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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 DESIGNATE ORDER
DENYING MOTION TO DISMISS
AS FINAL ORDER**

COMES NOW, the SOUTH VALLEY GROUND WATER DISTRICT (“SVGWD”), by and through its attorneys of record, BARKER ROSHOLT & SIMPSON LLP, and pursuant to IDAPA 37.01.01.750, hereby requests the Director to designate the order denying SVGWD’s motion to dismiss as a final order for purposes of immediate judicial review pursuant to Idaho’s Administrative Procedures Act (I.C. § 67-5201 et seq). *See Order Denying Motions to Dismiss et al.* (dated and served on Saturday May 22, 2021). Designating the order as final will provide the parties and Department with an orderly process for judicial review and ensure that time and resources are not wasted on an administrative proceeding that violates Idaho law.

BACKGROUND AND INTRODUCTION

The facts and background regarding this proceeding are set forth in SVGWD's *Motion to Dismiss*. The Director denied the motion to dismiss and the parties are thereby forced to proceed to the administrative hearing slated to begin in approximately two (2) weeks (counting Memorial Day holiday).

ARGUMENT

The Director should designate the order as a "final order" pursuant to IDAPA 37.01.01.750. Designating the order as final will allow SVGWD to file an appeal and petition for judicial review in district court. *See* IDAPA 37.01.01.790; I.C. § 67-5270. The judicial review process will allow the agency to compile an administrative record and provide an opportunity for interested parties to participate.

IDWR has followed a similar procedure before, as witnessed in the Big Wood and Little Wood River Users Association's delivery calls in 2015 (Docket No. CM-DC-2015-001, 002). In that proceeding Sun Valley Company moved to dismiss the case and the Director denied the motion. *See Order Denying Sun Valley Company's Motion to Dismiss* (July 22, 2015). Various parties entered into a stipulation and filed a *Joint Motion to Designate ACGWS and Sun Valley Order as Final Orders* (Sept. 25, 2015). The Director granted the joint motion and entered an *Order Designating ACGWS and Sun Valley Order as Final Orders* on October 15, 2015. Thereafter, the petitions for judicial review proceeded before the District Court.

In the interests of administrative and judicial economy, the Director should designate the order denying SVGWD's motion to dismiss as a final order pursuant to IDAPA 37.01.01.750. Such an action would be consistent with the prior handling of a similar conjunctive

administration matter. Rather than have the parties expend time and resources on a matter that may be moot on judicial review, the Director should designate the order as final and allow a district court to evaluate and determine what process should be followed.

SVGWD requests an expedited consideration of this motion, with responses due, oral argument on the motion, and an order from the Director on Monday May 24, 2021. *See* IDAPA 37.01.01.260.03; 270.02.

Dated this 22th day of May, 2021.

BARKER ROSHOLT & SIMPSON LLP



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District*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22th day of May, 2021, I served a copy of the foregoing on those by electronic mail who had listed email addresses on the service list of the Director's *Order Denying Motions to Dismiss et al.* Parties without electronic mail listed on the will be served on Monday May 24, 2021 by U.S. Mail.



Travis L. Thompson