

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

IN THE MATTER OF APPLICATIONS FOR)
PERMITS FOR DIVERSION AND USE OF)
SURFACE AND GROUND WATER WITHIN)
THE BEAR RIVER DRAINAGE AND GREAT)
BASIN TRIBUTARIES)
_____)

**ORDER
DESIGNATING THE BEAR
RIVER GROUND WATER
MANAGEMENT AREA**

A preliminary order was entered on January 11, 1999, designating a portion of the Bear River Basin in Idaho as a ground water management area, as provided in Idaho Code § 42-233b. On January 28, 1999, the City of Montpelier filed a petition seeking reconsideration of the order. Eldon B. Bingham, Evan Koller, PacifiCorp (d.b.a. Utah Power & Light Company), and Bear River Water Users Association, Inc., filed responses to the reconsideration request, and on June 2, 1999, the parties to this matter informally met with a representative of the Department of Water Resources at Montpelier, Idaho. Agreement was reached to enter a final order designating a ground water management area with certain changes to the preliminary order. This final order includes the agreed upon changes. Finding of Fact No. 13 has been added and Conclusion of Law No. 1 has been revised to acknowledge that Idaho law was changed in 2000 to provide for adoption of a management plan for a ground water management area. Finding of Fact No. 14 has also been added to acknowledge that the potential for continued drought conditions provides additional basis to make the designation at this time.

The Director of the Department of Water Resources ("Director"), having responsibility for administering the appropriation of water in the State of Idaho, the protection of rights to the use of water within the state, the protection of the public interest in the waters of the state, and the conservation of the water resources of the state, enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. On May 14, 1997, PacifiCorp doing business in Idaho as Utah Power & Light Company ("Petitioner") filed a petition with the Idaho Department of Water Resources ("Department") seeking the following actions:
 - a. Establishment of a moratorium on the issuance of, or further action on, permits or applications to appropriate ground water or surface water in the Bear River and Bear Lake Basin located within the State of Idaho;

- b. In the alternative, if the Director does not order a moratorium, establishment of a ground water management area in the Bear River and Bear Lake Basin located within the State of Idaho, and the adoption of a management plan, including establishment of a procedure whereby applicants demonstrate that use of water under their application will not adversely impact existing vested water rights or provide replacement water or mitigation to compensate for impairment to existing vested water rights of Petitioner and its contract holders due to applicants' proposed uses;
 - c. Require accurate measurement and annual reporting of all surface and ground water uses in the Bear River and Bear Lake Basin located within the State of Idaho.
 - d. Order that all pending and future applications, and all applications or permits for which proof of beneficial use has not yet been made pursuant to the Department's rules, be subject to the moratorium or the ground water management area and management plan.
2. On May 14, 1997, the Bear River Water Users Association, Inc. (also referred to as "Petitioner") submitted a petition requesting the following actions of the Director:
- a. Establish a moratorium in the Bear River Basin, as defined in the Bear River Compact, and suspend the issuance and further action on all permits or applications pursuant to Idaho Code § 42-1805(7) to the extent necessary to protect prior vested surface water rights in the Bear River Basin in Idaho, except to the extent that the applicant for a new diversion and/or depletion establishes by competent evidence that the proposed use will not impair existing water rights or provides compensation or replacement water in accordance with IDAPA 37.03.11;
 - b. Additionally, or in the alternative if a moratorium is not established, a ground water management area should be established pursuant to Idaho Code § 42-233b for the Bear River Basin, as defined in the Bear River Compact. In conjunction therewith, new applications for permits within the ground water management area should be approved by the Director only after he has determined on an individual case-by-case basis that sufficient water is available and that the holders of other prior vested water rights will not be injured by the proposed appropriation. As a part thereof, the Director should require that all water right holders within the ground water management area report withdrawals of ground water and provide other necessary information for the purpose of assisting him in determining available ground water supplies and regulating usage, together with depletions and other impacts upon surface water rights;

- c. That the Department prepare and implement a plan to monitor and evaluate ground water diversions and depletions in the Bear River Basin;
- d. That all future applications to appropriate water within the Bear River Basin be subject to the foregoing;
- e. That action on all pending applications to appropriate water within the Bear River Basin be stayed until this petition has been acted upon.

3. Notice of the petitions was given and meetings were held in Preston and Soda Springs, Idaho on July 2, 1997, to disseminate information about the petitions and obtain public comments on the proposed actions. Written comments were accepted until August 1, 1997.

4. The comments received at the public meetings and in writing opposed the imposition of a moratorium on water right development but recognized the need to protect prior rights to the use of water in the Bear River Basin. Most of those commenting supported the establishment of a ground water management area provided the ensuing management plan would allow the development and use of Idaho's share of unappropriated water in the Bear River Basin under the Bear River Compact, with requirements adequate to protect prior water rights.

5. A study in the Bear River Basin by Dion (1969) shows that the ground water and surface water in the Bear River Basin are directly interconnected, generally. The geology of the valley floor has been characterized as being mostly "unconsolidated basin-fill deposits of Quaternary age . . . and younger alluvium." Diversion and use of water from a tributary stream or well will impact the total water supply available in the system.

6. A study done by the U. S. Geological Survey, published in 1994 by the Utah Department of Natural Resources (Technical Bulletin No. 108), found that withdrawal and use of ground water from the Cache Valley caused a reduction in the flow of Bear River.

7. As of August 10, 2001, thirty-five (35) applications for permit to appropriate water are pending in the Department's Administrative Basins 11 and 13. Of these, six (6) applications for permit proposing irrigation or other consumptive uses are pending in Administrative Basin 11 and nine (9) applications for permit for such purposes are pending in Basin 13. Most of these applications have been protested by the Petitioners and other holders of senior priority water rights alleging injury due to the reduction in the amount of water available to the protestants' senior priority rights.

8. On February 1, 1982, the Department issued an administrative directive that applications for permit, which propose diversion of surface water from the Bear River and tributaries between April 15 and October 15 for new consumptive uses, would not be approved. The order applies to Administrative Basins 11 and 13.

9. On October 21, 1991, the Department designated the Bancroft-Lund Ground Water Management Area, which includes part of the northern portion of Administrative Basin 13 and a part of Administrative Basin 29 (the Portneuf River Basin).

10. There is surplus and unappropriated surface water and ground water in the Bear River Basin in Idaho. However, at times during nearly every year, the flow of the Bear River is not adequate to satisfy all existing water rights from the river. Because surface flows are generally fully appropriated during the peak irrigation demand periods, and additional depletion caused by ground water withdrawals will further reduce flows to the river and various springs, it is anticipated that new appropriations from ground water will need to provide replacement water or other mitigation to prevent or compensate for injury to existing rights from hydraulically connected surface water sources.

11. The Bear River Compact, as Amended in 1980, apportioned the first 125,000 acre feet of additional future depletion of water from the Bear River, including ground water tributary to the Bear River, for use in Idaho. However, new development using the compact apportionment cannot injure prior water rights in Idaho or rights with a priority earlier than January 1, 1976, in the State of Utah.

12. The Petitioners verbally described that the area of the Bear River Basin to which the petitions were intended to apply corresponds to the Department's Administrative Basins 11 and 13.

13. Effective July 1, 2000, Idaho Code § 42-233b was amended to authorize the adoption of a ground water management plan for designated ground water management areas.

14. Southern Idaho, including Administrative Basins 11 and 13, is experiencing the second consecutive year of moderate to severe drought conditions. Designation of a ground water management area at this time will allow additional management authorities provided in Idaho law to address water shortages, should the drought conditions continue.

CONCLUSIONS OF LAW

1. Idaho Code § 42-233b provides in pertinent part as follows:

“Ground water management area” is defined as any ground water basin or designated part thereof which the director of the department of water resources has determined may be approaching the conditions of a critical ground water area . . .

When a ground water management area is designated by the director of the department of water resources, or at any time thereafter during the existence of the designation, the director may approve a ground

water management plan for the area. The ground water management plan shall provide for managing the effects of ground water withdrawals on the aquifer from which the withdrawals are made and on any other hydraulically connected sources of water

Applications for permits made within a ground water management area shall be approved by the director only after he has determined on an individual basis that sufficient water is available and that other prior water rights will not be injured.

2. Idaho Code § 42-233a provides in pertinent part as follows:

“Critical ground water area” is defined as any ground water basin, or designated part thereof, not having sufficient ground water to provide a reasonably safe supply for irrigation of cultivated lands, or other uses in the basin at the then current rates of withdrawal, or rates of withdrawal projected by consideration of valid and outstanding applications and permits, as may be determined and designated, from time to time, by the director of the department of water resources.

3. Idaho Code §§ 42-201 and 42-229 require a permit to appropriate water from surface and ground water sources in Idaho. Idaho Code § 42-227 exempts domestic purposes from the permit requirement. Idaho Code § 42-111 defines domestic purposes as follows:

- 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 ($\frac{1}{2}$) 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.

4. Diversion and use of ground water for new consumptive purposes in the Bear River Basin generally reduces the amount of surface water available to supply prior water rights.

5. In connection with the supervision and control of the exercise of ground water rights, the Director has the authority, pursuant to Idaho Code § 42-237a(g), to determine the areas of the state having a common ground water supply, and if it is determined that the flow of a stream is affected by the withdrawal of ground water to manage the effects of the ground water withdrawals on the surface water source through a ground water management plan.

6. Policy 1F of the State Water Plan dated January 1997, as adopted by the Idaho Water Resource Board and ratified by the Idaho Legislature, provides that:

It is the policy of Idaho that where evidence of hydrologic connection exists between ground and surface water, that they be managed as a single resource.

7. The Director is authorized to order the installation and maintenance of measuring devices and to require measurement and reporting of water withdrawals in accordance with Chapter 7, Title 42, Idaho Code.

8. The request to establish a moratorium on the issuance of permits to appropriate water in the Bear River Basin should be denied, because a long-term or permanent moratorium would delay or pre-empt development authorized by the Bear River Compact. The request to stop further development under existing permits should likewise be denied.

9. The Director should designate a ground water management area and should make provision for a management plan to be developed using an advisory committee with representation from water user and citizen group interests within the Department's Administrative Basins 11 and 13. The management plan should incorporate requirements for measuring and reporting of water withdrawals, as determined necessary by the Director with the advice of the advisory committee.

10. The Bear River Ground Water Management Area should exclude the part of the Bancroft-Lund Ground Water Management Area that is within Administrative Basin 13.

ORDER

IT IS, THEREFORE HEREBY ORDERED as follows:

1. The Petitioners' request to establish a moratorium on the issuance or further action on permits to appropriate water in the Bear River Basin is DENIED.

2. The Petitioners' request for designation of a ground water management area in the Bear River Basin is APPROVED. The area included in the "Bear River Ground Water Management Area" is that part of the Bear River Basin included within the Department's Administrative Basins 11 and 13, excluding therefrom the area encompassed by the Bancroft-Lund Ground Water Management Area. Attached to this Order is a map identified as Attachment A, that graphically shows the boundaries of the Bear River Ground Water Management Area.

3. Management of water appropriations within the Bear River Ground Water Management Area shall be guided by a management plan adopted by the Director. An advisory committee of representative water user and citizen group interests within the Department's Administrative Basins 11 and 13 will be selected to assist in drafting the management plan. The

advisory committee and the Department will consider the following matters in preparation of a management plan:

- a. The requirements and conditions needed to protect existing water rights as applications for new consumptive uses from ground water are approved;
- b. The need for policies to encourage development and use of water supply systems to provide water for multiple ownership subdivisions rather than individual wells for each residence or business;
- c. Appropriate requirements for measuring and reporting of water withdrawals by new and existing uses from surface and ground water sources;
- d. The need to designate areas of drilling concern to protect ground water quantity and quality.

4. The Bear River Water Management Advisory Committee is hereby created with the following membership and responsibilities:

- a. Committee membership: one (1) member from each of the Petitioners, two (2) members from the pending applicants for permits to appropriate ground water, one (1) member representing each of the following counties within the Bear River Ground Water Management Area (Bear Lake, Caribou, and Franklin), two (2) members representing municipalities, and two (2) members representing citizen groups within the Bear River Ground Water Management Area. The Department will ask for nominations from the various entities as the committee is formed. The Director or his designee will chair the advisory committee meetings;
- b. Responsibilities: the advisory committee will meet at the call of the Director at a location in the Bear River Ground Water Management Area to provide guidance in the preparation of a management plan. The entities represented by the members are responsible for the costs and expenses incurred by the members in attending the meetings and otherwise serving on the committee.

5. All applications proposing new consumptive uses of ground water, whether now pending or filed in the future, are to be held without action to approve or deny until a management plan is adopted as herein provided.

6. This order does not affect the authorization to continue development of any existing approved application (permit).

7. This order does not apply to any application proposing a non-consumptive use of water as the term is used in Idaho Code § 42-605A.

8. This order does not apply to applications for drilling permits to replace or deepen existing wells having valid existing water rights or to applications for transfer of existing water rights.

9. This order does not change or affect the administration of any area within the Bear River Basin that as been previously designated as a ground water management area pursuant to Idaho Code § 42-233b, Idaho Code.

DATED this 12th day of August, 2001.

/s/ Karl J. Dreher

KARL J. DREHER

Director

Bear River Ground Water Management Area

Attachment A

