to be administered by one water district rather than separate water districts. It is not practical to remove the approximate 100 ground water rights in WD37 and WD37M to a separate water district given the existing watermaster control conditions and relationship with surface water rights and sources.
- The proposed combination of water districts and inclusion of surface water and ground water rights in one water district would simplify administration of the SRBA General Provisions for Basin 37, Part 2. These provisions stipulate that a large number of surface water rights in the Camas drainage are to be administered separately from all other rights in Basin 37. An additional but much smaller group of surface water rights are to be administered separately from all other water rights in Basin 37 but certain rights held by the Big Wood Canal Company may call for water delivery of water against this smaller group. All other Camas drainage surface water rights not listed in these General Provisions, and all Camas drainage ground water rights are to be administered with other water rights in Basin 37.
- Abolishing the UWRWMD is necessary if ground water rights in the UWRWMD are placed in a water district.

14. Following the presentation, the hearing officer provided time for hearing participants to ask questions' regarding the Department's proposed actions.

15. Persons attending the hearing were provided an opportunity to make oral statements for the record. In addition, the hearing officer held the record open through August 9, 2013 to receive written testimony.

16. Eleven (11) individuals testified at the hearing. Thirteen (13) individuals submitted written comments, including four (4) of the individuals who testified at the July 30, 2013 public hearing. One of the individuals submitting both oral testimony and written comments represented two separate groups of affected water users.

17. Five (5) individuals holding water rights or representing the holders of water rights within the Camas drainage testified against the Department's proposal to include the Camas drainage in a combined water district with water rights from WD37/37M and ground water rights from the Big Wood River Valley upstream of Magic Reservoir and the Silver Creek drainage. These five individuals proposed a single water district for the Camas drainage composed of both surface water and ground water rights, including rights from WD37A and WD37C. Four (4) additional individuals submitted written comments in supporting a separate Camas drainage water district.

18. Jim Speck, one of the five individuals who testified in support of a separate Camas drainage water district, spoke as a representative of numerous surface water and ground water right holders in the Camas drainage who had signed petitions requesting the Department "to create a new and separate water district for the administration of our rights and not add them to Water District 37." Copies of the signed petitions with associated water right owner names and water right identification

numbers were submitted to the Department before the close of the written comment period. Mr. Speck testified that fifty-four (54) of seventy-seven (77) surface water users, and thirty-nine (39) of forty-one (41) ground water users in the Camas drainage had signed petitions supporting a separate water district. Mr. Speck further testified that the users signing the petitions supported the merger or inclusion of WD37A and WD37C with all other surface and ground water rights in the Camas drainage under one water district separate from WD37.

19. Reasons cited by the supporters of a separate water district for surface water and ground water rights in the Camas Creek drainage, including rights from WD37A and WD37C include:

- The Camas drainage area aquifer is different and separate from the Wood River Valley aquifer and the two aquifers are not connected. The two aquifers may be considered “independent” sources of water supply in accordance with Idaho Code § 42-604, thereby justifying creation of separate water districts.
- A ground water model is currently being developed for the Wood River Valley and Silver Creek/Bellevue triangle area (most of Basin 37, part 3). This model does not include the Camas Creek area aquifer (most of Basin 37, part 2) and no effort is currently being made to develop a model for the Camas Creek area aquifer. Lack of a ground water model for the Camas drainage aquifer prohibits the ability to implement conjunctive administration of water rights from that portion of Basin 37. Moreover, mitigation that might be provided from the Camas drainage would be completely separate from mitigation that might be developed in the Upper Wood River Valley and the Silver Creek/Bellevue triangle area.
- Upper Wood River Valley water issues are not present or do not exist in the Camas Creek drainage area. There are almost no common water administration issues between Basin 37, parts 2 and 3.
- The SRBA General Provisions for Basin 37, part 2 stipulate that many surface water sources are to be administered separately from all of the water rights in Basin 37.
- A separate water district for the Camas drainage area would better serve the right holders in the area due to local control and supervision. A bigger water district does not necessarily translate to a better water district. Users in the area are willing to pay some additional costs if necessary for the benefit of local control.
- Water users in the Camas drainage would not be adequately represented in a larger combined water district because water use in the Camas drainage may be relatively smaller than other areas of the proposed combined district.
- Ground water pumping in the Camas drainage has minimal impact on the Big Wood River, and the surface water in the drainage is intermittent or separate from the Big Wood River after the early spring snow melt and high flow runoff.

20. In accordance with the SRBA General Provisions for Basin 37, part 2, nearly all of the consumptive use surface water rights in the Camas drainage (about 215 out of 267 rights) are to be administered separately from all other water rights in Basin 37. There are about seventeen (17) rights in the Camas drainage that are to be administered separately from all other rights in Basin 37 but these seventeen rights may be subject to a delivery call of certain rights held by the Big Wood Canal Company. This leaves only about thirty-five (35) rights in the drainage that do not enjoy the benefits of any separate administration provisions.

21. Ground water rights in the Camas drainage are subject to administration with other rights in Basin 37 and are also subject to measurement and reporting requirements established by the Department when it created the UWRWMD. There are approximately 80 ground water diversions in the

UWRWMD and Camas drainage. Many of the owners of these 80 ground water diversions and associated ground water rights also hold surface water rights in the Camas drainage.

22. Three (3) individuals holding ground water rights or representing the holders of ground water rights within the Big Wood River drainage above Magic Reservoir or within the Silver Creek drainage area testified against the Department's proposal to include ground water rights with surface water rights in a combined WD37. These individuals instead supported a separate water district for the holders of ground water rights. One of these three individuals also voiced support for formation of a ground water sub-district within a combined WD37.

23. Five (5) individuals submitted written comments opposing the inclusion of ground water rights in the same water district as surface water rights, including Mr. Speck; Mike Creamer, representing the City of Hailey; Bruce Smith, representing the City of Ketchum; Evan Robertson, representing the Sun Valley Water and Sewer District; and James Laski, representing himself as the owner of a small surface water right. Two (2) of these five individuals (Speck and Creamer) provided oral testimony at the hearing. Mr. Speck testified at the hearing that he represented nine (9) ground water users in the Big Wood Valley or Silver Creek area but he submitted written comments on behalf of twenty-seven (27) ground water right holders. The written comments submitted by Mr. Speck and Mr. Robertson stated support for the testimony and comments provided by Mr. Creamer. Mr. Creamer's written comments supported a separate water district of ground water rights located within Basin 37, part 3. The written comments submitted by Mr. Laski also voiced opposition to include water rights from the Camas drainage with those from the Wood River Valley in one combined water district. The comments submitted by Mr. Smith on behalf of the City of Ketchum also opposed the abolishment of the UWRWMD.

24. Reasons cited by those opposing the inclusion of ground water rights in a water district with surface water rights include:

- Adversarial interests between ground water users and surface water users resulting from any potential conjunctive administration process would compromise the operations of a water district where surface and ground water rights are combined. Conflicts between surface and ground water users may negatively impact the ability of the combined district to function efficiently and cooperatively.
- Ground water right holders would be out voted in a combined water district because the amount of ground water use is significantly less than the amount of surface water use in the proposed water district.
- Ground water users may not be adequately represented on an advisory committee selected for the proposed water district.
- Ground water users may bear a disproportionate cost of water district operations because the budget of the UWRWMD is significantly less than the combined budgets of WD37 and 37M.
- Water districts have been created in the ESPA that are composed primarily of ground water rights. Those water districts have worked well and provide a good model for Basin 37, parts 2 and 3.
- The ground water model for Upper Wood River and Silver Creek/Bellevue triangle area must be completed before ground water and surface water rights can be combined in a single water district.
- The Department should have presented a budget for the proposed water district as part of its' hearing notice or hearing presentation. Costs, management and potential

administrative conflicts between ground and surface users should be explained before combining surface and ground water rights in one district.

- It may be difficult or legally impossible to address potential delivery calls from holders of senior surface water rights and potential mitigation requirements of junior ground water right holders if surface and ground water users are combined in one water district.

25. Two (2) individuals owning surface water rights in WD37 or WD37M testified at the hearing in support of the Department's proposal of a combined water district for both surface water and ground water rights. One of these 2 individuals, Fred Brossy, spoke on both his own behalf and on behalf of the WD37 and WD37M Advisory Committee. Mr. Brossy is the chairman of the WD37/WD37M Advisory Committee.

26. One (1) individual owning several small irrigation ground water rights in the Upper Wood River Valley and the UWRWMD submitted written comments supporting the Department's proposal for combining surface water and ground water rights in one water district.

27. Reasons cited by those supporting the Department's proposal include:

- The WD37/37M advisory committee has long supported the administration of ground water rights above Magic Reservoir (including the Camas drainage) and the Silver Creek drainage with surface water rights in WD37/37M. The committee petitioned the Director to begin administration of ground water rights many years ago.
- Ground water and surface water sources within Basin 37, parts 2 and 3 are connected as one water source so administration of rights in one district is reasonable.
- Combining surface water and ground water rights in one water district will generally provide for more effective, efficient, lawful and equitable administration of water rights.
- More effort is needed to complete the measurement of ground water diversions in the area. Ground water measurement compliance may be accomplished under one water district.
- Cost assessments to ground water users and surface water users under one combined water district should not be more than the current level of assessments.
- A combined water district will promote an opportunity for ground water and surface water users to work together on problems affecting the two groups. A single district will create a more regional approach to water management and resolution of basin wide issues whereas separate districts may provide more local control but result in more local conflicts.
- Delays in combining surface water rights and ground water rights in one water district may delay effective conjunctive administration of water resources.

28. The watermaster of WD37 and WD37M, Kevin Lakey, submitted written comments that addressed some of the testimony at the hearing regarding concerns about conjunctive management. Mr. Lakey noted that water users at annual water district meetings only vote on district "budget, hiring and resolutions" and not "on how conjunctive management will be enforced." Mr. Lakey also noted that representation on the WD37/37M advisory committee is not based on the amount of water delivered but rather on geographical areas and types of beneficial use. Mr. Lakey believed that a fair representation of water users can be established in a combined water district.

29. One (1) individual representing himself as the owner of a small irrigation ground water right in the Bellevue triangle area testified at the hearing that he did not support the Department's proposal and generally did not support the inclusion of his ground water right in any water district because such action will derive no benefit to him. This individual however did state that he was more

supportive of smaller units of administration because his right and interests “would not be lost in the shuffle.”

CONCLUSIONS OF LAW

1. Idaho law declares all surface water, when in natural channels or springs or lakes, and all ground water within the State of Idaho to be the property of the state, whose duty it is to supervise the appropriation and allotment of the water to those diverting the same for beneficial use. *See* Idaho Code §§ 42-101, 42-103, and 42-226.

2. The Director, acting on behalf of the State of Idaho, has the statutory authority to control the appropriation and use of all surface and ground waters within the state in accordance with, but not limited to, Idaho Code §§ 42-101, 42-103, 42-202(1), 42-220, 42-226, 42-237a.g., 42-351, and 42-602 *et seq.*

3. The Director has responsibility for direction and control over the distribution of water in accordance with the prior appropriation doctrine as established by Idaho law within water districts to be accomplished through watermasters supervised by the Director, and subject to removal by the Director, as provided in chapter 6, title 42, Idaho Code.

4. Idaho Code § 42-604 mandates the Director form water districts as necessary to properly administer uses of water from public streams, or other independent sources of water supply, for which a court having jurisdiction thereof has adjudicated the priorities of appropriation. *In re Idaho Dept. of Water Res. Amended Final Order Creating Water Dist. No. 170*, 148 Idaho 200, 211, 220 P.3d 318, 329 (2009). Efficient distribution of water, in accordance with the legislative mandate, requires that IDWR implement sufficient administrative oversight to prevent conflicts from arising, where possible, and to furnish a framework of evenhanded oversight which allows for consistent planning by water users. *Id.* The combination and revision of water districts within Basin 37, parts 2 and 3 is necessary for the reasons set forth in Finding of Fact 13 and for the efficient administration of water rights in general.

5. Idaho Code § 42-1417 provides that the district court having jurisdiction over a general water rights adjudication may authorize the interim administration of water rights pursuant to chapter 6, title 42, Idaho Code, prior to the entry of a final decree, in accordance with Director's Reports filed with the court, with or without modification by the court, or in accordance with partial decrees that have superseded the Director's Reports.

6. All of the surface and ground water rights claimed in the SRBA and within Basin 37, parts 2 and 3, have been partially decreed or reported to the SRBA District Court.

7. Idaho Code § 42-227 provides that a water right permit may be issued, but shall not be required for appropriation of ground water for domestic and stock water purposes as defined under Idaho Code § 42-111.

8. Idaho Code § 42-113 provides that a water right permit may be issued, but shall not be required for appropriation of water for the in-stream watering of livestock.

9. Idaho Code § 42-706 provides that the Director may create, revise the boundaries of, or abolish a water measurement district or combine two or more water measurement districts by entry of an order if such action is required in order to properly administer uses of the water resource.

10. Much of the oral testimony from the hearing and the written testimony received after the hearing focused on the creation of a separate water district for the Camas drainage that would include both surface and ground water rights, including rights from WD37A and WD37C. Reasons that water users cited for creation of a separate district are listed in Finding of Fact 19.

11. The Department concludes that a separate water district for the Camas Creek drainage composed of surface water rights may provide for proper administration of surface water rights. The Department concludes that the small number of surface water rights in the drainage that are required to be administered with other rights in Basin 37 as described in Finding of Fact 20 may not justify including Camas drainage surface water rights in a large water district. The Department concludes that administration of these limited numbers of rights can be accomplished by a watermaster in a separate Camas drainage water district working in coordination with the watermaster from WD37 and with both watermasters working under the direction of the Director.

12. The Department concludes that the Camas drainage aquifer system is characteristically different from the Upper Wood River Valley aquifer system but the aquifer systems are hydraulically connected to each other and the Big Wood River². The Department agrees with testimony that the amount of ground water use from the two aquifer systems are different and water resource issues in the two areas may vary. The Department also agrees with testimony that conjunctive administration of surface and ground water rights in the Wood River basin is likely imminent. The Department does not conclude that ground water rights in the Camas drainage are immune to conjunctive administration simply because ground water use is less or because the drainage has not yet been included in the development of a ground water model.

13. Although ground water rights in both the Camas drainage and the Upper Wood River Valley and Silver Creek drainages may need to be conjunctively administered together with surface water rights in Basin 37, the Department concludes that the limited number of ground water rights and wells in the Camas drainage can be administered properly by including them with surface water rights in a separate Camas drainage water district that is under the direction and control of the Director.

14. The Department adopts this structure with some hesitation because conjunctive administration of water rights in Basin 37 may be more challenging when the water rights are in separate water districts and because many ground water diversions in the Camas drainage are not yet in full compliance with Department measurement orders. The Department would prefer to place the Camas drainage in a well established operational water district such as WD37 that has experienced staff, equipment and other resources rather than start a new water district that has no existing staff or resources. If ground water or surface water rights in the Camas drainage cannot be administered or properly measured in a separate water district, then the Director may abolish the district, revise the boundaries of the district or combine the district with another water district in accordance with Idaho Code §42-604.

15. Much of the oral testimony from the hearing and the written testimony received after the hearing also focused on the creation of a separate water district for ground water rights in the Upper

² Bartolino and Adkins, 2012. Hydrogeologic Framework of the Wood River Valley Aquifer System, South-Central Idaho, USGS Report 2012-5053, p. 26; and Wlaton, W.C., 1962. Ground Water Resources of Camas Prairie, Camas and Elmore Counties, Idaho, USGS Water Supply Paper 1609, pp. 1, 20, and 42-43.

Wood River Valley and the Silver Creek/Bellevue triangle drainage area. Reasons that water users cited for creation of a separate district are listed in Finding of Fact 24.

16. Testimony was provided opposing the proposed combination of ground water and surface water rights in a water district due to concerns that “conjunctive administration of surface and ground water rights is imminent and is an inherently adversarial process” which will “bleed over into the business of WD37.” Water districts are limited to administration of water rights, including measurement and regulation of diversions. Adversarial tensions between ground water and surface water users resulting from potential conjunctive administration of water rights should not negatively affect water district operations given the limited regulatory scope of the water district and the fact that conjunctive administration is guided by separate processes outlined in the Conjunctive Management Rules (CMR’s) (IDAPA 37.03.11). The Department agrees with the testimony of Kevin Lakey, WD37 watermaster, which notes that decisions regarding conjunctive administration will be made and enforced by the Director. Conjunctive administration will not be resolved within the venues or forums of a combined water district. Moreover, the CMRs have been implemented and mitigation has been successfully implemented within WD130 without disruption to the operations of that water district despite the fact that both surface water and ground water rights are included in the district.³

17. Additional testimony suggested that it may be “legally impossible to address potential delivery calls from holders of senior surface water rights and potential mitigation requirements of junior ground water right holders if surface and ground water users are combined in one water district” and that “management and potential administrative conflicts should be explained before combining surface and ground water rights in one district.” This testimony appears to confuse conjunctive administration issues with the narrow and limited regulatory scope of water district operations. Again, conjunctive administration and mitigation has been implemented “legally” in WD130 where surface water and ground water rights coexist. The Department proposed combining ground water rights and surface water rights in one district for the reasons stated in Finding of Fact 13. The Department is statutorily obligated to create or modify water districts largely to provide a regulatory structure to address water distribution problems and minimize potential conflicts. Water districts are not authorized to address potential mitigation requirements of junior ground water right holders but they are authorized to enforce mitigation requirements that may be required pursuant to orders of the Director under the CMRs. Potential mitigation requirements must be addressed by the holders of junior ground water rights working independent from a water district and preferably through a ground water district organized in accordance with chapter 52, title 42, Idaho Code.

18. Witnesses opposed combining ground water rights with surface water rights in a water district because surface water use is significantly more than ground water use in the proposed district and surface water users may out vote ground water users under the alternative method of voting allowed under Idaho Code § 42-605(4). The testimony cited concerns that the interests of ground water users will not be represented “because implementing conjunctive administration in the Big Wood River Basin will be contentious.” The Department notes that voting at annual water district meetings is limited to the adoption of a budget, election of a watermaster and treasurer, selection of an advisory committee and adoption of resolutions related to the operation of the water district. Conjunctive administration issues and decisions will not be subject to voting at annual water district meetings. Moreover, the concern that ground water users will be outvoted or “unrepresented” discounts the fact that about 100 ground water rights have been included in WD37 and WD37M for a number of years. The Department is not aware of complaints or concerns from those ground water users regarding “unrepresented” interests or control by

³ WD130 includes ground water rights in the ESPA overlying Basins 36, 37 and 41 and surface water rights from the Thousand Springs area overlying the ESPA and Basins 36 and 37.

surface water users. Additionally, the holders of many ground water rights in the proposed combined water district also hold surface water rights in WD37 or WD37M.⁴ It is not clear that the interests of ground water users would be poorly represented when so many ground water users also own surface water rights that are presently administered by WD37/37M.

19. Witnesses opposed the proposed combination of ground water and surface water rights in a water district because ground water users may not be adequately represented on an advisory committee due primarily to the disparity in the amount of water use between surface and ground water users. Idaho law does not vest specific power in an advisory committee. The committee provides advice to the watermaster, the Director and the water users of the water district. The WD37/37M watermaster testified that the WD37/37M advisory committee representation is not based on the amount of water diverted but rather on geographical regions and types of beneficial water use. He added that if a combined district is formed, a steering committee will be selected to recommend, among other things, the organization of an advisory committee. The steering committee concept is consistent with the recommendation made by the Department during its presentation at the public hearing. The WD37/37M advisory committee chairman testified at the public hearing that he was confident that concerns about representation of ground water users on an advisory committee could be addressed. The Department concludes that an advisory committee can be selected that provides adequate representation of all water users in the proposed water district comprised of both surface water and ground water rights.

20. Witnesses testified that ground water rights in the Upper Wood River Valley and Silver Creek drainage should be placed in a separate water district because several water districts already exist in the ESPA that are composed primarily of ground water rights which provide a good model for ground water administration in the Big Wood River Basin. The Department acknowledges that there are several ESPA water districts that are limited to ground water rights but there is at least one ESPA water district, WD130, which includes both surface water and ground water rights. WD130 was created in 2002 when conjunctive administration of surface water and ground water rights within the district was imminent. Subsequently, conjunctive administration delivery calls have been made and the CMRs have been implemented. WD130 has functioned successfully despite contention among surface water and ground water users in the district. The Department recommends that ground water rights in the Upper Wood River Valley and Silver Creek drainage be combined with WD37 and WD37M because administration of the rights would be more efficient.

21. Witnesses testified that ground water rights in the Upper Wood River Valley and Silver Creek drainage should be placed in a separate water district due to concerns that water district administration costs can't be fairly allocated in a combined district. Specifically, a concern was expressed that ground water users "would wind up bearing a disproportionate cost of water district operations." In accordance with Idaho Code §42-610, water district costs are assessed to individual users based on the amount of water delivered. The WD37/37M advisory committee chairman testified at the public hearing that the current advisory committee members are concerned that surface water users could actually end up paying a disproportionate share of district costs because the costs of measuring the wells may be higher than expected since so many wells are not yet in compliance with the Department's ground water measurement order. The committee chairman testified that the WD37/37M advisory committee wishes to maintain the water district assessment rates. The Department's limited analysis indicates that if the WD37 2013 assessment rate were adopted and applied to both surface water and ground water deliveries in a combined water district, most ground water users would have an

⁴ Assessment records of the UWRWMD and WD37/37M show that about 41% of the water users assessed by the UWRWMD are also assessed by WD37/37M. A majority of the holders of large irrigation ground water rights in the UWRWMD also hold surface water rights in WD37/37M.

assessment that is less than or roughly equivalent to their 2013UWRWMD assessment.⁵ While the testimony raised concerns about ground water users bearing a disproportionate share of district costs, no evidence was given to substantiate the concern.

22. Written testimony suggested that suggested the Department should have presented a budget for the proposed combined water district. Chapter 6, title 42, Idaho Code does not require the Department to present a proposed budget when creating a water district, modifying the boundaries of a water district or combining two or more water districts. Rather, Idaho Code § 42-605 requires that the water users at an annual water district meeting must adopt a budget. The Department presented information at the hearing suggesting that a steering committee be formed consisting of affected ground water users and members from the WD37/37M advisory committee to consider a budget that could be presented at the first annual meeting of a combined water district. Department representatives at the public hearing cautioned about the appropriateness of the Director dictating a budget to the users in contrast with the requirements of § 42-605. The Department representative stated at the hearing that the current budgets for WD37/37M were adequate for administration of surface water rights, but the budget needed for administration and on-going measurement of ground water rights might need to be somewhat higher than the 2013 UWRWMD budget. The Department finds that combining the 2013 WD37/37M and UWRWMD budgets and deliveries, or estimate of deliveries for the UWRWMD, would result in an assessment rate that is similar to the 2013 WD37/37M and UWRWMD assessment rates.

23. Witnesses suggested the ground water model for the Upper Wood River and Silver Creek/Bellevue triangle area must be completed before ground water and surface water rights can be combined in a single water district. Again, this testimony appears to confuse conjunctive administration issues with the narrow and limited regulatory scope of water district operations. Completion of a ground water model is not a legal requirement or prerequisite for including both surface water and ground water rights in one water district. The Department has created several water districts in the State that include both surface and ground water rights without having a ground water model completed.

24. Based upon the above statutory authorities, the order of the SRBA District Court authorizing the interim administration of water rights pursuant to chapter 6, title 42, Idaho Code, and the record in this proceeding, the Director should take the following actions:

- i. Combine WD37 and WD37M into one water district to be designated as WD37;
- ii. Combine ground water rights in the Upper Wood River Valley and the Silver Creek/Bellevue triangle area with surface water rights in a combined WD37 to regulate water rights, and protect senior priority water rights in Basin 37;
- iii. Create a separate water district to administer both surface and ground water rights in the Camas Creek drainage including water rights from WD37A and WD37C to regulate water rights, and protect senior priority water rights in Basin 37; and
- iv. Abolish the UWRWMD.

⁵ This was determined by applying the WD37 2013 assessment rate to reported annual water use from certain municipal providers and 2013 water use from several UWRWMD metered ground water irrigation wells. The 2013 minimum assessment rate for the UWRWMD was over \$50 whereas the minimum assessment rate in WD37 and WD37M was only \$40. Given the significantly larger proportion of surface water use in a combined district, many of the smaller ground water users would be subject to a minimum rate assessment not to exceed \$50.

ORDER

IT IS HEREBY ORDERED that:

1. Water District No. 37 and Water District No. 37M are hereby combined as one water district together with all ground water rights located within the boundaries of the combined water district but outside the boundaries of the ESPA and Water District No. 130 as shown in the map appended hereto as Attachment A, except water rights used for domestic and stock water purposes as defined by Idaho §§ 42-111 and 42-1401A(11) and water rights used for in-stream watering of livestock as defined by Idaho Code § 42-113. The combined water district shall be designated as Water District No. 37, Big and Little Wood Rivers, and shall become effective January 6, 2014. The map attached hereto as Attachment B shows the boundaries of Water District Nos. 37 and 37M prior to the districts being combined pursuant to this Preliminary Order.

2. Water District No. 37 shall include ground water and all streams tributary to the Big Wood River and Little Wood River except Camas Creek and tributaries, and shall exclude Water District No. 37N (Upper Little Wood River and tributaries), Water District No. 37-O (Muldoon Creek and tributaries) and Water District No. 37U (Fish Creek and tributaries), and the lower portion of the Malad River and tributaries downstream and west of the point where the boundary common to Township 6 South and Range 13 East and Township 6 South and Range 14 East crosses the Malad River (approximately where Interstate 84 crosses the Malad River). The map attached hereto as Attachment B shows the locations of Water District Nos. 37-N, 37-O and 37-U.

3. The annual meeting of Water District No. 37 shall be held on January 6, 2014 to elect a watermaster, select an advisory committee, if desired, and set a budget for operating the district. The Director will send a separate notice to the holders of water rights in the water district providing a reminder of the meeting date and announcing the time and location for the meeting.

4. The water users attending the Water District 37 annual meeting shall adopt one budget for administration and measurement of both surface water rights and ground water rights. Ground water rights that are subject to assessment shall be assessed in the same manner as surface water rights and in accordance with the provision of chapter 6, title 42, Idaho Code. In cases where water delivery records do not exist for water rights, the assessments must be based on a reasonable estimate of water use during the previous season or seasons, not exceeding five seasons.

5. Water District No. 37-B is created to include all surface water and ground water rights in the Camas Creek drainage in Basin 37 as shown in the map appended hereto as Attachment A. Water District No. 37A and Water District No. 37C shall be merged with Water District 37-B. Water District 37-B shall exclude water rights used for domestic and stock water purposes as defined by Idaho §§ 42-111 and 42-1401A(11) and water rights used for in-stream watering of livestock as defined by Idaho Code § 42-113. The map attached here to as Attachment B shows the boundaries of former Water District Nos. 37-A and 37-C.

6. As soon as practicable in calendar year 2014, the holders of water rights within Water District No. 37-B shall meet at a date, time and place to be announced by the Director to conduct its annual meeting to elect a watermaster, select an advisory committee, if desired, and set a budget for operating the district.

7. The Director shall issue a separate order requiring the installation of measuring devices and controlling works for surface water right diversions within Water District No. 37-B.

8. The Director shall consider combining all or portions of Water District No. 37-B with Water District No. 37 if Water District No. 37-B does not comply with the provisions of chapter 6, title 42, Idaho Code or if a majority of water users in the water district do not comply with existing or future orders of the Department requiring water measurement devices or controlling works.

9. The watermasters for Water District Nos. 37 and 37-B shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director:

- a. Measure, collect, and record the diversions under water rights;
- b. Administer and enforce water rights in priority; and
- c. Curtail unauthorized or excessive diversions as necessary (i.e., any diversion without a water right or in excess of the elements or conditions of a water right).
- d. Coordinate delivery by priority of rights that do not enjoy the benefits of any separate administration provisions as decreed in the SRBA.

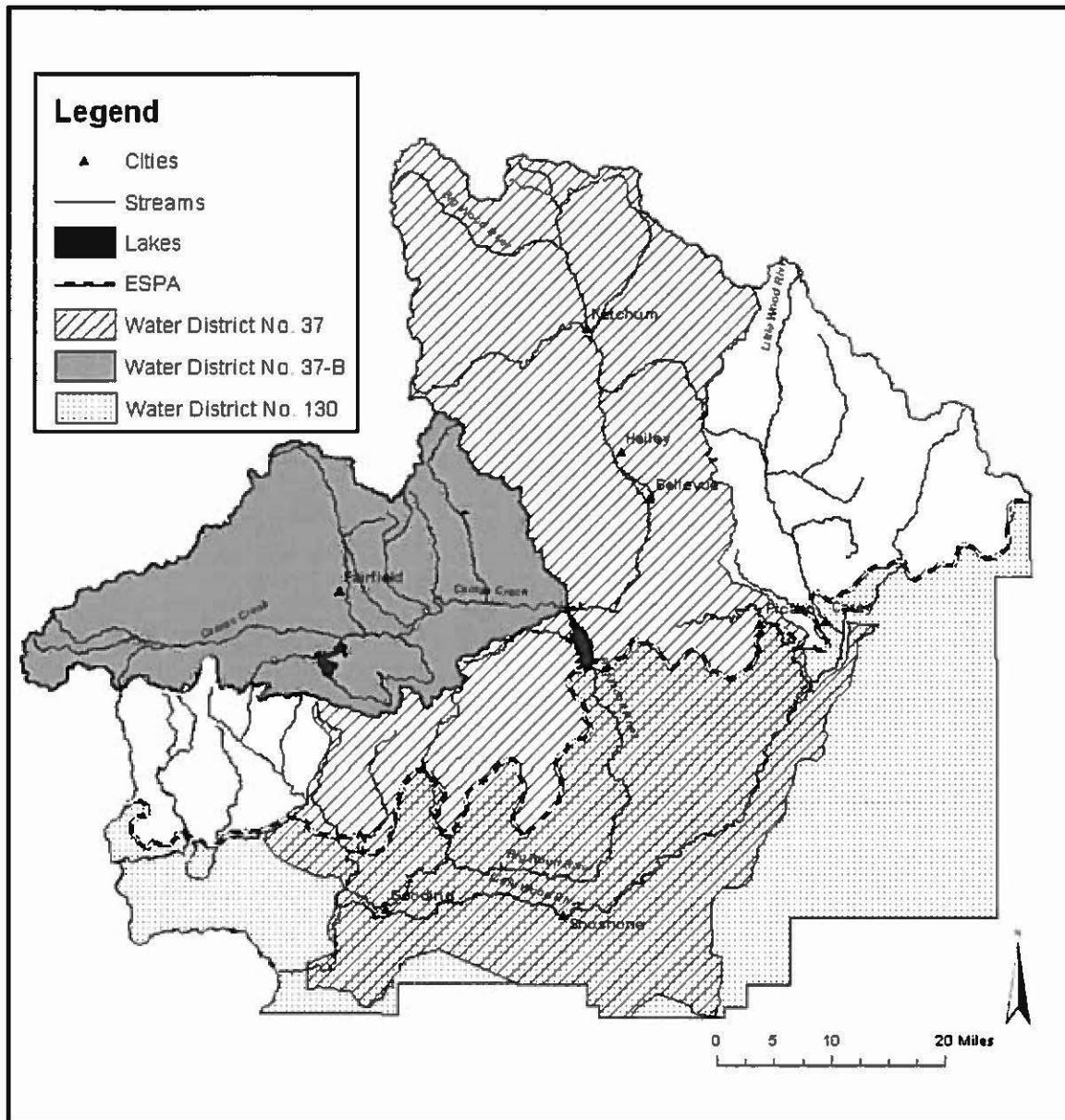
IT IS FURTHER HEREBY ORDERED that:

1. The Upper Wood Rivers Water Measurement District is hereby abolished effective December 31, 2013. The measurement district will continue to operate in accordance with chapter 7, title 42, Idaho Code, until December 31, 2013. The map attached hereto as Attachment B shows the boundaries of the measurement district.

DATED this 17th day of September, 2013.


Allen Merritt
Hearing Officer

ATTACHMENT A
Water District No. 37 and Water District 37-B Pursuant to Preliminary Order



Attachment B
Basin 37 Water Districts and Measurement District Prior to Preliminary Order

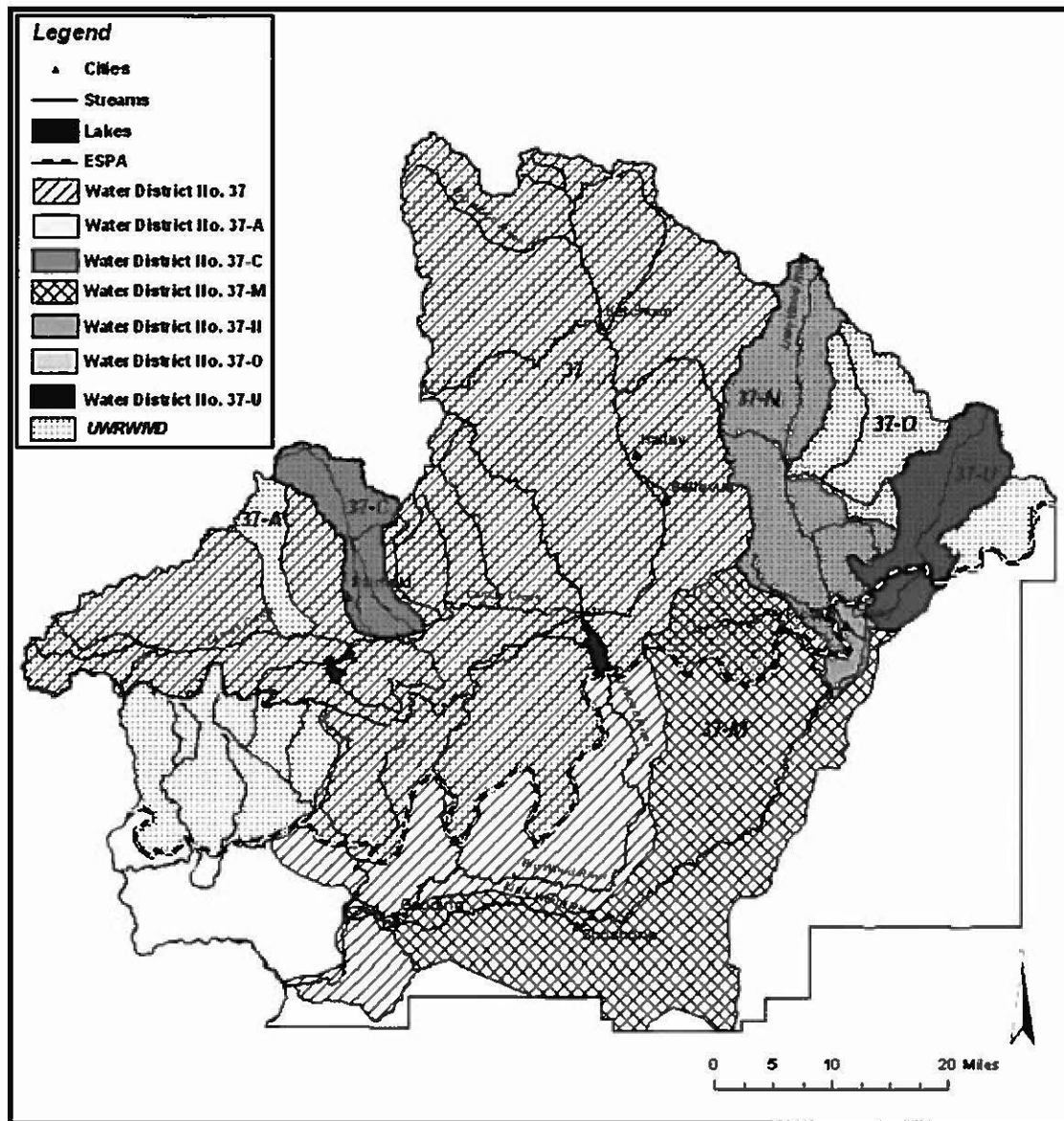


EXHIBIT B

IDAHO ADMINISTRATIVE BULLETIN

October 1, 2014 -- Volume 14-10

Idaho Department of Administration
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The Idaho Administrative Bulletin is published monthly by the Office of Administrative Rules, Department of Administration, Statehouse Mail, Boise, Idaho 83720-0306, pursuant to Title 67, Chapter 52, Idaho Code.

C.L. "Butch" Otter, Governor
Teresa Luna, Director, Department of Administration
Dennis Stevenson, Administrative Rules Coordinator
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Jason Shaw, Rules Analyst and Desktop Publishing Specialist

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IDAPA 37 - IDAHO DEPARTMENT OF WATER RESOURCES

37.03.11 - RULES FOR CONJUNCTIVE MANAGEMENT OF SURFACE AND GROUND WATER RESOURCES

DOCKET NO. 37-0311-1101

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Chapter 52, Title 67, Idaho Code, the Idaho Administrative Procedure Act, and Section 42-603, Idaho Code, which provides that the Director of IDWR is authorized to adopt rules and regulations for the distribution of water from the streams, rivers, lakes, ground water and other natural water sources as shall be necessary to carry out the laws in accordance with the priorities of the rights of the users thereof. The Conjunctive Management Rules are also promulgated pursuant to Section 42-1805(8), Idaho Code, which provides the Director with authority to promulgate the rules implementing or effectuating the powers and duties of the Department.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Friday, October 24, 2014, at 1:30 p.m. (MDT)

**Idaho Department of Water Resources
322 East Front Street, Boise, ID 83702
6th Floor Conference Rooms B and C**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below. Interested parties who wish to attend the public hearing by phone may contact the Department for the teleconference number and pass code.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11) address conjunctive administration of connected ground and surface water supplies. Rule 50 (IDAPA 37.03.11.050) identifies the area on the Eastern Snake Plain Aquifer (ESPA) having a common ground water supply as identified in a 1992 professional paper of the United States Geological Survey (USGS).

Clear Springs Foods filed a petition on November 2, 2010, for the Department to promulgate revisions to Rule 50. The Department determined that Rule 50 did not reflect current technical information and commenced negotiated rulemaking proceedings in January of 2011. Multiple public meetings were held. However, due to ongoing work related to the ESPA model and issues related to delivery calls pending before the Department, the Director stayed the rulemaking proceedings in August of 2011. The Director restarted the negotiated rulemaking process in May of 2014. Four additional public meetings were held and comments received and considered.

Having considered all of the public oral and written comments received, the Department has decided to repeal Rule 50. The Director has concluded that the rule is no longer necessary and that the administrative hearings and deliberations associated with individual delivery calls is the proper venue to address which ground water rights should be subject to administration under a delivery call.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

This rulemaking has no fiscal impact to dedicated funds for the Department or the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 7, 2014 Idaho Administrative Bulletin, Vol. 14-5, page 77.

INCORPORATION BY REFERENCE: No materials are being incorporated by referenced into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact: Richard M. Rigby at (208) 287-4839. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Department's web site at the following web address: www.idwr.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 31, 2014.

DATED this 15th Day of September, 2014.

Richard M. Rigby, Senior Advisor
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, Idaho 83720
Phone: (208) 287-4839
Fax: (208) 287-6700
richard.rigby@idwr.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 37-0311-1101
(Only those Sections being amended are shown.)

044. -- ~~0499.~~ (RESERVED)

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

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

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

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

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

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

051. -- 999. (RESERVED)

EXHIBIT C

IDAHO ADMINISTRATIVE BULLETIN

December 3, 2014 -- Volume 14-12

Idaho Department of Administration
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C.L. "Butch" Otter, Governor
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IDAPA 37 - IDAHO DEPARTMENT OF WATER RESOURCES

37.03.11 - RULES FOR CONJUNCTIVE MANAGEMENT OF SURFACE AND GROUND WATER RESOURCES

DOCKET NO. 37-0311-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Chapter 52, Title 67, Idaho Code, the Idaho Administrative Procedure Act, and Section 42-603, Idaho Code, which provides that the Director of IDWR is authorized to adopt rules and regulations for the distribution of water from the streams, rivers, lakes, ground water and other natural water sources as shall be necessary to carry out the laws in accordance with the priorities of the rights of the users thereof. The Conjunctive Management Rules are also promulgated pursuant to Section 42-1805(8), Idaho Code, which provides the Director with authority to promulgate the rules implementing or effectuating the powers and duties of the Department.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11) address conjunctive administration of connected ground and surface water supplies. Part 50 of the rules (IDAPA 37.03.11.050) identifies the area on the Eastern Snake Plain Aquifer (ESPA) having a common ground water supply as identified in a 1992 professional paper of the United States Geological Survey (USGS).

Clear Springs Foods filed a petition on November 2, 2010 for the Department to promulgate revisions to part 50. The Department determined that Rule 50 did not reflect current technical information and commenced negotiated rulemaking proceedings in January of 2011. Multiple public meetings were held. However, due to ongoing work related to the ESPA model and issues related to delivery calls pending before the Department, the Director stayed the rulemaking proceedings in August of 2011. The Director restarted the negotiated rulemaking process in May of 2014. Four additional public meetings were held and comments received and considered.

After considering the public oral and written comments received, the Director concluded Rule 50 should be repealed. The Director concluded the rule is no longer necessary and that administrative hearings and deliberations associated with individual delivery calls is the proper venue to address which ground water rights should be subject to administration under a delivery call.

On October 24, 2014, a public hearing was held on the proposal to repeal Rule 50. The Department provided interested parties an extended comment period to submit comments on this rulemaking.

Additionally, the Department discovered an oversight after the publication of the proposed rule whereby a reference to Rule 50 was found in Section 020. of the Rules for Conjunctive Management of Surface and Ground Water Resources, specifically 37.03.11.020.07. As a matter of administration, the reference to Rule 50 should also be deleted in conjunction with the repeal of Rule 50.

The rule has been adopted by the agency and is now pending. The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. As stated above, 37.03.11.020.07 has been added to this rulemaking to delete the reference to Rule 50. No other changes have been made to the pending rule as it was published. The complete text of the proposed rule was published in the October 1, 2014 issue of the Idaho Administrative Bulletin, Vol. 14-10, pages 447-448.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state

general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking has no fiscal impact to dedicated funds for the Department or the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact: Richard M. Rigby at (208) 287-4839. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Department's web site at the following web address: www.idwr.idaho.gov.

DATED this 7th Day of November, 2014.

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DOCKET NO. 37-0311-1101 - ADOPTION OF PENDING RULE

Substantive changes have been made to the pending rule.
Italicized red text that is *double underscored* is new text that has been added to the pending rule.

Only those sections or subsections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Vol. 14-10, October 1, 2014, pages 447 through 448.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and final approval by the 2015 Idaho State Legislature.

**THE FOLLOWING IS THE TEXT OF THE AMENDED PENDING RULE FOR
DOCKET NO. 37-0311-1101**

[Section 020 is being printed in its entirety]

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

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

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

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

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

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

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

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

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

09. Saving of Defenses. Nothing in these rules shall affect or in any way limit any person's entitlement to assert any defense or claim based upon fact or law in any contested case or other proceeding. (10-7-94)

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

11. Domestic and Stock Watering Ground Water Rights Exempt. A delivery call shall not be effective against any ground water right used for domestic purposes regardless of priority date where such domestic use is within the limits of the definition set forth in Section 42-111, Idaho Code, nor against any ground water right used for stock watering where such stock watering use is within the limits of the definition set forth in Section 42-1401A(12), Idaho Code; provided, however, this exemption shall not prohibit the holder of a water right for domestic or stock watering uses from making a delivery call, including a delivery call against the holders of other domestic or

stockwatering rights, where the holder of such right is suffering material injury.

(10-7-94)

EXHIBIT D
AUDIO CD OF
HOUSE RESOURCES & CONSERVATION
COMMITTEE MEETING – 2/9/15
AND
SENATE RESOURCES & ENVIRONMENT
COMMITTEE MEETING – 2/11/15



Copies of the audio CD were included with the affidavit and exhibits filed with IDWR and served upon petitioners Big Wood & Little Wood Water Users Association.

Copies of the audio CD have not been served on other parties, but will be provided upon request. Also, the audio files can be downloaded from the Idaho Legislature's website at the internet links set forth in the affidavit.

EXHIBIT E

**IDAHO HOUSE OF REPRESENTATIVES RESOURCES & CONSERVATION COMMITTEE
FEBRUARY 9, 2015, 1:30 P.M.**

Person	Statement
Chairman [4:50]	<p>Okay, we'll commence then with this Director Spackman. Do you want to talk to us about this Rule? And this Rule part of the Docket, this is Rule 50 that we're talking about then. Is there any other part of the Docket that you want to discuss? Okay, Director Spackman.</p>
G. Spackman	<p>Mr. Chairman, Members of the Committee. My name is Gary Spackman. I am the Director of the Idaho Department of Water Resources. Thanks for a chance to visit with you about the proposed repeal of Rule 50 of the Department's Conjunctive Management Rules. I was interested by the colloquy here just before being called to the podium and of the fact that so many of this Committee have an interest in this matter and I appreciate the transparency of the Committee. I also appreciate that the Committee, because of those declared interests I may actually be able to hold your attention even though I may be a poor and boring presenter. There's at least an upside for me.</p> <p>What I want to do, at least initially, right now is to talk just briefly about why this Rule 50 is proposed for repeal and then I want to give time to Rich Rigby who worked directly in conducting public meetings and in negotiating the proposed Rule as its been presented to you. He has more background and I think there's some value in diversifying the presenters here in front of you. I just want to give you a little background and probably is more for the purpose of taking the blame and the responsibility than anything. And then I'd be happy to mop up with questions and, again, take responsibility to the extent is necessary for the rule change.</p> <p>So, what I want to tell you this morning is that in 2010, we received a petition from Clear Springs Foods Company to begin rulemaking with respect to the definition of the area of common groundwater supply for the Eastern Snake Plain Aquifer and the request also or the petition also included a request that we modify the boundary to match the boundary for a groundwater model that had been developed by the Department of Water Resources. And we were in the middle of developing another model at the time so we drug our feet, honestly, and I felt that there was enough else on our plate at the time and we wanted to have the new model in place and the boundary for that model prior to going forward with the negotiated rulemaking. And we finished up the model in 2012 or 2013 and then adopted it about that same period of time. We felt we needed to start and re-engage the negotiated rulemaking process. Part of the reason is we had a pending petition in front of us which is legally authorized under the Administrative Procedures Act that I needed to act upon. And had I been, in my opinion, any more delinquent about it – it had already been three or four years since the petition had been filed. I really ran the risk of having the court issue if the parties wanted to seek a writ of mandamus to force me to start the rulemaking process. So, at that point, I don't know why Rich Rigby in my office volunteered but he actually came to me and said, "do you want me to take this on?" And I thought,</p>

Person	Statement
	<p>that would be wonderful. I don't have to at least be the direct point person. So I asked Rich to do it.</p> <p>So there were a number of public meetings and I'll let him explain all of the timetables and the comments that we received at the negotiated rulemaking sessions. What I want to tell you at the outset is that there were several alternatives that were posed to us in the end – none of them were very good, in my opinion. And there's a number of reasons for the characterization that none of them were very good and, in the end, we chose the alternative that we felt was the best of all the bad alternatives. And it was to repeal the Rule and there's a reason behind it. But it was a difficult decision for us internally and I'll explain that a little more at the end if Rich Rigby doesn't.</p> <p>But I also want to say that the decision was mine ultimately to repeal the Rule and I take responsibility for it. So I don't want anybody here to think that it was Rich's decision or anybody else's. With that Mr. Chairman, I'd like Rich with the indulgence of the Committee if you'd allow him to come forward and present information about the proposed Rule change.</p>
Chairman	<p>Okay, thank you Director Spackman. And Committee if you'd hold your questions for Director Spackman until after Mr. Rigby gets through. His explanation might answer maybe any questions that you have now. With that, Rich if you'd like to come to the podium and state your name and what your position is for the Minutes if you would.</p>
G. Spackman	<p>And my dad, Mr. Chairman, I hope Rich Rigby is the victim of software counterfeiting and not me up on the screen.</p>
R. Rigby	<p>I haven't touched it Mr. Chairman. My name is Rich Rigby. I am an employee of the Department of Water Resources. I was a senior adviser in 2012. I retired from ... actually, I had been on a detail from the Federal Government from the Bureau of Reclamation, but I've retired. In a weak moment, I agreed to continue to work with Gary. I don't do it every day but it's kind of an "as-needed" basis. I'll have to say that I did or do the first round of work on this Rule change and yah, Gary's right, I went into his office and said, "If you need somebody to do it, I'd be willing to do that." Now, what he didn't tell you is that about three mornings after that, I woke up and said to myself, "what did you just do?"</p> <p>So anyway, what I'd like to do is quickly give you some background so that we're all on the same page and then I want to talk about how the Department reached the decision it did and how the water user would be affected. Then I've got two or three takeaways that I think are important.</p> <p>So, the Conjunctive Administration Rules were adopted in 1994 and Rule 50 identified the area of common groundwater supply for the Eastern Snake Plain Aquifer. Now, generally, when we talk about the ESPA that may mean a lot of things. In this context it means, the area defined in the Rule. In administering water calls on the ESPA, the Department has limited the area subject to regulation to that defined in Rule 50. In order to best administer water calls on</p>

Person	Statement
	<p>the Aquifer anticipating that they were coming, a previous Director implemented the development of a hydrologic model to model the groundwater on the Eastern Snake Plain Aquifer and the model is not free from criticism. For example, a prediction of impacts. A great distance from the point of impact are less certain than predictions where the impacts are closer to the change.</p> <p>However, the courts ruled that decades ago that the Director must administer water calls to meet the prior rights. So, while it is imperfect, as all models are, the Eastern Snake Plain Aquifer model is the best tool available for the Director to administer water rights. In order to best model the impacts to on and to the Eastern Snake Plain Aquifer, the modelers established a model boundary where detailed information was identified and used. The model boundary is close but not identical to the ESPA boundary.</p> <p>If I could refer you to the maps that you have in front of you, the yellow area in the maps represents the area of common groundwater supply – the area defined in Rule 50. The dark boundary represents the model boundary. So you can see, for the most part, it's the same but there are some differences. You'll see, for example, the model boundary trails off up into the Big Lost Basin a little bit. There's some areas on the East and the South that are outside the area of common groundwater boundary but inside the model boundary. The blue areas, which surround the ESPA are what we call the tributary basins. Tributary basins contribute water to the Eastern Snake Plain Aquifer. It's labeled in the model as "tributary underflow." It's important to note that the model boundary is established to make the model work best. It wasn't established to identify rights that should or could be subject to regulation. Anything that takes place in that entire area (that's colored) has an impact upon the ESPA.</p> <p>So, how did we get to the decision that we did? In defining what constitutes an area of common groundwater supply, the Rules themselves set a low bar. Basically, the Rules say that where the use of groundwater <i>affects</i> the flow of surface water, it satisfies that definition. It's clear that the areas that affect the flow of the Snake River where water calls have been made is much larger than the area described in Rule 50. Now we can argue about the magnitude of the affects and we can argue about the timing of the affects, but I think the scientific evidence is pretty clear that these entire areas does influence or affect the flow of the Snake River and the area where water calls have been made.</p> <p>So what that leaves us with is the assertion that the area of common groundwater supply, as defined in the Rules, is no longer consistent with the best available scientific information. The petition requested that the boundary of the Aquifer model replace the area of common groundwater supply in the Rules. As I've said, the model boundary wasn't established for that purpose and it gave us pause to think about that. We think it's a poor surrogate for the area of common groundwater supply. It would result in different areas that have similar impacts being treated differently. And that's something that has been very difficult for us</p>

Person	Statement
	<p>to stomach and accept. Just for example – a pumper in the Big Wood River Basin has similar impacts to the Aquifer as a pumper in the Big Lost Basin. But if we took the model boundary as the area of common groundwater supply, a user in the Big Lost Basin up to Mackay Dam would be regulated and a user in the Big Wood River would not. The Director concluded that such disparate treatment is not acceptable.</p> <p>Another point is that the arguments against expanding the area of common groundwater supply seemed to focus on impacts to a specific call. It's important to remember that a given area may have minimal impacts on a call in one area and greater impacts on a call in a different area. It's just how it works. We can't predict where a call may come from. And so the area that is affected by each call will depend on the specific facts.</p> <p>In considering the course to take, the Department had three obvious options:</p> <ul style="list-style-type: none"> (1) to leave the boundary as it was; (2) to adopt the proposed change and make the area of common groundwater supply equal to the model boundary; and (3) to basically go ridge top to ridge top – all of the area that is colored on that map <p>Now, the first option appeared unsustainable from a technical standpoint because, as I mentioned earlier, the Rules set a low bar and they say that if an area affects the flow, it is part of the area of common groundwater supply. Adopting a model boundary was not acceptable because it would have treated similarly situated water rights (water rights with a similar impact upon the Aquifer very differently). And the third option are going mountain top to mountain top seemed a little bit of a bridge too far. And, in fact, an area of common groundwater supply has been established for each water call to date and it is not the same as the area defined in Rule 50.</p> <p>So let's briefly discuss how this area would affect or this Rule change would affect water users. There are basically two water calls that are active on the Aquifer. We have a Rangen call that is near the Hagerman area and that's for spring use and that's a year round every day use; and then there's Surface Water Coalition which is seven entities which divert water from Minidoka Dam and Milner Dam near the bottom of the basin. The Rangen call is for fish propagation. In identifying the area of common groundwater supply, certain areas that are inside the model boundary were excluded from the call because they were outside the boundary obviously. If that Rule change were adopted then that reason wouldn't apply.</p> <p>Now Judge Wildman recently ruled against the Director's establishment of the great rift fault zone as a boundary for the area of common groundwater supply for the Rangen call and he remanded that to the Director to reconsider. So, it seems</p>

Person	Statement
	<p>to me that there will be reconsideration of what the Rangen boundary should be. If this Rule change is adopted, it would not be automatically limited to some area within the area of common groundwater supply.</p> <p>Now, the Surface Water Coalition – there are some areas on the exterior edges of the model boundary that have not been included because they are outside the area of common groundwater supply. Recently, District Judge Wildman issued a decision modifying the application of this practice before that order ... let's say in 2010, I believe, the Surface Water Coalition shortage was determined to be 84,000 acre feet. Consistent with previous orders, the Director reduced the amount that the groundwater users owed to be consistent with the areas inside the area of common groundwater supply. Judge Wildman said that's not an acceptable practice – he said ... he didn't discuss which area should be included but he said, "all of the shortage should come from the area that's being regulated." So, I think that the Surface Water Coalition should not care very much whether the area of common groundwater supply is changed or not because regardless of the area they would get their full shortage met from the water users that are regulated.</p> <p>So, let me just summarize the issues – the key issues that I see that we're dealing with here. Those subject to regulation point out that the areas that contribute water to the ESPA are not treated equally. I call this the "unfairness argument." If it wasn't the most prevalent argument and comment made in the meetings, it was the one that caused me the most pause. I want to emphasize one thing – ultimately, this argument has the potential to drive the Department to regulate more rights and expand the area that's regulated. There's no doubt that, you know, if we want to be fair, that means we can't regulate anybody if somebody else isn't regulated. So, it just kind of follows logically that that's the pressure that's on the Department. It's pretty apparent to me that some area is outside the current boundary impacts bring discharge in certain locations more than areas inside the boundary. So, it isn't perfectly fair and uniform all the way around.</p> <p>Second point, those whose water supplies are impacted by groundwater pumping have a compelling argument. The area that affects spring discharge within the ESPA is clearly greater than the current boundary.</p> <p>Now the third point is a difficult one for me and that is the one thing we'd like to have in this whole process is certainty. I fear that's a casualty in all of our work. I believe it's been about ... it's been more than ten years now since we've been working on these issues. I remember a meeting long ago where it was predicted that it would be several years before certainty would come. I don't think people expected this long with this much uncertainty. So, unfortunately, that's what we're dealing with. That's the hand we've been dealt. And it's hard to predict when final certainty will be achieved.</p> <p>Mr. Chairman, that concludes my comments.</p>

Person	Statement
Chairman	Okay. Committee, do you have questions for Director Spackman or Mr. Rigby? Representative Burtenshaw.
Rep. Burtenshaw	Yes, Mr. Chairman and Mr. Rigby. Could I ... we talk about this model and how it affects the Aquifer, but in your proposal you're taking snippets of groundwater around the Aquifer that you currently have but your comment was that the blue area was a bridge too far. So, my question is if your model is accurate, as you believe it is, then if any of that area affects the Aquifer, why would you exclude any?
G. Spackman	<p>Mr. Chairman and Representative Burtenshaw. It's a very good question and part of our problem is that we don't have technical information right now beyond the boundaries of the model to establish where those obligations should be if we were to establish a hard-wire boundary in the Rules. And that's one of our problems. We know there are contributions from some of these other basins and Rich Rigby talked about one of those areas – the Big Wood. We know that there's a very large groundwater pumping component in the Raft River Basin that probably has a much greater and more immediate effect on both Surface Water Coalition call and the Rangen call but it's not in the model.</p> <p>So, I'm not sure I'm answering your question other than we really don't have information in those areas that's been modeled and included to pull them in.</p>
Rep. Burtenshaw	Follow-up Mr. Chairman
Chairman	A follow-up.
Rep. Burtenshaw	So, here's my question. We're going to include with this boundary change a lot of acres that you feel like scientifically add to the Aquifer or draw from the Aquifer based on the 2.1 model. Is that correct?
G. Spackman	Mr. Chairman, Representative Burtenshaw. Maybe there's some misunderstanding because what we are proposing is to repeal the Rule, which results in <i>no</i> definition of a boundary for the area of common groundwater supply for the Eastern Snake Plain Aquifer. And it will require me in every single delivery call now to determine based on evidence that's presented in a contested case hearing what that boundary should be. So, there will not be any hard-wire boundary in the Rules for the area of common groundwater supply for the Eastern Snake Plain Aquifer. It does not include all of the blue areas and, in fact, it doesn't even include all of the yellow or the white areas on your map. It essentially will mean that there <i>is</i> no area that's defined and I will have to make that determination in each contested case hearing.
Chairman	Okay. The Chairman has a question for you. I think it's very important that we understand the technical information that you have outside of the boundaries of the present Eastern Snake Plain Aquifer. I know that over the last 40 or 50 years that there's been all kinds of modeling done on that particular area that's in yellow on the map and pretty good information there on what each well or whatever would have in effect. But do you have <i>any</i> technical information that would let you make a good, honest decision on the affects of a well in any of the blue areas out there and how it affects the Aquifer and the <i>time</i> schedule – the amount of time it would take for it to actually have an effect and what percentage of that (if shut-off well) what percentage of that would actually reach the Water

Person	Statement
	Coalition or the springs or anything like that? Do you have enough information on that blue area that you could really make an intelligent, honest decision on a call?
G. Spackman	Mr. Chairman. The conclusion I draw is we have technical information but not to the degree that we could accurately determine what the depletions would be from groundwater pumping or even from surface water withdrawals in those basins to include the areas colored in blue at the present time.
Chairman	Okay. Representative Miller.
Rep. Miller	<p>Thank you, Mr. Chairman. I have similar concerns that have been voiced already and a specific concern in the Camas Prairie area, which is part of my district and of course is my home. A number of years ago there was a request to transfer a well groundwater water right from the Prairie to the Wood River Valley and that transfer was denied because it said that the Aquifer (the Camas Prairie Aquifer) was an isolated Aquifer that they weren't inter-related. And, yet, it would seem that this is suggesting that that Aquifer that was declared in that situation in the past now might be inter-related. And that seems to me like that puts the water users in that area in a situation where they have the burden of proof in any kind of a call or an allegation, then it transfers the burden of proof to those water users, which seems patently unfair to me given the history of the situation.</p> <p>I guess I'd like to hear you comment on that please.</p>
G. Spackman	Mr. Chairman, Representative Miller. The application for transfer that you're referring to – and I may have been involved in it, but my guess is that it was comparing the groundwater Aquifer in the Big Wood River area or the drainage upstream from there ... because the proposal was to move the water into that area, as I understand, and the determination would be that those two aquifers as compared to each other are separate. In other words, the Aquifer or the surface water system in the Camas Prairie area is contributing water downstream from the upper Wood River Valley and so there is no connection. I don't think the same argument can be tendered for the hydraulic relationship or hydrologic relationship between the Camas Prairie and the area below there where the surface and groundwater to the extent the groundwater contributes are connected to the lower Wood River area. So, there is a connection – there is a hydrologic connection. The extent of that connection we don't know. And I know there have been several arguments on the Camas Prairie that it is an isolated Aquifer and, in fact, the groundwater does not contribute much, if any, underflow to the Eastern Snake Plain Aquifer. We don't know.
Male Voice	[inaudible question/comment] [31.56]
G. Spackman	Burdens of proof, I guess. But it does impose on me. This Rule change would impose on me in each call to make that determination of what is in the area of common groundwater supply. And, at least from my perspective right now, it probably is a shared burden of proof between the parties. I don't see any presumption in this because we don't have a defined area.
Chairman	Do you have a follow-up?
Rep. Miller	Thank you, Mr. Chairman. I've seen a few water budgets done by different geologists over time. I guess I'm really ... without having some kind of

Person	Statement
	background that would indicate more than what we've ever seen historically or geologically presented, at least in the area that I've been associated with or the meetings that I've been with, it really makes me nervous to have an area that's included in there that could become subject to call without having reviewed materials, research, geological ascertainment of what's going on there. That really causes me a lot of heartburn.
G. Spackman	Mr. Chairman, Representative Miller. All of the documentation that you're referring to and additional evidence would have to be presented at the contested case hearing before a determination of the area of common groundwater supply could be complete.
Chairman	Representative Wood.
Rep. Wood	Thank you, Mr. Chairman and Director thank you today for your testimony and presentation. With respect to Chairman Raybould's question. What about white? What do we know with respect to technical expertise and how that area of common groundwater supply operates within the areas of white that you have here; and I recognize you mention the Raft River area, which has some significant issues and problems? What do you know about the areas in white (not the areas in blue, you've answered that part of the question)?
G. Spackman	Let me just ask Rich to ... if he has a copy of the map. It's blocked out for me looking at the screen.
R. Rigby	Those are inside the model boundary
Chairman	Excuse me, Rich. If you hit that box on the computer there that says "cancel" would that rid of that box? Yah, where it says "close". Right down at the bottom of that box there's a ... there you go, thank you.
G. Spackman	<p>That's helpful. Okay, the areas in white are the areas that are within the model boundaries presently but are <i>not</i> included in the Rule 50 area of common area groundwater supply. So those areas were included in the model boundary and, as Rich said, the reason for their inclusion is the modelers tried to find places where they could better define what they call the flux or the boundary change that's occurring for the model.</p> <p>And the best example I can give you ... you see that big thumb that extends up into the Big Lost and goes all the way on the northern end about half way up. It almost looks like a pistol in a way or a derringer. If you look at that particular geological area, there's a reason why the modelers went all the way up the Big Lost to Mackay Dam. And the reason they did is because Mackay Dam is a geological constriction in the hydrology of the Big Lost Basin. And the modelers can determine across that constriction ... they can better determine what the total water flow is into the model boundary. So, it's much easier for them to do that than out across the lavas on the Westside of ... well, as you go out towards the Craters of the Moon and out to the South because now they don't have a lot of data in monitoring wells and it's an expansive area. So for purposes of modeling, they took that area up through the Big Lost – not for the purpose of administration, but for purposes of accuracy.</p> <p>Now, if you look ... now that was true, at least from what they tell me, in all of</p>

Person	Statement
	<p>those white areas. And, yet, there are areas like the Raft River that we know and the Big Wood portions of it that may have (and probably have) as much direct impact (both in timing and quantity or more) than the Big Lost but there wasn't reason for the modelers to go up into there. They're just ... the modelers are just approaching this from a think tank nerdy sort of approach to how to we improve the accuracy of the model, not for purposes of administration.</p> <p>Now, to get to your question. And that is, how are they affected and I think that's a good question. If this Rule change occurs, then I have to look at the information that's available to me and then make a determination in the contested case to determine where that area of common groundwater supply is. But the practical question is where do I have information and data and where don't I have information and data. Well, I have information and data within the model boundary. And so honestly it may compel me to use the model boundary, hopefully, with some large measure of practical discretion. I don't know how much of that I have. I can tell you that the folks I know in the Big Lost if I went up and told them, they'd be regulated as part of the ESPA. I've been up there in Mackay and some of those meetings and been threatened with succession from the State of Idaho and that might happen again. But, practically, I have to use the information data I have. So, it may be that a lot of those white areas would be pulled into an area of common groundwater supply. Sorry for the long explanation but maybe it was helpful.</p>
Chairman	Okay. Further questions? Representative Vander Woude.
Rep. Vander Woude	Thank you Mr. Chairman and Director Spackman. You keep saying you <i>don't</i> have information on the blue area and how it affects the Aquifer. How are you going to attain that information and then make a judgment? Or, how do you make a judgment when you don't have the information?
G. Spackman	<p>Mr. Chairman, Representative Vander Woude. At the time that we decided to propose the repeal of Rule 50. I sent out specific instructions to staff and it was contained in two memos to staff. And what I asked the modeling people in our department, as well as the modeling committee that's larger and represents many of the interests across the Eastern Snake Plain – I asked them to look at all of these tributary basins and propose for me a way in which these basins – data could be gathered in these basins and we could determine whether those basins should be included as part of the model. So, I wanted them to look at timing. I wanted them to look at quantity and I wanted them to look at the amount of data that we need to gather to make a determination so that we can be more equitable and fair in the administration and conjunctive management of the water rights of the State of Idaho. That was one part of it.</p> <p>The other part, honestly, is (and this is outside of our consideration today) but there are several of these tributary basins, honestly, where there are surface water rights that are not regulated today and the water is tributary to the Snake River and probably the diversion ... and the water rights are unregulated at the present time with respect to the Snake River and those impacts are more direct and perhaps larger on the senior water right holders than some of the groundwater</p>

Person	Statement
	<p>pumping. So, it's outside of, but I wanted to let you know at least the whole picture of what I've asked staff to work on. So, I've asked them to look at those surface water diversions as well.</p> <p>And so we'll probably look at extensions into some of these blue areas and probably not all the way up. I think there are some areas where we'll look at it and say it's too remote, there's too little activity up there. We shouldn't be defining an area of common groundwater supply in those areas but we're not there yet.</p>
Chairman	Do you have a follow-up?
Rep. Vander Woude	Follow-up, Mr. Chairman. Thank you, Mr. Chairman and Director. So it is your intention to start regulating some of the surface water in this blue area if you find it affects the Aquifer?
G. Spackman	Chairman Raybould, Representative Vander Woude. One of the expectations at the end of the Snake River Basin adjudication was that the Director should be forming water districts; and that the water in all of the basins should be regulated, according to priority, unless those basins are decreed to be a separate basin to be administered separately. And so I have that obligation to look at both groundwater and surface water resources in a way that is equitable and fair to the water users.
Chairman	Okay, Mr. Director or Rich, either one. It's obvious from your testimony here today and in other discussions that we've had, that you do not have enough <i>accurate</i> information in all of that blue area to make an honest judgment of where to place a call. How long will it take the Department to gather that information in that area to include in the model so that whenever you made a call you would feel like it was an accurate and honest call on that? How long would that take to gather that information in that area?
G. Spackman	Mr. Chairman. I'd like to say that we were able to conduct these technical activities in a very rapid and accurate way. I remember talking to somebody from the Academy of Sciences once over in Portland years ago and the Executive Director of that entity (after having a couple beers) told me that their motto was "we're expensive, but we're slow." I'm afraid, with respect to modeling, it's that way a little bit. I mean it's a difficult process, it takes a lot of data and it takes a lot of massaging. The last model (a revision and amendment) took probably five years of intensive work with the Department and outside folks to redefine the boundary, to redefine the approaches, to redefine the attributes of the various cells in the model. It's a <i>huge</i> groundwater model – one of the largest, I think, that's out there in the Nation (that I'm aware of). So, it would take <i>years</i> . I hate to admit that, but those are the realities.
Chairman	In that case, then, if it's going to take say two years, five years or whatever to get the information you need to be <i>accurate</i> in the calls that would be made outside of the present boundaries of the Snake River Plain Aquifer, would you feel more comfortable in making those calls <i>after</i> you get some really good definite information on the modeling outside? Would that make you feel more comfortable in administering a call?
G. Spackman	Mr. Chairman, yes.

Person	Statement
Chairman	Okay. Representative Andrus.
Rep. Andrus	Thank you, Mr. Chairman and Director. Two or three years ago we got some [inaudible] [45:06] that were going to be hydrologic studies in various reaches of the Snake and I believe the Portneuf reach – the plan was to do that in 2018. Now, isn't that where you get the model – the information to make a model from?
G. Spackman	I don't know. Mr. Chairman, Representative Andrus. I guess I would have to go back and require or inquire about the 2018 studies. I know that staff is expanding and attempting to expand the monitoring network that the Department has and their efforts will intensify after this request that I made to them. But, again, it takes – even if we have an increase in the monitoring network, it takes time to gather the background data to actually then enter that data into the model so that it is meaningful. We often need years of data before we can make sense out of what's happening.
Chairman	Okay. Further questions? Okay ... seeing none.
G. Spackman	Mr. Chairman.
Chairman	You or Mr. Rigby have further discussion
G. Spackman	<p>If I could offer a couple of concluding remarks and I'll just ask a couple of questions of myself and then answer them.</p> <p>And the first question is ... did the Director want to go here? Not really. It was an additional activity that I didn't want to engage in.</p> <p>Second ... Was the boundary that was defined in the Rules defensible technically? The answer, from my perspective, is no. The boundary came from an old USGS study done by a guy by the name of Garabedian and he essentially tried to roughly map the boundaries of the basalt. And it was adopted back in 1995 at a time that we, as a department, knew very little about the interactions and where the edges of the Aquifer are and what might be the area of common groundwater supply.</p> <p>So, if I had taken the choice of leaving the boundary where it is, in my opinion, it was not defensible technically. We had to do something to change it. And then Rich talked about the fact that we didn't feel because of the disparate treatment that we could just say and hard-wire a model boundary.</p> <p>Next question ... will it make life easier or harder for me and for the decision-makers? It will be harder. It is much easier for us to just in a rote and blind way apply a boundary. Now there has to be a technical determination.</p> <p>And then I think the last question is a reiteration or restatement of the answer to Chairman Raybould and that is that for us to go outside of the model boundary right now will take a <i>lot</i> of technical work and information for us to establish the relationship between groundwater pumping in those exterior blue color basins and the actual Eastern Snake Plain Aquifer – at least that's within the model boundary today. Thank you, Mr. Chairman, Members of the Committee.</p>
Chairman	Okay. Thank you Director. We have one person who would like to testify here

Person	Statement
L. Tominaga	<p data-bbox="443 224 1487 256">today on the signup sheet. Lynn Tominaga. Lynn would you like to testify now?</p> <p data-bbox="443 262 1463 401">For the record, my name is Lynn Tominaga. I am the executive director for the Idaho Groundwater Appropriators. We are an association of groundwater districts and irrigation districts across the Eastern Snake Plain and some of its tributaries.</p> <p data-bbox="443 447 1471 657">The Committee has done ... first of all, I want to say thank you for the opportunity to come and talk. My Association is split on the issue because most of my groundwater districts are already in the common groundwater area as defined. But I have members that are outside the common groundwater area. And let me just explain maybe three or four issues that I'd like the Committee to examine.</p> <p data-bbox="443 703 1463 1136">One is the Director talked about certainty. What we have found that every time the Department has come out with a new version of the model (because it was 1.1, 2.0, 2.1), things have changed and there's no certainty. And so every time the model changes, we believe that there will be uncertainty for all of the folks that are on the map that I provided. If you notice on the map, there is 250,000 acres that would be included in the ESPA 2.1 and there's another 272,000 acres in the blue area. As the Director talks or discusses what's going on, we believe that that will include more and more folks as the information comes forward because as long as the model shows that there is some contribution from those groundwater areas, they could be included in any future water delivery call just because they contribute to the common groundwater area. So there's not certainty and that's one of the issues.</p> <p data-bbox="443 1182 1438 1320">We know that the yellow area that we presently have is ... we know who's in. And that's one of the issues that we would like to see this negotiated Rule defeated or eliminated in terms of eliminating the common groundwater area. We would like to see the common groundwater area stay.</p> <p data-bbox="443 1367 1487 1833">The second area is a lot of the folks that, you know, the Director and Rich talked about the two major water calls that are going on right now. We have Rangen down in the Thousand Springs and the surface water. The Rangen water delivery call, if Judge Wildman's decision holds, would take the entire area plus the areas that are in the white also. Now, there's a policy issue that we'd like maybe eventually to come to the Legislature and discuss. For example, in those white areas, most of contribute less than 1% of the water that they pump would eventually get down to Rangen and it might take 100 to 150 years for that water to actually show up from that water that's not being pumped. Now is that a policy question that shouldn't be done by modelers or the Department, but by the Legislature? If you don't contribute more ... well, a prime example is that most of the water measurement devices that are presently available, the accuracy of those measurement devices (especially on surface water) is between 5-10%.</p> <p data-bbox="443 1879 1377 1902">So the question is, how can a model be able to come in and show that it's</p>

Person	Statement
	<p>accurate to 1% or not have any margin of error? Shouldn't this be a policy question either for the courts or for the Legislature?</p> <p>It's kind of funny that the water delivery call or Rangen and the inclusion of the Big Lost and the Little Lost is included because they are one of the areas in the State where there is a futile call for surface water calls. In fact, at Mackay Dam during drought years, there's 10,000 inches that's released from Mackay Dam. Within five miles, that water all disappears into the river bed because of the loss. The senior is 6 to 7 miles down the river. So he never gets the water that's released from Mackay Dam and that's called a "futile call." Within 3 to 5 days if they can't get the water from Mackay Dam down to the senior, then the juniors are able to divert the water from Mackay Dam and be able to irrigate because the water never gets there. Is that true for some of the areas in white that contribute very little but takes a very long time to get down to the folks that are making the water delivery call? That's an issue I think that needs to be discussed.</p> <p>Last, but not least, is ... should we have modelers making policy decisions? In other words, if they come in and say they contribute 1,000 acre feet from an area that irrigates 100,000 acres of groundwater, or if they come in and say jeez they contribute 1 acre foot, should they be involved in a water delivery call where that water won't show up for a very long time. Again, do you want technical people that are going to come in and make policy decisions that should be done by the State Legislature or the courts?</p> <p>With that, I'd like to just finish my comments by saying one of the real big issues that are going on with all of this is that Judge Wildman down in Gooding is saying that for a groundwater user not to be included in a water delivery call it has to be done by clear and convincing evidence, which is a higher standard that has to be met in terms of if you don't contribute to a particular water delivery call. That's one of the concerns that we have is that in having this clear and convincing evidence, whenever the Department makes a determination that you have an impact on the Aquifer, then the evidence that the other folks have to provide that are going to be included in a call – the standard of proof is very, very high.</p> <p>So, with that, I'd be open for questions.</p>
Chairman	Okay, Committee is there questions for Mr. Tominaga? Representative Erpelding.
Rep. Erpelding	<p>Thank you, Mr. Chairman. Mr. Tominaga I guess what I heard you say was that you're concerned about the modelers making policy, but it seems to me that this modeling is increasingly more and more accurate and indicating that the Snake River Aquifer and the water that flows to it is quite complex and so this Rule doesn't really meet the purposes of what it was trying to do right now. Is that ... I mean if you don't take this Rule out, then there's an assumption that (I could be wrong ... as you know, I'm no water policy expert) what's already existing is considered part of it but there's no doubt that this basin is much, much bigger</p>

Person	Statement
	than potentially even people imagined. And so I'm not sure why there's a concern about this from the expanding the basin and how the basin presents on the whole.
L. Tominaga	Mr. Chairman, Representative. That's why our folks are conflicted is that those that are in the yellow already know that we're in no matter what. In other words, we've been living with water delivery calls for the last 10 or 12 years and we know that when there is a call, we're there and we have to gain water for mitigation purposes. The folks, I believe, that are in the white and in the blue don't even know that this Rule is even going on. It hasn't really been ... I asked the Department why they didn't mail out to all the other folks that could possibly be impacted. And I was told that it would cost too much to mail all those folks notices that they could be impacted. And so, like I said, there's more than a half a million acres of irrigated ground in the blue and the white areas. And the ones in white were notified and they showed up in force. And, in fact, I apologize, I didn't see the agenda on Friday and I would've made a couple of calls and we could've had 15 or 20 people here testifying against this today but that was my fault, not theirs. But, I can tell you that that's the issue ... is that there are people that don't even know this Rule is even going on that could be impacted. That's the concern that I have.
Chairman	Do you have a follow-up? Oh, Representative Rubel.
Rep. Rubel	Thank you, Mr. Chairman. Thank you, Mr. Tominaga. My question is directed to you but I would also be interested to hear what the gentlemen from the Department of Water Resources have to say. So, with respect to those that are in the white and the blue areas but that might have an argument that a call would be futile ... I guess, do they really have anything to worry about? Because if a call, you know, if it would take 10 days for the water to trickle out, would they really be subject to a call and how would the Department deal with situations like that as to folks that are currently in the white and the blue?
L. Tominaga	Mr. Chairman, I'll let the Department answer, but from at least our interpretation is that anything that's in the black area on your map would be included in any future water delivery call because there's information or data that says they contribute to the ESPA. Now, they haven't done the studies for the blue areas or they don't have enough information in the blue areas but we know that probably the next target will be the Big Wood and the other one would be Raft River groundwater area. So those are the two larger areas that we know that will probably be included into the future and I don't think that most of the folks even know that they have the possibility of being included.
Chairman	Okay, further questions of Mr. Tominaga? Okay, thank you, Lynn.
L. Tominaga	Thank you, Mr. Chairman. Thank you, Members of the Committee.
Chairman	Okay. Is there anyone else in the audience today who did not sign up that wished to testify on this? Okay, seeing none. Committee this is open for a motion or discussion. Representative Andrus.
Rep. Andrus	Thank you, Mr. Chairman. A point of clarification.
Chairman	Yes.
Rep. Andrus	A motion to reject the docket is the same as a motion to reject the Rule. Is that correct?

Person	Statement
Chairman	In this particular case, and I will let the Director determine if I'm correct here, but I believe that Rule 50 is the only part of this docket that is being taken out so we would reject the docket. We would reject docket number 3703111101. Is that correct Director Spackman? Of course, only Rule 50 is the only thing in the docket that has changed from the previous docket and so we would reject the change.
G. Spackman	Mr. Chairman, there is I think at least one other reference in the Rules (and I'd have to dig) where there was an actual reference to Rule 50 and that language is being stricken as well. But, my understanding is that and I'm not sure I can speak to the docket itself.
Chairman	Yes, that's on page 133. There's one line there that does talk about Rule 50 that is stricken and that would also remain in the docket if we reject the changes in the docket.
Rep. Andrus	I would make a motion then, Mr. Chairman.
Chairman	Motion is in order.
Rep. Andrus	I move that we reject Docket 370311-1101.
Chairman	Okay. Representative Rubel.
Rep. Rubel	Thank you, Mr. Chairman. I was wondering if it would be possible for the gentlemen from the Department of Water Resources to address some of the issues raised by Mr. Tominaga; and, in particular, the question about a call being futile as to many of these additional landowners?
Chairman	Okay. Director Spackman would you like to address that? I don't believe we have any authority to make a futile call on an underground source, do we?
G. Spackman	<p>Mr. Chairman and Representative Rubel. This particular subject of a futile call really and a discussion of it really launches me into a discussion of the core decisions and the decisions that I've issued. I can go there but some of the details might take a long time. So, I want to launch and have the Committee sitting there thinking why did we get started with this and why is Spackman droning on.</p> <p>But maybe I could just say that the original decision responding to the Rangen call that I issued on January 29, 2014 established what we called a "trim line". And that trim line cut through the yellow portion on the west side of that thumb that goes up the Big Lost. So, if you were to go there ... if you know where the Great Rift cuts through the Eastern Snake Plain, it would be on the west side. I'm sorry, it's not on the west side ... I think it's on the east side of the Big Lost. Isn't that correct, Rich? It is on the east side of the Big Lost Basin and then cuts almost directly south. So down on the bottom end of American Falls Reservoir that's depicted there. And that line was identified as the trim line which had been recognized by previous court decisions and by the US Supreme Court. Judge Wildman's decision then eliminated that trim line and stated that all of the groundwater users in the area of common groundwater supply should be subject to the delivery call and curtailments. So there was an initial line that was established – it was called a "trim line." It had been recognized by prior court decisions. I thought I was following those court decisions and some of the reasoning behind them.</p>

Person	Statement
	<p>So, in the remand the court said that the Director had not addressed the issue of futile call. Now, I don't know whether that's commentary or whether that's an invitation to address the issue of futile call. That decision has just been recently appealed – the Judge's decision to the Idaho Supreme Court and those appeals ... the deadline was within the last two or three weeks. Honestly, I was waiting to see if there might be a stay of that decision or whether I needed to act on the remand from the court. I don't see a stay in place, so I need to act on the remand. But the question is, are the water rights and the Conjunctive Management Rules that you're looking at in total refer to the principal of futile call that Lynn Tominaga talked about?</p> <p>And so, it's a question of the amount of time and the quantity. I know I can't apply the same principals of time that I do in a surface water delivery call because those are measured in days. And if I measured the impacts in days, no groundwater users would be curtailed or subject to it. So, I don't know what the answer is but it's something that I may need to struggle with and probably will. I don't know what the Legislature wants to do with it, but I know I have to struggle with it in the next ... weeks.</p>
Chairman	<p>Okay, thank you. I personally have always wondered when Conjunctive Management was implemented between surface water and groundwater that why all the Rules didn't apply. If they apply to surface water, why don't they apply to groundwater? So, in this particular case, I believe you said that if a senior surface water user made a call and the junior upstream shut off his water and didn't get down to the senior, what in seven days – is that what the time period you said? Or is it less than that?</p>
G. Spackman	Three to five days.
Chairman	<p>Three to five days. Well, if that's the timeframe on that and we have Conjunctive Management, then why doesn't that apply to underground water? If someone makes a call on a spring and he shuts 157,000 acres of land up above him and he doesn't get an increase in his water in a period of three to five days, isn't that a futile call? I don't know. That applies to surface water and we've got Conjunctive Management. Well, these are issues that I think we're going to have to determine.</p> <p>The Chairman's opinion here today, after listening to the testimony and the motion that we have to reject this Rule. I personally believe that, yes, at some point and time all of this area that's on the map in the blue area is going to have to be included in these calls but we're not prepared to do it right now. We don't have the technical information that the Director can make an <i>objective</i> call on any one of those areas and say I feel like that's accurate. That we're going to get some water down to the area that's making the call. I think we're a little premature. I think we need to give the Department enough time – maybe it's a year, two years, five years. Whatever it takes for them to do the investigation that they need in these areas that they want to include into the Aquifer and then come back with a Rule and you might have to do it piecemeal ... maybe a year or so at a time. And include areas just as we go along to get it in and get it in right. So, anyway that's</p>

Person	Statement
	kind of the opinion that I have on it. Representative Wood.
Rep. Wood	<p>Thank you, Mr. Chairman. Um, Chairman Raybould asked me where I was on this last Thursday and I thought, well, I really don't know; but coming from an agricultural area and representing agriculture, I knew the first thing I needed to do was to get home as quick as I could and find out where my irrigation districts in Legislative District 27 and the groundwater districts and the canal companies and everybody else that used water where they wanted me to be on this issue.</p> <p>So I can tell you that my vote today will reflect where my water users and the entities want me to be. It seems to me and in talking to them, it became apparent that there was some ambiguity, but there was more concern about uncertainty (and we've heard that word here before). What does the future hold? I think, however, all of them that I talked to and the other good gentleman from District 27 talked to – it became apparent that the real presentation that the Department made today, which is having an arbitrary boundary that does not conform to the boundary of at least what we know about the model now, just simply isn't fair.</p> <p>When someone makes a water call, there is a known liability of water that has to be produced. I mean that's a liability that is set and it doesn't change. And so, if you have an arbitrary line that goes through an area of common groundwater supply, as I understand it, such that some people are not affected by the call and the other people are, then what that means is that some people have more liability and some people have none. I agree that's more certainty, however, that's really not fair. I think the issue today is not about the areas in blue. I would agree with everything that everybody says about the areas in blue today. I think the issue at hand is what about the areas in white because I think we apparently do know enough from what the model says. That they probably should be incorporated (maybe or maybe not) depending upon where the call originates. As I see this, I think what the Director and the Department are actually asking for – if you look at the map and you go to the farthest point left and someone makes a water call versus going up to roughly where American Falls is on the map and someone makes a water call, well there's a <i>huge</i> difference in whose going to be liable for how much water to satisfy a water call. I think what the Department and the Director are asking for in asking to delete the Rule and, at least from what my people back home tell me is, that they just want the flexibility to make sure that the people who are actually involved and are the juniors that are using that (with respect to the call) are the ones that actually have to pony up the water versus the ones that don't. So, anyway, I felt that in representing an agricultural district, this Legislator needs to explain his vote on any water issue. Thank you for your indulgence, Mr. Chairman.</p>
Chairman	Okay. Committee, further discussion on the motion? Seeing none. All in favor of the motion to reject the Rule, say aye.
Committee	Aye.
Chairman	And those opposed?
Committee	Several saying, "no."
Chairman	One, two, three ... okay. Okay, I think the ayes have it. So, the Committee has

Person	Statement
	rejected this Rule. Is there any other business that needs to come before the Committee today? Representative Gibbs.
Rep. Gibbs	Thank you, Mr. Chairman. The page is going to pass out a copy of a letter I secured from the Attorney General. It concerns the topic of Wednesday's meeting here. I thought that everybody in the Committee should have a copy of the letter from the Attorney General's office. I regret that they are in color and my highlighted area shows up there. I wished I had not done that before the copy was made.
Chairman	Okay, thank you Director Spackman and Rich for coming. Thank you.
Rep. Gibbs	Anyway, I wanted you to know that and have a copy of that and Representative Shepherd had asked for a copy and I thought everybody should have a copy. Thank you.
Chairman	If you would put this copy of your letter – either take it back with you and read it or if you want to leave it here and leave it in your folder so that you'll have it for Wednesday's meeting. Be well, probably, if you took it back to your office and reviewed this but be sure and bring it back with you for Wednesday's meeting. Representative Erpelding.
Rep. Erpelding	Thank you, Mr. Chairman. I have never done this, but I would ask (I guess unanimous consent) that I be able to switch my vote to "no" on that Rule.
Chairman	Okay. Representative Erpelding has requested unanimous consent that he change his vote on this last motion. Is there any objection? Seeing none, do you wish to be recorded?
Rep. Erpelding	Yes.
Chairman	Okay, thank you. Okay with that Committee, if there isn't any other business today we will meet on Wednesday at 1:30 p.m. Thank you, meeting adjourned.

Transcribed by Cathy on 6/25/15

EXHIBIT F

MINUTES
HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: Monday, February 09, 2015

TIME: 1:30 P.M.

PLACE: Room EW40

MEMBERS: Chairman Raybould, Vice Chairman Gestrin, Representatives Moyle, Andrus, Shepherd, Wood, Boyle, Vander Woude, Gibbs, Miller, Bateman, Burtenshaw, Mendive, VanOrden, Youngblood, Pence, Erpelding, Rubel

**ABSENT/
EXCUSED:** None

GUESTS: Lynn Tominaga, IGWA; John Simpson, BRS; Brandt Bullock, IWUA; Brad Hunt, OARC; Jane Wittmeyer.

Chairman Raybould called the meeting to order at 1:31 p.m.

MOTION: Rep. Youngblood made a motion to approve the minutes of February 3, 2015. Motion carried by voice vote.

Reps. Bateman, Van Orden, Burtenshaw, Andrus, Miller, Raybould, Pence, Wood, and Youngblood declared Rule 50 as a possible a conflict of interest on Docket No. 37-0311-1101, but all intend to vote.

**DOCKET NO.
37-0311-1101** Gary Spackman, Director of Idaho Department of Water Resources (IDWR), stated a 2010 petition from Clear Springs Foods promulgated revisions to Rule 50 and he commenced negotiated rule making proceedings due to water delivery calls in the Eastern Snake Plain Aquifer (ESPA). He said IDWR determined that Rule 50 did not reflect current technical information. He stated multiple public meetings were held and due to ongoing work related to the ESPA model and issues related to delivery calls in the Eastern Snake Plain Aquifer, the department decided to stay the rulemaking proceedings. Mr. Spackman restarted the negotiated rulemaking process and additional public meetings were held. Mr. Spackman stated there are several alternatives, but none of the alternatives are very good in his opinion. He stated he chose the best of bad alternatives. Mr. Spackman's decision was to repeal Rule 50.

Rich Rigby, senior advisor at IDWR and now retired, works for IDWR on as needed basis. Mr. Rigby indicated Rule 50 and the ESPA model are no longer accurate scientific information and some areas contribute or have more affect on ground water supply than other areas. He stated some arguments of common ground water supply areas affected by each call will depend upon facts. Mr. Rigby stated that to repeal Rule 50 results in no definition of boundary for common ground water supply and the IDWR Director will make a determination on each case.

Gary Spackman, Director of Idaho Department of Water Resources (IDWR), indicated accurate modeling information is expensive and slow and could take 2 to 5 years to be accurate outside of the Eastern Snake Plain Aquifer. Mr. Spackman agreed with Legislators that IDWR needed definite information to make accurate and fair calls. Mr. Spackman added that IDWR staff is expanding the monitoring network and their efforts will intensify in the future. He noted it takes time to gather background data, enter data into the model, and years of data will be needed to accurately analyze the results.

Lynn Tominaga, Executive Director of IGWA, stated the IGWA is split on this issue. Mr. Tominaga expressed concern with IDWR using a model with uncertainty and more folks would be included as they would be required to contribute ground water to the water call area. Mr. Tominaga stated some of the water users would not make a difference in water as the distance of their property is too far from the location of the water needed or the location of the water call. He further stated that some water would just disappear into the river bed prior to reaching the water call area due to the distance.

MOTION: Rep. Andrus made a motion to reject Docket No. 37-0311-1101. Motion carried by voice vote. Rep. Gibbs, Wood, Bateman, Pence and Erpelding requested that they be recorded as voting NAY.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:50 p.m.

Representative Raybould
Chair

Jennifer Smith
Secretary

EXHIBIT G

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

**IN THE MATTER OF PETITION TO
AMEND RULE 50**

FINAL ORDER

This matter is before the Director ("Director") of the Idaho Department of Water Resources ("Department") in the form of *Clear Springs Foods, Inc.'s Petition to Amend Rule 50* ("Petition"). The Director finds, concludes and orders as follows:

PROCEDURAL HISTORY

On November 10, 2010, Clear Springs Foods, Inc. ("Clear Springs") filed its Petition to Amend Rule 50 of the Rules for Conjunctive Management of Surface and Ground Water Resources ("CM Rules") to expand the Area of Common Ground Water Supply ("ACGWS") consistent with the ground water model boundary referenced in the *Enhanced Snake Plain Aquifer Model Final Report dated July 2006, Idaho Water Resources Research Institute Technical Report 06-002*.

In response to the petition, the Director initiated negotiated rulemaking. Meetings were held in Arco, Boise, Burley, and Chubbuck during the period March 9 to April 20, 2011. On August 9, 2011, the Director issued a letter to participants in the process temporarily suspending further action on the Petition pending availability of the next generation of the Eastern Snake Plain Aquifer ("ESPA") ground water model. In the letter, the Director explained that "[i]t makes sense to analyze the proposed rule change under version 2.0 of the model which will be used for administration of rights under any new rule adopted in the future."

Action on the petition was further delayed after Rangen Inc. ("Rangen"), a fish hatchery operation in the Hagerman area, filed a delivery call in December of 2011. In his letter dated September 26, 2013, to Paul Arrington, attorney for five of the seven irrigation districts and canal companies known as the Surface Water Coalition ("SWC"),¹ the Director explained that the information developed in the Rangen administrative process would be important in evaluating the Petition: "The information being generated and analyzed in the Rangen call is a necessary prerequisite to addressing the broader issues of the boundary for the area of common ground water supply."

A final order on the Rangen delivery call was issued on January 29, 2014. Proceedings for Clear Springs' Petition resumed on April 11, 2014. Further meetings were held in Arco, Boise, Burley, Pocatello and Rexburg between May 29 and June 2, 2014. The Department accepted comments on the Petition through June 24, 2014.

¹ A&B Irrigation District, American Falls Reservoir District No. 2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company.

FINDINGS OF FACT

1. The current ACGWS is based primarily on a 1992 determination by the U.S. Geological Survey ("USGS") of the extent of the underlying basalt bedrock that comprises the ESPA. The USGS report is referenced in CM Rule 50, which currently provides in relevant part:

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

2. Clear Springs' Petition seeks to replace the reference to the USGS report:

01. Eastern Snake Plain Aquifer. The area of coverage of this rule is the aquifer underlying the Eastern Snake River Plain as the aquifer is defined in the report, ~~*Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho*, USGS Professional Paper 1408-F, 1992 excluding areas south of the Snake River and west of the line separating Sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian~~ Enhanced Snake Plain Aquifer Model Final Report dated July 2006, Idaho Water Resources Research Institute Technical Report 06-002.

3. The Enhanced Snake Plain Aquifer Model Final Report, dated July 2006, documents what is commonly known as ESPA model version 1.1 ("ESPAM 1.1"). The ESPA model has been updated twice since Clear Springs filed its petition in 2011. The most recent version is referred to as "ESPAM 2.1." See *Enhanced Snake Plain Aquifer Model Version 2.1 Final Report* dated January 2013.

4. The ESPAM 2.1 boundary was developed to simulate how ground water flows in the aquifer based on available data. Sometimes artificial boundaries were drawn because of the lack of scientific data for some tributary basins. A. Wylie, *Model Boundary Revision 2* (May 8, 2009). Given the artificial boundaries, the model boundary does not include all tributary ground water areas that supply water to a surface water source, nor does it include all areas where ground water "affects" the flow of surface water. USGS Professional Paper 1408-F, *Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho*, (1992); B. Sutter, Memorandum to the Idaho Committee on Hydrology (March 9, 1995); IWRI Technical Completion Report 20 II 03 (March 2011).² Ground water diversions in tributary basins deplete the volume of recharge to the ESPA and reduce tributary stream flow and ultimately the flow in certain reaches of the Snake River.

5. IDWR received verbal comments at public meetings and over 200 written comments in response to the proposed rule change. The parties that participated in the negotiated rulemaking have strongly held views with no material overlap between those who support and

² These documents are all on the Department's web page for the Petition.

those who oppose the petition. Those potentially subject to and those who would benefit from additional regulation both believe their approach is the only fair and reasonable one.

6. The vast majority of the testimony and comments received oppose the change. The following is a broad overview of the comments received but it does not reflect each and every comment received:

a. Comments in favor of the petition:

- The current model boundary is a better representation of the ACGWS than what is identified in the current rule.
- Failing to include all contributing areas within the ACGWS negatively impacts the rights of calling parties.

b. Comments opposing the petition:

- No change should be made because the ACGWS was defined on the basis of geology. The geology has not changed.
- There is insufficient hydraulic connection between the areas being proposed for inclusion and the ESPA to justify a change. Ground water in specific areas does not intermingle with waters of the ESPA and are consequently not part of a "common" supply. The low transmissivity of certain areas should be considered.
- The model does not adequately represent conditions in the areas proposed for inclusion in the ACGWS and should not be used for administration of those rights.
- The model was not developed to establish the ACGWS and it is inappropriate to use it for that purpose.
- Pumping in areas proposed for inclusion has a very small impact on the ESPA. Furthermore, ground water pumping impacts the diversions of calling parties long after the depletions of ground water occur. Some areas proposed for inclusion are outside the "trim line" and should not be included.
- It is not fair to only include some tributary basins. Other areas that are not proposed for inclusion also impact the ESPA. The proposed rule change treats different areas disparately.

7. Adoption of the ACGWS as proposed in the petition would result in treating similarly situated ground water rights disparately. For example, ground water depletions within the upper Big Wood River basin and in the Big Lost River basin below Mackay Dam both reduce tributary underflow and recharge to the ESPA. The area below Mackay Dam is within the ESPAM 2.1 model boundary, and the upper Big Wood River basin is not. In another

example, ground water use within the Big Lost River basin above Mackay Dam and outside the model boundary has essentially the same impact on recharge to the ESPA as ground water depletions associated with lands below the dam and within the boundary.

8. Additionally, there is a disparity in the administration of surface water rights in the tributary basins outside the model boundary. Surface water rights within different tributary basins would not be administered by a change to the ACGWS. Surface water rights that authorize diversions from the Snake River and some of its tributaries are administered by Water District 01 ("WD01"). However, there are surface water rights outside WD01 that authorize diversions from tributaries of the Snake River and are junior to some of the rights held by members of the SWC.³ The depletions associated with junior priority surface water rights outside WD01 may have a more immediate impact on the water supply (reach gains and storage accumulation) of the Snake River than some ground water rights within the model boundary.

9. Department staff recognized from the onset of negotiated rulemaking that the proposed change would result in disparate administration of similarly situated rights. The most prevalent comment in the recent round of public meetings was that ground water users would be willing or at least more willing to submit to regulation if all similarly situated lands were treated the same.

10. The rationale for establishing a fixed boundary for the ESPA ACGWS is not stated in the rules. Through the development of the ESPA ground water model, additional and better information is available and technical tools have been developed since the Conjunctive Management Rules were promulgated in 1994. The Department can analyze contributing water supplies both inside and outside the current ACGWS. As the Director recognized in recent delivery calls, the ESPA model is the "best technical scientific tool currently available" to predict the effect of ground water pumping. *Final Order Regarding Rangen, Inc.'s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962* at 22 (Jan. 29, 2014).

11. Furthermore, in practice, the administrative proceedings for each water delivery call have identified a trim line, an area within which ground water rights have been determined to impact the rights of the calling party and are, therefore, subject to curtailment. In every case, areas within the ESPA ACGWS have been excluded from consideration by application of the trim line so that each call has a specific area subject to administration. The area determined to contribute to the supply of a water right holder making a delivery call can be determined on a case-by-case basis in each delivery call proceeding. Therefore, a fixed ACGWS for the entire ESPA is no longer necessary.

12. The Director is able to administer a delivery call under the Conjunctive Management Rules without having a fixed ACGWS defined for the ESPA. Eliminating Rule 50 addresses the disparate treatment concern discussed in Finding of Fact 7 above. The administrative hearings and deliberations associated with individual delivery calls is the proper venue to address which ground water rights should be subject to administration.

³ The SWC has filed a delivery call under the CM Rules.

13. The issue of disparity in the administration of surface water and ground water rights in the tributary basins outside the model boundary discussed in Findings of Fact 7 and 8 still remains and should be addressed. In recognition of these concerns, separate from this order, Department Staff will undertake the following:

- a. Complete a review of surface water rights in tributary basins adjacent to WD01 that are not regulated to meet rights within WD01.
- b. Make recommendations to the Director regarding steps that should be taken to assure that water rights within tributary basins adjacent to WD01 are administered in a manner that protects senior water rights within WD01.
- c. With input from the Eastern Snake Hydrologic Modeling Committee, Department staff will develop model protocols or appropriate criteria and methods to administer ground water rights in the hydrologic basins where water is tributary to the Eastern Snake Plain Aquifer.

CONCLUSIONS OF LAW

1. The Director's decision to adopt rules governing water distribution is discretionary. *See* Idaho Code § 42-603 ("The director of the department of water resources is authorized to adopt rules ... as shall be necessary to carry out the laws in accordance with the priorities of the rights of the users thereof.").

2. The Idaho legislature has granted the Director broad discretion in implementing his administrative responsibilities. In a recent case, the Idaho Supreme Court outlined the scope of the Director discretion:

Idaho Code section 42-602 gives the Director broad powers to direct and control distribution of water from all natural water sources within water districts. That statute gives the Director a "clear legal duty" to distribute water. However, the details of the performance of the duty are left to the director's discretion. Therefore, from the statute's plain language, as long as the Director distributes water in accordance with prior appropriation, he meets his clear legal duty. Details are left to the Director.

In re SRBA, 40974, 2014 WL 3810591 (Idaho Aug. 4, 2014)(citations and quotations omitted).

3. The prior appropriation doctrine as established by Idaho law "is comprised of two bedrock principles—that the first appropriator in time is the first in right and that water must be placed to a beneficial use." *In Matter of Distribution of Water to Various Water Rights Held By or For Benefit of A & B Irrigation Dist.*, 155 Idaho 640, 650, 315 P.3d 828, 838 (2013). These two bedrock principles typically are in tension in the context of resolving delivery calls under the Conjunctive Management Rules, and "the critical role of the Director in managing the water resource" in such proceedings is "to accommodate both the first in time and beneficial use aspects." *Id.* at 650-51, 315 P.3d at 838-39.

3. An area having a common ground water supply is defined in IDAPA 37.03.11.010.01 as:

01. Area Having a Common Ground Water Supply. A ground water source within which the diversion and use of ground water or changes in ground water recharge affect the flow of water in a surface water source or within which the diversion and use of water by a holder of a ground water right affects the ground water supply available to the holders of other ground water rights.

4. IDAPA 37.03.11.031 lists the criteria the Director may consider in establishing an ACGWS :

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

02. Kinds of Information. The information considered may include, but is not limited to, any or all of the following:

a. Water level measurements, studies, reports, computer simulations, pumping tests, hydro graphs of stream flow and ground water levels and other such data; and

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

03. Criteria for Findings. A ground water source will be determined to be an area having a common ground water supply if:

a. The ground water source supplies water to or receives water from a surface water source; or

b. Diversion and use of water from the ground water source will cause water to move from the surface water source to the ground water source.

c. Diversion and use of water from the ground water source has an impact upon the ground water supply available to other persons who divert and use water from the same ground water source.

5. The Director is able to administer a delivery call under the Conjunctive Management Rules without having a fixed ACGWS defined for the ESPA. The above general definition and the case law developed in previous delivery call proceedings provide the appropriate framework for consideration of ground water impacts. The Director concludes that Rule 50 should be repealed because the administrative hearings and deliberations associated with individual delivery calls is the proper venue to address which ground water rights should be subject to administration under a delivery call. As a result, Clear Spring's request to amend Rule

50 by including reference to the *Enhanced Snake Plain Aquifer Model Final Report dated July 2006, Idaho Water Resources Research Institute Technical Report 06-002* should be granted in part and denied in part. The Director agrees with Clear Springs that CM Rule 50 must be changed because the current rule "is nearly 20 years old and is not based upon the most recent data information regarding the proper hydrologic boundary of the ESPA." *Petition* at 1. However, instead of amending the rule, the rule should be repealed.

ORDER

IT IS HEREBY ORDERED that Clear Springs's request to amend Rule 50 is granted in part and denied in part. The Petition to enter rulemaking is GRANTED, but the request to include a reference to the *Enhanced Snake Plain Aquifer Model Final Report dated July 2006, Idaho Water Resources Research Institute Technical Report 06-002* is **DENIED**. The Department will take administrative steps to repeal CM Rule 50.

Dated this 29th day of August, 2014.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of August, 2014, I mailed a true and correct copy of the foregoing document, postage pre-paid, to the following:

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Kimi White

EXHIBIT H

**IDAHO SENATE RESOURCES & ENVIRONMENT COMMITTEE
FEBRUARY 11, 2015, 1:30 P.M.**

Person	Statement
Chairman [5:25]	We will now move to the second item on the agenda and we have before us ... now I will turn that over to Senator Vick who is the rules' chairman. Senator Vick?
Sen. Vick	Thank you, Mr. Chairman. We have before us Docket #370311-1101 and Mr. Spackman. Is he here? He is here. He's going to present the rule to us. Welcome to the Committee.
G. Spackman	<p>Thank you Senator Vick. Well, first of all, I want to tell you thank you for your vote of support and I recognize that there are many difficult water issues that are pending right now and I'm in the maelstrom of that. I will tell you that what I've said even with the legislative session as its in progress and as decisions have to be issued that I have said to staff I will not shirk in my responsibility to try to timely and as best I can issue the decisions that need to be issued regardless of what the fallout might be. And so, there are a number of matters that are pending and I appreciate those of you who are, whose constituents are affected by those decisions and the difficulties that you face in rightfully listening and being sensitive to their concerns. I appreciate the position that you're in and also want to say Senator Nuxoll and anyone else that wants to talk about fill/refill, I am willing to spend time and lots of time because I already have on this subject with many people, but I'm happy to, I'd be happy to arrange a time with you following the Committee meeting to visit with you.</p> <p>The subject in front of us today is the proposed repeal of a portion of the Department's Conjunctive Management Rules and the rule is numbered Rule 50 in the Conjunctive Management Rules and it defines or what I call "hardwires" a boundary for the area of common groundwater supply for the Eastern Snake Plain Aquifer and the definition ... or the boundary was established back in 1995 when we really didn't have a lot of information for technical information about the Eastern Snake Plain Aquifer and the drafters of the Rule were looking for some kind of definition anticipating the controversies that we've encountered over the last 20 years. And they found a definition or a boundary that was put together by a United States Geological Survey employee named Garabedian who attempted to identify the edge of the basalt in which the water of the aquifer is located. And so without any additional information the boundary was adopted in the Rules and we've been operating with the boundary since that time.</p> <p>In 2010, Clear Springs Foods petitioned the Department to initiate rulemaking to change the boundary of the Eastern Snake Plain Aquifer. What they suggested is that the Department adopt a boundary that was equal to a model boundary that we had in place. At the time, we were developing a second groundwater model and the boundaries would change in that model and so we delayed consideration of the petition and the associated rulemaking until the second model or the last, most recent model was adopted and was used by the Department. And, honestly, the</p>

Person	Statement
	<p>first use of the most updated or most current model was in the Rangen delivery call and so when we started using that model then we felt it was important to reinitiate the consideration of the petition that was filed by Clear Springs Foods. In fact, we were obligated to start it and there had been a long expiration of time.</p> <p>And so I was trying to figure out with all of the duties that we had ongoing what process we ought to follow and I was fortunate enough to have had the person some of you might recognize, who spent years with the United States Bureau of Reclamation, came over to the Department of Water Resources for the last two years of his full-time employment to work with us on loan and he was near or past the expiration of that period of time. A guy by the name of Rich Rigby. And he just happened into my office and said in a lapse of good sense and said, "Do you want me to take on the rulemaking processes for Rule 50?" And I jumped and got his commitment before he could think twice.</p> <p>And so Rich went out on the road with the Deputy Attorney General in our office and some other staff and presented information. And what came out of that process was a number of alternatives. I will characterize those alternatives as none of them being very good for me and not feeling comfortable with any of them; but we knew that the old definition of a boundary that was put together by the Garabedian study was not technically defensible. We didn't have information to really defend the boundary that was in the Rules and we needed to do something with it. And there were a couple of other alternatives offered. I want Senator Vick to yield to Rich Rigby and allow him to talk through the process. He was much more familiar with it than I am, but there were two or three other alternatives posed. They were alternatives that would treat people, in my opinion, unfairly and part of that is because of the way the model boundary was developed and I'll let him talk about it.</p> <p>Ultimately, we felt that the fairest approach was to simply repeal the Rule and then in every delivery call I would then be responsible for taking evidence in a contested case hearing from all of the parties and then determining what the individual area of common groundwater supply was for each delivery call.</p> <p>So I want to tell you that the Rule is mine and I own it or at least the proposal to repeal the Rule. And I'll tell you that it wasn't without difficulty. I know that for me to consider that evidence every time and to determine that area of common groundwater supply will increase my workload and probably increase the litigation and the work that we have to do. But, from my perspective, it was still the best alternative of the alternatives that were proposed.</p> <p>So, Senator Vick, if I might ask the indulgence of the Committee and your indulgence, I'd like to yield time to Rich Rigby to talk about the process and how we arrived where we are today. If that would be okay.</p>
Sen. Vick	Yah, that's fine ... um, and I think what we'll do is I'll save the questions until he's done and then they can ask questions of either you or him when you're both

Person	Statement
	done.
G. Spackman	Okay. That would be great.
Sen. Vick	Alright? Mr. Rigby? Thank you, Mr. Spackman.
G. Spackman	Thank you.
R. Rigby [14:14]	<p>Thank you Senator Vick, Mr. Chairman, Members of the Committee. My name is Rich Rigby. I am an employee of the Department of Water Resources. And Gary embarrasses me every time he tells that story – it's true. The thing he doesn't tell you is that three mornings after that I woke up in bed and said, "What did I just do?" So, knowing this was a difficult issue. I had done some work on it in the first go around and I knew it was a difficult issue. The thing we can try to offer people is a listening ear and, you know, to try to be as sensitive to concerns as we can.</p> <p>But the proposal that you have in front of you is a proposal to delete Rule 50 of the Department's Conjunctive Management Rules. Those Rules were adopted in 1994 and, as the Director mentioned, the area of common groundwater supply that is defined in Rule 50 is consistent with a map of the United States Geological Survey that was developed in a 1992 report. I just want to read you the definition of area of common groundwater supply – it's very brief. From the Rules, it says, "A groundwater source within which the diversion and use of groundwater or changes in groundwater supply affect the flow of water in a surface water source or within which the diversion and use of water by a holder of a groundwater right affects the groundwater supply available to the holders of other groundwater rights." So, the bar we have defining an area of common groundwater supply is a low bar. If the use of groundwater <i>affects</i> other groundwater supply or a surface water supply, the definition would hold that that should be included in the area of common groundwater supply.</p> <p>Now, what that means is that in a past administration and current administration of water calls on the Eastern Snake Plain Aquifer, the area of consideration is limited to the area within that defined boundary. If you'll refer to the maps that we've handed out to you and that we've got on the screen, the yellow area in the maps is the area that is currently defined in the Rule – that is the Rule 50 boundary. And that's consistent with the USGS map. The white areas (or in some cases brown) – on here, on this map, it looks white on the screens – is the areas that are within the model boundary and outside of the Rule 50 definition. So the model boundary is the dark line that includes the yellow and the white. The blue areas are tributary basins.</p> <p>When we consider the Eastern Snake Plain Aquifer, I'm sure I've simplified it a lot but I think of the inputs to the aquifer of being of three.</p> <p>(1) is rain and precipitation on the plain; (2) is recharge that occurs from surface water diversion and use; and (3) is tributary underflow.</p>

Person	Statement
	<p>The modelers needed to make a decision on how to best count for tributary underflow and make those estimates – and they are estimates. And so they drew the model boundary and locations where they felt they could make the best estimate of tributary underflow.</p> <p>Now, this model was developed in anticipation of water calls back about 10 years ago when the previous Director directed the development of the model. That was version 1.1 that was used. I believe it was 2014 the Department formally adopted 2.1 of the model. Now we'd like it to be different but we have to recognize that the model is not free from criticism.</p> <p>For example, prediction of impacts a great distance from the point of impact probably have less confidence associated with them than impacts that are closer to the impact ... or disturbances that are closer to the area of impact. While imperfect, as all models are, it is the best available tool that we have to work with. In order to best model the impacts and, again, the model boundary was set to best identify what's taking place in the yellow area on the map.</p> <p>Clear Springs Foods filed a petition in 2010 to change the Rule 50 boundary to match the model boundary. We conducted several public meetings at the time we were in the process of finishing the additions and a new version of the model; and so the decision was made to delay further consideration; and that consideration was initiated in 2014 when we held a second round of comments. We did receive some 200 comments. We weren't surprised. People that were inside the areas that might be regulated said, "We don't like that." People that were in a position to receive benefits from that regulation said, "We like that. We think that's a good idea." So, we weren't surprised. It would be nice if there had been a consensus develop in the public meetings but that did not take place.</p> <p>So, why did the Department make the decision to repeal Rule 50? So, as I said earlier, the Rule definition of an area of common groundwater supply is a fairly low boundary – a low bar. So, what that means is that the current model boundary really doesn't fit the definition. And the arguments against extending the model boundary seemed to apply to one call over another one. In other words, maybe we got a Rangen call and the party would say I don't have much impact there and that may be true. But the Department can predict where calls are going to come from in the Aquifer and we had a difficult time in deciding where to draw that line.</p> <p>So, we basically had three choices that we saw. One of them was to leave the model boundary intact, another one was to adopt the model boundary as the new area of common groundwater supply, and the third one was to go mountain top to mountain top – include the blue areas on the map as well as the yellow and the white. Now the reason again we felt we couldn't continue with the existing model boundary is it is not consistent with the Rule definition. We thought of the model boundary and the problem that that creates is that creates some obvious</p>

Person	Statement
	<p>unfairness and concerns that people have.</p> <p>If you'll look at the extension there on the North up to Mackay Dam. The big lost people looked at that and said, "You know, we see we would be regulated under that approach but what about people in the Big Wood Basin? What about people in the Raft River Basin?" And there's no answer to that question if we adopt the model boundary. So, for that reason, that was not a very palatable approach to us. We didn't feel like we could go to mountain top to mountain top because we didn't have data to administer the calls and it would imply if we did that that all those people would be in a call and we just weren't ready to administer that way.</p> <p>So, let's talk a little bit about how the call would affect the water users and, I guess, the groundwater users and surface water users. So, we've got two active calls on the Aquifer – we've got a Rangen call which is for spring water near Hagerman. The Director's orders have identified an area that is subject to regulation from that order. And I need to also mention that all of the water calls to date have identified a specific area of common groundwater supply that is less than and not equal to the original, the yellow area, or even the model boundary. So it shrunk in every case to some degree.</p> <p>So if the Rule is adopted, the potential exists for the area in the southern part of the Aquifer (that's in the white) that would contribute water to the Rangen call. Ultimately, other areas could contribute. The Big Wood could contribute water – the Raft River – the Goose Creek. Those areas that are tributary basins could. So, we would assume ... well, in fact, Judge Wildman ruled recently (District Judge Wildman) that the Director's decision and order on Rangen improperly limited the area that would be subject to a call. He said "You've got to look at that differently and expand that area." So that issue will have to be addressed. The question is whether that remand has to be addressed now or whether it will be stayed for an appeal to take place.</p> <p>The second type of call that exists is a Surface Water Coalition. The seven irrigation districts and canal companies that divert water from either Minidoka Dam or Milner Dam. And the facts are a little different on those. Judge Wildman recently ruled that regardless of the area that's subject to the call – the area of common groundwater for that call – 100% of the Surface Water Coalition shortage that's determined to exist in a Director's order has to come from that area. In prior Directors' decisions, the amount of contribution that was required from the groundwater users was reduced a little bit to account for the area outside the model. And the Judge said, "That's not an acceptable practice."</p> <p>So, there's a couple differences that I think are important to note about the surface water use and the spring use. We know we have a pretty good idea today of two things about next year and the year after that. (1) We have a pretty good idea what the spring flow is going to be at the Rangen Springs. It's very</p>

Person	Statement
	<p>consistent. It takes a long time for things to make it ... a very big change in those flows. So we know today pretty well what the flows are going to be like next year and the year after that at the Rangen Springs. The other thing we know pretty confident is that groundwater pumping in the areas that have been modeled will affect those flows a year from today and two years from today. There's not much doubt in our minds about that. A surface water supply is different in many respects. The big driver in the Surface Water Coalition call is snow pack and reservoir storage. And so we have a good reason to hope, for example, right now that this year's water supply is going to be adequate. We have to wait and see but we don't have a good idea about what it's going to be next year and we have less idea what it's going to be the following year. So that's hard to predict the water supply there. We do know again that groundwater use affects that supply. But those are just some of the things that ... nuances, I guess, that we have to deal with.</p> <p>Now, I think there are two or three issues that I'd like to kind of just ... that are take home messages for me. Those potentially subject to regulation point out that it's just not fair to regulate them if somebody else isn't being regulated too. I call this the "unfairness argument." And, ultimately, I think what this argument does is that it drives the Department to expand the area subject to regulation because we don't want to be unfair. That is not something we want to be.</p> <p>The other point is that those that are, you know, potentially affected by groundwater pumping they have a compelling argument. The groundwater use does affect their water supply. For the areas that are inside the model boundary, except on the fringes, an impact that exists to those areas is felt at a given springs within the year. Now it takes a longer time to reach steady state. "Steady state" means what's the forever condition. And it may not happen right away but it may be that 5% of the impact show up within a year or, you know, some amount. So those are the kinds of issues that we deal with.</p> <p>I think we would all love certainty with respect to these water calls and water issues. It's very illusive. It seems to me that the courts and the engineers have kind of had a dance, you know. I think the courts think the engineers can do something and they tell the engineers to do it and, ultimately, they find out that maybe it doesn't work that way and so we have to adjust and continue to make adjustments as we go.</p> <p>I believe the Director would like to finish up and make some observations. Gary?</p>
Sen. Vick	Uh, before you go ... are there questions for Mr. Rigby? Senator Stennett.
Sen. Stennett	Thank you, Mr. Chairman, Mr. Rigby. Well, you put me in the cross hairs on this one. So, I'm going to have to ask a few questions. I completely understand where you are headed with this and I have been a proponent of what we've all done in the Hagerman area and the Aquifer, but it has put Big Wood into conflict. My concern is how that would impact water calls downstream by doing this?
Sen. Vick	Mr. Rigby?

Person	Statement
R. Rigby	Sen. Vick, Sen. Stennett. I think we have to answer the question immediately. I think there is no real big impact because we don't have the data to expand into the Big Wood Basin. But I think we have to recognize that, ultimately, with the Rule change there would be regulation in the Big Wood River. I think that's something that is a real possibility.
Sen. Stennett	Follow-up Mr. Chairman.
Sen. Vick	Senator Stennett.
Sen. Stennett	Can you give me a guess as to what that regulation might look like? What you would plan by incorporating that?
Sen. Vick	Mr. Rigby?
R. Rigby	<p>Mr. Chairman, Sen. Stennett. I believe the Rangen call would regulate all rights to 1962. That's the date of the priority date of the Rangen water right that is not being met. So the implication would be that all areas that would be, ultimately, identified to contribute to that shortage would be regulated to 1962.</p> <p>Now with the Surface Water Coalition it is a little different. Instead of regulating to a water right automatically, the procedure is that the Department determines the amount of shortage that exists to the Surface Water Coalition and that amount is made up by the area that contributes. So if the area is ... just general terms ... if it's 300,000 acres of groundwater pumpers that would have to do that, they have to meet that. If that number happens to affect 500,000 acres, they would have to meet that too. So regardless of the size of the area, the Surface Water Coalition would get its water supply.</p>
Sen. Stennett	One more follow-up, Mr. Chairman.
Sen. Vick	Senator Stennett.
Sen. Stennett	Thank you. Um, so I'm just trying to understand all that we did down in the Hagerman Valley with the way we've worked the water down there. My understanding that a lot of what Rangen was asking for was mitigated and you're saying that incorporating this is to further mitigate a Rangen call. I'm trying to figure out how much difference we're talking about and get clear about what we actually did accomplish and what's still left undone that you think you'll be pulling out of that upper ridge.
Sen. Vick	Mr. Rigby.
R. Rigby	Senator Vick, Senator Stennett. I'm going to have to defer on the technical information. I'm not familiar. My sense is that there wasn't enough improvement from groundwater pumping to fully mitigate. So what would happen is that the ... so let's say, for example, that there's a shortage of 20 cfs in a water right. Well, if you can get 20 cfs by curtailing rights to 1970, then that's all you have to do, but curtailing to 1962 which is the water right that was the Rangen water right that doesn't get you to hole. That didn't get Rangen hole. So my sense is that at least for a while, we're probably going to see additional mitigation that would be required. So, let's say there's another 2 cfs (or something like that for the sake of discussion) that would come from the Big Wood so that mitigation I believe it was 9 cfs in the Director's order – so it goes up to 11 if that were to be added. What it probably means and I think that so far it looks like the spring calls will be solved through mitigation through some sort

Person	Statement
	of delivery of additional water to those springs. So what that means is the cost goes up some degree to the users and you would expand the number of users that would be subject to that call.
Sen. Stennett	Thank you.
Sen. Vick	Senator Heider.
Sen. Heider	Thank you, Mr. Chairman, Mr. Rigby. You made the statement we know today what groundwater pumping will affect stream flows and that doesn't change by changing the boundary. That what I got from what you said. So I would ask, why would we want to change the boundary if it's not going to affect the change in the Aquifer or the stream flows?
R. Rigby	Senator Vick, Senator Heider. The purpose of the boundary change is all about regulation. It's who is subject to regulation. So ... and, again, it depends on which type of call we're talking about. If we're talking about a spring call, expanding the area increases the mitigation that a spring user would receive because it increases the number of rights subject to regulation.
Sen. Heider	Okay. Follow-up?
Sen. Vick	Senator Heider.
Sen. Heider	Mr. Chair and Mr. Rigby. Most of this water that is in the blue areas or even in the tan areas has been appropriated for years. I mean the Rock Creek or, you know, Raft River all these – these rivers and creeks that flow out of the blue areas have been appropriated years ago. Probably or maybe before the Aquifer was ever appropriated. So would they have a senior right to the areas in yellow or would they be a new right if you gain control of them?
R. Rigby	Senator Vick, Senator Heider. I did some looking and to see what other states, how other states handled this type of issue just to become educated. Some states treat the water supply, the right to pump groundwater, as a right ... as long as it doesn't impact, you know, improperly impact other rights or diminish the resource and things like that. People have a right to pump. In those states, what happens is that they'd find an error and then they'll say to everybody, you can only divert X inches of water or something like that. So, Idaho's approach to this has been to follow the prior appropriation doctrine. Nobody has ever said the prior appropriation doctrine was kind. It's severe. And what that means is that if you get in the list (in the pecking order), the senior right gets the water first and the junior rights get curtailed. The trouble we got here is that, you know, conjunctive administration is a difficult issue because the timing isn't instantaneous and you can't see the impacts immediately. They have to modeled and so it just creates challenges that we're dealing with right now.
Sen. Heider	One more follow-up, Mr. Chair.
Sen. Vick	Senator Heider.
Sen. Heider	Mr. Chairman and Mr. Rigby. I guess my point is that by including the blue land, right now the water that is leftover, that's not being used, that flows out of the mountains from hilltop to hilltop already has its affect on the yellow area, on the Aquifer because if there's water that comes out of Rock Creek or Big Wood or Little Wood or wherever it comes from, and it's not being utilized or it's going into the Aquifer, it's already being counted as Aquifer water. So I don't

Person	Statement
	understand, I guess, how incorporating a larger area affects the amount of water in the Aquifer that will affect either the spring flow or the amount of groundwater pumping.
R. Rigby	Senator Vick, Senator Heider. Let's remember that what we're talking about here is eliminating the current boundary. The current boundary says we don't have the right to look up into the tributaries. If we eliminate that in a future Director's order, the decision may come down that it is appropriate to look into the tributary areas. I think the same, the contention you make can be said for all users on the plain. In other words, everybody got a water right with expectations that it was an ample supply and the history replete with references to those kinds of issues and people just expected that the flows in the Thousand Springs area, for example, were just going to be there forever. When we found out that some of those assumptions weren't correct. So the question we've been dealing with and the courts have dealt with it too and addressed it and you may remember – I believe it was 1982 that the Musser brothers filed a call (it may have been later than that). But, anyway, the Director said, "I can't administer this. It's too difficult." And that wound its way through the courts and the court said I don't care, you have to administer. So that is what we're dealing with and it's a very challenging issue, it really is.
Sen. Heider	Thank you.
Sen. Vick	Further questions for Mr. Rigby?
Floor	Questions from the floor?
Sen. Vick	No, we don't take questions from the floor. If you'd like to sign in to testify, you can do that. And with that, I think ... thank you. I think what we're going to do is ... because I do have a handful of people who did sign up to testify, we'll let them testify and then Mr. Spackman we'll let you finish when they are done.
G. Spackman	Thank you.
Sen. Vick [38:00]	Thank you. And so, first we have, is that Mark Hintzy?

Person	Statement
Sen. Vick [59:15]	That's all I have signed up to testify. So, Mr. Spackman if you'd like to come up and close.
G. Spackman	Senator Vick and Members of the Committee. Thanks for your indulgence. It's an unusual experience I have to follow-up after testimony and I want to ensure you that my purpose for being here is not to offer rebuttal, any rebuttal information to what's been said. I don't think that's my place. And really what I want to do is stand here and field questions to the degree that Members of the Committee want to ask me questions. I do want to just say ... ask some questions and then answer them and just make one statement. And that is to make it clear that the proposal to repeal Rule 50 does not establish a different boundary. It does not establish a boundary that follows the model boundary and it does not establish a boundary that goes ridge top to ridge top. It eliminates an artificial boundary that's not defensible technically and perhaps not legally. And because we didn't think it was defensible, we couldn't keep it

Person	Statement
	<p>in place. That would be the yellow boundary. And because of equities and certainly the folks here have talked about the inequities if they are located in the white areas of bringing them into regulation when there might be other groundwater users who are located in tributary basins that would contribute more water in a shorter period of time than going into the Rexburg Bench or up the Big Lost. And I can tell you that I was loathed to adopt the model boundaries and go to Mackay for a public meeting where I've been before and they've threaten to succeed from the State when I was there and I don't want to go through that again. And rightfully so, it isn't fair for me to go up near Mackay and regulate groundwater up there when there may be other tributary basins.</p> <p>And I will tell you that one of the byproducts of the proposal for this rule is that I have instructed staff to start exploring and evaluating what we need to do to try to determine and gather the data that is necessary to determine where the area of common groundwater supply would be. So, I just want to run through a few questions and then answer them myself sort of.</p> <p>Q. Does this ... Will this rule change, make life easier for me or more difficult?</p> <p>A. It really will make it more difficult.</p> <p>Q. Is the rule that's in place justifiable technically?</p> <p>A. It's our conclusion that it is not.</p> <p>Q. Is it fair for me to go in a regulate people in the Big Lost or the Little Lost or the Rexburg Bench without looking at the Aquifer as a whole and trying to make a determination?</p> <p>A. No, I don't think it is. So we rejected that alternative.</p> <p>Q. What will be the practical effect of this Rule change?</p> <p>A. So, for every delivery call, I'll have to make a determination of what the area of common groundwater supply is and I will need to do that based on the data and information that the Department has. And, frankly, in many of these areas, we don't have enough data to determine whether some of these ... particularly in the blue areas ... whether there is any real relationship or how remote the relationship is between either surface water or groundwater in those basins. So, at least in the near future it would be very difficult for me to include those areas in any area of common groundwater supply. We'll need to do that background technical work.</p> <p>With that, Senator Vick, I'd stand for questions here. Thank you.</p>
Sen. Vick	Questions. Senator Stennett.
Sen. Stennett	Thank you, Mr. Chairman. Good afternoon, Director. I want to be clear about what brought this process to what we're looking at it. What guided you to define this model and the way that we see it now? What created this?

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Sen. Vick	Mr. Spackman.
G. Spackman	<p>Senator Vick, Senator Stennett. Your question is, what brought us to define the model boundary the way it is now? So that question, I'll answer and then if your larger question is, what brought us to where we are in proposing this Rule, I'll let you ask that second question.</p> <p>So, the modelers, in my opinion and I can say this fondly about them ... but, you know, they're a bunch of nerds. I mean that's what they are. And they sit around, honestly, and they look at the model and they say, "how can we improve this as a technical tool?" And, honestly, they employed a lot of technical help some of the best in the State of Idaho and some of the best outside the State of Idaho. We had some of the best hydro-geologists and engineers in the State of Idaho who worked on water for a long time engaged in a modeling committee to put it together. We also had folks from Colorado and from Texas who came in and were hired by interested parties. And the modeling committee worked over a period of years to develop the latest version of the Eastern Snake Plain Model. And, as Rich Rigby said, they went around the model and set boundaries and said how do we define the inflows or the relationships at the model boundaries and they looked for places where they could best define those. A lot of times it was at a pinch point. That's the best illustration of that as at the top end of that ... I don't know whether it's a boomerang or a derringer shape going up the Big Lost, but they went right to Mackay Dam.</p> <p>Now the reason they went to Mackay Dam was not because the Big Lost Basin had a more direct relationship to the Aquifer, it was because they could define what was coming across the boundary at that pinch point better than they could down out in the lavas where the waters of the Big Lost disappear. They just didn't have data down there. So it was all for technical reasons, it wasn't for the purpose of defining who's in and who's out. That's why I have been again loathed to adopt the model boundary because the model boundary wasn't established for the purpose of administration. I mean it was established to give us information. And that's why I've gone out and said, "You need to provide some more staff for me."</p>
Sen. Stennett	Follow-up, Mr. Chairman?
Sen. Vick	Senator Stennett.
Sen. Stennett	<p>Thank you. With all due respect, it does give the Director a lot of power over a greater area and so understanding that what is your vision of usage? I mean, I hear that there is that need to contemplate use. Where it puts me in difficulty, as I mentioned, is I've been a huge proponent of making sure that there is aquifer recharge and mitigating Rangen calls in the south part of my district. And yet you're calling in a part of my north part of my district that doesn't have any ability to store water or manage its water; and if there are calls, that is a problem. So, I'm trying to reconcile in my area how everybody is treated fairly in this greater model.</p>
G. Spackman	Senator Vick, Senator Stennett. The first statement that I'd make out of the

Person	Statement
	chute is that the repeal of Rule 50 creates greater uncertainty. There's no question about it. It creates uncertainty for the groundwater users as to who would be included within the area. And the fact of the matter is we know that there are groundwater pumpers in tributary areas that have a greater affect (both in quantity and timing) than some of the remote white areas that you see. So, my intention, if you ask about it, again I come back to it and say I've asked staff to look into those basins and try to determine what data we need because some of the reason for the non-inclusion is that we didn't have the adequate data even to model it. So, my intention is to instruct staff to go into those areas and gather the necessary data but I cannot tell you how I might respond or as Mr. Tominaga mentioned I don't know how some subsequent Director will respond to a delivery call. But there certainly has to be enough information and data to define an area of common groundwater supply. And that's not much comfort, I'm sure.
Sen. Stennett	Thank you, Director.
Sen. Vick	Senator Buckner-Webb.
Sen. Buckner-Webb	Thank you, Chairman Vick. Just a question Mr. Spackman and I'm asking this as a neophyte. One of the questions was posed to me was about the technology, not that the persons that you had to do the work were not totally capable but they said there's technology that's dated and technology that's more up-to-date that would help you make a more accurate assessment of what should happen. Can I just ask about the equipment and the ... I mean, how current is it? Is it dated equipment?
Sen. Vick	Mr. Spackman.
G. Spackman	Senator Vick, Senator Buckner-Webb. When you're talking about equipment, it may be that you're referring to the methods of measurement across the plain because what we have to have, we have to have measurements of all kinds of quantities – flow rates, groundwater levels, attributes of the basalt or the Aquifer itself, values for transmissivity through it. I can tell you that the model that we're using is an acceptable model (and there are a number of ways to model). I'm not a modeler. But it's a numerical model, it divides the entire Aquifer up into, I think, it's one mile by one mile grid cells across the entire Aquifer. Each of them with individual, unique attributes that have to be entered. It takes a lot of computer horsepower to run the model to simulate activities and impacts. So, we could improve our water measurement and we might be able to do that through better instrumentation – we're trying to do that. And by increasing the number of monitoring sites. I would defend the model itself as a tool and the courts have said and, honestly, the modeling committee has determined that it's the best tool that we have available – technical tool. Thank you.
Sen. Vick	Further questions. Senator Siddoway.
Sen. Siddoway	Thank you. Thank you Director Spackman for being here and for that report. I just had a couple quick questions. Could you tell us what happened to this Rule in the House?
Sen. Vick	Mr. Spackman.
G. Spackman	Senator Vick, Senator Siddoway. The House rejected the proposal from the

Person	Statement
	Department to repeal Rule 50.
Sen. Siddoway	Okay, follow-up?
Sen. Vick	Senator Siddoway.
Sen. Siddoway	So, if we follow suit here, could you give me an idea of what Judge Wildman may do? Will he unilaterally take any action and direct the Department to press forward and come up with some kind of a solution? Are you still under that obligation or do we just wait for someone to bring an action someplace before he would given any future direction on this issue?
G. Spackman	Senator Vick, Senator Siddoway. I'm not a legal authority on the legal implications of the Legislature rejecting this Rule and then what could happen as a result of that rejection. But, I would at least opine that the Legislature has a separate obligation to consider these proposals beyond my responsibility to look at those rules and make a determination, in this case, what I think was legally defensible and factually defensible and what's not. The Legislature certainly has those powers of policy determination that I don't have. Now what happens with Judge Wildman – whether somebody challenges what the Legislature does, if the Legislature chooses to reject the Rule or the Rule proposal, I don't know the answer. I want to make sure that we separate what we're talking about – that is, the Rule change that is proposed from the court's directive that there's no longer a timeline because all of those things and the futile call which the Judge has sent back to me on remand and we're still struggling looking at that because we're just two or three weeks out from the filing of the appeal of Wildman's decision to the Supreme Court. I don't want to spend a lot of time in detail on that. I know it's been raised here. I could if the Committee wants to ask questions about it, but I do want to separate it and say we really have a Rule that's in front of the Committee right now. And these other issues are certainly related issues, but they're ... I didn't come to discuss those today unless the Committee wants to. I'm happy to.
Sen. Siddoway	Follow-up please.
Sen. Vick	Senator Siddoway.
Sen. Siddoway	So, then a clarification. So I don't know where I got this ... maybe I'm totally wrong but I thought the expansion of the boundary was part of that. You're telling me it wasn't part of that direction.
Sen. Vick	Go ahead.
G. Spackman	Senator Vick, Senator Siddoway. The expansion of the boundary for what?
Sen. Siddoway	For the inclusion of the land into the mitigation areas.
G. Spackman	Senator Vick, Senator Siddoway. What the Rule proposes is that we would eliminate the present boundary. It does not establish any boundary at this point. I still have to go back in, based on the remand from the court that eliminated the time line, because there was one in place previously in my decision at the great rift. The court said, "No, you didn't justify the establishment of that trim line. You've got to look at the whole area of common groundwater supply." So, it's related. But this Rule change does not propose the establishment of any boundary and it creates uncertainty and I recognize it.
Sen. Siddoway	Okay. Thank you.

Person	Statement
Sen. Vick	Further questions? Senator Brackett.
Sen. Brackett	Thank you Mr. Chairman, Mr. Spackman. I'm still trying to get my arms around the issue. As has been said, it's a very complicated issue and without retracing the last hour and a half of testimony, and probably following up just a little bit where Senator Siddoway was ... so the Department, you are ... the Department has a court order that says that the current boundary is not defensible. Or that's the way you're ... is that correct, you're not interpreting it that way?
Sen. Vick	Mr. Spackman.
G. Spackman	Senator Vick, Senator Brackett. I do not have a court order that says the current boundary is not defensible. My determination of that came through the rulemaking and our analysis of the basis for the current boundary.
Sen. Brackett	Okay, I might have expanded. Mr. Chairman.
Sen. Vick	Senator Brackett.
Sen. Brackett	Expanded that just a little bit, but it did say that all water should be considered connected unless it was decreed otherwise?
G. Spackman	Senator Vick, Senator Brackett. The court decision stated that at least within the area of common groundwater supply because the Rule hadn't changed but the Judge says "within that area of common groundwater supply" that there was no trimline and the court said that I had not addressed, in the decision, the issue of futile call that was raised by Lynn Tominaga. Essentially, what the Judge said was that the entire area in yellow under the present definition of the area of common groundwater supply would be subject to the Rangen call but remanded the matter to me and talked about futile call. Previously, I've said this in the House, I don't know how to interpret that decision right now ... whether it was a commentary by the court or whether it was a directive that I needed to address it on remand. So, there's that much uncertainty in it right now. I'm not sure I'm answering your question and I'm sorry.
Sen. Brackett	Mr. Chairman, follow-up?
Sen. Vick	Senator Brackett.
Sen. Brackett	I'm not sure that I'm asking the right question either. So, if we reject the Rule and maybe disregard the Judge (maybe that's not the right terminology), you won't use ... you'll continue to use the science that you have. You won't use the best available, you'll continue on ... if we reject the Rule, you continue on basically like you have been?
G. Spackman	Senator Vick, Senator Brackett. If you reject the proposal, then Rule 50 would stay in place and the area of common groundwater supply would remain as presently defined in yellow and I would continue to use that as the area of common groundwater supply based on that legislative determination.
Sen. Brackett	One last question, Mr. Chairman.
Sen. Vick	One more, Senator Brackett.
Sen. Brackett	And would you continue to use the same model that currently is or would you update your model that you're using?
Sen. Vick	Director.
G. Spackman	Senator Vick, Senator Brackett. I would continue to use the same model that

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	we have. It was just recently rolled out in 2014. The modeling committee is continuing to work and they're looking at improvements to the model but those efforts will take years probably to amend the model.
Sen. Brackett	Thank you, Mr. Chairman.
Sen. Vick	Thank you, and we're about out of time. So I would entertain a motion on this Rule. Senator Brackett.
Sen. Brackett	Mr. Chairman. I move that we approve Docket No. 370311-1101.
Sen. Vick	You've heard the motion. Is there a second? <i>[inaudible response]</i>
Sen. Vick	Motion by Senator Brackett, and second by Senator Cameron to accept the docket. Any discussion on the motions? Senator Stennett.
Sen. Stennett	Thank you, Mr. Chairman. I appreciate all of the effort to try to bring this all around to understanding what it is we're trying to do here. I think it's because of the confusion and it seems to me a bit too premature and ill-defined for me to be able to support it. I know that for part of my district that would be helpful. For another part of it, it's just too ill-defined. We are in the process in Big Wood and Little Wood trying to manage and wrangle water calls as it is. I just really feel like I would be ... I'm not comfortable with the degree of uncertainty I keep hearing in terminology on this so I will not be able to support the motion. Thank you, Mr. Chairman.
Sen. Vick	Further discussion? Senator Siddoway.
Sen. Siddoway	Well I concur with Senator Stennett on this. I'm certainly not comfortable with moving this forward and I don't know that we got the motion just right here. So maybe I'll offer a substitute motion in that we reject this Rule. If I can get a second.
Sen. Vick	Motion by Senator Siddoway, second by Senator Nuxoll, a substitute motion to reject the docket. Is there discussion that motion? <i>[pause]</i> Seeing none. All those in favor, say aye.
Parties	Aye.
Sen. Vick	Opposed?
Party	Aye.
Sen. Vick	The motion carries and the docket is rejected. With that I'll turn the gavel back over to Chairman Bair.
Chairman	Just want to thank everybody. Particularly, you folks that drove a long ways. I'm grateful for your input. This is after all the people's house and this is your committee. So, with that we're adjourned.

Transcribed by Cathy on 6/25/15

EXHIBIT I

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Wednesday, February 11, 2015

TIME: 1:30 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Bair, Vice Chairman Vick, Senators Cameron, Siddoway, Brackett, Heider, Nuxoll, Stennett and Buckner-Webb

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: Chairman Bair called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:40 p.m.

MOTION: Senator Heider moved to send the gubernatorial appointment of Gary Spackman to the Idaho Department of Water Resources to the floor with recommendation that he be confirmed by the Senate. Senator Brackett seconded the motion.

SUBSTITUTE MOTION: Senator Nuxoll moved to hold the gubernatorial appointment of Gary Spackman to the Idaho Department of Water Resources in Committee subject to the call of the chair. Vice Chairman Vick seconded the motion.

ROLL CALL VOTE: Chairman Bair called for a roll call vote. Senators Nuxoll, Siddoway, and Vice Chairman Vick voted aye. Senators Buckner-Webb, Stennett, Heider, Brackett, Cameron and Chairman Bair voted nay. The substitute motion failed.

VOICE VOTE: The original motion passed by voice vote. Senator Heider will be the floor sponsor.

PASSED THE GAVEL: Chairman Bair passed the gavel to Vice Chairman Vick.

DOCKET NO. 37-0311-1101 Director Gary Spackman, Idaho Department of Water Resources (IDWR), reported on this rule. He stated that the rule is a proposed repeal of a portion of IDWR's conjunctive management rules. The rule is number 50 in the conjunctive management rules, and it defines the boundary as the area of common groundwater supply for the Eastern Snake Plain Aquifer (ESPA).

The boundary was established in 1995 when there was not a lot of technical information about the ESPA. The drafters of the rule were looking for some kind of definition anticipating controversies that have been encountered over the past 20 years. A definition of the boundary was found that had been put together by the USGS. They attempted to identify the edge of the basalt in which the water of the aquifer is located. Without any additional information, the boundary was adopted in rules, and they have been operating with the boundary since that time.

In 2010, Clear Springs Foods petitioned IDWR to initiate rulemaking to change the boundary of the ESPA. What they suggested was for IDWR to adopt a boundary that was equal to a model boundary that was in place. At that time, a second groundwater model was being developed, and the boundaries changed in that model, so the consideration of the petition was delayed until the most recent model was adopted and used by IDWR.

The first use of the that model was in the Rangen delivery call. When they started using that model, they felt it was important to reinstate the consideration that was filed by Clear Springs Foods. **Director Spackman** said that with all the ongoing duties, he wondered what process should be followed. He said that he was fortunate enough to have Rich Rigby, who had spent years with the Bureau of Reclamation, come to IDWR for the last two years of his employment and offer to take on the process for Rule 50.

Mr. Rigby and other staff members went out on the road and presented information. **Director Spackman** stated that what came out of that process was a number of alternatives, none of which were very good for him. However, he also knew that the definition of the boundary was not technically defensible. **Director Spackman** said that they felt the fairest approach was to repeal the rule, and in every delivery call, he would be responsible for taking evidence from all parties, then determining what the individual area of common groundwater supply was for each delivery. He asked to defer the rest of the time to Mr. Rigby.

Mr. Rigby said that he is an employee of IDWR, and what they want to offer people is a listening ear and to try to be as sensitive as they can. The conjunctive management rules were adopted in 1994 and the area of common groundwater supply is defined in Rule 50 and is consistent with a map of the U.S. Geological Survey that was developed in a 1992 report.

Mr. Rigby referenced a map (see attachment 1) that identified:

- ESPA tributary basins (purple)
- ESPA area of common groundwater supply (yellow)
- ESPAM 2.1 boundary (white)
- Stream gauges (black dots)
- Irrigated acres inside the area of common ground water - 1,806,407 acres
- Irrigated acres inside ESPAM 2.1 - 2,061,790 acres
- Groundwater irrigated acres in Basins beyond ESPAM 2.1 - 272,935 acres

A model was made about ten years ago in anticipation of water calls, which was version 1.1, and in 2014, IDWR formally adopted version 2.1 of the model. As imperfect as it is, this model is the best available tool that they have to work with.

Clear Springs Foods filed a petition in 2010 to change the Rule 50 boundary to match the model boundary. **Mr. Rigby** said they held several public meetings, and at that time they were in the process of finishing the new version of the model. The decision was made to delay further consideration until 2014, when a second round of comments was held. They received more than 200 comments.

IDWR made the decision to repeal Rule 50, as the current model boundary does not fit the definition. **Mr. Rigby** said they had three choices: 1) to leave the model boundary intact; 2) adopt the model boundary as the new area of common groundwater supply; and 3) go from mountain top to mountain top to include the colored areas on the map.

There were two active calls on the aquifer for water. One was the Rangan call for spring water near Hagerman and the other was a call from the Surface Water Coalition. Differences from surface water versus spring water are spring flows are pretty well known from one to two years in the future and ground water pumping in the areas that have been modeled will affect those flows. Surface water supplies are different in many respects, one being no reservoir storage. **Mr. Rigby** said they are hoping that this year's water supply will be adequate.

- TESTIMONY:** **Mr. Marx Hintze** said he is from the Big Lost River area and is a professional engineer with the State of Idaho. His father and uncle put in some of the first supplemental wells in the valley in the early 1950s. He stated that he doesn't understand the timing of the models as talked about by Mr. Rigby. In his work as an engineer, Mr. Hintze has worked with models, and he feels the model in the Big Lost River is hard to understand. **Mr. Hintze** said that the Big Lost River Aquifer is poorly defined, and he suspects the Snake River Plain Aquifer is the same way. If the supplementary wells are curtailed on a dry year when they can't get their storage water delivered, it will devastate the agriculture in the Big Lost area. He feels the basis for curtailment is poorly understood and it is a serious situation for the irrigators in the Big Lost River.
- TESTIMONY:** **Mr. Bevam Jeppesen** said he is with the Madison County Ground Pumpers. They have holes that have very different water levels and some of the water is lukewarm, not cold at all. They don't understand the differences and feel it is not fair to be included in with the area of common groundwater. **Mr. Jeppesen** said he wanted to point out that if the Rexburg Bench is curtailed, the economic impact would be devastating to them. The Madison County Ground Pumpers have been assessed a rate of \$2.00 per acre per year for the last 15 years.
- TESTIMONY:** **Mr. Joel Ashton** stated that he is from the Rexburg Bench and wanted to support what Mr. Jeppesen just testified to.
- TESTIMONY:** **Mr. Gary Wight** said he is from the Big Lost River area. He stated that each basin gets different snow level packs, and the Big Lost Basin has a high elevation and recovers very quickly. **Mr. Wight** feels that it is a quick decision to throw out Rule 50 just because of the data being used from a model with its imperfections.
- TESTIMONY:** **Mr. Lynn Tominaga**, Executive Director, Idaho Ground Water Appropriators (IGWA), said that they represent one million acres on the Eastern Snake Plain and its tributaries. His Ground Water Districts are mixed on this rule because most of the Ground Water Districts are within the yellow area on the map. He is representing Madison Ground Water District and the Fremont-Madison Irrigation District today, and they wanted him to express some concerns about Rule 50. **Mr. Tominaga** said the Eastern Snake Plain Aquifer model is often called an imperfect approximation of a complex physical system. He stated that it means the information that comes from the model is just that - an approximation. When you get an approximation that is one percent or less, that doesn't take into account the factor of uncertainty, that is one of the issues his Ground Water Districts have.
- Mr. Tominaga** said he was glad to see representatives from the Big Lost area here today. In this State, there is a futile call for the surface to surface water users, with the prime example being the Big Lost where 10,000 inches (200 cfs) are released during drought periods. The water only goes down four or five miles, then disappears into the river bed. Seniors are six miles down the river, so they don't get any of the water released from that. If the water doesn't get down to the Seniors, then that is called a futile call. **Mr. Tominaga** said the question is if the State should develop a policy of groundwater to surface water futile call. If there is no more than a five percent impact on a Senior, should you not be involved with a water delivery call? **Mr. Tominaga** said that is a policy question and it needs people who have a stake in the outcome to have a say what that future policy should be.
- Mr. Tominaga** stated that IGWA recommends that the docket that is before the Committee be repealed.

Director Spackman thanked the Vice Chairman and the Committee for their indulgence regarding this docket. He said that the proposal to repeal Rule 50 does not establish a different boundary. It does not establish a boundary that follows the model boundary, and it does not establish a boundary that goes ridge top to ridge top. It eliminates an artificial boundary that is not defensible technically and is perhaps not legal. Because they did not think it was defensible, they could not keep it in place. **Director Spackman** said he has instructed the staff to start exploring and evaluating what IDWR needs to do.

MOTION: **Senator Brackett** moved to approve **Docket No. 37-0311-1101**. **Senator Cameron** seconded the motion.

DISCUSSION: **Senator Stennett** said she is not comfortable with the degree of uncertainty and terminology and therefore cannot support the motion. **Senator Siddoway** stated that he concurs with **Senator Stennett** and is not comfortable with moving forward on this issue.

SUBSTITUTE MOTION: **Senator Siddoway** moved to reject **Docket No. 37-0311-1101**. **Senator Nuxoll** seconded the motion. The motion carried by voice vote.

PASSED THE GAVEL: Vice Chairman **Vick** passed the gavel back to Chairman **Bair**.

ADJOURNED: With no further business to come before the Committee, **Chairman Bair** adjourned the meeting at 3:05 p.m.

Senator **Bair**
Chair

Juanita Budell
Secretary

EXHIBIT J

LEGISLATURE OF THE STATE OF IDAHO
Sixty-third Legislature First Regular Session - 2015

IN THE HOUSE OF REPRESENTATIVES

HOUSE CONCURRENT RESOLUTION NO. 10

BY RESOURCES AND CONSERVATION COMMITTEE

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND REJECTING A CERTAIN RULE DOCKET OF
THE DEPARTMENT OF WATER RESOURCES RELATING TO RULES FOR CONJUNCTIVE
MANAGEMENT OF SURFACE AND GROUND WATER RESOURCES.

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

WHEREAS, the Legislature is vested with authority to reject executive
agency rules under the provisions of Section 67-5291, Idaho Code, in the
event that the Legislature finds that the rules are not consistent with leg-
islative intent; and

WHEREAS, it is the finding of the Legislature that a certain rule docket
of the Department of Water Resources relating to Rules for Conjunctive Man-
agement of Surface and Ground Water Resources is not consistent with leg-
islative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Ses-
sion of the Sixty-third Idaho Legislature, the House of Representatives and
the Senate concurring therein, that IDAPA 37.03.11, Department of Water
Resources, Rules for Conjunctive Management of Surface and Ground Water
Resources, adopted as a pending rule under Docket Number 37-0311-1101, the
entire rulemaking docket, be, and the same is hereby rejected and declared
null, void and of no force and effect.

EXHIBIT K

STATEMENT OF PURPOSE

RS23634

This rule was rejected in committee because it eliminated the current boundary lines of the Eastern Snake Plain Aquifer, and not enough technical data was available at the present time for the Department of Water Resources to accurately evaluate the underground water sources available in the additional territory added to the ESPA to define the effects on the various sections of the Aquifer.

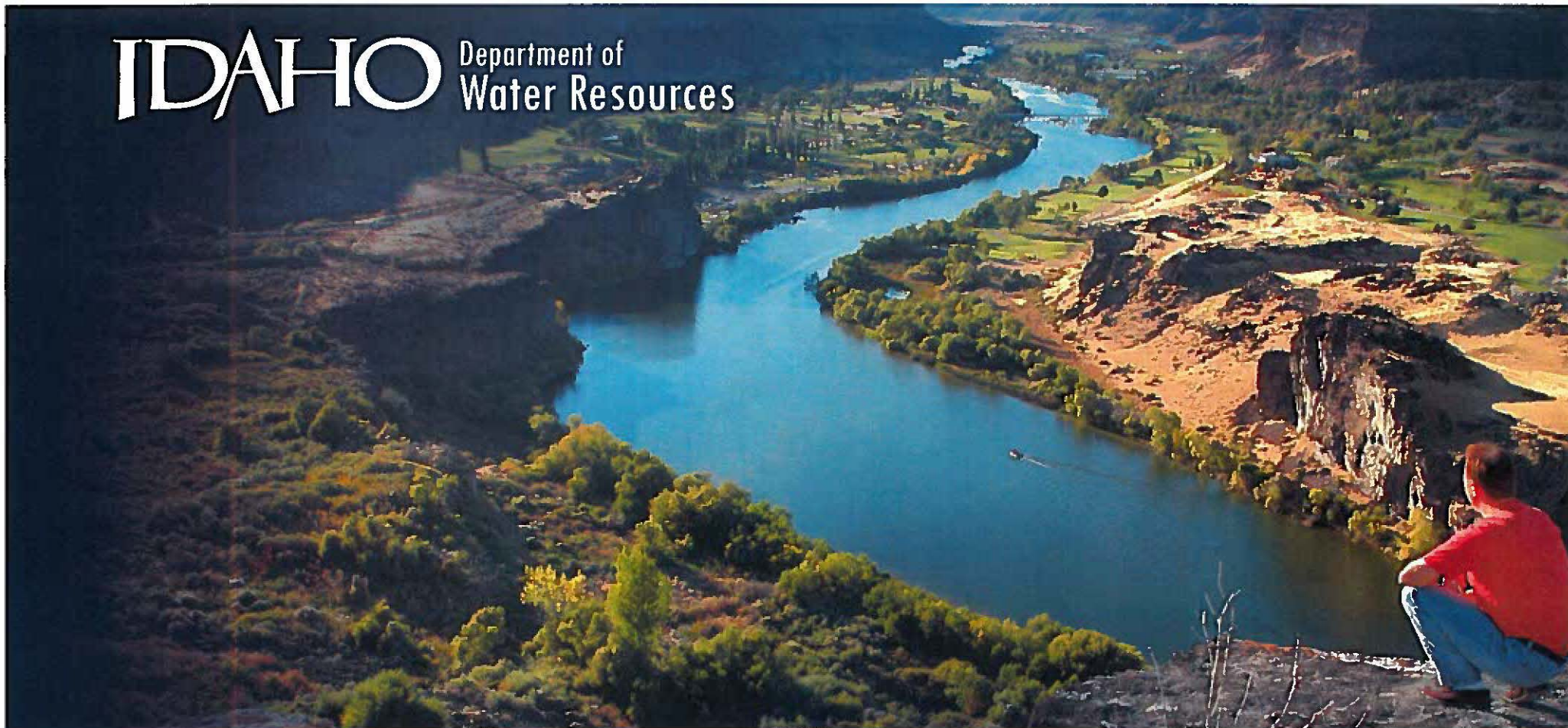
FISCAL NOTE

No fiscal impact.

Contact:

Representative Dell Raybould
(208) 332-1000

EXHIBIT L



Big & Little Wood River Delivery Calls – 2015

Preliminary Overview of Delivery Call Water Rights

Tim Luke, IDWR

Shoshone, ID; 05/04/2015



Water Delivery Call Rts. PODs and Water Districts 37 & 37B

- Water District
- Diversions – Delivery Call Rights
- Ground Water Rights PODs
(Received Notice)

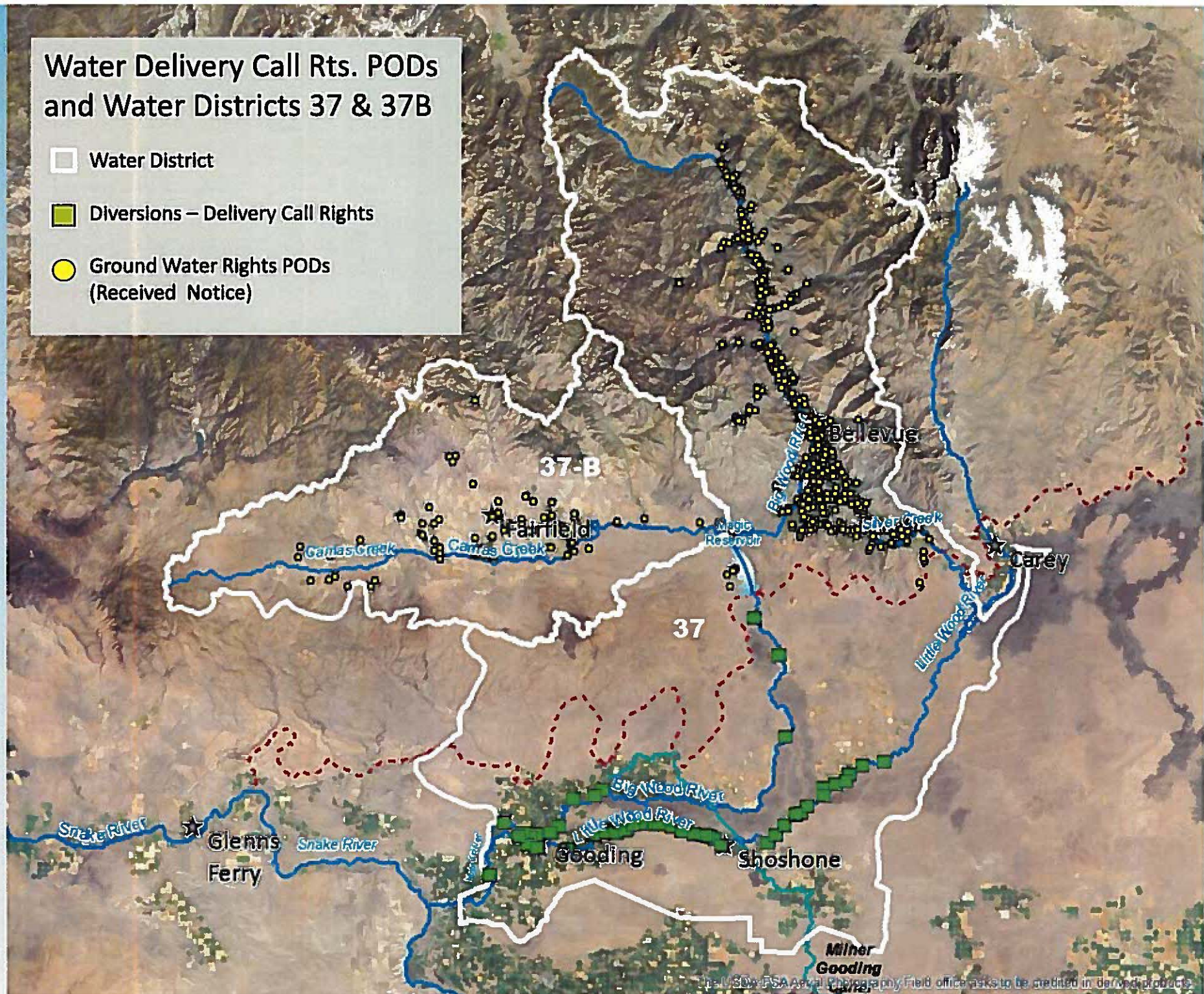


EXHIBIT M



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

April 11, 2014

Re: Petition to Amend Rule 50 filed by Clear Springs Foods, Inc.

Dear Water Users,

You are receiving this letter because you previously asked to be included in the mailing list for the Department's negotiated rulemaking activities related to Rule 50 of the Rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11).

On November 2, 2010, Clear Springs Foods ("Clear Springs") filed a petition to amend the Rules for Conjunctive Management of Surface and Ground Water Resources in order to expand the Area of Common Ground Water Supply as set forth in part 37.03.050 of the rule. Various developments have taken place relating to the petition:

1. After consideration of the technical issues raised by Clear Springs' Petition, this Department initiated negotiated rulemaking. Meetings were held in Arco, Boise, Burley, and Chubbuck. Some 180 comments were received.
2. On August 9, 2011 I issued a letter to participants in the process temporarily suspending further action on the petition pending availability of the next generation of the computer model (ESPAM 2) covering the ground water within the Eastern Snake Plain Aquifer.
3. ESPAM 2.1¹ was adopted for use in early 2013.
4. However, a call for priority delivery of water had been filed in December 2011 by Rangen, Inc., a fish hatchery operation in the Hagerman area. Like the negotiated rulemaking on the Area of Common Ground Water Supply, the parties agreed that action on the Rangen call should await the availability of ESPAM version 2.0 (now ESPAM version 2.1).
5. I determined that the information developed in the Rangen administrative process might be helpful to the Department in considering the Area of Common Ground Water Supply (letter to Paul Arrington of September 26, 2013) and in determining if there are any deficiencies in ESPAM 2.1.
6. The final order on the Rangen call was issued on January 29, 2014.

Accordingly, it is appropriate to reinstate action on Clear Springs' petition. For information on activities under the negotiated rulemaking, interested parties are referred to the Department's web page: <http://www.idwr.idaho.gov/WaterInformation/GroundWaterManagement/Petition/default.htm>.

Interested parties are particularly invited to read the Director's letter of August 9, 2011 for a summary of the issues raised in the original round of information gathering and analysis.

Information on the ESPAM can be found at:

<http://www.idwr.idaho.gov/WaterInformation/Projects/espam/>.

The Conjunctive Management Rules, adopted in 1994, address the manner in which the Director will respond to delivery calls where groundwater use may impact the exercise of surface water rights. Several calls have been made and addressed through the Administrative process in accordance with the Rules. Ground

¹ Version 2.0 was a short-lived version of the model. Shortly after roll out of 2.0, Department staff discovered some of the data was invalid. The invalid data was corrected and the revision was designated Version 2.1.

water rights within the Area of Common Ground Water Supply are subject to administration to meet a delivery call. Clear Springs Foods petitioned to amend the rule as follows:

Eastern Snake Plain Aquifer. The area of coverage of this rule is the aquifer underlying the Eastern Snake River Plain as the aquifer is defined in the report, Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho, USGS Professional Paper 1408-F, 1992 excluding areas south of the Snake River and west of the line separating Sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian Enhanced Snake Plain Aquifer Model Final Report dated July 2006, Idaho Water Resources Research Institute Technical Report 06-002.

Currently there are two major active calls under the Conjunctive Management Rules; the Rangen Inc. call and the Surface Water Coalition:

<http://www.idwr.idaho.gov/news/curtailment/Curtailment.htm#rngn> (Rangen)

<http://www.idwr.idaho.gov/News/WaterCalls/Surface%20Coalition%20Call/default.htm> (Surface Water Coalition).

In compliance with the administrative requirements governing rulemaking, the Department published a Notice of Intent to Promulgate Rules in the Idaho Administrative Bulletin prior to the initial round of negotiated rulemaking. We intend to republish notice to assure that the administrative requirements are properly followed. The earliest it can be published is in the May bulletin.

The Department believes it is important to again meet water users in the areas potentially impacted by this action. A teleconference will be conducted at 1:30 pm on May 29, 2014, 21 days following the publication of notice in the Administrative Bulletin. The purpose of the meeting will be to hear from water users and address initial questions. Parties are not required to participate in person. The call in number is 1-215-446-0193 and the pass code is 987764#. Please see the attached sheet for additional details.

The Department intends to hold additional meetings in areas potentially affected by a rule change. At this time we are considering meetings in Arco, Idaho Falls or Rexburg, the Pocatello area, and Burley.

Sincerely,



Gary Spackman
Director

Encl.