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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,

Petitioners,

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,

CITY OF KETCHUM, CITY OF FAIRFIELD,  
WATER DISTRICT 37-B GROUNDWATER  
GROUP, BIG WOOD & LITTLE WOOD  
WATER USERS ASSOCIATION, SOUTH  
VALLEY GROUND WATER DISTRICT,  
ANIMAL SHELTER OF WOOD RIVER  
VALLEY, DENNIS J. CARD and MAUREEN E.  
MCCANTY, EDWARD A LAWSON, FLYING

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

**ORDER SETTLING THE  
AGENCY RECORD**

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 ASSOCIATION, 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 HOEMOWNERS 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

On September 9, 2015, the Idaho Department of Water Resources (“Department”) served its *Notice of Lodging Agency Record with the Agency* (“Notice”) in this matter pursuant to I.R.C.P. 84(j). The Notice gave the parties fourteen (14) days from the date of the Notice to file any objection to the agency record.<sup>1</sup>

On September 23, 2015, Sun Valley Company and the Cities of Ketchum and Fairfield (collectively referred to herein as “SVC and the Cities”) jointly filed their *Objection to Agency Record In Re: Sun Valley Company v. Spackman, et al., Ada County District Court Case No. CV-WA-2015-14500* (“Objection”). On September 29, 2015, the South Valley Ground Water District (“SVGWD”) filed its *Response to Objection to Agency Record* (“Response”).

#### **A. Sun Valley Company and the Cities’ Objection**

SVC and the Cities argue that many of the documents filed in the underlying Big and Little Wood Delivery Call proceedings included in the agency record “are not relevant to the issues on appeal before the District Court” and request their exclusion “in the interest of efficiency and judicial economy.” *Objection* at 2. Exhibits A and B to the Objection are the Tables of Contents of the agency record as served on the parties with the Notice, and indicate by highlighted marks the documents SVC and the Cities propose should comprise the agency record on appeal.

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<sup>1</sup> There is no transcript in this matter because a hearing was not held before the Department in the underlying administrative proceedings.

The Objection requests exclusion of many Letters of Participation and/or Notices of Intent to Participate filed in the Big Wood and Little Wood Delivery Calls by parties that are also parties to this proceeding before the District Court. The Objection also requests inclusion of a Letter of Participation filed in the Big and Little Wood Delivery Calls by non-parties to this appeal J. Evan Robertson on behalf of Eccles Window Rock Ranch, LLC, Eccles Flying Hat Ranch, LLC, Sun Valley Water and Sewer District and J. Evan Robertson, dated April 7, 2015. At the time of lodging the settled agency record with the District Court, the agency record will include all Letters of Participation and/or Notices of Intent to Participate filed in the Big Wood and Little Wood Delivery Calls by parties that are also parties to this appellate proceeding before the District Court.

SVC and the Cities also request exclusion of the following documents in the agency record unrelated to party participation:

- Sun Valley Company's Motion for Order Authorizing Discovery, 4/29/15
- Ground Water Model Development for the Wood River Valley presentation by Sean Vincent, IDWR, (April 4, 2015), presented at the public meeting on 5/ 4/15
- Order Authorizing Discovery; Notice of Prehearing Conference, 5/13/15
- Notice of Service of Sun Valley Company's First Set of Discovery Requests to the Big Wood and Little Wood Water Users Association and Its Members, 5/19/15
- Letter to Joseph F. James from Gary Spackman requesting additional information, with attachments, 5/20/15
- Petitioner's Motion for Scheduling Order and Motion for Protective Order, 6/2/15
- Opposition to Motion for Protective Order filed by Sun Valley Company, 6/16/15
- Petitioner's Motion to Allow Amendment to the Pleadings, 6/22/15
- Joinder in and Support of Opposition to Motion for Protective Order filed by James P. Speck, 6/22/15
- Joinder in and Support of Joint Motion to Modify Request for Staff Memorandum filed by James P. Speck, 7/1/15
- Order Denying Motion for Protective Order; Scheduling Order, 7/2/15
- Joinder in Support of Opposition to Motion for Protective Order filed by Cities of Ketchum and Fairfield, 7/6/15
- Joinder in Support of Joint Motion to Modify Request for Staff Memorandum and Motion to Modify/Withdraw "Request for Staff Memoranda" and May 2, 2015 "Request for Additional Information" filed by Cities of Ketchum and Fairfield, 7/13/15
- Sun Valley Company's Motion to Compel, 7/16/15
- Affidavit of Matthew J. McGee in Support of Sun Valley Company's Motion to Compel, 7/16/15
- Joinder in Support of Motion to Modify/Withdraw "Request for Staff Memoranda" and May 20, 2015 "Request for Additional Information" filed by James P. Speck, 7/16/15
- Joint Motion to Determine Consolidated Case Status filed by Sun Valley Company and Sun Valley Water and Sewer District, 7/30/15
- Affidavit of Matthew J. McGee in Support of Joint Motion to Determine Consolidated Case Status, 7/30/15

- Association's Response to the Director's Request for Information (Attachment to Association's Response located on Agency Record DVD only), 8/3/15
- Joinder in and Support of Joint Motion to Determine Consolidated Case Status filed by Cities of Ketchum and Fairfield, 8/3/15
- Notice of Service of Discovery Requests filed by Water District 37-B Groundwater Group, 8/4/15
- Order Granting Sun Valley Company's Motion to Compel; Denying Request for Attorney Fees and Costs, 8/12/15
- Notice of Service of Association's Responses to Sun Valley Company's First Set of Discovery Requests, 8/19/15
- Hydrology, Hydrogeology, and Hydrologic Data Staff Memo by Jennifer Sukow (Supplemental Files to Staff Memo located on Agency Record DVD only), 8/28/15
- Surface Water Delivery Systems Staff Memo with Appendices 1 and 2, 8/31/15
- Notice of Non-Profit Association Status and Updated Membership List filed by Water District 37-B Groundwater Group, 8/31/15
- Motion to Grant Late Request to Participate as Respondent/Petition to Intervene filed by Water District 37-B Groundwater Group, 8/31/15

The Department will not exclude these documents from the agency record as they may be relevant to issues on appeal. These documents will be included in the settled agency record in this matter at the time of lodging with the District Court.

The Department does not object to exclusion of the other documents not highlighted on Exhibits A & B to the Objection. The settled agency record will reflect their exclusion at the time of lodging with the District Court.

#### **B. SVGWD's Response**

SVGWD objects to SVC and the Cities' request to exclude documents that reflect participation of the SVGWD and its members. *Response* at 2-3. The Department agrees with SVGWD's objection and the settled agency record at the time of lodging with the District Court will reflect inclusion of those documents.

SVGWD requests inclusion of the Letter of Participation from Harry S. Rinker on behalf of the Rinker Company, transmitted by email, dated March 30, 2015. *Id.* at 2. The Department will not include this letter because neither Harry S. Rinker nor counsel for the SVGWD provided the Department with notice in the Big Wood and Little Wood Delivery Calls that Mr. Rinker is a member of SVGWD.

SVGWD also objects to SVC and the Cities' request to exclude the following documents:

- Hydrology, Hydrogeology and Hydrologic Data Staff memo by Jennifer Sukow (Supplemental Files to Staff Memo located on Agency Record DVD only), dated August 28, 2015.

- Surface Water Delivery Systems Staff memo with Appendices 1 and 2, dated August 31, 2015.

*Response* at 3. SVGWD argues “these documents may be relevant to the issues on appeal.” *Id.* The Department agrees with SVGWD’s objection and these documents will be included in the settled agency record at the time of lodging with the District Court.

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that, a timely objection and response to the agency record having been filed, and with the additions or changes to the record described above, the agency record is deemed settled.

IT IS FURTHER ORDERED that, pursuant to Idaho Rule of Civil Procedure 84(j), the Objection, Response, and this order shall be included in the record on the petition for judicial review. The Department shall provide the parties with copies of the settled agency record on two (2) DVDs consistent with modifications made in this order.

DATED this 7<sup>th</sup> day of October 2015.

  
GARY SPACKMAN  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7<sup>th</sup> day of October 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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