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

CITY OF HAILEY, an Idaho municipal corporation, and CITY OF BELLEVUE, an Idaho municipal corporation,

Petitioners,

vs.

GARY SPACKMAN in his official capacity as Director of the Idaho Department of Water Resources; and the IDAHO DEPARTMENT OF WATER RESOURCES,

Respondents.

Case No.: _____

JOINT PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION

CATEGORY FEE: L3
FEE AMOUNT: $221.00

Petitioners City of Hailey ("Hailey") and the City of Bellevue ("Bellevue") (collectively, the "Cities"), by and through their respective attorneys of record, jointly file this petition ("*Joint Petition*") seeking judicial review of an intermediate agency action pursuant to Idaho Code Sections 67-5270 and 67-5271(2), and Idaho Rule of Civil Procedure 84.

STATEMENT OF THE ISSUES AND CASE

1. This is a civil action pursuant to Idaho Code §§ 67-5270 through 67-5279 seeking judicial review of the July 22, 2015, *Order Denying Joint Motion To Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* in Docket Nos. CM-DC-2015-001 and CM-DC-2015-002 ("*Order*") issued by the Director of the Idaho Department of Water Resources ("IDWR" or

"Department") in the Big Wood River and Little Wood River delivery call proceedings ("Delivery Calls").[1] A true and correct copy of the *Order* is attached hereto as Exhibit A.

2. The issues to be addressed on judicial review include:

a. Whether the Director properly denied the Cities' June 26, 2015 *Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* ("*Joint Motion*"), in which the Cities moved that the Director must initiate rulemaking in accordance with the Idaho Administrative Procedure Act, I.C. § 67-5201 *et. seq.*, to designate an area of common ground water supply ("ACGWS") before proceeding with the Delivery Calls;

b. Whether the Director has authority to determine an ACGWS within the context of the Delivery Calls, which are being conducted pursuant to Rule 40 of the Conjunctive Management Rules, IDAPA 37.03.11 ("CM Rules"), or whether he must first conduct a rulemaking to amend CM Rule 50, which currently defines a single ACGWS that does not encompass the Cities; and

c. Whether the Director must dismiss the Delivery Calls until such time as an ACGWS may be determined by amendment of CM Rule 50.

3. The Cities seek judicial review of IDWR's *Order* for the reasons set forth in Cities' *Joint Motion* and supporting memorandum and affidavit,[2] including without limitation the following:

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[1] The Department has captioned the Delivery Calls as follows: "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) and "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).

[2] Together with and in support of the *Joint Motion*, the Cities filed a *Memorandum In Support of Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* ("*Joint Motion Brief*"), and an *Affidavit of Chris M. Bromley* ("*Bromley Affidavit*").

a. The Director has determined the Delivery Calls to be delivery calls initiated pursuant to CM Rule 40. *Order Denying Sun Valley Company's Motion to Dismiss* p. 3.[3]

b. CM Rule 40 applies "[w]hen a delivery call is made by the holder of a senior-priority water right (petitioner) alleging that by reason of diversion of water by the holders of one (1) or more junior-priority ground water rights (respondents) from an area having a common ground water supply in an organized water district the petitioner is suffering material injury . . . ." IDAPA 37.03.11.040.01 (emphasis added).

c. The only ACGWS designated in the CM Rules is the Eastern Snake Plain Aquifer ("ESPA") ACGWS. IDAPA 37.03.11.050.01.

d. All of the senior water rights held by the parties who initiated the Delivery Calls are located entirely within the ESPA ACGWS. *Bromley Affidavit* Ex. L.

e. None of the junior ground water rights identified by the Department as potentially implicated in these Delivery Calls and subject to curtailment of their water rights in priority (including the Cities) are located within the ESPA ACGWS. *Bromley Affidavit* Ex. L.

f. In the context of prior CM Rule 40 delivery calls placed by senior water right holders within the ESPA ACGWS, both the Director and Fifth Judicial District Court Judge Wildman have held that under the CM Rules the Director may only curtail junior ground water rights that are located within the ESPA ACGWS as currently designated in CM Rule 50:

[3] Other than the *Order*, pleadings in the underlying administrative action cited hereinafter are to be made part of the agency record on judicial review and are not included as exhibits to this *Joint Petition.*

i. In the Rangen delivery call proceeding, the Director stated that "IDWR is only authorized to curtail diversions within the area of common ground water supply described in Rule 50 of the CM Rules." *Final Order Regarding Rangen, Inc.'s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962*, Docket No. CM-DC-2011-004, p. 37, Conclusion of Law 41 (Jan. 29, 2014) (emphasis added); and

ii. In the Surface Water Coalition delivery call proceeding, the Director stated that "[he] can only curtail junior ground water rights within the [ESPA] area of common ground water supply, CM Rule 50.01." *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover*, pp. 34-35, Order ¶ 5 (June 23, 2010) (emphasis added).

iii. In the Surface Water Coalition delivery call proceeding, Judge Wildman stated: "When a senior water user seeks the conjunctive administration of ground water rights under the CM Rules, the senior user is seeking administration within the area of common ground water supply. The plain language of CM Rules make this clear." *Memorandum Decision and Order on Petitions for Judicial Review*, CV-2010-382, pp. 24-25 (Fifth Jud. Dist., Sept. 26, 2014) (emphasis added).

4. The statements set forth above demonstrate that the Director does not have authority to curtail the junior-priority water rights identified as potentially implicated by the Department in these Delivery Calls because those junior water rights are not within any ACGWS defined by the CM Rules.

5. In light of the foregoing determinations of both the Director and Judge Wildman recognizing that the Director's authority when responding to a delivery call by senior water right holders in the ESPA ACGWS is limited to curtailing junior water rights within the ESPA ACGWS defined by CM Rule 50, the Director attempted to repeal CM Rule 50 expressly so that he could determine an ACGWS within a Rule 40 delivery call proceeding rather than through amendment of CM Rule 50. *See generally Bromley Affidavit* Exs. B-K.

6. Concerning his attempted repeal of CM Rule 50, the Director testified to the Idaho Legislature that "[i]f you reject the proposal [to repeal Rule 50], then Rule 50 would stay in place and the area of common groundwater supply would remain as presently defined . . . [in CM Rule 50] and I would continue to use that as the area of common groundwater supply based on that legislative determination." *Bromley Affidavit* Ex. H, p. 14.

7. The Idaho Legislature rejected the Director's attempt to repeal CM Rule 50. *Bromley Affidavit* Exs. J, K.

8. Contrary to the Director's and Judge Wildman's statements set forth above, and the Legislature's rejection of the Director's attempted CM Rule 50 repeal, the Director's *Order* nevertheless concludes that the Director may curtail junior water rights, such as those of the Cities, without first defining an ACGWS that encompasses them and the calling senior water rights. "The ACGWS for the [Delivery Calls] is a factual question that can be established based upon the information presented at hearing applying the definition [of ACGWS] set forth in CM Rule 10.01." *Order* p. 3.

JURISDICTION AND VENUE

9. This *Joint Petition* is authorized by Idaho Code §§ 67-5270 through 67-5279.

10. The *Order* is an intermediate agency action or ruling[4] that is immediately reviewable by the Court because judicial review of the final agency action in these Delivery Calls would not provide the Cities an adequate remedy. Idaho Code §§ 67-5270(1), 67-5271(2).[5] Determination of an ACGWS that may encompass the Cities' water rights in these Delivery Calls is a threshold issue that must be resolved before the Cities can be required to defend against the Delivery Calls, which will include having to present defenses under the heightened clear and convincing evidence standard.

11. The rulemaking requirements of the Idaho Administrative Procedure Act, Idaho Code §§ 67-5220 – 5231, were enacted so that where a state agency seeks to impose legal standards of general applicability in the future, all persons potentially affected have the right to be involved in a transparent regulatory *rulemaking* process with notice and a reasonable opportunity to participate in an open, non-litigious setting. *Idaho Rule Writer's Manual*, State of Idaho Office of the Administrative Rules Coordinator, p. 10. http://adminrules.idaho.gov. Without an ACGWS encompassing the Cities' water rights that has been designated through rulemaking (which the Director, Judge Wildman and the Legislature have determined is required), it cannot be known which junior water right holders are properly before the Department under the *these* Delivery Calls or the CM Rules, and required to mount a defense against the Delivery Calls. The Cities' only adequate remedy here is the right to participate in a rulemaking process that will establish who is and is not within an ACGWS and to thereby know at the outset of any CM Rule 40 proceeding whether they are properly joined as a party. By

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[4] Because the *Order* is not a final order, it is intermediate or "interlocutory," which the Idaho courts interpret as synonymous for purposes of Idaho Code § 67-5271(2). *Williams v. State Bd. Of Real Estate Appraisers*, 149 Idaho 675, 239 P.3d 780 (2010).

[5] Cities have filed a *Joint Motion for Review of Interlocutory Order* with the Respondents pursuant to IDWR Procedural Rules, IDAPA 37.01.01.260 and 711. The *Joint Motion* will not have been decided before the twenty-eight-day deadline for filing of this *Joint Petition* has run.

avoiding rulemaking, as the Director is attempting here, the Cities (and all other potentially affected persons) also will be deprived of protections that the legislative review process provides. No decision on judicial review requiring rulemaking *after* the Cities have been required to defend against a delivery call can provide them the adequate remedies that the IAPA and legislative oversight are intended to afford them.Under the standards of Idaho Code § 67-5279 the Order is:

a. in violation of constitutional or statutory provisions or IDWR's administrative rules;

b. in excess of statutory authority or IDWR's authority under its administrative rules;

c. made upon unlawful procedure; and

d. arbitrary and capricious, and/or and abuse *of the a*gency's discretion.

12. This Court has jurisdiction over this action pursuant to Idaho Code Sections 67-*5271(2) and 67-5272.*

13. *Venue* lies in this Court pursuant to Idaho Code Section 62-5272. IDWR's final action was taken at its state headquarters in Ada County, Idaho.[6]

PARTIES

14. The Cities each are municipal corporations organized under the laws of the State of Idaho, including without limitation Title 50, Idaho Code, and their principal places of business

[6] Because this is a petition seeking judicial review of a decision made by IDWR, it should be reassigned to the Presiding Judge of the Snake River Basin Adjudication Court for the Fifth Judicial District ("SRBA Court") pursuant to the Idaho Supreme Court's December 9, 2009 *Administrative Order* and the SRBA Court's July 1, 2010 *Administrative Order Adopting Procedures for the Implementation of the Idaho Supreme Court's Administrative Order dated December 9, 2009*. A proposed *Notice of Reassignment* of this matter to the SRBA Court is attached hereto as Exhibit B.

are, respectively: City of Bellevue, P.O. Box 825, Bellevue, ID 83313 and City of Hailey, 115 Main Street South, Suite H, Hailey ID, 83333.

15. Respondent Gary Spackman is the Director of IDWR and is a resident of Ada County;

16. Respondent IDWR is a state agency existing under the laws of the State of Idaho pursuant to Idaho Code 42-1701 et seq., with its main offices located at 322 E. Front St., Boise, Ada County, Idaho, 83702.

AGENCY RECORD

17. The Department has compiled a documentary record. Because no hearing has been held, there is no transcript. Cities anticipate that they can reach a stipulation with the agency regarding the contents of the agency's official record for this judicial review, which shall include, without limitation.

a. the *Order*;

b. the *Cities' Joint Motion*;

c. the Cities' *Joint Motion Brief*;

d. the *Bromley Affidavit* and included exhibits thereto; and

e. *Order Denying Sun Valley Company's Motion to Dismiss.*

18. The undersigned attorneys for the Cities hereby certify that the Cities have paid the clerk of the agency the estimated fee of $10.00 for the preparation of the record, which includes the cost of copying at IDWR's standard copying rate of $0.01per page after the first one hundred pages, for which there is no charge.

SERVICE

19. The undersigned hereby certify that service of this *Joint Petition* has been made on Respondent and all other parties to the proceeding before the agency.

DEMAND FOR ATTORNEY FEES AND COSTS

20. As a result of the Respondents' actions, the Cities have had to retain counsel. For services rendered the Cities are entitled to their reasonable attorney fees and costs should they prevail in this action pursuant to Idaho Code Section 12-117 and Rule 54 of Idaho Rules of Civil Procedure.

Respectfully submitted this 18th day of August, 2015.

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By: _____
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By: _____
Chris M. Bromley
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 18th day of August, 2015, I served a true and correct copy of the above and foregoing document by placing a copy of the same in the United States mail, postage prepaid and properly addressed and by e-mail to participants who have provided e-mail addresses to the Department for service to the following:

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Michael C. Creamer

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 **ORDER DENYING JOINT MOTION TO DESIGNATE ACGWS BY RULEMAKING AND TO DISMISS DELIVERY CALLS**

BACKGROUND

On February 24, 2015, the Director ("Director") of the Idaho Department of Water Resources ("Department") received two conjunctive management water delivery call letters from counsel for members of the Big Wood & Little Wood Water Users Association. The letters allege senior surface water users on the Big Wood and Little Wood Rivers are being injured by water users diverting ground water hydraulically connected to the Big Wood and Little Wood Rivers. The letters request the Director regulate junior ground water users consistent with the prior appropriation doctrine.

The Director initiated new contested case proceedings and assigned each delivery call letter its own docket number. The Big Wood Delivery Call was assigned docket no. CM-DC-2015-001. The Little Wood Delivery Call was assigned docket no. CM-DC-2015-002.

On March 20, 2015, the Department sent letters to ground water users the Department identified as potentially affected by one or both of the above-described delivery calls. The purpose of the letters was to inform the water users of the delivery calls and notify them of a planned status conference. The letters invited the water users to file a written notice with the Department if they planned to participate in delivery call proceedings. The Department received over 100 notices of intent to participate, including notices filed by the City of Hailey and the City of Bellevue ("Hailey and Bellevue").

The Department also published general notice of the delivery calls and the status conference in the Idaho Mountain Express and Camas Courier on March 25th, 2015 & April 1st, 2015; and the Times News on March 26th, 2015 & April 2nd, 2015. The Director held a status conference on May 4, 2015, and a pre-hearing conference on June 3, 2015.

EXHIBIT

A

On June 26, 2015, Hailey and Bellevue filed a *Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* ("Motion to Dismiss"), *Memorandum in Support of Joint Motion to Designate ACGWS by Rulemaking and to Dismiss Delivery Calls* ("Memorandum"), and the *Affidavit of Chris M. Bromley* ("Affidavit"). Joinders in support of the Motion to Dismiss were filed by attorney James P. Speck on behalf of multiple respondents, the City of Ketchum and City of Fairfield, and the Water District 37-B Groundwater Group.[1]

ANALYSIS

Hailey and Bellevue argue the Director must "initiate rulemaking in accordance with the Idaho Administrative Procedure Act, I.C. § 67-5201" to designate an area of common ground water supply ("ACGWS") before proceeding with the Big and Little Wood Delivery Calls pursuant to Rule 40 of the Department's Rules of Conjunctive Management of Surface and Ground Water Resources ("CM Rules"). *Memorandum* at 1.

CM Rule 40 governs the Director's response to the Big and Little Wood Delivery Calls because it applies "[w]hen a delivery call is made by the holder of a senior-priority water right (petitioner) alleging that by reason of diversion of water by the holders of one (1) or more junior-priority ground water rights (respondents) from an area having a common ground water supply in an organized water district the petitioner is suffering material injury. . . ." IDAPA 37.03.11.040.01. Hailey and Bellevue argue "the plain language of [CM] Rule 40" requires "that an ACGWS exist before the Director may respond to a delivery call." *Memorandum* at 8-9 (emphasis in original).

Contrary to Hailey and Bellevue's argument, CM Rule 40 does not require the Director establish an ACGWS by rulemaking before the Director can move forward with the Big and Little Wood Delivery Calls. While the Director has authority to establish an ACGWS by rule (and in fact did for the Eastern Snake Plain Aquifer ("ESPA")), the CM Rules do not mandate that the Director go through the rulemaking process to establish an ACGWS. CM Rule 10.01 defines "Area Having a Common Ground Water Supply" as:

> A ground water source within which the diversion and use of ground water or changes in ground water recharge affect the flow of water in a surface water source or within which the diversion and use of water by a holder of a ground water right affects the ground water supply available to the holders of other ground water rights. (Section 42-237a.g., Idaho Code)

[1] On April 22, 2015, the Water District 37-B Groundwater Group filed a notice of intent to participate only in proceedings related to the Big Wood Delivery Call. On July 10, 2015, counsel Dylan B. Lawrence, of the law firm Varin Wardwell LLC, filed a *Notice of Appearance* and *Joinder in Support of Motion to Dismiss Contested Case Proceedings* on behalf of the Water District 37-B Groundwater Group in both the Big and Little Wood Delivery Calls. The Water District 37-B Groundwater Group did not file a notice of intent to participate in the Little Wood Delivery Call in compliance with the Director's May 13, 2015, *Order Governing Participation*. Therefore, the Director will not consider filings by the Water District 37-B Groundwater Group in Little Wood Delivery Call proceedings.

IDAPA 37.03.11.010.01. The ACGWS for the Big and Little Wood Delivery Calls is a factual question that can be established based upon information presented at hearing applying the definition set forth in CM Rule 10.01.

Hailey and Bellevue also argue that, because CM Rule 31 establishes a process for determining an ACGWS in a CM Rule 30 delivery call, the lack of a process in CM Rule 40 means that the Director *must* follow the rulemaking process to establish an ACGWS in a CM Rule 40 delivery call. *See Memorandum* at 9-10. The Director disagrees. While CM Rule 31 requires the Director consider certain information and establishes criteria for determining an ACGWS in a CM Rule 30 delivery call, the absence of specific processes in the CM Rules to establish an ACGWS for a CM Rule 40 delivery call does not dictate that the Director must establish an ACGWS by rule in a CM Rule 40 delivery call. CM Rule 30 and 31 do not limit the Director's ability to determine an ACGWS in the Big and Little Wood Delivery Calls under CM Rule 40. As discussed above, the ACGWS is a factual question that can be established based upon information presented at hearing applying the definition set forth in CM Rule 10.01.

The Idaho Legislature has given the Director "broad powers to direct and control distribution of water from all natural water sources within water districts." *In re SRBA*, 157 Idaho at 393, 336 P.3d at 800; Idaho Code § 42-602. "In connection with his supervision and control of the exercise of ground water rights the [Director] shall also have the power to determine what areas of the state have a common ground water supply. . . ." Idaho Code § 42-237a(g). In addition, a timely response is required when a delivery call is made. *Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res.*, 143 Idaho 862, 874, 154 P.3d 433, 445 (2007). A requirement that the Director must initiate rulemaking to designate an ACGWS prior to responding to every CM Rule 40 delivery call against junior-priority ground water rights outside the ESPA would result in lengthy delay and run afoul of the Director's mandatory duty to "distribute water in water districts in accordance with the prior appropriation doctrine." Idaho Code § 42-602; *In re SRBA*, 157 Idaho 385, 393, 336 P.3d 792, 800 (2014); *Musser v. Higginson*, 125 Idaho 392, 395, 871 P.2d 809, 812 (1994) (*abrogated on other grounds by Rincover v. State, Dep't of Fin., Sec. Bureau*, 132 Idaho 547, 976 P.2d 473 (1999)).

The Director will not dismiss the Big and Little Wood Delivery Calls to designate an ACGWS through rulemaking before responding to the delivery calls. The Director will determine the ACGWS in the Big and Little Wood Delivery Calls based upon information presented at hearing applying the definition set forth in CM Rule 10.01.[2]

Hailey and Bellevue reference statements of the Director and District Court in the Surface Water Coalition and Rangen, Inc., delivery calls. *Memorandum* at 4-6. These statements recognize the Director may only curtail junior ground water rights within the ACGWS defined by CM Rule 50.01 in the context of delivery calls by holders of senior water

[2] Hailey and Bellevue assert it is "apparent that the information to determine an ACGWS in the Big Wood River basin, and many other tributary basins, does not exist." *Memorandum* at 14. Again, the Director has a mandatory legal duty to distribute water in water districts in accordance with the prior appropriation doctrine. The Director must meet this duty in the Big and Little Wood Delivery Calls by designating an ACGWS through administrative hearings and deliberations associated with those delivery calls. Uncertainty cannot operate in favor of junior ground water right holders. *See Memorandum Decision and Order on Petitions for Judicial Review* at 40, Case No. CV-2014-1338 (Consolidated Gooding County Case No. Cv-2014-179) (Oct, 24, 2014).

rights against junior-priority ground water rights within the ESPA ACGWS. *See id.* Hailey and Bellevue argue the statements demonstrate the Director may *only* administer junior ground water rights in a CM Rule 40 delivery call within an already designated ACGWS. *Id.* at 4.

The statements relied upon by Hailey and Bellevue are specific to the Director's authority to curtail junior ground water rights within the ACGWS defined by CM Rule 50.01. The statements are irrelevant to the Director's authority to curtail junior ground water rights in response to a CM Rule 40 delivery call by senior water right holders against junior ground water rights outside the ESPA ACGWS, such as the Big and Little Wood Delivery Calls. Statements of the Director and District Court related to prior delivery call proceedings factually and legally distinct from the Big and Little Wood Delivery Calls are not a basis for dismissal of the delivery calls.

Hailey and Bellevue also reference the Idaho Legislature's rejection of the Director's repeal of CM Rule 50. *Memorandum* at 10-14. In the *Final Order* issued In the Matter of Petition to Amend Rule 50, the Director found:

> 12. The Director is able to administer a delivery call under the [CM] Rules without having a fixed ACGWS defined for the ESPA. Eliminating [CM] Rule 50 addresses the disparate treatment concern . . . . The administrative hearings and deliberations associated with delivery calls is the proper venue to address which ground water rights should be subject to administration.

Affidavit Ex. G at 4. The Director concluded "[CM] Rule 50 should be repealed because the administrative hearings and deliberations associated with individual delivery calls is the proper venue to address which ground water rights should be subject to administration under a delivery call." *Id.* at 6. The Director repeated this conclusion in testimony before the Idaho Legislature.[3] The Idaho Legislature's *Statement of Purpose* related to rejection of the Director's repeal of CM Rule 50 explains:

> This rule was rejected in committee because it eliminated the current boundary lines of the [ESPA], and not enough technical data was available at the present time for the [Department] to accurately evaluate the underground water sources available in the additional territory to the ESPA to define the effects on the various sections of the Aquifer.

Affidavit Ex. K. Hailey and Bellevue cite the above-described testimony and *Statement of Purpose* to support the argument "that the Legislature does not want the Director to make *ad hoc* determinations within [CM] Rule 40 delivery call proceedings." *Memorandum* at 14.

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[3] The Director testified: "Ultimately, we felt that the fairest approach was to simply repeal the Rule and then in every delivery call I would then be responsible for taking evidence in a contested case hearing from all of the parties and then determining what the individual area of common groundwater supply was for each delivery call." *Affidavit* Ex. H at 2. The Director also testified: "[W]hat we are proposing is to repeal the Rule, which results in *no* definition of a boundary for the [ACGWS] for the [ESPA]. And it will require me in every single delivery call now to determine based on evidence that's presented in a contested case hearing what the boundary should be. So, there will not be any hard-wire boundary in the Rules for the [ACGWS] for the [ESPA]." *Affidavit* Ex. E at 6.

The Director's testimony and *Statement of Purpose* cited by Hailey and Bellevue are specific to the effect of the repeal of CM Rule 50 on ESPA delivery calls. The Director's testimony and *Statement of Purpose* are irrelevant to CM Rule 40 delivery calls initiated by holders of senior water rights against junior ground water rights outside the ESPA ACGWS and, therefore, not a basis to dismiss the Big and Little Wood Delivery Calls.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the Motion to Dismiss is DENIED.

DATED this 22nd day of July 2015.

GARY SPACKMAN
Director

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

CITY OF HAILEY, an Idaho municipal corporation, and CITY OF BELLEVUE, an Idaho municipal corporation, Petitioners, vs. IDAHO DEPARTMENT OF WATER RESOURCES, Respondent.	Case No.: _____ **NOTICE OF REASSIGNMENT**

WHEREAS Idaho Supreme Court Administrative Order dated December 9, 2009, declares that all petitions for judicial review made pursuant to I.C. § 42-1701A of any decision from the Department of Water Resources be assigned to the presiding judge of the District Court of the Fourth Judicial District, and

WHEREAS Idaho Supreme Court Administrative Order dated December 9, 2009, vests in the Fourth Judicial District Court the authority to adopt procedural rules necessary to implement said Order, and

WHEREAS on July 1, 2010, the Snake River Basin Adjudication District Court issued an Administrative Order regarding the Rule of Procedure Governing Petitions for Judicial Review or Actions for Declaratory Relief of Decisions from the Idaho Department of Water Resources.

EXHIBIT
B

THEREFORE THE FOLLOWING ARE HEREBY ORDERED:

1. The above-matter is hereby assigned to the presiding judge of the Snake River Basin Adjudication Court of the Fifth Judicial District for disposition and further proceedings.

2. All further documents filed or otherwise submitted in this matter, and all further filing fees filed or otherwise submitted in this matter, shall be filed with the Snake River Basin Adjudication District Court of the Fifth Judicial District at P.O. Box 2707, Twin Falls, Idaho 83303-2707, provided that checks representing further filing fees shall be made payable to the county where the original petition for judicial review or action for declaratory judgment was filed.

Dated this ____ day of August, 2015.

By:_____