

**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 MOTION FOR  
PROTECTIVE ORDER; SCHEDULING  
ORDER**

On April 29, 2015, the Director (“Director”) of the Idaho Department of Water Resources (“Department”) issued an *Order Authorizing Discovery; Notice of Pre-hearing Conference* (“Order”) in the above-captioned matters. On May 19, 2015, Respondent Sun Valley Company (“SVC”) filed with the Department a *Notice of Service 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 the Petitioners, members of the Big Wood & Little Wood Water Users Association (“Association”), requesting additional information about the Association members’ diversion and use of water. The letter requested a response to the information request within thirty days.

On June 2, 2015, the Association filed *Petitioner’s Motion for Scheduling Order and Motion for Protective Order* (“Motion”). On June 16, 2015, SVC filed its *Opposition to Motion for Protective Order* (“Opposition”).<sup>1</sup>

**Motion for Protective Order**

The Association’s motion for protective order asks the Director to suspend authorization of discovery by the parties “until Petitioners have had an opportunity to collect and submit the information requested by the Director” in the letter dated May 20, 2015. *Motion* at 2. The Association notes that SVC’s “First Set of Discovery Requests, to a large extent, seek the same information requested by the Director.” *Id.* at 1.

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<sup>1</sup> On June 22, 2015, James P. Speck, counsel for multiple parties in the above-captioned matter, filed with the Department a *Joinder in and Support of Opposition to Motion for Protective Order*.

Overlap between discovery requests and information requested by the Director in the letter dated May 20, 2015, is not a reason to suspend authorization of discovery by the parties. Discovery is an ongoing process. The Association should be able to respond to a discovery request with the information it already has in its possession. As additional information is collected by the Association, its discovery responses can be supplemented. Supplementing the information response does not constitute an undue burden upon the Association. Moreover, the Association requested the Director hold the hearing in this matter as quickly as possible. Given the Association's request to expedite the hearing, the Director will not suspend the order "that parties to the above-captioned matters are authorized to engage in discovery." *Order* at 1. The Director will deny the Association's motion for protective order.

### **Requests Regarding Discovery**

The Association asks the Director to issue an order requiring that proponents of proposed interrogatories obtain the Director's authorization prior to serving those interrogatories on other parties. *Motion* at 3. Rule 520.02 of the Department's Rules of Procedure states 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 (see Idaho Rule of Civil Procedure 26(b))." IDAPA 37.01.01.520.02.

The Association's request deviates from the Idaho Rules of Civil Procedure. While the Department included a requirement similar to the one proposed by the Association in a previously issued discovery order for another contested case, the Director is not convinced it is necessary in this case. This matter should continue to be governed by the Idaho Rules of Civil Procedure. Granting the Association's request would only impede the progress of discovery and is not currently necessary. The Director will not require submission of proposed interrogatories to the Director.

The Association requests the Director limit the number of interrogatories served by one party on another at any given time to not more than ten, "with subparts of interrogatories counting as a separate interrogatory." *Motion* at 3. This request deviates from Idaho Rule of Civil Procedure 33(a)(3), which governs the number of interrogatories parties may serve. The Association also asks "that requests for admission should not be authorized, and that depositions should be authorized and be taken in accordance with Idaho Rules of Civil Procedure." *Motion* at 2-3. Depositions and requests for admission are two types of discovery recognized and authorized by Rule 520.01 of the Department's Rules of Procedure. IDAPA 37.01.01.520.01(a) & (c).

Again, the Director is not convinced that it is necessary to deviate from the Idaho Rules of Civil Procedure at this time. The Director will not limit the scope of discovery allowed by the Department's Rules of Procedure. Discovery shall proceed consistent with requirements set forth in the Department's Rules of Procedure and the Idaho Rules of Civil Procedure.

### **Scheduling Order**

The Association asks the Director to issue an order establishing the "schedule for discovery" and "setting forth a schedule requiring disclosure of witnesses, expert witnesses, expert witness reports and exhibits." *Motion* at 2-3.

The Director has already issued an order authorizing the commencement of discovery. No further schedule for discovery is currently needed. Recently, two motions to dismiss the delivery calls have been filed. The SVC filed the first motion. The cities of Hailey and Bellevue filed the second motion. The motions to dismiss are dispositive motions. The Director will delay issuance of a scheduling order until the motions have been decided. At this time, the Director will not, grant the Association's request for a scheduling order.

### ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that:

- 1) The Association's motion for protective order is DENIED;
- 2) Discovery shall proceed consistent with requirements set forth in the Department's Rules of Procedure and the Idaho Rules of Civil Procedure; and
- 3) The Association's motion for a scheduling order is DENIED.

DATED this 2<sup>nd</sup> day of July 2015.



GARY SPACKMAN  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 2<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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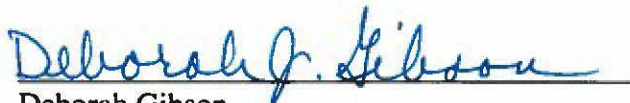
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