

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

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| IN THE MATTER OF THE LEWISTON PLATEAU GROUNDWATER MANAGEMENT AREA _____ |)))))) | RECOMMENDED ORDER RESCINDING LINDSAY CREEK GWMA AND DESIGNATING LEWISTON PLATEAU GWMA |
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On March 5, 1992, the Director of the Department of Water Resources (“Director” or “Department”) entered an order designating the Lindsay Creek Ground Water Management Area (“Lindsay Creek GWMA”), along with a management policy, pursuant to Idaho Code § 42-233b. The area was designated as a result of concerns over the effect of additional ground water pumping on existing wells and senior water rights from the shallow aquifer in the general area of the Lindsay Creek drainage in Nez Perce County.

Ground water level monitoring in the Lindsay Creek GWMA and in the Tammany Creek area to the south (the combined area will be referred to as the “Lewiston Plateau area”) indicate that the shallow aquifers have experienced declines in water levels since at least 2000. The existing Lindsay Creek GWMA and associated management policy is no longer effective to administer the appropriation of water and protect existing water rights and the ground water resource in the area because the area of concern has grown.

The 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 and having this matter come before the Director as a result of concerns over the effect of pumping on the shallow water aquifers within the Lewiston Plateau area located in Nez Perce County, enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. The hydrogeology of the Lewiston Plateau area consists of two aquifer systems. A deep regional basalt aquifer in the Grande Ronde Formation that extends at least 10 miles to the south and east of Lewiston, and a series of shallow perched aquifers in the basalt flows and sedimentary interbeds of the Wanapum and Saddle Mountain Formations that exist throughout most of the area.

2. Hydraulic communication between wells completed in the deep regional basalt aquifer is very good, and water levels have not declined in this aquifer despite extensive usage by three major water suppliers in the area.

3. Wells completed in the shallow aquifers of the Wanapum and Saddle Mountain Formations have experienced water level declines. Water levels in four Lindsay Creek GWMA monitoring wells declined an average of 6.9 feet from 2006 to 2011. Water levels in seven

monitoring wells in the Tammany Creek area declined an average of 7.4 feet in the same time period.

4. In areas where individual wells have been constructed on 1 to 5 acre subdivision tracts, land owners have been experiencing accelerated water level declines in the shallow aquifers. This has resulted in the necessity to deepen existing wells or construct new wells in an effort to find an adequate water source at a lower level.

5. On February 13, 2013, the Department held a public meeting to engage and inform the public of the Department's intent to establish a new groundwater management area within the Lewiston Plateau area. The new ground water management area would replace the existing Lindsay Creek Groundwater Management Area and associated management policy that was established in 1992. At the meeting, there was no opposition to improved management to protect existing water rights and the ground water resource of the shallow aquifers.

CONCLUSIONS OF LAW

1. Idaho Code § 42-233a defines a "critical ground water area" 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 rate of withdrawal projected by consideration of valid and outstanding applications and permits, as may be determined by the Director.

2. Idaho Code § 42-233b authorizes the Director to designate a "ground water management area" to allow increased management of the ground water resources in areas of the state that may be approaching the conditions of a critical ground water area. It also authorizes the Director to approve a ground water management plan for the area. The plan shall provide for managing the effects of ground water withdrawals on the aquifer and on hydraulically connected sources of water.

3. Based on declining water levels, the Director concludes that conditions in the shallow perched aquifers of the Wanapum and Saddle Mountain Formations within the Lewiston Plateau area may be approaching conditions of a critical ground water area.

4. Idaho Code § 42-233b provides, "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."

5. Injury can occur to senior groundwater right holders established in a shallow aquifer of limited water capability if new pumping is not appropriately managed. In order to prevent withdrawals from new wells from having an adverse impact on prior water rights diverted from surface water and/or ground water supplied by the shallow aquifers, new applications for permits in the area must be controlled consistent with Idaho Code § 42-233b.

6. Idaho Code § 42-233b also allows the Director to require water users to report withdrawals of ground water and other necessary information for the purpose of assisting the Department in determining available ground water supplies and its usage.

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 of Title 42, Idaho Code.

8. To assist the Department in determining available ground water supplies and its usage, the Director should, as part of the ground water management plan, develop a way to monitor conditions and availability of water in the aquifer.

9. The Director of the Department of Water Resources should designate a ground water management area for the Lewiston Plateau area located in Nez Perce County and should make provisions for a management plan to be developed using an advisory committee with representation from water user and citizen group interests. The ground water management area designated should replace the existing Lindsay Creek Ground Water Management Area and associated management policy.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The following described area is included within and designated as the Lewiston Plateau Groundwater Management Area ("Lewiston Plateau GWMA") pursuant to the provisions of Idaho Code § 42-233b.

Beginning at the intersection of the centerlines of the Snake and Clearwater Rivers, which is the True Point of Beginning, thence following the centerline of the Snake River south to the south boundary line of Section 17, Township 34 North, Range 5 West, Boise Meridian, thence east along the south boundary lines of Sections 17, 16, 15, 14 and 13, Township 34 North, Range 5 West to the southwest corner of Section 18, Township 34 North, Range 4 West. Thence continuing east along the south boundary line of Sections 18 and 17 to the southeast corner of Section 17, Township 34 North, Range 4 West, thence north along the east boundaries of Sections 17, 8 and 5 of Township 34 North, Range 4 West to the intersection with the west boundary line of the Nez Perce Indian Reservation. Thence, northwest along said boundary line of the Nez Perce Indian Reservation to the centerline of the Clearwater River, thence following the centerline of the Clearwater River west to the True Point of Beginning.

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

2. The Lindsay Creek GWMA and associated management policy created by order dated March 5, 1992 is rescinded, to be effective when a management plan for the Lewiston Plateau GWMA is approved by the Director.

3. Management of water appropriations within the Lewiston Plateau GWMA 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 Basin 85 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 and interests of the public as applications for new consumptive uses from ground water are considered;
- 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. The need for the continuation and expansion of the Department's existing Lewiston Plateau ground water monitoring program or other mechanisms to monitor the condition and availability of water within the Lewiston Plateau GWMA;
- d. The need to restrict future drilling into shallow aquifers within all or parts of the ground water management area;
- e. The requirements and conditions for future well construction into the deeper regional and shallow aquifers.

4. The Lewiston Plateau GWMA Advisory Committee is hereby created with the following membership and responsibilities:

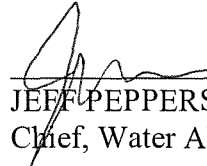
- a. Committee membership: two (2) member representing municipalities within the Lewiston Plateau GWMA, two (2) members representing Nez Perce County, one (1) member from the land development community within the Lewiston Plateau GWMA, one (1) member representing the well construction industry in the area, three (3) members representing private citizens within the Lewiston Plateau GWMA and one (1) member from a private engineering firm doing business in the area. The Department will ask for nominations from 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 within the Lewiston Plateau GWMA 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.

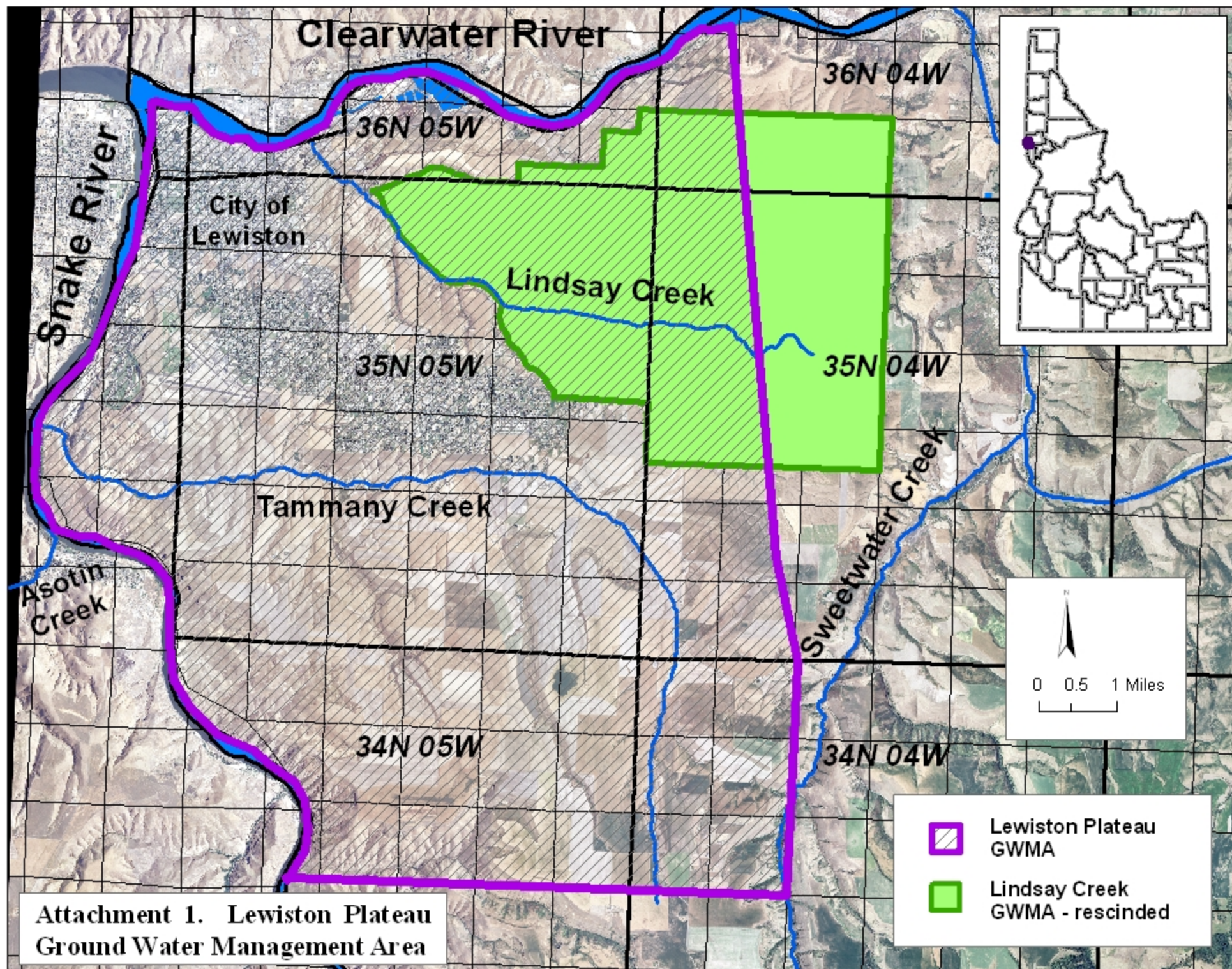
5. All applications within the Lewiston Plateau GWMA proposing new consumptive or non-consumptive uses of ground water, whether now pending or filed in the future, will be approved by the director only after he has determined on an individual basis that sufficient water is available and that other prior water rights will not be injured. A management plan may provide specific standards or requirements to allow such determinations to be made in a timely and appropriate manner.

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

7. The Director shall publish notice of this order in two (2) consecutive weekly issues of a newspaper of general circulation in the Lewiston Plateau GWMA.

DATED this 2 day of April, 2013.


JEFF PEPPERSACK
Chief, Water Allocation Bureau



EXPLANATORY INFORMATION TO ACCOMPANY A RECOMMENDED ORDER

(Required by Rule of Procedure 720.02)

The accompanying order is a "**Recommended Order**" issued by the department pursuant to Section 67-5243, Idaho Code. The provisions of this order will not become effective until the Director issues a final order in this matter.

Any party may file a petition for reconsideration, briefs and exceptions to the recommended order and may request oral argument before the Director of the department as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of the order. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of a recommended order and may file briefs in support of the party's position on any issue in the proceeding. Written briefs in support of or taking exceptions to the recommended order shall be filed with the Director. Opposing parties shall have fourteen (14) days to respond.

If no party files exceptions to the recommended order with the Director, the Director will issue a final order within fifty-six (56) days after (a) the last day a timely petition for reconsideration could have been filed with the hearing officer, (b) the service date of a denial of a petition for reconsideration by the hearing officer; or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration by the hearing officer.

ORAL ARGUMENT

The Director may schedule oral argument in the matter before issuing a final order. Oral argument on exceptions to a recommended order shall be heard at the discretion of the Director. If oral arguments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

APPEAL OF FINAL ORDER TO DISTRICT COURT

A party aggrieved by a final order of the Director is entitled to judicial review in compliance with sections 67-5271 through 67-5279, Idaho Code.