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Attorneys for Sun Valley Company

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CITY OF HAILEY, an Idaho municipal  
 corporation, and CITY OF BELLEVUE, an  
 Idaho municipal corporation,

Petitioners,

vs.

GARY SPACKMAN in his official capacity as  
 the Director of the Idaho Department of Water  
 Resources; and the IDAHO DEPARTMENT  
 OF WATER RESOURCES,

Respondents,

Case No. CV-WA-2015-14419

**JOINT RESPONSE TO STIPULATED  
 MOTION TO AUGMENT THE  
 RECORD**

and

CITY OF KETCHUM, CITY OF FAIRFIELD, WATER DISTRICT 37-B GROUNDWATER GROUP, BIG WOOD & LITTLE WOOD WATER USERS ASSOCIATION, SUN VALLEY COMPANY, SOUTH VALLEY GROUND WATER DISTRICT, ANIMAL SHELTER OF WOOD RIVER VALLEY, DENNIS J. CARD and MAUREEN E. MCCANTY, EDWARD A LAWSON, FLYING HEART RANCH II SUBDIVISION OWNERS ASSOCIATION, INC., HELIOS DEVELOPMENT, LLC, SOUTHERN COMFORT HOMEOWNER'S ASSOCIATION, THE VILLAGE GREEN AT THE VALLEY CLUB HOMEOWNERS ASSOCIATION, INC., AIRPORT WEST BUSINESS PARK OWNERS ASSN INC., ANNE L. WINGATE TRUST, AQUARIUS SAW LLC, ASPEN HOLLOW HOMEOWNERS, DON R. and JUDY H. ATKINSON, BARRIE FAMILY PARTNERS, BELLEVUE FARMS LANDOWNERS ASSN, BLAINE COUNTY RECREATION DISTRICT, BLAINE COUNTY SCHOOL DISTRICT #61, HENRY and JANNE BURDICK, LYNN H. CAMPION, CLEAR CREEK LLC, CLIFFSIDE HOMEOWNERS ASSN INC, THE COMMUNITY SCHOOL INC, JAMES P. and JOAN CONGER, DANIEL T. MANOOGIAN REVOCABLE TRUST, DONNA F. TUTTLE TRUST, DAN S. FAIRMAN MD and MELYNDA KIM STANDLEE FAIRMAN, JAMES K. and SANDRA D. FIGGE, FLOWERS BENCH LLC, ELIZABETH K. GRAY, R. THOMAS GOODRICH and REBECCA LEA PATTON, GREENHORN OWNERS ASSN INC, GRIFFIN RANCH HOMEOWNERS ASSN and GRIFFIN RANCH PUD SUBDIVISION HOMEOWNERS ASSN INC, GULCH TRUST, IDAHO RANCH LLC, THE JONES TRUST, LOUISA JANE H. JUDGE, RALPH R. LAPHAM, LAURA L. LUCERE,

CHARLES L. MATTHIESEN, MID VALLEY WATER CO LCC, MARGO PECK, PIONEER RESIDENTIAL & RECREATIONAL PROPERTIES LLC, RALPH W. & KANDI L. GIRTON 1999 REVOCABLE TRUST, RED CLIFFS HOMEOWNERS ASSOCIATION, F. ALFREDO REGO, RESTATED MC MAHAN 1986 REVOCABLE TRUST, RHYTHM RANCH HOMEOWNERS ASSN, RIVER ROCK RANCH LP, ROBERT ROHE, MARION R. and ROBERT M. ROSENTHAL, SAGE WILLOW LLC, SALIGAO LLC, KIRIL SOKOLOFF, STONEGATE HOMEOWNERS ASSN INC, SANDOR and TERI SZOMBATHY, THE BARKER LIVING TRUST, CAROL BURDZY THIELEN, TOBY B. LAMBERT LIVING TRUST, VERNON IRREVOCABLE TRUST, CHARLES & COLLEEN WEAVER, THOMAS W. WEISEL, MATS and SONYA WILANDER, MICHAEL E. WILLARD, LINDA D. WOODCOCK, STARLITE HOMEOWNERS ASSOCIATION, GOLDEN EAGLE RANCH HOMEOWNERS ASSN INC, TIMBERVIEW TERRACE HOMEOWNERS ASSN, and HEATHERLANDS HOMEOWNERS ASSOCIATION INC.,

Intervenors.

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 AND LITTLE WOOD RIVERS

Intervenors Sun Valley Company, the City of Ketchum and the City of Hailey, by and through undersigned counsel of record, hereby provide a joint response to the Motion to Augment the Record, served October 28, 2015, pursuant to Rule 84(1), Idaho Rules of Civil Procedure, and Rule 30(a), Idaho Appellate Rules.

Sun Valley Company ("Sun Valley") and the Cities of Ketchum and Fairfield do not object to augmenting the record with Attachments A-1 through A-7 to the Idaho Department of Water Resources' (the "Department") Motion to Augment the Record. They object, however, to augmenting the record with Attachment A-8 through A-9, the Order Denying Joint Motion to Revise Interlocutory Order and the Order Denying Motion to Revise Interlocutory Order, each issued October 16, 2015 (the "Rule 711 Orders"). Sun Valley and the Cities of Ketchum and Fairfield object to augmentation with the Rule 711 Orders for the following reasons.

1. The Order Designating ACGWS Order and Sun Valley Order as Final Orders was issued on October 15, 2015. *See* Attachment A-6. The Rule 711 Orders were issued a day later, on October 16, 2015. The substance of the appeal properly before the Court in the above-captioned matter is the Department's Order Denying Joint Motion to Designate by Rulemaking and to Dismiss Delivery Calls, designated a final order by the Director's ruling on October 15, 2015. The Rule 711 Orders merely reflected that the Director declined to review or revise an interlocutory order (which interlocutory order, again, became final by virtue of the Order Designating ACGWS Order and Sun Valley Order as Final Orders). The Rule 711 Orders did not alter the Director's denial of the Joint Motion to Designate by Rulemaking and to Dismiss Delivery Calls or Sun Valley's Motion to Dismiss Contested Case. In other words, the substance of the Rule 711 Orders does nothing to change the original order that is the subject of this appeal, and the Rule 711 Orders should not augment the existing record on appeal.

2. On October 15, 2015, concurrently with its Order Designating ACGWS Order and Sun Valley Order as Final Orders, the Director entered Order Granting Joint Motion for Stay of Delivery Calls; Granting Motion to Compel. Such order provides, in pertinent part as follows:

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).

*See Attachment A-7.*

In short, as of October 15, 2015, proceedings before the Director were halted until the Court resolves the above-captioned appeal. The next day, the Director issued the Rule 711 Orders. Such action during a previously-ordered stay, during which the parties are without any recourse to address the Rule 711 Orders with the Director, further demonstrates that the Rule 711 Orders are not ripe for review, nor appropriately before this Court on appeal. Moreover, the Amended Petition for Judicial Review, filed on November 6, 2015, does not raise the Rule 711 Orders as an issue for consideration by this Court.

3. On September 23, 2015, Sun Valley and the Cities of Ketchum and Fairfield objected to the agency record, specifically objecting to the Department's inclusion of certain Department staff memoranda prepared and circulated after denial of the Joint Motion to Dismiss at issue on appeal. These staff memoranda are vaguely referenced in the Rule 711 Orders. Sun Valley and the Cities of Ketchum and Fairfield maintain and preserve their objection to the inclusion of the staff memoranda in the record, and also object to any *post-hoc* attempt to justify the propriety of such memoranda in the record on appeal by the transparent and self-serving reference to such staff memoranda in the Rule 711 Orders.

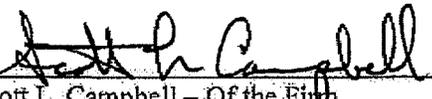
4. The Idaho Rules of Civil Procedure provide that, "[a]ny party desiring to augment the transcript or record with *additional materials presented to the agency* may move the district court within twenty-one (21) days of the filing of the settled transcript and record in the same manner and pursuant to the same procedure for augmentation of the record in appeals to

the Supreme Court." IDAHO R. CIV. P. 84(1) (emphasis added). The rule clearly provides for augmentation of the record with materials *presented to the agency*. The Rule 711 Orders were not presented to the Department, and should not be included in the record on appeal.

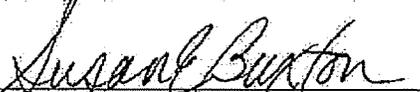
For the foregoing reasons, Sun Valley and the Cities of Ketchum and Fairfield object to augmenting the record with Attachment A-8 through A-9, and respectfully request that the Court exclude such documents from the record on appeal.

DATED this 10th day of November, 2015.

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### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of November, 2015, I caused a true and correct copy of the foregoing **JOINT RESPONSE TO STIPULATED MOTION TO AUGMENT THE RECORD** to be served by the method indicated below, and addressed to the following:

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