

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

RANGEN, INC.,

Petitioner,

vs.

THE IDAHO DEPARTMENT OF WATER  
RESOURCES and GARY SPACKMAN, in  
his capacity as Director of the Idaho  
Department of Water Resources,

Respondents,

and

IDAHO GROUND WATER  
APPROPRIATORS, INC. and SALMON  
FALLS LAND & LIVESTOCK CO.,

Intervenors.

Case No. CV-2014-2935

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**IDAHO DEPARTMENT OF WATER RESOURCES'  
BRIEF IN RESPONSE TO RANGEN, INC.'S OPENING BRIEF**

Judicial Review from the Idaho Department of Water Resources

Honorable Eric J. Wildman, District Judge, Presiding

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## STATEMENT OF CASE

### A. NATURE OF THE CASE & PROCEDURAL BACKGROUND

This is a judicial review proceeding in which Rangen, Inc. (“Rangen”), appeals an order issued by the Director (“Director”) of the Idaho Department of Water Resources (“Department”) responding to a mitigation plan filed by the Idaho Ground Water Appropriators, Inc. (“IGWA”), pursuant to the Conjunctive Management Rules (“CM Rules”).<sup>1</sup> The order appealed is the June 20, 2014; *Order Approving IGWA’s Second Mitigation Plan, Order Lifting Stay Issued April 28, 2014; Second Amended Curtailment Order* (“Second Mitigation Plan Order”).<sup>2</sup>

Issues raised in this appeal stem from the *Petition for Delivery Call* filed by Rangen with the Department on December 13, 2011, alleging Rangen is not receiving all of the water it is entitled to pursuant to water right nos. 36-2551 and 36-7694, and is being materially injured by junior-priority ground water pumping. In the delivery call proceeding, the Director issued the *Final Order Regarding Rangen, Inc.’s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962* (“Curtilment Order”). The Director concluded his material injury determination could only focus on water diverted by Rangen from the Martin-Curren Tunnel (sometimes referred to as “Curren Tunnel”) because the source element on Rangen’s partial decrees is unambiguously described as “Martin-Curren Tunnel.” *Curtilment Order* at 32-33; R. p. 32-33. The Director also concluded Rangen is being materially injured by junior-priority ground water pumping. *Id.* at 36; R. p. 36.

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<sup>1</sup> The term “Conjunctive Management Rules” or “CM Rules” refers to the *Rules for Conjunctive Management of Surface and Ground Water Resources*, IDAPA 37.03.11.

<sup>2</sup> IGWA and Salmon Falls Land & Livestock Co. filed notices of appearance in this matter. This Court treated the notices of appearance as motions to intervene and granted the same on September 2, 2014.

The Eastern Snake Plain Aquifer Model (“ESPAM”) is a calibrated regional ground water model representing the Eastern Snake Plain Aquifer (“ESPA”). In the Curtailment Order, the Director adopted ESPAM 2.1 to model the stresses to the ESPA as a result of ground water pumping. ESPAM 2.1 simulations predicted that 9.1 cfs of the decline in the flow from the Martin-Curren Tunnel are attributable to junior-priority ground water pumping west of the Great Rift and in the area of common ground water supply. *Id.* at 35; R. p. 35. The Director ordered curtailment of junior-priority ground water rights, but that such curtailment could be avoided if the junior ground water users participated in a mitigation plan that would provide “simulated steady state benefits of 9.1 cfs to Curren Tunnel or direct flow of 9.1 cfs to Rangen.” *Id.* at 42; R. p. 42. The Curtailment Order explained that mitigation provided to Rangen “may be phased-in over not more than a five-year period pursuant to CM Rule 40 as follows: 3.4 cfs the first year, 5.2 cfs the second year, 6.0 cfs the third year, 6.6 cfs the fourth year, and 9.1 cfs the fifth year.” *Id.*

On February 11, 2014, IGWA filed with the Department *IGWA’s Mitigation Plan and Request for Hearing* (“First Mitigation Plan”) which set forth nine proposals to avoid the curtailment imposed by the Curtailment Order.<sup>3</sup> On February 12, 2014, IGWA filed *IGWA’s Petition to Stay Curtailment, and Request for Expedited Decision*. On February 21, 2014, the Director issued an *Order Granting IGWA’s Petition to Stay Curtailment* which stayed enforcement of the Curtailment Order for members of IGWA and the non-member participants in IGWA’s First Mitigation Plan until a decision was issued on the First Mitigation Plan. R. p. 106.

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<sup>3</sup> IGWA submitted the Mitigation Plan on behalf of its members and non-member participants in IGWA-sponsored mitigation activities.

A hearing was held on the First Mitigation Plan on March 17-19, 2014. On April 11, 2014, the Director issued an *Order Approving in Part and Rejecting in Part IGWA's Mitigation Plan; Order Lifting Stay Issued February 21, 2014; Amended Curtailment Order*. The Director approved partial mitigation credit for only two proposals: (1) IGWA's past and ongoing aquifer enhancement activities (conversions from ground water irrigation to surface water irrigation, voluntary "dry-ups" of acreage irrigated with ground water through the Conservation Reserve Enhanced Program ("CREP") or other cessation of irrigation with ground water, and ground water recharge); and (2) exchange of irrigation water diverted from the Martin-Curren Tunnel by Howard (Butch) and Rhonda Morris (hereafter referred to in the singular as "Morris") with operational spill water from the North Side Canal Company ("Morris exchange agreement"). *Amended Order Approving in Part and Rejecting in Part IGWA's Mitigation Plan; Order Lifting Stay Issued February 21, 2014; Amended Curtailment Order* ("First Mitigation Plan Order") at 4; R. p. 294.

The Director granted IGWA 1.2 cfs of transient mitigation credit for the annual period from April 1, 2014, through March 31, 2015, because of its past and ongoing aquifer enhancement activities. *Id.* at 21; R. p. 311. The Director granted IGWA 1.8 cfs of mitigation credit for the annual period from April 1, 2014, through March 31, 2015, for direct delivery of surface water from the Martin-Curren Tunnel to Rangen as a result of the Morris exchange agreement. *Id.* In total, the Director granted IGWA 3.0 cfs of mitigation credit for the annual period from April 1, 2014, through March 31, 2015. *Id.* This was 0.4 cfs less than the 3.4 cfs annual mitigation requirement set forth in the Curtailment Order. *Id.* Accordingly, the Director used ESPAM 2.1 to calculate the priority date of junior ground water rights that must be curtailed during the 2014 irrigation season to provide 0.4 cfs to Rangen. The Director

determined ground water rights bearing priority dates junior or equal to July 1, 1983, must be curtailed to provide 0.4 cfs to Rangen. *Id.*

On April 25, 2014, Rangen filed *Rangen's Motion for Reconsideration of Order Re: IGWA's Mitigation Plan; Order Lifting Stay; Amended Curtailment Order* ("Motion for Reconsideration") challenging the Director's method of determining mitigation credit for the Morris exchange agreement. On May 16, 2014, the Director issued both the *Final Order on Reconsideration* and the First Mitigation Plan Order.<sup>4</sup> Rangen's petition for judicial review of the First Mitigation Plan Order in Case No. CV-2014-2446, currently pending before this Court, challenged the Director's determination of mitigation credit for IGWA's past and ongoing aquifer enhancement activities and the Morris exchange agreement.

On March 10, 2014, during the pendency of the First Mitigation Plan proceeding, IGWA filed with the Department *IGWA's Second Mitigation Plan and Request for Hearing* ("Second Mitigation Plan") in response to the Curtailment Order. The Second Mitigation Plan proposed delivery of up to 9.1 cfs of water from Tucker Springs, a tributary to Riley Creek, through a 1.3 mile pipeline to the fish research and propagation facility owned by Rangen ("Rangen Facility"). *Second Mitigation Plan* at 2; R. p. 125. The Second Mitigation Plan was protested by Rangen; Buckeye Farms, Inc. ("Buckeye"); Big Bend Irrigation & Mining Company, Ltd. ("Big Bend Ditch"); Salmon Falls Land & Livestock Company ("Salmon Falls"); and Big Bend Trout, Inc. ("Big Bend Trout").

On April 17, 2014, IGWA filed *IGWA's Second Petition to Stay Curtailment, and Request for Expedited Decision* ("Second Petition"). The Second Petition asked the Director to

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<sup>4</sup> A *Petition for Reconsideration and Clarification* was also filed by IGWA. In addressing this petition, the Director determined some modifications to the Mitigation Plan Order were necessary but denied the bulk of the petition. IGWA did not appeal either order.

“stay implementation of the [Curtailment Order], . . . until the judiciary completes its review of the Curtailment Order in *IGWA v. IDWR*, Gooding County Case No. CV-2014-179, and *Rangen v. IDWR*, Twin Falls County Case No. CV-2014-1338.” R. p. 178. On April 28, 2014, the Director issued an *Order Granting IGWA’s Second Petition to Stay Curtailment* stating the Director would revisit the stay at the time a decision on the Second Mitigation Plan was issued. R. p. 180.

On June 4-5, 2014, the Director conducted a hearing for the Second Mitigation Plan. On June 20, 2014, the Director issued the Second Mitigation Plan Order. No motions for reconsideration of the Second Mitigation Plan Order were filed. This appeal challenges the Director’s approval of the Second Mitigation Plan.

## **B. STATEMENT OF FACTS**

### **I. Tucker Springs Diversion Proposal**

The Rangen Facility is a fish research and propagation facility owned and operated by Rangen in the Thousands Springs area near Hagerman, Idaho. Tucker Springs are a series of springs that derive water from the ESPA and are located approximately two miles southwest of the Rangen Facility. Tucker Springs are tributary to Riley Creek, a short spring fed stream which flows in a northwesterly direction towards the Idaho Department of Fish and Game (“Fish & Game”) Hagerman State Hatchery before turning south and flowing to the Snake River.

Tucker Springs are divided into an Upper Tucker Springs Complex and a Lower Tucker Springs Complex. IGWA’s Second Mitigation Plan proposes to pump up to 10 cfs of Fish & Game water right no. 36-2055 from the Upper Tucker Springs Complex and deliver the Tucker Springs water via a pipeline to the Rangen Facility located at the head of Billingsley Creek. Ex. 1111 at 4. Water right no. 36-2055 authorizes the diversion of 64 cfs for fish propagation

purposes from Upper Tucker Springs and Riley Creek and bears a priority date of September 16, 1947. *Id.* North Snake Ground Water District (“NSGWD”), Magic Valley Ground Water District, and Southwest Irrigation District filed an application for water right transfer on behalf of Fish & Game proposing to change the place of for water right no. 36-2055. *Id.* at 43-48.

Exhibit 1138 is an aerial photograph of the Upper Tucker Springs Complex, and is attached as Appendix A. Within the Upper Tucker Springs Complex is an upper pool and a lower pool. Both the upper and lower pools of the Upper Tucker Springs Complex are depicted on Appendix A.

The location of diversion head works for several water rights are depicted on Appendix A. Idaho Power Company, Protestant Big Bend Ditch and Fish & Game divert water out of the upper pool. Ex. 1138. In addition to diverting water from the upper pool, Protestant Salmon Falls holds a water right authorizing the diversion of water from Riley Creek downstream from the Hagerman State Hatchery. Hardgrove, Tr. Vol. I, p. 164; Ex. 1105 at 3. Protestant Buckeye does not divert water directly from the Upper Tucker Springs Complex, but relies on flows from Tucker Springs to satisfy its water rights authorizing diversion from Riley Creek downstream from the Hagerman State Hatchery. Ex. 1102 at 1-2. Protestant Big Bend Trout only diverts water from the Lower Tucker Springs Complex. Hardgrove, Tr. Vol. I, p. 192.

In addition to its diversions from the upper pool, Fish & Game diverts water from the lower pool of the Upper Tucker Springs complex through four buried perforated collection pipes and a surface water intake at a collection box. Chapman, Tr. Vol. II, pp. 322, 356. Fish & Game currently diverts over 40 cfs into this collection box and through their large pipe to the Hagerman State Hatchery. Ex. 1138; Hardgrove, Tr. Vol. I, p. 153. Fish & Game’s diversion through its large pipe is the only diversion made out of the lower pool. Hardgrove, Tr. Vol I., p. 164.

IGWA executed a letter of intent with Fish & Game providing that Fish & Game will lease to IGWA 10 cfs of its Tucker Springs water rights as needed to meet IGWA's mitigation obligation to Rangen. Ex. 1106 at 1-2. The agreement is contingent upon (a) IGWA securing an order from the Department approving a mitigation plan providing for the delivery of 10 cfs from Fish & Game's Tucker Springs water rights to satisfy the mitigation obligation to Rangen; (b) IGWA securing an order from the Department approving the transfer of the point of diversion and place of use of the 10 cfs to the Rangen facility; and (c) IGWA proceeding to implement the plan. *Id.* at 2. In return, Fish & Game will receive title to a second fish hatchery, known as the Aqua Life Aquaculture Facility, and IGWA will pay the costs to upgrade the second fish hatchery. *Id.*

At the time of the hearing, engineers for IGWA had completed sixty percent of the engineering design necessary to construct the Tucker Springs project. Ex. 1111 at 4. The engineering design calls for the construction of a second collection box in the lower pool of the Upper Tucker Springs Complex near the Fish & Game collection box. *Id.* at 8. A pumping station will be constructed to pump water through a buried pipeline to the head of the Rangen Facility. *Id.* at 4. The buried pipeline will be approximately 1.8 miles long. *Id.* IGWA's engineers prepared sixty percent design drawings showing the spring collection box, pump station, pipeline alignment, and tie-in to the Rangen Facility pipeline. Ex. 1111.

IGWA's design engineer testified that the project can be completed by April 1, 2015. Hardgrove, Tr. Vol. I, p. 181; *see also* Ex. 1111, Fig. 7. He testified that the bulk of construction would be wrapped up and water could possibly be delivered in January



2015, but certain areas would need to be re-vegetated so the project would not be officially complete until April 2015. *Id.* at 182, 214.

## **ISSUES PRESENTED ON APPEAL**

Respondents' formulation of the issues presented on appeal by Rangen is as follows:

1. Whether the Director acted in compliance with the CM Rules and prior appropriation doctrine in approving the Second Mitigation Plan.
2. Whether the Director acted within the limits of his discretion in considering the First and Second Mitigation Plans together.
3. Whether the Director's approval of the Second Mitigation Plan adequately addressed injury to others.
4. Whether the Director's approval of the Second Mitigation Plan is a taking of Rangen's property rights.

## STANDARD OF REVIEW

Judicial review of a final decision of the Department is governed by the Idaho Administrative Procedure Act (“IDAPA”), chapter 52, title 67, Idaho Code. I.C. § 42-1701A(4). Under IDAPA, the Court reviews an appeal from an agency decision based upon the record created before the agency. Idaho Code § 67-5277; *Dovel v. Dobson*, 122 Idaho 59, 61, 831 P.2d 527, 529 (1992). The Court shall affirm the agency decision unless it finds the agency’s findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion. Idaho Code § 67-5279(3); *Barron v. Idaho Dept. of Water Resources*, 135 Idaho 414, 417, 18 P.3d 219, 222 (2001). The party challenging the agency decision must show that the agency erred in a manner specified in Idaho Code § 67-5279(3), and that a substantial right of the petitioner has been prejudiced. Idaho Code § 67-5279(4); *Barron*, 135 Idaho at 417, 18 P.3d at 222. “Where conflicting evidence is presented that is supported by substantial and competent evidence, the findings of the [agency] must be sustained on appeal regardless of whether this Court may have reached a different conclusion.” *Tupper v. State Farm Ins.*, 131 Idaho 724, 727, 963 P.2d 1161, 1164 (1998). If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary. *Idaho Power Co. v. Idaho Dep’t of Water Res.*, 151 Idaho 266, 272, 255 P.3d 1152, 1158 (2011).

## ARGUMENT

### A. THE DIRECTOR HAS COMPLIED WITH THE CM RULES AND PRIOR APPROPRIATION DOCTRINE

The Director concluded that IGWA's Second Mitigation Plan "is an acceptable mitigation plan under the CM Rules" and "[t]he plan adequately describes the actions that will be taken by IGWA to mitigate material injury to Rangen by pumping water from Tucker Springs to the Rangen Facility for the beneficial purpose of fish propagation." *Second Mitigation Plan Order* at 16; R. p. 552. Rangen challenges this determination and argues the Director "exceeded his authority" by allowing out-of-priority ground water pumping to continue unabated from the date of the Curtailment Order (January 29, 2014) through the date of approval of the Second Mitigation Plan (June 20, 2014) "without even a nominally approved mitigation plan." *Opening Brief* at 9.

Rangen's assertion is misplaced. The CM Rules and doctrine of prior appropriation require that, upon a determination of material injury, out-of-priority pumping may only be allowed pursuant to a mitigation plan that has been approved by the Director. IDAPA 37.03.11.040.01; *In Matter of Distribution of Water to Various Water Rights Held By or For Ben. of A & B Irrigation Dist.*, 155 Idaho 640, 653-54, 315 P.3d 828, 841-42 (2013). Under Idaho law, the Director also has discretion to enter an order granting or denying a request for stay. *Order Denying Application for Alternative Writ of Mandate*, Case No. CV-2014-272 (Fifth Jud. Dist. Ct. May 23, 2014); IDAPA 37.01.01.780; I.C. § 67-5274 and I.R.C.P. 84(m); *See also Bank of Idaho v. Nesseth*, 104 Idaho 842, 846, 664 P.2d 270, 274 (1983).

Here, as required by CM Rule 40 and the prior appropriation doctrine, the Director has only allowed out-of-priority ground water pumping pursuant to properly issued stays and approved mitigation plans. Specifically, in response to Rangen's 2011 *Petition for Delivery*

*Call*, the Director determined Rangen is being materially injured by junior-priority ground water pumping. The Director ordered curtailment of junior-priority ground water rights during the 2014 irrigation season unless the junior water users participated in a mitigation plan that would provide mitigation as set forth in the Curtailment Order. After issuance of the Curtailment Order, IGWA filed the First Mitigation Plan and a petition to stay curtailment until a decision was made on the First Mitigation Plan, which was granted by the Director on February 21, 2014. The First Mitigation Plan Order determined IGWA was entitled to some mitigation credit, but a mitigation deficiency of 0.4 cfs remained. Therefore, the Director lifted the February 21, 2014, stay and ordered curtailment of junior ground water users during the 2014 irrigation season to make up for the deficiency.

During the pendency of the First Mitigation Plan proceeding, IGWA filed the Second Mitigation Plan. Shortly after the Director issued the First Mitigation Plan Order lifting the stay entered on February 21, 2014, IGWA filed a second petition to stay curtailment. On April 28, 2014, the Director issued an *Order Granting IGWA's Second Petition to Stay Curtailment* stating the Director would revisit the stay at the time a decision on the Second Mitigation Plan was issued. In the Second Mitigation Plan Order, the Director recalculated the period of time the Morris exchange agreement is recognized as mitigation equal to the number of days the water will provide full mitigation to Rangen. Pursuant to this calculation, the Second Mitigation Plan Order grants IGWA 3.4 cfs of mitigation credit, the full amount of mitigation required by the Curtailment Order for the first year of phased-in-curtailment, until January 19, 2015. At that point, junior priority ground water pumpers will be curtailed unless another mitigation plan has been approved and is providing the water to Rangen.

As this discussion demonstrates, out-of-priority ground water pumping only continued after issuance of the Curtailment Order and up until issuance of the Second Mitigation Plan Order in accordance with the CM Rules and prior appropriation doctrine pursuant to the Director's exercise of discretion in issuance of a stay on February 21, 2014; approval of the First Mitigation Plan; and issuance of a second stay on April 28, 2014. Rangen has not appealed the Director's issuance of stays on February 21, 2014, and April 28, 2014, and may not challenge those stays in this proceeding. Rangen's petition for judicial review of the First Mitigation Plan Order is currently pending before this Court (Case No. CV-2014-2446). Therefore, any challenges to the First Mitigation Plan Order may not be heard in this proceeding.

Rangen further asserts the Director has allowed out-of-priority ground water pumping to occur since approval of the Second Mitigation Plan even though "[n]ot a single drop of additional water has been provided to Rangen." *Opening Brief* at 9. This assertion is false. IGWA's aquifer enhancement activities have resulted in additional delivery of water to Rangen as recognized in the First Mitigation Plan Order. Additionally, because of the Director's approval of the First Mitigation Plan Order, Rangen has received water that would have otherwise been unavailable to Rangen but for the Morris exchange agreement. Specifically, in 2014, Morris entered into a contract with NSGWD formally authorizing NSGWD to use Morris's senior water rights out of the Curren Tunnel "as needed to provide mitigation water to Rangen to satisfy the IDWR Director's January 29, 2014 Order curtailing 157,000 acres of ground water rights junior to July 13, 1962." Ex. 1016 (Case No. CV-2014-2446).<sup>5</sup> In

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<sup>5</sup> A copy of this exhibit is attached hereto as Appendix B. This exhibit was included in the record of Case No. CV-2014-2446. The Court may take judicial notice of the exhibit pursuant to IRE 201(d). If a party moves the Court to "take judicial notice of records, exhibits or transcripts from the court file in the same or a separate case, the party shall identify the specific documents or items for which the judicial notice is requested or shall proffer to the court and serve on all the parties copies of such documents or items. A court shall take judicial notice if requested

exchange, NSGWD agreed Morris may continue to use the Sandy Pipeline to deliver irrigation water to his lands. *Id.* This agreement entered into by Morris to exchange his senior decreed water rights with NSGWD results in actual “wet” water being made available to Rangen that would have been diverted and used by Morris (and thus not available to Rangen) but for the agreement. *See* Ex. 1016 (“Were it not for the Sandy Pipeline, Morris would take all water available from the Martin-Curren Tunnel under the Morris Rights for irrigation purposes.”). The Director has complied with the CM Rules and prior appropriation doctrine and has not allowed out-of-priority ground water pumping absent properly issued stays and approved mitigation plans.

Rangen also argues curtailment of junior-priority ground water users once the Morris exchange agreement expires is an insufficient contingency provision to protect Rangen in the event water is not delivered under the Second Mitigation Plan. *Opening Brief* at 18. Rangen asserts that, because IGWA’s members primarily use water during the irrigation season, “such a threat carries little weight during the non-irrigation season.” *Id.* Rangen also asserts the Director violated CM Rule 43 by failing to provide any mechanism for monitoring or adjustments to the amount of credit for the Morris exchange agreement as Curren Tunnel measurements become available during the year. *Id.* at 12. Rangen concludes the “entire risk that water will not be delivered in the future [is placed] upon Rangen, the senior water right holder.” *Id.* at 19.

The risk that water will not be delivered to Rangen in accordance with the Second Mitigation Plan Order is not placed upon Rangen. The Second Mitigation Plan Order recognized full mitigation credit for the first-year mitigation obligation of 3.4 cfs until the Morris exchange

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by a party and supplied with the necessary information.” IRE 201(d) emphasis added. “Judicial notice may be taken at any stage of the proceeding.” IRE 201(f).



agreement expires on January 19, 2015. There is an expectation of additional water being delivered to Rangen by the Second Mitigation Plan during the first year of phased-in mitigation. The Department monitors activities conducted pursuant to approved mitigation plans in order to ensure compliance with mitigation requirements and if IGWA fails to comply with those requirements junior ground water right holders will be curtailed. *See Order Curtailing Ground Water Rights in Water District Nos. 130 & 140 Junior to January 8, 1981, In the Matter of Distribution of Water to Water Rights Nos. 36-04013A, 36-04013B, and 36-07148 (Snake River Farm)(July 22, 2009).*<sup>6</sup> The Director's Second Mitigation Plan Order protects Rangen in the event water is not delivered under the Second Mitigation Plan. If additional water is not delivered pursuant to the Second Mitigation Plan or some other approved mitigation plan to supply the 2.2 cfs mitigation deficiency<sup>7</sup> that will exist once the Morris exchange agreement expires, junior-priority ground water pumpers will be curtailed. The Department will require IGWA to make up any shortfall in mitigation before the curtailment will be lifted. While curtailment will apply first to the year-round water users, it will equally apply to junior priority irrigators and will prevent them from commencing irrigation until all mitigation requirements are met. Curtailment of these water users provides a sufficient contingency provision to protect

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<sup>6</sup> A copy of this decision is attached hereto as Appendix C. This decision the subject of a *Motion for Stay* filed by North Snake Ground Water District and Magic Valley Ground Water District in Gooding County Case No. CV 2009-431 and was included in the record of that case as Exhibit 14 to the Affidavit of Randal C. Budge (Aug. 11, 2009). The Court may take judicial notice of this decision pursuant to IRE 201(d). If a party moves the Court to "take judicial notice of records, exhibits or transcripts from the court file in the same or a separate case, the party shall identify the specific documents or items for which the judicial notice is requested or shall proffer to the court and serve on all the parties copies of such documents or items. A court shall take judicial notice if requested by a party and supplied with the necessary information." IRE 201(d) emphasis added. "Judicial notice may be taken at any stage of the proceeding." IRE 201(f).

<sup>7</sup> Rangen mistakenly asserts there will be a remaining mitigation obligation of .4 cfs under the Second Mitigation Plan Order unless the Tucker Springs Project is built and water is actually delivered on January 19, 2014. *Opening Brief* at 11-12. Instead, once the Morris exchange agreement expires under the Second Mitigation Plan Order, there will be a mitigation deficiency of 2.2 cfs (i.e. 3.4 cfs obligation for the first year of phased-in curtailment, minus 1.2 cfs mitigation credit for aquifer enhancement activities, equals a 2.2 cfs mitigation deficiency).

Rangen and will make up for any mitigation deficiency remaining once the Morris exchange agreement expires.

**B. THE DIRECTOR ACTED WITHIN THE LIMITS OF HIS DISCRETION IN CONSIDERING THE FIRST AND SECOND MITIGATION PLANS TOGETHER**

One issue that arose in the Second Mitigation Plan proceeding is how the Second Mitigation Plan relates to the First Mitigation Plan. The Director was required to rule on the First Mitigation Plan without considering the merits of any subsequent mitigation plans. For consistency and direct comparison to the mitigation requirement established in the Curtailment Order for the first year of phased-in mitigation (3.4 cfs), the Director employed an annual time period in the First Mitigation Plan Order to evaluate the average benefit provided by IGWA's aquifer enhancement activities and the average benefit provided by IGWA's delivery of water pursuant to the Morris exchange agreement. The Director recognized 1.2 cfs of mitigation credit for the annual benefits of transient aquifer enhancement activities. *Amended Mitigation Plan Order* at 21; R. p. 311. The Director also recognized 1.8 cfs of mitigation credit for direct delivery of surface water from the Martin-Curren Tunnel to Rangen as a result of the Morris exchange agreement. *Id.*

To derive the 1.8 cfs of mitigation credit in the First Mitigation Plan Order, the twelve average irrigation season flow rates from the Martin-Curren Tunnel for the years 2002 – 2013 were averaged, resulting in a predicted average flow rate for the 2014 irrigation season of 3.7 cfs. *Id.* at 9-10; R. p. 299-300. The Director allocated approximately 0.2 cfs to account for senior water rights diverting from the Curren Tunnel and credited the Morris exchange agreement with providing an average flow of 3.5 cfs for 184 days (the number of days Morris irrigates crops), or a total volume of 644 24-hour second feet (3.5 cfs x 184 days). *Id.* at 12-13; R. p. 302-03.

Employing an annual time period to evaluate the average benefit, the Director determined IGWA

is entitled to 1.8 cfs of mitigation credit for the Morris exchange agreement (3.5 cfs x 184 days/365 days). *Id.* In total, the Director granted IGWA 3.0 cfs of mitigation credit for April 1, 2014, through March 31, 2015, which was 0.4 cfs less than the 3.4 cfs mitigation requirement established in the Curtailment Order. *Id.* at 21; R. p. 311. Therefore, the Director used ESPAM 2.1 to calculate the priority date of junior ground water rights that must be curtailed during the 2014 irrigation season to provide 0.4 cfs to Rangen. *Id.*

In approving the Second Mitigation Plan, the Director acted within the limits of his discretion in determining how to respond to a delivery call by considering the components of the First Mitigation Plan in conjunction with components of the Second Mitigation Plan. *See American Falls Res. Dist. No.2 v. Idaho Dept. Water Resources*, 143 Idaho 862, 875, 154 P.3d 433, 446 (2007) ("Given the nature of the decisions which must be made in determining how to respond to a delivery call, there must be some exercise of discretion by the Director.").<sup>8</sup> In the Second Mitigation Plan hearing, IGWA established April 1, 2015, as the target date for completion of the diversion and delivery works for piping water from Tucker Springs to the Rangen Facility, but IGWA's expert engineer testified that water could possibly be delivered as soon as January 2015. Hardgrove, Tr. Vol. I, p. 182, 214. In order to dovetail the First Mitigation Plan into the Second Mitigation Plan, and because there is an expectation of additional water being delivered to Rangen by the Second Mitigation Plan during the first year of phased-in mitigation, the Director acted within the limits of his discretion by recalculating the period of time the Morris exchange agreement is recognized as mitigation to equal the number of days the water will provide full mitigation to Rangen. Specifically, the flow rate of water that

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<sup>8</sup> The Director notes that Rule 43 of the CM Rules is silent about how two mitigation plans should interact, particularly where a final order of the Director has previously approved one mitigation plan, and the consideration of a second mitigation plan might affect the implementation of the already approved mitigation plan.

must be delivered by the Morris exchange agreement to provide full mitigation during the first year of phased-in mitigation is 3.4 cfs minus 1.2 cfs (credit for aquifer enhancement activities), leaving a remainder mitigation obligation of 2.2 cfs. *Second Mitigation Plan Order* at 17; R. p. 553. The First Mitigation Plan Order credited the Morris exchange agreement with providing a total volume of 644 24-hour second feet (3.5 cfs x 184 days). This same volume will provide an average rate of 2.2 cfs to Rangen for 293 days (3.5 x 184 days/2.2 cfs), or until January 19, 2015. *Id.* at 18; R. p. 554. Accordingly, the Director ordered that the April 28, 2014, stay was lifted and failure to deliver 2.2 cfs to Rangen from Tucker Springs by January 19, 2015, will result in curtailment of water rights junior or equal to August 12, 1973, unless another mitigation plan has been approved and is providing the required water to Rangen. *Id.*

The Director's decision to recalculate the period of time the Morris exchange agreement is recognized as mitigation in approving the Second Mitigation Plan was reached through an exercise of reason and is within the limits of the Director's discretion in determining how to respond to delivery calls. Contrary to Rangen's assertion, this decision is not arbitrary and capricious or an abuse of discretion and must be affirmed.

**C. THE DIRECTOR ADEQUATELY ADDRESSED INJURY IN APPROVAL OF THE SECOND MITIGATION PLAN**

**1. Transmission of Disease to the Rangen Facility**

Rangen argues "[t]he Director abused his discretion by approving a mitigation plan that will likely result in the willful transmission of a previously unknown and untreatable disease [i.e. proliferative kidney disease ("PKD")] from Tucker Springs to the Rangen Research Hatchery and Billingsley Creek." *Opening Brief* at 18.

As the Director found in the Second Mitigation Plan Order, both the Hagerman State Hatchery and Rangen hatchery have experienced disease and it is normal practice of hatchery

management to treat for diseases. *Second Mitigation Plan Order* at 14; R. p. 550. The Director recognized that fish in the Hagerman State Hatchery suffer from several pathological maladies that have not been detected or have been controlled in the Rangen Facility, including PKD. *Id.*

The carrier of PKD is a water-borne parasite that is hosted by bryozoans and then transmitted in the water to the fish. *Id.* Fish & Game has not been able to identify the specific source of PKD in its large raceways or specifically link the disease to the Tucker Springs water source. *Id.* However, circumstantial evidence presented at the hearing suggests the parasite that causes PKD could live in the lower pool at Upper Tucker Springs. *Id.* Testimony presented at the hearing also demonstrated Fish & Game has treated the lower pool area to kill bryozoans and believes PKD can be remedied through modification of the spring headbox and disinfection of the pipeline supplying water to the Hagerman State Hatchery. *Id.* at 14-15; R. p. 550-51. In addition, Fish & Game indicated covering springs to limit access by animals can help limit transmission of disease. *Id.* at 15; R. p. 551. Rangen presented testimony indicating that locating the collection box close to the spring source would reduce the risk of contamination. Ramsey, Tr. Vol. II, p. 507.

Given the evidence presented at the hearing, the Director ordered that, in order to prevent transmission of PKD to the Rangen Facility, “IGWA must initiate preventive measures to address PKD, such as treating the lower pool to kill the intermediate host, disinfecting pipelines that may contain PKD or the intermediate host, and covering the spring area.” *Second Mitigation Plan Order* at 18; R. p. 554. The Director also required IGWA to “design the [collection] box to divert water at a location closer to the spring source to limit potential exposure to disease.” *Id.* The Director has not approved a mitigation plan that will likely result in transmission of PKD to the Rangen Facility.

## 2. Impacts to Other Water Users

The Second Mitigation Plan was protested by Rangen, Buckeye, Big Bend Ditch, Big Bend Trout, and Salmon Falls. In the Second Mitigation Plan hearing, Rangen and other protestants raised concerns that IGWA's transfer application cannot be approved because the transfer will result in injury to other water users on Tucker Springs and Riley Creek.

The Director discussed injury to other water users in approving the Second Mitigation Plan. Specifically, in the Second Mitigation Plan Order, the Director determined:

Rangen and other protestants argue that IGWA's transfer application cannot be approved because the transfer will result in injury to other water users on Tucker Springs and Riley Creek. Big Bend Ditch diverts only from the upper pool. Hardgrove, Tr. Vol. I, p. 195. A gravity based diversion out of the lower pool will not affect the water rights that divert from the upper pool. *Id.* at 196-97; Erwin, Tr. Vol. II, p. 406. Big Bend Trout diverts water from Lower Tucker Springs, not Upper Tucker Springs. Hardgrove, Tr. Vol. I, p. 192. A diversion from the lower pool of Upper Tucker Springs will not affect the Lower Tucker Springs. Hardgrove, Tr. Vol. I, p. 196-97. If IGWA is able to mitigate any potential injury to Protestant Buckeye, the Buckeye mitigation would likely mitigate injury to all other rights on Riley Creek. Erwin, Tr. Vol. II, p. 415. IGWA and Buckeye are currently discussing possible actions to mitigate any potential injury to Buckeye's water rights. Hardgrove, Tr. Vol. I, p. 190. During the hearing, IGWA and Buckeye stipulated that the Second Mitigation Plan will reduce flows available to Buckeye and that the reductions would need to be mitigated prior to development of the plan, if approved. Simpson, Tr. Vol. II, p. 371. IGWA is still analyzing potential impacts of the transfer on Salmon Falls. Hardgrove, Tr. Vol. I, p. 197. However, IGWA testified it plans to mitigate for any shortage it creates in Riley Creek. Carlquist, Tr. Vol. I, p. 139.

*Second Mitigation Plan Order* at 12-13; R. p. 548-49.

Rangen argues the Director failed to "ensure that injury to other water users was addressed prior to approval of the Second Mitigation Plan." *Opening Brief* at 15. However, as passage quoted above indicates, the Director recognized the stipulation between IGWA and Buckeye acknowledged the Second Mitigation Plan will reduce flows to Buckeye that IGWA

will need to mitigation for prior to development of the Tucker Springs project.<sup>9</sup> *Second Mitigation Plan Order* at 13; R. p. 549. With respect to Salmon Falls and other rights on Riley Creek, the Director determined that IGWA is analyzing potential impacts of the transfer on Salmon Falls and plans to mitigate for any shortages it creates on Riley Creek. *Id.* The Director recognized that, if IGWA is able to mitigate any potential injury to Protestant Buckeye, the Buckeye mitigation would likely mitigate injury to all other rights on Riley Creek. *Id.* The Director also determined that Big Bend Ditch diverts only from the upper pool of the Upper Tucker Springs Complex and a gravity-based diversion out of the lower pool will not affect the water rights that divert from the upper pool. *Id.* at 12; R. p. 548. In addition, the Director determined Big Bend Trout will not be impacted by the Second Mitigation Plan because a diversion from the lower pool of Upper Tucker Springs will not affect Lower Tucker Springs. *Id.* at 13; R. p. 549.

Importantly, as discussed by the Director in the Second Mitigation Plan Order, there is still pending a separate administrative proceeding on the transfer and the best place for issue of injury to other water users to be addresses is in that proceeding:

The Director will not prejudge the application for transfer in the contested case proceeding but must consider whether there is something in the application that would prevent it from being approved. Extensive testimony was presented about the potential for the transfer to cause injury. The plan will not injure water users diverting from the upper pool nor water users from Lower Tucker Springs. Testimony of IGWA's witnesses recognizes that IGWA must address the injury to water users diverting from Riley Creek and that IGWA is in negotiations with Buckeye, the entity with the water rights most likely to be affected by the transfer. The Director concludes it is possible for IGWA to adequately address the question of injury to other water users in the transfer proceeding. The Director concludes the Second Mitigation Plan should be approved conditioned upon the approval of the transfer application.

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<sup>9</sup> Rangen argues the Director violated the CM Rules by failing to require details of the stipulation between IGWA and Buckeye prior to approval of the Second Mitigation Plan. *Opening Brief* at 15. However, the CM Rules do not require this of the Director and Rangen cites no authority in support of this proposition.



*Second Mitigation Plan Order* at 16; R. p. 552. A transfer is a separate administrative contested case to consider injury to other water users required by Idaho Code §§ 42-108 and 42-222. The Department is required to separately publish notice of transfer applications and hold hearings on any protest that is filed with the Department. Idaho Code § 42-222(1). This obligation is separate and apart from the Director's duty to hold a hearing on a mitigation plan and may include different parties. Here, IGWA filed its transfer application and it is pending before the Department. It is appropriate in this circumstance where a transfer is pending to condition approval of the mitigation plan upon the final transfer approval.

Rangen also argues the Director's determination that diversions from the lower pool of the Upper Tucker Springs Complex will not affect other pools in Tucker Springs is not supported by substantial and competent evidence because "[t]here was no evidence presented regarding any hydrologic studies related to the relationship between the various pools of Upper and Lower Tucker Springs." *Opening Brief* at 15-16.

However, there is no requirement that hydrologic studies be presented in order for the Director to make determinations regarding impacts of diversions. The Director's determination that diversions from the lower pool of the Upper Tucker Springs Complex will not affect other pools in Tucker Springs is supported by substantial and competent expert testimony. *See Hardgrove, Tr. Vol. I at 165, 196-97; Erwin, Tr. Vol. II, p. 406.* Given this testimony, the Director determined the Second Mitigation Plan "will not injure water users diverting from the upper pool nor water users from Lower Tucker Springs." *Second Mitigation Plan Order* at 16; R. p. 552.

Rangen asserts this testimony relied upon by the Director is rendered inapplicable by imposition of the condition that IGWA move the collection box closer to the spring source.

*Opening Brief* at 16. While some testimony was specific to whether the Fish & Game collection box and collection box location proposed by the Second Mitigation Plan in the lower pool of the Upper Tucker Springs Complex would impact the upper pool, other testimony indicated in general that, because the upper pool is approximately ten feet higher than the lower pool, no connection exists between the pools. Hardgrove, Tr. Vol I, p. 165. Testimony regarding the connection between Upper and Lower Tucker Springs Complexes generally indicated no connection exists between the two Complexes. *Id.* at 191; Erwin, Tr. Vol. II, p. 421. This testimony speaks generally to the lack of connection between the pools in the Tucker Springs Complexes and is not rendered inapplicable by the Director's requirement that IGWA move the collection box closer to the spring source in final implementation of the Second Mitigation Plan.

### 3. Factors of Consideration

Rangen suggests the Director violated the CM Rules because he failed "to even consider the impact that the Second Mitigation Plan would have on the environment and aquatic life" and "made no findings of fact regarding whether the Second Mitigation Plan 'would result in the diversion and use of ground water at a rate beyond the reasonably anticipated average rate of future natural recharge.'" *Opening Brief* at 16-17. CM Rule 43 sets forth factors that "*may* be considered by the Director in determining whether a proposed mitigation plan will prevent injury to senior rights." IDAPA 37.03.11.043.03 (emphasis added). The CM Rules do not require the Director to make findings of fact regarding potential impacts on the environment and aquatic life or on the reasonably anticipated average rate of future natural recharge in approving a mitigation

plan, but make it discretionary. Because it is discretionary, the Director acted in compliance with the CM Rules in approving the Second Mitigation Plan.

**D. THE DIRECTOR'S APPROVAL OF THE SECOND MITIGATION PLAN IS NOT A TAKING OF RANGEN'S PROPERTY RIGHTS**

In approving the Second Mitigation Plan, the Director required Rangen to state, in writing, whether it will accept water delivered through the Tucker Springs Pipeline and whether it will allow construction on its land related to placement of the delivery pipe. *Second Mitigation Plan Order* at 18, R. p. 554. Rangen argues that requiring Rangen to allow construction on its land related to placement of the delivery pipe constitutes a taking of Rangen's property rights in violation of the Fifth Amendment to the United States Constitution as well as Article 1, section 14 of the Idaho State Constitution. *Opening Brief* at 19.

The U.S. Constitution provides that private property shall not be taken for public use without just compensation. U.S. Const. amend. V. The Fifth Amendment is made applicable to the states through the Fourteenth Amendment. *Texaco, Inc. v. Short*, 454 U.S. 516, 523, n. 11, 102 S.Ct. 781, 788, 70 L.Ed.2d 738, 746 (1982). The Idaho Constitution provides that "[p]rivate property may be taken for public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor." Idaho Const. art. I, § 14.

The Director's requirement that Rangen state, in writing, whether it will accept water delivered through the Tucker Springs Pipeline and whether it will allow construction on its land related to placement of the delivery pipe does not constitute a taking of Rangen's property under the United States or Idaho Constitutions. First, Rangen's property has not been taken. Rangen was given a choice regarding whether it would allow construction of the Tucker Springs Pipeline on its property in order to deliver water to mitigate injury to its senior water rights. Second, the pipeline will not be constructed or placed across Rangen's property for public use. Its

construction and placement is entirely for Rangen's use and was proposed only because Rangen initiated the delivery call proceeding in this matter for the purpose of determining whether its senior water rights were being injured and to have that injury mitigated. Rangen cannot choose to accept delivery of water pursuant to an approved mitigation plan and then pursue a takings claim because such delivery requires construction and placement of a pipeline across Rangen's property. The Court should reject Rangen's takings claim.

**E. RANGEN IS NOT ENTITLED TO ATTORNEY FEES**

In order for attorney fees to be awarded, authority and argument establishing a right to attorney fees must be presented in the first brief filed by a party on appeal. *Carroll v. MBNA Am. Bank*, 148 Idaho 261, 270, 220 P.3d 1080, 1089 (2009). While Rangen demanded attorney fees pursuant to Idaho Code § 12-117 and Idaho Rule of Civil Procedure 54 in its *Petition for Judicial Review* filed on July 17, 2014, Rangen presents no argument in support of this demand in its opening brief on appeal. Even if the Court considers Rangen's request for attorney fees, the Director's factual findings are supported by substantial and competent evidence and his determinations of legal issues are not clearly erroneous. Therefore, Rangen is not entitled to an award of attorney fees in this matter.

**CONCLUSION**

The Director complied with the CM Rules and prior appropriation doctrine in approving the Second Mitigation Plan. The Director's decision to recalculate the period of time the Morris exchange agreement is recognized as mitigation in approving the Second Mitigation Plan was reached through an exercise of reason and is within the limits of the Director's discretion in determining how to respond to delivery calls. The Director adequately addressed issues of injury in approving the Second Mitigation Plan. Rangen's takings claim is frivolous. Rangen is not

entitled to an award of attorney fees in this matter. The Court should affirm the Director's Second Mitigation Plan Order.

DATED this 31 day of October 2014.

LAWRENCE G. WASDEN  
ATTORNEY GENERAL

CLIVE J. STRONG  
Chief, Natural Resources Division  
Deputy Attorney General



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Garrick J. Baxter  
Emmi L. Blades  
Deputy Attorneys General  
Idaho Department of Water Resources

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31 day of October 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated, to the following:

*Original to:*

SRBA DISTRICT COURT  
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PO BOX 2707  
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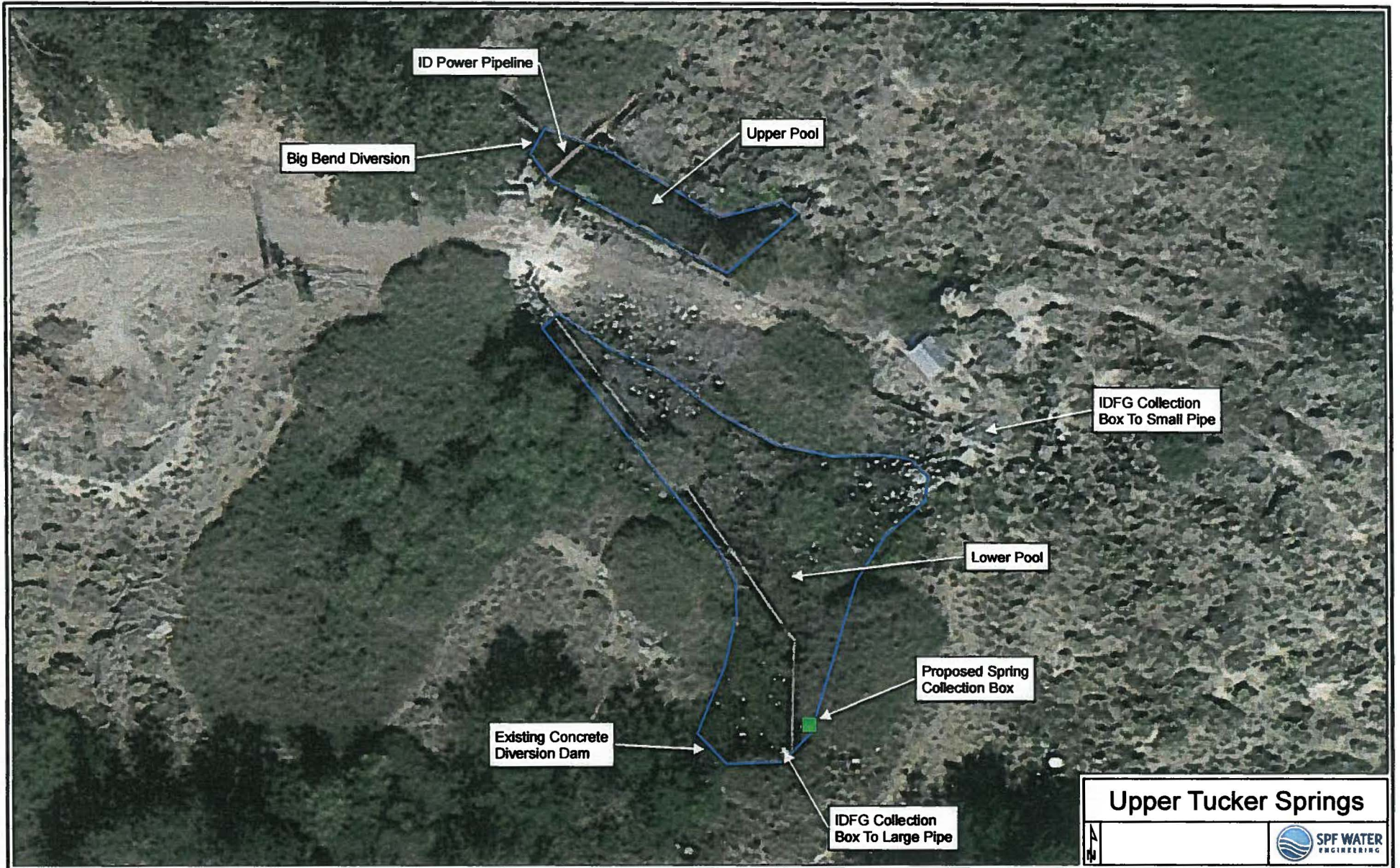
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GARRICK L. BAXTER  
Deputy Attorney General

# **Appendix A**





# Appendix B

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## MEMORANDUM AGREEMENT

This Memorandum Agreement is entered into February 11<sup>th</sup>, 2014, between North Snake Ground Water District, whose address is 152 E. Main Street, Jerome, Idaho 83338 ("District") and Howard (Butch Morris), whose address is 1101 East 2900 South, Hagerman, Idaho 83332 ("Morris"). The purpose of this Agreement is to provide for the ongoing delivery of irrigation water to Morris through the Sandy Pipeline in consideration for the District's use of certain water rights owned by Morris diverted from the Martin-Curren Tunnel at the head of Billingsley Creek to supply mitigation water to Rangen, Inc.

Water rights at the head of Billingsley Creek diverted from the Martin-Curren Tunnel are reflected in Table 3.1 attached. These include 6.05 cfs under water right numbers 36-134D, 36-134E, 36-135D, 36-135E, 36-10141A and 36-10141B owned by Morris (the "Morris Rights"). The District constructed in 2003 and owns and operates the Sandy Pipeline which delivers irrigation water from the end of the North Side Canal Company system to Morris, with a discharge into Billingsley Creek immediately downstream from Rangen.

The Sandy Pipeline has in the past and will continue in the future to be operated and maintained by the Districts to deliver irrigation water to Morris by reason of which the Morris Rights have not been diverted from the Martin-Curren Tunnel and have instead been delivered to the junior water rights of Rangen. Morris's irrigation diversions from the Sandy Pipeline utilize and replace the full 6.05 cfs available under the Morris Rights. Were it not for the Sandy Pipeline, Morris would take all water available from the Martin-Curren Tunnel under the Morris Rights for irrigation purposes.

The District agrees that Morris may continue to use the Sandy Pipeline without expense to deliver irrigation water to the property he owns. The District and Morris will cooperate with each other and with North Side Canal Company and use their best efforts to continue to supply irrigation water to Morris. In return therefore, Morris agrees that the District may use the Morris Rights as needed to provide mitigation water to Rangen to satisfy the IDWR Director's January 29, 2014 Order curtailing 157,000 acres of ground water rights junior to July 13, 1962.

This Memorandum Agreement is for a period of five (5) years and then will be reviewed by the parties to determine if it should be extended or terminated. By signing this Agreement Morris in no way agrees to any forfeiture or loss of water rights from the Martin-Curren Tunnel.

### NORTH SNAKE GROUND WATER DISTRICT

By: \_\_\_\_\_

LYNN CARLQUIST, Chairman

\_\_\_\_\_  
HOWARD (BUTCH) MORRIS

# **Appendix C**



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

IN THE MATTER OF DISTRIBUTION OF	)	
WATER TO WATER RIGHTS NOS. 36-04013A,	)	
36-04013B, AND 36-07148 (SNAKE RIVER	)	<b>ORDER CURTAILING GROUND</b>
FARM)	)	<b>WATER RIGHTS IN WATER</b>
	)	<b>DISTRICT NOS. 130 AND 140</b>
	)	<b>JUNIOR TO JANUARY 8, 1981</b>
(Water District Nos. 130 and 140)	)	
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**FINDINGS OF FACT**

**Procedural Background**

1. This matter was originally commenced in 2005 with the filing of a delivery call for administration of junior ground water rights by Clear Springs Foods, Inc. ("Clear Springs"). On July 8, 2005, the Director of the Department of Water Resources ("Director" or "Department") issued an order in this matter ("July 2005 Order") finding that certain water rights held by Clear Springs were materially injured in accordance with the Department's Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11 *et seq.* ("CM Rules"). The Director ordered curtailment of ground water rights junior to the most senior of Clear Springs' injured water rights (36-4013B; February 4, 1964), unless those users could replace the depletions that were causing injury to Clear Springs. Consistent with CM Rule 40.01.a, curtailment was phased-in over a period of five years to lessen the economic impact of curtailment.

2. At the time the July 2005 Order was issued, ground water depletions from Water District No. 140 had not yet been taken into account. With the inclusion of Water District No. 140, the Eastern Snake Plain Aquifer ("ESPA") Model simulates that the benefits of curtailing ground water rights junior to February 4, 1964 would increase reach gains in the 11-mile Buhl Gage to Thousand Springs reach by 38.72 cfs. *Final Order Accepting Ground Water Districts' Withdrawal of Amended Mitigation Plan, Denying Motion to Strike, Denying Second Mitigation Plan and Amended Second Mitigation Plan in Part; and Notice of Curtailment* at 6, ¶ 23 (March 5, 2009) ("March 5 Order").

3. Clear Springs diverts from discrete springs located in the Buhl Gage to Thousand Springs reach. The Director has determined that 6.9% of the benefits of curtailment will accrue directly to Clear Springs at its facility. *Id.* at 2, ¶ 2.

4. In 2009, the fifth year of the phased-in period of curtailment, junior ground water users are required to provide 38.72 cfs to the Buhl Gage to Thousand Springs reach, or 2.67 cfs directly to Clear Springs (6.9% of 38.72 cfs). *Id.* at 6, ¶ 24.

5. Since 2005, junior ground water users, represented by the Idaho Ground Water Appropriators, Inc. ("IGWA" or "Ground Water Districts"), have responded to the requirements of the July 2005 Order by submitting replacement plans to offset depletions to the Buhl Gage to Thousand Springs reach. Water has been replaced by conversion of acres irrigated by ground water to surface water, conveyance losses, idling of lands through the Conservation Enhancement Reserve Program ("CREP"), and recharge.

6. In 2009, IGWA proposed to replace its depletions through conversion of approximately 9,300 acres that had been converted in previous years, continued enrollment of acres in CREP, and other activities.<sup>1</sup> In the March 5 Order, the Department determined that the benefits of conversion and CREP would result in a 9.88 cfs benefit to the Buhl Gage to Thousand Springs reach. *Id.* at 6, ¶ 23. The Director accepted those portions of IGWA's 2009 replacement plan in the March 5 Order. *Id.* at 13, ¶ 2. The resulting shortfall at the time of the March 5 Order was 28.84 cfs to the reach (38.72 cfs – 9.88 cfs), or 1.99 cfs directly to Clear Springs (6.9% of 28.84 cfs). *Id.* at 6, ¶ 23.

7. Based on the shortfall, the Director provided notice to holders of ground water rights junior to November 16, 1972, that curtailment would occur if no action was taken by March 16, 2009. The resulting curtailment would have impacted approximately 860 ground water rights that irrigate approximately 41,000 acres in Cassia, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls counties.

8. On March 12, 2009, IGWA submitted its *2009 Replacement Water Plan and Third Mitigation Plan (Over-the-Rim) of North Snake Ground Water District and Magic Valley Ground Water District* ("2009 Plan"). The 2009 Plan proposed to eliminate the 1.99 cfs shortfall to Clear Springs by providing "direct delivery of ground water from existing wells to Snake River Farm's intake." *2009 Plan* at 6. The lands that were served by the wells that would comprise the over-the-rim component of direct replacement supply to Clear Springs would be converted from ground water irrigation to surface water irrigation. "The total acres proposed to be converted is approximately 1,060 acres." *Id.* at 7. The over-the-rim pipeline would provide between 1.99 to 3.0 cfs directly to Clear Springs.

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<sup>1</sup> IGWA had proposed to offset the remainder of its depletions by requesting that the Director order Clear Springs to accept direct monetary payment or replacement fish. For reasons discussed in the March 5 Order, the Director denied the request. This and other determinations made in the March 5 Order are on judicial review before the Honorable John M. Melanson of the Fifth Judicial District.

9. Upon receipt of the 2009 Plan, the Director held in abeyance the notice of curtailment in the March 5 Order until making a determination on the 2009 Plan. *Order on Scheduling and Holding Notice of Curtailment in Abeyance* (March 16, 2009).

10. On March 26, 2009, the Director approved the 2009 Plan, which required IGWA to construct the over-the-rim pipeline and implement the associated 1,060 new conversion acres. *Order Approving Ground Water Districts' Replacement Water Plan for 2009* (March 26, 2009) ("March 26 Order"). The order required construction of the pipeline and new conversion acres no later than June 1, 2009. Nothing in the March 26 Order altered the requirement of the March 5 Order that IGWA continue conversion of the existing 9,300 conversion acres and maintain enrollment of lands in CREP. The notice of curtailment continued to be held in abeyance.

11. On April 27, 2009, Clear Springs filed its *Motion for Partial Stay of Implementation of Directors' March 26, 2009 Order Approving Ground Water Districts' Replacement Water Plan for 2009* ("Partial Stay Motion"). For several legal and practical reasons, Clear Springs requested that the Director partially stay implementation of the March 26 Order for one year, "so as not to require construction and installation of the GWD's 'over-the-rim' project at this time." *Partial Stay Motion* at 9. Clear Springs stated it would "accept the remainder of the 2009 Plan as acceptable mitigation for this year" and that "Clear Springs' acceptance of this mitigation would be for the sole purpose of proceeding to an immediate hearing on the 2009 Plan on the issues identified by Clear Springs' protest" to the Ground Water Districts' Third Mitigation Plan (Over-the-Rim). *Id.* at 6-7.

12. On May 4, 2009, the Director conducted a status conference with the parties to discuss their positions regarding the requested partial stay. At the status conference, an officer of Clear Springs and the attorney for the Ground Water Districts stated that each party respectively agreed to a two-year partial stay of the requirement for completion of the over-the-rim project, "while continuing with the other approved replacement water requirements for the two-year period. The parties were not able to reach agreement at the status conference on the timing for holding a hearing on the Ground Water Districts' Third Mitigation Plan." *Order Granting Partial Stay of Ground Water Districts' Replacement Water Plan for 2009* at 1 (May 15, 2009) ("May 15 Partial Stay Order"). "[B]ased upon Clear Springs' acceptance of the terms of the two-year partial stay, satisfaction of the remainder of the 2009 Plan, approved by the March 26, 2009 Order of the Director, shall constitute acceptable and sufficient replacement water or mitigation by the Ground Water Districts for the 2009 and 2010 calendar years." *May 15 Partial Stay Order* at 2.

13. On May 15, 2009, Gerald F. Schroeder was appointed to serve as independent hearing officer and conduct a hearing on the stayed portion of the 2009 Plan, as well as conduct a post-audit of the Ground Water Districts' prior replacement activities. *Order Appointing Hearing Officer; Granting Petition to Intervene; and Consolidating Matters for Hearing*.

14. On June 19, 2009, the Director sent a letter to attorneys for the Ground Water Districts regarding compliance with the non-stayed portions of the 2009 Plan: new conversions of 1,060 acres; continued conversion of 9,300 acres; and continued participation in CREP. In the letter, the Director stated that a field examination of the 1,060 new conversion acres was

performed by the watermaster for Water District Nos. 130 and 140 on June 2, 2009. One concern raised in the letter was a potential shortfall in the number of new conversion acres. The Director requested additional information on the new conversion acres by June 25, 2009.

15. On June 25, 2009, attorneys for the Ground Water Districts provided an initial response to the Director's June 19 letter. In the response letter, attorneys for the Ground Water Districts stated that, "When the 2009 Plan was filed, the exact number of acres to be converted was unknown." Actual implementation of the new conversions led to fewer acres. Secondly, attorneys for the Ground Water Districts notified the Director that, of the 9,300 existing conversion acres, fewer of those acres were converted than in previous years. Third, attorneys for the Ground Water Districts stated that participation in CREP is continuing and that more acres may be enrolled than in previous years. Finally, attorneys for the Ground Water Districts stated that if the actions taken thus far are "not acceptable and the Director determines to remove the two-year partial stay, the Ground Water Districts are prepared to proceed with the construction of the over-the-rim delivery portion of the 2009 Plan."

16. On June 29, 2009, Clear Springs filed its *Response to Ground Water Districts' June 25, 2009 Letter* ("Response"). In its Response, Clear Springs stated its concerns with the Ground Water Districts' failure to follow the requirements of the March 26 Order and May 15 Partial Stay Order regarding continued conversion of 9,300 acres and conversion of 1,060 new acres.

17. On June 30, 2009, the Director<sup>2</sup> responded by letter to attorneys for the Ground Water Districts. The Director stated that even if the two-year stay on construction of the pipeline were removed, there would be too few new conversion acres and the 2009 Plan would not be in compliance. Additionally, the Director requested additional information on how many of the existing 9,300 conversion acres would be irrigated with rented storage water.

18. On July 9, 2009, attorneys for the Ground Water Districts responded to the Director's June 30, 2009 letter. Attorneys for the Ground Water Districts reiterated the position on the new conversion acres from the June 25, 2009 letter. In the July 9, 2009 letter, attorneys for the Ground Water Districts explained a number of reasons that fewer than the existing 9,300 conversion acres would be irrigated by surface water this season. Ultimately, the letter stated "that surface water is being delivered to approximately 3,500 of the 9,300 previously converted acres, as well as to the new conversions under the 2009 Plan."

19. On July 16, 2009, attorneys for the Ground Water Districts supplemented the July 9, 2009 letter with additional information.

#### **Technical Review of Non-Stayed Requirements of the 2009 Plan**

20. In 2009, the final year of the phased-in period of curtailment, junior ground water users were to provide 38.72 cfs to the Buhl Gage to Thousand Springs reach, or 2.67 cfs directly

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<sup>2</sup> On June 30, 2009, after thirty-three years of service to the Department, Director David R. Tuthill, Jr. retired. This was the final document issued by Director Tuthill in this proceeding. Gary Spackman was subsequently appointed Interim Director by the Governor on July 17, 2009.



to Clear Springs (6.9% of 38.72 cfs). In the March 5 Order, the Director accepted the Ground Water Districts' 2009 proposal to enroll the same number of acres in CREP and continue the same conversions as in 2008. Acceptance of the existing CREP and conversion acres reduced the 2009 obligation to "28.84 cfs to the reach, or 1.99 cfs to Clear Springs (6.9% or 28.8[4] cfs)." *March 5 Order* at 8, ¶ 6.

21. According to the orders of March 5, March 26, and the May 15 Partial Stay Order, acceptable and sufficient replacement water or mitigation by the Ground Water Districts for the 2009 and 2010 calendar years was to consist of: (1) continued conversion of 9,300 acres; (2) conversion of 1,060 new acres; and (3) continued enrollment of acres in CREP.

22. Using the ESPA Model, the simulations of above-mentioned efforts predict a reach gain of 12.23 cfs to the Buhl Gage to Thousand Springs reach, or 0.84 cfs directly to Clear Springs. But for the May 15 Partial Stay Order, the remaining difference of 26.49 to the reach, or 1.83 to Clear Springs, was to be made up by the Ground Water Districts via construction of the over-the-rim pipeline.

23. In accordance with the May 15 Partial Stay Order, the Ground Water Districts are required to provide 12.23 cfs to the Buhl Gage to Thousand Springs reach during the 2009 and 2010 calendar years through existing conversions, new conversions, and CREP.

**(1) Continued Conversion of 9,300 Acres**

24. In the March 5 and March 26 orders, the Director accepted the Ground Water Districts' proposal to continue surface water delivery to 9,300 conversion acres. The 9,300 conversion acres accepted in the March 5 and March 26 orders were the same conversion acres as in 2006, 2007, and 2008. *March 5 Order* at 6, ¶ 22. In order to irrigate the 9,300 conversion acres with surface water, the Ground Water Districts secured 35,000 acre-feet of storage water to be conveyed through the North Side Canal Co.'s delivery system. *2009 Plan* at 6.

25. As stated in the March 5 Order, the Department has reviewed the Ground Water Districts' reporting and has independently reviewed the number of conversion acres from previous years. Using the ESPA Model, the Department has determined the resulting benefit to the Buhl Gage to Thousand Springs reach from existing conversion acres is 9.44 cfs. *March 5 Order* at 6, ¶ 23.

26. The Ground Water Districts' June 25, 2009 letter stated that fewer than 9,300 acres were expected to be converted this season. The Ground Water Districts' July 9, 2009 letter stated that "surface water is being delivered to approximately 3,500 of the 9,300 previously converted acres . . . ."

27. In reviewing data provided by the North Snake Ground Water District, the Department determined that approximately 4,202.6 of the original 9,300 conversion acres have received or will receive some surface water in 2009 for conversion purposes. The volume of water that has been delivered or has been ordered for those acres is 9,249.96 acre-feet.

28. The Department used the above-mentioned volume and the physical location of the particular acres within the ESPA Model that have received or will receive surface water deliveries to determine the benefit to the Buhl Gage to Thousand Springs reach. The anticipated benefit to the Buhl Gage to the Thousand Springs reach is 3.54 cfs, resulting in a shortfall of 5.90 cfs (9.44 cfs – 3.54 cfs).

**(2) Conversion of 1,060 New Acres**

29. The March 26 Order and May 15 Partial Stay Order required 1,060 new conversion acres. The ESPA Model predicted that the benefit of these new conversion acres to the Buhl Gage to Thousand Springs reach would be 2.35 cfs. *March 26 Order* at 3-4, ¶ 16.

30. The model simulation performed by the Department for the March 26 Order assumed that the location of the new conversion acres would be consistent with the 2009 Plan, and that the number of acres converted would be 1,060. The model simulations assumed that the required irrigation volume for the new conversion acres would be four acre-feet per acre.

31. Subsequent to the March 26 Order, the watermaster determined that there were fewer acres converted than required, and that the location of the acres was different than expected.<sup>3</sup> As found by the watermaster, 920 of the expected 1,060 acres have been converted to surface water irrigation. Assuming delivery of four acre-feet per acre, the expected delivery to the 920 converted acres during the 2009 irrigation season is 3,680 acre-feet.

32. The most significant changes in the new conversion acres were the substitution of 74 Van Dyke acres for 80 Brown acres, and the loss of 132 acres which were originally thought to be owned by Box Canyon. The location of the Van Dyke acres in the ESPA Model results in an approximately 10% greater benefit to the Buhl Gage to Thousand Springs reach; therefore, despite fewer new conversion acres than required, the simulated benefit to the reach is 2.82 cfs, which is 0.47 cfs more than anticipated in the March 26 Order.

**(3) Continued Enrollment of Acres in CREP**

33. In the March 5 and March 26 orders, the Director accepted the Ground Water Districts' proposal to continue enrollment of acres in CREP. The Department has reviewed the Ground Water Districts' reporting and has independently reviewed the number of acres enrolled in CREP. As of the issuance of the March 5 and March 26 orders, the modeled benefit to the Buhl Gage to Thousand Springs reach was 0.44 cfs. *March 5 Order* at 6, ¶ 23; *March 26 Order* at 4, ¶ 17. Based on the Department's present understanding of the acres enrolled in CREP, the simulated benefit to the Buhl Gage to Thousand Springs reach is 0.68 cfs, or 0.24 cfs more than anticipated in the March 5 and March 26 orders.

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<sup>3</sup> The report of the watermaster is attached to the Director's June 19, 2009 letter.

**Shortfall to the Buhl Gage to Thousand Springs Reach;**  
**Curtailment of Ground Water Rights Junior to January 8, 1981**

34. While the benefit to the Buhl Gage to Thousand Springs reach is greater than anticipated for CREP and the new conversion acres, there exists a shortfall as a result of the Ground Water Districts converting fewer than the existing 9,300 conversion acres.

Existing Conversions	New Conversions	CREP	Total Provided	Required	Shortfall
3.54 cfs	2.82 cfs	0.68 cfs	7.04 cfs	12.23 cfs	5.19 cfs

35. As a result of fewer existing conversions, the ESPA Model predicts a shortfall of 5.19 cfs to the Buhl Gage to Thousand Springs reach. The parties agreed and the Director ordered that 12.23 cfs would "constitute acceptable and sufficient replacement water or mitigation by the Ground Water Districts for the 2009 and 2010 calendar years." *May 15 Partial Stay Order* at 2.

36. Using the ESPA Model, and taking into account 10% model uncertainty and only those rights located within the area of common ground water supply, curtailment of ground water rights junior to January 8, 1981 will result in a 5.24 cfs benefit to the Buhl Gage to Thousand Springs reach, or 0.36 cfs directly to Clear Springs. Selecting a more junior priority date for curtailment will not satisfy the 5.19 cfs shortfall.

37. Included with this order is a map depicting the area of curtailment and a list of all junior priority ground water rights that are subject to curtailment. In Water District No. 130, there are approximately 302 junior priority ground water rights that are subject to curtailment. Curtailment of junior priority ground water rights in Water District No. 130 would result in the curtailment of approximately 8,425 acres. In Water District No. 140, there are approximately 13 junior priority ground water rights that are subject to curtailment. Curtailment of junior priority ground water rights in Water District No. 140 would result in the curtailment of approximately 464 acres.

38. In total, the curtailment will impact the holders of approximately 315 ground water rights that irrigate approximately 8,889 acres in portions of Blaine, Cassia, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls counties.

### **CONCLUSIONS OF LAW**

1. Idaho Code § 42-602, addressing the authority of the Director over the supervision of water distribution within water districts, provides:

The director of the department of water resources shall have direction and control of the distribution of water from all natural water sources within a water district to

the canals, ditches, pumps and other facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho Code, shall be accomplished by watermasters as provided in this chapter and supervised by the director. The director of the department of water resources shall distribute water in water districts in accordance with the prior appropriation doctrine. The provisions of chapter 6, title 42, Idaho Code, shall apply only to distribution of water within a water district.

In addition, Idaho Code § 42-1805(8) provides the Director with authority to “promulgate, adopt, modify, repeal and enforce rules implementing or effectuating the powers and duties of the department.”

2. Idaho Code § 42-603 grants the Director authority to adopt rules governing water distribution. In accordance with chapter 52, title 67, Idaho Code, the Department adopted the CM Rules. The CM Rules prescribe procedures for responding to a delivery call made by the holder of a senior priority surface or ground water right against junior priority ground water rights in an area having a common ground water supply. CM Rule 1.

3. In the fifth and final year of the phased-in period of curtailment, the Ground Water Districts were to provide 38.72 cfs to the Buhl Gage to Thousand Springs reach, or 2.67 cfs directly to Clear Springs.

4. As agreed to by the parties and required by the Director in the May 15 Partial Stay Order, 12.23 cfs to the Buhl Gage to Thousand Springs reach shall “constitute acceptable and sufficient replacement water or mitigation by the Ground Water Districts for the 2009 and 2010 calendar years.” *May 15 Partial Stay Order* at 2.

5. For 2009, the Ground Water Districts have provided 7.04 cfs to the Buhl Gage to Thousand Springs reach, resulting in a shortfall of 5.19 cfs.

6. As stated in the Findings of Fact, these proceedings were initiated in 2005 by Clear Springs as a call for delivery of water under the CM Rules. Under the July 2005 Order, it was stated as follows:

If at any time the mitigation or substitute curtailment is not provided as required herein, the water rights subject to curtailment as provided herein shall be immediately curtailed by the watermaster for Water District No. 130, based on the priorities of the rights, to the extent mitigation or substitute curtailment has not been provided.

*July 2005 Order* at 38, ¶ 5.

7. The ESPA Model represents the best available science for determining the effects of ground water diversions and surface water uses on the ESPA and hydraulically-connected reaches of the Snake River and its tributaries. There currently is no other technical basis as reliable as the simulations from the ESPA Model that can be used to determine the effects of

ground water diversions and surface water uses on the ESPA and hydraulically-connected reaches of the Snake River and its tributaries.

8. Using the ESPA Model, and taking into account 10% model uncertainty and only those rights located within the area of common ground water supply, curtailment of ground water rights junior to January 8, 1981 is simulated to result in at least 5.19 cfs benefit to the Buhl Gage to Thousand Springs reach. The curtailment will impact the holders of approximately 315 ground water rights that irrigate approximately 8,889 acres in portions of Blaine, Cassia, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls counties.

9. In their June 25 and July 9, 2009 letters to the Director, attorneys for the Ground Water Districts state that the Director could lift his May 15 Partial Stay Order and instruct the Ground Water Districts to move forward with construction of the over-the-rim pipeline in order to alleviate the shortfall to Clear Springs. As stated by the Director in his June 30, 2009 letter, the Ground Water Districts are not in compliance with the non-stayed portions of the 2009 Plan, which was agreed to by the parties and ordered by the Director. The Ground Water Districts were specifically required to construct 1,060 new conversion acres, continue conversion of the existing 9,300 conversion acres, and continue enrollment of acres in CREP. A shortfall to the Buhl Gage to Thousand Springs reach exists and the appropriate remedy is curtailment of junior ground water rights, not removal of the two-year partial stay.

10. Description of actions to comply with the terms of the May 15 Partial Stay Order may be submitted on behalf of holders of junior priority ground water rights by the ground water district(s) in which such water rights are located within six (6) days of the issuance of this order. If a plan of action submitted by a ground water district to comply with the terms of the May 15 Partial Stay Order is received by the Department on or before July 28, 2009 and the plan is deemed acceptable by the Director, in whole or in part, the Director should modify the priority date identified for curtailment and reduce the number of curtailed junior priority ground water rights in the affected water district(s), or possibly rescind the ordered curtailment. The Director will only accept a plan to comply with the terms of the May 15 Partial Stay Order that is submitted by a ground water district.

11. On July 31, 2009, at 12:01 a.m., unless notified by the Department that the order of curtailment has been modified or rescinded as to their water rights, users of ground water within Water District Nos. 130 and 140 holding consumptive water rights bearing priority dates junior to January 8, 1981, listed in the attachment to this order, shall curtail/refrain from diversion and use of ground water pursuant to those water rights.

12. In 2007, a mitigation plan was submitted by the Idaho Dairymen's Association ("IDA") and approved by the Director to mitigate for ground water depletions caused by its members. Based on acceptance of the IDA mitigation plan, participating members of the IDA are not subject to curtailment, provided the terms of the plan are being followed.

13. Ground water users who hold junior priority ground water rights and are not members of a ground water district that is providing approved mitigation, replacement water supply, or substitute curtailment, should be deemed a non-member participant for mitigation



purposes pursuant to H.B. 737 (*Act Relating to the Administration of Ground Water Rights within the Eastern Snake River Plain*, ch. 356, 2006 Idaho Sess. Laws 1089) and should be required to pay the ground water district that is providing approved mitigation, replacement water supply, or substitute curtailment nearest the lands to which the water right is appurtenant for mitigation purposes pursuant to Idaho Code § 42-5259. If the holder of such a junior priority ground water right elects not to join the ground water district, the Director should order curtailment.

14. Curtailment will apply to consumptive ground water rights for agricultural, commercial, industrial, and municipal uses, excluding ground water rights used for *de minimis* domestic purposes where such domestic use is within the limits of the definition set forth in Idaho Code § 42-111 and ground water rights used for *de minimis* stock watering where such stock watering use is within the limits of the definitions set forth in Idaho Code § 42-1401A(12), pursuant to IDAPA 37.03.11.020.11.

15. In the event that junior priority ground water users do not voluntarily comply with ordered curtailment, the Director should enforce the terms of this order in accordance with Idaho law, which includes, but is not limited to, the procedures outlined in Idaho Code §§ 42-351 (Illegal diversion or use of water—Enforcement procedure—Injunctive relief), 42-607 (Distribution of Water), and 42-1701B (Enforcement procedure—Notice—Consent order).

## ORDER

Based on the foregoing, IT IS HEREBY ORDERED as follows:

IT IS HEREBY ORDERED that, at 12:01 a.m. on July 31, 2009, users of ground water within Water District Nos. 130 and 140 holding consumptive water rights bearing priority dates junior to January 8, 1981, listed in the attachment to this order, shall curtail/refrain from diversion and use of ground water pursuant to those water rights unless notified by the Department that the order of curtailment has been modified or rescinded as to their water rights. This order shall apply to consumptive ground water rights for agricultural, commercial, industrial, and municipal uses, excluding ground water rights used for *de minimis* domestic purposes where such domestic use is within the limits of the definition set forth in Idaho Code § 42-111 and ground water rights used for *de minimis* stock watering where such stock watering use is within the limits of the definitions set forth in Idaho Code § 42-1401A(12), pursuant to IDAPA 37.03.11.020.11.

IT IS FURTHER ORDERED that the watermaster for Water District Nos. 130 and 140 is directed to issue written notices to the holders of the consumptive ground water rights located in Water District Nos. 130 and 140, listed in the attachment to this order, and bearing priority dates junior to January 8, 1981. The written notices are to advise the holders of the identified ground water rights that their rights are subject to curtailment in accordance with the terms of this order.

IT IS FURTHER ORDERED that description of actions to comply with the terms of the May 15 Partial Stay Order may be submitted on behalf of holders of junior priority ground water

rights by the ground water district(s) in which such water rights are located within six (6) days of the issuance of this order. If a plan of action submitted by a ground water district to comply with the terms of the May 15 Partial Stay Order is received by the Department on or before July 28, 2009 and the plan is deemed acceptable by the Director, in whole or in part, the Director should modify the priority date identified for curtailment and reduce the number of curtailed junior priority ground water rights in the affected water district(s), or possibly rescind the ordered curtailment. The Director will only accept a plan to comply with the terms of the May 15 Partial Stay Order that is submitted by a ground water district.

IT IS FURTHER ORDERED that a mitigation plan was previously approved by the Director for the Idaho Dairymen's Association ("IDA") to mitigate for ground water depletions caused by its members. Based on acceptance of the IDA mitigation plan, participating members of the IDA are not subject to curtailment, provided the terms of the plan are being followed.

IT IS FURTHER ORDERED that if junior priority ground water right holders for whom curtailment is ordered do not comply with this order, the Director shall immediately enforce the terms of this order in accordance with Idaho law.

IT IS FURTHER ORDERED that this is a final order of the agency effective upon issuance. A hearing was previously held on the mitigation obligations of the Ground Water Districts. The mitigation obligation for the 2009 and 2010 calendar years, as agreed to by the parties and ordered by the Director, is less than the obligation for the final year of the five-year, phased-in period of curtailment. This order is entered to enforce the terms of the Director's previous orders. The decision made in this order is final and subject to review by reconsideration or judicial review.

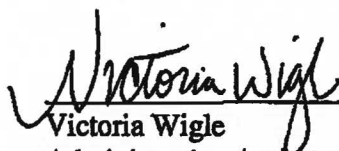
Dated this 22<sup>nd</sup> day of July, 2009.

  
GARY SPACKMAN  
Interim Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of July 2009, the above and foregoing, was served by first class U.S. Mail and electronic mail to the following:

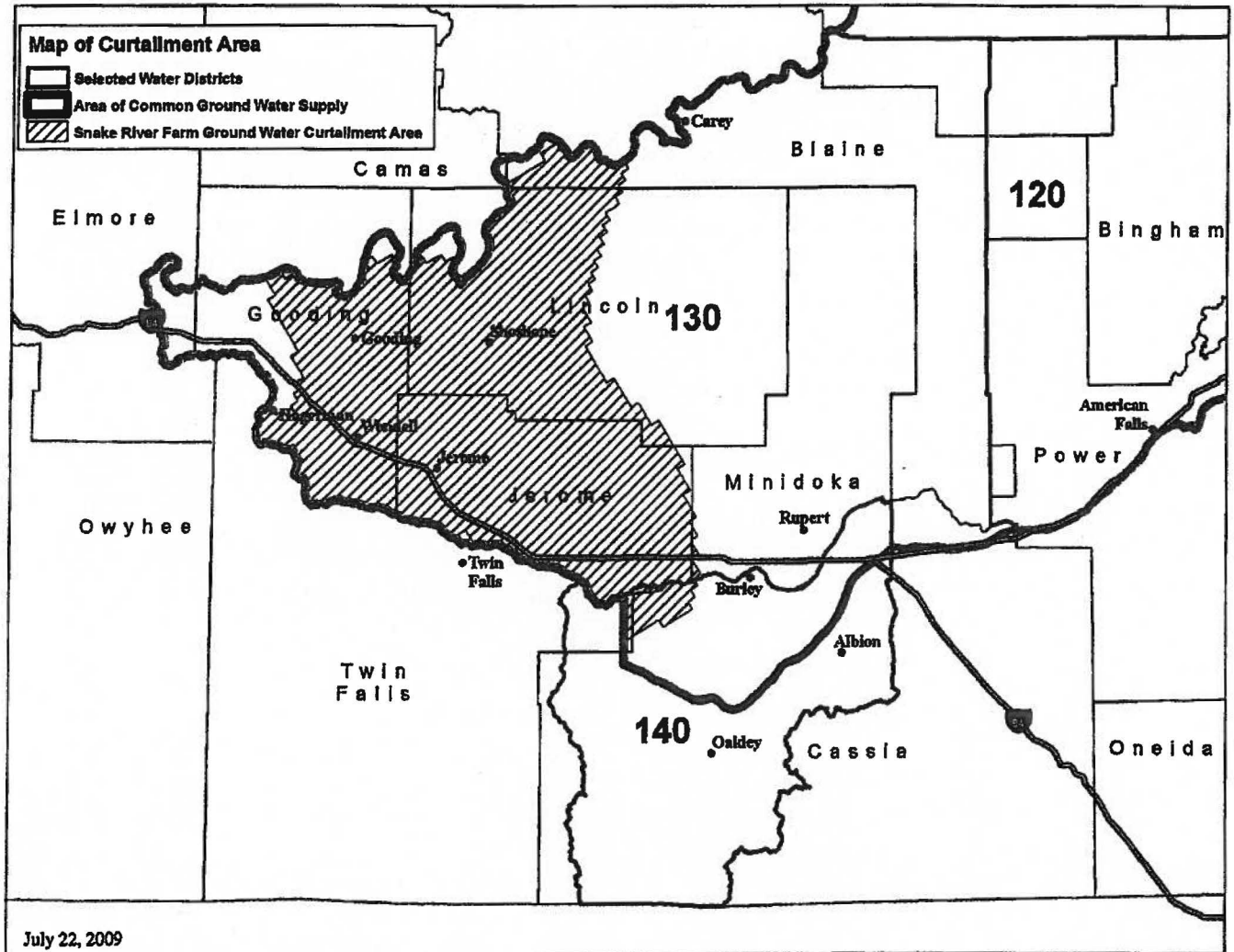
RANDY BUDGE RACINE OLSON PO BOX 1391 POCATELLO ID 83204-1391 <a href="mailto:rcb@racinelaw.net">rcb@racinelaw.net</a>	CANDICE M. MCHUGH RACINE OLSON 101 S. CAPITOL BLVD., STE. 208 BOISE ID 83702 <a href="mailto:cmm@racinelaw.net">cmm@racinelaw.net</a>	JOHN SIMPSON BARKER ROSHOLT PO BOX 2139 BOISE ID 83701-2139 <a href="mailto:iks@idahowaters.com">iks@idahowaters.com</a>
TRAVIS THOMPSON PAUL ARRINGTON BARKER ROSHOLT 113 MAIN AVE. WEST, STE. 303 TWIN FALLS ID 83301-6167 <a href="mailto:tlt@idahowaters.com">tlt@idahowaters.com</a> <a href="mailto:pla@idahowaters.com">pla@idahowaters.com</a>	DANIEL V. STEENSON CHARLES L. HONSINGER RINGERT LAW PO BOX 2773 BOISE ID 83701-2773 <a href="mailto:dan@ringertlaw.com">dan@ringertlaw.com</a> <a href="mailto:clh@ringertlaw.com">clh@ringertlaw.com</a>	MIKE CREAMER JEFF FEREDAY GIVENS PURSLEY PO BOX 2720 BOISE ID 83701-2720 <a href="mailto:mcc@givenspursley.com">mcc@givenspursley.com</a> <a href="mailto:jefffereday@givenspursley.com">jefffereday@givenspursley.com</a>
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ALLEN MERRITT CINDY YENTER WATERMASTER - WD 130, 140 IDWR - SOUTHERN REGION 1341 FILLMORE ST., STE. 200 TWIN FALLS ID 83301-3380 <a href="mailto:allen.merritt@idwr.idaho.gov">allen.merritt@idwr.idaho.gov</a> <a href="mailto:cindy.yenter@idwr.idaho.gov">cindy.yenter@idwr.idaho.gov</a>		



Victoria Wigle  
Administrative Assistant to the Director  
Idaho Department of Water Resources



Attachment 1



Attachment 2  
Water Rights Subject to Curtailment - Snake River Farm Delivery Call

Current Owner	Water Right Number	Priority Date	Diversion Rate (cfs)	Acre	Purpose of Use
4 BROS DAIRY INC	37-7033	7/5/1988	3.2	160	IRRIGATION
A & B IRRIGATION DISTRICT; UNITED STATES OF AMERICA ACTING THROUGH	36-15127B*	4/1/1984	28.89	1751.5	IRRIGATION
A & B IRRIGATION DISTRICT; UNITED STATES OF AMERICA ACTING THROUGH	36-15193B*	4/1/1965	0.31	18.9	IRRIGATION
A & B IRRIGATION DISTRICT; UNITED STATES OF AMERICA ACTING THROUGH	36-15194B*	4/1/1968	2.51	152.4	IRRIGATION
A & B IRRIGATION DISTRICT; UNITED STATES OF AMERICA ACTING THROUGH	36-15195B*	4/1/1978	2.24	135.6	IRRIGATION
A & B IRRIGATION DISTRICT; UNITED STATES OF AMERICA ACTING THROUGH	36-15196B*	4/1/1981	0.08	4.7	IRRIGATION
AARDEMA FARMS LTD PARTNERSHIP	36-8179	1/10/1997	0.06		STOCKWATER, DOMESTIC
AARDEMA, CORNELIA; AARDEMA, FRANS; BOX CANYON DAIRY; HEIDA, MARY JANE; HEIDA, THOMAS	36-15181*	3/15/1982	0.23	54	IRRIGATION
AARDEMA, CORNELIA; AARDEMA, FRANS; BOX CANYON DAIRY; HEIDA, MARY JANE; HEIDA, THOMAS	36-8305	2/14/1986	1.9	95	IRRIGATION
AARDEMA, DONALD J; AARDEMA, DONALD JOHN; AARDEMA, EVELYN L; AARDEMA, GAYLE; AARDEMA, KRISTYN; AARDEMA, MICHAEL D; AARDEMA, RONALD J; AARDEMA, SARAH J	36-10225F	5/1/1985	0.01		STOCKWATER
AARDEMA, DONALD J; AARDEMA, DONALD JOHN; AARDEMA, EVELYN L; AARDEMA, GAYLE; AARDEMA, KRISTYN; AARDEMA, MICHAEL D; AARDEMA, RONALD J; AARDEMA, SARAH J	36-16283*	5/1/1985	0.17	302.7	IRRIGATION
AARDEMA, DONALD JOHN	36-10225H*	5/1/1985	0.01	3	IRRIGATION
AARDEMA, DONALD JOHN	36-15256C*	3/15/1975	0.92	524.4	IRRIGATION
ABC AGRA LLC	36-8484	12/11/1989	0.08		COMMERCIAL, DOMESTIC
ADKINS, GINA; ADKINS, RICK	36-8525	3/2/1990	0.06	1	IRRIGATION, DOMESTIC
ALLEN, HERB; ALLEN, MARY CHUGG; LLOYD, DANIEL; TIERNEY LLOYD, MONA LISA	36-8523	4/25/1990	1.89	115	IRRIGATION
ANDERSON, DONALD M; ANDERSON, JOAN	36-8285	6/14/1985	0.04	2	IRRIGATION
ANDERSON, LARRY; ANDERSON, RETHA	36-8232	9/27/1983	0.09	1	IRRIGATION, COMMERCIAL, DOMESTIC
ANDERSON, LARRY; ANDERSON, RETHA	36-8233	12/17/1991	0.93		HEATING, RECREATION
ASTLE, DOUGLAS D; ASTLE, JANIS L	37-8296	5/11/1987	5	491	IRRIGATION
ASTORQUIA, FRANK	37-7460	7/3/2002	4	199.5	IRRIGATION
ASTORQUIA, FRANK	37-8338	5/19/1994	0.6	72	IRRIGATION
BARNES, T H; COLLINS, LARRY	36-8780	4/17/1998	0.04	1	IRRIGATION, DOMESTIC
BARRYMORE EST SUBDIVISION WATER USERS	36-8155	3/4/1983	0.07		STOCKWATER, DOMESTIC
BECKLEY, BONNIE B; BECKLEY, R K	37-8138	6/29/1983	0.12		STOCKWATER, COMMERCIAL
BENNETT, CAROLE R; BENNETT, JOHN D	37-20931	5/5/2003	0.12	4.3	IRRIGATION
BEORCHIA PROPERTIES AND HOLDINGS LLC	36-8108	8/16/1982	0.03	5	IRRIGATION, STOCKWATER, DOMESTIC
BETTENCOURT, LUIS M	36-14285*	5/1/1977	0.32	274	IRRIGATION
BETTENCOURT, LUIS M	36-15161*	3/15/1977	0.14	258	IRRIGATION

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BETTENCOURT, LUIS M	36-8081	3/7/1983	0.42	22	IRRIGATION
BETTENCOURT, LUIS M	36-8302	11/14/1985	0.96	193.4	IRRIGATION
BETTENCOURT, LUIS M	36-8739	5/10/1995	1	108.6	IRRIGATION
BETTENCOURT, LUIS M	36-8740	5/10/1995	0.53	126.5	IRRIGATION
BETTENCOURT, LUIS M; BETTENCOURT, SHARON L	36-14394*	6/28/1967	0.16	618	IRRIGATION
BETTENCOURT, LUIS M; BETTENCOURT, SHARON L	36-14595A*	5/1/1978	1.31	414.8	IRRIGATION
BHB FARMS INC	36-8144	2/2/1983	0.84	42	IRRIGATION
BICKETT, HARVEY B; BICKETT, MYRNA	37-8366	7/14/1988	0.06	0.8	IRRIGATION, DOMESTIC
BIG SKY DAIRY	37-8054	7/1/1983	3.34	167	IRRIGATION
BLACK BUTTE HILLS LLC	36-15233*	4/6/1980	0.73	180	IRRIGATION
BLALACK, JOANN K; SCHMIDT, CHESTER A	36-8208	5/20/1985	0.1	2	IRRIGATION, DOMESTIC
BLUE SKY RANCH; KRUCKER, KATHLEEN; KRUCKER, ROBERT	36-16184	6/30/1983	0.13		STOCKWATER, DOMESTIC
BLUE SKY RANCH; KRUCKER, KATHLEEN; KRUCKER, ROBERT	36-8482	11/7/1989	0.05		STOCKWATER
BOLINGBROKE, EDNA	36-16489*	4/1/1984	0.04	24	IRRIGATION
BONAWITZ, DANI; BONAWITZ, DUKE	36-8065	2/17/1982	0.12	5	IRRIGATION, DOMESTIC
BOOT JACK DAIRY PARTNERSHIP	37-20395	3/16/1982	2.1	277.4	IRRIGATION
BORBA, JOSE; BORBA, MARIA	36-8731	7/13/1994	0.08		STOCKWATER, DOMESTIC
BOTHOF, GERALD A; BOTHOF, ROGER W	36-8805	10/31/2000	0.03	0.8	IRRIGATION
BOX CANYON DAIRY	36-10044*	3/1/1984	0.55	124	IRRIGATION
BOX CANYON DAIRY	36-16282*	5/1/1985	0.26	444	IRRIGATION
BRADLEY, DAWN ANN; BRADLEY, R BRUCE	36-8112	9/7/1982	0.04	1	IRRIGATION, COMMERCIAL, DOMESTIC
BRANCHFLOWER, KATHERINE L; BRANCHFLOWER, MICHAEL G	36-8581	3/13/1991	0.74	39	IRRIGATION
BRANDSMA, ANN; BRANDSMA, HILL A	36-16036*	5/1/1985	0.18	318	IRRIGATION
BRANDSMA, DEBRA K; BRANDSMA, KENNETH A	36-8787	1/22/1999	1.05	152	IRRIGATION
BRANDSMA, HILL A	36-8063D	3/18/1982	0.28		STOCKWATER, COMMERCIAL
BREAULT, LEONARD; BREAULT, RUTH	36-8372	8/3/1988	0.06	3	IRRIGATION
BROWN, JAY A; BROWN, MARIE H	36-8111	8/20/1982	0.76	312	IRRIGATION
BURGOYNE, GLENDA; BURGOYNE, J H	36-8114	6/18/1982	0.04	3	IRRIGATION, DOMESTIC
CALLEN, JERRY; CALLEN, PATRICIA	36-7975	3/20/1981	0.03		STOCKWATER
CAMPBELL, ANNIE M.; CAMPBELL, WILLIAM ROY	36-8535	4/12/1990	0.13	4	IRRIGATION, DOMESTIC
CANNEDY, BARRY S	36-8503	2/21/1990	0.04	2	IRRIGATION
CARNEY FARMS	36-16395	12/8/1981	0.62	524	IRRIGATION
CARNEY FARMS	36-7949	2/4/1981	1.41	524	IRRIGATION
CARRELL, F DUANE	36-8342	1/5/1988	0.02		COMMERCIAL
CARRILLO, CUTBERTO	36-8407	1/19/1989	0.08	3	IRRIGATION, DOMESTIC
CHATTERTON, DANIEL GROVER; CHATTERTON, RONDA D	36-8537	4/12/1990	0.16	5	IRRIGATION, STOCKWATER, DOMESTIC
CHURCH OF JESUS CHRIST OF THE LATTER DAY SAINTS	36-11278*	4/1/1977	2.55	1610	IRRIGATION
CIOCCA, ANN A; CIOCCA, EDWARD M	36-8219	6/30/1983	1.72	86	IRRIGATION
CIOCCA, TONY M; CIOCCA, TRINA A	36-8255	12/7/1984	1.16	154	IRRIGATION
CITY OF DIETRICH	37-8783	2/21/1992	0.45		MUNICIPAL
CITY OF JEROME	36-8237	12/22/1983	2.71		MUNICIPAL
CITY OF WENDELL	36-8421	9/14/1998	2.76		MUNICIPAL
CITY OF WENDELL	36-8764	3/28/1997	1.27		MUNICIPAL

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CLARK, BETTE L; CLARK, RAYMOND G	36-15253*	3/15/1985	0.34	211	IRRIGATION
CLARK, RAYMOND G	36-8286	6/26/1985	0.21	225	IRRIGATION
CNOSSEN BROTHERS CO INC	36-8468	9/28/1989	0.86		COMMERCIAL
CNOSSEN BROTHERS CO INC; NORTHWEST FARM CREDIT SERVICES FLCA	36-8417	3/1/1989	0.76		STOCKWATER, DOMESTIC
CORP OF THE PRESIDING BISHOP	36-8145	2/14/1983	0.04	0.5	IRRIGATION, DOMESTIC
CORP OF THE PRESIDING BISHOP	36-8239	1/12/1984	0.88	630	IRRIGATION
COUNTRY CLUB ESTATES WATER ASSN INC	36-8607	11/18/1991	0.5		STOCKWATER, DOMESTIC, FIRE PROTECTION
CROCKER, BRENT; CROCKER, TONIA	36-8375	7/18/1988	0.04	2	IRRIGATION, DOMESTIC
DANSIE, BERTHA D; DANSIE, ELVOY H	37-8363	8/6/1988	0.05		STOCKWATER, COMMERCIAL, DOMESTIC
DAVIDSON, JOSEPH E	36-8780	4/12/1999	0.05		DOMESTIC
DE KRUYF, ALICE RUTH; DE KRUYF, CALVIN	36-10082A*	3/15/1976	0.21	162.7	IRRIGATION
DEVELOPMENT WEST CORPORATION	37-8379	8/22/1988	0.36	17	IRRIGATION, DOMESTIC
DICKINSON, DALE; DICKINSON, MARSHA	36-8681	10/16/1992	0.03	1	IRRIGATION, DOMESTIC
DINOS LLC; DINOS LLC	36-8680	10/21/1992	0.1		DOMESTIC
DOTSON, MARK; HOLLANDER, LEWIS	37-8944	11/30/2000	0.2		DOMESTIC
DOUBLE V LLC	37-8756A	2/4/1987	2.41	146.5	IRRIGATION
DOUBLE V LLC	37-8756B	2/4/1987	2.41	146.5	IRRIGATION
DOUBLE V LLC; VANDERVEGT, RAY	36-8047E	12/9/1981	0.8	81	IRRIGATION
DOUBLE V LLC; VANDERVEGT, RAY	36-8313B	8/20/1986	0.32	16	IRRIGATION
DURAND, DANIEL G; DURAND, VICKY S	37-8410	10/4/1988	0.03		STOCKWATER, COMMERCIAL, DOMESTIC
DURFEE, BRENDA J; DURFEE, JAMES M	36-8367	6/21/1988	0.11		STOCKWATER, COMMERCIAL
DURFEE, DEWEY D	36-7641	5/19/1983	1.19	64	IRRIGATION
EDWARDS, KENT F	36-8628	11/26/1991	0.18	8	IRRIGATION, STOCKWATER, DOMESTIC
EQUITY LIVESTOCK CREDIT CORP	36-14988	12/31/1983	0.07		STOCKWATER, COMMERCIAL, DOMESTIC
ESTATE OF RAY CHUGG	36-8266	3/18/1985	0.12		STOCKWATER, COMMERCIAL, DOMESTIC
EVERS BROTHERS PARTNERSHIP; NORTHWEST FARM CREDIT SERVICES FLCA	36-8584	2/26/1991	2.08	144	IRRIGATION
FAIRVIEW POULTRY FARM	37-8112	6/2/1983	0.02		COMMERCIAL, COOLING
FATTIG, PATSY; FATTIG, WAYNE	36-8637	12/6/1991	0.23	245	IRRIGATION
FAULKNER LAND & LIVESTOCK CO INC	37-8005B	3/20/1982	2.02	264	IRRIGATION
FAULKNER LAND & LIVESTOCK CO INC	37-8005C	3/20/1982	1.6	264	IRRIGATION
FAULKNER LAND & LIVESTOCK CO INC	37-8005D	3/20/1982	0.41	264	IRRIGATION
FAULKNER LAND & LIVESTOCK CO INC	37-8720	4/23/1991	3.2	324	IRRIGATION
FORD, JOYCE A; FORD, THOMAS RAY	36-14617*	5/1/1982	0.9	378	IRRIGATION
FORD, JOYCE A; FORD, THOMAS RAY	36-14619*	5/1/1965	1.32	311	IRRIGATION
FORSYTH, DANNY R; FORSYTH, GINGER	36-8531	4/24/1990	0.05	0.8	IRRIGATION, DOMESTIC
FRANCIS, MARK	36-8371	7/20/1988	0.06	2	IRRIGATION, DOMESTIC
FRAZIER FAMILY TRUST DTD 6/19/80 4% UNDIVIDED INT; FRAZIER, JAMES F; FRAZIER, JEFFREY W; FRAZIER, JOE K; FRAZIER, JORDAN P	36-8049	12/21/1981	0.94	47	IRRIGATION

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FREDERICKSEN, BETTY; FREDERICKSEN, CRAIG	37-22386	10/16/2008	0.04		DOMESTIC
FUNK, DARRELL M	45-13657	1/1/1983	0.06		STOCKWATER
FUNK, DARRELL M	45-4103	6/30/1985	1.6	305	IRRIGATION
FUNK, DARRELL M; FUNK, PATRICIA M	45-13917	6/8/1982	0.06		STOCKWATER, COMMERCIAL
GILLETTE, CINDY L; GILLETTE, LARRY R	37-8742	3/28/1991	4.21	995.5	IRRIGATION
GLANBIA FOODS INC	37-8903	9/17/1999	1.67		COMMERCIAL
GLEN CAPPS INC	36-8176	3/31/1983	0.04		COMMERCIAL, DOMESTIC
GOEDHART, HUGO; GOEDHART, MARY	36-8774	3/10/1998	0.13		STOCKWATER, DOMESTIC
GOOCH, BEATRICE; GOOCH, ELLIS	37-8839	11/22/1994	0.1		STOCKWATER
GOODING URBAN RENEWAL AGENCY	37-8289	2/23/1987	0.11		COMMERCIAL
GOTT, MIKE	36-8534	4/27/1990	0.1	2.5	IRRIGATION, DOMESTIC
GRANT, ANGELA; GRANT, RANDY; HAGAN, ROCKY	36-14202*	5/1/1975	0.2	130	IRRIGATION
GULICK, LARRY	36-8507	2/1/1990	0.06		STOCKWATER, COMMERCIAL
GULLEY, JUDY L; GULLEY, WILLIAM F	36-8789	3/23/1999	0.39	12	IRRIGATION
GUNNING, F F; GUNNING, G C	36-8063A	2/16/1982	2.14	329	IRRIGATION
H & S FARMS INC	36-8401	11/28/1988	0.68	360	IRRIGATION
H & S FARMS INC	36-8402	11/28/1988	0.84	314	IRRIGATION
HAAGSMA FAMILY TRUST	36-8345	4/9/2001	1		STOCKWATER, COMMERCIAL
HANEY SEED CO	36-8416	3/30/1989	0.04		COMMERCIAL
HEIDA, MARY JANE; HEIDA, THOMAS	36-8276	6/6/1985	0.14	121	IRRIGATION
HENRY FARMS	36-15163*	5/1/1981	0.66	286	IRRIGATION
HENRY, AUDREY; HENRY, ROBERT P	36-14844*	3/15/1983	0.25	94	IRRIGATION
HIRAI, JACK J; MATTHEWS, J W	36-8585	8/11/1988	0.22	171	IRRIGATION
HOLTZEN FARMS INC	36-8603	6/14/1991	0.14		STOCKWATER
HORIZON ORGANIC DAIRY LLC	36-16045	10/19/1981	1.95	182	IRRIGATION
HORIZON ORGANIC DAIRY LLC	36-16055	12/8/1981	4.12	522.6	IRRIGATION
HORIZON ORGANIC DAIRY LLC	36-8008	12/8/1981	0.84	314	IRRIGATION
HORIZON ORGANIC DAIRY LLC	36-8011A	12/24/1981	0.15		DOMESTIC
HUBSMITH, IRIS B; HUBSMITH, LOUIS L	37-8083	3/17/1984	0.08		STOCKWATER, COMMERCIAL
INFANGER, DEBRA A; INFANGER, JOHN N	37-20800	9/10/2002	0.14		DOMESTIC
J R SIMPLOT CO	36-8471	10/4/1989	0.18		COMMERCIAL
JACKSON, LAVAR R; VEENSTRA, FRANK W; VEENSTRA, MARY JANE	36-8101	7/13/1982	0.8	40	IRRIGATION
JEROME COUNTRY CLUB INC	36-8344	2/12/1988	0.41	104	IRRIGATION
JEROME COUNTY ROD & GUN CLUB	36-8620	11/14/1991	0.02	0.5	IRRIGATION, COMMERCIAL
JEROME JOINT SCHOOL DISTRICT NO 261	36-16440	7/10/2006	1.07		HEATING
JEROME JOINT SCHOOL DISTRICT NO 261	36-16441	7/10/2006	0.45		HEATING
JOE & MARTIN TRUCKING INC	37-8355	8/9/1988	0.04		COMMERCIAL, DOMESTIC
JOHN L WARREN TRUST; WARREN, ARTHELLA U	45-13567*	11/14/1983	0.21	163	IRRIGATION
JOHN, GLORIA; JOHN, KIT M	37-8346	6/21/1988	0.03		COMMERCIAL
JOHNSON, BECKY; JOHNSON, CHARLES; NELSON, JACK; NELSON, KATHY	37-21644	2/2/2006	0.12		DOMESTIC
K & W DAIRY	36-10225K*	5/1/1985	0.58	1064.7	IRRIGATION
KEARLEY, SUSAN L; KEARLEY, WILLIAM P	36-10547*	4/1/1980	0.25	154	IRRIGATION
KEARLEY, WILLIAM P	36-8200	5/26/1983	0.28	154	IRRIGATION
KECHTER, RICHARD L	45-10679*	4/1/1977	0.52	729.5	IRRIGATION
KECHTER, RICHARD L	45-10777B*	3/15/1976	0.23	151	IRRIGATION

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KERNER, HERSHEL	37-8361	6/16/1988	0.03		COMMERCIAL
KIME, MARK	37-7998	1/29/1982	0.04		STOCKWATER, COMMERCIAL
KISLING FARMS	37-8078	5/15/1983	2	116	IRRIGATION
KLOSTERMAN, KENT L	36-7974	3/25/1981	2.6	201	IRRIGATION
KUNSMAN, SHIRLEY	36-8249	7/12/1984	0.09	2.5	IRRIGATION, DOMESTIC
KUNSMAN, SHIRLEY	36-8306	2/26/1986	0.08	2.5	IRRIGATION
LANIER, BLANCHE; LANIER, MELVIN	36-8501	2/21/1990	0.07	1.5	IRRIGATION, DOMESTIC
LAST RANCH LLC	36-16140*	3/15/1974	0.03	32	IRRIGATION
LAZY P FARMS; PAULS, DEBBRAH; PAULS, EMIL V; PAULS, RONALD	37-8147	6/27/1983	0.04	1.8	IRRIGATION, STOCKWATER, DOMESTIC
LEE, MARTIN R	36-8410	2/10/1989	0.03		COMMERCIAL
LEED CORP	37-21952	9/26/2006	0.44		DOMESTIC
LENORE HUETTIG FAMILY LIMITED PARTNERSHIP	36-8147	3/1/1983	1.6	511	IRRIGATION
LIND, ELDEN; LIND, MELBA JEAN	36-8583	2/22/1991	3.99	238.9	IRRIGATION
LLOYD, CARL; LLOYD, JANICE	36-8580	2/19/1991	0.7	35	IRRIGATION
LONG VIEW DAIRY	36-16185	6/30/1983	2.03	131	IRRIGATION
MAY, DAVID C; MAY, DEBRA J	36-15226*	6/15/1973	0.36	658	IRRIGATION
MC CABE, LINDA JOY; MC CABE, ROBERT	37-20747*	4/1/1978	0.56	300	IRRIGATION
MC CAUGHEY, MARGARET; MC CAUGHEY, WALTER L	36-8579	2/8/1991	0.68	52	IRRIGATION
MC DONALD, FRANK F	36-8516	3/2/1990	0.11	3	IRRIGATION, DOMESTIC
MC KNIGHT, SPARR	37-22201	7/5/2007	0.2		DOMESTIC
MC KEAN, EDWARD; MC KEAN, LYNETTE	36-8186	5/17/1983	0.04		COMMERCIAL, DOMESTIC
MEEKS, DIANE SAWYER; MEEKS, JAMES D	36-7336	8/8/1986	0.88	87	IRRIGATION
MEYERS, ROBERT J	36-7854	2/16/1990	2.71	142	IRRIGATION
MEYERS, ROBERT J	37-8801	10/20/1992	0.1		DOMESTIC
MILLARD, DAVID; SLIGAR, KEITH; STANLEY, RONALD L	36-8234	1/11/1984	1.23	14	IRRIGATION, COMMERCIAL, DOMESTIC, RECREATION
MILLENKAMP, SUSAN; MILLENKAMP, WILLIAM J	36-8054	4/24/1990	2.3	217.8	IRRIGATION
MILLER, DIANE M; MILLER, GUS E	37-8373	8/10/1988	0.04	2	IRRIGATION, STOCKWATER, DOMESTIC
MIPAD LIMITED PARTNERSHIP	37-8707	3/26/1991	2	100	IRRIGATION
MORGAN, CODY G; MORGAN, KATHY J	36-16094	3/10/1982	0.03		STOCKWATER
MORGAN, CODY G; MORGAN, KATHY J	36-16407	3/10/1992	1.53	390.5	IRRIGATION
MORGAN, CODY G; MORGAN, KATHY J	36-16408	3/10/1992	0.08		STOCKWATER, COMMERCIAL
MOSS GREENHOUSES INC; MOSS, CAROLYN A	36-8298	9/23/1985	0.27		COMMERCIAL
MOUNTAIN VIEW WATER CORP	37-21278	3/22/2004	0.06		DOMESTIC
MOYLE, ALLEN; MOYLE, KARLA	36-8768	6/16/1997	0.17		STOCKWATER, COMMERCIAL
MUNSEE, G K; MUNSEE, LAREE; MUNSEE, MARK	36-8559	9/4/1990	1.86	93	IRRIGATION
MURPHY, LA VERN A	36-8361	5/31/1988	0.09	3	IRRIGATION
NALLEY, TINA L	37-8750	7/12/1991	0.13	6	IRRIGATION, STOCKWATER, DOMESTIC
NAPIER, DIANNA K	36-8521	12/19/1991	0.03	1	IRRIGATION, DOMESTIC
NELSON, JACK; NELSON, KATHY	37-8717	3/1/1991	0.08	2.6	IRRIGATION
NELSON, JACK; NELSON, KATHY	37-8740	3/14/1991	0.09	3	IRRIGATION

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NORTH RIM FAIRWAYS OWNERS ASSN INC	36-8399	1/5/1995	0.41		DOMESTIC
NORTHSIDE DAIRY	36-8490	11/7/1989	0.27		STOCKWATER, COMMERCIAL, DOMESTIC
NORTHVIEW WATER ASSN INC	36-16204	2/9/2004	0.18	9	IRRIGATION
NORTHVIEW WATER ASSN INC	36-8747	2/2/1996	0.35	8	IRRIGATION, DOMESTIC
NORTHWEST FARM CREDIT SERVICES FLCA; VAN DYK, MARIE C; VAN DYK, RICHARD B	36-8547	4/25/1990	0.39		STOCKWATER, COMMERCIAL, DOMESTIC
NOTCH BUTTE FARMS LLC	36-16139*	3/15/1974	0.18	188	IRRIGATION
NOTCH BUTTE FARMS LLC	37-20816	11/12/1981	0.49	195.4	IRRIGATION
NOTCH BUTTE FARMS LLC	37-20817	11/12/1981	0.47	187	IRRIGATION
NOTCH BUTTE FARMS LLC	37-8909*	3/15/1974	0.02		STOCKWATER
OAK VALLEY LAND CO LLC	45-13930	6/30/1985	1.29	3844.4	IRRIGATION
OAK VALLEY LAND CO LLC	45-13934	6/30/1985	2.3	3844.4	IRRIGATION
OAK VALLEY LAND CO LLC	45-13944	11/24/1981	6.09	3844.4	IRRIGATION
OAK VALLEY LAND COMPANY LLC	45-10777A*	3/15/1976	0.47	483	IRRIGATION
OAK VALLEY LAND COMPANY LLC	45-4176*	3/15/1976	0.18	463	IRRIGATION
OLSEN, BETTY M; OLSEN, GEORGE L	36-8605	5/23/1991	0.04	1.4	IRRIGATION
OLSEN, RICHARD ARTHUR	37-8374	7/8/1988	0.15	3	IRRIGATION, STOCKWATER, DOMESTIC
OPPIO FAMILY LIMITED PARTNERSHIP	37-19848*	4/15/1987	0.29	142.4	IRRIGATION
OPPIO FAMILY LIMITED PARTNERSHIP	37-8010	12/5/1982	2.52	142.4	IRRIGATION
OPPIO FAMILY LIMITED PARTNERSHIP	37-8756C	2/4/1987	1.34	67	IRRIGATION
PARKINSON, ROBERT J	36-8591	3/6/1991	1	66	IRRIGATION
PATTERSON LAND & LIVESTOCK INC	37-7952	11/18/1981	0.15	10	IRRIGATION
PETERS, THOMAS R	36-8577	2/28/1991	1.68	94	IRRIGATION
POPA, DAN; POPA, PAM	36-8197	6/7/1983	0.08	2.5	IRRIGATION, DOMESTIC
PRICE, BERTHA; PRICE, EUGENE F	45-10000*	4/1/1971	0.74	202.1	IRRIGATION
RANGEN INC	36-8048	12/21/1981	0.41	20.2	IRRIGATION
RAY, JUDITH K; RAY, LEO E	36-7995	7/17/1981	0.2		COMMERCIAL, DOMESTIC
REED, CAROL A; REED, ROBERT W	36-15227*	8/27/1973	0.7	163	IRRIGATION
RESERVOIR LAND CO INC	36-8466	10/4/1989	0.03		COMMERCIAL
RITCHIE, JAMES M; RITCHIE, KARLYN	36-8077	7/12/1984	1.6	330	IRRIGATION
RODRIGUEZ, EMMA J; RODRIGUEZ, RAFAEL	37-8033	8/6/1982	0.06	1	IRRIGATION, DOMESTIC
ROOST POTATO CO INC	36-15152*	8/30/1984	0.08	633	IRRIGATION
ROTH INVESTMENTS LLC	36-15222*	7/5/1985	0.52	235	IRRIGATION
ROYCE, DAN; ROYCE, JO ANNE	36-8609	10/21/1991	0.02	2.5	IRRIGATION, STOCKWATER, DOMESTIC
SALMON FALLS LAND & LIVESTOCK CO INC	36-10033*	3/15/1975	1.07	370	IRRIGATION
SALMON FALLS LAND & LIVESTOCK CO INC	36-10035*	3/15/1981	0.47	370	IRRIGATION
SALMON FALLS LAND & LIVESTOCK CO INC	36-10037*	3/15/1974	1.65	404	IRRIGATION
SAWTOOTH SHEEP CO INC	37-8702	1/31/1991	2.5	260	IRRIGATION
SCARROW, JIM D	36-8164	6/27/1985	2.08	104	IRRIGATION
SCARROW, JIM D	36-8263	2/3/1985	0.85	128	IRRIGATION
SCARROW, JIM D	37-8152	6/30/1983	0.25		STOCKWATER
SCHAEFFER, DAN; SCHAEFFER, JAMES K	36-8220B	2/7/1990	1.2	162	IRRIGATION
SCHOTH, WARREN E	36-8589	5/9/1991	0.13	3	IRRIGATION, DOMESTIC
SEYMOUR, JOHN R	45-13542*	3/15/1976	1.28	479	IRRIGATION
SHAW, WILLIAM HUBERT	37-8705	2/21/1991	7	420	IRRIGATION
SIRUCEK, BECKY; SIRUCEK, MIKE	36-8569	12/10/1990	0.46	67	IRRIGATION
SLADE, DELILAH; SLADE, KEVIN L	36-15229*	8/17/1972	0.3	153	IRRIGATION
SLADE, WILLIAM J; SLADE, WYLENE	36-15228*	3/15/1973	0.1	459	IRRIGATION
SLIMAN, MICHAEL E; SLIMAN, MIKE G	37-8060	12/9/1982	0.01		COMMERCIAL

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SLIMAN, MICHAEL E; SLIMAN, MIKE G	37-8061	12/9/1982	0.07	1	IRRIGATION, DOMESTIC
SLUDER, GILBERT T; SLUDER, GONDA O; SLUDER, RONALD E	37-8108	6/1/1983	0.08		DOMESTIC
SMITH, RONNIE D; SMITH, SHARLENE M	36-8333	8/25/1987	3.66	183	IRRIGATION
SOUTH VIEW DAIRY	36-10225B*	5/1/1985	0.17	273	IRRIGATION
SOUTHFIELD DAIRY	36-2907	4/26/1990	0.8	436	IRRIGATION
SOUTHFIELD DAIRY	36-8387	8/31/1988	2.48	149	IRRIGATION
SOUTHFIELD DAIRY	37-8326	1/6/1988	1.36	602	IRRIGATION
SOUTHFIELD PROPERTIES LLC	36-10666*	5/1/1987	0.19	142	IRRIGATION
SOUTHFIELD PROPERTIES LLC	36-8063C	2/21/1982	0.3	99	IRRIGATION
SOUTHFIELD PROPERTIES LLC	36-8252E	10/17/1984	0.1	99	IRRIGATION
SOUTHFIELD PROPERTIES LLC	36-8313A	8/20/1986	1.2	60	IRRIGATION
SOUTHFIELD PROPERTIES LLC	36-8529	4/5/1990	0.66	33	IRRIGATION
SOUTHFIELD PROPERTIES LLC	36-8560A	9/7/1990	1.03	135	IRRIGATION
SOUTHFIELD PROPERTIES LLC	36-8560B	9/7/1990	0.12	6	IRRIGATION
SOUTHFIELD PROPERTIES LLC	36-8582	2/20/1991	0.46	23	IRRIGATION
SOUTHFIELD PROPERTIES LLC	36-8760	12/4/1990	1.52	436	IRRIGATION
SOUTHFIELD PROPERTIES LLC	37-8732	4/13/1991	3	587	IRRIGATION
SPENCER, GLEN D	36-8536	4/12/1990	0.03	1	IRRIGATION, DOMESTIC
STANDLEE, MIKE; STANDLEE, WHENDY	36-15119*	3/1/1975	1.31	417	IRRIGATION
STANDLEE, MIKE; STANDLEE, WHENDY	36-15178*	3/1/1975	0.04	456	IRRIGATION
STANDLEE, MIKE; STANDLEE, WHENDY	36-16500*	4/1/1984	0.51	348	IRRIGATION
STAR FALLS FARMS LLC; THE ESTATE OF GERALD HUETTIG DECEASED	36-8289	6/26/1985	0.04	511	IRRIGATION
STATE OF IDAHO; STATE OF IDAHO	37-7372	6/30/1999	6.54	320	IRRIGATION, STOCKWATER
STEVENSON, SCOTT A; STEVENSON, TAMARA LYNN	36-8161	3/31/1983	1.8	446	IRRIGATION
STEWART, FRED R; STEWART, PHYLLIS L	36-8568	11/7/1990	0.79	240	IRRIGATION
STOKES, SHIRLEY W	36-8409	1/23/1989	0.2	10	IRRIGATION
SUHR, DANIEL A; SUHR, DONNA DEE	36-14317*	3/20/1976	0.67	153	IRRIGATION
TABER, BEVERLY	37-7877A	2/5/1981	0.02	1	IRRIGATION
TABER, DONALD	37-10158*	4/1/1974	1.78	466	IRRIGATION
TABER, DONALD	37-8401	9/20/1988	6.68	334	IRRIGATION
TANNER, BARBARA; TANNER, ROBERT	36-8512	2/27/1990	0.02		COMMERCIAL STOCKWATER, COMMERCIAL
TELFORD, MICHAEL S	37-7949	11/4/1981	0.25		COMMERCIAL
THE ALTON & PAULA HUYSER TRUST UNDER TRUST AGREEMENT DTD 4-1-2001	37-8679	8/23/1990	0.16	8	IRRIGATION
THOMPSON, KURT; THOMPSON, LINDA B	36-8615	10/30/1991	0.05	1.5	IRRIGATION
TOWNE, DELORIS E; TOWNE, RALPH W P	37-8211	5/16/1983	0.05		STOCKWATER, COMMERCIAL
TRAVELERS OASIS TRUCK PLAZA; WILLIE, DANIEL L	36-8766	6/8/1997	0.11		COMMERCIAL
TRAVELERS OASIS TRUCK PLAZA; WILLIE, DANIEL L	36-8767	6/19/1997	0.11		COMMERCIAL
TRIPLE C CONCRETE INC	36-16401	3/31/2006	0.04		DOMESTIC
UNIT 3 WATER ASSN INC	36-8090	6/16/1982	0.51	24	IRRIGATION, STOCKWATER, DOMESTIC, FIRE PROTECTION
UNIT 3 WATER ASSN INC	36-8727	5/5/1994	0.45		DOMESTIC
UNITED STATES OF AMERICA ACTING THROUGH	37-20851*	3/15/1983	0.02	30	IRRIGATION

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U-U RANCH LLC	36-8050	12/11/1981	4.06	699	IRRIGATION
V & L DAIRY	36-15211*	1/30/1970	0.33	75	IRRIGATION
VALLEY CO-OPS INC	36-8452	8/22/1989	0.16		COMMERCIAL
VALLEY SCHOOL DISTRICT #262	36-16299	9/22/2004	2		DOMESTIC, FIRE PROTECTION
VAN BEEK, DIANNE; VAN BEEK, JACK	36-7958	1/9/1981	5.8	290	IRRIGATION
VAN DYK, RICHARD B; VAN DYK, TAMMY D	36-8389	9/1/1988	0.18		STOCKWATER, COMMERCIAL
VAN TASSELL, AFTON; VAN TASSELL, GAIL	36-7966	2/23/1981	0.37	837	IRRIGATION
VANDERHAM, KEN	36-16101	5/9/1988	0.04		DOMESTIC
VASQUAZ, DUFIA; VASQUAZ, J REUBEN	36-10243*	5/1/1985	0.4	205	IRRIGATION
VEENSTRA, CHERYL; VEENSTRA, PETE	36-8803	7/13/2000	0.13		STOCKWATER, COMMERCIAL
VEENSTRA, FRANK W	36-15077*	4/1/1982	0.91	198.5	IRRIGATION
VERBREE JR, JACK; VERBREE, MARGARET	36-8351	6/15/1988	0.19		STOCKWATER, COMMERCIAL, DOMESTIC
VICTOR, SALLY; VICTOR, STEVE	36-8128	12/30/1982	0.03		COMMERCIAL
WAHLSTROM, LESLIE; WAHLSTROM, RON	36-8612	10/24/1991	0.03	1	IRRIGATION
WARTLUFT, HAROLD; WARTLUFT, LOIS	37-8375	8/11/1988	0.15	3.5	IRRIGATION, DOMESTIC
WEBER, JEFF L; WEBER, KERI JO	37-20850*	3/15/1983	0.4	634	IRRIGATION
WERT, LOREN; WERT, RITA	36-8000	9/11/1981	0.8	40	IRRIGATION
WEST ONE BANK IDAHO	36-15215*	3/15/1972	1.1	609	IRRIGATION
WESTERN IDAHO POTATO PROCESSING CO	36-8324	4/3/1987	2		FIRE PROTECTION
WHITTAKER, JAMES A	37-8063	1/6/1983	2	658	IRRIGATION
WHITTAKER, KEITH	36-8553	7/9/1990	0.13	4.3	IRRIGATION
WICKEL, ARDEL W; WICKEL, JUDY M	36-15165*	3/15/1970	2.2	2785	IRRIGATION
WICKEL, ARDEL W; WICKEL, JUDY M	36-16421	12/30/1983	0.13	2785	IRRIGATION
WICKEL, ARDEL W; WICKEL, JUDY M	36-16425*	5/1/1976	0.15	2785	IRRIGATION
WICKEL, ARDEL W; WICKEL, JUDY M	36-4200*	3/15/1974	0.84	2785	IRRIGATION
WICKEL, ARDEL W; WICKEL, JUDY M	36-8403	11/28/1988	0.31	2785	IRRIGATION
WILCOX, FRANCIS; WILCOX, MARGARET	36-8515	3/2/1990	0.03	1	IRRIGATION
WILD WEST INC	37-21719	3/22/2006	0.11		DOMESTIC
WILDMAN, LINDA; WILDMAN, MAURICE	37-8377	8/19/1988	0.03	1	IRRIGATION
WISE, EARL; WISE, INEZ	36-8638	1/7/1992	0.04	1	IRRIGATION, DOMESTIC
WOOD RIVER RANCH CO INC	36-8312	8/15/1986	0.05		STOCKWATER
YERION, GEORGE A; YERION, SUSAN F	37-20717	4/29/2002	0.1	4	IRRIGATION

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