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Attorneys for City of Pocatello

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CITY OF POCATELLO,

Petitioner,

vs.

GARY SPACKMAN in his official capacity As Director of the Idaho Department of Water Resources; and the IDAHO DEPARTMENT OF WATER RESOURCES,

Respondents,

and

SPARTAN PORTNEUF, LLC,

Intervenor.

Case No. CV-01-17-23146

POCATELLO'S OPENING BRIEF ON JUDICIAL REVIEW

Fee Category:
Exempt per I.C. § 67-2301

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TABLE OF AUTHORITIES

STATEMENT OF THE CASE

This is an appeal, pursuant to Idaho Code sections 67-5270 and 67-5279, of the *Order Remanding Contested Case; Order Denying Request to Exclude Evidence* ("Order") (Nov. 20, 2017) of the Director of the Idaho Department of Water Resources, In the Matter of Application for Transfer No. 81155 in the Name of City of Pocatello. Exhibit 5.

The City of Pocatello ("City" or "Pocatello") relies on numerous interconnected wells to provide water for municipal uses to its water customers. Record at 12, 53–56. The wells that are located near the Pocatello Regional Airport generally serve culinary and irrigation requirements associated with airport uses. *Id.* Among the wells designed to serve the Pocatello Airport is Well 39, which was relocated in 2015 from south of Interstate 86 to north of Interstate 86 and adjacent to the airport. Transfer 81155 is the last of three transfers filed by City staff to authorize the relocation of Well 39 and to ensure, following the relocation of Well 39, that the ground water produced by Well 39 was legally available to be diverted by the City.

Well 39

Well 39 is located on the northwest side of Pocatello's service area and has historically served the Pocatello Regional Airport. The well was originally built in 1940 and, according to the City's cover letter submitted with its request to relocate Well 39, the well was in poor condition, difficult to access, and near a rail line.[1] The City sought to build a new well closer to the airport, approximately one half mile north of its original location, to rectify the operational problems of the original well and to enhance well head protection. *Id.* The original location of Well 39 and the new location of Well 39 are both approximately 12 miles northwest of Well 44, which is the subject of Spartan Portneuf, LLC's ("Spartan") Notice of Protest ("Protest").

[1] Exhibit 1, excerpts from Transfer 79826 file.

Transfer 5452 and SRBA Partial Decrees

At its original location, Well 39 was among the points of diversion authorized by Transfer 5452 to divert water under Water Right Nos. 29-2274, 29-2338, and 29-7375 ("Subject Water Rights"). Transfer 5452 was approved by the Idaho Department of Water Resources ("IDWR" or "Department") in 1999 without conditions. Record at 57–58. Consistent with the determination in Transfer 5452, the Subject Water Rights were decreed in the Snake River Basin Adjudication Court ("SRBA") as alternate points of diversion. Diversion of the entire recommended rate of 21.45 cfs may be made from any one identified alternate point. Record at 60–62.

As detailed in Pocatello's *Motion to Dismiss Protest and In the Alternative Motion In Limine* ("Motion to Dismiss") filed June 26, 2017, the issue of *whether* the Subject Water Rights and other Pocatello water rights claims should be decreed without terms and conditions was litigated at the SRBA and before the Idaho Supreme Court in *City of Pocatello v. Idaho*, 152 Idaho 830, 275 P.3d 845 (2012). *See also* Record at 63-80, *Order on Summary Judgment.*

Transfers to Effectuate Operations at Relocated Well 39

On February 17, 2015, City staff filed Transfer 79826 seeking to relocate Well 39 from south of Interstate 86 and adjacent to a railroad line to north of Interstate 86 and nearer to the Pocatello Regional Airport. Transfer 79826 also sought to divert water from relocated Well 39 under Water Right No. 29-13638. The transfer was not protested and IDWR approved the relocation in May of 2015.[2]

[2]Exhibit 1. *Pocatello's Response to Brief and Exceptions to Preliminary Order Dismissing Protest and Approving Transfer* incorporated the contents of IDWR Transfer 79826 and Transfer 81117 by reference. Record at 205. Excerpts from these transfer files are attached here as Exhibits 1 and 2 for the Court's convenience. The entire transfer file for each of the transfers discussed in this brief are available at https://www.idwr.idaho.gov/water-rights/transfers/search.html.

In addition to Water Right No. 29-13638, Well 39 was previously authorized to divert water under four other water rights. To continue its ability to divert Well 39 under these water rights at the new location, City staff filed two additional transfer applications on July 16, 2016. Transfer 81117 (Exhibit 3) sought to authorize diversions under Water Right No. 29-7450 from relocated Well 39, and Transfer 81155 (Exhibit 6) sought to authorize diversion of the Subject Water Rights through relocated Well 39. Transfer 81117 was not protested and was approved in December of 2016.

Spartan protested Transfer 81155 and the proceedings described below and within ensued.

Spartan's Protest

Spartan protested Transfer 81155 on September 16, 2016. Exhibit 4; Record at 1–14. Spartan's protest alleged that the "contemplated transfer to other well [sic] specifically city well #44 . . . will exacerbate existing problem of city's operation of well #44 has been and continues to be, injurious" to the operation of Spartan's located approximately 300 feet from Well 44. Record at 21. Spartan engaged in informal pre-hearing correspondence and requests for information from City staff. Record at 91–92. Even the Spartan pre-hearing correspondence did not raise any issues regarding the relocation or operation of Well 39.[3] Spartan's focus was on the pumping rate associated with Well 44 and the lack of pumping data related to Wells 4, 6, 7, 8 and 9. Spartan's stated goal was to have a term and condition added to the Subject Water Rights that was previously litigated in *Pocatello v. Idaho*. Record at 92.

[3]Mr. Justin Armstrong, Pocatello Water Superintendent, stated in his affidavit attached to *Pocatello's Reply in Support of Motion to Dismiss and In the Alternative Motion In Limine* that Wells 4, 6, 7, 8 and 9 are "not active points of diversion" used by the City; Mr. Armstrong also explained that the two points of diversion that were omitted involved: a well that was sold by the City; and a duplicate quarter-quarter section. Record at 105–106.

After an unproductive prehearing conference, Pocatello moved to dismiss Spartan's Protest as defective, because Spartan had not alleged actual injury from the relief sought by Transfer 81155, or in the alternative to exclude evidence or information regarding Well 44.

On August 8, 2017, the Hearing Officer dismissed Spartan's Protest in response to Pocatello's Motion to Dismiss and approved Pocatello's Transfer 81155. *Preliminary Order Dismissing Protest and Approving Transfer* ("Preliminary Order"), In the Matter of Application for Transfer No. 81155 In the Name of City of Pocatello.[4] Record at 110–117.

Spartan filed a *Brief and Exceptions to Preliminary Order Dismissing Protest and Approving Transfer* ("Brief and Exceptions"), dated September 19, 2017. Record at 145–201. Pocatello filed *Pocatello's Response to Brief and Exceptions to Preliminary Order Dismissing Protest and Approving Transfer*, dated October 2, 2017. Record at 203–214. In response, the Director entered his Order, remanding this matter back to the Hearing Officer and denying Pocatello's motion in limine. Exhibit 5, Record at 215–220.

In addition to the arguments in this Opening Brief, Pocatello's arguments made in the briefing below are incorporated by reference.

ARGUMENT

I. STANDARD OF REVIEW

The Director's Order reinstated Spartan's Protest and remanded for a hearing making it an interlocutory agency action pursuant to IDWR's Rule of Procedure 710. IDAPA 37.01.01.710. Pursuant to Idaho Code section 67-5271(2) an interlocutory agency order is immediately reviewable if exhausting administrative remedies and awaiting a final agency order would not provide an "adequate remedy." Here to exhaust administrative remedies and obtain a

[4] Exhibit 3.

final order, Pocatello would be required to engage in an administrative hearing to rebut Spartan's theory of injury which is inherently erroneous and outside the scope of issues that can properly be considered by the Department in the context of Pocatello's transfer hearing. The Director's Order reinstating Spartan's Protest is "in excess of authority . . . or clearly erroneous or arbitrary and capricious." *Greenfield Vill. Apartment, L.P. v. Ada County*, 130 Idaho 207, 209, 938 P.2d 1245, 1247 (1997).

Under the IDAPA, the Court shall review an appeal from an agency decision "based upon the record created before the agency." *Chisholm v. Idaho Dep't of Water Res.*, 142 Idaho 159, 162, 125 P.3d 515, 518 (2005). An agency's conclusions of law are entitled to *de novo* review by the Court and erroneous conclusions of law may be corrected on appeal. *Greenfield Vill. Apartment*, 130 Idaho at 209, 938 P.2d at 1247.

Idaho Code section 67-5279(3) provides that a Court shall set aside an order in whole or in part if the Court finds the order is:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) not supported by substantial evidence on the record as a whole; or

(e) arbitrary, capricious, or an abuse of discretion.

I.C. § 67-5279(3). In this case, the Director's Order reinstating Spartan's Protest is in excess of the agency's statutory authority, arbitrary and capricious and an abuse of discretion. Reversing the Director's remand would reinstate the Hearing Officer's Preliminary Order which dismissed Spartan's Protest and approved Transfer 81155.

II. SPARTAN'S PROTEST RAISES ISSUES THAT ARE OUTSIDE THE SCOPE OF ISSUES TO BE RESOLVED IN POCATELLO'S TRANSFER 81155

Spartan has raised two primary arguments in the pleadings below.

- In its Protest, Spartan asserted that "contemplated transfer to other well [sic] specifically city well #44 . . . will exacerbate existing problem of city's operation of well #44 has been and continues to be injurious" to the operation of Spartan's located approximately 300 feet from Well 44. Record at 21.
- Then, for the first time in Spartan's July 10, 2017 *Response to City's Motion to Dismiss Protest and Objection To Alternative Motion in Limine* Spartan asserted that Pocatello's inadvertent omission of two points of diversion associated with the Subject Water Rights was an indication that Pocatello's *real* purpose in filing Transfer 81155 was to modify the operation of its interconnected municipal water system to the detriment of Spartan's well located near Well 44. Record at 84.

The Director erred in relying on these allegations as a basis to reinstate the Spartan Protest. Even leaving aside the question of whether the second Spartan argument (which was not raised in the Protest) is timely, neither creates a colorable basis for relief to Spartan in the context of Transfer 81155, and the Director's Order should be reversed.

A. To effect a remand of the Director's Order would improperly enlarge the scope of agency discretion to evaluate injury in a transfer.

In granting Pocatello's Motion to Dismiss, the Hearing Officer found:

> Spartan's arguments are not sufficient to connect the injury concerns associated with the operation of Well 44 to the change proposed in Application 81155.

Exhibit 3 at 5; Record at 114.

> Issues of protest which are not related to the proposed change fall outside the scope of the Department's review authority for transfer applications.
>
> . . . .

> Spartan's protest does not identify any issues related to the proposed change for Well 39. The protest does not even refer to Well 39 or the existing or proposed points of diversion for Well 39. . . . Application 81155 does not propose to change the diversion rate authorized for Well 44 in any way.

Exhibit 3 at 5–6; Record at 114–115.

The Hearing Officer's Preliminary Order correctly identifies the scope of agency discretion in evaluating a transfer application. While the provisions of Idaho Code section 42-222(1) require IDWR to determine, among other things, if a transfer will injure other water users, the alleged injury that the Department may evaluate is limited by principles of Idaho law to injury allegedly arising from the proposed change. *Barron v. Idaho Dep't of Water Res.*, 135 Idaho 414, 418, 18 P.3d 219, 223 (Idaho 2001) (emphasis added) (citation omitted) ("'[t]he director is statutorily required to examine all evidence of whether the *proposed transfer* will injure other water rights . . . .'"). In this regard, the Hearing Officer found no injury from the Transfer 81155:

> The proposed point of diversion for Well 39 is located approximately ½ mile north of the existing point of diversion for Well 39. According to the Department's water right records, the closest ground water well to the proposed point of diversion is owned by Pocatello (Well 35). No other recorded water rights are located within ½ mile of the proposed point of diversion for Well 39. Pocatello is already authorized to divert the full combined diversion rate under water rights 29-2274, 29-2338 and 29-7375 from the existing point of diversion for Well 39. Approval of Application 81155 will not increase the authorized diversion rate from Well 39. There is no evidence in the record suggesting that approval of Application 81155 will injure existing rights.

Exhibit 3 at 6; Record at 115.

If affirmed, the Director's Order would inject speculative issues unrelated to the change sought by Pocatello into this matter. To wit, the Director's Order found:

> While the hearing officer is correct that "Pocatello is already authorized to divert the full quantity listed on water rights 29-2274, 29-2338, and 29-7375 from Well 44," that does not necessarily mean "the expected operation of the system is of little consequence in an injury analysis." It is conceivable that Spartan could present evidence at a hearing regarding Pocatello's current operation of its system

> and evidence that the changes proposed by Application 81155 will cause Pocatello to shift operation of its system to demand more from Well 44 and injure the Spartan Well.

Exhibit 5 at 4; Record at 218 (citation omitted).

As the Director's Order acknowledges, Pocatello is authorized to divert the full rate of flow associated with the Subject Water Rights from Well 44 (or Well 39 for that matter) whether Well 39 is in its original location or its new location. In the absence of a transfer request from Pocatello to not only operate Well 39 under the Subject Water Rights but to also change the operational terms and conditions (for example, to increase the rate of flow) of the Subject Water Rights, it is not clear what kind of evidence Spartan could conceivably present that would be relevant. The reality is that, in the context of Transfer 81155, so long as Pocatello's operation of the Subject Water Rights are consistent with the terms of its SRBA partial decrees, any impact from the operation of Well 44 on the Spartan water rights is not injury that can be remedied in the context of Transfer 81155. The Director's Order would authorize exercise of agency discretion that is beyond its statutory authority and this Court should reverse.

III. SPARTAN HAS NO STANDING TO SUSTAIN ITS PROTEST

The Director's Order improperly concluded that Spartan has standing to pursue its protest. The Idaho Supreme Court has explained that "'[s]tanding is a preliminary question to be determined by this Court before reaching the merits of the case.'" *State v. Phillip Morris, Inc.*, 158 Idaho 874, 881, 354 P.3d 187, 194 (2015) (citation omitted). "'Idaho has adopted the constitutional based federal justiciability standard.'" *Id.* (citations omitted). "[T]o establish standing a plaintiff must show (1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a like[lihood] that the injury will be redressed by a favorable decision." *Id.* (quotation marks and citations omitted).

The Director's Order simultaneously found: 1) due to Spartan's admission in its briefing below, Spartan was not seeking to collaterally attack the partial decrees of the Subject Water Rights; 2) that Pocatello is "authorized to divert the full quantity listed on [the Subject Water Rights]"; and 3) that Spartan has standing to sustain its protest because "Spartan argues that eliminating points of diversion or changing the location of Well 39 may possibly increase the demand on Well 44." All of these things cannot be true. In other words, if Spartan is not challenging (and presumably, the Director will not entertain a challenge) to the decretal terms and conditions governing the operation of the Subject Water Rights AND if Pocatello remains authorized to divert the full quantity listed, then there is no basis to conclude that Spartan can introduce relevant, non-frivolous evidence about changes in demand on Well 44 that it may speculate are related to either the relocation of Well 39 or the inadvertent omission of the two points of diversion.

Further, Spartan's allegations about injury arise because of events that occurred prior to the filing of Transfer 81155: it alleges that the current operation of Well 44 is injuring its senior water right, and that approving Transfer 81155 will exacerbate this alleged injury in unspecified ways. However, Spartan's allegations survive whether or not Pocatello pursues Transfer 81155 because Spartan's claims rely not on the location of Well 39, but on the underlying operation of the Subject Water Rights. In other words, if Pocatello withdrew Transfer 81155, Spartan's claims of injury from the operation of Well 44 would not be remedied. As a result, Spartan cannot establish that it has standing under Idaho law to sustain its Protest. "There must also be a fairly traceable causal connection between the claimed injury and the challenged conduct" in order to satisfy principles of standing. *Troutner v. Kempthorne*, 142 Idaho 389, 391, 128 P.3d 926, 928 (2006).

Transfer 81155 does not involve the operation of Well 44, and there is no connection between the conduct challenged in the Transfer and Spartan's claimed injury. Spartan has failed to show a "distinct, palpable injury" to allow it to participate in the proceeding and sustain its Protest.

IV. THE INADVERTENT OMISSION OF TWO POINTS OF DIVERSION IS A RED HERRING

As noted in the Statement of the Case, *supra*, in its response to the Motion to Dismiss (nearly a year after it filed its Protest), Spartan for the first time seized on the City's inadvertent omission of two points of diversion from the Transfer application as an additional basis to sustain its Protest. According to Spartan, the City's inadvertent omission of these points of diversion was an indication that approval of Transfer 81155 would alter the operation of Pocatello's interconnected well system and the Subject Water Rights to Spartan's detriment. Record at 84–87. The Director erred by agreeing that the inadvertent omission (and subsequent abandonment of these points of diversion) provided a basis to revive the Spartan Protest.

As established in Mr. Armstrong's Affidavit, the two points of diversion are not (and have not been) among the City's active points of diversion. Record at 105–106. In fact, one point had a well on it (Well 11) which was sold sometime in the past and is no longer owned by the City; the other is described by Mr. Armstrong as a "duplicative" legal description but there is not now, nor has there been, a well structure associated with this legal description. In other words, the City was not relying on either of these points of diversion *prior* to the relocation of Well 39 and the inadvertent omission of these two points of diversion will have no effect on the City's operations after the relocation of Well 39. Nor will the omission of these points of diversion affect Spartan's well.

The Director's Order does not suggest that the City was obligated to handle the abandonment of these points of diversion in any other manner—for example, the Director's Order does not find that the City needed to file a transfer or other publicly noticed document in order to obtain a legal determination that these points were no longer in active use by the City. The City has suffered the result of its inadvertent actions, which is the abandonment of these points of diversion—a determination it does not challenge. Spartan's efforts to turn these omissions into a cause of action should be rejected, and the Court should reverse the Director's Order which would allow any theory of injury advanced by Spartan, no matter how spurious, to be the basis for a hearing in this case.

V. WHILE SPARTAN'S PROTEST DOES NOT STATE A CLAIM FOR RELIEF IN THE CONTEXT OF A TRANSFER, SPARTAN DOES HAVE AN AVENUE FOR RELIEF

Spartan's Protest, which the Director's Order found to state a claim for relief, seeks terms and conditions on the operation of Pocatello's Well 44. Spartan has not attempted to connect the operation of the Subject Water Rights at relocated Well 39 to its allegations of injury from the operation of Well 44. Whatever Spartan is experiencing as far as issues with deliveries from its well, the cause is not Transfer 81155, and Spartan has not really attempted to show that it is.

Spartan's dogged determination to pursue this frivolous Protest is surprising because under Idaho law, when a senior water right holder (Spartan) alleges the operation of a junior water right (Well 44) is causing injury to his water right, the procedural mechanism to seek terms and conditions on the operation of a junior water right is a delivery call. If Spartan believes itself to be injured from the operation of Well 44 it can file a delivery call under the Department's procedures.

Respectfully submitted this 12th day of March, 2018.

WHITE & JANKOWSKI LLP

Attorneys for City of Pocatello

By_____
Sarah A. Klahn

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of March, 2018 a true and correct copy of the foregoing **CITY OF POCATELLO'S NOTICE OF WITHDRAWAL OF COUNSEL** was served on the following by the method indicated below:

Sarah A. Klahn
White & Jankowski LLP

SRBA District Court 253 3rd Avenue North P.O. Box 2707 Twin Falls, ID 83303-2707	____ U.S. Mail, Postage Prepaid ____ Hand Delivery __X__ Overnight Mail – Federal Express ____ Facsimile 208-736-2121 Phone 208-736-3011 ____ Email
Gary Spackman, Director IDWR 322 East Front St P.O. Box 83720 Boise ID 83720-0098 gary.spackman@idwr.idaho.gov kimi.white@idwr.idaho.gov	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail – Federal Express ____ Facsimile 208-287-6700 Phone 208-287-4800 __X__ Email
Garrick Baxter IDWR P.O. Box 83720 Boise ID 83720-0098 garrick.baxter@idwr.idaho.gov emmi.blades@idwr.idaho.gov	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail – Federal Express ____ Facsimile 208-287-6700 Phone 208-287-4800 __X__ Email
Jim Browitt Laura Schroeder Spartan Portneuf LLC Schroeder Law Offices P.C. 1915 NE Cesar E. Chavez Blvd. Portland, OR 97212 schroeder@water-law.com j.browitt@water-law.com	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Overnight Mail – Federal Express ____ Facsimile __X__ Email

42-222 POD - 09/14

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
FEB 17 2015
Department of Water Resources
Eastern Region

APPLICATION FOR TRANSFER OF WATER RIGHT – POINT(S) OF DIVERSION

This form may be used to apply to change and/or add points of diversion for existing water rights and to report an ownership change for a water right(s) in connection with the proposed point of diversion change(s). Do not use this form to apply for changes to other elements of a water right. See the *Application for Transfer Instructions* for help completing this form and for mailing addresses of Department offices where your application can be submitted.

Check all that apply:

☑ Change diversion point(s) ☐ Add diversion point(s) ☐ Ownership change ☐ Ownership split

1. **APPLICANT(S)** City of Pocatello Phone (208) 234-6174
2. **MAILING ADDRESS** 911 N. 7th Ave City Pocatello
   State Idaho Zip 83205 Email jarmstrong@pocatello.us

☑ If the applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign for the applicant.

☐ If the applicant is not the current water right(s) owner, attach documentation of authority to file the application.

☐ If the application includes a change in ownership of water right(s), attach a copy of the conveyance document, such as a warranty deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property conveyed or description of the water right if no land is conveyed. Additional fee(s) are required for water right ownership changes; see Item 9 for the fee schedule.

If the ownership change resulted in the water right(s) being split, how did the division occur? Mark one:

☐ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
☐ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.

☐ If the application is not signed by the applicant, attach a Power of Attorney or other documentation providing authority to sign for the applicant.

3. **LIST WATER RIGHT NUMBER(S)** 29-13638

☑ Attach a copy of the water right(s) as recorded, available at *www.idwr.idaho.gov, Water Right Transfers, Step 1*, or by contacting any Department office.

4. **TOTAL AMOUNT OF WATER** transferred is 2.2 (diversion rate) cubic feet per second and/or _____ (storage volume) acre-feet per annum.

5. **POINT OF DIVERSION** – Describe all the point(s) of diversion to be included on the water right(s) after the proposed change.

☐ Attach Eastern Snake Plain Aquifer (ESPA) analysis if this transfer proposes to change a point of diversion affecting the ESPA. ESPA analysis information is available at www.idwr.idaho.gov, *Water Right Transfers, Online Resources.*

New?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
X		SW	SW	SE	10	6S	33E	Power	Groundwater	Well 39
			NE	SE	10	6S	33E	Power	Groundwater	Well 35

AMENDED

Transfer No. 79826

79826

EXHIBIT 1

42-222 POD - 09/14

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
FEB 0 9 2015
Department of Water Resources
Eastern Region

APPLICATION FOR TRANSFER OF WATER RIGHT – POINT(S) OF DIVERSION

This form may be used to apply to change and/or add points of diversion for existing water rights and to report an ownership change for a water right(s) in connection with the proposed point of diversion change(s). Do not use this form to apply for changes to other elements of a water right. See the *Application for Transfer Instructions* for help completing this form and for mailing addresses of Department offices where your application can be submitted.

Check all that apply:

☑ Change diversion point(s) ☐ Add diversion point(s) ☐ Ownership change ☐ Ownership split

1. **APPLICANT(S)** City of Pocatello Phone (208) 234-6174
2. **MAILING ADDRESS** 911 N. 7th Ave City Pocatello
   State Idaho Zip 83205 Email jarmstrong@pocatello.us

☑ If the applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign for the applicant.

☐ If the applicant is not the current water right(s) owner, attach documentation of authority to file the application.

☐ If the application includes a change in ownership of water right(s), attach a copy of the conveyance document, such as a warranty deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property conveyed or description of the water right if no land is conveyed. Additional fee(s) are required for water right ownership changes; see Item 9 for the fee schedule.

If the ownership change resulted in the water right(s) being split, how did the division occur? Mark one:

☐ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
☐ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.

☐ If the application is not signed by the applicant, attach a Power of Attorney or other documentation providing authority to sign for the applicant.

3. **LIST WATER RIGHT NUMBER(S)** 29-13638

☑ Attach a copy of the water right(s) as recorded, available at *www.idwr.idaho.gov, Water Right Transfers, Step 1*, or by contacting any Department office.

4. **TOTAL AMOUNT OF WATER** transferred is 2.2 (diversion rate) cubic feet per second and/or _____ (storage volume) acre-feet per annum.

5. **POINT OF DIVERSION** – Describe all the point(s) of diversion to be included on the water right(s) after the proposed change.

☐ Attach Eastern Snake Plain Aquifer (ESPA) analysis if this transfer proposes to change a point of diversion affecting the ESPA. ESPA analysis information is available at www.idwr.idaho.gov, *Water Right Transfers, Online Resources.*

New?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
X		SW	SW	SE	10	6S	33E	Power	Groundwater	Well 39
			SW	NE	15	6S	33E	Power	Groundwater	Well 39

SUPERSEDED

79826 1

Transfer No. _____

6. **GENERAL INFORMATION**

a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:

20" Well, 220 ft. deep, equipped with a 30-hp vertical turbine pump with a 12" discharge line connected to a 500,000 gallon storage tank.. The well, motor,control valve, and flow meter will be secure inside a lockable building

b. Who owns the property at the point(s) of diversion? City of Pocatello

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

c. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes	No	
☐	☑	undergone a period of five or more consecutive years of non-use,
☐	☑	currently used in a mitigation plan limiting the use of water under the right(s), or
☐	☑	currently enrolled in a Federal set-aside program limiting the use of water under the right(s)?

If yes, describe:

d. Is any portion of the water right(s) proposed to be changed currently leased to the Water Supply Bank? ☐ Yes ☑ No

☐ If yes and there are multiple owners, attach a Lessor Designation form.
☐ If yes, the individual owner or designated lessor must complete, sign and attach an IRS Form W-9.
(Disregard if these items are on file and ownership has not changed.)

7. **MAP** – ☑ Attach a map of the diversion, measurement, control and distribution system. Include the place of use if a split of the water right occurred. Clearly label the map with township, range, section and ¼ ¼ of section information. The *Map Tool*, available at *maps.idwr.idaho.gov/TransferApplicationLayouts/* provides a satisfactory template for creating the required map.

8. **SIGNATURE** – The information in this application is true to the best of my knowledge. I understand any willful misrepresentations in this application may result in rejection of the application or cancellation of an approval.

Signature of applicant or authorized agent	Print name and title if applicable	Date
	Brian Blad, Mayor	1/30/15
	Justin Armstrong, Water Superintendent	2/2/15

9. **FEE** - ☑ The application filing fee provided in Section 42-221, Idaho Code, must be submitted with the application for transfer. The Application fee is based on the total amount of water proposed for transfer in Item 4: the larger fee for either cubic feet per second (diversion rate) or acre-feet per annum (storage volume). The *Fee Schedule* is available at *www.idwr.idaho.gov, Water Right Transfers, Step 4* and in the *Application for Transfer Instructions*.

FOR DEPARTMENT USE ONLY

Transfer includes _____ pages of attachments. Received by _____ Date _____

Fee paid 460 CC Date 2/9/15 Receipted by SL Receipt # 2040627

Preliminary review by _____ Date _____ Active in the Water Supply Bank? Yes ☐ No ☐

W-9 received? Yes ☐ No ☐ Name on W-9 _____ W-9 forwarded to fiscal? Yes ☐ No ☐

(Do NOT scan the W-9 – confidential information is held by fiscal only)

79826

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 29-13638

NAME AND ADDRESS:	CITY OF POCATELLO PO BOX 4169 POCATELLO, ID 83205		
SOURCE:	GROUND WATER		
QUANTITY:	2.20 CFS		
PRIORITY DATE:	12/31/1940		
POINT OF DIVERSION:	T06S R33E S10 S15	NESE SWNE	Within Power County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Municipal	01-01 TO 12-31	2.20 CFS

PLACE OF USE:

Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Pocatello Well No. 39 located in T06S, R33E, S15, SWNE.

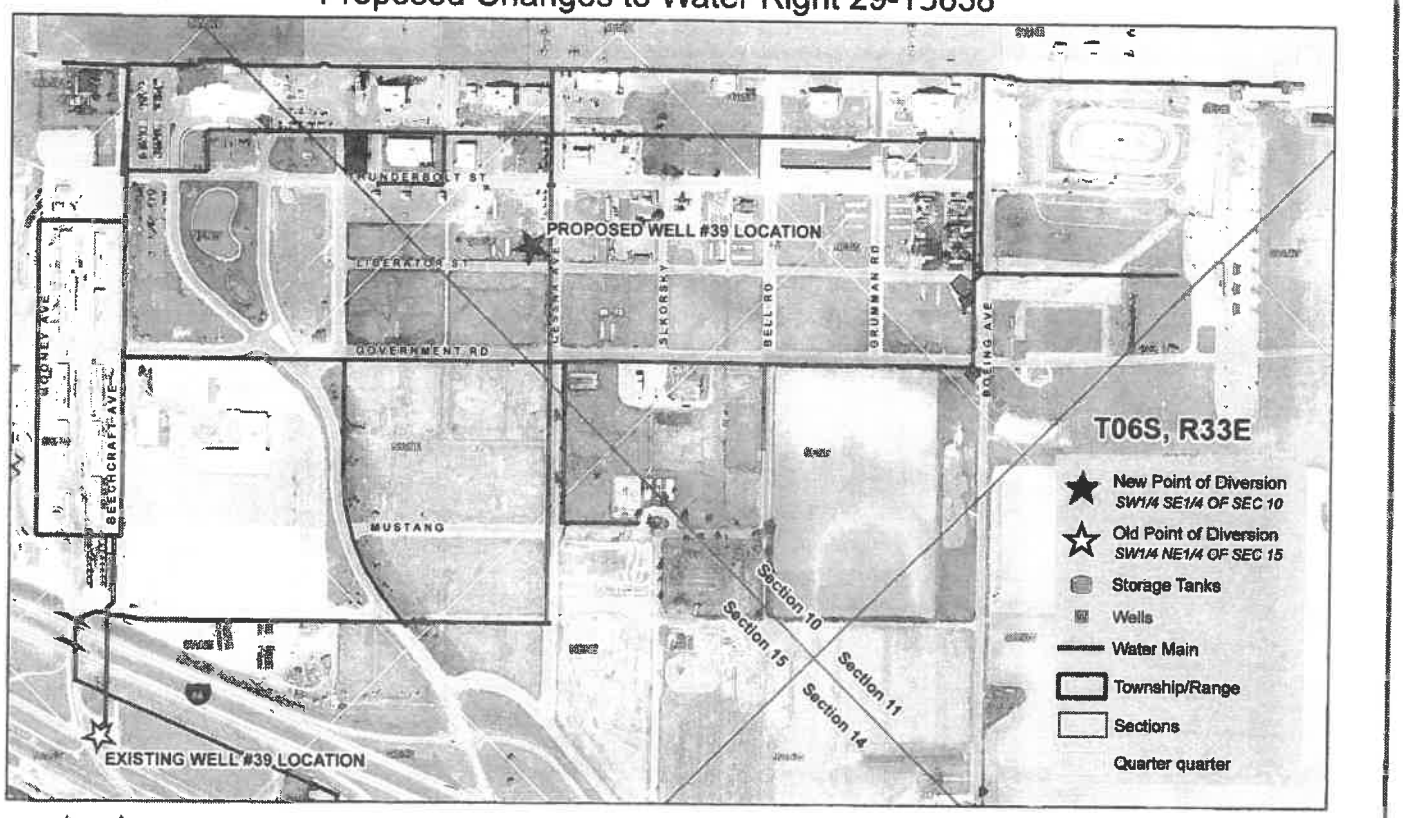
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication

Proposed Changes to Water Right 29-10638



Idaho Statutes

TITLE 50
MUNICIPAL CORPORATIONS

CHAPTER 6
MAYOR

50-602. MAYOR, ADMINISTRATIVE OFFICIAL. The mayor, except as provided in sections 50-801 through 50-812[, Idaho Code], shall be the chief administrative official of the city, preside over the meetings of the city council and determine the order of business subject to such rules as the council may prescribe, have a vote only when the council is equally divided, have the superintending control of all the officers and affairs of the city, preserve order, and take care that the ordinances of the city and provisions of this act are complied with and enforced.

History:
[50-602, added 1967, ch. 429, sec. 122, p. 1249.]

79826

Idaho Statutes

TITLE 50
MUNICIPAL CORPORATIONS

CHAPTER 6
MAYOR

50-607. GENERAL POWERS. The mayor shall have and exercise such powers, prerogatives and authority as is conferred by the laws of the state of Idaho or as may be conferred upon him by the city council, and shall have the power to administer oaths, and shall sign all contracts and conveyances in the name of and on behalf of the city.

History:
[50-607, added 1967, ch. 429, sec. 127, p. 1249.]

79826

Pocatello
A MUNICIPAL CORPORATION OF IDAHO

WATER DEPARTMENT
911 [illegible] a 7th Avenue
P.O. Box 4169
Pocatello, ID 83205-4169

SUPERINTENDENT'S OFFICE
(208) 234-6174
FAX (208) 234-7084
REPAIR SHOP
(208) 234-6182
FAX (208) 234-7084

Water AT YOUR SERVICE SINCE 1892

RECEIVED
FEB 09 2015
Department of Water Resources
Eastern Region

January 29, 2015

State of Idaho
Department of Water Resources
IDWR Eastern Region
900 N. Skyline Dr, Suite A
Idaho Falls, ID 83402-1718

Subject: Application for Transfer of Water Right – Point(s) of Diversion, Water Right 29-13638

Dear Agency:

Please find the enclosed Application for Transfer of Water Right – Point(s) of Diversion, as well as, the supporting documentation and payment of fees for the transfer water right 29-13638 owned and operated by the City of Pocatello.

The City of Pocatello is currently in need of replacing existing municipal Well 39, located at the Pocatello Regional Airport. Well 39 is associated under Water Right 29-13638 with two points of diversion located within T06S, R33E, NE1/4 SE1/4, Section 10 and T06S, R33E, SW1/4 NE1/4, Section 15 within the Eastern Snake Plain Aquifer (ESPA).

The existing municipal Well 39 was originally drilled in 1940. Due to the age and construction of the well, it is in dire need of replacement. The City has hired Keller Associates to design a replacement well at a new location for better wellhead protection and distribution within the water system. Re-drilling the well within the existing site is less desirable due to the proximity of the I-86 interstate corridor and a railroad spur.

The new replacement Well 39 is proposed to be relocated approximately 3,000 ft from existing point of diversion to a new point within T06S, R33E, SW1/4 SE1/4, Section 10. The new replacement well should have insignificant impacts to both the ESPA and surrounding wells currently owned and operated by the City of Pocatello. Due to the relocation of the well, the City of Pocatello is requesting your review of this application for POD transfer. Application for drilling permits will be submitted prior to well construction.

If you should have any questions regarding this application, please do not hesitate to call my office at (208) 234-6174. Thanks for your review and assistance.

Sincerely,

Justin Armstrong
Water Superintendent
City of Pocatello
(208) 234-6174

79826

MEMORANDUM

Date: March 17, 2015

To: Transfer 79826

From: Scott Bergendorf

Re: Transfer Analysis

Applicant proposes to transfer a point of diversion for water right 29-13638. The water right has two PODs. The POD at the SWNE of Sec. 15, T06S, R33E will be moved to the SWSWSE of Sec. 10, T06S, R33E. No change will take place for the POD at the NESE of Sec 10 . A new well will be constructed.
Water Right 29-13638 is a municipal water right that is part of the Pocatello Municipal large POU boundary. No changes are proposed for the POU.
Water right 29-13638 is one of 4 other water rights currently existing at "old well 39" (06S33E15 SWNE). This transfer proposes to delete the POD at this location only for right 29-13638. Eventually this old well will be abandoned at which time the remaining water rights will either be deleted or transferred from this POD location.

Authority to File:
The applicant is the current owner of the water right per IDWR record and of the proposed place of use per Power County taxlot data. Brian Blad (Mayor), and Justin Armstrong (Water Superintendent) signed the application.

Water Right Validity:
Water right 29-13638 was decreed in 2012. Water right is part of the Pocatello city municipal system. Forfeiture is not an issue.

Injury to other water rights:
Inside the ESPA and within WD 120. Points of diversions are within adjacent cells. No ESPA analysis is required. Transfer was advertised and there were no protests. Water master does not oppose the transfer.

Enlargement of Use:
The proposed change will not result in enlargement of use. Neither rate nor acres will increase as a result of the transfer.
No issues identified.

Local Public interest:
No issues identified.

Beneficial Use/Conservation of Water Resources:
No issues identified.

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT
TRANSFER NO. 79826

This is to certify that: CITY OF POCATELLO
WATER DEPARTMENT
911 N 7TH AVE
POCATELLO, ID 83201

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

Water Right	Origin/Basis	Priority Date	Diversion Rate	Diversion Volume	Acre Limit	Total Acres	Source
29-13638	WR/DECREED	12/31/1940	2.200 cfs	N/A	N/A	N/A	GROUND WATER

Purpose of Transfer (Changes Proposed)

Current Number	Split	POD	POU	Add POD	Period of Use	Nature of Use
29-13638	NO	YES	NO	NO	NO	NO

Summary Of Water Rights After the Approved Change

Existing Right	New No. (Changed Portion)	Transfer Rate	Transfer Volume	Acre Limit	Total Acres	New No. (remaining portion)	Remaining Rate	Remaining Volume	Remaining Acre Limit	Remaining Total Acres
29-13638	29-13638	2.200 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		**2.200 cfs**	**N/A**	**N/A**	**N/A**		**N/A**	**N/A**	**N/A**	**N/A**

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 15th day of May, 2015.

for Chief, Water Allocation Bureau

SUPPORT DATA

Transfer No. 79826

IN FILE # 29-13638

WATER RIGHT NO. 29-13638

As Modified by Transfer No. 79826

In accordance with the approval of Transfer No. 79826, Water Right No. 29-13638 is now described as follows:

Right Holder: CITY OF POCATELLO
911 N 7TH AVE
PO BOX 4169
POCATELLO, ID 83205

Priority Date: 12/31/1940

Source: GROUND WATER

BENEFICIAL USE	From		To	Diversion Rate
MUNICIPAL	01/01	to	12/31	2.200 cfs
				2.200 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	NESE	Sec 10 Twp 06S Rge 33E	POWER County
GROUND WATER	SWSWSE	Sec 10 Twp 06S Rge 33E	POWER County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.
2. Prior to diversion and use of water under Transfer approval 79826, the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion, in accordance with Department specifications.
3. Upon specific notification of the Department, the right holder shall install and maintain data loggers to record water usage information at the authorized point(s) of diversion in accordance with Department specifications.
4. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No.120.
5. A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
6. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
7. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

WATER RIGHT NO. 29-13638

As Modified by Transfer No. 79826

CONDITIONS OF APPROVAL

8. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

42-222 POD - 09/14

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
JUL 25 2016
Department of Water Resources
Eastern Region

APPLICATION FOR TRANSFER OF WATER RIGHT – POINT(S) OF DIVERSION

This form may be used to apply to change and/or add points of diversion for existing water rights and to report an ownership change for a water right(s) in connection with the proposed point of diversion change(s). Do not use this form to apply for changes to other elements of a water right. See the *Application for Transfer Instructions* for help completing this form and for mailing addresses of Department offices where your application can be submitted.

Check all that apply:

☑ Change diversion point(s) ☐ Add diversion point(s) ☐ Ownership change ☐ Ownership split

1. APPLICANT(S) City of Pocatello Phone (208) 234-6174
2. MAILING ADDRESS 911 N. 7th Ave, PO Box 4169 City Pocatello
   State Idaho Zip 83205 Email jarmstrong@pocatello.us

☑ If the applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign for the applicant.

☐ If the applicant is not the current water right(s) owner, attach documentation of authority to file the application.

☐ If the application includes a change in ownership of water right(s), attach a copy of the conveyance document, such as a warranty deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property conveyed or description of the water right if no land is conveyed. Additional fee(s) are required for water right ownership changes; see Item 9 for the fee schedule.

If the ownership change resulted in the water right(s) being split, how did the division occur? Mark one:

☐ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
☐ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.

☐ If the application is not signed by the applicant, attach a Power of Attorney or other documentation providing authority to sign for the applicant.

3. LIST WATER RIGHT NUMBER(S) 29-7450

☑ Attach a copy of the water right(s) as recorded, available at *www.idwr.idaho.gov, Water Right Transfers, Step 1*, or by contacting any Department office.

4. TOTAL AMOUNT OF WATER transferred is 3.34 (diversion rate) cubic feet per second and/or _____ (storage volume) acre-feet per annum.

5. POINT OF DIVERSION – Describe all the point(s) of diversion to be included on the water right(s) after the proposed change.

☐ Attach Eastern Snake Plain Aquifer (ESPA) analysis if this transfer proposes to change a point of diversion affecting the ESPA. ESPA analysis information is available at www.idwr.idaho.gov, *Water Right Transfers, Online Resources.*

New?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
X		SW	SW	SE	10	6S	33E	Power	Groundwater	Well 39
			NE	SE	10	6S	33E	Power	Groundwater	Well 35

Transfer No. 81117

81117

EXHIBIT 2

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

6/2/2016

WATER RIGHT NO. 29-7450

Owner Type	Name and Address
Current Owner	CITY OF POCATELLO 911 N 7TH AVE PO BOX 4169 POCATELLO, ID 83205
Attorney	WHITE & JANKOWSKI LLP ATTN SARAH A KLAHN 511 16TH ST STE 500 DENVER, CO 80202 (303)595-9441
Attorney	BEEMAN & ASSOC PC ATTN JOSEPHINE BEEMAN 1019 N 17TH ST BOISE, ID 83702-3304 (208)331-0950

Priority Date: 06/13/1978
Basis: Decreed
Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
MUNICIPAL	1/01	12/31	3.34 CFS	
Total Diversion			3.34 CFS	

81117

Location of Point(s) of Diversion:

GROUND WATER	NESE	Sec. 10	Township 06S	Range 33E	POWER County
GROUND WATER	SWNE	Sec. 15	Township 06S	Range 33E	POWER County

Place(s) of use: Large POU Info

Conditions of Approval:

1.		To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Pocatello Well No. 35 located in T06S, R33E, S10, NESE.
2.	C03	RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.
3.	C18	This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
4.	124	Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.

Dates:
Licensed Date:
Decreed Date: 04/26/2012
Permit Proof Due Date: 7/1/1983
Permit Proof Made Date: 4/11/1983
Permit Approved Date: 7/20/1978
Permit Moratorium Expiration Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Water Supply Bank Enrollment Date Accepted:
Water Supply Bank Enrollment Date Removed:
Application Received Date:
Protest Deadline Date:
Number of Protests: 0

Other Information:
State or Federal: S
Owner Name Connector:
Water District Number: 120
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Civil Case Number:
Old Case Number:
Decree Plantiff:

6. **GENERAL INFORMATION**

a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:
20" Well, 221 ft. deep, equipped with a 50-hp vertical turbine pump with a 12" discharge line into the distribution system. The well, motor and control valve are located in a lockable building. Flow meter in a secure vault.

b. Who owns the property at the point(s) of diversion? City of Pocatello
If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

c. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes	No	
☐	☑	undergone a period of five or more consecutive years of non-use,
☐	☑	currently used in a mitigation plan limiting the use of water under the right(s), or
☐	☑	currently enrolled in a Federal set-aside program limiting the use of water under the right(s)?

If yes, describe:

d. Is any portion of the water right(s) proposed to be changed currently leased to the Water Supply Bank? ☐ Yes ☑ No

☐ If yes and there are multiple owners, attach a Lessor Designation form.
☐ If yes, the individual owner or designated lessor must complete, sign and attach an IRS Form W-9.
(Disregard if these items are on file and ownership has not changed.)

7. **MAP** – ☑ Attach a map of the diversion, measurement, control and distribution system. Include the place of use if a split of the water right occurred. Clearly label the map with township, range, section and ¼ ¼ of section information. The *Map Tool*, available at *maps.idwr.idaho.gov/TransferApplicationLayouts/* provides a satisfactory template for creating the required map.

8. **SIGNATURE** – The information in this application is true to the best of my knowledge. I understand any willful misrepresentations in this application may result in rejection of the application or cancellation of an approval.

Signature of applicant or authorized agent	Print name and title if applicable	Date
BBlad	Brian Blad, Mayor	7/14/16
Signature of applicant or authorized agent	Print name and title if applicable	Date
	Justin Armstrong, Water Superintendent	7-7-16

9. **FEE** - ☑ The application filing fee provided in Section 42-221, Idaho Code, must be submitted with the application for transfer. The Application fee is based on the total amount of water proposed for transfer in Item 4: the larger fee for either cubic feet per second (diversion rate) or acre-feet per annum (storage volume). The *Fee Schedule* is available at *www.idwr.idaho.gov, Water Right Transfers, Step 4* and in the *Application for Transfer Instructions*.

FOR DEPARTMENT USE ONLY

Transfer includes _____ pages of attachments. Received by JL Date 7/25/16
Fee paid 740.00 Date 7/25/16 Receipted by JL Receipt # 0042298
Preliminary review by _____ Date _____ Active in the Water Supply Bank? Yes ☐ No ☐
W-9 received? Yes ☐ No ☐ Name on W-9 _____ W-9 forwarded to fiscal? Yes ☐ No ☐
(Do NOT scan the W-9 – confidential information is held by fiscal only)

81117

AIR PORT # 3

State of Idaho
Department of Water Resources
WATER RIGHT LICENSE

License of Water Right No. 29-7450 Priority June 13, 1978 Amount 3.34 cfs

THIS IS TO CERTIFY, that City of Pocatello

of Pocatello, Idaho, has complied with the terms and conditions of Permit No. 29-7450 issued pursuant to Application for Permit dated June 13, 1978, and has submitted proof to the Department of Water Resources on April 11, 1983, that he has applied water to a beneficial use; an examination by the Department indicates that the works have a capacity for the diversion of 3.34 cfs of water from a groundwater source, tributary to ____ and that the permit holder has applied to a beneficial use and established a right to use water as follows:

Beneficial Use	Period of Use		Rate of Diversion	Annual Volume
Municipal	from January 1	to December 31	at 3.34 cfs	and N/A
____	from ____	to ____	at ____ cfs	and ____
____	from ____	to ____	at ____ cfs	and ____

(both dates inclusive)

Subject, however, to the condition that no more than 3.34 cfs of water be diverted at any one time, and that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed N/A acre feet per year, said waters to be diverted within the NE¼SE¼ Section 10, Twp 6S, Rge 33E in the County of Power

Description and location of place of use: City of Pocatello Municipal Airport

Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres irrigated ____

81117

CONDITIONS OF APPROVAL

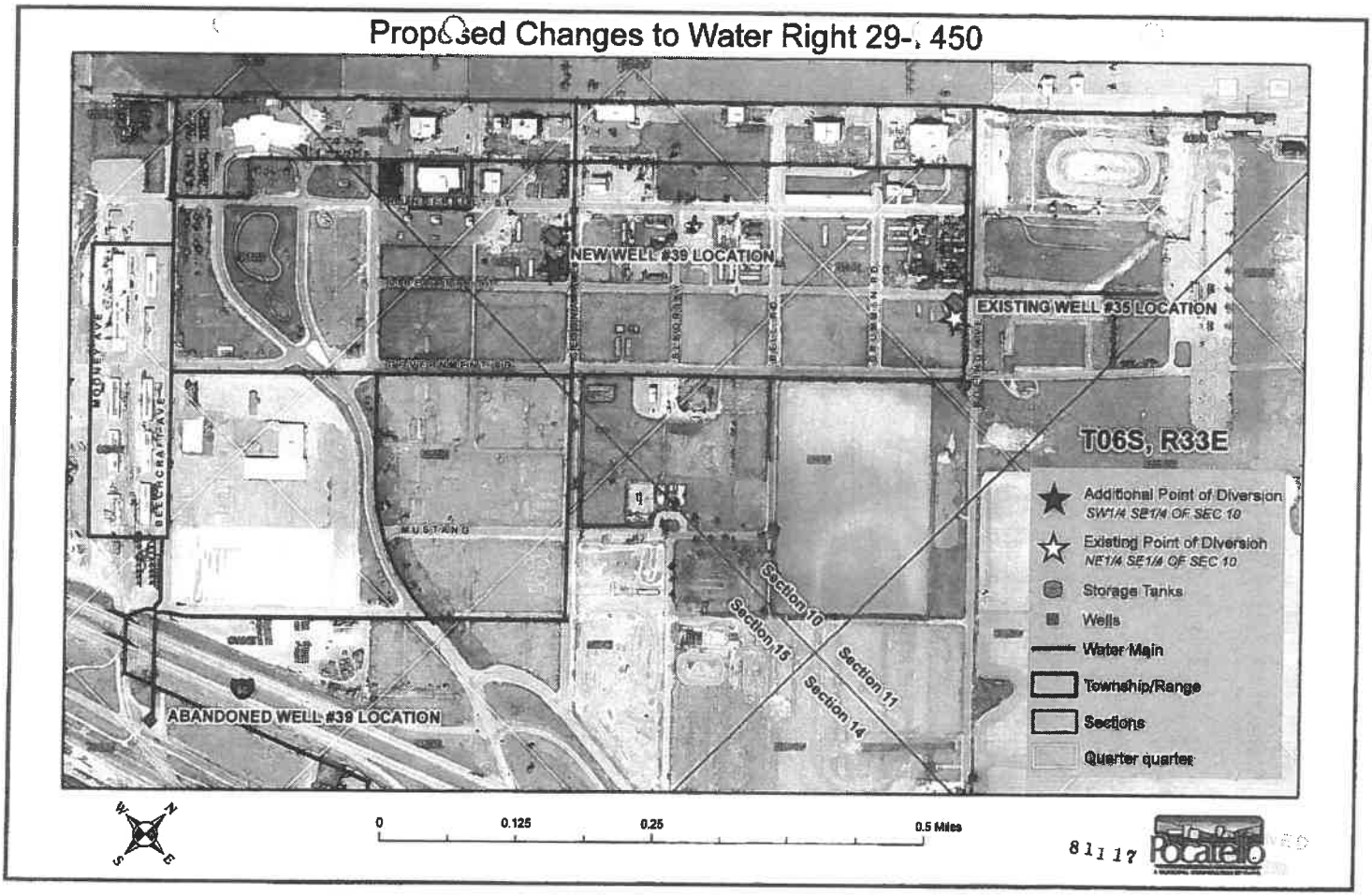
a. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

b. The right to the use of the water hereby confirmed is restricted and appurtenant to lands or place of use herein described, and is subject to all prior water rights, as provided by the laws of Idaho.

c. Any water right confirmed in this license for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this license and shall not give rise to any right or claim against any future rights to the use of water other than hydropower, within the State of Idaho initiated later in time than the priority of this license.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 7TH day of AUGUST, 19 86.

Acting for the Director


Proposed Changes to Water Right 29-. 450
NEW WELL #39 LOCATION
EXISTING WELL #35 LOCATION
ABANDONED WELL #39 LOCATION
T06S, R33E
Additional Point of Diversion
SW1/4 SE1/4 OF SEC 10
Existing Point of Diversion
NE1/4 SE1/4 OF SEC 10
Storage Tanks
Wells
Water Main
Township/Range
Sections
Quarter quarter
Section 10
Section 15
Section 11
Section 14
0
0.125
0.25
0.5 Miles
8 1 1 17
Pocatello

Idaho Statutes

TITLE 50
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CHAPTER 6
MAYOR

50-602. MAYOR, ADMINISTRATIVE OFFICIAL. The mayor, except as provided in sections 50-801 through 50-812[, Idaho Code], shall be the chief administrative official of the city, preside over the meetings of the city council and determine the order of business subject to such rules as the council may prescribe, have a vote only when the council is equally divided, have the superintending control of all the officers and affairs of the city, preserve order, and take care that the ordinances of the city and provisions of this act are complied with and enforced.

History:
[50-602, added 1967, ch. 429, sec. 122, p. 1249.]

81117

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History:
[50-607, added 1967, ch. 429, sec. 127, p. 1249.]

81117

MEMORANDUM

Date: October 5, 2016

To: Transfer 81117

From: Scott Stosich

Re: Review & Evaluation of Sufficiency of Information

This transfer proposes to change one of the points of diversion associated with water right 29-7450. The water right currently has two PODs. The POD located at SWNE of Sec. 15 T06S R33E will be moved to the SWSWSE of Sec. 10. The well in Section 15, designated by the city as Well #39, will be abandoned. The new well will be designated as Well #39 and will be equipped with a flow meter. There is no change to the place of use.

There are five water rights associated with Well #39 in Section 15: 29-2274, 29-2338, 29-7375, 29-7450 and 29-13638. In Feb 2015, the city filed Transfer 79826 to change the point of diversion for water right 29-13638 from the Section 15 well to the proposed well site in the SWSWSE of Section 10. Transfer 79826 was approved in May 2015. The city filed this transfer application to change the point of diversion for water right 29-7450. The city filed a third transfer application (81155) to make the same adjustment to water rights 29-2274, 29-2338 and 29-7375. It is unclear why the city filed three transfer applications to make a change that could have been accomplished in a single application.

Authority to File:
The applicant is the current owner of the water right according to IDWR records. According to Power County taxlot data, the applicant is the property owner of the property at the new point of diversion. The application is signed by Mayor Brian Blad, and Water Superintendent Justin Armstrong, who have authority to make changes to water rights held by the city.

Water Right Validity:
Water right 29-7450 was decreed in the SRBA in 2012. It is part of the municipal system for the City of Pocatello. Forfeiture is not an issue.

Injury to Other Water Rights:
Other rights will not be injured by the proposed change to this water right. The change to the point of diversion will not result in an increase in rate or volume. Applicant was not required to perform an analysis using the ESPA Transfer Tool because the existing well and proposed well are within the same model cell. The application was advertised and no protests were received.

Enlargement of Use:
The proposed change will not result in enlargement because neither the rate or volume will increase as a result of the transfer.

Local Public interest:
No issues identified.

Beneficial Use/Conservation of Water Resources:
No issues identified.

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT
TRANSFER NO. 81117

This is to certify that: CITY OF POCATELLO
911 N 7TH AVE
PO BOX 4169
POCATELLO, ID 83205

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

Water Right	Origin/Basis	Priority Date	Diversion Rate	Diversion Volume	Acre Limit	Total Acres	Source
29-7450	WR/DECREED	6/13/1978	3 340 cfs	N/A	N/A	N/A	GROUND WATER

Purpose of Transfer (Changes Proposed)

Current Number	Split	POD	POU	Add POD	Period of Use	Nature of Use
29-7450	NO	YES	NO	NO	NO	NO

Summary Of Water Rights After the Approved Change

Existing Right	New No. (Changed Portion)	Transfer Rate	Transfer Volume	Acre Limit	Total Acres	New No. (remaining portion)	Remaining Rate	Remaining Volume	Remaining Acre Limit	Remaining Total Acres
29-7450	29-7450	3 340 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		**3.340 cfs**	**N/A**	**N/A**	**N/A**		**N/A**	**N/A**	**N/A**	**N/A**

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 6th day of December, 2016

Water Resources Program Manager

WATER RIGHT NO. 29-7450

As Modified by Transfer No. 81117

In accordance with the approval of Transfer No. 81117, Water Right No. 29-7450 is now described as follows:

Right Holder: CITY OF POCATELLO
911 N 7TH AVE
PO BOX 4169
POCATELLO, ID 83205

Priority Date: 6/13/1978

Source: GROUND WATER

BENEFICIAL USE	From	To	Diversion Rate
MUNICIPAL	1/01	to 12/31	3.340 cfs
			3.340 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	NESE	Sec 10 Twp 06S Rge 33E POWER County
GROUND WATER	SWSWSE	Sec 10 Twp 06S Rge 33E POWER County

CONDITIONS OF APPROVAL

1. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from Pocatello Well No. 35 located in T06S, R33E, S10, NESE.
2. Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.
3. This right does not grant any right-of-way or easement across the land of another.
4. Prior to diversion and use of water under Transfer approval 81117, the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion, in accordance with Department specifications.
5. Upon specific notification of the Department, the right holder shall install and maintain data loggers to record water usage information at the authorized point(s) of diversion in accordance with Department specifications.
6. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 120.
7. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.

WATER RIGHT NO. 29-7450

As Modified by Transfer No. 81117

CONDITIONS OF APPROVAL

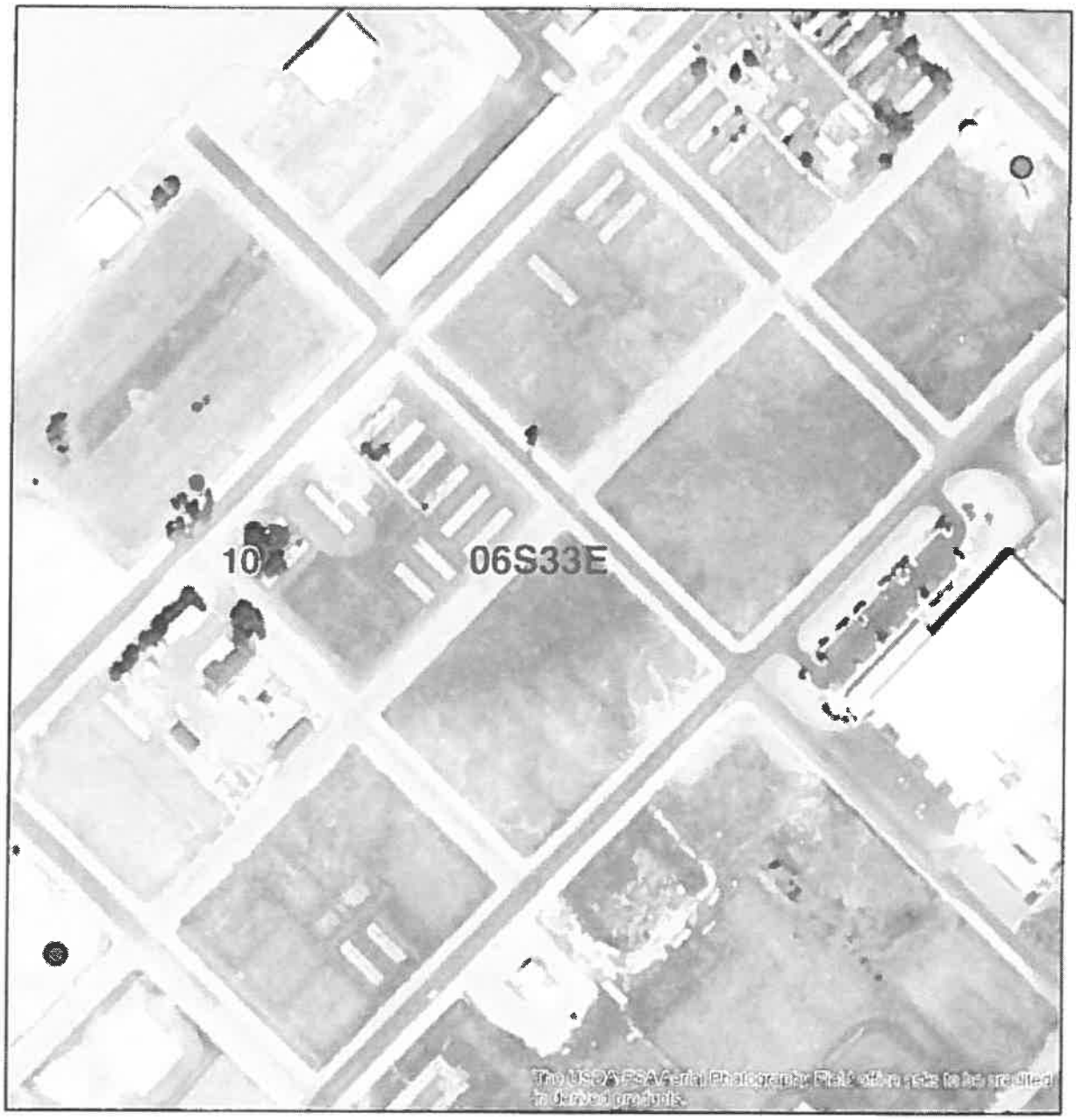
8. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.

9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

10. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

Transfer Approval 81117

This map depicts the IRRIGATION place of use boundary at the time
of this transfer approval and is attached to the approval document solely for illustrative purposes.



Legend

- Water Right POD
- Water Right POU
- Township/Range
- Sections

0 115 230 460 Feet

1 inch = 255 feet

N

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 81155 IN THE NAME OF CITY OF POCATELLO	)))	PRELIMINARY ORDER DISMISSING PROTEST AND APPROVING TRANSFER

PROCEDURAL BACKGROUND

On July 25, 2016, City of Pocatello ("Pocatello") filed Application for Transfer No. 81155 ("Application 81155") with the Idaho Department of Water Resources ("Department"). The Department published notice of Application 81155 on September 8 and 15, 2016. A protest was filed by Spartan Portneuf LLC ("Spartan").

The Department conducted a pre-hearing conference on June 9, 2017. The parties were unable to resolve the issues of protest and requested that the Department conduct an administrative hearing to decide the contested case. A hearing was scheduled for October 17, 2017.

Pocatello filed a *Motion to Dismiss Protest and in the Alternative Motion in Limine* ("Motion") on June 26, 2017. Spartan filed a *Response to City's Motion to Dismiss Protest and Objection to Alternative Motion in Limine* ("Response") on July 10, 2017. Pocatello filed a *Reply in Support of Motion to Dismiss Protest and in the Alternative Motion in Limine* ("Reply") on July 13, 2017.

FINDINGS OF FACT

1. Application 81155 proposes to change[1] the location of one of the thirteen shared points of diversion for the following water rights:

Water Right No.	Priority Date	Diversion Rate	Source	Beneficial Use
29-2274	6/15/1948	9.69 cfs	Ground Water	Municipal
29-2338	9/1/1953	9.53 cfs	Ground Water	Municipal
29-7375	2/24/1977	2.23 cfs	Ground Water	Municipal

[1] In completing Application 81155, Pocatello marked that it intended to both change point(s) of diversion for and add point(s) of diversion to water rights 29-2274, 29-2338 and 29-7375. However, the other portions of the application form and the other documents submitted with the application make it clear that Pocatello only intends to change a point of diversion.

EXHIBIT 3

2. The Snake River Basin Adjudication ("SRBA") Court issued partial decrees for water rights 29-2274, 29-2338 and 29-7375 on April 26, 2012, with the following authorized ground water points of diversion:

NESE	Sec. 10, Twp 06S, Rge 33E,	POWER County	(Well 35)
NESE	Sec. 12, Twp 06S, Rge 33E,	POWER County	(Well 11)
SWNE	Sec. 15, Twp 06S, Rge 33E,	POWER County	(Well 39)
NWSW	Sec. 15, Twp 06S, Rge 34E,	BANNOCK County	(Well 8)
NENW	Sec. 26, Twp 06S, Rge 34E,	BANNOCK County	(Well 10)
NWSE	Sec. 27, Twp 06S, Rge 34E,	BANNOCK County	(Well 9)
SENE	Sec. 35, Twp 06S, Rge 34E,	BANNOCK County	(Well 12)
SENE	Sec. 35, Twp 06S, Rge 34E,	BANNOCK County	
NWSE	Sec. 35, Twp 06S, Rge 34E,	BANNOCK County	(Well 4)
NWSE	Sec. 35, Twp 06S, Rge 34E,	BANNOCK County	(Well 6)
NWSE	Sec. 35, Twp 06S, Rge 34E,	BANNOCK County	(Well 7)
SESE	Sec. 01, Twp 07S, Rge 34E,	BANNOCK County	(Well 13)
SWSW	Sec. 16, Twp 07S, Rge 35E,	BANNOCK County	(Well 44)

3. Water rights 29-2274, 29-2338 and 29-7375 do not include any conditions limiting the amount of water which can be diverted from any single point of diversion. The entire combined authorized diversion rate for the three rights (21.45 cfs) could be diverted from any one of the thirteen points of diversion identified on the rights.

4. Application 81155 proposes to change the point of diversion associated with Well 39. The existing point of diversion is located in the SWNE, Section 15, T06S, R33E. The proposed point of diversion is located approximately ½ mile to the north, in the SWSWSE, Section 10, T06S, R33E. Application 81155 also proposes to remove two points of diversion (NESE, Sec. 12, T06S, R33E and SENE, Sec. 35, T06S, R34E) from the water rights.[2]

[2] Water rights 29-2274, 29-2338 and 29-7375 currently describe thirteen points of diversion. In completing Application 81155, Pocatello only identified eleven proposed points of diversion. In its Reply, Pocatello asserts it "does not intend to abandon any of its authorized points of diversion." Reply, Armstrong Aff. at ¶7. This statement, however, is not consistent with the proposed points of diversion listed in Application 81155. Pocatello acknowledges that it no longer owns the well in the NESE, Sec. 12, T06S, R33E (Well 11). Reply, Armstrong Aff. at ¶4. Further, Pocatello does not identify more than one existing well in the SENE, Sec. 35, T06S, R34E *See* Application Map (Well 12 is the only well shown in the SENE, Sec. 35, T06S, R34E). There is no evidence in the record that a second city well has ever existed in the SENE, Sec. 35, T06S, R34E. Pocatello claims the exclusion of the two points of diversion was "due to the space constraints of the application form." Reply, Armstrong Aff. at ¶5. Such a claim is not convincing, however, in light of Pocatello identifying Wells 4, 6 and 7 in a single row on the Application form. Application 81155, page 1. The same technique could have been adopted for the other wells, or an additional page of proposed points of diversion could have been provided with the application.

5. Spartan's protest includes the following questions and responses:

Basis of protest (including statement of facts and law upon which the protest is based):

CONTEMPLATED TRANSFER TO OTHER WELL, SPECIFICALLY CITY WELL #44 LOCATED AT SW1/4 SW1/4 SEC 16, TWP7.S. R35E. WILL EXACERBATE EXISTING PROBLEM OF CITY'S OPERATION OF WELL #44 HAS BEEN, AND CONTINUES TO BE, INJURIOUS TO WELL OPERATED BY SPARTAN PORTNEUF LLC UNDER IT'S SENIOR RIGHT & LICENSE.

What would resolve your protest?

CURTAILMENT, REDUCTION IN VOLUME PUMPED BY CITY AT WELL #44, OR CALL. SHOULD CONDUCT FLOW MEASUREMENT STUDY FOR ONE YEAR PRIOR TO ACTION BY THE DEPARTMENT.

6. Spartan owns water right 29-13425, which authorizes the diversion of water from a ground water well ("Spartan Well") located in the SWSW, Section 16, T07S, R35E. The following water rights are associated with the Spartan Well:

Right No.	Priority	Rate	Volume	Owner	Beneficial Uses
29-13424	9/5/1951	1.98 cfs	453.6 af	Various (not Spartan)	Irrigation
29-13425	9/5/1951	0.676 cfs	154.4 af	Spartan	Irrigation/Stockwater
29-14148	9/5/1951	0.22 cfs	49.2 af	Paul Katsilometes	Irrigation

7. Pocatello's Well 44 is located approximately 300 feet south of the Spartan Well. Application 81155 does not propose to make any change to Well 44 or the authorized point of diversion located in the SWSW, Section 16, T07S, R35E.

8. Well 44 and the Spartan Well are located 12.1 miles away from existing Well 39. Well 44 and the Spartan Well are located approximately 12.4 miles away from proposed Well 39.

9. In April 1999, Pocatello filed Application for Transfer No. 5452 ("Application 5452"), proposing to change points of diversion for and add points of diversion to water rights 29-2274, 29-2338 and 29-7375. Prior to Application 5452, water right 29-2274 described nine points of diversion, water right 29-2338 described six points of diversion and water right 29-7375 described one point of diversion. Pocatello proposed listing the same thirteen points of diversion on all three water rights. Twelve of the thirteen proposed points of diversion were purportedly for existing wells. In addition, Pocatello proposed drilling a new well in the SWSW, Sec. 16, T07S, R35E (Well 44). The Department approved Transfer 5452 on June 28, 1999, authorizing thirteen shared points of diversion for water rights 29-2274, 29-2338 and 29-7375. The SRBA partial decrees for water rights 29-2274, 29-2338 and 29-7375 reflected the changes approved by the Department in Transfer 5452.

RELEVANT LEGAL PROVISIONS

Idaho Code § 42-222(1) states, in pertinent part:

> Upon receipt of such [transfer] application it shall be the duty of the director of the department of water resources to examine [the] same, obtain any consent required in section 42-108, Idaho Code, and if otherwise proper to provide notice of the proposed change in a similar manner as applications under section 42-203A, Idaho Code. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication.

Idaho Code § 42-222(1) also sets forth the criteria used by the Department to evaluate transfer applications:

> The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter.

By rule, a protest filed against an application for transfer is considered a pleading. IDAPA 37.01.01.250.01. Protests should "[f]ully state the facts upon which they are based" and "[r]efer to the particular provisions of statute, rule, order or other controlling law upon which they are based." IDAPA 37.01.01.250.02. A presiding officer has the authority to dismiss a pleading that is "defective, insufficient or late." IDAPA 37.01.01.304.

ANALYSIS

Pocatello advances three primary arguments in support of its Motion. First, Pocatello argues that Spartan's protest is defective and insufficient because it is not related to the change being proposed in Application 81155. Second, Pocatello argues that Spartan's protest constitutes an impermissible collateral attack on the SRBA partial decrees for water rights 29-2274, 29-2338 and 29-7375. Third, Pocatello argues that Spartan lacks standing to file a protest against Application 81155.

Spartan's Protest

According to Idaho Code § 42-222(1) a protest may be filed against a "proposed change." Section 42-222(1) grants the Department the authority to evaluate the "proposed change." Issues of protest which are not related to the proposed change fall outside of the scope of the Department's review authority for transfer applications.

Spartan's protest focuses on alleged injury to the Spartan Well resulting from Pocatello's operation of Well 44. In its Response, Spartan attempts to connect the Well 44 injury concerns to the change proposed in Application 81155. Spartan argues Pocatello's removal of two points of diversion from water rights 29-2274, 29-2338 and 29-7375 could alter the way Pocatello operates its interconnected municipal delivery system. Spartan also argues the change in location of Well 39 could alter the way Pocatello operates its system. Spartan asserts that any change to the structure of Pocatello's delivery system could shift more demand to Well 44 and exacerbate the alleged injury to the Spartan Well resulting from the operation of Well 44. Spartan's arguments are not sufficient to connect the injury concerns associated with the operation of Well 44 to the change proposed in Application 81155.

Spartan conflates the authorization to divert pursuant to a recorded water right with the operational decisions of a water user. When the Department evaluates a transfer application for injury to other water rights, it cannot predict how a water user will operate its system in the future. Therefore, the Department must assume that the water user will operate to the full extent authorized by the water right. If a transfer application includes multiple proposed points of diversion, and does not include an agreement to limit the amount of water diverted at any of the proposed points of diversion, the Department must assume that the full diversion rate and full diversion volume could be diverted from any one of the proposed points of diversion. In the absence of a limit on the diversion rate or diversion volume at certain points of diversion, the expected operation of the system is of little consequence in an injury analysis. Injury should be evaluated based on the diversion rates and volumes proposed on the face of a transfer application.

In this case, the changes proposed by Application 81155 will have no effect on Pocatello's authorization to divert from Well 44. Currently, water rights 29-2274, 29-2338 and 29-7375 authorize Pocatello to divert the entire combined diversion rate (21.45 cfs) from Well 44. In theory, Pocatello could abandon all of the other points of diversion listed on water rights 29-2274, 29-2338 and 29-7375, except for Well 44, and still operate within the parameters of its water rights. Spartan's argument that eliminating points of diversion or changing the location of Well 39 may possibly increase the demand in Well 44 is unavailing. As long as it does not exceed the overall rate limits of its water rights, Pocatello can already increase the demand on Well 44, regardless of the existence of other wells on Pocatello's system or the location of Well 39. If Pocatello's operation of Well 44 is causing injury to Spartan's water rights, the proper forum to address such injury is within a delivery call proceeding.

Spartan's protest does not identify any issues related to the proposed change for Well 39. The protest does not even refer to Well 39 or the existing or proposed points of diversion for Well 39. Spartan's protest focuses entirely on Well 44, which is located over 12 miles away from Well

39. Application 81155 does not propose to change the diversion rate authorized at Well 44 in any way. Pocatello is already authorized to divert the full quantity listed on water rights 29-2274, 29-2338 and 29-7375 from Well 44. If Application 81155 were approved, the authorized diversion rate from Well 44 will not increase.

Spartan's protest is defective because it does not identify any issues related to the changes proposed in Application 81155. Therefore, Spartan's protest should be dismissed.

Collateral Attack on SRBA Decrees

Spartan contends it is not asking for reconsideration of the conditions included on or excluded from water rights 29-2274, 29-2338 or 29-7375 through Transfer 5452 or the partial decrees issued in the SRBA. "With its Protest, [Spartan] simply contests this proposal on the basis that it will further injure right No. 29-13425 – it is not challenging the underlying determinations of T-5452 or any SRBA decree." Response, page 4.

Spartan's Response is inconsistent with other documents in the record. For example, an April 14, 2017 letter from Spartan to Pocatello states: "It is our position that a condition consistent with what the Idaho Supreme Court approved in *Pocatello v. Idaho* should be affixed to the three water rights subject to the proposed transfer. The condition, which the Supreme Court deemed necessary for effective administration of Pocatello's interconnected well system under the prior appropriation doctrine, is a reasonable accommodation." Response, Ex. 1, page 2.

Because Spartan has now confirmed that it is not challenging the water right conditions for water rights 29-2274, 29-2338 and 29-7375 set forth in Transfer 5452 or the SRBA partial decrees, the question of an impermissible collateral attack on the partial decrees is moot.

Standing

Because Spartan's protest is defective and will be dismissed, the hearing officer does not need to address the question of standing.

Injury to Existing Water Rights

The proposed point of diversion for Well 39 is located approximately ½ mile north of the existing point of diversion for Well 39. According to the Department's water right records, the closest ground water well to the proposed point of diversion is owned by Pocatello (Well 35). No other recorded water rights are located within ½ mile of the proposed point of diversion for Well 39. Pocatello is already authorized to divert the full combined diversion rate under water rights 29-2274, 29-2338 and 29-7375 from the existing point of diversion for Well 39. Approval of Application 81155 will not increase the authorized diversion rate from Well 39. There is no evidence in the record suggesting that approval of Application 81155 will injure existing rights.

Enlargement

There is no evidence in the record suggesting that approval of Application 81155 will result in an enlargement of use under water rights 29-2274, 29-2338 or 29-7375.

Conservation of Water Resources

There is no evidence in the record suggesting the proposed change is contrary to the conservation of water resources within the state of Idaho.

Local Public Interest

There is no evidence in the record suggesting the proposed change is not in the local public interest as the term is defined in Idaho Code § 42-202B.

CONCLUSIONS OF LAW

The protest filed by Spartan is defective because it does not identify any issues related to the changes proposed in Application 81155. Therefore, Spartan's protest should be dismissed pursuant to IDAPA 37.01.01.304.

Application 81155 satisfies the elements of review set forth in Idaho Code § 42-222(1) and should be approved.

ORDER

IT IS HEREBY ORDERED that the protest filed by Spartan against Application 81155 is DISMISSED pursuant to Rule 304 of the Department's Rules of Procedure (IDAPA 37.01.01).

Because Spartan's protest has been dismissed, and because there are no other protests against Application 81155, the hearing officer need not address Pocatello's Alternative Motion in Limine.

IT IS FURTHER ORDERED that Application 81155 is APPROVED as set forth in Transfer Approval 81155 issued in conjunction with this order.

Dated this 8th day of August, 2017.

James Cefalo
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of August 2017, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER DISMISSING PROTEST AND APPROVING TRANSFER, with the United States Postal Service, certified mail with return receipt requested, postage prepaid and properly addressed to the person(s) listed below:

US MAIL - CERTIFIED
RE: APPLICATION FOR TRANSFER 81155

Sarah Klahn
Mitra Pemberton
White & Janikowski, LLP
511 Sixteenth Street, Suite 500
Denver, CO 80202

Laura Schroeder
Jim Browitt
Schroeder Law Offices P.C.
1915 NE Cesar E Chavez Blvd.
Portland, OR 97212

Courtesy copies sent by US Mail to:

Kirk Bybee
City of Pocatello
911 North 7th Avenue
PO Box 4169
Pocatello, ID 83205-4169

Thomas Katsilometes
PO Box 777
Boise, ID 83701-0777

Sharla Cox
Administrative Assistant

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

> Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
>
> (a) The petition for reconsideration is disposed of; or
> (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

i. A hearing was held,
ii. The final agency action was taken,
iii. The party seeking review of the order resides, or
iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
SEP 26 2016
Department of Water Resources
Eastern Region

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, and 42-222, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested TRANSFER APPLICATION # 81155 BY THE CITY OF POCATELLO
2. Name of protestant SPARTAN PORTNEUF L.L.C.
3. Protestant's Representative for service (If different than protestant)
   THOMAS J. KATSILOMETES P.L.L.C.
4. Service mailing address P.O. BOX 777, BOISE, ID 83701
5. Service telephone no. (208) 529-9377 Email Address: TJK@2081AWYERS.COM
6. Basis of protest (including statement of facts and law upon which the protest is based)
   CONTEMPLATED TRANSFER TO OTHER WELL, SPECIFICALLY CITY WELL #44 LOCATED AT SW¼ SW¼ SEC 16, TWP 7S. R35E. WILL EXACERBATE EXISTING PROBLEM OF CITY'S OPERATION OF WELL #44 HAS BEEN AND CONTINUES TO BE INJURIOUS TO WELL OPERATED BY SPARTAN PORTNEUF LLC UNDER IT'S SENIOR RIGHT & LICENCE. (additional pages may be attached to describe nature of the protest)
7. What would resolve your protest? CURTAILMENT, REDUCTION IN VOLUME PUMPED BY CITY AT WELL #44, OR CALL. SHOULD CONDUCT FLOW MEASUREMENT STUDY FOR ONE YEAR PRIOR TO ACTION BY THE DEPARTMENT.

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 23RD day of SEPTEMBER, 20 16.

Marcia Katsilometes, MANAGER-SPARTAN PORTNEUF LLC.
Protestant

Thomas J. Katsilometes, Esq.
Protestant's Representative

Receipt #20424774

EXHIBIT 4

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 81155 IN THE NAME OF CITY OF POCATELLO

ORDER REMANDING CONTESTED CASE; ORDER DENYING REQUEST TO EXCLUDE EVIDENCE

BACKGROUND

On July 25, 2016, the City of Pocatello ("Pocatello") filed Application for Transfer No. 81155 ("Application 81155") with the Idaho Department of Water Resources ("Department"). Application 81155 proposes to change the location of Well 39, one of the thirteen shared points of diversion decreed for Pocatello's water right nos. 29-2274, 29-2338 and 29-7375 by the Snake River Basin Adjudication ("SRBA") Court on April 26, 2012. The existing point of diversion is located in the SWNE, Section 15, T06S, R33E. The proposed point of diversion is located approximately ½ mile to the north, in the SWSWSE, Section 10, T06S, R33E. The entire combined authorized diversion rate for water right nos. 29-2274, 29-2338 and 29-7375 (21.45 cfs) can be diverted from any one of the thirteen points of diversion identified on the rights. While the partial decrees for water right nos. 29-2274, 29-2338 and 29-7375 contain thirteen shared points of diversion, Application 81155 only proposes eleven points of diversion to be included on the water rights after the proposed change.

The Department published notice of Application 81155 on September 8 and 15, 2016. Spartan Portneuf LLC ("Spartan") filed a protest. Spartan owns water right no. 29-13425 which authorizes the diversion of water from a ground water well ("Spartan Well") located in the SWSW, Section 16, T07S, R35E. Pocatello's Well 44, one of the points of diversion for water right nos. 29-2274, 29-2338 and 29-7375, is located approximately 300 feet south of the Spartan Well. Well 44 and the Spartan Well are located 12.1 miles away from existing Well 39. Well 44 and the Spartan Well are located approximately 12.4 miles away from proposed Well 39.

Spartan's protest includes the following questions and responses:

Basis of protest (including statement of facts and law upon which the protest is based):

CONTEMPLATED TRANSFER TO OTHER WELL, SPECIFICALLY CITY WELL #44 LOCATED AT SW1/4 SW1/4 SEC 16, TWP7.S. R35E. WILL

EXHIBIT 5

EXACERBATE EXISTING PROBLEM OF CITY'S OPERATION OF WELL #44 HAS BEEN, AND CONTINUES TO BE, INJURIOUS TO WELL OPERATED BY SPARTAN PORTNEUF LLC UNDER IT'S SENIOR RIGHT & LICENSE.

What would resolve your protest?

CURTAILMENT, REDUCTION IN VOLUME PUMPED BY CITY AT WELL #44, OR CALL. SHOULD CONDUCT FLOW MEASUREMENT STUDY FOR ONE YEAR PRIOR TO ACTION BY THE DEPARTMENT.

A Department hearing officer conducted a pre-hearing conference on June 9, 2017. The parties were unable to resolve the issues of protest and requested that the hearing officer conduct an administrative hearing to decide the contested case. A hearing was scheduled for October 17, 2017.

On June 26, 2017, Pocatello filed a *Motion to Dismiss Protest and in the Alternative Motion in Limine* ("Motion"). Pocatello argued Spartan's protest should be dismissed as "defective" because it "exclusively involves claims of injury from the operation of Well #44" and "does not complain of injury from the relocation of Well #39." *Motion* at 4-5.

Spartan filed a *Response to City's Motion to Dismiss Protest and Objection to Alternative Motion in Limine* ("Response") on July 10, 2017. Spartan disagreed with Pocatello's assertion that Application 81155 only "relates to the relocation and operation of Well No. 39" and pointed to Application 81155's exclusion of two points of diversion from water right nos. 29-2274, 29-2338 and 29-7375. *Response* at 2. Spartan asserted "it is not unreasonable to question how this change will affect the production demands on the other 11 wells, among them No. 44." *Id.* at 3. Spartan reiterated that it "contests the changes proposed in [Application 81155], changes it believes will 'exacerbate' the 'existing problem.'" *Id.* at 4.

On August 8, 2017, the hearing officer issued a *Preliminary Order Dismissing Protest and Approving Transfer* ("Dismissal Order"). The hearing officer determined that "Spartan's arguments are not sufficient to connect the injury concerns associated with the operation of Well 44 to the change proposed in Application 81155." *Id.* at 5. The hearing officer concluded "Spartan's protest is defective because it does not identify any issues related to the changes proposed in Application 81155." *Id.* at 6. The hearing officer dismissed Spartan's protest and approved Application 81155. *Id.* at 7.

On August 22, 2017, Spartan filed *Protestant's Petition for Reconsideration of Preliminary Order Dismissing Protest and Approving Transfer*. The hearing officer issued an *Order Denying Petition for Reconsideration* on September 5, 2017.

On September 19, 2017, Spartan filed a *Brief and Exceptions to Preliminary Order Dismissing Protest and Approving Transfer* ("Exceptions"). On October 2, 2017, Pocatello filed *Pocatello's Response to Brief and Exceptions to Preliminary Order Dismissing Protest and Approving Transfer* ("Response to Exceptions").

ANALYSIS

Spartan contends the hearing officer erred by dismissing its protest and asserts Application 81155 is deficient. *Exceptions* at 3-9. Spartan's arguments will be addressed in turn.

1. Spartan's protest should not be dismissed.

Spartan asserts the hearing officer erred by dismissing its protest and asks the Director to "allow the contested case for [Application 81155] to proceed." *Exceptions* at 8-9. Pocatello asserts the hearing officer "properly dismissed Spartan's Protest because its claim of injury from the pumping of Well #44 had nothing to do with the contemplated transfer." *Response to Exceptions* at 2.

Idaho Code § 42-222(1) requires that the Department publish notice of an application for transfer which "shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication." Idaho Code § 42-222(1) also requires that, "[u]pon the receipt of any protest, accompanied by the statutory filing fee as provided in section 42-221, Idaho Code, it shall be the duty of the [Director] to investigate the same and to conduct a hearing thereon." The Department's Rule of Procedure 250 states that "pleadings opposing an application or claim or appeal as a matter of right are called 'protests.'" IDAPA 37.01.01.250.01. Rule of Procedure 304 states that "[d]effective, insufficient or late pleadings may be returned or dismissed." IDAPA 37.01.01.304.

In evaluating Pocatello's request to dismiss Spartan's protest, the hearing officer focused on the language of Idaho Code § 42-222(1) that allows a person to "protest the proposed change." The hearing officer reasoned:

> Spartan's protest does not identify any issues related to the proposed change for Well 39. The protest does not even refer to Well 39 or the existing or proposed points of diversion for Well 39. Spartan's protest focuses entirely on Well 44, which is located over 12 miles away from Well 39. Application 81155 does not propose to change the diversion rate authorized at Well 44 in any way. Pocatello is already authorized to divert the full quantity listed on water rights 29-2274, 29-2338 and 29-7375 from Well 44. If Application 81155 were approved, the authorized diversion rate from Well 44 will not increase.
>
> Spartan's protest is defective because it does not identify any issues related to the changes proposed in Application 81155. Therefore, Spartan's protest should be dismissed.

Dismissal Order at 5-6.

The Director disagrees with the hearing officer's conclusion that "Spartan's protest does not identify any issues related to the proposed change for Well 39." As the hearing officer explained, Spartan argues "that eliminating points of diversion or changing the location of Well 39 may

possibly increase the demand in Well 44" and "exacerbate the alleged injury to the Spartan Well." *Id.* at 5. In other words, Spartan asserts the changes proposed in Application 81155 will cause Pocatello to alter the way it operates its system to "shift more demand to Well 44 and exacerbate the alleged injury to the Spartan Well resulting from operation of Well 44." *Id.* While the hearing officer is correct that "Pocatello is already authorized to divert the full quantity listed on water rights 29-2274, 29-2338 and 29-7375 from Well 44," that does not necessarily mean "the expected operation of the system is of little consequence in an injury analysis." *Id.* It is conceivable that Spartan could present evidence at a hearing regarding Pocatello's current operation of its system and evidence that the changes proposed by Application 81155 will cause Pocatello to shift operation of its system to demand more from Well 44 and injure the Spartan Well. Spartan's argument that eliminating points of diversion and changing the location of Well 39 could possibly increase demand in Well 44 and injure the Spartan well constitutes a protest against the "proposed change" in accordance with Idaho Code § 42-222(1). Spartan's protest is not "defective" and should not have been dismissed. It is the duty of the Department "to investigate the same and to conduct a hearing thereon." Idaho Code § 42-222(1). The Director will remand the contested case to the hearing officer to conduct a hearing on Application 81155 and consider Spartan's protest.

Pocatello asserts that, in the alternative, Spartan's protest should be dismissed because "Spartan's theory of injury amounts to a collateral attack on Pocatello's SRBA decrees." *Response to Exceptions* at 9-10. Spartan's argument that the changes proposed in Application 81155 could result in injury to the Spartan Well does not equate to an attack on Pocatello's authorization to divert the full quantity listed on the SRBA partial decrees for water right nos. 29-2274, 29-2338 and 29-7375 from Well 44. As Spartan previously stated, "[w]ith its Protest, [Spartan] simply contests this proposal on the basis that it will further injure right No. 29-13425 – it is not challenging . . . any SRBA decree." *Response* at 4.

Pocatello also asserts that Spartan's protest should be dismissed because "there is no connection between the conduct challenged in this transfer and Spartan's claimed injury" and, therefore, "Spartan does not have standing to protest this transfer." *Response to Exceptions* at 9-10. The Director disagrees. As discussed above, Spartan argues "that eliminating points of diversion or changing the location of Well 39 may possibly increase the demand in Well 44" and "exacerbate the alleged injury to the Spartan Well." *Dismissal Order* at 5. Spartan's argument alleges a connection between the changes proposed in Application 81155 and possible injury to the Spartan Well. Spartan has standing to protest Application 81155.

Finally, Pocatello argues that, "if the Director determines remand is proper," the Director should "exclude evidence regarding Well #44" pursuant to the Department's Rule of Procedure 600. Rule 600 allows a hearing officer to "exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho." IDAPA 37.01.01.600. Rule 600 also states "[e]vidence should be taken by the agency to assist the parties' development of a record, not excluded to frustrate that development." *Id.* The Director will not exclude evidence regarding Well #44. Spartan's argument that eliminating points of diversion and changing the location of Well 39 could possibly increase demand in Well 44 relies upon presentation of evidence regarding Well 44. Such evidence is not irrelevant, repetitious, or inadmissible and exclusion of evidence regarding

Well 44 would frustrate Spartan's ability to develop the record in support of its argument. The Director will order that evidence regarding Well 44 shall not be excluded.

2. **Application 81155 is not deficient.**

Spartan asserts Application 81155 is deficient because 1) Pocatello should have submitted a "notarized statement" with Application 81155 in compliance with the Department's *Transfer Processing Memorandum No 24* ("Memo 24") identifying that Pocatello was proposing to eliminate two points of diversion from water right nos. 29-2274, 29-2338 and 29-7375 and 2) Application 81155 did not "'list the purpose for and a general statement of the reason for the proposed change.'" *Exceptions* at 3-7.

Memo 24 explains that "[a]n application for transfer is not required to relinquish a portion of a water right such as elimination of a purpose of use or a point of diversion," but "[t]he water right owners should provide a notarized statement of relinquishment including specific identification of the water right(s) and the specific reduction(s)." While Memo 24 states water right owners "should provide a notarized statement," Memo 24 does not require that water right owners do so. Failure to submit such notarized statement in support of an application for transfer that proposes removal of points of diversion such as Application 81155 does not mean the application is deficient.[1] Further, Pocatello adequately presented "the purpose for and a general statement of the reason for the proposed change" when it submitted Application 81155 to the Department. Pocatello stated in the letter enclosing Application 81155 that, "[d]ue to the recent relocation and replacement of Well 39 . . . the former well will be properly decommissioned and this point of diversion no longer utilized. [Pocatello] desires to update any formerly associated water rights at the previous location to include the new point of diversion of Well 39 . . . ." Application 81155 is not deficient.

ORDER

IT IS HEREBY ORDERED that this matter is REMANDED to the hearing officer to conduct a hearing including Spartan as a protestant to Application 81155.

IT IS FURTHER ORDERED that Pocatello's request to exclude evidence regarding Well 44 is DENIED.

DATED this 20th day of November 2017.

GARY SPACKMAN
Director

[1] Pocatello does not take "exception" with the hearing officer's exclusion of two points of diversion in the Transfer Approval 81155 issued in conjunction with the Dismissal Order. *Response to Exceptions* at 1. If Application 81155 is approved after an evidentiary hearing on remand, the Transfer Approval 81155 should continue to exclude the two points of diversion.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November 2017, I served a true and correct copy of the foregoing document by the method(s) indicated to the following:

Sarah A. Klahn
Mitra M. Pemberton
White & Jankowski, LLP
511 Sixteenth Street, Suite 500
Denver, CO 80202
sarahk@white-jankowski.com
mitrap@white-jankowski.com

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- [ ] Hand Delivery
- [ ] Overnight Mail
- [ ] Facsimile
- [x] Email

Laura Schroeder
Jim Browitt
Schroeder Law Offices, P.C.
1915 NE Cesar E. Chavez Blvd.
Portland, OR 97212
counsel@water-law.com

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- [ ] Hand Delivery
- [ ] Overnight Mail
- [ ] Facsimile
- [x] Email

COURTESY COPIES TO:

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911 North 7th Avenue
P.O. Box 4169
Pocatello, ID 83205-4169
kibybee@pocatello.us

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- [ ] Hand Delivery
- [ ] Overnight Mail
- [ ] Facsimile
- [x] Email

Thomas J. Katsilometes
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- [x] Email

Kimi White

42-222 POD - 09/14

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
JUL 25 2016
Department of Water Resources
Eastern Region

APPLICATION FOR TRANSFER OF WATER RIGHT – POINT(S) OF DIVERSION

This form may be used to apply to change and/or add points of diversion for existing water rights and to report an ownership change for a water right(s) in connection with the proposed point of diversion change(s). Do not use this form to apply for changes to other elements of a water right. See the *Application for Transfer Instructions* for help completing this form and for mailing addresses of Department offices where your application can be submitted.

Check all that apply:

☑ Change diversion point(s) ☑ Add diversion point(s) ☐ Ownership change ☐ Ownership split

1. **APPLICANT(S)** City of Pocatello Phone (208) 234-6174
2. **MAILING ADDRESS** 911 N. 7th Ave, PO Box 4169 City Pocatello
   State Idaho Zip 83205 Email jarmstrong@pocatello.us

☑ If the applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign for the applicant.

☐ If the applicant is not the current water right(s) owner, attach documentation of authority to file the application.

☐ If the application includes a change in ownership of water right(s), attach a copy of the conveyance document, such as a warranty deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property conveyed or description of the water right if no land is conveyed. Additional fee(s) are required for water right ownership changes; see Item 9 for the fee schedule.

If the ownership change resulted in the water right(s) being split, how did the division occur? Mark one:

☐ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
☐ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.

☐ If the application is not signed by the applicant, attach a Power of Attorney or other documentation providing authority to sign for the applicant.

3. **LIST WATER RIGHT NUMBER(S)** 29-02274, 29-02338, 29-07375

☑ Attach a copy of the water right(s) as recorded, available at *www.idwr.idaho.gov, Water Right Transfers, Step 1*, or by contacting any Department office.

4. **TOTAL AMOUNT OF WATER** transferred is 21.45 (diversion rate) cubic feet per second and/or _____ (storage volume) acre-feet per annum.

5. **POINT OF DIVERSION** – Describe all the point(s) of diversion to be included on the water right(s) after the proposed change.

☐ Attach Eastern Snake Plain Aquifer (ESPA) analysis if this transfer proposes to change a point of diversion affecting the ESPA. ESPA analysis information is available at www.idwr.idaho.gov, *Water Right Transfers, Online Resources*.

New?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
			NE	SE	10	6S	33E	Power	Groundwater	Well 35
X		SW	SW	SE	10	6S	33E	Power	Groundwater	Replacement Well 39
			NW	SW	15	6S	34E	Bannock	Groundwater	Well 8
			NE	NW	26	6S	34E	Bannock	Groundwater	Well 10
			NW	SE	27	6S	34E	Bannock	Groundwater	Well 9
			SE	NE	35	6S	34E	Bannock	Groundwater	Well 12
			NW	SE	35	6S	34E	Bannock	Groundwater	Well 4,6 & 7
			SE	SE	1	7S	34E	Bannock	Groundwater	Well 13
			SW	SW	16	7S	35E	Bannock	Groundwater	Well 44

81155

Transfer No. 81155

EXHIBIT 6

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

6/9/2016

WATER RIGHT NO. 29-2274

Owner Type	Name and Address
Current Owner	CITY OF POCATELLO 911 N 7TH AVE PO BOX 4169 POCATELLO, ID 83205
Attorney	WHITE & JANKOWSKI LLP ATTN SARAH A KLAHN 511 16TH ST STE 500 DENVER, CO 80202 (303)595-9441
Attorney	BEEMAN & ASSOC PC ATTN JOSEPHINE BEEMAN 1019 N 17TH ST BOISE, ID 83702-3304 (208)331-0950

Priority Date: 06/15/1948
Basis: Decreed
Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume

81155

MUNICIPAL	01/01	12/31	9.69 CFS
Total Diversion			9.69 CFS

Location of Point(s) of Diversion:

GROUND WATER NESE	Sec. 10 Township 06S Range 33E POWER County
GROUND WATER NESE	Sec. 12 Township 06S Range 33E POWER County
GROUND WATER SWNE	Sec. 15 Township 06S Range 33E POWER County
GROUND WATER NWSW	Sec. 15 Township 06S Range 34E BANNOCK County
GROUND WATER NENW	Sec. 26 Township 06S Range 34E BANNOCK County
GROUND WATER NWSE	Sec. 27 Township 06S Range 34E BANNOCK County
GROUND WATER SENE	Sec. 35 Township 06S Range 34E BANNOCK County
GROUND WATER SENE	Sec. 35 Township 06S Range 34E BANNOCK County
GROUND WATER NWSE	Sec. 35 Township 06S Range 34E BANNOCK County
GROUND WATER NWSE	Sec. 35 Township 06S Range 34E BANNOCK County
GROUND WATER NWSE	Sec. 35 Township 06S Range 34E BANNOCK County
GROUND WATER SESE	Sec. 01 Township 07S Range 34E BANNOCK County
GROUND WATER SWSW	Sec. 16 Township 07S Range 35E BANNOCK County

Place(s) of use: Large POU Info

Conditions of Approval:

1. 081 Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.
2. T17 Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.
3. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
4. 124 Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.
5. 067 The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.

Dates:
Licensed Date:
Decreed Date: 04/26/2012
Permit Proof Due Date:
Permit Proof Made Date:
Permit Approved Date:
Permit Moratorium Expiration Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Water Supply Bank Enrollment Date Accepted:
Water Supply Bank Enrollment Date Removed:
Application Received Date:
Protest Deadline Date:
Number of Protests: 0

Other Information:
State or Federal: S
Owner Name Connector:
Water District Number: 120
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Civil Case Number:
Old Case Number:
Decree Plantiff:
Decree Defendant:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

6/9/2016

WATER RIGHT NO. 29-2338

Owner Type	Name and Address
Current Owner	CITY OF POCATELLO 911 N 7TH AVE PO BOX 4169 POCATELLO, ID 83205
Attorney	WHITE & JANKOWSKI LLP ATTN SARAH A KLAHN 511 16TH ST STE 500 DENVER, CO 80202 (303)595-9441
Attorney	BEEMAN & ASSOC PC ATTN JOSEPHINE BEEMAN 1019 N 17TH ST BOISE, ID 83702-3304 (208)331-0950

Priority Date: 09/01/1953
Basis: Decreed
Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume

81155

MUNICIPAL	01/01	12/31	9.53 CFS
Total Diversion			9.53 CFS

Location of Point(s) of Diversion:

GROUND WATER NESE	Sec. 10 Township 06S Range 33E POWER County
GROUND WATER NESE	Sec. 12 Township 06S Range 33E POWER County
GROUND WATER SWNE	Sec. 15 Township 06S Range 33E POWER County
GROUND WATER NWSW	Sec. 15 Township 06S Range 34E BANNOCK County
GROUND WATER NENW	Sec. 26 Township 06S Range 34E BANNOCK County
GROUND WATER NWSE	Sec. 27 Township 06S Range 34E BANNOCK County
GROUND WATER SENE	Sec. 35 Township 06S Range 34E BANNOCK County
GROUND WATER SENE	Sec. 35 Township 06S Range 34E BANNOCK County
GROUND WATER NWSE	Sec. 35 Township 06S Range 34E BANNOCK County
GROUND WATER NWSE	Sec. 35 Township 06S Range 34E BANNOCK County
GROUND WATER NWSE	Sec. 35 Township 06S Range 34E BANNOCK County
GROUND WATER SESE	Sec. 01 Township 07S Range 34E BANNOCK County
GROUND WATER SWSW	Sec. 16 Township 07S Range 35E BANNOCK County

Place(s) of use: Large POU Info

Conditions of Approval:

1. 124 Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.
2. 081 Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.
3. 067 The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
4. T17 Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.
5. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

Dates:
Licensed Date:
Decreed Date: 04/26/2012
Permit Proof Due Date:
Permit Proof Made Date:
Permit Approved Date:
Permit Moratorium Expiration Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Water Supply Bank Enrollment Date Accepted:
Water Supply Bank Enrollment Date Removed:
Application Received Date:
Protest Deadline Date:
Number of Protests: 0

Other Information:
State or Federal: S
Owner Name Connector:
Water District Number: 120
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Civil Case Number:
Old Case Number:
Decree Plantiff:
Decree Defendant:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

6/9/2016

WATER RIGHT NO. 29-7375

Owner Type	Name and Address
Current Owner	CITY OF POCATELLO 911 N 7TH AVE PO BOX 4169 POCATELLO, ID 83205
Attorney	WHITE & JANKOWSKI LLP ATTN SARAH A KLAHN 511 16TH ST STE 500 DENVER, CO 80202 (303)595-9441
Attorney	BEEMAN & ASSOC PC ATTN JOSEPHINE BEEMAN 1019 N 17TH ST BOISE, ID 83702-3304 (208)331-0950

Priority Date: 02/24/1977
Basis: Decreed
Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume

81155

MUNICIPAL	01/01	12/31	2.23 CFS
Total Diversion			2.23 CFS

Location of Point(s) of Diversion:

GROUND WATER NESE	Sec. 10 Township 06S Range 33E POWER County
GROUND WATER NESE	Sec. 12 Township 06S Range 33E POWER County
GROUND WATER SWNE	Sec. 15 Township 06S Range 33E POWER County
GROUND WATER NWSW	Sec. 15 Township 06S Range 34E BANNOCK County
GROUND WATER NENW	Sec. 26 Township 06S Range 34E BANNOCK County
GROUND WATER NWSE	Sec. 27 Township 06S Range 34E BANNOCK County
GROUND WATER SENE	Sec. 35 Township 06S Range 34E BANNOCK County
GROUND WATER SENE	Sec. 35 Township 06S Range 34E BANNOCK County
GROUND WATER NWSE	Sec. 35 Township 06S Range 34E BANNOCK County
GROUND WATER NWSE	Sec. 35 Township 06S Range 34E BANNOCK County
GROUND WATER NWSE	Sec. 35 Township 06S Range 34E BANNOCK County
GROUND WATER SESE	Sec. 01 Township 07S Range 34E BANNOCK County
GROUND WATER SWSW	Sec. 16 Township 07S Range 35E BANNOCK County

Place(s) of use: Large POU Info

Conditions of Approval:

1. 124 Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.
2. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
3. 067 The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
4. 081 Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.
5. T17 Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

Dates:
Licensed Date:
Decreed Date: 04/26/2012
Permit Proof Due Date: 3/1/1982
Permit Proof Made Date:
Permit Approved Date: 3/29/1977
Permit Moratorium Expiration Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Water Supply Bank Enrollment Date Accepted:
Water Supply Bank Enrollment Date Removed:
Application Received Date:
Protest Deadline Date:
Number of Protests: 0

Other Information:
State or Federal: S
Owner Name Connector:
Water District Number: 120
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Civil Case Number:
Old Case Number:
Decree Plantiff:
Decree Defendant:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False

6. **GENERAL INFORMATION**

a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:
Several deep wells, equipped with vertical turbine pumps, motors and control valves are located within lockable buildings. Flow meters are in a secure underground vaults.

b. Who owns the property at the point(s) of diversion? City of Pocatello
If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

c. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes	No	
☐	☑	undergone a period of five or more consecutive years of non-use,
☐	☑	currently used in a mitigation plan limiting the use of water under the right(s), or
☐	☑	currently enrolled in a Federal set-aside program limiting the use of water under the right(s)?

If yes, describe:

d. Is any portion of the water right(s) proposed to be changed currently leased to the Water Supply Bank? ☐ Yes ☑ No

☐ If yes and there are multiple owners, attach a Lessor Designation form.
☐ If yes, the individual owner or designated lessor must complete, sign and attach an IRS Form W-9.
(Disregard if these items are on file and ownership has not changed.)

7. **MAP –** ☑ Attach a map of the diversion, measurement, control and distribution system. Include the place of use if a split of the water right occurred. Clearly label the map with township, range, section and ¼ ¼ of section information. The *Map Tool*, available at *maps.idwr.idaho.gov/TransferApplicationLayouts* provides a satisfactory template for creating the required map.

8. **SIGNATURE** – The information in this application is true to the best of my knowledge. I understand any willful misrepresentations in this application may result in rejection of the application or cancellation of an approval.

Signature of applicant or authorized agent	Print name and title if applicable	Date
	Brian Blad, Mayor	7/14/16
	Justin Armstrong, Water Superintendent	7-7-16

9. **FEE -** ☑ The application filing fee provided in Section 42-221, Idaho Code, must be submitted with the application for transfer. The Application fee is based on the total amount of water proposed for transfer in Item 4: the larger fee for either cubic feet per second (diversion rate) or acre-feet per annum (storage volume). The *Fee Schedule* is available at *www.idwr.idaho.gov, Water Right Transfers, Step 4* and in the *Application for Transfer Instructions*.

FOR DEPARTMENT USE ONLY

Transfer includes _____ pages of attachments. Received by JE Date 7/25/16
Fee paid $200 Date 7/25/16 Receipted by JE Receipt # E042299
Preliminary review by _____ Date _____ Active in the Water Supply Bank? Yes ☐ No ☐
W-9 received? Yes ☐ No ☐ Name on W-9 _____ W-9 forwarded to fiscal? Yes ☐ No ☐
(Do NOT scan the W-9 – confidential information is held by fiscal only)

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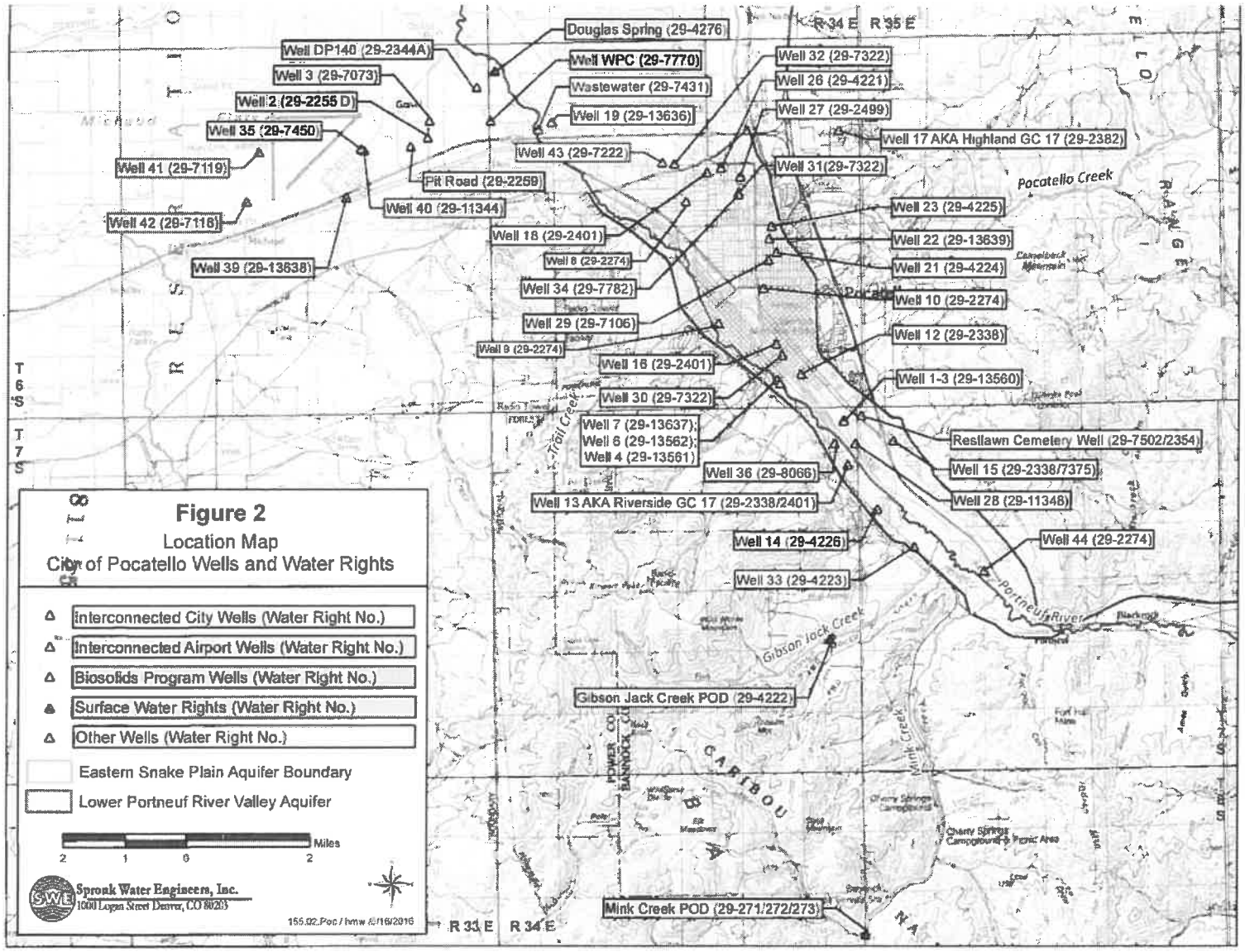
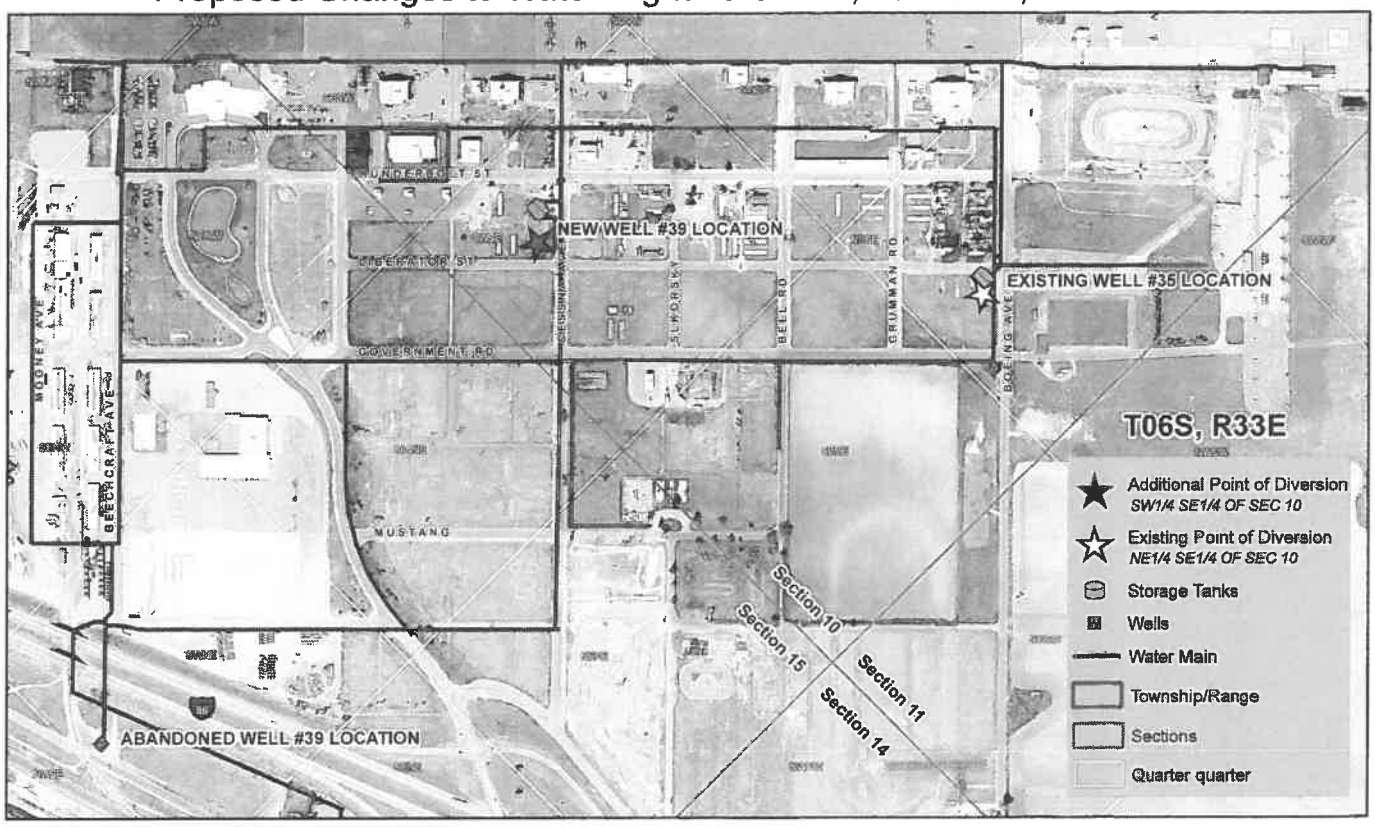

Douglas Spring (29-4276)
Well DP140 (29-2344A)
Well WPC (29-7770)
Well 3 (29-7073)
Wastewater (29-7431)
Well 2 (29-2255 D)
Well 19 (29-13636)
Well 35 (29-7450)
Well 43 (29-7222)
Well 41 (29-7119)
Pit Road (29-2259)
Well 40 (29-11344)
Well 42 (29-7118)
Well 18 (29-2401)
Well 39 (29-13638)
Well 8 (29-2274)
Well 34 (29-7782)
Well 29 (29-7106)
Well 9 (29-2274)
Well 16 (29-2401)
Well 30 (29-7322)
Well 7 (29-13637);
Well 6 (29-13562);
Well 4 (29-13561)
Well 36 (29-8066)
Well 13 AKA Riverside GC 17 (29-2338/2401)
Gibson Jack Creek POD (29-4222)
Mink Creek POD (29-271/272/273)
Well 32 (29-7322)
Well 26 (29-4221)
Well 27 (29-2499)
Well 17 AKA Highland GC 17 (29-2382)
Well 31(29-7322)
Well 23 (29-4225)
Well 22 (29-13639)
Well 21 (29-4224)
Well 10 (29-2274)
Well 12 (29-2338)
Well 1-3 (29-13560)
Resllawn Cemetery Well (29-7502/2354)
Well 15 (29-2338/7375)
Well 28 (29-11348)
Well 44 (29-2274)
Well 14 (29-4226)
Well 33 (29-4223)
R 34 E
R 35 E
R 33 E
R 34 E
T 6 S
T 7 S
Pocatello Creek
Portneuf River
Gibson Jack Creek
Mink Creek
Trail Creek
CARIBOU
BA
NA
POWER
BANNOCK
Figure 2
Location Map
City of Pocatello Wells and Water Rights
Interconnected City Wells (Water Right No.)
Interconnected Airport Wells (Water Right No.)
Biosolids Program Wells (Water Right No.)
Surface Water Rights (Water Right No.)
Other Wells (Water Right No.)
Eastern Snake Plain Aquifer Boundary
Lower Portneuf River Valley Aquifer
Miles
2 1 0 2
Sprouk Water Engineers, Inc.
1600 Logan Street Denver, CO 80203
155.02.Poc / hmw 8/16/2016

Proposed Changes to Water Right 29-02274, 29-02338, 29-07375



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