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MAY 03 2017

DEPARTMENT OF  
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

|                            |   |                                  |
|----------------------------|---|----------------------------------|
| IN THE MATTER OF THE       | ) | Case No. CM-DC-2017-001          |
| PETITION FOR               | ) |                                  |
| ADMINISTRATION BY BIG WOOD | ) | PETITIONER'S MOTION FOR          |
| & LITTLE WOOD WATER USERS  | ) | PROTECTIVE ORDER                 |
| ASSOCIATION                | ) | (IDAPA 37.01.01.532; IRCP 26(c)) |
|                            | ) |                                  |

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COME NOW, Petitioner, the Big Wood & Little Wood Water Users Association, ("Association") by and through its attorney, Joseph F. James, of Brown & James, and hereby requests the Director of the Department of Water Resources ("Director") issue an order protecting Petitioner from undue burden or expense and directing that Petitioner not be required to respond to Sun Valley Company's First Set of Discovery Requests to the Big Wood & Little Wood Water Users Association and its Members. This Petition is brought pursuant to Rule 532 of Rules of Procedure of the Idaho Department of Water Resources and Rule 26(c) of the Idaho Rules of Civil Procedure.

As grounds therefore, the Association states that it is an Idaho Unincorporated Nonprofit Association with the capacity to institute, defend, intervene or participate in administrative proceedings. At the time of formation of the Association, and at the time the Association's remedies accrued, the Idaho Code provided that an unincorporated nonprofit association had standing to institute administrative proceedings, and could assert claims in its name, and on behalf of its members. See I.C. §53-707. Idaho repealed its former version of the Uniform Unincorporated Nonprofit Association Act and replaced it with a revised version in 2015.

PETITIONER'S MOTION FOR  
PROTECTIVE ORDER

The new version of the Idaho Unincorporated Nonprofit Association Act did not provide material change in this regard and continues to provide the Association with standing. Presently, the Idaho Code provides in part that an unincorporated nonprofit association is an entity distinct from its members with the same powers as any individual to do all things to carry on its purposes. I.C. §30-27-105. Further, an unincorporated nonprofit association may bring suit in its own name. I.C. §30-27-109. The official comments to the Revised Uniform Unincorporated Nonprofit Associations Act provide further insight, and Comments 1 and 2 to Section 9. Assertion and Defense of Claims, state as follows:

1. Under traditional common law doctrine, a UNA was considered to be an aggregate of members and therefore it could not sue or be sued in its own name. Only the members could sue or be sued and some state court cases held that all of the members had to be named plaintiffs in a suit brought on behalf of the UNA and that all the members had to be named, and served with the Summons and Complaint in a suit against a UNA. Most states have enacted statutes in recent years granting a UNA entity status for the purpose of suits by and against the UNA. Section 10 follows the modern rule and is consistent with the concept built into this act that a UNA is a separate entity for many more purposes than existed under traditional common law principles.

2. This section is intended to apply to all types of judicial, administrative and governmental proceedings and all types of alternative dispute resolution proceedings such as arbitration and mediation. An enacting state may want to modify this section to make it clear that this is the case if that is not clear under its current civil procedure law.

The Association has filed a Petition for Administration, initiating a contested case, and seeking an order from the Director directing the administration of certain surface water rights and hydrologically connected ground water rights. The Association is a party to the above captioned contested case. See IDAPA 37.01.01.150; IDAPA 37.01.01.152. The Department's Rules of Procedure provide that those persons not named in Rule 151 through 156 of the Department's Rules of Procedure are not parties for the purpose of any statute or rule addressing rights or obligations of parties in a contested case IDAPA 37.01.01.158. The individual members of the Association are not parties to the above captioned contested case.

The Department's Rules of Procedure provide in part, that once authorized, written interrogatories and requests for production "may be taken in accordance with the Idaho Rules of Civil Procedure." IDAPA 37.01.01.524. The Idaho Rules of Civil Procedures provide that that written interrogatories and requests for production may be served upon a party. See IRCP 33; IRCP 34. The

Department's Rules of Procedure provide for protective orders as authorized by a statute or rule. IDAPA 37.01.01.532. Rule 26(c) of the Idaho Rules of Civil Procedure, authorizes the issuance of a protection order in order to protect a party from undue burden or expense and authorizes an issuance of an order forbidding the discovery or prescribing a different discovery method other than the ones selected by the propounding party.

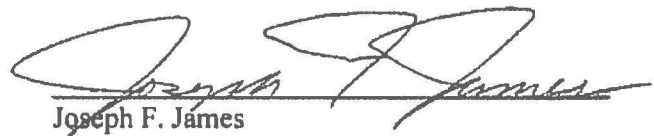
The Association was served, on April 11, 2017, with Sun Valley Company's First Set of Discovery Requests to the Big Wood & Little Wood Water Users Association and its Members. Sun Valley Company's discovery requests are not only directed to the Association, but specifically propounded upon the Association's members. Sun Valley Company's discovery requests treat the Petitioner and the non-party members of the Association interchangeably. Accordingly, the Association is unable to respond to the requests as propounded to non-party members, and to require them to do so would cause an undue burden and expense.

This motion is supported by the entire record on file in the above captioned matter, including but not limited to, Sun Valley Company's First Set of Discovery Requests to the Big Wood & Little Wood Water Users Association and its Members, received by the Idaho Department of Water Resources on April 11, 2017.

The undersigned certifies that he conferred in good faith with counsel for Sun Valley Company in an effort to resolve discovery issues without requiring action by the Director.

DATED this 3<sup>rd</sup> day of May, 2017.

BROWN & JAMES



Joseph F. James

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of May, 2017, I served the foregoing Motion for Scheduling Order and Motion for Protection Order upon the following persons by depositing in the United States Mail, properly addressed, postage prepaid.

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