

Michael P. Lawrence [ISB No. 7288]
Charlie S. Baser [ISB No. 10884]
Givens Pursley LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
mpl@givenspursley.com
csb@givenspursley.com
Attorneys for Veolia Water Idaho, Inc.

**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

**VEOLIA'S PETITION
TO INTERVENE**

Veolia Water Idaho, Inc. ("Veolia"), by and through its attorneys Givens Pursley LLP, hereby submits this *Petition to Intervene* in the above-captioned matter pursuant to Rules 350 through 354 of the Idaho Department of Water Resources ("Department" or "IDWR"), IDAPA 37.01.01.350 to 354.

BACKGROUND

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"). Among other things, the *Amended Moratorium Order* (1) expands the prior moratorium area boundary to include basins deemed tributary to the Eastern Snake Plain Aquifer, (2) expands the moratorium to surface water appropriations where the prior moratorium order only applied to ground water appropriations, and (3) declares, without any factual or legal support, that "[a]pplications for municipal water use and for domestic use from community water systems shall

be considered fully consumptive.” *Amended Moratorium Order* at 28. A number of parties have challenged the *Amended Moratorium Order* and have requested a hearing pursuant to I.C. § 42-1701A(3).

LEGAL STANDARD

Entities that are “not already a party to a contested case and who ha[ve] a direct and substantial interest in the proceeding may petition for an order granting intervention as a party to the contested case.” IDAPA 37.01.01.350. A timely filed petition to intervene showing “a direct and substantial interest in any part of the subject matter of a contested case” that “does not unduly broaden the issues” must be granted “subject to reasonable conditions, unless the applicant’s interest is adequately represented by existing parties.” IDAPA 37.01.01.353. “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.” IDAPA 37.01.01.352.

ANALYSIS

Veolia’s *Petition to Intervene* is timely because no formal hearing or initial prehearing conference has yet been set or conducted in this matter, and the Department has not issued any order or notice establishing a different time for filing a petition to intervene. For the reasons discussed below, Veolia’s intervention must be granted because Veolia has a direct and substantial interest in the subject matter of this contested case, Veolia’s participation will not unduly broaden the issues, and Veolia’s interest is not adequately represented by existing parties.

I. Veolia has a direct and substantial interest in this matter.

Veolia is a regulated public utility that holds surface and ground water rights in the Boise River Basin under which it diverts water for delivery to its municipal customers within its certificated service area, which currently includes parts of the Cities of Boise, Eagle, Garden City,

and Meridian, as well as parts of unincorporated Ada County. Veolia provides water to customers throughout its service area for various municipal purposes, including domestic in-home use, irrigation of homes and public spaces, commercial use, industrial use, and aesthetic and environmental use, among others.

Veolia has a direct and substantial interest in the *Amended Moratorium Order* and desires to intervene in this matter because decisions may be made in this matter that could directly affect Veolia and its ability to supply water to its customers. Specifically, Veolia is concerned with the Department's new policy that applications for municipal water use will be considered fully consumptive. The *Amended Moratorium Order* contains no findings of fact or conclusions of law to support this policy. This policy is contrary to the reality that municipal water use is only potentially fully consumptive, and in practice is rarely (if ever) fully consumed. Like many other municipal providers, the municipal water that Veolia supplies to its customers is not fully consumed.

While Veolia's service area is not within the moratorium area boundary imposed by the *Amended Moratorium Order*, Veolia is nevertheless concerned about the state-wide precedent that may be set in this proceeding. The Department already has demonstrated its apparent intent to impose its new policy in multiple basins—first in the Big Wood River basin, and now in the Snake River Basin. To the extent the new policy continues in any basin, Veolia believes it should not be extended to the Boise River Basin.

Furthermore, Veolia is concerned that the Department may extend its new policy into other administrative contexts, such as delivery calls. It is not appropriate to treat all municipal water use as fully consumptive in any context where the municipal provider can show that its municipal use is not fully consumptive.

In sum, Veolia has a direct and substantial interest in ensuring that the Department's new policy is reversed and, in any case, is not extended to the Boise River Basin or other administrative contexts.

II. Veolia's participation would not broaden the issues.

Whether municipal use should be considered fully consumptive already is at issue in this proceeding by virtue of other parties' challenges, requests for hearings, and interventions. *See, e.g., City of Idaho Falls Challenge and Request for Hearing* (Nov. 4, 2022) and *City of Hailey's Challenge and Request for Hearing* (Nov. 7, 2022). Accordingly, Veolia's participation on this issue would not broaden the issues in this proceeding.

III. Veolia's interests are not adequately represented by existing parties.

Veolia is the largest municipal water provider in the state of Idaho. Its service area is located in the Boise River Basin, which includes two of the fastest growing counties in the state. No other parties to this matter are located within the Boise River Basin, and none have the same water supply demands or challenges as Veolia. It is impossible for any other municipal provider to adequately represent Veolia's interests in this proceeding.

CONCLUSION

Based on the foregoing, Veolia respectfully requests that this *Petition to Intervene* be granted and Veolia be allowed to fully participate as a party in this proceeding.

Respectfully submitted this 21st day of November, 2022.

GIVENS PURSLEY LLP



By _____

Michael P. Lawrence
Attorneys for Veolia Water Idaho, Inc.



By _____

Charlie S. Baser
Attorneys for Veolia Water Idaho, Inc.

CERTIFICATE OF MAILING

I certify that on this 21st day of November, 2022, the foregoing document was filed and served on the following parties as indicated below:

FILED:

Idaho Department of Water Resources	<input type="checkbox"/>	U. S. Mail
PO Box 83720	<input type="checkbox"/>	Hand Delivered
Boise, ID 83720	<input type="checkbox"/>	Overnight Mail
file@idwr.idaho.gov	<input type="checkbox"/>	Facsimile
	<input checked="" type="checkbox"/>	E-mail

SERVICE/COURTESY COPIES:

Garrick L. Baxter	<input type="checkbox"/>	U. S. Mail
Deputy Attorney General	<input type="checkbox"/>	Hand Delivered
Idaho Department of Water Resources	<input type="checkbox"/>	Overnight Mail
PO Box 83720	<input type="checkbox"/>	Facsimile
Boise, ID 83720-0098	<input checked="" type="checkbox"/>	E-mail
garrick.baxter@idwr.idaho.gov		

Robert L. Harris	<input type="checkbox"/>	U. S. Mail
Holden, Kidwell, Hahn & Crapo, P.L.L.C.	<input type="checkbox"/>	Hand Delivered
P.O. Box 50130	<input type="checkbox"/>	Overnight Mail
1000 Riverwalk Drive, Suite 200	<input type="checkbox"/>	Facsimile
Idaho Falls, ID 83405	<input checked="" type="checkbox"/>	E-mail
rharris@holdenlegal.com		

Candice McHugh	<input type="checkbox"/>	U. S. Mail
Chris M. Bromley	<input type="checkbox"/>	Hand Delivered
McHugh Bromley, PLLC	<input type="checkbox"/>	Overnight Mail
380 S. 4th St., Ste. 103	<input type="checkbox"/>	Facsimile
Boise, ID 83702	<input checked="" type="checkbox"/>	E-mail
cmchugh@mchughbromley.com		
cbromley@mchughbromley.com		

Norman M. Semanko	<input type="checkbox"/>	U. S. Mail
PARSONS BEHLE & LATIMER	<input type="checkbox"/>	Hand Delivered
800 W. Main St., Suite 1300	<input type="checkbox"/>	Overnight Mail
Boise, ID 83702	<input type="checkbox"/>	Facsimile
nsemanko@parsonsbehle.com	<input checked="" type="checkbox"/>	E-mail

Albert P. Barker
Travis L. Thompson
Michael A. Short
John K. Simpson
BARKER ROSHOLT & SIMPSON LLP
PO Box 63
Twin Falls, ID 83303-0063
apb@idahowaters.com
flt@idahowaters.com
mas@idahowaters.com
jks@idahowaters.com

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Jerry R. Rigby
Chase T. Hendricks
RIGBY, ANDRUS & RIGBY
25 North Second East
Rexburg, ID 83440
jrigby@rex-law.com
chendricks@rex.law.com

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

James R. Laski
Heather E. O'Leary
LAWSON LASKI CLARK, PLLC
PO Box 3310
675 Sun Valley Rd., Suite A
Ketchum, ID 83340
jrl@lawsonlaski.com
heo@lawsonlaski.com

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Sarah A. Klahn
Somach Simmons & Dunn
2033 11th Street, #5
Boulder, CO 80302
sklahn@somachlaw.com

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Dylan B. Lawrence
Varin Thomas LLC
242 N. 8th Street, Suite 220
P.O. Box 1676
Boise, Idaho 83701-1676
dylan@varinthomas.com

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

W. Kent Fletcher
FLETCHER LAW OFFICE
PO Box 248
Burley, ID 83318
wkf@pmt.org

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Randall C. Budge
Thomas J. Budge
RACINE OLSON, PLLP
PO Box 1391
Pocatello, ID 83204-1391
randy@racineolson.com
tj@racineolson.com

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail



Michael P. Lawrence