

# MEMO

State of Idaho

Department of Water Resources

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**Date:** May 17, 2021

**To:** Gary Spackman, Director

**From:** Tim Luke, Water Compliance Bureau Chief *TJK*

**Subject:** Responses to Request for Staff Memorandum – Basin 37 Administrative Hearing

This memorandum has been prepared in response to the *Request for Staff Memorandum In the Matter of Basin 37 Administrative Hearing* ("Request") issued by the Director of the Idaho Department of Water Resources ("IDWR") on May 11, 2021. This memorandum addresses items 3, 8, 9, 10 a. and 10.c of the Director's Request. Sections of this memo are numbered in accordance with the items listed in the Request.

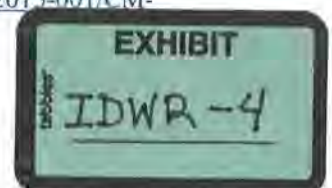
### **3. Description of Surface Water Deliveries in the Wood River Basin**

The Wood River basin, identified by IDWR as Administrative Basin 37, is divided into separate water districts for purposes of administration of water rights. Figure 1 shows water districts in Administrative Basin 37.

This memorandum focuses on surface water deliveries and certain surface water delivery systems in Water District 37 ("WD37"), specifically, the Big Wood River below Magic Reservoir and the Little Wood River and Silver Creek. A fairly detailed description of delivery systems in these river reaches of WD37 was given in a staff memorandum for a previous proceeding (Luke, 2015).<sup>1</sup>

WD37 includes the main Big Wood River and tributaries in the Wood River Valley to Magic Reservoir, the Big Wood River below Magic Reservoir to its confluence with the Malad River, the Little Wood River from its confluence with Silver Creek to the Malad River, including Silver Creek and its tributaries, and the Malad River from the confluence of the Big and Little Wood Rivers to approximately the Snake River canyon rim where Interstate 84 crosses the Malad River. WD37 also administers ground water rights in the Wood River Valley, including the Bellevue Triangle area, outside of the Eastern Snake Plain Aquifer Area of Common Ground Water Supply ("ESPA ACGWS"). WD37 administers all ground water rights in the

<sup>1</sup> Luke, T., 2015, *Staff Memorandum Regarding Big Wood and Little Wood Water Users Association Delivery Calls from the Big Wood and Little Wood Rivers – Response to Director's Request for Memoranda Dated June 12, 2015*. Idaho Department of Water Resources, August 31, 2015. <https://idwr.idaho.gov/files/legal/CM-DC-2015-001/CM-DC-2015-001-20150831-Staff-Memo-Attachments-BWLWWUA-Calls.pdf>





aforementioned Wood River Valley area except groundwater rights used for domestic and stock water purposes as defined by Idaho §§ 42-111 and 42-1401A(11) and water rights used for in-stream watering of livestock as defined by Idaho Code § 42-113.

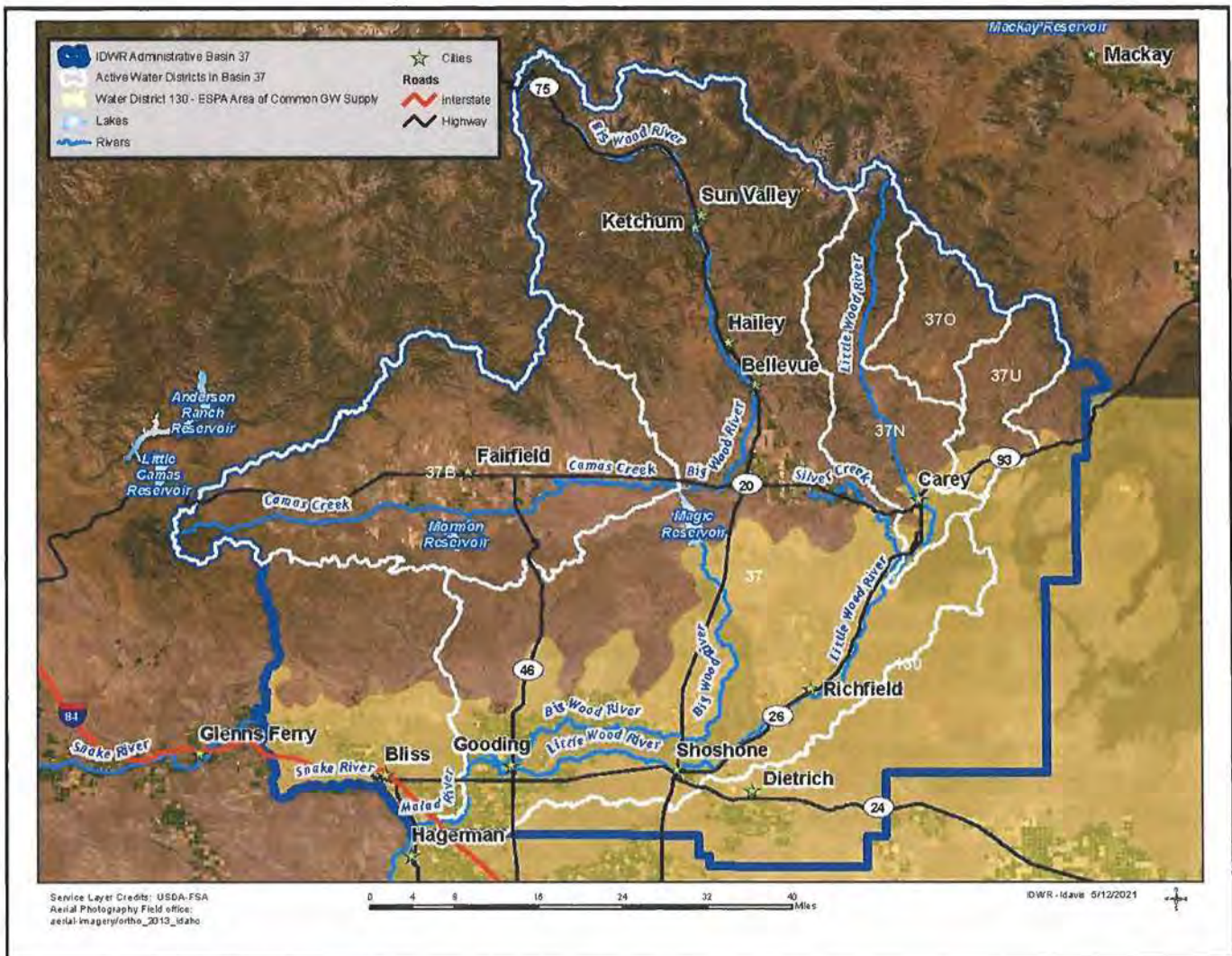


Figure 1. Administrative Basin 37 Water Districts

As reported in Sukow (2015),<sup>2</sup> the Little Wood River upstream of the confluence of Silver Creek is perched above the ESPA and generally dry except during periods of high surface runoff.

Surface water rights and diversions in the Little Wood River drainage area above Silver Creek are administered by Water District 37N, Upper Little Wood River (“WD37N”), and two separate

<sup>2</sup> Sukow, J., 2015, *Hydrology, hydrogeology, and hydrologic data, Big Wood & Little Wood Water Users Association delivery calls, CM-DC-2015-001 and CM-DC-2015-002*. Idaho Department of Water Resources, August 28, 2015, 25 p., <https://idwr.idaho.gov/files/legal/CM-DC-2015-001/CM-DC-2015-001-20150828-WRCall-Hydro-Memo-w-Attach.pdf>.



tributary water districts, Water District 37O, Muldoon Creek, and Water District 37U, Fish Creek (Luke, 2015).

Water District 37N includes the Little Wood Reservoir located north of Carey which is owned and operated by the Little Wood River Irrigation District. East Canal and West Canal, below Little Wood River dam divert the entire flow of the Little Wood River during the irrigation season, and most non-irrigation season flow is stored in the reservoir. The entire flow of Fish Creek is similarly diverted and stored (Sukow, 2015).

Over two dozen water rights in WD37N are senior in priority to water rights on the Little Wood River below Silver Creek. These rights, totaling about 20 cfs and bearing priority dates from 1880 to 1882, are diverted at or near the East and West Canals north of Carey. Water rights in the upper Little Wood River with priority dates starting in 1882 are then mixed with water right priorities in the lower Little Wood River. The combination of river losses, reservoir storage and senior priority water rights in the upper Little Wood River supports a long practice of separate water districts and administration of water rights between the upper and lower Little Wood River systems.

#### *A. Surface Water Deliveries in Water District 37*

WD37 is divided into three systems for delivery of surface water rights including: (1) the Big Wood River above Magic Reservoir, (2) the Big Wood River and Malad River below Magic Reservoir, and (3) the Little Wood River and Silver Creek, including streams tributary to Silver Creek. The WD37 watermaster makes separate water right priority determinations on these three systems.

Surface water delivery systems, water deliveries and water right priority cut procedures for the Big Wood River below Magic Reservoir (including the Malad River) and the Little Wood River below Silver Creek are generally described in Luke (2015). Additional water delivery and system information is summarized below.

##### *1. Big Wood River Above Magic Reservoir*

WD37 regulates numerous diversions from the Big Wood River and tributaries above Magic Reservoir from north of Ketchum to Stanton Crossing at Highway 20 upstream of Magic Reservoir. Most of the diversions are small to medium size irrigation ditch diversions, ranging in capacity from 1 cfs or less to 50 cfs or more. The largest diversion in this system, the District 45 Canal, diverts up to 200 cfs and serves a large area of the Bellevue Triangle.

Most of the Big Wood River Valley above Magic Reservoir was under irrigation by 1900 (Bartolino and Adkins, 2012).<sup>3</sup> Surface water rights from the river above Magic Reservoir range

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<sup>3</sup> Bartolino, J.R., C.B. Adkins, 2012, *Hydrogeologic Framework of the Wood River Valley Aquifer System*, South-Central Idaho, U.S. Geological Survey Scientific Investigations Report 2012-5053, 36 p., 1 pl., <http://pubs.usgs.gov/sir/2012/5053/>.

in priority from 1880 to 2015. Most rights with priority dates after 1936 are used for non-irrigation purposes, and many are non-consumptive.

As reported by the WD37 watermaster, “in decades past, the standard for a good water year [on the Big Wood River above Magic Reservoir] was if the 1886 priorities remained deliverable. Since the mid to late 1980’s, droughts became more common and flows diminished. Today, the standard for a good water year is if the senior 1884 rights remain deliverable” (Water District 37 and 37M, 2010).<sup>4</sup>

The Dry Bed of the Big Wood River is a braided and losing river reach located south of Bellevue between approximately Glendale and Baseline Roads. Nearly all the flow of the Big Wood River is diverted each summer into the Baseline Bypass Canal just upstream of the Glendale Bridge. As described by Bartolino and Adkins (2012), the Bypass Canal was built in 1920 on the east side of the river to route water around the Dry Bed section of the Big Wood River to speed the passage of water through this section of the river and to reduce losses; flow can be routed south to the Baseline Bypass extension canal or west back to the braided channel of the Big Wood River in the lower part of the Dry Bed.

In dry years, the entire flow of Big Wood River near the Glendale Bridge may be diverted to the Baseline Bypass Canal early in the irrigation season. For example, on or about April 4, 2021, the river was dammed off above the Glendale Bridge and diverted down the Baseline Bypass and back to the river channel to reduce losses in the Dry Bed and increase inflows to Magic Reservoir.

The Water District 37 watermaster makes separate priority cuts on the Big Wood River above and below Magic Reservoir. An explanation of priority cut determinations on the Big Wood River both above and below Magic Reservoir is documented by Water District 37 Watermaster Kevin Lakey in his correspondence to IDWR dated June 16, 2015 in Luke (2015). In that correspondence, Lakey notes that “there is much more senior [priority] water above Magic Reservoir than there is below; when inflows into Magic become low enough to start cutting decrees, decrees with more senior priority have already been shut off above Magic.” The most senior priority rights below Magic Reservoir have 1883 priority dates. In contrast, there are about 60 rights above Magic Reservoir with priority dates senior to 1883, totaling about 84 cfs. Some of the most senior rights above Magic Reservoir (1880 priority) are located below or at the lower end of the Dry Bed and rely on use of the Baseline Bypass Canal for delivery.

## *2. Big Wood River Below Magic Reservoir*

Flows in the Big Wood River below Magic Reservoir are controlled by reservoir operations. Magic Reservoir, located on the Big Wood River about 22 miles north of Shoshone, is owned and operated by the Big Wood Canal Company (“BWCC”). The reservoir has a storage capacity of 191,500 acre-feet. Magic Reservoir inflow primarily comes from the Big Wood River and

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<sup>4</sup> Water District No. 37 & 37M, *Water Distribution and Hydrometric Works – 2010*, 379 p.



Camas Creek. On average, approximately one-third of the reservoir inflow comes from Camas Creek (IDWR, 2021).<sup>5</sup>

The BWCC holds several water rights from the Big Wood River for storage in Magic Reservoir, ranging in priority from 1905 to 1920. Additionally, BWCC holds two natural flow rights from the Big Wood River for irrigation, including an 1897 priority right authorizing a diversion rate of 66.9 cfs and a 1908 priority right authorizing diversion of 3,000 cfs.

As described in Luke (2015), BWCC storage water from Magic Reservoir and BWCC natural flow water rights from the Big Wood River are diverted from the river below the reservoir at the Richfield and Lincoln Bypass Canals (see Figure 2).

Water diverted to the Richfield Canal is conveyed a distance of about 12 miles southeast where the canal splits into three main channels including the Jim Byrns Slough, the East Main Canal, and the West Main Canal. The East and West Main Canals deliver BWCC water to the Richfield Tract located north of Richfield and the Little Wood River, and east of the Big Wood River. The total irrigated area within the Richfield tract is roughly 19,000 acres (Luke, 2015).

The Jim Byrns Slough conveys water about 16 miles around the east side of the Richfield Tract before connecting to the Little Wood River near the head of the Dietrich Main Canal located just south of Richfield. The water injected to the Little Wood River from the Jim Byrns Slough is measured at a gage station on the slough a short distance above its confluence with the river. The injected water is then diverted to the Dietrich Main Canal and conveyed eight to ten miles southwest to the Dietrich tract. The total irrigated area within the Dietrich tract is about 8,200 acres (Luke, 2015).

The BWCC holds a number of water rights from the Little Wood River that can be diverted to the South Dietrich Main Canal for irrigation within the Dietrich tract. Water diverted under these rights may be commingled with BWCC water supplies diverted from the Big Wood River and injected to the Little Wood River near the head of the South Dietrich Main Canal. The BWCC Little Wood River rights range in priority from 1883 to 1920. BWCC's more senior priority rights, from 1883 to 1887, have a cumulative diversion rate of 16.65 cfs. The more junior priority rights have diversion rates that vary from 15.3 cfs (1896 priority) to 304 cfs (1907 priority).

The Lincoln Bypass Canal diverts water from the Big Wood River approximately 10 miles around a dry or losing reach of the river to the head of the North Shoshone Canal. The North Shoshone Canal flows southwest to irrigate lands above the Milner Gooding Canal and north of the Big Wood River, known as the North Shoshone tract. The BWCC delivers water to about 8,800 irrigable acres in the North Shoshone tract. Water conveyed through the North Shoshone Canal may commingle with water from the Milner Gooding Canal to irrigate lands below or west of the Milner Gooding Canal and north of the Big Wood River known as the North Gooding tract (Luke, 2015).

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<sup>5</sup> Idaho Department of Water Resources, *Wood River Basin Hydrologic and Hydrogeologic Relationships, Prepared for the BWRGWMA Advisory Committee – IDWR Observations*, March 17, 2021, 11 p.

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There are no diversions of any significance on the Big Wood River between the North Shoshone Canal and the confluence of the Big Wood River and Thorn Creek, located about 7 miles northeast of Gooding. Water from the Milner-Gooding Canal injected to Thorn Creek returns to the Big Wood River upstream of the Robertson and Union Ditches, located about one mile below Thorn Creek; all or most of the river flow below Thorn Creek is dependent on the Milner-Gooding Canal (Luke, 2015).

The BWCC shares a service area boundary with the American Falls Reservoir District No. 2 (“AFRD2”). The following excerpt from Luke (2015) describes AFRD2 and the shared BWCC-AFRD2 service area:



AFRD2 is an irrigation district that maintains the Milner-Gooding Canal to convey water from Milner Dam on the Snake River to irrigate lands within the AFRD2 and BWCC project areas. The district was created in 1925 for the purpose of delivering an additional supply of water from the American Falls Reservoir on the Snake River to the BWCC due to water shortages in the BWCC and Wood River drainages. The irrigation district was also formed to develop additional irrigated lands or “new lands” within the BWCC-AFRD2 service area located below the Milner-Gooding Canal. The Milner Gooding Canal crosses both the Little Wood and Big Wood Rivers in approximately the center of the BWCC-AFRD2 service areas near Shoshone as shown in Figure 2. Water delivered via the Milner Gooding Canal can be injected to the Little Wood River and re-diverted from the river downstream. The Milner Gooding Canal ends about 10.5 miles northeast of Gooding where it splits to the North Gooding Canal and Thorn Creek. Water from the Milner Gooding Canal injected to Thorn Creek returns to the Big Wood River upstream of the Robertson and Union Ditches.

AFRD2 holds a contract with the United States Bureau of Reclamation (“BOR”) for 393,550 acre-feet of storage space in American Falls Reservoir on the Snake River. Water stored pursuant to this contract is used within the BWCC-AFRD2 place of use boundary. The total irrigated acres in the BWCC-AFRD2 project area is about 98,667 acres.

In addition to the BOR storage contract referenced above, AFRD2 also holds a 1921 priority natural flow water right from the Snake River authorizing diversion of up to 1,700 cfs for irrigation use within the BWCC-AFRD2 service area.

Contracts between the BWCC, AFRD2 and the BOR describe the water supplies delivered by the BWCC and AFRD2 within their shared service area. These contracts also include provisions allowing the exchange of water supplies. These contracts are described in further detail by Luke (2015) and in item 8 of this memorandum. In short, the contracts stipulate that water supplies and rights held by BWCC from Magic Reservoir, the Big Wood River and the Little Wood River, shall be used to irrigate the approximate 36,000 acres in the BWCC-ARD2 shared service area above the Milner-Gooding Canal, while remaining lands in the shared service area below the Milner-Gooding Canal are irrigated using AFRD2 water supplies from the Snake River delivered via the Milner-Gooding Canal.

There are approximately 130 natural flow irrigation water rights on the Big Wood River and Malad River below Magic Reservoir, including several natural flow water rights held by the BWCC. Many of these water rights have places of use from the Big Wood and Malad Rivers below the Milner-Gooding Canal. The priority dates of these rights range from 1883 to 1940 (one irrigation right has a 1981 priority).

Seventy-two (72) of Big Wood River water rights below Magic Reservoir include a condition, known as the Exchange Condition, which stipulates that delivery of each right is subject to the water exchange provisions contained in the contracts between BOR, AFRD2 and BWCC. As a result, AFRD2 delivers water to these 72 rights, when they are deliverable, from the Snake River using the Milner-Gooding Canal. The amount of natural flow in the Big Wood River for these 72

rights, when deliverable, is delivered to the Lincoln Bypass and North Shoshone canals and distributed to lands within the North Shoshone tract above the Milner-Gooding Canal.

In dry years, reservoir releases from Magic Reservoir may be shut off in July or earlier. For example, in 2002, Magic Reservoir was shut off on or about July 15, thus making delivery of reservoir inflow unavailable for delivery of natural flow rights below the reservoir (IDWR, 2021). In this scenario, any inflow to the reservoir during the remaining irrigation season may accrue as storage to BWCC. When there is sufficient inflow to satisfy any senior natural flow rights below Magic Reservoir after the reservoir is shut off, BWCC and AFRD2 deliver water to the holders of those rights from the Milner-Gooding Canal if the water right places of use are located below the Milner-Gooding Canal.<sup>6</sup> This practice may be consistent with the exchange provisions of the BOR contracts but, due to physical limitations, water cannot be delivered to the holders of any deliverable senior priority rights with places of use located above the Milner-Gooding Canal.

As previously noted, an explanation of priority cut determinations on the Big Wood River below Magic Reservoir is documented by WD37 Watermaster Kevin Lakey in his correspondence to IDWR dated June 16, 2015 in Luke (2015).

As described in the watermaster's 2015 correspondence, the long standing method for determining priority cuts on the Big Wood River below Magic Reservoir is based on totaling reservoir inflows and subtracting a standard river loss (about 60.6 cfs) in the channel between the reservoir and the North Shoshone Canal. While this method may be appropriate for determining priority right deliveries below the reservoir based on reservoir inflows, it does not account for gains to the lower reaches of the Big Wood and Malad Rivers. A limited review of reach gains in the Big Wood River between Gooding and the USGS gage station on the Malad River indicates that gains and unused flow injected to the river from the AFRD2 Milner-Gooding Canal system and the North Side Canal Company X Canal should be sufficient to satisfy decreed priority rights in this reach and two irrigation stations below Station 21.<sup>7</sup>

### *3. Little Wood River and Silver Creek*

Administration of water rights on the Little Wood River and Silver Creek drainage system includes all of the Little Wood River from the confluence with Silver Creek to the confluence with the Big Wood River at the head of the Malad River, and all of Silver Creek, including tributary spring fed creeks located within the Bellevue Triangle near Picabo.

Irrigation development from Silver Creek occurs along the creek and its tributaries from the Picabo area downstream to its confluence with the Little Wood River about 2.5 miles southwest of where Silver Creek crosses State Highway 93. Irrigation development and diversions from the Little

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<sup>6</sup> Personal and email communication with Kevin Lakey, March 17, 2021.

<sup>7</sup> Idaho Department of Water Resources, *Return Flows and Reach Gains, IDWR Presentation to the Big Wood River Ground Water Management Area Advisory Committee*, January 5, 2021. <https://idwr.idaho.gov/files/groundwater-mgmt/big-wood-gwma-advisory-comm/20210105-Big-Wood-GWMA-Advisory-Committee-Meeting-Materials.pdf>



Wood River occurs along the river from Richfield downstream to its confluence with the Big Wood River. Most of the diversions and development occurs between Richfield and Gooding.

There are nearly 300 irrigation consumptive use surface water rights in this system with priority dates ranging from 1877 to 2011. Other authorized water right uses in the system include hydropower, ground water recharge, stock water, and minimum instream flow. Figure 3 shows the cumulative rate of diversion for all irrigation water rights,<sup>8</sup> by priority date, within the WD37 Little Wood River-Silver Creek system. The chart shows several large diversion rate increases from about 1900 to 1907. The increases represent three high runoff water supply appropriations by the BWCC totaling about 540 cfs including an 1899 priority right for 150 cfs, a 1905 priority right for 87 cfs, and a 1907 priority right for 303.6 cfs. BWCC also holds a 1920 priority right for 87 cfs.

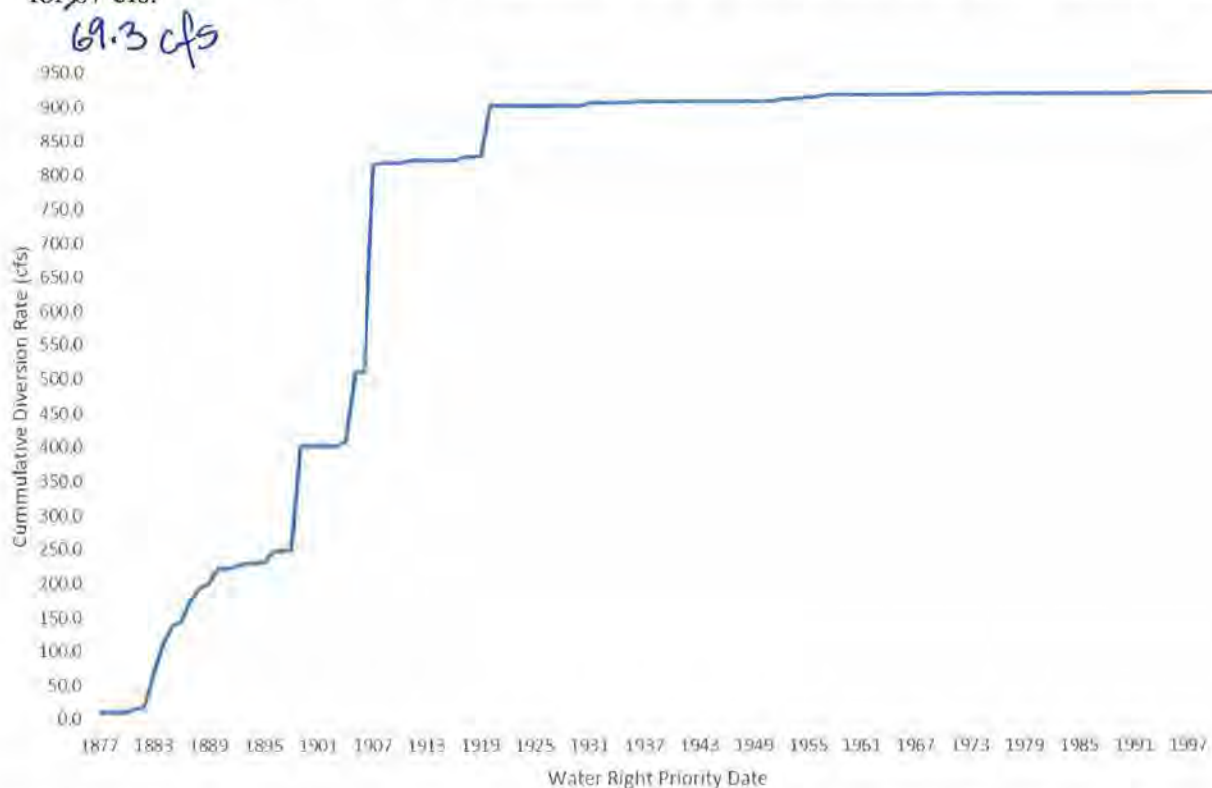


Figure 3. Cumulative water right diversion rates for irrigation uses from Little Wood River & Silver Creek

As shown in Table 1, the total cumulative rate of diversion for all irrigation rights in the Little Wood River-Silver Creek system exceeds 900 cfs. The total cumulative diversion rate of all rights with priority dates senior to 1900 is about 400 cfs, including the BWCC 1899 priority right for 150 cfs.

<sup>8</sup> Figures 3 and 4, and Table 1 includes senior priority water rights for groundwater recharge held by the City of Gooding that are used during the irrigation season. The purpose of use under these rights were changed from irrigation to groundwater recharge.

Source	Cumulative Diversion Rate (cfs) All Rights	Cumulative Diversion Rate (cfs) Rts. Senior to 1900
Little Wood River	733.5	253.3
Silver Creek & tributaries	181.8	143.4
Total: L Wood + Silver Ck & tribs.	915.4	396.8

Table 1. Cumulative water right diversion rates for irrigation uses within the Little Wood River-Silver Creek system, WD37

Figure 4 shows the cumulative rate of diversion for irrigation water rights separately on Little Wood River and Silver Creek, with priorities senior to 1900. Note that the cumulative rate of diversion by priority is generally greater than the Little Wood River except for the period from 1884 through 1886, and from 1899 to 1900. The oldest or most senior priority rights, those through 1883, are located on Silver Creek or Silver Creek tributaries.

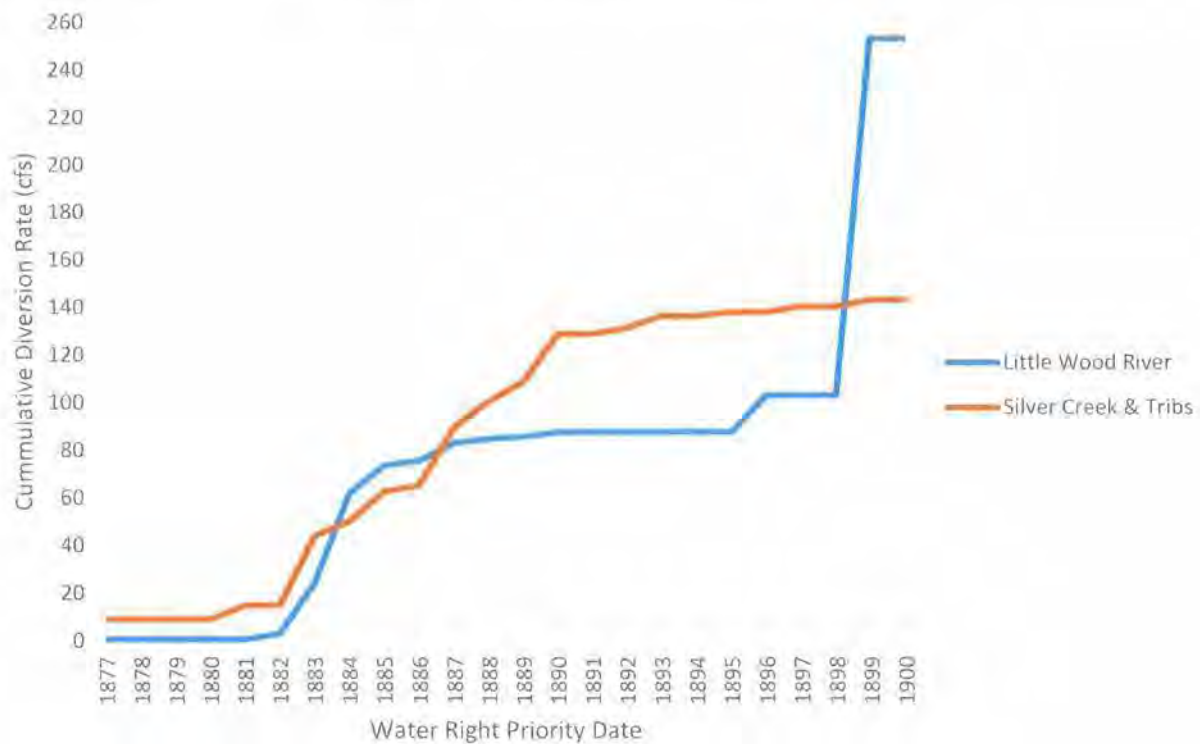


Figure 4. Figure 5. Cumulative water right diversion rates for irrigation uses from Little Wood River & Silver Creek, water rights with priority dates senior to 1900



### *Little Wood River Exchange Condition Water Rights*

Thirty-eight (38) water rights from the Little Wood River have the BOR contract Exchange Condition described in items 3.2 and 8 of this memo. All 38 rights have points of diversion and places of use located below the Milner-Gooding Canal. These rights range in priority from 1877 through 1906 but most have 1883 or 1884 priority dates. Further information about the delivery and administration of these Little Wood River Exchange Condition rights is addressed in item 8 of this memo.

### *Little Wood River-Silver Creek Water Right Administration*

WD37 administers water rights on the Little Wood River and Silver Creek as one system. An explanation of priority cut determinations on the Little Wood River and Silver Creek is given by WD37 Watermaster Kevin Lakey in his correspondence to IDWR dated June 16, 2015 in Luke (2015).

The watermaster's 2015 correspondence states that he bases his "priority cut date on flows at Station 54 at Shoshone." Station 54 is located on the river just upstream of the Milner-Gooding Canal. The watermaster notes that Station 54 accounts for return flows to the Little Wood from the Richfield tract. While the watermaster's 2015 explanations about priority cuts are unchanged, he has recently clarified that his cuts are also based on the list of water rights below Station 54.<sup>9</sup> For example, if the watermaster determines there is 24 cfs of available natural flow in the Little Wood River at Station 54, he looks at his list of water rights on the Little Wood with points of diversion located below Station 54, sorted by priority; he then finds the priority date where the cumulative water right rates of diversion are equivalent to 24 cfs and sees that all water rights with priority dates through 5/15/1885 can be delivered. The next ~~senior~~ priority date on the list of rights below Station 54, 6/3/1884, is the priority date cut called by the watermaster. In this example, all water rights on both the Little Wood River and Silver Creek (including tributaries to Silver Creek) with a priority date of 6/3/1884 or junior are cut or shut off.

### *Variability in Water Right Priority Deliveries in WD37*

The depth and duration of water right priority cuts within WD37 may vary considerably depending on annual water supply and runoff conditions.

The IDWR staff memorandum from Sean Vincent dated May 17, 2021 ("Vincent Memo"), describes the Surface Water Supply Index (SWSI) as a predictive indicator of surface water availability in a basin compared to historic supply. The NRCS publishes a table with 10-, 30-, 50-, 70-, and 90-percent exceedance forecasts for the coming season along with measured total annual water supply volumes for the previous 30 years which are ranked from highest to lowest.

The IDWR staff memorandum from Phil Blankenau dated May 17, 2021 describes selection of three years having above-median, near-median and below-median water supply conditions based in part on water supply volumes and rankings over the past 30 years for the Big Wood River

<sup>9</sup> Lakey, Kevin, Watermaster, Water District 37. Personal communication. May 14, 2021.



above Hailey, 1991 – 2020. The three select years are representative of a good water supply year, a normal or average water supply year and a water short year. Table 2 summarizes the measured total annual runoff volumes, SWSI values and rankings for the three select years as reported by the NRCS.<sup>10</sup>

Year	Stream Flow Apr - Sep (KAF)	30-Year Rank (1991-2020)	SWSI	Annual Water Supply Comment
2011	321	10	1.5	Good water supply year
2016	236	15	0.1	Normal water supply year
2013	154	22	-1.7	Water-short year

*Table 2. Select water years representing above average, average and below average water supply conditions, Big Wood River above Hailey*

The three select years listed in Table 2 are similarly ranked for the Big Wood River below Magic Reservoir based on NRCS published SWSI data, with 2011, 2016 and 2013 ranked 9th, 14th and 27th respectively. In 2013, the approximate fill in Magic Reservoir was only about 54, 000 AF (54 KAF). Although 2013 was a low runoff year for Big Wood River below Magic Reservoir, reservoir contents may have been affected in part by repairs to the dam late in 2012.

Tables 3, 4 and 5 show WD37 water right priority cuts in 2011, 2013 and 2016 for the three river systems in which separate priority cut determinations are made.

Focusing attention on the Little Wood River and Silver Creek, the tables show that nearly all water rights were delivered through a majority of the irrigation season in 2011, a good water supply year. According to the WD37 2011 report, “only the extreme junior [priority] (1960) Little Wood decrees were cut.”

In the normal or average water supply year, 2016, rights senior to April 1, 1899 were deliverable from April 20 to June 16, at which point rights with priorities of April 1, 1887 and junior were cut. By mid to late July, 1884 priority rights were cut for the rest of the season.

In the water-short year, 2013, the season started with a cut to 1902 priority rights. Rights were then cut to an 1887 priority by June 11, and to the April 1, 1884 priority date by July 9. Three days later on July 12, the September 9, 1883 priority rights were cut, followed by cuts to the April 1, 1886 priority rights from mid-August to late August and early September. The April 1, 1884 rights were not restored until late September.

In 2013, Magic Reservoir was shut off about July 1. As discussed in IDWR’s Hydrologic Observations (2021), reservoir shutoff is typically seen as an abrupt, sustained decrease in the flow rate at the below Magic Dam gage from more than 500 cfs to less than 10 cfs. Typical reservoir releases are about 800 to 900 cfs.

<sup>10</sup> [https://www.wcc.nrcs.usda.gov/ftpref/states/id/webftp/swsi/tables/Apr/Big\\_Wood\\_above\\_Hailey\\_Apr.pdf](https://www.wcc.nrcs.usda.gov/ftpref/states/id/webftp/swsi/tables/Apr/Big_Wood_above_Hailey_Apr.pdf)



An early season shut off of Magic Reservoir can impact the natural flow and water right priority deliveries on the Little Wood River between Richfield and Shoshone due to lack of return flows from the Richfield tract. Moreover, storage deliveries from Magic are not injected to the Little Wood River near the Main Dietrich Canal via conveyance from the Jim Byrns Slough. As a result, occasional storage spills past the Main Dietrich Canal that benefits natural flow and senior priority rights are not available after the reservoir is shut off. As reported in the WD37 2011 report, “if Magic Reservoir is able to run a full season, the decrees on the Little Wood are upheld with return flows out of Richfield and Dietrich.”

In 2016, Magic Reservoir was shut off on approximately September 12, and in 2011, Magic Reservoir was shut off on approximately October 2.

Examples of water right priority cuts for two additional below average water years, 2020 (ranked 26 with a -2.8 SWSI and 121 KAF runoff) and 2004 (ranked 25 with a -2.6 SWSI and 136 KAF runoff), are given in Table 11 and discussed in Item 10 of this memo.

<b>Water District 37 &amp; 37M 2011 Priority Cuts</b>		
BIG WOOD RIVER ABOVE MAGIC RESERVOIR		
WATER DISTRICT 37		
Date Priority Cut Made	Date of Priority Cut to and including:	Remarks
July 26, 2011	June 1, 1901	
August 29, 2011	May 10, 1887	
September 2, 2011	June 15, 1885	
September 7, 2011	July 10, 1884	
September 15, 2011	June 15, 1883	
BIG WOOD RIVER BELOW MAGIC RESERVOIR		
WATER DISTRICT 37		
Date Priority Cut Made	Date of Priority Cut to and including:	Remarks
August 4, 2011	April 1, 1906	
August 8, 2011	April 1, 1905	
August 15, 2011	April 27, 1896	
August 24, 2011	May 1, 1887	
SILVER CREEK & LITTLE WOOD RIVER		
WATER DISTRICT 37M		
Date Priority Cut Made	Date of Priority Cut to and including:	Remarks
August 11, 2011	May 6, 1960	
August 12, 2011	May 27, 1899	Cottonwood Decree

Table 3. WD37 priority cuts in above average water year: 2011



<b>Water District 37 2016 Priority Cuts</b>		
BIG WOOD RIVER ABOVE MAGIC RESERVOIR		
Date Priority Cut Made	Date of Priority Cut to and including:	Remarks
July 7, 2016	June 15, 1891	
July 12, 2016	May 1, 1886	
July 16, 2016	October 15, 1884	
July 19, 2016	June 30, 1884	
July 20, 2016	June 20, 1884	
July 25, 2016	May 15, 1884	
July 26, 2016	June 26, 1883	
July 29, 2016	June 15, 1883	
BIG WOOD RIVER BELOW MAGIC RESERVOIR		
Date Priority Cut Made	Date of Priority Cut to and including:	Remarks
June 30, 2016	April 1, 1906	
July 5, 2016	April 1, 1905	
July 13, 2016	June 15, 1890	
July 26, 2016	April 3, 1889	
SILVER CREEK & LITTLE WOOD RIVER		
Date Priority Cut Made	Date of Priority Cut to and including:	Remarks
March 31, 2016	Oct. 29, 1891	
April 20, 2016	April 1, 1899	Reinstate & Senior
May 24, 2016		Reinstate all Decrees
June 16, 2016	April 1, 1887	
June 30, 2016	April 1, 1886	
July 7, 2016	May 27, 1899	Cottonwood Decree
July 18, 2016	May 15, 1884	
July 26, 2016	April 1, 1884	

Table 4. WD37 priority cuts in average water year: 2016

Water District 37 & 37M 2013 Priority Cuts		
BIG WOOD RIVER ABOVE MAGIC RESERVOIR		
WATER DISTRICT 37		
Date Priority Cut Made	Date of Priority Cut to and including:	Remarks
April 23, 2013	June 1, 1901	Reinstate
May 1, 2013	June 1,1901 & Junior	
July 8, 2013	September 18, 1885	
July 9, 2013	October 15, 1884	Cut 50%
July 10, 2013	July 10, 1884	Cut 50%
July 11, 2013	June 15, 1883	
July 19, 2013	April 17, 1883	
July 23, 2013	March 24, 1883	
August 2, 2013	March 24, 1883	
August 6, 2013	December 19, 1882	Cut 100%
August 8, 2013	August 1, 1882	Reinstate
August 19, 2013	May 15,1882	
August 26, 2013	July 31, 1881	
August 30, 2013	July 1, 1881	
September 4, 2013	August 1, 1882	
BIG WOOD RIVER BELOW MAGIC RESERVOIR		
WATER DISTRICT 37		
Date Priority Cut Made	Date of Priority Cut to and including:	Remarks
April 26, 2013	July 1, 1889	Reinstate
April 30, 2013	May 10, 1897	
May 13, 2013	All Decrees	Reinstate
June 24, 2013	May 1, 1897	Magic Off
June 28, 2013	All Decrees	
September 6, 2013	April 15, 1887	
SILVER CREEK & LITTLE WOOD RIVER		
WATER DISTRICT 37M		
Date Priority Cut Made	Date of Priority Cut to and including:	Remarks
April 30, 2013	August 2, 1902	Cottonwood Decree
June 11, 2013	June 15, 1887	
June 25, 2013	May 27, 1899	
July 9, 2013	April 1, 1884	
July 12, 2013	September 1, 1883	
August 14, 2013	April 6, 1883	Reinstate 50%
August 19, 2013	April 1, 1883	
August 27, 2013	April 1, 1883	
September 6, 2013	April 6, 1883	Reinstate
September 10, 2013	September 1, 1883	Reinstate 30%
September 18, 2013	September 1, 1883	Reinstate 60%
September 24, 2013	September 1, 1883	Reinstate 85%
September 26, 2013	April 1, 1884	Reinstate 100 %

Table 5. WD37 priority cuts in below average water year: 2013



## **8. Water Right Exchange Condition**

The water right Exchange Condition is generally described in item 3.2 of this memo and in further detail by Luke (2015). The Exchange Condition is also explained in a recent IDWR memorandum to WD37 watermaster Kevin Lakey (Luke, 2021).<sup>11</sup> See Attachment B. Please refer to these memorandums for more detailed explanations of the condition.

As reported in Luke (2021), Snake River water from the Milner-Gooding Canal is delivered by AFRD2 to the Exchange Condition river rights, and water from the Big and Little Wood Rivers that would be delivered to the Exchange Condition river rights but for the delivery of Snake River water is instead delivered to water rights and lands located above the Milner-Gooding Canal.

In accordance with the Exchange Condition, the WD37 watermaster has been instructed to withhold the physical delivery or conveyance of the natural flow from the Little Wood or Big Wood Rivers below the Milner-Gooding Canal to benefit the Exchange Condition water rights, and deliver any natural flow from the rivers available to fill the Exchange Condition rights to BWCC's diversions located above the Milner-Gooding Canal. In the event BWCC has no demand or need for water above the Milner-Gooding Canal that is deliverable by priority to the Exchange Condition water rights, the water shall then be distributed to the next available rights in priority either above or below the Milner-Gooding Canal on the Big Wood River, and the Little Wood River and Silver Creek.

Based on recent communication with AFRD2 representatives and the WD37 watermaster,<sup>12</sup> as well as past correspondence from the WD37 watermaster attached to Luke (2015), IDWR understands that most or all of the Exchange Condition water right places of use have a supplemental supply of water from the Snake River delivered by AFRD2 via the Milner-Gooding Canal. The watermaster has explained that when a river right place of use has AFRD2 supplemental water and the river right is cut by priority, the supplemental water replaces the river right after the right is cut (Lakey correspondence, June 16, 2015, in Luke, 2015).

IDWR staff finds there may be some lack of clarity or understanding among water users and the water delivery entities regarding the delivery of Exchange Condition rights and the extent of AFRD2 supplemental water delivered to the lands covered by such rights. Unless additional information is furnished regarding available water supplies for lands with Exchange Condition water rights, IDWR assumes such lands have a full supply of water in 2021 and most other

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<sup>11</sup> Luke, T., 2021, *Delivery of Water Rights in Water District 37 from the Big Wood and Little Wood Rivers having the BOR-AFRD2-BWCC Exchange Condition*. Idaho Department of Water Resources, April 27, 2021.

<sup>12</sup> Personal communication with Craig Hobdey, AFRD2 attorney (retired), and Kevin Lakey, WD 37 Watermaster, at meeting of AFRD2, BWCC and BWRGWMA Advisory Committee representatives, March 31, 2021, Shoshone, ID (participation via Zoom conference call).

years.<sup>13</sup> Therefore, IDWR assumes that the Exchange Condition rights are not injured from depletion of river flows caused by groundwater pumping.

## **9. Identification of Irrigated Lands Potentially Injured by Groundwater Pumping**

This section describes technical information relevant to IDWR analysis to identify lands irrigated from the Little Wood River and Silver Creek that could be injured by depletions caused by groundwater pumping within the 2021 irrigation season. Lands identified for potential injury were further analyzed by IDWR staff using an evapotranspiration (ET) model as further described in a separate staff memorandum.

### **Water Right Data**

Water Right spatial data, including GIS feature layers representing Points of Diversion (POD) and Places of Use (POU), are available through IDWR's GIS Data and Mapping Hub.<sup>14</sup> Irrigation water right POD's with sources from the Little Wood River, Silver Creek, and Silver Creek tributaries within Water District 37 were selected using IDWR's water rights GIS and database information search tools.

A water right POU from one source may have overlapping water rights from other sources. Many irrigated areas within WD37 have overlapping groundwater and surface water right POUs (Figure 4).  
5

Upon selection of all water rights from the described surface water sources in WD37, IDWR staff then excluded water rights having the following features or attributes:

- water rights having a source described as “drain” or “wastewater” because the source may be dependent on other water sources or irrigation practices, or may be unreliable;
- water rights owned by the BWCC and AFRD2 since lands may receive water from other sources;
- water rights having the Exchange Condition described in items 3 and 8 of this memo; many or most of those water right POUs may have an adequate supply of water; and
- all water rights that have an overlapping POU from a groundwater source.

IDWR staff added water rights 37-351B and 37-352B to the resulting water rights list. These rights list “groundwater” as the authorized source of water but include conditions limiting the use of water to times when water is deliverable from Silver Creek under the rights' priority dates.

The resulting list of water rights are listed in Attachment A of this memo. The water right POU locations are displayed in Figure 6. The list of water rights and associated POU GIS shape files were made available to IDWR staff as input to the ET model as discussed in the IDWR staff memorandum from Phil Blankenau dated May 17, 2021.

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<sup>13</sup> According to Water District 01 records, AFRD#2 has had a full (100%) storage allocation in 29 of the previous 30 years, IDWR (2021).

<sup>14</sup> IDWRs GIS data and Mapping Hub, <https://data-idwr.opendata.arcgis.com/>.



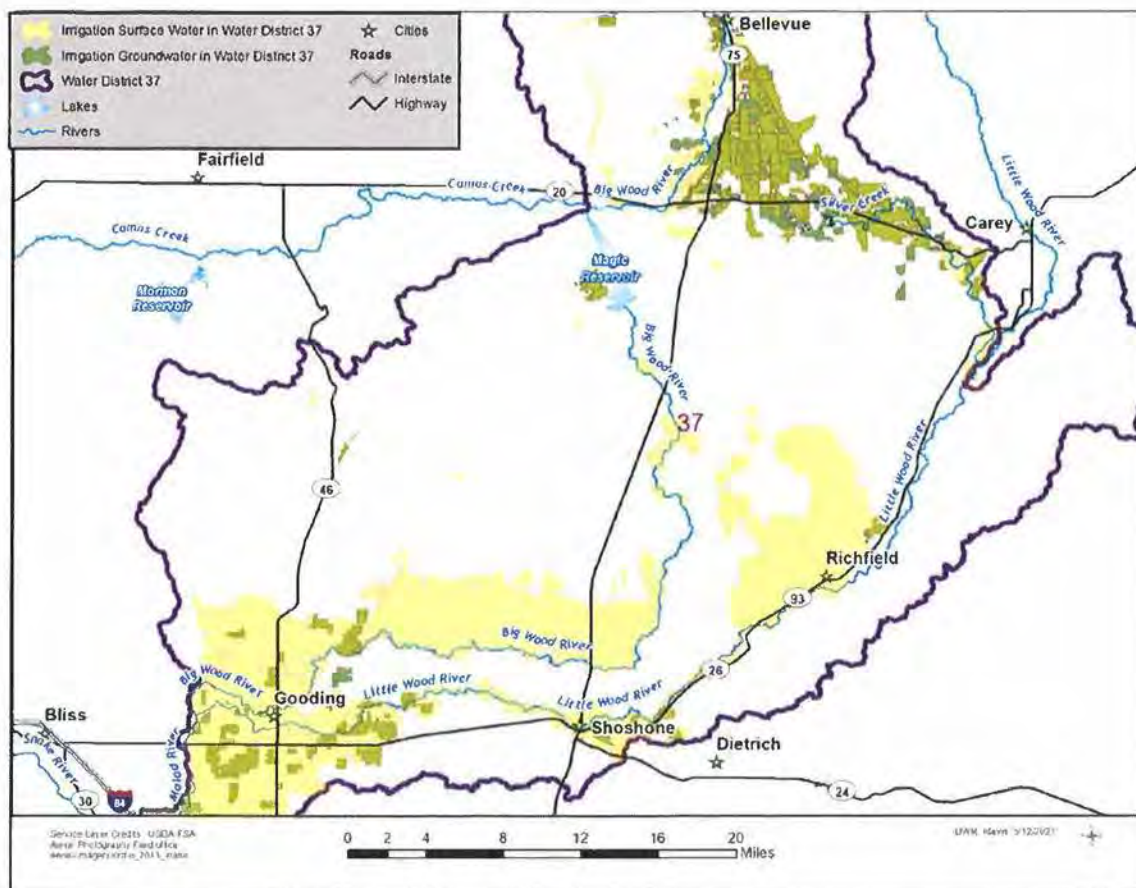


Figure 5. Water right irrigation POU's from both groundwater and surface water sources in WD37

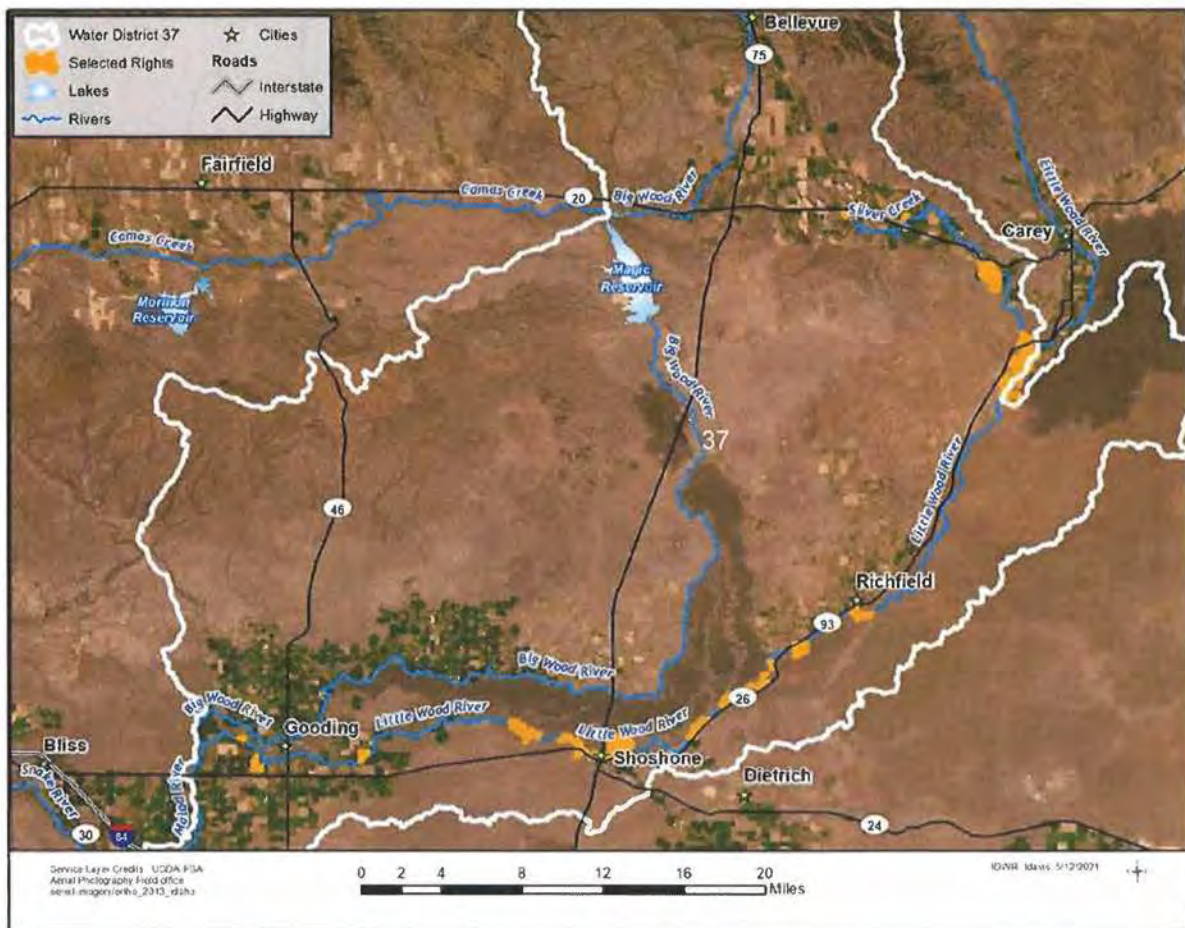


Figure 6. Selected Water Right POUs from Silver Creek, Silver Creek Tributaries, and the Little Wood River



## **10. Analysis of Possible Injury**

The following analysis of possible injury is limited to water rights on the Little Wood River and Silver Creek.

### **A. Comparison of Little Wood River and Silver Creek Water Right Priorities: 2021 vs. Pre-Groundwater Development**

Water right priority date deliveries on the Little Wood River and Silver Creek are published in annual water district reports. Reports are available for most years from 1919 through 2020.<sup>15</sup> Annual reports are missing for some early years between 1919 and 1934. Some available reports from these early years do not include summaries of water right priority deliveries or cuts.

As discussed in the IDWR staff memorandum from Jennifer Sukow dated May 17, 2021 (“Sukow Memo”), groundwater development within the Wood River Valley “increased steadily between the late 1940s and 1991.” The pre-groundwater development period for which water right delivery records are available for the Little Wood River and Silver Creek is limited to 1919 through the mid-1940s.

As described in the IDWR staff memorandum from Sean Vincent dated May 17, 2021 (“Vincent Memo”), “the SWSI for the Big Wood River above Hailey is a better choice for predicting the available supply for surface water users in the Wood River Valley as well as downstream users that don’t have access to Magic Reservoir but instead divert from Silver Creek or the Little Wood River. The 2021 April SWSI [50% chance exceedance forecast] for the Big Wood River above Hailey was -2.7 with a predicted April through September runoff volume of 127 KAF.”

The 2021 predicted April SWSI value of -2.7 published by the NRCS is based on a SWSI analysis period from 1961 to present. Upon request by IDWR, the NRCS completed an expanded SWSI analysis at the Big Wood River above Hailey for the 104-year historical period of record, 1917 through 2020. The 2021 April SWSI 50% chance exceedance value for the historical period of record is -3.1 and among the lowest ranked SWSI values for the 104-year period. Other years with the same -3.1 April SWSI value include 1988 and 1961, ranked respectively at 91 and 92. The next two closest years are 1939 (-3.0 SWSI) and 1937 (-3.2 SWSI), ranked respectively at 90 and 93. Both 1939 and 1937 are in the pre-groundwater development period for which water right priority delivery records are available. The next two closest years from the pre-groundwater development period are 1929 and 1926 (-3.5 SWSI, and runoff of 116 KAF and 114 KAF respectively), but annual water district reports are not available for those years.

Table 6 shows the 2021 April SWSI 50% chance exceedance value compared to similar years from the pre-groundwater development period for the Big Wood River above Hailey.

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<sup>15</sup> The annual reports are titled “Water Distribution and Hydrometric Works.” Silver Creek and the Little Wood River below Silver Creek was originally designated as Water District 11-AB. In 1971, Water District 11-AB was renumbered as Water District 37-M. Effective 2014, Water District 37-M was combined with Water District 37, Big Wood River and tributaries excluding Camas Creek and tributaries.



Year	SWSI 1917-2020	Stream Flow Apr-Sep (KAF)	SWSI Rank	Most Sr. Water Rt. Priority Filled	Comment
1939	-3.0	131	90	7/8/1884	7/8/1884 priority filled all season
2021	-3.1	127			
1937	-3.2	123	93	4/1/1884	4/1/1884 priority filled all season
1929	-3.5	116	96	NA	Delivery records not available
1926	-3.5	114	97	NA	Delivery records not available

Table 6. 2021 Predicted SWSI and comparable years from pre-groundwater development period for Big Wood River above Hailey.

#### *1939 Water Right Priority Deliveries*

In 1939, all water rights bearing a priority date of 4/1/1884 and senior on the Little Wood River and Silver Creek system were filled throughout the irrigation season. The next junior priorities, 6/3/1884 through 7/17/1884, were cut for two days from May 10 to May 12. The next junior water right priority date on the system is 4/1/1885, which was cut or partially cut for a total of 26 days including 10 days during mid to late May, and 16 days from August 20 to September 5.

In 1939, Magic Reservoir filled to capacity on approximately April 9.<sup>16</sup>

#### *1937 Water Right Priority Deliveries*

In 1937, all water rights bearing a priority date of 5/5/1884 and senior on the Little Wood River and Silver Creek system were filled throughout the irrigation season. The next junior priority, 5/15/1884, was cut for six days from May 22 to May 28. The next junior priority, 6/3/1884, was cut for seven days from July 30 to August 6. The next junior priority, 7/8/1884, was cut for a total of 22 days, from May 28 to June 11 (14 days), and again from July 30 to August 6 (8 days).

Magic Reservoir did not fill to capacity in 1937; maximum reservoir fill reached about 172 KAF on about May 18, 1937. The 1937 fill included 92,000 acre-feet of carryover at the close of the 1936 irrigation season.<sup>17</sup>

The 1939 and 1937 water right priority cut tables are included in Table 11 of this memo.

#### Analysis of Watermaster Records for 2021 Analog Years

As noted in the Vincent Memo, the potential analog years for the Wood River Valley, based on review of SWSI data for the period 1991 to 2020, are 2004 (-2.6 SWSI) and 2020 (-2.8 SWSI). For the full period of record 1917 to 2020, the years with the most similar total supplies to the 50% exceedance forecast for 2021 are 1988 and 1961 (SWSI = -3.1). The years 2020 and 2004 are selected as the most analogous years to 2021 for predicting water right priority cuts on the Little Wood and Silver Creek system because they are more recent and should be more

<sup>16</sup>[https://waterdata.usgs.gov/id/nwis/dv?cb\\_00054=on&format=html&site\\_no=13142000&referred\\_module=sw&period=&begin\\_date=1938-10-01&end\\_date=1939-10-01](https://waterdata.usgs.gov/id/nwis/dv?cb_00054=on&format=html&site_no=13142000&referred_module=sw&period=&begin_date=1938-10-01&end_date=1939-10-01)

<sup>17</sup> WD 37 and 11, 1937 *Water Distribution and Hydrometric Work, Big Rivers and Little Wood Rivers*.



representative of groundwater pumping in 2021. The 2020 and 2004 water right priority cut tables are included in Table 11 of this memo.

#### *2020 Water Right Priority Deliveries*

In 2020, all water rights bearing a priority date of 4/1/1883 and senior on the Little Wood River and Silver Creek system were filled throughout the irrigation season.<sup>18</sup> The next junior priority dates, 4/6/1883 through 4/1/1884, were cut from early to mid-September to the end of the irrigation season. The 5/1/1884 priority rights were cut on July 22 through the end of the season.

#### *2004 Water Right Priority Deliveries*

In 2004, all water rights bearing a priority date of 9/1/1883 and senior on the Little Wood River and Silver Creek system were filled throughout the irrigation season. The next junior priority date, 4/1/1884, was cut from September 4 through the end of the season.

In 2004, Magic Reservoir filled to only 77 KAF on about May 1; the reservoir was shut off on approximately July 1.

#### *Comparison of Water Right Priority Cuts: 1939 and 1937 vs. 2020 and 2004*

Comparison of the 2020 and 2004 water right priority cuts with the 1939 and 1937 water right priority cuts generally indicates that the 1884 priority rights were cut more frequently and longer in 2020/2004 than 1939/1937.

Tables 7 through 10 compare the 2020 and 2004 water right priority cuts with the water right priority cuts in 1939 and 1937. Specifically, the tables compare the number of days the different priorities were cut between the more recent years and the older years. For example, in 2004, the 4/1/1885 priority right was cut, or off, a total of 69 days from July 22 through the end of the season. In comparison, the 4/1/1885 priority right was off a total of 25 days in 1939. The difference between the number of days off (44 days in this example), is multiplied by the 4/1/1885 priority water rights cumulative diversion rate to calculate a total net volume of water cut between the two years. Totals are given in cubic feet per second (“cfs”) and acre-feet (“AF”). The net volume represents the additional amount of water cut under the 4/1/1885 priority in 2004 versus 1939. This example is repeated for each priority cut in 2020 versus 1939 and 1937, and each priority cut in 2004 versus 1939 and 1937.

As shown in the tables, the total net curtailment volume in 2020 versus 1939 and 1937 is 5,312 AF and 4,225 AF respectively. The total net curtailment volume in 2004 versus 1939 and 1937 is 3,416 and 2,269 AF respectively. Note that the 1937 net curtailment volume is lower primarily because cuts to the 4/1/1885 priority in 1937 were greater than both 1939 and 2004 (the 4/1/1885 priority was cut a total of 86 days in 1937 compared to 69 days in 2004).

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<sup>18</sup> The 2020 WD37 annual report shows the 4/1/1883 priority was cut on 9/24/2020. Per communications with the WD37 watermaster and local water users, the typical irrigation shut off date in WD37 is about September 25. IDWR therefore removed the 4/1/1883 priority date curtailment on 9/24/2020, and assumed the priority was delivered through the year.

The analysis summarized in Tables 7 through 10 uses an irrigation season from May 1 through September 25. The September 25 end date is representative of the normal irrigation shut off date in WD37.

Priority Date Cut in 2020	Date First Cut in 2020	Priority Cut in 1939?	Number of Days Off in 1939	Number of Days Off in 2020	Difference in No. Days Off (2020 - 1939)	Priority Right Cummulative Diversion Rate (cfs)	Net Cut Total 24 hr-cfs	Net Cut Volume (Acre Ft.)
Cut 5/10-12, 5/17-								
4/1/1885	7/13/2020	24, 8/20-9/5	25	66	41	10.1	413.3	819.7
7/17/1884	7/22/2020	Cut 5/10 -5/12	2	66	64	1.4	89.6	177.7
7/8/1884	7/22/2020	Cut 5/10 -5/12	2	66	64	2.4	153.6	304.7
6/3/1884	7/22/2020	Cut 5/10 -5/12	2	66	64	4.0	256.0	507.8
5/15/1884	7/22/2020	No - on all season	0	66	66	6.5	429.0	850.9
5/5/1884	7/22/2020	No - on all season	0	66	66	6.2	409.2	811.6
5/1/1884	7/22/2020	No - on all season	0	66	66	1.9	125.4	248.7
4/30/1884	9/9/2020	No - on all season	0	16	16	5.0	80.0	158.7
4/15/1884	9/9/2020	No - on all season	0	16	16	1.8	28.8	57.1
4/1/1884	9/9/2020	No - on all season	0	16	16	14.6	233.6	463.3
9/1/1883	9/10/2020	No - on all season	0	15	15	20.0	300.0	595.1
6/14/1883	9/10/2020	No - on all season	0	15	15	6.6	99.0	196.4
4/6/1883	9/17/2020	No - on all season	0	8	8	7.6	60.4	119.8
							2,677.9	5,311.6

Table 7. Water Right Priority Cut Comparison: 2020 vs. 1939

Priority Date Cut in 2004	Date First Cut in 2004	Priority Cut in 1939?	Number of Days Off in 1939	Number of Days Off in 2004	Difference in No. Days Off (2004 - 1939)	Priority Right Cummulative Diversion Rate (cfs)	Net Cut Total 24 hr-cfs	Net Cut Volume (Acre Ft.)
Cut 5/10-12, 5/17-								
4/1/1885	7/19/2004	24, 8/20-9/5	25	69	44	10.1	443.5	879.7
7/17/1884	7/19/2004	Cut 5/10 -5/12	2	69	67	1.4	93.8	186.1
7/8/1884	7/19/2004	Cut 5/10 -5/12	2	69	67	2.4	160.8	318.9
6/3/1884	7/19/2004	Cut 5/10 -5/12	2	69	67	4.0	268.0	531.6
5/15/1884	9/4/2004	No - on all season	0	21	21	6.5	136.5	270.7
5/5/1884	9/4/2004	No - on all season	0	21	21	6.2	130.2	258.3
5/1/1884	9/4/2004	No - on all season	0	21	21	1.9	39.9	79.1
4/30/1884	9/4/2004	No - on all season	0	21	21	5.0	105.0	208.3
4/15/1884	9/4/2004	No - on all season	0	21	21	1.8	37.8	75.0
4/1/1884	9/4/2004	No - on all season	0	21	21	14.6	306.6	608.1
							1,722.1	3,415.8

Table 8. Water Right Priority Cut Comparison: 2004 vs. 1939



Priority Date Cut in 2020	Date First Cut in 2020	Priority Cut in 1937?	Number of Days Off in 1937	Number of Days Off in 2020	Difference in No. Days Off (2020 - 1937)	Priority Right Cumulative Diversion Rate (cfs)	Net Cut Total 24 hr-cfs	Net Cut Volume (Acre Ft.)
		Cut 5/22 - 28; 7/30						
7/17/1884	7/22/2020	- 8/6; 8/23 - 8/30	20	66	46	1.4	64.4	127.7
		Cut 5/22 - 5/28;						
7/8/1884	7/22/2020	7/30 - 8/6;	13	66	53	2.4	127.2	252.3
		Cut 5/22-5/28;						
6/3/1884	7/22/2020	7/30 - 8/6	13	66	53	4.0	212.0	420.5
5/15/1884	7/22/2020	Cut 5/22 - 5/28	6	66	60	6.5	390.0	773.6
5/5/1884	7/22/2020	No - on all season	0	66	66	6.2	409.2	811.6
5/1/1884	7/22/2020	No - on all season	0	66	66	1.9	125.4	248.7
4/30/1884	9/9/2020	No - on all season	0	16	16	5.0	80.0	158.7
4/15/1884	9/9/2020	No - on all season	0	16	16	1.8	28.8	57.1
4/1/1884	9/9/2020	No - on all season	0	16	16	14.6	233.6	463.3
9/1/1883	9/10/2020	No - on all season	0	15	15	20.0	300.0	595.1
6/14/1883	9/10/2020	No - on all season	0	15	15	6.6	99.0	196.4
4/6/1883	9/17/2020	No - on all season	0	8	8	7.6	60.4	119.8
							2,130.0	4,224.9

Table 9. Water Right Priority Cut Comparison: 2020 vs. 1937

Priority Date Cut in 2004	Date First Cut in 2004	Priority Cut in 1937?	Number of Days Off in 1937	Number of Days Off in 2004	Difference in No. Days Off (2004 - 1937)	Priority Right Cumulative Diversion Rate (cfs)	Net Cut Total 24 hr-cfs	Net Cut Volume (Acre Ft.)
		Cut 5/22 - 28; 7/30						
7/17/1884	7/19/2004	- 8/6; 8/23 - 8/30	20	69	49	1.4	68.6	136.1
		Cut 5/22 - 5/28;						
7/8/1884	7/19/2004	7/30 - 8/6;	13	69	56	2.4	134.4	266.6
		Cut 5/22-5/28;						
6/3/1884	7/19/2004	7/30 - 8/6	13	69	56	4.0	224.0	444.3
5/15/1884	9/4/2004	Cut 5/22 - 5/28	6	21	15	6.5	97.5	193.4
5/5/1884	9/4/2004	No - on all season	0	21	21	6.2	130.2	258.3
5/1/1884	9/4/2004	No - on all season	0	21	21	1.9	39.9	79.1
4/30/1884	9/4/2004	No - on all season	0	21	21	5.0	105.0	208.3
4/15/1884	9/4/2004	No - on all season	0	21	21	1.8	37.8	75.0
4/1/1884	9/4/2004	No - on all season	0	21	21	14.6	306.6	608.1
							1,144.0	2,269.1

Table 10. Water Right Priority Cut Comparison: 2004 vs. 1937

Table 11. WD 37 Water Right Priority Cut Tables for Little Wood River and Silver Creek, 2020, 2004, 1939 and 1937

Year: 2020

## SILVER CREEK &amp; LITTLE WOOD RIVER

Date Priority Cut Made	Date of Priority Cut to and including:	Remarks
April 26, 2020	May 27, 1899	Cottonwood Decree
May 13, 2020	May 27, 1899	Reinstate - Dam washed out
June 3, 2020	April 1, 1905	
June 11, 2020	All Decrees	All rights reinstated
June 16, 2020	May 27, 1899	Cottonwood Decree
June 22, 2020	June 1, 1887	
July 13, 2020	May 31, 1885	
July 22, 2020	May 1, 1884	
September 9, 2020	April 1, 1884	
September 10, 2020	June 14, 1883	
September 17, 2020	April 6, 1883	
September 24, 2020	April 1, 1883	
October 6, 2020	April 6, 1883	33% reinstate

Year: 2004

SILVER CREEK & LITTLE WOOD RIVER  
WATER DISTRICT 37M

Date of Priority	Date Priority Cut Made	Remarks
Cottonwood Rights	May 24, 2004	
October 25, 1892	June 18, 2004	
June 1, 1889	July 6, 2004	
April 1, 1886	July 12, 2004	
June 3, 1884	July 19, 2004	
April 1, 1884	September 4, 2004	



Year: 1939

Water District 11-AB			
Priority	When Expired	Again Supplied	Remarks
April 1, 1886	May 4th		
April 15, 1885	May 7th		
June 3, 1884	May 10th		
April 1, 1885		May 12th	50% Good
April 1, 1885		May 14th	100% Good
April 1, 1885	May 17th		
April 1, 1885		May 24th	
May 31, 1885		June 8th	
June 1, 1886		June 20th	
Nov. 1, 1889		July 10th	
April 1, 1888	July 12th		
June 1, 1887	July 14th		
June 1, 1886	July 16th		
Nov. 1, 1885	July 18th		
May 31, 1885	July 24th		
May 15, 1885	Aug. 5th		
Apr. 15, 1885	Aug. 7th		
April 1, 1885	Aug. 20th	Sept. 5th	

Year: 1937

Water District No. 11-AB			
Priority	When Expired	Again Supplied	Remarks
June 1, 1885	May 14th		
April 1, 1885	May 15th		
May 15, 1884	May 22nd	May 28th	
July 8, 1884		May 28th	
April 1, 1885		June 11th	
April 1, 1885	June 15th	June 19th	
April 15, 1885		June 19th	
April 1, 1885	June 25th		
April 1, 1885		June 29th	50% good
May 31, 1885		July 1st	
June 15th, 1885		July 9th	
April 1, 1885	July 20th		50% good
April 1, 1885	July 23rd		
June 3, 1884	July 30th		
July 17, 1884		August 5th	
July 17, 1884	August 23rd		
July 17, 1884		August 30th	
April 15, 1885		September 12th	
May 15, 1885		September 16th	
June 15, 1885		September 26th	

## **ATTACHMENT A**

### **List of Water Rights with Places of Use for ET Model Analysis**



Owner	Source	WaterRight	SplitSuffix	PriorityDate	DecreedDate	OverallMax	Uses
SCHOEN, LAWRENCE	GROUND WATER	37-352B	B	6/15/1887	9/24/2010	0	IRRIGATION
SCHOEN, LAWRENCE	GROUND WATER	37-351B	B	6/1/1886	9/24/2010	0	IRRIGATION
ALTON & PAULA HUYSER TRUST	LITTLE WOOD RIVER	37-10561A	A	18840505	9/21/2006	4	IRRIGATION
ALTON & PAULA HUYSER TRUST	LITTLE WOOD RIVER	37-10561B	B	18840505	9/21/2006	2.2	IRRIGATION
MATHENEY, JOE; MATHENEY, MELISSA	LITTLE WOOD RIVER	37-1125		5/20/1908	9/29/2006	3.2	IRRIGATION
LEGG, CARL; LEGG, SUSAN DIANE	LITTLE WOOD RIVER	37-1126		4/8/1908	12/11/2007	0.8	IRRIGATION
UNITED STATES OF AMERICA ACTING THROUGH	LITTLE WOOD RIVER	37-14264		4/6/1906	9/21/2006	5.5	IRRIGATION
LARSON, JOHN A; LARSON, SHELLY	LITTLE WOOD RIVER	37-177D	D	18830401	9/29/2006	0.2	IRRIGATION, STOCKWATER
BENCK JR, GERHARDT J; BURGESS-BENCK, LA VON M	LITTLE WOOD RIVER	37-177H	H	18830401	9/29/2006	0.04	IRRIGATION
UHRIG, JOHN T; UHRIG, LENNIE L	LITTLE WOOD RIVER	37-177J	J	18830401	9/29/2006	0.3	IRRIGATION
HALLER, ALEXIA; HALLER, ROD	LITTLE WOOD RIVER	37-177K	K	18830401	9/29/2006	0.16	IRRIGATION
ACHTENBERG, FERN V	LITTLE WOOD RIVER	37-177L	L	18830401	9/29/2006	0.04	IRRIGATION
MAGIC VALLEY GROWERS LTD	LITTLE WOOD RIVER	37-2043A	A	5/10/1906	9/29/2006	1.25	IRRIGATION
NEWELL, CHARLES E	LITTLE WOOD RIVER	37-21135		4/15/1985	3/12/2007	0.78	IRRIGATION
LRM LLC	LITTLE WOOD RIVER	37-21164		18840415	9/21/2006	1.58	IRRIGATION
ONEIDA, MICHAEL PETE	LITTLE WOOD RIVER	37-21165		18840415	9/21/2006	0.22	IRRIGATION
LRM LLC	LITTLE WOOD RIVER	37-21166		18840501	9/21/2006	1.67	IRRIGATION
ONEIDA, MICHAEL PETE	LITTLE WOOD RIVER	37-21167		18840501	9/21/2006	0.23	IRRIGATION
LRM LLC	LITTLE WOOD RIVER	37-21168		18830401	9/21/2006	0.49	IRRIGATION
ONEIDA, MICHAEL PETE	LITTLE WOOD RIVER	37-21169		18830401	9/21/2006	0.07	IRRIGATION
LRM LLC	LITTLE WOOD RIVER	37-21170		18850401	9/21/2006	0.144	IRRIGATION
ONEIDA, MICHAEL PETE	LITTLE WOOD RIVER	37-21171		18850401	9/21/2006	0.02	IRRIGATION
LUTHER, MARGARET A; LUTHER, MARTIN H	LITTLE WOOD RIVER	37-21656		3/4/1907	9/28/2006	0.2	IRRIGATION
LUTHER, CHARLES M	LITTLE WOOD RIVER	37-21660		3/4/1907	9/28/2006	0.92	IRRIGATION
LUTHER, CARTER V	LITTLE WOOD RIVER	37-21661		3/4/1907	9/28/2006	0.12	IRRIGATION
TS RANCH LLC	LITTLE WOOD RIVER	37-21838		18880615	4/30/2007	1.56	IRRIGATION, STOCKWATER
UNITED STATES OF AMERICA ACTING THROUGH	LITTLE WOOD RIVER	37-21839		18880615	4/30/2007	0.44	IRRIGATION, STOCKWATER
LARSON, JOHN A; LARSON, SHELLY	LITTLE WOOD RIVER	37-2242		7/15/1912	9/29/2006	0.47	IRRIGATION
NAYLOR, JAMIE; NAYLOR, WILLIAM	LITTLE WOOD RIVER	37-2634A	A	5/6/1960	9/29/2006	0.38	IRRIGATION
7 MILE RANCH LLC	LITTLE WOOD RIVER	37-321		18840430	12/11/2007	3	IRRIGATION
BARBARA FARMS LLC	LITTLE WOOD RIVER	37-344A	A	18830406	4/30/2007	4	IRRIGATION
NEWELL, CHARLES E	LITTLE WOOD RIVER	37-432		18850415	3/12/2007	2.6	IRRIGATION
MATHENEY, JOE; MATHENEY, MELISSA	LITTLE WOOD RIVER	37-471		18840430	9/29/2006	2	IRRIGATION
HUBSMITH, KAYSI SHARON; HUBSMITH, RODNEY FRED	LITTLE WOOD RIVER	37-472		18840401	9/29/2006	1.2	IRRIGATION
KOOSH INC	LITTLE WOOD RIVER	37-485		18830401	9/29/2006	1.1	IRRIGATION
ITTER, JAMES B; RITTER, LINDA	LITTLE WOOD RIVER	37-49		18830401	9/29/2006	4.2	IRRIGATION
CITY OF SHOSHONE	LITTLE WOOD RIVER	37-560A	A	18821128	9/29/2006	0.4	IRRIGATION
CITY OF SHOSHONE	LITTLE WOOD RIVER	37-560B	B	18821128	9/29/2006	0.14	IRRIGATION
CITY OF SHOSHONE	LITTLE WOOD RIVER	37-606C	C	18821128	9/29/2006	1	IRRIGATION
REGALADO, ANA L; REGALADO, HUGO	LITTLE WOOD RIVER	37-606D	D	18821128	4/30/2007	0.04	IRRIGATION
LINCOLN COUNTY CEMETERY MAINT DISTRICT	LITTLE WOOD RIVER	37-606E	E	18821128	9/29/2006	0.16	IRRIGATION
ROSE, KENNETH O; ROSE, MARY D	LITTLE WOOD RIVER	37-691B	B	18850401	9/29/2006	0.24	IRRIGATION
HAYS II, EDGAR W	LITTLE WOOD RIVER	37-691E	E	18850401	9/29/2006	0.04	IRRIGATION
CITY OF SHOSHONE	LITTLE WOOD RIVER	37-691G	G	18850401	9/29/2006	1.136	IRRIGATION
BARBARA FARMS LLC	LITTLE WOOD RIVER	37-973		18840401	4/30/2007	2	IRRIGATION
BUICH 1995 FAMILY TRUST	SILVER CREEK	37-1223		18770329	8/30/2011	1.6	IRRIGATION, STOCKWATER
HOFSTETTER RANCH LLC	SILVER CREEK	37-1224A	A	18770329	12/5/2011	0.651	IRRIGATION, STOCKWATER
THE FOSTER FAMILY TRUST	SILVER CREEK	37-1224C	C	12/28/1932	8/5/2010	0.2	IRRIGATION
J R SIMPLOT CO	SILVER CREEK	37-141		18851101	12/1/2010	0.2	IRRIGATION
J R SIMPLOT CO	SILVER CREEK	37-142		18870901	12/1/2010	0.4	IRRIGATION
J R SIMPLOT CO	SILVER CREEK	37-143		18880401	12/1/2010	0.4	IRRIGATION
BLACKBURN FAMILY IRREVOCABLE TRUST A	SILVER CREEK	37-20835		18830614	9/21/2006	3.3	IRRIGATION
WILLIAMS MARKELL PROPERTIES LLLP	SILVER CREEK	37-21180		18770329	5/3/2011	0.173	IRRIGATION
WILLIAMS MARKELL PROPERTIES LLLP	SILVER CREEK	37-21182		18851101	9/24/2010	0.049	IRRIGATION
WILLIAMS MARKELL PROPERTIES LLLP	SILVER CREEK	37-21184		18880401	9/24/2010	0.098	IRRIGATION
WILLIAMS MARKELL PROPERTIES LLLP	SILVER CREEK	37-21186		18950630	9/24/2010	0.17	IRRIGATION
RINKER, RODRICK H	SILVER CREEK	37-22503		18770329	8/30/2011	0.16	IRRIGATION
RINKER, RODRICK H	SILVER CREEK	37-22504		18770329	8/30/2011	0.39	IRRIGATION
RINKER, RODRICK H	SILVER CREEK	37-22505		18851101	6/15/2010	0.047	IRRIGATION
RINKER, RODRICK H	SILVER CREEK	37-22506		18851101	6/15/2010	0.112	IRRIGATION
RINKER, RODRICK H	SILVER CREEK	37-22507		18880401	6/15/2010	0.095	IRRIGATION
RINKER, RODRICK H	SILVER CREEK	37-22508		18880401	6/15/2010	0.223	IRRIGATION
RINKER, RODRICK H	SILVER CREEK	37-22509		18950630	6/15/2010	0.164	IRRIGATION
RINKER, RODRICK H	SILVER CREEK	37-22510		18950630	6/15/2010	0.386	IRRIGATION
THE MC GRATH 1998 TRUST	SILVER CREEK	37-22988		18870901	9/29/2006	0.2	IRRIGATION
THE MC GRATH 1998 TRUST	SILVER CREEK	37-22989		18880401	9/29/2006	0.2	IRRIGATION
THE MC GRATH 1998 TRUST	SILVER CREEK	37-22990		18900401	9/29/2006	0.4	IRRIGATION
THE MC GRATH 1998 TRUST	SILVER CREEK	37-22991		8/4/1936	12/11/2009	0.5	IRRIGATION
THE MC GRATH 1998 TRUST	SILVER CREEK	37-22992		11/7/1918	9/29/2006	0.5	IRRIGATION
THE MC GRATH 1998 TRUST	SILVER CREEK	37-22993		18851101	9/29/2006	0.1	IRRIGATION
BLACKBURN FAMILY IRREVOCABLE TRUST A	SILVER CREEK	37-267A	A	18840515	12/1/2006	2	IRRIGATION
BLACKBURN FAMILY IRREVOCABLE TRUST A	SILVER CREEK	37-267B	B	18840515	9/29/2006	1.5	IRRIGATION
BLACKBURN FAMILY IRREVOCABLE TRUST A	SILVER CREEK	37-317B	B	18830614	9/29/2006	1.5	IRRIGATION



BLACKBURN FAMILY IRREVOCABLE TRUST A	SILVER CREEK	37-318A	A	18830614	9/29/2006	1.8 IRRIGATION
BLACKBURN FAMILY IRREVOCABLE TRUST A	SILVER CREEK	37-319		18850515	9/29/2006	1 IRRIGATION
THE WILLOWS AT SILVER CREEK LLC	SILVER CREEK	37-426B	B	18870401	9/24/2010	1.05 IRRIGATION
J R SIMPLOT CO	SILVER CREEK	37-465		18880401	9/29/2006	2.5 IRRIGATION
PAYNE, RICHARD D	SILVER CREEK	37-526A	A	18810601	9/29/2006	2.78 IRRIGATION
MOLYNEUX, WILLIAM L	SILVER CREEK	37-6		18810501	9/29/2006	3 IRRIGATION
J R SIMPLOT CO	SILVER CREEK	37-692A	A	18890501	12/1/2010	0.88 IRRIGATION
J R SIMPLOT CO	SILVER CREEK	37-692B	B	18890501	9/29/2006	1.52 IRRIGATION
MOLYNEUX, WILLIAM L	SILVER CREEK	37-7		18850401	9/29/2006	2.5 IRRIGATION
OHRSTROM, RICARD RIGGS	SILVER CREEK	37-7790		7/10/1979	9/24/2010	0.04 IRRIGATION
MOLYNEUX, WILLIAM L	SILVER CREEK	37-8		18870401	9/29/2006	0.6 IRRIGATION
HOFSTETTER RANCH LLC	SILVER CREEK	37-88A	A	18851101	9/24/2010	0.192 IRRIGATION
HOFSTETTER RANCH LLC	SILVER CREEK	37-89A	A	18880401	9/24/2010	0.384 IRRIGATION
BUICH 1995 FAMILY TRUST	SILVER CREEK	37-90C	C	18950630	8/30/2011	0.4 IRRIGATION, STOCKWATER
HOFSTETTER RANCH LLC	SILVER CREEK	37-90D	D	18950630	9/24/2010	0.48 IRRIGATION
J R SIMPLOT CO	SILVER CREEK	37-939		8/1/1920	12/1/2010	1 IRRIGATION
ORVIK, NINA MOLYNEUX; ORVIK, WAYNE D	LOVING CREEK	37-21997		18930529	9/24/2010	0.013 IRRIGATION
ORVIK, NINA MOLYNEUX; ORVIK, WAYNE D	LOVING CREEK	37-21999		18870615	9/24/2010	0.012 IRRIGATION
ORVIK, NINA MOLYNEUX; ORVIK, WAYNE D	LOVING CREEK	37-22001		18870401	9/24/2010	0.013 IRRIGATION
ORVIK, NINA MOLYNEUX; ORVIK, WAYNE D	LOVING CREEK	37-22003		18970603	9/24/2010	0.013 IRRIGATION



## **ATTACHMENT B**

### **IDWR Memo to WD37 Regarding Delivery of Exchange Condition Rights**

# MEMO

## State of Idaho

### Department of Water Resources

322 E Front Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700

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**Date:** April 27, 2021

**To:** Kevin Lakey, Water District 37 Watermaster

**From:** Tim Luke, Water Compliance Bureau Chief *TLL*

**Subject:** Delivery of Water Rights in Water District 37 from the Big Wood and Little Wood Rivers having the BOR-AFRD2-BWCC Exchange Condition

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### Purpose of Memo

This memo instructs you regarding the administration of water rights from the Big Wood and Little Wood Rivers that have the following condition, referred herein as the "Exchange Condition" or "Condition No. 161":

Delivery of this right is subject to the water exchange provisions contained in Bureau of Reclamation contract no. 14-06-W-73, executed October 14, 1954, between the United States of America and American Falls Reservoir District No. 2, as supplemented by Bureau of Reclamation contract no. 14-06-100-6031, executed June 1, 1962, between and among the United States of America, American Falls Reservoir District No. 2, and the Big Wood Canal Company.

For purposes of this memo, Bureau of Reclamation contract no. 14-06-W-73 is referred to as the "BOR 1954 Contract", and Bureau of Reclamation contract no. 14-06-100-6031 is referred to as the "BOR 1962 Contract".

### Background

During recent Big Wood River Groundwater Management Area ("BWRGWMA") Advisory Committee meetings, participants questioned you about your delivery of water rights from the Big Wood and Little Wood Rivers that have the above referenced Exchange Condition. In correspondence from you to the Idaho Department of Water Resources ("Department") dated June 16, 2015, you explained you had only recently become aware of Condition No. 161 and that you "have never delivered water from either the Big Wood or Little Wood Rivers in relation to this condition." Based on discussions in which you participated during recent BWRGWMA committee meetings, the Department understands you continue to deliver water and make priority cut determinations from the Big Wood



River below Magic Reservoir, and from the Little Wood River and Silver Creek, without consideration of the Exchange Condition.

The Exchange Condition is included on 72 water rights from the Big Wood River and 38 water rights from the Little Wood River shown in separate tables in Attachment 1 of this memo. The Exchange Condition is included in Snake River Basin Adjudication ("SRBA") partial decrees for all 110 water rights identified in Attachment 1. During the SRBA, the Department assigned a number, 161, to the Exchange Condition. All water rights with the Exchange Condition have a place of use located below the Milner-Gooding Canal and within the service areas of American Falls Reservoir District No. 2 ("AFRD2") and the Big Wood Canal Company ("BWCC").

Article 28 of the BOR 1954 Contract<sup>1</sup> states in pertinent part:

- a. It is one of the objects of this contract to provide each irrigable acre of the old lands within the [American Falls Reservoir] District, whether located above or below the main canal, with substantially the same benefits from American Falls storage and other sources available to the District, either directly or indirectly.
- b. To carry out this object, it is agreed that:
  1. The owners of old lands below the main canal who are entitled to water from the Big Wood or the Little Wood River or Magic Reservoir are deemed to agree that the water from those sources may be used on old lands above the main canal, and to accept in lieu of water from those sources, an equal amount of water from American Falls storage and other sources available to the District, all to the extent necessary to permit the old lands above the main canal to benefit equally, as far as possible, with the old lands below the canal in the water supply made available under this contract.

The BOR 1954 Contract describes the "main canal" as the Milner-Gooding Canal.<sup>2</sup> Both the BOR 1954 Contract and the BOR 1962 Contract define "old lands" as "78,167.1 acres of irrigable lands within the [American Falls Reservoir] District ... including those 4,263 acres of land designated as "river-right lands."<sup>3</sup>

Both the BOR 1954 Contract and the BOR 1962 Contract state that the [American Falls Reservoir] District "will deliver water made available under the United States-District amendatory contract ... into the Big Wood and Little Wood rivers for diversion by river-right lands."<sup>4</sup>

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<sup>1</sup> *Amendatory Contract Between the United States of America and American Falls Reservoir District No. 2*, October 14, 1954, at 35; and *Company-District Contract Among the United States of America, American Falls Reservoir District No.2 and Big Wood Canal Company*, June 1, 1962 at 35.

<sup>2</sup> *Ibid.* at 5.

<sup>3</sup> *Ibid.* at 3, and *Company-District Contract Among the United States of America, American Falls Reservoir District No.2 and Big Wood Canal Company*, June 1, 1962, at 3.

<sup>4</sup> BOR 1954 Contract at 31 and BOR 1962 Contract at 5.

Due to repeated questions from some BWRGWMA Advisory Committee members, the BWCC arranged a separate meeting between you, advisory committee members, representatives from both AFRD2 and BWCC, and Department staff on March 31, 2021. In that meeting, Mr. Craig Hobdey, former and recently retired attorney for BWCC, stated that he was familiar with the Exchange Condition assigned to SRBA partial decrees for water rights from the Big Wood and Little Wood Rivers. Mr. Hobdey reported that AFRD2 delivers water from the Snake River conveyed via the Milner-Gooding Canal to lands within AFRD2 and BWCC service areas having water rights from the Big Wood and Little Wood Rivers with the Exchange Condition. Mr. Hobdey explained that, in accordance with the BOR contracts, Snake River water from the Milner-Gooding Canal is delivered to the Exchange Condition river rights, and water from the Big and Little Wood Rivers that would be delivered to the Exchange Condition river rights but for the delivery of Snake River water is instead delivered to water rights and lands located above the Milner-Gooding Canal.

During the March 31, 2021 meeting, you advised meeting participants that you have never delivered water from the Big Wood and Little Wood Rivers in the manner described by Mr. Hobdey. You reported that you make no distinction between river rights with or without the Exchange Condition when delivering water or making priority cut determinations. Department staff participating in the meeting advised that the Department would issue guidance to you regarding the delivery of water to Exchange Condition water rights given the different explanations and the Department's current understanding that the rights are not administered consistently with the condition.

### **Watermaster Guidance Regarding Delivery of Exchange Condition Water Rights**

Upon review of the Exchange Condition, the BOR contracts, and information obtained from you and representatives of AFRD2 and BWCC, the Department directs you to administer the water rights in accordance with the exchange provisions of the contracts referenced in the Exchange Condition. In doing so, it is understood that the Exchange Condition water rights, to the extent they are in priority, shall receive Snake River water conveyed by the Milner-Gooding Canal in coordination with AFRD2. As a result, you shall not physically deliver or convey natural flow from the Little Wood or Big Wood Rivers below the Milner-Gooding Canal to benefit the Exchange Condition water rights. Pursuant to the Exchange Condition and provisions of the BOR exchange contracts, any natural flow from the Big Wood and Little Wood Rivers that is available to fill the Exchange Condition water rights below Milner-Gooding Canal, shall be delivered to BWCC's diversions located above the Milner-Gooding Canal for the benefit of "old lands" above the canal.

Starting immediately, and until given further notice, you shall implement the following procedures regarding the delivery of water to the Exchange Condition water rights from the Big Wood and Little Wood Rivers referenced in Attachment 1 of this memo:



1. Determine the available natural flow and river right priority cuts for the Big Wood River below Magic Reservoir, and for Silver Creek-Little Wood River using the same methods for those river reaches you have employed in the past;
2. Based on your priority cut determination in Step 1, identify the Exchange Condition water rights from each source that are in priority and sum the diversion rates for those deliverable rights by source (Little Wood River or Big Wood River). The sum of the deliverable Exchange Condition water rights by source shall be distributed respectively to BWCC's diversions from the Big Wood and Little Wood Rivers above the Milner-Gooding Canal (the Lincoln Bypass/North Shoshone Canals on the Big Wood River, and the Main Dietrich Canal on the Little Wood River).
  - a. If the BWCC has no demand or need for water above the Milner-Gooding Canal that is deliverable by priority to the Exchange Condition water rights, then the water shall be distributed to the next available rights in priority (rights that do not have the Exchange Condition) either above or below the Milner Gooding Canal on the Big Wood River, and the Little Wood River and Silver Creek.
3. In making your priority cut determination on all surface water sources in Water District 37, you should require the holders of all rights to call for initial delivery of water at or near the start of the irrigation season and then make subsequent calls or requests during the season for any change in delivery (example: increase or decrease delivery, turn off or turn on). Delivery based on user demand may allow delivery of additional priority rights when demand decreases. Similarly, you should account for rights that are not used for any reason, such as enrollment in crop set-aside programs or lease to water supply bank, and adjust priority cut determinations accordingly.

ATTACHMENT 1  
Big Wood River Water Rights with Exchange Condition

Owner	Water Right	Priority Date	Div Rate (cfs)	Uses	Source	RiverReach
OPPIO LAND & LIVESTOCK LLC	37-238A	18830415	2	IRRIGATION	MALAD RIVER	Sta 9 to Sta 21
SHERI PATTERSON INC	37-20385	18830415	0.04	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
SLIMAN LAND & LIVESTOCK	37-21163	18830415	0.76	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
SABALA FARMS INC	37-619A	18840501	2.4	IRRIGATION	BIG WOOD RIVER	Magic Res to MGC
WESTENDORF, JENNIFER L; WESTENDORF, NICHOLAS K	37-619B	18840501	0.8	IRRIGATION	BIG WOOD RIVER	Magic Res to MGC
BLISS POINT CATTLE INC	37-22658	18840601	0.77	IRRIGATION	BIG WOOD RIVER	Sta 9 to Sta 21
CRUZ, ALFREDO; LAGUNAS, JUANA	37-21749	18840601	0.05	IRRIGATION	BIG WOOD RIVER	Magic Res to MGC
DESERT ROSE RANCH INC	37-287A	18840601	0.33	IRRIGATION	BIG WOOD RIVER	Sta 9 to Sta 21
FAULKNER, KIM; FAULKNER, TOM	37-22534	18840601	1.41	IRRIGATION	BIG WOOD RIVER	Sta 9 to Sta 21
GARY L & LUCY C OSBORNE FAMILY LTD PARTNERSHIP	37-359B	18840601	1.121	IRRIGATION	BIG WOOD RIVER	Sta 9 to Sta 21
HARRIS, ALTA K; HARRIS, DALE E	37-21747	18840601	0.36	IRRIGATION	BIG WOOD RIVER	Magic Res to MGC
KOCHERT, MICHAEL M; KOCHERT, PHYLLIS K	37-359D	18840601	0.34	IRRIGATION	BIG WOOD RIVER	Magic Res to MGC
LAGUNAS, AMALIA; LAGUNAS, FRANCISCO	37-21748	18840601	0.05	IRRIGATION	BIG WOOD RIVER	Magic Res to MGC
OSBORNE, GARY L; OSBORNE, LUCY C	37-359E	18840601	1.08	IRRIGATION	BIG WOOD RIVER	Sta 9 to Sta 21
COLEMAN, CAROLYN F; COLEMAN, GARY R	37-239D	18840829	0.68	IRRIGATION	MALAD RIVER	Sta 9 to Sta 21
OPPIO LAND & LIVESTOCK LLC	37-239A	18840829	1.72	IRRIGATION	MALAD RIVER	Sta 9 to Sta 21
M & M FARMS	37-72B	18850401	2.2	IRRIGATION, STOCKWATER	BIG WOOD RIVER	MGC to Sta 9
M & M FARMS	37-72B	18850401		IRRIGATION, STOCKWATER	BIG WOOD RIVER	Sta 9 to Sta 21
RIXON, CARL H; RIXON, KARIN	37-72A	18850402	0.44	IRRIGATION	BIG WOOD RIVER	Sta 9 to Sta 21
COLEMAN, CAROLYN F; COLEMAN, GARY R	37-607D	18860815	1.29	IRRIGATION	MALAD RIVER	Sta 9 to Sta 21
KOYLE, BONNIE M; KOYLE, RANLEY A	37-607B	18860815	0.14	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
PIERSON, MARGARET A; PIERSON, MARVIN E	37-10642	18860815	0.49	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
SLIMAN, DAVID; SLIMAN, LESTER	37-607F	18860815	0.48	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9



ATTACHMENT 1  
Big Wood River Water Rights with Exchange Condition

Owner	Water Right	Priority Date	Div Rate (cfs)	Uses	Source	RiverReach
COLEMAN, CAROLYN F; COLEMAN, GARY R	37-608D	18870415	0.422	IRRIGATION	MALAD RIVER	Sta 9 to Sta 21
KOYLE, BONNIE M; KOYLE, RANLEY A	37-608B	18870415	0.098	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
PIERSON, MARGARET A; PIERSON, MARVIN E	37-10643	18870415	0.16	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
SLIMAN, DAVID; SLIMAN, LESTER	37-608C	18870415	0.12	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
EDEN, GARY; EDEN, GLENNA R	37-365	18880601	3	IRRIGATION, STOCKWATER	BIG WOOD RIVER	Magic Res to MGC
MORRIS, AUDREY; MORRIS, HOWARD L; MORRIS, JEREMY; MORRIS, RHONDA K	37-11131	18890701	5.6	IRRIGATION, STOCKWATER	MALAD RIVER	Blw Sta 21
MORRIS, HOWARD L; MORRIS, JEREMY; MORRIS, MEKENZIE; MORRIS, RHONDA K	37-447D	18890701	0.8	IRRIGATION	MALAD RIVER	Blw Sta 21
MORRIS, HOWARD L; MORRIS, RHONDA K	37-447C	18890701	4	IRRIGATION, STOCKWATER	MALAD RIVER	Blw Sta 21
NORTH SIDE CANAL CO LTD	37-507	18900615	15	IRRIGATION	BIG WOOD RIVER	Sta 9 to Sta 21
NORTH SIDE CANAL CO LTD	37-507	18900615		IRRIGATION	MALAD RIVER	Sta 9 to Sta 21
SABALA FARMS INC	37-620	18910501	1.3	IRRIGATION	BIG WOOD RIVER	Magic Res to MGC
OPPIO LAND & LIVESTOCK LLC	37-240A	18950601	2.28	IRRIGATION	MALAD RIVER	Sta 9 to Sta 21
COLEMAN, CAROLYN F; COLEMAN, GARY R	37-240D	18950829	0.92	IRRIGATION	MALAD RIVER	Sta 9 to Sta 21
EDEN, GARY; EDEN, GLENNA R	37-366	18960415	1.4	IRRIGATION	BIG WOOD RIVER	Magic Res to MGC
4 BROS DAIRY INC	37-11114B	18960427	5.3	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
BROWN, ANN A; BROWN, PHILIP A	37-600B	18960427	0.5	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
SABALA, SUSAN M	37-669A	18960430	1.6	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
LEGUINECHE, JOE; LEGUINECHE, LINDA	37-178	18960501	2.5	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
PIERSON, MARGARET A	37-175A	18970501	0.8	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
PIERSON, MARGARET A; PIERSON, MARVIN E	37-10644	18970501	0.6	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
NORTHVIEW FARMS LP	37-616	18970510	2.7	IRRIGATION	BIG WOOD RIVER	Magic Res to MGC
ADAMS, RUTH M	37-84A	18970515	0.087	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9

ATTACHMENT 1  
Big Wood River Water Rights with Exchange Condition

Owner	Water Right	Priority Date	Div Rate (cfs)	Uses	Source	RiverReach
BIG SKY DAIRY	37-84B	18970515	0.74	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
BIG SKY DAIRY	37-675A	18970520	0.8	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
PIERSON, MARGARET A; PIERSON, MARVIN E	37-10641	18970520	1.48	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
DRY CREEK PARTNERS	37-865A	4/1/1905	1.03	IRRIGATION, WILDLIFE STORAGE, AESTHETIC STORAGE, DIVERSION TO STORAGE	BIG WOOD RIVER	MGC to Sta 9
DRY CREEK PARTNERS	37-865B	4/1/1905	4.57	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
JUSTICE DITCH CO	37-1175	4/1/1906	3.34	IRRIGATION, STOCKWATER	MALAD RIVER	Blw Sta 21
JUSTICE DITCH CO	37-4091	4/1/1934	9.1	IRRIGATION, STOCKWATER	MALAD RIVER	Blw Sta 21
BILBAO, EDWARD; BILBAO, ROSEMARIE; BILBAO, STACIE A; BILBAO, STEVEN; HANEY, CARL A	37-367A	4/15/1902	1.6	IRRIGATION	BIG WOOD RIVER	Magic Res to MGC
DRY CREEK PARTNERS	37-580	4/2/1906	3.2	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
SABALA FARMS INC	37-581	4/2/1906	3.2	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
TURNER, CODY R; TURNER, TORI J	37-583	4/2/1906	3.2	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
TURNER, CODY R; TURNER, TORI J	37-584	4/2/1906	3.2	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
CRUZ, ALFREDO; LAGUNAS, JUANA	37-21752	4/20/1907	0.025	IRRIGATION	BIG WOOD RIVER	Magic Res to MGC
GARY L & LUCY C OSBORNE FAMILY LTD PARTNERSHIP	37-1164G	4/20/1907	0.89	IRRIGATION	BIG WOOD RIVER	Sta 9 to Sta 21
HARRIS, ALTA K; HARRIS, DALE E	37-21750	4/20/1907	0.17	IRRIGATION	BIG WOOD RIVER	Magic Res to MGC
KOCHERT, MICHAEL M; KOCHERT, PHYLLIS K	37-1164H	4/20/1907	0.22	IRRIGATION	BIG WOOD RIVER	Magic Res to MGC
LAGUNAS, AMALIA; LAGUNAS, FRANCISCO	37-21751	4/20/1907	0.025	IRRIGATION	BIG WOOD RIVER	Magic Res to MGC
OSBORNE, GARY L; OSBORNE, LUCY C	37-1164D	4/20/1907	0.06	IRRIGATION	BIG WOOD RIVER	Sta 9 to Sta 21
OSBORNE, GARY L; OSBORNE, LUCY C	37-1164L	4/20/1907	1.01	IRRIGATION	BIG WOOD RIVER	Sta 9 to Sta 21
HULTS, DAVID; HULTS, NICOLE	37-22795	5/1/1905	1.2	IRRIGATION	BIG WOOD RIVER	Sta 9 to Sta 21
PALACIO, WILLIAM M	37-174D	5/1/1905	0.4	IRRIGATION, STOCKWATER	BIG WOOD RIVER	MGC to Sta 9

ATTACHMENT 1  
Big Wood River Water Rights with Exchange Condition

Owner	Water Right	Priority Date	Div Rate (cfs)	Uses	Source	RiverReach
PIERSON, MARGARET A; PIERSON, MARVIN E	37-174C	5/1/1905	0.12	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
PIERSON, MARGARET A; PIERSON, MARVIN E	37-10645	5/1/1905	0.18	IRRIGATION	BIG WOOD RIVER	MGC to Sta 9
RIVER VIEW FARMS	37-499B	5/1/1905	0.3	IRRIGATION	BIG WOOD RIVER	Sta 9 to Sta 21
JUSTICE DITCH CO	37-1160	5/31/1900	4	IRRIGATION, STOCKWATER	MALAD RIVER	Blw Sta 21
BRAUN, ENNICE; BRAUN, RONALD	37-21658	8/6/1902	0.07	IRRIGATION	BIG WOOD RIVER	Magic Res to MGC
BRAUN, ENNICE; BRAUN, RONALD	37-21659	8/6/1902	0.53	IRRIGATION	BIG WOOD RIVER	Magic Res to MGC
WESTENDORF, JENNIFER L; WESTENDORF, NICHOLAS K	37-1191	9/2/1902	2.4	IRRIGATION	BIG WOOD RIVER	Magic Res to MGC
M & M FARMS	37-21279	11/1/1913	6.4	IRRIGATION, STOCKWATER	BIG WOOD RIVER	MGC to Sta 9
M & M FARMS	37-21279	11/1/1913		IRRIGATION, STOCKWATER	BIG WOOD RIVER	Sta 9 to Sta 21



ATTACHMENT 1  
Little Wood River Water Rights with Exchange Condition

Owner	Water Right	Priority Date	Div Rate (cfs)	Uses	Source	River Reach
CITY OF GOODING	37-282	18770401	1	GROUND WATER RECHARGE	LITTLE WOOD RIVER	16 to 17
CITY OF GOODING	37-271A	18820630	0.32	GROUND WATER RECHARGE	LITTLE WOOD RIVER	16 to 17
ARKOOSH, CARRIE R; ARKOOSH, JOHN W	37-326	18821101	0.4	IRRIGATION	LITTLE WOOD RIVER	14 to 16
CITY OF GOODING	37-262A	18830222	3.16	GROUND WATER RECHARGE	LITTLE WOOD RIVER	16 to 17
CITY OF GOODING	37-709A	18830222	0.74	GROUND WATER RECHARGE	LITTLE WOOD RIVER	16 to 17
STATE OF IDAHO	37-10839	18830222	0.66	IRRIGATION	LITTLE WOOD RIVER	16 to 17
GLANBIA FOODS INC	37-177M	18830401	0.14	IRRIGATION	LITTLE WOOD RIVER	14 to 16
FLF SAWTOOTH LLC	37-177N	18830401	0.06	IRRIGATION	LITTLE WOOD RIVER	14 to 16
KUNTZ, CALVIN D; KUNTZ, JOYCE DARLENE	37-193A	18830401	1	IRRIGATION	LITTLE WOOD RIVER	17X to Malad
CITY OF GOODING	37-960A	18830401	0.57	GROUND WATER RECHARGE	LITTLE WOOD RIVER	16 to 17
GARZA, MELISSA; GARZA, ROMAN	37-20847	18830401	0.04	IRRIGATION	LITTLE WOOD RIVER	16 to 17
HOSKOVEC, BARBARA; HOSKOVEC, STANLEY E	37-21173	18830401	0.04	IRRIGATION	LITTLE WOOD RIVER	16 to 17
INFANGER, DEBRA A; INFANGER, JOHN N	37-21649	18830401	0.2	IRRIGATION, GROUND WATER RECHARGE	LITTLE WOOD RIVER	17X to Malad
SIMPSON, CARL D	37-21650	18830401	0.04	IRRIGATION	LITTLE WOOD RIVER	16 to 17
BURNETT, CHRISTA L; BURNETT, SCOTT O	37-22832	18830401	0.08	IRRIGATION	LITTLE WOOD RIVER	16 to 17
RIGBY, DEVIN O; RIGBY, KRISTEN; RIGBY, MATHEW ODELL; RIGBY, RAE LYN	37-194A	18840401	0.06	IRRIGATION	LITTLE WOOD RIVER	16 to 17
DAVENPORT, LEWIS M; DAVENPORT, NITA F	37-194B	18840401	0.24	IRRIGATION	LITTLE WOOD RIVER	16 to 17
MC DADE, ERNEST J; MC DADE, JOYCE A	37-609B	18840401	0.17	IRRIGATION	LITTLE WOOD RIVER	16 to 17
SPOONER, KATHRYN R	37-609E	18840401	2.22	IRRIGATION	LITTLE WOOD RIVER	16 to 17
CHAMBERS, JOHN F	37-609F	18840401	0.15	IRRIGATION	LITTLE WOOD RIVER	16 to 17
MAGIC VALLEY GROWERS LTD	37-613	18840401	3.2	IRRIGATION	LITTLE WOOD RIVER	14 to 16
GALLUP, JOHN; GALLUP, MELANIE A	37-10933B	18840401	0.045	IRRIGATION	LITTLE WOOD RIVER	16 to 17
DAVENPORT, LEWIS M; DAVENPORT, NITA F	37-22177	18840401	0.025	IRRIGATION	LITTLE WOOD RIVER	16 to 17
BARNETT, CAROLE	37-22178	18840401	0.05	IRRIGATION	LITTLE WOOD RIVER	16 to 17
ULRICH, THOMAS J	37-23126	18840401	0.03	IRRIGATION	LITTLE WOOD RIVER	16 to 17
ARKOOSH, KAREN A; ARKOOSH, WILLIAM	37-327	18840515	2.2	IRRIGATION	LITTLE WOOD RIVER	14 to 16
GLANBIA FOODS INC	37-374A	18840515	0.56	IRRIGATION	LITTLE WOOD RIVER	14 to 16
FLF SAWTOOTH LLC	37-374B	18840515	0.24	IRRIGATION	LITTLE WOOD RIVER	14 to 16
ARKOOSH, CARRIE R; ARKOOSH, JOHN W	37-460	18840603	4	IRRIGATION	LITTLE WOOD RIVER	14 to 16
ARKOOSH, CARRIE R; ARKOOSH, JOHN W	37-461	18840717	1.4	IRRIGATION	LITTLE WOOD RIVER	14 to 16
ARKOOSH, CARRIE R; ARKOOSH, JOHN W	37-328	18850401	0.6	IRRIGATION	LITTLE WOOD RIVER	14 to 16
MAGIC VALLEY GROWERS LTD	37-375A	18850515	0.2	IRRIGATION	LITTLE WOOD RIVER	14 to 16
CITY OF GOODING	37-662	18850615	1.42	GROUND WATER RECHARGE	LITTLE WOOD RIVER	16 to 17
ARKOOSH, KAREN A; ARKOOSH, WILLIAM	37-329	18860515	2	IRRIGATION	LITTLE WOOD RIVER	14 to 16
MAGIC VALLEY GROWERS LTD	37-614	18890501	0.8	IRRIGATION	LITTLE WOOD RIVER	14 to 16

ATTACHMENT 1  
Little Wood River Water Rights with Exchange Condition

Owner	Water Right	Priority Date	Div Rate (cfs)	Uses	Source	River Reach
ARKOOSH, KAREN A; ARKOOSH, WILLIAM	37-176	18900401	2	IRRIGATION	LITTLE WOOD RIVER	16 to 17
ARKOOSH, CARRIE R; ARKOOSH, JOHN W	37-1127	4/1/1905	1.6	IRRIGATION	LITTLE WOOD RIVER	14 to 16
ARKOOSH, KAREN A; ARKOOSH, WILLIAM	37-1131	8/1/1906	2.4	IRRIGATION	LITTLE WOOD RIVER	16 to 17

Big Wood above Hailey SWSI

Adequate Water Supply Not Available or Known

Station ID	Station Name	Period	Data Type	Years	# of Years		
13139510	Big Wood R at Hailey	Jun-Sep	strm	1991-2020	30 Units KAF		
ENSO Classification							
SE Strong El Nino - EN Mild El Nino - N Neutral - LN Mild La Nina - SL Strong La Nina							
Rank	Year	Enso	Stream	Streamflow +	Non-Exceedance Probability	SWSI	
			Flow Jun-Sep	Reservoir 31-May			Reservoir Sum
1	1995	SE	366	0	366	97%	3.9
2	2017	LN	326	0	326	94%	3.6
3	1997	N	289	0	289	90%	3.4
4	1998	SE	234	0	234	87%	3.1
5	2011	SL	231	0	231	84%	2.8
6	2006	N	219	0	219	81%	2.6
7	1999	SL	213	0	213	77%	2.3
8	2019	EN	212	0	212	74%	2.0
9	1996	N	206	0	206	71%	1.7
10	1993	EN	195	0	195	68%	1.5
11	2009	N	172	0	172	65%	1.2
12	2010	EN	164	0	164	61%	0.9
13	2005	EN	131	0	131	58%	0.7
14	2003	EN	128	0	128	55%	0.4
15	2012	LN	119	0	119	52%	0.1
16	2018	LN	118	0	118	48%	-0.1
17	2008	N	113	0	113	45%	-0.4
18	1991	N	112	0	112	42%	-0.7
19	2016	SE	105	0	105	39%	-0.9
20	2000	N	90	0	90	35%	-1.2
21	2014	N	83	0	83	32%	-1.5
22	2002	N	83	0	83	29%	-1.7
23	2015	EN	82	0	82	26%	-2.0
24	2013	N	82	0	82	23%	-2.3
25	2004	N	73	0	73	19%	-2.6
2021 10% Chance Exceedance Forecast		?	71	0	71	18%	-2.7
26	2020	?	64	0	64	16%	-2.8
27	2007	EN	51	0	51	13%	-3.1
2021 30% Chance Exceedance Forecast		?	48	0	48	11%	-3.2
28	2001	LN	47	0	47	10%	-3.4
29	1992	EN	44	0	44	6%	-3.6
30	1994	SE	44	0	44	3%	-3.9
2021 50% Chance Exceedance Forecast		?	32	0	32	2%	-4.0
2021 70% Chance Exceedance Forecast		?	16	0	16	2%	-4.0
2021 90% Chance Exceedance Forecast		?	7	0	7	1%	-4.1



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

IN THE MATTER OF BASIN 37  
ADMINISTRATIVE PROCEEDING

Docket No. AA-WRA-2021-001

**FINAL ORDER**

**INTRODUCTION**

The Director of the Idaho Department of Water Resources (“Department” or “IDWR”) commenced this administrative proceeding in response to an exceptionally dry year in the Wood River Basin. This order is issued after a six-day hearing in which senior surface water users argued that junior ground water pumpers are interfering with their water rights and junior ground water pumpers raised various defenses and argued they should not be curtailed. In this order, the Director concludes 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 prior appropriation doctrine. The Director orders that junior priority ground water rights within the Bellevue Triangle listed in Exhibit A to this order should be curtailed for the 2021 irrigation season starting July 1, 2021.

**PROCEDURAL BACKGROUND**

On May 4, 2021, the Director issued a *Notice of Administrative Proceeding, Pre-Hearing Conference, and Hearing* (“Notice”). The *Notice* stated that a drought is predicted for 2021 irrigation season, and the water supply in Silver Creek and its tributaries may be inadequate to meet the needs of surface water users. *Id.* at 1. The *Notice* also stated that curtailment model runs of the Wood River Valley Groundwater Flow Model v.1.1 (“WRV1.1 Model” or “Model”) showed that curtailment of ground water rights during the 2021 irrigation season would result in increased surface water flows for the holders of senior surface water rights during the 2021 irrigation season. *Id.*

The *Notice* cited Idaho Code § 42-237a.g.’s provision that “water in a well shall not be deemed available to fill a water right therein if withdrawal of the amount called for by the right would affect . . . the present or future use of any prior surface or ground water right,” and stated that, based on the information from the Model, the Director believes “that the withdrawal of water from ground water wells in the Wood River Valley south of Bellevue (commonly referred to as the Bellevue Triangle) would affect the use of senior surface water rights on Silver Creek and its tributaries during the 2021 irrigation season.” *Id.* The *Notice* stated the Director was therefore initiating an administrative proceeding, pursuant to Idaho Code § 42-237a.g. and IDAPA 37.01.01.104, to determine whether water is available to fill the ground water rights within the Wood River Valley south of Bellevue, as depicted in the map attached to the *Notice*. *Id.* The map defined this as the “Potential Area of Curtailment.” The *Notice* stated “[i]f the

Director concludes that water is not available to fill the ground water rights, the Director may order the ground water rights curtailed for the 2021 irrigation seasons.” *Id.*<sup>1</sup>

The *Notice* instructed parties wishing to participate in the administrative proceeding to send written notice the Department by May 19, 2021. *Id.* The *Notice* scheduled a pre-hearing conference for May 24, 2021, and scheduled the hearing for June 7-11, 2021, at the Department’s state office. *Id.*

On May 11, 2021, the Director issued a *Request for Staff Memorandum* (“*Request*”). The *Request* described ten subjects to be addressed in the staff memoranda, and directed that the memoranda be submitted to the Director on or before May 17, 2021. *Id.* at 1-3.

Four staff memoranda responding to the *Request* were submitted to the Director on May 17, 2021, and posted on IDWR’s website the next day.<sup>2</sup> Also posted on the Department’s website were supporting files for the staff memorandum addressing the Model’s predictions of the hydrologic response in Silver Creek to curtailment of ground rights in the Bellevue Triangle.<sup>3</sup>

A large number of parties filed notices of intent to participate in the administrative proceeding. The persons and entities who filed notices of participation are identified in the *Scheduling Order*, *Order Granting Party Status* and *Order Granting Party Status and Closing the Proceeding to Additional Parties*. The participants are individually identified in this order only as needed for clarity and to avoid confusion.

The Prehearing Conference was held on May 24, 2021. At the Prehearing Conference and in the subsequently issued *Scheduling Order* the Director discussed a number of issues related to party status. It was pointed out at the Prehearing Conference that the area analyzed by Jennifer Sukow in her staff memorandum was slightly smaller than the “Potential Area of Curtailment” depicted in the map attached to the *Notice*. *Scheduling Order* at 3. The Director therefore limited the “Potential Area of Curtailment” to the area considered in Sukow’s staff memorandum. *Id.* The boundary for the updated “Potential Area of Curtailment” is reflected in Figure 17 of Sukow’s staff memorandum. IDWR Ex. 2, Figure 17.

Prior to the hearing, the parties engaged in discovery, depositions, and filed various motions. The hearing began on Monday, June 7, 2021, and concluded on Saturday, June 12, 2021. Various lay and expert witnesses testified and exhibits were admitted into the record.

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<sup>1</sup> Ground water rights for domestic and stock watering uses as defined in Idaho Code §§ 42-111 and 42-1401A(11) were excluded from the administrative proceeding. *Notice* at 1.

<sup>2</sup> The *Request for Staff Memorandum* was issued, and the staff memoranda were submitted, before the May 19, 2021, deadline for filings notices of participation. On the day after the deadline for filing notices of participation, the Department sent emails to the parties who had filed notices, informing them that the *Request* and the staff memoranda were available on the Department’s website.

<sup>3</sup> One of the supporting GIS files could not be opened when posted. This was corrected on May 21, 2021.

## **FINDINGS OF FACT**

The relationship between ground water in the Bellevue Triangle and surface water flowing in Silver Creek and the Little Wood River is a central focus of the underlying contested case. A description of the hydrology of the Upper Big Wood River Basin is necessary to understand the hydrologic relationships between ground water in the Bellevue Triangle and surface water in Silver Creek and the Little Wood River.

The Upper Big Wood River Basin hydrologic system is comprised of three main arterial streams: the Big Wood River, Silver Creek, and Camas Creek.

Silver Creek originates from various springs emitting from the shallow aquifer underlying an area of irrigated cropland south and east of the community of Bellevue, Idaho.

### **Hydrology of the Wood River Basin**

#### **Big Wood River**

The Big Wood River begins in the Boulder Mountains near Galena, Idaho. The river flows mostly south and occasionally east to the community of Ketchum. At Ketchum, Trail Creek flows into the Big Wood River from the east through Sun Valley, Idaho. Other streams drain snowmelt to the Big Wood River from the Boulder and Pioneer Mountains, located to the east, and the Smoky Mountains located to the west. The Big Wood River gathers flow as it courses south through the communities of Hailey and Bellevue. Just south of Bellevue, the Big Wood River Valley broadens into an expanse of agricultural land shaped like a triangle. The vertices of the triangle are roughly located at Bellevue on the north, Stanton Crossing (where Highway 20 crosses the river) on the southwest, and Picabo, Idaho on the southeast. This area is locally known as the "Bellevue Triangle."

Early settlers of Bellevue Triangle land diverted water from the Big Wood River through canals and flood irrigated land within the Bellevue Triangle. Much of the canal water is delivered from the Big Wood River southeasterly through the Bellevue Triangle.

In recent decades, farmers converted flood irrigation systems to pressurized pipes and to sprinkler applications of water to crops.

The Big Wood River flows south to Stanton Crossing, turns west at approximately Stanton Crossing, and discharges into Magic Reservoir. Magic Reservoir can store 191,500 acre feet of water, primarily for irrigation.

While some of the water diverted for irrigation in the Wood River Valley returns as ground water inflow to the Big Wood River, this decision only addresses the relationship between ground water underlying the Bellevue Triangle and hydraulically connected surface water flows in Silver Creek and the Little Wood River.

#### **Camas Creek**

Camas Creek flows into Magic Reservoir from the west. The hydrologic relationship of ground water pumping in the Camas Creek Basin to other surface water sources in the Wood River Basin is not evaluated by this decision.



### Silver Creek and Tributary Spring Creeks

Silver Creek and its tributary spring creeks derive their water from springs emitting from the shallow aquifer underlying the Bellevue Triangle. Emergent spring flows gather in various open channels that ultimately flow into Silver Creek.

A portion of the water diverted from the Big Wood River and applied for flood irrigation in the Bellevue Triangle historically enhanced the flows of Silver Creek. Changes to pressurized sprinkler systems in recent years increased efficiencies of water application to agricultural fields, reducing the amount of incidental recharge to ground water. Nonetheless, Big Wood River water delivered through surface water canals continues to percolate into the ground water underlying the Bellevue Triangle.

Silver Creek meanders through the Bellevue Triangle, generally in an easterly direction. Near Picabo, Silver Creek flows out of the Bellevue Triangle in a southeasterly direction for 10-15 miles into the desert of the northern Eastern Snake Plain. As it flows into the desert, Silver Creek approaches the stream channel of the Little Wood River.

The Little Wood River headwaters are located north of Carey, Idaho. From Carey, the Little Wood River carves a streambed in a southwesterly direction along the boundary between the Eastern Snake Plain and the uplifted surrounding geography to the northwest.

As the Little Wood River and Silver Creek channels approach each other, Silver Creek turns southwesterly and parallels the Little Wood River for approximately three miles. The two stream channels converge 2.5 miles southwest of where Silver Creek crosses State Highway 93, IDWR Ex. 4 at 8. The Little Wood River continues to flow in a southwesterly direction after its confluence with Silver Creek.

### Little Wood River

Water users in the Carey, Idaho area divert all or most of the flow of the Little Wood River except during high water events. The Little Wood River channel is often dry downstream from Carey, Idaho. As a result, Silver Creek sustains flows in the Little Wood River continuously from its confluence downstream to where the Milner Gooding Canal contributes additional surface water to the Little Wood River from the Snake River. *See map on page 7, Sukow 2015 report attached to Ex. 2, see also testimony from Kevin Lakey, Tr. p. 892.*

The Little Wood River flows southwesterly through the town of Richfield. The Little Wood River then turns westerly and subsequently flows through the towns of Shoshone and Gooding.

## **Water Development and Water Rights**

### Surface Water Development

Initial development of irrigation water rights in the Wood River Basin started in the 1870's and 1880's. Many of the earliest water rights bear priority dates of this vintage.

Early priority water rights authorizing diversion and beneficial use from Silver Creek and the Little Wood River bear priority dates of 1877 to 1883. In a normal or average water year,

water rights bearing a priority date of 1883 and earlier are deliverable for the entire irrigation season. IDWR Ex. 4 at 12, 15.

In a normal or average water year, water rights bearing a priority date of 1884 are deliverable until mid-to-late July. *Id.*

In average and above average water years, water from Magic Reservoir water on the Big Wood River is delivered and injected into the Little Wood River by the Big Wood Canal Company. Much of this Magic Reservoir storage water is rediverted from the Little Wood River near Richfield and delivered south to the Dietrich Tract.

In the early 1930's, the U.S. Bureau of Reclamation ("the BOR") completed the Milner Gooding Canal, which delivers Snake River natural flow and storage water for irrigation of farm land located in the Lower Little Wood River Basin and the Lower Big Wood River Basin. The Milner Gooding Canal crosses the Little Wood River northeast of Shoshone, Idaho through a siphon under the Little Wood River bed. At the canal siphon crossing of the Little Wood River, a portion of the Snake River water flowing in the Milner Gooding Canal can be discharged directly into the Little Wood River through a bifurcation at the head of the siphon to enhance water supplies in the Little Wood River. The contracts for the Snake River water deliveries will be discussed later in this decision.

#### Ground Water Development in the Wood River Valley

Ground water development for irrigation in the Bellevue Triangle began around 1930. IDWR Ex. 2 at 12.

Some of the earliest wells were constructed in an artesian aquifer located in the southern part of the Bellevue Triangle. Significant development of the artesian aquifer for irrigation began in the late 1940s. IDWR Ex. 2 at 12. The artesian pressures are created by a confining layer of clay above the ground water.

Ground water in wells completed in the artesian aquifer would rise in the well column above the level where the ground water was encountered, and would sometimes rise high enough to free flow above the level of the ground.

With the advent of modern drilling equipment, rural electrification, and efficient pumping systems, diversion of ground water increased until the early 1990's when regulatory action by IDWR restricted further ground water development.

#### Regulatory Activities

On June 28, 1991, Keith Higginson, Director of IDWR, issued an order designating the Big Wood River Ground Water Management Area ("Management Area Order"). Three findings of fact from the order designating the ground water management area are important for this decision:

2. The surface and ground waters of the Big Wood River drainage are interconnected. Diversion of ground water from wells can deplete the surface water flow in streams and rivers. New ground water uses can also deplete available supplies for other users and affect basin underflow which presently accumulates in the Magic Reservoir.

3. There are a number of Applications for Permit to Appropriate Water pending before the department which propose additional consumptive uses of ground water within the Big Wood River drainage.
4. Injury could occur to prior surface and ground water rights including the storage right in Magic Reservoir if the flows of streams, rivers and ground water underflow in the Big Wood River Basin are intercepted by junior priority ground water diversions.

The Management Area Order contained a Management Policy that stated IDWR would not approve a new application for consumptive use unless there was a showing that the use proposed by the application would not injure existing water rights. Approvals of new applications to appropriate ground water for consumptive uses other than domestic largely ceased after issuance of the Management Area Order.

Because of continued concerns about the impact of ground water diversions on both ground water and surface water sources in the Wood River Basin, IDWR, in coordination with the water users in the Wood River Basin, has initiated or addressed the following activities since issuance of the Management Area Order:

- 2010 – In cooperation with the U.S. Geological Survey, began a program to expand the existing hydrologic monitoring network in the Wood River Valley with the installation of four stream gages in the Wood River Valley
- September 21, 2011 – Issued order (a) creating the Upper Wood Rivers Water Measurement District, and (b) requiring all ground water users to install measuring devices prior to the 2014 irrigation season
- 2012 – In cooperation with the U.S. Geological Survey, began work on development and calibration of a numerical groundwater-flow model for the Wood River Valley, including Silver Creek and ground water underlying the Bellevue Triangle
- September 17, 2013 – Issued order (a) combining water districts for the Big Wood River, the Little Wood River, and Silver Creek; and (b) adding ground water rights from the Upper Big Wood River valley above Magic Reservoir and the Silver Creek drainage to the water district (Water District 37), and (c) abolishing the Upper Wood Rivers Water Measurement District
- February 2015 to June 2016 – First conjunctive management delivery call by surface water users against ground water users dismissed on procedural grounds
- 2016 – Published final report documenting version 1.0 of the Wood River Valley Groundwater-Flow Model (IDWR Ex. 2 at 14)
- March 2017 to June 2017 – Second delivery call dismissed on procedural grounds
- 2018 through 2020 – Proposals for Ground Water Management Plans submitted by ground water users to Director of IDWR



- 2019 – Published final report documenting recalibrated version 1.1 of the Wood River Groundwater-Flow Model (IDWR Ex. 2 at 14)
- 2019 - Published a summary of groundwater conditions in the Big Wood Ground Water Management Area and a summary of Silver Creek Flow Measurements by IDWR staff between 2014 and 2018.
- 2020 – Published a summary of seepage surveys by IDWR staff between 2017 and 2019 on Trail Creek near Ketchum.
- Fall 2020 through spring 2021 – Approximately biweekly meetings of Big Wood River Ground Water Management Area Advisory Committee; at these committee meetings, analyses of the hydrology and hydrogeology of the Wood River Basin were presented by experts and by those who had personally observed facts related to water availability and use.
- May 4, 2021 – Director initiates administrative proceeding for Basin 37

### **The Wood River Valley Ground Water Flow Model**

The Wood River Valley aquifer system is hydraulically connected to Silver Creek and its tributaries above the Sportsman Access gage. IDWR Ex. 2 at 2. Water use within the Wood River Valley aquifer system affects Silver Creek reach gains from ground water, and thus affects streamflow in Silver Creek and in the Little Wood River downstream of Silver Creek. *Id.*

Discharge from the Wood River Valley aquifer system is the primary source of water for Silver Creek. *Id.* at 4.

The WRV1.1 Model was developed to serve as a tool for water rights administration and water resource management and planning. *Id.* at 15.

Twenty-two Modeling Technical Advisory Committee (“MTAC”) meetings were convened between March 2013 and January 2019 to facilitate a transparent and open process of data collection, model construction, and model calibration. *Id.* at 14. With input from the MTAC, the final report documenting the present version of the model was published in 2019.

In 2019, Allan Wylie, one of the model developers, wrote the following:

“Although every groundwater model is a simplification of a complex hydrologic system, WRV Aquifer Model Version 1.1 is the best available tool for evaluating the interaction between groundwater and surface water in the Wood River Valley. The science underlying the production and calibration of the WRV Aquifer Model Version 1.1 reflects the best knowledge of the aquifer system available at this time. The WRV Aquifer Model Version 1.1 was calibrated to 1,314 aquifer water-level measurements and 1,026 river gain-and loss calculations. Calibration statistics indicate a good fit to the observed data, providing confidence that the updated model provides an acceptable representation of the hydrologic system in the Wood River Valley.”

*Id.* at 15

Expert witnesses Erick Powell and Greg Sullivan acknowledged that, despite the need for improvement to the WRV1.1 Model, the model is the best available tool to evaluate the effects of ground water pumping on flows of Silver Creek (Tr. at 1320; 1452).

In 2019, Sukow published a report on a model simulation of the cumulative impacts to streamflow resulting from full curtailment of consumptive use ground water diversions from 1995 through 2014. *Id.* at 16.

### **2021 Drought Year**

The Surface Water Supply Index (SWSI) is a predictive indicator of surface water availability in a river basin compared to historic supply. IDWR Ex. 1 at 1. The Natural Resources Conservation Service (“NRCS”) computes the SWSI by summing the two major sources of surface water supply for irrigation: streamflow runoff and reservoir carryover. *Id.*

The NRCS determines SWSI values by “normalizing the magnitude of annual water supply variability between basins. The non-exceedance values are then rescaled to range from +4.1 (extremely wet) to -4.1 (extremely dry). A SWSI value of 0.0 indicates a median water supply as compared to historic occurrences.” *Id.*

At the beginning of each month (excluding November and December), the NRCS publishes a table with 10-, 30-, 50-, 70-, and 90-percent exceedance forecasts for the current season along with measured volumes for the previous 30 years. *Id.*

There is a strong correlation between the SWSI for the Big Wood River above Hailey and flows in Silver Creek. IDWR Ex. 6. The SWSI for the Big Wood River above Hailey is a good predictor of the available supply for surface water users in the Wood River Valley as well as downstream users that don’t have access to water from Magic Reservoir but instead divert water from Silver Creek or the Little Wood River. IDWR Ex. 1 at 2.

The April SWSI for the Big Wood River above Hailey was -2.7 with a predicted April through September runoff volume of 127 KAF. *Id.* at 3.

Based on the April SWSI, for the period 1991 to 2020, the years with the most similar total supplies to the 50% exceedance forecast for 2021 were 2004 (SWSI = -2.6) and 2020 (SWSI = -2.8). *Id.*

In early June 2021, the NRCS published a SWSI table for June through September 2021 for the Big Wood River at Hailey. *See* IDWR Ex. 5. The SWSI value corresponding to the June through September 2021 50% exceedance forecast volume was -4.0, which is worse than the June through September SWSI for any of the previous 30 years. Tr. at 48, 50; IDWR Ex 5. The next closest SWSI is -3.9 in 1994. Tr. 50.

Water District 37 watermaster Kevin Lakey testified that this year’s flows at the Sportsman’s Access gage and Station 10 are lower than the flows on comparable dates in any analogous water supply year, and agreed that the water supply conditions this year are the “worst” he has seen since taking over as watermaster in 2003. Tr. p.766. Lakey predicted that, based on current conditions, all 1884 priorities on the Little Wood River would be cut during June 2021, and that the April 1, 1883 priority would be cut by June 30, 2021. Tr. pp. 771-72 788-89; Rigby Ex. 2.

As a result of the predicted dismal surface water supply, surface water rights from Silver Creek and the Little Wood River senior in priority to ground water rights in the Bellevue Triangle will be curtailed unusually early during the 2021 irrigation season.

### **2021 Model Simulation**

The WRV1.1 Model was used to simulate the impact of curtailing consumptive use of groundwater for agricultural, municipal, residential, commercial, and irrigation uses during the 2021 irrigation season. IDWR Ex. 2 at 17. The year 2002 was used as a baseline dry year for the model simulation. *Id.*

Curtailment of irrigation was simulated with different starting dates of May 1, June 1, July 1, and August 1. *Id.*

Curtailment was simulated within two areas. *See Id.*, Figure 15. The first area was the WRV1.1 Model boundary. Although the effects of the curtailment were simulated with the model for a period of approximately 12 years, the WRV1.1 Model predicts most of the impacts to streamflow are realized in less than 2 years. *Id.*, Figure 16.

The second area for which curtailment was simulated comprised most of the model area south of Glendale Bridge. *See Id.*, Figure 15, Figure 17. The second area excludes areas where groundwater pumping has minimal impact on streamflow in Silver Creek. Glendale Bridge crosses the Big Wood River at the north end of the Dry Bed. *Id.* at 22. Aquifer water levels deepen at the northern margin of the triangle between Bellevue and Glendale Bridge. *Id.*

Because the Basin 37 Administrative Proceeding was initiated to address water delivery during the 2021 irrigation season, the simulation results focus on the hydrologic responses that are predicted to occur by the end of September 2021. *Id.* at 17.

Predicted increases to the average monthly Silver Creek streamflow during the 2021 irrigation season, starting July 1 through September, range from 23 to 28 cfs. *Id.*

The simulation of curtailment indicates that 99% of the predicted in-season benefit to Silver Creek streamflow can be achieved by curtailing 70% of the consumptive groundwater use within the model domain by reducing the area of curtailment to the area south of Glendale Bridge. IDWR Ex. 2 at 22-23. This area coincides with the Bellevue Triangle area identified as the 2021 potential curtailment area. The remaining 30% of the consumptive groundwater use has minimal impact on Silver Creek.

### **Surface Water Flow Outside of the Model Boundaries**

The Little Wood River and part of Silver Creek are outside the WRV1.1 Model boundary. IDWR Ex. 2, Figure 19. Many of the senior surface water rights potentially affected by ground water diversions in the Bellevue Triangle are outside the model boundary.

For the 2020 irrigation season, average monthly seepage losses between the Sportsman Access gage and Little Wood River Station 10 were calculated using the USGS recorded streamflow at the Sportsman Access gage and Water District 37 records of streamflow (Little Wood River Station 10, thirty diversions from Silver Creek, and two inflows to Silver Creek). IDWR Ex. 2 at 26, and Table 3. Estimated seepage losses range from 16 cfs to 46 cfs and from 20% to 37% of the inflow to the reach. *Id.* at 26. Gains to Silver Creek, between Highway 20



Bridge and Station 10, resulting from curtailment of groundwater will likely incur similar rates of seepage loss. *Id.* at 30.

Kevin Lakey testified that he had observed the discharge at Station 10 increase within five to ten days after voluntary curtailment of some upstream ground water rights. Tr. p.785-87. The surface water users and one of the ground water users also testified that, based on their observations, flows in the Little Wood River and Silver Creek respond to changes in ground water pumping in the Bellevue Triangle. Tr. pp. 404, 493-94, 612-13, 1130. The range is a few days to two weeks.

### **Injury**

The Director's request for staff memoranda sought, among other things, an analysis identifying lands irrigated by water from Silver Creek and the Little Wood River "that could be injured by depletions caused by ground water pumping." *Request* at 2. The Request also sought an explanation of "methods of analysis for identifying possible injury" to senior water rights arising from depletions caused by ground water pumping. *Id.* at 3.

#### Pre-ground Water Pumping vs. Post-ground Water Pumping

The staff memorandum prepared by Tim Luke ("Luke Memorandum") compares water right priorities on Silver Creek and the Little Wood River deliverable in a year before the advent of ground water pumping but having a water supply year analogous to 2021, with priorities that may be deliverable in 2021. The Luke Memorandum also included an analysis of watermaster records to determine water right deliveries for water rights in water supply years analogous to 2021. IDWR Ex. 4 at 11-27. The Luke Memorandum identifies lands potentially injured by ground water pumping using IDWR's water rights spatial data, including GIS feature layers, that identify the places of use ("POU") for water rights diverting from Silver Creek and the Little Wood River. *Id.* at 18. The resulting list of water rights was modified to exclude: 1) all water rights with POUs that are also irrigated by ground water, 2) water rights having a "drain" or "wastewater" source, 3) water rights owned by BWCC or AFRD2 that may receive water from another source, and 4) all water rights having the "Exchange Condition" that authorizes the exchange of water from the Big Wood and Little Wood Rivers for Snake River water injected into the Wood River system via the Milner-Gooding Canal. *Id.* at 7, 18. The list of potentially injured water rights is attached to the Luke Memorandum as "Attachment A." *Id.* at 18.

The Exchange Condition rights were excluded from Attachment A based on the understanding that "the Exchange Condition water rights, to the extent they are in priority, shall receive Snake River water conveyed by the Milner-Gooding Canal in coordination with AFRD2." *Id.*, Attachment B, p. 2. Testimony at the hearing, however, established that when an exchange right is out of priority, the exchange no longer applies and the water user must then look to a supplemental supply, if the water users has one. Tr. p. 291-92. Not all Exchange Condition water rights also have a "supplemental" supply of water, and even those that do may not have a sufficient supplemental supply to replace the amounts of water that would have been available under the water rights had they not been curtailed. Tr. pp. 289-97, 778-80. Thus, even Little Wood River water rights with the Exchange Condition can be injured by ground water pumping in the Bellevue Triangle.

The years 1937 and 1939 are the two years “in the pre-groundwater development period” for which priority delivery records exist that are “closest” to the 2021 April SWSI, based on the NRCS’s historical SWSI analysis of the 104-year period of record for the Big Wood River above Hailey. 2004 and 2020 are analog years for the post-ground water development period, based on the staff memorandum of Sean Vincent. *Id.* at 23.<sup>4</sup>

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.” *Id.* at 23.<sup>5</sup> 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. *Id.* at 24-25. When 1884 priority dates were cut in the years 1937 and 1939, they were cut for shorter periods of time: 1 to 2 weeks. *Id.*; *see also* Tr. p. 374. 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). IDWR Ex. 4 at 23-25.

#### Evapotranspiration

The staff memorandum prepared by Philip Blankenau (“Blankenau Memorandum”) compares evapotranspiration (“ET”) values for water right places of use during years of adequate water supply and reduced water supply. IDWR Ex. 3. The Blankenau Memorandum looks at water right POUs in five areas during recent years of above-median, below-median, and near-median SWSIs for the Big Wood River above Hailey (2011, 2013, and 2016, respectively). *Id.* The five areas are:

1. Irrigated fields within ground water POUs and within the Bellevue Triangle, which were assumed to have a full water supply;
2. Irrigated fields north of Shoshone and east of the Milner-Gooding Canal (“North Shoshone Area”) which are supplied primarily from Magic Reservoir, and do not receive a full supply when the reservoir does not fill;
3. Irrigated fields northwest of Richfield and the Little Wood River (“Richfield Area”), which are known to have an insufficient water supply when Magic Reservoir does not fill;
4. Irrigated fields within the area west of the Milner-Gooding Canal supplied by American Falls Reservoir District No. 2 (“AFRD2”) and not overlapping the North Side Canal Company’s service area or other surface or ground water right POUs, which were also assumed to have a full supply;

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<sup>4</sup> The Luke Memorandum noted that while the SWSIs for the years 1961 and 1988 were actually closer to 2021 April SWSI, the years 2004 and 2021 were selected because they are more recent and should be more representative of ground water pumping in 2021. IDWR Ex. 4 at 23-24.

<sup>5</sup> Water rights diverting from Silver Creek and the Little Wood River under 1883 and 1884 priority dates are considered “good priority rights that are not cut often.” Tr. p.367.

5. Irrigated fields within POU's for water rights diverting from Silver Creek and the Little Wood River and having no overlapping ground water right POU's. These water rights could potentially be injured by ground water use during the 2021 irrigation season.

IDWR Ex. 3 at 3; Tr. pp.238-41.

The Blankenau Memorandum determined that ET values for the Richfield and North Shoshone areas in 2013 (the below-median SWSI year) showed a widespread and deep decrease in ET values as compared to the above- and near-median years of 2011 and 2016, and that these decreases can safely be attributed to fields being dried down due to a water shortage. IDWR Ex. 3 at 6, 9-10; Tr. p.242. The Blankenau Memorandum did not find similar ET value decreases in the Little Wood and Silver Creek area during 2013, however. IDWR Ex. 3 at 9; Tr. p.249. The Blankenau Memorandum concluded, therefore, that the ET analysis "did not clearly identify water shortage in the Little Wood and Silver Creek area during the 2013 drought." IDWR Ex. 3 at 10.

Blankenau noted in his testimony that "in this analysis, [I] wasn't going to call an area water-short unless it was pretty clearly water-short," and that "individual fields could have water supply issues, but this analysis I don't think is sensitive enough to detect that." Tr. p.243. The Blankenau Memorandum also identified several factors that might limit the ability of the ET analysis to identify a water shortage at individual fields, including, among others, purchases of supplemental water by water users whose rights had been curtailed. IDWR Ex. 3 at 9-10. Subsequent testimony established that some water users in the Little Wood and Silver Creek area had purchased supplemental water during 2013 that could have affected the ET analysis. Tr. pp.904-06.

#### Ground Water use Within the Bellevue Triangle

The majority of irrigation and municipal ground water diversions within the Potential Area of Curtailment have priority dates later than 1940. IDWR Ex. 2, Figure 13. The majority of surface water rights on Silver Creek and its tributaries have priority dates prior to 1925. IDWR Ex. 4, Figure 3. The ground water rights in the Potential Area of Curtailment are junior to the surface water rights on Silver Creek and its tributaries.

The Potential Area of Curtailment contains a small portion of Galena's and the majority of South Valley's irrigated land. IDWR Ex. 2, Figure 17; SVGWD & GGWD Ex. 23 at 5; SVGWD & GGWD Ex. 41; Tr. pp. 1272-1273. Galena members hold twenty-one ground water rights, for a total of 4.04 cfs, within the Potential Area of Curtailment. SVGWD & GGWD Ex. 41; Tr. pp. 1272-1273. South Valley's members use ground water to irrigate approximately 22,000 acres of land. Tr. pp. 1158-1159. South Valley members use their ground water to grow grain, alfalfa, pasture, seed potatoes, and mustard, among other things. Tr. pp. 1159-1160. South Valley members have improved their irrigation efficiencies. Tr. pp. 1075, 1113-1125.

IDFG operates Hayspur Fish Hatchery, which is located within the Potential Area of Curtailment. Tr. p. 1008. The Hatchery uses three ground water rights in its operation. Tr. pp. 1011. Two of the water rights say they are non-consumptive on their face. IDFG Exs. 4, 6. The Hatchery pipes water through a series of concrete raceways and ponds, discharging the water to settling basins which flow into Butte Creek. Tr. pp. 1015-1026. Butte Creek flows to Loving



Creek which flows to Silver Creek. Tr. p. 1026. Measurements of the inflow to the Hatchery (IDFG Ex. 23) and measurements of the outflow of the Hatchery (IDFG Ex. 26) indicate the Hatchery discharges more water to Butte Creek than it diverts in ground water. The increase of flow can be attributed to spring seepage in the settling basin. Tr. pp. 1034-1035.

Water Supplies for Water Right Holders Diverting from Silver Creek or the Little Wood River

Fred Brossy owns and manages Barbara Farms, which is located near Shoshone.<sup>6</sup> Barbara Farms holds several surface water rights, including water rights 37-344A (Barbara Exs. 6, 7) and 37-973 (Barbara Exs. 4, 5), which authorize diversions of 4 cfs and 2 cfs from the Little Wood River under priorities of April 6, 1883, and April 1, 1884. This year, Brossy is growing organic potatoes, organic garden bean seed, organic pinto beans, barley, alfalfa, and various small acreages of seed crops. Tr. p. 442. In normal water supply years, Barbara Farms' water rights are sufficient to irrigate the farm's crops, although in recent years they have been curtailed more frequently. Tr. pp. 442-443. Brossy expects that his 1883 and 1884 water rights will be curtailed within one or two weeks of the hearing, and his water rights will not provide enough water to irrigate his crops during the 2021 irrigation season. Tr. p. 449. Brossy has rented 100 shares of AFRD#2 storage water from the City of Shoshone as a supplemental supply, and made some changes to his plantings to conserve and extend his water supply. Tr. pp. 441, 442, 453. Brossy testified he will need additional supplemental water to fully irrigate his crops this year, and has been attempting to secure it. *Id.* If he cannot, Brossy expects the water supply shortfall will adversely affect his 2021 crop production and revenue.

Brossy submitted estimates of his expected 2021 water supply shortfall, and the effects the shortfall would have on his crop production and revenue. Barbara Ex. 1. Brossy projected a total injury of approximately \$220,000 as a result of water shortage in 2021. Barbara 1: Tr. pp. 448-451. Brossy's water supply shortage estimates and loss projections may be high because they are based on existing conditions, which are subject to change, and on assumptions and computations that may not be entirely accurate or correct. Even so, the record supports a finding that a shortage of water in 2021 has already impacted Brossy's farming activities, and will likely cause significant economic injury by the end of the 2021 irrigation season.

Brossy believes that ground water pumping in the Bellevue Triangle reduces the amount of Little Wood River water available for diversion under his water rights, and that curtailing junior water rights in the Bellevue Triangle would provide additional water for diversion. Tr. pp. 445-447. Brossy believes that curtailment on July 1 will provide water in time to save his crops. Tr. pp. 467-471.

Rodney Hubsmith owns and operates a farm and ranch near Richfield. Tr. p. 481. A portion of this land is irrigated under water right 37-472, which authorizes diversion of 1.2 cfs from the Little Wood River under a priority date of April 1, 1884. Hubsmith Exs. 2, 3. Hubsmith bought his farm in 1981 from his grandfather who had owned it for 40 years previously, and considered the farm's water right to be "the best water right in Richfield" prior to

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<sup>6</sup> Brossy is the managing member of the entities that own and operate Barbara Farms: Barbara Farms LLC and Ernie's Organics LLC.

large-scale ground water pumping. Tr. p.487, 491. Since the 1990s, it has become increasingly common for Hubsmith's water right to be curtailed. Tr. pp. 484-486.

This year, Hubsmith is using the water right to irrigate alfalfa, Timothy grass, and pasture lands. Hubsmith's water right provides a full supply of water for these purposes if the right is not curtailed. Hubsmith anticipates that his water right will be curtailed in June this year, however, and that he will not have a full supply of water to grow his crops and irrigate his pasture land during the 2021 irrigation season. Hubsmith does not have an alternative or supplemental water supply for this land, and will take losses on his 2021 crop and livestock production if his water right is curtailed.

Hubsmith submitted estimates of his expected 2021 water supply shortfall, and the effects the shortfall would have on his crop production and livestock revenue. Hubsmith Ex. 1. Hubsmith projected a total injury of approximately \$68,000 as a result of water shortage in 2021. *Id.*; Tr. pp. 495-497. Hubsmith's water supply shortage estimates and loss projections may be high because they are based on existing conditions, which are subject to change, and on assumptions and computations that may not be entirely accurate or correct. Even so, the record supports a finding that a shortage of water in 2021 has already impacted Hubsmith's farming activities, and will probably cause significant economic injury by the end of the 2021 irrigation season.

Hubsmith has lived and worked near the Little Wood River and Station 10 for many years, and is familiar with both. Tr. pp. 489-490. Hubsmith testified that the flows of the Little Wood River in the area of Station 10 have become increasingly lower in recent years, and he believes the reduction in flows is due in part to ground water pumping in the Bellevue Triangle. Tr. pp. 490-494. Hubsmith believes that ground water pumping in the Bellevue Triangle is injuring his water right. Tr. pp. 499-500. Hubsmith testified that when pumping in the Bellevue Triangle is reduced, flows in the Little Wood River near Station 10 increase within a few days. Tr. p. 493.

Carl Pendleton is a farmer-rancher who owns and rents farmland north of Shoshone. Pendleton is also the chairman of the board of the Big Wood Canal Company ("BWCC") and appeared on behalf of the company. Tr. p. 520. BWCC holds a number of water rights to divert from the Little Wood River for irrigation purposes, ranging in priority from April 6, 1883, to June 1, 1920. Fletcher Ex. 1. The most junior water rights (those later than 1885) are curtailed relatively early in most years, and are primarily used to send spring runoff flows to the Dietrich Tract, which helps conserve the storage supply in Magic Reservoir. Tr. p. 529. The most reliable of BWCC's Little Wood River water rights are 37-21402, 37-21405, and 37-21401, which have priority dates of April 6, 1883, April 1, 1884, and May 15, 1885. Tr. pp. 528-529. In normal years, the 1883 and 1884 water rights generally stay in priority until late in the irrigation season (Tr. p. 547.), and the 1885 water right stays in priority until midsummer (Tr. p. 546.).

When these water rights are in priority, BWCC diverts them into the Dietrich Main Canal (Tr. p. 529.), but only if storage water from Magic Reservoir is being injected into the Little Wood River upstream, via the Richfield Canal and the Jim Burns Slough (Tr. p. 535.). If no storage is being released from Magic Reservoir, BWCC does not divert these water rights into the Dietrich Main Canal because the relatively small quantity of water they cover would not make it to BWCC's water users at the end of the canal on its own. Tr. pp. 531-533. BWCC therefore allows its Little Wood River water to remain in the river after Magic Reservoir releases

have ended for the season. Tr. p. 542. BWCC rents this water to users seeking a supplemental supply, or allows it to become part of the natural flow supply available for diversion under water rights diverting downstream. *Id.*

If BWCC's Little Wood River water rights are curtailed in June, as predicted, the curtailment would prevent BWCC from renting its water to water users in need of a supplemental water supply, or would reduce the supply available for downstream water rights that may be senior to ground water rights diverting in the Bellevue Triangle. Tr. p. 556. Pendleton testified that, based on his observations, the flows of the Little Wood River at Station 10 near Richfield increase substantially within 48 hours of when ground water pumps in the Bellevue Triangle are shut off. Tr. p. 537.

John Arkoosh ("John") is a farmer and stockman who operates several farm properties owned by himself and his father, William Arkoosh ("William"), in a loose partnership with his father. Tr. p. 571. John testified regarding both his and his father's farms, water rights, and water uses.

William owns two farms, one in Gooding County and one in Lincoln County, for which he holds water rights to divert from the Little Wood River. The Gooding farm has two such water rights, 37-176 (W. Arkoosh Exs. 4 and 5) and 37-1131 (W. Arkoosh Exs. 6 and 7), which authorize diversions of 2 cfs and 2.4 cfs from the Little Wood River under priority dates of April 1, 1890, and August 1, 1906. Both water rights have the Exchange Condition, and William also has two supplemental water supplies for the Gooding farm: 100 inches of American Falls Reservoir District No. 2 storage water, and approximately 4.4 cfs of ground water under a 1977 priority date.<sup>7</sup> Tr. pp. 581-582, 586-587. The Lincoln farm is irrigated by water rights 37-327 (W. Arkoosh Exs. 6 and 7) and 37-329 (W. Arkoosh Exs. 8 and 9), which authorize diversions of 2.2 cfs and 2 cfs from the Little Wood River under priority dates of May 15, 1884, and May 15, 1886.<sup>8</sup> These two water rights have the Exchange Condition, and William also has a supplemental supply of 30 inches of AFRD2 storage water for the Lincoln farm. Tr. p. 589. William raises alfalfa and silage corn on both the Gooding and Lincoln properties, and for part of the year these lands also support William's livestock. Tr. p. 590.

All of the Little Wood River water rights for William's Gooding and Lincoln farms have been curtailed this irrigation season, and these farms are now being irrigated with William's supplemental water alone. Tr. p. 592. While William's water rights for the Little Wood River have been curtailed in previous years, the curtailments have become increasingly earlier and more frequent in recent years. Tr. pp. 593-594. William's supplemental storage and ground water supplies are sufficient to fully irrigate the Gooding farm during the 2021 irrigation season, although curtailment has increased William's electrical costs as a result of the need to pump

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<sup>7</sup> The record does not appear to include the water right number for William's ground water right.

<sup>8</sup> The Lincoln farm is supplied by a Big Wood River water right, 37-59M, but this water right is relevant to this proceeding only for purposes of describing the total water supply for the Lincoln farm.



ground water. Tr. pp. 587-588. The supplemental supply for the Lincoln farm is not sufficient to fully irrigate the Lincoln farm in 2021, however. Tr. pp. 592-593.

John submitted an estimate of the expected 2021 water supply shortfall for the Lincoln farm in 2021, and the effects the shortfall would have on crop production and revenue. W. Arkoosh Ex. 1. John projected a total injury for the Lincoln farm of approximately \$55,000 as a result of water shortage in 2021, and pumping costs of approximately \$2,000 for the Gooding farm. *Id.* John's water supply shortage estimates and loss projections for William's farms may be high because they are based on existing conditions, which are subject to change, and on assumptions and computations that may not be entirely accurate or correct. Even so, the record supports a finding that a shortage of water in 2021 has already impacted William's farming activities, and will probably cause significant economic injury by the end of the 2021 irrigation season.

John also testified as to two farms he owns in Lincoln County, which he referred to as the Varin farm and the Ohlinger farm, both of which are supplied by water rights to divert from the Little Wood River.<sup>9</sup> John is raising alfalfa on the Varin farm, and has leased the Ohlinger farm to a farmer who is raising organic potatoes. Tr. pp. 599-600, 605. The Varin farm is supplied by water rights 37-326 (J. Arkoosh Exs. 2 and 3), 37-328 (J. Arkoosh Exs. 4 and 5), and 37-1127 (J. Arkoosh Exs. 10 and 11), which authorize diversions of 0.4 cfs, 0.6 cfs, and 1.6 cfs from the Little Wood River, under priority dates of November 1, 1882, April 1, 1885, and April 1, 1905. The Ohlinger farm is supplied by water rights 37-460 (J. Arkoosh Exs. 6 and 7) and 37-461 (J. Arkoosh Exs. 8 and 9), which authorize diversions of 4 cfs and 1.4 cfs from the Little Wood River under priority dates of June 3, 1884, and July 17, 1884.

All of the decreed water rights for the Varin and Ohlinger farms have been curtailed this irrigation season, with the exception of a portion of the 1882 water right for the Varin property. Tr. p. 606. This water right apparently has never been curtailed before, but will probably be fully curtailed within a month. Tr. pp. 601-602. The Ohlinger farm is also being supplied by 46.8 inches of American Falls storage water ("Carey Act Water"), but otherwise there are no supplemental water supplies for the Varin farm or the Ohlinger farm. At present, the water supplies for the Varin farm and the Ohlinger farm are not sufficient to properly grow and finalize their crops. John is attempting to secure several different supplies of additional water for the Varin and Ohlinger farms, but to date nothing has been finalized.

John submitted an estimate of the expected 2021 water supply shortfall for the Varin and Ohlinger farms in 2021, and the effects the shortfall would have on crop production and revenue. J. Arkoosh Ex. 1. John projected a total injury of approximately \$40,000 for the Varin farm, and \$611,000 for the Ohlinger farm, as a result of water shortage in 2021. *Id.*; Tr. pp 610-611. John's water supply shortage estimates and loss projections may be high because they are based on existing conditions, which are subject to change, and on assumptions and computations that may not be entirely accurate or correct. Even so, the record supports a finding that a shortage of

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<sup>9</sup> The Varin and Ohlinger farms are also supplied by two water rights for the Big Wood River, 37-10343 and 37-21485, but these water rights are only relevant to this proceeding for purposes of describing the farms' total water supply.

water in 2021 has already impacted John's farming activities, and will probably cause significant economic injury by the end of the 2021 irrigation season.

John testified that, based on his personal observations and experience, he believes that groundwater pumping in the Bellevue Triangle has decreased the supply of water in the Little Wood River that would otherwise be available for diversion under water rights held by himself and his father. John also testified that he believed their Little Wood River water rights would remain in priority longer and there would be less damage to their crops, if there were additional flows in the Little Wood River. Tr. pp.612-13. John testified that he believes that ground water pumping in the Bellevue Triangle is injuring his and William's water rights. Tr. p.632.

Alton Huyser is a farmer who testified as a principal of the Big Wood Farms LLC, which owns and operates Big Wood Farms. Huyser raises winter and spring wheat and alfalfa, and irrigates his crops with water rights 37-10561A (Big Wood Farms Exs. 6 and 7) and 37-10561B (Big Wood Farms Exs. 8 and 9), which authorize diversions of 4 cfs and 2.2 cfs from the Little Wood River under the common priority date of April 5, 1884.<sup>10</sup> In normal water supply years, Huyser's Little Wood River water rights are curtailed in mid-August, and in combination with Huyser's Big Wood River water right provide a sufficient water supply for his crops. Tr. pp. 652-653. This year, however, Huyser's decreed water rights were curtailed on June 2, and at this point he has no water to irrigate his crops for the rest of the 2021 irrigation season. *Id.* Huyser has been attempting to secure supplemental water, but nothing has been finalized. Tr. p. 654.

Huyser submitted an estimate of the expected 2021 water supply shortfall for Big Wood Farms, and the effects the shortfall would have on crop production and revenue. Big Wood Farms Ex. 1. Huyser projected a total injury of approximately \$38,800 for 2021. *Id.* Huyser's water supply shortage estimates and loss projections may be high because they are based on existing conditions, which are subject to change, and on assumptions and computations that may not be entirely accurate or correct. Even so, the record supports a finding that a shortage of water in 2021 has already impacted Huyser's farming activities, and will probably cause significant economic injury by the end of the 2021 irrigation season.

Huyser testified that he believes ground water pumping in the Bellevue Triangle is part of the reason that the flows of the Little Wood River are insufficient to fill his water rights, and that ground water pumping is injuring his water rights. Tr. p. 657. Huyser also believes that if ground water rights in the Bellevue Triangle junior in priority to his Little Wood River water rights are curtailed, his Little Wood River water rights would be reinstated for a sufficient period of time to finalize his wheat crop. *Id.*

Don Taber is a dairy farmer who owns and operates three contiguous farms near Shoshone: the Taber or Home farm, the 7 Mile farm, and the Ritter farm. Tr. p. 673. Taber's farms focus primarily on raising feed for his dairy herd, but also have some acres in malt barley, sugar beets, and wheat. Taber Ex.1; 7 Mile Ex. 1; Ritter Ex. 1. The three farms are supplied with water from a number of water rights, including several that authorize diversions from the Little Wood River

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<sup>10</sup> The water rights are held by the Alton & Huyser Trust. Huyser also relies on Big Wood River water right 37-59K, but this water right is relevant to this proceeding only for purposes of describing the total water supply for Big Wood Farms.

under priorities ranging from April 1, 1883, to April 1, 1887. Taber's 1887 Little Wood River water rights have been curtailed, and while his 1884 water rights normally last most of the irrigation season, this year he expects the 1884 water rights will be curtailed in mid-June. Until recently, Taber's 1883 water rights remained in priority all season, but in recent years they have increasingly been curtailed for short periods. Tr. pp. 682-684. Taber is unsure of whether his 1883 water rights will be curtailed this year, and even if they remain in priority, he will not have a sufficient water supply to fully irrigate his farm lands. Tr. pp. 673-714.

Taber submitted estimates of the expected 2021 water supply shortfalls for the Taber farm, the 7 Mile farm, and the Ritter farm, and the effects the shortfall would have on crop production and revenue. Taber Ex. 1; 7 Mile Ex. 1; Ritter Ex. 1. Taber projected total injuries in 2021 of approximately \$82,000 for the Taber farm, \$126,000 for the 7 Mile farm, and \$177,600 for the Ritter farm. *Id.* Taber's water supply shortage estimates and loss projections may be high because they are based on existing conditions, which are subject to change, and on assumptions and computations that may not be entirely accurate or correct. Even so, the record supports a finding that a shortage of water in 2021 has already impacted Taber's farming activities, and will probably cause significant economic injury by the end of the 2021 irrigation season.

Taber testified that he believes that ground water pumping in the Bellevue Triangle is a significant cause of the reduced flows available for diversion under his Little Wood River water rights. Taber testified that based on his observations, flows in the Little Wood River increase within a few days after ground water pumping in the Bellevue Triangle is reduced. Taber also testified that, in his opinion, curtailment of ground water rights in the Bellevue Triangle junior in priority to his water rights would benefit his farms even if the water did not become available until August. Taber testified that he seeks to have water rights in the Bellevue Triangle curtailed based on the priority system. Tr. pp. 691-92, 697-98.

Charles Newell owns a 160-acre farm on which he is raising oats and grain to feed his cattle. Tr. p. 737-738. Newell irrigates his lands with several water rights, including water right 37-432, which authorizes diversion of 2.6 cfs from the Little Wood River under a priority date of April 15, 1885. Newell Exs. 4 and 5. Newell testified that his 1885 water right was expected to be curtailed on June 10 or 11. Tr. p. 736. Newell's other water rights had already been curtailed, and while he was trying to secure supplemental water supplies, prices are "very high and scary," and he had not been able to finalize any arrangements for additional water. Tr. pp. 732-48.

Newell submitted an estimate of the expected 2021 water supply shortfall for his farm, and the effects the shortfall would have on crop production and revenue. Newell Ex. 1. Newell projected a total injury of approximately \$55,000 for 2021. *Id.* Newell's water supply shortage estimate and loss projection may be high because they are based on existing conditions, which are subject to change, and on assumptions and computations that may not be entirely accurate or correct. Even so, the record supports a finding that a shortage of water in 2021 has already impacted Newell's farming activities, and will probably cause significant economic injury by the end of the 2021 irrigation season.

Lawrence Schoen owns 306 acres adjacent to the Silver Creek Preserve. Tr. p. 390. He irrigates a total of 14.4 acres with water rights 37-351B (priority June 1, 1886) and 37-352B (priority June 15, 1887). Tr. p. 391. He testified that he raises horse hay and pasture on the land. *Id.* As a result of a transfer from a surface water source to a ground water source, Schoen diverts his water through a well on his property. *See* Water Right 37-351B and 37-352B.



Schoen's well is shut off when the June 1, 1886, and June 15, 1887, surface water rights are curtailed on Silver Creek. *Id.* Schoen expressed frustration that a well "across the road" with "a water right 94 years junior" to his water rights gets to pump water when his rights are curtailed. *Id.* He testified that "the ground water and the surface water are one and the same water source here, and they should be managed on the continuum according to the priority doctrine." *Id.* at 398-99.

Most or all of these surface water right holders also testified as to the measures they have taken, and investments they have made, to increase the efficiencies of their irrigation systems and conserve water, such as converting to pivot irrigation systems, and piping their water from the point of diversion to the place of use. The surface water users also testified to the steps they have taken in 2021, and in earlier drought years, to conserve and extend their water supplies, such as securing supplemental water, planting less water intensive crops, and minimizing losses by selecting which fields and crops to continue watering and which to dry out.

Lakey also testified that, based on his experience and interactions with water users on Silver Creek and the Little Wood River, they have adequate water supplies when there is enough water to fill water rights with priorities equal to April 1, 1884, until September 1st. Tr. pp. 780-84, 819-20, 882-84; BV Ex. 1. Lakey also estimated that in an average year, 40,000 acre-feet is an adequate water supply for Silver Creek and Little Wood River water users, and that at least 35,000 are-feet of this supply must come from sources other than Magic Reservoir. Tr. p. 783-84; BV Ex. 1. When these conditions are met, the discharge at Station 10 during the period from April 1 to September 30 ranges from 25,000 to 33,000 acre-feet. Tr. p. 781; BV Ex. 1.

## **ANALYSIS AND CONCLUSIONS OF LAW**

This case presents a question of distributing water in a year of drought and shortage. The ultimate issue is whether ground water rights diverting in the Bellevue Triangle should be curtailed this year in favor of senior water rights diverting from Silver Creek and the Little Wood River. The Bellevue Triangle is within Water District 37 and the Big Wood Ground Water Management Area ("BWGMA"). Sections 42-602 and 42-237a.g. of the Idaho Code guide the Director's analysis in this case.

### **I. Ground Water Pumping in the Bellevue Triangle Adversely Affects Senior Surface Water Uses in Silver Creek and the Little Wood River and Should be Curtailed.**

Section 42-602 states that the Director "shall distribute water in water districts in accordance with the prior appropriation doctrine." Idaho Code § 42-602. The Idaho Supreme Court has held that this statute "gives the Director a 'clear legal duty' to distribute water," but "the details of the performance of the duty are left to the director's discretion." *In re SRBA*, 157 Idaho 385, 393, 336 P.3d 792, 800 (2014) (citations omitted).

Section 42-237a.g. authorizes the Director "to supervise and control the exercise and administration of all right to the use of ground waters," and states that in the exercise of this "discretionary power," may "initiate administrative proceedings to prohibit or limit the withdrawal of water from any well during any period that he determines that water to fill any water right in said well is not there available." Idaho Code § 42-237a.g. The statute further states, in pertinent part, that "[w]ater in a well shall not be deemed available to fill a water right

therein if withdrawal therefrom of the amount called for by such right would affect, contrary to the declared policy of this act, the present or future use of any prior surface or ground water right[.]” *Id.* This statute gives the Director “broad powers” to prohibit or limit ground water withdrawals that adversely affect the use of senior surface water rights. *Stevenson v. Steele*, 93 Idaho 4, 11-12, 453 P.2d 819, 826-27 (1969).

The central legal inquiry in this case is whether withdrawals of ground water from wells in the Bellevue Triangle “would affect, contrary to the declared policy of [the Ground Water Act],” the present use of senior water rights diverting from Silver Creek and the Little Wood River, or their future use during the remainder of the 2021 irrigation season. Idaho Code § 42-237a.g. The “declared policy” of the Ground Water Act, *id.*, is set forth in Idaho Code § 42-226. This statute expressly affirms Idaho’s “traditional policy” of “requiring the water resources of this state to be devoted to beneficial use in reasonable amounts through appropriation[.]” Idaho Code § 42-226. The statute further states that “while the doctrine of ‘first in time is first in right’ is recognized, a reasonable exercise of this right shall not block full economic development of underground water resources.” *Id.* This last provision was added to Idaho Code § 42-226 through an amendment passed in 1953. *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 801, 252 P.3d 71, 82 (2011).<sup>11</sup>

The Idaho Supreme Court considered the meaning and intent of the 1953 amendment in the *Clear Springs* decision. 150 Idaho at 800-04, 252 P.3d at 81-85. The Court held that while the phrase “full economic development of underground water resources” had “modified the doctrine of first in time is first in right,” the modification did not mean that an appropriator “who is producing the greater economic benefit or would suffer greater economic loss” has the better right to the use of the water. *Id.* at 801-02, 252 P.3d at 82-83. Rather, the 1953 amendment was intended “to change the holding in *Noh v. Stoner* . . . that a prior appropriator of ground water was protected in his historic pumping level.” *Id.* at 802, 252 P.3d at 83. The Court explained that the phrase “full economic development of underground water resources” refers “to promoting full development of ground water by not permitting a ground water appropriator with an unreasonably shallow well to block further use of the aquifer,” *id.* at 803, 252 P.3d at 84, and held that “[b]y its terms, section 42-226 only applies to appropriators of ground water.” *Id.* at 804, 252 P.3d at 85.

The senior water rights in this case, however, are not ground water rights, but rather are surface water rights to divert from Silver Creek and the Little Wood River. Section 42-226’s “modification” of the doctrine that first in time is first in right, *Id.* at 801-02, 252 P.3d at 82-83, does not apply to surface water rights. *Id.* at 804, 252 P.3d at 85. Thus, the provision that “a reasonable exercise of this right shall not block full economic development of underground water resources” does not apply in this case, contrary to the ground water users’ arguments.

In this case, rather, the “declared policy” of the Ground Water Act, Idaho Code § 42-237a.g., is limited to Section 42-226’s affirmation of the requirement that Idaho’s water resources

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<sup>11</sup> Idaho Code § 42-226 was originally enacted in 1951. 1951 Idaho Sess. Laws 423-24. The 1953 legislation that amended Idaho Code § 42-226 also added Idaho Code § 42-237a.g. to the Ground Water Act. 1953 Idaho Sess. Laws 278, 285.

are “to be devoted to beneficial use in reasonable amounts through appropriation,” and its recognition of the doctrine that “first in time is first in right.” Idaho Code § 42-226.

In this case, the Director must determine: a) whether ground water and surface water diversions in the Bellevue Triangle and from Silver Creek and the Little Wood River are “contrary” to the “traditional policy” of “beneficial use in reasonable amounts through appropriation”; or b) whether withdrawals of ground water in the Bellevue Triangle are contrary to the “doctrine of ‘first in time is first in right.’” Idaho Code §§ 42-226, 42-237a.g. These questions are addressed in sequence below.

**a. Water Uses in the Bellevue Triangle and from Silver Creek and the Little Wood River are not Contrary to the Traditional Policy of “Beneficial Use in Reasonable Amounts Through Appropriation.”**

The requirement that water be put to beneficial use “in reasonable amounts through appropriation,” Idaho Code § 42-226, has two components. The beneficial use must be authorized by a valid “appropriation,” and it must be in a “reasonable amount.”

The uses of the ground water and surface water involved in this proceeding have been authorized “through appropriation.” Idaho water rights are defined by elements, including the “particular purpose” or purposes for which the water may be used. *In re SRBA*, 157 Idaho 385, 389, 336 P.3d 792, 796 (2014). The record establishes that the ground water users in the Bellevue Triangle and surface water users on Silver Creek and the Little Wood River are diverting pursuant to decreed water rights. There have been no assertions that the ground water or the surface water is being used for purposes other than the beneficial uses authorized in the water rights, and there is no evidence in the record that would support such a conclusion.

Water rights decrees, however, do not answer the question of whether diversions are “in reasonable amounts” for purposes of an administrative proceeding under Idaho Code § 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. *AFRD2*, 143 Idaho at 877, 154 P.3d at 448. The record establishes that both ground water and surface water users have continuously striven to improve the efficiencies of their diversion, conveyance, and irrigation systems, and continue to do so. Water users in both groups have invested considerable amounts of time and money in connection with these efforts, and continue to do so. The record also establishes that, when a shortage of water is predicted or materializes, water users in both groups make planning and management decisions accordingly, in order to conserve and extend their water supplies, and prevent or minimize crop and revenue losses as much as possible.

The record, therefore, does not support a conclusion that ground water uses in the Bellevue Triangle, or surface water uses on Silver Creek and the Little Wood River, are contrary to Idaho’s “traditional policy” of requiring the state’s water resources “to be devoted to beneficial use in reasonable amounts through appropriation.” Idaho Code § 42-226. 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 use in reasonable amounts through valid appropriations. Idaho Code § 42-226.



**b. Ground Water Use in the Bellevue Triangle is Contrary to the Doctrine That “First in Time is First in Right.”**

The rule that “first in time is first in right” is one of the “bedrock” principles of Idaho’s prior appropriation doctrine. *In Matter of Distribution of Water to Various Water Rts. Held By or For Ben. of A & B Irrigation Dist.*, 155 Idaho 640, 650, 315 P.3d 828, 838 (2013). “Priority in time is an essential part of western water law and to diminish one’s priority works an undeniable injury to that water right holder.” *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 797–98, 252 P.3d 71, 78–79 (2011).

“The presumption under Idaho law is that the senior is entitled to his decreed water right, but there certainly may be some post-adjudication factors which are relevant to the determination of how much water is actually needed.” *AFRD2*, 143 Idaho at 878, 154 P.3d at 449. 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. *Id.* Further, junior appropriators who claim their diversions do not injure a senior appropriator are required to establish that claim by “clear and convincing evidence.” *A&B Irr. Dist., et al., v. IDWR*, 153 Idaho 500, 516-20, 284 P.3d 225, 241-45 (2012). This requirement “gives the ‘proper presumptive weight to a decree.’” *Id.* at 517, 284 P.3d at 242.

In this case, almost all of the water rights to divert from Silver Creek and the Little Wood River are “first in time” and therefore “first in right.” The vast majority of the surface water rights for lands irrigated by Silver Creek and the Little Wood River bear priority dates pre-dating 1900. IDWR Ex. 3 at 18 & Attachment A. The vast majority of the ground water rights in the Bellevue Triangle bear priority dates later than 1940. *See, e.g.*, IDWR Ex. 2 at 12-13 (discussing ground water development). Only one of the surface water rights for lands irrigated by Silver Creek and the Little Wood River in Attachment A to the Luke Memorandum has a priority date later than 1940. IDWR Ex. 3 at 18 & Attachment A.

Sukow’s modelling analyses, as explained in her staff memorandum and testimony, 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 WRV1.1 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. These conclusions are supported by the testimony of the watermaster and the surface water users on Silver Creek and the Little Wood River. They testified that, based on their observations, flows in Silver Creek and the Little Wood River respond to changes in ground water pumping in the Bellevue Triangle within a few days, or a week at most.

Most of the water rights to divert from Silver Creek and the Little Wood River have already been curtailed, or will be curtailed soon. Silver Creek and Little Wood River water rights having priority dates of 1885 or later have already been curtailed, 1884 water rights will likely be curtailed sometime before the end of June, and even the April 1, 1883 priority—which is among the most senior—will likely be cut by the end of June, or soon thereafter. *See, e.g.*, Tr. pp. 771-72 788-89 (Lakey test.); Rigby Ex. 2 (Lakey memorandum); IDWR Ex. 3 at 18

& Attachment A (list of potentially injured water rights). The junior priority ground water rights in the Bellevue Triangle have not been curtailed this year, and apparently have never been curtailed in the past. Tr. p.764.

Consistent with the Director's instructions at the Prehearing Conference, the surface water right holders did not simply rely on the presumption that as senior appropriators they are entitled to their full amount of their decreed water rights before junior water rights are allowed to divert. The surface water users also submitted considerable testimony and exhibits showing that curtailment of their senior water rights will result in substantial crop and revenue losses during the 2021 irrigation season. The surface water users, therefore, 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 appropriators diverting from Silver Creek and the Little Wood River. The ground water users offered no support for their summary assertion that "the modeled boundary of curtailment is arbitrary and capricious as it is not based upon actual groundwater hydrology in the basin." *South Valley Groundwater District and Galena Ground Water District's Post Hearing Memorandum* ("SVGWD-GGWD Brief") at 29. The Sukow Memorandum's explanation of the area modeled for curtailment purposes, in contrast, shows that the modeled area of curtailment is based on the ground water hydrology of the Wood River basin. IDWR Ex. 2 at 22.

The ground water users also relied on evidence that WRV1.1 Model has a predictive uncertainty of  $\pm 22\%$  over a ten-month span, and the predictive uncertainty may increase for shorter time periods, such as Sukow's curtailment simulations. *SVGWD-GGWD Brief* at 29. All ground water models are simplifications with inherent predictive uncertainty, however, Tr. p. 82, and it is undisputed that the WRV1.1 Model is the best scientifically-based tool currently available for predicting Silver Creek's hydraulic responses to ground water curtailment in the Bellevue Triangle. Tr. pp. 156-57, 231, 1299-1300, 1320, 1452.

Further, 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. *Id.* 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." *Memorandum Decision and Order on Petition for Judicial Review, Rangen, Inc. v. IDWR*, p. 13 (5<sup>th</sup> Jud. Dist. Case No. CV 2014-2446) (Dec. 3, 2014) ("*Rangen Dec.*").

The ground water users also assert the WRV1.1 Model is unreliable because it is allegedly based on "assumed values for pumping prior to 2014, especially in the proposed curtailment area," and because "additional data has been collected since that time which includes pumping data, ET, stream measurements, aquifer levels and efficiency." *SVGWD-GGWD Brief* at 20. The record shows, however, that values for pumping prior to 2014 were not "assumed" but rather calculated from available data including ET, precipitation, and surface water diversion data. Canal seepage and surface water irrigation efficiency had to be estimated. IDWR Exhibit

2 at 26 (Appendix A at 15); Tr. pp.97-98. Surface water irrigation efficiency values were adjusted within an allowable range during model calibration. Tr. p.109.<sup>12</sup>

The ground water users also relied on the testimony of their expert witness Erick Powell that the hydraulic conductivity estimates for some of the Model's "cells" are "outrageously high." Tr. p.1270; *SVGWD-GGWD Brief* at 31.<sup>13</sup> Powell conceded that no model is perfect, however, and that every model has problems. *Id.* Further, the WRV1.1 Model has over 55,000 cells, each of which represents an area of 100 meters by 100 meters, but only 200 cells had the high hydraulic conductivity estimates. Tr. pp.1244, 1308. The ground water users' expert did not agree that this proportion constituted a significant issue, but rather only raised questions as to the constraints used in calibrating the model. Tr. p.1308. The expert also affirmed that the Model, as calibrated, remains "the best tool" currently available, "warts and all." Tr. pp. 1300-01, 1320.<sup>14</sup>

The ground water users also assert the WRV1.1 Model "is unable to predict whether water will actually make it downstream to senior surface water users if curtailment occurs" and is unable to account for conveyance losses in Silver Creek and the Little Wood River. *SVGWD-GGWD Brief* at 31. The record shows, however, that Silver Creek above the Sportsman Access gage is a gaining reach, and the reach between the Sportsman Access gage and the Model boundary has minimal gain or loss. IDWR Ex. 2 at 8, 26; *SVGWD & GGWD Ex. 14* at 16; *SVGWD & GGWD Ex. 14* at 5. Thus, there are no seepage losses to simulate in these reaches.

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<sup>12</sup> The methods used to develop and calibrate the Model were developed with the input of a Modeling Technical Advisory Committee (MTAC), which was established to provide transparency in model development and to serve as a vehicle for stakeholder input. Twenty-two MTAC meetings were convened between March 2013 and January 2019 to facilitate a transparent and open process of data collection, model construction, and model calibration. IDWR Exhibit 2 at 14.

<sup>13</sup> South Valley and Galena appear to argue that Powell "specifically" testified that the hydraulic conductivity values for two of the Model's three "layers" were 500,000 feet per day and 950,000 feet per day. *SVGWD-GGWD Brief* at 31. This argument mischaracterizes the Powell's testimony, which referred to the "maximum" hydraulic conductivity value in individual cells, not the overall conductivity for the layers. Tr. p.1270. That is, Powell was referring to the individual cell in each layer having the highest conductivity value for that particular layer. The overall hydraulic conductivity value for all cells across each layer was much lower, as Powell's testimony confirms. See Tr. p.1308 ("the average for layer one was at somewhere in the order of 3,000 feet per day").

<sup>14</sup> The record contradicts the ground water users' assertion that the Model's predictive uncertainty estimate of  $\pm 22\%$  "does not even include the undisputed deficiencies in the model's hydraulic transmissivity rates." *SVGWD-GGWD Brief* at 48. The record shows that the results of the predictive uncertainty analyses performed by Wylie (2019) do include the uncertainty associated with the calibration of hydraulic conductivity. These results also include the uncertainty associated with the range of other calibrated parameters. Tr. pp. 163-64; *SVGWD & GGWD Ex. 16* at 3, 5.



Some seepage losses of additional flow are expected to occur in downstream reaches of Silver Creek and the Little Wood River between the Highway 20 Bridge and Station 10, IDWR Ex. 2 at 26-29, but these reaches are downstream of the ground water flow model boundary. The effects of seepage and potential diversions of additional flow in these reaches will be accounted for in the watermaster's priority cut determination and does not need to be predicted by the Model. Tr. 826, 889.

The ground water users also rely on evidence that channel seepage in portions of Silver Creek and the Little Wood River downstream of Sportsman's Gage reduce the flows available to surface water users, and that, in some locations, beaver dams and "holes" in levees or embankments cause water in Silver Creek and the Little Wood River to overflow or spill out of the stream channel. Tr. pp.833, 858-61, 1392. The ground water users did not provide evidence, however, that these losses and flow depletions dry up any portion of Silver Creek or the Little Wood River, or prevent usable quantities of water from reaching the surface water users' points of diversion. To the contrary, the evidence shows that there is a continuous flow of water in Silver Creek and the Little Wood River downstream from the Sportsman's Access gage. See, e.g., Tr. pp. 764, 792, 886-93. At best the ground water users' evidence raises questions about how much water is lost through seepage and other mechanism in the reaches the Sportsman's Access gage and the senior surface water right holders' points of diversion. Further, these factors are "built into priority cuts. They are already within the system." Tr. p. 826; *see also id.*, p. 889 (similar). The junior ground water users must bear the risk of any uncertainty regarding these channel losses. *Rangen Dec.* at 13-14.

The ground water users further rely on evidence that an increase in stream flow the watermaster had once observed at Station 10 on the Little Wood River was not caused by reduced ground water pumping in the Bellevue Triangle, but rather by the direct pumping of ground water into Silver Creek by an upstream water user. Tr. pp.854-55. Other testimony established, however, that the upstream water user typically re-diverted the pumped water back out of the creek, and that this was done "to avoid getting our September 1883 cut" rather than to enhance stream flows generally. Tr. pp. 1409-10, 1413-14.

"Clear and convince evidence" is "'evidence indicating that a thing to be proved is highly probable or reasonably certain.'" *A&B Irr. Dist.*, 153 Idaho at 516, 284 P.3d at 241 (citation omitted). The ground water users' evidence regarding the WRV1.1 Model raises questions about the Model's calibration and predictions of the hydraulic response in Silver Creek and the Little Wood River to curtailment of ground water pumping in the Bellevue Triangle. The ground water users have not shown, however, that it is highly probable or reasonably certain that the Model is so flawed that it cannot be relied upon for purposes of this proceeding. To the contrary, it is essentially undisputed that the Model is the best scientifically-based based tool currently available for predicting the hydraulic response in Silver Creek and the Little Wood River to curtailment of ground water pumping in the Bellevue Triangle. Certainly the Model can be and should be improved and refined, and would benefit from having more data, but this is true of all models, and these risks must be borne by the ground water users in order to avoid imposing "an unlawful risk" on the senior surface water users. *Rangen Dec* at 6, 13-14. The ground water users have not carried their burden of showing by clear and convincing evidence that the WRV1.1 Model cannot be relied upon to show that ground water pumping in the Bellevue Triangle reduces flows in Silver Creek and the Little Wood River.

The ground water users' evidence that the flows of Silver Creek and the Little Wood River are depleted by channel seepage, "holes" in levees or embankments, and beaver dams does not show that it is highly probable or reasonably certain that curtailment of ground water pumping in the Bellevue Triangle will not result in usable quantities of water reaching senior surface water users on Silver Creek and the Little Wood River. *See Sylte v. Idaho Dep't of Water Res.*, 165 Idaho 238, 245, 443 P.3d 252, 259 (2019) (explaining the "futile call doctrine"). At best, the evidence regarding channel seepage, "holes," and beaver dams shows that there will be some losses between the Sportsman's Access gage and surface water users' points of diversion.

Further, the watermaster testified that curtailment of ground water pumping in the Bellevue Triangle would increase the amount of water available for diversion by at least some of the senior surface water users on Silver Creek and the Little Wood River, and the ground water users did not rebut or undermine this testimony. Tr. pp.787-92. Any risk of uncertainty on these questions falls upon the junior ground water users. The ground water users have not carried their burden of showing by clear and convincing evidence that curtailment of ground water pumping in the Bellevue Triangle will not result in "a sufficient quantity" of water for senior surface water users on Silver Creek and the Little Wood River to apply to beneficial use. *Sylte*, 165 Idaho at 245, 443 P.3d at 259.

The record, therefore, 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.'" Idaho Code Idaho Code § 42-226. The Director, therefore, is authorized to prohibit or limit ground water withdrawals in the Bellevue Triangle on this basis. Idaho Code § 42-237a.g.

**c. Ground Water Use in the Bellevue Triangle Should be Curtailed to Protect Senior Surface Water Rights on Silver Creek and the Little Wood River.**

The Idaho Supreme Court has stated that the drafters of the Idaho Constitution "intended that there be no unnecessary delays in the delivery of water pursuant to a valid water right." *AFRD2*, 143 Idaho at 874, 153 P.3d at 445. "Clearly, it was important to the drafters of our Constitution that there be a timely resolution of disputes relating to water." *Id.* at 875, 153 P.3d at 446. The District Court for Twin Falls County has also emphasized the need for prompt administrative action to address a water supply deficiency "in the year in which it occurs." *Rangen Dec.* at 10. "Curtailing ground water rights the following irrigation season is too late. The injury [to the senior appropriator], and corresponding out-of-priority use, will have already occurred." *Rangen Dec.* at 10.

A drought has been predicted for the 2021 irrigation season, and the most recent SWSI suggests that the 2021 water supply shortage in Basin 37 will be even worse than originally predicted. IDWR Ex. 5. Many surface water rights on Silver Creek and the Little Wood River have already been curtailed, including some of the most senior priorities, and further curtailments are expected within the coming days and weeks. Some fields and crops have already dried up, and so will many more without prompt action to protect the senior water rights.

The Director concludes that consumptive ground water pumping in the Bellevue Triangle<sup>15</sup> for purposes other than domestic and stock watering uses pursuant to Idaho Code §§ 42-111 and 42-1401A(11) should be curtailed as soon as possible in order to protect senior surface water rights diverting from Silver Creek and the Little Wood River.

The Director disagrees with the argument of the Idaho Ground Water Users Association, Inc. (“IGWA”), that there is no need for “prompt action” in this case because ground water pumping from the Eastern Snake Plain Aquifer (“ESPA”) does “‘not cause a sudden loss of water discharge from the springs’ and ‘curtailment would not quickly restore the spring flows.’” *IGWA's Post-Hearing Brief* at 4 (quoting *Clear Springs*, 150 Idaho at 815, 252 P.3d at 96). 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.

The Director also disagrees with the arguments of South Valley and Galena that curtailing ground water pumping in the Bellevue Triangle would be futile. South Valley and Galena argue that curtailment of ground water pumping in the Bellevue Triangle would be futile because:

- 23,000 acres would be curtailed to provide usable water to three senior surface water rights;
- the Exchange Condition ensures a full water supply to the holders of senior surface rights having the Exchange Condition;
- curtailment would not provide usable quantities of water to surface water rights junior to April 1, 1884;
- it is “too late” to protect some senior water rights; and
- most of the water produced by curtailment of ground water pumping would remain in the Wood River Valley aquifer during the 2021 irrigation season.

Curtailment is “futile” if due to “‘seepage, evaporation, channel absorption or other conditions beyond the control of the appropriators the water in the stream will not reach the point of the prior appropriator in sufficient quantity for him to apply it to beneficial use.’” *Sylte*, 165 Idaho at 245, 443 P.3d at 259. As previously discussed, the record establishes that curtailment of junior ground 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.” It simply means that, in this year of drought, some senior water right holders would have been curtailed

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<sup>15</sup> As previously noted, the term “Bellevue Triangle” as used in this order refers to the potential area of curtailment identified in the Sukow Memorandum.



regardless of ground water pumping in the Bellevue Triangle. That does not change the fact that curtailment will provide usable quantities of water to some senior surface water users.

South Valley's and Galena's argument that it is futile to curtail 23,000 acres in the Bellevue Triangle in order to provide 8.5 cfs of water to senior water users also lacks merit. *SVGWD-GGWD Brief* at 19. As Idaho courts have recognized, protecting senior surface water rights from junior ground water pumping can require curtailment of extensive acreages. *See, e.g., IGWA*, 160 Idaho at 132, 369 P.3d at 910 ("Indeed, as the district court accurately and aptly noted, the very nature of conjunctive management involves a large disparity between the number of acres curtailed and the accrued benefit to a senior surface right."). In the Rangen delivery call case, for instance, the Idaho Supreme Court upheld an order requiring "curtailment of 17,000 acres per cfs predicted to benefit Rangen." *Id.* 135, 369 P.3d at 913. In this case, many fewer acres must be curtailed "per cfs," even using South Valley's and Galena's numbers. Curtailing 23,000 acres to provide 8.5 cfs of benefit to three senior water rights requires curtailing only 2,706 acres per cfs of benefit to senior water rights.

Further, South Valley's and Galena's argument that curtailment would be futile incorrectly assumes that the Director may only consider the benefits of curtailment to the senior water rights held by water users who appeared in this proceeding. This case is not a response to a delivery call by individual senior water right holders, however, and Idaho Code § 42-237a.g., does not limit the Director to considering the benefits of curtailment to senior water users who have appeared in an administrative proceeding. In addition, the senior water right holders who appeared in this proceeding are not necessarily the only water users on Silver Creek and the Little Wood River who would benefit from curtailment. Almost all water rights on Silver Creek and the Little Wood River are senior to ground water rights in the Bellevue Triangle. Any of these surface water rights would be allowed to divert flows resulting from curtailment, within the limits of their individual priorities. *Tr.* p.898

Even assuming, simply for the sake of argument, that this proceeding was intended to address a "delivery call"—which it was not—curtailment of ground water pumping in the Bellevue Triangle is consistent with the futile call doctrine. Ground water pumping from the Wood River Valley aquifer is not limited to the Bellevue Triangle. Approximately one-third of the consumptive ground water use within the model domain comes from the aquifer area located outside the Bellevue Triangle. *IDWR Ex. 2* at 22-23; *Tr.* pp.86-87. Further, limiting curtailment to the Bellevue Triangle will provide senior surface water users with 99% of the predicted benefit of curtailing all ground water uses within the domain of the WRV1.1 Model. *Id.* Limiting curtailment to the Bellevue Triangle, therefore, gives effect to the beneficial use principles underlying the futile call doctrine. *See IGWA v. IDWR*, 160 Idaho 119, 128, 369 P.3d 897, 906 (2016) (discussing the "trim line").

South Valley and Galena also argue that "full" curtailment of all ground water pumping in the Bellevue Triangle is not justified because it would not provide usable water to surface water rights equal or junior in priority to April 1, 1884. *SVGWD-GGWD Brief* at 18-22. South Valley and Galena therefore argue the Director should limit curtailment of junior ground water rights within the Bellevue Triangle to those necessary "to satisfy surface water rights with priorities April 1, 1884 and junior." *Id.* at 22. This assertion is a logically flawed because it contradicts the very assumption upon which it is based. South Valley and Galena begin with the assumption, based on the watermaster's testimony, that curtailing all junior water rights within

the Bellevue Triangle will produce enough water to satisfy only two water rights senior to April 1, 1884, and partially satisfy a third. *Id.* at 18. This premise does not support a conclusion that curtailing fewer ground water rights will still protect surface water rights senior to April 1, 1884, however. Rather it confirms that curtailment of all junior ground water rights in the Bellevue Triangle is the minimum necessary to protect these three water rights, as well as any other surface water rights senior to April 1, 1884. Even that amount of curtailment is not sufficient fully satisfy the September 1883 priority. *Id.* at 18 (watermaster testimony).

The record does not support South Valley's and Galena's assertion that the Exchange Condition ensures a full supply of water to the holders of senior surface rights having the Exchange Condition. To the contrary, the record confirms that the Exchange Condition does not prevent priority-based curtailment, and that it also does not guarantee a fully supply of supplemental water after the water right is curtailed. *See, e.g.,* Tr. pp. 288-97.

While the record does appear to support South Valleys and Galena's assertion that some of the surface water users' fields and crops have dried up to the point that it may be "too late" to save them, *SVGWD-GGWD Brief* at 20, that is not true for all of their fields and crops. The testimony of the watermaster and the surface water users establishes that curtailment of ground water pumping in the Bellevue Triangle will help minimize surface water users' crop and revenue losses, by preventing curtailment of some surface water rights and allowing some surface water rights that have been curtailed to come back on sooner than would otherwise have been the case.

The Director also disagrees with South Valley's and Galena's argument that curtailment would be futile because most of the curtailed water would remain in the aquifer during the 2021 irrigation season. The futile call doctrine does not require all or even most of the curtailed water to reach senior water users' points of diversion. All that is required is a "sufficient quantity for [the senior water user] to apply it to beneficial use." *Sylte*, 165 Idaho at 245, 443 P.3d at 259. While the record shows that the majority of the curtailed water would remain in the Wood River Valley aquifer during the 2021 irrigation season, the record also supports a conclusion that curtailment of ground water pumping in the Bellevue Triangle would result in useable quantities of water reaching the points of diversion for some senior surface water rights. South Valley and Galena also concede that curtailment of ground water pumping in the Bellevue Triangle would produce sufficient water to fully or partially satisfy at least three senior surface water rights. *SVGWD-GGWD Brief* at 18-20.

South Valley and Galena also point to the economic benefits resulting from ground water pumping in the Bellevue Triangle, and to the economic losses and that will result from curtailing ground water pumping in the Bellevue Triangle. The Director recognizes the substantial benefits that ground water pumping in the Bellevue Triangle provide. The Director also recognizes that curtailment of ground water pumping in the Bellevue Triangle will cause significant economic impacts. The record also establishes, however, that surface water uses on Silver Creek and the Little Wood River have substantial economic benefits. The record further establishes that many of the surface water rights on Silver Creek and the Little Wood River have been, and will be, curtailed due to a water shortage that is due, in part, to ground water pumping in the Bellevue Triangle.

Moreover, "full economic development of underground water resources," does not mean that "the ground water appropriator who is producing the greater economic benefit or would

suffer the greater economic loss is entitled to the use of the ground water when there is insufficient water for both the senior and junior appropriators.” *Clear Springs*, 150 Idaho at 802, 252 P.3d at 83. As the Idaho Supreme Court has recognized, the prior appropriation doctrine as established by Idaho law can be “harsh,” especially in “times of drought.” *AFRD2*, 143 Idaho at 869, 154 P.3d at 440. “First in time is first in right” among those beneficially using the water, Id. Const. XV § 3; Idaho Code § 42-106, and “it is obvious that in times of water shortage someone is not going to receive water.” *Nettleton v. Higginson*, 98 Idaho 87, 91, 558 P.2d 1048, 1052 (1977).

## **II. This Proceeding Did Not Exceed Director’s Statutory Authority or Violate Due Process Requirements.**

Several parties make various overlapping procedural arguments that the Director exceeded or misinterpreted his statutory authority in initiating this administrative proceeding, that this proceeding should have been governed by the Rules for the Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.011.000--051 (“CM Rules”), and that this proceeding violated their rights to due process. *See Cities/SVC’s Post-Hearing Brief; Coalition of Cities Corrected Cities List and Notice of Joinder in Cities/SVC’s Post-hearing Brief; City of Pocatello’s Post-Hearing Brief and Joinder in Cities /SVC’s Post-Hearing Brief; IGWA’s Post-Hearing Brief; South Valley Groundwater District and Galena Groundwater District’s Post Hearing Memorandum; and Notice of Intent to Rely Upon Post-hearing Briefs of Galena Ground Water Users Association, South Valley Ground Water Users Association & IGWA* (Dean R. Rogers, III, and Dean R. Rogers, Inc.).<sup>16</sup> The Director disagrees with these arguments for reasons discussed below.

### **a. This Proceeding Is Not a Response to a Delivery Call and is Not Governed by the CM Rules.**

South Valley, Galena, IGWA and Pocatello argue the Director was legally required to apply and follow the procedures, standards, and requirements of the CM Rules in this administrative proceeding. IGWA argues that under CM Rule 20, the CM Rules apply to “all situations” involving administration between or among ground water rights and surface water rights. *IGWA Post-Hearing Brief* at 1. Pocatello argues that “in all respects this was a delivery call case.” *Pocatello’s Post-Hearing Brief* at 4. South Valley and Galena assert that the CM Rules apply because the testimony of the senior surface water users amounted to conjunctive management “delivery calls.” *SVGWD-GGWD Brief* at 44. These arguments lack merit.

CM Rule 1 plainly states that the CM Rules “prescribe procedures for responding to a delivery call made by the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right . . . .” IDAPA 37.03.11.001 (underlining added). The District Court for Twin Falls County has affirmed that the CM Rules are limited to cases respond to a “delivery call” as that term is defined and treated in the CM Rules. *Memorandum*

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<sup>16</sup> The Director assumes that the references in Rogers’ filing to “Galena Ground Water Users Association” and “South Valley Ground Water Users Association” were intended to identify Galena Ground Water District and South Valley Ground Water District.



*Decision and Order, Basin 33 Water Users, et al., v. IDWR*, Ada County Case No. CV01-20-8069, at 8-9 (Nov. 6, 2020) (“the CM Rules are limited in scope to prescribing the basis and procedure for responding to delivery calls . . . . No such delivery call has been made in this case.”).

The record shows that no delivery call was filed in this case, as some of the ground water users concede. *See Cities/SVC's Brief* at 11 (“this is not a water delivery call (let alone a delivery call under the CM Rules)”) (parenthetical in original). The record shows, rather, that this proceeding was initiated by the Director, *sua sponte*, pursuant to Idaho Code § 42-237a.g. *Notice* at 1. This statute authorizes the Director “[t]o “supervise and control the exercise and administration of all rights to the use of ground water.” Idaho Code § 42-237a.g. This code section states that “in the exercise of this discretionary power,” the Director “may initiate administrative proceedings to prohibit or limit the withdrawal of water from any well” during any period the Director determines “that water to fill any water right in said well is not there available.” *Id.* “Water in a well shall not be deemed available to fill a water right therein,” in turn, “if withdrawal of the amount called for by such right” would affect, contrary to the policy of the Ground Water Act, “the present or future use of any prior surface or ground water right . . . .” *Id.* (underlining added).

Nothing in Idaho Code § 42-237a.g. makes initiation of such an administrative proceeding contingent upon the filing of a delivery call or request for administration of ground water rights. Nothing in Idaho Code § 42-237a.g. or the CM Rules requires the Director to apply the CM Rules in conducting an administrative proceeding under Idaho Code § 42-237a.g. *See Memorandum Decision and Order, Basin 33 Water Users, et al., v. IDWR*, *supra*, at 8-12 (rejecting the argument that “the CM Rules preclude the Director from exercising his authority under the [Ground Water] Act”). Further, the statute expressly committed the determination of whether to initiate this administrative proceeding to the Director’s discretion. *See* Idaho Code § 42-237a.g. (“discretionary power”).<sup>17</sup> As the Idaho Supreme Court recognized, in a 1969 case involving curtailment of junior ground water pumping in favor of senior surface water users, Idaho Code § 42-237a.g. grants “broad powers” to the Director in cases such as this one. *Stevenson*, 93 Idaho at 11-12, 453 P.2d at 826-27.

These authorities, and the timeline in this case, undermine South Valley’s and Galena’s argument that the surface water users’ filed “delivery calls” simply by stating that they sought to have all water rights in Basin 37, including ground water rights, administered according to the prior appropriation doctrine. Prior to the hearing, the Director had informed the parties the surface water users would be required to provide some evidence of water shortage or injury traceable to junior ground water pumping. This was the purpose for which the surface water users provided testimony and exhibits, and the Director had “broad power” to impose this requirement upon the surface water users. *Stevenson*, 93 Idaho at 11-12, 453 P.2d at 826-27.

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<sup>17</sup> The Director’s exercise of this discretionary authority is subject to judicial review under applicable legal standards. *See, e.g., Rangen, Inc. v. IDWR*, 160 Idaho 251, 255, 371 P.3d 305, 309 (2016) (discussing the standards for reviewing “[d]iscretionary determinations of an agency”).

Fulfilling this requirement, and in so doing clarifying their positions in this proceeding (some surface water users did not take a position on whether the Director should take any action) did not amount to filing “delivery calls.”<sup>18</sup>

Further, and contrary to Pocatello’s argument, the fact that this administrative proceeding used the same presumptions, burdens, and evidentiary standards as those that apply under the CM Rules did not convert this proceeding into a delivery call case. The CM Rules did not create these presumptions, burdens, and evidentiary standards, but rather simply acknowledged and incorporated the existing presumptions, burdens, and evidentiary standards long required by Idaho’s prior appropriation doctrine. CM Rule 20.02; *AFRD2*, 143 Idaho at 873-74, 154 P.3d at 444-45. These standards are not unique to the CM Rules, and were well-established components of Idaho’s prior appropriation doctrine long before the CM Rules were promulgated. *Id.*; *see also A & B Irr. Dist.*, 153 Idaho at 516-20, 284 P.3d at 241-45 (explaining development and application of the “clear and convincing evidence” in Idaho water law).

**b. This Proceeding Must Adhere to the Well-Established Presumptions, Burdens, and Evidentiary Standards of Idaho’s Prior Appropriation Doctrine.**

The Cities and Sun Valley argue that because this case is a proceeding under Idaho Code § 42-237a.g. rather than the CM Rules, the presumptions, burdens of proof, and evidentiary standards of the CM Rules “do not clearly apply,” and that “any determination by the Director to curtail ground water rights must be supported by ‘clear and convincing evidence’ or some other heightened proof[.]” *Cities /SVC Brief* at 13. These arguments are contrary to Idaho law.

As discussed above, the CM Rules did not create new or different presumptions, burdens, and evidentiary standards. They simply acknowledge and incorporate well-established presumptions, burdens, and evidentiary standards that were well-established components of Idaho’s prior appropriation doctrine long before the CM Rules were promulgated. CM Rule 290.02; *AFRD2*, 143 Idaho at 873-74, 154 P.3d at 444-45; *A & B Irr. Dist.*, 153 Idaho at 516-20, 284 P.3d at 241-45. There is no merit in the arguments that the well-established presumptions, burdens, and evidentiary 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.

**c. “Full Economic Development of Underground Water Resources” is not at Issue in This Proceeding.**

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<sup>18</sup> South Valley and Galena also re-assert arguments they made in their prehearing motion to dismiss. The Director disagrees with these arguments for the reasons explained in the *Order Denying Motions to Dismiss, for Continuance or Postponement, and for Clarification or More Definite Statement* (May 22, 2021), which is incorporated herein by this reference

South Valley, Galena, the Cities, and Sun Valley argue that curtailment, or curtailment without allowing time for mitigation to be secured, would violate Idaho Code § 42-226's "a reasonable exercise" of a senior priority "shall not block full economic development of underground water resources." Idaho Code § 42-226. *SVGWD-GGWD Brief* at 24, 41, 48; *Cities/SVC Brief* at 7-8, 14. The Director disagrees because this "modification" to the doctrine that "first in time is first in right," *Clear Springs*, 150 Idaho at 801-02, 252 P.3d at 82-83, has no application in this case.

In the *Clear Springs* case, junior ground water users also relied on Idaho Code § 42-226's "reference to 'full development of underground water resources'" to limit or avoid a curtailment in favor of senior surface water appropriators. *Id.* The Idaho Supreme Court rejected this argument. The Court explained that "the reference to 'full development of underground water resources' refers to promoting full development of ground water by not permitting a ground water appropriator with an unreasonably shallow well to block further use of the aquifer." *Id.* at 803, 252 P.3d at 84. The Court thus held that "[b]y its terms, section 42-226 only applies to appropriators of ground water," and the senior water right holders were "not appropriators of ground water." *Id.* The Court therefore affirmed the district court's holding that the curtailment orders did not violate Idaho Code § 42-226. *Id.*<sup>19</sup>

This case, like *Clear Springs*, involves the question of whether junior ground water rights should be curtailed in favor of senior surface water rights. The Idaho Supreme Court's decision in *Clear Springs* confirms that Idaho Code § 42-226's "reference to 'full development of underground water resources'" does not apply in questions of priority administration between senior surface water rights and junior ground water rights. *Clear Springs*, 150 Idaho at 801-04, 252 P.3d at 82-85. While this case is a proceeding under Idaho Code § 42-237a.g. rather than the CM Rules, the reasoning and holding of *Clear Springs* apply even more directly in this case, because the question is whether junior ground water pumping will affect, contrary to the "declared policy" of Idaho Code § 42-226, the present or future use of senior surface water rights. Idaho Code § 42-237a.g. Under *Clear Springs*, the "declared policy" of Idaho Code § 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." *Clear Springs*, 150 Idaho at 801-04, 252 P.3d at 82-85.

**d. Section 42-237a.g. Does Not Require the Director to Establish a Reasonable Pumping Level or the Reasonably Anticipated Rate of Future Natural Recharge Before Curtailing Ground Water Rights.**

Pocatello, the Cities, and Sun Valley argue that the Director exceeded his authority under Idaho Code § 42-237a.g. by initiating an administrative proceeding without first determining whether the Wood River Valley aquifer is being "mined." This argument refers to Section 42-237a.g.'s prohibition against allowing ground water withdrawals to exceed "the reasonably

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<sup>19</sup> The Idaho Supreme Court also affirmed the district court's holding that the curtailment order did not violate Idaho Code § 42-237a. *Id.*



anticipated average rate of future natural recharge,” which prohibits “mining the aquifer.” *Clear Springs*, 150 Idaho at 804, 252 P.3d at 85; *Baker v. Ore-Ida Foods, Inc.*, 95 Idaho 575, 583, 513 P.2d 627, 635 (1973). The Cities and Sun Valley also argue that it is “inappropriate” to curtail ground water pumping before establishing a “reasonable ground water pumping level.” Both of these argument are contrary to the statutory language.

Under the plain language of Idaho Code § 42-237a.g., establishing “the reasonably anticipated average rate of future natural recharge” is an option, not a requirement. The statute authorizes the Director to prohibit or limit ground water withdrawals in two different sets of circumstances: (1) when such withdrawals “would affect, contrary to the declared policy of [the Ground Water Act], the present or future use of any prior surface or ground water right”; *or* (2) when such withdrawals would exceed “the reasonably anticipated average rate of future natural recharge.” Idaho Code § 42-237a.g. This focus of this administrative proceeding is the first set of circumstances. Nothing in Idaho Code § 42-237a.g. requires the Director to also consider the second set of circumstances and make a determination of whether the Wood River Valley aquifer is being “mined.”

There is also no requirement in Idaho Code § 42-237a.g. that the Director must determine a “reasonable ground water pumping level” before curtailing junior ground water rights. The applicable language of the statute is discretionary rather than mandatory: the Director “*may* establish a ground water pumping level or levels . . .” Idaho Code § 42-237a.g. (italics and underlining added); *see also A & B Irr. Dist.*, 153 Idaho at 511, 284 P.3d at 236 (“he is not obligated to establish a reasonable ground water pumping level”). While the Cities and Sun Valley nominally concede this point, they then pivot to argue that “the lack of any evidence discussing” a reasonable ground water pumping level means the Director committed fatal legal error by failing to consider “other provisions” of the Ground Water Act. *Cities/SVC Post-Hearing Brief* at 9-10. The Cities and Sun Valley do not provide any authority for this conclusion or try to reconcile it the above-cited holding in the *A&B* case, and do not identify the “other provisions” or explain why they allegedly were essential to the administrative proceeding. There is no merit in the argument that the Director was required to establish a “reasonable ground water pumping level” before curtailing junior ground water rights.<sup>20</sup>

**e. The Determination of Whether Water is “Available” in a Well is Determined by the Effects of Withdrawals.**

The Cities and Sun Valley also argue that the Director exceeded his authority under Idaho Code § 42-237a.g. because there was “no evidence about the amount of water in wells.” *Cities/SVC Post-Hearing Brief* at 9. They argue that without such evidence, it is impossible to determine whether water in a well is “available” for use by the ground water right holder. *Id.*

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<sup>20</sup> The Cities and Sun Valley also purport to “renew” a number of prehearing motions that were denied. *Cities/SVC Post-Hearing Brief* at 17-19. The Director denies the implied request for reconsideration of the denial of those motions.

This argument is contrary to the plain language of Idaho Code § 42-237a.g., which includes a provision specifically defining the two sets of circumstances (discussed above) in which water in a well “shall not be deemed available.” Idaho Code § 42-237a.g. Under the first set of circumstances, 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. *Id.* In short, it is the effect of withdrawals on the use of other water rights that determines whether well water is “available” for use by a junior ground water right holder, *id.*, not “the amount of water in wells.” *Cities/SVC Brief* at 9.

**f. Junior Water Users Must Provide Mitigation to Avoid Curtailment.**

The Cities and Sun Valley argue that curtailment cannot be ordered until junior ground water users have had the opportunity to secure mitigation. *Cities/SVC Brief* at 13-15.<sup>21</sup> This argument is based in large part on the reference in Idaho Code § 42-226 to “full economic development of underground water resources” and therefore is incorrect for the reason previously discussed: Idaho Code § 42-226’s admonishment that “a reasonable exercise” of senior priority “shall not block full economic development of underground water resources” has no application to senior surface water rights. *Clear Springs*, 150 Idaho at 801-04, 252 P.3d at 82-85.

The argument that curtailment cannot be ordered until the junior ground water users secure mitigation is also contrary to the holdings of the District Court for in the second Rangen decision. *Memorandum Decision and Order* (5<sup>th</sup> Jud. Dist. Case No. CV 2014-4970) (June 3, 2015) (“*Second Rangen Dec.*”). In *Second Rangen Dec.*, the Director delayed curtailment to allow junior ground water users “sufficient time ... to prepare for curtailment.” *Second Rangen Dec.*, at 4. The District Court rejected the Director’s approach because it resulted in Rangen’s senior rights being “prejudiced and subjected to unmitigated material injury while junior users were permitted to continue out-of-priority diversions.” *Id.* at 7-8. The District Court held that “under the Director’s rationale, the senior user’s water use and operations should be disrupted so as to not unduly disrupt the juniors,” which was contrary to Idaho’s prior appropriation doctrine. *Id.* at 8. The argument that curtailment cannot be ordered in this case until junior ground water users secure mitigation is contrary to Idaho’s prior appropriation doctrine for the same reasons.

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. The argument of the Cities and Sun Valley turns priority on its head by “unreasonably shift[ing] the risk of shortage to the senior surface water right holder.” *First Rangen Dec.* at 13-14.

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<sup>21</sup> IGWA asserts Department staff member Tim Luke “reportedly” testified “that the right to provide mitigation under the CM Rules is not available in this proceeding.” *IGWA’s Brief* at 2. Luke did not testify that “the right to provide mitigation . . . is not available.” His testimony was that he was not aware of what mitigation options were available in this case. Tr. p.378.

**g. This Proceedings Satisfied the Requirements of Due Process.**

The Cities, Sun Valley, and IGWA argue that the schedule the Director established for this proceeding violated the requirements of due process because it was too compressed and denied them the opportunity to adequately prepare for the hearing. *Cities/SVC Brief* at 15-17; *IGWA Brief* at 5. The Cities and Sun Valley focus in particular on the fact that the Department did not provide information in response to a request by Sun Valley on the third day of the hearing. *Cities/SVC Brief* at 16-17. IGWA focuses on the time allegedly required to understand and scrutinize seniors' claims of injury, the reasonableness of seniors' diversions and uses of water, and "other complexities of conjunctive management." *IGWA Brief* at 5. South Valley and Galena note their concern with "this shortened hearing schedule and how it impacted their ability to have a meaningful opportunity to be heard," but "reserve all rights" on these matters rather than arguing that the hearing schedule violated any legal requirements or standards. *SVGWD-GGWD Brief* at 9 n.4.<sup>22</sup>

"Due process is not a concept to be rigidly applied, but is a flexible concept calling for such procedural protections as are warranted by the particular situation." *Neighbors for Pres. of Big & Little Creek Cmty. v. Bd. of Cty. Comm'rs of Payette Cty.*, 159 Idaho 182, 190, 358 P.3d 67, 75 (2015) (citation omitted). Procedural due process requirements are met when notice and an opportunity to be heard are provided, and "the opportunity to be heard must occur at a meaningful time and in a meaningful manner." *Id.* "The procedure required is merely that to ensure that a person is not arbitrarily deprived of his or her rights." *Telford v. Nye*, 154 Idaho 606, 611, 301 P.3d 264, 269 (2013).

In this proceeding, the Cities, Sun Valley, and IGWA were never at risk of being "arbitrarily deprived" of any of their rights. It is undisputed that these entities hold no ground water rights diverting with the "Potential Area of Curtailment" originally described and depicted in the *Notice*, or within the smaller "Potential Area of Curtailment" subsequently described in Sukow's staff memorandum. Further, none of these entities' ground water rights will be curtailed pursuant to this order. The Cities, Sun Valley, and IGWA have not been injured or prejudiced by any of the due process violations they allege.

Further, this administrative proceeding provided both notice and a meaningful opportunity to be heard. The *Notice* was issued on May 4, 2021, and stated that the Director was initiating an administrative proceeding under Idaho Code § 42-237a.g. "to determine whether water is available to fill the ground water rights" within the Bellevue Triangle, which was depicted on a map attached to the *Notice*. The *Notice* stated that "if the Director concludes that water is not available to fill the ground water rights, the Director may order the ground water rights curtailed for the 2021 irrigation season." The *Notice* invited interested parties to file notices of participation and scheduled a prehearing conference to discuss, among other things, the hearing procedure, remote participation at the hearing, discovery, witnesses, and burdens.

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<sup>22</sup> South Valley and Galena argued in their prehearing motion to dismiss that the hearing schedule violated their rights to due process. The Director addressed these arguments in the *Order Denying Motions to Dismiss, for Continuance or Postponement, and for Clarification or More Definite Statement* (May 22, 2021), which is incorporated herein by this reference.



The *Notice* scheduled the hearing for June 7-11, 2021.<sup>23</sup> Pursuant to the *Notice* and the prehearing conference, the parties conducted discovery, deposed witnesses, and filed a number of prehearing motions. At the hearing, which lasted six days, multiple witnesses testified, including expert witnesses, and many exhibits were submitted into the record. The parties were also afforded the opportunity to file post-hearing briefs.

None of this is disputed by the Cities, Sun Valley, or IGWA. Their arguments, rather, are that a much more extended prehearing schedule was required to fully identify and develop the issues and the evidence, and to otherwise prepare for the hearing. *Cities/SVC Brief* at 17; *IGWA Brief* at 5. These arguments are largely based on analogizing this case to the cases involving conjunctive management delivery calls on the Eastern Snake Plain Aquifer (“ESPA”). IGWA asserts that those cases “did not present a special need for very prompt action” because ground water pumping did not “cause a sudden loss of water discharge from the springs” and “curtailment would not quickly restore the spring flows.” *IGWA Brief* at 4. The Cities’ expert witness testified that, as in the ESPA cases, he would have needed “many months” to prepare for this proceeding. Tr. p. 1442.

The assertions that this case is analogous to a delivery call in the ESPA are contrary to the record. This proceeding involves an aquifer that is far smaller than the ESPA in geographical extent and volume. The record shows that changes in ground water pumping from the Bellevue Triangle are quite rapidly reflected changes in the flows of Silver Creek and the Little Wood River, and that the amount of change is substantial. Moreover, there is a need for prompt action to protect senior surface water rights on Silver Creek and the Little Wood River. Many of these rights have been curtailed due water shortages and more likely will be soon; yet out-of-priority ground water pumping in the Bellevue Triangle continues. Under these circumstances, requiring “many months” of prehearing preparation would be far in excess of what is “warranted by the particular situation.” *Neighbors*, 159 Idaho at 190, 358 P.3d at 75. It also would effectively preclude in-season protection of senior surface water rights while allowing junior ground water right to continue pumping. See *Second Rangen Dec.* at 8 (rejecting the rationale that “the senior user’s water use and operations should be disrupted so as to not unduly disrupt the juniors”). In the circumstances of this case, the extended prehearing schedule that the Cities, Sun Valley, and IGWA seek “unreasonably shifts the risk of shortage to the senior surface water right holder.” *First Rangen Dec.* at 13-14. *Id.*

#### **h. IDFG’s Ground Water Rights are Non-Consumptive and Should Not Be Curtailed.**

IDFG holds three ground water rights in the Bellevue Triangle for fish propagation purposes, which are used at IDFG’s Hayspur Fish Hatchery. IDFG argues that these water rights should not be curtailed because they have are non-consumptive and have no adverse effects on senior surface water rights on Silver Creek and the Little Wood River. *IDFG Brief* at 3-12.

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<sup>23</sup> On the third day of the hearing, the Director extended the hearing to June 12 in order to allow for all witnesses to be examined and exhibits submitted, and also left open the option of extending the hearing into the following week, although that turned out to be unnecessary.

IDFG's ground water rights have a condition that expressly limits them to "non-consumptive" use of water. Tr. pp. 1009-14. At the hearing, IDFG's witness described in some detail how water is used and measured at the hatchery, relying upon and explaining several illustrative and quantitative exhibits. Tr. pp. 1015-44. IDFG argues that the exhibits and testimony demonstrate the IDFG's use of water at the hatchery is non-consumptive and should not be curtailed. *IDFG Brief* at 3-12.

The Director concludes that IDFG has provided evidence showing that it is highly probable or reasonably certain that IDFG's use of ground water at the Hayspur Fish Hatchery is non-consumptive. IDFG has therefore provided clear and convincing evidence that its use of ground water in the Bellevue Triangle will not affect, contrary to the declared policy of the Ground Water Act, the use of senior surface water rights on Silver Creek and the Little Wood River during the 2021 irrigation season. *A&B Irr. Dist.*, 153 Idaho at 516, 284 P.3d at 24; Idaho Code § 42-237a.g. IDFG's ground water rights for the Hayspur Fish Hatchery, therefore, will be excluded from the curtailment order.

### ORDER

Based on the forgoing discussion, IT IS HEREBY ORDERED that on July 1, 2021, starting at 12:01 a.m., ground water rights listed in Exhibit A to this order shall be curtailed. The holders of the water rights shall refrain from diversion and use of ground water pursuant to those water rights. The curtailment shall run through the 2021 irrigation season unless notified by the Department that this order of curtailment has been modified or rescinded as to their water rights. This order applies to all consumptive ground water rights, including agricultural, commercial, industrial, and municipal uses, but excludes ground water rights used for *de minimis* domestic purposes where such domestic use is within the limits of the definition set forth in Idaho Code § 42-111 and ground water right used for *de minimis* stockwatering where such stock watering is within the limits of the definitions set for in Idaho Code § 42-1401A(11).

IT IS FURTHER ORDERED that the watermaster for Water District 37, on July 1, 2021, and thereafter through the irrigation season of 2021, is directed to curtail the ground water rights listed in Exhibit A to this order unless notified by the Department that this order of curtailment has been modified or rescinded.

DATED this 28<sup>th</sup> day of June, 2021.

  
Gary Spackman  
Director



### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 28<sup>th</sup> day of June, 2021, the above and foregoing FINAL ORDER was served by the method indicated below, and address to the following:

James R. Laski Heather E. O'Leary Lawson Laski Clark, PLLC 675 Sun Valley Rd., Ste. A P.O. Box 3310 Ketchum, ID 83340 <a href="mailto:jrl@lawsonlaski.com">jrl@lawsonlaski.com</a> <a href="mailto:heo@lawsonlaski.com">heo@lawsonlaski.com</a> <a href="mailto:efiling@lawsonlaski.com">efiling@lawsonlaski.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
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**Megan Jenkins**  
Administrative Assistant



Exhibit A  
List of Ground Water Rights Subject to Curtailment  
Sorted by Owner

Owner	Water Right No.	Basis	Priority Date	Usage	Diversion Rate (cfs)	Total Acres
187 SLUDER DR LLC	37-8451	License	10/31/1988	COMMERCIAL	0.08	
SBISON LLC	37-21474	Decreed	7/18/1960	IRRIGATION	0.87	43.5
ABJ2 LLC; STEVENSON, JOHN F	37-2631	Decreed	2/8/1960	IRRIGATION	5.72	602
ABJ2 LLC; STEVENSON, JOHN F	37-2664A	Decreed	6/5/1961	IRRIGATION	2.5	602
ABJ2 LLC; STEVENSON, JOHN F	37-2668	Decreed	8/12/1961	IRRIGATION	1.11	602
ABJ2 LLC; STEVENSON, JOHN F	37-19735	Decreed	4/12/1964	IRRIGATION	0.51	602
ANDERSON ASPHALT PAVING INC	37-8856	License	7/15/1996	INDUSTRIAL	0.23	
ANDERSON, CYNTHIA E; ANDERSON, GREGORY L	37-22360	Decreed	1/29/1965	IRRIGATION	2.53	126.3
ANDERSON, JASON V; ANDERSON, WHITNIE A	37-21603	Decreed	4/21/1970	IRRIGATION	0.46	24.2
ANDREA STEVESON WARD IRREVOCABLE TRUST; BELLE RANCH LLC; JOHN FELL STEVENSON JR IRREVOCABLE TRUST	37-4133	Decreed	4/15/1956	IRRIGATION	2.12	106
APPLEGATE, TONYA; ARAMBARRI, GARY DAVID; ARAMBARRI, RON; HALL, JEFF; HALL, RANDY; REBISCHKE, LORI L	37-22390	Decreed	7/18/1960	IRRIGATION	0.05	4.9
ARGUEDAS, DANIEL JOHN; ARGUEDAS, GRETCHEN KATHLEEN	37-7064E	Decreed	4/21/1970	IRRIGATION	0.46	25.3
AUBREY SPRING RANCH LLC	37-2553A	Decreed	6/28/1954	IRRIGATION	2	100
AUBREY SPRING RANCH LLC	37-2686D	Decreed	12/11/1962	IRRIGATION	0.16	19
AUBREY SPRING RANCH LLC	37-7598D	Decreed	7/8/1977	IRRIGATION	0.22	19
AUBREY SPRING RANCH LLC	37-22777	License	12/5/1979	IRRIGATION	3.18	158.9
AUBREY SPRING RANCH LLC	37-22778	License	12/5/1979	IRRIGATION	0.06	2.4
AUBREY SPRING RANCH LLC	37-8571	License	9/22/1989	WILDLIFE	5	
BAIRD, CAROLYN; BAIRD, RUSTY	37-8408	License	10/6/1988	IRRIGATION	0.06	2
BAKER, JEREMY WAYNE; BAKER, TAMARA KATRINA	37-20822	Decreed	9/21/1954	IRRIGATION	0.25	20
BAKER, JEREMY WAYNE; BAKER, TAMARA KATRINA	37-20824	Decreed	12/12/1979	IRRIGATION	0.15	20
BALL, PATRICIA LATHAM; BALL, ROBERT R	37-2557V	Decreed	9/25/1954	IRRIGATION	0.2	10
BARFUSS, DARIN; BARFUSS, KATHLEEN	37-2557D	Decreed	9/25/1954	IRRIGATION	0.1	4
BASELINE CANAL CO; BASELINE PUMP ASSN # 1	37-4109	Decreed	6/18/1955	IRRIGATION	6	
BASELINE CANAL CO; BASELINE PUMP ASSN # 2	37-2556A	Decreed	9/21/1954	IRRIGATION	6.76	
BASHAW FAMILY TRUST	37-2566A	Decreed	2/26/1955	IRRIGATION	0.07	841.1
BASHAW FAMILY TRUST	37-2594A	Decreed	2/25/1957	IRRIGATION	0.07	841.1
BASHAW FAMILY TRUST	37-2612A	Decreed	4/1/1959	IRRIGATION	0.07	841.1
BASHAW FAMILY TRUST	37-7239A	Decreed	6/5/1973	IRRIGATION	0.04	841.1
BASHAW FAMILY TRUST; THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-22559	Decreed	2/26/1955	IRRIGATION	2.86	841.1
BASHAW FAMILY TRUST; THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-22560	Decreed	2/26/1955	IRRIGATION	0.11	200.1
BASHAW FAMILY TRUST; THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-22561	Decreed	2/25/1957	IRRIGATION	2.32	841.1
BASHAW FAMILY TRUST; THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-22562	Decreed	2/25/1957	IRRIGATION	0.09	200.1
BASHAW FAMILY TRUST; THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-22563	Decreed	4/1/1959	IRRIGATION	3.07	841.1
BASHAW FAMILY TRUST; THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-22564	Decreed	4/1/1959	IRRIGATION	0.11	200.1
BASHAW FAMILY TRUST; THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-2615	Decreed	5/28/1959	IRRIGATION	1.8	841.1
BASHAW FAMILY TRUST; THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-22565	Decreed	6/5/1973	IRRIGATION, STOCKWATER	1.55	841.1
BASHAW FAMILY TRUST; THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-22566	Decreed	6/5/1973	IRRIGATION	0.06	200.1
BASHAW, AUDREY; BASHAW, GERALD B	37-800	Decreed	4/1/1930	IRRIGATION, STOCKWATER	2	434
BASHAW, AUDREY; BASHAW, GERALD B	37-801	Decreed	4/1/1950	IRRIGATION	2	434
BASHAW, GERALD B	37-22389	Decreed	7/18/1960	IRRIGATION	0.52	51.4
BASHAW, GERALD B	37-22572	Decreed	7/18/1960	IRRIGATION	0.23	200.1
BASHAW, GERALD B	37-22587	Decreed	7/18/1960	IRRIGATION	0.13	12.6
BECK, THOMAS M	37-2732	Decreed	4/11/1966	IRRIGATION	1.9	90.2
BECK, WILLIAM M	37-2559B	Decreed	10/4/1954	IRRIGATION	0.18	20
BECK, WILLIAM M	37-20737	Decreed	4/15/1985	IRRIGATION	0.03	20
BELLE RANCH LLC	37-23055	Decreed	8/12/1961	IRRIGATION	0.43	21.5
BELLE RANCH LLC; STEVENSON, JOHN F	37-4362	Decreed	6/1/1940	IRRIGATION, COMMERCIAL, DOMESTIC	0.08	1

Exhibit A  
List of Ground Water Rights Subject to Curtailment  
Sorted by Owner

Owner	Water Right No.	Basis	Priority Date	Usage	Diversion Rate (cfs)	Total Acres
BENSON, BARBARA	37-8384	License	8/29/1988	IRRIGATION	0.09	3
BENSON, BARBARA	37-8660	License	8/9/1990	IRRIGATION	0.02	0.7
BLACKBURN FARMING LLC	37-2625B	Decreed	11/13/1959	IRRIGATION	0.04	1.8
BLACKBURN FARMING LLC	37-23090	Decreed	11/13/1959	IRRIGATION	7.16	1291.6
BLACKBURN FARMING LLC	37-23091	Decreed	8/1/1960	IRRIGATION	3.61	1291.6
BLACKBURN FARMING LLC	37-23092	Decreed	8/20/1964	IRRIGATION	8.89	1291.6
BLACKBURN FARMING LLC	37-23093	Decreed	4/1/1984	IRRIGATION	2.65	1291.6
BLACKBURN, BRIAN	37-20896	Decreed	4/21/1970	IRRIGATION	0.35	20.9
BLAINE COUNTY RECREATION DISTRICT	37-21569	Decreed	10/22/1959	IRRIGATION	0.02	0.8
BOND, HELEN H	37-20621	Decreed	9/21/1954	IRRIGATION	0.17	12
BOND, HELEN H	37-20619	Decreed	12/12/1979	IRRIGATION	0.11	12
BORDENKIRCHER, MICHAEL P	37-8011A	Decreed	5/31/1982	IRRIGATION	0.06	3
C W & R H GARDNER FAMILY LIMITED PARTNERSHIP	37-802	Decreed	4/1/1935	IRRIGATION	5	484
C W & R H GARDNER FAMILY LIMITED PARTNERSHIP	37-4433	Decreed	4/1/1952	IRRIGATION	2.86	143
C W & R H GARDNER FAMILY LIMITED PARTNERSHIP	37-2684	Decreed	10/29/1962	IRRIGATION	6.4	321
C W & R H GARDNER FAMILY LIMITED PARTNERSHIP	37-21974	Decreed	4/15/1981	IRRIGATION	5.76	288
C W & R H GARDNER FAMILY LIMITED PARTNERSHIP	37-8218	License	6/11/1985	IRRIGATION	1	58
C W & R H GARDNER FAMILY LIMITED PARTNERSHIP	37-8219	License	6/11/1985	IRRIGATION	4.5	864
CAMERON, GEORGE E; CAMERON, MARGARET J	37-7243	Decreed	6/19/1973	IRRIGATION, DOMESTIC	0.22	23.9
CAMERON, GEORGE E; CAMERON, MARGARET J	37-7995	Decreed	2/4/1982	IRRIGATION	0.32	23.9
CAMERON, LESLIE H; CAMERON, THELMA CLOUGHTON	37-7373	Decreed	8/25/1974	IRRIGATION	0.18	9
CAMERON, LESLIE H; CAMERON, THELMA CLOUGHTON	37-23245	Decreed	8/25/1974	IRRIGATION, DOMESTIC	0.06	1
CASEY, MARGARET C	37-21500	Decreed	1/29/1965	IRRIGATION	0.05	2.5
CASH, JUDY	37-21666	Decreed	9/25/1954	IRRIGATION	0.1	5
CEMMRM PARTNERS LLC	37-2739	Decreed	7/8/1966	IRRIGATION, STOCKWATER	1.23	60
CHANEY CREEK RANCH LLC	37-2608	Decreed	10/8/1958	IRRIGATION	2	454
CHANEY CREEK RANCH LLC	37-2609A	Decreed	10/8/1958	IRRIGATION, WILDLIFE STORAGE, RECREATION STORAGE, AESTHETIC STORAGE, DIVERSION TO STORAGE	0.48	12
CHANEY CREEK RANCH LLC	37-2685	Decreed	12/8/1961	IRRIGATION	2.46	454
CHANEY CREEK RANCH LLC	37-7284	Decreed	9/25/1973	IRRIGATION	1.98	454
CHASE, MC KENNA; WHEELER, CODY	37-7616	Decreed	5/31/1977	IRRIGATION, DOMESTIC	0.18	6.1
CONNAUTON, SHANNON M; SMITH, FRANK M	37-22254	License	6/30/1985	IRRIGATION	0.18	9
CORSO-HARRIS, PEPIN; HARRIS, MICHAEL A	37-7609	Decreed	5/18/1977	IRRIGATION	0.29	17.2
CROCE, JERRY L	37-7486	Decreed	4/19/1976	IRRIGATION	0.2	10
DAVID GARST REVOCABLE TRUST	37-20928	Decreed	7/9/1956	IRRIGATION	1.38	69.1
DE CHEVRIEUX, AARON M; EISENBARTH, STEPHANIE J	37-8553	License	9/25/1989	IRRIGATION, DOMESTIC	0.09	3
DEAN R ROGERS INC	37-2600	Decreed	12/27/1957	IRRIGATION	0.72	458
DEAN R ROGERS INC	37-2641A	Decreed	9/27/1960	IRRIGATION	4.07	458
DEAN R ROGERS INC	37-2641B	Decreed	9/27/1960	IRRIGATION	0.93	458
DEAN R ROGERS INC	37-2642	Decreed	9/27/1960	IRRIGATION	3	699.5
DEAN R ROGERS INC	37-2643	Decreed	9/27/1960	IRRIGATION	3.4	699.5
DEAN R ROGERS INC	37-2661	Decreed	5/24/1961	IRRIGATION	2.32	699.5
DEAN R ROGERS INC	37-2662A	Decreed	5/24/1961	IRRIGATION	2.1	458
DEAN R ROGERS INC	37-2662B	Decreed	5/24/1961	IRRIGATION	1.32	458
DEAN R ROGERS INC	37-4289A	Decreed	6/1/1961	IRRIGATION	0.16	458
DEAN R ROGERS INC	37-4289B	Decreed	6/1/1961	IRRIGATION	0.08	458
DEAN R ROGERS INC; NORTHWEST FARM CREDIT SERVICES FLCA	37-7633	Decreed	6/20/1977	IRRIGATION	4.06	699.5
DEAN R ROGERS INC; NORTHWEST FARM CREDIT SERVICES FLCA	37-8091	Decreed	4/29/1983	IRRIGATION	2.22	111
DEAN, PAUL A; DEAN, TANA L	37-7708	Decreed	3/30/1978	IRRIGATION, STOCKWATER, DOMESTIC	0.19	16.5
DENZEL R & MARY S ROWLAND REVOCABLE LIVING TRUST	37-7747	Decreed	11/16/1978	IRRIGATION, DOMESTIC	0.3	18

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Owner	Water Right No.	Basis	Priority Date	Usage	Diversion Rate (cfs)	Total Acres
DIGES, ANDREW	37-20828	Decreed	9/21/1954	IRRIGATION	0.25	20
DIGES, ANDREW	37-20826	Decreed	12/12/1979	IRRIGATION	0.15	20
DILWORTH, BRYAN K; ROCKWOOD, KELLY M	37-7775G	Decreed	8/2/1988	IRRIGATION	0.4	20
DREYER, ROBERT P	37-2614	Decreed	5/18/1959	IRRIGATION	2	164.5
DREYER, ROBERT P	37-14289	Decreed	4/15/1978	IRRIGATION	0.29	164.5
DRISCOLL, TRISHA; PAGE, JEFFREY A	37-2557P	Decreed	9/25/1954	IRRIGATION	0.2	10
DRUSSEL, DIANE L; DRUSSEL, LARRY	37-23103	Decreed	7/9/1956	IRRIGATION	0.08	3.9
EAKIN, GRACE; ESTATE OF JAMES IVAN EAKIN	37-21807	Decreed	4/21/1970	IRRIGATION	3.08	154
EGE, JESSICA A; EGE, LYLE G; TRUXAL 2019 REVOCABLE TRUST	37-2546A	Decreed	9/28/1953	IRRIGATION, DOMESTIC	0.32	18
FARMERS NATIONAL BANK WENDELL OFFICE	37-7310	Decreed	6/10/1983	IRRIGATION, STOCKWATER, DOMESTIC	0.08	6.8
FERY LC RANCH LLC; GATES FAMILY PARTNERSHIP LP; WLCR LLC	37-2686C	Decreed	12/11/1962	IRRIGATION	1.618	196
FERY LC RANCH LLC; GATES FAMILY PARTNERSHIP LP; WLCR LLC	37-7598C	Decreed	7/8/1977	IRRIGATION	2.302	196
FERY LC RANCH LLC; GATES FAMILY PARTNERSHIP LP; WLCR LLC	37-7799	Decreed	10/2/1979	IRRIGATION, DOMESTIC	2.78	136
FIFE, ARLENE; FIFE, MILTON D	37-7923	Decreed	7/22/1981	IRRIGATION, DOMESTIC	0.12	3
FINNEY, DIANA K; FINNEY, HIRAM	37-21808	Decreed	4/21/1970	IRRIGATION	0.72	36
FLOLO, JOHN M; FLOLO, JULIE C	37-2611D	Decreed	3/26/1959	IRRIGATION	0.12	6
FLOOD, DIANA L; FLOOD, JOHN D	37-2479	Decreed	5/31/1947	IRRIGATION	5.88	294
FLOOD, DIANA L; FLOOD, JOHN D	37-21568	Decreed	10/22/1959	IRRIGATION	0.56	28
FLOOD, DIANA L; FLOOD, JOHN D	37-7676	Decreed	12/29/1977	IRRIGATION	0.4	20
FLOOD, JOHN D	37-2573	Decreed	6/16/1955	IRRIGATION	1.42	549.3
FLOOD, JOHN D	37-7014	Decreed	3/11/1968	IRRIGATION	5	549.3
FLOOD, JOHN D	37-11932	Decreed	4/15/1987	IRRIGATION	0.72	549.3
FOLEY, CHARLES T	37-22453	Decreed	5/19/1964	IRRIGATION	3.33	167.6
FOLEY, CHARLES T	37-22454	Decreed	5/19/1964	RECREATION STORAGE, AESTHETIC STORAGE	0	
FOLEY, CHARLES T; FOLEY, KATHLEEN MAHER	37-2686E	Decreed	12/11/1962	IRRIGATION	0.21	25.4
FOLEY, CHARLES T; FOLEY, KATHLEEN MAHER	37-2686F	Decreed	12/11/1962	RECREATION STORAGE, AESTHETIC STORAGE	0	
FOLEY, CHARLES T; FOLEY, KATHLEEN MAHER	37-7598E	Decreed	7/8/1977	IRRIGATION	0.29	25.4
FOLEY, CHARLES T; FOLEY, KATHLEEN MAHER	37-7598F	Decreed	7/8/1977	RECREATION STORAGE, AESTHETIC STORAGE	0	
FOLEY, CHARLES T; FOLEY, KATHLEEN MAHER	37-8225A	Decreed	6/26/1985	IRRIGATION	0.36	19
FREDRICKSON, EDITH	37-22627	Decreed	3/26/1959	IRRIGATION, DOMESTIC	0.46	21
GARDNER, SARAH R; HARRISON, RONALD T	37-22874	Decreed	10/29/1962	IRRIGATION	0.4	20
GARNER, MATTHEW A; LEAH, KATE L	37-7775D	Decreed	8/2/1988	IRRIGATION	0.4	20
GARY & JUDITH FRUGARD TRUST	37-21511	Decreed	9/25/1954	IRRIGATION	0.1	5
GOVE, JAY; GOVE, NANCY	37-7064D	Decreed	4/21/1970	IRRIGATION	0.36	18
GREEN, LARRY G; GREEN, LUANNE	37-27058	Decreed	1/29/1965	IRRIGATION	0.78	39
GRIGSBY, JUDITH P	37-8012	Decreed	6/2/1982	IRRIGATION, DOMESTIC	0.16	4.5
HALE, JOHNNY; WATTS, JOAN	37-20895	Decreed	4/21/1970	IRRIGATION	0.35	20.3
HANSON, MELISSA; KELLER, JASON	37-20413	Decreed	10/22/1959	IRRIGATION	0.4	20
HAYWARD, JERRY P; HAYWARD, STEPHANIE A	37-4160	Decreed	4/1/1956	IRRIGATION, STOCKWATER	0.19	7.9
HEART ROCK RANCH LLC	37-2492	Decreed	9/16/1948	IRRIGATION, WILDLIFE, RECREATION, AESTHETIC	2.75	122.5
HEART ROCK RANCH LLC	37-22051	Decreed	9/16/1948	STOCKWATER, WILDLIFE, AESTHETIC	2.75	
HEART ROCK RANCH LLC	37-22050	Decreed	4/15/1950	IRRIGATION, STOCKWATER, WILDLIFE, RECREATION, AESTHETIC	3.1	369.4
HEART ROCK RANCH LLC	37-22052	Decreed	4/15/1950	STOCKWATER, WILDLIFE, AESTHETIC	1.65	
HEART ROCK RANCH LLC	37-22533	Decreed	4/15/1950	STOCKWATER, WILDLIFE, AESTHETIC	2.18	
HEART ROCK RANCH LLC	37-22749	Decreed	6/1/1950	IRRIGATION, STOCKWATER	0.62	34.8
HEART ROCK RANCH LLC	37-2538	Decreed	6/20/1953	IRRIGATION, WILDLIFE, RECREATION, AESTHETIC	1.65	151.1
HEART ROCK RANCH LLC	37-2597	Decreed	7/9/1957	IRRIGATION, WILDLIFE, DOMESTIC, RECREATION, AESTHETIC	1.36	166.1
HEART ROCK RANCH LLC	37-2764	Decreed	11/19/1963	IRRIGATION, WILDLIFE, DOMESTIC, RECREATION, AESTHETIC	1.98	166.1



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HEART ROCK RANCH LLC	37-22459	Permit	1/19/2010	WILDLIFE STORAGE, RECREATION STORAGE, AESTHETIC STORAGE, DIVERSION TO STORAGE	76.36	
HEMINGWAYS BLIND LLC	37-2683B	Decreed	8/23/1961	IRRIGATION	1.12	152
HEMINGWAYS BLIND LLC	37-7349B	License	3/7/1974	IRRIGATION	0.43	152
HENEGHAN, JULIE; HENEGHAN, TERRANCE	37-8168	License	3/19/1984	IRRIGATION, DOMESTIC	0.09	2.4
HENEGHAN, JULIE; HENEGHAN, TERRANCE	37-8488	License	1/30/1989	IRRIGATION	0.04	2
HENSON, BRADLEY	37-22361	Decreed	1/29/1965	IRRIGATION	0.04	2
HOOK & TEE LLC	37-23019	Decreed	2/1/1957	IRRIGATION	1.4	70
IVERSON, CLIFTON R; IVERSON, RHONDA L	37-20929	Decreed	7/9/1956	IRRIGATION	0.08	4
JASKOWSKI, MICHAEL; JASKOWSKI, STEPHANIE	37-21459	Decreed	10/22/1959	IRRIGATION	0.4	20
JESSEN, MICHAEL	37-7406	Decreed	11/21/1974	IRRIGATION, DOMESTIC	0.2	15
JOHN D & DIANA L FLOOD TRUST	37-21175	Decreed	10/22/1959	IRRIGATION	0.4	20
JOHNSON, JILL; JOHNSON, MARK	37-2682	Decreed	7/31/1961	IRRIGATION	3.44	198
JORGENSEN, TRAVIS H	37-7775F	Decreed	8/2/1988	IRRIGATION	0.4	20
KIMBALL, DEBORAH; KIMBALL, KENNETH; KIMBALL, KYLE	37-7409	Decreed	1/1/1975	IRRIGATION, STOCKWATER, DOMESTIC	0.19	20
LAKESIDE INDUSTRIES INC	37-2493	Decreed	12/21/1948	IRRIGATION	2	100
LAKESIDE INDUSTRIES INC	37-2747	Decreed	8/11/1966	IRRIGATION	1.06	56
LAKESIDE INDUSTRIES INC	37-7002	Decreed	8/8/1967	IRRIGATION	1.24	507.6
LAKESIDE INDUSTRIES INC	37-7210	Decreed	3/14/1973	IRRIGATION	0.89	102
LAKESIDE INDUSTRIES INC	37-7225	Decreed	5/4/1973	IRRIGATION	4.62	230.8
LAKESIDE INDUSTRIES INC	37-7309	Decreed	10/31/1973	IRRIGATION, STOCKWATER	3.93	507.6
LAKESIDE INDUSTRIES INC	37-12089	Decreed	5/1/1981	IRRIGATION	3.93	507.6
LARSON, CHRISTOPHER; LARSON, LUCIA	37-23078	Decreed	6/10/1983	IRRIGATION, STOCKWATER	0.06	5.1
LOOMIS, MARK; LOOMIS, STEVE	37-4336	Decreed	4/1/1940	IRRIGATION	0.28	14
LOVAS TRUST	37-2625A	Decreed	11/13/1959	IRRIGATION	0.8	143.5
LOVAS TRUST	37-2638	Decreed	8/1/1960	IRRIGATION	0.4	143.5
LOVAS TRUST	37-2700	Decreed	8/20/1964	IRRIGATION	0.99	143.5
LOVAS TRUST	37-21463	Decreed	4/1/1984	IRRIGATION	0.3	143.5
LOVING SPRINGS RANCH LP	37-23289	Decreed	8/23/1961	IRRIGATION	0.72	38
LUNCEFORD, MARGARET; LUNCEFORD, WILLIAM J	37-2664B	Decreed	6/5/1961	IRRIGATION	0.6	19
MADSEN, PETER; MADSEN, VICTORIA	37-21604	Decreed	4/21/1970	IRRIGATION	0.26	20.1
MARLOW, MICHAEL H; MARLOW, NATASHA	37-7764	Decreed	2/16/1979	IRRIGATION, DOMESTIC	0.2	9.2
MC GOWAN, CHRISTOPHER D; MC GOWAN, SUSAN M	37-22571	Decreed	7/18/1960	IRRIGATION	0.2	10
MC INNIS, MARSHAL	37-7775C	Decreed	8/2/1988	IRRIGATION	0.4	20
MOLYNEUX, A W	37-8068	License	1/24/1983	IRRIGATION	1.04	52
MOLYNEUX, A W; MOLYNEUX, MAXINE	37-2629	Decreed	1/14/1960	IRRIGATION	2.5	138.9
MOLYNEUX, A W; MOLYNEUX, MAXINE	37-7584	Decreed	6/28/1977	IRRIGATION	0.86	134
MOLYNEUX, JOHN I; MOLYNEUX, KRISTY	37-11387	Decreed	6/1/1950	IRRIGATION, STOCKWATER	1.94	140.9
MOLYNEUX, JOHN I; MOLYNEUX, KRISTY	37-4421B	Decreed	1/1/1955	IRRIGATION	0.48	591
MOLYNEUX, JOHN I; MOLYNEUX, KRISTY	37-2658	Decreed	5/3/1961	IRRIGATION	6.71	591
MOLYNEUX, JOHN I; MOLYNEUX, KRISTY	37-7651	Decreed	8/2/1977	IRRIGATION	2.05	591
MOLYNEUX, JOHN I; MOLYNEUX, KRISTY	37-11430	Decreed	5/1/1982	IRRIGATION	2.4	591
MOLYNEUX, WILLIAM L	37-2570	Decreed	6/13/1955	IRRIGATION	1.75	110
MOLYNEUX, WILLIAM L	37-11426	Decreed	6/13/1970	IRRIGATION	0.3	110
NACHTMAN, FRANK; NACHTMAN, JANET	37-20704	License	4/8/2002	COMMERCIAL STORAGE, DOMESTIC, FIRE PROTECTION, FIRE PROTECTION STORAGE, DIVERSION TO STORAGE	0.07	
NISSON, JESSE A; NISSON, JIM L	37-2496	Decreed	9/4/1950	IRRIGATION	2.36	78
NOBLE, KATHY	37-22253	License	6/30/1985	IRRIGATION	0.18	9
O BRIEN, DENNIS P	37-7775B	Decreed	8/2/1988	IRRIGATION	0.4	20
PHELPS, MATTHEW ALLEN; PHELPS, SHERRIE M	37-2624B	Decreed	10/22/1959	IRRIGATION	0.44	20

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PICABO LIVESTOCK CO	37-8875	License	5/11/1998	DOMESTIC	0.08	
PICABO LIVESTOCK CO INC	37-11911	Decreed	7/28/1959	IRRIGATION	6.18	3037.4
PICABO LIVESTOCK CO INC	37-2627A	Decreed	12/9/1959	IRRIGATION	10.65	3037.4
PICABO LIVESTOCK CO INC	37-11914	Decreed	5/1/1972	IRRIGATION	6.18	3037.4
POINT OF ROCKS RANCH LLC	37-2591	Decreed	12/24/1956	IRRIGATION	1.54	127
POINT OF ROCKS RANCH LLC	37-22129	Decreed	11/1/1960	WILDLIFE, RECREATION	0.15	
POINT OF ROCKS RANCH LLC	37-4427	Decreed	10/31/1961	IRRIGATION	1	127
PORTER, SCOTT C	37-2557H	Decreed	9/25/1954	IRRIGATION	0.12	6
PRAIRIE SUN RANCH OWNERS ASSN INC	37-21046	Decreed	10/4/1954	IRRIGATION	5.99	511
PRAIRIE SUN RANCH OWNERS ASSN INC	37-21050	Decreed	10/4/1954	IRRIGATION	0.35	28.7
PRAIRIE SUN RANCH OWNERS ASSN INC	37-21084	Decreed	4/15/1985	IRRIGATION	0.86	511
PRAIRIE SUN RANCH OWNERS ASSN INC	37-21088	Decreed	4/15/1985	IRRIGATION	0.05	28.7
RALPH W & KANDI L GIRTON 1999 REVOCABLE TRUST	37-22692	Decreed	1/29/1965	IRRIGATION	0.03	2.1
RALPH W & KANDI L GIRTON 1999 REVOCABLE TRUST	37-22693	Decreed	1/29/1965	IRRIGATION	0.03	2.1
RALPH W & KANDI L GIRTON 1999 REVOCABLE TRUST	37-22695	Decreed	1/29/1965	IRRIGATION	0.03	2
RALPH W & KANDI L GIRTON 1999 REVOCABLE TRUST	37-22696	Decreed	1/29/1965	IRRIGATION	0.03	2.1
REED, LINDA K; SAMPLE, WILLIAM K	37-604E	Decreed	6/3/1887	IRRIGATION	1.04	36
REED, LINDA K; SAMPLE, WILLIAM K	37-7775E	Decreed	8/2/1988	IRRIGATION	0.72	36
RENEGADE MC GLOCHLIN LLC	37-2444	Decreed	10/26/1931	IRRIGATION	2.52	608
RENEGADE MC GLOCHLIN LLC	37-7551	Decreed	3/20/1978	IRRIGATION	2.8	608
SANGHA, KEN; SANGHA, MALINDER	37-2518	Decreed	12/11/1950	IRRIGATION	1.8	127.2
SANGHA, KEN; SANGHA, MALINDER	37-22628	Decreed	3/26/1959	IRRIGATION	0.32	127.2
SCHMID, KATHRYN; SCHMID, STEPHEN	37-22039	Decreed	3/24/1883	IRRIGATION, MITIGATION	0.04	27.9
SCHMID, KATHRYN; SCHMID, STEPHEN	37-22041	Decreed	3/24/1883	IRRIGATION, MITIGATION	0.24	27.9
SCHMID, KATHRYN; SCHMID, STEPHEN	37-22035	Decreed	6/30/1884	IRRIGATION, MITIGATION	0.12	27.9
SCHMID, KATHRYN; SCHMID, STEPHEN	37-22033	Decreed	5/15/1885	IRRIGATION, MITIGATION	0.11	27.9
SCHMID, KATHRYN; SCHMID, STEPHEN	37-22027	Decreed	5/31/1887	IRRIGATION, MITIGATION	0.06	27.9
SCHMID, KATHRYN; SCHMID, STEPHEN	37-22031	Decreed	5/31/1887	IRRIGATION, MITIGATION	0.34	27.9
SCHMID, KATHRYN; SCHMID, STEPHEN	37-22037	Decreed	6/15/1891	IRRIGATION, MITIGATION	0.02	27.9
SCHMID, KATHRYN; SCHMID, STEPHEN	37-22029	Decreed	5/15/1892	IRRIGATION, MITIGATION	0.18	27.9
SCHMIDT, DANIEL E	37-22694	Decreed	1/29/1965	IRRIGATION	0.03	2
SCHOESSLER, KATHY	37-7612	Decreed	5/23/1977	STOCKWATER	0.05	
SHERBINE, THERESA L; SHERBINE, WILLIAM T "ROCKY"	37-2554	Decreed	8/15/1954	IRRIGATION	3.2	277
SHERBINE, THERESA L; SHERBINE, WILLIAM T "ROCKY"	37-21273	Decreed	9/21/1954	IRRIGATION	0.4	31
SHERBINE, THERESA L; SHERBINE, WILLIAM T "ROCKY"	37-21274	Decreed	9/21/1954	IRRIGATION	0.4	31
SHERBINE, THERESA L; SHERBINE, WILLIAM T "ROCKY"	37-2561	Decreed	10/13/1954	IRRIGATION	3.82	191
SHERBINE, THERESA L; SHERBINE, WILLIAM T "ROCKY"	37-2582	Decreed	9/14/1955	IRRIGATION	2.8	137
SHERBINE, THERESA L; SHERBINE, WILLIAM T "ROCKY"	37-4114	Decreed	8/18/1960	IRRIGATION	1.4	277
SHERBINE, THERESA L; SHERBINE, WILLIAM T "ROCKY"	37-21271	Decreed	12/12/1979	IRRIGATION	0.23	31
SHERBINE, THERESA L; SHERBINE, WILLIAM T "ROCKY"	37-21272	Decreed	12/12/1979	IRRIGATION	0.23	31
SHERBINE, THERESA L; SHERBINE, WILLIAM T "ROCKY"	37-22016	Decreed	5/1/1987	IRRIGATION	0.94	277
SILVER SAGE PROPERTIES LLC	37-22586	Decreed	3/29/1979	IRRIGATION	5.6	400
SLUDER, C D; SLUDER, M JOAN	37-8213	Decreed	5/21/1985	COMMERCIAL	0.09	
SLUDER, C D; SLUDER, M JOAN	37-8214	Decreed	5/21/1985	COMMERCIAL	0.81	
SLUDER, C D; SLUDER, MYRA JOAN	37-8476	License	12/2/1988	IRRIGATION, STOCKWATER, DOMESTIC	0.18	2.5
SMITH, GARY M; SMITH, PATRICIA M	37-21496	Decreed	1/29/1965	IRRIGATION	0.05	2.5
SMITH, GEOFFREY C	37-2552	Decreed	6/28/1954	IRRIGATION, DOMESTIC	1.44	97
SMITH, GEOFFREY C	37-4159	Decreed	6/22/1959	IRRIGATION	0.32	33
SMITH, GEOFFREY C	37-20629	Decreed	6/22/1959	IRRIGATION	0.34	33
SPRINGS III, RICHARD	37-7812	Decreed	1/1/1980	IRRIGATION	1.26	63

Exhibit A  
List of Ground Water Rights Subject to Curtailment  
Sorted by Owner

Owner	Water Right No.	Basis	Priority Date	Usage	Diversion Rate (cfs)	Total Acres
STALKER CREEK RANCH LLC	37-2609B	Decreed	10/8/1958	IRRIGATION	1.41	75.8
STALKER CREEK RANCH LLC	37-2618	Decreed	6/29/1959	IRRIGATION	2.39	162.8
STALKER CREEK RANCH LLC	37-7800	Decreed	10/9/1979	IRRIGATION	3.75	212
STASZ, MARK A; STASZ, MEAGAN R	37-14290	Decreed	6/22/1959	IRRIGATION	0.22	11
STEVENSON JR, JOHN F; WARD, ANDREA S	37-7020	Decreed	4/30/1968	IRRIGATION	3.2	160
STEVENSON JR, JOHN F; WARD, ANDREA S	37-8003	Decreed	5/1/1982	IRRIGATION	2.68	134
STEVENSON, JOHN F	37-2576	Decreed	7/13/1955	IRRIGATION	4.69	521.1
STEVENSON, JOHN F	37-2649A	Decreed	1/27/1961	IRRIGATION	4.24	397
STEVENSON, JOHN F	37-2649B	Decreed	1/27/1961	IRRIGATION	3.2	397
STEVENSON, JOHN F	37-2656	Decreed	4/27/1961	IRRIGATION	3.02	152
STEVENSON, JOHN F	37-2681	Decreed	12/8/1961	IRRIGATION	4.5	521.1
STEVENSON, JOHN F	37-22736	Decreed	10/28/1974	IRRIGATION	2.88	146
STEVENSON, JOHN F	37-7645	Decreed	8/8/1977	IRRIGATION	3	158
STEVENSON, JOHN F	37-7644	Decreed	8/20/1977	IRRIGATION	2.02	139.5
STEVENSON, JOHN F	37-22738	Decreed	9/20/1977	IRRIGATION	5.91	295.3
STEVENSON, JOHN F	37-22740	Decreed	10/18/1980	IRRIGATION	1.56	78
STEVENSON, JOHN F	37-8117	License	6/2/1983	IRRIGATION	1.24	77
STEVENSON, JOHN F	37-8196	Decreed	10/29/1984	IRRIGATION	1.83	152
STRUTHERS, ROBERT J	37-2593	Decreed	2/1/1957	IRRIGATION	0.05	2.5
TEDESCO, JOHN A; TEDESCO, MEGAN; TEDESCO, SAMANTHA	37-2049A	Decreed	1/29/1965	IRRIGATION	1.1	55.9
THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-2683A	Decreed	8/23/1961	IRRIGATION	1.16	200.1
THE BRETT & PATRICIA BASHAW FAMILY TRUST	37-7349A	License	3/7/1974	IRRIGATION	1.17	200.1
THE NATURE CONSERVANCY	37-2580	Decreed	9/1/1955	IRRIGATION	2.01	160
THE NATURE CONSERVANCY	37-2609C	Decreed	10/8/1958	IRRIGATION	2.02	120
THOMAS M O GARA FAMILY TRUST	37-20639	Decreed	6/15/1946	IRRIGATION	2.45	3437
THOMAS M O GARA FAMILY TRUST	37-20640	Decreed	6/15/1946	WILDLIFE STORAGE, DIVERSION TO STORAGE	0.09	
THOMAS M O GARA FAMILY TRUST	37-20637	Decreed	2/12/1947	IRRIGATION	1.58	3437
THOMAS M O GARA FAMILY TRUST	37-20638	Decreed	2/12/1947	WILDLIFE STORAGE, DIVERSION TO STORAGE	0.06	
THOMAS M O GARA FAMILY TRUST	37-804	Decreed	4/1/1947	IRRIGATION	1.82	3437
THOMAS M O GARA FAMILY TRUST	37-2502	Decreed	5/3/1949	IRRIGATION	5	3437
THOMAS M O GARA FAMILY TRUST	37-2568	Decreed	4/25/1955	IRRIGATION	3.2	3437
THOMAS M O GARA FAMILY TRUST	37-2581	Decreed	8/16/1955	IRRIGATION	3	3437
THOMAS M O GARA FAMILY TRUST	37-2599	Decreed	9/30/1957	IRRIGATION	1.5	3437
THOMAS M O GARA FAMILY TRUST	37-2604	Decreed	7/29/1958	IRRIGATION	2.5	3437
THOMAS M O GARA FAMILY TRUST	37-2616	Decreed	6/3/1959	IRRIGATION	2.98	3437
THOMAS M O GARA FAMILY TRUST	37-20635	Decreed	3/8/1977	IRRIGATION	8.88	3437
THOMAS M O GARA FAMILY TRUST	37-20636	Decreed	3/8/1977	WILDLIFE STORAGE, DIVERSION TO STORAGE	0.32	
THOMAS M O GARA FAMILY TRUST	37-7663	Decreed	8/25/1977	IRRIGATION, STOCKWATER, DOMESTIC	0.1	1
THOMAS M O GARA FAMILY TRUST	37-7758	Decreed	2/6/1979	IRRIGATION	3.5	3437
THOMAS M O GARA FAMILY TRUST	37-8116	License	6/6/1983	IRRIGATION	0.03	1.6
THOMAS M O GARA FAMILY TRUST	37-20899	License	12/16/2002	WILDLIFE STORAGE, RECREATION STORAGE	0	
THREE CREEKS RANCH LLC	37-7811	License	12/5/1979	IRRIGATION	3.36	168
TRASK, TERRANCE P	37-8011B	Decreed	5/31/1982	IRRIGATION	0.1	5
WALBERT, CINDRA L PALMER; WALBERT, MICHAEL E	37-8536	License	7/27/1989	IRRIGATION, STOCKWATER	1.85	108
WALKER SAND & GRAVEL LTD CO	37-8136	Decreed	6/1/1983	INDUSTRIAL	0.97	
WALKER SAND & GRAVEL LTD CO	37-8532	License	7/20/1989	INDUSTRIAL	1.43	
WALKER SAND & GRAVEL LTD CO	37-20833	License	11/15/2002	IRRIGATION	0.48	24.1
WALKER SAND & GRAVEL LTD CO	37-20834	License	11/15/2002	INDUSTRIAL	3.47	
WALKER SAND & GRAVEL LTD CO	37-22380	License	9/27/2008	INDUSTRIAL, DOMESTIC	3.61	
WALTERS READY MIX INC	37-23202	Decreed	12/14/1974	INDUSTRIAL	0.02	



Exhibit A  
List of Ground Water Rights Subject to Curtailment  
Sorted by Owner

Owner	Water Right No.	Basis	Priority Date	Usage	Diversion Rate (cfs)	Total Acres
WALTERS, CHARLENE B; WALTERS, DAVID	37-23100	License	7/15/1996	INDUSTRIAL	0.92	
WARBERG, ANN MARIE	37-22829	Decreed	6/10/1983	IRRIGATION, STOCKWATER	0.06	5.1
WEBB LANDSCAPE INC	37-22328	Decreed	12/14/1974	IRRIGATION	0.12	9
WEBB, DOUG	37-8411	License	10/6/1988	COMMERCIAL	0.18	
WEBB, DOUG	37-8412	License	10/6/1988	COMMERCIAL, DOMESTIC	0.11	
WEBER, ANNETTE	37-21667	Decreed	9/25/1954	IRRIGATION	0.1	5
WEEMS, MICHAEL J; WEEMS, RUTH	37-7452	Decreed	8/20/1975	IRRIGATION, DOMESTIC	0.22	9
WICKED GAMES INC	37-23257	Decreed	5/18/1977	IRRIGATION	2.03	122.8
WOOD RIVER LAND TRUST CO	37-2505	Decreed	6/9/1949	IRRIGATION	1.4	70
WOOD RIVER LAND TRUST CO	37-25468	Decreed	5/28/1953	IRRIGATION	0.66	33
WORTHINGTON, JUNE I; WORTHINGTON, KENNETH D	37-8137	Decreed	6/30/1983	IRRIGATION, STOCKWATER, DOMESTIC	0.13	13

## **EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER**

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the service date of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
  - (a) The petition for reconsideration is disposed of; or
  - (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.
- (7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

### **PETITION FOR RECONSIDERATION**

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4) Idaho Code.

### **APPEAL OF FINAL ORDER TO DISTRICT COURT**

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

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

The appeal must be filed within twenty-eight (28) days: a) of the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.





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*Attorneys for South Valley Ground Water District and Galena Ground Water District*

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

IN THE MATTER OF BASIN 37  
ADMINISTRATIVE PROCEEDING

Docket No. AA-WRA-2021-001

**SOUTH VALLEY GROUND  
WATER DISTRICT AND GALENA  
GROUND WATER DISTRICT'S  
PROPOSED MITIGATION PLAN**

COMES NOW, the SOUTH VALLEY GROUND WATER DISTRICT and GALENA  
GROUND WATER DISTRICT ("Ground Water Districts") by and through their attorneys of  
record and hereby submit to the Director a proposed Mitigation Plan under IDAPA 37.03.11.043

in response to the delivery call and demands for conjunctive administration of surface and ground water use in Silver Creek, the Little Wood and the ground water in the Bellevue Triangle asserted by certain surface water users.<sup>1</sup> These demands for conjunctive administration of ground water are the subject of the hearing held before the Director, June 7- 12, 2021. This hearing was triggered by a Notice of Administrative Hearing, AA-WRA-2021-001, issued by the Director on May 4, 2021. That *Notice* asserted that, based on the Model, the Director believes that withdrawal of ground water from wells in the Bellevue Triangle would affect senior surface water rights on Silver Creek. The Notice also provided that the Director may order ground water rights in the Bellevue Triangle curtailed for the 2021 irrigation season. Of course affecting senior surface water right is not sufficient to demonstrate “material injury.” The *Notice* did not specify whether the Director would consider any measures other than 100% curtailment of all ground water use or whether a mitigation plan could be offered. However, when a curtailment order for ground water pumping was issued in the Rangen delivery call, the order provided that the ground water users affected by the order could avoid curtailment by participating in an approved mitigation plan. *Rangen Inc. v. IDWR*, 160 Idaho 251, 253, 371 P.3d. 305, 307 (2016). That order advised the ground water users of the amount of water needed, and further provided that the mitigation plan would be phased in over a five (5) year period. *Id* at 254, 371 P.3d. at 308; *see* CM Rule 40.01.a.

Given the urgency the Director has expressed with respect to administration during the 2021 irrigation season, the Ground Water Districts have opted to submit this proposed Mitigation

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<sup>1</sup> While the Director has characterized this proceeding as administration rather than a delivery call, the CM Rules make it clear that they are intended to apply to general rules regarding ground water administration in Idaho. IDAPA 37.03.11.001. Indeed, the repeal of portions of the Ground Water Act specifically refers to the use of the CM Rules in lieu of the procedures under the Ground Water Act, or after the effective date of the repeal. *See* Statement of Purpose HB0043 (2021 Legislative Session).

Plan in advance of any Order, contingent on a determination that a curtailment order is necessary to prevent material injury.

Without waiving their objections to the validity of any potential curtailment order both a matter of fact and as a matter of legal procedure, the Ground Water Districts submit this Mitigation Plan to the Director to mitigate and offset any conceivable injury to specific water rights on Silver Creek or Little Wood River that might have resulted from continuing to withdraw ground water from the Big Wood Ground Water Aquifer during the remainder of the 2021 irrigation season.

The testimony and evidence at the hearing established, as a best-case scenario for the surface water users, that three water rights with April 1883 priorities might receive water should the 100% curtailment scenario for the Bellevue Triangle ground water rights outlined in the *Notice* and Jennifer Sukow's staff memorandum be ordered. Those three 1883 water rights included Water Right No. 37-344A (4.0 cfs) belonging to Barbara Farms LLC, which is located below the Milner-Gooding Canal, Water Right No. 37-344A (4.0 cfs), and Water Right Nos. 37-423 (0.3 cfs) and 37-49 (4.2 cfs) owned or operated by Don Taber (and on behalf of Jim Ritter) diverted from the Little Wood River below Station 10.

With respect to mitigation for potential injury to the Barbara Farms water right, the Ground Water Districts propose to lease 500 acre-feet from the Henry's Fork Reservoir District pursuant to an option agreement for the 2021 irrigation season and deliver that water via the Milner-Gooding Canal to the Barbara Farms headgates. Barbara Farms only has identified 217.5 acres that require water for the balance of the irrigation season that may be injured and require water. Barbara Farms previously



secured an alternate water supply for 66 acres through a lease of AFRD#2 water from the City of Shoshone. Based upon information from the Watermaster Kevin Lakey, Barbara Farms had diverted and used 490 acre-feet through June 14, 2021. Using 4 cfs as the diversion rate divided by the total acreage of 217.5 acres, and the needed last day of irrigation as offered by Mr. Brossy at hearing (Barbara Exhibit 1), the following table shows the required water left to use on the respective acres:

<u>Crop</u>	<u>Acres</u>	<u>Last Irrigation</u>	<u>Cutoff</u>	<u>Days</u>	<u>AF</u>
Garden Seed Beans	21	8/30	6/25	66	50.6
Edible Pinto Beans	20	8/25	6/25	61	44.5
Purple Barley	11	7/15	6/25	20	8.0
Malt Barley/Alf	49.5	7/15	6/25	20	36.1
Winter wheat/Alf	12	7/15	6/25	20	8.8
Edible Pinto Beans	16	8/25	6/25	61	47.6
Alfalfa Green Chop	71	8/30	6/25	66	230.5
Rye Green Chop/Alf	17	9/15	6/25	82	50.9
Total					405.3

Barbara Ex. 1 (with estimated acre-feet needed).

The rental of 500 acre-feet for delivery through AFRD#2's Milner Gooding Canal will supply the estimated crop water need set forth above plus cover any conveyance loss through the canal.

The Ground Water Districts have been advised that the Big Wood Little Wood Water Users Association (Association) has already leased 1000 acre-feet of surface water from Mitigation Inc. for delivery to its members via the Milner-Goodling Canal. *See* Exhibit A (Water District 01 June 22, 2021 Weekly Report).<sup>2</sup> The Ground Water Districts are not privy to how that water is or will be allocated. Nevertheless, the Ground

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<sup>2</sup> Water District 01 notes the rental adjustment to AFRD#2's account for "Yellowstone Earth Science." This is the company owned by the seniors' consultant Eric Miller.

Water Districts also propose to reimburse the Association for the cost of renting 500 acre-feet of water to the extent that the water is actually rented from Mitigation, Inc., as part of the Ground Water Districts' proposed Mitigation Plan, in addition to acquisition of 500 acre-feet from Henry's Lake Reservoir District.

With respect to the Taber & Ritter 1883 rights on the Little Wood below Station 10, the Ground Water Districts propose three transfers, all of which are attached hereto. Transfer 1, to supply water right 37-49, transfers 168 acres of water rights from designated lands in the Bellevue Triangle that are not being irrigated to an array of nine ground water wells and pumps in the vicinity of Picabo. These pumps will then pump water into Silver Creek for delivery to the 168 acres under Water Right 37-49 property. The second transfer to supply water to Water Right No. 37-423 proposes to transfer 36 acres of water from lands in the Bellevue Triangle that are not being irrigated to the place of use of water right 37-423. These rights transferred will also be pumped from an array of ground water wells and pumps in the vicinity of Picabo into Silver Creek for delivery to Water Right 37-423. The total water proposed to be diverted under these two transfers is 6.0 cfs rather than 4.5 cfs to account for an approximate 25% conveyance loss between Picabo and Station 10. The third transfer proposes to pump an additional 9 cfs for a total of 15 cfs, when including Transfers 1 and 2, from the same array of wells and pumps in the vicinity of Picabo into Silver Creek. These pumps will be supplied by water transferred from lands that are not being irrigated in the Bellevue Triangle during the 2021 irrigation season. This third transfer is intended to provide additional surety for delivery of Water Rights 37-49 and 37-423 as well as to provide potential water for the Barbara Farms water right and for other more junior water rights (i.e. junior to April 6,

1883) on the Little Wood, even though there is no evidence that these junior water rights would receive any water from the 100% curtailment scenario for the rest of the 2021 irrigation season.

Transferring the water rights to nine different wells and pumps will provide flexibility to allow the Ground Water Districts to maximize the water that can be pumped at any one time based on the pump capacity, water availability and the ability to provide positive flow benefits to Silver Creek.

This Mitigation plan demonstrates that more than 1,600 acres of land normally irrigated by ground water in the Bellevue Triangle are not being irrigated in the Bellevue Triangle during the 2021 irrigation season and will not be irrigated for the duration of the 2021 irrigation season.

The Ground Water Districts further propose that all crop irrigation in the Bellevue Triangle area of potential curtailment, as described in Jennifer Sukow's staff memo, will cease further ground water withdrawals as of August 15, 2021, with the exception of 3500 acres of pasture and 450 acres of potatoes. All fields in the Bellevue Triangle growing grain and alfalfa will not be irrigated after the August 15 date proposed in this Mitigation Plan. This non-use will be in addition to the temporary transfers identified above. These transfers are proposed to continue throughout the 2021 irrigation season or as long as the Director determines that benefit would accrue during the irrigation season to the rights that are protected that could benefit from the 100% curtailment scenario.

The Ground Water Districts submit that this proposed Mitigation Plan more than offsets any hypothetical benefits that might accrue from 100% curtailment of ground water withdrawals in the Bellevue Triangle. Approval of this Plan by the Director will



avoid injury in excess of ten million dollars to the producers in the Bellevue Triangle that would otherwise result from the proposed 100% curtailment.

Dated this 23<sup>rd</sup> day of June, 2021.

BARKER ROSHOLT & SIMPSON LLP

/s/ Albert P. Barker

Albert P. Barker

*Attorney for South Valley Ground Water District*

LAWSON LASKI CLARK, PLLC

/s/ Heather E. O'Leary

Heather E. O'Leary

*Attorney for Galena Ground Water District*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23<sup>rd</sup> day of June, 2021, the foregoing was filed, served, and copied as shown below.

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/s/ Albert P. Barker  
Albert P. Barker

## **WATER REPORT – June 22, 2021**

The 1895-02-06 priority is currently being partially filled for diversions above Blackfoot. The 1900-10-11 priority is currently being partially filled for diversions below Blackfoot.

The current trend in natural flow and priorities is similar to the patterns seen in 2007 and 2016. Today's natural flow is a little worse than it was in 2016 and a little better than it was in 2007. Attached to this report is a comparison of the natural flow, diversions, and priorities for the years 2007, 2016, and 2021 beginning June 21<sup>st</sup>. Canal managers may use this comparison to estimate where priorities may be headed over the next several weeks.

Two additional Rental Pool transactions that occurred after the last June 17<sup>th</sup> Water Report were added to the AF RMNG values in the water right accounting: 1,500 AF of Water Mitigation Coalition leased storage was added to the North Side Canal AF RMNG and 1,000 AF of Mitigation Inc. leased storage was added to the AFRD#2 AF RMNG to be supplied to Yellowstone Earth Science.

Impacted spaceholders published in the June 17<sup>th</sup> Water Report are reminded they have until 5 PM July 2<sup>nd</sup> to submit their rental applications with fees to the Water District #1 Office to preserve their priority for large Common Pool rental according to Rental Pool Procedure 5.3.101. Spaceholders that have supplied Private Leases to water users this year are limited from purchasing Common Pool storage according to Rental Pool Procedure 5.5.

## PRELIMINARY ACCOUNTING

2021 IRRIGATION YEAR											
MILNER DATE	HEISE DATE	TOTAL			TOTAL			REACH GAIN			
		NATURAL FLOW ABOVE BLACKFOOT CFS	DIVERSIONS ABOVE BLACKFOOT CFS	SNAKE RIVER AT HEISE PRIORITY YR-MO-DAY	NATURAL FLOW ABOVE BLACKFOOT CFS	DIVERSIONS ABOVE BLACKFOOT CFS	SNAKE RIVER AT HEISE PRIORITY YR-MO-DAY	BLACKFOOT TO MILNER CFS	BLACKFOOT TO MILNER CFS		
21-Jun	17-Jun	12952	15858	1895-03-22	17888	16363	1905-10-07	16061	16276	1903-03-26	1543
22-Jun	18-Jun	13126	15872	1895-11-05	16896	15865	1903-03-26	15502 *	16546 *	1900-10-11 *	
23-Jun	19-Jun	12440	16286	1895-02-06	16549	15939	1902-03-26	14425 *	16675 *	1900-10-11 *	
24-Jun	20-Jun	11667	16398	1885-01-09	16174	16433	1903-03-26	13807 *	16542 *	1900-06-16 *	
25-Jun	21-Jun	10846	16434	1892-04-28	15441	16833	1900-10-11	13045 *	16372 *	1896-07-09 *	
26-Jun	22-Jun	10229	16481	1891-12-14	14997	17120	1900-10-11	11863 *	16186 *	1895-02-06 *	
27-Jun	23-Jun	9909	16564	1891-12-14	14521	17347	1900-10-11				
28-Jun	24-Jun	9615	16461	1891-01-24	14022	17305	1900-10-11				
29-Jun	25-Jun	9408	16365	1891-01-24	13408	17089	1898-04-15				
30-Jun	26-Jun	9084	16384	1891-01-24	12752	16882	1895-06-01				
1-Jul	27-Jun	8927	16233	1890-10-16	12061	16879	1895-02-06				
2-Jul	28-Jun	8320	16411	1890-06-01	11104	17128	1894-08-18				
3-Jul	29-Jun	8319	16685	1890-06-01	10845	17530	1892-06-01				
4-Jul	30-Jun	8358	16667	1890-06-10	10924	17551	1892-06-01				
5-Jul	1-Jul	8193	16499	1890-06-01	14059	17387	1894-08-18				
6-Jul	2-Jul	8146	16350	1890-06-10	11164	16914	1895-01-09				
7-Jul	3-Jul	7812	16279	1890-09-26	10847	16269	1895-01-09				
8-Jul	4-Jul	7724	16086	1890-07-10	10305	16292	1892-06-01				
9-Jul	5-Jul	7505	15997	1890-07-10	10087	16307	1892-04-28				
10-Jul	6-Jul	7192	15928	1889-06-01	9839	16423	1891-06-01				
11-Jul	7-Jul	7141	15841	1889-06-01	9477	16265	1891-01-24				
12-Jul	8-Jul	7084	15741	1889-06-01	9286	16131	1891-01-24				
13-Jul	9-Jul	7101	15669	1889-06-01	8951	15956	1891-01-24				
14-Jul	10-Jul	7252	15074	1889-07-10	8992	15607	1891-01-24				
15-Jul	11-Jul	6750	14323	1889-05-11	9490	14928	1892-04-28				
16-Jul	12-Jul	6261	14207	1889-05-11	9768	14673	1893-04-30				
17-Jul	13-Jul	6172	14337	1889-05-11	9578	14322	1892-06-01				
18-Jul	14-Jul	6122	13786	1889-05-11	8604	13898	1891-01-24				
19-Jul	15-Jul	6256	13720	1889-05-11	8066	13281	1890-10-16				
20-Jul	16-Jul	6145	13526	1889-05-11	7768	13142	1890-07-12				
21-Jul	17-Jul	6495	13221	1889-05-11	7627	13030	1890-07-12				
22-Jul	18-Jul	6470	12790	1889-05-11	7583	13041	1890-06-10				
23-Jul	19-Jul	6328	12461	1889-05-11	8291	13050	1890-10-16				
24-Jul	20-Jul	6063	12227	1889-05-11	7017	13035	1889-06-01				
25-Jul	21-Jul	5795	11913	1889-05-01	7249	13287	1889-07-10				
26-Jul	22-Jul	5656	11619	1889-04-15	7140	13222	1889-06-01				
27-Jul	23-Jul	5541	11691	1889-04-16	7006	13084	1889-07-10				
28-Jul	24-Jul	5727	11537	1889-05-11	6894	13048	1889-07-10				
29-Jul	25-Jul	6211	11564	1889-05-11	6585	12996	1889-06-01				
30-Jul	26-Jul	6697	11475	1889-06-01	6489	12876	1889-06-01				
31-Jul	27-Jul	7562	11138	1891-12-14	6561	12850	1889-05-11				
1-Aug	28-Jul	7342	10985	1891-01-24	6519	12904	1889-05-20				
2-Aug	29-Jul	6865	10765	1890-07-12	6430	12923	1889-05-11				
3-Aug	30-Jul	6415	10354	1890-07-10	6388	12881	1889-05-11				
4-Aug	31-Jul	5910	10368	1889-05-11	6433	12631	1889-06-01				
5-Aug	1-Aug	5559	10437	1889-05-01	6246	12305	1889-06-01				
6-Aug	2-Aug	5640	10421	1889-05-11	6177	12205	1889-04-15				
7-Aug	3-Aug	5832	10472	1889-05-11	6311	12109	1889-05-11				
8-Aug	4-Aug	6128	10467	1889-06-01	5888	12056	1889-04-15				
9-Aug	5-Aug	5939	10399	1889-05-11	6010	12025	1889-05-11				
10-Aug	6-Aug	5849	10135	1889-05-11	5961	11920	1889-04-15				

\* Projected Data



# WATER DISTRICT 01 - WEEKLY WATER REPORT 06/22/2021

Reach Name	DIVERSION DATA PRIORITY DATES	Projected Priority Dates For Actual Date 06/23/2021
SNAKE ABV LORENZO	3/26/1903	2/6/1895
HENRYS FORK	3/26/1903	2/6/1895
FALLS RIVER	3/26/1903	2/6/1895
TETON RIVER	3/26/1903	2/6/1895
TETON LOWER N. FORK	3/26/1903	2/6/1895
SNAKE ABV BLCKFOOT	3/26/1903	2/6/1895
SNAKE BLW BLCKFOOT	3/26/1903	10/11/1900

## Diversion Data

Actual Date	Site	Diversion	CFS DIVN	CFS STOR	AF USED	AF RMNG
Jun 17	13033010	PALISADES CANAL	77	0	4	-4
Jun 17	13037505	ANDERSON CANAL (1A)	508	283	8779	42339
Jun 17	13037975	EAGLE ROCK CAN (1) (1B)	616	0	0	0
Jun 17	13037980	FARMERS FRIEND	467	133	3228	6118
Jun 17	13037985	ENTERPRISE CANAL	186	0	815	19390
Jun 17	13038025	BUTLER ISLAND	45	0	115	128
Jun 17	13038030	ROSS AND RAND	4	0	6	-6
Jun 17	13038055	HARRISON CANAL	595	124	1925	41932
Jun 17	13038085	RUDY CANAL	286	147	3336	5032
Jun 17	13038090	LOWDER SLOUGH CANAL	52	0	51	1395
Jun 17	13038098	KITE & NORD CANAL	9	1	75	-75
Jun 17	13038110	BURGESS CANAL * (4A)	957	155	3951	41629
Jun 17	13038115	CLARK & EDWARDS * (5A)	70	0	0	777
Jun 17	13038145	CROFT DITCH	0	0	41	-41
Jun 17	13038150	EAST LABELLE CANAL	129	9	67	710
Jun 17	13038180	RIGBY CANAL	205	44	1098	4936
Jun 17	13038204	DILTS LATERAL (3) (6B)	9	0	0	0
Jun 17	13038205	DILTS CANAL (6A)	26	7	40	1591
Jun 17	13038210	ISLAND CANAL (30A)	195	0	0	4398
Jun 17	13038225	W. LABELLE & L.I. * (7A)	528	0	789	4176
Jun 17	13038305	PARKS & LEWISVILLE	379	30	1201	4144
Jun 17	13038315	NORTH RIGBY CANAL	50	0	301	875
Jun 17	13038340	WHITE DITCH (4) (7B)	0	0	0	0
Jun 17	13038360	BRAMWELL CANAL (8A)	0	0	0	0
Jun 17	13038362	ELLIS CANAL (5) (30B)	0	0	0	0
Jun 17	13038388	MATTSON-CRAIG CANAL	13	0	84	386
Jun 17	13038392	SUNNYDELL CANAL (29A)	156	0	688	6086
Jun 17	13038426	LENROOT CANAL	105	0	786	10229
Jun 17	13038431	REID CANAL	149	1	1229	5700
Jun 17	13038434	TEXAS & LIBERTY	204	0	0	4568
Jun 17	13038435	BANNOCK JIM SLOUGH	14	0	58	-58
Jun 17	13038436	HILL PETTINGER	8	5	224	-224
Jun 17	13038437	NELSON COREY CANAL	0	0	0	0
Jun 16	13046310	DEWEY CANAL	22	0	42	274
Jun 16	13047305	YELLOWSTONE CANAL	26	0	0	464
Jun 16	13047475	MARYSVILLE CANAL * (9A)	170	0	0	8199
Jun 16	13047575	FARMERS OWN CANAL (11A)	34	0	0	3193
Jun 16	13047681	CONANT CK CANAL (12A)	22	2	15	939
Jun 16	13048475	ENTERPRISE CANAL	114	114	1161	19077
Jun 16	13048560	FALL RIVER CANAL (16A)	136	0	1101	3073
Jun 16	13048705	CHESTER CANAL	63	0	539	187
Jun 16	13049010	SILKEY CANAL	19	0	102	-15
Jun 16	13049015	CURR CANAL	27	0	0	22
Jun 16	13049550	LAST CHANCE CANAL	53	0	1547	9910
Jun 16	13049560	CROSSCUT TO TETN	0	0	0	0
Jun 16	13049561	XCUT FALL R (6) (16B)	216	0	0	0
Jun 16	13049705	FARMERS FRIEND	72	0	21	2176
Jun 16	13049710	TWIN GROVES CANAL	77	0	272	2109
Jun 16	13049725	ST ANTHY UNION (17A)	374	0	10258	7761
Jun 16	13049805	SALEM UNION CANAL	237	0	533	24059
Jun 16	13050525	EGIN CANAL	255	0	2622	8056
Jun 16	13050530	ST ANTHY UNION (7) (17B)	66	0	0	814
Jun 16	13050535	INDEPENDENT CANAL	150	0	2359	26143
Jun 16	13050545	CONSOLIDATED FRMRS	240	0	1528	19268
Jun 16	13054515	CANYON CREEK CANAL	0	0	0	0
Jun 16	13055030	WILFORD CANAL	87	0	0	1103
Jun 16	13055040	TETON IRRIGATION (18A)	41	0	985	191

FOOTNOTES: (#) STORAGE DIVERSION COMBINED WITH (#A)

TOTAL DIVERSION AND STORAGE USE DOES NOT INCLUDE ADDITIONAL PUMP  
DIVERSIONS (NOT SHOWN) ADDED AT THE END OF THE YEAR

6/22/2021

# WATER DISTRICT 01 - WEEKLY WATER REPORT 06/22/2021

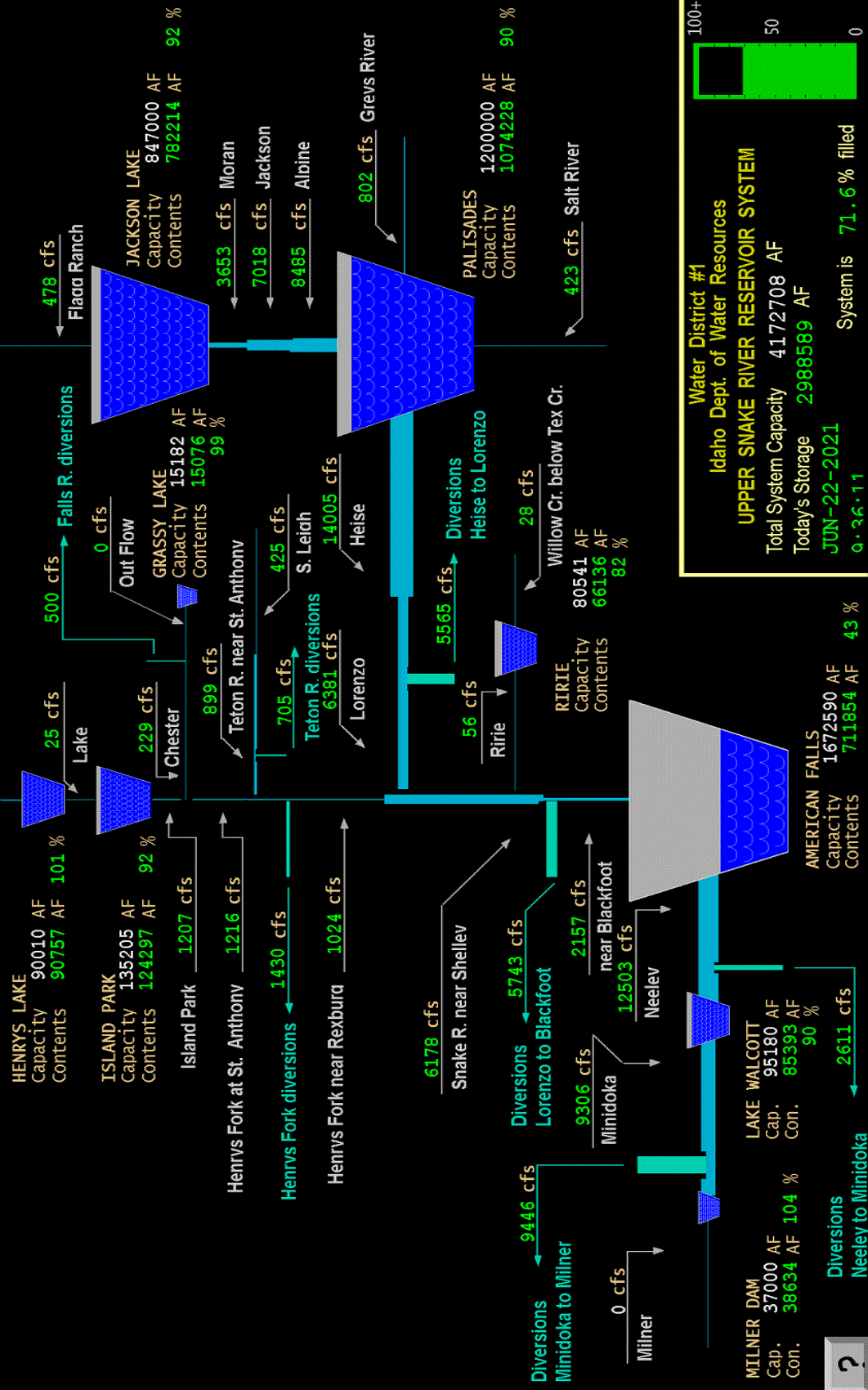
Actual Date	Site	Diversion	CFS DIVN	CFS STOR	AF USED	AF RMNG
Jun 16	13055050	PIONEER CANAL	11	0	0	59
Jun 16	13055060	STEWART CANAL	6	0	0	11
Jun 16	13055205	PINCOCK-BYINGTON	0	0	47	66
Jun 16	13055210	TETON ISLND FEEDER	361	0	2535	4027
Jun 16	13055245	SALEM UNION B	3	0	3	-3
Jun 16	13055275	ROXANA CANAL	9	0	18	438
Jun 16	13055280	ISLAND WARD CANAL	10	0	85	1565
Jun 16	13055295	SAUREY CANAL	15	0	17	45
Jun 16	13055315	WOODMANSEE-JOHNSON (19A)	8	0	0	568
Jun 16	13055323	CITY OF REXBURG	8	0	0	0
Jun 16	13055334	REXBURG IRRIGATION	147	0	87	2155
Jun 17	13057025	BUTTE & MARKET * (20A)	420	67	638	48169
Jun 17	13057030	BEAR TRAP CANAL	52	0	50	-50
Jun 17	13057125	OSGOOD CANAL	96	0	127	10998
Jun 17	13057126	CLEMENTS CANAL	0	0	0	259
Jun 17	13057130	KENNEDY CANAL	11	0	0	194
Jun 17	13057135	GREAT WESTERN (21A)	340	44	281	77964
Jun 17	13057145	IDAHO CANAL (33A)	790	0	1171	72646
Jun 17	13057250	PORTER CANAL (9) (21B)	347	0	0	0
Jun 17	13058125	FERGUSON CANAL	9	0	0	0
Jun 17	13058290	ORVAL AVERY CNL	5	0	0	0
Jun 17	13058310	ROY AVERY CANAL	13	0	0	0
Jun 17	13058370	R COOPER SAND CR	14	0	0	0
Jun 17	13058380	R COOPER WLLW CK	1	0	0	0
Jun 17	13058510	PROGRESSIVE SAND	628	0	4	-4
Jun 17	13058514	W & O COOPER	10	0	0	0
Jun 17	13058515	IDAHO FR SAND CK	0	0	0	0
Jun 17	13058530	PROGRESSIVE WILL	162	0	0	0
Jun 17	13059505	WOODVILLE CANAL (22A)	53	0	0	14243
Jun 17	13059520	WOODVILLE SIPHON (22D)	13	0	0	0
Jun 17	13059525	SNAKE RIVER VLLY * (23A)	491	0	1000	70278
Jun 18	13060500	RESERVATION CANAL	182	0	0	0
Jun 18	13060501	X RESERVATION	260	0	0	0
Jun 18	13061430	BLACKFOOT CANAL	367	0	1596	20731
Jun 18	13061520	NEW LAVA SIDE * (24A)	120	0	0	11420
Jun 18	13061525	PEOPLES CANAL * (25A)	331	0	7263	59036
Jun 18	13061610	ABERDEEN CANAL	1443	271	20057	165660
Jun 18	13061650	CORBETT CANAL	199	0	162	9543
Jun 18	13061670	NIELSON-HANSEN	16	4	417	-417
Jun 18	13061705	RIVERSIDE CANAL * (26A)	107	3	60	1153
Jun 18	13061995	DANSKIN CANAL	177	0	871	2214
Jun 18	13062050	TREGO CANAL	45	0	230	3293
Jun 18	13062051	JENSEN GROVE	23	0	149	-149
Jun 18	13062503	WEARYRICK CANAL	49	0	166	267
Jun 18	13062506	WATSON CANAL	84	0	122	1717
Jun 18	13062507	PARSONS CANAL	35	2	294	573
Jun 19	13075900	FT HALL MICHAUD	150	150	15697	87384
Jun 19	13076400	FALLS IRRIG PUMP	144	144	8954	45303
Jun 20	13080000	MINIDOKA NSIDE * (27A)	1360	2316	57615	240073
Jun 20	13080500	MINIDOKA SSIDE (10) (27B)	1229	0	0	225253
Jun 21	13085500	A & B IRRIGATION	308	308	24328	108585
Jun 21	13085800	PA LATRL PUMP (11) (28B)	54	0	0	0
Jun 21	13086000	MILNER IRRIGATION	296	261	20364	63785
Jun 21	13086520	NSIDE XCT GDNG (11) (28E)	718	0	0	0
Jun 21	13086530	RES DIST #2 CANAL	1697	1697	140025	248467
Jun 21	13087000	N SIDE TWIN FALLS (28A)	3078	3449	155193	681836
Jun 21	13087500	TWIN FALLS S SIDE	3667	667	26465	206365

FOOTNOTES: (#) STORAGE DIVERSION COMBINED WITH (#A)

TOTAL DIVERSION AND STORAGE USE DOES NOT INCLUDE ADDITIONAL PUMP  
DIVERSIONS (NOT SHOWN) ADDED AT THE END OF THE YEAR

6/22/2021

# USRRS FLOW SCHEMATIC





STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**TEMPORARY CHANGE APPLICATION**

*(To change point of diversion, place of use, or purpose of use of a water right upon declaration of a drought emergency in accordance with Section 42-222A, Idaho Code.)*

Name of Applicant South Valley &/or Galena Ground Water Districts Phone 208-336-0700  
Mailing Address PO Box 2139, Boise, ID 83701 Email brs@idahowaters.com

**A. PURPOSE OF TRANSFER**

1. ☒ Change point of diversion ☒ Add diversion point(s) ☒ Change place of use  
☐ Change purpose of use ☐ Other
2. Describe the proposed change(s) and explain the reason(s) they are needed. \_\_\_\_\_  
Ground water rights not in use in 2021 are proposed to be used for mitigation by pumping from select wells into  
Silver Creek to augment the discharge of the Little Wood River to benefit an 1883 priority water right identified by  
the Watermaster as 37-49.

**B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE**

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>37-22777</u>	<u>12/5/1979</u>	<u>3.18</u>	<u>Irrigation</u>	<u>4/15</u> to <u>10/31</u>
<u>37-23090</u>	<u>11/13/1959</u>	<u>7.16</u>	<u>Irrigation</u>	<u>4/1</u> to <u>11/01</u>
<u>37-23091</u>	<u>8/1/1960</u>	<u>3.61</u>	<u>Irrigation</u>	<u>4/15</u> to <u>10/31</u>
<u>37-23092</u>	<u>8/20/1964</u>	<u>8.89</u>	<u>Irrigation</u>	<u>4/1</u> to <u>11/1</u>

2. Total amount of water being transferred 5.50 cubic feet per second and/or \_\_\_\_\_ acre-feet per annum.
3. Source of water Ground Water tributary to \_\_\_\_\_.
4. Point(s) of diversion:

Twp	Rge	Sec	Govt Lot	¼	¼	¼	County	Source	Local name or tag number
1S	20E	20		NW	NE	NE	Blaine	Ground Water	No Log - RF = 0.1035
					NE	SW	"	"	No Log - RF = 0.147
				SE	SW	SE	"	"	
		30		NW	SW	NE	"	"	

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres \_\_\_\_\_

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**TEMPORARY CHANGE APPLICATION**

*(To change point of diversion, place of use, or purpose of use of a water right upon declaration of a drought emergency in accordance with Section 42-222A, Idaho Code.)*

Name of Applicant For additional Water Rights and PODs only. Phone \_\_\_\_\_

Mailing Address \_\_\_\_\_ Email \_\_\_\_\_

**A. PURPOSE OF TRANSFER**

1. ☐ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use  
☐ Change purpose of use ☐ Other

2. Describe the proposed change(s) and explain the reason(s) they are needed. \_\_\_\_\_

**B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE**

1. <u>Right Number</u>	<u>Priority</u>	<u>Amount</u> (cfs/ac-ft)	<u>Nature of Use</u>	<u>Period of Use</u>
<u>37-23093</u>	<u>4/1/1984</u>	<u>2.65</u>	<u>Irrigation</u>	<u>4/15</u> to <u>10/31</u>
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____

2. Total amount of water being transferred \_\_\_\_\_ cubic feet per second and/or \_\_\_\_\_ acre-feet per annum.

3. Source of water \_\_\_\_\_ tributary to \_\_\_\_\_.

4. Point(s) of diversion:

Twp	Rge	Sec	Govt Lot	¼	¼	¼	County	Source	Local name or tag number
1S	20E	30			NE	NW	Blaine	Ground Water	
	19E	2		SW	NW	SW	Blaine	Ground Water	
				SE	NW	SW	Blaine	Ground Water	
		5	1		SE	NE	Blaine	Ground Water	

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres \_\_\_\_\_

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**TEMPORARY CHANGE APPLICATION**

*(To change point of diversion, place of use, or purpose of use of a water right upon declaration of a drought emergency in accordance with Section 42-222A, Idaho Code.)*

Name of Applicant For additional PODs Only Phone \_\_\_\_\_

Mailing Address \_\_\_\_\_ Email \_\_\_\_\_

**A. PURPOSE OF TRANSFER**

1. ☐ Change point of diversion      ☐ Add diversion point(s)      ☐ Change place of use  
☐ Change purpose of use      ☐ Other

2. Describe the proposed change(s) and explain the reason(s) they are needed. \_\_\_\_\_

**B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE**

1. <u>Right Number</u>	<u>Priority</u>	<u>Amount</u> <small>(cfs/ac-ft)</small>	<u>Nature of Use</u>	<u>Period of Use</u>
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____

2. Total amount of water being transferred \_\_\_\_\_ cubic feet per second and/or \_\_\_\_\_ acre-feet per annum.

3. Source of water \_\_\_\_\_ tributary to \_\_\_\_\_.

4. Point(s) of diversion:

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag number
1S	19E	28			SE	NW	Blaine	Ground Water	

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres \_\_\_\_\_



6. General Information:

- a. Who owns the water right to be changed? Aubry Springs Ranch LLC & Blackburn Farming LLC
- b. Describe the arrangement allowing use of the right. Sharing agreement with South Valley and Galena Ground Water Districts
- c. Describe the affect on the land now irrigated if the change is approved pursuant to this application:  
Water rights are not being used in 2021 & there will be no impact to the lands these rights are appurtenant to.
- d. Has the water right sought to be transferred been used this year? ☐ Yes ☒ No If yes, explain. \_\_\_\_\_
- e. Absent the changes, how would the right be used for the remainder of the year? Remain unused.
- f. Describe other water rights used for the same purpose. None except those identified in this application.
- g. Remarks: This transfer seeks to augment the discharge of Silver Creek and the Little Wood River to supply water to water right 37-49.

I hereby assume all risk in accordance with Section 42-222A, Idaho Code, and assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in voiding its approval.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

**FOR DEPARTMENT USE ONLY**

Received by \_\_\_\_\_ Date \_\_\_\_\_ \$50 fee receipted by \_\_\_\_\_ Receipt No. \_\_\_\_\_  
Recommend: ☐ approve ☐ deny Watermaster recommendation \_\_\_\_\_

**ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES**

This is to certify that I have examined Temporary Change Application No. \_\_\_\_\_, and said application is hereby \_\_\_\_\_, subject to the following limitations and conditions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Temporary Change Expiration Date \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
For the Director

## Memorandum in Support of Temporary Transfer to Supplement Water Right N0. 37-49

The remaining 122.9 acres from water right 37-22777, copy attached, are fallowed and the water from this right is proposed to be transferred to the place of use of water right 37-49, copy attached, for the current year. The remaining 45.1 acres to cover the 168 acres currently being irrigated under water right 37-49 will be transferred from water rights 37-23090, 37-23091, 37-23092 and 37-23093 as described further below.

Water from 45.1 acres not being irrigated this year will be provided from portions of water rights 37-23090, 37-23091, 37-23092 and 37-23093 not currently being used. The place of use for these 4 water rights has been reshaped this year with over 200 acres fallowed and not being irrigated that are within the place of use of these 4 water rights. The lands have been identified through the overlay of a sketch map, copy attached, with the current place of use of the water rights. A more precise mapping can be prepared of the idle acres if needed as time permits. Copies of the water rights are attached.

Up to 5.5 cfs of ground water will be diverted from wells shown on the Temporary Change Application this Memorandum is accompanying. The RF shown on the Application, for the wells without a well log, is the response function taken from the support files accompanying Jennifer Sukow's May 17, 2021 Memorandum titled "Predicted hydrologic response in Silver Creek and the Little Wood River to curtailment of groundwater use in 2021, Basin 37 Administrative Proceeding, AA-WRA-2021-001." The response function is the fraction of the diverted water estimated to appear in Silver Creek by the end of September 2021.

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WATER RIGHT REPORT

5/25/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-49

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	JAMES B RITTER
Current Owner	LINDA RITTER
	PO BOX 28
	RICHFIELD, ID 83349
	2088862163

Priority Date: 04/01/1883  
Basis: Decreed  
Status: Active

<u>Source</u>	<u>Tributary</u>
LITTLE WOOD RIVER	MALAD RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/15	11/15	4.2 CFS	
Total Diversion			4.2 CFS	

Location of Point(s) of Diversion:

LITTLE WOOD RIVER	SENENW	Sec. 23	Township 05S	Range 18E	LINCOLN County
LITTLE WOOD RIVER	NWSENW	Sec. 23	Township 05S	Range 18E	LINCOLN County
LITTLE WOOD RIVER	SENENW	Sec. 27	Township 05S	Range 18E	LINCOLN County
LITTLE WOOD RIVER	SESWSE	Sec. 28	Township 05S	Range 18E	LINCOLN County

Place(s) of use:  
Place of Use Legal Description: IRRIGATION LINCOLN County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
05S	18E	27		NWNE	19.9									
				NENW	28.2		NWNW	1.3		SWNW	25.9		SENW	25.9
				NWSW	28.8		SWSW	6.1						
		28		SENE	22.2									
				NESE	26.3		SWSE	13.6		SESE	17.5			

Total Acres: 215.7  
Conditions of Approval:

- |    |     |  |
|----|-----|--|
| 1. |     | Right limited to 4.07 cfs when diverted from pump in Little Wood River.  |
| 2. | R05 | Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 37M.   |
| 3. | R43 | The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversions.   |
| 4. | U42 | Place of use does not include federal public lands.  |
| 5. | T07 | The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.   |
| 6. | T08 | Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.  |
| 7. | T19 | Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree. |



Dates:  
Licensed Date:  
Decreed Date: 09/29/2006  
Enlargement Use Priority Date:  
Enlargement Statute Priority Date:  
Water Supply Bank Enrollment Date Accepted:  
Water Supply Bank Enrollment Date Removed:  
Application Received Date:  
Protest Deadline Date:  
Number of Protests: 0

Other Information:  
State or Federal: S  
Owner Name Connector: And  
Water District Number: 37  
Generic Max Rate per Acre:  
Generic Max Volume per Acre:  
Civil Case Number:  
Old Case Number:  
Decree Plaintiff:  
Decree Defendant:  
Swan Falls Trust or Nontrust: T  
Swan Falls Dismissed:  
DLE Act Number:  
Cary Act Number:  
Mitigation Plan: False



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WATER RIGHT REPORT

6/17/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-22777

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	AUBREY SPRING RANCH LLC 18450 HWY 20 BELLEVUE, ID 83313 6506449516
Original Owner	KENNETH F HELLYER
Priority Date: 12/05/1979	
Basis: License	
Status: Active	

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/15	10/31	3.18 CFS	556.2 AFA
Total Diversion			3.18 CFS	556.2 AFA

Location of Point(s) of Diversion:

GROUND WATER Injection	SWSW	Sec. 13	Township 01S	Range 19E	BLAINE County
GROUND WATER	SENE	Sec. 14	Township 01S	Range 19E	BLAINE County
GROUND WATER Rediversion	NWNW	Sec. 24	Township 01S	Range 19E	BLAINE County

Place(s) of use:

Place of Use Legal Description: IRRIGATION BLAINE County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
01S	19E	13		SWNW	10									
				NESW	10		NWSW	36		SWSW	30		SESW	1.6
		14		SENE	3.2									
				SESE	3.1									
		23		NENE	36		SENE	29						

Total Acres: 158.9

Conditions of Approval:

- |    |     |  |
|----|-----|--|
| 1. | 004 | The issuance of this right does not grant any right-of-way or easement across the land of another.   |
| 2. | R05 | Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 37M. |
| 3. | R43 | The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).   |
| 4. | X11 | The right holder shall install and maintain acceptable measuring devices at the point of injection into Loving Creek and at the point of rediversion from Loving Creek.  |
| 5. | X35 | Rights 37-22777, 37-2553A and 37-8571 when combined shall not exceed a total diversion rate of 5.46 cfs.   |
| 6. | R55 | This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.   |
| 7. | R63 | This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.   |

8.	065	The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.
9.	105	If the surface water right(s) appurtenant to the place of use is abandoned, forfeited, sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used for irrigation purposes without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
10.		An intake screen acceptable to Idaho Fish & Game shall be installed at the point of rediversion on Loving Creek to prevent any negative impact on juvenile fish.

Dates:

Licensed Date: 01/14/2013

Decreed Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit:

Combined Volume Limit:

Combined Rate Limit: 5.46

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust: T

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

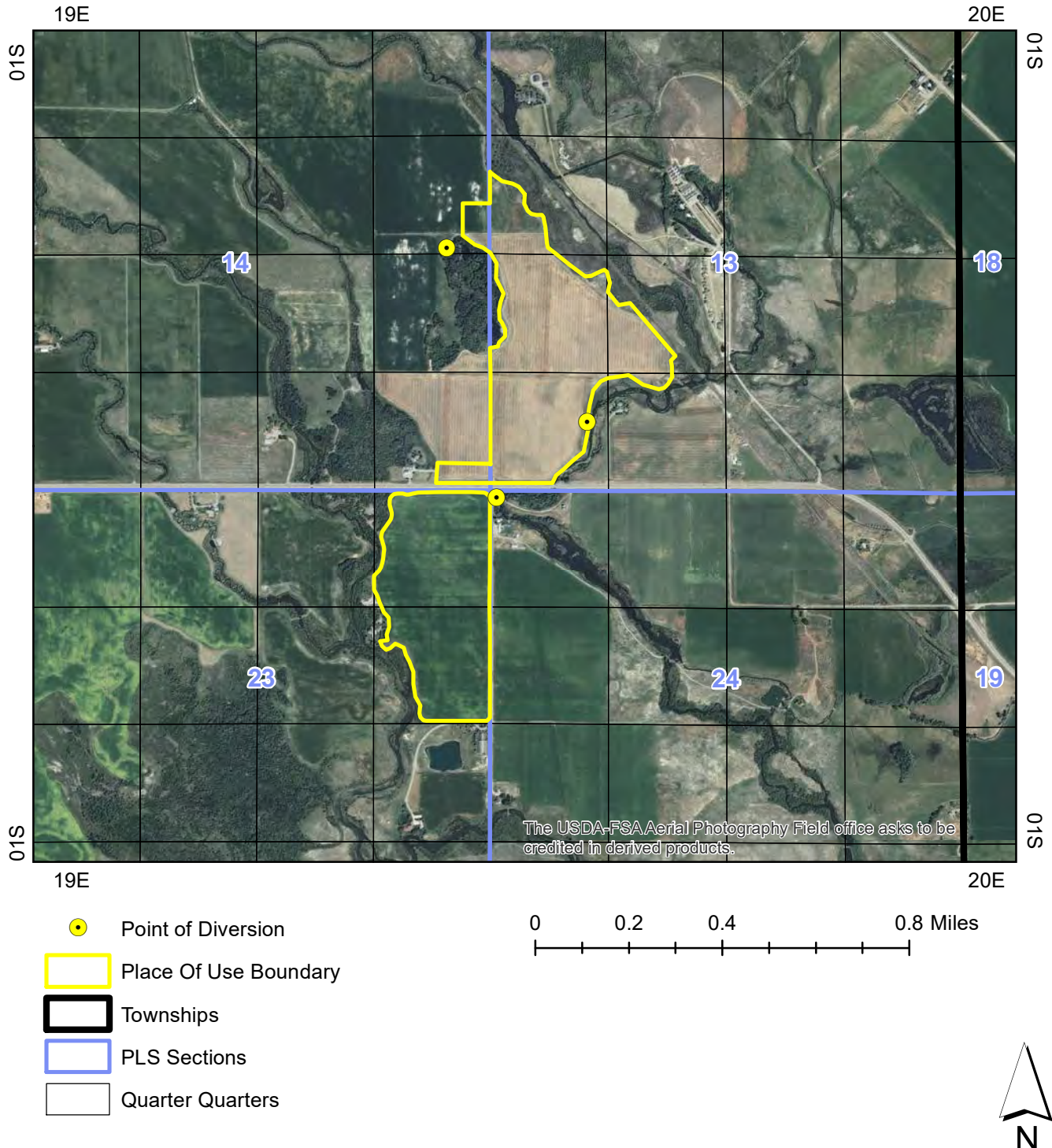


State of Idaho  
Department of Water Resources

# Water Right 37-22777

## IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.





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WATER RIGHT REPORT

6/18/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-23090

Owner Type	Name and Address
Current Owner	BLACKBURN FARMING LLC 535 GANNETT RD UNIT E BELLEVUE, ID 83313-5045 2084810348
Trustee	MICHAEL LOVAS 13233 SNOWSHOE THOMPSON CIR TRUCKEE, CA 96161 9255770293
Original Owner	NMS LEASING INC BANK OF HAWAII ATTN: MS KIM YOSHIMOTO 130 MERCHANT ST HONOLULU, HI 96802 8085384737
Original Owner	K F HELLYER HWY 68 GANNETT, ID 83329
Security Interest	LOVAS TRUST 13233 SNOWSHOE THOMPSON CIR TRUCKEE, CA 96161-5181 9255770293

Priority Date: 11/13/1959  
Basis: Decreed  
Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/01	11/01	7.16 CFS	1256.8 AFA
Total Diversion			7.16 CFS	1256.8 AFA

Location of Point(s) of Diversion:

GROUND WATER	NWSWNW	Sec. 17	Township 01N	Range 19E	BLAINE County
GROUND WATER	NENENW	Sec. 20	Township 01N	Range 19E	BLAINE County
GROUND WATER	SWSENW	Sec. 28	Township 01N	Range 19E	BLAINE County

IRRIGATION Use:  
Acre Limit: 359.1  
Place(s) of use:  
Place of Use Legal Description: IRRIGATION BLAINE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01N	19E	17		SWNE	38									
				SWNW	31		SENW	40						
				NESW	40		NWSW	13		SESW	26			

			NESE	11		NWSE	40		SWSE	40		SESE	22
	20		NENE	39		NWNE	38.5		SWNE	19		SENE	40
			NENW	7									
			NESE	35		NWSE	1.3		SESE	13			
	21	8	NWNW	10	9	SWNW	9						
		11	NWSW	24		SWSW	36	12	SESW	1.2			
	27		NENE	11		NWNE	9		SWNE	40		SENE	11
			SWNW	13		SENW	30						
			NESW	40		NWSW	38		SWSW	40		SESW	30
			NESE	3.8		NWSE	36		SWSE	4			
	28		SWNE	14		SENE	4						
			NENW	13		NWNW	29		SWNW	6.4		SENW	37
			NESW	22		SESW	2.2						
			NESE	39		NWSE	39		SWSE	36		SESE	40
	33		NENE	40		NWNE	14		SENE	30			
	34		NENW	0.2		NWNW	31		SWNW	15			

Total Acres: 1291.6

Conditions of Approval:

1.

Total combined delivery at the field headgates (for surface water rights) and diversion at the wellheads (for ground water rights) for this right along with water right nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 shall not exceed a total instantaneous rate of 25.8 cfs (which equates to 0.02 cfs per acre over the combined permissible places of use for these water rights totaling 1291.6 acres).
2.

Total volume of water delivered to the field from this right along with water right nos. 37-481B, 37-482G, 37-483B, 37-665K, 37-666J, 37-667N, 37-2625A, 37-2638, 37-2700, 37-21463, and 37-22155 shall not exceed 4626.9 acre-feet per year (which equates to 3.5 acre-feet per acre over the combined permissible places of use for these water rights totaling 1291.6 acres).
3.

C05

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.
4.

Right Nos. 37-23090, 37-23091, 37-23092 and 37-23093 are limited to the irrigation of a combined total of 1291.6 acres in a single irrigation season.
5.

E52

The rights listed below are limited to a total combined diversion rate of 19.65 cfs. Combined Right Nos.: 37-23090, 37-23091, 37-23092 and 37-23093.
6.

C18

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
7.

104

If the surface water rights appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
8.

C03

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.
9.

K06

This right is limited to the irrigation of 359.1 acres within the place of use described above in a single irrigation season.
10.

K01

Right No. 37-23093 is an enlargement of this right pursuant to Section 42-1426, Idaho Code.
11.

Right Nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 are limited to the irrigation of a combined total of 1291.6 acres in a single irrigation season.
12.

065

The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.

Dates:

Licensed Date:

Decreed Date: 01/14/2009

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 1291.6

Combined Volume Limit: 19.7

Combined Rate Limit:

Civil Case Number:



Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False



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WATER RIGHT REPORT

6/18/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-23091

Owner Type	Name and Address
Current Owner	BLACKBURN FARMING LLC 535 GANNETT RD UNIT E BELLEVUE, ID 83313-5045 2084810348
Trustee	MICHAEL LOVAS 13233 SNOWSHOE THOMPSON CIR TRUCKEE, CA 96161 9255770293
Original Owner	NMS LEASING INC BANK OF HAWAII ATTN: MS KIM YOSHIMOTO 130 MERCHANT ST HONOLULU, HI 96802 8085384737
Original Owner	K F HELLYER HWY 68 GANNETT, ID 83329
Security Interest	LOVAS TRUST 13233 SNOWSHOE THOMPSON CIR TRUCKEE, CA 96161-5181 9255770293

Priority Date: 08/01/1960  
Basis: Decreed  
Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/15	10/31	3.61 CFS	1455.2 AFA
Total Diversion			3.61 CFS	1455.2 AFA

Location of Point(s) of Diversion:

GROUND WATER	NWSWNW	Sec. 17	Township 01N	Range 19E	BLAINE County
GROUND WATER	NENENW	Sec. 20	Township 01N	Range 19E	BLAINE County
GROUND WATER	SWSENW	Sec. 28	Township 01N	Range 19E	BLAINE County

IRRIGATION Use:  
Acre Limit: 385.2  
Place(s) of use:  
Place of Use Legal Description: IRRIGATION BLAINE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01N	19E	17		SWNE	38									
				SWNW	31		SENW	40						
				NESW	40		NWSW	13		SESW	26			

			NESE	11		NWSE	40		SWSE	40		SESE	22
	20		NENE	39		NWNE	38.5		SWNE	19		SENE	40
			NENW	7									
			NESE	35		NWSE	1.3		SESE	13			
	21	8	NWNW	10	9	SWNW	9						
		11	NWSW	24		SWSW	36	12	SESW	1.2			
	27		NENE	11		NWNE	9		SWNE	40		SENE	11
			SWNW	13		SENW	30						
			NESW	40		NWSW	38		SWSW	40		SESW	30
			NESE	3.8		NWSE	36		SWSE	4			
	28		SWNE	14		SENE	4						
			NENW	13		NWNW	29		SWNW	6.4		SENW	37
			NESW	22		SESW	2.2						
			NESE	39		NWSE	39		SWSE	36		SESE	40
	33		NENE	40		NWNE	14		SENE	30			
	34		NENW	0.2		NWNW	31		SWNW	15			

Total Acres: 1291.6

Conditions of Approval:

1.

C03

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.
2.

E55

Right Nos. 37-23091 and 37-23092 are limited to the irrigation of a combined total of 757.9 acres in a single irrigation season.
3.

Total volume of water delivered to the field from this right along with water right nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 shall not exceed 4626.9 acre-feet per year (which equates to 3.5 acre-feet per acre over the combined permissible places of use for these water rights totaling 1291.6 acres).
4.

104

If the surface water rights appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
5.

X27

This right is limited to the irrigation of 385.2 acres within the place of use described above in a single irrigation season.
6.

E52

The rights listed below are limited to a total combined diversion rate of 19.65 cfs. Combined Right Nos.: 37-23090, 37-23091, 37-23092 and 37-23093.
7.

Right Nos. 37-23090, 37-23091, 37-23092 and 37-23093 are limited to the irrigation of a combined total of 1291.6 acres in a single irrigation season.
8.

Right Nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 are limited to the irrigation of a combined total of 1291.6 acres in a single irrigation season.
9.

C05

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.
10.

Total combined delivery at the field headgates (for surface water rights) and diversion at the wellheads (for ground water rights) for this right along with water right nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 shall not exceed a total instantaneous rate of 25.8 cfs (which equates to 0.02 cfs per acre over the combined permissible places of use for these water rights totaling 1291.6 acres).
11.

C18

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
12.

065

The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.

Dates:

Licensed Date:

Decreed Date: 01/14/2009

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 1291.6

Combined Volume Limit: 19.7

Combined Rate Limit:



Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False



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WATER RIGHT REPORT

6/18/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-23092

Owner Type	Name and Address
Current Owner	BLACKBURN FARMING LLC 535 GANNETT RD UNIT E BELLEVUE, ID 83313-5045 2084810348
Trustee	MICHAEL LOVAS 13233 SNOWSHOE THOMPSON CIR TRUCKEE, CA 96161 9255770293
Original Owner	NMS LEASING INC
Original Owner	K F HELLYER BANK OF HAWAII ATTN: MS KIM YOSHIMOTO 130 MERCHANT ST HONOLULU, HI 96802 8085384737
Original Owner	FRED BROSSY COVE RANCH BELLEVUE, ID 83313
Security Interest	LOVAS TRUST 13233 SNOWSHOE THOMPSON CIR TRUCKEE, CA 96161-5181 9255770293

Priority Date: 08/20/1964  
Basis: Decreed  
Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/01	11/01	8.89 CFS	1333.8 AFA
Total Diversion			8.89 CFS	1333.8 AFA

Location of Point(s) of Diversion:

GROUND WATER	NWSWNW	Sec. 17	Township 01N	Range 19E	BLAINE County
GROUND WATER	NENENW	Sec. 20	Township 01N	Range 19E	BLAINE County
GROUND WATER	SWSENW	Sec. 28	Township 01N	Range 19E	BLAINE County

IRRIGATION Use:

Acre Limit: 444.6

Place(s) of use:

Place of Use Legal Description: IRRIGATION BLAINE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01N	19E	17		SWNE	38									
				SWNW	31		SENW	40						

			NESW	40		NWSW	13		SESW	26			
			NESE	11		NWSE	40		SWSE	40		SESE	22
	20		NENE	39		NWNE	38.5		SWNE	19		SENE	40
			NENW	7									
			NESE	35		NWSE	1.3		SESE	13			
	21	8	NWNW	10	9	SWNW	9						
		11	NWSW	24		SWSW	36	12	SESW	1.2			
	27		NENE	11		NWNE	9		SWNE	40		SENE	11
			SWNW	13		SENE	30						
			NESW	40		NWSW	38		SWSW	40		SESW	30
			NESE	3.8		NWSE	36		SWSE	4			
	28		SWNE	14		SENE	4						
			NENW	13		NWNW	29		SWNW	6.4		SENE	37
			NESW	22		SESW	2.2						
			NESE	39		NWSE	39		SWSE	36		SESE	40
	33		NENE	40		NWNE	14		SENE	30			
	34		NENW	0.2		NWNW	31		SWNW	15			

Total Acres: 1291.6

Conditions of Approval:

1.

Total combined delivery at the field headgates (for surface water rights) and diversion at the wellheads (for ground water rights) for this right along with water right nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 shall not exceed a total instantaneous rate of 25.8 cfs (which equates to 0.02 cfs per acre over the combined permissible places of use for these water rights totaling 1291.6 acres).
2.

104

If the surface water rights appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
3.

E55

Right Nos. 37-23091 and 37-23092 are limited to the irrigation of a combined total of 757.9 acres in a single irrigation season.
4.

065

The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.
5.

X27

This right is limited to the irrigation of 444.6 acres within the place of use described above in a single irrigation season.
6.

C18

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
7.

Right Nos. 37-23090, 37-23091, 37-23092 and 37-23093 are limited to the irrigation of a combined total of 1291.6 acres in a single irrigation season.
8.

Right Nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 are limited to the irrigation of a combined total of 1291.6 acres in a single irrigation season.
9.

C05

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.
10.

E52

The rights listed below are limited to a total combined diversion rate of 19.65 cfs. Combined Right Nos.: 37-23090, 37-23091, 37-23092 and 37-23093.
11.

C03

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.
12.

Total volume of water delivered to the field from this right along with water right nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 shall not exceed 4626.9 acre-feet per year (which equates to 3.5 acre-feet per acre over the combined permissible places of use for these water rights totaling 1291.6 acres).

Dates:

Licensed Date:

Decreed Date: 01/14/2009

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 1291.6

Combined Volume Limit: 19.7



Combined Rate Limit:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False



IDWR offices are open to the public and following the CDC guidelines for wearing masks and observing social distancing. For in-person visits, we encourage you to call ahead for an appointment.

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WATER RIGHT REPORT

6/18/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-23093

Owner Type	Name and Address
Current Owner	BLACKBURN FARMING LLC 535 GANNETT RD UNIT E BELLEVUE, ID 83313-5045 2084810348
Trustee	MICHAEL LOVAS 13233 SNOWSHOE THOMPSON CIR TRUCKEE, CA 96161 9255770293
Original Owner	NMS LEASING INC BANK OF HAWAII ATTN: MS KIM YOSHIMOTO 130 MERCHANT ST HONOLULU, HI 96802 8085384737
Security Interest	LOVAS TRUST 13233 SNOWSHOE THOMPSON CIR TRUCKEE, CA 96161-5181 9255770293

Priority Date: 04/01/1984  
Basis: Decreed  
Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/15	10/31	2.65 CFS	611.1 AFA
Total Diversion			2.65 CFS	611.1 AFA

Location of Point(s) of Diversion:

GROUND WATER	NWSWNW	Sec. 17	Township 01N	Range 19E	BLAINE County
GROUND WATER	NENENW	Sec. 20	Township 01N	Range 19E	BLAINE County
GROUND WATER	SWSENW	Sec. 28	Township 01N	Range 19E	BLAINE County

IRRIGATION Use:  
Acre Limit: 174.6  
Place(s) of use:  
Place of Use Legal Description: IRRIGATION BLAINE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01N	19E	17		SWNE	38									
				SWNW	31		SENW	40						
				NESW	40		NWSW	13		SESW	26			
				NESE	11		NWSE	40		SWSE	40		SESE	22
		20		NENE	39		NWNE	38.5		SWNE	19		SENE	40
				NENW	7									

			NESE	35		NWSE	1.3		SESE	13			
	21	8	NWNW	10	9	SWNW	9						
		11	NWSW	24		SWSW	36	12	SESW	1.2			
	27		NENE	11		NWNE	9		SWNE	40		SENE	11
			SWNW	13		SENW	30						
			NESW	40		NWSW	38		SWSW	40		SESW	30
			NESE	3.8		NWSE	36		SWSE	4			
	28		SWNE	14		SENE	4						
			NENW	13		NWNW	29		SWNW	6.4		SENW	37
			NESW	22		SESW	2.2						
			NESE	39		NWSE	39		SWSE	36		SESE	40
	33		NENE	40		NWNE	14		SENE	30			
	34		NENW	0.2		NWNW	31		SWNW	15			

Total Acres: 1291.6

Conditions of Approval:

1.

E52

The rights listed below are limited to a total combined diversion rate of 19.65 cfs. Combined Right Nos.: 37-23090, 37-23091, 37-23092 and 37-23093.
2.

Right Nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 are limited to the irrigation of a combined total of 1291.6 acres in a single irrigation season.
3.

The rights listed below are limited to a total combined diversion rate of 7.16 cfs. Combined Right Nos.: 37-23090 and 37-23093.
4.

C11

This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right.
5.

Right Nos. 37-23090, 37-23091, 37-23092 and 37-23093 are limited to the irrigation of a combined total of 1291.6 acres in a single irrigation season.
6.

Total combined delivery at the field headgates (for surface water rights) and diversion at the wellheads (for ground water rights) for this right along with water right nos.37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 shall not exceed a total instantaneous rate of 25.8 cfs (which equates to 0.02 cfs per acre over the combined permissible places of use for these water rights totaling 1291.6 acres).
7.

104

If the surface water rights appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
8.

K01

This right is an enlargement of Right 37-23090, 37-23091 & 37-23092 pursuant to Section 42-1426, Idaho Code.
9.

C05

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.
10.

C18

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
11.

Total volume of water delivered to the field from this right along with water right nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 shall not exceed 4626.9 acre-feet per year (which equates to 3.5 acre-feet per acre over the combined permissible places of use for these water rights totaling 1291.6 acres).
12.

X27

This right is limited to the irrigation of 174.6 acres within the place of use described above in a single irrigation season.
13.

065

The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.
14.

C03

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

Dates:

Licensed Date:

Decreed Date: 01/14/2009

Enlargement Use Priority Date:

Enlargement Statute Priority Date: 4/12/1994

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 1291.6

Combined Volume Limit: 19.7

Combined Rate Limit:

Civil Case Number:  
Old Case Number:  
Decree Plaintiff:  
Decree Defendant:  
Swan Falls Trust or Nontrust:  
Swan Falls Dismissed:  
DLE Act Number:  
Cary Act Number:  
Mitigation Plan: False



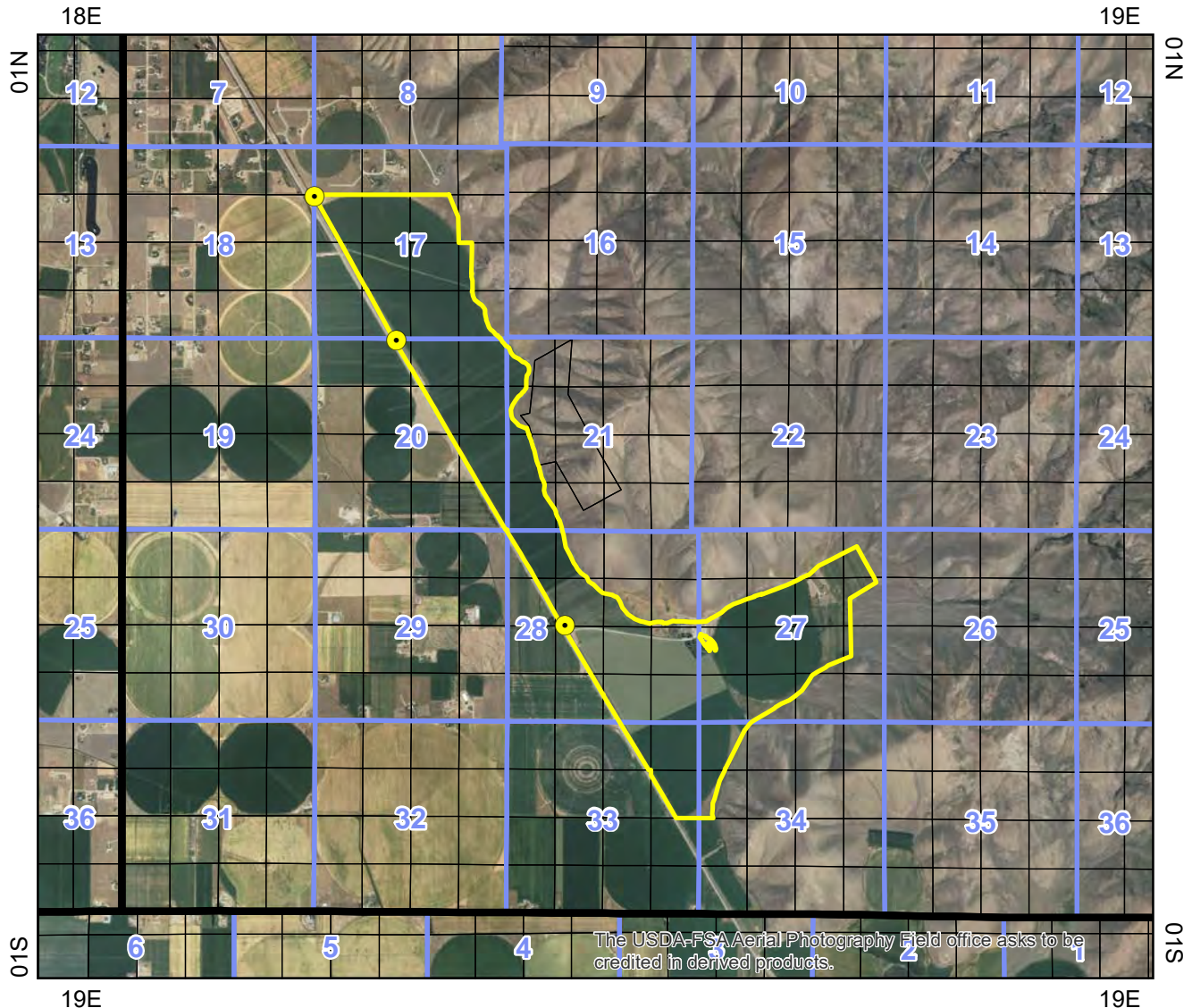
State of Idaho  
Department of Water Resources

# Water Right

## 37-23090 - 3

### IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



● Point of Diversion

□ Place Of Use Boundary

□ Townships

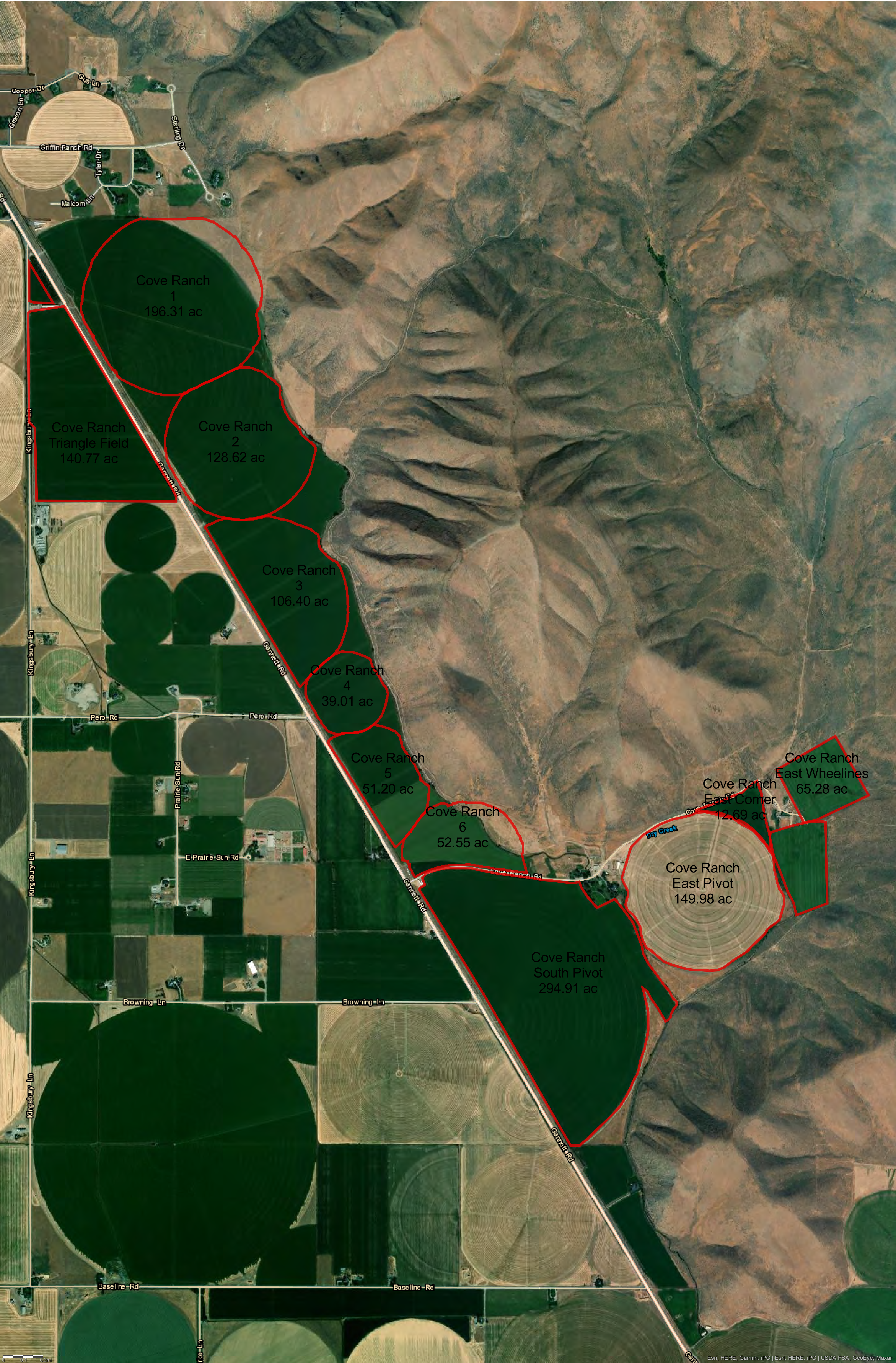
□ PLS Sections

□ Quarter Quarters

0 0.5 1 2 Miles









RECEIVED  
DEC 6 1960  
Department of ReclamationWELL LOG AND REPORT OF THE  
STATE RECLAMATION ENGINEER OF IDAHOPermit No. 25856 Well No. \_\_\_\_\_ County BlaineOwner K. F. HeltzerAddress Sun ValleyDriller Eugene W. WalkerAddress Twin FallsWell location SE 1/4 NW 1/4 Sec. 28, T. 1 N. R. 19 E.Size of drilled hole 20 inTotal depth of well 140Give depth to standing water from the ground 57 1/2 Water temp. 46 °Fahr.On "Pumping Test" delivery was 3200 g.p.m. or \_\_\_\_\_ c.f.s. Drawdown was 4 1/4 feet.Size of pump and motor used to make test 12 in Bowl 300 HP DieselLength of time of test 3 hours \_\_\_\_\_ minutes.

If flowing well, give flow \_\_\_\_\_ c.f.s. or \_\_\_\_\_ g.p.m. and of shut off pressure \_\_\_\_\_

If flowing well, described control works \_\_\_\_\_  
(TYPE AND SIZE OF VALVE, ETC.)Water will be used for Irrigation Weight of casing per lineal foot 65 - lbThickness of casing 5/16 Casing material Steel  
(STEEL, CONCRETE, WOOD, ETC.)Diameter, length and location of casing 20" 140 ft  
(CASING 12" IN DIAMETER OR LESS, GIVE INSIDE DIAMETER;  
CASING OVER 12" IN DIAMETER, GIVE OUTSIDE DIAMETER)

## CASING RECORD

Diam. Casing	From Feet	To Feet	Length	Remarks—seals, grouting, etc.
20	0	140	140	

Mills Knife 1/2 x 3  
Number and size of perforations 30 Per foot located 57 feet to 68 feet from ground

	<u>74</u>	<u>81</u>
	<u>81</u>	<u>100</u>
	<u>175</u>	<u>136</u>

  
Date of commencement of well 25 May 60 Date of completion of well 23 May 60

SE NW S. 28 IN 19 E

## WELL LOG

From Feet	To Feet	Type of Material	Water-bearing Formation Ans. Yes or No	Casing Perforated Ans. Yes or No
0	3	Surface		
3	67	Gravel, sand small Boulders, with clay	m	<del>no</del>
67	68	Clean gravel	yes	yes
68	74	Clay & gravel	no	yes
74	81	Coarse gravel - clean	yes	yes
81	100	gravel & clay	?	yes
100	115	Large Amount of Clay with Gravel	No	No
115	140	Clean coarse gravel	yes	yes

If more space is required use Sheet No. 2

### WELL DRILLER'S STATEMENT

This well was drilled under my supervision and the above information is true and correct to the best of my knowledge and belief.

**Signed.**

**By\_**

**Dated.**

**License No.**



WELL LOG AND REPORT TO THE  
STATE RECLAMATION ENGINEER OF IDAHO

RECEIVED  
SEP 18 1957

Department of Reclamation

Location Corrected by IDWR To:

T01S R19E Sec. 5 SENE

By: mciscell 2013-10-11

Rec. \_\_\_\_\_, 19\_\_\_\_

Well No. \_\_\_\_\_

Permit No. \_\_\_\_\_

(DO NOT FILL IN)

Owner B. R. Stoecking Address Gannett

Driller Eugene A. Walker Address Twin Falls Lic. No. 15

Location of Well: LOT 1 NE 1/4 SE 1/4 Sec. 5, T. 1 N/S, R. 19 E/W BLAINE County,

and 50 feet N/S, and 800 feet W from NE Corner of NE 1/4 SE 1/4 Sec. 5

Size of Drilled Hole 20 Total depth of Well 80

Give depth of standing water from surface 14 1/2 Water Temp. 52 °Farenheit

On pumping test delivery was See notes g.p.m. or \_\_\_\_\_ c.f.s. Drawdown was 18 feet.

Size of pump and motor used to make the test 50 HP

Length of time pumped during check was Permanent hr., \_\_\_\_\_ minutes.

If flowing well, give flow in c.f.s. \_\_\_\_\_ or g.p.m. \_\_\_\_\_ and shut in pressure \_\_\_\_\_

If flowing well, describe control works \_\_\_\_\_  
(TYPE AND SIZE OF VALVE, ETC.)

Water will be used for Irrigation Weight of casing per linear foot 65 lb

Thickness of casing 5/16 Casing material Steel  
E.G., PIPE, CONCRETE, WOOD.

Diameter, length and location of casing \_\_\_\_\_  
(CASING 12" IN DIAMETER AND UNDER GIVE INSIDE DIAMETER;  
CASING OVER 12" IN DIAMETER GIVE OUTSIDE DIAMETER.)

Number and size of perforations 17/10 located 19 feet to 77 feet  
from surface of ground.

Other perforations \_\_\_\_\_

Date of commencement of well 29 July 1957 Date of completion of well 6 Aug 1957

Type of well rig Churn

CASING RECORD

DIAM. CASING	FROM FEET	TO FEET	LENGTH	"REMARKS" -- SEALS, GROUTING, ETC.

GENERAL INFORMATION—Pumping Test, Quality of Water, Etc.

Permanent Pump delivers about 4200 G.P.M.  
with 50 H.P.

LOT 1 NESE 5.5 IS 19E  
SE 11E

# WELL LOG

From Feet	To Feet	Type of Material	Drilling Time		Water-bearing Formation Ans. Yes or No	Casing Perforated Ans. Yes or No
			Hrs.	Min.		
0	32	Pit				
32	50	Clean gravel & sand	10	10	yes	yes
50	51	Clay & gravel	1		no	yes
51	70	Clean gravel & sand	10		yes	yes
70	80	Clean coarse gravel & sand	5	40	yes	yes
If more space is required use Sheet No. 2						

# WELL DRILLER'S STATEMENT

This well was drilled under my jurisdiction and the above information is true and correct to the best of my knowledge and belief.

Signed Eugene W Walker  
 By \_\_\_\_\_

License No. 15

Dated 15 Sept, 1957

**FORWARD WHITE COPY TO WATER RESOURCES**

## WELL DRILLER'S REPORT

**State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.**

[illegible]



## WELL DRILLER'S REPORT

**State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.**

[illegible]

WELL LOG AND REPORT OF THE  
STATE RECLAMATION ENGINEER OF IDAHORECEIVED  
APR 4 1961

Department of Reclamation

034560

Permit No. \_\_\_\_\_ Well No. \_\_\_\_\_ County BlaineOwner Picabo Livestock CoAddress Picabo IdahoDriller Eugene W WalkerAddress Twin FallsWell location SW 1/4 SE 1/4 Sec 20, T. 1 N, R. 10 ESize of drilled hole 16 in

Locate well in section

NW 1/4	NE 1/4
SW 1/4	SE 1/4

Total depth of well 173Give depth to standing water from the ground 14 1/2 Water temp 49 °Fahr.On "Pumping Test" delivery was 2700 g.p.m. or \_\_\_\_\_ c.f.s. Drawdown was 55 feet.Size of pump and motor used to make test 12 in Bowl - 200 HPLength of time of test 7 hours \_\_\_\_\_ minutes.

If flowing well, give flow \_\_\_\_\_ c.f.s. or \_\_\_\_\_ g.p.m. and of shut off pressure \_\_\_\_\_

If flowing well, described control works \_\_\_\_\_

(TYPE AND SIZE OF VALVE, ETC.)

Water will be used for Supplemental Irrigation Weight of casing per lineal foot 42Thickness of casing 1/4 Casing material Steel

(STEEL, CONCRETE, WOOD, ETC.)

Diameter, length and location of casing 9 1/2 in 16 in Surface down(CASING 12" IN DIAMETER OR LESS, GIVE INSIDE DIAMETER;  
CASING OVER 12" IN DIAMETER, GIVE OUTSIDE DIAMETER)

## CASING RECORD

Diam. Casing	From Feet	To Feet	Length	Remarks—seals, grouting, etc.
16 <del>in</del>	0	9 1/2	9 1/2	Driven Into Rock

Number and size of perforations None located \_\_\_\_\_ feet to \_\_\_\_\_ feet from groundDate of commencement of well 2 Mar 1961 Date of completion of well 24 Mar 1961

SWSE S.20 15 20 E

## WELL LOG

From Feet	To Feet	Type of Material	Water-bearing Formation Ans. Yes or No	Casing Perforated Ans. Yes or No
0	7	Surface Water at 6 ft		
7	14	old looking Clay or soil	no	no
14	28	Gravel	yes	no
28	32	River sand	yes	no
32	78	Clay & sand - Blue	yes	no
78	93	Sticky Clay	no	no
93	97	Red Lava	no	no
97	117	Gray Lava	no	
117	136	Red Cinders & Clay	no	
130	<del>138</del> 136	Hard Gray Basalt		
136	148	Cinders & Clay	?	
148	157	Red Lava - <del>hard</del> solid but has seams	?	
157	170	Large Broken Red Lava & Clay	?	
170	173	Cutting not recovered	yes	
Water Pumped Very Red (dark) appeared to be Clay Source unknown				

If more space is required use Sheet No. 2

## WELL DRILLER'S STATEMENT

This well was drilled under my supervision and the above information is true and correct to the best of my knowledge and belief.

Signed

Eugene T. Walker

By

Dated

2 April, 1961

License No.

15

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

1. WELL OWNER  
Name Double R Ranch c/o Darryl Smith  
Address Picabo, Idaho 83348  
Owner's Permit No. 37-7551

2. NATURE OF WORK  
☐ New well ☒ Deepened ☐ Replacement  
☐ Abandoned (describe abandonment procedures such as materials, plug depths, etc. in lithologic log)

3. PROPOSED USE  
☐ Domestic ☒ Irrigation ☐ Test ☐ Municipal  
☐ Industrial ☐ Stock ☐ Waste Disposal or Injection  
☐ Other (specify type)

4. METHOD DRILLED  
☒ Rotary ☐ Air ☐ Hydraulic ☐ Reverse rotary  
☐ Cable ☐ Dug ☐ Other

5. WELL CONSTRUCTION  
Casing schedule: ☐ Steel ☐ Concrete ☐ Other  
Thickness \_\_\_\_\_ inches Diameter \_\_\_\_\_ inches + \_\_\_\_\_ feet To \_\_\_\_\_ feet  
Was casing drive shoe used? ☐ Yes ☒ No  
Was a packer or seal used? ☐ Yes ☒ No  
Perforated? ☐ Yes ☒ No  
How perforated? ☐ Factory ☐ Knife ☐ Torch  
Size of perforation \_\_\_\_\_ inches by \_\_\_\_\_ inches  
Number \_\_\_\_\_ From \_\_\_\_\_ To \_\_\_\_\_  
\_\_\_\_\_ perforations \_\_\_\_\_ feet \_\_\_\_\_ feet  
\_\_\_\_\_ perforations \_\_\_\_\_ feet \_\_\_\_\_ feet  
\_\_\_\_\_ perforations \_\_\_\_\_ feet \_\_\_\_\_ feet  
Well screen installed? ☐ Yes ☒ No  
Manufacturer's name \_\_\_\_\_  
Type \_\_\_\_\_ Model No. \_\_\_\_\_  
Diameter \_\_\_\_\_ Slot size \_\_\_\_\_ Set from \_\_\_\_\_ feet to \_\_\_\_\_ feet  
Diameter \_\_\_\_\_ Slot size \_\_\_\_\_ Set from \_\_\_\_\_ feet to \_\_\_\_\_ feet  
Gravel packed? ☐ Yes ☒ No ☐ Size of gravel \_\_\_\_\_  
Placed from \_\_\_\_\_ feet to \_\_\_\_\_ feet  
Surface seal depth \_\_\_\_\_ Material used in seal: ☐ Cement grout  
☐ Bentonite ☐ Puddling clay ☐  
Sealing procedure used: ☐ Slurry pit ☐ Temp. surface casing  
☐ Overbore to seal depth  
Method of joining casing: ☐ Threaded ☐ Welded ☐ Solvent Weld  
☐ Cemented between strata  
Describe access port \_\_\_\_\_

6. LOCATION OF WELL  
Sketch map location must agree with written location.  
Subdivision Name \_\_\_\_\_  
Lot No. \_\_\_\_\_ Block No. \_\_\_\_\_  
County Blaine  
NE ¼ NW ¼ Sec. 30, T. 1 N/S, R. 20 E/W.

7. WATER LEVEL  
Static water level 17 feet below land surface.  
Flowing? ☐ Yes ☒ No G.P.M. flow \_\_\_\_\_  
Artesian closed-in pressure \_\_\_\_\_ p.s.i.  
Controlled by: ☐ Valve ☐ Cap ☐ Plug  
Temperature \_\_\_\_\_ °F. Quality Good  
Describe artesian or temperature zones below.

8. WELL TEST DATA  
☐ Pump ☐ Bailer ☐ Air ☐ Other  
Discharge G.P.M. Pumping Level Hours Pumped

9. LITHOLOGIC LOG  
86751  
Bore Diam. Depth From To Material Water Yes No  
16 74 86 Hard gray basalt X  
16 86 97 Cinders X  
16 97 100 Firm brown basalt X  
16 100 106 Broken brown basalt X  
16 106 123 Firm gray basalt X  
16 123 132 Cinders X  
16 132 135 Firm brown basalt X  
16 135 147 Cinders X

10. Work started 8/1/86 finished 8/6/86

11. DRILLERS CERTIFICATION  
I/We certify that all minimum well construction standards were complied with at the time the rig was removed.  
Firm Name Andrew Well Drilling Firm No. 5  
Address 1268 E. 17th Street Date 8/14/86  
Idaho Falls, Idaho 83401  
Signed by (Firm Official) \_\_\_\_\_  
and \_\_\_\_\_  
(Operator) Wale Hulse

USE ADDITIONAL SHEETS IF NECESSARY - FORWARD THE WHITE COPY TO THE DEPARTMENT



**State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.**

[illegible]

Duplicate Report

WELL LOG AND REPORT TO THE  
STATE RECLAMATION ENGINEER OF IDAHO

SUBMIT WITHIN 30 DAYS AFTER COMPLETION OF WELL: SEE IDAHO STATUTES 42-238

034405

Permit No. 8159 628319 Well No. \_\_\_\_\_ County BLAINE

Owner PICABO LIVESTOCK CO

Address Picabo Idaho

Driller EUGENE W. WALKER

Address 624 Pierce St,  
Twin Falls, Idaho

Well location SW 1/4 NE 1/4 Sec. 30, T. 1 N. R. 10 E/W

Size of drilled hole 16

Total depth of well 332

Give depth to standing water from the ground 1 Water temp. 49 °Fahr.

Test delivery was 2500 g.p.m. or \_\_\_\_\_ c.f.s. Drawdown was 77 feet. Pump? ☒ Bail? \_\_\_\_\_

Size of pump and motor used to make test 10 in Column 12 Bowl 300 HP D.

Length of time of test 4 hours \_\_\_\_\_ minutes.

If flowing well, give flow \_\_\_\_\_ c.f.s. or \_\_\_\_\_ g.p.m. and of shut off pressure \_\_\_\_\_

If flowing well, described control works \_\_\_\_\_ (TYPE AND SIZE OF VALVE, ETC.)

Water will be used for Irrigation Weight of casing per lineal foot \_\_\_\_\_

Thickness of casing 312 Casing material Steel (STEEL, CONCRETE, WOOD, ETC.)

Diameter, length and location of casing 16 in I.D. 91 1/2 ft Surface  
(CASING 12" IN DIAMETER OR LESS, GIVE INSIDE DIAMETER;  
CASING OVER 12" IN DIAMETER, GIVE OUTSIDE DIAMETER)

CASING RECORD

Diam. Casing	From Feet	To Feet	Length	Remarks—seals, grouting, etc.
16	0	91 1/2	91 1/2	Driven into Rock water Tight

Number and size of perforations None located \_\_\_\_\_ feet to \_\_\_\_\_ feet from ground

Date of commencement of well June 60 Date of completion of well Mar 61

SWNE S.30 IN 20E

USGS

## WELL LOG

From Feet	To Feet	Type of Material	Water-bearing Formation Ans. Yes or No	Casing Perforated Ans. Yes or No
0	10	Surface (Water at 5 ft)	yes	no
10	23	Clay & gravel	no	no
23	27	Clean gravel — Water	yes	no
27	46	Clay		
46	47	Gravel & Water	yes	no
47	53	Tan Clay	no	no
57	78	Blue Clay	no	no
78		River Sand (Artesian Water)	yes	no
78	84	Sticky <sup>Brown</sup> <del>Greenish</del> yellow Clay		
84	89			
89	91	Lava Cinders	yes	
91	125	Coarse Lava Cinders — Talus	yes	
125	164	Soft dark gray LAVA		
164	178	Hard gray LAVA, water raised in casing	yes	
178	190	Gray LAVA	no	
190	192	Crumbly — Caving	no	
192	205	Hard LOOSE Caving Basalt	no	
If more space is required use Sheet No. 2				

## WELL DRILLER'S STATEMENT

This well was drilled under my supervision and the above information is complete, true and correct to the best of my knowledge and belief.

Signed

Eugene Walker

By

Dated

2 July 1967

License No.

15-

Well Driller's Helper

Well Owner Lucas Truck Co.

034406

Well Driller

**EUGENE W. WALKER**

**624 Pierce St.**

Well Location

**Twin Falls, Idaho**

## WELL LOG

[illegible]

U S G S



STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**TEMPORARY CHANGE APPLICATION**

*(To change point of diversion, place of use, or purpose of use of a water right upon declaration of a drought emergency in accordance with Section 42-222A, Idaho Code.)*

Name of Applicant South Valley &/or Galena Ground Water Districts Phone 208-336-0700  
Mailing Address PO Box 2139, Boise, ID 83701 Email brs@idahowaters.com

**A. PURPOSE OF TRANSFER**

1. ☒ Change point of diversion ☒ Add diversion point(s) ☒ Change place of use  
☐ Change purpose of use ☐ Other
2. Describe the proposed change(s) and explain the reason(s) they are needed. \_\_\_\_\_  
Ground water rights not in use in 2021 are proposed to be used for mitigation by pumping from select wells into  
Silver Creek to augment the discharge of the Little Wood River to benefit an 1883 priority water right identified by  
the Watermaster as 37-423.

**B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE**

1. <u>Right Number</u>	<u>Priority</u>	<u>Amount</u> <small>(cfs/ac-ft)</small>	<u>Nature of Use</u>	<u>Period of Use</u>
<u>37-22777</u>	<u>12/5/1979</u>	<u>3.18</u>	<u>Irrigation</u>	<u>4/15</u> to <u>10/31</u>
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____

2. Total amount of water being transferred 0.50 cubic feet per second and/or \_\_\_\_\_ acre-feet per annum.
3. Source of water Ground Water tributary to \_\_\_\_\_.
4. Point(s) of diversion:

Twp	Rge	Sec	Govt Lot	¼	¼	¼	County	Source	Local name or tag number
1S	20E	20		NW	NE	NE	Blaine	Ground Water	No Log - RF = 0.1035
				NW	NE	SW	"	"	No Log - RF = 0.147
				SE	SW	SE	"	"	
		30		NW	SW	NE	"	"	

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres \_\_\_\_\_

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**TEMPORARY CHANGE APPLICATION**

*(To change point of diversion, place of use, or purpose of use of a water right upon declaration of a drought emergency in accordance with Section 42-222A, Idaho Code.)*

Name of Applicant For additional PODs only. Phone \_\_\_\_\_

Mailing Address \_\_\_\_\_ Email \_\_\_\_\_

**A. PURPOSE OF TRANSFER**

1. ☐ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use  
☐ Change purpose of use ☐ Other

2. Describe the proposed change(s) and explain the reason(s) they are needed. \_\_\_\_\_

**B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE**

1. <u>Right Number</u>	<u>Priority</u>	<u>Amount</u> (cfs/ac-ft)	<u>Nature of Use</u>	<u>Period of Use</u>
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____

2. Total amount of water being transferred \_\_\_\_\_ cubic feet per second and/or \_\_\_\_\_ acre-feet per annum.

3. Source of water \_\_\_\_\_ tributary to \_\_\_\_\_.

4. Point(s) of diversion:

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag number
1S	20E	30			NE	NW	Blaine	Ground Water	
	19E	2		SW	NW	SW	Blaine	Ground Water	
				SE	NW	SW	Blaine	Ground Water	
		5	1		SE	NE	Blaine	Ground Water	

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres \_\_\_\_\_

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

## TEMPORARY CHANGE APPLICATION

*(To change point of diversion, place of use, or purpose of use of a water right upon declaration of a drought emergency in accordance with Section 42-222A, Idaho Code.)*

Name of Applicant For additional PODs Only Phone \_\_\_\_\_

Mailing Address \_\_\_\_\_ Email \_\_\_\_\_

### A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use  
☐ Change purpose of use ☐ Other

2. Describe the proposed change(s) and explain the reason(s) they are needed. \_\_\_\_\_

### B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. <u>Right Number</u>	<u>Priority</u>	<u>Amount</u> (cfs/ac-ft)	<u>Nature of Use</u>	<u>Period of Use</u>
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____

2. Total amount of water being transferred \_\_\_\_\_ cubic feet per second and/or \_\_\_\_\_ acre-feet per annum.

3. Source of water \_\_\_\_\_ tributary to \_\_\_\_\_.

4. Point(s) of diversion:

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag number
1S	19E	28			SE	NW	Blaine	Ground Water	

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres \_\_\_\_\_

6. General Information:

- a. Who owns the water right to be changed? Aubry Springs Ranch LLC
- b. Describe the arrangement allowing use of the right. Sharing agreement with South Valley and Galena Ground Water Districts
- c. Describe the affect on the land now irrigated if the change is approved pursuant to this application:  
Water rights are not being used in 2021 & there will be no impact to the lands these rights are appurtenant to.
- d. Has the water right sought to be transferred been used this year? ☐ Yes ☒ No If yes, explain. \_\_\_\_\_
- e. Absent the changes, how would the right be used for the remainder of the year? Remain unused.
- f. Describe other water rights used for the same purpose. None except those identified in this application.
- g. Remarks: This transfer seeks to augment the discharge of Silver Creek and the Little Wood River to supply water to water right 37-423.

I hereby assume all risk in accordance with Section 42-222A, Idaho Code, and assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in voiding its approval.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

**FOR DEPARTMENT USE ONLY**

Received by \_\_\_\_\_ Date \_\_\_\_\_ \$50 fee receipted by \_\_\_\_\_ Receipt No. \_\_\_\_\_  
Recommend: ☐ approve ☐ deny Watermaster recommendation \_\_\_\_\_

**ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES**

This is to certify that I have examined Temporary Change Application No. \_\_\_\_\_, and said application is hereby \_\_\_\_\_, subject to the following limitations and conditions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Temporary Change Expiration Date \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
For the Director



## Memorandum in Support of Temporary Transfer to Supplement Water Right No. 37-423

A copy of water right no. 37-423 is attached describing the place of use of the water right. Ground water will be diverted to supply water to 36 acres under water right no. 37-423 from 36 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 13 Twp 01S Rge 19E, B.M. that is fallow and not being irrigated this year. A copy of water right no. 37-22777 and the POU map are attached.

Up to 0.5 cfs of ground water will be diverted from wells shown on the Temporary Change Application this Memorandum is accompanying. The RF shown on the Application is the response function taken from the support files accompanying Jennifer Sukow's May 17, 2021 Memorandum titled "Predicted hydrologic response in Silver Creek and the Little Wood River to curtailment of groundwater use in 2021, Basin 37 Administrative Proceeding, AA-WRA-2021-001." The RF is shown only for those wells without a well log. The well logs are attached for all other wells.



IDWR offices are open to the public and following the CDC guidelines for wearing masks and observing social distancing. For in-person visits, we encourage you to call ahead for an appointment.

Home / Water Rights / Research / Search Water Rights

WATER RIGHT REPORT

5/25/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-423

Owner Type	Name and Address
Current Owner	DONALD E TABER 312 E 20 N SHOSHONE, ID 83352 2088862427

Priority Date: 04/01/1883  
Basis: Decreed  
Status: Active

Source	Tributary
LITTLE WOOD RIVER	MALAD RIVER

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	03/15	11/15	0.3 CFS	
Total Diversion			0.3 CFS	

Location of Point(s) of Diversion:

LITTLE WOOD RIVER	SENESE	Sec. 32	Township 05S	Range 18E	LINCOLN County
LITTLE WOOD RIVER	NENWNE	Sec. 33	Township 05S	Range 18E	LINCOLN County

IRRIGATION Use:  
Acre Limit: 295  
Place(s) of use:  
Place of Use Legal Description: IRRIGATION LINCOLN County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres						
05S	18E	28		SWSE	1.1		SESE	4.8												
				SENE	9.1															
				NESE	35															
		33		NENE	38		NWNE	18		SWNE	35		SENE	40						
				NENW	6.6		SWNW	7.4		SENW	31									
				NESW	9.2		NWSW	25												
				NWNW	40		SWNW	27												
		34																		

Total Acres: 327.2  
Conditions of Approval:

- E56 USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 295 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 37-59B & 37-424.
- E55 USE OF THIS RIGHT WITH RIGHT NO.37-425 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 327.2 ACRES IN A SINGLE IRRIGATION SEASON.
- C05 RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
- C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
- K06 THIS RIGHT IS LIMITED TO THE IRRIGATION OF 295 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
- S05 USE OF THIS RIGHT IS COMBINED WITH WATER FROM BIG WOOD CANAL CO.
- U42 Place of use does not include federal public lands

Dates:  
Licensed Date:  
Decreed Date: 04/30/2007  
Enlargement Use Priority Date:  
Enlargement Statute Priority Date:  
Water Supply Bank Enrollment Date Accepted:  
Water Supply Bank Enrollment Date Removed:  
Application Received Date:  
Protest Deadline Date:  
Number of Protests: 0

Other Information:  
State or Federal: S  
Owner Name Connector:  
Water District Number: 37  
Generic Max Rate per Acre:  
Generic Max Volume per Acre:  
Civil Case Number:  
Old Case Number:  
Decree Plaintiff:  
Decree Defendant:  
Swan Falls Trust or Nontrust:  
Swan Falls Dismissed:  
DLE Act Number:  
Cary Act Number:  
Mitigation Plan: False



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WATER RIGHT REPORT

6/17/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-22777

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	AUBREY SPRING RANCH LLC 18450 HWY 20 BELLEVUE, ID 83313 6506449516
Original Owner	KENNETH F HELLYER
Priority Date: 12/05/1979	
Basis: License	
Status: Active	

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/15	10/31	3.18 CFS	556.2 AFA
Total Diversion			3.18 CFS	556.2 AFA

Location of Point(s) of Diversion:

GROUND WATER Injection	SWSW	Sec. 13	Township 01S	Range 19E	BLAINE County
GROUND WATER	SENE	Sec. 14	Township 01S	Range 19E	BLAINE County
GROUND WATER Rediversion	NWNW	Sec. 24	Township 01S	Range 19E	BLAINE County

Place(s) of use:

Place of Use Legal Description: IRRIGATION BLAINE County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
01S	19E	13		SWNW	10									
				NESW	10		NWSW	36		SWSW	30		SESW	1.6
		14		SENE	3.2									
				SESE	3.1									
		23		NENE	36		SENE	29						

Total Acres: 158.9

Conditions of Approval:

- |    |     |  |
|----|-----|--|
| 1. | 004 | The issuance of this right does not grant any right-of-way or easement across the land of another.   |
| 2. | R05 | Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 37M. |
| 3. | R43 | The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).   |
| 4. | X11 | The right holder shall install and maintain acceptable measuring devices at the point of injection into Loving Creek and at the point of rediversion from Loving Creek.  |
| 5. | X35 | Rights 37-22777, 37-2553A and 37-8571 when combined shall not exceed a total diversion rate of 5.46 cfs.   |
| 6. | R55 | This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.   |
| 7. | R63 | This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.   |



8.	065	The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.
9.	105	If the surface water right(s) appurtenant to the place of use is abandoned, forfeited, sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used for irrigation purposes without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
10.		An intake screen acceptable to Idaho Fish & Game shall be installed at the point of rediversion on Loving Creek to prevent any negative impact on juvenile fish.

Dates:

Licensed Date: 01/14/2013  
Decreed Date:  
Enlargement Use Priority Date:  
Enlargement Statute Priority Date:  
Water Supply Bank Enrollment Date Accepted:  
Water Supply Bank Enrollment Date Removed:  
Application Received Date:  
Protest Deadline Date:  
Number of Protests: 0

Other Information:

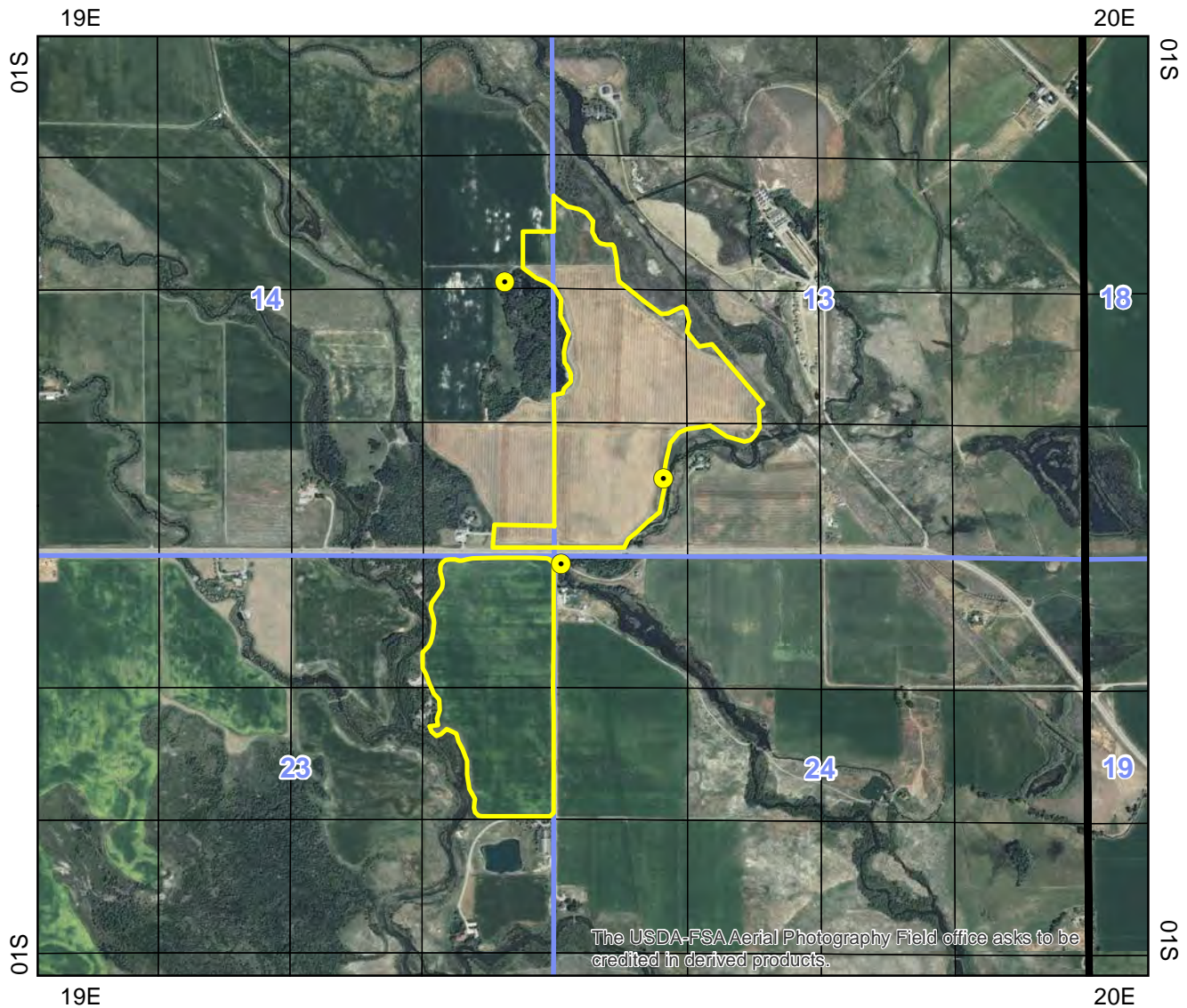
State or Federal:  
Owner Name Connector:  
Water District Number: 37  
Generic Max Rate per Acre:  
Generic Max Volume per Acre:  
Combined Acres Limit:  
Combined Volume Limit:  
Combined Rate Limit: 5.46  
Civil Case Number:  
Old Case Number:  
Decree Plaintiff:  
Decree Defendant:  
Swan Falls Trust or Nontrust: T  
Swan Falls Dismissed:  
DLE Act Number:  
Cary Act Number:  
Mitigation Plan: False

State of Idaho  
Department of Water Resources

# Water Right 37-22777

## IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.2 0.4 0.8 Miles



RECEIVED  
DEC 6 1960  
Department of ReclamationWELL LOG AND REPORT OF THE  
STATE RECLAMATION ENGINEER OF IDAHOPermit No. 25856 Well No. \_\_\_\_\_ County BlaineOwner K. F. HeltzerAddress Sun ValleyDriller Eugene W. WalkerAddress Twin FallsWell location SE 1/4 NW 1/4 Sec. 28, T. 1 N. R. 19 E.Size of drilled hole 20 inTotal depth of well 140Give depth to standing water from the ground 57 1/2 Water temp. 46 °Fahr.On "Pumping Test" delivery was 3200 g.p.m. or \_\_\_\_\_ c.f.s. Drawdown was 4 1/4 feet.Size of pump and motor used to make test 12 in Bowl 300 HP DieselLength of time of test 3 hours \_\_\_\_\_ minutes.

If flowing well, give flow \_\_\_\_\_ c.f.s. or \_\_\_\_\_ g.p.m. and of shut off pressure \_\_\_\_\_

If flowing well, described control works \_\_\_\_\_

(TYPE AND SIZE OF VALVE, ETC.)

Water will be used for Irrigation Weight of casing per lineal foot 65 - lbThickness of casing 5/16 Casing material Steel

(STEEL, CONCRETE, WOOD, ETC.)

Diameter, length and location of casing 20" 140 ft(CASING 12" IN DIAMETER OR LESS, GIVE INSIDE DIAMETER;  
CASING OVER 12" IN DIAMETER, GIVE OUTSIDE DIAMETER)

## CASING RECORD

Diam. Casing	From Feet	To Feet	Length	Remarks—seals, grouting, etc.
20	0	140	140	

Mills Knife 1/2 x 3  
Number and size of perforations 30 Per foot located 57 feet to 68 feet from ground748181100175136Date of commencement of well 25 May 60 Date of completion of well 23 May 60

SE NW S. 28 IN 19E

## WELL LOG

From Feet	To Feet	Type of Material	Water-bearing Formation Ans. Yes or No	Casing Perforated Ans. Yes or No
0	3	Surface		
3	67	Gravel, sand small Boulders, with clay	No	<del>No</del>
67	68	Clean gravel	yes	yes
68	74	Clay & gravel	No	yes
74	81	Coarse gravel - clean	yes	yes
81	100	gravel & clay	?	yes
100	115	Large amount of clay with gravel	No	No
115	140	Clean coarse gravel	yes	yes

If more space is required use Sheet No. 2

### WELL DRILLER'S STATEMENT

This well was drilled under my supervision and the above information is true and correct to the best of my knowledge and belief.

**Signed.**

**By.**

**Dated.**

**License No.**



WELL LOG AND REPORT TO THE  
STATE RECLAMATION ENGINEER OF IDAHO

RECEIVED  
SEP 18 1957

Department of Reclamation

Location Corrected by IDWR To:

T01S R19E Sec. 5 SENE

By: mciscell 2013-10-11

Rec. \_\_\_\_\_, 19\_\_\_\_

Well No. \_\_\_\_\_

Permit No. \_\_\_\_\_

(DO NOT FILL IN)

Owner B. R. Stoecking Address Ganett

Driller Eugene A. Walker Address Twin Falls Lic. No. 15

Location of Well: LOT 1 NE 1/4 SE 1/4 Sec. 5, T. 1 N/S, R. 19 E/W BLAINE County,

and 50 feet N/S, and 800 feet W from NE Corner of NE 1/4 SE 1/4 Sec. 5

Size of Drilled Hole 20 Total depth of Well 80

Give depth of standing water from surface 14 1/2 Water Temp. 52 °Farenheit

On pumping test delivery was See notes g.p.m. or \_\_\_\_\_ c.f.s. Drawdown was 18 feet.

Size of pump and motor used to make the test 50 HP

Length of time pumped during check was Permanent hr., \_\_\_\_\_ minutes.

If flowing well, give flow in c.f.s. \_\_\_\_\_ or g.p.m. \_\_\_\_\_ and shut in pressure \_\_\_\_\_

If flowing well, describe control works \_\_\_\_\_  
(TYPE AND SIZE OF VALVE, ETC.)

Water will be used for Irrigation Weight of casing per linear foot 65 lb

Thickness of casing 5/16 Casing material Steel

E.G., PIPE, CONCRETE, WOOD.

Diameter, length and location of casing \_\_\_\_\_

(CASING 12" IN DIAMETER AND UNDER GIVE INSIDE DIAMETER;  
CASING OVER 12" IN DIAMETER GIVE OUTSIDE DIAMETER.)

Number and size of perforations 17/10 located 19 feet to 77 feet  
from surface of ground.

Other perforations \_\_\_\_\_

Date of commencement of well 29 July 1957 Date of completion of well 6 Aug 1957

Type of well rig Churn

CASING RECORD

DIAM. CASING	FROM FEET	TO FEET	LENGTH	"REMARKS" -- SEALS, GROUTING, ETC.

GENERAL INFORMATION—Pumping Test, Quality of Water, Etc.

Permanent Pump delivers about 4200 G.P.M.  
with 50 H.P.

LOT 1 NESE 5.5 IS 19E  
SE 11E

# WELL LOG

[illegible]

## WELL DRILLER'S STATEMENT

This well was drilled under my jurisdiction and the above information is true and correct to the best of my knowledge and belief.

Signed Eugene W Walker

By \_\_\_\_\_

Dated 15 Sept, 1957

License No. 15



## WELL DRILLER'S REPORT

**State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.**

[illegible]

USE ADDITIONAL SHEETS IF NECESSARY - FORWARD THE WHITE COPY TO THE DEPARTMENT



## WELL DRILLER'S REPORT

**State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.**

[illegible]

WELL LOG AND REPORT OF THE  
STATE RECLAMATION ENGINEER OF IDAHORECEIVED  
APR 4 1961

Department of Reclamation

034560

Permit No. \_\_\_\_\_ Well No. \_\_\_\_\_ County BlaineOwner Picabo Livestock CoAddress Picabo IdahoDriller Eugene W WalkerAddress Twin FallsWell location SW 1/4 SE 1/4 Sec 20, T. 1 N, R. 10 ESize of drilled hole 16 in

Locate well in section

NW 1/4	NE 1/4
SW 1/4	SE 1/4

Total depth of well 173Give depth to standing water from the ground 14 1/2 Water temp 49 °Fahr.On "Pumping Test" delivery was 2700 g.p.m. or \_\_\_\_\_ c.f.s. Drawdown was 55 feet.Size of pump and motor used to make test 12 in Bowl - 200 HPLength of time of test 7 hours \_\_\_\_\_ minutes.

If flowing well, give flow \_\_\_\_\_ c.f.s. or \_\_\_\_\_ g.p.m. and of shut off pressure \_\_\_\_\_

If flowing well, described control works \_\_\_\_\_ (TYPE AND SIZE OF VALVE, ETC.)

Water will be used for Supplemental Irrigation Weight of casing per lineal foot 42Thickness of casing 1/4 Casing material Steel (STEEL, CONCRETE, WOOD, ETC.)Diameter, length and location of casing 9 1/2 in 16 in Surface down(CASING 12" IN DIAMETER OR LESS, GIVE INSIDE DIAMETER;  
CASING OVER 12" IN DIAMETER, GIVE OUTSIDE DIAMETER)

## CASING RECORD

Diam. Casing	From Feet	To Feet	Length	Remarks—seals, grouting, etc.
16 <del>16</del>	0	9 1/2	9 1/2	Driven Into Rock

Number and size of perforations None located \_\_\_\_\_ feet to \_\_\_\_\_ feet from groundDate of commencement of well 2 Mar 1961 Date of completion of well 24 Mar 1961

SWSE S.20 15 20 E

## WELL LOG

From Feet	To Feet	Type of Material	Water-bearing Formation Ans. Yes or No	Casing Perforated Ans. Yes or No
0	7	Surface Water at 6 ft		
7	14	old looking Clay or soil	no	no
14	28	Gravel	yes	no
28	32	River sand	yes	no
32	78	Clay & sand - Blue	yes	no
78	93	Sticky Clay	no	no
93	97	Red Lava	no	no
97	117	Gray Lava	no	
117	136	Red Cinders & Clay	no	
130	<del>138</del> 136	Hard Gray Basalt		
136	148	Cinders & Clay	?	
148	157	Red Lava - <del>hard</del> solid but has seams	?	
157	170	Large Broken Red Lava & Clay	?	
170	173	Cutting not recovered	yes	
Water Pumped Very Red (dark) appeared to be Clay Source unknown				

If more space is required use Sheet No. 2

## WELL DRILLER'S STATEMENT

This well was drilled under my supervision and the above information is true and correct to the best of my knowledge and belief.

Signed

Eugene T. Walker

By

Dated

2 April, 1961

License No.

15

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

1. WELL OWNER

Name Double R Ranch c/o Darryl Smith

Address Picabo, Idaho 83348

Owner's Permit No. 37-7551

2. NATURE OF WORK

☐ New well ☒ Deepened ☐ Replacement  
☐ Abandoned (describe abandonment procedures such as materials, plug depths, etc. in lithologic log)

3. PROPOSED USE

☐ Domestic ☒ Irrigation ☐ Test ☐ Municipal  
☐ Industrial ☐ Stock ☐ Waste Disposal or Injection  
☐ Other \_\_\_\_\_ (specify type)

4. METHOD DRILLED

☒ Rotary ☐ Air ☐ Hydraulic ☐ Reverse rotary  
☐ Cable ☐ Dug ☐ Other \_\_\_\_\_

5. WELL CONSTRUCTION

Casing schedule: ☐ Steel ☐ Concrete ☐ Other \_\_\_\_\_

Thickness	Diameter	From	To
_____ inches	_____ inches + _____	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet

Was casing drive shoe used? ☐ Yes ☒ No

Was a packer or seal used? ☐ Yes ☒ No

Perforated? ☐ Yes ☒ No

How perforated? ☐ Factory ☐ Knife ☐ Torch

Size of perforation \_\_\_\_\_ inches by \_\_\_\_\_ inches

Number	From	To
_____ perforations	_____ feet	_____ feet
_____ perforations	_____ feet	_____ feet
_____ perforations	_____ feet	_____ feet

Well screen installed? ☐ Yes ☒ No

Manufacturer's name \_\_\_\_\_

Type \_\_\_\_\_ Model No. \_\_\_\_\_

Diameter \_\_\_\_\_ Slot size \_\_\_\_\_ Set from \_\_\_\_\_ feet to \_\_\_\_\_ feet

Diameter \_\_\_\_\_ Slot size \_\_\_\_\_ Set from \_\_\_\_\_ feet to \_\_\_\_\_ feet

Gravel packed? ☐ Yes ☒ No ☐ Size of gravel \_\_\_\_\_

Placed from \_\_\_\_\_ feet to \_\_\_\_\_ feet

Surface seal depth \_\_\_\_\_ Material used in seal: ☐ Cement grout

☐ Bentonite ☐ Puddling clay ☐ \_\_\_\_\_

Sealing procedure used: ☐ Slurry pit ☐ Temp. surface casing

☐ Overbore to seal depth

Method of joining casing: ☐ Threaded ☐ Welded ☐ Solvent Weld

☐ Cemented between strata

Describe access port \_\_\_\_\_

6. LOCATION OF WELL

Sketch map location must agree with written location.

N

W

E

S

Subdivision Name \_\_\_\_\_

Lot No. \_\_\_\_\_ Block No. \_\_\_\_\_

County Blaine

NE ¼ NW ¼ Sec. 30, T. 1 N/S, R. 20 E/W.

7. WATER LEVEL

Static water level 17 feet below land surface.

Flowing? ☐ Yes ☒ No G.P.M. flow \_\_\_\_\_

Artesian closed-in pressure \_\_\_\_\_ p.s.i.

Controlled by: ☐ Valve ☐ Cap ☐ Plug

Temperature \_\_\_\_\_ °F. Quality Good

Describe artesian or temperature zones below.

8. WELL TEST DATA

☐ Pump ☐ Bailer ☐ Air ☐ Other \_\_\_\_\_

Discharge G.P.M.	Pumping Level	Hours Pumped

9. LITHOLOGIC LOG

86751

Bore Diam.	Depth		Material	Water	
	From	To		Yes	No
16	74	86	Hard gray basalt		X
16	86	97	Cinders	X	
16	97	100	Firm brown basalt		X
16	100	106	Broken brown basalt	X	
16	106	123	Firm gray basalt		X
16	123	132	Cinders	X	
16	132	135	Firm brown basalt		X
16	135	147	Cinders	X	

10.

Work started 8/1/86 finished 8/6/86

11. DRILLERS CERTIFICATION

I/We certify that all minimum well construction standards were complied with at the time the rig was removed.

Firm Name Andrew Well Drilling Firm No. 5

Address 1268 E. 17th Street Date 8/14/86

Idaho Falls, Idaho 83401

Signed by (Firm Official) Harvard R. Rudner

and Wale Hulse

(Operator)

USE ADDITIONAL SHEETS IF NECESSARY - FORWARD THE WHITE COPY TO THE DEPARTMENT



## WELL DRILLER'S REPORT

**State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.**

[illegible]

USE ADDITIONAL SHEETS IF NECESSARY – FORWARD THE WHITE COPY TO THE DEPARTMENT

Duplicate Report

WELL LOG AND REPORT TO THE  
STATE RECLAMATION ENGINEER OF IDAHO

SUBMIT WITHIN 30 DAYS AFTER COMPLETION OF WELL: SEE IDAHO STATUTES 42-238

034405

Permit No. 8159 628319 Well No. \_\_\_\_\_ County BLAINE

Owner PICABO LIVESTOCK CO

Address Picabo Idaho

Driller EUGENE W. WALKER

Address 624 Pierce St,  
Twin Falls, Idaho

Well location SW 1/4 NE 1/4 Sec. 30, T. 1 N. R. 10 E. W

Size of drilled hole 16

Total depth of well 332

Give depth to standing water from the ground 1 Water temp. 49 °Fahr.

Test delivery was 2500 g.p.m. or \_\_\_\_\_ c.f.s. Drawdown was 77 feet. Pump? ☒ Bail? \_\_\_\_\_

Size of pump and motor used to make test 10 in Column 12 Bowl 300 HP D.

Length of time of test 4 hours \_\_\_\_\_ minutes.

If flowing well, give flow \_\_\_\_\_ c.f.s. or \_\_\_\_\_ g.p.m. and of shut off pressure \_\_\_\_\_

If flowing well, described control works \_\_\_\_\_ (TYPE AND SIZE OF VALVE, ETC.)

Water will be used for Irrigation Weight of casing per lineal foot \_\_\_\_\_

Thickness of casing 312 Casing material Steel (STEEL, CONCRETE, WOOD, ETC.)

Diameter, length and location of casing 16 in I.D. 91 1/2 ft Surface  
(CASING 12" IN DIAMETER OR LESS, GIVE INSIDE DIAMETER;  
CASING OVER 12" IN DIAMETER, GIVE OUTSIDE DIAMETER)

CASING RECORD

Diam. Casing	From Feet	To Feet	Length	Remarks—seals, grouting, etc.
<u>16</u>	<u>0</u>	<u>91 1/2</u>	<u>91 1/2</u>	<u>Drum into Rock water Tight</u>

Number and size of perforations None located \_\_\_\_\_ feet to \_\_\_\_\_ feet from ground

Date of commencement of well June 60 Date of completion of well Mar 61

SWNE S.30 IN 20E

USGS

## WELL LOG

From Feet	To Feet	Type of Material	Water-bearing Formation Ans. Yes or No	Casing Perforated Ans. Yes or No
0	10	Surface (Water at 5 ft)	yes	no
10	23	Clay & gravel	no	no
23	27	Clean gravel — Water	yes	no
27	46	Clay		
46	47	Gravel & Water	yes	no
47	53	Tan Clay	no	no
57	78	Blue Clay	no	no
78		River Sand (Artesian Water)	yes	no
78	84	Sticky <sup>Brown</sup> greenish yellow Clay		
84	89			
89	91	Lava Cinders	yes	
91	125	Coarse Lava Cinders — Talus	yes	
125	164	Soft dark gray LAVA		
164	178	Hard gray LAVA, water raised in casing	yes	
178	190	Gray LAVA	no	
190	192	Crumbly — Caving	no	
192	205	Hard LOOSE Caving Basalt	no	
If more space is required use Sheet No. 2				

## WELL DRILLER'S STATEMENT

This well was drilled under my supervision and the above information is complete, true and correct to the best of my knowledge and belief.

Signed

Eugene Walker

By

Dated

2 July 1967

License No.

15-

Well Driller's Helper

Well Owner Lucas Truck Co.

034406

Well Driller

**EUGENE W. WALKER**

**624 Pierce St.**

Well Location

**Twin Falls, Idaho**

# WELL LOG

[illegible]

U S G S



STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**TEMPORARY CHANGE APPLICATION**

*(To change point of diversion, place of use, or purpose of use of a water right upon declaration of a drought emergency in accordance with Section 42-222A, Idaho Code.)*

Name of Applicant South Valley &/or Galena Ground Water Districts Phone 208-336-0700  
Mailing Address PO Box 2139, Boise, ID 83701 Email brs@idahowaters.com

**A. PURPOSE OF TRANSFER**

1. ☒ Change point of diversion ☒ Add diversion point(s) ☒ Change place of use  
☒ Change purpose of use ☐ Other
2. Describe the proposed change(s) and explain the reason(s) they are needed. \_\_\_\_\_  
Ground water rights not in use in 2021 are proposed to be used for mitigation by pumping from select wells into  
Silver Creek to augment the discharge of the Little Wood River to benefit senior priority water rights.

**B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE**

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>37-23093</u>	<u>4/1/1984</u>	<u>2.65</u>	<u>Irrigation</u>	<u>4/15</u> to <u>10/31</u>
<u>37-23090</u>	<u>11/13/1959</u>	<u>7.16</u>	<u>Irrigation</u>	<u>4/1</u> to <u>11/01</u>
<u>37-23091</u>	<u>8/1/1960</u>	<u>3.61</u>	<u>Irrigation</u>	<u>4/15</u> to <u>10/31</u>
<u>37-23092</u>	<u>8/20/1964</u>	<u>8.89</u>	<u>Irrigation</u>	<u>4/1</u> to <u>11/1</u>

2. Total amount of water being transferred 15.00 cubic feet per second and/or \_\_\_\_\_ acre-feet per annum.
3. Source of water Ground Water tributary to \_\_\_\_\_.
4. Point(s) of diversion:

Twp	Rge	Sec	Govt Lot	¼	¼	¼	County	Source	Local name or tag number
1S	20E	20		NW	NE	NE	Blaine	Ground Water	No Log - RF = 0.1035
					NE	SW	"	"	No Log - RF = 0.147
				SE	SW	SE	"	"	
		30		NW	SW	NE	"	"	

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres \_\_\_\_\_

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**TEMPORARY CHANGE APPLICATION**

*(To change point of diversion, place of use, or purpose of use of a water right upon declaration of a drought emergency in accordance with Section 42-222A, Idaho Code.)*

Name of Applicant For additional PODs & Water Rights only. Phone \_\_\_\_\_

Mailing Address \_\_\_\_\_ Email \_\_\_\_\_

**A. PURPOSE OF TRANSFER**

1. ☐ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use  
☐ Change purpose of use ☐ Other

2. Describe the proposed change(s) and explain the reason(s) they are needed. \_\_\_\_\_

**B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE**

1. <u>Right Number</u>	<u>Priority</u>	<u>Amount</u> <small>(cfs/ac-ft)</small>	<u>Nature of Use</u>	<u>Period of Use</u>
<u>37-2581</u>	<u>8/16/1955</u>	<u>3.00</u>	<u>Irrigation</u>	<u>4/15</u> to <u>10/31</u>
<u>37-2599</u>	<u>9/30/1957</u>	<u>1.50</u>	<u>Irrigation</u>	<u>4/15</u> to <u>10/31</u>
<u>37-2604</u>	<u>7/29/1958</u>	<u>2.50</u>	<u>Irrigation</u>	<u>4/15</u> to <u>10/31</u>
<u>37-2616</u>	<u>6/3/1959</u>	<u>2.98</u>	<u>Irrigation</u>	<u>4/15</u> to <u>10/31</u>

2. Total amount of water being transferred \_\_\_\_\_ cubic feet per second and/or \_\_\_\_\_ acre-feet per annum.

3. Source of water \_\_\_\_\_ tributary to \_\_\_\_\_.

4. Point(s) of diversion:

Twp	Rge	Sec	Govt Lot	¼	¼	¼	County	Source	Local name or tag number
1S	20E	30			NE	NW	Blaine	Ground Water	
	19E	2		SW	NW	SW	Blaine	Ground Water	
				SE	NW	SW	Blaine	Ground Water	
		5	1		SE	NE	Blaine	Ground Water	

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres \_\_\_\_\_

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**TEMPORARY CHANGE APPLICATION**

*(To change point of diversion, place of use, or purpose of use of a water right upon declaration of a drought emergency in accordance with Section 42-222A, Idaho Code.)*

Name of Applicant For additional PODs & Water Rights only. Phone \_\_\_\_\_

Mailing Address \_\_\_\_\_ Email \_\_\_\_\_

**A. PURPOSE OF TRANSFER**

1. ☐ Change point of diversion      ☐ Add diversion point(s)      ☐ Change place of use  
☐ Change purpose of use      ☐ Other

2. Describe the proposed change(s) and explain the reason(s) they are needed. \_\_\_\_\_

**B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE**

1. <u>Right Number</u>	<u>Priority</u>	<u>Amount</u> <small>(cfs/ac-ft)</small>	<u>Nature of Use</u>	<u>Period of Use</u>
<u>37-7758</u>	<u>2/6/1979</u>	<u>3.50</u>	<u>Irrigation</u>	<u>4/1</u> to <u>11/1</u>
<u>37-2576</u>	<u>7/13/1955</u>	<u>4.69</u>	<u>Irrigation</u>	<u>4/15</u> to <u>10/31</u>
<u>37-2649A</u>	<u>1/27/1961</u>	<u>4.24</u>	<u>Irrigation</u>	<u>4/1</u> to <u>11/1</u>
<u>37-2649B</u>	<u>1/27/1961</u>	<u>3.20</u>	<u>Irrigation</u>	<u>4/1</u> to <u>11/1</u>

2. Total amount of water being transferred \_\_\_\_\_ cubic feet per second and/or \_\_\_\_\_ acre-feet per annum.

3. Source of water \_\_\_\_\_ tributary to \_\_\_\_\_.

4. Point(s) of diversion:

Twp	Rge	Sec	Govt Lot	¼	¼	¼	County	Source	Local name or tag number
1S	19E	28			SE	NW	Blaine	Ground Water	

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres \_\_\_\_\_

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**TEMPORARY CHANGE APPLICATION**

*(To change point of diversion, place of use, or purpose of use of a water right upon declaration of a drought emergency in accordance with Section 42-222A, Idaho Code.)*

Name of Applicant For additional Water Rights only. Phone \_\_\_\_\_

Mailing Address \_\_\_\_\_ Email \_\_\_\_\_

**A. PURPOSE OF TRANSFER**

1. ☐ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use  
☐ Change purpose of use ☐ Other

2. Describe the proposed change(s) and explain the reason(s) they are needed. \_\_\_\_\_

**B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE**

1. <u>Right Number</u>	<u>Priority</u>	<u>Amount</u> <small>(cfs/ac-ft)</small>	<u>Nature of Use</u>	<u>Period of Use</u>
<u>37-2681</u>	<u>12/08/1961</u>	<u>4.5</u>	<u>Irrigation</u>	<u>4/1</u> to <u>10/31</u>
<u>37-7644</u>	<u>8/20/1977</u>	<u>2.02</u>	<u>Irrigation</u>	<u>4/15</u> to <u>10/31</u>
<u>37-8559</u>	<u>8/17/1989</u>	<u>1.15</u>	<u>Irrigation</u>	<u>4/15</u> to <u>10/31</u>
<u>37-2493</u>	<u>12/21/1948</u>	<u>2.00</u>	<u>Irrigation</u>	<u>4 / 1 5</u> to <u>10/31</u>

2. Total amount of water being transferred \_\_\_\_\_ cubic feet per second and/or \_\_\_\_\_ acre-feet per annum.

3. Source of water \_\_\_\_\_ tributary to \_\_\_\_\_.

4. Point(s) of diversion:

Twp	Rge	Sec	Govt Lot	¼	¼	¼	County	Source	Local name or tag number

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres \_\_\_\_\_



6. General Information:

- a. Who owns the water right to be changed? Blackburn Farming LLC, O'Gara (Speth), Stevenson
- b. Describe the arrangement allowing use of the right. Sharing agreement with South Valley and Galena Ground Water Districts, Water Bank
- c. Describe the affect on the land now irrigated if the change is approved pursuant to this application:  
Water rights are not being used in 2021 & there will be no impact to the lands these rights are appurtenant to.
- d. Has the water right sought to be transferred been used this year? ☐ Yes ☒ No If yes, explain. \_\_\_\_\_
- e. Absent the changes, how would the right be used for the remainder of the year? Remain unused.
- f. Describe other water rights used for the same purpose. None except those identified in this application.
- g. Remarks: This transfer seeks to augment the discharge of Silver Creek and the Little Wood River to supply water to mitigate the water supply for Little Wood River water users.

I hereby assume all risk in accordance with Section 42-222A, Idaho Code, and assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in voiding its approval.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

**FOR DEPARTMENT USE ONLY**

Received by \_\_\_\_\_ Date \_\_\_\_\_ \$50 fee receipted by \_\_\_\_\_ Receipt No. \_\_\_\_\_  
Recommend: ☐ approve ☐ deny Watermaster recommendation \_\_\_\_\_

**ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES**

This is to certify that I have examined Temporary Change Application No. \_\_\_\_\_, and said application is hereby \_\_\_\_\_, subject to the following limitations and conditions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Temporary Change Expiration Date \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
For the Director

## Memorandum in Support of Temporary Transfer to Supplement Little Wood River Water Supply

Water from 155 acres not being irrigated this year will be provided from portions of water rights 37-23090, 37-23091, 37-23092 and 37-23093 not currently being used. The place of use for these 3 water rights has been reshaped this year with over 200 acres not being irrigated that are within the place of use of these 4 water rights. The lands have been identified through the overlay of a sketch map with the current place of use of the water rights, copy attached. A more precise mapping can be prepared of the idle acres if needed as time permits.

An additional 302 acres currently leased to the Water Supply Bank are not being irrigated and the water from those acres is available to augment the water supply of the Little Wood River. The 302 acres comes from a portion of water rights 37-2581, 37-2599, 37-2604, 37-2616 and 37-7758. A map of the fallowed acres is attached to this package.

About 893 acres covered by ground water rights are not being irrigated this year by Stevenson. Also, Lakeside Industries are not irrigating 157 acres covered by ground water rights.

Up to 9 cfs of ground water will be diverted from wells shown on the Temporary Change Application this Memorandum is accompanying. This 9 cfs will be in addition to the ground water being specifically pumped to augment the water supply for water rights 37-49 and 37-423. The RF shown on the Application, for the wells without a well log, is the response function taken from the support files accompanying Jennifer Sukow's May 17, 2021 Memorandum titled "Predicted hydrologic response in Silver Creek and the Little Wood River to curtailment of groundwater use in 2021, Basin 37 Administrative Proceeding, AA-WRA-2021-001." The response function is the fraction of the diverted water estimated to appear in Silver Creek by the end of September 2021.



IDWR offices are open to the public and following the CDC guidelines for wearing masks and observing social distancing. For in-person visits, we encourage you to call ahead for an appointment.

Home / Water Rights / Research / Search Water Rights

WATER RIGHT REPORT

6/18/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-23090

Owner Type	Name and Address
Current Owner	BLACKBURN FARMING LLC 535 GANNETT RD UNIT E BELLEVUE, ID 83313-5045 2084810348
Trustee	MICHAEL LOVAS 13233 SNOWSHOE THOMPSON CIR TRUCKEE, CA 96161 9255770293
Original Owner	NMS LEASING INC BANK OF HAWAII ATTN: MS KIM YOSHIMOTO 130 MERCHANT ST HONOLULU, HI 96802 8085384737
Original Owner	K F HELLYER HWY 68 GANNETT, ID 83329
Security Interest	LOVAS TRUST 13233 SNOWSHOE THOMPSON CIR TRUCKEE, CA 96161-5181 9255770293

Priority Date: 11/13/1959  
Basis: Decreed  
Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/01	11/01	7.16 CFS	1256.8 AFA
Total Diversion			7.16 CFS	1256.8 AFA

Location of Point(s) of Diversion:

GROUND WATER	NWSWNW	Sec. 17	Township 01N	Range 19E	BLAINE County
GROUND WATER	NENENW	Sec. 20	Township 01N	Range 19E	BLAINE County
GROUND WATER	SWSENW	Sec. 28	Township 01N	Range 19E	BLAINE County

IRRIGATION Use:

Acre Limit: 359.1

Place(s) of use:

Place of Use Legal Description: IRRIGATION BLAINE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01N	19E	17		SWNE	38									
				SWNW	31		SENW	40						
				NESW	40		NWSW	13		SESW	26			

			NESE	11		NWSE	40		SWSE	40		SESE	22
	20		NENE	39		NWNE	38.5		SWNE	19		SENE	40
			NENW	7									
			NESE	35		NWSE	1.3		SESE	13			
	21	8	NWNW	10	9	SWNW	9						
		11	NWSW	24		SWSW	36	12	SESW	1.2			
	27		NENE	11		NWNE	9		SWNE	40		SENE	11
			SWNW	13		SENW	30						
			NESW	40		NWSW	38		SWSW	40		SESW	30
			NESE	3.8		NWSE	36		SWSE	4			
	28		SWNE	14		SENE	4						
			NENW	13		NWNW	29		SWNW	6.4		SENW	37
			NESW	22		SESW	2.2						
			NESE	39		NWSE	39		SWSE	36		SESE	40
	33		NENE	40		NWNE	14		SENE	30			
	34		NENW	0.2		NWNW	31		SWNW	15			

Total Acres: 1291.6

Conditions of Approval:

1.

Total combined delivery at the field headgates (for surface water rights) and diversion at the wellheads (for ground water rights) for this right along with water right nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 shall not exceed a total instantaneous rate of 25.8 cfs (which equates to 0.02 cfs per acre over the combined permissible places of use for these water rights totaling 1291.6 acres).
2.

Total volume of water delivered to the field from this right along with water right nos. 37-481B, 37-482G, 37-483B, 37-665K, 37-666J, 37-667N, 37-2625A, 37-2638, 37-2700, 37-21463, and 37-22155 shall not exceed 4626.9 acre-feet per year (which equates to 3.5 acre-feet per acre over the combined permissible places of use for these water rights totaling 1291.6 acres).
3.

C05

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.
4.

Right Nos. 37-23090, 37-23091, 37-23092 and 37-23093 are limited to the irrigation of a combined total of 1291.6 acres in a single irrigation season.
5.

E52

The rights listed below are limited to a total combined diversion rate of 19.65 cfs. Combined Right Nos.: 37-23090, 37-23091, 37-23092 and 37-23093.
6.

C18

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
7.

104

If the surface water rights appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
8.

C03

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.
9.

K06

This right is limited to the irrigation of 359.1 acres within the place of use described above in a single irrigation season.
10.

K01

Right No. 37-23093 is an enlargement of this right pursuant to Section 42-1426, Idaho Code.
11.

Right Nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 are limited to the irrigation of a combined total of 1291.6 acres in a single irrigation season.
12.

065

The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.

Dates:

Licensed Date:

Decreed Date: 01/14/2009

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 1291.6

Combined Volume Limit: 19.7

Combined Rate Limit:

Civil Case Number:



Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False



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WATER RIGHT REPORT

6/18/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-23091

Owner Type	Name and Address
Current Owner	BLACKBURN FARMING LLC 535 GANNETT RD UNIT E BELLEVUE, ID 83313-5045 2084810348
Trustee	MICHAEL LOVAS 13233 SNOWSHOE THOMPSON CIR TRUCKEE, CA 96161 9255770293
Original Owner	NMS LEASING INC BANK OF HAWAII ATTN: MS KIM YOSHIMOTO 130 MERCHANT ST HONOLULU, HI 96802 8085384737
Original Owner	K F HELLYER HWY 68 GANNETT, ID 83329
Security Interest	LOVAS TRUST 13233 SNOWSHOE THOMPSON CIR TRUCKEE, CA 96161-5181 9255770293

Priority Date: 08/01/1960  
Basis: Decreed  
Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/15	10/31	3.61 CFS	1455.2 AFA
Total Diversion			3.61 CFS	1455.2 AFA

Location of Point(s) of Diversion:

GROUND WATER	NWSWNW	Sec. 17	Township 01N	Range 19E	BLAINE County
GROUND WATER	NENENW	Sec. 20	Township 01N	Range 19E	BLAINE County
GROUND WATER	SWSENW	Sec. 28	Township 01N	Range 19E	BLAINE County

IRRIGATION Use:  
Acre Limit: 385.2  
Place(s) of use:  
Place of Use Legal Description: IRRIGATION BLAINE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01N	19E	17		SWNE	38									
				SWNW	31		SENW	40						
				NESW	40		NWSW	13		SESW	26			

			NESE	11		NWSE	40		SWSE	40		SESE	22
	20		NENE	39		NWNE	38.5		SWNE	19		SENE	40
			NENW	7									
			NESE	35		NWSE	1.3		SESE	13			
	21	8	NWNW	10	9	SWNW	9						
		11	NWSW	24		SWSW	36	12	SESW	1.2			
	27		NENE	11		NWNE	9		SWNE	40		SENE	11
			SWNW	13		SENW	30						
			NESW	40		NWSW	38		SWSW	40		SESW	30
			NESE	3.8		NWSE	36		SWSE	4			
	28		SWNE	14		SENE	4						
			NENW	13		NWNW	29		SWNW	6.4		SENW	37
			NESW	22		SESW	2.2						
			NESE	39		NWSE	39		SWSE	36		SESE	40
	33		NENE	40		NWNE	14		SENE	30			
	34		NENW	0.2		NWNW	31		SWNW	15			

Total Acres: 1291.6

Conditions of Approval:

1.

C03

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.
2.

E55

Right Nos. 37-23091 and 37-23092 are limited to the irrigation of a combined total of 757.9 acres in a single irrigation season.
3.

Total volume of water delivered to the field from this right along with water right nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 shall not exceed 4626.9 acre-feet per year (which equates to 3.5 acre-feet per acre over the combined permissible places of use for these water rights totaling 1291.6 acres).
4.

104

If the surface water rights appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
5.

X27

This right is limited to the irrigation of 385.2 acres within the place of use described above in a single irrigation season.
6.

E52

The rights listed below are limited to a total combined diversion rate of 19.65 cfs. Combined Right Nos.: 37-23090, 37-23091, 37-23092 and 37-23093.
7.

Right Nos. 37-23090, 37-23091, 37-23092 and 37-23093 are limited to the irrigation of a combined total of 1291.6 acres in a single irrigation season.
8.

Right Nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 are limited to the irrigation of a combined total of 1291.6 acres in a single irrigation season.
9.

C05

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.
10.

Total combined delivery at the field headgates (for surface water rights) and diversion at the wellheads (for ground water rights) for this right along with water right nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 shall not exceed a total instantaneous rate of 25.8 cfs (which equates to 0.02 cfs per acre over the combined permissible places of use for these water rights totaling 1291.6 acres).
11.

C18

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
12.

065

The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.

Dates:

Licensed Date:

Decreed Date: 01/14/2009

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 1291.6

Combined Volume Limit: 19.7

Combined Rate Limit:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False





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WATER RIGHT REPORT

6/18/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-23092

Owner Type	Name and Address
Current Owner	BLACKBURN FARMING LLC 535 GANNETT RD UNIT E BELLEVUE, ID 83313-5045 2084810348
Trustee	MICHAEL LOVAS 13233 SNOWSHOE THOMPSON CIR TRUCKEE, CA 96161 9255770293
Original Owner	NMS LEASING INC
Original Owner	K F HELLYER BANK OF HAWAII ATTN: MS KIM YOSHIMOTO 130 MERCHANT ST HONOLULU, HI 96802 8085384737
Original Owner	FRED BROSSY COVE RANCH BELLEVUE, ID 83313
Security Interest	LOVAS TRUST 13233 SNOWSHOE THOMPSON CIR TRUCKEE, CA 96161-5181 9255770293

Priority Date: 08/20/1964

Basis: Decreed

Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/01	11/01	8.89 CFS	1333.8 AFA
Total Diversion			8.89 CFS	1333.8 AFA

Location of Point(s) of Diversion:

GROUND WATER	NWSWNW	Sec. 17	Township 01N	Range 19E	BLAINE County
GROUND WATER	NENENW	Sec. 20	Township 01N	Range 19E	BLAINE County
GROUND WATER	SWSENW	Sec. 28	Township 01N	Range 19E	BLAINE County

IRRIGATION Use:

Acre Limit: 444.6

Place(s) of use:

Place of Use Legal Description: IRRIGATION BLAINE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01N	19E	17		SWNE	38									
				SWNW	31		SENW	40						

			NESW	40		NWSW	13		SESW	26			
			NESE	11		NWSE	40		SWSE	40		SESE	22
	20		NENE	39		NWNE	38.5		SWNE	19		SENE	40
			NENW	7									
			NESE	35		NWSE	1.3		SESE	13			
	21	8	NWNW	10	9	SWNW	9						
		11	NWSW	24		SWSW	36	12	SESW	1.2			
	27		NENE	11		NWNE	9		SWNE	40		SENE	11
			SWNW	13		SENE	30						
			NESW	40		NWSW	38		SWSW	40		SESW	30
			NESE	3.8		NWSE	36		SWSE	4			
	28		SWNE	14		SENE	4						
			NENW	13		NWNW	29		SWNW	6.4		SENE	37
			NESW	22		SESW	2.2						
			NESE	39		NWSE	39		SWSE	36		SESE	40
	33		NENE	40		NWNE	14		SENE	30			
	34		NENW	0.2		NWNW	31		SWNW	15			

Total Acres: 1291.6

Conditions of Approval:

1.

Total combined delivery at the field headgates (for surface water rights) and diversion at the wellheads (for ground water rights) for this right along with water right nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 shall not exceed a total instantaneous rate of 25.8 cfs (which equates to 0.02 cfs per acre over the combined permissible places of use for these water rights totaling 1291.6 acres).
2.

104

If the surface water rights appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
3.

E55

Right Nos. 37-23091 and 37-23092 are limited to the irrigation of a combined total of 757.9 acres in a single irrigation season.
4.

065

The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.
5.

X27

This right is limited to the irrigation of 444.6 acres within the place of use described above in a single irrigation season.
6.

C18

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
7.

Right Nos. 37-23090, 37-23091, 37-23092 and 37-23093 are limited to the irrigation of a combined total of 1291.6 acres in a single irrigation season.
8.

Right Nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 are limited to the irrigation of a combined total of 1291.6 acres in a single irrigation season.
9.

C05

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.
10.

E52

The rights listed below are limited to a total combined diversion rate of 19.65 cfs. Combined Right Nos.: 37-23090, 37-23091, 37-23092 and 37-23093.
11.

C03

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.
12.

Total volume of water delivered to the field from this right along with water right nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 shall not exceed 4626.9 acre-feet per year (which equates to 3.5 acre-feet per acre over the combined permissible places of use for these water rights totaling 1291.6 acres).

Dates:

Licensed Date:

Decreed Date: 01/14/2009

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 1291.6

Combined Volume Limit: 19.7

Combined Rate Limit:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

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WATER RIGHT REPORT

6/18/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-23093

Owner Type	Name and Address
Current Owner	BLACKBURN FARMING LLC 535 GANNETT RD UNIT E BELLEVUE, ID 83313-5045 2084810348
Trustee	MICHAEL LOVAS 13233 SNOWSHOE THOMPSON CIR TRUCKEE, CA 96161 9255770293
Original Owner	NMS LEASING INC BANK OF HAWAII ATTN: MS KIM YOSHIMOTO 130 MERCHANT ST HONOLULU, HI 96802 8085384737
Security Interest	LOVAS TRUST 13233 SNOWSHOE THOMPSON CIR TRUCKEE, CA 96161-5181 9255770293

Priority Date: 04/01/1984  
Basis: Decreed  
Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/15	10/31	2.65 CFS	611.1 AFA
Total Diversion			2.65 CFS	611.1 AFA

Location of Point(s) of Diversion:

GROUND WATER	NWSWNW	Sec. 17	Township 01N	Range 19E	BLAINE County
GROUND WATER	NENENW	Sec. 20	Township 01N	Range 19E	BLAINE County
GROUND WATER	SWSENW	Sec. 28	Township 01N	Range 19E	BLAINE County

IRRIGATION Use:  
Acre Limit: 174.6  
Place(s) of use:  
Place of Use Legal Description: IRRIGATION BLAINE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01N	19E	17		SWNE	38									
				SWNW	31		SENW	40						
				NESW	40		NWSW	13		SESW	26			
				NESE	11		NWSE	40		SWSE	40		SESE	22
		20		NENE	39		NWNE	38.5		SWNE	19		SENE	40
				NENW	7									



			NESE	35		NWSE	1.3		SESE	13			
	21	8	NWNW	10	9	SWNW	9						
		11	NWSW	24		SWSW	36	12	SESW	1.2			
	27		NENE	11		NWNE	9		SWNE	40		SENE	11
			SWNW	13		SENW	30						
			NESW	40		NWSW	38		SWSW	40		SESW	30
			NESE	3.8		NWSE	36		SWSE	4			
	28		SWNE	14		SENE	4						
			NENW	13		NWNW	29		SWNW	6.4		SENW	37
			NESW	22		SESW	2.2						
			NESE	39		NWSE	39		SWSE	36		SESE	40
	33		NENE	40		NWNE	14		SENE	30			
	34		NENW	0.2		NWNW	31		SWNW	15			

Total Acres: 1291.6

Conditions of Approval:

1.

E52

The rights listed below are limited to a total combined diversion rate of 19.65 cfs. Combined Right Nos.: 37-23090, 37-23091, 37-23092 and 37-23093.
2.

Right Nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 are limited to the irrigation of a combined total of 1291.6 acres in a single irrigation season.
3.

The rights listed below are limited to a total combined diversion rate of 7.16 cfs. Combined Right Nos.: 37-23090 and 37-23093.
4.

C11

This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right.
5.

Right Nos. 37-23090, 37-23091, 37-23092 and 37-23093 are limited to the irrigation of a combined total of 1291.6 acres in a single irrigation season.
6.

Total combined delivery at the field headgates (for surface water rights) and diversion at the wellheads (for ground water rights) for this right along with water right nos.37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 shall not exceed a total instantaneous rate of 25.8 cfs (which equates to 0.02 cfs per acre over the combined permissible places of use for these water rights totaling 1291.6 acres).
7.

104

If the surface water rights appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
8.

K01

This right is an enlargement of Right 37-23090, 37-23091 & 37-23092 pursuant to Section 42-1426, Idaho Code.
9.

C05

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.
10.

C18

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
11.

Total volume of water delivered to the field from this right along with water right nos. 37-23083, 37-23084, 37-23085, 37-23086, 37-23087, 37-23088, 37-23089, 37-23090, 37-23091, 37-23092 and 37-23093 shall not exceed 4626.9 acre-feet per year (which equates to 3.5 acre-feet per acre over the combined permissible places of use for these water rights totaling 1291.6 acres).
12.

X27

This right is limited to the irrigation of 174.6 acres within the place of use described above in a single irrigation season.
13.

065

The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.
14.

C03

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

Dates:

Licensed Date:

Decreed Date: 01/14/2009

Enlargement Use Priority Date:

Enlargement Statute Priority Date: 4/12/1994

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 1291.6

Combined Volume Limit: 19.7

Combined Rate Limit:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

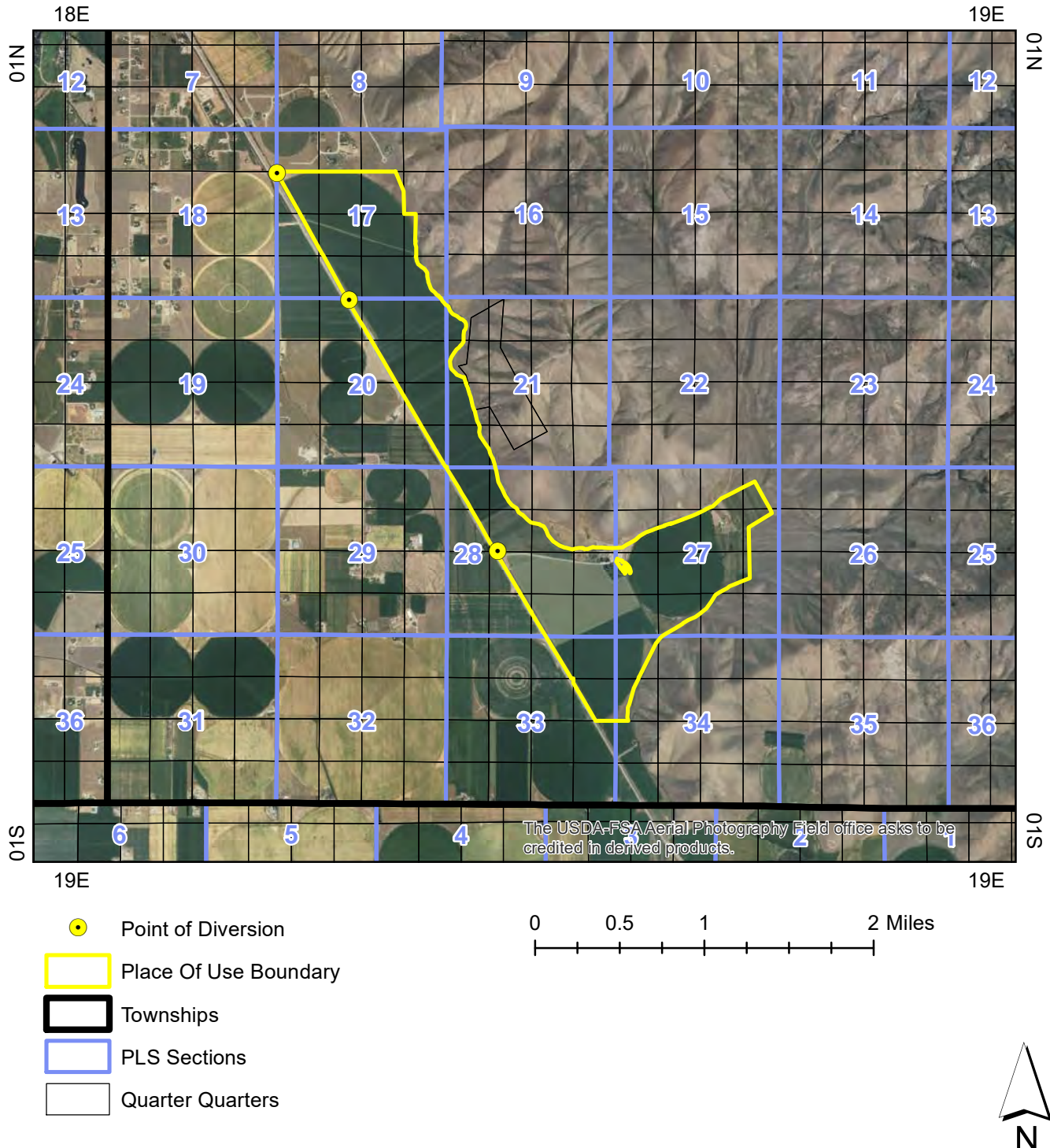
State of Idaho  
Department of Water Resources

# Water Right

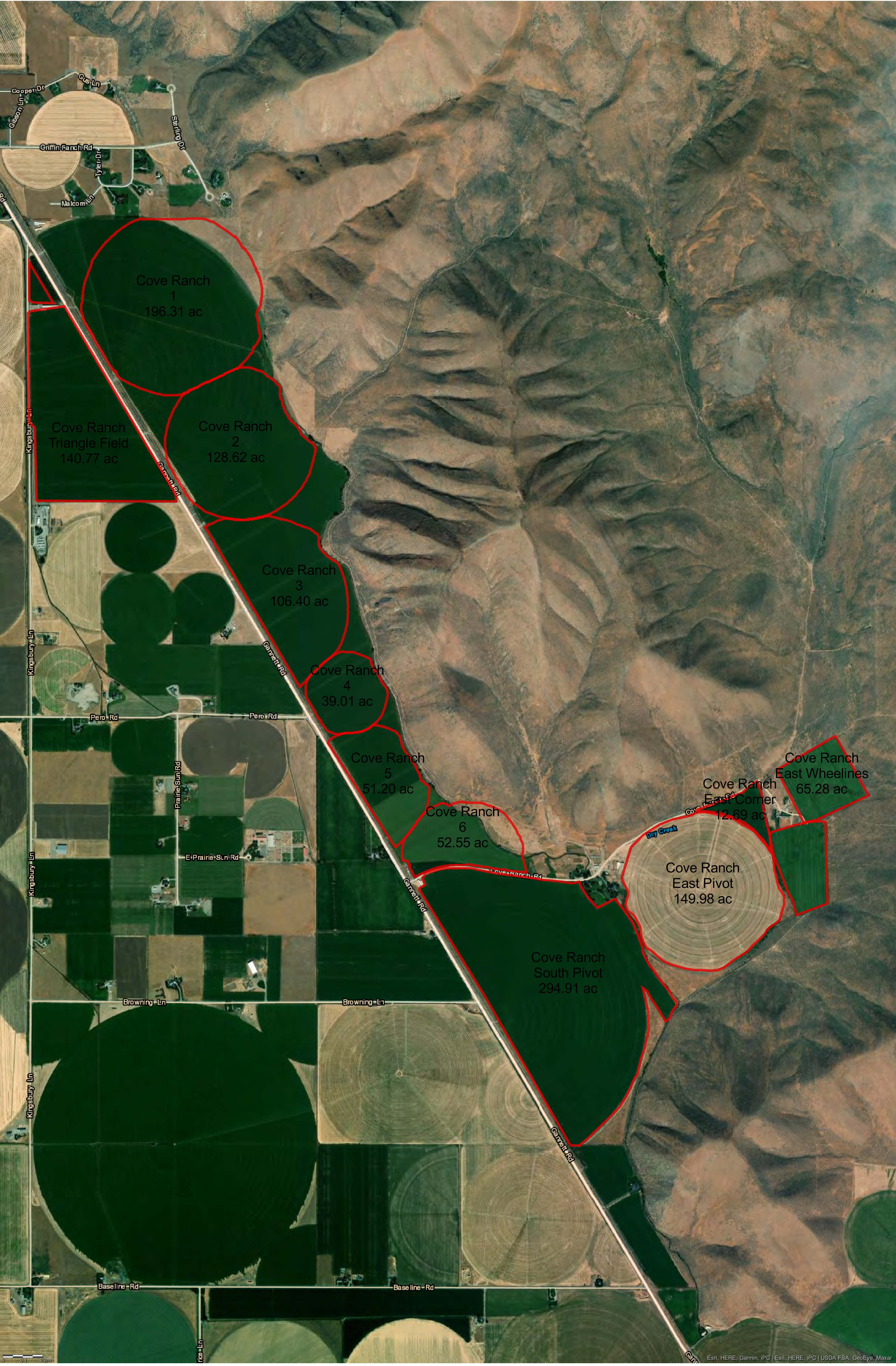
## 37-23090 - 3

### IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.











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WATER RIGHT REPORT

6/18/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-2581

Owner Type	Name and Address
Current Owner	THOMAS M O GARA FAMILY TRUST C/O BRIAN BARSOTTI PO BOX 370 KETCHUM, ID 83340 2087263030
Attorney	PAUL L ARRINGTON BARKER ROSHOLT & SIMPSON LLP 163 2ND AVE W PO BOX 63 TWIN FALLS, ID 83303-0063 2087330700
Trustee	THOMAS O GARA PO BOX 2930 HAILEY, ID 83333
Original Owner	CHEMS PO BOX 237 GOODING, ID 83330 2089344337
Security Interest	D L EVANS BANK PO BOX 87 TWIN FALLS, ID 83303-0087 2087369300

Priority Date: 08/16/1955  
Basis: Decreed  
Status: Active  
Water Supply Bank Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/15	10/31	3 CFS	1188 AFA
Total Diversion			3 CFS	1188 AFA

Location of Point(s) of Diversion:

GROUND WATER	NWSWNW Lt 4	Sec. 04	Township 01S	Range 19E	BLAINE County
GROUND WATER	NWNWSW	Sec. 04	Township 01S	Range 19E	BLAINE County
GROUND WATER	NESWSE	Sec. 17	Township 01S	Range 19E	BLAINE County

IRRIGATION Use:  
Acre Limit: 721.7  
Place(s) of use:  
Place of Use Legal Description: IRRIGATION BLAINE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01S	19E	3	2	SWNE	6									
			4	SWNW	16		SENW	15						
				NESW	40		NWSW	40						

			NWSE	31										
	4	2	SWNE	17	1	SENE	16							
		4	SWNW	18	3	SENW	18							
			NESW	40		NWSW	40	SWSW	40		SESW	40		
			NESE	40		NWSE	40	SWSE	40		SESE	40		
	5	2	SWNE	19	1	SENE	19							
			NESE	41		NWSE	41	SWSE	41		SESE	41		
	8		NENE	39		NWNE	39							
			NESW	40		NWSW	40	SWSW	40		SESW	40		
			NWSE	40		SWSE	40	SESE	20					
	9		NENE	40		NWNE	40	SWNE	40		SENE	40		
			NENW	40		NWNW	40	SWNW	40		SENW	40		
			NESW	41		NWSW	41	SWSW	41		SESW	41		
			NESE	41		NWSE	41	SWSE	41		SESE	41		
	10		SWNE	40										
			SWNW	21										
			NESW	40		NWSW	40	SWSW	40		SESW	40		
			NWSE	40		SWSE	40	SESE	40					
	15		NENE	40		NWNE	40	SWNE	40					
			NENW	40		NWNW	40	SWNW	40		SENW	40		
			NWSE	40		SWSE	37							
	16		NENE	41		NWNE	40	SWNE	40		SENE	41		
			NENW	40		NWNW	39	SWNW	40		SENW	40		
			NESW	41		NWSW	41	SWSW	38		SESW	38		
			NESE	41		NWSE	41	SWSE	38		SESE	38		
	17		NESE	41		NWSE	40	SWSE	37		SESE	38		
	20		NENE	40		NWNE	20							
	21		NENW	40		NWNW	40	SENW	41					
			NESW	40										

Total Acres: 3437

Conditions of Approval:

1.

X27

This right is limited to the irrigation of 721.7 acres within the authorized place of use in a single irrigation season.
2.

X35

Rights 37-2581, 37-2599, 37-2604, 37-2616, and 37-7758 when combined shall not exceed a total annual maximum diversion volume of 2526 af at the field headgate and the irrigation of 721.7 acres.
3.

Rights 37-2581, 37-2599, 37-2604, 37-2616 and 37-7758 diverted from ground water are used as the sole source of water for irrigation of a specific 721.7 acres within the 3437.0 acre place of use authorized by these rights in a single irrigation season. Before changing the 721.7 acres to be irrigated within the 3437.0 acre place of use, the right holder shall submit a new land list and representative electronic shape file or map to the Department prior to the irrigation season in which the change will occur. Note that the 721.7 acres is a subset of the 2119.9 acre total seasonal acre limit for the rights included in transfer 80114.
4.

X35

Rights 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-20635, 37-20637 and 37-20639 when combined shall not exceed a total diversion rate of 34.59 cfs, a total annual maximum diversion volume of 6709.5 af at the field headgate, and the irrigation of 2028.7 acres.
5.

X35

Rights 37-804, 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-20635, 37-20637, and 37-20639 when combined shall not exceed a total diversion rate of 36.41 cfs, a total annual maximum diversion volume of 7028.7 af at the field headgate, and the irrigation of 2119.9 acres.
6.

X35

Rights 37-115F, 37-501B, 37-501C, 37-577K, 37-590B, 37-597B, 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-20635, 37-20637, 37-20639, 37-20641, 37-20643, 37-20645, 37-20647, 37-20649, and 37-20651 when combined shall not exceed a total diversion rate of 53.88 cfs and the irrigation of 2028.7 acres.
7.

X35

Rights 37-115F, 37-501B, 37-501C, 37-577K, 37-590B, 37-597B, 37-804, 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-11830, 37-20635, 37-20637, 37-20639, 37-20641, 37-20643, 37-20645, 37-20647, 37-20649, and 37-20651 when combined shall not exceed a total diversion rate of 55.70 cfs and the irrigation of 2119.9 acres.
8.

206

Rights 37-115F, 37-501B, 37-501C, 37-577K, 37-590B, 37-597B, 37-804, 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-11830, 37-20635, 37-20637, 37-20639, 37-20641, 37-20643, 37-20645, 37-20647, 37-20649, and 37-20651 are limited to the irrigation of a specific 2119.9 acres within the 3437.0 acre place of use authorized by these rights in a single irrigation season. The specific 2119.9 acres to be irrigated by the right holder are shown in the electronic shape file associated with this right in the geographic information system component of the water rights database maintained by the department. Before changing the 2119.9 acres to be irrigated within the 3437.0 acre place of use, the right holder shall submit a new land list and representative electronic shape file or map to the Department prior to the irrigation season in which the change will occur.
9.

R05

Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No.37.
10.

R43

The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversions.
11.

R63

This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
12.

T07

The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
13.

T08

Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

14.

T19

Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

Dates:

Licensed Date:

Decreed Date: 06/01/2010

Permit Proof Due Date:

Permit Proof Made Date:

Permit Approved Date:

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 721.7

Combined Volume Limit: 2526

Combined Rate Limit:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Water Supply Bank:

Lessor Name(s): THOMAS M O GARA FAMILY TRUST

Lease Status: Active

Lease Amount: 30

Rental Availability: None

Date Received: 4/30/2013

Lease Begin Date: 4/30/2013

Expiration Date: 12/31/2017



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WATER RIGHT REPORT

6/18/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-2599

Owner Type	Name and Address
Current Owner	THOMAS M O GARA FAMILY TRUST C/O BRIAN BARSOTTI PO BOX 370 KETCHUM, ID 83340 2087263030
Attorney	PAUL L ARRINGTON BARKER ROSHOLT & SIMPSON LLP 163 2ND AVE W PO BOX 63 TWIN FALLS, ID 83303-0063 2087330700
Trustee	THOMAS O GARA PO BOX 2930 HAILEY, ID 83333
Original Owner	CHEMS PO BOX 237 GOODING, ID 83330 2089344337
Security Interest	D L EVANS BANK PO BOX 87 TWIN FALLS, ID 83303-0087 2087369300

Priority Date: 09/30/1957  
Basis: Decreed  
Status: Active  
Water Supply Bank Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/15	10/31	1.5 CFS	594 AFA
Total Diversion			1.5 CFS	594 AFA

Location of Point(s) of Diversion:

GROUND WATER|SESWSW|Sec. 16|Township 01S|Range 19E|BLAINE County  
IRRIGATION Use:  
Acre Limit: 721.7  
Place(s) of use:  
Place of Use Legal Description: IRRIGATION BLAINE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01S	19E	3	2	SWNE	6									
			4	SWNW	16		SENW	15						
				NESW	40		NWSW	40						
				NWSE	31									
		4	2	SWNE	17	1	SENE	16						



		4	SWNW	18	3	SENW	18						
			NESW	40		NWSW	40		SWSW	40		SESW	40
			NESE	40		NWSE	40		SWSE	40		SESE	40
	5	2	SWNE	19	1	SENE	19						
			NESE	41		NWSE	41		SWSE	41		SESE	41
	8		NENE	39		NWNE	39						
			NESW	40		NWSW	40		SWSW	40		SESW	40
			NWSE	40		SWSE	40		SESE	20			
	9		NENE	40		NWNE	40		SWNE	40		SENE	40
			NENW	40		NWNW	40		SWNW	40		SENW	40
			NESW	41		NWSW	41		SWSW	41		SESW	41
			NESE	41		NWSE	41		SWSE	41		SESE	41
	10		SWNE	40									
			SWNW	21									
			NESW	40		NWSW	40		SWSW	40		SESW	40
			NWSE	40		SWSE	40		SESE	40			
	15		NENE	40		NWNE	40		SWNE	40			
			NENW	40		NWNW	40		SWNW	40		SENW	40
			NWSE	40		SWSE	37						
	16		NENE	41		NWNE	40		SWNE	40		SENE	41
			NENW	40		NWNW	39		SWNW	40		SENW	40
			NESW	41		NWSW	41		SWSW	38		SESW	38
			NESE	41		NWSE	41		SWSE	38		SESE	38
	17		NESE	41		NWSE	40		SWSE	37		SESE	38
	20		NENE	40		NWNE	20						
	21		NENW	40		NWNW	40		SENW	41			
			NESW	40									

Total Acres: 3437

Conditions of Approval:

1.

X27

This right is limited to the irrigation of 721.7 acres within the authorized place of use in a single irrigation season.
2.

X35

Rights 37-2581, 37-2599, 37-2604, 37-2616, and 37-7758 when combined shall not exceed a total annual maximum diversion volume of 2526 af at the field headgate and the irrigation of 721.7 acres.
3.

Rights 37-2581, 37-2599, 37-2604, 37-2616 and 37-7758 diverted from ground water are used as the sole source of water for irrigation of a specific 721.7 acres within the 3437.0 acre place of use authorized by these rights in a single irrigation season. Before changing the 721.7 acres to be irrigated within the 3437.0 acre place of use, the right holder shall submit a new land list and representative electronic shape file or map to the Department prior to the irrigation season in which the change will occur. Note that the 721.7 acres is a subset of the 2119.9 acre total seasonal acre limit for the rights included in transfer 80114.
4.

X35

Rights 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-20635, 37-20637 and 37-20639 when combined shall not exceed a total diversion rate of 34.59 cfs, a total annual maximum diversion volume of 6709.5 af at the field headgate, and the irrigation of 2028.7 acres.
5.

X35

Rights 37-804, 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-20635, 37-20637, and 37-20639 when combined shall not exceed a total diversion rate of 36.41 cfs, a total annual maximum diversion volume of 7028.7 af at the field headgate, and the irrigation of 2119.9 acres.
6.

X35

Rights 37-115F, 37-501B, 37-501C, 37-577K, 37-590B, 37-597B, 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-20635, 37-20637, 37-20639, 37-20641, 37-20643, 37-20645, 37-20647, 37-20649, and 37-20651 when combined shall not exceed a total diversion rate of 53.88 cfs and the irrigation of 2028.7 acres.
7.

X35

Rights 37-115F, 37-501B, 37-501C, 37-577K, 37-590B, 37-597B, 37-804, 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-11830, 37-20635, 37-20637, 37-20639, 37-20641, 37-20643, 37-20645, 37-20647, 37-20649, and 37-20651 when combined shall not exceed a total diversion rate of 55.70 cfs and the irrigation of 2119.9 acres.
8.

206

Rights 37-115F, 37-501B, 37-501C, 37-577K, 37-590B, 37-597B, 37-804, 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-11830, 37-20635, 37-20637, 37-20639, 37-20641, 37-20643, 37-20645, 37-20647, 37-20649, and 37-20651 are limited to the irrigation of a specific 2119.9 acres within the 3437.0 acre place of use authorized by these rights in a single irrigation season. The specific 2119.9 acres to be irrigated by the right holder are shown in the electronic shape file associated with this right in the geographic information system component of the water rights database maintained by the department. Before changing the 2119.9 acres to be irrigated within the 3437.0 acre place of use, the right holder shall submit a new land list and representative electronic shape file or map to the Department prior to the irrigation season in which the change will occur.
9.

R05

Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No.37.
10.

R43

The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
11.

R63

This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
12.

T07

The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
13.

T08

Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
14.

T19

Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

Dates:

Licensed Date:

Decreed Date: 06/01/2010

Permit Proof Due Date:

Permit Proof Made Date:

Permit Approved Date:

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 721.7

Combined Volume Limit: 2526

Combined Rate Limit:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Water Supply Bank:

Lessor Name(s): THOMAS M O GARA FAMILY TRUST

Lease Status: Active

Lease Amount: 15

Rental Availability: None

Date Received: 6/3/2013

Lease Begin Date: 4/3/2013

Expiration Date: 12/31/2017



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WATER RIGHT REPORT

6/18/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-2604

Owner Type	Name and Address
Current Owner	THOMAS M O GARA FAMILY TRUST C/O BRIAN BARSOTTI PO BOX 370 KETCHUM, ID 83340 2087263030
Attorney	PAUL L ARRINGTON BARKER ROSHOLT & SIMPSON LLP 163 2ND AVE W PO BOX 63 TWIN FALLS, ID 83303-0063 2087330700
Trustee	THOMAS O GARA PO BOX 2930 HAILEY, ID 83333
Original Owner	CHEMS PO BOX 237 GOODING, ID 83330 2089344337
Security Interest	D L EVANS BANK PO BOX 87 TWIN FALLS, ID 83303-0087 2087369300

Priority Date: 07/29/1958  
Basis: Decreed  
Status: Active  
Water Supply Bank Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/15	10/31	2.5 CFS	990 AFA
Total Diversion			2.5 CFS	990 AFA

Location of Point(s) of Diversion:

GROUND WATER	NWSWNW Lt 4	Sec. 04	Township 01S	Range 19E	BLAINE County
GROUND WATER	NWNWSW	Sec. 04	Township 01S	Range 19E	BLAINE County
GROUND WATER	NENWSE	Sec. 17	Township 01S	Range 19E	BLAINE County

IRRIGATION Use:  
Acre Limit: 721.7  
Place(s) of use:  
Place of Use Legal Description: IRRIGATION BLAINE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01S	19E	3	2	SWNE	6									
			4	SWNW	16		SENW	15						
				NESW	40		NWSW	40						

			NWSE	31									
	4	2	SWNE	17	1	SENE	16						
		4	SWNW	18	3	SENW	18						
			NESW	40		NWSW	40	SWSW	40		SESW	40	
			NESE	40		NWSE	40	SWSE	40		SESE	40	
	5	2	SWNE	19	1	SENE	19						
			NESE	41		NWSE	41	SWSE	41		SESE	41	
	8		NENE	39		NWNE	39						
			NESW	40		NWSW	40	SWSW	40		SESW	40	
			NWSE	40		SWSE	40	SESE	20				
	9		NENE	40		NWNE	40	SWNE	40		SENE	40	
			NENW	40		NWNW	40	SWNW	40		SENW	40	
			NESW	41		NWSW	41	SWSW	41		SESW	41	
			NESE	41		NWSE	41	SWSE	41		SESE	41	
	10		SWNE	40									
			SWNW	21									
			NESW	40		NWSW	40	SWSW	40		SESW	40	
			NWSE	40		SWSE	40	SESE	40				
	15		NENE	40		NWNE	40	SWNE	40				
			NENW	40		NWNW	40	SWNW	40		SENW	40	
			NWSE	40		SWSE	37						
	16		NENE	41		NWNE	40	SWNE	40		SENE	41	
			NENW	40		NWNW	39	SWNW	40		SENW	40	
			NESW	41		NWSW	41	SWSW	38		SESW	38	
			NESE	41		NWSE	41	SWSE	38		SESE	38	
	17		NESE	41		NWSE	40	SWSE	37		SESE	38	
	20		NENE	40		NWNE	20						
	21		NENW	40		NWNW	40	SENW	41				
			NESW	40									

Total Acres: 3437

Conditions of Approval:

1.

X27

This right is limited to the irrigation of 721.7 acres within the authorized place of use in a single irrigation season.
2.

X35

Rights 37-2581, 37-2599, 37-2604, 37-2616, and 37-7758 when combined shall not exceed a total annual maximum diversion volume of 2526 af at the field headgate and the irrigation of 721.7 acres.
3.

Rights 37-2581, 37-2599, 37-2604, 37-2616 and 37-7758 diverted from ground water are used as the sole source of water for irrigation of a specific 721.7 acres within the 3437.0 acre place of use authorized by these rights in a single irrigation season. Before changing the 721.7 acres to be irrigated within the 3437.0 acre place of use, the right holder shall submit a new land list and representative electronic shape file or map to the Department prior to the irrigation season in which the change will occur. Note that the 721.7 acres is a subset of the 2119.9 acre total seasonal acre limit for the rights included in transfer 80114.
4.

X35

Rights 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-20635, 37-20637 and 37-20639 when combined shall not exceed a total diversion rate of 34.59 cfs, a total annual maximum diversion volume of 6709.5 af at the field headgate, and the irrigation of 2028.7 acres.
5.

X35

Rights 37-804, 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-20635, 37-20637, and 37-20639 when combined shall not exceed a total diversion rate of 36.41 cfs, a total annual maximum diversion volume of 7028.7 af at the field headgate, and the irrigation of 2119.9 acres.
6.

X35

Rights 37-115F, 37-501B, 37-501C, 37-577K, 37-590B, 37-597B, 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-20635, 37-20637, 37-20639, 37-20641, 37-20643, 37-20645, 37-20647, 37-20649, and 37-20651 when combined shall not exceed a total diversion rate of 53.88 cfs and the irrigation of 2028.7 acres.
7.

X35

Rights 37-115F, 37-501B, 37-501C, 37-577K, 37-590B, 37-597B, 37-804, 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-11830, 37-20635, 37-20637, 37-20639, 37-20641, 37-20643, 37-20645, 37-20647, 37-20649, and 37-20651 when combined shall not exceed a total diversion rate of 55.70 cfs and the irrigation of 2119.9 acres.
8.

206

Rights 37-115F, 37-501B, 37-501C, 37-577K, 37-590B, 37-597B, 37-804, 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-11830, 37-20635, 37-20637, 37-20639, 37-20641, 37-20643, 37-20645, 37-20647, 37-20649, and 37-20651 are limited to the irrigation of a specific 2119.9 acres within the 3437.0 acre place of use authorized by these rights in a single irrigation season. The specific 2119.9 acres to be irrigated by the right holder are shown in the electronic shape file associated with this right in the geographic information system component of the water rights database maintained by the department. Before changing the 2119.9 acres to be irrigated within the 3437.0 acre place of use, the right holder shall submit a new land list and representative electronic shape file or map to the Department prior to the irrigation season in which the change will occur.
9.

R05

Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No.37.
10.

R43

The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
11.

R63

This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
12.

T07

The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
13.

T08

Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

14.

T19

Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

Dates:

Licensed Date:

Decreed Date: 06/01/2010

Permit Proof Due Date:

Permit Proof Made Date:

Permit Approved Date:

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 721.7

Combined Volume Limit: 2526

Combined Rate Limit:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Water Supply Bank:

Lessor Name(s): THOMAS M O GARA FAMILY TRUST

Lease Status: Active

Lease Amount: 25

Rental Availability: None

Date Received: 6/3/2013

Lease Begin Date: 4/30/2013

Expiration Date: 12/31/2017





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WATER RIGHT REPORT

6/17/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-2615

Owner Type	Name and Address
Current Owner	BASHAW FAMILY TRUST
Current Owner	THE BRETT & PATRICIA BASHAW FAMILY TRUST C/O GERALD BASHAW PO BOX 767 PICABO, ID 83348 2087268414
Trustee	GERALD B BASHAW PO BOX 767 PICABO, ID 83348-0767 2087204825
Original Owner	CLYDE L MOLYNEUX 10575 HWY 75 BELLEVUE, ID 83313 2087884060
Original Owner	WILLIS CASTLE RT 1 BOX 440 BELLEVUE, ID 83313 2087882747
Original Owner	LEE J AMARAL PO BOX 1563 EAGLE, ID 83616 2088500001
Original Owner	LEE J AMARAL TRUST C/O LEE J AMARAL TRUSTEE PO BOX 687 PICABO, ID 83348 2087882747

Priority Date: 05/28/1959  
Basis: Decreed  
Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/15	10/31	1.8 CFS	219.8 AFA
Total Diversion			1.8 CFS	219.8 AFA

Location of Point(s) of Diversion:

GROUND WATER	SWSWSW	Sec. 16	Township 01S	Range 20E	BLAINE County
GROUND WATER	NESENW	Sec. 17	Township 01S	Range 20E	BLAINE County
GROUND WATER	SENESE	Sec. 17	Township 01S	Range 20E	BLAINE County
GROUND WATER	SESWSW	Sec. 17	Township 01S	Range 20E	BLAINE County
GROUND WATER	NWNENE	Sec. 20	Township 01S	Range 20E	BLAINE County
IRRIGATION Use:					

Acre Limit: 62.8

Place(s) of use:

Place of Use Legal Description: IRRIGATION BLAINE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01S	20E	16		SWSW	18.9									
		17		NENE	1		NWNE	35.3		SWNE	39.6		SENE	6.7
				NENW	40.2		NWNW	40.1		SWNW	40.1		SENW	40.3
				NESW	40.1		NWSW	40		SWSW	38.7		SESW	38.8
				NESE	10.6		NWSE	39.7		SWSE	35.4		SESE	29.5
		18		NENE	41		NWNE	41		SWNE	40.8		SENE	40.9
				NESE	40.7		SESE	38.9						
		20		NENE	26.9		SENE	3.7						
		21		NWNW	27.4		SWNW	4.8						

Total Acres: 841.1

Conditions of Approval:

1.

This right in combination with all other right for irrigation of the lands above shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre, measured at the field, when water is applied via pump and pressurized irrigation system.
2.

X35

Rights 37-95G, 37-426E, 37-632G, 37-706E and 37-2615 when combined shall not exceed the irrigation of 62.8 acres within the authorized place of use.
3.

X35

Rights 37-2566A, 37-2594A, 37-2612A, 37-2615, 37-7239A, 37-22559, 37-22561, 37-22563 and 37-22565 when combined shall not exceed a total annual maximum diversion volume of 2155.3 af at the field headgate.
4.

206

Water rights 37-95G, 37-137C, 37-22549, 37-138C, 37-22551, 37-207C, 37-22553, 37-426E, 37-448D, 37-22555, 37-632G, 37-706E, 37-1082E, 37-22557, 37-2566A, 37-22559, 37-2594A, 37-22561, 37-2612A, 37-22563, 37-2615, 37-7239A and 37-22565 when used in combination are limited to the irrigation of a specific 615.8 acres within the 841.1 acre place of use authorized by these rights in a single irrigation season. The specific 615.8 acres to be irrigated by the right holder shall be identified prior to use by submittal of a land list and a representative electronic shape file or by submittal of a land list and a map sufficiently detailed to allow creation of an electronic shape file to be associated with this right in the geographic information system component of the water rights database maintained by the department. Before changing the 615.8 acres to be irrigated within the 841.1 acre place of use, the right holder shall submit a new land list and representative electronic shape file or map to the department prior to the irrigation season in which the change will occur.
5.

F06

The following rights are diverted through point(s) of diversion described above: 37-2566A, 37-2566B(37-22559), 37-2594A, 37-2594B(37-22561), 37-2612A, 37-2612B(37-22563), 37-2615, 37-7239A and 37-7239B(37-22565).
6.

01M

After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
7.

T07

The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8.

T08

Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9.

T19

Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

Dates:

Licensed Date:

Decreed Date: 06/29/2010

Permit Proof Due Date:

Permit Proof Made Date:

Permit Approved Date:

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False



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WATER RIGHT REPORT

6/18/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-2616

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	THOMAS M O GARA FAMILY TRUST C/O BRIAN BARSOTTI PO BOX 370 KETCHUM, ID 83340 2087263030
Attorney	PAUL L ARRINGTON BARKER ROSHOLT & SIMPSON LLP 163 2ND AVE W PO BOX 63 TWIN FALLS, ID 83303-0063 2087330700
Trustee	THOMAS O GARA PO BOX 2930 HAILEY, ID 83333
Original Owner	CHEMS PO BOX 237 GOODING, ID 83330 2089344337
Security Interest	D L EVANS BANK PO BOX 87 TWIN FALLS, ID 83303-0087 2087369300

Priority Date: 06/03/1959  
Basis: Decreed  
Status: Active  
Water Supply Bank Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/15	10/31	2.98 CFS	1180.1 AFA
Total Diversion			2.98 CFS	1180.1 AFA

Location of Point(s) of Diversion:

GROUND WATER	NWSWNW Lt 4	Sec. 04	Township 01S	Range 19E	BLAINE County
GROUND WATER	NWNWSW	Sec. 04	Township 01S	Range 19E	BLAINE County
GROUND WATER	SWSWNW	Sec. 16	Township 01S	Range 19E	BLAINE County

IRRIGATION Use:  
Acre Limit: 721.7  
Place(s) of use:  
Place of Use Legal Description: IRRIGATION BLAINE County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
01S	19E	3	2	SWNE	6									
			4	SWNW	16		SENW	15						
				NESW	40		NWSW	40						

			NWSE	31										
	4	2	SWNE	17	1	SENE	16							
		4	SWNW	18	3	SENE	18							
			NESW	40		NWSW	40	SWSW	40		SESW	40		
			NESE	40		NWSE	40	SWSE	40		SESE	40		
	5	2	SWNE	19	1	SENE	19							
			NESE	41		NWSE	41	SWSE	41		SESE	41		
	8		NENE	39		NWNE	39							
			NESW	40		NWSW	40	SWSW	40		SESW	40		
			NWSE	40		SWSE	40	SESE	20					
	9		NENE	40		NWNE	40	SWNE	40		SENE	40		
			NENW	40		NWNW	40	SWNW	40		SENE	40		
			NESW	41		NWSW	41	SWSW	41		SESW	41		
			NESE	41		NWSE	41	SWSE	41		SESE	41		
	10		SWNE	40										
			SWNW	21										
			NESW	40		NWSW	40	SWSW	40		SESW	40		
			NWSE	40		SWSE	40	SESE	40					
	15		NENE	40		NWNE	40	SWNE	40					
			NENW	40		NWNW	40	SWNW	40		SENE	40		
			NWSE	40		SWSE	37							
	16		NENE	41		NWNE	40	SWNE	40		SENE	41		
			NENW	40		NWNW	39	SWNW	40		SENE	40		
			NESW	41		NWSW	41	SWSW	38		SESW	38		
			NESE	41		NWSE	41	SWSE	38		SESE	38		
	17		NESE	41		NWSE	40	SWSE	37		SESE	38		
	20		NENE	40		NWNE	20							
	21		NENW	40		NWNW	40	SENE	41					
			NESW	40										

Total Acres: 3437

Conditions of Approval:

1.

X27

This right is limited to the irrigation of 721.7 acres within the authorized place of use in a single irrigation season.
2.

X35

Rights 37-2581, 37-2599, 37-2604, 37-2616, and 37-7758 when combined shall not exceed a total annual maximum diversion volume of 2526 af at the field headgate and the irrigation of 721.7 acres.
3.

Rights 37-2581, 37-2599, 37-2604, 37-2616 and 37-7758 diverted from ground water are used as the sole source of water for irrigation of a specific 721.7 acres within the 3437.0 acre place of use authorized by these rights in a single irrigation season. Before changing the 721.7 acres to be irrigated within the 3437.0 acre place of use, the right holder shall submit a new land list and representative electronic shape file or map to the Department prior to the irrigation season in which the change will occur. Note that the 721.7 acres is a subset of the 2119.9 acre total seasonal acre limit for the rights included in transfer 80114.
4.

X35

Rights 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-20635, 37-20637 and 37-20639 when combined shall not exceed a total diversion rate of 34.59 cfs, a total annual maximum diversion volume of 6709.5 af at the field headgate, and the irrigation of 2028.7 acres.
5.

X35

Rights 37-804, 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-20635, 37-20637, and 37-20639 when combined shall not exceed a total diversion rate of 36.41 cfs, a total annual maximum diversion volume of 7028.7 af at the field headgate, and the irrigation of 2119.9 acres.
6.

X35

Rights 37-115F, 37-501B, 37-501C, 37-577K, 37-590B, 37-597B, 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-20635, 37-20637, 37-20639, 37-20641, 37-20643, 37-20645, 37-20647, 37-20649, and 37-20651 when combined shall not exceed a total diversion rate of 53.88 cfs and the irrigation of 2028.7 acres.
7.

X35

Rights 37-115F, 37-501B, 37-501C, 37-577K, 37-590B, 37-597B, 37-804, 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-11830, 37-20635, 37-20637, 37-20639, 37-20641, 37-20643, 37-20645, 37-20647, 37-20649, and 37-20651 when combined shall not exceed a total diversion rate of 55.70 cfs and the irrigation of 2119.9 acres.
8.

206

Rights 37-115F, 37-501B, 37-501C, 37-577K, 37-590B, 37-597B, 37-804, 37-2502, 37-2568, 37-2581, 37-2599, 37-2604, 37-2616, 37-7758, 37-11830, 37-20635, 37-20637, 37-20639, 37-20641, 37-20643, 37-20645, 37-20647, 37-20649, and 37-20651 are limited to the irrigation of a specific 2119.9 acres within the 3437.0 acre place of use authorized by these rights in a single irrigation season. The specific 2119.9 acres to be irrigated by the right holder are shown in the electronic shape file associated with this right in the geographic information system component of the water rights database maintained by the department. Before changing the 2119.9 acres to be irrigated within the 3437.0 acre place of use, the right holder shall submit a new land list and representative electronic shape file or map to the Department prior to the irrigation season in which the change will occur.
9.

R05

Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No.37.
10.

R43

The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
11.

R63

This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
12.

T07

The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
13.

T08

Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.



14.

T19

Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

Dates:

Licensed Date:

Decreed Date: 06/01/2010

Permit Proof Due Date:

Permit Proof Made Date:

Permit Approved Date:

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 721.7

Combined Volume Limit: 2526

Combined Rate Limit:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Water Supply Bank:

Lessor Name(s): THOMAS M O GARA FAMILY TRUST

Lease Status: Active

Lease Amount: 29

Rental Availability: None

Date Received: 6/3/2013

Lease Begin Date: 4/30/2013

Expiration Date: 12/31/2017



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WATER RIGHT REPORT

6/18/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-7758

Owner Type	Name and Address
Current Owner	THOMAS M O GARA FAMILY TRUST C/O BRIAN BARSOTTI PO BOX 370 KETCHUM, ID 83340 2087263030
Attorney	PAUL L ARRINGTON BARKER ROSHOLT & SIMPSON LLP 163 2ND AVE W PO BOX 63 TWIN FALLS, ID 83303-0063 2087330700
Trustee	THOMAS O GARA PO BOX 2930 HAILEY, ID 83333
Original Owner	CHEMS PO BOX 237 GOODING, ID 83330 2089344337
Security Interest	D L EVANS BANK PO BOX 87 TWIN FALLS, ID 83303-0087 2087369300

Priority Date: 02/06/1979  
Basis: Decreed  
Status: Active  
Water Supply Bank Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/01	11/01	3.5 CFS	525 AFA
Total Diversion			3.5 CFS	525 AFA

Location of Point(s) of Diversion:

GROUND WATER	NWSWNW Lt 4	Sec. 04	Township 01S	Range 19E	BLAINE County
GROUND WATER	NWNWSW	Sec. 04	Township 01S	Range 19E	BLAINE County
GROUND WATER Rediversion	SESENW	Sec. 16	Township 01S	Range 19E	BLAINE County
GROUND WATER	SWNESW	Sec. 16	Township 01S	Range 19E	BLAINE County
GROUND WATER Injection	NESWSW	Sec. 16	Township 01S	Range 19E	BLAINE County
GROUND WATER Rediversion	NWSESE	Sec. 16	Township 01S	Range 19E	BLAINE County

IRRIGATION Use:  
Acre Limit: 175  
Place(s) of use:  
Place of Use Legal Description: IRRIGATION BLAINE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
----------	-------	---------	-----	-------	-------	-----	-------	-------	-----	-------	-------	-----	-------	-------



12.	R63	This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
13.	T07	The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
14.	T08	Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
15.	T19	Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

Dates:

Licensed Date:

Decreed Date: 06/01/2010

Permit Proof Due Date: 4/1/1980

Permit Proof Made Date: 1/1/1900

Permit Approved Date: 3/22/1979

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 721.7

Combined Volume Limit: 2526

Combined Rate Limit:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Water Supply Bank:

Lessor Name(s): THOMAS M O GARA FAMILY TRUST

Lease Status: Active

Lease Amount: 13

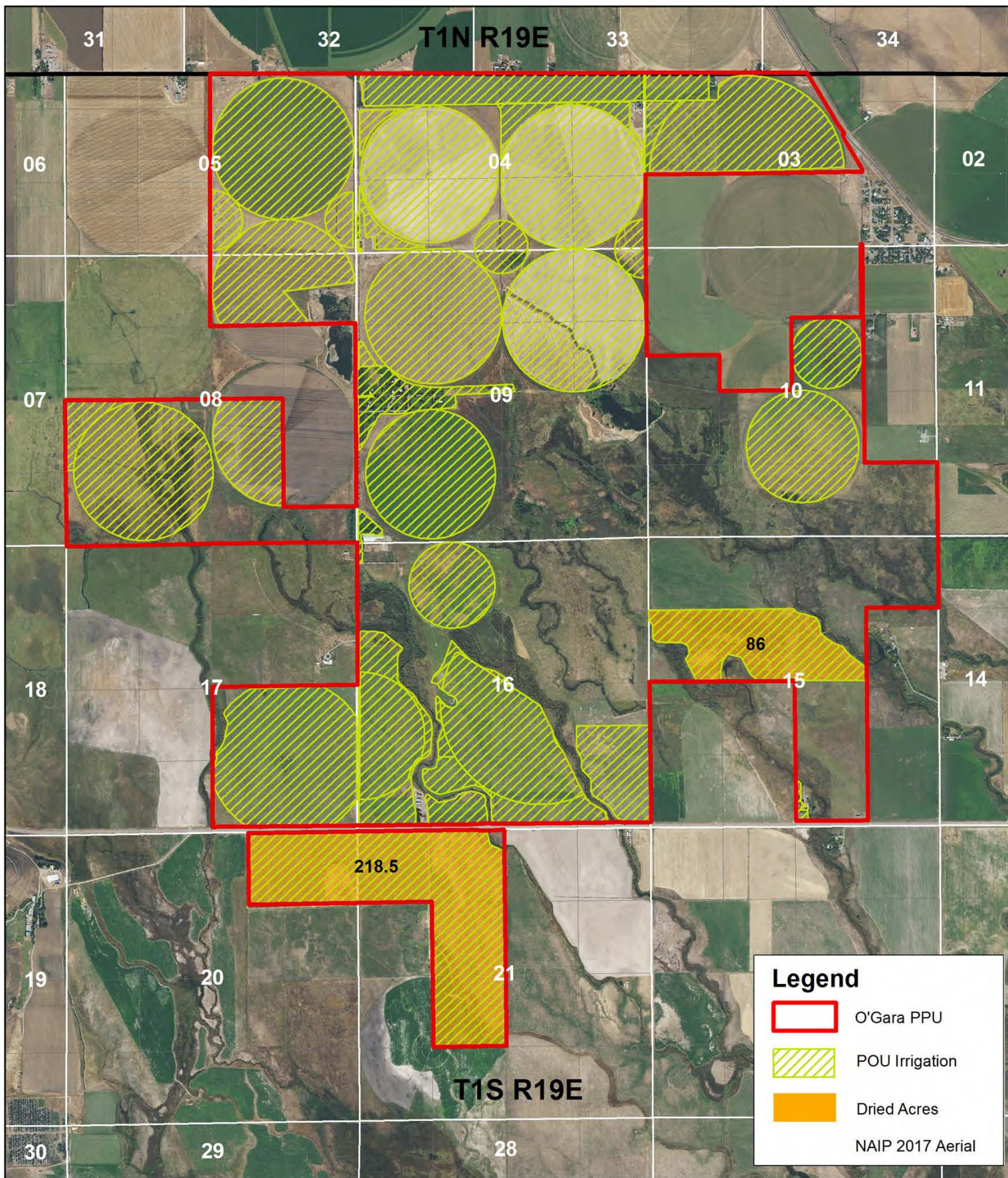
Rental Availability: None

Date Received: 6/3/2013

Lease Begin Date: 4/30/2013

Expiration Date: 12/31/2017



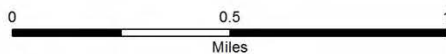


# O'Gara - Silver Spring Ranch

## 2020 Proposed Water Bank - Dried Acres

Allowed Irrigation = 2,119.9 Acres

Dried Acres = 304.5 Acres



### Legend

- O'Gara PPU
- POU Irrigation
- Dried Acres
- NAIP 2017 Aerial

**Ecosystem Sciences, LLC**

Science    Design    Planning

Disclaimers - This map (or data product) is for illustration purposes only. It is not intended to be used for description, conveyance, authoritative definition of legal boundary, or property title. This is not a survey product. Users are encouraged to examine the documentation or metadata associated with the data on which this map is based for information related to its accuracy, currentness, and limitations.





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WATER RIGHT REPORT

6/18/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-2576

Owner Type	Name and Address
Current Owner	JOHN F STEVENSON 36 HILLSIDE RANCH RD BELLEVUE, ID 83313-5147 2087884826

Priority Date: 07/13/1955  
Basis: Decreed  
Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/15	10/31	4.69 CFS	840 AFA
Total Diversion			4.69 CFS	840 AFA

Location of Point(s) of Diversion:

GROUND WATER|SWSENE|Sec. 18|Township 01S|Range 19E|BLAINE County  
IRRIGATION Use:  
Acre Limit: 240  
Place(s) of use:  
Place of Use Legal Description: IRRIGATION BLAINE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01S	19E	19		NENE	3		SENE	28						
				NESE	25		SESE	29						
		20		SWNW	6									
				NWSW	11		SWSW	28						
		27		SWNW	28									
				NWSW	26									
		28		SWNE	15		SENE	27						
				NESE	30		NWSE	10		SESE	22			
		29		NWNW	32		SWNW	38		SENW	5.7			
				NESW	37		NWSW	38						
				NWSE	18									
		30		NENE	34		SENE	28.1						
		33		NENE	2.3									

Total Acres: 521.1

Conditions of Approval:

1. C05

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.
2. 065

The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.
3. E56

The rights listed below are limited to the irrigation of a combined total of 521.1 acres in a single irrigation season. Combined Right Nos.: 37-118, 37-2576, 37-2681, and 37-7644.

4.	K06	This right is limited to the irrigation of 240 acres within the place of use described above in a single irrigation season.
5.	104	If the surface water right appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
6.	C18	This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

Dates:

Licensed Date:

Decreed Date: 05/02/2011

Permit Proof Due Date:

Permit Proof Made Date:

Permit Approved Date:

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 521.1

Combined Volume Limit:

Combined Rate Limit:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False



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WATER RIGHT REPORT

6/18/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-2681

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	JOHN F STEVENSON 36 HILLSIDE RANCH RD BELLEVUE, ID 83313-5147 2087884826

Priority Date: 12/08/1961  
Basis: Decreed  
Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	10/31	4.5 CFS	693 AFA
Total Diversion			4.5 CFS	693 AFA

Location of Point(s) of Diversion:

GROUND WATER|NWNENW|Sec. 20|Township 01S|Range 19E|BLAINE County  
IRRIGATION Use:  
Acre Limit: 231  
Place(s) of use:  
Place of Use Legal Description: IRRIGATION BLAINE County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>						
01S	19E	19		NENE	3		SENE	28												
				NESE	25		SESE	29												
		20		SWNW	6		SWSW	28												
				NWSW	11															
		27		SWNW	28															
				NWSW	26															
		28		SWNE	15		SENE	27												
				NESE	30		NWSE	10		SESE	22									
		29		NWNW	32		SWNW	38		SENW	5.7									
				NESW	37		NWSW	38												
				NWSE	18		SENE	28.1												
		30		NENE	34															
		33		NENE	2.3															

Total Acres: 521.1

Conditions of Approval:

- |    |     |  |
|----|-----|--|
| 1. | E56 | The rights listed below are limited to the irrigation of a combined total of 521.1 acres in a single irrigation season. Combined Right Nos.: 37-118, 37-2576, 37-2681, and 37-7644.  |
| 2. | K06 | This right is limited to the irrigation of 231 acres within the place of use described above in a single irrigation season.  |
| 3. | C05 | Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.  |
| 4. | 104 | If the surface water right appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required. |

5.	065	The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.
6.	C18	This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

Dates:

Licensed Date:

Decreed Date: 01/31/2012

Permit Proof Due Date:

Permit Proof Made Date:

Permit Approved Date:

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 521.1

Combined Volume Limit:

Combined Rate Limit:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False





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WATER RIGHT REPORT

6/18/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-7644

Owner Type	Name and Address
Current Owner	JOHN F STEVENSON 36 HILLSIDE RANCH RD BELLEVUE, ID 83313-5147 2087884826

Priority Date: 08/20/1977  
Basis: Decreed  
Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/15	10/31	2.02 CFS	
Total Diversion			2.02 CFS	

Location of Point(s) of Diversion:

GROUND WATER Injection	NWNWNE	Sec. 20	Township 01S	Range 19E	BLAINE County
GROUND WATER	NWNWNE	Sec. 20	Township 01S	Range 19E	BLAINE County
GROUND WATER Rediversion	SESENE	Sec. 28	Township 01S	Range 19E	BLAINE County

Place(s) of use:

Place of Use Legal Description: IRRIGATION BLAINE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01S	19E	27		SWNW	24									
				NWSW	23									
		28		SWNE	14		SENE	19						
				NESE	27		NWSE	8.5		SESE	22			
		33		NENE	2									

Total Acres: 139.5

Conditions of Approval:

- |    |     |   |
|----|-----|---|
| 1. | 065 | The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right. |
| 2. | R05 | Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 37-M.   |
| 3. | E56 | The rights listed below are limited to the irrigation of a combined total of 521.1 acres in a single irrigation season. Combined Right Nos.: 37-118, 37-2576, 37-2681 and 37-7644.  |
| 4. | C18 | This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.   |
| 5. | R43 | The right holder shall maintain measuring devices at the points of injection into and rediversion from Patton Creek and shall maintain lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.   |
| 6. | X35 | Rights 37-7644, 37-2649A, 37-2649B and 37-7014 when combined shall not exceed a total diversion rate of 7.44 cfs.   |

7.	X36	Rights 37-2649A, 37-2649B and 37-7014 are also diverted through the points of diversion described above.
8.	104	If the surface water rights appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
9.	X56	The portion of Right 37-7644 used for conveyance losses is 0.04 cfs.
10.	X59	Point of diversion is locally known as The Lucke Well.
11.	WB7	This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor exceed a combined annual maximum diversion volume of 488.3 af at the field headgate for the lands above.
12.		Water diverted under this right is injected into Patton Creek then rediverted from Patton Creek to the place of use. The amount of water rediverted from Patton Creek under this right shall not exceed 98% of the amount of water injected into Patton Creek.

Dates:

Licensed Date:

Decreed Date: 05/31/2011

Permit Proof Due Date: 1/1/1983

Permit Proof Made Date: 2/3/1983

Permit Approved Date: 1/29/1978

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date: 07/18/1977

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 521.1

Combined Volume Limit:

Combined Rate Limit:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

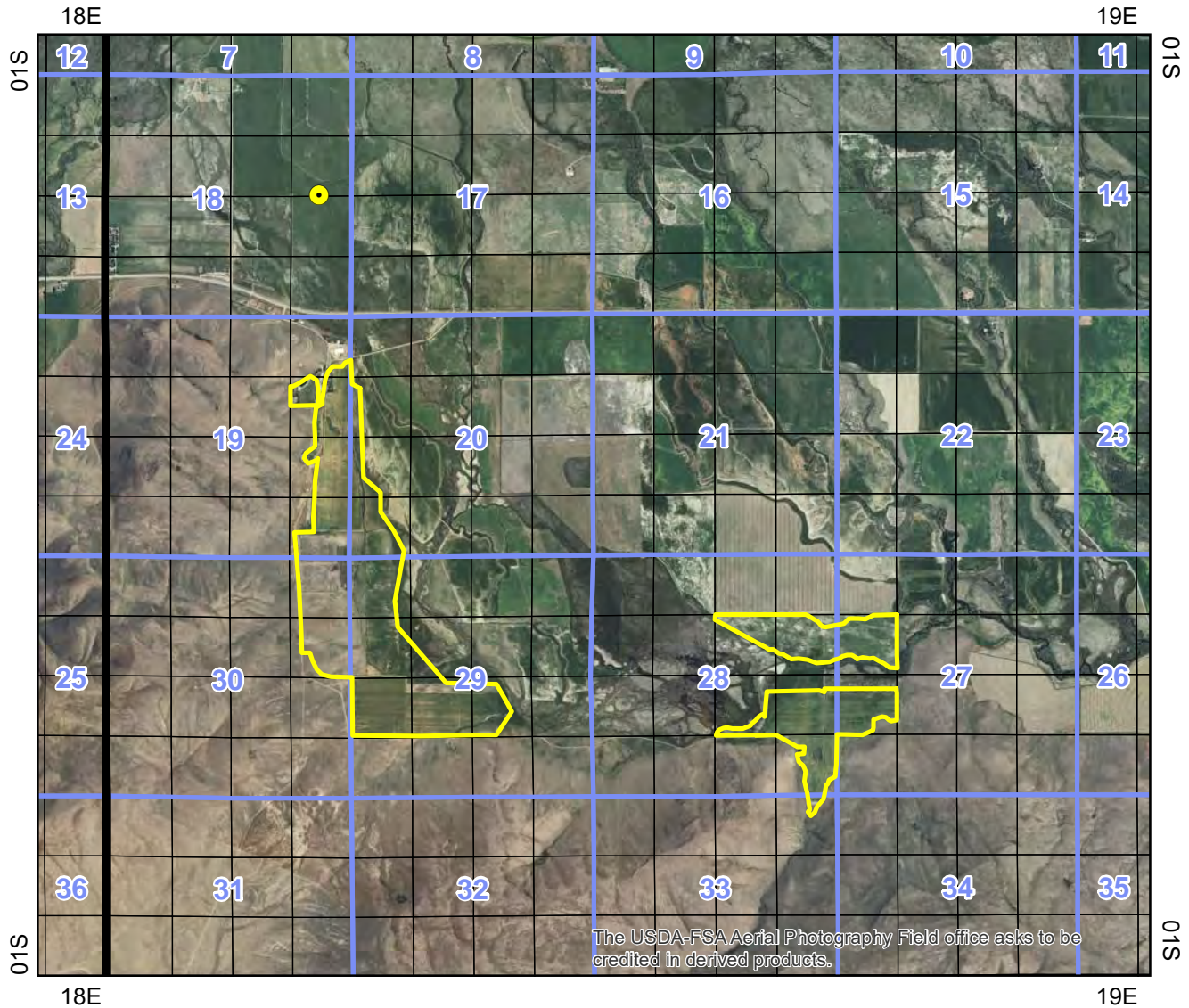
Mitigation Plan: False

State of Idaho  
Department of Water Resources

# Water Right 37-2576

## IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.475 0.95 1.9 Miles



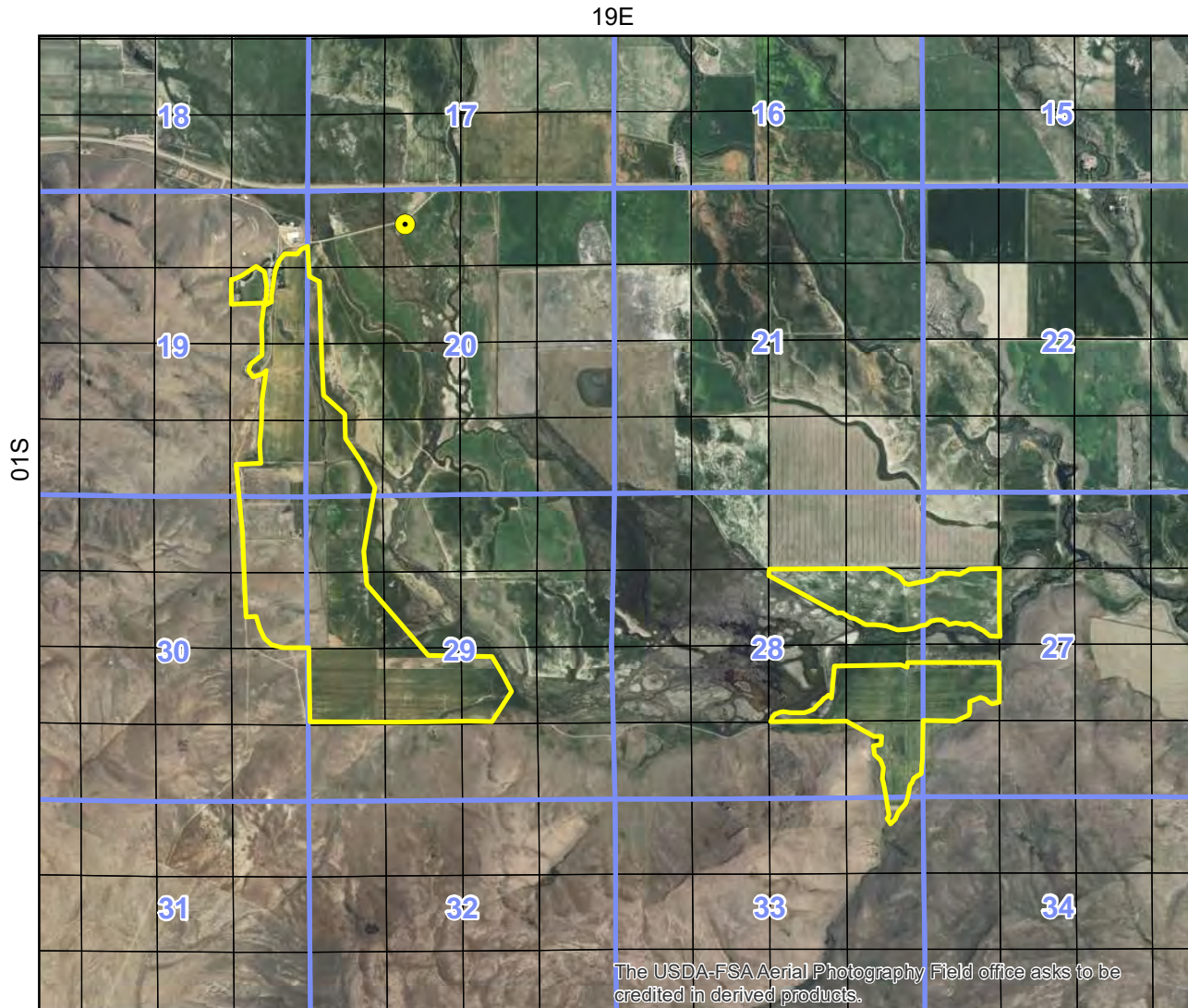


State of Idaho  
Department of Water Resources

# Water Right 37-2681

## IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.375 0.75 1.5 Miles

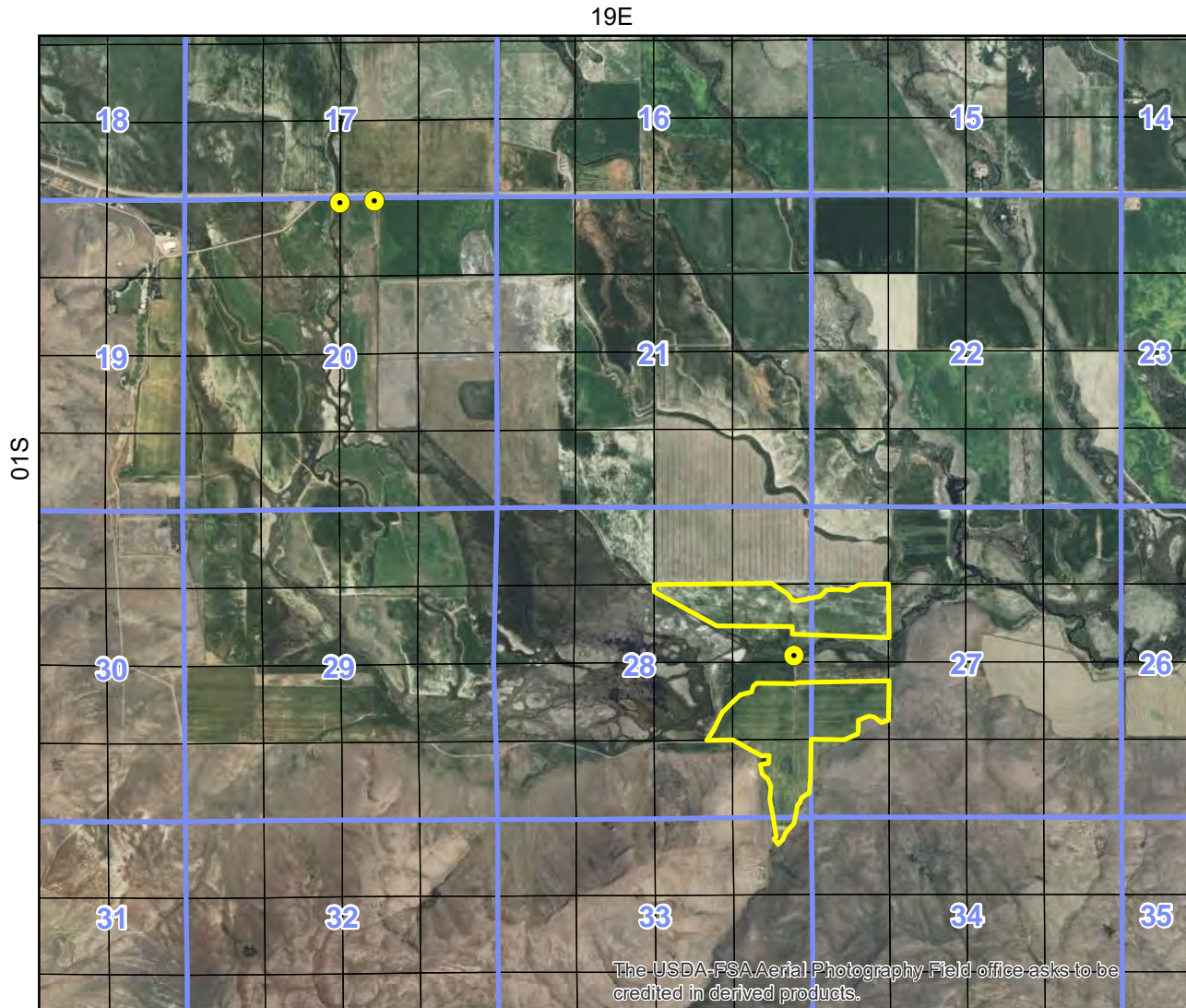


State of Idaho  
Department of Water Resources

# Water Right 37-7644

## IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.375 0.75 1.5 Miles







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WATER RIGHT REPORT

6/18/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-2649A

Owner Type	Name and Address
Current Owner	JOHN F STEVENSON 36 HILLSIDE RANCH RD BELLEVUE, ID 83313-5147 2087884826

Priority Date: 01/27/1961  
Basis: Decreed  
Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/01	11/01	4.24 CFS	742 AFA
Total Diversion			4.24 CFS	742 AFA

Location of Point(s) of Diversion:

GROUND WATER|NWNWNE|Sec. 20|Township 01S|Range 19E|BLAINE County  
IRRIGATION Use:  
Acre Limit: 212  
Place(s) of use:  
Place of Use Legal Description: IRRIGATION BLAINE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01S	19E	20		NWNE	20		SWNE	40		SENE	40			
				NESE	40		NWSE	40		SESE	32			
		21		SWNW	40									
				NWSW	40		SWSW	40		SESW	40			
		28		NENW	25									

Total Acres: 397  
Conditions of Approval:

1.

065

The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.
2.

104

If the surface water rights appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
3.

067

The right holder shall record the quantity of water diverted and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
4.

206

This right is limited to the irrigation of a specific 372.0 acres within the 397.0 acre place of use authorized by this right in a single irrigation season. The specific 397.0 acres to be irrigated by the right holder are shown in the electronic shape file associated with this right in the geographic information system component of the water rights database maintained by the department. Before changing the 372.0 acres to be irrigated within the 397.0 acre place of use, the right holder shall submit a new land list and representative electronic shape file or map to the Department prior to the irrigation season in which the change will occur.
5.

F06

The following rights are diverted through point of diversion described above: 37-2649A; 37-2649B; 37-7014 and 37-7644.

6.	R63	This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
7.	X59	Point of diversion is locally known as The Lucke Well.
8.	X35	Rights 37-7644, 37-2649A, 37-2649B and 37-7014 when combined shall not exceed a total diversion rate of 7.44 cfs.
9.	T07	The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
10.	T08	Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
11.	T19	Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

Dates:

Licensed Date:

Decreed Date: 05/31/2011

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False



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WATER RIGHT REPORT

6/18/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-2649B

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	JOHN F STEVENSON 36 HILLSIDE RANCH RD BELLEVUE, ID 83313-5147 2087884826

Priority Date: 01/27/1961  
Basis: Decreed  
Status: Active  
Water Supply Bank Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	11/01	3.2 CFS	560 AFA
Total Diversion			3.2 CFS	560 AFA

Location of Point(s) of Diversion:

GROUND WATER Injection	NWNWNE	Sec. 20	Township 01S	Range 19E	BLAINE County
GROUND WATER	NWNWNE	Sec. 20	Township 01S	Range 19E	BLAINE County
GROUND WATER Rediversion	SESWW	Sec. 21	Township 01S	Range 19E	BLAINE County

IRRIGATION Use:  
Acre Limit: 160  
Place(s) of use:  
Place of Use Legal Description: IRRIGATION BLAINE County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
01S	19E	20		NWNE	20		SWNE	40		SENE	40			
				NESE	40		NWSE	40		SESE	32			
		21		SWNW	40									
				NWSW	40		SWSW	40		SESW	40			
		28		NENW	25									

Total Acres: 397  
Conditions of Approval:

1.

065

The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.
2.

104

If the surface water rights appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
3.

067

The right holder shall record the quantity of water diverted and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.

4.	206	This right is limited to the irrigation of a specific 372.0 within the 397.0 place of use authorized by this right in a single irrigation season. The specific 372.0 acres to be irrigated by the right holder are shown in the electronic shape file associated with this right in the geographic information system component of the water rights database maintained by the department. Before changing the 372.0 acres to be irrigated within the 397.0 acre place of use, the right holder shall submit a new land list and representative electronic shape file or map to the Department prior to the irrigation season in which the change will occur.
5.	F06	The following rights are diverted through point of diversion described above: 37-2649A; 37-2649B; 37-7014 and 37-7644.
6.	R05	Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 37-M.
7.	R43	The right holder shall maintain measuring devices at the points of injection into and redirection from Patton Creek and shall maintain lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
8.	R63	This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
9.	X35	Rights 37-7644, 37-2649A, 37-2649B and 37-7014 when combined shall not exceed a total diversion rate of 7.44 cfs.
10.	X56	The portion of Right 37-2649B used for conveyance losses is 2%.
11.	X59	Point of diversion is locally known as The Lucke Well.
12.		Water diverted under this right is injected into Patton Creek then redirected from Patton Creek to the place of use. The amount of water redirected from Patton Creek under this right shall not exceed 98% of the amount of water injected into Patton Creek.
13.	T07	The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
14.	T08	Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
15.	T19	Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

Dates:

Licensed Date:

Decreed Date: 05/31/2011

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Water Supply Bank:

Lessor Name(s): JOHN F STEVENSON

Lease Status: Active

Lease Amount: 112

Rental Availability: None

Date Received: 4/29/2013

Lease Begin Date: 4/29/2013

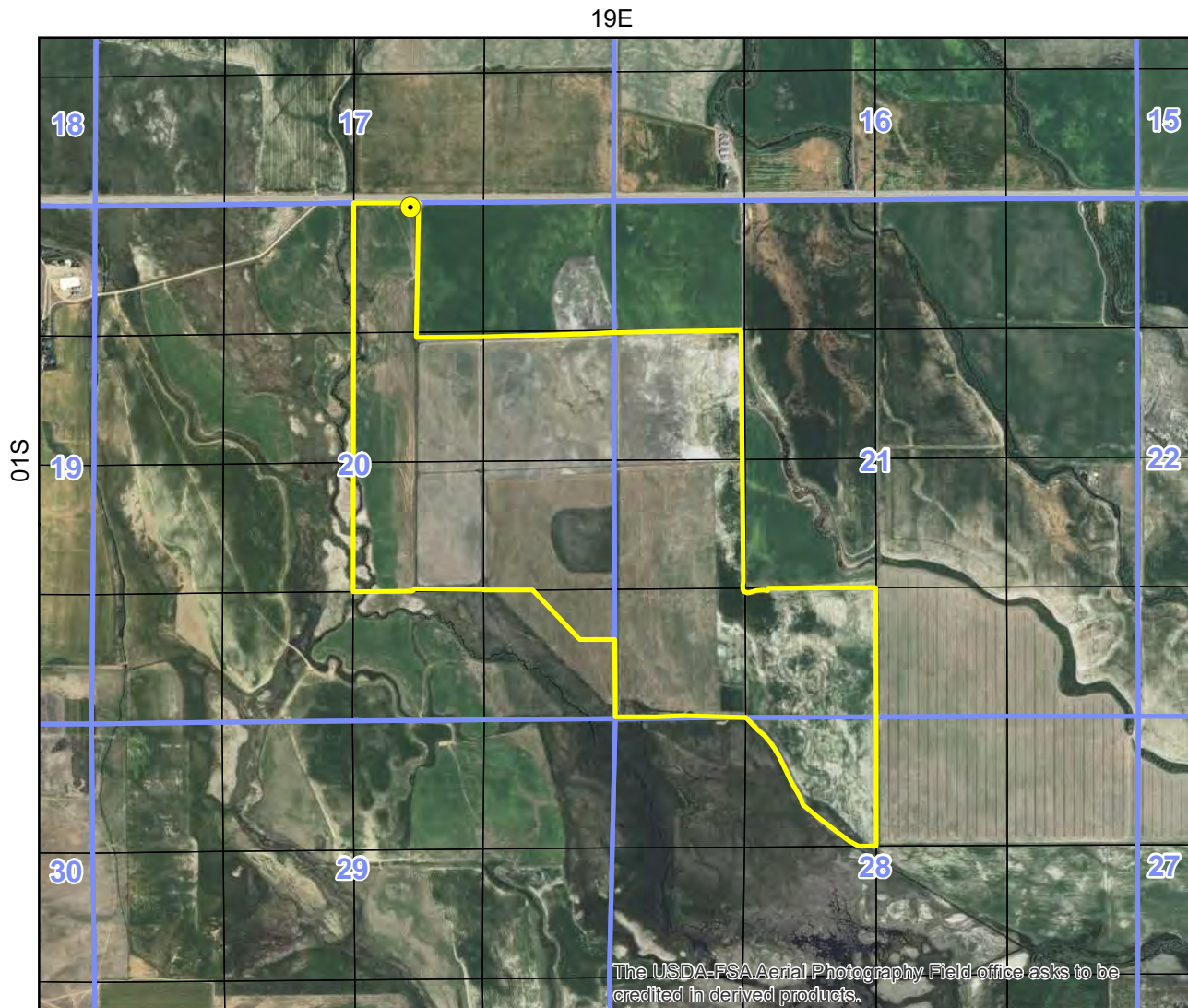
Expiration Date: 12/31/2017

State of Idaho  
Department of Water Resources

**Water Right**  
**37-2649A - B**

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.225 0.45 0.9 Miles







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WATER RIGHT REPORT

6/21/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-2493

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	LAKESIDE INDUSTRIES INC PO BOX 479 BELLEVUE, ID 83313-0479 2087884389
Original Owner	WOOD RIVER RANCH CO INC PO BOX 479 BELLEVUE, ID 83313 2087202141

Priority Date: 12/21/1948  
Basis: Decreed  
Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/15	10/31	2 CFS	350 AFA
Total Diversion			2 CFS	350 AFA

Location of Point(s) of Diversion:

GROUND WATER	NESESE	Sec. 02	Township 01S	Range 18E	BLAINE County
GROUND WATER	NESESE	Sec. 02	Township 01S	Range 18E	BLAINE County

Place(s) of use:

Place of Use Legal Description: IRRIGATION BLAINE County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
01S	18E	1		SWSW	24									
		2		SESW	4									
				SWSE	33		SESE	39						

Total Acres: 100

Conditions of Approval:

1. C18

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
2.

This right is supplemental to surface water.
3. E55

Right Nos. 37-2493, 37-11821, 37-11822 and 37-11823 are limited to the irrigation of a combined total of 100 acres in a single irrigation season.
4. C05

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.
5. C03

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

Dates:  
Licensed Date:  
Decreed Date: 09/24/2010  
Permit Proof Due Date:

Permit Proof Made Date:  
Permit Approved Date:  
Permit Moratorium Expiration Date:  
Enlargement Use Priority Date:  
Enlargement Statute Priority Date:  
Water Supply Bank Enrollment Date Accepted:  
Water Supply Bank Enrollment Date Removed:  
Application Received Date:  
Protest Deadline Date:  
Number of Protests: 0

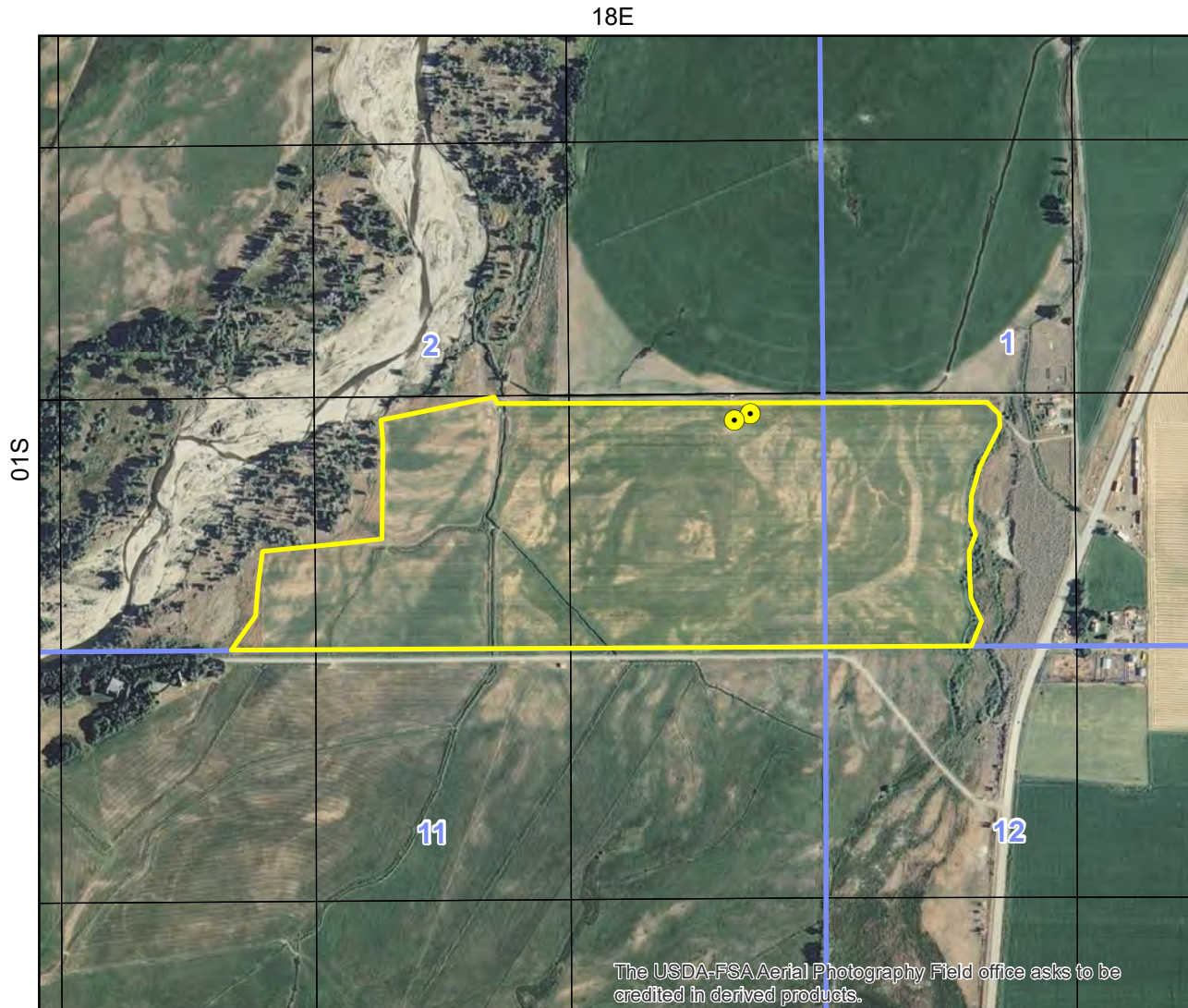
Other Information:  
State or Federal: S  
Owner Name Connector:  
Water District Number: 37  
Generic Max Rate per Acre:  
Generic Max Volume per Acre:  
Combined Acres Limit: 100  
Combined Volume Limit:  
Combined Rate Limit:  
Civil Case Number:  
Old Case Number:  
Decree Plaintiff:  
Decree Defendant:  
Swan Falls Trust or Nontrust:  
Swan Falls Dismissed:  
DLE Act Number:  
Cary Act Number:  
Mitigation Plan: False

State of Idaho  
Department of Water Resources

# Water Right 37-2493

## IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.1 0.2 0.4 Miles





IDWR offices are open to the public and following the CDC guidelines for wearing masks and observing social distancing. For in-person visits, we encourage you to call ahead for an appointment.

[Home](#) / [Water Rights](#) / [Research](#) / [Search Water Rights](#)

WATER RIGHT REPORT

6/17/2021  
IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report  
WATER RIGHT NO. 37-8559

Owner Type	Name and Address
Current Owner	LAKESIDE INDUSTRIES INC PO BOX 479 BELLEVUE, ID 83313-0479 2087884389
Original Owner	WOOD RIVER RANCH CO INC PO BOX 479 BELLEVUE, ID 83313 2087202141

Priority Date: 08/17/1989  
Basis: License  
Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/15	10/31	1.15 CFS	202 AFA
Total Diversion			1.15 CFS	202 AFA

Location of Point(s) of Diversion:

GROUND WATER|NESWSE|Sec. 12|Township 01N|Range 18E|BLAINE County  
Place(s) of use:  
Place of Use Legal Description: IRRIGATION BLAINE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01N	18E	12		SWSE	24									
		13		NWNE	33.6									

Total Acres: 57.6

Conditions of Approval:

- |    |     |   |
|----|-----|---|
| 1. | R05 | Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 37.   |
| 2. | R43 | The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).  |
| 3. | R63 | This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.  |
| 4. | 933 | This right is for the use of trust water, and it is subject to review 20 years after its initial approval (date of permit approval) to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.                     |
| 5. | 934 | When the minimum stream flow water rights in the Snake River at Murphy Gage are not being satisfied, the right holder shall cease diverting water for the consumptive uses authorized by this right.  |
| 6. | T07 | The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.  |
| 7. | T08 | Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.   |
| 8. | T19 | Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014. |



Dates:

Licensed Date: 12/19/2011

Decreed Date:

Permit Proof Due Date: 1/1/1991

Permit Proof Made Date: 12/18/1990

Permit Approved Date: 1/2/1990

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date: 08/17/1989

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

Water District Number: 37

Generic Max Rate per Acre: 0.02

Generic Max Volume per Acre: 3.5

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

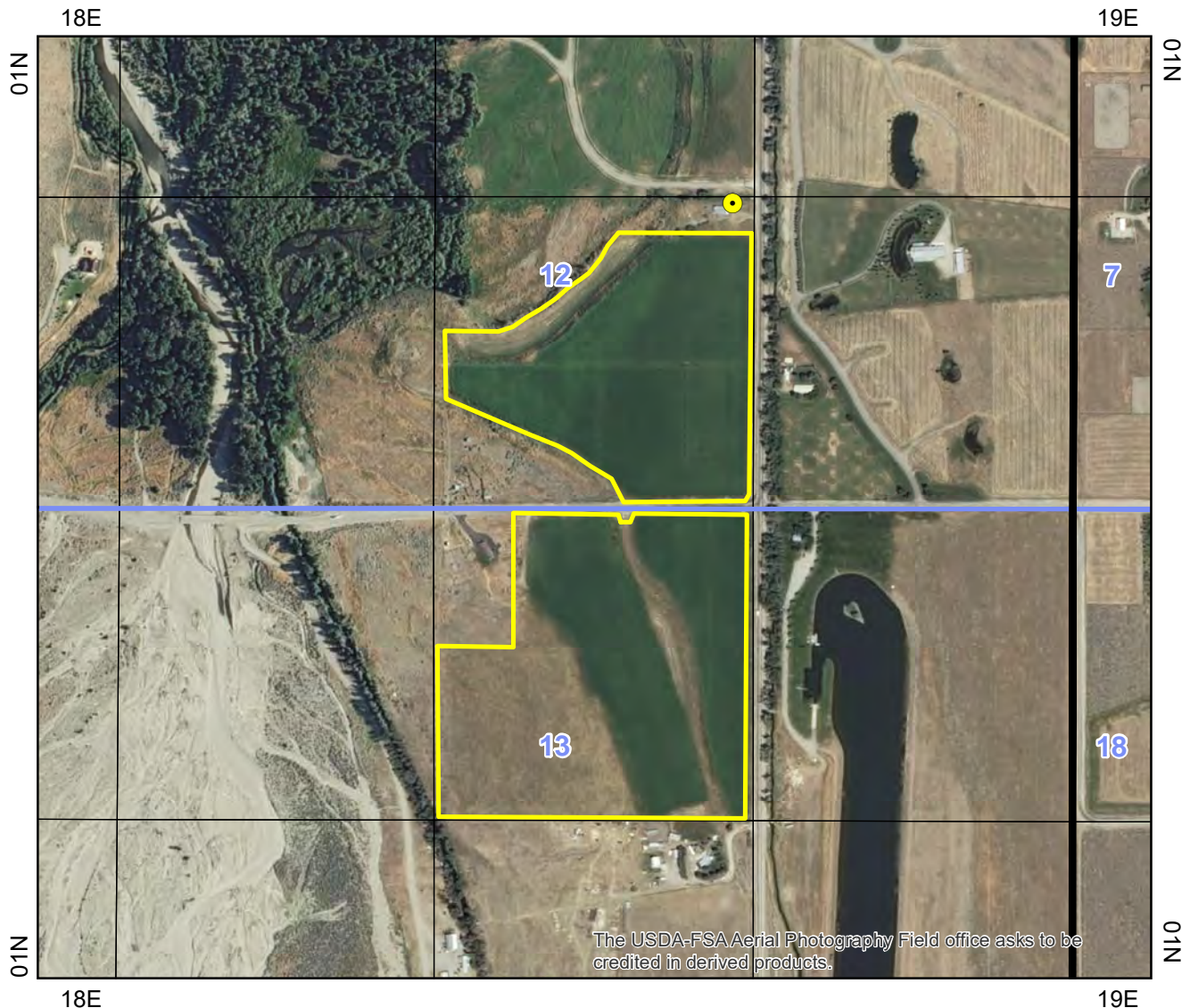
Mitigation Plan: False

State of Idaho  
Department of Water Resources

# Water Right 37-8559

## IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



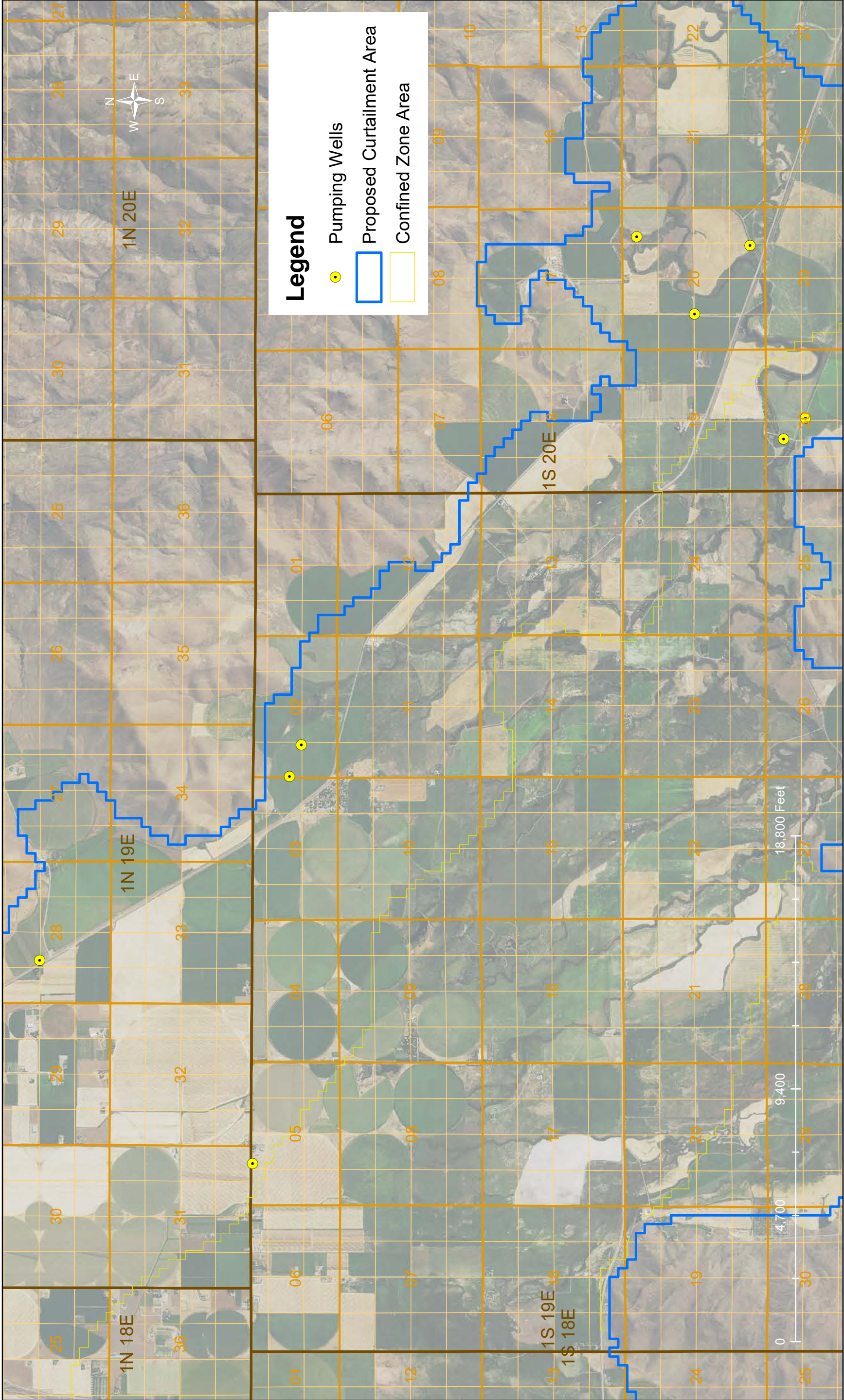
- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.075 0.15 0.3 Miles





# Wells Proposed to be Pumped for Temporary Transfers





RECEIVED  
DEC 6 1960  
Department of ReclamationWELL LOG AND REPORT OF THE  
STATE RECLAMATION ENGINEER OF IDAHOPermit No. 25856 Well No. \_\_\_\_\_ County BlaineOwner K. F. HeltzerAddress Sun ValleyDriller Eugene W. WalkerAddress Twin FallsWell location SE 1/4 NW 1/4 Sec. 28, T. 1 N. R. 19 E.Size of drilled hole 20 inTotal depth of well 140Give depth to standing water from the ground 57 1/2 Water temp. 46 °Fahr.On "Pumping Test" delivery was 3200 g.p.m. or \_\_\_\_\_ c.f.s. Drawdown was 4 1/4 feet.Size of pump and motor used to make test 12 in Bowl 300 HP DieselLength of time of test 3 hours \_\_\_\_\_ minutes.

If flowing well, give flow \_\_\_\_\_ c.f.s. or \_\_\_\_\_ g.p.m. and of shut off pressure \_\_\_\_\_

If flowing well, described control works \_\_\_\_\_  
(TYPE AND SIZE OF VALVE, ETC.)Water will be used for Irrigation Weight of casing per lineal foot 65 - lbThickness of casing 5/16 Casing material Steel  
(STEEL, CONCRETE, WOOD, ETC.)Diameter, length and location of casing 20" 140 ft  
(CASING 12" IN DIAMETER OR LESS, GIVE INSIDE DIAMETER;  
CASING OVER 12" IN DIAMETER, GIVE OUTSIDE DIAMETER)

## CASING RECORD

Diam. Casing	From Feet	To Feet	Length	Remarks—seals, grouting, etc.
20	0	140	140	

Mills Knife 1/2 x 3  
Number and size of perforations 30 Per foot located 57 feet to 68 feet from ground

	74	81
	81	100
	175	136

Date of commencement of well 25 May 60 Date of completion of well 23 May 60

SE NW S. 28 IN 19 E



## WELL LOG

[illegible]

### WELL DRILLER'S STATEMENT

This well was drilled under my supervision and the above information is true and correct to the best of my knowledge and belief.

**Signed.**

**By\_**

**Dated.**

**License No.**

WELL LOG AND REPORT TO THE  
STATE RECLAMATION ENGINEER OF IDAHO

RECEIVED  
SEP 18 1957

Department of Reclamation

Location Corrected by IDWR To:

T01S R19E Sec. 5 SENE

By: mciscell 2013-10-11

Rec. \_\_\_\_\_, 19\_\_\_\_

Well No. \_\_\_\_\_

Permit No. \_\_\_\_\_

(DO NOT FILL IN)

Owner B. R. Stoecking Address Ganett

Driller Eugene A. Walker Address Twin Falls Lic. No. 15

Location of Well: LOT 1 NE 1/4 SE 1/4 Sec. 5, T. 1 N/S, R. 19 E/W BLAINE County,

and 50 feet N/S, and 800 feet W from NE Corner of NE 1/4 SE 1/4 Sec. 5

Size of Drilled Hole 20 Total depth of Well 80

Give depth of standing water from surface 14 1/2 Water Temp. 52 °Farenheit

On pumping test delivery was See notes g.p.m. or \_\_\_\_\_ c.f.s. Drawdown was 18 feet.

Size of pump and motor used to make the test 50 HP

Length of time pumped during check was Permanent hr., \_\_\_\_\_ minutes.

If flowing well, give flow in c.f.s. \_\_\_\_\_ or g.p.m. \_\_\_\_\_ and shut in pressure \_\_\_\_\_

If flowing well, describe control works \_\_\_\_\_  
(TYPE AND SIZE OF VALVE, ETC.)

Water will be used for Irrigation Weight of casing per linear foot 65 lb

Thickness of casing 5/16 Casing material Steel  
E.G., PIPE, CONCRETE, WOOD.

Diameter, length and location of casing \_\_\_\_\_  
(CASING 12" IN DIAMETER AND UNDER GIVE INSIDE DIAMETER;  
CASING OVER 12" IN DIAMETER GIVE OUTSIDE DIAMETER.)

Number and size of perforations 17/10 located 19 feet to 77 feet  
from surface of ground.

Other perforations \_\_\_\_\_

Date of commencement of well 29 July 1957 Date of completion of well 6 Aug 1957

Type of well rig Churn

CASING RECORD

DIAM. CASING	FROM FEET	TO FEET	LENGTH	"REMARKS" -- SEALS, GROUTING, ETC.

GENERAL INFORMATION—Pumping Test, Quality of Water, Etc.

Permanent Pump delivers about 4200 G.P.M.  
with 50 H.P.

LOT 1 NESE 5.5 IS 19E  
SE 11E

# WELL LOG

From Feet	To Feet	Type of Material	Drilling Time		Water-bearing Formation Ans. Yes or No	Casing Perforated Ans. Yes or No
			Hrs.	Min.		
0	32	Pit				
32	50	Clean gravel & sand	10	10	yes	yes
50	51	Clay & gravel	1		No	yes
51	70	Clean gravel & sand	10		yes	yes
70	80	Clean coarse gravel & sand	5-	40	yes	yes
If more space is required use Sheet No. 2						

## WELL DRILLER'S STATEMENT

This well was drilled under my jurisdiction and the above information is true and correct to the best of my knowledge and belief.

Signed Eugene W Walker

By \_\_\_\_\_

Dated 15 Sept, 1957

License No. 15

**FORWARD WHITE COPY TO WATER RESOURCES**



## WELL DRILLER'S REPORT

**State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.**

[illegible]

USE ADDITIONAL SHEETS IF NECESSARY — FORWARD THE WHITE COPY TO THE DEPARTMENT

## WELL DRILLER'S REPORT

**State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.**

[illegible]

WELL LOG AND REPORT OF THE  
STATE RECLAMATION ENGINEER OF IDAHORECEIVED  
APR 4 1961

Department of Reclamation

034560

Permit No. \_\_\_\_\_ Well No. \_\_\_\_\_ County BlaineOwner Picabo Livestock CoAddress Picabo IdahoDriller Eugene W WalkerAddress Twin FallsWell location SW 1/4 SE 1/4 Sec 20, T. 1 N, R. 10 ESize of drilled hole 16 in

Locate well in section

NW 1/4	NE 1/4
SW 1/4	SE 1/4

Total depth of well 173Give depth to standing water from the ground 14 1/2 Water temp 49 °Fahr.On "Pumping Test" delivery was 2700 g.p.m. or \_\_\_\_\_ c.f.s. Drawdown was 55 feet.Size of pump and motor used to make test 12 in Bowl - 200 HPLength of time of test 7 hours \_\_\_\_\_ minutes.

If flowing well, give flow \_\_\_\_\_ c.f.s. or \_\_\_\_\_ g.p.m. and of shut off pressure \_\_\_\_\_

If flowing well, described control works \_\_\_\_\_ (TYPE AND SIZE OF VALVE, ETC.)

Water will be used for Supplemental Irrigation Weight of casing per lineal foot 42Thickness of casing 1/4 Casing material Steel (STEEL, CONCRETE, WOOD, ETC.)Diameter, length and location of casing 9 1/2 in 16 in Surface down(CASING 12" IN DIAMETER OR LESS, GIVE INSIDE DIAMETER;  
CASING OVER 12" IN DIAMETER, GIVE OUTSIDE DIAMETER)

## CASING RECORD

Diam. Casing	From Feet	To Feet	Length	Remarks—seals, grouting, etc.
16 <del>in</del>	0	9 1/2	9 1/2	Driven Into Rock

Number and size of perforations None located \_\_\_\_\_ feet to \_\_\_\_\_ feet from groundDate of commencement of well 2 Mar 1961 Date of completion of well 24 Mar 1961

SWSE S.20 15 20 E

## WELL LOG

From Feet	To Feet	Type of Material	Water-bearing Formation Ans. Yes or No	Casing Perforated Ans. Yes or No
0	7	Surface Water at 6 ft		
7	14	old looking Clay or soil	no	no
14	28	Gravel	yes	no
28	32	River sand	yes	no
32	78	Clay & sand - Blue	yes	no
78	93	Sticky Clay	no	no
93	97	Red Lava	no	no
97	117	Gray Lava	no	
117	136	Red Cinders & Clay	no	
130	<del>138</del> 136	Hard Gray Basalt		
136	148	Cinders & Clay	?	
148	157	Red Lava - <del>hard</del> solid but has seams	?	
157	170	Large Broken Red Lava & Clay	?	
170	173	Cutting not recovered	yes	
Water Pumped Very Red (dark) appeared to be Clay Source unknown				

If more space is required use Sheet No. 2

## WELL DRILLER'S STATEMENT

This well was drilled under my supervision and the above information is true and correct to the best of my knowledge and belief.

Signed

Eugene T. Walker

By

Dated

2 April, 1961

License No.

15



WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

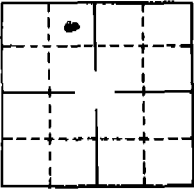
1. WELL OWNER  
Name Double R Ranch c/o Darryl Smith  
Address Picabo, Idaho 83348  
Owner's Permit No. 37-7551

2. NATURE OF WORK  
☐ New well ☒ Deepened ☐ Replacement  
☐ Abandoned (describe abandonment procedures such as materials, plug depths, etc. in lithologic log)

3. PROPOSED USE  
☐ Domestic ☒ Irrigation ☐ Test ☐ Municipal  
☐ Industrial ☐ Stock ☐ Waste Disposal or Injection  
☐ Other \_\_\_\_\_ (specify type)

4. METHOD DRILLED  
☒ Rotary ☐ Air ☐ Hydraulic ☐ Reverse rotary  
☐ Cable ☐ Dug ☐ Other \_\_\_\_\_

5. WELL CONSTRUCTION  
Casing schedule: ☐ Steel ☐ Concrete ☐ Other \_\_\_\_\_  
Thickness \_\_\_\_\_ inches Diameter \_\_\_\_\_ inches + \_\_\_\_\_ feet To \_\_\_\_\_ feet  
\_\_\_\_\_ inches \_\_\_\_\_ inches \_\_\_\_\_ feet \_\_\_\_\_ feet  
\_\_\_\_\_ inches \_\_\_\_\_ inches \_\_\_\_\_ feet \_\_\_\_\_ feet  
\_\_\_\_\_ inches \_\_\_\_\_ inches \_\_\_\_\_ feet \_\_\_\_\_ feet  
Was casing drive shoe used? ☐ Yes ☒ No  
Was a packer or seal used? ☐ Yes ☒ No  
Perforated? ☐ Yes ☒ No  
How perforated? ☐ Factory ☐ Knife ☐ Torch  
Size of perforation \_\_\_\_\_ inches by \_\_\_\_\_ inches  
Number \_\_\_\_\_ From \_\_\_\_\_ To \_\_\_\_\_  
\_\_\_\_\_ perforations \_\_\_\_\_ feet \_\_\_\_\_ feet  
\_\_\_\_\_ perforations \_\_\_\_\_ feet \_\_\_\_\_ feet  
\_\_\_\_\_ perforations \_\_\_\_\_ feet \_\_\_\_\_ feet  
Well screen installed? ☐ Yes ☒ No  
Manufacturer's name \_\_\_\_\_  
Type \_\_\_\_\_ Model No. \_\_\_\_\_  
Diameter \_\_\_\_\_ Slot size \_\_\_\_\_ Set from \_\_\_\_\_ feet to \_\_\_\_\_ feet  
Diameter \_\_\_\_\_ Slot size \_\_\_\_\_ Set from \_\_\_\_\_ feet to \_\_\_\_\_ feet  
Gravel packed? ☐ Yes ☒ No ☐ Size of gravel \_\_\_\_\_  
Placed from \_\_\_\_\_ feet to \_\_\_\_\_ feet  
Surface seal depth \_\_\_\_\_ Material used in seal: ☐ Cement grout  
☐ Bentonite ☐ Puddling clay ☐ \_\_\_\_\_  
Sealing procedure used: ☐ Slurry pit ☐ Temp. surface casing  
☐ Overbore to seal depth  
Method of joining casing: ☐ Threaded ☐ Welded ☐ Solvent Weld  
☐ Cemented between strata  
Describe access port \_\_\_\_\_

6. LOCATION OF WELL  
Sketch map location must agree with written location.  
  
Subdivision Name \_\_\_\_\_  
Lot No. \_\_\_\_\_ Block No. \_\_\_\_\_  
County Blaine  
NE 1/4 NW 1/4 Sec. 30, T. 1 N/S, R. 20 E/W.

7. WATER LEVEL  
Static water level 17 feet below land surface.  
Flowing? ☐ Yes ☒ No G.P.M. flow \_\_\_\_\_  
Artesian closed-in pressure \_\_\_\_\_ p.s.i.  
Controlled by: ☐ Valve ☐ Cap ☐ Plug  
Temperature \_\_\_\_\_ °F. Quality Good  
*Describe artesian or temperature zones below.*

8. WELL TEST DATA  
☐ Pump ☐ Bailer ☐ Air ☐ Other \_\_\_\_\_  

Discharge G.P.M.	Pumping Level	Hours Pumped

9. LITHOLOGIC LOG  

86751

Bore Diam.	Depth		Material	Water	
	From	To		Yes	No
16	74	86	Hard gray basalt		X
16	86	97	Cinders	X	
16	97	100	Firm brown basalt		X
16	100	106	Broken brown basalt	X	
16	106	123	Firm gray basalt		X
16	123	132	Cinders	X	
16	132	135	Firm brown basalt		X
16	135	147	Cinders	X	

10. Work started 8/1/86 finished 8/6/86

11. DRILLERS CERTIFICATION  
I/We certify that all minimum well construction standards were complied with at the time the rig was removed.  
Firm Name Andrew Well Drilling Firm No. 5  
Address 1268 E. 17th Street Date 8/14/86  
Idaho Falls, Idaho 83401  
Signed by (Firm Official) Harvard R. Rudner  
and Wale Hulse  
(Operator)

## WELL DRILLER'S REPORT

**State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.**

[illegible]

*Duplicate Report*

WELL LOG AND REPORT TO THE  
STATE RECLAMATION ENGINEER OF IDAHO

SUBMIT WITHIN 30 DAYS AFTER COMPLETION OF WELL: SEE IDAHO STATUTES 42-238

034405

Permit No. 8159 628319 Well No. \_\_\_\_\_ County BLAINE

Owner PICABO LIVESTOCK CO

Address Picabo Idaho

Driller EUGENE W. WALKER

Address 624 Pierce St,  
Twin Falls, Idaho

Well location SW 1/4 NE 1/4 Sec. 30, T. 1 N. R. 10 E/W

Size of drilled hole 16

Total depth of well 332

Give depth to standing water from the ground 1 Water temp. 49 °Fahr.

Test delivery was 2500 g.p.m. or \_\_\_\_\_ c.f.s. Drawdown was 77 feet. Pump? ☒ Bail? \_\_\_\_\_

Size of pump and motor used to make test 10 in Column 12 Bowl 300 HP D.

Length of time of test 4 hours \_\_\_\_\_ minutes.

If flowing well, give flow \_\_\_\_\_ c.f.s. or \_\_\_\_\_ g.p.m. and of shut off pressure \_\_\_\_\_

If flowing well, described control works \_\_\_\_\_ (TYPE AND SIZE OF VALVE, ETC.)

Water will be used for Irrigation Weight of casing per lineal foot \_\_\_\_\_

Thickness of casing 312 Casing material Steel (STEEL, CONCRETE, WOOD, ETC.)

Diameter, length and location of casing 16 in I.D. 91 1/2 ft Surface  
(CASING 12" IN DIAMETER OR LESS, GIVE INSIDE DIAMETER;  
CASING OVER 12" IN DIAMETER, GIVE OUTSIDE DIAMETER)

CASING RECORD

Diam. Casing	From Feet	To Feet	Length	Remarks—seals, grouting, etc.
16	0	91 1/2	91 1/2	Drum into Rock water Tight

Number and size of perforations None located \_\_\_\_\_ feet to \_\_\_\_\_ feet from ground

Date of commencement of well June 60 Date of completion of well Mar 61

SWNE S.30 IN 20E

USGS

## WELL LOG

From Feet	To Feet	Type of Material	Water-bearing Formation Ans. Yes or No	Casing Perforated Ans. Yes or No
0	10	Surface (Water at 5 ft)	yes	no
10	23	Clay & gravel	no	no
23	27	Clean gravel — Water	yes	no
27	46	Clay		
46	47	Gravel & Water	yes	no
47	53	Tan Clay	no	no
57	78	Blue Clay	no	no
78		River Sand (Artesian Water)	yes	no
78	84	Sticky <sup>Brown</sup> <del>Greenish</del> yellow Clay		
84	89			
89	91	Lava Cinders	yes	
91	125	Coarse Lava Cinders — Talus	yes	
125	164	Soft dark gray LAVA		
164	178	Hard gray LAVA, water raised in casing	yes	
178	190	Gray LAVA	no	
190	192	Crumbly — Caving	no	
192	205	Hard LOOSE Caving Basalt	no	
If more space is required use Sheet No. 2				

## WELL DRILLER'S STATEMENT

This well was drilled under my supervision and the above information is complete, true and correct to the best of my knowledge and belief.

Signed

Eugene Walker

By

Dated

2 July 1967

License No.

15-

Well Driller's Helper



Well Owner Lucas Truck Co.

034406

Well Driller

**EUGENE W. WALKER**

**624 Pierce St.**

Well Location

**Twin Falls, Idaho**

# WELL LOG

[illegible]

U S G S



RECEIVED

JUL 28 2009

DEPARTMENT OF  
WATER RESOURCES

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

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,

UNITED STATES OF AMERICA,  
BUREAU OF RECLAMATION,

Petitioners,

vs.

IDAHO DAIRYMEN'S ASSOCIATION,  
INC.

Cross-Petitioner,

vs.

GARY SPACKMAN, in his capacity as  
Interim Director of the Idaho Department  
of Water Resources,<sup>1</sup> and THE  
DEPARTMENT OF WATER  
RESOURCES,

Filed pursuant to  
I.R.C.P. 5(e)(1)  
on July 24, 2009  
at 3:05 P.M.  
John Melanson, Dist. Judge

Case No. 2008-0000551

ORDER ON PETITION FOR  
JUDICIAL REVIEW

<sup>1</sup> Director David R. Tuthill retired as Director of Idaho Department of Water Resources effective June 30, 2009. Gary Spackman was appointed as Interim Director. I.R.C.P. 25 (d) and (e).

### Respondents.

**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**

**Ruling:**

1) Director did not exceed authority by waiting until following season to adjust material injury to carry-over storage but exceeded his authority by not making process contingent on guarantee of replacement water in event of shortfall; 2) Director exceeded authority by categorically denying reasonable carry-over for multiple-years; 3) Director did not exceed authority or abuse discretion by combining natural flow and storage rights in making a material injury analysis or by using a "baseline" different from the decreed or licensed quantity, subject to certain conditions; 4) Director did not err or abuse discretion by using 10% trim-line in applying ground water model; 5) Director exceeded authority and abused discretion by not following procedural steps for mitigation plans as set forth in the Rules for Conjunctive Management; 6) Director exceeded his authority by determining that full headgate delivery for Twin Falls Canal Company as issue is currently pending in the SRBA; 7) Director exceeded authority by issuing separate "Final Orders"; 8) Based on foregoing actions, Director's actions did not constitute timely administration of junior rights to protect senior rights.

**Appearances:**

C. Thomas Arkoosh, of Capitol Law Group, PLLC, Gooding, Idaho, attorney for American Falls Reservoir District #2.

W. Kent Fletcher, of Fletcher Law Office, Burley, Idaho, attorney for Minidoka Irrigation District.

John A. Rosholt, John K. Simpson, and Travis L. Thompson, of Barker Rosholt & Simpson, LLP, Twin Falls, Idaho, attorneys for A&B Irrigation District, Burley Irrigation

District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company.

Phillip J. Rassier, Chris M. Bromley, Deputy Attorneys General of the State of Idaho, Idaho Department of Water Resources, Boise, Idaho, attorneys for the Idaho Department of Water Resources and Gary Spackman.

John C. Cruden, Acting Assistant Attorney General, and David Gehlert, of the United States Department of Justice, Denver, Colorado, attorneys for the United States Bureau of Reclamation.

Randall C. Budge, Candice M. McHugh, and Scott J. Smith, of Racine Olson Nye Budge & Bailey, Chartered, Pocatello, Idaho, attorneys for Idaho Ground Water Appropriators.

A. Dean Tranmer, of the City of Pocatello Attorney's Office, Pocatello, Idaho, attorney for the City of Pocatello.

Sarah A. Klahn of White and Jankowski, LLP, Denver, Colorado, attorney for the City of Pocatello.

Michael C. Creamer, Jeffrey C. Fereday, of Givens Pursley, LLP, Boise, Idaho, attorneys for the Idaho Dairymen's Association.

## **I.**

### **STATEMENT OF THE CASE**

#### **A. Nature of the case**

This case is an appeal from an administrative decision of the Director of the Idaho Department of Water Resources ("Director," "IDWR" or "Department") issued in response to a delivery call filed by Petitioner Surface Water Coalition ("SWC") on January 14, 2005. The delivery call was filed as a result of a reduction in reach gains and spring flows discharging from the Eastern Snake Plain Aquifer ("ESPA"). The SWC is made up of seven irrigation districts and canal companies below American Falls Reservoir that divert natural flow water from the Snake River and who hold storage water rights in various Bureau of Reclamation ("BOR") reservoirs. The members of SWC are: A&B Irrigation District ("A&B"), American Falls Reservoir District #2 ("AFRD #2"), Burley Irrigation District ("BID"), Milner Irrigation District ("Milner"), Minidoka

Irrigation District (“MID”), North Side Canal Company (“NSCC”), and Twin Falls Canal Company (“TFCC”). The September 5, 2008 *Final Order Regarding the Surface Water Coalition Delivery Call* (“*Final Order*”), from which judicial review is sought, ordered curtailment of junior ground water rights or alternatively a replacement water plan in lieu of curtailment. Petitioners contend the Department erred in response to the delivery call and seek judicial review pursuant to the Idaho Administrative Procedures Act, Title 57, Chapter 52, Idaho Code.

## **B. Course of Proceedings**

### **1. The Delivery Call**

SWC delivered a letter to the Director of IDWR on January 14, 2005, requesting the Director to commence conjunctive administration of their water rights. Hearing Record (R.) Volume (Vol.) 1 at 1. SWC asserts in the letter that their senior water rights were being materially injured “[b]y reason of the diversion of junior ground water rights located within Water District No. 120 and elsewhere throughout the ESPA,” including the American Falls Ground Water Management Area, and areas of the ESPA not within an organized water district or ground water management area. *Id.* at 4. Also on January 14, 2005, SWC filed a *Petition for Water Rights Administration and Designation of the Eastern Snake River Plain Aquifer as a Ground Water Management Area*. R. Vol. 1 at 53.

On February 14, 2005, Director Dreher issued an order (“*February 14, 2005 Order*”) in response to SWC’s requests. The Director found that because water districts were expected to be created in the ESPA by the irrigation season of 2006, there was no need for the creation of a ground water management area encompassing the entire ESPA. R. Vol. 2 at 214. The Director was unable to determine injury to the senior priority rights held by SWC until the commencement of the 2005 irrigation season and until the BOR and the United States Army Corps of Engineers released inflow forecasts. *Id.* at 226. The Director requested more information from SWC in order to make a determination of injury “as soon after April 1 [the start of the irrigation season] as practicable.” *Id.* at 227, 230.



On May 2, 2005, Director Dreher issued an *Amended Order* (“*May 2, 2005 Amended Order*”). The Director found that junior ground water diversions from the ESPA were materially injuring senior SWC natural flow and storage rights. Vol. 8 at 1384-85, 1402. The amount of material injury to the seniors was determined to be 27,700 acre feet of water. *Id.* at 1402. Applying the amount of water used by SWC water users in 1995, the Director determined the “minimum full supply” needed for full deliveries, and then subtracted the predicted 2005 supply, in order to calculate a total shortage of 133,400 acre feet. *Id.* at 1384. Built into this calculation was the assumption that SWC members use all of their carryover storage from 2004. Further, the Director found that “[m]embers of the Surface Water Coalition are entitled to maintain a reasonable amount of carryover storage to minimize storages in future dry years pursuant to Rule 42.01.g of the Conjunctive Management Rule (IDAPA 37.03.11.042.g).” *Id.* at 1385. The Director determined the amount of reasonable carryover due to SWC by averaging the amounts of carryover storage based on flow and storage accruals from 2002 and 2004. *Id.* Finally, the Director ordered that replacement water be provided over time to SWC and that the amount of replacement water for 2005 not be less than 27,700 acre feet. *Id.* at 1404. The Director determined that if all of the replacement water is not provided to the senior users as required, the amount remaining would be added to the ground water users’ obligations for future years. However, the Director also ordered that the ground water users may be curtailed if at any time mitigation is not provided. *Id.*

Thereafter, the Director issued a series of supplemental orders, which reviewed IDWR action, made additional findings, and modified or revised previous findings. R. Vol. 37 at 7067-7071. For instance, on June 29, 2006, the Director entered his *Third Supplemental Order* (“*June 29, 2006 Supplemental Order*”), determining that the remainder of the replacement water that IGWA was to supply in 2005 was to be supplied at the beginning of the 2006 irrigation season, and not as 2005 carryover storage. R. Vol. 20 at 3756. Subsequent supplemental orders amended or approved replacement water plans for 2006, 2007, and 2008. R. Vol. 37 at 7068-7071, Vol. 38 at 7198.

## 2. IGWA

On February 3, 2004, IGWA filed two petitions to intervene in the request for administration in Water District 120 and the request for administration and curtailment of ground water rights in the American Falls Ground Water Management Area, and designation of the ESPA as a Ground Water Management Area. R. Vol. 2 at 197, 204. IGWA is a non-profit corporation that represents ground water users who pump water from the ESPA and irrigate over 700,000 acres of land from the aquifer. R. Vol. 37 at 7058. IGWA represents water users with ground water rights junior to SWC's rights, which are subject to curtailment under the Director's *Final Order*.

In a February 14, 2005 *Order*, the Director granted IGWA's petition to intervene in the matter of water right administration in Water District 120 and in the American Falls Ground Water Management Area.<sup>2</sup> *Id.* at 228.

IGWA has filed petitions for reconsideration of each of the *Director's Orders* and is a respondent in the petition for judicial review currently before this Court. ("IGWA or Ground Water Users").

## 3. The City of Pocatello

On April 26, 2005, the City of Pocatello filed a petition to intervene in the SWC delivery call. R. Vol. 7 at 1254. The City of Pocatello holds a ground water right that is junior to rights held by SWC and is subject to curtailment under the Director's *Final Order*. R. Vol. 37 at 7060.

On May 16, 2005, the City of Pocatello filed a petition for reconsideration of the Director's *May 2, 2005 Order*, and also filed petitions for reconsideration for later *Supplemental Orders*. R. Vol. 9 at 1669, Vol. 23 at 4376, Vol. 25 at 4745. The City of Pocatello is a respondent in the petition for judicial review currently before this Court.

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<sup>2</sup> The Idaho Dairymen's Association, the City of Pocatello, the United States Bureau of Reclamation, and the State Agency Ground Water Users were also granted intervention in the proceedings before Director Dreher. See R. Vol. 39 at 7381.

#### **4. Hearing on the SWC Delivery Call, Hearing Officer Schroeder's Recommended Order and the Director's Final Order**

On August 1, 2007, Director David Tuthill issued an *Order Approving Stipulation and Rescheduled Hearing*, and an *Order Appointing Hearing Officer*, setting a hearing on the SWC delivery call and appointing Hon. Gerald F. Schroeder ("Hearing Officer") to preside over the hearing. R. Vol. 25 at 4770, 4775. The hearing began on January 18, 2008, and concluded on February 5, 2008. R. Vol. 37 at 7048. On April 29, 2008, the Hearing Officer entered his *Opinion Constituting Findings of fact, Conclusions of Law and Recommendation* ("*Recommended Order*"). *Id.*

In sum, the Hearing Officer concluded that: 1) the Director's assignment of a 10% uncertainty to the ESPA model and the use of a "trim-line" was reasonable, *Id.* at 7080; 2) the Director's consideration of the public interest criteria was proper, *Id.* at 7086; 3) the Director's application of a "minimum full supply" was reasonable when subject to adjustment as conditions change, but was unacceptable as a fixed amount, *Id.* at 7091, 7095, 7098-7099; 4) the existing facilities utilized by SWC were reasonable, *Id.* at 7101-7102; 5) the members of SWC were employing reasonable conservation practices, *Id.* at 7103-7104; 6) the Director's determination to provide carryover storage for one year (not multiple years) was reasonable, *Id.* at 7109; 7) the process utilized by the Director to determine a reasonable amount of carryover storage due to SWC was proper; 8) the Director's order of replacement water plans as a form of mitigation was proper, *Id.* at 7112-7113; and 9) replacement water must be approved in accordance with the procedures of the Conjunctive Management Rules, and provided at the time of material injury, *Id.* at 7112.

On September 5, 2008, the Director issued his *Final Order Regarding the Surface Water Coalition Delivery Call*. R. Vol. 39 at 7381. The *Final Order* adopted the findings of fact and conclusions of law of the previous Director's orders issued in the delivery call, and the recommended orders of the Hearing Officer except as specifically modified. *Id.* at 7387. In particular, the Director held that 1) the Director properly exercised his discretion in authorizing replacement water as an interim measure for mitigation to senior water users before conducting a hearing to determine material injury, *Id.* at 7383, 7388; 2) it was appropriate to find that replacement water for predicted

shortages to reasonable carryover be provided in the season in which water can be put to beneficial use, not the season before, *Id.* at 7386, 7391; and 3) the term “reasonable in-season demand” will replace the use of the term “minimum full supply”, *Id.* at 7386.

## **5. Petitions for Judicial Review**

Petition for judicial review of the *Final Order* was timely filed by the SWC on September 11, 2008. On September 25, 2008, the United States Bureau of Reclamation filed a *Petition for Reconsideration* of the Director’s *Final Order*. Thereafter, the Director issued an *Order Denying USBR Petition for Reconsideration and Pocatello’s Response*. BOR then timely filed a petition for judicial review on November 7, 2008. This case was assigned to this Judge in his capacity as a District Judge and not in his capacity as Presiding Judge of the Snake River Basin Adjudication, on September 12, 2008.

## **C. Relevant Facts**

### **1. The Water Rights at Issue**

#### **a) The A&B Irrigation District**

A & B holds natural flow right number 01-00014 for 267 cfs with a priority date of April 1, 1939, and storage water rights in American Falls Reservoir for 46,826 acre feet with a priority date of March 30, 1921, and 90,800 acre feet in Palisades Reservoir with a priority date of July 28, 1939, for combined storage rights of 137,626 acre feet. R. Vol. 37 at 7055.

#### **b) The American Falls Reservoir District #2**

AFRD #2 holds natural flow right number 01-006 for 1,700 cfs with a priority date of March 30, 1921, and storage water rights in American Falls Reservoir for 393,550 acre feet with a priority date of March 30, 1921. R. Vol. 37 at 7055.

**c) The Burley Irrigation District**

BID holds natural flow right number 01-00211B for 655.88 cfs with a priority date of March 26, 1903, and natural flow right number 01-00214B for 380 cfs with a priority date of August 6, 1908, and natural flow right number 01-00008 for 163.4 cfs with a priority date of April 1, 1939. BID also has a storage rights in Lake Walcott for 31,892 acre feet with a priority date of December 14, 1909; 2,672 acre feet in Palisades Reservoir with a priority date of March 29, 1921; 155,395 acre feet in American Falls Reservoir with a priority date of March 30, 1921; 36,528 acre feet in Palisades Reservoir with a priority date of July 28, 1939, for combined storage rights of 226,487 acre feet. R. Vol. 37 at 7055.

**d) The Milner Irrigation District**

Milner holds natural flow right number 01-00017 for 135 cfs with a priority date of November 14, 1916, and natural flow right 01-00009 for 121 cfs with a priority date of April 1, 1939, and natural flow right number 01-02050 for 37 cfs with a priority date of July 11, 1968. Milner has storage rights of 44,951 acre feet in American Falls Reservoir with a priority date of March 30, 1921, and 45,640 acre feet in Palisades Reservoir with a priority date of July 28, 1939, for combined storage rights of 90,591 acre feet. R. Vol. 37 at 7055.

**e) The Minidoka Irrigation District**

MID holds natural flow rights number 01-00211A for 1,070 cfs with a priority date of March 26, 1903, right number 01-00214A for 620 cfs with a priority date of August 6, 1908, and right number 01-00008 for 266.6 acre feet with a priority date of April 1, 1939. MID has storage rights of 127,040 acre feet in Jackson Lake with a priority date of August 23, 1906; 58,990 acre feet in Jackson Lake with a priority date of August 18, 1910, 63,308 acre feet in Lake Walcott with a priority date of December 14, 1909; 5,328 acre feet in Palisades Reservoir with a priority date of March 29, 1921; 82,216 acre feet in American Falls Reservoir with a priority date of March 30, 1921, and 29,672, acre feet in Palisades Reservoir with a priority date of July 28, 1939, for combined storage rights of 336,554 acre feet. R. Vol. 37 at 7056.



**f) The North Side Canal Company**

NSCC holds natural flow rights 01-00210 for 400 cfs with a priority date of October 11, 1900, right number 01-00212 for 2,250 cfs with a priority date of October 7, 1905; right number 01-00213 for 890 cfs with a priority date of June 16, 1908; right number 01-00005 for 300 cfs with a priority date of December 23, 1915; and right number 01-00016 for 1,260 cfs with a priority date of August 6, 1920. NSCC has storage rights for 312,007 acre feet in Jackson Lake with a priority date of May 24, 1913; 9,248 acre feet in American Falls Reservoir with a priority date of March 29, 1921; 116,600 acre feet in Palisades Reservoir with a priority date of March 29, 1921; and 422,043 acre feet in American Falls Reservoir with a priority date of March 30, 1921. R. Vol. 37 at 7056.

**g) The Twin Falls Canal Company**

TFCC holds natural flow rights 01-00209 for 3,000 cfs with a priority date of October 11, 1900, right number 01-00004 for 600 cfs with a priority date of December 22, 1915, and right 01-00010 for 180 cfs with a priority date of April 1, 1939. TFCC has storage rights of 97,183 acre feet in Jackson Lake with a priority date of May 24, 1913, and 147,582 acre feet in American Falls Reservoir with a priority date of March 29, 1921, for combined storage rights of 244,765 acre feet. Twin Falls Canal Company has claimed in the SRBA and the Director has recommended irrigation rights totaling 196,162 acres. TFCC delivers water to 202,690 shares. R. Vol. 37 at 7056.

**2. Eastern Snake Plain Aquifer (ESPA)**

The ESPA is an unconfined aquifer underlying a geographic area of approximately 10,800 square miles of southern and southeast Idaho. R. Vol. 37 at 7050. The ESPA connects with the Snake River and its tributaries along a number of reaches resulting in either gains or losses to the River depending on the level of the aquifer in relation to the River. *Id.* The ESPA consists primarily of fractured basalt ranging in a saturated thickness of several thousand feet in the central part of the Eastern Snake River

Plain, to a few hundred feet in the Thousand Springs area where the water is discharged through a complex of springs. Water flow through the ESPA is not uniform. Water travels through the system at rates ranging from 0.1 feet per day to 100,000 feet per day depending on subterranean geology, elevation and pressure differentials. *Id.* The ESPA receives approximately 7.5 million acre-feet per year from the following sources: irrigation related incidental recharge (3.4 million acre-feet), precipitation (2.2 million acre-feet) flow from tributary basins (0.9 million acre-feet) and losses from the Snake River and its tributaries (1.0 million acre-feet). R. Vol 2 at 198. On average between May 1980 and April 2002, the ESPA discharged approximately 7.5 million acre-feet on an annual basis through spring complexes located in the Thousand Springs area and near the American Falls Reservoir and through the discharge of approximately 2.0 million acre-feet per year through depletions from ground water withdrawals. *Id.* The ESPA is estimated to contain as much as one billion acre-feet of water. R. Vol. 37 at 7050.

The early 1950's marked the beginning of the use of deep well pumps on the ESPA. Spring flows then began to decline as a result of conversion from flood irrigation to sprinkler irrigation as well as depletions caused by ground water pumping. R. Vol. 37 at 7052. As a result, spring discharges and ESPA ground water levels have been declining in the last 50 years. A moratorium on new ground water permits was issued in 1992. R. Vol. 37 at 7058.

### **3. ESPA Model**

A calibrated ground water model was used by the Director to predict the effects of curtailment of junior ground water rights. R. Vol. 2 at 199. The model has strengths and weaknesses. The model was designed to simulate gains and losses in various reaches of the Snake River including the reach from Shelley, Idaho to Minidoka Dam, which includes the American Falls Reservoir. *Id.* at 200. The model divides the ESPA into individual one mile by one mile cells. R. Vol. 37 at 7079. Despite the lack of homogeneity in the ESPA the model treats all cells as homogenous. The model was developed with input from a number of stakeholders with competing interests. *Id.*

#### **4. The Bureau of Reclamation**

The United States Bureau of Reclamation operates four main reservoir facilities on the Snake River: Jackson Lake Reservoir (“Jackson”), American Falls Reservoir (“American Falls”), Lake Walcott or Minidoka Dam (“Minidoka”), and Palisades Reservoir (“Palisades”). R. Vol. 37 at 7060-7061. This reservoir system was originally constructed with the intent to provide storage water to irrigators to insure against water shortages in times of drought. *Id.* More recently, the system also allows for flood control and hydropower production, while continuing to provide irrigation districts with the certainty that water will be available in future years. R. Vol. 37 at 7060-7061, 7107-7108. The BOR has contracts with members of SWC and the City of Pocatello for water held in storage in this reservoir system, including contracts for carryover water for irrigation. *Id.* at 7060-7061. *See also* United States’ *Opening Brief*, at 3-4. As a result, the BOR has an interest in how the water rights at issue in this delivery call are administered. *See also* *U.S. V. Pioneer Irr. Dist.*, 144 Idaho 106, 157 P.3d 600 (2007) (holding legal title is held by the BOR with equitable title being held by landowners within the service area of SWC).

#### **5. Interim Administration and Formation of Water District**

On January 8, 2002, pursuant to I.C. § 42-1417, the SRBA District Court ordered Interim Administration of water rights located in all or portions of Basins 35, 36, 41 and 43, which included the water rights at issue in this matter. R. Vol. 2 at 200. On February 19, 2002, the Director of IDWR issued orders creating Water District Nos. 120 and 130. On November 19, 2002, the SRBA District Court ordered interim administration of a portion of Basin 37, which includes water rights at issue in this matter. *Id.* Thereafter, the Director issued an order revising the boundaries of Water District 130 to include this portion of Basin 37. *Id.* On October 29, 2003, the SRBA District Court issued an order authorizing Interim Administration of water rights located in portions of Basin 29, which includes water rights at issue here. *Id.* Again, the Director thereafter issued an order revising the boundary of Water District No. 120 to include this portion of Basin 29. *Id.* at

201. The water rights at issue in this case are included in Water District nos. 120 and 130, and such water districts have been created in order to provide for administration of water rights to protect prior surface and ground water rights. R. Vol. 37 at 7064. As a precondition for interim administration Idaho Code § 42-1417 requires that water rights either be reported in a director's report or partially decreed. I.C. § 42-1417 (a) and (b).

## II.

### **MATTER DEEMED FULLY SUBMITTED FOR DECISION**

Oral argument before the District Court in this matter was held May 26, 2009. The parties did not request the opportunity to submit additional briefing and the Court does not require any additional briefing in this matter. Therefore, this matter is deemed fully submitted for decision on the next business day or May 27, 2009.

## III.

### **APPLICABLE STANDARD OF REVIEW**

Judicial review of a final decision of the director of IDWR is governed by the Idaho Administrative Procedure Act (IDAPA), Chapter 52, Title 67, Idaho Code § 42-1701A(4). Under IDAPA, the Court reviews an appeal from an agency decision based upon the record created before the agency. Idaho Code § 67-5277; *Dovel v. Dobson*, 122 Idaho 59, 61, 831 P.2d 527, 529 (1992). The Court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. Idaho Code § 67-5279(1); *Castaneda v. Brighton Corp.*, 130 Idaho 923, 926, 950 P.2d 1262, 1265 (1998). The Court shall affirm the agency decision unless the court finds that the agency's findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;

- (c) made upon unlawful procedure;
- (d) not supported by substantial evidence on the record as a whole; or,
- (e) arbitrary, capricious, or an abuse of discretion.

Idaho Code §67-5279(3); *Castaneda*, 130 Idaho at 926, 950 P.2d at 1265.

The petitioner or appellant must show that the agency erred in a manner specified in Idaho Code § 67-5279(3), and that a substantial right of the party has been prejudiced. Idaho Code § 67-5279(4); *Barron v. IDWR*, 135 Idaho 414, 18 P.3d 219, 222 (2001). Even if the evidence in the record is conflicting, the Court shall not overturn an agency's decision that is based on substantial competent evidence in the record.<sup>3</sup> *Id.* The Petitioner (the party challenging the agency decision) also bears the burden of documenting and proving that there was not substantial evidence in the record to support the agency's decision. *Payette River Property Owners Assn. v. Board of Comm'rs.* 132 Idaho 552, 976 P.2d 477 (1999).

The Idaho Supreme Court has summarized these points as follows:

The Court does not substitute its judgment for that of the agency as to the weight of the evidence presented. The Court instead defers to the agency's findings of fact unless they are clearly erroneous. In other words, the agency's factual determinations are binding on the reviewing court, even where there is conflicting evidence before the agency, so long as the determinations are supported by substantial evidence in the record.... The party attacking the Board's decision must first illustrate that the Board erred in a manner specified in Idaho Code Section §67-5279(3), and then that a substantial right has been prejudiced.

*Urrutia v. Blaine County*, 134 Idaho 353, 2 P.3d 738 (2000) (citations omitted); *see also*, *Cooper v. Board of Professional Discipline*, 134 Idaho 449, 4 P.3d 561 (2000).

If the agency action is not affirmed, it shall be set aside in whole or in part, and remanded for further proceedings as necessary. Idaho Code § 67-5279(3); *University of*

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<sup>3</sup> Substantial does not mean that the evidence was uncontradicted. All that is required is that the evidence be of such sufficient quantity and probative value that reasonable minds *could* conclude that the finding – whether it be by a jury, trial judge, special master, or hearing officer – was proper. It is not necessary that the evidence be of such quantity or quality that reasonable minds *must* conclude, only that they *could* conclude. Therefore, a hearing officer's findings of fact are properly rejected only if the evidence is so weak that reasonable minds could not come to the same conclusions the hearing officer reached. *See eg. Mann v. Safeway Stores, Inc.* 95 Idaho 732, 518 P.2d 1194 (1974); *see also Evans v. Hara's Inc.*, 125 Idaho 473, 478, 849 P.2d 934,939 (1993).



*Utah Hosp. v. Board of Comm'rs of Ada Co.*, 128 Idaho 517, 519, 915 P.2d 1375, 1377 (Ct. App. 1996).

#### IV.

#### ISSUES PRESENTED FOR JUDICIAL REVIEW

##### A. Issues Raised by SWC

In its brief, SWC raised a number of issues. The Court has summarized these issues as follows:

1. Whether the Director failed to provide timely and lawful conjunctive administration of junior ground water rights?
2. Whether the Director gave proper weight and deference to the SWC's decreed senior water rights?
3. Whether the Director exceeded his statutory authority through the implementation of replacement water plans?
4. Whether the Director's procedures for submission, review, approval and performance of mitigation plans are arbitrary, capricious, and contrary to law?
5. Whether the Director's application of the Conjunctive Management Rules is consistent with Idaho law?
6. Whether the Director's use of a 10% "trim-line" resulting in the exclusion of certain junior priority ground water rights from administration was arbitrary, capricious, and contrary to law?
7. Whether the Director's determinations regarding carryover storage is arbitrary, capricious, and contrary to law?

##### B. Issues Raised by the Bureau of Reclamation

1. Whether the Director abused his discretion by failing to allow reasonable carryover storage for use in multiple years?

2. Whether the Director abused his discretion by failing to require mitigation of the material injury to reasonable carryover storage in the season the injury occurs?

## V.

### ANALYSIS AND DISCUSSION

#### A. The Director abused discretion by failing to require mitigation of material injury to reasonable carry-over storage in the season in which the injury occurs.

The SWC and BOR argue that Director Tuthill acted outside the scope of his authority and abused discretion by waiting until the following irrigation season before making a final determination of material injury to carry-over storage. Instead of making a final determination of injury, the Director adopted a “wait and see” approach to see if the storage reservoirs were predicted to fill the following year. The Director would not make a final determination until after the issuance of the “joint forecast” for the inflow for the Upper Snake River Basin which is issued annually after April 1st by the BOR and the United States Army Corps of Engineers. The Director reasoned as follows:

The former Director [Dreher] found that shortfalls to reasonable carryover should be provided the season before the water can be put to beneficial use. as evidenced in 2006 and 2008, if the reservoir system mostly fills and had IGWA been required to provide reasonable carryover shortfalls to injured members of the SWC, the secured water would have been in excess of the amount needed for beneficial use by members of the SWC in the season of need.

As found by the Hearing Officer, the reservoir system fills two-thirds of the time, and storage water has been historically available for rental or lease even during times of drought. *Recommended Order* at 6, 15. To order reasonable carryover the year prior to the season of need would result in waste of the State’s water resources. *Mountain Home Irrigation District v. Duffy*, 79 Idaho 435, 422, 319 P.2d 995, 968 (1957); *Stickney v. Hanrahan*, 7 Idaho 424, 433, 63 P. 189, 191 (1900). It is appropriate to notify the parties in the fall prior to the upcoming irrigation season of predicted carryover shortfalls for planning purposes. *But it is not appropriate to require junior ground water users to provide predicted shortfalls until the spring when the water can be put to beneficial use*

*during the season of need:* ‘As indicated, requiring curtailment to reach beyond the next irrigation season involves too many variables and too great a likelihood of irrigation water being lost to irrigation use to be acceptable within the standards applied in *AFRD#2*.’

*Final Order*, R. Vol. 39 at 7391 (emphasis added). The Director concluded that if the reservoirs filled in the following year any shortfall to carry-over storage from the preceding year would be cancelled. This Court concludes that this issue is addressed by the express language and framework of the CMR.

### **1. Surface Storage Rights Include Reasonable Carry-Over Storage.**

The storage rights held by the BOR and SWC include the right to reasonable carry-over. CMR 042 expressly acknowledges material injury to carry-over storage.

**Factors.** Factors the Director may consider in determining whether the holders of water rights are suffering material injury and using water efficiently and without waste include, but are not limited to, the following:

...  
g. The extent to which the requirements of the holder of a senior-priority water right could be met with the user’s existing facilities and water supplies by employing reasonable diversion and conveyance efficiency and conservation practices; provided, however, the holder of a surface storage right shall be entitled to maintain a reasonable amount of carry-over storage to assure water supplies for future dry years. In determining a reasonable amount of carry-over storage, the Director shall consider the average annual rate of fill of storage reservoirs and the average annual carry-over for prior comparable water conditions and the projected water supply for the system.

CMR 042.01.g. In *American Reservoir Dist. No. 2 v. Idaho Dept. of Water Resources*, 143 Idaho 862, 154 P.3d 433 (2007) (“*AFRD #2*”), the Idaho Supreme Court upheld the constitutionality of the reasonable carry-over provisions of the CMR.

Somewhere between the absolute right to use a decreed water right and an obligation not to waste it and to protect the public’s interest in this valuable commodity, lies an area for the exercise of discretion by the Director. This is certainly not unfettered discretion, nor is it discretion to be exercised without any oversight. That oversight is provided by the courts, and upon a properly developed record, this Court can determine whether that exercise of discretion is being properly carried out. *For*

*purposes of this appeal, however, the CM Rules are not facially defective in providing some discretion in the Director to carry out this difficult and contentious task. This Court upholds the reasonable carryover provisions in the CM Rules.*

AFRD #2 at 880, 154 P.3d at 451 (emphasis added). Clearly, based on the foregoing, absent conditions or other limitations included in the partial decree, a surface storage right includes with it the right to reasonable carry-over.

**2. The Director's "wait and see" determination of material injury to carry-over storage is only authorized pursuant to a mitigation plan.**

The CMR state that in determining a reasonable amount of carry-over storage "the Director shall consider the average annual rate of fill of storage reservoirs and the average carry-over for prior comparable water conditions and the projected water supply for the system." CMR 042.01.g. Of significance is that the "material injury" provisions of the CMR with respect to the reasonable carry-over provisions of storage water do not authorize a "wait and see" approach for purposes of determining material injury to carry-over storage. *See generally* CMR 042 ("Determining Material Injury and Reasonableness of Water Diversions"). Rather, a "wait and see" type approach is expressly authorized under the mitigation provisions of the CMR. CMR 043 provides:

03. Factors to Be Considered. Factors that may be considered by the Director in determining whether a proposed mitigation plan *will prevent injury to senior rights* include, but are not limited to, the following:

c. ... A mitigation plan may allow for multi-season accounting of ground water withdrawals and provide for replacement water to take advantage of variability in seasonal water supply.

CMR 043.03.c. (emphasis added). However, the provision goes on to provide: "*The mitigation plan must include contingency provisions to assure protection of the senior priority right in the event the mitigation water source becomes unavailable.*" *Id.* (emphasis added). This language is unambiguous.

A court must construe a statute as a whole and consider all of its sections together. *Davaz v. Priest River Glass Co., Inc.* 125 Idaho 333, 336, 870 P.2d 1292, 1295 (1994). As such, the court must adopt a construction that will harmonize and reconcile all of the provisions of a statute. *State v. Horejs*, 143 Idaho 260, 266, 141 P.3d 1129, 1135 (Ct. App. 2006).

In this regard, although the Director adopted a “wait and see” approach, the Director did not require any protection to assure senior right holders that junior ground water users could secure replacement water. The Hearing Officer found that to date during extended drought periods there has always been water available somewhere at a price. Although the water may be expensive and/or difficult to obtain. R. Vol. 37 at 7053. While water may be available somewhere, the failure to require any protections for seniors is contrary to the express provisions and framework of the CMR. This does not mean that juniors must transfer replacement water in the season of injury, however, the CMR require that assurances be in place such that replacement water can be acquired and will be transferred in the event of a shortage. An option for water would be such an example.<sup>4</sup> Seniors can therefore plan for the future the same as if they have the water in their respective accounts and juniors may avoid the threat of curtailment. The BOR and SWC argue that in the event the reservoirs do not fill in times of shortage, the risk of junior ground pumpers not being able to obtain replacement water to mitigate for injury to carry-over storage is unconstitutionally borne by the senior. This Court agrees.

Under the CMR the ordering of replacement water or other mitigation is in lieu of curtailment. CMR 040.01 provides in relevant part that “upon a finding by the Director as provided in Rule 42 that material injury is occurring, the Director through the water master, shall: a. regulate the diversion and use of water in accordance with the priorities of rights of the various surface or ground water users whose rights are included in the district . . . or b. Allow out of priority diversion of water by junior-priority ground water users pursuant to a mitigation plan that has been approved by the Director.” CMR 040.01.a. and b. The Hearing Officer also acknowledged: “The theory underlying predicting material injury and allowing replacement water as mitigation instead of

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<sup>4</sup> An option for water or some other mechanism for securing water pursuant to a long term mitigation plan where the cost would be less than actually transferring or leasing water.



requiring curtailment is that replacement water will be provided in time and in place in stages comparable to what would occur if curtailment were ordered.” R. Vol. 37 at 7113. In the event replacement water could not be obtained in the following irrigation season or was determined too costly to obtain, ordering curtailment after the irrigation season has already begun or is about to begin presents new issues and problems. Both senior and juniors will have already planted crops. At that point curtailment may not timely remediate for the carry-over shortfall. The seniors are therefore forced to assume losses and adjust their cropping plans based on not having the anticipated quantity of carry-over storage. The Director is also faced with the issue as to whether or not to curtail junior ground water users based either on futile call as to the instant irrigation season or considerations regarding lessening the impact of economic injury. The Hearing Officer aptly pointed to this dilemma: “Curtailment of the ground water users may well not put water into the field of the senior surface water user in time to remediate the damage caused by a shortage, whereas the curtailment is devastating to the ground water user and damaging to the public interest which benefits from a prosperous economy.” R. Vol. 37 at 7090. Ultimately, the prior appropriation doctrine is turned upside down. Therefore, unless assurances are in place that carry-over shortfalls will be replaced if the reservoirs do not fill, the risk of shortage ultimately falls on the senior. As such, the very purpose of the carry-over component of the storage right -- insurance against risk of future shortage -- is effectively defeated.

Accordingly, the Court concludes that the Director abused discretion in failing either to order curtailment in the season of injury or alternatively require a contingency provision to assure protection of senior right in the event the reservoirs do not fill.

**3. The Director abused discretion by categorically denying reasonable carry-over for storage for more than one year.**

The BOR and SWC argue that the Director acted outside of his authority and/or abused discretion by failing to require juniors to provide carry-over water for use beyond the one irrigation season. The Hearing Officer essentially recommended a categorical

rule with respect to carry-over storage beyond one irrigation season (as opposed to a case-by-case determination):

The multiple functions of BOR and the desire of SWC for long term insurance against adverse weather conditions are legitimate and consistent with the language of CM Rule 42.01.g which refers to dry years. Nonetheless, attempting to curtail or to require replacement water sufficient to insure storage for periods of years rather than the forthcoming year presents too many problems and too great likelihood for the waste of water to be acceptable. Curtailing to hold water for longer than a year runs a serious risk of being classified as hoarding, warned against by the Supreme Court in AFRD #2. . . Ordering curtailment to meet storage needs beyond the next year is almost certain to require ground water pumpers to give up valuable property rights or incur substantial financial obligations when no need would develop enough times to warrant such action.

R. Vol. 37 at 7109. The Director adopted this reasoning in the *Final Order*. R. Vol. 39 at 7385. The problem with such a determination is that it is inconsistent with the plain language and framework of the CMR as well as the Idaho Supreme Court's ruling in AFRD #2. There is not a statute that specifically authorizes, defines or limits carry-over storage. However, carry-over storage is specifically included in the "**Determining Material Injury and Reasonableness of Water Diversions**" section of the CMR.<sup>5</sup> CMR 042.01.g provides "the holder of a surface storage right *shall be entitled to maintain a reasonable amount of carry-over storage to assure water supplies for future dry years.* (emphasis added). IDWR argues in its brief that "[t]here appears to be a misconception in the opening briefs filed by the SWC and USBR that the Director has limited those entities' ability to hold carryover storage. Nothing in the Final Order limits the right to hold carryover storage. Rather, the issue is whether junior ground water users are subject to curtailment for the purpose of providing water to enhance carryover storage beyond one year." *Respondent's Brief* at 14. The problem with IDWR's argument is that the carry-over storage provisions are specifically included in the material injury section of the CMR as opposed to being just a provision that authorizes carry-over storage. Once material injury is established (absent defenses raised by juniors), then the Director must

either regulate the diversion and use of rights in accordance with priority or allow out-of-priority diversion pursuant to an approved mitigation plan. CMR 040. 01. a. and b. Accordingly, the CMR clearly contemplate that juniors can be curtailed to enhance carry-over storage beyond one year.

This exact provision withstood a facial constitutional challenge in *AFRD#2*. The Idaho Supreme Court rejected the argument that storage rights holders should be permitted to fill their entire storage right regardless of whether there was any indication that it was necessary to fulfill current or future needs. *Id.* at 880,154 P.3d at 451 (2007). The Supreme Court also rejected the argument of ground water users that the purpose of the reasonable carry-over provision is to meet actual needs as opposed to “routinely permitting water to be wasted through storage and non-use.” The Court acknowledged that it is “permissible . . . to hold water over from one year to the next absent abuse.” *Id.* at 880, 154 P.3d at 451 (citing *Rayl v. Salmon River Canal Co.*, 66 Idaho 199, 157 P.2d 76 (1945)). But “[t]o permit excessive carryover of stored water without regard to the need for it would in itself be unconstitutional.” *Id.* Ultimately, the Court concluded that the CMR were facially constitutional in permitting some discretion in the Director to determine whether carryover water is reasonably necessary for future needs.” *Id.*

Based upon this holding, this Court concludes that the Director exceeded his authority by concluding that permitting carry-over for more than just the next season is categorically unreasonable and results in the unconstitutional hoarding of water. Such a determination contravenes the express language and framework of the CMR. The Director, however, in the exercise of discretion, can significantly limit or even reject carry-over for multiple years based on the specific facts and circumstances of a particular delivery call. Ultimately, the end result may well be the same. Finally, as discussed above, the securing of water through an option or similar method pursuant to or in conjunction with a long term mitigation plan would eliminate any concerns regarding hoarding water or other abuses.

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<sup>5</sup> In referring to ‘framework’ the Court means that the reasonable carry-over provision is specifically located in the material injury and reasonableness of diversion section of the CMR.

**B. The Director did not err in combining the natural flow rights and storage rights for purposes of determining material injury.**

The SWC argues that the Director abused discretion and/or exceeded his authority by combining the supply of natural flow rights and storage rights for purposes of making a material injury determination. This Court disagrees. The irrigation water requirements of the members of the SWC are satisfied through a combination of decreed natural flow and storage rights. Storage is supplemental to natural flow to meet water requirements. However, the extent to which individual members of the SWC rely on storage to supplement natural flow in order to satisfy irrigation season demands varies. As a result of differing priority dates, some SWC members do not have sufficient natural flow rights to irrigate through an entire season and must rely heavily on storage rights to meet irrigation season demands. For others with earlier natural flow priority dates, less reliance on storage rights to meet seasonal demands is required. However, because one of the purposes of a storage right includes carry-over for future use, the combined full decreed quantities of natural flow and storage rights can exceed the quantity necessary to satisfy the water requirements for a single irrigation season. In the context of a material injury analysis, the issue is then at what point does material injury occur to a senior storage right such that curtailment of junior ground pumpers or mitigation in lieu of curtailment is required? Former Director Dreher discussed this issue in his testimony:

Do you curtail junior priority ground water use to provide full reservoirs? Half-full reservoirs? At what point do you curtail junior-priority ground water use because of storage, the reduced storage supplies that are available to the senior right holders?

Tr. at 42-43.

Although the storage rights are decreed separately from the natural flow rights, the purpose of use of the storage rights is that the stored water will be released and used to supplement the natural flow rights for irrigating the same lands.<sup>6</sup> Therefore, it would be error for the Director not to consider natural flow and storage rights in conjunction with each other. This was confirmed by the Idaho Supreme Court in *AFRD#2*, where the

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<sup>6</sup> The storage use is not an *in situ* use such as recreation, aesthetic etc.

Idaho Supreme Court specifically rejected the argument that senior surface storage right holders were entitled to seek curtailment up to the decreed quantity of the storage right regardless of whether there was any indication that it was necessary to fulfill current or future irrigation needs. The Court held that storage right holders were entitled to protection for reasonable carry-over:

Clearly American Falls has decreed storage rights. Neither the Idaho Constitution, nor statutes, permit irrigation districts and individual water right holders to waste water or unnecessarily hoard it without putting it to some beneficial use. At oral argument, one of the irrigation district attorneys candidly admitted that their position was that they should be permitted to fill their entire storage right, regardless of whether there was any indication that it was necessary to fulfill current or future needs and even though the irrigation districts routinely sell or lease the water for uses unrelated to the original rights. This is simply not the law of Idaho. While the prior appropriation doctrine certainly gives pre-eminent rights to those who put water to beneficial use first in time, this is not an absolute right without exception. As previously discussed, the Idaho Constitution and statutes do not permit waste and require water to be put to beneficial use or lost. Somewhere between the absolute right to use a decreed water right and the obligation not to waste it and to protect the public's interest in this valuable commodity, lies an area for the exercise of discretion by the Director. This is certainly not unfettered discretion, nor is it discretion without any oversight. That oversight is provided by the courts, and upon a properly developed record, this Court can determine whether that exercise of discretion is being properly carried out. For purposes of this appeal, however, the CM Rules are not facially defective in providing some discretion in the Director to carry out this difficult and contentious task. This Court upholds the reasonable carry-over provisions.

*AFRD#2* at 880, 154 P.2d at 451. The Director's actions must be evaluated against the back drop of this holding. Additionally, one of the factors the Director is to consider in determining material injury under CMR 042 is "the extent to which the requirements of the holder of a senior-priority water right could be met with the user's existing water supplies . . . ." CMR 042.01.g. Accordingly, because:

- 1) a combination of both natural flow and storage rights are used for the purpose of meeting the same irrigation purpose of use; and



- 2) the decreed quantity of natural flow rights and the decreed quantity of storage rights can exceed irrigation demands for a single irrigation season; and
- 3) regulation of juniors for carry-over storage is limited to reasonable carry-over as opposed to the full quantity of the storage right; and
- 4) a material injury analysis requires that the Director consider the extent to which the requirements of a senior water right holder can be met with existing water supplies;

the Director's material injury determination necessarily requires evaluating natural flow and storage rights in conjunction with each other, as opposed to independently from each other. Accordingly, the Director did not abuse discretion or act outside his authority in considering natural flow rights and storage rights together for purposes of making a material injury determination.

**1. The Director did not abuse discretion or act outside his authority in utilizing a "minimum full supply" or "reasonable in-season demand" baseline for determining material injury.**

In determining material injury to senior rights the Director considered a "baseline" quantity independent of the decreed or licensed quantity. The baseline quantity represented the amount of water predicted from natural flow and storage needed to meet in-season irrigation requirements and reasonable-carryover. The Director then determined material injury based on shortfalls to the predicted baseline as opposed to the decreed or licensed quantities. Former Director Dreher labeled the baseline "minimum full supply." Director Tuthill in the *Final Order* replaced "minimum full supply" with the term "reasonable in-season demand." R. Vol. 39 at 7386. The SWC argues that the Director abused discretion and acted contrary to law by using a baseline quantity, as opposed to the decreed or licensed quantity. This Court disagrees.

On first impression it would appear that the use of such a baseline constitutes a re-adjudication of a decreed or licensed water right. As stated by the Hearing Officer "[t]he

logic of SWC in objecting to the Director's use of a minimum full supply is difficult to avoid." R. Vol.37 at 7090. However, on closer examination the use of baseline is a necessary result of the Director implementing the conditions imposed by the CMR with respect to regulating junior rights to protect senior storage rights. Put differently, senior right holders are authorized to divert and store up to the full decreed or licensed quantities of their storage rights, but in times of shortage juniors will only be regulated or required to provide mitigation subject to the material injury factors set forth in CMR 042. Rule 042 of the CMR lists a number of factors the Director is to consider in determining material injury to senior rights. CMR 042.01 a-h. As this Court concluded previously, the total combined decreed quantity of the natural flow and storage rights can exceed the amount of water necessary to satisfy in-season demands plus reasonable carry-over. Simply put, pursuant to these factors a finding of material injury requires more than shortfalls to the decreed or licensed quantity of the senior right. Although the CMR do not expressly provide for the use of a "baseline" or other methodology, the Hearing Officer concluded that: "Whether one starts at the full amount of the licensed or decreed right and works down when the full amount is not needed or starts at base and works up according to need, the end result should be the same." R. Vol 37 at 7091. Ultimately the Hearing Officer determined that the use of a baseline estimate to represent predicted in-season irrigation needs was acceptable provided the baseline was adjustable to account for weather variations and that the process satisfied certain other enumerated conditions. R. Vol. 37 at 7086- 7100. This Court affirms the reasoning of the Hearing Officer on this issue.

**C. The Director did not err in using the 10 % margin of error for the ESPA Model or in using as a "trim-line" for juniors located with the margin of error.**

The Court addressed this issue at length in the *Order on Petition for Judicial Review* recently issued in Gooding County Case No. 2008-000444, which involves many of the same parties to this action. See Gooding County Case No. 2008-000444 *Order on*

*Petition for Judicial Review* (June 19, 2009) at 25-28. The Court's analysis and holding in that decision is incorporated herein by reference.

**D. The Director Abused Discretion by ordering a "replacement water plan" in lieu of following the procedures set forth in the CMR.**

In response to the January 2005, request for administration filed by the SWC, the Ground Water Users filed an *Application for Approval of Mitigation Plan* pursuant to CMR 043. R. Vol. 1 at 126. A hearing was originally scheduled on the *Application* but was ultimately continued. R. Vol. 1 at 186; R. Vol. 2 at 454. On May 2, 2005, the Director issued an *Amended Order*, which made findings of fact and conclusions of law relative to material injury predictions and ultimately ordered replacement water as "mitigation" in lieu of curtailment. *See e.g. Amended Order*, R. Vol. 8 at 1403-1405 ¶¶ 1-14. The *Amended Order* also provided:

As required herein, the North Snake, Magic valley, Aberdeen-American Falls, Bingham, and Bonneville-Jefferson ground water districts, and other entities seeking to provide replacement water or other mitigation in lieu of curtailment, must file a plan for providing such replacement water with the Director, to be received in his offices no later than 5:00 pm on April 29, 2005. Requests for extensions to file a plan for good cause will be considered on a case-by-case basis and granted or denied based on the merits of any such individual request for extension. The plan will be disallowed, approved, or approved with conditions by May 6, 2005, or as soon thereafter as practicable in the event an extension is granted as provided in the order granting the extension. A plan that is approved with conditions will be enforced by the Department and the water masters for Water Districts No. 120 and No. 130 through curtailment of the associated rights in the event the plan is not fully implemented.

*Amended Order*, R. Vol. 8 at 1405-05, ¶ 9. In response, the SWC filed a *Protest, Objection, and Motion to Dismiss 'Replacement Water Plans,'* on the grounds that the Director failed to follow the procedures set forth in the CMR. R. Vol. 8 at 1507.

Conjunctive Management Rule 43 clearly sets forth the method for submitting mitigation plans, requires notice and hearing, requires that the

plan be considered under the procedural provisions of Idaho Code § 42-222 in the same manner as applications to transfer water rights, and sets forth specific factors that may be considered by the Director of the Department in determining whether a proposed mitigation plan will prevent injury to senior rights.

The department has no legal right or ability to unilaterally create new conjunctive management rules nor do those proposing mitigation have any legal authority to proceed other than set forth in the Conjunctive Management Rules. Should the Director or the Department desire to create new rules, the provisions of the Idaho Administrative procedure Act must be followed. See Idaho Code § 67-5201 *et seq.*

R. Vol. 8 at 1511. On May 6, 2005, without conducting a hearing, the Director issued an *Order Approving IGWA's Replacement Water Plan for 2005*. R. Vol. 12 at 2174.

Thereafter the Director issued a series of supplemental orders amending the replacement water requirements.<sup>7</sup> A limited hearing was granted on IGWA's 2007 Replacement Plan.

R. Vol. 23 at 4396. The hearing was limited as follows:

The hearing on the 2007 Replacement Plan is limited in scope to presentation of information regarding the implementation of the Plan by IGWA to demonstrate that timely, in-season replacement water and reasonable carryover water can be provided to members of the Surface water Coalition.

The hearing on IGWA's 2007 Replacement Plan will not include argument or presentation of evidence on any other orders issued by the Director, or the Director's method and computation of material injury.

*Id.* at 4397. Ultimately, a hearing was held before the Hearing Officer on January 16, 2008. The Hearing Officer determined that: "[t]he replacement water plan approved by

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<sup>7</sup> *Supplemental Order Amending Replacement Water Requirements* (July 22, 2005), R. Vol. 13 at 2424; *Second Supplemental Order Amending Replacement Water Requirements* (Dec. 27, 2005), R. Vol. 16 at 2994; *Third Supplemental Order Amending Replacement Water Requirements Final 2005 & Estimated 2006* (June 29, 2006), R. Vol. 20 at 3735; *Fourth Supplemental Order Amending Replacement Water Requirements* (July 17, 2006), R. Vol. 21 at 3944; *Fifth Supplemental Order Amending Replacement Water Requirements Final 2006 & Estimated 2007* (May 23, 2007), R. Vol. 23 at 4286; *Sixth Supplemental Order Amending Replacement Water Requirements and Order Approving IGWA's 2007 Replacement Water Plan* (July 11, 2007), R. Vol. 25 at 4714; *Seventh Supplemental Order Amending Replacement Water Requirements* (December 20, 2007), Ex. 4600; *Eighth Supplemental Order Amending Replacement Water Requirements Final 2007 & Estimated 2008* (May 23, 2008), R. Vol. 38 at 7198.

the former Director in the May 2, 2005, Order and Supplemental Orders is in effect a mitigation plan. However, it does not appear that the procedural steps for approving a mitigation plan were followed.” R. Vol. 37 at 7112.

This Court agrees. This is not a situation where the replacement water ordered is consistent with the timing and in the quantities authorized under the decreed or licensed rights, leaving no room for disagreement. Rather this is situation where the Director has extensively applied the provisions of the CMR for purposes of making a material injury analysis ultimately resulting in adjustments in the timing of delivery and in the quantities of water authorized under the decrees or licenses. The Court sees no distinction between the “replacement water plans” ordered in this case and a mitigation plan. Mitigation plans under the CMR are defined as:

A document submitted by the holder(s) of a junior-priority ground water right and approved by the Director as provided in Rule 043 that identifies actions and measures to prevent, or compensate holders of senior-priority water rights for, material injury caused by diversion and use of surface or ground water by the holders of junior-priority surface or ground water rights under Idaho law.

CMR 010.15. governed by CMR 43:

**043. MITIGATION PLANS (RULE 43).**

**02. Notice and Hearing.** Upon receipt of a proposed mitigation plan the Director will provide notice, hold a hearing as determined necessary, and consider the plan under the procedural provisions of Section 42-222, Idaho Code, in the same manner as applications to transfer water rights.

*Once a mitigation plan has been proposed, the Director must hold a hearing as determined necessary and follow the procedural guidelines for transfer, as set out in I.C. § 42-222, which provides in relevant part:*

Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same, obtain any consent required in section 42-108, Idaho Code, and if otherwise proper to provide notice of the proposed change in a similar manner as applications under section 42-203A, Idaho Code. *Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication. Upon the*



*receipt of any protest, accompanied by the statutory filing fee as provided in section 42-221, Idaho Code, it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon.*

(emphasis added). The Director did not follow this process. IDWR argues that “[a]uthorizing replacement plans is akin to a court issuing a preliminary injunction in a civil matter to preserve the status quo, pending final judgment.” While this may be true the Court is aware of no circumstance under the civil rules where a preliminary injunction is issued without the opportunity for a hearing. Next, the Director’s preliminary relief extended over a period of multiple irrigation seasons in effect becoming an unauthorized substitute for a mitigation plan. Finally, Director concluded in his *Final Order*:

Once a record is developed through the hearing process on the delivery call, a formal mitigation plan should be submitted by junior ground water users to mitigate material injury to the senior. Since a Rule 43 mitigation plan serves as a long term solution to material injury to senior water users, it is necessary for junior ground water users to have a proper record upon which to develop the plan because the amount of water sought by the senior in its delivery call may not be the amount attributable to junior ground water depletions.

R. Vol. 39 at 7384. However, the methodology employed by the Director in conjunction with the replacement plan can result in junior ground water users never being required to file a mitigation plan. For example, if and when the reservoirs ultimately fill and no future injury is predicted the filing of a mitigation plan is not required under the CMR. If the next time a shortfall occurs and the Director responds with the replacement plan process, the replacement plan has by default effectively circumvented and replaced the mitigation plan requirement. Thus, the process may never reach the point where a mitigation plan is filed.

While the CMR are vague with respect to procedural framework components, the Idaho Supreme Court acknowledged such but nonetheless upheld the constitutionality of these rules in *AFRD#2*. As such, the Director is required to follow the procedures for conjunctive administration as outlined in the CMR when responding to a delivery call between surface and ground water users.

**E. The Director exceeded his authority in determining that full headgate delivery for Twin Falls Canal Company should be calculated at 5/8 of an inch instead of 3/4 of an inch per acre.**

In response to information requests to SWC members made by former Director Dreher, Twin Falls Canal Company responded that 3/4 of an inch per acre constituted full headgate delivery. The Hearing Officer concluded:

The former Director [Dreher] accepted Twin Falls Canal Company's response that 3/4 inch constituted full headgate deliver [sic], and TFCC continued to assert that position at hearing. This is contradicted by the internal memoranda and information given to shareholders in the irrigation district. It is contrary to a prior judicial determination. It is inconsistent with some of the structural facilities and exceeds similar SWC members with no defined reason. Any conclusions based on full headgate delivery should utilize 5/8 inch.

R. Vol. 37 at 7100. Director Tuthill accepted the recommendation in his *Final Order*. R. Vol. 39 at 7392. TFCC's water right is still pending in the SRBA. The *Director's Report* recommended the water right at the delivery of 3/4 of an inch. Ex. 4001A. IGWA filed a SRBA *Standard Form 1 Objection* to the recommendation asserting *inter alia*, "The quantity should not exceed 5/8" per acre consistent with the rights of other surface water coalition rightholders." Ex. 9729. Proceedings on the *Objection* are currently pending in the SRBA. The Hearing Officer's recommendation appears to be based on a determination that TFCC's water right only entitles it to 5/8 of an inch per acre. The SRBA Court is vested with exclusive jurisdiction for determining the elements of a water right. Furthermore, the Director's determination is inconsistent with his recommendation for the claim in the SRBA. The SRBA Court ordered interim administration of the water rights at issue in this proceeding pursuant to Idaho Code § 42-1417. Idaho Code § 42-1417 provides: "The district court may permit the distribution of water pursuant to chapter 6, title 42, Idaho Code . . . in accordance with the director's report or as modified by the court's order . . . [or] . . . in accordance with applicable partial decree(s) for water rights acquired under state law. . . ." I.C. § 42-1417(1) (a) and (b). At this stage of the proceedings the *Director's Report* recommends 3/4 of an inch per acre. The Director can file an amended director's report in the SRBA, however, the

interim administration process is not a substitute for litigating the substantive elements of a water right. *See e.g. Walker v. Big Lost Irr. District*, 124 Idaho 78, 856 P.2d 868 (1993). The Director exceeded his authority in making this determination.

**F. The Director abused his discretion by issuing two “*Final Orders*” in response to the Hearing Officer’s *Recommended Order*.**

In the September 5, 2008, *Final Order*, the Director stated his decision to issue an additional *Final Order* at a later date in response to the Hearing Officer’s *Recommended Order*:

25. Because of the need for ongoing administration, the Director will issue a separate, final order before the end of 2008 detailing his approach for predicting material injury to reasonable in-season demand and reasonable carryover for the 2009 irrigation season. An opportunity for hearing on the order will be provided.

The SWC argues that the failure to address this issue in the *Final Order* was an abuse of discretion. This Court agrees.

In the *Recommended Order*, the Hearing Officer found that adjustments should be made to the methodologies for determining material injury and reasonable carryover for future years. R. Vol. 37 at 7090. The Director adopted this conclusion, but did not address a new method in his September 5, 2008 *Final Order*. R. Vol. 39 at 7382. The process for determining material injury and reasonable carryover is an integral part of the Hearing Officer’s *Recommended Order*, and the issues raised in the delivery call. The Director abused his discretion by not addressing and including all of the issues raised in this matter in one *Final Order*. Styling the *Final Order* as two orders issued months apart runs contrary to the Idaho Administrative Procedures Act and IDWR’s Administrative Rules. *See* I.C. §§ 67-5244, 67-5246, 67-5248 and IDWR Administrative Rules 720 and 740. In addition, the issuance of separate “*Final Orders*” undermines the efficacy of the entire delivery call process, including the process of judicial review. Such a process requires certainty and definiteness as to the *Final Order* issued, so that any review of the *Final Order* can be complete and timely.<sup>8</sup>

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<sup>8</sup> The Court notes that on June 30, 2009, the Director issued an *Order Regarding Protocol for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover*. The *Order* is not part of the record in this matter.

**G. Timeliness of the Director's Response to Delivery Calls.**

The SWC also raises the issue that the Director failed to provide timely and lawful administration of junior priority rights to satisfy senior rights. This argument was addressed in the context of the Director's failure to provide mitigation in the season of injury and the Director's use of a replacement plan in lieu of following the procedural requirements for mitigation plans as set forth in the CMR.


**VI.**

**CONCLUSION AND ORDER OF REMAND**

For the reasons set forth above, the actions taken by the Director in this matter are affirmed in part and reversed in part. The case is remanded for further proceedings consistent with this decision.

IT IS SO ORDERED.

Dated: July 24, 2009



JOHN M. MELANSON  
District Judge

## NOTICE OF ORDERS

I.R.C.P. 77(d)

I, Cynthia R. Eagle-Ervin, Deputy Clerk of Gooding County do hereby certify that on the 24 of July, 2009, pursuant to Rule 5(e)(1) the District Court filed in chambers the foregoing instrument and further pursuant to Rule 77(d) I.R.C.P., I have this day caused to be delivered a true and correct copy of the within and foregoing instrument: Order on Petition for Judicial Review to the parties listed below via the U.S. Postal Service, postage prepaid:

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**BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF BASIN 37  
ADMINISTRATIVE PROCEEDING

DOCKET No. AA-WRA-2021-001

**SOUTH VALLEY GROUND  
WATER DISTRICT'S AND  
GALENA GROUND WATER  
DISTRICT'S PETITION TO STAY  
CURTAILMENT / REQUEST FOR  
EXPEDITED DECISION /  
REQUEST FOR HEARING ON  
PROPOSED MITIGATION PLAN**

COME NOW, the SOUTH VALLEY GROUND WATER DISTRICT ("SVGWD") by and  
through its attorneys of record, BARKER ROSHOLT & SIMPSON LLP and THE GALENA

GROUND WATER DISTRICT (“Galena GWD”) by and through its attorneys of record, LAWSON LASKI CLARK, PLLC, (collectively hereinafter the “Districts”), pursuant to Rule 780 of the Rules of Procedure of the Idaho Department of Water Resources (“IDWR”), and hereby petition the Director to stay implementation of the *Final Order* (“Curtailment Order”) issued on June 28, 2021 until a decision is made on the Districts’ *Proposed Mitigation Plan* filed with IDWR on June 23, 2021.

### **LEGAL STANDARD**

The Director has authority to stay an agency order pursuant to IDAPA 37.01.01.780. Rule 780 provides:

Any party or person affected by an order may petition the agency to stay any order, whether interlocutory or final. Interlocutory or final orders may be stayed by the judiciary according to statute.

IDAPA 37.01.01.780.

Idaho’s APA provides that an agency “may grant, or the reviewing court may order, a stay upon appropriate terms.” I.C. § 67-5274. The decision to grant a stay is within the hearing officer’s discretion. *See Platz v. State*, 154 Idaho 960, 969 (2013). For the reasons set forth below the Director should grant the Districts’ petition to stay the Curtailment Order.

### **ARGUMENT**

#### **I. Due Process Requires Consideration and a Hearing on the Districts’ Mitigation Plan Before Implementing the Curtailment Order.**

Conjunctive administration allows for mitigation in lieu of curtailment. *See generally*, CM Rules 40, 43. The Director’s Curtailment Order rejected IGWA’s assertion that the right to mitigation does not exist in this proceeding. Curtailment Order p. 35 n. 21. The Director also stated that “it may take time to secure mitigation.” *Id.* at 35. The Districts filed a mitigation plan on June 23, 2021, proposing to fully mitigate any potential injury to the three affected 1883 senior

surface water rights (37-344A, 37-323, and 37-49). Even though the Groundwater Districts' mitigation plan was submitted prior to issuance of the Curtailment Order, their mitigation plan was not considered in the Curtailment Order. Principles of due process require adequate time to hear and obtain approval of the mitigation prior to implementing the proposed curtailment set to begin on July 1, 2021.

In the context of a mitigation plan in the Surface Water Coalition delivery call case, Judge John Melanson found the following with respect to a mitigation plan procedure:

The Hearing Officer determined that: “[t]he replacement water plan approved by the former Director in the May 2, 2005, Order and Supplemental Orders is in effect a mitigation plan. However, it does not appear that the procedural steps for approving a mitigation plan were followed.” R. Vol. 37 at 7112.

This Court agrees. . . The Court sees no distinction between the “replacement water plans” ordered in this case and a mitigation plan. . . . *Once a mitigation plan has been proposed*, the Director must hold a hearing as determined necessary and follow the procedural guidelines for transfer, as set out in I.C. § 42-222. . . . The Director did not follow this process.

*Order on Petition for Judicial Review*, at 28-30 (Gooding County Dist. Ct., Fifth Jud. Dist., Case No. 2008-551, July 24, 2009) (emphasis in original).

At a minimum, the Districts are entitled to a hearing on the mitigation plan to avoid curtailment of 23,000 acres for the rest of the 2021 irrigation season that is now set to begin in less than three (3) days. *See* Curtailment Order at 38 (curtailment “starting on July 1, 2021, at 12:01 a.m. . . .”). Whereas the senior surface water rights can be fully mitigated, the Director should stay the Curtailment Order and provide the necessary due process to consider and approve the Districts' mitigation plan. Such a process would follow the guidance provided by Judge Melanson in the Springs Users' delivery call case as well. *See Order on Petitions for Judicial Review*, at 51 (Gooding County Dist. Ct., Fifth Jud. Dist., Case No. 2008-444) (“Under the CMR, a more appropriate course of action for the Director to follow would have been to issue the initial

curtailment order, provide the junior Ground Water Users time to submit a mitigation plan before making the order final, and then hold a hearing on the order of curtailment and material injury”).

The Director can follow the process outlined by Judge Melanson by granting a stay of the Curtailment Order pending a decision on the Districts’ mitigation plan. This would provide due process and ensure no unnecessary curtailment during the 2021 irrigation season.

## **II. The Districts Will Suffer Irreparable Harm if the Stay is Not Granted**

The South Valley Groundwater District encompasses approximately 22,000 - 23,000 acres of irrigated crop land served by ground water. Hearing Tr. Vol. V, 1158:22-1159:4. The primary crops grown in the Bellevue Triangle are barley/grains, alfalfa, pasture and cattle, with some potatoes, and other miscellaneous crops. Hearing Tr. Vol. V, 1159:13-25. Most of the land in the South Valley District has both surface and ground water, with some lands on the Bellevue Triangle exclusively supplied by surface water and some exclusively by ground water. In 2021 the Big Wood surface water supplies are expected to be completely out of water by early July. *See e.g.*, Hearing Tr. Vol. IV, 1076:12-14. By the time the present matter commenced in May 2021, the crops were in the ground and contracts were executed. Water was being delivered at the time of discussions of the advisory committee in March, and early April water supplies were predicted to be available well into July when the barley crops would no longer need to pump groundwater. Given what was known at the time, planting crops in April was a reasonable decision.

### **A. Damage to Districts’ Members**

Mark Johnson is a potato farmer operating as Silver Creek Seeds. He grows seed potatoes for a variety of commercial growers on 750 acres in the Bellevue Triangle. He entered into contracts with his customers, and with landowners to rent the fields last fall. The fields were all planted before this proceeding began. Potatoes must have water until the first of September to

survive, then a little water at harvest time at the end of September. Implementing the Curtailment Order would kill his crops. He would go out of business. Thirty-five years in the potato business would be over. His customers would leave him, looking for a more reliable supplier. Hearing Tr. Vol. V, 1055-56.

Stuart Taylor has been the ranch manager at Wood River Ranch since 2012, he testified about the impact of curtailment on the pasture land used to raise cattle on the Wood River Ranch. Hearing Tr. Vol. V, 1077-80. If ground water is not available, the pastures will not be able to support the cattle on the ranch for the remainder of the season through the time when he moves the cattle herd to winter pasture in October/November. Rather than sell the cattle and lose the valuable genetic makeup of the herd, he would choose to buy hay which would cost \$250,000-\$300,000 just in 2021. Hearing Tr. Vol. V, 1079:15-17 If he used feed hay, he would lose calves to disease and would lose 40% of the reproduction from the cows, over the next season.

Gary Beck has been the Ranch Manager for Hillside Ranch for twenty-two years. Mr. Beck explained the consequences of a July 1 curtailment on the barley crop. Hearing Tr. Vol. V, 1128:12-13 (“So if we’re shut off on July 1<sup>st</sup>, the crop will not make grade at all”). The last two weeks of water are critical to allow the kennels to plump up to meet Coors and Anheuser-Busch standards. Hearing Tr. Vol. V, 1128:12-25; 1129:1-23. The brewers’ field men have advised that a water curtailment will mean that the crop will not be acceptable under the contracts and will be rejected. *See Id.* Mr. Beck’s experience with the barley crop bears out that assessment. If the crop is rejected, the cost of harvesting for feed barley would not justify the revenue and the entire crop would be lost at a revenue loss of \$2 Million. *See Id.* Guest workers on the ranch from Mexico would have to be laid off and required to return home. Hearing Tr. Vol. V, 1131:22-25; 1132:1-5. Long term consequences would be severe. Long term contracts would likely not be renewed in



previous quantities, or at all, if the customer cannot depend on Hillside Ranch to reliably produce a crop on a regular basis.

The injury to the crops described by Mr. Johnson (potatoes), Mr. Taylor (pasture and cattle), and Mr. Beck (barley) apply across the entire Bellevue Triangle and the 22,000 – 23,000 acres of land irrigated from wells, and are representative of the losses the Districts' member will incur as a result of the Curtailment Order. South Valley members alone anticipate losses from a July 1 curtailment, occurring in the middle of the irrigation season, well in excess of \$12 Million. Hearing Tr. Vol. V, 1129:2-9, 1163:9-10.

### **III. Given the Timing of the Curtailment Order Granting a Stay is in the Public Interest in this Case.**

The Director initiated this proceeding in the middle of the irrigation season, well after the water users facing curtailment had already planted their crops. In general, the Director is proposing to curtail approximately 23,000 acres in the Bellevue Triangle in order to support the temporary irrigation of 615 acres located downstream (i.e., Barbara Farms LLC = 217.5; Taber = 229; Ritter = 168). As a comparison, the administrative action would be the equivalent of curtailing ninety-eight (98) acres in order to supply water to two (2) acres ( $23,000/615 = 0.02$ ). Idaho law provides the following policy considerations when evaluating conjunctive administration in this context.

First, Idaho Code § 42-101 charges the Director with the following concerning irrigation rights:

Water being essential to the industrial prosperity of the state, and all agricultural development throughout the greater portion of the state depending upon its just apportionment to, and economical use by, those making a beneficial application of the same, its control shall be in the state, which, providing for its use, shall equally guard all the various interests involved.

I.C. § 42-101 (emphasis added).

While the prior appropriation doctrine controls distribution of water to the various rights, this provision has important consideration in the context of this proceeding where the Director did not initiate the matter until May 4, 2021, well after the irrigation season began. Faced with a decision as to how to administer for the balance of the irrigation season, the Director must “equally guard all the various interests” of the seniors and juniors and make a decision in the best interest of the State at this late date. Curtailing 98% of the acres involved in order to supply water to a mere 2% is not “economical” and does not lend itself to the continued industrial prosperity of the state for the rest of the 2021 irrigation season.<sup>1</sup>

Next, the Ground Water Act specifically requires consideration of the following:

The traditional policy of the state of Idaho, requiring the water resources of this state to be devoted to beneficial use in reasonable amounts through appropriation, is affirmed with respect to the ground water resources of this state as said term is hereinafter defined and, while the doctrine of “first in time is first in right” is recognized, a reasonable exercise of this right shall not block full economic development of underground water resources.

I.C. § 42-226.

The Idaho Supreme Court addressed the Ground Water Act’s concepts of “reasonable use,” “beneficial use, and “full economic development” or “optimum development of water resources” in *IGWA v. IDWR*, 160 Idaho 119, 369 P.3d 897 (2016) (hereinafter “*Rangen*” case). In *Rangen*, the Court held the following:

The Court has previously held that hydrologically connected surface and ground waters must be managed conjunctively. . . . “While the prior appropriation doctrine certainly gives pre-eminent rights to those who put water to beneficial use first in time, this is not an absolute rule without exception . . . the Idaho Constitution and statutes do not permit waste and require water to be put to beneficial use or be lost.” . . . As we recently stated in *Clear Springs*, the policy of securing the maximum use and benefit, and least wasteful use of Idaho’s water resources, has long been the policy in Idaho. . . . This policy limits the prior appropriation doctrine by excluding

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<sup>1</sup> There are approximately 23,615 acres at issue (23,000 in the Bellevue Triangle, 615 in the Little Wood), of which the potential injury to rights in the Little Wood only comprises about 2.6%.

from its purview water that is not being put to beneficial use. . . . Necessarily, not all of the water collected due to the curtailment will accrue to the senior water right holder; some will remain in the aquifer and some will flow to other tributary springs. This complexity can make it very difficult to balance a senior right holder's interest in receiving additional water against the State's interest in securing the maximum use and benefit, and least wasteful use, of its water resources. In light of this challenging balancing requirement, it is necessary that the Director have some discretion to determine in an delivery call proceeding whether there is a point where curtailment is unjustified because vast amounts of land would be curtailed to produce a very small amount of water to the caller. As discussed, Idaho law contemplates a balance between the "bedrock principles" of priority of right and beneficial use. . . . The Director is authorized to undertake this balancing act, subject, as he acknowledged here, to the limitations of Idaho law.

369 P.3d at 908-910.

The Director's discretion and "balancing requirement" in conjunctive administration in this proceeding is further tempered by the timing. This is a case where crops had been planted before the administrative proceeding began, and are currently receiving irrigation water. The optimum use of water resources in 2021 must take into consideration the best use of available water in the public interest. Curtailing 23,000 acres to supply a limited quantity of water to 615 acres is not "securing the maximum use and benefit, and least wasteful use" of water supplies in the Bellevue Triangle and Silver Creek/Little Wood area for the balance of the 2021 irrigation season.

Whereas IDWR's own staff report shows that 67% of the curtailed water would remain in the aquifer and not be put to beneficial use by anyone, senior or junior, that waste of resources tips the scale in the favor of the juniors at this point in time. Stated another way, this state policy does not condone curtailing 23,000 acres in order to save 650 for the balance of this season.<sup>2</sup>

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<sup>2</sup> Moreover, any of the drought induced losses suffered by Mr. Taber are covered by a multi-peril drought insurance policy. Hearing Tr. Vol. III, 706:1-5; 708:7-9; 712:2-7. Given that remedy, the disparity is even greater as the Director would be curtailing 23,000 acres to supply limited water to Barbara Farms' 217.5 acres, less than 1% of the acres curtailed ( $23,000/217.5 = 0.09$ ). The effect of curtailment is even further unwarranted if Barbara can be supplied water for the rest of 2021 through the Milner-Gooding Canal.

Curtailing groundwater acres at this point in the irrigation season would basically preclude the beneficial use of 67% of the available groundwater and curtail 98 acres of groundwater irrigated land in order to supply water for 2 acres of surface irrigated land. Staying the Curtailment Order will support the public interest in optimum use of water in that it will prevent the disproportionate loss of water to 23,000 acres in lieu of 615, and it will allow the Director time to review and approve the proposed mitigation plan, which is expected to offset the potential benefits to senior right holders from curtailment.

#### **IV. Curtailment is Unnecessary as the Mitigation Plan Should be Heard and Approved.**

As argued above, the Director has a duty to consider a proposed mitigation plan, “once a mitigation plan has been proposed, **the Director must hold a hearing.**” *Order on Petition for Judicial Review*, at 28-30 (Gooding County Dist. Ct., Fifth Jud. Dist., Case No. 2008-551, July 24, 2009) (emphasis added). In fact, when the Director has issued an order such as this, and a mitigation plan has been proposed, the procedure is clear, “a more appropriate course of action for the Director to follow would have been to issue the initial curtailment order, provide the junior Ground Water Users time to submit a mitigation plan before making the order final, and then hold a hearing on the order of curtailment and material injury.” *Id.*, at 51.

On June 23, 2021, the Districts submitted their proposed mitigation plan with IDWR. The mitigation plan more than offsets any hypothetical benefits that might accrue from 100% curtailment of ground water withdrawals in the Bellevue Triangle. *See generally Districts’ Proposed Mitigation Plan*. Approval of this plan by the Director will avoid injury in excess of ten million dollars to the producers in the Bellevue Triangle that would otherwise result from the proposed 100% curtailment. The Director has a duty to consider the Districts’ proposed mitigation plan, one which should offset any potential benefits from the Curtailment Order.

### **REQUEST FOR EXPEDITED DECISION**

Time is of the essence for adequate resolution of the issues discussed herein. Granting Districts' *Petition to Stay* will prevent unnecessary and irreparable damage to the Districts, it will provide the Director necessary time to hold a hearing, review and approve the plan and satisfy the Idaho public policy of optimum use, and it will help avoid future litigation on these issues before the District Court. As such, the Districts request an expedited decision on this *Petition to Stay Curtailment*.

### **REQUEST FOR HEARING ON MITIGATION PLAN**

The Districts request a hearing on the *Proposed Mitigation Plan* filed with IDWR on June 23, 2021.

### **CONCLUSION**

In addition to the *Petition to Stay*, the Districts' reassert the importance and necessity of the Director's timely review of the proposed mitigation plan. The mitigation plan, if approved, will render moot the potential injuries to senior water holders in the Bellevue Triangle and will remove the need for the Curtailment Order. Staying the Curtailment Order prevents injury while the Director is afforded adequate time to approve the mitigation plan, which will replace all of the benefits of curtailment of Districts' ground water rights. As such, the Districts' request the Director grant this *Petition to Stay and Curtailment Request for Expedited Decision*, as well as take appropriate steps to begin review and approval of the Districts' proposed mitigation plan

Dated this 28<sup>th</sup> day of June, 2021.



BARKER ROSHOLT & SIMPSON LLP

/s/ ALBERT BARKER

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I HEREBY CERTIFY that on this 28<sup>th</sup> day of June, 2021, the foregoing was filed, served, and copied as shown below.

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## Audio Transcription

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF BASIN 37 ) Docket No.  
ADMINISTRATIVE PROCEEDING ) AA-WRA-2021-001  
\_\_\_\_\_) )

TRANSCRIPT OF RECORDED PRE-HEARING CONFERENCE

MAY 24, 2021

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**JEFF LaMAR, C.S.R. No. 640**

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5 For Idaho Department of Water Resources:

6 OFFICE OF ATTORNEY GENERAL

7 IDAHO DEPARTMENT OF WATER RESOURCES

8 BY MR. GARRICK BAXTER

9 MS. MEGHAN CARTER

10 322 East Front Street

11 Boise, Idaho 83720

12 garrick.baxter@idwr.idaho.gov

13 megan.carter@idwr.idaho.gov

14 Also Present Remotely:

15 Rusty Kramer

16 Lawrence Schoen

17 Pat McMahon

18 Fred Brossy

19 Alton Heiser [phonetic]

20 Mark Sabala

21 Rodney Hubsmith

22 Bill Arkoosh

23 John Arkoosh

24 Joe Matheney

25 Nick Westendorf

1	Carl Legg
2	Lori Graves [phonetic]
3	Christian Petrich
4	Don Taber
5	Rachel Cohen [phonetic]
6	Neil Crashendy [phonetic]
7	Erika Phillip [phonetic]
8	Corey Allen [phonetic]
9	Sharon Lee
10	Megan Jenkins
11	Carl Sinnilla [phonetic]
12	Johanna Bell [phonetic]
13	Deersa Flores [phonetic]
14	Jennifer Sukow
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

1                   (Begin transcription at 5:31 of audio  
2                   file.)

3                   DIRECTOR SPACKMAN: Okay. Welcome everybody.  
4                   My name is a Gary Spackman, Director Idaho Department  
5                   of Water Resources.

6                   We are meeting here today for a pre-hearing  
7                   conference in the matter of Basin 37 administrative  
8                   proceeding. And we have a number of participants, both  
9                   in person and on Zoom or on telephone. So -- and we  
10                  are preparing for a hearing, I'll remind everybody,  
11                  that's scheduled for June 7th through 11th, in two  
12                  weeks.

13                  So because of the nature of the way this  
14                  particular matter was initiated, I will depart from the  
15                  regular approach that I normally take at a pre-hearing  
16                  conference. I'll be more assertive today. And I want  
17                  to talk just briefly here about how people can  
18                  participate.

19                  So again, there's some people here and also  
20                  many more on Zoom. If you want to comment, will you  
21                  raise your hand, please. We have somebody remotely  
22                  running the Zoom program. And I think everybody should  
23                  be muted. If you're just on the phone, we'll try to  
24                  figure out a way to have you chime in.

25                  MR. BAXTER: Director.

1           DIRECTOR SPACKMAN:   And -- yes.

2           MR. BAXTER:   This is Garrick Baxter.   Those on  
3   the phone are muted.   If they want to take themselves  
4   off of mute, all they have to do is hit star 6.   And it  
5   will unmute them, and they can make us aware that  
6   they'd like to talk.

7                       Thank you.

8           DIRECTOR SPACKMAN:   Thank you, Garrick.

9                       So now you know who the grand wizard is  
10   behind the curtain.   And Garrick Baxter will be running  
11   the Zoom program in the background.

12                      Okay.   What I want to do first is to call  
13   roll.   And I want to do this in a different way.   So I  
14   have spent some time trying to categorize the various  
15   participants and those who have filed notices.   And  
16   I've separated those who have filed a notice of  
17   appearance into four different groups.

18                      So let me tell you what they are, and then  
19   I'll read -- and these groups and the names under them  
20   will -- can shift, because I don't know where some  
21   people are located or what the nature of their concern  
22   is with this matter.

23                      So the first group is a group that I would  
24   characterize as surface water users holding senior  
25   surface water rights either on Silver Creek or the

1 Little Wood River.

2 And the second group is a grouping that, at  
3 least as best that I could determine, are holders of  
4 groundwater rights that bear junior priorities and may  
5 be the subject of this particular matter and possible  
6 curtailment.

7 Then the third group is a group of entities  
8 or individuals located within the Wood River Basin but  
9 outside of the area identified for curtailment.

10 And then the fourth group is what I would  
11 characterize as everybody else. And those who are in  
12 the "everybody else" category can clarify for me what  
13 their -- their interest is.

14 And I think we need to talk about each one  
15 of these groups and what the expectations of these  
16 groups or participants are.

17 So let me go back now to the first group,  
18 and I'll call roll. After I finish them, then I want  
19 anybody who is participating to identify themselves if  
20 they choose to. So again, the first group would be  
21 those holding or representing holders of surface water  
22 rights authorizing diversion from Silver Creek or the  
23 Little Wood River.

24 And I have Barbara Farms, LLC.

25 MR. BROSSEY: Here.



1           DIRECTOR SPACKMAN: And that's Fred Brossy. I  
2 see you here, Fred.

3           Now, I want to say right out of the -- at  
4 the beginning as I go through, if -- if the water  
5 right -- if the water rights that a person is claiming  
6 are being injured in some way, if the water rights are  
7 held by a corporation, a partnership, or some other  
8 entity, then I expect that that entity be represented  
9 by counsel, not by an individual in this proceeding.

10           So I have a number of individuals, and I  
11 want to know if the water rights are held by a  
12 corporation, partnership, or other legal entity, trust,  
13 any of those, then I expect that that entity be  
14 represented by counsel, not by an individual.

15           Okay. So again, I come back to it.  
16 Barbara Farms, LLC. Fred I see you're here.

17           Big Wood and Little Wood Water Users  
18 Association. I'm looking at the Hollywood Squares. I  
19 have Jerry Rigby and Joe James.

20           Are you --

21           MS. CARTER: Jerry Rigby is on.

22           DIRECTOR SPACKMAN: -- participating? Jerry, I  
23 see you.

24           MR. RIGBY: Yes, Mr. Director, I am here.

25           DIRECTOR SPACKMAN: Okay. Thank you.

1 Big Wood Canal Company represented by Kent  
2 Fletcher.

3 MR. FLETCHER: I'm here. Thank you.

4 DIRECTOR SPACKMAN: Thank you, Kent.

5 Big Wood Farms, LLC? I have an Alton --  
6 and I'm sorry Alton Heiser [phonetic].

7 MR. HEISER: It's pronounced Heiser.

8 DIRECTOR SPACKMAN: Heiser. I'm sorry. I knew  
9 I'd blow that. Is Alton on?

10 MR. HEISER: Yes. I'm present, sir.

11 DIRECTOR SPACKMAN: Okay. Larry Schoen? Is  
12 Larry on?

13 Okay. Sabala or Sabala.

14 UNIDENTIFIED SPEAKER: Sabala.

15 DIRECTOR SPACKMAN: Sabala Farms. Mark Sabala.

16 MR. SABALA: Yes, sir.

17 DIRECTOR SPACKMAN: Thank you, Mark.

18 Kaysi and Rodney Hubsmith?

19 MR. HUBSMITH: Yes, I'm here, Mr. Director.

20 DIRECTOR SPACKMAN: Thank you, Rodney.

21 David Hults?

22 Charles Newel?

23 Bill Arkoosh?

24 MR. BILL ARKOOSH: I'm here, Mr. Director.

25 DIRECTOR SPACKMAN: Oh, are you Charles?

1 MR. BILL ARKOOSH: Bill.

2 DIRECTOR SPACKMAN: Oh, Bill. Thank you, Bill.

3 MR. BILL ARKOOSH: Yeah.

4 DIRECTOR SPACKMAN: Thank you.

5 I'm not looking at the gallery or the  
6 gallery's too far away, one or the other.

7 John Arkoosh?

8 MR. JOHN ARKOOSH: Here, Mr. Director.

9 DIRECTOR SPACKMAN: Thanks, John. Joe  
10 Matheney -- Matheney?

11 UNIDENTIFIED SPEAKER: Matheney.

12 DIRECTOR SPACKMAN: Matheney. I got it right  
13 the first time.

14 Nick Westendorf? I see Nick on the board.

15 MR. WESTENDORF: Yes, I'm here. Thank you.

16 DIRECTOR SPACKMAN: Nick, are you -- thanks,  
17 Nick.

18 Okay. That's the -- that's the list in the  
19 first category.

20 MR. THOMPSON: Director, can you clarify who  
21 wasn't here on that list?

22 DIRECTOR SPACKMAN: Yes. David Hults, Charles  
23 Newel, and Joe Matheney. Joe Matheney.

24 MS. CARTER: Also Lawrence Schoen.

25 DIRECTOR SPACKMAN: Oh, and Lawrence Schoen.

1 Sorry. Those four are not participating today.

2 MR. RIGBY: Director, this is Jerry.

3 DIRECTOR SPACKMAN: Yes. Yes.

4 MR. RIGBY: As other counsel have known, I'm  
5 attempting to put together those who I will be  
6 representing. And as per your initial, I guess,  
7 decision, which has always been the case, that an  
8 entity must be represented by counsel, I, in fact, will  
9 be filing, once we get this confirmed -- and that  
10 should be even later today -- all of the entities and  
11 persons I will be representing, which would be in this  
12 particular group that you've identified.

13 DIRECTOR SPACKMAN: Thank you, Jerry.

14 Okay. The second category would be --

15 MR. FLETCHER: Excuse me, Director.

16 DIRECTOR SPACKMAN: Yes.

17 MR. FLETCHER: This is Kent. Did you -- did you  
18 want the names of other people that were listening in?  
19 In other words, there are other participants from Big  
20 Wood that are on the phone. Are you interested in  
21 those names as well or --

22 DIRECTOR SPACKMAN: Well, let's -- let's see.  
23 I'm just working from the list of those -- those people  
24 or entities that filed notices of appearance. And so  
25 we'll get to those who may be listening in.

1 MR. FLETCHER: Okay. Thank you.

2 DIRECTOR SPACKMAN: So let me -- yeah.

3 Okay. So the second category or grouping.  
4 And these would be holders of groundwater rights. And  
5 I would -- I would state that they're groundwater  
6 rights authorizing diversion of groundwater within the  
7 Bellevue Triangle and within the area that was  
8 identified in -- in the original notice of  
9 administrative proceeding.

10 So I have Dean R. Rogers, III, or Dean R.  
11 Rogers, Inc. And represented by Laird Stone.

12 Laird, are you there.

13 MR. VAUGHN: I'm Jeremy Vaughn, his associate,  
14 Mr. Director. I'm here.

15 DIRECTOR SPACKMAN: Thank you. Thank you,  
16 Laird.

17 Now, the next one I grouped here, but I  
18 wasn't sure whether it should be or not. Idaho  
19 Department of Fish and Game. I don't know where Fish  
20 and Game may be aligned, but Fish and Game has at  
21 least, I know, water rights in the area.

22 Ann Vonde, do you happen to be on?

23 MS. VONDE: Yes, Director. This is Ann Vonde  
24 for Fish and Game. And Fish and Game does hold  
25 groundwater rights in this area.



1           DIRECTOR SPACKMAN: Okay. And so you would be  
2 aligned as a groundwater right holder, then?

3           MS. VONDE: Correct.

4           DIRECTOR SPACKMAN: Thank you.

5                     Galana Ground Water District, Heather  
6 O'Leary? Heather?

7           MS. O'LEARY: Yes, Director, I'm on the call.

8           DIRECTOR SPACKMAN: Thank you.

9                     South Valley Ground Water District? Al and  
10 Travis, you are here.

11          MR. BARKER: We are.

12          DIRECTOR SPACKMAN: Sound off.

13          MR. BARKER: Here.

14          MR. THOMPSON: Present.

15          DIRECTOR SPACKMAN: Thank you.

16                    Swiftsure Ranch? And I have listed as a  
17 representative Paul Bennett. Is Mr. Bennett on the  
18 phone?

19                    Okay. I identified Swiftsure Ranch as  
20 within the mapped area that was identified as possibly  
21 subject to this administrative proceeding.

22                    And then I have multiple parties  
23 represented by Jim Speck. And I hope Jim is on the  
24 phone -- or on the Zoom call.

25                    Jim, are you out there?

1 MR. SPECK: Yes, I am, Director.

2 DIRECTOR SPACKMAN: And I have you identified in  
3 this group, I'm assuming that you have some clients,  
4 probably not all, that are located within the Bellevue  
5 Triangle.

6 MR. SPECK: That's quite correct. And I -- if I  
7 may ask a question at this point?

8 DIRECTOR SPACKMAN: Sure.

9 MR. SPECK: If a client of mine holds rights  
10 that are outside this area of curtailment or the  
11 somewhat smaller area identified by Jennifer Sukow, can  
12 we assume that we will not be curtailed in 2021, and  
13 thus would have no reason to participate in these  
14 proceedings? Is that correct?

15 DIRECTOR SPACKMAN: Well, the administrative  
16 proceeding is limited to the area that was identified.  
17 So I think your first conclusion is that the Director  
18 does not intend to possibly curtail those holding water  
19 rights outside of the mapped area identified by  
20 Jennifer Sukow in the Bellevue Triangle in 2021.

21 MR. SPECK: Okay. If I may, Jennifer's area is  
22 south of the Glendale Road -- or the Glendale Bridge,  
23 which I have clients that lie between there and your  
24 northern line.

25 So which -- where is that line going to be?

1           DIRECTOR SPACKMAN: Well, Jim, I don't want to  
2 get into the detail of that right now. We don't have  
3 the map up. There was a -- a detailed map, I think  
4 that was attached, that showed the location up there.  
5 And it was drawn intentionally at a specific location.  
6 And that was based on Jennifer's modeling and her  
7 analysis. So you can look at that map.

8           Now, the other part of your question, Jim,  
9 was whether -- whether you had an interest or should be  
10 participating or had no reason to participate. And I  
11 will pass on that question. I think that's something  
12 we need to talk about.

13          MR. SPECK: I understand that. Thank you.

14          DIRECTOR SPACKMAN: Yeah. All right. Now I've  
15 gone through the second grouping, as best I could  
16 establish, looking at the notices of appearance and,  
17 honestly, doing some searches on the Internet and  
18 looking at maps.

19          Now, the third version is --

20          MS. MCHUGH: Excuse me, Director. Sorry -- this  
21 is Candice -- to interrupt.

22          DIRECTOR SPACKMAN: Yes.

23          MS. MCHUGH: Are you going to articulate who  
24 Jim's people were that you identified within the  
25 different locations, or were you just going to -- or

1     should we just refer to his notice? Because it sounded  
2     like he had two groups. And I didn't know if you were  
3     going to identify which ones you thought were in which  
4     group.

5             DIRECTOR SPACKMAN: I thought I was trying to  
6     identify which are -- which entities are within each of  
7     these groupings. I've gone through the first two. Now  
8     I'm going to the third. So maybe your question is  
9     premature, or I don't understand it, Candice. Let me  
10    work through these others, and then let's see if we've  
11    answered your question.

12            So the third group are entities or persons  
13    who are located in the Wood River Basin but are outside  
14    of the area that was identified by the map that was  
15    prepared by Jennifer Sukow and was attached to the  
16    notice of the administrative proceeding.

17            So I have Avalanche Ranch, and the  
18    representative was a Spencer Brendel -- Brendel.  
19    Anyone from Avalanche Ranch?

20            I have the City of Bellevue represented by  
21    Candice McHugh.

22            MS. MCHUGH: Yes, present.

23            DIRECTOR SPACKMAN: City of Hailey, represented  
24    by Michael Lawrence.

25            MR. LAWRENCE: Yes, present.

1           DIRECTOR SPACKMAN: Thank you, Michael.

2                   City of Ketchum represented by Matthew  
3 Johnson.

4           MR. O'BANNON: This is Brian O'Bannon for  
5 Ketchum.

6           DIRECTOR SPACKMAN: Thank you, Brian.

7                   Eagle Creek Irrigation Company? Norm?

8           MR. SEMANKO: This is Norm Semanko.

9           DIRECTOR SPACKMAN: Thanks.

10          MR. SEMANKO: Just for the record, we're  
11 upstream surface water users. We don't think we're  
12 implicated, but your notice did say this proceeding  
13 could affect all surface and groundwater users in the  
14 basin, which I think got a lot of people's attention.

15                 We are the beneficiaries of a separate  
16 streams provision, and we don't believe we're  
17 implicated. But we'd be happy to be let go of this  
18 proceeding. I'm with Mr. Speck. But we're here to  
19 protect our rights and watch what's going on.

20                 Thank you.

21          DIRECTOR SPACKMAN: Thank you.

22                 Sun Valley Company, Chris Bromley?

23          MR. BROMLEY: Yes, Director.

24          DIRECTOR SPACKMAN: Thank you, Chris.

25                 Sun Valley Water and Sewer District, Evan



1 Robertson? Evan?

2 Why am I surprised Evan's not here?

3 Water District 37B Groundwater Association,  
4 Rusty Kramer?

5 MR. KRAMER: Present.

6 DIRECTOR SPACKMAN: Thank you, Rusty. And  
7 again, I'll remind you, as well as the others, that  
8 any -- any association, corporation, partnership, or  
9 similar entity needs to be represented by counsel.  
10 Thank you.

11 Okay. Now I'll get to everybody else. And  
12 please sound off if you think I've misidentified your  
13 interest, location, geography, any of the above.

14 Coalition of Cities, Candice?

15 MS. MCHUGH: Yes, present. Sorry. Trying to  
16 get my mute on.

17 DIRECTOR SPACKMAN: Thank you. And I noticed  
18 the Coalition of Cities, I think you have a coalition  
19 of 13 different cities, some perhaps located within the  
20 basin, many of them outside. Some of those entities,  
21 it seems to me, are represented by counsel  
22 individually. And so I have grouped the coalition as  
23 being outside.

24 MS. MCHUGH: I think that is generally fair at  
25 this point. I do think the City of Gooding filed a

1 separate notice. I had left a message for their new  
2 attorney. So we are focusing on that. But I think  
3 it's fair to characterize us as outside of the basin at  
4 this point.

5 DIRECTOR SPACKMAN: Okay. City of Idaho Falls,  
6 Rob Harris?

7 MR. HARRIS: I am present on -- I am present on  
8 the phone. Thanks.

9 DIRECTOR SPACKMAN: Thank you, Rob.

10 City of Gooding? I have a Brendan Ash.

11 MR. ASH: I'm here, Director.

12 DIRECTOR SPACKMAN: Thank you, Brendan.

13 City of Pocatello, Sarah Klahn?

14 MS. KLAHN: Good morning, Mr. Director.

15 DIRECTOR SPACKMAN: Good morning, Sarah.

16 Idaho Ground Water Appropriators, Randy  
17 Budge?

18 MR. BUDGE: Good morning. This is TJ Budge.

19 DIRECTOR SPACKMAN: Good morning, TJ.

20 Idaho Power Company, John Simpson?

21 MR. SIMPSON: Good morning, Director. Appearing  
22 for Idaho Power Company. And the company does have a  
23 number of water rights within Basin 37. Perhaps --  
24 we're checking, and there may be even one or two within  
25 the circle that you've drawn that have irrigation use

1 in and around substations or other commercial  
2 facilities.

3 DIRECTOR SPACKMAN: So you would assert that  
4 Idaho Power has a direct interest within the mapped  
5 area identified in the notice?

6 MR. SIMPSON: Mr. Director, we are checking on  
7 that, but it does appear like we may have a right or  
8 some uses associated with some buildings that the  
9 company utilizes that may be subject to curtailment,  
10 yes.

11 DIRECTOR SPACKMAN: Okay.

12 MR. SIMPSON: If not within -- definitely within  
13 the basin, but we're checking as to the uses within the  
14 circle that was drawn in your administrative notice.

15 DIRECTOR SPACKMAN: Thank you.

16 Lincoln County?

17 MR. ROATS: Richard Roats present, Director.

18 DIRECTOR SPACKMAN: Mr. Roats. And again, I  
19 have Lincoln County listed here. I don't know what  
20 rights Lincoln County may have, water rights.

21 MR. ROATS: Director, at this point I'm just  
22 following the proceedings for my client, the Board of  
23 County Commissioners.

24 DIRECTOR SPACKMAN: Okay.

25 Southern Comfort Homeowners' Association?

1 Don Juanell [phonetic]? I couldn't locate this  
2 particular entity.

3 And then I have two individuals, a Carl  
4 Legg and Mike Vowels. Carl, are you participating?

5 MR. LEGG: Yes, Director. I'm here.

6 DIRECTOR SPACKMAN: Okay. And what is your  
7 interest?

8 MR. LEGG: I have water rights both out of the  
9 canal and out of the Little Wood River there on  
10 Highway 26.

11 DIRECTOR SPACKMAN: Okay. I'll relocate you or  
12 regroup you.

13 And Mike Vowels? Mike, are you  
14 participating?

15 Okay. I think that's my complete list.

16 Now, are there others who may have filed a  
17 notice of appearance that I've missed.

18 MR. SCHOEN: Mr. Director, this is Larry Schoen.  
19 I -- I did not hear my name. But I joined late. I did  
20 not receive notice of the change of meeting start time  
21 from 9:30 to 9:00 a.m. I had a notice on Thursday of a  
22 meeting start time of 9:30. Apparently something was  
23 sent out Friday. But I am present and I did send in my  
24 notice to participate.

25 DIRECTOR SPACKMAN: Okay. And what's your name

1 again?

2 MR. SCHOEN: Lawrence Schoen, S-c-h-o-e-n.

3 DIRECTOR SPACKMAN: Oh, sure. Okay. Thanks,  
4 Larry. I didn't recognize your voice.

5 MR. SCHOEN: Oh, thank you. Sorry about that.

6 DIRECTOR SPACKMAN: Okay. I called you out.

7 So all right. Now let's talk about this --  
8 is there anybody else.

9 MS. GRAVES: Hey, Gary. This is Lori with SPF.  
10 We -- we filed a notice on behalf of Blaine County  
11 School District.

12 DIRECTOR SPACKMAN: Okay. I also have another  
13 list. And I can go through this. This is a list of  
14 people who have filed, at least based on what I can  
15 tell, a request to observe, but not necessarily to  
16 participate. So let me read through these.

17 Blaine County School District, Lori Graves?

18 MS. GRAVES: Yeah. Good morning, Gary. Yeah,  
19 we're on.

20 DIRECTOR SPACKMAN: But the School District is  
21 not planning to participate, then?

22 MS. GRAVES: I think they're outside the mapped  
23 areas on their water rights, but they are definitely  
24 interested in the proceedings.

25 DIRECTOR SPACKMAN: Well, again, I need to know

1 whether the School District intends to participate as a  
2 party. I don't have them listed that way.

3 MS. GRAVES: Yeah, why don't you just --

4 DIRECTOR SPACKMAN: Let me --

5 MS. GRAVES: Go ahead and include them as a  
6 participant. Christian Petrich is also on, and he will  
7 be the official representative for the School District.

8 DIRECTOR SPACKMAN: Well, but he can't represent  
9 the School District because he's not an attorney. So  
10 the original premise, and the standard that we began  
11 with, was any entity -- and the School District would  
12 be one of those entities -- needs to be represented by  
13 counsel. I won't depart from that in this proceeding.

14 MR. PETRICH: Mr. Director, this is Christian  
15 Petrich. The School District is still deciding whether  
16 to participate. And I expect they'll make a decision  
17 here very shortly, in which case they understand that  
18 they will have an attorney that would represent them.

19 DIRECTOR SPACKMAN: Well, I'm not sure that I  
20 can leave this matter hanging. We're operating under a  
21 very short time frame. I -- right now I'm inclined to  
22 say the School District is not timely in their -- in  
23 their notice. But I will look at it, and we'll get  
24 back to you.

25 Okay. I need to get through this list. I



1 have Boise State Public Radio, Rachel Cohen. If any of  
2 these people are on, sound off.

3 MS. COHEN: I'm on the call.

4 DIRECTOR SPACKMAN: Idaho Water Users -- okay.

5 MS. COHEN: Thank you.

6 DIRECTOR SPACKMAN: Paul Arrington?

7 MR. ARRINGTON: I'm here, Mr. Director. Thank  
8 you.

9 DIRECTOR SPACKMAN: Simplot, Vic Conrad  
10 [phonetic]?

11 Nature Conservancy, I have a Neil Crashendy  
12 [phonetic], Crashendy or --

13 MR. CRASHENDY: Here.

14 DIRECTOR SPACKMAN: Thank you, Neil.

15 And an Erika Phillip?

16 MS. PHILLIP: Yes, I'm here. Thank you.

17 DIRECTOR SPACKMAN: And then I have a bunch of  
18 individual names.

19 Chris Howe [phonetic] or Hoff [phonetic]?

20 Corey Allen [phonetic].

21 Sharron Lee?

22 MR. ALLEN: Director, Corey Allen. I'm  
23 [unintelligible].

24 MS. LEE: Yes.

25 DIRECTOR SPACKMAN: Oh, that's right.

1 MR. ALLEN: [Unintelligible.]

2 DIRECTOR SPACKMAN: That's right. Thank you.

3 MS. LEE: Director, it's Sharron Lee. I am  
4 here.

5 DIRECTOR SPACKMAN: Thank you.

6 Pat McMahon?

7 MR. MCMAHON: Yes, Director. I'm here.

8 DIRECTOR SPACKMAN: Christy Mullinow [phonetic].

9 UNIDENTIFIED SPEAKER: She was not going to be  
10 able to get on today.

11 DIRECTOR SPACKMAN: Karl Pendleton [phonetic]?  
12 This almost appears to be a restatement of  
13 the Advisory Committee. And I don't think I'll go  
14 through the rest of the names here.

15 Okay.

16 UNIDENTIFIED SPEAKER: Mr. Director.

17 DIRECTOR SPACKMAN: Yes.

18 UNIDENTIFIED SPEAKER: We do have one guy that  
19 sent in his notice to participate that I don't think we  
20 received it. He sent it -- it was one of the first  
21 ones in our group to send it. He was Don Taber. And  
22 I'm not sure what happened to it, but 7 Mile Ranch, Jim  
23 Ritter, and Taylor Farms [unintelligible].

24 MR. BAXTER: Director, can you have whoever's  
25 speaking get closer to a microphone, please.

1 MS. MCHUGH: Candice McHugh, we can't hear.

2 DIRECTOR SPACKMAN: Yeah, you need to -- you  
3 need to speak up or come closer.

4 UNIDENTIFIED SPEAKER: Don Taber, sent in notice  
5 to participate, but I...

6 DIRECTOR SPACKMAN: Don Taber?

7 UNIDENTIFIED SPEAKER: Yes.

8 DIRECTOR SPACKMAN: How do you spell it?

9 UNIDENTIFIED SPEAKER: T-a-b-e-r.

10 DIRECTOR SPACKMAN: Okay.

11 UNIDENTIFIED SPEAKER: And he farms -- I believe  
12 he sent in notice for 7 Mile Ranch, Jim Ritter, and his  
13 own farms, Taber Farms.

14 DIRECTOR SPACKMAN: So is Jim Ritter a different  
15 entity than Don Taber?

16 UNIDENTIFIED SPEAKER: Yeah. He -- he leases  
17 ground from those places, I believe. So he just wanted  
18 to mention that, because I know he wanted to be  
19 included, but I don't think he --

20 MR. BAXTER: Again, Director, if whoever is  
21 speaking could get --

22 DIRECTOR SPACKMAN: Yeah, you have got to speak  
23 up.

24 UNIDENTIFIED SPEAKER: Okay.

25 DIRECTOR SPACKMAN: Louder.

1 UNIDENTIFIED SPEAKER: Why don't you sit right  
2 there in front of that microphone.

3 UNIDENTIFIED SPEAKER: Okay. Sorry.

4 Don Taber sent in notice to participate.  
5 And he farms 7 Mile Ranch and Jim Ritter's farm and  
6 Taber Farms. And I don't think you received his notice  
7 yet, but I know that he sent it early.

8 DIRECTOR SPACKMAN: Okay.

9 UNIDENTIFIED SPEAKER: We wanted to make sure  
10 that he was at least mentioned today. I don't know  
11 what the status will be.

12 DIRECTOR SPACKMAN: All right. Thank you.

13 UNIDENTIFIED SPEAKER: [Unintelligible.]

14 UNIDENTIFIED SPEAKER: [Unintelligible.]

15 DIRECTOR SPACKMAN: Somebody spoke?

16 MR. TABER: Yes. Don Taber.

17 DIRECTOR SPACKMAN: Okay.

18 MR. TABER: And I did send my stuff in. I  
19 mailed it in on the 17th or so.

20 DIRECTOR SPACKMAN: Okay. We'll look for it,  
21 Don, and include you.

22 MR. TABER: Okay. Thank you.

23 DIRECTOR SPACKMAN: All right. Others? Others  
24 that wish to identify themselves?

25 MR. SINNILLA: Carl Sinnilla [phonetic]. I'm

1 here and would intend to participate.

2 DIRECTOR SPACKMAN: All right. Thanks, Charles.  
3 We got your name.

4 MR. HULTS: Director?

5 DIRECTOR SPACKMAN: Yes.

6 MR. HULTS: David Hults is on the line too.

7 DIRECTOR SPACKMAN: Okay. We have your name as  
8 well.

9 MR. HULTS: Yes. Thank you.

10 MR. ROBERTSON: Evan Robertson is here.

11 DIRECTOR SPACKMAN: Who?

12 MR. ROBERTSON: Evan Robertson for Sun Valley  
13 Water and Sewer District.

14 DIRECTOR SPACKMAN: Evan, welcome.

15 MR. ROBERTSON: Thank you, sir.

16 DIRECTOR SPACKMAN: Wouldn't be the same --  
17 wouldn't be the same without you.

18 MR. ROBERTSON: Thanks.

19 MS. BELL: This is Johanna Bell [phonetic] with  
20 the Association of Idaho Cities, just as an observer,  
21 not as a participant.

22 DIRECTOR SPACKMAN: Okay.

23 MS. FLORES: Hello.

24 DIRECTOR SPACKMAN: Others?

25 MS. FLORES: This is Deersa Flores [phonetic],

1 representing [unintelligible] LLC.

2 DIRECTOR SPACKMAN: Okay. We don't -- we don't  
3 have, I don't think, a notice of appearance from ABC.

4 Is it ABC?

5 MS. BELL: 86.

6 MS. CARTER: We do have that one. I don't know.  
7 I think it got named something else, but we did get  
8 that one, I think.

9 DIRECTOR SPACKMAN: Okay. I don't -- I'm told  
10 we have it. I --

11 UNIDENTIFIED SPEAKER: No, I guess we don't.

12 MS. FLORES: We received a letter.

13 DIRECTOR SPACKMAN: I don't think we received a  
14 notice from you.

15 MS. FLORES: Oh, okay.

16 DIRECTOR SPACKMAN: Okay. Others? Okay. Well,  
17 that was arduous. Let's see if we can find a more  
18 efficient path forward here.

19 Okay. Again, I want to reiterate for  
20 everybody that's joined us that all entities, including  
21 corporations, limited liability corporations, limited  
22 partnerships, trusts, any kind of partnership, any kind  
23 of entity other than an individual needs to be  
24 represented by counsel in this matter.

25 All right. Those who are participants and



1 e-mailed their Notice of Intent to Participate, we need  
2 from you a hard copy. So if you just e-mailed it, you  
3 need to send a hard copy with a docket number. And I  
4 can read that to you. But you need to include it, your  
5 name, your address, phone number, and e-mail address if  
6 you want electronic service.

7 So if there's a question, I'll read the  
8 docket number here. So it is -- and the letters are in  
9 caps, AA-WRA-2021-001.

10 All right. Let's talk about the motions  
11 and other filings. So there were a number of motions  
12 that were pending.

13 MR. THOMPSON: Director.

14 DIRECTOR SPACKMAN: Yes.

15 MR. THOMPSON: Before we get to that, can we  
16 talk about service a little bit and filings?

17 DIRECTOR SPACKMAN: Sure.

18 MR. THOMPSON: Because there are people that  
19 just have mailing addresses. I don't know if they have  
20 e-mail. The mail takes like four or five days from  
21 Magic Valley, so I don't know if people are mailing  
22 things or intend to. We won't get it until like --

23 MS. MCHUGH: Travis, can you speak closer to the  
24 microphone. Sorry to be a pain.

25 DIRECTOR SPACKMAN: Yeah, I think you have got

1 to speak up as well, Travis.

2 MR. THOMPSON: Is this better? Can you hear me?

3 MS. CARTER: She's nodding her head.

4 MS. McHUGH: Yes.

5 MR. THOMPSON: I just want to talk about service  
6 for people that don't have electronic mail, or if they  
7 file things, how we address that, because the mail  
8 takes sufficient -- a long time from various areas.

9 DIRECTOR SPACKMAN: Well, let's at least talk  
10 about the parties and the acceptance of e-mail service.  
11 Because of the short time periods, I'm assuming that  
12 everybody would want to serve by e-mail.

13 Now, is there anybody that doesn't have an  
14 e-mail address?

15 MS. McHUGH: There's a lot of us that don't know  
16 what people's e-mail addresses are. On their notices  
17 they were lacking e-mail addresses. We've mailed ours  
18 to the addresses, and a couple of the notices were  
19 deficient on even addresses. But I guess someone needs  
20 to look at that, because obviously we can't serve  
21 people if we don't have an e-mail address. But not  
22 everybody does.

23 DIRECTOR SPACKMAN: Okay. So I want everybody  
24 that filed a Notice of Intent to Participate or a  
25 notice of participation, I want you to e-mail the

1 Department of Water Resources.

2 And, Mehgan, what e-mail address? Yours.

3 MS. CARTER: Let's send them to the other Megan.

4 DIRECTOR SPACKMAN: Okay. Megan, give -- give  
5 them your e-mail address. And I want those in by  
6 tomorrow.

7 MS. JENKINS: Hello, everyone. My e-mail  
8 address is going to be megan.jenkins. Megan is spelled  
9 m-e-g-a-n, dot Jenkins, j-e-n-k-i-n-s@idwr.idaho, which  
10 is all spelled out, dot gov. So one last time,  
11 megan.jenkins@idwr.idaho.gov.

12 DIRECTOR SPACKMAN: So I want you to e-mail your  
13 e-mail addresses to Megan by tomorrow. And we will  
14 distribute those out to all of the entities that we've  
15 identified.

16 MR. RIGBY: Mr. Director, this is Jerry.

17 DIRECTOR SPACKMAN: Go ahead.

18 MR. RIGBY: In -- what will help is that by the  
19 end of today, I will probably be filing a  
20 representation of the group one. And I believe that  
21 everyone that you have addressed will be represented by  
22 counsel. So therefore, for all of the others  
23 participating -- although I still want those mailed so  
24 that I have their e-mails, the other counsel in filings  
25 can go through me, this office.

1           DIRECTOR SPACKMAN: Now, I also want to say in  
2 response to your question, Travis -- and maybe I'm  
3 beyond your question, but because of the short time  
4 frames, I will accept service for the Department by  
5 e-mail, but I want a hard copy coming to the office as  
6 well. But just to expedite the service of documents, I  
7 will accept service by e-mail here. That's a departure  
8 from what we normally follow in our rules. But I think  
9 because of the expedited time frames, I need to accept  
10 service. And as long as it's going to Megan, that will  
11 be sufficient.

12           MR. THOMPSON: Just a follow-up on that. I  
13 think there's a lot of stuff that I haven't received  
14 that's gone out last week. So just to make sure,  
15 whatever service list you have you have me and my  
16 assistant on it?

17           DIRECTOR SPACKMAN: Okay.

18           MS. CARTER: We made sure and updated the  
19 service list on Saturday. So if you received the  
20 e-mail that said -- with the three orders in it, you  
21 should have them.

22           DIRECTOR SPACKMAN: Travis, we'll reconcile  
23 that. And you're welcome to look at the documents that  
24 we have after the hearing if there's something you're  
25 missing.

1 MR. THOMPSON: I received one from Rebecca Wills  
2 [phonetic] Saturday.

3 MS. CARTER: Yep.

4 MR. THOMPSON: I just didn't know if there was  
5 other things --

6 MS. CARTER: No.

7 MR. THOMPSON: -- that went out.

8 DIRECTOR SPACKMAN: Okay. Other questions about  
9 service?

10 Chris, if I could --

11 MS. KLAHN: Mr. Director, this is Sarah Klahn.  
12 Just to clarify, you'll accept e-mail service, and you  
13 want something just put in the regular U.S. mail, not  
14 certified; correct?

15 DIRECTOR SPACKMAN: Yes.

16 MS. KLAHN: Thank you.

17 DIRECTOR SPACKMAN: Yep.

18 Chris.

19 MR. BROMLEY: My only question, Director, was so  
20 anything that we would be filing would be going to  
21 Megan Jenkins? Not to your e-mail address, but to  
22 Megan, and then hard copy in the mail?

23 DIRECTOR SPACKMAN: Yes.

24 MR. BROMLEY: And then that completes service  
25 for the [unintelligible]?

1 DIRECTOR SPACKMAN: Yes.

2 MR. BROMLEY: Thank you.

3 DIRECTOR SPACKMAN: And you can -- you can cc  
4 me. I'm just not a reliable place to send it to. I  
5 want it to be somebody that's reliable.

6 MR. BROMLEY: Okay. Thank you.

7 DIRECTOR SPACKMAN: I've just imposed the mantle  
8 of reliability onto my new assistant, so she'll take  
9 that well.

10 All right. Let's talk about motions and  
11 other filings. So there were numerous motions filed  
12 with the Department. I think they were all addressed  
13 by three orders issued last week. There was an order  
14 authorizing discovery. There was an order denying  
15 motion to appoint an independent hearing officer, and  
16 an order denying motions to dismiss for continuance or  
17 postponement. And in that particular order, at least  
18 my understanding that all of the motions were addressed  
19 by -- all the remaining motions were addressed by the  
20 order denying motions to dismiss.

21 There also is a request for production, a  
22 public records request. And the Department will  
23 provide for the parties all records related to these  
24 requests. Most of these documents have been compiled,  
25 so -- and I think the deadline is tomorrow, right,



1 Meghan?

2 MS. CARTER: Uh-huh.

3 DIRECTOR SPACKMAN: And they'll be sent by  
4 e-mails to -- e-mail to the parties, or there will be  
5 access to an FTP site. And they'll be posted on the  
6 web page.

7 Is that correct, Meghan?

8 MS. CARTER: Yes.

9 MS. MCHUGH: Mr. Director, this is Candice.  
10 Just to clarify one of your statements.

11 DIRECTOR SPACKMAN: Yes.

12 MS. MCHUGH: You stated there was three orders,  
13 one was order denying motion to dismiss continuance and  
14 postponement. It was -- and it wasn't necessarily a  
15 motion to dismiss the request for clarification,  
16 because you did in fact clarify. So just for the  
17 parties' sake and for the record, that order did  
18 provide clarification in a response to the City of  
19 Bellevue's motion for clarification and more definite  
20 statement.

21 DIRECTOR SPACKMAN: Okay. All right. And then  
22 over the weekend we received a motion to designate the  
23 order denying motion to dismiss as a final order. And  
24 I will deny that motion from the table today. We'll  
25 issue a final order. But the denial will be without

1 prejudice. And if the parties can strike an agreement,  
2 some kind of settlement that would allow a delay of the  
3 hearing itself, and I would reconsider, and am actually  
4 inclined to grant that motion if the parties can reach  
5 an agreement for the 2021 irrigation season.

6 And I know at least in the motion to  
7 certify the order to dismiss as final that there was a  
8 reference to a previous certification, that there was  
9 an agreement between junior and senior water-right  
10 holders. So I will just say, I still hold out hope  
11 that there can be some agreement.

12 All right. Let's talk about standard --  
13 standards for proof. I think the parties need to know  
14 what my expectations are. And I don't know that I want  
15 to go through 42-237a.g. in detail. But the burdens at  
16 least -- burdens of proof are the presumption under  
17 Idaho law is that the senior is entitled to his decreed  
18 water right but there certainly may be some  
19 post-adjudication factors which are relevant to the  
20 determination of how much water is actually needed.

21 And again, in Idaho a subsequent  
22 appropriator attempting to justify his diversion has  
23 the burden of providing that it will not injure prior  
24 appropriations.

25 So at least from my perspective the senior

1 water-right holders need to show that they hold water  
2 rights and at least bring forward some evidence of  
3 injury. I don't think that the mere pleading that they  
4 hold water rights and therefore they're entitled water  
5 suddenly -- entitled to water suddenly shifts to the  
6 juniors the total responsibility of establishing both  
7 that they're short or that they're injured and that --  
8 and then -- and then bearing the burden of establishing  
9 that there is some lesser amount of water which will  
10 satisfy the beneficial use under the right.

11 So at least from my perspective, the senior  
12 needs to come in and assert that they hold or that the  
13 senior holds a water right and that the senior has been  
14 injured at least to some degree. Then I think the  
15 burden shifts to -- fully to the junior.

16 And as the courts have said, the senior is  
17 entitled to the decreed water, but there may be other  
18 factors that will play into how much water is actually  
19 necessary to satisfy the right.

20 Do the parties want to discuss this  
21 particular burden issue?

22 MR. THOMPSON: I've got a question, Director.

23 DIRECTOR SPACKMAN: Travis.

24 MR. THOMPSON: When you mentioned the other  
25 factors post adjudication, what are you considering?

1 Are you talking about the Rule 42 factors  
2 [unintelligible] injury?

3 DIRECTOR SPACKMAN: Well, no, I'm not -- I'm not  
4 referring to Rule 42 at all, if you're talking about  
5 the Conjunctive Management Rules. I'm going back to  
6 the court's standard that is cited here. And I can  
7 give you a citation if you want.

8 MR. THOMPSON: Right. And that case was about  
9 Conjunctive Management Rules in the context of those  
10 post-adjudication factors. If you read it, I think it  
11 will talk about Rule 42.

12 DIRECTOR SPACKMAN: Well, it says the senior is  
13 entitled to his decreed water right. But there  
14 certainly may be some post-adjudication factors, and  
15 so --

16 MR. THOMPSON: If you keep reading that  
17 [unintelligible], that's what it talks about.

18 MR. BROMLEY: Sorry, Travis.

19 But, Mr. Director, what case are you  
20 reading from? Can you tell us?

21 DIRECTOR SPACKMAN: This is American Falls  
22 Reservoir District No. 2 versus Idaho Department of  
23 Water Resources.

24 MR. BROMLEY: Which I think Travis is right. It  
25 does repeal with the Conjunctive Management Rules.

1 DIRECTOR SPACKMAN: Well -- go ahead, Meghan.

2 MS. CARTER: It doesn't deal with the  
3 Conjunctive Management Rules, but it does set up what  
4 the standard is going into the Conjunctive Management  
5 Rules by talking about what the standard was prior to  
6 using the Conjunctive Management Rules. So that's --  
7 that's what we're drawing from.

8 UNIDENTIFIED SPEAKER: [Unintelligible.]

9 MS. KLAHN: Just to be clear, could we get the  
10 actual journal. Or yeah, what specific second cite is  
11 that? There were several AFRD versus IDWR cases, as I  
12 recall.

13 Is this the 2013 decision?

14 MR. BROMLEY: 2007, Sarah. 143 Idaho  
15 [unintelligible] --

16 MS. KLAHN: Oh, the early one? Okay. Thank  
17 you.

18 MR. BROMLEY: The constitutionality of the  
19 Conjunctive Management Rule case, Sarah. This is  
20 Chris.

21 MS. KLAHN: Thank you.

22 DIRECTOR SPACKMAN: All right. I would say  
23 generally, Travis, that the standard is that if there  
24 is some lesser quantity of water that would satisfy the  
25 beneficial use under the right, and there may be

1 several subfactors in that, then that proof of the  
2 lesser quantity. And the burden of that proof is borne  
3 by the junior.

4 MR. THOMPSON: Okay.

5 MR. RIGBY: Mr. Director, this is Jerry.

6 DIRECTOR SPACKMAN: Who spoke?

7 MR. RIGBY: This is Jerry, Jerry Rigby.

8 DIRECTOR SPACKMAN: Yes.

9 MR. RIGBY: I'm just trying to also verify  
10 exactly what you are looking for from the senior  
11 surface users, in that I understand where you're going  
12 for a lesser amount. But the question would be if they  
13 can evidence that they are not able to beneficially  
14 apply the water and obtain the full crop that they  
15 otherwise would, is that going to be sufficient? In  
16 other words, I'm trying to determine just how detailed  
17 our -- the seniors would be required under your  
18 standard to ensure that the -- that, in essence, full  
19 curtailment is necessary.

20 DIRECTOR SPACKMAN: Well, Jerry, what I am  
21 saying is that the seniors just can't come in and say  
22 we have a water right and the model -- and the model  
23 shows that there are depletions, therefore the juniors  
24 should be curtailed.

25 MR. RIGBY: Fully understand. My point --



1 DIRECTOR SPACKMAN: That's not --

2 MR. RIGBY: Go ahead.

3 DIRECTOR SPACKMAN: That's not sufficient. So  
4 there has to be more proof of a connection between  
5 depletion and actual injury.

6 MR. RIGBY: Fully understand. My question is,  
7 to what extent of the injury? You know, last crop of  
8 hay? Stuff like -- evidence like that, is that what is  
9 necessary only, or do we have to get into the detail of  
10 just exactly how much of an injury it would be, as  
11 opposed to showing that there is injury?

12 DIRECTOR SPACKMAN: Jerry, I'll leave that to  
13 counsel.

14 MR. RIGBY: Very good. Thanks.

15 MR. SCHOEN: Mr. Director, this is Larry Schoen.  
16 I have a question along these lines to try to answer  
17 your question.

18 DIRECTOR SPACKMAN: Whose question?

19 MR. SCHOEN: Your question about -- you asked,  
20 are there any questions or clarifications needed on the  
21 issue of the burdens that you just outlined.

22 DIRECTOR SPACKMAN: Okay.

23 MR. SCHOEN: And so here's -- here's where I'm  
24 stuck: The junior groundwater pumpers have never been  
25 curtailed, and yet senior surface water users are

1 curtailed nearly every year. Typically for me, for  
2 example, with an 1886 water right, I'm curtailed in the  
3 range of late June to -- last week of June, first week  
4 of July. My surrounding area groundwater pumpers are  
5 never curtailed.

6           And so the question really is about showing  
7 injury. How do I show injury on that situation? There  
8 are enumerable reports dating back to roughly 1950  
9 demonstrating the clear link between groundwater and  
10 the surface water in the Silver Creek system. The  
11 Silver Creek system is spring fed. The source of the  
12 springs is the very groundwater being pumped by the  
13 groundwater users. And this has been shown in study  
14 after study after study.

15           If I've been curtailed every year, and the  
16 juniors have never been curtailed, how do I demonstrate  
17 the extent of my injury? And is -- is your question --  
18 is showing a burden really a two-part answer? In other  
19 words, (a), groundwater users should be curtailed, then  
20 the question becomes -- and that's an "if" question,  
21 because they haven't been in the past.

22           And then the second part is, to what extent  
23 should they be curtailed so that the surface water  
24 users may enjoy the use of their senior rights. And we  
25 don't really know the full extent of that use because

1 they've always been curtailed prematurely while the  
2 juniors have been allowed to keep pumping.

3           So, you know, this is a conundrum that  
4 really can't be overcome because of the history here.  
5 But at the very least it would seem to me to say -- to  
6 be proper and truthful to say, juniors must be  
7 curtailed to some extent, at least they must be in line  
8 with other water rights on the spectrum of seniority.

9           DIRECTOR SPACKMAN: Well, Larry, let me just  
10 say -- and I don't want to get into the details of your  
11 particular circumstances, but let me just say that I  
12 disagree with your premise that initially the junior  
13 groundwater users have to be shut off.

14           There has to be a nexus, a connection,  
15 between groundwater diversion and depletions to the  
16 stream that ultimately injure the senior water rights.  
17 There has to be a connection. And in my opinion, those  
18 who are best able to establish that connection are the  
19 seniors.

20           Now, I will say that the Department of  
21 Water Resources has developed some information from its  
22 records, and you have that through the staff memoranda.  
23 You have that information. Now, who that's helpful to,  
24 I won't even venture to say at this point, because I  
25 think that information is beneficial to both sides in

1 different ways. And -- but, Larry, there has to be a  
2 connection. And the entities that can best or the  
3 individuals who can best establish that connection are  
4 the seniors.

5 MR. SCHOEN: Okay.

6 DIRECTOR SPACKMAN: But let me reiterate the  
7 ultimate burden is upon the junior.

8 MR. BARKER: Mr. Director.

9 DIRECTOR SPACKMAN: Yes.

10 MR. BARKER: This is Al Barker. I just have one  
11 question about the injury analysis.

12 And that is, are we looking at -- are we  
13 looking at material injury, or are we looking at  
14 something other than material injury as the burden of  
15 proving what, I guess is the question.

16 DIRECTOR SPACKMAN: Well, I don't know what the  
17 difference is, Al.

18 MR. BARKER: Okay.

19 DIRECTOR SPACKMAN: We -- I guess I'd say I  
20 don't know that I know the difference.

21 MR. BARKER: Okay. I'm not sure I do either.  
22 But we've been using one term, and there's another term  
23 that's been used in similar circumstances, including in  
24 the AFRD case that you just read from. So I just need  
25 to know what we're shooting at.

1           DIRECTOR SPACKMAN: Yeah. All right. Well, we  
2 talked about the burdens, and I'm sure that it's not  
3 clear to anybody. But I don't think that I can  
4 describe in exact detail what proof each party needs to  
5 come in with to satisfy their respective burdens.

6           MR. THOMPSON: I'll rephrase my question. This  
7 is Travis Thompson again.

8                     I guess the post-adjudication factors, are  
9 we able to use what is identified in Rule 42, what's  
10 identified in the court's decision in AFRD2 as those  
11 type of factors and information that you're looking for  
12 as far as what the junior would have to show?

13           DIRECTOR SPACKMAN: Well, so, Travis, in  
14 response to your question, without adopting the rules  
15 of procedure -- I'm sorry, the Conjunctive Management  
16 Rules as the rules that will govern what the Director  
17 is doing in this proceeding, I would say that those  
18 factors are a guide, certainly a very important guide,  
19 in the establishment and putting on the burden of  
20 proof.

21           MR. THOMPSON: I just want to clarify. You're  
22 not looking at other factors that I'm not aware of?

23           DIRECTOR SPACKMAN: Okay. Let's talk about  
24 discovery. So some of this is open-ended, perhaps.  
25 Deadlines: Let me just -- let me mention a couple. I

1 would like to have the parties identify any expert  
2 witnesses by Wednesday of this week. And identify any  
3 factual witnesses by Friday of this week.

4 Now, maybe what I ought to do, let me --  
5 well, I guess I'll wait. I want to at least at some  
6 point leave a marker here, because I've kind of left it  
7 behind. I want to at least put out a marker about the  
8 level of participation in the various categories that  
9 we identified. And maybe this is an appropriate place  
10 to talk about it when we're talking about discovery,  
11 because we're really talking about hearing preparation.

12 So in the first two categories, that would  
13 be those who might be seeking relief because they're  
14 asserting that their senior water rights are being  
15 injured. They will participate fully in the hearing.  
16 Those groundwater users who hold rights within the area  
17 identified by Jennifer Sukow in the Bellevue Triangle  
18 will be full participants in the matter.

19 Now let's talk about those who are within  
20 the Wood River Basin but are outside of the area that  
21 was identified. So at least in 2020, not subject to  
22 curtailment in this immediate proceeding. And -- and I  
23 would consider those folks as full participants.

24 But my question will be, first of all, who  
25 will be your witnesses and what do they intend to



1     testify about? Because the focus of this hearing is  
2     really on Silver Creek, on Little Wood, depletions to  
3     those sources of water, and diversions of groundwater  
4     within the area in the Bellevue Triangle identified by  
5     Jennifer Sukow and the impact or depletions caused by  
6     those groundwater diversions.

7                     Groundwater diversions outside of that area  
8     are not -- at least with respect to this upcoming  
9     hearing, are not subject to a determination of whether  
10    those diversions should be curtailed.

11                    So I guess my long explanation is that  
12    those folks that I identified in the third grouping,  
13    you're certainly entitled to participate as parties.  
14    But I want to know who your witnesses are. I want to  
15    know what they will testify about, and at least under  
16    our rules of procedure, I have the ability to limit  
17    testimony.

18                    And so if it's duplicative or it's  
19    testimony that I think is not relevant to the  
20    particular issues of curtailment of groundwater users  
21    within the Bellevue Triangle and the impacts on surface  
22    water users, I will limit the testimony. And I'll  
23    be -- I'll be very assertive about it, because we need  
24    to get through the testimony to be presented in five  
25    days.

1 MS. MCHUGH: Mr. Director, this is Candice  
2 McHugh, since you're addressing my category.

3 DIRECTOR SPACKMAN: Yeah.

4 MS. MCHUGH: I hear what you're saying. I would  
5 request that you put whatever you're asking in writing,  
6 so that we understand specifically what you're asking  
7 of us, number one. Number two, the rationale that you  
8 just put forward on the record that it also go in  
9 writing so that we are not unclear as to what your  
10 expectations are for what you think our level of  
11 participation can be.

12 And I'm fully aware of the power of you to  
13 limit anything that you found irrelevant in that. But  
14 I do request that it be in writing so that we could  
15 respond.

16 If what you're asking is for me to respond  
17 today about that, I'm not prepared to do so. But --

18 DIRECTOR SPACKMAN: No.

19 MS. MCHUGH: -- I think it's helpful if you  
20 could put it in writing so that we know what you're  
21 expecting from us, if that would be okay.

22 DIRECTOR SPACKMAN: Thank you, Candice. And I  
23 will issue a scheduling order. But my expectation is  
24 that that information come in on Friday, the same time  
25 when information about lay witnesses comes in. And

1 certainly if you're planning to call an expert, that  
2 information needs to come in on Wednesday.

3 MR. BROMLEY: Director.

4 MR. RIGBY: Director.

5 MR. BROMLEY: If I might, I think what I'm  
6 hearing is that since I'm in group three --

7 DIRECTOR SPACKMAN: Right.

8 MR. BROMLEY: -- I'd be sending in a notice on  
9 Wednesday of who we would be intending to call as an  
10 expert witness, because I wouldn't have your scheduling  
11 order explaining the scope of the hearing. Our --  
12 we're trying to figure out what our interests are here.  
13 And so, you know, we're learning along with you minute  
14 by minute what -- you know, what we might have to  
15 prepare for or not.

16 And so I guess I'd be filing what I feel I  
17 would need to file on Wednesday or Friday to preserve  
18 those issues, I may then learn more, I think is what  
19 you're saying with your scheduling order as to, you  
20 know, what would and would not be allowed. And then  
21 ultimately that goes to -- if the hearing, in fact,  
22 happens in that week of June that you've identified,  
23 you know, what we would or would not be preparing for.

24 And the last -- my last comment, Director,  
25 is I've been involved in enough of these to have seen

1 the scope increase from what was stated at the outset.  
2 So I -- you know, I appreciate what you're saying. But  
3 my personal experience is that scope has a tendency of  
4 enlarging. And that's the difficulty, then, that the  
5 third group is in, at least from my standpoint, for my  
6 client, is knowing that in fact that that scope will  
7 increase.

8 DIRECTOR SPACKMAN: Well, thank you,  
9 Mr. Bromley. I -- and I appreciate your comments. So  
10 we will issue a scheduling order tomorrow, hopefully  
11 tomorrow morning, so at least you'll have it in your  
12 hands. And the reason for my asking that the experts  
13 be identified is so that the parties, within the short  
14 time frames that we've identified, can at least have an  
15 opportunity to question those experts in one way or  
16 another.

17 MR. SPECK: Director, this is Jim Speck.

18 DIRECTOR SPACKMAN: Yes, Jim.

19 MR. SPECK: If I may revisit the question I  
20 asked at the outset, and I saw Jennifer Sukow raise her  
21 hand at one point. We really need to understand where  
22 that north line is in the area, because you've been  
23 quite clear that if party's outside the area that she  
24 identified, then they do not stand the risk of  
25 curtailment in 2021.

1                   And her line, if I read her report  
2                   correctly, is Glendale Bridge Road. And your line is  
3                   significantly north of that. So we need to know what  
4                   it is.

5                   And perhaps the easiest way would be if the  
6                   Department can simply provide a list of all of the  
7                   groundwater rights it is contemplating curtailing as a  
8                   result of this proceeding.

9                   DIRECTOR SPACKMAN: Well, let me defer to  
10                  Jennifer.

11                  Jennifer, are you on?

12                  MS. SUKOW: Yes, I'm on.

13                  Can you hear me?

14                  DIRECTOR SPACKMAN: Yes.

15                  MS. SUKOW: Yeah, just to clarify that the area  
16                  that you sent out that was attached to the notice is  
17                  larger than the area that was analyzed in my staff  
18                  memo. And Jim Speck's correct about that. It is -- it  
19                  does -- it does go a bit further north, and then it  
20                  also includes -- the area in the notice includes a few  
21                  more groundwater PODs in the very southeast and  
22                  southwest parts of the triangle.

23                  So I think the clarification he's asking  
24                  for is which -- I guess if people are in those -- those  
25                  areas that are between those two, I guess he's asking

1 whether -- whether they would be -- whether they need  
2 to be concerned about being curtailed or not. And I  
3 don't know the answer to that. But I just wanted to  
4 point out that those -- those two areas are -- are  
5 different.

6 DIRECTOR SPACKMAN: Okay. And this is -- so  
7 thanks, Jim. So this is something unknown to me, I  
8 guess, at this time. We will clarify this in the  
9 scheduling order, Jim.

10 MR. SPECK: Thank you.

11 DIRECTOR SPACKMAN: Okay. All right. So let's  
12 go back to discovery. Oh, I didn't finish.

13 So we talked about the third group. And  
14 the fourth group, which is a group of those who filed a  
15 Notice of Intent to Participate. And my question, and  
16 really it's a question of standing, in other words,  
17 what standing do these particular entities have in this  
18 dispute?

19 And I'm struggling trying to establish,  
20 from my perspective, any standing, other than an  
21 interest in the legal outcome of this proceeding; in  
22 other words, the legal issues. But there -- go ahead.  
23 Somebody wants to speak.

24 MR. ASH: Mr. Director, this is Brendan Ash on  
25 behalf of the City of Gooding.



1                   Now that we're talking about the details of  
2     these groups, I believe you have us grouped into four.  
3     But the City of Gooding is a -- we hold surface water  
4     rights that I believe are senior out of the Little  
5     Wood, priority dates of 1877 through 1855.

6                   So now that we're discussing this, I think  
7     we should probably be bumped up to group one. And that  
8     was 1885, excuse me, not '55. '85.

9                   MS. KLAHN: Are there people talking in the  
10    conference room, or is it just very quiet?

11                  MR. BAXTER: Sarah, I think we might have lost  
12    audio. Let me go walk in there and double-check real  
13    quick.

14                  MR. THOMPSON: I think I put us on mute. I'm  
15    sorry. Take this away from me.

16                  UNIDENTIFIED SPEAKER: So can you hear us now?

17                  UNIDENTIFIED SPEAKER: You're going to have to  
18    repeat your question.

19                  MS. KLAHN: We didn't hear anything for about  
20    three minutes.

21                  UNIDENTIFIED SPEAKER: It cut off right after  
22    the --

23                  DIRECTOR SPACKMAN: Travis -- Travis Thompson  
24    decided he wanted to operate the system and muted  
25    everybody.

1                   Garrrick, do you have any demerits you can  
2 hand out?

3                   MR. BAXTER: No. But I will just say that we  
4 cut out right after Mr. Ash talked about the City of  
5 Gooding's water rights.

6                   DIRECTOR SPACKMAN: Okay. All right. All  
7 right. Let's try again. I'm sorry. So I thought I  
8 had everybody agreeing with us, and now let's try  
9 again.

10                  UNIDENTIFIED SPEAKER: It helps if you mute  
11 everybody.

12                  DIRECTOR SPACKMAN: Well, not only they're  
13 muted, but they can't hear.

14                   Okay. So my question was, we were talking  
15 about the fourth group, and Mr. Ash had stated that the  
16 City of Gooding held water rights, surface water  
17 rights, and so City of Gooding should be in group one.

18                   And then I asked the question of the  
19 remaining folks in the group four, what factual  
20 interest they had in this particular matter. And in my  
21 opinion, there's a question of standing, because some  
22 of these entities are located completely outside of the  
23 Wood River Basin. And while they may have an interest  
24 in the legal issues that are being raised, I can't see  
25 that there's a factual basis for their participation.

1 And so I -- I asked someone who wanted to speak up,  
2 either Rob Harris representing the City of Idaho Falls,  
3 Sarah Klahn, representing the City of Pocatello, Idaho  
4 Ground Water Appropriation's represented by Randy  
5 Budge, what the factual witnesses you would wish to  
6 present at the hearing.

7 MS. KLAHN: City of Pocatello isn't going to  
8 call any witnesses, Mr. Director.

9 DIRECTOR SPACKMAN: Okay.

10 MR. BUDGE: Director, this is TJ Budge. IGWA's  
11 not planning to call fact witnesses, but is certainly  
12 interested in the legal ramifications of the  
13 proceeding.

14 MS. KLAHN: Yes, that's the same reason we're  
15 here.

16 DIRECTOR SPACKMAN: Rob?

17 MR. HARRIS: We share similar concerns,  
18 Director. This is, to the best of my knowledge, the  
19 first time the Director has fully executed his powers  
20 under the Groundwater Act after the decision on the  
21 Basin 33 water users matter that I briefed.

22 So the process and procedure that is  
23 implemented in this proceeding, I think, has  
24 significant possible ramifications for any future  
25 proceedings on the ESPA. So we don't plan to call any

1 factual witnesses.

2           Anytime I hear the word "standing," my --  
3 my concern goes up a little bit, because it's a little  
4 unclear to me if the Director is saying that because we  
5 can't show a direct factual injury that we would  
6 otherwise not have standing to at least listen in on  
7 the proceedings and at least be a part of them, even  
8 though we may not actively participate.

9           MS. KLAHN: Specifically, we want to be able to  
10 participate in any briefing of legal issues. We  
11 suspect that, given the conversation here today and the  
12 way things have gone so far, that there's going to be a  
13 robust appeal of whatever happens here. And that's  
14 going to set the precedent for the way things go with,  
15 as Rob says, potentially with the ESPA.

16           And so we'd like to be able to participate  
17 in that, and we can't unless we are parties -- well, we  
18 can't effectively participate unless we're parties to  
19 this matter.

20           DIRECTOR SPACKMAN: Coalition of Cities,  
21 Candice?

22           MS. MCHUGH: Mr. Director, this is Candice on  
23 behalf of the Coalition of Cities. And I think you  
24 rightly identified that we have a mixed number of  
25 members.

1           I understand Mr. Ash is representing the  
2 City of Gooding on behalf of their senior surface water  
3 rights. And he and I will have a discussion about  
4 that. And I'll likely be amending my notice to exclude  
5 the City of Gooding. I just didn't want to prejudice  
6 any of my coalition cities by not including them in  
7 that, and we simply didn't have enough time to brief  
8 all of the City Councils.

9           I do have, as you know, a settlement with  
10 our Coalition of Cities that's directly impacted -- or  
11 directly and potentially impacted in the sense that we  
12 find ourselves on the ESPA in the same situation as  
13 those in Basin 37 who are in a groundwater management  
14 area without a groundwater management area plan in  
15 place.

16           Our stipulation anticipates that it would  
17 be part of such a plan, but of course said hasn't  
18 happened, number one. And number two, it is only  
19 effective at this point, it appears in our delivery  
20 call scenarios, and this is a new proceeding in that.

21           So at this point I think I can't speak  
22 entirely that the coalition would have zero factual  
23 witnesses, because I do have a couple folks that have  
24 called about their interest in the basin. But the real  
25 reason is to be able to participate and protect any

1 proceeding that could be duplicated in the ESPA and  
2 impact our settlement with the surface water users  
3 there.

4 So unfortunately, given the timeline, I  
5 can't fully address whether there would be zero factual  
6 witnesses from any of the individual city members that  
7 are finding themselves in the basin. I anticipate not.  
8 And I anticipate it would be a limited to simply  
9 briefing questions. But I will do my best to clarify  
10 that by your deadlines.

11 DIRECTOR SPACKMAN: Okay. And the last -- last  
12 entity I want to ask is Lincoln County.

13 Does Lincoln County hold any water rights?

14 MR. ROATS: Lincoln -- Richard Roats here,  
15 Director. Lincoln County does not hold water rights.  
16 And there will be no factual witnesses.

17 DIRECTOR SPACKMAN: Okay.

18 MR. KRAMER: Mr. Director.

19 DIRECTOR SPACKMAN: Yes.

20 MR. KRAMER: Mr. Director, I wanted to ask a  
21 question as well.

22 DIRECTOR SPACKMAN: Who's this?

23 MR. KRAMER: This is Rusty Kramer with the Water  
24 District 37B Groundwater Association. So we -- I just  
25 wanted to have a clarification. We've been part of the



1 groundwater management area meetings all winter. We  
2 had a spot at the -- at the Advisory Board. We filed  
3 an intent to participate. And if I'm understanding you  
4 correctly, obviously we need counsel. You let me know  
5 that.

6 And I'm just reading my notes here. If we  
7 are going to participate moving forward, we are going  
8 to have to bring witnesses and what they're going to  
9 have to testify, that list, by Wednesday.

10 Can we participate just as an observer  
11 moving forward, I guess is my question?

12 DIRECTOR SPACKMAN: So the association, Rusty --  
13 the association can participate, but the association  
14 needs to be represented by counsel in this matter to  
15 participate.

16 MR. KRAMER: I understand that. I was just  
17 saying, are they going to have to have a witness list.  
18 And if they're not going to bring a witness list or  
19 anyone to testify, can they participate just out of  
20 concern? Because we were out of the map, but, you  
21 know, we've been part of these proceedings the last  
22 five years. And so they want to obviously be aware of  
23 the whole situation.

24 DIRECTOR SPACKMAN: Rusty, your question brings  
25 up another particular issue that we need to talk about.

1 And that's what -- what's required and what does  
2 "participation" mean. And this will be an open  
3 hearing. And there will be an opportunity at least for  
4 people to listen in.

5 So folks who are observers, folks who want  
6 to understand what's happening, and if they're not  
7 offering witnesses and they're not examining,  
8 cross-examining witnesses that are called, they can  
9 even participate, if we call it that, or observe  
10 remotely. Okay. So those opportunities will be  
11 afforded.

12 I expect that people who are actively  
13 participating and who are calling witnesses and  
14 presenting factual evidence, I expect them to be here  
15 in person. So there won't be a Zoom or remote  
16 opportunity for participation. And I think that's  
17 consistent with some of the guidelines that are now  
18 being given by the State and by CDC.

19 MR. KRAMER: Forgive -- forgive my ignorance on  
20 that, so even as an observer you would need counsel?  
21 I'm just clarifying.

22 DIRECTOR SPACKMAN: Well, if you're just  
23 listening in, you don't need counsel.

24 MR. KRAMER: Even if you're an entity?

25 DIRECTOR SPACKMAN: No. If you're just

1 listening in, any individual or entity can listen. But  
2 if somebody is actively participating, either in the  
3 presentation of evidence or cross-examining witnesses  
4 or if they anticipate filing briefs or attempting to  
5 appeal the matter, then those parties or entities need  
6 to be represented by counsel.

7 MR. KRAMER: And the only other last question I  
8 was -- and maybe you said this at the first and I  
9 didn't hear: I heard this is being recorded. Can a  
10 person go on IDWR's website and listen to this whole  
11 meeting right now again later?

12 DIRECTOR SPACKMAN: I don't -- I don't know  
13 whether we intend to post this on the website. It  
14 certainly is being recorded.

15 MR. BAXTER: Director.

16 MS. CARTER: We'll make it available.

17 DIRECTOR SPACKMAN: We'll make it available.

18 MR. KRAMER: Thank you.

19 MR. SPECK: Director, this is Jim Speck.

20 DIRECTOR SPACKMAN: Yeah.

21 MR. SPECK: Just two points of clarification,  
22 because I happen to know where they are. The Southern  
23 Comfort Homeowners' Association and 86 Gimlet Road,  
24 LLC, should be in group three. They hold groundwater  
25 rights, but they're well north of your area.

1 DIRECTOR SPACKMAN: Okay. Thank you.

2 MR. SEMANKO: Mr. Director.

3 DIRECTOR SPACKMAN: Yes, Norm.

4 MR. SEMANKO: Thank you. I hope you do post the  
5 recording. I want to hear where Travis cut everybody  
6 off for three minutes and see what we lost there.

7 I'm a little bit confused. I'll try to  
8 clarify things. So I get if you're in group one or  
9 group two. You're in the target. You're directly  
10 affected. You're going to be involved in this hearing.

11 I get group three, too, because unless I  
12 don't understand it, your notice of this proceeding was  
13 sent to all water users in Basin 37. That's how my  
14 client got interested, even though based on your most  
15 recent order it's pretty clear we're probably not  
16 impacted. I still feel like what Mr. Bromley said, I  
17 don't know what's going to happen at the hearing. I  
18 don't know where it's going to go. I got to be there  
19 to protect my folks. I get -- I get group three.

20 I did not take your order, which the notice  
21 went to the water users in Basin 37 inviting them to  
22 file a notice of participation. This isn't the  
23 adjudication. This isn't a deal where everybody's got  
24 standing. I don't understand that your notice, which  
25 was not sent directly to folks outside of Basin 37, was

1 an invitation for the world to file notices of  
2 participation.

3 Now, correct me if I'm wrong, but I've been  
4 in this position for a client before where I wasn't  
5 representing someone in the target area, and I had to  
6 file a motion to intervene. I wasn't invited to  
7 participate. I wasn't sent the notice. So I'm not  
8 understanding -- and I'm not saying they shouldn't  
9 participate. I'm not understanding how the group four  
10 folks were able to file notices of participation if  
11 they, in fact, did not directly receive the notice, as  
12 all the users in Basin 37 did.

13 And maybe I'm not understanding it because  
14 it was published or for some other reason I'm not  
15 understanding it. But I'm not understanding right now  
16 the group four folks to be in the same position as the  
17 group three folks. And maybe I'm wrong. And maybe I'm  
18 opening a can that doesn't need to be opened. But I'm  
19 a little confused about who was invited to file notices  
20 of participation.

21 DIRECTOR SPACKMAN: Well, Norm, I struggled with  
22 this some myself in grouping people into the various  
23 categories. But -- and I suppose, as a Hearing  
24 Officer, I could essentially tell these folks that they  
25 don't have standing and they can't participate, then I

1     suppose it would force, if there is an appeal -- and  
2     I'm assuming there will be regardless of how this  
3     particular matter shakes out, then I would force them  
4     into filing something, whether it's an amicus brief or  
5     whether it's some other filing to participate in an  
6     appeal or challenges.

7                 So I guess where I'm landing, and the  
8     distinction between group three and group four will be,  
9     group three, from my perspective, can fully participate  
10    because you're in the basin.

11                And Chris is worried about creep. And I  
12    think that's a legitimate concern. And I want to -- I  
13    want to limit the focus on this hearing to the area  
14    that was identified.

15                Now, I think -- and I want to be perfectly  
16    transparent -- the way in which the notice of the  
17    proceeding and the contested case was issued, it was,  
18    in this case, titled very broad. In other words, this  
19    is a hearing related to a specific attempt to determine  
20    in the Bellevue Triangle what the impacts are.

21                But the proceeding itself could go on and  
22    be much larger than this particular hearing. And there  
23    could be multiple hearings that spring out of this  
24    particular matter. That's my vision.

25                So there is a good reason why the people in



1 category three should be recognized as parties. Now, I  
2 don't know whether that clarification is helpful to  
3 anybody.

4 I hope it is, Chris, because if you're  
5 concerned about creep, I don't intend to allow creep  
6 with respect to this particular hearing, because it was  
7 intended to have a narrow focus. But nonetheless,  
8 there are larger issues in the conjunctive  
9 administration here that I think ultimately will need  
10 to be resolved. And I don't know how those go.

11 But I couldn't see the worth of having  
12 multiple proceedings. And my vision was let's just  
13 have one proceeding, and then hold hearings based on  
14 what the emergency or exigent circumstances are. So  
15 I'm --

16 MS. MCHUGH: Mr. Director.

17 DIRECTOR SPACKMAN: -- answering this in a long  
18 way, Norm, but in the -- in the fourth category, my  
19 intention is to say no opportunity to call witnesses,  
20 no opportunity to cross-examine, but I will allow those  
21 folks to brief and to participate in any appeals that  
22 might arise out of this particular contested case --

23 MS. MCHUGH: Well, Mr. Director, this is  
24 Candice.

25 DIRECTOR SPACKMAN: -- because I --

1 MS. MCHUGH: And for the record, I do want to  
2 clarify for Norm that notice was published. And I  
3 think your point isn't off base by means and sense that  
4 a normal proceeding, you know, you would have  
5 intervention and stuff. But because the notice was  
6 published and the way to essentially participate in  
7 this particular case was set forth in the notice with  
8 the Notice of Intent to Participate, I think it was  
9 appropriate, because I think we're plowing very new  
10 ground. And I'm not sure under what kind of rules  
11 we're under, so I think that's the issue as to why the  
12 category four people are here. So the whole world, by  
13 notice, was intended -- was essentially invited to  
14 participate under the rules set forth in the notice  
15 that was published.

16 And I think that may have altered the  
17 regular procedure in this case. But I do want to make  
18 clear that it wasn't just an invitation through a  
19 written notice that was actually published.

20 MR. THOMPSON: That brings up a point, Director,  
21 if I might. Travis Thompson. That notice has a  
22 sentence in the middle, it says, "If you do not  
23 participate, you may still be legally bound by the  
24 results of the proceeding." I don't know what that  
25 means or who that's intended to be addressed to.

1 People that received the letter? Or people that read  
2 the notice in the paper or what's published?

3 DIRECTOR SPACKMAN: Well, this is Gary Spackman  
4 again. I want to interpret and allow for the  
5 opportunity to participate as broadly as I can allow  
6 it. I don't want to exclude people, but I'm also  
7 looking at five days of hearing that I'm trying to  
8 narrow sideboards and confine the focus a little bit  
9 here.

10 MR. SEMANKO: I appreciate your answer. And I  
11 understand whether you're in group three or four that  
12 if you bring testimony that's not relevant, the Hearing  
13 Officer is going to so rule accordingly. So I  
14 appreciate the clarification. And I understand what  
15 Candice is saying as well. It could have been a little  
16 clearer. But we are where we are. Thanks.

17 DIRECTOR SPACKMAN: Thank you, Norm.

18 Okay.

19 MR. SCHOEN: Mr. Director, Larry Schoen.

20 DIRECTOR SPACKMAN: We talked about --

21 MR. SCHOEN: A quick question.

22 DIRECTOR SPACKMAN: Yeah.

23 MR. SCHOEN: This is Larry Schoen. Is there any  
24 reason why IDWR staff members could not be called as  
25 fact witnesses or expert witnesses?

1           DIRECTOR SPACKMAN: No. All of the Department  
2 staff are available. I asked for staff memoranda.  
3 There are four of those memorandums, as I understand  
4 it, that have been filed. And those four individuals  
5 are identified as being witnesses that will testify at  
6 the hearing. And honestly, I would encourage either  
7 informal or formal questioning of those staff that  
8 prepared the staff memoranda.

9           MR. SCHOEN: Thank you.

10          DIRECTOR SPACKMAN: Okay.

11          MR. THOMPSON: I'm sorry. Can you restate that  
12 last sentence? Did you say "informal questioning"?

13          DIRECTOR SPACKMAN: Yeah, informal or formal.  
14 However -- I mean if counsel wants to depose witnesses,  
15 they can. And when I say "witnesses," Department  
16 staff. You can depose them. We have their calendars  
17 available for your review so that you can find a time.

18                 Or informally, if you want to sit down with  
19 them and talk through the staff memorandums with them,  
20 we'll make them available to you. And I know that in  
21 the past that in Department proceedings that I've seen  
22 both, both methods of questioning of Department staff.

23          MR. BAXTER: Mr. Director.

24          DIRECTOR SPACKMAN: Yes.

25          MR. BAXTER: This is Garrick. I just wanted to

1 clarify. The informal versus formal just relates to  
2 whether or not it's a formal deposition. If we go the  
3 informal route, we'll still provide the opportunity for  
4 everybody to participate. I just want to make that  
5 clear, because we didn't want to get in a situation  
6 where, let's say, Jennifer Sukow is talking to one  
7 attorney, and then another attorney calls her up and  
8 tries to set up a meeting. We'll coordinate  
9 availability amongst all the participants.

10 Okay, Director.

11 DIRECTOR SPACKMAN: Okay. Thank you. That's  
12 helpful.

13 MR. BARKER: So, Director, Al Barker. I think  
14 just to make things -- following up on what Garrick  
15 said, we would very much intend to depose the staff  
16 members who did prepare the staff reports. And so if  
17 Garrick says we're going to do it one way or the other,  
18 we intend to send notice of depositions. We want to  
19 get the dates. We want to figure out when we can get  
20 that done after we get the document responses.

21 And so I think that answers your question  
22 about informal versus formal.

23 MR. BAXTER: Al, could you speak up a little  
24 louder.

25 MR. BARKER: Garrick, we're going to do a formal

1 deposition of all the staff witnesses.

2 Did you hear that?

3 MR. BAXTER: Yep. Thank you.

4 MR. THOMPSON: This is Travis. I guess I don't  
5 want parties contacting staff that I don't know about  
6 informally in between that time --

7 DIRECTOR SPACKMAN: Okay.

8 MR. THOMPSON: -- if that's fair.

9 DIRECTOR SPACKMAN: Well, and perhaps -- all of  
10 counsel isn't here right now, but perhaps after this  
11 pre-hearing conference, we have a calendar of the four  
12 people that filed the staff memorandum and memorandums,  
13 and you can look at, at least, the schedule and try to  
14 determine a time when they can be deposed.

15 Okay. We have some cleanup matters, but I  
16 think I'll wait. We talked about identifying experts  
17 needs to come in Wednesday. Lay witnesses Friday.

18 Along with the lay witnesses, those in  
19 category three need to tell me -- well, and experts,  
20 you need to tell me what they'll testify to. And let's  
21 see. We'll address exhibit numbering in the scheduling  
22 order.

23 Deadline to submit exhibits, any  
24 preference? Thursday before the hearing, which gives  
25 you a day and a weekend. Think about it.



1           I want to talk about the hearing itself.  
2       We have so many parties. We have five days. I intend  
3       to finish. So Day One, IDWR staff will be up. Day Two  
4       set aside for the seniors. Days Three, Four, and Five  
5       set aside for the juniors. If at any time we're behind  
6       schedule, we'll go overtime and we'll start earlier in  
7       the morning. So we'll go late. We'll start early. I  
8       intend to finish.

9           MS. MCHUGH: Mr. Director, I would request IDWR  
10       staff go Day Two and the seniors go Day One. I'm not  
11       available on Day One. The staff has the most  
12       substantive stuff to say, frankly. And I'm pretty sure  
13       I'll be able to figure out what the seniors said.

14           But I think in fairness to my clients that  
15       it would be fair that I be able to be there to  
16       cross-examine or at least hear what staff has to say.  
17       And I'm unable to be there on Day One. And I don't  
18       think it would prejudice any party by changing those  
19       two days up.

20           MR. BARKER: Well, Mr. Director, we have the  
21       opposite problem. We have an expert witness that needs  
22       to be there and -- for the staff presentation and is  
23       not available on Day Two.

24           So with respect to Candice, juniors are the  
25       ones in the area of the bull's-eye.

1 DIRECTOR SPACKMAN: Yeah.

2 MS. MCHUGH: And that's fine. I didn't realize  
3 that, Al. And so I understand. I just thought if  
4 there wasn't a conflict. But if you have a conflict, I  
5 don't disagree that we yield to the juniors that are  
6 directly in the bull's-eye. It's just trying to make  
7 this work with the schedules is difficult.

8 DIRECTOR SPACKMAN: Well, thanks. Thanks,  
9 Candice.

10 I also think in the order of presenting  
11 evidence that it's more sensible to have the Department  
12 staff testify first, testify about the background, lay  
13 out for the Hearing Officer and for others at least  
14 what the Department's research and information data  
15 analysis shows. And then I think that sets the tone.  
16 And also because the Director initiated this matter.  
17 And as a result, I think the Department has a  
18 responsibility to go forward with whatever evidence it  
19 has gathered.

20 So I'll leave the -- I'll leave the  
21 schedule the way it is.

22 MR. BROMLEY: Director, on the exhibits and  
23 thinking about it --

24 DIRECTOR SPACKMAN: Yeah.

25 MR. BROMLEY: -- it might -- I was thinking

1 about this the last couple of days. I think really  
2 having exhibits a week ahead of the hearing is a better  
3 way to go. A few days doesn't give time for creation  
4 of rebuttal exhibits. Doesn't give time, frankly, to  
5 prepare -- you know, to prepare. I think a week. And  
6 we're in an incredibly truncated time frame here.

7 But I think a week ahead is probably a  
8 reasonable amount of time. I -- you know, Thursday  
9 with Friday and the weekend to look at them to be  
10 prepared on Monday, I -- I don't think that's  
11 reasonable. I think a week ahead of time, given the  
12 schedule, is about as reasonable as it can get. That's  
13 my two cents on that disclosure.

14 DIRECTOR SPACKMAN: All right. Well, any other  
15 thoughts?

16 MR. BARKER: Mr. Director, Al Barker again.

17 I -- again, I'm going to have to disagree,  
18 Chris.

19 We're not going to have -- we're not going  
20 to have all the depositions done by then. We're not  
21 even going to know who the witnesses are until Friday.  
22 And then on Monday we're supposed to provide all the  
23 exhibits of what we're going to need to cross-examine  
24 people who we may or may not have had a chance to  
25 depose. I just don't see that Monday ahead of the --

1 or a week ahead of the hearing makes -- is possible.

2 It would be better, I agree. But we don't  
3 have time, given the date that the Director has  
4 selected that he says he's not going to move.

5 MR. BROMLEY: Al, I'm with you there. I'm just  
6 trying to think of something that helps. Maybe  
7 Wednesday is better.

8 DIRECTOR SPACKMAN: Let's make it Wednesday.  
9 Let's make it Wednesday. Well, I think all of this  
10 highlights, from my perspective -- and I'll say this  
11 again to the parties. All of this highlights the need  
12 for some reasonable settlement in 2021 and a -- a more  
13 traditional approach to holding this hearing.

14 Okay. We have a few things that need to be  
15 addressed as mop-ups.

16 Meghan, do you want to talk about  
17 corrections?

18 MS. CARTER: There --

19 DIRECTOR SPACKMAN: Yes.

20 MR. BARKER: Mr. Director, I have one more --

21 DIRECTOR SPACKMAN: Yes.

22 MR. BARKER: -- question about the -- about the  
23 evidence. And that is -- and for those on the phone,  
24 this is Al Barker.

25 The question I have is, is the

1 Department -- are the Department witnesses done with  
2 their work effective with the submission of their staff  
3 reports dated the 17th, or is your staff continuing to  
4 do additional work and additional analysis? And if  
5 that's the case, when will we be able to see that  
6 additional work and additional analysis?

7 DIRECTOR SPACKMAN: Mr. Barker, I'm not aware of  
8 any additional analyses that's being completed or done  
9 by the staff at this point.

10 MR. BARKER: Okay. Thank you.

11 DIRECTOR SPACKMAN: Mehgan.

12 MS. CARTER: Just one cleanup matter, in Tim  
13 Luke's staff memorandum, he noticed two typos on  
14 page 11, paragraph 3. We will include this information  
15 in the scheduling order.

16 But in that paragraph the sentence that  
17 starts after the footnote, the dates should say dates  
18 through 5/15/19 -- or 1884 instead of 1885. The next  
19 sentence, it should say the next junior priority date.  
20 But again, we'll put that in the scheduling order.

21 MR. THOMPSON: Footnote 3, you said?

22 MS. CARTER: I was just identifying the  
23 sentence. It's the sentence that starts after the  
24 footnote.

25 DIRECTOR SPACKMAN: Okay. Is there anything

1 else we need to talk about?

2 MR. LAWRENCE: Mr. Director, this is Mike  
3 Lawrence.

4 DIRECTOR SPACKMAN: Yeah, Mike.

5 MR. LAWRENCE: Just clarification. I think I  
6 heard you correctly that as far as parties that intend  
7 to participate in the examination of witnesses and  
8 presentation of evidence, those parties need to be  
9 present at the Department for the hearing in person?

10 DIRECTOR SPACKMAN: Yes. Yes.

11 MR. LAWRENCE: And witnesses will all be  
12 required to be in person --

13 DIRECTOR SPACKMAN: Yes.

14 MR. LAWRENCE: -- or will they be allowed to  
15 attend via Zoom?

16 DIRECTOR SPACKMAN: They need to be here.

17 MR. LAWRENCE: Okay.

18 MR. THOMPSON: Just one more question. Travis  
19 Thompson, Director. Jerry Rigby indicated he was going  
20 to file something to note who he was representing as  
21 far as that list of individuals who are in that  
22 category three -- two. I don't remember.

23 Can that be provided by sometime today?

24 MR. RIGBY: Mr. Director, this is Jerry. I  
25 fully intend to do so. It's been difficult to round



1 the herd up, if you will. And I think we're there --  
2 we're there. So I intend by close of business day  
3 today to send out a notice that I'll be -- that we will  
4 be representing the individuals that we intend -- or  
5 that have agreed to allow us to represent them. So  
6 yes.

7 DIRECTOR SPACKMAN: Okay. I'm finished.

8 Anything else?

9 MR. FLETCHER: Director, this is Kent Fletcher.

10 DIRECTOR SPACKMAN: Yes, Kent.

11 MR. FLETCHER: I just had a question. On your  
12 discovery order you limited the discovery to requests  
13 for production, depositions, and subpoenas.

14 I'm a little uncertain as to which of your  
15 groups can engage in that discovery. Clearly groups  
16 one and two should be involved in that. I was just  
17 wondering about groups three and four, because I can  
18 see where parties may attempt to bury, you know, the  
19 senior users with multiple requests for production that  
20 aren't impacted by this matter that face no threat of  
21 curtailment.

22 And I just was wondering if you could give  
23 us any guidance on that.

24 DIRECTOR SPACKMAN: Well, group three is fully  
25 participating, except for, I guess, the specter of

1 being limited either through duplication or other  
2 redundant kinds of presentations. So groups one  
3 through three can fully participate in discovery. And  
4 I'll rely on the good faith and the relationships  
5 between the attorneys to ensure that certain parties  
6 don't overburden others in their requests, given the  
7 short time period. Group four isn't participating in  
8 discovery.

9 Okay. Anything else?

10 Thanks, everybody. It's a screamer.

11 MR. THOMPSON: Director.

12 DIRECTOR SPACKMAN: Yeah, Travis.

13 MR. THOMPSON: For the hearing, a court  
14 reporter, as opposed to just recording?

15 DIRECTOR SPACKMAN: Yes.

16 MR. THOMPSON: Is there room for that?

17 DIRECTOR SPACKMAN: If parties want a court  
18 reporter, there's a process that we follow. And I  
19 think we -- we would be willing to follow that same  
20 kind of joint financing arrangement. I don't recall  
21 what it is.

22 Garrick?

23 MR. BAXTER: Yes, Director. Generally we'll pay  
24 the first hundred dollars of the fee to have a court  
25 reporter here, and then leave it to the parties to

1 distribute the remaining amount among -- or the  
2 remaining costs amongst themselves. So if the  
3 attorneys who want to participate want to talk amongst  
4 themselves how they want to divvy that up, that's fine.  
5 And we'll leave it to them to reach out and hire the  
6 court reporter.

7 DIRECTOR SPACKMAN: Okay. Anything else?

8 Thanks, everybody.

9 MR. THOMPSON: Thank you.

10 (End of recording.)

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## Audio Transcription

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I, JEFF LaMAR, CSR No. 640, Certified Shorthand Reporter, certify:

That the audio recording of the proceedings were transcribed by me or under my direction.

That the foregoing is a true and correct transcription of all testimony given, to the best of my ability.

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

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JEFF LaMAR, CSR NO. 640

Notary Public

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My commission expires December 30, 2023

	<b>Advisory (2)</b> 29:13;64:2	<b>analyses (1)</b> 80:8	<b>24:1</b>
<b>[</b>	<b>affect (1)</b> 21:13	<b>analysis (5)</b> 19:7;49:11;77:15;80:4,6	<b>arrangement (1)</b> 83:20
<b>[phonetic] (13)</b> 13:6;25:1;28:10,12,19,19, 20;29:8,11;31:25;32:19,25; 38:2	<b>affected (1)</b> 67:10	<b>analyzed (1)</b> 56:17	<b>Arrington (2)</b> 28:6,7
<b>[unintelligible] (11)</b> 28:23;29:1,23;31:13,14; 33:1;38:25;43:2,17;44:8,15	<b>afforded (1)</b> 65:11	<b>Ann (2)</b> 16:22,23	<b>articulate (1)</b> 19:23
<b>A</b>	<b>AFRD (2)</b> 44:11;49:24	<b>answered (1)</b> 20:11	<b>Ash (7)</b> 23:10,11;57:24,24;59:4, 15;62:1
	<b>AFRD2 (1)</b> 50:10	<b>anticipate (3)</b> 63:7,8;66:4	<b>aside (2)</b> 76:4,5
	<b>again (19)</b> 9:19;11:20;12:15;22:7; 24:18;26:1,25;30:20;33:19; 41:21;50:7;59:7,9;66:11; 72:4;78:16,17;79:11;80:20	<b>anticipates (1)</b> 62:16	<b>assert (2)</b> 24:3;42:12
<b>AA-WRA-2021-001 (1)</b> 34:9	<b>agree (1)</b> 79:2	<b>Apparently (1)</b> 25:22	<b>asserting (1)</b> 51:14
<b>ABC (2)</b> 33:3,4	<b>agreed (1)</b> 82:5	<b>appeal (4)</b> 61:13;66:5;69:1,6	<b>assertive (2)</b> 9:16;52:23
<b>ability (1)</b> 52:16	<b>agreeing (1)</b> 59:8	<b>appeals (1)</b> 70:21	<b>assistant (2)</b> 37:16;39:8
<b>able (11)</b> 29:10;45:13;48:18;50:9; 61:9,16;62:25;68:10;76:13, 15;80:5	<b>agreement (4)</b> 41:1,5,9,11	<b>appear (1)</b> 24:7	<b>associate (1)</b> 16:13
<b>above (1)</b> 22:13	<b>ahead (10)</b> 27:5;36:17;44:1;46:2; 57:22;78:2,7,11,25;79:1	<b>appearance (5)</b> 10:17;15:24;19:16;25:17; 33:3	<b>associated (1)</b> 24:8
<b>accept (4)</b> 37:4,7,9;38:12	<b>Al (9)</b> 17:9;49:10,17;74:13,23; 77:3;78:16;79:5,24	<b>Appearing (1)</b> 23:21	<b>Association (10)</b> 12:18;22:3,8;24:25;32:20; 63:24;64:12,13,13;66:23
<b>acceptance (1)</b> 35:10	<b>aligned (2)</b> 16:20;17:2	<b>appears (2)</b> 29:12;62:19	<b>assume (1)</b> 18:12
<b>access (1)</b> 40:5	<b>Allen (4)</b> 28:20,22,22;29:1	<b>apply (1)</b> 45:14	<b>assuming (3)</b> 18:3;35:11;69:2
<b>accordingly (1)</b> 72:13	<b>allow (6)</b> 41:2;70:5,20;72:4,5;82:5	<b>appoint (1)</b> 39:15	<b>attached (3)</b> 19:4;20:15;56:16
<b>Act (1)</b> 60:20	<b>allowed (3)</b> 48:2;54:20;81:14	<b>appreciate (4)</b> 55:2,9;72:10,14	<b>attempt (2)</b> 69:19;82:18
<b>actively (3)</b> 61:8;65:12;66:2	<b>almost (1)</b> 29:12	<b>approach (2)</b> 9:15;79:13	<b>attempting (3)</b> 15:5;41:22;66:4
<b>actual (2)</b> 44:10;46:5	<b>along (3)</b> 46:16;54:13;75:18	<b>appropriate (2)</b> 51:9;71:9	<b>attend (1)</b> 81:15
<b>actually (4)</b> 41:3,20;42:18;71:19	<b>altered (1)</b> 71:16	<b>appropriations (1)</b> 41:24	<b>attention (1)</b> 21:14
<b>additional (5)</b> 80:4,4,6,6,8	<b>although (1)</b> 36:23	<b>Appropriation's (1)</b> 60:4	<b>attorney (5)</b> 23:2;27:9,18;74:7,7
<b>address (11)</b> 34:5,5;35:7,14,21;36:2,5, 8;38:21;63:5;75:21	<b>Alton (3)</b> 13:5,6,9	<b>appropriator (1)</b> 41:22	<b>attorneys (2)</b> 83:5;84:3
<b>addressed (6)</b> 36:21;39:12,18,19;71:25; 79:15	<b>always (2)</b> 15:7;48:1	<b>Appropriators (1)</b> 23:16	<b>audio (2)</b> 9:1;58:12
<b>addresses (6)</b> 34:19;35:16,17,18,19; 36:13	<b>amending (1)</b> 62:4	<b>arduous (1)</b> 33:17	<b>authorizing (3)</b> 11:22;16:6;39:14
<b>addressing (1)</b> 53:2	<b>American (1)</b> 43:21	<b>area (29)</b> 11:9;16:7,21,25;17:20; 18:10,11,16,19,21;20:14; 24:5;47:4;51:16,20;52:4,7; 55:22,23;56:15,17,20;62:14, 14;64:1;66:25;68:5;69:13; 76:25	<b>availability (1)</b> 74:9
<b>adjudication (2)</b> 42:25;67:23	<b>amicus (1)</b> 69:4	<b>areas (4)</b> 26:23;35:8;56:25;57:4	<b>available (7)</b> 66:16,17;73:2,17,20; 76:11,23
<b>administration (1)</b> 70:9	<b>among (1)</b> 84:1	<b>arise (1)</b> 70:22	<b>Avalanche (2)</b> 20:17,19
<b>administrative (6)</b> 9:7;16:9;17:21;18:15; 20:16;24:14	<b>amongst (3)</b> 74:9;84:2,3	<b>Arkoosh (6)</b> 13:23,24;14:1,3,7,8	<b>aware (5)</b> 10:5;50:22;53:12;64:22; 80:7
<b>adopting (1)</b> 50:14	<b>amount (4)</b> 42:9;45:12;78:8;84:1	<b>around (1)</b>	<b>away (2)</b> 14:6;58:15

<b>B</b>	<b>better (4)</b> 35:2;78:2;79:2,7	24:8	44:11
	<b>beyond (1)</b> 37:3	<b>bull's-eye (2)</b> 76:25;77:6	<b>categories (3)</b> 51:8,12;68:23
<b>back (6)</b> 11:17;12:15;27:24;43:5; 47:8;57:12	<b>Big (4)</b> 12:17;13:1,5;15:19	<b>bumped (1)</b> 58:7	<b>categorize (1)</b> 10:14
<b>background (2)</b> 10:11;77:12	<b>Bill (7)</b> 13:23,24;14:1,1,2,2,3	<b>bunch (1)</b> 28:17	<b>category (10)</b> 11:12;14:19;15:14;16:3; 53:2;70:1,18;71:12;75:19; 81:22
<b>Barbara (2)</b> 11:24;12:16	<b>bit (5)</b> 34:16;56:19;61:3;67:7; 72:8	<b>burden (9)</b> 41:23;42:8,15,21;45:2; 47:18;49:7,14;50:19	<b>caused (1)</b> 52:5
<b>BARKER (18)</b> 17:11,13;49:8,10,10,18,21; 74:13,13,25;76:20;78:16,16; 79:20,22,24;80:7,10	<b>Blaine (2)</b> 26:10,17	<b>burdens (5)</b> 41:15,16;46:21;50:2,5	<b>cc (1)</b> 39:3
<b>base (1)</b> 71:3	<b>blow (1)</b> 13:9	<b>bury (1)</b> 82:18	<b>CDC (1)</b> 65:18
<b>based (4)</b> 19:6;26:14;67:14;70:13	<b>board (3)</b> 14:14;24:22;64:2	<b>business (1)</b> 82:2	<b>cents (1)</b> 78:13
<b>Basin (19)</b> 9:7;11:8;20:13;21:14; 22:20;23:3,23;24:13;51:20; 59:23;60:21;62:13,24;63:7; 67:13,21,25;68:12;69:10	<b>Boise (1)</b> 28:1	<b>C</b>	<b>certain (1)</b> 83:5
<b>basis (1)</b> 59:25	<b>borne (1)</b> 45:2	<b>calendar (1)</b> 75:11	<b>certainly (7)</b> 41:18;43:14;50:18;52:13; 54:1;60:11;66:14
<b>BAXTER (14)</b> 9:25;10:2,2,10;29:24; 30:20;58:11;59:3;66:15; 73:23,25;74:23;75:3;83:23	<b>both (6)</b> 9:8;25:8;42:6;48:25; 73:22,22	<b>calendars (1)</b> 73:16	<b>certification (1)</b> 41:8
<b>bear (1)</b> 11:4	<b>bound (1)</b> 71:23	<b>call (13)</b> 10:12;11:18;17:7,24;28:3; 54:1,9;60:8,11,25;62:20; 65:9;70:19	<b>certified (1)</b> 38:14
<b>bearing (1)</b> 42:8	<b>Brendan (3)</b> 23:10,12;57:24	<b>called (4)</b> 26:6;62:24;65:8;72:24	<b>certify (1)</b> 41:7
<b>becomes (1)</b> 47:20	<b>Brendel (2)</b> 20:18,18	<b>calling (1)</b> 65:13	<b>challenges (1)</b> 69:6
<b>began (1)</b> 27:10	<b>Brian (2)</b> 21:4,6	<b>calls (1)</b> 74:7	<b>chance (1)</b> 78:24
<b>Begin (1)</b> 9:1	<b>Bridge (2)</b> 18:22;56:2	<b>can (55)</b> 9:17;10:5,20;11:12;14:20; 18:11;19:7;26:13,14;27:20; 29:24;33:17;34:4,15,23; 35:2;36:25;39:3,3;41:1,4,11; 43:6,20;45:13;49:2,3;50:3; 53:11;55:14;56:6,13;58:16; 59:1;64:10,13,19;65:8;66:1, 9;68:18;69:9;72:5;73:11,15, 16,17;74:19;75:13,14;78:12; 81:23;82:15,17;83:3	<b>change (1)</b> 25:20
<b>beginning (1)</b> 12:4	<b>brief (3)</b> 62:7;69:4;70:21	<b>Canal (2)</b> 13:1;25:9	<b>changing (1)</b> 76:18
<b>behalf (4)</b> 26:10;57:25;61:23;62:2	<b>briefed (1)</b> 60:21	<b>Candice (14)</b> 19:21;20:9,21;22:14;30:1; 40:9;53:1,22;61:21,22; 70:24;72:15;76:24;77:9	<b>characterize (3)</b> 10:24;11:11;23:3
<b>behind (3)</b> 10:10;51:7;76:5	<b>briefing (2)</b> 61:10;63:9	<b>caps (1)</b> 34:9	<b>Charles (4)</b> 13:22,25;14:22;32:2
<b>Bell (3)</b> 32:19,19;33:5	<b>briefly (1)</b> 9:17	<b>Carl (3)</b> 25:3,4;31:25	<b>checking (3)</b> 23:24;24:6,13
<b>Bellevue (8)</b> 16:7;18:4,20;20:20;51:17; 52:4,21;69:20	<b>briefs (1)</b> 66:4	<b>CARTER (15)</b> 12:21;14:24;33:6;35:3; 36:3;37:18;38:3,6;40:2,8; 44:2;66:16;79:18;80:12,22	<b>chime (1)</b> 9:24
<b>Bellevue's (1)</b> 40:19	<b>bring (4)</b> 42:2;64:8,18;72:12	<b>case (12)</b> 15:7;27:17;43:8,19;44:19; 49:24;69:17,18;70:22;71:7, 17;80:5	<b>choose (1)</b> 11:20
<b>beneficial (3)</b> 42:10;44:25;48:25	<b>brings (2)</b> 64:24;71:20	<b>cases (1)</b>	<b>Chris (9)</b> 21:22,24;28:19;38:10,18; 44:20;69:11;70:4;78:18
<b>beneficially (1)</b> 45:13	<b>broad (1)</b> 69:18		<b>Christian (2)</b> 27:6,14
<b>beneficiaries (1)</b> 21:15	<b>broadly (1)</b> 72:5		<b>Christy (1)</b> 29:8
<b>Bennett (2)</b> 17:17,17	<b>Bromley (18)</b> 21:22,23;38:19,24;39:2,6; 43:18,24;44:14,18;54:3,5,8; 55:9;67:16;77:22,25;79:5		<b>circle (2)</b> 23:25;24:14
<b>best (7)</b> 11:3;19:15;48:18;49:2,3; 60:18;63:9	<b>BROSSEY (1)</b> 11:25		<b>circumstances (3)</b> 48:11;49:23;70:14
	<b>Brossy (1)</b> 12:1		<b>citation (1)</b> 43:7
	<b>Budge (6)</b> 23:17,18,18;60:5,10,10		<b>cite (1)</b> 44:10
	<b>buildings (1)</b>		<b>cited (1)</b> 43:6



			D
<b>Cities (8)</b> 22:14,18,19;32:20;61:20, 23:62:6,10	<b>complete (1)</b> 25:15	<b>Corey (2)</b> 28:20,22	
<b>City (20)</b> 20:20,23;21:2;22:25;23:5, 10,13;40:18;57:25;58:3; 59:4,16,17;60:2,3,7;62:2,5,8; 63:6	<b>completed (1)</b> 80:8	<b>corporation (3)</b> 12:7,12;22:8	<b>data (1)</b> 77:14
<b>claiming (1)</b> 12:5	<b>completely (1)</b> 59:22	<b>corporations (2)</b> 33:21,21	<b>date (2)</b> 79:3;80:19
<b>clarification (9)</b> 40:15,18,19;56:23;63:25; 66:21;70:2;72:14;81:5	<b>completes (1)</b> 38:24	<b>corrections (1)</b> 79:17	<b>dated (1)</b> 80:3
<b>clarifications (1)</b> 46:20	<b>concern (4)</b> 10:21;61:3;64:20;69:12	<b>correctly (3)</b> 56:2;64:4;81:6	<b>dates (4)</b> 58:5;74:19;80:17,17
<b>clarify (12)</b> 11:12;14:20;38:12;40:10, 16;50:21;56:15;57:8;63:9; 67:8;71:2;74:1	<b>concerned (2)</b> 57:2;70:5	<b>Councils (1)</b> 62:8	<b>dating (1)</b> 47:8
<b>clarifying (1)</b> 65:21	<b>concerns (1)</b> 60:17	<b>counsel (18)</b> 12:9,14;15:4,8;22:9,21; 27:13;33:24;36:22,24;46:13; 64:4,14;65:20,23;66:6; 73:14;75:10	<b>David (3)</b> 13:21;14:22;32:6
<b>cleanup (2)</b> 75:15;80:12	<b>conclusion (1)</b> 18:17	<b>County (9)</b> 24:16,19,20,23;26:10,17; 63:12,13,15	<b>day (9)</b> 75:25;76:3,3,10,10,11,17, 23;82:2
<b>clear (7)</b> 44:9;47:9;50:3;55:23; 67:15;71:18;74:5	<b>conference (4)</b> 9:7,16;58:10;75:11	<b>couple (4)</b> 35:18;50:25;62:23;78:1	<b>days (8)</b> 34:20;52:25;72:7;76:2,4, 19;78:1,3
<b>clearer (1)</b> 72:16	<b>confine (1)</b> 72:8	<b>course (1)</b> 62:17	<b>deadline (2)</b> 39:25;75:23
<b>Clearly (1)</b> 82:15	<b>confirmed (1)</b> 15:9	<b>court (4)</b> 83:13,17,24;84:6	<b>Deadlines (2)</b> 50:25;63:10
<b>client (5)</b> 18:9;24:22;55:6;67:14; 68:4	<b>conflict (2)</b> 77:4,4	<b>courts (1)</b> 42:16	<b>deal (2)</b> 44:2;67:23
<b>clients (3)</b> 18:3,23;76:14	<b>confused (2)</b> 67:7;68:19	<b>court's (2)</b> 43:6;50:10	<b>Dean (2)</b> 16:10,10
<b>close (1)</b> 82:2	<b>Conjunctive (9)</b> 43:5,9,25;44:3,4,6,19; 50:15;70:8	<b>Crashendy (3)</b> 28:11,12,13	<b>decided (1)</b> 58:24
<b>closer (3)</b> 29:25;30:3;34:23	<b>connection (6)</b> 46:4;48:14,17,18;49:2,3	<b>creation (1)</b> 78:3	<b>deciding (1)</b> 27:15
<b>Coalition (9)</b> 22:14,18,18,22;61:20,23; 62:6,10,22	<b>Conrad (1)</b> 28:9	<b>Creek (6)</b> 10:25;11:22;21:7;47:10, 11;52:2	<b>decision (5)</b> 15:7;27:16;44:13;50:10; 60:20
<b>Cohen (3)</b> 28:1,3,5	<b>Conservancy (1)</b> 28:11	<b>creep (3)</b> 69:11;70:5,5	<b>decreed (3)</b> 41:17;42:17;43:13
<b>Comfort (2)</b> 24:25;66:23	<b>consider (1)</b> 51:23	<b>crop (2)</b> 45:14;46:7	<b>Deersa (1)</b> 32:25
<b>coming (1)</b> 37:5	<b>considering (1)</b> 42:25	<b>cross-examine (3)</b> 70:20;76:16;78:23	<b>defer (1)</b> 56:9
<b>comment (2)</b> 9:20;54:24	<b>consistent (1)</b> 65:17	<b>cross-examining (2)</b> 65:8;66:3	<b>deficient (1)</b> 35:19
<b>comments (1)</b> 55:9	<b>constitutionality (1)</b> 44:18	<b>curtail (1)</b> 18:18	<b>definite (1)</b> 40:19
<b>commercial (1)</b> 24:1	<b>contacting (1)</b> 75:5	<b>curtailed (14)</b> 18:12;45:24;46:25;47:1,2, 5,15,16,19,23;48:1,7;52:10; 57:2	<b>definitely (2)</b> 24:12;26:23
<b>Commissioners (1)</b> 24:23	<b>contemplating (1)</b> 56:7	<b>curtailing (1)</b> 56:7	<b>degree (1)</b> 42:14
<b>Committee (1)</b> 29:13	<b>contested (2)</b> 69:17;70:22	<b>curtailment (9)</b> 11:6,9;18:10;24:9;45:19; 51:22;52:20;55:25;82:21	<b>delay (1)</b> 41:2
<b>Company (7)</b> 13:1;21:7,22;23:20,22,22; 24:9	<b>context (1)</b> 43:9	<b>curtain (1)</b> 10:10	<b>delivery (1)</b> 62:19
<b>compiled (1)</b> 39:24	<b>continuance (2)</b> 39:16;40:13	<b>cut (3)</b> 58:21;59:4;67:5	<b>demerits (1)</b> 59:1
	<b>continuing (1)</b> 80:3		<b>demonstrate (1)</b> 47:16
	<b>conundrum (1)</b> 48:3		<b>demonstrating (1)</b> 47:9
	<b>conversation (1)</b> 61:11		<b>denial (1)</b> 40:25
	<b>coordinate (1)</b> 74:8		<b>deny (1)</b>
	<b>copy (4)</b> 34:2,3;37:5;38:22		

40:24 <b>denying (5)</b> 39:14,16,20;40:13,23 <b>depart (2)</b> 9:14;27:13 <b>Department (18)</b> 9:4;16:19;36:1;37:4; 39:12,22;43:22;48:20;56:6; 73:1,15,21,22;77:11,17;80:1, 1;81:9 <b>Department's (1)</b> 77:14 <b>departure (1)</b> 37:7 <b>depletion (1)</b> 46:5 <b>depletions (4)</b> 45:23;48:15;52:2,5 <b>depose (4)</b> 73:14,16;74:15;78:25 <b>deposed (1)</b> 75:14 <b>deposition (2)</b> 74:2;75:1 <b>depositions (3)</b> 74:18;78:20;82:13 <b>describe (1)</b> 50:4 <b>designate (1)</b> 40:22 <b>detail (4)</b> 19:2;41:15;46:9;50:4 <b>detailed (2)</b> 19:3;45:16 <b>details (2)</b> 48:10;58:1 <b>determination (2)</b> 41:20;52:9 <b>determine (4)</b> 11:3;45:16;69:19;75:14 <b>developed (1)</b> 48:21 <b>difference (2)</b> 49:17,20 <b>different (7)</b> 10:13,17;19:25;22:19; 30:14;49:1;57:5 <b>difficult (2)</b> 77:7;81:25 <b>difficulty (1)</b> 55:4 <b>direct (2)</b> 24:4;61:5 <b>directly (6)</b> 62:10,11;67:9,25;68:11; 77:6 <b>DIRECTOR (292)</b> 9:3,4,25;10:1,8;12:1,22,24, 25;13:4,8,11,15,17,19,20,24, 25;14:2,4,8,9,12,16,20,22,25; 15:2,3,13,15,16,22;16:2,14, 15,23;17:1,4,7,8,12,15;18:1, 2,8,15,17;19:1,14,20,22;	20:5,23;21:1,6,9,21,23,24; 22:6,17;23:5,9,11,12,14,15, 19,21;24:3,6,11,15,17,18,21, 24;25:5,6,11,18,25;26:3,6, 12,20,25;27:4,8,14,19;28:4, 6,7,9,14,17,22,25;29:2,3,5,7, 8,11,16,17,24;30:2,6,8,10,14, 20,22,25;31:8,12,15,17,20, 23;32:2,4,5,7,11,14,16,22,24; 33:2,9,13,16;34:13,14,17,25; 35:9,23;36:4,12,16,17;37:1, 17,22;38:8,11,15,17,19,23; 39:1,3,7;40:3,9,11,21;42:22, 23;43:3,12,19,21;44:1,22; 45:5,6,8,20;46:1,3,12,15,18, 22;48:9;49:6,8,9,16,19;50:1, 13,16,23;53:1,3,18,22;54:3, 4,7,24;55:8,17,18;56:9,14; 57:6,11,24;58:23;59:6,12; 60:8,9,10,16,18,19;61:4,20, 22;63:11,15,17,18,19,20,22; 64:12,24;65:22,25;66:12,15, 17,19,20;67:1,2,3;68:21; 70:16,17,23,25;71:20;72:3, 17,19,20,22;73:1,10,13,23, 24;74:10,11,13;75:7,9;76:9, 20;77:1,8,16,22,24;78:14,16; 79:3,8,19,20,21;80:7,11,25; 81:2,4,10,13,16,19,24;82:7,9, 10,24;83:11,12,15,17,23; 84:7 <b>disagree (3)</b> 48:12;77:5;78:17 <b>disclosure (1)</b> 78:13 <b>discovery (9)</b> 39:14;50:24;51:10;57:12; 82:12,12,15;83:3,8 <b>discuss (1)</b> 42:20 <b>discussing (1)</b> 58:6 <b>discussion (1)</b> 62:3 <b>dismiss (6)</b> 39:16,20;40:13,15,23;41:7 <b>dispute (1)</b> 57:18 <b>distinction (1)</b> 69:8 <b>distribute (2)</b> 36:14;84:1 <b>District (16)</b> 17:5,9;21:25;22:3;26:11, 17,20;27:1,7,9,11,15,22; 32:13;43:22;63:24 <b>diversion (4)</b> 11:22;16:6;41:22;48:15 <b>diversions (4)</b> 52:3,6,7,10 <b>divvy (1)</b> 84:4 <b>docket (2)</b>	34:3,8 <b>document (1)</b> 74:20 <b>documents (3)</b> 37:6,23;39:24 <b>dollars (1)</b> 83:24 <b>Don (8)</b> 25:1;29:21;30:4,6,15;31:4, 16,21 <b>done (4)</b> 74:20;78:20;80:1,8 <b>dot (2)</b> 36:9,10 <b>double-check (1)</b> 58:12 <b>down (1)</b> 73:18 <b>drawing (1)</b> 44:7 <b>drawn (3)</b> 19:5;23:25;24:14 <b>uplicated (1)</b> 63:1 <b>duplication (1)</b> 83:1 <b>uplicative (1)</b> 52:18 <b>E</b> <b>Eagle (1)</b> 21:7 <b>earlier (1)</b> 76:6 <b>early (3)</b> 31:7;44:16;76:7 <b>easiest (1)</b> 56:5 <b>effective (2)</b> 62:19;80:2 <b>effectively (1)</b> 61:18 <b>efficient (1)</b> 33:18 <b>either (6)</b> 10:25;49:21;60:2;66:2; 73:6;83:1 <b>electronic (2)</b> 34:6;35:6 <b>else (9)</b> 11:11,12;22:11;26:8;33:7; 81:1;82:8;83:9;84:7 <b>e-mail (20)</b> 34:5,20;35:10,12,14,16,17, 21,25;36:2,5,7,12,13;37:5,7, 20;38:12,21;40:4 <b>e-mailed (2)</b> 34:1,2 <b>e-mails (2)</b> 36:24;40:4 <b>emergency (1)</b> 70:14	<b>encourage (1)</b> 73:6 <b>end (2)</b> 36:19;84:10 <b>engage (1)</b> 82:15 <b>enjoy (1)</b> 47:24 <b>enlarging (1)</b> 55:4 <b>enough (2)</b> 54:25;62:7 <b>ensure (2)</b> 45:18;83:5 <b>entirely (1)</b> 62:22 <b>entities (13)</b> 11:7;15:10,24;20:6,12; 22:20;27:12;33:20;36:14; 49:2;57:17;59:22;66:5 <b>entitled (6)</b> 41:17;42:4,5,17;43:13; 52:13 <b>entity (13)</b> 12:8,8,12,13;15:8;22:9; 25:2;27:11;30:15;33:23; 63:12;65:24;66:1 <b>enumerable (1)</b> 47:8 <b>Erika (1)</b> 28:15 <b>ESPA (4)</b> 60:25;61:15;62:12;63:1 <b>essence (1)</b> 45:18 <b>essentially (3)</b> 68:24;71:6,13 <b>establish (4)</b> 19:16;48:18;49:3;57:19 <b>establishing (2)</b> 42:6,8 <b>establishment (1)</b> 50:19 <b>Evan (5)</b> 21:25;22:1;32:10,12,14 <b>Evan's (1)</b> 22:2 <b>even (10)</b> 15:10;23:24;35:19;48:24; 61:7;65:9,20,24;67:14;78:21 <b>everybody (17)</b> 9:3,10,22;11:11,12;22:11; 33:20;35:12,22,23;58:25; 59:8,11;67:5;74:4;83:10; 84:8 <b>everybody's (1)</b> 67:23 <b>everyone (2)</b> 36:7,21 <b>evidence (9)</b> 42:2;45:13;46:8;65:14; 66:3;77:11,18;79:23;81:8 <b>exact (1)</b>
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50:4 <b>exactly (2)</b> 45:10;46:10 <b>examination (1)</b> 81:7 <b>examining (1)</b> 65:7 <b>example (1)</b> 47:2 <b>except (1)</b> 82:25 <b>exclude (2)</b> 62:4;72:6 <b>Excuse (3)</b> 15:15;19:20;58:8 <b>executed (1)</b> 60:19 <b>exhibit (1)</b> 75:21 <b>exhibits (5)</b> 75:23;77:22;78:2,4,23 <b>exigent (1)</b> 70:14 <b>expect (5)</b> 12:8,13;27:16;65:12,14 <b>expectation (1)</b> 53:23 <b>expectations (3)</b> 11:15;41:14;53:10 <b>expecting (1)</b> 53:21 <b>expedite (1)</b> 37:6 <b>expedited (1)</b> 37:9 <b>experience (1)</b> 55:3 <b>expert (5)</b> 51:1;54:1,10;72:25;76:21 <b>experts (4)</b> 55:12,15;75:16,19 <b>explaining (1)</b> 54:11 <b>explanation (1)</b> 52:11 <b>extent (5)</b> 46:7;47:17,22,25;48:7	<b>fair (4)</b> 22:24;23:3;75:8;76:15 <b>fairness (1)</b> 76:14 <b>faith (1)</b> 83:4 <b>Falls (3)</b> 23:5;43:21;60:2 <b>far (5)</b> 14:6;50:12;61:12;81:6,21 <b>farm (1)</b> 31:5 <b>Farms (10)</b> 11:24;12:16;13:5,15; 29:23;30:11,13,13;31:5,6 <b>fed (1)</b> 47:11 <b>fee (1)</b> 83:24 <b>feel (2)</b> 54:16;67:16 <b>few (3)</b> 56:20;78:3;79:14 <b>figure (4)</b> 9:24;54:12;74:19;76:13 <b>file (9)</b> 9:2;35:7;54:17;67:22; 68:1,6,10,19;81:20 <b>filed (13)</b> 10:15,16;15:24;22:25; 25:16;26:10,14;35:24;39:11; 57:14;64:2;73:4;75:12 <b>filing (7)</b> 15:9;36:19;38:20;54:16; 66:4;69:4,5 <b>filings (4)</b> 34:11,16;36:24;39:11 <b>final (3)</b> 40:23,25;41:7 <b>financing (1)</b> 83:20 <b>find (3)</b> 33:17;62:12;73:17 <b>finding (1)</b> 63:7 <b>fine (2)</b> 77:2;84:4 <b>finish (4)</b> 11:18;57:12;76:3,8 <b>finished (1)</b> 82:7 <b>first (16)</b> 10:12,23;11:17,20;14:13, 19;18:17;20:7;29:20;47:3; 51:12,24;60:19;66:8;77:12; 83:24 <b>Fish (5)</b> 16:19,19,20,24,24 <b>five (6)</b> 34:20;52:24;64:22;72:7; 76:2,4 <b>Fletcher (8)</b> 13:2,3;15:15,17;16:1;82:9,	9,11 <b>FLORES (5)</b> 32:23,25,25;33:12,15 <b>focus (4)</b> 52:1;69:13;70:7;72:8 <b>focusing (1)</b> 23:2 <b>folks (13)</b> 51:23;52:12;59:19;62:23; 65:5,5;67:19,25;68:10,16,17, 24;70:21 <b>follow (3)</b> 37:8;83:18,19 <b>following (2)</b> 24:22;74:14 <b>follow-up (1)</b> 37:12 <b>footnote (3)</b> 80:17,21,24 <b>force (2)</b> 69:1,3 <b>Forgive (2)</b> 65:19,19 <b>formal (6)</b> 73:7,13;74:1,2,22,25 <b>forth (2)</b> 71:7,14 <b>forward (6)</b> 33:18;42:2;53:8;64:7,11; 77:18 <b>found (1)</b> 53:13 <b>four (16)</b> 10:17;15:1;34:20;58:2; 59:19;68:9,16;69:8;71:12; 72:11;73:3,4;75:11;76:4; 82:17;83:7 <b>fourth (4)</b> 11:10;57:14;59:15;70:18 <b>frame (2)</b> 27:21;78:6 <b>frames (3)</b> 37:4,9;55:14 <b>frankly (2)</b> 76:12;78:4 <b>Fred (3)</b> 12:1,2,16 <b>Friday (7)</b> 25:23;51:3;53:24;54:17; 75:17;78:9,21 <b>front (1)</b> 31:2 <b>FTP (1)</b> 40:5 <b>full (5)</b> 45:14,18;47:25;51:18,23 <b>fully (11)</b> 42:15;45:25;46:6;51:15; 53:12;60:19;63:5;69:9; 81:25;82:24;83:3 <b>further (1)</b> 56:19 <b>future (1)</b>	60:24  <b>G</b>  <b>Galana (1)</b> 17:5 <b>gallery (1)</b> 14:5 <b>gallery's (1)</b> 14:6 <b>Game (5)</b> 16:19,20,20,24,24 <b>Garrick (9)</b> 10:2,8,10;59:1;73:25; 74:14,17,25;83:22 <b>Gary (4)</b> 9:4;26:9,18;72:3 <b>gathered (1)</b> 77:19 <b>generally (3)</b> 22:24;44:23;83:23 <b>geography (1)</b> 22:13 <b>Gimlet (1)</b> 66:23 <b>given (6)</b> 61:11;63:4;65:18;78:11; 79:3;83:6 <b>gives (1)</b> 75:24 <b>Glendale (3)</b> 18:22,22;56:2 <b>goes (2)</b> 54:21;61:3 <b>Good (9)</b> 23:14,15,18,19,21;26:18; 46:14;69:25;83:4 <b>Gooding (8)</b> 22:25;23:10;57:25;58:3; 59:16,17;62:2,5 <b>Gooding's (1)</b> 59:5 <b>gov (1)</b> 36:10 <b>govern (1)</b> 50:16 <b>grand (1)</b> 10:9 <b>grant (1)</b> 41:4 <b>GRAVES (6)</b> 26:9,17,18,22;27:3,5 <b>Ground (6)</b> 17:5,9;23:16;30:17;60:4; 71:10 <b>groundwater (29)</b> 11:4;16:4,5,6,25;17:2; 21:13;22:3;46:24;47:4,9,12, 13,19;48:13,15;51:16;52:3,6, 7,20;56:7,21;60:20;62:13, 14;63:24;64:1;66:24 <b>group (37)</b> 10:23,23;11:2,7,7,10,17,
<b>F</b>			
<b>face (1)</b> 82:20 <b>facilities (1)</b> 24:2 <b>fact (7)</b> 15:8;40:16;54:21;55:6; 60:11;68:11;72:25 <b>factors (10)</b> 41:19;42:18,25;43:1,10, 14;50:8,11,18,22 <b>factual (10)</b> 51:3;59:19,25;60:5;61:1,5; 62:22;63:5,16;65:14			

20;15:12;18:3;20:4,12; 29:21;36:20;54:6;55:5; 57:13,14,14;58:7;59:15,17, 19;66:24;67:8,9,11,19;68:9, 16,17;69:8,8,9;72:11;82:24; 83:7 <b>grouped (3)</b> 16:17;22:22;58:2 <b>grouping (5)</b> 11:2;16:3;19:15;52:12; 68:22 <b>groupings (1)</b> 20:7 <b>groups (10)</b> 10:17,19;11:15,16;20:2; 58:2;82:15,15,17;83:2 <b>guess (16)</b> 15:6;33:11;35:19;49:15, 19;50:8;51:5;52:11;54:16; 56:24,25;57:8;64:11;69:7; 75:4;82:25 <b>guidance (1)</b> 82:23 <b>guide (2)</b> 50:18,18 <b>guidelines (1)</b> 65:17 <b>guy (1)</b> 29:18	66:9;81:6 <b>hearing (31)</b> 9:10;37:24;39:15;41:3; 51:11,15;52:1,9;54:6,11,21; 60:6;65:3;67:10,17;68:23; 69:13,19,22;70:6;72:7,12; 73:6;75:24;76:1;77:13;78:2; 79:1,13;81:9;83:13 <b>hearings (2)</b> 69:23;70:13 <b>Heather (2)</b> 17:5,6 <b>Heiser (5)</b> 13:6,7,7,8,10 <b>held (3)</b> 12:7,11;59:16 <b>Hello (2)</b> 32:23;36:7 <b>help (1)</b> 36:18 <b>helpful (4)</b> 48:23;53:19;70:2;74:12 <b>helps (2)</b> 59:10;79:6 <b>herd (1)</b> 82:1 <b>here's (2)</b> 46:23,23 <b>Hey (1)</b> 26:9 <b>highlights (2)</b> 79:10,11 <b>Highway (1)</b> 25:10 <b>hire (1)</b> 84:5 <b>history (1)</b> 48:4 <b>hit (1)</b> 10:4 <b>Hoff (1)</b> 28:19 <b>hold (11)</b> 16:24;41:10;42:1,4,12; 51:16;58:3;63:13,15;66:24; 70:13 <b>holder (1)</b> 17:2 <b>holders (5)</b> 11:3,21;16:4;41:10;42:1 <b>holding (4)</b> 10:24;11:21;18:18;79:13 <b>holds (2)</b> 18:9;42:13 <b>Hollywood (1)</b> 12:18 <b>Homeowners' (2)</b> 24:25;66:23 <b>honestly (2)</b> 19:17;73:6 <b>hope (4)</b> 17:23;41:10;67:4;70:4 <b>hopefully (1)</b>	55:10 <b>Howe (1)</b> 28:19 <b>Hubsmith (2)</b> 13:18,19 <b>Hults (6)</b> 13:21;14:22;32:4,6,6,9 <b>hundred (1)</b> 83:24  <b>I</b>  <b>Idaho (15)</b> 9:4;16:18;23:5,16,20,22; 24:4;28:4;32:20;41:17,21; 43:22;44:14;60:2,3 <b>identified (27)</b> 11:9;15:12;16:8;17:19,20; 18:2,11,16,19;19:24;20:14; 24:5;36:15;50:9,10;51:9,17, 21;52:4,12;54:22;55:13,14, 24;61:24;69:14;73:5 <b>identify (6)</b> 11:19;20:3,6;31:24;51:1,2 <b>identifying (2)</b> 75:16;80:22 <b>IDWR (4)</b> 44:11;72:24;76:3,9 <b>IDWR's (1)</b> 66:10 <b>ignorance (1)</b> 65:19 <b>IGWA's (1)</b> 60:10 <b>III (1)</b> 16:10 <b>immediate (1)</b> 51:22 <b>impact (2)</b> 52:5;63:2 <b>impacted (4)</b> 62:10,11;67:16;82:20 <b>impacts (2)</b> 52:21;69:20 <b>implemented (1)</b> 60:23 <b>implicated (2)</b> 21:12,17 <b>important (1)</b> 50:18 <b>imposed (1)</b> 39:7 <b>Inc (1)</b> 16:11 <b>inclined (2)</b> 27:21;41:4 <b>include (4)</b> 27:5;31:21;34:4;80:14 <b>included (1)</b> 30:19 <b>includes (2)</b> 56:20,20 <b>including (3)</b>	33:20;49:23;62:6 <b>increase (2)</b> 55:1,7 <b>incredibly (1)</b> 78:6 <b>independent (1)</b> 39:15 <b>indicated (1)</b> 81:19 <b>individual (6)</b> 12:9,14;28:18;33:23;63:6; 66:1 <b>individually (1)</b> 22:22 <b>individuals (7)</b> 11:8;12:10;25:3;49:3; 73:4;81:21;82:4 <b>informal (6)</b> 73:7,12,13;74:1,3,22 <b>informally (2)</b> 73:18;75:6 <b>information (9)</b> 48:21,23,25;50:11;53:24, 25;54:2;77:14;80:14 <b>initial (1)</b> 15:6 <b>initially (1)</b> 48:12 <b>initiated (2)</b> 9:14;77:16 <b>injure (2)</b> 41:23;48:16 <b>injured (4)</b> 12:6;42:7,14;51:15 <b>injury (13)</b> 42:3;43:2;46:5,7,10,11; 47:7,7,17;49:11,13,14;61:5 <b>instead (1)</b> 80:18 <b>intend (14)</b> 18:18;32:1;34:22;51:25; 66:13;70:5;74:15,18;76:2,8; 81:6,25;82:2,4 <b>intended (3)</b> 70:7;71:13,25 <b>intending (1)</b> 54:9 <b>intends (1)</b> 27:1 <b>Intent (5)</b> 34:1;35:24;57:15;64:3; 71:8 <b>intention (1)</b> 70:19 <b>intentionally (1)</b> 19:5 <b>interest (9)</b> 11:13;19:9;22:13;24:4; 25:7;57:21;59:20,23;62:24 <b>interested (4)</b> 15:20;26:24;60:12;67:14 <b>interests (1)</b> 54:12
<b>H</b>			
<b>Hailey (1)</b> 20:23 <b>hand (3)</b> 9:21;55:21;59:2 <b>hands (1)</b> 55:12 <b>hanging (1)</b> 27:20 <b>happen (3)</b> 16:22;66:22;67:17 <b>happened (2)</b> 29:22;62:18 <b>happening (1)</b> 65:6 <b>happens (2)</b> 54:22;61:13 <b>happy (1)</b> 21:17 <b>hard (4)</b> 34:2,3;37:5;38:22 <b>Harris (4)</b> 23:6,7;60:2,17 <b>hay (1)</b> 46:8 <b>head (1)</b> 35:3 <b>hear (13)</b> 25:19;30:1;35:2;53:4; 56:13;58:16,19;59:13;61:2; 66:9;67:5;75:2;76:16 <b>heard (2)</b>			

<b>Internet (1)</b> 19:17	<b>John (4)</b> 14:7,8,9;23:20	<b>Laird (3)</b> 16:11,12,16	18:23
<b>interpret (1)</b> 72:4	<b>Johnson (1)</b> 21:3	<b>landing (1)</b> 69:7	<b>likely (1)</b> 62:4
<b>interrupt (1)</b> 19:21	<b>joined (2)</b> 25:19;33:20	<b>larger (3)</b> 56:17;69:22;70:8	<b>limit (4)</b> 52:16,22;53:13;69:13
<b>intervene (1)</b> 68:6	<b>joint (1)</b> 83:20	<b>Larry (9)</b> 13:11,12;25:18;26:4; 46:15;48:9;49:1;72:19,23	<b>limited (6)</b> 18:16;33:21,21;63:8; 82:12;83:1
<b>intervention (1)</b> 71:5	<b>journal (1)</b> 44:10	<b>last (13)</b> 36:10;37:14;39:13;46:7; 47:3;54:24,24;63:11,11; 64:21;66:7;73:12;78:1	<b>Lincoln (7)</b> 24:16,19,20;63:12,13,14, 15
<b>into (9)</b> 10:17;19:2;42:18;44:4; 46:9;48:10;58:2;68:22;69:4	<b>Juanell (1)</b> 25:1	<b>late (3)</b> 25:19;47:3;76:7	<b>line (7)</b> 18:24,25;32:6;48:7;55:22; 56:1,2
<b>invitation (2)</b> 68:1;71:18	<b>July (1)</b> 47:4	<b>later (2)</b> 15:10;66:11	<b>lines (1)</b> 46:16
<b>invited (3)</b> 68:6,19;71:13	<b>June (4)</b> 9:11;47:3,3;54:22	<b>law (1)</b> 41:17	<b>link (1)</b> 47:9
<b>inviting (1)</b> 67:21	<b>junior (9)</b> 11:4;41:9;42:15;45:3; 46:24;48:12;49:7;50:12; 80:19	<b>Lawrence (11)</b> 14:24,25;20:24,25;26:2; 81:2,3,5,11,14,17	<b>list (14)</b> 14:18,21;15:23;25:15; 26:13,13;27:25;37:15,19; 56:6;64:9,17,18;81:21
<b>involved (3)</b> 54:25;67:10;82:16	<b>juniors (8)</b> 42:6;45:23;47:16;48:2,6; 76:5,24;77:5	<b>lay (4)</b> 53:25;75:17,18;77:12	<b>listed (3)</b> 17:16;24:19;27:2
<b>irrelevant (1)</b> 53:13	<b>justify (1)</b> 41:22	<b>learn (1)</b> 54:18	<b>listen (4)</b> 61:6;65:4;66:1,10
<b>Irrigation (3)</b> 21:7;23:25;41:5		<b>learning (1)</b> 54:13	<b>listening (4)</b> 15:18,25;65:23;66:1
<b>issue (7)</b> 40:25;42:21;46:21;53:23; 55:10;64:25;71:11	<b>K</b>	<b>leases (1)</b> 30:16	<b>Little (15)</b> 11:1,23;12:17;25:9;34:16; 52:2;58:4;61:3,3;67:7;68:19; 72:8,15;74:23;82:14
<b>issued (2)</b> 39:13;69:17	<b>Karl (1)</b> 29:11	<b>least (28)</b> 11:3;16:21;26:14;31:10; 35:9;39:17;41:6,16,25;42:2, 11,14;48:5,7;51:5,7,21;52:8, 15;55:5,11,14;61:6,7;65:3; 75:13;76:16;77:13	<b>LLC (5)</b> 11:24;12:16;13:5;33:1; 66:24
<b>issues (6)</b> 52:20;54:18;57:22;59:24; 61:10;70:8	<b>Kaysi (1)</b> 13:18	<b>leave (7)</b> 27:20;46:12;51:6;77:20, 20;83:25;84:5	<b>locate (1)</b> 25:1
<b>J</b>	<b>keep (2)</b> 43:16;48:2	<b>Lee (4)</b> 28:21,24;29:3,3	<b>located (6)</b> 10:21;11:8;18:4;20:13; 22:19;59:22
	<b>Kent (5)</b> 13:1,4;15:17;82:9,10	<b>left (2)</b> 23:1;51:6	<b>location (3)</b> 19:4,5;22:13
<b>James (1)</b> 12:19	<b>Ketchum (2)</b> 21:2,5	<b>legal (6)</b> 12:12;57:21,22;59:24; 60:12;61:10	<b>locations (1)</b> 19:25
<b>JENKINS (3)</b> 36:7,9;38:21	<b>kind (6)</b> 33:22,22;41:2;51:6;71:10; 83:20	<b>legally (1)</b> 71:23	<b>long (4)</b> 35:8;37:10;52:11;70:17
<b>j-e-n-k-i-n-s@idwridaho (1)</b> 36:9	<b>kinds (1)</b> 83:2	<b>Legg (3)</b> 25:4,5,8	<b>look (7)</b> 19:7;27:23;31:20;35:20; 37:23;75:13;78:9
<b>Jennifer (9)</b> 18:11,20;20:15;51:17; 52:5;55:20;56:10,11;74:6	<b>Klahn (14)</b> 23:13,14;38:11,11,16; 44:9,16,21;58:9,19;60:3,7, 14;61:9	<b>legitimate (1)</b> 69:12	<b>looking (11)</b> 12:18;14:5;19:16,18; 45:10;49:12,13,13;50:11,22; 72:7
<b>Jennifer's (2)</b> 18:21;19:6	<b>knew (1)</b> 13:8	<b>lesser (4)</b> 42:9;44:24;45:2,12	<b>Lori (2)</b> 26:9,17
<b>Jeremy (1)</b> 16:13	<b>knowing (1)</b> 55:6	<b>letter (2)</b> 33:12;72:1	<b>lost (2)</b> 58:11;67:6
<b>Jerry (13)</b> 12:19,21,22;15:2,13; 36:16;45:5,7,7,20;46:12; 81:19,24	<b>knowledge (1)</b> 60:18	<b>letters (1)</b> 34:8	<b>lot (3)</b> 21:14;35:15;37:13
<b>Jim (15)</b> 17:23,23,25;19:1,8;29:22; 30:12,14;31:5;55:17,18; 56:18;57:7,9;66:19	<b>known (1)</b> 15:4	<b>level (2)</b> 51:8;53:10	<b>Louder (2)</b> 30:25;74:24
<b>Jim's (1)</b> 19:24	<b>Kramer (11)</b> 22:4,5;63:18,20,23,23; 64:16;65:19,24;66:7,18	<b>liability (1)</b> 33:21	<b>Luke's (1)</b> 80:13
<b>Joe (4)</b> 12:19;14:9,23,23	<b>L</b>	<b>lie (1)</b>	
<b>Johanna (1)</b> 32:19	<b>lacking (1)</b> 35:17		

M	71:3,25 meeting (5) 9:6;25:20,22;66:11;74:8 meetings (1) 64:1 Megan (7) 36:3,4,8,13;37:10;38:21, 22 m-e-g-a-n (1) 36:9 meganjenkins (1) 36:8 meganjenkins@idwridahogov (1) 36:11 Meghan (4) 40:1,7;44:1;79:16 Mehgan (2) 36:2;80:11 members (4) 61:25;63:6;72:24;74:16 memo (1) 56:18 memoranda (3) 48:22;73:2,8 memorandum (2) 75:12;80:13 memorandums (3) 73:3,19;75:12 mention (2) 30:18;50:25 mentioned (2) 31:10;42:24 mere (1) 42:3 message (1) 23:1 methods (1) 73:22 Michael (2) 20:24;21:1 microphone (3) 29:25;31:2;34:24 middle (1) 71:22 might (7) 51:13;54:5,14;58:11; 70:22;71:21;77:25 Mike (5) 25:4,13,13;81:2,4 Mile (3) 29:22;30:12;31:5 mine (1) 18:9 minute (2) 54:13,14 minutes (2) 58:20;67:6 misidentified (1) 22:12 missed (1) 25:17 missing (1) 37:25	mixed (1) 61:24 model (2) 45:22,22 modeling (1) 19:6 Monday (3) 78:10,22,25 mop-ups (1) 79:15 more (11) 9:16,20;33:17;40:19;46:4; 54:18;56:21;77:11;79:12,20; 81:18 morning (8) 23:14,15,18,19,21;26:18; 55:11;76:7 Most (3) 39:24;67:14;76:11 motion (10) 39:15;40:13,15,19,22,23, 24;41:4,6;68:6 motions (8) 34:10,11;39:10,11,16,18, 19,20 move (1) 79:4 moving (2) 64:7,11 much (5) 41:20;42:18;46:10;69:22; 74:15 Mullinow (1) 29:8 multiple (4) 17:22;69:23;70:12;82:19 must (3) 15:8;48:6,7 mute (4) 10:4;22:16;58:14;59:10 muted (4) 9:23;10:3;58:24;59:13 myself (1) 68:22	42:19;45:19;46:9 need (33) 11:14;19:12;26:25;27:25; 30:2,3;34:1,3,4;37:9;41:13; 42:1;49:24;52:23;54:17; 55:21;56:3;57:1;64:4,25; 65:20,23;66:5;68:18;70:9; 75:19,20;78:23;79:11,14; 81:1,8,16 needed (2) 41:20;46:20 needs (10) 22:9;27:12;33:23;35:19; 42:12;50:4;54:2;64:14; 75:17;76:21 Neil (2) 28:11,14 new (4) 23:1;39:8;62:20;71:9 Newel (2) 13:22;14:23 next (3) 16:17;80:18,19 nexus (1) 48:14 Nick (4) 14:14,14,16,17 nodding (1) 35:3 nonetheless (1) 70:7 Norm (7) 21:7,8;67:3;68:21;70:18; 71:2;72:17 normal (1) 71:4 normally (2) 9:15;37:8 north (4) 55:22;56:3,19;66:25 northern (1) 18:24 note (1) 81:20 notes (1) 64:6 notice (47) 10:16;16:8;20:1,16;21:12; 23:1;24:5,14;25:17,20,21,24; 26:10;27:23;29:19;30:4,12; 31:4,6;33:3,14;34:1;35:24, 25;54:8;56:16,20;57:15; 62:4;67:12,20,22,24;68:7,11; 69:16;71:2,5,7,8,13,14,19, 21;72:2;74:18;82:3 noticed (2) 22:17;80:13 notices (8) 10:15;15:24;19:16;35:16, 18;68:1,10,19 number (12) 9:8;12:10;23:23;34:3,5,8, 11;53:7,7;61:24;62:18,18
N	name (6) 9:4;25:19,25;32:3,7;34:5 named (1) 33:7 names (5) 10:19;15:18,21;28:18; 29:14 narrow (2) 70:7;72:8 nature (3) 9:13;10:21;28:11 nearly (1) 47:1 necessarily (2) 26:15;40:14 necessary (3)		



<b>numbering (1)</b> 75:21	27:20		29:6
<b>numerous (1)</b> 39:11	<b>opinion (2)</b> 48:17;59:21	<b>P</b>	<b>path (1)</b> 33:18
<b>O</b>	<b>opportunities (1)</b> 65:10	<b>page (2)</b> 40:6;80:14	<b>Paul (2)</b> 17:17;28:6
<b>O'BANNON (2)</b> 21:4,4	<b>opportunity (7)</b> 55:15;65:3,16;70:19,20; 72:5;74:3	<b>pain (1)</b> 34:24	<b>pay (1)</b> 83:23
<b>observe (2)</b> 26:15;65:9	<b>opposed (2)</b> 46:11;83:14	<b>paper (1)</b> 72:2	<b>pending (1)</b> 34:12
<b>observer (3)</b> 32:20;64:10;65:20	<b>opposite (1)</b> 76:21	<b>paragraph (2)</b> 80:14,16	<b>Pendleton (1)</b> 29:11
<b>observers (1)</b> 65:5	<b>order (23)</b> 39:13,14,16,17,20;40:13, 17,23,23,25;41:7;53:23; 54:11,19;55:10;57:9;67:15, 20;75:22;77:10;80:15,20; 82:12	<b>part (6)</b> 19:8;47:22;61:7;62:17; 63:25;64:21	<b>people (24)</b> 9:17,19;10:21;15:18,23; 19:24;26:14;28:2;34:18,21; 35:6,21;56:24;58:9;65:4,12; 68:22;69:25;71:12;72:1,1,6; 75:12;78:24
<b>obtain (1)</b> 45:14	<b>orders (3)</b> 37:20;39:13;40:12	<b>participants (8)</b> 9:8;10:15;11:16;15:19; 33:25;51:18,23;74:9	<b>people's (2)</b> 21:14;35:16
<b>obviously (3)</b> 35:20;64:4,22	<b>original (2)</b> 16:8;27:10	<b>participate (44)</b> 9:18;18:13;19:10;25:24; 26:16,21;27:1,16;29:19; 30:5;31:4;32:1;34:1;35:24; 51:15;52:13;57:15;61:8,10, 16,18;62:25;64:3,7,10,13,15, 19;65:9;68:7,9,25;69:5,9; 70:21;71:6,8,14,23;72:5; 74:4;81:7;83:3;84:3	<b>per (1)</b> 15:6
<b>off (8)</b> 10:4;17:12;22:12;28:2; 48:13;58:21;67:6;71:3	<b>others (10)</b> 20:10;22:7;25:16;31:23, 23;32:24;33:16;36:22;77:13; 83:6	<b>participating (11)</b> 11:19;12:22;15:1;19:10; 25:4,14;36:23;65:13;66:2; 82:25;83:7	<b>perfectly (1)</b> 69:15
<b>offering (1)</b> 65:7	<b>otherwise (2)</b> 45:15;61:6	<b>participation (10)</b> 35:25;51:8;53:11;59:25; 65:2,16;67:22;68:2,10,20	<b>perhaps (6)</b> 22:19;23:23;50:24;56:5; 75:9,10
<b>office (2)</b> 36:25;37:5	<b>ought (1)</b> 51:4	<b>particular (17)</b> 9:14;11:5;15:12;25:2; 39:17;42:21;48:11;52:20; 57:17;59:20;64:25;69:3,22, 24;70:6,22;71:7	<b>period (1)</b> 83:7
<b>officer (4)</b> 39:15;68:24;72:13;77:13	<b>ours (1)</b> 35:17	<b>parties (24)</b> 17:22;35:10;39:23;40:4; 41:1,4,13;42:20;51:1;52:13; 55:13;61:17,18;66:5;70:1; 75:5;76:2;79:11;81:6,8; 82:18;83:5,17,25	<b>periods (1)</b> 35:11
<b>official (1)</b> 27:7	<b>ourselves (1)</b> 62:12	<b>parties' (1)</b> 40:17	<b>person (6)</b> 9:9;12:5;65:15;66:10; 81:9,12
<b>O'Leary (2)</b> 17:6,7	<b>out (29)</b> 9:24;12:3;17:25;25:8,9,23; 26:6;36:10,14;37:14;38:7; 41:10;51:7;54:12;56:16; 57:4;58:4;59:2,4;64:19,20; 69:3,23;70:22;74:19;76:13; 77:13;82:3;84:5	<b>partnership (4)</b> 12:7,12;22:8;33:22	<b>personal (1)</b> 55:3
<b>once (1)</b> 15:9	<b>outcome (1)</b> 57:21	<b>partnerships (1)</b> 33:22	<b>persons (2)</b> 15:11;20:12
<b>one (36)</b> 11:14;14:6;16:17;23:24; 27:12;29:18,20;33:6,8; 36:10,20;38:1;40:10,13; 44:16;49:10,22;53:7;55:15, 21;58:7;59:17;62:18;67:8; 70:13;74:6,17;76:3,10,11,17; 79:20;80:12;81:18;82:16; 83:2	<b>outlined (1)</b> 46:21	<b>parts (1)</b> 56:22	<b>perspective (5)</b> 41:25;42:11;57:20;69:9; 79:10
<b>ones (3)</b> 20:3;29:21;76:25	<b>outset (2)</b> 55:1,20	<b>party (3)</b> 27:2;50:4;76:18	<b>Petrich (3)</b> 27:6,14,15
<b>only (5)</b> 38:19;46:9;59:12;62:18; 66:7	<b>outside (13)</b> 11:9;18:10,19;20:13; 22:20,23;23:3;26:22;51:20; 52:7;55:23;59:22;67:25	<b>party's (1)</b> 55:23	<b>Phillip (2)</b> 28:15,16
<b>onto (1)</b> 39:8	<b>over (1)</b> 40:22	<b>pass (1)</b> 19:11	<b>phone (8)</b> 9:23;10:3;15:20;17:18,24; 23:8;34:5;79:23
<b>oOo- (1)</b> 84:11	<b>overburden (1)</b> 83:6	<b>past (2)</b> 47:21;73:21	<b>place (3)</b> 39:4;51:9;62:15
<b>open (1)</b> 65:2	<b>overcome (1)</b> 48:4	<b>Pat (1)</b>	<b>places (1)</b> 30:17
<b>opened (1)</b> 68:18	<b>overtime (1)</b> 76:6		<b>plan (3)</b> 60:25;62:14,17
<b>open-ended (1)</b> 50:24	<b>own (1)</b> 30:13		<b>planning (3)</b> 26:21;54:1;60:11
<b>opening (1)</b> 68:18			<b>play (1)</b> 42:18
<b>operate (1)</b> 58:24			<b>pleading (1)</b> 42:3
<b>operating (1)</b>			<b>please (3)</b> 9:21;22:12;29:25
			<b>plowing (1)</b> 71:9

<b>Pocatello (3)</b> 23:13;60:3,7	65:14;77:10	<b>pumpers (2)</b> 46:24;47:4	<b>rebuttal (1)</b> 78:4
<b>PODs (1)</b> 56:21	<b>preserve (1)</b> 54:17	<b>pumping (1)</b> 48:2	<b>recall (2)</b> 44:12;83:20
<b>point (14)</b> 18:7;22:25;23:4;24:21; 45:25;48:24;51:6;55:21; 57:4;62:19,21;71:3,20;80:9	<b>presumption (1)</b> 41:16	<b>put (8)</b> 15:5;38:13;51:7;53:5,8,20; 58:14;80:20	<b>receive (2)</b> 25:20;68:11
<b>points (1)</b> 66:21	<b>pretty (2)</b> 67:15;76:12	<b>putting (1)</b> 50:19	<b>received (9)</b> 29:20;31:6;33:12,13; 37:13,19;38:1;40:22;72:1
<b>position (2)</b> 68:4,16	<b>previous (1)</b> 41:8	<b>Q</b>	<b>recent (1)</b> 67:15
<b>possible (3)</b> 11:5;60:24;79:1	<b>prior (2)</b> 41:23;44:5	<b>quantity (2)</b> 44:24;45:2	<b>recognize (1)</b> 26:4
<b>possibly (2)</b> 17:20;18:18	<b>priorities (1)</b> 11:4	<b>quick (2)</b> 58:13;72:21	<b>recognized (1)</b> 70:1
<b>post (3)</b> 42:25;66:13;67:4	<b>priority (2)</b> 58:5;80:19	<b>quiet (1)</b> 58:10	<b>reconcile (1)</b> 37:22
<b>post-adjudication (4)</b> 41:19;43:10,14;50:8	<b>probably (5)</b> 18:4;36:19;58:7;67:15; 78:7	<b>quite (2)</b> 18:6;55:23	<b>reconsider (1)</b> 41:3
<b>posted (1)</b> 40:5	<b>problem (1)</b> 76:21	<b>R</b>	<b>record (4)</b> 21:10;40:17;53:8;71:1
<b>postponement (2)</b> 39:17;40:14	<b>procedure (4)</b> 50:15;52:16;60:22;71:17	<b>Rachel (1)</b> 28:1	<b>recorded (2)</b> 66:9,14
<b>potentially (2)</b> 61:15;62:11	<b>proceeding (23)</b> 9:8;12:9;16:9;17:21; 18:16;20:16;21:12,18;27:13; 50:17;51:22;56:8;57:21; 60:13,23;62:20;63:1;67:12; 69:17,21;70:13;71:4,24	<b>Radio (1)</b> 28:1	<b>recording (3)</b> 67:5;83:14;84:10
<b>Power (4)</b> 23:20,22;24:4;53:12	<b>proceedings (8)</b> 18:14;24:22;26:24;60:25; 61:7;64:21;70:12;73:21	<b>raise (2)</b> 9:21;55:20	<b>records (3)</b> 39:22,23;48:22
<b>powers (1)</b> 60:19	<b>process (2)</b> 60:22;83:18	<b>raised (1)</b> 59:24	<b>redundant (1)</b> 83:2
<b>precedent (1)</b> 61:14	<b>production (3)</b> 39:21;82:13,19	<b>ramifications (2)</b> 60:12,24	<b>refer (1)</b> 20:1
<b>preference (1)</b> 75:24	<b>program (2)</b> 9:22;10:11	<b>Ranch (7)</b> 17:16,19;20:17,19;29:22; 30:12;31:5	<b>reference (1)</b> 41:8
<b>pre-hearing (3)</b> 9:6,15;75:11	<b>pronounced (1)</b> 13:7	<b>Randy (2)</b> 23:16;60:4	<b>referring (1)</b> 43:4
<b>prejudice (3)</b> 41:1;62:5;76:18	<b>proof (7)</b> 41:13,16;45:1,2;46:4;50:4, 20	<b>range (1)</b> 47:3	<b>regardless (1)</b> 69:2
<b>premature (1)</b> 20:9	<b>proper (1)</b> 48:6	<b>rationale (1)</b> 53:7	<b>regroup (1)</b> 25:12
<b>prematurely (1)</b> 48:1	<b>protect (3)</b> 21:19;62:25;67:19	<b>reach (2)</b> 41:4;84:5	<b>regular (3)</b> 9:15;38:13;71:17
<b>premise (2)</b> 27:10;48:12	<b>provide (5)</b> 39:23;40:18;56:6;74:3; 78:22	<b>read (8)</b> 10:19;26:16;34:4,7;43:10; 49:24;56:1;72:1	<b>reiterate (2)</b> 33:19;49:6
<b>preparation (1)</b> 51:11	<b>provided (1)</b> 81:23	<b>reading (3)</b> 43:16,20;64:6	<b>related (2)</b> 39:23;69:19
<b>prepare (4)</b> 54:15;74:16;78:5,5	<b>providing (1)</b> 41:23	<b>real (2)</b> 58:12;62:24	<b>relates (1)</b> 74:1
<b>prepared (4)</b> 20:15;53:17;73:8;78:10	<b>proving (1)</b> 49:15	<b>realize (1)</b> 77:2	<b>relationships (1)</b> 83:4
<b>preparing (2)</b> 9:10;54:23	<b>provision (1)</b> 21:16	<b>really (9)</b> 47:6,18,25;48:4;51:11; 52:2;55:21;57:16;78:1	<b>relevant (3)</b> 41:19;52:19;72:12
<b>present (12)</b> 13:10;17:14;20:22,25; 22:5,15;23:7,7;24:17;25:23; 60:6;81:9	<b>Public (2)</b> 28:1;39:22	<b>reason (8)</b> 18:13;19:10;55:12;60:14; 62:25;68:14;69:25;72:24	<b>reliability (1)</b> 39:8
<b>presentation (3)</b> 66:3;76:22;81:8	<b>published (6)</b> 68:14;71:2,6,15,19;72:2	<b>reasonable (4)</b> 78:8,11,12;79:12	<b>reliable (2)</b> 39:4,5
<b>presentations (1)</b> 83:2	<b>pumped (1)</b> 47:12	<b>Rebecca (1)</b> 38:1	<b>relief (1)</b> 51:13
<b>presented (1)</b> 52:24			<b>relocate (1)</b> 25:11
<b>presenting (2)</b>			<b>rely (1)</b> 83:4
			<b>remaining (4)</b> 39:19;59:19;84:1,2

<b>remember (1)</b> 81:22	<b>restate (1)</b> 73:11	<b>roughly (1)</b> 47:8	19:17
<b>remind (2)</b> 9:10;22:7	<b>restatement (1)</b> 29:12	<b>round (1)</b> 81:25	<b>season (1)</b> 41:5
<b>remote (1)</b> 65:15	<b>result (2)</b> 56:8;77:17	<b>route (1)</b> 74:3	<b>second (6)</b> 11:2;15:14;16:3;19:15; 44:10;47:22
<b>remotely (2)</b> 9:21;65:10	<b>results (1)</b> 71:24	<b>Rule (6)</b> 43:1,4,11;44:19;50:9; 72:13	<b>seeking (1)</b> 51:13
<b>repeal (1)</b> 43:25	<b>review (1)</b> 73:17	<b>rules (13)</b> 37:8;43:5,9,25;44:3,5,6; 50:14,16,16;52:16;71:10,14	<b>seem (1)</b> 48:5
<b>repeat (1)</b> 58:18	<b>revisit (1)</b> 55:19	<b>running (2)</b> 9:22;10:10	<b>seems (1)</b> 22:21
<b>rephrase (1)</b> 50:6	<b>Richard (2)</b> 24:17;63:14	<b>Rusty (5)</b> 22:4,6;63:23;64:12,24	<b>selected (1)</b> 79:4
<b>report (1)</b> 56:1	<b>Rigby (18)</b> 12:19,21,24;15:2,4;36:16; 18:45;5,7,7,9,25;46:2,6,14; 54:4;81:19,24	<b>S</b>	<b>SEMANKO (6)</b> 21:8,8,10;67:2,4;72:10
<b>reporter (4)</b> 83:14,18,25;84:6	<b>right (43)</b> 12:3,5;14:12;17:2;19:2,14; 24:7;26:7;27:21;28:25;29:2; 31:1,12,23;32:2;33:25; 34:10;39:10,25;40:21;41:12; 18:42;10,13,19;43:8,13,24; 44:22,25;45:22;47:2;50:1; 54:7;57:11;58:21;59:4,6,7; 66:11;68:15;75:10;78:14	<b>Sabala (6)</b> 13:13,13,14,15,15,16	<b>send (8)</b> 25:23;29:21;31:18;34:3; 36:3;39:4;74:18;82:3
<b>reports (3)</b> 47:8;74:16;80:3	<b>rightly (1)</b> 61:24	<b>sake (1)</b> 40:17	<b>sending (1)</b> 54:8
<b>represent (3)</b> 27:8,18;82:5	<b>rights (34)</b> 10:25;11:4,22;12:5,6,11; 16:4,6,21,25;18:9,19;21:19; 23:23;24:20,20;25:8;26:23; 42:2,4;47:24;48:8,16;51:14; 16:56;7:58;4;59:5,16,17; 62:3;63:13,15;66:25	<b>same (7)</b> 32:16,17;53:24;60:14; 62:12;68:16;83:19	<b>senior (17)</b> 10:24;41:9,17,25;42:11, 13,13,16;43:12;45:10;46:25; 47:24;48:16;51:14;58:4; 62:2;82:19
<b>representation (1)</b> 36:20	<b>risk (1)</b> 55:24	<b>Sarah (7)</b> 23:13,15;38:11;44:14,19; 58:11;60:3	<b>seniority (1)</b> 48:8
<b>representative (3)</b> 17:17;20:18;27:7	<b>Ritter (3)</b> 29:23;30:12,14	<b>satisfy (4)</b> 42:10,19;44:24;50:5	<b>seniors (7)</b> 45:17,21;48:19;49:4;76:4, 10,13
<b>represented (17)</b> 12:8,14;13:1;15:8;16:11; 17:23;20:20,23;21:2;22:9, 21;27:12;33:24;36:21;60:4; 64:14;66:6	<b>Ritter's (1)</b> 31:5	<b>Saturday (2)</b> 37:19;38:2	<b>sense (2)</b> 62:11;71:3
<b>representing (10)</b> 11:21;15:6,11;33:1;60:2,3; 62:1;68:5;81:20;82:4	<b>River (7)</b> 11:1,8,23;20:13;25:9; 51:20;59:23	<b>saw (1)</b> 55:20	<b>sensible (1)</b> 77:11
<b>request (7)</b> 26:15;39:21,22;40:15; 53:5,14;76:9	<b>Road (3)</b> 18:22;56:2;66:23	<b>saying (8)</b> 45:21;53:4;54:19;55:2; 61:4;64:17;68:8;72:15	<b>sent (12)</b> 25:23;29:19,20;30:4,12; 31:4,7;40:3;56:16;67:13,25; 68:7
<b>requests (4)</b> 39:24;82:12,19;83:6	<b>ROATS (6)</b> 24:17,17,18,21;63:14,14	<b>scenarios (1)</b> 62:20	<b>sentence (6)</b> 71:22;73:12;80:16,19,23, 23
<b>required (3)</b> 45:17;65:1;81:12	<b>Rob (5)</b> 23:6,9;60:2,16;61:15	<b>schedule (4)</b> 75:13;76:6;77:21;78:12	<b>separate (2)</b> 21:15;23:1
<b>research (1)</b> 77:14	<b>Robertson (7)</b> 22:1;32:10,10,12,12,15,18	<b>scheduled (1)</b> 9:11	<b>separated (1)</b> 10:16
<b>Reservoir (1)</b> 43:22	<b>robust (1)</b> 61:13	<b>schedules (1)</b> 77:7	<b>serve (2)</b> 35:12,20
<b>resolved (1)</b> 70:10	<b>Rodney (2)</b> 13:18,20	<b>scheduling (8)</b> 53:23;54:10,19;55:10; 57:9;75:21;80:15,20	<b>service (13)</b> 34:6,16;35:5,10;37:4,6,7, 10,15,19;38:9,12,24
<b>Resources (4)</b> 9:5;36:1;43:23;48:21	<b>Rogers (2)</b> 16:10,11	<b>Schoen (19)</b> 13:11;14:24,25;25:18,18; 26:2,2,5;46:15,15,19,23; 49:5;72:19,19,21,23,23;73:9	<b>set (7)</b> 44:3;61:14;71:7,14;74:8; 76:4,5
<b>respect (3)</b> 52:8;70:6;76:24	<b>roll (2)</b> 10:13;11:18	<b>S-c-h-o-e-n (1)</b> 26:2	<b>sets (1)</b> 77:15
<b>respective (1)</b> 50:5	<b>room (2)</b> 58:10;83:16	<b>School (9)</b> 26:11,17,20;27:1,7,9,11, 15,22	<b>settlement (4)</b> 41:2;62:9;63:2;79:12
<b>respond (2)</b> 53:15,16		<b>scope (4)</b> 54:11;55:1,3,6	<b>several (2)</b> 44:11;45:1
<b>response (3)</b> 37:2;40:18;50:14		<b>screamer (1)</b> 83:10	<b>Sewer (2)</b> 21:25;32:13
<b>responses (1)</b> 74:20		<b>searches (1)</b>	<b>shakes (1)</b>
<b>responsibility (2)</b> 42:6;77:18			
<b>rest (1)</b> 29:14			

69:3 <b>share (1)</b> 60:17 <b>Sharron (2)</b> 28:21;29:3 <b>shift (1)</b> 10:20 <b>shifts (2)</b> 42:5,15 <b>shooting (1)</b> 49:25 <b>short (6)</b> 27:21;35:11;37:3;42:7; 55:13;83:7 <b>shortly (1)</b> 27:17 <b>show (4)</b> 42:1;47:7;50:12;61:5 <b>showed (1)</b> 19:4 <b>showing (3)</b> 46:11;47:6,18 <b>shown (1)</b> 47:13 <b>shows (2)</b> 45:23;77:15 <b>shut (1)</b> 48:13 <b>sideboards (1)</b> 72:8 <b>sides (1)</b> 48:25 <b>significant (1)</b> 60:24 <b>significantly (1)</b> 56:3 <b>Silver (5)</b> 10:25;11:22;47:10,11;52:2 <b>similar (3)</b> 22:9;49:23;60:17 <b>Simplot (1)</b> 28:9 <b>simply (3)</b> 56:6;62:7;63:8 <b>Simpson (4)</b> 23:20,21;24:6,12 <b>SINNILLA (2)</b> 31:25,25 <b>sit (2)</b> 31:1;73:18 <b>site (1)</b> 40:5 <b>situation (4)</b> 47:7;62:12;64:23;74:5 <b>smaller (1)</b> 18:11 <b>somebody (5)</b> 9:21;31:15;39:5;57:23; 66:2 <b>someone (3)</b> 35:19;60:1;68:5 <b>sometime (1)</b> 81:23	<b>somewhat (1)</b> 18:11 <b>sorry (13)</b> 13:6,8;15:1;19:20;22:15; 26:5;31:3;34:24;43:18; 50:15;58:15;59:7;73:11 <b>Sound (3)</b> 17:12;22:12;28:2 <b>sounded (1)</b> 20:1 <b>source (1)</b> 47:11 <b>sources (1)</b> 52:3 <b>South (2)</b> 17:9;18:22 <b>southeast (1)</b> 56:21 <b>Southern (2)</b> 24:25;66:22 <b>southwest (1)</b> 56:22 <b>SPACKMAN (212)</b> 9:3,4;10:1,8;12:1,22,25; 13:4,8,11,15,17,20,25;14:2,4, 9,12,16,22,25;15:3,13,16,22; 16:2,15;17:1,4,8,12,15;18:2, 8,15;19:1,14,22;20:5,23; 21:1,6,9,21,24;22:6,17;23:5, 9,12,15,19;24:3,11,15,18,24; 25:6,11,25;26:3,6,12,20,25; 27:4,8,19;28:4,6,9,14,17,25; 29:2,5,8,11,17;30:2,6,8,10, 14,22,25;31:8,12,15,17,20, 23;32:2,5,7,11,14,16,22,24; 33:2,9,13,16;34:14,17,25; 35:9,23;36:4,12,17;37:1,17, 22;38:8,15,17,23;39:1,3,7; 40:3,11,21;42:23;43:3,12,21; 44:1,22;45:6,8,20;46:1,3,12, 18,22;48:9;49:6,9,16,19; 50:1,13,23;53:3,18,22;54:7; 55:8,18;56:9,14;57:6,11; 58:23;59:6,12;60:9,16; 61:20;63:11,17,19,22;64:12, 24;65:22,25;66:12,17,20; 67:1,3;68:21;70:17,25;72:3, 3,17,20,22;73:1,10,13,24; 74:11;75:7,9;77:1,8,24; 78:14;79:8,19,21;80:7,11,25; 81:4,10,13,16;82:7,10,24; 83:12,15,17;84:7 <b>speak (8)</b> 30:3,22;34:23;35:1;57:23; 60:1;62:21;74:23 <b>SPEAKER (22)</b> 13:14;14:11;29:9,16,18; 30:4,7,9,11,16,24;31:1,3,9, 13,14;33:11;44:8;58:16,17, 21;59:10 <b>speaking (2)</b> 29:25;30:21 <b>specific (3)</b>	19:5;44:10;69:19 <b>specifically (2)</b> 53:6;61:9 <b>Speck (14)</b> 17:23;18:1,6,9,21;19:13; 21:18;55:17,17,19;57:10; 66:19,19,21 <b>Speck's (1)</b> 56:18 <b>specter (1)</b> 82:25 <b>spectrum (1)</b> 48:8 <b>spell (1)</b> 30:8 <b>spelled (2)</b> 36:8,10 <b>Spencer (1)</b> 20:18 <b>spent (1)</b> 10:14 <b>SPF (1)</b> 26:9 <b>spoke (2)</b> 31:15;45:6 <b>spot (1)</b> 64:2 <b>spring (2)</b> 47:11;69:23 <b>springs (1)</b> 47:12 <b>Squares (1)</b> 12:18 <b>staff (25)</b> 48:22;56:17;72:24;73:2,2, 7,8,16,19,22;74:15,16;75:1, 5,12;76:3,10,11,16,22;77:12; 80:2,3,9,13 <b>stand (1)</b> 55:24 <b>standard (7)</b> 27:10;41:12;43:6;44:4,5, 23;45:18 <b>standards (1)</b> 41:13 <b>standing (8)</b> 57:16,17,20;59:21;61:2,6; 67:24;68:25 <b>standpoint (1)</b> 55:5 <b>star (1)</b> 10:4 <b>start (4)</b> 25:20,22;76:6,7 <b>starts (2)</b> 80:17,23 <b>state (3)</b> 16:5;28:1;65:18 <b>stated (3)</b> 40:12;55:1;59:15 <b>statement (1)</b> 40:20 <b>statements (1)</b>	40:10 <b>status (1)</b> 31:11 <b>still (6)</b> 27:15;36:23;41:10;67:16; 71:23;74:3 <b>stipulation (1)</b> 62:16 <b>Stone (1)</b> 16:11 <b>stream (1)</b> 48:16 <b>streams (1)</b> 21:16 <b>strike (1)</b> 41:1 <b>struggled (1)</b> 68:21 <b>struggling (1)</b> 57:19 <b>stuck (1)</b> 46:24 <b>study (3)</b> 47:13,14,14 <b>stuff (5)</b> 31:18;37:13;46:8;71:5; 76:12 <b>subfactors (1)</b> 45:1 <b>subject (5)</b> 11:5;17:21;24:9;51:21; 52:9 <b>submission (1)</b> 80:2 <b>submit (1)</b> 75:23 <b>subpoenas (1)</b> 82:13 <b>subsequent (1)</b> 41:21 <b>substantive (1)</b> 76:12 <b>substations (1)</b> 24:1 <b>suddenly (2)</b> 42:5,5 <b>sufficient (4)</b> 35:8;37:11;45:15;46:3 <b>Sukow (9)</b> 18:11,20;20:15;51:17; 52:5;55:20;56:12,15;74:6 <b>Sun (3)</b> 21:22,25;32:12 <b>suppose (2)</b> 68:23;69:1 <b>supposed (1)</b> 78:22 <b>sure (13)</b> 16:18;18:8;26:3;27:19; 29:22;31:9;34:17;37:14,18; 49:21;50:2;71:10;76:12 <b>surface (14)</b> 10:24,25;11:21;21:11,13;
--	---	---	--

45:11;46:25;47:10,23;52:21; 58:3;59:16;62:2;63:2 <b>surprised (1)</b> 22:2 <b>surrounding (1)</b> 47:4 <b>suspect (1)</b> 61:11 <b>Swiftsure (2)</b> 17:16,19 <b>system (3)</b> 47:10,11;58:24	14:20;17:14;34:13,15,18; 35:2,5;37:12;38:1,4,7;42:22, 24;43:8,16;45:4;50:6,7,21; 58:14,23;71:20,21;73:11; 75:4,8;80:21;81:18,19; 83:11,13,16;84:9 <b>though (2)</b> 61:8;67:14 <b>thought (4)</b> 20:3,5;59:7;77:3 <b>thoughts (1)</b> 78:15 <b>threat (1)</b> 82:20 <b>three (20)</b> 37:20;39:13;40:12;54:6; 58:20;66:24;67:6,11,19; 68:17;69:8,9;70:1,72:11; 75:19;76:4;81:22;82:17,24; 83:3 <b>Thursday (3)</b> 25:21;75:24;78:8 <b>thus (1)</b> 18:13 <b>Tim (1)</b> 80:12 <b>timeline (1)</b> 63:4 <b>timely (1)</b> 27:22 <b>titled (1)</b> 69:18 <b>TJ (3)</b> 23:18,19;60:10 <b>today (12)</b> 9:6,16;15:1,10;29:10; 31:10;36:19;40:24;53:17; 61:11;81:23;82:3 <b>together (1)</b> 15:5 <b>told (1)</b> 33:9 <b>tomorrow (5)</b> 36:6,13;39:25;55:10,11 <b>tone (1)</b> 77:15 <b>total (1)</b> 42:6 <b>traditional (1)</b> 79:13 <b>transcription (1)</b> 9:1 <b>transparent (1)</b> 69:16 <b>Travis (18)</b> 17:10;34:23;35:1;37:2,22; 42:23;43:18,24;44:23;50:7, 13;58:23,23;67:5;71:21; 75:4;81:18;83:12 <b>Triangle (8)</b> 16:7;18:5,20;51:17;52:4, 21;56:22;69:20 <b>tries (1)</b>	74:8 <b>truncated (1)</b> 78:6 <b>trust (1)</b> 12:12 <b>trusts (1)</b> 33:22 <b>truthful (1)</b> 48:6 <b>try (6)</b> 9:23;46:16;59:7,8;67:7; 75:13 <b>trying (10)</b> 10:14;20:5;22:15;45:9,16; 54:12;57:19;72:7;77:6;79:6 <b>two (20)</b> 9:11;20:2,7;23:24;25:3; 51:12;53:7;56:25;57:4; 62:18;66:21;67:9;76:3,10, 19,23;78:13;80:13;81:22; 82:16 <b>two-part (1)</b> 47:18 <b>type (1)</b> 50:11 <b>Typically (1)</b> 47:1 <b>typos (1)</b> 80:13	84:4 <b>upcoming (1)</b> 52:8 <b>updated (1)</b> 37:18 <b>upon (1)</b> 49:7 <b>upstream (1)</b> 21:11 <b>use (6)</b> 23:25;42:10;44:25;47:24, 25;50:9 <b>used (1)</b> 49:23 <b>users (20)</b> 10:24;12:17;21:11,13; 28:4;45:11;46:25;47:13,19, 24;48:13;51:16;52:20,22; 60:21;63:2;67:13,21;68:12; 82:19 <b>uses (2)</b> 24:8,13 <b>using (2)</b> 44:6;49:22 <b>utilizes (1)</b> 24:9
<b>T</b>			<b>V</b>
<b>Taber (11)</b> 29:21;30:4,6,13,15;31:4,6, 16,16,18,22 <b>T-a-b-e-r (1)</b> 30:9 <b>table (1)</b> 40:24 <b>talk (21)</b> 9:17;10:6;11:14;19:12; 26:7;34:10,16;35:5,9;39:10; 41:12;43:11;50:23;51:10,19; 64:25;73:19;76:1;79:16; 81:1;84:3 <b>talked (5)</b> 50:2;57:13;59:4;72:20; 75:16 <b>talking (9)</b> 43:1,4;44:5;51:10,11;58:1, 9;59:14;74:6 <b>talks (1)</b> 43:17 <b>target (2)</b> 67:9;68:5 <b>Taylor (1)</b> 29:23 <b>telephone (1)</b> 9:9 <b>tendency (1)</b> 55:3 <b>term (2)</b> 49:22,22 <b>testify (8)</b> 52:1,15;64:9,19;73:5; 75:20;77:12,12 <b>testimony (5)</b> 52:17,19,22,24;72:12 <b>Thanks (14)</b> 14:9,16;21:9;23:8;26:3; 32:2,18;46:14;57:7;72:16; 77:8,8;83:10;84:8 <b>therefore (3)</b> 36:22;42:4;45:23 <b>thinking (2)</b> 77:23,25 <b>third (7)</b> 11:7;19:19;20:8,12;52:12; 55:5;57:13 <b>THOMPSON (33)</b>		<b>ultimate (1)</b> 49:7 <b>ultimately (3)</b> 48:16;54:21;70:9 <b>unable (1)</b> 76:17 <b>uncertain (1)</b> 82:14 <b>unclear (2)</b> 53:9;61:4 <b>under (11)</b> 10:19;27:20;41:16;42:10; 44:25;45:17;52:15;60:20; 71:10,11,14 <b>unfortunately (1)</b> 63:4 <b>UNIDENTIFIED (22)</b> 13:14;14:11;29:9,16,18; 30:4,7,9,11,16,24;31:1,3,9, 13,14;33:11;44:8;58:16,17, 21;59:10 <b>unknown (1)</b> 57:7 <b>unless (3)</b> 61:17,18;67:11 <b>unmute (1)</b> 10:5 <b>up (19)</b> 19:3,4;30:3,23;35:1;44:3; 58:7;60:1;61:3;64:25;71:20; 74:7,8,14,23;76:3,19;82:1;	<b>Valley (5)</b> 17:9;21:22,25;32:12;34:21 <b>various (4)</b> 10:14;35:8;51:8;68:22 <b>VAUGHN (2)</b> 16:13,13 <b>venture (1)</b> 48:24 <b>verify (1)</b> 45:9 <b>version (1)</b> 19:19 <b>versus (4)</b> 43:22;44:11;74:1,22 <b>via (1)</b> 81:15 <b>Vic (1)</b> 28:9 <b>vision (2)</b> 69:24;70:12 <b>voice (1)</b> 26:4 <b>Vonde (4)</b> 16:22,23,23;17:3 <b>Vowels (2)</b> 25:4,13
		<b>U</b>	<b>W</b>
			<b>wait (2)</b> 51:5;75:16 <b>walk (1)</b> 58:12 <b>wants (2)</b>

57:23;73:14 <b>watch (1)</b> 21:19 <b>Water (62)</b> 9:5;10:24,25;11:21;12:4,5, 6,11,17;16:21;17:5,9;18:18; 21:11,25;22:3;23:16,23; 24:20;25:8;26:23;28:4; 32:13;36:1;41:18,20;42:1,4, 4,5,9,13,17,18;43:13,23; 44:24;45:14,22;46:25;47:2, 10,23;48:8,16,21;51:14;52:3, 22;58:3;59:5,16,16;60:4,21; 62:2;63:2,13,15,23;67:13,21 <b>water-right (2)</b> 41:9;42:1 <b>way (15)</b> 9:13,24;10:13;12:6;27:2; 55:15;56:5;61:12,14;69:16; 70:18;71:6;74:17;77:21;78:3 <b>ways (1)</b> 49:1 <b>web (1)</b> 40:6 <b>website (2)</b> 66:10,13 <b>Wednesday (9)</b> 51:2;54:2,9,17;64:9;75:17; 79:7,8,9 <b>week (12)</b> 37:14;39:13;47:3,3;51:2,3; 54:22;78:2,5,7,11;79:1 <b>weekend (3)</b> 40:22;75:25;78:9 <b>weeks (1)</b> 9:12 <b>Welcome (3)</b> 9:3;32:14;37:23 <b>Westendorf (2)</b> 14:14,15 <b>what's (7)</b> 21:19;25:25;50:9;65:1,6; 67:17;72:2 <b>whoever's (1)</b> 29:24 <b>whole (3)</b> 64:23;66:10;71:12 <b>Who's (1)</b> 63:22 <b>Whose (1)</b> 46:18 <b>willing (1)</b> 83:19 <b>Wills (1)</b> 38:1 <b>winter (1)</b> 64:1 <b>wish (2)</b> 31:24;60:5 <b>within (19)</b> 11:8;16:6,7;17:20;18:4; 19:24;20:6;22:19;23:23,24; 24:4,12,12,13;51:16,19;52:4,	21;55:13 <b>without (4)</b> 32:17;40:25;50:14;62:14 <b>witness (4)</b> 54:10;64:17,18;76:21 <b>witnesses (30)</b> 51:2,3,25;52:14;53:25; 60:5,8,11;61:1;62:23;63:6, 16;64:8;65:7,8,13;66:3; 70:19;72:25,25;73:5,14,15; 75:1,17,18;78:21;80:1;81:7, 11 <b>wizard (1)</b> 10:9 <b>wondering (2)</b> 82:17,22 <b>Wood (14)</b> 11:1,8,23;12:17,17;13:1,5; 15:20;20:13;25:9;51:20; 52:2;58:5;59:23 <b>word (1)</b> 61:2 <b>words (6)</b> 15:19;45:16;47:19;57:16, 22;69:18 <b>work (5)</b> 20:10;77:7;80:2,4,6 <b>working (1)</b> 15:23 <b>world (2)</b> 68:1;71:12 <b>worried (1)</b> 69:11 <b>worth (1)</b> 70:11 <b>writing (4)</b> 53:5,9,14,20 <b>written (1)</b> 71:19 <b>wrong (2)</b> 68:3,17	<b>11 (1)</b> 80:14 <b>11th (1)</b> 9:11 <b>13 (1)</b> 22:19 <b>143 (1)</b> 44:14 <b>17th (2)</b> 31:19;80:3 <b>1855 (1)</b> 58:5 <b>1877 (1)</b> 58:5 <b>1884 (1)</b> 80:18 <b>1885 (2)</b> 58:8;80:18 <b>1886 (1)</b> 47:2 <b>1950 (1)</b> 47:8	<b>55 (1)</b> 58:8
			<b>6</b>
			<b>6 (1)</b> 10:4
			<b>7</b>
			<b>7 (3)</b> 29:22;30:12;31:5 <b>7th (1)</b> 9:11
			<b>8</b>
			<b>85 (1)</b> 58:8 <b>86 (2)</b> 33:5;66:23
			<b>9</b>
		<b>2</b>	<b>9:00 (1)</b> 25:21 <b>9:30 (2)</b> 25:21,22
		<b>2 (1)</b> 43:22 <b>2007 (1)</b> 44:14 <b>2013 (1)</b> 44:13 <b>2020 (1)</b> 51:21 <b>2021 (5)</b> 18:12,20;41:5;55:25;79:12 <b>26 (1)</b> 25:10	
		<b>3</b>	
		<b>3 (2)</b> 80:14,21 <b>33 (1)</b> 60:21 <b>37 (7)</b> 9:7;23:23;62:13;67:13,21, 25;68:12 <b>37B (2)</b> 22:3;63:24	
		<b>4</b>	
		<b>42 (4)</b> 43:1,4,11;50:9 <b>42-237ag (1)</b> 41:15	
		<b>5</b>	
		<b>5/15/19 (1)</b> 80:18 <b>5:31 (1)</b> 9:1	
	<b>Y</b>		
	<b>year (2)</b> 47:1,15 <b>years (1)</b> 64:22 <b>Yep (3)</b> 38:3,17;75:3 <b>yield (1)</b> 77:5		
	<b>Z</b>		
	<b>zero (2)</b> 62:22;63:5 <b>Zoom (7)</b> 9:9,20,22;10:11;17:24; 65:15;81:15		
	<b>1</b>		





BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER )	
TO WATER RIGHTS NOS. 36-02356A, 36-07210, )	
AND 36-07427 )	
(Blue Lakes Delivery Call) )	<b>OPINION CONSTITUTING</b>
_____ )	<b>FINDINGS OF FACT,</b>
	<b>CONCLUSIONS OF LAW</b>
	<b>AND RECOMMENDATION</b>

IN THE MATTER OF DISTRIBUTION OF WATER )	
TO WATER RIGHTS NOS. 36-04013A, 36-04013B, )	
AND 36-07148 (SNAKE RIVER FARM); AND TO )	
WATER RIGHTS NOS. 36-07083 AND 36-07568 )	
(CRYSTAL SPRINGS FARMS) )	
(Clear Springs Delivery Call) )	
_____ )	

Hearing was held commencing November 28, 2007, to resolve disputes arising from the Director's Orders entered May 19, 2005, concerning the delivery call made by Blue Lakes Trout Farm, Inc. and the Order entered July 8, 2005, concerning the delivery call made by Clear Springs Food, Inc. for Snake River Farm. When issues common to Blue Lakes and Clear Springs are considered they are referred to as the Spring Users, a term that is not inclusive of other users of spring water in the reaches of concern. The Spring Users are aquaculture businesses that use water flowing from springs in the Thousand Springs Reach to raise trout for sale. IGWA, Idaho Ground Water Appropriators, Inc., is a collective association of ground water users including the North Snake Ground Water District and the Magic Valley Ground Water District. Members of IGWA are subject to the Director's Orders which mandated curtailment of ground water usage to meet the Spring Users' delivery calls. The Idaho Dairymen's Association and Rangen, Inc. participated in the hearing with regard to issues of common concern with the Spring Users and IGWA, as did the cities of Wendell, Shoshone, Paul, Jerome, Heyburn and Hazelton. Prior to hearing the parties filed written testimony and exhibits of expert witnesses and some lay witnesses who were then subject to examination on their

testimony at hearing. The Idaho Department of Water Resources is not a party in this proceeding. The Department provided witnesses to explain the background of the Department's action and the administrative record relied upon by the Director in entering the Orders at issue to assist the parties and the Hearing Officer. Some issues were determined by summary judgment prior to trial. A copy of that opinion is attached for further explanation of those determinations.

Also at issue in this case are orders entered and actions taken by the Department subsequent to the May 19 and July 8, 2005, orders. These concern efforts by IGWA to avoid curtailment by alternate methods and the Director's responses to those efforts.

## **I.**

### **HISTORICAL BACKGROUND**

The current legal dispute arises from the dilemma of attempting to parse out the rights to water when there are more demands, and in fact more paper rights to water, than there is available water in times of shortage. The scientific and cultural history leading to this dispute is epic in the development of a significant portion of the State. It is important to understand to avoid simplifying the case by identifying villains to be the scapegoats and losers. Resolution would be easy if that were the case. This is a case, however, of industrious and often visionary people pursuing laudable goals dependent upon a water resource that for decades appeared infinite and is now known to be finite and in fact in short supply.

**1. The Eastern Snake River Plain Aquifer.** An aquifer is an underground source of water. The Eastern Snake River Plain Aquifer (ESPA) underlies the Eastern Snake River Plain that is approximately 170 miles long and 60 miles wide. The ESPA begins at the Teton Range near Ashton in the east and extends in a southwesterly direction following the Snake River downstream to King Hill. It comprises more than 10,800 square miles. There are estimates that it contains approximately one billion acre feet of water. The aquifer is made up primarily of fractured basalt, sometimes interspersed with river sediment or windblown material. It ranges in depth from thousands of feet to much more shallow levels. The significance of its structure is that it forms a conduit for the flow of water, but that flow is neither consistent in pace nor direction. Unlike a river channel that can be observed and which flows along clearly defined lines and identifiable speeds, water in the aquifer may move as little as 0.1 feet per day to as

much as 100,000 feet per day. The fractured basalt may form barriers that impede the flow of water and change its direction or may form conduits that channel the flow of water, allowing it to move quickly from one point to another. The movement is below ground. Consequently, particular water cannot be traced from one precise point under ground to another precise point where it emerges to the surface. This becomes significant in determining the cause and effect of junior ground water usage upon senior surface water rights. At any given point in its travels water may be either ground water or surface water as it enters or exits the aquifer.

**2. The development of irrigation on the Eastern Snake River Plain.** The initial development of irrigation in Idaho began in the second half of the 19<sup>th</sup> century when water was diverted from the Snake River and its tributaries and delivered to crops by channels on the ground – flood irrigation. From this practice developed what is called incidental recharge of the aquifer. That is, water that was not consumed by the crops or through evaporation entered the ground and joined the water that was in the aquifer. As a consequence, the level of water in the aquifer rose above what that level would be absent the irrigation practices. As the extent of flood irrigation increased, incidental recharge increased. This trend continued until the middle of the twentieth century at which time there were approximately 1.83 million acres under irrigation. At that time two developments occurred. In the 1950's Idaho Power had abundant inexpensive electrical power for which it needed a market in the summer. Idaho Power and the State of Idaho through its policy makers encouraged ground water development and the expansion of farming by pumping water from the aquifer. This was the science that made practical irrigation in areas that were impractical for flood irrigation from the river. It was, as the promotional literature of the day stated, the way to use this vast reservoir of untapped water and to make the desert bloom. That is what happened. Water in vast quantities began to be withdrawn from the aquifer for agricultural purposes.

**3. The changes in irrigation practices.** Coordinate with the development of ground water pumping was a change in irrigation practices by many surface water users who moved away from flooding the ground to the more efficient method of sprinkler irrigation. Flooding typically used more water than was necessary for crop growth. Additionally, it often meant crops at the beginning of the diversion received more water than crops further down the line and that it was impractical to deliver water to some property that would otherwise produce crops.

The use of sprinkler irrigation allowed the more efficient and uniform use of water. The collateral effect of this change was a reduction of the incidental recharge that had occurred with the less efficient flooding practices.

**4. The need for conjunctive management of surface and ground water.** Ground water pumping increased, incidental recharge diminished, and additional water rights were licensed. No doubt many people understood the connection between the water on the surface in the Snake River and its tributaries and the water below the ground in the aquifer. Nonetheless, for a significant period of time the connection was ignored as the administration of surface water and ground water progressed independent of one another. Ultimately the connection became obvious and the need for conjunctive management apparent. A drought of historic proportions that began in 2000 brought the problem to a head.

## **II.**

### **THE SPRING USERS' WATER RIGHTS**

**1. The Blue Lakes Trout Farm, Inc. rights at issue.** On March 22, 2005, Gregory Kaslo of Blue Lakes Trout Farm, Inc. provided a letter to the Director of the Department of Water Resources demanding that the Director "direct the watermaster for Water District 130 to administer water rights in the Water District as required by Idaho Code Section 42-607 in order to supply Blue Lakes prior rights." The letter asserted that Blue Lakes was then receiving 137.7 cfs and that at its low point in 2003 it received only 111 cfs. The letter sought protection for Water Rights 36-02356A for 99.83 cfs with a priority date of May 29, 1958, 36-07210 for 45 cfs with a priority date of November 17, 1971, and 36-0747 for 52.23 with a priority date of December 28, 1973. Collectively the three water rights total 197.06. The water rights are for fish propagation and the period of use is January 1 through December 31.

**2. The Blues Lakes facilities.** The Blue Lakes Farm is located in the Thousand Springs in which there are numerous springs that emanate from the canyon walls. The Thousand Springs area is divided into six spring complexes or reaches: a) Devil's Washbowl to the USGS stream gage near Buhl, b) Buhl Gage to Thousand Springs, c) Thousand Springs, d) Thousand Springs to Malad Gorge, e) Malad Gorge, f) Malad Gorge to Bancroft. The Blue Lakes Trout Farm is in the Devil's Washbowl to Buhl spring reach which includes springs having moderately large rates

of discharge at intermittent locations. Blue Lakes diverts water from Alpheus Creek which is formed by spring water. The Blue Lakes facility consists of three ponds with 35 raceways each for a total of 105 raceways. Water passes from one set of raceways to a lower set by gravity flow with settling areas between the ponds. The youngest fish receive the water at the upper raceways to provide them with the purest water when they are most vulnerable to disease. The Blue Lakes facility is designed to use the 197.06 cfs. decreed.

**3. Clear Springs Food, Inc.** On May 2, 2005, Larry Cope of Clear Springs provided two letters to the Director requesting water rights administration in Water District No. 130 pursuant to Idaho Code Section 42-607 for the benefit of rights held by Clear Springs for use at the Snake River Farm and Crystal Springs Farm. The Snake River Farm facility which is at issue is located in the Buhl to Thousand Springs reach westerly of the Blue Lakes facility. The Snake River Farm facility is served by water rights 36-02703 for 40.00 cfs issued November 23, 1933, 36-02048 for 20.00 cfs issued April 11, 1938, 36-04013C for 14.00 cfs issued November 20, 1940, 36-04013A for 15.00 cfs issued September 15, 1955, 36-04013B for 27.00 cfs issued February 4, 1964, 36-07148 for 1.67 cfs issued January 31, 1971. The total of the water rights is 117.67 cfs year round and is a non-consumptive use. The water rights derive from spring flows that are collected and used in a manner similar to the Blue Lakes process.

**4. The Spring Users' water rights are non-consumptive.** The use of water by Blue Lakes and Clear Springs is non-consumptive. Unlike growing crops which take water into their structure which depletes the water supply, water used in the trout farms passes on and may be used again in lower elevations, similar to the non-consumptive use of hydroelectric power plants.

**5. The quality of water is important for the propagation of trout.** The use of spring water from the aquifer is important to the maintenance of the trout farms. The temperature, purity and oxygen content of the water from the springs makes it desirable for trout farming.

**6. The use of water by the Spring Users is a beneficial use.** The propagation of trout is a substantial business that competes in a global market. Blue Springs markets nationally. Clear Springs markets internationally. Water they receive pursuant to their water rights enables them to engage in an enterprise that benefits the owners and employees and the State of Idaho through tax revenues and employment. Each is capable of utilizing the total amount of water

decreed in their various rights to produce trout. The more water available under the rights the more fish they can produce.

**7. The Spring Users need an adequate supply of water every day of the year.** Trout propagation is a year round process. An adequate and predictable supply of water is necessary twenty-four hours a day. An interruption in the flow of water to the raceways would be devastating to the fish crop.

### **III.**

#### **THE DECLINES IN SPRING FLOWS AND THE CONSEQUENT RIGHT TO CURTAILMENT**

**1. There has been a decline in the spring flows in the Thousand Springs area from the time of and before the adjudication of the Spring Users water rights which has reduced the water available to their facilities well below the adjudicated amounts.** The flow records of Blue Lakes show consistent declines in average daily flows from 1995 through 2004, ranging in the areas of 20cfs to 10cfs, depending on the months within the years. The former Director compared the November, 2004, average daily flow of Blue Lakes of 149.45 cfs to the USGS records for November 10, 1980, a time following Blue Lakes' last water right. The USGS record indicated that Blue Lakes would have received 184.7 cfs, accounting for that portion of the flow that would have been diverted to Pristine Springs senior right.

Analysis of records available for the Snake River Farm facility indicated spring flows from November 1, 1989, of 116 cfs, compared to 93.18 cfs October 20, 2004, which amounts to a decline of approximately 21%. There are variations in years and within years, but the long term trend has been a significant decline in the flow of water to the Spring Users' facilities.

**2. Ground water pumping is a contributing factor to the decline in spring flows.** Various factors contribute to the decline in spring flows, including reductions in incidental recharge as a consequence of improved irrigation practices, ground water pumping, and most recently, drought. Ground water pumping accounts for a withdrawal of nearly 2.0 million acre feet of water from the aquifer annually. Ground water pumping for agriculture is a consumptive

use and must have an effect upon the amount of water in the aquifer that will continue to the Thousand Springs area.

**3. Agricultural ground water pumping accounts for 95% of the withdrawal from the aquifer.** USGS records for the year 2000 indicate that 95% of ground water use is for agriculture. The remaining 5% is divided among public use (2.6%), domestic (1.2%), industrial (0.7%) and livestock (0.6%).

**4. The relevant periods for consideration of aquifer levels are those beginning when the water rights were licensed or adjudicated.** IGWA argues that analysis of the Spring Users' rights to water should look back to the time before incidental recharge from flood irrigation dramatically increased the amount of water in the aquifer. IGWA maintains that the spring flows were artificially inflated by decades of inefficient flood irrigation practices when vastly more water was placed on the ground than was necessary for crop growth. There is evidence that in the early part of the twentieth century some flood irrigators poured as much as thirty acre feet of water onto the land when only two acre feet was necessary, resulting in a mass of water going into the aquifer. Dr. Charles Brendecke testified that early ground water development was almost non-existent in the early 1900's and points to early measurement records that show significantly lower spring discharges in the Thousand Springs area than at the time the Spring Users' rights were licensed. He maintains that measurements in 1902 showed that Blue Lakes Spring, synonymous with Alpheus Creek, showed flows of 86.37 cfs in April and 80 cfs in August. Together with other information, he concludes that the natural flow of the springs in the Thousand Springs area was significantly lower than flows when the Spring Users rights were licensed and subsequently adjudicated. This was primarily the consequence of incidental recharge from surface irrigation practices. From this type of information IGWA maintains that there should not be curtailment when the Spring Users rights are dependent upon an inflated water level that was dependent upon incidental recharge that resulted from inefficient farming practices that cannot now be required.

There is a serious question as to the reliability of the 1902 measurements. Nonetheless, it is clear that the level in the aquifer increased when there were inefficient flood irrigation practices and has declined with the advent of more efficient practices. However, the extreme result pressed by IGWA is unacceptable.



5. To the extent that the level of the aquifer increased from irrigation practices, the ground water users began pumping from the same increased level. Were the calendar turned back to 1902 levels, the priorities would still be the same. The Spring User senior rights would come ahead of the ground water junior rights. The Spring Users cannot require the continuance of inefficient flood practices. To the extent spring flows decline as a consequence, the Spring Users lose water without recourse. But to the extent that water is in the aquifer subject to appropriation, senior rights come ahead of junior rights. Otherwise it would result in junior ground water users continuing to pump to the detriment of senior surface water users simply because they can reach water that would otherwise continue in the aquifer until it emerged at the Thousand Springs area. The Spring Users are entitled to curtailment to the extent that the junior ground water users interfere with the water the Spring Users would otherwise have under their water rights.

#### **IV.**

#### **THE DIRECTOR'S ORDERS**

The Director responded to the calls made by the Spring Users with Orders dated May 19, 2005, determining the Blue Lakes call, and July 8, 2005, concerning the Clear Springs call. There are common issues in dispute in the two orders, including the determination that the Spring Users are entitled to curtailment of some junior ground water users, the exclusion of some junior ground water users from curtailment, a limitation on the amount of water to which the Spring Users are entitled to under the calls, and the implementation of the orders which included alternatives available to the ground water users to avoid curtailment. There are issues concerning the use of pre-adjudication information and seasonal differences in spring flows in making the determination of the extent of the curtailment. There is an issue as to whether the model (ESPAM) developed for the use in conjunctive management of surface and ground water should be relied upon.

V.

**THE EFFECT OF THE AMOUNT ADJUDICATED IN THE PARTIAL  
DECREEES AND THE BURDENS OF PROOF**

**1. There is a presumption that a senior water user is entitled to the amount of water set forth in the partial decree.** *American Falls Reservoir District No. 2 v. Idaho Department of Water Resources*, 143 Idaho 862, 878, 154 P.3d 433, 449 (2007), addressed the threshold burden in a water adjudication:

The Rules should not be read as containing a burden-shifting provision to make the petitioner re-prove or re-adjudicate the right which he already has. We note that in the Initial Order entered in this case, the Director requested extensive information from American Falls for the prior fifteen irrigation seasons, to which American Falls objected in part. While there is no question that some information is relevant and necessary to the Director's determination of how best to respond to a delivery call, the burden is not on a senior water rights holder to re-prove an adjudicated right. The presumption under Idaho law is that the senior is entitled to his decreed water right, but there certainly may be some post-adjudication facts which are relevant to the determination of how much water is actually needed. The Rules may not be applied in such a way as to force the senior to demonstrate an entitlement to the water in the first place; that is presumed by the filing of a petition containing information about the decreed right.

**2. The senior water right holder must allege material injury under oath setting forth the basis of that belief.** *Id.*, 878:

The Rules require the petitioner, that is the senior water rights holder, to file a petition alleging that by reason of diversion of water by junior priority ground water rights holders, the petitioner is suffering material injury. That is consistent with the statutory provision which requires a surface priority water right holder claiming injury by junior water right holders pumping from an aquifer to file a "written statement under oath" setting forth "the facts upon which [he] founds his belief that the use of his right is being adversely affected" by the pumping. I.C. sec. 42-237b. The Rules further provide that the petitioner file a description of his water rights, including the decree, license, permit or claim for such right, the water diversion and delivery system he is using and the beneficial use being made. The Rules then provide three additional types of information which must be provided by the petition; however, the Rules are clear in saying that the additional information should be provided only *if available* to the petitioner.

In this case the Spring Users did not follow this process. They made calls for water by demands in letters. Nonetheless, the Director treated those letters as sufficient calls for water and initiated the investigation that led to the curtailments in this case. There is now considerable sworn

testimony as to the basis for the claims of material injury. The threshold showings necessary by the Spring Users have been made. They demonstrated their decreed rights and they have now alleged under oath material injury, i.e., they cannot utilize their fish propagation facilities fully from lack of their adjudicated rights.

**3. “Once the initial determination is made that material injury is occurring or will occur, the junior then bears the burden of proving that the call would be futile or to challenge, in some other constitutionally permissible way, the senior’s call.”** *AFRD#2*, 879.

**4. The decreed amount of a water right is a maximum amount to which the right holder is entitled. The right holder is presumed entitled to that amount, and the burden is upon a junior right holder to show a defense to a call for the amount of water in the partial decree.** *Id.* 878, 879. The Director ordered curtailment of junior ground water rights holders but not to an extent that would ultimately meet the amounts set forth in the partial decrees. There are questions as to whether there was information produced that would overcome the presumption that the senior right holders are entitled to the full extent of their adjudicated rights.

**5. The Director could consider information prior to the partial decrees in considering curtailment.** It is clear that the Director could consider post-adjudication information in deciding whether to curtail junior rights holders. This case presents the question of whether it was proper to consider pre-adjudicative historical factors in determining issues of curtailment. The answer to the question of the use of pre-adjudicative information begins with the nature of the adjudicated right. If the adjudicated amount is the fixed amount of water to be provided at all times if it may be put to a beneficial use and absent waste, it would seem that pre-adjudication history is irrelevant. On the other hand if the adjudicated amount represents a maximum amount of water that may be used, historical information is relevant to determine what a water user could reasonably expect to be available at the time of licensing and subsequent adjudication short of optimal conditions when the full amount of water will appear without curtailment. The Spring Users maintain that such a process is a re-adjudication of the senior user’s water right and impermissible. It is not. The right to the adjudicated amount continues. The question remains whether the information informs the Director as to any defenses that might be available to the calls.

The practice has been to license and subsequently adjudicate the water right as a maximum amount. The Director properly determined that he could examine historical information, together with post-adjudicative information, to utilize in determining the amount of curtailment, if any

## **VI.**

### **THE REASONABLENESS OF ALTERNATIVE METHODS OF DIVERSION**

**1. The Spring Users are not required to pursue alternative methods of diversion.** In the order resolving the motion for summary judgment and partial motion for summary judgment resolved prior to hearing the Hearing Officer ruled that the evidence established that the Spring Users' means of diversion were reasonable and that there was no evidence that the Spring Users had an obligation to "chase" water, a practice in ground water use. This concept was renewed at the hearing. The result does not change.

**2. The current means of diversion are reasonable.** The burden is on IGWA to show that there is a satisfactory alternative to curtailment that would satisfy the adjudicated rights of the Spring Users. There is speculation offered, but there is no scientific evidence that would lead to the conclusion that the Spring Users are neglecting a reasonable opportunity to satisfy their water rights in an alternative manner. Brian Patton, an engineer with IDWR examined the Spring Users' diversion facilities. He testified that horizontal wells into the canyon wall might be an option, but that such a proposal would need extensive study. IGWA offered no such evidence, and there appears to be none in the record. There is no evidence of cost or probable results.

**3. The collateral effects of drilling for water in the Spring User reaches have not been established.** The former Director determined in the Orders that the Spring Users were not obligated to pursue alternate means of diversion considering the nature of their water rights. At hearing he testified that he considered this proposed solution but rejected it because it would most likely lead to similar efforts along the spring reaches by others with rights dependent upon the springs pursuing the same water. The resulting actions might lead to additional problems of administration.

## VII.

### THE PROPOSAL FOR REUSE OF WATER BY THE SPRING USERS

**1. The Spring Users are not obligated to pursue repumping of water beyond the current practices.** IGWA maintains that the Spring Users should be required to institute systems for reuse of the water they receive before calling for the curtailment of junior rights. At the present time water is reused in the trout farms as it moves from one set of raceways in a pond to a lower set of raceways. The process works by gravity and utilizes a settling system between the ponds. IGWA maintains that this process can be replicated by repumping the water through the raceways. This is a theory. The burden of proof is upon IGWA to show that it is a realistic method.

Several problems prevent acceptance of this alternative: a) There is no showing that it is financially feasible to run pumps twenty-four hours a day, three hundred sixty-five days a year. b) There is evidence that there would be risks that make this process unacceptable. Any breakdown for even a brief time could be catastrophic to fish deprived of water containing adequate oxygen. c) While water is presently reused in a process of settling waste that works, there is no evidence that a similar quality of water could be maintained with repumping.

## VIII.

### THE ESPA MODEL AND ITS APPLICATION

**1. The implementation of conjunctive management of surface and ground water required the development of a model to understand the interaction of the two.** Conjunctive management of surface and ground water rights depends upon an understanding of the hydrology of surface and ground water and the relationship between the two. Unlike the history of surface water administration in which a watermaster could monitor water he or she could see and understand the immediate effect of curtailment, the relationship between surface water and ground water rights is much more complex. In its travels the same water may be surface water at one point and ground water at another. When it is surface water it may be tracked with some certainty as to amount, direction and speed or flow. When it is ground water its course is hidden. Water that enters the aquifer at the eastern end may take a century to exit at the western end.

There have been numerous studies of the geology of the aquifer and ground water resources of the eastern Snake River Plain (ESP) dating from 1902 (Russell), 1938 (Stearns, et al.), 1964 (Mundorff, et al.) 1962, (Shibitzke and da Costa), 1969 (Norwich), 1974 (Maintei), 1974 (de Sonnevile), 1978 (Newton), 1980 (Wytzes), 1984 (Johnson, et al.), 1974, 1977 (Robertson), 1982 (Lewis and Goldstein). See S. P. Garabedian, *Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho*. Pp. 10, 11. None of these studies provided an adequate basis for actual administration of water rights between ground and surface water. Consequently, IDWR contracted with the University of Idaho Water Resources Research Institute to develop a new and enhanced model. The model was developed with broad based representation, including a substantial number of the witnesses who testified for competing interests in this litigation. The model was calibrated to a 22 year data set from 1980 through 2002. The model divides the Eastern Snake River Plain into square mile cells which are assumed to be homogenous in their composition. It is described as "a numerical ground-water model of the eastern Snake River Plain which is calibrated to a sufficient time period to represent a wide range of aquifer stresses." *Abstract*, p. 113. The ESPAM was utilized by the Director in deciding the dispute between the Spring Users and IGWA.

**2. There are limitations in the use of the model.** a) The aquifer is not uniform in its geology. It is composed of fractured basalt that may lie in random patterns, sometimes interspersed with soil of a different composition. There may be variations within the model cells, contrary to the assumption of homogeneity. Hydrologists describe a cone that is created when water is pumped. Water from connected areas then flows to the cone. The assumption for model purposes is that the cone is uniform, but it may not be, since the aquifer is not uniform in its structure. The scientists know these things and developed the model to account for them. b) The model cannot predict the effect of a particular well on a particular spring. Conclusions must be drawn on a regional basis. That is, withdrawal of water from wells in certain cells will have an effect on spring flows within a particular reach, not that a particular well will have a certain effect upon a particular spring. The closer the well is to a spring source the more likely there is to be an immediate effect. c) Development of the model has not proceeded to the point of establishing a margin of error. Those involved in the development of the model agree that it is not 100% accurate and that it is desirable to determine an error factor. However, the shortages in water precipitated calls that necessitated decisions before the next stage in model development

could occur. The former Director recognized that there had to be a margin of error in the application of the model and assigned a 10% error factor. This conclusion was based on the fact that the gauges used in water measurement have a plus or minus error factor of 10%. Some will be high; some will be low. The Director concluded that the model could be no better than the measuring gauges and used the 10% margin absent a better figure developed through further testing of the model.

**3. It was and is appropriate to use the ESPAM in making the conjunctive management decisions in these cases.** There is no better science available. Decisions had to be made and will have to be made. The limitations of the model are identifiable and important but they do not preclude reliance upon it. It has an acceptable level of reliability based on peer reviewed science. There is evidence By Eric J. Harmon, a professor of hydrogeology, that water table contours can be utilized to estimate contributing areas to the springs that supply the Spring Users facilities. This approach would supplement and might improve model results, but the evidence does not tell us what that would mean in the outcome of this case. It appears to be a method to add to, not replace the ESPAM. Stated redundantly, the Director had no better tool than the model available in 2005, and there is no showing of any better tool today than the ESPAM. It is the product of an intense effort by scientists with adequate opportunities to present any competing views.

**4. It was proper for the Director to determine a margin of error which resulted in the so called "trim line."** The 10% margin of error factor assigned by the former Director was not the result of a perfect protocol that might render a different figure or range of figures. No such protocol was in place and there was none forthcoming in a reasonable time when the decisions on the Spring Users' calls had to be made. There is common sense to the 10% error factor assigned by the former Director, based on the assumption that the model cannot be better than the input of a key component. The evidence is clear that the model is not perfect and should have an error factor developed to utilize. It may be simple but true – a 10% factor is closer to accurate than no error factor, once the scientists agree, as they do, that an error factor is desirable. Until a better factor is established, the Director in his best judgment may use 10%. The development of a more scientifically based error factor should be a priority in improvement



of the model. The question of whether this is an appropriate basis for a “trim line” is addressed separately. That intersects State policy which must be considered.

## **IX.**

### **THE ROLE OF PUBLIC INTEREST IN CONSIDERING CURTAILMENT**

**1. The public interest is a proper interest to be considered when a call is made that requires curtailment.** The concept of “first in time, first in right” is a deeply held principle in Idaho water law. Idaho Code section 42-106 provides, “As between appropriators, the first in time is first in right.” Case law has enforced this rule for generations. However, this principle of law is not without limitation. In *AFRD#2, 143 Idaho 862, 878, 154 P.3d 433, 449 (2007)*, the Supreme Court cited *Schodde v. Twin Falls Land and Water Co.*, 224 U.S 107, 32 S. Ct. 470, 56 L. Ed. 686 (1912), noting that “evaluation of whether a diversion is reasonable in the administrative context should not be deemed a re-adjudication.” In *Schodde* the U.S. Supreme Court was interpreting Idaho law. The Idaho Supreme Court would not be bound by the interpretation, but two factors make it persuasive authority. First, the Idaho Supreme Court has cited it favorably. Second, the Legislature has had nearly one hundred years to address issues presented by *Schodde* and act otherwise. It has not done so.

*Schodde* presented the issue of weighing public interest against the exercise of an established water right. Construction of a dam downstream from Schodde’s point of diversion eliminated his means of diversion. Those means of diversion were reasonable when constructed, but construction of the dam would foreclose their usage and render his water right unusable by the means then available. He retained the water right and its priority but could not use it with the then existing technology. His water right could not trump the public welfare. The result was that junior water right holders would be able to use water as a consequence of the dam construction but Schodde could not utilize his senior right because of the construction. The public good was considered and outweighed the private right.

Article XV, Section 5 of the Idaho Constitution acknowledges the priority in time of water rights but passed to the Legislature the authority to subject that priority to “such reasonable limitations as to the quantity of water used and times of use as the legislature, having due regard both to such priority of right and the necessities of those subsequent in time of settlement or

**OPINION CONSTITUTING FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
RECOMMENDATION - 15**

improvement, may by law prescribe.” The Legislature responded in Idaho Code section 42-106: “As between appropriators, the first in time is first in right.” This provision must be read in the context of Idaho Code section 42-101:

Water being essential to the industrial prosperity of the state, and all agricultural development throughout the greater portion of the state depending upon its just apportionment to, and economical use by, those making a beneficial application of the same, its control shall be in the state, which, in providing for its use shall equally guard all the various interests involved. All the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose is recognized and confirmed; and the right to the use of any of the public waters which have heretofore been or may hereafter be allotted or beneficially applied, shall not be considered as being a property right in itself, but such right shall become the complement of, or one of the appurtenances of, the land or other thing to which, through necessity, said water is being applied; and the right to continue the use of any such water shall never be denied or prevented from any cause than the failure on the part of the user thereof to pay the ordinary charges or assessments which may be made to cover the expenses for delivery of such water.”

Idaho Code section 42-602 vests supervision of the distribution and control of water in the Director of the Department of Water Resources, this authority to be accomplished by watermasters. Section 42-602 provides that, “The director of the department of water resources shall distribute water in water districts in accordance with the prior appropriation doctrine.” This provision raises the question of whether the Director may consider the public interest in making a determination that there should or should not be curtailment or is to look solely at the timing of the water right and the amount stated in the partial decree. It is clear that the Legislature did not intend to grant the Director broad powers to do whatever the Director might think right. However, it is clear also that the Legislature did not intend to sum up water law in this single statement. The appropriation must be for “some useful or beneficial purpose.” *Idaho Code section 42-104*. A water user cannot waste water. These principles remain. Similarly, the constrictions of Idaho Code section 42-101 that water is the property of the state “which, in providing for its use shall equally guard all the various interests involved.” See *Schodde*.

As noted in *American Falls*, there is a presumption that the senior water right holder is entitled to the decreed water right. However, “Once the initial determination is made that material injury is occurring or will occur, the junior then bears the burden of proving that the call

would be futile or to challenge in some constitutionally permissible way, the seniors call.” The Rules for Conjunctive Management of Surface and Ground Water Resources (CM Rules), Rule 020.01, acknowledge the prior appropriation doctrine: “These rules acknowledge all elements of the prior appropriation doctrine as established by Idaho law.” However, Rule 020.03 acknowledges other elements:

**Reasonable Use of Surface and Ground Water.** These rules integrate the administration and use of surface and ground water in a manner consistent with the traditional policy of reasonable use of both surface and ground water. The policy of reasonable use includes the concepts of priority in time and superiority in right being subject to conditions of reasonable use as the legislature may by law prescribe as provided in Article XV, Section 5, Idaho Constitution, optimum development of water resources in the public interest prescribed in Article XV, Section 7, Idaho Constitution, and full economic development as defined by Idaho law. An appropriator is not entitled to command the entirety of large volumes of water in a surface or ground water source to support his appropriation contrary to the public policy of reasonable use of water as described in this rule.

In *American Falls* the Supreme Court determined that the Conjunctive Management Rules are not facially unconstitutional. Rule 020.03 is at the heart of the rules and how they will be applied. Had any Rule been subject to a facial challenge, 020.03 was one. It was adopted October 7, 1994, and has remained untouched by the Legislature or the Supreme Court. It incorporates the law as it has developed. “First in time, first in right” is fundamental to water administration but is subject to consideration of the public interest. The Director is not limited to counting the number of cubic feet per second in the decree and comparing the priority date to other priority dates and then ordering curtailment to achieve whatever result that action will obtain regardless of the consequences to the State, its communities and citizens. These conclusions have significance in several issues in this case. They affect the Director’s use of the so-called “trim line,” a point of departure beyond which curtailment was not ordered. The public interest affects the timing of curtailment. Consideration of the public interest gives relevance to the economic evidence that was presented.

## X.

### THE INTRA-YEAR AND INTER-YEAR VARIATIONS IN WATER FROM THE SPRINGS

**1. It is proper to consider intra-year and inter-year variations in the spring flows in determining curtailment.** The Director found that springs discharging in the Thousand Springs area do not discharge at a constant rate. There are significant variations in discharge in a single year and variations from year to year. Among factors influencing these variations are differences in the amount of water available for surface water irrigation and the collateral effect of incidental recharge, changes in the amounts and timing of tributary underflow to the ESPA, and differences in precipitation and temperature. Additionally, the variations can result from ground water withdrawals and managed recharge to the aquifer. The Director found that for the water rights in issue for the Snake River Farm and Blue Lakes the factors contributing to variations would have been present when the rights were licensed. Finding 54 Clear Springs; finding 49 Blue Lakes. The Director found that the Spring Users "are not entitled to water supplies...that are enhanced beyond the conditions that existed at the time such rights were established..." And the Spring Users "cannot call for the curtailment of junior priority ground water rights simply because seasonally the discharge from springs is less than the authorized rates of diversion...unless seasonal variations are caused by depletions resulting from diversions and use of water under such junior priority rights." Finding 55, Clear Springs; finding 50 Blue Lakes.

The concept that curtailment of junior water rights can enhance a senior's rights beyond the amount available at the time the senior's rights were established is not sound. Curtailment of juniors would not put more water in the system than existed prior to the junior's appropriation. In ruling on the motion for summary judgment the Hearing Officer was concerned from language in the Orders that the former Director was imposing conditions on the amount of the water rights in issue, limiting the adjudicated amounts. Following testimony by the former Director it is clear that was not the intent and cannot be the case. The Spring Users retain the full amount of the adjudicated rights which they can use when water is available. But as a matter of fact the flows fluctuate annually and within the year. That is a matter of science, not a legal conclusion. It is a relevant fact in considering the extent of curtailment. If curtailment were ordered and could provide the full amount of the water rights at the lowest point of the year it seems almost certain

that significantly more water would be delivered in the high points of the year than the Spring Users are entitled to receive.

According to Dr. Brockway, the Snake River Farm rights of 117 cfs have not been met since 1988, and then not for the entire year. Apparently it is necessary to go back to 1972 to find a time the full rights were previously met, and that would not have been year round. The variations in spring flows from year to year and within years are facts, influenced in part by ground water pumping but also attributable to such factors as changes in incidental recharge, stream underflow, and weather.

In context the sense of the Director's finding is that the Spring Users cannot be guaranteed the full amount of the water rights adjudicated every day of the year or every year when that condition has not existed during any relevant time. Consequently, seasonal variations must be considered to determine what the Spring Users would have received throughout the year absent junior water users' appropriations.

## **XI.**

### **THE FUTILE CALL RULE**

**1. The Spring Users' Calls Are Not Futile.** The Director determined that the Spring Users can only call for the distribution of water to their rights through the curtailment of junior priority ground water rights when such curtailment would result in a usable amount of water reaching the Spring Users "in time of need." Clear Springs Finding 56. Blue Lakes Finding 51. Rule 10.08 of the *Conjunctive Management Rules* defines a futile call:

A delivery call made by the holder of a senior-priority surface or ground water right that, for physical and hydrologic reasons, cannot be satisfied within a reasonable time of the call by immediately curtailing diversions under junior-priority ground water rights or that would result in waste of the water resource.

The relationship of water in the aquifer to surface water differs from that of surface water to surface water in ways that affect interpretation of the futile call rule. In managing surface water to surface water for irrigating crops a reasonable time for the delivery of water has been considered to be the time to get water in a surface channel to a crop before it perishes. Two different factors intersect in the Spring User cases. First, curtailing ground water pumping does

not provide the immediacy of delivery to the senior user that would be present in the curtailment of surface water. Surface water travels in a channel from one source that may be seen to a destination that can be seen. It can be routed to a particular point. Ground water does not fall into this model. Its route is determined by the contours of fractured basalt interspersed at times with soil of a different composition. Part of the water curtailed may travel one direction, part another. The effects of curtailment may be years to be realized. The parameters of a futile call in surface to surface delivery do not fit in the administration of ground water. If the time for the delivery of water to avoid a futile call defense that is applicable in surface to surface water delivery were applied in calls for the curtailment of ground water, most calls would be futile. In effect ground water pumping could continue uncurtailed despite deleterious effects upon surface water use because curtailment would not have the immediate effect traditionally anticipated.

A second complexity exists in this case. Fish propagation is a year round enterprise. It is not limited by a growing season, so water in some amount is necessary every day of the year. Unlike plant crops which may survive for a period of days without water, common knowledge, tells us that it is minutes, not days, for fish to survive without water. Further, water cannot simply be held in raceways. Trout need flowing water or the effects will be adverse in a short time. According to the testimony of Gregory Kaslo, Vice President in charge of operations for Blue Lakes, it is necessary to anticipate low cycles to determine the stocking of fish. Consequently predictability is necessary to avoid overstocking or understocking of fish. A curtailment system that depended upon an immediate response when a shortage appeared would not work either for the health of the fish or the businesses.

What these facts establish is that in the administration of ground water to spring flows the fact that curtailment will not produce sufficient water immediately to satisfy the senior rights does not render the calls futile. A reasonable time for the results of curtailment to be fully realized may require years, not days or weeks. This is the reverse process of the depletion of the water flowing to the springs from the aquifer over a substantial number of years. The Director's orders of curtailment recognized that the Spring Users' calls were not futile, though remediation would take *considerable time*. The evidence supports that determination.

## **XII.**

### **USABLE QUANTITY**

**1. The percentages of curtailed water used by the former Director that will go to the Spring Users facilities should be utilized, with a small adjustment for the Snake River Farm facility.** The Director determined that curtailment of ground water users would only be appropriate if the curtailment would result in a usable amount of water reaching the Spring Users. The usable quantity issue presents a continuing problem peculiar to ground water administration since the majority of the water curtailed will not go to the two Spring Users. Use of the ESPAM renders an amount that will go to the Thousand Springs area and the reaches within that area. However, it does not establish an amount that will go to the particular springs supplying the Spring Users' facilities. The result determined by the Director must come from calculating the percentage of the water in the area of concern that will go to the Blue Lakes and Snake River Farm raceways. That percentage applied to the Blue Lakes facility is supported by the evidence and was proper to be applied. However, the Director determined that 7% of the spring flows go to the Snake River Farm facility in the Buhl Gage to Thousand Springs reach. There is some confusion concerning this finding. The former Director testified that he thought the figure came from Dr. Allan Wylie, an expert with IDWR. However, Dr. Wylie's memorandum to the former Director set the percentage applicable to the Snake River Farm at 4.2%: "As best I can figure (after talking with Tim Luke) Snake River Trout gets 4.2% of the Buhl to Thousand Springs reach." Dr. Wylie did not defend the 4.2% figure. Tim Luke indicated that 6.9% is the figure supplied. It does not appear that the Director made an independent determination apart from the information he received from staff. The most likely state of the evidence is that he rounded the figure up from the 6.9%. The 6.9% figure should be used as the only one supported by evidence.

**3. The amount of water that would be delivered to the Spring Users' facilities is a usable quantity.** Using the ESPAM establishes the increased amount of water that will go to the reaches. The percentage of that water that will go to the particular Spring Users is a usable quantity.



### **XIII.**

#### **THE QUALITY OF WATER THAT MUST BE PROVIDED**

**1. The quality of water is not an element of a water right but may be considered.**

IGWA maintains correctly that quality of water is not one of the elements of a water right. However, the quality of water may be considered in alternative proposals to curtailment. The Spring Users businesses are dependent upon a certain quality of water in order to operate their business. The purpose of the water rights enumerated in their partial decrees is fish propagation. If something happens in nature that prevents the quality of water necessary for fish propagation from coming to them from the springs they are out of luck and most likely out of business. There are no guarantees against natural processes that might alter either the quantity or quality of the water they receive. However, in considering alternate proposals to provide water in a manner different from the practices in place when the rights were licensed and ultimately decreed, the quality of the water may be considered. They are adjudicated to have water rights for the purpose of fish propagation. If their rights are met through curtailment they will receive the quality of water that nature provides and that will most likely be suitable for fish propagation. Any alternative to curtailment must accomplish the same result as curtailment. Otherwise the purpose of the water right is defeated.

### **XIV.**

#### **THE USE OF THE "TRIM LINE"**

**1. The Director's use of the "trim line" to limit curtailment was proper.** One of the most startling facts in these cases is the amount of acreage that must be curtailed in order to deliver water to the Spring Users facilities. It is not a one cfs curtailed to one cfs increase to the Spring Users ratio. The vast majority of the water that will be produced from curtailment does not go to the Blue Lakes and Snake River Farm facilities. Perhaps it will go to beneficial use in Idaho, perhaps not. According to Dr. Allan Wylie, absent the application of the trim line or clip, as he termed it, the curtailment required for Blue Lakes would go from 57,220 acres to 300,000 acres. The acres curtailed to be applied to Snake River Farm would rise from 52,740 to 600,000 acres, producing a 38 cfs gain to the reach and 2.7 cfs to Snake River Farm. Dr. Wylie indicated that in 2005 the Spring Users' rights would not be satisfied year round even if there were

curtailment in the entire Snake River Plain. It is within this context that the Director's decision to use a "trim line" excluding certain pumpers from curtailment must be viewed. Conjunctive Management Rule 020.03 provides the following:

**Reasonable Use of Surface and Ground Water.** These rules integrate the administration and use of surface and ground water in a manner consistent with the traditional policy of reasonable use of both surface and ground water. The policy of reasonable use includes the concepts of priority in time and superiority in right being subject to conditions of reasonable use as the legislature may by law prescribe as provided in Article XV, Section 5, Idaho Constitution, and full economic development as defined by Idaho law. **An appropriator is not entitled to command the entirety of large volumes of water in a surface or ground water source to support his appropriation contrary to the public policy of reasonable use of water as described in this rule.** (emphasis added).

The development of ground water pumping has not been an act of piracy. State policy has sanctioned it. Making the "desert bloom" as the promotional literature of Idaho Power proclaimed was a reality. The cities of Wendell, Shoshone, Paul, Jerome, Heyburn and Hazelton have offered testimony as to the damage that would occur from curtailment. Vast areas of land were brought into production, jobs created, businesses in communities serving farm needs have benefited and become dependent on the agricultural economy. Tax revenue increased to the State and local communities. In this context to say that land will not be dried up when there is a substantial possibility that there will be no significant contribution to the Spring Users water rights is consistent with the policies set forth in the Conjunctive Management Rules, which are consistent with the Idaho Constitution and the legislative policy towards ground water development. The Spring Users retain the full extent of their water rights to be used when water is available, but parallel to *Schodde* they do not trump the interests of the State by commanding "the entirety of large volumes of water in a surface or ground water source to support [their] appropriation[s] contrary to the public policy of reasonable use of water..." CM Rule 020.03. The Spring Users are entitled to curtailment, or alternative redress, but not to the extent of drying up hundreds of thousands of acres when that action may contribute little or nothing in any reasonable time to their shortage. The same logic applies to the exclusion from curtailment of water users whose consumption is so small that it is unlikely any benefit to the Spring Users could be traced but the effect on the individual user potentially devastating.

**2. The financial impact of curtailment has limited relevance.** There was expert evidence concerning the financial impact of curtailment. John Church, an expert in financial forecasting, testified that widespread curtailment of ground water users would have dramatic negative impacts, including the loss of thousands of jobs, millions of dollars in lost personal income, and losses to the State and local governments in tax revenues. In his opinion, which is persuasive, the losses would not be offset by comparable gains through improved aquaculture. These conclusions are consistent with the January 31, 2005, "*Assessment of Relative Economic Consequences of Curtailment of Eastern Snake Plain Aquifer Ground Water Irrigation Rights*," which was prepared by Donald L. Snyder, Utah State University, and Roger H. Coupal, University of Wyoming, for the Natural Resources Interim Committee. Such information is very relevant to legislative considerations but has limited relevance in an adjudication. Were such information prominent in an adjudication, the Director and the courts would be drawn into comparing the merits of one water user against another and passing out water to the one perceived to be better. That is not the Director's or a court's role. The hallmark of water adjudication is first in time, first in right when the water is applied to a beneficial use without waste. However, this is the extreme case in which the requested curtailment would dry up as many as 600,000 acres, or more if an effort were made to supply the full amount of adjudicated rights every day of the year for a speculative benefit. At that point the Director has a responsibility to the State to consider the impact of the requested curtailment.

The curtailment ordered by the former Director would improve the position of the Spring Users to the level they could reasonably expect when their rights were adjudicated. From that there is harm to ground water users who are curtailed, but it is reasonable considering priorities and the effects of their pumping. The same would not be the case if the trim line were left out of consideration. This is not a case of saying crop farmers are more important than fish farmers. It is the case where two businesses cannot "command the entirety of large volumes of water in a surface or ground water source to support [their] appropriation[s] contrary to the public policy of reasonable use of water as described in this rule." *Conjunctive Management Rule 020.03*.

## XV.

### **BLUE LAKES COUNTRY CLUB, INC. WATER RIGHT NO. 36-08593**

**1. The amount of water Blue Lakes Country Club, Inc. receives under right no. 36-08593 which is junior to all Blue Lakes water rights should be deducted from the amount Blue lakes is entitled to receive by curtailment of other junior water users.** Blue Lakes Country Club has a water right, no. 36-08593 for 0.7 cfs, which is junior to all Blue Lakes water rights. This is water that it uses during the irrigation season, together with other water it receives, to water its golf course. Pursuant to an agreement, Blue Lakes Trout Farm does not assert its priority rights and object to this use. The Director reduced the amount to which Blue Lakes Trout Farm is entitled by the amount that goes to Blue Lakes Country Club pursuant to the agreement. This decision is proper. It is water to which Blue Lakes Trout Farm has a priority right. Unlike the calculation of water that must be determined by the use of the ESPAM, this is water from the source used by the Trout Farm. Rather than curtail to provide this water, it should be counted as water already available to Blue Lakes Trout Farm.

## XVI.

### **THE CURTAILMENT ORDERS**

**1. The information available to the Director and presented at hearing in this matter justify curtailment of junior ground water users.** IGWA objects on various grounds to any curtailment. In the mass of expert opinions and evidence offered a number of conclusions could be reached on different issues in this case. It is, however, inescapable that spring flows have declined over time and that a portion of that decline is attributable to ground water pumping. The ground water pumpers are upstream from the springs that supply water to the Spring User facilities. The ground water users draw water from the body of water that ultimately spills water into the canyon reaches from a variety of springs. The ground water users that have been curtailed are junior to all Spring User adjudicated rights. The Spring Users have been prevented from applying water that would otherwise be available to them for a beneficial use, causing them material injury. Curtailment is proper.

**2. The target amounts set by the Director in the Orders of curtailment are reasonable.** The Spring Users object to the curtailment orders because they do not focus on providing the amount of their adjudicated rights. However, the Orders seek to provide improvement of their rights to the levels that could reasonably be expected when they were adjudicated, curtailing the amounts attributable to the junior ground water rights users' depletions that reduce spring flows, and excluding from curtailment a marginal group that might or might not provide water to the springs in any reasonable time and any measurable amount. There was information available to the Director and evidence presented at hearing that supports these amounts. An Order should be entered confirming the amounts.

**3. Implementing the curtailment orders, or alternative methods of remediation, over time is consistent with State policy and justified in the public interest.** The Conjunctive Management Rules have not been altered by the Legislature since their promulgation in 1994 and do, consequently reflect State policy. Rule 040.01.a. of the Conjunctive Management Rules provides that the Director, acting through the watermaster may:

Regulate the diversion and use of water in accordance with the priorities of rights of the various surface or ground water users whose rights are included with the district, provided that regulation of junior-priority ground water diversion and use where the material injury is delayed or long range may, by order of the Director, be phased-in over not more than a five-year (5) period to lessen the economic impact of immediate and complete curtailment.

This process of phased in curtailment would extend to a mitigation plan approved by the Director pursuant to CM Rule 040.01.b. The failure to meet the targets in a mitigation plan approved by the Director is addressed separately.

## **XVII.**

### **THE ALTERNATIVE METHODS OF ADDRESSING CURTAILMENT**

**1. A replacement water plan is an acceptable alternative to curtailment if it meets the target goals of curtailment.** The Director's Orders afforded the ground water users the alternative of providing replacement water in lieu of curtailment. IGWA has attempted to provide adequate replacement water through various methods, including drying up of acres and running water through the North Side Canal system in the hopes that an adequate amount of

water would seep into the aquifer to improve spring flows. These are legitimate methods in the attempt to avoid full curtailment.

**2. Replacement plans must meet the targeted goals of curtailment.** Replacement plans are an alternative to curtailment. To be valid they must meet the goals of curtailment within the time frames of curtailment. A failure in one year to meet the goals of curtailment requires carrying over that shortage to be made up in the following years. The cap on phased in curtailment is five years. That period of time should apply also to any approved mitigation plan, unless an agreement is reached with the Spring Users that extends the period or provides a different alternative. That appears unlikely. Consequently, if the targeted goals are not met in the five year phase in period, curtailment to meet the initial goals is required.

**3. The Director's approval of a mitigation plan does not eliminate the need to meet the goals to be achieved by curtailment.** The fact that the Director approves a replacement water plan for a particular year does not eliminate the ultimate goal of providing the amount of water to the Spring Users set forth in the Orders. The value of the approval is that the rights of IGWA and the Spring Users are settled for that year and they may plan accordingly. But the ultimate obligation that would be met by curtailment remains and is carried over. This is relevant in this case, since it appears that the last approved mitigation plan falls short of the targeted goal.

## **XVIII.**

### **DUE PROCESS CONCERNS**

**1. Rules outlining an immediate process for hearing are necessary.** The Director's Orders for curtailment were entered in the spring and summer of 2005. This hearing occurred in December, 2007. There are reasons. When the Conjunctive Management Rules were challenged, the authority of the Director and the policies of the State were in doubt. There is no remediation for what has occurred. The Director's Orders are supportable and should be enforced. Actions that were taken pursuant to them have been actions that would have been necessary had there been a hearing in a short time from their issuance. Nonetheless, it is critical that procedures be adopted which define the immediate rights of parties subject to emergency conjunctive management orders of curtailment, or denial of curtailment.

**XIX.**

**THE DAIRYMEN**

The Hearing Officer has been informed that the Dairymen have reached an agreement with the Department which should be addressed. However, that agreement has not yet been formalized and presented, and apparently not all parties have stipulated to it. Further action awaits the presentation of the agreement and the impact that it may have on these proceedings.

**XX.**

**CONCLUSION**

This opinion constitutes the findings of fact and the conclusions of law of the Hearing Officer for consideration by the Director.

Dated January 11, 2008.

A handwritten signature in black ink, appearing to read 'Gerald F. Schroeder', written over a horizontal line.

GERALD F. SCHROEDER, Hearing Officer



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11<sup>th</sup> day of January, 2008, the above and foregoing, was served by the method indicated below, and addressed to the following:

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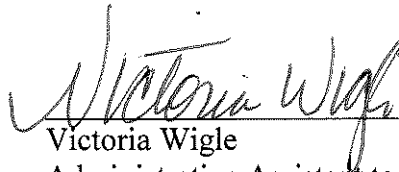
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*Attorneys for South Valley Ground Water District*

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

IN THE MATTER OF BASIN 37  
ADMINISTRATIVE PROCEEDING

Docket No. AA-WRA-2021-001

**SOUTH VALLEY GROUND  
WATER DISTRICT'S MOTION TO  
DISMISS / SUPPORTING POINTS  
& AUTHORITIES / MOTION TO  
SHORTEN TIME FOR RESPONSE /  
REQUEST FOR ORAL  
ARGUMENT**

COMES NOW, the SOUTH VALLEY GROUND WATER DISTRICT ("SVGWD"), by and through its attorneys of record, BARKER ROSHOLT & SIMPSON LLP, and pursuant to Rule 260 of the Department's Rules of Procedure (IDAPA 37.01.260) hereby moves for dismissal of the above-captioned contested case on the basis the Director's *Notice* and the procedure set out for the hearing of the proposed contested case violates: 1) the Director's requirement to administer water rights in Basin 37 pursuant to the Rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11) ("CM Rules"); 2) the

**SVGWD MOTION TO DISMISS**

provisions of the Ground Water Act, specifically IC § 42-237a.g et seq.; 3) a prior district court decision and final judgment; and 4) SVGWD's constitutional right to due process.

SVGWD further respectfully moves the Director to shorten the time to respond and dispose of this motion and requests oral argument.

## **INTRODUCTION**

The Rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11 et seq.) ("CM Rules") implement Idaho law with respect to administration of surface and ground water rights. Department, district court, and Idaho Supreme Court precedent identify a detailed process and sequence of events for the agency to follow. Yet, the *Notice* ignores the CM Rules and this established process and relies exclusively on I.C. § 42-237a.g. to initiate this proceeding to conjunctively administer surface and ground water rights. This is proposed even though a prior district court final judgment requires the Director to follow CM Rule 30 procedures for administration of ground water rights in Basin 37, a region where ground water rights are included within a water district but where no "area of common ground water supply" has been designated. Disregarding the agency's rules promulgated over twenty-five years ago, the Director has attempted to initiate a truncated administrative proceeding as a surrogate for what is required under Idaho law. For the reasons set forth below, the Director should dismiss the proceeding as a matter of law.

## **BACKGROUND**

IDWR designated the Big Wood River Groundwater Management Area (BWRGWMA) on June 28, 1991. Although the order included a "management policy," it did not establish either a "reasonable groundwater pumping level" or a "reasonably anticipated rate of future natural recharge." Moreover, the designation did not determine an "area of common ground water

supply.” Since that time, aquifer levels in the Big Wood River Basin have remained fairly stable and there is no evidence of aquifer mining. *See* Ex. A. Two years later IDWR issued an *Amended Moratorium Order* affecting all applications for permit proposing a consumptive use of water within the trust water area.

Historically ground water rights in Basin 37 were not included within an established water district. That changed with the culmination of the Snake River Basin Adjudication (SRBA) and the court’s order authorizing the Director to distribute water pursuant to chapter 6, title 42, Idaho Code in accordance with the Director’s Reports and partial decrees that superseded the reports for those surface and ground water rights located in Basin 37, part 2 (Camas and Clover Creek drainage areas) and part 3 (Upper Big and Little Wood River drainage areas). *See Preliminary Order* at 2 (In the Matter of the Proposed Combination of Water District Nos. 37 et al.) (Sept. 17, 2013) (hereinafter “*WD37 Order*”). At the time, the Department explained:

The proposed combination of water districts and inclusion of surface water and ground water rights in one district will provide for proper conjunctive administration of surface and ground water rights and the protection of senior priority water rights.

*WD37 Order* at 3 (emphasis added).

In the conclusions of law regarding the combination of the water districts and inclusion of surface and ground water rights, the Department found:

4. Idaho Code § 42-604 mandates the Director form water districts as necessary to properly administer uses of water from public streams, or other independent sources of water supply, for which a court having jurisdiction thereof has adjudicated the priorities of appropriation. . . . Efficient distribution of water, in accordance with the legislative mandate, requires that IDWR implement sufficient administrative oversight to prevent conflicts from arising, where possible, and to furnish a framework of evenhanded oversight which allows for consistent planning by water users. *Id.* The combination and revision of water

districts within Basin 37, parts 2 and 3 is necessary for the reasons set forth in Finding of Fact 13 and for the efficient administration of water rights in general.

\* \* \*

16. . . . Adversarial tensions between ground water and surface water users resulting from potential conjunctive administration of water rights should not negatively affect water district operations given the limited regulatory scope of the water district and the fact that conjunctive administration is guided by separate processes outlined in the Conjunctive Management Rules (CMR's) (IDAPA 37.03.11). . . .

17. . . . The Department is statutorily obligated to create or modify water districts largely to provide a regulatory structure to address water distribution problems and minimize potential conflicts. Water districts are not authorized to address potential mitigation requirements of junior ground water right holders but they are authorized to enforce mitigation requirements that may be required pursuant to orders of the Director under the CMRs.

\* \* \*

24. Based upon the above statutory authorities, the order of the SRBA District Court authorizing the interim administration of water rights pursuant to chapter 6, title 42, Idaho Code, and the record in this proceeding, the Director should take the following actions:

- i. Combine WD37 and WD37M into one water district to be designated as WD37;
- ii. Combine ground water rights in the Upper Wood River Valley and Silver Creek/Bellevue triangle area with surface water rights in a combined WD37 to regulate water rights, and protect senior priority water rights in Basin 37;

*WD37 Order* at 8, 10, 12 (emphasis added). Thus, when groundwater rights were brought into WD 37, that decision was based on the Department's representation that conjunctive administration would occur under the CM Rules.

Shortly after IDWR combined the various water districts and included ground water rights in WD 37, the Department addressed conjunctive administration and the formation of ground water districts at a public meeting in Hailey, Idaho on March 7, 2014. Questions

surrounding inclusion of ground water rights in the water district were understandable given historic administration. The Department's presentation identified the following with respect to proposed conjunctive administration in Basin 37:

Does ground water pumping cause injury to water rights diverted from the stream?

Idaho has a process to address this question.

*Idaho CM Rules and Ground Water District Formation* at 8 (3/7/14 PowerPoint); Ex. B.

### **Conjunctive Management of Surface and Ground Water Resources**

- Conjunctive Management Rules
  - o IDAPA 37.03.11
  - o Authorized by I.C. § 42-603
- IDWR Adopted 1994
  - o (approved by Legislature 1995)

*Id.* at 9; Ex. B.

Specifically, as to procedure and how the agency intended to distribute water to the various rights within the water district, IDWR represented the following:

### **Delivery Calls and Mitigation in a Water District (process/timeframe)**

- Senior must submit petition alleging injury by junior users and identify senior rights being injured
- Initial investigation by Water District watermaster and IDWR
  - o Director may request additional information from Senior (senior does not bear burden to determine/prove injury)
- IDWR Director considers factors to determine material injury
  - o Matter generally handled as contested case as per IDAPA Rules
  - o Pre-hearing schedule
    - information gathered/provided by both senior and junior right holders; expert reports/analyses; motions; depositions etc.
  - o Hearing scheduled and held
- Time from Delivery Call Petition to Hearing
  - o May take up to one year or more:
    - May depend on complexity of case and parties
    - May depend on availability of ground water model

*Id.* at 15-17 (emphasis added); Ex. B.



As set forth in the Department's representations to the water users within WD 37, conjunctive administration was to follow the CM Rules, with a senior filing a petition, the Director determining "material injury," and a contested case that would be expected to last a year or more. Having addressed calls throughout the ESPA, IDWR understood the complexity and time needed to address conjunctive administration in an orderly and fair process. The Department failed to mention that a separate process under I.C. § 42-237a.g. would ever be utilized.

On February 23, 2015, less than a year after IDWR's presentation, members of the Big Wood and Little Wood River Water Users Association ("Association") submitted letters to the Director requesting priority administration. *See Memorandum Decision and Order* at 3 (*Sun Valley Co. v. Spackman*, Ada County Dist. Ct., Fourth Jud. Dist., Apr. 22, 2016) (hereinafter "*Order*"). The Director created contested cases and proceeded to consider the Association's delivery calls under CM Rule 40. The Director held a status conference on May 4, 2015, and then a pre-hearing conference on June 3, 2015. The Director also requested detailed information and data from staff in the form of a memorandum that was due by August 21, 2015.

Sun Valley Company (SVC) moved to dismiss the calls for the Association's failure to comply with the procedure of CM Rule 30. The Director denied the motion to dismiss but certified that decision as a final order for purposes of judicial review. On appeal, Judge Wildman set aside the Director's decision and remanded the case for proceedings consistent with his *Order*. The Court found the Director's decision violated the CM Rules and the substantial rights of the junior ground water right holders. The Court noted that since there was no defined "area of common ground water supply" IDWR was required to process the delivery call under CM Rule 30. The Court further found that the determination of an "area of common ground

water supply” had to be determined pursuant to CM Rules 30 and 31 with proper notice and service to all potential junior priority ground water right holders that might be affected. IDWR did not appeal the district court’s final judgment.

On March 6, 2017, the Association filed a *Petition for Administration* with IDWR. The Director authorized discovery and then held a pre-hearing conference on May 11, 2017. SVGWD filed a motion to dismiss that was joined by other parties. After further briefing by the parties, the Director entered an order dismissing the petition on standing grounds on June 7, 2017. *See Order Dismissing Petition for Administration* (Docket No. CM-DC-2017-001). The Director concluded that CM Rules 30 and 42 require submittal of specific information unique to each senior surface water user, including water right numbers, delivery systems, beneficial use, and alternate water supplies. The Association did not appeal or seek further review of the Director’s order.

In the fall of 2020, IDWR appointed an advisory committee for the Big Wood River Basin Groundwater Management Area. The committee met over several months addressing a variety of topics and issues. In the spring of 2021, senior surface water users on the committee identified alleged injuries and so-called “quasi-injuries” for the upcoming irrigation season. At the April 7, 2021 meeting, a representative for the senior surface water users requested the following:

The lower valley surface water users made a counter proposal that included limiting groundwater within the Galena Groundwater District to 12,000 acre feet, limiting groundwater pumping within the South Valley Groundwater District to 25,000 acre feet, an August 15<sup>th</sup> end date for groundwater irrigation pumping, a minimum flow target of 50 cfs on the Little Wood River at Station 10

...  
Ex. C (Minutes of April 7, 2021 Meeting).

At the April 15, 2021 meeting, the representative for the senior surface water uses made the following statements' regarding alleged material injury:

Cooper Brossy then provided an update on the lower valley surface water users' projected 2021 shortfalls. He indicated that they estimate a system injury of 38,850 acre-feet, with injury to individual users totaling 18,210 acre-feet (11,460 acre-feet for Big Wood Canal Company/Magic Reservoir and 6,750 acre-feet for decree users, including 3,000 acre-feet for Big Wood River decreed rights, and 3,771 acre-feet for Little Wood River decreed rights).

Ex. D (Minutes of April 15, 2021 Meeting).

At that same meeting, the Director stated that he was "ready to act" and warned groundwater users that they may be required "to reduce pumping much more than the amounts identified by the groundwater districts." *Id.* After the Director's pronouncement, the Association rejected the proposal from the ground water users. Thereafter, the Association members did not file a delivery call that satisfied the requirements of CM Rule 30.

On May 4, 2021, the Director issued a *Notice of Administrative Proceeding, Pre-Hearing Conference, and Hearing* ("Notice"). The Director stated that he "believes that the withdrawal of water from ground water wells in the Wood River Valley south of Bellevue (commonly referred to as the Bellevue Triangle) would affect the use of senior surface water rights on Silver Creek and its tributaries during the 2021 irrigation season." *Notice* at 1. The *Notice* was accompanied by cover letter stating the following:

A drought is predicted for the 2021 irrigation season and the water supply in the Little Wood River-Silver Creek drainage may be inadequate to meet the needs of surface water users in that area. Therefore, the Director of the Department has initiated an administrative proceeding to determine if the surface water rights in the Little Wood-Silver Creek drainage will be injured in the 2021 irrigation season by pumping from junior-priority ground water rights in the Wood River Valley south of Bellevue. The administrative proceeding could result in curtailment of junior-priority ground water rights south of Bellevue this irrigation season.

*Director May 4, 2021 Letter to “Water Right Holder”* (emphasis added).<sup>1</sup>

The *Notice* does not identify which surface or groundwater water rights are affected, or by how much. The Director stated at the April 15<sup>th</sup> meeting that “the impact of groundwater pumping on surface water flows varies by location, with some pumpers impacting surface flows more than others.” *See* Ex. D (Minutes of April 15, 2021 Meeting). However, the *Notice* does not identify the surface water rights that are or may be injured. Further, the *Notice* provides no indication of any injury standard, including “material injury” required under the CM Rules. The *Notice* references groundwater model “curtailment runs” but does not identify those runs, the results, or supporting background data. Significantly, the *Notice* only references potential impacts on “senior surface rights on Silver Creek and its tributaries during the 2021 irrigation season.” *Notice* at 1 (emphasis added). The *Notice* makes no reference whatsoever to senior surface water rights on the Little Wood or Big Wood Rivers.

## **ARGUMENT**

Idaho law prescribes a careful and detailed process for conjunctive administration of surface and ground water rights. The agency’s CM Rules are the centerpiece of this process and provide critical due process for affected water right holders. The CM Rules and the process to administer conjunctively has been tested through decades of litigation and multiple Supreme Court decisions. Where determinations of “an area of common ground water supply” and “material injury” are critical for orderly administration, the Director has unilaterally cast the Department’s rules, and a prior district court judgment, aside in the present matter. The agency

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<sup>1</sup> The original letter and *Notice* included an address list with errors. Consequently, IDWR revised its address list and resent the letter and *Notice* on May 7, 2021. *See Tim Luke May 7, 2021 Email to BWRGWMA Advisory Committee Members*; Ex. E.

does not have authority to disregard its rules, violate a prior court judgment, or violate the constitutional protection of due process. For the reasons set forth below the Director should dismiss the *Notice* as a matter of law.

**I. Idaho Law Requires Compliance with the CM Rules for Conjunctive Administration of Surface and Ground Water Rights in Basin 37.**

Idaho's water distribution statutes require administration of water rights in accordance with the prior appropriation doctrine. *See* I.C. §§ 42-602, 607. In carrying out this duty the Department "shall equally guard all the various interests involved." I.C. § I.C. 42-101. The Legislature authorized the Director to "adopt rules and regulations for the distribution of water from the streams, rivers, lakes, ground water and other natural water sources as shall be necessary to carry out the laws in accordance with the priorities of rights of the users thereof." I.C. § 42-603 (emphasis added). Pursuant to that legislative authorization, IDWR promulgated the CM Rules, which were approved by the Legislature and became effective on October 7, 1994. *See A&B Irr. Dist. v. Spackman*, 155 Idaho 640, 650 (2013) (quoting I.C. § 42-603 and describing the rules as part of "developing a water allocation plan for an up-coming irrigation season").

The Idaho Supreme Court has explained that the CM Rules "give the Director the tools by which to determine 'how the various ground and surface water sources are interconnected, and how, when, where and to what extent the diversion and use of water from one source impacts [others].'" *See AFRD#2 v. IDWR*, 143 Idaho 862, 877 (2007) (quoting *A&B Irr. Dist.*, 131 Idaho 411, 422 (1997)). The Court further observed "[t]hat is precisely the reason for the CM Rules and the need for analysis and administration by the Director." *Id.* (emphasis added). The Court has also noted that the CM Rules integrate "all elements of the prior appropriation

doctrine as established by Idaho law,” and that hydrologically connected surface and ground waters must be managed conjunctively. *See IGWA v. IDWR*, 160 Idaho 119, 369 P.3d 897, 908 (2016).

In general, the CM Rules should be “construed in the context of the rule and the statute as a whole, to give effect to the rule and to the statutory language the rule is meant to supplement.” *Mason v. Donnelly Club*, 135 Idaho 581, 586 (2001). The CM Rules, as administrative rules of IDWR, have “the force and effect of law” and are integral to orderly conjunctive administration of surface and ground water rights as they were promulgated pursuant to and complement the water distribution statutes. *See* I.C. §§ 42-602, 603, 607; *see e.g. Eller v. Idaho State Police*, 165 Idaho 147, 443 P.3d 161, 174 (2019); *Huyett v. Idaho State Univ.*, 140 Idaho 904, 908-909 (2004) (“IDAPA rules and regulations are traditionally afforded the same effect of law as statutes”).

In addition to the water distribution statutes, the Legislature codified the Ground Water Act. At the time of the original act and amendments in the early 1950s, ground water rights were not managed conjunctively within surface water districts. Accordingly, the act contains various statutes regarding well drilling, recharge, designation of special management areas, general authorities, and determination of adverse claims. *See* I.C. § 42-226 et seq. With respect to administration, the local ground water board statutes provided a procedure to address claims by a senior surface or ground water user. *See* I.C. § 42-237b. However, the local ground water board statutes were recently prospectively repealed during the 2021 Legislative Session pursuant to House Bill 43 (effective July 1, 2021).<sup>2</sup> The bill, proposed by IDWR, included the following

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<sup>2</sup> The local ground water board statutes are effective as of the filing of this motion and will be the date of the proposed hearing set in the contested case proceeding. If senior surface water users are claiming an adverse effect

Statement of Purpose:

Consistent with the Governor’s Red Tape Reduction Act, this bill seeks to eliminate inactive provisions of law. The legislation eliminates outdated and obsolete sections of Idaho Code related to water delivery calls. The procedures outlined in these sections are obsolete since the adoption of the Rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11).

H0043 Statement of Purpose (emphasis added).

Having just told the Legislature that procedures for conjunctive administration are to be handled under the CM Rules, the Department cannot simply abandon the CM rules. Indeed, the CM Rules reference and implement various provisions of Idaho’s Ground Water Act. *See* CM Rule 010.01, 02, 09, 10, 18, 20, 30.06, and 31. Notably, in this case, the rules provide a detailed procedure for implementing the statute and determining “an area of common ground water supply.” *See* I.C. § 42-237a.g; CM Rule 31. The Director cannot conjunctively administer surface and ground water rights without first determining such an area. *See Memorandum Decision and Order* at 9 (“a determination must be made identifying an area of the state that has a common ground water supply relative to the Big Wood River and Little Wood Rivers and the junior ground water users located therein”); *see also*, CM Rule 30.07 (“Following consideration of the contested case under the Department’s Rules of Procedure, the Director may, by order, take any or all of the following actions: . . . c. Determine an area having a common ground water supply which affects the flow of water in a surface water source in an organized water district”); *see also*, CM Rule 31.01 (“The Director will consider all available data and information that

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on their water rights, the Director must review whether that claim complies with the statute and set the matter for hearing before a local ground water board. *See* I.C. § 42-237b. The Director’s *Notice* includes no discussion of this provision of the Ground Water Act or whether he is required to follow its provisions as well (at least until July 1, 2021).



describes the relationship between ground water and surface water in making a finding of an area of common ground water supply”).

These statutes and rules must be read together to ascertain what is required for lawful conjunctive administration in Basin 37. *See State v. Garner*, 161 Idaho 708, 711 (2017) (“Statutes and rules that can be read together without conflicts must be read in that way.”). Idaho’s water distribution statutes, Ground Water Act, and CM Rules “should not be read in isolation, but must be interpreted in the context of the entire document.” *Idaho Power Co. v. Tidwell*, 164 Idaho 571, 574 (2018). Reading the relevant statutes and rules together leads to one conclusion, conjunctive administration of junior groundwater and senior surface water rights must proceed under the Department’s CM Rules.

**A. Section 42-237a.g Does Not Give the Director Authority to Initiate a Contested Case for Conjunctive Administration Outside the CM Rules.**

Despite the CM Rules, the Director has attempted to initiate administration of ground water rights in a limited region of Basin 37 (Bellevue Triangle) on the theory that he can *sua sponte* initiate a contested case and regulate solely under I.C. § 42-237a.g. without following the CM Rules. However, the Director’s authority with respect to “administration” of water rights is further informed by the CM Rules and specific processes approved by the agency, the Legislature, and importantly the Idaho Supreme Court.

In *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790 (2011), junior priority ground water users objected to the Director’s orders in response to the spring users’ delivery calls and claimed curtailment was precluded as long as they were not “mining” an aquifer. The Court analyzed their argument in the context of I.C. § 42-237a.g and noted:

The statute merely provides that well water cannot be used to fill a ground water right if doing so would either: (a) cause material injury to any prior surface

or ground water right or (b) result in withdrawals from the aquifer exceeding recharge.

150 Idaho at 804.

The Court's interpretation of the statute is binding upon the Department. Specifically, the Court recognized the Director could prohibit ground water diversions under the statute in only two scenarios: 1) where pumping is found to cause material injury; or 2) to prevent aquifer mining. The "material injury" inquiry leads to administration and the processes provided for under the CM Rules.

In this matter, the Director is not seeking to regulate or enforce the use of water "at a rate beyond the reasonably anticipated rate of future natural recharge." I.C. § 42-237a.g. The Department has not made a determination of what the average annual recharge rate is. The *Notice* doesn't mention average annual recharge and the Director's request for staff report doesn't ask for an analysis of average annual recharge either. Instead, according to the *Notice*, the Director has initiated this proceeding to determine the second element referenced by the statute, whether junior ground water use is causing injury, or more correctly, "material injury" to senior surface water rights. *See Notice* at 1; *see also, Cover Letter*.

The Director's inquiry into "material injury" depends upon a number of factors specifically set out in the CM Rules. *See* CM Rule 42. Moreover, given that the Department has not designated an "area of common ground water supply," that material injury inquiry must follow the requirements of CM Rule 30. The Idaho Supreme Court has instructed IDWR how to implement lawful conjunctive administration pursuant to the CM Rules. In *A&B*, the Court set out a three-part process for IDWR to follow in irrigation administration cases:

1. The Director may develop and implement a pre-season management plan for allocation of water resources that employs a baseline methodology, which

methodology must comport in all respects with the requirements of Idaho's prior appropriation doctrine, be made available in advance of the applicable irrigation season, and be promptly updated to take into account changing conditions.

2. A senior right holder may initiate a delivery call based on allegations that specified provisions of the management plan will cause it material injury. The baseline serves as the focal point of such delivery call. The party making the call shall specify the respects in which the management plan results in injury to the party. While factual evidence supporting the plan may be considered along with other evidence in making a determination with regard to the call, the plan by itself shall have no determinative role.
3. Junior right holders affected by the delivery call may respond thereto, and shall bear the burden of proving by clear and convincing evidence that the call would be futile or is otherwise unfounded. A determination of the call shall be made by the Director in a timely and expeditious manner, based on the evidence in the record and the applicable presumptions and burdens of proof.

315 P.3d at 841 (emphasis added).

The *Notice* wholly ignores steps 1 and 2 of the Supreme Court's procedure and instead leap-frogs straight to step 3. Setting aside the failure to follow CM Rule 30 and 31, the Director has not provided a proposed management plan "in advance of the irrigation season" as required by the Supreme Court. Waiting until after the irrigation season is well underway, when crops are in the ground, expressly violates the Supreme Court's procedure.

Moreover, only weeks ago the Department represented to the Legislature that conjunctive administration of ground water rights is covered by the CM Rules, not the Ground Water Act. Notably, the Statement of Purpose for House Bill 43 provides that the statutes for administration under local ground water boards are "obsolete since the adoption of" the CM Rules. *See Statement of Purpose H0043*. The Director presented the bill to the House Resources & Conservation Committee on February 3, 2021 and specifically explained the statutes could be repealed since conjunctive administration is handled under the CM Rules. It follows that the

Director has no authority to disregard the agency's own rules that cover the exact matter at issue. *See Mason*, 135 Idaho at 585 ("The Commission, therefore, does not have discretion to disregard the rule based on its own policy considerations").

Pursuant to well-established canons of statutory construction, IDWR must read the relevant statutes and rules together to arrive at a lawful outcome for conjunctive administration. *See Rangen, Inc. v. IDWR*, 160 Idaho 252, 256 (2016) ("Administrative rules are interpreted the same way as statutes"). As the CM Rules implement the water distribution statutes and relevant portions of the Ground Water Act, the Department is bound to follow the procedures and regulations it has promulgated. *See State v. Garner*, 161 Idaho 708, 711 ("Statutes and rules that can be read together without conflicts must be read that way"); *Idaho Power Co. v. Tidwell*, 164 Idaho 571, 574 (2018) (statute and rules "should not be read in isolation, but must be interpreted in the context of the entire document"); *see also, Farber v. Idaho State Ins. Fund*, 147 Idaho 307 (2009) ("Courts must give effect to all the words and provisions of [the rules] so that none will be void, superfluous or redundant").

The Director has never previously proposed to conjunctively administer surface and ground water rights through a short-cut process relying solely on I.C. § 42-237a.g. By ignoring the relevant water distribution statutes and CM Rules, which define a clear process for conjunctive administration of water rights in Basin 37, the Director's *Notice* is legally flawed and should be dismissed.

## **II. The Director's Administrative Proceeding is a Collateral Attack on Judge Wildman's Order for Conjunctive Administration in Basin 37.**

The proper process for conjunctive administration in Basin 37 was already decided by Judge Wildman in 2016. *See Memorandum Decision and Order; Judgment (Sun Valley Co. v.*

*Spackman*, Ada County Dist. Ct., Fourth Jud. Dist., Case No. CV-WA-2015-14500, Apr. 22, 2016). IDWR and its Director were party respondents to that case. Pursuant to Idaho's *res judicata* doctrine, the Director cannot collaterally attack that final judgment and evade what the court has required for conjunctive administration. Accordingly, IDWR should dismiss the *Notice* and proceeding on *res judicata* grounds.

The doctrine of *res judicata* covers both claim preclusion and issue preclusion. *See Monitor Finance, L.C. v. Wildlife Ridge Estates, LLC*, 164 Idaho 555, 560 (2019). Claim preclusion bars a subsequent action between the same parties upon the same claim or upon claims relating to the same cause of action. *See id.* A claim is precluded where; 1) the original action ended in a final adjudication on the merits; 2) the present claim involves the same parties as the original action; and, 3) the present claim arises out of the same transaction or series of transactions as the original action. *See id.* at 560-61. When the three elements are established, claim preclusion bars “every matter offered and received to sustain or defeat the claim *but also as to every matter which might and should have been litigated* in the first suit.” *Id.* at 561 (italics in original) (quoting *Magic Valley Radiology, P.A. v. Kolouch*, 123 Idaho 434, 437 (1993)).

The first question is whether the original action ended in a final judgment on the merits. It did. Judge Wildman entered a final judgment on April 22, 2016. The Court set aside the Director's decision denying Sun Valley's motion to dismiss and remanded the matter to the agency for further proceedings as necessary, specifically to process conjunctive administration in Basin 37 under CM Rule 30.

The next inquiry is whether the present claim involves the same parties. Here, the agency has sent the *Notice* to 1,100 ground water right holders in Basin 37. SVGWD has appeared on

behalf of its members and was a party to the *Sun Valley* proceeding on judicial review. IDWR and the Director were a party to the proceeding.

Finally, the present claim arises out of the same transaction or series of transactions as the original case. The first action concerned the Director's effort to conjunctively administer surface and ground water rights in the Basin 37. The Director attempted to address the senior's request for administration through CM Rule 40. The Director erred as a matter of law. In commenting on what is required for lawful conjunctive administration, the District Court held:

As will be shown below, the fact that juniors are in organized water districts is not necessarily relevant to the proper and orderly processing of a call involving the conjunctive management of surface and ground water. Much more relevant, in fact critical, to processing such a call is identifying that area of the state which has a common ground water supply relative to the senior's surface water source and the junior ground water users located therein. Since it is Rule 30 that provides the procedures and criteria for making this determination, the Court, for the reasons set forth herein, holds that the Director's determination that Rule 40 governs the calls must be reversed and remanded.

\* \* \*

Determining an area of common ground water supply is critical in a surface to ground water call. Its boundary defines the world of water users whose rights may be affected by the call, and who ultimately need to be given notice and an opportunity to be heard. In the Court's estimation, determining the applicable area of common ground water supply is the single most important factor to the proper and orderly processing of a call involving the conjunctive management of surface and ground water.

\* \* \*

Therefore, to process the Association's calls, a determination must be made identifying an area of the state that has a common ground water supply relative to the Big Wood and Little Wood Rivers and the junior ground water users located therein.

\* \* \*

Therefore, the Court finds that Rule 30 provides the procedures and processes necessary to safeguard juniors' due process rights. It follows that when a call is

made by a senior surface water user against junior water users in an area of the state that has not been determined to be an area having a common ground water supply, the procedures set forth in Rule 30 must be applied to govern the call.

\* \* \*

Therefore, the Court finds that it is Rule 30 that provides the Director the authority to determine an area of common ground water supply. It follows the procedures set forth in Rule 30 must be applied to govern the calls. . . . Since the procedures and criteria for making this determination are associated with Rule 30, **it is Rule 30 that must govern a call where a senior surface water user seeks to curtail junior ground water users in an area of the state that has not been designated as an area having a common ground water supply.**

\* \* \*

The reason Rule 30 requires the calling senior to identify and serve the respondents he seeks to curtail is so that the Director is not placed in the position of appearing to prejudge any issues relevant to the contested case proceeding. . .

Therefore, the Court finds that the seniors failed to satisfy both the filing and service requirements of Rule 30 to the prejudice of the substantial rights of Sun Valley, the Cities of Fairfield and Ketchum, and the Water District 37B Ground Water Association.

*Memorandum Decision and Order* at 8-11, 14 (emphasis added).

This proceeding also involves the proper procedure for conjunctive administration in Basin 37. Here, the Director issued the *Notice* in direct response to claims of material injury made by senior surface water users in the Advisory Committee meetings held in mid-April. The Director stated he “was ready to act.” How the Director is required to act to conjunctively administer surface and ground water rights in Basin 37 is plainly governed by the District Court’s decision and final judgment. Although the Court advised that proper and orderly conjunctive administration requires a determination of “an area of common ground water supply,” the Director has failed to make that determination for over five years. Whereas the agency used rulemaking to define the Eastern Snake Plain Aquifer area of common ground water supply (CM Rule 50.01), the agency has refused to employ that process as well for Basin 37.



The present *Notice* purports to determine if water is available to fill certain ground water rights on the basis of whether those junior rights “would affect the use of senior surface water rights on Silver Creek and its tributaries during the 2021 irrigation season.” *Notice* at 1. The issue is plainly conjunctive administration of surface and ground water rights. Again, the Director has not initiated a proceeding to identify a “reasonable ground water pumping level” or the “reasonably anticipated rate of future natural recharge,” but he has initiated this matter solely on the basis of administration of water rights. *See* I.C. § 42-237a.g. Since the District Court has already ruled that the Director is bound to follow CM Rule 30 and make a determination of “an area of common ground water supply,” the Director’s *Notice* and its pre-determined area of curtailment (see map attached to *Notice*) should be dismissed pursuant to Idaho’s *res judicata* doctrine. SVGWD requests the Director to dismiss the case accordingly.

### **III. The *Notice* and Contested Case Violates SVGWD’s Due Process Rights**

The Director issued the *Notice* on May 4, 2021. The service list contained errors so the agency remailed the *Notice* on May 7, 2021. Most affected junior ground water right holders only received an actual copy of the *Notice* by mail during the week of May 10<sup>th</sup>. The CM Rules contain important due process safeguards for purposes of conjunctive administration where “an area of common ground water supply” has not been designated. The current process disregards those procedures, and prejudices the rights of SVGWD’s members. Even if the process were proper, the schedule for this case is unprecedented and is contrary to any other conjunctive administration case that the agency has ever considered. The Department previously represented that a contested case for conjunctive administration in Basin 37 could take a “year or more.” Now, the Director has short-circuited the established process, ignored his recent representations to the Legislature, and set a contested case hearing to begin and in less than a month. Moreover,

the Director has just requested that IDWR provide a staff report explaining IDWR (or the Director's) position about certain highly technical information, and that staff report will not be provided by staff until May 17<sup>th</sup>. Affected junior ground water users and their technical experts will have less than 3 weeks to review and analyze this highly technical material and prepare any opinions and defenses. Given the unique circumstances and complexity of such cases, the Director's action violates SVGWD's constitutional right to due process. The Director should dismiss the proceeding accordingly.

Procedural due process requires that there be some process to ensure that an individual is not arbitrarily deprived of his or her rights in violation of the state or federal constitutions. *See Newton v. MJK/BJK, LLC*, 167 Idaho 236, 244 (2020). Determining whether an individual's Fourteenth Amendment due process rights have been violated requires a two-step analysis: 1) determining whether the individual is threatened with deprivation of a liberty or property interest; and 2) determining what process is due. *See id.*

Water rights are real property right interests in Idaho. I.C. § 55-101. Water right holders, like the SVGWD members, must be afforded due process before the right can be taken by the State. *See Clear Springs Foods, Inc.*, 150 Idaho at 814; *Bennett v. Twin Falls North Side Land & Water Co.*, 27 Idaho 643, 651 (1915). The Supreme Court has found that issuing curtailment orders without prior notice and an opportunity for hearing can constitute an abuse of discretion and violation of the right to process. *See* 150 Idaho at 815 ("Under these circumstances, the Director abused his discretion by issuing the curtailment orders without prior notice to those affected and an opportunity for hearing"). SVGWD's members, holders of real property interests in their water rights, meet the first step of the due process analysis.

In determining what process is due, the Supreme Court has observed that “[p]rocedural due process is an essential requirement of the administrative process, and notice is a critical aspect of that due process.” *City of Boise v. Industrial Com’n*, 129 Idaho 906, 910 (1997). Due process requires that parties “be provided with an opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* The concept is flexible, “calling for such procedural protections as are warranted by the particular situation.” *Id.* The Idaho Supreme Court has used the U.S. Supreme Court’s balancing test in evaluating the adequacy a particular process:

Due process . . . is not a technical conception with a fixed content unrelated to time, place and circumstances . . . Due process is flexible and calls for such procedural protections as the particular situation demands . . . Identification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

*Ayala v. Robert J. Meyers Farms, Inc.*, 165 Idaho 355, 362 (2019).

In this case the Department is not without guidance on what procedures are due. Here, Judge Wildman explained how procedural due process safeguards are protected by the procedures of CM Rule 30:

More troubling, however, is the fact that the letters were not served by the seniors on the juniors they seek to curtail. This lack of service violates Rule 30, which expressly requires that “[t]he petitioner shall serve the petition upon all known respondents as required by IDAPA 37.01.01, ‘Rules of Procedures of the Department of Water Resources.’” IDAPA 37.03.11.030.02. It also raises issues regarding due process of law. The Director engaged in correspondence with counsel for the seniors regarding the calls, including a request for further information and clarification, before junior users had notice the calls had been filed. . . .

The Director attempted to address the notice and service concerns by taking it upon himself to provide notice of the calls to the juniors. . . . To do this,

the Department undertook the exercise of identifying those junior water right users in those areas of the state it believed may be affected by one or both of the calls. *Id.* These included junior ground water users in water district 37 and water district 37B. *Id.*

At the time, no explanation was given as to how the Director determined whom to serve, or as to what areas of the State may be affected by the calls. Nor was an explanation given as to why junior users in other organized water districts within Basin 37 (i.e., water district 37N, 37O and 37U) were not served. However, the exercise undertaken by the Director leads Sun Valley and other juniors to assert that he has already prejudged the area of common ground water supply relative to the Big Wood and Little Wood Rivers to be the boundaries of water district 37 and 37B. They assert this determination was made without notice to them and without an opportunity for them to present evidence and be heard on the issue. The Director denies these allegations, but the Court understands the concerns of the juniors. . . . The Director, as the decision maker, should not have been placed in the position of appearing to have made these kinds of determinations prior to the juniors having been given notice of the calls. The reason Rule 30 requires the calling senior to identify and serve the respondents he seeks to curtail is so that the Director is not placed in the position of appearing to prejudice any issues relevant to the contested case proceeding.

Therefore, the Court finds that the seniors failed to satisfy both the filing and service requirements of Rule 30 to the prejudice of the substantial rights of Sun Valley, the Cities of Fairfield and Ketchum, and the Water District 37B Ground Water Association. These include the right to have the seniors comply with the mandatory filing and service requirements of Rule 30. *See e.g. Jasso v. Camas County*, 151 Idaho 790, 796, 264 P.3d 897, 903 (2011) (holding that due process rights are substantial rights). Since the seniors' requests for administration fail to meet these mandatory requirements of Rule 30, the Director's decision to deny Sun Valley's motion to dismiss is in violation of the CM Rules and violates the substantial rights of the juniors.

*Memorandum Decision and Order* at 13-14.

Judge Wildman's decision leaves no doubt that CM Rule 30 is the proper due process to apply for conjunctive administration in this case. The Director has disregarded this ruling and has proceeded to initiate a case with the same errors present in the *Sun Valley* case. Notably, the Director has not required the seniors to follow the filing and service requirements of CM Rule 30. This is an about-face from his position in the spring of 2017, where he dismissed the

Association's petition for failing to comply with CM Rule 30. *See Order Dismissing Petition for Administration* (CM-DC-2017-001, June 7, 2017). Instead, IDWR has once again taken it upon itself to serve various junior water right holders of its own choosing in Basin 37. There is no notice to the water users of the boundaries of an "area of common groundwater supply." Furthermore, it appears that the Director has implicitly pre-judged an area of common ground water supply by identifying a limited area of potential curtailment (Bellevue Triangle) without following the requirements of the CM Rules in making that determination. *See Notice*, Attachment A (identifying "potential area of curtailment").

In addition to failing the due process notice requirements set forth by Judge Wildman, the Director's *Notice* fails the balancing test identified by the Supreme Court in *Ayala*. First, the private interests affected by this case are the individual ground water rights of the members of SVGWD. The Director is threatening to curtail those water rights during the middle of the 2021 irrigation season, despite crops having already been planted, and substantial private investment into property, equipment, infrastructure, and livestock.

Next, the risk of an erroneous deprivation of the water right interest is extremely high given the procedures proposed to be used. As noted, the Director has noticed up a hearing to begin within a month. The *Notice* contains no information required by the CM Rules necessary to make a "material injury" determination. The Director just recently requested a *Staff Memorandum* detailing requested information on at least 16 different subjects to be provided on May 17<sup>th</sup>, or three weeks from the date of the start of the proposed hearing. The request for data and technical reports is expected to span thousands of pages. There likely will be a significant amount of background information and data to examine. Significantly, the staff report requests information on injury but does not include all the factors that should be considered when making

a “material injury” determination under CM Rules. Having sufficient time to evaluate and review such information is critical for SVGWD’s ability to prepare expected defenses to the delivery calls and “material injury” determinations.

Whereas every other conjunctive administration contested case has taken months, not weeks, the Director’s truncated schedule does not satisfy SVGWD’s right to due process. For example, the following outlines the various delivery call cases and their timeframes to complete discovery, motion practice, and hold an administrative hearing on the issues raised by seniors and juniors:

Spring Users (Blue Lakes / Clear Springs)	May 2005 to November 2007
Surface Water Coalition	January 2005 to February 2008
A&B Irrigation District	January 2008 to June 2009
Rangen, Inc.	Sept. 2011 to March 2014

The use of experts, evaluation of complex hydrologic systems, and evaluation of hundreds of water rights and their individual uses is a time-consuming and intense endeavor. But, the CM Rules make it clear that those evaluations are necessary under the prior appropriation doctrine to determine when there has been a material injury. *See AFRD#2*, 143 Idaho at 875 (“It is vastly more important that the Director have the necessary pertinent information and the time to make a reasoned decision based on the available facts”).

As illustrated in the Director’s *Request for Staff Memorandum*, there are numerous reports and extensive data and information to compile and review. Forcing junior ground water users affected by the *Notice* to absorb this information (without knowing how complete and comprehensive the information will be) and then come prepared to a hearing to debate and review this highly technical information, in two and a half weeks, is highly prejudicial. *See e.g.*

*State v. Doe*, 147 Idaho 542, 546 (2009) (“In addition, notice must be provided at a time which allows the person to reasonably be prepared to address the issue”). Since SVGWD will not have a reasonable time to prepare for hearing, the risk of curtailment without a meaningful and fair process is high. *See Declaration of David B. Shaw in Support of Motion for Continuance of Hearing*.

Moreover, the shortcomings of the current hearing schedule are further exposed when compared to a typical application for permit or transfer contested case. Even in that example where a proceeding only evaluates one or a few water rights, the Department routinely provides at least three months from the pre-hearing conference to the hearing date. While there is no defined timetable that applies to every case, counsel for the SVGWD is aware of no proceeding where the Department has forced litigants to go to hearing in less than one month.

Finally, there is little fiscal or financial burden on the Department to provide for the proper procedure and hearing as required by the CM Rules. Indeed, as Judge Wildman has noted, the burden of filing and service is on the senior users, not IDWR. Whereas the agency has once again erroneously taken up this effort on its own to provide notice to some subset of juniors, that can be corrected by dismissing this case and requiring the seniors to follow CM Rule 30. Any proper hearing process will inevitably involve the same issues, parties, and facts. *See Citizens Allied for Integrity and Accountability, Inc. v. Schultz*, 335 F.Supp.3d 1216, 1228 (D. Idaho 2018). Ensuring the hearing complies with the CM Rules and due process will “set an example for future hearings and thereby reduce the probability of further litigation.” *Id.*

Evaluated in context, it is clear the process provided for by the *Notice* does not satisfy constitutional due process rights and provide for a “meaningful opportunity to be heard.” It is just this type of action “that undermines public confidence in a fair and impartial tribunal” and



should be dismissed. *See e.g. Ayala*, 165 Idaho at 363. In summary, the Director should dismiss this matter for violating SVGWD's due process rights.

#### **IV. The Notice is Defective and Warrants Dismissal of this Case.**

As a corollary to due process, a person has a right to have proper notice of proceedings. Here, the Director's *Notice* indicates that the "water supply in Silver Creek and its tributaries may be inadequate to meet the needs of surface water users" and that certain ground water rights could be curtailed during the 2021 irrigation season. *Notice* at 1 (emphasis added). SVGWD is unaware of any senior surface water right holders on Silver Creek or its tributaries (i.e. Loving Creek, Stalker Creek) that are seeking conjunctive administration of junior ground water rights. The cover letter references the "Little Wood River-Silver Creek drainage," a larger area than what is provided for in the formal *Notice*, but that larger area is not included in the *Notice*. It is the formal *Notice* that triggers the proceeding and by its own terms, the *Notice* purporting to initiate the contested case is directed at surface water sources that do not have seniors calling for water right administration. The cover letter is not a pleading or filing in the contested case.

The Idaho Supreme Court has stated that "the content of the notice must be such as to fairly advise the person of its subject matter and the issues to be addressed." *State v. Doe*, 147 Idaho at 546. Moreover, the Court held that "[n]otice must be clear, definite, explicit and unambiguous." *Id.* In this case the *Notice* does not apply to the Little Wood River or the senior water rights requesting conjunctive administration and asserting injury at the April Advisory Committee meetings. By limiting the *Notice* to "Silver Creek and its tributaries," the Director is proposing to administer to a surface water source where no calling seniors are present. As such, the *Notice* is defective and must be dismissed.

//

### **MOTION TO SHORTEN TIME FOR RESPONSE**

Given the extremely short schedule, SVGWD moves the Director to shorten the time to file responses to this motion from fourteen (14) days to three (3) business days. *See* IDAPA 37.01.01.270.02; 565. SVGWD has presented good cause to shorten the time to respond, since allowing the full 14 days to respond would likely mean that a decision on this motion would not be issued until right before the hearing is set to begin. Rather than forcing the parties to expend extensive time and resources on a proceeding that may be moot as a matter of law, the Director should address this motion as soon as possible.

Moreover, the Director represented to water users at the Advisory Committee meetings in April that he had already instructed the Department's deputy attorneys general to address his authority for taking such action. Presumably, shortening the time for response and disposing of this motion can be resolved in an expedient manner given that ongoing research and work for the Director. As such, SVGWD moves for an order shortening time to respond pursuant to Rule 270 and 565 of the Department's Rules of Procedure.

### **REQUEST FOR ORAL ARGUMENT**

Pursuant to IDAPA 37.01.01.260.03, SVGWD hereby requests oral argument on this motion.

### **CONCLUSION**

Idaho's water distribution statutes and CM Rules prescribe an orderly and proper procedure to address conjunctive administration. Judge Wildman has already ruled that the procedure set forth in CM Rule 30 must be followed in Basin 37. Due process requires IDWR provide a hearing to be held in a "meaningful time and in a meaningful manner." The May 4<sup>th</sup>

*Notice* plainly violates these precepts of Idaho law and therefore SVGWD respectfully moves for an order dismissing the case as a matter of law.

Dated this 13<sup>th</sup> day of May, 2021.

BARKER ROSHOLT & SIMPSON LLP



Albert P. Barker

*Attorney for South Valley Ground Water District*

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13<sup>th</sup> day of May, 2021, the foregoing was filed, served, and copied as shown below.

**IDAHO DEPARTMENT OF WATER RESOURCES**

P.O. Box 83720

Boise, ID 83720-0098

Hand delivery or overnight mail:

322 East Front Street

Boise, ID 83702

**Gary L. Spackman**

Director

IDAHO DEPARTMENT OF WATER RESOURCES

PO Box 83720

Boise, ID 83720-0098

**Sarah A. Klahn**

SOMACH SIMMONS & DUNN

2033 11th St., #5

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**Candice McHugh**

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LAWSON LASKI CLARK PLLC

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Ketchum, ID 83340

**Matthew A. Johnson**

**Brian T. O'Bannon**

WHITE, PETERSON, GIGRAY & NICHOLS, P.A.

5700 East Franklin Road, Suite 200

Nampa, Idaho 83687-7901

☐ U. S. Mail  
☒ Hand Delivered  
☐ Overnight Mail  
☐ Fax  
☐ E-mail


☐ U. S. Mail  
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☒ E-mail

  
Albert P. Barker

# Exhibit A



# Ground Water Conditions Throughout Idaho

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IWUA Annual Conference

Craig Tesch, P.G.

IDWR

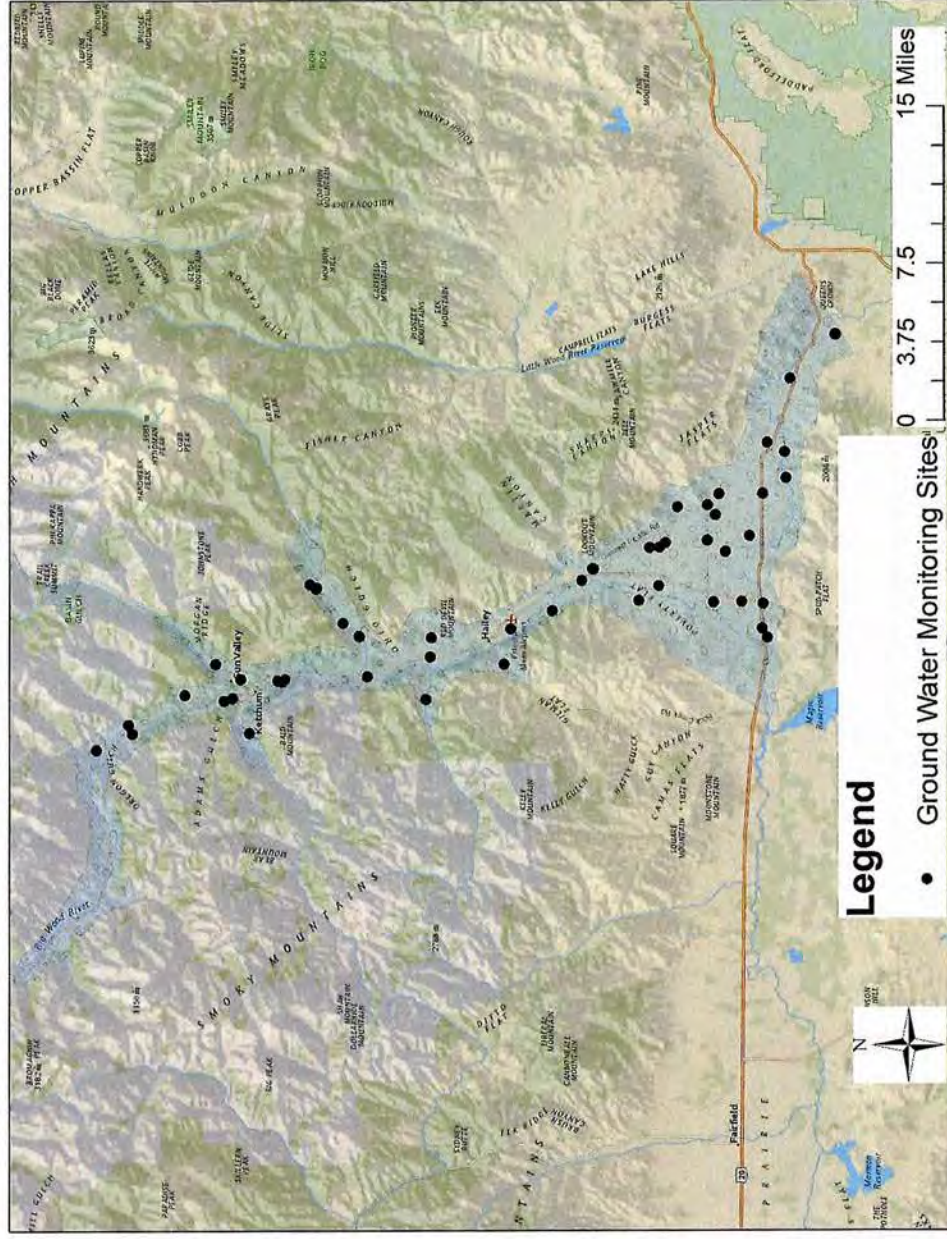
January 21, 2020





## Big Wood

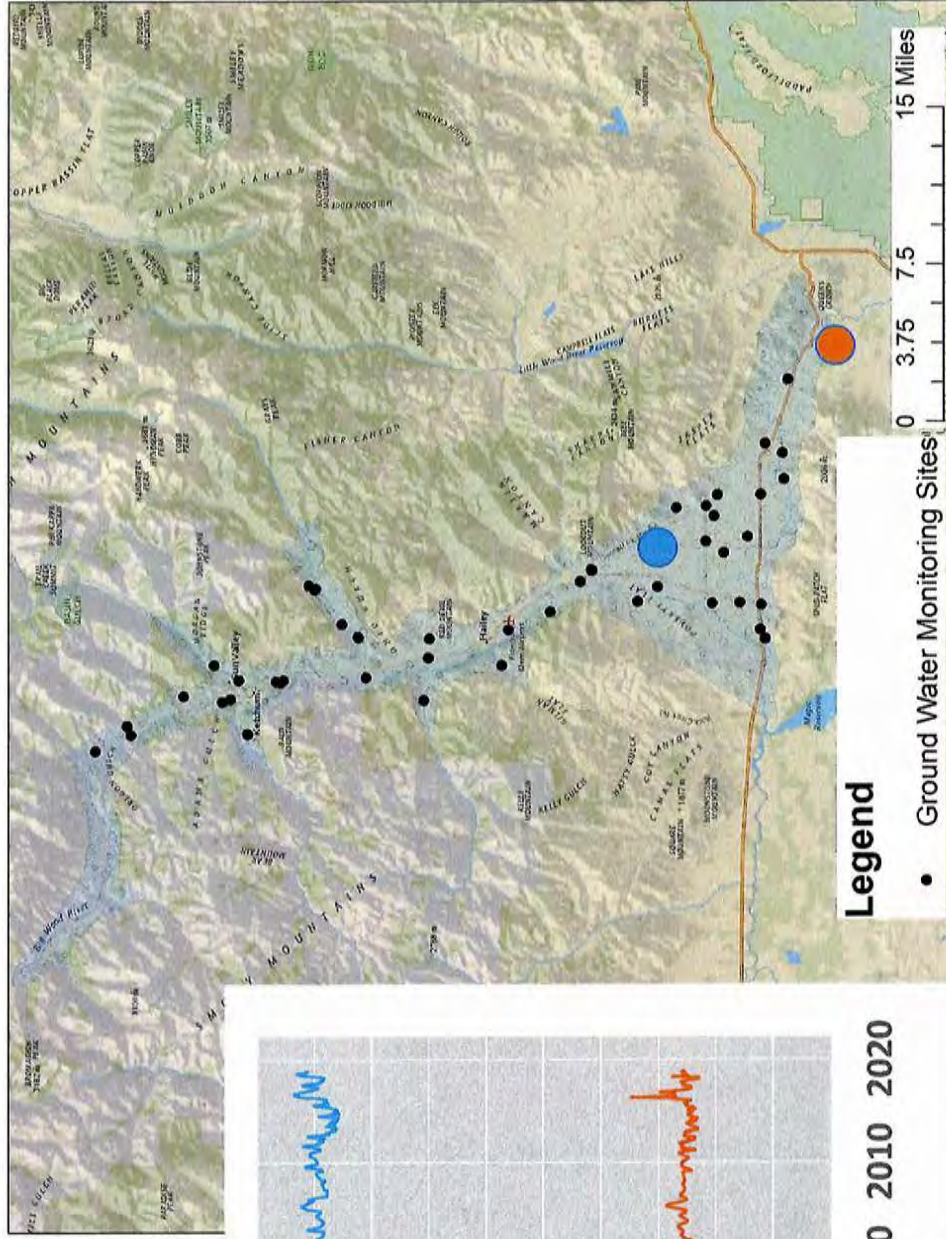
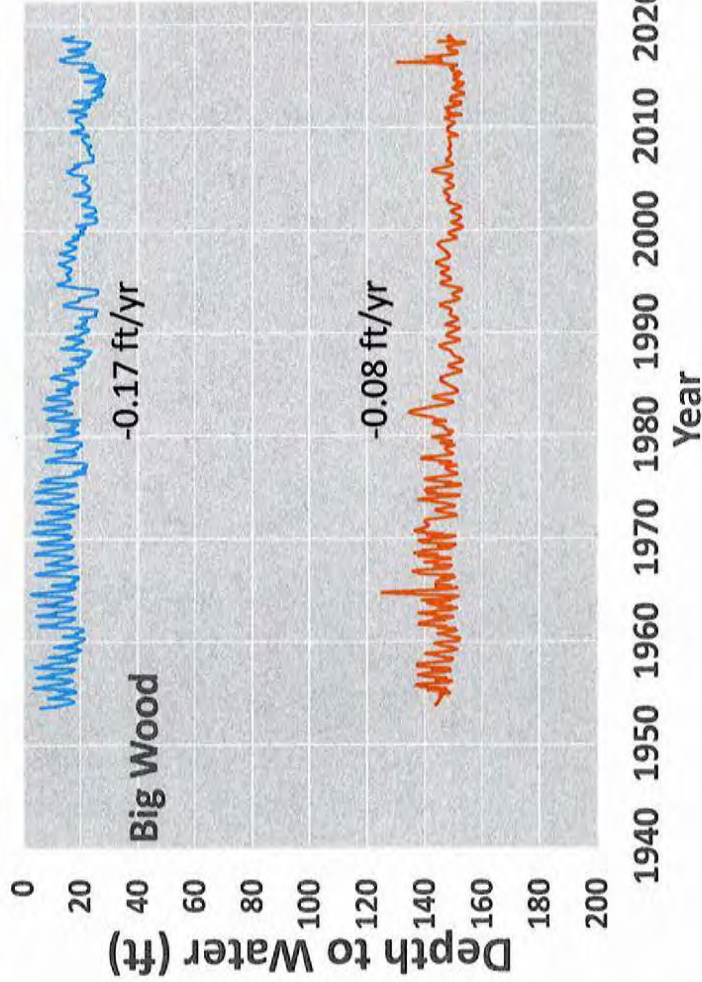
- GWMA (1991, includes Camas Prairie)
- Model Developed (2016)
- ESPA Tributary
- ~ 25 wells monitored







## Big Wood - Hydrographs



# Exhibit B

**IDAHO** Department of  
Water Resources



# Idaho Conjunctive Management Rules & Ground Water District Formation

Boise, Idaho

March 7, 2014

Tim Luke, IDWR





# Conjunctive Management of Surface and Ground Water Resources

- Conjunctive Management Rules
  - IDAPA 37.03.11
  - Authorized by I.C. § 42-603
- IDWR Adopted 1994
  - (approved by Legislature 1995)

## Delivery Calls and Mitigation in a Water District (process/timeframe)

- Senior must submit petition alleging injury by junior users and identify senior rights being injured
- Initial investigation by Water District watermaster and IDWR
  - Director may request additional information from Senior (senior does not bear burden to determine/prove injury)

## Delivery Calls and Mitigation in a Water District (process/timeframe)

- IDWR Director considers factors to determine material injury
  - Matter generally handled as contested case as per IDAPA Rules
  - Pre-hearing schedule
    - information gathered/provided by both senior and junior right holders; expert reports/analyses; motions; depositions etc.
  - Hearing scheduled and held



## Delivery Calls and Mitigation in a Water District (process/timeframe)

- Time from Delivery Call Petition to Hearing
  - May take up to one year or more:
    - May depend on complexity of case and parties
    - May depend on availability of ground water model
- Post Hearing
  - Director review and consideration
  - May require use of ground water model
    - Injury determination does not require model but model may be necessary to determine extent of injury & complete order



# Exhibit C

**Meeting Minutes**  
**Big Wood River Ground Water Management Area Advisory Committee**  
**IDWR State Office at Idaho Water Center, Boise, Idaho**  
**April 7, 2021**

The meeting started at 1:35 p.m. Director Gary Spackman, Deputy Director Mat Weaver, Tim Luke, and Shelley Keen attended at the IDWR State Office in Boise. Other attendees participated via Zoom video conferencing or telephone. See the attached list of attendees.

After a brief introduction, old business items were discussed. Comments were solicited regarding IDWR's response to questions/comments from the Galena and South Valley Groundwater Districts relating to IDWR's March 17<sup>th</sup> observations, but no comments were given. Cooper Brossy gave an update from surface water users on predicted shortfalls. Cooper's update prompted discussion about BOR-AFRD2-BWCC exchange contracts, river rights with exchange conditions, and supplemental AFRD2 water. Tim Luke said he will draft watermaster instructions regarding delivery of water rights with exchange conditions. . The instructions will be shared with the committee. Sean Vincent of IDWR updated the committee on 2021 hydrologic conditions and the predicted water supply. IDWR staff then reported on its' review of BWRGWMA groundwater rights having supplemental use conditions. On April 8, 2021, IDWR will send notice to holders of supplemental groundwater rights summarizing their groundwater use and reminding them of the requirement to use their surface water supplies before using groundwater.

After the discussion of old business, the meeting transitioned to discussing mitigation proposals that the Wood River Valley groundwater districts may take during the 2021 irrigation season. The South Valley Groundwater District offered a 10% reduction in pumping compared to its five year average excluding 2017 (resulting average = 33,569 acre-feet) and recharge of 3,500 acre-feet to the aquifer using recharge pits located in the southern area of the Bellevue Triangle. The Galena Groundwater District also offered a 10% pumping reduction, plus \$50,000 for the one year purchase of water and an additional \$10,000 to complete an engineering study for a water conservation/pipeline conveyance project within the Big Wood Canal Company North Shoshone tract.

The lower valley surface water users made a counter proposal that included limiting groundwater within the Galena Groundwater District to 12,000 acre feet, limiting groundwater pumping within the South Valley Groundwater District to 25,000 acre feet, an August 15<sup>th</sup> end date for groundwater irrigation pumping, a minimum flow target of 50 cfs on the Little Wood River at Station 10, increased monitoring and enforcement by the groundwater districts, monetary penalties of \$40 per acre-foot for exceeding pumping reduction limits and for pumping after the August 15<sup>th</sup> date, and \$200 per cfs for not meeting the proposed minimum flow target on the Little Wood River. The lower valley surface water users also proposed an 800 acre-foot allowance that could be utilized by the districts after the August 15<sup>th</sup> shutoff date.

These proposals led to further discussion but not to agreement among the committee members. When it was clear that there would not be agreement between the ground water users

and the surface water users, Director Spackman addressed the committee. The Director stated that the previously submitted groundwater management plans lacked details and metrics, and that we now have an inadequate water supply for the 2021 irrigation season. He stated that for 2021 he is exploring all options, consistent with the prior appropriation doctrine, to protect water users having senior priority water rights.’ The Director further stated that the proposed mitigation proposals and counter proposals made by both the groundwater districts and lower valley surface water users were either inadequate or unreasonable. He said that he may move forward with administrative actions that will not likely meet the full objectives of either side.

IDWR staff and committee members discussed potential next steps, including reconsideration of the mitigation proposals for the 2021 season. Reconsideration would require the groundwater districts and the surface water users to confer with their members over the following week. After further discussion, the committee proposed meeting again on April 15, 2021 .

The meeting adjourned at 4:35 p.m.

Next Committee Meeting: April 15, 2021, 1:00 p.m., IDWR State Office at IDWR Water Center – Boise, with Zoom and teleconference participation.

**Big Wood River Ground Water Management Area Advisory Committee**  
**April 7, 2021 Attendance**

**Advisory Committee**

Corey Allen  
Cooper Brossy  
Rod Hubsmith  
Sharon Lee  
Pat McMahon  
Kristy Molyneux  
Carl Pendleton  
Pat Purdy  
Bill Simon  
Nick Westendorf  
Brian Yeager

**IDWR Staff**

Tim Luke  
Cherie Palmer  
Corey Skinner  
Gary Spackman  
Jennifer Sukow  
Sean Vincent  
Shelley Keen  
Nathan Erickson  
Mat Weaver

**Members of the Public**

Kevin Lakey  
Larry Schoen  
Mary Beth Collins  
Zach Hill  
Al Barker  
Chris Bromley  
Dave Shaw  
Eric Miller  
Jim Speck  
Judd McMahan  
Erick Powell  
Chris Simms  
Jim Bartolino  
Dennis Strom  
Mark Johnson  
Travis Thompson  
Thomas Beck  
Kent Fletcher  
Megan Stevenson  
W. Strasley  
Neil Crescent  
Michael Lawrence  
Sunny Healy

# Exhibit D

**Meeting Minutes**  
**Big Wood River Ground Water Management Area Advisory Committee**  
**IDWR State Office at Idaho Water Center, Boise, Idaho**  
**April 15, 2021**

The meeting started at 1:02 p.m. Director Gary Spackman, Tim Luke, Sean Vincent, Cherie Palmer, and Shelley Keen attended at the IDWR State Office in Boise. Other attendees participated via Zoom video conferencing or telephone. See the attached list of attendees.

After a brief introduction and taking of attendance, Sean Vincent of IDWR updated the committee on 2021 hydrologic conditions and the predicted water supply. Sean stated that the NRCS has now published the April Snow Water Supply Index (SWSI). He indicated that the anticipated water supply continues to decrease, and it now appears that 2004 might be a more appropriate analog year for 2021. Previous discussions used 2002 and 2014. Sean stated that in 2002 and 2014 the Magic Reservoir was empty in mid-July, and the current forecast suggests the water supply will last two weeks less than suggested by the last forecast. In 2004, Magic Reservoir was empty on July 1<sup>st</sup>. Magic Reservoir currently has a storage volume of 38,549 acre-feet with predictions indicating 50-70 days of water supply.

Cooper Brossy then provided an update on the lower valley surface water users' projected 2021 shortfalls. He indicated that they estimate a system injury of 38,850 acre-feet, with injury to individual users totaling 18,210 acre-feet (11,460 acre-feet for Big Wood Canal Company/Magic Reservoir and 6,750 acre-feet for decree users, including 3,000 acre-feet for Big Wood River decreed rights, and 3,771 acre-feet for Little Wood River decreed rights). Ground water users asked Kevin Lakey, Water District 37 watermaster, several questions about how he estimated the 2021 shortfalls.

After Cooper Brossy's presentation, the meeting transitioned into discussions about the proposed actions by the groundwater districts for the 2021 irrigation season. Since the last (April 7<sup>th</sup>) committee meeting, the South Valley Groundwater District increased its offer to a 17% reduction in pumping and monitoring of pumping on a bi-weekly basis. The Galena Groundwater District also proposed a 17% pumping reduction, \$50,000 for the purchase of water, and an additional \$10,000 for a Big Wood Canal Company (BWCC) project engineering feasibility study. Discussion among committee members followed on how the money offered by the Galena Groundwater District could be spent. One idea was to use the money to pay for renting water, infrastructure costs, and power costs for a project to use Snake River water in the Dietrich area. Carl Pendleton indicated that the BWCC has recently received a \$10,000 grant from another funding source for the BWCC project and inquired about the possibility of using the \$10,000 offered by the Galena Groundwater District for other purposes. The committee also discussed surface water flow targets in Silver Creek or the Little Wood River. The groundwater districts expressed reluctance to agree to flow targets, but they are open to the idea of monitoring and reporting of surface water flows. After discussion of these offers, Carl Pendleton stated that he thought that the Big Wood Canal Company would be on board. Cooper Brossy indicated that he would need more time to discuss the offers with other lower valley surface water users.

The meeting was opened for public comment and discussion. Robin Lezamiz and Fred Brossy expressed concerns about the 2021 water supply and suggested the groundwater districts' proposals might not be enough to help surface water users.

Director Spackman also spoke. He stated that he is ready to act and that further delays will not help in the 2021 season. He also provided clarification on the percent reduction amounts that have been proposed. He stated that the groundwater-flow model of the Wood River Valley Aquifer system will likely show that the impact of groundwater pumping on surface water flows varies by location, with some pumpers impacting surface flows more than others. Consequently, some groundwater pumpers could be required to reduce their pumping much more than the amounts that have been proposed by the groundwater districts.

The meeting wrapped up with Cooper Brossy stating that the lower valley surface water users would have their response to the groundwater districts' proposal by mid-day on April 16 (next day).

The meeting adjourned at 3:47 without a follow up meeting being scheduled.



**Big Wood River Ground Water Management Area Advisory Committee**  
**April 15, 2021 Attendance**

**Advisory Committee**

Corey Allen  
Cooper Brossy  
Rod Hubsmith  
Sharon Lee  
Pat McMahon  
Kristy Molyneux  
Carl Pendleton  
Pat Purdy  
Bill Simon  
Nick Westendorf  
Senator Michelle Stennett  
Brian Yeager

**IDWR Staff**

Tim Luke  
Cherie Palmer  
Corey Skinner  
Gary Spackman  
Sean Vincent  
Jennifer Sukow  
Shelley Keen  
Nathan Erickson  
Alex Moody

**Members of the Public**

Kevin Lakey  
Mary Beth Collins  
Zach Hill  
Al Barker  
Chris Bromley  
Dave Shaw  
Eric Miller  
Jim Speck  
Judd McMahan  
Chris Simms  
Travis Thompson  
Sunny Healy  
Pete Van Der Meulen  
Greg Loomis  
Kira Finkler  
Justin Stevenson  
Chris Johnson  
Norm Semanko  
Fred Brossy  
Robin Lezamiz  
Kent Fletcher

# Exhibit E

## Travis Thompson

---

**From:** Albert Barker  
**Sent:** Friday, May 7, 2021 12:31 PM  
**To:** Travis Thompson  
**Subject:** FW: Notice of Basin 37 Administrative Proceeding  
**Attachments:** 20210507\_Basin 37 Notice.pdf

**From:** Sharon Lee <slee247@mac.com>  
**Sent:** Friday, May 7, 2021 12:28 PM  
**To:** Dave Shaw <dshaw@erresources.com>; Albert Barker <apb@idahowaters.com>  
**Subject:** Fwd: Notice of Basin 37 Administrative Proceeding

Sent from my iPhone

Begin forwarded message:

**From:** "Luke, Tim" <Tim.Luke@idwr.idaho.gov>  
**Date:** May 7, 2021 at 11:25:22 AM PDT  
**To:** [brian.yeager@haileycityhall.org](mailto:brian.yeager@haileycityhall.org), [callen@sunvalley.com](mailto:callen@sunvalley.com), [cooper.brossy@gmail.com](mailto:cooper.brossy@gmail.com), [jkmoly78@gmail.com](mailto:jkmoly78@gmail.com), [kaysi10@live.com](mailto:kaysi10@live.com), [mstennett@senate.idaho.gov](mailto:mstennett@senate.idaho.gov), [nick@4lfarms.com](mailto:nick@4lfarms.com), [pat@purdyent.com](mailto:pat@purdyent.com), [pat@svwsd.com](mailto:pat@svwsd.com), [pendletonranch@hotmail.com](mailto:pendletonranch@hotmail.com), [slee247@mac.com](mailto:slee247@mac.com), [wasimon9@gmail.com](mailto:wasimon9@gmail.com)  
**Cc:** "Van Der Meulen, Peter (IWRB Member)" <[vandermeulenpete@yahoo.com](mailto:vandermeulenpete@yahoo.com)>, [watermanager@cableone.net](mailto:watermanager@cableone.net), Rusty Krame <[waterdistrict37b@outlook.com](mailto:waterdistrict37b@outlook.com)>, "Skinner, Corey" <[Corey.Skinner@idwr.idaho.gov](mailto:Corey.Skinner@idwr.idaho.gov)>, "Erickson, Nathan" <[Nathan.Erickson@idwr.idaho.gov](mailto:Nathan.Erickson@idwr.idaho.gov)>, [MDavis@house.idaho.gov](mailto:MDavis@house.idaho.gov), [SToone@house.idaho.gov](mailto:SToone@house.idaho.gov), Dick Fosbury <[dfosbury@co.blaine.id.us](mailto:dfosbury@co.blaine.id.us)>, "Carter, Meghan" <[Meghan.Carter@idwr.idaho.gov](mailto:Meghan.Carter@idwr.idaho.gov)>, "Baxter, Garrick" <[Garrick.Baxter@idwr.idaho.gov](mailto:Garrick.Baxter@idwr.idaho.gov)>, "Weaver, Mathew" <[Mathew.Weaver@idwr.idaho.gov](mailto:Mathew.Weaver@idwr.idaho.gov)>, "Spackman, Gary" <[Gary.Spackman@idwr.idaho.gov](mailto:Gary.Spackman@idwr.idaho.gov)>, "Whitney, Rob" <[Rob.Whitney@idwr.idaho.gov](mailto:Rob.Whitney@idwr.idaho.gov)>  
**Subject:** Notice of Basin 37 Administrative Proceeding

Dear BWRGWMA Advisory Committee Members,

On May 4, 2021, I sent you an email with a copy of *Notice of Basin 37 Administrative Proceeding, Pre-hearing Conference and Hearing* and cover letter issued by IDWR Director Spackman. My email stated that the notice was sent to over 1,100 water right holders in Water Districts 37 and 37B on May 4th.

The purpose of this email is to let you know that IDWR had a glitch in its mailing of the above referenced notice. Many of the notices sent had an error in the address and were not deliverable. Consequently, IDWR is resending the notice today to the correct and complete addresses for all 1,100 plus water right holders. All notices will be delivered to the US Postal Service today. An updated and complete service list showing all mailing recipients should be posted on IDWR's website by close of business on Monday, May 10, 2021.

We apologize for the delay in receipt of the notices and any inconvenience caused by the error. A copy of the notice, cover letter and updated Certificate of Service document is attached again for your reference. The only change between the notice attached and the one sent to you by email on May 4<sup>th</sup> is the updated Certificate of Service (last page of the notice).

Respectfully,

***Tim Luke***

***Idaho Department of Water Resources***

*Water Compliance Bureau Chief*

[tim.luke@idwr.idaho.gov](mailto:tim.luke@idwr.idaho.gov) | 208-287-4959

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

IN THE MATTER OF BASIN 37  
ADMINISTRATIVE PROCEEDING

Docket No. AA-WRA-2021-001

**ORDER DENYING MOTIONS TO  
DISMISS, FOR CONTINUANCE OR  
POSTPONEMENT, AND FOR  
CLARIFICATION OR MORE  
DEFINITE STATEMENT**

**BACKGROUND**

On May 4, 2021, the Director of the Idaho Department of Water Resources (“Department”) issued a *Notice of Administrative Proceeding, Pre-Hearing Conference, and Hearing* (“Notice”). The Director commenced the administrative proceeding in response to predicted drought in Basin 37 for the 2021 irrigation season and in response to ground water modeling showing that curtailment of ground water rights during the 2021 irrigation season would result in increased surface water flows for certain holders of senior surface water rights. *Notice* at 1. The purpose of the hearing is for the Director to decide whether “the withdrawal of water from ground water wells in the Wood River Valley south of Bellevue (commonly referred to as the Bellevue Triangle) would affect the use of senior surface water rights on Silver Creek and its tributaries during the 2021 irrigation season.” *Id.* at 1; *see also id.*, Attachment A (depicting the “Potential Area of Curtailment”). The Director, acting as presiding officer, set a prehearing conference for May 24, 2021, and set the hearing for June 7-11, 2021. *Id.* at 1-2.

On May 13, 2021, South Valley Ground Water District (“South Valley”) filed *South Valley Ground Water District’s Motion to Dismiss/Supporting Points & Authorities/Motion to Shorten Time for Response/Request for Oral Argument* (“SVGWD MTD”) and *South Valley Ground Water District’s Motion for Continuance of Hearing* (“SVGWD MFC”). On the next day, Sun Valley Company (“Sun Valley”) filed a *Motion to Dismiss* (“SVC MTD”) and the City of Bellevue (“Bellevue”) filed a *Motion for More Definite Statement, Motion for Clarification, and Motion to Postpone Hearing* (“Bellevue Motion”). On May 19, 2021, attorney James P. Speck filed a *Joinder in and Support of Motions* on behalf of numerous clients<sup>1</sup> that joined in and

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<sup>1</sup> Specifically: Griffin Ranch Homeowners Ass’n, Griffin Ranch PUD Subdivision Homeowners Ass’n, Inc., Robert P. Dreyer, River Rock Ranch LP, Margo Peck, Edward M. Blair Jr Personal Residence Trust, Marion R. and Robert M. Rosenthal, CW & RH Gardner Family Limited Partnership and Robert & Kathryn Gardner Family Trust, Rego 2008 Revocable Trust, Team Flowers Bench LLC, Parks Family 2006 Trust, Thomas W. Weisel, Tom Weisel



supported the motions filed by South Valley, Sun Valley, and Bellevue. On the same day, Galena Ground Water District filed *Galena Ground Water District's Joinder in and Support of South Valley Ground Water District's Motions*. On May 20, 2021 three joinder filings were made. Dean R. Rogers, III and Dean R. Rogers, Inc., filed a *Joinder in and Support of Motions* that joined and supported South Valley and Bellevue's motions; Sun Valley Water and Sewer District joined in the same motions in its *Joinder in, and Support of, Previously Filed Motions*; and the City of Pocatello filed *City of Pocatello's Joinder in and Support of Motions* joining in the motions filed by South Valley, Sun Valley and Bellevue. On May 21, 2021, the City of Hailey filed *City of Hailey's Joinder in and Support of Motions* joining in the motions filed by South Valley, Sun Valley and Bellevue. In addition, on May 21, 2021, the Big Wood and Little Wood Water Users Association filed *Joint Response to Motions*. For the reasons discussed below, the Director denies the above-referenced motions filed by South Valley, Sun Valley, and Bellevue.<sup>2</sup>

## ANALYSIS

The above-referenced motions filed by South Valley, Sun Valley, and Bellevue seek several different forms of relief, sometimes in the alternative, and raise a number of different arguments. Some of the arguments presented in support of the relief requested overlap. The various arguments are addressed in the discussion below.

### I. MOTIONS TO DISMISS

The motions to dismiss filed by South Valley and Sun Valley argue that Idaho Code § 42-237a.g. does not create authority for the Director to initiate this proceeding, and the Director has used an improper procedure to address the question of whether ground water rights diverting in the Bellevue Triangle should be curtailed during 2021 in favor of senior water rights diverting from Silver Creek and its tributaries. *SVGWD MTD* at 1-2, 9-20; *SVC MTD* at 2-12. South Valley and Sun Valley argue that the Ground Water Act<sup>3</sup> does not authorize this proceeding, and that, in the absence of the filing of a delivery call under the *Rules for Conjunctive Management of Surface and Ground Water Resources* ("CM Rules"),<sup>4</sup> the Director lacks authority to regulate or curtail diversions by holders of junior-priority ground water rights to protect diversions by holders of senior-priority surface water rights. *Id.* South Valley and Sun Valley further argue that the Notice and the administrative proceeding it initiated violate due process requirements.

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Partners, Justin Power Separate Property Revocable Trust, Ridgeview Smith Properties LLC, Linda D. Woodcock, Redcliff Homeowners Ass'n, and The Jones Trust.

<sup>2</sup> South Valley and Sun Valley moved the Director to shorten time regarding their motions to dismiss, and also requested oral argument, pursuant to Rules 260, 270, and 565 of the Department's Rules of Procedure. *SVGWD MTD* at 28; *SVC MTD* at 14-15. Bellevue requested an expedited decision on its motion. *Bellevue Motion* at 7. The motions to shorten time are mooted by the issuance of this order, and the requests for oral argument on the motions are denied. IDAPA 37.01.01.260, .270 and .565.

<sup>3</sup> Idaho Code §§ 42-226—42-239.

<sup>4</sup> IDAPA 37.03.11.000—050.

*SVGWD MTD* at 2, 9-10, 20-27; *SVC MTD* at 1-6, 12-14. The Director disagrees, for reasons discussed below.

a. IDAHO CODE § 42-237a.g. AUTHORIZED THE INITIATION OF THIS ADMINISTRATIVE PROCEEDING.

The Director has the authority to initiate this administrative proceeding under the plain language of Idaho Code § 42-237a.g. Section 42-237a.g. authorizes the Director “[t]o “supervise and control the exercise and administration of all rights to the use of ground water.” Idaho Code § 42-237a.g. This code section states that “in the exercise of this discretionary power,” the Director “may initiate administrative proceedings to prohibit or limit the withdrawal of water from any well” during any period the Director determines “that water to fill any water right in said well is not there available.” *Id.* “Water in a well shall not be deemed available to fill a water right therein,” in turn, “if withdrawal of the amount called for by such right” would affect, contrary to the policy of the Ground Water Act, “the present or future use of any prior surface or ground water right . . . .” *Id.* (underlining added). Nothing in Idaho Code § 42-237a.g. requires the filing of a delivery call or request for administration of ground water rights prior to the Director initiating an administrative proceeding. Idaho Code § 42-237a.g. expressly authorized the Director to initiate this proceeding even in the absence of a delivery call or a request for administration. Further, Idaho Code § 42-237a.g. expressly commits the determination of whether to initiate this proceeding to the Director’s discretion.<sup>5</sup>

Sun Valley argues, however, that Idaho Code § 42-237a.g. “requires a ‘call’ for administration of water rights,” because the statute refers to “the amount called for” by a ground water right that is potentially subject to curtailment in favor of a “prior surface or ground water right.” *SVC MTD* at 2 (quoting Idaho Code § 42-237a.g.). This argument incorrectly equates “the amount called for” by a junior ground water right with a “delivery call” filed by a senior surface water right holder against the junior ground water right. The “amount called for” by a ground water right is simply the licensed or decreed quantity of the ground water right. Idaho Code §§ 42-219(1), 42-1411(2)(c), 42-1412(6). This meaning is clear in the cited passage of Idaho Code § 42-237a.g., which in speaking of “the amount called for by such right” is referring to a ground water right for which water “shall not be deemed available” because continued withdrawals would affect “prior” surface or ground water rights. Idaho Code § 42-237a.g. (underlining added). A “delivery call,” in contrast, is a request made by the holder of a senior priority water right for administration of junior priority water rights. IDAPA 37.03.11.010.04. Sun Valley’s argument that Idaho Code § 42-237a.g. requires the filing of a “delivery call” is contrary to the natural reading of the statutory language and “counter to Idaho water law.” *North Snake Ground Water Dist. v. IDWR*, 160 Idaho 518, 523, 376 P.3d 722, 727 (2016).

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<sup>5</sup> The Director’s exercise of this discretionary authority is subject to judicial review under applicable legal standards. *See, e.g., Rangen, Inc. v. IDWR*, 160 Idaho 251, 255, 371 P.3d 305, 309 (2016) (discussing the standards for reviewing “[d]iscretionary determinations of an agency”).



Sun Valley further argues that a different section of the Ground Water Act—Idaho Code § 42-237b<sup>6</sup>—requires the filing of a delivery call. Sun Valley argues Section 42-237b “requires an ‘adverse claim’ – or put another way a ‘call’ – to initiate the proceeding.” *SVC MTD* at 7, 9. This argument is incorrect because this proceeding was not initiated under Idaho Code § 42-237b, but rather under Idaho Code § 42-237a.g. Section 42-237a.g. expressly authorizes the Director to initiate this administrative proceeding even in the absence of a delivery call or “adverse claim.” Nothing in Idaho Code § 42-237b or in Idaho Code § 42-237a.g. mandates that an “adverse claim” be filed prior to initiation of an administrative proceeding pursuant to Idaho Code § 42-237a.g.

Idaho Code §§ 42-237a.g. and 42-237b deal with distinctly different questions. Idaho Code § 42-237a defines the “Powers of the Director of the Department of Water Resources,” while Idaho Code § 42-237b deals with “Administrative Determination of Adverse Claims” between individual water users. The Ground Water Act grants the Director broad “discretionary power” to “supervise and control the exercise and administration of all rights to the use of ground water . . .” Idaho Code § 42-237a.g. The Ground Water Act also includes a separate provision authorizing individual water right holders to pursue claims of injury against other water right holders. *See* Idaho Code § 42-237b (“Whenever any person owning or claiming the right to the use of any surface or ground water rights believes that the use of such right is being adversely affected by one or more user[s] of ground water rights of later priority . . .”). There is no basis in the language or structure of the Ground Water Act for interpreting Idaho Code § 42-237b’s authorization for individual water users to pursue “adverse claims” against other water users as a limitation on the Director’s broad discretionary authority under Idaho Code § 42-237a.g. to supervise and control the exercise of ground water rights that may be affecting senior surface water rights.

This conclusion is also supported in the recent repeal of some sections of the Ground Water Act. The Legislature repealed Idaho Code § 42-237b, but it did not repeal or amend Idaho Code § 42-237a.g. *SVGWD MTD* at 11-12, 15; *SVC MTD* at 7-10. Consequently, while the Ground Water Act will no longer authorize the administrative determination of “adverse claims” by “local ground water boards” after July 1, 2021, the Ground Water Act will still expressly authorize the Director to “initiate administrative proceedings to prohibit or limit” the withdrawal of water under junior ground water rights that “would affect” the present or future exercise of “any prior surface or ground water right.” Idaho Code § 42-237a.g. Had these separate authorities been deemed inextricably linked or interconnected, as argued by South Valley and Sun Valley, then both would have been repealed. This is not what happened.

South Valley and Sun Valley also argue that, before initiating an administrative proceeding pursuant to Idaho Code § 42-237a.g, the Ground Water Act requires the Director to determine “an area of common ground water supply,” a “reasonable pumping level,” or a “reasonably anticipated rate of future natural recharge.” *SVGWD MTD* at 2, 9, 12-14, 18-20, 23-

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<sup>6</sup> The 2021 Idaho Legislature repealed Idaho Code § 42-237b, effective July 1, 2021.

24; *SVC MTD* at 3, 5, 11.<sup>7</sup> Under the plain language of Idaho Code § 42-237a.g., however, the Director is allowed, not required, to make these determinations when exercising “discretionary power” to initiate and conduct administrative proceedings regarding supervision and control of ground water withdrawals. See Idaho Code § 42-237a.g. (“in making determinations upon which said orders shall be based, he may establish a ground water pumping level or levels in an area or areas having a common ground water supply as determined by him . . .”). The Director is also specifically authorized to allow ground water withdrawals “at a rate exceeding the reasonably anticipated rate of future natural recharge . . .” *Id.* The language of Idaho Code § 42-237a.g. expressly states that these determinations are not preconditions to the Director’s exercise of the “discretionary power” to initiate administrative proceedings under Idaho Code § 42-237a.g., but rather are permissible exercises of the Director’s authority to “supervise and control the exercise and administration” of ground water rights. *Id.*

South Valley argues, however, that in the *Clear Springs* decision,<sup>8</sup> the Idaho Supreme Court conclusively determined that Idaho Code § 42-237a.g. allows the Director to prohibit ground water pumping “in only two scenarios: 1) where pumping is found to cause material injury; or 2) to prevent aquifer mining.” *SVGWD MTD* at 13-14. The *Clear Springs* decision does not support this conclusion. The *Clear Springs* Court did not comprehensively interpret Idaho Code § 42-237a.g. To the contrary, the Court only referenced Idaho Code § 42-237a.g. to consider the ground water users’ argument that under this provision “they are protected from delivery call as long as they are maintaining reasonable pumping levels.” 150 Idaho at 803, 252 P.3d at 84. The distinctly different question of whether the Director must establish a “reasonable pumping level” or “reasonably anticipated rate of future natural recharge” prior to initiating an administrative proceeding under Idaho Code § 42-237a.g. was not raised or decided in the *Clear Springs* case.

b. THE CM RULES DO NOT APPLY TO OR GOVERN THIS PROCEEDING.

South Valley and Sun Valley also argue that this administrative proceeding must be dismissed because the CM Rules provide the sole and exclusive procedural pathway for addressing the question of whether ground water rights diverting in the Bellevue Triangle should be curtailed during the 2021 irrigation season in favor of senior surface water rights diverting from Silver Creek and its tributaries. *SVGWD MTD* at 10-16; *SVC MTD* at 10-12. The Director disagrees, for reasons discussed below.

The CM Rules provide procedures for responding to delivery calls. As CM Rule 1 states: “The rules prescribe procedures for responding to a delivery call made by the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right . . .” IDAPA 37.03.11.001. In contrast, this administrative proceeding is not a response to a delivery call. Rather, as South Valley and Sun Valley admit, this administrative proceeding was initiated in the absence of a delivery call. See, e.g., *SVGWD MTD* at 8 (“the Association

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<sup>7</sup> South Valley and Sun Valley also make a related argument that CM Rule 30 required the Director to determine “an area of common ground water supply” before initiating this administrative proceeding. This argument is addressed below.

<sup>8</sup> *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 252 P.3d 71 (2011).

members did not file a delivery call that satisfied the requirements of CM Rule 30”);<sup>9</sup> *SVC MTD* at 1-2 (“in the absence of a call for delivery of water”). The plain language of the CM Rules contradicts assertions that the CM Rules govern this administrative proceeding. *See also Memorandum Decision and Order, Basin 33 Water Users, et al., v. IDWR*, Ada County Case No. CV01-20-8069, at 8-9 (Nov. 6, 2020) (“the CM Rules are limited in scope to prescribing the basis and procedure for responding to delivery calls . . . . No such delivery call has been made in this case.”).

The plain language of the CM Rules also contradicts assertions that the CM Rules provide the sole and exclusive procedure for dealing with questions of administration between surface water rights and ground water rights. This case is an example. As previously discussed, Idaho Code § 42-237a.g. explicitly recognizes the Director’s broad “discretionary power” to initiate administrative proceedings to address the question of whether to prohibit or limit diversions under junior ground water rights that are affecting senior surface water rights, even in the absence of a delivery call or “adverse claim.” *See also Memorandum Decision and Order, Basin 33 Water Users, et al., v. IDWR*, supra, at 8-12 (rejecting the argument that “the CM Rules preclude the Director from exercising his authority under the [Ground Water] Act”).

South Valley and Sun Valley argue, however, that the District Court for the Fifth Judicial District, Twin Falls County, has already conclusively determined that the CM Rules apply to and govern the issues raised in this administrative proceeding. In support of this argument, South Valley and Sun Valley repeatedly cite to and quote from the Court’s *Memorandum Decision and Order* issued on April 22, 2016, in the judicial review proceeding under Ada County Case No. CV-WA-2015-14500 (“*Mem. Decision & Order*”). *SVGWD MTD* at 6, 12, 16-19, 23; *SVC MTD* at 4-6, 10-11. That case, however, involved “a demand for the priority administration of water” that “the Director treated “as delivery calls under the CM Rules . . . .” *Mem. Decision & Order* at 3. The findings, analysis, and holdings therefore focused on the question of whether the “delivery calls” were governed by CM Rule 40 or CM Rule 30. *Id.* at 5-15. The question of whether the Director is authorized to initiate an administrative proceeding under Idaho Code § 42-237a.g. was never raised or decided. Nor did the Court hold that the CM Rules are the sole or exclusive procedural pathway for addressing the question of whether ground water rights authorizing diversion in the Bellevue Triangle may be subject to curtailment in favor of senior water rights diverting from Silver Creek and its tributaries. Moreover, four years later the same Court held that the CM Rules apply only when senior water right holders have filed delivery calls. *Memorandum Decision and Order, Basin 33 Water Users, et al., v. IDWR*, supra, at 8-12.

For the same reasons, South Valley and Sun Valley have misplaced their reliance on decisions of the Idaho Supreme Court regarding the validity or interpretation of the CM Rules, such as *AFRD2 v. IDWR*, 143 Idaho 862 (2007), *A&B Irr. Dist. v. IDWR*, 153 Idaho 500 (2012), and *A&B Irr. Dist. v. Spackman*, 155 Idaho 640 (2013). *SVGWD MTD* at 10, 14-15; *SVC MTD* at 2-3, 7. None of these cases raised or decided the question of whether the Director is

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<sup>9</sup> *SVGWD* asserts that the *Notice* was issued “in direct response to claims of material injury made by senior water users in the Advisory Committee meetings held in mid-April.” *SVGWD MTD* at 19. Even assuming this assertion is correct (which it is not), verbal assertions made at the Advisory Committee meetings are not “delivery calls” within the meaning and requirements of CM Rule 30.



authorized to initiate an administrative proceeding under Idaho Code § 42-237a.g., and none of these decisions held that the CM Rules are the sole or exclusive procedure for addressing the question of whether ground water rights can or should be curtailed to prevent injury to senior surface water rights. These types of questions never arose in these cases because conjunctive management delivery calls had been filed, the issues hinged upon whether the Department had properly responded to the delivery calls, and it was undisputed that the CM Rules governed the questions presented for resolution. That does not also mean, however, that the CM Rules are the sole or exclusive procedure for addressing questions of priority administration between interconnected ground water rights and surface water rights, especially when there is express statutory authority to the contrary—in this case, Idaho Code § 42-237a.g. See *Mead v. Arnell*, 117 Idaho 660, 666, 791 P.2d 410, 416 (1990) (“rules do not supplant statutory law nor do they preempt judicial statutory interpretation”) (citation omitted); *Memorandum Decision and Order, Basin 33 Water Users, et al., v. IDWR*, supra, at 8-12 (rejecting arguments that the CM Rules bar application of the Ground Water Act).

c. THIS ADMINISTRATIVE PROCEEDING SATISFIES DUE PROCESS REQUIREMENTS.

South Valley and Sun Valley argue that this proceeding must be dismissed because it violates their due process rights. *SVGWD MTD* at 20-27; *SVC MTD* at 4-7, 12-14. South Valley and Sun Valley assert that the *Notice* deprives them of a full and fair opportunity to be heard and protect their water rights, because the schedule established in the *Notice* does not grant sufficient time for South Valley and Sun Valley to conduct discovery, arrange for expert analyses, and otherwise prepare for the hearing. *Id.* These assertions rest primarily on contentions that this case involves a delivery call under the CM Rules, and on attempts to analogize this case to conjunctive management cases involving the Eastern Snake Plain Aquifer (“ESPA”). See, e.g. *SVGWD MTD* at 20 (“the schedule for this case is unprecedented and is contrary to any other conjunctive administration case that the agency has ever considered”); *SVC MTD* at 14 (“In each of those cases, meaningful discovery was allowed to take place over the course of months and years, not mere days”).

South Valley’s and Sun Valley’s due process arguments rely in large part on their contention that this case is, or should be treated as, a response to a delivery call filed under the CM Rules, and therefore the *Mem. Decision & Order* establishes due process requirements for this case. *SVGWD MTD* at 22-23; *SVC MTD* at 4-5. As previously discussed, however, this case is not a response to a delivery call under the CM Rules, and the *Mem. Decision & Order* only applies to delivery calls under the CM Rules. The *Mem. Decision & Order* did not establish due process standards for administrative proceedings pursuant to Idaho Code § 42-237a.g. See *Memorandum Decision and Order, Basin 33 Water Users, et al., v. IDWR*, supra, at 8-12 (distinguishing the CM Rules and the Ground Water Act). For these reasons, there is no merit in South Valley’s argument that an “area of common ground water supply” had to be determined prior to initiating this administrative proceeding in order to satisfy due process. *SVGWD MTD* at 20, 24. For the same reasons, there is no merit in contentions of South Valley and Sun Valley that the Director improperly relieved senior water rights holders of the burden of identifying and serving junior water rights holders with notice of a conjunctive management delivery call. *SVGWD MTD* at 22-24; *SVC MTD* at 4-5.

Moreover, it is incorrect to analogize this case to the cases that addressed conjunctive management delivery calls involving the ESPA. *SVGWD MTD* at 25; *SVC MTD* at 14. This case only addresses in-season administration of ground water rights diverting in the Bellevue Triangle during the 2021 irrigation season, and time is of the essence. A drought is predicted for 2021, and information and data currently available to the Director suggests that ground water pumping in the Bellevue Triangle during the 2021 irrigation season will have an immediate, measurable impact on surface flows in Silver Creek and its tributaries, and may injure senior surface water rights diverting from those sources.

The ESPA cases were very different. They 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. Resolving the ESPA cases often required long-term, multiple-season curtailments and/or mitigation plans.<sup>10</sup> This case, in contrast, involves a smaller number of ground water rights pumping from a more limited area that is immediately adjacent to Silver Creek and its tributaries. These ground water diversions appear to have direct, largely un-attenuated impacts on the surface flows in Silver Creek and its tributaries. Further, this case only addresses potential shortages during the 2021 irrigation season, which likely will be a time of drought.

The Director has an affirmative duty to distribute water in accordance with the prior appropriation doctrine. *In Re SRBA*, 157 Idaho 385, 393, 336 P.3d 792, 800 (2014). Protecting the water rights of senior appropriators diverting from Silver Creek and its tributaries during the upcoming irrigation season may require prompt administration of ground water rights in the Bellevue Triangle. While South Valley and Sun Valley are correct in arguing that junior ground water rights are real property rights, *SVGWD MTD* at 21; *SVC MTD* at 4, senior surface water rights diverting from Silver Creek and its tributaries are also real property rights, and in times of shortage have priority over the water rights of junior ground water appropriators. Idaho Const. Art. XV § 3; Idaho Code §§ 42-106, 42-226, 42-237a.g., 42-602, 42-607.

Further, “[d]ue process is not a rigid concept to be mechanically applied to every adversary confrontation; rather, due process is ‘flexible and calls for such procedural protections as the particular situation demands.’” *Bowler v. Bd. of Trustees of Sch. Dist. No. 392, Shoshone Cty., Mullan*, 101 Idaho 537, 542, 617 P.2d 841, 846 (1980) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). South Valley and Sun Valley ignore this settled principle by arguing that this case must follow the procedural requirements of the CM Rules and the ESPA cases, and by focusing only on the water rights of junior appropriators. This case does not involve an ESPA conjunctive management delivery call, however, and the information presently available to the Director indicates that ground water diversions in the Bellevue Triangle may have a direct and

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<sup>10</sup> See, e.g., *AFRD2 v. IDWR*, 143 Idaho 862 (2007); *A&B Irr. Dist. v. IDWR*, 153 Idaho 500, 284 P.3d 225 (2012); *In the Matter of Distribution to Various Water Rights held by and for the Benefit of A&B Irr. Dist.*, 155 Idaho 640, 315 P.3d 828 (2012); *IGWA v. IDWR*, 160 Idaho 119, 369 P.3d 897 (2016); *Rangen, Inc. v. IDWR*, 160 Idaho 251, 371 P.3d 305 (2016); *North Snake Ground Water Dist. v. IDWR*, 160 Idaho 518, 376 P.3d 722 (2016).

immediate effect on the flows of Silver Creek and its tributaries during the 2021 irrigation season. *Notice* at 1. Timely and effective priority administration of water rights is integral to due process, and often necessary if the Director is to “equally guard all the various interests involved.” Idaho Code § 42-101. Providing a full and fair opportunity for all potentially interested parties to be heard on a question of administration during the current irrigation season, while also protecting the water rights of all potentially interested parties, precludes the type of protracted, time-consuming proceedings contemplated by South Valley and Sun Valley. South Valley and Sun Valley seek procedural protection far in excess of what “the particular situation demands.” *Bowler*, 101 Idaho at 542, 617 P.2d at 846.

The schedule established by the Notice, in contrast, allows for timely, in-season administration of water rights in accordance with the prior appropriation doctrine. Further, the schedule guarantees that, before any order for curtailment is issued, there will be pre-hearing conference and a hearing on the merits. At the hearing, the parties will have an opportunity to submit exhibits, call and examine their own witnesses, cross-examine other parties’ witnesses, and cross-examine IDWR staff members who prepared the staff memoranda. This schedule provides notice to the parties and grants a “full and fair” opportunity to be heard before any curtailment order is issued. *Coeur d’Alene Tribe v. Johnson*, 162 Idaho 754, 762, 405 P.3d 13, 21 (2017).

Sun Valley also argues that the Notice violates due process because the subsequently-issued *Request for Staff Memorandum* (May 11, 2021) (“Request”) allegedly enlarged the boundary of the “Potential Area of Curtailment” identified in the Notice. *SVC MTD* at 5-6. This assertion is incorrect. The Notice is the legally operative document that establishes the potential area of curtailment for purposes of this administrative proceeding. The Request did not purport to modify the Notice, and the “Potential Area of Curtailment” depicted in the map attached to the Notice has not been changed or enlarged by the Request. The Request simply calls for staff to prepare a memorandum that contains “[f]acts and technical information” that may be pertinent to the issues to be addressed in this proceeding. *Request* at 1. The staff memorandum was posted on the IDWR website on May 17, 2021, and is available to all potentially interested parties.<sup>11</sup> The staff members that prepared the memorandum will testify at the hearing and be subject to cross-examination. *Request* at 1. The Director’s request that staff prepare the memorandum did not violate any due process requirement or prejudice any party.

## **II. MOTION FOR CLARIFICATION OR MORE DEFINITE STATEMENT**

The *Bellevue Motion* includes a request for a clarification of the Notice, or a more definite statement regarding certain aspects of the Notice. *Bellevue Motion* at 1-3. Specifically, Bellevue asks for clarification or a more definite statement as to the boundaries or extent of the physical area within which ground water diversions are potentially subject to curtailment, whether

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<sup>11</sup> The staff memorandum is posted on the IDWR website in multiple parts. *Jennifer Sukow Response to Request for Staff Memo* (May 17, 2021), *Phil Blankenau Response to Request for Staff Memo* (May 17, 2021), *Sean Vincent Response to Request for Staff Memo* (May 17, 2021), and *Tim Luke Response to Request for Staff Memo* (May 17, 2021). The “Supporting Files of Jennifer Sukow” were also posted on the same day. <https://idwr.idaho.gov/legal-actions/administrative-actions/basin-37.html>.



curtailment of ground water diversions in this area would extend beyond the 2021 irrigation season, and the “relevance” of certain information identified in the Request. *Id.* at 2-3. Bellevue argues that clarification or a more definite statement regarding these matters is necessary because the Request “asks for several items that are much broader than what is set forth in the Notice,” and “it is impossible to know at this point whether the Director will need to broaden or modify the Notice.” *Id.* Bellevue does not assert, however, that the Notice by itself is vague, ambiguous, or confusing. Rather, Bellevue argues that the Request can or will enlarge the Potential Area of Curtailment identified in the Notice, and that the Request creates the potential for curtailment to extend beyond the 2021 irrigation season. For the reasons discussed below, the Director disagrees and denies the *Bellevue Motion*’s request for clarification or a more definite statement.

The Notice is the legally operative document that establishes the potential area of curtailment for purposes of this administrative proceeding, and also the timeframe during which curtailment could potentially occur. Under the Notice, the “Potential Area of Curtailment” is limited to the area depicted in the map attached to the Notice, and the timeframe for potential curtailment of ground water rights within this area is limited to the 2021 irrigation season. *Notice* at 1 & Attachment A. The Request does not purport to modify the Notice, enlarge the “Potential Area of Curtailment” depicted in the map attached to the Notice, or enlarge the period of potential curtailment beyond the 2021 irrigation season. The Request is only an instruction to IDWR staff to prepare a memorandum setting forth facts and technical information that may be pertinent to the issues to be addressed at the administrative proceeding hearing. *Request* at 1. The fact that the Request calls for the memorandum to include information regarding surface water and ground water uses outside the Bellevue Triangle and during years other than 2021 does not enlarge the area potentially subject to curtailment as a result of any order issued in this administrative proceeding, nor does it enlarge the period of potential curtailment beyond the 2021 irrigation season.

Further, and contrary to the apparent understanding of the *Bellevue Motion*, the Request does not assume or establish the ultimate “relevance” of the information requested to the outcome of this administrative proceeding. *Bellevue Motion* at 3. Rather, the Request calls for facts and technical information that is potentially relevant to the issues to be addressed in this proceeding. *Request* at 1. The Request does not assume that all the requested facts and technical information ultimately are, or will be, relevant to the determination of whether ground water users within the Bellevue Triangle must be curtailed during the 2021 irrigation season in order to protect senior surface water rights diverting from Silver Creek and its tributaries. Rather, it is intended to ensure the record includes the facts and technical information that water users and IDWR staff have identified as potentially relevant. This approach promotes efficiency and fairness in the administrative proceeding.

### **III. MOTIONS FOR POSTPONEMENT OR CONTINUANCE.**

Bellevue requests postponement of the hearing scheduled for June 7-11, 2021, *Bellevue Motion* at 3-6, and South Valley requests that the hearing be continued. *SVGWD MFC* at 1-4.<sup>12</sup>

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<sup>12</sup> South Valley’s motion for continuance was filed “in the alternative” to South Valley’s motion to dismiss. *SVGWD MFC* at 1.



The primary argument asserted in support of these motions is that the hearing schedule established by the Notice does not allow sufficient time to address the issues presented in this proceeding, and to prepare a defense to potential curtailment of their water rights. *See Bellevue Motion* at 4 (“This rushed schedule certainly seems to give lip service to a full and fair opportunity for parties to defend their water rights and use”); *SVGWD MFC* at 3 (“grossly inadequate to prepare for the complex issues involved”). Both Bellevue and South Valley also argue that their attorneys have prior obligations (including an out-of-country trip) which will interfere with their attorneys’ ability to fully prepare for the hearing. *Bellevue Motion* at 6; *SVGWD MFC* at 4.

The arguments of Bellevue and South Valley that the hearing schedule fails to allow sufficient time to prepare for the hearing are essentially the same due process arguments made in the motions to dismiss, and lack merit for the same reasons. In brief, this case does not involve a conjunctive management delivery call on the ESPA, and the curtailment question presented is simply whether ground water uses in the Bellevue Triangle during the 2021 irrigation season will have adverse effects on the exercise of senior surface water rights diverting from Silver Creek and its tributaries. In other words, this case is not governed by the procedural requirements of the CM Rules, and is not analogous to the ESPA cases. Moreover, adopting the protracted and time-consuming schedule contemplated by Bellevue and South Valley would effectively preclude any possibility of protecting senior surface water rights diverting from Silver Creek and its tributaries from junior ground water uses in the Bellevue Triangle during the upcoming irrigation season. This would be contrary to the prior appropriation as established by Idaho law. Idaho Const. Art. XV § 3; Idaho Code §§ 42-106, 42-226, 42-237a.g. These legal considerations, and the circumstances of this case, also preclude the Director from granting an essentially indefinite postponement or continuance on grounds that some parties’ attorney have prior obligations or travel plans. The Director therefore denies the motions for postponement or continuance of the hearing scheduled for June 7-11, 2021.

DATED this 22<sup>nd</sup> day of May, 2021.

  
GARY SPACKMAN  
Director

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of May, 2021, the above and foregoing was served on the following by the method(s) indicated below:

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

IN THE MATTER OF BASIN 37  
ADMINISTRATIVE PROCEEDING

Docket No. AA-WRA-2021-001

**SOUTH VALLEY  
GROUNDWATER DISTRICT AND  
GALENA GROUND WATER  
DISTRICT'S POST HEARING  
MEMORANDUM**

**I. INTRODUCTION**

South Valley Ground Water District and Galena Ground Water District (collectively the "Districts") hereby submit this post-hearing memorandum in compliance with the Director's

request made on the record on June 12, 2021. Tr. Vol. VI, 1477:20-22.<sup>1</sup> The Districts do not waive any rights regarding the legality of this proceeding by submitting this brief, and hereby expressly reserve all rights and defenses concerning this proceeding, the hearing held June 7-12, 2021, and any resulting orders.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

This proceeding involves two separate but interrelated water systems: 1) the Big Wood River above Stanton Crossing, groundwater in the Bellevue Triangle and the upper reaches of Silver Creek on one hand; and 2) the Little Wood River on the other.<sup>2</sup> The primary water supply for the groundwater in the Bellevue Triangle and the headwaters of Silver Creek is the Big Wood River. Over the past thirty (30) years, flows in the Big Wood River at Hailey have declined as much as twenty-six percent (26%). SVGWD & GGWD Ex. 23 at 15. IDWR's analysis shows, and the Districts' analysis agrees, there is a strong correlation between flows in the Big Wood River at Hailey and flows in Silver Creek at the Sportsman's Access gage. IDWR Ex. 6; Tr. Vol. V, 1344:9-11 ("We know that Silver Creek responds to the Big Wood and the discharge at the Hailey gage. There's a strong relationship there"). 2021 has turned into a miserable year for water supply in the Big Wood River Basin, with predicted streamflow and water availability declining virtually every month from January through June. *See generally*, IDWR Exs. 1, 6.

Apart from the water supply difficulties in the Big Wood River in 2021, the water supply in the Big Wood River below Stanton Crossing and in the Little Wood River has historically been notoriously unreliable. By 1927, the water users and the United States government recognized

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<sup>1</sup> References to exhibits are listed by entity and party (e.g., "IDWR Ex. \_\_"), and references to the hearing transcript are listed by volume (e.g., "Tr. Vol. \_\_, [page]:[line]"). All combined exhibits from the SVGWD and GGD are hereinafter referenced as "SVGWD & GGWD Ex. \_\_\_\_").

<sup>2</sup> Based on the Director's May 4, 2021 *Notice*, water rights to the Big Wood River below Stanton Crossing are not included in this proceeding.

there was only a partial supply of water available for users in the Big Wood below Stanton Crossing and in Little Wood River. SVGWD & GGWD Ex. 6. Water shortage was so pronounced that a 1927 contract issued by the United States to the water users in the Big Wood River and Little Wood River basins recounted that these lands were “reclaimed and improved and are occupied by settlers who have suffered crop losses on account of such water shortages and on account of such water shortages are struggling under great difficulties to continue the occupation and cultivation on the lands of the project.” SVGWD & GGWD Ex. 6 at 4, ¶ 5. These chronic shortages led the United States to construct the American Falls Reservoir and a canal to supply water to these lands through what is now known the Milner-Gooding canal. *Id.* Under this contract, the settlers were required to enter into a contract with the Big Wood Canal Company and American Falls Reservoir District #2 (“AFRD2”) to forego delivery of Wood River water in exchange for Snake River water furnished to the river rights. SVGWD & GGWD Ex. 6 at 8, ¶ 18.

Even with this additional supply of water, the Big Wood and Little Wood Rivers have remained chronically short in drought years, from the 1930s through the present day. Without the addition of Snake River storage, the water supply can be meager at best. The 1930s suffered numerous drought years. Specifically, 1931, 1937, and 1939 were years with very low natural flows leading to the regular priority cuts to surface rights in the Big Wood Basin and Little Wood Basin. *See* IDWR Ex. 4 at 27; SVGWD & GGWD Ex. 39. Rights junior to 1883 were routinely curtailed in those low water years. As Tim Luke’s Staff Memo explains, water shortages in the 1930s occurred before most of the groundwater development had begun in the Bellevue Triangle and in the area above Bellevue in the Big Wood River. *See* IDWR Ex. 4.

Bellevue Triangle groundwater development began to increase in the early 1950s, continued into the 1960s and 1970s, and leveled off in the 1980s. SVGWD & GGWD Ex. 24 at

33; IDWR Ex. 4. In 1991, IDWR Director Keith Higginson issued an order designating the Big Wood River Groundwater Management Area (BWRGWMA). SVGWD & GGWD Ex. 3. The order recognized that Silver Creek is fed by springs whose flows depend, in part, on seepage from Big Wood irrigation diversions and water use in the Bellevue Triangle. *Id.* at 3 (Management Policy, § I.A). The Order recognized that the Director has the duty to protect prior rights and to allow full economic development of the resource. *Id.* at 1 (Findings of Fact, No. 1). The Order also established a Management Policy providing that new consumptive use applications will be denied unless the applicant could show that there would be no injury or proof of adequate mitigation. *Id.* at 5 (Management Policy § III). The Director allowed non-consumptive, municipal, stock water, and domestic uses to continue to withdraw water from the aquifer under new applications. *Id.* at 4 (Management Policy § III). The Order designating the BWRGWMA also stated that one of the goals of the Groundwater Management Act was to ensure that “early appropriations of groundwater are protected in the maintenance of reasonable ground water pumping levels.” *Id.* at 1.

After the designation of the BWRGWMA and the moratorium on new consumptive uses, groundwater use leveled off. Investigations and analysis by IDWR staff, including Allan Wylie, have determined that since 1991, groundwater levels are stable and have been increasing slightly during certain times of the year, particularly in April, prior to the onset of the irrigation season. SVGWD & GGWD Ex. 15 at 15.

Since the designation of the Groundwater Management Area in 1991 no action has been taken to establish reasonable groundwater pumping levels in the Bellevue Triangle and no action has been taken to determine an Area of Common Groundwater Supply in the Big Wood Groundwater Management Area. Tr. Vol. II, p. 317:25-318:7. No witness offered testimony on

reasonable pumping levels or designation of an area of common ground water supply, and the Director did not request the information to be addressed in any staff memo. *See Request for Staff Memorandum* (May 11, 2021).<sup>3</sup> Nor did the Director request any information about whether the groundwater withdrawals exceeded the reasonably anticipated average rate of future natural recharge under Idaho Code § 42-237a.g

In 2011, the Department issued a preliminary order creating a water measurement district for groundwater rights in the upper Big Wood and Little Wood River Basins. SVGWD & GGWD Ex. 4. In 2013, the Department issued an order combining certain water districts and bringing groundwater rights into Water District 37. SVGWD & GGWD Ex. 5. The Department made a presentation to the water users at that time explaining that bringing the water rights and groundwater and surface water rights into a single Water District would provide for proper conjunctive administration of surface and groundwater. *Id.*; Tr. Vol. II, 311:1-12. Water users complained about the impact of having groundwater and surface water rights in a single water district, particularly as it related to conjunctive administration or conjunctive management. The Department responded and advised the water users that “conjunctive administration is guided by separate processes outlined in the conjunctive management rules (CMR’s) IDAPA 37.03.11.” SVGWD & GGWD Ex. 5 at 10 (Conclusions of Law ¶ 16). The Department also pointed to successful implementation of the conjunctive management rules within Water District 130 located just to the south within the Eastern Snake Plain Aquifer (ESPA).

In 2015, after the water districts were combined, and after the Department advised the water users in Basin 37 that groundwater and surface water would be managed by the conjunctive

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<sup>3</sup> The senior water users’ consultant Eric Miller did not offer opinions on these items either. Tr. Vol. IV, 987:3-14.

management process, a number of individuals under the Big Wood Little Wood Water Users Association (“Association”) attempted to file a delivery call against groundwater users in the Big Wood Groundwater Management Area. Sun Valley Company moved to dismiss the proceeding on the grounds that the Department could not manage the delivery call under Rule 40 of the conjunctive management rules because no “Area of Common Ground Water Supply” had been established. The Director denied that motion, but was reversed on appeal by the District Court, which agreed that there could not be a delivery call under Rule 40 without an “Area of Common Ground Water Supply” and further held that Rule 30 authorized the Department to determine such an area under a Rule 30 conjunctive management proceeding. SVGWD & GGWD Ex. 1; Tr. Vol. II, 316:7-318:9.

Following the dismissal of the 2015 delivery call, the Department did not establish an “Area of Common Ground Water Supply” within the Big Wood Groundwater Management Area. Tr. Vol. II, 317:25-318:7. In 2017, a second effort to initiate delivery call was made by the Association. That delivery call was dismissed by the Director because the Association had no standing to bring a delivery call under the Conjunctive Management Rules on behalf of its members and that the members would have to assert individual delivery calls to initiate a conjunctive management proceeding. SVGWD & GGWD Ex. 2. The Director’s decision was not appealed.

Meanwhile, the South Valley Groundwater District and the Galena Groundwater District began an effort to draft a groundwater management plan for the BWRGWMA, as no plan had been put in place at the time of the 1991 designation order or since. In 2019, a draft of a groundwater management plan was provided to the Director, but he sent the groundwater districts back to the drawing board. Also, during this time, hydrologists for the surface water users and the groundwater

users met regularly to discuss the hydrology of the system. *See e.g., SVGWD & GGWD Ex. 23; Tr. Vol. V, 1185:11-24.* After consulting with the surface water users, in the fall of 2020, the Districts submitted another version of their proposed plan to the Director, and the surface water users responded with a document of their own. *Tr. Vol. V, 1185:25-1186:23.*

In response to those submittals, the Director established a Ground Water Management Area Advisory Committee which met from November 2020 to April 2021. *Tr. Vol. II, 297:11-20; SVGWD & GGWD Ex. 19.* During the second meeting of the Advisory Committee, the Department's attorney gave a presentation concerning options and comparing and contrasting delivery calls under the Conjunctive Management Rules and Management Plans under the Groundwater Management Area statute, Idaho Code § 42-233b. *See SVGWD & GGWD Ex. 19 at 6-7.* No mention was made any other means of administration as between surface and groundwater, because the Department had not thought of such alternatives at that time. *Tr. Vol. II, 343:12-19.*

By the March 3, 2021 meeting, surface water users had begun seeking curtailment by priority and conjunctive management. *SVGWD & GGWD Ex. 19 at 24.* During the March 24, 2021 meeting surface water committee members continued to raise the issue of conjunctive management. The Director stated to the committee that he had some responsibility to administer by priority and admonished the groundwater users to provide proposed remedial actions within the next two to three weeks. At the same time, internally the Department was evaluating conjunctive administration within Basin 37. Jennifer Sukow, the Department modeler, began discussing generating response functions or depletion functions using the Big Wood groundwater model with the Director, explaining that it would take two weeks to set up and run the model because the model was complex and indeed far more complex than the ESPA model. *Tr. Vol. I, 173-74; SVGWD & GGWD Ex. 36.* This information about obtaining new model runs was apparently not



shared with the advisory committee. SVGWD & GGWD Ex. 19; *See* also SVGWD & GGWD Ex. 36.

At the April 7<sup>th</sup> meeting of the Advisory Committee, the groundwater users proposed a reduction in use and the surface water users proposed other measures, including establishing minimum stream flows and financial penalties. The Director admonished the groundwater users that their proposal was inadequate and admonished the surface water users that their proposal was unreasonable. He stated that he was considering all options but did not specifically reference Idaho Code § 42-237a.g. SVGWD & GGWD Ex. 19 at 29; Tr. Vol. II, 345:7-22. At the April 15<sup>th</sup> advisory committee meeting the groundwater users brought back an increase in proposed reductions in use. The Big Wood Canal Company (“BWCC”) stated that it could agree but the Association stated that it needed additional time. SVGWD & GGWD Ex. 19 at 28-29. The next day, the Association rejected the groundwater users’ proposal.

Three weeks later, on May 4<sup>th</sup>, the Director issued the Notice initiating this proceeding (“*Notice*”). The *Notice* was limited to “Silver Creek and its tributaries” and stated that the scope of the proceeding was whether “curtailment of ground water rights during the 2021 irrigation season would result in increased flows for the holders of senior surface water rights during the 2021 irrigation season.” The *Notice* also provided that, based on a reference to “information from the Model,” the Director believed that withdrawal of water from ground water wells in the Bellevue Triangle would affect senior surface water rights in Silver Creek and its tributaries during the 2021 irrigation season. On May 27, 2021, the Director issued an *Order Granting Party Status and Closing the Proceeding to Additional Parties*, reiterating “the Director has repeatedly emphasized that this proceeding is meant to address the 2021 irrigation season.” *Order* at 2.

The *Notice* did not inform water users that the scope of the proceeding would extend to alleged injuries occurring beyond the 2021 irrigation season. Nor was any information from the Model that led to the Director's belief disclosed at the time of the *Notice*. On May 11, 2021, the Director issued a *Request for Staff Memoranda*, requesting that Staff reports be submitted to the Director by May 17, 2021. By the time of May 17<sup>th</sup> staff memoranda, IDWR and its groundwater modelers had been working with the Model for nearly two months to assist with the Department's evaluations. SVGWD & GGWD Ex. 36. Even so, the May 4<sup>th</sup> *Notice* set a contested case hearing date starting June 7, 2021, only three weeks after the Staff Reports were submitted to the Director, disclosing some of the Model results and other requested information.<sup>4</sup>

The *Request for Staff Memoranda* included a request for staff to explain methods of analysis of possible injury. The Request listed three possible methods. The Request did not include all the elements for consideration of injury under Rule 42 of the Conjunctive Management Rules. Staff did not extend the potential methodology for determining injury beyond the three possible methods of evaluating injury described by the Director, when responding to the Request for Staff Memorandum, or cover all the elements of Rule 42, confining their responses to the specific questions raised by the Director. Tr. Vol. II, 377:7-378:4; IDWR Ex. 4.

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<sup>4</sup> The record is undisputed that these Staff Reports were not available to the groundwater users until the reports were posted on the Department's website sometime on the afternoon of May 18<sup>th</sup>, and that some of the model files posted were corrupted and not accessible until May 20<sup>th</sup>. Tr. Vol. VI, 1470-72. In other words, the Districts only had the staff reports in their hands less than three weeks before the start of the hearing. Moreover, IDWR did not respond to Sun Valley Company's May 21, 2021 request for related information until mid-way through the hearing on June 9<sup>th</sup>. Tr. Vol. VI, 1469-1472. The Districts had requested information from IDWR on May 13, 2021, but did not receive any response from IDWR until they filed a formal public records request on May 20, 2021. Only then did IDWR respond with some information by email at the close of business on May 24, 2021. *See id.* It does not appear that everything requested was provided, and the Department did not provide a log of what documents it withheld. The Districts reserve all rights concerning the delay in providing information during this shortened hearing schedule and how it impacted their ability to have a meaningful opportunity to be heard.

A prehearing conference was held before the Director on May 24, 2021. The Director made it clear that the contested case was limited to the geographic area defined in the *Notice*. See Pre-Hearing Tr., 52:1-10 (“the focus of this hearing is really on Silver Creek, on Little Wood, depletions to those sources of water, and diversions of groundwater within the area in the Bellevue Triangle identified by Jennifer Sukow”). The Director stated that any senior water right holder would be expected to bring evidence of injury and that merely pleading that they have water rights and are entitled to water is not enough. *Id.*, 46:3-5. Nor is it sufficient to show that the model shows depletions. There must be proof of causation. The Director disclaimed knowing whether there was any difference between “injury” as it was being used in this proceeding and “material injury” as used in the *AFRD2* decision cited by the Director at the pre-hearing conference. *Id.*, 49:10-20. He further stated that the Conjunctive Management Rule 42 factors would be a “very important” guide in putting on proof in this proceeding. *Id.*, 50:6-20.

The *Notice* of potential curtailment did not encompass the entire BWRGWMA or even the ground water in the area of the Big Wood River in Basin 37. The *Notice* excluded the Camas ground water portion of the Ground Water Management Area and excluded the area above a line drawn below the City of Bellevue. *Notice*, Attachment A. This northern boundary line in the *Notice* was not located in the same place as the northern boundary line in Jennifer Sukow’s Staff report. IDWR Ex. 2; Pre-Hearing Tr. 55:19-57:5. No one was able to explain why the northern boundary line was located where it was in the *Notice*. See Tr. Vol. I 137:25-139:2. The *Request for Staff Memorandum* requested identification of areas which had “minimal” contribution to Silver Creek Streamflow. *Request for Staff Memorandum* at 2, #6. “Minimal” was not defined for the modeler. Tr. Vol. I 134:8-24.

IDWR's modeler selected a line at the Glendale Bridge as the boundary, but did not test the boundary by simulating model runs with different boundaries to the north or south, to evaluate a "minimal" contribution. Tr. Vol. I 135:3-137:7. The modeler looked at some wells' response functions in drawing the model boundary but did not rely on response functions (i.e., depletion) to establish the northern boundary. *Id.* The line that was drawn includes two wells across the street from one another; one curtailed and one not. Tr. Vol. I, 137:8-139:2. The Director then issued a scheduling Order on May 25, 2021 and stated that the area of potential curtailment would be the area in Jennifer Sukow's Staff Memo (IDWR Ex. 2), without explanation other than that Ms. Sukow's Staff Memo encompassed a smaller area.

### **III. LEGAL ISSUES**

#### **A. Senior Surface Water Rights and Beneficial Uses in 2021 / Extent of Potential Injury.**

The conjunctive administration of senior surface water rights and junior ground water rights in Water District 37 requires consideration of certain "post-adjudication" factors, including those identified in CM Rule 42. *See* Pre-Hearing Tr., 50:17-20 (Rule 42 factors are "an important guide"). As noted above, the Director observed no difference between "injury" and "material injury." *See Id.*, 49:10-20. Accordingly, the CM Rules' definition of "material injury" provides: "Hindrance to or impact upon the exercise of a water right caused by the use of water by another person as determined in accordance with Idaho Law, as set forth in Rule 42." IDAPA 37.03.11.10.15 ("CM Rule" 10.15).

A senior is not entitled to his or her decreed quantity if that water will not be put to beneficial use. *See AFRD#2 v. IDWR*, 143 Idaho 862, 878 (2007) ("there certainly may be some post-adjudication factors which are relevant to the determination of how much water is actually needed"). Moreover, depletion to a water source does not automatically constitute material injury

to a water right. With respect to irrigation water rights in conjunctive administration, the Idaho Supreme Court has observed the following:

On April 7, 2010, the Director issued his Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover. This order set forth a refined methodology for determining material injury, starting from a predictive baseline of the senior water right holders' actual needs.

\* \* \*

1. The Director may develop and implement a pre-season management plan for allocation of water resources that employs a baseline methodology, which methodology must comport in all respects with the requirements of Idaho's prior appropriation doctrine, be made available in advance of the applicable irrigation season, and be promptly updated to take into account changing conditions.
2. A senior right holder may initiate a delivery call based on allegations that specified provisions of the management plan will cause it material injury. The baseline serves as the focal point of such delivery call. The party making the call shall specify the respects in which the management plan results in injury to the party. While factual evidence supporting the plan may be considered along with other evidence in making a determination with regard to the call, the plan by itself shall have no determinative role.
3. Junior right holders affected by the delivery call may respond thereto, and shall bear the burden of proving by clear and convincing evidence that the call would be futile or is otherwise unfounded. A determination of the call shall be made by the Director in a timely and expeditious manner, based on the evidence in the record and the applicable presumptions and burdens of proof.

*A&B Irr. Dist. v. Spackman*, 315 P.3d 828, 835, 841 (emphasis added).

The Director did not follow the administrative procedure set forth by the Idaho Supreme Court. Instead, the Director initiated this proceeding well after the irrigation season had started and developed a new and unprecedented procedure for hearing evidence related to water use and actual need for the 2021 irrigation season, long after the season was underway and crops were in

the ground. The Director required the seniors to put on evidence of actual injury to a water right. *See* Pre-Hearing Tr., 50:1-3.

Certain senior water users that filed notices of participation did not attend or present any evidence at the hearing. *See Notices of Participation* (Joe Matheny May 17, 2021; Sabala Farms, Inc. May 17, 2021; Nick Westendorf May 17, 2021; and David Hults May 17, 2021; City of Gooding May 17, 2021). Consequently, these water users and their water rights are not part of any injury analysis for purposes of this proceeding in 2021 and should be excluded from any resulting order.<sup>5</sup> *See generally Pre-Hearing Order.*

With respect to those seniors potentially impacted by groundwater pumping for the remainder of the 2021 irrigation season, the following evidence is relevant and was addressed at the hearing. First, Barbara Farms LLC (“Barbara”) owns water right 37-344A, priority date 4/6/1883, diversion rate 4 cfs (200 miner’s inches), place of use 301.9 acres. Barbara Ex. 4. Mr. Fred Brossy testified at hearing as to the following crop mix<sup>6</sup> and acres irrigated for 2021:

<u>Crop Type</u>	<u>Acres</u>	<u>Last Day Irrigation</u>
Organic garden seed beans	21	Aug 30
Organic edible pinto beans	20	Aug 25
Organic purple barley	11	July 15
Organic malt barley/new seeding alfalfa	49.5	July 15
Organic winter wheat/new seeding alfalfa	12	July 15

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<sup>5</sup> Certain water users on this list only have water rights to the Big Wood River. *See* Sabala Farms, Inc., Westendorf, and Hults. As stipulated to by counsel at the hearing, this proceeding does not address any alleged injury to water rights to the Big Wood River. This stipulation further covers any Big Wood River water rights held by those seniors that did participate at the hearing, as that evidence only was presented to show available total water supplies for 2021. Tr. Vol. I, 14:22-25; 15:1-11; Vol. IV, 436:1-23; 438:3-12 (“For this hearing today, we’re not purporting, show what the Director indicated, the total water supply”).

<sup>6</sup> Barbara is also growing organic processing potatoes (21 acres) and organic garden seed beans (45 acres). However, these acres are being supplied by water from American Falls Reservoir District #2 through a rental with the City of Shoshone. *See* Barbara Ex. 1. The 2021 crop water requirement on these acres is being met by an alternate water supply previously obtained by Barbara and AFRD#2’s water rights are not supplied by the Little Wood River. *See* CM Rule 42.01.g; *see also*, Water Right Nos. 01-6; 01-2064. As such, these acres are removed from any injury analysis to water right 37-344A since they are not being irrigated with that water right in 2021.

Organic no-till edible pinto beans	16	Aug 25
Organic alfalfa green chop	71	Aug 30
Organic rye green chop/new seeding alfalfa	17	Sep 15
<b>Total</b>	<b>217.5 acres</b>	

Accordingly, Barbara's 4 cfs is only being used to irrigate 217.5 acres in 2021, not the full 301.9 acres identified on the water right. The Director must take into account the actual number of acres being irrigated in 2021 for purposes of his material injury analysis. *See* CM Rule 42.01.d. Barbara irrigates with wheel line and pivot sprinklers, and gated pipe, and has unmeasured losses, including from pivot pump ponds back to the Little Wood River. Tr. Vol. III, 443:22-25; 444:1-6; 458:1-23.

Next, Don Taber irrigates his "Home Farm" with water right 37-423, priority date 4/1/1883, diversion rate 0.3 cfs, place of use 295 acres.<sup>7</sup> Taber Ex. 4. Mr. Taber testified at hearing as to the following crop mix<sup>8</sup> and acres irrigated for 2021:

<u>Crop Type</u>	<u>Acres</u>	<u>Last Day Irrigation</u>
Alfalfa	61	Sep 30
Silage Corn	106	Sep 10
Malt Barley	62	July 10
<b>Total</b>	<b>229 acres</b>	

Accordingly, Mr. Taber's 0.3 cfs is only being used to irrigate 229 acres at most in 2021, not the full 295 acres identified on the water right. Moreover, the quantity is insufficient to irrigate all of those acres (30 inches on 229 acres = 0.13 inch/acre). The Director must take into account the actual number of acres being irrigated in 2021 as well as the availability of his supplemental

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<sup>7</sup> Mr. Taber identified 202 acres (96 alfalfa and 106 silage corn) irrigated with water right nos. 37-424 (4/1/1884) and 37-425 (4/1/1887). Curtailment of junior groundwater to fill these surface water rights would be futile in 2021. *See infra*.

<sup>8</sup> Mr. Taber also irrigates alfalfa (60 acres), silage corn (112 acres), and spring wheat (43 acres) (total=215 acres) with a supplemental ground water right 37-8401. *See* Taber Ex. 18. However, his ground water right authorizes a diversion of 3 cfs for use on 248 irrigated acres. Accordingly, we have applied the balance of the supplemental ground water use (35 acres) to reduce the alfalfa acreage from 96 acres to 61 acres for purposes of this analysis.



ground water right 37-8401 for use on 248 acres. *See* CM Rule 42.01.d.; 42.01.g. Mr. Taber irrigates with hand and wheel lines, pivot sprinklers, and has piped his entire system from the point of diversion to the point of application. Tr. Vol. III, 680:21-22

Don Taber also leases and irrigates the adjacent “Ritter Farm” with water right 37-49, priority date 4/1/1883, diversion rate 4.2 cfs, place of use 215.7 acres. Ritter Ex. 2. Mr. Taber testified at hearing as to the following crop mix and acres irrigated for 2021:

<u>Crop Type</u>	<u>Acres</u>	<u>Last Day Irrigation</u>
Alfalfa	73	Sep 20
Silage Corn	75	Sep 10
Sugar Beets	20	Sep 20
<b>Total</b>	<b>168 acres</b>	

Accordingly, Mr. Taber’s 4.2 cfs is being used to irrigate 168 acres in 2021, not the full 217.5 acres identified on the water right. Tr. Vol. III, 707:11-14. The Director must take into account the actual number of acres being irrigated in 2021. *See* CM Rule 42.01.d. Mr. Taber irrigates with wheel line and pivot sprinklers, and has piped his entire system from the point of diversion to the point of application. Tr. Vol. III, p. 689:13-17.

Mr. Taber testified that he operates his “Home Farm,” the “Ritter Farm”, and the “7 Mile Ranch” as “one operation.” Tr. Vol. III, 703:5-11. Accordingly, the Director should take into account whether water rights are temporarily moved between properties and whether that supply is available for use at times when other rights may be curtailed. *Id.* 703:10-11 (“Q. Able to move water back and forth if needed? A. Yes.”).

Neither Barbara through Mr. Brossy, nor Mr. Taber identified an actual “crop water demand” for their respective properties in 2021. Both witnesses did not identify the application

rate per acre or the total volume needed for the year. Tr. Vol. III, 458:24-25; 459:1-4; 679:21-25; 680:1-9.

The Water District 37 Watermaster, Kevin Lakey, submitted an analysis proposing 3.1 acre-feet/acre, but that was rejected by the seniors. *See* SVGWD & GGWD Ex. 20; Tr. Vol. IV, 864-866. Neither witness testified as to what reasonable in season amount of water is required to fully irrigate the respective crops nor how much water had been diverted to date through the administrative hearing. IDWR should evaluate and identify a crop water need for each crop and field identified above, as well as the total volume diverted through June 21, 2021, for purposes of calculating any demand shortfall for the rest of 2021. Although actual diversions vary year to year, Phil Blankenau concluded that his analysis “did not clearly identify water shortage in the Little Wood and Silver Creek area during the 2013 drought.” IDWR Ex. 3 at 10. This area includes all of the places of use irrigated by Barbara and Mr. Taber identified above. As such, IDWR should take into account water diverted and used in 2013 rather than what was claimed to be an “adequate water year” by the Water District 37 Watermaster.<sup>9</sup>

As to any water rights held by the above seniors with priority dates April 1, 1884 and junior, and all other seniors that testified at the hearing, the request for conjunctive administration should be denied as futile for the rest of the 2021 irrigation season.<sup>10</sup> As set forth below, even

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<sup>9</sup> The so-called “adequate” water year chosen by Eric Miller, based on discussions with Kevin Lakey, cannot not be relied upon by the Department in this proceeding because in that water year, deemed “adequate,” surface water users had six and even eight acre-feet per acre delivered to their headgates, well beyond any recognized duty of water. *See* Bellevue Ex. 1, at 8; Tr. Vol. IV, 884; IDAPA 37.03.02.35.01.j (Beneficial Use Examination Rules); *Id.*, at Appendix A (establishing 3.5 AFA standard for this area of the state).Based on the water-master’s experience, 3.5 acre-feet is high for this area. Tr. Vol. IV, 864:7-11.

<sup>10</sup> The water rights that the defense of futile call apply to are as follows: April 1, 1884 (37-472, Rod Hubsmith), (37-424, Don Taber), (37-973, Barbara Farms LLC); April 30, 1884 (37-321, 7 Mile Ranch LLC); May 5, 1884 (37-10561A, 37-10561B, Big Wood Farms LLC); May 15, 1884 (37-327, Bill Arkoosh); June 3, 1884 (37-460, John Arkoosh); July 17, 1884 (37-461, John Arkoosh); April 1, 1885 (37-328, John Arkoosh); April 15, 1885 (37-432, Charles Newell); May 15, 1885 (37-21401, BWCC); April 1, 1886 (37-272, BWCC); May 15, 1886 (37-329, Bill Arkoosh); June 1, 1886 (37-351B, Lawrence Schoen); April 1, 1887 (37-425, Don Taber), (37-21403, BWCC); June 15, 1887 (37-352B, Lawrence Schoen); April 1, 1890 (37-176, Bill Arkoosh); April 1, 1905 (37-1127, John

assuming for argument's sake that the Model is correct in predicting an increase in flows in Silver Creek on a monthly basis, full curtailment of 23,000<sup>11</sup> acres in the Bellevue Triangle would only produce the following quantities (by the end of each month):

<u>Month</u>	<u>Curtailed CU AF</u>	<u>Silver Creek</u>	<u>CFS</u>	<u>AF</u>
July	7,214		22.7	1,398
August	6,737		28.0	1,720
September	3,502		26.5	1,578

IDWR Ex. 2 at 25 (Table 2).

Applying the measured and calculated losses between the Sportsman's Access Gage and Station 10 taken by IDWR in 2020, the table would be further revised as follows:

<u>Month</u>	<u>Curtailed CU AF</u>	<u>Silver Creek</u>	<u>CFS</u>	<u>AF</u>
July	7,214		<b>15.7</b>	937 (33% loss)
August	6,737		<b>22.4</b>	1,376 (20% loss)
September	3,502		<b>21.2</b>	1,262 (20% loss)

IDWR Ex. 2 at 28 (Table 3); Ex. 2 at 25 (Table 2) (emphasis added).<sup>12</sup>

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Arkoosh); November 6, 1905 (37-13114, BWCC); August 1, 1906 (37-1131, Bill Arkoosh); November 13, 1907 (37-13043, BWCC); April 8, 1908 (37-1126, Carl Legg). *See* Miller Ex. 1, Appendix. B.

<sup>11</sup> Jennifer Sukow testified that her simulated curtailment "would affect water supply for 23,000 acres in the Bellevue Triangle, Tr. Vol. I., 139:12-16, and Justin Stevenson testified that total irrigated acreage in the South Valley Ground Water District is 22,000 to 23,000 acres, Tr. Vol. V, 1158:24-1159:4. The March 10, 2015 *Report of the Idaho Department of Water Resources*, approving the SVGWD, estimates total irrigated acreage at 25,000. For purposes of this memorandum, SVGWD and GGWD utilize Ms. Sukow's 23,000 acres of affected water supply as total irrigated land in the Bellevue Triangle at risk of curtailment.

<sup>12</sup> IDWR's losses were calculated and measured between the 20<sup>th</sup> of each month. The August estimated value (20%) was applied to September.

Kevin Lakey, the Watermaster, testified at the hearing regarding projected curtailment dates of water rights to the Little Wood River:

Q. [MR. FLETCHER]. Have you analyzed which senior priorities in Little Wood and Silver Creek will benefit if junior groundwater rights are curtailed in 2021?

A. [MR. LAKEY]. Yes.

Q. Can you explain how you did that analysis?

A. I used numbers from Jennifer Sukow's work that gave me an idea of how much water would return to Silver Creek or show up in Silver Creek over certain days. So using her numbers, I went back to my estimated priority cut dates and said if there were certain priority cuts that we're estimating, and what Jennifer was estimating would be in Silver Creek more than what we had, and so I made the comparison of the two, and started saying, well, which priority dates might be left on.

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Q. And what was your conclusion in that analysis? What priority dates would be restored if curtailment took place on July 1?

A. There were varying effects on priority rates – or priority dates and the rates we would be able to deliver. The September of '83 would have gotten some, but not their full right. The June of '83 would have gotten, I believe, all of their water. The April 6<sup>th</sup> and April 1<sup>st</sup> priorities would receive water with the July 1 curtailment.

Tr. Vol. IV, 787:12-25; 788:11-20.

As set forth above, Mr. Lakey testified that of the water curtailed, as predicted by the Model, only the April 1, 1883, the April 6, 1883, and a portion of the September 9, 1883<sup>13</sup> water rights would receive water as a result of that curtailment. *See id.* Greg Sullivan, the expert for Sun Valley Company and the Cities, confirmed this testimony reviewing the list of water rights and the fact that other water users (not calling seniors in this case) would receive water as well. Tr. Vol.

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<sup>13</sup> The September 1883 rights are held by Picabo Livestock which is not making a demand for administration. Tr. Vol. VI, 1391:10-11; Tr. Vol. VI, 1405:6-25.

VI, 1427:25; 1428-1430. Curtailing all 23,000 acres of junior groundwater use to supply any water rights beyond the three 1883 rights held by Barbara (4 cfs) and Taber/Ritter (4.5 cfs), would therefore be futile and should be denied accordingly.

Another reason the Director should consider certain surface water users' demands for administration futile, or unsupported by the evidence, is based on the Exchange Condition, also known as Condition 161 on the water rights. Some of the individuals asserting injury have water rights with this Exchange Condition. Tim Luke issued instructions to the watermaster explaining how this condition would be administered. IDWR Ex. 4, at Attachment A. He did not include water users with that condition on their right as being potentially injured by shortages because they had an alternative water supply. Tr. Vol. II, 295:4-6; *see generally* Tr. Vol. II, 288-295; *see* CM Rule 42.01.h. Tim Luke pleaded with those surface right holders to come forward with additional information; no one did. *See* Tr. Vol. II, 297:16-20. Counsel suggested that the amount of water might vary, but no actual evidence was offered to overcome Mr. Luke's analysis, or to show injury to water rights with this condition. *See* Tr. Vol. II, 289:6-290:4.

In general, the “underlying idea behind the Futile Call Doctrine is that the primary purpose of water appropriation is to put water to beneficial use. . . . If a junior is required to respond to a call for water and the outcome will result in no beneficial use by the senior but only in the waste of water, then the junior is excused from responding to the call, and the waste, which is factually and legally undesirable, will be avoided.” Law of Water Rights and Resources § 5:35 (2020) (citing *Kelly v. Teton Prairie LLC*, 376 P.3d 143 (Mont. 2016)).

The Idaho Supreme Court recently addressed “futile call” in *Sylte v. IDWR*, 165 Idaho 238 (2019).<sup>14</sup> In *Sylte* the Court noted:

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<sup>14</sup> The CM Rules define “futile call” as “A delivery call made by the holder of a senior-priority surface or ground water right that, for physical and hydrologic reasons, cannot be satisfied within a reasonable time of the call

The futile call doctrine in Idaho “embodies a policy against the waste of irrigation water.” *Gilbert v. Smith*, 97, Idaho 735, 739, 552 P.2d 1220, 1224 (1976); *see also, Hill v. Green*, 47 Idaho 157, 274 P. 100, 110-11 (1928). Generally, this provides

if . . . seepage, evaporation, channel absorption or other conditions beyond the control of the appropriators the water in the stream will not reach the point of the prior appropriator in sufficient quantity for him to apply it to beneficial use, then a junior appropriator whose diversion point is higher on the stream may divert the water.

165 Idaho at 245 (citing *Gilbert*, 97 Idaho at 739).

Applying the facts of this case to the Supreme Court’s “futile call” standard it is clear that water in a “sufficient quantity” will not reach the senior water rights in this matter with priorities of April 1, 1884 and junior in order to apply it to beneficial use during the 2021 irrigation season. *See infra*, fn.10. Furthermore, the various seniors testified at the hearing that their rights have been or will be curtailed, which even if curtailed groundwater would supply a right junior to September 9, 1883, it would be too late anyway. *See* Tr. Vol. III, 506-07 (Mr. Hubsmith explaining that his right is projected to go off June 15<sup>th</sup> and that he will not “make another cutting”); Hubsmith Ex. 1 (timothy grass hay and pasture, last irrigation 9/30); Tr. Vol. III, 630:15-19 (Mr. Arkoosh testifying that his water will be off shortly after his first cutting and he’ll be lucky to get it watered again to get a second cutting); Bill Arkoosh Ex. 1 (Alfalfa, last irrigation 9/1); John Arkoosh Ex. 1 (potatoes and new seeding oats/alfalfa, last irrigation 9/15); Tr. Vol. III, 697:24-25 (“It probably would not benefit the corn because it would be dead.”); Tr. Vol. III, 710:20-25; 711:1-5 (Mr. Taber explaining that there would be no benefit for wheat or sugar beets); Taber Ex. 1, 7 Mile Ranch Ex. 1; Tr. Vol. III, 724:23-24 (Mr. Legg testifying he is “not currently irrigating” his pasture); Legg Ex. 1 (new seeding pasture, last irrigation 9/30, but not planted); Tr. Vol. III, 736:13-18 (Mr. Newell testifying

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by immediately curtailing diversions under junior-priority ground water rights or that would result in waste of the water resource.” CM Rule 10.08.

that his 4/15/1885 right was going off “tomorrow or the next day”); Newell Ex. 1 (alfalfa hay, grass hay and pasture, oat hay, last irrigation 9/30); Tr. Vol. III, 653:5-6, 662:3-11 (Mr. Huyser explaining his 1884 right was cut on June 2<sup>nd</sup>, and explaining what happens to his wheat crops for remainder of irrigation season); Big Wood Farms Ex. 1 (winter wheat, last irrigation 7/15; spring wheat, last irrigation 7/25).

Moreover, the evidence shows that in prior drought years, rights junior to 1883 have been curtailed during the irrigation season regardless of groundwater pumping. Tr. Vol. III, 504:15-21; 626:3-4; 700:3-16; 702:10-12. The fact such administration would be “futile” is further proven by the Model curtailment scenarios which predict that 67% of the curtailed groundwater would remain in the aquifer for July, August, and September 2021. *See* IDWR Ex. 2 at 25, Table 2 (predicting 67% increase in aquifer storage). The seniors’ own expert, Mr. Eric Miller, confirmed that such curtailment was not an “optimum utilization of the water resource” for the balance of the 2021 irrigation season. Tr. Vol. IV, 986:5-25; 987:1-2.

As set forth above, the evidence in the record shows that only the water rights of April 1, 1883 and April 6, 1883 would suffer possible injury due to groundwater pumping in the Bellevue Triangle in 2021. Even if all 23,000 acres are curtailed, only water rights 37-49 (Ritter), 37-423 (Taber), and 37-344A (Barbara Farms LLC), are projected to receive any water resulting from curtailment during the 2021 irrigation season.

Similar to the surface rights with priorities April 1, 1884 and junior, the Director should deny conjunctive administration of any ground water rights in order to satisfy BWCC’s water right 37-444 (April 6, 1883) during the 2021 irrigation season. At hearing, BWCC’s President Carl Pendleton testified that the company does not deliver water right 37-444 once it closes the Dietrich Canal. Tr. Vol. III, 541:1; 542:1-17. (“Q. . . would Big Wood Canal Company be able to take



delivery of any of its Little Wood rights this year? A. We would not.”). Instead, the water dedicated to that right remains in the Little Wood River, available to fill other senior water rights or those just junior (i.e., June 14, 1883 or September 1, 1883). Since BWCC discontinued deliveries on June 10<sup>th</sup>, it would not be able to put water right 37-444 to beneficial use for the rest of the 2021 irrigation season.<sup>15</sup> Tr. Vol. III, 548:24-25; 549:1-10. As such, any curtailment of junior ground water rights in the Bellevue Triangle for water right 37-444 would be futile.

Consequently, the Director should apply and confirm that “futile call” prevents curtailment of junior groundwater rights in the Bellevue Triangle to satisfy surface water rights with priorities April 1, 1884 and junior.

#### **B. SVGWD Groundwater Users’ Water Rights and Water Use and the Impact of Proposed Curtailment.**

The boundary line drawn by the *Notice* and Jennifer Sukow’s Staff Memo encompasses the ground water users within most of the South Valley Groundwater District and a small number of users in the Galena Ground Water District. The Bellevue Triangle area of potential curtailment relies on surface water deliveries to the major canals in the Bellevue Triangle, the Baseline and the D45 canals which are positively correlated with flows in the Big Wood at Hailey. IDWR Ex. 4 at 4; Tr. Vol. I, 160:12-21.

The canal systems are a major source of water for the ground water in the Bellevue Triangle. SVGWD & GGWD Exs. 3, 24. The canals experience significant conveyance losses, adding to the groundwater supplies and the flows in Silver Creek. Tr. Vol. V, 1153-54; SVGWD

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<sup>15</sup> Mr. Pendleton testified that BWCC had rented the water right in the past, but that it did not have a rental in place for 2021. Tr. Vol. III, 567:5-16. Moreover, IDWR has previously refused to conjunctively administer junior ground water rights in order to supply water to a senior for rental purposes. *See e.g., Second Amended Order Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* at 27, ¶ 80 (SWC Call Case, June 23, 2010). Applying that policy here the Director should not obligate junior groundwater users to curtail or mitigate for a water right that is not put to beneficial use or rented.

& GGWD Ex. 32. Jennifer Sukow agreed in her testimony that Attachment G to the USGS Report utilized a 60% conveyance loss in the D45 and Baseline Canals as an input to the Model. IDWR Ex. 2; Tr. Vol. I, 150:1-25; 151:1-2 . There is a positive correlation between diversions into the D45 and flows at the Sportsman's Access gauge on Silver Creek. SVGWD & GGWD Ex. 24 at 23. Both the Hailey gauge flows and D45 canal diversions, correlations to Silver Creek flows are statistically stronger by R2 values than the correlation between groundwater levels in the Bellevue Triangle and the flows at Sportsman's Access. *Compare* IDWR Ex. 6 with IDWR Ex. 1, Figure 9.

The South Valley Groundwater District encompasses approximately 22,000 - 23,000 acres of irrigated crop land served by ground water. Tr. Vol. V, 1158:22-1159:4. The primary crops grown in the Bellevue Triangle are barley/grains, alfalfa, pasture and cattle, with some potatoes, and other miscellaneous crops. Tr. Vol. V, 1159:13-25. Most of the land in the South Valley District has both surface and ground water, with some lands on the Bellevue Triangle exclusively supplied by surface water and some exclusively by ground water. In 2021 the Big Wood surface water supplies are expected to be completely out of water by early July. *See e.g.*, Tr. Vol. IV, 1076:12-14.

By the time the *Notice* was issued in May 2021, the crops were in the ground and contracts were executed. Water was being delivered at the time of discussions of the advisory committee in March, and early April water supplies were predicted to be available well into July when the barley crops would no longer need to pump groundwater. Given what was known at the time, planting crops in April was a reasonable decision.

The *Notice* and Staff Memo of Jennifer Sukow both propose curtailing all ground water use in the Bellevue Triangle as of July 1, 2021. IDWR Ex. 2 at 29. The Staff Memo does not conclude, or even suggest, that there is insufficient water in the aquifer to satisfy the needs of the

ground water users. Instead, it focuses on the consequence of a complete, 100%percent curtailment on flows in Silver Creek and Little Wood. The Staff Memo does not examine the benefits of a partial curtailment, either on a time priority basis, or by location, or by influence of a particular well or wells on Silver Creek. Slashing all groundwater use with a single stroke of the pen is not consistent with the 1991 Big Wood Ground Water Management Area Order which established a goal to assure that early appropriations of ground water are protected with a reasonable pumping level. SVGWD & GGWD Ex. 3 at 1. Nor would a 100% curtailment be consistent with Idaho Code § 42-226 (The 1951 Ground Water Act). There, the legislature directed that, while first in time is first in right is recognized, a reasonable exercise of the right “shall not” block full economic development of the State’s ground water resources.

Indeed, doing as some of the seniors and their counsel demand and curtailing solely based on the relative priorities of surface water users vis-à-vis ground water priority dates would violate Idaho Code § 42-226 and Idaho’s long-held policy of securing the maximum use and benefit and least wasteful use of Idaho water’s resources, and even the very concept of conjunctive management. *IGWA v. IDWR*, 160 Idaho 119, 131, 369 P.3d 897, 909 (2016); CM Rule 10.03. As the Supreme Court held there is a point where curtailment is unjustified because vast amounts of land would be curtailed to produce a very small amount of water to a caller. *Id.* at 120, 369 P.3d at 910.

With that legal backdrop it is important to consider the impact of a 100% curtailment, as modeled by Jennifer Sukow, against the benefits. Starkly, over two-thirds of the curtailed water would remain in the aquifer, unavailable for any use, and the vast majority of that water would leave the aquifer during the coming, non-irrigation season. IDWR EX. 2, at 24-25. Sadly, this curtailment would waste more water than it would yield. The Idaho Constitution and statutes do

not allow hoarding of water, nor permit wasting water. *American Falls Reservoir District No. 2 v. IDWR*, 143 Idaho 862, 880, 154 P.3d 433, 451 (2007). Yet that would be the result of a curtailment. Surface water users would command large volumes of water even though they would actually use only a small quantity.

Mark Johnson is a potato farmer operating as Silver Creek Seeds. He grows seed potatoes for a variety of commercial growers on 750 acres in the Bellevue Triangle. He entered into contracts with his customers, and with landowners to rent the fields last fall. The fields were all planted before this proceeding began. Potatoes must have water until the first of September to survive, then a little water at harvest time at the end of September. The July 1 curtailment order would kill his crops. He would go out of business. Thirty-five years in the potato business would be over. His customers would leave him, looking for a more reliable supplier. Tr. Vol. V, 1055-56.

Stuart Taylor has been the ranch manager at Wood River Ranch since 2012, he testified about the impact of curtailment on the pasture land used to raise cattle on the Wood River Ranch. Tr. Vol. V, 1077-80. If ground water is not available, the pastures will not be able to support the cattle on the ranch for the remainder of the season through the time when he moves the cattle herd to winter pasture in October/November. Rather than sell the cattle and lose the valuable genetic makeup of the herd, he would choose to buy hay which would cost \$250,000-\$300,000 just in 2021. Tr. Vol. V, 1079:15-17 If he did feed hay, he would lose calves to disease and would lose 40% of the reproduction from the cows, over the next season.

Mr. Taylor also explained the many water management improvements he has implemented on the ranch since he arrived in 2012. Tr. Vol. V, 1070-75. He has reduced the water application dramatically. He introduced alternative forage crops to create a wider biodiversity to replace the

pre-existing mono culture. This biologically diverse pasture needs less water and, importantly, consumes less water. Since these measures have been implemented over time, none of this information about water use, crop requirements or other changes has been, or could have been, incorporated into the Model, which was based on data up to 2014 and with only limited actual pumping data from the Bellevue Triangle. The ranch has also placed some of its water in the water bank and dried up acres in an effort to be a good neighbor and a good steward of water resources in the basin. Tr. Vol. V, p. 1067:1-3; 1081:11-20.

Also significant to the proceeding is the location of Wood River Ranch at the far western boundary of the Model, straddling the Big Wood River. Mr. Taylor has never observed impact to flows on Silver Creek from operations on the ranch. Tr. Vol. IV, 1086:21-25.

Gary Beck has been the Ranch Manager for Hillside Ranch for twenty-two years. Mr. Beck explained that the barley crop on the ranch is contracted to Coors and Anheuser-Busch under long-term agreements. Tr. Vol. V, 1128-1129. The ranch produces both organic and conventional barley crops for these customers. In 2009 Gary and the ranch began experimenting with water savings projects. Tr. Vol. V, 1113. Hearing of the ranch's interest in water conservation, Coors, teaming with The Nature Conservancy, identified Hillside Ranch as the Coors Model Barley Ranch. Working with Coors and TNC, the ranch over the years found ways to reduce its water use by 40%, including by eliminating end guns, lowering sprinklers, drying up corners, eliminating wheel lines, improving sprinkler packages, using variable speed pivots to direct water to where it is needed the most, relying on soil moisture monitors to measure water needs, reducing the number of days the pivots run to 4 or 5 days per week, and enrolling in the Peak savings program to turn off the pumps during evening high load hours for twelve hours each week. Tr. Vol. V, 1113-1125.

None of this updated usage or pumping information has been incorporated into the Model. Moreover, in 2021 Mr. Beck plowed up 2500 acres of alfalfa and planted barley because barley uses less water. Tr. Vol. V, 1106:24, 1115:17-1116:5. Significantly, Mr. Beck, who is from Burley and who has relatives in the Richfield – Gooding area, recently toured the Richfield – Gooding area looking at the irrigation practices. He did not see similar types of water conservation measures in use there as had been implemented on Hillside Ranch. Tr. Vol. V, 1130:20-25; 1131:1-16.

Mr. Beck explained the consequences of a July 1 curtailment on the barley crop. Tr. Vol. V, 1128:12-13 (“So if we’re shut off on July 1<sup>st</sup>, the crop will not make grade at all”). The last two weeks of water are critical to allow the kernels to plump up to meet Coors and Anheuser-Busch standards. Tr. Vol. V, 1128:12-25; 1129:1-23. The brewers’ field men have advised that a water curtailment will mean that the crop will not be acceptable under the contracts and will be rejected. *See Id.* Mr. Beck’s experience with the barley crop bears out that assessment. If the crop is rejected, the cost of harvesting for feed barley would not justify the revenue and the entire crop would be lost at a revenue loss of \$2 Million. *See Id.* Guest workers on the ranch from Mexico would have to be laid off and required to return home. Tr. Vol. V, 1131:22-25; 1132:1-5. Long term consequences would be severe. Long term contracts would likely not be renewed in previous quantities, or at all, if the customer cannot depend on Hillside Ranch to reliably produce a crop on a regular basis.

Zach Hill has been responsible for water management improvements at the Silver Springs Ranch on the headwaters of Silver Creek. He explained the water conservation measures that the ranch has undertaken to benefit Silver Creek. He also explained the recharge and wildlife water rights on the ranch that collect waste water and drain water, directs that water toward Silver Creek and hence, have resulted in an increasing trend in the flows from the springs and creeks on the

ranch that are main headwaters of Silver Creek. Tr. Vol. V 1199:18-1202:2; SVGWD & GGWD Ex. 40. Since 2015 to the present – Grove Creek, Mud Creek, Wilson Creek, Cain Creek, Patton Creek, and Chaney Creek are all trending upward. None of this information about increasing trends in the springs and creeks tributary to Silver Creek is incorporated in the model.

Throughout the Bellevue Triangle there have been vast improvements in water conservation measures and water use. Moreover, various fields throughout the Bellevue Triangle are not being irrigated in 2021. Yet, none of this information is calibrated in the Model since it only includes data through 2014, nearly a decade old now. The Model is a generation behind regarding water conservation, use, and up-to-date measured data, as well as 2021 consumptive use.

The injury to the crops described by Mr. Johnson (potatoes), Mr. Taylor (pasture and cattle) and Mr. Beck (barley) apply across the entire Bellevue Triangle and 22,000 – 23,000 acres of land irrigated from wells. South Valley members anticipate losses from a July 1 curtailment, occurring in the middle of the irrigation season, well in excess of \$12 Million. Tr. Vol. V, 1129:2-9, 1163:9-10. These losses are unacceptable give the Director’s duties under Idaho law and the projected benefits resulting from curtailment compared to the impacts on junior groundwater users.

**C. There Are Multiple Issues with The Model Which Make It an Insufficient Tool for The Department to Rely Upon for a Curtailment in This Proceeding.**

Although the Model may be the “best” scientific tool currently available, there are significant questions regarding whether it is the right tool for curtailing the ground water users in the proposed curtailment area.<sup>16</sup> Indeed, there are multiple uncertainties with the Model as well as aquifer parameters questions, such as hydraulic conductivity, that make the Model an insufficient tool to use for the purpose intended by the Director in this case, which is a partial season

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<sup>16</sup> In contrast, the ESPA model went through multiple iterations before it was used for administration. *See infra*.



curtailment to benefit downstream senior surface water users for irrigation purposes from July 2021 through September 2021. In this matter it is undisputed that IDWR model runs and supporting information were not supplied until May 18<sup>th</sup> and May 21<sup>st</sup> respectively. The Districts were prevented from conducting any meaningful analysis or recalibration to evaluate water data and information gathered since 2014 (the last year used to calibrate the Model). Tr. Vol. V, 1288. Moreover, the modeled boundary of curtailment is arbitrary and capricious as it is not based upon actual groundwater hydrology in the basin.

For instance, the Model's uncertainty, as calculated by Allan Wylie a former Department staff member, is at least twenty-two (22%) percent over a ten (10) month span. SVGWD & GGWD Ex. 15. Notably, Mr. Wylie's analysis only included two (2) cells within the Bellevue Triangle. *Id.* Given the limited review of cells within the proposed curtailment area, it is possible that the Model's uncertainty in that area may be even greater than twenty-two (22%) percent. And, as Dr. Powell, an engineer at Brockway Engineering testified, the more the response time-period is reduced, the more the Model's uncertainty will increase. Tr. Vol. V, 1267:9-1268:4. Thus, Ms. Sukow's analysis for the Department, which was based upon a three (3) month time-period, likely has an uncertainty of greater than twenty-two (22%) percent – a fact which Ms. Sukow admitted in her Memorandum to the Department as well as during the Hearing in this matter. IDWR, Ex. 2 at 29; Tr. Vol. I, 220:7-18. Notably, no one, including the Department's staff, has had enough time to determine what the actual uncertainty of Ms. Sukow's analysis is.

There is additional uncertainty regarding the Model's results based on a lack of data. In fact, the Model Final Report which was authored by Mr. Wylie and Ms. Sukow among others, recognizes that there are significant gaps in data and in the Department's understanding of the aquifer that are "apparent" – which Ms. Sukow corroborated during her testimony at the Hearing.

SVGWD & GGWD Ex. 14 at 26; Tr. Vol. I, 152:23-156:22. Specifically, Mr. Sullivan, a senior water resources engineer with Spronk Water Engineering, testified that the Model is based on assumed values for pumping prior to 2014, especially in the proposed curtailment area, even though additional data has been collected since that time which includes pumping data, ET, stream measurements, aquifer levels and efficiency. Tr. Vol. VI, 1439:5-1440:7. That additional data, however, has not been included in the calibrated Model. Tr. Vol. V, 1270:2:7. The Model does not account for lands being left fallow throughout the Bellevue Triangle in 2021 as well. Certainly, this additional data is useful and should be used to re-calibrate the Model to allow for more accurate evaluations, which is extremely important in this case since the Department is currently relying on data that is more than seven (7) years old to make a decision regarding curtailment. Although the Model's lack of data was originally pointed out in the Model Final Report, the Model has not been recalibrated to incorporate this additional data so the data gaps still exist today. Tr. Vol. V, 1268:16-1270:12.

Given the Department's short notice of this proceeding, the junior groundwater users were hamstrung by not being able to perform a different analysis with seven (7) years of additional data that may have disclosed a different result. Tr. Vol. V, 1288:11-24. As such, there has been no meaningful opportunity to conduct this work and provide it in the context of this case.

The junior ground water users are further prejudiced by the fact that they did not receive the Department's staff memoranda, including Ms. Sukow's, until May 18, 2021<sup>17</sup> with supporting information provided later, which was less than three (3) weeks prior to the start of the Hearing. This prevented any possibility of the junior ground water users from having a chance to recalibrate

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<sup>17</sup> Notably, Ms. Sukow began her modeling activities in March 2021, which was two (2) months prior to the time that her calculations were provided to the junior ground water users. Tr. Vol I., 187:1-7. Although the Department had the benefit of such time to conduct the analyses, the Districts were given less than three weeks.

the Model with updated information to show more accurate results. Completing work with a complex groundwater model is not something that can be accomplished in mere days. Instead, a thorough evaluation can take weeks or months.

Notably, Ms. Sukow's Memorandum does not address response functions even though she reviewed them during her Modeling activities. Tr. Vol I., 187:1-7; Tr. Vol. V, 1273:14-1274:3; *See also* IDWR Ex. 2. This is an important point to recognize because it means that, despite having information relating to the impact of each well within the proposed curtailment area, the Department did not rely upon the response functions to determine where the proposed curtailment area should be located. In addition to the Department's failure to take into account response functions, it is unable to predict whether water will actually make it downstream to senior surface water users if a curtailment occurs. This is because Model version 1.1 does not have the ability to predict this important information nor does it have the ability to account for conveyance losses in any way. Tr. Vol. VI, 1435:18-1436:13. Although this technology exists, it is not incorporated into Model version 1.1. Tr. Vol. VI, 1436:17-1437:7. If such technology was incorporated into the Model and properly calibrated, Mr. Sullivan opined that there would be greater confidence in the Model's results because the Department would be able to "simulate the seepage losses of the additional flow and getting it down to the Sportsman Access gage, and potentially also a diversion of that water, if there are diversions." Tr. Vol. VI, 1436:25-1437:7.

Mr. Powell also testified that he has low confidence in the model calibration constraints, especially the hydraulic conductivity values. Specifically, he testified that of the Model's three layers, layer one had a hydraulic conductivity value of over 500,000 feet per day and layer two had a hydraulic conductivity value of more than 950,000 feet per day. Tr. Vol. V, 1270:20-12721:11. Mr. Powell explained that these are extremely high values which he has never seen

before and he did not believe they were based on realistic values, especially when compared to Model version 1.0's values which are more reasonable. *Id.* To rectify these errors, Mr. Powell opined that the Model should be re-calibrated with more constraints on values. *Id.* It is important to recognize that this testimony is unrebutted even though the Department offered other rebuttal testimony.

Given the unrealistic aquifer parameters, it is unknown whether the Model version 1.1 is actually an improvement over Model version 1.0. And, accepting and using a model without qualification, when that estimate has a calculated error rate of over twenty-two (22%) percent raises serious questions when curtailing established property rights. Stated another way, the Director should have reasonable certainty of the results when he is proposing to curtail 23,000 acres and cause initial estimates of economic damage near \$12 million dollars in order to supply surface water to only 615 acres. This Model has not reached that point of certainty based upon unrealistic parameters, high calculated uncertainty, and the lack of required data.

With respect to an early version of the Eastern Snake Plain Aquifer Model (ESPAM), IDWR implemented a careful approach concerning the use of a groundwater model for curtailment. With respect to an error factor for ESPAM 1.0, Justice Schroeder, the Hearing Officer in the Spring Users' proceeding explained:

The former Director recognized that there had to be a margin of error in the application of the model and assigned a 10% error factor. This conclusion was based on the fact that the gauges used in water measurement have a plus or minus error factor of 10%. Some will be high; some will be low. The Director concluded that the model could be no better than the measuring gauges and used the 10% margin absent a better figure developed through further testing of the model.

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The evidence is clear that the model is not perfect and should have an error factor developed to utilize. It may be simple but true – a 10% factor is closer to accurate

than no error factor, once the scientists agree, as they do, that an error factor is desirable.

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The Director's use of the "trim line" to limit curtailment was proper.

*Opinion Constituting Findings of Fact, Conclusions of Law and Recommendation* at 14, 22 (Spring Users' Call, Jan. 11, 2008).

The Idaho Supreme Court addressed the issue on appeal in *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790 (2011). In that case the Court found:

Former-Director Dreher relied upon the Department's ground water model in issuing the curtailment orders. However, he found that the model had an uncertainty of up to ten percent due to the margin of error in stream gauges used in developing the model. Based upon that level of possible uncertainty, he limited the junior water rights curtailed. . . . The Director also found that "the degree of uncertainty associated with application of the [Aquifer] ground water model is 10 percent."

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The court stated, "The evidence also supports the position that the model must have a factor for uncertainty as it is only a simulation or prediction of reality. . . . Given the function and purpose of a model it would be inappropriate to apply the results independent of the assigned margin of error." The court concluded, "Accordingly, the Director did not abuse discretion by applying the 10% margin of error 'trim line.'" The issue is whether the district court erred in upholding the Director on the ground that he did not abuse his discretion in not curtailing ground water appropriators who are within the model's margin of error.

\* \* \*

The Director concluded that there was up to a 10% margin of error in the groundwater model due to the margin of error in the stream gauges, and he decided not to curtail appropriators who were within that margin of error when deciding whether they were causing material injury to the Spring Users' water rights. . . . The district court did not err in upholding the Director's decision in this regard.

150 Idaho at 812, 816-17.

Whereas the Department previously excluded junior ground water rights within the identified margin of error, or model uncertainty of ten (10%) percent, the same protocol is even more warranted in this case where the Model's calculated error is over twice that number, *i.e.*, over

twenty-two (22%) percent. The predictions are even more uncertain in the Bellevue Triangle as the Model is non-linear and there are two aquifer sources, an unconfined and confined aquifer. Therefore, if the Director makes a decision on curtailment based on Model version 1.1, he would be making his decision with a very high error rate. Based on the above, the Districts submit that the Model is not sufficiently developed for purposes of conjunctive administration and cannot be reliably used to curtail junior groundwater rights in 2021.

**D. Water Users Anecdotal Claims of Immediate Response from Turning Off Pumps Is Unscientific; Unreliable and Not Supported by Any Scientific or Technical Measurement Data.**

The surface water users repeatedly made claims that when pumps in the Bellevue Triangle were turned off there is an immediate response in flows at Station 10. *See* Tr. Vol. III, 473:10-18; 493:15-24; 659-660; 740:15-18. The water users never identified which pump or the amount of pumping reductions, and never identified specific measurements showing any actual response, timing of response or volume of water.

Primarily, they relied on an incident in August 2020 when the watermaster requested that pumps be turned off to enhance flows at Station 10. Tr. Vol. IV, 785:10-786:8. The watermaster testified that he did make a request for pumping reduction in August 2020 to see if there would be a response at Station 10. *Id.* Following that request, the watermaster testified that he noticed that Station 10 flows experienced a noticeable uptick in flows. *Id.* However, a number of compounding factors make this observation unreliable as a basis for establishing cause and effect to any purported injury, particularly as to timing and volume of the responses.

First, at that same time of the request, surface water in Silver Creek went out of priority, including the Picabo Livestock's September 1883 right of 20 cfs. Tr. Vol. IV, 829:9-11. This means that 20 cfs was not being diverted above Picabo. Second, the watermaster did not know if

or how many pumps turned off or what volume was no longer being pumped. Tr. Vol. IV, 786:19-787:1. The watermaster said that he accounted for the surface water rights going out of priority and still had about 10 cfs of unaccounted-for increase in flows, which he attributed to pumping reduction. *Id.* However, his calculation of unaccounted-for flows failed to take into account a significant fact. He admitted that Nick Purdy (Picabo Livestock) had turned on a pump and pumped 8 cfs directly into Silver Creek at this same time. Tr. Vol. IV, 855:5-12. He also admitted that he did not account for this direct pumping into the creek when expressing his opinion that there was 10 cfs of unaccounted-for increase in flow, and admitted that this direct pumping represented the vast majority of the unaccounted-for increase in flows. Tr. Vol. IV, 786:19-787:1.

The claims of immediate response from turning off pumps do not represent the best available science. They are not supported by any real data. Instead, such assertions are pure speculation. Speculation is the “art of theorizing about a matter as to which evidence is not sufficient for certain knowledge.” *Karlson v. Harris*, 140 Idaho 561, 432, 97 P.3d. 428, 565 (2004) (citing Black’s Law Dictionary 1255 (5th ed.1979)). Whether Mr. Lakey is an expert or a lay witness does not matter, his testimony cannot be based on inadmissible speculation. *Tech Landing LLC v. JLH Ventures, LLC*, 162 482, 490, 483 P.3d. 1025, 1033 (2021). Moreover, any claims of the individual water users purporting to tie the timing of unknown wells being turned off with increased flows in the Little Wood River are not admissible testimony because they have no first-hand knowledge of the facts they purported to relay. Idaho Rule of Evidence 602; Comment to IRE 602 (“Rule 602 is intended to continue the common law requirement that a lay witness must have “first hand” knowledge of the facts to which he testifies.”). Several senior witnesses admitted they did not know which pumps had a direct impact on Silver Creek flows or were causing injury



to senior surface water rights. Tr. Vol. III, 456:15-18; 500:15-18; 612:19-25; 613:1-10; 663:22-25; 664:1-6; 706:20-25; 707:1-2; 723:11-19.

**E. Comparison Of Priority Cut Dates in the 1930s With Current Projected Priority Cut Dates Does Not Establish Material Injury.**

The Director's Request for Staff Memoranda asked staff as part of an evaluation of potential methods of determining injury to compare deliverable priorities as between analogous water years prior to pumping and deliverable dates that might be expected in 2021. Tim Luke's Staff Memo, §10 responded by observing that water years 1937 and 1939 had similar values for the Hailey gauge records, based on NRCS SWSI report when compared to the April 1 NRCS forecast for 2021. IDWR Ex. 4. He concluded correctly that the 1930s for the most part, preceded groundwater development in the Bellevue Triangle. IDWR Ex. 4 at 21. Mr. Luke then identified water master delivery records for more recent analog years to 2021. He compared curtailment volumes between 1937/1939 and 2004/2020, which he selected as analog years to 2021. On the first day of the hearing, Sean Vincent provided a stream flow forecast updated to June 1, 2021, which showed that the forecast had deteriorated significantly since the April 1 forecast. By June 1, the NRCS forecast placed the stream flow at Hailey as one of the worst years, in the past 30 years, Tr. Vol. I, 48:2-15, with a SWSI forecast number of -4.0. IDWR Ex. 5; Tr. Vol. II, 340:9-10. The result of this forecast change is that the 1937 and 1939 water year no longer match the current forecast run off for 2021, since the 1937 and 1939 SWSI numbers were -3.2 and -3.0. Tr. Vol. II, 339:24-340:5. Not -4.0, which is the June 1, 2021 forecast. IDWR Ex. 5.

The change in forecast would result in different analog years in the pre-pumping period. Tr. Vol. I, 51:8-15. In fact, now 1931 is a more comparable year for pre-groundwater development based on the June 1, 2021 NRCS forecast. Tr. Vol. II, 299:5-11. IDWR does have curtailment

records from the Black Book for 1931. *Id.*; SVGWD & GGWD Ex. 39 at 11. But IDWR did not run the numbers for the 1931 water against a comparable water year to the 2021 SWSI forecast.<sup>18</sup>

The net effect is that 1937 and 1939 are no longer the right pre-ground water development years to compare to the current water year. The year 1931 would be similar, but that comparison was not done by IDWR. Thus, the comparisons in Mr. Luke's Staff report are no longer appropriate. Moreover, the comparisons do not prove injury, as Mr. Luke agreed. Tr. Vol. II, 341:6-11.

Another significant problem with comparing water years from the 1930s to current years is that since the 1930s Silver Creek and the Little Wood have deteriorated significantly in their ability to transmit water downstream to Station 10 on the Little Wood without excessive seepage losses. In the 1930s and 1940s, the Water District<sup>19</sup> was engaged in a program to maintain the banks of the creek to prevent channel losses. For example, the 1931 Black Book reports work performed to prevent loss of water to sink holes in Silver Creek. SVGWD & GGWD Ex. 39 at 7; Tr. Vol. IV, 858:7-859:2. Seepage losses in the creek and river were estimated at 15% for the 1930s. SVGWD & GGWD Ex. 39. In the 1940s, the water district entered into an easement agreement with landowners on Silver Creek to build up, repair and maintain the banks of Silver Creek specifically to prevent the loss of irrigation water. SVGWD & GGWD Ex. 12 at 1; Tr. Vol. IV, 858:7-859:2.

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<sup>18</sup> SVGWD witness Dave Shaw offered testimony comparing the 1931 water year with current water years in modern times with the earliest curtailment dates in the Little Wood River, but the Director did not admit the testimony on the ground that it was "not SWSI." Tr. Vol. V 1357:18-1359:7; *See also* SVGWD & GGWD Ex. 42. Yet, as Mr. Vincent testified, the NRCS SWSI report values that are taken from the USGS Hailey Gauge records. If anyone looked at the USGS records they would be looking at the same data that is reported by the NRCS SWSI report. Tr. Vol. VI 1466:25-1467:13. Mr. Shaw, rather than relying on the NRCS report, went directly to the same data that is the basis for the NRCS reports. So, while his opinion is "not SWSI," it relies upon the same data

<sup>19</sup> WD 11AB, now WD 37.

Since the current water master has been in office for the past 20 years, the water district has not maintained the banks of the Creek as set out in the easement and has not sought permits for any such work. Lakey Testimony. Not surprisingly, then, the seepage losses between Sportsman's Access and Station 10 have approximately doubled to a range of 20-37%. IDWR Ex. 2 at 26; Tr. Vol. I, 140:21-141:12. The water master measured approximately 20 cfs was being lost at a single stretch on Silver Creek in March 2021. Tr. Vol. IV, 852:8-10 Moreover, reliable evaluation of seepage losses is frustrated by measurement uncertainty. Tr. Vol. I, 131:21-25. IDWR views the Station 10 measurements as "poor." Tr. Vol. I, 232:3-9.

As testimony on the last day of the hearing showed, even today, during an inadequate water supply where users are demanding water, there are significant obstructions in the creek and river. Mr. Purdy found two beaver dams, one on Silver Creek and one on the Little Wood, that were backing water up and on to adjacent land. When he partially breached the beaver dams, increased flows showed up at Station 10 right away. Tr. Vol VI, 1396:13-18; SVGWD & GGWD Exs. 43-46. Beavers will return and repair the dams if the beaver are not trapped. Tr. Vol. VI, 1407:18-22, 1408:6-14. The Supreme Court has long held that the law of Idaho is that a junior water right holder has a "vested right to insist on the continuance of the condition that existed at the time he made his appropriation." *Bennett v. Nourse*, 22 Idaho 249, 253, 125 P. 1038, 1039 (1912).

These current obstructions are further reason that comparing flows and curtailment dates in the 1930s with the current flows and potential curtailment dates is fraught with uncertainty and not a reliable way to establish injury.

#### **F. The Notice Limited the Scope of The Hearing to the Irrigation Season.**

Big Wood Canal Company ("BWCC") attempted to assert injury to its stock water right after the irrigation season. Tr. Vol. III, 544:8-16, 545:11-17. BWCC offered no evidence to

quantify such injury. The model results do not predict any amount of flow that might be available for this right after the irrigation season. IDWR Ex. 2, at 25. BWCC did not testify how it would put that water to beneficial use. Consequently, BWCC failed to comply with the directive from the pre-hearing conference to do more than show a water right that might suffer a shortage. Moreover, any claim to injury to a water right beyond the 2021 irrigation season is beyond the scope of this proceeding and should not be considered.

**G. The Impact of Galena Ground Water Users to Silver Creek Is Nominal and Does Not Justify the Department's Proposed Curtailment.**

Only twenty-one (21) out of over four (400) hundred of Galena GWD's members' water rights are located within the proposed curtailment area. SVGWD & GGWD Ex. 41. The total decreed flow rate for those twenty-one (21) water rights is only 4.04 CFS. *Id.*; Tr. Vol. V, 1273:5-13. But, based on Mr. Powell's calculations, the flow rate that would be curtailed under a curtailment order would only be 3.8 CFS, which he opined would have a nominal impact on Silver Creek. Tr. Vol. V, 1275:10-13; 1301:11-14.

Such conclusion is based on Mr. Powell's review of the response functions of the Model's cells located within the Galena GWD area, which were provided by Ms. Sukow in her shape files. Tr. Vol. V, 1274:4-8. The response functions in those shape files were based on a five (5) month percentage of what water would show up in Silver Creek if a curtailment occurred. Tr. Vol. I, 197:13-198:12. It is unclear whether that five (5) month period was for 2002 or 2007, which is important because the percentages would change since the Model is not linear. Nevertheless, based on the information that Ms. Sukow provided in her shape files, Mr. Powell calculated the response functions of the cells within the Galena GWD area to be between a 4.6%-20% response. *Id.* at 1274:4-12. Mr. Powell also ran the Model to obtain the actual model response for the cells encompassing the twenty-one (21) Galena ground water users' water rights during the curtailment

period, which quantified that amount at less than 0.5 CFS. *Id.* at 1276:16-1277:1; 1302:2-9. Certainly, this nominal amount of water does not justify a curtailment of Galena GWD's members.

#### **H. Curtailment Would Violate Idaho's Law on Optimum Development and the Principle of Conjunctive Management of Surface and Ground Water.**

The Director must evaluate the proposed 2021 conjunctive administration in the context of the Ground Water Act and other Idaho law. In general, the Director is proposing to curtail approximately 23,000 acres in the Bellevue Triangle in order to support the temporary irrigation of 615 acres located downstream (i.e., Barbara Farms LLC = 217.5; Taber = 229; Ritter = 168). As a comparison, the administrative action would be the equivalent of curtailing ninety-eight (98) acres in order to supply water to two (2) acres ( $23,000/615 = 0.02$ ). Idaho law provides the following policy considerations when evaluating conjunctive administration in this context.

First, Idaho Code § 42-101 charges the Director with the following concerning irrigation rights:

Water being essential to the industrial prosperity of the state, and all agricultural development throughout the greater portion of the state depending upon its just apportionment to, and economical use by, those making a beneficial application of the same, its control shall be in the state, which, providing for its use, shall equally guard all the various interests involved.

I.C. § 42-101 (emphasis added).

While the prior appropriation doctrine controls distribution of water to the various rights, this provision has important consideration in the context of this proceeding where the Director did not initiate the matter until May 4, 2021, well after the irrigation season began. Faced with a decision as to how to administer for the balance of the irrigation season, the Director must "equally guard all the various interests" of the seniors and juniors and make a decision in the best interest of the State at this late date. Curtailing 98% of the acres involved in order to supply water to a

mere 2% is not “economical” and does not lend itself to the continued industrial prosperity of the state for the rest of the 2021 irrigation season.<sup>20</sup>

Next, the Ground Water Act specifically requires consideration of the following:

The traditional policy of the state of Idaho, requiring the water resources of this state to be devoted to beneficial use in reasonable amounts through appropriation, is affirmed with respect to the ground water resources of this state as said term is hereinafter defined and, while the doctrine of “first in time is first in right” is recognized, a reasonable exercise of this right shall not block full economic development of underground water resources.

I.C. § 42-226.

The Idaho Supreme Court addressed the Ground Water Act’s concepts of “reasonable use,” “beneficial use, and “full economic development” or “optimum development of water resources” in *IGWA v. IDWR*, 160 Idaho 119, 369 P.3d 897 (2016) (hereinafter “*Rangen*” case). In *Rangen*, the Court held the following:

The Court has previously held that hydrologically connected surface and ground waters must be managed conjunctively. . . . “While the prior appropriation doctrine certainly gives pre-eminent rights to those who put water to beneficial use first in time, this is not an absolute rule without exception . . . the Idaho Constitution and statutes do not permit waste and require water to be put to beneficial use or be lost.” . . . As we recently stated in *Clear Springs*, the policy of securing the maximum use and benefit, and least wasteful use of Idaho’s water resources, has long been the policy in Idaho. . . . This policy limits the prior appropriation doctrine by excluding from its purview water that is not being put to beneficial use. . . . Necessarily, not all of the water collected due to the curtailment will accrue to the senior water right holder; some will remain in the aquifer and some will flow to other tributary springs. This complexity can make it very difficult to balance a senior right holder’s interest in receiving additional water against the State’s interest in securing the maximum use and benefit, and least wasteful use, of its water resources. In light of this challenging balancing requirement, it is necessary that the Director have some discretion to determine in an delivery call proceeding whether there is a point where curtailment is unjustified because vast amounts of land would be curtailed to produce a very small amount of water to the caller. As discussed, Idaho law contemplates a balance between the “bedrock principles” of priority of right and

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<sup>20</sup> There are approximately 23,615 acres at issue (23,000 in the Bellevue Triangle, 615 in the Little Wood), of which the potential injury to rights in the Little Wood only comprises about 2.6%.

beneficial use. . . . The Director is authorized to undertake this balancing act, subject, as he acknowledged here, to the limitations of Idaho law.

369 P.3d at 908-910.

The Director's discretion and "balancing requirement" in conjunctive administration in this proceeding is further tempered by the timing. This is a case where crops have already been planted and are currently receiving irrigation water. The optimum use of water resources in 2021 must take into consideration the best use of available water in the public interest. Curtailing 23,000 acres to supply a limited quantity of water to 615 acres is not "securing the maximum use and benefit, and least wasteful use" of water supplies in the Bellevue Triangle and Silver Creek/Little Wood area for the balance of the 2021 irrigation season. Whereas, IDWR's own staff report shows that 67% of the curtailed water would remain in the aquifer and not be put to beneficial use by anyone, senior or junior, that waste of resources tips the scale in the favor of the juniors at this point in time. Stated another way, this state policy does not condone curtailing 23,000 acres in order to save 650 for the balance of this season.<sup>21</sup>

The timing of the proposed curtailment further warrants against its order this summer. Junior ground water users have entered into contracts, planted crops, and initiated two months of irrigation. The Director and IDWR never indicated that a new proceeding under Idaho Code § 42-237a.g would be initiated during the irrigation season for purposes of water right administration. Instead, IDWR and the Director have always contemplated using the CM Rules for conjunctive administration of surface and groundwater resources in Water District 37. Those representations

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<sup>21</sup> Moreover, any of the drought induced losses suffered by Mr. Taber are covered by a multi-peril drought insurance policy. Tr. Vol. III, 706:1-5; 708:7-9; 712:2-7. Given that remedy, the disparity is even greater as the Director would be curtailing 23,000 acres to supply limited water to Barbara Farms' 217.5 acres, less than 1% of the acres curtailed ( $23,000/217.5 = 0.09$ ). The effect of curtailment is even further unwarranted if Barbara can be supplied water for the rest of 2021 through the Milner-Gooding Canal.



were made when ground water rights were brought under the administrative regime of Water District 37 back in 2014. *See* SVGWD & GGWD Ex. 4.

At no time did anyone at the State indicate a different process would be employed for administration. Tim Luke admitted the same at hearing. Tr. Vol. II, 312-13. This “unfair surprise” tempers the Director’s discretion in this proceeding and the maximum use of available water for the balance of the 2021 irrigation season. On the flip side seniors have made decisions anticipating a lower water supply due to a lower snowpack and lack of precipitation. Tr. Vol. III, 457:8-15 (“we chose not to grow corn or as many acres as of beans based on potentially shorter water season . . . Q. That decision was made last winter? A. It was made during the course of the winter, yes”); 485:23-25; 486:1-7; 506:24-25 (“I planted [Timothy hay] 2 years ago to survive shortfalls of water”); 680:7-9. Seniors testified they planted grain and rented additional water for purposes of their crop decisions this year. *See generally* Brossy Testimony; Huyser Testimony, Taber Testimony, Arkoosh Testimony. Those decisions were made well in advance of any proposed conjunctive administration that was initiated on May 4, 2021. Whereas decisions have been made, the table is set, the Director must exercise his discretion accordingly.

Curtailing groundwater acres at this point in the irrigation season would basically preclude the beneficial use of 67% of the available groundwater and curtail 98 acres of groundwater irrigated land in order to supply water for 2 acres of surface irrigated land. The Director should deny curtailment accordingly.

**I. No Legal Authority for This Administrative Proceeding Taking Place in Mid-Season Outside the Conjunctive Management Rules.**

SVGWD filed a motion to dismiss this proceeding on various legal grounds, including the requirement that the Director was required to proceed under IDWR’s CM Rules. *See generally*,

*SVGWD Motion to Dismiss* (5/13/21). The Director denied the motion and asserted that the CM Rules were not implicated because no delivery calls had been filed. *See Order Denying Motion to Dismiss* at 5-6 (“*Denial Order*”). SVGWD adopts and incorporates its prior motion to dismiss and supporting materials, and reasserts that legal position for purposes of this post-hearing brief.

While the Director did not have the benefit of sworn testimony at the time of ruling on the motion to dismiss, there is no question now that the seniors are requesting administration of junior ground water rights and claiming adverse effects to their senior surface water rights under oath. *See e.g., AFRD#2 v. IDWR*, 143 Idaho 862, 877 (2007) (noting requirement for CM Rules and section 42-237b to file a written statement “under oath”); *Opinion Constituting Findings of Fact, Conclusions of Law and Recommendation* at 25 (SWC Call, Apr. 29, 2008) (“The senior water right holder must allege material injury under oath setting forth the basis of that belief”). Consequently, such statements qualify as a “delivery call” under the CM Rules and/or an adverse claim that triggers a local ground water board process.<sup>22</sup> For the foregoing reasons the Director should dismiss this proceeding and apply the applicable statute and rules for purposes of conjunctive administration in 2021.

First, the Director cannot read section 42-237a.g in isolation from the rest of the Ground Water Act. Both section 42-237a.g and 42-237b were codified as part of the 1953 amendments to the Ground Water Act. *See Idaho Sess. Laws*, Chp. 182. As such, the Director must read the statutory provisions in context of the entire act, not in isolation from one another. *See Farber v. Idaho State Ins. Fund*, 147 Idaho 307, 310 (2009). The Idaho Supreme Court provided the following guide for statutory construction:

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<sup>22</sup> Idaho Code § 42-237b was effective law at the time of hearing and is still effective today. Furthermore, since the Legislature had not adjourned there remains a question as to whether or not statutes passed during the session are legally effective July 1, 2021. *See Alex J. Adams (DFM) May 20, 2021 Memo to Department Heads*.

In construing legislative acts it is not the business of the court to deal in any subtle refinements of the legislation, but our duty is to ascertain, if possible, from a reading of the whole act, and amendments thereto, the purpose and intent of the legislature and give force and effect thereto. *State v. Groseclose*, 67 Idaho 71, 171 P.2d 863 (1946). Statutes must also be construed as a whole without separating one provision from another. *Sherwood & Roberts, Inc. v. Riplinger*, 103 Idaho 535, 650 P.2d 677 (1982); *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 744, 639 P.2d 442 (1981). The primary function of the court in construing a statute is to determine legislative intent and give effect thereto. *Carpenter v. Twin Falls County*, 107 Idaho 575, 691 P.2d 1190 (1984); *Umphrey v. Sprinkel*, 106 Idaho 700, 682 P.2d 1247 (1983).

See *George W. Watkins Fam. v. Messenger*, 118 Idaho 537, 539–40, 797 P.2d 1385, 1387–88 (1990), abrogated by *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

In denying the motion to dismiss, the Director reasoned that conjunctive administration can apparently occur in one of three forums as of the spring of 2021: 1) an IDWR section 42-237a.g proceeding initiated by the Director; 2) the CM Rules; or 3) a local ground water board under section 42-237b. The Director's interpretation misses the intent of the Legislature and how water rights are to be administered within a water district. If a water user believes another right is causing an adverse effect, the local ground water board process provides a forum. See I.C. § 42-237b. The Director believes section 42-237a.g usurps the procedure if he makes the decision to administer. If that is a correct interpretation, then the power to administer, or not administer, is left solely in the agency's hands, and apparently to the Director's lone discretion.

If the Director could use 42-237a.g for conjunctive administration then why bother with the CM Rules in 1994, the SRBA, and the combination of ground and surface rights into Water District 37? The Director's "fielder's choice" interpretation fails, especially when the agency has represented to water users for over 20 years that the CM Rules would be the vehicle to implement conjunctive administration in Basin 37. Instead of following a court tested procedure that provides certainty to all water users involved, the Director chose a new path, not supported by Idaho's

canons of statutory construction. If section 42-237a.g provided the agency with sua sponte authority to administer, then why did IDWR ignore past droughts in Basin 37, and why did IDWR not use its authorities in other basins around the state for the same purpose? Even if the Director had no such authority, singling out ground water users in the Bellevue Triangle for 2021 is an arbitrary exercise of that authority considering the various drought declarations across the State and shortages to senior water users in other Basins.

Reading the entire Ground Water Act in context, if the Director wishes to address adverse claims in conjunctive administration, then section 42-237b provides a detailed procedure before a local ground water board. The Director cannot “pick and choose” which parts of the Act to implement. *See e.g., In re Salgado-Nava*, 473 B.R. 911, 919 (9<sup>th</sup> Cir. BAP 2012) (“it is not our role to pick and choose between statutory provisions and only give effect to some of them”). In denying the motion to dismiss, the Director points to the repeal of section 42-237b, but not 42-237a.g to justify his position. *Order Denying Motion to Dismiss* at 4. However, section 42-237b was effective at the time of the issuance of the *Notice* on May 4, 2021, and remains effective today. The Director has no legal authority to ignore an effective law. Moreover, IDWR was the agency that proposed the legislation in the first place, not on the basis that section 42-237a.g. would be used for conjunctive administration, but rather on the representation that the CM Rules would be the procedural vehicle for such administration. *See Statement of Purpose* House Bill 43, 2021 Idaho State Legislative Session.

In arguing against the application of the CM Rules, the Director’s *Denial Order* focused on the absence of a delivery call by senior rights holders. *See Denial Order* at 5-7, 11. Since those arguments have been made however, numerous senior rights holders have testified, both during depositions, and during the hearings for this matter, that they are requesting administration, or

calling on, junior ground water rights in the Bellevue Triangle.<sup>23</sup> In light of these calls for administration, it is appropriate for this matter to be dismissed and for the Director to initiate proceedings pursuant to the CM Rules.

“The [CM Rules] prescribe procedures for responding to a delivery call made by the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right in an area having a common ground water supply.” CM Rule 01. The CM Rules define a delivery call as, “A request from the holder of a water right for administration of water rights under the prior appropriation doctrine.” CM Rule 10.04 (emphasis added).

The *Denial Order* argues that the Director is empowered to proceed under Idaho Code §42-237a.g in order to protect senior right holders, and that “adopting the protracted and time-consuming schedule contemplated by Bellevue and South Valley would effectively preclude any possibility of protecting senior surface water rights.” *Denial Order* at 11. However, the senior right holders *have* made calls for conjunctive administration in this matter and the CM Rules provide a full, and detailed procedure for the protection of those senior water rights. There is no basis for the Director to cast aside the rules and take the unprecedented step of administering rights under Idaho Code §42-237a.g. As evidenced at the hearing, the CM Rules are now clearly implicated by reason of the seniors’ call for administration.

The Director recognizes that “the CM Rules provide procedures for responding to delivery calls.” *Id.* at 5 (emphasis in original). As numerous, unequivocal calls for conjunctive water

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<sup>23</sup> See Tr. Vol. II, 455:12-14 (Mr. Brossy “requesting administration of water within Basin 37 in priority”); 499:7-8, 10 (Mr. Hubsmith “requesting from the Director to administer water rights by senior priority doctrine. . .Both surface and groundwater”); 632:1-3 (Mr. Arkoosh stating “I would like the Department to administer the water in Water District 37, groundwater water and surface water, by priority date”); 663:18-21 (Mr. Huyser claiming material injury to surface rights caused by upstream groundwater pumping); 708:10-13 (Mr. Taber claiming injury to surface rights based upon junior pumping upstream); 722:18-22, 723:5-8 (Mr. Legg requesting conjunctive administration, claiming injury by junior groundwater rights); 744:2-5 (Mr. Newell seeking to have surface and groundwater rights administered pursuant to their priorities).

administration have occurred for Basin 37, the Director should follow the dictates of the CM Rules and initiate proceedings under that procedure. The present proceedings, being no longer necessary to protect the senior's water rights in the presence of clear calls for conjunctive administration of water right, should be dismissed and the Director should initiate proceedings consistent with the CM Rules.

#### **IV. CONCLUSION**

Curtailement of 23,000 acres of productive crop land in the Bellevue Triangle in the middle of the irrigation season would devastate the planted crops. Potatoes would die. Barley would not make grade. Pastures would have to be replaced with purchased hay resulting in loss of calves and significant loss of reproduction. All of this, for three farms that might benefit if the predictions of the model are correct—predictions admittedly made with a high predictive error rate of greater than 22%. That error rate does not even include the undisputed deficiencies in the model's hydrologic transmissivity rates, and the fact that significant changes in water use have been implemented in the Bellevue Triangle since 2014 data was last added to the model calibration.

Curtailement under this scenario would violate the Idaho law of optimum development of the water resources, Idaho Code § 42-226, the Conjunctive Management Rules, and the duty of the Director to balance uses to avoid waste. For all these reasons, South Valley Ground Water District and Galena Ground Water District request the Director take no further action under these proceedings and dismiss this contest case.

//Signature Page to Follow//

Dated this 21<sup>st</sup> day of June, 2021.

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18<sup>th</sup> day of June, 2021, the foregoing was filed, served, and copied as shown below.

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