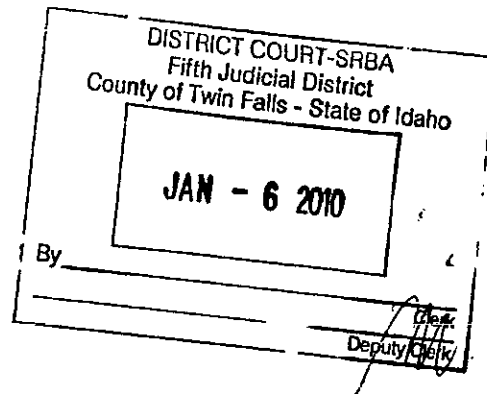


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Attorneys for City of Weiser



**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. 3-7009, 3-7034, 3-10010,
	)	3-10198, 67-2320, 67-4291, 67-4412,
Case No. 39576	)	67-10971, 67-10975, and 67-14129
	)	(City of Weiser)
_____	)	

**CITY OF WEISER'S MOTION TO
 VACATE TRIAL**

The City of Weiser respectfully requests the court to vacate the January 7, 2010 trial for the above subcases based on the information below. IDWR concurs in the motion.

There are two very limited issues that remain concerning these subcases.

(1) The first issue is whether a combined capacity limitation is necessary for the Snake River and Weiser River rights that are diverted for the City of Weiser's potable system (3-10010, 3-10267¹, 3-7009, and 67-14129²).

(2) The second issue concerns the points of diversion for the two ground water rights in the Weiser drainage which are part of the potable system (67-4291 and 67-2320).³

¹ 3-10267 is a 1912 priority for 1.94 cfs late claim which will be filed to reflect staged development of the City of Weiser's diversion facilities. 3-10010 will reflect 1.87 cfs for 1903. 3-7009 will be 0.65 cfs from 1972. All three rights are from the Snake River)

² Depending upon the resolution of the diversion capacity issue, there will either be a withdrawal of the objection to 67-14129 or an SF5 will be executed for 67-14129 for 0.65 cfs with a 1972 priority date; and two new claims (1.8 cfs with priority of 1903, and 1.94 cfs with priority of 1912) will be filed. These are all Weiser River rights for the City's potable system.

The remaining SRBA claims for the City have been resolved as follows:

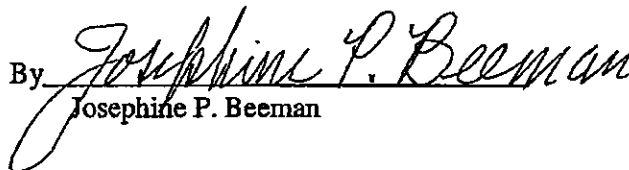
- 3-10198 – An amended claim will be filed by the City of Weiser. The elements of the amended claim have been stipulated between IDWR and the City. As a result of the amended claim 3-10198, IDWR will issue an Amended Director's Report for 3-10198 and a Director's Report for 3-10264⁴ (Snake River irrigation).
- 3-7034 – A Standard Form 5 will be submitted (Snake River irrigation).
- 67-4412 – A Standard Form 5 will be submitted for 0.4 cfs with a 1954 priority date (Weiser River irrigation).
- 67-10975 – A Standard Form 5 will be submitted for 0.24 cfs with a 10/12/1887 priority date (ground water – domestic and fire protection).
- 67-10971 – A Standard Form 5 will be submitted for 0.04 cfs with a 1980 priority date (ground water – domestic use at airport).

The City of Weiser and IDWR will submit a joint written status report no later than January 28, 2010 to advise the Special Master regarding the unresolved issues affecting 3-10010, 3-10267, 3-7009, 67-14129, 67-4291, and 67-2320.

Based on this information, the City of Weiser respectfully submits this motion to vacate the January 7 trial.

Respectfully submitted this 6th day of January 2010.

BEEMAN & ASSOCIATES P.C.
Attorneys for the City of Weiser

By 
Josephine P. Beeman

³ The City's potable ground water rights 67-4291 and 67-2320 currently list only a single point of diversion for each water right. The City intends to file amended claims to show two alternate points of diversion for these two ground water rights. It is possible there may be more alternate points of diversion for these two ground water rights. This will be reflected in the amended claims for 67-4291 and 67-2320.

⁴ The amended claim for 3-10198 will be split by the Department into amended recommendation 3-10198 and new recommendation 3-10264 once the motion to amend 3-10198 is granted.

CERTIFICATE OF SERVICE

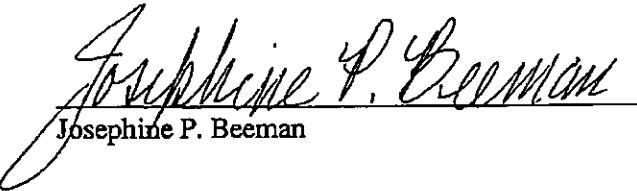
I HEREBY CERTIFY that on the _____ day of January 2010, I caused a true copy of the foregoing document be deposited in an official U.S. Post Office box with First Class postage affixed, addressed to the following:

UNITED STATES OF AMERICA
REPRESENTED BY:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NAT'L RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

STATE OF IDAHO
REPRESENTED BY:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

GARRICK BAXTER
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