

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

IN THE MATTER OF BIG WOOD RIVER
GROUND WATER MANAGEMENT AREA

**ORDER GRANTING PETITIONS TO
INTERVENE AND SETTING
SCHEDULING CONFERENCE AND
DEADLINES**

BACKGROUND

On May 17, 2022, the Deputy Director of the Idaho Department of Water Resources (“Department”), Mat Weaver, while serving as acting director, issued an *Order Establishing Moratorium* (“Moratorium Order”) in the above captioned matter. The order established a moratorium on the processing and approval of new and pending applications for permits to appropriate water from surface and ground water sources within the Big Wood River Ground Water Management Area (“BWRGWMA”). *Moratorium Order* at 7.

On May 31, 2022, the Department received a *Motion for Clarification and Reconsideration and Request for Hearing* filed on behalf of the City of Bellevue (“Bellevue”). On June 21, 2022, the Director issued the *Order Denying Request for Clarification and Reconsideration; Order Granting Request for Hearing*, granting the City of Bellevue’s request for hearing and setting a prehearing conference for August 15, 2022.

The Director granted four petitions to intervene on September 12, 2022—*South Valley Ground Water District’s Petition to Intervene, Big Wood & Little Wood Water Users Association’s Petition to Intervene, Big Wood Canal Company’s Petition to Intervene*; and *City of Hailey’s Petition to Intervene*. In the same September 12, 2022 order, the Director allowed the contested case to move forward informally and set a formal continued prehearing conference for October 17, 2022.

The Department received two additional petitions to intervene in the above captioned matter: on September 30, 2022, the Wellsprings Group, LLC (“Wellsprings”) filed its *Petition to Intervene* and on October 5, 2022, the Galena Ground Water District (“Galena”) filed *Galena Ground Water District’s Petition to Intervene* (collectively, “Petitions to Intervene” or “Petitions”). No objections to the Petitions were filed with the Department in accordance with IDAPA 37.01.01.354.

During the October 17, 2022 prehearing conference, the Director asked if there were any objections to the outstanding Petitions to Intervene. Counsel for intervenor South Valley Ground Water District raised an issue regarding Wellsprings’ petition, noting that Wellsprings appeared to be expanding the scope of the proceedings beyond the municipal issues raised in Bellevue’s May 31, 2022 *Motion for Clarification and Reconsideration and Request for Hearing*. However, counsel for South Valley Ground Water District noted that an objection to the actual intervention of Wellsprings was not being raised. Counsel for intervenor Big Wood & Little Wood Water Users Association agreed Wellsprings’ petition would expand the scope of the issues and further questioned why Wellsprings should be granted intervention. Counsel for Wellsprings responded

to the issues raised by claiming the time to file an objection to the intervention under the Department's Rules of Procedure (IDAPA 37.01.01) ran prior to the October 17, 2022 prehearing; also, claiming that granting Wellsprings petition would not expand the issues for hearing since the Department's June 21, 2022 *Order Denying Request for Clarification and Reconsideration*; *Order Granting Request for Hearing* designates the Moratorium Order as a contested order under Idaho Code § 42-1701A(3). No issues with or objections to Galena's petition were raised. The Director verbally granted Galena's intervention and took Wellsprings petition under further consideration.

Additionally, during the October 17, 2022 prehearing conference, the parties and prospective intervenors agreed to a scheduling conference to be held on December 7, 2022. Bellevue agreed to file a statement of the issues for hearing with the Department by October 31, 2022. All other parties and prospective intervenors agreed to file any responses to Bellevue's statement of the issues by November 14, 2022. All parties and prospective intervenors agreed to a November 30, 2022 deadline to file any motions concerning issues for hearing with the Department.

PETITIONS TO INTERVENE

The Department's Rule of Procedure 350 addresses who may file a petition to intervene in an administrative case: "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 37.01.01.350.

A petition to intervene must comply with the Department's basic form and content rules for all pleadings and "state the direct and substantial interest of the potential intervenor in the proceeding." IDAPA 37.01.01.351. To be considered timely, a petition must also "be filed at least fourteen 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." IDAPA 37.01.01.352. Once a petition to intervene is filed with the Department, an opposing party only has seven days to file an objection. IDAPA 37.01.01.354.

When considering whether to grant a petition to intervene and its implications for an intervening party, the Department's Rule of Procedure 353 states:

01. Timely-Filed Petitions. If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a contested case and does not unduly broaden the issues, the agency shall grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties.

02. Late Petitions. The agency may grant late petitions to intervene 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.

03. Order and Notices Issued Prior to Intervention. Intervenors are bound by orders and notices entered in the contested case prior to the approval of the petition to intervene.

IDAPA 37.01.01.353.

The Director concludes the Petitions to Intervene should be considered under IDAPA 37.01.01.353.02. The initial formal prehearing conference in this matter was held on August 15, 2022. The Petitions were filed with the Department after August 15, 2022. In accordance with IDAPA 37.01.01.352, both Wellsprings' and Galena's Petitions are late.

The Director concludes the Petitions satisfy the requirements set forth in IDAPA 37.01.01.351. Based on the Petitions to Intervene, the Director concludes that Wellsprings and Galena have a direct and substantial interest in this matter, will not unduly broaden the issues, and are not adequately represented by existing parties. Having considered the late objections made during the October 17, 2022 prehearing conference to Wellsprings' petition and intervention, there being no objections made to Galena's intervention, and for good cause shown the Director concludes the Petitions to Intervene satisfy the requirements set forth in IDAPA 37.01.01.353.02. The Director verbally granted Galena's intervention during the October 17, 2022 prehearing conference and he concludes Wellsprings' intervention in this matter should also be granted. The Director further concludes that pursuant to IDAPA 37.01.01.353.03, Wellsprings and Galena are bound by all previous orders and notices entered in the BWRGWMA moratorium contested matter.

NOTICE OF SCHEDULING CONFERENCE

NOTICE IS HEREBY GIVEN that the Director will hold a formal scheduling conference to establish the schedule for this contested proceeding and discuss the issues for hearing. The scheduling conference will be held on **December 7, 2022, at 2 PM (MST)** in Conference Rooms 602C and 602D of the Department's State Office, located at 322 E. Front Street, 6th Floor, Boise, Idaho. Parties may appear at the scheduling conference in person, by telephone, or by video conference.

To join the conference via computer or smartphone, please use the following Webex link, follow the prompts, and wait to be admitted by the meeting host:

<https://idahogov.webex.com/idahogov/j.php?MTID=md44e9dc1a768de28036de9f2e1688b4e>.

To join the conference via telephone, please dial 1 (415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2452 118 5607.

The scheduling 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. A copy of the Rules of Procedure may be obtained from the Department upon request or at <https://adminrules.idaho.gov/rules/current/37/index.html>.

The conference will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations to attend, participate in, or understand the conference, please advise the Department no later than five (5) days before the

conference. Inquiries for special accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098, telephone: (208) 287-4815.

ORDER

IT IS HEREBY ORDERED that the petitions to intervene filed by Wellsprings Group, LLC and the Galena Ground Water District are GRANTED.

IT IS FURTHER ORDERED that the parties must adhere to the following deadlines:

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|--------------------------|---|
| October 31, 2022 | The City of Bellevue must file a statement of the issues for hearing with the Department. |
| November 14, 2022 | All other parties shall file any responses to Bellevue's statement of the issues with the Department. |
| November 30, 2022 | All parties shall file any motions concerning issues for hearing with the Department. |

Dated this 1st day of November 2022.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of November 2022, the above and foregoing, was served by the method indicated below, and addressed to the following:

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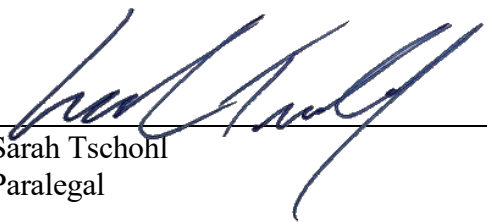
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