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 DESIGNATING ACGWS ORDER AND SUN VALLEY ORDER AS FINAL ORDERS**

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 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 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. Neither the Sun Valley Order nor the ACGWS Order contain language or are accompanied by a document containing language indicating they are recommended orders, preliminary orders, or final orders. Thus, under the Department's Rule of Procedure 710, the Sun Valley Order and ACGWS Order are interlocutory orders. *See* IDAPA 37.01.01.710.

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 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, and the Department entered into a *Stipulation* ("Stipulation"). The signatories agreed Hailey and Bellevue, the City of Ketchum, the City of Fairfield, and SVC (collectively, the "Movants") would file a motion requesting the Director designate the ACGWS Order and the Sun Valley Order "as final orders pursuant to the Department's Rules of Procedure 710 and 750." *Stipulation* at 5.

On September 25, 2015, the Movants filed a *Joint Motion to Designate ACGWS Order and Sun Valley Order as Final Orders* ("Motion to Designate"). The Movants request "the Director designate the Sun Valley Order and the ACGWS Order as final orders and issue separate orders as provided for [in the Stipulation]." *Motion to Designate* at 2.

ANALYSIS

As explained above, neither the Sun Valley Order nor the ACGWS Order contain language or are accompanied by a document containing language indicating they are recommended orders, preliminary orders, or final orders. Thus, under the Department's Rule of Procedure 710, the Sun Valley Order and ACGWS Order are interlocutory orders. *See* IDAPA 37.01.01.710.

Rule 750 of the Department's Rules of Procedure states:

> If an order does not designate itself as recommended, preliminary or final at its release, but is designated as recommended, preliminary or final after its release, its effective date for purposes of reconsideration or appeal is the date of the order of designation. If a party believes that an order not designated as a recommended order, preliminary order or final order according to the terms of these rules should be designated as a recommended order, preliminary order or final order, the party may move to designate the order as recommended, preliminary or final, as appropriate.

IDAPA 37.01.01.750.

Consistent with Rule 750, the Movants filed the Motion to Designate. In the Stipulation, the Department agreed that, if no objections were filed to the Motion to Designate, the Director would issue "orders designating the [ACGWS Order] and the [Sun Valley Order] as final orders subject to judicial review consistent with the Department's Rule of Procedure 740." *Stipulation* at 5. The Department received no responsive pleadings to the Motion to Designate. Accordingly, the Director will grant the Motion to Designate.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the Motion to Designate is GRANTED. The ACGWS Order and the Sun Valley Order are hereby designated as final orders of the Department subject to judicial review consistent with the Department's Rule of Procedure 740 (IDAPA 37.01.01.740). The effective date of the ACGWS Order and the Sun Valley Order for purposes of reconsideration or appeal is the date of this *Order Designating ACGWS Order and Sun Valley Order as Final Orders. See* IDAPA 37.01.01.750.

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.

Kimi White
Person mailing document