

May 17, 2024

DEPARTMENT OF
WATER RESOURCES

Dylan B. Lawrence ISB #7136
Varin Thomas LLC
242 N. 8th Street, Suite 220
P.O. Box 1676
Boise, Idaho 83701
Phone (208) 345-6021
Fax 1-866-717-1758
dylan@varinthomas.com

Attorneys for Edwards Family LLC

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

IN THE MATTER OF THE BOISE
FRONT LOW TEMPERATURE
GEOTHERMAL RESOURCE
GROUND WATER MANAGEMENT
AREA

PETITION FOR HEARING

Edwards Family LLC (“Edwards”), through undersigned counsel of record, hereby files this Petition for Hearing pursuant to Idaho Code Section 42-1701A(3) and Rules 053.01(b) and 152 of the Department’s Rules of Procedure in IDAPA 37.01.01. Specifically, Edwards requests a hearing regarding the basis for the three-year moratorium extension adopted in the Department’s Order Extending Moratorium of May 3, 2024 (the “May 3 Order”).

When the Department issues moratorium orders for ground water management areas (“GWMAs”), it has a long-standing practice of either issuing

them indefinitely or in five-year increments. See MORATORIUM ORDERS, available at <https://idwr.idaho.gov/legal-actions/orders/moratorium-orders/> (last visited May 15, 2024). By contrast, the May 3 Order extends the moratorium in the Boise Front GWMA for only three years. The only discernable basis for the selection of the three-year extension is in Conclusion of Law No. 6, which states:

A three-year moratorium extension affords IDWR an opportunity to consider the merits of a petition for a management plan for the Boise Front GWMA, should a petition be filed, before proof of beneficial use for permit 63-34326 is due on November 1, 2027.

(May 3 Order, at p. 8).

Orders issued by administrative agencies are required to include a “reasoned statement” in support of the decision being adopted. IDAHO CODE § 67-5248(1)(a). The Idaho Supreme Court has interpreted this requirement to require agency orders to “clearly and precisely” state the basis for its decision. See *Jasso v. Camas County*, 151 Idaho 790, 796 (2011) (citing *Workman Family Partnership v. City of Twin Falls*, 104 Idaho 32 (1982)). Moreover, in order to withstand judicial scrutiny, agency decisions must not be, among other things, “arbitrary.” See IDAHO CODE § 67-5279(2)(d), (3)(e).

The primary authority for the Department to establish a moratorium is Idaho Code Section 42-1805(7), which states:

In addition to other duties prescribed by law, the director of the department of water resources shall have the following powers and duties:...After notice, to suspend the issuance or further action on permits or applications as necessary [1] to **protect existing vested water rights** or [2] to **ensure compliance with the provisions of chapter 2, title 42, Idaho Code**, or [3] to prevent violation of minimum flow provisions of the state water plan....

IDAHO CODE § 42-1508(7) (emphasis added).

Clearly, the third basis does not apply here. As to the first two, the May 3 Order does not explain how shortening the typical five-year moratorium extension to three years is rationally related to either basis. Conclusion of Law No. 6 of the May 3 Order does not explain how the three-year extension is rationally related to a petition for a groundwater management plan that may or may not be filed in the future or to the beneficial use deadline of a permit. Perhaps there is a rational explanation. As drafted, however, Conclusion of Law No. 6 of the May 3 Order does not satisfy the “reasoned statement” requirement of the Idaho Administrative Procedure Act as interpreted by the Idaho Supreme Court.

Finally, Edwards files this petition for a hearing on the matter because a hearing is the only relief afforded by Idaho Code Section 42-1701A(3). In other circumstances, Edwards would have filed a motion for clarification. Before proceeding with the hearing process, Edwards suggests the Department first issue an amended order more specifically explaining the basis for the three-year moratorium extension and how it relates to the standards in Idaho Code Section 42-1805(7). If Edwards finds the explanation in an amended order adequate, it would withdraw this petition.

DATED this 17th day of May, 2024.

Varin Thomas LLC



Dylan B. Lawrence, Attorneys for Edwards Family LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2024, I caused to be filed with the Department and served a true and correct copy of the foregoing by email, addressed to the following:

Original:

Idaho Department of Water Resources
file@idwr.idaho.gov

With courtesy copies to:

Erika Malmen
Perkins Coie LLP
emalmen@perkinscoie.com
Attorneys for the City of Boise

Garrick Baxter
Office of the Attorney General
Garrick.Baxter@idwr.idaho.gov
Attorneys for the Department of Water Resources

Ali Breshears
Niky Robles
Office of the Attorney General
ali.breshears@ag.idaho.gov
Niky.Robles@ag.idaho.gov
Attorneys for the Department of Administration

Lyndon Nguyen
Nguyen Law, PLLC
lyndonlegal@gmail.com
Attorneys for Boise Warm Springs Water District

Andrew Waldera
Sawtooth Law Offices, PLLC
andy@sawtoothlaw.com
Attorneys for The Terteling Co. Inc.

JJ Winters
Office of the Attorney General
jj.winters@ag.idaho.gov
Attorneys for the Department of Lands



Dylan B. Lawrence