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DEPARTMENT OF
WATER RESOURCES

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
billh@white-jankowski.com

Attorneys for City of Pocatello

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

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| IN THE MATTER OF T HE REQUEST FOR<br>ADMINISTRATION IN WATER DISTRICT 120<br>AND THE REQUEST FOR DELIVERY OF WATER<br>TO SENIOR SURFACE WATER RIGHTS BY<br>A&B IRRIGATION DISTRICT,<br>AMERICAN FALLS RESERVOIR DISTRICT #2,<br>BURLEY IRRIGATION DISTRICT,<br>MILNER IRRIGATION DISTRICT,<br>MINIDOKA IRRIGATION DISTRICT,<br>NORTH SIDE CANAL COMPANY, AND<br>TWIN FALLS CANAL COMPANY | ) | **CITY OF POCATELLO'S MOTION FOR ORDER AUTHORIZING DISCOVERY** |

The City of Pocatello ("Pocatello"), pursuant to Rule 521 of the IDAPA ("Rules") of the Idaho Department of Water Resources ("IDWR"), and the June 16, 2005 Order entered in the captioned matter, moves for an order authorizing discovery by Pocatello in this proceeding. Pocatello seeks to engage in all forms of discovery authorized by the Rules and seeks leave to conduct discovery against all parties or other knowledgeable persons or entities.

The grounds for this motion are as follows:

1. This is a contested case and Pocatello is a party to this proceeding.

2. The IDAPA allow discovery by a party in a contested case but only pursuant to an order from the Director of the IDWR ("Director") authorizing discovery.

3. In the June 16, 2005 Order, the Director advised the parties of his intention to conduct the hearing in January of 2006.

4. The factual issues that the Director must address in this hearing are complex, extensive and potentially in controversy. Discovery will permit the parties to develop a more adequate record and thus will facilitate the Director's task as hearing officer.

5. To date, the Director has proceeded without a hearing, citing the "emergency" nature of the SWC's request for a delivery call. Thus, while the facts in this matter may have been sufficiently developed for the Director's purposes in rendering his May 2, 2005 Order requiring curtailment of certain wells, the facts have not been developed through the adversarial process.

6. The current record for decision is limited, and there are substantial information gaps. For example, the Director requested information from the Surface Water Coalition to which the SWC made only a partial response. The material that has not been provided is needed for the Director to make the findings and decisions that he is required to make.

7. Discovery will also serve to develop the issues and to let the parties focus on the important facts for purposes of the hearing. The unsatisfactory alternative – absent discovery – is extended cross-examination to develop basic information that could have been gained before the hearing had there been discovery. Allowing discovery before the hearing will make the hearing more efficient and productive.

8. Pocatello's interests in this case are unique, as it is the only municipal ground water user party to the matter. However, with that said, Pocatello will coordinate its discovery efforts with other ground water users to avoid duplicative discovery against the various surface water interests, including the SWC.

9. A proposed discovery schedule is included in *Idaho Ground Water Appropriators and Pocatello's Joint Proposal For Hearing Procedures and Schedule For The Hearing On The Surface Water Coalition Delivery Call* filed today under separate cover.

Respectfully submitted this 29th day 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

## CERTIFICATE OF SERVICE

I hereby certify that on this 29 th 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

Matt Howard, PN-3130
U.S. Bureau of Reclamation
1150 N. Curtis Road
Boise, ID 83706

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 [6735]