

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

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|--------------------------------------------|---|------------------------------|
| SOUTH VALLEY GROUND WATER |) | Case No. CV07-21-243 |
| DISTRICT and GALENA GROUND |) | |
| WATER DISTRICT, |) | ORDER DENYING |
| |) | APPLICATION FOR |
| Petitioners, |) | TEMPORARY RESTRAINING |
| |) | ORDER |
| vs. |) | |
| |) | |
| |) | |
| THE IDAHO DEPARTMENT OF WATER |) | |
| RESOURCES and GARY SPACKMAN in his |) | |
| official capacity as Director of the Idaho |) | |
| Department of Water Resources, |) | |
| |) | |
| Respondents. |) | |
| _____ |) | |

I.

BACKGROUND

On May 4, 2021, the Director of the Idaho Department of Water Resources issued a *Notice of Administrative Proceeding, Pre-Hearing Conference, and Hearing* in Docket No. AA-WRA-2021-001. The *Notice* provides the following background:

A drought is predicted for the 2021 irrigation season and the water supply in Silver Creek and its tributaries may be inadequate to meet the needs of surface water users. Curtailment model runs of the Wood River Valley Groundwater Flow Model v.1.1 (“Model”) show that curtailment of ground water rights during the 2021 irrigation season would result in increased surface water flows for the holders of senior surface water rights during the 2021 irrigation season. Pursuant to Idaho Code § 42-237a.g., “water in a well shall not be deemed available to fill a water right therein if withdrawal therefrom of the amount called for by such right would affect ... the present or future use of any prior surface or ground water right.” Based on the information from the Model, the Director of the Idaho Department of Water Resources (“Department”) believes that the withdrawal of water from ground water wells in the Wood River Valley south of Bellevue (commonly referred to as the Bellevue Triangle) would affect the use of senior surface water rights on Silver Creek and its tributaries during the 2021 irrigation season. Therefore, the Director is initiating an administrative proceeding to determine whether water is available

to fill the ground water rights, excluding water rights for domestic uses as defined in Idaho Code § 42-111 and stock watering uses as defined in Idaho Code § 42-140 1A(11), within the Wood River Valley south of Bellevue, as depicted in the attached map. If the Director concludes that water is not available to fill the ground water rights, the Director may order the ground water rights curtailed for the 2021 irrigation season.

Thompson Dec., Ex. I, p.1. Based on that background, the *Notice* directs the Director is initiating an administrative proceeding under Idaho Code § 42-237.a.g. The purpose of the proceeding is for the Director to decide whether the withdrawal of water from ground water wells in the Wood River Valley south of Bellevue will affect the use of senior surface water rights on Silver Creek and its tributaries during the 2021 irrigation season. The *Notice* sets an administrative hearing before the Department on the matter for June 7-11, 2021.

The Director mailed a copy of the *Notice* to ground and surface water right holders within Water District 37 (Big and Little Wood River basin, including Silver Creek) and Water District 37B (Camas Creek basin). The *Notice* directs that those persons wishing to participate in the administrative proceeding must send written notice of their intent to participate to the Department by May 19, 2021. Various persons timely submitted written notice of their intent to participate.

On May 13, 2021, South Valley Ground Water District filed a *Motion to Dismiss* the administrative proceeding on the basis the Director exceeded his authority in initiating the same. Also on May 13, 2021, South Valley Ground Water District filed a *Motion* requesting that the Director appoint an independent hearing officer to preside over the administrative hearing.¹ A second *Motion to Dismiss* was filed by the Sun Valley Company on May 14, 2021. Additionally, various parties filed *Motions* requesting that the administrative hearing be continued or postponed to a later date.² Other parties filed joinders in support of the *Motions*. On May 22, 2021, the Director issued an *Order Denying Motions to Dismiss, for Continuance or Postponement, and for Clarification or More Definite Statement*. The Director also issued an *Order Denying Motion to Appoint Independent Hearing Officer*. On May 22, 2021, South

¹ The *Motion* requesting appointment of an independent hearing officer was made in the alternative to South Valley Ground Water District's *Motion to Dismiss*.

² South Valley Ground Water District filed a *Motion for Continuance* on May 13, 2021. The City of Bellevue filed a *Motion to Postpone Hearing* as well as a *Motion for More Definite Statement* and *Motion for Clarification* on May 14, 2021.

Valley Ground Water District filed a *Motion* requesting that the Director designate his *Order Denying Motions to Dismiss* as a final order for purposes of immediate judicial review. The Director entered an *Order* denying the *Motion* on May 24, 2021.

This case was initiated on May 24, 2021, when the Petitioners filed a *Petition for Judicial Review, Complaint for Declaratory Relief, Temporary Restraining Order and Preliminary Junction, or Alternatively, Writ of Prohibition* (“*Petition*”).³ Among other things, the *Petition* seeks the immediate entry of a temporary restraining order restraining the Respondents from proceeding with the administrative proceeding set to commence on June 7, 2021, and from issuing any curtailment order potentially resulting from that hearing. The Petitioners filed an *Application for Temporary Restraining Order* with a proposed *Order* along with the *Petition*. The *Application* is filed pursuant to Idaho Rule of Civil Procedure 65(b).

II. ANALYSIS

Idaho Rule of Civil Procedure 65(b) provides that the court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant or the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

I.R.C.P. 65(b).

In this case, the Court does not find that immediate and irreparable injury, loss, or damage will result to the Petitioners. The posture of the administrative proceeding at this time is such that the Director has not yet made any determination as to whether the withdrawal of water from ground water wells in the Wood River Valley south of Bellevue will affect the use of senior surface water rights on Silver Creek and its tributaries during the 2021 irrigation season. Nor has the Director issued any order of curtailment that would affect the water rights held by the Petitioners or their members. Until such a determination is made and/or curtailment ordered, any injury, loss, or damage to the Petitioners is speculative. At this point, the Director has simply

³ Although the *Petition* was filed in Blaine County, the case was reassigned by the clerk of the court to this Court.


scheduled an administrative hearing pursuant to the duties and powers he purports to be statutorily granted to him under Idaho's Ground Water Act (specifically, Idaho Code § 42-237.a.g.) to examine these issues of water right administration.

The Court recognizes that those purported duties and powers are challenged in the Petitioners' *Petition*. However, the Court does not find that raising such issues on judicial review equates to immediate and irreparable injury, loss, or damage under the facts and circumstances presented here. In reaching its decision, the Court notes that a temporary restraining order is an extraordinary remedy, which is only to be used where the need for such relief is clear and plain. The Court does not find the need for such relief to be clear and plain, given the Director has not yet ruled on the issues of water right administration that are presently before him. Because the criteria for a temporary restraining order have not been met in this case, the Petitioners' *Application for Temporary Restraining Order* must be denied.

III.
ORDER

Therefore, IT IS ORDERED that the Petitioners' *Application for Temporary Restraining Order* is hereby denied.

DATED May 27, 2021


ERIC J. WILDMAN
District Judge

CERTIFICATE OF SERVICE

I certify that on this day I served a copy of the attached to:

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Clerk of the Court

Dated: 5/27/2021 10:09 AM

By *A. Scheirs*
Deputy Clerk