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**DEPARTMENT OF
WATER RESOURCES**

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Attorneys for Ground Water Districts

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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

Case No. 39576

**Subcase Numbers: See Attachment
A**

**CITY OF POCATELLO AND
GROUNDWATER USERS' JOINT
MOTION FOR SUMMARY
JUDGMENT ON PRIORITY
DATES**

The City of Pocatello ("Pocatello") and the Aberdeen American Falls
Groundwater District, Bingham Groundwater District, Bonneville Jefferson Groundwater
District, Carey Valley Groundwater District, Jefferson Clark Groundwater District,
Madison Groundwater District, Magic Valley Groundwater District, and North Snake
Groundwater District, (collectively referred to herein as "Groundwater Users") jointly

move the Special Master for a clarifying remark regarding the priority dates claimed in the referenced sub-cases.

1. The water rights referenced in Attachment A claim a priority date of April 1, 1939.
2. By the terms of the Eagle decree, these priority dates were negotiated, and the date of actual first diversion to beneficial use may or may not have actually been April 1, 1939. *See* Eagle Decree, Ex. 3 to Attachment B at ¶ IV(c), (f). In some cases, such as the case of A&B Irrigation District, the project works were not even constructed in 1939.
3. Under Idaho law, and the law of the case in the SRBA, a negotiated priority date in a prior decree is not dispositive of beneficial use on the claimed date absent specific findings of fact supporting the date.
4. Pocatello and the Groundwater Users are unaware of any evidence of diversion for beneficial use of these rights on or prior to April 1, 1939. Instead, the actual first date of diversion for beneficial use is based on summaries of WD01 records prepared by the Surface Water Coalition in the Delivery Call case, *In the Matter of Distribution of Water to Various Water Rights Held by or for the Benefits of A&B Irrigation District, American Falls Reservoir District, North Side Canal Company and Twin Falls Canal Company*, as referenced in the Undisputed Facts portion of the Memorandum filed contemporaneously herewith.
5. Under I.C. 42-1411(2)(j), a clarifying remark should be added to the partial decrees in these sub-cases identifying the priority date for administration, being the date of actual first diversion for beneficial use, to facilitate lawful administration of these rights.

As reflected in the service list, Pocatello and the Ground Water Users'

Memorandum in Support of this Motion will be emailed to the parties, along with supporting Affidavit of Sarah A. Klahn and Exhibits. The Court will receive the Memorandum and Affidavit by Federal Express delivery on Monday, August 25, 2008.

Respectfully submitted this 22nd day of August, 2008.

RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED

By Sarah Klahn for
Candice M. McHugh

ATTORNEY FOR GROUND WATER
DISTRICTS

CITY OF POCA TELLO ATTORNEY'S
OFFICE

By Sarah Klahn for
A. Dean Tranmer

WHITE & JANKOWSKI, LLP

By Sarah Klahn
Sarah A. Klahn

ATTORNEYS FOR POCA TELLO

ATTACHMENT A

Subcases Nos:

01-00007

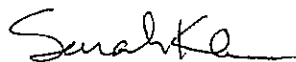
01-00008

01-00009

01-00014

CERTIFICATE OF MAILING

I hereby certify that on this 22nd day of August, 2008, a true and correct copy of **City of Pocatello and Groundwater Users' Joint Motion for Summary Judgment on Priority Dates for SRBA Surface Water Coalition Water Rights Cases** was served by email to those with email addresses and U.S. Mail, postage pre-paid and addressed to the following:



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