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DEPARTMENT OF  
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

SUN VALLEY COMPANY,

Petitioner,

vs.

GARY SPACKMAN, Director of the Idaho  
Department of Water Resources,

Respondent.

Docket No.

**SUN VALLEY COMPANY'S PETITION  
FOR RECONSIDERATION OF FINAL  
ORDER DESIGNATING THE  
EASTERN SNAKE PLAIN AQUIFER  
GROUND WATER MANAGEMENT  
AREA**

COMES NOW Sun Valley Company ("Sun Valley"), by and through it attorneys  
of record and pursuant to Idaho Code Section 67-5246(4) and Rule 740 of the Rules of Procedure  
of the Idaho Department of Water Resources (IDAPA 37.01.01), and hereby petitions the Idaho

**SUN VALLEY COMPANY'S PETITION FOR RECONSIDERATION OF FINAL  
ORDER DESIGNATING THE EASTERN SNAKE PLAIN AQUIFER GROUND  
WATER MANAGEMENT AREA - 1**

Client:4287749.1

Department of Water Resources (the “Department”) for reconsideration of its final *Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area* (“ESPA GWMA Order”), served on October 3, 2016.

## **I. INTRODUCTION**

The Director has designated a ground water management area in the Eastern Snake Plain Aquifer. He has done so after a number of public presentations and a short period of time to submit written comments. He has done so without providing notice of specific facts or material noticed and the source thereof. Sun Valley is presently unable to access the official record. In making his designation, the Director made several conclusions of law that contravene the plain language of Idaho Code Section 42-233b and the Department’s own rules, including the Department’s Rules for Conjunctive Management. For the reasons that follow, and for the reasons more specifically addressed in Sun Valley’s Second Amended Petition for Declaratory Ruling, IDWR Docket No. P-DR-2016-001, Sun Valley seeks reconsideration of the ESPA GWMA Order.

## **II. ARGUMENT**

### **A. The Director Entered the ESPA GWMA Order Upon Improper Procedures.**

The Director did not validly issue the ESPA GWMA Order. An order is “[a]n agency action of particular applicability that determines the legal rights, duties, privileges, immunities or other legal interests of one (1) or more specific persons.” *See* IDAPA 37.01.01.005.15; IDAHO CODE § 67-5201(12). An order is the result of a contested case. *See* IDAPA 37.01.01.005.07; IDAHO CODE § 67-5201(6) (“‘Contested case’ means a proceeding which results in the issuance of an order.”). All proceedings by any agency that may result in the

issuance of an order are governed by the contested case provisions of the Idaho Administrative Procedures Act. IDAHO CODE § 67-5240. Those provisions include, without limitation, procedural requirements for hearings, *see* § 67-5242, evidentiary requirements, *see* § 67-5251, requirements for the maintenance of an official record, *see* § 67-5249, and the prohibition of ex parte communications with the hearing officer, *see* § 67-5253. The foregoing definitions and required procedures are plain and unambiguous, and cannot simply be ignored by the Director. *See Westway Constr., Inc. v. Idaho Transp. Dep't*, 139 Idaho 107, 113-14, 73 P.3d 721, 727-28 (2003). “[I]nformal disposition may be made of any contested case by negotiation, stipulation, agreed settlement or consent order,” *see* IDAHO CODE § 67-5241(1)(c), but this contested case did not involve negotiation, stipulation, agreement or consent by Sun Valley or, to Sun Valley’s knowledge, negotiation, stipulation, agreement or consent by any of the other parties the Director affirmatively selected to receive notice that he was considering designation of an ESPA GWMA. *See Laughy v. Idaho Dep’t of Transp.*, 149 Idaho 867, 872, 243 P.3d 1055, 1060 (2010) (“an agency cannot unilaterally decide to utilize informal procedures to the exclusion of formal proceedings”).

The Department did not comply with even the most basic hearing, evidentiary or record requirements for contested case proceedings before entering the ESPA GWMA Order, and the ESPA GWMA Order was not the result of negotiation, stipulation, agreement or consent by the parties. Therefore, the Director did not have authority to enter the ESPA GWMA Order. Acts taken by an agency without statutory authority are void and must be set aside. *See A&B Irrigation Dist. v. Idaho Dep’t of Water Res.*, 153 Idaho 500, 505, 284 P.3d 225, 230 (2012);

*Arrow Transp. Co. v. Idaho Pub. Util. Comm'n*, 85 Idaho 307, 314-15, 379 P.2d 422, 426-27 (1963).

Sun Valley incorporates by reference herein its arguments from the Second Amended Petition for Declaratory Ruling, IDWR Docket No. P-DR-2016-001, relating to the proper procedures, including compliance with the Department's Conjunctive Management Rules, to designate a GWMA.

**B. The Director's Conclusions of Law Are Erroneous, and in Contravention of the Operative Statutes, Rules, and Judicial Precedent.**

In the event the Director finds the procedure by which he has created the ESPA GWMA sound, Sun Valley seeks reconsideration of any conclusions of law inconsistent with the rulings Sun Valley sought from the Director in its Second Amended Petition for Declaratory Ruling in IDWR Docket No. P-DR-2016-001.

In addition, the Director has supplemented his reference to "tributary basins" within the Director's letter dated July 7, 2016, with a new undefined term—"aquifer system"—in his conclusions of law interpreting Idaho Code Section 42-233b. *See* ESPA GWMA Order at 21-22, ¶ 16. ("The ESPA and the tributary basins comprise an *aquifer system* within which ground water flows or moves to specific discharge areas and has reasonably well-defined boundaries. . . . The *aquifer system* constitutes a 'ground water basin' within the meaning of Idaho Code § 42-233b."). The term "aquifer system" does not appear in that section, or anywhere else in Idaho Code. On the other hand, the statute expressly uses the singular term "the aquifer" when defining the scope of the Director's management of ground water withdrawal. *See* IDAHO CODE § 42-233b ("The ground water management plan shall provide for managing the effects of ground water withdrawals on *the aquifer* from which withdrawals are

made and on any other hydraulically connected sources of water.”). *See also* Second Amended Petition at 11-20.


Notwithstanding the fact that the Big Wood River Basin is presently not subject to the ESPA GWMA, the Director’s conclusions about the scope, extent, and applicability of Section 42-233b encompassing water districts comprised of adjudicated water basins affect Sun Valley’s water rights. His interpretation of that statute allows him, in reliance upon the foregoing legal conclusions, to include the Big Wood River Basin and any other basin he deems to be part of the “aquifer system” in the ESPA GWMA. Sun Valley therefore seeks reconsideration of the Director’s conclusions.

### III. CONCLUSION

For the reasons set forth above, Sun Valley respectfully requests that the Department reconsider its GWMA Order.

DATED this 16th day of November, 2016.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Scott L. Campbell – Of the Firm  
Attorneys for Sun Valley Company

By   
Matthew J. McGee – Of the Firm  
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of November, 2016, I caused a true and correct copy of the foregoing **SUN VALLEY COMPANY'S PETITION FOR RECONSIDERATION OF FINAL ORDER DESIGNATING THE EASTERN SNAKE PLAIN AQUIFER GROUND WATER MANAGEMENT AREA** to be served by the method indicated below, and addressed to the following:

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