

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

NOV 16 2015

By \_\_\_\_\_ Clerk  
 \_\_\_\_\_ Deputy Clerk

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

SUN VALLEY COMPANY, a Wyoming corporation,  
 Petitioner,

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, 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

) Case No. CV-WA-2015-  
 ) 14500  
 )  
 ) **ORDER GRANTING**  
 ) **MOTION TO AUGMENT**  
 )  
 ) **ORDER GRANTING**  
 ) **REQUEST TO AMEND**  
 ) **PETITION FOR**  
 ) **JUDICIAL REVIEW**

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.

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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 )

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## 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 25, 2015, 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.” The Director entered an *Order Denying Sun Valley Company’s Motion to Dismiss* on July 22, 2015.

3. On August 6, 2015, the Sun Valley Company filed a *Motion for Review of Interlocutory Order* pursuant to IDAPA 37.01.01.711. In its *Motion for Review*, the Sun Valley Company requested that the Department review and revise its *Order Denying Sun Valley Company’s Motion to Dismiss*, raising several issues not raised in its *Motion to Dismiss*.

4. On August 19, 2015, prior to the Director taking any action on its *Motion for Review*, the Sun Valley Company filed a *Petition for Judicial Review* in the above-captioned matter. The *Petition* seeks judicial review of the Director’s *Order* denying its *Motion to Dismiss*. 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 Sun Valley Company’s Motion to Dismiss* as a final order subject to judicial review. With respect to the *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 Sun Valley Company may amend its *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(1), Idaho Rules of Civil Procedure.”

6. On October 15, 2015, the Director entered an *Order* designating his *Order Denying Sun Valley Company’s Motion to Dismiss* 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 Sun Valley Company's *Motion for Review*.

8. On October 26, 2015, the Sun Valley Company filed an *Amended Petition for Judicial Review*, wherein it seeks "judicial review of the actions taken by the Director and the Department for the reasons set forth in the Motion to Dismiss Contested Case Proceedings and the Motion for Review of Interlocutory Order."

9. On October 28, 2015, the Department 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. Those parties oppose the addition to the record of two of the documents identified in the *Motion*. A hearing on the *Motion* 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 Department's *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 Motion to Revise Interlocutory Order.***

The Director entered his *Order Denying Motion to Revise Interlocutory Order* in response to the *Motion for Review* filed by the Sun Valley Company. 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 reasons. First, the Sun Valley Company's *Amended Petition* necessarily implicates the *Order*. In its *Amended Petition*, the Sun Valley Company seeks "judicial review of the actions taken by the Director and the Department for the reasons set forth in the Motion to Dismiss Contested Case Proceedings and the Motion for Review of Interlocutory Order." *Amended Petition*, p. 6 (emphasis added). As stated above, the *Motion for Review* raises issues not raised in the *Motion to Dismiss*. Since the Sun Valley Company intends to seek judicial review of the issues raised in its *Motion for Review*, it is necessary for the Director's *Order* denying that *Motion* to be in the record. This Court cannot address issues raised in the *Motion for Review* without first reviewing the Director's treatment of those issues in his *Order*. See e.g., *Meyers v. Lott*, 133 Idaho 846, 851, 993 P.2d 609, 614 (2000) (stating that a court sitting in an appellate capacity will not decide issues not previously raised before, and addressed by, the lower tribunal). Simply put, the Sun Valley Company cannot have it both ways.

Second, the *Stipulation* filed by the parties contemplated that the Director may take action on the Sun Valley Company's *Motion for Review*, despite the Sun Valley Company's filing of its *Petition for Judicial Review*.<sup>1</sup> 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 Sun Valley Company would be permitted to amend its *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(1), 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 Department's request to augment the record

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

with the Director's *Order Denying Motion to Revise Interlocutory Order* is consistent with the plain language of the parties' *Stipulation*.

For these reasons, the Court in an exercise of its discretion will permit the Department to augment the record in this matter to include the Director's *Order Denying Motion to Revise Interlocutory Order*.

**B. *Order Denying Joint Motion to Revise Interlocutory Order.***

The Director's *Order Denying Joint Motion to Revise Interlocutory Order* results from a series of *Motions* in the underlying administrative proceeding filed by the Cities of Hailey and Bellevue. In the underlying administrative proceeding, the Cities filed a *Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* with the Department. In response, the Director issued an *Order* denying the *Motion*. The Cities thereafter filed a *Joint Motion for Review of Interlocutory Order* requesting that the Director revise his *Order*. The Director entered the *Order Denying Joint Motion to Revise Interlocutory Order* at issue here on October 16, 2015.

The Cities of Hailey and Bellevue are not parties to this proceeding. Further, the Sun Valley Company's *Amended Petition for Judicial Review* does not seek judicial review of the Director's *Order* denying the Cities' *Motion to Dismiss*, nor the Director's *Order Denying Joint Motion to Revise Interlocutory Order*. However, the Court's review of the agency record establishes that the pertinent documents preceding, and that culminate in, the *Order Denying Joint Motion to Revise Interlocutory Order* are already contained in the record in this proceeding. That is, the record already contains the Cities' *Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls*, the Director's *Order* denying the *Motion*, and the Cities' *Joint 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 Joint 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 Cities' *Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* or his *Order Denying Joint Motion to Revise Interlocutory Order* in this proceeding. This is because the

Cities are not a party to this proceeding and the Sun Valley Company does not seek judicial review of those orders in its *Amended Petition*.

**C. The Sun Valley Company's request to further amend its *Petition for Judicial Review* is granted.**

At the hearing held on this matter, the Sun Valley Company requested that it be granted additional time to further amend its *Petition for Judicial Review* in the event the Department's *Motion to Augment* is granted in full. Given the addition of new documents into the record the Court in an exercise of its discretion will grant the request. The Sun Valley Company may further amend its *Petition for Judicial Review* in accordance with the deadline set forth below.

**III.  
ORDER**

BASED ON THE FOREGOING, THE FOLLOWING ARE HEREBY ORDERED:

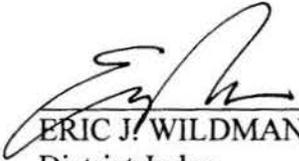
1. The *Motion to Augment Record* is hereby granted.
2. The agency record in this matter shall be augmented to include the following documents:
  - a. Joint Motion for Stay of Delivery Calls, September 17, 2015;
  - b. Order Granting Late Request to Participate, September 21, 2015;
  - c. Joint Motion 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**.

4. The Sun Valley Company's request to further amend its *Petition for Judicial Review* is **hereby granted**. Should the Sun Valley Company desire to further amend its *Petition for Judicial Review* it shall do so **on or before December 3, 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 / ORDER GRANTING REQUEST TO AMEND PETITION FOR JUDICIAL REVIEW was mailed on November 16, 2015, with sufficient first-class postage to the following:

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IDAHO DEPARTMENT OF WATER  
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ANIMAL SHELTER OF WOOD RIVER  
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AIRPORT WEST BUSINESS PARK  
ANNE L WINGATE TRUST  
AQUARIUS SAW LLC  
ASPEN HOLLOW HOMEOWNERS  
ORDER

BARRIE FAMILY PARTNERS  
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BLAINE COUNTY RECREATION DIST  
BLAINE COUNTY SCHOOL DIST #61  
CAROL BURDZY THIELEN  
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CHARLES L MATTHIESEN  
CLEAR CREEK LLC  
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DANIEL T MANOOGIAN REVOCABLE  
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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  
GULCH TRUST  
HEATHERLANDS HOMEOWNERS ASSN  
HENRY & JANNE BURDICK  
IDAHO RANCH LLC  
JAMES K & SANDRA D FIGGE  
JAMES P & JOAN CONGER  
KIRIL SOKOLOFF  
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LOUISA JANE H JUDGE  
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MARGO PECK  
MATS & SONYA WILANDER  
MELYNDA KIM STANDLEE FAIRMAN  
MICHAEL E WILLARD  
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PIONEER RESIDENTIAL &  
R THOMAS GOODRICH  
RALPH R LAPHAM  
RALPH W & KANDI L GIRTON  
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

(Certificate of mailing continued)

SALIGAO LLC  
SANDOR & TERI SZOMBATHY  
STARLITE HOMEOWNERS ASSN  
STONEGATE HOMEOWNERS ASSN INC  
THE BARKER LIVING TRUST  
THE COMMUNITY SCHOOL INC  
THE JONES TRUST  
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ORDER

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Deputy Clerk

  
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