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DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA	)	Subcase Nos. 29-00271, et al. (see attached Exhibit A)
	)	
	)	CITY OF POCA TELLO'S MOTION FOR
Case No. 39576	)	SUMMARY JUDGMENT ON IDWR's AUTHORITY
_____	)	UNDER I.C. § 42-1425

The City of Pocatello ("Pocatello" or "City") moves for summary judgment under I.R.C.P. 56 that the Idaho Department of Water Resources ("IDWR") has no authority to recommend conditions for transferred water rights unless it complies with the following procedures under Idaho Code section 42-1425 ("42-1425" or "accomplished transfers"):

...all requirements of sections 42-108 and 42-222, Idaho Code, are hereby waived in accordance with the following procedures: If an objection is filed to a claim for accomplished change of...point of diversion...the district court shall remand the water

right to the director for further hearing to determine whether the change injured a water right existing on the date of the change or constituted an enlargement of the original right.

Pocatello further moves for summary judgment that IDWR's compliance with such procedures does not allow IDWR to re-open transfers formally determined by IDWR under Idaho Code section 42-222 ("42-222 Transfers"), or otherwise extend IDWR's jurisdiction to condition previously decided 42-222 transfers.

Pocatello believes the following facts are not in dispute.

- IDWR has not requested a hearing as required by 42-1425;
- IDWR has not developed any evidentiary basis for the condition it recommends be applied to Pocatello's accomplished transfers;
- 42-1425 inquiries are limited to two factual issues, and IDWR's recommended conditions are unrelated to either: enlargement of use at the time of the transfer or injury at the time of the transfer; and
- Finally, the City's 42-222 transfer was decided in 1999 without conditions.

Pocatello respectfully requests that the Special Master find that IDWR may not recommend conditions on 42-1425 transfers without an evidentiary hearing and further, that the only evidence that may be taken at such a hearing is whether or not the transfers, at the time they were made, expanded the use of the water right or injured water rights vested at the time of the transfer. Pocatello further requests that the Special Master remand Pocatello's 42-1425 transfers to IDWR for such a hearing.

Summary judgment is proper under I.R.C.P. 56(c) when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." *See Strongman v. Idaho Potato Comm'n*, 129 Idaho 766, 771, 932 P.2d 889, 894 (1997).

DATED this 4th day of May 2006.

BEEMAN & ASSOCIATES, P.C.
Attorneys for the City of Pocatello

By Josephine P. Beeman
Josephine P. Beeman

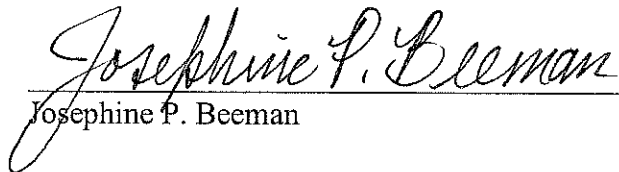
White & Jankowski, LLP
Attorneys for the City of Pocatello

By Josephine P. Beeman
(for) Sarah A. Klahn

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of May 2006, I caused a true copy of the foregoing **CITY OF POCATELLO'S MOTION FOR SUMMARY JUDGMENT ON IDWR's AUTHORITY UNDER I.C. § 42-1425** to be served on the following by U.S. First Class Mail unless indicated as faxed or hand delivered:

UNITED STATES OF AMERICA REPRESENTED BY: US DEPARTMENT OF JUSTICE ENVIRONMENT & NAT'L RESOURCES 550 WEST FORT STREET, MSC O33 BOISE, ID 83724	C. TOM ARKOOSH ARKOOSH LAW OFFICES, CHTD. PO BOX 32 GOODING, IDAHO 83330
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Josephine P. Beeman

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EXHIBIT A

Subcase Numbers

29-00271
29-00272
29-00273
29-02274
29-02338
29-02354
29-02382
29-02401
29-02499
29-04221
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