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RECEIVED
AUG 15 2006
DEPARTMENT OF
WATER RESOURCES

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Attorneys for City of Pocatello

**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)
	)	
	)	
Case No. 39576	)	POCATELLO'S MOTION TO PARTIALLY
	)	MODIFY THE <i>FIFTH AMENDED TRIAL</i>
	)	<i>SCHEDULING ORDER</i>

The City of Pocatello (Pocatello) moves the court to partially modify the *Fifth Amended Trial Scheduling Order* as set forth below. Counsel for the State of Idaho and counsel for the Surface Water Coalition¹ have authorized undersigned counsel to state that they do not oppose this Motion.

¹ The "Surface Water Coalition" refers to the seven surface water delivery organizations who are each a party respondent in these 38 subcases: Minidoka Irrigation District, A & B Irrigation District, Burley Irrigation District, Twin Falls Canal Company, Milner Irrigation District, North Side Canal Company, and American Falls Reservoir District #2.

Under the current – and fifth amended -- scheduling order, Pocatello's MOTION FOR SUMMARY JUDGMENT ON IDWR's AUTHORITY UNDER I.C. § 42-1425 was heard July 12, 2006, and is pending as the parties proceed with discovery. An example of Pocatello's discovery to the other parties regarding the question of "injury" for one water right under I.C. § 42-1425 is attached to this motion as Exhibit B to demonstrate the complexity of the issue and the extent of related discovery.² The decision on summary judgment could confirm the necessity of this discovery or render all or portions of it unnecessary.

In order to avoid potentially unnecessary work by the Respondents and Pocatello in responding to discovery and in preparing expert reports, the parties have agreed to the following modifications to the April 14, 2006, *Fifth Amended Trial Scheduling Order*, while the summary judgment decision is pending:

September 8, 2006	All written discovery responses due. (previously not listed, but would be August 21 or August 23, 2006 based on July 21 deadline to serve written discovery)
September 15, 2006	Deadline for serving Pocatello's expert reports. (previously was August 25, 2006)
October 10, 2006	Deadline for serving the Respondents' expert reports. (previously was September 27, 2006)
October 20, 2006	Deadline for disclosing rebuttal experts. (previously was October 5, 2006)
October 20, 2006	Deadline for serving rebuttal expert reports. (previously was October 17, 2006)

The following dates from the April 14, 2006, *Fifth Amended Trial Scheduling Order* would not to be modified:

² Similar questions were submitted to each of the Respondents for each of the 22 Pocatello water rights that IDWR conditioned based upon its "injury" determination under I.C. § 42-1425.

October 27, 2006 Deadline for filing all dispositive motions
November 9, 2006 Deadline to complete expert depositions
November 17, 2006 Deadline for response briefs
December 1, 2006 Deadline for reply briefs
December 6, 2006 1:30 pm 2nd Summary Judgment Hearing (Twin Falls)
December 6, 2006 3:00 pm Trial Management Conference
December 13, 2006 10:00 am Pretrial Conference (Twin Falls)
January 22-26, 2007 9:00 am Trial (5 day) (Twin Falls)

A proposed Order with these modifications is enclosed with this motion. The City of Pocatello does not request oral argument on this motion.

Respectfully submitted this 11th day of August 2006.

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

By Josephine P. Beeman
Josephine P. Beeman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of August 2006, I caused a copy of the foregoing document to be served by U.S. First Class Mail on:

UNITED STATES OF AMERICA

REPRESENTED BY:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NAT'L RESOURCES
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BOISE, ID 83724

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STATE OF IDAHO

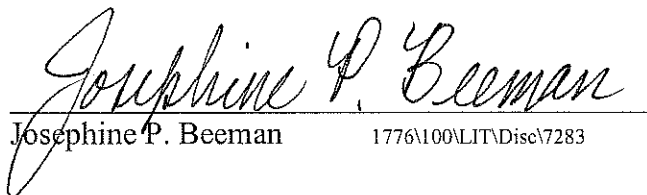
REPRESENTED BY:
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TWIN FALLS, IDAHO 83301-6167



Josephine P. Beeman 1776\100\LIT\Disc\7283

EXHIBIT A

Subcase Numbers

29-00271
29-00272
29-00273
29-02274
29-02338
29-02354
29-02382
29-02401
29-02499
29-04221
29-04222
29-04223
29-04224
29-04225
29-04226
29-07106
29-07118
29-07119
29-07222
29-07322
29-07375
29-07431
29-07450
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29-11339
29-11344
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29-13560
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29-13636
29-13637
29-13638
29-13639

EXHIBIT B

Subcase No. 29-02499

Interrogatory No. 1: Please STATE THE BASIS for YOUR RESPONSE TO POCATELLO'S OBJECTION in this SUBCASE.

Interrogatory No. 2: Please IDENTIFY each PERSON who has information that RELATES TO YOUR RESPONSE that is the subject of Interrogatory No. 1.

Interrogatory No. 3: Please describe the substance of the knowledge of each PERSON identified in YOUR RESPONSE to Interrogatory No. 2.

Interrogatory No. 4: Please IDENTIFY each EXPERT who YOU expect to testify RELATING TO YOUR RESPONSE that is the subject of Interrogatory No. 1.

Interrogatory No. 5: For each EXPERT you IDENTIFIED in your RESPONSE to Interrogatory No. 4, state the subject matter on which the expert is expected to testify, state the substance of the opinions to which the expert is expected to testify, and state the underlying facts and data upon which the expert opinions are based.

Request for Production No. 1: Please PRODUCE all DOCUMENTS that support YOUR RESPONSE to POCATELLO'S OBJECTION in this SUBCASE.

Request for Production No. 2: Please PRODUCE all DOCUMENTS, not produced in response to Request for Production No. 1, that RELATE TO YOUR RESPONSE to POCATELLO'S OBJECTION in this SUBCASE.

Request for Production No. 3: Please PRODUCE all DOCUMENTS that constitute or were included with or referred to in CORRESPONDENCE between YOU and any other PERSON that RELATES TO YOUR RESPONSE to POCATELLO'S OBJECTION in this SUBCASE.

Request for Production No. 4: Please PRODUCE all DOCUMENTS that RELATE TO COMMUNICATIONS between YOU and any other PERSON that RELATE TO YOUR RESPONSE to POCATELLO'S OBJECTION in this SUBCASE.

Request for Production No. 5: Please PRODUCE copies of all data and RELEVANT DOCUMENTS upon which the opinions of each EXPERT WITNESS whom YOU are asked to IDENTIFY in response to Interrogatory No. 4 are based or expected to be based.

Request for Production No. 6: Please PRODUCE copies of any RELEVANT DOCUMENTS that YOU have received from any PERSON, including but not limited to expert witness reports, in conjunction with his or her anticipated testimony in this SUBCASE.

Interrogatory No. 6: Please DESCRIBE any information you have regarding the cone of depression created by POCATELLO'S use of the wells located at the points of diversion recommended by IDWR for this water right.

Request for Production 7: Please produce any DOCUMENTS in your possession relating to your responses to Interrogatory No. 6.

Interrogatory No. 7: Please DESCRIBE any information you have regarding ground water rights that withdraw water from the Lower Portneuf River Valley Aquifer within the cone of depression created by POCATELLO'S use of the wells located at the points of diversion recommended by IDWR for this water right.

Interrogatory No. 8: Please DESCRIBE any information you have regarding the individual water rights "injured" by POCATELLO'S use of the wells located at the points of diversion recommended by IDWR for this water right.

Interrogatory No. 9: Please DESCRIBE any information you have regarding the maximum amount of water ever withdrawn by POCATELLO at the wells located at the points of diversion recommended by IDWR for this water right.

Interrogatory No. 10: List any water rights YOU allege to be injured by an accomplished transfer of this water right pursuant to Idaho Code §42-1425.

Interrogatory No. 11: Describe the nature of the injury you allege occurred because of the accomplished transfer of this water right pursuant to Idaho Code §42-1425.

Request for Production No. 8: Produce any DOCUMENTS related to YOUR response to Interrogatory No. 11.

Request for Admission No. 1: Admit that this water right has never been administered by the STATE in response to the injury alleged in Interrogatory No. 11.

Interrogatory No. 12: If YOU DENY Request for Admission No. 1, please STATE THE BASIS for YOUR DENIAL.

Interrogatory No. 13: Please IDENTIFY each PERSON who has information that RELATES TO YOUR CONTENTION that is the subject of Interrogatory No. 12.

Request for Production No. 9: Produce any DOCUMENTS related to YOUR response to Interrogatory No. 12.

Request for Admission No. 2: Admit that YOU have no DOCUMENTS or other INFORMATION alleging or claiming an injury as described in your response to Interrogatory No. 11 to the water rights listed in your response to Interrogatory No. 7.

Interrogatory No. 14: If YOU DENY Request for Admission No. 2, please STATE THE BASIS for YOUR DENIAL.

Interrogatory No. 15: Please IDENTIFY each PERSON who has information that RELATES TO YOUR CONTENTION that is the subject of Interrogatory No. 14.

Request for Production No. 10: Produce any DOCUMENTS related to YOUR response to Interrogatory No. 14.

Interrogatory No. 16: Please IDENTIFY each PERSON who participated in or furnished information for the preparation of all or any portion of YOUR responses to these DISCOVERY REQUESTS and IDENTIFY the information that each such PERSON provided.