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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)
	)	
	)	
Case No. 39576	)	CITY OF POCATELLO'S MOTION FOR
_____	)	SUMMARY JUDGMENT ON MUNICIPAL
	)	PURPOSE OF USE, INTERCONNECTION, AND
		INJURY UNDER I.C. § 42-1425

**I
POCATELLO'S MOTION FOR SUMMARY JUDGMENT
AS TO MUNICIPAL PURPOSE OF USE**

The City of Pocatello (Pocatello or City) moves for summary judgment under I.R.C.P. 56 that the City's water rights 29-7119, 29-7118, 29-7770 and 29-7431 be decreed with a municipal purpose of use, consistent with their use by the City in its broad capacity and function as a municipality.

As a matter of law, municipal water rights are defined by their use for purposes which benefit the City's inhabitants. This is in accordance with a prior decision of this Court interpreting the common law and I.C. § 42-202(B).^{1, 2} These necessary municipal functions, which require the use of water may include, but are not limited to, maintenance of parks and green spaces, airport safety, and EPA-approved biosolids programs to treat and dispose of domestic sewage.

Pocatello believes the following facts are not in dispute:

1. Water right 29-7118 always has been used by the City of Pocatello in its capacity and function as a municipality to manage municipal land at the Pocatello airport in accordance with Federal Aviation Administration safety and security requirements.
2. Water right 29-7119 always has been used by the City of Pocatello in its capacity and function as a municipality to manage municipal land at the Pocatello airport in accordance with Federal Aviation Administration safety and security requirements.
3. Water right 29-7770 always has been used by the City of Pocatello in its capacity and function as a municipality for the land application of the City's biosolids under Pocatello's EPA-approved biosolids program and NPDES permit.
4. Water right 29-7431 always has been used by the City of Pocatello in its capacity and function as a municipality to apply effluent from City's wastewater treatment plant to land in accordance with the Federal Water Pollution Control Act.

1 In 1997, in Subcase 34-10030 (City of Arco), Special Master Bilyeu issued a master's report that considered 42-202(B) in light of the common law. The report states that 42-202(B) codifies, but does not limit, the common law. The report adopts a broad view of "municipal purposes", stating that when used to describe the purpose of use of a water right, "municipal" means "a right used by a municipality for the benefit of its inhabitants. A 'municipal' right may be used for numerous purposes which benefit the city's inhabitants. The court finds this definition of 'municipal' persuasive and adopts it here. Thus 'municipal' water rights encompass a broad range of uses to which such water rights are used for the benefit of the municipality's inhabitants." (Emphasis added.) *In Re SRBA*, Subcase 34-10030, Special Master's Report April 8, 1997, at 2.

2 I.C. 42-202(B)(6) defines "municipal purposes" as "water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled or obligated to supply to all those users within a service area, including those located outside the boundaries of a municipality served by a municipal provider."

5. The use of water by Pocatello to manage municipal land at the Pocatello airport, to land apply the City's biosolids under Pocatello's EPA-approved biosolids program and NPDES permit and to apply effluent from the City's wastewater treatment plant to private cropland, benefits the inhabitants of Pocatello.

Pocatello respectfully requests that the Special Master find and recommend that Pocatello water rights 29-7119, 29-7110, 29-7770 and 29-7431 be decreed with a municipal purpose of use, consistent with their use by the City of Pocatello in its broad capacity and function as a municipality.

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).

II

POCATELLO'S MOTION FOR SUMMARY JUDGMENT AS TO INTERCONNECTION AND AS TO INJURY UNDER I.C. § 42-1425

Pocatello moves for summary judgment under I.R.C.P. 56 that Mink Creek, Gibson Jack Creek, Lower Portneuf River Valley Aquifer (LPRVA), the Snake River, and the Eastern Snake Plain Aquifer (ESPA) are interconnected sources of water, and there is no 42-1425 injury from the alternate points of diversion in operation for the City's interconnected culinary system and the water rights it served as of November 19, 1987.³ Specifically, IDWR, the State, and the Surface Water Coalition (SWC) have no facts to demonstrate injury to individual water rights

³ City water rights 29-2401, 29-2499, 29-4221, 29-4223, 29-4224, 29-4225, 29-4226, 29-7106, 29-7322, 29-11339, 29-11348, 29-13558, 29-13559, 29-13560, 29-13561, 29-13562, 29-13637, 29-13639, 29-2274, 29-2338, 29-7375, 29-7782.

from Pocatello's use of the wells claimed as alternate points of diversion pursuant to accomplished transfers, prior to November 19, 1987.⁴

Pocatello believes the following facts are not in dispute:

1. Twenty-two (22) wells were connected to Pocatello's municipal culinary water system prior to November 19, 1987.
2. The 22 wells operate to provide culinary water within Pocatello's service area.
3. The 22 wells were claimed as alternate points of diversion in Pocatello's SRBA claims for 22 water rights serving the culinary system.
4. Pocatello's "culinary water system" is defined as the City of Pocatello's interconnected system of wells that provide potable water, and of which 22 wells were interconnected as of November 19, 1987, serving 22 water rights.
5. The LPRVA and Mink Creek are interconnected sources of water.
6. The LPRVA and Gibson Jack Creek are interconnected sources of water.
7. The LPRVA, Mink Creek, Gibson Jack Creek, the ESPA, and the Snake River are interconnected sources of water.
8. IDWR, the State, and the SWC have no information about injury to individual water rights by Pocatello's use of the 22 interconnected wells located at the points of diversion identified and recommended by IDWR for Pocatello's interconnected culinary system.
9. IDWR and SWC allege prospective injuries occurring because of accomplished transfers of water rights pursuant to I.C. § 42-1425 but do not prove any injury as of November 19, 1987 for the City's alternate points of diversion for its interconnected culinary system.

⁴ Based upon review of the following documents, IDWR, the State, and the SWC have not provided any information to support any claims for injury from these accomplished transfers. The Supplemental Director's Report submitted to the SRBA court on April 13, 2006; SWC's Rebuttal Expert Report submitted attached here as Exhibit C to Affidavit of Joyce Angell; the State's Discovery in Response to Pocatello attached here as Exhibit D to Affidavit of Joyce Angell; and the SWC's Discovery in Response to Pocatello attached here as Exhibit E to Affidavit of Joyce Angell.

Pocatello respectfully requests the Special Master to grant summary judgment that Mink Creek, Gibson Jack Creek, the LPRVA, the ESPA, and the Snake River are interconnected sources of water, and that no 42-1425 injury has been proved for Pocatello's alternate points of diversion in operation for its interconnected culinary system as of November 19, 1987.

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).

III DOCUMENTS RELIED ON IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

The City relies on the following documents in support of its motion for summary judgment:

1. Pocatello's Brief in Support of Summary Judgment on the Issues of (1) Municipal Purpose of Use and (2) Interconnection and Injury Under I.C. § 42-1425.
2. The Supplemental Director's Report submitted to the SRBA Court on April 13, 2006.
3. Spronk Water Engineers, Inc. Expert Report Dated September 29, 2006 Prepared for the City of Pocatello, Claimant attached here as Exhibit B to Affidavit of Joyce Angell.
4. Brockway Engineering PLLC Rebuttal Expert Report to Spronk Water Engineers, Inc. Expert Report Dated September 29, 2006 Prepared November 2, 2006 for Milner Irrigation District, Minidoka Irrigation District, American Falls Reservoir District #2, A & B Irrigation District, Burley Irrigation District, North Side Canal Company, Twin Falls Canal Company attached here as Exhibit C to Affidavit of Joyce Angell.
5. Idaho's Responses to First Set of Discovery Requests Served by the City of Pocatello attached here as Exhibit D to Affidavit of Joyce Angell.

6. The Surface Water Coalition's Responses to Pocatello's First Set of Discovery Requests attached here as Exhibit E to Affidavit of Joyce Angell.
7. Pocatello's Objections and Responses to State of Idaho's First Set of Discovery Requests to the City of Pocatello attached here as Exhibit F to Affidavit of Joyce Angell.
8. Farm Lease Agreement between the City of Pocatello and Edward Alvin Smith and Christine Smith attached here at Exhibit G to Affidavit of Joyce Angell.

DATED this 30th day of November 2006.

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

By _____
Josephine P. Beeman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of November 2006, I caused a true copy of the foregoing **CITY OF POCA TELLO'S MOTION FOR SUMMARY JUDGMENT ON THE ISSUES OF (1) MUNICIPAL PURPOSE OF USE AND (2) INTERCONNECTION AND INJURY UNDER I.C. § 42-1425** to be served on the following by U.S. First Class Mail unless indicated as faxed, hand delivered, or emailed:

UNITED STATES OF AMERICA
REPRESENTED BY:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NAT'L RESOURCES
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EXHIBIT A

Subcase Numbers

29-00271
29-00272
29-00273
29-02274
29-02338
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29-02401
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29-04221
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