BEFORE 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	)	**ORDER GRANTING PETITIONS TO INTERVENE**

This matter is before the Director of the Department of Water Resources ("Director" or "Department") as a result of petitions to intervene filed by the City of Pocatello, by and through its attorney of record, Josephine P. Beeman, and the State Agency Ground Water Users (the Idaho Department of Juvenile Corrections, the Idaho Department of Health & Welfare, the Idaho Department of Fish & Game, and the Idaho Transportation Department), by and through its attorney of record, Michael S. Gilmore, Deputy Attorney General.

Based upon the Director's consideration of the documents in this matter, the Director enters the following Findings of Facts, Conclusions of Law, and Order.

FINDINGS OF FACT

1. On April 19, 2005, the Director issued his order *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*, which was amended May 2, 2005 ("Amended Order").

2. In the Amended Order, the Director found that ground water diversions under junior priority water rights in Water Districts No. 120 and 130 are causing material injury to senior natural flow and storage rights. As a result, the Director instructed the holders of junior ground water rights in Water Districts No. 120 and 130, "having priorities of February 27, 1979, and later . . . to either curtail the diversion and use of ground water for the remainder of 2005, provide replacement water to the members of the Surface Water Coalition as mitigation, or combination of both." *Amended Order* at p. 44, ¶ 53.

3. On April 26, 2005, the City of Pocatello ("City") filed a petition to intervene in the above-titled matter. *City of Pocatello's Petition to Intervene* (" City's Petition"). The City, who was not party to the Amended Order, holds a ground water right for irrigation purposes (no. 29-7770) that is subject to curtailment pursuant to the Amended Order.

4. In its Petition, the City states that "[t]he threat of curtailment or required mitigation . . . establishes Pocatello's direct and substantial interest in the proceeding that justifies granting its petition to intervene." *City's Petition* at p. 2, ¶ 3.

5. On April 26, 2005, the State Agency Ground Water Users filed a petition to intervene in the above-titled matter. *State Agency Ground Water Users' Petition to Intervene* (" State Agencies' Petition"). The State Agency Ground Water Users, who were not party to the Amended Order, hold certain ground water rights (nos. 35-8624, 35-8625, and 35-9041) that are subject to curtailment pursuant to the Amended Order.

6. In its Petition, the State Agency Ground Water Users state that "[t]he threat of curtailment or mitigation . . . . gives the State Agency Ground Water Users a direct and substantial interest in the proceeding that justifies granting their petition to intervene." *State Agencies' Petition* at p. 2, ¶ 4.

7. No objections have been filed with the Department regarding the petitions to intervene.

CONCLUSIONS OF LAW

1. Petitions to intervene in the proceeding were timely filed by the City and the State Agency Ground Water Users. IDAPA 37.01.01.352. In addition, more than seven (7) days have passed since the petitions to intervene were filed; therefore, the Department may rule on the merits of the petitions. IDAPA 37.01.01.354.

2. According to IDAPA 37.01.01.353,

> If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.

3. The City holds water right no. 29-7770, which is subject to curtailment in accordance with the Director's Amended Order. Therefore, the City has a direct and substantial interest in the subject of the proceeding that may not be adequately represented by the present parties. Because the interests of the City will not unduly broaden the issues, the City is granted intervention.

4. The State Agency Ground Water Users hold water right nos. 35-8624, 35-8625, and 35-9041, some of which may be subject to curtailment in accordance with the Director's Amended Order. Therefore, the State Agency Ground Water Users have a direct and substantial interest in the subject of the proceeding that may not be adequately represented by the present parties. Because the interests of the State Agency Ground Water Users will not unduly broaden the issues, the State Agency Ground Water Users are granted intervention.

ORDER

The Director enters the following Order for the reasons stated in the foregoing Findings of Fact and Conclusions of Law:

IT IS HEREBY ORDERED as follows:

The petitions to intervene as parties in this matter filed by the City of Pocatello and the State Agency Ground Water Users are GRANTED.

DATED this 11th day of May 2005.

KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of May, 2005, the above and foregoing, was served by the method indicated below, and addressed to the following:

JOSEPHINE P. BEEMAN BEEMAN & ASSOC. 409 W JEFFERSON BOISE ID 83702 (208) 331-0954 jo.beeman@beemanlaw.com	(x) U.S. Mail, Postage Prepaid ( ) Facsimile (x) E-mail
MICHAEL GILMORE ATTORNEY GENERAL'S OFFC PO BOX 83720 BOISE ID 83720-0010 (208) 334-2830 mike.gilmore@ag.idaho.gov	(x) U.S. Mail, Postage Prepaid ( ) Facsimile (x) E-mail
TOM ARKOOSH ARKOOSH LAW OFFICES PO BOX 32 GOODING ID 83330 (208) 934-8873 alo@cableone.net	(x) U.S Mail, Postage Prepaid ( ) Facsimile (x) E-mail
W. KENT FLETCHER FLETCHER LAW OFFICE PO BOX 248 BURLEY ID 83318-0248 (208) 878-2548 wkf@pmt.org	(x) U.S. Mail, Postage Prepaid ( ) Facsimile (x) E-mail
ROGER D. LING LING ROBINSON PO BOX 396 RUPERT ID 83350-0396 (208) 436-6804 lnrlaw@pmt.org	(x) U.S. Mail, Postage Prepaid ( ) Facsimile (x) E-mail

JOHN ROSHOLT TRAVIS THOMPSON BARKER ROSHOLT 113 MAIN AVE WEST STE 303 TWIN FALLS ID 83301-6167 (208) 735-2444 jar@idahowaters.com tlt@idahowaters.com	(x) U.S. Mail, Postage Prepaid ( ) Facsimile (x) E-mail
JOHN SIMPSON BARKER ROSHOLT PO BOX 2139 BOISE ID 83701-2139 (208) 344-6034 jks@idahowaters.com	(x) U.S. Mail, Postage Prepaid ( ) Facsimile (x) E-mail
JEFFREY C. FEREDAY MICHAEL C. CREAMER GIVENS PURSLEY LLP PO BOX 2720 BOISE ID 83701-2720 (208) 1300 cf@givenspursley.com mcc@givenspursley.com	(x) U.S. Mail, Postage Prepaid ( ) Facsimile (x) E-mail
SCOTT CAMPBELL MOFFATT THOMAS PO BOX 829 BOISE ID 83701 (208) 385-5384 slc@moffatt.com	(x) U.S. Mail, Postage Prepaid ( ) Facsimile (x) E-mail
KATHLEEN CARR OFFICE OF THE FIELD SOLICITOR 550 W FORT STREET MSC 020 BOISE ID 83724 (208) 334-1378	(x) U.S. Mail, Postage Prepaid ( ) Facsimile (x) E-mail
GAIL MCGARRY PN-3100 US BUREAU OF RECLAMATION 1140 N CURTIS ROAD BOISE ID 83706-1234 (208) 378-5066 emcgarry@pn.usbr.gov	(x) U.S. Mail, Postage Prepaid ( ) Facsimile (x) E-mail

RON CARLSON
LEWIS ROUNDS
IDWR
900 N SKYLINE DR
IDAHO FALLS ID 83402-6105
(208) 525-7177
ron.Carlson@idwr.idaho.gov
lewis.rounds@idwr.idaho.gov

(x) U.S. Mail, Postage Prepaid
( ) Facsimile
(x) E-mail

ALLEN MERRITT
CINDY YENTER
IDWR
1341 FILLMORE ST STE 200
TWIN FALLS ID 83301-3033
(208) 736-3037
allen.merritt@idwr.idaho.gov
cindy.yenter@idwr.idaho.gov

(x) U.S. Mail, Postage Prepaid
( ) Facsimile
(x) E-mail

Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources