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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING**

IDAHO GROUND WATER)
APPROPRIATORS, INC.,)
)
Petitioners,)
)
vs.)
)
CITY OF POCATELLO,)
)
Petitioner,)
)
vs.)
)
TWIN FALLS CANAL COMPANY, NORTH)
SIDE CANAL COMPANY, A&B IRRIGATION)
DISTRICT, AMERICAN FALLS RESERVOIR)
DISTRICT #2, BURLEY IRRIGATION)
DISTRICT, MILNER IRRIGATION DISTRICT,)
and MINIDOKA IRRIGATION DISTRICT,)
)
Petitioners,)

Consolidated Case No. CV-2010-382

(consolidated Gooding County
Cases CV-2010-382, 2010-383, 2010-
384, 2010-387, 2010-388, and Twin
Falls County Cases CV-2010-3403,
2010-5520, 2010-5946, 2012-2096,
2013-2305, 2013-4417, and Lincoln
County Case CV-2013-155)

**CITY OF POCATELLO'S
RESPONSE TO MOTION TO
REMAND METHODOLOGY
ORDER TO IDAHO
DEPARTMENT OF WATER
RESOURCES**

vs.)
)
 GARY SPACKMAN, in his capacity as)
 Director of the Idaho Department of Water Resources,)
 and THE IDAHO DEPARTMENT OF WATER)
 RESOURCES,)
 Respondents.)
 _____)

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)
 _____)

COMES NOW, the City of Pocatello (“Pocatello”) by and through its undersigned counsel, and hereby files this Response to Motion to Remand Methodology Order to Idaho Department of Water Resources (“Motion”).

An issue not addressed in the Motion is whether the Director anticipates also revising the “as-applied” orders that are on appeal in these consolidated cases—for example, Pocatello’s Notice of Appeal and Petition for Judicial Review of Agency Action (Final As-Applied Order) (filed on July 21, 2010 in case no. CV-2010-387) raises the issue of “Whether the Director’s Final Methodology Order was applied in an arbitrary and capricious manner in the Final As-Applied Order.” Similar issues have been raised by other parties in this matter, for example by the Surface Water Coalition in their notice of appeal originally filed in case no. CV-2010-3403, and consolidated in the above-captioned matter.¹ In other words, whether the Director properly

¹ Indeed, the Surface Water Coalition’s appeals in every other consolidated case in this matter involve appeals of “as-applied” orders. See Gooding County case no. CV-2010-384, and Twin Falls County case nos. 2010-5520, 2010-5946, 2012-2096, 2013-2305, 2013-4417.

applied the Methodology Order in subsequent as-applied orders is an issue on appeal. Revisions to the Methodology Order will call into question how to proceed in the as-applied appeals.

Pocatello does not oppose in principle the remand of the Methodology Order to Idaho Department of Water Resources (“IDWR”) provided that, as represented by IDWR in the Motion, parties are permitted to participate in briefing regarding revisions to the Methodology Order before said revised order is issued by the Director. However, IDWR should outline its proposed procedure for how to deal with the interaction between the appeals of the as-applied orders and the Methodology Order, as described above. At minimum, any remand should not operate to “moot” Pocatello’s appeal of the Final As-Applied Order.

Respectfully submitted, this 13th day of February, 2014.

CITY OF POCATELLO ATTORNEY’S OFFICE
Attorneys for the City of Pocatello

By 
A. Dean Tranmer

WHITE & JANKOWSKI, LLP
Attorneys for the City of Pocatello

By 
Sarah A. Klahn

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of February, 2014, I caused to be served a true and correct copy of the foregoing **City of Pocatello's Response to Motion to Remand Methodology Order to Idaho Department of Water Resources in Consolidated Case No. CV-2010-382, Gooding County** upon the following by the method indicated:



Sarah Klahn, White & Jankowski, LLP

via facsimile to: SRBA District Court 253 – 3 rd Ave North PO Box 2707 Twin Falls ID 83303-2707	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail – Federal Express <input checked="" type="checkbox"/> Facsimile 208-736-2121, Phone 208-736-3011 <input type="checkbox"/> Email
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