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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 )  
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**MEMORANDUM AND STATEMENT  
OF POSITION FOR PREHEARING  
CONFERENCE**

The Board of Commissioners of Elmore County, through undersigned counsel of record, hereby files this memorandum and statement of position in advance of the upcoming prehearing conference scheduled for Friday, March 10, 2023, pursuant to the Department’s Rule of Procedure 562 and the Director’s order of December 6, 2022.

**I. BACKGROUND**

Elmore County has filed two documents in the proceedings stemming from the Department’s Amended Snake River Basin Moratorium Order of October 21, 2022 (the “Moratorium Order”). First, the County filed its own Petition for Hearing on November 4, 2022, requesting a hearing regarding the Moratorium Order’s application to the mainstem Snake River between King Hill and Swan Falls Dam. Second, on November 29, 2022, the County filed a

response to the City of Bellevue’s motion to consolidate the proceedings involving the Moratorium Order with proceedings related to a separate moratorium order applicable to the Big Wood River Ground Water Management Area. That response argued that the County’s petition should not be consolidated with proceedings addressing the propriety of the Department’s assumption that all municipal water rights are fully consumptive (the “Municipal Issue”).

In the order scheduling the March 10 prehearing conference, the Director instructed:

Parties should be prepared to address consolidating the two proceedings on common issues related to the consumptive nature of municipal water use or domestic water use from a community system. ***Parties should also be prepared to address bifurcating or otherwise expediting proceedings on the issues raised in the Snake River Basin proceeding by the Elmore County Board of Commissioners.***

(Order of 12/6/22, at p. 3) (emphasis added).

## II. LEGAL ANALYSIS

The Department’s Rule of Procedure 562 provides that “[i]n any contested case, any party may ask to file briefs, memoranda,...or statements of position....” Elmore County files this memorandum in order to aid the discussion at the prehearing conference. This seems appropriate in light of the Director’s instructions in the December 6 order.

The following table attempts to summarize the initial filing by each party to these proceedings:

<u>No.</u>	<u>Date</u>	<u>Party</u>	<u>Title</u>	<u>Requested Relief</u>
1	11/4/22	City of Ammon	Challenge and Request for Hearing	Hearing on Municipal Issue
2	11/4/22	City of Bellevue	Objection and Request for Hearing	Hearing on Municipal Issue

<u>No.</u>	<u>Date</u>	<u>Party</u>	<u>Title</u>	<u>Requested Relief</u>
3	11/4/22	City of Idaho Falls	Challenge and Request for Hearing	Hearing on Municipal Issue
4	11/4/22	Coalition of Cities	Objection and Request for Hearing	Hearing on Municipal Issue
5	11/4/22	Elmore County	Petition for Hearing	Hearing regarding moratorium on pending applications from mainstem Snake River between King Hill and Swan Falls, instead of relying upon prior appropriation doctrine and water district to regulate diversions
6	11/4/22	Wellsprings Group	Challenge and Request for Hearing	Hearing on Municipal Issue
7	11/7/22	City of Hailey	Challenge and Request for Hearing	Hearing on Municipal Issue
8	11/7/22	Falls Water Co.	Challenge and Request for Hearing	Hearing on Municipal Issue
9	11/14/22	City of Pocatello	Petition to Intervene	Approval to intervene in “this action” to protect municipal water rights and ability to acquire water rights in future
10	11/15/22	IGWA	Petition to Intervene	Approval to intervene in “this matter” in light of mitigation requirements
11	11/16/22	Upper Valley Districts	Petition to Intervene	Approval to intervene in “this matter,” referencing petitions filed by City of Hailey and Falls Water Co.
12	11/21/22	City of Meridian	Petition to Intervene	Approval to intervene in this matter, describing Municipal Issue
13	11/21/22	Veolia	Petition to Intervene	Approval to intervene in this matter, describing Municipal Issue
14	11/29/22	Idaho Power	Petition to Intervene	Approval to intervene in this matter in order to protect hydropower interests
15	12/6/22	City of Boise	Petition to Intervene	Approval to intervene in this matter, describing Municipal Issue
16	12/6/22	City of Post Falls	Petition to Intervene	Approval to intervene in this matter, describing Municipal Issue
17	12/6/22	Surface Water Coalition	Petition to Intervene	Approval to intervene in this matter

<u>No.</u>	<u>Date</u>	<u>Party</u>	<u>Title</u>	<u>Requested Relief</u>
18	2/9/23	Aberdeen-Springfield Canal	Petition to Intervene	Approval to intervene in this matter, describing issuance of permits upstream of Milner Dam


The vast majority of the parties have sought to participate in this proceeding due to their interest in the Municipal Issue or based upon interests they hold in the upper Snake River Basin. None of the petitions filed by other parties have referenced Elmore County’s petition specifically or have expressed an interest in addressing the same issue raised by Elmore County’s petition. The only filing that can be fairly read to raise or encompass similar issues is the November 29 Petition to Intervene filed by Idaho Power.

### III. CONCLUSION

Based on the foregoing, it is Elmore County’s position that (1) its Petition for Hearing should proceed separately from the other petitions and challenges to the Moratorium Order; and (2) the County and Idaho Power are the only appropriate parties to proceedings related to the County’s Petition for Hearing.

DATED THIS 6th day of March, 2023.

Varin Thomas LLC

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

## CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of March, 2023, 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
<a href="mailto:file@idwr.idaho.gov">file@idwr.idaho.gov</a>	<input type="checkbox"/>	Fax
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*With copies to:*

Robert L. Harris	<input type="checkbox"/>	U.S. Mail
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A handwritten signature in blue ink that reads "Dylan Lawrence". The signature is written in a cursive style with a large initial "D" and a long horizontal flourish at the end.

Dylan B. Lawrence