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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 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	)	
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	)	<b>POCATELLO'S INITIAL STATEMENT FOR STATUS AND SCHEDULING CONFERENCE</b>

Pocatello submits its Initial Statement for the June 15, 2005 status and scheduling conference. In doing so, Pocatello reserves the right to amend this statement based on subsequent developments, including hearing procedures and schedules.

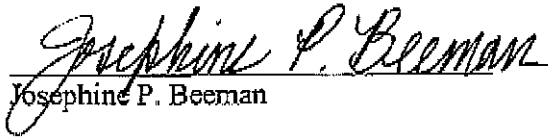
1. Issues to be contested by Pocatello:
  - a. Is there a shortage of water that requires the Department to consider the SWC delivery call at all.
  - b. Are there legal limitations that affect the determination of material injury and mitigation requirements?

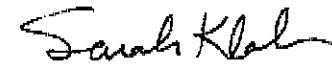
- c. Have changed conditions mooted the SWC delivery call?
  - d. Is there material injury for any of the Surface Water Coalition members?
    - 1. Are the SWC's means of diversion or purposes for diversion reasonable in light of the claims of injury for irrigation uses?
    - 2. Under the factors to be applied under Rule 42 of the conjunctive management rules are SWC's water rights being injured.
    - 3. What actions might SWC take to self-mitigate the alleged injury? What is the obligation to self-mitigate?
    - 4. What is the proper role of carry-over storage in the material injury determination? How is carry-over storage to be quantified? What guarantees should attach? If the SWC water demands are satisfied, is it injury if their carry-over storage is depleted?
    - 5. Do any of the SWC members have junior rights that are not being administered in priority?
    - 6. Are there other rights junior to SWC that are causing depletions to the SWC's water sources that have gone unadministered?
    - 7. Whether the material injury determination is consistent with Idaho law concerning reasonable use, optimum use, and full economic development of the state's water resources.
  - e. Whether depletions attributable to surface water transfers (winter water savings, etc.) are being improperly attributed to ground water withdrawals by SWC?
  - f. Whether depletions attributable to changes in surface water irrigation under I.C. 42-219 are being improperly attributed to ground water withdrawals by the SWC?
  - g. Whether the mitigation plans or replacement water plans as filed are adequate?
  - h. Should Pocatello ever be subject to curtailment under a delivery call when it has had a mitigation plan on file with IDWR for 12 years, unobjected to by any water users?
2. Hearing Procedures:
- a. The Delivery Call Order involved a finding of "material injury" by the Director that resulted in the issuance of curtailment letters. While both the Surface Water Coalition (SWC) and ground water users have raised valid issues for a hearing, the hearing should be bifurcated into two parts.
    - 1. The first part of the hearing should involve a thorough trial on the merits of the SWC's claims of injury.

- (i) The burden of proof in the first part of the hearing is on the SWC to show that they have been materially injured. Written opening statements, written direct testimony and exhibits would be submitted before the hearing; cross-examination would be live.
      - (ii) The standards under which the SWC must put on their evidence are the Conjunctive Management Rules, including the provisions under Rule 42.
      - (iii) After SWC rests, the objectors would proceed under the same procedures—a written case-in-chief and live cross-examination.
    2. The second part of the hearing would involve the application of any *finding of material injury* against individual ground water users.
  - b. All proceedings should be *de novo*.
  - c. IDWR cannot be a party to the hearing. The Director has stated that he will be the decision-maker. IDWR staff may be called as witnesses, but shall not independently present evidence at the hearing. The ultimate ruling by the Director should be based exclusively on matters within the record of the hearing.
3. Schedule for Hearing.
- a. The first proceeding should be set for four weeks of testimony. In view of the time required for preparation and the need to clear schedules, this hearing should be set for the month of January, 2006.
  - b. Prehearing schedule for first phase of the hearing (working backwards from the hearing date )
    1. 12/15/05 – Each party submits written opening statement and, if it wishes, a trial brief.
    2. 12/9/05 – Final prehearing conference
    3. 12/2/05 – Parties may submit proposed orders to govern conduct of hearing, consistent with earlier prehearing orders issued by the Director.
    4. 12/1/05 – Deadline for objections to exhibits, including matters designated by the Director for inclusion in the hearing record. Any exhibits that are not objected to shall be treated as admitted.
    5. 11/15/05 – Objectors shall file written direct testimony and copies of all exhibits, together with proof of authenticity and relevance of exhibits.
    6. 10/30/05 – Replies due on all motions.

7. 10/17/05 – Surface Water Coalition shall file written direct testimony and copies of all exhibits, other than rebuttal testimony and exhibits, together with proof of authenticity and relevance of exhibits.
  8. 10/15/05 – Responses due on all motions.
  9. 10/3/05 – The Director shall designate materials, other than exhibits previously identified by the parties, that he wants included in the hearing record and provide electronic copies of these materials to all parties.
  10. 9/30/05 – Deadline for filing all motions.
  11. 9/15/05 –9/15/05 – Discovery cut-off.
  12. 9/9/05 - All parties shall identify the exhibits that they anticipate offering.
  13. 9/1/05 – Surface Water Coalition submits any rebuttal expert disclosures and reports. These shall have the content required by Rule 26(a)(2) of the Federal Rules of Civil Procedure.
  14. 8/15/05 – Objectors submit expert disclosures and reports. These shall have the content required by Rule 26(a)(2) of the Federal Rules of Civil Procedure.
  15. 7/15/05 - Surface Water Coalition submits expert disclosures and reports. These shall have the content required by Rule 26(a)(2) of the Federal Rules of Civil Procedure.
  16. 7/1/05 – All parties shall submit lists of persons knowledgeable about the issues previously identified by them, including the location of these people and the subject matter of their knowledge.
  17. 6/15/05 – All parties may initiate all forms of discovery permitted by the Idaho Rules of Civil Procedure. Responses shall be provided in accordance with the IRCP.
4. Potential Consolidation of Representation.
- a. Pocatello has no objection to members of the Surface Water Coalition consolidating their representation.
  - b. Pocatello will work with similarly situated objectors to minimize overlap and duplication in evidence.

Respectfully submitted this 14<sup>th</sup> of June 2005

  
Josephine P. Beeman

  
Sarah A. Klahn

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14 th day of June 2005, 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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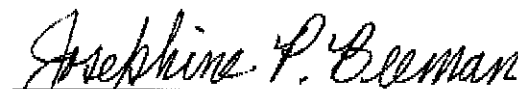
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