

Jerry R. Rigby, ISB #2470
RIGBY ANDRUS & MOELLER CHTD.
P.O. Box 250
Rexburg, Idaho 83440
Telephone: (208) 356-3633
Facsimile: (208) 356-0768

Attorneys for Protestant Committee of Nine

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

IN THE MATTER OF APPLICATION FOR)	
LEASING OF WATER FOR HYDROELECTRIC)	
GENERATION (City of Pocatello))	COMMITTEE OF NINE'S
_____)	PROTEST

COMES NOW, the COMMITTEE OF NINE, by and through the following counsel of record, Rigby Andrus & Moeller Chtd., and pursuant to Idaho Code § 42-108B and the Department's Rules of Procedure (IDAPA 37.01.01 *et seq.*) and hereby files its protest to the *Application for Leasing of Water for Hydroelectric Generation* filed by the City of Pocatello ("Pocatello") on June 19, 2008. Notice of the application was published on July 10 and 17, 2008 in the *Times-News* and this protest is filed in compliance with the statutory and noticed deadline of July 22, 2008.

BASES FOR PROTEST

As identified in the issues stated in the *Notice*, the Committee provides the following comments and bases for its protest. The Committee primarily protests Pocatello's application to ensure no injury to its spaceholders and water users in Water District 1.

I. No-Injury to Other Spaceholders in Water District 1.

The Committee of Nine represents water users, including spaceholders in Jackson Lake, Henry's Lake, Grassy Lake, Island Park Reservoir, Palisades Reservoir, Ririe Reservoir, American Falls Reservoir, and Lake Walcott. The Committee of Nine adopted *Rental Pool Procedures* for Water District 1 that were approved by the Idaho Water Resource Board. The procedures provide protections for spaceholders in regards to the lease of stored water both within and outside the district. Water District 1 and the U.S. Bureau of Reclamation ("Reclamation") operate the reservoir storage system primarily for irrigation storage purposes. Carryover storage is a critical component of those operations to ensure sufficient water supplies in future years. Releasing water out of the Water District, as proposed by Pocatello's application, stands to injure other spaceholders and water users by reducing the available water supply that has been stored pursuant to the 1939 Palisades storage water right. If the lease is approved and water is released out of the District (apparently up to 20,000 acre-feet), the reservoir system will have to re-fill that amount in the following year or years before junior storage space or natural flow rights would be in priority. Consequently, junior priority storage space as well as junior natural flow rights stand to be injured in the event there is insufficient water to re-fill the system next year.

II. Accounting of Pocatello's Contract with Reclamation / Prior Leases

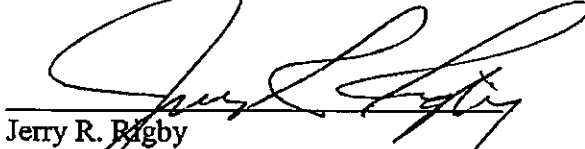
Pocatello identifies its contract with Reclamation (#14-06-100-1825) and water right #01-2068 as the source of the water subject to its lease application. *Application* at 1. Pocatello, pursuant to its contract with Reclamation, may use up to 50,000 acre-feet for purposes identified

in the contract and the water right. Pocatello acquired storage water in Palisades to replace the ground water it intercepts that would otherwise flow to the Snake River. *See* Contract #14-06-100-1825. An accounting of Pocatello's contract, like all other spaceholder contracts, should be performed to implement the contract's purpose. This is consistent with Reclamation's recent request to the Watermaster to complete the required accounting and implementation of the contract. Implementation of the Pocatello contract is imperative this year since Pocatello has previously leased water pursuant to the District's rental pool procedures which would classify that leased water as "last to fill" in 2008.

The Committee requests the Director to consider the above issues in the approval, conditioning, or denial of Pocatello's application.

DATED this 21st day of July, 2008.

RIGBY ANDRUS & MOELLER CHTD.



Jerry R. Rigby
Attorneys for Committee of Nine