

MAY 30 2017

DEPARTMENT OF WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE PETITION )	Case No. CM-DC-2017-001
FOR ADMINISTRATION BY BIG )	
WOOD & LITTLE WOOD WATER )	PETITIONER'S RESPONSE TO SUN
USERS ASSOCIATION )	VALLEY COMPANY'S MOTION TO
)	DISMISS
)	(IDAPA 37.01.01.565)

COMES NOW, Petitioner, the Big Wood & Little Wood Water Users Association, ("Association") by and through its attorney, Joseph F. James, of Brown & James, and hereby responds to Sun Valley Company's motion to dismiss.

**INTRODUCTION**

The Association filed a Petition for Administration on March 6, 2017. Sun Valley Company's First Set of Discovery Requests to Big Wood & Little Wood Water Users Association and its Members was served on April 11, 2017. Petitioner's Motion for Protective Order was filed on May 3, 2017. On May 12, 2017, the Sun Valley Company ("Sun Valley") filed a Response to Petitioner's Motion for Protective Order / Motion to Dismiss. On May 22<sup>nd</sup>, 2017, certain named Respondents joined in the Sun Valley's Response to Petitioner's Motion for Protective Order / Motion to Dismiss.

**ANALYSIS**

**The Association has Standing to Pursue a Delivery Call on Behalf of its Members.**

The Idaho Supreme Court has followed the federal test regarding associational standing as laid down by the United States Supreme Court. *Beach Lateral Water Users Ass,n, v. Harrison,*

142 Idaho 600, 603, 130 P.3d 1138, 1141 (2006), citing *Bear Lake Educ. Assoc. v. Sch. Dist. 33*, 116 Idaho 443, 448, 776 P.2d 452, 457 (1989). An association can have standing to seek judicial relief not only to protect its own interests, but also those of its members. *Id.* Even in the absence of injury to the association, it may have standing solely as the representative of its members. *Id.*

Idaho has adopted a three part test for determining associational standing as previously articulated by the United States Supreme Court. *Beach Lateral Water Users Ass,n*, 142 Idaho at 603, 130 P.3d at 1141.

[W]e have recognized that an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit.

*Beach Lateral Water Users Ass,n*, 142 Idaho at 604, 130 P.3d at 1142, quoting *Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 343, 97 S.Ct. 2434, 2441, 53 L.Ed.2d 383, 394 (1977).

Sun Valley Company does not contest that the Association meets first two prongs of the *Hunt* test. *Motion* p. 3. Rather, Sun Valley asserts that the Association fails to meet the third prong of the *Hunt* test. *Id.* Sun Valley relies heavily on *Beach Lateral Water Users Ass,n*. However, this reliance is misplaced.

In *Beach Lateral Water Users Ass,n*, an association sought and received two forms of relief from the district court: (1) an order quieting title in the ditch easement in favor of the Association, and (2) injunctive relief preventing Harrison from impeding or blocking the flow of water in the Harrison ditch. *Beach Lateral Water Users Ass,n*, 142 Idaho at 603, 130 P.3d at 1141. The Idaho Supreme Court held that the District Court erred in issuing its ruling that quieted title in a ditch easement to the association. *Beach Lateral Water Users Ass,n*, 142 Idaho at 604, 130 P.3d at 1142. However, the Idaho Supreme Court further determined that even though the association lacked an ownership interest in its members' ditch easements, it had standing to seek injunctive relief to prevent the impediment or obstruction in the flow of water in the subject ditch. *Beach Lateral Water Users Ass,n*, 142 Idaho at 604-5, 130 P.3d at 1142-43, See also *Tower Asset Sub Inc. v. Lawrence*, 143 Idaho 710, 152 P.3d 581 (2007).

Generally, standing turns on the relief sought, and “[w]hen an association seeks some form of prospective relief, such as a declaration or an injunction, its benefits will likely be shared by the association's members without any need for individualized findings of injury that would require the direct participation of its members as named parties.” *Beach Lateral Water Users Ass,n*, 142 Idaho at 604, 130 P.3d at 1142, citing *Hunt*, 432 U.S. at 343, 97 S.Ct. at 2441. As an example of a matter necessitating individual findings and requiring individualized participation, an action seeking entry of a judgment quieting title in an easement would require the participation of those individuals entitled to the easement. See *Beach Lateral Water Users Ass,n*, 142 Idaho 600, 130 P.3d 1138. As another example of a matter necessitating individual findings and requiring individualized participation, an action seeking entry of a judgment for monetary damages would require the participation of those individuals who suffered the damages. See *Warth v. Seldin*, 422 U.S. 490, 95 S.Ct. 2197 (1975).

In the present matter, the Association is neither seeking to quiet title of its individual members’ water rights in itself, nor seeking an award of monetary damages. The Association is seeking prospective relief and asking for administration of certain surface water rights, and hydrologically connected ground water rights, in accordance with the prior appropriation doctrine. *Petition* p. 1. For the reasons stated above, the Association has standing to pursue a delivery call on behalf of its members.

**The Associations Individual Members are Available For Discovery**

The Association did not attempt to insulate its members from discovery. Rather, the Association sought protection from Sun Valley Company’s discovery requests, which were not only directed to the Association, but specifically propounded upon each individual member of the Association. Rule 33(a)(2) of the Idaho Rules of Civil Procedure requires each interrogatory to be answered under oath and signed by the party to whom they are directed. Likewise, Rule 34(b) requires each party served with requests for production to serve a written response. If, as Sun Valley asserts, it can simply serve discovery on the Association and each individual member of the Association pursuant to Idaho Rules of Civil Procedure 33 and 34, as a party hereto, then it would appear the Association would have to prepare, verify and serve separate responses, not only for the Association, but for each individual member of the Association. Such requirement would truly cause an undue burden and expense on the Association. Further, even

as nonparties, the Associations members are not insulated from the discovery process. See generally I.R.C.P. 30(a); I.R.C.P. 30(b)(5); I.R.C.P. 31(a); I.R.C.P. 34(c); and I.R.C.P. 45. Finally, Sun Valley could have eliminated the necessity for the Association to request a protective order, and limit any delay in the discovery process, by simply clarifying that it's First Set of Discovery Requests to the Big Wood & Little Wood Water Users Association and its Members were directed to, propounded upon, and served solely upon the Association.

**If the Individual Members of the Association are deemed to be the Real Parties in Interest and Indispensable Parties, the Association Should be Given an Opportunity to Amend**

Rule 305 of the Department's Rules of Procedure provides in part as follows:

The presiding officer may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded.

IDAPA 37.01.01.305. Though not controlling, the Idaho Rules of Civil Procedure provide direction and state:

The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

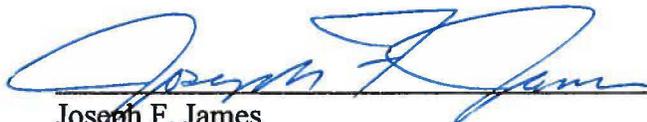
I.R.C.P. 17(a)(3) Accordingly, if the Director deems the Association's lacks standing to seek administration of its members' surface water rights, and hydrologically connected ground water rights, and that the members are indispensable parties, the Association should be granted an opportunity to amend pursuant to Rule 305 of the Department's Rules of Procedure.

**CONCLUSION**

For the reasons stated above, the Association requests Sun Valley's Motion to be denied.

DATED this 26<sup>th</sup> day of May, 2017.

BROWN & JAMES

  
Joseph F. James

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26<sup>th</sup> day of May, 2017, I served the foregoing Petitioner's Response to Sun Valley Company's Motion to Dismiss or in the Alternative Motion to Stay upon the following persons by depositing in the United States Mail, properly addressed, postage prepaid.

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