

COPY

RECEIVED

DEC 07 2015

DEPARTMENT OF  
WATER RESOURCES

Scott L. Campbell, ISB No. 2251  
Norman M. Semanko, ISB No. 4761  
Matthew J. McGee, ISB No. 7979  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 S. Capitol Blvd., 10th Floor  
Post Office Box 829  
Boise, Idaho 83701  
Telephone (208) 345-2000  
Facsimile (208) 385-5384  
slc@moffatt.com  
nms@moffatt.com  
mjm@moffatt.com  
16845.0025

Attorneys for Petitioner

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

SUN VALLEY COMPANY, a Wyoming  
corporation,

Petitioner,

vs.

GARY SPACKMAN, in his official capacity  
as 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 WATER USERS

Case No. CV-WA-2015-14500

**MEMORANDUM IN SUPPORT OF  
MOTION FOR LEAVE TO  
(1) PRESENT ADDITIONAL  
EVIDENCE; AND (2) CONDUCT  
LIMITED DISCOVERY**

**MEMORANDUM IN SUPPORT OF MOTION FOR  
LEAVE TO (1) PRESENT ADDITIONAL EVIDENCE;  
AND (2) CONDUCT LIMITED DISCOVERY - 1**

ASSOCIATION, 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 LCC, MARGO  
PECK, PIONEER RESIDENTIAL &  
RECREATIONAL PROPERTIES LLC,

**MEMORANDUM IN SUPPORT OF MOTION FOR  
LEAVE TO (1) PRESENT ADDITIONAL EVIDENCE;  
AND (2) CONDUCT LIMITED DISCOVERY - 2**

RALPH W. & KANDI L. GIRTON 1999  
REVOCABLE TRUST, RED CLIFFS  
HOMEOWNERS ASSOCIATION,  
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  
HOMEOWNERS 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

## **I. FACTUAL BACKGROUND**

On June 3, 2015, the Director held a pre-hearing conference, at which conference the Director indicated he intended to request the preparation of two technical staff memoranda (the "Technical Memoranda"). *See* Agency Record, Big Wood Delivery Call, IDWR Docket No. CM-DC-2015-001, Vol. III-IV, pp. 616-648. At the conference, several parties, including

**MEMORANDUM IN SUPPORT OF MOTION FOR  
LEAVE TO (1) PRESENT ADDITIONAL EVIDENCE;  
AND (2) CONDUCT LIMITED DISCOVERY - 3**

Sun Valley Company (“Sun Valley”), expressed concern over the scope of such Technical Memoranda, and the process by which information might be gathered and evaluated by Department staff during the preparation of such memoranda.

On June 12, 2015, the Department issued a Request for Staff Memoranda to Tim Luke, Bureau Chief of the Water Compliance Bureau, and Sean Vincent, Manager of the Hydrology Section. R., Vol. II, pp. 334-344. The Request for Staff Memoranda sought (1) a memorandum concerning surface water delivery systems, and (2) a memorandum concerning hydrology, hydrogeology and hydrological data, to address, among other things, a conceptual description of the interaction between ground water and surface water in various drainages. *Id.*

On June 25, 2015, Sun Valley filed a Motion to Dismiss Contested Case Proceedings, challenging the Petitioners’ water delivery call petitions as deficient under the CM Rules and Procedural Rules, and challenging the Director’s exercise of jurisdiction over the contested water delivery call cases as improper. R., Vol. II, pp. 382-402.

On July 1, 2015, Sun Valley filed a Motion to Modify/Withdraw “Request for Staff Memoranda” and May 20, 2015 “Request for Additional Information,” (the “Motion to Modify/Withdraw”). R., Vol. III-IV, pp. 616-648. The motion challenged, among other things, the propriety of the Department staff’s development, gathering, compilation, and evaluation of potentially relevant information, before the information is presented to the Director as “evidence” in the contested case hearings in the proceedings at issue. The motion raised the violation of procedural due process rights that would necessarily occur should Sun Valley not be afforded notice and the opportunity to participate in the process if the Director intended to officially notice or otherwise rely upon the Technical Memoranda. *Id.*

The Director denied each of Sun Valley's motions on July 22, 2015. R., Vol. V, pp. 888-908. Thereafter, on August 6, 2015, Sun Valley filed a Motion for Review of Interlocutory Order. R. Vol. V, pp. 963-977. On August 19, 2015, Sun Valley filed the above-captioned appeal to district court. R. Vol. V, pp. 1039-1062.

On August 28, 2015, the Department served on the parties a memorandum titled: Hydrology, hydrogeology, and hydrological data, Big Wood & Little Wood Water Users Association delivery calls, CM-DC-2015 and CM-DC-2015-002, authored by Jennifer Sukow (the "Sukow Memo"). R. Vol. VI, pp. 1080-1104. On August 31, 2015, the Department served on the parties a memorandum titled Staff Memorandum regarding Big Wood and Little Wood Water Users Association Delivery Calls from the Big Wood and Little Wood Rivers – Response to Director's Request for Memoranda Dated June 12, 2015, authored by Tim Luke (the "Luke Memo"), which included two Appendices. R. Vol. VI-VII, pp. 1105-1342.

On October 15, 2015, the Director issued the Order Designating ACGWS Order and Sun Valley Order as Final Orders. Supplemental Agency Record, Big Wood Delivery Call, IDWR Docket No. CM-DC-2015-001, Vol. I, pp. 71-74. On October 16, 2015, the Director issued the Order Denying Motion to Revise Interlocutory Order (the "Rule 711 Order"). Supp. R., Vol. I, pp. 84-88. In the Rule 711 Order, the Director, carefully avoiding use of the term "evidence" or "official notice" to cite the Technical Memoranda he relied upon, stated the following findings of fact:

[T]he 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). . . . 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).

Supp. R., Vol. I, p. 86.

A footnote in the Order also states the following finding of fact:

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).

*Id.*

Sun Valley timely objected to augmentation of the record with the Rule 711 Order. Sun Valley noted that, among other issues, the augmentation expanded the scope of issues on appeal by buttressing denial of Sun Valley's motion to dismiss with findings of fact based upon the Technical Memoranda, which Technical Memoranda were neither evidence presented at a public hearing, nor the proper subject of official notice in accordance with the Idaho Administrative Procedure Act and the Department's Procedural Rules. Accordingly, Sun Valley requested that in the event the Court granted the Department's Motion to Augment the Record, it be afforded the opportunity to file a Second Amended Petition for Judicial Review.

On November 16, 2015, the Court granted the Department's Motion to Augment the Record, and also granted Sun Valley's request to file a Second Amended Petition. On December 3, 2015, Sun Valley filed a Second Amended Petition for Judicial Review. The Second Amended Petition for Judicial Review addresses the broadened scope and nature of the instant appeal that results from inclusion of the Rule 711 Order in the agency record, and specifically, the Director's reliance upon the Technical Memoranda therein.

In light of the Director's premature reliance upon the Technical Memoranda to make findings of fact related to issues of law presently on appeal before this Court, a more complete record of the procedural irregularities associated with such Technical Memoranda is warranted. While the record as it stands reveals procedural irregularities relating to the validity of the Director's actions, the purpose of this motion is to seek leave of the Court to conduct additional limited discovery, and to present additional evidence to the Court concerning such procedural irregularities. A more complete record of the contested case proceedings at issue will better equip the Court to render a decision on appeal.

## II. LEGAL STANDARDS

Judicial review of an agency's decision must be confined to the agency record, unless the party requesting additional evidence complies with one of the two statutory exceptions in Idaho Code Section 67-5276, governing the reviewing court's consideration of additional evidence. *Crown Point Development, Inc. v. City of Sun Valley*, 144 Idaho 72, 76, 156 P.3d 573, 577 (2007). Specifically, Section 67-5276(1)(b) allows for the presentation of additional evidence directly to the reviewing court when procedural irregularities before the agency are present. It provides:

If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material, relates to the validity of the agency action, and that:

...

(b) there were alleged irregularities in procedure before the agency, the court may take proof on the matter.

IDAHO CODE § 67-5276(1).

A district court's decision to admit or refuse additional evidence, pursuant to Idaho Code Section 67-5276, will be reviewed under an abuse of discretion standard. *In re Application for Zoning Change*, 140 Idaho 512, 515-16, 96 P.3d 613, 616-17 (2004).

### **III. ARGUMENT**

#### **A. The Additional Evidence, and the Need for Further Limited Discovery.**

Based on a review of the Appendices to the Luke Memo, site visits to the Petitioners' properties occurred on, at a minimum, May 26, 2015, June 26, 2015, July 2, 2015 and August 17, 2015. *See* R. Vol. VI-VII, pp. 1080-1342. The Department did not provide notice or the opportunity to participate in these site views to Sun Valley, nor does the record reflect that the Department provided such notice or opportunity to any other Respondent.

However, careful review of the photographs of the site views (which were ostensibly for the purpose of gathering technical and scientific information) reveals that participation of Department staff was not limited to scientific or technical staff. *See* Affidavit of Scott L. Campbell, filed contemporaneously herewith. Photographs show that legal counsel for the Director and the Department, Mr. Garrick Baxter,<sup>1</sup> also participate in the site views. *See*

---

<sup>1</sup> To be clear, Sun Valley is unaware of the exact nature of Mr. Baxter's role as counsel in these proceedings, *i.e.*, whether Mr. Baxter is fulfilling the role of an investigative attorney or an advisory attorney. *See e.g.* IDAPA 04.11.01.423.02. If Mr. Baxter acts in a capacity similar to that of an investigative attorney, working with and advising only Department staff in their investigation of the facts that will be tried before the Director, his presence at site views or field examinations may have been appropriate. If, on the other hand, Mr. Baxter is acting as an advisory attorney to the Director, his substantive communication concerning the contested cases at issue, including site views or field examinations, involving Department staff and/or the Petitioners was inappropriate, and in violation of the prohibition of indirect *ex parte* communication with the Director. In other words, in the event Mr. Baxter is counseling both Department staff preparing the Technical Memoranda and the Director as to substantive issues in these proceedings, there is clearly inadequate procedural safeguards in place to avoid indirect *ex parte* communication or, at a minimum, the appearance of impropriety.

Campbell Aff., ¶¶ 2-3. In fact, in at least one photograph, Mr. Baxter appears to be taking notes. *See id.* Likewise, and the photographs are less clear in this regard, certain photographs indicate that the Director may have been present with Mr. Baxter during the site views. *See* Campbell Aff., ¶ 4-5.

Finally, several photographs include unidentified persons who do not appear to be Department staff. *See* Campbell Aff., ¶¶ 6-7. Additionally, narrative in the Appendices reflects that owners and parties—the Petitioners—were present at site views in some instances, and directly communicated substantive information to Department staff. *See* R. Vol. VI, p. 001188 (“The owner was present and explained . . .”); *id.* at 1204 (site view made with Alan Romans, ditch rider for Robertson Ditch Company and Big Wood Canal Company, a Petitioner); *id.* at 1208 (“Owner present at time of visit . . .”); *id.* at 1340 (“Owner reported that system includes 3 pivots . . .”). Department staff also appears to have communicated directly with agents of at least one Petitioner during preparation of the Technical Memoranda. *See* R. Vol. VI, pp. 001113-001116 (footnotes referencing personal communications with the manager and office manager Big Wood Canal Company concerning water delivery and accounting, irrigated acreage and delivery systems).

For the reasons that follow, limited discovery should be allowed to clarify these, and related, issues.

**B. The Request for Leave to Present Additional Evidence Meets the Standards of Idaho Code Section 67-5276(1)(b).**

Procedural irregularities occurred: (1) Attendance of the Director’s legal counsel, and perhaps the Director himself, at site views; (2) participation of the Director’s legal counsel in the preparation of Technical Memoranda already inappropriately relied upon by the Director to

make findings of fact; and (3) participation of Petitioners and *ex parte* communications with Department staff during the site views or at other times. These are not small matters that can be brushed aside. If this Court allows Sun Valley to conduct limited discovery and present not yet disclosed additional evidence, the significance of the Department's violations of Sun Valley's rights are likely to be more clearly demonstrable.

Property viewing in an administrative proceeding is analogous to a viewing in a trial, which requires notice to all parties prior to a viewing by a judge or jury. *Comer v. County of Twin Falls*, 130 Idaho 433, 439, 942 P.2d 557, 563 (1997). In *Eacret v. Bonner County*, 139 Idaho 780, 787, 86 P.3d 494, 501 (2004) (overruled on other grounds), the Idaho Supreme Court stated:

A quasi-judicial officer must confine his or her decision to the record produced at the public hearing. Any *ex parte* communication must be disclosed at the public hearing, including a "general description of the communication." The purpose of the disclosure requirement is to afford opposing parties with an opportunity to rebut the substance of any *ex parte* communications. In a similar vein, the opportunity to be present at a view provides opposing parties the opportunity to rebut facts derived from the visit that may come to bear on the ultimate decision and create an appearance of bias. A view of the subject property without notice to the interested parties by a board considering an appeal from the commission has been held a violation of due process.

139 Idaho at 786-87, 86 P.3d at 500-01.

In *Eacret*, a Commissioner viewed the subject property without notice to any of the parties and communicated *ex parte* with the applicant of a variance. The *Eacret* court held that the Commissioner's pre-hearing, *ex parte* contacts with the applicant concerning the variance at issue "reveal a lack of impartiality and denial of an opportunity for opponents of the variance to challenge or answer the *ex parte* evidence." *Id.* at 787, 86 P.3d at 501. In addition,

the court held that even if the Commissioner's view of the property in question was unrelated to the pending matter, he still should have disclosed the fact of the view prior to the hearing, in order to allow the parties to object or move for a viewing by all of the commissioners. *Id.* Idaho case law demands that "any view of a parcel of property in question must be preceded by notice and the opportunity to be present to the parties in order to satisfy procedural due process concerns." *Id.* (citing *Comer v. Cnty. of Twin Falls*, 130 Idaho 433, 439, 942 P.2d 557, 563 (1997)). The *Eacret* court ultimately held that under these circumstances, the Commissioner's actions "not only created an appearance of impropriety but also underscored the likelihood that he could not fairly decide the issues in the case." *Id.*

In *Idaho Historic Preservation Council v. City Council of Boise*, the court recognized that "when a governing body deviates from the public record, it essentially conducts a second fact-gathering session without proper notice, a clear violation of due process." 134 Idaho 651, 654, 8 P.3d 646, 649 (2000). The court held that the City Council's receipt of phone calls from concerned citizens regarding the demolition of a warehouse in a historic district violated procedural due process because the substance of the calls was not recorded or disclosed at the public hearing. *Id.* at 655, 650. By considering the input received in the ex parte telephone conversations, the City Council improperly extended its inquiry beyond the limits of the record. *Id.* Although the court in *Idaho Historic Preservation Council* struggled with whether the City Council was a quasi-judicial body under Idaho Code Section 67-5253, an administrative agency, such as the Idaho Department of Water Resources, is clearly a quasi-judicial body under the statute and is governed by the APA. See *Gibson v. Ada Cnty. Sheriff's Dep't*, 139 Idaho 5, 7, 72 P.3d 845, 847 (2003).

In this case, the Director has drawn conclusions and issued findings based upon Technical Memoranda produced after procedural irregularities that involved invalid site views and ex parte communications, in violation of Idaho Code Sections 67-5251 and 67-5253. Sun Valley was not afforded the opportunity for a hearing or to otherwise participate in developing the facts on which the Director based his findings. The Director coordinated and conducted a fact-gathering session without notice to all of the parties, and improperly considered those facts as evidence, in violation of fundamental concepts of procedural due process.

- 1. Evidence of improprieties during site views is material and relates to the validity of the agency action that is the subject of this Court's review.**

As the foregoing case law illustrates, site views and ex parte communications in administrative proceedings must meet minimum thresholds of procedural due process. The additional evidence Sun Valley proposes to investigate and, present, if necessary, is clearly material and related to the validity of agency action. The Director already made factual findings based upon the Technical Memoranda that resulted from the procedurally irregular site views and ex parte communications with Petitioners, as well as the unusual involvement of the Director's counsel. Such factual findings form the basis of the Rule 711 Order in which the Director upheld denial of Sun Valley's motion to dismiss—the very denial the Court has been asked to review.

- 2. The procedural deficiencies associated with the site views and preparation of the Technical Memoranda constitute irregularities in procedure before the agency.**

In this case, irregularities in procedure before the agency are reflected in the record, and identified in Sun Valley's Second Amended Petition for Judicial Review.

Specifically, based solely upon a letter submitted by the Petitioner's counsel, the Director ordered Department staff to prepare Technical Memoranda to meet the pleading requirements that should have been borne by the Petitioners. In addition, without any hearing, and in violation of Sun Valley's due process rights, the Director made findings of fact based on information within the Technical Memoranda that is neither evidence presented in a contested case hearing nor the proper subject of official notice.

However, the procedural irregularities associated with the Technical Memoranda are not limited to the issues already properly in the record before the Court. Limited discovery is therefore necessary and appropriate in order to ensure that the record before the court is complete with respect to such procedural irregularities.

Specifically, Sun Valley requests limited written discovery in order to address exactly who was present at the site views, including any and all unidentified persons in the photographs included in the Appendices to the Luke Memo, any communications that may have occurred with such persons, as well as the identity of all who participated in the collection of information for, and the preparation of, the Technical Memoranda. Sun Valley is also entitled to discovery concerning any and all substantive communications, written or oral, direct or indirect, between the Director or his agents and the Petitioners and their respective agents.

#### **IV. CONCLUSION**

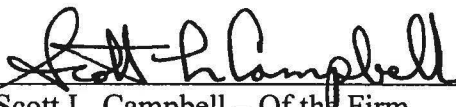
Clearly, in the event either the Director or the Director's counsel, or both, were present at the site views or involved in the collection of information or preparation of the Technical Memoranda, or were involved in communications regarding matters of substance in these contested case proceedings, such conduct constitutes irregularities in the procedure before

the Department. Likewise, Department staff's communications with Petitioners, without participation by Sun Valley or any other Respondents, constitute irregularities in procedure, where Department staff will ostensibly be relied upon by the Director for neutral technical and scientific expertise. Evidence of such conduct should be presented to this Court in accordance with Idaho Code Section 67-5276.

Sun Valley respectfully requests that the Court take proof as to the foregoing procedural irregularities. Additionally, in light of the fact a complete record of such procedural irregularities has not been presented by the Department to date, Sun Valley respectfully requests that the Court grant it additional time to conduct limited discovery, as set forth *supra*. The record on appeal now includes factual findings supported by purported "evidence" that was not subjected to any opportunity to answer or challenge by the parties. That issue, along with the procedures associated with the development of that purported "evidence," is now ripe for review by this Court. Sun Valley must be afforded the opportunity to investigate and ensure that the agency record is complete.

DATED this 7th day of December, 2015.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Scott L. Campbell – Of the Firm  
Attorneys for Petitioner

By   
Matthew J. McGee – Of the Firm  
Attorneys for Petitioner

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of December, 2015, I caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO (1) PRESENT ADDITIONAL EVIDENCE; AND (2) CONDUCT LIMITED DISCOVERY** to be served by the method indicated below, and addressed to the following:

Joseph F. James  
BROWN & JAMES  
130 Fourth Ave. W.  
Gooding, ID 83330  
Facsimile (208) 934-4101  
*Attorneys for Big Wood/Little Wood Water  
Users Association*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

Garrick L. Baxter  
Emmi Blades  
Deputy Attorneys General  
IDAHO DEPARTMENT OF WATER RESOURCES  
P.O. Box 83720  
Boise, ID 83720-0098  
Facsimile (208) 287-6700  
*Attorneys for Idaho Department of Water  
Resources*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

Dylan B. Lawrence  
VARIN WARDWELL LLC  
242 N. 8th St., Suite 220  
P.O. Box 1676  
Boise, ID 83701-1676  
Facsimile (866) 717-1758  
*Attorneys for Water District 37-B Groundwater  
Group*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

Susan E. Buxton  
Cherese McLain  
MOORE SMITH BUXTON & TURCKE, CHTD.  
950 W. Bannock St., Suite 520  
Boise, ID 83702  
Facsimile (208) 331-1202  
*Attorneys for the City of Ketchum and City of  
Fairfield*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

**MEMORANDUM IN SUPPORT OF MOTION FOR  
LEAVE TO (1) PRESENT ADDITIONAL EVIDENCE;  
AND (2) CONDUCT LIMITED DISCOVERY - 15**

James R. Laski  
Heather E. O'Leary  
LAWSON LASKI CLARK & POGUE, PLLC  
675 Sun Valley Rd., Suite A  
P.O. Box 3310  
Ketchum, ID 83340  
Facsimile (208) 725-0076  
*Attorneys for Intervenors Animal Shelter of  
Wood River, Dennis J. Card, Edward A Lawson  
and Maureen E. McCanty*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

Albert P. Barker  
Paul L. Arrington  
BARKER, ROSHOLT & SIMPSON, LLP  
1010 W. Jefferson St., Suite 102  
P.O. Box 2139  
Boise, ID 83701-2139  
Facsimile (208) 344-6034  
*Attorneys for South Valley Ground Water  
District*

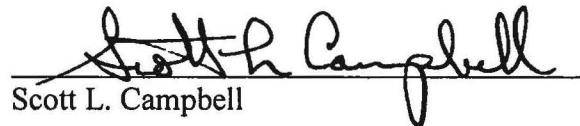
☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

James P. Speck  
SPECK & AANESTAD  
120 E. Ave.  
P.O. Box 987  
Ketchum, ID 83340  
Facsimile (208) 726-0752  
*Attorneys for Intervenors*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

Director of the Idaho Department of Water  
Resources  
P.O. Box 83720  
Boise, ID 83720-0098

☐ U.S. Mail, Postage Prepaid  
☒ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

  
Scott L. Campbell