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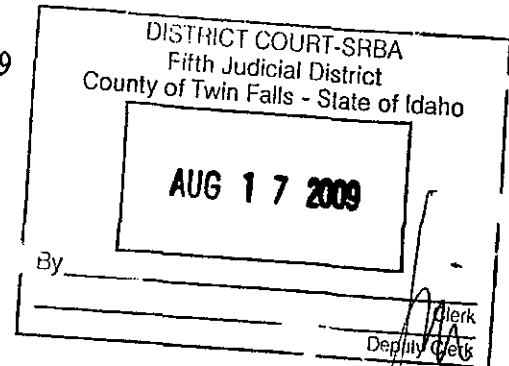
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August 14, 2009

Via Fax 208-736-2121

John M. Melanson
Judge of the SRBA Court
P. O. Box 2707
Twin Falls, ID 83303



Re: City of Pocatello – In Re SRBA Case No. 39576, Subcases 29-00271, et al.
Notice of Challenge Argument, Thursday, August 13, 2009

Dear Judge Melanson:

During oral argument on Thursday, August 13, in the above-mentioned matter, I made reference to the record regarding the State's "change in source" argument and IDWR Transfer Processing Memo No. 24, which IDWR and then Special Master Bilyeu relied on to determine interconnection between Pocatello's surface and ground water sources. These are the specific citations to the record:

1. February 27, 2008 hearing on Motion to Alter or Amend: Jo Beeman's statements regarding "source" as a descriptive aspect of the point of diversion and describing decrees in the SRBA which were issued with a statement that the "right includes accomplished change in source pursuant to 42-1425." *See* Transcript of Telephonic Hearing Before Special Master Bilyeu at 26-28, Feb. 27, 2008.¹
2. January 17, 2007 hearing on summary judgment: David Barber's statements that IDWR Transfer Processing Memo No. 24 is not a regulation, is not enforceable as a regulation, and does not directly apply to an accomplished transfer under I.C. § 42-1425. *See* Transcript of Audiotaped Proceedings at 48-49, Jan. 17, 2007.

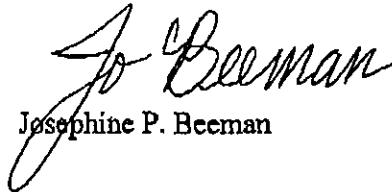
¹ The same decrees are discussed in the City of Pocatello's December 13, 2007 Brief in Support of Motion to Alter or Amend at 2, *In Re SRBA Case No. 39576*, Subcase Nos. 29-00271, et al. ("Pocatello refers the Master to the recommendations and partial decrees for 29-00071, 29-02219, and 29-10341 as examples where the source element of the water right was specifically recommended and decreed with the following statement: 'Right includes accomplished change in source pursuant to section 42-1425, Idaho Code.' Pocatello understands that I.C. 42-1425 is routinely applied to changes in source because the source element is a descriptive aspect of the point of diversion element.").

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When asked at the end of oral argument whether additional briefing would be provided, Pocatello declined. After discussing the matter with Dean Tranmer, City Attorney for Pocatello, Pocatello would like to provide additional briefing. Pocatello would like to clarify its arguments regarding the errors made by the Special Master in her findings of fact and conclusions of law on the issue of listing Pocatello's ground water wells as alternate points of diversion for the City's surface water rights. Specifically, Pocatello would like to address the issue you raised in a question to Ms. Kilminster-Hadley regarding the "clearly erroneous" standard of review. As the subject of the briefing does not involve the alternative points of diversion condition, no further participation by Chris Meyer on behalf of the Providers would be necessary.

Sincerely,

BEEMAN & ASSOCIATES, P.C.

A handwritten signature in cursive script, reading "Jo Beeman".

Josephine P. Beeman

cc: Shasta Kilminster-Hadley (State)
Chris Meyer (Providers)