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DEPARTMENT OF  
WATER RESOURCES

Chris M. Bromley ISB #6530  
MCHUGH BROMLEY, PLLC  
380 S. 4th St., Ste. 103  
Boise, ID 83702  
Telephone: (208) 287-0991  
Facsimile: (208) 287-0864  
[cbromley@mchughbromley.com](mailto:cbromley@mchughbromley.com)

*Attorneys for Wellsprings Group, LLC*

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

IN THE MATTER OF BIG WOOD RIVER  
GROUND WATER MANAGEMENT AREA

**PETITION TO INTERVENE**

Fee Category: \$25

COMES NOW the Wellsprings Group, LLC (“Wellsprings Group”),<sup>1</sup> and pursuant to IDAPA 37.01.01.350 *et seq.*, hereby files this *Petition to Intervene* in the above-captioned matter.

**I. BACKGROUND**

On May 17, 2022, Deputy Director, Mat Weaver, of the Idaho Department of Water Resources Irrigation District (“IDWR” or “Department”) signed and issued *Order Establishing Moratorium* (“Moratorium Order”). The *Moratorium Order* stated: “Applications for municipal water use and for domestic use from community water systems shall be considered fully consumptive.” *Moratorium Order* at 8.

On May 31, 2022, the City of Bellevue filed a *Motion for Clarification and Reconsideration and Request for Hearing* (“Motion for Clarification”) in which the City asked IDWR to clarify the Moratorium Order by “including a finding or conclusion that provides that

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<sup>1</sup> Wellsprings Group owns water right nos. 37-2446, -4100, -4368B, -4369, -8205, -12158, -12159, -12160, -21614, -22127, and -22128.

proposed municipal appropriations will be considered non-consumptive unless evidence to the contrary is provided, and/or in the alternative that proposed municipal uses must only be mitigated to the extent they are actually consumptively used.” *Motion for Clarification* at 4.

On June 21, 2022, Director Gary Spackman (“Director”) issued his *Order Denying Request for Clarification and Reconsideration; Order Granting Request for Hearing* (“Order Denying Request for Clarification”) in which he stated: “The Director is not convinced by Bellevue’s Motion that the requested changes are warranted. However, for reasons outlined in the section above, Bellevue’s only legal remedy is to contest the Moratorium Order and request a hearing . . . . The Director will consider any evidence presented during Bellevue’s requested hearing . . . .” *Order Denying Request for Clarification* at 3.

Petitions to intervene were filed by South Valley Ground Water District, Big Wood & Little Wood Water Users Association, Big Wood Canal Company, and the City of Hailey. On September 12, 2022, the Director issued his *Order Granting Petitions to Intervene and Appointing Department Contact for Informal Proceedings; Notice of Prehearing Conference* (“*Order Granting Petitions to Intervene*”) in which it was stated: “NOTICE IS HEREBY GIVEN that the Director will hold a formal prehearing conference to discuss the status of and schedule for this contested proceeding. The continued prehearing conference will be held on October 17, 2022 at 2 PM (MST) . . . .” *Order Granting Petitions to Intervene* at 3 (emphasis added).

For the foregoing reasons, Wellsprings Group meets the criteria to petition to intervene as a matter of right, IDAPA 37.01.01.352, and also satisfies the standards for permissive intervention, IDAPA 37.01.01.353.02.

## II. ARGUMENT

### A. Intervention As A Matter Of Right

In order to grant a petition to intervene, the moving party must demonstrate it is “timely” filed, IDAPA 37.01.01.352, and that it has a “direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues . . . .” IDAPA 37.01.01.353.01. Wellsprings Group meets these requirements.

First, this petition to intervene is timely. A petition to intervene is timely if it is “filed at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference,<sup>2</sup> whichever is earlier unless a different time is provided by order or notice.” IDAPA 37.01.01.352. Here, a formal hearing has not been noticed and a formal prehearing conference has not taken place. Therefore, because the formal prehearing conference has yet to occur and a formal hearing has not been scheduled, Wellsprings Group’s *Petition to Intervene* is timely and intervention should be granted as a matter of right.

Second, Wellsprings Group has a direct and substantial interest in the outcome of this matter that will not unduly broaden the issues. IDAPA 37.01.01.353.01. Wellsprings Group owns property in Basin 37 and diverts water under a suite of rights from Deer Creek, Jimmie Creek, springs, and ground water. Wellsprings Group is interested in providing potable water through a community water system and may do so through an application for permit. The *Moratorium Order* directly implicates new applications for community water systems by claiming these systems will be treated as one-hundred percent consumptive, when the opposite is likely true for most new applications of this nature. Because the *Moratorium Order* implicates community water systems, Wellsprings Group has a substantial interest in the outcome and

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<sup>2</sup> See Section B. below regarding the ambiguity on whether a formal pre-hearing conference has taken place or is concluded.

cannot unduly broaden the issues by seeking intervention. While petitions to intervene have been granted, no party has identified itself as wanting to provide potable water through a community water system or otherwise address community water systems. For this reason, no party can adequately represent Wellsprings Group's interests.

**B. Permissive Intervention**

Here, the *Order Granting Petitions to Intervene* is ambiguous as to whether a prehearing conference has taken place or has been continued, to wit:

Additionally, during the August 15, 2022 prehearing conference, Bellevue requested the Director allow informal proceedings, as defined by and in accordance with Rules 100 and 101 of the Department's Rules of Procedure (IDAPA 37.01.01).

....

Later, all interested persons in attendance agreed to schedule a formal prehearing conference for October 17, 2022.

....

**NOTICE OF CONTINUED PREHEARING CONFERENCE**

NOTICE IS HEREBY GIVEN that the Director will hold a formal prehearing conference to discuss the status of and schedule for this contested proceeding. The continued prehearing conference will be held on October 17, 2022, at 2 PM (MST)

....

....

The prehearing conference will be held in accordance with the provisions of Chapter 17, Title 42, and Chapter 52, Title 67, Idaho Code, and the Department's Rules of Procedure, IDAPA 37.01.01.

*Order Granting Petitions to Intervene* at 1, 3 (emphasis added).

At worst, if a prehearing conference has taken place, it has yet to conclude, and as explained above, Wellsprings Group meets the criteria for intervention as a matter of right. If the continuance of a prehearing conference in lieu of setting a "formal prehearing conference for

October 17, 2022” triggers the requirements of IDAPA 37.01.01.353.02, Wellsprings Group also meets the requirements for permissive intervention.

Under the permissive standard, the Director may grant intervention “for good cause shown or may deny or conditionally grant petitions to intervene that are late for failure to state good cause for the late filing, to prevent disruption, to prevent prejudice to existing parties, to prevent undue broadening of the issues, or for other reasons.” IDAPA 37.01.01.353.02. The Department’s procedural rule has its underpinnings in I.R.C.P. 24(a), which “allows permissive intervention by a person ‘[u]pon timely application’ and ‘when an applicant’s claim . . . and the main action have a question of law or fact in common.’” *State v. United States (In re SRBA Case No. 39576)*, 134 Idaho 106, 110, 996 P.2d 806, 810 (2000). “To determine timeliness, the court considers three factors: (1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for the length of the delay.” *Farrell v. Bd. Of Comm’rs*, 138 Idaho 378, 390, 64 P.3d 304, 316 (2002) *overruled on different grounds by City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012). “The decision of whether grant the motion to intervene is discretionary with the trial court. A court acts within its discretion if it perceives the issue as discretionary, acts within the outer boundaries of its discretion and consistently with applicable legal standards, and reaches its decision by an exercise of reason.” *Id.*

Here, and as to good cause, Wellsprings Group only recently became aware of the *Moratorium Order* and its implications for community water systems. Upon learning of the *Moratorium Order*, Wellsprings Group retained counsel and is filing this document within days of securing representation. As stated previously, Wellsprings Group is interested in establishing a community water system, and cannot unduly broaden the issues or prejudice the existing

parties because the *Moratorium Order* implicates community systems. Since no party to the proceeding has articulated an interest in a community water systems, Wellsprings Group's interests are not represented. As to stage of the proceeding, and assuming the prehearing conference has started, it has yet to conclude, no scheduling order has been issued, and a hearing date has not been set; thus, no prejudice can result to the parties or the process. For these reasons, Wellsprings Group meets the standards for permissive intervention consistent with IDAPA 37.01.01.353.02 and I.R.C.P. 24(a).

### III. CONCLUSION

Wellsprings Group's *Petition to Intervene* is timely, with petitioner having a direct and substantial interest in the outcome of this matter that will not unduly broaden the issues. In the alternative, if the prehearing conference has started, it has yet to conclude, and Wellsprings Group meets the standards for permissive intervention. Therefore, based on the foregoing, Wellsprings Group's *Petition to Intervene* should be granted.

DATED this 30th day of September, 2022.

  
CHRIS M. BROMLEY

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30<sup>th</sup> day of September, 2022, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

Idaho Department of Water Resources  
Garrick Baxter  
Deputy Attorneys General  
Idaho Department of Water Resources  
P.O. Box 83720  
Boise, Idaho 83720-0098

Via US Mail, Postage Paid  
 Via Facsimile  
 Hand-Delivered  
 Via Electronic Mail

Candice McHugh  
McHugh Bromley, PLLC  
380 S. 4<sup>th</sup> St., Ste. 103  
Boise, ID 83702  
[cmchugh@mchughbromley.com](mailto:cmchugh@mchughbromley.com)

Via US Mail, Postage Paid  
 Via Facsimile  
 Hand-Delivered  
 Via Electronic Mail

Michael P. Lawrence  
Givens Pursley, LLP  
PO Box 2720  
Boise, ID 83701-2720  
[mpl@givenspursley.com](mailto:mpl@givenspursley.com)

Via US Mail, Postage Paid  
 Via Facsimile  
 Hand-Delivered  
 Via Electronic Mail

Albert P. Barker  
Travis L. Thompson  
Michael A. Short  
Barker Rosholt & Simpson  
PO Box 63  
Twin Falls, ID 83303-0063  
[apb@idahowaters.com](mailto:apb@idahowaters.com)  
[tlt@idahowaters.com](mailto:tlt@idahowaters.com)  
[mas@idahowaters.com](mailto:mas@idahowaters.com)

Via US Mail, Postage Paid  
 Via Facsimile  
 Hand-Delivered  
 Via Electronic Mail

W. Kent Fletcher  
Fletcher Law Office  
PO Box 248  
Burley, ID 83318  
[wkf@pmt.org](mailto:wkf@pmt.org)

Via US Mail, Postage Paid  
 Via Facsimile  
 Hand-Delivered  
 Via Electronic Mail

Jerry R. Rigby  
Chase Hendricks  
Rigby, Andrus & Rigby, Chartered  
25 North Second East  
Rexburg, ID 83440  
[jrigby@rex-law.com](mailto:jrigby@rex-law.com)  
[chendricks@rex-law.com](mailto:chendricks@rex-law.com)

Via US Mail, Postage Paid  
 Via Facsimile  
 Hand-Delivered  
 Via Electronic Mail



CHRIS M. BROMLEY