

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF BASIN 37
ADMINISTRATIVE PROCEEDING

Docket No. AA-WRA-2021-001

**FINAL ORDER APPROVING
MITIGATION PLAN AND STAYING
CURTAILMENT**

BACKGROUND

On May 4, 2021, the Director of the Idaho Department of Water Resources (“Department”) issued a *Notice of Administrative Proceeding, Pre-Hearing Conference, and Hearing* (“Notice”). The *Notice* stated that a drought is predicted for 2021 irrigation season, and the water supply in Silver Creek and its tributaries may be inadequate to meet the needs of surface water users. *Id.* at 1. The *Notice* stated the Director was initiating an administrative proceeding, pursuant to Idaho Code § 42-237a.g. and IDAPA 37.01.01.104, to determine whether water is available to fill the ground water rights within the Wood River Valley south of Bellevue. *Id.*

A hearing was held starting on June 7, 2021, and ending on June 12, 2021. On June 28, 2021, the Director issued a *Final Order* curtailing ground water rights within the area known as the Bellevue Triangle, starting July 1, 2021. The Director instructed the watermaster for Water District 37 to curtail the ground water rights listed in Exhibit A to the *Final Order* unless notified by the Department that this order of curtailment has been modified or rescinded.

Prior to the issuance of the *Final Order*, on June 24, 2021, South Valley Ground Water District (“South Valley”) and Galena Ground Water District (“Galena”) filed *South Valley Ground Water District and Galena Ground Water District’s Proposed Mitigation Plan* (“Mitigation Plan”).

After the Director issued the *Final Order*, on June 28, 2021, South Valley and Galena filed *South Valley Ground Water District’s and Galena Ground Water District’s Petition to Stay Curtailment/Request for Expedited Decision/Request for Hearing on Proposed Mitigation Plan* (“Petition”).¹ In response, on June 29, 2021, the Director issued *Final Order Denying Petition to Stay Curtailment/Granting Request for Expedited Decision/ Granting Request for Hearing* granting the hearing request. On July 1, 2021, the Director issued a *Notice of Hearing* setting the hearing on the *Mitigation Plan* for July 6-8, 2021.

¹ South Valley and Galena emailed the Director a copy of the *Petition* and mailed the official filing on June 28, 2021. The official filing was received by the Department on July 2, 2021.

On the morning of July 6, prior to commencing the hearing on the Mitigation Plan, the parties requested time to conduct settlement discussions instead of proceeding with the hearing. Those discussions proved fruitful and that same day, South Valley and Galena submitted three applications for temporary transfer and one water supply bank rental application.

On July 7, 2021, South Valley, Galena, Big Wood & Little Wood Water Users Association, Big Wood Canal Company, and Lawrence Schoen entered into an agreement² whereby ground water users agreed to undertake certain actions to mitigate for injury to senior surface water rights that divert water from Silver Creek and the Little Wood River. The agreement has three principal components: (1) maintaining the delivery of 23 cfs flow to Station 10 on the Little Wood; (2) acquisition of 2,500 AF of storage water rights for delivery through the Milner-Gooding Canal; and (3) a reduction in the irrigation season.

On July 7, 2021, South Valley and Galena also submitted the agreement to the Department as *South Valley Ground Water District and Galena Groundwater District's Revised and Amended Proposed Mitigation Plan* ("Amended Mitigation Plan"). The *Amended Mitigation Plan* explains that the three applications for temporary transfer and the one water supply bank rental application submitted on July 6 are necessary to implement the agreement. *Amended Mitigation Plan* at 2-3.

DISCUSSION

South Valley and Galena state the *Amended Mitigation Plan* is submitted pursuant to Conjunctive Management Rule 43 (IDAPA 37.03.11.043). *Amended Mitigation Plan* at 2. However, as previously emphasized in the *Notice* and multiple orders of this proceeding, the conjunctive management rules do not apply. The Director's authority to prohibit or limit ground water use under Idaho Code § 42-237a.g. is expressly "discretionary" and also "broad." *Stevenson v. Steele*, 93 Idaho 4, 11-12, 453 P.2d 819, 826-27 (1969). Mitigating the adverse effects of ground water pumping in the Bellevue Triangle on the present or future use of senior surface water rights diverting from Silver Creek and the Little Wood River can be an alternative to curtailment pursuant to Idaho Code § 42-237a.g. The Director concludes he has authority to approve a proposed mitigation plan.

The parties to the *Amended Mitigation Plan* comprise the active participants affected by the *Final Order*.³ Because the active participants affected by the *Final Order* all agree to the *Amended Mitigation Plan*, the Director finds that the *Amended Mitigation Plan* is approvable.

² The agreement is titled Big Wood and Little Wood Water Users Association ("BWLWWUA"), Big Wood Canal Company ("BWCC"), South Valley Ground Water District ("SVGWD"), and Galena Ground Water District ("GGWD") – Final 2021 Term Sheet. A copy is attached as Attachment A.

³ These parties comprise the active participants in groups one (surface water users) and two (ground water users) as identified in the *Prehearing Order*; *Scheduling Order*. There were multiple parties in each group that did not actively participate in the hearing. In group one, the City of Gooding did not actively participate in the hearing. In group two, Dean R. Rogers III, Dean R. Rogers Inc., and Swiftsure Ranch did not actively participate. Further, the Idaho Department of Fish and Game, part of group two, was not curtailed in the *Final Order* and therefore not affected by it.

Therefore, pursuant to the Director's discretionary authority in this matter, the agreement and *Amended Mitigation Plan* are approved.⁴

Because the *Amended Mitigation Plan* is approved, the curtailment ordered in the *Final Order* should be stayed. The stay should be contingent upon compliance with the terms of the *Amended Mitigation Plan*. If the terms are not met, the Watermaster for Water District 37 should curtail ground water users as provided in the agreement.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED that the *Amended Mitigation Plan* is APPROVED.

IT IS FURTHER ORDERED that because the *Amended Mitigation Plan* is approved, curtailment of the ground water rights in the Bellevue Triangle, for the 2021 irrigation season is STAYED. The Director instructs the Watermaster for Water District 37 to cease curtailing the ground water rights listed in Exhibit A to the *Final Order*. The stay is contingent upon compliance with the *Amended Mitigation Plan*. If the terms are not met, the Watermaster for Water District 37 shall curtail ground water users as provided in the agreement.

DATED this 20th day of July, 2021.



GARY SPACKMAN
Director

⁴ Approval of the *Amended Mitigation Plan* moots the need to have a hearing on the *Mitigation Plan*. Further, the parties did not request a hearing on the *Amended Mitigation Plan*.

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that, on this 8th day of July, 2021, the above and foregoing FINAL ORDER APPROVING MITIGATION PLAN AND STAYING CURTAILMENT was served by the method indicated below, and address to the following:

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BELLEVUE, ID 83313

SILVER SAGE PROPERTIES LLC
475 E OAK FOREST RD
SALT LAKE CTY, UT 84103-2244

C D AND MYRA JOAN SLUDER
PO BOX 868
BELLEVUE, ID 83313

C D AND M JOAN SLUDER
PO BOX 22
BELLEVUE, ID 83313

GARY M AND PATRICIA M SMITH
PO BOX 676
BELLEVUE, ID 83313-0676

GEOFFREY C SMITH
17926 HWY 20
BELLEVUE, ID 83313

RICHARD SPRINGS III
121 PUNKIN CENTER RD
GANNETT, ID 83313

STALKER CREEK RANCH LLC
PO BOX 739
SUN VALLEY, ID 83353

MARK A AND MEAGAN R STASZ
PO BOX 2948
HAILEY, ID 83333

JOHN F STEVENSON JR
369 MONTEZUMA AVE #152
SANTA FE, NM 87501

ROBERT J STRUTHERS
762 ROBERT ST
PICABO RT
BELLEVUE, ID 83313

JOHN A, MEGAN AND SAMANTHA
TEDESCO
1450 PURSIMA CREEK RD
HALF MOON BAY, CA 94019

THE NATURE CONSERVANCY
116 N 1ST AVE
HAILEY, ID 83333-8411

THOMAS M O GARA FAMILY TRUST
C/O BRIAN BARSOTTI
PO BOX 370
KETCHUM, ID 83340

THREE CREEKS RANCH LLC
1901 BAYADERE TERRACE
CORONA DL MAR, CA 92625-1810

TERRANCE P TRASK
PO BOX 2276
HAILEY, ID 83333

TRUXAL 2019 REVOCABLE TRUST
PO BOX 431
BELLEVUE, ID 83313-0431

CINDRA L PALMER AND MICHAEL E
WALBERT
PO BOX 219
HAILEY, ID 83333

WALKER SAND & GRAVEL LTD CO
PO BOX 869
MAGNA, UT 84044-0869

CHARLENE B AND DAVID WALTERS AND
WALTERS READY MIX INC
PO BOX 390
REXBURG, ID 83440-0390

ANN MARIE WARBERG
10761 HIGHWAY 75
BELLEVUE, ID 83313

ANDREA S WARD
4200 SW TORR LN
PORTLAND, OR 97221

DOUG WEBB AND WEBB LANDSCAPE INC
PO BOX 444
SUN VALLEY, ID 83353

ANNETTE WEBER
PO BOX 2814
HAILEY, ID 83333

ANNETTE WEBER
350 S HAMILTON #802
MADISON, WI 53703

MICHAEL J AND RUTH WEEMS
PO BOX 455
BELLEVUE, ID 83313

WICKED GAMES INC
PO BOX 1191
SUN VALLEY, ID 83353-1191

WOOD RIVER LAND TRUST CO
119 E BULLION ST
HAILEY, ID 83333

JUNE I WORTHINGTON
41 KILPATRICK BRIDGE RD
BELLEVUE, ID 83313

KENNETH D WORTHINGTON
41 KILPATRICK BRIDGE RD
BELLEVUE, ID 83313-5133



Megan Jenkins

ATTACHMENT A

BIG WOOD AND LITTLE WOOD WATER USERS ASSOCIATION ("BWLWWUA"), BIG WOOD CANAL COMPANY ("BWCC")¹, SOUTH VALLEY GROUND WATER DISTRICT ("SVGWD"), AND GALENA GROUND WATER DISTRICT ("GGWD")² – FINAL 2021 TERM SHEET

1. Objectives

- a. Mitigate for material injury to senior surface water rights that divert water from Silver Creek and the Little Wood River reaches between "Silver Creek at Sportsman's Access NR Picabo ID" and the confluences of the Little Wood and Big Wood rivers;
- b. Provide safe harbor to Groundwater Users on the Bellevue Triangle that divert groundwater within the Basin 37 Administrative Proceeding curtailment boundary;
- c. Minimize economic impact to water users and the economy arising from water supply shortages; and
- d. Develop and submit an approved Ground Water Management Plan for the Big Wood Ground Water Management Area ("BWGWMA").

2. 2021 Irrigation Season Mitigation Practices

- a. Delivery of Natural Flow Water as Measured at Station 10: Through September 1, 2021, the Groundwater Users shall ensure a minimum of 23 cfs of flow at Station 10 to support senior surface water right diversions from the Little Wood River above the Milner-Gooding Canal (flows below 20 cfs will enact full curtailment, after a 48-hour "cure" period, total cure period during the 2021 Irrigation Season not to exceed 144 hours).
 - i. This could consist of pumped groundwater, some amount of water generated from flexibly-applied self-curtailment and incidental reach gains.
 - ii. "Monsoon" Exception: Picabo Livestock ("PL") will not divert its 1883 surface water rights, unless (1) 23 cfs of flow at Station 10 is occurring without any SVGWD pumping to sustain the 23 cfs; and (2) PL's 1883 surface water rights are in priority.
- b. Fixed Storage Water Delivery: For delivery to Surface Water Users diverting from the Little Wood River below the Milner-Gooding Canal, the Groundwater Users will take the following actions:
 - i. Reimburse the full cost of 1,000 acre-feet of storage water already acquired by the senior Surface Water Users during the 2021 irrigation season; and
 - ii. Acquire an additional 1,500 acre-feet of storage water, for 2,500 acre-fee total, and deliver it to senior Surface Water Users upon request. The Groundwater Users are responsible for acquiring storage water and wheeling contracts to deliver the water via the Milner-Gooding Canal.
- c. Irrigation Season Reduction: Groundwater Users agree to end groundwater diversions on August 15, 2021. An exception is allowed for the use of groundwater to irrigate seed potatoes within the curtailment area to the extent that surface water rights for the acreages are not available.

3. Long Term Ground Water Management Plan

- a. Ground Water Management Plan: the Groundwater Users agree to work through the BWGWMA Advisory Committee and in coordination with senior Surface Water Users to develop and submit to the

¹ The BWLWWUA and the BWCC, along with Lawrence Schoen are collectively referred to as the "Surface Water Users."

² The SVGWD and the GGWD are collectively referred to as the "Groundwater Users."

Director of IDWR a Ground Water Management Plan ("Plan"). The Plan shall be submitted to the Director by December 1, 2021.

- b. Resumption of Basin 37 Proceeding: If a Plan is not submitted, or a Plan is submitted that is unacceptable to the Director, per the Director's July 3 letter³, he will resume the Basin 37 proceedings to determine what actions he should take to ensure that groundwater diversions within the "Wood River Basin" don't negatively affect surface water use.
4. 2021 Safe Harbor – Consistent with Section 2 of this agreement, the Groundwater Users will not be subject to curtailment by the Water District, as long as the provisions of this Term Sheet are met. Consistent with I.C. § 42-5244B, individual groundwater users not in compliance with an approved mitigation plan may be subject to curtailment.

³ Letter from Director Gary Spackman to Brad Little Governor of Idaho and Scott Bedke Speaker of the House dated July 3, 2021, with the subject line "Curtailment of Ground Water Rights in the Bellevue Triangle."

As of July 7, 2021,

Jerry Rigby, Big Wood and Little Wood Water Users Association

A handwritten signature in dark ink, appearing to read "Kent Fletcher", is written over a horizontal line.

Kent Fletcher, Big Wood Canal Company

Lawrence Schoen

Kristy Molyneux, South Valley Ground Water District

Pat McMahon, Galena Ground Water District

As of July 7, 2021,

Jerry Rigby, Big Wood and Little Wood Water Users Association

Kent Fletcher, Big Wood Canal Company



Lawrence Schoen

Kristy Molyneux, South Valley Ground Water District

Pat McMahon, Galena Ground Water District

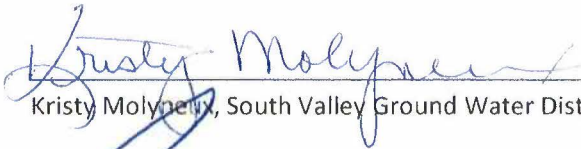
As of July 7, 2021,

A handwritten signature in blue ink, appearing to read "Jerry Rigby", is written over a horizontal line.

Jerry Rigby, Big Wood and Little Wood Water Users Association

Kent Fletcher, Big Wood Canal Company

Lawrence Schoen

A handwritten signature in blue ink, appearing to read "Kristy Molyn", is written over a horizontal line.

Kristy Molyn, South Valley Ground Water District

A handwritten signature in blue ink, appearing to read "Pat McMahon", is written over a horizontal line.

Pat McMahon, Galena Ground Water District

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: The petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4), Idaho Code.

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.