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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 VARIOUS WATER) Docket No. CM-DC-2010-001
RIGHTS HELD BY OR FOR THE)
BENEFIT OF A&B IRRIGATION) **CITY OF POCATELLO’S REQUEST FOR**
DISTRICT, AMERICAN FALLS) **HEARING, MOTION TO AUTHORIZE**
RESERVOIR DISTRICT #2, BURLEY) **DISCOVERY AND REQUEST FOR STAY**
IRRIGATION DISTRICT, MILNER)
IRRIGATION DISTRICT, MINIDOKA)
IRRIGATION DISTRICT, NORTH SIDE)
CANAL COMPANY, AND TWIN FALLS)
CANAL COMPANY)
_____)

The City of Pocatello (“Pocatello”) hereby submits this Request for Hearing, Motion to Authorize Discovery and Request for Stay.

Pocatello requests a hearing pursuant to I.C. § 42-1701A(3) on the Director’s *Third Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“2015 Methodology Order”) dated April 16, 2015, in the

above-captioned proceeding.

A. Request for Hearing

The District Court remanded this matter to the Idaho Department of Water Resources (“Department”) for further proceedings as necessary and identified certain areas in which the Director’s *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“2010 Methodology Order”) dated June 23, 2010 was lacking. *Memorandum Decision and Order on Petitions for Judicial Review* (“Memorandum Decision”) Case No. CV-2010-382, Sept. 26, 2014. Pocatello requests a hearing in this matter regarding: 1) the Director’s adjustments to the calculation of Reasonable In-Season Demand (“RISD”) in the 2015 Methodology Order; and 2) acres irrigated by the Surface Water Coalition (“SWC”), including those irrigated by supplemental ground water rights.

B. Request for Permission to Conduct Discovery

Pocatello requests the Director authorize discovery on all issues relevant to the above identified subjects for hearing. The Director’s 2015 Methodology Order revises the calculation of RISD at various times during the season, and Pocatello seeks to conduct discovery regarding the basis of these calculations and adjustments thereto.

The Court found that while supplemental ground water is a factor the Director should consider in the context of a delivery call, the Department’s basis for doing so in the 2010 Methodology Order was not supported by the record. Memorandum Decision at 18. The issue was investigated in initial delivery call proceedings in this litigation (*see* the record in CV-2008-551 at 5130–31 and Exhibit 3029), but that analysis was completed in 2005 to 2006. In order to reflect current conditions and uses, new investigations regarding irrigated acres and the extent of supplemental ground water use by SWC must be conducted. Memorandum Decision at 19–20.

C. Request for Stay to Accommodate Committee Recommendation Process

In January of 2015, the Department issued an order directing staff to convene a committee of experts to recommend technical changes to the 2010 Methodology Order. *Order Setting Deadline for Submission of Expert Reports*, Jan. 30, 2015. The committee is composed of Department staff and experts representing parties involved in the above-captioned litigation. A Staff Memorandum issued March 16, 2015 by Liz Cresto and Matt Anders contains the recommendations of the Committee that certain changes be made to the Director's methodology regarding natural flow forecast and crop mix data, and that the Committee continue to meet to develop recommendations regarding additional subjects. Staff Memorandum at 7.

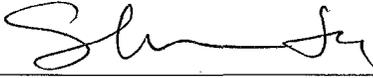
The 2015 Methodology Order does not mention the Committee or its recommendations, or address whether the Committee process will continue. It appears the Director has adopted some but not all of the Committee's recommendations, including the request for additional time for the Committee to develop further recommendations. Pocatello requests that any hearing in this matter be stayed for six (6) months to permit the Committee to provide more thorough recommendations to the Director regarding the 2015 Methodology Order. Pocatello understands that in the meantime the Director must administer water rights, and agrees to the application of the 2015 Methodology Order as currently written for the 2015 irrigation season, while reserving all issues in this matter or an appeal regarding the 2010 Methodology Order itself or its application in 2015.

CONCLUSION

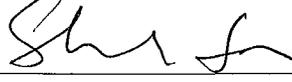
Pocatello requests (1) the Director hold a status conference in order to set this matter for hearing; (2) issue an order authorizing discovery; and (3) stay any hearing in this matter for six (6) months in order for the Committee to meet and provide recommendations regarding the 2015 Methodology Order for the Director to consider.

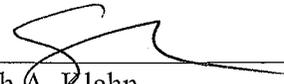
Respectfully submitted this 30th day of April, 2015.

CITY OF POCA TELLO ATTORNEY'S OFFICE

By 
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WHITE & JANKOWSKI

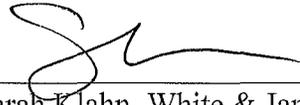
By 
Mitra M. Pemberton

By 
Sarah A. Klahn

ATTORNEYS FOR CITY OF POCA TELLO

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, 2015, I caused to be served a true and correct copy of the foregoing **City of Pocatello's Request for Hearing, Motion to Authorize Discovery and Request for Stay** in Docket No. **CM-DC-2010-001** upon the following by the method indicated:



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