

**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

Case No. 39576

A. Subcase No. 29-07222

**STANDARD FORM 2
RESPONSE TO OBJECTION**

Please **print or type** the following information:

B. NAME AND ADDRESS OF PERSON RESPONDING

Name: A & B Irrigation District
Address: P. O. Box 675
Rupert, Idaho 83350-0675
(208) 436-3152

Burley Irrigation District
246 East 100 South
Burley, Idaho 83318
(208) 678-2511

Name & Address of Attorney, if any:

Attorney Name: Roger D. Ling
Ling, Robinson & Walker
Address: P. O. Box 396
Rupert, Idaho 83350-0396
Phone Number: (208) 436-4717

**C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO
WHICH YOU ARE RESPONDING**

Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, Idaho 83205

D. I am responding to the objections to the following elements. (Please check the appropriate box(es).)

1. ☐ Name and Address
2. ☒ Source
3. ☒ Quantity
4. ☒ Priority Date
5. ☐ Point(s) of Diversion
6. ☐ Instream Flow Description
7. ☒ Purpose(s) of Use
8. ☐ Period of Year
9. ☒ Place of Use

11. **Recommendation:**

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING RESPONSES

D. 2, 3, 4 and 7 - Source, Quantity, Priority Date and Purpose of Use:

In its Amended Objection, the City of Pocatello objects to the recommendation in regard to these elements on the basis that it did not include a remark that the water under this right can be stored in various reservoir and tank storage facilities, including water from all other sources available to the City of Pocatello. Respondents are unaware of any basis for the inclusion of such a remark regarding the City of Pocatello's water distribution facilities, and opposes this proposed change for the further reason that this right is for irrigation purposes, and should not be commingled with the municipal water of the City of Pocatello.

Objector further states that this water right should have been recommended with a general provision that this water right should not be considered junior to water rights from the Portneuf River and should be administered separately from all other water rights in Basin 29, and that said water right should be decreed with the general provision that all of the City's sources of water in Basin 29 should be administered separately from all other water rights in Basin 29. Objector further objects that the recommendation of this right did not include a general provision addressing the Swan Falls rights of Idaho Power Company as set forth in Consolidated Subcase No. 37-02499. Respondents oppose objector's definition of the source of the point of diversion under this right, including the allegation that the right is legally and physically available from ground water sources in Basin 29, and that Swan Falls issues should be addressed in a general provision for the reason that this issue will be addressed in Consolidate Subcase No. 92-37 in the SRBA.

Objector, City of Pocatello, has failed to state any reason for changing the purpose of use as no factual or legal basis upon the purpose of use of this water right can or should be changed.

D. 7 - Purpose(s) of Use:

Objector, City of Pocatello, objects to the purposes of use as irrigation, and seeks to

change it to "municipal." Pocatello submits no factual or legal basis by which an irrigation right, whether held by a city or any other entity, can be changed to a "municipal" water right, and respondents therefore object to any change in the purpose of use. The City of Pocatello has not set forth any basis for changing the purpose of use from irrigation, nor does it describe a different purpose of use asserted. The objection as to the purpose of use as "irrigation" should be denied.

D. 9 – Place of Use:

The Objection of the City of Pocatello objects that the place of use in the recommendation did not include the entire "municipal service area" of the City, including all lands necessary to complete the beneficial use of the municipal water right. As previously stated, this is not a municipal water right, and there is no basis by which the City of Pocatello may show the place of use as the entire surface area, as such change in the water right would be a significant and substantial expansion of the nature of use and the duty of water under this water right.

E.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Minidoka)

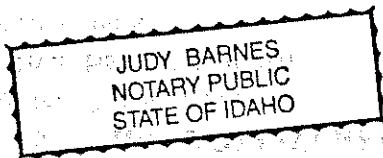
Roger D. Ling, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this response as defined by I.C. §42-1401A(1) and (6), or that I am the attorney for the party/claimant responding and that I have read this response, know its contents and that the statements are true to the best of my knowledge and belief.

(Signature of person filing response)

Roger D. Ling
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: May 4, 2000



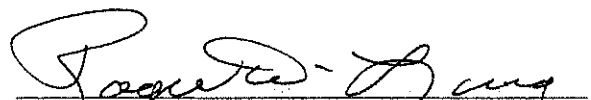
Judy Barnes
Notary Public for the State of Idaho
Residing at: Rupert, Idaho
My Commission expires: 02/12/2011

F.

CERTIFICATE OF MAILING

I hereby certify that on May 4, 2006, I hand-delivered the original and copies of this response, including all attachments, to the following parties:

1. Original to: **HAND DELIVERED**
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707
2. One copy to the claimant of the water right at the following address:
Name City of Pocatello
Address: P. O. Box 4169
Pocatello, Idaho 83205
3. One copy to the party who filed the objection at the following address:
Name: Josephine P. Beeman
Address: 409 W. Jefferson Street
Boise, Idaho 83702
4. Copies to:
IDWR Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098
Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, Idaho 83711-4449
United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, Box 033
Boise, Idaho 83724
C. Tom Arkoosh
Arkoosh & James, LLP
P. O. Box 32
Gooding, Idaho 83330
Travis L. Thompson
Barker, Rosholt & Simpson, PLLC
P. O. Box 485
Twin Falls, Idaho 83303-0485
W. Kent Fletcher
P. O. Box 248
Burley, Idaho 83318


Your signature or signature of attorney mailing on
your behalf