



## I.

### PROCEDURAL BACKGROUND

1. On July 11, 2014, Plaintiff/Petitioner Little Sky Farms filed a *Petition for Judicial Review and Verified Complaint for Writ of Mandate and Declaratory Judgment* in the above-captioned matter.

2. On July 11, 2014, the Clerk of the Court entered a *Notice of Reassignment*, reassigning the case to this Court.

3. As part of its *Petition for Judicial Review and Verified Complaint for Writ of Mandate and Declaratory Judgment*, Little Sky Farms requests that this Court issue an Order to Show Cause “why a preemptory writ should not issue requiring an accounting of Little Sky Farms’ equitable and proportionate share of the costs of the mitigation upon the Rangen call, and why IGWA<sup>1</sup> and NSGWD<sup>2</sup> should not provide the same.”

## II.

### ANALYSIS

Idaho Code §§ 7-301, et seq., and Idaho Rule of Civil Procedure 74, govern requests to obtain a writ of mandate. A writ of mandamus may be issued by a district court to any inferior tribunal, corporation, board or person, “to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station.” I.C. § 7-302. The decision to grant or deny an application for a writ of mandate is left to the sound discretion of the court. *Idaho Falls Redevelopment Agency v. Countryman*, 118 Idaho 43, 44, 794 P.2d 632, 633 (1990).

In this case, the Court finds in an exercise of its discretion that Little Sky Farms’ request for an Order to Show Cause why a preemptory writ should not issue is procedurally improper. The procedure for obtaining a writ of mandate is set forth in Idaho Rule of Civil Procedure 74, I.R.C.P. 74(a). As shown below, while Rule 74 authorizes order to show cause hearings in certain situations, and the issuance of preemptory writs in certain situations, the plain language of the Rule does not permit this Court to issue a preemptory writ as a result of an order to show cause hearing as requested by Little Sky Farms.

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<sup>1</sup> The term “IGWA” refers to Defendant Idaho Ground Water Appropriators, Inc.

<sup>2</sup> The term “NSGWD” refers to Defendant North Snake Ground Water District.

When a party prays for the issuance of an alternative writ of mandate, Rule 74(b) gives this Court the discretion to issue such alternative writ commanding the affected party to do or refrain from doing the act sought to be required by the writ, “or to show cause before the court . . . why the party has not elected to comply with the alternative writ.” In the event the Court issues the alternative writ and commands the affected party to appear at a show cause hearing, the Rule directs as follows:

No contested trial of a petition or a complaint for writ of prohibition or mandamus shall be had on the merits at a show cause hearing pursuant to an alternative writ, *and no peremptory writ shall issue as a result of such contested hearing*. If the party on whom the alternative writ was served appears at the time specified to show cause, the court shall at such hearing determine and set a time for the trial of the action on its merits for a determination of whether a peremptory writ shall issue in the action, and the court may hear limited testimony, in its discretion, as to whether the alternative writ should remain in force and effect so as to require the party to perform an act or to refrain from performing an act pending final hearing on the merits.

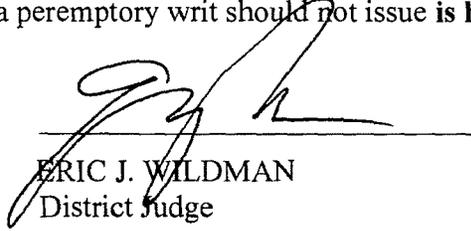
I.R.C.P. 74(b) (emphasis added).

In this case Little Sky Farms does not seek an alternative writ followed by an order to show cause hearing, but rather an order to show cause hearing why a peremptory writ should not issue. Rule 74 does not permit this Court to issue a peremptory writ as a result of an order to show cause. As stated above, Rule 74(b) plainly states that no peremptory writ shall issue as a result of a show cause hearing, but rather may only issue after a trial of the action on its merits. Likewise, Rule 74(d) provides that the plaintiff “shall have the burden of proof in the proceedings . . . and *upon conclusion of the trial* the court shall enter its decision and judgment granting or denying a peremptory writ.” (emphasis added). Little Sky Farms’ request for an order to show cause why a peremptory writ shall not issue is simply an attempt by Little Sky Farms to obtain a peremptory writ without a trial on the merits. Such an outcome is not contemplated by Rule 74, and is therefore procedurally improper.

**III.**  
**ORDER**

Therefore, BASED ON THE FOREGOING, IT IS ORDERED that Little Sky Farms' request for an Order to Show Cause why a peremptory writ should not issue **is hereby denied.**

Dated July 14, 2014

  
ERIC J. WILDMAN  
District Judge

**CERTIFICATE OF MAILING**

I hereby certify that true and correct copies of the **ORDER DENYING REQUEST FOR ORDER TO SHOW CAUSE**, were mailed on July 14, 2014, by first-class mail to the following:

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