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November 17, 2011

Ms. Christine Roberts  
Idaho Department of Water Resources  
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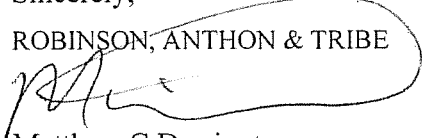
RE: **Water District 43C nka Cassia Creek Irrigation District**

Dear Christine:

This office represents the interests of Cassia Creek Irrigation District. We are in receipt of a copy of letter you sent to Maxine Ward, Secretary for Water District 43C in Elba, Idaho. Please be advised that the majority of Water District 43C has been encompassed into the newly created Cassia Creek Irrigation District that was formed by Order of the Cassia County Board of Commissioners on September 26, 2011. Enclosed please find a copy of that Order. At this time, the Irrigation District intends to operate as an independent entity. Its plan at this time is to have the Organizational Meeting of the Irrigation District on the last Saturday of January, which was their traditional day to meet as a water district. If you have any other questions or concerns, please do not hesitate to contact me or Maxine Ward, Secretary of the Irrigation District.

Sincerely,

ROBINSON, ANTHON & TRIBE



Matthew C Darrington

MCD:jb

enc

pc: client

**IDAHO DEPARTMENT OF WATER RESOURCES  
REPORT ON  
FORMATION OF THE CASSIA CREEK IRRIGATION DISTRICT**

**INTRODUCTION**

On June 16, 2010, Matthew C Darrington, legal counsel for water users proposing formation of the Cassia Creek Irrigation District ("district"), submitted a petition and map proposing formation of the district to the Idaho Department of Water Resources ("IDWR"). In accordance with Idaho Code ("IC") §43-101 and §43-107, IDWR has reviewed the petition, map and accompanying signatures of petitioners. This report responds to Mr. Darrington's request for IDWR to examine the petition and supporting documents pursuant to IC §43-107. IDWR was provided with an Amended Exhibit A (list of lands within proposed district boundaries) on October 14, 2010.

**LIST OF PETITIONERS**

IC §43-101 provides guidance regarding who may propose organization of a district. The statute, copied in its entirety, is as follows:

Whenever fifty (50), or a majority, of the holders of title, or evidence of title, to lands susceptible of one or more modes of irrigation from the same or different sources and by the same or different systems of works, desire to provide for the irrigation of the same, or when for other reasons they desire to organize the proposed territory into one district, they may propose the organization of an irrigation district under this title: provided, said formation into one (1) district meets with the approval of fifty (50), or a majority of the holders of title, or evidence of title, to lands in each of the communities affected: provided, further, said holders of title or evidence of title shall hold such title or evidence of title to at least one-fourth (1/4) part of the total area of the land in the proposed district, exclusive of state and government land which will be assessable for the purposes of the district. The equalized county assessment roll next preceding the presentation of a petition for the organization of an irrigation district shall be sufficient evidence of title for the purpose of this title, but other evidence may be received, including receipts or other evidence of the rights of entrymen on lands under any law of the United States or of this state, and such entrymen shall be competent signers of such petition, and the lands on which they have made such entries shall, for the purposes of said petition, be considered as owned by them.

Based on review of the list of petition signees presented as Exhibit B of the petition, IDWR finds that there are a total of 25 individuals who signed the petition to form the district. IDWR has found through a search of water right records from Cassia Creek and tributaries that there are over 60 individual water right owners within the proposed district. Given these numbers, IDWR finds that the petitioners have not met the initial requirements of IC §43-101 wherein "fifty (50) or a majority of holders of title, or evidence of title to lands susceptible of irrigation...may **propose** the formation of an irrigation district" (emphasis added). IDWR however also finds that the 25 individual petition signees hold title to more than one-fourth of the water right acres authorized to be irrigated from Cassia Creek and tributaries within the proposed district. Presumably, district formation would meet the "approval" of a majority of the assessable land

owners in the district where such majority is described in IC §43-101 as the holders of title to one-fourth of the assessable area in the district, excluding federal and state lands. IDWR is not certain how the “one-fourth” assessable land ownership criteria is to be applied within the context of IC §43-101 or other portions of Title 43, Idaho Code. IDWR encourages the County Commission to consult with its legal counsel with respect to the requirements of IC §43-101.

IDWR has found additional concerns with the submitted list of signed petitioners as follows:

- One of the petition names provided in Exhibit B was not signed by the petitioner, but rather signed “for” by one of the other petition signees. IDWR does not find that the irrigation district formation statutes provide for proxy petitions and is of the opinion that proxy petitions should not be considered valid unless fully supported by power of attorney or similar documentation.
- IDWR finds that one of the petition signees, Thomas Ward, is not a current holder of record of any water rights within the proposed district. Tax lot records on file at IDWR from the Cassia County Assessor’s Office, which were last updated with IDWR in February of 2010, do not include any records for Thomas Ward.
- Two of the petition signees provided in Exhibit B of the petition, Kevin Tracey and Rodney Hall, own irrigation water rights for which about half or most of the irrigated place of use is located outside of the proposed district boundaries as described in Exhibits A and C.

## **SCOPE OF PETITION**

IDWR notes that the petition is general in nature in describing the purpose of the proposed district. On June 28, 2010, IDWR sent correspondence to Mr. Darrington seeking further clarification regarding the intent of district formation. IDWR received a response from Mr. Darrington dated September 22, 2010 (see Attachment A of this report). IDWR finds that Mr. Darrington’s September 22<sup>nd</sup> response provides little additional clarification regarding the purpose of district creation. Based on the petition and Mr. Darrington’s response, the objectives of district formation appear to be as follows:

- Assume management and maintenance of stream channel diversion works;
- Provide for management and delivery of water;
- Apply for and receive grants for irrigation works;
- Utilize the district for cooperation with IDWR.

Both the petition and subsequent response from Mr. Darrington are clear in stating that “it is not the intent of the district, at this time, to construct new works or to purchase existing works”, but “the District may do so in the future.” The petition lacks sufficient detail or explanation regarding the district objective for management of water and diversion works. IDWR is not certain as to the type or extent of management that may be provided by the district, or what costs and resources may be involved in providing such management. The Darrington response does summarize that the purpose of the district is “to assess members, improve and maintain delivery works, and apply for grants.”

With respect to the objective concerning delivery of water in the proposed district, IDWR wishes the county commission to understand that an active water district already exists for the purpose of delivering water from Cassia Creek and its tributaries. A water district is created by the director of IDWR and organized in accordance with the provisions of IC Title 42, Chapter 6, for the purpose of distributing water rights from public sources of water in accordance with water right priority dates. Water District 43-C includes all surface water rights within the Cassia Creek drainage. The water district extends from the Cassia Creek drainage headwaters to the confluence with the Raft River. The water district has been in existence for many years and remains an active water district that annually elects a watermaster and adopts a budget for the delivery of water and regulation of water rights. Upon being elected and taking an oath of office, the watermaster is appointed by the director of IDWR and may take guidance from the director in fulfilling the duties of the office. Idaho law is clear that the duly elected water district watermaster is responsible for delivery of water from the public water supply within the water district. Irrigation districts have no authority to deliver water from the public streams or water sources in the state. Irrigation districts may provide for the delivery of water within their own delivery canals or infrastructure, as well as the maintenance of any delivery canals or works that they own within their district. As stated in the petition, the proposed irrigation district will not, for the foreseeable future, own any delivery canals or diversion works. The proposed district therefore will not be involved in the delivery of water to its members. The district may be limited in maintenance and management of any "irrigation works" since such works are privately owned unless there is an intent among the private parties to assign ownership of their irrigation works to the district.

IDWR appreciates that the district organizers wish to obtain grants to improve and maintain "irrigation works" in the district. Mr. Darrington's response letter appears to define "irrigation works" as the stream channel and diversion works including head gates. Although not specifically referenced in the petition or Mr. Darrington's response, IDWR assumes that the term "irrigation works" may also include measuring devices. Installation and maintenance of head gates and measuring structures are the responsibility of the individual water right holders but IDWR recognizes that there can be some significant costs associated with such structures. The goal of obtaining grants, if accomplished, will greatly assist the water district watermaster in delivery and regulation of water. To this end, IDWR supports the existence of an entity whose primary goal is to obtain grants to install new head gates and measuring devices on water diversions in the Cassia Creek drainage, if indeed that is the intent of the proposed irrigation district. IDWR does note that several Idaho water districts in recent years have been successful in obtaining federal grants to improve controlling works and measuring devices in their districts. Water District 11, Bear River and tributaries, received a federal grant in 2009 to replace or upgrade measuring devices throughout the district. That grant is being administered through a local Natural Resources Conservation Service (NRCS) county office. IDWR recognizes that it may often be easier for entities such as irrigation districts or canal companies to qualify for grants. IDWR also acknowledges that an irrigation district or private canal company may qualify for feasibility study grants and low interest loans from the Idaho Water Resources Board (IWRB), whereas water districts generally do not qualify for such IWRB funds given that they are state created entities that work under the guidance of IDWR.

IDWR wishes to point out that maintenance of stream channels may be accomplished by irrigation districts, private canal companies, private individual water right holders or a group of

private right holders as long as proper stream channel permits and authorization is acquired in accordance with the Idaho Stream Channel Protection Act (IC Title 42, Chapter 38).

## **PROPOSED BOUNDARIES**

The boundaries of the proposed irrigation district are essentially the same as the Water District 43-C and Cassia Creek drainage boundaries. The Water District 43-C boundary includes some intermittent streams and dry washes draining from the east slope of the Cotterel Mountains that sink into the ground of alluvial fans within Townships 11 and 12 South and Range 26 East (see Exhibit A, Water District 43-C Area Excluded from Irrigation District). There are no irrigation water right points of diversion or uses within this excluded area, and only a few privately owned stock water rights exist in this area.

Some lands with Cassia Creek irrigation water right place of use descriptions are located just outside of the eastern Cassia Creek hydrologic boundary or divide between Cassia Creek and the Raft River drainage area east and northeast of Malta. The proposed irrigation district boundaries as shown in Exhibit A includes Cassia Creek water right place of use descriptions located outside of the Water District 43-C boundary within portions of Sections 24 and 25 of Township 12 South (T12S) and Range 26 East (R26E), and portions of Sections 19 and 30, T12S and R27E. However, Cassia Creek irrigation water rights with place of use descriptions in portions of Section 31, T12S, R27E, and portions of Sections 6 and 19, T13S, R27E are not included in either petitioner's Amended Exhibit A (land list) or Exhibit C (map).

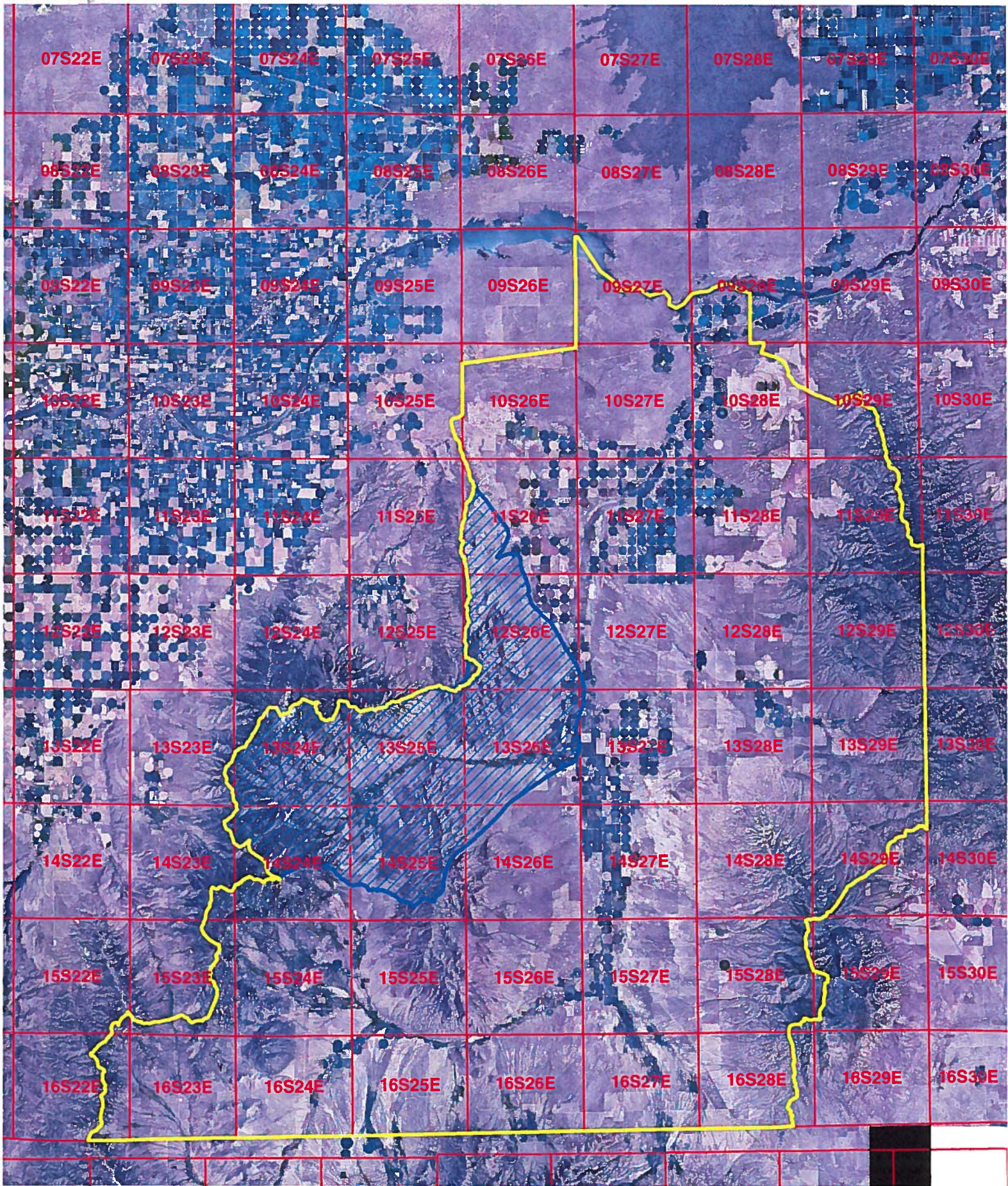
## **SUMMARY AND CONCLUSIONS**

IDWR questions if the number of landowners needed to propose formation of an irrigation district have been documented pursuant to IC §43-101. IDWR therefore recommends that the county commission carefully determine if the district organizers have met the requirements of IC §43-101.

IDWR is neutral in its recommendation of the proposed Cassia Creek Irrigation District. IDWR remains firm in its opinion that the stated purposes of district formation are either vague or too broad. At best, IDWR, and likely the county commission, would find it difficult addressing potential questions from water users or constituents concerning district objectives and/or future potential irrigation district assessments based on the limited justification provided to IDWR through this point in time. IDWR suggests that the district organizers consider providing a more detailed plan of proposed operation, including any potential plans or schedule of work related to improvement or replacement of diversion works in the proposed district, estimates of cost, and other pertinent information, so that further review and approval opportunities are provided.

Despite IDWR's interpretation of IC requirements, IDWR believes the county commissioners and the property owners in the proposed district are the appropriate parties to determine, in accordance with IC Title 43, Chapter 1, whether such a district should be created to accomplish the broad objectives outlined in the petition.





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13N18W	13N17W	13N16W		13N14W	13N13W	13N12W	13N11W	13N10W