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DEPARTMENT OF  
WATER RESOURCES

*Attorneys for the Sun Valley Company*

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

IN THE MATTER OF DISTRIBUTION OF  
WATER TO VARIOUS WATER RIGHTS  
HELD BY OR FOR THE BENEFIT OF  
A&B IRRIGATION DISTRICT,  
AMERICAN FALLS RESERVOIR  
DISTRICT #2, BURLEY IRRIGATION  
DISTRICT, MILNER IRRIGATION  
DISTRICT, MINIDOKA IRRIGATION  
DISTRICT, NORTH SIDE CANAL  
COMPANY, AND TWIN FALLS CANAL  
COMPANY

Docket No. CM-DC-2010-001

**SUN VALLEY COMPANY'S PETITION  
TO INTERVENE**

COME NOWS the Sun Valley Company, by and through its counsel of record, pursuant to IDAPA 37.01.01.350 -.354, and hereby files this *Petition to Intervene* in the above-captioned matter.

**I. BACKGROUND**

Since 2005, the Director of the Idaho Department of Water Resources ("Director" or "IDWR") has issued administrative orders in response to the ongoing conjunctive administration delivery call filed by members of the Surface Water Coalition ("SWC"). A member of the SWC is the A&B Irrigation District ("A&B"), which holds both surface water and ground water rights.

On April 11, 2019, the Director issued his *Final Order Regarding April 2019 Forecast Supply (Methodology Steps 1-3)* (“April Final Order”). The April Final Order found a 20,900 acre-feet demand shortfall to the Twin Falls Canal Company, requiring curtailment of junior-priority ground water rights, absent mitigation, “within the Eastern Snake Plain Aquifer area of common ground water supply.” *April Final Order* at 6 (emphasis added). Of the predicted 20,900 acre-foot shortfall, the Director established A&B’s “proportionate share of the predicted . . . is 2,121 acre-feet.” *Id.* at 5, fn. 4.

On April 23, 2019, A&B filed a *Petition for Reconsideration and Request for Hearing Re: April 2019 As Applied Order* (“A&B Petition”). According to A&B, “No explanation is given in the order regarding the method and calculation of the ‘proportionate share.’” *A&B Petition* at 2. In requesting reconsideration, and as to the “area of common ground water supply,” A&B states:

Finally, the Director failed to consider the impacts caused by hydraulically connected junior ground water rights tributary to the Snake River but that are not within the defined “area of common ground water supply.” Rule 50. Irrespective of the rule, the Director has a duty and obligation to use the best available science in water right administration, which he acknowledges is ESPAM 2.1. *See April Order* at 4, n.3. ESPAM 2.1 defines the Eastern Snake Plain Aquifer differently than the CM Rules, which were promulgated over 20 years ago. *See* CM Rule 50.01. The rule admittedly fails to account for the best available science to the detriment of junior ground water users like A&B.<sup>2</sup> [footnote discussing the Director’s prior attempt to repeal Rule 50] By excluding certain juniors from administration the Director has artificially enlarged the mitigation obligation of A&B contrary to Idaho’s constitution and water distribution statutes. Stated another way, if all hydraulically connected juniors are being appropriately administered, A&B’s “proportionate share” of the mitigation obligation would be lower. The application of the CM Rules in such a manner is unconstitutional and should be reconsidered.

*Id.* at 3 (emphasis added).

In requesting a hearing, A&B states: “To the extent the Director denies the above request for reconsideration . . . A&B requests a hearing on the same pursuant to Idaho Code § 42-1701A(3).” *Id.*

On May 14, 2019, the Director granted A&B’s request for hearing, but did not set a hearing date. “Counsel for A&B should contact counsel for the Department to coordinate informal discussions.” *Order Granting Request for Hearing* at 2.

## II. ARGUMENT

In order to grant a petition to intervene, the moving party must demonstrate it is “timely” filed, IDAPA 37.01.01.352, and that it has a “direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues . . . .” IDAPA 37.01.01.353. The Sun Valley Company meet these requirements.

First, the Sun Valley Company has a direct and substantial interest in the outcome of the hearing. The Sun Valley Company owns ground water and surface water rights in Basin 37 it uses for various purposes. The Sun Valley Company’s water rights have not been conjunctively administered with water rights that are hydraulically connected to the Eastern Snake Plain Aquifer (“ESPA”). The A&B Petition calls this distinction into question by raising questions regarding the “area of common ground water supply” and “CM Rule 50.” *A&B Petition* at 3. The Sun Valley Company has previously defended against attempts to bring its water rights into conjunctive administration with the ESPA. *See Sun Valley Company’s Amended Petition for Reconsideration of Final Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area*, AA-GWMA-2016-001 (November 23, 2016) (opposing inclusion of the Big Wood River Basin within the scope of the ESPA). Given the scope of the A&B Petition, an outcome of the hearing ordered by the Director could implicate CM Rule 50, the area of common

ground water supply, and the boundary of the ESPA to bring the Sun Valley Company's water rights into administration with water rights hydraulically connected to the ESPA, which the Company has previously opposed.

Second, the Sun Valley Company's petition is timely. A petition to intervene is timely if it is:

[F]iled at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier unless a different time is provided by order or notice. Petitions not timely filed must state a substantial reason for delay. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenor who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition.

IDAPA 37.01.01.352.

Here, a hearing has been ordered, with no date yet set by the Director for the hearing, or a prehearing conference. As such, this petition is timely and should be granted as a matter of right.

### III. CONCLUSION

Based on the foregoing, the Sun Valley Company meet the standards for intervention, and respectfully requests the Director grant its petition to intervene in this proceeding and fully participate in all matters that may arise.

Respectfully submitted this 14<sup>th</sup> day of May, 2019.

McHugh Bromley, PLLC



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CHRIS M. BROMLEY

*Attorneys for the Sun Valley Company*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14<sup>th</sup> day of May, 2019, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

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