

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

**IN THE MATTER OF THE MALAD)
VALLEY GROUND WATER)
MANAGEMENT AREA)**
_____)

**ORDER DESIGNATING
MALAD VALLEY GWMA
AND ESTABLISHING
TEMPORARY MORATORIUM**

On January 16, 2015, the Board of Commissioners for Oneida County sent a letter to the Idaho Department of Water Resources (“Department”) asking the Department to establish a temporary moratorium on new wells pending a study of hydrologic conditions and recommendations for management of the ground water resource in the Malad Valley within Oneida County. The Department asked its hydrology staff to assemble and review the hydrologic data for the Malad Valley. On May 8, 2015, Mike McVay, a technical hydrogeologist for the Department, completed a memorandum (“McVay Memo”) evaluating the water level data for the Malad Valley.

On October 8, 2015, the Department held a public meeting in Oneida County to present information and solicit public input regarding the proposal to establish a temporary moratorium and designate a ground water management area (“GWMA”) for the Malad Valley. The meeting was well attended and there was strong support to establish a temporary moratorium and designate a GWMA.

The Director, having responsibility for the administration of the appropriation of the waters of the state, 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 water resources within the state, finds, concludes and orders the following:

FINDINGS OF FACT

1. The Malad Valley is comprised of thick sequences of sedimentary material bounded on the east and west by mountain ranges. McVay Memo, page 3. The aquifer consists of several connected water bearing units composed primarily of sand and gravel that are inter-bedded with relatively impermeable beds of silt and clay. *Id.* Only the upper portion of the aquifer (upper few hundred feet) is known to yield significant amounts of ground water. *Id.*

2. The interspersed layers of impermeable clay act as confining layers in some areas of the valley and can create artesian conditions. Faults in the basin also create isolated areas of geothermal ground water and warm springs.

3. The Department currently monitors ground water levels in seven wells within the Malad Valley. McVay Memo, page 5. Four of these wells have data sets extending back into the 1950s. *Id.* The other four monitoring wells have much smaller data sets. *Id.*

4. Three of the monitoring wells with large data sets show water level trends that are statistically significant. According to the data collected at these three wells, aquifer levels at the wells are declining between 0.1 and 1.7 feet per year. Because of the limited data sets, the data collected from the other wells are not statistically significant.

5. The McVay Memo included the following conclusion:

The water-level data that IDWR collects indicate a declining resource. However, the spatial coverage of the wells are generally limited to the central part of the basin. To adequately characterize the water resource, it is recommended that additional water-level data be collected in the northern, eastern and south-central basin. Furthermore, it is recommended that surface-water data be collected at four inflow, and two outflow sites.

6. As of October 20, 2015, there were 13 pending applications to appropriate water from ground water proposing to divert approximately 36 cfs for irrigation of over 8,700 acres in the Malad Valley. There were 36 approved water right permits to appropriate water from ground water in the Malad Valley for which proof of beneficial use has not been filed. Those approved permit are for approximately 66 cfs for irrigation of approximately 3,800 acres in the Malad Valley. Because proof of beneficial use has not been filed yet for those permits, there is limited information available to the Department about the extent of development completed for those permits. The permit holders may have expended significant resources for power lines, wells, pumps or water distribution systems associated with those permits.

7. On October 8, 2015, the Department held a public meeting to present information and obtain public input about ground water levels and aquifer concerns in the Malad Valley. Attendees at the meeting strongly supported establishment of a temporary moratorium and designation of a GWMA. No attendee testified opposing a temporary moratorium on new consumptive ground water rights. No attendee testified opposing a GWMA to facilitate better monitoring and management of the ground water resources in the valley.

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 rates of withdrawal projected by consideration of valid and outstanding applications and permits, as may be determined . . . by the director of the department of water resources.”

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. Section 42-233b also authorizes the director to approve a ground water management plan for the designated management 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 the data summarized in the McVay Memo and input from the public meeting, the Director concludes that conditions in the Malad Valley may be approaching conditions of a critical ground water area. The Director should designate a GWMA in the Malad Valley and should adopt a management plan based on recommendations from an advisory committee comprised of representatives from water users and communities in the area.

4. Idaho Code § 42-233b states: “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. Idaho Code § 42-231 states: “It shall likewise be the duty of the director of the department of water resources to control the appropriation and use of the ground water of this state as in this act provided and to do all things reasonably necessary or appropriate to protect the people of the state from depletion of ground water resources contrary to the public policy expressed in this act.”

6. Idaho Code § 42-1805(7) authorizes the Director to suspend the issuance or further action on applications to appropriate water as necessary to protect existing water rights. Further, Rule 55 of the Department’s Water Appropriation Rules (IDAPA 37.03.08) states that the Director may establish moratoriums, as necessary, to protect existing water rights.

7. Based on the aquifer data summarized in the McVay Memo, the Director concludes that a temporary moratorium to suspend processing of pending and new applications to appropriate water is warranted to protect existing ground water rights and to protect the aquifer from depletion.

ORDER

IT IS HEREBY ORDERED that the following described area is included within and designated as the Malad Valley Ground Water Management Area (“Malad Valley GWMA”) pursuant to the provisions of Idaho Code § 42-233b:

All of the Malad River drainage within the state of Idaho and all ground water underlying these drainages, including the drainages of all creeks and streams tributary to the Malad River. This area is currently designated as IDWR Administrative Basin 15. A map of the boundary for the Malad Valley GWMA is attached to this Order and identified as Attachment 1.

Management of ground water appropriations within the Malad Valley GWMA shall be governed by a management plan adopted by the Director. An advisory committee of representative water users and communities within the designated management area will be selected to assist in drafting the management plan. The advisory committee and the Department shall consider the following matters in drafting the management plan:

1. The need to measure and report ground water diversions, ground water levels, and surface water outflow from the GWMA or other mechanisms to monitor the condition and availability of water within the Malad Valley GWMA. This may include identification of mechanisms to expand the Department's existing ground water monitoring program in the Malad Valley.
2. The need to identify and address uncontrolled flowing artesian wells.
3. Determination of the hydrologic connection, if any, between springs and ground water in the Malad Valley, including geothermal springs.
4. Recommendations for ongoing management of the ground water resource, including a moratorium on applications for new appropriations of water and existing undeveloped permits.
5. The need to identify and address unauthorized uses of water.

The Malad Valley GWMA Advisory Committee is hereby created with the following membership and responsibilities:

Committee Membership: At least one ground water irrigator with a well located south of 6700 South, at least one ground water irrigator with a well located between Highway 38 and 6700 South, at least one ground water irrigator with a well located north of Highway 38, one representative from the City of Malad, one representative from Oneida County, one representative from Samaria Water & Irrigation Company and one representative from Samaria Lake Irrigating Company, and any other individuals in the community that wish to participate. Committee membership will be capped at 10 people to preserve the workability of the group. The Director or his designee shall chair the advisory committee meetings.

Responsibilities: The advisory committee will meet in Malad, Idaho at the call of the Director. The advisory committee is assigned the responsibility of recommending components of a management plan. The entities represented by committee members are responsible for the costs and expenses incurred by the members in attending the meetings and serving on the committee.

IT IS FURTHER ORDERED that a temporary moratorium is established on the processing and approval of presently pending and new applications for permits to appropriate water from ground water within the designated Malad Valley GWMA (IDWR Administrative Basin No. 15). New and pending applications to appropriate water in the area subject to the moratorium shall be held without further processing unless they meet one or more of the exceptions stated in this order. The following provisions apply to the administration of the moratorium:

1. The moratorium shall be in effect as of the date of this order and shall remain in effect for two years unless withdrawn or modified by order of the Director.
2. The moratorium does not affect the authorization to continue development of any existing approved permit to appropriate water.
3. The moratorium does not apply to any application for domestic purposes as such term is defined in Idaho Code § 42-111. For the purposes of this exception, 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 requirement to file an application for permit as described in said section. This exception to the moratorium does not apply to applications to appropriate water for municipal purposes, regardless of the specific type of municipal use.

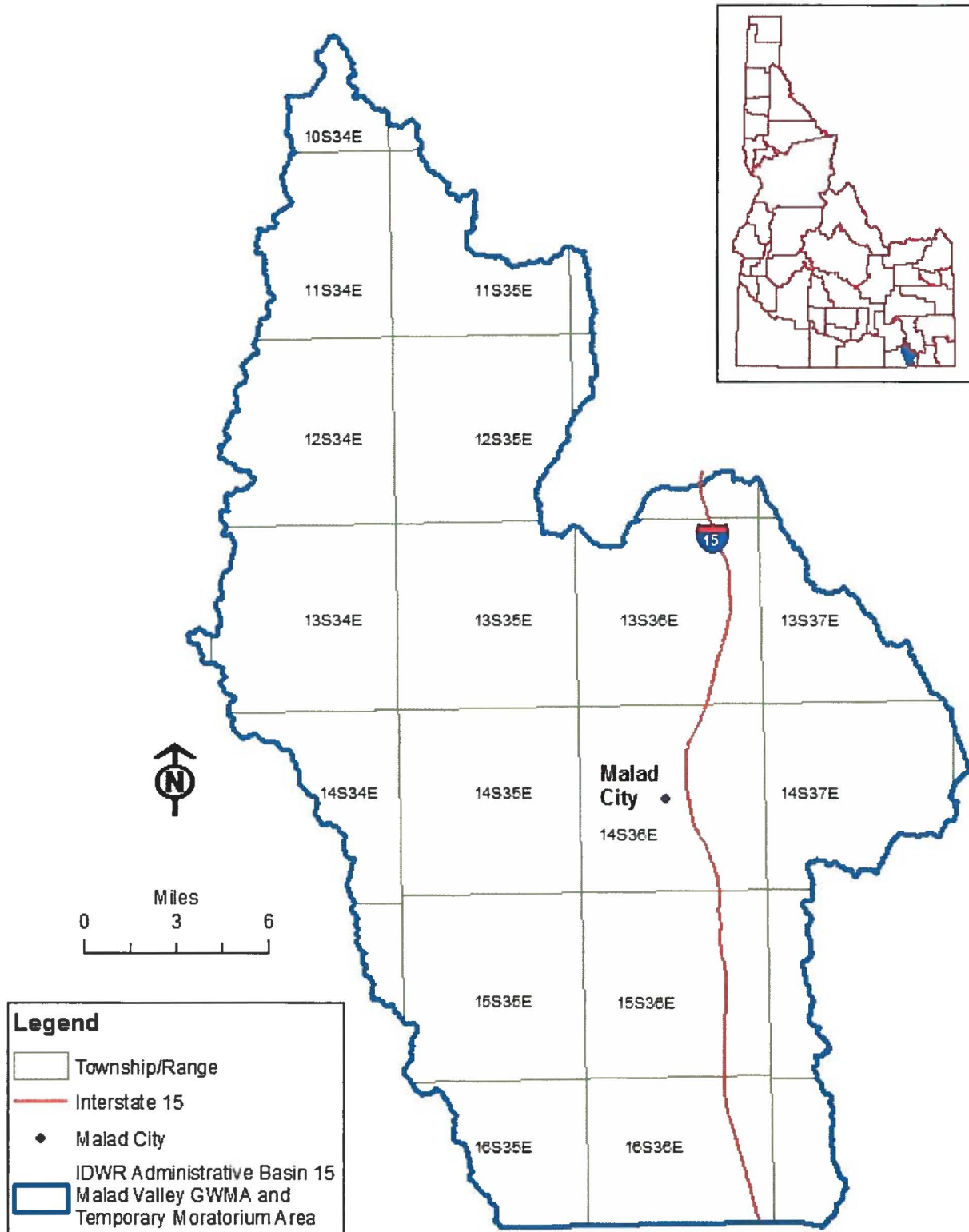
4. The moratorium does not apply to any application proposing a non-consumptive use of water as the term is used in Idaho Code § 42-605A.
5. This moratorium does not apply to applications for drilling permits to replace or deepen existing wells having valid, existing water rights.
6. This moratorium does not apply to applications for transfer, including applications to add points of diversion to valid, existing water rights.
7. This moratorium does not prevent the Director from reviewing for approval on a case-by-case basis an application which otherwise would not be approved under the terms of this moratorium if:
 - a) Protection and furtherance of the public interest as determined by the Director, requires consideration and approval of the application irrespective of the general moratorium; or
 - b) The Director determines that the development and use of the water pursuant to an application will have no effect on prior surface and ground water rights because of its timing, location insignificant consumption of water or mitigation provided by the application to offset injury to other rights.

Dated this 4th day of November, 2015.



Gary Spackman
Director

Malad Valley Ground Water Management Area and Temporary Moratorium Area



EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "**Final Order**" issued by the department pursuant to section 67-5246, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order. **Note: The petition must be received by the Department within this fourteen (14) day period.** The department 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 67-5246(4), Idaho Code.

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter 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: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.