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Department of Water Resources

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Attorneys for City of Pocatello

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF T HE REQUEST FOR ADMINISTRATION IN WATER DISTRICT 120 AND THE REQUEST FOR DELIVERY OF WATER TO SENIOR SURFACE WATER RIGHTS BY 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	)))))))))))))	**CITY OF POCATELLO'S REQUEST FOR EXTENSION OF DEADLINES**

The City of Pocatello ("City" or "Pocatello"), by and through undersigned counsel, requests that the Director (1) extend the existing deadline for the disclosure of expert reports, (2) make provisions to allow discovery by and against Idaho Power, in the event Idaho Power is allowed to participate in this matter, and (3) postpone the hearing for a short period. Each of these schedule changes is necessary to avoid prejudice to existing parties if Idaho Power is determined to be a party to this delivery call matter.

BACKGROUND

The following procedural background will be useful to understand the basis of this request.

1. After being denied party status in this matter by the Department in its July 22, 2005 Order, Idaho Power filed its Petition for Judicial Review of Agency Action on August 19, 2005 in the Ada County District Court. Idaho Power seeks an order making it a party to this matter. A copy of Idaho Power's Petition is attached as Exhibit A.

2. The record has not been transmitted to the Court in the Ada County case although it may be transmitted sometime the week of October 10, 2005. Under the existing Scheduling Order for proceedings in the District Court, once the scope of the record is agreed upon, Idaho Power will have five weeks to file its opening brief. Parties opposing or supporting Idaho Power have 4 weeks to respond; Idaho Power has three weeks after that to reply. Parties who desire oral argument must petition the court within 14 days of the close of briefing.

3. Assuming the record is agreed upon by October 14, Idaho Power would have until November 21, approximately, to file its opening brief. Under the Court's Scheduling Order, the briefing on Idaho Power's appeal would not conclude until approximately January 14, 2005, and oral argument might not be scheduled until after commencement of the hearing in the captioned case. In short, there is no assurance that the appeal will be resolved before the scheduled hearing in the delivery call matter.

4. Simultaneously with this Request, Pocatello has moved the Ada County District Court for an expedited briefing schedule. (*See* City of Pocatello's Motion for Expedited Briefing Schedule, attached as Attachment B.) However, even an expedited briefing schedule, including a possible ruling from the Court in early December, cannot avoid prejudice to existing parties to this delivery call matter.

5. Under the present schedule, simultaneous expert reports are due in this matter on November 4, with rebuttal expert reports on November 18. Expert depositions will follow, and discovery will close in this case on December 12, 2005. Under the present schedule, it is inevitable that the disclosure of expert reports and close of discovery will occur before the Ada County District Court has an opportunity to conclude briefing and argument on Idaho Power's Petition and rule on whether Idaho Power should be a party to the delivery call matter.

ARGUMENT

If Idaho Power is made a party to this matter by order of the Ada County District Court, Pocatello will need to do discovery against Idaho Power and potentially incorporate the results of discovery into its expert disclosures. Similarly, if made a party to this matter, Idaho Power probably will be entitled to conduct discovery and make expert disclosures. Yet if the existing

deadlines in this matter are maintained, the existing parties to this proceeding, including Pocatello, will be irreparably prejudiced, as will Idaho Power if it is made a party. If expert disclosures have been made, and discovery is closed, it will not be possible to remedy the prejudice.

For example, Pocatello will have made its expert disclosures simultaneously with those of the SWC, in November. If Idaho Power thereafter is made a party to this matter, the Director will be faced with the choices of denying Idaho Power disclosures and discovery (which could provide Idaho Power with new grounds for appeal) or of extending the schedule at that time. If the Director chooses the second alternative, Pocatello will be prejudiced. Idaho Power (perhaps in concert with other owners of surface water rights) will have the advantage of reviewing all of the expert reports to craft its own expert disclosures that both correct the problems with SWC's reports, and respond to Pocatello. That result would be inconsistent with the practice of simultaneous disclosures that has been adopted in this case.

REQUEST FOR RELIEF

To avoid prejudice to all of the existing parties to this proceeding, as well as to streamline the matter and avoid legal error on the part of the Department, Pocatello requests that the deadlines for expert disclosures be delayed until resolution of the Idaho Power Petition in Ada County; Pocatello also requests that the discovery deadline be extended (vis-à-vis Idaho Power only) until resolution of the Idaho Power petition. A sample schedule is attached as Exhibit C that reflects a likely schedule if the Ada County District Court adopts the expedited briefing schedule requested by Pocatello. Specifically, Pocatello proposes:

1. If the Ada County Court rules that Idaho Power may NOT be made a party to the delivery call matter:

    a. All opening expert reports in this matter shall be submitted within 10 days after the Ada County District Court rules that Idaho Power may not be made a party to this matter; rebuttal expert reports shall be submitted 14 days thereafter;

b. All discovery other than expert depositions shall be completed by the existing deadline of December 12, 2005; expert depositions shall be completed within 40 days after the deadline for rebuttal expert reports;

c. Dispositive Motions would be due on or before January 5, 2006; responsive briefing, January 15, 2006; reply briefs January 25, 2006.

d. The hearing, set for one month, shall begin on March 1, 2006.

2. If the Ada County Court rules that Idaho Power SHALL be made a party to this matter:

a. Discovery by or against Idaho Power, except for expert depositions, shall be completed within 45 days after the Ada County District Court rules that Idaho Power shall be made a party to this matter.

b. All opening expert reports in this matter shall be submitted within 20 days after the deadline for discovery set out in paragraph 2 a; rebuttal reports shall be submitted 14 days thereafter;

c. Expert depositions shall be completed within 30 days after the deadline for rebuttal reports;

d. Dispositive Motions to be filed by February 25; responsive briefing, March 5, reply briefs due March 15, 2006.

e. The hearing in this delivery call matter, set for one month, shall begin on April 3, 2006.

Respectfully submitted this 14th day of October 2005.

BEEMAN & ASSOCIATES, P.C.

By Josephine P. Beeman
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By Josephine P. Beeman
for Sarah A. Klahn

Attorneys for the City of Pocatello

EXHIBIT C

SAMPLE SCHEDULES IF THE ADA COUNTY DISTRICT COURT ADOPTS POCATELLO'S PROPOSED EXPEDITED BRIEFING SCHEDULE

Assuming the record is agreed to by October 14, 2005:

1. Idaho Power's Opening Brief would be due October 28, 2005;
2. Response briefs due November 8, 2005;
3. Reply brief due November 18, 2005;
4. Oral argument set by November 23, 2005;
5. Ruling by November 28, 2005.

If Idaho Power DENIED party status, then:

1. Expert disclosures due December 8, 2005; rebuttal reports, due December 22, 2005.
2. Expert depositions to be conducted through January 27, 2006.
3. Hearing to begin March, 2006.

If Idaho Power GRANTED party status, then:

1. Discovery by or against Idaho Power begins November 282005, and extends for 35 days to January 7, 2006;
2. Expert disclosures due January 27, 2006;
3. Rebuttal reports due February 11, 2006;
4. Expert depositions completed by March 11, 2006;
5. Hearing to begin April 3, 2006.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of October 2005, I caused to be served a true and correct copy of the foregoing document by regular U.S. Mail, postage prepaid, to:

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

OF THE STATE OF IDAHO

IDAHO POWER COMPANY, Petitioner, Plaintiff vs. KARL J. DREHER, in his official capacity as Director of the Idaho Department of Water Resources, Respondents/Defendants.	CASE NO. CV OC 0506175 PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION

COMES NOW, the Petitioner/Plaintiff, Idaho Power Company ("Idaho Power"), by and through its undersigned counsel, and hereby files this Petition as follows:

Exhibit A
Pocatello's Request for Extension of Deadlines
October 14, 2005

STATEMENT OF THE CASE

1. This is a civil action pursuant to Idaho Code § 67-5279 seeking judicial review of a final order of the Respondent, Karl Dreher, in his official capacity as Director of the Idaho Department of Water Resources.

2. Specifically, Idaho Power petitions this court for a finding that the Respondent erred in determining that Idaho Power is not an aggrieved party entitled to a hearing on the Respondent's Order regarding replacement of water for the benefit of senior water rights holders on the Snake River or curtailment of junior ground water rights in the Eastern Snake Plains Aquifer.

JURISDICTION AND VENUE

3. This petition is authorized by Idaho Code §§ 42-1701A(4) and 67-5270.

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

5. Venue lies in this Court pursuant to Idaho Code §§ 42-1401D and 67-5272.

6. Petitioner Idaho Power exhausted all administrative remedies prior to the filing of this Petition.

PARTIES

7. Petitioner Idaho Power is an Idaho Corporation, with its principal office in Boise, Ada County, Idaho.

8. Respondent Karl J. Dreher is a resident of Ada County, Idaho, and is the Director of the Idaho Department of Water Resources ("IDWR"), with its main offices located at 322 E. Front Street, Boise, Idaho.

AGENCY RECORD

9. Judicial review is sought of the July 22, 2005, "Order Denying Idaho Power's Petition for Hearing."

10. The Director of the Idaho Department of Water Resources conducted a prehearing status conference on June 15, 2005, 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 transcript is Victoria Wigle, 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, e-mail: victoria.wigle@idwr.idaho.gov. Idaho Power will pay the necessary fee for preparation of the transcript at the time the agency record is prepared in this matter.

11. Petitioner anticipates that it can reach a stipulation regarding the agency record with the Idaho Department of Water Resources, and will pay the necessary fee for preparation of the record at such time.

12. Service of this Petition for Judicial Review of Agency Action has been made on the Idaho Department of Water Resources at the time of the filing of this Petition.

STANDARD OF REVIEW

13. The agency's erroneous conclusions of law may be corrected on appeal. Greenfield Village Apartments v. Ada County, 130 Idaho 207, 209, 938 P.2d 1245, 1247 (1997); citing Love v. Board of County Comm'rs of Bingham County, 105 Idaho 558, 671 P.2d 471 (1983); St. Joseph Regional Medical Center v. Nez Perce County Commissioners, 134 Idaho 486, 488, 5 P.3d 466, 468 (2000). Such review on questions of law are de novo.

BACKGROUND

14. On January 14, 2005, 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 referred to as the "Surface Water Coalition") filed a petition (as to water rights located outside Water District 120) and letter (as to water rights located inside Water District 120) with Respondent seeking administration and curtailment of diversions through wells diverting ground water from the Eastern Snake Plain Aquifer ("ESPA"), junior in priority to water rights held by or for the benefit of Surface Water Coalition (the "Surface Water Coalition Call").

15. The water rights forming the basis for the Surface Water Coalition call included water rights held by the United States Bureau of Reclamation ("USBR") in American Falls Reservoir under water rights Nos. 01-284; 01-2064; 01-2068; 01-4052; 01-4055; 01-4056; 01-4057; 01-10042; 01-10043; 01-10044; 01-10045; and 01-10053. The Surface Water Coalition claimed contractual rights for the delivery of water from American Falls Reservoir under these water rights held by the USBR.

16. On February 11, 2005, Idaho Power filed a letter with regard to the Surface Water Coalition call inside Water District 120 supporting the Surface Water Coalition's call, and requesting that the February 11, 2005, letter be treated as a Motion to Intervene should a contested case be initiated in response to the Surface Water Coalition Call. The letter stated Idaho Power's interest in American Falls Reservoir and in other water rights held by Idaho Power throughout the Snake River Basin, and Idaho Power's interest in the proceeding.

17. On February 14, 2005, Idaho Power filed a Petition to Intervene with regard to the

Surface Coalition call outside Water District 120 supporting the Surface Water Coalition's call. The Petition stated Idaho Power's interest in American Falls Reservoir and in other water rights held by Idaho Power throughout the Snake River Basin, and Idaho Power's interest in the proceeding.

18. On February 14, 2005, Respondent issued an interlocutory order designating certain portions of the Surface Water Coalition Call as contested cases and providing that the Respondent would "make a determination of injury" in response to the Surface Water Coalition Call. The Order was designated "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." The Order treated both the Surface Water Coalition call inside Water District 120 and the Surface Water Coalition call outside Water District 120 as one matter. All subsequent orders of the Respondent likewise treated the two calls as one matter.

19. On March 7, 2005, the U.S. Bureau of Reclamation ("USBR") filed a Petition to intervene in the Surface Water Coalition Call. USBR's Petition stated as the basis for its interest in the proceedings, USBR's interest in American Falls Reservoir, including water rights Nos. 01-284; 01-2064; 01-2068; 01-4052; 01-4055; 01-4056; 01-4057; 01-10042; 01-10043; 01-10044; 01-10045; and 01-10053.

20. On April 6, 2005, Respondent issued an order denying Idaho Power's petitions to intervene, and granting petitions to intervene by USBR and the Idaho Dairymen's Association.

21. On April 19, 2005, Respondent issued an Order in response to the Surface Water

Coalition call. Among other things, the Order found that ground water in the ESPA, from which junior wells subject to the Surface Water Coalition call had been pumping, is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees. The Order found that ground water pumping from the ESPA has a depletionary effect on surface flows in the Snake River. The Order found that the effect of ground water depletions can reduce the amount of water in storage in American Falls Reservoir. The Order found that material injury to the water rights of the Surface Water Coalition from depletions by junior ground water pumping in the ESPA, including injury to reservoir storage in American Falls Reservoir, was reasonably likely. The Respondent based his determination of injury, in part, on his calculation of the amount of water in storage and his determination of "reasonable carryover" storage that he determined was appropriate for American Falls Reservoir. The Order required junior groundwater users to provide replacement water to the Surface Water Coalition or curtail junior groundwater pumping. The Director based his order on runs and studies of the state's groundwater model.

22. On May 2, 2005, Respondent issued an order amending the April 19, 2005, Order, which made certain revisions to the April 19, 2005 Order. The basic thrust of the Orders remained the same. The Order provided that "<u>any person</u> aggrieved by this decision shall be entitled to a hearing before the Director to contest the action taken provided the person files with the Director . . . a written petition stating the grounds for contesting the action and requesting a hearing."

23. Idaho law and IDWR procedural rules provide that "<u>any person</u> aggrieved by any action of the director" may file a written petition requesting a hearing. Idaho Code § 42-

1701A(3); IDAPA 37.01.01.740 (emphasis added).

24. Petitions for hearing on the Respondent's May 2, 2005 Order were timely filed by the Surface Water Coalition, Idaho Dairymen's Association, City of Pocatello, Idaho Groundwater Appropriators, J.R. Simplot Company, State Agency Ground Water Users, and the USBR. Among other grounds, the USBR asserted in its Petition that the May 2, 2005, Order adversely affected USBR's ability to store and deliver water from its reservoirs for multiple purposes, including irrigation and power.

25. On May 17, 2005, Idaho Power also timely filed a Petition for Hearing on the May 2, 2005, Amended Order. In it's Petition for Hearing, Idaho Power alleged among other things that it was an "aggrieved party" allowed to participate in the Surface Water Coalition Call matter because it holds water rights, contract rights and entitlements to water at American Falls Reservoir, all of which are adversely affected by the Respondent's May 2, 2005, Amended Order.

26. Idaho Power holds a contract right and entitlement for delivery of a portion of Water Rights Nos. 01-02064 and 01-04052, pursuant to a June 15, 1923, agreement with the United States. U.S. Contract I1r – 733, attached as EXHIBIT A. The 1923 American Falls contract entitles Idaho Power to the use of 45,000 acre-feet of primary storage capacity and 255,000 acre-feet of secondary storage capacity in American Falls Reservoir, for delivery to Idaho Power facilities in the Snake River both above and below Milner.

27. In its Petition, Idaho Power specifically referenced and attached its contract for the delivery of water from American Falls Reservoir and asserted its interest in the water rights held by the USBR, which the Respondent had specifically found at issue in the proceeding,

including water rights Nos. 01-02064 and 01-04052. Among other things, Idaho Power asserted that the May 2, 2005 Order failed to adequately compensate for injury to its rights in American Falls Reservoir and other water rights in the Snake River Basin, and adversely affected the ability of Idaho Power to exercise calls in the future for the protection of its water rights. Idaho Power set forth numerous grounds for contesting the action of the Director in his Order, including the adequacy of the state's ground water model, which served as the basis of the Director's Order, and which will serve as the basis for future orders of the Director concerning the administration of ground water in the ESPA.

28. In its Petition, Idaho Power also alleged that it held water rights, contract rights and entitlements to water at the American Falls Reservoir which are identical to the rights held by USBR, and that because USBR had already been allowed intervention in the Surface Water Coalition Call matter Idaho Power must also logically be allowed to participate.

29. At a pre-hearing conference on June 15, 2005, Respondent sua sponte raised the issue of whether Idaho Power was entitled to file its Petition for Hearing.

30. On June 16, 2005, Respondent issued an Order directing all parties to brief the issue of Idaho Power's status in the Surface Water Coalition Call matter.

31. On June 22, 2005, USBR filed a brief in support of Idaho Power's standing to participate as a party in the Surface Water Coalition Call matter. USBR's brief acknowledged Idaho Power's contractual entitlement to storage water in American Falls Reservoir, and recognized Idaho Power's interest in the factual and legal questions raised of first impression in the proceeding, the determinations on which by the Director may be applied with respect to Idaho Power's interests.

32. On June 22, 2005, the Idaho Ground Water Association ("IGWA") and the State Agency Ground Water Users ("SAGWU") filed briefs in opposition to Idaho Power's standing to participate as a party in the Surface Water Coalition Call matter.

33. On June 29, 2005, Idaho Power filed a combined reply to the briefs filed by IGWA and SAGWU, arguing that Idaho Power had demonstrated that it was an aggrieved party, that it had water rights that were adversely affected by the Respondents Order and Amended Order of April 19, 2005, and May 2, 2005 respectively, and that in any case it had demonstrated the same interest in water rights as a party to the Surface Water Coalition Call matter.

34. On July 22, 2005, Respondent issued an Order denying Idaho Power's Petition for a Hearing as an aggrieved party.

35. Respondent's Order of July 22, 2005, states that Idaho Power exhausted its administrative remedies with respect to the issue of whether it is an aggrieved party entitled to a hearing.

FIRST CLAIM FOR RELIEF

(Respondent's Order Violates Constitutional and Statutory Provisions)

36. Idaho Power repeats the allegations of paragraphs 1 through 35, inclusive, as if set forth fully herein.

37. Respondent's Orders of February 14, 2005; April 6, 2005; April 19, 2005 and May 2, 2005, recognize that Water Rights Nos. 01-02064 and 01-04052 at American Falls Reservoir are directly at issue in this proceeding and confer standing upon parties with an interest in those rights.

38. Respondent's own statements concede that these interests in water confer standing on USBR. See May 2, 2005, Order, Conclusions of Law, Paragraph 15, Page 34.

39. Idaho Power owns property interests that are injuriously affected by the legal and factual findings in the May 2nd Order, and on that basis is an aggrieved party.

40. Accordingly, Respondent's July 22, 2005, Order violates constitutional and statutory provisions entitling Idaho Power to a hearing before the Respondent

SECOND CLAIM FOR RELIEF

(Respondent's Order Was Not Supported by Substantial Evidence on the Record)

41. Idaho Power repeats the allegations of paragraphs 1 through 40, inclusive, as if set forth fully herein.

42. Respondent's Orders of February 14, 2005; April 6, 2005; April 19, 2005 and May 2, 2005, recognize that Water Rights Nos. 01-02064 and 01-04052 at American Falls Reservoir are directly at issue in this proceeding and confer standing upon parties with an interest in those rights.

43. Idaho Power demonstrated an interest in these water rights, and there was no evidence to the contrary before the Respondent.

44. Respondent's own statements concede that these interests in water confer standing on other parties to the Surface Water Coalition Call matter. See May 2, 2005, Order, Conclusions of Law, Paragraph 15, Page 34.

45. Accordingly, Respondent's July 22, 2005, Order is not supported by substantial evidence on the record.

THIRD CLAIM FOR RELIEF

(Respondent's Order is Arbitrary, Capricious and an Abuse of Discretion)

46. Idaho Power repeats the allegations of paragraphs 1 through 45, inclusive, as if set forth fully herein.

47. Respondent granted party status to other similarly situated parties.

48. Respondent conceded that parties with rights directly at issue in the matter, and substantially identical to Idaho Power, were entitled to participate in the proceedings.

49. Respondent ignored the clear evidence of Idaho Power's water rights in the record, and did not cite any evidence to the contrary, in denying Idaho Power's request for a hearing.

50. Accordingly, Respondent's denial of Idaho Power's request for a hearing as an aggrieved party was arbitrary, capricious, and an abuse of discretion.

WHEREFORE, Idaho Power prays that this Court:

A. Enter judgment in favor of Idaho Power and against the Respondent with respect to Idaho Power's claims;

B. Set aside Respondent's July 22, 2005, Order in whole;

D. Remand the matter to Respondent with directions that Idaho Power is an aggrieved party with standing to participate in the Surface Water Coalition Call; and

F. Award such other and further relief which this Court deems just and equitable.

Dated this 19th day of August, 2005.

IDAHO POWER COMPANY

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

IDAHO POWER COMPANY, Petitioner/Plaintiff, v. KARL J. DREHER, in his official capacity as Director of the Idaho Department of Water Resources, Respondent/Defendant.	)	Case No. CV OC 0506175 **CITY OF POCATELLO'S MOTION FOR EXPEDITED BRIEFING SCHEDULE**

The City of Pocatello ("Pocatello"), by and through undersigned Counsel, hereby moves for an expedited briefing schedule in the above-captioned case. Idaho Power has Petitioned this Court to be made a party to the underlying agency action, which arises from the May 2 Order of the Idaho Department of Water Resources regarding the Surface Water Coalition's Delivery Call ("Delivery Call Matter").

While Pocatello takes no position at this time on Idaho Power's participation as a party in the Delivery Call Matter, the City does seek speedy resolution of Idaho Power's Petition to avoid prejudice in the event Idaho Power is made a party. Under the September 15, 2005 Scheduling Order entered in this case, the Court is unlikely to rule on Idaho Power's petition until after January 6, 2006; the hearing in the Delivery Call Matter is to commence on January 30, 2006. If Idaho Power is made a party at that late date, Pocatello will be prejudiced from its inability to conduct discovery against Idaho Power. As described in further detail below, if the Court adopts an expedited briefing schedule as set out in the attached Amended Scheduling Order, and if the Department makes the modifications requested to its existing scheduling order as Pocatello has requested (*see*, Request for Extension of Deadlines, Attachment 1), the Delivery Call Matter can proceed to hearing without prejudice to existing parties, and without establishing new procedural grounds for appeal.

BACKGROUND

As reflected in the Delivery Call Matter Scheduling Order ("Schedule") (*see*, Attachment 2[1]) the Schedule requires simultaneous disclosure of expert reports and rebuttal reports during November, and the end of discovery by December 12. The hearing in the Delivery Call Matter is scheduled to begin January 30, 2006. Under the existing scheduling order associated with this Petition for Review it is unlikely the Court will rule on Idaho Power's petition until after January 6, 2006. If the Court ultimately determines that Idaho Power should be a party to the Delivery Call Matter, the existing parties to that hearing will be prejudiced from an inability to do discovery against Idaho Power, and from advantages afforded Idaho Power if it is allowed to file its expert report after the other parties to the Delivery Call Matter.

[1] The first scheduling Order entered on July 22, 2005; by stipulation of the Parties to the Delivery Call Matter, the Director modified deadlines for disclosure of expert reports and for discovery under the September 1, 2005 Order Amending Scheduling Order of July 22, 2005. For clarity, both are attached as Attachment 2.

Procedurally, the following events are relevant to the Court's resolution of this Motion:

1. After being denied party status in the Delivery Call Matter by the Department's July 22, 2005 Order, Idaho Power filed its Petition for Judicial Review of Agency Action on August 19, 2005 in the Ada County District Court.

2. To date, the underlying agency record has not been transmitted to the Court, although on information and belief the record may be transmitted sometime the week of October 10, 2005.

3. In the Delivery Call Matter, under the current Schedule, discovery is ongoing, and on November 4, 2005, the parties will simultaneously disclosure their expert reports; on November 18, the parties will simultaneously disclose rebuttal expert reports.

4. If the record is agreed to by October 14, 2005, the Court's Scheduling Order would allow Idaho Power until approximately November 18, 2005 to file its opening brief (35 days after the record enters); this is after the disclosure of expert opinions in the underlying Delivery Call Matter.

5. Discovery in the Delivery Call Matter closes December 12, 2005.

6. Response briefs would be due in the Idaho Power Petition around December 16, 2005 (28 days after the opening brief is filed).

7. Idaho Power's reply brief would not be due until January 6, 2006 (21 days after the response briefs are filed).

8. A notice of hearing on the Idaho Power Petition would be due by January 20, 2006 (14 days after Idaho Power's reply brief).

9. The hearing in the Delivery Call Matter is scheduled to begin January 30, 2006.

Under these deadlines, called for under the existing Scheduling Order, even if the Court had a hearing immediately after the close of briefing and ruled from the bench, a finding in January 2006 that Idaho Power should be made a party to the Delivery Call Matter would prejudice existing parties.

To avoid prejudice, Pocatello requests that the Court enter the following deadlines for briefing in this matter:

1. Idaho Power's opening brief to be due 14 days after the record is agreed to.

2. Responsive briefs to Idaho Power's opening brief due no later than 10 days after Idaho Power's opening brief.

3. Idaho Power's reply brief due 10 days after responsive briefing.

4. Oral argument on the matter to commence within 5 days of the close of briefing.

5. Court to rule within 5 days of the hearing (or, depending on the preference of the Court, to rule from the bench at the conclusion of the oral arguments whether Idaho Power should be a party or not and a written ruling to enter at the convenience of the Court).

This schedule, together with the request Pocatello made to the Department in its Request for Extension of Deadlines (Attachment 1), will allow speedy resolution of the Idaho Power Petition and avoid prejudice to the parties to the Delivery Call Matter.

Pocatello respectfully requests that the Court enter the attached Expedited Schedule for Briefing, hearing and resolution of Idaho Power's Petition.

DATED this 14th day of October 2005.

BEEMAN & ASSOCIATES, P.C.
Attorneys for the City of Pocatello

By Josephine P. Beeman
Josephine P. Beeman

White & Jankowski, LLP
Attorneys for the City of Pocatello

By Josephine P. Beeman
Sarah A. Klahn

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of October 2005, I caused to be served a true and correct copy of the foregoing document by regular U.S. Mail, postage prepaid, to:

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Josephine P. Beeman

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

IDAHO POWER COMPANY, Petitioner/Plaintiff, v. KARL J. DREHER, in his official capacity as Director of the Idaho Department of Water Resources, Respondent/Defendant.	)	Case No. CV OC 05 06175 **AMENDED SCHEDULING ORDER**

The Court, having considered the Motion to Expedite Briefing Schedule filed by the City of Pocatello, and being fully apprised on the premises, hereby amends the scheduling order in this case. Upon the record being lodged with the Court:

1. Idaho Power shall have 14 days to file its opening brief;
2. Parties responding to Idaho Power shall have 10 days to file response briefs;
3. Idaho Power shall have 10 days to file reply briefs;
4. The Parties shall petition the Court for oral argument within 5 days of the final brief. If no petition for oral argument is made, the Court shall consider the matters on the papers including the administrative record and render a decision forthwith, but in any event within 10 days of the lodging of the final brief with the Court.

DATED this _____ day of October 2005.

_____
D. DUFF McKEE
Senior District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of October 2005, I caused to be served a true and correct copy of the foregoing document by regular U.S. Mail, postage prepaid, to:

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_____
Clerk of the District Court