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DEPARTMENT OF
WATER RESOURCES

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

A. Subcase No. 29-13638

Case No. 39576

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 and therefore opposes it as unnecessary to define or administer the water right.

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.

D. 3, 4, and 5. - Quantity, Priority Date and Point(s) of Diversion:

"Other provisions necessary for definition or administration of this water right" is objected to and supports the objector City of Pocatello's objection to quantity, priority date and point of diversion. No basis is given for objecting to this "other provision" and the same should be retained.

D. 5 – Point(s) of Diversion:

Objector, City of Pocatello, alleges that the recommendation for this right should have included 23 points of diversion based upon an “accomplished change in point of diversion.” Respondents are unaware of any basis, factual or legal, by which other points of diversion under this right can be included in any decree. Objector further asserts that the points of diversion are interconnected with the points of diversion under other water rights, and that these points of diversion should be interconnected. Respondents object to the addition of points of diversion without a remark or condition recognizing that no well may be used to divert more than the original amount of water authorized to be diverted under an existing right from that well.

D. 9 – Place of Use:

The Objection of the City of Pocatello objects to the recommendation of this right for the reason that it does not include a description of the place of use that includes: “including all lands necessary to complete the beneficial use of this municipal water right.” Respondent is unaware of any basis for changing the place of use under this surface water right to the vague and undescribed place of use or for including such a remark, and objects to such change.

E. VERIFICATION (Must be Completed)

State of Idaho)

County of Minidoka)

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

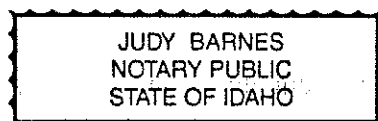
(Name of person filing response)

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, 2006



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 mailed copies of this response, including all attachments, to the following parties:

1. Original to:
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

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Your signature or signature of attorney mailing on your behalf