

District Court - SRBA
Fifth Judicial District
In Re: Administrative Appeals
County of Twin Falls - State of Idaho

NOV 16 2015

Clerk
Deputy Clerk

**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,

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

Case No. CV-WA-2015-
14419

**ORDER GRANTING
MOTION TO AUGMENT**

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)

I.
BACKGROUND

1. In February 2015, members of the Big Wood & Little Wood Water Users Association submitted written requests to the Director seeking the administration of certain surface and groundwater rights. The Director treated the requests as delivery calls and initiated contested case proceedings.

2. On June 26, 2015, the Cities of Hailey and Bellevue filed a *Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls*. The Director entered an *Order Denying Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* on July 22, 2015.

3. On August 18, 2015, the Cities filed a *Joint Motion for Review of Interlocutory Order* pursuant to IDAPA 37.01.01.711.

4. On August 19, 2015, prior to the Director taking any action on their *Joint Motion for Review*, the Cities filed a *Petition for Judicial Review* in the above-captioned matter. The *Petition* seeks judicial review of the Director's *Order Denying Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls*. The settled agency record was lodged with the Court on October 7, 2015.

5. On September 17, 2015, the parties filed a *Stipulation* wherein they agreed that the Director would issue a separate *Order* designating his *Order Denying Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* as a final order subject to judicial review. With respect to the *Joint Motion for Review*, the *Stipulation* provided that in the event the Director takes any action in response to the *Motion* within 21 days of the filing of the settled record, the parties agree that the Cities may amend their *Petition for Judicial Review*. Further, that "the parties will take appropriate steps to augment the records before the District Court with any record or evidence of such action in accordance with Rule 84(I), Idaho Rules of Civil Procedure."

6. On October 15, 2015, the Director entered an *Order* designating his *Order Denying Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* as a final order. On that same date he entered an *Order* staying all administrative proceedings in the contested cases pending resolution of the *Petitions for Judicial Review* arising from those cases.

7. On October 16, 2015, the Director entered an *Order* denying the Cities' *Joint Motion for Review*.

8. On October 28, 2015, the City of Hailey, the City of Bellevue and the Department jointly filed a *Motion to Augment Record* with this Court, requesting that the agency record be augmented with nine documents identified therein. A *Joint Response* to the *Motion* was subsequently filed by the Sun Valley Company, the City of Ketchum and the City of Fairfield, wherein those parties oppose the addition to the record of two of the documents identified in the *Motion*.

9. On November 6, 2015, the Cities filed an *Amended Joint Petition for Judicial Review*.

10. A hearing on the *Motion to Augment Record* was held before this Court on November 12, 2015.

II. ANALYSIS

Idaho Rule of Civil Procedure 84(l) governs the *Motion to Augment*. It provides that any party desiring to augment the record “may move the district court within twenty-one (21) days of the filing of the settled . . . record.” I.R.C.P 84(l). The agency record was lodged with the Court on October 7, 2015. The *Motion to Augment* was timely filed on October 28, 2015. The decision to grant or deny a *Motion to Augment* is left to the discretion of the court. I.A.R. 30.

The *Motion* seeks to augment the agency record with the addition of nine documents. With respect to the first seven documents identified in the *Motion*, no opposition has been filed or raised. Therefore, the Court will permit the Department to augment the agency record with the addition of those documents on the grounds they are unopposed. The Sun Valley Company, the City of Ketchum and the City of Fairfield oppose the remaining two documents. The disputed documents are the Director's *Order Denying Motion to Revise Interlocutory Order* and his *Order Denying Joint Motion to Revise Interlocutory Order*. The disputed documents were both entered in the underlying administrative proceeding on October 16, 2015. Each will be addressed in turn.

A. Order Denying Joint Motion to Revise Interlocutory Order.

The Director entered his *Order Denying Joint Motion to Revise Interlocutory Order* in response to the *Motion for Review* filed by the City of Hailey and the City of Bellevue. In an exercise of its discretion, the Court will allow the Department to augment the record in this case with the addition of that *Order* for the following reason. The *Stipulation* filed by the parties contemplated that the Director may take action on the Cities' *Motion for Review*, despite the Cities filing of their *Petition for Judicial Review*.¹ The *Stipulation* acknowledged that "as of this date the Director has taken no action to rescind, alter or amend the [*Order*] in response to the [*Motion for Review*]." Indeed, it further provided that the Director may take action on the *Motion* within twenty-one (21) days of the filing of the settled record. In the event the Director timely acted, the *Stipulation* further contemplated that the Cities would be permitted to amend their *Petition* if necessary, and that "the parties will take appropriate steps to augment the records before the District Court with any record or evidence of such action in accordance with Rule 84(l), Idaho Rules of Civil Procedure." In this case, the Director issued the *Order* at issue within the stipulated timeframe. Under the plain and unambiguous language of the *Stipulation*, the parties agreed that steps would be taken to augment the record with "any record or evidence of such action." Therefore, the Court finds that the movants' request to augment the record with the Director's *Order Denying Joint Motion to Revise Interlocutory Order* is consistent with the plain language of the parties' *Stipulation*.

B. Order Denying Motion to Revise Interlocutory Order.

The Director's *Order Denying Motion to Revise Interlocutory Order* results from a series of *Motions* in the underlying administrative proceeding filed by the Sun Valley Company. In the underlying administrative proceeding, the Sun Valley Company filed a *Motion* requesting that the contested case proceedings be dismissed on the grounds that the members of the Big Wood & Little Wood Water Users Association "failed to file compliant petitions under the applicable rules, and the Department therefore lacks the authority and jurisdiction to proceed." In response, the Director issued an *Order* denying the *Motion*. The Sun Valley Company thereafter filed a *Motion for Review of Interlocutory Order* requesting that the Director revise his *Order*. The

¹ The Sun Valley Company, the City of Ketchum and the City of Fairfield are signatories to the *Stipulation*.

Director entered the *Order Denying Motion to Revise Interlocutory Order* at issue here on October 16, 2015.

In this proceeding, the Cities' *Amended Joint Petition for Judicial Review* does not seek judicial review of the Director's *Order* denying the Sun Valley Company's *Motion to Dismiss*, nor the Director's *Order Denying Motion to Revise Interlocutory Order*. However, the Court's review of the agency record in this matter establishes that the pertinent documents preceding, and that culminate in, the *Order Denying Motion to Revise Interlocutory Order* are already contained in the record in this proceeding. That is, the record already contains the Sun Valley Company's *Motion to Dismiss*, the Director's *Order* denying the *Motion*, and the Sun Valley Company's *Motion for Review of Interlocutory Order*. For the sake of consistency, and in an exercise of discretion, the Court will permit the Department to augment the record to include the Director's *Order Denying Motion to Revise Interlocutory Order*, given that all of the pertinent preceding documents that give rise to that *Order* are already in the record. That said, the Court notes that it will not be judicially reviewing either the Director's *Order* denying the Sun Valley Company's *Motion to Dismiss* or his *Order Denying Motion to Revise Interlocutory Order* in this proceeding. This is because the Cities do not seek judicial review of those orders in their *Amended Petition*.

III. ORDER

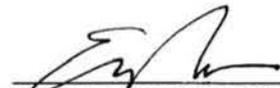
BASED ON THE FOREGOING, THE FOLLOWING ARE HEREBY ORDERED:

1. The *Motion to Augment Record* is **hereby granted**.
2. The agency record in this matter shall be augmented to include the following documents:
 - a. Joint Motion for Stay of Delivery Calls, September 17, 2015;
 - b. Order Granting Late Request to Participate, September 21, 2015;
 - c. Joint Motion to Designate ACGWS Order and Sun Valley Order as Final Orders, September 25, 2015;
 - d. Response to Joint Motion for Stay; Motion to Compel, September 28, 2015;
 - e. Affidavit of Dylan B. Lawrence in Support of Response to Joint Motion for Stay and Motion to Compel, September 28, 2015;

- f. Order Designating ACGWS Order and Sun Valley Order as Final Orders, October 15, 2015;
 - G. Order Granting Joint Motion for Stay of Delivery Calls; Granting Motion to Compel, October 15, 2015;
 - H. Order Denying Joint Motion to Revise Interlocutory Order, October 16, 2015;
 - I. Order Denying Motion to Revise Interlocutory Order, October 16, 2015.
3. The Department shall provide the Court and the parties with the documents described above on one DVD, in OCR format **on or before November 19, 2015**.

IT IS SO ORDERED.

Dated November 16, 2015



ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO AUGMENT was mailed on November 16, 2015, with sufficient first-class postage to the following:

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CITY OF BELLEVUE, AN IDAHO
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ANIMAL SHELTER OF WOOD RIVER
DENNIS J CARD
EDWARD A LAWSON
FLYING HEART RANCH II
HELIOS DEVELOPMENT LLC
MAUREEN E MCCANTY
ORDER

SOUTHERN COMFORT HOMEOWNERS
THE VILLAGE GREEN AT THE
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BLAINE COUNTY RECREATION DIST
BLAINE COUNTY SCHOOL DIST #61
CAROL BURDZY THIELEN
CHARLES & COLLEEN WEAVER
CHARLES L MATTHIESEN
CLEAR CREEK LLC
CLIFFSIDE HOMEOWNERS ASSN INC
DAN S FAIRMAN MD
DANIEL T MANOOGIAN REVOCABLE
DON R & JUDY H ATKINSON
DONNA F TUTTLE TRUST
ELIZABETH K GRAY
F ALFREDO REGO
FLOWERS BENCH LLC
GOLDEN EAGLE RANCH HOMEOWNERS
GREENHORN OWNERS ASSN INC
GRIFFIN RANCH HOMEOWNERS ASSN
GRIFFIN RANCH PUD SUBDIVISION
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IDAHO RANCH LLC
JAMES K AND SANDRA D FIGGE
JAMES P & JOAN CONGER
KIRIL SOKOLOFF
LAURA L LUCERE
LINDA D WOODCOCK
LOUISA JANE H JUDGE
LYNN H CAMPION
MARGO PECK
MATS & SONYA WILANDER
MELYNDA KIM STANDLEE FAIRMAN

(Certificate of mailing continued)

MICHAEL E WILLARD
MID VALLEY WATER CO LLC
PIONEER RESIDENTIAL &
R THOMAS GOODRICH
RALPH R LAPHAM
RALPH W & KANDI L GIRTON 1999
REBECCA LEA PATTON
RED CLIFFS HOMEOWNERS ASSN
RESTATED MC MAHAN 1986
RHYTHM RANCH HOMEOWNERS ASSN
RIVER ROCK RANCH LP
ROBERT M & MARION R ROSENTHAL
ROBERT ROHE
SAGE WILLOW LLC
SALIGAO LLC
SANDOR & TERI SZOMBATHY
STARLITE HOMEOWNERS ASSN
STONEGATE HOMEOWNERS ASSN INC
THE BARKER LIVING TRUST
THE COMMUNITY SCHOOL INC
THE JONES TRUST
THOMAS W WEISEL
TIMBERVIEW TERRACE HOMEOWNERS
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ORDER

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