

**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 TO  
REVISE INTERLOCUTORY ORDER**

**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 treated the letters as delivery calls pursuant to the Department’s Rules for Conjunctive Management of Surface and Ground Water Resources (“CM Rules”), 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 June 25, 2015, Sun Valley Company (“SVC”) filed a *Motion to Dismiss Contested Case Proceedings* (“Motion to Dismiss”). SVC argued, among other things, 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 to Dismiss* at 6-11.

On July 22, 2015, the Director issued an *Order Denying Sun Valley Company's Motion to Dismiss* ("Order"). The Director determined CM Rule 40 is applicable to the Big and Little Wood Delivery Calls, not CM Rule 30. *Order* at 3. The Director also determined the Petitioners' letters meet the specific pleading requirement set forth in CM Rule 40 in that the calling party alleges "'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." *Id.* at 4.

On August 6, 2015, SVC filed a *Motion for Review of Interlocutory Order* requesting the Director revise the Order to grant the Motion to Dismiss ("Motion to Revise").<sup>1</sup> SVC argues the Director incorrectly concluded "the Department has jurisdiction to conduct these contested case proceedings under CM Rule 40." *Motion to Revise* at 4.

### ANALYSIS

In its Motion to Revise, SVC argues: "In these proceedings, no 'area of common ground water supply' has yet been designated. And, because no designation has been made, no action has been taken to 'incorporat(e) such water rights into existing water districts,' as specified in CM Rule 20.06." *Id.* at 8. In other words, SVC argues that CM Rule 20.06 requires the Director first establish an area of common ground water supply and then incorporate the water rights at issue into water districts before proceeding with the Big and Little Wood Delivery Calls pursuant to CM Rule 40.

CM Rule 20.06 does not mandate that the Director designate an area of common ground water supply prior to proceeding with the Big and Little Wood Delivery Calls pursuant to CM Rule 40. CM Rule 20.06 states: "These rules provide the basis for the designation of areas of the state that have a common ground water supply and the procedures that will be followed in incorporating the water rights within such areas into existing water districts. . . ." IDAPA 37.03.11.020.07. This statement simply explains the CM Rules "provide the basis" for the designation of an area of common ground water supply. CM Rule 10.01 defines "Area Having a Common Ground Water Supply" as:

A ground water source within which the diversion and use of ground water or changes in ground water recharge affect the flow of water in a surface water source or within which the diversion and use of water by a holder of a ground water right affects the ground water supply available to the holders of other ground water rights. (Section 42-237a.g., Idaho Code)

IDAPA 37.03.11.010.01. The area of common ground water supply for the Big and Little Wood Delivery Calls is a factual question that can be answered using the framework of CM Rule 40 based upon information presented at hearing and applying the definition set forth in CM Rule 10.01. This is consistent with CM Rule 20.06.

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<sup>1</sup> On August 7, 2015, the City of Ketchum and City of Fairfield filed a *Joinder in and Support of Motion for Review of Interlocutory Order*.

In addition, SVC's suggestion that CM Rule 20.06 prescribes a fixed two-step process for delivery calls where water rights are put into water districts only after an area of common ground water is designated is not tenable. Throughout much of Idaho, water districts have been created and water rights incorporated into the districts. Here, current information demonstrates the water rights at issue in the Big and Little Wood Delivery Calls are already in water districts. Specifically, the junior-priority ground water right diversions that impact flow in water sources for the Petitioners' senior surface water rights are diverted from the Wood River Valley aquifer system and the Camas Prairie aquifer system. *IDWR Staff Memo Re: Hydrology, Hydrogeology, and Hydrologic Data* at 1, 6-14 (Aug. 28, 2015).<sup>2</sup> The ground water rights in the Wood River Valley aquifer system are in Water District 37. *See Preliminary Order* at 13, *In the Matter of the Proposed Combination of Water District Nos. 37, 37A, 37C, and 37M and the Inclusion of Both Surface Water and Ground Water Rights in the Combined Water District; and in the Matter of Abolishing the Upper Wood Rivers Water Measurement District* (Sept. 17, 2013) ("Preliminary Order"). The ground water rights in the Camas Prairie aquifer system are in Water District 37B. *Id.* The senior surface water rights Petitioners allege are being injured are in Water District 37. *IDWR Staff Memo Re: Surface Water Delivery Systems* at Attachments 1 and 2 (Aug. 31, 2015). Water Districts 37 and 37B are authorized to administer both surface and ground water rights. *Preliminary Order* at 13-14. Therefore, current information establishes the Director will not need to incorporate water rights at issue in the Big and Little Wood Delivery Calls into water districts.

SVC continues to argue that CM Rule 30 applies to the Big and Little Wood Delivery Calls. *Motion to Revise* at 6. SVC argues the Department's only "vehicle to make a determination of 'an area of common ground water supply'" and to incorporate ground water rights in that area into organized water districts is to follow "the process set forth in the provisions of CM Rule 30.01 through 30.09." *Id.* at 6, 8-10.

CM Rule 30 lays out the administrative process for when a delivery call is made against junior-priority water rights and the water rights are *not* in a water district. When this occurs, a new water district can be created or an existing water district can be modified to allow for administration of the water rights pursuant to the prior appropriation doctrine. In short, CM Rule 30 outlines a pathway to ensure administration can take place if the water rights subject to a delivery call are not currently in a water district. In contrast, CM Rule 40 outlines a pathway for when a delivery call is made against junior-priority water rights that *are already in* a water district. As explained above, current information demonstrates the water rights at issue in the Big and Little Wood Delivery Calls are already in water districts. Therefore, the applicable rule is not CM Rule 30, but rather CM Rule 40 that governs responses to calls for water delivery "in an organized water district." IDAPA 37.03.11.040. As discussed above, the area of common ground water supply for the Big and Little Wood Delivery Calls is a factual question that can be answered in the framework of CM Rule 40 based upon information presented at hearing and applying the definition of area of common ground water supply set forth in CM Rule 10.01.

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<sup>2</sup> Ground water use in the upper Little Wood River valley above Silver Creek does not appear to affect the calling surface water rights. *IDWR Staff Memo Re: Hydrology, Hydrogeology, and Hydrologic Data* at 14 (Aug. 28, 2015).

**ORDER**

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

DATED this 16<sup>th</sup> day of October 2015.

  
GARY SPACKMAN  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 16<sup>th</sup> day of October 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 14th day of October 2015, by the following method:

- ☐ Placing a copy of the document in the United States mail, postage prepaid and properly addressed.
- ☒ Email 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 email to parties who provided e-mail addresses to the Department but have not consented to service by email.



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