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DEPARTMENT OF
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BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF BASIN 37
ADMINISTRATIVE PROCEEDING

**OBJECTION AND
MOTION TO STRIKE
MISCHARACTERIZATION
OF EVIDENCE**

COMES NOW, the 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, pursuant to IDAPA 37.01.01.260, I.R.E. 401, and I.R.E. 402, and hereby submit this *Objection and Motion to Strike for Improper Characterization*

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of Evidence (“*Motion to Strike*”), requesting the Director strike from the record certain statements made by Big Wood and Little Wood Water Users Association (“Association”) and Big Wood Canal Company (“BWCC”) in their joint post-hearing brief which mischaracterize the testimony of Gary Beck, a witness for the ground water users.

Mr. Beck testified during the fifth day of the contested case hearing held in the above-captioned matter from June 7-12, 2021. During cross-examination by Kent Fletcher, counsel for BWCC, Mr. Beck was asked about response times between water on his farm and tributaries to Silver Creek:

Q. Did they give you any idea of how quickly it responded?

A. Typically, when we start **putting water** into the gravel pits, up on Pero Road, let's say, or up on Baseline, we typically see a 10 to a 14 day before we see the water coming up in the creeks on Patton Creek and Buhler Drain. That's typically what I have seen in the past.

Q. And those drains, where do they flow?

A. Buhler Drain dumps into Stalker Creek. And Patton Creek dumps into Stalker Creek, which dumps into Silver Creek.

Q. So they're tributaries to Silver Creek?

A. Yes.

See Exhibit A, a true and correct copy of the relevant excerpt from Mr. Beck’s testimony, Tr. Vol. V, 1159:11-24 (emphasis added). Of note, Mr. Beck explained that when the farm adds water back into gravel pits, he begins to see a response, in 10-14 days, of water coming up on Patton Creek and Buhler Dam. Mr. Beck is describing the response rate of direct *recharge* water on tributaries of Silver Creek. He did not testify about, and was not asked about, response time when ground water pumps are shut down.

In contrast, The Association and BWCC characterize Mr. Beck’s testimony, not in terms of the response rate caused by direct recharge to the gravel pits on Silver Spring Ranch, but instead

OBJECTION AND MOTION TO STRIKE MISCHARACTERIZATION OF EVIDENCE

as response rate caused by reducing ground water diversions from his wells. “Mr. Beck also testified that he personally observed increases in flows in Silver Creek within 10-14 days of *reducing ground water diversions* on the Hillsdale farm.” *BWLWWUA and BWCC Post Hearing Brief* (“*Association and BWCC Brief*”), at 24 (emphasis added). Additionally, the Association and BWCC state that, “Gary Beck, a ground water witness, testified that he observed a response in Silver Creek within 10-14 days of the *cessation of ground water diversions*.” *Id.*, at 40 (emphasis added). No attempts were made in cross-examination of Mr. Beck to quantify the recharge volumes, contrast them with pumping volumes, or to explain the duration of any responses. Mr. Beck did *not* testify about response times from cessation of ground water pumping, as the Association and BWCC allege.

The Association and BWCC’s mischaracterization of Mr. Beck’s testimony is improper, is an effort to offer new evidence after the conclusion of the hearing, is irrelevant evidence in any event, and should be struck. “Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence,” and, “Irrelevant evidence is not admissible.” Idaho Rule of Evidences 401(a), 402. Here, the Association and BWCC mischaracterize Mr. Beck’s testimony to argue that reduction in ground water pumping will have a quick, 10-14 day, response on the availability of water in Silver Creek. This particular issue is of central importance in these proceedings, and the Association and BWCC cannot be allowed to fabricate testimony to support their position. Mr. Beck testified as to the downstream response caused by direct recharge from the Silver Springs gravel pits, which will have a different and distinct impact on downstream water as compared to the effects of unspecified reductions in ground water withdrawal over an unspecified period. The mischaracterized testimony will not have any tendency to offer truth to the Association and BWCC’s contention that reduced ground water pumping will have a quick, or

noticeable increase in downstream water because Mr. Beck's testimony simply does not speak to that issue.

The Association and BWCC's mischaracterized testimony should be struck from the record because it improperly characterizes Mr. Beck's testimony and is therefore, irrelevant evidence. To wit, the following statements should be struck from the *Association and BWCC Brief*:

- 1) "Mr. Beck also testified that he personally observed increases in flows in Silver Creek within 10-14 days of reducing ground water diversions on the Hillsdale farm."
- 2) "Gary Beck, a ground water witness, testified that he observed a response in Silver Creek within 10-14 days of the cessation of ground water diversions."

See Association and BWCC Brief, at 24, 40.

Dated this 24th 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

By: /s/ Heather E. O'Leary

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th 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



1 correct?

2 A. We have -- I haven't necessarily seen the
3 increase. But TNC, they made that comparison.

4 Q. Okay. So as your groundwater pumping
5 decreased and your other irrigation decreased, Silver
6 Creek responded to that; correct?

7 A. Yes.

8 Q. According to the study you've cited here
9 today?

10 A. Yes.

11 Q. Did they give you any idea of how quickly
12 it responded?

13 A. Typically, when we start putting water into
14 the gravel pits, up on Pero Road, let's say, or up on
15 Baseline, we typically see a 10 to a 14 day before we
16 see the water coming up in the creeks on Patton Creek
17 and Buhler Drain. That's typically what I have seen in
18 the past.

19 Q. And those drains, where do they flow?

20 A. Buhler Drain dumps into Stalker Creek. And
21 Patton Creek dumps into Stalker Creek, which dumps into
22 Silver Creek.

23 Q. So they're tributaries to Silver Creek?

24 A. Yes.

25 Q. These stresses on your crop that you