

Danni
TIM CURE

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on July 16, 2003 the attached letter regarding "Motion for Interim Administration in Basin 29" dated July 10, 2003 and additional materials was served upon the following individuals by placing a copy of the same in the United States Mail, postage prepaid and properly addressed as follows:

Lewis Rounds Watermaster
American Falls WD 120
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Idaho Falls Id 83402-1718

North Snake Ground Water Dist
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Jerome Id 83338

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Bonneville-Jefferson GWD
1050 West Riverview Dr
Idaho Falls Id 83401

Bill Taylor
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PO Box 51121
Idaho Falls ID 83405

Brian Higgs
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Dane Watkins
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Blackfoot Id 83221

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Carol Vogler
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Rexburg Id 83440
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American Falls Id 83211

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Aberdeen-Am Falls GWD
2590 Quigley
American Falls Id 83211

Marc Foster
Aberdeen-Am Falls GWD
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Aberdeen Id 83210

Larry Elliott
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Aberdeen Id 83210

Jenny Ruff
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PO Box 70
American Falls Id 83211

Brock Driscoll
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17 North Main Street
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Walter Gay
Industrial water user
40 North 400 West
Blackfoot Id 83221

Mike Creamer
PO Box 2720
Boise Id 83701

Lynn Tominaga
Idaho Ground Water Assn
500 W Washington
Boise Id 83701-2524

Jo Beeman (previously sent)
Chris Meyer (previously sent)

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Ringert Clarck
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Boise Id 83701

John Rosholt
Barker Rosholt
PO Box 2139
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Rigby Thatcher
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Rexburg Id 83440-0250

Roger Ling
Ling Robinson
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Moffatt Thomas
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Boise Id 83701-0829

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Givens Pursley
PO Box 2720
Boise Id 83701-2720

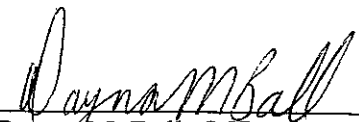
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Dayna M. Ball, Office Specialist II
Water Distribution Section

July 10, 2003

RE: Motion for Interim Administration in Basin 29

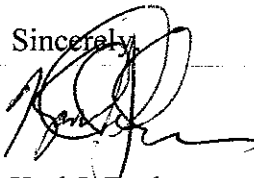
Dear Water User:

Because of the continuing drought, IDWR issued an order in 2001 creating the American Falls Ground Water Management Area for the purpose of administering certain ground water rights. In response, representatives of ground water and surface water users signed a stipulated agreement that provides a framework for the administration of hydraulically connected water rights during the irrigation season.

On February 19, 2002, the Department created Water District 120 to enforce the stipulated agreement and to provide for long-term administration of affected ground water rights. IDWR intends to enlarge Water District 120 to include some water rights recommended to the SRBA District Court in Basin 29. The Office of the Attorney General has agreed to file a Motion for Order of Interim Administration with the SRBA District Court, which also requires notification of potentially affected water right holders. Therefore, the Motion for Order of Interim Administration and related documents are being sent to recorded SRBA claimants in Basin 29 holding water rights that IDWR intends to administer through Water District No. 120.

Included in this mailing are: (1) Motion for Order of Interim Administration and Notice of Hearing; (2) Brief in Support of Motion for Order of Interim Administration; (3) Affidavit of Tim Luke, Section Manager for the IDWR Water Distribution Section; and (4) an area map showing the affected portions of the Eastern Snake Plain Aquifer. If you have any questions, please call the Idaho Department of Water Resources Adjudication hot line at 1-800-451-4129.

Sincerely,



Karl J. Dreher
Director

Enclosures

Movant: State of Idaho

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)	Subcase No. 92-00021
)	
)	MOTION FOR ORDER OF
Case No. 39576)	INTERIM ADMINISTRATION
)	AND NOTICE OF HEARING
)	
_____)	

The State of Idaho moves this Court for an order of interim administration of water rights¹ in Snake River Basin Adjudication Basin 29 pursuant to Idaho Code § 42-1417,

¹ The State of Idaho previously filed a motion for interim administration for Basins 35, 36, 41 and 43. The court authorized interim administration for these Basins on January 8, 2002. Later, the State of Idaho filed a motion for interim administration in Basin 37, Part 1 Groundwater. The court authorized interim administration in this Basin on November 19, 2002. This motion does not seek authorization for interim administration of domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A(11).

in accordance with the most current Director's Report for Snake River Basin Adjudication Basin 29, filed with the Court, or in accordance with partial decrees that will supersede the Director's Report. The grounds for this motion are as follows:

1. Idaho Code § 42-1417 provides that the district court may, by order, permit the distribution of water pursuant to chapter 6, title 42, Idaho Code, through water districts in accordance with the Director's Report and the partial decrees for water rights acquired under state law or established under federal law. Idaho Code § 42-1417 provides that the district court may enter the order after notice and hearing, if the district court determines that interim administration of water rights is reasonably necessary to protect senior water rights.
2. Interim administration of water rights in Basin 29 is reasonably necessary because the available water supply is currently not adequate to satisfy some senior priority water rights and is projected, in the future, to be insufficient, at times, to satisfy these water rights.
3. In accordance with Idaho Code § 42-1417(2)(b), notice of this motion is being provided to all affected claimants in Basin 29 by mailed notice.

THEREFORE, the State respectfully moves this Court for an order authorizing interim administration of water rights in Basin 29 in accordance with the most current Director's Report for this Basin, or in accordance with partial decrees that will supersede the Director's Report. The Affidavit of Timothy J. Luke Dated July 10, 2003 and a brief in support of this motion are submitted herewith. Oral argument on this motion is requested.

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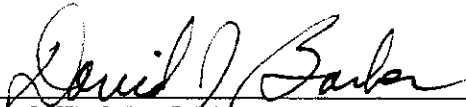
NOTICE OF HEARING

Notice is hereby given that the motion for interim administration for Basin 29 will be heard on October 21, 2003, at 1:30 p.m. at the SRBA courthouse in Twin Falls, Idaho.

DATED this 10th day of July 2003.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
CHIEF, NATURAL RESOURCES DIVISION



DAVID J. BARBER
Deputy Attorney General

Movant: State of Idaho

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Chief, Natural Resources Division

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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA)
)
Case No. 39576)
)
)
)
)
_____)

Subcase No. 92-00021

**BRIEF IN SUPPORT OF MOTION
FOR ORDER OF INTERIM
ADMINISTRATION**

SUMMARY OF ARGUMENT

Administration of water rights is the distribution of water to water users in accordance with the prior appropriation doctrine as set forth in Idaho law. The statutory mechanism for

BRIEF IN SUPPORT OF MOTION FOR ORDER OF INTERIM ADMINISTRATION

distribution of water in accordance with the prior appropriation doctrine in Idaho is through creation of a water district and the office of watermaster within that district under the supervision of the Director (hereinafter "Director") of the Idaho Department of Water Resources (hereinafter "IDWR"). The Director has the authority to create a water district upon entry of a court decree that determines the water rights within the geographic boundaries of the proposed water district or upon entry of an order from the district court that authorizes the use of a director's report for purposes of interim administration. Since a final court decree does not exist for all water rights in Basin 29, the only way for the Director to administer the water in this basin through the use of a water district mechanism is for the district court to enter an order authorizing interim administration. That order is reasonably necessary because the continued drought has created substantial shortages in water needed by senior surface water rights in the Snake River Basin.

STATEMENT OF THE CASE

A. The Nature of the Case

The present motion requests the district court to enter an order authorizing interim administration for water rights in Snake River Basin Adjudication Basin 29, which contains that portion of Basin 29 located within the Eastern Snake Plain Aquifer (hereinafter "ESPA").¹

B. The Course of the Proceedings

On August 3, 2001, the Director established the American Falls Ground Water Management Area and the Thousand Springs Ground Water Management Area, pursuant to Idaho Code § 42-233b. The primary reason for the creation of the two Ground Water Management Areas was the continued drought condition in surface water supplies. The reduced surface water flows caused two related impacts. First, senior natural flow surface water rights

¹ The State of Idaho's Motion for Interim Administration does not seek administration of domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A(11).

were not being fully satisfied. Second, surface storage supplies did not recover from depletions during previous drought years. Thus, surface storage water was much reduced in availability. After the Director stated his intent to curtail diversions under those water rights for ground water within the Ground Water Management Areas he determined were causing significant depletions to hydraulically connected surface water sources, affected ground water right holders entered into written agreements with certain senior priority surface water right holders. The senior surface right holders agreed not to exercise their senior priorities against the junior ground water right holders in exchange for commitments by the ground water right holders to provide replacement water during the term of the agreements. In addition, the signatories to these agreements agreed not to oppose a motion by the State seeking an order from the SRBA district court authorizing interim administration of water rights within portions of the ESPA in accordance with the provisions of Idaho Code § 42-1417. While these agreements govern the distribution of water to many of the users within Basin 29, not all water users within Basin 29 signed these agreements. Thus, the Director will need to use a watermaster to curtail junior water users within Basin 29 found to be causing injury to senior surface water rights in the event that the drought continues. State Exhibit 1, *Affidavit of Timothy J. Luke Dated July 10, 2003*, at 3-4.

The agreements recognize that interim administration will extend to all, or, portions of Basins 25, 27, 29, 35, 36, 37, 41, 43 and 45. *Id.* The State of Idaho previously filed motions for interim administration for all, or portions, of Basins 35, 36, 41, and 43. MOTION FOR ORDER OF INTERIM ADMINISTRATION AND MOTION FOR EXPEDITED HEARING, dated November 19, 2001 (hereinafter "First Interim Administration Motion"). The district court

granted interim administration within these Basins on January 8, 2002. ORDER GRANTING STATE OF IDAHO'S MOTION FOR ORDER OF INTERIM ADMINISTRATION.

The State of Idaho also filed a motion for administration for Basin 37, Part 1, Groundwater. MOTION FOR ORDER OF INTERIM ADMINISTRATION AND NOTICE OF HEARING, dated August 30, 2002 (hereinafter "Second Interim Administration Motion"). The district court granted interim administration within Basin 37, Part I, Groundwater on November 19, 2002. Because Director's Reports have not been filed with the SRBA District Court for Basins 25, 27, and 45, the State of Idaho is limiting its current motion for interim administration to Basin 29. As Director's Reports are filed for Basins 25, 27, 45, and the remaining portion of Basin 37 (surface water rights), the State of Idaho will file motions for interim administration for water rights within those basins, as appropriate.

On February 19, 2002, the Director of IDWR created Water District No. 120 pursuant to chapter 6, title 42, Idaho Code. The district was created for the purpose of administration of rights to the use of ground water and springs discharging from the ESPA in IDWR Administrative Basins 25, 27, 29, 35, and 41. The geographic scope of Water District 120 is currently limited to all or portions of Basins 35 and 41 within the ESPA. *Id.* at 4-5.

On July 10, 2003, IDWR filed with the district court the Director's Report for Basin 29. If the district court enters an order authorizing interim administration for that portion of Basin 29, within the ESPA, the Director intends to enlarge Water District 120 to include that portion of Basin 29 in the ESPA pursuant to the provisions of Sections 42-1417 and 42-604, Idaho Code. State Exhibit 1, *Affidavit of Timothy J. Luke Dated July 10, 2003*, at 4-5.

C. The Statement of Facts

The Eastern Snake River Plain is a crescent shaped tract of land beginning near Ashton in Eastern Idaho and extending in a southwesterly direction to the Thousand Springs reach of the Snake River northwest of Twin Falls, Idaho. The ESPA underlies much of the Eastern Snake River Plain. State Exhibit 1, *Affidavit of Timothy J. Luke Dated July 10, 2003*, at 3. Efficient management of the water resources of the ESPA is essential to the well being of the entire State of Idaho.

Natural discharge from the ESPA into the Snake River occurs primarily at two sites in Southern Idaho: (1) American Falls Reservoir, and (2) the Thousand Springs reach of the Snake River. Discharges from the ESPA into the Snake River at both sites have fluctuated significantly over the last one hundred years. The major factor in this fluctuation of spring discharges is due to the many effects of irrigated agriculture. Because of the hydrogeology of the ESPA, the impacts of changes in aquifer recharge and pumping are often not apparent in aquifer discharge into the Snake River for periods of years or decades in some cases. This delayed and dispersed effect makes distribution of the water rights in accordance with the prior appropriation doctrine from the hydraulically connected ground water and surface water sources extremely complex. State Exhibit 1, *Affidavit of Timothy J. Luke Dated July 10, 2003*, at 3.

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ARGUMENT

I. THE REQUIREMENTS FOR INTERIM ADMINISTRATION OF WATER RIGHTS ARE MET FOR BASIN 29.

Chapter 6, title 42, Idaho Code, sets forth the general provisions of law that govern administration of water rights in Idaho. "Administration of water rights" is the distribution of water to water users in accordance with the prior appropriation doctrine as set forth in Idaho law. Chapter 6 assigns to the Director the responsibility for supervising the distribution of water from all natural water sources and directs that the Director will exercise this duty through the creation and function of water districts with an administrative officer designated as the watermaster under the Director's supervision. Idaho Code § 42-602. However, chapter 6 only authorizes the creation of water districts where the water sources have been adjudicated by a court having jurisdiction thereof. Idaho Code § 42-604. The single exception to this limitation is a geographic unit where the district court has authorized interim administration in accordance with Idaho Code § 42-1417.

Idaho Code § 42-1417 authorizes interim administration of water rights and provides, in part, as follows:

- (1) The district court may permit the distribution of water pursuant to chapter 6, title 42, Idaho:
 - (a) in accordance with the director's report or as modified by the court's order;
 - (b) in accordance with applicable partial decree(s) for water rights acquired under state law;
 - (c) in accordance with applicable partial decree(s) for water rights established under federal law.
- (2) The district court may enter the order only:
 - (a) upon a motion by a party;
 - (b) **after notice by the moving party by mail to the director and each claimant from the water system or portion thereof that could reasonably be determined to be adversely affected by entry of the order; and**
 - (c) **upon a determination by the court, after hearing, that the interim administration of water rights in accordance with the report, or as the report is modified by the court's order, and in accordance with any**

partial decree(s), is reasonably necessary to protect senior water rights.

Idaho Code § 42-1417 (1996) (emphasis added). Thus, Idaho Code § 42-1417 requires the district court to make the following determinations: (1) a party filed a motion for interim administration, (2) the moving party served by mail each claimant that could reasonably be determined to be adversely affected, (3) interim administration is reasonably necessary to protect senior water rights, and (4) the water rights should be administered in accordance with the director's report, as modified by the district court, or in accordance with partial decrees that supersede the director's report.

Here, the first and second requirements are easily met. Since the State of Idaho is a claimant, and therefore a party to the SRBA, and is the moving party in this matter, the first requirement of Idaho Code § 42-1417 is met.

The notice is being served on all claimants who will be subject to interim administration if the motion is granted. The Certificate of Service for the Motion for Interim Administration demonstrates compliance with this requirement by service of these papers on all claimants in Basin 29, except for the excluded domestic and stockwater rights. Thus, the State of Idaho has demonstrated compliance with the second requirement of Idaho Code § 42-1417. The third and fourth requirements are discussed in more detail in the following sections.

II. INTERIM ADMINISTRATION OF WATER RIGHTS IN THE EASTERN SNAKE PLAIN AQUIFER IN BASIN 29 IS REASONABLY NECESSARY TO PROTECT SENIOR WATER RIGHTS.

- A. Senior surface water rights that rely on natural flow gains of the Snake River and tributary surface water sources in the Shelley to Minidoka reach of the Snake River, herein termed the "American Falls reach", need protection from diversions by junior users of ground water in Basin 29.

Recent events demonstrate the immediate need for water districts within portions of the ESPA in order to protect senior water rights. As a result of the drought over the past several

years, the water supplies available for use under senior priority surface water rights relying on natural flow gains in the American Falls reach have diminished and are expected to continue to diminish in the coming year. As a result, the Director designated a Ground Water Management Area encompassing portions of the ESPA along the American Falls reach of the Snake River. State Exhibit 1, *Affidavit of Timothy J. Luke Dated July 10, 2003*, at 4.

Water flows from the American Falls reach of the Snake River are insufficient, at times, to supply some senior surface water rights. State Exhibit 1, *Affidavit of Timothy J. Luke Dated July 10, 2003*, at 4, 7. Simulations using the Department's calibrated computer model of the ESPA show that ground water withdrawals from the ESPA for irrigation and other consumptive purposes cause reductions in the gains to the American Falls reach that result from hydraulic connection with the ESPA in the American Falls area. *Affidavit of Timothy J. Luke Dated July 10, 2003*, at 4. Thus, administration is necessary to ensure senior surface water users' rights are protected. The critical question is how best to provide that protection.

B. Interim administration is reasonably necessary for protection of senior surface water rights.

On November 19, 2001, the State of Idaho filed its First Interim Administration Motion and other supporting papers.² At that time the State of Idaho advised the district court that its First Interim Administration Motion was limited to all or portions of Basins 35, 36, 41, and 43, and that supplemental motions would be filed as later Director's Reports were filed with the district court. BRIEF IN SUPPORT OF MOTION FOR ORDER OF INTERIM ADMINISTRATION at 2, n. 2. Following hearing, the district court entered an order authorizing interim administration as requested. Thus, the district court has already decided that

² In considering the State of Idaho's present request the State of Idaho requests the district court to take judicial notice of the pleadings filed in the First Interim Administration Motion filed on November 19, 2001 and in the Second Interim Administration Motion filed on August 30, 2002.

interim administration is the best solution to this continuing distribution problem. Later, the State of Idaho filed its Second Interim Administration Motion for Basin 37, Part I Groundwater on August 30, 2002, and the district court granted this motion on November 19, 2002.

The present motion is the third motion that proposes interim administration involving the ESPA. If the district court enters an order authorizing interim administration of water rights in Basin 29, the Director would then expand existing Water District 120 to include the geographic area of that portion of Basin 29 within the ESPA. The expansion of Water District 120 is an important step in the administration of water rights. Water districts provide mechanisms for administration, regulation, and enforcement of water rights. They also provide a means for incorporating regular measurement and reporting of diversions, including ground water diversions. In addition, water districts provide for timely response to general calls for water distribution and provide a system whereby a watermaster can provide timely assistance and expertise to water users and respond to their complaints. Furthermore, water districts provide for improved management of water rights records, specifically maintaining current ownership information. Creation of water districts provides an equitable funding mechanism for these services. The water users will fund the costs of the watermaster as provided for by Idaho Code § 42-605 and 42-612. State Exhibit 1, *Affidavit of Timothy J. Luke Dated July 10, 2003*, at 5-6.

The watermaster duties in the water districts will be to (1) curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right); (2) measure and report the diversions under water rights; (3) enforce the provisions of the agreements; and (4) curtail out-of-priority diversions determined by the Director to be causing injury to senior water rights that are not covered by an agreement or a mitigation plan approved by the Director.

C. Conclusion

The need to protect senior water rights that rely on the spring discharges from the American Falls reach of the Snake River is clear. The only effective means to provide that protection is through the use of a water district and a watermaster acting under the supervision of the Director. Because of the shortage of water to satisfy senior water rights in the Snake River Basin and the interrelationship between the ESPA and Basin 29, it is appropriate that the existing Water District 120 be expanded to include the administration of the water rights within Basin 29. Expansion of Water District 120 also will enable the Director and participating water right holders to take further steps toward long-term administration of the resource. Interim administration in Basin 29 is reasonably necessary for the protection of senior surface water rights.

II. THE DIRECTOR'S REPORT AND PARTIAL DECREES PROVIDE AN ADEQUATE LIST OF WATER RIGHTS FOR PURPOSES OF INTERIM ADMINISTRATION.

Chapter 6 recognizes that distribution of water requires an accurate listing of water rights. Idaho Code § 42-604, providing for the creation of water districts, applies only to "streams or water supplies" whose priorities of appropriation have been adjudicated by courts having jurisdiction thereof. The Idaho Supreme Court has recognized the importance of an accurate list containing the description of the water rights to be administered. In *Nettleton v. Higginson*, 98 Idaho 87, 558 P.2d 1048 (1977), the Idaho Supreme Court stated: "Only by having a specific list reciting the names of water users, with their dates of priority, amounts, and points of diversion can such a system be administered." *Id.* at 91, 558 P.2d at 1052, quoting *DeRousse v. Higginson*, 95 Idaho 173, 505 P.2d 321 (1973).

Before the court can issue the order of interim administration, the court must find that the individual partial decrees that supersede the Director's Report for individual recommendations

and the latest filing of Director's Report where partial decrees have not been issued are an adequate listing of the owners of and the elements of the water rights for the purposes of interim administration of a water source. Idaho Code § 42-1417 contemplates that the Director's Report constitutes an adequate listing, since all the claims acquired under state law have been investigated by state officials and reported to the district court. The statute assures procedural due process by requiring notice to the claimants and by allowing the court to modify the Director's Report for purposes of interim administration in the event that a claimant establishes an error in the Director's Report at the hearing. The statute also contemplates that the partial decrees provide an adequate listing of water rights for purposes of interim administration because these rights have not only been investigated by state officials, but have also withstood the scrutiny of court review. Thus, the Director's Report and the partial decrees meet the need for administration pending the completion of the adjudication. Upon entry of an order for interim administration, the creation of a water district and the distribution of water thereafter will occur in accordance with the normal administrative mechanism provided by chapter 6, title 42, Idaho Code.

CONCLUSION


Interim administration, as requested in the State's motion, is reasonably necessary to prevent injury to senior water rights in the Snake River Basin as required by Idaho Code § 42-1417. The Director's Report for Basin 29 and the partial decrees that will supersede the Director's recommendations are based on examination of the claims and the water system as required by Idaho Code § 42-1411. As such, the Director's Report and the partial decrees constitute an adequate listing of water rights for purposes of administration of water rights pending entry of a final decree of the water rights. Therefore, the State requests that the district

court enter an order authorizing the administration of water rights pursuant to chapter 6, title 42, Idaho Code, in Basin 29 in accordance with the definition of water rights listed in the Director's Report and, where superseded, in accordance with the partial decrees.

DATED this 10th day of July, 2003.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
STATE OF IDAHO


DAVID J. BARBER
Deputy Attorney General

Movant: State of Idaho

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)	Subcase No. 92-00021
)	
)	AFFIDAVIT OF TIMOTHY J. LUKE
Case No. 39576)	DATED JULY 10, 2003
)	
))	
_____)	

STATE OF IDAHO)
) ss.
County of Ada)

Timothy J. Luke, being first duly sworn upon oath deposes and states as follows:

1. My name is Timothy J. Luke. I am the Section Manager for the Water Distribution Section for the Idaho Department of Water Resources ("IDWR"). My work address is

Idaho Department of Water Resources, 1301 North Orchard, Boise, Idaho 83706. I reside in Boise, Idaho.

2. My education background includes a Bachelor of Arts degree in Geography from West Virginia University in 1982, and a Master of Science degree in Geography and Natural Resource Management from the University of Idaho in 1992. My education/training since college has included, but is not limited to, participation in seminars and courses related to water management such as Ground Water and Surface Water Relationships, Hydraulics, Water Management Workshop, Field Hydrogeology, Irrigation System Design and several water law workshops.

3. I worked from September 1988 to August 1991 for IDWR as a Senior Water Rights Agent. My duties included, but were not limited to, the review, analysis, recommendation and processing of water right transfers, and the review and processing of applications to reallocate water held in trust under the Swan Falls agreement.

4. From September 1991 to February 1992 I worked for IDWR as a Hydrologist-in-Training, in the Water Permits Section. My duties included, but were not limited to, water district assistance, field inventory and measurement of diversions, and water right analysis.

5. I worked from March 1992 to February 1997 for IDWR as a Hydrologist in the Water Permits and Water Distribution Sections. My duties included, but were not limited to, assisting in the implementation of the water measurement program, field inventory and measurement of diversions, water district assistance, water right analysis, reduction and analysis of hydrologic data and preparation of reports, and investigation of water distribution complaints and water right disputes.

6. From March 1997 to the present I have served as the Section Manager for the

Water Distribution Section. My primary responsibilities are the implementation and management of the water measurement program, provide assistance to water districts, periodic training of watermasters, and assistance or resolution of water distribution/water right disputes.

7. I have personal knowledge of the water supply conditions and water rights in IDWR Administrative Basin 29, through my work with IDWR's Water Distribution Section. Ground water occurrence within part of Basin 29 is located in the Eastern Snake Plain Aquifer ("ESPA").

8. The Eastern Snake River Plain is a crescent shaped tract of land extending from about Ashton in the east in a southwesterly direction following the Snake River downstream to King Hill. Underlying this plain is the ESPA. Natural recharge to the ESPA occurs mainly in the north and east portions of the plain. Natural discharge from the ESPA occurs primarily near American Falls Reservoir and in the Thousand Springs reach from Kimberly to King Hill. Discharges from the ESPA have fluctuated significantly over the past one hundred years. The primary causes of the fluctuations in discharge are due to the many effects of irrigated agriculture. For example, irrigated agriculture brings large quantities of water out onto the ESPA. Leaks from earthen canals and recharge from irrigation provide additional recharge to the ESPA. Diversions of ground water from the ESPA intercept some ground water that would otherwise discharge into the Snake River. These changes may not be apparent in discharge from the ESPA for periods of years or even decades. This complex hydrogeology makes distribution of surface and ground water rights from the hydraulically connected sources in accordance with the prior appropriation doctrine very complex.

9. A severe drought has occurred in southern Idaho beginning in 2000. The reduced surface water flows has caused substantial shortages of water for users of surface water and has

resulted in depleted reservoirs. In response to the drought the Director established on August 3, 2001 the American Falls Ground Water Management Area and the Thousand Springs Ground Water Management Area. The *Order In the Matter of Designating the American Falls Ground Water Management Area* states, in part:

2. The water supply in the ESPA is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees. One of the locations at which a direct hydraulic connection exists between the ESPA is in the Shelley to Minidoka reach of the river, herein termed the "American Falls reach" located along the southeastern edge of the ESPA in the vicinity of American Falls Reservoir.
3. Simulations using the Department's calibrated computer model of the ESPA show that ground water withdrawals from the ESPA for irrigation and other consumptive purposes, which occur in relatively close proximity to the American Falls reach, cause significant reductions in the gains to this reach of the Snake River that result from hydraulic connection with the ESPA (herein termed "reach gains") within six (6) months or less from the time the withdrawals occur.

Id. at 1.

10. Ground water in the ESPA occurs in part of Basin 29 in close proximity to the American Falls reach of the Snake River and is hydraulically connected to the Snake River.

11. The Director also stated his intent to curtail diversions of ground water users whom he determined were causing significant depletions to hydraulically connected surface water sources. The senior users of surface water and many affected ground water users then entered into agreements to address the water shortage for a two-year period. As a part of the agreements, the signators agreed not to oppose a motion by the State seeking interim administration of water rights within portions of the ESPA. In addition, the senior surface water users agreed not to exercise their senior surface water rights against the junior ground water

users; the junior ground water users agreed to provide a replacement supply to the senior surface water users.

12. Later as the drought worsened, the Director declared in 2002 drought emergencies in the following counties in southern Idaho: Butte, Bingham, Blaine, Bonneville, Clark, Elmore, Fremont, Gooding, Jefferson, Lincoln, Madison, Oneida, and Power.

13. On February 19, 2002, the Director of IDWR issued the Final Order Creating Water District 120 pursuant to Chapter 6, title 42, Idaho Code. The district was created for the purpose of administration of rights to the use of ground water in the ESPA in IDWR Administrative Basins 35 and 41. The district is currently limited to all or portions of Basins 35 and 41 within the ESPA because rights can be administered in accordance with the most current Director's Reports for those basins, or in accordance with partial decrees that have superseded the Director's Reports.

14. As the drought continued in 2003, the Director declared drought emergencies in the following counties in Southern Idaho: Bannock, Bear Lake, Bingham, Blaine, Butte, Caribou, Cassia, Clark, Custer, Fremont, Lincoln, Madison, Oneida, Owyhee, and Power.

15. IDWR filed a Director's Report with the SRBA District Court on or about July 10, 2003 for water rights in Basin 29, including ground water rights within the ESPA in Basin 29 (Director's Report for Basin 29). Pursuant to the provisions of Sections 42-1417 and 42-604, Idaho Code, the Director proposes to enlarge Water District 120 to include water rights within that portion of Basin 29 in the ESPA. Attached is a map that illustrates this area.

16. The general reasons for the creation or enlargement of a water district are:

- Provide a mechanism for administration, regulation and enforcement of water rights;

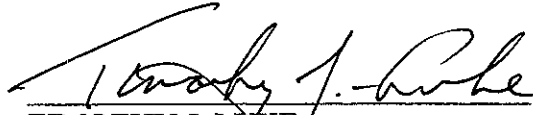
- Provide a means for regular measurement and reporting of diversions, including ground water diversions.
- Provide a more local and immediate response to general calls for water delivery;
- Provide for improved management of water rights and keeping water rights current with respect to ownership and water use;
- Provide a system whereby local watermasters or deputy watermasters can provide for local and timely response to general calls for water distribution; and
- Water district administration and regulation can be accomplished by assessing water users directly through the districts.

17. The specific reasons for creation or enlargement of water districts in Basin 29 are:

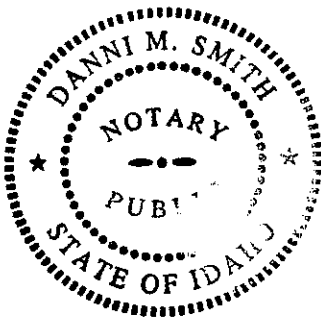
- Existing water districts in these basins are limited to surface water sources and do not include ground water sources.
- All of the water rights claimed in Basin 29 in the ESPA have been reported or partially decreed in the SRBA as required under Idaho Code § 42-1417.
- IDWR has already created a Water Measurement District in the area, but the measurement District's authority is limited to measurement and reporting of diversions and does not include authority for the administration of water rights, or the enforcement of water right conditions.
- The expansion of a water district will provide the watermaster with the ability to administer water rights in accordance with the prior appropriation doctrine as established by Idaho law.

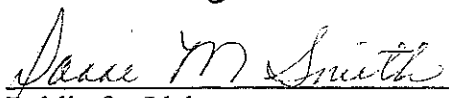
- The available water supply is currently not adequate to satisfy some senior priority water rights and is projected, in the future, to be insufficient, at times, to satisfy these water rights.

18. Further your affiant sayeth naught.

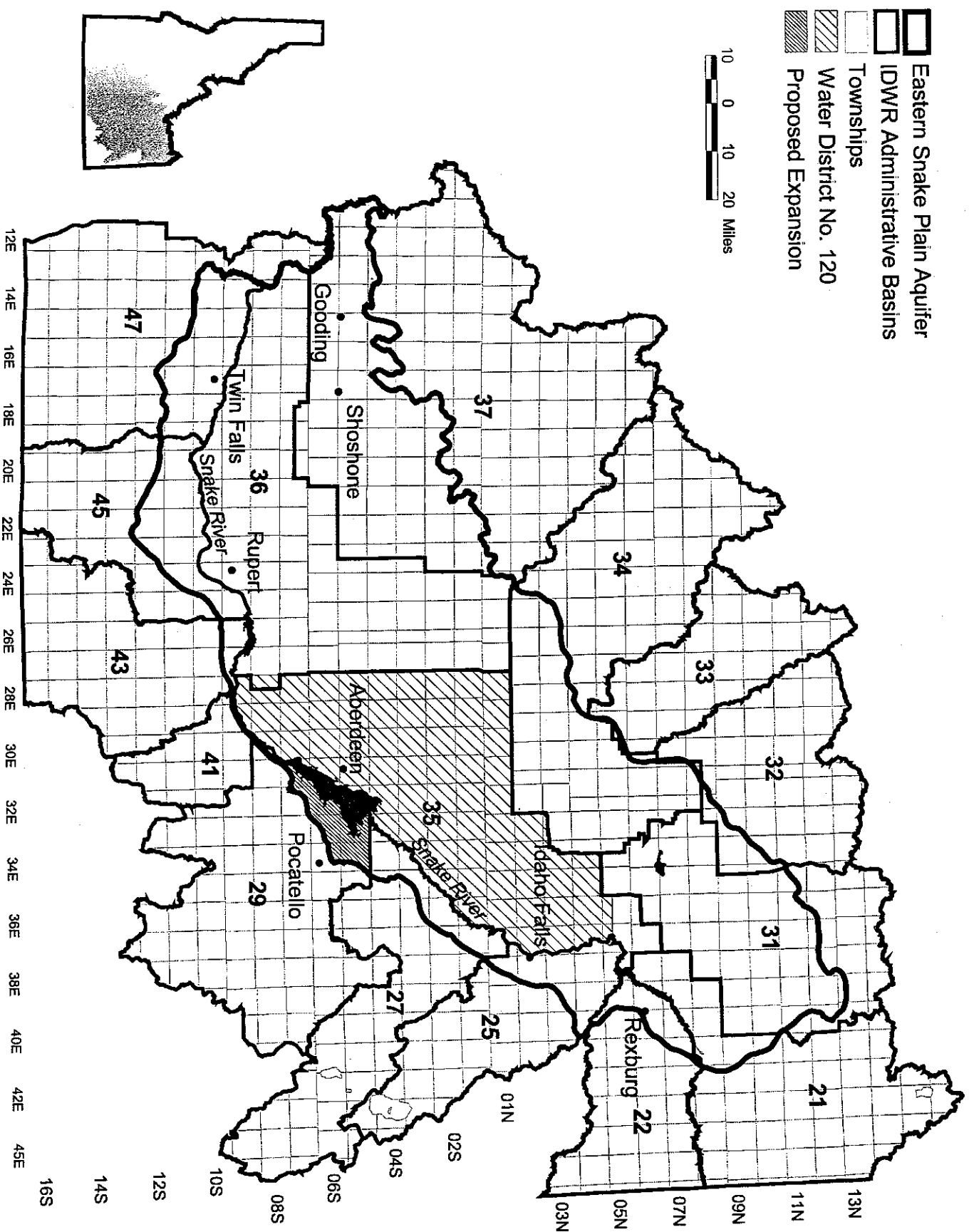

TIMOTHY J. LUKE

SUBSCRIBED AND SWORN to before me this 10th day of July, 2003




Notary Public for Idaho
Residing at: Boise, Idaho
My commission expires: Dec 5, 2006

WATER DISTRICT NO. 120 PROPOSED EXPANSION



Movant: State of Idaho

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
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Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)	Subcase 92-00021
)	
)	CERTIFICATE OF SERVICE
Case No. 39576)	
)	
)	
)	

I hereby certify that on the 10th day of July, 2003, I caused to be served true and correct copies of the **MOTION FOR ORDER OF INTERIM ADMINISTRATION And NOTICE OF HEARING; BRIEF IN SUPPORT OF MOTION FOR INTERIM ADMINISTRATION; AFFIDAVIT OF TIMOTHY J. LUKE DATED JULY 10, 2003, and this CERTIFICATE OF SERVICE** on the following persons by mailing in the U.S. Mail,

with the correct postage affixed thereto:

1. One copy to each claimant in Administrative Basin 29 that could reasonably be determined to be adversely affected by entry of the requested order. The list of claimants served is attached as Exhibit 1.
2. Copies to:

Karl Dreher
Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

IDWR Document Repository
P.O. Box 83720
Boise, ID 83720-0098

U.S. Department of Justice
Environment & Natural Resources Division
550 West Fort Street, MSC Box 033
Boise, ID 83724

DATED this 10th day of July 2003.



DAVID J. BARBER
Deputy Attorney General

Exhibit 1

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Exhibit 1

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ENGLAND LYNN E
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EVANS JOHN P
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REXBURG ID 83440

FERGUSON SYBIL
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GONZALES IRENE H
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GUNDERSON GARY A
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JACOBSON DIANNE
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POCATELLO ID 83204-7435

JACOBSON LEONARD
1350 W SYPHON RD
POCATELLO ID 83204-7435

KENDELL PAUL
3131 W NEELEY RD
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KOPP ESTHER M
2697 KOPP RD
AMERICAN FALLS ID 83211

KOPP SR FRED L
2697 KOPP RD
AMERICAN FALLS ID 83211

KREIN WILBUR R
3350 S EAGLE ROCK RD
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Exhibit 1

LAMBERT LYLE
11336 N RIO VISTA RD
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LAMBERT VIRGINIA
11336 N RIO VISTA RD
POCATELLO ID 83202

LEIGHTON WILLIAM A
1820 GOVERMENT RD
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LOWDER JUSTIN
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LOWDER LUCILE
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1877 TANK FARM RD
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MASON JOHN D
1819 GOVERNMENT RD
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MASON VALERIE
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MC CRAW SANDIE
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REES PATRICIA
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RICHARDSON KIM
2506 SIMONS LN
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ROWE JR WILLARD A
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SCHROEDER NATHAN
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2016 TRUCKERSVILLE
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SHELLEY WANDA B
2016 TRUCKERSVILLE
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THOMPSON LYNN
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GONZALES FERNANDO B
2002 BIG SKY RD
POCATELLO ID 83204

GONZALES IRENE H
2002 BIG SKY RD
POCATELLO ID 83204

GUNDERSON GARY A
1890 BIG SKY RD
POCATELLO ID 83202

JACOBSON DIANNE
1350 W SYPHON RD
POCATELLO ID 83204-7435

JACOBSON LEONARD
1350 W SYPHON RD
POCATELLO ID 83204-7435

KENDELL PAUL
3131 W NEELEY RD
AMERICAN FALLS ID 83211

KOPP ESTHER M
2697 KOPP RD
AMERICAN FALLS ID 83211

KOPP SR FRED L
2697 KOPP RD
AMERICAN FALLS ID 83211

KREIN WILBUR R
3350 S EAGLE ROCK RD
AMERICAN FALLS ID 83211

Exhibit 1

LAMBERT LYLE
11336 N RIO VISTA RD
POCATELLO ID 83202

LAMBERT VIRGINIA
11336 N RIO VISTA RD
POCATELLO ID 83202

LEIGHTON WILLIAM A
1820 GOVERNMENT RD
POCATELLO ID 83202

LOWDER JUSTIN
14451 W CHUBBUCK RD
POCATELLO ID 83201

LOWDER LUCILE
14451 W CHUBBUCK RD
POCATELLO ID 83201

MADDEN BARBARA L
1877 TANK FARM RD
POCATELLO ID 83204

MASON JOHN D
1819 GOVERNMENT RD
POCATELLO ID 83202

MASON VALERIE
1819 GOVERNMENT RD
POCATELLO ID 83202

MC CRAW JAMES A
2012 S BIG SKY RD
POCATELLO ID 83202

MC CRAW SANDIE
2012 S BIG SKY RD
POCATELLO ID 83202

MEYERS M JAY
PO BOX 4747
POCATELLO ID 83205

MILES BRENT M
15167 W TYLER RD
POCATELLO ID 83202

MILES JOYCE A
15167 W TYLER RD
POCATELLO ID 83202

MOSS MARY
1956 COTTAGE
POCATELLO ID 83201

RABURN JAYNEE N
2550 LAKE VIEW RD
AMERICAN FALLS ID 83211

RABURN LENARD H
2550 LAKE VIEW RD
AMERICAN FALLS ID 83211

REES CARL C
11366 N RIO VISTA RD
POCATELLO ID 83202

REES PATRICIA
11366 N RIO VISTA RD
POCATELLO ID 83202

RICHARDSON JUSTIN
2506 SIMONS LN
AMERICAN FALLS ID 83211

RICHARDSON KIM
2506 SIMONS LN
AMERICAN FALLS ID 83211

Exhibit 1

ROWE ORA L
2814 S POCATELLO AVE
AMERICAN FALLS ID 83211

ROWE JR WILLARD A
2814 S POCATELLO AVE
AMERICAN FALLS ID 83211

ROWLAND CONNIE M
1254 W SYPHON RD
POCATELLO ID 83202

ROWLAND EDWARD N
DBA ROWLANDS INC
1141 ROWLAND RD
POCATELLO ID 83204

SCHROEDER MICHELLE
2098 MICHAUD CREEK RD
POCATELLO ID 83204

SCHROEDER NATHAN
2098 MICHAUD CREEK RD
POCATELLO ID 83204

SHELLEY ELTON C
2016 TRUCKERSVILLE
POCATELLO ID 83204

SHELLEY WANDA B
2016 TRUCKERSVILLE
POCATELLO ID 83204

SMITH ANTON
1651 W SUNDANCE RD
POCATELLO ID 83202

SMITH EDWARD A
2811 MARGO LN
POCATELLO ID 83201

STIRLING FRED
2096 TRUCKERSVILLE RD
POCATELLO ID 83204

STIRLING JACK R
C/O FRED STERLING
2096 TRUCKERVILLE RD
POCATELLO ID 83204

SWANSON MARK R
436 POLK
AMERICAN FALLS ID 83211

THOMPSON BETTY L
1761 W SYPHON RD
POCATELLO ID 83202

THOMPSON LYNN
1761 W SYPHON RD
POCATELLO ID 83202

TURNER ESTHER S
1355 DOUGLAS LN
POCATELLO ID 83204

TWITCHELL DALE
2548 LAKE VIEW RD
AMERICAN FALLS ID 83211

TWITCHELL EILEEN
2548 LAKE VIEW RD
AMERICAN FALLS ID 83211