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DEPARTMENT OF  
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*Attorneys for South Valley Ground Water District*

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF BASIN 37  
ADMINISTRATIVE PROCEEDING

Docket No. AA-WRA-2021-001

**SOUTH VALLEY GROUND  
WATER DISTRICT'S  
MOTION TO APPOINT  
INDEPENDENT HEARING  
OFFICER**

COMES NOW, the SOUTH VALLEY GROUND WATER DISTRICT (“SVGWD”), by and through its attorneys of record, BARKER ROSHOLT & SIMPSON LLP, and pursuant to Idaho Code § 42-1701A(2) and IDAPA 37.01.01.410, hereby requests the Director appoint an independent hearing officer in the above-captioned matter. SVGWD has simultaneously filed a Motion to Dismiss. The present motion, as well as the contemporaneously filed Motion for Order Authorizing Discovery, and the Motion For Continuance of Hearing are made in the alternative to the Motion to Dismiss and should be considered moot if dismissal is granted.

On May 4, 2021 the Director issued a *Notice of Administrative Proceeding, Pre-Hearing Conference, and Hearing* (“*Notice*”). The Director stated that he “believes that the withdrawal of water from ground water wells in the Wood River Valley south of Bellevue (commonly referred to as the Bellevue Triangle) would affect the use of senior surface water rights on Silver Creek and its tributaries during the 2021 irrigation season.” *Notice* at 1. The *Notice* was accompanied by cover letter stating the following:

A drought is predicted for the 2021 irrigation season and the water supply in the Little Wood River-Silver Creek drainage may be inadequate to meet the needs of surface water users in that area. Therefore, the Director of the Department has initiated an administrative proceeding to determine if the surface water rights in the Little Wood-Silver Creek drainage will be injured in the 2021 irrigation season by pumping from junior-priority ground water rights in the Wood River Valley south of Bellevue. The administrative proceeding could result in curtailment of junior-priority ground water rights south of Bellevue this irrigation season.

*Director May 4, 2021 Letter to “Water Right Holder”* (emphasis added).<sup>1</sup> On May 11, 2021, the Director issued a *Request for Staff Memorandum* (“*Request*”). The *Request* asks for information acquired by IDWR staff related to the technical and scientific basis for the possible curtailment of junior-priority rights in Basin 37.

Idaho Code § 42-1701A(2) provides that, “the director, in his discretion, may direct that a hearing be conducted by a hearing officer appointed by the director,” and IDAPA 37.01.01.410 allows that the appointed hearing officer be an independent contractor. SVGWD requests an independent hearing officer for the following reasons:

1. In the fall of 2020, IDWR initiated an advisory committee for the Big Wood River Basin Groundwater Management Area. The committee proceeded to meet over several

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<sup>1</sup> The original letter and *Notice* included an address list with errors. Consequently, IDWR revised its address list and resent the letter and *Notice* on May 7, 2021. See *Tim Luke May 7, 2021 Email to BWRGWMA Advisory Committee Members*.

months addressing a variety of topics and issues. In the spring of 2021, senior surface water users identified alleged injuries for the upcoming irrigation season and rejected various proposals by the ground water users. The Director and/or his representatives participated directly in these advisory committee meetings.

2. At the April 15, 2021 meeting, the Director made various statements that he was “ready to act” and warned groundwater users that they may be required “to reduce pumping much more than the amounts identified by the groundwater districts.”
3. SVGWD questions the Director’s authority to initiate the present proceedings. Specifically, SVGWD does not believe Idaho Code § 42-237a.g authorizes the Director to take unilateral action to curtail groundwater rights in a conjunctive management area.
4. Additionally, SVGWD believes that the Director is proceeding under the incorrect administrative rules. Because Basin 37 has consistently been treated as, and found to be, a conjunctive management area (albeit unorganized), the Director is improperly proceedings under the general administrative procedures of the IDWR instead of the conjunctive management rules specifically promulgated for ground and surface water areas such as Basin 37.
5. Given these foundational disagreements as to the authority of the Director and the procedure chosen, adjudication of these issues should be left to a party without interest in their resolution; i.e. the Director should not be put in a position where he is asked to determine the scope of his own authority to act.
6. The Director’s involvement with the Wood River groundwater modelling, as well as his decision to sua sponte initiate a water rights administration makes him a likely fact witness in this proceeding.

7. The Director personally participated in negotiations and meetings of the Big Wood River Ground Water Management Area Advisory Committee. Through those meetings, the Director and his representatives were made aware of certain positions on factual and legal matters taken by the parties, making him a likely fact witness in this proceeding.

Given the Director's role in various aspects of prior negotiations and meetings of the Big Wood River Ground Water Management Area Advisory Committee, as well as the overarching issues of the Director's authority and scope to initiate these proceedings, SVGWD requests the Director appoint an independent hearing officer to preside over the hearing in this matter.

Dated this 13<sup>TH</sup> day of May, 2021.

BARKER ROSHOLT & SIMPSON LLP



Albert P. Barker

*Attorney for South Valley Ground Water District*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13<sup>th</sup> day of May, 2021, the foregoing was filed, served, and copied as shown below.

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