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DEPARTMENT OF
WATER RESOURCES

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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

IN THE MATTER OF APPLICATIONS FOR
PERMITS FOR THE DIVERSION AND USE
OF SURFACE AND GROUND WATER
WITHIN THE SNAKE RIVER BASIN

**BIG WOOD & LITTLE WOOD WATER
USERS ASSOCIATION AND BIG WOOD
CANAL COMPANY'S POST HEARING
BRIEF IN SUPPORT OF THE
DIRECTOR'S CURRENT MORATORIUM
ORDER**

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 POST HEARING BRIEF IN SUPPORT OF THE DIRECTOR'S
CURRENT MORATORIUM ORDER**

OFFICE, and enters this brief in support of the Director’s Moratorium Order for the Big Wood River Ground Water Management Area. (BWRGWMA).

FACTUAL AND PROCEDURAL BACKGROUND

On May 4, 2022, an *Order Approving Ground Water Management Plan* was signed by the Director that explained that the Idaho Department of Water Resources (IDWR) may replace the 1991 Policy with a moratorium order. Soon thereafter, on May 17, 2022, the Director signed the *Order Establishing Moratorium*, for the Big Wood River Management Area. (*Moratorium Order*). The Moratorium Order mandates a suspension on the approval and processing of new and existing applications for water appropriation from surface and ground water sources within the BWRGWMA, unless they fall under the specified exceptions of the order.

On May 31, 2022, the City of Bellevue filed a *Motion for Clarification and reconsideration and Request for Hearing*, which sought to modify the *Moratorium Order’s* findings. On June 21, 2022, the Director declined the City of Bellevue’s request for clarification and reconsideration of the *Moratorium Order* but ordered a hearing. Following interventions from various parties, informal proceedings began on August 15, 2022, and were conducted over the next several months. The City of Bellevue submitted a *List of Issues* on October 31, 2022, containing several issues, including “whether all pumping in the BWRGWMA has an impact on all surface water sources upstream from Magic Reservoir, including Silver Creek.” The Big Wood & Little Wood Water Users Association (BWLWWUA) and the Big Wood Canal Company (BWCC) argued that evaluating the full impact of ground water pumping on surface waters was beyond the scope of the *Moratorium Order*, citing the 1991 *Designation Order* and its findings between ground water and the Big Wood River system. Moreover, the South Valley and Galena Ground Water Districts pointed to legal procedure,

specifically Idaho Code § 42-1701A(3), to suggest that City of Bellevue's challenges should be narrowly focused on the proposed textual changes in the Moratorium Order.

On March 31, 2023, the Director ordered that the contested proceedings for the Big Wood Moratorium and the Snake River Moratorium matters were to be consolidated for a contested hearing. On November 1st, 2023, a *Scheduling Order* was issued, which outlined the schedule for the upcoming hearing and contained a list of issues that were to be examined at the hearing. The parties conducted Discovery and provided several expert reports over the course of the next several months.

On October 16-19, 2023, a hearing was held to determine “Whether all pumping in the BWRGWMA has an impact on all surface water sources upstream from Magic Reservoir, including Silver Creek.” This brief shall only focus and support the issues as were heard regarding the Big Wood River upstream from Magic Reservoir, including Silver Creek, as outlined in the *Scheduling Order* and not those issues as were heard regarding the Snake River Moratorium and its corresponding fully consumptive assumption regarding municipal water rights.

ARGUMENT

The Expert Reports and testimony presented at the hearing confirmed that a significant hydrogeologic relationship, as outlined in the Original 1991 Big Wood Ground Water Designation Order, exists in Water Basin 37 north of Glendale bridge that impacts not only the discharges to the Big Wood River but to Silver Creek as well.

This brief is intended to compare and analyze the expert reports and testimony presented in the context of the hydrological impacts of ground water pumping in the Big Wood River Ground Water Management Area (BWRGWMA), with a focus on Silver Creek from the recent October 16-19, 2023 hearing concerning the Big Wood Moratorium. The central argument of this brief is that the testimony of Jennifer Sukow, an expert from the Idaho Department of Water Resources (IDWR), as well as the other experts who provided both testimony and expert reports, provides a

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comprehensive and largely unrefuted analysis of these impacts, in contrast to the limited scope of the expert report of Gregory K. Sullivan, *Expert Report on Big Wood Moratorium - Silver Creek Impacts July 11, 2023, prepared for the City of Bellevue and the City of Hailey*, Cities Exhibit 314 (Sullivan Report).

The Sullivan Report *Silver Creek* admits that cities' ground water pumping impacts the Big Wood River and misstates the impact of cities' pumping on Silver Creek. The Sullivan Report conclusions are inconsistent with the findings of all other experts, particularly Jennifer Sukow, upon whom the Sullivan Report almost wholly relies, and whose detailed analysis provides a more comprehensive understanding of the hydrological impacts in the area.

Jennifer Sukow's Testimony

Jennifer Sukow, P.E, P.G, hydrologist employed by the Idaho Department of Water Resources ("IDWR"), provided a critical perspective on the interconnectedness of water resources in the Bellevue Triangle, directly challenging the Sullivan Report. Her extensive hydrological modeling revealed significant long-term and cumulative effects of ground water pumping north of the Glendale Bridge on Silver Creek flows, quantifying the direct impacts at approximately 8%, a stark contrast to Sullivan's minimal impact claims.

Sukow distinguished between two analyses: the comprehensive impact assessment of pumping across the Wood River Valley area and her focused 2021 analysis for a limited three-month curtailment scenario that occurred as part of a hearing in the summer of 2021. In 2021, she examined curtailment effects within a specific area south of the Glendale Bridge, documented in her corrected staff memorandum for the 2021 hearing. *See SVGWD Exhibit 202 IDWR Jennifer Sukow Response to Request for Staff Memo Corrected*. (2021 Sukow Report). This analysis highlighted the

differences in water usage impacts within the region. These were documented in her corrected staff memorandum, prepared expressly for that hearing.

During the October hearing, Sukow revisited a paragraph from her 2021 report, clarifying that her analysis was tailored for the July 2021 period, making it not applicable to the issue for hearing. That paragraph from her 2021 report, reads as follows:

"Curtailment of irrigation was simulated with different starting dates of May 1, June 1, July 1, and August 1. Results for all four starting dates are provided in Attachment B and the supporting files. Because the hearing for the Basin 37 Administrative Proceeding is scheduled for June 7-11, 2021, results from the simulated curtailment starting July 1 are discussed in the text of this memorandum. Curtailment was simulated within two areas (Figure 15). The first area was the WRV1.1 model boundary. Although the effects of the curtailment were simulated with the model for a period of approximately 12 years, the WRV1.1 model predicts most of the impacts to streamflow are realized in less than 2 years (Figure 16). Because the Basin 37 Administrative Proceeding was initiated to address water delivery during the 2021 irrigation season, the results presented in the text of this memorandum focus on the hydrologic responses that are predicted to occur by the end of September."

SVGWD 202 Exhibit consisting of the corrected version of Sukow's 2021 report Model Results and Observations pg. 17. In her testimony during the October hearing, Jennifer Sukow clarified that her analysis, noted above, was specifically tailored to assess the impacts during July 2021. She emphasized that this analysis was constrained to a three-month period in 2021, rendering it not applicable to the issue for the hearing. She also highlighted a critical limitation of the Model's 12-year data span, which is insufficient for assessing the long-term impacts of consistent annual pumping. While this dataset was sufficient for a short-term evaluation of a curtailment scenario, it falls short in capturing the long-term ramifications of consistent annual pumping, a factor crucial for comprehensive impact assessment in the context of the Moratorium.

Furthermore, Sukow pointed out the limitations in Gregory Sullivan's report. She noted that Sullivan's analysis was narrowly focused, primarily considering a limited time frame, and did not

adequately address the broader, interconnected hydrological dynamics of the region. Jennifer Sukow addressed Sullivan's selective quoting of her 2021 report by clearly pointing out that Sullivan's interpretation hinged on a few statements taken out of context, emphasizing that his interpretation failed to represent her comprehensive findings, especially regarding the long-term impacts of pumping north of the Glendale Bridge on Silver Creek. Jennifer Sukow emphasized the limited relevance of her 2021 findings, particularly in the context of the Moratorium Order issue. The 2021 analysis aimed to ensure water delivery to senior rights holders by the end of September 2021, a goal distinctly different from the objectives of the Moratorium Order hearing. Sukow stressed the need for a comprehensive assessment of long-term impacts for evaluating new pumping permits, extending beyond the immediate curtailment scenario.

Sukow provided a crucial analysis regarding the impacts of ground water pumping north of the Glendale Bridge. Utilizing the data available in the Model, she estimated that the average impact of cities' pumping on Silver Creek would be approximately 8%. This significant figure was derived from a scenario where, hypothetically, if there had been no pumping north of the Glendale Bridge during 2021, an additional 8% of the total water would have been available to Silver Creek. Sukow further elaborated on the variable impacts of pumping based on proximity to Silver Creek. She acknowledged that pumping activities closer to Silver Creek likely exert a more pronounced effect, whereas those situated farther away might have a lesser impact. During cross-examination, Ms. Jennifer Sukow clarified that the observed 8% impact from pumping recurs approximately every two years, with residual effects accumulating over time. These impacts, she noted, extend beyond the irrigation season and variably influence the water discharged to Silver Creek, contingent on historical water usage and current availability. This nuanced understanding highlights the complexity of the hydrological interactions in the area and underscores the importance of

considering both geographical proximity and the cumulative effects of pumping when assessing the overall impact on water resources like Silver Creek.

She also noted other significant indirect impacts, such as reduced flows into the Big Wood River and subsequent effects on water availability for diversion and the capacity to fill Magic Reservoir. Furthermore, Sukow acknowledged a significant correlation between the flow measurements at the Hailey gauge and the water levels in Silver Creek. She testified that pumping activities upstream of the Big Wood River not only directly affect this river system but also impact the filling of Magic Reservoir. These reduced flows into the Big Wood River due to the cities' pumping activities subsequently leads to diminished water availability for diversion into the main canals. As a consequence of these lowered water levels, she explained that this upstream water use compels downstream users, particularly those south of the Glendale Bridge, to divert from ground water wells earlier than usual. This action, in turn, exacerbates the direct impacts by further drawing down ground water levels in areas where Silver Creek is heavily dependent on its surface flows. This cascade of effects illustrates the complex interplay between ground water extraction and surface water dynamics, particularly in that area.

In her testimony, Jennifer Sukow emphasized a crucial aspect overlooked in her 2021 analysis: the impact of winter-time consumptive use, particularly from municipal pumping, on the hydrological model. She pointed out that this analysis primarily focused on irrigation impacts, neglecting the long-term effects of other types of water use, such as municipal pumping, on Silver Creek. Sukow highlighted that the assumptions underpinning the 2021 model were limited to irrigation-related impacts, thereby excluding a needed comprehensive assessment of the full spectrum of water usage and its implications for the region's hydrology. This omission, she suggested, could significantly alter the understanding of the long-term effects on Silver Creek,

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underscoring the need for a more inclusive modeling approach that accounts for varied water uses across different seasons.

Sukow also contested the Sullivan Report's preference for a short-term analytical approach, highlighting a fundamental difference between methodologies applied in the Surface Water Coalition (SWC) case and those pertinent to the Moratorium Order. In the SWC case, curtailment occurs on a year-by-year basis, necessitating a short-term focus. However, for a Moratorium, where long-term water resource management is paramount, a more extensive temporal analysis is essential. Sukow emphasized that while short-term analysis suits curtailment scenarios, a Moratorium demands a broader, more future-oriented perspective, especially when considering the allocation of new water rights.

Ultimately, Sukow stressed the importance of analyzing both direct and secondary effects in the context of evaluating new permits under the Moratorium. She testified that the Moratorium Order took into account the impact of cities' pumping, emphasizing the substantiality of an 8% reduction in water flow to Silver Creek. This connection is crucial, as it concludes that upstream pumping can influence both Magic Reservoir's storage capacity as a result of reduced Big Wood River flows and the flow dynamics of Silver Creek, thereby affecting a broader hydrological system than considered in the Sullivan Report. Her testimony underscored the interconnected nature of the region's water resources and the need for a comprehensive approach to water management under the Moratorium.

Zach Hill Testimony:

The expert report and testimony by Zach Hill titled "*Summary Ground Water Use Data in the Big Wood River Ground Water Management Area*" (See SVGWD Exhibit 206) (Hill report) also

provides a critical foundation for supporting the Director's Moratorium Order. The Hill report presents a thorough examination of the hydrological impacts in the BWRGWMA. Unlike the Sullivan Report, which is limited in scope and timeframe, Hill's analysis delves into the long-term and cumulative effects of ground water pumping, offering a more holistic view of the situation.

The Hill report first looked at a 5-year over average of historic ground water use for entities in the BWRGWMA prior to the adoption of the new ground water management plan adopted in 2022 after the 2021 curtailment hearing. The Hill report then used this baseline to analyze the total use by the ground water users in in the BWRGWMA in 2022 after the management plan was put into place. The Hill report determined that the Cities diverted approximately 27% of all the ground water pumped in the BWRGWMA and only reduced 9% from their baseline, whereas other entities had reduced up to 49% of their baseline pumping. SVGWD Exhibit 206 pg. 6. The Hill report elaborated that the more substantial reductions implemented by the GWDs, compared to other entities, stemmed from the concentration of numerous irrigation wells north of Glendale Bridge, which currently fall outside the jurisdiction of any GWD. This scenario prompted the Hill Report to advocate for additional investigation to ascertain the precise impact of these non-GWD ground water users on Silver Creek's flows. SVGWD Exhibit 206 pg. 7-8.

Ultimately, the Hill report's analysis "confirmed significant interaction between surface water and ground water in the BWRGWMA." SVGWD Exhibit 206 pg. 7. The Hill report not only points to the direct impacts of ground water pumping but also sheds light on the indirect effects. This includes the analysis of how reduced flows into the Big Wood River due to upstream pumping affect the entire hydrological system, including Silver Creek. This approach contrasts sharply with the Sullivan Report, which overlooks these broader systemic impacts. This limitation significantly undermines the Sullivan Report's findings.

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Hill's report findings are instrumental in understanding the dynamics of water use and its management within the BWRGWMA. The detailed analysis of ground water use, both baseline and for the water year 2022, underscores the effectiveness of the Management Plan in reducing consumptive ground water use. Furthermore, based on his analysis, the plan should be reanalyzed to include areas North of Glendale Bridge. Particularly noteworthy is the report's emphasis on the significant interaction between surface water and ground water in the BWRGWMA. This interaction is a key factor in the Director's decision to implement the Moratorium Order. The data-driven approach of Hill's report provides a robust basis for this decision, illustrating the necessity of managing ground water withdrawals to protect the interconnected water sources. Hill's report aligns with the Director's ongoing commitment to a comprehensive and evolving understanding of the BWRGWMA's water resources. In conclusion, Hill's report substantiates the findings of the Moratorium Order.

Erick Powell and David Shaw

The Technical Memo – *Joint Expert Witness Report* by Erick Powell, Ph.D., P.E., and David Shaw, P.E., dated August 11, 2023 (“Powell Shaw Report”), provides a critical counterpoint to the assertions made by the Sullivan Report. *See* SVGWD Exhibit 204. The Powell Shaw Report utilizes the Wood River Valley Groundwater Model version 1.1 (WRV 1.1) to demonstrate the impact of pumping on Silver Creek. Powell and Shaw note, “While the percentage of impact to Silver Creek is substantially less than in the Big Wood River, the model predicts that ground water pumping will impact Silver Creek, and the impact occurs over time” SVGWD Exhibit 204, Powell & Shaw, 2023, p.3. This evidence is crucial in understanding the broader implications of ground water pumping in the area.

The Powell Shaw Report begins by addressing the Sullivan Report conclusions, stating, “Mr. Sullivan’s report relies on the IDWR staff memorandum... [but] does not evaluate the hydraulic impact of ground water diversions above Glendale Bridge on Silver Creek over a longer time period” SVGWD Exhibit 204, p.2. This statement highlights a significant oversight in Sullivan's analysis, emphasizing the need for a more comprehensive understanding of the long-term impacts of ground water pumping on Silver Creek. Furthermore, Sullivan’s admission during testimony that his review was narrowly focused on a three-month curtailment analysis further undermines the comprehensiveness of his conclusions.

The Sullivan Report, while acknowledging the impact of city pumping on the Big Wood River flows, fails to address the broader implications of these actions. The Powell Shaw Report, for instance, explains that other corollary effects from the Cities pumping North of Glendale Bridge can, for instance, cause a reduction in discharge to the Big Wood River south of the Glendale Bridge. This reduction to the Big Wood River, caused by ground water pumping by the cities, not only reduces water available for diversion by the Bypass Canal but also reduces water available for diversion by the senior water rights in the D45 and Baseline Canals. *See* SVGWD Exhibit 204, Powell & Shaw, 2023, p.3.

A key point in the report is the challenge to Sullivan's use of the term ‘material hydraulic impact’. Powell and Shaw assert, “Mr. Sullivan does not present evaluation criteria used to make this determination; therefore, we are uncertain what this term means” SVGWD Exhibit 204, Powell & Shaw, 2023, p.3. This lack of clarity in Sullivan's report underscores the need for more precise and scientifically grounded criteria in assessing the impacts of ground water pumping. The report also addresses the issue of mitigation, based on Sullivan's claim that potential impacts from upstream pumping on Silver Creek through water right linkage are difficult to quantify, stating,

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“just because an impact is difficult to quantify, that doesn’t eliminate the obligation of ground water pumpers to provide mitigation of impacts” SVGWD Exhibit 204 Powell & Shaw, 2023, p.3. This statement is a powerful argument for the responsibility of all ground water users to engage in mitigation efforts, regardless of the challenges in quantifying specific impacts.

The Powell Shaw Report provides compelling evidence arguments against the conclusions drawn by Greg Sullivan. Their analysis underscores the necessity of a comprehensive and long-term approach to managing the interconnected water resources of the BWRGWMA and Silver Creek. It is imperative that the Moratorium Order remains unamended by Sullivan’s proposed condition, in order to ensure that all ground water pumpers participate in mitigation activities to alleviate impacts on surface water sources.

Kendra Kaiser Report:

The intricate relationship between ground water pumping and streamflow in the Big Wood River and Silver Creek is a complex and critical issue for water resource management in WB37. Dr. Kendra Kaiser’s Technical Memorandum on “*Statistical Modeling of Irrigation Season Streamflow in the Big Wood River and Silver Creek,*” dated August 10, 2023 (“Kaiser Report”), offers vital insights into this relationship. See SVGWD Exhibit 205. The Kaiser Report utilizes multivariate linear regression models to predict irrigation season streamflow. The report states, “Snow water equivalent and snowpack runoff from the Big Wood watershed above the Hailey gage are consistent predictor variables in the Silver Creek irrigation season streamflow models” See SVGWD Exhibit 205, pg. 1. This finding is crucial as it establishes a direct connection between the Big Wood River's water dynamics and the streamflow in Silver Creek, indicating that changes in one can significantly impact the other.

A critical aspect of the Kaiser Report is the challenge to the short-term focus of previous analyses. The report notes, “The Sullivan comment... is an incorrect use of the results from the Sukow modeling effort” *See* SVGWD Exhibit 205, pg. 2. This statement highlights the inadequacy of relying on short-term models to assess the impacts of ground water pumping, emphasizing the need for a longer-term perspective. One of the most significant points in Dr. Kaiser's report is the delayed response time of Silver Creek to changes in the Big Wood River of over 6 months. The report explains, “Pumping north of Glendale bridge would have a delayed response time in Silver Creek that would occur outside of the Sukow modeling timeframe” *See* SVGWD Exhibit 205, pg. 2. This insight is pivotal in understanding the full extent of the impacts of ground water pumping, which may not be immediately apparent but are nonetheless profound over time.

The findings in the Kaiser Report have significant implications for water management policies in the region. The report argues against the proposed changes to the Big Wood moratorium order requested by the Sullivan Report, stating, “The changes to the Big Wood moratorium order are not appropriate as written due to the fact that impacts on Silver Creek that originate from pumping north of Glendale bridge take longer than the 3-month modeling period” *See* SVGWD Exhibit 205, pg. 3. This stance underscores the need for policies that consider the long-term and interconnected nature of water resources in the area.

CONCLUSION

When addressing the issue presented for hearing - whether all pumping in the BWRGWMA has an impact on all surface water sources upstream from Magic Reservoir, including Silver Creek – all experts agreed that cities’ ground water pumping has an impact on flows in the Big Wood River and flows into Magic Reservoir, and all experts but Greg Sullivan agreed that cities’ ground water pumping has a significant impact on Silver Creek. The Sullivan Report did not accurately address the issue for hearing and limited its analysis to a limited three-month curtailment scenario. The findings of the Sullivan Report are not credible in light of the issue presented for hearing.

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BWLWWUA and BWCC request that, based on the expert reports and testimony presented at the hearing and the detailed analysis by Jennifer Sukow, the Director retain the existing wording of the Moratorium Order. The evidence clearly demonstrates measurable direct and secondary effects of the pumping activities north of the Glendale Bridge on the discharges to Silver Creek. This conclusion is further reinforced by the admission of Gregory Sullivan, who acknowledged the limited scope of his review, confined to a 3-month curtailment analysis, and notably omitted the broader impacts of the cities' pumping on the Big Wood River. In light of these findings, BWLWWUA and BWCC, respectfully request that the Director uphold the Moratorium Order in its existing form, recognizing the significant hydrological impacts identified through the reports and testimony of multiple experts.

DATED this 17th day of November 2023.

_____/s/_____
JERRY R. RIGBY



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

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