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ATTORNEYS FOR THE CITY OF POCATELLO

**BEFORE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION	)	CITY OF POCATELLO'S SPECIAL
FOR TRANSFER NO. 81155	)	APPEARANCE AND RESPONSE TO
IN THE NAME OF	)	PROTESTANT'S MOTION FOR
CITY OF POCATELLO	)	ATTORNEYS' FEES AND COSTS
_____	)	

City of Pocatello ("Pocatello"), by and through its undersigned attorneys, hereby enters a special appearance in the referenced action. Pocatello does not concede this is an active matter before the Idaho Department of Water Resources ("Department" or "IDWR") nor does Pocatello concede that the Hearing Officer has jurisdiction to entertain Spartan Portneuf LLC's ("Spartan") Motion for Attorneys' Fees and Costs ("Motion"). Pocatello asks that the Hearing Officer simply decline to rule on the Motion based on lack of jurisdiction. Alternatively, in the event the Hearing Officer believes that Spartan's Motion revives the withdrawn matter, Pocatello requests the Hearing Officer deny the Motion on its merits.

I. TRANSFER NO. 81155 WAS WITHDRAWN AND THE DEPARTMENT IS WITHOUT JURISDICTION TO TAKE ANY ACTION ON SPARTAN'S MOTION

Spartan's Motion does not allege a jurisdictional basis for the Department to consider Spartan's Motion. Spartan captions its Motion as relating to Transfer No. 81155. However, Transfer No. 81155 was withdrawn on October 10, 2018. IDWR acknowledged the withdrawal on October 12, 2018. Once a transfer application is withdrawn, there is no longer an active IDWR matter regarding the proposed modification to the water rights that were named in the

transfer, and the Department is without jurisdiction to take any action regarding the withdrawn transfer, including considering claims for attorneys' fees.

Under the Department's procedural rules, Idaho Administrative Code ("IDAPA") 37.01.01.260, motions may be filed in contested cases. There is no provision of the Department's procedural rules, however, and no statutory provision, that allows a protestant to revive a withdrawn transfer through a motion for attorneys' fees. As there is no contested case involving Transfer No. 81155, and no statutory basis for initiating a contested case before IDWR to seek attorneys' fees, Spartan's Motion seeking an order of the Department on any issue—including attorneys' fees—fails for want of agency jurisdiction. The Hearing Officer should, in the absence of a contested case, communicate to Spartan that its Motion cannot be considered due to the agency's lack of jurisdiction. Whatever written instrument is elected to communicate the agency's inability to take action on Spartan's Motion, Pocatello respectfully requests it not be captioned as an "order" or other summary determination, which Spartan may interpret as an invitation to prolong this baseless claim even further.

II. SHOULD THE HEARING OFFICER DETERMINE A BASIS TO EXERCISE JURISDICTION (WHICH POCATELLO DOES NOT CONCEDE), SPARTAN'S MOTION SHOULD BE DENIED ON THE MERITS

FACTUAL BACKGROUND

In October 2014, Pocatello moved Well #39 from its original location south of Interstate 86 to a location about one half mile north, closer to the Pocatello Airport, which is and has been served by Well #39. At Well #39's original location, Pocatello was authorized to pump under five separate water rights: 29-13638, 29-7450, 29-2274, 29-2338, and 29-7375. Pursuant

to approved transfers,¹ Well #39 at its new location is currently authorized to divert pursuant to Water Right Nos. 29-13638 and 29-7450. No protests were filed in either of these transfers.

Application for Transfer No. 81155, filed on July 25, 2016, intended to transfer Pocatello's remaining three water rights (Nos. 29-2274, 29-2338, and 29-7375) ("Subject Water Rights") associated with Well #39 to the new well location. Spartan filed a protest, alleging that Pocatello's operation of the Subject Water Rights out of Well #44 – located over 12 miles from Well #39 – would adversely impact Spartan's water right. Spartan's Protest requested that the Department curtail or otherwise reduce the volume of water pumped by Pocatello at Well #44. Notice of Protest, Transfer No. 81155, Spartan Portneuf L.L.C. (Sept. 26, 2016) (Spartan's "Protest").

Pocatello filed a motion to dismiss the Protest. Spartan resisted, arguing its Protest was proper because the operation of the Subject Water Rights at relocated Well #39, as well as Pocatello's exclusion of two points of diversion formerly associated with the Subject Water Rights, could alter the way that Pocatello operates its municipal system to Spartan's detriment. The Department's Hearing Officer dismissed Spartan's Protest and approved Transfer No. 81155 for only the points of diversion listed in the transfer application. Preliminary Order Dismissing Protest and Approving Transfer, Transfer No. 81155, Aug. 8, 2017. The Hearing Officer dismissed Spartan's Petition for Reconsideration on similar grounds. Order Denying Petition for Reconsideration, Transfer No. 81155, Sept. 5, 2017.

On November 20, 2017, after considering Spartan's Brief and Exceptions to Preliminary Order Dismissing Protest and Approving Transfer, the Department reinstated the Protest in the Director's November 20, 2017 Order Remanding Contested Case; Order Denying Request to

¹ Transfer of Water Right, Transfer No. 79826, May 15, 2015; Transfer of Water Right, Transfer No. 81117, Dec. 6, 2016.

Exclude Evidence (“Director’s November 2017 Order”). Thereafter, Pocatello appealed the Director’s interlocutory order to the District Court, and the District Court denied the appeal and sent the matter back to the agency. *Order Dismissing Petition for Judicial Review*, Case No. CV-01-17-23146, District Court-SRBA Fifth Judicial District (Administrative Appeals), June 4, 2018 (“June 2018 SRBA Order”). The Hearing Officer held a status conference on September 25, 2018. Pocatello withdrew its transfer application on October 10, 2018.

LEGAL STANDARD FOR AWARDS OF ATTORNEYS’ FEES

Pursuant to Idaho Code (I.C.) § 12-117(1), an administrative agency may award attorneys’ fees to a *prevailing party* in a proceeding only where the non-prevailing party “acted without a reasonable basis in fact or law.” *Sopatyk v. Lemhi County*, 151 Idaho 809, 818, 264 P.3d 916 (2011) (emphasis added). Thus, the first step in any attorneys’ fees analysis is to determine, using the discretion of the court or the agency, whether there was a prevailing party. I.R.C.P. Rule 54(d)(1)(B). When exercising this discretion, the Department must consider the “extent to which each party prevailed relative to the final judgment or result” in the proceeding. *Bolger v. Lance*, 137 Idaho 792, 797, 53 P.3d 1211 (2002). Prevailing alone is insufficient to receive fees under I.C. § 12-117; the losing party must act *unreasonably* in the litigation before fees are available. *Lake CDA Investments, LLC v. Idaho Dep’t of Lands*, 149 Idaho 274, 284, 233 P.3d 721 (2010).

ARGUMENT

Spartan’s Motion must be denied because Spartan is not a prevailing party in this action. Furthermore, even if Spartan is considered to have wholly or partially prevailed, Pocatello’s Application for Transfer No. 81155 was reasonably based in law and fact.²

² Pocatello has omitted the facts and procedural history from Transfer No. 81155, due to the Agency’s acknowledgement of withdrawal on October 18, 2018. However, Pocatello does not concede that Spartan has

A. THERE IS NO FINAL JUDGMENT IN THIS ACTION, AND NO SETTLEMENT, SO THERE CAN BE NO PREVAILING PARTY

This matter did not involve a final judgment, or a settlement, and Spartan cannot demonstrate that it “prevailed” as that term is used in Idaho Rules of Civil Procedure Rule 54. Rule 54 lists the factors a court – or in this instance, the Department – must consider when exercising its discretion to determine the prevailing party for purposes of costs and attorneys’ fees recovery. I.R.C.P. Rule 54(d)(1)(B). Specifically, the Department must “consider the final judgment or result of the action in relation to the relief sought by the respective parties.” *Id.* A result achieved through settlement can be considered in the place of a “final judgment,” although the result of a settlement is not controlling in the analysis. *Bolger v. Lance*, 137 Idaho 792, 797, 53 P.3d 1211 (2002); *Hobson Fabricating Corp. v. SE/Z Construction, LLC*, 154 Idaho 45, 51, 294 P.3d 171 (2012).

In this matter, there is no final judgment. Pocatello withdrew its transfer application. The Department acknowledged the withdrawal. In the absence of a final judgment, there is no basis to determine whether there was a prevailing party.³

Further, no cases have determined that withdrawal of an application for transfer of water rights is analogous to either a settlement or final judgment, and it is hard to see how withdrawal of a transfer application could be considered a final judgment. Unlike a typical civil case that

properly recited either the facts or the procedural history in its Motion, and notes that the Department’s files, to the extent it maintains files of withdrawn transfers, are the proper place to find relevant facts and procedural history in this matter.

³ In this matter, there is also no settlement. Spartan insinuates that it made numerous attempts to either convince Pocatello to correct its deficient transfer application and/or propose terms of settlement. This is simply inaccurate. In the November 20, 2017 Order remanding this case, the IDWR Director specifically found in his November 2017 Order that the application for transfer was *not* deficient. As for settlement attempts, the formal settlement correspondence that occurred between the parties is attached hereto as **Exhibit A**. Pocatello provides these settlement materials to the Hearing Officer to dispute Spartan’s characterization of the settlement efforts between the parties, in accordance with Idaho Evidence Rule 408. *See Davidson v. Beco Corp.*, 114 Idaho 107, 109, 753 P.2d 1253 (1987). Spartan’s last settlement proposal sought not only mitigation water in excess of the volume associated with the water right Spartan alleged would be injured, it also sought other relief that was beyond the scope of the transfer proceeding. Pocatello’s refusal of such a settlement request is not unreasonable.

begins with a complaint or petition seeking a specific remedy, an application for transfer filed with the Department involves the applicant water right owner seeking permission to modify his interest in a property right. *See* I.C. § 42-222(1). No relief aside from the modification of the subject water right may be granted in the application for transfer process. *Id.*

In this instance, Pocatello sought permission to transfer Water Right Nos. 29-2274, 29-2338, and 29-7375 that were previously operated out of the old Well #39 location to the current Well #39 location. By withdrawing Transfer No. 81155, Pocatello has simply ceased requesting that these rights be transferred to another location at this time. It can apply for a similar transfer at any time in the future that Pocatello finds appropriate. Therefore, Pocatello's withdrawal of Transfer No. 81155 is not analogous to a final judgment. Further, as Spartan notes in its Motion, the parties were unable to reach a stipulation relating to the withdrawal of Transfer No. 81155. For that reason, Pocatello's withdrawal cannot be considered analogous to a settlement result.

B. EVEN IF THE DEPARTMENT CAN FIND A LEGAL AND JURISDICTIONAL BASIS TO DETERMINE A FINAL ORDER ISSUED IN THIS MATTER, SPARTAN DID NOT PREVAIL

Even if the Department finds a legal and jurisdictional basis to equate the withdrawal of Application for Transfer No. 81155 to be a final judgment sufficient for determining whether there is a prevailing party, Spartan cannot be considered the prevailing party. “[A] party’s successes in bringing claims and in defending against them are important to the prevailing party analysis.” *Hobson Fabricating Corp. v. SE/Z Construction, LLC*, 154 Idaho 45, 50, 294 P.3d 171 (2012).

Spartan alleged injury from Pocatello's request to transfer the Subject Water Rights to relocated Well #39, not because of the impact from operating the Subject Water Rights out of Well #39, but because it claimed the city would modify the operation of Well #44 to the detriment of Spartan's water right. But the transfer did not seek any modifications to the Subject

Water Rights other than approval to divert them from relocated Well #39. Put another way: prior to the filing of Transfer No. 81155, the Subject Water Rights could be operated out of Well #44; today, after the withdrawal of Transfer No. 81155, the Subject Water Rights can *still* be operated out of Well #44. Furthermore, within the scope of the Subject Water Rights, Pocatello could still elect—tomorrow, if it wanted—to modify the operation of the Subject Water Rights to rely wholly on Well #44. As the Hearing Officer pointed out in his Order dismissing Spartan’s Protest, Pocatello could theoretically abandon all of its points of diversion *except* Well #44 and lawfully divert 21 cubic feet per second (cfs) (the total flow rate attributable to the Subject Water Rights) out of Well #44. If today Spartan has an issue with the operation of Well #44, it has the same issue with the operation of Well #44 that it had prior to the filing of Transfer No. 81155.

Thus, withdrawal of Transfer No. 81155 did not result in Spartan achieving its goal in Spartan’s Protest, which was an order that would limit Pocatello’s use of the Subject Water Rights at Well #44. Therefore, Spartan is not the prevailing party because the result of the withdrawal does not provide the relief Spartan requested in its Protest. Since Spartan did not prevail, Spartan is not entitled to attorneys’ fees under I.C. § 12-117.

C. EVEN IF SPARTAN CAN SOMEHOW BE CONSIDERED THE PREVAILING PARTY, POCATELLO’S APPLICATION FOR TRANSFER WAS REASONABLY BASED IN LAW AND FACT

In order to receive attorneys’ fees pursuant to I.C. § 12-117, it is not enough that a party prevail in the final judgment or result of the proceeding. The non-prevailing party must also have acted “without a reasonable basis in fact or law” in order for that party to be liable for attorneys’ fees. I.C. § 12-117. In essence, this means that Pocatello must “have acted frivolously or without foundation” in the Transfer No. 81155 proceedings. *City of Osburn v. Randel*, 152 Idaho 906, 910, 277 P.3d 353 (2012). Pocatello’s actions in this matter have not

offended the statutory standard—an element of water rights ownership is the ability to seek a transfer to modify the property interest, so filing the transfer cannot be described as “frivolous” or “without foundation”. Pocatello’s motion to dismiss was an effort to avoid Spartan’s apparent disregard for the factual disconnect between Spartan’s concerns over operations of Well #44 (which Pocatello has attempted to resolve repeatedly) and the matter at hand, involving a well 12 miles distant. Further, attorneys’ fees have already been sought and rejected by Spartan (and IDWR) in the course of Pocatello’s interlocutory appeal of the Director’s November 2017 Order. In the June 2018 SRBA Order, the SRBA Court specifically considered and rejected an award of attorneys’ fees. *Order Dismissing Petition for Judicial Review*, Case No. CV-01-17-23146, District Court-SRBA Fifth Judicial District (Administrative Appeals), June 4, 2018, at 6. Pocatello’s actions over the last four months cannot be described as “without a reasonable basis in fact or law”—in fact, neither party took any action in this matter between the June 4, 2018 Order and the remand status conference on September 25, 2018. Immediately following the September 25, 2018 status conference, after the City determined that it could, for the immediate future, operate newly relocated Well #39 with the existing water rights associated with that point of diversion, Pocatello withdrew the transfer approximately two weeks later.

Contrary to Spartan’s arguments, Pocatello has not prolonged this case, and because Pocatello acted reasonably, an attorneys’ fee award is not available under I.C. § 12-117.⁴

CONCLUSION

The Department does not have jurisdiction to entertain Spartan’s Motion. Motions can only be filed in contested cases, and the captioned contested case was withdrawn by Pocatello on

⁴ To the extent there is any possibility that Spartan’s motion will not be summarily rejected either for want of jurisdiction or on the merits, Pocatello also puts at issue Spartan’s claim for fees which, contrary to law, is devoid of allegations regarding the amount of fees claimed, affidavits from counsel regarding claimed fees, or even copies of any attorney billing statements.

October 10, 2018, and acknowledged as withdrawn by IDWR on October 12, 2018. The Department should decline to rule on the Motion, and simply communicate to Spartan that its Motion cannot be heard because of the lack of a forum.

However, if the Department determines it has jurisdiction, Spartan is not entitled to attorneys' fees as a result of Pocatello's withdrawal of Application for Transfer No. 81155. This is because Spartan did not prevail in the proceedings. Furthermore, Pocatello did not act unreasonably when filing the application for transfer or in defending its ability to pursue the transfer against Spartan's Protest and subsequent filings. None of the elements required for an attorneys' fees award under I.C. § 12-117 are present here. Therefore, Spartan's Motion must be denied.

Respectfully submitted this 2nd day of November 2018.

SOMACH SIMMONS & DUNN

By 

Sarah A. Klahn

ATTORNEYS FOR CITY OF POCATELLO

EXHIBIT A

TO

**CITY OF POCA TELLO'S SPECIAL APPEARANCE AND RESPONSE
TO PROTESTANT'S MOTION FOR ATTORNEYS' FEES AND COSTS**

From: Jim Browitt <j.browitt@water-law.com>
Sent: Monday, May 7, 2018 2:07 PM
To: Sarah Klahn
Cc: Bybee, Kirk (kibybee@pocatello.us); Laura Schroeder
Subject: RE: Transfer 81155 appeal

Sarah,

Thank you for reaching out, and our apologies for the tardy reply.

We are of course interested in exploring ways to settle this matter and would welcome the opportunity to discuss how this might be achieved. While we are reluctant to seek postponement of the May 10 hearing because of the distinct possibility that the only result would be further delay, our position on this ultimately depends on what concessions the city is willing to make.

Our client's primary goal is to alleviate interference with the operation of its well - as it relates to appropriation under all three associated water rights, not just the one owned by Spartan Portneuf. This amounts to a maximum diversion rate of approximately 2.88 cfs and an annual volume of 657 acre feet. Any negotiation regarding the city's assurance of non-interference would be based on those numbers.

Further, we maintain that a multi-POD condition consistent with the one used in the SRBA would be an appropriate accommodation. We have never understood the city's steadfast refusal to consider including this condition in Transfer No. 81155; while this would provide Spartan Portneuf with *per se* priority protection, it would have a minimal impact on the city's subject water rights, and only then in times of shortage. Although this condition was crafted for the SRBA, there is no reason to conclude its use must be limited to that particular application.

Again, we appreciate your willingness to work toward resolving this matter. Let us know if the city is amenable to points addressed above.

Best regards,

Jim

James Browitt
Of Counsel, Schroeder Law Offices, P.C.
1915 NE Cesar E. Chavez Blvd.
Portland, OR 97212
Phone (503) 281-4100
Fax (503) 281-4600
www.water-law.com

From: Sarah Klahn [sarahk@white-jankowski.com]
Sent: Monday, May 07, 2018 1:43 PM
To: Jim Browitt
Cc: Bybee, Kirk (kibybee@pocatello.us); Laura Schroeder
Subject: RE: Transfer 81155 appeal

Hi Jim,

Just checking to be sure you received this email containing the City's conceptual settlement offer in the above-referenced matter. Based on the lack of a response, we understand that Spartan-Portneuf is *not* interested in settlement discussions; however, if that is incorrect please let me know.

Best regards,

Sarah

Sarah A. Klahn, Esq.



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From: Sarah Klahn
Sent: Wednesday, May 02, 2018 9:31 AM
To: j.browitt@water-law.com
Cc: Bybee, Kirk (kibybee@pocatello.us)
Subject: Transfer 81155 appeal

Good morning Jim,

The city has authorized me to speak with you regarding a potential settlement of Spartan's Transfer 81155 protest. The elements of such a settlement would include:

1. The city providing water to the Spartan well at a negotiated rate of flow;
2. Withdrawal of Spartan's protest regarding the Transfer.

If there is interest in this type of discussion, I'd suggest we ask IDWR's consent to vacate and reschedule the hearing next week; I am concerned if the hearing goes forward we run the risk of further entrenching positions on the dispute. Of course I don't know if IDWR will agree to this, but I suspect that if we both ask for this type of accommodation they will go along.

Let me know if this is something that warrants further discussion, or feel free to give me a call. I'm in the office most of today, although in a variety of conference calls (at 10, 11, and 1:30).

Thanks—

Sarah

Sarah A. Klahn, Esq.



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Laura A. Schroeder
Oregon, Idaho,
Nevada, Washington & Utah

Therese A. Ure
Oregon & Nevada

Sarah R. Liljefelt
Oregon,
California & Utah

William F. Schroeder
(1928 - 2015)



Lindsay M. Thane
Oregon & Montana

Patrick B. T. Mansfield
Nevada

Wyatt E. Rolfe
Of Counsel
Oregon & Washington

James Browitt
Of Counsel
Idaho & Washington

July 20, 2018

VIA U.S. AND ELECTRONIC MAIL

Sarah Klahn
Somach Simmons & Dunn
2701 Lawrence, Suite 113
Denver, CO 80205
Email: sklahn@somachlaw.com

RE: Offer of Settlement Pursuant to IRE Rule 408

Dear Ms. Klahn:

This is an offer of settlement pursuant to Idaho Rules of Evidence ("IRE") Rule 408.

Tom Katsilometes' personal relationship with Chris Meyer afforded him the opportunity to casually discuss our pending issue with an individual whom I think we would agree is one of the foremost practitioners of water law in Idaho. However, Mr. Katsilometes reported that these discussions touched solely on the subject of our May proposal to Pocatello---alternate points of diversion for municipal groundwater rights and the merits of an APOD condition — that would potentially benefit Pocatello as well as Spartan Portneuf. Therefore, although inclusion of an express APOD condition in Transfer No. 81155 would be central to any settlement discussion, it is not the only accommodation that Spartan Portneuf seeks.

In addition to the APOD condition, Spartan Portneuf seeks express assurance of non-interference in the operation of the well associated with its water right, No. 29-13425, as well as water rights Nos. 29-13424 and 29-14148. The aggregate maximum diversion rate for these rights is approximately 2.88 cfs while the annual volume is 657 acre feet.

Further, Spartan Portneuf requests City authorization on a related matter. Spartan Portneuf seeks formal acknowledgement from Pocatello of two easements associated with the Spartan Portneuf well site: a pipeline easement running approximately 725 feet between Interstate 15 and the well site, crossing Hildreth Road once and an unnamed access road twice; and an easement granting Spartan Portneuf use of the aforementioned access road for the purpose of ingress and egress to the well site. In contemplation of future development or modification of the well site, Spartan Portneuf also requests that the City authorize potential enlargement of the pipeline easement to include natural gas and telephone utilities. Although this request falls

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Sarah Klahn
July 20, 2018
Page 2 of 2

outside the scope of the pending matter, we feel that formal recognition of these easements would underscore Pocatello's good-faith intentions regarding Spartan Portneuf's interests, and do so with negligible impact on the City's interests.

Thank you again for your efforts in working toward resolution of this matter, and congratulations on your recent move to Somach Simons & Dunn.

Best regards,
SCHROEDER LAW OFFICES, P.C.



James Browitt
Laura A. Schroeder

LAS:jeb

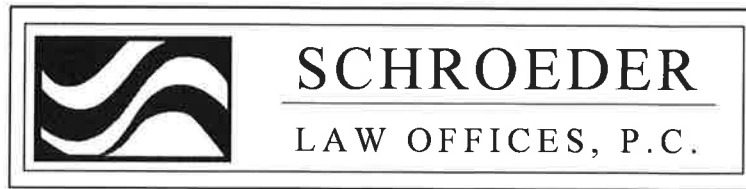
cc: Client
Kirk Bybee (*via email*)

Laura A. Schroeder
Oregon, Idaho,
Nevada, Washington & Utah

Therese A. Ure
Oregon & Nevada

Sarah R. Liljefelt
Oregon,
California & Utah

William F. Schroeder
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Lindsay M. Thane
Oregon & Montana

Patrick B. T. Mansfield
Nevada

Wyatt E. Rolfe
Of Counsel
Oregon & Washington

James Browitt
Of Counsel
Idaho & Washington

July 20, 2018

VIA U.S. AND ELECTRONIC MAIL

Sarah Klahn
Somach Simmons & Dunn
2701 Lawrence, Suite 113
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Email: sklahn@somachlaw.com

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Sarah Klahn
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Page 2 of 2

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Best regards,
SCHROEDER LAW OFFICES, P.C.



James Browitt
Laura A. Schroeder

LAS:jeb

cc: Client
Kirk Bybee (*via email*)

From: Jim Browitt <j.browitt@water-law.com>
Sent: Wednesday, September 12, 2018 3:42 PM
To: Sarah Klahn
Cc: Laura Schroeder
Subject: Protest of Transfer 81155

Sarah:

Thank you for your letter dated August 20, 2018, outlining Pocatello's stance regarding the possibility of a negotiated settlement for Spartan Portneuf's protest of Transfer No. 81155. Based on the parties' respective positions, it appears unlikely that a resolution will be reached prior to the contested case hearing. With that in mind, and considering that this matter has already gone on for more than two years, we are hopeful of expediting the process to whatever extent possible. Accordingly, we are going to move for immediate commencement of discovery and will make that request with suggested procedure and timelines consistent with those set forth in the Notice of Hearing and Discovery/Disclosure that Hearing Officer Cefalo issued on June 17, 2017. If Pocatello is likewise interested in speeding up the process, we would be happy to work with you in drafting a stipulated motion and scheduling order to submit to HO Cefalo before the status conference on September 20.

Also, we are asking for some clarification regarding a rather perplexing reference contained in your August 20 letter. You allude to the "lawful purposes" in which Spartan Portneuf uses its water right, then assert that resolution prior to the contested case hearing "would allow Spartan to avoid an inquiry into the nature and extent of its historical use of the referenced water right." If these references point to alleged transgressions on the part of Spartan Portneuf, it would be greatly appreciated if you specified those so we may respond appropriately.

Best regards,

Jim

James Browitt
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Attorneys for City of Pocatello

**BEFORE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION) **CERTIFICATE OF SERVICE OF CITY OF**
FOR TRANSFER NO. 81155) **POCATELLO'S SPECIAL APPEARANCE**
IN THE NAME OF) **AND RESPONSE TO PROTESTANT'S**
CITY OF POCATELLO) **MOTION FOR ATTORNEYS' FEES AND**
_____) **COSTS**

I hereby certify that on this 2nd day of November, 2018, I caused to be served a true and correct copy of the attached **CITY OF POCATELLO'S SPECIAL APPEARANCE AND RESPONSE TO PROTESTANT'S MOTION FOR ATTORNEYS' FEES AND COSTS** upon the following by the method indicated below:

SOMACH SIMMONS & DUNN

By 
Sarah A. Klahn

ATTORNEY FOR CITY OF POCATELLO

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