

SEP 28 2009

DEPARTMENT OF
WATER RESOURCES

A. Dean Tranmer ISB # 2793
 City of Pocatello
 P. O. Box 4169
 Pocatello, ID 83201
 (208) 234-6149
 (208) 234-6297 (Fax)
dtranmer@pocatello.us

Sarah A. Klahn, ISB #7928
 White & Jankowski, LLP
 511 Sixteenth Street, Suite 500
 Denver, Colorado 80202
 (303) 595-9441
 (303) 825-5632 (Fax)
sarahk@white-jankowski.com

Attorneys for the City of Pocatello

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

IN THE MATTER OF DISTRIBUTION
 OF WATER TO WATER RIGHTS NOS.
 36-02356A, 36-07210, AND 36-07427

(Water District 120)

**CITY OF POCATELLO'S PROTEST
 TO A & B IRRIGATION DISTRICT'S
 RULE 43 MITIGATION PLAN**

IN THE MATTER OF THE
 MITIGATION PLAN FILED BY A&B
 IRRIGATION DISTRICT

(Blue Lakes Delivery Call)

The City of Pocatello ("Pocatello" or "the City") hereby submits its Protest to the A&B Irrigation District's Rule 43 Mitigation plan pursuant to IDAPA 37.01.01.155. As grounds therefore, Pocatello would show the Hearing Officer:

1. On August 18, 2009, A & B Irrigation District filed a Rule 43 Mitigation Plan which will:
 - a) convert 1,378 acres from a ground water source to a surface water supply; b) use storage water for the surface supply for the on-going conversions; and c) enrollment of

ORIGINAL

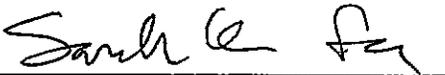
121 acres of ground water acres to the Conservation Reserve Enhancement Program (CREP).

2. On September 2, 2009, the Idaho Department of Water Resources (Department or IDWR) submitted for publication the *Notice of Application for Approval of A & B Irrigation District's Mitigation Plan To Compensate Blue Lakes Trout Farm, Inc.* The deadline for filing Protests is September 28, 2009.
3. The City of Pocatello is within the boundaries of Water District 120 and a junior ground water user. Pocatello's ground water rights have been subject to curtailment orders associated with the Surface Water Coalition delivery call, and Pocatello's ground water rights were among those that A&B Irrigation District requested to be curtailed in the A&B Delivery Call.
4. Pocatello also has a contract for a junior storage right in Palisades Reservoir. Pocatello has leased IGWA with replacement water supplies under its Palisades contract.
5. Pocatello has not been subject to curtailment as part of the Thousand Springs Delivery call. However, as a provider of replacement water and a junior ground water right owner, Pocatello has an interest in hearings involving Rule 43 mitigation plans.
6. Pocatello filed a Rule 43 Mitigation Plan in 1996; after over 10 years of inaction by IDWR, it withdrew the plan in February of 2008. However, given its status as a junior ground water user, Pocatello may be required to re-file a Rule 43 Plan at some point in the near future.

7. Pocatello is filing this Protest to participate as a party to any proceedings on A&B's 2009 Plan and to put A&B on its proof with regard to each element of the Rule 43 Mitigation Plan.
 - a. Specifically, A&B must demonstrate that its supplies of surface water are adequate for replacement of the amounts required by Blue Lakes in the Director's final order.
 - b. In addition, and possibly more importantly, the Department has not indicated how it will deal with the apparent "double-replacement" of the seniors' shortage that is contemplated through implementation of the *Ground Water Users' Mitigation Plan for 2009 (Blue Lakes)* (Ground Water Users' 2009 Plan) which also replaces alleged shortages suffered by Blue Lakes Trout Farm, Inc. by providing direct delivery of water to its hatchery from Alpheus Creek under water right no. 36-2603C which is owned by MVGWD and NSGWD and conversions of irrigated acres from groundwater to surface water and enrollment of groundwater acres in CREP. While Idaho law may indeed require replacement water to be provided to senior water rights, it does not require over-replacement and to the extent the two plans have not been rectified, this is an important policy question that will impact future mitigation plan determinations by the Department.
8. Pocatello requests that this Protest be considered continuing in nature, and reserves the right to amend as necessary as additional grounds become apparent during the course of this proceeding.

DATED this 28th day of September, 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 MAILING

I hereby certify that on this 28th day of September, 2009, the above and foregoing was sent to the following by hand-delivery to the IDWR as well as U.S. Mail, proper postage prepaid and by e-mail for those with listed e-mail addresses:


Sarah Klahn, White & Jankowski, LLP

Gary Spackman, Interim Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098
victoria.wigle@idwr.idaho.gov
phil.rassier@idwr.idaho.gov

U.S. Mail, postage prepaid
 Facsimile
 E-Mail
 Hand Delivery

Travis Thompson
Barker Rosholt & Simpson
113 Main Ave, W, Ste 303
PO Box 485
Twin Falls, ID 83303-0485
tlt@idahowaters.com
jks@idahowaters.com

U.S. Mail, postage prepaid
 Facsimile
 E-Mail
 Hand Delivery

Daniel V. Steenson
Charles L. Honsinger
Ringert Clark
P.O. Box 2773
Boise, ID 83701-2773
dvs@ringertclark.com
clh@ringertclark.com

U.S. Mail, postage prepaid
 Facsimile
 E-Mail
 Hand Delivery

Randy Budge
Candice M. McHugh
Racine Olson Nye Budge & Bailey
201 E Center St
PO Box 1391
Pocatello ID 83204-1391
rcb@racinelaw.net
cmm@racinelaw.net

U.S. Mail, postage prepaid
 Facsimile
 E-Mail
 Hand Delivery