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DEPARTMENT OF
WATER RESOURCES

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Attorneys for City of Pocatello

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

IN THE MATTER OF THE REQUEST FOR)
ADMINISTRATION IN WATER DISTRICT 120)
AND THE REQUEST FOR DELIVERY OF WATER)
TO SENIOR SURFACE WATER RIGHTS BY)
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)
_____)

**POCATELLO'S RESPONSE
TO SURFACE WATER
COALITION'S PETITION
FOR RECONSIDERATION,
INCLUDING MOTION TO
STRIKE**

The City of Pocatello ("Pocatello") responds to the Petition for Reconsideration filed by the Surface Water Coalition ("SWC"), by requesting the Director to (1) consider the arguments presented by the SWC at the hearing to be held in this matter and (2) strike the excerpts from an expert report tendered by the SWC along with the petition.

On June 29, 2006, the Director entered his Third Supplemental Order Amending Replacement Water Requirements Final 2005 & Estimated 2006. On July 12, 2006, the SWC filed a petition asking the Director to reconsider his June 29, 2006 Order and to stay the hearing in this matter. The SWC petition is based upon a partial summary judgment entered July 11, 2006 by District Court Judge Barry Wood in Gooding County in Case No. CV-2005-600.

In filing its petition, the SWC has followed a practice -- adopted by Pocatello and others in this matter, including the SWC -- of requesting relief from the Director with respect to his orders. The critical difference from the earlier requests for reconsideration, however, is that the Director now has set a hearing, to commence on September 26, 2006, which will address the issues raised by all parties -- through requests for reconsideration or otherwise -- and which provides the forum for potential relief for any party who is dissatisfied with the Director's rulings in this matter. The administrative hearing schedule is presently suspended to allow the Director to review the SWC's Petition and a separate Petition for Reconsideration filed by IGWA on July 13. *See Interim Order Suspending Hearing Schedule*, July 14, 2006.

Certainly the parties in this matter have different theories of the case -- including what the facts are, what the governing law is, and what relief the Director should order. It is likely that none of the parties is completely satisfied with the orders that the Director has issued in advance of the hearing. The appropriate action for the Director to take is to consider these varying theories and the applicable facts at the hearing that he has set for that purpose.

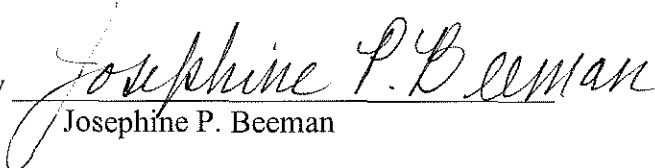
Judge Wood's ruling has been appealed by the State, and it remains to be seen how the Idaho Supreme Court will rule on appeal. Therefore, the hearing before the Director should be broad enough to develop a record on the alternative approaches to well administration urged by the different parties, so that the Director may proceed on a factual record in light of legal rulings that may emerge from the proceedings now before the Idaho Supreme Court.

The SWC, however, acted inappropriately in tendering a portion of its expert report in this matter to the Director in support of its petition. The Director previously in a January 9, 2006 order (attached) has advised the parties that they should not file their expert reports with him, but should wait until the presentation of evidence at the hearing to present testimony. Therefore, the Director should not consider the expert report excerpts tendered with the affidavit of Charles Brockway, but should strike that material from the petition.

Respectfully submitted this 18th day of July 2006

BEEMAN & ASSOCIATES, P.C.

By


Josephine P. Beeman

WHITE & JANKOWSKI, LLP

By


Sarah A. Klahn

Attorneys for the City of Pocatello

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of July 2006, I caused to be served a true and correct copy of the foregoing document by regular U.S. Mail, postage prepaid, to:

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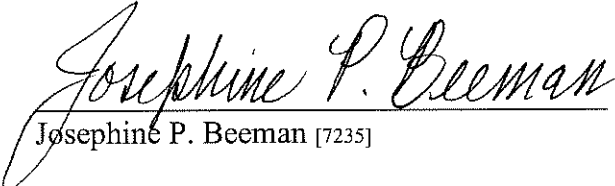
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**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

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) **ORDER REGARDING**
IRRIGATION DISTRICT, MINIDOKA IRRIGATION) **SERVICE OF EXPERT**
DISTRICT, NORTH SIDE CANAL COMPANY,) **REPORTS**
AND TWIN FALLS CANAL COMPANY)
)
)
(Water Districts No. 120 and No. 130))
_____)

The Director of the Idaho Department of Water Resources ("Director") issued a *Scheduling Order* in this matter on July 22, 2005, which authorized the parties to engage in discovery according to the Idaho Rules of Civil Procedure, subject to certain conditions. On November 25, 2005, the Director issued a *Second Amended Scheduling Order*, which extended the deadline to submit expert witness reports to December 30, 2005. On December 29, 2005, the U.S. Bureau of Reclamation ("Reclamation") filed with the Department *Reclamation's Notice of Service of Expert Report of Patrick C. McGrane, P.E.* together with the original *Expert Report of Patrick C. McGrane, P.E.* On December 30, 2005, the City of Pocatello filed with the Department *Pocatello's Notice of Service of Expert Disclosures in Compliance with Scheduling Order* together with originals or copies of the expert disclosures, reports, affidavits, and resumes referenced in its *Notice of Service*.


On January 3, 2006, the Surface Water Coalition ("SWC") and the Idaho Ground Water Appropriators, Inc. ("IGWA") separately filed with the Department notices of service of their respective expert reports upon the other parties to the proceeding without filing the originals or copies of the reports with the Department. The question thus arises as to whether the expert reports should be filed with the Department.

The *Second Amended Scheduling Order* provides that "parties submit expert witness reports" on December 30, 2005, without providing specific direction as to whether or not the reports were to be filed with the Department. The preparation and exchange of expert reports in this proceeding was required to facilitate the discovery process among the parties. *See* I.R.C.P. 26(b)(4); I.R.E. 705. As such, it is premature to submit the reports to the Director at this stage of the proceeding.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that the expert reports and associated documents, other than the notices of service, filed with the Department on December 29, 2005, by the U.S. Bureau of Reclamation, and by the City of Pocatello on December 30, 2005, shall be returned to the respective parties. The expert reports and associated documents may be offered into evidence at the hearing in this matter as appropriate.

DATED this 3rd day of January, 2006.



KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of January, 2006, the above and foregoing, was served by the method indicated below, and addressed to the following:

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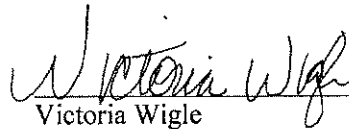
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