

RECEIVED

DEC 08 2009

DEPARTMENT OF
WATER RESOURCES

Josephine P. Beeman (#1806)
Beeman & Associates, P.C.
409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
Fax – (208) 331-0954
jo.beeman@beemanlaw.com

Attorney for the City of Pocatello

**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. 00-92002GP, 02-00200, 02-00201,
	)	02-00223, and 02-00224
	)	
Case No. 39576	)	CITY OF POCA TELLO'S COMMENTS TO
	)	PROPOSED "SUPPLEMENTAL ORDER OF
	)	REFERENCE APPOINTING
	)	TERRENCE A. DOLAN TO PRESIDE
	)	OVER RECOMMENDED GENERAL
	)	PROVISION 00-92002GP AND ALL
	)	RELATED MATTERS PERTAINING
	)	TO THE GENERAL PROVISION ON
	)	FLows AT MILNER DAM"

The City of Pocatello files these comments in response to the SRBA Special Master Terrence A. Dolan's November 20, 2009 Order Granting Petition To Appear As Amicus Curiae, Order Setting Deadline For Comments and Special Master Report And Recommendation (November 20 Order). The November 20 Order set a December 4, 2009 deadline for comments to the proposed "Supplemental Order of Reference Appointing Terrence A. Dolan to Preside over Recommended General Provision 00-92002GP and All Related Matters Pertaining to the General Provision on Flows at Milner Dam." (Supplemental Order of Reference)

In order to clarify that the Supplemental Order of Reference for 00-92002GP includes both of the general provision objections in basin 02, the City of Pocatello provides its comments in the form of edits set forth below to the proposed Supplemental Order of Reference.

Title of Order:

“Supplemental Order of Reference Appointing Terrence A. Dolan to Preside over ~~Recommended General Provision~~ 00-92002GP which includes and All Related Matters Pertaining to the General Provision on Flows at Milner Dam and the request for a Swan Falls General Provision for all water rights in the Snake River drainage above the Murphy Gauge.”

Text of the Order:

On June 4, 2007, this Court issued Order of Reference Appointing Terrence A. Dolan as Special Master **for Irrigation** and Other Claims **iii** IDWR Administrative Basins 02, 03, 47, 73 and 75, which included the following authority:

General Provisions — Contested or Uncontested: Identify and preside over any objections filed to the recommended general provision for the above-captioned basin. Following a review of the objections if it is determined that the recommended general provision was uncontested then issue a Special **Master’s Report and Recommendation** notifying the Court that the general provision was not contested. Alternatively, if the recommended general provision is contested then following proceedings on objections, issue a Special **Master’s Report and Recommendation** consistent with the outcome of the proceedings.

Thereafter, Objections and Responses were filed to the general provision recommendations for Basin 02, including both the recommendation regarding flows at Milner Dam and the request for a Swan Falls General Provision for all water rights in the Snake River drainage above the Murphy Gauge. The subcases relating to these general provision objections ^{were JPB} ~~is was~~ designated as

Subcase 00-92002GP. One of the issues before the Special Master involves the scope of application of these general provision matters outside of Basin 02. This Supplemental Order clarifies that the June 4, 2007, **Order of Reference** confers the authority to preside over all related matters including application of ~~the~~ any general provision matters within Subcase 00-92002GP, if any, outside of Basin 02.

DATED this 4th day of December 2009.

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

By Josephine P. Beeman
Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on this 4th day of December 2009, I caused to be served a true and correct copy of the foregoing document on the following parties by U.S. Mail:

James Tucker
Idaho Power Company
P.O. Box 70
Boise, ID 83701

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

James S. Lochhead
Adam Devoe
Brownstein Hyatt Farber Shreck, P.C.
410 17th Street, Suite 2200
Denver, CO 80202

United States Department of Justice
Environment and Natural Resource Div
550 W. Fort Street, MSC 033
Boise, ID 83724

John Simpson
Barker Rosholt and Simpson
P.O. Box 2139
Boise, ID 83701-2139

David Gehlert
U.S. Dept of Justice
1961 Stout Street, 8th Floor
Denver, CO 80294

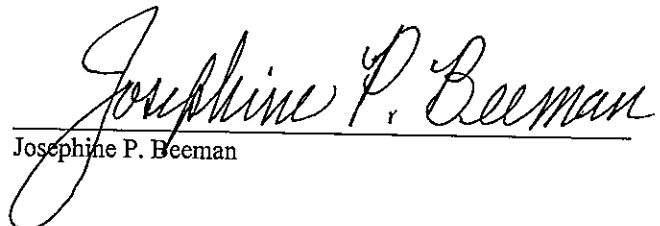
Travis Thompson
Barker Rosholt & Simpson
P. O. Box 485
Twin Falls, ID 83303-0485

Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

Randall C. Budge
P. O. Box 1391
Pocatello, ID 83204-1391

Dana Hofstetter
608 W. Franklin Street
Boise, ID 83702

Candice McHugh
Racine Olson
101 S. Capitol, #208
Boise, ID 83702



Josephine P. Beeman