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

IN THE MATTER OF DISTRIBUTION
OF WATER TO WATER RIGHTS NOS.
36-02356A, 36-07210, AND 36-07427

(Water District 120)

**CITY OF POCATELLO'S BRIEF IN
SUPPORT OF GROUND WATER
DISTRICT'S MOTION TO LIMIT
SCOPE OF HEARING AND
PROPOSED SCHEDULE**

IN THE MATTER OF THE
MITIGATION PLAN FILED BY A&B
IRRIGATION DISTRICT

(Blue Lakes Delivery Call)

The City of Pocatello ("City") submits its brief in support of the Ground Water District's Motion to Limit Scope of Hearing and Proposed Schedule ("Motion"). The City supports the concept of setting a briefing schedule, as well as an opportunity to resolve the issues briefed, in advance of any hearing in these matters. The Ground Water Districts' Motion identifies one of the issues that has yet to be resolved in the context of a Rule 43 mitigation plan hearing: what is the appropriate scope of such a hearing particularly where, as here, a mitigation plan hearing is

held *after* a delivery call hearing where the issue of injury has been decided by the Hearing Officer.

Agencies, like trial courts, are “empowered to prevent parallel or repetitive litigation.” *Knight Ins., Inc. v. Knight*, 109 Idaho 56, 60, 704 P.2d 960, 964 (Idaho App. 1985). Exercise of this power should be guided by, among other things, judicial economy and “avoiding potentially inconsistent judgments.” *Wing v. Amalgamated Sugar Co.*, 106 Idaho 905, 908, 484 P.2d 307, 310 (1984) (when deciding whether to exercise jurisdiction over a case when another action is pending between the same parties for the same cause, trial courts must evaluate the identity of the real parties in interest and the degree to which the claims or issues are similar) (overruled on other grounds). The Ground Water Districts rightly point out that the seniors’ attempts to get another “bite at the apple” (particularly during the pendency of an appeal of the delivery call hearing order) should be foreclosed but in any event. However, resolving the question of scope ahead of a hearing will promote administrative efficiency avoid repetitive litigation and the possibility of competing judgments on the same issue by an appellate court and the IDWR.

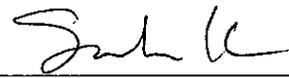
Another issue that arises in the context of these matters is the potential problem—from a factual and legal standpoint—of IGWA and A&B proposing to provide replacement water to mitigate injury to the same senior water users. While the City does not oppose provision of mitigation water to the extent called for by the Director’s delivery call orders in these matters, over-replacement of mitigation water is contrary to Idaho law. Idaho Const. art. XV, §§ 1, 3, 5, 7. It is the interests of all parties involved to address the matter of potential over-replacement prior to the mitigation hearing in this matter. For these reasons, the City joins the Ground Water Users Motion, and also endorses the Ground Water Users proposed schedule for briefing and hearing.

Respectfully submitted this 7th day of December, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of December, 2009, the above and foregoing **City of Pocatello's Brief In Support of Ground Water District's Motion to Limit Scope of Hearing and Proposed Schedule** for **Docket No. CM-MP-2009-001 and CM-MP-2009-002** [aka Blues Lakes Mitigation] was sent to the following by e-mail at the listed e-mail addresses:



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