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DEPARTMENT OF
WATER RESOURCES

Docket No. 37723-2010

IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF SRBA CASE NO. 39576 SUBCASE NOS. 29-271 ET AL.

CITY OF POCATELLO
Appellant

v.

THE STATE OF IDAHO
Respondent

CITY OF POCATELLO'S PETITION FOR REHEARING
(Filing Fee: \$71.00)

On Appeal from the Snake River Basin Adjudication,
Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls.

Honorable Eric J. Wildman, Presiding

Josephine P. Beeman (Idaho Bar # 1806)
Jane M. Newby (Idaho Bar # 2848)
Beeman & Associates, P.C.
409 West Jefferson Street
Boise, Idaho 83702
TELEPHONE: (208) 331-0950
FACSIMILE: (208) 331-0954
EMAIL: jo.beeman@beemanlaw.com

Attorneys for City of Pocatello, Appellant

Clive Strong, Deputy Attorney General
Shasta Kilminster-Hadley, Deputy
Attorney General
Natural Resources Division Chief
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

Attorneys for State of Idaho, Respondent

The City of Pocatello (Appellant) respectfully petitions this Court, pursuant to Idaho Appellate Rule 42, for rehearing of its Opinion entered in this case on January 5, 2012.

Appellant requests a rehearing of the Opinion on the following issues:

1. The correction of certain clerical errors:
 - a. “Hearing officer” should be replaced by “Special Master” throughout the opinion.
 - b. Page 2, footnote 1, line 2: “97106” should be “29-7106.”
 - c. Page 3, line 1: the phrase “three water rights pumped from three wells” should be replaced by “two water rights pumped from two wells” in accordance with the April 12, 2010 decision of the SRBA court, page 6, footnote 2, which refers to exhibits attached to the April 12, 2010 decision.
 - d. Page 3, lines 15 to 20: the discussion of the Appellant’s biosolids water right 29-7770 should be amended to conform to the April 12, 2010 decision of the SRBA court, page 7, lines 12-17. The SRBA court amended its previous decision to clarify Pocatello’s position that IDWR made an *error of law* [unrelated to the accomplished transfer statute Idaho Code section 42-1425(2)] in recommending the purpose of use for water right 29-7770 as “irrigation” rather than “municipal.”
2. Whether Appellant timely raised the following issue in the SRBA district court prior to the entry of final judgment and prior to the filing of the Appellant’s November 23, 2009 Motion to Alter or Amend:

Did the Department of Water Resources Have the Authority to Recommend the Condition that Was Attached to Pocatello’s Ground Water Rights when It Had Not Done So in Prior Similar Cases?

3. Whether Appellant timely raised the following issue in the SRBA district court prior to the entry of final judgment and prior to the filing of the Appellant's November 23, 2009 Motion to Alter or Amend:

The accomplished transfer statute, Idaho Code §42-1425 does not apply to changes made to water rights before May 26, 1969, the date it became mandatory to seek a formal transfer for changes to water rights.

4. Whether there was a factual basis in the record before the Special Master for Pocatello's assertion that the accomplished transfer statute does not apply to transfers of points of diversion that occurred prior to May 26, 1969.
5. Whether the upholding of the SRBA district court on the following issue is an error of law that also invalidates the previously entered SRBA partial decrees, in the record in this proceeding, that were issued with changes in source pursuant to Idaho Code 42-1425:

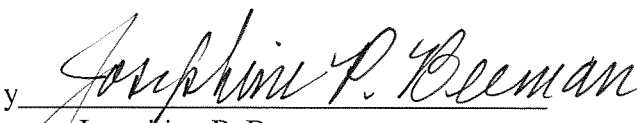
The source of a water right cannot be changed under Idaho Code section 42-1425.

6. Whether issues timely raised prior to entry of the SRBA final judgment on November 9, 2009, but deemed untimely raised in the January 5, 2012 Opinion, should be addressed in a future opinion.

Pursuant to Idaho Appellate Rule 42, the supporting brief will be filed by the Appellant within 14 days.

RESPECTFULLY SUBMITTED this 26th day of January 2012.

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

By 
Josephine P. Beeman

CERTIFICATE OF SERVICE

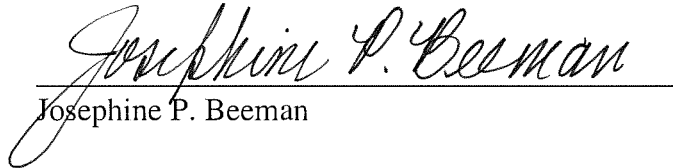
I HEREBY CERTIFY that on the 26th day of January 2012, I caused a true and correct copy of the foregoing document to be served on the following by U.S. Mail:

NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449 (and email)

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

US DEPARTMENT OF JUSTICE
ENVIRONMENT & NAT'L RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

CHRISTOPHER H. MEYER
JOHN M. MARSHALL
GIVENS PURSLEY LLP
P. O. BOX 2720
BOISE, ID 83701-2720


Josephine P. Beeman