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DEPARTMENT OF
WATER RESOURCES

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

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 29-271 (See Exhibit A)
	)	
	)	ORDER ON SUMMARY JUDGMENT
Case No. 39576	)	
_____	)	

I. PROCEDURAL BACKGROUND

The above subcases were claimed in the SRBA by the City of Pocatello (hereafter "Pocatello") under a state basis. (Pocatello claimed the same water use under its federal theory under subcase number 29-11609.) *Director's Reports* were issued by the Idaho Department of Water Resources (hereafter "IDWR") on the state-based claims. Pocatello filed *Objections* to the *Director's Reports* because it disagreed with conditions placed on the "other provisions necessary" element. The condition states:

To the extent necessary for administration, water was first appropriated or used from: Pocatello Well No. ____, located in [legal description] on [date] in the amount of _____ cfs.

Pocatello filed *City of Pocatello's Motion for Summary Judgment on IDWR's Authority Under I.C. § 42-1425* (hereafter "*Summary Judgment Motion*") on May 4, 2006. The *Summary Judgment Motion* argues that the condition is improper as a matter of law. First, Pocatello asserts that formal transfer No. 5452 was approved pursuant to I.C. § 42-222 without a condition. Thus, any conditions added in a *Director's Report* are impermissible collateral attacks on the administrative decision.

Second, Pocatello asserts the "accomplished transfer" statute, I.C. § 42-1425, allows for changes in water rights and that these "accomplished transfers" claims should be recognized without any conditions.

The State of Idaho opposed the *Summary Judgment Motion*. A & B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, Twin Falls Canal Company, Americans Falls Reservoir District #2, and the Minidoka Irrigation District filed a *Joint Response to City of Pocatello's Motion for Summary Judgment* generally supporting the *Summary Judgment Motion*. A hearing on the *Summary Judgment Motion* was held on July 12, 2006.

II. STANDARD OF REVIEW

Idaho Rule of Civil Procedure 56(c) provides for summary judgment where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Courts look to “the pleadings, depositions, and admissions on file, together with the affidavits, if any,” to determine whether the moving party is entitled to summary judgment. I.R.C.P. 56(c). The facts are usually liberally construed in favor of the nonmoving party who is to be given the benefit of all favorable inferences which might reasonably be drawn from the evidence. *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 808 P.2d 851 (1991). The burden of proving the absence of genuine issues of material fact rests on the moving party. *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 425 P.2d 362 (1969).

III. FACTS

The following facts are not in dispute.

1. IDWR issued Transfer No. 5452 to Pocatello on June 28, 1999. (Attached hereto as Exhibit 1)
2. Transfer No. 5452 refers to water right nos. 29-02274, 29-02338, and 29-07375 as those subject to the transfer.
3. Transfer No. 5452 did not include the condition at issue under the “Conditions of Approval and Remarks” section.
4. The *Director's Reports* for claims 29-02274, 29-02338, and 29-07375 did not add any conditions. (Attached hereto as Exhibit 2)
5. Other state-based claims filed by Pocatello assert transfers under the “accomplished transfer” statute, I.C. § 42-1425.
6. The *Director's Reports* for some of these “accomplished transfer” claims include a condition under the “other provisions necessary” element which states:

To the extent necessary for administration, water was first appropriated or used from: Pocatello Well No____, located in [legal description] on [date] in the amount of ____cfs.

7. IDWR filed a *706 Report* relating to Pocatello's claims. In the *706 Report*, a similar condition is recommended:

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 at or used from:____

8. These subcases were not "remanded" to IDWR.

IV. ANALYSIS

A. Transfer No. 5452

Pocatello argues that IDWR may not add a condition to a transferred water right if the transfer was approved without the condition pursuant to I.C. § 42-222. It is undisputed that in 1999, Pocatello transferred the water rights relating to 29-2274, 29-2338, and 29-7375. IDWR approved the transfer without adding the condition.

Pocatello points out that adding a material change to a water right subject to a formal transfer decision is an impermissible collateral attack on an administrative decision. The SRBA Court generally disfavors such collateral attacks. *Order on Challenge (Consolidated Issues) of "Facility Volume" Issue and "Additional Evidence" issue*, subcases 36-02708 *et al.* (December 29, 1999) However, IDWR did not include the condition in the recommendations for the three enumerated water rights 29-2274, 29-2338, or 29-7375.

At oral argument, Pocatello argued that the condition was included in other subcases which relate to Transfer No. 5452. Unfortunately neither Pocatello nor the other parties could identify the subcases to which this argument applies. It is inappropriate for the court to grant summary judgment regarding unidentified subcases.

B. Idaho Code § 42-1425

Pocatello has multiple state-based claims that rely on the accomplished transfer statute. Idaho Code § 42-1425 was enacted to address changes in established water rights that were made in violation of Idaho's mandatory transfer procedures. The statute sets forth:

Any change of place of use, point of diversion, nature or purpose of use or period of use of a water right by any person entitled to use of water or owning any land to which water has been made appurtenant either by decree of the court or under the provisions of the constitution and statutes of this state, prior to November 19,

1987, the date of commencement of the Snake River basin adjudication, may be claimed in a general adjudication even though the person has not complied with sections 42-108 and 42-222, Idaho Code, provided no other water rights existing on the date of the change were injured and the change did not result in an enlargement of the original right.

I.C. § 42-1425(2).

The statute allows SRBA claimants to assert water rights with changes to the elements if three components exist:

1. The change was made before November 19, 1987;
2. No other water rights existing on the date of the change were injured; and
3. The change did not result in an enlargement of the right.

The statute establishes a procedure for evaluating claims based on an accomplished transfer.

If an objection is filed to a claim for accomplished change of place of use, point of diversion, nature or purpose of use or period of use, 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. After a hearing, the director shall submit a supplemental report to the district court setting forth his findings and conclusions. If the claimant or any person who filed an objection to the accomplished transfer is aggrieved by the director's determination, they may seek review before the district court. If the change is disallowed, the claimant shall be entitled to resume use of the original water right, provided such resumption of use will not cause injury or can be mitigated to prevent injury to existing water rights.

I.C. § 42-1425(2)(a). (Emphasis added.)

1. Legality of the Condition

Pocatello argues that the condition placed on its accomplished transfer is improper. Pocatello's argument is twofold. First, Pocatello argues that the condition is improper because these subcases were not "remanded" to IDWR as set forth in I.C. § 42-1425(2)(a).

Second, Pocatello argues that the condition is improper as a matter of law because it seeks to prevent **potential** injury rather than actual injury. Pocatello bases this argument on language from the *706 Report* which states that the condition was recommended "to prevent injury that **could result** from allowing this practice." *706 Report* at 15.

Pocatello asserts that its accomplished transfers did not injure water rights existing on the date of the change. IDWR concluded that water rights existing on the date of the changes were injured by the change and added the condition. *706 Report* at 15.

Pocatello reads the *706 Report* language as improperly looking at prospective, not actual injury. However, construing the language in favor of the non moving party shows that it addresses actual injury. The injury IDWR discusses is to the priority of rights on a given source. Injury to a water right would occur when another right takes precedence. For example, if a change in the point of diversion of Pocatello's wells allows a portion of its water rights to be delivered before existing water rights, those existing water rights are injured. Depending on conditions such as precipitation and weather, the damages may not appear immediately. Immediate injury to priority resulting in future damages appears to be just what IDWR was trying to prevent with the condition. The *706 Report* raises genuine issues of material fact on the injury issue. Therefore, this Special Master declines to strike the conditions under the summary judgment standard.

2. Remand Provision

Idaho Code § 42-1425 requires that the district court "shall remand the water right to the director for further hearing" if an objection is filed to a claim asserting an accomplished transfer.

Pocatello objected to the *Director's Report* because it disagreed with the conditions. Thus it would appear that the statutory directive of a remand has been met.

It is interesting to note that parties to the SRBA have not previously requested a formal "remand" to IDWR because IDWR regularly receives additional information from parties during the litigation process and supplements or amends its recommendations when necessary. Parties may provide additional information to IDWR, and IDWR may consider that information without a formal remand.

However duplicative a formal remand may be, it is provided for when an objection is filed relating to I.C. § 42-1425. Here, an objection was filed that relates to the accomplished transfer portion of the claim. To the extent Pocatello seeks a formal remand to IDWR, the motion is **granted**. These subcases are "remanded" to IDWR, with the Special Master retaining concurrent jurisdiction. The remand will consist of additional information or evidence being presented to IDWR. After IDWR considers the additional information, its conclusions may be reported in an *Amended Director's Report* or a *Supplemental 706 Report*. The *Amended*

Director's Report or *Supplemental 706 Report* should contain explanatory material stating the basis for its recommendation and should address injury to existing water rights. To be clear, the remand is not intended to be a separate administrative transfer proceeding, but is to be part of the record for this case.

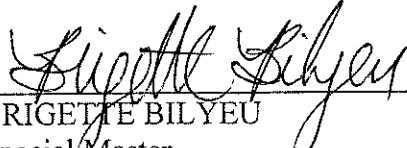
V. CONCLUSION

The *Motion for Summary Judgment* is **denied** in part and **granted** in part. There are no facts of record showing that IDWR added conditions to the subcases identified in Transfer No. 5452. If other subcases relating to Transfer No. 5452 are identified at trial, the court may consider facts and argument relating to transfer No. 5452 at that time. However, there are insufficient facts of record supporting a summary judgment ruling relating to Transfer No. 5452.

The facts of record regarding Pocatello's claimed accomplished transfers indicate that IDWR considered the injury question which is part of the inquiry under I.C. § 42-1425. IDWR apparently recommended conditions to prevent injury to existing water rights. No facts of record or legal arguments presented here support a finding that the condition is improper as a matter of law. Whether IDWR's conclusion on injury is correct is a matter for trial.

Finally, I.C. § 42-1425 provides for a remand to IDWR if an objection is filed "to a claim for accomplished change" Pocatello's objections dispute the conditions recommended by IDWR. Therefore, the objections appear to come within the statutory language "an objection . . . filed to a claim for accomplished change." Therefore, these subcases are "remanded" to IDWR for the purpose of allowing Pocatello to present additional evidence and information regarding the condition. The Special Master retains concurrent jurisdiction. All information must be presented to IDWR on or before August 31, 2006. IDWR should report its additional conclusions in a *Supplemental 706 Report*. The *Supplemental 706 Report* is due September 7, 2007.

DATED: August 18, 2006.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 5452
WATER RIGHT NO(S). 29-02274/29-02338/29-07375

This is to certify that: CITY OF POCA TELLO
PO BOX 4169
POCA TELLO ID 83205

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
Right No. 29-02274 :		
MUNICIPAL	01/01 to 12/31	21.00 CFS
Priority: 06/15/1948		
Right No. 29-02338 :		
MUNICIPAL	01/01 to 12/31	14.76 CFS
Priority: 09/01/1953		
Right No. 29-07375 :		
MUNICIPAL	01/01 to 12/31	3.34 CFS
Priority: 02/24/1977		
TOTAL:		* 39.10 CFS

SOURCE
GROUNDWATER

LOCATION OF POINT(S) OF DIVERSION:

-NESE , Sec. 10, Township 06S, Range 33E
BANNOCK County
-NESE , Sec. 12, Township 06S, Range 33E
POWER County
-SWNE , Sec. 15, Township 06S, Range 33E
-NWSW , Sec. 15, Township 06S, Range 34E
-NENW , Sec. 26, Township 06S, Range 34E
-NWSE , Sec. 27, Township 06S, Range 34E
SENE , Sec. 35, Township 06S, Range 34E
-SENE , Sec. 35, Township 06S, Range 34E
-NWSE , Sec. 35, Township 06S, Range 34E
-SESE , Sec. 1, Township 07S, Range 34E
-SWSW , Sec. 16, Township 07S, Range 35E
BANNOCK County

SCANNED
APR 30 2001

MICROFILMED
AUG 09 1999

TRANSFER NO. 5452
WATER RIGHT NO(S). 29-02274/29-02338/29-07375

CONDITIONS OF APPROVAL AND REMARKS

1. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
2. Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.
3. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
4. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
5. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
6. The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
7. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.
- * 8. The total instantaneous diversion of water from all points of diversion under Transfer 5452 shall not exceed 39.10 cfs.
9. The well(s) previously used under these rights shall be abandoned in a manner which complies with Department well abandonment rules.
10. Place of use is located within the City of Pocatello and the surrounding service area.
11. Two (2) points of diversion are located within SENE, and three (3) points of diversion are located within NWSE, of S35, T06S, R34E.

Dated this 28th day of June, 19 99


Chief, Water Allocation Bureau

MICROFILMED

AUG 09 1999

EXHIBIT 2

07/10/2003

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-2274

NAME AND ADDRESS: CITY OF POCATELLO
PO BOX 4169
POCATELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 9.690 CFS

PRIORITY DATE: 06/15/1948

POINT OF
DIVERSION:

T06S R33E S10 NESE Within POWER County
T06S R33E S12 NESE Within POWER County
T06S R33E S15 SWNE Within POWER County
T06S R34E S15 NWSW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S27 NWSE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S16 SWSW Within BANNOCK County

PURPOSE AND
PERIOD OF USE:PURPOSE OF USE
MUNICIPALPERIOD OF USE
01/01 12/31QUANTITY
9.690 CFS

PLACE OF USE:

07/10/2003

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.

Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.

Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

07/10/2003

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-2338

NAME AND ADDRESS: CITY OF POCA TELLO
PO BOX 4169
POCA TELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 9.530 CFS

PRIORITY DATE: 09/01/1953

POINT OF
DIVERSION:

T06S R33E S10 NESE Within POWER County
T06S R33E S12 NESE Within POWER County
T06S R33E S15 SWNE Within POWER County
T06S R34E S15 NWSW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S27 NWSE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S16 SWSW Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
MUNICIPAL

PERIOD OF USE
01/01 12/31

QUANTITY
9.530 CFS

PLACE OF USE:

07/10/2003

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.

Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.

Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

07/10/2003

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-2499
NAME AND ADDRESS: CITY OF POCA TELLO
PO BOX 4169
POCA TELLO ID 83205

SOURCE: GROUND WATER
TRIBUTARY:

QUANTITY: 4.100 CFS

PRIORITY DATE: 12/10/1964

POINT OF
DIVERSION:

T06S R34E S14 NWNW Within BANNOCK County
T06S R34E S15 NWNE Within BANNOCK County
T06S R34E S15 NENW Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S15 NESE Within BANNOCK County
T06S R34E S16 NENE Within BANNOCK County
T06S R34E S23 NWNE Within BANNOCK County
T06S R34E S23 SWNE Within BANNOCK County
T06S R34E S23 SENW Within BANNOCK County
T06S R34E S23 NESW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S26 SWSE Within BANNOCK County
T06S R34E S35 NWNE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 NWNE Lot 2 Within BANNOCK County
T07S R34E S1 SWNE Within BANNOCK County
T07S R34E S1 NESE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S6 NWSE Within BANNOCK County
T07S R35E S7 NESW Within BANNOCK County
T07S R35E S18 SENE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MUNICIPAL	01/01 12/31	4.100 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

07/10/2003

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

To the extent necessary for administration, water was first appropriated or used from:

Pocatello Well No. 2 located in T07S, R34E, S01, NWNE,
on 12/31/1926 in the amount of 3.12 cfs.
Pocatello Well No. 3 located in T07S, R34E, S01, SWNE,
on 12/31/1926 in the amount of 4.23 cfs.
Pocatello Well No. 7 located in T06S, R34E, S35, NWNE,
on 12/31/1940 in the amount of 4.46 cfs.
Pocatello Well No. 10 located in T06S, R34E, S26, NENW,
on 6/15/1948 in the amount of 5.35 cfs.
Pocatello Well No. 12 located in T06S, R34E, S35, SENE,
on 9/1/1953 in the amount of 6.20 cfs.
Pocatello Well No. 13 located in T07S, R34E, S01, SESE,
on 9/1/1953 in the amount of 2.22 cfs, and on 10/16/1958 for an
additional amount of 0.89 cfs.
Pocatello Well No. 14 located in T07S, R35E, S07, NESW,
on 12/31/1955 in the amount of 0.22 cfs.
Pocatello Well No. 15 located in T07S, R35E, S06, NWSE,
on 9/1/1953 in the amount of 1.11 cfs, and on 2/24/1977 for an additional
amount of 2.23 cfs.
Pocatello Well No. 16 located in T06S, R34E, S26, SWSE,
on 10/16/1958 in the amount of 6.67 cfs.
Pocatello Well No. 18 located in T06S, R34E, S15, NENW,
on 10/16/1958 in the amount of 4.66 cfs.
Pocatello Well No. 21 located in T06S, R34E, S23, SWNE,
on 9/15/1955 in the amount of 3.89 cfs.
Pocatello Well No. 22 located in T06S, R34E, S23, SENW,
on 10/22/1952 in the amount of 3.68 cfs.
Pocatello Well No. 23 located in T06S, R34E, S23, NWNE,
on 8/15/1956 in the amount of 4.44 cfs.
Pocatello Well No. 26 located in T06S, R34E, S15, NWNE,
on 6/1/1945 in the amount of 2.67 cfs.
Pocatello Well No. 27 located in T06S, R34E, S14, NWNW,
on 12/10/1964 in the amount of 4.10 cfs.
Pocatello Well No. 28 located in T07S, R34E, S01, NESE,
on 8/31/1951 in the amount of 4.90 cfs.
Pocatello Well No. 29 located in T06S, R34E, S23, NESW,
on 11/6/1972 in the amount of 6.20 cfs.
Pocatello Well No. 30 located in T06S, R34E, S35, NWNE,
on 4/25/1976 in the amount of 5.57 cfs.
Pocatello Well No. 31 located in T06S, R34E, S15, NESE,
on 4/25/1976 in the amount of 8.02 cfs.
Pocatello Well No. 32 located in T06S, R34E, S16, NENE,
on 4/25/1976 in the amount of 3.45 cfs.
Pocatello Well No. 33 located in T07S, R35E, S18, SENE,
on 10/1/1962 in the amount of 0.21 cfs.
Pocatello Well No. 34 located in T06S, R34E, S15, NESE,
on 2/18/1985 in the amount of 7.00 cfs.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

07/10/2003

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-7375

NAME AND ADDRESS: CITY OF POCATELLO
PO BOX 4169
POCATELLO ID 83205

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 2.230 CFS

PRIORITY DATE: 02/24/1977

POINT OF
DIVERSION:

T06S R33E S10 NESE Within POWER County
T06S R33E S12 NESE Within POWER County
T06S R33E S15 SWNE Within POWER County
T06S R34E S15 NWSW Within BANNOCK County
T06S R34E S26 NENW Within BANNOCK County
T06S R34E S27 NWSE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 SENE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T06S R34E S35 NWSE Within BANNOCK County
T07S R34E S1 SESE Within BANNOCK County
T07S R35E S16 SWSW Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
MUNICIPAL

PERIOD OF USE
01/01 12/31

QUANTITY
2.230 CFS

PLACE OF USE:

07/10/2003

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.

Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.

Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

EXHIBIT A CITY OF POCA TELLO

Subcase Nos:

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
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CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON SUMMARY JUDGMENT was mailed on August 18, 2006, with sufficient first-class postage to the following:

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