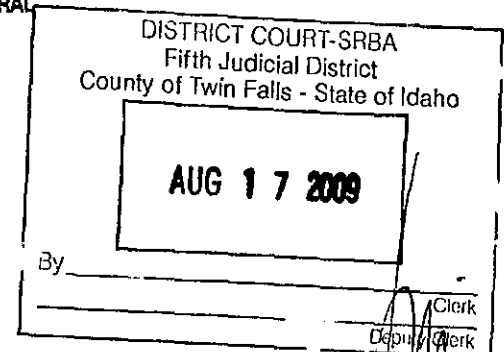




STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WARDEN

August 17, 2009



Via Fax (208) 736-2121

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

Re: In Re SRBA Case No. 39576, Subcases 29-00271, et al.

Dear Judge Melanson:

In response to the City of Pocatello's August 14, 2009 letter to the Court, the State of Idaho maintains that there is no need for additional briefing on the matters before the Court. The City of Pocatello has had ample opportunity to address any errors made by the Special Master in her findings of fact and conclusions of law regarding the use of Pocatello's groundwater wells as alternative points of diversion for its surface water rights. Furthermore, the City should not be permitted to raise new issues that are not properly before the Court.

In Pocatello's Opening Brief on Challenge, it presented no evidence to support rejecting the Special Master's findings of fact. On the contrary, the City claimed only that the Special Master erred as *a matter of law* in considering whether the City's groundwater wells and surface water rights withdraw from the same source and also that the Special Master erred as *a matter of law* in the standards she used in her analysis. In its Response to Pocatello's Opening Brief on Challenge, the State pointed out that the Special Master's findings of fact should be adopted by the Court unless they are clearly erroneous. The State also pointed out that the City had presented no evidence to support rejecting the Special Master's findings. Although it filed a Reply to the State's responsive brief, Pocatello chose not to brief the issue further in that pleading, where it would have been appropriately addressed.

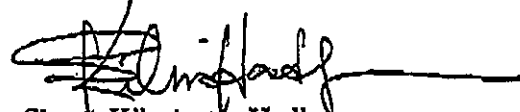
Additionally, to the extent that Pocatello is attempting to make the argument that the accomplished transfer statute allows changes in the source element, it is raising a new

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issue that is not properly before the Court. The City has argued to date that its groundwater wells can be deemed alternative points of diversion for its surface water rights because they are diverting from sources so interconnected as to be the *same source*. The City's expert testified in support of that assertion. Pocatello should not be permitted at this late date to introduce new arguments that the statute should be interpreted to include a change in source element.

The appropriate time for briefing on this issue is past. To the extent the City's letter constitutes a motion for additional briefing, the State urges the Court to deny such motion. If the Court determines that additional briefing is warranted, the State respectfully requests that it be provided ample opportunity to provide a response thereto.

Sincerely,



Shasta Kilminster-Hadley
Deputy Attorney General

SKH/olv