

STIPULATION AND AGREEMENT BETWEEN POCATELLO AND THE SURFACE WATER COALITION IN POCATELLO'S SRBA SUBCASES 29-271 *et seq.* **2007**

DEPARTMENT OF
WATER RESOURCES

WHEREAS, on November 19, 2003, the City of Pocatello filed Amended Objections to the IDWR recommendations for all of the City's 38 state-law based SRBA claims, the claim numbers being described on Exhibit A attached;

WHEREAS, on March 2, 2006, the American Falls Reservoir District #2, A & B Irrigation District, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (Surface Water Coalition or SWC) filed Responses to each of Pocatello's Amended Objections; and

WHEREAS, the Surface Water Coalition and the City of Pocatello desire to resolve their differences with regard to these 38 subcases by stipulation and agreement rather than litigation;

THE PARTIES DO HEREBY STIPULATE AND AGREE AS FOLLOWS:

1. Water Right No. 29-7118: SWC and Pocatello agree that the water right shall be changed and conditioned as described on Exhibit B attached.
2. Water Right No. 29-7119: SWC and Pocatello agree that the water right shall be changed and conditioned as described on Exhibit C attached.
3. Water Right No. 29-7770: SWC and Pocatello agree that the water right shall be changed and conditioned as described on Exhibit D attached.
4. 21 ground water rights - Water Rights Nos. 29-2274, 29-2338, 29-2401, 29-2499, 29-4221, 29-4223, 29-4224, 29-4225, 29-4226, 29-7106, 29-7322, 29-7375, 29-11339, 29-11348, 29-13558, 29-13559, 29-13560, 29-13561, 29-13562, 29-13637 and 29-13639 and 4 surface water rights - Water Rights Nos. 29-271, 29-272, 29-273, and 29-4222 - shall include "Remark/Condition #1" as described on Exhibit E.

5. Water Rights Nos. 29-271, 29-272, 29-273, and 29-4222: shall include “Remark/Condition #2” as described on Exhibit E.
6. Water Rights Nos. 29-7450 and 29-13638: shall include the “Remark/Condition” described on Exhibit F.
7. SWC and Pocatello acknowledge that the Special Master of the contested proceeding before the SRBA Court, or a subsequent Judge or Court reviewing the matter on appeal, may not grant some or all of the requests set forth in the Pocatello’s objections, or may grant Pocatello more of the requests set forth in its objections than those set forth in this stipulation. The remarks, conditions and limitations contained in this stipulation shall be binding upon the parties to this stipulation and included in any partial decree for each water right addressed, to the extent acceptable to the SRBA Court. Any such remark, condition or limitation shall continue to be binding upon the parties even though such remark, condition or limitation, or any of them, may be rejected by the court.
8. The SWC originally had concerns about the Swan Falls general provision raised by Pocatello’s Amended Objections. However, based on the SRBA court’s August 23, 2004 order designating Basin Wide Issue # 91-13, the Surface Water Coalition’s concerns are expected to be addressed in proceedings related to that Basin-Wide Issue and not in these individual subcases. Nothing in this Stipulation waives or alters the right of the SWC, or any entities composing the SWC, to appear and assert its position concerning the Swan Falls general provision in any proceeding.
9. In consideration of this stipulation, the SWC withdraws its Responses and withdraws from these subcases entirely and shall cease to participate except to the extent necessary to enforce the terms of this stipulation. In addition, the SWC may participate in any issues that arise out of these subcases that are designated as basin-wide issues.
10. Each party will bear its own attorney’s fees and costs.

Dated: Feb 26, 2007

CITY OF POCATELLO

By Josephine P. Beeman
Josephine P. Beeman
Beeman & Associates, P.C.

AMERICAN FALLS RESERVOIR DISTRICT #2

Dated: Feb 26, 2007

By C. Tom Arkoosh for
C. Tom Arkoosh
Jay J. Kiiha
Arkoosh Law Offices, Chtd.

MINIDOKA IRRIGATION DISTRICT

Dated: Feb 26, 2007

By W. Kent Fletcher
W. Kent Fletcher
Fletcher Law Offices

A&B IRRIGATION DISTRICT AND
BURLEY IRRIGATION DISTRICT

Dated: Feb. 26, 2007

By Roger D. Ling
Roger D. Ling
Ling Robinson & Walker

MILNER IRRIGATION DISTRICT, NORTH
SIDE CANAL COMPANY AND TWIN FALLS
CANAL COMPANY

Dated: Feb 26, 2007

By John A. Rosholt
John A. Rosholt
John K. Simpson
Travis L. Thompson
Paul L. Arrington
Barker Rosholt & Simpson, LLP

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of February, 2007, I served a true and correct copy of the foregoing STIPULATION AND AGREEMENT BETWEEN POCATELLO AND THE SURFACE WATER COALITION IN POCATELLO'S SRBA SUBCASES 29-271 *ET SEQ.* on the person(s) listed below, in the manner indicated:

Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Josephine P. Beeman
Beeman & Associates, P.C.
409 W. Jefferson Street
Boise, ID 83702

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Attorneys for City of Pocatello

Sarah A. Klahn
WHITE & JANKOWSKI, LLP
511 16th Street, Suite 500
Denver, CO 80202

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Attorneys for City of Pocatello

Natural Resources Division Chief
IDAHO ATTORNEY GENERAL'S OFFICE
P.O. Box 44449
Boise, ID 83711-4449

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Attorneys for State of Idaho

Environment & Natural Resources Division
U.S. DEPARTMENT OF JUSTICE
550 W. Fort Street, MSC 033
Boise, ID 83724

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Attorneys for United States of America

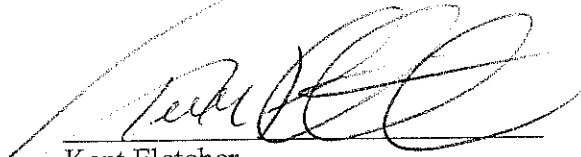

Kent Fletcher

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

EXHIBIT A

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommended Right Report

02/19/2007

WATER RIGHT NO. 29-7118

Owner Type Name and Address

Current Owner CITY OF POCA TELLO
PO BOX 4169
POCA TELLO, ID 83205
(208)234-6254

~~Attorney~~ ~~WHITE & JANKOWSKI LLP~~
~~ATTN SARAH A KLAHN~~
~~511 16TH ST STE 500~~
~~DENVER, CO 80202~~
~~(303)595-0441~~

~~Attorney~~ ~~JOSEPHINE P BEEMAN~~
~~BEEMAN & ASSOCIATES PC~~
~~409 W JEFFERSON ST~~
~~BOISE, ID 83702~~
~~(208)331-0950~~

Priority Date: 04/11/1973

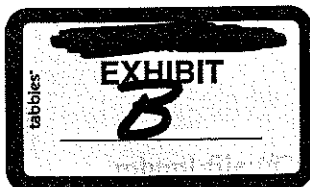
Basis: License

Status: Active

Source Tributary

GROUND WATER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>	<u>Annual Consumptive Use*</u>
					919 AFA (based on 3AFA average historical irrigation



~~IRRIGATION MUNICIPAL 04/01/01 11/01/12/31~~ 4.01 CFS 1114 AFA
 requirement for alfalfa at Pocatello airport weather station and allowing for a 10% deviation from the average for a total of 3.3 AFA)
 Total Diversion 4.01 CFS *applies with change to a municipal use other than the municipal biosolids program

Location of Point(s) of Diversion:

GROUND WATER NWNWSW Sec. 16 Township 06S Range 33E POWER County

Place(s) of use: MUNICIPAL SERVICE AREA FOR THE CITY OF POCA TELLO MUNICIPAL WATER SUPPLY SYSTEM AS PROVIDED FOR UNDER IDAHO LAW. THIS RIGHT IS CURRENTLY USED FOR THE MUNICIPAL BIOSOLIDS PROGRAM AT THE IDENTIFIED ACREAGE.

Place of Use Legal Description: ~~IRRIGATION MUNICIPAL~~ POWER County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
06S	33E	16		SWNW 40			SENW 32							
				NESW 32			NWSW 40			SWSW 28			SESW 12	
		17		SENE 32										
				NESE 32			SESE 30							
		20		NENE 0.5										

Total Acres: 278.5

Conditions of Approval:

1. C18 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.

Dates:

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommended Right Report

02/19/2007

WATER RIGHT NO. 29-7119

Owner Type Name and Address

Current Owner CITY OF POCA TELLO
PO BOX 4169
POCA TELLO, ID 83205
(208)234-6254

~~Attorney~~ ~~WHITE & JANKOWSKI LLP~~
~~ATTN SARAH A KLAHN~~
~~511 16TH ST STE 500~~
~~DENVER, CO 80202~~
~~(303)595-9441~~

~~Attorney~~ ~~JOSEPHINE P BEEMAN~~
~~BEEMAN & ASSOCIATES PC~~
~~409 W JEFFERSON ST~~
~~BOISE, ID 83702~~
~~(208)331-0950~~

Priority Date: 04/11/1973

Basis: License

Status: Active

Source Tributary

GROUND WATER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>	<u>Annual Consumptive Use*</u>
					990 AFA (based on 3 AFA average historical irrigation)



IRRIGATION MUNICIPAL 04/01/01 11/01/12/31 6 CFS	1200 AFA	<u>requirement for alfalfa at Pocatello airport weather station and allowing for a 10% deviation from the average for a total of 3.3 AFA)</u>
Total Diversion	6 CFS	<u>*applies with change to a municipal use other than the municipal biosolids program</u>

Location of Point(s) of Diversion:

GROUND WATER SENWSW Sec. 09 Township 06S Range 33E POWER County

Place(s) of use: MUNICIPAL SERVICE AREA FOR THE CITY OF POCA TELLO MUNICIPAL WATER SUPPLY SYSTEM AS PROVIDED FOR UNDER IDAHO LAW. THIS RIGHT IS CURRENTLY USED FOR THE MUNICIPAL BIOSOLIDS PROGRAM AT THE IDENTIFIED ACREAGE.

Place of Use Legal Description: ~~IRRIGATION~~ MUNICIPAL POWER County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
06S	33E	9		NENW 2			NWNW 2			SWNW 40			SENW 34	
				NESW 34			NWSW 40			SWSW 40			SESW 34	
		16		NENW 34			NWNW 40							

Total Acres: 300

Conditions of Approval:

1. C03 RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.
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
2. C18 Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

Dates:

Other Information:
State or Federal: S

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommended Right Report

02/19/2007

WATER RIGHT NO. 29-7770

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	CITY OF POCA TELLO PO BOX 4169 POCA TELLO, ID 83205 (208)234-6254
Attorney	WHITE & JANKOWSKI LLP ATTN SARAH A KLAHN 511 16TH ST STE 500 DENVER, CO 80202 (303)595-9441
Attorney	JOSEPHINE P BEEMAN BEEMAN & ASSOCIATES PC 409 W JEFFERSON ST BOISE, ID 83702 (208)331-0950

Priority Date: 05/21/1984

Basis: License

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>	<u>Annual Consumptive Use*</u>
					924 AFA (based on 3 AFA average historical irrigation



~~IRRIGATION MUNICIPAL 04/01/01 10/31/12/31~~ 4.46 CFS 1120 AFA
 requirement for alfalfa at Pocatello airport weather station and allowing for a 10% deviation from the average for a total of 3.3 AFA)
 *applies with change to a municipal use other than the municipal biosolids program

Total Diversion 4.46 CFS

Location of Point(s) of Diversion:

GROUND WATER NESENE Sec. 12 Township 06S Range 33E POWER County

Place(s) of use: MUNICIPAL SERVICE AREA FOR THE CITY OF POCA TELLO MUNICIPAL WATER SUPPLY SYSTEM AS PROVIDED FOR UNDER IDAHO LAW. THIS RIGHT IS CURRENTLY USED FOR THE MUNICIPAL BIOSOLIDS PROGRAM AT THE IDENTIFIED ACREAGE.

Place of Use Legal Description: ~~IRRIGATION MUNICIPAL~~ POWER County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
06S	33E	1		SWSE	5									
		12		NENE	27		NWNE	40		SWNE	40		SENE	40
				NENW	40		SENE	40						
				NESW	26									
				NESE	7		NWSE	15						

Total Acres: 280

Conditions of Approval:

1. C18 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.

Dates:

Other Information:
 State or Federal: S

Owner Name Connector:
Water District Number:
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False

Close

REMARK/CONDITIONS FOR WATER RIGHTS DELIVERED THROUGH THE CITY OF
POCATELLO'S INTERCONNECTED WELLS

REMARK/CONDITION #1

The following remark/condition will be included on 25 water rights for the City of Pocatello:

- 21 ground water rights: 29-2274, 29-2338, 29-2401, 29-2499, 29-4221, 29-4223, 29-4224, 29-4225, 29-4226, 29-7106, 29-7322, 29-7375, 29-11339, 29-11348, 29-13558, 29-13559, 29-13560, 29-13561, 29-13562, 29-13637, and 29-13639.
- 4 surface water rights: 29-271, 29-272, 29-273, and 29-4222

The exercise of this water right at any of the 23 alternate points of diversion listed below, by itself or in combination with the other listed water rights, will not exceed the respective rate of diversion at each diversion listed below, unless pursuant to an approved administrative action, including, but not limited to, a section 42-222 transfer.

Township	Range	Section	¼	of ¼	Pocatello Well No. and rate of diversion
7S	34E	1	NW	NE	Well No. 2 in the amount of 3.12 cfs
7S	34E	1	SW	NE	Well No. 3 in the amount of 4.46 cfs
6S	34E	35	NW	SE	Well No. 7 in the amount of 4.46 cfs
6S	34E	26	NE	NW	Well No. 10 in the amount of 6.23 cfs
6S	34E	35	SE	NE	Well No. 12 in the amount of 6.20 cfs
7S	34E	1	SE	SE	Well No. 13 in the amount of 3.11 cfs
7S	35E	7	NE	SW	Well No. 14 in the amount of 2.23 cfs
7S	35E	6	NW	SE	Well No. 15 in the amount of 3.34 cfs
6S	34E	26	SW	SE	Well No. 16 in the amount of 6.67 cfs
6S	34E	15	NE	NW	Well No. 18 in the amount of 4.66 cfs
6S	34E	23	SW	NE	Well No. 21 in the amount of 3.89 cfs
6S	34E	23	SE	NW	Well No. 22 in the amount of 3.68 cfs
6S	34E	23	NW	NE	Well No. 23 in the amount of 4.44 cfs
6S	34E	15	NW	NE	Well No. 26 in the amount of 2.67 cfs
6S	34E	14	NW	NW	Well No. 27 in the amount of 4.9 cfs
7S	34E	1	NE	SE	Well No. 28 in the amount of 4.9 cfs
6S	34E	23	NE	SW	Well No. 29 in the amount of 4.01 cfs
6S	34E	35	NW	NE	Well No. 30 in the amount of 6.23 cfs
6S	34E	15	NE	SE	Well No. 31 in the amount of 8.02 cfs
6S	34E	16	NE	NE	Well No. 32 in the amount of 3.45 cfs
7S	35E	18	SE	NE	Well No. 33 in the amount of 2.67 cfs
6S	34E	15	NE	SE	Well No. 34 in the amount of 7.00 cfs
7S	35E	16	SW	SW	Well No. 44 in the amount of 4.46 cfs



REMARK/CONDITION #2

The following remark/condition will be included on the 4 surface water rights for the City of Pocatello: 29-271, 29-272, 29-273, and 29-4222

Exercise of this water right from October 1 through September 30 at the 23 alternate points of diversion will be limited to the amount of water delivered from these surface water sources to the Portneuf River after that water has been diverted, in priority, at the original point of diversion (on Mink Creek or Gibson Jack Creek) and which is delivered past any intervening water users during the period from October 1 through September 30. Pursuant to the settlement in the SRBA proceedings on these subcases, the City, conditioned upon and pursuant to an agreement between the parties and IDWR, could implement an administrative mechanism that would permit the City's diversion entitlement to be measured in Mink Creek or Gibson Jack Creek and delivered past other water users on those creeks.

REMARK/CONDITION FOR WATER RIGHTS DELIVERED THROUGH THE CITY OF
POCATELLO'S INTERCONNECTED AIRPORT WELLS

REMARK/CONDITION

The following remark/condition will be included on water rights 29-7450 and 29-13638 for the City of Pocatello:

The exercise of water rights 29-7450 and 29-13638, at either of the alternate points of diversion listed below, either individually or in combination, will not exceed the rate of diversion listed for the respective wells, unless pursuant to an approved administrative action, including, but not limited to, a 42-222 transfer.

Township	Range	Section	¼	of	¼	Pocatello Well No. and rate of diversion
6S	33E	10	NE		SE	Well No. 35 in the amount of 3.34 cfs
6S	33E	15	SW		NE	Well No. 39 in the amount of 2.20 cfs

