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DEPARTMENT OF
WATER RESOURCES

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**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
PERMITS FOR THE DIVERSION AND USE
OF SURFACE AND GROUND WATER
WITHIN THE SNAKE RIVER BASIN**

**MUNICIPAL PROVIDERS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

COME NOW City of Pocatello, City of Bellevue, City of Hailey, City of Idaho Falls,
City of Ammon, Coalition of Cities¹, Falls Water Co., Inc., Veolia Water Idaho Inc. (“Veolia”),

¹ The Coalition of Cities is composed of the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell.

and Wellsprings Group, LLC (collectively, the “Municipal Providers”), by and through their respective counsel of record, and hereby move the Director of The Idaho Department of Water Resources (“IDWR”) to enter partial summary judgment, pursuant to Idaho Rules of Civil Procedure (“I.R.C.P.”) Rule 56 and IDAPA 37.01.01.220.03, finding that the phrase “Applications for municipal water use and for domestic use from community water systems shall be considered fully consumptive,” found in the *Amended Snake River Basin Moratorium Order*² (“Amended SRB Moratorium Order”) at page 28, is not based in fact or law and thus must be removed from the *Amended SRB Moratorium Order*. Filed concurrently herewith in support of this *Motion* are the *Municipal Providers’ Memorandum in Support of Motion for Partial Summary Judgment*, and *Affidavit of Maximilian C. Bricker in Support of Municipal Providers’ Motion for Partial Summary Judgment*.

WHEREFORE, the Municipal Providers pray the Director enter an order finding that:

1. there is no genuine dispute that municipal uses are not always fully consumptive; and
2. IDWR has no authority to require mitigation amounts in excess of the “depletive effect” or “consumptive use” amounts associated with a new appropriation because the Water Appropriation Rules, IDAPA 37.03.08, and Conjunctive Management Rules, IDAPA 37.03.11, limit IDWR’s consideration to the “depletive effect” or “consumptive use component” of water diversions to ensure injury to senior rights will be avoided (*see* IDAPA 37.03.08.045.01.a, IDAPA 37.03.11.043.03); and further

² Am. Snake River Basin Moratorium Order, *In the Matter of Applications for Permit for the Diversion and Use of Surface and Ground Water Within the Snake River Basin*, (Idaho Dep’t of Water Res. Oct. 21, 2022) (“*Amended SRB Moratorium Order*”).

3. The Director remove from page 28 of the *Amended Order* the following language:

“Applications for municipal water use and for domestic use from community water systems shall be considered fully consumptive. Applications for domestic purposes from non-community water systems shall be evaluated on a case-by-case basis to determine whether the proposed use is non-consumptive.”

and replace this language with:

“Applications for municipal water use and for domestic use shall be evaluated on a case-by-case basis to determine whether the proposed use, or some portion thereof, is non-consumptive.”

Respectfully submitted this 30th day of August, 2023.

SOMACH SIMMONS & DUNN, P.C.



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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 2023, a true and correct copy of the foregoing document was served by email and addressed to the following:

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