

More troubling, however, is the fact that the letters were not served by the seniors on the juniors they seek to curtail. This lack of service violates Rule 30, which expressly requires that “[t]he petitioner shall serve the petition upon all known respondents as required by IDAPA 37.01.01, ‘Rules of Procedures of the Department of Water Resources.’” IDAPA 37.03.11.030.02. It also raises issues regarding due process of law. The Director engaged in correspondence with counsel for the seniors regarding the calls, including a request for further information and clarification, before junior users had notice the calls had been filed. R., p.6; LW R. p.6. The seniors filed their *First Amended Petitions for Administration* in response to that correspondence before any notice of the filing of the original letters had been provided to juniors. R., pp.7-9; LW R. pp.7-9. Again, when the seniors submitted their *First Amended Petitions for Administration* to the Director they did not serve them on the juniors.

The Director attempted to address the notice and service concerns by taking it upon himself to provide notice of the calls to juniors. On March 20, 2015, he sent out a letter to certain junior users informing them of the filing of the calls and inviting them to participate in contested case proceedings. R., p.12. Since the seniors did not identify respondents in their petitions, the Director was placed in the unenviable position of unilaterally determining whom to serve with the letter. To do this, the Department undertook the exercise of identifying those junior water right users in those areas of the state it believed may be affected by one or both of the calls. *Id.* These included junior ground water users in water district 37 and water district 37B. *Id.*

At the time, no explanation was given as to how the Director determined whom to serve, or as to what areas of the State may be affected by the calls. Nor was an explanation given as to why junior water users in other organized water districts within IDWR Basin 37 (i.e., water district 37N, 37O and 37U) were not served. However, the exercise undertaken by the Director leads Sun Valley and other juniors⁷ to assert that he has already prejudged the area of common ground water supply relative to the Big Wood and Little Wood Rivers to be the boundaries of water district 37 and 37B. They assert this determination was made without notice to them and without an opportunity for them to present evidence and be heard on the issue. The Director denies these allegations, but the Court understands the concerns of the juniors. To them, the

⁷ Specifically, the City of Fairfield, the City of Ketchum and the Water District 37B Ground Water Association.

Director appears as having determined issues relevant to the contested case proceedings before they were noticed or joined to the proceedings. These include determining that area of the state having a common ground water supply relative to the seniors' sources and which juniors are properly identified as respondents. The Director, as the decision maker, should not have been placed in the position of appearing to have made these kinds of determinations prior to the juniors having been given notice of the calls. The reason Rule 30 requires the calling senior to identify and serve the respondents he seeks to curtail is so that the Director is not placed in the position of appearing to prejudice any issues relevant to the contested case proceeding.

Therefore, the Court finds that the seniors failed to satisfy both the filing and service requirements of Rule 30 to the prejudice of the substantial rights of Sun Valley, the Cities of Fairfield and Ketchum, and the Water District 37B Ground Water Association. These include the right to have the seniors comply with the mandatory filing and service requirements of Rule 30. *See e.g., Jasso v. Camas County*, 151 Idaho 790, 796, 264 P.3d 897, 903 (2011) (holding that due process rights are substantial rights). Since the seniors' requests for administration fail to meet these mandatory requirements of Rule 30, the Director's decision to deny Sun Valley's motion to dismiss is in violation of the CM Rules and violates the substantial rights of the juniors. As a result, the *Final Order* must be reversed and remanded. I.C. §§ 67-5279(3) and (4).

D. The Court rejects the South Valley Groundwater District's argument.

Intervenor South Valley Groundwater District argues that neither Rule 30 nor Rule 40 of the CM Rules may be applied to the Association's calls. It asks this Court to take the following action:

The Court should remand to the Director to initiate a comprehensive proceeding to determine which ground water rights in Basin 37 are in an Area of Common Ground Water Supply that would be subject to the Association's delivery call, rather than simply assuming that only ground water rights in Water District 37 are subject to the call and that all ground water outside Water District 37 are not. Once that determination has been made in a properly convened contested case or, as in the ESPA by regulation, then the delivery call can commence or resume.

South Valley Ground Water District Reply Brief, p.9.

There are several problems with this argument. First, although it asks this Court to remand this proceeding to the Director to initiate a comprehensive proceeding, it does not