

ATTACHMENT D

Water District 100

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF CREATING THE)
ST. ANTHONY – REXBURG AREA WATER DISTRICT))
(DESIGNATED AS WATER DISTRICT NO. 100) FOR)
ADMINISTRATION OF RIGHTS TO THE USE OF)
GROUND WATER IN THE EASTERN SNAKE PLAIN)
AQUIFER IN ADMINISTRATIVE BASINS 21 AND 22)
_____)

**FINAL ORDER
CREATING WATER
DISTRICT NO. 100**

The Director of the Idaho Department of Water Resources (“Director” or “Department”) is required by Idaho statutes 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. The requirement to create water districts applies to those streams, or other water sources, for which the priorities of appropriation have been adjudicated by court decree. By statute, during the pendency of a water rights adjudication, the district court having jurisdiction for the adjudication can authorize interim administration of the water rights by the Director if reasonably necessary to protect senior water rights. The district court may authorize the distribution of water pursuant to chapter 6, title 42, Idaho Code, in accordance with partial decrees entered by the court or in accordance with one or more Director’s Reports as may be modified by the court’s order.

FINDINGS OF FACT

1. On January 17, 2006, the State of Idaho (“State”) filed a motion with the Snake River Basin Adjudication (“SRBA”) District Court requesting an order authorizing the interim administration of water rights by the Director in the Department’s Administrative Basin (“Basin”) 21.

2. On January 18, 2006, the State served copies of its motion and supporting briefing and affidavits on all affected parties by regular U. S. Mail. The State’s motion included a Notice of Hearing setting the matter for hearing by the SRBA District Court on April 18, 2006. The SRBA District Court designated the matter as SRBA Subcase 92-00021-21 (Interim Administration).

3. On February 27, 2006, the State filed a motion with the SRBA District Court requesting an order authorizing the interim administration of water rights by the Director in Basin 22, Part 1, Ground Water, or ground water in that portion of Basin 22 overlying the Eastern Snake Plain Aquifer (“ESPA”).

4. Also on February 27, 2006, the State served copies of its motion and supporting briefing and affidavits on all affected parties by regular U. S. Mail. The State's motion included a Notice of Hearing setting the matter for hearing by the SRBA District Court on May 25, 2006. The SRBA District Court designated the matter as SRBA Subcase 92-00021-22 Part 1 GW (Interim Administration).

5. The State's motions, supporting briefing, and affidavits described in Findings 1 through 4 are a part of the record in the matter of creating Water District No. 100 within Basins 21 and 22.

6. All of the water rights claimed in Basin 21 and Basin 22, Part 1, Ground Water, have been reported in Director's Reports to the SRBA District Court or have been partially decreed, superceding the Director's Reports, as required under Idaho Code § 42-1417.

7. The State's motions for interim administration described in Findings 1 and 3 state that: "interim administration of water rights ... is reasonably necessary because an efficient means of administering water rights from ground water sources ... does not exist. The establishment of a water district ... will provide the watermasters with the ability to administer water rights in accordance with the prior appropriation doctrine as established by Idaho law."

8. On April 18, 2006, the SRBA District Court held a hearing on the State's motion for interim administration in Basin 21. No objections were filed in opposition to the motion and no party appeared in opposition to the State's motion.

9. On May 1, 2006, the SRBA District Court issued an order authorizing the interim administration of water rights by the Director in Basin 21, pursuant to chapter 6, title 42, Idaho Code, based upon a determination that such interim administration is necessary to protect senior water rights.

10. On May 25, 2006, the SRBA District Court held a hearing on the State's motion for interim administration in Basin 22, Part 1, Ground Water. No objections were filed in opposition to the motion and no party appeared in opposition to the State's motion.

11. Also on May 25, 2006, the SRBA District Court issued an order authorizing the interim administration of water rights by the Director in Basin 22, Part 1, Ground Water, pursuant to chapter 6, title 42, Idaho Code, based upon a determination that such interim administration is necessary to protect senior water rights.

12. On October 18, 2006, the Director signed a notice proposing to establish the St. Anthony – Rexburg Area Water District in the portions of Basins 21 and 22 overlying the ESPA, pursuant to the provisions of Idaho Code § 42-604. Notice was mailed on October 26, 2006, by regular U. S. Mail to each holder of a water right within the boundaries of the proposed water district. The notice described the proposed water district to be established (Water District No. 100), the reasons therefor, and the time and place for a public hearing to be held on November 14, 2006, concerning the establishment of the proposed water district. The notice also provided a time period within which written comment on the proposed action would be accepted.

13. In addition, the Director caused notice to be published of the proposed action establishing the St. Anthony – Rexburg Area Water District once a week for two (2) weeks in the following newspapers having general circulation within the area covered by the proposed water district: *The Post Register* of Idaho Falls and the *Rexburg Standard Journal* of Rexburg, both on October 25, and November 1, 2006.

14. The notice mailed to water right holders proposed that establishment of Water District No. 100 include all water rights authorizing the use of ground water with points of diversion located within the boundaries of Basins 21 and 22 overlying the ESPA, except those used solely for domestic and/or stock water purposes as defined by Idaho Code §§ 42-111 and 42-1401A(11).

15. The Director's notice also proposed that the water district watermaster be responsible for certain duties under the direction and supervision of the Director including: (1) measurement and reporting of diversions under water rights; (2) administration of water rights in priority; (3) curtailment and enforcement against unauthorized or excessive diversions; and (4) enforcement of stipulated agreements or mitigation plans approved by the Director.

16. The Director's notice also proposed that the water district would replace the measurement and reporting responsibilities of the ESPA East Water Measurement District ("EWMD") that currently exists within those portions of Basins 21 and 22 overlying the ESPA.

17. On November 14, 2006, at approximately 8:40 p.m., the Director conducted a hearing concerning the proposed establishment of Water District No. 100 at the Best Western Cotton Tree Inn, 450 W 4th S, Rexburg, Idaho. Approximately 23 people attended the hearing.

18. For a period of approximately 90 minutes prior to commencing the hearing, the Director described factors he considered in proposing to establish Water District No. 100 and answered questions about the creation of the proposed water district and how the district was envisioned to function.

19. Persons attending the hearing were provided an opportunity to make oral statements for the record. In addition, the Director held the record open through November 24, 2006, for the submission of written comments.

20. Four (4) individuals gave oral statements for the record at the hearing in Rexburg, Idaho.

21. Mr. Jeff Raybould of St. Anthony, Idaho, testified on behalf of the Fremont-Madison Irrigation District ("FMID"), which holds several ground water rights within the boundaries of the proposed water district. Mr. Raybould testified in support of formation of the proposed Water District No. 100. Mr. Raybould also testified that FMID supports including those portions of Basins 21 and 22 in the Rexburg Bench area in Water District No. 100 once the rights in that area are "adjudicated" and the timing is appropriate for inclusion in the water district.

22. Mr. Willard ("Bill") Dale Beck, Mayor of the City of St. Anthony, Idaho, testified on behalf of the City of St. Anthony. Mr. Beck testified that he supported the formation of the proposed water district and stated "the plans and suggestions as laid out to us" by the Director "appear reasonable."

23. Mr. Gary Ball of Rexburg, Idaho, testified on his own behalf. Mr. Ball testified that he owns a water right on the Rexburg Bench. Mr. Ball supported formation of the proposed water district but also supported including the Rexburg Bench area in the water district. Mr. Ball stated that water rights in the Rexburg Bench area should be included in Water District No. 100 "in the beginning" and "all at once" with the rest of the area and water rights that the Department proposed to be included in Water District No. 100.

24. Mr. Jerry L. Mumm of Rexburg, Idaho testified on his own behalf. Mr. Mumm stated that he owns ground water rights in the "Teton River meadows." Mr. Mumm stated that he "is in favor of forming Water District No. 100" but that he also favors including parts of Basins 21 and 22 in the water district, including the Rexburg Bench and Ashton areas. Mr. Mumm asked if anything could be done to "speed up" the inclusion of these areas in Water District No. 100.

25. The Department did not receive any written comments regarding the proposed creation of Water District No. 100 before the close of the written comment period on November 24, 2006.

26. The ESPA is defined as the aquifer underlying an area of the Eastern Snake Plain that is about 170 miles long and 60 miles wide as delineated in the report "Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho," U. S. Geological Survey ("USGS") Professional Paper 1408-F, 1992, excluding areas lying both south of the Snake River and west of the line separating Sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian. The boundary of the ESPA is referenced in the map on Attachment A to this Order (labeled as the Eastern Snake Plain Aquifer).

27. The Rexburg Bench is an upland area that slopes northwestward from the Big Hole Mountains to the margin of the Snake River Plain. The bench encompasses the Moody Creek drainage area southwest of Newdale and east of Rexburg.

28. The proposed boundaries of Water District No. 100 and the ESPA boundary described in Finding 26 do not include the Rexburg Bench. The Rexburg Bench area was excluded from the ESPA boundary delineated by the USGS because it is an upland area, Moody Creek (the principal drainage) is perched above the regional ESPA, and because the aquifer or principal water bearing unit of the Rexburg Bench is rhyolite as opposed to the basalt of the regional ESPA.

29. Ground water rights located outside of the ESPA in Basin 22 (including the Rexburg Bench) were reported in a Director's Report filed with the SRBA District Court on December 22, 2006. However, a motion has not yet been filed with the SRBA District Court

requesting an order authorizing the interim administration of water rights by the Director in that portion of Basin 22 located outside of the ESPA.

30. The Department uses a calibrated ground water model to determine the effects on the ESPA and hydraulically connected reaches of the Snake River and its tributaries from pumping a single well in the ESPA, from pumping selected groups of wells in the ESPA, and from surface water uses on lands above the ESPA.

31. The Eastern Snake Hydrologic Modeling Committee ("ESHMC") is a committee of engineers and hydrologists representing different state and Federal agencies and water right holder groups who have an interest in the use and results of the Department's ESPA ground water model. Committee members have technical expertise in various subject areas including, but not limited to, ground water modeling, surface water hydrology, reservoir operations, climatology, and agricultural and irrigation engineering. The ESHMC provides technical advice and peer review for the development, use, and maintenance of the Department's ESPA ground water model.

32. The ESPA ground water model described in Finding 30 has a boundary that varies in places from the ESPA boundary delineated by the USGS and described in Finding 26. One of the locations where the two boundaries are different is in the vicinity of the Rexburg Bench. The ESPA ground water model boundary includes all of the irrigated lands within the Rexburg Bench, as well as some irrigated areas north of the Rexburg Bench and the Teton River, and irrigated areas south of the Rexburg Bench and north of the Snake River.

33. The ESHMC concluded in 2002 that the Rexburg Bench is hydraulically connected to the ESPA and recommended inclusion of the area in the ESPA ground water model. The calibrated ESPA ground water model described in Finding 30 includes the Rexburg Bench.

34. The water supply in the ESPA is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees. Two of the locations at which a direct hydraulic connection exists between the ESPA and the Snake River, or between the ESPA and water sources tributary to the Snake River, include the reach of the Snake River between the USGS stream gage located near Ashton and the USGS stream gage located near Rexburg ("Ashton to Rexburg reach") and the reach of the South Fork Snake River between the USGS stream gage located near Heise and the USGS stream gage located near Rexburg ("Heise to Rexburg reach"), located along the northeastern edge of the ESPA in the vicinity of St. Anthony, Rexburg, and Roberts, Idaho.

35. The available water supply in portions of Basins 21 and 22 overlying the ESPA is, at times, not adequate to satisfy some senior priority water rights that are hydraulically connected to the ESPA. The available water supply is also projected in the future to be insufficient, at times, to satisfy these water rights.

CONCLUSIONS OF LAW

Statutory Authorities

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. 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, 42-201(1), 42-220, 42-226, 42-237a.g., 42-351, and 42-602 et seq.

3. Idaho Code §§ 42-226 and 42-237a.g. assign the authority and responsibility to the Director for the administration of ground water rights in the state in accordance with the prior appropriation doctrine as established by Idaho law so as to protect prior surface and ground water rights.

4. The Director has the authority and 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.

5. Idaho Code § 42-604 authorizes the Director to 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. The Director may also revise the boundaries of a water district, abolish a water district, or combine two (2) or more water districts, by entry of an order, if such action is required in order to properly administer the users of the water resource.

6. In addition, 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.

Response to Testimony and Written Comments

7. The oral testimony provided at the hearing on November 14, 2006, supported creation of the proposed Water District No. 100. The testimony also supported including additional areas and ground water rights in the proposed district. Specifically, the testimony supported inclusion of the Rexburg Bench area in Water District No. 100. Some of the testimony supporting inclusion of the Rexburg Bench favored immediate inclusion of the area into the water district.

8. In response to the hearing testimony, the Director concludes that it may be appropriate to include ground water rights located in the Rexburg Bench in Water District No. 100, but the inclusion of those ground water rights must be delayed until after a party to the SRBA moves the SRBA District Court to authorize interim administration based on the Director's Report filed on December 22, 2006, or subsequent partial decrees, and the SRBA District Court authorizes the interim administration of those ground water rights by the Director in that area. In addition, the Director must again publish notice and hold another hearing in order to include ground water rights from the Rexburg Bench or other areas of Basin 22 in Water District No. 100.

9. The Director concludes that it is not appropriate to further delay creation of the proposed Water District No. 100 in order to include ground water rights from the Rexburg Bench or other areas of Basin 22, particularly when such action may delay creation of the district after the start of the 2007 irrigation season. Water District No. 100 can be revised to include ground water rights from the Rexburg Bench later in 2007 or prior to the 2008 irrigation season as necessary.

District Creation

10. 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 create a water district to administer ground water rights within Basins 21 and 22 overlying the ESPA, as shown on the map appended hereto as Attachment A, to protect senior priority water rights.

11. The Director concludes that Water District No. 100 should be formed on a permanent basis and be used to administer the affected water rights in accordance with the prior appropriation doctrine as established by Idaho law.

Administration of Affected Water Rights

12. The Director concludes that immediate administration of ground water rights, other than domestic and stockwater rights as defined under Idaho Code § 42-111 and 42-1401A(11), pursuant to chapter 6, title 42, Idaho Code, is necessary for the protection of prior surface and ground water rights.

13. The Director concludes that the watermaster of the water district created by this order shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director:

- a. Administer and enforce water rights in priority;
- b. Measure and report the diversions under water rights;

- c. Curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);
- d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not mitigated by a stipulated agreement or a mitigation plan approved by the Director; and
- e. Enforce the provisions of any stipulated agreements or mitigation plans approved by the Director.

14. Additional instructions to the watermaster for the administration of water rights from hydraulically connected sources will be based upon available data, models, and the director's best professional judgment.

15. The Director concludes that the water district created by this order may provide for the designation of sub-districts that match the boundaries of existing surface water districts, new or existing ground water districts, canal companies, irrigation districts, or other water use entities as otherwise determined by the Director.

16. The Director further concludes that the water district created by this order shall include the following organizational features:

- a. Election and appointment of a single watermaster for the water district. The water users may elect to have the district contract with the Department to provide watermaster services. Under a district contract with the Department, the watermaster will be a direct employee of the Department.
- b. Selection of a Water District Advisory Committee that may include, but need not be limited to, representation from boards of directors for ground water districts or representatives of other water use entities.
- c. Deputy watermasters may be appointed by the watermaster, with approval from the Director. Deputy watermasters would work pursuant to supervision by the watermaster consistent with instructions from the Director. Deputy watermasters, if any, may be employees of existing water districts, ground water districts, or other water use entities that are located within the boundaries of the water district. Duties of deputy watermasters that are also employees of an existing water district, ground water district, or other water use entity should be limited to measuring and reporting of diversions.

ORDER

IT IS HEREBY ORDERED that:

1. The St. Anthony -- Rexburg Area Water District, designated as Water District No. 100, is created to include all ground water rights in Basins 21 and 22 overlying the ESPA within the area depicted on the map appended hereto as Attachment A and incorporated herein by reference, except small domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A(11) for which authorization for interim administration was not obtained from the SRBA District Court and for which notice of this action was not provided. Ground water rights located in Township 7 North, Range 38 East, Section 6 of Basin 21, are also excluded from Water District No. 100 since ground water rights in that location are already included in the Mud Lake Area Water District, designated as Water District No. 110.


2. As soon as practicable in calendar year 2007, the holders of water rights within Water District No. 100 shall meet at a time and place to be determined and noticed by the Director for purposes of: (1) electing a watermaster; (2) selecting an advisory committee, if desired; and (3) setting a budget and corresponding assessments to be collected for operating the district. In future years, the annual meeting shall be held as provided in Idaho Code §42-605.

3. The Director will consider revising the boundaries of Water District No. 100 to include ground water rights in the Rexburg Bench and/or other areas of Basin 22 after the SRBA District Court authorizes interim administration of water rights in response to a motion filed by a party to the SRBA.

4. The watermaster of Water District No. 100 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 the water rights in priority;
- 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. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not mitigated by a stipulated agreement or mitigation plan approved by the Director; and
- e. Enforce the provisions of any stipulated agreements or mitigation plans approved by the Director.

DATED this 29th day of December, 2006.

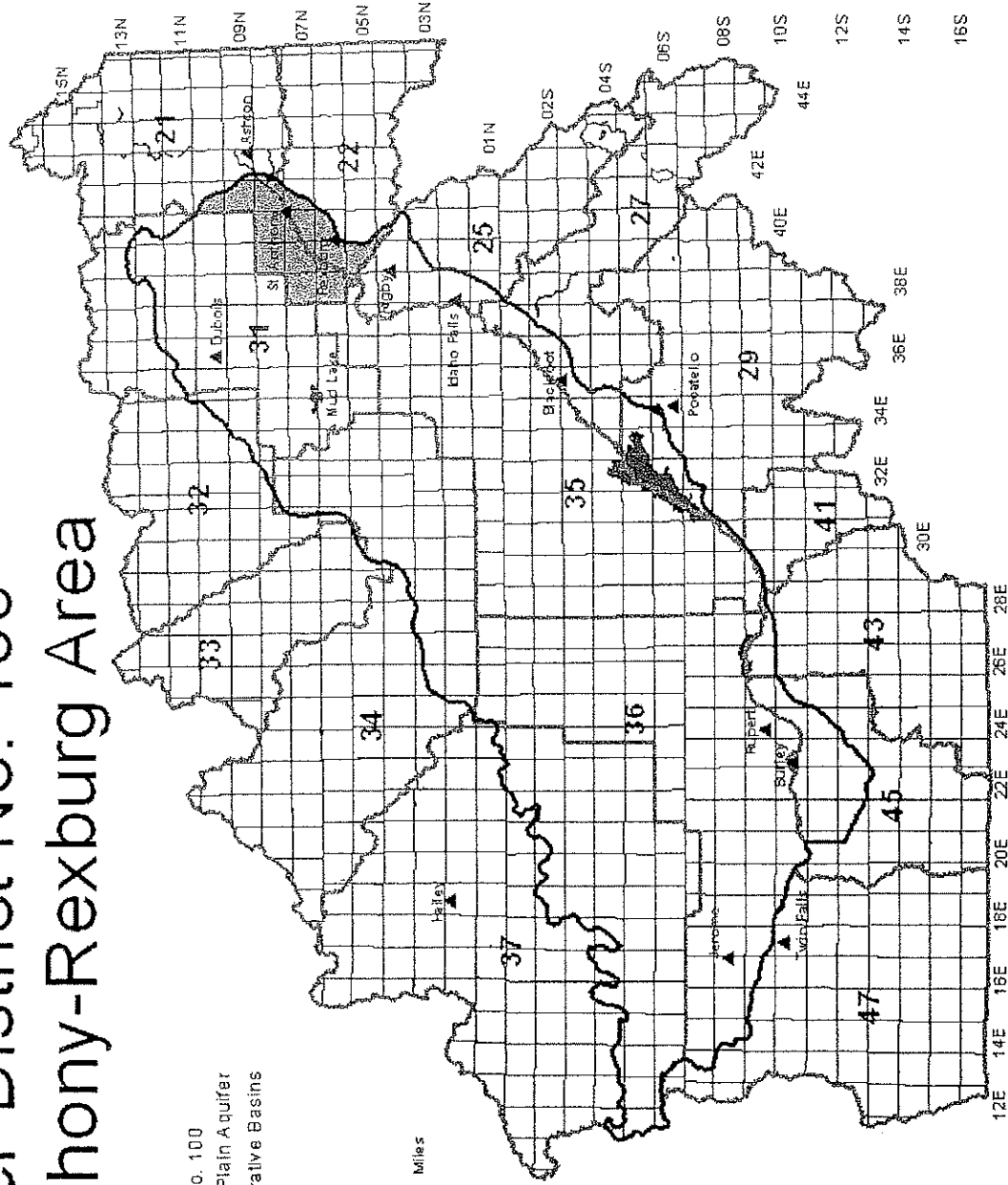
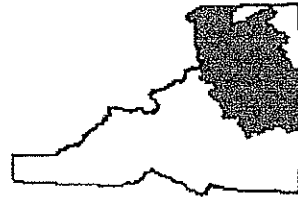

KARL J. DREHER
Director

ATTACHMENT A

Water District No. 100 St. Anthony-Rexburg Area

-  Water District No. 100
-  Eastern Snake Plain Aquifer
-  IDWR Administrative Basins
-  Townships
-  Cities

10 0 10 20 Miles



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of December, 2006, the above and foregoing document was served on each individual or entity on the service list for this matter on file at the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho, and posted on the Department's website: www.idwr.idaho.gov. Each individual or entity on the service list was served by placing a copy of the above and foregoing document in the United States mail, postage prepaid and properly addressed.



Christine Roberts
Office Records Specialist
Idaho Department of Water Resources

Water District 110

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF CREATING THE)
MUD LAKE AREA WATER DISTRICT)
(DESIGNATED AS WATER DISTRICT NO. 110))
FOR THE ADMINISTRATION OF RIGHTS TO)
THE USE OF GROUND WATER FROM THE)
EASTERN SNAKE PLAIN AQUIFER IN)
ADMINISTRATIVE BASINS 31 AND 32)

**FINAL ORDER
CREATING WATER
DISTRICT NO. 110**

The Director of the Idaho Department of Water Resources ("Director" or "Department") is required by Idaho statutes 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. The requirement to create or establish water districts applies to those streams, or other water sources, for which the priorities of appropriation have been adjudicated by court decree. By statute, during the pendency of a water rights adjudication, the district court having jurisdiction for the adjudication can authorize interim administration of the water rights by the Director if reasonably necessary to protect senior water rights. The district court may authorize the distribution of water pursuant to chapter 6, title 42, Idaho Code, in accordance with partial decrees entered by the court or in accordance with one or more Director's Reports as may be modified by the court's order.

FINDINGS OF FACT

1. On April 18, 2005, the State of Idaho ("State") filed a motion requesting an order authorizing the interim administration of water rights by the Director in the Department's Administrative Basins ("Basins") 31 and 32 with the Snake River Adjudication ("SRBA") District Court. The State's motion included a Notice of Hearing setting the matter for hearing by the SRBA District Court on July 21, 2005. The SRBA District Court designated the matter as SRBA Subcase 92-00021 (Interim Administration). The State's motion and supporting briefing and affidavits are a part of the public record in the matter of creating Water District No. 110 within Basins 31 and 32.

2. All of the water rights claimed in Basins 31 and 32 have been reported in Director's Reports to the SRBA District Court or have been partially decreed, superceding the Director's Reports, as required under Idaho Code § 42-1417.

3. The State's motion for interim administration described in Finding 1 above states that: "Interim administration of water rights in [these] [b]asins . . . is reasonably necessary because an efficient means of administering water rights from ground water sources and some surface water sources in these basins does not exist. The establishment of water districts for

these basins will provide the watermasters with the ability to administer water rights in accordance with the prior appropriation doctrine as established by Idaho law.”

4. On April 19, 2005, the State served copies of its motion and supporting briefing and affidavits on all affected parties by regular U. S. Mail.

5. On July 21, 2005, the SRBA District Court held a hearing on the State’s motion. No objections were filed in opposition to the motion, and no party appeared in opposition to the State’s motion.

6. On July 21, 2005, the SRBA District Court issued an order authorizing the interim administration of water rights by the Director in Basins 31 and 32, pursuant to chapter 6, title 42, Idaho Code, based upon a determination that such interim administration is “reasonably necessary to efficiently administer water rights and to protect senior water rights.”

7. On November 9, 2005, the Director signed a notice proposing to establish the Mud Lake Area Water District in portions of Basins 31 and 32 overlying the Eastern Snake Plain Aquifer (“ESPA”) pursuant to the provisions of Idaho Code § 42-604. Notice was mailed on November 14, 2005, by regular U. S. Mail, to each holder of a water right within the boundaries of the proposed water district. The notice described the water district proposed to be established (Water District No. 110), the reasons therefor, and the time and place for a public hearing to be held on December 5, 2005, concerning establishment of the proposed water district. The notice also provided a time period within which written comments on the proposed action would be accepted.

8. In addition, the Director caused notice to be published of the proposed action establishing the Mud Lake Area Water District once a week for two (2) weeks in the following newspapers having general circulation within the area of the proposed water district: *The Post Register* of Idaho Falls on November 17 and 24, 2005; and the *Jefferson Star* of Jefferson County on November 16 and 23, 2005.

9. The notice mailed to water right holders proposed that establishment of Water District No. 110 would include all water rights authorizing the use of surface water and ground water with points of diversion located within the boundaries of Basins 31 and 32 overlying the ESPA, except those used solely for domestic and/or stock water purposes as defined under Idaho Code §§ 42-111 and 42-1401A(11). The Director’s notice advised that a meeting of the holders of water rights within the boundaries of the proposed district be held during the spring of 2006 for the purpose of electing a watermaster and conducting other business necessary to initiate operation of the district.

10. The Director’s notice also proposed that the water district watermaster be responsible for certain duties under the direction and supervision of the Director including: (1) measurement and reporting of diversions under water rights; (2) administration of water rights in priority; (3) curtailment and enforcement against unauthorized or excessive diversions; and (4) enforcement of stipulated agreements or mitigation plans approved by the Director.

11. The Director's notice further proposed that existing water districts in Basins 31 and 32 continue to operate but be subsumed into Water District No. 110. There are currently two water districts located within portions of the proposed Water District No. 110: Water District No. 31, Mud Lake and tributaries; and Water District No. 32-C, Medicine Lodge Creek and tributaries. A portion of Water District No 32-C lies within the ESPA, but much of the district also lies outside of the ESPA and the proposed boundaries of Water District No. 110. Some surface water rights and diversions in Water District No. 31 also lie outside of the ESPA and the boundaries of the proposed Water District No. 110.

12. Water District No. 31 includes surface water rights in Basin 31 as well as about 30 or more ground water rights that divert ground water into Mud Lake. The watermaster for Water District No. 31 historically has administered these ground water rights and wells. The rights are subject to the Agreement of Water Right Owners Regarding Delivery of Mud Lake Water, dated April 17, 2001 ("Mud Lake Agreement"), which is on file in the records of the Department and the Clerk and Recorder of Jefferson County, instrument number 307626. The Mud Lake Water Users, Inc., Independent Water Users of Mud Lake, Inc., and Dobson Ranch Partnership, hold the ground water rights and wells under this agreement.

13. Water District No. 32-C includes only surface water rights.

14. The Director's notice proposed that Water District No. 110 would replace the measurement and reporting responsibilities of the North ESPA Water Measurement District ("NWMD") that currently exists within those portions of Basins 31 and 32 overlying the ESPA.

15. The Director conducted a hearing on the proposed establishment of Water District No. 110 at the West Jefferson High School Advanced Learning Center Cafeteria in Terreton, Idaho, at approximately 2:30 pm on December 5, 2005. Approximately thirty-five people attended the hearing.

16. For a period of approximately 90 minutes prior to commencing the hearing, the Director described factors he considered in proposing to establish Water District No. 110 and answered questions about the establishment of the proposed water district and how the district was envisioned to function.

17. Persons attending the hearing were provided an opportunity to make oral statements for the record. In addition, the Director held the record open through December 15, 2005, for the submission of written comments.

18. Two individuals gave oral statements for the record at the hearing in Terreton, Idaho. Four written statements were submitted to the Department on or before the deadline of December 15, 2005.

19. Mr. Lynn Burtenshaw of Terreton, Idaho, testified on his own behalf as the holder of a ground water right in Basin 31. Mr. Burtenshaw testified that if holders of ground water rights within the area of the proposed water district are ever required to provide mitigation, that the priority dates of water rights be recognized, meaning that holders of relatively senior priority

ground water rights should provide or contribute less towards mitigation than holders of more junior priority ground water rights.

20. Mr. Robert Larranaga, manager of the United States Fish and Wildlife Service (“USFWS”) Camas National Wildlife Refuge, testified on behalf of the USFWS, which holds ground water and surface water rights in Basin 31 for wildlife uses at the Camas National Wildlife Refuge. Mr. Larranaga stated that the USFWS would like to continue the arrangement it has had with the NWMD regarding measurement and reporting of ground water diversions located within the refuge. The USFS has been measuring diversions from its own wells and reporting diversions directly to the NWMD. An agreement dated December 15, 1998, was executed between the USFWS and the NWMD regarding measurement and reporting of the USFWS ground water diversions within the refuge.

21. On November 21, 2005, the Director received written comments from Mr. Ted S. Sorensen, a shareholder in the Reno Ditch Company located within Water District No. 32-C. Mr. Sorensen stated that surface water rights from Birch Creek do not need to be included in the proposed Water District No. 110 since they are already in Water District No. 32-C.

22. On December 13, 2005, the Director received written comments from Mr. Bryce A. Contor of Iona, Idaho. Mr. Contor stated that he has worked with water right holders and developed an understanding of the water rights in the proposed water district as a result of having held previous employment positions with NWMD, the Department, and the University of Idaho. Mr. Contor stated that the ground water rights and wells historically administered by Water District No. 31 should “remain solely under the administration of the watermaster of Water District 31.” Mr. Contor noted that if the proposed district does not include surface water rights, then the watermaster of the new district could not properly administer the rights under the Mud Lake Agreement. He further stated: “Water District 31 can perform any and all necessary administrative functions for these wells. Including these wells both within Water District 31 and within any new water district would create administrative ambiguity, an unnecessary burden for watermasters of both districts, and an unnecessary burden for owners of the wells.”

23. Mr. Contor also noted that some wells outside of Water District No. 31 but in the NWMD are currently measured and reported by the watermaster for Water District No. 31 directly to the NWMD. Mr. Contor suggested that additional administrative efficiency could be gained “by assigning these wells to Water District 31 rather than to the new water district.”

24. On December 14, 2005, the Director received written comments from Mr. Kent W. Foster, attorney for the Mud Lake Water Users, Inc. (“MLWU”). Mr. Foster stated that MLWU does not concede or admit that either the surface and ground water sources upon which MLWU rely are hydraulically connected to the Snake River.

25. MLWU requested that its ground water rights continue to be administered by the watermaster of Water District No. 31, since these rights are administered in connection with other surface water rights belonging to MLWU and others in Water District No. 31. MLWU stated that: “Shifting such responsibility to the new Water District 110 would provide no practical benefit and could result in the unnecessary creation of confusion or worse problems.”

26. MLWU further stated in its letter that it objected to the practice of the Camas National Wildlife Refuge measuring ground water diversions from its own wells and reporting the measured diversions directly to the NWMD. MLWU requested that the USFWS wells and rights "be administered by the appropriate State watermaster, the same as for all other water users." MLWU also stated that "there is no legal reason for separate or different treatment and the practical considerations mitigate in favor of similar and equal administration practices."

27. On December 16, 2005, the Director received written comments from Mr. Jerry R. Rigby, attorney for various ground water users located within the proposed boundaries of Water District No. 110, but not administered by Water District No. 31. Mr. Rigby stated that his clients generally agreed with the boundaries proposed for Water District No. 110. Mr. Rigby further stated that nothing in his letter "should be construed as an admission by the ground water users within the proposed 110 boundary that their ground water sources are hydraulically connected to the Snake River."

28. After the close of the written comment period, the Department received inquiries from several NWMD advisory committee members regarding inclusion of two ground water wells used for irrigation and located in Basin 21 immediately adjacent to the boundaries of the proposed Water District No. 110. The points of diversion for the two ground water rights in question are located in the north half of Section 6, Township 7 North, Range 38 East. The holder of these ground water rights, Richard Egbert, holds additional ground water rights and diversions within the proposed boundaries of Water District No. 110. The NWMD has historically measured and reported the ground water diversions for the Egbert wells in Basin 21 because the wells are proximate to the NWMD and because Egbert owns other irrigation wells in the NWMD.

29. The State of Idaho did not file a motion with the SRBA District Court seeking an order for interim administration of water rights in Basin 21 until January 18, 2006, the date on which the Director's Report for the ground water rights in Basin 21 overlying the ESPA was filed. The court has scheduled a hearing for this matter on April 18, 2006.

30. A portion of the boundaries for the Bonneville-Jefferson Ground Water District ("BJGWD") overlaps a portion of Basin 31 and the proposed boundaries of Water District No. 110. This overlap occurs in Township 5 North, Range 35 East, Sections 25 through 36, although there are no water rights or irrigation within this area.

31. The water supply from the ESPA is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees. Locations at which a direct hydraulic connection exists between the ESPA and the Snake River, or between the ESPA and water sources tributary to the Snake River, include the Ashton to Rexburg reach of the Henrys Fork and the Heise to Shelley reach of the Snake River, located along the northeastern edge of the ESPA in the vicinity of Rexburg and Roberts, Idaho.

32. The available water supply in all or portions of Basins 31 and 32 overlying the ESPA are currently not always adequate to satisfy some senior priority water rights that are hydraulically connected to the ESPA, and is projected in the future to be insufficient, at times, to satisfy those water rights.

CONCLUSIONS OF LAW

Statutory Authorities

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, 42-220, 42-226, 42-237a.g., 42-351, and 42-602 et seq.

3. Idaho Code §§ 42-226 and 42-237a.g. assign the authority and responsibility to the Director for the administration of ground water use in the state in accordance with the prior appropriation doctrine as established by Idaho law so as to protect prior surface and ground water rights.

4. The Director has the authority and responsibility for direction and control over the distribution of surface water and ground 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.

5. Idaho Code § 42-604 authorizes the Director to 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. The Director may also revise the boundaries of a water district, abolish a water district, or combine two (2) or more water districts, by entry of an order, if such action is required in order to properly administer uses of the water resource.

6. In addition, 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.

Response to Testimony and Written Comments

7. Most of the written comments submitted to the Department expressed concerns about inclusion of some water rights and sources in the proposed Water District No. 110 that are currently administered by an existing water district.

8. Based on review of the Department's water rights records, there are surface water rights within Basins 31 and 32 included within two existing water districts that are outside of the boundaries for the ESPA. The Director concludes that at this time the two existing water

districts in the area, Water District No. 31 and Water District No. 32-C, should continue to administer all surface water rights both within and outside of the proposed boundaries for Water District No. 110.

9. Certain ground water rights that authorize diversion of ground water and conveyance of the ground water diverted into Mud Lake have historically been administered by the watermaster of Water District No. 31. The administration of these ground water rights is subject to the Mud Lake Agreement cited in Finding 12. The Mud Lake Agreement specifies the ground water rights affected by the agreement, each of which have been decreed by the SRBA District Court, and the decree for each right includes a condition that references the agreement.

10. Ground water rights subject to the Mud Lake Agreement should continue to be administered by the watermaster for Water District No. 31 and should not be included in the proposed Water District No. 110 at this time for purposes of administration. However, the exclusion of these rights from the proposed water district does not diminish the Director's responsibility to seek appropriate administration of these rights through direction and supervision of the watermaster for Water District No. 31 to ensure that the administration of surface and ground water rights in Water District No. 31 fully complies with Idaho law.

11. Other written comments and testimony at the hearing in Terreton, Idaho, on December 5, 2005, addressed concerns about either continuing or discontinuing arrangements with the USFWS to measure and report diversions of ground water on the Camas National Wildlife Refuge under rights held by the USFWS. Comments submitted in opposition to this arrangement alleged that this provided for separate or different treatment of the rights held by the USFWS, and that diversions under all water rights in the proposed water district should be measured and administered by the appropriate state watermaster.

12. Documents on file with the Department show that both the Montevue Canal Company ("Montevue") and Producers Canal Company ("Producers") also have had agreements with the NWMD dating back to 1997 for the measurement and reporting of ground water diversions under water rights held by each company, similar to the agreement between the USFWS and the NWMD. Under both the Montevue and Producers agreements, canal company ditch riders have measured, recorded, and reported ground water diversions to the NWMD in coordination with the watermaster for Water District No. 31. The watermaster for Water District No. 31 has also coordinated with the Jefferson Irrigation Company ("Jefferson") for the measurement and reporting of Jefferson's ground water diversions to the NWMD.

13. Ground water rights held by Montevue, Producers, and Jefferson have not historically been administered by the watermaster for Water District No. 31.

14. The agreement between the USFWS and NWMD for measuring and reporting ground water diversions is not unique in Basin 31. Three canal companies in the area have made similar arrangements with the NWMD for measuring and reporting diversions of ground water under their rights.

District Creation

15. Based on the Director's 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 establish a new water district, Water District No. 110, to administer ground water rights that are not already included within Water District No. 31 within those portions of Administrative Basins 31 and 32 overlying the ESPA, as shown on the map appended hereto as Attachment A, to protect senior priority water rights.

16. Water rights authorizing the diversion and use of ground water in that portion of Basin 21 within the proposed boundaries of Water District No. 110 are subject to being included in Water District No. 110 at such time that the Director is authorized to administer such rights pursuant to chapter 6, title 42, Idaho Code.

17. A portion of the Bonneville-Jefferson Ground Water District in Township 5 North, Range 35 East, Sections 25 through 36, falls within Basin 31 and the proposed boundaries of Water District No. 110. Although there are no ground water rights within the overlapped area, other than small domestic and stockwater rights as defined under Idaho Code § 42-111 and 42-1401A(11), the overlapped area of the Bonneville-Jefferson Ground Water District should be excluded from Water District No. 110. Instead, the boundaries for Water District No. 120 should be extended in the future to incorporate the overlapped area, since the remaining larger portion of the Bonneville-Jefferson Ground Water District is currently within Water District No. 120 or is proposed to be included when authorized.

18. The water district should be established on a permanent basis and operated to administer the affected water rights in accordance with the prior appropriation doctrine as established by Idaho law.

Administration of Affected Water Rights

19. Providing for the immediate administration of ground water rights within those portions of Basins 31 and 32 overlying the ESPA pursuant to chapter 6, title 42, Idaho Code, other than domestic and stockwater rights as defined under Idaho Code § 42-111 and 42-1401A(11), is necessary for the protection of prior surface and ground water rights.

20. The watermaster of the water district created by this order should perform the following duties in accordance with guidelines, direction, and supervision provided by the Director:

- a. Administer and enforce ground water rights in priority;
- b. Measure and report the diversions of ground water under the water rights;
- c. Curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a valid water right);

- d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or a mitigation plan approved by the Director; and
- e. Enforce the provisions of any stipulated agreements or mitigation plans approved by the Director.

21. Additional instructions to the watermaster for the administration of water rights should be based upon available data, ground water model(s), and the Director's best professional judgment.

22. The water district created by this order should include the following organizational features:

- a. Election and appointment of a watermaster for the water district may be pursuant to an agreement with the Department to provide watermaster services. Under an agreement with the Department, the watermaster would be a direct employee of the Department and would be provided at no cost to the water right holders for a period of two years.
- b. Selection of a Water District Advisory Committee that may include, but need not be limited to, representation from boards of directors for ground water districts or representatives of other water use entities.
- c. Deputy watermasters may be appointed by the watermaster, with approval from the Director. Deputy watermasters would work pursuant to supervision by the watermaster consistent with instructions from the Director. Deputy watermasters, if any, may be employees of existing water districts, ground water districts, or other water use entities that are located within the boundaries of the water district. Duties of deputy watermasters that are also employees of an existing water district, ground water district, or other water use entity should be limited to measuring and reporting of diversions.

ORDER

The Director enters the following Order for the reasons stated in the foregoing Findings of Fact and Conclusions of Law.

IT IS HEREBY ORDERED as follows:

1. The Mud Lake Area Water District, designated as Water District No. 110, is hereby established to include all ground water rights in Basins 21, 31, and 32 overlying the ESPA, within the area depicted on the map appended hereto as Attachment A and incorporated herein by reference, excluding: (1) ground water rights included and administered in Water District No. 31 and subject to the Mud Lake Agreement; (2) small domestic and stockwater rights as defined under Idaho Code § 42-111 and 42-1401A(11); and (3) that portion of the

Bonneville-Jefferson Ground Water District in Township 5 North, Range 35 East, Sections 25 through 36, within Basin 31.

2. As soon as practicable in calendar year 2006, holders of water rights included in Water District No. 110 shall meet at a time and place to be determined and noticed by the Director for the purposes of: (1) electing a watermaster; (2) selecting an advisory committee, if desired; and (3) setting a budget and corresponding assessments to be collected for operating the district. In future years, the annual meeting shall be held as provided in Idaho Code § 42-605.

3. The watermaster for Water District No. 110 shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director, except in Basin 21 until such time that the Director is authorized to administer ground water rights in Basin 21 pursuant to chapter 6, title 42, Idaho Code:






- a. Measure, record, and report diversions of ground water under water rights included in Water District No. 110;
- b. Administer and enforce water rights in Water District No. 110 in priority;
- c. Curtail unauthorized or excessive diversions in Water District No. 110 (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);
- d. Curtail out-of-priority diversions under ground water rights in Water District No. 110 determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement of mitigation plan approved by the Director; and
- e. Enforce the provisions of any stipulated agreements or mitigation plans approved by the Director and applicable in Water District No. 110.

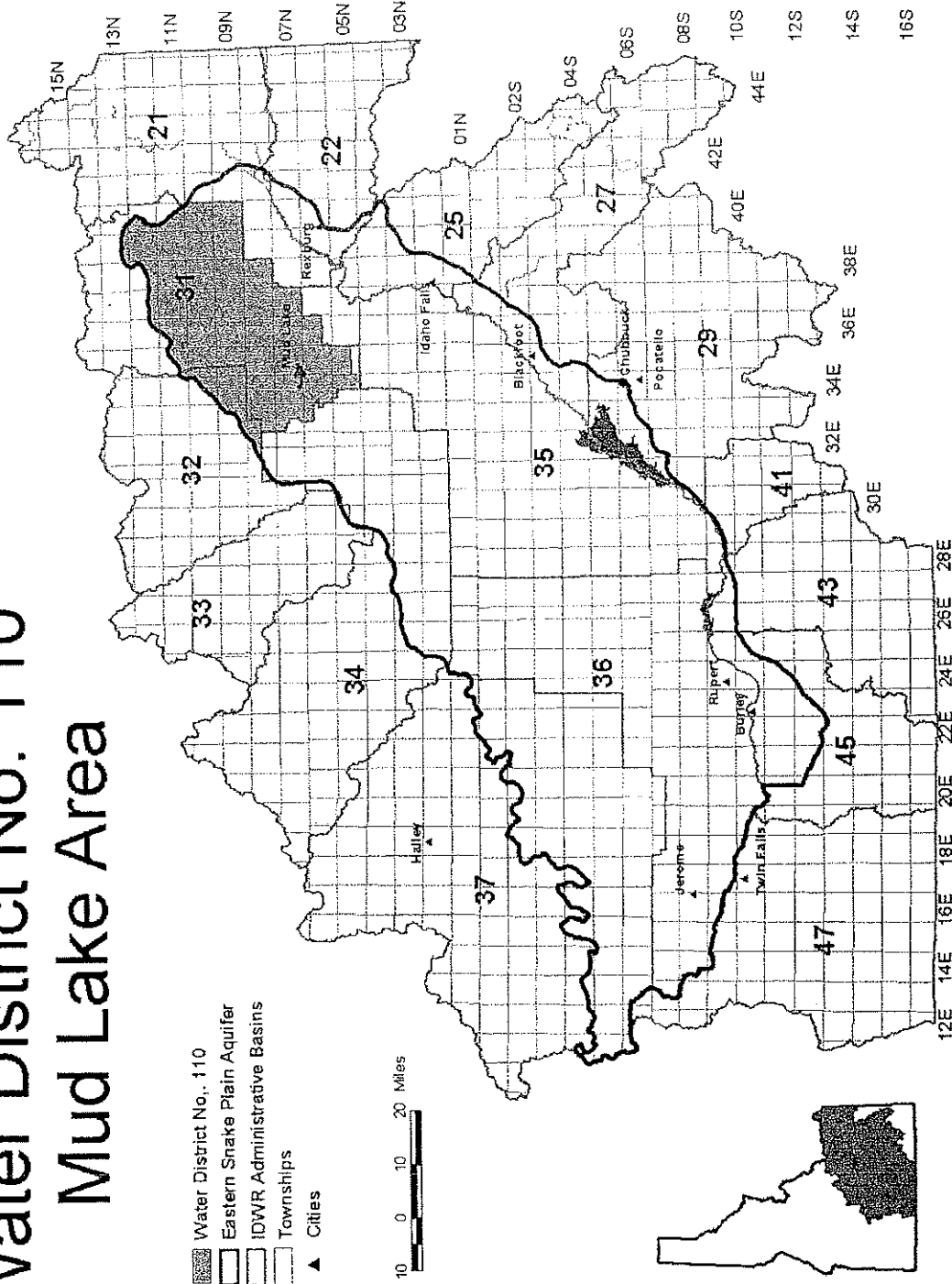
DATED this 17th day of April 2006.



KARL J. DREHER
Director

Water District No. 110 Mud Lake Area

-  Water District No. 110
-  Eastern Snake Plain Aquifer
-  IDWR Administrative Basins
-  Townships
-  Cities



Water District 120

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF CREATING THE AMERICAN)
FALLS AREA WATER DISTRICT, DESIGNATED)
AS WATER DISTRICT NO. 120, FOR THE)
ADMINISTRATION OF RIGHTS TO THE USE OF)
GROUND WATER FROM THE EASTERN SNAKE)
PLAIN AQUIFER IN ADMINISTRATIVE BASINS)
35 AND 41.)

**FINAL ORDER
CREATING WATER
DISTRICT NO. 120**

The Director of the Idaho Department of Water Resources ("Director") is authorized 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. The authority to create water districts applies to those streams, or other water sources, for which the priorities of appropriation have been adjudicated by court decree. During the pendency of a water rights adjudication, the district court is authorized by statute to approve interim administration of the water rights by the Director if reasonably necessary to protect senior water rights. The district court may permit the distribution of water pursuant to chapter 6, title 42, Idaho Code, in accordance with partial decrees entered by the court or in accordance with a Director's Report as modified by the court's order.

FINDINGS OF FACT

1. On August 3, 2001, the Director established the American Falls Ground Water Management Area ("American Falls GWMA") pursuant to Idaho Code § 42-233b. The Director designated the American Falls GWMA due to concerns about the depletionary effects of ground water withdrawals under junior priority water rights and the availability of water supplies for senior priority water rights from connected surface and ground water sources during the severe drought conditions experienced across the Snake River Basin. The Director issued the order in response to his recognition that he has a responsibility, subject to the confines of existing knowledge and technology, to exercise his statutory authorities to administer water rights for the use of ground water in a manner that recognizes and protects senior priority surface water and ground water rights in accordance with the provisions of Idaho law. In establishing the American Falls GWMA, the Director stated his intent to curtail diversions under certain junior ground water rights that caused significant depletions to hydraulically connected surface water sources thereby causing injury to senior priority water rights.

2. On August 31, 2001, the Director was advised by representatives of holders of

junior priority ground water rights and holders of senior priority surface water rights that agreements in principle had been reached that would provide replacement surface water for the next two irrigation seasons equal in amount to what would have resulted from the intended curtailment of certain junior ground water diversions within the American Falls GWMA.

3. Based upon the representations that agreements in principle had been reached, the Director announced on August 31, 2001, that no curtailment orders would be issued for the American Falls GWMA, provided the agreements in principle were implemented through detailed written agreements.

4. After August 31, 2001, representatives of holders of most of the affected ground water rights entered into detailed written stipulated Agreements with representatives of most holders of senior priority surface water rights. The Agreements were submitted to the Director for approval. The Director approved the Agreements on January 18, 2002.

5. Under the Agreements, the represented holders of senior priority surface water rights agreed not to exercise their senior priorities against the represented holders of junior priority ground water rights in exchange for commitments by the ground water right holders to provide specific quantities of replacement water during the two-year term of the stipulated Agreements. In the event the replacement water cannot be provided, the Agreements require an appropriate reduction of diversion under ground water rights or require that other mitigation be provided.

6. The signatories to the Agreements agreed to work with the Director to expeditiously create water districts to implement the terms of the Agreements.

7. Under the Agreements, the parties requested that the Director notify holders of ground water rights subject to interim administration who are not party to the Agreements, or other similar agreements or approved mitigation plans, that they may be subject to curtailment under the prior appropriation doctrine as established by Idaho law.

8. On November 19, 2001, the State of Idaho filed with the SRBA District Court a motion requesting an order authorizing the interim administration of water rights by the Director in all, or parts, of Administrative Basins 35 and 41 overlying the Eastern Snake Plain Aquifer ("ESPA") in the American Falls area.

9. On November 19, 2001, the SRBA District Court issued an order setting the State's motion for order authorizing interim administration for hearing on January 8, 2002. The Court designated the matter as SRBA Subcase 92-00021 (Interim Administration). The State of Idaho served copies of the Court's November 19, 2001, order and the State's motion and supporting briefing and affidavits on all affected parties by regular U. S. Mail on November 26, 2001.

10. On January 8, 2002, the SRBA District Court issued an order authorizing the interim administration of water rights by the Director in all, or parts, of Administrative Basins 35 and 41 overlying the ESPA, pursuant to chapter 6, title 42, Idaho Code, based upon a

determination that such interim administration is necessary to protect senior water rights.

11. On January 14, 2002, the Director mailed notice, by regular mail, of the proposed action creating a water district in the American Falls area within the ESPA in Administrative Basins 35 and 41, pursuant to the provisions of Idaho Code § 42-604. Notice was mailed to each water user in the proposed district affected by the creation of the water district (herein established as Water District No. 120). The notice described the proposed action to be taken, the reasons therefore, the time and place of a hearing to be held on February 4, 2002, concerning the proposed action, and provided a time period within which written comment on the action would be accepted.

12. In addition, the Director published notice of the proposed action creating the water district once a week for two (2) weeks in the following newspapers having general circulation within the area covered by the proposed district: the *Idaho Falls Post-Register* on January 17 and 24, 2002; the *Blackfoot Morning News* on January 17 and 24, 2002; the *Pocatello Idaho State Journal* on January 17 and 24, 2002; the *Rigby Jefferson Star* on January 16 and 23, 2002; the *Shelley Pioneer* on January 17 and 24, 2002; and the *Aberdeen Times* on January 16 and 23, 2002.

13. The Director conducted the hearing concerning the proposed creation of the water district at the Blackfoot Civic Center in Blackfoot, Idaho, at 1:00 pm on February 4, 2002. Approximately seventy-five people attended the hearing.

14. Prior to commencing the hearing, the Director made a presentation and answered questions for approximately two hours addressing the reasons for creation of the proposed water district and how the district would operate.

15. Persons attending the hearing were provided an opportunity to make an oral statement for the record. In addition, the Director held the record open through February 14, 2002, for the submission of written comments.

16. Only two persons presented oral statements for the record at the Blackfoot hearing. No one testified in opposition to the creation of the proposed water district. Tim Deeg of American Falls testified as a Director of the Aberdeen American Falls Ground Water District, and as President of the Idaho Ground Water Appropriators, Inc., which represents six ground water districts, three municipal users and three industrial users. Steven T. Howser testified as the General Manager of the Aberdeen-Springfield Canal Company.

17. Mr. Deeg stated that ground water users have several concerns regarding the operation of the proposed water district, and the interrelationship that will exist between the operation of the water district and the existing ground water districts. Mr. Howser stated that provision should be made to ensure that ground water may be diverted where the effects of the diversion have been fully mitigated.

18. The Director received written comments from six affected water users prior to the close of the February 14, 2002, comment period. None of the written comments oppose

creation of the water district. The comments raise issues and concerns about the types of functions that the water district will perform, how those responsibilities will be carried out, and how the costs of the water district will be allocated among water users. The United States Fish and Wildlife Service submitted comments relating to future arrangements that may be made for the measuring and reporting of ground water usage at its affected facilities.

19. The water supply in the ESPA is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees. One of the locations at which a direct hydraulic connection exists between the ESPA and the Snake River, including tributary surface water sources, is in the Shelley to Minidoka reach of the river, sometimes termed the "American Falls reach" located along the southeastern edge of the ESPA in the vicinity of the American Falls Reservoir.

20. The available water supply in all or portions of Administrative Basins 35 and 41 is currently not adequate to satisfy some senior priority water rights and is projected in the future to be insufficient, at times, to satisfy these water rights.

21. The administration of ground water rights within the portion of Administrative Basins 35 and 41 overlying the ESPA is necessary for the protection of prior surface and ground water rights.

CONCLUSIONS OF LAW

Statutory Authorities

1. Idaho law declares all ground waters in 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. Idaho Code § 42-226.

2. The Director has a statutory responsibility to administer the use of ground water in the state so as to protect prior surface and ground water rights. See Idaho Code §§ 42-226 and 42-237a.g.

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. The Director is authorized to establish 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. See Idaho Code § 42-604.

5. In addition, the district court having jurisdiction over a general water rights adjudication may permit 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. See Idaho Code § 42-1417.

District Creation

6. 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 create a water district to administer water rights within those portions of Administrative Basins 35 and 41 overlying the ESPA, as shown on the map appended hereto as Attachment A, to protect senior priority water rights.

7. The Director concludes that the water district should be formed on a permanent basis and be used to administer the affected water rights in accordance with the prior appropriation doctrine as established by Idaho law.

Administration of Affected Water Rights

8. The Director concludes that immediate administration of water rights, other than domestic and stockwater rights as defined under Idaho Code §§ 42-111 and 42-1401A(11), pursuant to chapter 6, title 42, Idaho Code, is necessary for the protection of prior surface and ground water rights.

9. The Director concludes that compliance with the provisions of the interim stipulated Agreements will provide adequate replacement water to satisfy the need for any mitigation or curtailment of the rights to the use of ground water held by persons who are party to the Agreements or are represented by a party to the Agreements during the term of the stipulated Agreements.

10. The Director concludes that the watermaster of the water district created by this order shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director:

- a. Curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);
- b. Measure and report the diversions under water rights;
- c. Enforce the provisions of stipulated agreements approved by the Director; and
- d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or a mitigation plan approved by the Director.

11. Additional instructions to the watermaster for the administration of water

rights from hydraulically connected sources will be based upon available data, models, and the Director's best professional judgment.

12. The Director concludes that the water district created by this order shall include the following organizational features:

- a. Election and appointment of a single watermaster for the water district. The water users may elect to have the district contract with IDWR to provide watermaster services. Under a district contract with IDWR, the watermaster will be a direct employee of IDWR.
- b. Creation of subdistricts that match boundaries of existing ground water districts and irrigation districts, or as otherwise determined by the Director.
- c. Selection of Water District Advisory Committee that includes, but need not be limited to, representation from boards of directors of ground water districts and irrigation districts.
- d. Appointment of deputy watermasters by the watermaster, with approval from the Director. Deputy watermasters shall work pursuant to instructions of the watermaster. Deputy watermasters may be employees of existing ground water districts or irrigation districts that are located within the water district. Duties of appointed deputy watermasters that are also employees of an existing ground water district or irrigation district shall be limited primarily to measuring and reporting of diversions.
- e. Water rights not included in an existing ground water district or irrigation district shall be assessed costs directly by the water district watermaster.
- f. Ground water districts and irrigation districts that are organized as subdistricts may collect and pay the pro-rata expenses on behalf of the diversions and users within their respective district (this will avoid billing of individual water rights or diversions by both the subdistrict and the water district).

ORDER

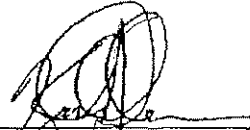
IT IS ORDERED that:

1. The American Falls Area Water District, designated as Water District No. 120, is hereby created to include all ground water rights, other than small domestic and stockwater rights as defined under Idaho Code §§ 42-111 and 42-1401A(11), within the area depicted on the map appended hereto as Attachment A and incorporated herein by reference.

2. For 2002, the water right holders within the American Falls Area Water District No. 120 shall meet at a time and place to be announced by the Director to elect a





watermaster, select an advisory committee, and set a budget to be collected to operate the district. In future years, the annual meeting shall be held as provided in Idaho Code § 42-605.

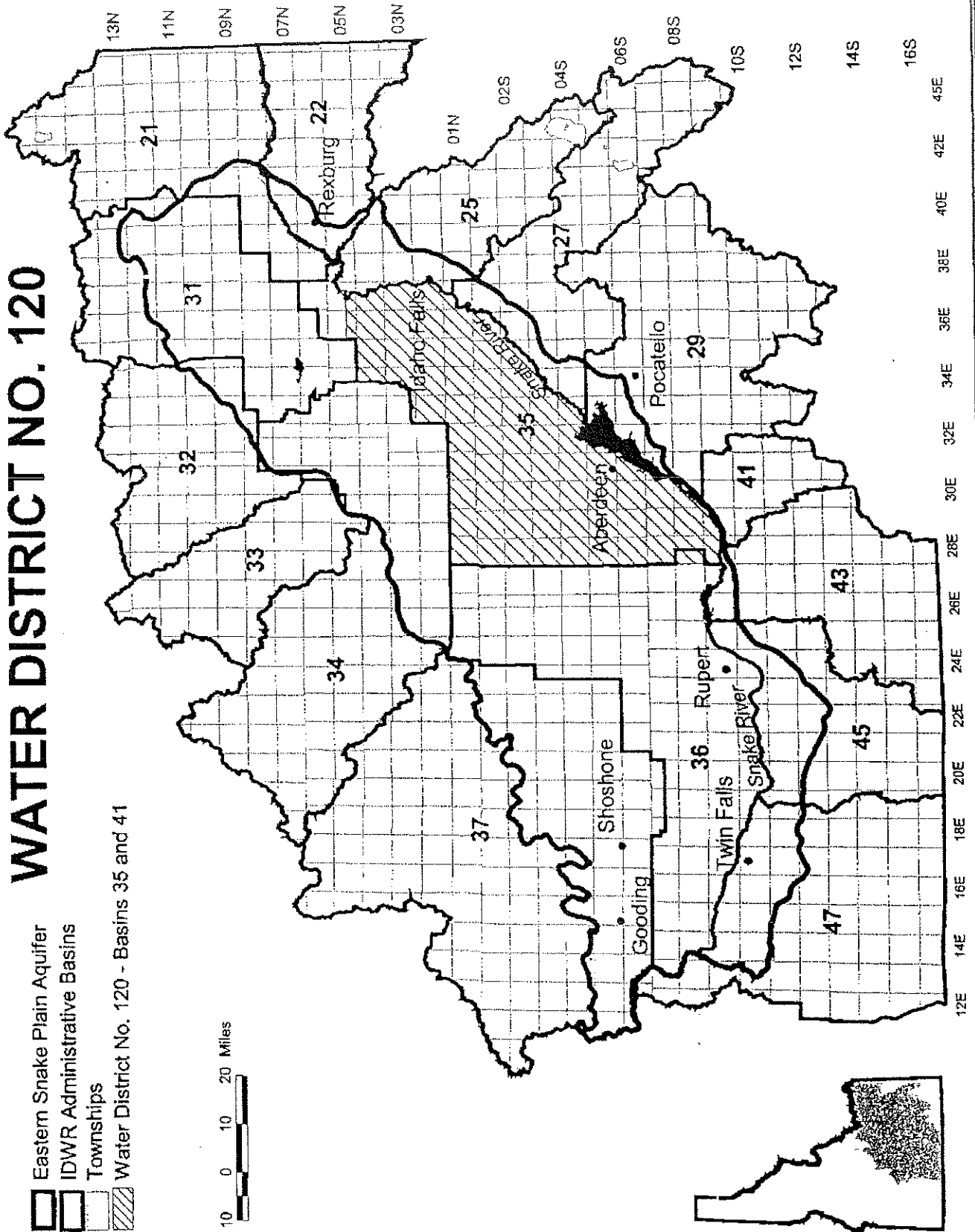
DATED this 19th day of February 2002.



KARL J. DREHER
Director

AMERICAN FALLS AREA WATER DISTRICT NO. 120

-  Eastern Snake Plain Aquifer
-  IDWR Administrative Basins
-  Townships
-  Water District No. 120 - Basins 35 and 41



BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF REVISING THE)
BOUNDARIES OF WATER DISTRICT)
NO. 120, AMERICAN FALLS AREA, IN)
ADMINISTRATIVE BASINS 25 & 35)
_____)

**FINAL ORDER
REVISING THE BOUNDARIES
OF WATER DISTRICT NO. 120**

The Director of the Idaho Department of Water Resources ("Director" or "Department") is required by Idaho statutes 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. The requirement to create water districts applies to those streams, or other water sources, for which the priorities of appropriation have been adjudicated by court decree. The Director is also authorized by statute to revise the boundaries of any water district in order to provide for the proper distribution of water among rights diverting and using the water. During the pendency of a water rights adjudication and pursuant to Idaho statutes, the district court having jurisdiction for the adjudication may authorize interim administration of the water rights by the Director under chapter 6, title 42, Idaho Code, if reasonably necessary to protect senior water rights, in accordance with partial decrees entered by the court or in accordance with a Director's Report with or without modification by the court's order.

FINDINGS OF FACT

1. On February 19, 2002, the Director issued an order creating Water District No. 120, pursuant to the provisions of Idaho Code § 42-604. The boundaries of Water District No. 120 were originally limited to ground water rights in administrative basins 35 and 41 overlying the Eastern Snake Plain Aquifer ("ESPA") in the American Falls Area that had been included in a Director's Report or partially decreed by the Snake River Basin Adjudication ("SRBA") District Court. Although, the Director was authorized to propose inclusion of all ground water rights in Basin 35 in Water District No. 120, a portion of Basin 35 within the ESPA lying north of the Bonneville-Jefferson Ground Water District was originally excluded from Water District No. 120.

2. Holders of junior priority ground water rights in Basins 25, 27, 29, 35, and 41 overlying the ESPA entered into written stipulated agreements with holders of senior priority surface water rights from the Snake River downstream of the American Falls area. The signatories to those agreements pledged to work with the Director to expeditiously create or revise the boundaries of water districts to implement the terms of the agreements.

3. On January 22, 2004, the Director issued an order revising the boundaries of Water District No. 120, pursuant to the provisions of Idaho Code § 42-604, to include ground water rights in that portion of Administrative Basin 29 overlying the ESPA.

4. On April 18, 2005, the State of Idaho filed with the SRBA District Court a motion requesting an order authorizing the interim administration of ground water rights (except those whose use is solely for domestic and/or stockwater purposes as defined under Idaho Code §§ 42-111 and 42-1401A(11)) by the Director in Administrative Basin 25. Copies of this motion were mailed to affected water right holders of record on April 18, 2005. The State's motion, supporting briefing, and affidavits are a part of the public record in the matter of revising the boundaries for Water District No. 120 within Basin 25.

5. On July 21, 2005, the SRBA District Court issued an order authorizing the interim administration of water rights by the Director in Basin 25, pursuant to chapter 6, title 42, Idaho Code.

6. On January 16, 2006, the Director mailed notice, by regular mail pursuant to the provisions of Idaho Code § 42-604, of the proposed action to further revise the boundaries of Water District No. 120 to include ground water rights within Basin 25 overlying the ESPA and to include ground water rights in that portion of Basin 35 that were previously excluded from Water District No. 120. Notice was mailed to each ground water right holder of record in those areas of basins 25 and 35 overlying the ESPA and affected by the proposed revision of the water district, as well as all water right holders of record in Water District No. 120. The notice described the proposed action to be taken, the reasons therefor, the time and place of a hearing to be held on February 1, 2006, concerning the proposed action, and provided a time period within which written comment on the action would be accepted.

7. On February 1, 2006, at approximately 8:20 p.m., the Director conducted the hearing on the proposed revision to the boundaries of Water District No. 120 at the Red Lion Inn, 475 River Parkway, in Idaho Falls, Idaho. Approximately 12 people attended the hearing.

8. Prior to commencing the hearing, the Director spent approximately 80 minutes describing the background and purpose of the proposed action and addressing questions. The Director also presented information concerning current and future operations of the District.

9. Persons attending the hearing were provided an opportunity to make oral statements for the record. In addition, the Director held the record open through February 13, 2006, for the submission of written comments.

10. Two individuals presented oral statements for the record at the hearing in Idaho Falls, Idaho.

11. Mr. Jack Lance of Idaho Falls, Idaho presented a statement on his own behalf. Mr. Lance stated that he owns a farming operation in Jefferson County east of the Snake River. Mr. Lance objected to the proposed expansion of Water District No. 120 because he felt that the district should also include ground water wells in or around the Rexburg Bench and Ririe areas.

12. Mr. Randy Skidmore of Idaho Falls, Idaho, presented a statement on behalf of himself and Comore Development. Mr. Skidmore stated that he opposed expansion of the proposed water district because he was not convinced that a large water district was in his best interest. Mr. Skidmore stated that smaller water districts would be more advantageous and provide better control.

13. The Director did not receive any written comments from affected water right holders or other interested parties prior to the close of the comment period on February 13, 2006.

14. The ESPA is defined as the aquifer underlying an area of the Eastern Snake Plain that is about 170 miles long and 60 miles wide as delineated in the report "Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho," U. S. Geological Survey ("USGS") Professional Paper 1408-F, 1992, excluding areas lying both south of the Snake River and west of the line separating Sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian. The boundary of the ESPA is shown on the map included as Attachment A of this Order (labeled as the Eastern Snake Plain Aquifer).

15. The water supply from the ESPA is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees. Locations at which a direct hydraulic connection exists between the ESPA and the Snake River, or between the ESPA and water sources tributary to the Snake River, include the reach of the Snake River between the USGS stream gage located near Heise and the USGS stream gage located near Shelley ("Heise to Shelley reach"), located along the northeastern edge of the ESPA in the vicinity of Rigby and Idaho Falls, Idaho.

16. The Department uses a calibrated ground water model to determine the effects on the ESPA and hydraulically connected reaches of the Snake River and its tributaries from pumping a single well in the ESPA, from pumping selected groups of wells in the ESPA, and from surface water uses on lands above the ESPA.

17. The available water supply in all or portions of Basins 25 and 35 overlying the ESPA have at times not been adequate to satisfy some senior priority water rights that are hydraulically connected to the ESPA. In the future, it is likely that the available water supply will be insufficient, at times, to satisfy these water rights.

18. Ground water rights in Basin 25, and ground water rights in that portion of Basin 35 overlying the ESPA and not included within Water District No. 120, currently are not subject to administration through water districts by watermasters.

19. The administration of ground water rights within those portions of administrative basins 25 and 35 overlying the ESPA is necessary for the protection of prior surface and ground water rights.

CONCLUSIONS OF LAW

Statutory Authorities

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. Idaho Code §§ 42-226 and 42-237a.g., assign the authority and responsibility to the Director for the administration of ground water rights in the state in accordance with the prior appropriation doctrine as established by Idaho law so as to protect prior surface and ground water rights.

4. 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.

5. Idaho Code § 42-604 authorizes the Director to 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. The Director may also revise the boundaries of a water district, abolish a water district, or combine two (2) or more water districts, by entry of an order, if such action is required in order to properly administer the users of the water resource.

6. In addition, 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.

Response to Testimony and Written Comments

7. The only testimony provided to the Director was oral testimony at the hearing on February 1, 2006, concerning the size of the proposed water district expansion and resulting size of Water District No. 120. One (1) person testified in support of a larger district and inclusion of additional areas, and one (1) person testified in support of multiple smaller districts.

8. Prior to the taking of testimony at the hearing on February 1, 2006, the Director described those areas within the ESPA that are already in water districts and outlined his plans to include remaining areas of the ESPA in water districts. Specifically, the Director described that the area around Rexburg would be proposed to be included in a separate water district, Water District No. 100. The Director also explained that he was in the process of creating a separate water district in the Mud Lake area, proposed as Water District No. 110, and that he was also proposing to include that portion of Basin 27 overlying the ESPA in the Blackfoot area within Water District No. 120. Ground water rights in the area around Ririe are within Basin 25, which the Director proposed at the hearing to be included in Water District No. 120.

9. The Director has generally proposed that boundaries of the ESPA water districts follow existing hydrologic and administrative boundaries for efficiency and ease of water right administration. Current boundaries of water districts include one or more ground water districts, and generally place water right holders together that share common socio-economic interests and whose diversions of water have similar effects on the ESPA and sources hydraulically connected to the ESPA. Such areas of designation can promote realistic and achievable opportunities for mitigation of impacts among junior priority water right holders.

Revision of District Boundaries

10. Based on the above statutory authorities, the order of the SRBA District Court authorizing interim administration of water rights pursuant to chapter 6, title 42, Idaho Code, and the record in this proceeding, the Director should revise the boundaries of Water District No. 120 to include administration of ground water rights, excluding those rights whose use is solely for domestic and/or stockwater purposes as defined under Idaho Code §§ 42-111 and 42-1401A(11), in those portions of Basins 25 and 35 overlying the ESPA as shown on the map appended hereto as Attachment A to protect senior priority water rights.

11. The Director concludes that the revised boundaries of the water district should be used to administer the affected water rights in accordance with the prior appropriation doctrine as established by Idaho law.

Administration of Affected Water Rights

12. The Director concludes that immediate administration of ground water rights pursuant to chapter 6, title 42, Idaho Code, is necessary, other than for domestic and stockwater rights as defined under Idaho Code §§ 42-111 and 42-1401A(11).

13. The Director concludes that the watermaster for Water District No. 120, with the boundaries as revised pursuant to this order, shall perform the following duties in accordance with the direction and supervision of the Director:

- a. Curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);

- b. Measure and report the diversions under water rights;
- c. Enforce the provisions of any mitigation plans or stipulated Agreements approved by the Director;
- d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or a mitigation plan approved by the Director; and
- e. Enforce the provisions of any stipulated agreements or mitigation plans approved by the Director.

14. Additional instructions to the watermaster for the administration of water rights from hydraulically connected sources will be based upon available data, models, and the Director's best professional judgment.

15. The Director concludes that the revisions to the boundaries of Water District No. 120 created by this Order may provide for future creation of sub-districts that match the boundaries of existing surface water districts, new or existing ground water districts, canal companies, irrigation districts or other water use entities as otherwise determined by the Director.

16. The Director concludes that Water District No. 120, with the boundaries as revised by this Order, shall include the following organizational features:

- a. Election and appointment of a watermaster for the water district. The water users may elect to have the district contract with the Department to provide watermaster services. Under a contract with the Department, the watermaster will be a direct employee of the Department;
- b. Selection of a Water District Advisory Committee that includes representation from boards of directors of ground water districts or representatives of other water use entities; and
- c. Deputy watermasters may be appointed by the watermaster, with approval from the Director. Deputy watermasters would work pursuant to supervision by the watermaster consistent with instructions from the Director. Deputy watermasters, if any, may be employees of existing water districts, ground water districts, or other water use entities that are located within the boundaries of the water district. Duties of deputy watermasters that are also employees of an existing water district, ground water district, or other water use entity should be limited to measuring and reporting of diversions.

ORDER

IT IS HEREBY ORDERED that:


1. The boundaries of Water District No. 120 in the American Falls Area are revised to include all ground water rights within those portions of Basins 25 and 35 overlying the Eastern Snake Plain Aquifer as depicted on the map appended hereto as Attachment A and incorporated herein by reference, except small domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A(11) for which authorization for interim administration was not obtained from the SRBA District Court and for which notice of this action was not provided.

2. The holders of water rights within Water District No. 120 will meet on February 12, 2007 at a time and place to be noticed by the Director for purposes of: (1) electing a watermaster; (2) selecting an advisory committee, if desired; and (3) setting a budget and corresponding assessments to be collected for operating the district.

3. The watermaster for Water District No. 120 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 the water rights in priority;
- 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. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or mitigation plan approved by the Director; and
- e. Enforce the provisions of any stipulated agreements or mitigation plans approved by the Director.

DATED this 28th day of December, 2006.

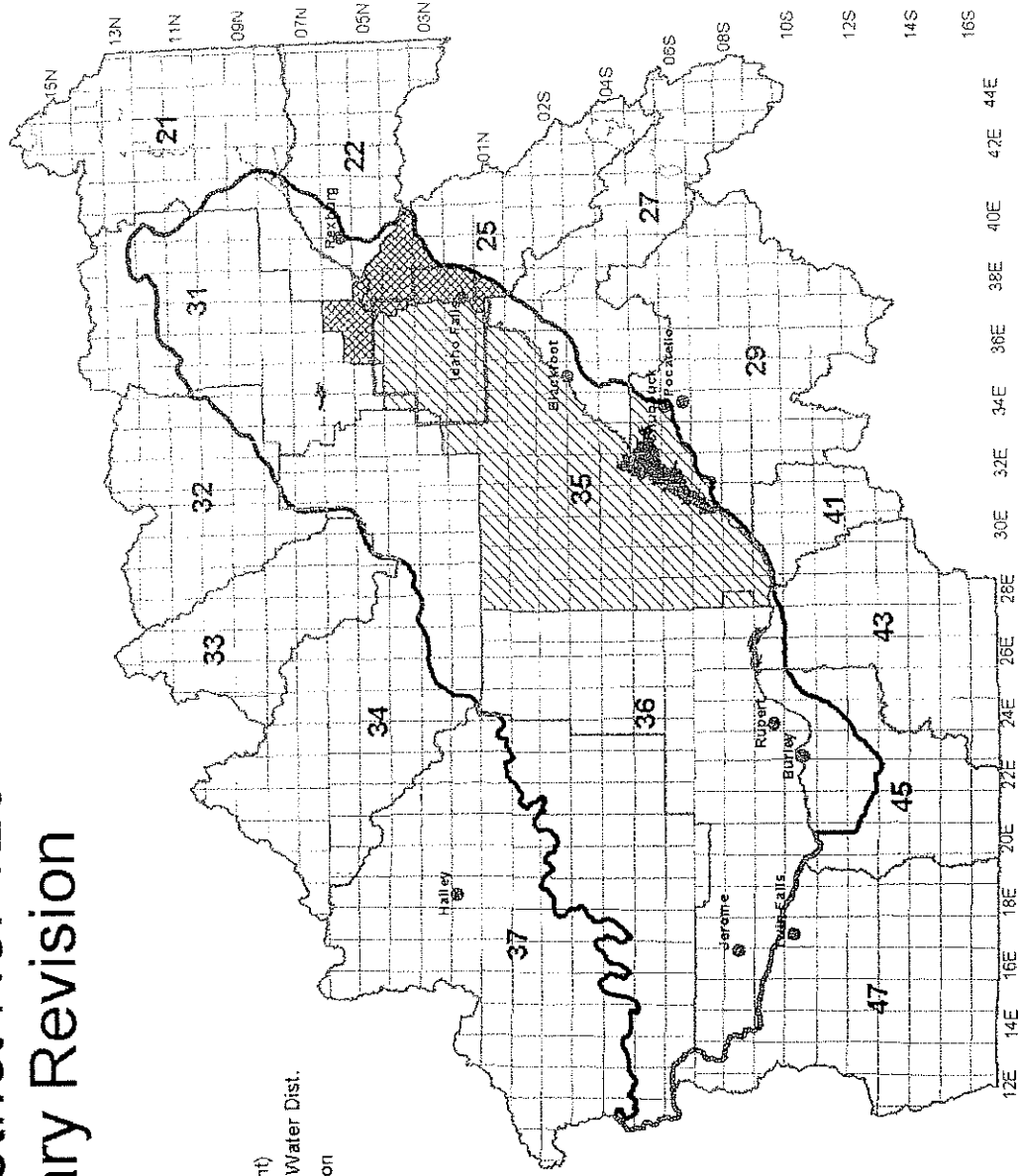
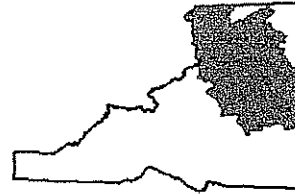


KARL J. DREHER
Director

Water District No. 120 Boundary Revision

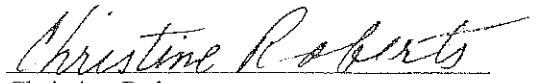
-  Eastern Snake Plain Aquifer
-  IDWR Administrative Basins
-  Townships
-  Water District No. 120 (current)
-  Bonneville-Jefferson Ground Water Dist.
-  Water District No. 120 Revision
(Portions of Basins 25 & 35
within the ESPA)

10 0 10 20 Miles

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of December, 2006, the above and foregoing document was served on each individual or entity on the service list for this matter on file at the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho, and posted on the Department's website: www.idwr.idaho.gov. Each individual or entity on the service list was served by placing a copy of the above and foregoing document in the United States mail, postage prepaid and properly addressed.



Christine Roberts
Office Records Specialist
Idaho Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF REVISING THE)
BOUNDARIES OF WATER DISTRICT)
NO. 120, AMERICAN FALLS AREA, IN)
ADMINISTRATIVE BASIN 27)
_____)

**PRELIMINARY ORDER
REVISING THE BOUNDARIES
OF WATER DISTRICT NO. 120**

The Director of the Idaho Department of Water Resources ("Director" or "Department") is required by Idaho statutes 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. The requirement to create water districts applies to those streams, or other water sources, for which the priorities of appropriation have been adjudicated by court decree. The Director is also authorized by statute to revise the boundaries of any water district in order to provide for the proper distribution of water among rights diverting and using the water. During the pendency of a water rights adjudication and pursuant to Idaho statutes, the district court having jurisdiction for the adjudication may authorize interim administration of the water rights by the Director under chapter 6, title 42, Idaho Code, if reasonably necessary to protect senior water rights, in accordance with partial decrees entered by the court or in accordance with a Director's Report with or without modification by the court's order.

FINDINGS OF FACT

1. On February 19, 2002, the Director issued an order creating Water District No. 120, pursuant to the provisions of Idaho Code § 42-604. The boundaries of Water District No. 120 were originally limited to ground water rights in administrative basins 35 and 41 overlying the Eastern Snake Plain Aquifer ("ESPA") in the American Falls Area that had been included in a Director's Report or partially decreed by the Snake River Basin Adjudication ("SRBA") District Court.

2. Holders of junior priority ground water rights in basins 25, 27, 29, 35, and 41 overlying the ESPA entered into written stipulated agreements with holders of senior priority surface water rights from the Snake River downstream of the American Falls area. The signatories to those agreements pledged to work with the Director to expeditiously create or revise the boundaries of water districts to implement the terms of the agreements.

3. On January 22, 2004, the Director issued an order revising the boundaries of Water District No. 120, pursuant to the provisions of Idaho Code § 42-604, to include ground water rights in that portion of Administrative Basin 29 overlying the ESPA.

4. On December 28, 2006, the Director issued an order revising the boundaries of Water District No. 120, pursuant to the provisions of Idaho Code § 42-604, to include ground water rights in a portion of administrative basin 25 overlying the ESPA, and a portion of Basin 35 overlying the ESPA located north of Roberts and the Bonneville-Jefferson Ground Water District. This area in Basin 35 had not previously been included in Water District No. 120.

5. On November 10, 2005, the State of Idaho filed with the SRBA District Court a motion requesting an order authorizing the interim administration of ground water rights (except those whose use is solely for domestic and/or stockwater purposes as defined under Idaho Code §§ 42-111 and 42-1401A(11)) by the Director in administrative basin 27. Copies of this motion were mailed to affected water right holders of record on November 10, 2005. The State's motion, supporting briefing, and affidavits are a part of the public record in the matter of revising the boundaries for Water District No. 120 within basin 27.

6. On December 21, 2006, the SRBA District Court issued an order authorizing the interim administration of water rights by the Director in basin 27, pursuant to chapter 6, title 42, Idaho Code.

7. On December 29, 2006, the Director mailed notice, by regular mail pursuant to the provisions of Idaho Code § 42-604, of the proposed action to further revise the boundaries of Water District No. 120 to include ground water rights within basin 27 overlying the ESPA. This notice was sent to all ground water right holders of record in Water District No. 120 affected by the proposed revision of the water district. A second notice of hearing was mailed on January 4, 2007 to each ground water right holder of record in that portion of basin 27 overlying the ESPA and affected by the proposed revision of the water district. Both notices described the proposed action to be taken, the reasons therefor, the time and place of a hearing to be held on January 29, 2006, concerning the proposed action, and provided a time period within which written comment on the action would be accepted.

8. On January 26, 2007, the Director appointed Tim Luke, a Department employee, as the hearing officer in this matter.

9. On January 29, 2007, at approximately 3:35 p.m., the hearing officer conducted the hearing on the proposed revision to the boundaries of Water District No. 120 at the Blackfoot City Council Chambers, 157 N. Broadway, Blackfoot, Idaho. Approximately 33 people attended the hearing.

10. Prior to commencing the hearing, the hearing officer spent approximately 90 minutes describing the background and purpose of the proposed action and addressing questions. The hearing officer also presented information concerning current and future operations of the District.

11. 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 February 8, 2007, for the submission of written comments.

11. One individual presented oral statements for the record at the hearing in Blackfoot, Idaho

12. Ms. Clarice Villa of the Shoshone-Bannock Tribal Water Commission presented testimony on behalf of the Tribal Water Commission and the Shoshone-Bannock Tribes ("Tribes"). Ms. Villa's testimony described the 1990 Fort Hall Indian Water Rights Agreement ("Agreement") between the Tribes, the United States, and the State of Idaho. Ms. Villa stated that the Agreement recognizes and respects the sovereignty of the parties with respect to administration of water rights owned by each of the parties as described in the Agreement and subsequently decreed by the SRBA District Court in 1994. Ms. Villa's testimony further stated that the Tribes feel it is crucial that the proposed boundary revision of Water District No. 120 does not interfere with the Tribes' ability to use or manage water on Indian lands pursuant to the Agreement, and that Water District No. 120 also does not interfere with the nature, scope or provisions of the Agreement. The Tribes also wished to remind the State of Idaho that the Agreement requires cooperation among the parties to monitor water use under the water rights in the Agreement to the same extent as required of other water users in Idaho. The Tribes further requested that the State of Idaho provide enforcement of non-Indian water rights and water uses within the water district to protect Tribal water rights

13. The Department did not receive any written comments from affected water right holders or other interested parties prior to the close of the comment period on February 8, 2007.

14. The ESPA is defined as the aquifer underlying an area of the Eastern Snake Plain that is about 170 miles long and 60 miles wide as delineated in the report "Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho," U. S. Geological Survey ("USGS") Professional Paper 1408-F, 1992, excluding areas lying both south of the Snake River and west of the line separating Sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian. The boundary of the ESPA is shown on the map included as Attachment A of this Order (labeled as the Eastern Snake Plain Aquifer).

15. The water supply from the ESPA is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees. Locations at which a direct hydraulic connection exists between the ESPA and the Snake River, or between the ESPA and water sources tributary to the Snake River, include the reach of the Snake River between Shelley and Minidoka (also known as the "American Falls reach"), located along the southeastern edge of the ESPA in the vicinity of Blackfoot, Idaho and American Falls Reservoir.

16. The Department uses a calibrated ground water model to determine the effects on the ESPA and hydraulically connected reaches of the Snake River and its tributaries from pumping a single well in the ESPA, from pumping selected groups of wells in the ESPA, and from surface water uses on lands above the ESPA.

17. The available water supply in all or portions of basin 27 overlying the ESPA have at times not been adequate to satisfy some senior priority water rights that are hydraulically connected to the ESPA. In the future, it is likely that the available water supply will be insufficient, at times, to satisfy these water rights.

18. Ground water rights in basin 27 overlying the ESPA and not included within Water District No. 120, currently are not subject to administration by a water district watermaster.

19. The administration of ground water rights within that portion of administrative basin 27 overlying the ESPA is necessary for the protection of prior surface and ground water rights.

CONCLUSIONS OF LAW

Statutory Authorities

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. Idaho Code §§ 42-226 and 42-237a g., assign the authority and responsibility to the Director for the administration of ground water rights in the state in accordance with the prior appropriation doctrine as established by Idaho law so as to protect prior surface and ground water rights

4. 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.

5. Idaho Code § 42-604 authorizes the Director to 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. The Director may also revise the boundaries of a water district, abolish a water district, or combine two (2) or more water districts, by entry of an order, if such action is required in order to properly administer the uses of the water resource.

6. In addition, 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.

Response to Testimony and Written Comments

7 The only testimony provided was the oral testimony at the hearing on January 29, 2007, from Clarice Villa of the Shoshone-Bannock Tribal Water Commission, given on behalf of the Shoshone-Bannock Tribes. Ms. Villa also provided a written copy of her testimony to the Department at the hearing.

8 The Department acknowledges and respects the provisions of the 1990 Fort Hall Indian Water Rights Agreement. As described further in this Order, the proposed revision of the Water District No. 120 boundary is intended to extend administration and enforcement of water rights established under state law within and around the Fort Hall Indian Reservation to protect all senior priority water rights, including those owned by the Shoshone-Bannock Tribes and the United States pursuant to the Agreement.

Revision of District Boundaries

9 Based on the above statutory authorities, the order of the SRBA District Court authorizing interim administration of water rights pursuant to chapter 6, title 42, Idaho Code, and the record in this proceeding, the boundaries of Water District No. 120 should be revised to include administration of ground water rights, excluding those rights whose use is solely for domestic and/or stockwater purposes as defined under Idaho Code §§ 42-111 and 42-1401A(11), in that portion of basin 27 overlying the ESPA as shown on the map appended hereto as Attachment A, to protect senior priority water rights.

10 The water district with the revised boundaries should be used to administer the affected water rights in accordance with the prior appropriation doctrine as established by Idaho law.

Administration of Affected Water Rights

11 Immediate administration of ground water rights pursuant to chapter 6, title 42, Idaho Code, is necessary, other than for domestic and stockwater rights as defined under Idaho Code §§ 42-111 and 42-1401A(11).

12 The watermaster for Water District No. 120, with the boundaries as revised pursuant to this order, shall perform the following duties in accordance with the direction and supervision of the Director:

- a Curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);
- b Measure and report the diversions under water rights;
- c Enforce the provisions of any mitigation plans or stipulated agreements approved by the Director;

- d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or a mitigation plan approved by the Director; and
- e. Enforce the provisions of any stipulated agreements or mitigation plans approved by the Director

13. Additional instructions to the watermaster for the administration of water rights from hydraulically connected sources will be based upon available data, models, and the Director's best professional judgment.

ORDER

IT IS HEREBY ORDERED that:

1. The boundaries of Water District No. 120 in the American Falls Area are revised to include all ground water rights within that portion of basin 27 overlying the Eastern Snake Plain Aquifer as depicted on the map appended hereto as Attachment A and incorporated herein by reference, except small domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A(11) for which authorization for interim administration was not obtained from the SRBA District Court and for which notice of this action was not provided, and ground water rights administered by the Shoshone-Bannock Tribes and the United States pursuant to the 1990 Fort Hall Indian Water Rights Agreement.

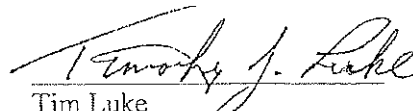
2. The watermaster for Water District No. 120 shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director:

- a. Measure, collect, and record the diversions under water rights;
- b. Administer and enforce the water rights in order of priority;
- 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. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or mitigation plan approved by the Director; and
- e. Enforce the provisions of any stipulated agreements or mitigation plans approved by the Director.

3. The watermaster of Water District No. 120 shall, pursuant to guidance from the Director and in accordance with the 1990 Fort Hall Indian Water Rights Agreement, coordinate with the Shoshone-Bannock Tribes and the United States with respect to monitoring, reporting, and inspection of diversions within the Reservation.

4. Holders of water rights in that portion of basin 27 overlying the ESPA and included in Water District No. 120 are not subject to assessments by Water District No. 120 in 2007 since the district held its annual meeting prior to the issuance of this Order. These right holders shall be provided notice of all future annual meetings in accordance with Idaho Code § 42-605.

DATED this 15th day of March, 2007.


Tim Luke
Hearing Officer

Water District 130

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF CREATING THE THOUSAND)
SPRINGS AREA WATER DISTRICT, DESIGNATED)
AS WATER DISTRICT NO. 130, FOR THE)
ADMINISTRATION OF RIGHTS TO THE USE OF)
GROUND WATER AND SPRINGS DISCHARGING)
FROM THE EASTERN SNAKE PLAIN AQUIFER)
IN ADMINISTRATIVE BASINS 36 AND 43.)
_____)

**FINAL ORDER
CREATING WATER
DISTRICT NO. 130**

The Director of the Idaho Department of Water Resources ("Director") is authorized 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. The authority to create water districts applies to those streams, or other water sources, for which the priorities of appropriation have been adjudicated by court decree. During the pendency of a water rights adjudication, the district court is authorized by statute to approve interim administration of the water rights by the Director if reasonably necessary to protect senior water rights. The district court may permit the distribution of water pursuant to chapter 6, title 42, Idaho Code, in accordance with partial decrees entered by the court or in accordance with a Director's Report as modified by the court's order.

FINDINGS OF FACT

1. On August 3, 2001, the Director established the Thousand Springs Ground Water Management Area ("Thousand Springs GWMA") pursuant to Idaho Code § 42-233b. The Director designated the Thousand Springs GWMA due to concerns about the depletionary effects of ground water withdrawals under junior priority water rights and the availability of water supplies for senior priority water rights from connected surface and ground water sources during the severe drought conditions experienced across the Snake River Basin. The Director issued the order in response to his recognition that he has a responsibility, subject to the confines of existing knowledge and technology, to exercise his statutory authorities to administer water rights for the use of ground water in a manner that recognizes and protects senior priority surface water and ground water rights in accordance with the provisions of Idaho law. In establishing the Thousand Springs GWMA, the Director stated his intent to curtail diversions under certain junior ground water rights that caused significant depletions to hydraulically connected surface water sources thereby causing injury to senior priority water rights.

2. On August 31, 2001, the Director was advised by representatives of holders of

junior priority ground water rights and holders of senior priority surface water rights that agreements in principle had been reached that would provide replacement surface water for the next two irrigation seasons equal in amount to what would have resulted from the intended curtailment of certain junior ground water diversions within the Thousand Springs GWMA.

3. Based upon the representations that agreements in principle had been reached, the Director announced on August 31, 2001, that no curtailment orders would be issued for the Thousand Springs GWMA, provided the agreements in principle were implemented through detailed written agreements.

4. After August 31, 2001, representatives of holders of most of the affected ground water rights entered into detailed written stipulated Agreements with representatives of most holders of senior priority surface water rights. The Agreements were submitted to the Director for approval. The Director approved the Agreements on January 18, 2002.

5. Under the Agreements, the represented holders of senior priority surface water rights agreed not to exercise their senior priorities against the represented holders of junior priority ground water rights in exchange for commitments by the ground water right holders to provide specific quantities of replacement water during the two-year term of the stipulated Agreements. In the event the replacement water cannot be provided, the Agreements require an appropriate reduction of diversion under ground water rights or require that other mitigation be provided.

6. The signatories to the Agreements agreed to work with the Director to expeditiously create water districts to implement the terms of the Agreements.

7. Under the Agreements, the parties requested that the Director notify holders of ground water rights subject to interim administration who are not party to the Agreements, or other similar agreements or approved mitigation plans, that they may be subject to curtailment under the prior appropriation doctrine as established by Idaho law.

8. On November 19, 2001, the State of Idaho filed with the SRBA District Court a motion requesting an order authorizing the interim administration of water rights by the Director in all, or parts, of Administrative Basins 36 and 43 overlying the Eastern Snake Plain Aquifer ("ESPA") in the Thousand Springs area.

9. On November 19, 2001, the SRBA District Court issued an order setting the State's motion for order authorizing interim administration for hearing on January 8, 2002. The Court designated the matter as SRBA Subcase 92-00021 (Interim Administration). The State of Idaho served copies of the Court's November 19, 2001, order and the State's motion and supporting briefing and affidavits on all affected parties by regular U. S. Mail on November 26, 2001.

10. On January 8, 2002, the SRBA District Court issued an order authorizing the interim administration of water rights by the Director in all, or parts, of Administrative Basins 36 and 43 overlying the ESPA, pursuant to chapter 6, title 42, Idaho Code, based upon a

determination that such interim administration is necessary to protect senior water rights.

11. On January 14, 2002, the Director mailed notice, by regular mail, of the proposed action creating a water district in the Thousand Springs area within the ESPA in Administrative Basins 36 and 43, pursuant to the provisions of Idaho Code § 42-604. Notice was mailed to each water user in the proposed district affected by the creation of the water district (herein established as Water District No. 130). The notice described the proposed action to be taken, the reasons therefore, the time and place of a hearing to be held on February 4, 2002, concerning the proposed action, and provided a time period within which written comment on the action would be accepted.

12. In addition, the Director published notice of the proposed action creating the water district once a week for two (2) weeks in the following newspapers having general circulation within the area covered by the proposed district: *The Times News* of Twin Falls on January 17 and 24, 2002; the *Burley South Idaho Press* on January 17 and 24, 2002; and the *Minidoka County News* of Rupert on January 16 and 23, 2002.

13. The Director conducted the hearing concerning the proposed creation of the water district at the Jerome High School Auditorium in Jerome, Idaho, at 7:00 pm on February 4, 2002. Approximately fifty-five people attended the hearing.

14. Prior to commencing the hearing, the Director made a presentation and answered questions for approximately ninety minutes addressing the reasons for creation of the proposed water district and how the district would operate.

15. Persons attending the hearing were provided an opportunity to make an oral statement for the record. In addition, the Director held the record open through February 14, 2002, for the submission of written comments.

16. Only one person presented an oral statement for the record at the Jerome hearing. No one testified in opposition to the creation of the proposed water district. Jeff Martin presented a statement on behalf of the North Snake River Ground Water District in support of the establishment of a water district to administer ground water in accordance with the prior appropriation doctrine and State law.

17. Mr. Roger Ling, attorney for the A & B Irrigation District, stated that the questions he had were addressed by the Director during the presentation and discussion that occurred prior to going on the record.

18. The Director received no written comments from affected ground water users objecting to the creation of the proposed water district prior to the close of the February 14, 2002, comment period. Comments were received from Clear Springs Foods, Inc. of Buhl, Idaho, suggesting that water rights included within Water District 36-A (Billingsley and Riley Creeks and tributary springs) should be combined into the same water district or subdistrict with ground water rights so that the parties may continue to work together under the same watermaster. Water District 36-A submitted comments requesting that it remain autonomous

at this time while retaining the option of joining the newly formed water district in the future. The United States Fish and Wildlife Service submitted comments relating to future arrangements that may be made for the measuring and reporting of ground water usage at its affected facilities.

19. The water supply in the ESPA is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees. One of the locations at which a direct hydraulic connection exists between the ESPA and surface water sources tributary to the Snake River is in the Thousand Springs area located at the western edge of the ESPA in the vicinity of Hagerman, Idaho.

20. The available water supply in all or portions of Administrative Basins 36 and 43 is currently not adequate to satisfy some senior priority water rights and is projected in the future to be insufficient, at times, to satisfy these water rights.

21. The administration of ground water rights within the portion of Administrative Basins 36 and 43 overlying the ESPA is necessary for the protection of prior surface and ground water rights.

CONCLUSIONS OF LAW

Statutory Authorities

1. Idaho law declares all ground waters in 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. Idaho Code § 42-226.

2. The Director has a statutory responsibility to administer the use of ground water in the state so as to protect prior surface and ground water rights. See Idaho Code §§ 42-226 and 42-237a.g.

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. The Director is authorized to establish 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. See Idaho Code § 42-604.

5. In addition, the district court having jurisdiction over a general water rights adjudication may permit 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. See Idaho Code § 42-1417.

District Creation

6. 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 create a water district to administer water rights within those portions of Administrative Basins 36 and 43 overlying the ESPA, as shown on the map appended hereto as Attachment A, to protect senior priority water rights.

7. The Director concludes that the water district should be formed on a permanent basis and be used to administer the affected water rights in accordance with the prior appropriation doctrine as established by Idaho law.

Administration of Affected Water Rights

8. The Director concludes that immediate administration of water rights, other than domestic and stockwater rights as defined under Idaho Code §§ 42-111 and 42-1401A(11), pursuant to chapter 6, title 42, Idaho Code, is necessary for the protection of prior surface and ground water rights.

9. The Director concludes that compliance with the provisions of the interim stipulated Agreements will provide adequate replacement water to satisfy the need for any mitigation or curtailment of the rights to the use of ground water held by persons who are party to the Agreements or are represented by a party to the Agreements during the term of the stipulated Agreements.

10. The Director concludes that the watermaster of the water district created by this order shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director:

- a. Curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);
- b. Measure and report the diversions under water rights;
- c. Enforce the provisions of stipulated agreements approved by the Director; and
- d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or a mitigation plan approved by the Director.

11. Additional instructions to the watermaster for the administration of water rights from hydraulically connected sources will be based upon available data, models, and

the Director's best professional judgment.

12. The Director concludes that the water district created by this order shall include the following organizational features:

- a. Election and appointment of a single watermaster for the water district. The water users may elect to have the district contract with IDWR to provide watermaster services. Under a district contract with IDWR, the watermaster will be a direct employee of IDWR.
- b. Creation of subdistricts that match boundaries of existing ground water districts and irrigation districts, or as otherwise determined by the Director.
- c. Selection of Water District Advisory Committee that includes, but need not be limited to, representation from boards of directors of ground water districts and irrigation districts.
- d. Appointment of deputy watermasters by the watermaster, with approval from the Director. Deputy watermasters shall work pursuant to instructions of the watermaster. Deputy watermasters may be employees of existing ground water districts or irrigation districts that are located within the water district. Duties of appointed deputy watermasters that are also employees of an existing ground water district or irrigation district shall be limited primarily to measuring and reporting of diversions.
- e. Water rights not included in an existing ground water district or irrigation district shall be assessed costs directly by the water district watermaster.
- f. Ground water districts and irrigation districts that are organized as subdistricts may collect and pay the pro-rata expenses on behalf of the diversions and users within their respective district (this will avoid billing of individual water rights or diversions by both the subdistrict and the water district).


ORDER

IT IS ORDERED that:

1. The Thousand Springs Area Water District, designated as Water District No. 130, is hereby created to include all ground water rights and all rights to divert from springs discharging from the ESPA that are not already included in Water District No. 36-A, other than small domestic and stockwater rights as defined under Idaho Code §§ 42-111 and 42-1401A(11), within the area depicted on the map appended hereto as Attachment A and incorporated herein by reference.






2. For 2002, the water right holders within the Thousand Springs Area Water District No. 130 shall meet at a time and place to be announced by the Director to elect a watermaster, select an advisory committee, and set a budget to be collected to operate the district. In future years, the annual meeting shall be held as provided in Idaho Code § 42-605.

DATED this 19th day of February 2002.


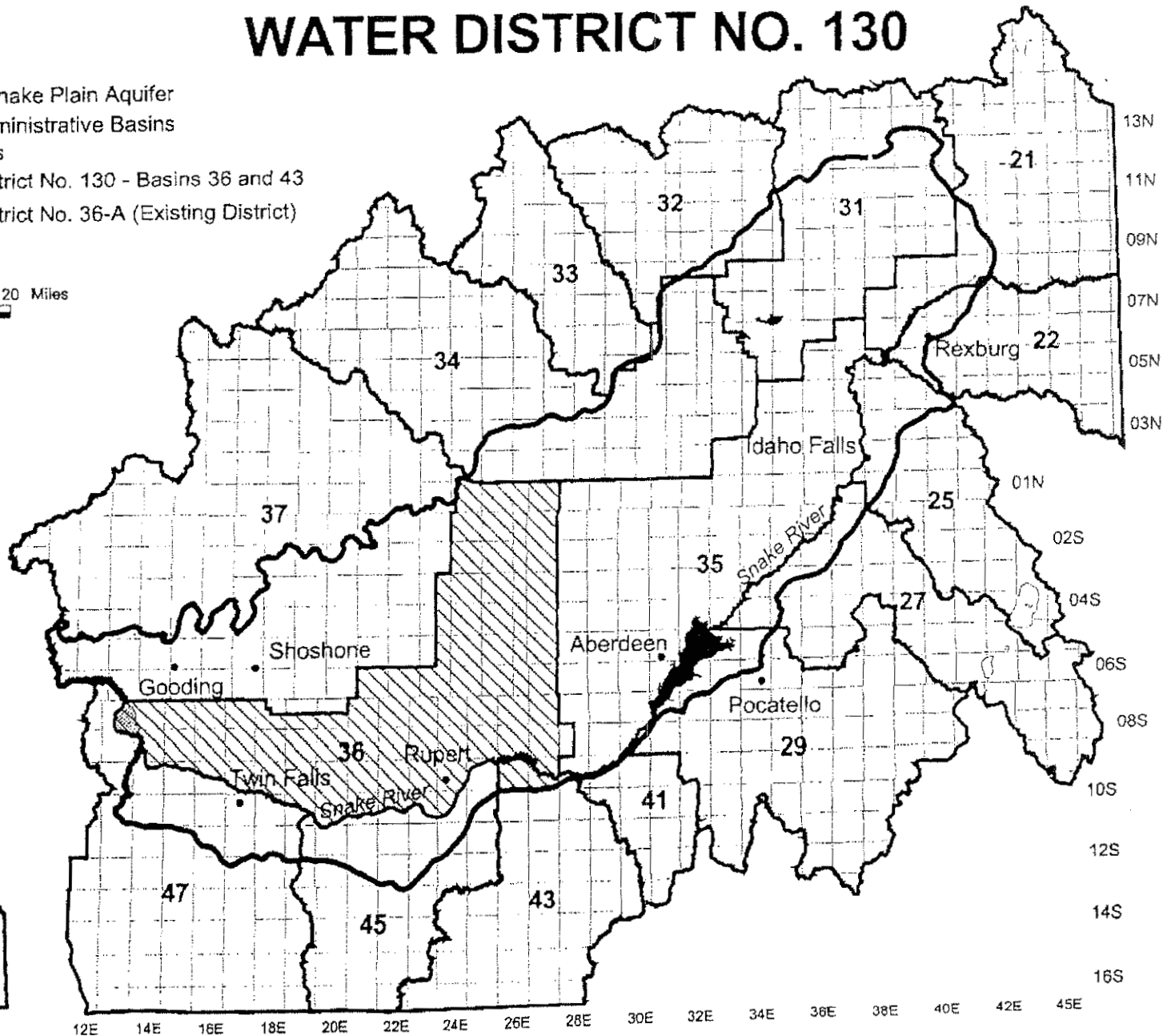


KARL J. DREHER
Director

THOUSAND SPRINGS AREA WATER DISTRICT NO. 130

-  Eastern Snake Plain Aquifer
-  IDWR Administrative Basins
-  Townships
-  Water District No. 130 - Basins 36 and 43
-  Water District No. 36-A (Existing District)

10 0 10 20 Miles

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF REVISING)	
THE BOUNDARIES OF WATER)	FINAL ORDER
DISTRICT NO. 130, IN THE)	REVISING THE BOUNDARIES
THOUSAND SPRINGS AREA)	OF WATER DISTRICT NO. 130
_____)	

The Director of the Idaho Department of Water Resources (Director) is authorized 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. The authority to create water districts applies to those streams, or other water sources, for which the priorities of appropriation have been adjudicated by court decree. The Director is also authorized by statute to revise the boundaries of any water district in order to properly administer uses of water. During the pendency of a water rights adjudication, the district court is authorized by statute to approve interim administration of the water rights by the Director if reasonably necessary to protect senior water rights. The district court may permit the distribution of water pursuant to chapter 6, title 42, Idaho Code, in accordance with partial decrees entered by the court or in accordance with a Director's Report as modified by the court's order.

FINDINGS OF FACT

1. On February 19, 2002, the Director issued an Order Creating Water District No. 130, pursuant to the provisions of Idaho Code § 42-604. The boundaries of Water District No. 130 were limited to ground water rights and surface water rights in Administrative Basins 36 and 43 overlying the Eastern Snake Plain Aquifer (ESPA) in the Thousand Springs Area. The boundaries were limited to Administrative Basins 36 and 43 overlying the ESPA because water rights in those basins had either been included in a Director's Report or partially decreed by the Snake River Basin Adjudication (SRBA) District Court. In addition, holders of junior priority ground water rights in Basin 36 and Basin 37 entered into written stipulated agreements with most of the holders of senior priority surface water rights in the Thousand Springs area. Under the Agreements, the represented holders of senior priority surface water rights agreed not to exercise their senior priorities against the represented holders of junior priority ground water rights in exchange for commitments by the ground water right holders to provide specific quantities of replacement water or reduction of ground water depletion during the two-year term of the stipulated Agreements. The signatories to the Agreements agreed to work with the Director to expeditiously create water districts to implement the terms of the Agreements.

2. On August 30, 2002, the State of Idaho filed with the SRBA District Court a motion requesting an order authorizing the interim administration of ground water rights (except

those whose use is solely for domestic and/or stockwater purposes) by the Director within that portion of Administrative Basin 37 overlying the ESPA. Copies of this motion were mailed to affected water right holders of record on August 30, 2002.

3. On November 19, 2002, the SRBA District Court issued an order authorizing the interim administration of water rights by the Director within that portion of Basin 37 overlying the ESPA, pursuant to chapter 6, title 42, Idaho Code.

4. On November 25, 2002, the Director mailed notice, by regular mail, of the proposed action revising the boundaries of Water District No. 130 to include water rights within Basin 37 overlying the ESPA, pursuant to the provisions of Idaho Code § 42-604. Notice was mailed to each water right holder of record in Basin 37 overlying the ESPA affected by the proposed revision of the water district. The notice described the proposed action to be taken, the reasons therefor, the time and place of a hearing to be held on December 18, 2002, concerning the proposed action, and provided a time period within which written comment on the action would be accepted. In addition, the Director issued a press release describing the proposed action and hearing date to newspapers and other media sources within and around the geographical area affected by the proposed action.

5. The Director conducted the hearing concerning the proposed revision of boundaries of Water District 130 at the Shoshone School District Office Board Room in Shoshone, Idaho at 4:00 pm on December 18, 2002. Approximately twenty-five people attended the hearing.

6. Prior to commencing the hearing, the Director took approximately 90 minutes to describe the background and purpose of the proposed action and address questions. The Director also presented information concerning current and future operations of the district.

7. Persons attending the hearing were provided an opportunity to make an oral statement for the record. In addition, the Director held the record open through December 31, 2002, for the submission of written comments.

8. Five individuals presented oral statements for the record at the Shoshone hearing:

- a. Neil Bowman of Dietrich, Idaho, presented a statement on behalf of himself, as a water user in Basin 37, in support of the formation of subdistricts within Water District 130.
- b. Mike Faulkner of Gooding, Idaho, presented a statement on behalf of Faulkner Land and Livestock, a water right holder in Basin 37, in support of the proposed water district boundary revision. However, Mr. Faulkner stated that there are *unresolved issues concerning the Swan Falls Agreement* that need to be addressed for the district.
- c. George Lemmon of Hagerman, Idaho, presented a statement on behalf of himself and members of the Big Spring Water Users Association who hold water rights

from Big Springs located in Water District 36-A (Hagerman Valley). Mr. Lemmon generally supported the proposed boundary revision. Although the Director at this hearing did not propose inclusion of Water District 36-A in Water District 130, Mr. Lemmon stated for the record that Water District 36-A should not be included in Water District 130.

- d. John Faulkner of Gooding, Idaho, presented a statement on behalf of Sawtooth Sheep Co., a water right holder in Basin 37. Mr. Faulkner stated that he is not convinced that the Basin 37 area should be included in the district based on his belief that wells in the Gooding area of Basin 37 have very little effect on the springs in the Thousand Springs area. Mr. Faulkner further stated his belief that the Snake Plain ground water model used by the Idaho Department of Water Resources (Department) may have significant uncertainties and that the Director should consider the uncertainty of the model and whether or not ground water in Basin 37 is really connected with the Thousand Springs area before including Basin 37 in Water District 130.
- e. Jeff Martin presented a statement on behalf of the North Snake Ground Water District (NSGWD) in support of the proposed boundary revision. Mr. Martin stated that administration of water rights in the area is a complicated matter and that the ground water model is a tool to help with administration. Mr. Martin also stated that some existing state laws may not have been given full consideration and that the NSGWD planned to submit written comments to the Director regarding certain technical and legal matters.

9. The Director received two written comments from affected ground water users prior to the close of the December 31, 2002, comment period. Comments were received from Josephine Beeman, attorney for the NSGWD, in support of the proposed action. The NSGWD suggested that the Director consider further refinement of watermaster instructions whereby administration of water rights in the water district include the following considerations:

- a. Consistency with the Swan Falls Agreement and State Water Plan;
- b. Calculation of the depletions to the Thousand Springs reach resulting from the transfer of winter surface water rights so that such depletions are not attributed to ground water withdrawals; and
- c. Identification of depletions to the Thousand Springs reach resulting from changes in surface water irrigation under Idaho Code § 42-219 (i.e., changes that do not require a transfer pursuant to Idaho Code § 42-222).

10. Written comments were also received from Dean R. Rogers III of Bellevue, Idaho, opposing inclusion of ground water rights from the Wood River Valley in Water District No. 130. Mr. Rogers' comments appeared to be specific to the area of the Wood River Valley that is located outside of the ESPA. The Director does not intend to include in Water District

No. 130 ground water rights from the Wood River Valley for ground water that is outside of the ESPA.

11. The United States Geological Survey (USGS) defined the boundaries of the Eastern Snake Plain based on the 1980 Regional Aquifer System Analysis Study (RASA). For administrative purposes, the Idaho Department of Water Resources considers the boundaries of the ESPA to closely approximate the boundaries of the plain as determined by the USGS. The Big and Little Wood Rivers within the Eastern Snake Plain are losing river reaches. The ESPA is not a homogeneous aquifer and does contain some layers of alluvium overlaying or inter-fingered with basalt flows. Although some areas within Basin 37 overlying the ESPA may contain alluvial deposits that are hydraulically connected to surface water in the Big and Little Wood River Basins, ground water occurrence in the area is also hydraulically connected to the ESPA.

12. The administration of ground water rights within the portion of Administrative Basin 37 overlying the ESPA is necessary for the protection of prior surface and ground water rights.

13. To the extent that ground water withdrawals from the portion of Administrative Basin 37 overlying the ESPA affect surface water in the Big and Little Wood River Basins, the effects may be appropriately addressed by coordinating the actions of the watermasters for Water District No. 130 and water districts for the Big and Little Wood River Basins.

CONCLUSIONS OF LAW

Statutory Authorities

1. Idaho law declares all ground waters in 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. Idaho Code § 42-226.

2. The Director has a statutory responsibility to administer the use of ground water in the state so as to protect prior surface and ground water rights. See Idaho Code §§ 42-226 and 42-237a.g.

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, as provided in chapter 6, title 42, Idaho Code.

4. The Director is authorized to establish water districts or revise the boundaries of 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. See Idaho Code § 42-604.

5. In addition, the district court having jurisdiction over a general water rights adjudication may permit 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 or in accordance with partial decrees that have superseded the director's reports. See Idaho Code § 42-1417.

Revision of District Boundaries

6. 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 revise the boundaries of Water District No. 130 to include administration of ground water rights (except those whose use is solely for domestic and/or stockwater purposes) in the portion of Administrative Basin 37 overlying the ESPA, as shown on the map appended hereto as Attachment A, to protect senior priority water rights.

7. The Director concludes that the revised boundaries of the water district should be used to administer the affected water rights in accordance with the prior appropriation doctrine as established by Idaho law.

Administration of Affected Water Rights

8. The Director concludes that immediate administration of water rights, other than domestic and stockwater rights as defined under Idaho Code §§ 42-111 and 42-1401A(11), pursuant to chapter 6, title 42, Idaho Code, is necessary.

9. The Director concludes that compliance with the provisions of the interim stipulated Agreements will provide adequate replacement water to satisfy the need for mitigation or curtailment of the rights to the use of ground water held by persons who are party to the Agreements or are represented by a party to the Agreements during the term of the stipulated Agreements.

10. The Director concludes that the watermaster of the water district, as revised pursuant to this order, shall perform the following duties in accordance with the direction and supervision of the Director:

- a. Curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);
- b. Measure and report the diversions under water rights;
- c. Enforce the provisions of the stipulated Agreements; and
- d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights that are not covered by a stipulated agreement or a mitigation plan approved by the Director.

11. The instructions contained in Attachment B to the Order Creating Water District No. 130, dated February 19, 2002, shall continue to be used to guide the watermaster in performing the duties described above.

12. Additional instructions to the watermaster for the administration of water rights from hydraulically connected sources will be based upon available data, analytic or model studies, and the Director's best professional judgment.

13. The Director concludes that Water District No. 130, as revised by this order, shall include the following organizational features:

- a. Election and appointment of a watermaster for the water district. The water users may elect to have the district contract with IDWR to provide watermaster services. Under a district contract with IDWR, the watermaster will be a direct employee of IDWR.
- b. Creation of subdistricts that match boundaries of existing ground water districts irrigation districts or measurement districts, or other areas as may be proposed by the Director or right holders within the water district and deemed appropriate by the Director.
- c. Water District Advisory Committee that includes representation from boards of directors of ground water districts and irrigation districts, or from other groups of right holders within the water district as may be appropriate.
- d. Appointment of deputy watermasters by the watermaster, with approval from the Director. Deputy watermasters shall work pursuant to instructions of the watermaster. Deputy watermasters may be employees of existing ground water districts or irrigation districts that are located within the water district. Duties of appointed deputy watermasters that are also employees of an existing ground water district or irrigation district shall be limited primarily to measuring and reporting of diversions.
- e. Diversions not included in an existing ground water district or irrigation district shall be assessed costs directly by the water district watermaster.
- f. Ground water districts and irrigation districts that are organized as subdistricts may collect and pay the pro-rata expenses on behalf of the diversions and users within their respective district (this will avoid billing of individual water rights or diversions by both the subdistrict and the water district).

ORDER


IT IS ORDERED that:

1. The boundaries of Water District No. 130, in the Thousand Springs Area , are hereby revised to include all ground water rights other than small domestic and stockwater rights as defined under Idaho Code §§ 42-111 and 42-1401A(11), within that portion of Administrative Basin 37 overlying the ESPA and as depicted on the map appended hereto as Attachment A and incorporated herein by reference.

2. The Water District No. 130 watermaster shall perform watermaster duties in accordance with the provisions of Conclusions of Law 10 through 12 of this order.

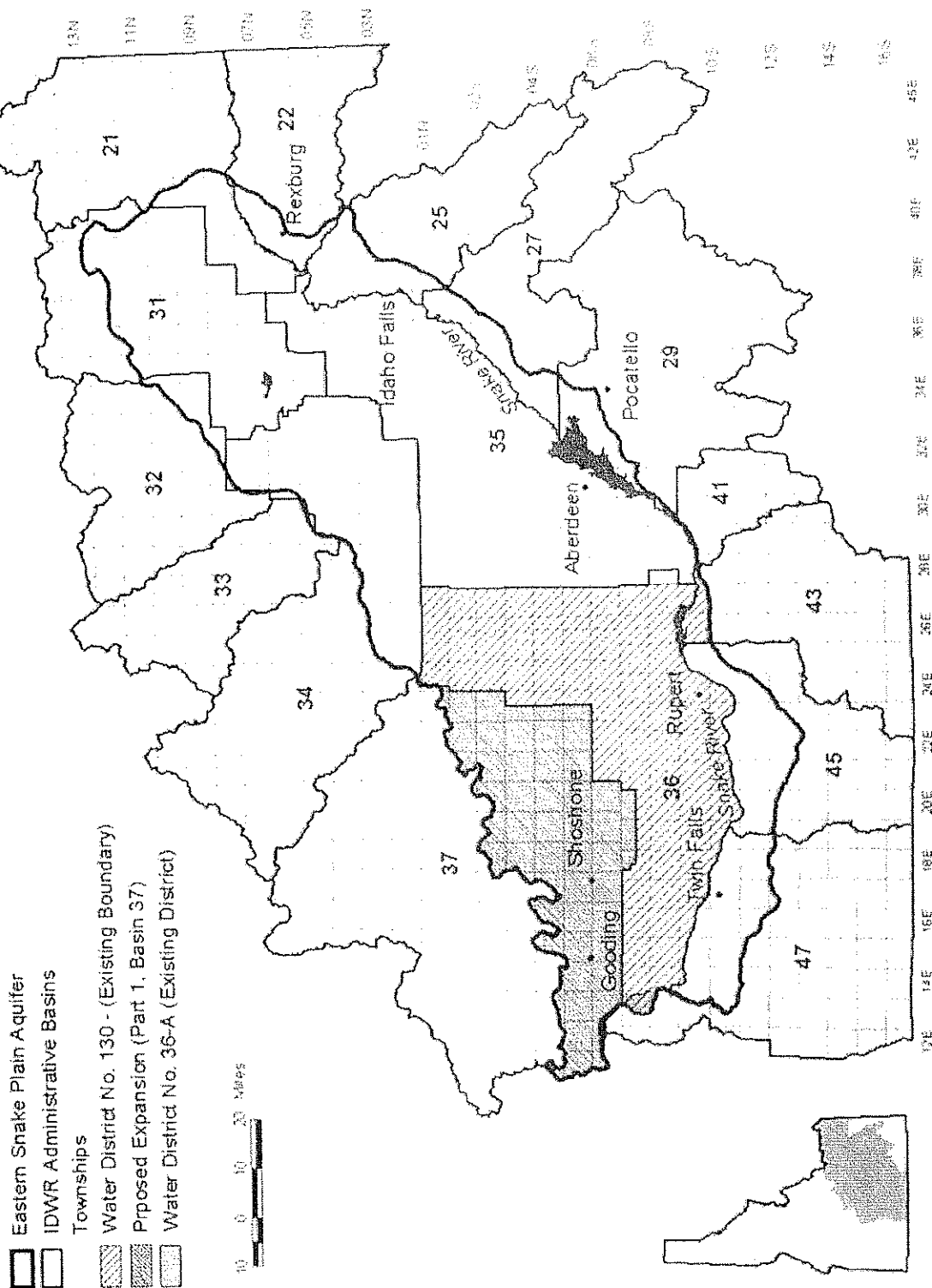
3. For 2003, the water right holders included within the revised boundaries of Water District No. 130 shall meet at a time and place to be announced by the Director to elect a watermaster, select an advisory committee, and set a budget to be collected to operate the district. In future years, the annual meeting shall be held as provided in Idaho Code § 42-605.

DATED this 8th day of January 2003.



KARL J. DREHER
Director

WATER DISTRICT NO. 130 PROPOSED EXPANSION



Code, based upon a determination that such interim administration is necessary to protect senior water rights.

5. On November 2, 2005, the Director signed a notice proposing to establish a water district in Basin 45 pursuant to the provisions of Idaho Code § 42-604. On November 8, 2005, the Director sent notice of the proposed action by regular U. S. Mail to each holder of a water right within the boundaries of the proposed water district. The notice described the water district proposed to be established, the reasons therefor, and the time and place for a hearing to be held on December 15, 2005, concerning establishment of the proposed water district. The notice also provided a time period within which written comments on the proposed action would be accepted.

6. In addition, the Director caused notice of the proposed action establishing the water district to be published once a week for two (2) weeks in the following newspapers having general circulation within the area of the proposed water district: *The Times News* of Twin Falls and the *South Side Press* of Cassia County, both on November 17 and 24, 2005.

7. The notice mailed to water right holders proposed that Water District No. 140 would include all water rights with points of diversion located within the boundaries of Basin 45, except those used solely for domestic and/or stock water purposes as defined by Idaho Code §§ 42-111 and 42-1401A(11).

8. The Director's notice also described that the watermaster for the water district would be responsible for certain duties under the direction and supervision of the Director including: (1) measurement and reporting of diversions under water rights; (2) administration of water rights in priority; (3) curtailment and enforcement against unauthorized or excessive diversions; and (4) enforcement of stipulated agreements or mitigation plans approved by the Director.

9. The Director's notice further described that existing water districts in Basin 45 are proposed to be converted to sub-districts within Water District No. 140. There are currently seven water districts located within the proposed Water District No 140 including: Water District No. 45-A, Basin Creek and tributaries; Water District No. 45-B, Birch Creek and tributaries; Water District No. 45-C, Goose Creek and tributaries; Water District No. 45-F, Marsh Creek and tributaries; Water District No. 45-K, Cottonwood Creek and tributaries; Water District No. 45-N, Dry Creek and tributaries; and Water District No. 45-O, Golden Valley (ground water in the Cottonwood Critical Ground Water Area). All of these water districts are currently active except Water District No. 45-N, which is currently inactive. Water District No. 45-C has been inactive in certain years.

10. None of the existing water districts listed above, except Water District No. 45-O, include water rights from ground water sources. None of these water districts administer water rights from surface water sources outside the irrigation season for those rights included within the districts, nor do these districts administer water rights during the irrigation season when the surface water sources are not under watermaster regulation.

11. The Director's notice also stated that the water district would replace the measurement and reporting responsibilities of the Eastern Snake Plain Aquifer ("ESPA") West Water Measurement District ("WWMD") that currently exists within that portion of Basin 45 overlying the ESPA.

12. On December 15, 2005, at approximately 8:00 p.m., the Director conducted a hearing concerning the proposed creation of the water district at the Burley City Hall in Burley, Idaho. Approximately 35 people attended the hearing.

13. Prior to commencing the hearing, the Director gave a presentation and answered questions for approximately 90 minutes addressing the reasons for creation of the proposed water district and how the district would operate.

14. Persons attending the hearing were provided opportunity to make oral statements for the record. In addition, the Director held the record open through December 28, 2005, for the submittal of written comments.

15. Seven (7) individuals made oral statements for the record at the hearing. Two (2) persons who testified at the hearing on December 15, 2005, also submitted written statements to the Department on or before the deadline of December 28, 2005. Written statements were also submitted to the Department prior to the deadline of December 28, 2005, by a group of holders of water rights from ground water in the northeast portion of Basin 45.

16. Mr. Randy Brown of Murtaugh, Idaho, testified on behalf of the Southwest Irrigation District ("SWID"). Mr. Brown testified that SWID supports formation of a water district south of the Snake River that is separate from Water District No. 130, which is located north of the Snake River. Mr. Brown stated that SWID believes the hydrology north of the river is not the same as the hydrology south of the river where SWID is located. Mr. Brown stated that SWID believes a separate district south of the river better serves the interests of the irrigation district. Mr. Brown further stated that some wells included in SWID are located within Administrative Basin 47, and SWID recommends that those wells be included in Water District No. 140 when the Department implements administration of ground water rights in Administrative Basin 47.

17. Mr. Grant Wyatt of Burley, Idaho, also testified on behalf of SWID. Mr. Wyatt stated that SWID supports being included in the proposed Water District No. 140 rather than being included in Water District No. 130. Mr. Wyatt also stated that water management issues and ground water hydrology south of the Snake River in Basin 45 are different than those north of the Snake River. In particular, some of the aquifers located in Basin 45 may not be hydraulically connected to the Snake River. Mr. Wyatt stated that SWID has been able to use some of the nearby streams from the South Hills for recharge of local aquifers.

18. Mr. Carl Austin of Oakley, Idaho, testified on his own behalf, as the owner of the Double Diamond Ranch located south of Oakley. Mr. Austin is a mining and geological engineer with extensive background in geothermal resource exploration and development. Mr. Austin testified that geothermal water tapped by deep wells located on the Double Diamond

Ranch upstream of the Oakley Reservoir should not be considered to be hydraulically connected to the ground water of the Oakley Basin or the Snake River Plain. Mr. Austin supplemented his testimony with a technical report he authored on the occurrence of geothermal fluids in the Goose Creek Basin. A copy of this report was also submitted to the Department on December 13, 2005.

19. Mr. David Pickett of Oakley, Idaho, testified on behalf of the Goose Creek Irrigation District ("GCID") and the Oakley Canal Company ("OCC"). Mr. Pickett testified in support of the proposed Water District No. 140 rather than including Basin 45 in Water District No. 130. Mr. Pickett requested that the Department consider the current duties of field agents employed by GCID, SWID, OCC, and other small water districts near Oakley, when assigning the duties of the watermaster of the proposed Water District No. 140. Mr. Pickett cautioned that the watermaster for Water District No. 140 should not duplicate the duties of the field agents working for these other water delivery entities. Mr. Pickett also suggested that the watermaster for Water District No. 140 should be an information gatherer and should provide oversight of the existing water delivery entities in the area.

20. Mr. Randy Robinson of Oakley, Idaho, testified as the chairman of the Board of Directors for the OCC. Mr. Robinson stated that he concurred with the testimony provided by Mr. Pickett.

21. Mr. Earl Warthen of Albion, Idaho, testified that holders of surface and ground water rights located within the Albion Basin (Marsh Creek drainage) had met on December 10, 2005, to discuss the proposed formation of Water District No. 140. Mr. Warthen stated that the right holders present at this meeting supported formation of a separate water district for the Albion Basin for the following reasons:

The Albion Basin sits by itself in an uplifted area bordered on the East and West by major tertiary faults in an uplift, and separate from the Oakley fan and the Malta area.... Second, the Oakley Valley falls in the West Cassia Soil Water Conservation District whereas the Albion Basin is in the East Cassia Soil Water Conservation District. Third, both the Malta and Oakley fans are connected to the interstate waters of Utah and Nevada, Utah on the Malta side and Utah and Nevada on the Oakley side. Furthermore, number 4, both the Malta and the Oakley area have been designated critical groundwater areas. Fifth, approximately fifteen years ago the East Cassia Soil Water Conservation District petitioned the State of Idaho for a groundwater recharge district and still hopes to further that goal as these problems continue.

Mr. Warthen submitted a written version of his testimony to the Department at the hearing on December 15, 2005.

22. Mr. Don Bowden of Albion, Idaho, testified on behalf of the City of Albion. Mr. Bowden requested that the Department recognize that the Albion Basin is an isolated basin that is not hydraulically connected to any other water sources in the proposed water district. Mr. Bowden expressed concern about a previous change in point of diversion from outside the Albion Basin to within the Basin that Mr. Bowden alleged to have caused injury to existing water rights in the Albion Basin. Mr. Bowden requested that the Department recognize the

Albion Basin as “an isolated system” and to avoid such changes in points of diversion in the future “in order to equitably administer” the Albion Basin. Mr. Bowden stated the City is not adverse to working with its neighbors and paying its share for the administrative overhead of a watermaster, but requested that the Albion Basin be designated as a separate district.

23. The Director received a written petition from thirteen individual holders of ground water rights for diversions located in Basin 45 south of the Snake River, north of Interstate 86, and within the Magic Valley Ground Water District. The petitioners include Jack Duncan, Paul Duncan, Bill Hepworth, Bruce Newcomb, Mark Newcomb, Mark Sanderson, Dan Walton, Gary Fowler, William McManus, Ron Hieb, Ardel Wickel, Lynn Mitchell, and Dell Mitchell. The petition asks the Director to include the ground water rights in this area in the proposed Water District No. 140 for the following reasons:

1. According to the water model used by the state of Idaho, the hydrology south of the Snake river is substantially different than the hydrology north of the Snake river.
2. The south side canal from Minidoka Dam (which supplies surface water to the ground south of Burley) runs through the middle of our farms. We feel this vital artery between us and the rest of Cassia county will prove to be a very positive advantage for water management.
3. The Snake River forms a natural boundary for separation of these two state water districts [Water District No. 130 and Water District No. 140].

24. The above referenced petition also states that if the lands owned by the petitioners are included in Water District No. 140, then the petitioners intend to join SWID for purposes of measurement and reporting. The petitioners also state that they are prepared to create a new irrigation or ground water district if necessary to represent the northeast portion of Cassia County.

25. The ESPA is defined as the aquifer underlying an area of the Eastern Snake Plain that is about 170 miles long and 60 miles wide as delineated in the report “Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho,” U. S. Geological Survey (“USGS”) Professional Paper 1408-F, 1992, excluding areas lying both south of the Snake River and west of the line separating sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian. The boundary of the ESPA within Basin 45 is referenced in the map on Attachment A of this order (labeled as the “Eastern Snake Plain Aquifer”).

26. The ESPA extends across the northern portion of Basin 45 between Minidoka Dam in the northeast, Churchill Knolls in the south (approximately 7 miles north of Oakley), and Murtaugh Lake in the northwest.

27. Although there is uncertainty regarding the degree of connection between the different aquifers within Basin 45, ground water in that portion of Basin 45 that is within the ESPA is primarily in two unconfined aquifers comprised of fractured basalt and alluvium. South and west of the ESPA boundary in Basin 45, the principal aquifers are confined in rhyolite or limestone and unconfined in alluvium. The confined aquifers in rhyolite and limestone are

deeper and overlain by basalt and alluvium. Water levels in the shallower unconfined basalt and alluvium aquifers appear to be more responsive to periods of above-average and below-average precipitation. Geologic faulting and surface water in Basin 45 also affect ground water movement.

28. The Department uses a calibrated ground water model to determine the effects on the ESPA and hydraulically connected reaches of the Snake River and its tributaries from pumping a single well in the ESPA, from pumping selected groups of wells in the ESPA, and from surface water uses on lands above the ESPA.

29. The ground water in the ESPA is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees. One of the river reaches where a direct hydraulic connection exists between the ESPA and the Snake River is between the USGS stream gage located about 1 mile downstream of American Falls Dam and the USGS stream gage located at Minidoka Dam ("Neeley to Minidoka reach").

30. Results from the Department's calibrated ground water model indicate that diverting ground water from that portion of Basin 45 overlying the ESPA for consumptive uses affects flows in the Neeley to Minidoka reach of the Snake River, as well as ground water levels in the ESPA north of the Snake River. That portion of the ESPA south of the Snake River in Basin 45 is hydraulically connected to the ESPA north of the Snake River and to the Neeley to Minidoka reach of the Snake River.

31. Four (4) separate critical ground water areas ("CGWAs") have been designated by the Department in Basin 45 pursuant to Idaho Code § 42-233a. A CGWA is defined as all or part of a ground water basin that does not have sufficient ground water to provide a reasonably safe supply for irrigation or other uses at current or projected rates of withdrawal. The Director can deny applications for new water right appropriations located within a CGWA and may require water users to report diversions or other information.

32. The four CGWAs designated by the Department in Basin 45 are collectively known as the Oakley Fan CGWAs. The Goose Creek-Rock Creek CGWA was first designated in 1962 but subdivided in 1967 into three separate CGWAs: Artesian City, Cottonwood, and Oakley-Kenyon. The fourth, the West-Oakley Fan CGWA, was established in 1982. The four CGWAs are contiguous and have been managed as a single unit. The orders designating the CGWAs set forth the basis for determining that ground water within the areas is either limited or not available for appropriation. New appropriations of ground water are not allowed in the Artesian, Cottonwood, and Oakley-Kenyon CGWAs. New appropriations in the West-Oakley Fan CGWA may only be considered upon submittal of an acceptable mitigation plan.

33. Approximately half of the Oakley-Kenyon and West Oakley Fan CGWAs, plus a portion of the Artesian City CGWA, overlap the ESPA. The contiguous boundary of the Oakley Fan CGWAs and the ESPA boundary in Basin 45 are delineated on the map in Attachment A to this Order.

34. Continuous monitoring of ground water levels in the Oakley Fan CGWAs indicates that ground water levels continue to generally decline. The declining trend suggests that overdraft conditions still exist throughout the four CGWAs, although water levels in the shallower basalt and alluvium aquifers have generally declined less and are more stable.

35. Idaho Code § 42-1416B provides that claims to expanded use of water within CGWAs may be decreed in the SRBA if the expansion occurred after the designation of the CGWA and before the commencement of the SRBA. The priority date of such decreed rights is June 30, 1985.

36. Idaho Code § 42-1416B further provides that water in a CGWA shall be deemed unavailable to fill such decreed expansion rights unless the Director finds that a management program exists that will limit the annual average withdrawals from the aquifer to the average annual recharge of the aquifer. Within two (2) years after a decree determining the water rights within a CGWA, the Director must find that a management plan exists that would bring withdrawals into balance with recharge. If an adequate management plan does not exist, the Director shall order holders of expansion rights in a CGWA to cease or reduce withdrawal of ground water until withdrawals are brought into balance with recharge.

37. There are approximately 60 expansion ground water rights within the four (4) CGWAs in Basin 45 appurtenant to over 11,500 acres of irrigated land. These rights and lands lie within and outside of the ESPA boundary in Basin 45.

38. Several irrigation districts and canal companies in Basin 45 have service area boundaries that lie within and outside the ESPA boundary and represent water users who hold ground water rights located within the Basin 45 CGWAs.

39. Several of the existing water districts in Basin 45 that administer surface water rights also overlap portions of the CGWAs, as well as the service areas of certain irrigation districts and canal companies. Some water right holders have both surface water rights in these water districts and ground water rights within the CGWAs and irrigation districts.

40. The available water supply in all or portions of Basin 45 overlying the ESPA is not adequate to consistently satisfy some senior priority water rights from sources that are hydraulically connected to the ESPA. The available water supply is also projected in the future to be insufficient, at times, to satisfy these water rights.

41. The administration of ground water rights within the portion of Basin 45 overlying the ESPA is necessary for the protection of prior surface and ground water rights.

42. The remaining areas of Basin 45 outside of the ESPA may not have a direct hydraulic connection to the Snake River or sources tributary to the Snake River. However, significant portions of the CGWAs in Basin 45 overlap the ESPA and some irrigation districts and surface water districts. The CGWAs were designated because average annual withdrawals of water in those areas exceed the average rate of recharge. Water supplies in the CGWAs are fully appropriated and ground water levels generally continue to decline.

43. Ground water rights, and some surface water rights in Basin 45 currently are not subject to administration through water districts by watermasters.

44. Administration of ground water rights and surface water rights within the CGWAs and all of Basin 45 is necessary for the protection of prior surface and ground water rights.

45. Administration of water rights and management of water in Basin 45 would be properly and efficiently provided by including all of Basin 45 in one water district.

46. Well logs and published literature indicate the presence of a shallow unconfined alluvium aquifer in the Albion Basin that is hydraulically connected to Marsh Creek. Available literature indicates that the unconfined ground water in the basin moves northward and discharges either to Marsh Creek or leaves the basin as underflow beneath Marsh Creek to the ESPA (see Crosthwaite, E.G., "Ground Water Possibilities South of the Snake River Between Twin Falls and Pocatello," USGS, 1956).

CONCLUSIONS OF LAW

Statutory Authorities

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. Idaho Code §§ 42-226 and 42-237a.g., assign the authority and responsibility to the Director for the administration of ground water rights in the state in accordance with the prior appropriation doctrine as established by Idaho law so as to protect prior surface and ground water rights.

4. 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.

5. Idaho Code § 42-604 authorizes the Director to 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. The Director may also revise the boundaries of a water district, abolish a water district, or combine two (2) or more water districts, by entry of an order, if such action is required in order to properly administer the users of the water resource.

6. In addition, 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.

Response to Testimony and Written Comments

7. Most of the oral testimony and written comments submitted to the Department generally supported creation of the proposed Water District No. 140. Much of the testimony supported the concept that any water district created to include ground water rights in Basin 45 should be limited to Basin 45, and not included with Water District No. 130 located north of the Snake River. Some testimony and written comments did not support inclusion of certain areas or water rights in the proposed water district.

8. In response to the hearing testimony and written comments, the Director concludes that during the irrigation season for the water rights in some of the existing water districts in Basin 45, the statutory requirements of Chapter 6, Title 42, Idaho Code, are mostly being met; while in other water districts in Basin 45, some or many of the statutory requirements are not being satisfied. For example, surface water diversions in some of the existing districts lack adequate measuring devices and controlling headgates, are not measured or recorded on a regular basis, or are not monitored or regulated during portions of the irrigation season. Additionally, some of the existing water districts do not maintain adequate measurement records, annual watermaster reports are not always complete or timely submitted, and some existing water districts have been periodically inactive or inactive for many years. None of the existing water districts enforce limitations of surface water rights outside of the irrigation season for the rights, and only one (1) of the existing water districts regulates water rights diverting from ground water.

9. Given that: (1) water districts do not exist in large areas of Basin 45; (2) the administration of surface water rights in the existing water districts in Basin 45 is often inconsistent; (3) none of the existing water districts in Basin 45 administer surface water rights outside of the irrigation season for those rights or during the irrigation season when the surface water sources are not in regulation; and (4) only one of the existing water districts in Basin 45 regulates diversions from ground water; the Director concludes that there should be one water district created that encompasses all of the water rights within Basin 45, and that the existing surface water districts in Basin 45 should be designated as sub-districts, in order to provide consistent and effective administration of water rights from both surface water sources and ground water sources year-round throughout Basin 45.

10. Existing water districts in Basin 45, which now will be sub-districts within Water District No. 140, will each continue to elect their own watermasters, who will serve as deputy watermasters under the watermaster for Water District No. 140, and adopt their own budgets for purposes of measuring, recording, reporting, and regulating surface water diversions within their districts. A sub-district that adequately measures, records, reports, and controls diversions should not be subject to future assessments to fund the watermaster of Water District No. 140 for purposes of measuring, recording, reporting, and regulating surface water diversions within that sub-district. However, each sub-district may be subject to future assessments for costs associated with oversight of that sub-district. Oversight costs may include, but may not be limited to, technical assistance, enforcement assistance, training of deputy watermasters, collection and review of diversion data, periodic field checks of diversions, periodic or miscellaneous field calibration measurements of measuring devices, review of annual sub-district water diversion and budget reports, and monitoring and implementation of mitigation plans as necessary for ground water rights.

11. There is no evidence available that suggests the Albion Basin is a closed basin. The Director concurs with testimony that changes in water rights in the Albion Basin or other areas of Basin 45 should not cause injury to other water rights.

12. The Director recognizes that ground water rights in some areas or drainages of Basin 45 are not included within the boundaries of the ESPA or any of the Basin 45 CGWAs. Ground water diversions in these areas, however, may potentially contribute to reductions in discharge to local streams or reductions in underflow discharging to the ESPA.

13. The Director concludes that the geothermal sources located in the Goose Creek and Trapper Creek drainages above the Oakley Reservoir are not hydraulically connected to other ground or surface water sources in Basin 45. Some of the water delivered from geothermal wells located above the Oakley Reservoir are either commingled with surface water rights or used in combination with surface water rights or ground water rights diverted from shallower aquifers for irrigation of a common place of use.

14. Water rights diverted from geothermal wells located above the Oakley Reservoir may be administered separately from other sources of water in Basin 45. However, these geothermal rights may still require measurement and regulation by a local watermaster when such rights are used in combination with water rights from other sources for the same purpose of use. Additionally, the Director may require measurement and regulation of water rights from these geothermal sources in the future if such action is necessary to protect the geothermal resource.

District Creation

15. 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 create a water district to administer ground

water and surface water rights within Basin 45, as shown on the map appended hereto as Attachment A, to protect senior priority water rights.

16. The Director concludes that the water district should be formed on a permanent basis and be used to administer the affected water rights in accordance with the prior appropriation doctrine as established by Idaho law.

Administration of Affected Water Rights

17. The Director concludes that immediate administration of ground water rights, other than domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A(11), pursuant to chapter 6, title 42, Idaho Code, is necessary for the protection of prior surface and ground water rights.

18. The Director concludes that the watermaster of the water district created by this order shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director:

- a. Administer and enforce water rights in priority;
- b. Measure and report the diversions under water rights;
- c. Curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);
- d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or a mitigation plan approved by the Director; and
- e. Enforce the provisions of any stipulated agreements or mitigation plans approved by the Director.

19. Additional instructions to the watermaster for the administration of water rights from hydraulically connected sources will be based upon available data, ground water and surface water models, and the Director's best professional judgment.

20. The Director concludes that the water district created by this order includes the designation of sub-districts consisting of existing surface water districts, and may include new or existing ground water districts, canal companies, or other water use entities.

21. The Director further concludes that the water district created by this order shall include the following organizational features:

- a. Election and appointment of a single watermaster for the water district. The water right holders may elect to have the district contract with the Department to

provide watermaster services. Under a district contract with the Department, the watermaster will be a direct employee of the Department;

- b. Selection of a Water District Advisory Committee that includes, but need not be limited to, representation from boards of directors of ground water districts, irrigation districts, canal companies, or representatives of other water use entities, as well as advisory committee members from existing surface water districts;
- c. Appointment of deputy watermasters by the watermaster, with approval from the Director. Deputy watermasters shall work pursuant to instructions of the watermaster. Deputy watermasters may be employees of existing water districts, ground water districts, irrigation districts, canal companies, or other water use entities that are located within the water district.
- d. Water rights not included in an existing water district, ground water district, irrigation district, or canal company, shall be assessed costs directly by the water district watermaster. Water rights in an inactive water district shall also be assessed costs directly by the water district watermaster; and
- e. Ground water districts, irrigation districts, canal companies, or other water use entities that are organized as sub-districts, may collect and pay the pro-rata expenses on behalf of the diversions and users within their respective district or organization (this will avoid billing of individual water rights or diversions by both the sub-district and the water district).

ORDER

IT IS HEREBY ORDERED that:

1. The Oakley Valley Area Water District, designated as Water District No. 140, is created to include all surface and ground water rights in Basin 45 within the area depicted on the map appended hereto as Attachment A and incorporated herein by reference, except small domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A(11) for which authorization for interim administration was not obtained from the SRBA District Court and for which notice of this action was not provided.

2. Water District No. 45-A, Basin Creek and tributaries; Water District No. 45-B, Birch Creek and tributaries; Water District No. 45-C, Goose Creek and tributaries; Water District No. 45-F, Marsh Creek and tributaries; Water District No. 45-K, Cottonwood Creek and tributaries; Water District No. 45-N, Dry Creek and tributaries; and Water District No. 45-O, Golden Valley (ground water in the Cottonwood Critical Ground Water Area), are designated as sub-districts within Water District No. 140. These sub-districts shall continue to meet annually to elect a sub-district watermaster, adopt a budget, and select an advisory committee. These sub-districts, except for Water District No. 45-O, shall be responsible for distribution of surface water rights that have been reported or partially decreed in the SRBA and located within the

respective sub-districts. Water District No. 45-O shall be responsible for distribution and administration of ground water rights within the district that have been reported or partially decreed in the SRBA. For 2007, water right holders within the sub-districts shall meet at a time and place as normally determined by the district. Water rights in any sub-district that is or becomes inactive shall be administered directly by the watermaster of Water District No. 140.


3. Water rights diverted from geothermal sources upstream of Oakley Reservoir are included in Water District No. 140 but shall be administered separately from water rights diverted from other ground and surface water sources in Water District No. 140, the Snake River, and the ESPA. The watermaster of Water District No. 140 shall monitor or coordinate monitoring of the geothermal diversions above Oakley Reservoir with the watermaster of Water District No. 45-C as necessary to ensure proper delivery of water when geothermal and surface water rights are used in combination for the same use.

4. As soon as practicable in calendar year 2007, the holders of water rights within Water District No. 140 shall meet at a time and place to be determined and noticed by the Director for purposes of: (1) electing a watermaster; (2) selecting an advisory committee, if desired; and (3) setting a budget and corresponding assessments to be collected for operating the district. In future years, the annual meeting shall be held as provided in Idaho Code §42-605.

5. The watermaster for Water District No. 140 shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director:

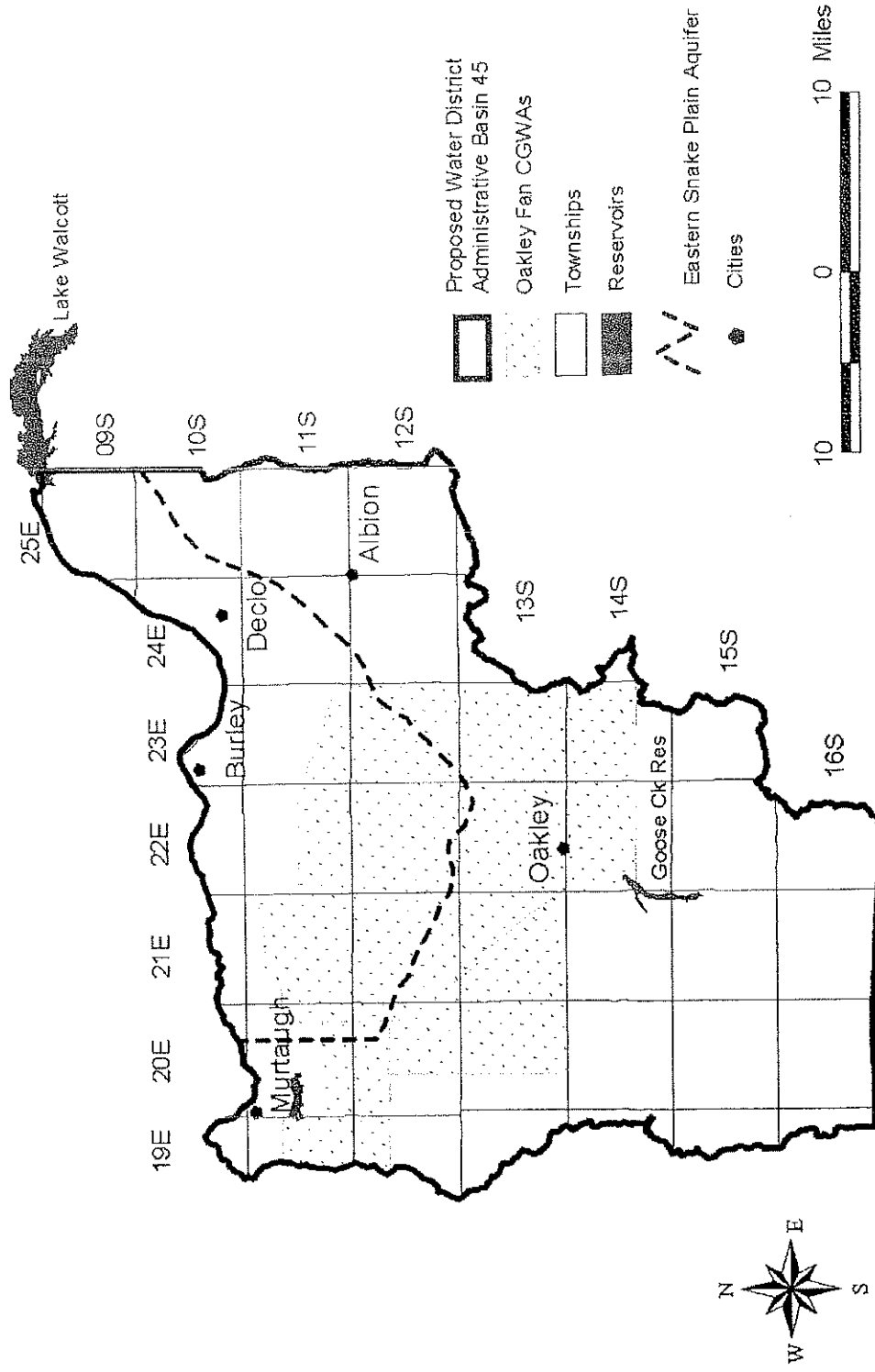
- a. Measure, collect, and record the diversions under water rights;
- b. Administer and enforce the water rights in priority;
- c. Curtail unauthorized or excessive diversions as necessary (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);
- d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights if not covered by a stipulated agreement or mitigation plan approved by the Director; and
- e. Enforce the provisions of any stipulated agreements or mitigation plans approved by the Director.

DATED this 28th day of December, 2006.



KARL J. DREHER
Director

Proposed Water District Basin 45 - Oakley Valley Area



ATTACHMENT E

1
2
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12 A & B Irrigation District
13

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

16 **IN THE MATTER OF THE PETITION)**
17 **FOR DELIVERY CALL OF A & B)**
18 **IRRIGATION DISTRICT FOR THE)**
19 **DELIVERY OF GROUND WATER AND)**
20 **FOR THE CREATION OF A GROUND)**
21 **WATER MANAGEMENT AREA)**

DOCKET NO. 37-03-11-1

MOTION TO PROCEED

22 COMES NOW the petitioner, A & B Irrigation District, and moves the Director to
23 lift the stay agreed to by the parties in regard to the petition of A & B Irrigation District for the
24 delivery of ground water and the creation of a ground water management area, and that said
25 Director proceed, without delay, in the administration of the Eastern Snake Plain Aquifer
26 (ESPA) in such a manner as to provide ground water to A&B under its ground water rights that
27 are being interfered with and materially injured by junior ground water appropriators in the
28 ESPA, on the grounds and for the reasons:

MOTION TO PROCEED

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3 1. That petitioner A & B Irrigation District readopts and incorporates herein
4 its petition for delivery call dated July 26, 1994, as though fully set forth herein.

5 2. That in the Petition for Delivery Call filed by A & B Irrigation District
6 (A&B) in 1994, it was alleged that by reason of the diversion of water by junior ground water
7 appropriators located within the Eastern Snake Plain Aquifer (ESPA), A&B was suffering
8 material injury caused by the lowering of the ground water pumping level within the ESPA by an
9 average of 20 feet since 1959, with some areas of the ESPA from which A&B diverts water
10 having been lowered in excess of 40 feet since 1959, thereby reducing the diversions of A&B to
11 974 cfs, a reduction of 126 cfs from the reasonable diversion rate provided by its water right as
12 decreed by the SRBA District Court. That the reduction of the diversion rate as the result of the
13 reduction in the ground water tables had reduced the diversions by A&B from 40 of its 177
14 wells, serving approximately 21,000 acres to a diversion rate which is less than the minimum
15 required for the proper irrigation of said lands served with water from said wells.
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17

18 3. On May 1, 1995 R. Keith Higginson, the then Director of the Idaho
19 Department of Water Resources (IDWR) issued his Pre-Hearing Conference Order concerning
20 A&B's Petition for a Delivery Call of Ground Water from the ESPA and for the creation of a
21 Ground Water Management Area. In that Pre-Hearing Conference Order, the Director set forth a
22 proposed stipulation between the petitioner and respondents which provided, among other things,
23 that IDWR adopt and implement an active enforcement plan to eliminate all illegal ground water
24 diversions within the ESPA, all emergency diversions within the ESPA, diversions from ground
25 water under supplemental water rights under certain conditions, the diversion of water under
26 supplemental water rights being used as a new permanent source, under certain conditions, and
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3 all transfers of supplemental water rights unless transferred with the primary water rights. It
4 further provided that IDWR require measurement of all ground water diversions in the ESPA,
5 including annual volume of water diverted, and a representative tabulation of changes in ground
6 water levels at various times during each year at representative points of diversion in the ESPA.
7 It further provided that said measurements be performed by an entity having authority to assess
8 water right holders, to require the measurement and proper recording of all surface water
9 diversions and to establish a working group consisting of representatives of all parties to evaluate
10 mitigation methods, plans and proposals in the ESPA. The stipulation provided that parties
11 would cooperate in the submission of legislation in the 1995 legislative session authorizing the
12 formation of water measurement districts which would have the power to levy assessments on
13 lands within the district, measure all water diversions and ground water levels within the ground
14 water measurement district (GWMD), require installation of appropriate measuring devices and
15 to contract with existing water organizations to measure water diversions within that district for
16 the benefit of the GWMD. Numerous other provisions were contained in the stipulation which
17 would aid in the proper management of the ESPA.
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20 4. In the Pre-Hearing Conference Order of May 1, 1995, the Director of
21 IDWR ordered that the proposed stipulation set forth therein be adopted in part as the Pre-
22 Hearing Conference Order and that actions called for in the stipulation be accomplished as far as
23 possible using available Department resources, including the development of a plan for
24 management of ESPA, the elimination of drought-related emergency permits to divert ground
25 water from the ESPA, the adoption of Rules to define the term "supplemental water right" and
26 governing the use and transfer of such rights, to continue to fully implement the provisions of §
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3 42-701, Idaho Code, regarding the measurement and reporting of diversions within the ESPA, to
4 continue the moratorium on new appropriations for surface and ground water from the ESPA, for
5 IDWR to retain jurisdiction of A&B's petition for the purpose of continued review for
6 information concerning water supply, the impact of use of ground water and other uses of the
7 resource and the determination and designation of the ESPA as the ground water management
8 area.
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10 5. The Pre-Hearing Conference Order of May 1, 1995 ordered that action on
11 the petition of A&B be stayed until further notice to the parties and that any party may file a
12 Motion to Proceed at any time to request the stay be lifted.

13 6. On or about May 1, 1962, A&B submitted to IDWR its resolution of that
14 date, requesting IDWR, then known as the Idaho Department of Reclamation, to make a
15 comprehensive study of the Snake River plains ground water area north of the Snake River as
16 early as possible, in anticipation of the need for the issuance of a Critical Ground Water Area
17 Order as the result of the average decline in 15 observation wells within the A&B Project of 1.3
18 feet per year and, since 1960, detailed records have established that 7 production wells have
19 shown a decline of approximately 2 feet per year.
20

21 7. Approximately 13 years have expired since the filing by A&B of its
22 Petition for Delivery of Ground Water to fulfill its ground water rights, and no management plan
23 has been adopted by the Director for managing the ESPA, and although two ground water
24 management areas were designated in 2001 within the ESPA and later dissolved, no ground
25 water management area has been designated as provided by § 42-233b, Idaho Code, adopted by
26 the Idaho Legislature in 1982, for the entire ESPA. A "ground water management area" is
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3 defined as any ground water basin or designated part thereof which the Director of the
4 Department of Water Resources has determined may be approaching the conditions of a critical
5 ground water area.

6 8. On October 7, 1994, the "Rules for Conjunctive Management of Surface
7 and Groundwater Resources" (CM Rules or Rules) were promulgated by the Director of IDWR.

8
9 9. The CM Rules provide the procedures for responding to delivery calls
10 "made by the holder of a senior-priority...ground water right against the holder of a junior-
11 priority ground water right in an area having a common ground water supply." The ESPA is a
12 common ground water supply from which A&B and junior water right holders divert water.

13 10. On March 5, 2007, the Idaho Supreme court filed its Opinion No. 40, in
14 which it found the CM Rules to be constitutional under a facial challenge and that the Rules
15 incorporate Idaho law by reference and to the extent the Constitution, statutes and case law have
16 identified the proper presumptions, burdens of proof, evidentiary standards and time parameters,
17 those are a part of the CM Rules.
18

19 11. That in times of shortage, there is a presumption of material injury to a
20 senior by the diversion of a junior from the same source, and the well-engrained burdens of
21 proof. Evidence of a shortage and resulting injury includes:

22 a. A&B has made major investment in infrastructure and efficiency
23 improvements to remain viable with the shortage caused by declining ground water
24 levels. A&B and it's landowners have invested heavily to increase efficiency and 96.5%
25 of A&B's lands irrigated with ground water are irrigated with sprinklers and A&B has
26 converted conveyance structures in many areas from open lateral to pipeline. A&B has
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3 been required to upgrade pump and pipe distribution systems, and has been required to
4 increase the size of the pump motors at many wells to provide the power needed to lift
5 ground water from ever-deeper levels. The combined total motor upgrades for all wells
6 is 3,845 hp. A&B has also been required to endure costs from significant alteration of
7 conveyance systems to bring water from new wells into the conveyance system and to
8 decrease conveyance losses. During 1995 through 2006, A&B has expended
9 approximately \$152,000 per year for well rectification efforts to divert water from the
10 declining aquifer, and has expended in the years 2002 through 2005, approximately
11 \$388,205 per year in drain well rectification, and reductions in operational waste to
12 increase water supplies to meet a part of the shortages occurring as the result of declining
13 ground water tables. Since 1980, and primarily since 1994, A&B has made numerous
14 attempts to solve the reduction in ground water irrigation supply caused by declining well
15 yields. A&B drilled 8 new wells to replace wells that would no longer provide an
16 adequate water supply as the result of the lower ground water tables, has deepened 47
17 wells, has replaced the bowls on 109 pumps in wells that are now pumping from
18 substantially lower water levels, 137 pumps have been lowered to increase their capacity
19 as a result of declining ground water tables, and 7 wells have been abandoned because
20 they no longer provide adequate water. Deepening of wells with declining well yield
21 problems (caused by falling ground water levels) has not provided an appreciable
22 rectification of declining well yield, and since 1994 the total water supply from the A&B
23 wells has declined to 970 cfs. Many of the wells that have been drilled deeper, some to
24 depths of 800 feet, because of the low transmissivity and low well yields deeper in the
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3 aquifer, do not produce additional water. All of these issues cause A&B to suffer water
4 supply shortages during peak demand periods.

5 b. From the annual measurement by A&B of approximately 150 of the 177
6 wells which divert water under Water Right No. 36-02080, it has been determined that
7 there has been a decline since 1999 of over 12 feet in ground water levels over the
8 district, on the average, and a decline of over 22 feet on the average since 1987. Total
9 ground water declines within the district boundaries since the early 1960s generally range
10 between 25 to 50 feet. The trend in ground water declines has become stronger and more
11 pronounced which indicates that the declining ground water level problem is worsening.

12 c. Diversions authorized under Water Right No. 36-02080 are necessary for
13 the irrigation of lands receiving water under that water right, and the methods of
14 diversion and use are consistent with the irrigation practices for the region, but A&B
15 lands served by ground water diverted under A&B's right continue to suffer significant
16 water shortages, seriously affecting the economic use and employment of farm land
17 within A&B that receive irrigation water from the ESPA for the growing of diverse
18 crops.

19 d. That the decreed diversion rate under A&B's ground water right is
20 necessary to provide a reasonable quantity for the beneficial use of the water in the
21 irrigation of lands within A&B. Because of the shortages suffered by junior pumping
22 interference and declining ground water levels, A&B is unable to divert an average of
23 0.75 of a miner's inch per acre which is the minimum amount necessary to irrigate lands
24 within A&B during the peak periods when irrigation water is most needed. A&B was
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3 able to deliver at least 0.75 of a miner's inch prior to the major impacts caused by junior
4 ground water pumping. Ground water pumping records show that during the mid 1960s
5 A&B was able to pump about 225,000 acre-feet per year. During the last decade, A&B
6 ground water pumping has dropped to as low as 150,000 acre-feet per year. A&B is
7 presently being denied its ability to economically provide adequate irrigation water for
8 lands served with ground water. A&B will continue to suffer water shortages and these
9 shortages will become more severe as ground water levels in the ESPA continue to
10 decline, notwithstanding reasonable efforts by it to divert adequate water from the lower
11 level of the aquifer, until such time as the aquifer level declines are remedied through
12 administration of junior priority ground water rights and the adoption and implementation
13 of a ground water management plan whereby ground water levels may be restored and
14 maintained.
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17 e. That additional effort and expense by A&B to divert the quantity of water
18 to which it is entitled is not economical and would be an unreasonable requirement, and
19 in most instances impossible to obtain as a result of the impacts and injury caused by
20 junior ground water diverters that have created multi-year accumulations of water
21 deficiencies in the ESPA, to serve the senior water rights of A&B.
22

23 f. The IDWR, by use of the Eastern Snake River Plain aquifer model that has
24 been developed, can provide technical information that will be useful to the Director in
25 meeting his obligation to delivery water to senior appropriators. One scenario entitled
26 "Sources of Drawdown Beneath the A&B Irrigation District" and the analysis therein
27 indicates that up to 84% of the ground water declines experienced at A&B are due to the
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3 effects of ground water pumping from others. Other scenarios using the ground water
4 model, such as the "Curtailment Scenario" show that curtailment of junior ground water
5 diversions is an effective management strategy to reduce the declining ground water
6 levels in the aquifer.

7
8 g. The ground water supply from the ESPA is not sufficient to meet the
9 water demands of A&B under its senior ground water rights as well as all junior ground
10 water rights within the ESPA. Most of the other ground water diversions, which are
11 depleting the ESPA water supply and reducing the ability of A&B to meet its demand,
12 are primarily diversions by those with junior ground water rights to the water rights of
13 A&B.

14
15 h. A&B has no other source or supply of water to replace its lost ground
16 water supply needed to irrigate Unit B land. Even if surface water was available, it
17 would not be economically feasible to deliver such water to the lands now being irrigated
18 with ground water within A&B. To the extent conversion to surface water has been
19 possible, it has been done, being required because of the lack of ground water supplies at
20 any depth to irrigate these lands.

21
22 i. That the ground water levels presently existing within the ESPA are below
23 the reasonable ground water pumping level, and A&B is entitled to be protected in the
24 maintenance of reasonable ground water pumping levels established by the Director of
25 IDWR, and the Director should order those water right holders on a time-priority basis,
26 within the areas determined by the Director, to cease and reduce withdrawal of water
27 until such time as the Director determines there is sufficient ground water.

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3 j. There are no post-adjudication circumstances or unauthorized changes in
4 the elements of A&B's partial decree under Water Right No. 36-02080.

5 12. There is clear and convincing evidence that the ESPA may be approaching
6 the conditions of a critical ground water area, which is clearly established by the following facts,
7 to-wit:

8
9 a. Scientific studies by many agencies show that the ESPA is hydraulically
10 continuous and provides one common water supply to ground water users, spring flow
11 users and natural flow users with varying order of priority. The use of the aquifer by
12 junior ground water pumpers affects all water users dependent on the common water
13 supply of the ESPA. The average annual rate of diversion from the ESPA (including
14 ground water pumping, the discharge from the Thousand Springs area and other springs
15 to the Snake River) has exceeded the average annual rate of recharge, resulting in a
16 decrease in aquifer storage and declining ground water levels.
17

18 b. Hydrographs of ground water levels in the ESPA collected since the 1960s
19 show evidence of severe and persistent declines that are not the result of short-term
20 droughts. These declines have become worse as ground water pumping has increased.
21 The declining trend in ground water levels has become worse with every decade since
22 1960. These hydrographs show that the aquifer is not able to support all of the permitted
23 ground water uses.
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25 c. It is possible to predict the amount of reduction in discharges from the
26 ESPA or the increase in recharge necessary to stabilize the ground water tables at a
27 reasonable pumping level. Analyses have been completed using Version 1.1 of the

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3 ESPAM Ground Water Flow Model developed by IDWR and IWRRI showing that
4 declining ground water levels, spring flows and the Snake River reach gains can be
5 stabilized by reducing ground water pumping.

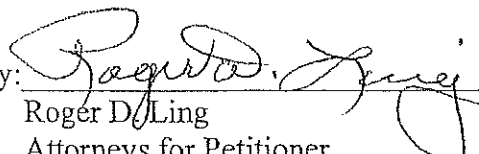
6 d. In the absence of meaningful management, aquifer levels will continue to
7 decline under present conditions, and such declines will cause additional material injury
8 to A&B by decreasing its ground water supply in even greater amounts than now being
9 experienced. This will undermine the entire system of water administration by priority
10 water rights.
11

12 e. The ESPA is a ground water basin that is approaching, or has reached, the
13 conditions of a critical ground water area. It is therefore required under Idaho Code §
14 42-233b that the ESPA, or such designated part thereof, should be designated by the
15 Director as a "ground water management area."
16

17 13. That there have been unnecessary delays in the delivery of ground water to
18 petitioner A&B and in taking action to insure future delivery to petitioner A&B of ground water
19 under its valid senior ground water rights.

20 DATED this 16th day of March, 2007.

21 LING, ROBINSON & WALKER


22
23
24 By: 
25 Roger D. Ling
26 Attorneys for Petitioner
27 A & B Irrigation District
28

VERIFICATION

STATE OF IDAHO)
) ss.
 County of Minidoka)

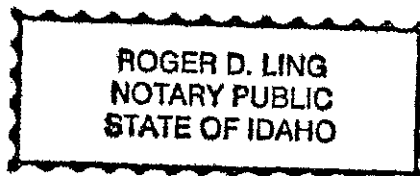
Dan Temple, Manager of A & B Irrigation District, being first duly sworn on his oath, deposes and states:

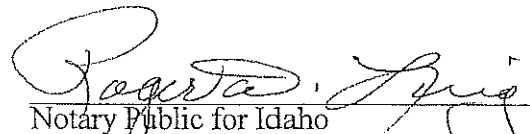
That he is the Manager of A & B Irrigation District, petitioner in the above-entitled matter, that he has read the above and foregoing *Motion to Proceed*, knows the contents thereof, and the facts stated he believes to be true.


 Dan Temple, Manager
 A & B Irrigation District

SUBSCRIBED AND SWORN to before me this 16th day of March, 2007.

(SEAL)




 Notary Public for Idaho
 Residing at: Rupert, Idaho
 My Commission expires: 10-30-2012

ATTACHMENT F

ROBINSON & ASSOCIATES

ATTORNEYS AT LAW

615 "H" STREET

P. O. BOX 396

RUPERT, IDAHO 83350-0396

AREA CODE 208
TELEPHONE 436-4717
FAX 436-6804

BRENT T. ROBINSON

KELLY ARTHUR ANTHON

MICHAEL P. TRIBE

ROGER D. LING, OF COUNSEL

June 15, 2007

David R. Tuthill, Jr., Director
State of Idaho
Department of Water Resources
P. O. Box 83720
Boise, ID 83720-0098

RE: Ground Water Delivery Call of A & B Irrigation District

Dear Director Tuthill:

It has recently come to my attention that you have expressed to numerous persons, including the Interim Legislative Committee on June 12, 2007, that A & B Irrigation District has not requested any action in 2007 on its 1994 petition for the delivery of ground water and designation of the ESPA as a ground water management area. If the reports I have received are correct, you misunderstood my comments as the attorney for A & B Irrigation District at the status conference in which all pending delivery calls were discussed. For this reason, the position of A & B Irrigation District needs to be again stated in no uncertain terms. A & B Irrigation District expects you, as Director, to proceed in 2007 with the designation of the ESPA as a ground water management area and that curtailment orders for 2008 be issued prior to September 1, 2007 to stabilize and recover the aquifer from the effects of excessive ground water withdrawals on the aquifer from which A & B Irrigation District relies to provide a reasonably safe supply of water for irrigation of its lands.

In the Petition of A & B Irrigation District dated July 26, 1994, the District stated the factual basis upon which, in its prayer for relief, requested that the Director designate the Eastern Snake Plain Aquifer as a ground water management area as provided by § 42-233b, Idaho Code, and to otherwise supervise the allotment of water from and the use of water from the ground water management area above described to insure the full utilization of the water rights of the petitioner for the benefit of the lands within A & B Irrigation District. In these delivery call proceedings, the then-Director of IDWR R. Keith Higgenson entered his Pre-Hearing Conference Order dated May 1, 1995. In that Order, the Director commented that the Idaho Department of Water Resources would give further consideration to designation of a ground water management area. It was noted that this proposed action can be held in abeyance under the retained jurisdiction of the IDWR. The Director then ordered: "IDWR retains jurisdiction of the petition for the purpose of continued review of information

David R. Tuthill, Jr., Director
Department of Water Resources
June 15, 2007
Page 2

concerning water supply, the impact of use of ground water on other uses of the resource, and the determination and designation of the ESPA as a ground water management area."

It should be noted that the Petition of A & B Irrigation District dated July 27, 1994 was not the first request from A & B Irrigation District that the Department initiate and undertake, as early as possible, a comprehensive study of all aspects of the ground water supply in the area from which the lands of the irrigation district derive their full water supply by pumping from underground sources, looking toward the issuance of a critical ground water area order if the findings and conclusions of the Department justify it. This request was set forth in a Resolution of the Board of Directors of the District and sent to the Director of the Idaho Department of Reclamation (now known as the Idaho Department of Water Resources) dated May 1, 1962. A & B Irrigation District received a response from Geo. N. Carter, State Reclamation Engineer, dated May 9, 1962 in which the irrigation district was advised that the Department of Reclamation had been considering the serious depletion of ground water supplies over the state and that studies were underway and will be completed in the very near future at which time a decision will be given in response to the Resolution.

In the Motion to Proceed filed on behalf of A & B Irrigation District dated March 16, 2007, A & B Irrigation District specifically requested the creation of a ground water management area and that the Director proceed, without delay, in the administration of the Eastern Snake Plain Aquifer in such a manner as to provide ground water to A & B Irrigation District under its ground water rights that are being interfered with and materially injured by junior ground water appropriators in the ESPA on the grounds set forth in said Motion. I did indicate to you during the informal status conference above referred to, that A & B Irrigation District did not expect the curtailment of junior appropriators from the Eastern Snake Plain Aquifer to be curtailed in 2007 as the irrigation season was well underway and crops had been planted. At the same time, I indicated to you that A & B Irrigation District expected you to proceed in the designation of the Eastern Snake Plain Aquifer as a ground water management area and that you approve a ground water management plan for the area which will provide for managing the effects of ground water withdrawals on the aquifer from which withdrawals are made and on any other hydraulically connected sources of water. These are obligations imposed upon the Director by Idaho Code § 42-233b, which further provides that upon the determination that the ground water supply is insufficient to meet the demands of water rights within all or portions of a water management areas, the Director shall order those water right holders on a time-priority basis, within the area determined by the Director, to cease or reduce the withdrawal of water until such time as the Director determines there is sufficient ground water. Such order shall be given only before September 1 and shall be effective for the growing season during the year following the date the order is given. Because of these statutory obligations, and our request, we expected that these matters would be completed in a timely manner so that appropriate curtailment orders could be issued before September 1 as provided by the statute.

David R. Tuthill, Jr., Director
Department of Water Resources
June 15, 2007
Page 3

Unless immediate action is taken to meet the obligations of I.C. § 42-233b, we will have no alternative but to seek an order from a court of competent jurisdiction to order that you carry out these duties. Studies that have been ongoing by your agency since at least 1962 should be sufficient to provide you with the information necessary to make the determinations requested and directed to be made by the laws of the State of Idaho.

I certainly hope that this letter clarifies the position of A & B Irrigation District on acts that it expects to be taken immediately in response to its petition for the creation of a ground water management area.

Very truly yours,


Roger D. Ling

RDL:jb

pc: A & B Irrigation District
Honorable C. L. "Butch" Otter, Governor
Chairman, Interim Legislative Committee