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ATTORNEYS FOR THE CITY OF
POCATELLO

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING**

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

UNITED STATES OF AMERICA,
BUREAU OF RECLAMATION,

Petitioners,

vs.

IDAHO DAIRYMEN'S ASSOCIATION,
INC.,

Cross-Petitioner,

vs.

GARY SPACKMAN, in his capacity as

Case No.: 2008-000551

**CITY OF POCATELLO'S SECOND
AMENDED NOTICE OF APPEAL**

Fee Amount: (exempt)

Interim Director of the Idaho Department of
Water Resources,¹ and THE IDAHO
DEPARTMENT OF WATER RESOURCES

Respondents,

vs.

IDAHO GROUND WATER
APPROPRIATORS, INC.,

Appellant-Respondents²,

vs.

THE CITY OF POCA TELLO,

Appellant-Respondents,

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

TO: THE ABOVE-NAMED 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, UNITED STATES OF
AMERICA, BUREAU OF RECLAMATION, IDAHO DAIRYMEN'S ASSOCIATION, INC.,
GARY SPACKMAN, IN HIS CAPACITY AS INTERIM DIRECTOR OF THE IDAHO
DEPARTMENT OF WATER RESOURCES, IDAHO GROUND WATER APPROPRIATORS,
AND THE PARTIES' ATTORNEYS AS IDENTIFIED ON THE CERTIFICATE OF SERVICE
BELOW; AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

¹ Director David R. Tuthill retired as Director of Idaho Department of Water Resources effective June 30, 2009.
Gary Spackman was appointed as Interim Director. I.R.C.P. 25 (d) and (e).

² Pursuant to Idaho Appellate Rule 17(m), the City of Pocatello's Amended Notice of Appeal indicates "changes
from the original notice of appeal by means of strikethroughs and underlining." New text is accordingly underlined,
and deleted text is stricken through.

1. The above named Appellant, THE CITY OF POCATELLO (“City” or “Pocatello”) appeals On October 20, 2010 the City of Pocatello (“City” or “Pocatello”) filed a notice of appeal in Case No. 2008-000551, appealing against the above named respondents to the Idaho Supreme Court from the District Court’s final *Amended Order on Petitions for Rehearing, Order Denying Surface Water Coalition’s Motion for Clarification* (“Final Order”), entered in the above entitled action on September 9, 2010, the Honorable John M. Melanson presiding. Unless modified by the Final Order, The Final Order expressly incorporates the District Court’s *Order on Petition for Judicial Review*, entered in the above entitled action on July 24, 2009, the Honorable John M. Melanson presiding

2. On November 30, 2010 the Court entered a *Judgment Nunc Pro Tunc* and an *Order Amending Caption* in this matter. The *Judgment Nunc Pro Tunc* enters a final judgment pursuant to I.R.C.P. 54(b) in Case No. 2008-000551 “upon which execution may issue and appeal may be taken as provided by the Idaho Appellate Rules.” The *Court’s Order Amending Caption* found that “IGWA and Pocatello are real parties in interest to this matter, participated in the proceedings on judicial review and rehearing, and have water right interests that could be affected by the outcome of this matter.”

3. The above named Appellant, THE CITY OF POCATELLO, hereby files this Second Amended Notice of Appeal to appeal against the above named respondents to the Idaho Supreme Court from the District Court’s *Judgment Nunc Pro Tunc*, entered in the above entitled action on November 30, 2010, the Honorable John M. Melanson presiding. The *Judgment Nunc Pro Tunc* incorporates the Court’s *Order on Petition for Judicial Review* entered July 24, 2009, and the Court’s subsequent *Amended Order on Petitions for Rehearing* entered August 23, 2010.

4. The Appellants have Appellant has a right to appeal to the Idaho Supreme Court, and the *Amended Order on Petitions for Rehearing, Order Denying Surface Water Coalition’s Motion for Clarification Judgment Nunc Pro Tunc* is appealable pursuant to Rule 11(f) of the Idaho Appellate Rules.

5. The Appellants intends to assert the following preliminary issues on appeal, provided this list of issues shall not prevent the appellant from asserting other issues on appeal:

- a. Whether the Court erred in determining that the Director’s authority was constrained so that he was required to determine that full headgate delivery for Twin Falls Canal Company should be 3/4 of an inch per acre, the rate recommended by the Director in the Snake River Basin Adjudication, instead of the amount determined to be reasonable by the Director, 5/8 inch per acre.
- b. Whether the Court erred in adopting the “clear and convincing” evidence standard as the basis for determining that a senior does not require his full licensed or decreed amount to satisfy a delivery call.

6. No order has been entered sealing any portion of the record.

7. The Appellant requests that the transcript of the administrative proceedings held before the Idaho Department of Water Resources be made a part of the record on appeal. The

Appellant currently possesses a copy of the transcript, as it was previously prepared in conjunction with the District Court's judicial review of this action. A copy of the transcript may be obtained from Idaho Department of Water Resources. In addition, Appellant requests that a copy of the transcripts from the following hearings held before the district court also be included:

- a. Hearing on Oral Argument, May 26, 2009.

~~Pursuant to Idaho Appellate Rule 19(c), Appellant may file a request to include additional material within 14 days of the filing of this notice of appeal.~~

- b. Hearing, February 22, 2010 (approximately 53 pages).
- c. Hearing, August 6, 2010 (less than 50 pages).

8. The Appellant requests that all pleadings and ~~attachments~~ documents filed in this case ~~that are listed on the attachment hereto~~ plus all other documents in the clerk's record automatically included under Rule 28 of the Idaho Appellate Rules be made part of the record. Appellant also requests, to the extent that the following pleadings are not found in the district court docket of the above-captioned matter, the following pleadings be made part of the record:

- a. Pocatello's Notice of Appeal and Petition for Judicial Review of Agency Action (Final Methodology Order), July 21, 2010, originally filed in case no. 2008-000551, renumbered and refiled by the Gooding County district clerk as case no. 2010-0000388.
- b. Notice of Appeal and Petition for Judicial Review of Final Agency Action (Methodology for Determining Material Injury) filed by A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, Twin Falls Canal Company, July 21, 2010, originally filed in case no. 2008-000551, renumbered and refiled by the Gooding County district clerk as case no. 2010-384.
- c. IGWA's Petition for Judicial Review (Second Amended Order Re: Methodology dated June 23, 2010), July 20, 2010, originally filed in case no. 2008-000551, renumbered and refiled by the Gooding County district clerk as case no. 2010-383.
- d. IGWA and Pocatello's Motion for Consolidation, July 21, 2010, CV-2010-551.
- e. Motion to Renumber Appeals and to File Appeals in Gooding County Case No. CV-2008-551, July 23, 2010, Gooding County case nos. CV-2010-383, CV-2010-384, CV-2010-388.
- f. Surface Water Coalition's Joint Response to IGWA and Pocatello's Motion for Stay and Consolidation and Motion to Renumber Appeals and to File Appeals in Gooding County Case No. CV-2008-551, July 28, 2010, Gooding

County case nos. CV-2010-388, CV-2010-387, CV-2010-384, CV-2010-383, CV-2010-382 and Twin Falls County case no. CV-2010-3403.

- g. *Order Denying Motion to Renumber; Order Consolidating Proceedings Involving Petitions for Judicial Review of "Methodology Order" and "As-Applied Order"*, Hon. Eric J. Wildman presiding, July 29, 2010, case no. CV-2010-382, County of Gooding, (consolidated Gooding County cases CV-2010-382, CV2010-383; CV-2010-384, CV-2010-387, CV-2010-388, and Twin Falls County Case CV-2010-3403).

9. The Appellant requests that all of the exhibits included in the agency record be copied and sent to the Supreme Court.

10. I certify:

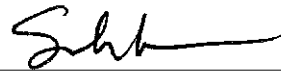
- a. That a copy of this second amended notice of appeal has been served on the reporter.
- b. That the fee required for the preparation of the reporter's transcript was paid in conjunction with the District Court's judicial review of this action.
- c. That the estimated fee for preparation of the clerk's record has been paid.
- d. That Appellant is exempt from the filing fee pursuant to Idaho Code section 67-2301.
- e. That service has been made upon all parties required to be served pursuant to Idaho Appellate Rule 20.

Respectfully submitted, this 27th day of January 2011.

ATTORNEYS FOR CITY OF POCATELLO



A. Dean Tranmer



Sarah A. Klahn

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of January, 2011, I caused to be served a true and correct copy of the foregoing **City of Pocatello's Second Amended Notice of Appeal** in **Case No. CV-2008-0000551, Gooding County** upon the following by the method indicated:



Sarah Klahn, White & Jankowski, LLP

<p>Gary Spackman, Interim Director State of Idaho, Dept of Water Resources 322 E Front St PO Box 83720 Boise ID 83720-0098 Deborah.Gibson@idwr.idaho.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail – Federal Express <input type="checkbox"/> Facsimile 208-287-6700, Phone 208-287-4942 <input checked="" type="checkbox"/> Email</p>
<p>Cynthia R. Eagle-Ervin, Deputy Clerk Gooding County District Court 624 Main St PO Box 27 Gooding ID 83330</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail – Federal Express <input checked="" type="checkbox"/> Facsimile 208-934-4408, Phone 208-934-4861 <input type="checkbox"/> Email</p>
<p>Courtesy Copy to: Judge John M. Melanson Idaho Court of Appeals PO Box 83720 Boise ID 83720-0101</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile 208-334-2616 <input type="checkbox"/> Email</p>
<p>C. Thomas Arkoosh Capitol Law Group PO Box 32 Gooding ID 83330 tarkoosh@capitolawgroup.net</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile 208-934-8873 <input checked="" type="checkbox"/> Email</p>
<p>John A. Rosholt John K. Simpson Travis L. Thompson Paul L. Arrington Barker Rosholt & Simpson 113 Main Ave West Ste 303 PO Box 485 Twin Falls ID 83303-0485 jar@idahowaters.com tlt@idahowaters.com jks@idahowaters.com pla@idahowaters.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile 208-735-2444 <input checked="" type="checkbox"/> Email</p>
<p>Kent Fletcher Fletcher Law Office PO Box 248 Burley, ID 83318 wkf@pmt.org</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile 208-878-2548 <input checked="" type="checkbox"/> Email</p>

<p>Garrick L. Baxter Chris M. Bromley Deputy Attorneys General – IDWR PO Box 83720 Boise ID 83720-0098 garrick.baxter@idwr.idaho.gov chris.bromley@idwr.idaho.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile 208-287-6700 <input checked="" type="checkbox"/> Email</p>
<p>Randall C. Budge Candice M. McHugh Racine Olson Nye Budge & Bailey 201 E Center St PO Box 1391 Pocatello ID 83204-1391 rbc@racinelaw.net cmm@racinelaw.net</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile 208-232-6109 <input checked="" type="checkbox"/> Email</p>
<p>Dean Tranmer City of Pocatello PO Box 4169 Pocatello ID 83201 dtranmer@pocatello.us</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile 208-234-6297 <input checked="" type="checkbox"/> Email</p>
<p>David W. Gehlert Natural Resources Section Environment & Natural Resources Division US Dept of Justice 1961 Stout St 8th Floor Denver CO 80294 david.gehlert@usdoj.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile 303-844-1350 <input checked="" type="checkbox"/> Email</p>
<p>Michael C Creamer Jeffery C. Fereday Givens Pursley 601 W Bannock St Ste 200 PO Box 2720 Boise ID 83701-2720 mcc@givenspursley.com jeffereday@givenspursley.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile 208-388-1300 <input checked="" type="checkbox"/> Email</p>
<p>Roger D. Ling Attorney at Law PO Box 623 Rupert ID 83350 rdl@idlawfirm.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile 208-436-6804 <input checked="" type="checkbox"/> Email</p>
<p>Courtesy copy to: Snake River Basin Adjudication District Court of the Fifth Judicial District PO Box 2707 Twin Falls ID 83303-2707</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid</p>

Courtesy Copy to:
Linda Ledbetter, SRBA Court Reporter
570 Rim View Drive
Twin Falls ID 83301

U.S. Mail, Postage Prepaid

=====
courtesy copy was sent to court reporter
who handled the May 26, 2009 hearing:
Maureen Newton
PO Box 368
Rupert ID 83350

U.S. Mail, Postage Prepaid

CV-2008-551 LIST OF DOCUMENTS REQUESTED FOR APPEAL

Filing Date	Document Name
9/25/08	Petitioners Statement of Initial Issues
10/17/08	Procedural Order Governing Judicial Review of Agency Decision by District Court
11/7/08	Filing; R2 Appeal or petition for judicial review, or cross-appeal or cross-petition, from Commission Board/ or body to the District Court. Paid by: Capital Law Receipt No. 0004571 Dated 11/7/2009 Amount \$88 (check) for A&B Irrigation District (plaintiff)
11/21/08	Petitioner's Statement of Issues (United States)
4/3/09	Petitioner US Opening Brief
4/3/09	Surface Water Coalition's Joint Opening Brief
5/1/09	IDWR Respondent's Brief
5/1/09	Respondent Pocatello's Brief
5/4/09	Ground Water Users Brief in Response
5/20/09	Petitioner US Reply Brief
5/20/09	Surface Water Coalitions Joint Reply Brief
7/24/09	Order on Petition for Judicial Review
8/14/09	Pocatello's Petition for Re-Hearing
8/14/09	Ground Water User's Petition for Re-Hearing
8/25/09	Scheduling Order on Petitions for Rehearing
10/9/09	City of Pocatello's Opening Brief in Support of Petition for Rehearing
10/13/09	Ground Water Users Opening Brief on Rehearing
10/23/09	Supreme Court Order Assigning Judge Melanson
11/16/09	Surface Water Coalition's Response to IGWA's and City of Pocatello Petition for Rehearing
11/19/09	IDWR Response Brief on Rehearing
11/30/09	Ground Water Users Reply on Rehearing
11/30/09	City of Pocatello's Reply Brief in Support of Petition for Rehearing
3/4/10	Order Staying Decision on Petition for Rehearing Pending Issuance of Revised Final Order
3/11/10	Surface Water Coalitions Objection to Order Staying Decision
3/17/10	Ground Water Users/Pocatello's Response to SWC Objection to Order Staying Decision
3/25/10	Order Overruling Objection to Order Staying Decision
5/13/10	City of Pocatello and Ground Water Users Motion for Stay and to Augment Record
5/13/10	City of Pocatello and Ground Water Users Memorandum in Support of Motion for Stay . . .
5/19/10	IDWR Response to IGWA and Pocatello Motion for Stay
5/19/10	Affidavit of Chris Bromley
5/28/10	City of Pocatello & Ground Water Users Response to Motion to Extend Deadline

6/3/10	Surface Water Coalition's Response to IWGA/City of Pocatello Motion to Stay
6/8/10	City of Pocatello & Ground Water Users Reply in Support of Motion to Stay and Augment . . .
6/8/10	Affidavit of Sarah Klahn
6/23/10	Order Denying Motion for Stay and to Augment Record
8/6/10	Court Minutes -- via video conferencing @ IDWR -- John Melanson Boise, ID -- Status Conference 10 a.m. Virginia Bailey -- Reporter Julie Murphy - Clerk
8/9/10	Hearing result for Hearing Scheduled held on 08/06/2010 10:00 AM: hearing held video teleconference from Idaho Water Ctr -- Boise
8/23/10	Order on Petitions for Rehearing
8/26/10	Motion to Clarify/Motion for Reconsideration
9/3/10	Surface Water Coalitions Motion for Clarification
9/9/10	Amended Order on Petitions for Rehearing
10/21/10	Appealed to the Supreme Court (City of Pocatello)
10/21/10	Appealed to the Supreme Court (IGWA)
11/4/10	Supreme Court Order Consolidating Appeals
11/22/10	Order Suspending Appeal (Clerk of the Court)
11/24/10	Idaho Ground Water Appropriators, Inc.'s and City of Pocatello's Request to Amend Caption
11/30/10	Judgment Nunc Pro Tunc
11/30/10	Order Amending Caption
12/20/10	Idaho Ground Water's Amended Notice of Appeal
12/20/10	City of Pocatello Amended Notice of Appeal
12/23/10	Supreme Court Order Adopting District Court Order (re: Caption)