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DEC 04 2006
IDAHO DEPARTMENT OF
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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	)	NOTICE OF SERVICE OF SPRONK WATER
	)	ENGINEERS, INC. EXPERT <i>REBUTTAL</i> REPORT
	)	DATED DECEMBER 1, 2006 PREPARED FOR THE
	)	CITY OF POCA TELLO, CLAIMANT

PLEASE TAKE NOTICE that on the 1st day of December 2006, a copy of the **SPRONK WATER ENGINEERS, INC. EXPERT *REBUTTAL* REPORT DATED DECEMBER 1, 2006 PREPARED FOR THE CITY OF POCA TELLO, CLAIMANT** was served by email on the parties listed below:

UNITED STATES OF AMERICA
REPRESENTED BY:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NAT'L RESOURCES
550 WEST FORT STREET, MSC O33
BOISE, ID 83724

C. TOM ARKOOSH
ARKOOSH LAW OFFICES, CHTD.
PO BOX 32
GOODING, IDAHO 83330

STATE OF IDAHO
REPRESENTED BY:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

W. KENT FLETCHER
FLETCHER LAW OFFICE
PO BOX 248
BURLEY, IDAHO 83318

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

ROGER D. LING
LING ROBINSON & WALKER
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RUPERT, IDAHO 83350

JOHN A. ROSHOLT
TRAVIS L. THOMPSON
BARKER ROSHOLT & SIMPSON
113 MAIN AVE. WEST, SUITE 303
TWIN FALLS, IDAHO 83301-6167

Dated this 1st day of December 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 1st day of December 2006, I caused a copy of **SPRONK WATER ENGINEERS, INC. EXPERT *REBUTTAL* REPORT DATED DECEMBER 1, 2006 PREPARED FOR THE CITY OF POCA TELLO, CLAIMANT** to be served by U.S. First Class Mail on:

UNITED STATES OF AMERICA
REPRESENTED BY:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NAT'L RESOURCES
550 WEST FORT STREET, MSC O33
BOISE, ID 83724

C. TOM ARKOOSH
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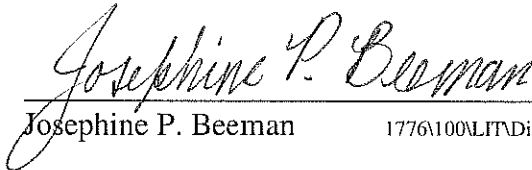
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EXHIBIT A

Subcase Numbers

29-00271
29-00272
29-00273
29-02274
29-02338
29-02354
29-02382
29-02401
29-02499
29-04221
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DEC 04 2006

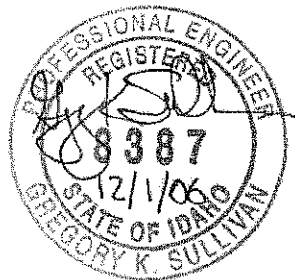
COMPTROLLER
WATER BENTLEY CO.

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

SPRONK WATER ENGINEERS, INC.
EXPERT *REBUTTAL* REPORT
DATED DECEMBER 1, 2006
PREPARED FOR THE CITY OF
POCATELLO, CLAIMANT



Spronk Water Engineers, Inc.
1000 Logan Street
Denver, Colorado 80203

Spronk Water Engineers, Inc.
Expert Rebuttal Report
Dated December 1, 2006
Prepared For
The City of Pocatello,
Claimant

1.0 INTRODUCTION

On behalf of the City of Pocatello, Spronk Water Engineers, Inc. ("SWE") prepared an Expert Report dated September 29, 2006, that was filed with the SRBA Court in accordance with the Seventh Amended Trial Scheduling Order. The Expert Report addressed the following disputed issues with regards to recommendations by the Idaho Department of Water Resources ("Department") for the City of Pocatello's ("Pocatello", the "City") State-law claims for water rights in the Snake River Basin Adjudication ("SRBA"):

- A condition proposed by the Department to limit the City's claims for alternate points of diversion for its interconnected municipal wells.
- The Department's recommended denial of the City's claim for alternate points of diversion for its surface water rights on Mink Creek and Gibson Jack Creek.
- Miscellaneous issues related to identification of the wells included in the City's interconnected municipal well systems, and a subset of these wells that were the subject of prior formal administrative transfers approved by the Department.

On November 2, 2006, Brockway Engineering PLLC, on behalf of the Milner Irrigation District, Minidoka Irrigation District, American Falls Reservoir District #2, A & B Irrigation District, Burley Irrigation District, North Side Canal Company, and Twin Falls Canal Company (the "Surface Water Coalition"), filed a Rebuttal Expert Report to the SWE Expert Report dated September 29, 2006 with the SRBA Court ("SWC Rebuttal Report"). The SWC Rebuttal Report describes opinions of

the Surface Water Coalition expert regarding Pocatello's claimed water rights.

SWE has reviewed the SWC Rebuttal Report, and provides the following rebuttal opinions regarding opinions offered by the SWC expert.

2.0 SWC EXPERT REBUTTAL REPORT DATED NOVEMBER 2, 2006

Alternate Points of Diversion for Surface Water

Opinion

Page 2 and 3. *"The City of Pocatello claims that City wells should be considered as alternate points of diversion for the claimed water rights from Mink Creek and Gibson Jack Creek. There is no hydrologic evidence to support this contention or to argue that there is no change or impact to other water users if this were allowed. If, in fact, ground water is pumped in lieu of a surface water diversion six miles away from the ground water extraction with the same early priority as the surface right, there will be significant differences in timing and magnitude of both the Portneuf River flow and ground water underflow from the basin."*

Response

Page 2 of the SWC Rebuttal Report includes the statement, *"The hydrogeology of the lower Portneuf River and tributaries and the aquifer underlying the lower Portneuf area shows that these are interconnected sources and are tributary to the Snake River and/or the Eastern Snake Plain aquifer...."*. Based on this statement, there is no disagreement that the ground water and surface water sources of the Snake River and the Portneuf River and its tributaries are interconnected.

The Surface Water Coalition claims there is a change in *"timing and magnitude of both Portneuf River flow and ground water underflow from the basin."*, but provides no evidence or analysis to quantify the alleged changes or that the changes result in injury to the Surface Water Coalition water rights.

An analysis using the Department's "Enhanced-Ground Water Rights Transfer Spreadsheet (version 2.2)" ("Transfer Spreadsheet"), was performed to demonstrate that diversion of the City's surface water rights at the City's wells will not injure the Surface Water Coalition water rights. Diversion at the original points of diversion was assumed to result in an immediate depletion of surface water flow. Diversion at the ground water alternate points of diversion results in delayed surface water depletions. The delayed surface water depletions resulting from diversions at the ground water alternate points of diversion were calculated using the Department's Transfer Spreadsheet. Municipal return flows from exercise of the surface water rights were ignored because they would be the same in both scenarios.

Figure 1 compares the annual depletions resulting from diversion of the surface water rights at (1) the original points of diversion, and (2) at the alternate points of diversion at the City's wells. The annual depletions are expressed as a percent of the total annual diversion. The results of the analysis show that diversions of the City's surface water rights at the claimed ground water alternate points of diversion result in delayed impacts to surface water flows as compared with the immediate impacts that would result from diversion of the City's surface water rights at their original decreed locations. These delayed impacts cause transient reductions in depletions to the surface streams, resulting in a transient benefit to downstream surface water users. Once the depletions from ground water use reaches steady state, they are essentially the same as the depletions that would have resulted had the water rights continued to be diverted at the original points.

The City historically used its surface water supplies year-around at relatively constant rates. The surface water rights are similarly used when exercised at the ground water alternate points of diversion. Constant year-around pumping of the surface water rights at the alternate points of diversion will result in constant year around stream depletions. These depletions will increase and eventually reach a steady state that is equal to the rate of pumping. This constant year-around depletion rate will match the uniform rate of diversion (and stream depletion) that would occur if the City diverted the surface water rights at the original points of diversion. As a result, exercise of the City's surface water rights at the ground water alternate points of diversion will not result in

a material change in the seasonal timing of stream depletions to the detriment of downstream surface water users.

Multiple Alternate Points of Diversion

Opinion

Page 3. *"If approved, priority administration would require determination of the instantaneous discharge from each well at all times to determine whether diversion rates were within the priority. If the City was diverting in excess of the rate allowed under the cumulative priority of all rights, then either the Department or the City would have to decide which well or wells would be shut off or curtailed. This would be extremely difficult to regulate or administer."*

Response

The City's cumulative diversion rate at its alternate points of diversion will not exceed the cumulative in-priority diversion rate for the water rights associated with its interconnected wells.

Opinion

Page 3. *"The Department's decision to require a condition on each water right showing the date of first appropriation and the well number and location is justified. Any decision by the City to pump at significantly greater rates than historical practice from later priority wells could result in injury to local ground water users, especially those with earlier priority wells."*

Response

The City will not pump its wells as alternate points of diversion at diversion rates that are greater than the rates claimed for the original water right(s) associated with each well.

Figure 1
Annual Depletions Resulting from Surface Water Diversions and
Ground Water Pumping at Alternate Points of Diversion
City of Pocatello

