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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 **RESPONSE TO JOINT MOTION FOR STAY; MOTION TO COMPEL**

The Water Dist. 37-B Groundwater Group (the "Camas Group"), through undersigned counsel of record, hereby files this combined response to the Joint Motion for Stay of September 17, 2015 ("Joint Motion") and motion to compel discovery responses, pursuant to the Department's Rules of Procedure 270.02, 413.01(b), 521, 522, and 565.

This response/motion is supported by the affidavit of Dylan Lawrence, filed contemporaneously herewith.

I. RESPONSE TO JOINT MOTION FOR STAY

To be clear, the Camas Group does not oppose the Joint Motion. Instead, the Camas Group believes there is a matter that should be a narrow exception to a stay. Specifically, at the time the Joint Motion was filed, Petitioner was already nine days late in responding to the Camas Group's discovery requests. As of the date of this filing, those responses are 20 days late. Therefore, the Camas Group respectfully requests that issues related to the timing and sufficiency of Petitioner's responses to those requests be excepted from a stay. The background and basis for this request are discussed in greater detail below in the accompanying Motion to Compel.

II. MOTION TO COMPEL

A. Petitioner Has Completely Ignored the Camas Group's Discovery Requests and Its Attempts to Avoid Having to File a Motion to Compel

The Camas Group served discovery requests on the Petitioner on August 4, 2015. (Lawrence Aff., ¶ 2, Ex. A (discovery requests); *see also* Notice of Service of 8/4/15.) Pursuant to IDWR Rule of Procedure 520.02 and Idaho Rules of Civil Procedure 6(e)(1), 33(a)(2), and 34(b)(2), the deadline for responding to those requests was September 8, 2015—9 days before the Joint Motion was even filed. Counsel for the Camas Group sent a letter to Petitioner's counsel on August 17, 2015, emphasizing the need for timely responses and requesting notice from the Petitioner if additional time would be needed. (Lawrence Aff., ¶ 3, Ex. B (8/17/15 letter from D. Lawrence to J. James).)

The September 8 deadline came and went, with no discovery responses or extension requests from Petitioner. (Lawrence Aff., ¶ 4.) Therefore, counsel for the Camas Group sent another letter to counsel for Petitioner on September 15, 2015, requesting responses. (Lawrence Aff., ¶ 5, Ex. C (9/15/15 letter from D. Lawrence to J. James).) Then again, after receiving the Joint Motion, counsel for the Camas Group sent an e-mail to counsel for the Petitioner, which both put Petitioner on notice of the Camas Group's intent to file a motion to compel, but also inviting Petitioner to begin a dialog that would potentially make a motion to compel unnecessary. (Lawrence Aff., ¶ 6, Ex. D (9/18/15 e-mail from D. Lawrence to J. James).)

As of the date of this response/motion, counsel for the Camas Group has not received any responses to the discovery requests or any of the three correspondences. (Lawrence Aff., ¶ 7.)

B. Responses to These Discovery Requests are Necessary for the Camas Group to Defend Its Interests

The hydrological basis for including the Camas Group in this delivery call is unclear. IDWR's August 28, 2015 staff memorandum regarding hydrology, hydrogeology, and hydrologic data (the "Hydrology Memo") does include a useful overview of the existing studies of Camas Prairie hydrology and hydrogeology. However, as the Hydrology Memo itself acknowledges, it is far from conclusive regarding the impact of groundwater withdrawals from the Camas Prairie on the members of the Petitioner. (*See, e.g.,* Hydrology Memo, at p. 19 ("...there are not sufficient data available to calibrate a numerical model to predict the timing of impacts [of junior ground water pumping from the Camas Prairie on the calling senior-priority surface water right holders]").) And, as has been previously noted, the Camas Prairie aquifer is not included in the current modeling

effort by USGS and IDWR with respect to the Big Wood River aquifer. *See generally* USGS, GROUNDWATER RESOURCES OF THE WOOD RIVER VALLEY, IDAHO: A GROUNDWATER-FLOW MODEL FOR RESOURCE MANAGEMENT, *available at* http://tinyurl.com/py3r3br (last visited July 8, 2015).

What this means, of course, is that the Camas Group must develop the data necessary to defend its interests in these delivery call proceedings. A critical component of that effort is to understand the extent of Petitioner's knowledge on these issues. For example, Petitioner has stated that it is "seeking administration of junior ground water rights in Water Districts 37 ***and 37B*** [and] alleging that diversions of water under such junior ground water rights cause material injury to the surface water rights of the [Petitioner]'s members."[1] (Joint Motion, ¶ 1 (emphasis added).)

Presumably, Petitioner would not make such allegations without some basis to believe that groundwater withdrawals from the Camas Prairie impact its members. Petitioner initiated this proceeding seven months ago and therefore has had ample time to develop evidence supporting this allegation—even without considering the time it had to investigate these issues before the proceedings began. This is precisely the type of information that is critical to the Camas Group's case and that it is entitled to discover. And, an objective review of the Camas Group's pending discovery requests demonstrates

[1] To be clear, the Camas Group does not necessarily agree with Petitioner's characterization of its own prior demand for administration. While the Petitioner's initial demand letter discussed the Camas Prairie generally, at the end of the letter, the Petitioner specifically "demand[s] that [Director Spackman] 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." (Letter from J. James to G. Spackman of 2/23/15, p. 3 (emphasis added).)

that they are reasonable and narrowly tailored to elicit Petitioner's information and understandings regarding these issues. (*See* Lawrence Aff., Ex. A (discovery requests).)

C. IDWR's Rules of Procedure Authorize the Director to Grant This Motion to Compel

The Director has authority "to schedule and ***compel discovery***, when discovery is authorized before the agency...." IDWR R. of Proc. 413.01(b) (emphasis added). In addition, "[t]he presiding officer may by order authorize or ***compel necessary discovery*** authorized by statute or rule." IDWR R. of Proc. 522 (emphasis added). Here, the Director has authorized discovery, and has denied Petitioner's request for a protective order. (Order Authorizing Discovery of 5/13/15; Order Denying Mot. for Protective Order of 7/2/15.) The previous section has already established why these discovery responses are "necessary."

"A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order ***compelling discovery*** in a manner consistent with the provisions of Rule 37(a) of the Idaho Rules of Civil Procedure." IDWR R. of Proc. 521 (emphasis added). Here, the Camas Group has given more than "reasonable notice" to Petitioner on this issue. In addition to the two letters that counsel for the Camas Group sent to Petitioner's counsel before the Joint Motion was filed, counsel for the Camas Group also sent an e-mail to counsel for Petitioner regarding these issues the day after receiving the Joint Motion. (Lawrence Aff., Exs. B, C, D.) And, the Petitioner is the only party affected by this motion because the Camas Group does not oppose the stay generally—it simply seeks a narrow exception to the stay that would only affect Petitioner.

Idaho Rule of Civil Procedure 37(a) authorizes "the discovering party [to] move for an order compelling an answer" to previously-propounded discovery requests. "The

motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action." Counsel for the Camas Group has attempted on three separate occasions to raise these issues with Petitioner, and counsel for Petitioner has not responded to any of those communications. (Lawrence Aff., ¶ 7; Exs. B, C, D.) Therefore, counsel for the Camas Group has certified that he has attempted in good faith to resolve these issues with counsel for Petitioner in an effort to secure responses without the Director's intervention. (Lawrence Aff., ¶ 8.)

III. CONCLUSION

Based on the foregoing, the Camas Group respectfully requests that the Director compel the Petitioner to respond to the Camas Group's pending discovery requests. Further, if the Director grants a stay of these proceedings, the Camas Group respectfully requests that the Director specifically exclude the issues raised in this response/motion from the operation of such a stay.

DATED THIS 28th day of September, 2015.

Varin Wardwell LLC

By: _____
Dylan B. Lawrence
Attorneys for Water Dist. 37-B
Groundwater Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 29th day of September, 2015, I served a true and correct copy of the foregoing document to all parties listed on the Combined Certificate of Service List posted on the Department's website at http://idwr.idaho.gov/legal-actions/delivery-call-actions/big-wood-river.html and http://idwr.idaho.gov/legal-actions/delivery-call-actions/little-wood-river.html updated the 21st day of September, 2015 by the following method:

[ ] Placing a copy of the document in the United States mail, postage prepaid and properly addressed.

[X] Emailing only to parties who have consented to service by email as indicated on the above-described Certificate of Service List; placing a copy of the document in the United States mail, postage prepaid and properly addressed, to parties who have not consented to service by email; and emailing to parties who provided e-mail addresses to the Department but have not consented to service by email.

Dylan B. Lawrence