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DEPARTMENT OF
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE BIG WOOD GROUND WATER MANAGEMENT AREA	**CITY OF BELLEVUE'S PETITION FOR CLARIFICATION AND/OR RECONSIDERATION**

COMES NOW the City of Bellevue ("City"), by and through its attorneys of record, McHugh Bromley, PLLC, and pursuant to IDAPA 37.01.01.740. and IDAPA 37.01.01.770, hereby petitions the Director of Idaho Department of Water Resources ("Director" or "IDWR") to clarify and/or reconsider whether Paragraph 4, pages 15-16 of the *Amended Order Establishing Moratorium* ("Amended Order"), issued on July 8, 2024, allows new domestic, commercial, industrial, or other water uses that discharge to waste water treatment plants ("WWTPs") to rebut the presumption that they are fully consumptive.

INTRODUCTION

As explained in the *Amended Order*, the "Municipal Providers," which includes the City of Bellevue, presented evidence that "municipal water use rarely (if ever) is fully consumptive . . . ." *Amended Order* at 7. In the *Amended Order*, the Director stated: "As detailed in the fourth paragraph in the Order below, the Director will presume new municipal and domestic uses to be

fully consumptive but will allow an applicant to submit evidence to rebut the presumption." *Id*. at 8.

Paragraph 4 states in full:

> The moratorium does not apply to any application proposing a non-consumptive use of water as the term is used in Idaho Code § 42-605A. This exception to the moratorium shall not apply to applications for non-consumptive uses of water that will reduce the supply of water available to existing water rights because of the location or timing of return flows. Applications for ground water recharge shall be evaluated on a case-by-case basis to determine whether the proposed use is non-consumptive and whether it will reduce the supply of water to holders of existing water rights with priority dates senior to the priority date of the application. Applications for municipal purposes and for domestic use from community water systems shall be presumed to be fully consumptive. Applicants may rebut the presumption by providing substantial, detailed evidence that the proposed use is not fully consumptive, will not become more consumptive or fully consumptive over time, and will not injure existing vested water rights. A rebuttal of the presumption must address monitoring, reporting, and mitigation measures, to ensure that the proposed use does not become more consumptive or fully consumptive after it has been established. The Director may consider a rebutted presumption when assessing an application. Sufficiently rebutting the presumption alone shall not entitle an applicant to approval of its application. Irrigation proposed in connection with a domestic use will be considered consumptive. Domestic, commercial, industrial, or other water uses that result in the discharge of wastewater to a municipal or publicly owned treatment works will be considered consumptive.

Id. at 15-16 (emphasis added).

ARGUMENT

IDAPA 37.01.01.740. and IDAPA 37.01.01.770 govern the ability to petition the Director for reconsideration and clarification, respectively, of the *Amended Order*. Here, page 8 of the *Amended Order* clearly states that applicants of new municipal and domestic uses may rebut the presumption that they are fully consumptive. When read, however, in combination with Paragraph 4, pages 15-16 – and more particularly the last sentence – it is unclear if the Director also intended that new uses that discharge to WWTPs also qualify for the rebuttable presumption.

As explained through testimony and evidence at the hearing, municipal use is rarely, if ever, fully consumptive, and that in many cases substantial portions of non-consumed water are treated at and discharged to the public waters from WWTPs. It was because of this testimony and evidence that the Director issued the *Amended Order* to allow applicants on a case-by-case basis to rebut the presumption that new municipal uses are fully consumptive. *See also Amended Order* at 16 ("This moratorium does not prevent the Director from reviewing for approval on a case-by-case basis . . . [whether] an application will have no effect on prior surface and ground water rights because of its timing, location, insignificant consumption or water or mitigation provided by the application to offset injury to other rights.").

The statement made on page 8 – "the Director will presume new municipal and domestic uses to be fully consumptive but will allow an applicant to submit evidence to rebut the presumption" – appears to grant municipal applicants that discharge to WWTPs the right to rebut the fully consumptive presumption when applying for a new water right. Yet, it is unclear whether the final sentence of Paragraph 4 – "Domestic, commercial, industrial, or other water uses that result in the discharge of wastewater to a municipal or publicly owned treatment works will be considered consumptive" – also allows municipal applicants that discharge to WWTPs the right to rebut the fully consumptive presumption.

Based on its structure, a more restrictive way of reading Paragraph 4 could eliminate the rebuttable presumption for applicants for new municipal water rights that will discharge to WWTPs.

Because of the structure of Paragraph 4, and out of an abundance of caution, the City asks the Director to clarify and/or reconsider whether the rebuttable presumption also applies to new

municipal water rights that discharge to WWTPs.[1] The City contends based on the evidence at the hearing, that applications for new municipal water right (including those that will serve "domestic, commercial, industrial, or other water uses") should be entitled to rebut the presumption that they are fully consumptive even if the uses result in the discharge of wastewater to a municipal or publicly owned treatment works because substantial portions of such water may return to the public waters.

CONCLUSION

Based on the foregoing, the Director should clarify and/or reconsider that applicants for new municipal water rights which will result in the discharge of treated water from WWTPs to the public waters are entitled to the rebuttable presumption that is discussed on page 8 and pages 15-16 of the *Amended Order*..

Dated this 22nd day of July, 2024.

/s/ Candice M. McHugh
Candice M. McHugh
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[1] Paragraph 4, pages 15-16, also appears in the *Amended Snake River Basin Moratorium Order* as Paragraph 3, page 33. As stated in the *Amended Snake River Basin Moratorium Order*: "This moratorium order will only apply to applications to appropriate water within the Big Wood River Ground Water Management Area if the Big Wood River Ground Water Management Area moratorium order is withdrawn." *Amended Snake River Basin Moratorium Order* at 34. The City of Bellevue is also a party to the Snake River Basin moratorium matter and is filing this *Petition for Clarification and/or Reconsideration* in the above-captioned proceeding because the *Amended Order Establishing Moratorium* in the Big Wood River Ground Water Management Area stands on its own, independent of the moratorium in the Snake River Basin. The City of Bellevue reserves the right to also petition for reconsideration and/or clarification as to the same issue in the *Amended Snake River Basin Moratorium Order*.

CERTIFICATE OF SERVICE

I certify that on this 22nd day of July, 2024, I caused to be served a true and correct copy of the foregoing to be served by electronic mail as follows:

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