

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNT OF ADA**

BASIN 33 WATER USERS, a coalition of water
right holders, and the UPPER VALLEY WATER
USERS, a coalition of water right holders,

Petitioners,

vs.

SURFACE WATER COALITION, a coalition of
water right holders,

Cross Petitioner,

vs.

THE IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondent,

and

CITIES OF BLISS, BURLEY, CAREY, DECLO,
DIETRICH, GOODING, HAZELTON,
HEYBURN, JEROME, PAUL, RICHFIELD,
RUPERT, SHOSHONE, AND WENDELL;
SOUTH VALLEY GROUND WATER
DISTRICT, IDAHO GROUND WATER
APPROPRIATORS, INC.; IDAHO POWER
COMPANY; CLEAR SPRINGS FOODS, LLC;
CITY OF POCA TELLO, and SNAKE RIVER
STORAGE,

Intervenors.

Case No. CV01-20-8069

**INTERVENOR SNAKE
RIVER STORAGE'S
RESPONSE TO
PETITIONERS' BRIEF**

IN THE MATTER OF DESIGNATING THE
EASTERN SNAKE PLAIN AQUIFER
GROUND WATER MANAGEMENT AREA

**INTERVENOR SNAKE RIVER STORAGE'S RESPONSE
TO PETITIONERS' BRIEF**

Judicial Review of the *Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area* (dated November 2, 2016),
entered by the Idaho Department of Water Resources;
Hearing Officer Director Gary Spackman, Director, Presiding.

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COMES NOW Intervenor Snake River Storage (“SRS”), by and through its undersigned counsel, Parsons Behle & Latimer, pursuant to the Court’s *Order Granting Motion to Modify Briefing Schedule* (September 2, 2020) and I.R.C.P 84(p), and hereby submits its response to Petitioners’ Brief, which was filed in the above-entitled matter on the 13th day of August, 2020 (“*Petitioners’ Brief*”).

I. ARGUMENT

After reviewing the *Petitioners’ Brief*, the applicable authorities, and the record in this matter, it is apparent that the Eastern Snake Plain Aquifer (“ESPA”) Ground Water Management Area (“GWMA”) was designated without following the procedures required by law. This is of particular concern to SRS because of the unknown differences in water rights administration that are likely to be imposed through, or otherwise result from, the Director’s planned adoption of a ground water management plan for the area, pursuant to Idaho Code Section 42-233b.¹

While the parameters of administration on the ESPA are relatively well-known under the Conjunctive Management Rules² – and the existing settlement agreement³ – SRS and others are

¹ “When a ground water management area is designated . . . the director may approve a ground water management plan for the area.” I.C. Sec. 42-233b. The Director’s *Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area* (Nov. 2, 2016) (“*Director’s Order*”) indicates that such a plan will be developed and adopted through a separate order.

² IDAPA 37.03.11, Rules for Conjunctive Management of Surface and Ground Water Resources.

³ Settlement Agreement Entered Into June 30, 2015 Between Participating Members of the Surface Water Coalition and Participating Members of the Idaho Ground Water Appropriators, Inc. (“*SWC-IGWA Settlement Agreement*”), available at <https://idwr.idaho.gov/files/legal/swc-igwa-settlement/SWC-IGWA-Settlement-20150630-SWC-IGWA-Settlement-Agreement.pdf>.

left guessing as to what additional reduction demands and/or private recharge obligations may ultimately result from the management plan.⁴ “[T]his significant change in water right administration” (*Petitioners’ Brief* at 16) threatens to impact SRS, which facilitates private recharge activities on the ESPA, by and for the benefit of its members, pursuant to the current *SWC-IGWA Settlement Agreement* obligations.⁵

As noted by the Petitioners, the Conjunctive Management Rules “provide the procedures that will be followed . . . in designating such areas as ground water management areas as provided in Section 42-233b, Idaho Code.” IDAPA 37.03.11.020.06; *Petitioners’ Brief* at 19. The Director did not follow the Rules in designating the ESPA GWMA. *Petitioner’s Brief* at 20.

⁴ The current obligations relating to consumptive use volume reductions and private recharge activities are set forth in the *SWC-IGWA Settlement Agreement* (2015) as follows:

3. Long Term Practices, Commencing 2016.

a. Consumptive Use Volume Reduction.

i. Total ground water diversion shall be reduced by 240,000 ac-ft annually.

ii. Each Ground Water and Irrigation District with members pumping from the ESPA shall be responsible for reducing their proportionate share of the total annual ground water reduction or in conducting an equivalent private recharge activity. Private recharge activities cannot rely on the Water District 01 common Rental Pool or credits acquired from third parties, unless otherwise agreed to by the parties.

SWC-IGWA Settlement Agreement at 2.

⁵ The “safe harbor” provision included in the settlement agreement provides: “No ground water user participating in this Settlement Agreement will be subject to a delivery call by the SWC members as long as the provisions of the Settlement Agreement are being implemented.” *SWC-IGWA Settlement Agreement* at 5. It does not, however, provide any assurances against additional obligations created by a GWMA designation or management plan.

The Rules prescribe the water management regime on the ESPA following completion of the Snake River Basin Adjudication (“SRBA”). IDAPA 37.03.11.050.01(d); *Petitioner’s Brief* at 21. Once the SRBA was completed, administration was to be pursuant to water districts – not a ground water management area. IDAPA 37.03.11.030.05; *Petitioner’s Brief* at 28. The *Director’s Order* is plainly contrary to these rules. The order designates a ground water management area where water rights have been adjudicated and placed in water districts.

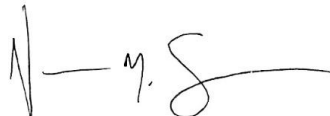
SRS agrees that the “duplicative administration regimes” resulting from designation of the ESPA GWMA “will only confuse the administration of water rights in the ESPA” and “would be an unnecessarily and perhaps conflicting layer of administration.” *Petitioner’s Brief* at 32–33. This speaks to the utility of the Conjunctive Management Rules’ prescription that areas such as the ESPA – where water rights have been adjudicated – be administered by water districts, not through designation of a GWMA. That is the law, as set forth in the Rules, which were duly adopted by the Department and approved by the Idaho State Legislature. The Director’s designation of the ESPA GWMA is plainly contrary to the Rules and must therefore be set aside.

II. CONCLUSION

For the foregoing reasons, SRS requests that the *Director’s Order* creating the ESPA GWMA be set aside.

DATED this 10th day of September, 2020.

PARSONS BEHLE & LATIMER



By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of September, 2020, I served a true and correct copy of the foregoing document on the parties listed below by their designated method of service as indicated.

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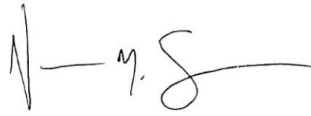
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