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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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 RIVER	Docket No. CM-DC-2015-001
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 LITTLE WOOD RIVER	Docket No. CM-DC-2015-002 **AFFIDAVIT OF MATTHEW J. McGEE IN SUPPORT OF JOINT MOTION TO DETERMINE CONSOLIDATED CASE STATUS**

STATE OF IDAHO)
) ss.
County of ADA)

MATTHEW J. McGEE, having been duly sworn upon oath, deposes and states as follows:

1. I am an attorney representing the Sun Valley Company in the above-captioned proceedings. As such, I have personal knowledge regarding the facts set forth herein.

2. Attached hereto as Exhibit A is a true and correct copy of selections from an internally-prepared rough transcript of the June 3, 2015, pre-hearing conference in the above-captioned proceedings before the Director of the Idaho Department of Water Resources. The audio of such hearing that was the source of such rough transcript was obtained from the Idaho Department of Water Resources.

Further your affiant sayeth naught.

Matthew J. McGee

SUBSCRIBED AND SWORN to before me this 30th day of July, 2015.

JENNIFER R. TAYLOR NOTARY PUBLIC STATE OF IDAHO

NOTARY PUBLIC FOR IDAHO
Residing at Boise, ID
My Commission Expires 9/13/18

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30 day of July, 2015, I caused a true and correct copy of the foregoing **AFFIDAVIT OF MATTHEW J. McGEE IN SUPPORT OF JOINT MOTION TO DETERMINE CONSOLIDATED CASE STATUS** to be served by U.S. Mail and addressed to the following:

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PRE-HEARING CONFERENCE TRANSCRIPT

JUNE 3, 2015

Spackman:	Gary Spackman, Director, Department of Water Users
Blades:	Emmi Blades, Attorney General's Office
Campbell:	Scott L. Campbell, Sun Valley Company
UM:	Unidentified Male
Haemmerle:	Fritz Haemmerle, AF Trust, Payne Trust & Smith
James:	Joe James
Creamer:	Mike Creamer, City of Hailey and Valley Club
Speck:	Jim Speck
Bromley	Chris Bromley, City of Bellevue
Robertson:	Gary M. Robertson, Sun Valley Water & Sewer District
Simpson:	John Simpson, Barker Rosholt & Simpson, for Al Barker and others
Rossi:	Fred Rossi, Water User
Schoen:	Larry Schoen, Water User
Anderson:	Lou Anderson, for District 37B Groundwater Users

Spackman: Alright. I don't whistle very well. Thanks for coming today. The appointed hour has arrived and our numbers are fewer than last time. I hope that's a good sign. So welcome again today. And the purpose of this particular status conference is to work on scheduling. And so I sort of looked at possible outcomes and processes. But I want to work through these individually with people who are here. I also want to say to this crowd, where are all the suits? [inaudible] Yeah, thank you, Scott. There's some others in disguise.

Campbell: [inaudible]

Spackman: All right. Well, welcome again. I want to tell you that, at the outset – and I probably should for the record say I'm Gary Spackman, Director of the Department of Water Resources. With me is Emmi Blades from the Attorney General's office today. So, I want to tell you from the outset before we start in today, that I want to sincerely apologize to Mr. James for defective service of the scheduling order and some of the other orders that have been issued, and documents. And I found out about it on late, what was it? Was it Friday afternoon?

Blades: It was recently. Very recently.

Spackman: Anyway, we looked at it and he had not been served. And of course the question I have is, how does this happen? And those of you who have practiced law

EXHIBIT A

the information that the Department has in its records, and this may be data, this may be studies, this may be Department technical staff opinion about certain either hydraulic connection matters or hydrology in some way and how that information then might be used in determining material injury. And probably also in determining how any curtailment order might be, might affect the various junior water users. So I anticipate requesting both of those staff memoranda and requesting them to be submitted somewhere around the middle of August. That's what I anticipate. And so you'll shortly see some kind of a request as provided for in the Department's rules of procedure that asks staff for the memorandum, or memorandums or memoranda, that I have described.

Okay, yeah, Fritz.

Haemmerle: Director, for the record, Fritz Haemmerle representing AF Trust, Payne Trust & Smith. I'm wondering why you decided to ask for those staff memorandum sort of at the front end of this particular case as opposed to the Rangen case where the parties were allowed to do discovery – and I think recognizing the seniors' burden, at least moving forward – why have you taken a different tactic in this case of kind of having staff get active with issuing those staff memorandums at the front end of the case. And if you were going to do that, are the staff memorandums, when they evaluate individual beneficial use, are you going to make waste determinations in those evaluations as well?

Spackman: My take is probably not. I don't, I guess I don't understand why you think this is a departure, Fritz, from what we've done before. It is consistent.

Haemmerle: Well, in the Rangen case, for example, you had a lot of expert, you know – you had identification of experts, you had depositions of experts, you had the parties issuing expert reports and then, and only then, did you issue staff reports, which clearly everyone found to be helpful, because I think they were and it's a good idea. But then, thereafter the experts had the ability to file any kind of reply report that they wanted to, based on whatever staff reports you obtained. So it's kind of a departure in procedure in this case. I don't think asking for the staff reports is a departure, and I think it's a good idea, but it's well before the parties have been able to do any kind of, you know, thoughtful discovery. And I think it's their burden to get together their beneficial use and, you know, we need a lot of time to inquire into that. So I don't know if the Department intends to do a lot of the work for the seniors in that respect, or what the issue is and why there's a change. Because I know you didn't do that in the Rangen case. I'm not being critical, I'm just trying to understand.

Spackman: No, and I guess my memory of that procedure is not as good as yours. I know what we wanted to do, honestly, was prepare the information for the parties far enough in advance that they had it in their hands. Some of what we're doing here, honestly, and it's different I think than the Rangen matter because we have a very

scattered group of points of diversion and numerous water rights. And rather than – at least with respect to the first staff memorandum that I talked about – the Department is probably more familiar with those and through the Water Master than all of the users would be or could become acquainted through a discovery process. And so my thought was, it would be helpful at least for the Department to describe what it knows and what it has in its records for the benefit of the parties going forward. But we're not attempting through that to make anything, or conclude anything, from it other than to say, this is what's on the ground for everybody. And what I'm doing, honestly, is to try to promote some efficiency in the process. So in that way, maybe it's a departure. But that departure is probably because of the difference in facts, both spatially and the number of points of diversion that we're looking at, where Rangen was more concentrated.

Haemmerle: The problem comes up when there's so many senior callers. I mean, in the Rangen case we had probably two weeks on the beneficial use alone on one caller. So, you know, the ability of these juniors to evaluate the beneficial use on that's going to be, I think, fairly monumental.

Spackman: I think that's a fair comment. But I'll come back to it and say, at least with respect to Tim Luke's memorandum describing the system, describing the points of diversion, and describing what's there.

Haemmerle: Will that include current use, or measurements if they're available, over a course of years of what's been used?

Spackman: Uh, yeah. We haven't gotten that deeply into it, but my intent is at least to provide the information to the parties so that it's in one place. I'll have to look and see what comes in from Mr. James or we will. By the way, I should say staff will, Scott, for your benefit. I'm being too loose. But I don't intend to be involved in that evaluation. Generally what happens with a staff memorandum is I sort of stay out of it and say, here are the broad subjects I want you to address. And then I essentially take what I get. I'm not involved in the editing or the writing of it at all.

Haemmerle: Thank you, Director.

Spackman: So, again, we're trying to get out to the parties the information that we have. And then from there it may require some additional discovery or analysis. I don't know. But we talked to Department staff even this morning and said when is the soonest that you can get this done with a reasonable time to put the information together. Now, the other staff memorandum that I asked for, or intended to ask for, would be different than what we saw at least initially in the Rangen matter. Because it will not have the same level of detail. In other words, some of the other staff memorandum or staff memoranda that I have requested in the past in these delivery calls have actually been numerical analyses of model results and

Speck: It's my understanding that you also have a responsibility to allow the juniors the use of all possible tools that would become available to them. That's not the case here. What we have is a situation where the model will be done at the end of this year. If we have a hearing in January, that doesn't give us enough time to work with that model and use it in a reasonable way before the hearing.

Spackman: [inaudible]

Speck: I have one other question.

Spackman: Okay.

Speck: It's seems to me that one of the first, so far these two cases have gone in lock step. But in looking at Tim's slide as to the location of the wells and the location of the points of diversion of the call units, it doesn't make sense. Because, for example, if you have a well up in Ketchum/Hailey area, anywhere in there, and the entire depletion from the pumping of that well stopped in the Big Wood River, not the Little Wood River, then why would that, the owner of that well, have to participate in the Little Wood River call? And vice-versa, if you have a well down along Silver Creek where the depletion clearly [inaudible] doesn't come anywhere close to the Big Wood River, why would that well user have to participate in the Big Wood River call? Because as Fritz mentioned, evaluating those water rights is going to be time consuming and for us, expensive, in terms of the [inaudible] of expert witnesses. And the folks need to know what rightful expenses should they be sharing? So when is that determination going to be made?

Spackman: Right now, Jim, the cases are consolidated. That's the way [inaudible]. They were consolidated because of at least an initial perception and determination that there were sufficient common issues of fact and law that they should be connected. That doesn't mean to say that you can't move to have them bifurcated somehow. And I'm willing to consider that motion or request [inaudible]. We're just trying to analyze right now what those are. At least initially the determination was that they [inaudible] of fact and law that were significant enough that they ought to be heard together.

Speck: So the burden will be on us to get these cases spun off and the iden-, the water users identified for each proceeding?

Spackman: Yeah.

Speck: Proceeding.

Spackman: Yeah.