

# Exhibit R

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

IN THE MATTER OF DESIGNATING)  
THE BIG WOOD RIVER GROUND )  
WATER MANAGEMENT AREA )  
\_\_\_\_\_ )

ORDER

This matter having come before the Director of the Idaho Department of Water Resources as a result of concern over the relationship between ground water pumping and the flow of surface streams in the Big Wood River drainage, the Director Finds, Concludes and Orders as follows:

FINDINGS OF FACT

1. The Director of the Department of Water Resources has the responsibility to administer the use of ground water in the state of Idaho to protect prior rights and yet allow full economic development of the resource.

2. The surface and ground waters of the Big Wood River drainage are interconnected. Diversion of ground water from wells can deplete the surface water flow in streams and rivers. New ground water uses can also deplete available supplies for other users and affect basin underflow which presently accumulates in the Magic Reservoir.

3. There are a number of Applications for Permit to Appropriate Water pending before the department which propose additional consumptive uses of ground water within the Big Wood River drainage.

4. Injury could occur to prior surface and ground water rights including the storage right in Magic Reservoir if the flows of streams, rivers and ground water underflow in the Big Wood River Basin are intercepted by junior priority ground water diversions.

CONCLUSIONS OF LAW

1. Section 42-226, Idaho Code, declares all ground waters to be the property of the state, whose duty it is to supervise the appropriation and allotment of the same. One of the goals is to assure that early appropriations of ground water are protected in the maintenance of reasonable ground water pumping levels.

2. In order to determine whether withdrawals from the existing and proposed wells will have an adverse impact on prior water rights diverted from surface water and/or ground water, the



construction and use of additional wells in the area must be monitored and controlled.

3. Section 42-233b, Idaho Code, authorizes the Director of the Idaho Department of Water Resources to designate "ground water management areas" to allow increased management of the ground water resources.

4. The director of the department of water resources should designate a ground water management area for a portion of the Big Wood River basin upstream from Magic Reservoir and from which ground water pumping can have an effect on flows of streams and rivers in the basin.

ORDER

NOW, THEREFORE IT IS HEREBY ORDERED that the following described area be included within and designated as the "Big Wood River Ground Water Management Area" pursuant to the provisions of Section 42-233b, Idaho Code:

Beginning at Magic Dam on Big Wood River and continuing eastward approximately one mile to the drainage divide at Rattlesnake Butte, which separates tributaries of the Big Wood River above Magic Dam from those below the dam, thence northward approximately three miles and eastward approximately fourteen miles along the divide to a point where the divide crosses the north-south section line common to sections 28, 29, 32 and 33, T1S, R20E, BM, which is near the NE corner of Section 32, T1S, R20E, BM., thence east approximately five miles to the divide separating Silver Creek tributaries from the upper Little Wood River basin, thence continuing in a counterclockwise direction along the entire topographic boundary of the upper Silver Creek and Big Wood River basins, including Camas Creek returning to the point of beginning at Magic Dam.

Attached to this order is a map identified as Attachment 1. which graphically shows the boundaries of the management area.

DATED this 28<sup>TH</sup> day of JUNE, 1991.

  
R. KEITH HIGGINSON  
Director



## MANAGEMENT POLICY

FOR

### THE BIG WOOD RIVER GROUND WATER MANAGEMENT AREA

#### I. GENERAL

##### A. Introduction

The Big Wood River drainage basin is located in southcentral Idaho within Blaine, Camas, Lincoln and Gooding Counties. In the approximate center of this basin is Magic Reservoir with a water storage capacity of 191,000 acre feet. This reservoir generally divides the basin into two distinct areas. The area upstream from the reservoir is herein referred to as the upper Big Wood River Basin.

The headwaters of Silver Creek are located east of the Big Wood River in the Bellevue Triangle. Silver Creek provides water to users who divert from the creek and from the Little Wood River to which it is tributary.

The upper Big Wood River Basin (including Silver Creek), particularly in Blaine County, is an area of continued economic growth and development. Water resource development to support some of this growth has occurred through transfers of existing water rights and new water appropriations.

##### B. Geohydrologic Characteristics of the Big Wood River Basin

The surface and ground water system in the upper Big Wood River Basin is interconnected. Diversion and use of water from a tributary stream or well will impact the total water supply available in the system. Downstream from Magic Reservoir, the river and ground water system are not as directly connected and there are other sources of water supply including canals bringing water from the Snake River and the Snake Plain ground water system. Magic Reservoir collects much of the water which moves through the upper Big Wood River Basin and which is not diverted and used upstream from that point. Except during periods of high runoff when Magic Reservoir fills and spills, the available water supply, both surface and ground water, upstream from Magic Reservoir is fully appropriated. Camas Creek and the Big Wood River are the major surface water tributaries upstream from Magic Reservoir.

Silver Creek is fed by numerous springs whose flows depend partly on percolating seepage resulting from Big Wood River irrigation diversion and use upstream in the Bellevue area. Ground water inflow contributes to the surface flow of Silver Creek and its tributaries from the headwaters to



a point approximately two miles upstream of Picabo, where Silver Creek ceases to be a gaining stream.

Diversions of ground water in the Bellevue Triangle, and generally in locations hydrologically upstream from Picabo, will deplete the surface flow of Silver Creek. Prior water right holders who divert from the Little Wood River also depend on surface water flow from Silver Creek. Depletion of Silver Creek flow will injure these earlier-in-time right holders. Many of the Little Wood River right holders also receive storage water from Magic Reservoir.

#### C. Present and Proposed Uses

Approximately 73 applications for permit to appropriate ground water upstream from Magic Reservoir and in the upper Silver Creek area are pending before the Department of Water Resources. Protests have been filed with the department against some of these applications. Complaints have also been lodged that continued granting of permits to develop new ground water uses in the upper Big Wood River Basin is interfering with prior surface water rights.

#### D. Recent Declines

The water years 1987 to the present have been below average within the basin. As a result, Magic Reservoir has not filled to its capacity within that time period. It has been suggested that this has been caused, in part, by the diversion of water within the basin under water rights with priority dates later in time than the Magic Reservoir rights.

Many natural flow rights have been cut off because of insufficient surface water flows. Since the water supply of the basin is finite, any withdrawal and consumption of water which would otherwise contribute water to a surface water source, when the source is fully appropriated, will injure another water user.

Various estimates have been made of the quantity of water within the basin. The studies have not all agreed on the total quantity of water but all have generally agreed that the surface and ground waters of the area are interconnected and that withdrawal and use of water from either source will impact the total supply.

#### E. Past Department Designation

In 1980, the Director of the Department of Water Resources issued a policy memorandum by which he declared that the surface water of the Big Wood River upstream from Magic Reservoir was fully appropriated. Since that date, no new permits for consumptive purposes have been issued for the use of the river or any of its tributaries. The department has continued, however, to issue permits for the use of ground water within the watershed. It now appears



that this policy must be changed with respect to new consumptive uses of ground water.

## II. STATUTORY REQUIREMENTS AND AUTHORITIES

- A. Section 42-226, Idaho Code, declares all ground water to be the property of the state, and charges the state with supervising the appropriation and allotment of the same. One of the purposes of this is to assure that early appropriators of ground water are protected in the maintenance of reasonable ground water pumping levels.
- B. Section 42-233b., Idaho Code, authorizes the Director of the Department of Water Resources to designate a "Ground water Management Area" when the water supply in the area may be approaching conditions which could lead to designation as a critical ground water area.
- C. Section 42-237 a.g., Idaho Code, empowers the Director to prohibit or limit the withdrawal of water from any well during the period that he determines that water to fill any water right is not available.
- D. Policy 1F of the State Water Plan adopted by the Idaho Water Resource Board provides that "It is the policy of Idaho that where evidence of hydrologic connection exists between ground and surface water, they be managed as a single resource."

## III. MANAGEMENT POLICY

Management policies which could be used in connection with future use of water in the upper Big Wood River Basin include the designation of all or a portion of the drainage as a groundwater management area, a critical ground water area or to issue a moratorium on additional permits for development.

The designation of a ground water management area for the upper Big Wood River Basin is the preferred management policy. Under this policy, additional approvals of ground water for consumptive uses can be granted upon a showing by an applicant and a determination by the department that the water supply is adequate and other water rights will not be injured. After the water rights of the basin are determined in the Snake River Basin Adjudication, and a method for the co-regulation of surface and ground water rights has been determined, the Director may require record keeping and reporting and may also issue orders if needed to reduce or stop ground water diversions.

This management policy allows the processing of all pending filings. Most consumptive use applications will be denied unless the applicants can demonstrate there will be no injury or can provide acceptable mitigation to prior rights.



The department will continue to consider the approval of applications for permit which propose non-consumptive uses, municipal uses, stockwater and domestic uses as defined in Section 42-111, Idaho Code. Domestic uses meeting the definition of Section 42-111, Idaho Code, are not subject to the application for permit filing requirements of Section 42-229, Idaho Code.

Section 42-111, Idaho Code, defines "domestic uses" as

- A. The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day, or
- B. Any other uses, if the total use does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day.

For purposes of this management policy, applications for ground water permits seeking water for multiple ownership subdivisions or mobile home parks will be considered provided each unit satisfies the definition for the exception of need to file an application for permit as described above.

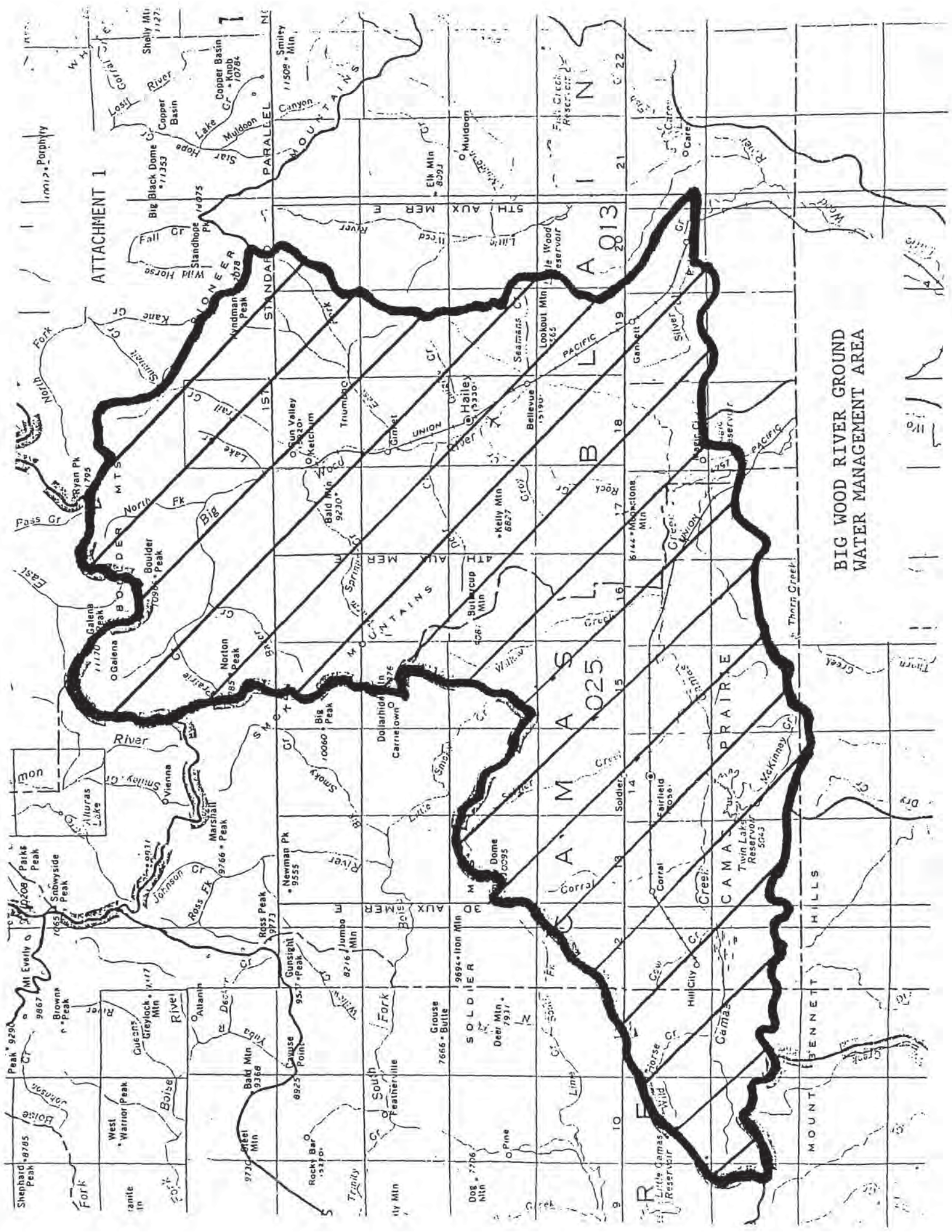
While an incorporated city has wide latitude under state law to beneficially use its water rights for municipal purposes, any new large consumptive use within the municipal limits, such as irrigation of lands not associated with a dwelling, or irrigation of more than one-half acre associated with a dwelling, must be mitigated by the municipality.

The department will continue to accept and process new applications for permit and applications seeking amendment or transfer of existing water rights. Applications for amendment or applications for transfer which propose a change in the point of diversion from outside the ground water management area to within the area which would directly or indirectly result in the irrigation of new land will be treated as a proposed new appropriation of water.

Dated this 28<sup>TH</sup> day of JUNE, 1991.

  
R. KEITH HIGGINSON  
Director





ATTACHMENT 1

BIG WOOD RIVER GROUND WATER MANAGEMENT AREA



# STATE OF IDAHO





WATER RIGHT NUMBER	OWNER NAME	O	PRIORITY	C	DATE	STG	POINT OF DIVERSION	FLAG	TOTAL DIVERSION	POD	ACRES	TOTAL WATER USES
37-08195	CITY OF KETCHUM				10/05/1984	A	04N 17E 1 SWSE		2.750	CFS	40.0	01,40,43
37-08204	SUN VALLEY LAND AND MINERAL INC.				03/12/1985	A	03N 17E 27 SWSE		4.380	CFS	38.0	01,04,10,43,46
37-08268	RINKER CO.				03/24/1986	A	03N 18E 18 NESWE		2.620	CFS	131.0	01
37-08294	GARDNER, ROBERT E.				05/01/1987	A	01N 19E 18 SESESE		6.000	CFS	300.0	01
37-08354	ALMA, H. WILLEM				07/07/1988	A	02N 19E 31 SWSW		0.175	CFS	6.0	01
37-08459	MC MAHAN, KATHRYN				09/22/1988	A	01N 18E 1 SWHNE 2		0.100	CFS	5.1	43,01
37-08439	STARWEATHER SUBDIVISION PROPERTY				10/25/1988	A	03N 18E 20 WNWNNW		0.960	CFS	30.0	43,01,49
37-08552	REESE, JANET S.				09/11/1989	A	02N 18E 30 SWSWSW 4		0.200	CFS	3.0	01,43,52
37-08580	FARNES, DORLA				10/26/1989	A	02S 17E 11 WNWNNW		0.200	CFS	1.0	10,01,43
37-08598	HERMANN, RANDALL				03/01/1990	A	05N 17E 10 SENHSE		0.120	CFS	4.0	01
37-08656	JOHN BROWN INC.				06/04/1990	A	01N 18E 14 SWSW		4.000	CFS	349.0	01
37-08645	BALDWIN, PHYLLIS				07/11/1990	A	01S 19E 11 NWSW		1.240	CFS	60.0	01,43
37-08672	RAMM, PAUL C.				08/16/1990	A	01N 19E 18 SWH		0.060	CFS	3.0	01
37-08671	RAMM, PAUL C.				08/16/1990	A	01N 19E 18 SWH		0.100	CFS	5.0	01
37-08674	NEW DEER CREEK RANCH INC.				09/07/1990	A	03N 18E 30 SESE		0.090	CFS	3.0	01
37-08681	PUCHNER, PHILIP F.				09/14/1990	A	01N 18E 28 NESNNW		0.130	CFS	3.0	43,01
37-08680	PUCHNER, PHILIP F.				09/14/1990	A	01N 18E 28 SWSNNW		0.130	CFS	3.0	43,01,04
37-08682	PUCHNER, PHILIP F.				09/14/1990	A	01N 18E 28 SWNESW		1.200	CFS	60.0	01
37-08686	HEATHERLANDS HOMEOWNERS ASSN INC				09/28/1990	A	03N 18E 17 NESWSW		0.860	CFS	6.5	49,43,01
37-08698	HARRIS, TIMOTHY H.				10/16/1990	A	04N 17E 1 SWSWSW		0.130	CFS	3.0	01,43,50,55
37-08708	MC STAY, G.M.				02/13/1991	A	02N 18E 10 SWSESE		0.130	CFS	3.0	43,01
37-08737	REMBER, CRAIG				02/19/1991	A	01N 18E 23 NENW		1.600	CFS	80.0	01
37-08711	HOBBS, JIM				02/19/1991	A	03N 18E 33 NESESW		0.070	CFS	1.0	43,01
37-08738	IRELAND, IAN DAVID				02/26/1991	A	01S 14E 11 SWSWSW		0.090	CFS	3.0	01
37-08714	CROPPER, LINDA C.				02/27/1991	A	02N 19E 31 SENHWSW 3		0.130	CFS	3.0	01,43
37-08725	MC ATEE, KENT				03/08/1991	A	02N 17E 35 WNWENE		2.000	CFS	222.0	01
37-08709	GARDNER, ROBERT				03/08/1991	A	01S 19E 13 SENENE		10.200	CFS	511.0	01
37-08723	GMMK-B				05/06/1991	A	01S 19E 10 WNWENE		0.240	CFS	1.8	01,43
37-08727	ROSE, DONNA				05/16/1991	A	04N 18E 25 SESE		0.060	CFS	2.0	01,50
37-08728	KENDALL, CHUCK				05/21/1991	A	04N 18E 19 SESENN		0.130	CFS	3.0	01,43
37-08731	WOOD, SYLVIA				06/14/1991	A	01N 18E 36 SWSENE		0.090	CFS	3.0	01
37-08762	NORTH STAR FUNDING INC				06/21/1991	A	01N 18E 1 SESESE		0.500	CFS	25.0	01
37-08763	RYAN, RONALD D				07/12/1991	A	05N 17E 26 SESE		0.130	CFS	3.0	01,43
37-08749	HEAD, JOSEPHINE				07/18/1991	A	02N 18E 36 SESE		0.360	CFS	18.0	01
37-08765	WOODS, JR, WARD W				08/28/1991	A	03N 18E 32 SESESW		0.180	CFS	4.0	01,43
37-08761	BASABE, SUSAN A				09/24/1991	A	01S 11E 35 SESESW		4.760	CFS	238.0	01
37-08768	LIMES, JAMES L				11/29/1991	A	01N 19E 18 SWNESW		0.090	CFS	10.0	01
37-08817	NEILL, STEVEN				08/02/1993	A	02N 19E 31 WNWESW		0.060	CFS	3.5	01
37-08848	CITY OF BELLEVUE				06/06/1995	A	02N 18E 25 SWSWSW		3.350	CFS	40	

WATER SOURCE: SPRING

37-08552 REESE, JANET S.

0.200 CFS 3.0 01,43,52

C 09/11/1989 A 02N 18E 30 SWSWSW 4