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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

**SOUTH VALLEY GROUND
WATER DISTRICT AND GALENA
GROUND WATER DISTRICT JOINT
RESPONSE TO CITY OF BELLEVUE’S
STATEMENT OF ISSUES**

COME NOW, South Valley Ground Water District (“SVGWD”) and Galena Ground
Water District (“GGWD”), by and through counsel of record, Barker Rosholt & Simpson, LLP

and Lawson Laski Clark PLLC, and pursuant to the Director’s November 1, 2022 Order hereby respond to the *Statement of Issues* filed by the City of Bellevue (“Bellevue”) as follows.

Background

The Director issued the *Moratorium Order* on May 17, 2022. Only Bellevue filed a petition requesting a hearing on the order. *See Motion for Clarification and Reconsideration and Request for Hearing* (May 31, 2022) (“*Petition*”). Bellevue requested reconsideration or clarification of three discrete issues. *See Petition* at 3-4. Bellevue’s request for hearing did not list any specific issues.

In the *Order Denying Request for Clarification and Reconsideration*, the Director denied Bellevue’s requested changes to the language in the order, but authorized addressing the requests at hearing. *Order* at 3.

I. Bellevue’s Statement of Issues Impermissibly Seeks to Expand the Original Request for Hearing Contrary to Idaho Code § 42-1701A(3).

Idaho Code § 42-1701A(3) allows any person aggrieved by a director’s order an opportunity for a hearing on the matter. The statute requires the person to file, within 15 days of written notice of the action, or receipt of actual notice, “a written petition stating the grounds for contesting the action by the director and requesting a hearing.” I.C. § 42-1701A(3) (emphasis added).

Bellevue’s *Petition* identified the following three grounds for contesting the *Moratorium Order*:

- 1) Changing wording in certain sentences from “affects” to “can affect” and from “would” to “could”;
- 2) Changing the policy of allowing municipal providers to file applications for permit for municipal use without mitigation; and

- 3) Challenging the finding that “applications for municipal water use and for domestic use from community water systems shall be considered fully consumptive.”

See Petition at 3-4.

The issues at hearing should be limited to these three matters as these were the only “grounds for contesting the action” that were included in Bellevue’s *Petition*. Contrary to the statute, Bellevue’s *Statement of Issues* contains many new issues that impermissibly seek to expand the scope of this contested case over which the Director lacks jurisdiction because of Bellevue’s failure to comply with I.C. § 42-1701A(3) and because it also raised non-justiciable issues by seeking advisory opinions on the possible effect of the moratorium order on hypothetical applications that have not been filed and may never be filed.

Notably, issues #1, #7, #8, #9, #10, #11, #12, and #13 are clearly beyond the scope of the three issues listed in Bellevue’s original *Petition*. Issue #4 also includes questions about “commercial” and “industrial” water uses that were not included in the *Petition*. Furthermore, Bellevue’s questions of hypothetical future applications, and what the Director can or will consider in the future, are not ripe for a decision in this contested case. *See e.g. Westover v. Idaho Counties Risk Management Program*, 164 Idaho 385, 389-90 (2018) (describing how courts do not issue advisory opinions advising what the law would be based upon a hypothetical state of facts).

If Bellevue wants to file a specific application for a municipal use and have its questions addressed, it is free to do so. The present contested case is not the forum to answer hypothetical questions on yet to be filed applications for permit. SVGWD opposes Bellevue’s *List of Issues* and submits the Director should prohibit Issues #1, #7, #8, #9, #10, #11, #12, #13, and part of #4 accordingly.

DATED this 14th day of November, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November, 2022, the foregoing was filed electronically using the Court’s e-file system, and upon such filing the following parties were served electronically.

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