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Attorneys for Big Wood & Little Wood Water Users Association and Big Wood Canal Company

**BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF BIG WOOD RIVER
GROUND WATER MANAGEMENT AREA**

**IN THE MATTER OF APPLICATIONS FOR
PERMITS FOR THE DIVERSION AND USE
OF SURFACE AND GROUND WATER
WITHIN THE SNAKE RIVER BASIN**

**BIG WOOD & LITTLE WOOD WATER
USERS ASSOCIATION EXPERT AND LAY
WITNESS DISCLOSURE AND PROPOSED
EXHIBITS**

Pursuant to that certain Order Consolidating Proceedings for Hearing, Authorizing Discovery, and Scheduling; Notice of Hearing, dated March 31, 2023, Big Wood and Little Wood Water User's Association, as the representative designation of its members who have filed notices of participation in the above entitled administrative proceeding (hereinafter BWLWWUA), and hereby submit the following intended expert witnesses in the above entitled matter:

Expert Disclosure under I.R.C.P. 26(b)(4)(A)(i)

*****Please Note***** The following Experts will only be called regarding the issue of whether all pumping in the BWGWMA has an impact on all surface water sources upstream from Magic Reservoir, including Silver Creek.”

**BIG WOOD & LITTLE WOOD WATER USERS ASSOCIATION EXPERT AND LAY
WITNESS DISCLOSURE AND PROPOSED EXHIBITS**

1. Expert: Bryce Contor

- Affiliation: Rocky Mountain Environmental Associates, Inc.
- Contact Information: 482 Constitution Way, Ste. 303, Idaho Falls, ID 83402;
bryce.rmea@gmail.com; 208-524-2353

A. Complete Statement of All Opinions and Basis for Opinion

- The complete statement of all opinions to be expressed, as well as the basis and reasons for each opinion, are comprehensively covered in the submitted "Big Wood Moratorium Silver Creek Impacts from Pumping," authored by Eric C. Miller, M.S., Yellowstone Earth Science; Bryce A. Contor, M.S., Rocky Mountain Environmental; and Thane R. Kindred, M.S., Rocky Mountain Environmental, dated August 11, 2023.

B. Data or Other Information Considered

- The data and other information considered by the witness in forming the opinions are included in the attached Exhibit A. Additionally, several essential documents are available on the Idaho Department of Water Resources (IDWR) website. URLs for these documents have been provided in a Word document within the attached Exhibit A. See also "Big Wood Moratorium Silver Creek Impacts from Pumping," authored by Eric C. Miller, M.S., Yellowstone Earth Science; Bryce A. Contor, M.S., Rocky Mountain Environmental; and Thane R. Kindred, M.S., Rocky Mountain Environmental, dated August 11, 2023.

C. Exhibits to be Used

- The only exhibit to be used for summary or support of the opinions is the aforementioned submitted Report. The exhibits to be used for summary or support of

the opinions will include hydrological studies, data analysis results, and relevant field reports. Please Exhibit A.

D. Qualifications of the Witness

- The qualifications of the witness, including a list of all publications authored within the preceding ten years, have been submitted and are contained in the attached Curriculum Vitae (CV). Please see Exhibit A.

E. Compensation for Testimony

- The witness will not be paid specifically for testimony but will invoice for time spent in hearing and travel. The rate sheet for Rocky Mountain Environmental Associates is attached, and the witness will be billed at the "Principal" rate. Provision for 2x the rate for expert testimony will be applied to the time spent in the witness chair. The rate for such activities will be in accordance with the rate sheet of Rocky Mountain Environmental Associates, Inc. Please see Exhibit A.

F. Prior Expert Testimony

- Please see attached Curriculum Vitae (CV) in Exhibit A.

2. Eric C. Miller - Yellowstone Earth Science

- Affiliation: Yellowstone Earth Science
- Contact Information: 2202 W. 8200 S., Rexburg, ID 83440;
Eric.Miller@yellowstoneearthscience.com; (208) 816-2881

A. Complete Statement of All Opinions and Basis for Opinion

- The complete statement of all opinions to be expressed, as well as the basis and reasons for each opinion, are comprehensively covered in the submitted "Big Wood Moratorium Silver Creek Impacts from Pumping," authored by Eric C. Miller, M.S., Yellowstone Earth Science; Bryce A. Contor, M.S., Rocky Mountain Environmental;

and Thane R. Kindred, M.S., Rocky Mountain Environmental, dated August 11, 2023.

B. Data or Other Information Considered

- The data and other information considered by the witness in forming the opinions are included in the attached Exhibit A. These consist of geological surveys, water usage data, and scientific models. Additional essential documents are available on the Idaho Department of Water Resources (IDWR) website. URLs for these documents have been provided in a Word document within the attached Exhibit A.

C. Exhibits to be Used

- The only exhibit to be used for summary or support of the opinions is the aforementioned submitted Report. Please refer to Exhibit A for geological surveys, water usage data, and scientific models.

D. Qualifications of the Witness

- The qualifications of the witness, including a list of all publications authored within the preceding ten years, have been submitted and are contained in the attached Curriculum Vitae (CV). Please see Exhibit A.

E. Compensation for Testimony

- The witness will not be paid specifically for testimony but will invoice for time spent in hearing and travel. The rate for such activities will be similarly in accordance with the rate sheet of Rocky Mountain Environmental Associates, Inc. Please see Exhibit A.

F. Prior Expert Testimony

- Please see attached Curriculum Vitae (CV) in Exhibit A for any prior instances where the witness has testified as an expert.

3. Thane R. Kindred

- Affiliation: Rocky Mountain Environmental Associates, Inc.
- Contact Information: 482 Constitution Way, Ste. 303, Idaho Falls, ID 83402;
thane.rmea@gmail.com; 801-243-0347

A. Complete Statement of All Opinions and Basis for Opinion

- Thane R. Kindred's opinions, as well as the basis and reasons for each opinion, are comprehensively covered in the submitted "Big Wood Moratorium Silver Creek Impacts from Pumping," authored by Eric C. Miller, M.S., Yellowstone Earth Science; Bryce A. Contor, M.S., Rocky Mountain Environmental; and Thane R. Kindred, M.S., Rocky Mountain Environmental, dated August 11, 2023.

B. Data or Other Information Considered

- The data and other information considered by the witness in forming the opinions are the same as those considered by Bryce A. Contor and are included in the attached Exhibit A. Additional essential documents are available on the Idaho Department of Water Resources (IDWR) website. URLs for these documents have been provided in a Word document within the attached Exhibit A.

C. Exhibits to be Used

- The only exhibit to be used for summary or support of the opinions is the aforementioned submitted Report. Please refer to Exhibit A for hydrological studies, data analysis results, and relevant field reports.

D. Qualifications of the Witness

- The qualifications of the witness, including a list of all publications authored within the preceding ten years, have been submitted and are contained in the updated

Curriculum Vitae (CV). This updated CV includes three additional publications not present in the initial CV. Please see Exhibit A.

E. Compensation for Testimony

- Thane R. Kindred will not be paid specifically for his testimony but will invoice for time spent in hearing and travel. He will be billed at the "Geologist II" rate, as detailed in the rate sheet attached to Exhibit A. Provision for 2x the rate for expert testimony will be applied to the time spent in the witness chair.

F. Prior Expert Testimony

- This is Thane R. Kindred's first time acting as an expert witness and/or being deposed. Therefore, there is no prior trial or deposition experience to report.

All expert witnesses will testify on matters within the scope of the proceeding described by the Director, including subjects concerning the connectivity of water sources within the district and the impacts of pumping activities. They are prepared to offer rebuttals to any opposing expert testimony and may be available as fact witnesses to provide background information. They may also address any other issues raised or evidence presented in this proceeding, whether as a rebuttal witness or otherwise. Additionally, the witnesses will present an analysis of the impacts resulting from pumping activities in the area, specifically addressing the effects on water availability and quantity. Their testimony will also encompass the nature and scope of water usage within Water District 37, offering insights into the diverse applications and consumption patterns. Furthermore, the witnesses are prepared to offer rebuttals to any opposing expert testimony, ensuring that a comprehensive understanding of the water management issues is presented to the Director. The witnesses may also be made available as fact witnesses to provide background and other information relevant to this proceeding. The witnesses may also address any other issues raised or evidence presented in this proceeding, whether as a rebuttal witness or otherwise, and whether as an expert or

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lay witness, including issues raised or evidence presented by other parties or by the Director or IDWR staff. Please see Attached Exhibit A are the Curriculum Vitae for each of the individual experts, further detailing the items identified in Interrogatory 3 a.-d.

LAY WITNESSES

1. Kevin Lakey - BWCC General Manager

- Physical Address: 1614 E. 1800 S., Gooding, Idaho 83330
- Telephone Number: 208-316-1038
- Email: manager@bigwoodcanal.com
- Nature of Testimony: Will discuss the general management practices of the Big Wood Canal Company, including the effects of pumping activities and their impact on water availability and quality. May also testify regarding his former position as WD37 Watermaster regarding the daily operations concerning water distribution within Water District 37, including the mechanisms in place for equitable water distribution and the challenges faced.

2. Sunny Healey - WD37 Watermaster

- Physical Address: 107 W 1ST ST, SHOSHONE, ID 83352-5425
- Telephone Number: 208-886-2451
- Email: watermanager@wd37.org
- Nature of Testimony: Will testify on the daily operations concerning water distribution within Water District 37, including the mechanisms in place for equitable water distribution and the challenges faced.

3. James Cefelo

- IDWR Regional Manager IDWR Eastern Region
- Telephone Number: (208) 525-7161
- Email: James.Cefalo@idwr.idaho.gov
- Nature of Testimony: James Cefelo, as the IDWR Regional Manager for the Eastern Region, is expected to testify on matters pertaining to water management, regulatory oversight, and the complexities of water rights in the State of Idaho. His testimony

may include, but is not limited to, the following: Explaining the methodology and governing policies behind the IDWR's approach to water rights allocation, including the calculation methods for consumptive and non-consumptive water use; Providing insights into the hydrogeological interconnections within water districts and their impact on senior and junior water rights, particularly in the context of the Big Wood Moratorium Order; Discussing the current moratorium order's framework, which establishes a rebuttable presumption that municipal or domestic uses from community water systems are considered fully consumptive unless proven otherwise; Addressing the administrative and enforcement capabilities of the IDWR, particularly in light of the Riverside case and the current debate on whether IDWR has the administrative capacity to continually monitor water rights without causing injury to senior rights; Offering his professional opinion on the advantages and challenges of case-by-case evaluation of water rights, as well as the practical implications of such an approach for both the IDWR and water rights holders; Responding to questions about expert reports submitted in the proceedings, including any submitted by or referenced by the IDWR. Mr. Cefelo may also provide rebuttal testimony to any opposing expert witnesses and address any other issues raised or evidence presented in this proceeding, whether as a rebuttal witness or otherwise.

4. Shelley Keen

- IDWR Bureau Chief
- 322 East Front Street, P.O. Box 83720, Boise, Idaho 83720-0098.
- Telephone: (208) 287-4800
- Email: Shelley.Keen@idwr.idaho.gov
- Nature of Testimony: Shelley Keen, serving as the IDWR Bureau Chief, is anticipated to testify on various aspects of water management, regulatory protocols, and water rights administration in the State of Idaho. Her testimony may encompass, but is not limited to, the following subjects: Discussing the IDWR's regulatory framework for evaluating water rights, with a focus on how the agency handles municipal and domestic uses from community water systems under the current moratorium order; Providing expert commentary on the technical and legal complexities surrounding consumptive and non-consumptive water use, especially as it relates to the Big Wood Moratorium Order and the Snake River Moratorium. Offering insights into how the IDWR assesses and manages the burden of ongoing consumptive use evaluations, considering its current funding and administrative capacities; Elaborating on the practical challenges and implications of case-by-case evaluations for water rights, including the administrative overhead and the potential risks to senior water rights holders; Addressing any expert reports submitted in the proceedings, including those authored by IDWR personnel or external experts, and how these reports should be interpreted in the context of Idaho water law; Providing rebuttal testimony to counter any opposing expert witnesses, as well as addressing any other issues or evidence presented in the course of this proceeding; The scope of

Ms. Keen's testimony is subject to change and may be adjusted based on evolving insights, new evidence, or developments in the case.

5. Any witness required to establish a foundation for an exhibit.
 - Nature of Testimony: Will establish the authenticity and admissibility of exhibits presented.
6. Any witness required for rebuttal.
 - Nature of Testimony: Will offer rebuttals to any opposing expert or lay testimony, ensuring a comprehensive understanding of the issues is presented.
7. Any witness endorsed or produced by the department.
 - Nature of Testimony: Will provide information relevant to the department's stance and evidence in the case.
8. Any witness called by the Big Wood Canal Company.

The witnesses will testify in the upcoming hearing concerning Water District 37. The witnesses will testify to matters within the scope of the proceeding described by the Director which may include, without limitation, subjects concerning the connectivity of water sources within the district, elaborating on the intricate interconnections and dependencies among them. Additionally, the witness will present an analysis of the impacts resulting from pumping activities in the area, specifically addressing the effects on water availability and quality. Their testimony will also encompass the nature and scope of water usage within Water District 37, offering insights into the diverse applications and consumption patterns. Furthermore, the witnesses are prepared to offer rebuttals to any opposing expert testimony, ensuring that a comprehensive understanding of the water management issues is presented to the Director. The witnesses may also be made available as fact witnesses to provide background and other information relevant to this proceeding. The witnesses may also address any other issues raised or evidence presented in this proceeding, whether

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as a rebuttal witness or otherwise, and whether as an expert or lay witness, including issues raised or evidence presented by other parties or by the Director or IDWR staff.

BWLWWUA and BWCC reserves the right to supplement the witnesses list based upon discovery in this action.

EXHIBIT LIST

1. **BWLWWUA/BWCC Exhibit 100:** "Big Wood Moratorium Silver Creek Impacts from Pumping," authored by Eric C. Miller, M.S., Yellowstone Earth Science; Bryce A. Contor, M.S., Rocky Mountain Environmental; and Thane R. Kindred, M.S., Rocky Mountain Environmental, dated August 11, 2023. Attached in Exhibit A. *See* also Exhibit A for documents that were relied on by Experts containing the following documents that witnesses may rely on the following at hearing:

- Miller, Eric (2021). Impacts to Senior Surface Water Rights in the Little Wood-Silver Creek Drainage: Affects from Junior Priority Ground Water Pumping in the Wood River Valley South of Bellevue, Idaho and Potential Benefits of Curtailment in the 2021 Irrigation Season.
- Smith, R. O. (1959). Ground-Water Resources of the Middle Big Wood River - Silver Creek Area Blaine County, Idaho. U.S. Geologic Survey.
- Castelin, P. and Chapman, S. Water Resources of the Big Wood River - Silver Creek Area, Blaine County, Idaho. Idaho Dept. of Water Administration Water Information Bulletin No. 28. November 1972.
- Loinaz, M. (2012). Modeling eco-hydrological impacts of land management and water use in the Silver Creek Basin. Technical University of Denmark.

- Hydrologic Assessment for Monitoring Groundwater/Surface-Water Interactions In and Near the Nature Conservancy's Silver Creek Preserve, Phase I. Rocky Mountain Environmental. August 2011.
- Bartolino, J. (2009). Ground-Water Budgets for the Wood River Valley Aquifer System, South-Central Idaho, 1995-2004. U.S. Geologic Survey.
- Moreland, J. (1977). Ground Water - Surface Water Relations in the Silver Creek Area, Blaine County, Idaho. (With associated plates and figures.) U.S. Geologic Survey.
- Water-Resource Trends and Comparisons Between Partial Development and October Skinner, K. et al. (2007).
- 2006 Hydrologic Conditions, Wood River Valley, South-Central Idaho. U.S. Geologic Survey.
- 2011 Idaho Department of Water Resources GIS Data related to Silver Creek. Fisher, J. et al. (2016)
- Groundwater-Flow Model for the Wood River Valley Aquifer System, South-Central Idaho. U.S. Geologic Survey.
- IDWR (2013 - 2017) Design Documents for the Wood River Valley Groundwater-Flow Model (<https://idwr.idaho.gov/water-data/projects/wood-river-valley/documents/>).
- IDWR (various dates) Reference Material for the Wood River Valley Groundwater-Flow Model (<https://idwr.idaho.gov/water-data/projects/wood-river-valley/references/>) (may include redundancies to other listed documents).

- IDWR (various dates) Model Files for the Wood River Valley Groundwater-Flow Model (<https://idwr.idaho.gov/water-data/projects/wood-river-valley/model/>) (may include redundancies to other listed documents).

2. **BWLWWUA/BWCC Exhibit 101:** 1991 Big Wood River Ground Water Management

Deisgnation Order

Additionally, the following documents contain information regarding the fully consumptive issue. The Idaho Department of Water Resources, Staff, IDAHO WATER CENTER, 322 E FRONT ST STE 648, BOISE ID 83702-7371, Phone: (208) 287-4800, idwrinfo@idwr.idaho.gov. SEE EXHIBIT B.

2. **BWLWWUA/BWCC Exhibit 102:** Big Wood River Appropriations Hold on new appropriations upstream from Magic Reservoir. Includes map of Big Wood River Drainage 1-22-80
3. **BWLWWUA/BWCC Exhibit 103:** Boise River Appropriations. 1-22-80
4. **BWLWWUA/BWCC Exhibit 104:** PROCESSING APPLICATIONS AND AMENDMENTS AND DETERMINING BENEFICIAL USE FOR NON-RAFN MUNICIPAL WATER RIGHTS Date: October 19, 2009.
5. **BWLWWUA/BWCC Exhibit 105:** ADMINISTRATOR'S MEMORANDUM RE: Approval of Applications in the Snake River Basin and Bear River Basin Moratorium Areas.
6. **BWLWWUA/BWCC Exhibit 106:** ADMINISTRATOR'S MEMORANDUM RE: WATER RIGHT FILING REQUIREMENTS FOR INDUSTRIAL WASTE WATER USE AND TREATMENT (INTERIM POLICY) September 27, 1996.
7. **BWLWWUA/BWCC Exhibit 107:** Memorandum: Recommendations for the Processing of Reasonably Anticipated Future Needs (RAF) Municipal Water Rights at the Time of

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of October, 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

<p>Robert L. Harris HOLDEN, KIDWELL, HAHN & CRAPO, PLLC P.O. Box 50130 Idaho Falls, ID 83405 rharris@holdenlegal.com</p>	<p><input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
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<p>Dylan B. Lawrence VARIN THOMAS LLC P.O. Box 1676 Boise, Idaho 83701-1676 dylan@varinthomas.com</p>	<p><input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
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