

Sarah A. Klahn (ISB# 7928)
Maximilian C. Bricker (ISB #12283)
SOMACH SIMMONS & DUNN, P.C.
1155 Canyon St., Suite 110
Boulder, CO 80302
sklahn@somachlaw.com
mbricker@somachlaw.com
Attorneys for City of Pocatello

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

CITY OF IDAHO FALLS, CITY OF POCATELLO,
CITY OF BLISS, CITY OF BURLEY, CITY OF
CAREY, CITY OF DECLO, CITY OF DIETRICH,
CITY OF GOODING, CITY OF HAZELTON, CITY
OF HEYBURN, CITY OF JEROME, CITY OF
PAUL, CITY OF RICHFIELD, CITY OF RUPERT,
CITY OF SHOSHONE, and CITY OF WENDELL

Petitioners,

vs.

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

Respondents,

and

IDAHO GROUND WATER APPROPRIATORS
INC., A&B IRRIGATION DISTRICT, BURLEY
IRRIGATION DISTRICT, MILNER IRRIGATION
DISTRICT, NORTH SIDE CANAL COMPANY,
TWIN FALLS CANAL COMPANY, AMERICAN
FALLS RESERVOIR DISTRICT #2, MINIDOKA
IRRIGATION DISTRICT, BONNEVILLE-
JEFFERSON GROUND WATER DISTRICT, and
BINGHAM GROUNDWATER DISTRICT,

Intervenors.

Case No. CV01-23-13238

**DECLARATION OF COUNSEL
IN SUPPORT OF FIRST
AMENDED UNOPPOSED
MOTION TO MODIFY
PROCEDURAL ORDER
BRIEFING SCHEDULE**

IN THE MATTER OF THE DISTRIBUTION OF
WATER TO VARIOUS WATER RIGHTS HELD BY
AND 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

I, Maximilian C. Bricker, declare the following:

1. I am an attorney representing Petitioner City of Pocatello in the above-captioned matter.
2. Pursuant to this Court's August 17, 2023 *Procedural Order*, the Petitioners' opening brief is due within 35 days of the lodging of the settled transcript and record with the district court. The settled transcript and record were lodged with the district court on September 28, 2023, meaning Petitioners' opening brief is due November 2, 2023.
3. On October 19, 2023, within 21 days after the lodging of the settled transcript and record with the district court, Petitioners filed a *Motion to Augment the Record*.
4. On October 26, 2023, the Court issued a notice of hearing on the *Motion to Augment the Record*, setting oral arguments on the motion for November 9, 2023.
5. There is good cause to vacate and reset the briefing deadlines because Petitioners' opening brief seeks to reference evidence at issue in the *Motion to Augment the Record* but cannot do so without the Court's decision on the motion.

Accordingly, Petitioners request that the Court vacate the briefing schedule set

forth in the *Procedural Order* until the Court rules on the *Motion to Augment the Record*.

6. Petitioners filed one prior request to modify the briefing schedule, on October 26, 2023, which has not yet been granted or denied.
7. The parties to the above-captioned matter were consulted regarding this motion and all parties agree to vacating the current briefing schedule.
8. No alternate dates for when briefs become due are currently proposed as these alternate dates are subject to the Court's pending ruling on the *Motion to Augment the Record*, of which the date of issuance is unknown. However, the briefing schedule contemplated in the *Procedural Order* and I.A.R. 34(c) will likely (a) be applied and triggered by the Court's ruling on the *Motion to Augment the Record* issuance date; or, (b) alternatively, be based upon the date that Respondents elect to modify their actions and file any modifications or new findings with the Court, pursuant to Idaho Code § 67- 5276(2). The proposed briefing schedule will likely be modified also because of the holiday season, over which briefs may be due.
9. After the issuance of the Court's decision on the *Motion to Augment the Record*, the parties shall coordinate with one another and the Court to set a briefing schedule. The parties are known entities to this Court having brought judicial review before it numerous times in the past. To the best of my knowledge, all parties have complied with the Court's procedural orders and have submitted briefs timely.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 30th day of October 2023.

SOMACH SIMMONS & DUNN, P.C.



Maximilian C. Bricker, ISB #12283

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2023, I served the foregoing document on the persons below via iCourt and email:

Clerk of the Court Jerome County District Court	iCourt
Director Mat Weaver Garrick Baxter Sarah Tschohl Idaho Department of Water Resources	mat.weaver@idwr.idaho.gov garrick.baxter@idwr.idaho.gov sarah.tschohl@idwr.idaho.gov
John K. Simpson Travis L. Thompson MARTEN LAW LLP	tthompson@martenlaw.com jsimpson@martenlaw.com jnielsen@martenlaw.com
W. Kent Fletcher FLETCHER LAW OFFICE	wkf@pmt.org
Kathleen Marion Carr U.S. Dept. Interior	kathleenmarion.carr@sol.doi.gov
David W. Gehlert Natural Resources Section Environment and Natural Resources Division U.S. Department of Justice	david.gehlert@usdoj.gov
Matt Howard U.S. Bureau of Reclamation	mhoward@usbr.gov
Robert E. Williams WILLIAMS, MESERVY & LOTH SPEICH, LLP	rewilliams@wmlattys.com
Randall D. Fife City Attorney City of Idaho Falls	rfife@idahofallsidaho.gov
Corey Skinner IDWR-Southern Region	corey.skinner@idwr.idaho.gov
Tony Olenichak IDWR-Eastern Region	Tony.Olenichak@idwr.idaho.gov

Thomas J. Budge Elisheva M. Patterson RACINE OLSON, PLLP	tj@racineolson.com elisheva@racineolson.com
Skyler C. Johns Nathan M. Olsen Steven L. Taggart OLSEN TAGGART PLLC	sjohns@olsentaggart.com nolsen@olsentaggart.com staggart@olsentaggart.com
Dylan Anderson Dylan Anderson Law	dylan@dylanandersonlaw.com
<i>COURTESY COPY TO:</i> William A. Parsons PARSONS SMITH & STONE	wparsons@pmt.org



Maximilian C. Bricker (ISB #12283)