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DEPARTMENT OF
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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

**SUN VALLEY COMPANY'S MOTION
TO COMPEL**

I. MOTION

The Sun Valley Company ("Sun Valley"), by and through undersigned counsel of record, and pursuant to Rules 520, 521 and 522 of the Rules of Procedure of the Idaho

Department of Water Resources, the Director's Order Authorizing Discovery dated May 13, 2015, and Rules 33, 34, and 37 of the Idaho Rules of Civil Procedure, hereby move the Director for an order compelling the Petitioners to respond to Sun Valley's First Set of Discovery Requests. Sun Valley respectfully requests oral argument.

II. BACKGROUND

Sun Valley files its Motion seeking an order from the Director compelling the Petitioners to immediately tender answers and responses to Sun Valley Company's First Set Discovery Requests, served on Petitioners on or about May 19, 2015 (the "Discovery Requests"). *See*, Affidavit of Matthew J. McGee ("McGee Affidavit") at ¶ 2. *See also*, Notice of Service of the Discovery Requests filed with the Department pursuant to Rule 528 on May 19, 2015. Pursuant to Idaho Rule of Civil Procedure 6(e)(1), 33(a), and 34(b), Petitioners' responses to the Discovery Requests were due on or about June 22, 2015.

On May 29, 2015, counsel for Sun Valley followed up with counsel for the Petitioners, noting the importance of timely responses in light of the Petitioners' desire to proceed to hearing as soon as possible, and explaining the need for certain basic information before targeted written discovery and depositions can proceed. *See* McGee Aff., ¶ 3.

On or about June 2, 2015, Petitioners filed a Motion for Protective Order. Thereafter, Petitioners failed to respond to the Discovery Requests on the June 22, 2015 deadline. *See id.* ¶ 4. On July 2, 2015, the Director denied the Motion for Protective Order. The same day, counsel for Sun Valley demanded responses to the Discovery Requests from the Petitioners. *See* McGee Aff., ¶ 5. In the interest of avoiding further discovery disputes before the Director, Sun Valley granted the Petitioners until July 13, 2015 to respond. *See id.* Counsel for the Petitioners never responded to the letter. *See id.*

On July 13, 2015, counsel for Sun Valley left a voicemail requesting a return telephone call concerning the status of the outstanding discovery. *See id.* ¶ 6. The following day, counsel for Sun Valley e-mailed counsel for the Petitioners, again requesting a return telephone call to discuss the status of the outstanding written discovery requests. *See id.* ¶ 7. Counsel for the Petitioners responded with a telephone call, indicating that responses were not immediately forthcoming and identifying the end of July as the earliest date by which he might be able to provide the Petitioners' respective responses, which responses would likely only involve information from a portion of the Petitioners. *See id.*

Petitioners have to date failed to respond, in any manner, to the Discovery Requests. The responses are a month overdue. Because of the condensed time-frame for these proceedings and the large number of water rights at issue, Sun Valley does not have the luxury of allowing discovery requests addressing very simple and basic information to continue to go unanswered, and is left with no recourse except to bring the matter before the Director. In light of the scheduled January 2016 hearing, it is absolutely critical that discovery proceed at a brisk pace. The Petitioners' continued non-compliance and non-responsiveness operates to significantly prejudice the rights of Sun Valley. Sun Valley assumes that it also operates to prejudice multiple other Respondents, who, consistent with Petitioners' counsel's concerns expressed at the hearing on June 3, 2015, have apparently refrained from serving duplicative discovery requests with the understanding that the Petitioners' responses to the Discovery Requests will be available for all parties to review.

III. ARGUMENT

A. **An Order Compelling Petitioners to Respond to Pending Discovery Requests is Appropriate Under Rule 37 of the Idaho Rules of Civil Procedure.**

A motion to compel may be granted under Rule 37 of the Idaho Rules of Civil Procedure if a party receiving an interrogatory “fails to answer an interrogatory submitted under Rule 33,” and if the recipient of a Rule 34 request for production fails to respond to said request that “inspection will be permitted.” I.R.C.P. 37(a)(2). Under I.R.C.P. 33(a)(2) and 34(b)(2), Petitioners had thirty (30) days in which to respond to Plaintiffs’ interrogatories and requests for production of documents, plus an additional three (3) for mailing. I.R.C.P. 6(e)(1). As noted above, without receiving a request and in recognition of the administrative burdens associated with so many Petitioners and so many water rights, Sun Valley granted Petitioners three (3) additional weeks to respond to the Discovery Requests. The Petitioners’ complete non-responsiveness make it apparent to Sun Valley, however, that the Petitioners do not intend to do anything absent an order from the Director.¹

Further, the promised submission of partial responses at the end of July will not be sufficient to cure the discovery deficiencies at issue. Sun Valley maintains that much of the requested information should have been provided by the Petitioners in its petition in accordance with the Department’s Procedural Rules, the Conjunctive Management Rules, and Idaho law. *See* Motion to Dismiss Contested Case Proceedings, dated June 25, 2015. The Petitioners’ non-compliance and delays related to discovery are not in keeping with the urgency with which they demanded the Director act to resolve their delivery call. Sun Valley requires, and is entitled to,

¹ Notably, it does not appear that the Petitioners have responded to the Director’s request for information from the Petitioners either.

full and complete responses from each and every Petitioner in order to effectively prepare its defenses.

Because of the contested hearing dates scheduled by the Director, and the undisputed complexity of the water delivery calls at issue, it is imperative that all Petitioners immediately and fully respond to the Discovery Requests so Sun Valley can effectively coordinate with its experts and proceed with any appropriate depositions, pre-trial motions and preparation for hearing. Therefore, Sun Valley respectfully requests that the Director issue an Order compelling Petitioners to immediately and fully respond to the outstanding Discovery Requests. Time is of the essence in this case, and each passing day adds to the prejudice to Sun Valley.

B. Rule 37 of the Idaho Rules of Civil Procedure Authorize an Award of Attorney Fees and Costs Incurred by Sun Valley in Bringing this Motion to Compel.

Pursuant to Idaho Rule of Civil Procedure 37(a), Sun Valley seeks an Order awarding costs and fees to Sun Valley in connection with bringing this Motion and supporting affidavit before the Court, as well as any hearing. *See* I.R.C.P. 37(a)(4) (“If the motion is granted, the court *shall*, after opportunity for hearing, require the party . . . whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney’s fees, . . .”) (emphasis added).

An award of the expenses incurred by Sun Valley in bringing this Motion is proper under the circumstances presented here because Petitioners can offer no substantial justification for their failure to timely respond to the Discovery Requests. Since May 29, 2015,

Sun Valley's counsel has made several attempts to cooperate concerning discovery moving forward, and to elicit discovery responses from Petitioners, to no avail.

III. CONCLUSION

For the above-mentioned reasons, Sun Valley respectfully requests that the Director grant its Motion to Compel and issue an order compelling each Petitioner to immediately tender complete answers and responses to Sun Valley's outstanding Discovery Requests. Sun Valley further requests that the Director award the reasonable attorney fees and costs incident to bringing this Motion.

DATED this 16th day of July, 2015.

MOFFATT, THOMAS, BARRETT, ROCK &
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By 
Matthew J. McGee – Of the Firm
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of July, 2015, I caused a true and correct copy of the foregoing **SUN VALLEY COMPANY'S MOTION TO COMPEL** to be served by U.S. Mail and addressed to the following:

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