

numbers were submitted to the Department before the close of the written comment period. Mr. Speck testified that fifty-four (54) of seventy-seven (77) surface water users, and thirty-nine (39) of forty-one (41) ground water users in the Camas drainage had signed petitions supporting a separate water district. Mr. Speck further testified that the users signing the petitions supported the merger or inclusion of WD37A and WD37C with all other surface and ground water rights in the Camas drainage under one water district separate from WD37.

19. Reasons cited by the supporters of a separate water district for surface water and ground water rights in the Camas Creek drainage, including rights from WD37A and WD37C include:

- The Camas drainage area aquifer is different and separate from the Wood River Valley aquifer and the two aquifers are not connected. The two aquifers may be considered “independent” sources of water supply in accordance with Idaho Code § 42-604, thereby justifying creation of separate water districts.
- A ground water model is currently being developed for the Wood River Valley and Silver Creek/Bellevue triangle area (most of Basin 37, part 3). This model does not include the Camas Creek area aquifer (most of Basin 37, part 2) and no effort is currently being made to develop a model for the Camas Creek area aquifer. Lack of a ground water model for the Camas drainage aquifer prohibits the ability to implement conjunctive administration of water rights from that portion of Basin 37. Moreover, mitigation that might be provided from the Camas drainage would be completely separate from mitigation that might be developed in the Upper Wood River Valley and the Silver Creek/Bellevue triangle area.
- Upper Wood River Valley water issues are not present or do not exist in the Camas Creek drainage area. There are almost no common water administration issues between Basin 37, parts 2 and 3.
- The SRBA General Provisions for Basin 37, part 2 stipulate that many surface water sources are to be administered separately from all of the water rights in Basin 37.
- A separate water district for the Camas drainage area would better serve the right holders in the area due to local control and supervision. A bigger water district does not necessarily translate to a better water district. Users in the area are willing to pay some additional costs if necessary for the benefit of local control.
- Water users in the Camas drainage would not be adequately represented in a larger combined water district because water use in the Camas drainage may be relatively smaller than other areas of the proposed combined district.
- Ground water pumping in the Camas drainage has minimal impact on the Big Wood River, and the surface water in the drainage is intermittent or separate from the Big Wood River after the early spring snow melt and high flow runoff.

20. In accordance with the SRBA General Provisions for Basin 37, part 2, nearly all of the consumptive use surface water rights in the Camas drainage (about 215 out of 267 rights) are to be administered separately from all other water rights in Basin 37. There are about seventeen (17) rights in the Camas drainage that are to be administered separately from all other rights in Basin 37 but these seventeen rights may be subject to a delivery call of certain rights held by the Big Wood Canal Company. This leaves only about thirty-five (35) rights in the drainage that do not enjoy the benefits of any separate administration provisions.

21. Ground water rights in the Camas drainage are subject to administration with other rights in Basin 37 and are also subject to measurement and reporting requirements established by the Department when it created the UWRWMD. There are approximately 80 ground water diversions in the

UWRWMD and Camas drainage. Many of the owners of these 80 ground water diversions and associated ground water rights also hold surface water rights in the Camas drainage.

22. Three (3) individuals holding ground water rights or representing the holders of ground water rights within the Big Wood River drainage above Magic Reservoir or within the Silver Creek drainage area testified against the Department's proposal to include ground water rights with surface water rights in a combined WD37. These individuals instead supported a separate water district for the holders of ground water rights. One of these three individuals also voiced support for formation of a ground water sub-district within a combined WD37.

23. Five (5) individuals submitted written comments opposing the inclusion of ground water rights in the same water district as surface water rights, including Mr. Speck; Mike Creamer, representing the City of Hailey; Bruce Smith, representing the City of Ketchum; Evan Robertson, representing the Sun Valley Water and Sewer District; and James Laski, representing himself as the owner of a small surface water right. Two (2) of these five individuals (Speck and Creamer) provided oral testimony at the hearing. Mr. Speck testified at the hearing that he represented nine (9) ground water users in the Big Wood Valley or Silver Creek area but he submitted written comments on behalf of twenty-seven (27) ground water right holders. The written comments submitted by Mr. Speck and Mr. Robertson stated support for the testimony and comments provided by Mr. Creamer. Mr. Creamer's written comments supported a separate water district of ground water rights located within Basin 37, part 3. The written comments submitted by Mr. Laski also voiced opposition to include water rights from the Camas drainage with those from the Wood River Valley in one combined water district. The comments submitted by Mr. Smith on behalf of the City of Ketchum also opposed the abolishment of the UWRWMD.

24. Reasons cited by those opposing the inclusion of ground water rights in a water district with surface water rights include:

- Adversarial interests between ground water users and surface water users resulting from any potential conjunctive administration process would compromise the operations of a water district where surface and ground water rights are combined. Conflicts between surface and ground water users may negatively impact the ability of the combined district to function efficiently and cooperatively.
- Ground water right holders would be out voted in a combined water district because the amount of ground water use is significantly less than the amount of surface water use in the proposed water district.
- Ground water users may not be adequately represented on an advisory committee selected for the proposed water district.
- Ground water users may bear a disproportionate cost of water district operations because the budget of the UWRWMD is significantly less than the combined budgets of WD37 and 37M.
- Water districts have been created in the ESPA that are composed primarily of ground water rights. Those water districts have worked well and provide a good model for Basin 37, parts 2 and 3.
- The ground water model for Upper Wood River and Silver Creek/Bellevue triangle area must be completed before ground water and surface water rights can be combined in a single water district.
- The Department should have presented a budget for the proposed water district as part of its' hearing notice or hearing presentation. Costs, management and potential

administrative conflicts between ground and surface users should be explained before combining surface and ground water rights in one district.

- It may be difficult or legally impossible to address potential delivery calls from holders of senior surface water rights and potential mitigation requirements of junior ground water right holders if surface and ground water users are combined in one water district.

25. Two (2) individuals owning surface water rights in WD37 or WD37M testified at the hearing in support of the Department's proposal of a combined water district for both surface water and ground water rights. One of these 2 individuals, Fred Brossy, spoke on both his own behalf and on behalf of the WD37 and WD37M Advisory Committee. Mr. Brossy is the chairman of the WD37/WD37M Advisory Committee.

26. One (1) individual owning several small irrigation ground water rights in the Upper Wood River Valley and the UWRWMD submitted written comments supporting the Department's proposal for combining surface water and ground water rights in one water district.

27. Reasons cited by those supporting the Department's proposal include:

- The WD37/37M advisory committee has long supported the administration of ground water rights above Magic Reservoir (including the Camas drainage) and the Silver Creek drainage with surface water rights in WD37/37M. The committee petitioned the Director to begin administration of ground water rights many years ago.
- Ground water and surface water sources within Basin 37, parts 2 and 3 are connected as one water source so administration of rights in one district is reasonable.
- Combining surface water and ground water rights in one water district will generally provide for more effective, efficient, lawful and equitable administration of water rights.
- More effort is needed to complete the measurement of ground water diversions in the area. Ground water measurement compliance may be accomplished under one water district.
- Cost assessments to ground water users and surface water users under one combined water district should not be more than the current level of assessments.
- A combined water district will promote an opportunity for ground water and surface water users to work together on problems affecting the two groups. A single district will create a more regional approach to water management and resolution of basin wide issues whereas separate districts may provide more local control but result in more local conflicts.
- Delays in combining surface water rights and ground water rights in one water district may delay effective conjunctive administration of water resources.

28. The watermaster of WD37 and WD37M, Kevin Lakey, submitted written comments that addressed some of the testimony at the hearing regarding concerns about conjunctive management. Mr. Lakey noted that water users at annual water district meetings only vote on district "budget, hiring and resolutions" and not "on how conjunctive management will be enforced." Mr. Lakey also noted that representation on the WD37/37M advisory committee is not based on the amount of water delivered but rather on geographical areas and types of beneficial use. Mr. Lakey believed that a fair representation of water users can be established in a combined water district.

29. One (1) individual representing himself as the owner of a small irrigation ground water right in the Bellevue triangle area testified at the hearing that he did not support the Department's proposal and generally did not support the inclusion of his ground water right in any water district because such action will derive no benefit to him. This individual however did state that he was more

supportive of smaller units of administration because his right and interests “would not be lost in the shuffle.”

## 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 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 IDWR 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.* The combination and revision of water districts within Basin 37, parts 2 and 3 is necessary for the reasons set forth in Finding of Fact 13 and for the efficient administration of water rights in general.

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 surface and ground water rights claimed in the SRBA and within Basin 37, parts 2 and 3, have been partially decreed or reported to the SRBA District Court.

7. 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.

8. 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.

9. Idaho Code § 42-706 provides that the Director may create, revise the boundaries of, or abolish a water measurement district or combine two or more water measurement districts by entry of an order if such action is required in order to properly administer uses of the water resource.

10. Much of the oral testimony from the hearing and the written testimony received after the hearing focused on the creation of a separate water district for the Camas drainage that would include both surface and ground water rights, including rights from WD37A and WD37C. Reasons that water users cited for creation of a separate district are listed in Finding of Fact 19.

11. The Department concludes that a separate water district for the Camas Creek drainage composed of surface water rights may provide for proper administration of surface water rights. The Department concludes that the small number of surface water rights in the drainage that are required to be administered with other rights in Basin 37 as described in Finding of Fact 20 may not justify including Camas drainage surface water rights in a large water district. The Department concludes that administration of these limited numbers of rights can be accomplished by a watermaster in a separate Camas drainage water district working in coordination with the watermaster from WD37 and with both watermasters working under the direction of the Director.

12. The Department concludes that the Camas drainage aquifer system is characteristically different from the Upper Wood River Valley aquifer system but the aquifer systems are hydraulically connected to each other and the Big Wood River<sup>2</sup>. The Department agrees with testimony that the amount of ground water use from the two aquifer systems are different and water resource issues in the two areas may vary. The Department also agrees with testimony that conjunctive administration of surface and ground water rights in the Wood River basin is likely imminent. The Department does not conclude that ground water rights in the Camas drainage are immune to conjunctive administration simply because ground water use is less or because the drainage has not yet been included in the development of a ground water model.

13. Although ground water rights in both the Camas drainage and the Upper Wood River Valley and Silver Creek drainages may need to be conjunctively administered together with surface water rights in Basin 37, the Department concludes that the limited number of ground water rights and wells in the Camas drainage can be administered properly by including them with surface water rights in a separate Camas drainage water district that is under the direction and control of the Director.

14. The Department adopts this structure with some hesitation because conjunctive administration of water rights in Basin 37 may be more challenging when the water rights are in separate water districts and because many ground water diversions in the Camas drainage are not yet in full compliance with Department measurement orders. The Department would prefer to place the Camas drainage in a well established operational water district such as WD37 that has experienced staff, equipment and other resources rather than start a new water district that has no existing staff or resources. If ground water or surface water rights in the Camas drainage cannot be administered or properly measured in a separate water district, then the Director may abolish the district, revise the boundaries of the district or combine the district with another water district in accordance with Idaho Code §42-604.

15. Much of the oral testimony from the hearing and the written testimony received after the hearing also focused on the creation of a separate water district for ground water rights in the Upper

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<sup>2</sup> Bartolino and Adkins, 2012. Hydrogeologic Framework of the Wood River Valley Aquifer System, South-Central Idaho, USGS Report 2012-5053, p. 26; and Wlaton, W.C., 1962. Ground Water Resources of Camas Prairie, Camas and Elmore Counties, Idaho, USGS Water Supply Paper 1609, pp. 1, 20, and 42-43.