

Scott L. Campbell, ISB No. 2251
 Norman M. Semanko, ISB No. 4761
 Matthew J. McGee, ISB No. 7979
 MOFFATT, THOMAS, BARRETT, ROCK &
 FIELDS, CHARTERED
 101 S. Capitol Blvd., 10th Floor
 Post Office Box 829
 Boise, Idaho 83701
 Telephone (208) 345-2000
 Facsimile (208) 385-5384
 slc@moffatt.com
 nms@moffatt.com
 mjm@moffatt.com
 16845.0025

Attorneys for Petitioner

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

**SUN VALLEY COMPANY'S
 MEMORANDUM IN SUPPORT OF
 MOTION FOR LEAVE TO FILE
 OVERLENGTH BRIEF**

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 (“Sun Valley”), by and through its attorney of record, and pursuant to Idaho Rules of Civil Procedure 84(o) and 84(r), submits the following memorandum in support of its Motion for Leave to File Overlength Brief.

1. The instant appeal was, and remains, addressed to the Director’s Order Denying Sun Valley Company’s Motion to Dismiss (the “Sun Valley Order”), which is undisputedly a final order. However, after Sun Valley initiated the appeal, in reliance upon

memoranda prepared by Department staff for purposes of the contested case proceedings at issue (the “Technical Memoranda”), the Director stated several findings of fact in an Order Denying Motion to Revise Interlocutory Order, dated October 16, 2015 (the “Rule 711 Order”). *See* Supp. R. Vol. I, p. 86.¹ Specifically, the Director stated the following findings of fact:

[T]he junior-priority ground water right diversions that impact flow in water sources for the Petitioners’ senior surface water rights are diverted from the Wood River Valley aquifer system and the Camas Prairie aquifer system. *IDWR Staff Memo Re: Hydrology, Hydrogeology, and Hydrologic Data* at 1, 6-14 (Aug. 28, 2015). . . . The senior surface water rights Petitioners allege are being injured are in Water District 37. *IDWR Staff Memo Re: Surface Water Delivery Systems* at Attachments 1 and 2 (Aug. 31, 2015).

Supp. R., Vol. I, p. 86.

A footnote in the Order also states the following finding of fact:

Ground water use in the upper Little Wood River valley above Silver Creek does not appear to affect the calling surface water rights. *IDWR Staff Memo Re: Hydrology, Hydrogeology, and Hydrologic Data* at 14 (Aug. 28, 2015).

Id.

2. Critically, as early as June 3, 2015, Sun Valley and others objected to the manner in which the Director enlisted Department staff for factual investigation and the preparation of the Technical Memoranda, as well as the procedures that would be followed during staff’s investigation and preparation. *See* R. Vol. III-IV, pp. 616-648.

3. Also critical, the Rule 711 Order upheld the Sun Valley Order, the final order that is the subject of this appeal. *See id.* at pp. 84-88. Findings of fact in the Rule 711

¹ There are two agency records involved in this appeal, which records in many respects mirror one another. For purposes of this motion, citations to the record are citations to the Big Wood Delivery Call, Contested Case No. CM-DC-2015-001.

Order were required to be “based exclusively on the evidence in the record of the contested case and on matters officially notice in that proceeding.” IDAHO CODE § 67-5248(2). However, the Director relied upon the Technical Memoranda to make the foregoing factual findings, and to uphold the Sun Valley Order, before the Technical Memoranda were appropriately considered as evidence in the contested case proceeding or the proper subject of official notice. Supp. R., Vol. I, p. 86.

4. Because the Rule 711 Order includes findings of fact reached in reliance upon the Technical Memoranda, Sun Valley is now compelled to raise the Director’s legal errors associated therewith, or risk waiver thereof. In light of the Department’s lodging of an augmented agency record on November 19, 2015, the Rule 711 Order now forms part of the legal and factual foundation for the Director’s decision in the Sun Valley Order, which the Court is to review. Accordingly, the scope of issues on review has been broadened to include the Director’s procedural missteps associated with preparation of the Technical Memoranda, as well as the propriety of the Director’s reliance upon such Technical Memoranda.

5. To be clear, the issues related to the Technical Memoranda are not somehow divorced from the Sun Valley Order merely because the Director issued a separate interlocutory order addressing Sun Valley’s objections to the Technical Memoranda. *See* R. Vol. V, pp. 899-908. On the contrary, the Director’s findings made in reliance upon the Technical Memoranda go to one of the core issues on appeal of a final order—the Petitioners’ compliance with Rule 30 of the Department’s Conjunctive Management Rules and the requirement that the Director proceed thereunder in the absence of a previously determined and incorporated “area of common ground water supply.”

6. Because the scope of the Court's consideration of the Sun Valley Order has been expanded to address the Director's reliance upon the Technical Memoranda, the argument and authority that Sun Valley must necessarily address in the Petitioner's brief has likewise expanded. For that reason, Sun Valley respectfully requests that the Court grant Sun Valley leave to file a Petitioner's Brief in excess of the 50-page limitation set forth in Rule 34(b) of the Idaho Appellate Rules.

DATED this 24th day of December, 2015.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By



Matthew J. McGee – Of the Firm
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of December, 2015, I caused a true and correct copy of the foregoing **SUN VALLEY COMPANY'S MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE OVERLENGTH BRIEF** 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>Susan E. Buxton Cherese McLain MOORE SMITH BUXTON & TURCKE, CHTD. 950 W. Bannock St., Suite 520 Boise, ID 83702 Facsimile (208) 331-1202 <i>Attorneys for the City of Ketchum and City of Fairfield</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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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
*Attorneys for Intervenors Animal Shelter of
 Wood River, Dennis J. Card, Edward A Lawson
 and Maureen E. McCanty*

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

Albert P. Barker
 Paul L. Arrington
 BARKER, ROSHOLT & SIMPSON, LLP
 1010 W. Jefferson St., Suite 102
 P.O. Box 2139
 Boise, ID 83701-2139
 Facsimile (208) 344-6034
*Attorneys for South Valley Ground Water
 District*

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

James P. Speck
 SPECK & AANESTAD
 120 E. Ave.
 P.O. Box 987
 Ketchum, ID 83340
 Facsimile (208) 726-0752
Attorneys for Intervenors

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile

Director of the Idaho Department of Water
 Resources
 P.O. Box 83720
 Boise, ID 83720-0098

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile



Matthew J. McGee