

177 50

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A29-00273
Date Received: 3/28/1990 4/19/90
Receipt No: 2016458
Received By: RA

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: CITY OF POCA TELLO
Address: P.O. BOX 4169
POCA TELLO, ID

83205

2. Date of Priority: OCT 01, 1917

3. Source: MINK CREEK

Trib. to: PORTNEUF RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
08S	34E	13		NE	SE		BANNOCK

5. Description of diverting works:

DIVERSION DAM, HEADGATE, PIPELINE TO SYSTEM

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
MUNICIPAL	01/01	12/31	1.218		

7. Total Quantity Appropriated is:
1.218 C.F.S. (and/or)

A.F.A.

8. Total consumptive use is

Acre Feet Per Annum.

9. Non-irrigation uses:

M/CITY OF POCA TELLO

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
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11. Place of use in counties:

12. Do you own the property listed above as place of use? NO

A29-00273

Page 1

Date: 04/16/90

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13. Other Water Rights Used:
SEE ATTACHMENT

14. Remarks:
P/U CITY OF POCA TELLO AND VICINITY, LOCATED IN BANNOCK AND POWER
COUNTIES.
FOR ADDITIONAL REMARKS, SEE ATTACHMENT.

15. Basis of Claim: DECREED
Case Number:
Court :
Decree date:

SMITH ADMIN., ET. AL.
Decree Plaintiff

vs

CITY OF POCA TELLO, ET. AL.
Decree Defendant

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am MAYOR of
_____ Title
CITY OF POCA TELLO, that I have signed the foregoing
Organization
document in the space below as MAYOR of
_____ Title
CITY OF POCA TELLO and that the statements contained in the
Organization
foregoing document are true and correct.

Peter Christadt
Signature of Authorized Agent

MAYOR / CITY OF POCA TELLO
Title and Organization

4-17-90
Date

State of Idaho

County of Bannock

)
) SS.

Subscribed and sworn (or affirmed) before me this 18th day

of April 19 90

Konnie Lee Blackburn
Notary Public

Seal

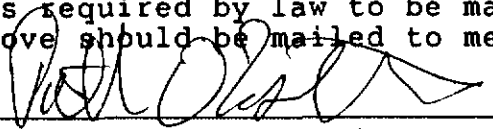
Residing at Pocatello

My Commission Expires 8-18-91

17. Notice of Appearance:

Notice is hereby given that I, Patrick D. Costello will be
Print Name

acting as attorney at law on behalf of the claimant signing above, and that
all notices required by law to be mailed by the director to the claimant
signing above should be mailed to me at the address listed below.

Signature 

Address 775 N. 8th Boise, ID 83702

Date 4/16/90

REMARKS

The Claimant's water supply system for distribution of all of its ground water and surface water supplies includes various reservoir and tank storage facilities, which are capable of being fully recharged by the quantity of water available in a 24-hour period from all of the city's sources of water. Right to use such storage facilities is therefore claimed as a part of the surface or ground water claim asserted herein.

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NOV 13 1992

81-00015

BEEMAN & HOFSTETTER, P.C.

Counselors and Attorneys at Law

608 West Franklin Street

P. O. Box 1427

Boise, Idaho 83701-1427

Josephine P. Beeman

Dana L. Hofstetter

Telephone: (208) 388-8900

Facsimile: (208) 388-8400

E-mail: beehof@micron.net

May 11, 1998

RECEIVED

MAY 15 1998

Department of Water Resources
Eastern Region

Idaho Department of Water Resources
Eastern Regional Office
Attn: Adjudication Bureau
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402-1718

Re: Designation of "service area" as place of use
All SRBA Claims for the City of Pocatello (see attached)

Dear Adjudication Agent:

We request that this letter be included in the adjudication files for the City of Pocatello regarding the designation of place of use for the City's municipal water rights. Specifically, due to statutory amendments in 1996 addressing municipal water rights, the City of Pocatello believes it would be more accurate to describe the place of use of its municipal water rights as "within the service area for the City of Pocatello." This is based upon our review of *Idaho Code* § 42-202B, which provides that the service area can be designated as a place of use for a municipal water right when the service area, although in part outside the corporate limits for the city, is within the city's established planning area and shares a common water distribution system with lands located within the corporate limits. This is true for the City of Pocatello because the areas served outside the corporate limits are within the impact area recognized in the City's comprehensive plan, the State Local Planning Act, and share a common distribution system with lands located within the corporate limits. Although the 1996 statutory change occurred after the filing of the City's municipal water rights in the Snake River Basin Adjudication, the City believes the term "service area" would more accurately define the place of use when these rights are recommended in a Director's Report to the SRBA Court.

IDWR Adjudication Bureau

Re: City of Pocatello

May 11, 1998

Page 2

The City of Pocatello believes that the SRBA is an appropriate forum to state the municipal place of use as accurately as possible. The statutes adopted in 1996 represent a codification of the common law and are not a change in the law applicable to municipal water rights existing before the statutory codification. I.C. § 42-202(11); Statement of Purpose, S.B. 1535 (Idaho 1996); Meyer, Christopher H., *Municipal Water Rights in Idaho: The Growing Communities Doctrine and Its Recent Codification*, Idaho Water Law News, Vol. 4, No. 1 Spring/Summer 1996, p. 5-6. See *Preliminary Special Master's Report for Water Right 34-10030* (City of Arco), p. 2, n.1 (dated March 18, 1997), *In Re: SRBA* (Twin Falls County Case No. 39576). Since the City's place of use for its municipal water rights has historically also included areas adjacent to the corporate limits, it is appropriate to designate its service area as the place of use in its SRBA claims.

Please call me with any questions regarding this matter.

Sincerely,

BEEMAN & HOFSTETTER, P.C.



Josephine P. Beeman

JPB:ja

Attachment

cc: Dean Tranmer (w/ attachment)

D:\1776\2097

**DILLION
BOSCH
DAW
BOCK**
Chartered

Attorneys

Josephine P. Beeman
Les Bock
Allan R. Bosch
C. A. Daw
Lee B. Dillion
Robert Wreggelsworth

Fidelity Building
242 N. 8th St.
Suite 200
Boise, ID 83702

tel (208) 344-8990
fax (208) 344-9140

Internet E-mail to:
dbdb@micron.net

A22 00273

cc: Eastern
Southern

AUG 04 1995

Department of Water Resources
Eastern District Office

July 7, 1995

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JUL 17 1995

OFFICE OF THE
ATTORNEY GENERAL

Diana Delaney, Chief Deputy Clerk
Snake River Basin Adjudication
253 3rd Ave. N.
P.O. Box 2707
Twin Falls, ID 83303-2707

RECEIVED

JUL 18 1995

Department of Water Resources
Adjudication Bureau

Re: Case No. 39576 and Subcases mailing lists

Dear Diana:

Please revise all court certificates of mailing, labels and service lists which include Josephine P. Beeman to reflect the following address change:

Josephine P. Beeman
Dillion, Bosch, Daw & Bock, Chtd.
Fidelity Building
243 N. 8th St., Suite 200
Boise, ID 83702

records modified by
Danni 8-1-95.

This change reflects a change in the law firm Ms. Beeman is associated with, but she remains legal counsel for all clients previously represented in SRBA matters.

By copy of this letter, I request counsel to similarly modify their service lists and labels.

Sincerely,

Dillion, Bosch, Daw & Bock
Chartered

By:

Debra L. Cline

Debra L. Cline, Administrative Assistant
to Josephine P. Beeman

cc: May 3, 1995 Court Certificate of Mailing for Expedited Hearings

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NOV 13 1996

29-00273

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FEB 28 1994

Department of Water Resources

LAW OFFICE

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS
CHARTERED

Eugene C. Thomas
John W. Barrett
R. B. Rock
Richard C. Fields
Robert E. Bakes
Paul S. Street
Larry C. Hunter
Glenna M. Christensen
Mark S. Prusynski
Morgan W. Richards, Jr.
Michael G. McPeck
Stephen R. Thomas
Jon S. Gorski
Gary T. Dance
Gerald T. Husch
Thomas V. Munson
Kirk R. Helvie

Thomas C. Morris
Michael E. Thomas
James C. deGlee
Christine E. Nicholas
Patricia M. Olsson
Grant T. Burgoyne
Stephen J. Olson
Patrick J. Kole
Andrew P. Doman
David S. Jensen
Ray E. Smith
Allen K. Davis
Bradley J. Williams
Mark A. Ellison
James L. Martin
Alan D. Malone
Josephine P. Beeman

FIRST SECURITY BUILDING
911 WEST IDAHO
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BOISE, IDAHO 83701

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Facsimile (208) 385-5384

February 25, 1994

Willis C. Moffatt
(1907-1980)

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Gary T. Dance
Partner in Charge
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Idaho WATS: 1 (800) 422-2889
ABA Net 010

Shelley Keen
Idaho Department of Water Resources
1301 N. Orchard Street
Boise, ID 83706

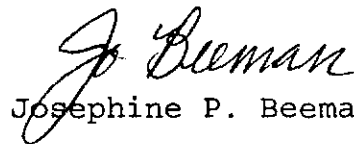
Re: City of Pocatello Reservoir List
MTBR&F File No. 15863.0000

Dear Shelley:

Enclosed is a copy of the City of Pocatello's reservoir list. Carter Fritschle reviewed the City's SRBA claims last summer and requested the reservoir list to confirm that the City's reservoir and tank storage facilities are capable of being fully recharged by the quantity of water available in a 24 hour period from all of the City's sources of water.

If you have any questions, do not hesitate to call.

Yours very truly,



Josephine P. Beeman

JPB/lis
Enclosure
cc: Dean Tranmer
Fred Ostler
Tom Dekker

MICROFILMED

APR 12 1994

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET - SUITE 700 - BOISE, IDAHO 83702
(208) 338-8200

JOSEPHINE BREMAN
(208) 338-8233

October 20, 1993

VIA FACSIMILE
503-231-6791

ATTENTION: Mr. Robert Fenton

Mr. Lynn Collins
Intermountain Regional Solicitor
United States Department of the Interior

Re: City of Pocatello Contracts for Water From the Fort Hall
Irrigation Project

Dear Mr. Collins:

We represent the City of Pocatello in the Snake River Basin Adjudication (SRBA). Earlier this month, the City Attorney for Pocatello forwarded to us letters which describe city acreage to be deleted from the SRBA claim for the Fort Hall Irrigation Project (Project). The letters explain that non-Indian land within the Project must have been irrigated between 1983 and 1987 in order to be included in the state law portion of the Project water right. The City of Pocatello's letters list 102.97 acres currently assessed by the Project. Based on actual irrigation between 1983 and 1987, the acreage would be reduced to 47.68 acres.

As a result of receiving these letters, the City of Pocatello has asked us to determine how many acres the City has under contract with the Fort Hall Irrigation Project and whether the amount of water under those contracts might be preserved for the City's use because of the unique status of municipal water rights under Idaho law. Generally, when a city acquires a water right, it can "grow into" the full amount of the water right and the water right is not subject to forfeiture.

In our efforts to understand the nature of the water right that the City of Pocatello holds within the Project (in direct contracts or assigned contracts), we have examined City records and we have asked for help from the Project (Alan Oliver), the Bureau of Indian Affairs (Robert Fenton), and the Idaho State law library to obtain historical documents regarding Project contracts held by Pocatello. We have also talked with David Shaw at the Idaho Department of Water Resources who directed us to you.

#70224W100045.LTR
Boise

NOV 13 1996

Mr. Lynn Collins
October 20, 1993
Page 2

The City of Pocatello has records which indicate that some Project contracts were deeded to the City by individuals in exchange for municipal water when structural problems made Project water difficult to deliver within the City. The City has always understood that it would have a right to use the Project water, particularly since its own municipal supplies were used as a replacement for Project water.

We also have in our possession a 1936 contract between the City of Pocatello and the project engineer for the Fort Hall Irrigation Project which identifies 602.42 Project acres within the corporate limits of the City of Pocatello. The contract is a supplemental repayment contract and identifies earlier repayment contracts from 1907 and 1922 for the same land. We have obtained copies of the 1907 and 1922 Acts of Congress, but have not been able to obtain any of the rules, regulations, or contracts under those earlier Acts. The 1907 Act does state, "any town or city embraced within the project may acquire water rights sufficient for its needs on such terms and condition as the Secretary of the Interior may impose." Senator Dubois of Idaho provided a letter (to the Senate Committee on Indian Affairs) to accompany the 1907 bill which states that "the city of Pocatello, with a population now of 8,000, will be supplied with water at a price to be fixed by the Secretary of the Interior." The letter also explains that the City's price is different from the price for water to supply the agricultural lands of the Project.

We do not know if the 102.97 acres in the recent Project letters represent all of the Pocatello contracts, or whether the 1936 contract, which describes 602.42 acres may be one of a series of contracts representing assignments to the City when individual users switched from Project water to City water. Mr. Oliver is checking Project billing records to determine current Project acreage for Pocatello and to determine past assignment of contract rights to or from the City.

Pocatello would use the Project water within the city limits for existing and future needs, just as the City uses its other municipal water rights. The Project water is particularly suited for uses which do not require potable water.

I understand that you will arrive in Boise this evening for meetings Thursday and Friday related to the Fort Hall reserved right and the Fort Hall state-based water right. Due to your travel schedule, Mr. Fenton offered to deliver this fax to you.

Mr. Lynn Collins
October 20, 1993
Page 3

The City of Pocatello would like me to discuss their contract rights with you. I would welcome the opportunity to meet with you and can meet at your convenience. My office is across the street from the Attorney General's office and I can be reached at 338-8233.

Sincerely yours,

DAVIS WRIGHT TREMAINE

Josephine Beeman
Josephine P. Beeman

JPB:ma

cc: Dean Tranmer, Esq., City Attorney for Pocatello
Jack Hockberger, Esq.
Mr. Alan Oliver
Clive Strong, Esq.
Mr. David Shaw
Mr. Jeff Peppersack
Mr. Brent Spronk

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FEB 28 1994
Department of Water Resources

CITY OF POCA TELLO
WATER STORAGE CAPACITY

Date: 8-30-93

The following is a summary of storage reservoirs:

NO.	LOCATION	DATE	CAPACITY (GAL)	STATUS
# 1	Reservoir Yard (NE $\frac{1}{4}$ SW $\frac{1}{4}$, 2-7S-34E)	1891	1,500,000	Abandoned
# 2	Reservoir Yard (NE $\frac{1}{4}$ NW $\frac{1}{4}$, 2-7S-34E)	1892	865,000	Abandoned
# 3	Reservoir Yard (NE $\frac{1}{4}$ NW $\frac{1}{4}$, 2-7S-34E)	1905	2,000,000	Abandoned
# 4	Reservoir Yard (NW $\frac{1}{4}$ NE $\frac{1}{4}$, 2-7S-34E)	1935	11,500,000	Abandoned
# 5	S End Valleyview (SE $\frac{1}{4}$ NE $\frac{1}{4}$, 33-6S-34E)	1950	300,000	In Use
# 6	Center & I-15 (SE $\frac{1}{4}$ SW $\frac{1}{4}$, 24-6S-34E)	1953	300,000	In Use
# 7	End E Cedar (SW $\frac{1}{4}$ NE $\frac{1}{4}$, 24-6S-34E)	1955	500,000	In Use
# 8	Reservoir Yard (SE $\frac{1}{4}$ SW $\frac{1}{4}$, 35-6S-34E)	1961	2,000,000	In Use
# 9	S End Valleyview (SE $\frac{1}{4}$ NE $\frac{1}{4}$, 33-6S-34E)	1964	20,000	In Use
#10	Satterfield & Terrace (SW $\frac{1}{4}$ SE $\frac{1}{4}$, 7-6S-35E)	1964	1,000,000	In Use
#11	Center & Apex (SW $\frac{1}{4}$ SE $\frac{1}{4}$, 19-6S-35E)	1973	2,000,000	In Use
#12	Birdie & Silverwood (SE $\frac{1}{4}$ NW $\frac{1}{4}$, 30-6S-35E)	1973	3,000,000	In Use
#13	Reservoir Yard (NE $\frac{1}{4}$ NW $\frac{1}{4}$, 2-7S-34E)	1975	5,000,000	In Use
#14	W End Juniper Hill (NW $\frac{1}{4}$ NE $\frac{1}{4}$, 13-7S-34E)	1978	500,000	In Use
#15	S End City Creek (NE $\frac{1}{4}$, 3-7S-34E)	1978	3,000,000	In Use
#16	Satterfield & Terrace (SW $\frac{1}{4}$ SE $\frac{1}{4}$, 7-6S-35E)	1985	3,000,000	In Use
#17	Airport - 10th Ave. & "B" St.	1969	150,000	In Use

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DEPARTMENT OF WATER RESOURCES
WATER RIGHTS NAME INDEX

DATE: 08/16/88
PAGE: 1

NAME	O C	WATER RIGHT NUMBER	STG STA	PRIORITY DATE	SOURCE OF WATER	TRIBUTARY TO
ITY OF POCATELLO	C	29-00262	D/	06/03/1907	SOUTH SPRINGS	
ITY OF POCATELLO	C	29-00271	D/	02/26/1869	MINK CREEK	PORTNEUF RIVER
ITY OF POCATELLO	C	29-00272	D/	10/01/1901	MINK CREEK	PORTNEUF RIVER
ITY OF POCATELLO	C	29-00273	D/	10/01/1917	MINK CREEK	PORTNEUF RIVER
ITY OF POCATELLO	C	29-02274	L/	06/15/1948	GROUNDWATER	
ITY OF POCATELLO	C	29-02338	L/	09/01/1953	GROUNDWATER	
ITY OF POCATELLO	C	29-02401	L/	10/16/1958	GROUNDWATER	
ITY OF POCATELLO	C	29-02499	L/	12/10/1964	GROUNDWATER	
ITY OF POCATELLO	C	29-04221	S/	06/01/1943	GROUNDWATER	
ITY OF POCATELLO	C	29-04222	S/	06/16/1898	GIBSON JACK CREEK, SOUTH FORK GIBSON JACK CREEK	GIBSON JACK CREEK PORTNEUF RIVER
ITY OF POCATELLO	C	29-04223	S/	10/01/1962	GROUNDWATER	
ITY OF POCATELLO	C	29-04224	S/	09/15/1955	GROUNDWATER	
ITY OF POCATELLO	C	29-04225	S/	08/15/1956	GROUNDWATER	
ITY OF POCATELLO	C	29-04226	S/	10/01/1955	GROUNDWATER	
ITY OF POCATELLO	C	29-07106	L/	11/06/1972	GROUNDWATER	
ITY OF POCATELLO	C	29-07118	L/	04/11/1973	GROUNDWATER	
ITY OF POCATELLO	C	29-07119	L/	04/11/1973	GROUNDWATER	
ITY OF POCATELLO	C	29-07322	L/	04/25/1976	GROUNDWATER	
ITY OF POCATELLO	C	29-07375	L/	02/24/1977	GROUNDWATER	
ITY OF POCATELLO	C	29-07431	L/	12/29/1977	WASTE WATER	PORTNEUF RIVER
ITY OF POCATELLO	C	29-07450	L/	06/13/1978	GROUNDWATER	
ITY OF POCATELLO	C	29-07700	A/	04/27/1983	GROUNDWATER	
ITY OF POCATELLO	C	29-07770	A/	05/21/1984	GROUNDWATER	
ITY OF POCATELLO	C	29-07782	P/	01/18/1985	GROUNDWATER	

DO NOT FILE

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DATE 8-18-88

SIGNED [Signature]
POCATELLO WATER DEPT.