

## I.

### STATEMENT OF THE CASE

#### A. Nature of the case.

This case originated when the Sun Valley Company (“Sun Valley”) filed a *Petition* seeking judicial review of a final order of the Director of the Idaho Department of Water Resources (“IDWR” or “Department”). Under review is the Director’s *Order Denying Sun Valley Company’s Motion to Dismiss* issued on July 22, 2015 (“*Final Order*”). The *Final Order* denies Sun Valley’s request to dismiss two requests for administration submitted by members of the Big Wood and Little Wood Water Users Association (“Association”). Sun Valley asserts that the *Final Order* is contrary to law and requests that the Court set it aside and remand with instructions to dismiss the requests for administration.

#### B. Course of proceedings and statement of facts.

This case involves a demand for the priority administration of water. The seniors are Association members located in water district 37. R., pp.1-5; LW R., pp.1-5.<sup>1</sup> They hold approximately 80 senior water rights that divert from the Big Wood and Little Wood Rivers. *Id.* In two letters to the Director dated February 23, 2015, the seniors assert they are short water due to junior use. *Id.* They demand priority administration of their surface water rights and hydrologically connected ground water rights within water district 37. *Id.* The Director informed the seniors he would treat the requests for administration as delivery calls under the CM Rules and proceeded to initiate two contested case proceedings.<sup>2</sup> R., p.6; LW R., p.6. The first, designated IDWR docket number CM-DC-2015-001, involves those seniors that divert from the Big Wood River. *Id.* The second, designated IDWR docket number CM-DC-2015-002, involves those diverting from the Little Wood River. *Id.*

The Director identified junior water users he determined may be affected by one or both of the calls. R., p.12. He proceeded to serve notice of the filing of the calls on those juniors. *Id.*

---

<sup>1</sup> Two agency records make the record in this matter. The first arises out of IDWR Docket No. CM-DC-2015-001, relating to the requests for priority administration of water rights diverting from the Big Wood River. The citation “R., p. \_\_\_” refers to that agency record. The second arises out of IDWR Docket No. CM-DC-2015-002, relating to the requests for priority administration of water rights diverting from the Little Wood River. The citation “LW R., p. \_\_\_” refers to that agency record.

<sup>2</sup> The term “CM Rules” refers to Idaho’s *Rules for Conjunctive Management of Surface and Ground Water Resources*, IDAPA 37.03.11.

The notice invited the juniors to participate in contested case proceedings and warned that if they did not they “may still be legally bound by the results of the contested case proceedings.” *Id.*

On June 25, 2015, Sun Valley moved the Director to dismiss the calls for their failure to comply with applicable filing requirements. *Id.* at 382-402. Among other things, it argued that Rule 30 of the CM Rules governs the calls and that the seniors did not satisfy the filing requirements of that Rule. *Id.* In his *Final Order*, the Director denied Sun Valley’s *Motion*. *Id.* at 888-898. He held the calls are governed by Rule 40 of the CM Rules and that the seniors’ letters meet the filing requirements of that Rule. *Id.* Sun Valley subsequently filed a *Motion* asking the Director to review and revise his *Final Order*. *Id.* at 963-977. The Director denied the *Motion* on October 16, 2015. Supp. R., pp.84-88.

Meanwhile, on August 19, 2015, Sun Valley filed a *Petition for Judicial Review*, asserting that the Director’s *Final Order* is contrary to law. The case was reassigned by the clerk of the court to this Court on August 28, 2015. On September 29, the Court entered an *Order* permitting the Intervenors to appear as parties to this proceeding. Although the administrative proceedings pertaining to the calls have not concluded, the Director entered an *Order* designating the *Final Order* as final and subject to judicial review on October 15, 2015. Supp. R., pp.71-74. This was done pursuant to the joint motion and stipulation of the parties. *Id.* at 9-13; 72. Sun Valley subsequently filed an *Amended and Second Amended Petition for Judicial Review*. A hearing on the *Second Amended Petition* was held before this Court on March 3, 2016. The parties did not request the opportunity to submit additional briefing and the Court does not require any. Therefore, this matter is deemed fully submitted for decision on the next business day, or March 4, 2016.

## II.

### STANDARD OF REVIEW

Judicial review of a final decision of the director of IDWR is governed by the Idaho Administrative Procedure Act (“IDAPA”). Under IDAPA, the court reviews an appeal from an agency decision based upon the record created before the agency. I.C. § 67-5277. The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. I.C. § 67-5279(1). The court shall affirm the agency decision unless it finds that the agency’s findings, inferences, conclusions, or decisions are: (a) in violation of

constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or, (e) arbitrary, capricious, or an abuse of discretion. I.C. § 67-5279(3). Further, the petitioner must show that one of its substantial rights has been prejudiced. I.C. § 67-5279(4). Even if the evidence in the record is conflicting, the Court shall not overturn an agency's decision that is based on substantial competent evidence in the record. *Barron v. IDWR*, 135 Idaho 414, 417, 18 P.3d 219, 222 (2001). The Petitioner bears the burden of documenting and proving that there was not substantial evidence in the record to support the agency's decision. *Payette River Property Owners Assn. v. Board of Comm'rs.*, 132 Idaho 552, 976 P.2d 477 (1999).

### III. ANALYSIS

#### A. **Introductory analysis.**

The issue before the Court is whether the Director properly denied Sun Valley's *Motion to Dismiss*. To address the issue the Court must determine what set of procedures govern the calls. The CM Rules provide the "procedures for responding to a delivery call made by the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right in an area having a common ground water supply." IDAPA 37.03.11.001. The Rules do not provide a single set of procedures uniform to all calls. Rather, they provide three sets of procedures, the application of which turns on the circumstances surrounding the call. These are set forth in Rule 30, 40 and 41 respectively. Rule 41 can be dispensed with for the purposes of this decision as it applies to calls made by senior ground water right holders. IDAPA 37.03.11.041.01. That leaves the Court to evaluate Rule 30 and Rule 40.

Neither Rule squarely applies to the circumstances of the Association's calls. Rule 30 presumes that the call is made "against the holders of junior-priority ground water rights within areas of the state not in organized water districts. . . ." IDAPA 37.03.11.030. That is not the case here. There are numerous organized water districts in IDWR Basin 37, including water district 37, 37B, 37N, 37O and 37U. Rule 40 presupposes that the call is made against "the holders of junior-priority ground water rights from *areas having a common ground water supply* in an organized water district." IDAPA 37.03.11.040 (emphasis added). Again, that is not the