BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHTS HELD BY MEMBERS OF THE BIG WOOD & LITTLE WOOD WATER USERS ASSOCIATION DIVERTING FROM THE BIG WOOD RIVER	Docket No. CM-DC-2015-001
IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHTS HELD BY MEMBERS OF THE BIG WOOD & LITTLE WOOD WATER USERS ASSOCIATION DIVERTING FROM THE LITTLE WOOD RIVER	Docket No. CM-DC-2015-002 **ORDER GRANTING JOINT MOTION FOR STAY OF DELIVERY CALLS; GRANTING MOTION TO COMPEL**

BACKGROUND

On February 24, 2015, the Director ("Director") of the Idaho Department of Water Resources ("Department") received two conjunctive management water delivery call letters from counsel for members of the Big Wood & Little Wood Water Users Association ("WUA"). The letters allege that senior surface water users on the Big Wood and Little Wood Rivers are being injured by water users diverting ground water hydraulically connected to the Big Wood and Little Wood Rivers. The letters request the Director regulate junior ground water users consistent with the prior appropriation doctrine.

The Director treated the letters as delivery calls pursuant to the Department's Rules for Conjunctive Management of Surface and Ground Water Resources ("CM Rules"), initiated new contested case proceedings and assigned each delivery call letter its own docket number. The Big Wood Delivery Call was assigned Docket No. CM-DC-2015-001. The Little Wood Delivery Call was assigned Docket No. CM-DC-2015-002.

On March 20, 2015, the Department sent letters to ground water users the Department identified as potentially affected by one or both of the Big Wood and Little Wood Delivery Calls ("Delivery Calls"). The purpose of the letters was to inform the water users of the Delivery Calls and notify them of a planned status conference. The letters invited the water users to file a written notice with the Department if they planned to participate in delivery call proceedings. The Department received over 100 notices of intent to participate.

The Department also published general notice of the Delivery Calls and the status conference in the Idaho Mountain Express and Camas Courier on March 25th, 2015 & April 1st, 2015; and the Times News on March 26th, 2015 & April 2nd, 2015.

On April 29, the Department received *Sun Valley Company's Motion for Order Authorizing Discovery*. On May 13, 2015, the Director issued an *Order Authorizing Discovery; Notice of Pre-Hearing Conference*. On June 2, 2015, the WUA filed *Petitioner's Motion for Scheduling Order and Motion for Protective Order* asking the Director to suspend authorization of discovery by the parties.

On June 25, 2015, Sun Valley Company ("SVC") filed a *Motion to Dismiss Contested Case Proceedings* ("Sun Valley's Motion") arguing, among other things, the WUA failed to file petitions for delivery calls compliant with the requirements of Idaho Code § 42-237b, the Department's Rules of Procedure, and the CM Rules.

On June 26, 2015, the City of Hailey and City of Bellevue ("Hailey and Bellevue") filed a *Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* ("Cities' Motion") arguing the Department may not administer ground water rights in Water Districts 37 and 37B in response to the Delivery Calls under CM Rule 40 unless and until the Department, through rulemaking, establishes an area of common ground water supply that encompasses the WUA's members' water rights and potentially implicated junior ground water rights.

On July 2, 2015, the Director issued an *Order Denying Motion for Protective Order; Scheduling Order* ("Scheduling Order"), denying Petitioner's motion for protective order and ordering discovery to proceed consistent with requirements set forth in the Department's Rules of Procedure and the Idaho Rules of Civil Procedure. *Scheduling Order* at 3.

On July 22, 2015, the Department issued its *Order Denying Sun Valley Company's Motion to Dismiss* ("Sun Valley Order") denying Sun Valley's Motion, and its *Order Denying Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* ("ACGWS Order") denying the Cities' Motion.

On August 4, 2015, the Water District 37-B Groundwater Group ("Group") filed a *Notice of Service of Discovery Requests* ("Notice") with the Department. The Notice explained that, on August 4, 2015, the Group served to the WUA the Group's "First Set of Interrogatories and Requests for Production of Documents" ("Discovery Requests"). *Notice* at 1.

On August 18, 2015, Hailey and Bellevue filed a *Petition for Judicial Review of Agency Action* ("Cities' Petition") in Ada County District Court, Case No. CV-OC-1514419, seeking judicial review of the ACGWS Order pursuant to Idaho Code §§ 67-5270 and 67-5271(2) and Rule 84 of the Idaho Rules of Civil Procedure. On August 19, 2015, SVC filed a *Petition for Judicial Review* ("SVC Petition") in Ada County District Court, Case No. CV-OC-1514500, seeking judicial review of the Sun Valley Order pursuant to Idaho Code §§ 67-5270 and 67-5271(2) and Rule 84 of the Idaho Rules of Civil Procedure. The Cities' Petition and the SVC Petition (collectively, the "Petitions") were reassigned to the Snake River Basin Adjudication District Court of the Fifth Judicial District. The Cities' Petition was renumbered to CV-WA-2015-14419. The SVC Petition was renumbered to CV-WA-2015-14500.

On September 17, 2015, Hailey and Bellevue, SVC, the WUA, the City of Ketchum, the City of Fairfield (collectively, the "Movants"), and the Department entered into a *Stipulation* ("Stipulation") in which they agreed the Movants would file with the Department a *Joint Motion for Stay of Delivery Calls* ("Motion for Stay"). *Stipulation* at 5-7.[1] The Stipulation states that, "[c]onsistent with the Department's Rule of Procedure 270, any party to the Delivery Calls may file a responsive pleading to the [Motion for Stay] within fourteen (14) days of the filing of the motion." *Id.* at 7.

On September 17, 2015, the Movants filed the Motion for Stay. The Movants ask the Director to "[o]rder the stay of all administrative proceedings on the Delivery Calls, including without limitation all discovery and motion practice, until the District Court has issued Rule 54 final and appealable judgments on both" Petitions. *Motion for Stay* at 3. The Movants also ask the Director to "[o]rder that, following issuance of Rule 54 final and appealable judgments by the District Court on both [Petitions], whichever is later, the Department will promptly notice scheduling of a status conference. . . ." *Id.* at 3-4.

On September 28, 2015, the Group filed a *Response to Joint Motion for Stay; Motion to Compel* ("Motion to Compel"). The Group supports the Motion for Stay, but "believes there is a matter that should be a narrow exception to a stay." *Motion to Compel* at 2. "Specifically, at the time the [Motion for Stay] was filed, [the WUA] was already nine days late in responding to the [Group's] discovery requests." *Id.* The Group requests the Director grant the Motion for Stay, but "specifically exclude the issues raised in [Motion to Compel] from the operation of such a stay" and "compel the [WUA] to respond to the [Group's] pending discovery requests." *Id.* at 6.

ANALYSIS

Motion for Stay

As stated in the Stipulation, the Movants and Department agree that "expedited judicial review of the issues raised by the [Cities' Motion] and [Sun Valley's Motion] on the terms set forth [in the Stipulation] is in the interests of administrative and judicial economy." *Stipulation* at 5. It is significant that the calling party in the Delivery Calls, the WUA, joined the Motion for Stay. The Director will grant the Motion for Stay.

Motion to Compel

As explained above, the Director previously ordered discovery to proceed consistent with requirements set forth in the Department's Rules of Procedure and the Idaho Rules of Civil Procedure. *Scheduling Order* at 3. The Group's Discovery Requests were served to the WUA on August, 4, 2015, well before the Movants filed the Motion for Stay with the Department. At the time the Motion for Stay was filed, the WUA had failed to timely respond to the Discovery

[1] The Stipulation was filed in both CV-WA-2015-14419 and CV-WA-2015-14500 on September 17, 2015, but did not include the Motion for Stay as Attachment A as claimed. *See Stipulation* at 7 paragraph 16(a). A *Corrected Stipulation* was filed in both CV-WA-2015-14419 and CV-WA-2015-14500 on September 18, 2015, that included the Motion for Stay as Attachment A.

Requests in accordance with the Idaho Civil Rules of Procedure and the Director's Scheduling Order. The WUA submitted no response to the Motion to Compel. The Director will grant the Motion to Compel.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the Motion for Stay is GRANTED. All administrative proceedings on the Big Wood and Little Wood Delivery Calls (Docket Nos. CM-DC-2015-001 and CM-DC-2015-002, respectively) are stayed as to all parties to the Delivery Calls, including without limitation, all discovery and motion practice, until the District Court has issued Rule 54 final and appealable judgments on both the Cities' Petition (CV-WA-2015-14419) and the SVC Petition (CV-WA-2015-14500).

IT IS FURTHER ORDERED that, as an exception to the stay, the Motion to Compel is GRANTED. The WUA must fully respond to the Group's Discovery Requests by October 29, 2015.

IT IS FURTHER ORDERED that, following issuance of Rule 54 final and appealable judgments by the District Court on both the Cities' Petition and the SVC Petition, whichever is later, the Department will promptly notice scheduling of a status conference at which the parties to the Delivery Calls and the Department will consult concerning the procedural steps required to give effect to the District Court's decisions, including without limitation, dismissal of the contested cases, or establishing a hearing schedule. If proceedings resume on the Delivery Calls following issuance of this *Order Granting Joint Motion for Stay of Delivery Calls; Granting Motion to Compel*, parties to the Delivery Calls shall be entitled to a schedule consistent with time frames set forth in the Stipulation.

DATED this 15th day of October 2015.

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 15th day of October 2015, I served a true and correct copy of the foregoing document to all parties listed on the Combined Certificate of Services List posted on the Department's website at http://idwr.idaho.gov/legal-actions/delivery-call-actions/big-wood-river.html and http://idwr.idaho.gov/legal-actions/delivery-call-actions/little-wood-river.html updated the 14th day of October 2015, by the following method:

☐ Placing a copy of the document in the United States mail, postage prepaid and properly addressed.

☒ Emailing only to parties who have consented to service by email as indicated on the above-described Certificate of Service List; placing a copy of the document in the United States mail, postage prepaid and properly addressed, to parties who have not consented to service by email; and emailing to parties who provided e-mail addresses to the Department but have not consented to service by email.

Kim Flint
Person mailing document