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MAY 04 2004

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May 3, 2004

David R. Tuthill
Idaho Department of Water Resources
1301 N. Orchard Street
Boise, ID 83706

Re: Pocatello Water Rights Claims and Objections in the SRBA: Issues
Ready for Stipulation

Dear Dave,

Following our discussion with Susan Hamlin-Nygard and Candice McHugh on April 19, 2004, the City of Pocatello (Pocatello) submits the following discrete issues, organized by related water right number, in which agreement with the Idaho Department of Water Resources (IDWR) has been reached and which would thus be ready for preparation of a stipulation to be signed by Pocatello, the State, and IDWR, and filed with the Snake River Basin Adjudication (SRBA) court. We understand that IDWR will respond to this letter in writing to confirm the listed details.

<u>Water right no.</u>	<u>Objection</u>	<u>Agreement</u>
All 38 of Pocatello's state-based water rights	'General provision/remark,' regarding 24-hour storage	The storage remark is not necessary because the volume of Pocatello's storage facilities is less than the 24-hour diverted volume of Pocatello's surface and ground water rights, combined. (See enclosed March 22, 2004 letter from David R. Tuthill.)
29-4221	Priority date (Pocatello claimed 6/1/1943; IDWR recommended 6/1/1945)	Priority date is 6/1/1943 (IDWR is reviewing evidence, submitted by Beeman & Associates in February 2004, that the Naval Ordnance Plant began operating in 1943).
29-7450	Point of diversion	Phillips wells 1 and 3 are interconnected and include two points of diversion, serving two water rights, 29-7450 and 29-13638.

Dave Tuthill
Re: Pocatello
May 3, 2004
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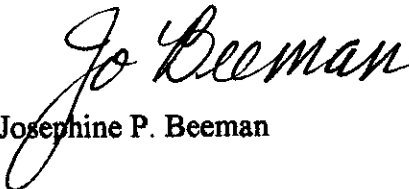
29-11344	Point of diversion	Phillips 2 is not interconnected with Phillips 1 and 3.
29-13636	Place of use	Place of use is 'service area,' consistent with the water right license. (See enclosed April 16, 2004 letter from David R. Tuthill.)
29-13638	Point of diversion	Phillips wells 1 and 3 are interconnected and include two points of diversion, serving two water rights, 29-7450 and 29-13638.

Pocatello also understands that the stipulations to be prepared for individual water rights will identify the specifically contested issue which is resolved. The stipulations will not resolve other contested elements of the water rights. As other issues are resolved, we would anticipate the entry of additional individual stipulations. The enclosed chart is helpful to us in that regard because it facilitates the tracking of issues for individual water rights. We hope it will be helpful to IDWR and the other parties as we work together with the SRBA court over the next months. We would appreciate your comments as well as the comments of those who are copied on this letter.

We look forward to your response.

Sincerely,

BEEMAN & ASSOCIATES, P.C.



Josephine P. Beeman

DHR:ja
Enclosures
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cc: Susan Hamlin-Nygard
Candice McHugh
Carter Fritschle
David Barber
Dean Tranmer
Peter Monson (courtesy copy)
Jeanette Wolfley (courtesy copy)



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 22, 2004

Josephine P. Beeman
Beeman & Associates, P.C.
409 W. Jefferson St.
Boise, ID 83702-6049

RE: Storage Component of a Water Right: Twenty-four (24) Hour Fill Rule

Dear Jo:

I am in receipt of your letter dated March 17, 2004 in the above-referenced matter. I have reviewed the issue of water storage in the City of Pocatello municipal water system per your request.

I concur with your assessment that IDAPA Rule 37.03.01.060.05(f)(ii) applies in this situation. For example, if the City of Pocatello municipal water rights are found to have a total rate of flow of 158.89 cubic feet per second, then the water rights would implicitly include incidental storage in the system in an amount not to exceed 315.16 acre-feet. In addition, as you state this amount would increase in the future as additional rates of flow are added via additional municipal water rights.

I fully concur with the analysis proffered in your letter. Please feel free to contact me if you desire additional input in this matter.

Sincerely,

David R. Tuthill, Jr., Ph.D., P.E.
Adjudication Bureau Chief

cc: Susan Hamlin Nygard
Carter Fritschle

3-22-04



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 16, 2004

Josephine Beeman Esq.
Beeman and Associates PC
409 W Jefferson St.
Boise, ID 83702-6049

Re: Basin 29 City of Pocatello SRBA Claims Issues

Dear Jo:

This letter provides answers to some of the questions that arose following our March 8, 2004, meeting with you and Dana Rose. We met with Karl Dreher and Phil Rassier and are able to provide you with more answers. The following discussion addresses the Department's answers to questions you had concerning specific water rights owned by the City of Pocatello ("City" or "Pocatello").

After further review, the Department agrees to change the place of use on water right no. 29-13636 to the City's service area as was reflected in the original license. The Department also agrees to clarify the language used to further describe the points of diversion on the City's ground water rights. The Department would agree to change this language to the following: "To the extent necessary for administration between points of diversion for ground water; and between points of diversion for ground water and hydraulically connected surface sources, water was first appropriated or used from:"

The Department will limit its review of the City's November 2003, transfer to adding a point of diversion and describing the current location of the City's points of diversion. Thus, the pending transfer will correct the issues you have with transfer no. 5452. I understand that some factual information concerning the location of the new well is required before the Department can proceed with the transfer.

Regarding the contested issues on the Departments SRBA recommendations for the other licensed water rights, the Department believes that the recommendations are correct and will not change its recommendations. The following provides a brief summary of the Department's analysis of the issues on those licenses.

Water Right Nos. 29-7118 and 29-7119. These water rights pertain to the two airport wells and are used for irrigation of cropland around the airport. The primary use for these water rights is to irrigate open space around the airport. The City leases these lands to a local farmer

who irrigates the ground. According to IDWR's license file, the farmer, at the request of the City applied for the water rights for this property. Because the only purpose for these water rights is to irrigate farmland, the purpose of use for these water rights is properly irrigation and not municipal. The City has chosen to develop water rights for an agricultural purpose and this purpose was properly addressed in the license as irrigation. If the City wants to change the actual use of these water rights to a municipal use, then the City may file a transfer.

Water Right No. 29-7770. This licensed water right is similar to those water rights used for irrigation at the airport in that it was developed as an irrigation water right used for raising crops that absorb the nutrients in the sludge that results from the City's waste. Again, because this water right was developed for and is used only for irrigation this water right will remain as irrigation with the irrigation limitations. The place of use and other elements will remain as licensed.

Water Right No. 29-7431. This water right was licensed with source described as waste water in order to allow the City to apply water to a farm outside the city's service area. You asked to have the source of this water right changed from waste water to ground water, however, the source of this water right is properly waste water. If this water right captures only waste water that comes from the municipal wells, then this license would not be necessary. However, it is more likely the case that the water under this license captures not only City waste water but also includes runoff from other privately held water rights. Thus, it is appropriate to call the source waste water and to leave this water right as currently recommended.

Water Right No. 29-7782. Water right license 29-7782 became interconnected with the City's other municipal wells prior to 1987. Yet, the City when it applied for this water right, applied for only one well as if it was not interconnected. The field examination for the license was completed in 1995. Because the City applied for only one well, the field examiner did not look for interconnection and thus, the license was issued for this water right without including the other City wells as alternate points of diversion. Because this license was issued in 1998, the accomplished transfer statute is not a viable vehicle to add multiple points of diversion to this water right; thus, the City must file a transfer to add alternate points of diversion to this license.

Water Right No. 29-2382. The City purchased this water right from a private owner. This water right was established as an irrigation water right. The department's recommendation includes a set irrigation season and a volume limitation. Removing the volume limitation and expanding the season to a year-round use would enlarge this water right from its original character. Thus, these two aspects of the water right will not be changed without a transfer.

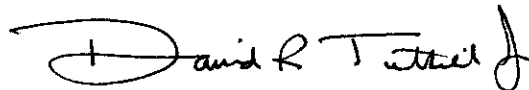
Finally, the Department will not add the City's ground water points of diversion as alternate points of diversion for the surface water rights, 29-271, 29-272, 29-273 and 29-4222 without further factual evidence that there is an immediate and direct hydraulic connection between the surface sources and the City's wells. For instance, Mink Creek, is the source of water right nos. 29-271, 29-272, and 29-273, and is eight miles from the closest City well.

Your questions concerning the City's planning horizon will be addressed at a future time, as we view this matter to be beyond the scope of the SRBA.

We appreciate the fact that you and Dana Rose have met with IDWR and Deputy Attorney General staff regarding the City of Pocatello water rights many times, most recently on April 13, 2004. We understand that while these meetings have resulted in resolutions of many of the contested issues, you still wish to meet with the Director and with Phil Rassier to discuss several areas of Department policy. You had mentioned that available dates are the first week of May or early June. IDWR staff will not be available the first week of May, so the follow-up meeting has been initially scheduled for Tuesday, June 1 at 10:00 am in Conference Room D. Please advise if this time is not convenient for you or for Dana.

If you have any further questions, please feel free to call me at 208-327-7929.

Sincerely,

A handwritten signature in black ink, reading "David R. Tuthill, Jr." with a stylized flourish at the end.

David R. Tuthill, Jr., Ph.D., P.E.
Adjudication Bureau Chief, IDWR

CMM/pm

cc: Karl Dreher
Phil Rassier
Jeff Peppersack
Susan Hamlin Nygard
Candice McHugh
Carter Fritschle

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Water Right no.	Issue	Parties (S = State of Idaho; DJ = Dept of Justice; SBT = Shoshone Bannock Tribe; BLM; Poc = Pocatello)	Progress/ Resolution		Basin Wide Review	Department of Water Resources	706 Report	Expert	Summary Judgment	Trial
			Meeting (held, scheduled)	Stipulation (pending, signed)						
29-271	General provision remark: 24-hour storage	S; Discussions between IDWR, Poc		Pending						
			Scheduled for 5/10/2004, IDWR							
	General provision: Separate Streams/Separate Administration	S, DJ, Poc								
	General provision: Swan Falls	See 92-37				92-37				
	Service area: definition should include "lands necessary to complete beneficial use of the municipal water right"	S; Discussions between IDWR, Poc		Pending confirmation of Pocatello						
			Pending presentation of facts to IDWR							
	Ground water as alternate points of diversion to surface water	S; Discussions between IDWR, Poc								
	BLM objections to place of use (implicates priority date, purpose of use, place of use)	BLM								
29-272	General provision remark: 24-hour storage	See 29-271 for details								
	General provision: Separate Streams/Separate Administration	See 29-271 for details								
	General provision: Swan Falls	See 29-271 for details								
	Service area: definition should include "lands necessary to complete beneficial use of the municipal water right"	See 29-271 for details								
	Ground water as alternate points of diversion to surface water	See 29-271 for details								
	BLM objections to place of use (implicates priority date, purpose of use, place of use)	See 29-271 for details								
29-273	General provision remark: 24-hour storage	See 29-271 for details								
	General provision: Separate Streams/Separate Administration	See 29-271 for details								
	General provision: Swan Falls	See 29-271 for details								
	Service area: definition should include "lands necessary to complete beneficial use of the municipal water right"	See 29-271 for details								
	Ground water as alternate points of diversion to surface water	See 29-271 for details								
	BLM objections to place of use (implicates priority date, purpose of use, place of use)	See 29-271 for details								
29-2274	General provision remark: 24-hour storage	See 29-271 for details								
	General provision: Separate Streams/Separate Administration	See 29-271 for details								
	General provision: Swan Falls	See 29-271 for details								
	Service area: definition should include "lands necessary to complete beneficial use of the municipal water right"	See 29-271 for details								
	Correct description of interconnected system and related errors on transfer 5452	S; Discussions between IDWR, Poc	Amended transfer to be filed with IDWR, pending confirmation of new well location							
	BLM objections to place of use (implicates priority date, purpose of use, place of use)	See 29-271 for details								

29-2338	General provision remark: 24-hour storage	See 29-271 for details								
	General provision: Separate Streams/Separate Administration	See 29-271 for details								
	General provision: Swan Falls	See 29-271 for details								
	Service area: definition should include "lands necessary to complete beneficial use of the municipal water right"	See 29-271 for details								
	Correct description of interconnected system and related errors on transfer 5452	See 29-2274 for details								
	BLM objections to place of use (implicates priority date, purpose of use, place of use)	See 29-271 for details								
29-2354	General provision remark: 24-hour storage	See 29-271 for details								
	General provision: Separate Streams/Separate Administration	See 29-271 for details								
	General provision: Swan Falls	See 29-271 for details								
	Service area: definition should include "lands necessary to complete beneficial use of the municipal water right"	See 29-271 for details								
29-2382	General provision remark: 24-hour storage	See 29-271 for details								
	General provision: Separate Streams/Separate Administration	See 29-271 for details								
	General provision: Swan Falls	See 29-271 for details								
	Service area: definition should include "lands necessary to complete beneficial use of the municipal water right"	See 29-271 for details								
	BLM objections to place of use (implicates priority date, purpose of use, place of use)	See 29-271 for details								
29-2401	General provision remark: 24-hour storage	See 29-271 for details								
	General provision: Separate Streams/Separate Administration	See 29-271 for details								
	General provision: Swan Falls	See 29-271 for details								
	Service area: definition should include "lands necessary to complete beneficial use of the municipal water right"	See 29-271 for details								
	IDWR statement "...water was first appropriated or used from..."	S; Discussions between IDWR, Poc	Scheduled for 6/1/2004 with Director Dreher							
	Correct description of interconnected system and related errors on transfer 5452	See 29-2274 for details								
	BLM objections to place of use (implicates priority date, purpose of use, place of use)	See 29-271 for details								
29-2499	General provision remark: 24-hour storage	See 29-271 for details								
	General provision: Separate Streams/Separate Administration	See 29-271 for details								
	General provision: Swan Falls	See 29-271 for details								
	Service area: definition should include "lands necessary to complete beneficial use of the municipal water right"	See 29-271 for details								
	IDWR statement "...water was first appropriated or used from..."	See 29-2401 for details								
	Correct description of interconnected system and related errors on transfer 5452	See 29-2274 for details								
	BLM objections to place of use (implicates priority date, purpose of use, place of use)	See 29-271 for details								
29-4221	General provision remark: 24-hour storage	See 29-271 for details								
	General provision: Separate Streams/Separate Administration	See 29-271 for details								
	General provision: Swan Falls	See 29-271 for details								

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	General provision: Separate Streams/Separate Administration	See 29-271 for details								
	General provision: Swan Falls	See 29-271 for details								
	Service area: definition should include "lands necessary to complete beneficial use of the municipal water right"	See 29-271 for details								
	IDWR statement "...water was first appropriated or used from..."	See 29-2401 for details								
	Correct description of interconnected system and related errors on transfer 5452	See 29-2274 for details								
	BLM objections to place of use (implicates priority date, purpose of use, place of use)	See 29-271 for details								
29-4226	General provision remark: 24-hour storage	See 29-271 for details								
	General provision: Separate Streams/Separate Administration	See 29-271 for details								
	General provision: Swan Falls	See 29-271 for details								
	Service area: definition should include "lands necessary to complete beneficial use of the municipal water right"	See 29-271 for details								
	IDWR statement "...water was first appropriated or used from..."	See 29-2401 for details								
	Correct description of interconnected system and related errors on transfer 5452	See 29-2274 for details								
	BLM objections to place of use (implicates priority date, purpose of use, place of use)	See 29-271 for details								
	Quantity: claimed 1.22 cfs; recommended .22 (Cree well)	S; Discussions between IDWR, Poc	Pending review by Pocatello of status							
29-7106	General provision remark: 24-hour storage	See 29-271 for details								
	General provision: Separate Streams/Separate Administration	See 29-271 for details								
	General provision: Swan Falls	See 29-271 for details								
	Service area: definition should include "lands necessary to complete beneficial use of the municipal water right"	See 29-271 for details								
	IDWR statement "...water was first appropriated or used from..."	See 29-2401 for details								
	Correct description of interconnected system and related errors on transfer 5452	See 29-2274 for details								
	BLM objections to place of use (implicates priority date, purpose of use, place of use)	See 29-271 for details								
29-7118	General provision remark: 24-hour storage	See 29-271 for details								
	General provision: Separate Streams/Separate Administration	See 29-271 for details								
	General provision: Swan Falls	See 29-271 for details								
	Service area: definition should include "lands necessary to complete beneficial use of the municipal water right"	See 29-271 for details								
	Purpose of use: claimed as municipal purpose; recommended consistent with irrigation license; municipal designation would affect volume limit, period of use, place of use)	S; Discussions between IDWR, Poc	Scheduled for 6/1/2004 with Director Dreher							
29-7119	General provision remark: 24-hour storage	See 29-271 for details								
	General provision: Separate Streams/Separate Administration	See 29-271 for details								
	General provision: Swan Falls	See 29-271 for details								

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	BLM objections to place of use (implicates priority date, purpose of use, place of use)	See 29-271 for details								
29-13638	General provision remark: 24-hour storage	See 29-271 for details								
	General provision: Separate Streams/Separate Administration	See 29-271 for details								
	General provision: Swan Falls	See 29-271 for details								
	Service area: definition should include "lands necessary to complete beneficial use of the municipal water right"	See 29-271 for details								
	IDWR statement "...water was first appropriated or used from..."	See 29-2401 for details								
	BLM objections to place of use (implicates priority date, purpose of use, place of use)	See 29-271 for details								
	Point of diversion: claimed and recommended as interconnected network of 3 wells; Phillips 1 is interconnected with Phillips 3; Phillips 2 is not interconnected (see also 29-7450 and 29-11344)	S; Discussions between IDWR, Poc		Pending						
29-13639	General provision remark: 24-hour storage	See 29-271 for details								
	General provision: Separate Streams/Separate Administration	See 29-271 for details								
	General provision: Swan Falls	See 29-271 for details								
	Service area: definition should include "lands necessary to complete beneficial use of the municipal water right"	See 29-271 for details								
	IDWR statement "...water was first appropriated or used from..."	See 29-2401 for details								
	Correct description of interconnected system and related errors on transfer 5452	See 29-2274 for details								
	BLM objections to place of use (implicates priority date, purpose of use, place of use)	See 29-271 for details								
	Priority date: claimed as 1940; recommended as 1952 (Alameda 3)	S; Discussions between IDWR, Poc	Pending review of evidence by Pocatello							