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ATTORNEYS FOR THE CITY OF POCATELLO

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

IN THE MATTER OF THE PETITION)	DOCKET NO. 37-03-11-1
FOR DELIVERY CALL OF THE A&B)	
IRRIGATION DISTRICT FOR THE)	
DELIVERY OF GROUND WATER AND)	MOTION FOR THE DIRECTOR TO
FOR THE CREATION OF A GROUND)	CONSIDER CITY OF POCATELLO'S
WATER MANAGEMENT AREA)	PROPOSED ORDER ON REMAND
_____)	

The City of Pocatello hereby moves for the Director to consider the attached Proposed Order on Remand, offered to assist the Director in responding to the District Court's February 14, 2011 Order Granting Motion to Enforce in Part and Denying Motion to Enforce in Part. As grounds therefore, the City would show the Director:

1. In the June 30, 2009 Final Order, the Director affirmed the Hearing Officer's decision that A&B's delivery call should not be answered with curtailment or administration because A&B's Water Right No. 36-2080 was not injured by junior ground water pumping.
2. The District Court, on judicial review, characterized the Final Order as determining that "the quantity decreed to A&B's 36-2080 exceeds the quantity being put to beneficial use for purposes of determining material injury" and remanded to the Director for a determination of whether the record supporting this finding was "clear and convincing", as that standard is characterized under Idaho law.

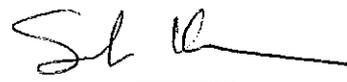
3. The record in this matter is voluminous, beginning with the initial filing of the A&B delivery call in 1994 and then again, in 2007, when A&B filed its Motion to Proceed. The record contains not only pre-trial pleadings and filings, but transcripts and exhibits from trial in this matter which was held from December 3-17, 2008.
4. In order to assist the Director in reviewing the record, Pocatello has compiled evidence and testimony it believes supports affirming the June 30, 2009 Final Order in this matter, consistent with the "clear and convincing" evidence standard.
5. Other parties may wish to offer, or the Director may wish to request, additional proposed orders to facilitate the efficient review of the record in this matter.

DATED this 14th day of March, 2011.

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 14th day of March, 2011, a copy of **Motion for the Director to Consider City of Pocatello's Proposed Order on Remand with Proposed Order in Docket No. 37-03-11-1** was served by email and addressed to the following:



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