

I. Overview of Plan

Certain of Pocatello's water rights are subject to potential curtailment by senior appropriators in several ongoing (and potential future) delivery calls before the Department. Through this filing, Pocatello seeks approval of a permanent mitigation plan, including approval of the mitigation supplies, methods, and practices that it may utilize to avoid curtailment as a result of current and future delivery calls by surface water rights on the Snake River under the CMR. As stated by the SRBA Court,

a preferable mitigation plan is one that applies to more than just the instant irrigation season. . . . the scope and complexity of the issues that the Director would be required to address would be significantly less than if a completely different mitigation plan were submitted for approval every year. Ultimately under a long term plan the result is less delay and more certainty and predictability for both senior and junior right holders.

Memorandum Decision and Order on Petition for Judicial Review at 15, Case No. CV-2010-3075, Jan. 25, 2011.

Approval of this Mitigation Plan will provide the City with authorization to implement the mitigation activities discussed below on an as-needed basis in order to prevent material injury to senior water rights. Pocatello's proposed Mitigation Plan can be implemented and adjusted as necessary on a year to year basis, depending on the requirements of administration by the Director. For example, if the Director makes a prediction of material injury in the SWC Delivery Call in a given year,¹ and that prediction threatens curtailment of any of the City's water rights, the City shall operate to mitigate injury pursuant to this Mitigation Plan, accounting for the particular requirements of the injured senior, and CMR 43.

¹ If the Director finds that the City's water rights are causing material injury to other senior appropriators who can benefit from the mitigation supplies described herein, this plan may also be utilized.

II. Summary of Pocatello's Water Rights

Pocatello operates a municipal water system serving a population of approximately 50,000 residents in southeastern Idaho. Exhibits 1 and 2, attached hereto, contain a map identifying the locations of the City's wells and a tabulation of the City's water rights. The City relies on ground water rights decreed to divert from the Lower Portneuf River Valley Aquifer ("LPRVA") to serve its culinary system within the City limits, and from the Eastern Snake Plain Aquifer ("ESPA") to serve culinary and irrigation uses in and around the Pocatello Airport north of the City.

In addition to its ground water wells, Pocatello also has several sources of surface water. These include surface water rights on Mink Creek and Gibson Jack Creek, which are tributaries of the Portneuf River southwest of the City. These surface water rights served as the original water supply for the City and are decreed for irrigation uses within the City limits.

The City also has a contract with the United States Bureau of Reclamation ("Bureau") for 50,000 acre-feet of storage in Palisades Reservoir ("Palisades Contract").

III. Mitigation Plan

A. Water Rights that Will Benefit from Mitigation Activities

This Mitigation Plan is intended to be comprehensive in nature and will benefit, without limitation, any senior water rights the Director finds to be materially injured² by any of Pocatello's water rights³ so long as the senior water rights can both legally and physically take delivery of Pocatello's Palisades Contract water as mitigation.

Initially, this Mitigation Plan is intended to benefit senior water rights held by the members of the Surface Water Coalition ("SWC") (comprised of Twin Falls Canal Company,

² The submission of this Mitigation Plan does not waive, and Pocatello expressly reserves, any and all defenses and objections in a delivery call by senior appropriators, including in any appeal of the same.

³ Pocatello's water rights are listed on Exhibit 2.

North Side Canal Company, A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, and Minidoka Irrigation District) and involved in the SWC Delivery Call. See Exhibit A to January 14, 2005 letter from SWC to Director Karl Dreher. However, if other senior surface water rights above Milner Dam place a delivery call and the Director finds injury, Pocatello will file a notice with the Department of its intent to provide mitigation water in the manner described below to those senior rights as well.

B. Determination of Mitigation Obligation

Once the Director determines a shortage to senior rights and that Pocatello's wells must be curtailed to satisfy the shortage, the procedure outlined in Exhibit 3 hereto, *Procedure for Determining Annual Mitigation Requirement*, should be used to calculate Pocatello's proportionate share of the projected shortage and Pocatello's resulting mitigation obligation.⁴ The mitigation plan will operate by reference to the steps in Exhibit 3 and any controlling administrative order such as the Director's *Second Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* ("Methodology Order"), IN THE MATTER OF DISTRIBUTION OF WATER TO VARIOUS WATER RIGHTS HELD BY OR FOR THE BENEFIT OF THE SURFACE WATER COALITION, June 23, 2010, as may be revised on remand.

C. Sources of Mitigation Water

Pocatello holds a contract with the Bureau for 50,000 acre-feet of storage in Palisades Reservoir on the Snake River. The City's storage contract represents 4.1667% of the active storage capacity of approximately 1.2 million acre-feet in Palisades Reservoir. The City plans to utilize its Palisades Contract water under this Mitigation Plan only if the Director orders that it mitigate injury to avoid curtailment, and the water shall otherwise remain uncommitted and

⁴ Pocatello reserves the right to utilize transient modelling and phased-in curtailment. IDAPA 37.03.11.020.04.

available for other permitted uses. If the City acquires or otherwise chooses to make available other sources of mitigation supply (such as lease of other storage water, senior irrigation rights, etc.), the City will file a request with the Department to add additional replacement supplies to this Mitigation Plan.

D. Adequacy of Mitigation Supply

Pocatello's mitigation obligation will vary annually depending on the shortage, if any, that is projected to the water right(s) for which the delivery call is placed. Similarly, the amount of water available for mitigation in Pocatello's storage account varies on an annual basis, depending on the carryover storage in Pocatello's storage account, the yield of the 1939 storage water right in Palisades Reservoir, flood control operations by the Bureau, and other factors. This is common to all storage water, and the Director has found that "[s]torage in the Snake River reservoirs is a reliable source of replacement water." *Order Approving Mitigation Plan* at 9, CM-MP-2009-007, June 3, 2010.

While the exact amount of storage water in Pocatello's account varies on an annual basis, Pocatello's Palisades Contract water is sufficiently reliable for purposes of its use in this Mitigation Plan. IDAPA 37.03.11.43.03.h. "[S]tored water is available to be used as a mitigation alternative to curtailment or sale to others to meet replacement water requirements." Hearing Officer's *Opinion Constituting Findings of Fact, Conclusions of Law and Recommendation* at 13, IN THE MATTER OF DISTRIBUTION OF WATER TO VARIOUS WATER RIGHTS HELD BY OR FOR THE BENEFIT OF THE SURFACE WATER COALITION, Apr. 29, 2008. Indeed, the SRBA Court has found that storage water is a reliable source of mitigation so long as a water user submits annual proof of the commitment of storage water to mitigate injury, which necessarily includes a confirmation of the reliability of that replacement water. *See*

Memorandum Decision and Order at 21, CV-2010-3075. As explained in the following section, Pocatello's Mitigation Plan will operate in such a manner, and should be approved.

E. Procedure for Providing Mitigation

In the event the Director issues an order finding injury that will result in curtailment of Pocatello's ground water rights, Pocatello will provide mitigation water from its Palisades Contract water (or other approved sources) to mitigate for its proportionate share of the shortage to the senior calling water right caused by junior pumping in the curtailment area. *See* Exhibit 3. Pocatello will comply with any Department procedural requirements and deadlines for committing and providing necessary mitigation water, for example as required by the Director's Methodology Order.⁵

Pocatello anticipates that, should it need to operate this Mitigation Plan in a given year, it will file a Notice of Secured Water or similar pleading notifying the Department and relevant parties of (1) the water rights it is providing mitigation for; (2) the amount of water available in its Palisades Contract water storage account (or other sources); and (3) the amount of water it is committing to mitigate Pocatello's proportionate share of the shortage to the senior calling water right.

In the SWC Delivery Call, this procedure for providing mitigation water shall be initiated for any determination of injury to a senior's in-season demand and/or reasonable carryover shortfall. Pocatello will secure its proportionate share of mitigation water as outlined in Exhibit 3 for any predicted injury until the Director orders the secured mitigation water be provided to seniors, consistent with the process outlined in any Methodology Order revised on remand. Pocatello will provide written notice to Water District 1 of the amount of Palisades Contract

⁵ The Director's Methodology Order is currently on appeal, and has been remanded by the District Court, and will be revised in the future.

water secured for purposes of this Mitigation Plan either before or at the time it provides the Notice of Secured Water, and will provide written notice instructing that the water be assigned to the injured senior(s) if ordered by the Director. Pocatello will also notify the Department and respective parties of any changes in Pocatello's water operations that would require the addition or deletion of its water rights to be included in this Mitigation Plan. IDAPA 37.03.11.043.03.k, l.

The foregoing process will ensure the availability and reliability of Pocatello's Palisades Contract water for mitigation on an annual basis in an amount necessary to mitigate its proportionate share of the shortage to the senior calling water rights caused by Pocatello's junior ground water withdrawals, and confirm that the mitigation water can be provided at the time and place required by the senior. IDAPA 37.03.11.043.03.b, h.

IV. Request for Relief

Wherefore, Pocatello requests that the Director enter an order approving this Mitigation Plan, finding that it meets the requirements of CMR 43 because it complies with Idaho law. Pocatello does not believe a hearing is necessary at this time, but reserves the right to request a hearing if the Plan is contested or if not approved by the Department. Pocatello requests that the Department advertise this Mitigation Plan as required under the CMR.

Respectfully submitted this 7th day of April, 2015.

CITY OF POCA TELLO ATTORNEY'S OFFICE

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By  _____
Mitra M. Pemberton

CERTIFICATE OF SERVICE

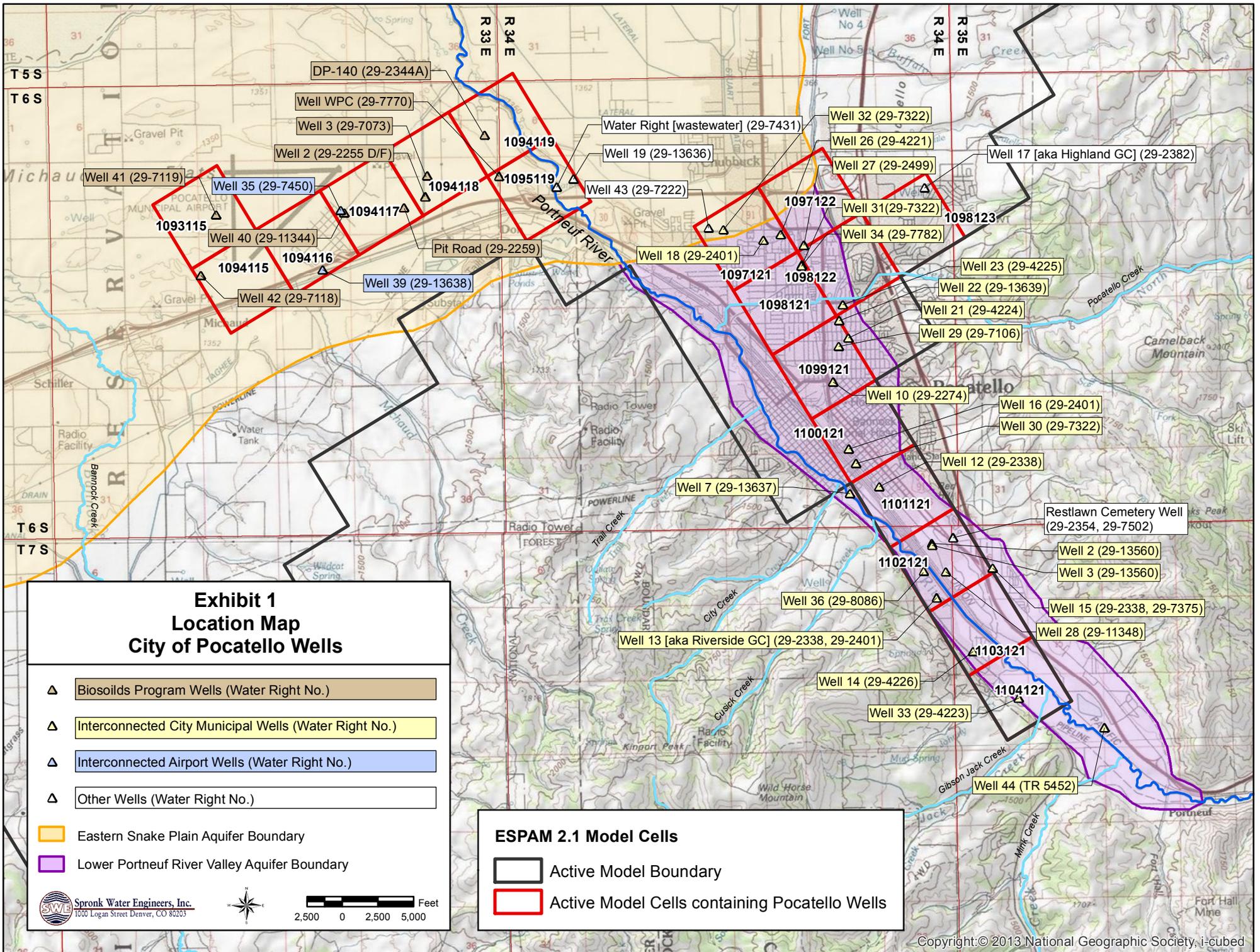
I hereby certify that on this 7th day of April, 2015, I caused to be served a true and correct copy of the foregoing **CITY OF POCATELLO'S RULE 43 MITIGATION PLAN** upon the following by the method indicated:



 Sarah Klahn, White & Jankowski, LLP

Gary Spackman, Interim Director State of Idaho, Dept of Water Resources 322 E Front St PO Box 83720 Boise ID 83720-0098 Deborah.Gibson@idwr.idaho.gov *Original being sent via FEDEX	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Overnight Mail – Federal Express 208-287-4942 <input type="checkbox"/> Facsimile 208-287-6700 <input checked="" type="checkbox"/> Email
John K. Simpson Travis L. Thompson Paul L. Arrington Barker Rosholt & Simpson 195 River Vista Place Ste 204 Twin Falls ID 83301-3029 tlt@idahowaters.com jks@idahowaters.com pal@idahowaters.com	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express 208-733-0700 <input type="checkbox"/> Facsimile 208-735-2444 <input checked="" type="checkbox"/> Email
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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"/> Federal Express <input type="checkbox"/> Facsimile 208-234-6297 <input checked="" type="checkbox"/> Email

<p>Kathleen Carr US Dept Interior 960 Broadway Ave Ste 400 Boise ID 83706 kathleenmarion.carr@sol.doi.gov</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express 208-334-1907 <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>David W. Gehlert Natural Resources Section Environment & Natural Resources Division US Dept of Justice 999 – 18th St, South Terrace Ste 370 Denver CO 80202 david.gehlert@usdoj.gov</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express 303-844-1386 <input type="checkbox"/> Facsimile 303-844-1350 <input checked="" type="checkbox"/> Email</p>
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<p>William A. Parsons Parsons Smith & Stone LLP 137 West 13th St PO Box 910 Burley ID 83318 wparsons@pmt.org</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express 208-878-8382 <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Matt Howard Bureau of Reclamation 1150 N Curtis Road Boise ID 83706-1234 mhoward@usbr.gov</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express 208-378-5317 <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Lyle Swank IDWR – Eastern Region 900 N Skyline Dr Ste A Idaho Falls ID 83402-6105 lyle.swank@idwr.idaho.gov</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express 208-525-7161 <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Allen Merritt Cindy Yenter IDWR – Southern Region 1341 Fillmore St Ste 200 Twin Falls ID 83301-3033 allen.merritt@idwr.idaho.gov cindy.yenter@idwr.idaho.gov</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express 208-736-3033 <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Chris Bromley McHugh Bromley 380 S 4th St Ste 103 Boise ID 83702 cbromley@mchughbromley.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express 208-287-0991 <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>



**Exhibit 1
Location Map
City of Pocatello Wells**

- ▲ Biosolids Program Wells (Water Right No.)
- ▲ Interconnected City Municipal Wells (Water Right No.)
- ▲ Interconnected Airport Wells (Water Right No.)
- ▲ Other Wells (Water Right No.)

- Eastern Snake Plain Aquifer Boundary
- Lower Portneuf River Valley Aquifer Boundary


Spronk Water Engineers, Inc.
 1000 Logan Street Denver, CO 80203




ESPAM 2.1 Model Cells

-  Active Model Boundary
-  Active Model Cells containing Pocatello Wells

Exhibit 2

Summary of Water Rights City of Pocatello

Water Right	Water Rights			Historical Well No. or Source	AKA/Name	Aquifer
	Priority Date	Divers Rate (cfs)	Cum Rate (cfs)			
SURFACE WATER RIGHTS						
29-271	2/26/1869	3.22		Mink Creek		N/A
29-4222	6/16/1898	5.00		Gibson Jack		N/A
29-272	10/1/1901	0.56		Mink Creek		N/A
29-273	10/1/1917	1.218		Mink Creek		N/A
CITY INTERCONNECTED WELLS AND WATER RIGHTS						
29-13558	7/16/1924	1.34	1.34	Alameda 1	Well 29	LPRVA
29-13559	12/31/1925	0.96	2.30	Alameda 2	Well 29	LPRVA
29-13560	12/31/1926	9.13	4.75	1(5)	Well 5	LPRVA
			7.20	2		LPRVA
			11.43	3		LPRVA
29-13561	8/31/1931	4.23	15.66	4		LPRVA
29-13562	12/31/1936	2.45	18.11	6		LPRVA
29-13637	12/31/1940	4.46	22.57	7		LPRVA
29-4221	6/1/1945	2.67	25.24	26	PIP	LPRVA
29-2274	6/15/1948	9.69	34.93	8		LPRVA
			34.93	9		LPRVA
			34.93	10		LPRVA
			34.93	44		LPRVA
29-11348	8/31/1951	4.90	39.83	28	20/Turner	LPRVA
29-13639	10/22/1952	3.68	43.51	22	Alameda 3	LPRVA
29-2338	9/1/1953	9.53	53.04	12		LPRVA
			53.04	13	17	LPRVA
			53.04	15		LPRVA
29-4224	9/15/1955	3.89	56.93	21	Alameda 4	LPRVA
29-4226	12/31/1955	0.22	57.15	14	Cree	LPRVA
29-4225	8/15/1956	4.44	61.59	23	Alameda 5	LPRVA
29-2401	10/16/1958	12.22	62.48	13	17	LPRVA
			69.15	16		LPRVA
			73.81	18		LPRVA
29-11339	12/31/1961	3.36	75.51	Alameda 6		LPRVA
29-11339			77.17	Alameda 7		LPRVA

Exhibit 2

Summary of Water Rights City of Pocatello

Water Right	Water Rights			Historical Well No. or Source	AKA/Name	Aquifer
	Priority Date	Divers Rate (cfs)	Cum Rate (cfs)			
29-4223	10/1/1962	0.21	77.38	33	Call	LPRVA

CITY INTERCONNECTED WELLS AND WATER RIGHTS (cont.)

29-2499	10/10/1964	4.10	81.48	27		LPRVA
29-7106	11/6/1972	3.90	85.38	29		LPRVA
29-7322	4/25/1976	17.07	90.96	30		LPRVA
			98.99	31		LPRVA
			102.45	32		ESPA
29-7375	2/24/1977	2.23	104.68	15		LPRVA
29-7782	1/18/1985	7.00		34		LPRVA
29-8086	3/26/1992	4.00		36		LPRVA

AIRPORT INTERCONNECTED WELLS AND WATER RIGHTS

29-13638	12/31/1940	2.20	2.20	39	Phillips 1	ESPA
29-7450	6/13/1978	3.34	5.54	35	Phillips 3	ESPA

BIOSOLIDS PROGRAM WATER RIGHTS

29-2255D	5/22/1939	0.482		2	A0007741	ESPA
29-4276	4/1/1940	0.27		Douglas Spr		Spring
29-11344	12/31/1942	1.92		40	Phillips 2	ESPA
29-2259	6/20/1944	2.60		Pit Road	Swanson	ESPA
29-2255F	9/16/1949	0.40		2	A0007741	ESPA
29-2344A	12/31/1953	1.18		DP 140		ESPA
29-7073	9/30/1971	1.49		3	A0008708	ESPA
29-7118	4/11/1973	4.01		42	Airport 1	ESPA
29-7119	4/11/1973	6.00		41	Airport 2	ESPA
29-7770	5/21/1984	4.46		WPC	City Pivot	ESPA

OTHER WATER RIGHTS

29-2354	8/27/1954	0.28		Restlawn Cem		LPRVA
29-2382	12/21/1956	3.82		17	Highland GC	LPRVA
29-13636	10/16/1958	0.80		19		ESPA
29-7222	8/22/1974	1.00		43	Ward Park	ESPA
29-7431	12/29/1977	9.28		Wastewater		N/A
29-7502	7/6/1979	0.10		Restlawn Cem		LPRVA

STORAGE WATER RIGHTS

01-2068	7/28/1939	50,000 AF		Palisades Reservoir		N/A
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Exhibit 3

Procedure for Determining Annual Mitigation Requirement City of Pocatello Mitigation Plan

The following procedure will be used to determine Pocatello's annual mitigation requirement in a Snake River delivery call that results from its use of ground water rights that are subject to a valid curtailment order from IDWR.

1. Upon the issuance of a curtailment order by IDWR that implicates any of Pocatello's ground water rights, identify the well(s) associated with the ground water rights that are included in the curtailment order, and determine whether those wells are in use. Also determine whether any of the ground water rights in the curtailment order are associated with Pocatello's Interconnected City Wells ("IC Wells") or Interconnected Airport Wells ("IA Wells") that are decreed as alternate points of diversion for multiple water rights.
2. Tabulate the decreed pumping rate for each of the junior ground water rights in Step 1 that are in use, but are not a part of either the IC Wells or the IA Wells.
3. If any of the junior ground water rights included in the curtailment order are associated with Pocatello's IC Wells, tabulate the total monthly pumping for all of the IC Wells for the most recent calendar year. Allocate the total monthly pumping for the IC Wells in order of priority to the associated ground water rights that are decreed with alternate points of diversion. Identify each of the ground water rights junior to the curtailment priority date that were allocated pumping.
4. Tabulate the decreed flow rate for each of the ground water rights for the IC Wells that are junior to the curtailment priority date that were allocated pumping in Step 3.
5. Repeat Steps 3 and 4 for the IA Wells and ground water rights.
6. Compute the sum of the decreed pumping rates for Pocatello's junior ground water rights identified in Steps 2, 4, and 5.
7. Compute the total combined decreed pumping rate for all ESPA wells that are subject to the curtailment order.
8. Compute Pocatello's percentage of the total pumping for wells that are subject to the curtailment order by dividing Pocatello's junior pumping rate from Step 6 by the total combined pumping rate for all wells subject to the curtailment order from Step 7.
9. Compute Pocatello's annual mitigation requirement in acre-feet by multiplying the Pocatello percentage from Step 8 by the estimate shortage determined by IDWR to the water right(s) making the delivery call.

10. In order to satisfy its mitigation obligation, Pocatello will make available to IDWR a volume of stored water in the City's Palisades Reservoir storage account equal to the mitigation requirement computed in Step 9.