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*Attorneys for Gary Spackman and the Idaho  
Department of Water Resources*

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

CITY OF HAILEY, an Idaho municipal  
corporation, and CITY OF BELLEVUE, an  
Idaho municipal corporation,

Petitioners,

vs.

GARY SPACKMAN in his official capacity as  
the Director of the IDAHO DEPARTMENT  
OF WATER RESOURCES; and the IDAHO  
DEPARTMENT OF WATER RESOURCES,

Respondents,

and

CITY OF KETCHUM, CITY OF FAIRFIELD,  
WATER DISTRICT 37-B GROUNDWATER  
GROUP, BIG WOOD & LITTLE WOOD

**Case No. CV-WA-2015-14419**

**STIPULATED MOTION TO  
AUGMENT THE RECORD**

WATER USERS ASSOCIATION, SUN VALLEY COMPANY, SOUTH VALLEY GROUND WATER DISTRICT, ANIMAL SHELTER OF WOOD RIVER VALLEY, DENNIS J. CARD and MAUREEN E. MCCANTY, EDWARD A LAWSON, FLYING HEART RANCH II SUBDIVISION OWNERS ASSOCIATION, INC., HELIOS DEVELOPMENT, LLC, SOUTHERN COMFORT HOMEOWNER'S ASSOCIATION, THE VILLAGE GREEN AT THE VALLEY CLUB HOMEOWNERS ASSOCIATION, INC., AIRPORT WEST BUSINESS PARK OWNERS ASSN INC., ANNE L. WINGATE TRUST, AQUARIUS SAW LLC, ASPEN HOLLOW HOMEOWNERS, DON R. and JUDY H. ATKINSON, BARRIE FAMILY PARTNERS, BELLEVUE FARMS LANDOWNERS ASSN, BLAINE COUNTY RECREATION DISTRICT, BLAINE COUNTY SCHOOL DISTRICT #61, HENRY and JANNE BURDICK, LYNN H. CAMPION, CLEAR CREEK LLC, CLIFFSIDE HOMEOWNERS ASSN INC, THE COMMUNITY SCHOOL INC, JAMES P. and JOAN CONGER, DANIEL T. MANOOGIAN REVOCABLE TRUST, DONNA F. TUTTLE TRUST, DAN S. FAIRMAN MD and MELYNDA KIM STANDLEE FAIRMAN, JAMES K. and SANDRA D. FIGGE, FLOWERS BENCH LLC, ELIZABETH K. GRAY, R. THOMAS GOODRICH and REBECCA LEA PATTON, GREENHORN OWNERS ASSN INC, GRIFFIN RANCH HOMEOWNERS ASSN and GRIFFIN RANCH PUD SUBDIVISION HOMEOWNERS ASSN INC, GULCH TRUST, IDAHO RANCH LLC, THE JONES TRUST, LOUISA JANE H. JUDGE, RALPH R. LAPHAM, LAURA L. LUCERE, CHARLES L. MATTHIESEN, MID VALLEY WATER CO LLC, MARGO PECK, PIONEER RESIDENTIAL & RECREATIONAL PROPERTIES LLC, RALPH W. & KANDI L. GIRTON 1999 REVOCABLE TRUST, RED CLIFFS



HOMEOWNERS ASSCIATION, F.  
ALFREDO REGO, RESTATED MC MAHAN  
1986 REVOCABLE TRUST, RHYTHM  
RANCH HOMEOWNERS ASSN, RIVER  
ROCK RANCH LP, ROBERT ROHE,  
MARION R. and ROBERT M. ROSENTHAL,  
SAGE WILLOW LLC, SALIGAO LLC,  
KIRIL SOKOLOFF, STONEGATE  
HOMEOWNERS ASSN INC, SANDOR and  
TERI SZOMBATHY, THE BARKER  
LIVING TRUST, CAROL BURDZY  
THIELEN, TOBY B. LAMBERT LIVING  
TRUST, VERNON IRREVOCABLE TRUST,  
CHARLES & COLLEEN WEAVER,  
THOMAS W. WEISEL, MATS AND SONYA  
WILANDER, MICHAEL E. WILLARD,  
LINDA D. WOODCOCK, STARLITE  
HOMEOWNERS ASSOCIATION, GOLDEN  
EAGLE RANCH HOMEOWNERS ASSN  
INC, TIMBERVIEW TERRACE  
HOEMOWNERS ASSN, and  
HEATHERLANDS HOMEOWNERS  
ASSOCIATION INC.,

Intervenors.

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHTS HELD BY  
MEMBERS OF THE BIG WOOD & LITTLE  
WOOD WATER USERS ASSOCIATION  
DIVERTING FROM THE BIG WOOD AND  
LITTLE WOOD RIVERS

COME NOW, Petitioners and Respondents, by and through their counsel of record and pursuant to Idaho Rule of Civil Procedure 84(1) and the September 18, 2015, *Stipulation*, and request the Court augment the record in the above-captioned matter with the documents listed below and attached to this stipulation as Attachments A-1 – A-9.

1. Joint Motion for Stay of Delivery Calls, September 17, 2015;
2. Order Granting Late Request to Participate, September 21, 2015;

3. Joint Motion to Designate ACGWS Order and Sun Valley Order as Final Orders, September 25, 2015;
4. Response to Joint Motion for Stay; Motion to Compel, September 28, 2015;
5. Affidavit of Dylan B. Lawrence in Support of Response to Joint Motion for Stay and Motion to Compel, September 28, 2015;
6. Order Designating ACGWS Order and Sun Valley Order as Final Orders, October 15, 2015;
7. Order Granting Joint Motion for Stay of Delivery Calls; Granting Motion to Compel, October 15, 2015;
8. Order Denying Joint Motion to Revise Interlocutory Order, October 16, 2015;
9. Order Denying Motion to Revise Interlocutory Order, October 16, 2015.

In entering this stipulation, the Petitioners do not waive their objections to the contents of the agency record as set forth in their September 23, 2015, Objection to Agency Record *In re: City of Hailey and Bellevue v. Spackman, et al*, Ada County District Court Case No. CV-WA-2015-14419<sup>1</sup>, including but not limited to their objection to inclusion of the following documents:

- a. Hydrology, Hydrogeology, and Hydrologic Data Staff Memo dated August 28, 2015 (BW R. at 1080-1104; LW R. at 1057-1081 ); and
- b. Surface Water Delivery Systems Staff Memo dated August 31, 2015 (BW R. at 1105-1342 and LW R. at 1082-1319).

The Petitioners and Respondents request the Court enter an order granting this stipulated motion to augment the record. No oral argument is requested. Should the Court grant the motion, the Department will provide the Court and the parties with the documents described above as Attachments A-1 – A-9 on one DVD, in OCR format.

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<sup>1</sup> This Objection to Agency Record is included in the settled agency record lodged with the Court on October 7, 2015, as shown in the LW Table of Contents at pages 1333-76 and the BW Table of Contents at pages 1360-1403.

DATED this 27<sup>th</sup> day of October 2015.

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By: 

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MCHUGH BROMLEY, PLLC

By: 

Candice M. McHugh  
Chris M. Bromley  
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IDAHO DEPARTMENT OF WATER  
RESOURCES

By: 

Emmi L. Blades  
*Attorney for the Idaho Department of Water  
Resources and Gary Spackman, Director of Idaho  
Department of Water Resources*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28<sup>th</sup> day of October 2015, I caused a true and correct copy of the foregoing document to be filed with the Court and served on the following parties by the indicated methods:

*Original to:*

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253 3RD AVE NORTH  
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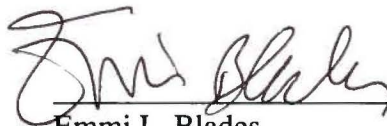
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# **Attachment A-1**

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SEP 17 2015

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**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHTS HELD BY  
MEMBERS OF THE BIG WOOD & LITTLE  
WOOD WATER USERS ASSOCIATION  
DIVERTING FROM THE BIG WOOD  
RIVER

Docket No. CM-DC-2015-001

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHTS HELD BY  
MEMBERS OF THE BIG WOOD & LITTLE

Docket No. CM-DC-2015-002



WOOD WATER USERS ASSOCIATION  
DIVERTING FROM THE LITTLE WOOD  
RIVER

JOINT MOTION FOR STAY OF  
DELIVERY CALLS

The City of Hailey ("Hailey"), the City of Bellevue ("Bellevue"), Sun Valley Company ("SVC"), the Big & Little Wood Water Users Association ("WUA"), the City of Ketchum ("Ketchum"), and the City of Fairfield ("Fairfield") (collectively, the "Movants"), by and through their respective attorneys of record, jointly file this *Joint Motion for Stay of Delivery Calls* ("Joint Motion") requesting the Director ("Director") of the Idaho Department of Water Resources ("Department") stay all further proceedings in the above-captioned matters (the "Delivery Calls") for the reasons and upon the terms set forth herein.

RECITALS

1. The WUA, through their attorney, initiated proceedings before the Department seeking administration of junior ground water rights in Water Districts 37 and 37B alleging that diversions of water under such junior ground water rights cause material injury to the surface water rights of the WUA's members.

2. On August 18, 2015, Hailey and Bellevue filed their *Petition for Judicial Review of Agency Action* ("Cities' Petition") in Ada County District Court, Case No. CV-OC-1514419, seeking judicial review of the July 22, 2015, *Order Denying Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* ("ACGWS Order") issued by the Director.

3. On August 19, 2015, SVC filed its *Petition for Judicial Review* ("SVC Petition") in Ada County District Court, Case No. CV-OC-1514500, seeking judicial review of the July 22, 2015, *Order Denying Sun Valley Company's Motion To Dismiss* ("Sun Valley Order") issued by the Director.

4. The *Cities' Petition* and the *SVC Petition* (together the "*Petitions*") have been reassigned from the Fourth District to the Snake River Basin Adjudication District Court of the Fifth Judicial District. The *Cities' Petition* was renumbered by the Court from CV-OC-1514419 to CV-WA-2015-14419. The *SVC Petition* was renumbered by the Court from CV-OC-1514500 to CV-WA-2015-14500.

5. Concurrent with the execution of this *Joint Motion*, the Movants and the Department entered into a *Stipulation* in which they agreed: (a) that Hailey, Bellevue, Ketchum, Fairfield and SVC would file a motion requesting the Director designate the *ACGWS Order* and *Sun Valley Order* as final orders pursuant to the Department's Rules of Procedure 710 and 750 subject to judicial review under the Idaho Administrative Procedure Act, Idaho Code § 67-5270(3); (b) that the Movants would file this *Joint Motion* requesting that the Director stay all administrative proceedings on the Delivery Calls, including without limitation all discovery and motion practice, until the District Court issues Rule 54 final and appealable judgments on the *Cities' Petition* and the *SVC Petition*; and (c) that the terms and conditions of the stay would be set forth in this *Joint Motion*.

#### JOINT MOTION

6. The Movants hereby move the Director to:

a. Order the stay of all administrative proceedings on the Delivery Calls, including without limitation all discovery and motion practice, until the District Court has issued Rule 54 final and appealable judgments on both the *Cities' Petition* and the *SVC Petition* (the "*Stay*"); and

b. Order that, following issuance of Rule 54 final and appealable judgments by the District Court on both the *Cities' Petition* and the *SVC Petition*, whichever is later, the Department will promptly notice scheduling of a status conference at which the parties to the

Delivery Calls and the Department will consult concerning the procedural steps required to give effect to the District Court's decisions, including without limitation, dismissal of the contested cases, or establishing a hearing schedule. Any further proceedings shall be consistent with the time frames set forth in the *Stipulation*.

7. The Movants further agree as follows:

a. All rights to further administrative and judicial proceedings are reserved to the parties of such proceedings, and the *Stay* shall not affect such rights, including without limitation the right of any party or the Department to seek reconsideration or appellate review of the District Court's decisions on the *Cities' Petition* and the *SVC Petition*, or any other relief provided by law;


b. Nothing herein precludes any party or person from seeking a stay or any other relief provided by law in any administrative and judicial proceeding; and

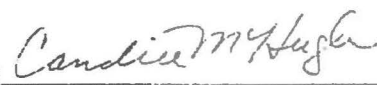
c. No party or person agrees to any stay of proceedings except as expressly provided herein.

DATED this 17<sup>th</sup> day of September 2015.

GIVENS PURSLEY LLP

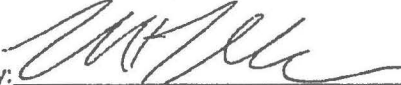
MCHUGH BROMLEY, PLLC

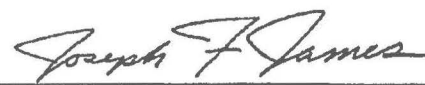
By:   
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Attorneys for City of Hailey

By:   
Candice M. McHugh  
Attorneys for City of Bellevue


MOFFATT, THOMAS, BARRETT,  
ROCK & FIELDS, CHARTERED

BROWN & JAMES

By:   
Matthew J. McGee  
Attorneys for Sun Valley Company

By:   
Joseph F. James  
Attorneys for Big & Little Wood Water Users Association

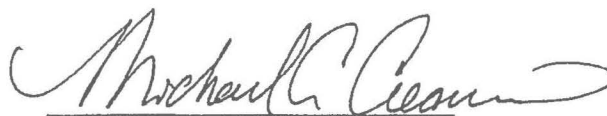
MOORE SMITH BUXTON & TURCKE,  
CHTD.

By:   
Susan E. Buxton  
*Attorneys for Cities of Ketchum and Fairfield*

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 17<sup>th</sup> day of September 2015, I served a true and correct copy of the foregoing document to all parties listed on the Combined Certificate of Services List posted on the Department's website at <http://idwr.idaho.gov/legal-actions/delivery-call-actions/big-wood-river.html> and <http://idwr.idaho.gov/legal-actions/delivery-call-actions/little-wood-river.html> updated the 19th day of August 2015, by the following method:

- ☐ Placing a copy of the document in the United States mail, postage prepaid and properly addressed.
- ☒ Emailing only to parties who have consented to service by email as indicated on the above-described Certificate of Service List; placing a copy of the document in the United States mail, postage prepaid and properly addressed, to parties who have not consented to service by email; and emailing to parties who provided e-mail addresses to the Department but have not consented to service by email.

  
Michael C. Creamer  
Attorneys for City of Hailey

# **Attachment A-2**

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

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHTS HELD BY  
MEMBERS OF THE BIG WOOD & LITTLE  
WOOD WATER USERS ASSOCIATION  
DIVERTING FROM THE LITTLE WOOD  
RIVER

Docket No. CM-DC-2015-002

**ORDER GRANTING LATE REQUEST  
TO PARTICIPATE**

**BACKGROUND**

On February 24, 2015, the Director ("Director") of the Idaho Department of Water Resources ("Department") received two conjunctive management water delivery call letters from counsel for members of the Big Wood & Little Wood Water Users Association. The letters allege senior surface water users on the Big Wood and Little Wood Rivers are being injured by water users diverting ground water hydraulically connected to the Big Wood and Little Wood Rivers. The letters request the Director regulate junior ground water users consistent with the prior appropriation doctrine.

The Director initiated new contested case proceedings and assigned each delivery call letter its own docket number. The Big Wood Delivery Call was assigned docket no. CM-DC-2015-001. The Little Wood Delivery Call was assigned docket no. CM-DC-2015-002.

On March 20, 2015, the Department sent letters to ground water users the Department identified as potentially affected by one or both of the above-described delivery calls. The purpose of the letters was to inform the water users of the delivery calls and notify them of a planned status conference.

On May 13, 2015, the Director issued an *Order Governing Participation* ("Order") stating:

Holders of ground water rights that may be affected by one or both of the above-described delivery calls **that have not filed a notice of intent to participate but wish to actively participate in the contested case proceedings** must file with the Department a written notice of intent to participate in CM-DC-2015-001 or CM-DC-2015-002 or both cases, **by May 27, 2015**.

*Order at 2 (emphasis in original).*

On April 22, 2015, the Department received a letter from the Water District 37-B Groundwater Group notifying the Department "of its intent to participate in the contested case proceedings related to Docket #CM-DC-2015-001 (Big Wood River delivery call)." The letter stated: "Twenty seven groundwater users from Water District 37-B have signed into this association. They also reserved the right to participate individually." Several of the Water District 37-B Groundwater Group members timely filed notices of intent to participate in both the Big Wood and Little Wood Delivery Calls.

On July 10, 2015, counsel for the Water District 37-B Groundwater Group filed a notice of appearance on behalf of the Group in both the Big Wood and Little Wood Delivery Calls. However, because the Water District 37-B Groundwater Group only timely filed a notice of intent to participate in the Big Wood Delivery Call, members within the Group that also filed a timely notice of intent to participate in the Little Wood Delivery Call still receive filings in the Little Wood proceeding.


On August 31, 2015, counsel for the Water District 37-B Groundwater Group filed a *Motion to Grant Late Request to Participate as Respondent/Petition to Intervene* ("Motion") requesting the Director allow the Water District 37-B Groundwater Group to participate in the Little Wood Delivery Call. Counsel represents that, individual members of the Group who timely filed notices of intent to participate in the Little Wood Delivery Call and continue to receive filings in that proceeding, intend "such documents to be served on counsel for the Group." *Motion* at 2.

The Director's March 20, 2015, letter identified members of the Water District 37-B Groundwater Group as ground water users potentially affected by one or both of the above-described delivery calls. As explained above, the Water District 37-B Groundwater Group timely filed a notice of intent to participate in the Big Wood Delivery Call. The Department received no response in opposition to the Motion to allow the Group to participate in the Little Wood Delivery Call. Granting the Motion will not result in prejudice to other parties. The Director will grant the Motion.

#### **ORDER**

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the Water District 37-B Groundwater Group's Motion is GRANTED.

DATED this 21<sup>st</sup> day of September 2015.

  
GARY SPACKMAN  
Director



### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 21<sup>st</sup> day of September 2015, I served a true and correct copy of the foregoing document to all parties listed on the LW Certificate of Service List posted on the Department's website at <http://idwr.idaho.gov/legal-actions/delivery-call-actions/little-wood-river.html> updated the 19th day of August 2015, by the following method:

- ☐ Placing a copy of the document in the United States mail, postage prepaid and properly addressed.
- ☒ Emailing only to parties who have consented to service by email as indicated on the above-described Certificate of Service List; placing a copy of the document in the United States mail, postage prepaid and properly addressed, to parties who have not consented to service by email; and emailing to parties who provided e-mail addresses to the Department but have not consented to service by email.



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Person mailing document

# **Attachment A-3**

RECEIVED

SEP 25 2015

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WATER RESOURCES

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*Attorneys for City of Hailey*

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

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHTS HELD BY  
MEMBERS OF THE BIG WOOD &  
LITTLE WOOD WATER USERS  
SSOCIATION DIVERTING FROM THE  
BIG WOOD RIVER

CM-DC-2015-001

CM-DC-2015-002

**JOINT MOTION TO DESIGNATE  
ACGWS ORDER AND SUN VALLEY  
ORDER<sup>1</sup> AS FINAL ORDERS**

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHTS HELD BY  
MEMBERS OF THE BIG WOOD &  
LITTLE WOOD WATER USERS  
ASSOCIATION DIVERTING FROM THE  
LITTLE WOOD RIVER

<sup>1</sup> Order Denying Sun Valley Company's Motion to Dismiss ("Sun Valley Order") denying Sun Valley's Motion, and its Order Denying Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls ("ACGWS Order") issued July 22, 2015.

**ORIGINAL**

COMES NOW, the **City of Bellevue**, the **City of Hailey**, the **City of Ketchum**, the **City of Fairfield**, and **Sun Valley Company** ("Petitioners") and files this *Joint Motion To Designate ACGWS Order And Sun Valley Order As Final Orders* ("Joint Motion") pursuant to IDAPA 37.01.01.710 and 740 and 750 and the Stipulation entered into September 18, 2015 between the Petitioners, the Idaho Department of Water Resources ("Department" or "IDWR"), and the Big & Little Wood Water Users Association which was filed with the District Court. This Joint Motion requests that the Director designate the Sun Valley Order and the ACGWS Order as final orders and issue separate orders as provided for paragraph 14.a. of the Stipulation.


DATED this 25 day of September, 2015.

---

Candice M. McHugh  
MCHUGH BROMLEY, PLLC  
Attorneys for City of Bellevue

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Michael C. Creamer  
GIVENS PURSLEY, LLP  
Attorneys for City of Hailey



---

Matthew J. McGee  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
Attorneys for Sun Valley Company

---

Susan Buxton,  
MOORE, SMITH, BUXTON & TURCKE  
Attorneys for City of Ketchum and City of Fairfield

COMES NOW, the **City of Bellevue**, the **City of Hailey**, the **City of Ketchum**, the **City of Fairfield**, and **Sun Valley Company** ("Petitioners") and files this *Joint Motion To Designate ACGWS Order And Sun Valley Order As Final Orders* ("Joint Motion") pursuant to IDAPA 37.01.01.710 and 740 and 750 and the Stipulation entered into September 18, 2015 between the Petitioners, the Idaho Department of Water Resources ("Department" or "IDWR"), and the Big & Little Wood Water Users Association which was filed with the District Court. This Joint Motion requests that the Director designate the Sun Valley Order and the ACGWS Order as final orders and issue separate orders as provided for paragraph 14.a. of the Stipulation.

DATED this 25th day of September, 2015.



---

Candice M. McHugh  
MCHUGH BROMLEY, PLLC  
Attorneys for City of Bellevue

---

Michael C. Creamer  
GIVENS PURSLEY, LLP  
Attorneys for City of Hailey

---


Matthew J. McGee  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
Attorneys for Sun Valley Company

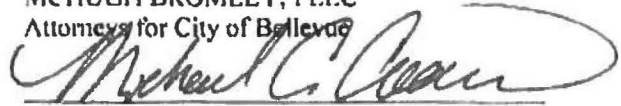
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Susan Buxton,  
MOORE, SMITH, BUXTON & TURCKE  
Attorneys for City of Ketchum and City of Fairfield

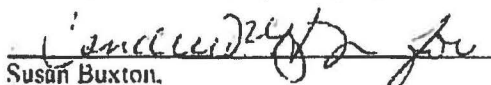
COMES NOW, the City of Bellevue, the City of Hailey, the City of Ketchum, the City of Fairfield, and Sun Valley Company ("Petitioners") and files this *Joint Motion To Designate ACGWS Order And Sun Valley Order As Final Orders* ("Joint Motion") pursuant to IDAPA 37.01.01.710 and 740 and 750 and the Stipulation entered into September 18, 2015 between the Petitioners, the Idaho Department of Water Resources ("Department" or "IDWR"), and the Big & Little Wood Water Users Association which was filed with the District Court. This Joint Motion requests that the Director designate the Sun Valley Order and the ACGWS Order as final orders and issue separate orders as provided for paragraph 14.a. of the Stipulation.

DATED this 25th day of September, 2015.

  
Candice M. McHugh  
MCHUGH BROMLEY, PLLC  
Attorneys for City of Bellevue

  
Michael C. Creamer  
GIVENS PURSLEY, LLP  
Attorneys for City of Hailey

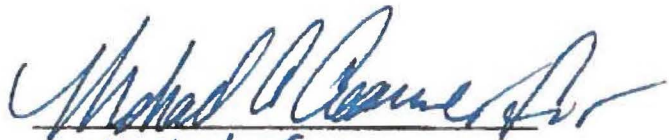
Matthew J. McGee  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
Attorneys for Sun Valley Company

  
Susan Buxton,  
MOORE, SMITH, BUXTON & TURCKE  
Attorneys for City of Ketchum and City of Fairfield

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 25th day of September, 2015, I served a true and correct copy of the foregoing **MOTION TO DESIGNATE ACGWS ORDER AND SUN VALLEY ORDER AS FINAL ORDERS** to all parties listed on the Combined Certificate of Service List posted on the Department's website at <http://idwr.idaho.gov/legal-actions/delivery-call-actions/big-wood-river.html> and <http://idwr.idaho.gov/legal-actions/delivery-call-actions/little-wood-river.html> updated September 10, 2015, and September 21, 2015, respectively, by the following method:

- ☒ Placing a copy of the document in the United States mail, postage prepaid and properly addressed.
- ☐ E-mailing only to parties who have consented to service by e-mail as indicated on the above-described Certificate of Service List; placing a copy of the document in the United States mail, postage prepaid and properly addressed, to parties who have not consented to service by e-mail; and e-mailing to parties who provided e-mail addresses to the Department but have not consented to service by e-mail.

  
Matt McFee



# **Attachment A-4**

RECEIVED  
SEP 28 2015  
DEPARTMENT OF  
WATER RESOURCES

Dylan B. Lawrence, ISB # 7136  
J. Will Varin, ISB # 6981  
VARIN WARDWELL LLC  
242 N. 8<sup>th</sup> Street, Suite 220  
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Boise, Idaho 83701-1676  
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Facsimile: (866) 717-1758  
Email: dylanlawrence@varinwardwell.com  
willvarin@varinwardwell.com

Attorneys for Water Dist. 37-B Groundwater Group

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF )  
WATER TO WATER RIGHTS HELD BY )  
MEMBERS OF THE BIG WOOD & LITTLE )  
WOOD WATER USERS ASSOCIATION )  
DIVERTING FROM THE BIG WOOD )  
RIVER )  
)

Docket No. CM-DC-2015-001

\_\_\_\_\_  
IN THE MATTER OF DISTRIBUTION OF )  
WATER TO WATER RIGHTS HELD BY )  
MEMBERS OF THE BIG WOOD & LITTLE )  
WOOD WATER USERS ASSOCIATION )  
DIVERTING FROM THE LITTLE WOOD )  
RIVER )  
)

Docket No. CM-DC-2015-002

**RESPONSE TO JOINT MOTION  
FOR STAY; MOTION TO  
COMPEL**

The Water Dist. 37-B Groundwater Group (the "Camas Group"), through undersigned counsel of record, hereby files this combined response to the Joint Motion for Stay of September 17, 2015 ("Joint Motion") and motion to compel discovery responses, pursuant to the Department's Rules of Procedure 270.02, 413.01(b), 521, 522, and 565.

RESPONSE TO JOINT MOTION FOR STAY; MOTION TO COMPEL – 1 –

**ORIGINAL**

This response/motion is supported by the affidavit of Dylan Lawrence, filed contemporaneously herewith.

## **I. RESPONSE TO JOINT MOTION FOR STAY**

To be clear, the Camas Group does not oppose the Joint Motion. Instead, the Camas Group believes there is a matter that should be a narrow exception to a stay. Specifically, at the time the Joint Motion was filed, Petitioner was already nine days late in responding to the Camas Group's discovery requests. As of the date of this filing, those responses are 20 days late. Therefore, the Camas Group respectfully requests that issues related to the timing and sufficiency of Petitioner's responses to those requests be excepted from a stay. The background and basis for this request are discussed in greater detail below in the accompanying Motion to Compel.

## **II. MOTION TO COMPEL**

### **A. Petitioner Has Completely Ignored the Camas Group's Discovery Requests and Its Attempts to Avoid Having to File a Motion to Compel**

The Camas Group served discovery requests on the Petitioner on August 4, 2015. (Lawrence Aff., ¶ 2, Ex. A (discovery requests); *see also* Notice of Service of 8/4/15.) Pursuant to IDWR Rule of Procedure 520.02 and Idaho Rules of Civil Procedure 6(e)(1), 33(a)(2), and 34(b)(2), the deadline for responding to those requests was September 8, 2015—9 days before the Joint Motion was even filed. Counsel for the Camas Group sent a letter to Petitioner's counsel on August 17, 2015, emphasizing the need for timely responses and requesting notice from the Petitioner if additional time would be needed. (Lawrence Aff., ¶ 3, Ex. B (8/17/15 letter from D. Lawrence to J. James).)

The September 8 deadline came and went, with no discovery responses or extension requests from Petitioner. (Lawrence Aff., ¶ 4.) Therefore, counsel for the Camas Group sent another letter to counsel for Petitioner on September 15, 2015, requesting responses. (Lawrence Aff., ¶ 5, Ex. C (9/15/15 letter from D. Lawrence to J. James).) Then again, after receiving the Joint Motion, counsel for the Camas Group sent an e-mail to counsel for the Petitioner, which both put Petitioner on notice of the Camas Group's intent to file a motion to compel, but also inviting Petitioner to begin a dialog that would potentially make a motion to compel unnecessary. (Lawrence Aff., ¶ 6, Ex. D (9/18/15 e-mail from D. Lawrence to J. James).)

As of the date of this response/motion, counsel for the Camas Group has not received any responses to the discovery requests or any of the three correspondences. (Lawrence Aff., ¶ 7.)

**B. Responses to These Discovery Requests are Necessary for the Camas Group to Defend Its Interests**

The hydrological basis for including the Camas Group in this delivery call is unclear. IDWR's August 28, 2015 staff memorandum regarding hydrology, hydrogeology, and hydrologic data (the "Hydrology Memo") does include a useful overview of the existing studies of Camas Prairie hydrology and hydrogeology. However, as the Hydrology Memo itself acknowledges, it is far from conclusive regarding the impact of groundwater withdrawals from the Camas Prairie on the members of the Petitioner. (*See, e.g.*, Hydrology Memo, at p. 19 ("...there are not sufficient data available to calibrate a numerical model to predict the timing of impacts [of junior ground water pumping from the Camas Prairie on the calling senior-priority surface water right holders]".) And, as has been previously noted, the Camas Prairie aquifer is not included in the current modeling

RESPONSE TO JOINT MOTION FOR STAY; MOTION TO COMPEL – 3 –

effort by USGS and IDWR with respect to the Big Wood River aquifer. *See generally* USGS, GROUNDWATER RESOURCES OF THE WOOD RIVER VALLEY, IDAHO: A GROUNDWATER-FLOW MODEL FOR RESOURCE MANAGEMENT, *available at* <http://tinyurl.com/py3r3br> (last visited July 8, 2015).

What this means, of course, is that the Camas Group must develop the data necessary to defend its interests in these delivery call proceedings. A critical component of that effort is to understand the extent of Petitioner's knowledge on these issues. For example, Petitioner has stated that it is "seeking administration of junior ground water rights in Water Districts 37 *and* 37B [and] alleging that diversions of water under such junior ground water rights cause material injury to the surface water rights of the [Petitioner]'s members."<sup>1</sup> (Joint Motion, ¶ 1 (emphasis added).)

Presumably, Petitioner would not make such allegations without some basis to believe that groundwater withdrawals from the Camas Prairie impact its members. Petitioner initiated this proceeding seven months ago and therefore has had ample time to develop evidence supporting this allegation—even without considering the time it had to investigate these issues before the proceedings began. This is precisely the type of information that is critical to the Camas Group's case and that it is entitled to discover. And, an objective review of the Camas Group's pending discovery requests demonstrates

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<sup>1</sup> To be clear, the Camas Group does not necessarily agree with Petitioner's characterization of its own prior demand for administration. While the Petitioner's initial demand letter discussed the Camas Prairie generally, at the end of the letter, the Petitioner specifically "demand[s] that [Director Spackman] direct the Watermaster for *Water District No. 37* to administer Petitioners' surface water rights, and hydrologically connected to ground water rights within *the district* in accordance with the prior appropriation doctrine." (Letter from J. James to G. Spackman of 2/23/15, p. 3 (emphasis added).)

that they are reasonable and narrowly tailored to elicit Petitioner's information and understandings regarding these issues. (*See* Lawrence Aff., Ex. A (discovery requests).)

**C. IDWR's Rules of Procedure Authorize the Director to Grant This Motion to Compel**

The Director has authority "to schedule and *compel discovery*, when discovery is authorized before the agency...." IDWR R. of Proc. 413.01(b) (emphasis added). In addition, "[t]he presiding officer may by order authorize or *compel necessary discovery* authorized by statute or rule." IDWR R. of Proc. 522 (emphasis added). Here, the Director has authorized discovery, and has denied Petitioner's request for a protective order. (Order Authorizing Discovery of 5/13/15; Order Denying Mot. for Protective Order of 7/2/15.) The previous section has already established why these discovery responses are "necessary."

"A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order *compelling discovery* in a manner consistent with the provisions of Rule 37(a) of the Idaho Rules of Civil Procedure." IDWR R. of Proc. 521 (emphasis added). Here, the Camas Group has given more than "reasonable notice" to Petitioner on this issue. In addition to the two letters that counsel for the Camas Group sent to Petitioner's counsel before the Joint Motion was filed, counsel for the Camas Group also sent an e-mail to counsel for Petitioner regarding these issues the day after receiving the Joint Motion. (Lawrence Aff., Exs. B, C, D.) And, the Petitioner is the only party affected by this motion because the Camas Group does not oppose the stay generally—it simply seeks a narrow exception to the stay that would only affect Petitioner.

Idaho Rule of Civil Procedure 37(a) authorizes "the discovering party [to] move for an order compelling an answer" to previously-propounded discovery requests. "The

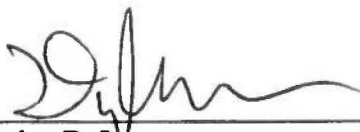
motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.” Counsel for the Camas Group has attempted on three separate occasions to raise these issues with Petitioner, and counsel for Petitioner has not responded to any of those communications. (Lawrence Aff., ¶ 7; Exs. B, C, D.) Therefore, counsel for the Camas Group has certified that he has attempted in good faith to resolve these issues with counsel for Petitioner in an effort to secure responses without the Director’s intervention. (Lawrence Aff., ¶ 8.)

### III. CONCLUSION

Based on the foregoing, the Camas Group respectfully requests that the Director compel the Petitioner to respond to the Camas Group’s pending discovery requests. Further, if the Director grants a stay of these proceedings, the Camas Group respectfully requests that the Director specifically exclude the issues raised in this response/motion from the operation of such a stay.

DATED THIS 28<sup>th</sup> day of September, 2015.

Varin Wardwell LLC

By:   
Dylan B. Lawrence  
Attorneys for Water Dist. 37-B  
Groundwater Group



## CERTIFICATE OF SERVICE

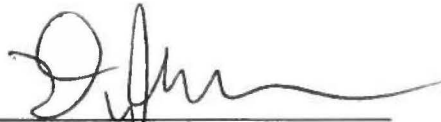
I HEREBY CERTIFY that, on this 29<sup>th</sup> day of September, 2015, I served a true and correct copy of the foregoing document to all parties listed on the Combined Certificate of Service List posted on the Department's website at <http://idwr.idaho.gov/legal-actions/delivery-call-actions/big-wood-river.html> and <http://idwr.idaho.gov/legal-actions/delivery-call-actions/little-wood-river.html> updated the 21<sup>st</sup> day of September, 2015 by the following method:

☐

Placing a copy of the document in the United States mail, postage prepaid and properly addressed.

☒

Emailing only to parties who have consented to service by email as indicated on the above-described Certificate of Service List; placing a copy of the document in the United States mail, postage prepaid and properly addressed, to parties who have not consented to service by email; and emailing to parties who provided e-mail addresses to the Department but have not consented to service by email.



Dylan B. Lawrence

# **Attachment A-5**

RECEIVED  
SEP 28 2015  
DEPARTMENT OF  
WATER RESOURCES

Dylan B. Lawrence, ISB # 7136  
J. Will Varin, ISB # 6981  
VARIN WARDWELL LLC  
242 N. 8<sup>th</sup> Street, Suite 220  
P.O. Box 1676  
Boise, Idaho 83701-1676  
Telephone: (208) 922-7060  
Facsimile: (866) 717-1758  
Email: dylanlawrence@varinwardwell.com  
willvarin@varinwardwell.com

Attorneys for Water Dist. 37-B Groundwater Group

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF )  
WATER TO WATER RIGHTS HELD BY )  
MEMBERS OF THE BIG WOOD & LITTLE )  
WOOD WATER USERS ASSOCIATION )  
DIVERTING FROM THE BIG WOOD )  
RIVER )  
\_\_\_\_\_ )

Docket No. CM-DC-2015-001

IN THE MATTER OF DISTRIBUTION OF )  
WATER TO WATER RIGHTS HELD BY )  
MEMBERS OF THE BIG WOOD & LITTLE )  
WOOD WATER USERS ASSOCIATION )  
DIVERTING FROM THE LITTLE WOOD )  
RIVER )  
\_\_\_\_\_ )

Docket No. CM-DC-2015-002

**AFFIDAVIT OF DYLAN B.  
LAWRENCE IN SUPPORT OF  
RESPONSE TO JOINT MOTION  
FOR STAY AND MOTION TO  
COMPEL**

STATE OF IDAHO )  
 ) ss.  
COUNTY OF ADA )

Dylan B. Lawrence, who being first duly sworn under oath, deposes, avers and says:

AFFIDAVIT OF DYLAN B. LAWRENCE IN SUPPORT OF RESPONSE TO JOINT  
MOTION FOR STAY AND MOTION TO COMPEL – 1 –

**ORIGINAL**

1. My name is Dylan Lawrence. I represent the Water Dist. 37-B Groundwater Group, an Idaho non-profit association, in these delivery call proceedings. I am of sound mind and the age of majority. I have access to the relevant documents and files, and make this affidavit based upon my own personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of discovery requests that I served on Petitioner's counsel on or about August 4, 2015.

3. Attached hereto as Exhibit B is a true and correct copy of a letter that I sent to Petitioner's counsel on or about August 17, 2015.

4. As of the September 8, 2015 deadline for responses to the discovery requests in Exhibit A, I had not received discovery responses or a response to my correspondence in Exhibit B.

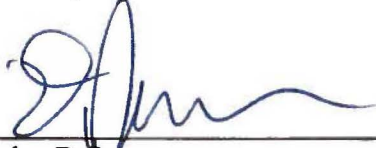
5. Attached hereto as Exhibit C is a true and correct copy of a letter that I sent to Petitioner's counsel on or about September 15, 2015.

6. Attached hereto as Exhibit D is a true and correct copy of an e-mail that I sent to Petitioner's counsel on or about September 18, 2015.

7. As of the date of this affidavit, I have not received responses to the discovery requests attached hereto as Exhibit A or responses to the correspondences attached hereto as Exhibits B, C, and D.


8. Based on the foregoing, I certify that I have in good faith attempted to confer with Petitioner's counsel in an effort to secure the responses to the discovery requests in Exhibit A without action or intervention by the Director.

RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of September, 2015.

  
Dylan B. Lawrence

SUBSCRIBED AND SWORN to before me this 28<sup>th</sup> day of September, 2015.




  
Notary Public for Idaho  
Residing at: Boise, Idaho  
My Commission expires: June 16, 2017

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 29<sup>th</sup> day of September, 2015, I served a true and correct copy of the foregoing document to all parties listed on the Combined Certificate of Service List posted on the Department's website at <http://idwr.idaho.gov/legal-actions/delivery-call-actions/big-wood-river.html> and <http://idwr.idaho.gov/legal-actions/delivery-call-actions/little-wood-river.html> updated the 21<sup>st</sup> day of September, 2015 by the following method:

- ☐ Placing a copy of the document in the United States mail, postage prepaid and properly addressed.
- ☒ Emailing only to parties who have consented to service by email as indicated on the above-described Certificate of Service List; placing a copy of the document in the United States mail, postage prepaid and properly addressed, to parties who have not consented to service by email; and emailing to parties who provided e-mail addresses to the Department but have not consented to service by email.

  
Dylan B. Lawrence

# **EXHIBIT A**



Dylan B. Lawrence, ISB # 7136  
J. Will Varin, ISB # 6981  
VARIN WARDWELL LLC  
242 N. 8<sup>th</sup> Street, Suite 220  
P.O. Box 1676  
Boise, Idaho 83701-1676  
Telephone: (208) 922-7060  
Facsimile: (866) 717-1758  
Email: dylanlawrence@varinwardwell.com  
willvarin@varinwardwell.com

Attorneys for Water District 37-B Groundwater Group

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF )	Docket No. CM-DC-2015-001
WATER TO WATER RIGHTS HELD BY )	
MEMBERS OF THE BIG WOOD & LITTLE )	WATER DISTRICT 37-B
WOOD WATER USERS ASSOCIATION )	GROUNDWATER GROUP'S FIRST
DIVERTING FROM THE BIG WOOD )	SET OF INTERROGATORIES AND
RIVER )	REQUESTS FOR PRODUCTION OF
_____ )	DOCUMENTS TO PETITIONERS

TO: BIG WOOD & LITTLE WOOD WATER USERS ASSOCIATION AND ITS  
ATTORNEYS OF RECORD:

YOU WILL PLEASE TAKE NOTICE that Water District 37-B Groundwater Group requires you to answer, under oath, the following Interrogatories and Requests for Production, in accordance with IDAPA 37.01.01.521, all provisions of Rules 26, 33, and 34 of the Idaho Rules of Civil Procedure, and the Director's May 13, 2015 Order Authorizing Discovery, by delivering verified written responses and furnishing copies of

**WATER DISTRICT 37-B GROUNDWATER GROUP'S FIRST SET OF  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
TO PETITIONERS- 1 -**

any responsive documents to the law offices of Varin Wardwell LLC at the address listed above.

In answering these Interrogatories, please furnish all information available to you, including information in the possession of your attorneys (and investigators, experts, etc., retained by you and your attorneys), not merely information known of your own personal knowledge.

If you cannot answer in full after exercising due diligence to secure the information to do so, answer to the extent possible, specify your inability to answer the remainder, and state whatever information and knowledge you have concerning the unanswered portion.

The Interrogatories are deemed continuing Interrogatories, and your answers thereto are to be supplemented as additional information and knowledge becomes available to you pursuant to Rule 26(e).

#### **DEFINITIONS AND INSTRUCTIONS**

“Camas Prairie” refers to the topographic feature known as the Camas Prairie Rift of Idaho, centered around Fairfield, Idaho and Camas Creek, and lying within portions of Blaine, Camas, and Elmore Counties, Idaho.

“Date” means the day, month and year, if known or ascertainable and, if not, the closest approximation that can be made.

“Document” or “Documentary” means and includes any and all tangible things and papers, whether written, recorded, graphic, typewritten, printed, photographed or otherwise produced or reproduced, and whether produced manually or by mechanical, electrical, electronic, or other artificial process or a combination of these methods, including but not limited to papers, computer records and/or files, agreements, contracts, letters, cables,

wires, notes, memoranda, correspondence, telegrams, patents, books, reports, studies, minutes, records, accounting books, maps, plans, blue prints, sketches, charts, drawings, diagrams, photographs, movies, films, computer printouts, tape recordings, information stored on computers, assignments, notebooks, ledgers, billings, statements, invoices, checks, receipts, analyses, surveys, transcriptions, recordings, analyses, studies, and things similar to any of the foregoing, regardless of their authority or origin, and however denominated by you of which you have any knowledge or information, referring, relating or pertaining in any way to the subject matters in connection with which the word is used. The term "Document" or "Documentary" includes, without limitation, originals, all file copies, and all the copies no matter how or by whom prepared and all drafts prepared in connection with such writings, whether used or not.

"IDWR" means the Idaho Department of Water Resources.

"Petitioner" refers to Big Wood & Little Wood Water Users Association, and its members, officers, agents, and/or employees for purposes of this action.

"Relate to" or "Relating to" means constituting; evidencing; reflecting; representing; supporting; contradicting; referring to; containing; mentioning; recording; noting; embodying; studying; analyzing; evaluating; relevant to; generated in anticipation of or as a result of; or relied upon, referred to, or mentioned in connection with any item or event. The terms "Relate to" or "Relating to," as applied to a specific document, such as an agreement, deed of trust, promissory note, etc., requests that specific Document as well any Documents otherwise relating to it.

“You” or “Your” means Big Wood & Little Wood Water Users Association, together with any of its members and managers, officers, directors, counsel, consultants, experts, investigators, principals, agents, employees, representatives, volunteers, predecessors-in-interest and any other person acting on its behalf, including without limitations, any consultants, accountants, bookkeepers, and attorneys.

Terms and abbreviations not specifically defined herein shall be defined by reference to the meanings attributed to them by IDWR rules, state water resource laws, and common usage.

The Requests for Production listed below include all Documents in your possession or under your control, including Documents in the possession of your attorneys, accountants, consultants, expert witnesses or other agents or persons from whom you have a legal right to obtain such Document(s).

All of the Interrogatories and Requests herein are deemed continuing. If, after responding to these Interrogatories and Requests for Production You acquire any further information or any Documents requested herein, or any other information related to any Document herein, which is not reflected by any Documents produced or any response to these Interrogatories and Requests for Production, You must file a supplemental response or indicate to counsel for the party propounding these Interrogatories and Requests for Production of the existence of such Documents. Such supplemental response is in addition to any required by the Idaho Rules of Civil Procedure.

If any Document or any portion of any Document or any other information which is requested herein is or will be withheld from your answers to Interrogatories, from

production, inspection or copying (whether because it is claimed to be work product, communication from attorney to client, or is claimed to be entitled to be withheld for any other reason), please fully identify each such Document or portion thereof in Your response and fully state in your response the reason it is or will be withheld. In addition, if any Document is practically impossible of production, inspection or copying, please fully identify such Document and the reason for the practical impossibility.

### **INTERROGATORIES**

**INTERROGATORY NO. 1:** Please identify each person who assisted You in the review and evaluation of these written discovery requests and in the preparation of Your responses thereto.

**INTERROGATORY NO. 2:** Please identify each expert witness You intend or expect to call at the hearing in this matter, and please include a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the testimony; and 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.

**INTERROGATORY NO. 3:** Please identify each lay witness You intend or expect to call at the hearing in this matter, and please describe the expected scope and substance of each such witness's testimony.

**INTERROGATORY NO. 4:** Please explain in detail Your understanding of the mechanisms by which, and the extent to which, withdrawals of ground water occurring on the Camas Prairie affect the surface flows available to each of the Petitioners' points of diversion.

**INTERROGATORY NO. 5:** Please identify each and every ground water well and ground water right on the Camas Prairie that you contend materially injures the water diversions and water uses of the Petitioners.

### **REQUESTS FOR PRODUCTION**

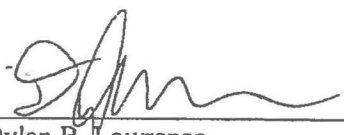
**REQUEST FOR PRODUCTION NO. 1:** Please produce copies of any Documents that You reviewed in preparing responses to these written discovery requests, that are identified in Your responses to these written discovery requests, or that otherwise support Your answers to these written discovery requests.

**REQUEST FOR PRODUCTION NO. 2:** Please produce copies of any reports, studies, measurements, data, or other Documents discussing, analyzing, documenting, or addressing ground water hydrology and hydrogeology within the Camas Prairie.

**REQUEST FOR PRODUCTION NO. 3:** Please produce copies of any reports, studies, measurements, data, or other Documents discussing, analyzing, documenting, or addressing the relationships and interactions between ground water withdrawals within the Camas Prairie and surface flows within the Big Wood River and Little Wood River.

DATED THIS 4<sup>th</sup> day of August, 2015.

Varin Wardwell LLC

By:   
Dylan B. Lawrence  
Attorneys for Water District 37-B  
Groundwater Group



### CERTIFICATE OF SERVICE

I hereby certify that on this 4<sup>th</sup> day of August, I caused to be served a true and correct copy of the foregoing by placing a copy of the same in the United States mail, postage prepaid and properly addressed and by e-mail to participants who have provided e-mail addressed to the Department for service to the following:

BIG WOOD WATER USERS ASSN  
LITTLE WOOD WATER USERS ASSN  
C/O JOSEPH J. JAMES  
BROWN & JAMES  
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GOODING ID 83330  
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MIKE BORDENKIRCHER  
MARGARET CLAIRE B CASEY  
JULIE GARDNER & LAUREN CORD  
THREE CREEKS RANCH LLC (JOHN  
& KINGSLEY R CROUL)  
AARON DECHEVRIEUX  
STEPHANIE EISENBARTH  
GRACE EAKIN  
JOHN FERY MARK GATES AND  
WARD WOODS (LOVING CREEK  
RANCH)  
POINT OF ROCKS RANCH LLC  
(JOHN & ELAINE FRENCH)  
ROBERT & KATHRYN GARDNER  
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PETER & TORI MADSEN  
JOHN & KRISTY MOLYNEUX  
THOMAS M O'GARA FAMILY  
TRUST (TOM O'GARA C/O BRIAN  
BARSOTTI)  
PHIL PUCHNER

PICABO LIVESTOCK (NICK PURDY)  
ROCKY & TERRI SHERBINE  
JOHN STEVENSON  
JOHN TEDESCO  
MICKY & JUSTIN VANHULLE  
LAKESIDE INDUSTRIES (WOOD  
RIVER RANCH/SHARON LEE)  
SYLVIA WOOD  
PAM LARSEN  
MATT & KATE GARNER  
PRAIRIE SUN RANCH OWNER'S  
ASSN INC (KATHY LYNN)  
RICHARD SPRINGS III (DICK &  
MELINDA SPRINGS)  
HEART ROCK RANCH LLC (HARRY  
& SHIRLEY HAGEY)  
LOVING SPRINGS RANCHES LP  
(GERALD B. BASHAW)  
ANTELOPE SPRINGS RANCH  
(ROBERT DREYER)  
C/O ALBERT BARKER  
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THOMAS J BUDGE  
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MCCANTY  
ANIMAL SHELTER OF WOOD RIVER  
VALLEY  
HELIOS DEVELOPMENT LLC  
THE VILLAGE GREEN VCHOA  
FLYING HEART RANCH II  
SUBDIVISION OWNERS ASSN  
C/O JAMES R LASKI  
HEATHER O'LEARY  
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J EVAN ROBERTSON  
ECCLES FLYING HAT RANCH LLC  
ECCLES WINDOW ROCK RANCH  
LLC  
C/O J EVAN ROBERTSON  
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GREENHORN HOA  
(JEFFREY T SEELY)  
KIRIL SOKOLOFF  
COMMUNITY SCHOOL (JANEL L  
GODDARD)  
DEER CREEK FARM (LYNN  
CAMPION)  
B LAMBERT TRUST (TOBY B  
LAMBERT)  
GULCH TRUST (TERESA L MASON)  
WEBB LANDSCAPE INC (MARK  
PALMER)  
SCI PROPERTIES LLC (BRENDA A  
LEVINE)  
REDCLIFF PARTNERS LP (RANNEY  
E DRAPER)  
RED CLIFFS HOA  
AQUARIUS SAW LLC  
SANDOR & TERI SZOMBATHY  
RIVER ROCK RANCH LP (SHEILA  
WITMER)  
BARBER FAMILY ASSOCIATES LP  
ROBERT ROHE  
GRIFFIN RANCH PUD SUBDIVISION

**WATER DISTRICT 37-B GROUNDWATER GROUP'S FIRST SET OF  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
TO PETITIONERS- 10 -**

HOA (CHERI HICKS)  
GRIFFIN RANCH SUBDIVISION HOA  
(CHERI HICKS)  
BLAINE COUNTY RECREATION  
DISTRICT  
HENRY & JANNE BURDICK  
BLAINE COUNTY SCHOOL  
DIST NO. 61  
ASPEN HOLLOW HOA (ALLAN  
PATZER & WILLIAM LEHMAN)  
F ALFREDO REGO  
BELLEUE FARMS LANDOWNERS  
ASSN INC  
CLIFFSIDE HOA  
CHANNEY CREEK RANCH LLC  
ELIZABETH K GRAY  
DONNA F TUTTLE TRUST  
LINDA WOODCOCK  
AIRPORT WEST BUSINESS PARK  
OWNERS ASSN INC  
CLEAR CREEK LLC  
MID-VALLEY WATER CO LLC  
THE ANNE L WINGATE TRUST  
DON R & JUDY H ATKINSON  
BARRIE FAMILY PARTNERS  
JAMES P & JOAN CONGER  
THE DANIEL T MONOOGIAN  
REVOCABLE TRUST  
DAN S FAIRMAN MD & MELYNDA  
KIM STANDLEE FAIRMAN  
FLOWERS BENCH LLC  
R THOMAS GOODRICH & REBECCA  
LEA PATTON  
IDAHO RANCH LLC  
THE JONES TRUST  
LOUISA JANE H JUDGE  
LAURAL LUCERE  
MARGO PECK  
THE RALPH W & KANDI L GIRTON  
1999 REVOCABLE TRUST  
THE RESTATED MCMAHAN 1986  
REVOCABLE TRUST  
RHYTHM RANCH HOA  
MARION R & ROBERT M

ROSENTHAL  
SAGEWILLOW LLC  
SALIGAO LLC  
CHARLES & COLLEEN WEAVER  
STONEGATE HOA  
THE BARKER LIVING TRUST  
CAROL BURDZY THIELEN  
THE VERNON IRREVOCABLE  
TRUST  
MATS & SONYA WILANDER  
MICHAEL E WILLARD  
RALPH R LAPHAM  
CHARLES L MATTHIESEN PIONEER  
RESIDENTIAL & RECREATIONAL  
PROPERTIES LLC  
THOMAS W WEISEL  
JAMES K & SANDRA FIGGE  
STARLITE HOA  
HEATHERLANDS HOA  
GOLDEN EAGLE RANCH HOA  
TIMBERVIEW TERRACE HOA  
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TRAINOR  
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TRUST  
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SYRINGA RANCH LLC  
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PAUL & TANA DEAN  
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SILVER SAGE OWNERS ASSN INC  
C/O CAROL'S BOOKKEEPING  
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KETCHUM ID 83340

---



STARWEATHER OWNERS  
ASSN INC  
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STEVEN C FUNK  
90 FREEDOM LOOP  
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THOMAS & AMY MISTICK  
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BELLEVUE ID 83313

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WOOD RIVER LAND TRUST  
119 E BULLION ST  
HAILEY ID 83333

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Dylan B. Lawrence

# **EXHIBIT B**



ATTORNEYS AT LAW

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DYLANLAWRENCE@VARINWARDWELL.COM

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P: 208.907.1529  
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VARINWARDWELL.COM

August 17, 2015

VIA REGULAR MAIL

Joseph J. James  
Brown & James  
130 Fourth Avenue West  
Gooding, Idaho 83330

Re: Big Wood & Little Wood Water Users Association Delivery Call

Dear Mr. James:

As you know, on August 4, 2015, I served the enclosed discovery requests on the Big Wood & Little Wood Water Users Association, on behalf of the Water District 37-B Groundwater Group. By now, you have probably observed that these requests are relatively short and narrowly tailored. Due to these factors, the Group and I are expecting timely responses on or before the September 8, 2015 deadline. If your client needs additional time to respond to those requests, please lodge that extension request with me as soon as it is apparent that more time will be necessary. Otherwise, we will assume we will receive timely responses.

If you have any questions or would like to discuss this further, please do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,

VARIN WARDWELL LLC

A handwritten signature in black ink, appearing to read "Dylan B. Lawrence", written over a horizontal line.

Dylan B. Lawrence

Enclosure

RECEIVED

AUG 04 2015

DEPARTMENT OF  
WATER RESOURCES

Dylan B. Lawrence, ISB # 7136  
J. Will Varin, ISB # 6981  
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willvarin@varinwardwell.com

Attorneys for Water District 37-B Groundwater Group

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF )  
WATER TO WATER RIGHTS HELD BY )  
MEMBERS OF THE BIG WOOD & LITTLE )  
WOOD WATER USERS ASSOCIATION )  
DIVERTING FROM THE BIG WOOD )  
RIVER )  
\_\_\_\_\_ )

Docket No. CM-DC-2015-001

NOTICE OF SERVICE OF  
DISCOVERY REQUESTS

Notice is hereby given that on the 4<sup>th</sup> day of August, 2015 I served the Water District 37-B Groundwater Group's First Set of Interrogatories and Requests for Production of Documents to Petitioners, along with a true and correct copy of this Notice of Service, by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

NOTICE OF SERVICE - 1 -

COPY

BIG WOOD WATER USERS ASSN  
LITTLE WOOD WATER USERS ASSN  
C/O JOSEPH J. JAMES  
BROWN & JAMES  
130 FOURTH AVENUE WEST  
GOODING ID 83330  
[joe@brownjameslaw.com](mailto:joe@brownjameslaw.com)  
[dana@brownjameslaw.com](mailto:dana@brownjameslaw.com)

---

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THOMAS BECK, MD  
BELLE RANCH LLC (JUSTIN AND  
BRETT STEVENSON)  
MIKE BORDENKIRCHER  
MARGARET CLAIRE B CASEY  
JULIE GARDNER & LAUREN CORD  
THREE CREEKS RANCH LLC (JOHN  
& KINGSLEY R CROUL)  
AARON DECHEVRIEUX  
STEPHANIE EISENBARTH  
GRACE EAKIN  
JOHN FERY MARK GATES AND  
WARD WOODS (LOVING CREEK  
RANCH)  
POINT OF ROCKS RANCH LLC  
(JOHN & ELAINE FRENCH)  
ROBERT & KATHRYN GARDNER  
RON HARRISON  
SARAH GARDNER  
PETER & TORI MADSEN  
JOHN & KRISTY MOLYNEUX  
THOMAS M O'GARA FAMILY  
TRUST (TOM O'GARA C/O BRIAN  
BARSOTTI)  
PHIL PUCHNER  
PICABO LIVESTOCK (NICK PURDY)  
ROCKY & TERRI SHERBINE  
JOHN STEVENSON  
JOHN TEDESCO  
MICKY & JUSTIN VANHULLE  
LAKESIDE INDUSTRIES (WOOD  
RIVER RANCH/SHARON LEE)  
SYLVIA WOOD  
PAM LARSEN  
MATT & KATE GARNER

PRAIRIE SUN RANCH OWNER'S  
ASSN INC (KATHY LYNN)  
RICHARD SPRINGS III (DICK &  
MELINDA SPRINGS)  
HEART ROCK RANCH LLC (HARRY  
& SHIRLEY HAGEY)  
LOVING SPRINGS RANCHES LP  
(GERALD B. BASHAW)  
ANTELOPE SPRINGS RANCH  
(ROBERT DREYER)  
C/O ALBERT BARKER  
BARKER ROSHOLT & SIMPSON LLP  
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BOISE ID 83701-2139  
[apb@idahowaters.com](mailto:apb@idahowaters.com)  
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WEBB LANDSCAPE INC (MARK  
PALMER)  
SCI PROPERTIES LLC (BRENDA A  
LEVINE)  
REDCLIFF PARTNERS LP

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RED CLIFFS HOA  
AQUARIUS SAW LLC  
SANDOR & TERI SZOMBATHY  
RIVER ROCK RANCH LP (SHEILA  
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ASSN INC  
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CHANEY CREEK RANCH LLC  
ELIZABETH K GRAY  
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LINDA WOODCOCK  
AIRPORT WEST BUSINESS PARK  
OWNERS ASSN INC  
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MID-VALLEY WATER CO LLC  
THE ANNE L WINGATE TRUST  
DON R & JUDY H ATKINSON  
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JAMES P & JOAN CONGER  
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FLOWERS BENCH LLC  
R THOMAS GOODRICH & REBECCA  
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THE JONES TRUST  
LOUISA JANE H JUDGE  
LAURAL LUCERE



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1999 REVOCABLE TRUST  
THE RESTATED MCMAHAN 1986  
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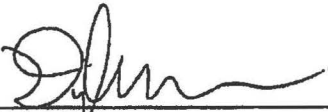
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DATED THIS 4<sup>th</sup> day of August, 2015.

Varin Wardwell LLC

By:   
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Attorneys for Water District 37-B  
Groundwater Group

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Attorneys for Water District 37-B Groundwater Group

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF )  
WATER TO WATER RIGHTS HELD BY )  
MEMBERS OF THE BIG WOOD & LITTLE )  
WOOD WATER USERS ASSOCIATION )  
DIVERTING FROM THE BIG WOOD )  
RIVER )  
\_\_\_\_\_ )

Docket No. CM-DC-2015-001

WATER DISTRICT 37-B  
GROUNDWATER GROUP'S FIRST  
SET OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF  
DOCUMENTS TO PETITIONERS

TO: BIG WOOD & LITTLE WOOD WATER USERS ASSOCIATION AND ITS  
ATTORNEYS OF RECORD:

YOU WILL PLEASE TAKE NOTICE that Water District 37-B Groundwater Group requires you to answer, under oath, the following Interrogatories and Requests for Production, in accordance with IDAPA 37.01.01.521, all provisions of Rules 26, 33, and 34 of the Idaho Rules of Civil Procedure, and the Director's May 13, 2015 Order Authorizing Discovery, by delivering verified written responses and furnishing copies of

**WATER DISTRICT 37-B GROUNDWATER GROUP'S FIRST SET OF  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
TO PETITIONERS- 1 -**

any responsive documents to the law offices of Varin Wardwell LLC at the address listed above.

In answering these Interrogatories, please furnish all information available to you, including information in the possession of your attorneys (and investigators, experts, etc., retained by you and your attorneys), not merely information known of your own personal knowledge.

If you cannot answer in full after exercising due diligence to secure the information to do so, answer to the extent possible, specify your inability to answer the remainder, and state whatever information and knowledge you have concerning the unanswered portion.

The Interrogatories are deemed continuing Interrogatories, and your answers thereto are to be supplemented as additional information and knowledge becomes available to you pursuant to Rule 26(e).

#### **DEFINITIONS AND INSTRUCTIONS**

“Camas Prairie” refers to the topographic feature known as the Camas Prairie Rift of Idaho, centered around Fairfield, Idaho and Camas Creek, and lying within portions of Blaine, Camas, and Elmore Counties, Idaho.

“Date” means the day, month and year, if known or ascertainable and, if not, the closest approximation that can be made.

“Document” or “Documentary” means and includes any and all tangible things and papers, whether written, recorded, graphic, typewritten, printed, photographed or otherwise produced or reproduced, and whether produced manually or by mechanical, electrical, electronic, or other artificial process or a combination of these methods, including but not limited to papers, computer records and/or files, agreements, contracts, letters, cables,

wires, notes, memoranda, correspondence, telegrams, patents, books, reports, studies, minutes, records, accounting books, maps, plans, blue prints, sketches, charts, drawings, diagrams, photographs, movies, films, computer printouts, tape recordings, information stored on computers, assignments, notebooks, ledgers, billings, statements, invoices, checks, receipts, analyses, surveys, transcriptions, recordings, analyses, studies, and things similar to any of the foregoing, regardless of their authority or origin, and however denominated by you of which you have any knowledge or information, referring, relating or pertaining in any way to the subject matters in connection with which the word is used. The term "Document" or "Documentary" includes, without limitation, originals, all file copies, and all the copies no matter how or by whom prepared and all drafts prepared in connection with such writings, whether used or not.

"IDWR" means the Idaho Department of Water Resources.

"Petitioner" refers to Big Wood & Little Wood Water Users Association, and its members, officers, agents, and/or employees for purposes of this action.

"Relate to" or "Relating to" means constituting; evidencing; reflecting; representing; supporting; contradicting; referring to; containing; mentioning; recording; noting; embodying; studying; analyzing; evaluating; relevant to; generated in anticipation of or as a result of; or relied upon, referred to, or mentioned in connection with any item or event. The terms "Relate to" or "Relating to," as applied to a specific document, such as an agreement, deed of trust, promissory note, etc., requests that specific Document as well any Documents otherwise relating to it.



"You" or "Your" means Big Wood & Little Wood Water Users Association, together with any of its members and managers, officers, directors, counsel, consultants, experts, investigators, principals, agents, employees, representatives, volunteers, predecessors-in-interest and any other person acting on its behalf, including without limitations, any consultants, accountants, bookkeepers, and attorneys.

Terms and abbreviations not specifically defined herein shall be defined by reference to the meanings attributed to them by IDWR rules, state water resource laws, and common usage.

The Requests for Production listed below include all Documents in your possession or under your control, including Documents in the possession of your attorneys, accountants, consultants, expert witnesses or other agents or persons from whom you have a legal right to obtain such Document(s).

All of the Interrogatories and Requests herein are deemed continuing. If, after responding to these Interrogatories and Requests for Production You acquire any further information or any Documents requested herein, or any other information related to any Document herein, which is not reflected by any Documents produced or any response to these Interrogatories and Requests for Production, You must file a supplemental response or indicate to counsel for the party propounding these Interrogatories and Requests for Production of the existence of such Documents. Such supplemental response is in addition to any required by the Idaho Rules of Civil Procedure.

If any Document or any portion of any Document or any other information which is requested herein is or will be withheld from your answers to Interrogatories, from

production, inspection or copying (whether because it is claimed to be work product, communication from attorney to client, or is claimed to be entitled to be withheld for any other reason), please fully identify each such Document or portion thereof in Your response and fully state in your response the reason it is or will be withheld. In addition, if any Document is practically impossible of production, inspection or copying, please fully identify such Document and the reason for the practical impossibility.

### **INTERROGATORIES**

**INTERROGATORY NO. 1:** Please identify each person who assisted You in the review and evaluation of these written discovery requests and in the preparation of Your responses thereto.

**INTERROGATORY NO. 2:** Please identify each expert witness You intend or expect to call at the hearing in this matter, and please include a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the testimony; and 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.

**INTERROGATORY NO. 3:** Please identify each lay witness You intend or expect to call at the hearing in this matter, and please describe the expected scope and substance of each such witness's testimony.

**INTERROGATORY NO. 4:** Please explain in detail Your understanding of the mechanisms by which, and the extent to which, withdrawals of ground water occurring on the Camas Prairie affect the surface flows available to each of the Petitioners' points of diversion.

**INTERROGATORY NO. 5:** Please identify each and every ground water well and ground water right on the Camas Prairie that you contend materially injures the water diversions and water uses of the Petitioners.

### **REQUESTS FOR PRODUCTION**


**REQUEST FOR PRODUCTION NO. 1:** Please produce copies of any Documents that You reviewed in preparing responses to these written discovery requests, that are identified in Your responses to these written discovery requests, or that otherwise support Your answers to these written discovery requests.

**REQUEST FOR PRODUCTION NO. 2:** Please produce copies of any reports, studies, measurements, data, or other Documents discussing, analyzing, documenting, or addressing ground water hydrology and hydrogeology within the Camas Prairie.

**REQUEST FOR PRODUCTION NO. 3:** Please produce copies of any reports, studies, measurements, data, or other Documents discussing, analyzing, documenting, or addressing the relationships and interactions between ground water withdrawals within the Camas Prairie and surface flows within the Big Wood River and Little Wood River.

DATED THIS 4<sup>th</sup> day of August, 2015.

Varin Wardwell LLC

By:   
Dylan B. Lawrence  
Attorneys for Water District 37-B  
Groundwater Group

### CERTIFICATE OF SERVICE

I hereby certify that on this 4<sup>th</sup> day of August, I caused to be served a true and correct copy of the foregoing by placing a copy of the same in the United States mail, postage prepaid and properly addressed and by e-mail to participants who have provided e-mail addressed to the Department for service to the following:

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LITTLE WOOD WATER USERS ASSN  
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(JOHN & ELAINE FRENCH)  
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RON HARRISON  
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JOHN & KRISTY MOLYNEUX  
THOMAS M O'GARA FAMILY  
TRUST (TOM O'GARA C/O BRIAN  
BARSOTTI)  
PHIL PUCHNER

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ROCKY & TERRI SHERBINE  
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MICKY & JUSTIN VANHULLE  
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RIVER RANCH/SHARON LEE)  
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ASSN INC (KATHY LYNN)  
RICHARD SPRINGS III (DICK &  
MELINDA SPRINGS)  
HEART ROCK RANCH LLC (HARRY  
& SHIRLEY HAGEY)  
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APPROPRIATORS INC  
C/O RANDALL C BUDGE  
THOMAS J BUDGE  
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RACINE OLSON  
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[jgb@racinelaw.net](mailto:jgb@racinelaw.net)

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CITY OF FAIRFIELD  
C/O SUSAN E BUXTON  
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DBA SUN VALLEY COMPANY  
C/O SCOTT L CAMPBELL  
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GEOFFREY SMITH LLC  
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[fxh@haemlaw.com](mailto:fxh@haemlaw.com)

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**WATER DISTRICT 37-B GROUNDWATER GROUP'S FIRST SET OF  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
TO PETITIONERS- 9 -**

SOUTHERN COMFORT HOA  
EDWARD A LAWSON  
DENNIS J CARD & MAUREEN M  
MCCANTY  
ANIMAL SHELTER OF WOOD RIVER  
VALLEY  
HELIOS DEVELOPMENT LLC  
THE VILLAGE GREEN VCHOA  
FLYING HEART RANCH II  
SUBDIVISION OWNERS ASSN  
C/O JAMES R LASKI  
HEATHER O'LEARY  
LAWSON LASKI CLARK & POGUE  
PLLC  
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732 FALLS VIEW DR  
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MICHELLE WOLF  
C/O CANDICE MCHUGH  
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MCHUGH BROMLEY PLLC  
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BOISE ID 83702  
[cmchugh@mchughbromley.com](mailto:cmchugh@mchughbromley.com)  
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HOLLY FARMS LTD  
J EVAN ROBERTSON  
ECCLES FLYING HAT RANCH LLC  
ECCLES WINDOW ROCK RANCH  
LLC  
C/O J EVAN ROBERTSON  
ROBERTSON & SLETTE PLLC  
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---

GREENHORN HOA  
(JEFFREY T SEELY)  
KIRIL SOKOLOFF  
COMMUNITY SCHOOL (JANEL L  
GODDARD)  
DEER CREEK FARM (LYNN  
CAMPION)  
B LAMBERT TRUST (TOBY B  
LAMBERT)  
GULCH TRUST (TERESA L MASON)  
WEBB LANDSCAPE INC (MARK  
PALMER)  
SCI PROPERTIES LLC (BRENDA A  
LEVINE)  
REDCLIFF PARTNERS LP (RANNEY  
E DRAPER)  
RED CLIFFS HOA  
AQUARIUS SAW LLC  
SANDOR & TERI SZOMBATHY  
RIVER ROCK RANCH LP (SHEILA  
WITMER)  
BARBER FAMILY ASSOCIATES LP  
ROBERT ROHE  
GRIFFIN RANCH PUD SUBDIVISION

**WATER DISTRICT 37-B GROUNDWATER GROUP'S FIRST SET OF  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
TO PETITIONERS- 10 -**

HOA (CHERI HICKS)  
 GRIFFIN RANCH SUBDIVISION HOA  
 (CHERI HICKS)  
 BLAINE COUNTY RECREATION  
 DISTRICT  
 HENRY & JANNE BURDICK  
 BLAINE COUNTY SCHOOL  
 DIST NO. 61  
 ASPEN HOLLOW HOA (ALLAN  
 PATZER & WILLIAM LEHMAN)  
 F ALFREDO REGO  
 BELLEUE FARMS LANDOWNERS  
 ASSN INC  
 CLIFFSIDE HOA  
 CHANEY CREEK RANCH LLC  
 ELIZABETH K GRAY  
 DONNA F TUTTLE TRUST  
 LINDA WOODCOCK  
 AIRPORT WEST BUSINESS PARK  
 OWNERS ASSN INC  
 CLEAR CREEK LLC  
 MID-VALLEY WATER CO LLC  
 THE ANNE L WINGATE TRUST  
 DON R & JUDY H ATKINSON  
 BARRIE FAMILY PARTNERS  
 JAMES P & JOAN CONGER  
 THE DANIEL T MONOOGIAN  
 REVOCABLE TRUST  
 DAN S FAIRMAN MD & MELYNDA  
 KIM STANDLEE FAIRMAN  
 FLOWERS BENCH LLC  
 R THOMAS GOODRICH & REBECCA  
 LEA PATTON  
 IDAHO RANCH LLC  
 THE JONES TRUST  
 LOUISA JANE H JUDGE  
 LAURAL LUCERE  
 MARGO PECK  
 THE RALPH W & KANDI L GIRTON  
 1999 REVOCABLE TRUST  
 THE RESTATED MCMAHAN 1986  
 REVOCABLE TRUST  
 RHYTHM RANCH HOA  
 MARION R & ROBERT M

ROSENTHAL  
 SAGEWILLOW LLC  
 SALIGAO LLC  
 CHARLES & COLLEEN WEAVER  
 STONEGATE HOA  
 THE BARKER LIVING TRUST  
 CAROL BURDZY THIELEN  
 THE VERNON IRREVOCABLE  
 TRUST  
 MATS & SONYA WILANDER  
 MICHAEL E WILLARD  
 RALPH R LAPHAM  
 CHARLES L MATTHIESEN PIONEER  
 RESIDENTIAL & RECREATIONAL  
 PROPERTIES LLC  
 THOMAS W WEISEL  
 JAMES K & SANDRA FIGGE  
 STARLITE HOA  
 HEATHERLANDS HOA  
 GOLDEN EAGLE RANCH HOA  
 TIMBERVIEW TERRACE HOA  
 C/O JAMES P SPECK  
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 ROGERS III)  
 C/O LAIRD B STONE  
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 TRAINOR  
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**WATER DISTRICT 37-B GROUNDWATER GROUP'S FIRST SET OF  
 INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
 TO PETITIONERS- 11 -**



ROBERT L BAKER REVOCABLE  
TRUST  
CATHERINE S DAWSON  
REVOCABLE TRUST  
SYRINGA RANCH LLC  
DEER CREEK RANCH INC  
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ERNEST J GETTO  
417 ENNISBROOK DR  
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NANCIE C TATUM &  
THOMAS F HENNIG  
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DEANN RICHINS MARK & SUSAN  
WILLIAMS FISH CREEK RESERVOIR  
RANCH, LLC  
384 2 2900 E  
PAUL ID 83347

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PAUL & TANA DEAN  
40 FREEDOM LOOP  
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ROBERT J STRUTHERS  
762 ROBERT ST PICABO ROUTE  
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ASSN INC  
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KETCHUM ID 83340

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SILVER SAGE OWNERS ASSN INC  
C/O CAROL'S BOOKKEEPING  
PO BOX 1702  
KETCHUM ID 83340

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**WATER DISTRICT 37-B GROUNDWATER GROUP'S FIRST SET OF  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
TO PETITIONERS- 14 -**

STARWEATHER OWNERS  
ASSN INC  
PO BOX 254  
KETCHUM ID 83340

---

STEVEN C FUNK  
90 FREEDOM LOOP  
BELLEVUE ID 83313

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THOMAS & AMY MISTICK  
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HAILEY ID 83333

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USDA FOREST SERVICE  
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[jgough@fs.fed.us](mailto:jgough@fs.fed.us)

---

VALLEY CLUB OWNERS ASSN INC  
PO BOX 254  
KETCHUM ID 83340

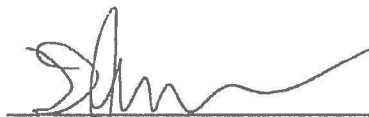
---

WILLIAM R & KATHRYN L  
RATLIFFE  
206 BAYHORSE RD  
BELLEVUE ID 83313

---

WOOD RIVER LAND TRUST  
119 E BULLION ST  
HAILEY ID 83333

---

  
Dylan B. Lawrence

# EXHIBIT C



ATTORNEYS AT LAW

DYLAN B. LAWRENCE  
DYLANLAWRENCE@VARINWARDWELL.COM

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P.O. Box 1676  
BOISE, IDAHO 83701  
P: 208.907.1529  
F: 1.866.717.1758  
VARINWARDWELL.COM

September 15, 2015

**VIA REGULAR MAIL**

Joseph J. James  
Brown & James  
130 Fourth Avenue West  
Gooding, Idaho 83330

Re: Big Wood & Little Wood Water Users Association Delivery Call

Dear Mr. James:

It is now one week past the deadline for your client's response to the discovery requests of the Water Dist. 37-B Groundwater Group, and I have not received the responses or a request for an extension. As I indicated in my follow-up letter of August 17, those discovery requests were limited in scope and narrowly tailored, and timely responses should be achievable. In addition, you will recall that in a letter dated September 1, I requested a copy of your client's responses to the Sun Valley Company discovery requests.

Please let me know at your earliest convenience when you expect to provide these responses. If I do not receive a response by the end of this week, I will assume it will be necessary to file a motion to compel.

Thank you for your attention to this matter.

Sincerely,

VARIN WARDWELL LLC

A handwritten signature in black ink, appearing to read "Dylan B. Lawrence", written over a horizontal line.

Dylan B. Lawrence

# **EXHIBIT D**



Dylan Lawrence <dylanlawrence@varinwardwell.com>

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## Delivery call

1 message

---

Dylan Lawrence <dylanlawrence@varinwardwell.com>

Fri, Sep 18, 2015 at 2:49 PM

To: joe@brownjameslaw.com

Bcc: Dylan Lawrence <dylanlawrence@varinwardwell.com>

Joe,

I represent a group of ground water users on the Camas Prairie, who are participating in the Big Wood & Little Wood WUA delivery calls as the Water Dist. 37-B Groundwater Group. We served discovery requests on your client back on August 4, and the deadline for responses was September 8, but I haven't received any responses or extension requests.

I have reviewed the joint motion for stay that you and counsel for some of the other parties filed yesterday. While I don't oppose the stay as a general matter, given that the responses were already significantly late by the time those were filed, I still believe responses before a stay goes into effect would be appropriate. As I am sure you know, the Camas Prairie aquifer is not part of the ground water modeling effort that has been taking place with respect to the Big Wood River aquifer, and so it is particularly important for us to understand what information you are relying on when you assert that junior ground water diversions in Water District 37-B are causing material injury to the BW&LWWUA (as was asserted in the first paragraph of both the motion and the stipulation).

I really do not want to go through the time and expense of filing a motion to compel responses, but am prepared to do so before a stay goes into effect if necessary. Please contact me at your earliest convenience next week if you believe there is some basis on which you believe we can avoid that.

Thank you for your consideration.

Dylan

**Dylan Lawrence**

242 N. 8th Street, Ste. 220

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<https://www.facebook.com/varinwardwell>



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# **Attachment A-6**

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

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHTS HELD BY  
MEMBERS OF THE BIG WOOD & LITTLE  
WOOD WATER USERS ASSOCIATION  
DIVERTING FROM THE BIG WOOD  
RIVER

Docket No. CM-DC-2015-001

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHTS HELD BY  
MEMBERS OF THE BIG WOOD & LITTLE  
WOOD WATER USERS ASSOCIATION  
DIVERTING FROM THE LITTLE WOOD  
RIVER

Docket No. CM-DC-2015-002

**ORDER DESIGNATING ACGWS  
ORDER AND SUN VALLEY ORDER  
AS FINAL ORDERS**

**BACKGROUND**

On February 24, 2015, the Director ("Director") of the Idaho Department of Water Resources ("Department") received two conjunctive management water delivery call letters from counsel for members of the Big Wood & Little Wood Water Users Association ("WUA"). The letters allege that senior surface water users on the Big Wood and Little Wood Rivers are being injured by water users diverting ground water hydraulically connected to the Big Wood and Little Wood Rivers. The letters request the Director regulate junior ground water users consistent with the prior appropriation doctrine.

The Director treated the letters as delivery calls pursuant to the Department's Rules for Conjunctive Management of Surface and Ground Water Resources ("CM Rules"), initiated new contested case proceedings and assigned each delivery call letter its own docket number. The Big Wood Delivery Call was assigned Docket No. CM-DC-2015-001. The Little Wood Delivery Call was assigned Docket No. CM-DC-2015-002.

On March 20, 2015, the Department sent letters to ground water users the Department identified as potentially affected by one or both of the Big Wood and Little Wood Delivery Calls ("Delivery Calls"). The purpose of the letters was to inform the water users of the Delivery Calls and notify them of a planned status conference. The letters invited the water users to file a written notice with the Department if they planned to participate in delivery call proceedings. The Department received over 100 notices of intent to participate.

**ORDER DESIGNATING ACGWS ORDER AND SUN VALLEY ORDER AS FINAL  
ORDERS - Page 1**

The Department also published general notice of the Delivery Calls and the status conference in the Idaho Mountain Express and Camas Courier on March 25th, 2015 & April 1st, 2015; and the Times News on March 26th, 2015 & April 2nd, 2015.

On June 25, 2015, Sun Valley Company ("SVC") filed a *Motion to Dismiss Contested Case Proceedings* ("Sun Valley's Motion") arguing, among other things, the WUA failed to file petitions for delivery calls compliant with the requirements of Idaho Code § 42-237b, the Department's Rules of Procedure, and the CM Rules.

On June 26, 2015, the City of Hailey and City of Bellevue ("Hailey and Bellevue") filed a *Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* ("Cities' Motion") arguing the Department may not administer ground water rights in Water Districts 37 and 37B in response to the Delivery Calls under CM Rule 40 unless and until the Department, through rulemaking, establishes an area of common ground water supply that encompasses the WUA's members' water rights and potentially implicated junior ground water rights.

On July 22, 2015, the Department issued its *Order Denying Sun Valley Company's Motion to Dismiss* ("Sun Valley Order") denying Sun Valley's Motion, and its *Order Denying Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* ("ACGWS Order") denying the Cities' Motion. Neither the Sun Valley Order nor the ACGWS Order contain language or are accompanied by a document containing language indicating they are recommended orders, preliminary orders, or final orders. Thus, under the Department's Rule of Procedure 710, the Sun Valley Order and ACGWS Order are interlocutory orders. *See* IDAPA 37.01.01.710.

On August 18, 2015, Hailey and Bellevue filed a *Petition for Judicial Review of Agency Action* ("Cities' Petition") in Ada County District Court, Case No. CV-OC-1514419, seeking judicial review of the ACGWS Order pursuant to Idaho Code §§ 67-5270 and 67-5271(2) and Rule 84 of the Idaho Rules of Civil Procedure. On August 19, 2015, SVC filed a *Petition for Judicial Review* ("SVC Petition") in Ada County District Court, Case No. CV-OC-1514500, seeking judicial review of the Sun Valley Order pursuant to Idaho Code §§ 67-5270 and 67-5271(2) and Rule 84 of the Idaho Rules of Civil Procedure. The Cities' Petition and the SVC Petition were reassigned to the Snake River Basin Adjudication District Court of the Fifth Judicial District. The Cities' Petition was renumbered to CV-WA-2015-14419. The SVC Petition was renumbered to CV-WA-2015-14500.

On September 17, 2015, Hailey and Bellevue, SVC, the WUA, the City of Ketchum, the City of Fairfield, and the Department entered into a *Stipulation* ("Stipulation"). The signatories agreed Hailey and Bellevue, the City of Ketchum, the City of Fairfield, and SVC (collectively, the "Movants") would file a motion requesting the Director designate the ACGWS Order and the Sun Valley Order "as final orders pursuant to the Department's Rules of Procedure 710 and 750." *Stipulation* at 5.

On September 25, 2015, the Movants filed a *Joint Motion to Designate ACGWS Order and Sun Valley Order as Final Orders* ("Motion to Designate"). The Movants request "the Director designate the Sun Valley Order and the ACGWS Order as final orders and issue separate orders as provided for [in the Stipulation]." *Motion to Designate* at 2.

## ANALYSIS

As explained above, neither the Sun Valley Order nor the ACGWS Order contain language or are accompanied by a document containing language indicating they are recommended orders, preliminary orders, or final orders. Thus, under the Department's Rule of Procedure 710, the Sun Valley Order and ACGWS Order are interlocutory orders. *See* IDAPA 37.01.01.710.

Rule 750 of the Department's Rules of Procedure states:

If an order does not designate itself as recommended, preliminary or final at its release, but is designated as recommended, preliminary or final after its release, its effective date for purposes of reconsideration or appeal is the date of the order of designation. If a party believes that an order not designated as a recommended order, preliminary order or final order according to the terms of these rules should be designated as a recommended order, preliminary order or final order, the party may move to designate the order as recommended, preliminary or final, as appropriate.

IDAPA 37.01.01.750.

Consistent with Rule 750, the Movants filed the Motion to Designate. In the Stipulation, the Department agreed that, if no objections were filed to the Motion to Designate, the Director would issue "orders designating the [ACGWS Order] and the [Sun Valley Order] as final orders subject to judicial review consistent with the Department's Rule of Procedure 740." *Stipulation* at 5. The Department received no responsive pleadings to the Motion to Designate. Accordingly, the Director will grant the Motion to Designate.

## ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the Motion to Designate is GRANTED. The ACGWS Order and the Sun Valley Order are hereby designated as final orders of the Department subject to judicial review consistent with the Department's Rule of Procedure 740 (IDAPA 37.01.01.740). The effective date of the ACGWS Order and the Sun Valley Order for purposes of reconsideration or appeal is the date of this *Order Designating ACGWS Order and Sun Valley Order as Final Orders*. *See* IDAPA 37.01.01.750.

DATED this 15<sup>th</sup> day of October 2015.

  
GARY SPACKMAN  
Director

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 15<sup>th</sup> day of October 2015, I served a true and correct copy of the foregoing document to all parties listed on the Combined Certificate of Services List posted on the Department's website at <http://idwr.idaho.gov/legal-actions/delivery-call-actions/big-wood-river.html> and <http://idwr.idaho.gov/legal-actions/delivery-call-actions/little-wood-river.html> updated the 14th day of October 2015, by the following method:

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# **Attachment A-7**

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

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHTS HELD BY  
MEMBERS OF THE BIG WOOD & LITTLE  
WOOD WATER USERS ASSOCIATION  
DIVERTING FROM THE BIG WOOD  
RIVER

Docket No. CM-DC-2015-001

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHTS HELD BY  
MEMBERS OF THE BIG WOOD & LITTLE  
WOOD WATER USERS ASSOCIATION  
DIVERTING FROM THE LITTLE WOOD  
RIVER

Docket No. CM-DC-2015-002

**ORDER GRANTING JOINT MOTION  
FOR STAY OF DELIVERY CALLS;  
GRANTING MOTION TO COMPEL**

**BACKGROUND**

On February 24, 2015, the Director ("Director") of the Idaho Department of Water Resources ("Department") received two conjunctive management water delivery call letters from counsel for members of the Big Wood & Little Wood Water Users Association ("WUA"). The letters allege that senior surface water users on the Big Wood and Little Wood Rivers are being injured by water users diverting ground water hydraulically connected to the Big Wood and Little Wood Rivers. The letters request the Director regulate junior ground water users consistent with the prior appropriation doctrine.

The Director treated the letters as delivery calls pursuant to the Department's Rules for Conjunctive Management of Surface and Ground Water Resources ("CM Rules"), initiated new contested case proceedings and assigned each delivery call letter its own docket number. The Big Wood Delivery Call was assigned Docket No. CM-DC-2015-001. The Little Wood Delivery Call was assigned Docket No. CM-DC-2015-002.

On March 20, 2015, the Department sent letters to ground water users the Department identified as potentially affected by one or both of the Big Wood and Little Wood Delivery Calls ("Delivery Calls"). The purpose of the letters was to inform the water users of the Delivery Calls and notify them of a planned status conference. The letters invited the water users to file a written notice with the Department if they planned to participate in delivery call proceedings. The Department received over 100 notices of intent to participate.

**ORDER GRANTING JOINT MOTION FOR STAY OF DELIVERY CALLS;  
GRANTING MOTION TO COMPEL - Page 1**



The Department also published general notice of the Delivery Calls and the status conference in the Idaho Mountain Express and Camas Courier on March 25th, 2015 & April 1st, 2015; and the Times News on March 26th, 2015 & April 2nd, 2015.

On April 29, the Department received *Sun Valley Company's Motion for Order Authorizing Discovery*. On May 13, 2015, the Director issued an *Order Authorizing Discovery; Notice of Pre-Hearing Conference*. On June 2, 2015, the WUA filed *Petitioner's Motion for Scheduling Order and Motion for Protective Order* asking the Director to suspend authorization of discovery by the parties.

On June 25, 2015, Sun Valley Company ("SVC") filed a *Motion to Dismiss Contested Case Proceedings* ("Sun Valley's Motion") arguing, among other things, the WUA failed to file petitions for delivery calls compliant with the requirements of Idaho Code § 42-237b, the Department's Rules of Procedure, and the CM Rules.

On June 26, 2015, the City of Hailey and City of Bellevue ("Hailey and Bellevue") filed a *Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* ("Cities' Motion") arguing the Department may not administer ground water rights in Water Districts 37 and 37B in response to the Delivery Calls under CM Rule 40 unless and until the Department, through rulemaking, establishes an area of common ground water supply that encompasses the WUA's members' water rights and potentially implicated junior ground water rights.

On July 2, 2015, the Director issued an *Order Denying Motion for Protective Order; Scheduling Order* ("Scheduling Order"), denying Petitioner's motion for protective order and ordering discovery to proceed consistent with requirements set forth in the Department's Rules of Procedure and the Idaho Rules of Civil Procedure. *Scheduling Order* at 3.

On July 22, 2015, the Department issued its *Order Denying Sun Valley Company's Motion to Dismiss* ("Sun Valley Order") denying Sun Valley's Motion, and its *Order Denying Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* ("ACGWS Order") denying the Cities' Motion.

On August 4, 2015, the Water District 37-B Groundwater Group ("Group") filed a *Notice of Service of Discovery Requests* ("Notice") with the Department. The Notice explained that, on August 4, 2015, the Group served to the WUA the Group's "First Set of Interrogatories and Requests for Production of Documents" ("Discovery Requests"). *Notice* at 1.

On August 18, 2015, Hailey and Bellevue filed a *Petition for Judicial Review of Agency Action* ("Cities' Petition") in Ada County District Court, Case No. CV-OC-1514419, seeking judicial review of the ACGWS Order pursuant to Idaho Code §§ 67-5270 and 67-5271(2) and Rule 84 of the Idaho Rules of Civil Procedure. On August 19, 2015, SVC filed a *Petition for Judicial Review* ("SVC Petition") in Ada County District Court, Case No. CV-OC-1514500, seeking judicial review of the Sun Valley Order pursuant to Idaho Code §§ 67-5270 and 67-5271(2) and Rule 84 of the Idaho Rules of Civil Procedure. The Cities' Petition and the SVC Petition (collectively, the "Petitions") were reassigned to the Snake River Basin Adjudication District Court of the Fifth Judicial District. The Cities' Petition was renumbered to CV-WA-2015-14419. The SVC Petition was renumbered to CV-WA-2015-14500.



On September 17, 2015, Hailey and Bellevue, SVC, the WUA, the City of Ketchum, the City of Fairfield (collectively, the “Movants”), and the Department entered into a *Stipulation* (“Stipulation”) in which they agreed the Movants would file with the Department a *Joint Motion for Stay of Delivery Calls* (“Motion for Stay”). *Stipulation* at 5-7.<sup>1</sup> The Stipulation states that, “[c]onsistent with the Department’s Rule of Procedure 270, any party to the Delivery Calls may file a responsive pleading to the [Motion for Stay] within fourteen (14) days of the filing of the motion.” *Id.* at 7.

On September 17, 2015, the Movants filed the Motion for Stay. The Movants ask the Director to “[o]rder the stay of all administrative proceedings on the Delivery Calls, including without limitation all discovery and motion practice, until the District Court has issued Rule 54 final and appealable judgments on both” Petitions. *Motion for Stay* at 3. The Movants also ask the Director to “[o]rder that, following issuance of Rule 54 final and appealable judgments by the District Court on both [Petitions], whichever is later, the Department will promptly notice scheduling of a status conference. . . .” *Id.* at 3-4.

On September 28, 2015, the Group filed a *Response to Joint Motion for Stay; Motion to Compel* (“Motion to Compel”). The Group supports the Motion for Stay, but “believes there is a matter that should be a narrow exception to a stay.” *Motion to Compel* at 2. “Specifically, at the time the [Motion for Stay] was filed, [the WUA] was already nine days late in responding to the [Group’s] discovery requests.” *Id.* The Group requests the Director grant the Motion for Stay, but “specifically exclude the issues raised in [Motion to Compel] from the operation of such a stay” and “compel the [WUA] to respond to the [Group’s] pending discovery requests.” *Id.* at 6.

## ANALYSIS

### Motion for Stay

As stated in the Stipulation, the Movants and Department agree that “expedited judicial review of the issues raised by the [Cities’ Motion] and [Sun Valley’s Motion] on the terms set forth [in the Stipulation] is in the interests of administrative and judicial economy.” *Stipulation* at 5. It is significant that the calling party in the Delivery Calls, the WUA, joined the Motion for Stay. The Director will grant the Motion for Stay.

### Motion to Compel

As explained above, the Director previously ordered discovery to proceed consistent with requirements set forth in the Department’s Rules of Procedure and the Idaho Rules of Civil Procedure. *Scheduling Order* at 3. The Group’s Discovery Requests were served to the WUA on August, 4, 2015, well before the Movants filed the Motion for Stay with the Department. At the time the Motion for Stay was filed, the WUA had failed to timely respond to the Discovery

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<sup>1</sup> The Stipulation was filed in both CV-WA-2015-14419 and CV-WA-2015-14500 on September 17, 2015, but did not include the Motion for Stay as Attachment A as claimed. See *Stipulation* at 7 paragraph 16(a). A *Corrected Stipulation* was filed in both CV-WA-2015-14419 and CV-WA-2015-14500 on September 18, 2015, that included the Motion for Stay as Attachment A.

Requests in accordance with the Idaho Civil Rules of Procedure and the Director's Scheduling Order. The WUA submitted no response to the Motion to Compel. The Director will grant the Motion to Compel.

### ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the Motion for Stay is GRANTED. All administrative proceedings on the Big Wood and Little Wood Delivery Calls (Docket Nos. CM-DC-2015-001 and CM-DC-2015-002, respectively) are stayed as to all parties to the Delivery Calls, including without limitation, all discovery and motion practice, until the District Court has issued Rule 54 final and appealable judgments on both the Cities' Petition (CV-WA-2015-14419) and the SVC Petition (CV-WA-2015-14500).

IT IS FURTHER ORDERED that, as an exception to the stay, the Motion to Compel is GRANTED. The WUA must fully respond to the Group's Discovery Requests by October 29, 2015.

IT IS FURTHER ORDERED that, following issuance of Rule 54 final and appealable judgments by the District Court on both the Cities' Petition and the SVC Petition, whichever is later, the Department will promptly notice scheduling of a status conference at which the parties to the Delivery Calls and the Department will consult concerning the procedural steps required to give effect to the District Court's decisions, including without limitation, dismissal of the contested cases, or establishing a hearing schedule. If proceedings resume on the Delivery Calls following issuance of this *Order Granting Joint Motion for Stay of Delivery Calls; Granting Motion to Compel*, parties to the Delivery Calls shall be entitled to a schedule consistent with time frames set forth in the Stipulation.

DATED this 15th day of October 2015.

  
GARY SPACKMAN  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 15<sup>th</sup> day of October 2015, I served a true and correct copy of the foregoing document to all parties listed on the Combined Certificate of Services List posted on the Department's website at <http://idwr.idaho.gov/legal-actions/delivery-call-actions/big-wood-river.html> and <http://idwr.idaho.gov/legal-actions/delivery-call-actions/little-wood-river.html> updated the 14th day of October 2015, by the following method:

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# **Attachment A-8**

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

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHTS HELD BY  
MEMBERS OF THE BIG WOOD & LITTLE  
WOOD WATER USERS ASSOCIATION  
DIVERTING FROM THE BIG WOOD  
RIVER

Docket No. CM-DC-2015-001

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHTS HELD BY  
MEMBERS OF THE BIG WOOD & LITTLE  
WOOD WATER USERS ASSOCIATION  
DIVERTING FROM THE LITTLE WOOD  
RIVER

Docket No. CM-DC-2015-002

**ORDER DENYING JOINT MOTION TO  
REVISE INTERLOCUTORY ORDER**

**BACKGROUND**

On February 24, 2015, the Director ("Director") of the Idaho Department of Water Resources ("Department") received two conjunctive management water delivery call letters from counsel for members of the Big Wood & Little Wood Water Users Association ("Petitioners"). The letters allege senior surface water users on the Big Wood and Little Wood Rivers are being injured by water users diverting ground water hydraulically connected to the Big Wood and Little Wood Rivers. The letters request the Director regulate junior ground water users consistent with the prior appropriation doctrine.

The Director treated the letters as delivery calls pursuant to the Department's Rules for Conjunctive Management of Surface and Ground Water Resources ("CM Rules"), initiated new contested case proceedings, and assigned each delivery call letter its own docket number. The Big Wood Delivery Call was assigned docket no. CM-DC-2015-001. The Little Wood Delivery Call was assigned docket no. CM-DC-2015-002.

On June 26, 2015, the City of Hailey and the City of Bellevue ("Hailey and Bellevue") filed a *Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* ("Motion to Dismiss") and *Memorandum in Support of Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* ("Memorandum"). Hailey and Bellevue argued the Director must "initiate rulemaking in accordance with the Idaho Administrative Procedure Act, I.C. § 67-5201" to designate an area of common ground water supply ("ACGWS") before proceeding with the Big and Little Wood Delivery Calls pursuant to CM Rule 40. *Memorandum* at 1.

On July 22, 2015, the Director issued an *Order Denying Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* (“Order”). The Director determined “CM Rule 40 does not require the Director establish an ACGWS by rulemaking before the Director can move forward with the Big and Little Wood Delivery Calls.” *Order* at 2. The Director stated: “While the Director has authority to establish an ACGWS by rule (and in fact did for the Eastern Snake Plain Aquifer (“ESPA”)), the CM Rules do not mandate that the Director go through the rulemaking process to establish an ACGWS.” *Id.* The Director concluded “[t]he ACGWS for the Big and Little Wood Delivery Calls is a factual question that can be established based upon information presented at hearing applying the definition set forth in CM Rule 10.01.” *Id.* at 3.

On August 18, 2015, Hailey and Bellevue filed a *Joint Motion for Review of Interlocutory Order* requesting the Director revise the Order to grant the Motion to Dismiss (“Motion to Revise”).<sup>1</sup>

### ANALYSIS

Hailey and Bellevue argue the Director’s determination that the ACGWS can be determined based upon the definition set forth in CM Rule 10.01 is “contrary to the plain language of the CM Rules.” *Motion to Revise* at 2. Specifically, Hailey and Bellevue cite to statements in CM Rules 1, 20, and 40 and assert these statements mandate the Director must “first define the [ACGWS] by rule under the Idaho Administrative Procedure Act, I.C. § 67-5201 *et. seq*” before proceeding with the Big and Little Wood Delivery Calls. *Id.* at 2-4.

Nothing in CM Rules 1, 20, and 40 mandates the Director establish an ACGWS by rule before proceeding with the Big and Little Wood Delivery Calls. CM Rule 1 states the CM Rules “prescribe procedures for responding to a delivery call made by the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right in an area having a common ground water supply.” IDAPA 37.03.11.001. CM Rule 20.01 states the CM Rules “govern the distribution of water from ground water sources and areas having a common ground water supply.” IDAPA 37.03.11.020.01. CM Rule 20.06 states: “These rules provide the basis for the designation of areas of the state that have a common ground water supply. . . .” IDAPA 37.03.11.020.07. CM Rule 40 states the rule governs “responses to call for water delivery made by the holders of senior-priority surface or ground water rights against the holders of junior-priority ground water rights from areas having a common ground water supply in an organized water district.” IDAPA 37.03.11.040. These statements do not require the Director establish an ACGWS by rule prior to moving forward with the Big and Little Wood Delivery Calls. As the Director stated in the Order, “[w]hile the Director has authority to establish an ACGWS by rule (and in fact did for the [ESPA]), the CM Rules do not mandate that the Director go through the rulemaking process to establish an ACGWS.” *Order* at 2. The Director’s determination that the ACGWS can be established using the framework of CM Rule 40 based on information presented at hearing and applying the definition set forth in CM Rule 10.01 is consistent with the CM Rules.

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<sup>1</sup> On August 20, 2015, James P. Speck, attorney for multiple respondents in the Big and Little Wood Delivery Calls, filed a *Joinder in and Support of Joint Motion for Review of Interlocutory Order*.

Hailey and Bellevue also argue the “the plain reading” of CM Rule 20.06 requires that, after the Director designates an ACGWS, “the next step is the incorporation of the ground water rights within that defined area into a water district.” *Motion to Revise* at 3.

Hailey and Bellevue’s suggestion that CM Rule 20.06 prescribes a fixed two-step process in delivery calls where water rights are put into water districts only after an area of common ground water is designated is not tenable. Throughout much of Idaho, water districts have been created and water rights incorporated into the districts. CM Rule 20.06 simply explains the CM Rules provide “the procedures that will be followed in incorporating the water rights within [areas of the state that have a common ground water supply] into existing water districts” when such water rights are not already within water districts. Here, current information demonstrates the water rights at issue in the Big and Little Wood Delivery Calls are already in water districts. Specifically, the junior-priority ground water right diversions that impact flow in water sources for the Petitioners’ senior surface water rights are diverted from the Wood River Valley aquifer system and the Camas Prairie aquifer system. *IDWR Staff Memo Re: Hydrology, Hydrogeology, and Hydrologic Data* at 1, 6-14 (Aug. 28, 2015).<sup>2</sup> The ground water rights in the Wood River Valley aquifer system are in Water District 37. *See Preliminary Order* at 13, *In the Matter of the Proposed Combination of Water District Nos. 37, 37A, 37C, and 37M and the Inclusion of Both Surface Water and Ground Water Rights in the Combined Water District; and in the Matter of Abolishing the Upper Wood Rivers Water Measurement District* (Sept. 17, 2013) (“Preliminary Order”). The ground water rights in the Camas Prairie aquifer system are in Water District 37B. *Id.* The senior surface water rights Petitioners allege are being injured are in Water District 37. *IDWR Staff Memo Re: Surface Water Delivery Systems* at Attachments 1 and 2 (Aug. 31, 2015). Water Districts 37 and 37B are authorized to administer both surface and ground water rights. *Preliminary Order* at 13-14. Therefore, current information establishes the Director will not need to incorporate water rights at issue in the Big and Little Wood Delivery Calls into water districts.

### ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that Hailey and Bellevue’s Motion to Revise is DENIED.

DATED this 16<sup>th</sup> day of October 2015.

  
GARY SPACKMAN  
Director


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<sup>2</sup> Ground water use in the upper Little Wood River valley above Silver Creek does not appear to affect the calling surface water rights. *IDWR Staff Memo Re: Hydrology, Hydrogeology, and Hydrologic Data* at 14 (Aug. 28, 2015).

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 16<sup>th</sup> day of October 2015, I served a true and correct copy of the foregoing document to all parties listed on the Combined Certificate of Service List posted on the Department's website at <http://idwr.idaho.gov/legal-actions/delivery-call-actions/big-wood-river.html> and <http://idwr.idaho.gov/legal-actions/delivery-call-actions/little-wood-river.html> updated the 14th day of October 2015, by the following method:

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# **Attachment A-9**

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

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHTS HELD BY  
MEMBERS OF THE BIG WOOD & LITTLE  
WOOD WATER USERS ASSOCIATION  
DIVERTING FROM THE BIG WOOD  
RIVER

Docket No. CM-DC-2015-001

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHTS HELD BY  
MEMBERS OF THE BIG WOOD & LITTLE  
WOOD WATER USERS ASSOCIATION  
DIVERTING FROM THE LITTLE WOOD  
RIVER

Docket No. CM-DC-2015-002

**ORDER DENYING MOTION TO  
REVISE INTERLOCUTORY ORDER**

**BACKGROUND**

On February 24, 2015, the Director ("Director") of the Idaho Department of Water Resources ("Department") received two conjunctive management water delivery call letters from counsel for members of the Big Wood & Little Wood Water Users Association ("Petitioners"). The letters allege senior surface water users on the Big Wood and Little Wood Rivers are being injured by water users diverting ground water hydraulically connected to the Big Wood and Little Wood Rivers. The letters request the Director regulate junior ground water users consistent with the prior appropriation doctrine.

The Director treated the letters as delivery calls pursuant to the Department's Rules for Conjunctive Management of Surface and Ground Water Resources ("CM Rules"), initiated new contested case proceedings, and assigned each delivery call letter its own docket number. The Big Wood Delivery Call was assigned docket no. CM-DC-2015-001. The Little Wood Delivery Call was assigned docket no. CM-DC-2015-002.

On June 25, 2015, Sun Valley Company ("SVC") filed a *Motion to Dismiss Contested Case Proceedings* ("Motion to Dismiss"). SVC argued, among other things, the Big and Little Wood Delivery Calls should be dismissed because the Petitioners' letters do not include all information required of a petition set forth in CM Rule 30. *Motion to Dismiss* at 6-11.

On July 22, 2015, the Director issued an *Order Denying Sun Valley Company's Motion to Dismiss* ("Order"). The Director determined CM Rule 40 is applicable to the Big and Little Wood Delivery Calls, not CM Rule 30. *Order* at 3. The Director also determined the Petitioners' letters meet the specific pleading requirement set forth in CM Rule 40 in that the calling party alleges "that by reason of diversion of water by the holders of one (1) or more junior-priority ground water rights (respondents) from an area having a common ground water supply in an organized water district the petitioner is suffering material injury. . . ." IDAPA 37.03.11.040.01." *Id.* at 4.

On August 6, 2015, SVC filed a *Motion for Review of Interlocutory Order* requesting the Director revise the Order to grant the Motion to Dismiss ("Motion to Revise").<sup>1</sup> SVC argues the Director incorrectly concluded "the Department has jurisdiction to conduct these contested case proceedings under CM Rule 40." *Motion to Revise* at 4.

### ANALYSIS

In its Motion to Revise, SVC argues: "In these proceedings, no 'area of common ground water supply' has yet been designated. And, because no designation has been made, no action has been taken to 'incorporat(e) such water rights into existing water districts,' as specified in CM Rule 20.06." *Id.* at 8. In other words, SVC argues that CM Rule 20.06 requires the Director first establish an area of common ground water supply and then incorporate the water rights at issue into water districts before proceeding with the Big and Little Wood Delivery Calls pursuant to CM Rule 40.

CM Rule 20.06 does not mandate that the Director designate an area of common ground water supply prior to proceeding with the Big and Little Wood Delivery Calls pursuant to CM Rule 40. CM Rule 20.06 states: "These rules provide the basis for the designation of areas of the state that have a common ground water supply and the procedures that will be followed in incorporating the water rights within such areas into existing water districts. . . ." IDAPA 37.03.11.020.07. This statement simply explains the CM Rules "provide the basis" for the designation of an area of common ground water supply. CM Rule 10.01 defines "Area Having a Common Ground Water Supply" as:

A ground water source within which the diversion and use of ground water or changes in ground water recharge affect the flow of water in a surface water source or within which the diversion and use of water by a holder of a ground water right affects the ground water supply available to the holders of other ground water rights. (Section 42-237a.g., Idaho Code)

IDAPA 37.03.11.010.01. The area of common ground water supply for the Big and Little Wood Delivery Calls is a factual question that can be answered using the framework of CM Rule 40 based upon information presented at hearing and applying the definition set forth in CM Rule 10.01. This is consistent with CM Rule 20.06.

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<sup>1</sup> On August 7, 2015, the City of Ketchum and City of Fairfield filed a *Joinder in and Support of Motion for Review of Interlocutory Order*.

In addition, SVC's suggestion that CM Rule 20.06 prescribes a fixed two-step process for delivery calls where water rights are put into water districts only after an area of common ground water is designated is not tenable. Throughout much of Idaho, water districts have been created and water rights incorporated into the districts. Here, current information demonstrates the water rights at issue in the Big and Little Wood Delivery Calls are already in water districts. Specifically, the junior-priority ground water right diversions that impact flow in water sources for the Petitioners' senior surface water rights are diverted from the Wood River Valley aquifer system and the Camas Prairie aquifer system. *IDWR Staff Memo Re: Hydrology, Hydrogeology, and Hydrologic Data* at 1, 6-14 (Aug. 28, 2015).<sup>2</sup> The ground water rights in the Wood River Valley aquifer system are in Water District 37. See *Preliminary Order* at 13, *In the Matter of the Proposed Combination of Water District Nos. 37, 37A, 37C, and 37M and the Inclusion of Both Surface Water and Ground Water Rights in the Combined Water District; and in the Matter of Abolishing the Upper Wood Rivers Water Measurement District* (Sept. 17, 2013) ("Preliminary Order"). The ground water rights in the Camas Prairie aquifer system are in Water District 37B. *Id.* The senior surface water rights Petitioners allege are being injured are in Water District 37. *IDWR Staff Memo Re: Surface Water Delivery Systems* at Attachments 1 and 2 (Aug. 31, 2015). Water Districts 37 and 37B are authorized to administer both surface and ground water rights. *Preliminary Order* at 13-14. Therefore, current information establishes the Director will not need to incorporate water rights at issue in the Big and Little Wood Delivery Calls into water districts.

SVC continues to argue that CM Rule 30 applies to the Big and Little Wood Delivery Calls. *Motion to Revise* at 6. SVC argues the Department's only "vehicle to make a determination of 'an area of common ground water supply'" and to incorporate ground water rights in that area into organized water districts is to follow "the process set forth in the provisions of CM Rule 30.01 through 30.09." *Id.* at 6, 8-10.

CM Rule 30 lays out the administrative process for when a delivery call is made against junior-priority water rights and the water rights are *not* in a water district. When this occurs, a new water district can be created or an existing water district can be modified to allow for administration of the water rights pursuant to the prior appropriation doctrine. In short, CM Rule 30 outlines a pathway to ensure administration can take place if the water rights subject to a delivery call are not currently in a water district. In contrast, CM Rule 40 outlines a pathway for when a delivery call is made against junior-priority water rights that *are already in* a water district. As explained above, current information demonstrates the water rights at issue in the Big and Little Wood Delivery Calls are already in water districts. Therefore, the applicable rule is not CM Rule 30, but rather CM Rule 40 that governs responses to calls for water delivery "in an organized water district." IDAPA 37.03.11.040. As discussed above, the area of common ground water supply for the Big and Little Wood Delivery Calls is a factual question that can be answered in the framework of CM Rule 40 based upon information presented at hearing and applying the definition of area of common ground water supply set forth in CM Rule 10.01.

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<sup>2</sup> Ground water use in the upper Little Wood River valley above Silver Creek does not appear to affect the calling surface water rights. *IDWR Staff Memo Re: Hydrology, Hydrogeology, and Hydrologic Data* at 14 (Aug. 28, 2015).

**ORDER**

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that SVC's Motion to Revise is DENIED.


DATED this 16<sup>th</sup> day of October 2015.

  
GARY SPACKMAN  
Director

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 16<sup>th</sup> day of October 2015, I served a true and correct copy of the foregoing document to all parties listed on the Combined Certificate of Service List posted on the Department's website at <http://idwr.idaho.gov/legal-actions/delivery-call-actions/big-wood-river.html> and <http://idwr.idaho.gov/legal-actions/delivery-call-actions/little-wood-river.html> updated the 14th day of October 2015, by the following method:

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Person serving document