

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

IN THE MATTER OF THE BIG WOOD RIVER  
GROUND WATER MANAGEMENT AREA

**ORDER GRANTING PETITION FOR  
CLARIFICATION AND DENYING  
PETITION FOR RECONSIDERATION**

**BACKGROUND**

On May 17, 2022, the Idaho Department of Water Resources (“Department”) issued the *Order Establishing Moratorium for the Big Wood River Ground Water Management Area* (“*Big Wood Moratorium Order*”). The order included the following statement: “Applications for municipal water use and for domestic use from community water systems shall be considered fully consumptive.” *Big Wood Moratorium Order*, at 8. The City of Bellevue (“City”) subsequently filed a *Motion for Clarification and Reconsideration and Request for Hearing* (“*Request for Hearing*”). In its *Request for Hearing*, the City asked the Director to modify the order to allow an applicant for municipal use “to demonstrate that its proposed appropriation is not fully consumptive . . . .” *Request for Hearing*, at 4. The Director granted the request for hearing and held a hearing. The fully consumptive language was one of the disputed issues at hearing.

On July 8, 2024, the Director issued the *Amended Order Establishing Moratorium* (“*Amended Big Wood Moratorium Order*”), in which the Director amended the sections of the order addressing the fully consumptive language.

On July 22, 2024, the City filed *City of Bellevue’s Petition for Clarification and/or Reconsideration* (“*Petition*”). The City asks the Director to “clarify and/or reconsider” portions of the order addressing the fully consumptive language pursuant to Rules 740 and 770 of the Department’s Rules of Procedure (IDAPA 37.01.01.740 and 770). *Petition*, at 4.

**ANALYSIS**

The Department’s Rule of Procedure 770 states:

Any party may petition to clarify any order, whether interlocutory, recommended, preliminary or final. Petitions for clarification from final orders do not suspend or toll the time to petition for reconsideration or appeal the order. A petition for clarification may be combined with a petition for reconsideration or stated in the alternative as a petition for clarification and/or reconsideration.

IDAPA 37.01.01.770. The City’s *Petition* seeks clarification and, in the alternative, reconsideration. For the reasons explained below, the Director GRANTS the City’s petition for clarification and DENIES the City’s petition for reconsideration.

In the *Amended Big Wood Moratorium Order*, the Director authorized an applicant for new municipal water rights to rebut the presumption that its use is fully consumptive. *Amended Big Wood Moratorium Order*, at 8, 15–16.

The *Amended Big Wood Moratorium Order* states: “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.” *Amended Big Wood Moratorium Order*, at 8. The fourth paragraph in the Order section explains how applicants may rebut the presumption. It states in relevant part:

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.

*Amended Big Wood Moratorium Order*, at 15–16.

In its *Petition*, the City asks the Director “to clarify and/or reconsider whether the rebuttable presumption also applies to new municipal water rights that discharge to [wastewater treatment plants]<sup>1</sup>.” *Petition*, at 3–4. The City argues:

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 [wastewater treatment plants] 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 [wastewater treatment plants] the right to rebut the fully consumptive presumption.

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<sup>1</sup> In the City’s *Petition*, the City abbreviates “waste water treatment plants” to “WWTPs.” For clarity, this order uses “wastewater treatment plants” rather than the City’s abbreviation.

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 [wastewater treatment plants].

*Petition*, at 3 (emphasis in original).

In other words, the City is concerned that the Director granted applicants for municipal purposes that discharge to wastewater treatment plants the option to refute the fully consumptive presumption in one part of the order and then retracted the option in a different part of the order.

To assuage the City's concern, the Director will clarify. The *Amended Big Wood Moratorium Order* grants applicants for new water rights for municipal purposes, including those that result in the discharge of wastewater to treatment plants, the option to rebut the presumption that the use is fully consumptive. The general reference to "other water uses" in the last sentence of paragraph 4 does not override or undo the specific authorization granted in the order.

### **ORDER**

IT IS HEREBY ORDERED that the City of Bellevue's petition for clarification is GRANTED. The order is clarified as set forth in this order.

IT IS FURTHER ORDERED that the City of Bellevue's petition for reconsideration is DENIED.

Dated this 9th day of August 2024.



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MAT WEAVER  
Director

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 9th day of August 2024, the above and foregoing, was served by the method indicated below, and addressed to the following:

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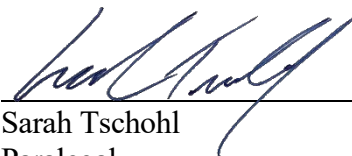
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Sarah Tschohl  
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## **EXPLANATORY INFORMATION TO ACCOMPANY AN ORDER DENYING PETITION FOR RECONSIDERATION**

**(To be used in connection with actions when a hearing was held)**

The accompanying order is an **Order Denying Petition for Reconsideration** of the "final order" or "amended final order" issued previously in this proceeding by the Idaho Department of Water Resources ("department") pursuant to section 67-5246, Idaho Code.

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days: a) of the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.