



IDAHO DEPARTMENT OF
WATER RESOURCES

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Governor Brad Little

Director Mathew Weaver

December 3, 2025

RE: Preliminary Order Creating Water District 122

Water User,

The Idaho Department of Water Resources (Department) has issued the enclosed preliminary order, creating Water District 122 (WD122) to administer ground water rights in a portion of the Teton River Basin. Attachment A of the preliminary order shows the boundaries of the new water district. Department records indicate that you own, or have an interest in, one or more ground water rights located within WD122.

The Department anticipates scheduling WD122's initial annual meeting for early March. Notice of the meeting, including the date, time, and location, will be sent to all water users within the district. At the annual meeting, water users present will elect a watermaster, adopt a budget, and conduct other business in accordance with Idaho Code Title 42, Chapter 6.

To prepare for WD122's initial annual meeting, the Department will organize and meet with a volunteer steering committee over the next 60–90 days. If you are interested in volunteering for the WD122 steering committee or attending preliminary meetings, please contact me at 208-287-4813 or scott.luvaas@idwr.idaho.gov.

Pursuant to Idaho Code § 67-5243, the preliminary order will become a final order without further action by the Department unless a party files a petition for reconsideration, as explained in the enclosed information sheet. For a complete list of all individuals and entities served on this matter, please visit the Department's website at: <https://idwr.idaho.gov/water-rights/water-districts/active>.

If you have any questions regarding the attached order, please contact the water distribution team at this office or our Eastern Region office in Idaho Falls (208-525-7161).

Respectfully,

Scott Luvaas
Water Administration Bureau

Encl: *Preliminary Order Creating Water District 122*
Explanatory Information to Accompany a Preliminary Order

cc: IDWR Eastern Region Office

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF CREATING WATER)	
DISTRICT 122, TETON RIVER BASIN)	
AREA, FOR THE ADMINISTRATION)	PRELIMINARY ORDER CREATING
OF GROUND WATER)	WATER DISTRICT 122
_____)	

COURSE OF PROCEEDINGS

The Director of the Idaho Department of Water Resources (“Director” or “Department”) is required by statute to divide the state into water districts in a designated manner, provided the priorities of appropriation for water rights within that area have been adjudicated. *In re Idaho Dept. of Water Res. Amended Final Order Creating Water Dist. No. 170*, 148 Idaho 200, 211, 220 P.3d 318, 329 (2009). Idaho Code § 42-604 provides the Director with discretion in determining how these mandatory water districts shall be structured, allowing the Director to create new districts, revise existing districts, or abolish districts, as the Director finds necessary for the efficient distribution of water resources. *Id.*

Before entering an order creating, modifying, or abolishing a water district, the Department must provide notice by mail to each water user in the district or proposed district describing the proposed action, providing the time and place of a hearing on the proposed action, and establishing a time period for written comment submission. *Id.*

On August 28, 2025, the Department issued a Notice of Proposed Action, Public Hearing, and Written Comment Period in the Matter of the Proposed Creation of Water District 122, Teton River Basin (“Notice”) to ground water users in Administrative Basin 22 (“Basin 22”).¹

The Notice outlined the following action (“Proposed Action”):

Create a new water district in a portion of Basin 22. The proposed water district, Water District 122 (“WD122”), would include all ground water rights except for ground water domestic and stockwater rights as defined by Idaho Code §§ 42-111 and 42-1401A(11).

On September 23, 2025, at approximately 6:00 p.m. at the Teton County School District Auditorium, Cherie Palmer, the Department hearing officer in this matter, held a public hearing regarding the Proposed Action. Approximately twenty-two people attended the hearing.

The hearing officer initiated the meeting by explaining the hearing process. Department staff Steve Visosky and Scott Luvaas presented information describing the proposed district area, the features and operation of a water district, the reasons for creating the district, and the water rights and uses proposed to be included in the district. The reasons for the Proposed Action included:

¹ Notices were sent by regular U.S. Mail to all current owners of ground water rights that have an authorized point of diversion within the proposed water district, except domestic and stockwater rights as defined in Idaho Code §§ 42-111 and 42-1401A(11). In addition to sending notice to individual right holders, the Department posted the hearing notice on its website and the Townhall Idaho website.

- Administer and distribute ground water rights according to the prior appropriation doctrine as established by Idaho law;
- Measure, report, and monitor ground water diversions to ensure that diversions do not exceed authorized water right diversion limits; and
- Facilitate management of water rights. Water district operations and procedures provide a means to maintain water right ownership records, maintain water right descriptions such as points of diversion and places of use, and provide watermaster review and comments for water right transfers, water supply bank transactions, and potential new water right applications.

Department staff then answered questions from the public and provided additional information regarding measuring devices and the Proposed Action.

The hearing officer provided an opportunity for attendees to offer public testimony. Additionally, the hearing officer established the deadline of October 3, 2025, for parties to submit written comments.

The City of Victor submitted written comments to the Department on September 19, 2025. Victor is a municipality within the proposed WD122 boundary.

Wyatt Penfold and Bruce Ricks offered public testimony for the record at the hearing.

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

FINDINGS OF FACT

1. The portion of the Teton River drainage located in Idaho covers approximately 806 square miles and lies within Basin 22. The Teton River originates in the Teton, Big Hole, and Snake River Mountains and flows northeast of Victor, Driggs, and Tetonia, before discharging into the Henry's Fork River, a tributary of the Snake River. Ground water within proposed WD122 is part of the same hydrologic drainage system that includes the Teton River and its tributaries.

2. Basin 22 spans Teton County, parts of Madison County, and parts of Fremont County. The Proposed Action will impact ground water rights in parts of Teton County and Fremont County only.

3. On August 26, 2014, the Snake River Basin Adjudication ("SRBA") District Court issued its Final Unified Decree, *In re SRBA Case No. 39576*, finalizing the judicial determination of surface and ground water rights in the Snake River Basin, including water rights in Basin 22.

4. Two existing water districts administer water rights in parts of Basin 22. Water District 01—Upper Snake River does not administer ground water rights. Water District 100—St. Anthony-Rexburg Area, located in Madison County, administers ground water rights in a portion of Basin 22 that is outside of the area affected by this Proposed Action.

5. Mr. Wyatt Penfold of Driggs, Idaho, testified on behalf of the "Griffith well group" and provided associated ground water right no. 22-2207. Mr. Penfold testified that he is not in favor of WD122 but believes it is needed to "satisfy our measurements statewide." He stated that ground water and surface water users will need to work together so their water is not taken by downstream users. Mr.

Penfold would like WD122 to be delayed so that ground water and surface water users can establish better management practices. He concluded that WD122, if managed conjunctively, would help ensure their current lifestyle and would delay being pulled into the Eastern Snake Plain Aquifer as quickly.

6. Mr. Bruce Ricks of Felt, Idaho, testified on his own behalf as a ground water user in Basin 22. Mr. Ricks stated that he has been involved with water meters and, in his view, they have been a significant expense, and he does not know whether Idaho water users receive any benefit from them. Mr. Ricks further stated that he thinks it may be a good idea to create WD122 but does not want to be subject to installing a water meter right away.

7. In its written comments, the City of Victor expanded on four reasons why the establishment of WD122 would provide “significant benefits,” including improved water management, regulatory compliance, regional coordination, and long-term sustainability.

8. Besides the City of Victor, the hearing officer did not receive any written comments by the end of the comment period on October 3, 2025.

RELEVANT LEGAL PROVISIONS

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

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

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

The Director is responsible for directing and controlling the distribution of water in accordance with the prior appropriation doctrine, as established by Idaho law, within water districts. This is accomplished through watermasters supervised by the Director, and subject to removal by the Director, as provided in Chapter 6, Title 42, Idaho Code.

Pursuant to Idaho Code § 42-604 the Director shall form water districts as necessary to properly administer uses of water from public streams, or other independent sources of water supply, for which the priorities of appropriation have been adjudicated by court decree. The Director has discretion to determine how the “mandatory water districts shall be structured” and may “create new districts, revise existing districts, or even abolish districts, as the Director finds necessary for the efficient distribution of water resources.” *In re Idaho Dep’t of Water Resources Amended Final Order Creating Water Dist. No. 170*, 148 Idaho 200, 211, (2009). “[E]fficient distribution of water . . . 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.*

ANALYSIS

The Proposed Action includes one primary idea: create WD122 so the majority of ground water rights within Basin 22 are administered in accordance with Chapter 6, Title 42, Idaho Code.

Response to Penfold Testimony

Mr. Penfold testified that he would prefer delaying the creation of WD122 so that ground water and surface water users could develop better management practices together. However, he did not describe what those management practices would entail or how they would be implemented outside of a formally established water district. Chapter 6, Title 42, Idaho Code, provides the statutory framework for organizing and managing water districts, including requirements for annual meetings, election of a watermaster, appointment of a meeting chairman and secretary, adoption of a budget, election of a treasurer, and formation of an advisory committee to carry out policies adopted by the water users. Establishing a water district is the mechanism provided by the Legislature to facilitate proper and coordinated water right administration. Delaying the formation of a water district would postpone the implementation of these statutory requirements and could result in inaction or uncoordinated management among users. Without the formal organization and procedural structure mandated by Chapter 6, Title 42, there is no reliable mechanism for developing, adopting, or enforcing the collaborative management practices that Mr. Penfold asserts should precede the formation of a district.

Response to Ricks Testimony

Mr. Ricks' testimony focused primarily on the cost of measuring devices and his skepticism regarding the benefits they provide. Idaho Code § 42-701 governs the installation and use of measuring devices within water districts. The Director will issue a separate order addressing any measuring device requirements pursuant to § 42-701.

Water District 122 Creation

Idaho law requires the Director to create water districts for all adjudicated water sources. Currently, there are 99 water districts in the state of Idaho, and the Department continues to create new water districts where districts are absent, as required by Idaho law.

The Department did not receive compelling testimony or written statements that would justify delaying the creation of WD122 or deviating substantively from the Proposed Action.

CONCLUSIONS OF LAW

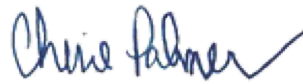
1. The Department completed all tasks required to create a water district. The Department sent notice to each affected water user in the district describing the Proposed Action, providing the time and place of a hearing, and establishing a time period for submission of written comments.
2. The Department should create WD122 to properly administer ground water rights within the boundary depicted in Attachment A, to facilitate the measurement and reporting of ground water diversions, and to administer water rights consistent with Idaho law.

ORDER

IT IS HEREBY ORDERED that:

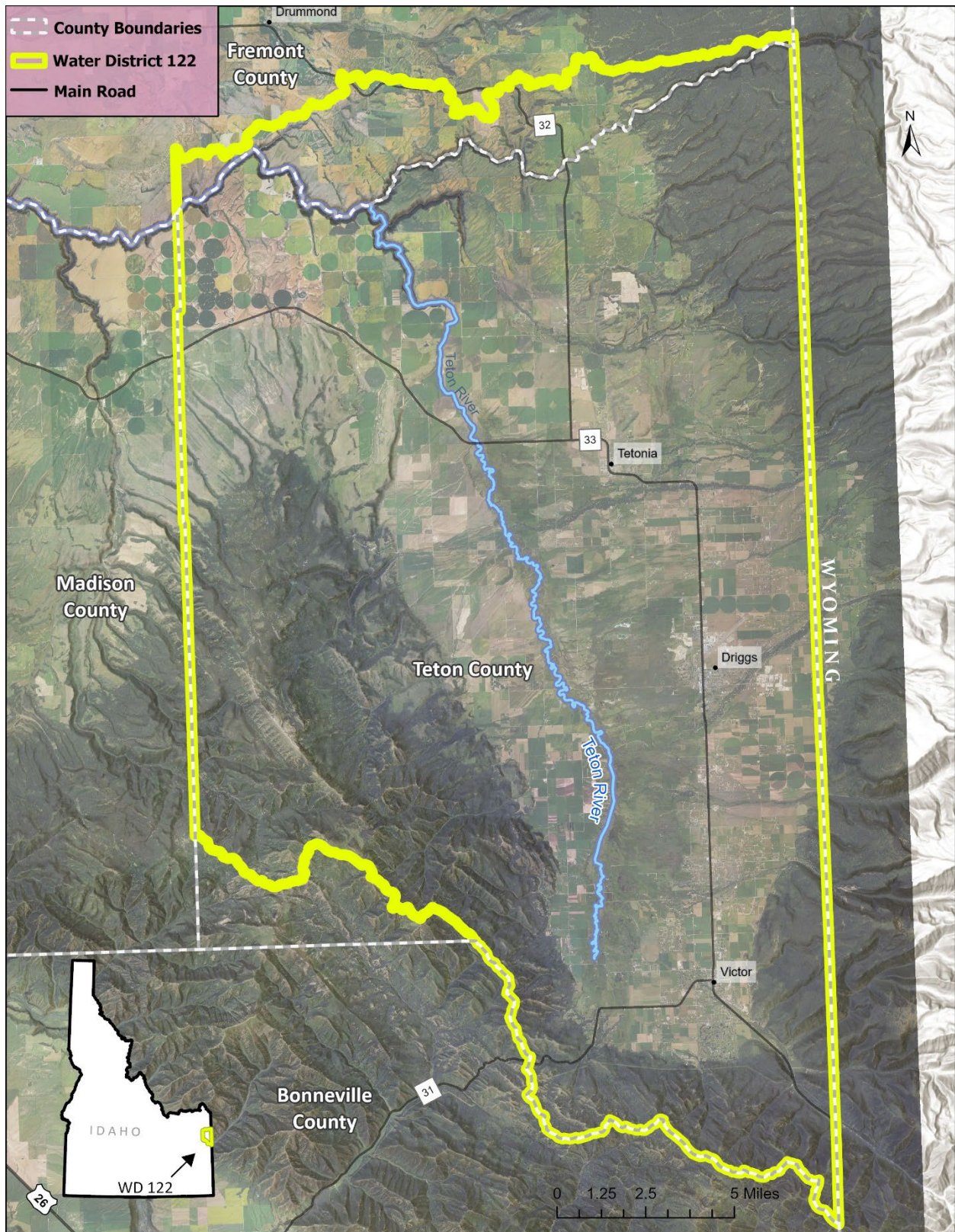
1. WD122 is created to include all ground water rights in a portion of Basin 22, as shown in Attachment A, except for ground water rights for domestic and stockwater purposes, as defined by Idaho Code §§ 42-111 and 42-1401A(11) for which notice of this action was not provided.
2. The holders of ground water rights within WD122 shall meet annually to elect a watermaster, adopt a budget, and otherwise operate in a manner consistent with the provisions of Chapter 6, Title 42, Idaho Code. WD122 will hold its first annual meeting at a date, time, and place to be announced by the Director.
3. The Director shall issue a separate order requiring the installation of measuring devices and controlling works for ground water right diversions within WD122.

DATED this 3rd day of December, 2025.



Cherie Palmer
Hearing Officer

Attachment A
WD122 Boundary



EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

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

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

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

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

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

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

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

FINAL ORDER

The Department will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The Department will serve a copy of the final order on all parties of record.

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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