

NOV 24 2009

DEPARTMENT OF
WATER RESOURCES

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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	)	Subcase Nos. 29-271 et al. (see Attachment)
	)	
Case No. 39576	)	CITY OF POCATELLO'S
	)	MOTION TO ALTER OR AMEND
	)	NOVEMBER 9, 2009 MEMORANDUM
	)	DECISION AND ORDER ON
	)	CHALLENGE

DESCRIPTION

The City of Pocatello (City or Pocatello), by and through its counsel of record, Josephine P. Beeman of Beeman & Associates, P.C., hereby moves this court to alter or amend the District Court's November 9, 2009 Memorandum Decision and Order on Challenge pursuant to I.R.C.P. 7(b)(1), 7(b)(3), and 59(e), or, in the alternative, to reconsider the Memorandum Decision and Order on Challenge pursuant to I.R.C.P. 11(a)(2). A brief in support of this motion will be filed within 14 days in accordance with I.R.C.P. 7(b)(3). Oral argument is requested.

MOTION

Pocatello respectfully moves this Court to amend its November 9, 2009 Memorandum Decision and Order on Challenge entered in the above captioned subcases to address or provide for the following:

1. Enumerated findings of fact and conclusions of law.
2. I.C. § 42-1425 does not contemplate and was not intended to authorize IDWR to engage in an injury analysis where no third parties objected to the claims based on

injury, and where IDWR has not identified any water rights that would be injured as a result of the accomplished transfers.

3. I.C. § 42-1425 does not apply to transfers accomplished prior to May 26, 1969; therefore, I.C. § 42-1425 cannot properly be used as justification for conditioning a transfer accomplished prior to May 26, 1969.
4. Unlike I.C. § 42-1426, which has a per se injury rule in the case of enlargements, I.C. § 42-1425 does not have a per se injury rule for accomplished transfers.
5. The Providers' scenarios set out in footnote 10 of the Memorandum Decision and Order on Challenge¹ are not based on facts in the record before the Court and do not provide a basis for a decision affecting Pocatello's water rights or directing IDWR's administration of similar rights in the future.
6. IDWR improperly changed its position with regard to the administration of municipal water rights without engaging in rulemaking procedures under Idaho's Administrative Procedures Act.
7. No specific legal standard exists for determining whether a sufficient degree of interconnection exists between surface and groundwater points of diversion so as to be considered the "same source."
8. Pocatello presented sufficient evidence under the substantial evidence standard to rebut the allegations of injury and lack of interconnection between Pocatello's surface and groundwater sources in the Director's Report.
9. I.C. § 42-1425 does not prohibit accomplished transfers of source.
10. As a matter of law, an "irrigation" purpose of use designation does not apply to a municipally owned water right beneficially used for biosolids waste treatment in accordance with federal law.
11. Pocatello presented sufficient evidence under the substantial evidence standard to support its claimed priority dates for water rights 29-13558 and 29-13639.
12. It is not a collateral attack on a prior license for Pocatello to claim a priority date consistent with beneficial use for water right 29-13639 predating the subsequent license.

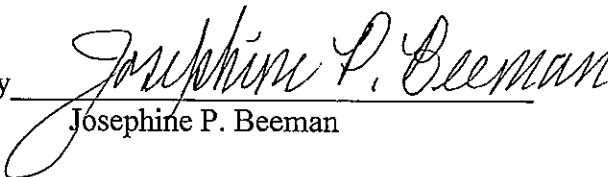
¹ Memorandum Decision and Order on Challenge (City of Pocatello) at page 16, *In Re SRBA Case No. 39576*, Subcase Nos. 29-271, et al. (November 9, 2009).

Pocatello offers the following as an example of the grounds supporting its Motion to Alter or Amend:

1. The lack of detailed and enumerated findings of fact and conclusions of law resulted in confusion regarding the facts of the case. This is illustrated by several factual errors and inaccuracies in the description of Pocatello's claims and water system. For example, the wells and water rights in existence prior to May 26, 1969 were not identified by either the Special Master or the Court and should be identified because the accomplished transfer statute only applies to transfers accomplished in violation of the transfer requirements that became mandatory on May 26, 1969.
2. The Memorandum Decision and Order on Challenge does not define what constitutes "interference" for the purposes of administering the condition on Pocatello's water rights.

Dated this 23RD day of November 2009.

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

By 
Josephine P. Beeman

Attachment (30 subcases)

29-00271
29-00272
29-00273
29-02274
29-02338
29-02401
29-02499
29-04221
29-04222
29-04223
29-04224
29-04225
29-04226
29-07106
29-07118
29-07119
29-07322
29-07375
29-07450
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29-11339
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29-13638
29-13639

CERTIFICATE OF SERVICE

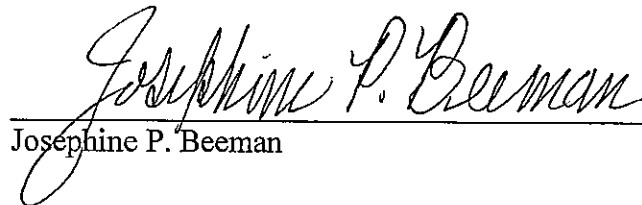
I HEREBY CERTIFY that on the 23rd day of November 2009, I caused a true and correct copy of the foregoing document to be served on the following by U.S. Mail:

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