

Dylan B. Lawrence, ISB No. 7136
Varin Thomas LLC
242 N. 8th Street, Suite 220
P.O. Box 1676
Boise, Idaho 83701-1676
Telephone: (208) 345-6021
Facsimile: (866) 717-1758
dylan@varinthomas.com

Attorneys for Petitioner Elmore County, Board of County Commissioners

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)
_____)

**RESPONSE TO MOTION TO
CONSOLIDATE PROCEEDINGS**

The Board of Commissioners of Elmore County, through undersigned counsel of record, hereby files this response to the City of Bellevue’s November 14, 2022 Motion to Consolidate Proceedings (the “Motion”), pursuant to the Department’s Rule of Procedure 220.02(b).

I. INTRODUCTION

The Motion asks the Department to consolidate proceedings involving the October 21, 2022 Amended Snake River Basin Moratorium Order (the “Snake River Order”) with proceedings involving the May 17, 2022 moratorium order in the Big Wood River Ground Water Management Area (the “Big Wood Order”). As the Motion correctly notes, Rule of Procedure 555 allows consolidation of two or more proceedings when (1) “they present

issues that are related,” and (2) “the rights of the parties will not be prejudiced.” For the following reasons, Elmore County does not believe these requirements are met as to the County’s petition for hearing.

II. LEGAL ANALYSIS

Elmore County filed its Petition for Hearing challenging the Snake River Order on November 4, 2022. Paraphrasing for the sake of brevity, Elmore County’s Petition asserts a moratorium on the mainstem of the Snake River between Swan Falls and King Hill is unnecessary because average flows on the Snake River remain above minimum stream flows at the Murphy Gage most of the time, applications for diversions of Trust Water are already subject to a public interest evaluation, and appropriations from the Snake River can be conditioned and regulated in real time to satisfy the prior appropriation doctrine. (*See generally* Elmore County Pet. for Hearing of 11/4/22, pp. 3-4).

The Motion asserts:

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.

(Motion, p. 2).

The primary issue raised in the City of Bellevue’s challenge to the Snake River Order is whether applications for municipal water use and domestic water use from community water systems “shall be considered fully consumptive.” (*See* City of Bellevue Objection and Request for Hearing of 11/4/22, p. 1). Indeed, objections and petitions to intervene filed by these additional nine parties seek to address that issue: City of Ammon;

City of Idaho Falls; Coalition of Cities; Wellsprings Group, LLC; City of Hailey; Falls Water Co., Inc.; City of Pocatello; City of Meridian; and Veolia Water Idaho, Inc.

Elmore County expresses no opinion regarding consolidation of proceedings involving the Snake River Order and the Big Wood Order that are specific to the issue of the consumptive nature of municipal water uses. However, pursuant to Procedural Rule 555, this issue is not “related” to the issues raised in Elmore County’s petition.

Moreover, the municipal issues raised by the City of Bellevue and others are overarching issues of statewide importance. By contrast, Elmore County’s petition, comparatively speaking, is more narrowly tailored to the propriety of a moratorium on the mainstem Snake River between King Hill and Swan Falls and its effect on the County’s pending application for permit from the Snake River. For Elmore County’s application to be further delayed by consolidating its petition with other unrelated proceedings would prejudice the rights of the County pursuant to Rule of Procedure 555.

III. CONCLUSION

Based on the foregoing, Elmore County respectfully requests that its Petition for Hearing involving the Snake River Order not be consolidated with proceedings regarding the consumptiveness of municipal water rights.

DATED THIS 29th day of November, 2022.

Varin Thomas LLC

By: 

Dylan B. Lawrence
Attorneys for Elmore County, Board of
County Commissioners

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of November, 2022, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Original:

Idaho Department of Water Resources	<input type="checkbox"/>	U.S. Mail
322 E. Front Street	<input type="checkbox"/>	Overnight Mail
Boise, Idaho 83702	<input type="checkbox"/>	Hand Delivery
file@idwr.idaho.gov	<input type="checkbox"/>	Fax
	<input checked="" type="checkbox"/>	Email

With copies to:

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

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

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

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
tlt@idahowaters.com
mas@idahowaters.com
jks@idahowaters.com

U.S. Mail
 Overnight Mail
 Hand Delivery
 Fax
 Email

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
 Overnight Mail
 Hand Delivery
 Fax
 Email

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
 Overnight Mail
 Hand Delivery
 Fax
 Email

Thomas J. Budge
Elisheva M. Patterson
RACINE OLSON, PLLP
PO Box 1391
Pocatello, ID 83204-1391
tj@racineolson.com
elisheva@racineolson.com

U.S. Mail
 Overnight Mail
 Hand Delivery
 Fax
 Email

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

U.S. Mail
 Overnight Mail
 Hand Delivery
 Fax
 Email

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

U.S. Mail
 Overnight Mail
 Hand Delivery
 Fax
 Email

Michael P. Lawrence
Charlie S. Baser
Givens Pursley LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
mpl@givenspursley.com
csb@givenspursley.com

U.S. Mail
 Overnight Mail
 Hand Delivery
 Fax
 Email



Dylan B. Lawrence