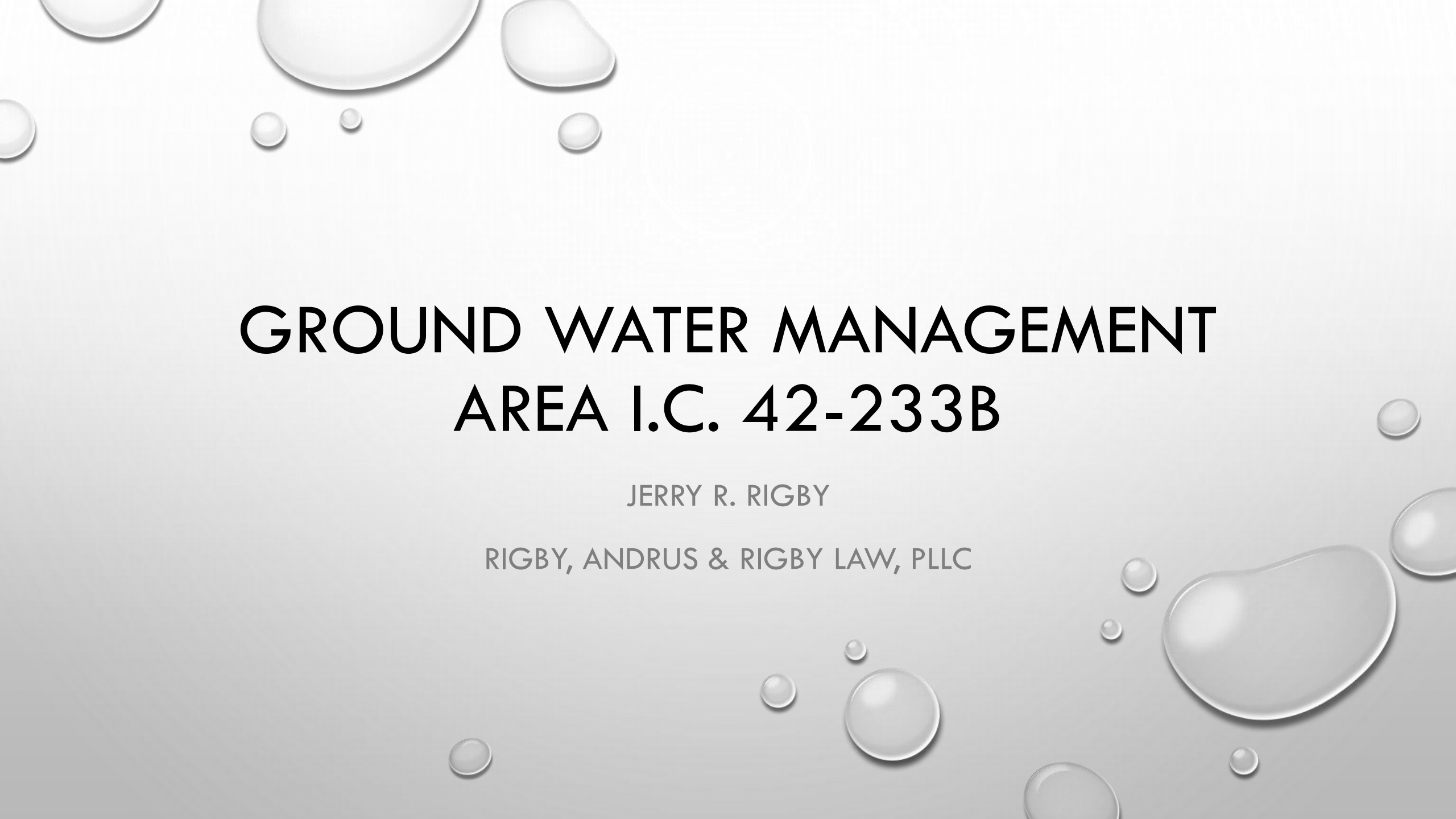


The background of the slide is a light gray gradient, decorated with numerous realistic water droplets of various sizes. Some droplets are large and prominent, while others are small and subtle. They are scattered across the slide, with a higher concentration in the top-left and bottom-right corners, creating a clean, fresh, and thematic visual for a document about groundwater management.

GROUND WATER MANAGEMENT AREA I.C. 42-233B

JERRY R. RIGBY

RIGBY, ANDRUS & RIGBY LAW, PLLC

IDAHO CODE 42-233B

- “GROUND WATER MANAGEMENT AREA” IS DEFINED AS ANY GROUND WATER BASIN OR DESIGNATED PART THEREOF WHICH THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES HAS DETERMINED MAY BE APPROACHING THE CONDITIONS OF A CRITICAL GROUND WATER AREA. UPON DESIGNATION OF A GROUND WATER MANAGEMENT AREA THE DIRECTOR SHALL PUBLISH NOTICE IN TWO (2) CONSECUTIVE WEEKLY ISSUES OF A NEWSPAPER OF GENERAL CIRCULATION IN THE AREA.
- WHEN A GROUND WATER MANAGEMENT AREA IS DESIGNATED BY THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES, OR AT ANY TIME THEREAFTER DURING THE EXISTENCE OF THE DESIGNATION, THE DIRECTOR MAY APPROVE A GROUND WATER MANAGEMENT PLAN FOR THE AREA. THE GROUND WATER MANAGEMENT PLAN SHALL PROVIDE FOR MANAGING THE EFFECTS OF GROUND WATER WITHDRAWALS ON THE AQUIFER FROM WHICH WITHDRAWALS ARE MADE AND ON ANY OTHER HYDRAULICALLY CONNECTED SOURCES OF WATER.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF DESIGNATING THE
EASTERN SNAKE PLAIN AQUIFER
GROUND WATER MANAGEMENT AREA**

**ORDER DESIGNATING THE
EASTERN SNAKE PLAIN
AQUIFER GROUND WATER
MANAGEMENT AREA**

The Director ("Director") of the Idaho Department of Water Resources ("Department") finds, concludes and orders as follows:

FINDINGS OF FACT

Procedural Background

1. On July 7, 2016, the Director sent a letter to potentially interested water users stating that the Department "is considering creating a ground water management area for the Eastern Snake Plain Aquifer (ESPA)." Ltr. from Gary Spackman, Dir., Idaho Dept. of Water Res. to Interested Parties 1 (July 7, 2016) ("*Letter*").¹ The *Letter* invited water users to participate in public meetings scheduled by the Director. The purpose of the public meetings was to provide water users and interested persons an opportunity to learn more about the possible ground water management area and to express their views regarding the proposal.² *Id.* The *Letter* stated that "[a]fter hearing from water users at the public meeting and considering the issues," the Director would "decide whether a ground water management area should be created." *Id.*

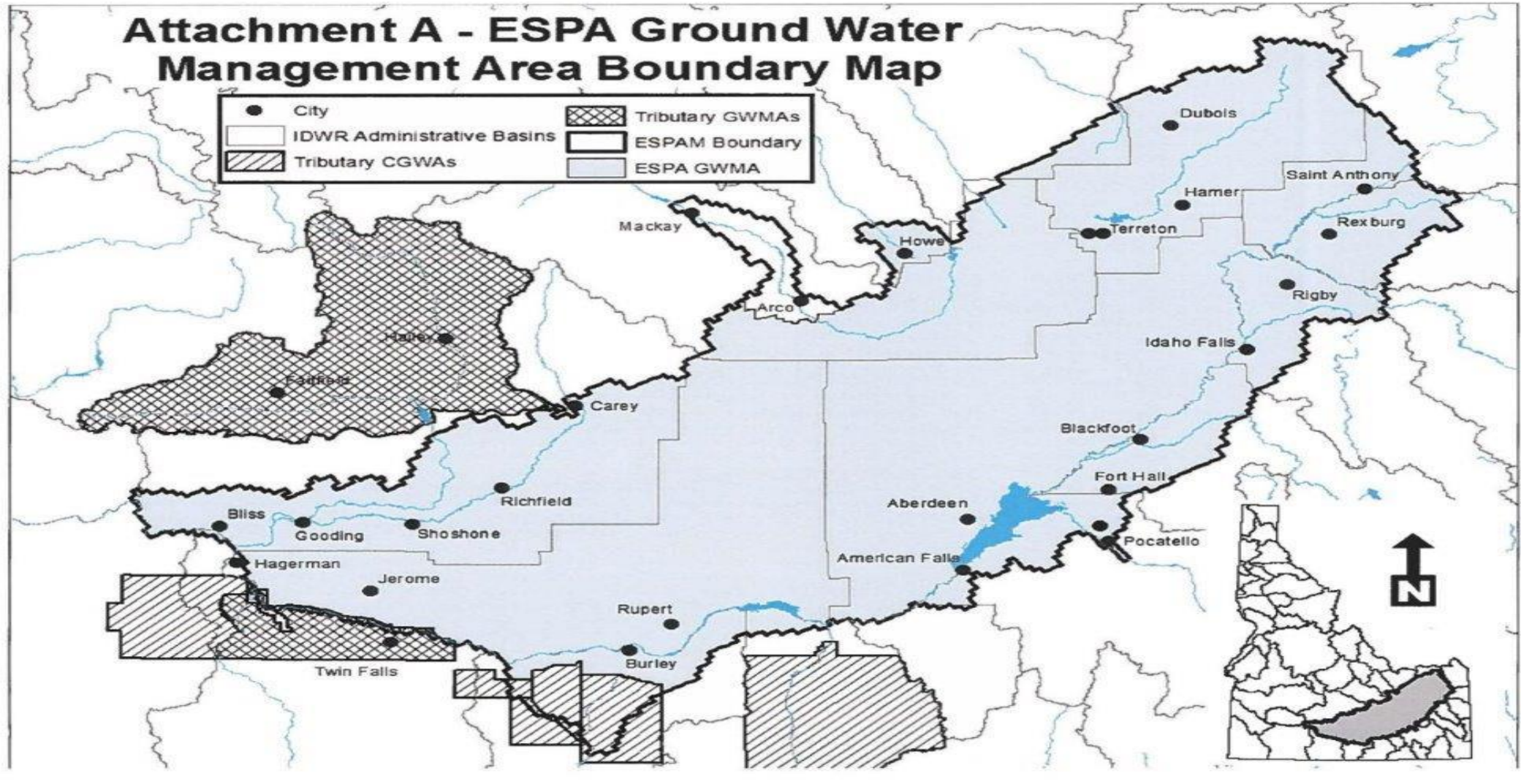
2. The *Letter* discussed historic trends of declining ESPA water levels, Snake River flows, and spring discharges that had begun in the 1950s and had continued steadily, despite brief "periods of recovery." *Id.* The *Letter* also stated that "[w]ater users and the Water Resources Board are undertaking efforts to enhance recharge and reduce ground water pumping to counter the declines," but "future conditions, including climate and water use practices are unknown." *Id.* at 2.

3. The *Letter* stated that pursuant to Idaho Code § 42-233b, the Director is authorized to designate "ground water management areas," that the statute "identifies several potential tools available to the Director within a ground water management area to properly

¹ A copy of the letter is on the Department's website at: https://www.idwr.idaho.gov/files/ground_water_mgmt/20160707-Letter-to-Water-Users-from-Gary-Spackman-Re-Proposed-ESPA-GWMA.pdf

² The Department also issued a news release on July 13, 2016, regarding the meetings.

Attachment A - ESPA Ground Water Management Area Boundary Map



Upper Snake River Basin

Eastern Snake Plain Aquifer Boundary

0 20 40 60 Miles



**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF DESIGNATING
THE EASTERN SNAKE PLAIN
AQUIFER GROUND WATER
MANAGEMENT AREA**

DOCKET NO. AA-GWMA-2016-001

**DEADLINE FOR IDWR'S SUBMITTAL
OF MATERIALS; ORDER ON MOTION
PRACTICE; NOTICE OF HEARING
AND SCHEDULING ORDER; ORDER
AUTHORIZING DISCOVERY**

BACKGROUND

On September 23, 2019, the Director of the Idaho Department of Water Resources ("IDWR" or "Department") held a prehearing conference in this matter. All parties were represented either in person or by phone. The Director and parties discussed the remaining scope of potential issues and agreed upon a schedule for disposition of both legal issues through briefing and factual issues through live hearing.

The Director now establishes: (a) a deadline for IDWR to disclose all relevant materials used or considered in issuance of the *Final Order Designating the ESPA GWMA* ("Final Order"), including any additional, pertinent information compiled after issuance of the Final Order; (b) a motion and briefing schedule for disposition of legal issues; (c) notice and the scope of hearing for the remaining factual issue(s); and (d) dates for the hearing and all relevant hearing preparation deadlines. This order also authorizes discovery.

DEADLINE FOR IDWR STAFF TO RESPOND

October 14, 2019

On or before October 14, 2019, IDWR Staff will disclose to the parties all relevant materials used by the Department to aid the Director in issuance of the Final Order. This disclosure will include a list of all Staff who may have knowledge or otherwise contributed to designation of the ESPA GWMA. All materials will also be posted on IDWR's website at: <https://idwr.idaho.gov/legal-actions/administrative-actions/ESPA-GWMA-order.html>.

SCOPE OF MOTION PRACTICE ON LEGAL ISSUES

IT IS HEREBY ORDERED the following four (4) issues represent the scope of legal issues remaining in this matter:

1. Whether the *Order Designating the ESPA GWMA* was procedurally deficient. Did the Director err when he issued the *Order Designating the ESPA GWMA* outside the auspices of the procedural requirements of the Rules for Conjunctive Management of Surface and

**DEADLINE FOR IDWR'S SUBMITTAL OF MATERIALS; ORDER ON MOTION PRACTICE;
NOTICE OF HEARING AND SCHEDULING ORDER; ORDER AUTHORIZING DISCOVERY - 1**

Ground Water Resources (IDAPA 37.03.11) and/or IDWR's Procedural Rules (IDAPA 37.01.01)?

2. Whether the Director should have conducted rulemaking. Did the Director err by not conducting rulemaking prior to designation of the ESPA GWMA?
3. Whether the Director should have designated the ESPA GWMA in a contested case. Did the Director err by not holding a contested case hearing to provide him the authority to designate an area of common ground water supply as a GWMA?
4. Whether adjudication and the formation of ground water districts in the ESPA forecloses the designation of a GWMA. Is the Director foreclosed from designating the ESPA GWMA because the ESPA has been adjudicated and contains existing ground water districts?

SCHEDULING ORDER FOR MOTION PRACTICE ON LEGAL ISSUES

IT IS HEREBY ORDERED that the parties shall adhere to the following deadlines:

- | | |
|--------------------------|---|
| October 21, 2019 | Deadline for motions and/or briefing related to the remaining issues requiring legal argument, as delineated directly above. The motions and/or briefing should include argument and authority in support of each issue proposed for consideration. There will be no oral arguments on the motions or briefing. |
| November 18, 2019 | Deadline for any party to file a response to motions and/or briefing submitted by October 21, 2019. |
| December 2, 2019 | Deadline for any party to file a reply to responses submitted by November 18, 2019. |

NOTICE OF HEARING ON REMAINING FACTUAL ISSUE

The hearing for challenges to the designation of the ESPA GWMA will be held **February 18-21, 2019. The hearing will commence on February 18, 2019 at 9:00 a.m.** The hearing will be held at the State Offices of IDWR, 322 E Front Street, Boise, Idaho 83702, Sixth Floor, Conference Rooms B-D.

The presiding officer will be Gary Spackman, Director of the Department, whose mailing address is PO Box 83720, Boise, ID 83720-0098.

The hearing will be held in accordance with the provisions of Chapters 31, Title 42 and Chapter 52, Title 67, Idaho Code, the Department's Rules of Procedure. A copy of the code and rules may be obtained from the Department's website, www.idwr.idaho.gov, or upon request.