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DEPARTMENT OF
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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**

**NOTICE OF WITHDRAWAL OF
CITY OF POCATELLO FROM
SUPPORT OF JOINT MOTION
FOR SUMMARY JUDGMENT ON
PRIORITY DATES**

The City of Pocatello ("Pocatello") represented in the August 22, 2008 Joint Motion for Summary Judgment (filed jointly with the Ground Water Districts) that it was not a party to the Eagle Decree. *See* Memorandum in Support of Joint Motion on Priority Dates 2. In the Claimants' October 30, 2008 Response to the Ground Water Districts' Motion to Amend, the Claimants alleged that Pocatello was a party to the Eagle Decree. Upon further investigation, Pocatello has discovered the following:

1. The copy of the Eagle Decree that resided in counsel's files was incomplete and did not contain all of the signature pages. *See*, August 22, 2008 Affidavit of Sarah A. Klahn, Exhibit 3. Similarly, the copies of the Eagle Decree that reside in the water rights files of the Idaho Department of Water Resources for the referenced sub-cases (see Attachment A) are incomplete. *See* <http://www.idwr.idaho.gov/apps/ExtSearch/SearchWRAJ.asp>.
2. Upon review of the copy of the Eagle Decree referenced by counsel in the October 30, 2008 Response brief, Pocatello is listed as a party signatory on the last page of the signature pages.
3. The Joint Motion for Summary Judgment was filed because of the junior ground water users concerns over the nature of administration of claimants rights. The Memorandum in support of the Joint Motion stated: "A clarifying remark is necessary to facilitate administration of certain rights. I.C. 42-1411(2), (3); *State v. Nelson*, 131 Idaho 12, 15-16; 951 P.2d 943, 946-947 (1998)." Memorandum in Support of Joint Motion on Priority Dates 2.
4. Pocatello still believes that the merits of the Joint Motion are sound and that a "clarifying remark" is appropriate. However, because of Pocatello's error in fact regarding it's status as a signatory to the Eagle Decree and because that error may overshadow the more important question of the appropriate clarifying remark for administration of claimants water rights, Pocatello withdraws from the Joint Motion for Summary Judgment on Priority Dates.

5. No party will be prejudiced by this withdrawal and, to the extent it eliminates an issue extrinsic to the merits of the Joint Motion, will promote judicial economy.
6. Pocatello respectfully requests that the Special Master allow the Joint Motion on Priority Dates to be re-filed listing the Ground Water Districts as the sole movant and removing all references to Pocatello from the Motion and Memorandum.

Respectfully submitted, this 14th day of November, 2008.

CITY OF POCA TELLO ATTORNEY'S
OFFICE

By Sarah A. Tranmer
A. Dean Tranmer

WHITE & JANKOWSKI, LLP

By Sarah A. 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 14th day of November, 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 [Exhibit A – subcases 01-00007, 01-00008, 01-00009, 01-00014]** 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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