



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

December 17, 2012

RE: Preliminary Order Revising the Boundaries of Water District No. 75-A, Jesse Creek and Tributaries

Dear Water Right Holder,

Enclosed please find a copy of the Preliminary Order regarding the above referenced matter. This order revises the boundaries of Water District No. 75-A by including water rights from Billy Creek and Gorley Creek as shown on the map in Attachment A of the Preliminary Order. A hearing on this matter was held in Salmon on November 13, 2012. The records of the Idaho Department of Water Resources (Department or IDWR) show that you own or have an interest in one or more water rights that are diverted within Water District 75-A or from Billy or Gorley Creeks.

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.

Please contact Tim Luke, IDWR, at 208-287-4959 or by e-mail at tim.luke@idwr.idaho.gov if you have any questions concerning the attached order.

Sincerely,

Tim Luke
Water Compliance Bureau

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

c: IDWR Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE PROPOSED)
REVISION OF THE BOUNDARIES OF)
WATER DISTRICT NO. 75-A, JESSE)
CREEK AND TRIBUTARIES, TO)
INCLUDE BILLY CREEK AND)
GORLEY CREEK)
_____)

PRELIMINARY ORDER

The Director of the Idaho Department of Water Resources (Director or Department) is required by Idaho 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 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. Water District No. 75-A (Water District 75-A) is composed of Jesse Creek and tributaries, including Chipps Creek and Pollard Canyon Creek, and is located in Lemhi County. Jesse Creek is tributary to the Salmon River. The water district is located in the Department's Administrative Basin No. 75 (Basin 75).

2. On April 19, 2010, the State of Idaho filed with the Snake River Basin Adjudication (SRBA) District Court a motion requesting an order authorizing the interim administration of water rights by the Director in Basin 75 except those rights whose use is solely for domestic and/or stockwater purposes as defined under Idaho Code §§ 42-111 and 42-1401A(11). Copies of this motion were mailed to affected water right holders of record on or about April 19, 2010.

3. The State's motion for interim administration described in Finding 2 above states that "interim administration of water rights in Basin 75 is reasonably necessary because an efficient means of administering water rights from ground water sources and some surface water sources in the basin does not exist. The establishment or enlargement of water districts for this basin will provide the watermasters with the ability to administer water rights in accordance with the prior appropriation doctrine as established by Idaho law."

4. On May 25, 2010, the SRBA District Court issued an order authorizing the interim administration of certain water rights in Basin 75 by the Director pursuant to chapter 6,

title 42, Idaho Code, subject to certain exclusions. One of the exclusions was with respect to those water rights located in Water District 75-A that were excluded due to certain objections filed by the City of Salmon (City) to the State's Motion described in Finding 2 above.

5. On June 13, 2011, the SRBA District Court issued an order authorizing interim administration of water rights by the Director in Water District 75-A, pursuant to chapter 6, title 42, Idaho Code, in accordance with the Directors Reports and the Partial Decrees that supersede the Directors Reports issued in the SRBA. With respect to water rights in Water District No. 75-A held by the City, Arrowhead Water District (Arrowhead), and Edgar and/or Myrtle Edwards (Edwards), the SRBA District Court's order authorized the distribution of water pursuant to chapter 6, title 42, Idaho Code, in accordance with the Director's Reports and Partial Decrees that supersede the Directors Reports issued in the SRBA for the 2011 irrigation season and subsequent winter season ending April 1, 2012.

6. On November 12, 2012, the SRBA District Court issued an order amending its June 13, 2011 order, authorizing interim administration of all water rights by the Director in Water District 75-A, without exception, pursuant to chapter 6, title 42, Idaho Code, in accordance with the Director's Reports and Partial Decrees that supersede the Directors Reports issued in the SRBA.

7. On October 23, 2012, the Director signed a notice proposing to revise Water District 75-A to include administration of water rights from Billy Creek and Gorley Creek. Billy Creek is a tributary to Gorley Creek, and Gorley Creek is a tributary to the Salmon River. The Director sent the notice of the proposed action by regular U. S. Mail to each holder of affected water rights within the boundaries of Water District 75-A and from Billy and Gorley Creeks. The notice described the proposed district revision, the reasons therefore, and the time and place for a hearing to be held on November 13, 2012 concerning the proposed district revision. The notice also provided a time period within which written comments on the proposed action would be accepted.

8. On November 13, 2012, at approximately 2:00 p.m. at the Salmon City Hall Council Chambers in Salmon, Idaho, Tim Luke, Water Compliance Bureau Chief for the Department conducted a hearing concerning the proposed revision of Water District 75-A. Three people attended the hearing.

9. The hearing officer initiated the hearing by explaining the hearing process. The hearing officer gave a brief presentation that provided a general description of the proposed water district revision and reasons for the proposed revision as follows:

- Certain water rights from Billy Creek and Gorley Creek are combined with certain water rights from Chipps Creek in Water District 75-A with respect to total combined rates of diversion and total irrigated acres. Including Billy and Gorley Creeks in Water District 75-A will provide potential administration of the combined limit conditions under the various water rights from the different water sources;
- During SRBA water right negotiation settlement meetings between the City, Arrowhead, Edwards, and Department representatives, which occurred during 2011, it was suggested by one or more parties that Billy and Gorley Creeks be added to Water District 75-A because of the combined limit conditions and

common ownership under certain water rights from both these creeks and Chipps Creek in Water District 75-A. Billy and Gorley Creeks must eventually be placed in a water district; it is more efficient to place the creeks in Water District 75-A rather than a separate district given that some of the rights on the creek share common ownership and combined limit conditions with rights already in Water District 75-A; and

- Revising the boundaries of WD75A to include Billy and Gorley Creeks is necessary in order to properly administer the water uses and water rights from these sources.

10. The hearing officer allowed time for questions and discussion concerning the proposed water district revision. A number of questions were raised by the persons attending the hearing and were addressed by the hearing officer.

11. Persons attending the hearing were provided an opportunity to make oral statements for the record. In addition, the hearing officer held the record open through November 23, 2012, for the submittal of written comments.

12. No oral testimony was offered at the hearing. The Department did not receive any written comments from affected water right holders or other interested parties prior to the close of the comment period on November 23, 2012.

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 to 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 the Department 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.* Implementation of the proposed actions described in Finding of Fact 7 is necessary for the efficient administration of water rights.

5. Idaho Code § 42-1417 provides that the district court having jurisdiction over a general water rights adjudication may authorize the interim administration of water rights pursuant to chapter 6, title 42, Idaho Code, prior to the entry of a final decree, in accordance with Director's Reports filed with the court, with or without modification by the court, or in accordance with partial decrees that have superseded the Director's Reports.

6. All of the water rights claimed in the SRBA and within Water District 75-A, and all of the water rights claimed in the SRBA from Billy and Gorley Creeks, have been partially decreed or reported to the SRBA District Court.

7. Idaho Code § 42-113 provides that a water right permit may be issued, but shall not be required for appropriation of water for the in-stream watering of livestock.

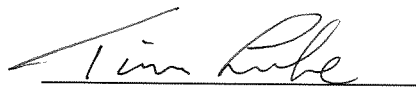
8. Based on the above statutory authorities, the order of the SRBA District Court authorizing interim administration of water rights pursuant to chapter 6, title 42, Idaho Code, and the record in this proceeding, Water District 75-A should be revised to include water rights from Billy and Gorley Creeks in Basin 75, with the exception of rights whose use is solely for domestic and/or stockwater purposes as defined under Idaho Code §§ 42-111 and 42-1401A(11), and those rights used for in-stream watering of livestock as defined by Idaho Code § 42-113.

ORDER

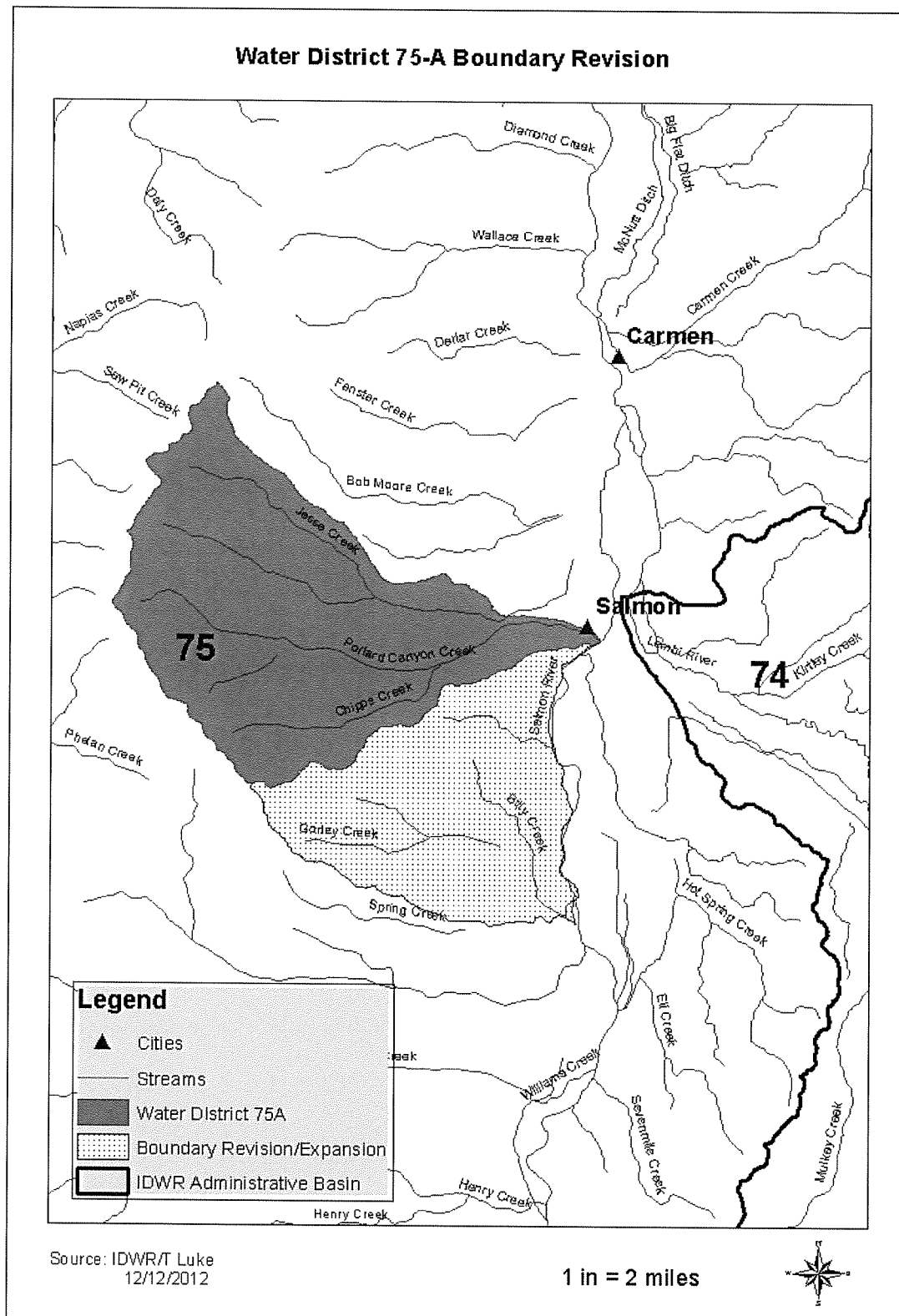
IT IS HEREBY ORDERED that:

1. The boundaries of Water District 75-A, Jesse Creek and tributaries (including Pollard Canyon Creek and Chipps Creek), are revised to include all water rights from Billy Creek and Gorley Creek in Basin 75 as shown in the map appended hereto as Attachment A, except those rights used solely for domestic and/or stockwater purposes as defined under Idaho Code §§ 42-111 and 42-1401A(11), and those rights used for in-stream watering of livestock as defined by Idaho Code § 42-113.

DATED this 17th day of December, 2012.


Tim Luke
Hearing Officer

ATTACHMENT A



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of December, 2012, 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. 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.



Sarah Garceau
Technical Records Specialist
Idaho Department of Water Resources

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CITY OF SALMON
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MYRTLE EDWARDS PO BOX 299 SALMON ID 83467	RALPH AND COLLEEN BENEDICT BOX 7 SALMON ID 83467
RANDY BUDGE PO BOX 1391 POCATELLO ID 83204	RICHARD J AND SANDRA L BILLS PO BOX 523 SALMON ID 83467
ROBERT L BLACKADAR 10 N CHEROKEE RD SALMON ID 83467	ROBERT RUSCILLI 311 AVE A SALMON ID 83467
SILVER PEAK RANCH TRUST C/O MYRTHUS AUSTIN/RON AUSTIN 63 HWY 93 N SALMON ID 83467-5292	STANNLEY AND ELISABETH MORGAN 803 14TH ST SALMON ID 83467
STANTON AND CHERYL S HADDOCK 16 JOY LN PO BOX 54 SALMON ID 83467	THE GRACE M LYON LIMITED PARTNERSHIP 4932 MOHAWK PL POCATELLO ID 83204
UNITED STATES OF AMERICA ACTING THROUGH USDI BUREAU OF LAND MANAGEMENT IDAHO STATE OFFICE 1387 S VINNELL WAY BOISE ID 83709-1657	WILMA R TILFORD 207 FULTON ST SALMON ID 83467

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

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

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

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

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

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

ORAL ARGUMENT

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

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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