

Albert P. Barker [ISB No. 2867]
Travis L. Thompson [ISB No. 6168]
Michael A. Short [ISB No. 10554]
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson St., Ste. 102
PO Box 2139
Boise, ID 83701-2139
Telephone: (208) 336-07000
Facsimile: (208) 344-6034

James R. Laski, ISB No. 5429
Heather E. O’Leary, ISB No. 8693
LAWSON LASKI CLARK, PLLC
675 Sun Valley Road, Suite A
Post Office Box 3310
Ketchum, Idaho 83340
Telephone 208.725.0055
Facsimile 208.725.0076
jrl@lawsonlaski.com
heo@lawsonlaski.com
efiling@lawsonlaski.com

Attorneys for South Valley Ground Water District and Galena 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 AND
GALENA GROUND WATER
DISTRICT’S OBJECTION TO
NOTICE OF TAKING
DEPOSITION DUCES TECUM OF
G. ERICK POWELL**

COMES NOW, the SOUTH VALLEY GROUND WATER DISTRICT (“SVGWD”) by and through its attorneys of record, BARKER ROSHOLT & SIMPSON LLP and THE GALENA GROUND WATER DISTRICT (“Galena GWD”) by and through its attorneys of record,
OBJECTION TO NOTICE OF DEPOSITION DUCES TECUM ON G. ERICK POWELL

LAWSON LASKI CLARK, PLLC, pursuant to Rule 521 of the Rules of Procedure of the Idaho Department of Water Resources (“IDWR”), Idaho Rule of Procedure 26(b), the May 21, 2021 *Order Authorizing Discovery*, and the May 25, 2021 *Prehearing Order; Scheduling Order*, and hereby object to the proposed scope of the Big Wood and Little Wood Water Users Association (“BWLWWUA”) and the Big Wood Canal Company’s (“BWCC”) *Notice of Taking Deposition Duces Tecum of G. Erick Powell* (“*Powell Notice*”) on the following bases:

1. On May 13, 2021, SVGWD filed its *Motion for Order Authorizing Discovery* asking the Director to authorize discovery in this matter. On May 21, 2021, the Director issued *Order Authorizing Discovery* (“*Discovery Order*”) allowing discovery in this matter, pursuant to Rule 521, Rule 520.01a, 520.01b, and 520.01d of the Rules of Procedure of IDWR.
2. The *Discovery Order* authorized discovery pursuant to the Idaho Rules of Civil Procedure (“IRCP”) unless otherwise limited by the *Order*.
3. The Director issued a *Prehearing Order; Scheduling Order* (“*Order*”) on May 25, requiring the parties to identify expert witnesses by May 26, and fact witnesses by May 28. *Order*, p. 5. The *Scheduling Order* provided that “If the Outside Bellevue Triangle Water Users identify an expert witness, they must also submit an explanation of what their expert witness intends to testify about.” *Id.* No similar requirement was imposed on parties in the Bellevue Triangle.
4. Mr. Powell was listed as an expert for SVGWD and Galena in *South Valley Ground Water District and Galena Ground Water District’s Expert Witness Disclosure*, filed May 26, 2021.

5. The IRCP provides for the scope of discovery for a testifying expert. *See* IRCP 26(b)(4).
6. Under IRCP 26, an expert must disclose: (1) a complete statement of all opinions to be expressed and the basis and reasons for the opinion must be disclosed; (2) the data or other information considered by the witness in forming the opinions; (3) any exhibits to be used as a summary of or support for the opinions; (4) any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; (5) the compensation to be paid for the testimony; and (6) a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. IRCP 26(b)(4)(A)(i).
7. Further, IRCP excludes from discovery documents and tangible things prepared in anticipation of litigation or trial, or as here, a hearing. IRCP 26(b)(3).
8. The *Powell Notice* attached an extensive demand for documentation that Mr. Powell should bring to the deposition, including an expert report, as well as an extensive and onerous list of documents that extends far beyond the scope of discovery of testifying experts authorized in Rule 26(b)(4)(A)(i).
9. Even if the parties had not reached such an agreement, the *Powell Notice* requests documents outside the scope of expert discovery. The following is a non-exhaustive, representative list of requests exceeding the allowable scope of expert discovery:
 - a. “All written reports for this proceeding prepared by you or at your direction.” Ex. A of *Powell Notice* at ¶ 1. This requests documents protected as trial preparation documents.

- b. “All writings setting forth or describing the nature and scope of your assignment in this proceeding.” *Id.* at ¶ 4. This requests documents protected as trial preparation documents, and/or protected by attorney client privilege.
- c. “All writings setting forth or describing any limitation on the nature and scope of your assignment in this proceeding.” *Id.* at ¶ 5. This requests documents protected as trial preparation documents, and/or protected by attorney client privilege.
- d. “All writings showing exactly how you spent your time in this proceeding.” *Id.* at ¶ 10. This requests documents protected as trial preparation documents, and/or protected by attorney client privilege.
- e. “All written results of tests conducted by you in this proceeding.” *Id.* at ¶ 11. This requests documents protected as trial preparation documents, and/or protected by attorney client privilege.
- f. “All writings showing or listing the raw data, including test protocols resulting from any test performed by you or at your direction in this proceeding.” *Id.* at ¶ 14. This requests documents protected as trial preparation documents, and/or protected by attorney client privilege.
- g. “All writings analyzing the raw data resulting from any test performed by you or at your direction in this proceeding.” *Id.* at ¶ 13. This requests documents protected as trial preparation documents, and/or protected by attorney client privilege.
- h. “All writings setting forth the reasons or reasoning for each of the opinions and conclusions you will be giving at trial in this proceeding.” *Id.* at ¶ 13. “All writings showing each assumption you made in forming the opinions and conclusions you will be giving at the trial in this proceeding.” *Id.* at ¶ 24. While discovery of opinions is allowed, the expert’s thought process and reasoning in reaching those opinions is not, and is protected by IRCP.

10. The scope of the *Powell Notice* greatly exceeds that allowed by the Director’s *Scheduling Order* and the IRCP. As such, SVGWD and Galena GWD object to the scope of the *Powell Notice*.

11. Mr. Powell will testify about the following matters, in conformity with the requirements of the Director and IRCP 26(b)(4)(A)(i):

- a. A statement of opinions;
- b. The data considered in reaching the opinions;
- c. Summary exhibits supporting the opinions, if any;
- d. Mr. Powell's qualifications as a witness;
- e. Mr. Powell's compensation;
- f. A list of other testimony at trial or deposition in the prior four (4) years.

12. Mr. Powell's trial preparation materials are not discoverable and will not be produced.

Dated this 3rd day of June, 2021.

BARKER ROSHOLT & SIMPSON LLP

/s/ ALBERT BARKER
Albert P. Barker
Attorney for South Valley Ground Water District

LAWSON LASKI CLARK, PLLC

By: /s/ Heather E. O'Leary
Heather E. O'Leary
Attorneys for Galena Ground Water District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of June, 2021, the foregoing was filed, served, and copied as shown below.

IDAHO DEPARTMENT OF WATER RESOURCES
P.O. Box 83720
Boise, ID 83720-0098

U. S. Mail
 Hand Delivered
 Overnight Mail
 E-mail

Gary L. Spackman
Director
IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720
Boise, ID 83720-0098

U. S. Mail
 Hand Delivered
 Overnight Mail
 E-mail

Sarah A. Klahn
SOMACH SIMMONS & DUNN
2033 11th St., #5
Boulder, CO 80302

U. S. Mail
 Overnight Mail
 E-mail

Candice McHugh
Chris Bromley
MCHUGH BROMLEY, PLLC
Attorneys at Law
380 S. 4th St., Ste. 103
Boise, ID 83702

U. S. Mail
 Overnight Mail
 E-mail

Heather O'Leary
LAWSON LASKI CLARK PLLC
PO Box 3310
Ketchum, ID 83340

U. S. Mail
 Overnight Mail
 Fax
 E-mail

Matthew A. Johnson
Brian T. O'Bannon
WHITE, PETERSON, GIGRAY & NICHOLS, P.A.
5700 East Franklin Road, Suite 200
Nampa, ID 83687-7901

U. S. Mail
 Overnight Mail
 E-mail

W. Kent Fletcher
FLETCHER LAW OFFICE
P.O. Box 248
Burley, ID 83318

U. S. Mail
 Overnight Mail
 E-mail

Laird B. Stone Stephan, Kvanvig, Stone & Trainor P.O. Box 83 Twin Falls, ID 83303-0083	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U. S. Mail Overnight Mail E-mail
Norman M. Semanko PARSONS BEHLE & LATIMER 800 West Main Street, Suite 1300 Boise, ID 83702	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U. S. Mail Overnight Mail E-mail
Randall C. Budge Thomas J. Budge RACINE OLSON, PLLP P.O. Box 1391 Pocatello, ID 83204	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U. S. Mail Overnight Mail E-mail
Rusty Kramer Water District 37B Groundwater Association P.O. Box 507 Fairfield, ID 83327	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U. S. Mail Overnight Mail E-mail
Jerry R. Rigby RIGBY, ANDRUS & RIGBY 25 North Second East Rexburg, ID 83440	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U. S. Mail Overnight Mail E-mail
Joseph F. James Brendan L. Ash James Law Office, PLLC 125 5 th Ave. West Gooding, ID 83330	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U. S. Mail Overnight Mail E-mail
Robert L. Harris HOLDEN, KIDWELL, HAHN & CRAPO PLLC P.O. Box 50130 Idaho Falls, ID 83405	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U. S. Mail Overnight Mail E-mail
James P. Speck Speck & Aanestad P.O. Box 987 Ketchum, ID 83340	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U. S. Mail Overnight Mail E-mail
Richard T. Roats Lincoln County Prosecuting Attorney P.O. Box 860 Shoshone, ID 83352	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U. S. Mail Overnight Mail E-mail

Paul Bennett 114 Calypso Lane Bellevue, ID 83313	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U. S. Mail Overnight Mail E-mail
J. Evan Robertson Gary D. Slette Robertson & Slette, PLLC P.O. Box 1906 Twin Falls, ID 83303-1906	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U. S. Mail Overnight Mail E-mail
Ann Y. Vonde P.O. Box 83720 Boise, ID 83720-0010	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U. S. Mail Overnight Mail E-mail
John K. Simpson Barker Rosholt & Simpson LLP P.O. Box 2139 Boise, ID 83701-2139	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U. S. Mail Overnight Mail E-mail
Lawrence Schoen Napisunaih 18351 U.S. Highway 20 Bellevue, ID 83313	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U. S. Mail Overnight Mail E-mail
Idaho Ranch Hands Property Management 218 Meadowbrook Hailey, ID 83333	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U. S. Mail Overnight Mail E-mail
Southern Comfort Homeowner's Association P.O. Box 2739 Ketchum, ID 83340	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	U. S. Mail Hand Delivered Overnight Mail
Michael C. Creamer Michael P. Lawrence Charlie S. Baser Givens Pursley LLP P.O. Box 2720 Boise, ID 83701-2720	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	U. S. Mail Overnight Mail E-mail

/s/ Albert P. Barker
Albert P. Barker