Josephine P. Beeman #1806
Beeman & Associates, P.C.
409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
(208) 331-0954 (Facsimile)
office@beemanlaw.com

Sarah A. Klahn
William A. Hillhouse, II
White & Jankowski, LLP
511 16th St., Ste. 500
Denver, CO 80202
(303) 595-9441
(303) 825-5632 (Facsimile)
sarahk@white-jankowski.com

Attorneys for City of Pocatello

Jeffrey C. Fereday, ISB #2719
Michael C. Creamer, ISB #4030
Givens Pursley, LLP
601 West Bannock Street
P. O. Box 2720
Boise, ID 83701-2720
(208) 388-1200
(208) 388-1300 (fax)

Attorneys for the Idaho Ground
Water Appropriators

RECEIVED
JUN 29 2005
DEPARTMENT OF
WATER RESOURCES

BEFORE THE DIRECTOR
OF 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	)	**IDAHO GROUND WATER APPROPRIATORS and POCATELLO'S JOINT PROPOSAL FOR HEARING PROCEDURES AND SCHEDULE FOR THE HEARING ON THE SURFACE WATER COALITION DELIVERY CALL**

Idaho Ground Water Users Appropriators ("IGWA") and Pocatello ("Ground Water Respondents") hereby submit their joint proposal for procedures and schedule in the hearing on the Surface Water Coalition Delivery Call.

PROCEDURES

The hearing in this matter has the potential to be quite lengthy. Pocatello and IGWA propose that the following procedures be adopted for purposes of this hearing in order to streamline the proceeding and increase efficiencies for the Director and the parties.

1. Written Direct Testimony.

To streamline presentation of the parties' expert witness testimony, the Ground Water Respondents propose that the direct testimony of all parties' expert witnesses be ordered be submitted as pre-filed written testimony on the attached schedule. The Department's procedural rules contemplate the use of pre-filed testimony. IDAPA 37.01.01.605 (the hearing officer "may order a witness's prepared testimony previously distributed to all parties to be included in the record of hearing as if read"). This is the type of case where this technique is particularly appropriate. There doubtless will be several experts, and it would be inefficient (and unnecessary) to elicit all of their direct testimony through live examination.

Prepared testimony from experts focuses the live testimony on the cross-examination phase, where the expert's views are properly tested. For example, the SRBA Court required the use of written, pre-filed expert testimony in its evidentiary hearing on Basin-Wide Issue 5, which involved the presentation of several complex hydrological and policy issues. This resulted in an expeditious proceeding, well-focused cross-examination, and a finder of fact who was well-informed about the parties' views on factual questions before the first witness was sworn. Doing so also helped speed the receipt of exhibits and handling of objections. In proceedings before the

Idaho Public Utilities Commission, where large amounts of technical data and financial analysis must be introduced and considered, the Commission routinely orders pre-filed testimony of experts. There are good reasons it does so, and the same reasons apply here.

Pre-filed testimony promotes a more prompt decision. With pre-filed written testimony, the fact-finder avoids the time-consuming task of reviewing transcripts that might contain misstatements, incomplete thoughts elicited during live direct examination, reporter's errors, or other ambiguities that crop up in an expert's live direct testimony.

Finally, pre-filed testimony allows all parties better to prepare their cross-examination of the experts, which almost certainly will be a central feature of this case. The Ground Water Respondents respectfully request that the Director require pre-filed direct testimony of experts in this matter.

2. Live rebuttal testimony.

If the Parties have done their collective jobs, there should be little need for rebuttal testimony. Towards that end, we would propose that all rebuttal testimony should be live.

3. Discovery considerations.

Although discovery should end as of December 2, 2005, we would request that the scheduling Order reflect the following special exceptions: a) that the Water District 01 accounting be completed to the extent possible by December 10, 2005, and that Ron Carlson or other personnel who assist in the preparation be available for deposition between the time the accounting is prepared and the hearing commences; b) to avoid problems scheduling depositions of experts, the scheduling Order should require the Parties to stipulate to deposition dates for their experts by no later than July 31, 2005. This has the advantage of potentially avoiding discovery disputes at least on the issue of expert depositions, and allows the Parties to plan for

depositions accordingly. The Parties will submit their stipulated deposition schedule to the Director for incorporation into an amended scheduling order.

DATE	**DEADLINE FOR:**
6/22/05	Briefs regarding Idaho Power's participation
6/29/05	Briefs regarding SWC motion to disqualify Director as hearing officer Idaho Power's response brief regarding participation Motions for discovery Response briefs for IGWA's motion to consolidate
	Submission of proposed prehearing schedules for the SWC delivery call hearing
7/6/05	IGWA's reply briefs regarding motion to consolidate
7/08/05	Director issues order regarding prehearing schedule and discovery
7/11/05	Initial discovery served
8/15/05	Responses to initial discovery due, including but not limited to identification of all witnesses. All other discovery responses are due 14 days after they are received, up through the November 15 end of discovery. The parties shall use email to send responses to the extent feasible.
10/11/05	All parties submit expert reports containing the following information: 1. Opinions of the expert 2. Nature and basis of opinions 3. Materials relied upon for opinions
10/31/05	All parties submit rebuttal opinions containing information described above.
11/15/05	All parties identify exhibits that may be used
11/17/05	Deadline for filing all motions. Responses due 14 days after motion filed (December 1); replies 14 days after responses (December 15).
12/02/05	Discovery cut-off—that is, all discovery responses due, and no new discovery allowed without leave of the hearing officer. This will require the last discovery to be served by 11/15/05. Notwithstanding this cut-off date, the parties shall be entitled to receive the District 01 Watermaster's year-end report, and conduct

	any necessary depositions of the Watermaster, a reasonable time before the hearing.
12/07/05	SWC and allied parties submit written direct testimony and copies of all exhibits, other than rebuttal testimony and exhibits, together with proof of authenticity and relevance of exhibits
12/21/05	Respondents submit written direct testimony and copies of all exhibits, other than rebuttal testimony and exhibits, together with proof of authenticity and relevance of exhibits
12/10/05	Parties may submit proposed orders to govern procedures at the hearing
12/15/05	Prehearing conference at IDWR
1/02/06	Parties submit written opening argument and, if desired, trial brief
1/16/06	Hearing commences

Respectfully submitted this 29th of June 2005.

Josephine P. Beeman

Josephine P. Beeman
Beeman & Associates, P.C.
Attorneys for the City of Pocatello

for Josephine P. Beeman

Sarah A. Klahn
White & Jankowski, LLP
Attorneys for the City of Pocatello

for Josephine P. Beeman

Jeffrey C. Fereday
Givens Pursley, LLP
Attorneys for the Idaho Ground Water Appropriators

for Josephine P. Beeman

Michael C. Creamer
Givens Pursley, LLP
Attorneys for the Idaho Ground Water Appropriators

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of June 2005, I caused to be served a true and correct copy of the foregoing document by regular U.S. Mail, postage prepaid, to:

Roger D. Ling
Ling Robinson & Walker
PO Box 396
Rupert, Idaho 83350

John A. Rosholt
Travis L. Thompson
Barker Rosholt & Simpson
113 Main Ave. West, Suite 303
Twin Falls, Idaho 83301-6167

John Simpson
Barker Rosholt & Simpson
PO Box 2139
Boise, Idaho 83301-2139

Jeffrey C. Fereday
Michael C. Creamer
Givens Pursley
601 Bannock Street, Suite 200
PO Box 2720
Boise, Idaho 83701-2720

Kathleen Marion Carr
Office Of The Field Solicitor
550 W. Front Street, MSC 020
Boise, Idaho 83724

Ron Carlson
Lewis Rounds
IDWR Eastern
900 N. Skyline Drive
Idaho Falls, ID 83402-6105

James S. Lochhead
Adam T. DeVoe
Brownstein Hyatt & Farber
410 17th Street, 22nd Floor
Denver, CO 80202

Terry Uhling
J. R. Simplot
P. O. Box 27
Boise, ID 83707

C. Tom Arkoosh
Arkoosh Law Offices, Chtd.
PO Box 32
Gooding, Idaho 83330

W. Kent Fletcher
Fletcher Law Office
PO Box 248
Burley, Idaho 83318

Scott L. Campbell
Moffatt Thomas
101 S. Capitol Blvd., 10th Floor
PO Box 829
Boise, Idaho 83701-0829

Michael S. Gilmore
Deputy Attorney General
Statehouse, Room 210
P. O. Box 83720
Boise, ID 83720-0010

Gail McGarry PN-3100
U.S. Bureau of Reclamation
1140 N. Curtis Road
Boise, ID 83701-1234

Allen Merritt
Cindy Yenter
IDWR Southern
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301

James Tucker
Idaho Power Company
1221 West Idaho Street
Boise, ID 83702

Josephine P. Beeman

Josephine P. Beeman [6728]