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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) **AFFIDAVIT OF CELESTE THAINE IN**
) **SUPPORT OF CITY OF POCA TELLO'S**
) **RESPONSE BRIEF TO THE SURFACE WATER**
) **COALITION'S MOTION FOR SUMMARY**
) **JUDGMENT**

STATE OF IDAHO)
) ss:
COUNTY OF ADA)

I, Celeste Thaine, state that I am employed by the law office of Beeman & Associates, P.C., and I make the following statements on the basis of my personal knowledge.

1. I attest that the following attached documents are true and correct copies of documents I obtained from the electronic database developed and maintained by the Idaho Department of Water Resources (IDWR) for SRBA claim file 29-271.

Exhibit B: November 14, 2003 Standard Form 1 Objection Subcase Nos. Attachment A (29-271, 29-272, 29-273, 29-4222), including a November 14, 2003 letter from Josephine P. Beeman to Diana Delaney of the Snake River Basin Adjudication and a chart of the City of Pocatello objections filed on November 14, 2003.

Exhibit C: November 18, 2003 Amended Standard Form 1 Objection Subcase No. 29-271, including a November 18, 2003 letter from Josephine P. Beeman to Diana Delaney of the Snake River Basin Adjudication and a chart of the City of Pocatello objections filed on November 14, 2003.

2. Exhibit B and Exhibit C are located under Doc Name and Doc Date OBJECTION 11/14/2003 and AMENDED OBJECTION 11/18/2003, respectively, on the IDWR electronic database.

3. Exhibit B also is located on the IDWR electronic database of SRBA claim files 29-272, 29-273, and 29-4222. Amended Objections to claims 29-272, 29-273, and 29-4222, which include the same documents and objections as Exhibit C, are located on the IDWR electronic database.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 12th day of December 2006.

Celeste Thaine

SUBSCRIBED AND SWORN to before me this 12th day of December 2006.



Joyce E. Angell
Notary Public in and for the State of Idaho
Residing in: Boise, Idaho
My Commission Expires: July 29, 2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of December 2006, I caused a true copy of the foregoing **AFFIDAVIT OF CELESTE THAINE IN SUPPORT OF THE CITY OF POCATELLO'S RESPONSE BRIEF TO THE SURFACE WATER COALITION'S MOTION FOR SUMMARY JUDGMENT** 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
550 WEST FORT STREET, MSC O33
BOISE, ID 83724

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

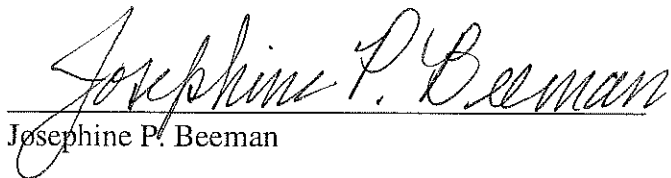
DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

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

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

ROGER D. LING
LING ROBINSON & WALKER
PO BOX 396
RUPERT, IDAHO 83350

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


Josephine P. Beeman

1776/100/Lit/Disc/SJ/7459

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
29-07502
29-07770
29-07782
29-11339
29-11344
29-11348
29-13558
29-13559
29-13560
29-13561
29-13562
29-13636
29-13637
29-13638
29-13639

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 No. Attachment A
(surface water rights)

Case No. 39576

STANDARD FORM 1
OBJECTION

NAME AND ADDRESS OF PERSON OBJECTING:

Name: City of Pocatello, a municipal corporation
Address: P. O. Box 4169
Pocatello, ID 83205

Daytime Phone: 208-232-4311

Name & Address of Attorney, if any:
Josephine P. Beeman, ISB # 1806
409 W. Jefferson St.
Boise, Idaho 83702
(208) 331-0950

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT:

Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83205

I object to the following elements as recommended in the Director's Report:

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☒ **Point(s) of Diversion**
Should be: Include all ground water points of diversion for the City of
Pocatello's municipal water rights
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
11. **I object because:**
 - ☐ This water right should not exist.
 - ☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S):

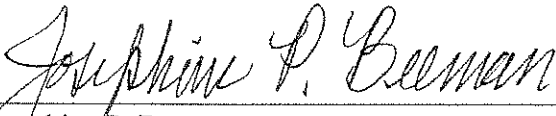
The City of Pocatello's municipal wells derive their supply from the Lower Portneuf River Valley Aquifer that underlies the Portneuf River as it flows through the City of Pocatello. Mink Creek and Gibson Jack Creek are connected to the Lower Portneuf River Valley Aquifer upstream of the City of Pocatello's municipal wells. Due to this interconnection, these municipal wells divert these surface water priorities as they are legally and physically available. Leave will be sought from the court to amend the notice of claim for this water right to properly reflect the elements as set forth above.

VERIFICATION

State of Idaho)
)ss.
County of Ada)

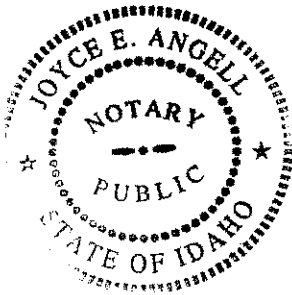
Josephine P. Beeman, duly sworn, upon oath, deposes and says:

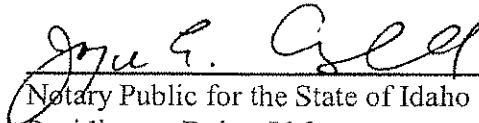
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(i) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Josephine P. Beeman
Beeman & Associates, P.C.
Attorneys for the City of Pocatello

Subscribed and sworn to before me on: November 14, 2003





Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: July 29, 2008

CERTIFICATE OF MAILING

I certify that on November 14, 2003, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

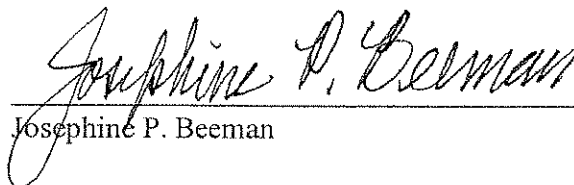
Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83201

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Josephine P. Beeman

Attachment A

29-271
29-272
29-273
29-4222

BEEMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702-6049

Josephine P. Beeman
jo.beeman@beemanlaw.com
Dana H. Rose
dana.rose@beemanlaw.com

Phone (208) 331-0950
Fax (208) 331-0954
office@beemanlaw.com

November 14, 2003

*Via Facsimile (208) 736-2121
and U.S. Mail*

Diana Delaney, Chief Deputy Clerk
Snake River Basin Adjudication
253 Third Avenue. North
Twin Falls, ID 83301

RECEIVED
NOV 14 2003
Department of Water Resources

Re: Objections to Director's Report for Irrigation and Other Water Rights in Basin 29

Dear Ms. Delaney:

The City of Pocatello is filing objections to 40 water rights listed in the Director's Report for Irrigation and Other Water Rights in Basin 29.

We enclose a chart listing these 40 water rights and the grounds for objections to each. The bolding and notes on the chart explain which water rights are affected by the six group objections and which are affected by the 16 individual water right objections. We hope that this chart facilitates the court's handling of these objections.

The originals and copies for the court to conform have been sent by courier. Please call if we can be of additional help or answer questions. Thank you for your assistance in these matters.

Sincerely,

BEEMAN & ASSOCIATES, P.C.


Josephine P. Beeman

JPB:ja
cc: City of Pocatello
IDWR Document Depository
US Department of Justice
Office of Attorney General

Enclosure
Z:\1776\Obj\5998

CITY OF POCATELLO OBJECTIONS FILED NOVEMBER 13, 2003

General Provisions	Municipal Provisions	Correct Inter-connection	Accomplished Transfer	Point of Diversion (Surface)	Name and address	Source	Quantity	Priority Date	Points of Diversion/Flow	Purpose of Use	Period of Year	Place of Use
29 271	X			X								
29 272	X			X								
29 273	X			X								
29 274	X		X									
29 2338	X	X	X									
29 2354	X	X	X									
29 2382	X											
29 2401	X	X										
29 2499	X	X										
29 4221	X	X										
29 4222	X	X						X				
29 4223	X	X		X			X					
29 4224	X	X					X					
29 4225	X	X										
29 4226	X	X										
29 7106	X	X					X					
29 7118	X											
29 7119	X									X		X
29 7222	X									X		X
29 7322	X											
29 7375	X	X										
29 7431	X	X	X									
29 7431	X						X			X		X
29 7450	X	X										
29 7502	X								X			
29 7770	X											
29 7782	X									X		X
29 11339	X	X										
29 11344	X	X										
29 11348	X	X							X			
29 11809												
29 12877									X			X
29 13558	X	X			X		X	X	X	X	X	X
29 13559	X	X										
29 13560	X	X										
29 13561	X	X										
29 13562	X	X										
29 13636	X	X										
29 13637	X	X										
29 13638	X	X										X
29 13639	X	X	X					X	X			

Note 1: Six group objections affect multiple water rights (objections in bold).

Note 2: Sixteen objections are to individual water rights (water right numbers in bold).

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 No. 29-271

Case No. 39576

AMENDED
STANDARD FORM 1
OBJECTION

NAME AND ADDRESS OF PERSON OBJECTING:

Name: City of Pocatello, a municipal corporation
Address: P. O. Box 4169
Pocatello, ID 83205

Daytime Phone: 208-232-4311

Name & Address of Attorney, if any:

Josephine P. Beeman, ISB # 1806
409 W. Jefferson St.
Boise, Idaho 83702
(208) 331-0950

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT:

Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83205

I object to the following elements as recommended in the Director's Report:

1. ☐ **Name and Address**
Should be: _____
2. ☒ **Source**
Should be: See "Reasons supporting objections" below.
3. ☒ **Quantity**
Should be: See "Reasons supporting objections" below.
4. ☒ **Priority Date**
Should be: See "Reasons supporting objections" below.
5. ☒ **Point(s) of Diversion**
Should be: Include all ground water points of diversion for the City of Pocatello's municipal water rights.
6. ☐ **Instream Flow Description**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: See "Reasons supporting objections" below.
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: "Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho law, including all lands necessary to complete the beneficial use of the municipal water right."

11. **I object because:**

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S):

1. Source, quantity, priority date and purpose of use (remark, general provision): All 38 of the City of Pocatello's basin 29 state-law water rights should include the following remark regarding the City of Pocatello's water distribution facilities:

The City of Pocatello's water supply system for distribution of all of its ground water and surface water supplies includes various reservoir and tank storage

facilities, which are capable of being fully recharged by the quantity of water available in a 24-hour period from all of the city's sources of water. The right to use such storage facilities is therefore a part of each of the city's water rights.

All 38 of the City of Pocatello's basin 29 state-law water rights should be decreed with the following general provisions:

Separate Streams:

For purposes of water distribution in the Portneuf River drainage basin, water rights from the following sources to the extent recommended herein, are not considered junior to water rights from the Portneuf River, and will be administered separately from all other water rights in Basin 29:

Mink Creek

Gibson Jack Creek

Ground water rights tributary to the Portneuf drainage

Separate Administration: All 38 of the City of Pocatello's basin 29 state-law water rights, including water right no. and source, should be decreed with the following general provisions:

The following water rights from the following sources of water in Basin 29 shall be administered separately from all other water rights in Basin 29 in accordance with the prior appropriation doctrine as established by Idaho law:

The following water rights from the following sources of water in Basin 29 shall be administered separately from all other water rights in Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law:

Swan Falls: This objection is parallel to the Swan Falls objections in Basin 37 (Consolidated Subcase No. 37-02499). Because the Swan Falls objections in Basin 37 have not been designated a basin-wide issue, this objection addresses the Swan Fall protections for water rights in Basin 29.

No decree entered in the SRBA will supercede, preempt, modify, terminate, extend or otherwise affect the legal force and effect of the October 25, 1984 Swan Falls Agreement, the October 25, 1984 Swan Falls Contract (so long as the Agreement and Contract remain in effect), Consent Judgments in *Idaho Power Co. v. State of Idaho*, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) and *Idaho Power Co. v. State of Idaho*, Case No. 62237 (Fourth Judicial Dist. Mar. 9, 1990), and the 1982 State Water Plan (as amended in 1985).

2. Place of use: Beneficial use of a municipal water right includes all actions necessary to comply with public health and safety standards. The City of Pocatello's municipal service area includes all lands necessary to complete the beneficial use of the municipal water right.

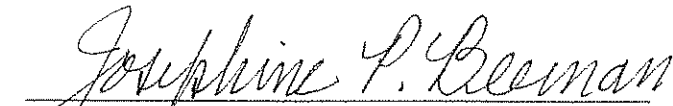
3. Point of diversion: The City of Pocatello's municipal wells derive their supply from the Lower Portneuf River Valley Aquifer that underlies the Portneuf River as it flows through the City of Pocatello. Mink Creek and Gibson Jack Creek are connected to the Lower Portneuf River Valley Aquifer upstream of the City of Pocatello's municipal wells. Due to this interconnection, these municipal wells divert these surface water priorities as they are legally and physically available. Leave will be sought from the court to amend the notice of claim for this water right to properly reflect the elements as set forth above.

VERIFICATION

State of Idaho)
) ss.
County of Ada)

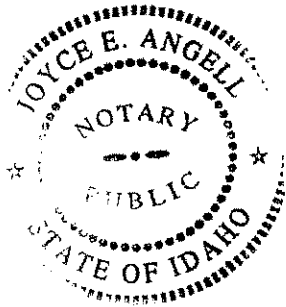
Josephine P. Beeman, duly sworn, upon oath, deposes and says:

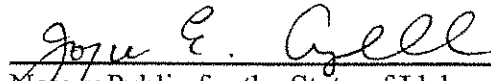
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(i) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Josephine P. Beeman
Beeman & Associates, P.C.
Attorneys for the City of Pocatello

Subscribed and sworn to before me on: November 18, 2003





Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: July 29, 2008

CERTIFICATE OF MAILING

I certify that on November 18, 2003, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

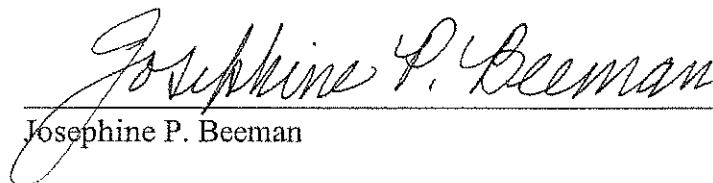
Name: City of Pocatello
Address: P. O. Box 4169
Pocatello, ID 83201

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Josephine P. Beeman

BEEMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702-6049

Josephine P. Beeman
jo.beeman@beemanlaw.com
Dana H. Rose
dana.rose@beemanlaw.com

Phone (208) 331-0950
Fax (208) 331-0954
office@beemanlaw.com

November 18, 2003

Diana Delaney, Chief Deputy Clerk
Snake River Basin Adjudication
253 Third Avenue, North
Twin Falls, ID 83301

Re: City of Pocatello's Amended Objections to
Director's Report for Irrigation and Other Water Rights in Basin 29

Dear Ms. Delaney:

On Friday, November 14, 2003, the City of Pocatello filed objections to 40 water rights listed in the Director's Report for Irrigation and Other Water Rights in Basin 29. This was accomplished with 22 Standard Form 1 documents, of which 16 were addressed to separately numbered water rights, and six were addressed to group objections affecting multiple water rights. As a result, 38 of the 40 water rights were listed in more than one objection.

In accordance with your phone call to us on November 17, we are submitting 38 separately numbered Amended Standard Form 1: Objections, so that each of the 38 water rights which were listed in more than one objection will now have a separately numbered Standard Form 1 which includes all general and specific objections affecting that water right. (The objections to 29-11609 and 29-12877 were not amended.) Each of the 40 water rights is listed on the enclosed chart which also accompanied the filing on Friday. Then, as now, the chart shows both the general and individual objections for each of the 40 water rights.

We appreciate your notice to our office. We are reserving all of the affected parties. Please let us know if we can be of further assistance.

Sincerely,

BEEMAN & ASSOCIATES, P.C.


Josephine P. Beeman

JPB:ja
Enclosures
cc: City of Pocatello
IDWR Document Depository
US Department of Justice
Office of Attorney General
Z:\177\AObj\5995B

CITY OF POCATELLO OBJECTIONS FILED NOVEMBER 14, 2003

	General Provisions	Municipal POH	Provisions Necessary	Entrances Inter-connection	Accomplished Transfer	Point of Division (Surface)	Name and address	Source	Quantity	Priority Date	Points of Diversion	Instream Flow	Purpose of Use	Period of Year	Place of Use
29 271	X	X				X									
29 272	X	X				X									
29 273	X	X				X									
29 274	X	X													
29 2338	X	X		X	X										
29 2354	X	X		X	X										
29 2382	X	X													
29 2401	X	X		X											
29 2499	X	X		X											
29 4221	X	X		X											
29 4222	X	X		X		X				X					
29 4223	X	X		X					X						
29 4224	X	X		X					X						
29 4225	X	X		X											
29 4226	X	X		X											
29 7106	X	X		X					X						
29 7118	X	X		X											
29 7119	X	X											X		X
29 7222	X	X											X		X
29 7322	X	X		X											
29 7375	X	X		X	X										
29 7431	X	X			X				X						
29 7450	X	X		X									X		X
29 7502	X	X													
29 7770	X	X													
29 7782	X	X		X									X		X
29 11339	X	X		X											
29 11344	X	X		X											
29 11348	X	X		X											
29 11609															
29 12877															
29 13558	X	X		X			X	X	X	X	X	X	X	X	X
29 13559	X	X		X											
29 13560	X	X		X											
29 13561	X	X		X											
29 13562	X	X		X											
29 13636	X	X		X											
29 13637	X	X		X											X
29 13638	X	X		X											
29 13639	X	X		X						X					

Note 1: Six group objections affect multiple water rights (objections in bold).

Note 2: Sixteen objections are to individual water rights (water right numbers in bold).