

of ground water or changes in ground water recharge affect the flow of water in a surface water source.” IDAPA 37.03.11.010.01. Determining an area of common ground water supply is critical in a surface to ground water call. Its boundary defines the world of water users whose rights may be affected by the call, and who ultimately need to be given notice and an opportunity to be heard. In the Court’s estimation, determining the applicable area of common ground water supply is the single most important factor relevant to the proper and orderly processing of a call involving the conjunctive management of surface and ground water.

There is only one area of the state that has been determined as having an area of common ground water supply under the CM Rules. That area is the ESPA area of common ground water supply. IDAPA37.03.11.050. Some parties argue that the fact the seniors are located within the ESPA area of common ground water supply has some legal significance. It does not. While it is true a portion of water district 37 is located within the ESPA area of common ground water supply, the ESPA area of common ground water supply is not relevant to the instant calls. It defines an area of the state having a common ground water supply relative to the Snake River. The seniors do not divert from the Snake River, but rather from the Big Wood and Little Wood Rivers. Therefore, to process the Association’s calls, a determination must be made identifying an area of the state that has a common ground water supply relative to the Big Wood and Little Wood Rivers and the junior ground water users located therein.

By their terms, the CM Rules “provide the basis for the designation of areas of the state that have a common ground water supply” IDAPA 37.03.11.020.06. The Director argues that this determination may be made under Rule 40. Sun Valley and the Water District 37-B Groundwater Group argue the determination must be made under Rule 30. The Court agrees with the latter.

- i. **Rule 30 provides procedures and processes necessary to safeguard juniors’ due process rights when determining an area of common ground water supply.**

The area of common ground water supply in a surface to ground water call defines the world of juniors whose rights to use ground water may be curtailed. It is paramount that junior users who may be found to be within that area be given proper notice and the opportunity to be heard. Rule 30 of the CM Rules provides the procedural safeguards necessary to ensure these

basic due process rights. Where, as here, the senior seeks to curtail juniors in an area of the state that has not been determined as having a common ground water supply, Rule 30 requires the senior to include certain information in his petition. IDAPA 37.03.11.030.01. The senior must allege the area he believes to be the area of common ground water supply relative to his water source. IDAPA 37.03.11.030.01.d. The senior must then identify the junior users within that area he alleges are causing material injury (i.e., respondents). IDAPA 37.03.11.030.01.b. To ensure proper notice, Rule 30 requires the senior to serve his petition on those respondents. IDAPA 37.03.11.030.02. To ensure an opportunity to be heard, it requires the Director to initiate a contested case proceeding under the Department's Rules of Procedure. *Id.* These safeguards provide juniors proper notice of the alleged area of common ground water supply as well as the opportunity to be heard and present evidence in opposition to the petitioner's allegations.

Rule 40 lacks these procedural safeguards. It does not require the senior to allege the area of common ground water supply nor to identify juniors alleged to be within that area causing injury. It does not require the senior to serve his petition on junior users nor the Director to initiate a contested case proceeding. The reason Rule 40 lacks these safeguards is that it presupposes the area of common ground water supply applicable to the call has already been determined. IDAPA 37.03.11.040. It contemplates a process of administration that is more efficient than that set forth in Rule 30. *Id.* The process contemplated is similar to the administration of surface water rights within a water district by a watermaster. *Id.* Since Rule 40 assumes the world of juniors subject to curtailment is already determined and known, it does not include the same procedural safeguards set forth in Rule 30. Therefore, the Court finds that Rule 30 provides the procedures and processes necessary to safeguard juniors' due process rights. It follows that when a call is made by a senior surface water user against junior ground water users in an area of the state that has not been determined to be an area having a common ground water supply, the procedures set forth in Rule 30 must be applied to govern the call.

ii. Rule 30 provides the Director the authority to determine an area of common ground water supply.

In addition to providing procedural safeguards, it is Rule 30 of the CM Rules that provides the Director with the express authority to determine an area of common ground water supply. It provides that following consideration of a contested case, the Director may enter an