

order determining “an area having a common ground water supply which affects the flow of water in a surface water source in an organized water district.” IDAPA 37.03.11.030.07.c. Rule 40 provides no such authority, as it presupposes that determination has already been made. That such a determination must be made under Rule 30 is further evidenced by Rule 31. That Rule sets forth the criteria for determining whether an area of the State may be designated as having a common ground water supply. IDAPA 37.03.11.031.03. Critically, it instructs that the Director’s findings with respect to those criteria must “be included in the Order issued pursuant to Rule [30].” IDAPA 37.03.11.031.05. Therefore, the Court finds that it is Rule 30 that provides the Director the authority to determine an area of common ground water supply. It follows the procedures set forth in Rule 30 must be applied to govern the calls.

The Court rejects the Director’s arguments that a determination of an area of common ground water supply can be made under Rule 40. There are simply no procedures, criteria or authorization under that Rule for making such a determination. The Director applied Rule 40 due to the fact that the juniors here are in organized water districts. However, applying the dichotomy that Rule 40 applies when juniors are in an organized water district and Rule 30 applies when they are not does not provide the critical information needed to process a surface to ground water call under the circumstances present here. Most notably, the fact that junior water right holders are in organized water districts does not address the issue of which areas of the state may be subject to curtailment as a result of a given call. It is the designation of an area of common ground water supply relative to the senior’s surface water source that answers this question. Since the procedures and criteria for making this determination are associated with Rule 30, it is Rule 30 that must govern a call where a senior surface water user seeks to curtail junior ground water users in an area of the state that has not been designated as an area having a common ground water supply.

Finally, Rule 30 addresses when administration is to occur pursuant to Rule 40. It provides that “[u]pon a finding of an area of common ground water supply and upon the incorporation of such area into an organized water district, or the creation of a new water district, the use of water shall be administered in accordance with the priorities of the various water rights as provided in Rule 40.” IDAPA 37.03.11.030.09 (emphasis added). Clearly the first prerequisite to Rule 40 administration is the determination of an area of common ground water

supply.⁶ This prerequisite is expressly addressed in Rule 30 and Rule 30 provides the only mechanism for making such a determination. The application of Rule 40 presumes that the determination has already been made.

C. The requests for administration submitted to the Director by the Association do not satisfy the filing and service requirements set forth in Rule 30.

Having determined that Rule 30 governs the Association's calls, the Court turns to evaluating whether their requests for administration satisfy that Rule's filing and service requirements. The Court finds they do not. Rule 30 requires a senior making a delivery call to include at least the following information in his petition:

- a. A description of the water rights of the petitioner including a listing of the decree, license, permit, claim or other documentation of such right, the water diversion and delivery system being used by petitioner and the beneficial use being made of the water.
- b. The names, addresses and description of the water rights of the ground water users (respondents) who are alleged to be causing material injury to the rights of the petitioner in so far as such information is known by the petitioner or can be reasonably determined by a search of public records.
- c. All information, measurements, data or study results available to the petitioner to support the claim of material injury.
- d. A description of the area having a common ground water supply within which petitioner desires junior-priority ground water diversion and use to be regulated.

IDAPA 37.03.11.030.01.

In this case, the seniors submitted letters to the Director seeking administration on February 23, 2015. R., pp.1-5; LW R. pp.1-5. A review of those letters reveals that they lack much of the information expressly required by Rule 30. Among other things, absent is a description of the area having a common ground water supply within which the seniors seek administration. Likewise absent is the identification of the "names, addresses and description" of the respondents the seniors allege are causing the material injury. Therefore, the Court finds that the seniors' letters fail to satisfy the filing requirements set forth in Rule 30.

⁶ Thereafter, the other prerequisite is to incorporate the rights into an existing water district or into a new water district. *See also* I.C. § 42-237a.g.