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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 FOR ORDER
AUTHORIZING DISCOVERY**

COMES NOW, the SOUTH VALLEY GROUND WATER DISTRICT (“SVGWD”), by and through its attorneys of record, BARKER ROSHOLT & SIMPSON LLP, and pursuant to Rules 260, 520, and 521 of the Department’s Rules of Procedure (IDAPA 37.01.01.260, IDAPA 37.01.01.520 and IDAPA 37.01.01.521), hereby moves for authorization to conduct discovery in all forms listed in Rule 520.01.a-d and seeks leave to conduct discovery against all parties or other knowledgeable persons or entities. SVGWD has simultaneously filed a Motion to Dismiss. The present motion, as well as the contemporaneously filed Motion to Appoint Independent Hearing Officer, 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).¹ The *Request* asks for technical acquired by IDWR staff related to the technical and scientific basis for the possible curtailment of junior-priority rights in Basin 37.

The grounds for this motion are as follows:

1. IDWR Rule of Procedure 521 allows discovery by a party in a contested case, but only pursuant to an order from the Director of IDWR authorizing discovery. IDAPA 37.01.01.521.
2. This is a contested case and SVGWD is a party to this proceeding.
3. Evaluation of the factual issues that the Director has addressed in his *Notice* will be complex and extensive. Discovery is essential for SVGWD, IDWR, and other parties to

¹ 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*.

properly analyze the myriad factors requisite in determining rights administration in a conjunctive management area such as Basin 37. See *Declaration of David B. Shaw in Support of Motion for Continuance of Hearing* (“*Shaw Declaration*”).

4. The IDWR Staff memorandum will serve to answer some questions regarding the basis for the Director’s position, but there remain issues ripe for discovery. Additionally, the information included in the IDWR staff memorandum will surely open new and important avenues of inquiry for which discovery is intended.
5. SVGWD moves to conduct discovery so that, among other things, it may learn whether the parties or IDWR Staff have information, data, or assumptions concerning the effects of the groundwater use in Basin 37 for the upcoming 2021 irrigation season.
6. Discovery will aid in clarifying numerous factual inadequacies in the *Notice*: the *Notice* does not identify which rights are affected, or by how much; the *Notice* doesn’t identify the rights that are, or may be injured; the *Notice* doesn’t provide any indication that “material injury” is the standard; and, the *Notice* states that “curtailment runs” of the model have been made but does not identify those curtailment runs or the results of those runs.
7. In light of the Director’s proposed final action, i.e. curtailment of junior-priority ground water rights, authorizing discovery is necessary to protect the due process rights of those junior-priority rights.
8. Without information of this kind, which can only be efficiently obtained by pre-hearing discovery rather than through "fishing expeditions" during cross-examination at hearing, it will be difficult, if not impossible, for SVGWD to evaluate whether they should contest other parties' and/or the IDWR’ positions concerning SVGWD’s water rights, water use and effects upon other water users.

9. Discovery will serve to narrow the issues and allow parties to focus on the important facts and issues to be resolved during the proceedings. Absent discovery, extensive examination and cross-examination at hearing will be required to develop even basic evidence and information, while evidence that could prove crucial to the Director's final evaluation is more likely to be missed or overlooked. Authorizing discovery before any hearing addressing the substantive merits of these proceedings will allow for a more productive and efficient administration thereof.

SVGWD therefore, moves for an order allowing it to conduct discovery to properly prepare for this hearing, and requests that the time and scope allowed for discovery be sufficient to allow the participants to prepare adequately for the hearing.

Dated this 13TH 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 13th day of May, 2021, the foregoing was filed, served, and copied as shown below.

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