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DEPARTMENT OF  
WATER RESOURCES

Josephine P. Beeman #1806  
Beeman & Associates, P.C.  
409 West Jefferson Street  
Boise, ID 83702  
(208) 331-0950  
(208) 331-0954 (Facsimile)  
office@beemanlaw.com

Sarah A. Klahn  
White & Jankowski, LLP  
511 16th St., Ste. 500  
Denver, CO 80202  
(303) 595-9441  
(303) 825-5632 (Facsimile)  
sarahk@white-jankowski.com  
billh@white-jankowski.com

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

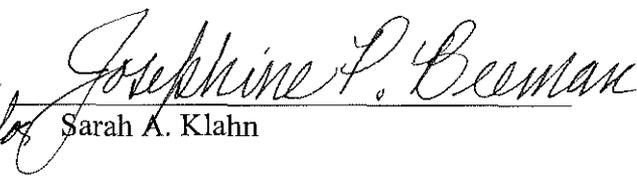
BEEMAN & ASSOCIATES, P.C.

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:

Roger D. Ling  
Ling Robinson & Walker  
PO Box 396  
Rupert, Idaho 83350

John A. Rosholt  
Travis L. Thompson  
Barker Rosholt & Simpson  
113 Main Ave. West, Suite 303  
Twin Falls, Idaho 83301-6167

John Simpson  
Barker Rosholt & Simpson  
PO Box 2139  
Boise, Idaho 83301-2139

Jeffrey C. Fereday  
Michael C. Creamer  
Givens Pursley  
601 Bannock Street, Suite 200  
PO Box 2720  
Boise, Idaho 83701-2720

Kathleen Marion Carr  
U. S. Department of the Interior  
960 Broadway Street, Suite 400  
Boise, Idaho 83706

Lewis Rounds  
IDWR Eastern  
900 N. Skyline Drive  
Idaho Falls, ID 83402-6105

James S. Lochhead  
Adam T. DeVoe  
Brownstein Hyatt & Farber  
410 17th Street, 22nd Floor  
Denver, CO 80202

Terry Uhling  
J. R. Simplot  
P. O. Box 27  
Boise, ID 83707

C. Tom Arkoosh  
Arkoosh Law Offices, Chtd.  
PO Box 32  
Gooding, Idaho 83330

W. Kent Fletcher  
Fletcher Law Office  
PO Box 248  
Burley, Idaho 83318

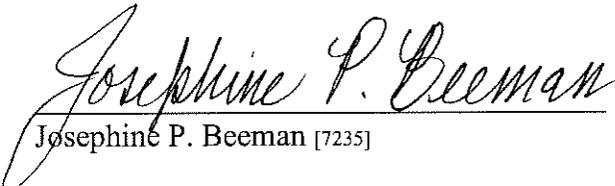
Scott L. Campbell  
Moffatt Thomas  
101 S. Capitol Blvd., 10th Floor  
PO Box 829  
Boise, Idaho 83701-0829

Michael S. Gilmore  
Deputy Attorney General  
Statehouse, Room 210  
P. O. Box 83720  
Boise, ID 83720-0010

Matt Howard, PN-3130  
U.S. Bureau of Reclamation  
1150 N. Curtis Road  
Boise, ID 83706

Allen Merritt  
Cindy Yenter  
IDWR Southern  
1341 Fillmore Street, Suite 200  
Twin Falls, ID 83301

James Tucker  
Idaho Power Company  
1221 West Idaho street  
Boise, ID 83702

  
Josephine P. Beeman [7235]

**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 )  
IRRIGATION DISTRICT, MINIDOKA IRRIGATION )  
DISTRICT, NORTH SIDE CANAL COMPANY, )  
AND TWIN FALLS CANAL COMPANY )  
)  
(Water Districts No. 120 and No. 130) )  
\_\_\_\_\_ )

**ORDER REGARDING  
SERVICE OF EXPERT  
REPORTS**

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  4<sup>th</sup>  day of January, 2006.

  
\_\_\_\_\_  
KARL J. DREHER  
Director

**CERTIFICATE OF SERVICE**

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

TOM C. ARKOOSH  
ARKOOSH LAW OFFICES  
PO BOX 32  
GOODING ID 83330  
(208) 934-8873  
[alo@cableone.net](mailto:alo@cableone.net)

U.S Mail, Postage Prepaid  
 Facsimile  
 E-mail

W. KENT FLETCHER  
FLETCHER LAW OFFICE  
PO BOX 248  
BURLEY ID 83318-0248  
(208) 878-2548  
[wkf@pmt.org](mailto:wkf@pmt.org)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

ROGER D. LING  
LING ROBINSON  
PO BOX 396  
RUPERT ID 83350-0396  
(208) 436-6804  
[rdl@idlawfirm.com](mailto:rdl@idlawfirm.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

JOHN A. ROSHOLT  
TRAVIS L. THOMPSON  
BARKER ROSHOLT  
113 MAIN AVENUE WEST, SUITE 303  
TWIN FALLS ID 83301-6167  
(208) 735-2444  
[jar@idahowaters.com](mailto:jar@idahowaters.com)  
[tlt@idahowaters.com](mailto:tlt@idahowaters.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

JOHN K. SIMPSON  
BARKER ROSHOLT  
PO BOX 2139  
BOISE ID 83701-2139  
(208) 344-6034  
[jks@idahowaters.com](mailto:jks@idahowaters.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

JEFFREY C. FEREDAY  
MICHAEL C. CREAMER  
GIVENS PURSLEY  
PO BOX 2720  
BOISE ID 83701-2720  
(208) 388-1200  
[cf@givenspursley.com](mailto:cf@givenspursley.com)  
[mcc@givenspursley.com](mailto:mcc@givenspursley.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

SCOTT L. CAMPBELL  
MOFFATT THOMAS  
PO BOX 829  
BOISE ID 83701  
(208) 385-5384  
[slc@moffatt.com](mailto:slc@moffatt.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

KATHLEEN M. CARR  
OFFICE OF THE SOLICITOR  
960 BROADWAY, SUITE 400  
BOISE ID 83706  
(208) 334-1378

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

MATT HOWARD PN-3130  
US BUREAU OF RECLAMATION  
PACIFIC NORTHWEST REGION  
1150 NORTH CURTIS ROAD  
BOISE ID 83706-1234  
(208) 378-5003  
[mhoward@pn.usbr.gov](mailto:mhoward@pn.usbr.gov)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

JOSEPHINE P. BEEMAN  
BEEMAN & ASSOCIATES  
409 WEST JEFFERSON STREET  
BOISE ID 83702  
(208) 331-0954  
[jo.beeman@beemanlaw.com](mailto:jo.beeman@beemanlaw.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

SARAH A. KLAHN  
WHITE & JANKOWSKI  
511 16TH STREET, SUITE 500  
DENVER CO 80202  
[sarahk@white-jankowski.com](mailto:sarahk@white-jankowski.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

MICHAEL S. GILMORE  
ATTORNEY GENERAL'S OFFICE  
PO BOX 83720  
BOISE ID 83720-0010  
(208) 334-2830  
[mike.gilmore@ag.idaho.gov](mailto:mike.gilmore@ag.idaho.gov)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

TERRY T. UHLING  
J.R. SIMPLOT COMPANY  
999 MAIN STREET  
BOISE ID 83702  
(208) 336-2110  
[tuhling@simplot.com](mailto:tuhling@simplot.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

JAMES C. TUCKER  
IDAHO POWER COMPANY  
1221 WEST IDAHO STREET  
BOISE ID 83702  
(208) 388-2112  
[jamestucker@idahopower.com](mailto:jamestucker@idahopower.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

JAMES S. LOCHHEAD  
BROWNSTEIN HYATT & FARBER  
410 17TH STREET, 22ND FLOOR  
DENVER CO 80202  
(303) 223-1100  
[jlochhead@bhf-law.com](mailto:jlochhead@bhf-law.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

RON CARLSON  
LEWIS ROUNDS  
IDWR  
900 NORTH SKYLINE DRIVE  
IDAHO FALLS ID 83402-6105  
(208) 525-7177  
[ron.carlson@idwr.idaho.gov](mailto:ron.carlson@idwr.idaho.gov)  
[lewis.rounds@idwr.idaho.gov](mailto:lewis.rounds@idwr.idaho.gov)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

ALLEN MERRITT  
CINDY YENTER  
IDWR  
1341 FILLMORE STREET, SUITE 200  
TWIN FALLS ID 83301-3033  
(208) 736-3037  
[allen.merritt@idwr.idaho.gov](mailto:allen.merritt@idwr.idaho.gov)  
[cindy.yenter@idwr.idaho.gov](mailto:cindy.yenter@idwr.idaho.gov)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail



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Victoria Wigle  
Administrative Assistant to the Director  
Idaho Department of Water Resources