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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE BIG WOOD
RIVER GROUND WATER
MANAGEMENT AREA

CITY OF BELLVUE'S LIST OF ISSUES
FOR HEARING

COMES NOW the City of Bellevue ("Bellevue") through its attorney of record, Candice McHugh of the firm McHugh Bromley, PLLC and files this List of Issues for Hearing pursuant the oral order given on October 17, 2022.

LIST OF ISSUES FOR HEARING

1. Whether all pumping in the BWGWMA has an impact on all surface water sources upstream from Magic Reservoir, including Silver Creek.
2. What's the true nature of municipal water use? When is it 100% consumptive? What are methods to determine the amount of consumption?
3. What's the true nature of domestic water use? When is it 100% consumptive? What are methods to determine the amount of consumption?
4. Can a municipality apply for a municipal water right and have its application considered on a case by case basis without proposing mitigation up front that assumes the diversion will be 100% consumptive? What about applications for domestic, commercial, and industrial uses?
5. Can the Director consider new applications for municipal use on a case by case basis under paragraph 7.b. of the Department's May 17, 2022 *Order Establishing Moratorium* ("BWRGWMA Moratorium") and determine that the municipal use is not 100% consumptive under the BWRGWMA Moratorium as currently written?

6. Can the Director consider a new applications for domestic use on a case by case basis under paragraph 7.b. of the Department's BWRGWMA Moratorium and determine that the domestic use is not 100% consumptive under the BWRGWMA Moratorium as currently written?
7. Does the domestic portion of a municipal application differ from a domestic use under a private application and it what way?
8. Should an application for municipal use be considered and the applicant entitled to a hearing on whether there is unappropriated water or whether mitigation for 100% of the proposed diversion is required?
9. Should an application for domestic use be considered and the applicant entitled to a hearing on whether there is unappropriated water or whether mitigation for 100% of the proposed diversion is required?
10. Are there conditions that could allow for a portion of a new municipal right to be considered not consumptive and thus regulated by IDWR? Does the Department have the ability to condition new applications for or transfers to municipal use under the District Court's decision in *Riverside Irrigation Dist. v. IDWR*, Civil Case No. CV14-021-05008? Can these conditions be legally enforced by IDWR under the Riverside decision?
11. If a municipal application's disposal method is effectively the same as that for a non-municipal domestic use under what authority should it be treated differently?
12. Is it a violation of equal protection to allow non-municipal users to file an application for water rights and have a hearing to show that injurious depletions are replaced, but not allow municipal users that same opportunity and instead require them to replace all pumping whether it is consumed or not? Is it constitutional to not allow a certain water use or user to file for unappropriated water without first having to mitigate for 100% of the proposed diversion? Under what authority is such application denied the ability to be filed and evidence heard through a hearing? Is it constitutional to treat an application for domestic use under a municipal or community water system as fully consumptive and without an opportunity to be filed and therefore heard by the Director on a case-by-case basis when other consumptive uses may be considered on a case by case basis?
13. How does the *Amended Snake River Basin Moratorium Order* dated October 21, 2022, impact, if at all, the *Order Establishing Moratorium* in the BWRGWMA? Are two overlapping moratorium areas permissible or necessary?

DATED this 31st day of October, 2022



Candice M. McHugh
Attorney for City of Bellevue

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October, 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:

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