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

IN THE MATTER OF BIG WOOD RIVER
GROUND WATER MANAGEMENT AREA

**BIG WOOD & LITTLE WOOD WATER
USERS ASSOCIATION'S AND BIG WOOD
CANAL COMPANY'S RESPONSE TO
CITY OF BELLEVUE'S STATEMENT OF
ISSUES**

COMES NOW, the BIG WOOD & LITTLE WOOD WATER USERS ASSOCIATION,
as the representative of its individual parties to the above-entitled matter, by and through its
attorneys of record, Jerry R. Rigby and Chase T Hendricks of RIGBY, ANDRUS & RIGBY
LAW, PLLC, and W. Kent Fletcher on behalf of Big Wood Canal Company and respond to the

City of Bellevue's List of Issues for Issues for Hearing filed on October 31st 2022 pursuant to the Director's of Idaho

Department of Water Resources' oral order given on October 17th, 2022, *Order Establishing Moratorium* ("Order") for a moratorium for the Big Wood Water River Ground Water Management Area. ("BWRGWMA").

LIST AND BWLWWUA'S RESPONSE TO ISSUES FOR HEARING

Bellevue's Issues:

1. Whether all pumping in the BWGWMA has an impact on all surface water sources upstream from Magic Reservoir, including Silver Creek.

BWLWWUA's Response: This question goes beyond the scope of the Director's *Order Establishing Moratorium* ("Order"). Looking back to the 1991 Designation Order, the Director cited in the *Order's Findings of Fact* that "Big Wood River drainage are interconnected. Diversion of ground water from wells can deplete the surface water flow in streams and rivers. New ground water uses can also deplete available supplies for other users and affect basin underflow which presently accumulates in the Magic Reservoir." *Order findings of fact* pg. 1 citing the 1991 "Designation Order"). There was no appeal taken from the Designation Order and the issue is res judicata.

2. What's the true nature of municipal water use? When is it 100% consumptive? What are methods to determine the amount of consumption?

BWLWWUA's Response: This matter has been addressed as a matter of policy by IDWR. It is unclear whether this is the proper forum to address IDWR policy on the issue.

3. What's the true nature of domestic water use? When is it 100% consumptive? What are methods to determine the amount of consumption?

BWLWWUA's Response: If this question is a reference to the domestic use of municipal rights, it is a repeat of issue 2. If it refers to individual domestic rights, those are outside the scope of the *Order*.

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?

BWLWWUA's Response: The *Order* speaks for itself on this issue. The issue is speculative. Clause 7 of the Director's *Order* allows the Director to review applications on a case-by-case basis for applications which otherwise would not be approved under the *Order*. To be granted an exception under Clause 7 of the *Order*, applications must adhere to two requirements for approval. These requirements are that the application: 1) be in the public interest; and 2) will not affect other prior surface and ground water rights or that sufficient mitigation is utilized to offset injury to other prior rights. Clause 7 grants the Director to determine which specific application could be granted approval, based on the timing, location, insignificant consumption of water, along with mitigation provided. The issue is repetitive of issue 2.

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?

BWLWWUA's Response: This *Order* speaks for itself. The issue is speculative, and the issue is a repeat of issue 2.

6. Can the Director consider 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?

BWLWWUA's Response: The term “domestic use” is vague as used in the question. To the extent it refers to municipal uses, it is speculative and a repeat of issue 2.

7. Does the domestic portion of a municipal application differ from a domestic use under a private application and if what way?

BWLWWUA's Response: This issue is speculative since it refers to an unknown municipal application. Municipal applications do not typically separate domestic uses from other uses. In effect, this is a repeat of issue 2.

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?

BWLWWUA's Response: If an application is filed under current law and if IDWR does not act in a fashion that the applicant desires, the applicant is entitled to seek judicial relief. Otherwise, the issue is speculative since there is no way to guess what the application includes.

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?

BWLWWUA's Response: If this question is in the context of a municipal right, it is already addressed above. Otherwise, the Order addresses domestic applications.

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?

BWLWWUA's Response: This issue is repetitive and speculative.

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?

BWLWWUA's Response: This issue is speculative and otherwise addressed in issue 2.

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?

BWLWWUA's Response: This issue is speculative and is addressed by issue 2.


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?

BWLWWUA's Response: These respondents agree that the Director should address this issue and determine whether Big Wood basin has unique issues that should be addressed by a moratorium order separate and apart from the *Amended Snake River Basin Moratorium Order*.

CONCLUSION

BWLWWUA requests that these responses be considered by the Director in review of this presented issues. BWLWWUA would reserve and request the opportunity to present additional responses, evidence, and argument to those issues presented by City of Bellevue and others that the Director determines to be appropriate for consideration.

DATED this 14th day of November, 2022.



Jerry R. Rigby



Chase T Hendricks
*Attorneys for Big Wood & Little Wood
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Fletcher Law Office

/s/ W. Kent Fletcher

W. Kent Fletcher
Attorney for Big Wood Canal Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November 2022, the above and foregoing, was served by the method indicated below, and addressed to the following:

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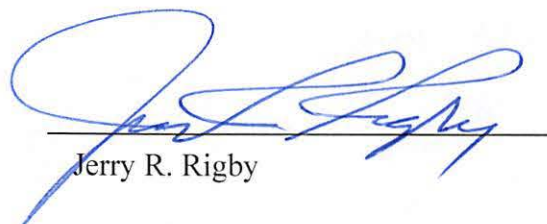
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