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

**FALLS WATER CO, INC. CHALLENGE
AND REQUEST FOR HEARING**

Falls Water Co., Inc. ("Falls Water"), by and through its counsel, Holden, Kidwell, Hahn & Crapo, P.L.L.C., petitions for a hearing pursuant to Idaho Code § 42-1701A(3) in the above-captioned matter.

On October 21, 2022, the Director of the Idaho Department of Water Resources ("IDWR" or "Department") issued an *Amended Snake River Basin Moratorium Order* ("Amended Moratorium Order"). This order superseded a prior moratorium order that was originally issued (and amended several times) in the 1990s, and generally speaking, seeks to accomplish three items: (1) expand the moratorium area boundary to include tributary basins to the Eastern Snake Plain Aquifer ("ESPA"); (2) expand the moratorium to surface water appropriations where the prior moratorium order only applied to ground water appropriations; and (3) declare, without any supporting findings of fact, that applications for municipal water use from community water systems are deemed to be "fully consumptive." Falls Water seeks a hearing to address the third

item described herein but reserves the right to address any other items contained in the *Amended Moratorium Order* as the contested case develops.

For the benefit of the Director and other parties to this contested case, and while not required at this stage of the contested case, Falls Water offers the following preliminary statement of the matters it intends to address at the hearing on this matter. Falls Water reserves the right to supplement and amend this statement.

The *Amended Moratorium Order* summarily concludes: “Applications for municipal water use and for domestic use from community water systems **shall be considered fully 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 Moratorium Order* at 28 (emphasis added). There are no findings of fact made to support the Director’s conclusory assumption that water use for municipal water systems “shall be considered fully consumptive.” The Director’s conclusion is made even though treated water for non-community water systems “shall be evaluated on a case-by-case basis to determine whether the proposed use is nonconsumptive.” *Id.* There are no findings and no legal analysis as to why the Director has decided to hold community and non-community treatment systems to different standards. And, while the plain language of the *Amended Moratorium Order* only applies to new applications for permit for municipal water use—which Falls Water may file in the future—the establishment of such a policy will also clearly serve as a precedential basis for how the Director will account for water diverted and treated by municipal water systems under *current* perfected water rights.

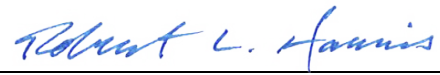
Falls Water owns and operates a community water system and primarily serves residential developments in Bonneville County, including parts of the City of Ammon, and areas north of the

City of Ammon and east of Idaho Falls. <https://fallswater.com/>. Effluent from Falls Water’s system is treated at the City of Idaho Falls wastewater treatment plant. See <https://www.idahofallsidaho.gov/379/Wastewater-Sewer>. Once Falls Water’s wastewater is treated to applicable legal requirements, it is discharged into the Snake River where it currently augments river flows and water supplies for other surface water rights. Accordingly, this water is demonstrably not “fully consumptive” under the plain language of the definition of “consumptive use” contained in Idaho Code § 42-202B(1) (“‘Consumptive use’ means that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to nonrecoverable water vapor, incorporated into products, **or otherwise does not return to the waters of the state.**”) (emphasis added). There is no intent or plans for Falls Water to change its municipal effluent treatment facilities or methods. Consequently, as it directly relates to the *Amended Moratorium Order*, any future water right appropriations made by Falls Water will be subject to the Director’s fully consumptive use presumption.

Information on how Idaho municipalities treat their effluent, and the extent of their consumptive use, is readily available and verifiable. Community water systems must be afforded the same case-by-case evaluation the Director has afforded to non-community water systems. The *Amended Moratorium Order* should be amended accordingly.

Based on the foregoing, and because the only relief allowed for in the *Amended Moratorium Order* is to contest this action by requesting a hearing, Falls Water hereby requests a hearing in this matter pursuant to Idaho Code § 42-1701A(3). Falls Water reserves the right to supplement this filing with a list of issues when so directed in this contested case.

Dated this 7th day of November, 2022.



Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2022, I served a true and correct copy of the following described pleading or document on the attorneys and/or individuals listed by the methods indicated.

Document Served: FALLS WATER CO., INC. CHALLENGE AND REQUEST FOR HEARING

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