FILED
BANNOCK COUNTY
CLERK OF THE COURT
2009 AUG 28 PM 4:58
BY _____
DEPUTY CLERK

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IN THE DISTRICT COURT FOR THE 6TH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

CITY OF POCATELLO, Petitioner, vs. **THE IDAHO DEPARTMENT OF WATER RESOURCES,** Respondent.	
IN THE MATTER OF APPLICATION TO LEASE WATER FOR HYDROELECTRIC GENERATION IN THE NAME OF THE CITY OF POCATELLO	**NOTICE OF APPEAL AND PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION**

COMES NOW, the Petitioner City of Pocatello ("City"), by and through its undersigned counsel, and hereby files this Petition seeking judicial review of a final agency action.

Pocatello's Statement of Issues in this matter will be filed with the Court within 14 days. Pursuant to I.R.C.P. 84(d)(5) Pocatello reserves the right to assert additional issues and/or clarify or further specify the issues for judicial review stated in the petition or which are discovered later.

STATEMENT OF THE CASE

1. This is a civil action pursuant to Idaho Code §§67-5270, 67-5279, 42-1701A(4) seeking judicial review of the *Final Order* of the Idaho Department of Water Resources ("Respondent"), *In the Matter of Application to Lease Water for Hydroelectric Generation in the Name of the City of Pocatello* entered June 29, 2009. The Respondent issued an Order Denying Pocatello's Petition for Reconsideration July 31, 2009.

2. A hearing in this matter was held before the agency on July 31, 2008.

JURISDICTION AND VENUE

3. This petition is authorized pursuant to Idaho Code §§67-5270, 67-5279 and 42-1701A(4).

4. This Court has jurisdiction over this action pursuant to Idaho Code §§42-1701A(4), 67-5272 and 42-1401D.

5. Venue lies with this Court pursuant to Idaho Code §§ 42-1701A, 42-1401D and 67-5272. Petitioner Pocatello's principal place of business is located in Bannock County, Idaho.

6. Petitioner Pocatello exhausted all administrative remedies prior to filing this Petition.

7. The Director's *Final Order* of June 29, 2009 is a final agency action subject to judicial review pursuant to Idaho Code §67-5270(3).

PARTIES

8. Petitioner City of Pocatello is a municipal corporation of Idaho.

9. Respondent Idaho Department of Water Resources is a state agency, with its main office located at 322 E. Front Street, Boise, Idaho. Respondent Gary Spackman is the Interim Director of the Idaho Department of Water Resources.

AGENCY RECORD

10. Judicial review is sought of the former Director's *Final Order* entered June 29, 2009, *In the Matter of Application to Lease Water for Hydroelectric Generation in the Name of the City of Pocatello.*

11. The Department held a hearing in this matter on July 31, 2008, which was recorded and a transcript was created, which transcript should be made a part of the agency record in this matter. The person who may have a copy of such a transcript is the Director's Administrative Assistant, Idaho Department of Water Resources, 322 E. Front Street, P.O. Box 83720, Boise, Idaho 83720-0098, Telephone: (208)287-4803, Facsimile: (208) 287-6700, email: victoria.wigle@idwr.idaho.gov.

12. Petitioner Pocatello anticipates that it can reach a stipulation regarding the agency record with the Respondents and the other parties, and will pay its necessary share of the fee for preparation of the record at such time.

13. Service of this Notice of Appeal and Petition for Judicial Review of Agency Action has been made on the Respondents at the time of the filing of this Petition with the Court.

Dated this 28th day of August, 2009.

CITY OF POCATELLO ATTORNEY'S OFFICE
Attorneys for the City of Pocatello

By_____
A. Dean Tranmer

WHITE & JANKOWSKI, LLP
Attorneys for the City of Pocatello

By_____
Sarah A. Klahn

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August, 2009, I caused to be served a true and correct copy of the foregoing **Notice of Appeal and Petition for Judicial Review of Agency Action** in the case regarding the **Application to Lease Water for Hydroelectric Generation by City of Pocatello** by electronic mail to:

Sarah Klahn, White & Jankowski, LLP

Bannock County District Court 624 East Center Pocatello, Idaho 83201 Facsimile: 1-208-236-7013	
Director c/o Victoria Wigle, Administrative Assistant Idaho Department of Water Resources PO Box 83720 Boise ID 83720-0098 victoria.wigle@idwr.id.gov	Alan Kelsch, Board Member Idaho Irrigation District 7466 South 15th W Idaho Falls, ID 83402 akelsch@bdhsi.com
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