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DEPARTMENT OF  
WATER RESOURCES

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*Attorney for Boise City*

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

IN THE MATTER OF THE BOISE FRONT  
LOW TEMPERATURE GEOTHERMAL  
RESOURCE GROUND WATER  
MANAGEMENT AREA

**MEMORANDUM IN SUPPORT  
OF CITY OF BOISE'S PETITION  
TO INTERVENE**

COMES NOW, the city of Boise City, herein referred to as "Boise City," by and through its attorney, Mary R. Grant, and in support of the Petition to Intervene, filed herewith, states as follows:

**I. BACKGROUND**

On May 3, 2024, the Idaho Department of Water Resources ("Department") issued an *Order Extending Moratorium* ("Moratorium Order") extending the moratorium on further development or additional use of the low temperature geotherm ("LTG") water resources within the Boise Front Ground Water Management Area ("Boise Front GWMA") for a period of three years, ending May 5, 2027.

The moratorium in the Boise Front GWMA was first established by the Department by order on June 10, 1988. Since the time the moratorium was first placed, Boise City has been a party to informal and is subject to the moratorium as a water right owner and permit holder.

On May 17, 2024, Edwards Family LLC (“Edwards”) filed a Petition for Hearing to reconsider the timeframe for the extension of the moratorium. Edwards is seeking a longer extension of the moratorium.

Boise City requests to participate in these proceedings related to this request for hearing and reconsideration, in order to be a part of these proceedings which affects water rights of Boise City in the Boise Front GWMA.

## **STANDARDS**

Idaho Code § 42-1701A(3) states, in relevant part:

[A]ny person aggrieved by any action of the director, including any decision, determination, order or other action... and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. The director shall give such notice of the petition as is necessary to provide other affected persons an opportunity to participate in the proceeding...

Idaho Administrative Code (IDAPA) 37.01.01.350 states:

A person who is not already a party to a contested case and who has a direct and substantial interest in the proceeding may petition for an order granting intervention as a party to the contest case.

IDAPA 37.01.01.352 states:

Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing, or by the date of the initial prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions filed after this deadline are considered late and must state a good cause for delay.

A petition to intervene *will be* granted by the presiding officer, subject to reasonable conditioning, if the petition is timely filed, the petitioner shows a direct and substantial interest in the matter,

and intervention does not unduly broaden the issues of the case. IDAPA 37.01.01.353 (emphasis added).

## II. DISCUSSION

### A. Boise City's Petition to Intervene is Timely.

The Department's Rule of Procedure 352 states that a petition to intervene will be considered timely if filed at least fourteen (14) days prior to the formal hearing, or by the date of the prehearing conference, whichever is earlier, or if it is filed by a different date as provided by the Department's. IDAPA 37.01.01.352. By letter dated August 16, 2024, from the Department to the LTG water rights owners, permit holders, applicants and/or interested parties, the Department established a deadline for filing a written petition to intervene by September 23, 2024.<sup>1</sup> The Petition to Intervene and Memorandum in Support are being filed on that date and, therefore, are timely.

### B. Boise City has a Direct and Substantial Interest in this Proceeding.

Boise City owns and operates a geothermal utility system in the downtown Boise area, that depends on and utilizes the geothermal resource in the Boise Front GWMA under Boise City's permit no. 63-34325 ("Permit") and license no. 63-9139 ("License").

Pursuant to a Stipulated Agreement filed on August 29, 2017 ("Stipulated Agreement") and Order Accepting Settlement from the Department on October 16, 2017, Boise City participates in annual discussions regarding the development of its Permit, the moratorium, and the status of the LTG aquifer in the Boise Front GWMA. Boise City provided comment to Department in the spring of 2024 for the Department's consideration on any extension of the moratorium.

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<sup>1</sup> The initial Order Granting Request for Hearing and Specifying Notice Procedures; Order Appointing Hearing Officer dated August 16, 2024, established a filing deadline of September 16, 2024, which was subsequently extended.

The Department's orders regarding the moratorium have a direct and substantial effect on Boise City's geothermal water rights and its utility. Whether the moratorium is extended for a period of three years (as is currently ordered), five years, or some other timeframe has an impact on Boise City's utility planning and use of its water resources. This may include facility or system improvements, planning for and timing of any projected expansion, and ability to address the regulatory landscape of the utility in the coming years. Boise City would like the ability to participate not only as a direct water right owner and permit holder, but as it also relates to how that resource is used to provide a utility service to Boise City customers.

**C. The Interests of Boise City are not Represented by Other Parties.**

Boise City's interests are unique from that of Edwards or of other potential intervening Parties, as Boise City has geothermal utility in the downtown area, which it intends to continue growing and expanding in the future and which is distinctively situated from other geothermal utilities. It is important that Boise City be allowed to participate in this proceeding to address how the Department's decision regarding the moratorium could impact Boise City's utility.

**D. Boise City's Involvement in this Proceeding will not Broaden the Issues before IDWR.**

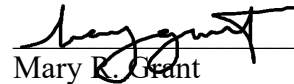
If Boise City is granted intervention, Boise City's involvement will not broaden the issues before the Department. The basis of Boise City's Petition to Intervene is in regards to the length of time established by the Moratorium Order. These issues are already before the Department for determination as outlined in the Department's Order Granting Request for Hearing and Specifying Notice Procedures; Order Appointing Hearing Officer. Boise City does not intend to introduce new or different issues other than those related to Petition for Hearing.

### **III. CONCLUSION**

Based on the foregoing, Boise City respectfully requests the Director and Presiding Officer, grant Boise City's Petition to Intervene and allow Boise City to fully participate in this proceeding.

Boise City has met the standards of intervention set forth in the Department's Rules of Procedure and orders. Boise City's Petition to Intervene is timely filed.

DATED this 23rd day of September, 2024.



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Mary R. Grant  
Deputy City Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 23rd day of September, 2024, served the foregoing documents on all parties of counsel as follows:

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