

EXHIBIT

A

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

IN THE MATTER OF BASIN 37
ADMINISTRATIVE PROCEEDING

Docket No. AA-WRA-2021-001

PREHEARING ORDER; SCHEDULING
ORDER

BACKGROUND

On May 4, 2021, the Director of the Idaho Department of Water Resources (“Department”) issued a *Notice of Administrative Proceeding, Pre-Hearing Conference, and Hearing* (“Notice”). The purpose of the hearing is for the Director to decide whether “the withdrawal of water from ground water wells in the Wood River Valley south of Bellevue (commonly referred to as the Bellevue Triangle) would affect the use of senior surface water rights on Silver Creek and its tributaries during the 2021 irrigation season.” *Id.* at 1. In the Notice, the Director set a deadline of May 19, 2021, for water users that wish to participate in the administrative proceeding to send written notice of their intent to participate to the Department. *Id.* at 1. The Director set a pre-hearing conference for May 24, 2021, and set the hearing for June 7-11, 2021. *Id.* at 1-2.

On May 24, 2021, the Director held a pre-hearing conference. All individuals and entities that timely filed a notice of intent to participate were represented in person, by video conference or phone except: Swiftsure Ranch (Paul Bennett), Avalanche Ranch (Spencer Brendel), Southern Comfort Home Owner’s Association (Donn Wonnell), Joe Matheney, and Mike Vowels.

PARTY STATUS

At the hearing, the Director discussed a number of issues related to party status. The Director divided the participants into five different groups. The first group includes holders of surface water rights from Silver Creek or Little Wood River. This group, hereinafter called the Surface Water Users, are:

- Big Wood and Little Wood Water Users Association¹

¹ The Big Wood and Little Wood Water Users Association comprises a group of individual participants all represented by Jerry R. Rigby and Joe F. James. The individuals are: Rod & Kaysi, Hubsmith, Big Wood Farm, LLC, Chuck Newell, Barbara Farms, LLC, Sabala Farms, Inc., John & Carrie

- Big Wood Canal Company
- City of Gooding²
- Lawrence Schoen

The second group includes holders of ground water rights authorizing diversion of water within the area depicted in the map included as Attachment A to the Notice (“Potential Area of Curtailment”). This group, hereinafter called the Bellevue Triangle Groundwater Users, are:

- Dean R. Rogers III and Dean R. Rogers Inc.
- Idaho Department of Fish and Game
- Galena Ground Water District
- South Valley Ground Water District
- Swiftsure Ranch

The third group includes holders of surface and ground water rights that divert within Basin 37 but outside of the Potential Area of Curtailment. This group, hereinafter called the Outside Bellevue Triangle Water Users, are:

- Eagle Creek Irrigation Co.
- Sun Valley Water and Sewer District
- Water District 37B Groundwater Association
- Southern Comfort Home Owners Association
- Avalanche Ranch
- City of Bellevue
- City of Hailey
- City of Ketchum
- Sun Valley Co.

The fourth group includes water users that are outside of Basin 37 but which have interest in the legal issues presented. This group, hereinafter called the Interested Water Users, are:

- Coalition of Cities³
- City of Idaho Falls
- City of Pocatello

Arkoosh, 7 Mile Ranch, LLC, Carl & Diane Legg, Joe & Melissa Matheney, David & Nicole Hults, Bill & Karen Arkoosh, Nick & Jennifer Westendorf, Donald Taber, James & Linda Ritter.

² The City of Gooding was also listed as a member of the Coalition of Cities in the Interested Water Users Group. However, it was represented at the pre-hearing conference that the City had differing interests from the Coalition of Cities and will be represented by separate counsel.

³ The Coalition of Cities comprises a group of city participants all represented by Candice McHugh. The cities are: Bliss, Burley, Carey, Declo, Dietrich, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, Wendell.

- Idaho Ground Water Users Association
- Lincoln County (Board of County Commissioners)

The Director informed the participants that any entities in these four groups such as a partnership, trust, corporation (including an LLC or PLLC), or governmental agency, must be represented by an attorney going forward.

Attorney James Speck represents multiple parties.⁴ At the pre-hearing conference he stated some of his clients belong in the Bellevue Triangle Groundwater Users group and some in the Outside Bellevue Triangle Water Users group. The attorney for Idaho Power represented at the pre-hearing conference that Idaho Power was unsure if it had water rights that would be implicated by this proceeding. Mr. Speck and Idaho Power must notify the Department by 5:00 pm May 26 which parties should be allocated to each group.

The fifth group includes others who wish to listen in on this proceeding but do not want to actively participate in the proceeding (for example, they do not intend to call witnesses, cross examine witnesses, or participate in legal briefing). Representatives of entities that wish to listen in on the proceeding may do so and do not need to be represented by an attorney.

SPF Water Engineering submitted a notice of participation as an observer for Blaine County School District. No other participation notices were received by the Department regarding the School District. Since timely notice of intent to participate was not received, Blaine County School District is not a party to this proceeding and is part of group five.

It is necessary to clarify the status of the individuals and entities in these five groups. A party is defined as a person or agency admitted as a party and entitled as of right to be admitted as a party. IDAPA 37.01.01.005.16. The Director admits the individuals and entities in the first four groups as parties to this proceeding. Time is of the essence in this proceeding and the Director deems it necessary pursuant to Rules 554 and 560 of the Department's Rules of Procedure to limit the participation of those parties that do not have a direct interest in this proceeding. IDAPA 37.01.01.554 and .560.

The first two groups (the Surface Water Users and the Bellevue Triangle Ground Water Users) will be allowed to fully participate in the proceeding. This includes the right to participate in discovery, call witnesses, cross-examine witnesses and participate in legal briefing.

Because this proceeding is focused on ground water uses in the Bellevue Triangle and will not result in curtailment this year outside the Potential Area of Curtailment, the third group (Outside Bellevue Triangle Water Users) may participate in discovery; but before they will be

⁴ Griffin Ranch Homeowners Assn; Griffin Ranch PUD Subdivision Homeowners Assn; Robert P Dreyer; River Rock Ranch LP; Margo Peck; Edward M Blair Jr. Idaho Personal Residence Trust; Marion R and Robert M Rosenthal; CW & RH Gardner Family Limited Partnership; Robert & Kathryn Gardner Family Trust; Rego 2008 Revocable Trust; Team Flowers Bench LLC; Parks Family 2006 Trust; Thomas S Weisel; Rom Weisel Partners; Justin Power Separate Property Revocable Trust; Ridgeview Smith Properties LLC; Linda D Woodcock; Red Cliffs Homeowners Assn; and The Jones Trust.

allowed to call witnesses at hearing, they must submit a list of witnesses they intend to call and also submit an explanation of what each witness intends to testify about. The Director reserves the right to limit any testimony or cross examination that is duplicative, repetitive, or irrelevant. They will be allowed to participate in all briefing.

For first three groups, the list of expert-witnesses and what they intend to testify about must be submitted to the Department no later than May 26, 2021. The list of factual witnesses and what they intend to testify about must be submitted by May 28, 2021.

The fourth group (the Interested Water Users) will not be allowed to participate in discovery, call witnesses or participate in cross examination. They will be allowed to participate in any briefing on legal issues.

The fifth group will be allowed to observe or listen in on the proceeding but will not be considered parties and will not have the rights of a party.

If an individual or entity in the first four groups disagrees with the group they have been placed in this order or wishes not to actively participate, they shall notify the Department by May 26, 2021.

POTENTIAL AREA OF CURTAILMENT

A question was raised at the hearing about the boundary the Director will consider for potential curtailment. The area Jennifer Sukow considered in her staff memo was smaller than the boundary in the Potential Area of Curtailment. The Director will limit the Potential Area of Curtailment to the area considered in Jennifer Sukow's staff memo.

SERVICE AND FILING OF DOCUMENTS

The participants discussed electronic service at the pre-hearing conference. Parties may serve each other by email. Everyone who filed a notice of participation must email their email address to megan.jenkins@idwr.idaho.gov by 5:00 pm on May 25, 2021. The Director agrees to accept filing of documents upon the Department by email to the above email address but a copy should also be filed with the Department by regular U.S. Mail, fax or hand delivery.

PROCEDURE AT HEARING

The procedure at hearing was discussed. The order of presentation of witnesses will be as follows:

Day 1 – Department staff

Day 2 – Surface Water Users witnesses

Days 3-5 – Bellevue Triangle Ground Water Users and the Outside Bellevue Triangle Water Users (if allowed)

Exhibits shall be labeled using the lead attorney or individual party's last name followed by the exhibit number.

ERRORS IN STAFF MEMOS

Two typos were identified in Tim Luke's *Responses to Request for Staff Memorandum – Basin 37 Administrative Hearing*, posted to the Department's website on May 17, 2021. The typos are on page 11, paragraph 3. The corrected paragraph is provided below:

The watermaster's 2015 correspondence states that he bases his "priority cut date on flows at Station 54 at Shoshone." Station 54 is located on the river just upstream of the Milner-Gooding Canal. The watermaster notes that Station 54 accounts for return flows to the Little Wood from the Richfield tract. While the watermaster's 2015 explanations about priority cuts are unchanged, he has recently clarified that his cuts are also based on the list of water rights below Station 54.⁹ For example, if the watermaster determines there is 24 cfs of available natural flow in the Little Wood River at Station 54, he looks at his list of water rights on the Little Wood with points of diversion located below Station 54, sorted by priority; he then finds the priority date where the cumulative water right rates of diversion are equivalent to 24 cfs and sees that all water rights with priority dates through 5/15/1884 ~~1885~~ can be delivered. The next ~~senior~~ **junior** priority date on the list of rights below Station 54, 6/3/1884, is the priority date cut called by the watermaster. In this example, all water rights on both the Little Wood River and Silver Creek (including tributaries to Silver Creek) with a priority date of 6/3/1884 or junior are cut or shut off.

An incorrect chart was used in Jennifer Sukow's Predicted hydrologic response in *Silver Creek and the Little Wood River to curtailment of groundwater use in 2021, Basin 37 Administrative Proceeding, AA-WRA-2021-001*, posted to the Department's website on May 17, 2021. The incorrect chart is Figure 14 on page 16. The corrected chart is included as an attachment to this Order.

SCHEDULING ORDER

Based upon the discussion at the prehearing conference and the foregoing, IT IS HEREBY ORDERED that the following schedule is ADOPTED:

May 25, 2021 Deadline for parties to provide email addresses to the Department. This applies only to parties that have not previously provided their email address.

May 26, 2021 Deadline for parties to identify expert witnesses.

If the Outside Bellevue Triangle Water Users identify an expert witness, they must also submit an explanation of what their expert witness intends to testify about.

Deadline for participants to notify Department if they disagree

with the group they have been placed in this order.

May 28, 2021

Deadline for parties to identify factual witnesses.

If the Outside Bellevue Triangle Water Users identify a factual witness, they must also submit an explanation of what their factual witness intends to testify about.

June 2, 2021

Deadline to submit exhibits to parties and the Department. Three paper copies of each exhibit must be submitted to the Department at the beginning of the hearing.

DATED this 25th day of May, 2021.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 25th day of May, 2021, the above and foregoing was served on the following by the method(s) indicated below:

<p>James R. Laski Heather E. O’Leary Lawson Laski Clark, PLLC 675 Sun Valley Rd., Ste. A P.O. Box 3310 jrl@lawsonlaski.com heo@lawsonlaski.com efiling@lawsonlaski.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Matthew A. Johnson Brian T. O’Bannon White, Peterson, Gigray & Nichols, P.A. 5700 East Franklin Road, Suite 200 Nampa, Idaho 83687-7901 mjohnson@whitepeterson.com bobannon@whitepeterson.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Laird B. Stone Stephan, Kvanvig, Stone, & Trainor P.O. Box 83 Twin Falls, Idaho 83303-0083 skst@idaho-law.com cynthia@idaho-law.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Jerry R. Rigby Rigby, Andrus & Rigby, Chartered 25 North Second East Rexburg, ID 83440 jrigby@rex-law.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Joseph F. James James Law Office, PLLC 125 5th Ave. West Gooding, ID 83330 joe@jamesmvlaw.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Robert L. Harris Holden, Kidwell, Hahn & Crapo, P.L.L.C. P.O. Box 50130 1000 Riverwalk Drive, Suite 200 Idaho Falls, ID 83405 rharris@holdenlegal.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>

Rusty Kramer, Secretary PO Box 507 Fairfield, ID 83327 waterdistrict37b@outlook.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Brendan L. Ash James Law Office, PLLC 125 5th Ave. West Gooding, ID 83330 efile@jamesmvlaw.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Richard T. Roats Lincoln County Prosecuting Attorney P.O. Box 860 Shoshone, ID 83352 rtr@roatslaw.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Paul Bennett 114 Calypso Lane Bellevue, ID 83313 info@swiftsureranch.org	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
J. Evan Robertson Robertson & Slette, PLLC P.O. Box 1906 Twin Falls, Idaho 83303-1906 erobertson@rsidaholaw.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Ann Y. Vonde P.O. Box 83720 Boise, ID 83720-0010 ann.vonde@ag.idaho.gov	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
James P. Speck Speck & Aanestad P.O. Box 987 Ketchum, ID 83340 jim@speckandaanestad.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
John K. Simpson Barker Rosholt & Simpson LLP 1010 Jefferson St., Ste. 102 P.O. Box 2139 Boise Idaho 83701-2139 jks@idahowaters.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Lawrence Schoen Napisunaih 18351 U.S. Highway 20 Bellevue, ID 83313 lschoen@naramail.net	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email

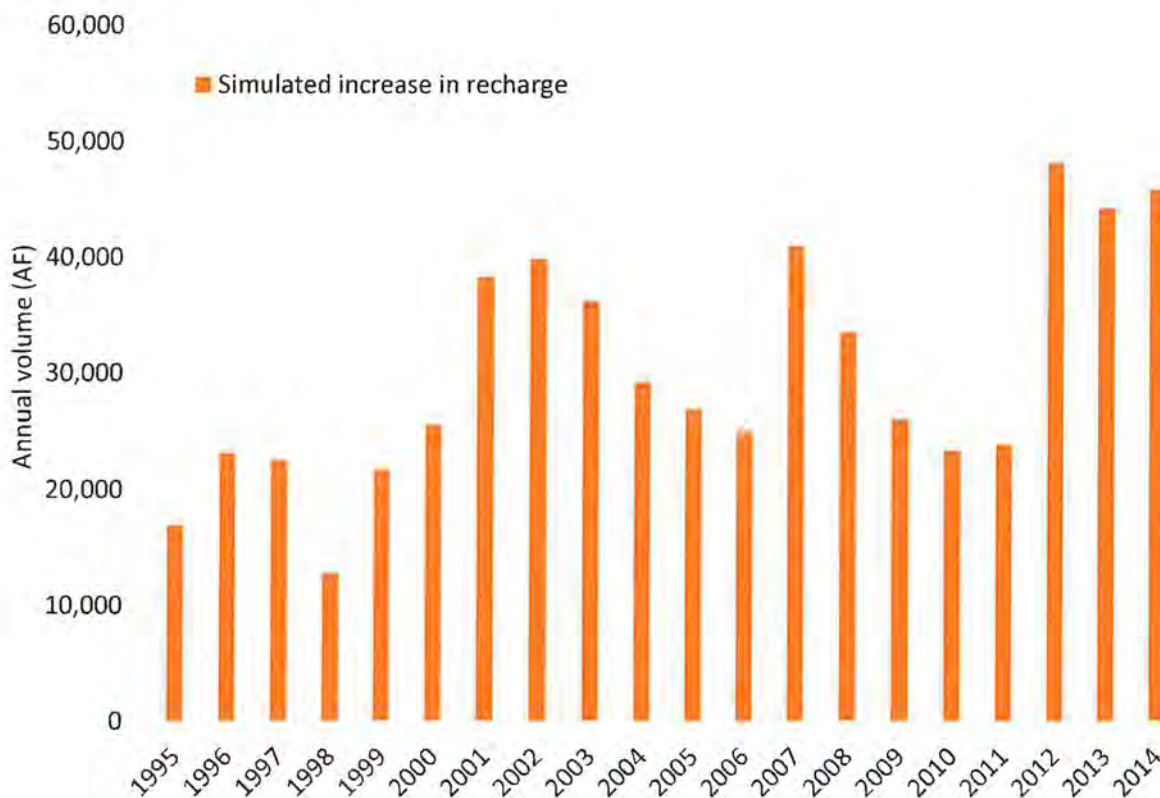
<p>Idaho Ranch Hands Property Management 218 Meadowbrook Hailey, ID 83333 idahoranchhands@gmail.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Southern Comfort Homeowner's Association P.O. Box 2739 Ketchum, ID 83340</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
<p>W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, Idaho 83318 wkf@pmt.org</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Albert P. Barker Travis L. Thompson Barker Rosholt & Simpson LLP 1010 W. Jefferson St., Ste. 102 PO Box 2139 Boise, ID 83701-2139 apb@idahowaters.com tlt@idahowaters.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Candice McHugh McHugh Bromley, PLLC 380 S. 4th St., Ste. 103 Boise, ID 83702 cmchugh@mchughbromley.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Chris M. Bromley McHugh Bromley, PLLC 380 S. 4th St., Ste. 103 Boise, ID 83702 cbromley@mchughbromley.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Norman M. Semanko Parsons Behle & Latimer 800 West Main Street, Ste 1300 Boise, ID 83702 NSemanko@parsonsbehle.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Sarah A. Klahn Somach Simmons & Dunn 2033 11th St., Suite 5 Boulder, CO 80302 sklahn@somachlaw.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email

<p>Randall C. Budge Thomas J. Budge Racine Olson, PLLP 201 E. Center St. P.O. Box 1391 Pocatello, Idaho 83204 randy@racineolson.com tj@racineolson.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Michael C. Creamer Michael P. Lawrence Charlie S. Baser Givens Pursley LLP 601 W. Bannock St. P.O. Box 2720 Boise, Idaho 83701-2720 mpl@givenspursley.com mcc@givenspurslev.com csb@givenspursley.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>



Meghan Carter

The chart in Figure 14 of the original memorandum is total estimated groundwater consumptive use, including groundwater use mitigated by the non-use of surface water and exempt domestic water use with irrigation of less than 1/2-acre. The following chart is the volume of curtailed consumptive use simulated in Sukow (2019) described in the caption for Figure 14.



Corrected Figure 14. Volume of curtailed consumptive use simulated in Sukow (2019).

On page 22, the original memorandum refers to well logs in Attachment A. This should read Attachment C.