

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

A&B IRRIGATION DISTRICT,

Petitioner,

vs.

CASE NO. CV-2009-647

**THE IDAHO DEPARTMENT OF
WATER RESOURCES and GARY
SPACKMAN** in his official capacity as
Interim Director of the Idaho Department of
Water Resources,

Respondents.

IN THE MATTER OF THE PETITION
FOR DELIVERY CALL OF A&B
IRRIGATION DISTRICT FOR THE
DELIVERY OF GROUND WATER AND
FOR THE CREATION OF A GROUND
WATER MANAGEMENT AREA

RESPONDENT CITY OF POCATELLO'S PETITION FOR REHEARING
On appeal from the Idaho Department of Water Resources

The City of Pocatello (“Pocatello” or “City”), by and through undersigned counsel, pursuant to Idaho Appellate Rule 42, respectfully petitions the Court for rehearing on the Court’s finding that “[t]he Director erred in failing to apply proper evidentiary standard of clear and convincing evidence in finding of no material injury to A&B’s right” and the Court’s concurrent remand. *Memorandum Decision and Order on Petition for Judicial Review* at 2 (“*Decision and Order*”). Contrary to the Court’s findings, administration of water rights by IDWR does not result in a “diminishment of a property right”. *Id.* at 34. *See, American Falls Reservoir District No. 2 v. IDWR*, 143 Idaho 862, 876-878, 154 P.3d 433, 447-449 (2007). Further, the Court’s *Decision and Order* erroneously finds that the standard for administration is an appropriators decreed amount as qualified by any “post-adjudication” factors relating to the amount diverted. *Id.* at 33 (“...if a water user is not making beneficial use of the water diverted, irrespective of the quantity decreed, the result is waste.”) By its terms, this conclusion renders the standards by which the Director or Hearing Officer may find injury under the Conjunctive Management Rules useless. Finally, this finding is made without regard to the constitutional qualifications on a senior’s water right, including optimum use and public interest.

In light of the foregoing problems, Pocatello requests rehearing on the following portions of the Court’s *Decision and Order*:

Paragraph C, and sub-paragraphs C.1-7, pages 24-38.

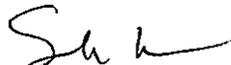
Pursuant to Idaho Appellate Rule 42(b), Pocatello will submit a brief in support of its Petition for Rehearing within fourteen days of the filing date of the petition.

Respectfully submitted this 9th day of June, 2010.

CITY OF POCA TELLO ATTORNEY'S OFFICE

By 
A. Dean Tranmer

WHITE & JANKOWSKI

By 
Sarah A. Klahn

ATTORNEYS FOR CITY OF POCA TELLO

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June, 2010, I caused to be served a true and correct copy of the foregoing **Respondent City of Pocatello's Petition for Rehearing** for Case No. **CV-2009-000647, Minidoka County**, upon the following by the method indicated:



Sarah Klahn, White & Jankowski, LLP

Santos Garza, Deputy Clerk Clerk of Minidoka County Court 715 G Street PO Box 368 Rupert ID 83350	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express = on 06-09-10 <input type="checkbox"/> Facsimile – 208-436-5272 = Phone – 208-436-9041 <input type="checkbox"/> Email
John K. Simpson Travis L. Thompson Barker Rosholt & Simpson 113 Main Ave West Ste 303 PO Box 485 Twin Falls ID 83303-0485 tlt@idahowaters.com jks@idahowaters.com	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile – 208-735-2444 <input checked="" type="checkbox"/> Email
Phillip J. Rassier Chris M. Bromley Deputy Attorneys General – IDWR PO Box 83720 Boise ID 83720-0098 phil.rassier@idwr.idaho.gov chris.bromley@idwr.idaho.gov	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile - 208-287-6700 <input checked="" type="checkbox"/> Email
Randall C. Budge Candice M. McHugh Racine Olson Nye Budge & Bailey 201 E Center St PO Box 1391 Pocatello ID 83204 rcb@racinelaw.net cmm@racinelaw.net	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile – 208-232-6109 <input checked="" type="checkbox"/> Email
A. Dean Tranmer City of Pocatello PO Box 4169 Pocatello ID 83201 dtranmer@pocatello.us	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile – 208-234-6297 <input checked="" type="checkbox"/> Email
Jerry R. Rigby Rigby Andrus & Rigby 25 N 2 nd East Rexburg ID 83440 jrigby@rex-law.com	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile – 208-234-6297 <input checked="" type="checkbox"/> Email