

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE PROPOSED)	
REVISION OF WATER DISTRICT NO. 370)	
TO INCLUDE ADMINISTRATION OF)	PRELIMINARY ORDER REVISING
GROUND WATER RIGHTS IN THE)	WATER DISTRICT NO. 370
MULDOON CREEK DRAINAGE AREA)	
_____)	

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. Department records describe Water District No. 370 (“WD370”) as “the entire Muldoon Creek drainage basin to its junction with the Little Wood River and is located in Blaine County.” *Order Regarding Re-designation of Water District Boundaries and Numbering System, Idaho Department of Water Administration* (January 27, 1971).
2. On March 14, 2017, the Director issued a public hearing notice proposing to revise or expand Water District 370 to include administration of ground water rights in the Muldoon Creek drainage area pursuant to Idaho Code § 42-604. The Department sent the notice by regular U.S. Mail to holders of surface water rights and ground water rights in the Muldoon Creek drainage area, except ground water domestic and stock water rights as defined by Idaho Code §§ 42-111 and 42-1401A(11).
3. The public hearing notice explained the Department proposed revising WD370 to include several ground water irrigation rights from the Logan Mine and Mutual Mine tunnels that are injected into Muldoon Creek and Copper Creek respectively, then re-diverted further downstream from Muldoon Creek for irrigation purposes. These ground water rights are identified below in Table 1.

Water Right	Priority Date	Decreed Date	Owner	Diversion Rate (cfs)	Uses	Source
37-1120	1/22/1913	3/10/2010	CLARK, ANITA K; CLARK, TERRY L	1.1	IRRIGATION	GROUND WATER
37-2243B	8/8/1912	5/13/2009	PRICE, BRUCE B; PRICE, SHERRY L	0.06	IRRIGATION	GROUND WATER
37-2243C	8/8/1912	4/7/2010	GEORGE T MERRILL & MARILYN K MERRILL FAMILY TRUST	0.03	IRRIGATION	GROUND WATER
37-2243A	8/8/1912	4/7/2010	THE MULDOON RANCH CO LLC	4.21	IRRIGATION	GROUND WATER

Table 1. Ground water irrigation rights located within Muldoon Creek drainage, Water District 370

4. The water rights identified in Table 1 have historically been delivered by the WD370 watermaster. The source of water for water rights 37-2243A, 37-2243B and 37-2243C is identified as

ground water on the partial decrees issued by the Snake River Basin Adjudication (“SRBA”) District Court. Department records show that water right 37-2243 was both permitted and licensed with a source identified as the “Mutual Tunnel on Last Chance Mine.” The water right was licensed January 5, 1915.

5. The source of water for water right 37-1120 is identified as ground water on the partial decree issued by the SRBA District Court. Water right 37-1120 was originally decreed in *Baptie vs. Lewis, Idaho District Court, Blaine County* (January 22, 1926). Logan Tunnel is identified as the source of water in the January 22, 1926, decree for this water right.

6. Currently, there are no ground water rights within the WD37O boundaries other than those listed in Table 1 above and those used for domestic and stock water purposes as defined by Idaho Code §§ 42-111 and 42-1401A(11).

7. The March 14, 2017, public hearing notice proposed excluding from WD37O ground water rights used for domestic and stock water purposes as defined by Idaho Code §§ 42-111 and 42-1401A(11). Currently, only those ground water rights listed in Table 1 are affected by the Director’s proposed action.

8. The ground water rights in Table 1 all have a point of diversion location at either the mouth of Logan Tunnel or the mouth of Mutual Tunnel. Each of the rights also include a point of injection where water flowing from the tunnels enter either Muldoon Creek (from Logan Tunnel) or Copper Creek (from Mutual Tunnel). Each of the rights also include points of re-diversion from Muldoon Creek further downstream from the points of injection to Muldoon Creek or Copper Creek. The points of re-diversion from Muldoon Creek are also points of diversion for other Muldoon Creek water rights.

9. On April 4, 2017, commencing at approximately 3:50 p.m. at the Carey City Hall, Carey, Idaho, Tim Luke, the Department hearing officer in this matter, conducted a public hearing concerning revision of WD37O to include water rights with sources from ground water sources, excluding ground water rights used for domestic and stock water purposes as defined by Idaho Code §§ 42-111 and 42-1401A(11). Approximately twelve people attended the hearing.

10. The hearing officer initiated the meeting by explaining the hearing process. Department representative Nathan Erickson gave a presentation that described WD37O and the district boundary, the existing ground water rights in WD37O proposed to be formally included in the water district, and the reasons for formal inclusion of the ground water rights in the water district. Mr. Erickson stated that the ground water rights from Logan and Mutual Tunnels have been delivered by the watermaster for many years. Mr. Erickson confirmed that the water rights describe a point of diversion which is the location where water exits the tunnels, a point of injection where water enters Muldoon Creek or Cooper Creek, and points of re-diversion from Muldoon Creek where the rights are conveyed through ditches with other water rights from Muldoon Creek for irrigation purposes. Mr. Erickson further stated that these ground water rights are included in the list of water rights the watermaster uses for delivery of water in WD37O. Mr. Erickson stated that water from the tunnels needs to be measured at the points of injection to the creeks so the watermaster can deliver the same amount of water downstream to the right holders’ points of re-diversion. Measurement of the water injected to the creeks and re-diverted from the creeks is necessary to assure both the ground water rights and the Muldoon Creek water rights are delivered equitably to all water users diverting or re-diverting water from Muldoon Creek.

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

12. 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 14, 2017, for written comments.

13. Two (2) individuals testified at the hearing.

14. Sherry Price testified in support of including ground water rights in WD370.

15. Bruce Price testified in support of including ground water rights in WD370. Mr. Price stated that the watermaster should deliver those ground water rights that are injected to the creeks from the Logan Mine and Mutual Mine tunnels.

16. The Department did not receive any written comments on or before April 14, 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 WD370 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 WD370 to include delivery and administration of ground water rights is necessary for the reasons set forth in Finding of Fact 10 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 Muldoon Creek drainage by the SRBA District Court, and the record in this proceeding, the Director should revise WD370 to administer and regulate ground water rights and protect senior priority water rights in the Muldoon Creek drainage area.

ORDER

IT IS HEREBY ORDERED that:

1. WD370 is revised to include all ground water rights in the Muldoon Creek drainage basin except ground water rights used for domestic and stock water purposes as defined by Idaho Code §§ 42-111 and 42-1401A(11).


DATED this 3rd day of May 2017.

A handwritten signature in black ink, appearing to read "Tim Luke", is written over a horizontal line.

Tim Luke
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th 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