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Attorneys for Respondents

**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  
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  
WATER USERS ASSOCIATION, SOUTH  
VALLEY GROUND WATER DISTRICT,

**Case No. CV-WA-2015-14500**

**RESPONSE TO MOTION TO  
AUGMENT**

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 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

COME NOW, Respondents, by and through their counsel of record and file this *Response to Motion to Augment* in response to the December 10, 2015, *Motion to Augment* (“Motion”) filed by Sun Valley Company (“SVC”).

SVC filed its Motion pursuant to Idaho Appellate Rule 30 and Idaho Rule of Civil Procedure 84(l). *Motion* at 3. Idaho Appellate Rule 30 allows parties to “move the Supreme Court to augment or delete from the settled reporter’s transcript or clerk’s or agency’s record.” Idaho Rule of Civil Procedure 84(l) identifies a specific timeline for motions to augment. Specifically, “[a]ny party desiring to augment the transcript or record with additional material presented to the agency may move the district court within twenty-one (21) days of the filing of the settled transcript and record.” IRCP 84(l). The settled record was filed with the Court in this

**RESPONSE TO MOTION TO AUGMENT – Page 3**

matter on October 7, 2015. The Respondents timely filed a *Motion to Augment the Record* on October 28, 2015, twenty-one days after the settled record was filed with the Court. SVC's December 10, 2015, Motion is not timely filed and should be denied.

In addition, the subject matter of the transcript that SVC seeks to augment the record with is irrelevant to the agency action that is the subject of the Court's review on appeal. SVC asserts that discussion of "matters related to the Department's preparation of staff memoranda" at the June 3, 2015, pre-hearing conference "may now be relevant and should be included in the record before the Court." *Motion* at 4. But the propriety of the Department's preparation of staff memoranda in the underlying delivery call proceedings is not properly before the Court for review. Instead, the agency action that is the subject of this Court's review is the Director's decision to proceed with the Big and Little Wood Delivery Calls pursuant to CM Rule 40 rather than proceeding under CM Rule 30 and following the fixed two-step process advocated for by SVC. *See BW CM-DC-2015-001* at 890-92; *See Supp AR Lodged w-DC* at 84-87.<sup>1</sup> SVC's Motion seeks to augment the record with material irrelevant to the subject of the Court's review on appeal should be denied.

Further, SVC is incorrect to assert the Director made "findings of fact" in the *Order Denying Motion to Revise Interlocutory Order* ("Order Denying Motion to Revise") based upon Department staff memoranda that "broadened the scope of the above-captioned petition for judicial review." *Motion* at 4. The Director only referenced staff memoranda in the Order Denying Motion to Revise in support of the statement that "the water rights at issue in the Big and Little Wood Delivery Calls are already in water districts." *Supp AR Lodged w-DC* at 86.

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<sup>1</sup> The record on appeal includes filings in the Big Wood Delivery Call matter in a folder labeled BW CM-DC-2015-001, filings in the Little Wood Delivery Call matter in a folder labeled LW CM-DC-2015-002, and documents as a result of the Court's November 16, 2015, *Order Granting Motion to Augment* in a folder labeled Supp AR Lodged w-DC. Citations to the record herein are consistent with these labels.


The Director made that same statement in the *Order Denying Sun Valley Company's Motion to Dismiss* wherein the Director determined the applicable rule in the underlying delivery call matters is CM Rule 40, not CM Rule 30. *BW CM-DC-2015-001* at 890 (“The Big and Little Wood Delivery Calls are against junior-priority ground water rights *in organized water districts.*” (emphasis in original)). The Director’s citation to staff memoranda in the Order Denying Motion to Revise does not broaden the scope of appeal.

Based upon and consistent with the foregoing, the Respondents respectfully request the Court enter an order denying the Motion.

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

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CLIVE J. STRONG  
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16<sup>th</sup> day of December 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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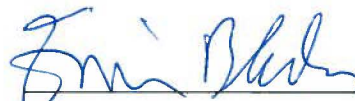
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