BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER TO VARIOUS WATER RIGHTS HELD BY OR FOR THE BENEFIT OF A&B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT #2, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, MINIDOKA IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, AND TWIN FALLS CANAL COMPANY	)	**ORDER REGARDING MOTION FOR CLARIFICATION AND SUPPLEMENTAL INFORMATION CONCERNING RECORD**

On August 15, 2005, the A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company ("Surface Water Coalition" or "SWC") filed *Surface Water Coalition's Motion for Clarification and Supplemental Information Concerning Record* ("SWC Motion") with the Director of the Idaho Department of Water Resources ("Director" or "Department"). On August 23, 2005, the City of Pocatello ("Pocatello") filed *Pocatello's Response to SWC's Motion for Clarification and Supplemental Information Concerning Record*, which supports the SWC Motion.

The SWC Motion requesting clarification regarding the record is premised upon the assumption that prior to the filing of requests for hearing in response to the Director's Amended Order of May 2, 2005 ("May 2 Order") this matter was handled by the Director as an informal proceeding pursuant to Department Rule of Procedure 100. IDAPA 37.01.01.0100.[1] The SWC states in its motion that the "Coalition is uncertain how matters considered by the Director in the informal proceeding will be considered by the Director when issuing a decision in the formal proceeding."[2] *SWC Motion* at 2. The SWC further states that the "coalition is uncertain as to what materials, memoranda, 'noticed matters' and other evidence in the record relied upon by the

[1] Department Rule of Procedure100 defining "informal proceedings" provides: "Informal proceedings are proceedings in contested cases authorized by statute, rule or order of the agency to be conducted using informal procedures, i.e., procedures without a record to be preserved for later agency or judicial review, without the necessity of representation according to Rule 230, without formal designation of parties, without the necessity of hearing examiners or other presiding officers, or without other formal procedures required by these rules for formal proceedings. Unless prohibited by statute, an agency may provide that informal proceedings may precede formal proceedings in the consideration of a rulemaking or a contested case."

[2] Department Rule of Procedure104 defining "formal proceedings" provides: "Formal proceedings, which are governed by rules of procedure other than Rules 100 through 103, must be initiated by a document (generally a notice, order or complaint if initiated by the agency) or another pleading listed in Rules 210 through 280 if initiated by another person. Formal proceedings may be initiated by a document from the agency informing the party(ies) that the agency has reached an informal determination that will become final in the absence of further action by the person to whom the correspondence is addressed, provided that the document complies with the requirements of Rules 210 through 280. Formal proceedings can be initiated by the same document that initiates informal proceedings."

Director when issuing the *May 2, 2005 Order* will be part of the record in the formal proceeding." *SWC Motion* at 3.

The answer to the SWC's inquiry is that all documents and information relied upon by the Director in preparation of the *May 2 Order* are included in the Partial Agency Record prepared by the Department and distributed to the parties in this matter. On June 17, 2005, the Department distributed to the parties a CD containing the Partial Agency Record. The Department revised the Partial Agency Record on September 12, 2005 and supplemented the Partial Agency Record on September 13, 2005. The SWC's characterization of the proceedings conducted in this matter prior to the filing of requests for hearing on the Director's *May 2 Order* as informal proceedings conducted pursuant to Department Rule of Procedure 100 is not consistent with the record or with the Director's actions in these proceedings.

ORDER

Based upon consideration of the motion filed by the Surface Water Coalition and Pocatello's response, the Director enters the following Order consistent with the foregoing:

IT IS HEREBY ORDERED that all documents and information included in the Partial Agency Record prepared by the Department and initially distributed to the parties on June 17, 2005, and as revised and supplemented on September 12 and 13, 2005, are included in the record of this matter.

DATED this 28th day of November 2005.

KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of November, 2005, the above and foregoing, was served by the method indicated below, and addressed to the following:

TOM C. ARKOOSH ARKOOSH LAW OFFICES PO BOX 32 GOODING ID 83330 (208) 934-8873 alo@cableone.net	(x) U.S Mail, Postage Prepaid ( ) Facsimile (x) E-mail
W. KENT FLETCHER FLETCHER LAW OFFICE PO BOX 248 BURLEY ID 83318-0248 (208) 878-2548 wkf@pmt.org	(x) U.S. Mail, Postage Prepaid ( ) Facsimile (x) E-mail
ROGER D. LING LING ROBINSON PO BOX 396 RUPERT ID 83350-0396 (208) 436-6804 rdl@idlawfirm.com	(x) U.S. Mail, Postage Prepaid ( ) Facsimile (x) E-mail
JOHN A. ROSHOLT TRAVIS L. THOMPSON BARKER ROSHOLT 113 MAIN AVENUE WEST, SUITE 303 TWIN FALLS ID 83301-6167 (208) 735-2444 jar@idahowaters.com tlt@idahowaters.com	(x) U.S. Mail, Postage Prepaid ( ) Facsimile (x) E-mail
JOHN K. SIMPSON BARKER ROSHOLT PO BOX 2139 BOISE ID 83701-2139 (208) 344-6034 jks@idahowaters.com	(x) U.S. Mail, Postage Prepaid ( ) Facsimile (x) E-mail

JEFFREY C. FEREDAY MICHAEL C. CREAMER GIVENS PURSLEY PO BOX 2720 BOISE ID 83701-2720 (208) 388-1200 cf@givenspursley.com mcc@givenspursley.com	(x) U.S. Mail, Postage Prepaid ( ) Facsimile (x) E-mail
SCOTT L. CAMPBELL MOFFATT THOMAS PO BOX 829 BOISE ID 83701 (208) 385-5384 slc@moffatt.com	(x) U.S. Mail, Postage Prepaid ( ) Facsimile (x) E-mail
KATHLEEN M. CARR OFFICE OF THE SOLICITOR 960 BROADWAY, SUITE 400 BOISE ID 83706 (208) 334-1378	(x) U.S. Mail, Postage Prepaid ( ) Facsimile ( ) E-mail
MATT HOWARD PN-3130 US BUREAU OF RECLAMATION PACIFIC NORTHWEST REGION 1150 NORTH CURTIS ROAD BOISE ID 83706-1234 (208) 378-5003 mhoward@pn.usbr.gov	(x) U.S. Mail, Postage Prepaid ( ) Facsimile (x) E-mail
JOSEPHINE P. BEEMAN BEEMAN & ASSOCIATES 409 WEST JEFFERSON STREET BOISE ID 83702 (208) 331-0954 jo.beeman@beemanlaw.com	(x) U.S. Mail, Postage Prepaid ( ) Facsimile (x) E-mail
SARAH A. KLAHN WHITE & JANKOWSKI 511 16TH STREET, SUITE 500 DENVER CO 80202 sarahk@white-jankowski.com	(x) U.S. Mail, Postage Prepaid ( ) Facsimile (x) E-mail

MICHAEL S. GILMORE
ATTORNEY GENERAL'S OFFICE
PO BOX 83720
BOISE ID 83720-0010
(208) 334-2830
mike.gilmore@ag.idaho.gov

(x) U.S. Mail, Postage Prepaid
( ) Facsimile
(x) E-mail

TERRY T. UHLING
J.R. SIMPLOT COMPANY
999 MAIN STREET
BOISE ID 83702
(208) 336-2110
tuhling@simplot.com

(x) U.S. Mail, Postage Prepaid
( ) Facsimile
(x) E-mail

JAMES C. TUCKER
IDAHO POWER COMPANY
1221 WEST IDAHO STREET
BOISE ID 83702
(208) 388-2112
jamestucker@idahopower.com

(x) U.S. Mail, Postage Prepaid
( ) Facsimile
(x) E-mail

JAMES S. LOCHHEAD
BROWNSTEIN HYATT & FARBER
410 17TH STREET, 22ND FLOOR
DENVER CO 80202
(303) 223-1100
jlochhead@bhf-law.com

(x) U.S. Mail, Postage Prepaid
( ) Facsimile
(x) E-mail

RON CARLSON
LEWIS ROUNDS
IDWR
900 NORTH SKYLINE DRIVE
IDAHO FALLS ID 83402-6105
(208) 525-7177
ron.carlson@idwr.idaho.gov
lewis.rounds@idwr.idaho.gov

(x) U.S. Mail, Postage Prepaid
( ) Facsimile
(x) E-mail

ALLEN MERRITT
CINDY YENTER
IDWR
1341 FILLMORE STREET, SUITE 200
TWIN FALLS ID 83301-3033
(208) 736-3037
allen.merritt@idwr.idaho.gov
cindy.yenter@idwr.idaho.gov

(x) U.S. Mail, Postage Prepaid
( ) Facsimile
(x) E-mail

Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources