



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

May 11, 2017

Name

Org

Address

City ST Zip

RE: Preliminary Order Revising Water District No. 100 to Include Ground Water Rights in the Rexburg Bench Area

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. 100: St. Anthony-Rexburg Area (WD100) to include ground water rights in the Rexburg Bench Areas as shown on the map in Attachment A of the Preliminary Order. The records of the Idaho Department of Water Resources (Department or IDWR) show that you own or have an interest in one or more water rights within the revised boundaries of WD100.

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 this office or the IDWR regional office in Idaho Falls (208-525-7161) if you have any questions concerning the attached order.

Sincerely,

Tim Luke
Water Compliance Bureau

Encl: *Preliminary Order Revising Water District No. 100*
Explanatory Information to Accompany a Preliminary Order

cc: IDWR Eastern Region, Idaho Falls

**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. 100, ST. ANTHONY-))
REXBURG AREA, TO INCLUDE))
GROUND WATER RIGHTS IN THE))
REXBURG BENCH AREA))
_____)

**PRELIMINARY ORDER REVISING
WATER DISTRICT NO. 100**

The Director (“Director”) of the Idaho Department of Water Resources (“Department”) is required to “divide the state into water districts” to perform “the essential governmental function of distribution of water among appropriators under the laws of the state of Idaho.” Idaho Code § 42-604. The Director has discretion to determine “how these mandatory water districts shall be structured” and may “create new districts, revise existing districts, or even abolish districts, as the Director finds necessary for the efficient distribution of water resources.” *In re Idaho Dep’t of Water Res. Amended Final Order Creating Water Dist. No. 170*, 148 Idaho 200, 211, 220 P.3d 318, 329 (2009). Based upon the record in this matter, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On December 29, 2006, the Director issued an order creating Water District No. 100 (“WD100”), pursuant to the provisions of Idaho Code § 42-604. *Final Order Creating Water District No. 100* (December 29, 2006). Pursuant to that order, the boundaries of WD100 were limited to those portions of Basins 21 and 22 overlying the Eastern Snake Plain Aquifer (“ESPA”)¹.
2. On March 29, 2017, the Director issued a public hearing notice proposing to revise or expand WD100 to include ground water rights in the Rexburg Bench area pursuant to the provisions of Idaho Code § 42-604. Both the current WD100 boundary and the area of expansion are shown on the map attached hereto as Attachment A. The Department sent the notice by regular U.S. Mail on March 30, 2017, to holders of ground water rights in WD100 and the Rexburg Bench area except ground water domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A(11).
3. The public hearing notice explained that the Department proposed revising WD100 to include ground water rights in the Rexburg Bench area for the following reasons:
 - The Snake River Basin Adjudication (“SRBA”) was completed on August 25, 2014. Idaho law specifies that the Department shall create or revise water districts for the administration of water rights where the water supplies of such rights have been

¹ The ESPA is:

[T]he aquifer underlying the Eastern Snake River Plain as the aquifer is defined in the report, Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho, USGS Professional Paper 1408-F, 1992 excluding areas south of the Snake River and west of the line separating Sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian.

adjudicated. A revised water district is necessary to properly administer ground water uses and rights within both the St. Anthony Rexburg and Rexburg Bench areas;

- The Rexburg Bench area is included within the Department’s ESPA Ground Water Model (“ESPA Model”) boundary. Ground water in the Rexburg Bench and the ESPA Model Boundary is hydraulically connected to the ESPA and the Snake River;
- The Rexburg Bench area is also included within the Madison Ground Water District (“MGWD”). The MGWD is both a participating member of the Idaho Ground Water Appropriators, Inc. (“IGWA”) and is a party to the Surface Water Coalition (“SWC”) and IGWA Settlement Agreement regarding the SWC water rights delivery call. The SWC delivery call affects junior priority ground water rights in the ESPA. The Settlement Agreement stipulates that participating IGWA ground water districts will initiate a number of mitigation and water management strategies, including measurement of ground water diversions and reductions of ground water use;
- An expanded water district is needed to facilitate the measurement and reporting of water use diversions in the Rexburg Bench area; and
- The Director designated the ESPA Ground Water Management Area on November 2, 2016, which includes both WD100 and the Rexburg Bench area within the ESPA Ground Water Model boundary.

4. On April 12, 2017, commencing at approximately 6:40 p.m. at the Rexburg City Council Chambers, Rexburg, Idaho, Cindy Yenter, the Department hearing officer in this matter, conducted a public hearing concerning revision of WD100 to include ground water rights in the Rexburg Bench area, excluding ground water rights used for domestic and stock water purposes as defined by Idaho Code §§ 42-111 and 42-1401A (11). Approximately twenty-two people attended the hearing.

5. The hearing officer initiated the meeting by explaining the hearing process. Department representative Tim Luke gave a presentation describing the existing WD100 boundaries, the proposed revision of WD100 boundaries, reasons for the proposed revision of boundaries, and the ground water rights and uses affected by the proposed water district revision. Mr. Luke cited reasons for the proposed expansion of WD100 that included the same reasons identified in Finding of Fact 3. Additionally, Mr. Luke stated that expansion of WD100 may be more efficient than creating a separate water district for the Rexburg Bench area because the one district may minimize duplication of efforts and costs. Moreover, some users may have ground water rights in both areas and may benefit from a single district versus two separate districts. Also, ground water users in both WD100 and the Rexburg Bench area share common interests and geography with respect to the ESPA, SWC and IGWA Settlement Agreement and the recent designation of the ESPA Ground Water Management Area² (“ESPA GWMA”).

6. Following the presentation, the hearing officer allowed hearing participants to ask questions regarding the proposed water district revision.

² *Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area, November 2, 2016. Idaho Department of Water Resources.* The boundary of the ESPA GWMA includes both WD100 and the Rexburg Bench area within the ESPA Ground Water Model Version 2.1.

7. The hearing officer also allowed persons attending the hearing to make oral statements for the record. In addition, the hearing officer held the record open through April 24, 2017, for submission of written comments.

8. One (1) individual testified at the hearing.

9. Jeff Raybould, a ground water right holder in WD100, who is also the WD100 treasurer and a member of the WD100 advisory committee, testified in support of the proposed revision of the WD100 boundaries. Specifically, Mr. Raybould supported including the Rexburg Bench area in WD100 because it would result in the lowest possible assessments and cost for the administration of ground water rights in the area.

10. The Department did not receive any written comments on or before April 24, 2017.

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 are “the property of the state, whose duty it shall be to supervise” the “appropriation and allotment” of the water “to those diverting the same therefrom for any beneficial purpose[.]” Idaho Code §§ 42-101 and 42-226.

2. The Director, acting on behalf of the state of Idaho, is authorized 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. Idaho Code § 42-604 mandates the Director form water districts to properly administer uses of water from “public streams and tributaries, or independent sources of water supply,” for which a court having jurisdiction thereof has adjudicated the water rights. *See In re Idaho Dep't of Water Res. Amended Final Order Creating Water Dist. No. 170*, 148 Idaho at 211, 220 P.3d at 329.

4. The Director has “direction and control of the distribution of water from all natural water sources within a water district” Idaho Code § 42-602. The Director must “distribute water in water districts in accordance with the prior appropriation doctrine.” *Id.*

5. The Director has discretion to determine how the “mandatory water districts shall be structured” and may “create new districts, revise existing districts, or even abolish districts, as the Director finds necessary for the efficient distribution of water resources.” *In re Idaho Dep't of Water Res. Amended Final Order Creating Water Dist. No. 170*, 148 Idaho at 211, 220 P.3d at 329.

6. “[E]fficient distribution of water . . . 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.*

7. Pursuant to Idaho Code § 42-604, adjudication of water rights is a prerequisite for the establishment of a water district or inclusion of water rights in a water district. All of the ground water rights claimed in the SRBA within the Rexburg Bench area (and/or the Madison Ground Water District) were partially decreed by the SRBA District Court. The SRBA District Court signed the *Final Unified Decree* for water rights within the Snake River Basin on August 25, 2014.

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

9. The revision of WD100 to include delivery and administration of ground water rights in the Rexburg Bench area is necessary for the reasons set forth in Finding of Fact 3 and for the efficient administration of water rights in general.

10. Based upon the above statutory authorities, the adjudication of ground water rights in the Rexburg Bench area, and the record in this proceeding, the Director should revise the boundaries of WD100 to include administration and regulation of ground water rights in the Rexburg Bench area.

ORDER

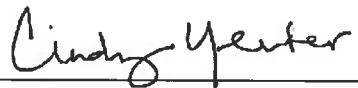
IT IS HEREBY ORDERED that:

1. WD100 is revised to include all ground water rights in the Rexburg Bench area as shown on the map attached hereto as Attachment A, except ground water rights used for domestic and stock water purposes as defined by Idaho Code §§ 42-111 and 42-1401A(11); and

2. The holders of ground water rights within the Rexburg Bench area added to WD100 pursuant to this order shall not be subject to administrative assessments from WD100 in 2017. The WD100 annual meeting is held on the last Tuesday in January. At the annual meeting, the holders of ground water rights within the district shall elect a watermaster, select an advisory committee to include representatives from the Rexburg Bench area added to WD100, and set a budget for operating the district; and

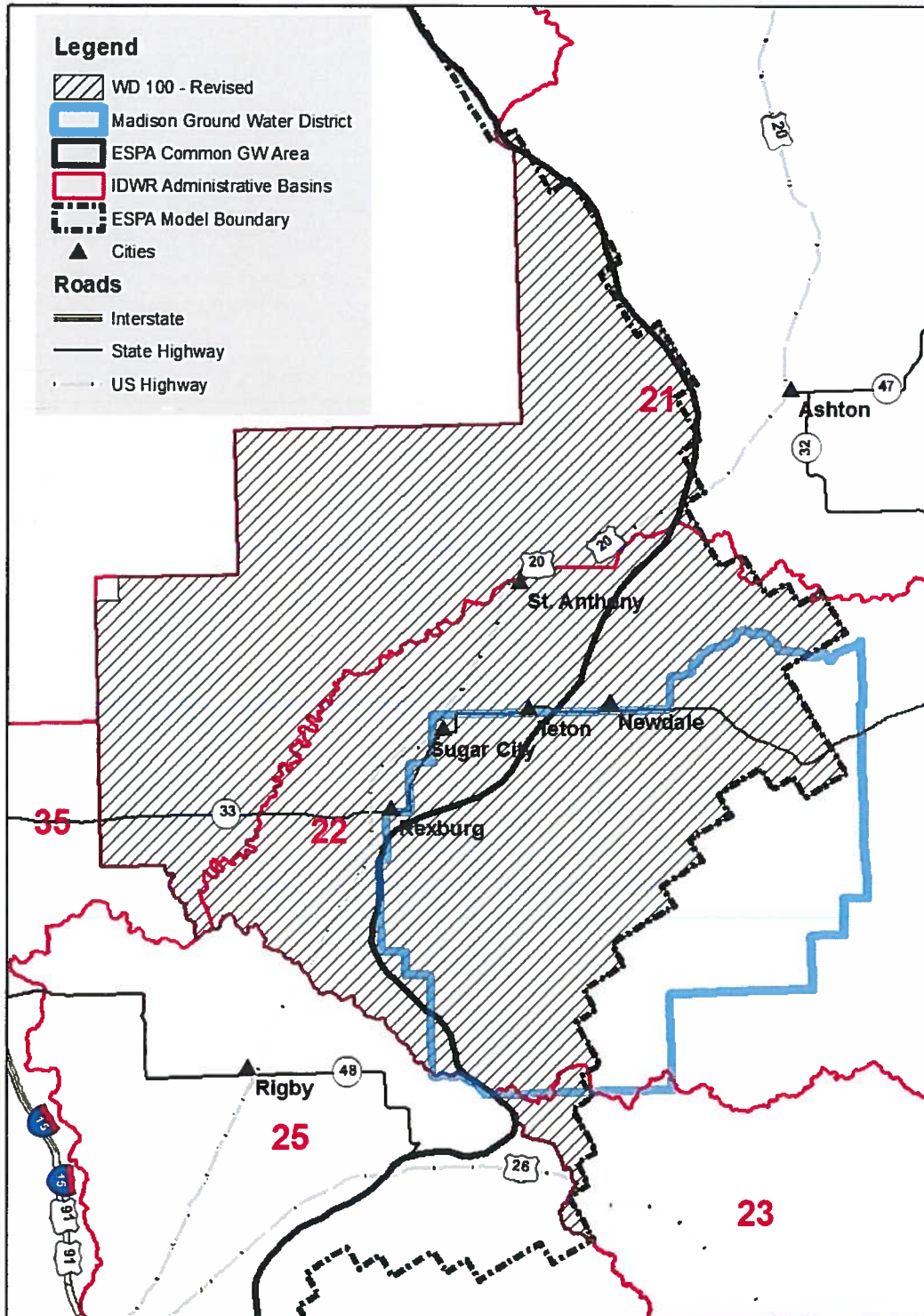
3. The Director shall issue a separate order requiring the installation of measuring devices for ground water diversions within the Rexburg Bench area added to WD100. The measuring device order shall be issued at least sixty days after the issuance of this Preliminary Order Revising WD100 to provide time for area water users to work with the Department toward developing a reasonable water measurement implementation plan.

DATED this 10th day of May 2017.



Cindy Yenter
Hearing Officer

Water District 100 Revised Boundary



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of May 2017, 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 Shaul
Technical Records Specialist
Idaho Department of Water Resources

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.