



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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

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C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

December 7, 2015

**RE: Preliminary Order Creating Water District No. 143, Raft River Basin Ground Water Rights**

Dear Water Right Holder,

Enclosed please find a copy of the Preliminary Order regarding the above referenced matter. This order creates a new water district for administration of ground water rights in the Raft River Basin as shown on the map in Attachment A of the Preliminary Order. The records of the Idaho Department of Water Resources (Department or IDWR) show that you own or have an interest in one or more ground water rights that are diverted within the new water district.

Also enclosed is an informational sheet that explains options for responding to preliminary orders. Please note that any party subject to the order may file a petition for reconsideration within fourteen (14) days of the service date of the order, which is the date of this letter. The Department will act upon petitions within twenty-one (21) days of their receipt.

The Department will send a separate notice to water users specifying a date, time and location of the first annual meeting of the water district. The Department anticipates holding the meeting in Malta in about 60 to 120 days. The water users present at the meeting must consider election of a watermaster, selection of an advisory committee and adoption of a budget. IDWR will organize a steering committee of representative water users within the district to assist with preparation for the annual meeting. IDWR is considering scheduling one steering committee meeting prior to the annual meeting. If you are interested in participating in the steering committee, please contact Tim Luke, IDWR, at 208-287-4959 or by e-mail at [tim.luke@idwr.idaho.gov](mailto:tim.luke@idwr.idaho.gov).

Please contact this office or the IDWR regional office in Twin Falls (208-736-3033) if you have any questions concerning the attached order.

Sincerely,

A handwritten signature in black ink that reads "Tim Luke". The signature is written in a cursive style.

Tim Luke  
Water Compliance Bureau

Encl: *Preliminary Order Responding to  
Preliminary Orders issued by IDWR*

cc: IDWR Southern Region Office

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

IN THE MATTER OF THE CREATION OF	)	
A WATER DISTRICT FOR THE	)	<b>PRELIMINARY ORDER CREATING</b>
ADMINISTRATION OF GROUND WATER	)	<b>WATER DISTRICT NO. 143</b>
RIGHTS IN THE RAFT RIVER BASIN	)	
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The Director ("Director") of the Idaho Department of Water Resources ("Department") is required by statute to divide the state into water districts to perform the essential governmental function of distributing water among appropriators under the laws of the State of Idaho. *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 even abolish districts, as the Director finds necessary for the efficient distribution of water resources. *Id.* Based upon the record in this matter, the Department finds, concludes and orders as follows:

**FINDINGS OF FACT**

1. On July 23, 1963, the Idaho Department of Reclamation (currently the Department) created the Raft River Critical Ground Water Area ("RRCGWA") recognizing that "the withdrawal of underground water is approaching the estimated amount of water available." The boundary of the RRCGWA was modified several times between 1965 and 1977. The RRCGWA boundary covers a large area within the Raft River drainage basin ("Raft River Basin"). Both the RRCGWA and the Raft River Basin (designated by the Department as Administrative Basin No. 43) are shown in the map attached hereto as Attachment A.
2. On August 25, 2014, the Snake River Basin Adjudication ("SRBA") District Court issued its *Final Unified Decree* for water rights within the Snake River Basin, including water rights in the Raft River Basin.
3. On February 18, 2015, the Department conducted a public information meeting in Malta, Idaho, regarding expansion ground water rights in the RRCGWA that were decreed in the SRBA pursuant to Idaho Code § 42-1416B. An expansion right authorizes expanded use of a ground water right diverted within a Critical Ground Water Area ("CGWA") where the expanded use occurred after the designation of the CGWA and in violation of mandatory permit requirements. In the RRCGWA, 75 expansion rights authorize irrigation of 6,804 acres total.
4. Idaho Code § 42-1416B requires expansion rights to be curtailed "unless the director of the Department finds that a management program exists which will, within a time period acceptable to the director, limit the average annual water withdrawals from the aquifer designated in the critical ground water area to no more than the average annual recharge to the aquifer." The director must determine whether an adequate management program exists within two years after the completion of the SRBA.
5. On June 3, 2015, the Department conducted a public information meeting in Malta, Idaho, regarding the potential creation of a new water district to administer ground water rights in the

Raft River Basin and/or the potential modification or merger of existing surface water districts in the basin to include ground water rights.

6. On October 26, 2015, the Director issued a notice proposing to create a water district pursuant to the provisions of Idaho Code § 42-604. The Department sent the notice by regular U.S. Mail on October 27, 2015, to each holder of a ground water right in the Raft River Basin except ground water domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A(11), and ground water rights within Water District 130 overlying the Eastern Snake Plain Aquifer (“ESPA”).<sup>1</sup> The hearing notice described the district proposed to be established, the reasons for establishing the proposed district, and the time and place for a hearing to be held on November 12, 2015, concerning creation of the proposed district. The notice also provided a time period within which written comments on the proposed action would be accepted.

7. The Director’s notice mailed to ground water right holders on October 27, 2015, proposed creation of a new water district in the Raft River Basin within the area designated Water District 43 on the map in Attachment A of this order. The notice further explained that the proposed water district would include all ground water rights within the Raft River drainage area except for ground water domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A (11), and ground water rights within the Eastern Snake Plain Aquifer (“ESPA”).

8. The Director’s notice further explained that creation of the water district is necessary in order to properly administer ground water rights within the Raft River Basin and to facilitate the measurement and reporting of ground water diversions.

9. The Director’s notice also proposed that upon creation of a water district, a meeting of the holders of water rights in the district will be held for the purpose of electing a watermaster and advisory committee.

10. On November 12, 2015, commencing at approximately 6:40 p.m. at the Raft River High School Auditorium, Malta, Idaho, Shelley Keen, the Department hearing officer in this matter, conducted a public hearing concerning the proposed water district creation. Approximately 34 people attended the hearing.

11. The hearing officer initiated the meeting by explaining the hearing process. Department representative Tim Luke gave a presentation that described the proposed district area, the features and operation of a water district, the reasons for creation of the district, and the water rights and uses proposed to be included in the district. The Department stated the proposed water district would accomplish the following administrative and regulatory duties:

- Administer and deliver ground water rights as necessary in accordance with the prior appropriation doctrine as established by Idaho law. Administration is required for both surface water rights and ground water rights. Most surface water rights in the Raft River Basin are already included in an existing water district, whereas most ground water rights in the basin are not included in a water district;
- Measure, record and monitor ground water diversions as necessary to assure that diversions do not exceed authorized water right diversion limits;

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<sup>1</sup> Administrative Basin 43 ground water rights within the ESPA are included in Water District No. 130, except domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A(11).

- Possibly regulate ground water expansion rights in the Raft River CGWA, which may be necessary as early as 2017;
- Possibly regulate ground water rights in response to future delivery calls made pursuant to Idaho conjunctive administration rules; and
- Facilitate management of water rights. Water district operations and procedures provide a means to assist in maintenance of 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 new water right applications.

12. Following the presentation, the hearing officer provided time for hearing participants to ask questions regarding the proposed water district.

13. The hearing officer provided opportunity for persons attending the hearing to make oral statements for the record. In addition, the hearing officer held the record open through November 23, 2015, for written comments. No oral statements were made at the hearing, nor did the Department receive any written comments on or before November 23, 2015.

### CONCLUSIONS OF LAW

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

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

3. The Director has responsibility for direction and control over the distribution of water in accordance with the prior appropriation doctrine as established by Idaho law within water districts to be accomplished through watermasters supervised by the Director, and subject to removal by the Director, as provided in chapter 6, title 42, Idaho Code.

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. *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). 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 creation of a water district for ground water rights in the Raft River Basin is necessary for the reasons set forth in Finding of Fact 11 and for the efficient administration of water rights in general.

6. Pursuant to Idaho Code § 42-604, adjudication of water rights is a prerequisite for the establishment of a water district. All of the ground water rights claimed in the SRBA and within the Raft River Basin have been partially decreed by the SRBA District Court. The SRBA District Court issued the *Final Unified Decree* for water rights within the Snake River Basin on August 25, 2014.

7. Idaho Code § 42-227 provides that a water right permit may be issued, but shall not be required for appropriation of ground water for domestic and stock water purposes as defined under Idaho Code § 42-111.

8. The hearing notice and hearing record in this matter show that one of the reasons the Department proposes creation of the water district is to facilitate the measurement and reporting of ground water diversions that are subject to administration under the proposed water district.

9. Based upon the above statutory authorities, upon the adjudication of ground water rights in the Raft River Basin by the SRBA District Court, and upon the record in this proceeding, the Director should create a water district to administer and regulate ground water rights and protect senior priority water rights in the Raft River Basin.

### ORDER

IT IS HEREBY ORDERED that:

1. Water District No. 143 is created to include all ground water rights in the Raft River Basin as shown in the map appended hereto as Attachment A, except the following water rights:

- a. Ground water rights used for domestic and stock water purposes as defined by Idaho Code §§ 42-111 and 42-1401A (11); and
- b. Ground water rights located within Water District 130 overlying the ESPA.

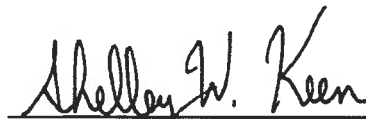
2. The holders of ground water rights within Water District No. 143 shall hold its first annual meeting at a date, time, and place to be announced by the Director to elect a watermaster, select an advisory committee, if desired, and set a budget for operating the district.

3. The watermaster for Water District No. 143 shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director:

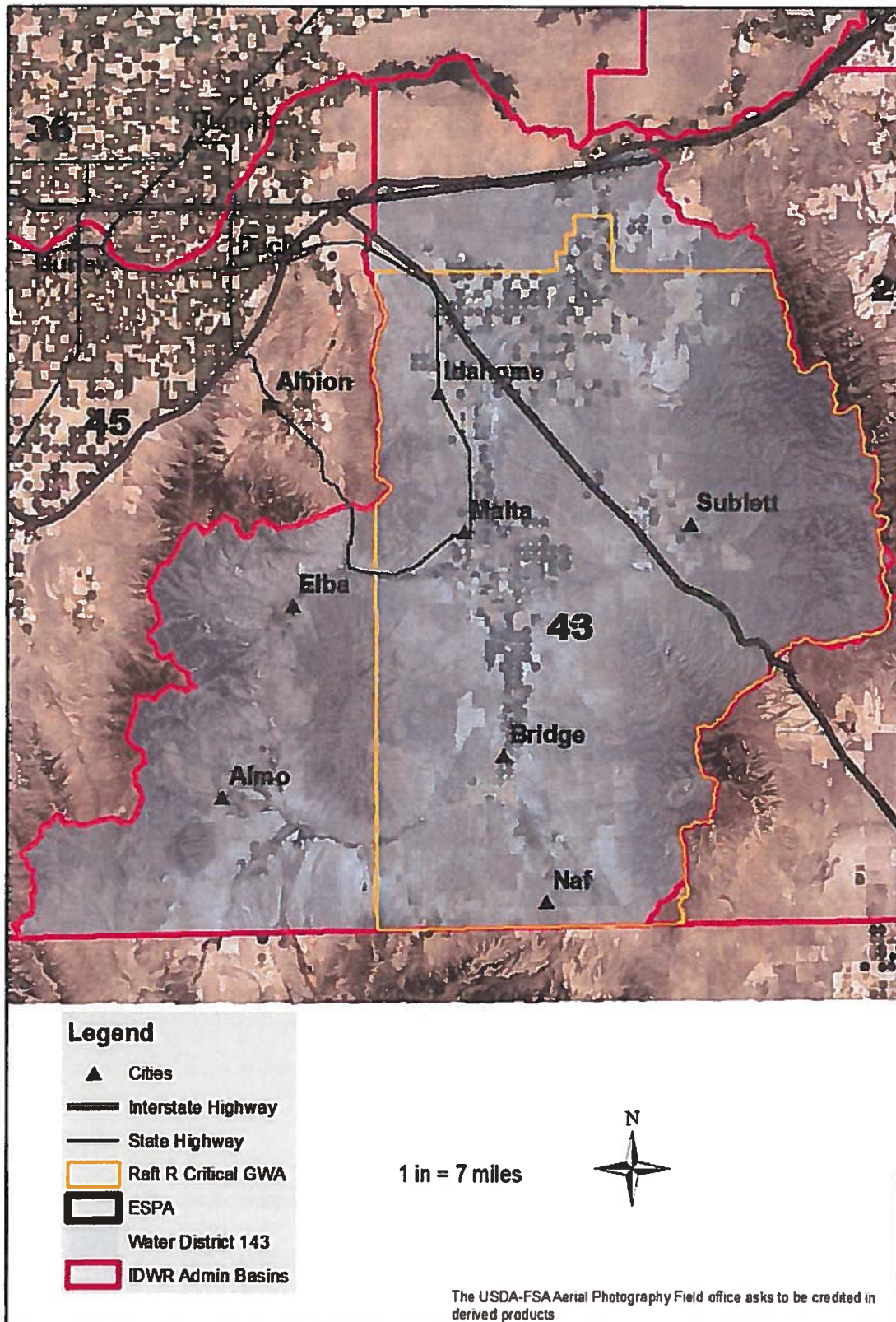
- a. Measure, collect, and record the diversions of water pursuant to ground water rights;
- b. Administer and enforce ground water rights in priority; and
- c. Curtail unauthorized or excessive diversions as necessary (i.e., any diversion without a water right or in excess of the elements or conditions of a water right).

4. The Department shall issue a separate order requiring the installation of measuring devices and controlling works for water right diversions within Water District No. 143.

DATED this 2<sup>nd</sup> day of December, 2015.


  
Shelley W. Keen  
Hearing Officer

ATTACHMENT A  
Water District No. 143



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 7<sup>th</sup> day of December, 2015, the above and foregoing document was served on each individual or entity on the service list for this matter on file at the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho, and posted on the Department's website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov). Each individual or entity on the service list was served by placing a copy of the above and foregoing document in the United States mail, postage prepaid and properly addressed.

  
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Sarah Shaul  
Technical Records Specialist  
Idaho Department of Water Resources