

Sarah A. Klahn, ISB # 7928  
Somach Simmons & Dunn, P.C.  
1155 Canyon St., Suite 110  
Boulder, CO 80302  
303-449-2834  
[sklahn@somachlaw.com](mailto:sklahn@somachlaw.com)

ATTORNEYS FOR THE CITY OF POCATELLO

**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

**Docket No. CM-DC-2010-001**

**POCATELLO'S REQUEST FOR  
HEARING**

COMES NOW the City of Pocatello (Pocatello), by and through its attorneys of record, Somach Simmons & Dunn, to request a hearing in the captioned matter and to seek an order authorizing discovery. As reflected in the contemporaneously filed Motion for Continuance, Pocatello joins in the request to delay the trial in this matter currently set for June 2-6, 2023.

**A. Request for Hearing**

Pursuant to Idaho Code § 42-1701(A)(3), Pocatello requests a hearing on the Department's *Fifth Amended Methodology Order Regarding Methodology For Determining Material Injury to Reasonable In-Season Demand And Reasonable Carryover*, issued

April 21, 2023 (“Fifth Methodology Order”). Among the issues Pocatello has identified for hearing:

- a) Whether changes to how IDWR computes curtailment dates (using transient groundwater modeling) are reasonable;
- b) Whether the ESPAM has been shown to be sufficiently accurate to support the proposed transient groundwater modeling to determine curtailment dates;
- c) Whether the Surface Water Coalition’s (“SWC”) actual irrigated acreage was properly determined for use in determining reasonable in-season demand;
- d) Whether a baseline demand that incorporates increases in SWC member diversions in recent years is valid basis for conjunctive administration;
- e) The reasonableness of Project efficiencies of the SWC members, trends in said efficiencies in recent years, and how the efficiency values are used in determining reasonable in-season demands;
- f) IDWR’s failure to consider all sources of supply to the SWC;
- g) Whether 2018 is a reasonable new baseline year;
- h) Whether changes to determination of the reasonable in-season demand for the SWC members are reasonable and appropriate;
- i) Whether the level of conservatism employed in the methodology order is reasonable;

- j) Whether contingencies other than curtailment are available to protect senior-priority rights in the event that mitigation water becomes unavailable.
- k) Whether changes to how the reasonable carryover for the SWC members is computed are reasonable;
- l) Whether other analytical methods or modeling would reasonably improve the process for predicting and evaluating material injury;
- m) IDWR’s failure to apply Conjunctive Management Rule 20.03 (IDAPA 37.03.11.20.03) and principles of reasonableness generally;
- n) IDWR’s violation of due process rights of all interested water users:
  - i. by engaging in an ineffective public process related to the Department’s convening of the “Technical Work Group” to discuss modifications to the Fourth Methodology Order;
  - ii. by setting the hearing without regard to the time required for discovery and without consideration of the existing obligations of the parties, their legal representatives and consultants.

Respectfully submitted this 28<sup>th</sup> day of April 2023.

**SOMACH SIMMONS & DUNN**

By   
Sarah A. Klahn, ISB # 7928

*ATTORNEYS FOR CITY OF POCATELLO*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of April, 2023, the foregoing document was served via email to the following:

Idaho Dept. of Water Resources <a href="mailto:file@idwr.idaho.gov">file@idwr.idaho.gov</a>	Kathleen Marion Carr US Dept. Interior 960 Broadway Ste 400 Boise, ID 83706 <a href="mailto:kathleenmarion.carr@sol.doi.gov">kathleenmarion.carr@sol.doi.gov</a>
John K. Simpson MARTEN LAW LLP P.O. Box 2139 Boise, ID 83701-2139 <a href="mailto:jsimpson@martenlaw.com">jsimpson@martenlaw.com</a>	David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice 999 18th St., South Terrace, Suite 370 Denver, CO 80202 <a href="mailto:david.gehlert@usdoj.gov">david.gehlert@usdoj.gov</a>
Travis L. Thompson MARTEN LAW LLP P.O. Box 63 Twin Falls, ID 83303-0063 <a href="mailto:tthompson@martenlaw.com">tthompson@martenlaw.com</a> <a href="mailto:jnielsen@martenlaw.com">jnielsen@martenlaw.com</a>	Matt Howard US Bureau of Reclamation 1150 N Curtis Road Boise, ID 83706-1234 <a href="mailto:mhoward@usbr.gov">mhoward@usbr.gov</a>
W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318 <a href="mailto:wkf@pmt.org">wkf@pmt.org</a>	Thomas J. Budge Elisheva M. Patterson RACINE OLSON P.O. Box 1391 Pocatello, ID 83204-1391 <a href="mailto:tj@racineolson.com">tj@racineolson.com</a> <a href="mailto:elisheva@racineolson.com">elisheva@racineolson.com</a>
Candice McHugh Chris Bromley MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83702 <a href="mailto:cbromley@mchughbromley.com">cbromley@mchughbromley.com</a> <a href="mailto:cmchugh@mchughbromley.com">cmchugh@mchughbromley.com</a>	Robert L. Harris HOLDEN, KIDWELL, HAHN & CRAPO, PLLC P.O. Box 50130 Idaho Falls, ID 83405 <a href="mailto:rharris@holdenlegal.com">rharris@holdenlegal.com</a>

<p>Robert E. Williams  WILLIAMS, MESERVY, &amp; LOTHSPREICH,  LLP  P.O. Box 168  Jerome, ID 83338  <a href="mailto:rewilliams@wmlattys.com">rewilliams@wmlattys.com</a></p>	<p>Skyler C. Johns  Nathan M. Olsen  Steven L. Taggart  OLSEN TAGGART PLLC  P.O. Box 3005  Idaho Falls, ID 83403  <a href="mailto:sjohns@olsentaggart.com">sjohns@olsentaggart.com</a>  <a href="mailto:nolsen@olsentaggart.com">nolsen@olsentaggart.com</a>  <a href="mailto:staggart@olsentaggart.com">staggart@olsentaggart.com</a></p>
<p>Randall D. Fife  City Attorney  City of Idaho Falls  P.O. Box 50220  Idaho Falls, ID 83405  <a href="mailto:rfife@idahofallsidaho.gov">rfife@idahofallsidaho.gov</a></p>	<p>Corey Skinner  IDWR—Southern Region  1341 Fillmore St., Ste. 200  Twin Falls, ID 83301-3033  <a href="mailto:corey.skinner@idwr.idaho.gov">corey.skinner@idwr.idaho.gov</a></p>
<p>Tony Olenichak IDWR—Eastern Region  900 N. Skyline Drive, Ste. A  Idaho Falls, ID 83402  <a href="mailto:Tony.Olenichak@idwr.idaho.gov">Tony.Olenichak@idwr.idaho.gov</a></p>	<p>William A. Parsons  PARSONS SMITH &amp; STONE  P.O. Box 910  Burley, ID 83318  <a href="mailto:wparsons@pmt.org">wparsons@pmt.org</a></p>




---

Sarah A. Klahn, ISB # 7928