



IDAHO DEPARTMENT OF
WATER RESOURCES

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Governor Brad Little

Director Gary Spackman

April 20, 2022

RE: Preliminary Order Revising Water District No. 110

Dear Water Right Holder,

Enclosed please find a copy of the Preliminary Order regarding the above referenced matter. This order revises the boundary of Water District No. 110, Mud Lake Area ("WD110") to include ground water rights located between the existing WD110 and the East Snake Plain Aquifer Ground Water Management Area boundaries as shown on the map in Attachment A of the Preliminary Order. The records of the Idaho Department of Water Resources ("IDWR") show that you own or have an interest in one or more water rights within the existing or revised boundary of WD110.

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.

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,

Brian Ragan
Water Compliance Bureau

Encl: *Preliminary Order Revising Water District No. 110*
Explanatory Information to Accompany a Preliminary Order

cc: IDWR Eastern Region, Idaho Falls

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

IN THE MATTER OF THE PROPOSED
MODIFICATION OF THE BOUNDARY OF
WATER DISTRICT NO. 110, MUD LAKE
AREA

PRELIMINARY ORDER MODIFYING
WATER DISTRICT NO. 110

COURSE OF PROCEEDINGS

On February 18, 2022, the Director (“Director”) of the Idaho Department of Water Resources (“Department”) issued a *Notice of Proposed Action, Public Hearing, and Written Comment Period in the Matter of the Proposed Modification of Water District No. 110, Mud Lake Area* (“Notice”). In the Notice, the Director proposed modifying Water District 110 (“WD 110”) to include an area (“Expansion Area”) located between the existing WD 110 and Eastern Snake Plain Aquifer Ground Water Management Area (“ESPA GWMA”) boundaries. The proposed modification would incorporate into WD 110 all ground water rights in the Expansion Area that are not currently within a water district. The Notice also explained that ground water rights excluded from administration by WD 110 are domestic and stockwater rights as defined in Idaho Code §§ 42-111 and 42-1401A(11).

The Department conducted a public hearing regarding the proposed modification of WD 110 on Wednesday, March 9, 2022, and accepted written comments until March 21, 2022.

Based upon the record in this matter, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On April 17, 2006, the Director created WD 110. *Final Order Creating Water District No. 110* (“*Final Order*”). Pursuant to the *Final Order*, the boundaries of WD 110 were limited to those portions of Administrative Basins 31 and 32 overlying the ESPA¹. The current WD 110 boundary is shown on Attachment A.

¹ The ESPA is:

[T]he aquifer underlying the Eastern Snake River Plain as the aquifer is defined in the report, Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho, USGS Professional Paper 1408-F, 1992 excluding areas south of the Snake River and west of the line separating Sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian.

IDAPA 37.03.11.050.

2. All ground water rights claimed in the SRBA and within the proposed Expansion Area have been decreed by the SRBA District Court. The SRBA District Court issued the *Final Unified Decree* for water rights within the Snake River Basin on August 25, 2014.

3. On February 18, 2022, the Director sent the Notice by mail via the U.S. Postal Service to all owners of record of ground water rights currently administered by WD 110, and to all owners of record of non-excluded ground water rights in the Expansion Area. The Notice explained the Department's proposed action for the following reasons:

- The SRBA was completed on August 25, 2014. Idaho law specifies that the Department shall create or revise water districts for the administration of water rights where the water supplies of such rights have been adjudicated. A revised water district is necessary to properly administer ground water uses and rights within the proposed Expansion Area;
- The Director designated the ESPA GWMA on November 2, 2016, which includes both WD 110 and the proposed Expansion Area;
- Ground water in the proposed Expansion Area is hydraulically connected to the ESPA and the Snake River. Ground water withdrawals in the proposed Expansion Area have a depletionary effect on the ESPA and flows in the Snake River;
- Administration of ground water rights in the proposed Expansion Area is required to protect senior water rights in the ESPA and Snake River; and
- It is most efficient to incorporate ground water rights in the proposed Expansion Area into WD 110 rather than a separate water district.

4. On March 9, 2022, commencing at approximately 6:00 p.m. at the Clark County Extension Office/City Annex Building, Dubois, Idaho, James Cefalo, the presiding officer in this matter, conducted a public hearing concerning modification of the WD 110 boundary. Approximately seven people attended the hearing.

5. The presiding officer initiated the meeting by explaining the hearing process. Department representative Blake Jordan gave a presentation that described the existing WD 110 boundaries, the proposed revision of WD 110 boundaries, the factual basis for the proposed revision of boundaries, and the ground water rights and uses affected by the proposed water district revision. Mr. Jordan's presentation confirmed the basis for including the Expansion Area in WD 110.

6. Following the presentation, the presiding officer allotted time for hearing participants to ask questions regarding the proposed water district revision.

7. The presiding officer granted opportunity for persons attending the hearing to make oral statements for the record. In addition, the presiding officer held the record open through March 21, 2022, for the submission of written comments.

8. No oral testimony was presented for the record at the hearing. Comments provided and questions posed by those in attendance at the hearing were related to specific water rights. None of the persons in attendance raised concerns about the proposed expansion.

9. The Department did not receive written comments.

CONCLUSIONS OF LAW

Statutory Authorities

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.g., 42-351, and 42-602.

3. Idaho Code §§ 42-226 and 42-237a.g., assign the authority and responsibility to the Director for the administration of ground water rights in the State in accordance with the prior appropriation doctrine as established by Idaho law so as to protect prior surface and ground water rights.

4. 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.

5. Idaho Code § 42-604 authorizes the Director to 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. The Director may also revise the boundaries of a water district, abolish a water district, or combine two (2) or more water districts, by entry of an order, if such action is required to properly administer the users of the water resource

District Revision

6. Based upon the above statutory authorities and the record in this proceeding, the Director should revise the WD 110 boundary to include the proposed Expansion Area.

Administration of Affected Water Rights

7. The Director concludes WD 110 and its watermaster should administer the affected ground water rights within the proposed Expansion Area in accordance with Idaho law and perform the duties prescribed by Chapter 6, Title 42, Idaho Code, and in accordance with the guidelines, direction, and supervision of the Director.

ORDER

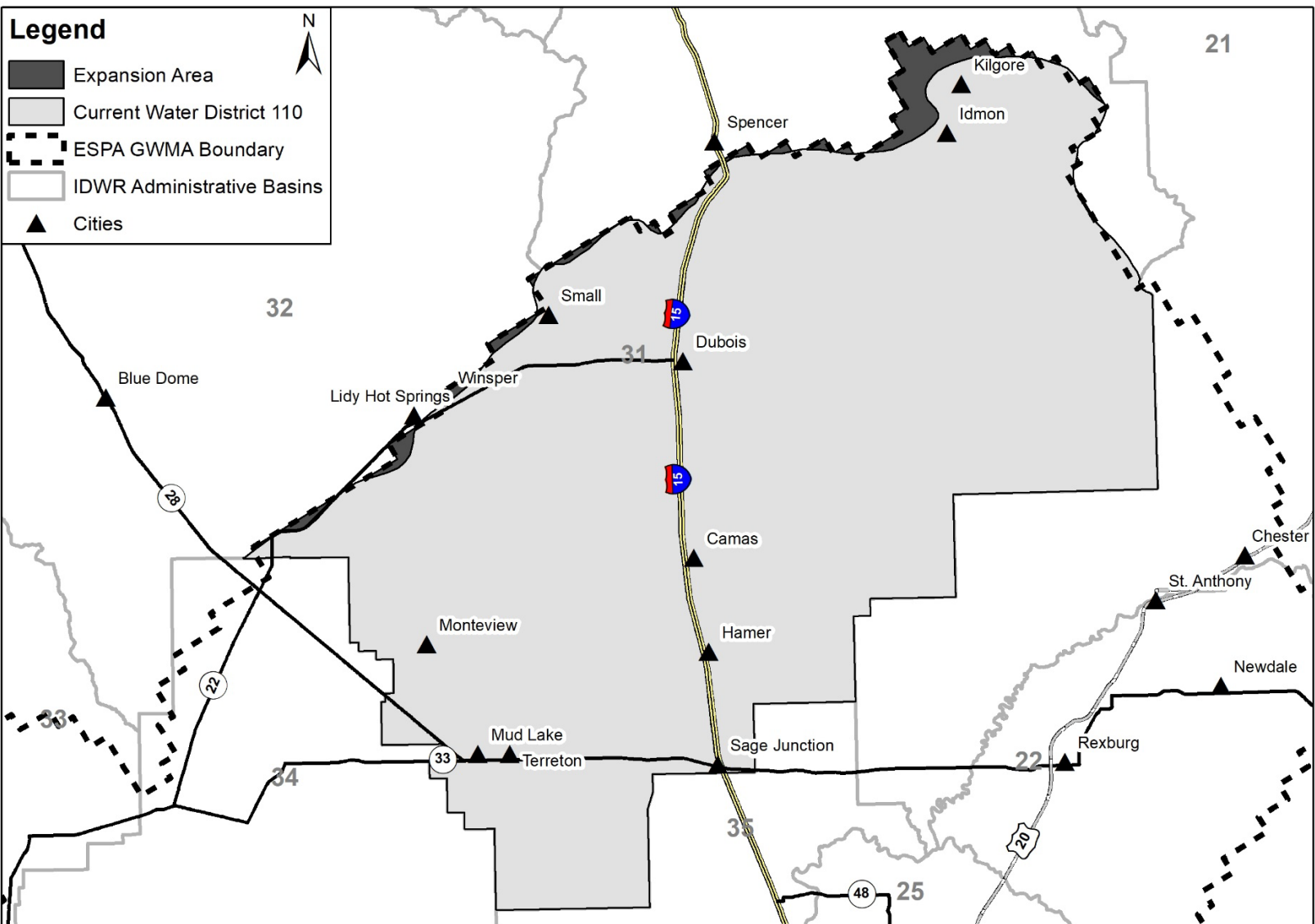
IT IS HEREBY ORDERED that:

1. The boundary of WD 110 is modified to include the Expansion Area as shown on the map attached hereto as Attachment A; and
2. All ground water rights located within the Expansion Area as shown in the map attached hereto as Attachment A shall be administered by WD 110, except ground water rights used for domestic and stock water as defined in Idaho Code §§ 42-111 and 42-1401A(11); and
3. The holders of ground water rights located in the Expansion Area shall not be subject to WD 110 administrative assessments in 2022. The WD 110 annual meeting is currently held on the second Wednesday of February. At the 2023 annual meeting, the holders of ground water rights within WD 110, including the Expansion Area, shall elect a watermaster and an advisory committee, and set a budget for operating the district; and
4. The Director shall issue a separate order requiring the installation of approved measuring devices for ground water diversions located within the Expansion Area.

DATED this 20th day of April, 2022.



James Cefalo
Presiding Officer



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.

I HEREBY CERTIFY that on this 20TH day of April 2022, a true and correct copy of the foregoing was served by the on each individual or entity on the service list for this matter on file at Idaho Department of Water Resources, 322 E Front St, Boise, ID. 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.

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72 POTATO ROAD LLC
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CECIL AND FLORENCE I ALLEN
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DUANE AND YVONNE ALLEN
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C/O LEWIS J NEWMAN
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MONTEVIEW, ID 83435

L2 LTD PARTNERSHIP AND L3 LTD
PARTNERSHIP
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LUNDHOLM ENTERPRISES LLC
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HAMER, ID 83425

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DAN MICHAEL MITCHELL
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C/O DON PARKER
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MONTEVIEW, ID 83440

DAVID AND MAGDALENE SAUER,
MONTEVIEW FARM LLC, MUD LAKE FARM
LLC AND SAUER FARMS INC
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DEE LYNN WOOD AND MUD LACRES LLC
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2658 E 2100 N
HAMER, ID 83425

BARBARA, PAMELA, SCOTT, SCOTT C AND
STAN D NEVILLE
2263 W 1000 N
REXBURG, ID 83440

LEWIS LA VAR AND LOUISE J NEWMAN
2943 N 800 E
MONTEVIEW, ID 83435-5069

NKC GREAT PLAINS LLC
10333 N MERIDIAN ST STE 425
INDIANAPOLIS, IN 46290

NORTH LAND RANCH INC
C/O GEORGE L HANSEN
626 E 2700 N
MONTEVIEW, ID 83435

ORANGE FARMS LLC
C/O FARMLAND MANAGEMENT SERVICES
301 E MAIN ST
TURLOCK, CA 95380-4537

BONNIE L AND BRUCE A OWENS
438 E 2300 N
MONTEVIEW, ID 83435

CORY PETERSEN
1980 N 2500 E
HAMER, ID 83425

DARLA PETERSEN
3712 E 190 N
RIGBY, ID 83442

WILMA PETERSEN
2973 WILD ROSE CT
IDAHO FALLS, ID 83402

LEE C PETERSON
1526 N 1900 E
TERRETON, ID 83450

PINNACLE GREAT PLAINS OPERATING CO
LLC
12821 E NEW MARKET ST STE 300
CARMEL, IN 46032-7258

PLACE FARMS LTD
1646 N 2200 E
HAMER, ID 83425

PORT OF ENTRY TRAVEL CENTER LLC
PO BOX 2895
NORRIS, MT 59745

PRODUCERS IRRIGATION CO
C/O MIKE OVERTON
2886 N 800 E
MONTEVIEW, ID 83435

DEANNA AND KEITH RADY
1853 E 1800TH N
HAMER, ID 83425

RAY SAUER FARMS INC
HC 63 BOX 2130
MONTEVIEW, ID 83435

RENO AGRICULTURE & ELECTRONICS
4655 AIRCENTER CR
RENO, NV 89502

DALE H RICHINS
PO BOX 51
TERRETON, ID 83450

BRUCE R AND DIANE RICKS
2482 E 3000 N
SUGAR CITY, ID 83448

JAMES REX AND TERRI DAWN RIGBY
2391 N 600 E
MONTEVIEW, ID 83435

ROCKY MOUNTAIN LAND & CATTLE CO
3640 S YELLOWSTONE HWY
IDAHO FALLS, ID 83402-4703

ROCKY MOUNTAIN LAND & CATTLE LLC
1096 E IONA RD
IDAHO FALLS, ID 83401-2170

ROSS D NEWMAN LLC
2103 N 800 E
MONTEVIEW, ID 83435-5022

BARBARA K ROUNDY
2526 N 665 E
MONTEVIEW, ID 83435

BENJAMIN AND JENNIFER ROUNDY
1057 E 2600 N
MONTEVIEW, ID 83435

JANEY AND KAMLAH ROUNDY
653 E 2500 N
MONTEVIEW, ID 83435-5077

WILLIAM H ROUNDY
2528 N 665 E
MONTEVIEW, ID 83435

S & S AGRISOURCE HOLDING LLC
9999 BELLAIRE BLVD STE 8B
HOUSTON, TX 77036-3579

SANDERS FAMILY LLLP
PO BOX 205
HAMER, ID 83425-0205

DAVID W SAUER
2136 SAURE FARMS RD
MONTEVIEW, ID 83435

DIANE SAUER
2104 SAUER FARMS RD
MONTEVIEW, ID 83435

DIANE SAUER
HC 63 BOX 2104
MONTEVIEW, ID 83435

SAUER FARMS INC
C/O NEAL W SAUER
1305 SAUER RD
MONTEVIEW, ID 83435

AARON AND LYLA SAVAGE
1971 N 2500 E
HAMER, ID 83425

STANLEY K SCOTT
PO BOX 59
MONTEVIEW, ID 83435-0057

SEE FARMS INC
C/O WAYNE ERIKSON
1040 W MAIN
REXBURG, ID 83440

CAROLYN RHODES AND H TOD SHENTON
573 MEDICINE LODGE RD
DUBOIS, ID 83423

CARA AND JONATHAN SHULDBERG
1085 N 1600 E
TERRETON, ID 83450

JALENE AND KEITH SHULDBERG
1785 N 1800 E
HAMER, ID 83425

KARLENE AND LYLE R SHUPE
2296 E 1950 N
HAMER, ID 83425

BILL SHURTLIFF
2023 N OLD BUTTE HWY
HAMER, ID 83425

SIDDOWAY SHEEP CO INC
1764 E 1200 N
TERRETON, ID 83450-5104

ANGELA AND GARY SKIDMORE
1268 E 1500 N
TERRETON, ID 83450

GARY SKIDMORE
PO BOX 13
TERRETON, ID 83450

J NICOLE SLAGOWSKI
2259 E 2350 N
HAMER, ID 83425

JOE AND NICOLE SLAGOWSKI
2325 E 2300 N
HAMER, ID 83425

DAVID R AND MICHELLE SPENCER
718 E 2700 N
MONTEVIEW, ID 83435

DENA STADTMAN
2043 N OLD BUTTE HWY
HAMER, ID 83425

ESTELLA R STALLINGS
2237 N 900 W
CLINTON, UT 84015

STEVEN BURTENSHAW LEGACY LLC
PO BOX 147
TERRETON, ID 83450-0147

STEWART INDUSTRIES INC AND SUSAN
STEWART
996 E 2700 N
MONTEVIEW, ID 83435

JOAN R, ROY AND ROY S STODDARD
2465 N 700 E
MONTEVIEW, ID 83435

M FRANK SULLIVAN
PO BOX 67
NORTH FORK, ID 83466

T B & R INVESTMENTS LLC
388 N 2000 E
ST ANTHONY, ID 83445

JIM W TARPLEY
221 BLUE CREEK RD
DUBOIS, ID 83423

CODY AND ROBERT K TELFORD
827 E 2600 N
MONTEVIEW, ID 83435

TERRETON PUMP NO 2
C/O BRANDON GORDON
PO BOX 57
TERRETON, ID 83450

TERRETON TRACTOR INC
C/O BONNEVILLE COUNTY IMP
2105 INDUSTRIAL BLVD
IDAHO FALLS, ID 83401-1703

AARON MILTON THOMPSON JR
1946 E 1700 N
TERRETON, ID 83450

LINDA RAY AND RONALD TORGERSON
1854 N 2500 E
HAMER, ID 83425

UNION PACIFIC RAILROAD CO
REAL ESTATE DEPT
1800 FARNAM ST
OMAHA, NE 68102

US DEPT OF INTERIOR
FISH & WILDLIFE SERVICE
911 NE 11TH AVE
PORTLAND, OR 97232-4181

USDA ARS
US SHEEP EXPERIMENT STATION
19 OFFICE LOOP
DUBOIS, ID 83423-5032

USDI FISH & WILDLIFE SERVICE
DIVISION OF ENGINEERING
911 N E 11TH AVE
PORTLAND, OR 97232-4181

LARRY AND RICHARD VADNAIS
2871 N 800 E
MONTEVIEW, ID 83435

DIANE SAVAGE VALCARCE
1719 HARGIS HILL
WILLARD, UT 84340

ELMA AND PAUL WALKER
124 EAST MAIN ST
REXBURG, ID 83440

DAVID Z AND MELISSA WARD
PO BOX 32
MONTEVIEW, ID 83435-0032

WEBBER CREEK RANCH LLC
PO BOX 50
SWAN VALLEY, ID 83449

WEST DESERT LLC
1344 N 1900 E
TERRETON, ID 83450-5209

WEST JEFFERSON MEMORIAL CEMETERY
DISTRICT
1052 E 1510 N
TERRETON, ID 83450-5066

WEST JEFFERSON SCHOOL DISTRICT #253
1272 E 1500 N
TERRETON, ID 83450-5136

JUDY WILLMORE
PO BOX 637
REXBURG, ID 83440

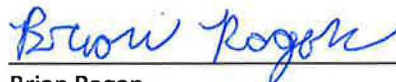
PERRY L WOODARD
PO BOX 85
HAMER, ID 83425

WWWDF LLC
1605 N 2200 E
HAMER, ID 83425

DARLA AND WADE L YEARSLEY
2354 E 1900 N
HAMER, ID 83425

JANET AND KIM YEARSLEY
2415 E 2050 N
HAMER, ID 83425

ZWEIFEL PROPERTIES LLC
5225 WILD DUNES LN
IDAHO FALLS, ID 83404



Brian Ragan
Idaho Department of Water Resources