



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

December 16, 2014

RE: Preliminary Order Combining Water District 13L (Battle Creek) and Water District 13M (Cottonwood Creek) and the Expansion of the Combined District to Include Stockton Creek and Its Tributaries

Dear Water Right Holder,

Enclosed please find a copy of the Preliminary Order regarding the above referenced matter. This order combines Water District 13M (Cottonwood Creek) with Water District 13L (Battle Creek) and the Stockton Creek drainage to create a single water district (13M) for administration of surface water rights in these drainages. The records of the Idaho Department of Water Resources ("Department" or "IDWR") show that you own or have an interest in one or more water rights that are located within the water districts/drainages affected by the enclosed Preliminary Order.

Also enclosed is an informational sheet that explains options for responding to preliminary orders. Please note that any party subject to the order may file a petition for reconsideration within fourteen (14) days of the service date of the order, which is the date of this letter. The Department will act upon petitions within twenty-one (21) days of their receipt.

The Department will send a separate notice to water users specifying a date, time and location of annual meetings for revised water districts. The water users present at the meetings must consider election of a watermaster, selection of an advisory committee, and adoption of a budget.

The Preliminary Order was executed on September 24, 2014. Due to administrative oversight, there was a delay in relaying this information to water users. We apologize if this delay has caused any inconvenience.

Please contact this office or the IDWR regional office in Idaho Falls (208-525-7161) if you have any questions concerning the attached order.

Sincerely,

Tim Luke
Water Compliance Bureau

Enclosures: *Preliminary Order*
Responding to Preliminary Orders issued by IDWR

c: IDWR Eastern Region

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

IN THE MATTER OF THE PROPOSED)
COMBINATION OF WATER DISTRICT 13L)
(BATTLE CREEK) AND WATER DISTRICT)
13M (COTTONWOOD CREEK) AND THE)
EXPANSION OF THE COMBINED)
DISTRICT TO INCLUDE STOCKTON CREEK)
AND ITS TRIBUTARIES)

PRELIMINARY ORDER

The Director ("Director") of the Idaho Department of Water Resources ("Department") is required by statute to divide the state into water districts for the purpose of performing the essential governmental function of distributing water among appropriators under the laws of the State of Idaho. *In re Idaho Dept. of Water Resources Amended Final Order Creating Water Dist. No. 170*, 148 Idaho 200, 211 (2009). Idaho Code § 42-604 provides the Director with discretion in determining how these mandatory water districts shall be structured, allowing the Director to create new districts, revise existing districts, combine districts, or even abolish districts, as the Director finds necessary for the efficient distribution of water resources. *Id.* Based upon the record in this matter, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. Water District No. 13L ("WD13L") includes surface water sources and water rights in the Battle Creek drainage, and is located within Franklin County. WD13L is not currently active, meaning the water users within the district do not hold an annual meeting, elect a watermaster, set an annual budget, or appoint an advisory board. Battle Creek flows into the Bear River approximately three miles to the northeast of Preston.
2. Water District No. 13M ("WD13M") includes surface water sources and water rights in the Cottonwood Creek drainage, and is primarily located within Franklin County. A portion of the upper basin is located within Bannock County.
3. The water users within WD13M annually elect a watermaster and adopt a budget to provide for the distribution of water from Cottonwood Creek and its tributaries. WD13M provides annual reports of deliveries made to water users within the district. Cottonwood Creek flows into the Bear River near the Oneida Narrows, approximately twelve miles north of Preston.
4. The Stockton Creek drainage is primarily located within Bannock County. A small portion of the upper basin is located within Franklin County. Stockton Creek and its tributaries are not currently within a water district. The water rights within the Stockton Creek drainage are not administered by a watermaster. Stockton Creek drains a relatively small watershed along the southwest portion of the Cottonwood Creek drainage and is tributary to the Oxford Slough near Swan Lake.

5. The water rights in the Cottonwood Creek drainage and the Battle Creek drainage were adjudicated in the 1920 Bear River Decree (commonly referred to as the Dietrich Decree). The water rights in the Stockton Creek drainage are set forth in the Brossard v. Morgan Decree (dated 4/28/1899).

6. A portion of the water diverted in the Cottonwood Creek drainage is conveyed out of the basin for use in the Stockton Creek and Battle Creek drainages. In recent years, water delivery issues have arisen in the Stockton Creek drainage relating to the measurement and use of Cottonwood Creek water.

7. The Department proposed combining Cottonwood Creek, Battle Creek, and Stockton Creek into a single water district. Because WD13M is the only active district in the area, the three drainages would be combined and identified as Water District 13M.

8. Based on the physical proximity of the Cottonwood Creek, Battle Creek, and Stockton Creek drainages, the three basins could easily be regulated by a single watermaster. Adding Stockton Creek and Battle Creek to the regulation route of the WD13M watermaster would not significantly increase the watermaster's driving distance or duties.

9. At the 2012 Annual Meeting for WD13M, the water users voted in favor of incorporating Stockton Creek into the district. The motion and approval are described in the annual meeting minutes on file with the Department.

10. On July 30, 2014, the Department conducted a hearing in Preston, Idaho to solicit public comment regarding the proposed changes. All of the owners of record for the water rights within the proposed district (excluding de minimus rights) were properly notified of the public hearing. Thirteen water users from the proposed district attended the hearing. Three individuals provided testimony. None of the testimony offered at the hearing was in opposition to the proposed changes.

11. The directors from Strongarm Irrigation District, the largest water user in the Battle Creek drainage, attended the hearing and voiced their support for the proposed changes.

12. Brent Abbott, a water user from the Stockton Creek drainage with senior priority water rights attended the hearing and voiced his support for the proposed changes.

13. Ron Blaisdell, a water user in the Cottonwood Creek drainage, stated a concern that the water rights listed in the old decrees may not be valid any more. Mr. Blaisdell's diversions from Cottonwood Creek are currently regulated by the WD13M watermaster.

14. The Department kept the administrative record open until August 11, 2014 to allow the public to provide written comments about the proposed changes. No written comments were provided.

CONCLUSIONS OF LAW

1. Idaho law declares all surface water, when in natural channels or springs or lakes, and all ground water within the State of Idaho to be the property of the state, whose duty it is to supervise the appropriation and allotment of the water to those diverting the same for beneficial use. *See* Idaho Code §§ 42-101, 42-103, and 42-226.

2. The Director, acting on behalf of the State of Idaho, has the statutory authority to control the appropriation and use of all surface and ground waters within the state in accordance with, but not limited to, Idaho Code §§ 42-101, 42-103, 42-202(1), 42-220, 42-226, 42-237a, 42-237g, 42-351, and 42-602 *et seq.*

3. The Director has responsibility for direction and control over the distribution of water, in accordance with the prior appropriation doctrine as established by Idaho law, within water districts to be accomplished through watermasters supervised by the Director, and subject to removal by the Director, as provided in chapter 6, title 42, Idaho Code.

4. Idaho Code § 42-604 mandates the Director form water districts as necessary to properly administer uses of water from public streams, or other independent sources of water supply, for which a court having jurisdiction thereof has adjudicated the priorities of appropriation. *In re Idaho Dept. of Water Res. Amended Final Order Creating Water Dist. No. 170*, 148 Idaho 200, 211, 220 P.3d 318, 329 (2009).

5. The facts set forth above demonstrate that combining Cottonwood Creek, Battle Creek and Stockton Creek into a single water district will result in better administration of the water resources and water rights within the three drainages.

ORDER

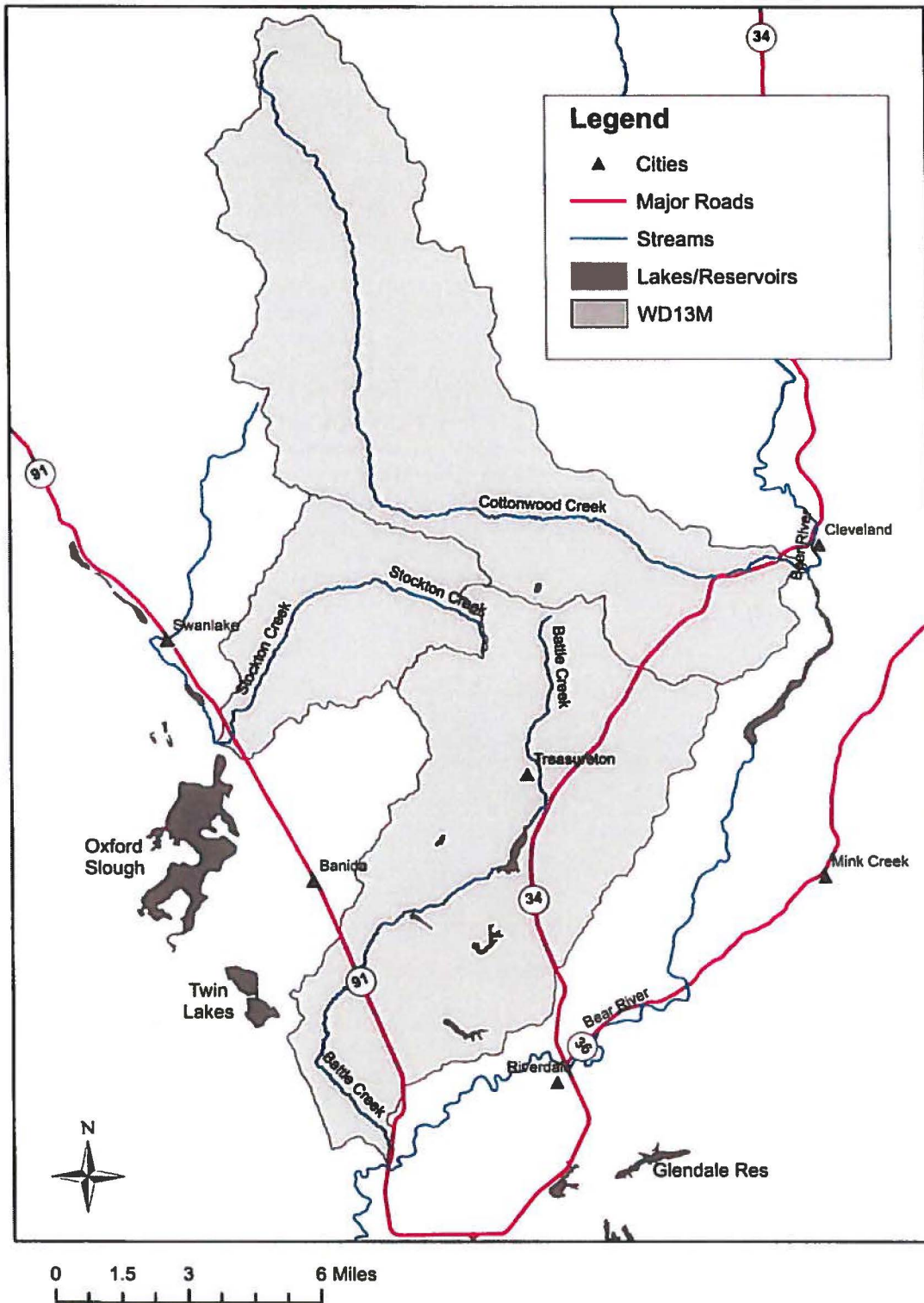
IT IS HEREBY ORDERED that WD13L (Battle Creek) and WD13M (Cottonwood Creek) shall be combined into a single water district, to be designated as Water District No. 13M. The combined district shall also include Stockton Creek and its tributaries. A map of the revised Water District 13M boundary is included as Attachment A.

DATED this 24th day of September, 2014.


James Cefalo
Hearing Officer

ATTACHMENT A
Water District No. 13M Pursuant to Preliminary Order

Water District 13M - Revised



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of December, 2014, the above and foregoing document was served on each individual or entity on the service list for this matter on file at the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho, and posted on the Department's website: www.idwr.idaho.gov. Each individual or entity on the service list was served by placing a copy of the above and foregoing document in the United States mail, postage prepaid and properly addressed.



Sarah Shaul
Technical Records Specialist
Idaho Department of Water Resources

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OSCAR M SEAMONS
RT 2
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SHELLEY ID 83274

BRAD SHUMWAY
9522 N TREASURETON RD
PRESTON ID 83263

THEO L SMITH
RT 2
PRESTON ID 83263

WILLIAM R SPACKMAN
27A STAR RT
PRESTON ID 83263

SPRING HOLLOW WATER ASSN INC
C/O ROBERT LINDHARDT
RT 3
PRESTON ID 83263

STRONGARM IRRIGATION DISTRICT
C/O JC HEDIN
RT 3
PRESTON ID 83263

STRONGARM RESERVOIR IRRIGATION DISTRICT
C/O MILES GEDDES
2806 W 7400N
PRESTON ID 83263

SUNNY B PROPERTIES LLC
2665 W 4400 S
WESTON ID 83286

IVAN AND LAVERN TALBOT
2865 N HWY 91
PRESTON ID 83263

TMT INC
6016 S RUBY RIDGE COVE
SALT LAKE CITY UT 84121

TREASURETON IRRIGATION CO
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PRESTON ID 83263

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EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was held)

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and brief as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **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 a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period 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.

CERTIFICATE OF SERVICE

All exceptions, briefs, request for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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 Director 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.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.