Attorneys for South Valley Ground Water District and Galena Ground Water District

BEFORE THE STATE OF IDAHO FISH AND GAME DEPARTMENT, AND THE
IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF BEAVER REMOVAL IN BASIN 37

REQUEST FOR AGENCY ACTION TO REMOVE WILD ANIMALS AND DAMS CAUSING DAMAGE TO WATER RIGHTS

COMES NOW, the Requesters, SOUTH VALLEY GROUND WATER DISTRICT, on behalf of its members, by and through counsel of record, BARKER ROSHOLT & SIMPSON LLP and GALENA GROUND WATER DISTRICT, on behalf of its members, by and through counsel of record, LAWSON LASKI CLARK, PLLC (collectively “Requesters”), pursuant to Idaho Code

REQUEST FOR AGENCY ACTION TO REMOVE WILD ANIMALS AND DAMS CAUSING DAMAGE TO WATER RIGHTS
§ 36-1107, and hereby submits this Request for Agency Action to Remove Wild Animals and Dams Causing Damage to Water Rights ("Request") requesting the Director of the Idaho Fish and Game Department and the Director of the Idaho Department of Water Resources immediately take, or authorize such actions, including, trapping beavers and removing their dams, which are causing damage or adverse impacts to Requester's water rights. This Request is filed simultaneously with the Idaho Department of Water Resources.

I. Parties

1. South Valley Ground Water District ("SVGWD") is a ground water district organized and existing pursuant to Idaho Code § 42-5201 et seq. The district includes ground water right priorities ranging from the 1930s and 1940s until about 1989. Most of the ground water development, based on priorities, occurred between 1954 and 1979. There are approximately 175 groundwater wells in the district and approximately 300 groundwater rights. These rights authorize irrigation of approximately 25,000 acres. Some of these groundwater rights are used to supplement surface water rights from the Big Wood River and Silver Creek and its tributaries.

2. Galena Ground Water District is a ground water district organized and existing pursuant to Idaho Code § 42-5201 et seq. This district has thirty-one (31) member water rights.

II. Legal Basis

3. When wildlife causes damage to property, including water rights, or are likely to do so, the property owner, including water right holders, may complain to the Idaho Department of Fish and Game. I.C. § 36-1107. The present Request makes such a complaint to the Director of the Idaho Department of Fish and Game ("IFG Director") to take action pursuant to Idaho Code § 36-1107.
4. When wild animals cause damage to property, the IFG Director has the authority to enter on land and control, trap, or remove the wildlife. See Id.

5. Similarly, when the houses, dams, or other structures of furbearing animals, cause damage to property, the IFG Director has the authority to enter on land, and may “authorize or cause the removal, modification or destruction of any dam, house, structure or obstruction erected by any furbearing animals.” I.C. § 36-1107(a)(3).

6. “In the case of water rights, the director shall request an investigation by the director of the department of water resources of the conditions complained of.” I.C. § 36-1107(a).

7. The Director of the Idaho Department of Water Resources (“IDWR Director”) shall request an examination by the local water master, and the IDWR Director shall then certify to the IFG Director that the complained of conditions injure or otherwise adversely impact water rights. Id.

III. Factual Allegations

8. The surface and ground waters of Basin 37 are hydrologically connected.

9. The IDWR Director recently initiated a contested case regarding the potential curtailment of ground water withdrawals in the Bellevue Triangle, within Basin 37. Use of water and waste of water in Basin 37 were significant factors in considering impact to water rights in that area.

10. During testimony for that case, evidence was presented concerning the activities and impacts of beavers on the Silver Creek, within Basin 37. Specifically, that beaver dams in Basin 37, on the Silver Creek and Little Wood River, impede stream flows and waste water.

11. A large beaver dam completely blocked the Silver Creek channel near its intersection with Highway 93, with a “significant amount of water pouring out both to the north end of the south into the desert ground,” estimated to be 10 cfs of water being lost to the desert. Tr. 1392:19-23
(Testimony of Patrick Purdy, owner of Picabo Livestock), a true and correct copy of the relevant portions of Mr. Purdy’s Testimony is attached hereto as Exhibit A.

12. This beaver dam extended across the Silver Creek channel and is estimated to be between 18 inches and 24 inches in height. Exhibit A, Tr. 1393:10-12. A true and correct copy of a photograph showing the Silver Creek beaver dam is attached hereto as Exhibit B. A true and correct copy of a photograph showing the water spilling out of the Silver Creek channel is attached hereto as Exhibit C.

13. About 50 yards upstream from the dam, water was escaping from several holes on stream bank. It is believed that these holes have been caused by muskrats. A true and correct copy of photographs showing a stream bank hole is attached hereto as Exhibit D.

14. Mr. Purdy testified that he caused a third of the beaver dam to be breached, allowing the water backed-up by the dam to flow downstream. Additionally, this caused the water level behind the dam to lower, and the amount of water flowing through the stream bank holes to decrease significantly. In fact, the dam had backed the water up so much, that when it was breached, water from the stream bank holes flowed back into the stream. Further, this stopped the loss of water into the desert around the dam. Finally, the partial clearing of the dam alleviated much of the estimated loss of 10 cfs into the surrounding desert. See generally, Exhibit A.

15. Mr. Purdy had previously been granted permission to remove a dam near there two years ago. The dam he recently removed was constructed soon after that. The regular rebuilding of dams is a problem, as beavers will simply rebuild dams after they have been removed. Exhibit A, Tr. 1408:6-14.

16. In addition to the beaver dam near Highway 93. Another beaver dam is located on the Little Wood River near a place called Bear Track Williams and believed to be on land managed by
the Department of Fish and Game. Water at this dam is backed up with about a three-foot elevation change, and it appears that the dam has been there for quite a while. The Bear Track Williams beaver dam will likely require heavy machinery to open or remove. See generally, Exhibit A. A true and correct copy of a photograph showing the beaver dam on Little Wood River is attached hereto as Exhibit E.

17. Collectively, these beaver dams, and others like it in Basin 37 impede the flow of water in its channels, reduce the amount available to senior surface water users, and cause the waste of important water for irrigation and the satisfaction of water rights.

18. The IDWR contested case in Basin 37 threatens curtailment of Requesters’ water rights as of July 1, 2021 due to a lack of adequate water in the basin.

19. Requesters’ water rights are therefore adversely impacted by the continued existence of these beaver dams, and that impact will persist unless the beavers are removed.

20. IDWR’s contested case has concluded. Department staff have indicated to the press that a final order will be issued in this case by July 1, 2021, and that order has the potential to affect Requesters’ water rights during the 2021 irrigation season. The water made available by removing the dams has been demonstrated to be a significant factor in providing water to downstream surface water users. As such, a quick and speedy response to this Request is necessary, and time is of the essence to protect Requesters’ water rights.

IV. Remedy Requested

21. Requesters requests the IDWR Director certify that the conditions complained of adversely impact Requesters’ water rights.
22. Removal of these dams will add water to Silver Creek and the Little Wood River for irrigation and the satisfaction of water rights. As such, Requesters request the IFG Director enter on the land and authorize the removal of those dams, pursuant to Idaho Code § 36-1107(a)(2-3).

23. Additionally, the beavers in the area have historically, and contemporaneously, shown that they immediately begin rebuilding after their dams are destroyed. As such, Requesters request the IFG Director, in order to protect and secure the future free flow of water and guard against the waste of water, enter on the land and authorize the trapping and removal of beavers from these areas, pursuant to Idaho Code § 36-1107(a)(1-2, 4).

24. To the extent that stream bank holes causing loss of water are the result of muskrats, Requesters ask the IFG Director enter on the land and authorize the trapping and removal of muskrats from these areas, pursuant to Idaho Code § 36-1107(a)(1-2, 4).

25. As time is of the essence protect Requesters’ water rights, it is requested that the IFG Director and the IDWR Director treat this Request as an emergency and act with all possible haste to grant the present Request, and take immediate action to protect water rights at risk from wildlife, including beavers, beaver dams, and muskrats.
Dated this 23rd day of June, 2021.

BARKER Rosholt & Simpson LLP

/s/ Albert P. Barker
Albert P. Barker

Attorneys for South Valley Ground Water District

LAWSON Laski Clark, PLLC

/s/ James R. Laski
James R. Laski

Attorneys for Galena Ground Water District

REQUEST FOR AGENCY ACTION TO REMOVE WILD ANIMALS AND DAMS CAUSING DAMAGE TO WATER RIGHTS
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of June, 2021, the foregoing was filed, served, and copied as shown below.

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/s/ Albert P. Barker
Albert P. Barker
A. So Silver Creek forms just above our property, and then from The Nature Conservancy then flows into the Kilpatrick Pond which is on our property. And through the Kilpatrick Pond down through our ground quite a ways towards Picabo, and the river is free flowing and no obstructions all the way down through, it crosses Highway 20, and then back around through our property again, and out into some Fish and Game property, and some other private ground. And then down it crosses Highway 20 again to the southeast, and then flows through some property owned by Harry Rinker, which we farm as well.

And then it hits an area that we call the Highway 93 intersection, where Highway 93 and where the river crosses under Highway 93, there is some significant issues at that location with -- we observed just on Wednesday of this week a large beaver dam completely blocking the stream channel with a significant amount of water pouring out both to the north end of the south into the desert ground owned by Simplot and Rob Hennefer. I would guess just as a layman's estimate, maybe ten cfs of water flowing out into the desert there.

Q. So there is some photographs in front of you. Do you see those?
A. Yes.

Q. So Exhibit 43 is that a photograph that you took?

A. It is. I took this picture on Wednesday of this week.

Q. Where is this photograph taken?

A. It's about 100 yards up from Highway 93 and Silver Creek intersect.

Q. What does this picture depict?

A. A large beaver dam clear across the stream channel backs the water up, I would say, between 18 inches and 24 inches total height.

Q. And this is in Silver Creek, itself?

A. This is directly in the stream channel, yes.

MR. BARKER: I would offer Exhibit 43, South Valley/Galena Exhibit 43.

THE HEARING OFFICER: Any objection to this exhibit?

MR. RIGBY: The only question is, I don't know how they are numbered.

MR. FLETCHER: We don't know which is which.

MR. RIGBY: We don't know which is which.

MR. BARKER: I left them on the table. It looks like they got shuffled.

MR. RIGBY: I'm sorry.
MR. BARKER: This is 43. No, that's not 43. This one (indicating).

MR. RIGBY: This one is 43 (indicating)?

MR. BARKER: Yes.

MR. FLETCHER: May I ask one question in aid.

THE HEARING OFFICER: Yes.

MR. FLETCHER: You took this picture on Wednesday of this week?

THE WITNESS: I did, yes.

MR. FLETCHER: Thank you. I have no objection.

MR. RIGBY: No objection.

THE HEARING OFFICER: Okay. The document marked South Valley and Galena No. 43 is received into evidence.

(SVGWD/GGWD Exhibit 43 received.)

Q. (BY MR. BARKER) Exhibit 44, do you have that in front of you?

A. I do.

Q. Well, first of all, did you take this photograph?

A. I did. I took this at the same time.

Q. So Wednesday of this week?

A. Yeah. So this is a large hole in the stream channel to the north flowing out onto some property
owned by Simplot. That's one our employees --

THE REPORTER: I'm sorry. I didn't hear you.

THE WITNESS: I'm sorry. That's one of our employees standing there looking at the hole. A significant stream of water flowing out into the property to the north of the stream channel here.

Q. (BY MR. BARKER) Is this part of the 10 cfs --

A. Yeah.

Q. -- you estimate was leaving?

A. Yes, it is.

MR. BARKER: Offer Exhibit 44, South Valley/Galena 44.

THE HEARING OFFICER: Any objection to the admission of this document?

MR. FLETCHER: Again, did you state the date this picture was taken?

THE WITNESS: It was taken on Wednesday by me.

MR. FLETCHER: Thank you. I have no objection.

MR. RIGBY: No objection.

THE HEARING OFFICER: So the document marked as South Valley and Galena No. 44 is received into evidence.

(SVGWD/GGWD Exhibit 44 received.)

Q. (BY MR. BARKER) And then Exhibit 45, do you
have that in front of you, Mr. Purdy?

A. I do. And again this photo was taken by me on Wednesday.

Q. Where was this photograph taken?

A. About 50 yards upstream of the beaver dam on Exhibit 43.

Q. And what does this photograph depict?

A. It's one of several holes in the stream bank to the south side of Silver Creek flowing out into again Simplot's property.

Q. And is this part of what you estimate the 10 cfs loss was?

A. Yes. So I sent a team down there the next day to do their best job to breach that beaver dam, which they were able to take out about a third of it. And a significant stream of water flowed backwards in from this -- in from this hole. So the elevation lowered the water came back into the stream channel.

Q. Do you have any idea how long this beaver dam that you photographed in Exhibit 43 has been there?

A. I would guesstimate you can go see the growth if we go back to that picture, you can see the growth on the one side of it. There is actually weeds and grass growing on it. Just based on that, I would assume that it's been there at least this full season, and probably
into last season. We did take a dam out of this area
two years ago. We got permission to bring a big track
hoe in and tear a large dam out. There is a huge pile
of debris that you can't see that is off to the side
from the prior beaver dam that was removed. So I
believe my best estimate is this one has been in there
all season and probably in the fall of last year.

Q. So in your estimate, in your experience
rather, would this dam constitute an obstruction of
flows to the --

A. Definitely, yes.

Q. -- downstream Little Wood water --

A. Yeah, definitely given the large elevation
change that it was inducing in the stream, and the
amount of water pouring out into each side of the stream
bank.

Q. Okay. And since you've been on the property,
has the water district taken any efforts to do this kind
of beaver dam removal that you've spoke of?

A. Not to my knowledge. We have spent some time
here ourselves, the Picabo Livestock employees have been
trying to do work here. So at the same time we removed
this beaver dam this week which would have been on
Thursday, we also plugged -- we also plugged some of
these holes as best we could by hand with some straw
bales and just some native soil.

Q. Would you turn now to Exhibit 46?
A. Okay.

MR. BARKER: I'm sorry. Did I move the admission of Exhibit 45? We offer Exhibit 45 at this time, South Valley/Galena Exhibit 45.

THE HEARING OFFICER: Any objection to the admission of this document?

MR. FLETCHER: No objection.
MR. RIGBY: No objection.

THE HEARING OFFICER: The document marked as South Valley and Galena No. 45 is received into evidence.

(SVGWD/GGWD Exhibit 45 received.)

Q. (BY MR. BARKER) Mr. Purdy, have you got Exhibit 46 in front of you?
A. I do.

Q. Did you take this photograph?
A. Yes, I took this photograph about 1:30 p.m. yesterday.

Q. And what's the location of this photograph?
A. So this is another beaver dam in the stream channel of Silver Creek in a location called Bear Track Williams. It's as near as I can tell, like a nature preserve or a small park run by the Fish and Game. The
ditch rider who services our area mentioned to me in passing on that yesterday morning that he saw another beaver dam in the stream along the highway. And so we drove down and took this photo.

Q. So this is below the Highway 93 crossing?

A. It is. It is highway miles maybe five miles highway miles, but significantly more than that in stream miles. The stream flows out and then back in towards the highway, so, yeah, it is below it.

Q. Is this above the confluence of the Little Wood?

A. Below, yeah, no, this would be below the confluence of the Little Wood.

Q. So this is actually in the Little Wood and not in Silver Creek?

A. Sorry. It is in the Little Wood, yes.

Q. Okay. Did you have an estimate of how large this dam is?

A. Again, it spans the entire stream channel. This was backing the water up at least three feet when we arrived. Again, it looks like this beaver dam has been there for quite a while. It is pretty well established. It was difficult to -- the banks in this area are very heavily, I guess just very heavy with brush and willow, so it's difficult to see water flowing
out, but it was backing the water up you could tell a significant distance upstream. So again, about a three foot elevation change here, so...

MR. BARKER: I would move the admission of Exhibit South Valley Ground Water/Galena Ground Water Exhibit 46?

THE HEARING OFFICER: Any objection to the admission of this document?

MR. FLETCHER: No objection.

MR. RIGBY: No objection.

THE HEARING OFFICER: The document marked as South Valley and Galena No. 46 is received into evidence.

(SVGWD/GGWD Exhibit 46 received.)

Q. (BY MR. BARKER) So did you make any effort to try and do something about this beaver dam?

A. We did. We did. Norberto Farfan was with me. So we put on our boots and spent about an hour trying to tear out the center section of this dam. We had reasonable success. We were able to just in the time we were there, the water level dropped at least a foot from its previous level. And we saw water starting to flow back into the stream channel from the surrounding area. It's going to take us a large piece of equipment to get this one out, because the stream is fairly wide here and
it's a large dam.

Q. So when you spoke to the ditch rider, did he give you any information about whether or not the water district had any plans to deal with these beaver dams?

A. No, I didn't ask.

Q. Is it your understanding or is it your belief based upon your observations of the stream, that this beaver dam also impedes the flow to the Little Wood?

A. Yes, I would say pretty significantly. That whatever additional water flows in from upstream is going to first spread out into a very large area. It's hard for me to say how large of an area, but it's going to spread out into a very large area before it actually flows downstream from this beaver dam.

Q. So do you know whether or not there are beaver dams on the Little Wood that have not been taken care of?

A. No, I don't. After observing this second dam, we made the decision that early next week we're going to put some people in a canoe and we're going to float the stream, because it runs pretty wild out through the desert. And to my knowledge, nobody looks at it. I don't know that anybody has looked at inspecting or doing any kind of maintenance on the stream channel. So we're going to take it on ourselves to go just take a
look and see what we can find from the boat.

Q. Are you familiar with the readings that the Water District maintains for Station 10?
A. I am.

Q. Have you observed those readings over the course of the last week?
A. Yeah, I've been watching them pretty carefully for the last three or four days.

Q. And what have you observed about the readings with respect to the work you've done on these beaver dams?
A. A pretty significant spike in the flow in Silver Creek that's -- I apologize. I don't have the numbers in front of me. But my recollection is they were running around 10 cfs around the first and second of June, and it is up consistently around 30 to 35 cfs in the last five or six days -- four or five days, I should say.

MR. BARKER: Thank you, Mr. Purdy. I don't have any further questions. Thank you for coming down for today.

THE HEARING OFFICER: Ms. O'Leary, questions?

MS. O'LEARY: No, Director.

THE HEARING OFFICER: Group 3 questions for Mr. Purdy?
MR. BROMLEY: No.

THE HEARING OFFICER: Mr. O'Bannon?

Cross-examination, Mr. Fletcher.

MR. FLETCHER: Thank you.

CROSS-EXAMINATION

QUESTIONS BY MR. FLETCHER:

Q. Mr. Purdy, I'm Kent Fletcher. I represent Big Wood Canal Company.

A. Nice to meet you.

Q. Nice to meet you. In your testimony you talked about the property that you leased to Mr. Johnson?

A. Yes.

Q. And Mr. Johnson is the same Mr. Johnson that testified in this proceeding; is that correct?

A. That's correct, Mark Johnson, Silver Creek Seed.

Q. Which of your properties did you say you leased to him, or how do you identify that property?

A. We have a piece of property that we farm under contract with Heart Rock Ranch, we call Spring Creek. That's over near Timmerman Hill. That ground is fed by the water from Willow Creek. We also lease two pieces of ground to him on our main ranch property just a mile roughly west of the town Picabo.
Q. How many acres are involved in the Spring -- did you say, Spring Creek?
A. Spring Creek has, I think, it's 120 acres that he's got over there.
Q. And on the other parcel?
A. It's going to be about 200, I believe, about 230 acres.
Q. So a total of about 350 acres?
A. I believe that's correct.
Q. That's how much you are leasing to him this year?
A. Yes.
Q. And I could have misunderstood your testimony. But did you state that what is the source of water to Spring Creek? What is the source of water to Spring Creek?
A. It's Willow Creek, which feeds into the Big Wood.
Q. Okay. So that's surface water?
A. Surface water, yes, there is no ground water right on that property.
Q. So if curtailment takes place, there will still be a water supply to Spring Creek?
A. A ground water curtailment would not affect Spring Creek, no.
Q. And on the other parcel you are talking about, the 230 acre parcel, what is the water source for that?

A. The primary water source is Silver Creek, and then the secondary would be ground water.

Q. So do you know the water rights priority date?

A. We have five feet of perpetual on Silver Creek, and we have 20 feet of September of 1883, and then we have a variety of other rights that are junior to that 1883 right. We have a total of about 60 cfs of right on Silver Creek.

Q. That are appurtenant to that property?

A. That's correct.

Q. Have the 1983 rights been curtailed?

A. The 1883, this year, no.

Q. Excuse me. 1883 rights?

A. No, they have not, although we've been told that they are expecting curtailment on those potentially this next week.

Q. And if those are curtailed, if there is no curtailment, you would then turn on this supplemental pump?

A. If those 1883 rights were curtailed, we would have our five cfs of perpetual. And then we would typically in a normal year, we would turn on our ground water pumping, yes.
Q. And if the supplemental right is curtailed, the ground water pump, you mentioned you were going to get water from a different source?

A. It would be the five cfs of perpetual off of Silver Creek that we had would be the only source of water we would have as long as the September '83 rights are curtailed.

Q. And how many of the 230 acres can you irrigate with that?

A. He would have a difficult time finishing all of that. Yeah, five -- can I do some math; is that all right?

Q. Sure.

A. If we were able to deliver 100 percent of that five cfs to him he could in theory finish that crop. There would be enough water there if we were able to get the full five cfs to him.

Q. Did you hear Mr. Johnson's testimony?

A. I did.

Q. Do you know if he took into account these water sources when he was giving his damage testimony?

A. He wouldn't necessarily be aware of this information, no.

Q. In fact, it was pretty clear he didn't really understand the water right situation at all; is that
correct?

A. I would agree, yeah. He's never had to. It's not been something that he's had to worry about.

Q. As I understand it, you observed this beaver dam in Exhibit 43, Wednesday. And you tore it out Wednesday; is that correct?

A. We did actually, yeah. I'm sorry. I said Thursday, but we did actually send a crew down there on Wednesday, that same day, that afternoon, yes.

Q. No, I think you said Wednesday.

A. Okay. Yes. So we did tear it out. Yeah, we did tear out a portion of it on Wednesday.

Q. And after you tore out that portion, water started flowing freely through that section you tore out?

A. Yes. And we observed water flowing back into the stream channel from the surrounding area.

Q. Have you gone back to that area to see if the dam was reestablished?

A. We were just there yesterday, and we actually saw the beaver. It hasn't started rebuilding it yet, but it certainly will. It was right there next to it.

Q. Is the beaver alive to talk about this incident?

A. Unfortunately, it is, yeah. I didn't have my
weapon or permission to shoot it.

Q. Are you familiar with beavers and how they respond to running water?
A. I wouldn't say so, no. They don't like it, I don't think.

Q. Have you had experience about when you tear out a dam, and how a beaver responds to that?
A. They rebuild it.
Q. Yeah.
A. Yeah, they rebuild it.
Q. So it's a constant problem; correct?
A. Yes. Yes, the beaver is going to have to be trapped out, and we're looking for permission to get that done as well.

Q. And then on the dam referred to in your Exhibit 46, you observed that also, I think you said Wednesday; is that correct?
A. That was yesterday.
Q. Yesterday. And you tore out a section of that dam as well?
A. We did. We took out as much as we could physically. It's a larger more well-established dam, so it's difficult to do by hand.
Q. Have you had a chance to go back and observe whether that dam is back in place?