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Attorneys for City of Ketchum and City of
Fairfield

Attorneys for Sun Valley Company

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,

Petitioner,

vs.

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

Respondents,

and

CITY OF KETCHUM, CITY OF
FAIRFIELD, WATER DISTRICT 37-B
GROUNDWATER GROUP, BIG WOOD &
LITTLE WOOD WATER USERS
ASSOCIATION, SOUTH VALLEY

Case No. CV-WA-2015-14500

**JOINT RESPONSE TO MOTION TO
AUGMENT THE RECORD**

GROUND WATER DISTRICT, ANIMAL
SHELTER OF WOOD RIVER VALLEY,
DENNIS J. CARD and MAUREEN E.
MCCANTY, EDWARD A LAWSON,
FLYING 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 LCC, 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
HOMEOWNERS 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

Petitioner Sun Valley Company, and Intervenors City of Ketchum and City of Fairfield, by and through undersigned counsel of record, hereby provide a joint response to the Motion to Augment the Record, served October 28, 2015, pursuant to Rule 84(1), Idaho Rules of Civil Procedure, and Rule 30(a), Idaho Appellate Rules.

Sun Valley Company ("Sun Valley") and the Cities of Ketchum and Fairfield do not object to augmenting the record with Attachments A-1 through A-7 to the Idaho Department of Water Resources' (the "Department") Motion to Augment the Record. They object, however,

to augmenting the record with Attachment A-8 through A-9, the Order Denying Joint Motion to Revise Interlocutory Order and the Order Denying Motion to Revise Interlocutory Order, each issued October 16, 2015 (the "Rule 711 Orders"). Sun Valley and the Cities of Ketchum and Fairfield object to augmentation with the Rule 711 Orders for the following reasons.

1. The Order Designating ACGWS Order and Sun Valley Order as Final Orders was issued on October 15, 2015. *See* Attachment A-6. The Rule 711 Orders were issued a day later, on October 16, 2015. The substance of the appeal properly before the Court in the above-captioned matter is the Department's Order Denying Sun Valley Company's Motion to Dismiss, designated a final order by the Director's ruling on October 15, 2015. The Rule 711 Orders merely reflected that the Director declined to review or revise an interlocutory order (which interlocutory order, again, became final by virtue of the Order Designating ACGWS Order and Sun Valley Order as Final Orders). The Rule 711 Orders did not alter the Director's denial of the Joint Motion to Designate by Rulemaking and to Dismiss Delivery Calls or Sun Valley's Motion to Dismiss Contested Case. In other words, the substance of the Rule 711 Orders does nothing to change the original order that is the subject of this appeal, and the Rule 711 Orders should not augment the existing record on appeal.

2. On October 15, 2015, concurrently with its Order Designating ACGWS Order and Sun Valley Order as Final Orders, the Director entered Order Granting Joint Motion for Stay of Delivery Calls; Granting Motion to Compel. Such order provides, in pertinent part as follows:

All administrative proceedings on the Big Wood and Little Wood Delivery Calls (Docket Nos. CM-DC-2015-001 and CM-DC-2015-002, respectively) are stayed as to all parties to the Delivery Calls, including without limitation, all discovery and motion practice, until the District Court has issued Rule 54 final and appealable

judgments on both the Cities' Petition (CV-WA-2015-14419) and the SVC Petition (CV-WA-2015-14500).

See Attachment A-7.

In short, as of October 15, 2015, proceedings before the Director were halted until the Court resolves the above-captioned appeal. The next day, the Director issued the Rule 711 Orders. Such action during a previously-ordered stay, during which the parties are without any recourse to address the Rule 711 Orders with the Director, further demonstrates that the Rule 711 Orders are not ripe for review, nor appropriately before this Court on appeal. Moreover, the Amended Petition for Judicial Review, filed on October 26, 2015, does not raise the Rule 711 Orders as an issue for consideration by this Court.

3. On September 23, 2015, Sun Valley and the Cities of Ketchum and Fairfield objected to the agency record, specifically objecting to the Department's inclusion of certain Department staff memoranda prepared and circulated after denial of the Joint Motion to Dismiss at issue on appeal. These staff memoranda are vaguely referenced in the Rule 711 Orders. Sun Valley and the Cities of Ketchum and Fairfield maintain and preserve their objection to the inclusion of the staff memoranda in the record, and also object to any *post-hoc* attempt to justify the propriety of such memoranda in the record on appeal by the transparent and self-serving reference to such staff memoranda in the Rule 711 Orders.

4. The Idaho Rules of Civil Procedure provide that, "[a]ny party desiring to augment the transcript or record with *additional materials presented to the agency* may move the district court within twenty-one (21) days of the filing of the settled transcript and record in the same manner and pursuant to the same procedure for augmentation of the record in appeals to the Supreme Court." IDAHO R. CIV. P. 84(l) (emphasis added). The rule clearly provides for augmentation of the record with materials *presented to the agency*. The Rule 711 Orders were not presented to the Department, and should not be included in the record on appeal.

For the foregoing reasons, Sun Valley and the Cities of Ketchum and Fairfield object to augmenting the record with Attachment A-8 through A-9, and respectfully request that the Court exclude such documents from the record on appeal.

DATED this 10th day of November, 2015.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
Scott L. Campbell – Of the Firm
Attorneys for Sun Valley Company

MOORE, SMITH, BUXTON, & TURCKE, CHTD.

By Susan Buxton
Susan Buxton – Of the Firm
Attorneys for City of Ketchum and City
of Fairfield

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of November, 2015, I caused a true and correct copy of the foregoing **JOINT RESPONSE TO MOTION TO AUGMENT THE RECORD** to be served by the method indicated below, and addressed to the following:

<p>Joseph F. James BROWN & JAMES 130 Fourth Ave. W. Gooding, ID 83330 Facsimile (208) 934-4101 <i>Attorneys for Big Wood/Little Wood Water Users Association</i></p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile</p>
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<p>Garrick L. Baxter Emmi Blades Deputy Attorneys General IDAHO DEPARTMENT OF WATER RESOURCES P.O. Box 83720 Boise, ID 83720-0098 Facsimile (208) 287-6700 <i>Attorneys for Idaho Department of Water Resources</i></p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile</p>
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<p>Dylan B. Lawrence VARIN WARDWELL LLC 242 N. 8th St., Suite 220 P.O. Box 1676 Boise, ID 83701-1676 Facsimile (866) 717-1758 <i>Attorneys for Water District 37-B Groundwater Group</i></p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile</p>
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<p>James R. Laski Heather E. O'Leary LAWSON LASKI CLARK & POGUE, PLLC 675 Sun Valley Rd., Suite A P.O. Box 3310 Ketchum, ID 83340 Facsimile (208) 725-0076 <i>Attorneys for Intervenors Animal Shelter of Wood River, Dennis J. Card, Edward A Lawson and Maureen E. McCanty</i></p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile</p>
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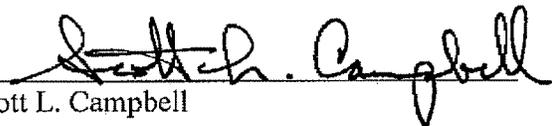
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 Scott L. Campbell