

**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 GRANTING SUN VALLEY
COMPANY'S MOTION TO COMPEL;
DENYING REQUEST FOR ATTORNEY
FEES AND COSTS**

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.

On April 29, 2015, the Department received *Sun Valley Company's Motion for Order Authorizing Discovery*. On May 13, 2015, the Director issued an *Order Authorizing Discovery; Notice of Pre-Hearing Conference*. On May 19, 2015, the Department received *Notice of Service of Sun Valley Company's First Set of Discovery Requests to the Big Wood and Little Wood Water Users Association and its Members*.

On May 20, 2015, the Director sent a letter to counsel for Petitioners, requesting additional information about Petitioners' diversion and use of water ("Letter"). The Letter requested a response to the information request within thirty days.

On June 2, 2015, Petitioners filed *Petitioner's Motion for Scheduling Order and Motion for Protective Order* asking the Director to suspend authorization of discovery by the parties.

On June 3, 2015, the Director held a prehearing conference. At the prehearing conference the participants discussed information in the Department's possession and how it might be disseminated to the parties and participants. The Director stated he would request that staff prepare memoranda regarding how water is delivered to the Petitioners. The Director also stated the staff memoranda would summarize relevant hydrologic and hydrogeologic data and information in the possession of the Department. The Director issued a *Request for Staff Memoranda* ("Request") on June 12, 2015. The Director stated the "staff memoranda shall be submitted to the presiding officer on or before August 21, 2015, and also served upon the parties to this matter." *Request* at 4.

On July 2, 2015, the Director issued an *Order Denying Motion for Protective Order; Scheduling Order*, denying Petitioner's motion for protective order and ordering discovery to proceed consistent with requirements set forth in the Department's Rules of Procedure and the Idaho Rules of Civil Procedure.

On July 16, 2015, the Department received *Sun Valley Company's Motion to Compel* ("Motion to Compel"). SVC seeks an order from the Director compelling the Petitioners to immediately tender answers and responses to SVC's first set of discovery requests, served on Petitioners on or about May 19, 2015 (the "Discovery Requests"). *Motion to Compel* at 2. SVC asserts "Petitioners have failed to respond, in any manner, to the Discovery Requests" in violation of timetables for responses to discovery requests set forth in the Idaho Rules of Civil Procedure. *Id.* at 3-4. Petitioners submitted no response to SVC's Motion to Compel.

Petitioners' failure to timely respond to SVC's Discovery Requests in accordance with the Idaho Civil Rules of Procedure violates the Director's July 2, 2015, *Order Denying Motion for Protective Order*. The Director will grant the Motion to Compel. SVC also asks the Director to award attorney fees and costs incurred in bringing the Motion to Compel. *Motion to Compel* at 6. However, the Department's Rules of Procedure do not provide for a sanction of attorneys fees in this circumstance. *See* IDAPA 37.01.01.531 (authorizing sanctions for failure to comply with an order compelling discovery). Accordingly, the Director will deny SVC's request for attorney fees and costs incurred in bringing the Motion to Compel.

In addition to Petitioners' failure to timely respond to SVC's Discovery Requests, Petitioners failed to timely respond to the Director's May 20, 2015, Letter. The Department received a response from the Petitioners on August 3, 2015, well after the thirty day deadline established in the Letter.¹ Time is of the essence in the Big Wood and Little Wood Delivery Calls. Petitioners have requested the Director hold a hearing before the 2016 irrigation season. In recognition of the need to timely address the Big Wood and Little Wood Delivery Calls, the Director set a deadline for staff memoranda of August 21, 2015, and sent a letter to participants on June 11, 2015, asking them to reserve the dates of January 11-22, 2016, for hearing. Given the Petitioners' failure to timely respond to SVC's Discovery Requests and the Director's May 20, 2015, Letter, the Director will move the deadline for staff memoranda to August 28, 2015, and vacate the unofficial dates of January 11-22, 2016, for hearing in the Big and Little Wood Delivery Calls.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that SVC's Motion to Compel is GRANTED.

IT IS FURTHER ORDERED that Petitioners must fully respond to SVC's Discovery Requests by August 19, 2015. If Petitioners fail to respond as ordered, the Director may take action as authorized by the Department's Rules of Procedure (IDAPA 37.01.01) including, but not limited to, the issuance of a notice of proposed default.

IT IS FURTHER ORDERED that SVC's request for costs and attorney fees is DENIED.

IT IS FURTHER ORDERED that the deadline for staff memoranda is moved to August 28, 2015. The unofficial hearing dates of January 11-22, 2016, are vacated.

DATED this 12th day of August 2015.



GARY SPACKMAN
Director

¹ A copy of the Petitioners' response is posted on the Department's website: <http://www.idwr.idaho.gov/legal-actions/delivery-call-actions/>. The CD accompanying the August 3, 2015, response was missing certain documents. A corrected CD was received by the Department on August 10, 2015. The CD is also posted on the Department's website.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 12th day of August 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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