BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF REVISING	)	
THE BOUNDARIES OF WATER	)	FINAL ORDER
DISTRICT NO. 130, IN THE	)	REVISING THE BOUNDARIES
THOUSAND SPRINGS AREA	)	OF WATER DISTRICT NO. 130
_____	)	

The Director of the Idaho Department of Water Resources (Director) is authorized 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. The authority to create water districts applies to those streams, or other water sources, for which the priorities of appropriation have been adjudicated by court decree. The Director is also authorized by statute to revise the boundaries of any water district in order to properly administer uses of water. During the pendency of a water rights adjudication, the district court is authorized by statute to approve interim administration of the water rights by the Director if reasonably necessary to protect senior water rights. The district court may permit the distribution of water pursuant to chapter 6, title 42, Idaho Code, in accordance with partial decrees entered by the court or in accordance with a Director's Report as modified by the court's order.

FINDINGS OF FACT

1. On February 19, 2002, the Director issued an Order Creating Water District No. 130, pursuant to the provisions of Idaho Code § 42-604. The boundaries of Water District No. 130 were limited to ground water rights and surface water rights in Administrative Basins 36 and 43 overlying the Eastern Snake Plain Aquifer (ESPA) in the Thousand Springs Area. The boundaries were limited to Administrative Basins 36 and 43 overlying the ESPA because water rights in those basins had either been included in a Director's Report or partially decreed by the Snake River Basin Adjudication (SRBA) District Court. In addition, holders of junior priority ground water rights in Basin 36 and Basin 37 entered into written stipulated agreements with most of the holders of senior priority surface water rights in the Thousand Springs area. Under the Agreements, the represented holders of senior priority surface water rights agreed not to exercise their senior priorities against the represented holders of junior priority ground water rights in exchange for commitments by the ground water right holders to provide specific quantities of replacement water or reduction of ground water depletion during the two-year term of the stipulated Agreements. The signatories to the Agreements agreed to work with the Director to expeditiously create water districts to implement the terms of the Agreements.

2. On August 30, 2002, the State of Idaho filed with the SRBA District Court a motion requesting an order authorizing the interim administration of ground water rights (except

those whose use is solely for domestic and/or stockwater purposes) by the Director within that portion of Administrative Basin 37 overlying the ESPA. Copies of this motion were mailed to affected water right holders of record on August 30, 2002.

3. On November 19, 2002, the SRBA District Court issued an order authorizing the interim administration of water rights by the Director within that portion of Basin 37 overlying the ESPA, pursuant to chapter 6, title 42, Idaho Code.

4. On November 25, 2002, the Director mailed notice, by regular mail, of the proposed action revising the boundaries of Water District No. 130 to include water rights within Basin 37 overlying the ESPA, pursuant to the provisions of Idaho Code § 42-604. Notice was mailed to each water right holder of record in Basin 37 overlying the ESPA affected by the proposed revision of the water district. The notice described the proposed action to be taken, the reasons therefor, the time and place of a hearing to be held on December 18, 2002, concerning the proposed action, and provided a time period within which written comment on the action would be accepted. In addition, the Director issued a press release describing the proposed action and hearing date to newspapers and other media sources within and around the geographical area affected by the proposed action.

5. The Director conducted the hearing concerning the proposed revision of boundaries of Water District 130 at the Shoshone School District Office Board Room in Shoshone, Idaho at 4:00 pm on December 18, 2002. Approximately twenty-five people attended the hearing.

6. Prior to commencing the hearing, the Director took approximately 90 minutes to describe the background and purpose of the proposed action and address questions. The Director also presented information concerning current and future operations of the district.

7. Persons attending the hearing were provided an opportunity to make an oral statement for the record. In addition, the Director held the record open through December 31, 2002, for the submission of written comments.

8. Five individuals presented oral statements for the record at the Shoshone hearing:

a. Neil Bowman of Dietrich, Idaho, presented a statement on behalf of himself, as a water user in Basin 37, in support of the formation of subdistricts within Water District 130.

b. Mike Faulkner of Gooding, Idaho, presented a statement on behalf of Faulkner Land and Livestock, a water right holder in Basin 37, in support of the proposed water district boundary revision. However, Mr. Faulkner stated that there are unresolved issues concerning the Swan Falls Agreement that need to be addressed for the district.

c. George Lemmon of Hagerman, Idaho, presented a statement on behalf of himself and members of the Big Spring Water Users Association who hold water rights

from Big Springs located in Water District 36-A (Hagerman Valley). Mr. Lemmon generally supported the proposed boundary revision. Although the Director at this hearing did not propose inclusion of Water District 36-A in Water District 130, Mr. Lemmon stated for the record that Water District 36-A should not be included in Water District 130.

d. John Faulkner of Gooding, Idaho, presented a statement on behalf of Sawtooth Sheep Co., a water right holder in Basin 37. Mr. Faulkner stated that he is not convinced that the Basin 37 area should be included in the district based on his belief that wells in the Gooding area of Basin 37 have very little effect on the springs in the Thousand Springs area. Mr. Faulkner further stated his belief that the Snake Plain ground water model used by the Idaho Department of Water Resources (Department) may have significant uncertainties and that the Director should consider the uncertainty of the model and whether or not ground water in Basin 37 is really connected with the Thousand Springs area before including Basin 37 in Water District 130.

e. Jeff Martin presented a statement on behalf of the North Snake Ground Water District (NSGWD) in support of the proposed boundary revision. Mr. Martin stated that administration of water rights in the area is a complicated matter and that the ground water model is a tool to help with administration. Mr. Martin also stated that some existing state laws may not have been given full consideration and that the NSGWD planned to submit written comments to the Director regarding certain technical and legal matters.

9. The Director received two written comments from affected ground water users prior to the close of the December 31, 2002, comment period. Comments were received from Josephine Beeman, attorney for the NSGWD, in support of the proposed action. The NSGWD suggested that the Director consider further refinement of watermaster instructions whereby administration of water rights in the water district include the following considerations:

a. Consistency with the Swan Falls Agreement and State Water Plan;

b. Calculation of the depletions to the Thousand Springs reach resulting from the transfer of winter surface water rights so that such depletions are not attributed to ground water withdrawals; and

c. Identification of depletions to the Thousand Springs reach resulting from changes in surface water irrigation under Idaho Code § 42-219 (i.e., changes that do not require a transfer pursuant to Idaho Code § 42-222).

10. Written comments were also received from Dean R. Rogers III of Bellevue, Idaho, opposing inclusion of ground water rights from the Wood River Valley in Water District No. 130. Mr. Rogers' comments appeared to be specific to the area of the Wood River Valley that is located outside of the ESPA. The Director does not intend to include in Water District

No. 130 ground water rights from the Wood River Valley for ground water that is outside of the ESPA.

11. The United States Geological Survey (USGS) defined the boundaries of the Eastern Snake Plain based on the 1980 Regional Aquifer System Analysis Study (RASA). For administrative purposes, the Idaho Department of Water Resources considers the boundaries of the ESPA to closely approximate the boundaries of the plain as determined by the USGS. The Big and Little Wood Rivers within the Eastern Snake Plain are losing river reaches. The ESPA is not a homogeneous aquifer and does contain some layers of alluvium overlaying or inter-fingered with basalt flows. Although some areas within Basin 37 overlying the ESPA may contain alluvial deposits that are hydraulically connected to surface water in the Big and Little Wood River Basins, ground water occurrence in the area is also hydraulically connected to the ESPA.

12. The administration of ground water rights within the portion of Administrative Basin 37 overlying the ESPA is necessary for the protection of prior surface and ground water rights.

13. To the extent that ground water withdrawals from the portion of Administrative Basin 37 overlying the ESPA affect surface water in the Big and Little Wood River Basins, the effects may be appropriately addressed by coordinating the actions of the watermasters for Water District No. 130 and water districts for the Big and Little Wood River Basins.

CONCLUSIONS OF LAW

Statutory Authorities

1. Idaho law declares all ground waters in 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. Idaho Code § 42-226.

2. The Director has a statutory responsibility to administer the use of ground water in the state so as to protect prior surface and ground water rights. See Idaho Code §§ 42-226 and 42-237a.g.

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, as provided in chapter 6, title 42, Idaho Code.

4. The Director is authorized to establish water districts or revise the boundaries of 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. See Idaho Code § 42-604.

5. In addition, the district court having jurisdiction over a general water rights adjudication may permit 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 or in accordance with partial decrees that have superseded the director's reports. See Idaho Code § 42-1417.

Revision of District Boundaries

6. Based upon the above statutory authorities, the order of the SRBA District Court authorizing the interim administration of water rights pursuant to chapter 6, title 42, Idaho Code, and the record in this proceeding, the Director should revise the boundaries of Water District No. 130 to include administration of ground water rights (except those whose use is solely for domestic and/or stockwater purposes) in the portion of Administrative Basin 37 overlying the ESPA, as shown on the map appended hereto as Attachment A, to protect senior priority water rights.

7. The Director concludes that the revised boundaries of the water district should be used to administer the affected water rights in accordance with the prior appropriation doctrine as established by Idaho law.

Administration of Affected Water Rights

8. The Director concludes that immediate administration of water rights, other than domestic and stockwater rights as defined under Idaho Code §§ 42-111 and 42-1401A(11), pursuant to chapter 6, title 42, Idaho Code, is necessary.

9. The Director concludes that compliance with the provisions of the interim stipulated Agreements will provide adequate replacement water to satisfy the need for mitigation or curtailment of the rights to the use of ground water held by persons who are party to the Agreements or are represented by a party to the Agreements during the term of the stipulated Agreements.

10. The Director concludes that the watermaster of the water district, as revised pursuant to this order, shall perform the following duties in accordance with the direction and supervision of the Director:

a. Curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right);

b. Measure and report the diversions under water rights;

c. Enforce the provisions of the stipulated Agreements; and

d. Curtail out-of-priority diversions determined by the Director to be causing injury to senior priority water rights that are not covered by a stipulated agreement or a mitigation plan approved by the Director.

11. The instructions contained in Attachment B to the Order Creating Water District No. 130, dated February 19, 2002, shall continue to be used to guide the watermaster in performing the duties described above.

12. Additional instructions to the watermaster for the administration of water rights from hydraulically connected sources will be based upon available data, analytic or model studies, and the Director's best professional judgment.

13. The Director concludes that Water District No. 130, as revised by this order, shall include the following organizational features:

a. Election and appointment of a watermaster for the water district. The water users may elect to have the district contract with IDWR to provide watermaster services. Under a district contract with IDWR, the watermaster will be a direct employee of IDWR.

b. Creation of subdistricts that match boundaries of existing ground water districts irrigation districts or measurement districts, or other areas as may be proposed by the Director or right holders within the water district and deemed appropriate by the Director.

c. Water District Advisory Committee that includes representation from boards of directors of ground water districts and irrigation districts, or from other groups of right holders within the water district as may be appropriate.

d. Appointment of deputy watermasters by the watermaster, with approval from the Director. Deputy watermasters shall work pursuant to instructions of the watermaster. Deputy watermasters may be employees of existing ground water districts or irrigation districts that are located within the water district. Duties of appointed deputy watermasters that are also employees of an existing ground water district or irrigation district shall be limited primarily to measuring and reporting of diversions.

e. Diversions not included in an existing ground water district or irrigation district shall be assessed costs directly by the water district watermaster.

f. Ground water districts and irrigation districts that are organized as subdistricts may collect and pay the pro-rata expenses on behalf of the diversions and users within their respective district (this will avoid billing of individual water rights or diversions by both the subdistrict and the water district).

ORDER

IT IS ORDERED that:

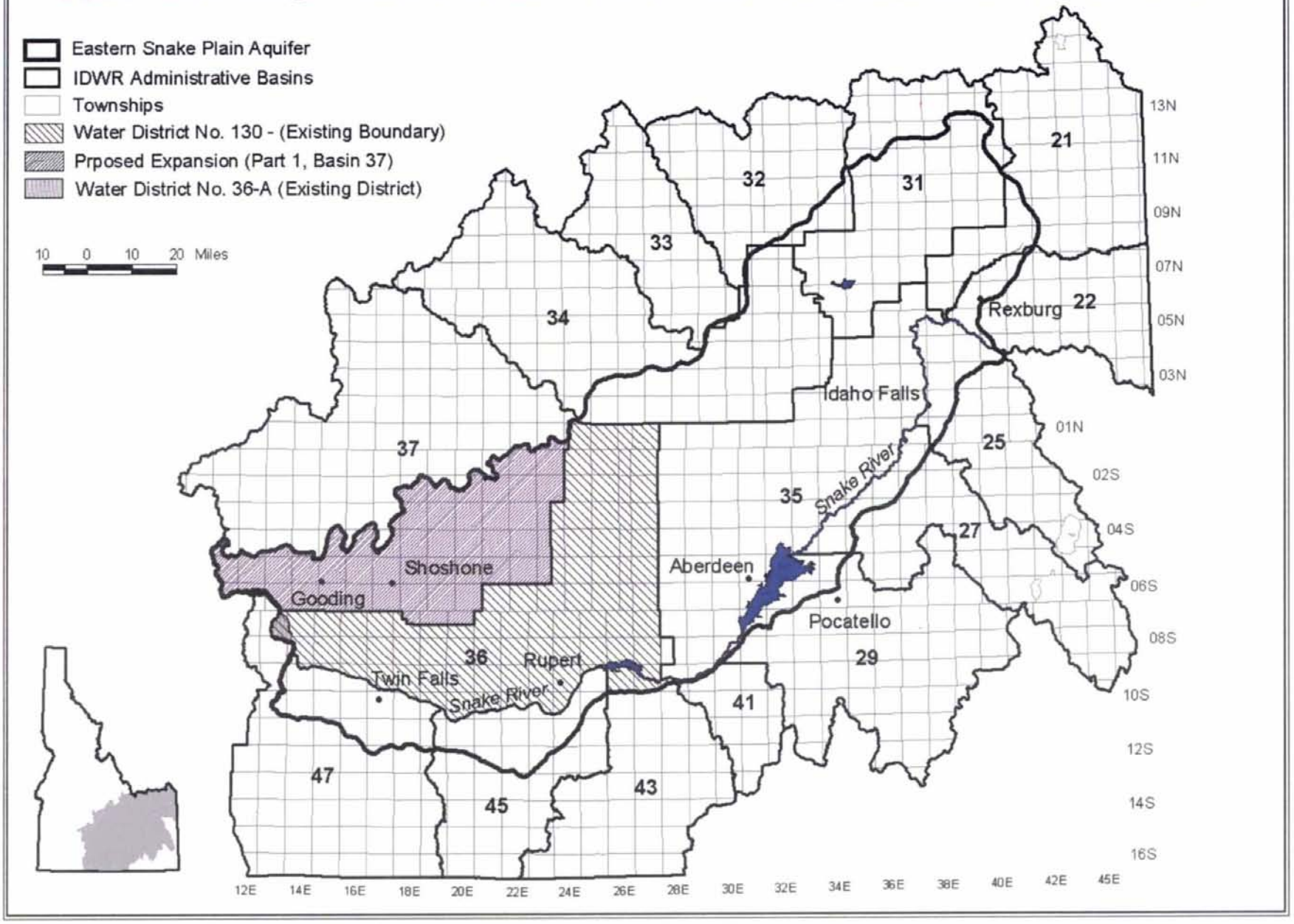
1. The boundaries of Water District No. 130, in the Thousand Springs Area , are hereby revised to include all ground water rights other than small domestic and stockwater rights as defined under Idaho Code §§ 42-111 and 42-1401A(11), within that portion of Administrative Basin 37 overlying the ESPA and as depicted on the map appended hereto as Attachment A and incorporated herein by reference.

2. The Water District No. 130 watermaster shall perform watermaster duties in accordance with the provisions of Conclusions of Law 10 through 12 of this order.

3. For 2003, the water right holders included within the revised boundaries of Water District No. 130 shall meet at a time and place to be announced by the Director to elect a watermaster, select an advisory committee, and set a budget to be collected to operate the district. In future years, the annual meeting shall be held as provided in Idaho Code § 42-605.

DATED this 8th day of January 2003.

KARL J. DREHER
Director

ATTACHMENT A

WATER DISTRICT NO. 130 PROPOSED EXPANSION