

Exhibit S

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DEPARTMENT OF
WATER RESOURCES

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Attorneys for South Valley Ground Water District

**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

**SOUTH VALLEY GROUND
WATER DISTRICT'S
REQUEST FOR PRODUCTION**

COMES NOW, the SOUTH VALLEY GROUND WATER DISTRICT (“SVGWD”), by and through its attorneys of record, BARKER ROSHOLT & SIMPSON LLP, and hereby requests the the Department of Water Resources respond to this request for production of information. SVGWD requests production of this information related to the *Notice of Administrative Proceeding, Pre-Hearing Conference, and Hearing* (“Notice”) issued by the Director of the Idaho Water Resources Board on May 4, 2021, and conjunctive management of certain groundwater rights in a portion of Basin 37. This information is relevant to the hydrology and water rights that are subject to the Director’s *Notice* of potential curtailment and critical for SVGWD and its members to prepare for the hearing.

To wit, SVGWD makes specific requests for production of records and information as more fully described in **Exhibit A**. This request is in addition to the information that the Director's May 11, 2021 *Request for Staff Memorandum*, required to be produced. To the extent that the information contained in answering these requests is included in the information provided in IDWR's response to the Director's May 11, 2021 *Request for Staff Memorandum*, SVGWD requests that the Department identify where the response to the request can be found in the forthcoming Staff Memorandum, and if not in the Staff Memorandum, responses should be answered in full.

Dated this 13th day of May, 2021.

BARKER ROSHOLT & SIMPSON LLP



Albert P. Barker

Attorney for South Valley Ground Water District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of May, 2021, the foregoing was filed, served, and copied as shown below.

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Albert P. Barker

1. All Orders issued under IC 42-237a.g involving curtailment of groundwater to prevent injury to surface water rights.
2. All IDWR guidance concerning the authority of the Director or IDWR under 42-237a.g.
3. The basis for the decision to direct the proposed administration at those groundwater rights within the boundary of the map, including the basis for selecting the boundary as shown on the inset map to the Notice.
4. The Director stated at an Advisory Committee meeting in April that he had enough information to make an injury determination. Produce the information that the Director relied upon or was available to the Director in making that statement.
5. Any additional information relevant to injury analysis generated since the Director's statement.
 - a. Including water rights that may be injured, and for each water right the factors listed in Rule 42 of the Conjunctive Management Rules
 - b. If the spreadsheet analysis dated April 14 &/or April 15, 2021 from Watermaster Kevin Lakey is relied upon, provide a full explanation of the spreadsheets and all backup data and calculations used to prepare the spreadsheets.
 - c. Provide all additional information and injury analysis prepared by or obtained from the Watermaster Kevin Lakey or the watermaster's office.
6. Identify all water rights the Department considers may be injured and the basis for that conclusion
7. Provide the methodology used to quantify the surface water supply for the Little Wood River downstream of Silver Creek in 2021.
8. Describe the impact of Condition 161 on water deliveries in the Little Wood in the 2021 water year, including identification of those rights with that condition.
9. All communications concerning water supply and injury analysis with any water right holder and their representatives, including Eric Miller and counsel, whose rights the Department considers may be injured concerning injury analysis
10. All injury analysis conducted by IDWR for this proceeding
11. All communication with the Basin 37 Water Master regarding injury analysis and water supply
12. All analysis of curtailment necessary to avoid injury
 - a. All analysis using the WRV 1.1 Ground Water Model including model runs, supporting data and documentation utilized to determine the administrative area identified on Attachment A to the Basin 37 Administrative Proceeding Order.
 - b. All analysis using the WRV 1.1 Ground Water Model including model runs, supporting data and documentation utilized to identify ground water rights to be reduced or curtailed in 2021.
 - c. All analysis including model runs, supporting data and documentation using the WRV 1.1 Ground Water Model to quantify the benefit to the Little Wood River water users from proposed reductions in ground water withdrawals in 2021.

13. 2021 communications (including phone logs, texts, emails and other written documents) with members of the Idaho legislature and Idaho Water Resource Board concerning about water supply, injury, curtailment and this administrative proceeding.
14. Quantify the impact of the channel condition of Silver Creek upstream of Highway 93. Explain how the channel condition impacts the water supply for the downstream Little Wood River water users. Produce all analysis of water losses to Silver Creek at the Highway 93 crossing.
15. Produce all documentation of the deterioration of the stream conditions in Silver Creek at Highway 93 and increases in stream losses at this location.
16. Provide documentation to support any determination concerning the responsibility for maintaining the stream channel in Silver Creek at Highway 93.
17. Provide all communication to the Department requesting administration of ground water in the Big Wood Ground Water Management Area since 2014.

Exhibit T

**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

**ORDER DENYING SOUTH VALLEY
GROUND WATER DISTRICT'S
MOTION TO DESIGNATE ORDER
DENYING MOTION TO DISMISS AS
FINAL 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 Director commenced the administrative proceeding in response to predicted drought in Basin 37 for the 2021 irrigation season and in response to ground water modeling showing that curtailment of ground water rights during the 2021 irrigation season would result in increased surface water flows for certain holders of senior surface water rights. *Notice* at 1. 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; *see also id.*, Attachment A (depicting the “Potential Area of Curtailment”). The Director, acting as presiding officer, set a prehearing conference for May 24, 2021, and set the hearing for June 7-11, 2021. *Id.* at 1-2.

On May 13, 2021, South Valley Ground Water District (“South Valley”) filed *South Valley Ground Water District’s Motion to Dismiss/Supporting Points & Authorities/Motion to Shorten Time for Response/Request for Oral Argument* (“SVGWD MTD”). On the next day, Sun Valley Company (“Sun Valley”) filed a *Motion to Dismiss* (“SVC MTD”) and the City of Bellevue (“Bellevue”) filed a *Motion for More Definite Statement, Motion for Clarification, and Motion to Postpone Hearing* (“Bellevue Motion”). On May 19, 2021, attorney James P. Speck filed a *Joinder in and Support of Motions* on behalf of numerous clients that joined in and supported the motions filed by South Valley, Sun Valley, and Bellevue. On the same day, Galena Ground Water District filed *Galena Ground Water District’s Joinder in and Support of South Valley Ground Water District’s Motions*. On May 20, 2021, three joinder filings were made. Dean R. Rogers, III and Dean R. Rogers, Inc., filed a *Joinder in and Support of Motions* that joined and supported South Valley and Bellevue’s motions; Sun Valley Water and Sewer District joined in the same motions in its *Joinder in, and Support of, Previously Filed Motions*; and the City of Pocatello filed *City of Pocatello’s Joinder in and Support of Motions* joining in the motions filed by South Valley, Sun Valley and Bellevue. On May 21, 2021, the City of Hailey filed *City of*

Hailey's Joinder in and Support of Motions joining in the motions filed by South Valley, Sun Valley, and Bellevue. In addition, on May 21, 2021, the Big Wood and Little Wood Water Users Association and the Big Wood Canal Company filed *Joint Response to Motions*.

On May 22, 2021, the Director issued the *Order Denying Motions to Dismiss, for Continuance or Postponement, and for Clarification or More Definite Statement* ("Order"). The Order does not contain language indicating it is a recommended order, preliminary order, or final order, and also was not accompanied by a document containing such language. Later the same day, South Valley filed *South Valley Ground Water District's Motion to Designate Order Denying Motion to Dismiss as Final Order* ("Motion"), in order to allow South Valley to seek judicial review of the Order pursuant to the Idaho Code § 67-5270. *Motion* at 1-3. South Valley requests oral argument and expedited consideration of the Motion, with Monday, May 24, 2021, set as the date for responses, oral argument, and an order resolving the Motion.¹ *Motion* at 3. The Director denies the Motion for reasons discussed below.²

ANALYSIS

As explained above, the Order does not contain language indicating it is a recommended order, preliminary order, or final order, and also was not accompanied by a document containing such language. Thus, under the Department's Rule of Procedure 710, the Order is an interlocutory order that is not subject to judicial review under the under the Idaho Administrative Procedure Act. IDAPA 37.0101.710; *see also Williams v. State, Bd. of Real Estate Appraisers*, 149 Idaho 675, 678, 239 P.3d 780, 783 (2010) (holding that an agency's denial of a motion to dismiss was an interlocutory order rather than a final agency action for purposes of judicial review).

Rule 750 of the Department's Rules of Procedure, however, authorizes the Director to designate an interlocutory order as a "final" order:

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. The determination of whether to grant a motion to designate an interlocutory order as final for purposes of reconsideration or appeal is committed to the Director's discretion. *See Brinkmeyer v. Brinkmeyer*, 135 Idaho 596, 599, 21 P.3d 918, 921

¹ This is the date set for the prehearing conference in this matter. *Notice* at 1.

² The Director grants the request for expedited consideration and denies the request for oral argument.

(2001) (“The decision to grant or deny a 54(b) certificate rests in the sound discretion of the trial judge who is best able to evaluate the situation.”).³

South Valley argues the Motion should be granted because “IDWR has followed a similar procedure before,” in the proceedings involving delivery calls filed by the Big & Little Wood Water Users Association (IDWR Docket no. CM-DC-2015-001 & 002). *Motion* at 2. South Valley asserts that designating the Order as final would serve the interests of administrative and judicial economy and “would be consistent with the prior handling of a similar conjunctive administration matter.” *Motion* at 2-3. The Director disagrees.

In the proceedings involving the Wood River Water Users’ delivery calls, the motion to designate certain interlocutory orders as final was the product of a stipulation among number of parties, and no party objected to the stipulation or designation of the interlocutory orders as final. *Order Designating ACGWS Order and Sun Valley Order as Final Order* at 2 (Oct. 15, 2015). There is no similar stipulation in this case, and the absence of such a stipulation weighs against granting the Motion.

As discussed in the Order, this case involves a question of administration during the current 2021 irrigation season, and time is of the essence. Drought conditions are predicted, and the information available to the Director suggests that ground water pumping in the Bellevue Triangle during the 2021 irrigation season will have an immediate, measurable impact on surface flows in Silver Creek and its tributaries, and may injure senior surface water rights diverting from those sources. *Order* at 8. Under these circumstances, designating the Order as a final order would likely preclude administration during some or all of the rest of the irrigation season because of the time that would be consumed by the judicial review proceedings.⁴ Under the circumstances of this case, therefore, designating the Order as a final order would effectively rule out any possibility of protecting senior surface water rights diverting from Silver Creek and its tributaries from junior ground water uses in the Bellevue Triangle during the upcoming irrigation season. As discussed in the Order, this result would be contrary to the prior appropriation doctrine as established by Idaho law. *Order* at 8, 11.

³ In *Williams*, the Idaho Supreme Court held that an agency’s denial of a motion to dismiss was not a final order even though the agency had expressly designated it as a final order. *Williams*, 149 Idaho at 677, 239 P.3d at 782. That case, however, involved an administrative complaint alleging multiple counts of wrongful conduct against a state-certified real estate appraiser, and the motion to dismiss did not challenge the agency’s authority to file such a complaint or initiate such a proceeding. *Id.* at 676-77, 239 P.3d at 781-82. This case does not involve an administrative complaint, and the Motion seeks judicial review of the Order’s determinations that the Director had authority to initiate this proceeding under Idaho Code § 42-237a.g., and was not required to proceed under the *Rules for Conjunctive Management of Surface and Ground Water Resources*. The Director, therefore, does not view *Williams* as eliminating the Director’s discretion to designate the Order as a final order.

⁴ The judicial review proceedings in the Wood River Water Users’ matter were initiated in August 2015 and concluded in April 2016.

CONCLUSION

The Motion to designate the Order as a “final order” is denied. The Director retains discretion to reconsider this determination if the parties enter into a stipulation regarding designation of the Order as a “final order.”

DATED this 24th day of May, 2021.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of May, 2021, the above and foregoing was served on the following by the method(s) indicated below:

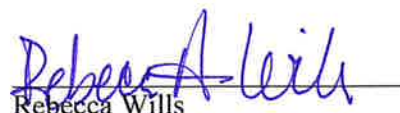
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