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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF DESIGNATING THE)
EASTERN SNAKE PLAIN AQUIFER)
GROUND WATER MANAGEMENT AREA)

Docket No. AA-GWMA-2016-001

**WATER DISTRICT 37B GROUND
WATER ASSOCIATION'S
RESPONSE TO IGWA'S
STATEMENT OF ISSUES**

The Water District 37B Ground Water Association (the "Camas Group"), through undersigned counsel of record, hereby files this Response to IGWA's Statement of Issues filed August 1, 2019, pursuant to the Director's Order Adopting Deadlines of July 18, 2019.

I. BACKGROUND

On November 2, 2016, the Director issued an order establishing the Eastern Snake Plain Aquifer ("ESPA") Ground Water Management Area ("GWMA"). In that Order, the

Director determined not to include several tributary basins in the ESPA GWMA, including some that had initially been proposed for inclusion. (*See* Order Designating ESPA GWMA of 11/2/16, pp. 2, 21-23, Att. A.). The Big Wood GWMA was originally established by Order of the Director on June 28, 1991. To the best of the Camas Group's knowledge, that Order was not appealed, and has never been challenged or set aside. Accordingly, the Big Wood GWMA was not included in the ESPA GWMA because it was not within the ESPA Model boundary (except for a very small overlap) and because there is an established management area outside the proposed ESPA GWMA model boundary. (*Id.* pp. 22-23.)

Sun Valley Company ("SVC") initiated this proceeding by filing two petitions on November 16, 2016, which it subsequently amended on November 23, 2016. While SVC raised a number of arguments to support its petitions, the ultimate goal of the petitions was to ensure that the Big Wood GWMA was not included in the ESPA GWMA. Over the course of the following four months, several parties intervened in the proceeding.

On March 20, 2017, SVC withdrew its request for a hearing and withdrew from this proceeding altogether. On April 24, 2017, the Director issued an order establishing briefing deadlines for the remaining intervening parties to address the issue of whether this matter could proceed without SVC. On June 5, 2019, the Director ruled on that issue, holding that the matter could proceed to hearing, but would be limited in scope, as more fully described below.

The Director then held a Status Conference on July 11, 2019 pursuant the Order on Briefing. At that status conference he asked all the parties to state whether they had any objections to the formation of the ESPA GWMA. The Basin 33 Water Users,

certain Upper Valley Intervenors, and McCain Foods stated that they had objections. As reflected in the first paragraph of the Director's subsequent Order of July 18, 2019, no other Intervenor, including IGWA, stated any objections. The Director Ordered the objectors to file a Statement of Issues by August 1, 2019. McCain later filed a notice that it was withdrawing its objections. Even though it did not state that it had any objections to the ESPA GWMA. IGWA filed a statement of issues challenging, among other things, the boundaries of the ESPA GWMA.

II. LEGAL ARGUMENT

On June 5, 2019, the Director issued his Order on Briefing, which states:

IT IS HEREBY ORDERED that intervenors in this contested case remain parties to the contested case pending before the Director. The issues addressed and evidence submitted at the hearing *will be limited to the issues raised in the original petition for hearing filed by the Sun Valley Company*. The contested case will be scheduled for a hearing.

(Order of 6/5/19, p. 6 (emphasis added).)

In its Statement of Issues, IGWA states that "the GWMA should be expanded to encompass...all potentially tributary basins," and that "[a] GWMA can and should be used to regulate pumping in all tributary basins...." (Stmnt. of Issues of 8/1//19, p. 2) IGWA does not explain how these issues are encompassed by SVC's petitions.

In fact, SVC's petitions cannot fairly be read as arguing for the inclusion of tributary basins within the ESPA GWMA, or for use of the GWMA to regulate ground water pumping in tributary basins not included within the proposed ESPA GWMA. Therefore, these issues are outside the scope of this proceeding.

SVC filed three petitions in this proceeding. In its Petition for Reconsideration, SVC argues that the Director followed improper procedure and that the Director

erroneously adopted certain conclusions of law by using phrases such as “aquifer system” in a manner inconsistent with the existing statutes. (Pet. for Recon. of 11/16/16, pp. 2-5.). In its Petition Requesting a Hearing, SVC simply adopted the arguments set forth in the Petition for Reconsideration. (Pet. Requesting a Hearing of 11/16/16, p. 2.) In its Amended Petition for Reconsideration, SVC re-asserted the same two issues from its initial petition, but added a third, that creating the ESPA GWMA required administrative rule-making. (Am. Pet. for Recon. of 11/23/16, pp. 2-8.)

In none of these petitions did SVC actively challenge the exclusion of the tributary basins from the ESPA GWMA. And why would it? Like the Camas Group, SVC itself is within an excluded tributary basin and within the existing Big Wood River GWMA. Indeed, SVC specifically petitioned to *exclude* the Big Wood GWMA from the ESPA GWMA. (See Petition for Declaratory Ruling of 7/25/16 (Dkt. No. P-DR-2016-001), paragraph 17(b), (d), (e), (f), (j) (all of which specifically advocate for exclusion of groundwater in the Big Wood GWMA).) In its Second Amended Petition for Declaratory Ruling in that proceeding, SVC specifically argued that the Director “has no authority to include ‘tributary basins’ in the proposed ESPA [GWMA].” (Sec. Am. Pet. of 10/18/16 (Dkt. No. P-DR-2016-001), p. 14.). In short, SVC did not argue to include tributary basins in the ESPA GWMA.


III. CONCLUSION

The Director has already ruled that the scope of these proceedings is limited to issues raised in SVC’s petitions. However, SVC never argued that the exclusion of the tributary basins from the ESPA GWMA was in error. IGWA’s untimely effort to expand the scope of the ESPA GWMA to include all potentially tributary basins, no matter how

small the contribution to the ESPA, and to include previously designated GWMA's, like the Big Wood GWMA, should be dismissed. Therefore, the Camas Group respectfully requests an order from the Director confirming that the issues of whether to exclude or include the tributary basins in an ESPA GWMA and whether an ESPA GWMA can be used to regulate ground water pumping outside the GWMA are outside the scope of this proceeding.

DATED THIS 20th day of August, 2019.

Varin Wardwell LLC

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August, 2019, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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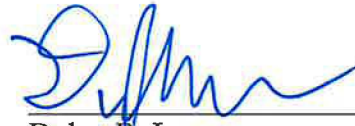
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