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DEPARTMENT OF
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DESIGNATING THE
EASTERN SNAKE PLAIN AQUIFER
GROUND WATER MANAGEMENT AREA

Docket No. AA-GWMA-2016-001

**SUN VALLEY COMPANY'S MOTION
FOR ORDER AUTHORIZING
DISCOVERY**

COMES NOW Sun Valley Company, by and through undersigned counsel of record, and pursuant to Idaho Department of Water Resources Administrative Rules of Procedure 260, 520 and 521 (IDAPA 37.01.01.260, 37.01.01.520 and 37.01.01.521), and hereby moves for an order authorizing discovery by Sun Valley Company in the above-captioned matter. Sun Valley Company seeks authority to conduct all forms of discovery listed in

**SUN VALLEY COMPANY'S MOTION FOR
ORDER AUTHORIZING DISCOVERY - 1**

Client:4295459.1

Rule 520.01.a-d and seeks leave to conduct discovery against all parties or other knowledgeable persons or entities.

The grounds for this motion are as follows:

1. This is a contested case and Sun Valley Company is a party to this proceeding.
2. The Idaho Department of Water Resources Administrative Rules of Procedure allow discovery by a party in a contested case, but only pursuant to an order from the Director of the Idaho Department of Water Resources authorizing discovery.
3. The factual issues that the Director has addressed in his Order in advance of any contested case hearing are complex and extensive. The authority cited by the Director in the Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area (“ESPA GWMA Order”), however, is inadequate as it relates to the Director’s findings and related conclusions. *See e.g.* IDAHO CODE § 67-5240 (proceeding that may result in issuance of order is a contested case); § 67-5241(1) (informal disposition of contested case allowed only by “negotiation, stipulation, agreed settlement, or consent order”) § 67-5242 (describing procedure at contested case hearing, including provision of opportunity for cross-examination and to present evidence and argument on all issues involved). The following examples are illustrative:

(a) The discussion of the ESPA is replete with citations to previously litigated factual and scientific conclusions regarding hydraulic connectivity and ground water. *See* Order at 3-4, ¶¶ 10-12. For most findings, the Director actually cites precedential judicial authority. *See id.* The same cannot be said regarding the Director’s factual findings relating to “tributary basins.” *See* ESPA GWMA Order at 4-5, ¶¶ 13-17. For those purposes, the Director cites a 1984 report by the Idaho Water Resources Institute, the ESPA GWMA Presentation, the

Director's letter indicating that he was considering the creation of an ESPA GWMA, and the ESPAM 2.1 Final Report. *See id.* Sun Valley is entitled to conduct discovery relating to those sources, and the factual and scientific findings therein.

(b) The Director concluded that “[a] ground water management area designation under Idaho Code § 42-233b would support attainment of the ESPA storage and spring discharge objectives of the recent settlement, the State Water Plan, the ESPA CAMP, and various legislative enactment.” *See Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area at 20, ¶ 9.* Sun Valley was not a participant in the recent settlement or ESPA CAMP and related committees. It is entitled to discover what role the participating parties, the Director and the Department played or continue to play as it relates to evaluation, negotiation and proposed implementation of the foregoing plans and settlement, as well as the role of any other scientists and experts on which the Director relied in drawing the foregoing conclusion. Sun Valley is entitled to discover the specific underlying facts and information that supports the Director's legal conclusions.

4. Discovery will serve to narrow the issues and allow parties to focus on the important facts and issues to be resolved during the proceedings. Absent discovery, extensive examination and cross-examination at hearing will be required to develop even basic evidence and information, and evidence that could prove crucial to the Director's evaluation of the issues are more likely to be missed or overlooked. Authorizing discovery before any hearing addressing the substantive merits of these proceedings will allow for a more productive and efficient administration thereof.

Sun Valley Company requests that this motion be granted to allow discovery for a minimum time period of nine (9) months from the date of an order authorizing discovery.

DATED this 13th day of December, 2016.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 

Scott L. Campbell – Of the Firm
Matthew J. McGee – Of the Firm
Attorneys for Sun Valley Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of December, 2016, I caused a true and correct copy of the foregoing **SUN VALLEY COMPANY'S MOTION FOR ORDER AUTHORIZING DISCOVERY** to be served by the method indicated below, and addressed to the following:

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