

JUN 25 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

**MOTION TO DISMISS CONTESTED CASE  
PROCEEDINGS**

COMES NOW Sun Valley Company ("SVC"), by and through undersigned  
counsel of record, and pursuant to Rule 260 of the Rules of Procedure of the Idaho Department  
of Water Resources, moves for dismissal of the above-captioned contested case proceedings on

the grounds that the Petitioners have failed to file compliant petitions under the applicable rules, and the Department therefore lacks the authority and jurisdiction to proceed.<sup>1</sup> The facts upon which the instant motion is based are the submission of, as well as the contents within, the letter from Brown & James to Director Gary Spackman, dated February 23, 2015 (the “Petitioners’ Letter”), the First Amended Petition for Administration of Water Rights Under the Prior Appropriation Doctrine, and the Second Amended Petition for Administration of Water Rights Under the Prior Appropriation Doctrine, each filed separately in the above-captioned contested case proceedings. SVC respectfully requests oral argument.

## **I. INTRODUCTION**

The rules promulgated by the Idaho Department of Water Resources (the “Department”) that apply to the above-captioned matters presently under consideration by the Director are IDAPA 37.01.01, relating to Rules of Procedure of the Idaho Department of Water Resources (the “Procedural Rules”), and IDAPA 37.01.11, the Rules for Conjunctive Management of Surface and Ground Water Resources (the “Conjunctive Management Rules”). Such rules have been largely ignored by the Petitioners. The deficiencies explained in the following memorandum implicate the Department’s authority and its exercise of jurisdiction, and demand that the Director dismiss the above-captioned contested case proceedings.

## **II. ARGUMENTS**

The Petitioners have failed to file compliant petitions under Idaho law, the Procedural Rules and the Conjunctive Management Rules. Before the Department can exercise

---

<sup>1</sup> For ease of reference, SVC uses the terms “Petitioners” and “Respondents” throughout this Motion, but SVC does not believe either term applies. The terms only accurately describe the parties in a validly initiated contested case proceeding.

jurisdiction and consider any petition to initiate a contested case under the Idaho Administrative Procedure Act, the Petitioners must meet the minimum requirements of Idaho Code Section 42-237b, IDAPA 37.03.11.030.01 and IDAPA 37.01.01.230.02. Unless the Petitioners meet such minimum requirements, the Department's actions in these proceedings are *ultra vires*.

**A. The Department's Jurisdiction and Authority is Limited, and Depends Upon Compliance with Idaho law, the Idaho Administrative Procedure Act and the Department's Rules.**

"Administrative agencies are creatures of statute and, therefore, are limited to the power and authority granted them by the Legislature." *Henderson v. Eclipse Traffic Control*, 147 Idaho 628, 632, 213 P.3d 718, 722 (2009) (quoting *Welch v. Del Monte Corp.*, 128 Idaho 513, 514, 915 P.2d 1371, 1372 (1996)). An administrative agency "exercises limited jurisdiction, and nothing is presumed in favor of its jurisdiction." *Id.* In the case of the Department, "[t]he requirement of procedural due process is satisfied by the statutory scheme of Title 42 of the Idaho Code," *Nettleton v. Higginson*, 98 Idaho 87, 91, 558 P.2d 1048, 1052 (1977), and all Department proceedings and hearings must be conducted in accordance with IDAPA. IDAHO CODE § 42-1701A. Furthermore, the Department has the responsibility "[t]o promulgate, adopt, modify, repeal and *enforce* rules implementing or effectuating the powers and duties of the department." IDAHO CODE § 42-1805(8) (emphasis added); *see also* IDAHO CODE § 42-603.

Although SVC does not by virtue of this motion challenge the Department's authority to administer water delivery calls generally, SVC maintains that, under the Idaho Administrative Procedure Act and Idaho law, an agency must abide by and enforce its own procedural rules when it is asked to so administer water delivery calls. *See e.g. Spencer v. Kootenai County*, 145 Idaho 448, 452-53, 180 P.3d 487, 491-92 (2008) (county authorized to

appoint an appeal board, but county employed “unlawful procedure” within the meaning of Idaho Code Section 67-5279 when it appointed only one hearing examiner despite the clear language of the ordinance calling for a five-member appeal board). For example, in *Fischer v. City of Ketchum*, 141 Idaho 349, 109 P.3d 1091 (2005), a city planning and zoning commission erred when it approved an application for a conditional use permit that failed to include an engineer’s certification that city ordinance mandated be included in the application. *Id.* at 353-54, 109 P.3d at 1095-96. Specifically, the commission approved the application on the condition that the applicant thereafter obtain the required certificate, although the ordinance required submittal of the certificate contemporaneously with the application and before the commission’s review and approval. In other words, although the commission ultimately required the submittal of the mandatory certificate after review, because the commission proceeded to review the application before the application was complete on its face in accordance with the plain and unambiguous provisions of the city ordinance, the commission’s review was undertaken in error.

Similarly, in this case, the Department has initiated a contested case, identified interested parties, provided notice of default to non-responsive parties, held a status conference, held a pre-hearing conference, requested technical memoranda from Department experts, and tentatively scheduled dates for a hearing in a contested case proceeding before the Petitioners have even met the minimum requirements of Idaho law, the Department’s Procedural Rules and the Conjunctive Management Rules by filing a compliant petition. *See* Sections B & C, *infra*. Because there is no compliant petition—a pre-condition for the initiation of a contested case—the Director did not have jurisdiction or authority to take the foregoing actions, and is similarly without the jurisdiction or authority to proceed with the administration of a contested case. *See* IDAPA 37.03.11.030.02. The above-captioned cases must be dismissed.

**B. The Petitioners Have Failed to File Compliant Petitions Under the Department's Procedural Rules.**

Under the Department's Procedural Rules, "[f]ormal proceedings . . . must be initiated by a document (generally a notice, order or complaint if initiated by the agency) or another pleading listed in Rules 210 through 280 if initiated by another person." IDAPA 37.01.01.104. In this case, there can be no dispute that the proceedings were initiated by the Petitioners, and not the Department, with their letter to the Director on or about February 23, 2015, and the subsequent First and Second Amended Petitions. The Petitioners were required to file an "application," a "petition," a "complaint," a "protest," a "motion," an "answer," or a "consent agreement." IDAPA 37.01.01.210-280. The Procedural Rules and the Conjunctive Management Rules, which govern the proceedings in this case, demonstrate that the Petitioners were required to file a petition. *See* IDAPA 37.01.01.230; IDAPA 37.03.11.010.17.

The Petitioners have failed to comply with Rule 230 of the Department's Procedural Rules. That rule requires a petition to fully state the facts upon which it is based. IDAPA 37.01.01.230.02(a). The rule also requires a petition to state the name of the person petitioned against—the respondent(s). IDAPA 37.01.01.230.02(d). The purported petitions in this case fail to do anything more than recite aggregated factual findings from two technical reports and vaguely reference the holders of water rights that are "hydrologically connected." *See* Petitioners' Letter. There is no clear factual allegation that *each and every Petitioner* claims material injury, nor a clear statement of the nature or extent of *each Petitioner's* material injury and when *each Petitioner* experienced or will experience such alleged injury. Equally important, the Petitioners have not identified SVC as a Respondent, or whether and how SVC's use of its water rights injures each and every Petitioner. The Petitioners must follow the Procedural Rules. *See* IDAPA 37.01.01.001.02 ("This chapter contains the rules of procedure

which *shall* govern contested case proceedings before the Department of Water Resources and the Water Resource Board of the state of Idaho.”) (emphasis added). Their failure to do so requires dismissal.

**C. The Petitioners Have Failed to File Compliant Petitions Under Idaho Code and the Conjunctive Management Rules.**

In addition to their failure to meet even the very basic pleading requirements set forth in the Department’s Procedural Rules, the Petitioners have also failed to satisfy the specific pleading requirements under Idaho Code Section 42-237b and the Conjunctive Management Rules. Specifically, under the Conjunctive Management Rules, each petitioner “*shall* file with the Director a petition in writing containing, *at least*, the following in addition to the information required by IDAPA 37.01.01, ‘Rules of Procedure of the Department of Water Resources,’ Rule 230.” IDAPA 37.03.11.030.01 (emphasis added).<sup>2</sup> The Rules proceed to declare categories of information required by the Director, which categories are similar to, and appear to supplement, the categories of required information set forth in Idaho Code Section 42-237b. The Petitioners

---

<sup>2</sup> SVC is aware that the Director has indicated he is proceeding under Rule 40, IDAPA 37.03.11.040. This motion does not necessarily address the propriety of that decision, but notes that in the absence of an area of common ground water supply, whether incorporated in a water district or not, neither Rule 30 nor Rule 40 of the Conjunctive Management Rules appear to apply. Furthermore, “Rule 40 provides procedures for *responding* to delivery calls within water districts where areas having a common ground water supply have been incorporated into the district or a new district has been created.” IDAPA 37.03.11.020.07 (emphasis added). Rule 40 does not provide any procedures for *initiating* a delivery call or a contested case proceeding within water districts where areas having a common ground water supply have been incorporated into the district or a new district has been created. Idaho Code Section 42-237b, on the other hand, sets forth clear pleading requirements for the administration of a water delivery calls generally, which conveniently coincide with the pleading requirements set forth in Rule 30. Accordingly, (i) since there is no dispute that the Petitioners must file a “pleading” under the Department’s Procedural Rules because this is a “formal proceeding,” and (ii) since Idaho Code Section 42-237b and IDAPA 37.03.11.030.01 set forth clear and applicable requirements for a petition under the Conjunctive Management Rules in conformance with Rule 230 of the Department’s Procedural Rules, such petition requirements must be followed in this case.



have failed to meet any requirement other than identifying their own name, address and water right.

**1. Petitioners failed to submit a statement under oath.**

First, Idaho law requires a claimant to “make a written statement *under oath* of such claim to the director of the department of water resources.” IDAHO CODE § 42-237b (emphasis added). SVC is unaware that any such statement under oath has ever been submitted by the Petitioners to the Director. Without such a statement under oath, the Director does not have jurisdiction to initiate a contested case to administer a delivery call. *See id.*

**2. Petitioners failed to describe the diversion and delivery system.**

Second, Idaho law requires that a claimant describe “the water right claimed by the claimant, with amount of water, date of priority, mode of acquisition, and place of use of said right, if said right is for irrigation, a legal description of the lands to which such right is appurtenant.” *Id.* The Conjunctive Management Rules similarly require “[a] description of the water rights of the petitioner including a listing of the decree, license, permit, claim or other documentation of such right, the water diversion and delivery system being used by petitioner and the beneficial use being made of the water.” IDAPA 37.03.11.030.01(a). The Petitioners in this case have failed to comply with such requirements. While the Petitioners have identified the water right number and the beneficial use being made of the water, they have not identified and described the “water diversion and delivery system being used” by each such Petitioner. Likewise, the Petitioners have failed to provide the place of use and a legal description for irrigation water rights. Instead, the Petitioners have improperly shifted the burden of collecting and stating such information to the Department and the Respondents. The petitions are

incomplete, and the Department therefore lacks jurisdiction to proceed with the above-captioned contested cases. The petitions should be dismissed.

**3. Petitioners failed to identify the Respondents.**

Third, Idaho law requires a claimant to identify and describe the respondent's water right. IDAHO CODE § 42-237b. The Conjunctive Management Rules similarly require "[t]he names, addresses and description of the water rights of the ground water users (respondents) who are alleged to be causing material injury to the rights of the petitioner in so far as such information is known by the petitioner or can be reasonably determined by a search of public records." IDAPA 37.03.11.030.01(b). The Department's Procedural Rules are also in accord, requiring a petitioner to "[s]tate the name of the person petitioned against (the respondent), if any." IDAPA 37.01.01.230.02(d). The Petitioners in this case have failed to comply with such requirements. The Petitioners simply demanded administration of "hydrologically connected" ground water rights within Water District No. 37. The Petitioners clearly did not evaluate which ground water users are alleged to be causing material injury, and to which Petitioner. The identities of all of the owners of ground water rights in any relevant area of the Big Wood River Basin are available to anyone with a computer and access to the Department's website. This information could "be reasonably determined by a search of public records," yet Petitioners apparently, and perhaps intentionally, failed to utilize this readily available resource. Rather, the coalition of Petitioners shifted to the Department the burden of identifying and providing notice to Respondents, effectively asking the Department to draw prejudicial conclusions about potential causation and hydrological connection.

SVC remains unaware of whether any single Petitioner, or all Petitioners, are actually alleging that SVC is causing material injury to any of their respective water rights. Yet,



it is compelled to participate in these proceedings by virtue of conclusions drawn by the Department, rather than allegations made by the Petitioners. In short, SVC does not know whether it is actually a respondent in *all* of the *Petitioners'* respective delivery calls, or in any *single* delivery call, or whether SVC was merely identified as a potentially interested party by the Department. A ground water user is entitled to know *why* Petitioners seek to curtail its ground water use. *Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res.*, 143 Idaho 862, 877, 154 P.3d 433, 448 (2007); IDAHO CODE § 42-237b. If that is the case, it is a very simple logical conclusion that a ground water user is entitled to know that Petitioners actually do seek to curtail its ground water use in the first place. It is axiomatic that the Respondents, should the Petitioners eventually identify any, are adverse to the Petitioners in these proceedings, not the Department. Respondents are not adverse to the Department or the Director, yet by virtue of (i) the Petitioners' failure to abide by the pertinent rules, and (ii) the Department's decision to identify Respondents on the Petitioners' behalf, the Petitioners have created such an adverse posture. This circumstance improperly compromises the objective or neutral status of the Department and clouds the validity of any final decision under IDAPA and constitutional standards.

Particularly in light of the evidentiary burdens that will be borne by any named Respondents with respect to material injury, *see A&B Irr. Dist. v. Idaho Dep't of Water Resources*, 153 Idaho 500, 524, 284 P.3d 225, 249 (2012), if the Petitioners prosecute a delivery call alleging SVC's water use caused them injury, consistent with fundamental conceptions of due process, the Petitioners must identify SVC as a respondent and describe SVC's water rights (the potentially impacted property rights) in conformance with Idaho law, the Conjunctive Management Rules and the Department's Procedural Rules. Until *each Petitioner* identifies

Respondents and the water rights at issue, the petitions are incomplete and the Department lacks jurisdiction to proceed with a contested case.

**4. The Petitioners failed to provide all information, measurements, data or study results available to each and every Petitioner.**

Fourth, the Conjunctive Management Rules require that each Petitioner set forth “[a]ll information, measurements, data or study results available to the petitioner to support the claim of material injury.” IDAPA 37.03.11.030.01(c). Such requirement coincides with Section 42-237b’s requirement that a claimant provide a “detailed statement in concise language of the facts upon which the claimant founds his belief that the use of his right is being adversely affected.” IDAHO CODE § 42-237b. In the letter dated February 23, 2015 which the Director apparently deemed a petition, the Petitioners cited two reports, which reports evaluated certain aggregated trends and measurements. The Petitioners provided no other information, measurements, data or study results. If each of the Petitioners claims material injury, each such Petitioner presumably has information related to such claim.<sup>3</sup> It bears repeating that SVC is entitled to know why the Petitioners seek to curtail its ground water use. *Am. Falls Reservoir Dist. No. 2*, 143 Idaho at 877, 154 P.3d at 448. Until all information, measurements, data or study results available to the Petitioners to support each of their separate claims of material injury are presented to the Department in writing, the Director does not have jurisdiction to consider the petition a contested case. The petitions must be dismissed.

---

<sup>3</sup> Even if it was appropriate for the Petitioners to file a consolidated petition as it has in this case (and it was not appropriate), that does not reduce the burden for each Petitioner to provide all available information relating to the claim of material injury. The fact that a group of Petitioners has formed a “coalition” to pursue a water delivery call does not somehow excuse each such Petitioner from compliance with the Department’s Procedural Rules and the Conjunctive Management Rules or allow the presentation of broad and aggregated technical conclusions in lieu of actual data and information pertinent to each Petitioner’s alleged injury.

**5. The Petitioners failed to describe the area having a common ground water supply.**

Fifth, the Conjunctive Management Rules require that each Petitioner provide “[a] description of the area having a common ground water supply within which petitioner desires junior-priority ground water diversion and use to be regulated.” IDAPA 37.03.11.030.01(d). The Petitioners have not provided that description, and SVC is not aware of that the source of any of its water rights has been identified or determined to have met the qualifications for designation as an area of common ground water supply. *See* IDAPA 37.03.11.031. The Petitioners have broadly discussed both Water District 37 and Water District 37-B, but have not actually described an “area having common ground water supply.” As with the second requirement, the Petitioners have effectively delegated their initial pleading obligations under the Conjunctive Management Rules to the Department. Then, the Department presumably generated its list of Respondents by drawing conclusions about such area having common ground water supply. Until the Petitioners identify SVC as a respondent and adequately describe an area of common ground water supply, the Department does not have jurisdiction to determine the petitions have initiated a contested case proceeding.

**6. Idaho law requires dismissal in light of the foregoing deficiencies.**

The Department must comply with its own rules, and similarly, must demand compliance by those appearing before it. In the *Rangen* water delivery call proceeding, the district court recently made very clear that it expected compliance with plain and unambiguous mandates set forth in the Conjunctive Management Rules. *See Rangen, Inc. v. Idaho Department of Water Resources*, Twin Falls Case No. CV 2014-2446, Memorandum Decision and Order on Petition for Judicial Review at 7 (Dec. 3, 2014) (finding that while the Director has discretion to approve a mitigation plan, it must also follow clearly expressed mandates related thereto as set

forth in the Conjunctive Management Rules). The rules at issue in this motion are mandatory, not permissive. *See* IDAHO CODE § 42-237b (“Such statement *shall* include . . .”); IDAPA 37.03.11.030.01 (“*shall* file with the Director a petition in writing containing . . .”); IDAPA 37.01.01.001.02 (“the rules of procedure *shall* govern contested case proceedings . . .”). The Petitioners must comply with such mandates. *See e.g. Mallonee v. State*, 139 Idaho 615, 619, 84 P.3d 551, 555 (2004) (“A rule or regulation of a public administrative body ordinarily has the same force and effect of law and is an integral part of the statute under which it is made just as though it were prescribed in terms therein. The same principles of construction that apply to statutes apply to rules and regulations promulgated by an administrative body.”). The plain language of the rules at issue require compliance, and the Department cannot legally fulfill those mandates, or play the Petitioners’ roles in these proceedings. The Petitioners have burdens and obligations, imposed upon them by Idaho law and the Department’s rules, that they must satisfy before they are entitled to the benefit of the Department’s regulatory powers. *A&B Irrigation Dist. v. Spackman*, 155 Idaho 640, 652-53, 315 P.3d 828, 840-41 (2013). Any result that does not require the Petitioners to bear such burdens and obligations effectively and impermissibly shifts those burdens to SVC.

Furthermore, as discussed above, it is well-established that the Department’s authority is limited by statute, and the Department’s jurisdiction should not be presumed. The rules at issue are not only mandatory, but they govern the invocation of Department authority to commence proceedings, providing what the Department has, via its rulemaking authority, deemed appropriate notice to parties consistent with due process.<sup>4</sup>

---

<sup>4</sup> By analogy, a civil litigant does not initiate litigation and invoke the powers of the judiciary by sending a letter to a judge. In conformance with due process of law, a litigant must file a complaint, petition or application with the court, which pleading designates and

Here, there can be no reasonable dispute that valuable property rights are at issue.

“When one has legally acquired a water right, he has a property right therein that cannot be taken from him for public or private use except by due process of law.” *Bennett v. Twin Falls North Side Land & Water Co.*, 27 Idaho 643, 651, 150 P. 336, 339 (1915). Procedural due process is afforded to all parties subject to the Department’s jurisdiction by virtue of compliance with title 42 of Idaho Code and the Idaho Administrative Procedure Act. *See Nettleton, supra*. Under the Idaho Administrative Procedure Act, the Department has promulgated, and the legislature has reviewed, both the Procedural Rules and the Conjunctive Management Rules, each of which supplements the statutory requirements for the initiation of a contested case related to the administration of water rights pursuant to Idaho Code Section 42-237b. *See IDAHO CODE §§ 67-5224; 67-5291*. Just as a Court does not have jurisdiction to hear and rule upon a litigated matter without compliance with the commencement procedures of the Idaho Rules of Civil Procedure, the Department likewise does not have the authority or jurisdiction to proceed without compliance with the clearly articulated commencement procedures of Section 42-237b, the Procedural Rules and the Conjunctive Management Rules. Such action would be, and in this case is, *ultra vires*, and in contravention of SVC’s due process rights and the procedures which the Department itself has determined are required.

In this case, the Petitioners have failed to comply with the requirements of title 42, Idaho Code, the Conjunctive Management Rules and the Department’s Procedural Rules in their initiation of a contested case. The Petitioners have not certified their petition under oath, nor identified the water diversion and delivery systems at issue, nor stated the facts upon which

---

appropriately identifies a defendant or respondent, then the litigant must serve such defendant or respondent with a pleading that conforms to certain minimum requirements in accordance with well-established rules of procedure. *See e.g. Idaho R. Civ. P. 3, 4.*

their petitions are based, nor provided all information, measurements, data or study results related to injury to each water right, nor adequately described the area of common ground water supply. Perhaps most importantly, the Petitioners failed to identify Respondents, and how they injure Petitioners. Instead, they improperly delegated such task to the Department, leaving SVC and others identified by the Department to guess as to their role in these contested case proceedings.

Such deficiencies, present as to each and every Petitioner, deprive the Department of jurisdiction in this matter and concurrently violate the procedural due process already demonstrably required by Idaho law and the Department's rules. Furthermore, the Department's continuing efforts to remedy such deficiencies on behalf of the Petitioners are inappropriate. While the Department is tasked with the administration of water use in the state, coordinating and aiding in the preparation of a legal and IDAPA-compliant petition for a "coalition" of senior water right holders *is not* among them. The Petitioners have retained counsel for that purpose. On the other hand, requiring and enforcing compliance with Idaho law, the Department's Procedural Rules and the Conjunctive Management Rules *is* the Department's responsibility. The Director must enforce compliance by dismissing the instant cases and, thereafter, requiring *each* Petitioner to file a compliant petition.

**D. Respondents Are Prejudiced by Proceeding Under the Original Non-Compliant Petitions.**

Even assuming the Petitioners could remedy the problems identified in this motion, the foregoing deficiencies are not without consequence. First, the Department, in identifying potential parties and Respondents, has prejudged the issues related to area of common ground water supply, interconnectedness and causation in this matter, in essence telling



the Petitioners exactly who it believes should be a respondent. Such prejudice cannot now be remedied.

Second, the timing associated with the Petitioners' delivery call has been a primary source of contention in this matter to date, and the Director has already expressed concern over the competing interests of expedience against the complexity of this matter and the due process that must be afforded to Respondents, should the Petitioners ever appropriately identify them. The time pressures imposed upon the Director by the Petitioners' filing, however, might have been relieved by a compliant petition.

Specifically, the Department has been required to request diversion and delivery information and all information, measurements, data or study results available to the Petitioners, which information should have been provided by each and every Petitioner upon filing a petition. *See* IDAHO CODE § 42-237b; IDAPA 37.03.11.030.01. Such inadequacies prejudice the Respondents, who must wait for the Department to aid the Petitioners by undertaking the substantial task of collecting information that should have been provided by the Petitioners four months ago. Only then can Respondents, once they have been appropriately identified by the Petitioners, even commence the preparation of any defenses. Such prejudice, unlike the identification of Respondents, can and should be remedied.

On the issue of expedience, the Idaho Supreme Court has stated that, while timely resolution of water disputes is an important consideration, "[i]t is vastly more important that the Director have the necessary pertinent information and the time to make a reasoned decision based on the available facts." *American Falls Reservoir v. IDWR*, 143 Idaho 862, 875, 153 P.3d 433, 456 (2007) (emphasis added). The Petitioners failed to provide baseline facts and all information and data available to them as part of their petition. In light of the Idaho Supreme

Court's statement concerning the importance of a reasoned decision based on available facts, a January 2016 hearing date is inappropriate. The expected groundwater model has not been completed. Significant expert analysis and targeted discovery will be necessary. Most important, Petitioners failed to identify respondents and allege "available facts" in a compliant petition.

Consequently, SVC and other Respondents must guess the specific factual basis of each Petitioner's allegations. Alternatively, they must await the Department's fact gathering. Petitioners derive substantial improper benefits from such a process by avoiding important pleading and evidentiary burdens placed upon them by the Department's rules. That prejudices SVC's due process rights. The contested case must be dismissed until each Petitioner has met the applicable pleading requirements.


At a minimum, should the Petitioners eventually achieve a reasonable level of compliance with the aid of the Department, the Director should adjust the date upon which their petitions are *deemed* filed from February 23, 2015 to the date such compliance is achieved. Thereafter, and in light of such adjustment, the Director should re-evaluate the time-frame for discovery and a hearing in this matter. It must be clarified that the true initiation of these contested case proceedings was not, in fact, February 23, 2015, which in turn resolves many of the Director's concerns about providing swift resolution for the Petitioners. The Petitioners' continuing failure to comply with the Department's rules, and their corresponding demand for the Director to resolve the matter before the 2016 irrigation season, are inapposite, unreasonable and prejudicial to any Respondents that may eventually be named by the Petitioners.


### III. CONCLUSION

For the foregoing reasons, SVC respectfully requests that the Director dismiss the above-captioned contested cases on the grounds that the Director does not have authority or jurisdiction to proceed until appropriate petitions are filed, pursuant to the plain and unambiguous language of the Department's Procedural Rules and Conjunctive Management Rules. In the alternative, and without waiving SVC's objection to the Department's affirmative efforts to act for and on behalf of the Petitioners in the gathering and preparation of information that was required to be submitted in order to initiate the proceedings in the first place, SVC requests that the Department treat the date on which all necessary information has been collected and presented by every Petitioner (including an identification of each respondent and their respective water rights *by the Petitioners*) as the filing date, and proceed to schedule discovery and hearing dates in light of such adjusted filing date.

Respectfully submitted this 25th day of June, 2015.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By  /for  
Scott L. Campbell – Of the Firm  
Attorneys for Sun Valley Company

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

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 25th day of June, 2015, I caused a true and correct copy of the foregoing **MOTION TO DISMISS CONTESTED CASE PROCEEDINGS** to be served by U.S. mail and addressed to the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PETER ZACH SEWELL  
LORI SEWELL  
PO BOX 3175  
HAILEY ID 83333

GREGORY R BLOOMFIELD  
REVOCABLE TRUST  
PO BOX 757  
HAILEY ID 83333

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

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

PAUL & TANA DEAN  
40 FREEDOM LOOP  
BELLEVUE ID 83313

POPPY ENGLEHARDT  
10965 HIGHWAY 75  
BELLEVUE ID 83313

JARED R WILLIAMS  
REVOCABLE TRUST  
PO BOX 99658  
SEATTLE WA 98139

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

HARRY S RINKER  
PO BOX 7250  
NEWPORT BEACH CA 92658

MARLYS J SCHMIDT  
10901 HWY 75  
BELLEVUE ID 83313

KEN SANGHA  
ASAM TRUST  
PO BOX 9200  
KETCHUM ID 83340

GARY HOFFMAN  
PO BOX 1529  
KETCHUM ID 83340

RALPH P CAMPANALE II  
PO BOX 3778  
KETCHUM ID 83340

ROBERT & JUDITH PITTMAN  
121 LOWER BROADFORD RD  
BELLEVUE ID 83313

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

JIM W KOONCE  
PO BOX 2015  
HAILEY ID 83333

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

BRITTA S HUBBARD  
PO BOX 1167  
KETCHUM ID 83340

CANADIAN CLUB  
HOMEOWNERS ASSN  
PO BOX 4041  
KETCHUM ID 83340

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

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

JAMES D WHITE  
PO BOX 367  
BELLEVUE ID 83313

LAWRENCE SCHOEN  
18351 US HWY 20  
BELLEVUE ID 83313

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

COLD SPRINGS WATER COMPANY  
PO BOX 254  
KETCHUM ID 83340

SAGE SPRINGS HOMEOWNERS  
ASSN INC  
PO BOX 254  
KETCHUM ID 83340

STARWEATHER OWNERS ASSN INC  
PO BOX 254  
KETCHUM ID 83340

VALLEY CLUB OWNERS ASSN INC  
PO BOX 254  
KETCHUM ID 83340

STEVEN C FUNK  
90 FREEDOM LOOP  
BELLEVUE ID 83313

H PHILIP CASH  
607 E 200 S  
FAIRFIELD ID 83327

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

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

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

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

GWINN RICE RANCH INC  
PO BOX 131  
HILL CITY ID 83337

ROBERT J STRUTHERS  
762 ROBERT ST PICABO ROUTE  
BELLEVUE ID 83313

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

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

SMOKEY DOME LLC  
PO BOX 333  
FAIRFIELD ID 83327

SOUTH COVE VENTURES LLC  
PO BOX 333  
FAIRFIELD ID 83327

SV RANCH LLC  
PO BOX 333  
FAIRFIELD ID 83327

WOOD RIVER LAND TRUST  
119 E BULLION ST  
HAILEY ID 83333

BARBARA CALL  
PO BOX 4  
ROSS CA 94957

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

BLACK BUTTE HILLS LLC  
PO BOX 333  
FAIRFIELD ID 83327

BRUCE & KAREN TRUXAL  
PO BOX 431  
BELLEVUE ID 83313

ROBERT BOUTTIER  
PO BOX 476  
BELLEVUE ID 83313

DAVID BERMAN  
PO BOX 4103  
HAILEY ID 83333

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

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

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

THOMAS & AMY MISTICK  
149 ASPEN LAKES DR  
HAILEY ID 83333

KEVIN D LAKEY  
107 W 1ST  
SHOSHONE ID 83352



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

HEATHERLANDS HOMEOWNERS  
ASSOCIATION INC  
PO BOX 1672  
SUN VALLEY ID 83353

BERNARD I FRIEDLANDER PHD  
116 VALLEY CLUB DR  
HAILEY ID 83333

RUSTY KRAMER  
PO BOX 591  
FAIRFIELD ID 83327

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

BLUEGROUSE RIDGE HOA  
BRIAN MCCOY  
PO BOX 3510  
KETCHUM ID 83340

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

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

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

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

EILEEN MCDEVITT  
732 FALLS VIEW DR  
TWIN FALLS ID 83301

  
Matthew J. McGee