

**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

**ORDER DENYING SUN VALLEY  
COMPANY'S MOTION TO DISMISS**

**BACKGROUND**

On February 24, 2015, the Director ("Director") of the Idaho Department of Water Resources ("Department") received two conjunctive management water delivery call letters from counsel for members of the Big Wood & Little Wood Water Users Association ("Petitioners"). The letters allege senior surface water users on the Big Wood and Little Wood Rivers are being injured by water users diverting ground water hydraulically connected to the Big Wood and Little Wood Rivers. The letters request the Director regulate junior ground water users consistent with the prior appropriation doctrine.

The Director initiated new contested case proceedings and assigned each delivery call letter its own docket number. The Big Wood Delivery Call was assigned docket no. CM-DC-2015-001. The Little Wood Delivery Call was assigned docket no. CM-DC-2015-002.

On March 20, 2015, the Department sent letters to ground water users the Department identified as potentially affected by one or both of the above-described delivery calls. The purpose of the letters was to inform the water users of the delivery calls and notify them of a planned status conference. The letters invited the water users to file a written notice with the Department if they planned to participate in delivery call proceedings. The Department received over 100 notices of intent to participate, including a notice filed by Sun Valley Company ("SVC").

The Department also published general notice of the delivery calls and the status conference in the Idaho Mountain Express and Camas Courier on March 25th, 2015 & April 1st, 2015; and the Times News on March 26th, 2015 & April 2nd, 2015. The Director held a status conference on May 4, 2015, and a pre-hearing conference on June 3, 2015.

On June 25, 2015, SVC filed a *Motion to Dismiss Contested Case Proceedings* (“Motion to Dismiss”). Joinders in support of the Motion to Dismiss were filed by attorney James P. Speck on behalf of multiple respondents; City of Bellevue; City of Hailey; City of Ketchum and City of Fairfield; AF 2014 Trust, Geoffrey Smith, and the Mariana S. Paen Trust; Dean R. Rogers Inc., and Dean R. Rogers, III; and attorney Heather E. O’Leary on behalf of multiple respondents.

## ANALYSIS

SVC argues the Big and Little Wood Delivery Calls should be dismissed for Petitioners’ failure “to file compliant petitions” under Idaho law, the Department’s Rules for Conjunctive Management of Surface and Ground Water Resources (“CM Rules”), and the Department’s Rules of Procedure. *Motion* at 2. Each argument will be addressed below.

### Compliance with Idaho Law

SVC argues the Petitioners’ delivery call letters do not “satisfy the specific pleading requirements under Idaho Code Section 42-237b.” *Motion* at 6. Idaho Code § 42-237b states:

Whenever any person owning or claiming the right to the use of any surface or ground water right believes that the use of such right is being adversely affected by one or more user[s] of ground water rights of later priority, or whenever any person owning or having the right to use a ground water right believes that the use of such right is being adversely affected by another's use of any other water right which is of later priority, such person, as claimant, *may* make a written statement under oath of such claim to the director of the department of water resources.

Such statement shall include:

1. The name and post-office address of the claimant.
2. A description of 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.
3. A similar description of the respondent's water right so far as is known to the claimant.
4. 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.

Upon receipt of such statement, if the director of the department of water resources deems the statement sufficient and meets the above requirements, the director of the department of water resources shall issue a notice setting the matter

for hearing *before a local ground water board*, constituted and formed as in this act provided.

(emphasis added). SVC asserts the Big and Little Wood Delivery Calls should be dismissed because Petitioners' letters do not contain a "written statement under oath" setting forth information required by Idaho Code § 42-237b.

The plain language of Idaho Code § 42-237b demonstrates Petitioners were not required to execute a written statement under oath to initiate the Big and Little Wood Delivery Calls. The statute states that a claimant *may* make a written statement under oath. Here, Petitioners did not file their letters to initiate delivery call proceedings pursuant to Idaho Code § 42-237b, but rather demanded the Director instruct "the Watermaster for Water District No. 37 to administer Petitioners' surface water rights, and hydrologically connected to ground water rights within the district in accordance with the prior appropriation doctrine." This is not a request for the Director to set the matter for hearing *before a local ground water board*. Instead, the Petitioners' letters initiated the Big and Little Wood Delivery Calls under CM Rule 40 that addresses delivery calls against junior-priority ground water users "in an organized water district." IDAPA 37.03.11.040.01. Accordingly, the specific pleading requirements set forth in Idaho Code § 42-237b do not apply and are not a basis to dismiss the Big and Little Wood Delivery Calls.

### **Compliance with the CM Rules and Department's Rules of Procedure**

SVC argues the Big and Little Wood Delivery Calls should be dismissed because the Petitioners' letters do not include all information required of a petition set forth in CM Rule 30. *Motion* at 6-11. However, CM Rule 30 applies only where a delivery call is filed by the holders of senior-priority surface or ground water rights against "holders of junior priority ground water rights within areas of the state *not in organized water districts*." IDAPA 37.03.11.030 (emphasis added). The Big and Little Wood Delivery Calls are against junior-priority ground water rights *in organized water districts*. Therefore, the applicable rule is CM Rule 40 that addresses delivery calls against junior-priority ground water users "in an organized water district." IDAPA 37.03.11.040.01. SVC's arguments regarding the failure of Petitioners' letters to comply with requirements in CM Rule 30 are therefore irrelevant in these proceedings and not a basis to dismiss the Big and Little Wood Delivery Calls.

SVC also argues the Big and Little Wood Delivery Calls should be dismissed because the Petitioners' letters do not include all information set forth in Rule 230 of the Department's Rules of Procedure. *Motion* at 5-6. Rule 230 lists general requirements of petitions, including that they should "[f]ully state facts upon which they are based" and "[s]tate the name of the person petitioned against (the respondent), if any." IDAPA 37.01.01.230.02 (a) &(d). The more specific requirement for initiating a delivery call under CM Rule 40 is that the holder of a senior-priority water right must allege "that by reason of diversion of water by the holders of one (1) or more junior-priority ground water rights (respondents) from an area having a common ground water supply in an organized water district the petitioner is suffering material injury. . . ." IDAPA 37.03.11.040.01. It is well recognized that a specific rule controls over a more general rule when there is conflict between the two. *See Ausman v. State*, 124 Idaho 839, 842, 864 P.2d

1126, 1129 (1993). Accordingly, Petitioners' letters must only meet the specific pleading requirement set forth in CM Rule 40 to properly initiate the Big and Little Wood Delivery Calls.

With respect to the Big Wood Delivery Call, Petitioners' letter states:

[The Petitioners] are entitled to delivery of water from the Big Wood River below Magic Dam. All the [Petitioners'] surface water rights listed in Exhibit "A" are all located in Water District 37, and are hydrologically connected to ground water rights in the Wood River Valley aquifer system.

...

Due to the failure of the [Department] to administer the subject water rights under the prior appropriation doctrine, the Petitioners have suffered from premature curtailment of delivery of their surface water rights, along with the accompanying material injury. Any future delay in the requested administration will result in further injury. Accordingly, Petitioners hereby demand that you direct the Watermaster for Water District No. 37 to administer Petitioners' surface water rights, and hydrologically connected to ground water rights within the district in accordance with the prior appropriation doctrine.

The Petitioners' letter regarding the Little Wood Delivery Call states:

[The Petitioners] are entitled to delivery of water from the Little Wood River below its confluence with Silver Creek. All the [Petitioners'] surface water rights listed in Exhibit "A" are all located in Water District 37, and are hydrologically connected to ground water rights in the Wood River Valley aquifer system.

...

Due to the failure of the [Department] to administer the subject water rights under the prior appropriation doctrine, the Petitioners have suffered from premature curtailment of delivery of their surface water rights, along with the accompanying material injury. Any future delay in the requested administration will result in further injury. Accordingly, Petitioners hereby demand that you direct the Watermaster for Water District No. 37 to administer Petitioners' surface water rights, and hydrologically connected to ground water rights within the district in accordance with the prior appropriation doctrine.

The above-quoted statements meet the specific requirement for initiating the Big and Little Wood Delivery Calls under CM Rule 40 that the calling party must allege "that by reason of diversion of water by the holders of one (1) or more junior-priority ground water rights (respondents) from an area having a common ground water supply in an organized water district the petitioner is suffering material injury. . . ." IDAPA 37.03.11.040.01.

SVC takes particular issue with the failure of Petitioners' letters to comply with Rule 230's requirement that a petition "[s]tate the name of the person petitioned against (the respondent), if any." SVC asserts this failure "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.” *Motion* at 8.

Even if Rule 230 applied to petitions filed to initiate CM Rule 40 delivery calls, the Department’s Rule of Procedure Rule 52 instructs that “this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless prohibited by statute, the agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest.” IDAPA 37.01.01.052.

It is unnecessary to require petitioners filing CM Rule 40 delivery calls to identify each person petitioned against. Again, CM Rule 40 delivery calls are against junior-priority ground water rights “in an organized water district.” IDAPA 37.03.11.040.01. Watermasters for water districts, upon appointment by the Director, “shall be responsible for distribution of water within said water district.” Idaho Code § 42-605(3). Watermasters make annual reports to the Department including the total amount of water delivered by the watermaster during the preceding year, the amount delivered to each water user, records of stream flow the watermaster used or made in distributing water supplies, and other information requested by the Director “deemed necessary in assuring proper distribution of water supplies within the district.” Idaho Code § 42-606. The water rights at issue in the Big and Little Wood Delivery Calls have been defined through partial decrees entered in the Snake River Basin Adjudication. The watermaster is to distribute water according to those decrees. *See* Idaho Code § 42-607. In sum, the watermaster in a water district already possesses the names and water right information of junior-priority ground water users that may be subject to a delivery call by senior users within that district. It is unnecessary for the Director to require a petition for a CM Rule 40 delivery call to list each junior-priority ground water user petitioned against. The Big and Little Wood Delivery Calls will not be dismissed for Petitioners’ failure to list in the delivery call letters the name of each junior-priority ground water user petitioned against. In addition, the Department has not drawn any conclusions “about potential causation and hydrological connection” in these delivery call proceedings as SVC asserts. Those determinations are for the Director upon a fully developed record and evidence admitted at hearing.

### ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that SVC’s Motion to Dismiss is DENIED.

DATED this 22<sup>nd</sup> day of July 2015.

  
\_\_\_\_\_  
GARY SPACKMAN  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 22<sup>nd</sup> day of July 2015, I served a true and correct copy of the above and foregoing document by placing a copy of the same in the United States mail, postage prepaid and properly addressed and by e-mail to participants who have provided e-mail addresses to the Department for service to the following:

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C/O CAROL'S BOOKKEEPING  
PO BOX 1702  
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STARWEATHER OWNERS ASSN INC  
PO BOX 254  
KETCHUM ID 83340

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STEVEN C FUNK  
90 FREEDOM LOOP  
BELLEVUE ID 83313

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SV RANCH LLC  
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THOMAS & AMY MISTICK  
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WILLIAM R & KATHRYN L RATLIFFE  
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BELLEVUE ID 83313

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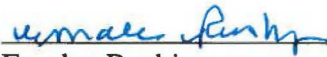
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Emalee Rushing  
Administrative Assistant

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