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**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,

Case No. CV-WA-2015-14419

Petitioners,

STIPULATION

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.

SUN VALLEY COMPANY, a Wyoming
corporation,

Case No. CV-WA-2015-14500

Petitioners,

STIPULATION

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.

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

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"); the City of Fairfield ("Fairfield"); and the Idaho Department of Water Resources ("Department") and Gary Spackman, Director of the Department, by and through their respective attorneys of record, hereby enter into this *Stipulation* in the above-captioned matters.

STIPULATION- 2

BACKGROUND

1. The WUA, through their counsel, submitted written requests to the Department that the Watermaster of Water Districts 37 and 37B administer junior ground water rights that the WUA alleges are causing material injury to the surface water rights of the WUA's members.

2. The Department deemed the WUA's requests to be delivery calls as defined in the Department's Conjunctive Management Rules, IDAPA 37.03.11 ("CM Rules"), and initiated contested case proceedings for the Big Wood Delivery Call (Docket No. CM-DC-2015-001) and the Little Wood Delivery Call (Docket No. CM-DC-2015-002) ("Delivery Calls") under CM Rule 40.

3. In a letter dated March 20, 2015, the Department notified holders of certain ground water rights within Water Districts 37 and 37B of the filing of the WUA's requests for administration. The Department also published notice of the Delivery Calls 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.

4. Hailey, Bellevue, Ketchum, Fairfield and SVC, among others, filed notices of intent to participate in the Delivery Calls.

5. On June 25, 2015, SVC filed its *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.

6. On June 26, 2015, Hailey and Bellevue filed their *Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* ("*Cities' Motion*") arguing that the Department may not administer ground water rights in Water Districts 37 and 37B in response to a delivery call under CM Rule 40 unless and until the Department, through rulemaking,

establishes an area of common ground water supply ("ACGWS") that encompasses the WUA's members' water rights and potentially implicated junior ground water rights.

7. 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* contained language or was accompanied by a document containing language indicating they were 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.

8. On August 6 and 8, 2015, respectively, SVC timely filed its *Motion for Review of Interlocutory Order* and Hailey and Bellevue timely filed their *Joint Motion for Review of Interlocutory Order* in the Delivery Calls (together the "*Rule 711 Motions*") seeking review of the *Sun Valley Order* and the *ACGWS Order* under the Department's Rule of Procedure 711, IDAPA 37.01.01.711. As of this date, the Director has taken no action to rescind, alter or amend the *Sun Valley Order* or the *ACGWS Order* in response to the *Rule 711 Motions*.

9. 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 *ACGWS Order* pursuant to Idaho Code §§ 67-5270 and 67-5271(2) and Rule 84 of the Idaho Rules of Civil Procedure, seeking judicial review of an intermediate agency action on the grounds that review of final agency action will not provide them with an adequate remedy.

10. 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 *Sun Valley Order* pursuant to Idaho Code §§ 67-5270 and 67-5271(2) and Rule 84 of the Idaho Rules

of Civil Procedure, seeking judicial review of an intermediate agency action on the grounds that review of final agency action will not provide them with an adequate remedy.

11. 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.

12. The Department disputes that the *ACGWS Order* and the *Sun Valley Order* may be reviewed by the District Court at this time.

13. All of the parties to this *Stipulation* agree that expedited judicial review of the issues raised by the *Cities' Motion* and *Sun Valley's Motion* on the terms set forth below is in the interests of administrative and judicial economy.

STIPULATION

14. Designation of the *ACGWS Order* and the *Sun Valley Order* as Final Orders, Amendment of *Petitions*, and Augmentation of Records on Appeal. The parties to this *Stipulation* agree to take the following actions with respect to the *ACGWS Order* and the *Sun Valley Order*, the *Petitions*, and the records on appeal:

- a. Hailey, Bellevue, Keichum, Fairfield and SVC will 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 with respect to issues presented by the *Cities' Motion* and *Sun Valley's Motion* ("Motion to Designate"). If no objection is filed to the Motion to Designate, the Director will issue separate 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 ("Designation Orders"). If an objection is timely filed to the

Motion to Designate, the Director will consider the objection and rule on the merits of the motion and objection accordingly.

- b. Hailey, Bellevue, Ketchum, Fairfield, SVC, and the WUA agree not to seek reconsideration of, or file exceptions to, the Designation Orders.
- c. Promptly following expiration of the time allowed for other parties to the Delivery Calls who are not parties to this *Stipulation* to seek reconsideration, file exceptions or request a hearing on the Designation Orders, assuming no parties have done so, Hailey and Bellevue and SVC will take appropriate steps to amend their respective *Petitions* in the District Court to reflect that they are seeking judicial review of final agency actions. Within twenty-one (21) days of the filing of the settled records, the parties will take appropriate steps to augment the records before the District Court with the Motion to Designate and Designation Orders in accordance with Rule 84(l), Idaho Rules of Civil Procedure.
- d. The parties agree not to oppose the above-described amendments to the *Petitions*, or to assert that Hailey and Bellevue or SVC have failed to exhaust administrative remedies, or to take any other action to prevent review by the District Court, on the merits, of the issues presented.
- e. In the event the Director takes any action in response to the *Rule 711 Motions* within twenty-one (21) days of the filing of the settled records, the parties agree that Hailey and Bellevue and SVC will take appropriate step to amend their *Petitions*, if necessary, and the parties will take appropriate steps to augment the records before the District Court with any record or evidence of such action in accordance with Rule 84(l), Idaho Rules of Civil Procedure.
- f. None of the parties shall be deemed to have waived any claim or defense, including without limitation claims or defenses concerning adequate remedies,

exhaustion of administrative remedies and those claims, defenses, arguments, findings or conclusions contained in the *Cities' Motion*, *Sun Valley's Motion*, the *ACGWS Order*, the *Sun Valley Order*, or the *Petitions* in the event the District Court does not recognize the Designation Orders and/or Hailey and Bellevue's or SVC's amendments of the *Petitions* as conferring jurisdiction on the Court to review the *ACGWS Order* or the *Sun Valley Order* as final agency actions.

15. Stipulation to Expedite Judicial Review. The parties agree to take all reasonable steps to expedite the District's Court judicial review of the *Petitions*.

16. Joint Motion to Stay Contested Case Proceedings.

- a. Hailey, Bellevue, Ketchum, Fairfield, SVC, and the WUA will file with the Department a *Joint Motion for Stay of Delivery Calls* substantially in the form attached hereto as Attachment A ("*Motion for Stay*"), which is hereby incorporated by reference.
- b. Consistent 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.
- c. The Department will expedite its decision on the *Motion for Stay*.
- d. Following issuance of Rule 54 final and appealable judgments on both *Petitions* by the District Court, 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.

17. Stipulation as to Hearing Schedule as to Further Proceedings in the Delivery

Calls.

a. If proceedings resume on the Delivery Calls following the stay ordered pursuant to the *Motion for Stay*, the parties to the Delivery Calls shall be entitled to a schedule providing the following time frames at a minimum:

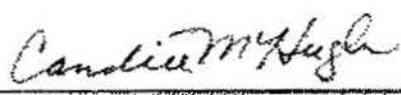
- i. Discovery. The parties to the Delivery Calls shall be entitled to resume discovery as authorized by the Director's May 13, 2015, *Order Authorizing Discovery; Notice of Pre-Hearing Conference*, for a minimum period of one hundred eighty (180) days, ending no earlier than thirty (30) days prior the Hearing.
- ii. Expert Witness Disclosures. The parties to the Delivery Calls shall disclose expert witnesses expected to testify at the Hearing, including information required by I.R.C.P. 16(a)(1) and 24(b)(4)(A), no later than sixty (60) days prior to the Hearing.
- iii. Hearing. Any evidentiary hearings on the Delivery Calls shall be held no earlier than two hundred forty (240) days following the conclusion of the stay ordered pursuant to *Motion for Stay*.

DATED this 17th day of September 2015.

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STIPULATION- R

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By: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of September 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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