

RECEIVED
JUN 16 2015
DEPARTMENT OF
WATER RESOURCES

Scott L. Campbell, ISB No. 2251
Matthew J. McGee, ISB No. 7979
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
slc@moffatt.com
mjm@moffatt.com
16845.0025
16845.0026

Attorneys for Sun Valley Company

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF
WATER TO WATER RIGHTS HELD BY
MEMBERS OF THE BIG WOOD & LITTLE
WOOD WATER USERS ASSOCIATION
DIVERTING FROM THE BIG WOOD
RIVER

Docket No. CM-DC-2015-001

IN THE MATTER OF DISTRIBUTION OF
WATER TO WATER RIGHTS HELD BY
MEMBERS OF THE BIG WOOD & LITTLE
WOOD WATER USERS ASSOCIATION
DIVERTING FROM THE LITTLE WOOD
RIVER

Docket No. CM-DC-2015-002

**OPPOSITION TO MOTION FOR
PROTECTIVE ORDER**

COMES NOW Sun Valley Company ("SVC"), by and through undersigned
counsel of record, and provides its response to the Petitioners' motion for protective order, filed

June 2, 2015. SVC respectfully requests that the Director deny the motion, and allow discovery to proceed in accordance with the Department's Procedural Rules, and by extension the Idaho Rules of Civil Procedure. SVC does not object to an order setting forth discovery deadlines, but the remaining requests by the Petitioners are unreasonable and unwarranted under the circumstances.

1. The Petitioners contend that "[t]he Director's Order Authorizing Discovery did not establish the manner, scope, and schedule for discovery, but rather simply stated that the parties were authorized to engage in discovery." Motion for Protective Order ¶ 7. The Department's Procedural Rules provide that "[u]nless otherwise provided by statute, rule order or notice, the scope of discovery, other than statutory inspection, examination, investigation, etc., is governed by the Idaho Rules of Civil Procedure." IDAPA 37.01.01.520.02. In short, absent an order from the Director limiting the scope of discovery, such scope is governed by the Idaho Rules of Civil Procedure. The Petitioners have not alleged that SVC's written discovery requests are outside the scope of discovery authorized by the Idaho Rules of Civil Procedure. A protective order is unwarranted.

2. The Petitioners primary argument, clarified at the scheduling conference on June 3, 2015, appears to revolve around the potential for duplicative discovery by other parties, and not any contention that SVC's discovery requests were unduly burdensome. Such a concern should be resolved at a later date, when duplication is an issue and the controversy is ripe for resolution. At present, SVC is not aware that any other party has propounded duplicative discovery, nor that any other party has propounded discovery at all. As to the contention that there exists substantial overlap between the information requested by the Department and the written discovery propounded by SVC, it bears noting that the evidentiary value of responses to

interrogatories is distinguishable from information that is simply supplied to an agency upon request, in light of the fact that responses to interrogatories and requests for admission both must be verified by the party responding. *See* I.R.C.P. 33(a)(2); 36(a). The Petitioners' motion for protective order should be denied because it is not ripe as to the written discovery requests at issue, and also ignores the evidentiary value of responses to interrogatories.

3. The Petitioners seek an order from the Director suspending discovery until after the Petitioners have had an opportunity to collect and submit the information requested by the Director in written correspondence dated May 20, 2015. *See* Motion for Protective Order ¶ 14. First, SVC propounded its discovery requests prior to the Director's request for information. Second, and more importantly, the Petitioners have already acknowledged that there is substantial overlap between the information sought by the Department and the information sought in SVC's discovery requests. *See* Motion for Protective Order ¶ 3. Accordingly, there is no reason why the Petitioners cannot timely respond to SVC's discovery requests.

4. The Petitioners also seek an order from the Director requiring any party seeking written discovery to submit such discovery to the Director "*along with an explanation of the subject matter to be discovered and showing that the information cannot be obtained through other sources of information.*" *See* Motion for Protective Order ¶ 15. Such a requirement is wholly unsupported by the Idaho Rules of Civil Procedure or the Director's Order Authorizing Discovery, which govern the written discovery in this case. The Petitioners have not even attempted to demonstrate why imposing a gatekeeping function upon the Director, or the affirmative act of justifying written discovery requests upon respondents, is warranted under the circumstances. Again, the Petitioners have not alleged, nor can they demonstrate, that any of the information requested by SVC is not well within the scope of allowable discovery under the


Idaho Rules of Civil Procedure, especially in light of the broad scope and complexity of these proceedings. The Director should decline to impose such a requirement.

5. The Petitioners also seek to limit SVC to 10 interrogatories, with each subpart counting as a separate interrogatory, with a limitation of 10 interrogatories outstanding at a time. First, such a request is not ripe. SVC has not even propounded 10 interrogatories. Furthermore, Rule 33 of the Idaho Rules of Civil Procedure authorizes 40 interrogatories. With respect to subparts, Idaho Rule of Civil Procedure 33 provides that subparts are to be counted as a separate interrogatory, but neither the rule nor the Idaho Supreme Court has clearly defined what the word “subpart” means. It is nevertheless clear from persuasive authority that a subpart is not a separate interrogatory if it is “logically or factually subsumed within and necessarily related to the primary question.” *Kendall v. Ges Exposition Servs., Inc.*, 174 F.R.D. 684, 684-85 (D. Nev. 1997). The subparts at issue in SVC’s written discovery requests are necessary to describe, for example, the water rights at issue. Furthermore, the Petitioners are well aware of the factual complexity of these proceedings, and the comprehensive investigation that will be required prior to any hearing. Their efforts to obstruct such investigation at the early stage of these proceedings are confusing, especially in light of their demand for an order from the Director prior to the 2016 irrigation season. There is no reason to apply a 10 interrogatory limitation in this case. The motion for protective order should be denied.

6. The Petitioners also move for an order that requests for admissions should not be authorized. Such a motion, although again, not ripe for consideration since SVC has not propounded any such requests for admission, should be denied. The Department’s procedural rules authorize requests for admission, and the Petitioners have not articulated any reason why they should not be allowed. *See* IDAPA 37.01.01.520.01.

DATED this 16 day of June, 2015.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Matthew J. McGee – Of the Firm
Attorneys for Sun Valley Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16 day of June, 2015, I caused a true and correct copy of the foregoing **OPPOSITION TO MOTION FOR PROTECTIVE ORDER** to be served by the method indicated below, and addressed to the following:

JOSEPH F JAMES
BROWN & JAMES
130 FOURTH AVENUE WEST
GOODING ID 83330

ALBERT BARKER
BARKER ROSHOLT & SIMPSON
PO BOX 2139
BOISE ID 83701-2139

PATRICK D BROWN
PATRICK D BROWN PC
PO BOX 125
TWIN FALLS ID 83303

RANDALL C BUDGE
RACINE OLSON
PO BOX 1391
POCATELLO ID 83204-1391

SUSAN E BUXTON
CHERESE D MCLAIN
MOORE SMITH
950 W BANNOCK ST STE 520
BOISE ID 83702

MICHAEL C CREAMER
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

S BRYCE FARRIS
SAWTOOTH LAW PLLC
PO BOX 7985
BOISE ID 83707

FRITZ X HAEMMERLE
HAEMMERLE LAW PLLC
PO BOX 1800
HAILEY ID 83333

JAMES R LASKI
HEATHER E O'LEARY
LAWSON LASKI CLARK & POGUE
PO BOX 3310
KETCHUM ID 83340

CHAS F MCDEVITT
MCDEVITT & MILLER LLP
PO BOX 2564
BOISE ID 83701

EILEEN MCDEVITT
732 FALLS VIEW DR
TWIN FALLS ID 83301

CANDICE MCHUGH
MCHUGH BROMLEY
380 S 4TH ST STE 103
BOISE ID 83702

J EVAN ROBERTSON
ROBERTSON & SLETTE PLLC
PO BOX 1906
TWIN FALLS ID 83303-1906

JOHN K SIMPSON
BARKER ROSHOLT & SIMPSON
PO BOX 2139
BOISE ID 83701-2139

JAMES P SPECK
SPECK & AANESTAD PC
PO BOX 987
KETCHUM ID 83340

LAIRD B STONE
STEPHAN KVANVIG STONE
PO BOX 83
TWIN FALLS ID 83303-0083

TRAVIS THOMPSON
BARKER ROSHOLT & SIMPSON
195 RIVER VISTA PL STE 204
TWIN FALLS ID 83301-3029

ANTHONY & JUDY D ANGELO
25 EAGLE CREEK RD
KETCHUM ID 83340

BARBARA CALL
PO BOX 4
ROSS CA 94957

BERNARD I FRIEDLANDER PHD
116 VALLEY CLUB DR
HAILEY ID 83333

BLACK BUTTE HILLS LLC
PO BOX 333
FAIRFIELD ID 83327

BLUEGROUSE RIDGE HOA
BRIAN MCCOY
PO BOX 3510
KETCHUM ID 83340

BRIAN LAMAR SMITH
DIANE STEFFEY-SMITH
PO BOX 629
BELLEVUE ID 83313

BRITTA S HUBBARD
PO BOX 1167
KETCHUM ID 83340

BRUCE & KAREN TRUXAL
PO BOX 431
BELLEVUE ID 83313

CANADIAN CLUB
HOMEOWNERS ASSN
PO BOX 4041
KETCHUM ID 83340

CATTLE-LACK RANCH HOA
11 PURPLE SAGE LANE
BELLEVUE ID 83313

CLARE & KAREN OLSON
OKC RANCHES
PO BOX 136
HILL CITY ID 83337

COLD SPRINGS WATER COMPANY
PO BOX 254
KETCHUM ID 83340

DAVID A & KAREN L SIMON
PO BOX 545
FAIRFIELD ID 83327

DAVID BERMAN
PO BOX 4103
HAILEY ID 83333

DEBORAH L & MATT A MCLAM
PO BOX 253
FAIRFIELD ID 83327

DENNIS STROM WATER DISTRICT
37-B GROUNDWATER GROUP
PO BOX 137
HILL CITY ID 83337-0137

DOUGLAS C WALTON
DIANA L WHITING
109 RIVER GROVE LN
HAILEY ID 83333

ERNEST & JUDITH GETTO TRUST
ERNEST J GETTO
417 ENNISBROOK DR
SANTA BARBARA CA 93108

FLOYD CRANDALL WATER
DISTRICT 37-B GROUNDWATER
GROUP
29 E HWY 20
FAIRFIELD ID 83327

GARY HOFFMAN
PO BOX 1529
KETCHUM ID 83340

GREGORY R BLOOMFIELD REVOCABLE
TRUST
PO BOX 757
HAILEY ID 83333

GWINN RICE RANCH INC
PO BOX 131
HILL CITY ID 83337

HARRY S RINKER
949 SOUTH COAST DR STE 500
COSTA MESA CA 92626

HARRY S RINKER
PO BOX 7250
NEWPORT BEACH CA 92658

HEATHERLANDS HOMEOWNERS
ASSOCIATION INC
PO BOX 1672
SUN VALLEY ID 83353

H PHILIP CASH
607 E 200 S
FAIRFIELD ID 83327

HULEN MEADOWS WATER COMPANY
AND ASSN INC
PO BOX 254
KETCHUM ID 83340

INNOVATIVE MITIGATION
SOLUTIONS LLC
2918 N EL RANCHO PL
BOISE ID 83704

JAMES D WHITE
PO BOX 367
BELLEVUE ID 83313

JARED R WILLIAMS
REVOCABLE TRUST
PO BOX 99658
SEATTLE WA 98139

JIM W KOONCE
PO BOX 2015
HAILEY ID 83333

KATHERINE BRECKENRIDGE
B BAR B INC
PO BOX 685
PICABO ID 83348

KEN SANGHA
ASAM TRUST
PO BOX 9200
KETCHUM ID 83340

KEVIN D LAKEY
107 W 1ST
SHOSHONE ID 83352

LAWRENCE SCHOEN
18351 US HWY 20
BELLEVUE ID 83313

LOU ANDERSON WATER DISTRICT 37-B
GROUNDWATER GROUP
PO BOX 141
FAIRFIELD ID 83327

LUBOFF SENAVSKY &
CHARLES TIMOTHY FLOYD
PO BOX 1240
EAGLE ID 83616

MARLYS J SCHMIDT
10901 HWY 75
BELLEVUE ID 83313

NANCIE C TATUM &
THOMAS F HENNIG
PO BOX 1365
SUN VALLEY ID 83353

PAUL & POLLY CARNEY LLOYD &
DEANN RICHINS MARK & SUSAN
WILLIAMS FISH CREEK RESERVOIR
RANCH, LLC
384 2 2900 E
PAUL ID 83347

PAUL & TANA DEAN
40 FREEDOM LOOP
BELLEVUE ID 83313

PETER ZACH SEWELL
LORI SEWELL
PO BOX 3175
HAILEY ID 83333

PHILIP J VANDERHOEF
KATHLEEN MCKAY
5069 HAROLD PL NE
SEATTLE WA 98105

POPPY ENGLEHARDT
10965 HIGHWAY 75
BELLEVUE ID 83313

RALPH P CAMPANALE II
PO BOX 3778
KETCHUM ID 83340

ROBERT BOUTTIER
PO BOX 476
BELLEVUE ID 83313

ROBERT & JUDITH PITTMAN
121 LOWER BROADFORD RD
BELLEVUE ID 83313

ROBERT J STRUTHERS
762 ROBERT ST PICABO ROUTE
BELLEVUE ID 83313

RUSTY KRAMER
PO BOX 591
FAIRFIELD ID 83327

SAGE SPRINGS HOMEOWNERS
ASSN INC
PO BOX 254
KETCHUM ID 83340

SILVER SAGE OWNERS ASSN INC
C/O CAROLS BOOKKEEPING
PO BOX 1702
KETCHUM ID 83340

SOUTH COVE VENTURES LLC
PO BOX 333
FAIRFIELD ID 83327

STARWEATHER OWNERS ASSN INC
PO BOX 254
KETCHUM ID 83340

STEVEN C FUNK
90 FREEDOM LOOP
BELLEVUE ID 83313

SMOKEY DOME LLC
PO BOX 333
FAIRFIELD ID 83327

SV RANCH LLC
PO BOX 333
FAIRFIELD ID 83327

THOMAS & AMY MISTICK
149 ASPEN LAKES DR
HAILEY ID 83333

USDA FOREST SERVICE
ATTN JAMIE GOUGH
324 25TH ST
OGDEN UT 84401

VALLEY CLUB OWNERS ASSN INC
PO BOX 254
KETCHUM ID 83340

WILLIAM A SIMON WATER DISTRICT 37
GROUNDWATER GROUP
PO BOX 364
FAIRFIELD ID 83327

WILLIAM R & KATHRYN L
RATLIFF
206 BAYHORSE RD
BELLEVUE ID 83313

WOOD RIVER LAND TRUST
119 E BULLION ST
HAILEY ID 83333

ED REAGAN
COURIER NEWS
PO BOX 339
FAIRFIELD ID 83327



Matthew J. McGee