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DEPARTMENT OF
WATER RESOURCES

Attorneys for the 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	)	
	)	
Case No. 39676	)	Subcase Nos. 29-00271 et al. (See Attachment A)
	)	
	)	
	)	MOTION TO ALTER OR AMEND
_____	)	

The City of Pocatello ("Pocatello" or "City") hereby moves this Court, pursuant to SRBA Administrative Order No.1, Section 13a, and Rules 7(b)(1) and 7(b)(3), I.R.C.P., to alter or amend the Special Master's REPORT AND RECOMMENDATION and ORDER ON MOTION TO RECONSIDER¹. Pursuant to Rule 7(b)(3), I.R.C.P., a brief in support of this motion will be filed within 14 days.

The grounds for this motion are as follows:

1. The Special Master's Order on Reconsideration incorrectly characterized legal arguments in cases that have gone to the Idaho Supreme Court as "additional evidence". Pocatello's Motion for Reconsideration was improperly denied.
2. The Special Master's Recommendation denied alternate points of diversion for Pocatello's surface water rights because it relied on and used a standard of "connection" when determining "whether Mink Creek and Gibson Jack Creek are connected closely enough to the

¹ The original Report was filed on October 2, 2007 and an amended version was filed on October 30, 2007. Subsequent amendments are anticipated to the October 30 Report.

proposed groundwater wells to be considered the same source.” The standard applied was based on an improper administrative rulemaking.

3. The Special Master’s Recommendation incorrectly concluded that I.C. § 42-1425’s provision for changes in point of diversion “does not provide for a change in the source element”.

4. The Special Master’s Recommendation erred by using a “no injury” standard to conclude that the alternative points of diversion were not “accomplished transfers”.

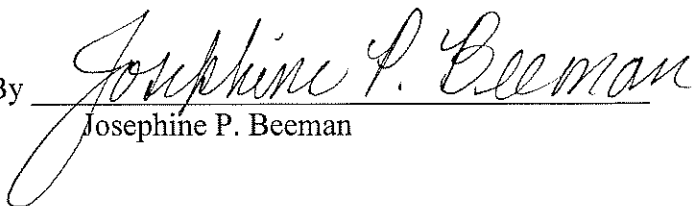
5. The Special Master’s Recommendation adopts IDWR’s limiting condition on the groundwater rights serving the City’s interconnected well system despite the fact that the condition is unnecessary for the adjudication of the rights and addresses concerns that are properly determined by the Department in the *administration* of the rights.

6. The Special Master’s Recommendation mistakenly concluded that correcting the Department’s administrative error of law - licensing water right 29-7770 with an irrigation purpose of use - would constitute a “collateral attack”.

7. The Special Master’s Recommendation failed to apply the “reasonable evidence” standard to the evidence presented at trial in support of Pocatello’s claimed priority date for water rights 29-13558 and 29-13639. Additionally, as to the priority date issue the City respectfully requests that the Special Master augment her findings of fact, pursuant to I.R.C.P. 52(b), to include newly discovered evidence that will be discussed in the brief.

DATED this 28th day of November 2007.

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

By 
Josephine P. Beeman

Attachment A (30 subcases)

29-00271
29-00272
29-00273
29-02274
29-02338
29-02401
29-02499
29-04221
29-04222
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29-04226
29-07106
29-07118
29-07119
29-07322
29-07375
29-07450
29-07770
29-11339
29-11348
29-13558
29-13559
29-13560
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29-13562
29-13637
29-13638
29-13639

CERTIFICATE OF SERVICE

On this 28th day of November 2007, I caused a true and correct copy of the foregoing document to be deposited in an official U.S. Post Office receptacle with proper First Class postage affixed, addressed to the following:

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UNITED STATES OF AMERICA

Represented by:
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STATE OF IDAHO

Represented by:
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STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
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MINIDOKA IRRIGATION DISTRICT

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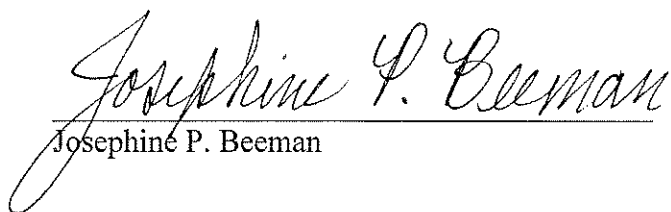
A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT

Represented by:
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MILNER IRRIGATION DISTRICT
NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY

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