

IDAHO DEPARTMENT OF WATER RESOURCES

INDEX OF PRECEDENTIAL AGENCY ORDERS MAINTAINED PURSUANT TO IDAHO CODE § 67-5250

[Readers are encouraged to review the full documents at the links provided below. The information in the factual scope, statutory and rule interpretation, and significant conclusions and findings columns is not exhaustive and is provided solely as a service to assist readers in their search for precedents that may apply to a particular situation. In the event of an omission or conflict in these columns with the full agency order, the language of the order prevails]

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Issue Date/ Document Title Link	Docket No./ Case Caption	Factual Scope: Geographic and Parties	Statutory and Rule Interpretations	Significant Conclusions and Findings
<p>9/2/2021</p> <p>Order on Exceptions; Final Order Approving Application for Amendment of Permit with Conditions and Denying Transfer</p>	<p>In the Matter of Application for Amendment of Permit No. 63-32225 in the Name of Intermountain Sewer & Water, Corp. and Application for Transfer No. 83875 in the Name of Gregory B. Johnson</p>	<ul style="list-style-type: none"> •Administrative Basin 63 •Mayfield Springs Planned Community •Mountain Home Groundwater Management Area •Cinder Cone Butte Critical Groundwater Management Area •I-84 Corridor between Boise and Mountain Home <p>Parties:</p> <ul style="list-style-type: none"> ○ Intermountain Sewer & Water ○ Gregory B. Johnson ○ Mary Walsh 	<ul style="list-style-type: none"> •There may be circumstances where irrigation water and municipal water could be commingled while still preventing enlargement. •The Director is statutorily required to examine all evidence of whether the proposed transfer will cause enlargement, not just evidence brought forth by an applicant. 42-222(1). •Historic conditions imposed in prior water transfer cases do not control which conditions might be attached to a 	<ul style="list-style-type: none"> •If the irrigation water right cannot be monitored and measured to show it is being used pursuant to its authorized use, the use could exceed the amount of beneficial use authorized under the right prior to the proposed transfer. This is enlargement. •The Director agrees with the hearing officer’s conclusion and concern that monitoring the Water Right based on authorized annual volume limits may result in water, diverted pursuant to an irrigation Water Right, being applied to municipal uses. •The act of commingling irrigation water for end use by residential irrigators means control over the irrigation water is turned over to the end user.

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		<ul style="list-style-type: none"> ○ Gayle Remine ○ Lacey Wilde 	<p>transfer, or prevent a reasoned departure in this or future water right transfer applications. There is no one-size-fits-all set of conditions or a universal solution in relation to the prevention of enlargement in water transfer proceedings, and the applicant maintains the statutory burden of proving that no enlargement will occur. The Director is not responsible for introducing potential conditions or other measures that might prevent enlargement.</p>	<ul style="list-style-type: none"> •The water delivery system operator will not know whether the reduced demand in the municipal system is due to less irrigation or less use for other components of the municipal use. Therefore, neither Intermountain nor the Department will know whether to attribute the volume still being diverted to the Water Right or to the Permit. Without separating delivery of the irrigation Water Right to the authorized irrigated places of use from delivery of the municipal Permit to its place of use, the Department cannot determine whether the irrigation Water Right will augment municipal demand under the municipal Permit. •Applicant failed to establish that irrigation water will not be used for non-irrigation components of municipal use when irrigation ceases or is reduced. Therefore, an enlargement could result from the unauthorized change in use. •Retaining the historic annual diversion volume limit does not prevent a portion of the irrigation water volume from being distributed to other components of the Applicants' municipal use, when the entire amount is not needed for irrigation of the approved place of use. Allowing such a

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				<p>change in use is disallowed under Idaho law. 42-104</p> <ul style="list-style-type: none"> • If there is priority administration in the Mountain Home GWMA, and diversion under the municipal Permit is curtailed, water may continue to be delivered in priority under the irrigation Water Right's 1974 priority date. • The Applicant cannot ensure water diverted into its municipal water system will be used only for the irrigation component of its municipal water use, therefore it cannot ensure the water will not be fully consumed by non-irrigation components of the municipal use. Consumptive use in excess of historic irrigation consumption is enlargement. • If administration occurred, there would be no way to ensure the irrigation Water Right still in priority would not be delivered and applied to the fully array of [later priority] municipal water uses, including in-house municipal purposes. • The Director concludes no current condition or monitoring and measuring plan employed in past transfer approvals definitively prevents enlargement upon the commingling of irrigation water into a municipal water system.

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<p>5/3/2021</p> <p>Order on Petition for Declaratory Ruling</p> <p>Affirmed by District Court:</p> <p>Memorandum Decision and Order</p>	<p>In the Matter of Riverside's Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01</p>	<ul style="list-style-type: none"> •Administrative Basin 63 •City of Nampa •Indian Creek •Phyllis Canal •Department of Environmental Quality <p>Parties:</p> <ul style="list-style-type: none"> ○ Riverside Irrigation District ○ Pioneer Irrigation District ○ Idaho Power Company ○ Association of Idaho Cities ○ Hayden Area Regional Sewer Board ○ Boise ○ Caldwell ○ Idaho Falls ○ Jerome ○ Meridian ○ Pocatello ○ Post Falls ○ Rupert 	<ul style="list-style-type: none"> • 42-201(8) The plain language of Subsection 8 does not limit land application to the service area of a municipality. It does not restrict the land on which water is used. In fact, land application may occur "on lands not identified as a place of use for an existing irrigation water right." •The characteristics of agency plainly allow an agent of a Subsection 8 exempted entity to benefit from Subsection 8's exemption. •42-201(2) The legislature's inclusion of "notwithstanding," plainly removes Subsection 8 from inclusion in the requirements of Subsection 2. 	<ul style="list-style-type: none"> •Under Subsection 8, Nampa may land apply its effluent on any land, if it informs the Department the land is not a place of use for an existing irrigation water right. This reasoning leads to the conclusion that Nampa may land apply its effluent within Pioneer's place of use without obtaining a water right. • The Director agrees with Nampa that Nampa and Pioneer are so intertwined in this matter that Subsection 8's exemption applies to Pioneer. • Given the contractual and regulatory ties between Nampa and Pioneer and under the specific set of facts presented here, the Director concludes Subsection 8's exemption applies, and it is not necessary for Pioneer to obtain a separate water right to accept water from Nampa and apply that water to land in the Pioneer district boundaries. •Riverside will be impacted by the proposed use of Nampa's effluent because there will be less water available in Indian Creek without the influx of effluent. However, Riverside is not entitled to Nampa's wastewater. Without that entitlement, there is no injury to Riverside. Without injury, there isn't a violation to the constitution.

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<p>6/28/2021</p> <p>Final Order</p>	<p>In the Matter of Basin 37 Administrative Proceeding</p>	<ul style="list-style-type: none"> •Administrative Basin 37 •Water District 37 •Wood River Basin •Bellevue Triangle •Silver Creek •Little Wood River •Big Wood River •Magic Reservoir •Wood River Valley aquifer system •Camas Creek •American Falls Reservoir •Milner Gooding Canal •Lincoln County •Big Wood River Ground Water Management Area •Wood River Valley Groundwater Flow Model v .1.1 •Hayspur Fish Hatchery <p>Primary Parties:</p> <ul style="list-style-type: none"> ○ Big Wood Canal Company 	<ul style="list-style-type: none"> •The "declared policy" of 42-226 does not modify or limit "the doctrine of 'first in time is first in right'" with respect to senior surface water rights, and they are not subject to the admonishment that "a reasonable exercise" of senior priority "shall not block full economic development of underground water resources." •Water rights decrees do not answer the question of whether diversions are "in reasonable amounts" for purposes of an administrative proceeding under 42-237a.g. "Reasonableness" is not an element of a water right, and an administrative determination of whether the quantity diverted is a "reasonable amount" depends upon the facts of the case. 	<ul style="list-style-type: none"> •Comparison of the 2004 and 2020 water right priority cuts with the 1937 and 1939 priority cuts "generally indicates that the 1884 priority rights were cut more frequently and longer in 2020/2004 than 1939/37." While most 1884 priority dates were cut for multiple weeks or months in 2004 and 2020, most 1884 priority dates were not cut at all in the years 1937 and 1939. When 1884 priority dates were cut in the years 1937 and 1939, they were cut for shorter periods of time: 1 to 2 weeks. The relatively junior April 1, 1885, priority was also cut for significantly shorter periods in 1937 and 1939 (25 days) than in 2004 and 2020 (66-69 days). •The majority of irrigation and municipal ground water diversions within the Potential Area of Curtailment have priority dates later than 1940. The majority of surface water rights on Silver Creek and its tributaries have priority dates prior to 1925. The ground water rights in the Potential Area of Curtailment are junior to the surface water rights on Silver Creek and its tributaries. •The Director concludes ground water and surface water diversions in the Bellevue Triangle and from Silver Creek and the Little Wood River are putting water to beneficial

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		<ul style="list-style-type: none"> ○ South Valley Ground Water District ○ Galena Ground Water District ○ Fred Brossy ○ Rodney Hubsmith ○ Carl Pendleton ○ John Arkoosh ○ Big Wood Farms ○ Don Taber ○ Charles Newell ○ Lawrence Schoen ○ Idaho Department of Fish and Game ○ Sun Valley Co. ○ Ketchum ○ Hailey ○ Bellevue ○ Idaho Ground Water Appropriators IGWA 	<ul style="list-style-type: none"> •Once an initial determination is made that the senior appropriator is or will be injured by diversions under a junior priority water right, the junior appropriator bears the burden of proving that curtailment would be futile, or otherwise challenging the injury determination. Further, junior appropriators who claim their diversions do not injure a senior appropriator are required to establish that claim by "clear and convincing evidence." •"Clear and convince evidence" is "'evidence indicating that a thing to be proved is highly probable or reasonably certain.'" •There is no merit in the arguments that the well-established presumptions, burdens, and evidentiary 	<p>use in reasonable amounts through valid appropriations. 42-226</p> <ul style="list-style-type: none"> •Sukow's modelling analyses show that the Wood River Valley aquifer system is hydraulically connected to Silver Creek and its tributaries above the Sportsman's Access gage, and that ground water pumping in the Bellevue Triangle has a significant impact on stream flows in Silver Creek. Sukow used the WRVI.1 Model to simulate the effects of curtailment of ground water rights diverting within the Bellevue Triangle on July 1 of this year. This analysis predicted that the curtailment would increase flows in Silver Creek by approximately 23-27 cfs during the months of July, August, and September. • The surface water users carried their burden of providing evidence to support an initial determination that during the 2021 irrigation season, the surface water users have been and will continue to be injured by a shortage of water resulting, in part, from ground water pumping in the Bellevue Triangle under junior priority water rights. •The ground water users did not carry their burden of showing by clear and convincing evidence that ground water pumping in the Bellevue Triangle does not injure senior

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			<p>standards of Idaho's prior appropriation doctrine "do not clearly apply," and that junior ground water rights may not be curtailed in the absence of "clear and convincing evidence" that curtailment will benefit senior surface water users. These arguments nullify the presumption that senior water right holders are entitled to their decreed water rights, and impermissibly shift the risk of water shortage to senior water users.</p> <ul style="list-style-type: none"> •The determination of whether water in a well is "available" for use by the ground water right holder depends on whether withdrawals "would affect" the present or future use of a senior surface or ground water right in a way contrary to the declared policy of the Ground Water Act. 	<p>appropriators diverting from Silver Creek and the Little Wood River.</p> <ul style="list-style-type: none"> •All ground water models are simplifications with inherent predictive uncertainty, and it is undisputed that the WRVI.1 Model is the best scientifically-based tool currently available for predicting Silver Creek's hydraulic responses to ground water curtailment in the Bellevue Triangle. •The Model's predictive uncertainty does not mean the Model is overestimating Silver Creek's hydraulic responses to ground water curtailment. It means that it is equally possible that the Model is underestimating Silver Creek's hydraulic responses to ground water curtailment. The risk of any uncertainty in this regard must be allocated to the ground water users. "Equality in sharing the risk does not adequately protect the senior priority surface water right holder from injury." •The record supports a conclusion that the effects of ground water withdrawals in the Bellevue Triangle on senior water rights diverting from Silver Creek and the Little Wood River during the 2021 irrigation season are contrary to "the doctrine of 'first in time is first in right.'" 42-226. The Director is authorized to prohibit or limit ground

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				<p>water withdrawals in the Bellevue Triangle on this basis. 42-237a.g</p> <ul style="list-style-type: none"> •The Director concludes that consumptive ground water pumping in the Bellevue Triangle for purposes other than domestic and stock watering uses pursuant to 42-111 and 42- 1401A(II) should be curtailed as soon as possible. •This case involves pumping from the Wood River Valley aquifer within the Bellevue Triangle, not from the ESPA. The ESPA delivery calls involved many more ground water diversions and a far larger area than this case. The vast majority of the ESPA diversions were much farther away from the Snake River than ground water diversions in the Bellevue Triangle are from Silver Creek and its tributaries. The impacts of the ESPA diversions on surface flows of the Snake River are far more diffuse, delayed, and attenuated than the impacts of ground water diversions in the Bellevue Triangle are on the surface flows of Silver Creek and its tributaries. Further, the record shows that ground water pumping in the Bellevue Triangle has significant impacts on flows in Silver Creek and the Little River within a few days of when pumping begins or ends. •As previously discussed, the record establishes that curtailment of junior ground

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				<p>water pumping in the Bellevue Triangle will provide water in usable quantities for at least some of the senior surface water users, a fact that South Valley and Galena concede. The fact that curtailment will not provide usable quantities to all senior surface water right holders who have an insufficient supply, therefore, does not render the curtailment "futile."</p> <ul style="list-style-type: none"> •The record shows that no delivery call was filed in this case. The record shows that this proceeding was initiated by the Director, sua sponte, pursuant to 42-237a.g. •The Director recognizes that it may take time to secure mitigation; it may also be that mitigation is simply not available, or not available at what the ground water users consider to be reasonable cost. Under Idaho's prior appropriation doctrine, however, this risk falls on the junior ground water right holders. •Requiring "many months" of prehearing preparation would be far in excess of what is "warranted by the particular situation." It also would effectively preclude in-season protection of senior surface water rights while allowing junior ground water right to continue pumping. In the circumstances of this case, an extended prehearing schedule

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				"unreasonably shifts the risk of shortage to the senior surface water right holder."
<p>6/10/2020</p> <p>Order on Exceptions; Final Order Amending Permit Approval</p>	<p>In the Matter of Application for Permit No. 75-14954 in the Name of Bryan A. Yenter and/or Cynthia J. Yenter</p>	<ul style="list-style-type: none"> • Administrative Basin 75 • Salmon River • Upper Salmon River Basin • City of Salmon • Salmon Valley Aquifer 		<ul style="list-style-type: none"> • Surface water first condition • Ground water levels in certain areas of Idaho decline without incidental recharge from surface water irrigation. The surface water first condition serves the local public interest by conserving ground water for new uses that cannot be accomplished with surface water. • Water users in the vicinity of the proposed appropriation do not rely heavily on the shallow ground water to meet substantial needs, including the City of Salmon. • Conserving ground water can be important, especially in urban areas where large volumes of water need to be treated for water quality, because treating surface water can cost more. • Salmon predominantly relies on surface water, inferring that ground water is not relied upon as a higher-quality water resource. • The public policy objective of enhancing surface water for ESA-listed fish species recovery outweighs the need for ground water conservation.

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<p>5/21/2020</p> <p>Order on Exceptions; Final Order</p>	<p>In the Matter of Application for Permit No. 74-16187 in the Name of Kurt W. Bird or Janet E. Bird</p>	<ul style="list-style-type: none"> • Administrative Basin 74 • Water District 74W • Big Timber Creek • Lemhi River • Snake River steelhead, spring Chinook salmon and Columbia River bull trout. 	<ul style="list-style-type: none"> • 42-203A(5) does not require a cumulative impacts analysis. • Distinction between the conservation of water resources criteria and the local public interest criteria. “Therefore, the term ‘conservation of water resources’ does not mean reserving water from appropriation or setting water aside for instream uses such as fish habitat. These topics and issues are encompassed by the local public interest review and should be weighed against all other local public interest factors.” • Local public interest review should be based on specific information in the record, not on 	<ul style="list-style-type: none"> • A bypass flow condition is not a minimum stream flow because when a right is not being used the bypassed flow is not protected. • Regarding the Wild and Scenic subordination amounts: “Therefore, these two protected quantities of water reserved for future appropriation represent a critical water supply for future development in the Salmon River drainage. The Department has a duty to allocate these limited water resources in a manner that optimizes the value of the available water supply.” Do not allocate the lower subordinated flow to a water right that cannot divert at times when the lower Wild and Scenic water flow is present. • It is in the local public interest to divert water for irrigation. • It is in the local public interest to maintain anadromous fisheries in Big Timber Creek; to reconnect Big Timber Creek to the Lemhi River and to recover fish species listed under the Endangered Species Act; and to maintain a portion of the unappropriated water in stream

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			speculation or assertions of indeterminate impact.	<p>supporting anadromous fish for the protection of fish habitat.</p> <ul style="list-style-type: none"> •In the absence of target flows or specific data identifying the streamflow needed to provide optimum fish habitat in the upper Lemhi River, it would not be appropriate to impose a bypass flow condition for the upper Lemhi River ...” •Insufficient evidence to support a bypass flow condition to protect high flow events in Big Timber Creek. •The purpose of high flow water use is for irrigation. Secondary benefits will not be examined in a local public interest analysis. •Concludes that the local public interest balance between the use of water for irrigation and the needs of ESA-listed anadromous fish necessitates the imposition of bypass flow conditions.
<p>4/21/2020</p> <p>Final Order on Fact Issue</p>	<p>In the Matter of Designating the Eastern Snake Plain Aquifer Ground Water Management Area</p>	<ul style="list-style-type: none"> • Eastern Snake Plain Aquifer ESPA Ground Water Management Area GWMA • Rexburg Bench <p>Parties:</p>		<ul style="list-style-type: none"> •Scope of the factual hearing in this matter is whether areas outside of the ESPA area of common ground water supply, as defined by Rules for the Conjunctive Management of Surface and Ground Water Resources (CM Rules) Rule 50 (IDAPA 37.03.11.050), but included within the ESPA GWMA, are

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		<ul style="list-style-type: none"> ○ Bliss ○ Buhl ○ Burley ○ Carey ○ Declo ○ Dietrich ○ Gooding ○ Hazelton ○ Heyburn ○ Jerome ○ Paul ○ Richfield ○ Rupert ○ Wendell ○ Pocatello ○ Hailey ○ McCain Foods ○ Sun Valley Company ○ Clear Springs Foods ○ Idaho Power Company ○ Basin 33 Water Users ○ South Valley Ground Water District ○ Big Wood River Water Users Association ○ Little Wood River Water Users Association ○ Water District 37-B ○ Fremont Madison Irrigation District 		<p>located in tributary basins and are otherwise sufficiently remote or hydrogeologically disconnected from the ESPA to warrant exclusion from the ESPAGWMA.</p> <ul style="list-style-type: none"> •Ground water underlying the Bench is tributary to the ESPA •For purposes of this order, the test for hydrogeological connection is: whether ground water underlying the Bench and ground water underlying the Eastern Snake Plain ("ESP") are both part of an aquifer system that has reasonably well-defined boundaries and more or less definite areas of recharge and discharge. •The ESPA model is a tool that simulates the extent and level of interacting resources, and the Bench is necessarily included due to significant development of ground water underlying the Bench and the fact that it is hydro geologically connected to the ESP A. •Factors justify inclusion of the Bench in the ESPA GWMA: (1) there is significant ground water development on the Bench; (2) the hydrogeology of the Bench is thoroughly characterized; (3) the Bench and the ESPA are hydrogeologically connected; (4) the Bench is included in the ESPA Ground Water Model (ESPAM2.1) area; (5) the Bench is not already designated as a critical ground

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		<ul style="list-style-type: none"> ○ Madison Ground Water District ○ Idaho Irrigation District ○ Surface Water Coalition SWC ○ Idaho Ground Water Appropriators IGWA 		<p>water area or ground water management area; and (6) the Bench is not presently considered for separate ground water management designation.</p>
<p>3/3/2020</p> <p>Order Denying Petitions for Reconsideration</p>	<p>In the Matter of Application for Transfer No. 82640 in the Name of Clinton K. Aston</p>	<p>Parties:</p> <ul style="list-style-type: none"> ○ Clinton Aston ○ Jay Norman Fannesbeck 	<ul style="list-style-type: none"> •The Director lacks authority to develop defenses to forfeiture on his own. •The Director will not recognize an “agricultural economics” defense to forfeiture. 	<ul style="list-style-type: none"> •While parties or successors in interest to the alleged verbal agreement may have taken certain actions, including consulting with the Department, they did not take any recognizable legal action to update their water rights to reflect any prior verbal agreements. The Director has no authority to assign water rights based on 50-year old verbal agreements or on agreements that are not proper water right conveyances.
<p>1/31/2020</p> <p>Order Denying Motion to Dismiss; Final Order on Exceptions</p>	<p>In the Matter of Application for Transfer No. 82640 in the Name of Clinton K. Aston</p>	<ul style="list-style-type: none"> •Administrative Basin 13 •Township I6 South, Range 38 East, B.M. •Ground water •Franklin County <p>Parties:</p> <ul style="list-style-type: none"> ○ Clinton Aston ○ Jay Norman Fannesbeck 	<ul style="list-style-type: none"> • The Director acknowledges and reiterates the importance of filing signed documents with the Department. However, in this specific case, the Director will liberally construe IDWR's rules on signatures in order "to secure just, speedy and economical determination of all issues 	<ul style="list-style-type: none"> • The Application was not defective or insufficient-plainly meaning flawed or inadequate-to prevent it from being processed and analyzed by the Department and intervenors. That factual disagreements remain at this late stage is normal in contested case proceedings before the Department. •The application for transfer did not willfully misrepresent fact when it presented fact to the best of applicant’s knowledge at the time of filing.

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			<p>presented to the agency." 37.01.01.052.</p> <ul style="list-style-type: none"> •A motion to dismiss is a pre-trial motion meant to end litigation prior to-in fact to avoid-hearing or trial. Motions to dismiss under Rule 565 are filed prior to the hearing to avoid excessive litigation costs. •The opportunity to attack underlying issues related to permitting, place of use, and ownership has passed and the finality of water right licensing is essential to assuring ownership of water rights. •The Director declines to recognize the novel "agricultural economics" defense to forfeiture Aston proposes. The legislature enacted an explicit exception to forfeiture for mining; it has not done so for the cost of electricity of pumping groundwater. 	<ul style="list-style-type: none"> •Conjecture as to the reasoning for an application does not govern what an application may be approved or denied under the Department's authority. •The Director agrees with the hearing officer that any prior verbal agreements fail under the statute of frauds. <p>No agricultural economics defense to forfeiture exists in Idaho.</p>

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			<p>Neither has a common law defense developed in Idaho case law been cited to. The Director agrees with the hearing officer and concludes no "agricultural economics" defense to forfeiture exists in Idaho.</p> <ul style="list-style-type: none"> •The ability of the Department to consider constitutional issues is limited. See IDAPA 37.01.01.415. If Aston believes a legislatively enacted statute is somehow invalid, or otherwise unconstitutional, he may seek relief in the courts. 	
<p>1/9/2020</p> <p>Order on Legal Issues</p>	<p>In the Matter of Designating the Eastern Snake Plain Aquifer Ground Water Management Area</p>	<ul style="list-style-type: none"> • Eastern Snake Plain Aquifer ESPA Ground Water Management Area GWMA <p>Parties:</p> <ul style="list-style-type: none"> ○ Bliss ○ Buhl ○ Burley ○ Carey 	<ul style="list-style-type: none"> •By enacting 42-233b, the legislature recognized the need for the Director to act before the rates of withdrawal exceeding the reasonably safe supply. •The conjunctive management rules describe in detail how IDWR and the holders of 	<ul style="list-style-type: none"> •Director issued the Deadline for IDWR 's Submittal of Materials; Order on Motion Practice; Notice of Hearing and Scheduling Order; Order Authorizing Discovery. In the order, the Director established: (a) a deadline for IDWR to disclose all relevant materials used or considered in issuance of the ESPA GWMA Order, including any additional, pertinent information compiled after issuance of the final order; (b) a

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		<ul style="list-style-type: none"> ○ Surface Water Coalition SWC ○ Idaho Ground Water Appropriators IGWA 	<p>rules are the sole procedural mechanism for creation of a ground water management area.</p> <ul style="list-style-type: none"> •The plain language of the CM Rules establishes the CM Rules do not preclude the Director from taking action consistent with 42-233b. •The designation of a ground water management area does not require rulemaking. •Because there is no specific rule in the Department's procedural rules concerning summary judgment, and because 42-1701a(3) grants a statutory right to a hearing for a person aggrieved by an action of the Director, summary judgment in an IDWR contested case should be an extraordinary remedy. 	<p>ESPA GWMA Order was issued, they were not denied due process.</p> <ul style="list-style-type: none"> •The determination of each ground water basin or designated part thereof for inclusion into a ground water management area depends on unique facts for each individual proposed area. Each basin is unique. Hydrogeology in basins is heterogeneous. Each has unique characteristics, such as: <ul style="list-style-type: none"> ○ Ground water recharge amounts and locations ○ Aquifer conditions, whether confined or unconfined ○ Ground water gradient and direction of ground water flow ○ Travel times and quantities of water movement ○ Isolation of ground water resources ○ Aquitards that slow or impede water movement ○ Relationships between ground water and hydraulically connected surface water sources •The method of confirmation of water rights, whether by decree or by administrative license, does not affect the authority of the Director to manage the ground water resource. The appointment of a watermaster to administer the water

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				rights does not limit the Director's authority to manage a ground water aquifer.
<p>12/20/2019</p> <p>Order on Reconsideration; Amended Final Order Order on Reconsideration; Amended Final Order</p>	<p>In the Matter of Applications for Permit 67-15292 through 67-15297 in the Name of Eckhardt Family LLLP</p> <p>In the Matter of Applications for Permit 67-15298 and 67-15300 in the Name of Eckhardt Family LLLP</p>	<ul style="list-style-type: none"> •Administrative Basin 67 •Jenkins Creek •Jenkins Reservoir •Monroe Creek •Monroe Reservoir <p>Parties:</p> <ul style="list-style-type: none"> ○ Eckhardt Family LLLP ○ John D. Hoff ○ Double C & J Land Co. 	<ul style="list-style-type: none"> •Responses to petitions for reconsideration are not recognized under the Department's rules of procedure. Rule 730. 	<ul style="list-style-type: none"> •There is insufficient evidence in the record to support a conclusion that Eckhart's proposed appropriations will not injure Hoff's senior, year-round stockwater water right component of Water Right No. 67-14251. The fact that the protestant in this matter offered no testimony or other evidence related to injury during the non-irrigation season is irrelevant to Eckhardt's burden. Eckhardt bore the burden of showing that senior water right holders would not be injured by the proposed appropriation and failed to do so in relation to the non-irrigation season. •The record shows that: (1) ponds 1-6 [9 and 11] are remote and difficult to access; (2) there is no water district, watermaster or rental pool to help alleviate administrative concerns; (3) losses caused by impoundment, seepage, and evaporation may still accrue if the applications were approved but Eckhardt could not access the requisite diversion components; and (4) Hoff and Eckhardt are incapable of reasonable communication in relation to administration. The Director lacks confidence that implementing and

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				<p data-bbox="1360 305 1894 370">maintaining the cutoff date condition would reasonably occur.</p> <ul data-bbox="1360 394 1894 1414" style="list-style-type: none"> <li data-bbox="1360 394 1894 889">• Until the time a water district is created, each water user and right holder is responsible for the regulation of his or her own diversions. If Eckhardt's Applications were granted and his mitigation condition approved, proper administration of the proposed water rights would require daily communication and coordination between Hoff and Eckhardt during critical times of the year. This is not possible because Eckhardt and Hoff have demonstrated, by their intractable disagreements over water for nearly twenty years, an inability to cooperate and resolve issues. <li data-bbox="1360 927 1894 1414">• As proposed, stockwater storage in Ponds 1-6 [9 and 11] will reduce the quantity of water under Hoff's water rights in certain years and under certain circumstances. Eckhardt's mitigation proposals do not adequately protect Hoff's water rights from injury. The Director will not impose a cutoff date that may cause injury to senior water rights. In addition, there is evidence in the record showing that Eckhardt and Hoff would be incapable of administration of water rights, if approved, due to longstanding disagreement and conflict. Further still, conditioning a water right on

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				being able to access these particular ponds in order to properly administer the rights, if approved, is unreasonable, regardless of Eckhardt's beliefs about accessibility and ease of operating the cut-off mechanism(s).
<p>10/22/2019</p> <p>Final Order</p>	<p>Docket No. P-FCD-2018-01</p> <p>In the Matter of the Petitions Filed with the Department Regarding Appointment of Gordon Sylte as a Commissioner of Flood Control District No. 17</p>	<ul style="list-style-type: none"> •Water District 95-C •Rathdrum Creek •Twin Lakes •Fish Creek •East Green Acres Water District •Flood Control District 17 •City of Rathdrum <p>Parties:</p> <ul style="list-style-type: none"> ○ Gordon Sylte ○ Susan Goodrich ○ John Andrews ○ Ronald Cater ○ John Dieckman ○ Susan Ellis ○ Jean and Harry Emerson ○ Paul Finman ○ Sheree Greenfield, Harold Greenfield Trust ○ Barbara Herr 	<ul style="list-style-type: none"> •The scope of evidence was limited to the factors in the statute, 42-3109, “neglect of duty, misconduct or malfeasance or inability to perform the duties of a commissioner.” •Petitioners seeking commissioner’s removal bore the burden of proof. •The Director has discretion to decide whether or not to remove a flood control district commissioner. The word “may” in 42-3109 connotes a duty the exercise of which is permissive, not mandatory. 	<ul style="list-style-type: none"> •In applying the tests set forth in 42-3109, the Director will focus on the substantive activities and outcomes resulting from Sylte's efforts as an FCD commissioner in preventing flood damage. The Director will discount failures or shortcomings related to ministerial inefficiency or neglect, and matters that are ministerial or otherwise inconsequential to the reasonably construed responsibilities and duties Sylte had as an FCD commissioner. •In applying the tests set forth in 42-3109, the Director will focus on the substantive activities and outcomes resulting from Sylte's efforts as an FCD commissioner in preventing flood damage. The Director will discount failures or shortcomings related to ministerial inefficiency or neglect, and matters that are ministerial or otherwise inconsequential to the reasonably construed responsibilities and duties Sylte had as an FCD commissioner. •The evidence submitted at the hearing does not establish evil doing, ill conduct, or the doing of something that is wholly wrong

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		<ul style="list-style-type: none"> ○ Berne and Pamela Indahl ○ Amy & Adam Kremin ○ Clint and Pattie Marvel ○ Dave Nipp ○ Travis Roth ○ Linda Solan ○ Twin Lakes Improvement Association TLIA 	<ul style="list-style-type: none"> •The test for removal of a FCD commissioner in 42-3109 should be applied to determine the fitness of a candidate for appointment. •A willingness to correct deficiencies should be sufficient justification to grant a remedial grace period. 	<p>or unlawful. Malfeasance connotes an intent to do wrong or to be vindictive.</p> <ul style="list-style-type: none"> •No evidence was presented showing that Sylte transgressed by acting willfully in "improper or wrong behavior." [misconduct] •Neglect does not require the elevated level of wrongdoing or intentionality required for malfeasance or misconduct. Neglect is the omission or failure to do something that is required. ... While the Director concludes that Sylte, and the FCD generally, showed a level of neglect by not holding regular meetings in February and March of 2017, this neglect is not sufficient to justify Sylte's removal according to 42-3109. •No legal conflict of interest under the Transparent and Ethical Government Act can exist, because Sylte is a member of a class required by law as a prerequisite to his holding his position. 18-1359(1)(a). This makes logical sense as finding available and willing FCD commissioners that do not hold any water rights in this particular basin would be a near impossibility.
<p>7/29/2019 Order Rescinding</p>	<p>Docket No. CM-DC-2010-001</p>	<ul style="list-style-type: none"> • Eastern Snake Plain Aquifer ESPA <p>Parties:</p>		<ul style="list-style-type: none"> •Example of Step 6 of the Methodology Order demonstrating there is no mid-season demand shortfall to the SWC.

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Final Order Curtailing Non-Enlargement Ground Water Rights Junior to April 12, 1994, and Enlargement Ground Water Rights Junior to March 14, 1971	In the Matter of Distribution of Water to Various Water Rights Held by or for the Benefit of A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company	<ul style="list-style-type: none"> ○ Surface Water Coalition SWC ○ Water users holding non-enlargement water rights bearing priority dates junior to April 12, 1994, and enlargement ground water rights junior to March 14, 1971 		<ul style="list-style-type: none"> ●As a result of there being no mid-season demand shortfall, the June Curtailment Order is now moot and should be rescinded. ●Watermasters for the water districts within the ESPA area of common ground water supply who regulate ground water are directed to review the water rights listed in Attachment A to the June Curtailment Order and inform water users holding non-enlargement water rights bearing priority dates junior to April 12, 1994, and enlargement ground water rights junior to March 14, 1971, that they are no longer curtailed.
8/13/2019 Order on Exceptions; Final Order	In the Matter of Application for Permit 63-34348 in the Name of Elmore County, Board of County Commissioners	<ul style="list-style-type: none"> ●Administrative Basin 63 ●Elmore County ●South Fork Boise River ●Anderson Ranch Dam and Reservoir ●Little Camas Reservoir ●Mountain Home Irrigation District ●Long Tom Creek ●Canyon Creek 	<ul style="list-style-type: none"> ● Because the Department's Rules of Procedure do not authorize responses to petitions for reconsideration, the responses were not considered by the hearing officer, an outcome with which the Director agrees. ●Rule 45.01.b does not require an applicant to 	<ul style="list-style-type: none"> ●The Director concludes the direct flow components of Permit 63-34348 should not be limited to 10,000 AF. This conclusion follows partly from reference to the Department's Instructions, which the Director recognizes as an integral and inseparable part of the Department's sanctioned application materials, and, therefore, a part of the record under consideration. The lack of a direct flow volumetric limitation in the Application is allowed by the Department, as explained in its Instructions.

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		<ul style="list-style-type: none"> •Mountain Home Reservoir Parties: <ul style="list-style-type: none"> ○ Elmore County, Board of County Commissioners ○ Boise Project Board of Control BPBC ○ Ballentyne Ditch Company ○ Canyon County Water Company ○ Eureka Water Company ○ Farmers' Cooperative Ditch Company ○ Middleton Mill Ditch Company ○ Middleton Irrigation Association, Inc. ○ Nampa & Meridian Irrigation District ○ New Dry Creek Ditch Company ○ Pioneer Ditch Company ○ Pioneer Irrigation District ○ Thurman Mill Ditch Company 	<p>conduct a cost-benefit analysis to establish the water supply is sufficient for the proposed use. The Rule specifies more than one way an applicant, or person in opposition to an application, may establish the water supply is sufficient or insufficient.</p> <ul style="list-style-type: none"> •Concerns about the effects Elmore County's proposed water use could have on the public water resource in Basin 63 are appropriate to consider pursuant to 42-203A(5)(e). In contrast, 42-203A(5)(g) requires the hearing officer to evaluate whether Elmore County's proposed use will "adversely affect the local economy" of Basin 63, which is distinct from the protestants' interest "in the effects of 	<ul style="list-style-type: none"> • Requiring a project to be complete prior to the application for permit would be antithetical to the water permitting process under Idaho's prior appropriation doctrine and elements of beneficial use. Accordingly, the Director will not reduce the 100 cfs limitation. Permit 63-34348 will maintain a 200 cfs for diversion to storage with a combined diversion rate of 100 cfs for direct delivery for ground water recharge and irrigation. •A condition of approval limiting diversion from the SFBR to times when water is released for flood control purposes from Anderson Ranch Dam and Lucky Peak Dam will appropriately limit the period of use for irrigation, ground water recharge, and diversion to storage. Ground water recharge storage, ground water recharge from storage, and irrigation storage should be authorized year-round as requested in the Application. •The Water District 63 watermaster's distribution of water rights in accordance with the prior appropriation doctrine, as required by 42-602, will ensure Permit 63-34348 will not reduce the quantity of water under existing

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		<ul style="list-style-type: none"> ○ Idaho Power Company ○ Cat Creek Energy, LLC ○ City of Boise ○ Riverside Irrigation District ○ Idaho Conservation League ICL ○ United States Bureau of Land Management BLM 	<p>such water use on the public water resource."</p> <ul style="list-style-type: none"> •The Ditch Companies argue Idaho Code§ 42-203A(5)(g) and Shokal stand for the notion that "future-looking, interrelated public interest-based effects" of the loss of alternative uses of water may be analyzed within a reasonable time. The Director agrees insofar that the length of time related to this analysis must be reasonable. While the analysis can consider both present and future facts, the future facts must be of sufficient certainty and of sufficient magnitude that the adverse economic affect is reasonably predictable. •The Director has no authority to address the issue of whether Elmore County's constitutional right to equal protection may or may not be 	<p>Boise River reservoir storage water rights.</p> <ul style="list-style-type: none"> •Reduction to "bank storage" does not constitute a reduction to the quantity of water under existing water rights as the Ditch Companies' assert. While the "bank storage" may "prolong river flow for the benefit of existing [natural flow] water rights," those natural flow water rights are not rights for "shallow groundwater" that is the "bank storage." Accordingly, those natural flow water rights are not authorized to divert "bank storage." •Pursuant to Water Appropriation Rule 45.01.a.iv, the Director will impose a condition requiring that Elmore County mitigate its diversions out of Anderson Ranch Reservoir that occur when water is not being released for flood control purposes as authorized by Permit 63-34348. IDAPA 37.03.08.045.01 .a.iv. •It is difficult to quantify or otherwise compare the costs and benefits of the project. It is also difficult to sharply distinguish between economic and noneconomic benefits to Elmore County if the project is built. There are a multitude of direct benefits, both economic and noneconomic, to Elmore County that negate

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			<p>violated under 42-115, and its arguments pertaining thereto will not be addressed in this Order.</p> <ul style="list-style-type: none"> The ability of the Department to consider constitutional issues is limited. IDAPA 37.01.01.415. If Elmore County believes a statute has not been validly enacted, or is otherwise unconstitutional, it must seek relief in the proper venue: The courts. 	<p>criticism of proposed project costs and justify approval of the Application.</p> <ul style="list-style-type: none"> Where a governmental entity is seeking community or basin-wide benefits from a diversion of water, economic and noneconomic factors may be distinguished from, as one example, a private entity's application to build an entirely new irrigation project for its sole use and economic benefit. In this case, the economic and non-economic benefits to Elmore County outweigh the costs. The Director concludes the water supply itself is sufficient for the purposes for which it is sought to be appropriated. Elmore County filed the Application in 2017 and hired SPF in 2018 to prepare a "Flood Water Availability Analysis for Application 63-34348." Elmore County also hired an "agricultural and resource economist" in 2018 to prepare a report addressing whether the Application will "adversely affect the economy of the Boise River basin." Elmore County has pursued agreements with private landowners and MHID and has filed applications with federal entities to secure access necessary for Elmore County's proposed use. Elmore County also passed a motion to "take any actions deemed legally required under

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				<p>Idaho law to use the easements and rights of way of the [MHID] crossing privately owned real property, including eminent domain procedures, in order to divert, convey, store, deliver and use water under a permit or license approved under [the Application]." Based on Elmore County's substantive actions in pursuit of the Application, the Director is satisfied that the Application is "made in good faith" and not "for delay or speculative purposes." 42-203A(5)(c)</p> <ul style="list-style-type: none"> •The record establishes the importance of maintaining operational flow targets of 300 cfs and 600 cfs on the SFBR agreed to by BOR and IDFG. Elmore County has agreed not to interfere with these operational flows, and then some-Elmore County will not even divert "unless [flow past Anderson Ranch Dam] was over 800 [cfs] actual flow." These limitations help ensure that Elmore County's proposed use does not conflict with the local public interest. •Permit 63-34348 will include a condition that Elmore County cannot divert water until it obtains necessary "authorizations from United States agencies." These conditions will help ensure that diversion pursuant to Permit 63-34348 will not conflict with the local public interest.

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				<ul style="list-style-type: none"> •While a majority of the evidence presented at the hearing supports that Elmore County is pursuing Permit 63-34348 for the main purpose of ground water recharge to begin to address chronic water level declines in the Mountain Home area, the evidence also suggests a possibility that water diverted pursuant to Permit 63-34348 may only be delivered for "supplemental irrigation" to MHID patrons. It would conflict with the local public interest to approve Permit 63-34348 without proper conditioning to ensure that ground water recharge will occur pursuant to the Permit consistent with the intent of the Application. The Director will condition Permit 63-34348 to ensure that, in any given year, at least 50% of the water diverted pursuant to the Permit is delivered for ground water recharge •The Director agrees with Elmore County that its proposal to divert water that is otherwise leaving the state of Idaho and apply that water to beneficial uses within Idaho is consistent with the conservation of water resources within Idaho. The Applicant has satisfied its burden to demonstrate its proposed use is not contrary to the conservation of water resources within Idaho.

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				<ul style="list-style-type: none"> •The hearing officer properly discounted the relative importance of the Ditch Companies' arguments related to hydropower by referring to 42-203(b). There is no record evidence that at the time flood flows are diverted, hydropower production is adversely affected. Therefore, the Director cannot make a determination of whether hydropower is adversely affected under the facts presented. •The Director finds that Elmore County's proposed use will not adversely affect the Treasure Valley's local economy and declines to reject the Application on the basis of 42-203A(5)(g). That statute requires the Department, when the place of use is outside the watershed or local area where the source of water originates, to consider whether an application "will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates." This is one consideration under the Director's authority to approve a permit to divert water, and the record supports that a permit to divert a small portion of available flood flows that would otherwise leave the state will not adversely affect the Treasure Valley. • The plain language of Condition 14 answers Elmore County's question. The

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				condition states that Permit 63-34348 shall be subordinate "to the capture and retention of water in existing on-stream reservoirs operated for storage and flood control purpose " If water is being released from storage for flood control, it is not being "capture[d] and retain[ed]" in the reservoir system. When flood control releases occur, so long as the conditions imposed in Permit 63-34348 are met, water should be available to Elmore County for diversion.
<p>6/12/2019</p> <p>Order Dismissing Mitigation Plans</p>	<p>Docket Nos. CM-MP-2015-001; CM-MP-2015-004; CM-MP-2015-005; & CM-MP-2016-002</p> <p>In the Matter of the Distribution of Water to Various Water Rights Held by and for the Benefit of A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation</p>	<ul style="list-style-type: none"> • Eastern Snake Plain Aquifer ESPA <p>Parties:</p> <ul style="list-style-type: none"> ○ Surface Water Coalition SWC ○ Bliss ○ Burley ○ Carey ○ Declo ○ Dietrich ○ Gooding ○ Hazelton ○ Heyburn ○ Jerome ○ Paul ○ Richfield ○ Rupert ○ Shoshone 		<ul style="list-style-type: none"> • Example of the Director approving a stipulated mitigation plan, supplanting the previously filed plans which are now moot and should be dismissed.

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	District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company	<ul style="list-style-type: none"> ○ Wendell ○ Coalition of Cities ○ City of Idaho Falls ○ City of Pocatello ○ Idaho Ground Water Appropriators IGWA 		
<p>4/9/2019</p> <p>Final Order Approving Stipulated Mitigation Plan</p>	<p>Docket No. CM-MP-2019-001</p> <p>In the Matter of the Distribution of Water to Various Water Rights Held by and for the Benefit of A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company</p> <p>In the Matter of the Joint</p>	<ul style="list-style-type: none"> ● Eastern Snake Plain Aquifer ESPA <p>Parties:</p> <ul style="list-style-type: none"> ○ Surface Water Coalition SWC ○ Bliss ○ Burley ○ Carey ○ Declo ○ Dietrich ○ Gooding ○ Hazelton ○ Heyburn ○ Jerome ○ Paul ○ Richfield ○ Rupert ○ Shoshone ○ Wendell ○ Coalition of Cities ○ City of Idaho Falls ○ City of Pocatello 		<ul style="list-style-type: none"> ● Example of the Director approving a stipulated, joint mitigation plan. ● The Joint Mitigation Plan includes, in summary, (a) the Cities' specific mitigation obligation(s) and options; (b) reporting and information sharing requirement(s); (c) agreement to withdraw opposition to creation of the ESPA Ground Water Management Area and potential incorporation of the Agreement into the ESPA ground water management plan; (d) a safe harbor from a delivery call by any participating city based on IGWA's spring water rights; (e) approval by the Department; (e) effect on ground water district assessments; and (f) legislative approval and participating city support of state-sponsored managed aquifer recharge of the ESPA. ● Approval of the Joint Mitigation Plan does not constitute approval of the Joint

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	Mitigation Plan Filed by the Coalition of Cities, the City of Idaho Falls, and the City of Pocatello in Response to the Surface Water Coalition Delivery Call	<ul style="list-style-type: none"> ○ Idaho Ground Water Appropriators IGWA 		Mitigation Plan as a ground water management plan.
<p>3/11/2019</p> <p>Order Approving IGWA's 2018 Mitigation Plan</p>	<p>Docket Nos. CM-MP-2018-001 & CM-DC-2011-004</p> <p>In the Matter of the Mitigation Plan Filed by the Idaho Ground Water Appropriators for the Distribution of Water to Water Right Nos. 36-02551, 36-07694, and 36-15501</p>	<ul style="list-style-type: none"> ● Eastern Snake Plain Aquifer ESPA ● Springs ● Rangen fish hatchery <p>Parties:</p> <ul style="list-style-type: none"> ○ Idaho Ground Water Appropriators, Inc. IGWA ○ American Falls-Aberdeen Ground Water District ○ Bingham Ground Water District ○ Bonneville-Jefferson Ground Water District ○ Carey Valley Ground Water District ○ Henry's Fork Ground Water District 		<ul style="list-style-type: none"> ● Example of approval of a mitigation plan that consisted of purchase of the calling water right. ● The Mitigation Plan satisfies the requirements of CM Rule 43.01. The Mitigation Plan contains the names and address of the Mitigation Plan's proponents. The Mitigation Plan identifies water rights for which the benefit of mitigation is proposed. The Mitigation Plan states that the Rangen Rights have been purchased by the Districts. ● The purchase of the Rangen Rights by the Districts mitigates against any material injury caused by junior-priority ground water rights of District members who are in good standing with the Districts.

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		<ul style="list-style-type: none"> ○ Jefferson-Clark Ground Water District ○ Madison Ground Water District ○ Magic Valley Ground Water District ○ North Snake Ground Water District ○ Southwest Irrigation District 		
<p>6/7/2019 Final Order Curtailing Non-Enlargement Ground Water Rights Junior to April 12, 1994, and Enlargement Ground Water Rights Junior to March 14, 1971</p>	<p>Docket No. CM-DC-2010-001 In the Matter of Distribution of Water to Various Water Rights Held by or for the Benefit of A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company</p>	<ul style="list-style-type: none"> ● Water District 01 ● Eastern Snake Plain Aquifer ESPA area of common ground water supply ACWS <p>Parties:</p> <ul style="list-style-type: none"> ○ Surface Water Coalition ○ A&B Irrigation District ○ American Falls Reservoir District #2 ○ Burley Irrigation District ○ Milner Irrigation District ○ Minidoka Irrigation District ○ North Side Canal Company 		<ul style="list-style-type: none"> ● Example of the application of the fourth amended methodology order and as-applied order in curtailment order. ● If a junior ground water user does not establish that they can mitigate for their proportionate share of the predicted demand shortfall "in accordance with an approved mitigation plan" the ground water user will be subject to this "order curtailing the junior-priority ground water user." ● When a SWC member leases storage water into the rental pool following a determination of a demand shortfall for that SWC member and the storage water is rented, the rental pool lease in/rental out of storage water is per se evidence that the senior water right holder does not need the water.

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		<ul style="list-style-type: none"> ○ Twin Falls Canal Company ○ Idaho Ground Water Appropriators IGWA ○ Coalition of Cities ○ Southwest Irrigation District ○ Goose Creek Irrigation District ○ Ground water users holding water rights bearing priority dates junior to April 12, 1994, and enlargement water rights bearing priority dates junior to March 14, 1971, within the ESPA ACGWS 		<ul style="list-style-type: none"> •A&B's Petition notified the Director that it "will not deliver groundwater pursuant to its referenced ground water rights subject to the [As-Applied Order] this irrigation season. To ensure that A&B's enlargement water rights are curtailed for 2019, the Director will place the enlargement water rights on the curtailment list. The Director will instruct the Watermaster to confirm that A&B is not diverting ground water pursuant to its enlargement water rights •Consistent with the As-Applied Order, the Director will order curtailment of junior-priority ground water users that have not established they can mitigate for their proportionate share of the predicted demand shortfall in accordance with an approved mitigation plan.
<p>6/5/2019</p> <p>Order on Briefing; Notice of Additional Prehearing Conference</p>	<p>Docket No. AA-GWMA-2016-001</p> <p>In the Matter of Designating the Eastern Snake Plain Aquifer Ground Water Management Area</p>	<ul style="list-style-type: none"> • Eastern Snake Plain Aquifer ESPA Ground Water Management Area GWMA <p>Parties:</p> <ul style="list-style-type: none"> ○ Bliss ○ Buhl ○ Burley ○ Carey ○ Declo ○ Dietrich 	<ul style="list-style-type: none"> • The Department's Procedural Rules specifically list an intervenor as a party and do not differentiate between the rights of intervenors and other parties, except insofar as an intervenor's rights are conditioned in the order granting the petition to intervene. IDAPA 	<ul style="list-style-type: none"> • The Director concludes in this case, and under this specific set of facts, that when intervenors have been granted party status, and the original petition initiating the contested case is withdrawn, the intervenors remain parties to a contested case pending before the Director. The issues that may be litigated in the contested case are limited to the issues raised by the original petition creating the contested case.

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		<ul style="list-style-type: none"> ○ Gooding ○ Hazelton ○ Heyburn ○ Jerome ○ Paul ○ Richfield ○ Rupert ○ Wendell ○ Pocatello ○ Hailey ○ McCain Foods ○ Sun Valley Company ○ Clear Springs Foods ○ Idaho Power Company ○ Basin 33 Water Users ○ South Valley Ground Water District ○ Big Wood River Water Users Association ○ Little Wood River Water Users Association ○ Water District 37-B ○ Fremont Madison Irrigation District ○ Madison Ground Water District ○ Idaho Irrigation District ○ Surface Water Coalition SWC 	<p>37.01.01.150; IDAPA 37.01.01.353. Where an intervenor's rights have not been conditioned as parties, as is the case here, they "may appear at hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in hearings or arguments." IDAPA 37.01.01.157</p> <ul style="list-style-type: none"> •The Director has the authority to recognize other affected persons as parties and to grant to intervenor-parties the opportunity to participate in a proceeding, even if the original petition initiating the proceeding is withdrawn. 	<ul style="list-style-type: none"> •These findings are limited to a situation where parties have timely and properly intervened, creating a contested case and the original hearing petitioner removes itself at some point prior to hearing, as it is allowed to do under Rule 204. •Intervenors in this contested case remain parties to the contested case pending before the Director. The issues addressed and evidence submitted at the hearing will be limited to the issues raised in the original petition for hearing filed by the Sun Valley Company.

Issue Date/ Document Title Link	Docket No./ Case Caption	Factual Scope: Geographic and Parties	Statutory and Rule Interpretations	Significant Conclusions and Findings
		<ul style="list-style-type: none"> ○ Idaho Ground Water Appropriators IGWA 		
<p>3/11/2019</p> <p>Order Rescinding Permit and Amendment Approval; Order Delaying Processing</p>	<p>Docket No. P-DR-2017-002</p> <p>In the Matter of License No. 37-07842 in the Name of the Idaho Water Resource Board</p>	<ul style="list-style-type: none"> ● Administrative Basin 37 ● Little Wood River ● Big Wood River ● Lincoln County ● Dietrich Canal System ● Richfield Canal System ● Shoshone recharge site ● Milner-Gooding Canal <p>Parties:</p> <ul style="list-style-type: none"> ○ Idaho Water Resource Board ○ William Arkoosh; ○ Estate of Vernon Ravenscroft ○ Koosh, Inc. ○ Koyle Hydro, Inc. ○ Shorock Hydro, Inc. 	<ul style="list-style-type: none"> ●42-219(1) requires that the Department review "all the evidence in relation to" the permit holder's proof of beneficial use, not just the proof of beneficial use itself. ●The Department's Beneficial Use Examination Rules also allow the Department to go beyond the permit holder's proof of beneficial use in licensing review by authorizing the Department to request additional information from the certified water right examiner "to clarify the field report." 	<ul style="list-style-type: none"> ●The Department's licensing review process is not limited to the July 27, 1992, Proof of Beneficial Use form and Mr. Martens' Beneficial Use Field Reports for Permit 37-7842. ●The evidence in the record does not reasonably quantify what amount of Big Wood River water, if any, recharged ground water along the Richfield Canal during the development period for Permit 37-7842. Further, as discussed above, the Richfield Canal has never been an authorized place of use for Permit 37-7842. Accordingly, License 37-7842 should not include ground water recharge along the Richfield Canal. ●Because the above-described water deliveries were byproducts of specific operations caused by spring flooding during high water years, and did not happen, nor would they ever happen, during normal flow conditions, a water right license issued for Permit No. 37-7842 must be limited to the time periods when flood waters were delivered as a byproduct of operations other than recharge, and water percolated into ground water.

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				<ul style="list-style-type: none"> • Diversion of water outside of these periods of use (flood water time frames) could reduce the water available to existing water rights that likely did not happen during the development period for Permit 37-7842.
<p>1/3/2018</p> <p>Order re: Statements of Issues and Responses; Order Adopting Deadlines; Amended Notice of Status Conference</p>	<p>Docket No. P-WRA-2017-002</p> <p>In the Matter of the Petition Regarding Storage Reset in Water District 01 Filed by Milner Irrigation District</p>	<ul style="list-style-type: none"> • Water District 01 • Lake Walcott <p>Parties:</p> <ul style="list-style-type: none"> ○ Milner Irrigation District ○ Shoshone-Bannock Tribes ○ Coalition of Cities (Bliss, Buhl, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Wendell) ○ Upper Valley Storage Holders (Fremont Madison Irrigation District, North Fork Reservoir Company; Idaho Irrigation District, New Sweden Irrigation District) ○ City of Pocatello ○ Surface Water Coalition (A&B 	<p>Idaho Code § 42-602 "gives the Director broad powers to direct and control distribution of water from all natural water sources within water districts." In re SRBA, 157 Idaho 385,393,336 P.3d 792,800 (2014). Idaho Code § 42-1420(1) states that "decree[s] entered in a general adjudication shall be conclusive as to the nature and extent of all water rights in the adjudicated water system." "[T]he Director has a 'clear legal duty' to distribute water according to decreed water rights." City of Blackfoot v. Spackman, 162 Idaho 302, 396 P.3d 1184, 1191 (2017)." "[T]he Director's clear duty to act means that the Director uses his</p>	<ul style="list-style-type: none"> • The threshold legal question the Director must answer in this contested case is whether the plain language of the "period of use" element of the storage water right partial decrees for federal onstream reservoirs in Water District 01 that specifies "1/1 to 12/31" as the time period for "irrigation storage" requires that the reset date for those rights be January 1.

Issue Date/ Document Title Link	Docket No./ Case Caption	Factual Scope: Geographic and Parties	Statutory and Rule Interpretations	Significant Conclusions and Findings
		Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Minidoka Irrigation District, North Side Canal Company, Twin Falls Canal Company) ○ Idaho Power Company ○ Aberdeen-Springfield Canal Company ○ City of Idaho Falls ○ Palisades Water Users, Inc. ○ U.S. Bureau of Indian Affairs.	information and discretion to provide each user the water it is decreed. And implicit in providing each user its decreed water would be determining when the decree is filled or satisfied." In re SRBA, 157 Idaho at 393-94, 336 P.3d at 800-01. It is the Director's duty to interpret water right partial decrees in the first instance. See id. at 394, 336 P.3d at 801.3 Further, the Department's Rule of Procedure 104 authorizes the Director to conduct formal proceedings to address petitions. IDAPA 37.01.01.104. This contested case is the proper forum to address issues raised by Milner' s petition.	
12/21/2017 Order Re: Prehearing Motions	In the Matter of License No. 37- 07842	<ul style="list-style-type: none"> •Administrative Basin 37 •Little Wood River •Big Wood River Parties:	<ul style="list-style-type: none"> •Actions for declaratory relief “may not be used to avoid the consequences of failing to comply with statutory procedural requirements.” Actions for 	<ul style="list-style-type: none"> •The record in this matter demonstrates the Petitioners received actual notice of the June 2, 1982 order approving Application ... by September 21, 2010, at the latest. ... The petitioners’ attempt to challenge the Department’s June 2, 1982, order approving

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		<ul style="list-style-type: none"> ○ William Arkoosh ○ Estate of Vernon Ravenscroft ○ Koyle Hydro, Inc. ○ Koosh, Inc. ○ Shorock Hydro ○ Idaho Water Resource Board IWRB 	<p>declaratory relief “are not intended as a substitute for a statutory procedure and such administrative remedies must be exhausted.” “[T]he proper method of contesting an agency or judicial decision is by appeal” and “an order or judgment may not later be collaterally attacked by means of” an action for declaratory relief.</p> <p>However, orders issued by an administrative agency in excess of the agency’s statutory authority are void and subject to collateral attack at any time.</p>	<p>Application ... through a petition for declaratory ruling constitutes an impermissible collateral attack on the order.</p> <ul style="list-style-type: none"> •The Petitioners’ request for a declaratory ruling constitutes a challenge to the determination of the amount of water beneficially applied during the development period of the permit. The appropriate method for challenging this determination is a request for a hearing, not a petition for declaratory ruling. • The record in this matter demonstrates the Petitioners received actual notice of the December 1, 1993, Reinstatement Order ... by September 21, 2010, at the latest. The Petitioners did not file a written petition with Department contesting the Reinstatement Order with fifteen days and therefore did not exhaust their administrative remedies set forth in 42-1701A(3). The Petitioners’ attempt to challenge the Reinstatement Order through a petition for declaratory ruling constitutes an impermissible collateral attack on the order.
<p>12/21/2017</p> <p>Order on Reconsideration Remanding</p>	<p>In the Matter of Applications for Permit Nos. 63-34079 and 63-34080 in the</p>	<ul style="list-style-type: none"> •Administrative Basin 63 •Canyon County •Lake Lowell •Ground water 		<ul style="list-style-type: none"> •The Director agrees with Emmert that potential options for mitigation exist and that, given the specific facts and circumstances of this matter, Emmert should have the opportunity to present

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Matter to Hearing Officer	Name of Chris Emmert	Parties: <ul style="list-style-type: none"> ○ Chris Emmert ○ Boise Project Board of Control ○ Meridian ○ Caldwell ○ Nampa ○ Eagle ○ Boise ○ Kuna ○ Suez Water Idaho Inc. 		<p>evidence in support of those mitigation options at an evidentiary hearing on remand. Regardless of the mitigation option Emmert chooses to pursue, he must choose an option or options at this stage of the proceeding and satisfy his burden to demonstrate his proposed mitigation will offset losses of water to the Boise Project. See IDAPA 37.03.08.040.04.c and IDAPA 37.03.08.045.01.a.iv. Otherwise, the Department may properly reject Emmert's applications. See IDAPA 37.03.08.045.01.a.iv.</p> <ul style="list-style-type: none"> • The Director's decision to remand this matter for such evidentiary hearing is consistent with the Director's authority to reconsider the Order on Exceptions pursuant to Idaho Code § 67-5246(4) and the Department's Rule of Procedure 740.02.a (IDAPA 37.01.01.740.02.a).
12/1/2017 Final Order Requiring Measuring Devices and Controlling Works	In the Matter of Requiring Measuring Devices and Controlling Works on Diversions from the Weiser River and Tributaries in Water District No. 67	<ul style="list-style-type: none"> • Administrative Basin 67 • Water District 67 • Weiser River • Crane Creek • Lost Creek • Mill Creek • Lost Valley Reservoir 		<ul style="list-style-type: none"> • Example of an order requiring surface water measuring devices and controlling works. • Measurement and control of diversions is necessary in WD67 for proper distribution of water and administration of water rights. Measurement of diversions creates the following administrative benefits: <ul style="list-style-type: none"> i. Ability to regulate diversions within the water district to deliver water to the most

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				<p>senior priority rights during times of water scarcity or shortages, thereby protecting senior priority rights;</p> <p>ii. Ability to regulate diversion of commingled storage water within the water district, thereby protecting rights to natural flow waters;</p> <p>iii. Assurance that water rights are exercised within their authorized diversion limits; and</p> <p>iv. Accurate determination of water user assessments because Idaho law requires that the expenses of the water district be based on water delivery.</p>
<p>11/20/2017</p> <p>Order Remanding Contested Case; Order Denying Request to Exclude Evidence</p>	<p>In the Matter of Application for Transfer No. 81155 in the Name of City of Pocatello</p>	<ul style="list-style-type: none"> •Administrative Basin 29 •Bannock County •Ground Water <p>Parties:</p> <ul style="list-style-type: none"> ○ City of Pocatello ○ Spartan Portneuf LLC 		<ul style="list-style-type: none"> •"It is conceivable that Spartan could present evidence at a hearing regarding Pocatello's current operation of its system and evidence that the changes proposed by Application 81155 will cause Pocatello to shift operation of its system to demand more from Well 44 and injure the Spartan Well." •Spartan's protest is not defective. •Spartan's argument alleges a connection between the changes proposed and injury to the Spartan Well. Spartan has standing to protest transfer application.

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				<ul style="list-style-type: none"> •Water right owners should provide a notarized statement of any proposed relinquishment, but are not required to do so.
11/3/2017 Order Approving Ground Water Management Plan	In the Matter of Management of Ground Water Within the Malad Valley Ground Water Management Area	<ul style="list-style-type: none"> •Oneida County •Power County •Franklin County •Bannock County •MVGWMA •Advisory Committee • Malad Valley •Malad City •Ground water •Malad River •Artesian wells 	<ul style="list-style-type: none"> •Idaho Code § 42-233b 	<ul style="list-style-type: none"> •The Director concludes the Management Plan will manage the effects of ground water withdrawals within the MVGWMA. The Management Plan, with slight modification, should be approved for the MVGWMA. The Department must enforce compliance through an enforcement proceeding. Water measurement districts do not have authority to regulate water use. The moratorium should apply to all uses in a multiple ownership subdivision. The moratorium is for ground water only, so it does not need an exception for surface water.
11/3/2017 Order Extending Temporary Moratorium	In the Matter of Management of Ground Water Within the Malad Valley Ground Water Management Area	<ul style="list-style-type: none"> •Oneida County •Power County •Franklin County •Bannock County •MVGWMA •Advisory Committee • Malad Valley •Malad City •Ground water •Malad River •Artesian wells 	<ul style="list-style-type: none"> •Idaho Code § 42-1805(7) 	<ul style="list-style-type: none"> •A temporary moratorium was established pursuant to Rule 55 of the Department's Water Appropriation Rules (IDAPA 37.03.08) to protect existing ground water rights and to protect the aquifer from depletion. The conditions creating the need for a moratorium have not changed; the moratorium should be extended for five years, consistent with the Management Plan and the Approval Order.

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<p>10/31/2017</p> <p>Order Accepting Settlement; Order Requiring Implementation</p>	<p>Docket No. P-Wra-2017-001</p> <p>In the Matter of the Petition Filed by Aberdeen-Springfield Canal Company Regarding Distribution of Natural Flow by Water District 01</p>	<ul style="list-style-type: none"> •Administrative Basin 01 •Snake River •Blackfoot to Near Blackfoot Reach •Shelley to At Blackfoot Reach <p>Parties:</p> <ul style="list-style-type: none"> ○ Aberdeen-Springfield Canal Company ○ A&B Irrigation District ○ American Falls Reservoir District #2 ○ Burley Irrigation District ○ Milner Irrigation District ○ Minidoka Irrigation District ○ North Side Canal Company ○ Twin Falls Canal Company ○ Fremont Madison Irrigation District ○ Idaho Irrigation District ○ Parson's Ditch Co. 		<ul style="list-style-type: none"> •The procedure set forth in the Settlement of administrative and water rights accounting procedure shall be incorporated into Water District 01 's water right administration and accounting procedures and implemented starting in the 2018 irrigation season. However, the Director reserves the right to reconsider in the future how losses to natural flow are accounted for in Water District O 1 's accounting procedures.

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		<ul style="list-style-type: none"> ○ New Sweden Irrigation District ○ Wearywick Ditch Company ○ United Canal Company ○ Peoples Canal & Irrigation Company ○ Egin Bench Canals, Inc. ○ Idaho Power Company ○ Surface Water Coalition ○ Shoshone-Bannock Tribes ○ U.S. Bureau of Indian Affairs 		
<p>10/27/2017</p> <p>Order Denying Petition to Intervene; Order Affirming Preliminary Order Rejecting Applications For Permit</p>	<p>In the Matter of Applications for Permit Nos. 63-34079 and 63-34080 in the Name of Chris Emmert</p>	<ul style="list-style-type: none"> •Administrative Basin 63 •Canyon County •Ground water •Lake Lowell <p>Parties:</p> <ul style="list-style-type: none"> ○ Chris Emmert ○ Boise Project Board of Control ○ Meridian ○ Caldwell ○ Nampa 	<ul style="list-style-type: none"> •Rule 45 states a proposed use will reduce the quantity of water under an existing water right if "[t]he amount of water available under an existing water right will be reduced below the amount recorded by permit, license, decree or valid claim <i>or the historical amount beneficially used by the water right holder</i> 	<ul style="list-style-type: none"> •Regarding intervention, the Municipal Providers' interest in raising arguments in support of a determination that new appropriators should not have to mitigate for induced seepage from Lake Lowell is already represented by Emmert. • The fact that the Municipal Providers divert and deliver more ground water than Emmert, and therefore may face larger mitigation requirements with respect to their pending and future applications for permit, does not demonstrate the Municipal

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		<ul style="list-style-type: none"> ○ Eagle ○ Boise ○ Kuna ○ Suez Water Idaho Inc. 	<p><i>under such recorded rights, whichever is less."</i> IDAPA 37.03.08.045.01.a & IDAPA 37.03.08.045.01.a.i (emphasis added).</p> <ul style="list-style-type: none"> • The Director is not exercising his authority in Idaho Code §§ 42-226 and 42-237a to establish a "ground water pumping level" by analyzing applications pursuant to the review criteria set forth in Idaho Code § 42-203A(5) and requiring mitigation consistent with the plain language of the Department's Water Appropriation Rule 45. 	<p>Providers' interest in this proceeding is not adequately represented by Emmert.</p> <ul style="list-style-type: none"> • The Municipal Providers seek to intervene to raise a new argument that neither Emmert nor the Boise Project presented to the hearing officer. Allowing the Municipal Providers to raise this new argument at this late stage of the proceeding would prejudice the parties and cause disruption • The Department would act contrary to Rule 45 if it constrained its analysis of a new proposed water use to whether the use would reduce the quantity of water to a senior's point of diversion. The Department must "follow the law" and cannot limit its analysis with respect to new applications for permit in violation of the plain language of the Department's Water Appropriation Rules. • Emmert that requiring him to mitigate for induced seepage from Lake Lowell is contrary to "the maximum use requirement". • While the Idaho Supreme Court determined it was appropriate to apply "principles stated in Schodde" to the "water management case" in Idaho Ground Water Assoc. v. Idaho Dep't of Water Res., 160

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				<p>Idaho 119, 133, 369 P.3d 897, 911 (2016), reh'g denied (May 9, 2016), where the reasonableness of the senior's point of diversion was not at issue, the facts in Idaho Ground Water Assoc. were significantly different from the facts in this matter.</p> <ul style="list-style-type: none"> • Application of the policy of beneficial use to excuse the impacts of Emmert's proposed water use on the Boise Project's senior water rights would logically apply to future applications. While the impact of this one permit may be small, the cumulative impact on the senior water user here is unknown. This uncertainty leads the Director to conclude that application of the policy is not appropriate in this case. • Emmert did not submit information to the hearing officer necessary to evaluate whether these proposed mitigation options can actually offset losses to the Boise Project due to Emmert's proposed ground water pumping. Rule 45 only allows the Department to approve applications that would otherwise be rejected for "injury to another water right" if conditions can be imposed "which will mitigate losses of water to the holder of an existing water right." IDAPA 37.03.08.045.01.a.iv. The Director rejects Emmert's assertion that it is

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				<p>"premature" for the Department to "assess the adequacy of" his mitigation proposals at this time.</p> <ul style="list-style-type: none"> •Mitigating by reducing the volume of surface water delivered to Emmert is not viable because it only increases Emmert's need to pump ground water.
<p>10/25/2017</p> <p>Order on Exceptions; Order Approving Transfer</p>	<p>In the Matter of Application for Transfer No. 81039 in the Name of Michael and/or Eulla Wallace</p>	<ul style="list-style-type: none"> •Administrative Basin 78 •Adams County •Springs •Three Mile Creek <p>Parties:</p> <ul style="list-style-type: none"> ○ Michael and Eulla Wallace ○ James and Sandra Henley ○ Edward Kalinowski 		<ul style="list-style-type: none"> •Applicant sufficiently demonstrated legal access to the proposed points of diversion with platted waterline easements.
<p>10/25/2017</p> <p>Order on Exceptions; Order Denying Permits</p>	<p>In the Matters of Application for Permit No. 78-12447 in the Name of James L. and Sandra J. Henley and Application for Permit No. 78-12439 in the</p>	<ul style="list-style-type: none"> •Administrative Basin 78 •Adams County •Springs •Unnamed Creek •Three Mile Creek <p>Parties:</p> <ul style="list-style-type: none"> ○ Michael and Eulla Wallace 		<ul style="list-style-type: none"> •The hearing officer's conclusion that neither Henley nor Kalinowski met their burden to establish that the water supply is sufficient is based upon the determination that there is no evidence in the record about the actual flow rate from the proposed sources. Henley and Kalinowski have not demonstrated that the hearing officer erred. •Determination whether applicants failed to meet their burden to establish that

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	Name of Edward Kalinowski	<ul style="list-style-type: none"> ○ James and Sandra Henley ○ Edward Kalinowski 		proposed use will not reduce the quantity of water under existing water rights is moot.
9/12/2017 Preliminary Order	In the Matter of Requiring Measuring Devices for Ground Water Diversions in the Water District No. 100 Area of Expansion (Rexburg Bench Area)	<ul style="list-style-type: none"> •Administrative Basins 21, 22, 23 •Water District No. 100 •ESPA Ground Water Management Area •Rexburg Bench •Eastern Snake Plain Aquifer ESPA •Ground water •Madison Ground Water District •Idaho Ground Water Appropriators IGWA 		<ul style="list-style-type: none"> •Measurement of diversions is necessary in WD100, including the Rexburg Bench area, for the proper distribution of water and administration of water rights. Measurement of diversions has the following administrative benefits: <ul style="list-style-type: none"> i. Collective quantification of ground water withdrawals assists the director of the Department, the water district and local ground water right holders in determining the available ground water supplies and usage; ii. Quantification of individual ground water withdrawals creates the necessary evidence to ensure ground water rights are used within their authorized diversion limits and that withdrawals can be regulated to the authorized diversion limits of the water rights when such limits are exceeded; and <p>Collective and individual quantification of ground water withdrawals establishes an</p>

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				equitable, defensible and legal basis for determining water user assessments since Idaho law requires that expenses of the water district be based on water delivery.
<p>9/6/2017</p> <p>Order on Motions for Summary Judgment; Order Amending Instructions; Order Vacating Hearing Dates and Schedule</p>	<p>In the Matter of Sylte's Petition for Declaratory Ruling Regarding Distribution of Water to Water Right No. 95-0734</p>	<ul style="list-style-type: none"> •Administrative Basin 95C •Kootenai County •Twin Lakes •Fish Creek •Rathdrum Creek Watershed •Surface water •Watermaster Instructions <p>Parties:</p> <ul style="list-style-type: none"> ○ Gordon Sylte ○ Susan Goodrich ○ John Sylte ○ Sylte Ranch Limited Liability Company ○ Twin Lakes Improvement Assoc. et al. 	<ul style="list-style-type: none"> •Futile call conditions occur when curtailing an upstream junior right provides insufficient water for beneficial use by a downstream senior right because the water seeps into the channel or evaporates before reaching the senior's point of diversion. 	<ul style="list-style-type: none"> •Because Water Right no. 95-0734 is the most senior right in the Twin Lakes - Rathdrum Creek drainage, Sylte is entitled to the passage of Twin Lakes' natural tributary inflow through the outlet control structure to augment the flow of water in Rathdrum Creek for the satisfaction of Water Right no. 95-0734, regardless of evaporation and seepage losses from Twin Lakes. •Water Right no. 95-0734 has the unique position of being the only Rathdrum Creek appropriation that may rely on the natural tributary inflows into Twin Lakes in priority over the two storage rights from November 1 through March 31 and also rely on the natural tributary inflows to Twin Lakes when seepage and evaporation from Twin Lakes exceed such inflows from April 1 to October 31. •Because the Director is responsible for balancing the right to divert water against the obligation not to waste it, no water rights are automatically immune from a futile call determination. Rather, futile call is

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				<p>a judgment made by the Director on a case-by-case basis. Natural circumstances, such as evaporation rates and stream channel morphology, change over time. Consequently, the amount of water reasonably required to satisfy a water right at one moment in time may result in waste at another moment in time. The 48-hour standard in the Instructions is a reasonable implementation of the Director's discretion in applying the futile call doctrine.</p>
<p>8/15/2017 Preliminary Order Rejecting Application</p>	<p>In the Matter of Application for Permit No. 96-9629 in the Name of VP Incorporated</p>	<ul style="list-style-type: none"> •Administrative Basin 96 •Bonner County •Ground water •Public Water System •Fire Protection •Golden Tee Estates •Hidden Lakes Subdivisions •The Idaho Club <p>Parties:</p> <ul style="list-style-type: none"> ○ VP Incorporated ○ Valiant Idaho, LLC 		<ul style="list-style-type: none"> •Applicant does not need a new appropriation of water to replace the existing well with a larger-capacity well as proposed in the Application to meet its need for a Redundant Supply for the development. Applicant has not proposed to beneficially use an additional amount of water beyond that already available for municipal and fire protection purposes under its existing water rights. Although Applicant may or may not have plans to physically divert and use more water beyond amounts already available to it, the Application was not intended for that purpose. Additional capacity associated with a Redundant Supply does not constitute an additional increment of beneficial use, justifying a new appropriation of water. Applicant has not shown it intends to apply the water it seeks to appropriate to

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				<p>beneficial use and, therefore, has not met its burden to demonstrate the Application was not filed for speculative purposes.</p> <ul style="list-style-type: none"> • It is contrary to the conservation of water resources within the state of Idaho to approve an application for a new appropriation of water where the applicant does not intend to actually apply the water to beneficial use or where the need for additional water has not been shown
<p>6/23/2017</p> <p>Order Granting Request to Withdraw Petitions and Dismissing Contested Case; Order Vacating Hearing Dates and Schedule</p>	<p>Docket No. P-CGWA-2016-001</p> <p>In the Matter of Whether to Designate the Big Lost River Basin a Critical Ground Water Area or a Ground Water Management Area</p>	<ul style="list-style-type: none"> • Administrative Basin 34 • Big Lost River Basin • Ground water <p>Parties</p> <ul style="list-style-type: none"> ○ Rose Bernal ○ Big Lost River Ground Water District ○ USDA Forest Service ○ Bruce Blackmer ○ Warm Springs Creek Ranch, LLC, Big Lost Ranch, LLC, and 6X Ranch, LLC ○ Upper Big Lost River Ground Water Association ○ Big Lost River Irrigation District 		<ul style="list-style-type: none"> • Letters requesting the designation of a critical ground water area or ground water management area in the Big Lost River Basin are petitions under IDAPA 37.01.01.230. • Based on a stipulation and notice of withdrawal of petitions with agreement to cooperate in developing a proposed ground water management plan for the Big Lost River Basin the Director dismissed the contested case.

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		<ul style="list-style-type: none"> ○ Nelson Mackay Ranch LLC, Notch Butte Farms, LLC, Last Ranch, LLC, John Lezamiz Family Partnership, and Loy Pehrson ○ Val and Heather Carter ○ Melvin Marx Hintze ○ Lyn F. Hintze ○ Nancy McCaslin and Rick Mauthe ○ Rick E. Reynolds ○ James Rindfleisch 		
<p>6/7/2017</p> <p>Order Dismissing Petition for Administration</p>	<p>Docket No. CM-DC-2017-001</p> <p>In the Matter of the Petition for Administration Filed by the Big Wood & Little Wood Water Users Association</p>	<ul style="list-style-type: none"> •Administrative Basin 37 •Big Wood River •Little Wood River •Ground water <p>Parties:</p> <ul style="list-style-type: none"> ○ Big Wood & Little Wood Water Users Association ○ Sun Valley Company SVC ○ Galena Ground Water District ○ South Valley Ground Water District ○ City of Bellevue ○ City of Hailey 	<ul style="list-style-type: none"> •The Department's Rules of Procedure 270.02 and 565 authorize a party opposing a motion or prehearing motion respectively to file an answer within fourteen days of the filing of the motion. IDAPA 37.01.01.270.02 & 565. The Department's Rules of Procedure do not authorize the filing of replies or joinders in replies. •CM Rule 30 expressly states the water right 	<ul style="list-style-type: none"> •Because the individual water right holders who are members of the Association are indispensable to proper resolution of this contested case, the holders of the individual senior priority water rights must petition for delivery of their water rights. The Association does not have standing to petition for delivery of its members' senior priority water rights and to seek a general remedy for all the senior priority water right holders.

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		<ul style="list-style-type: none"> ○ Dean R. Rogers Inc. ○ City of Ketchum ○ James Speck 	<p>holder must file the petition for delivery call. IDAPA 37.03.11.030.01. The water right holder must submit information about the holder's water rights, water sources, points of diversion, delivery systems, and beneficial use for the Director to determine whether the senior priority water rights have been materially injured. The claim and relief sought requires the individual participation of each party claiming material injury who is indispensable to proper resolution of the case.</p>	
<p>5/9/2017</p> <p>Final Order Approving Amendment to Stipulated Mitigation Plan</p>	<p>Docket No. CM-MP-2016-001</p> <p>In the Matter of the Distribution of Water to Various Water Rights Held by and for the Benefit of A&B Irrigation District,</p>	<ul style="list-style-type: none"> • Eastern Snake Plain Aquifer • Ground water <p>Parties:</p> <ul style="list-style-type: none"> ○ Idaho Ground Water Appropriator's Inc. IGWA ○ A&B Irrigation District 		<ul style="list-style-type: none"> • Approval of amended mitigation plan with second addendum to settlement agreement. • While the Department will exert its best efforts to support the activities of IGW A and the SWC, approval of the Second Addendum does not obligate the

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	<p>American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company</p> <p>In the Matter of IGWA's Settlement Agreement Mitigation Plan</p>	<ul style="list-style-type: none"> ○ American Falls Reservoir District No. 2 ○ Burley Irrigation District ○ Milner Irrigation District ○ Minidoka Irrigation District ○ North Side Canal Company ○ Twin Falls Canal Company ○ Surface Water Coalition SWC 		<p>Department to undertake any particular action.</p> <ul style="list-style-type: none"> • Approval of the Second Addendum does not limit the Director's enforcement discretion or otherwise commit the Director to a particular enforcement approach.
<p>4/24/2017</p> <p>Order on Exceptions Re: Amended Preliminary Order Removing a Watermaster</p>	<p>Docket No. C-RWM-2016-001</p> <p>In the Matter of Clark's Request for Removal of the Water District No. 95c Watermaster, Laurin Scarcello</p>	<ul style="list-style-type: none"> • Administrative Basin 95 • Kootenai County • Twin Lakes • Fish Creek • Rathdrum Creek <p>Parties:</p> <ul style="list-style-type: none"> ○ Colby Clark ○ Laurin Scarcello ○ Susan Goodrich ○ John Sylte 	<ul style="list-style-type: none"> • The statutory standard for removing a watermaster is whether he has failed to perform his duties. Idaho Code § 42-609(5). The watermaster's duties are to distribute water in accordance with the prior appropriation doctrine at the direction of the Department. Idaho Code §§ 42-602 and 42-607. 	<ul style="list-style-type: none"> • In WD95C, the Decree establishes the water rights and their priorities so that water can be distributed in accordance with the prior appropriation doctrine as directed by the Department. • Scarcello's unwillingness to rely on Kiefer's assistance, despite agreeing to do so and despite having no better information, casts a long shadow of doubt on Scarcello's accountability to WD95C and the Department's Instructions. • The Watermaster Handbook, which is intended to be a set of best practices for

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		<ul style="list-style-type: none"> ○ Twin Lakes Improvement Association ○ Twin Lakes Rathdrum Creek Flood Control District 17 ○ Susan Ellis ○ Don Ellis ○ Paul F. Finman ○ Terry Kiefer ○ Michael Dempsey ○ Curran Dempsey ○ Gordon Stephenson 	<ul style="list-style-type: none"> •The Department has discretion in deciding whether or not to remove a watermaster if the Department finds that the watermaster has failed to perform his duties. Idaho Code § 42- 605(9). The word "may" in Idaho Code § 42-605(9) indicates a duty that is permissive, not mandatory. 	<p>water district operations, contains guidance appropriate for WD95C. For example, the Watermaster Handbook instructs watermasters to maintain daily water delivery records. Water delivery records are critical to establishing that a watermaster has performed his or her duties diligently and credibly. The fact that Scarcello does not keep water delivery records seriously undermines the ability to ascertain that Scarcello has upheld the prior appropriation doctrine.</p> <ul style="list-style-type: none"> •In September and October of 2016 the lake level continued to decline and the Syltes could not receive water due to the losses occurring in the Rathdrum Creek channel on Finman's property. Under such conditions, the Instructions are clear that Scarcello should have consulted the Department regarding determination of a futile call with respect to delivery of right no. 95-0734. •The Flood Control District's influence over Scarcello undermines his ability to distribute water in accordance with the Department's Instructions. •Scarcello remained defiant of the authority of the Decree, even though it establishes the water rights he was elected to distribute.

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<p>4/7/2017</p> <p>Interlocutory Order Regarding Instructions to Water District 34 Watermaster; Order Vacating Deadline and Hearing Dates; Notice of Status Conference</p>	<p>In the Matter of the Administration and Accounting of the Practice of Rotating Natural Flow Water Rights into Mackay Reservoir for Storage</p>	<ul style="list-style-type: none"> •Administrative Basin 34 •Water District 34 •Butte County •Big Lost River •Mackay Dam Reservoir <p>Parties:</p> <ul style="list-style-type: none"> ○ Big Lost River Irrigation District BLRID ○ Lucus Yockey ○ Young Harvey Walker ○ Mitchell Sorensen 		<ul style="list-style-type: none"> •The practice of rotation for credit in WD34 is unique in water right administration in Idaho. The practice allows the holder of a natural flow water right whose source is the Big Lost River to cease diverting the water right for direct irrigation purposes and instead store the water in Mackay Reservoir. The water stored in Mackay Reservoir can then be released and delivered at the request of the water right holder for use on the land to which the natural flow water right is appurtenant. •When the water rotated into storage in Mackay Reservoir is released, the water is comingled with natural flow and BLRID storage water in the Big Lost River. This requires administration and accounting by both the watermaster and the BLRID. The requirement of joint administration is recognized in the General Provision and the WD34 Rules, wherein both documents describe an oversight role for the Director, and by extension the watermaster, and BLRID. •On or before May 1, any water user planning to rotate a natural flow water right into storage in the up-coming irrigation season is required to completely fill out and submit to the watermaster a notice of intent

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				<p>to rotate a natural flow water right into storage. The watermaster shall prepare a standard form for notice of intent to rotate Big Lost River rights into storage ("NOi").</p> <ul style="list-style-type: none"> •Order provides procedures, standards, and annual reporting for rotations for credit.
<p>2/27/2017</p> <p>Preliminary Order</p>	<p>In the Matter of Requiring Measuring Devices and Controlling Works on Water Diversions in Water District No. 01, Upper Teton River and Tributaries</p>	<ul style="list-style-type: none"> •Water District 01 •Upper Teton River •Badger Creek 		<ul style="list-style-type: none"> •A primary purpose of a water district is the administration of water rights within the water district by a watermaster. A watermaster administers water rights in part by measuring diversions and adjusting controlling works to deliver the authorized flow rate and/or volume to the water right holders within the water district. Measurement and control of diversions is necessary to assure the proper and equitable delivery of water in accordance with authorized water rights. •Measuring devices that are acceptable to IDWR are listed in the Department's <i>Minimum Acceptable Standards for Open Channel and Closed Conduit Measuring Devices</i>. •The watermaster shall shut off and refuse to deliver water to the holder of any water rights listed in Attachment A that does not have an adequate measuring device and/or lockable controlling works at any and all times during the 2018 irrigation season or

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				<p>each season thereafter until an adequate measuring device and/or lockable controlling works has been installed.</p> <ul style="list-style-type: none"> • In some situations, IDWR may exempt a diversion from the requirements of this order or may allow deferred compliance for a diversion. IDWR will consider each request for exemption or deferral on a case-by-case basis. Conditions that may result in exemption or deferral include, but are not limited to, the following: <ul style="list-style-type: none"> • Abandonment, non-use, or consolidation of diversions that results in a diversion being unused. • Delays caused by requirements of other government entities.
<p>2/8/2017</p> <p>Final Order Approving Cities' Interim Mitigation Plan For 2017</p>	<p>Docket No. CM-MP-2016-02</p> <p>In the Matter of the Mitigation Plan Filed by the City of Pocatello, the Coalition of Cities, and the City of Idaho Falls for the Distribution of Water to Water Rights Held by the</p>	<ul style="list-style-type: none"> • Water District 01 • Eastern Snake Plain Aquifer ESPA • Snake River • Upper Snake River Reservoir system <p>Parties:</p> <ul style="list-style-type: none"> ○ City of Pocatello ○ Coalition of Cities ○ City of Idaho Falls ○ A&B Irrigation District 	<ul style="list-style-type: none"> • CM Rule 43.03(o) states one factor the Director may consider regarding mitigation plans: “Whether the petitioners and respondents have entered into an agreement on an acceptable mitigation plan even though such plan may not otherwise be fully in compliance with these provisions.” IDAPA 37.03.11.043.03(o). 	<ul style="list-style-type: none"> • The Cities and SWC submitted the Mitigation Plan pursuant to CM Rule 43.03(0). The Cities and SWC agreed “that delivery of the mitigation actions” described in the Mitigation Plan “shall mitigate for any of the Cities’ injury to the [Surface Water Coalition’s] water rights, and that the Cities’ water rights shall not be subject to curtailment during the term” of the Mitigation Plan. “The SWC expressly agree[d] that the compensation to be provided” under the Mitigation Plan “shall constitute full mitigation for any injury in

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	Surface Water Coalition	<ul style="list-style-type: none"> ○ American Falls Reservoir District No. 2 ○ Burley Irrigation District ○ Milner Irrigation District ○ Minidoka Irrigation District ○ North Side Canal Company ○ Twin Falls Canal Company ○ Surface Water Coalition SWC ○ Idaho Ground Water Appropriators, Inc. IGWA 		2016 associated with the Cities’ ground water pumping.”
<p>2/8/2017</p> <p>Final Order Approving SWID’s Interim Mitigation Plan for 2017</p>	<p>Docket No. CM-MP-2010-01</p> <p>In the Matter of Southwest and Goose Creek Irrigation Districts Mitigation Plan for the Surface water Coalition Delivery Call</p>	<ul style="list-style-type: none"> •Water District 01 •Eastern Snake Plain Aquifer ESPA •Snake River •Upper Snake River Reservoir system <p>Parties:</p> <ul style="list-style-type: none"> ○ Southwest Irrigation District SWID ○ Goose Creek Irrigation District ○ A&B Irrigation District 	<ul style="list-style-type: none"> •CM Rule 43.03(o) states one factor the Director may consider regarding mitigation plans: “Whether the petitioners and respondents have entered into an agreement on an acceptable mitigation plan even though such plan may not otherwise be fully in compliance with these provisions.” IDAPA 37.03.11.043.03(o). 	<ul style="list-style-type: none"> •On November 25, 2013, the Director issued a Final Order Approving Interim Mitigation Plan, approving the Mitigation Plan upon certain conditions. The Director ordered that “[a]ll activities required pursuant to the Mitigation Plan, such as monitoring, reporting, and verification of data, are the responsibility of the parties to the Mitigation Plan.” The Director ordered that “[t]he goals set forth in Covenants 7 and 8 are applicable only to the parties to the Mitigation Plan. Department is not

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		<ul style="list-style-type: none"> ○ American Falls Reservoir District No. 2 ○ Burley Irrigation District ○ Milner Irrigation District ○ Minidoka Irrigation District ○ North Side Canal Company ○ Twin Falls Canal Company ○ Surface Water Coalition SWC 		<p>responsible for monitoring, reporting, or any other activity related to the goals.”</p> <ul style="list-style-type: none"> •The Mitigation Plan “provides for certain aquifer mitigation actions to be undertaken by [SWID] on an annual basis, including groundwater recharge, conversions, and voluntary curtailment.” “In exchange, the [SWC] agrees that the [SWID]’s members’ junior priority ground water rights shall not be subject to curtailment in response to the SWC’s water delivery call or any order issued by [the Department] during the term of the agreement.” •This order completes administrative proceedings related to SWID’s Interim Mitigation Plan for 2017. While SWID’s water rights listed in Attachment B to the Curtailment Order are subject to curtailment, the watermaster shall allow participants operating in conformance with SWID’s Interim Mitigation Plan for 2017 to continue ground water use out of priority for the term of the plan.
<p>2/3/2017</p> <p>Preliminary Order Approving Transfer</p>	<p>In the Matter of Application for Transfer No. 79934 in the Name of Albion 12 Investments, LLC</p>	<ul style="list-style-type: none"> •Administrative Basin 45 •Water District 45F and 140 •Cassia County •Ground water •Albion basin aquifer 	<ul style="list-style-type: none"> •For every water right included in a transfer application, the Department must verify that the portion of the water right being changed 	<ul style="list-style-type: none"> •Change application was filed less than five years after the issuance of a SRBA partial decree. The applicant diligently pursued the change application since filed. Department does not have clear and convincing evidence of forfeiture.

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		<ul style="list-style-type: none"> •Springs •Marsh Creek •Howell Creek •Lake Cleveland •Water Right 45-14284 <p>Parties:</p> <ul style="list-style-type: none"> ○ Albion 12 Investments, LLC ○ Kevin Smyer ○ Norman Smyer ○ Christopher King ○ Lavell Warthen 	<p>has not been forfeited through nonuse.</p> <ul style="list-style-type: none"> •A proposed transfer of a supplemental water right may result in an enlargement if the primary water rights at the proposed place of use are less reliable than the primary rights at the existing place of use. 	<ul style="list-style-type: none"> •Acceptable methods and equations in drawdown analysis showed that diversion from proposed wells would result in little or no drawdown in wells at a distance of one mile. •If changed water right is conditioned to prohibit perforations in the proposed wells to prevent intercepting the perched aquifer strata forming the source of the springs the wells will have no drawdown effects on the spring. •Ground water right includes a condition requiring the right holder to make full beneficial use of the available surface water rights before diverting ground water right. Therefore, the amount of water diverted under the ground water right is directly linked to the reliability of the underlying surface water rights (primary rights). •Because the primary right at the proposed place of use bears a more senior priority date than the primary right at the existing place of use, and both rights are curtailed based on water calls by the same downstream senior water rights, the proposed primary right is more reliable. •The primary right at the proposed place of use authorizes less rate per acre than the

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				<p>existing primary right. If the supplemental right is used to make up for this difference in rate per acre, it would be an enlargement.</p> <ul style="list-style-type: none"> •To prevent enlargement of ground water right, applicant must delineate the acres to be irrigated in any given year.
<p>2/1/2017</p> <p>Amended Order Affirming Preliminary Order Voiding Permit</p> <p>Affirmed by District Court:</p> <p>Memorandum Decision and Order</p>	<p>In the Matter of Permit No. 27-7549 in the Name of Tanner Lane Ranch, LLLP</p>	<ul style="list-style-type: none"> •Administrative Basin 27 •Bingham County •Ground water <p>Parties:</p> <ul style="list-style-type: none"> ○ Tanner Lane Ranch LLLP 	<ul style="list-style-type: none"> •Idaho Code § 42-217 does not mandate specifically how the Department is to examine the place of use and mechanisms used to conduct water. It does not require an on-site field examination in all cases. •Licensing water use developed after the authorized development period is contrary to Idaho law. There is no provision in Idaho law that allows the Department to recognize post-proof development. •Estoppel may not ordinarily be invoked against a government or public agency functioning in a sovereign or governmental capacity. 	<ul style="list-style-type: none"> •The permit holder submitted proof 47 days after proof was due affirming that the permit holder had completed all development that would occur under the permit and the water had been applied according to the permit. Testimony at hearing established that water was not beneficially applied until after proof was submitted. The law was not complied with because no water was diverted and applied to beneficial use until after the authorized development period. The Department cannot issue a license and must void the permit. •Department complied with Idaho Code § 42-217 to “examine” by its on-site inspection in 1999 and its use of satellite imagery and aerial photography from the 1990’s and early 2000’s to complete its 2013 review and prepare the statutorily required report.

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<p>1/13/2017</p> <p>Preliminary Order Denying Motion for Summary Judgment and Denying Application</p>	<p>In the Matter of Application for Permit No. 25-14428 in the Name of Black Hawk HOA and Iron Rim Ranch HOA</p>	<ul style="list-style-type: none"> •Administrative Basin 25 •Bonneville County •Ground water •Snake River •Milner Dam <p>Parties:</p> <ul style="list-style-type: none"> ○ Black Hawk HOA ○ Iron Rim Ranch HOA ○ A&B Irrigation District ○ Burley Irrigation District ○ Milner Irrigation District ○ North Side Canal Company ○ Twin Falls Canal Company ○ American Falls Reservoir District #2 ○ Minidoka Irrigation District 	<ul style="list-style-type: none"> •The term "domestic purposes" and the beneficial use of "domestic" are not the same. Water may be diverted by a multiple ownership subdivision for "domestic" use, even though the subdivision does not meet the definition of "domestic purposes" set forth in Idaho Code § 42-111. Water rights for subdivisions often identify the beneficial use as "domestic." There are many beneficial uses, other than domestic, which may fit within the definition of "domestic purposes" in 42-111. Stockwater use may meet the definition of "domestic purposes" if the total daily diversion volume does not exceed 13,000 gallons per day. Commercial use may meet the definition of "domestic purposes" if the diversion rate does not 	<ul style="list-style-type: none"> •The Applicants acknowledge that the proposed water use will reduce the quantity of water under existing rights. The total consumptive use proposed would reduce the quantity of water in the Snake River above Milner Dam by approximately 85.9 acre-feet per year, which equates to a continuous reduction of flow in the Snake River of approximately 0.12 cfs. •Multiple ownership subdivisions present a unique challenge for injury review. Idaho law does not require lot owners within multiple ownership subdivisions to pursue joint permit applications. Each lot owner within a subdivision could file a separate application, describing domestic use for a single home with water diverted from a community well. In this case, the Applicants filed a joint application to cover seventy-six homes, but could have filed seventy-six separate applications, each describing domestic use at a single home, with diversion from a community well. •Because the proposed water use could have been proposed through seventy-six separate applications. each proposing domestic use for one home, it is important for the Department to evaluate the impact of domestic use at a single home within the

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			<p>exceed 0.04 cfs and the daily diversion volume does not exceed 2,500 gallons per day.</p> <ul style="list-style-type: none"> •Homeowners within a multiple ownership subdivision seeking to divert water from a community well in excess of the diversion rate and volume limitations set forth in subsection (b) are not exempt from the permitting process and must obtain a recorded water right (either collectively or individually) prior to diverting ground water for domestic use. •The term "de minimus" has been used by the Snake River Basin Adjudication ("SRBA") Court to designate a subset of water rights which were deferrable in the adjudication. The SRBA only addresses the question of whether a 	<p>subdivision when evaluating potential injury under Idaho Code§ 42-203A(5)(a). Using the Department's transfer tool, the Applicants estimate that the cumulative impacts of a single home domestic use from the Applicants community well(s) would be approximately 1.1 acre-feet per year. This equates to a continuous reduction to the Snake River flow of 0.002 cfs. Although small, this is a reduction to the quantity of water under existing water rights. The Applicants must, therefore, provide mitigation to offset the reduction before the Application can be approved. The Applicants have not proposed any mitigation to offset the calculated reduction. Therefore, the Application should be denied based on reduction of the quantity of water under existing water rights.</p>

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			<p>claim must be filed in the SRBA for certain water uses. It does not declare that the water uses designated as de minimus are non-injurious or that such uses cannot cause a legally cognizable injury to other water rights.</p> <ul style="list-style-type: none"> •Idaho Code 42-111 and 42-227 simply identify which proposed uses must be pursued through an application for permit and which uses are exempt from that process. These statutes do not make any determination of injury or non-injury caused by certain types of water use. •Idaho Constitution, Article XV, Section 3 does not state that domestic uses cannot, as a matter of law, reduce the quantity of water under existing water rights. Nor does Section 3 state that the injury resulting from a domestic 	

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			<p>use should be considered negligible or de minimus.</p> <ul style="list-style-type: none"> •The Idaho Supreme Court recognized that junior domestic water users can cause legally cognizable injury to existing senior water users by noting that the Conjunctive Management Rules "do not exclude the possibility of a takings claims" by senior water users whose water rights have been taken by domestic water users. •The exceptions or exclusions set forth in the ESPA Moratorium merely govern what types of applications can continue to be processed and evaluated by the Department. They are not a final determination of injury or non-injury. The Moratorium cannot be used to trump or circumvent the statutory 	

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			review criteria required for all applications for permit.	