

7-7  
RECEIVED

JUL 09 2013

DEPARTMENT OF  
WATER RESOURCES

Josephine P. Beeman #1806  
BEEMAN & ASSOCIATES, P.C.  
409 West Jefferson Street  
Boise, ID 83702  
(208) 331-0950  
(208) 331-0954 (Facsimile)  
Jo.beeman@beemanlaw.com

Attorneys for 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. 1-2068 and 1-2068Y |
|                | ) |                                 |
| Case No. 39576 | ) | <b>CITY OF POCATELLO'S</b>      |
|                | ) | <b>NOTICE OF CHALLENGE</b>      |
| _____          | ) |                                 |

**I. INTRODUCTION**

City of Pocatello, and by and through its counsel of record, pursuant to Administrative Order 1, subpart 13, hereby gives notice of challenge to the Special Master's June 24, 2013 Order Denying Motion to Alter or Amend. The affected subcases are state law-based SRBA claims 1-2068 filed by the United States and 1-2068Y filed by Pocatello.

On May 3, 2012 the Special Master entered an Order Granting Motion to Reset Schedules and Amended Trial Schedule Order. The Special Master's Order on Motions for Partial Summary Judgment was entered July 27, 2012, following hearing on July 12, 2012. The Parties' Stipulation was filed September 25, 2012. The SRBA Order to Show Cause and Hearing regarding the Stipulation was filed September 28, 2012. The Surface Water Coalition and the State of Idaho's Joint Motion to Amend Trial Schedule was filed September 28, 2012. The Special Master's Order Granting Motion to Amend Trial Schedule was entered October 1, 2012. The Special Master's Order Adopting Stipulation was entered November 2, 2012,

following hearing on October 30, 2012. The Special Master's Order and Report and Recommendation was entered March 6, 2013 (March 6 Order, amended *nunc pro tunc* on April 15, 2013), following trial on December 10, 2012. The Special Master's Order Denying Pocatello's Motion to Alter or Amend was entered June 24, 2012, following hearing on July 12, 2012.

## **II. ISSUES ON CHALLENGE**

Pocatello raises the following issues on challenge as they may arise in the Order Granting Motion to Reset Schedules and Amended Trial Schedule Order, the Order on Motions for Partial Summary Judgment, the Show Cause Order, the Order Granting Motion to Amend Trial Schedule, the Order Adopting Stipulation, the Order and Report and Recommendation (amended *nunc pro tunc*), and the Order Denying Pocatello's Motion to Alter or Amend:

1. The SRBA court, including proceedings before the Special Master, has an obligation to refer to and render decisions that are not in conflict with its own records. It was error for the Special Master to deny the inclusion of and consideration of Pocatello's exhibit 522 pertaining to United Water Idaho water rights associated with the municipal purpose of use under Reclamation water right 63-3614.
2. It was error for the Special Master to determine that an accomplished transfer and the diversion of storage water by the City under water right 1-2068 or 1-2068Y were necessary for the inclusion of a municipal purpose of use under Reclamation water right 1-2068 or Pocatello claim 1-2068Y.
3. It is error to include only the "Pioneer ownership remark" in subcase 1-2068 because the remark is from an Idaho Supreme Court decision that addressed only the *irrigation* portion of Reclamation storage rights and did not address or determine

ownership of any other portions of purposes of use in Reclamation contracts, such as the non-irrigation purposes of use asserted by Pocatello in its objection to 1-2068 and in its claim to 1-2068Y.

### **III. TRANSCRIPTS**

A transcript of the December 10, 2013 trial has already been prepared and provided to the parties and to the Court.

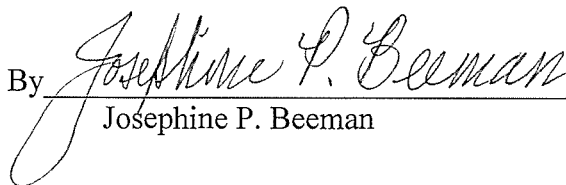
In accordance with Administrative Order 1, § 13(d), Pocatello intends to request transcripts of the following proceedings and to provide transcripts to the parties and the SRBA court:

- July 12, 2012: Hearing on Motions for Partial Summary Judgment
- October 30, 2012: Hearing on Order to Show Cause
- November 29, 2012: Pre-trial hearing
- June 6, 2013: Hearing on Pocatello's Motion to Alter or Amend March 6, 2013 Order and Special Master's Report and Recommendation (March 6 Order, amended *nunc pro tunc* on April 15, 2013).

No other hearing transcript is requested for purposes of Pocatello's Notice of Challenge.

Dated this 8<sup>th</sup> day of July 2013.

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

By   
Josephine P. Beeman

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8<sup>th</sup> day of July 2013, I caused a true and correct copy of the foregoing **CITY OF POCA TELLO'S NOTICE OF CHALLENGE** 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

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

US DEPARTMENT OF JUSTICE  
ENVIRONMENT & NAT'L RESOURCES  
550 WEST FORT STREET, MSC O33  
BOISE, ID 83724

JAMES C. TUCKER  
IDAHO POWER COMPANY  
P O BOX 70  
BOISE ID 83707

ADAM DEVOE  
BROWNSTEIN HYATT FARBER SHCRECK  
410 17<sup>TH</sup> STREET, SUITE 2200  
DENVER CO 80202

TOM ARKOOSH  
ARKOOSH LAW OFFICES  
P O BOX 2900  
BOISE ID 83701

JOHN K SIMPSON  
BARKER ROSHOLT SIMPSON  
PO BOX 2139  
BOISE, ID 83701-2139

CANDICE MCHUGH  
RACINE OLSON NYE BUDGE BAILEY  
101 S CAPITOL BLVD, SUITE 208  
BOISE ID 83702

RANDALL C BUDGE  
RACINE OLSON NYE BUDGE BAILEY  
PO BOX 1391  
POCA TELLO ID 83204-1391

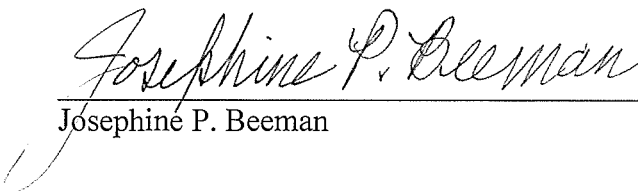
JERRY RIGBY  
RIGBY ANDRUS RIGBY  
P O BOX 250  
REXBURG ID 83440

TRAVIS THOMPSON  
PAUL ARRINGTON  
BARKER ROSHOLT SIMPSON  
195 RIVER VISTA PL STE 204  
TWIN FALLS ID 83301

KENT FLETCHER  
P O BOX 248  
BURLEY ID 83318

DAVID GEHLERT  
U.S. DOJ  
999 18<sup>TH</sup> STREET, SOUTH TERRACE  
SUITE 370  
DENVER CO 80202

MATT HOWARD  
BUREAU OF RECLAMATION PN 3100  
1150 N CURTIS ROAD, SUITE 100  
BOISE ID 83706-1234

  
\_\_\_\_\_  
Josephine P. Beeman