

Exhibit B



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

September 19, 2013

RE: Preliminary Order Combining Water Districts in Basin 37 and Inclusion of both Surface and Ground Water Rights in the Combined Water District; and Abolishing the Upper Wood Rivers Water Measurement District

Dear Water Right Holder,

Enclosed please find a copy of the Preliminary Order regarding the above referenced matter. This order creates a new water district for administration of surface water and ground water rights in the Camas Creek drainage area, including merger of Water Districts 37A and 37C with the new district; combines Water Districts 37 and 37M and includes ground water rights from the Upper Wood River Valley and the Silver Creek drainage in the combined district; and abolishes the Upper Wood Rivers Water Measurement District. 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 located within the water districts or water measurement district affected by the enclosed Preliminary Order.

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.

The Department will send a separate notice to water users specifying a date, time and location of annual meetings for the new or revised water districts. The water users present at the meetings must consider election of a watermaster, selection of an advisory committee and adoption of a budget. IDWR will organize a steering committee of representative water users within the districts to assist with preparation for the annual meetings. IDWR is considering scheduling at least one steering committee for each water district prior to the annual meetings. If you are interested in participating in a steering committee, please contact Tim Luke, IDWR at 208-287-4959 or by e-mail at tim.luke@idwr.idaho.gov.

Please contact this office or the IDWR regional office in Twin Falls (208-736-3033) 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 Southern Region

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

IN THE MATTER OF THE PROPOSED)
COMBINATION OF WATER DISTRICT NOS.)
37, 37A, 37C AND 37M AND THE INCLUSION)
OF BOTH SURFACE WATER AND GROUND)
WATER RIGHTS IN THE COMBINED WATER)
DISTRICT; AND IN THE MATTER OF)
ABOLISHING THE UPPER WOOD RIVERS)
WATER MEASUREMENT DISTRICT)
_____)

PRELIMINARY ORDER

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 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.* Idaho Code § 42-706 authorizes the Director to create or abolish a water measurement district if such action is required to properly administer water uses. Based upon the record in this matter, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. Water District No. 37 (“WD37”) includes surface water sources and water rights in the Big Wood and Malad River drainages excluding Water District Nos. 37M, 37A and 37C, and is located within portions of Blaine, Camas, Lincoln and Gooding Counties. WD37 annually elects a watermaster and adopts a budget to provide for the distribution of water from the Big Wood River and tributaries in accordance with the priorities of the water rights from those sources. WD37 has provided annual water delivery reports since 1920.
2. Water District No. 37M (“WD37M”) includes surface water sources and water rights in the Little Wood River drainage area from the mouth of Silver Creek to the confluence of the Big Wood River, including the Silver Creek drainage, and is located within portions of Blaine, Camas, Lincoln and Gooding Counties. WD37M annually elects a watermaster and adopts a budget to provide for the distribution of water from the Little Wood River and Silver Creek drainage in accordance with the priorities of the water rights from those sources. WD37M has provided annual water delivery reports since 1920.
3. WD37 and WD37M share the same watermaster, administrative staff and office. This practice of sharing staff and office resources along with submittal of combined annual reports for the two districts has occurred since 1921. Although the two districts still maintain separate budgets, they have in recent years combined their annual meetings to jointly adopt the same resolutions and select a common advisory committee.

4. Water District No. 37A (“WD37A”) includes surface water sources and water rights in the Corral Creek drainage located in Camas County. Corral Creek is tributary to Camas Creek. WD37A has been an inactive water district for over 33 years.

5. Water District No. 37C (“WD37C”) includes surface water sources and water rights in the Soldier Creek drainage located in Camas County. Soldier Creek is tributary to Camas Creek. WD37C has been an active water district over the past twenty years. The district holds annual meetings and elects a watermaster but does not consistently provide annual meeting minutes or other reports required of water districts pursuant to chapter 6, title 42, Idaho Code.

6. In 1980, the Director issued a policy memorandum declaring surface water in the Big Wood River basin upstream from Magic Reservoir, including Camas Creek, was fully appropriated.

7. On June 28, 1991, the Director issued an order creating the Big Wood River Ground Water Management Area pursuant to Idaho Code § 42-233b. The management area included ground water located within the Wood River Valley and the Camas Creek drainage above Magic Reservoir, and the Silver Creek/Bellevue triangle area. Finding of Fact 2 from the order stated the following:

The surface and ground waters of the Big Wood River drainage are interconnected. Diversion of ground water from wells can deplete the surface water flow in streams and rivers. New ground water uses can also deplete available supplies for other users and affect basin underflow which presently accumulates in the Magic Reservoir.

8. On September 21, 2011, the Department created the Upper Wood Rivers Water Measurement District (“UWRWMD”) for the purpose of measuring and reporting ground water diversions located within the Department’s Administrative Basin No. 37 (“Basin 37”) and the Upper Big and Little Wood River drainages outside of the Eastern Snake Plain Aquifer (“ESPA”).¹ The measurement district included ground water rights in the Camas Creek drainage area. Camas Creek is tributary to the Big Wood River at Magic Reservoir.

9. On February 20, 2013, the Snake River Basin Adjudication (“SRBA”) District Court issued an order authorizing the Director to distribute water pursuant to chapter 6, title 42, Idaho Code, in accordance with the Director's Reports and partial decrees that have superseded the Director's Reports for those surface and ground water rights located in Basin 37, part 2 (Camas and Clover Creek drainage areas) and part 3 (Upper Big and Little Wood River drainage areas). The District Court’s order found that “interim administration ... is reasonably necessary to efficiently administer water rights and to protect senior water rights.”

10. On July 10, 2013, the Director prepared a notice of public hearing proposing the following actions pursuant to the provisions of Idaho Code §§ 42-604 and 42-706:

- i. Combine WD37, WD37M, WD37A and WD37C;
- ii. Include surface water rights from the Camas Creek drainage in the combined water district, except surface water rights used for domestic and stock water purposes as defined by Idaho Code §§ 42-111 and 42-1401A(11) and surface water rights used for in-stream watering of livestock as defined by Idaho Code § 42-113;

¹ The UWRWMD included ground water rights located within the Snake River Basin Adjudication reporting areas of Basin 37, Parts 2 and 3.

- iii. Include in the combined water district ground water rights from the UWRWMD overlying the combined district in that portion of Basin 37 outside of the ESPA, except ground water rights for domestic and stock water uses as defined by Idaho Code §§ 42-111 and 42-1401A(11); and,
- iv. Abolish the UWRWMD.

The notice was sent by regular U.S. Mail on July 12, 2013, to each holder of a water right affected by the proposed actions above except holders of ground water rights used for domestic and stock water purposes as defined by Idaho Code §§ 42-111 and 42-1401A(11), and surface water rights used for in-stream watering of livestock as defined by Idaho Code § 42-113. The hearing notice described the proposed actions, the reasons therefore, and the time and place for a hearing to be held on July 30, 2013 concerning the proposed actions. The notice also provided a time period within which written comments on the proposed action would be accepted.

11. The notice explained that the proposed combination and revision of water districts is necessary in order to properly administer the water uses and water rights from both surface water and ground water sources in the combined water district area. The notice also explained that the UWRWMD was created in 2011 for the purpose of measuring and reporting ground water right diversions only and that regulation of ground water rights within the UWRWMD can only be accomplished through a water district created or modified pursuant to Idaho Code § 42-604.

12. On July 30, 2013, commencing at approximately 6:30 p.m. at the Blaine County School District Community Campus Auditorium in Hailey, Idaho, the Department conducted a public hearing concerning the proposed combination and revisions of water districts, and the abolishment of the UWRWMD. Allen Merritt, the Department's Southern Regional Manager, presided as hearing officer. Approximately 65 people attended the hearing.

13. The hearing officer initiated the hearing by explaining the hearing process. Department representative Tim Luke gave a presentation that described the proposed water district combination and revisions, the features and operation of water districts, the reasons for the proposed actions, and the rights and uses proposed to be included in the combined water district. The Department presented the following reasons for the proposed actions:

- Combining surface water rights from WD37 and WD37M will formalize a merger that has essentially been accomplished for a number of years. Combining the two districts will promote efficiency by eliminating dual budgets and duplication of certain processes.
- Ground water rights in the UWRWMD and most surface water rights in the Camas Creek drainage are not currently included in a water district subject to administration by a watermaster in an active water district. The UWRWMD has no authority to regulate ground water rights and is limited to measurement and reporting of ground water diversions only. Water rights not currently included in a water district whose sources of water have been adjudicated must be placed in a water district pursuant to Idaho Code § 42-604 "to properly administer uses of the water resource."
- The proposed combination of water districts and inclusion of surface water and ground water rights in one water district will provide for proper conjunctive administration of surface and ground water rights and the protection of senior priority water rights.
- The proposed combination of water districts and inclusion of surface water and ground water rights in one water district will provide for consistent, cost effective and efficient water district operations.
- Maintaining all of the ground water rights from the UWRWMD in one water district with surface water rights from WD37/37M will provide a consistent organizational structure

that can manage the measurement of ground water diversions as required by the Department.

- About 100 ground water rights in the Wood River Valley above Magic Reservoir and in the Silver Creek drainage are already regulated by the WD37/WD37M watermaster. Most of these rights require WD37/37M watermaster control because they are mitigated by surface water rights or because ground water is commingled with surface water sources. The Department believes it is more efficient and practical for all the ground water rights in the same area to be administered by one water district rather than separate water districts. It is not practical to remove the approximate 100 ground water rights in WD37 and WD37M to a separate water district given the existing watermaster control conditions and relationship with surface water rights and sources.
- The proposed combination of water districts and inclusion of surface water and ground water rights in one water district would simplify administration of the SRBA General Provisions for Basin 37, Part 2. These provisions stipulate that a large number of surface water rights in the Camas drainage are to be administered separately from all other rights in Basin 37. An additional but much smaller group of surface water rights are to be administered separately from all other water rights in Basin 37 but certain rights held by the Big Wood Canal Company may call for water delivery of water against this smaller group. All other Camas drainage surface water rights not listed in these General Provisions, and all Camas drainage ground water rights are to be administered with other water rights in Basin 37.
- Abolishing the UWRWMD is necessary if ground water rights in the UWRWMD are placed in a water district.

14. Following the presentation, the hearing officer provided time for hearing participants to ask questions' regarding the Department's proposed actions.

15. 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 August 9, 2013 to receive written testimony.

16. Eleven (11) individuals testified at the hearing. Thirteen (13) individuals submitted written comments, including four (4) of the individuals who testified at the July 30, 2013 public hearing. One of the individuals submitting both oral testimony and written comments represented two separate groups of affected water users.

17. Five (5) individuals holding water rights or representing the holders of water rights within the Camas drainage testified against the Department's proposal to include the Camas drainage in a combined water district with water rights from WD37/37M and ground water rights from the Big Wood River Valley upstream of Magic Reservoir and the Silver Creek drainage. These five individuals proposed a single water district for the Camas drainage composed of both surface water and ground water rights, including rights from WD37A and WD37C. Four (4) additional individuals submitted written comments in supporting a separate Camas drainage water district.

18. Jim Speck, one of the five individuals who testified in support of a separate Camas drainage water district, spoke as a representative of numerous surface water and ground water right holders in the Camas drainage who had signed petitions requesting the Department "to create a new and separate water district for the administration of our rights and not add them to Water District 37." Copies of the signed petitions with associated water right owner names and water right identification