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IN THE SUPREME COURT 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**

**IDAHO GROUND WATER
APPROPRIATORS, INC.,**

Petitioner-Appellant,

v.

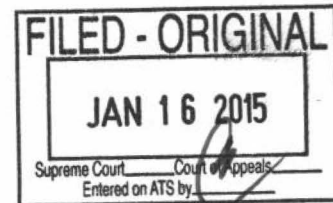
THE CITY OF POCA TELLO,

Petitioner-Appellant,

)
)
) Docket No. 42776-2015
) (Consolidated with Docket No. 42778-
) 2015)

)
) Snake River Basin Adjudication No.
) CV-2010-382

)
) **SURFACE WATER COALITION'S**
) **MOTION TO DISMISS CITY OF**
) **POCA TELLO'S APPEAL**



TWIN FALLS CANAL COMPANY, NORTH
SIDE CANAL COMPANY, A&B
IRRIGATION DISTRICT, AMERICAN
FALLS RESERVOIR DISTRICT #2,
BURLEY IRRIGATION DISTRICT,
MILNER IRRIGATION DISTRICT,
MINIDOKA IRRIGATION DISTRICT,

Petitioners-Respondents,

v.

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

Respondents-Respondents.

COME NOW, Respondents, 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 (collectively hereinafter referred to as the "Surface Water Coalition" or "Coalition"), by and through their undersigned counsel, and move this Court for an order dismissing the appeal filed by the City of Pocatello. The reasons for the Coalition's motion are set forth below.

ARGUMENT

The Snake River Basin Adjudication ("SRBA") District Court issued its *Memorandum Decision and Order on Petitions for Judicial Review* on September 26, 2014. The parties then filed petitions for rehearing and a motion to alter or amend the judgment. The SRBA Court issued an *Order Denying Petitions for Rehearing* and an *Order Denying Motion to Alter or Amend Judgment* on November 17, 2014. IGWA filed a timely notice of appeal on December

24, 2014. However, the City of Pocatello filed its notice of appeal on December 30, 2014, exactly forty-three (43) days following the orders denying the petitions for rehearing and the motion to alter or amend the judgment. The City's untimely appeal should be dismissed pursuant to Idaho law.

Idaho Appellate Rule (I.A.R.) 14 requires any appeal to be "physically" filed with the clerk of the court "within 42 days from the date evidenced by the filing stamp of the clerk of the court on any judgment or order of the district court appealable as a matter of right in any civil" action. The filing deadline is jurisdictional. *See also*, I.A.R. 21; *State v. James*, 112 Idaho 239, 241 (Ct. App. 1986) ("Appeals taken after the expiration of the filing period must be dismissed"); *see also*, *State v. Thomas*, 146 Idaho 592, 594 (2008). Since the City of Pocatello did not physically file its appeal within 42 days as required by I.A.R. 14 and 21, the Court does not have jurisdiction to review it.

The Coalition respectfully requests the Court to dismiss the City of Pocatello's untimely notice of appeal.

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DATED this 16th day of January, 2015.


BARNER ROCHOLT & SIMPSON LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of January, 2015, I served true and correct copies of the foregoing upon the following by the method indicated:

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