

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF BIG WOOD RIVER
GROUND WATER MANAGEMENT AREA

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

**ORDER CONSOLIDATING
PROCEEDINGS FOR HEARING,
AUTHORIZING DISCOVERY, AND
SCHEDULING; NOTICE OF HEARING**

BACKGROUND

The Director of the Idaho Department of Water Resources (“Department”) issued orders establishing moratoriums suspending further action on certain applications to appropriate water in southern Idaho. Several affected water users filed petitions challenging the Director’s orders. The petitions initiated contested case proceedings.

The first proceeding pertains to the May 17, 2022 *Order Establishing Moratorium* for the Big Wood River Ground Water Management Area (“Big Wood Moratorium”). The second proceeding pertains to the October 21, 2022 *Amended Snake River Basin Moratorium Order* (“Snake Moratorium”).

On November 15, 2022, the City of Bellevue filed a *Motion to Vacate Schedule and Consolidate Proceedings and Request for Pre-Hearing Conference* (“Bellevue Motion”). Among other things, the Bellevue Motion notes that both the Big Wood Moratorium and the Snake Moratorium use “identical” language “relative to the consumptive nature of domestic and municipal use.” *Bellevue Motion* at 2. The City of Bellevue also notes that identical parties are participating in both the Big Wood River Basin and the Snake River Basin proceedings, such that “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.” *Id.* at 3.

On December 6, 2022, the Director issued an *Order Appointing Department Contact for Joint Informal Proceedings and Vacating Prehearing Conference; Notice of Joint Prehearing Conference*. The order applied to both the Big Wood Moratorium and Snake Moratorium matters. To date, the parties have engaged in three joint, informal settlement conferences but have not filed a formal agreement with the Department.

The Department held a joint prehearing conference on March 10, 2023. During the joint prehearing conference, the parties agreed that the moratorium orders present a common issue regarding language contained in both orders: “Applications for municipal water use and for domestic use from community water systems shall be considered fully consumptive.” *Big Wood Moratorium* at 8; *Snake Moratorium* at 28. Counsel for the Board of Commissioners of Elmore

County also raised a separate issue, unique to the Snake Moratorium proceedings, regarding the necessity of issuing a “moratorium on pending applications from mainstem Snake River between King Hill and Swan Falls.” Mem. & Statement Position for Prehr’g at 3, *In re Appls. for Permit for Diversion & Use of Surface & Ground Water Within Snake River Basin*. In addition, counsel for the City of Bellevue stated a desire to address at hearing “[w]hether all pumping in the BWGWMA has an impact on all surface water sources upstream from Magic Reservoir, including Silver Creek.” Bellevue’s List of Issues for Hr’g ¶ 1, *In re Big Wood River Ground Water Mgmt. Area*. After some discussion surrounding the issues for hearing, the parties did not oppose a proposal to consolidate the contested proceedings for hearing, with the understanding that each issue would be taken up separately and consecutively. During the joint prehearing conference, the parties also asked to initiate discovery and agreed to a discovery and hearing schedule. The Director stated on the record that discovery was authorized to begin immediately.

CONSOLIDATION OF PROCEEDINGS

Pursuant to Rule 555 of the Department’s Rules of Procedure, “[t]he 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.” IDAPA 37.01.01.555. Both the Big Wood Moratorium and Snake Moratorium orders determine the consumptive nature of municipal water use or domestic water use from a community system. Consolidating these contested proceedings for hearing will promote administrative efficiency and limit the expenditure of resources by the parties. Moreover, consolidating the proceedings for hearing does not prejudice the rights of the Board of Commissioners of Elmore County or the City of Bellevue to raise their unique issues at hearing.

ORDER

IT IS HEREBY ORDERED that the contested proceedings for the Big Wood Moratorium and Snake Moratorium matters are consolidated for hearing pursuant to IDAPA 37.01.01.555.

IT IS FURTHER ORDERED that the parties are authorized to conduct and engage in discovery pursuant to IDAPA 37.01.01.521 as of March 10, 2023.

IT IS FURTHER ORDERED that the following schedule is ADOPTED:

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| April 7, 2023 | Deadline for the Department to identify the Department employees that will testify at hearing and documents that may be relied upon at hearing. A general summary of testimony shall be provided for each employee identified. |
| May 8, 2023 | Deadline for the parties to exchange a list of lay and expert witnesses and identify documents that may be relied upon at hearing. A general summary of testimony shall be provided for each witness identified. While discovery is ongoing, should a party identify additional witnesses or documents, this requirement is subject to a duty to supplement. |

- June 9, 2023** Deadline for each party to deliver to the parties copies of their expert reports. This production deadline applies only to those parties who intend to argue against:
- (a) the Director’s conclusion that “[a]pplications for municipal water use and for domestic use from community water systems shall be considered fully consumptive”;
 - (b) the Director’s issuance of a “moratorium on pending applications from mainstem Snake River between King Hill and Swan Falls”;
or
 - (c) the Director’s conclusion regarding the impact of pumping on surface water sources upstream from Magic Reservoir, including Silver Creek.
- June 12, 2023** Depositions may begin of the experts identified for purposes of meeting the above June 9, 2023 deadline.
- July 14, 2023** Deadline for each party to deliver to the parties copies of their expert reports. This production deadline applies only to those parties who intend to argue in support of:
- (a) the Director’s conclusion that “[a]pplications for municipal water use and for domestic use from community water systems shall be considered fully consumptive”;
 - (b) the Director’s issuance of a “moratorium on pending applications from mainstem Snake River between King Hill and Swan Falls”;
or
 - (c) the Director’s conclusion regarding the impact of pumping on surface water sources upstream from Magic Reservoir, including Silver Creek.
- July 17, 2023** Depositions may begin of the experts identified for purposes of meeting the above July 14, 2023 deadline.
- Oct. 2, 2023** Deadline for the parties to: 1) complete all discovery, 2) submit pretrial briefs, if desired, and 3) file with the Department their lists of proposed hearing exhibits and lay and expert witnesses they intend to rely upon at the hearing. The parties shall coordinate among themselves to ensure proposed hearing exhibits are numbered in a nonrepeating manner.
- Oct. 12, 2023** Deadline for the parties to exchange copies and to provide the Department with one electronic copy (via e-file email, USB thumb

drive, or disc(s)) of their marked and numbered, proposed hearing exhibits. The parties shall also provide the Department with three physical, collated copies of their marked and numbered, proposed hearing exhibits no later than the start of the first hearing day.

NOTICE OF HEARING


NOTICE IS HEREBY GIVEN that the Director of the Department, Gary Spackman, will hold a consolidated hearing on the Big Wood Moratorium and Snake Moratorium matters. The hearing will be held on **October 16–19, 2023, beginning each day at 9:00 AM (MST), in Conference Rooms 602C–D at the Department’s State Office**, located at 322 E. Front Street, 6th Floor, Boise, Idaho. The first day of the hearing, October 16, 2023, will be dedicated to hearing the issue raised by the Board of Commissioners of Elmore County that is unique to the Snake Moratorium matter. The second day of the hearing, October 17, 2023, will begin with addressing the common issue involving the consumptive nature of municipal water use or domestic water use from a community system. Bellevue’s issue will be heard upon the conclusion of hearing the aforementioned common issue.

All parties who wish to participate in the hearing must be present in person. Remote participation will be allowed for those who wish to only observe the hearing. To request remote participation information, contact Sarah Tschohl at the phone number or email listed below.

The hearing will be held in accordance with the provisions of Chapter 2 and 17, Title 42, and Chapter 52, Title 67, Idaho Code, and the Department's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department upon request or at <https://adminrules.idaho.gov/rules/current/37/370101.pdf>.

The hearing will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations to attend, participate in, or understand the hearing, please advise the Department no later than five (5) days before the hearing. Inquiries for special accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098, telephone: (208) 287-4800, email sarah.tschohl@idwr.idaho.gov.

DATED this 31st day of March 2023.



Gary Spackman
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of March 2023, the above and foregoing, was served by the method indicated below, and addressed to the following:

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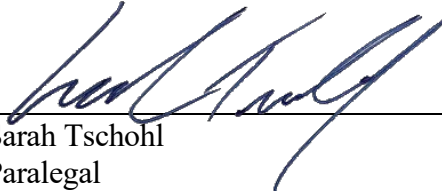
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