

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

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

**ORDER GRANTING REQUEST FOR
HEARING AND SPECIFYING
NOTICE PROCEDURES**

**ORDER APPOINTING HEARING
OFFICER**

BACKGROUND

On June 10, 1988, the Idaho Department of Water Resources (“IDWR”) issued an order establishing a five-year moratorium to prevent further development or additional use of the low temperature geothermal (“LTG”) water resource within the Boise Front Ground Water Management Area (“Boise Front GWMA”).

On June 11, 1993, September 1, 1998, November 25, 2003, April 14, 2009, April 29, 2014, and May 3, 2019, IDWR issued orders extending the Boise Front GWMA moratorium for five years each time.

In the spring of 2024, IDWR received numerous written comments addressing whether the Boise Front GWMA moratorium should be extended and for how long. In its March 22, 2024, letter, the City of Boise proposed extending the moratorium for one year. *City of Boise Letter* at 2. The March 22, 2024, letter submitted on behalf of Edwards Family LLC (“Edwards”) responded to the City of Boise proposal by stating, “[E]dwards opposes the request and believes IDWR should renew the moratorium for another five years.” *Edwards Letter* at 3.

On May 3, 2024, IDWR issued an *Order Extending Moratorium* (“Moratorium Order”), extending the Boise Front GWMA moratorium for an additional three years to May 5, 2027.

On May 17, 2024, IDWR received a *Petition for Hearing* (“Petition”) filed on behalf of Edwards. Edwards requests a hearing “regarding the basis for the three-year moratorium extension.” *Petition* at 1. To further explain its request for a hearing, Edwards states, “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.” *Petition* at 1-2. Edwards further asserts that the Moratorium Order “does not explain how shortening the typical five-year moratorium extension to three years is rationally related” to the Idaho Code § 42-1805(7) criteria for establishing a moratorium. *Petition* at 2-3.

Edwards filed the Petition pursuant to Idaho Code § 42-1701A(3).

RELEVANT STATUTES AND RULES

Idaho Code § 42-1701A(3) states, in part:

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person aggrieved by any action of the director, including any decision, determination, order or other action, including action upon any application for a permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, 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. The director shall give such notice of the petition as is necessary to provide other affected persons an opportunity to participate in the proceeding.

IDAPA 37.01.01.350 states:

A person who is not already a party to a contested case and who has a direct and substantial interest in the proceeding may petition for an order granting intervention as a party to the contested case.

IDAPA 37.01.01.352 states:

Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing, or by the date of the initial prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions filed after this deadline are considered late and must state a good cause for delay.

IDAPA 37.01.01.355 states:

A person who is not a party and is not called by a party as a witness who desires to testify at hearing is a public witness. Public witnesses do not have the right to examine witnesses or otherwise participate in the proceedings as parties. Subject to Rules 555 and 557, public witnesses have a right to introduce evidence at hearing by written or oral statements and to offer exhibits at hearing. Public witnesses are bound by scheduling orders issued in a contested case regarding disclosure of expert reports and exhibits prior to the hearing. A person intending to present public witness testimony shall notify the agency in writing at least five (5) days prior to the hearing and include the name and address of the witness and the general nature or subject matter of the testimony to be given. If the notice is not given, the public witness testimony will only be allowed at the discretion of the presiding officer upon a finding of good cause. Public witnesses are subject to cross-examination, and exhibits offered by public witnesses are subject to objection. Public witnesses have no right to seek reconsideration, file exceptions, or appeal.

CONCLUSIONS OF LAW

1. Edwards filed the Petition within the fifteen-day deadline established by Idaho Code § 42-1701A(3).
2. Edwards is entitled to a hearing pursuant to Idaho Code § 42-1701A(3).
3. The hearing should be limited to the sole matter raised in the Petition, i.e., the duration of the moratorium established by the Moratorium Order.
4. Idaho Code § 42-1701A(3) requires that IDWR provide notice of the petition to other affected persons or entities so that they have an opportunity to participate in the hearing.
5. Idaho Code § 42-1701A(3) gives IDWR discretion in its noticing procedures.
6. To ensure that “affected persons” have an opportunity to participate in this proceeding if they so choose, IDWR should notify holders of water rights authorizing diversion of the LTG resource within the Boise Front GWMA and owners of applications and undeveloped permits proposing appropriation in the Boise Front GWMA of the Petition and the opportunity to participate. Furthermore, IDWR should notify these affected persons or entities by U.S. mail.
7. IDWR should also publish notice of the Petition and the opportunity to participate in this proceeding. Publication should be one day each week for three consecutive weeks in a newspaper of general circulation in the Boise Front GWMA.
8. IDAPA 37.01.01.352 authorizes IDWR to set a deadline for petitions to intervene in this proceeding.

ORDER

IT IS HEREBY ORDERED that Edwards’ request for a hearing is **GRANTED**.

IT IS FURTHER HEREBY ORDERED that the subject of the hearing shall be limited to the duration of the moratorium established by the Moratorium Order.

IT IS FURTHER HEREBY ORDERED that IDWR shall serve a copy of this order and an explanation of the opportunity to participate in this proceeding upon holders of water rights authorizing diversion of the LTG resource within the Boise Front GWMA and owners of applications and undeveloped permits proposing appropriation in the Boise Front GWMA.

IT IS FURTHER HEREBY ORDERED that IDWR shall publish notice of the Petition and the opportunity to participate in this proceeding. Publication should be one day each week for three consecutive weeks in a newspaper of general circulation in the Boise Front GWMA.

IT IS FURTHER HEREBY ORDERED that any person or entity seeking to intervene in this matter must submit a petition to intervene to IDWR by **September 16, 2024**.

IT IS FURTHER HEREBY ORDERED that Shelley Keen is appointed to serve as hearing officer in this matter and is authorized to hear this contested case on behalf of the Department pursuant to IDAPA 37.01.01.410–414 and the provisions of chapter 52, title 67, Idaho Code. Hearing Officer Keen’s contact information is as follows:

Shelley Keen
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front St., Suite 648
Boise, ID 83702
(208) 287-4800
shelley.keen@idwr.idaho.gov

IT IS FURTHER HEREBY ORDERED that Hearing Officer Keen will contact the parties and issue a notice within 90 days of the issuance of this order.

Dated this 16th day of August 2024.



MAT WEAVER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of August, 2024, I served a true and correct copy of the foregoing document on the following by the method(s) indicated below:

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