BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF DESIGNATING
THE AMERICAN FALLS GROUND
WATER MANAGEMENT AREA

PETITION OPPOSING ORDER

COMES NOW the petitioner, Falls Irrigation District, an irrigation district duly organized and existing under the laws of the State of Idaho, hereinafter referred to as "FID," and petitions the Director of Idaho Department of Water Resources ("IDWR"), and in opposition to the action taken by the Director by the issuance of his Order of August 3, 2001 creating the "American Falls Ground Water Management Area" ("AFGWMA") as it relates to the inclusion of the area in which ground water withdrawals are being made by FID, and in support of this Petition, alleges:

STANDING OF PETITIONER

1. That Falls Irrigation District is an irrigation district duly organized under the laws of the State of Idaho and is a beneficial owner of surface water rights consisting of natural
flow and storage water and ground water rights, by which the lands within Falls Irrigation District are irrigated.

2. The lands of FID consist of approximately thirteen thousand (13,000) acres, seventy-one percent (71%) of which are served by surface water diverted from the Snake River and approximately twenty-nine percent (29%) are served and irrigated by water from ground water diversions by the District.

3. That as the result of the irrigation of lands within FID with surface water sources from the Snake River, return flows to the Snake River and to the aquifer from which ground water is diverted exceeds the consumptive use of ground water by the irrigation district.

4. That ground water diversions by FID under its rights with priorities from 1946 to 1956 are senior to most ground water diversion rights within the Eastern Snake Plain Aquifer, and any curtailment of diversion under the proposed American Falls Ground Water Management Area will cause irreparable harm to the lands upon which said waters are beneficially used, in derogation of the rights of the irrigation district and the landowners within the irrigation district.

FINDINGS OF FACT

The Findings of Fact of the Director in his Order of August 3, 2001, designating the American Falls Ground Water Management Area, as it relates to the area in which ground water
diversions are made by FID, is neither supported by the law nor competent, substantial and relevant evidence.

5. That there is no substantial or competent evidence to support the finding by the Director of IDWR that there is a direct hydraulic connection between the area in which ground water withdrawals are made by FID from its wells for the service of lands within the service area of FID described in Exhibit "A" attached hereto and made a part hereof as though fully set forth herein, and the portion of the Snake River termed by the Director as the "American Falls reach."

6. That there is no substantial or competent evidence to conclude that simulations using IDWR's calibrated computer model of the ESPA has been programmed to use existing data, and that upon the use of such existing data, the model would not show that ground water withdrawals by FID within its boundaries cause any reductions in the gains to the "American Falls reach" of the Snake River within six (6) months or any other time frame from the time the withdrawals occur.

7. That IDWR's model simulations and analytical calculations do not include existing data which clearly shows that the ground water diversions by FID do not result in seasonal reach gain reductions equal to fifty percent (50%) or more of the amount of water diverted and consumptively used. That there is a lack of substantial or competent evidence to support the Department's model simulations and other analytical calculations to support its
findings in paragraph 4 as it relates to consumptive ground water
diversions by FID.

8. That the Department's ground water model is not
sufficient to run simulations of ground water recharge and
withdrawals within the FID to establish or calculate the amount and
location of surface water depletions, if any, caused by the ground
water withdrawal by FID, and said simulations using the ground
water model is not presently programmed to provide a suitable basis
for making ground water management decisions relating to the
withdrawals by FID.

9. It is denied that the results of simulations from
its existing ground water model and other analytical calculations
are adequate or sufficient for determining that the area in which
ground water diversions are made by FID results in a direct or
significant reduction in reach gains with an acceptable degree of
accuracy. It is further alleged that IDWR and the Director have
failed to make other analytical calculations using presently
available data as to surface water use within the service area of
Falls Irrigation District which results in recharge and return
flows and the effect upon ground water tables within Falls
Irrigation District by the diversion of ground water.

10. The Director has failed and refused to recognize
existing mitigation resulting from surface water diversions and use
within FID which fully mitigates the effects of any ground water
depletions by FID.
11. That there is no substantial or competent evidence to support a finding that the depletionary effects of ground water withdrawals by FID, if any, has or will cause or result in the conditions of a critical ground water area and denies that there is any factual or legal basis upon which the Director may rely to include the lands within FID in a ground water management area.

**CONCLUSIONS OF LAW**

12. FID denies that all ground waters in the State of Idaho are property of the State of Idaho.

13. That the Director of IDWR has failed to meet his statutory responsibility to administer the use of ground water in the State so as to protect senior ground water rights.

14. That the Director has failed to determine the effects, if any, of ground water withdrawals and surface water use within the service area by the FID, necessary to implement or develop a ground water management plan for the area within FID.

15. That the Director has failed to analyze or consider information presently available to determine available ground water supplies within FID and their usage, or to conclude that such area may be approaching the conditions of a critical ground water area. As the result, the Conclusions of the Director are not based upon relevant and competent evidence.

16. That the Director has acted beyond his statutory authority in attempting to establish a ground water management area for the purposes of protecting surface water users, and has refused
to exercise his statutory authority to provide water management of
ground water diversions for the protection of senior ground water
rights, and has abused his discretion in including any lands of FID
in the AFGWMA.

WHEREFORE, petitioner prays that a hearing be held after
a reasonable time for completion of discovery as provided by law
and required to provide procedural due process to petitioner, and
that the Director amend his Order and delete the lands served by
FID from any ground water management area.

DATED this 27th day of August, 2001.

LING & ROBINSON

By:  
Roger D. Ling
Attorneys for Petitioner
Falls Irrigation District
CERTIFICATE OF MAILING

I hereby certify that on the 20th day of August, 2001, I served the original of the foregoing Petition Opposing Order upon:

Karl J. Dreher, Director
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720

and copies of said Petition Opposing Order upon:

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by depositing said document in the United States mail, postage prepaid, in envelopes addressed to said parties at the foregoing addresses.

Roger D. Ling
The area located within the following boundary, to-wit:

Beginning at a point on the highwater mark of the Southeast bank of the American Falls Reservoir in Section 29, Township 6 South, Range 32 East of the Boise Meridian where the West boundary of the Fort Hall Indian Reservation intersects said highwater mark, which point is approximately 990' North of the Southwest corner of the SE\(\frac{1}{4}\)SE\(\frac{1}{4}\) of said Section 29, which shall be known as the TRUE POINT OF BEGINNING;

Thence South along the West boundary line of said Fort Hall Indian Reservation, being the line along the mid-quarter section line of the East half (E\(\frac{1}{2}\)) of Sections 29 and 32 in Township 6 South, Range 32 East of the Boise Meridian and Sections 5 and 8 in Township 7 South, Range 32 East of the Boise Meridian, to the Southeast corner of Lot 4 in said Section 8;

Thence West along the South section line of said Section 8 to the South quarter corner of said Section 8, also known as the Southwest corner of Lot 4 in said Section 8;

Thence South along the mid-section line of Section 17 in Township 7 South, Range 32 East of the Boise Meridian to the Southeast corner of the NE\(\frac{1}{4}\)NW\(\frac{1}{4}\) of said Section 17;

Thence West along the South line of the NE\(\frac{1}{4}\)NW\(\frac{1}{4}\) of said Section 17 to the Southwest corner of said NE\(\frac{1}{4}\)NW\(\frac{1}{4}\);

Thence South along the mid-line of the West half (W\(\frac{1}{2}\)) of said Section 17 to the Southeast corner of the SW\(\frac{1}{4}\)SW\(\frac{1}{4}\) of said Section 17;

Thence West along the South section lines of Sections 17 and 18 in Township 7 South, Range 32 East of the Boise Meridian to the South quarter corner of said Section 18;

Thence South along the mid-section line of Section 19 in Township 7 South, Range 32 East of the Boise Meridian to the South quarter corner of said Section 19;

Thence West along the South section line of said Section 19 and the South section line of Section 24 in Township 7 South, Range 31 East of the Boise Meridian to the Southwest corner of said Section 24;
General Description of Service Area - Falls Irrigation District, Power County, Idaho (continued)

Thence South along the East section line of Sections 26 and 35 in Township 7 South, Range 31 East of the Boise Meridian and the East section line of Section 2 in Township 8 South, Range 31 East of the Boise Meridian to the Southeast corner of said Section 2;

Thence West along the South section line of Sections 2 and 3 in Township 8 South, Range 31 East of the Boise Meridian to the Southwest corner of said Section 3;

Thence South along the East section line of Section 9 in Township 8 South, Range 31 East of the Boise Meridian to the Southeast corner of said Section 9;

Thence West along the South section line of Sections 8 and 9 in Township 8 South, Range 31 East of the Boise Meridian to the South quarter corner of said Section 8;

Thence South along the mid-section line of Section 17 to the South quarter corner of said Section 17;

Thence West along the South section line of Sections 17 and 18 in Township 8 South, Range 31 East of the Boise Meridian to the Southwest corner of said Section 18;

Thence South along the East section line of Sections 24, 25 and 36 in Township 8 South, Range 30 East of the Boise Meridian to the Southeast corner of said Section 36;

Thence West along the South section line of Sections 35 and 36 in Township 8 South, Range 30 East of the Boise Meridian to the Southwest corner of said Section 35;

Thence North along the West section line of said Section 35 to the Northwest corner of said Section 35;

Thence West along the South boundary of Sections 27 and 28 in Township 8 South, Range 30 East of the Boise Meridian to the Southwest corner of said Section 28;

Thence North a distance of 950', more or less, to the East bank of the Snake River in said Section 28;

Thence in a northeasterly direction along the meander line of the highwater mark of the Snake River to the American Falls Reservoir, and thence along the meander line of the highwater mark of American Falls Reservoir in a northeasterly direction to the POINT OF BEGINNING.