

Chris M. Bromley, ISB No. 6530
McHugh Bromley, PLLC
Attorneys at Law
380 S. 4th St., Ste. 103
Boise, ID 83702
Telephone: (208) 287-0991
Facsimile: (208) 287-0864
cbromley@mchughbromley.com

Attorney for the Sun Valley Company

Michael C. Creamer, ISB No. 4030
Michael P. Lawrence, ISB No. 7288
Charlie S. Bauer, ISB No. 10884
Givens Pursley, LLP
P.O. Box 2720
Boise, ID 83701-2720
Telephone: (208) 388-1200
Facsimile: (208) 388-1300
mcc@givenspursley.com
mpl@givenspursley.com
csb@givenspursley.com

Attorneys for the City of Hailey

Candice M. McHugh, ISB No. 5908
McHugh Bromley, PLLC
Attorneys at Law
380 S. 4th St., Ste. 103
Boise, ID 83702
Telephone: (208) 287-0991
Facsimile: (208) 287-0864
cmchugh@mchughbromley.com

Attorney for the City of Bellevue

Matthew A. Johnson, ISB No. 7789
Brian T. O'Bannon, ISB No. 8343
White Peterson, Gigray & Nichols, PA
5700 E. Franklin Rd., Ste. 200
Nampa, ID 83687-7901
Telephone: (208) 466-9272
Facsimile: (208) 466-4405
mjohnson@whitepeterson.com
bobannon@whitepeterson.com

Attorneys for the City of Ketchum

RECEIVED
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DEPARTMENT OF
WATER RESOURCES

**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

**JOINT RESPONSE TO BWLWWUA
AND BWCC MOTION IN LIMINE**

COME NOW the Cities of Bellevue, Hailey and Ketchum and Sun Valley Company ("SVC") (collectively referred to as the "Joint Parties") by and through their counsels of record, and hereby file this *Joint Response to Big Wood & Little Wood Water Users Association & Big Wood Canal Company Motion in Limine*.

On June 1, 2021, the Big Wood & Little Wood Water Users Association (“Association”) and the Big Wood Canal Company (“BWCC”) filed a *Motion in Limine* (“Assn Motion in Limine”) to “prohibit parties who are not at risk of curtailment from calling expert witnesses and fact witnesses in the administrative proceeding that is currently pending in the above entitled matter.” *Assn Motion in Limine* at 2. While worded broadly in the introduction, the Association and BWCC take direct aim at the Joint Parties by stating none of the Joint Parties witnesses (fact and expert) should be allowed to testify.

The Joint Parties were grouped by the Director at the May 24, 2021 prehearing conference into the “third group.” *Prehearing Order; Scheduling Order* at 2. As a member of the third group, the Joint Parties are entitled to call expert witnesses, fact witnesses, and present evidence and exhibits for consideration by the Director. The *Assn Motion in Limine* seeks to prevent the Joint Parties from doing what was already ordered by the Director.

At the prehearing conference, counsel for SVC expressed his concern that the hearing in this matter could “creep” outside the area of curtailment noticed by the Director, which has since been further clarified in Jennifer Sukow’s May 17, 2021 Staff Memo and by the Director in his *Prehearing Order; Scheduling Order*. *Id.* at 4 (explaining the area of curtailment is further limited to the boundary in the Sukow Staff Memo). The Director recognized the potential for creep, noting that other administrative proceedings could “spring” from the matter at hand. So even if the evidence presented and facts and conclusions made in this proceeding do not exceed the scope established by the Director, a significant concern of the Joint Parties are potential decisions of facts and law made within the potential area of curtailment (generally referred to as

the “Bellevue Triangle”) for the 2021 irrigation season that could then be used in a future proceeding to bind the Joint Parties who are wholly located outside the zone.¹

Filed contemporaneously herewith is the Joint Parties *Joint Motion to Strike, Motion in Limine, and Motion to Limit the Scope of Evidence, and Request for Expedited Decision* along with a *Memorandum in Support* (“Joint Parties Motion in Limine”). The Joint Parties Motion in Limine generally seeks a ruling from the Director that the evidence accepted into the record at hearing and any related findings of fact and conclusions of law be limited in scope to 2021 ground water pumping within the Bellevue Triangle that may cause 2021 injury to senior surface water rights from Silver Creek and its tributaries and the resulting benefits of curtailments, if any.

In comparing the Joint Parties Motion in Limine with the Assn Motion in Limine, there does not seem to be much dispute that the matter at hand should be limited to potential curtailment within the Bellevue Triangle in the 2021 irrigation season. *See Assn Motion in Limine* at 3 (“Testimony of fact witnesses on how they use water outside the Bellevue Triangle is not relevant or material to this proceeding, at least to the extent of the scope of the proceeding has been identified by the Director.”). As set forth in the Joint Parties Motion in Limine, impacts of any groundwater pumping on flows in any stream other than Silver Creek and its tributaries also is not relevant to this proceeding and should be excluded from the record.

¹ As an example, it would be prejudicial to the Cities and SVC if facts established in this proceeding concerning the construction, application, and uncertainty of the Wood River Valley groundwater flow model (version 1.1) (the “Model”), including results of model runs therefrom, have *res judicata* effect in future proceedings. As noted, the scope of this proceeding is limited to groundwater pumping in an area of potential curtailment identified in Jennifer Sukow’s May 17, 2021 Staff Memo. This area is much smaller than the Model’s entire boundary, which encompasses the water rights and uses of Cities of Bellevue, Hailey and Ketchum and Sun Valley Company. Because the scope of this proceeding does not involve areas within the Model boundary encompassing the Joint Parties’ water rights or uses, the Joint Parties should not be precluded from establishing facts concerning the Model based on their own evidence presented in a future proceeding that actually involves their water rights and uses.

To the extent the Assn Motion in Limine intends to allow this proceeding to be used as *res judicata* against the Joint Parties, the Joint Parties object and will fully participate.

Dated this 2nd day of June, 2021.

/s/ Chris M. Bromley
Chris M. Bromley
Attorney for Sun Valley Co.

/s/ Chris M. Bromley for
Candice M. McHugh
Attorney for the City of Bellevue

/s/ Chris M. Bromley for
Michael P. Lawrence
Attorney for the City of Hailey

/s/ Chris M. Bromley for
Matthew A. Johnson
Brian T. O'Bannon
Attorneys for the City of Ketchum

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of June, 2021, the above and foregoing was served on the following by the method(s) indicated below:

Director Gary Spackman Idaho Department Of Water Resources PO Box 83720 Boise, ID 83720 Megan.jenkins@idwr.idaho.gov	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Garrick L. Baxter Deputy Attorney General Idaho Department Of Water Resources PO Box 83720 Boise, ID 83720-0098 garrick.baxter@idwr.idaho.gov	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
James R. Laski Heather E. O'Leary Lawson Laski Clark, PLLC 675 Sun Valley Rd., Ste. A P.O. Box 3310 irl@lawsonlaski.com heo@lawsonlaski.com efiling@lawsonlaski.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Matthew A. Johnson Brian T. O'Bannon White, Peterson, Gigray & Nichols, P.A. 5700 East Franklin Road, Suite 200 Nampa, Idaho 83687-7901 mjohnson@whitepeterson.com bobannon@whitepeterson.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Laird B. Stone Stephan, Kvanvig, Stone, & Trainor P.O. Box 83	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail

Twin Falls, Idaho 83303-0083 skst@idaho-law.com cynthia@idaho-law.com	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Jerry R. Rigby Rigby, Andrus & Rigby, Chartered 25 North Second East Rexburg, ID 83440 jrigby@rex-law.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Joseph F. James James Law Office, PLLC 125 5th Ave. West Gooding, ID 83330 joe@jamesmvlaw.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Robert L. Harris Holden, Kidwell, Hahn & Crapo, P.L.L.C. P.O. Box 50130 1000 Riverwalk Drive, Suite 200 Idaho Falls, ID 83405 rharris@holdenlegal.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Rusty Kramer, Secretary PO Box 507 Fairfield, ID 83327 waterdistrict37b@outlook.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Brendan L. Ash James Law Office, PLLC 125 5th Ave. West Gooding, ID 83330 efile@jamesmvlaw.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Richard T. Roats Lincoln County Prosecuting Attorney P.O. Box 860 Shoshone, ID 83352 rtr@roatslaw.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Paul Bennett 114 Calypso Lane Bellevue, ID 83313 info@swiftsureranch.org	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
J. Evan Robertson Robertson & Slette, PLLC P.O. Box 1906 Twin Falls, Idaho 83303-1906 erobertson@rsidaholaw.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Ann Y. Vonde P.O. Box 83720 Boise, ID 83720-0010 ann.vonde@ag.idaho.gov	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
James P. Speck Speck & Aanestad P.O. Box 987 Ketchum, ID 83340 jim@speckandaanestad.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
John K. Simpson Barker Rosholt & Simpson LLP 1010 Jefferson St., Ste. 102 P.O. Box 2139 Boise Idaho 83701-2139 jks@idahowaters.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email

Lawrence Schoen Napisunaih 18351 U.S. Highway 20 Bellevue, ID 83313 lschoen@naramail.net	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email
Idaho Ranch Hands Property Management 218 Meadowbrook Hailey, ID 83333 idahoranchhands@gmail.com	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email
Southern Comfort Homeowner's Association P.O. Box 2739 Ketchum, ID 83340	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email
W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, Idaho 83318 wkf@pmt.org	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email
Albert P. Barker Travis L. Thompson Barker Rosholt & Simpson LLP 1010 W. Jefferson St., Ste. 102 PO Box 2139 Boise, ID 83701-2139 apb@idahowaters.com tlr@idahowaters.com	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email
Candice McHugh McHugh Bromley, PLLC 380 S. 4th St., Ste. 103 Boise, ID 83702 cmchugh@mchughbromley.com	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email
Chris M. Bromley McHugh Bromley, PLLC 380 S. 4th St., Ste. 103 Boise, ID 83702 cbromley@mchughbromley.com	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email
Norman M. Semanko Parsons Behle & Latimer 800 West Main Street, Ste 1300 Boise, ID 83702 NSemanko@parsonsbehle.com	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email
Sarah A. Klahn Somach Simmons & Dunn 2033 11th St., Suite 5 Boulder, CO 80302 sklahn@somachlaw.com dthompson@somachlaw.com	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email
Randall C. Budge Thomas J. Budge Racine Olson, PLLP 201 E. Center St. P.O. Box 1391 Pocatello, Idaho 83204 randy@racineolson.com tj@racineolson.com	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail Facsimile Email
Michael C. Creamer Michael P. Lawrence Charlie S. Baser	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	U.S. Mail, postage prepaid Hand Delivery Overnight Mail

Givens Pursley LLP 601 W. Bannock St. P.O. Box 2720 Boise, Idaho 83701-2720 mpl@givenspursley.com mcc@givenspursley.com csb@givenspursley.com	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
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/s/ Chris M. Bromley
Chris M. Bromley