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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 AND BIG WOOD
CANAL COMPANY'S OBJECTION TO
ISSUE CONTAINED IN ORDER
GRANTING PETITIONS TO INTERVENE
AND SETTING SCHEDULING
CONFERENCE AND DEADLINES**

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 the BIG WOOD CANAL COMPANY, by and through its attorneys of record, FLETCHER LAW

**BIG WOOD & LITTLE WOOD WATER USERS ASSOCIATION AND BIG WOOD
CANAL COMPANY'S OBJECTION TO ISSUE CONTAINED IN ORDER GRANTING
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OFFICE, and enters this objection, or in the alternative a request for clarification, regarding the issue for the upcoming hearing of “Whether all pumping in the BWGWMA has an impact on all surface water sources upstream from Magic Reservoir, including Silvercreek” as presented in the recent November 1st, 2023 *Order Granting Petitions to Intervene and setting Scheduling Conference and Deadlines* (“scheduling order”)(Bellevue’s issue regarding the pumping’s affect will be referred to as “Issue” throughout). The reason for this objection is the Issue is overly broad, beyond the scope of the *Mortarium Order*, and has previously been adjudicated in the *1991 Designation Order*. This motion is brought pursuant to IDAPA 37.01.01 and the Idaho Administrative Procedure Act (“APA”).

The recent *Scheduling Order* sent out last Friday outlined the schedule for the upcoming hearing and contained a list of issues that will be examined at the hearing. One of the issues to be addressed, as detailed in the *Scheduling Order*, is Bellevue's desire to examine "[w]hether all pumping in the BWGWMA has an impact on all surface water sources upstream from Magic Reservoir, including Silver Creek." (*Bellevue's List of Issues*, pg. 1, In re Big Wood River Ground Water Mgmt. Area. Filed October 31, 2022). This obviously is a colossal issue, requiring extensive research and preparation, well beyond the scope of the *Moratorium Order*, and has been previously decided.

The Issue was initially brought up rather simply by the City of Bellevue in its initial *Motion for Clarification and reconsideration and Request for Hearing* at the outset of this matter. In its *Motion for Clarification*, the City of Bellevue sought clarification only for the Findings of Fact in the Director’s *Moratorium Order*. In its *Motion for Clarification* the City of Bellevue requested that a few simple words be added to the *Moratorium Order* as follows;

“The second sentence should be modified to state that “Pumping ground water from within the BWRGWMA can affect surface water flows” The third sentence should be modified to read “Lower ground water levels could result in less aquifer discharge” Finally the fourth sentence should be modified to state “New development of consumptive ground water use could reduce the quantity” (Emphasis Included from the Original)

BIG WOOD & LITTLE WOOD WATER USERS ASSOCIATION AND BIG WOOD CANAL COMPANY’S OBJECTION TO ISSUE CONTAINED IN ORDER GRANTING PETITIONS TO INTERVENE AND STTING SCHEDULING CONFERENCE AND DEADLINES

Motion for Clarification and reconsideration and Request for Hearing pg. 3, filed May 31st, 2022.

It should be clearly noted that the statement that the City of Bellevue took issue with was in relation to the 1991 *Designation Order* cited in the *Moratorium Order* 's Findings of Fact, which asserted 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." (*Moratorium Order*, findings of fact pg. 1 citing the 1991 "*Designation Order*"). It should be noted that no appeal was taken from the *Designation Order*, making the issue res judicata.

In the Director's June 21st, 2022 *Order Denying Request for Clarification and Reconsideration* stated that "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, consequently, the Director must deny Bellevue's requests for clarification and reconsideration without consideration of the evidence or arguments put forth by Bellevue in support of its requests." *Order Denying Request for Clarification and Reconsideration* pg 3 2022. Thus the Director denied Bellevue's request for these changes to the *Moratorium Order* but ordered a Hearing.

Additionally, on August 15th, 2022, after the Director having received several *Petitions to Intervene* filed by the parties, the Director Ordered that this matter be set for Informal Proceedings and required Department of Water Resources Bureau Chief, Shelley Keen, as the Department's contact for those proceedings in accordance with Rules 100 and 101 of the Department's Rules of Procedure (IDAPA 37.01.01). The matter was then set for a pretrial conference on October 17th, 2022. During the initial informal proceedings it was thought prudent and economical to create a list

BIG WOOD & LITTLE WOOD WATER USERS ASSOCIATION AND BIG WOOD CANAL COMPANY'S OBJECTION TO ISSUE CONTAINED IN ORDER GRANTING PETITIONS TO INTERVENE AND STTING SCHEDULING CONFERENCE AND DEADLINES

issues that could be discussed to see if any consensus among the parties could be reached. The City of Bellevue filed its *List of Issues* on October 31, 2022. The City of Bellevue's *List of Issues* contained thirteen broad-stroke types of questions to be discussed further, informally.

In response to the Bellevue's *List of Issues* the parties each filed a response. BWLWWUA responded to the question of whether all pumping the BWGWMA has an impact on all surface water sources upstream from Magic Reservoir with the following;

This question goes beyond to 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"). As the area has been designated and that surface and ground water sources have continually found to be interconnected, it is far beyond the scope of the Director's *Order* to delve into determining the question if "all pumping" has impacts on "all surface" water sources as listed in the City of Bellevue's interest.

Big Wood & Little Wood Water Users Association and Big Wood Canal Company's Response to City of Bellevue's statement of issues, pg. 2, 2022.

Likewise South Valley Ground Water District and Galena Ground Water Districts responded to this *List of Issues* citing I.C. § 42-1701A(3); that 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) and based on that statute that the City of Bellevue's list of grounds for contesting the *Moratorium Order* was limited only to the wording changes in certain sentences from "affects" to "can affect" and from "would" to "could" etc. See *GWD's Joint Response to City of Bellevue's Statement of Issues*.

It should be understood this particular Issue has neither been examined or discussed throughout the informal process regarding at all. The Issue made its way to the hearing solely because

BIG WOOD & LITTLE WOOD WATER USERS ASSOCIATION AND BIG WOOD CANAL COMPANY'S OBJECTION TO ISSUE CONTAINED IN ORDER GRANTING PETITIONS TO INTERVENE AND STTING SCHEDULING CONFERENCE AND DEADLINES

it was included in Bellevue's *List of Issues*, to which both BWLWWUA, BWCC, as well as both GWD's objected. Addressing this point in the hearing is an enormous undertaking that sits well beyond the scope of the *Moratorium Order* as well as the City of Bellevue's initial objection and will surely complicate the proceedings.

CONCLUSION

BWLWWUA requests that this Issue be removed as an issue for the upcoming hearing, or in the alternative be clarified so as to let the parties properly prepare for the upcoming hearing.

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 7th day of April, 2023.

/s/ JERRY R. RIGBY
JERRY R. RIGBY



CHASE T HENDRICKS

*Attorneys for Big Wood & Little Wood Water
Users Association*

/s/ W. KENT FLETCHER
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**BIG WOOD & LITTLE WOOD WATER USERS ASSOCIATION AND BIG WOOD
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of April, 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

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