

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE CREATION)
OF THE JORDAN CREEK WATER)
DISTRICT, ADMINISTRATIVE)
BASIN NO. 55)
_____)

**FINAL ORDER CREATING
WATER DISTRICT 55B**

The Director (“Director”) of the Idaho Department of Water Resources (“Department”) is required by statute to divide the state into water districts for the purpose of performing 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 vests the Director with discretion to determine how these mandatory water districts should 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:

PRELIMINARY ACTIVITIES AND PROCEDURAL FACTS

1. Jordan Creek is located in the Department’s Administrative Basin 55, Owyhee County.
2. On December 1, 2011, the Snake River Basin Adjudication ("SRBA") District Court closed claims taking in Basin 55, Owyhee County.
3. On August 25, 2014, the SRBA District Court issued its Final Unified Decree, finalizing the judicial determination of water rights in the Snake River Basin, except for deferrable domestic and stockwater rights and certain other water rights not required to be claimed in the adjudication.
4. Water rights authorizing the diversion of water from Jordan Creek and its tributaries were decreed by the Final Unified Decree.
5. Idaho Code § 42-604 states that the Director shall “divide the state into water districts in such manner that each public steam and tributaries [(hydrologic basin)] . . . shall constitute a water district . . .” Division of the state into water districts and constitution of a water district requires the Director to “create” a water district. The mandate to create water districts “shall not apply to streams or water supplies whose priorities of appropriation have not been adjudicated by the courts . . .” *Id.*
6. On January 4, 2022, the Department received a formal request from the Gusman Livestock Company, Inc. (“Gusman Livestock”), for the creation of a water district for Jordan Creek and its tributaries as per Idaho Code § 42-604.
7. On February 1, 2022, the Director issued a notice proposing creation of a water district for Jordan Creek and its tributaries pursuant to the provisions of Idaho Code § 42-604. The Department sent notice by regular U.S. Mail on February 2, 2022, to each holder of a surface water right in the Jordan Creek Hydrologic Basin, except domestic and stock water rights, as defined under Idaho Code §§ 42-111 and 42-1401A(11). The hearing notice described the proposed creation of a water district in the Jordan Creek Hydrologic Basin as shown on the map in Attachment A of this order, the reasons

therefore, and the time and place for a hearing to be held on February 23, 2022, concerning the proposed action. The notice also designated a time period within which written comments on the proposed action would be accepted.

8. The Director's notice further explained that creation of the water district is necessary to properly administer water rights within the Jordan Creek Hydrologic Basin and to facilitate the measurement and reporting of water diversions.

9. On February 23, 2022, commencing at approximately 6:00 p.m. at the Pleasant Valley School, 28026 Juniper Mountain Road, located in Idaho near Jordan Valley, Oregon, Gary Spackman, Director of the Department ("Director"), conducted a public hearing concerning the proposed water district creation. Approximately a dozen people attended the hearing.

10. The Director initiated the meeting by explaining the hearing process. Department staff presented information that described the proposed district area, the features and operation of a water district, the reasons for creation of the district, and the rights and uses proposed to be included in the district. Reasons given for creation of the water district by the Department included the following:

- Administer and deliver water rights as necessary in accordance with the prior appropriation doctrine as established by Idaho law;
- Measure, record, and monitor water diversions as necessary to deliver priority water rights and to assure 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 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 potential new water right applications.

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

13. Persons attending the hearing offered oral statements for the record. In addition, the Director held the record open through March 9, 2022.

14. The following individuals presented oral statements for the record at the hearing:

- Laura Schroeder, Attorney for Gusman Livestock
- Teo Mastrejuan
- Josh Bruce
- Lavar Young
- Mike Hanley
- Bryce Kershner
- Kim Kildew
- Brian Johnstone
- Vernon Kershner

15. The following individuals submitted written comment to the Department on or before the March 9, 2022, deadline:

- Dennis Stanford (O6 Livestock)
- Teo Mastrejuan
- Josh Bruce (Bruce Ranch LLC)
- Craig Brasher
- Bryce Kershner (Kershner Ranch LLC)
- Kim Kildew (Boulder Creek Ranch LLC)
- Forest Fretwell (Gusman Livestock)

FINDINGS OF FACT

1. The Jordan Creek Hydrologic Basin, including its tributaries, is depicted on the map attached as Attachment A. The Jordan Creek Hydrologic Basin drains approximately 500 square miles of land in Owyhee County, Idaho.

2. The Jordan Creek Hydrologic Basin can be divided roughly into two separate topographical areas: (1) the Headwaters, located in higher elevations and higher gradient uplands punctuated with ranchlands along or near tributary streams; and (2) the Lower Jordan Creek Valley, a broad, gently sloping east to west then northwest valley of ranches through which Jordan Creek and portions of Jordan Creek tributaries meander to the Idaho/Oregon State Line. The upstream boundaries of the Lower Jordan Creek Valley include lower Jordan Creek, lower Lone Tree Creek, the extreme lower portions of Williams Creek, Big Boulder Creek, Flint Creek, and a small portion of Jordan Creek just upstream of the location where Flint Creek Road crosses Jordan Creek. The map attached as Attachment A depicts the boundaries of the Lower Jordan Creek Valley with a gray boundary line and gray cross-hatching.

3. Water rights bearing primarily senior priority dates authorize diversion of water from Jordan Creek and lower tributaries in the Lower Jordan Creek Valley for irrigation. For the most part, water rights authorizing diversion of water from streams in the Headwaters bear dates of priority later than the water rights in the Lower Jordan Creek Valley.

4. Gusman Livestock owns the irrigation water right with the second most-senior priority on Lower Jordan Creek. Gusman Livestock asserts that owners of ranches located upstream of the Gusman Livestock place of use are diverting Jordan Creek water pursuant to water rights bearing junior priority dates to the Gusman Livestock water right. As a result of these diversions, Gusman Livestock asserts it is being deprived of water to which it is entitled.

5. Holders of water rights authorizing diversion of water upstream from Gusman Livestock assert:

- a. The water users have attempted to informally deliver water to Gusman Livestock when there is a shortage of water.
- b. Measuring devices and controlling works on Jordan Creek and tributaries are deficient or nonexistent, and water cannot currently be measured and delivered to water rights in priority.
- c. Water rights authorizing diversion of water from the Headwaters must be regulated in priority with the water rights authorizing diversion of Jordan Creek water in the Lower Jordan Creek Valley.

6. Tributaries located in the Headwaters derive water from high desert uplands and mountainous terrain surrounding the Jordan Creek Hydrologic Basin. Snow in the upper reaches of the basin melt early in the year, and many of the streams diminish to base flows or dry up after the spring runoff. These streams may or may not contribute water to the Lower Jordan Creek Valley during the summer when stream flows are low and the demand for water is high.

7. Currently, the Department has little knowledge of the contribution of Headwater tributary streams to the flows of Jordan Creek in the Lower Jordan Creek Valley during summertime base flows.

8. Without knowledge of the contribution of streams in the Headwaters to Lower Jordan Creek, there is no good reason to separate the Headwaters and the Lower Jordan Creek Valley into two separate water districts as some have suggested.

9. Joint monitoring and measurement by a watermaster, assisted by Department staff, is necessary to establish the hydraulic connectivity and the timing of connectivity between the Headwaters and Lower Jordan Creek Valley.

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 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, 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 that 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 a court having jurisdiction thereof has adjudicated the priorities of appropriation.

5. All the water rights claimed in the SRBA and within Basin 55, including the Jordan Creek Hydrologic Basin, have been decreed by the SRBA District Court.

6. Based upon the above statutory authorities, and the record in this proceeding, the Director should create a water district to administer and regulate water rights and protect senior priority water rights in the Jordan Creek Hydrologic Basin.

ORDER

IT IS HEREBY ORDERED:

1. Water District No. 55B is created to include all surface water rights in the Jordan Creek Hydrologic Basin in Basin 55 as shown in the map appended hereto as Attachment A.
2. Surface water rights for domestic and stock water purposes, as defined by Idaho Code §§ 42-111 and 42-1401A (11), are presumed to be de minimis, and will not be regulated by the watermaster of Water District No. 55B to supply water to other water rights unless determined to be depleting water delivered to the holder of a senior priority water right. Nonetheless, the holder of a decreed surface water right for domestic and stock water purposes, as defined by Idaho Code §§ 42-111 and 42-1401A (11), may call for delivery of water against holders of junior priority water rights.
3. The holders of water rights within Water District No. 55B shall meet in May 2022 at a date, time, and place to be announced by the Director to conduct its annual meeting to elect a watermaster, select an advisory committee, if desired, and set a budget for operating the district.
4. The watermaster for Water District No. 55B shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director:
 - a. Measure, collect, and record the diversions authorized by water rights;
 - b. Administer and enforce 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).
5. The Director will issue separate orders requiring the installation of measuring devices and controlling works for water right diversions within Water District No. 55B. The Director anticipates a series of orders requiring the installation of measuring devices and controlling works focused initially on Lower Jordan Creek and extending up into the Headwaters in subsequent orders if justified by hydrologic analysis.
6. The holder of any water right who is seeking delivery of water by the watermaster must first install controlling works and a measuring device approved by the watermaster and the Department prior to delivery of water by the watermaster. The department may also require installation of controlling works and measuring devices on other points of diversion prior to regulation if the Department determines installation is necessary for delivery to the holder of a water right who is seeking delivery of water.

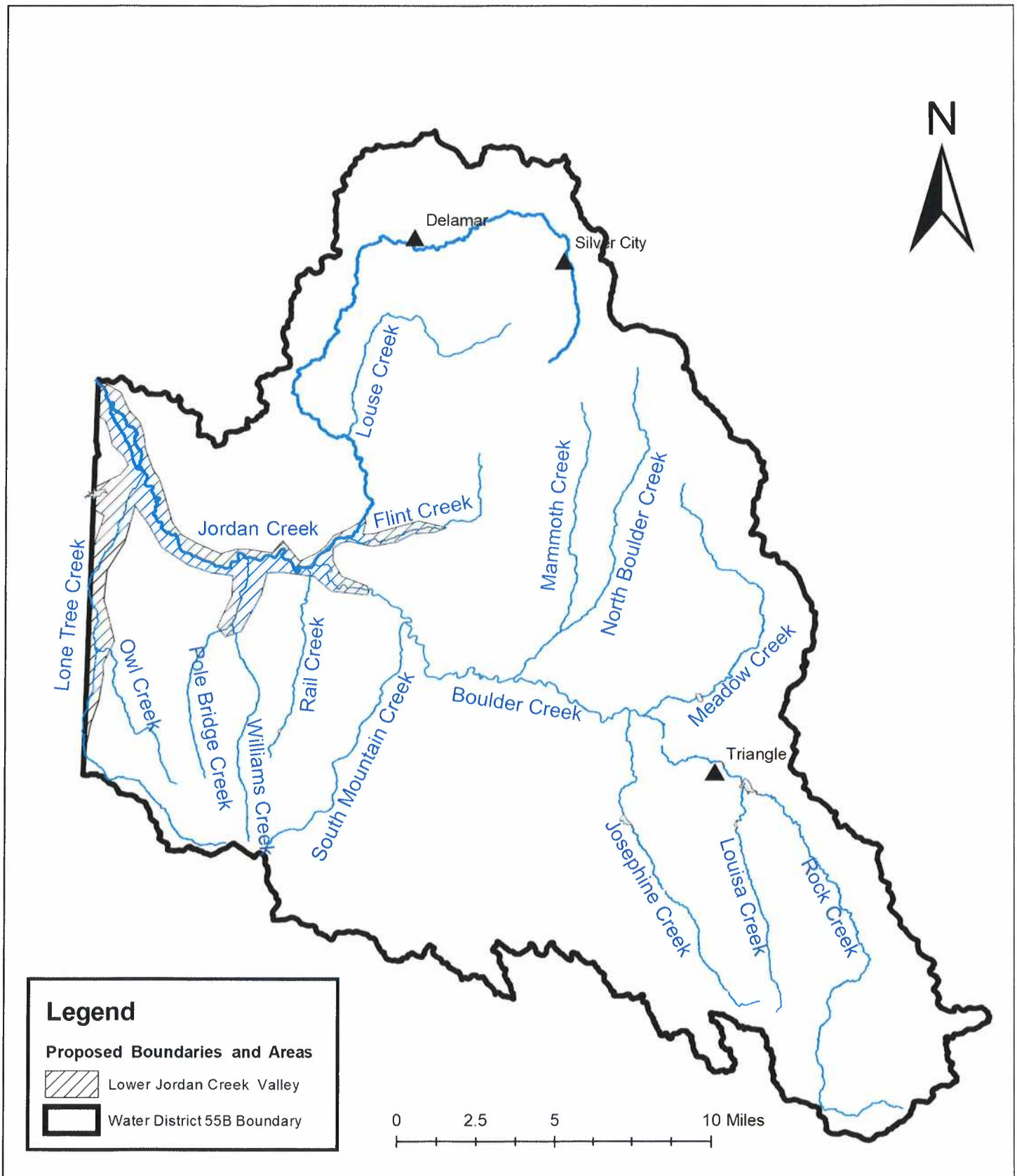
DATED this 12th day of April 2022.



Gary Spackman
Director

Attachment A

Water District 55B - Jordan Creek and Tributaries



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of April 2022, the above and foregoing document was served on each individual or entity on the included service list for this matter on file at the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho. 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.

06 LIVESTOCK
C/O DENNIS & PAT STANFORD
PO BOX 167
JORDAN VALLEY, OR 97910

CHARLES AND LARRY G ANDRUS, LARRY G
ANDRUS JR AND LARRY G ANDRUS SR
12887 CHICKEN DINNER RD
CALDWELL, ID 83605

CHARLES ANDRUS
BOX 776 RT 1
MARSING, ID 83639

BANNER MINING & MILLING CO
1712 KILLINGTON RD
RUXTON, MD 21204-1807

DONNA M BENNETT AND GEORGE L
BENNETT JR
573 N BENNETT RD
GRAND VIEW, ID 83624-5079

RUTH B AND WAYNE BERRETT
1280 KLAMATH AVE
NYSSA, OR 97913

JIM AND TERESA BJORK
15579 GOODRICH CREEK LN
BAKER CITY, OR 97814

JOSEPH E BLACK
STAR RT BOX 49
HAMMETT, ID 83627

BOULDER CREEK RANCH LLC
410 S ORCHARD ST #176
BOISE, ID 83705

WILLIAM A BOWES
PO BOX 160
STEAMBOAT SPRINGS, CO No_Data

CRAIG BRASHER
4401 EDISON RD
MARSING, ID 83639

BRUCE RANCH LLC AND ROBERT C BRUCE
PO BOX 435
JORDAN VALLEY, OR 97910-0435

CHIPMUNK GRAZING ASSN AND
CHIPMUNK GRAZING ASSOCIATION INC
PO BOX 175
MARSING, ID 83639

BRIAN D AND CHRISTINE COLLETT
24777 COLLETT RD
OREANA, ID 83650

BOB D AND RUTH M COLLETT
24912 COLLETT RD
MURPHY, ID 83650-5072

PHILIP CRAMER
1891 MOUNTAIN VIEW AVE
PETALUMA, CA 94952

JUANITA DANNER
3735 PIONEER RD
HOMEDALE, ID 83628

ROBERT V DANNER
710 BRIDAL PATH
PO BOX 673
MC CALL, ID 83638

TERESA M DANNER FRANCO
1023 LUPINE PL
NAMPA, ID 83686

DELAMAR MINING CO
PO BOX 52
JORDAN VALLEY, OR 97910-0052

DORA L FREDRICKSEN AND LOREN E
FREDRICKSEN SR
312 AMBER ST
CALDWELL, ID 83605

ANITA L AND THOMAS R GLUCH
PO BOX 257
JORDAN VALLEY, OR 97910

GUSMAN LIVESTOCK CO
27058 PLEASANT VALLEY RD
JORDAN VALLEY, OR 97910-9520

LINDA HANLEY AND MICHAEL F HANLEY IV
PO BOX 271
JORDAN VALLEY, OR 97910

JULIE J AND L DOUGLAS HYSLOP
10139 RIM RD
NAMPA, ID 83686

IDAHO DEPARTMENT OF LANDS
8355 W STATE ST
BOISE, ID 83714

ANITA J AND MICHAEL V JOHNSTON
19735 MIDDLE RD
CALDWELL, ID 83607

GEORGE AND JUANITA JOHNSTONE
5071 JOHNSTONE RD
HOMEDALE, ID 83628-3551

JOSEPHINE CREEK RANCH
C/O ROBERT K BORRON
2314 S MIDLAND BLVD
NAMPA, ID 83686-8302

JOYCE LIVESTOCK CO
C/O PAUL NETTLETON
14568 JOYCE RANCH RD
MURPHY, ID 83650

KERSHNER RANCH LLC
PO BOX 33
JORDAN VALLEY, OR 97910-0033

L U RANCHING CO INC
C/O TIMOTHY C LOWRY
PO BOX 132
JORDAN VALLEY, OR 97910-0132

LARRINAGA LAND COMPANY LLC
C/O R LARRINAGA
5604 N EDDY PL
BOISE, ID 83714-5607

LEQUERICA & SONS INC
3910 S SUMTER WAY
BOISE, ID 83709-3745

LOIS A SEEBECK, LOUIS ARLENE SEEBECK
FAMILY TRUST AND MELVIN EDWARD
SEEBECK JR
PO BOX 8
CLARKSBURG, CA 95612-0008

KAREN F AND ROBERT S MAC KENZIE
PO BOX 125
JORDAN VALLEY, OR 97910

KENNETH MAC KENZIE
RT 1 BOX 210
MARSING, ID 83639

WILLIAM E MAHER
C/O MICHAEL W MAHER
42 PARKSIDE DR
DAVIS, CA 95616

DAVID C AND SARA C MILLER
525 COOLIDGE DR
SAN GABRIEL, CA 91775

MILLER LAND CO INC
C/O STEPHEN J MILLER, PRESIDENT
PO BOX 59
MELBA, ID 83641

MJR PROPERTIES LLC
1850 S TRENT POINT PL
BOISE, ID 83712-8553

CRAIG A AND GEORGENE MOORE
PO BOX 14
MELBA, ID 83641

BARBARA MORAN
PO BOX 424
JORDAN VALLEY, OR 97910

MORGAN PROPERTIES LTD PARTNERSHIP
BOX 277
JORDAN VALLEY, OR 97710

MORGAN RANCHES LLC
C/O DAVID RUTAN
PO BOX 277
JORDAN VALLEY, OR 97910

SCOTT R AND SHERRI C NICHOLSON
PO BOX 690
MERIDIAN, ID 83680

CARL W AND GLORIA W OTTO
250 AUSTIN AVE
ATHERTON, CA 94027-4006

WILLIAM PANZERI
PO BOX 149
MARSING, ID 83639

JOSEPH L PARKINSON
21388 PARKINSON ROAD
PO BOX 65
GRAND VIEW, ID 83624

RAY PERSHALL
RT 1 BOX 448
MARSING, ID 83639

KENTON D AND SANDRA S REED
2024 E MASSACHUSETTS AVE
NAMPA, ID 83686-6239

EDDIE AND EDNA REED
21411 LONKEY LN
CALDWELL, ID 83651

ROBERT C ROBERTS
2109 N 9TH ST
BOISE, ID 83702-2820

SCHROEDER LAW OFFICES, P.C.
C/O LAURA A. SCHROEDER
1915 NE CESAR E. CHAVEZ BLVD
PORTLAND, OR 97212

SILVER CITY PROPERTY OWNERS INC
C/O CLARENCE M ORTON
3567 E YESTERNIGHT ST
MERIDIAN, ID 83642

ELEANOR L SMITH
1017 N 28TH
BOISE, ID 83702

IDAHO DEPT. OF LANDS
PO BOX 83720
BOISE, ID 83720-0050

WILLIAM P STATHAM
1421 N 21ST ST
BOISE, ID 83702

HAROLD R AND WILMA L STATHAM
4023 HOOVER ST
BOISE, ID 83705

CHARLES W STEINER
STAR RT
OREANA, ID 83659

CLEO R SWAYNE
311 14TH AVE S
NAMPA, ID 83651

THE TESTAMENTARY FAMILY BYPASS TRUST
DALE BERRETT, RETA HANSEN, OWEN
BERRETT
1280 KLAMATH AVE
NYSSA, OR 97913

KELLY A AND ROBERT A THOMAS
17947 SHORT CUT RD
OREANA, ID 83650-5089

LOGAN THOMAS
18243 SHORT CUT RD
OREANA, ID 83650

THUNDER MOUNTAIN RESOURCES INC
11770 W PRESIDENT DR STE F
BOISE, ID 83713

JENNIFER D AND TAL R TRAUTMAN
2170 OLD HIGHWAY 95
JORDAN VALLEY, OR 97910-9619

USDI BUREAU OF LAND MANAGEMENT
ATTN FRED PRICE
1387 S VINNELL WAY
BOISE, ID 83709-1657

USDI BUREAU OF LAND MANAGEMENT
20 1ST AVE W
MARSING, ID 83639

ROSEMARY AND TERRY V WARN
PO BOX 235
JORDAN VALLEY, OR 97910

BOB AND TOM WROTEN
PO BOX 438
JORDAN VALLEY, OR 97910

JANET B YOUNG
10547 YOUNGS LN
MELBA, ID 83641-4184

J LAVAR AND JANET B YOUNG
10935 YOUNGS LN
MELBA, ID 83641

LUIS C YTURRASPE
1507 ROCKING W DR
BISHOP, CA 93514



Megan Jenkins

Idaho Department of Water Resources

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(Required by Rule of Procedure 740.02)

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

Section 67-5246 provides as follows:

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

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

PETITION FOR RECONSIDERATION

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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