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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

**CITY OF BELLVUE’S MOTION TO
VACATE SCHEDULE AND TO
CONSOLIDATE PROCEEDINGS AND
REQUEST FOR PRE-HEARING
CONFERENCE**

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

COMES NOW the City of Bellevue (“Bellevue”) through its attorney of record, Candice McHugh of the firm McHugh Bromley, PLLC and files this *Motion to Vacate Schedule and to Consolidate Proceedings* pursuant to IDAPA 37.01.01.555 (“Rule 555”). Bellevue requests that the two above captioned matters be consolidated and a pre-hearing conference scheduled.

On May 17, 2022, “Acting Director” Mat Weaver of the Idaho Department of Water Resources (“IDWR” or “Department”) for Director Gary Spackman issued an *Order Establishing Moratorium In the Matter of the Big Wood River Ground Water Management Area* (“BWRGWMA Moratorium”). On May 31, 2022, Bellevue requested a hearing on the

BWRGWMA Moratorium. On October 21, 2022, the Director issued an *Amended Snake River Basin Moratorium Order In The Matter of Applications for Permits for the Diversion and Use of Surface and Ground Water Within the Snake River Basin* (“Amended Moratorium Order”). On November 4, 2022, Bellevue objected to the Amended Moratorium Order and requested a hearing. The *Amended Moratorium Order* extends into and covers the location of water rights located within the “Big Wood River Ground Water Management Area” (*Amended Moratorium Order* at 28).

REQUEST FOR CONSOLIDATION AND TO VACATE BIG WOOD SCHEDULE

The Department’s Rule of Procedure 555 states:

The agency may consolidate two (2) or more proceedings for hearing upon finding that they present issues that are related and that the rights of the parties will not be prejudiced. In consolidated hearings the presiding officer determines the order of the proceeding.

The *Amended Moratorium Order* overlaps the area of the Big Wood River Moratorium, thus, a party with interests in both the *BWRGWMA Moratorium* and the *Amended Moratorium Order* must raise its issues in both in order to not waive issues in either one. Currently there are three parties that have filed in both matters and it is anticipated that the parties to the *BWRGWMA Moratorium* will need to become parties to the *Amended Moratorium Order* because the areas overlap.

The bulk of the legal issues raised and challenged in both matters are nearly identical. For instance, the City of Bellevue’s reasons for objection to the *Amended Moratorium Order* are the list of issues Bellevue has filed in the *BWRGWMA Moratorium* matter. Furthermore, the language used in the *Amended Moratorium Order* relative to the consumptive nature of domestic and municipal use is identical in both matters.

Formal proceedings have not fully commenced in either matter. The only thing that has occurred formally in the *BWRGWMA Moratorium* matter was the filing of Bellevue's list of issues and responses thereto, a motions deadline and a scheduling conference set for December 7, 2022. Therefore, consolidation at this point will allow a schedule to fully encompass both matters. Vacating the schedule in the *BWRGMWA Moratorium* matter and consolidating both matters will also allow for a more efficient method for considering the legal issues and will avoid potentially conflicting decisions, multiple and duplicative briefs, and allow for a more effective appeal if necessary after the hearing.

REQUEST FOR PRE-HEARING CONFERENCE

Bellevue also asks that the Director set a pre-hearing conference in the *Amended Moratorium*. Currently, there is a scheduling conference set in the *BWRGWMA Moratorium* on December 7, 2022. Converting the December 7, 2022 date to the pre-hearing date for the *Amended Moratorium* and to consider the City's motions would keep both matters moving forward for timely consideration by the Director. In addition, because there is time for parties to timely join the *Amended Moratorium* and because the two matters are so closely related, there is no prejudice to any party to have the matters consolidated. On the contrary, subjecting parties to two contested cases that raise identical issues will prejudice those parties and possibly subject them to unnecessary and duplicative briefing and possibly conflicting outcomes and cause confusion on appeal if the matters are not heard together.

Thus, Bellevue asks that this Motion be granted, the two matters consolidated and that the December 7, 2022 date be a pre-hearing conference in both matters.

DATED this 15th day of November, 2022.



Candice M. McHugh

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of November, 2022, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

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