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DEPARTMENT OF
WATER RESOURCES

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Attorneys for City of Weiser

**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. 3-7009 (City of Weiser)
	)	
Case No. 39576	)	BRIEF IN SUPPORT OF MOTION FOR
	)	RECONSIDERATION OF PARTIAL
_____	)	DECREE FOR WATER RIGHT No. 3-7009

INTRODUCTION

The City of Weiser respectfully submits this *Brief in Support of Motion for Reconsideration of Partial Decree for Water Right No. 3-7009*. As governed by SRBA Administrative Order 1,¹ this *Brief* is submitted pursuant to IRCP 7(b)(3)(C) which provides that a brief in support of a motion may be filed within fourteen (14) days of the Motion. The City of Weiser's *Motion for Reconsideration of Partial Decree For Water Right No. 3-7009* was served on July 23, 2007;² the 14-day deadline to file the brief is August 6, 2007.

Weiser filed the *Motion to Reconsider* because there is a subcase currently pending at the SRBA court (subcase 3-10010) which would moot the partial decree for 3-7009 or require the

¹ Administrative Order 1, Rule 1.a provides: "[t]he litigation of the SRBA will be governed by the Idaho Rules of Civil Procedure (I.R.C.P.), Idaho Rules of Evidence (I.R.E.), and the Idaho Appellate Rules (I.A.R.)."

² Weiser submitted the *Motion for Reconsideration of Partial Decree for Water Right No. 3-7009* pursuant to IRCP 59(e) which requires that the motion be served "not later than fourteen (14) days after entry of the judgment." The partial decree for 3-7009 was entered on July 9, 2007; the deadline for service of the Motion to Reconsider under IRCP 59(e) was July 23, 2007.

partial decree for 3-7009 to be modified consistent with the partial decree of 3-10010. In addition, because the City's municipal water supply is from sources in basin 03 (lower Snake River) and basin 67 (ground water and surface water in the Weiser River drainage), the City has a pending Motion to Consolidate its basin 03 and basin 67 SRBA claims and proceedings. The Motion to Consolidate is set for hearing on August 30, 2007 at 11:30a.m. before Special Master Dolan.

**RULE 59 (e) IS AN APPROPRIATE STANDARD FOR
RECONSIDERATION OF THE PARTIAL DECREE FOR 3-7009**

The purpose of IRCP 59(e) is to allow the court to correct errors of fact and law which have occurred in its proceedings in order to circumvent a later appeal.³ Weiser respectfully requests this court to reconsider the partial decree of 3-7009 because it is interrelated with contested subcase 3-10010, which is proceeding before SRBA Special Master Dolan, and because of the City's related basin 67 claims which are still subject to objection and response deadlines at the SRBA court.⁴

3-7009 PROCEEDINGS AS RELATED TO THE RULE 59(e) STANDARD

Weiser filed SRBA claims for 3-7009 and 3-10010, an indication that the City intended to adjudicate both rights. Notice of Claim 3-10010 was for 4.46 cfs for municipal purposes dating from October 12, 1887.⁵ Notice of Claim 3-7009 was also for 4.46 cfs for municipal purposes, dating from November 15, 1972.⁶ It is uncontested that the Town of Weiser

³ *First Security Bank v. Neibaur*, 98 Idaho 598, 570 P.2d 276 (1977).

⁴ The Basin 67 claims for the City of Weiser are: 67-2320, 67-4291, 67-4412, 67-10971, 67-10975, and 67-14129.

⁵ This court may take judicial notice of its own records in the case before it. *Larson v. State*, 91 Idaho 908, 909, 435 P.2d 248, 249 (1967). For a copy of the Notice of Claim for 3-10010, see Attachment A to this *Brief*.

⁶ For a copy of the Notice of Claim for 3-7009, see Attachment B to this *Brief*. (See footnote 5 *supra*.)

incorporated as the City of Weiser on October 12, 1887.⁷ The August 14, 2006 Director's Report to the SRBA court recommended 3-7009⁸ but disallowed 3-10010, stating that 3-10010 was recommended as 3-7009.⁹

On November 1, 2006, Weiser filed an *SFI Objection* to the Director's Report disallowing 3-10010, stating that 3-10010 should be decreed as claimed by the City.¹⁰ Since 3-10010 was disallowed and recommended as 3-7009, any change from the disallowal of 3-10010 would impact 3-7009. A hearing for uncontested water rights in Basin 03 was held on June 19, 2007, and a partial decree for 3-7009 was issued on July 9, 2007. The City of Weiser understands that it is the practice of the SRBA court to hold entry of a partial decree when an uncontested right is interrelated with other rights not yet presented for partial decree.

**WATER RIGHTS 3-7009 AND 3-10010 ARE INTERRELATED
AND SHOULD BE ADJUDICATED TOGETHER**

The decree of 3-7009 prior to the determination of 3-10010 forecloses Weiser's ability to accurately adjudicate both rights with regard to the City's historical water development. The decree of 3-7009 prior to the determination of the City's basin 67 claims also forecloses the opportunity to accurately adjudicate all of the City's related water rights.

⁷ For a copy of Weiser's Certificate of Municipal Incorporation and a copy of the minutes from a meeting of the Weiser Board of Trustees (declaring the Town of Weiser incorporated as "Weiser") see Exhibits A-C to the *Affidavit of Anna R. Trentadue In Support of Motion For Reconsideration of Partial Decree For Water Right 3-7009* (August 2, 2007).

⁸ The director's report for 3-7009 included the following remark:

Rights have also been claimed to water from Basin 67 for the same purpose of use at the same place of use described above, which will be included in a Directors Report to be filed at a later date. Any water rights recommended in the Basin 67 report for the same purpose of use at the same place of use described above will contain combined use limitations, if any, for this right and the Basin 67 rights.

⁹ On information and belief, counsel for the City of Weiser represents that neither IDWR nor the City of Weiser has been able to locate information documenting the course of the SRBA investigation of claim 3-10010.

¹⁰ For a copy of the *SFI Objection* for 3-10010, see Attachment C to this *Brief*. (See footnote 5 supra.)

CONCLUSION

Based on the foregoing, the City of Weiser respectfully requests that its *Motion for Reconsideration of Partial Decree for Water Right No. 3-7009* be granted.

Respectfully submitted this 2nd day of August 2007.

BEEMAN & ASSOCIATES P.C.
Attorneys for the City of Weiser

By Josephine P. Beeman
Josephine P. Beeman

CERTIFICATE OF SERVICE

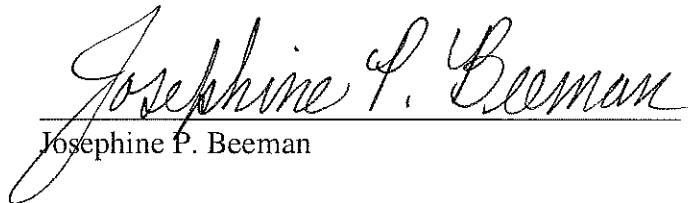
I HEREBY CERTIFY that on the 2nd day of August 2007, I caused a true copy of the foregoing **BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION OF PARTIAL DECREE FOR WATER RIGHT No. 3-7009** be served by U.S. First Class Mail on:

UNITED STATES OF AMERICA
REPRESENTED BY:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NAT'L RESOURCES
550 WEST FORT STREET, MSC 033
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

GARRICK BAXTER
DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF WATER
RESOURCES
322 EAST FRONT STREET
PO BOX 83720
BOISE, IDAHO 83720-0098



Josephine P. Beeman

Z\2088\8039F

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number: A03-10010
Date Received: 10-18-89
Receipt No: 601237B
Received by: *DL*

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of applicant: City of Weiser

Phone: 549-1964

Address: 55 W. Idaho St.

2. Date of priority: Oct 12, 1887

3. Source of water supply: Snake River

Tributary to: Columbia

4. Point of diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
11N	5W	32	SW SW		WASHINGTON

5. Description of existing diversion works: River intake structure with pumps on bank pumpi
the treatment plant then into the city water line grid.

6. Water is claimed for the following purposes:

Purposes	(both dates are inclusive)		C.F.S.	(OR)	A.F.A.
	From	To			
MUN.	1/1	12/31	4.46		

7. Total quality claimed (a) 4.46 (cfs) and/or (b) (acre feet)

8. Total consumptive use claimed is: MUNICIPAL

9. Non-irrigation uses; MUNICIPAL

10. Lands irrigated of Place of Use: WITHIN THE CITY LIMITS OF WEISER

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
----------	-------	---------	-----	----	-----	-----	-----	-------

Total number of acres irrigated

Last Name: Weiser

Ident. Number:

Attachment A
Brief in Support of Motion for Reconsideraiton of
Partial Decree for Water Right No. 3-7009
August 2, 2007

11. Place of Use in counties: Washington

12. Do you own the property listed above as place of use? yes

If your answer is No, describe in Remarks below the authority you have to claim t
right.

13. Other Water Rights Used: 67-4291, 67-07727, 31633/67-2320, 67-7009

14. Remarks: This makes a claim for the historic water use by the City of Weiser.

15. Basis of Claim: Claim

Case Number:

Court:

Decree Date:

Plaintiff

vs

Defendant

16. Signatures(s)

(a.) By signing below, I/We acknowledge that I/We have received, read, and understand
entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I
do not _____ wish to receive and pay a small annual fee for monthly copies of the dock

Number of Attachments: _____

FOR ORGANIZATIONS: I do solemnly swear or affirm that I am R. Dale Thomason, Mayor

of City of Weiser, that I have signed

the foregoing document in the space below as Mayor

of City of Weiser and that the statements
contained in the foregoing document are true and correct.

Signature of Authorized Agent R. Dale Thomason

Title and Organization Mayor City of Weiser Date 10-16-80

State of Idaho)

County of Washington)

SS.

Last Name: Weiser

Ident. Number:

Page 3 of 3

Subscribe and sworn (or affirmed) before me this 16th day of Oct. 19 89

Seal

Notary Public M. J. Moran

Residing at Weiser, Idaho

My Commission Expires Jan 30, 1992

17. Notice of Appearance:

Notice is hereby given that I, _____ will be acting as attorney on behalf of the claimant signing above, and that all notices required by law to be mailed director to the claimant signing above should be mailed to me at the address listed below

Signature _____

Address _____

Date _____

Last Name: Weiser

Ident. Number:

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF TWIN FALLS

TO RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 3957

Ident. Number: 03-7009
Date Received: 10-18-89
Receipt No: C012378
Received by: *[Signature]*

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of applicant: City of Weiser

Phone: 549-1964

Address: 55 W. Idaho St.

2. Date of priority: Nov. 15, 1972

3. Source of water supply: Snake River

Tributary to: Columbia

4. Point of diversion:
Township Range Section 1/4 of 1/4 of 1/4 Lot County
11N 5W 32 SW SW WASHINGTON

5. Description of existing diversion works: River intake structure with pump on bank pumping into the treatment plant then into the city water line 9'

6. Water is claimed for the following purposes:

Purposes	(both dates are inclusive)		C.F.S.	(OR)	A.F.A.
	From	To			
MUN.	1/1	12/31	4.46		

7. Total quality claimed (a) 4.46 (cfs) and/or (b) (acre fee)

8. Total consumptive use claimed is: MUNICIPAL

9. Non-irrigation uses; MUNICIPAL

10. Lands irrigated of Place of Use: WITHIN THE CITY LIMITS OF WEISER

Township	Range	Section	1/4	of	1/4	Lot	Use	Acre
----------	-------	---------	-----	----	-----	-----	-----	------

Total number of acres irrigated

Post Name: Weiser

Ident. Number: 03-7009

Page 2 of 3

1. Place of Use in counties: Washington

2. Do you own the property listed above as place of use? yes
If your answer is No, describe in Remarks below the authority you have
claim this water right.

13. Other Water Rights Used: 67-4291, 67-07727, 31633/67-2320

14. Remarks:

15. Basis of Claim: LICENSE
Case Number:
Court:
Decree Date:

vs

Plaintiff

Defendant

3. Signatures(s)

(a.) By signing below, I/We acknowledge that I/We have received, read
understand the form entitled "How you will receive notice in the Snake River
Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a
annual fee for monthly copies of the docket sheet.

Number of Attachments: _____

FOR ORGANIZATIONS: I do solemnly swear or affirm that I am R. Dale Thomason,

of City of Weiser, that I have s

the foregoing document in the space below as Mayor
of City of Weiser and that the state
contained in the foregoing document are true and correct.

Signature of Authorized Agent R. Dale Thomason

Title and Organization Mayor

Date

State of Idaho

SS.

County of Washington

Last Name: Weiser

Ident. Number: 03-7009

3 of 3
 subscribe and sworn (or affirmed) before me this 16th day of Oct 19.

Notary Public M. J. Meane
Residing at Wesley, Idaho
My Commission Expires Jan 30, 1992

Notice of Appearance:
 Notice is hereby given that I, _____ will be acting as
 attorney at law on behalf of the claimant signing above, and that all notices
 required by law to be mailed by the director to the claimant signing above should
 be mailed to me at the address listed below.

Signature _____

Address _____

Date _____

st Name: Weiser

Ident. Number: 03-7009

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

1. ☒ **Name and Address**
Should be: City of Weiser
2. ☒ **Source**
Should be: Snake River, Tributary to Columbia River
3. ☒ **Quantity**
Should be: 4.460 cfs
4. ☒ **Priority Date**
Should be: October 12, 1887
5. ☒ **Point(s) of Diversion**
Should be: T11N R05W S32 SWSW within Washington County
6. ☐ **Instream Flow Description**
Should be:
7. ☒ **Purpose(s) of Use**
Should be: Municipal
8. ☒ **Period of Year**
Should be: 01/01 to 12/31
9. ☒ **Place of Use**
Should be: Place of use is within the service area of the City of Weiser 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): This SRBA water claim was disallowed but it should be allowed. This SRBA claim is based on historic water used by the City of Weiser, and the water has been used since the incorporation of the City of Weiser in 1887.

VERIFICATION

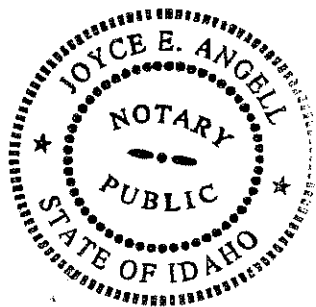
State of Idaho)
) ss:
County of Ada)

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

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
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: November 1, 2006



Joyce E. Angell
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 1, 2006, 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
PO Box 2707
Twin Falls, ID 83303-2707

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

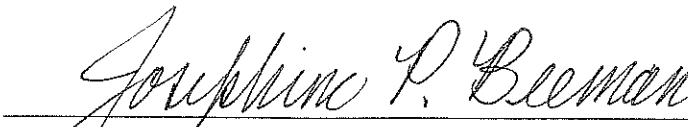
Name: City of Weiser
Address: 55 W. Idaho Street
Weiser, Idaho 83672

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



Signature of attorney mailing on Objector's behalf