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February 2, 2011

RECEIVED
FEB 07 2011
DEPARTMENT OF
WATER RESOURCES

Twin Falls County Clerk
P.O. Box 126
Twin Falls, ID 83303-1023

Re: *SRBA Case No.: 39576, Subcase No.: 01-00006*

Dear Clerk:

Enclosed for filing with the Court in the above captioned matter please find the following:

1. Response to American Falls Reservoir District No. 2's First Set of Interrogatories and Requests for Production of Documents to Palisades Water Users, Inc; and
2. Notice of Service.

Your courtesies and assistance are appreciated.

Best regards,

Ashley Hernandez
Secretary to Robert L. Harris

Enclosures

Robert L. Harris, Esq. (ISB #7018)
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Attorneys for Palisades Water Users, Inc.

RECEIVED
FEB 07 2011
DEPARTMENT OF
WATER RESOURCES

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

Case No. 39576

Subcase No. 01-00006

**RESPONSE TO AMERICAN FALLS
RESERVOIR DISTRICT NO. 2'S FIRST
SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF
DOCUMENTS TO PALISADES WATER
USERS, INC.**

INTERROGATORIES

INTERROGATORY NO. 1: Please separately identify each communication which is relevant or which you intend to offer in evidence at the trial of this action for any purpose

ANSWER TO INTERROGATORY NO. 1: PWUI object to this interrogatory to the extent it seeks disclosure of any communications protected by the attorney-client privilege and/or the attorney work product doctrine. PWUI further objects that this interrogatory is overly broad, indefinite as to time, is vague, and unduly burdensome.

Additionally, PWUI and the State of Idaho (upon which PWUI rely for a significant amount of the documentation as to their understanding and knowledge as to the claims made by AFRD No. 2) have not completed their review and preparations for trial and has not yet identified all communications that they believes may be potentially relevant, and thus any

determination by PWUI at this stage of the litigation as to what communications are "relevant" are preliminary and subject to change.

Without waiving said objections, PWUI believes many of the communications sought under this interrogatory are already in the possession of AFRD No. 2, such as communications previously provided to AFRD No. 2 by the State of Idaho in response to AFRD No. 2's request for copies of the FOIA documents the State of Idaho received from the United States, in the State of Idaho's document production to AFRD No. 2 pursuant to its Rule 30(b)(6) deposition of the State, and the Response to AFRD No. 2's Production of Documents sent by the State of Idaho on or about November 22, 2010. PWUI relies primarily upon these documents, which may contain communications called for in this interrogatory.

Additionally, PWUI relies upon the State of Idaho's response to this interrogatory which states: "in the years since the question of AFRD No. 2's claimed right to divert natural flow was first raised in the 1930's, the State's departments, agencies, employees, agents, officers, representatives, and/or attorneys have verbally communicated on various occasions, either in personal meetings or by telephone, with various persons, entities, and organizations, including but not limited to departments, agencies, employees, agents, officers, representatives, and/or attorneys of the federal government, regarding the issues raised in this subcase. Although the State has no record of such verbal communications that would allow the State to provide the numerous pieces of information AFRD No. 2 seeks with respect to each individual instance of such verbal communication, the State refers to its answer to Interrogatory No. 3 for a list of persons with whom it has communicated in connection with this subcase." PWUI presently knows of no individual beyond the State's witnesses and the Idaho Department of Water Resources which have had direct communications beyond those stated above by the State of Idaho.

INTERROGATORY NO. 2: Please separately identify each document which is relevant or which you intend to offer in evidence at the trial of this action for any purpose.

ANSWER TO INTERROGATORY NO. 2: PWUI object to this interrogatory to the extent it seeks disclosure of any communications protected by the attorney-client privilege and/or the attorney work product doctrine. PWUI further objects that this interrogatory is overly broad, indefinite as to time, is vague, and unduly burdensome.

Subject to and without waiving these objections, PWUI provide the documents in the State of Idaho's CD, most of which are already in AFRD No. 2's possession. In addition, there are a number of documents, many of which are voluminous and portions of which may be "relevant" or offered as evidence at the trial of this action, that are equally available to AFRD No. 2 including: the "Related Documents" that are available on IDWR's website for water rights nos. 01-0006 and 01-2064; the annual watermaster reports for Water District 1 ("black books"); and Water District No. 1's daily water right accounting records, some of which are available for inspection at IDWR's state office in Boise and/or in Water District No. 1's office in Idaho Falls during normal business hours.

IDWR's state office is located in the Idaho Water Center, 322 East Front Street, Boise, Idaho (208-287-4800). The Water District No. 1 office is located at 900 North Skyline Drive, Suite A, Idaho Falls, Idaho (208-525-7161). The url for IDWR's website is <http://www.idwr.idaho.gov/>; the url for Water District No. 1's website is <http://www.waterdistrict1.com/>.

INTERROGATORY NO. 3: Please identify each person with whom you or your representatives have communicated or who you or your representatives have interviewed seeking information relating to this action or any issue in this action.

ANSWER TO INTERROGATORY NO. 3: PWUI objects to this interrogatory as unreasonably overbroad and unduly burdensome, and that it further violates the attorney-client and work-product privilege.

Without waiving said objections, a number of depositions have been taken in this matter, including Gary Spackman (Jul. 28, 2010), Anthony Olenichak (Jul. 7, 2010 and Oct. 6, 2008), Lyle Swank (Oct. 7, 2008), and Ron Carlson (Oct. 7, 2008). PWUI has primarily communicated with Ronald D. Carlson regarding this matter. However, these depositions identify the following individuals with whom they or their counsel have communicated or who it has interviewed seeking information relating to this action:

Ronald D. Carlson
Former Watermaster for Water District 01
651 N. 600 E.
Firth, ID 83236
208-346-6289

Anthony Olenichak

Program Manager
Water District 1
900 North Skyline Drive, Ste. A
Idaho Falls, ID 83402-1718
208-525-7161

Lyle Swank
Watermaster
Water District 1
Regional Manager
Idaho Department of Water Resources
900 North Skyline, Ste. A
Idaho Falls, ID 83402-1718
208-525-7161

Gary Spackman
Interim Director
Idaho Department of Water Resources
Idaho Water Center
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208-287-4800

Garrick Baxter
Deputy Attorney General
Idaho Department of Water Resources
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208-287-4800

Ray Williams
Paralegal
Idaho Department of Water Resources
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208-287-4800

Carter Fritschle
Adjudication Section Manager
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, ID
208-287-4800

Richard Rigby
Senior Advisor
Idaho Department of Water Resources
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Michael Holliday
Senior Water Right Agent
Idaho Department of Water Resources
900 North Skyline, Ste A
Idaho Falls, ID 83402-1718
208-525-7161

Matt Howard
Water Rights Analyst
United State Bureau of Reclamation
1150 North Curtis Road
Boise, ID 83706
208-378-5003

E. Gail McGarry
Manager, Water Rights and Acquisition
United State Bureau of Reclamation
1150 North Curtis Road
Boise, ID 83706
208-378-5306

Robert Sutter
824 East Bannock Street
Boise, ID 83712
208-345-3599

INTERROGATORY NO. 4: Please separately identify each person who, according to your information or knowledge or the information of knowledge of your representatives, has relevant knowledge of any of the issues or any of the occurrences which are relevant to this action and state the substance of the facts and opinions which constitute such relevant knowledge.

ANSWER TO INTERROGATORY NO. 4: PWUI object to this interrogatory as calling for legal conclusions and as vague and ambiguous to the extent it requires PWUI to determine what constitutes "relevant" knowledge and/or "relevant" issues and facts. See PWUI objections to Interrogatory No. 1, which are incorporated herein by this reference.

Without waiving said objections, see Answer to Interrogatory No. 3 above.

INTERROGATORY NO. 5: Please separately identify each person who you may call as a lay witness at the trial of this action and state the substance of the facts and opinions to which such lay witness is expected to testify.

ANSWER TO INTERROGATORY NO. 5: PWUI have not completed their review and preparations for the trial of this matter and have not yet determined who they may or will call as a lay witness at trial. PWUI will identify any such person in accordance with the Idaho Rules of Civil Procedure and any applicable order of the Court.

INTERROGATORY NO. 6: Please separately identify each person retained or specially employed by you as an expert in anticipation of this litigation or in preparation for the trial of this action whom you do not expect to call as a witness at the trial of this action and state with respect to any reports made to you by the expert the subject matter thereof and the location of each such report.

ANSWER TO INTERROGATORY NO. 6: PWUI object to this interrogatory because it seeks information protected by the attorney work product doctrine and as exceeding the permissible scope of discovery. I.R.C.P. 26(b)(4)(B). Subject to and without waiving these objections, PWUI answers that as of the date of these responses, it has retained Ronald D. Carlson as an expert witness in this matter. However, PWUI have not yet determined whether they will call other expert witnesses in the trial of this action. PWUI reserve the right to call expert witnesses and if so will disclose any such expert witnesses in accordance with the Idaho Rules of Civil Procedure and any order entered by the Court.

INTERROGATORY NO. 7: Please separately identify each person whom you may call as an expert witness at the trial of this action and state the subject matter on which such expert witness is expected to testify, the substance of the facts to which such expert witness is expected to testify and the substance of the opinions to which such expert witness is expected to testify.

ANSWER TO INTERROGATORY NO. 7: See deposition transcript of Ron Carlson (Oct. 7, 2008). Additionally, see Answer to Interrogatory No. 10 below.

INTERROGATORY NO. 8: Please separately identify each exhibit which you may

offer into evidence at the trial of this action and as to each such exhibit which consists of more than 15 pages or more than 3,000 words, quote or otherwise specifically designate each portion of such exhibit which you contend is the relevant portions thereof.

ANSWER TO INTERROGATORY NO. 8: PWUI objects to this interrogatory on the same grounds and for the same reasons set forth in PWUI answer to Interrogatories Nos. 2 and 3 above. PWUI have not completed their review and preparations for the trial of this matter and have not yet determined who they may or will call as a lay witness at trial. PWUI will identify any such person in accordance with the Idaho Rules of Civil Procedure and any applicable order of the Court.

INTERROGATORY NO. 9: Please separately identify each person who supplied answers to these interrogatories and designate the answer or part thereof supplied by such person. (This interrogatory is intended to discover principal sources of information and does not seek to ascertain the identity of mere draftsmen or persons responsible for the mechanical preparation of these answers.)

ANSWER TO INTERROGATORY NO. 9: The answers to these interrogatories were drafted by legal counsel based on review of the documents and depositions referenced herein, and in consultation with Ronald D. Carlson.

INTERROGATORY NO. 10: Please describe how you contend water received by American Falls Reservoir District No. 2 (AFRD No. 2) is categorized as natural flow and water received by AFRD No. 2 is categorized as storage in language other than that set out in the Eagle Decree and the Palisades Contracts.

ANSWER TO INTERROGATORY NO. 10: PWUI objects to this interrogatory as it is ambiguous and calls for a legal conclusion, and PWUI cannot answer without clarification of its meaning in order to fully respond.

Without waiving said objections, PWUI agrees with the language of the original recommendation of this water right dated May 11, 2006. PWUI interprets this recommendation to incorporate the historic delivery practices and accounting performed by Water District 01 for Water Right No. 1-6 described by Mr. Ronald Carlson and others in their depositions, as well as the State of Idaho in their discovery responses. Their testimony and responses in this regard is controlling, but to summarize:

1. Beginning May 1 of a given year or irrigation season, the natural flow available to the March 30, 1921 priority is split evenly between American Falls Reservoir District No. 2 and the American Falls Reservoir storage right up to a maximum of 850 c.f.s delivered to American Falls Reservoir District No. 2 under water right 01-0006 unless and until the storage water right for American Falls Reservoir has filled. If the storage water right for American Falls Reservoir fills after May 1, American Falls Reservoir District No. 2 may thereafter divert up to 1,700 c.f.s. as natural flow while water right no. 01-0006 remains in priority.
2. All of American Falls Reservoir District No. 2's diversions prior to May 1 of a given year or irrigation season are to be charged as storage water if the storage water right for American Falls Reservoir does not fill in that given year or irrigation season.
3. All other determinations of whether American Falls Reservoir District No. 2's diversions are to be accounted for as natural flow or storage water are to be made by the Watermaster in accordance with applicable Idaho Law and Water District No. 1 policies and practices. The following example illustrates PWUI's understanding of how this has historically been done.
 - a. When the storage space in the Upper Snake River storage system is allocated by the Watermaster on the date of allocation, then the historical accounting practice has been that all space holders who have used storage prior to that date may have some of their storage "written off" since the contents available on that day, considering the space vacated by storage use, is what is allocated by the Watermaster.
 - b. For example, the Upper Snake storage system has a capacity of 4,100,000 acre-feet. In a given year, assume the system fills to 4,000,000 (97.6% fill percentage). Prior to the system filling, 250,000 acre-feet had been diverted by all spaceholders. On the day of allocation the Watermaster determines the contents of the system to be 4,000,000 acre feet. Consequently 150,000 acre-feet of the 250,000 acre-feet diverted is written off under the logic that this water would have been lost past Milner had it not been diverted. Through this logic the additional water is considered to have been natural flow water.

INTERROGATORY NO. 11: Please identify all documents, memoranda and/or other tangible items, regardless of format, which you believe support your September, 2010, Objection to the Amended Director's Report.

ANSWER TO INTERROGATORY NO. 11: PWUI object to this Interrogatory on the same grounds and for the same reasons set forth in the PWUI answer to Interrogatories Nos. 2 and 3. PWUI also object to this interrogatory to the extent it seeks disclosure of information protected by the attorney work product doctrine. Subject to and without waiving these objections, PWUI answers that they have not completed their review and preparations for the

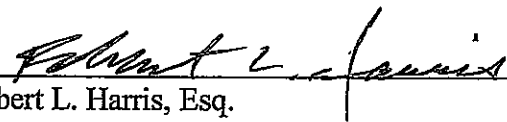
trial of this matter and have not yet determined what documentation, memoranda and/or other tangible items, regardless of format, which support their September, 2010 Objection and/or Amended Objections to the Amended Director's Report in subcase 01-06. PWUI assert that a portion of said documentation, etc. is provided on the State of Idaho's CD referred to above, in the "Related Documents" on IDWR's website for water rights nos. 01-0006 and 01-2064, and/or the annual watermaster reports for Water District 1 ("black books") and Water District 1's daily water right accounting records, and that such documents speak for themselves. PWUI also reserve the right to offer into evidence as such other documentation, exhibits or any other tangible thing that is subsequently discovered or disclosed to PWUI or the State of Idaho, and will identify such documentation in accordance with the Idaho Rules of Civil Procedure and any applicable orders of the Court.

REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce each and every document and/or other physical or tangible object that supports your answers to Interrogatory Nos. 1 through 11, above. Also, please produce each and every document and/or physical or tangible object identified, described, or discussed in your responses to Interrogatory Nos. 1 through 11, above. With respect to each such document or object, please indicate the number of the interrogatory or interrogatories to which the document or object is responsive.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Copies of the documents responsive to this request for production are provided on the State of Idaho's CD described hereinabove. The documents are organized into directories that named so as to correspond to the applicable interrogatories. Many of the documents are responsive to more than one of the interrogatories and thus appear in more than one folder. The majority of the documents on the State of Idaho's CD are already in the possession of AFRD No. 2.

DATED this 2nd day of February, 2011.


Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC

CERTIFICATE OF SERVICE

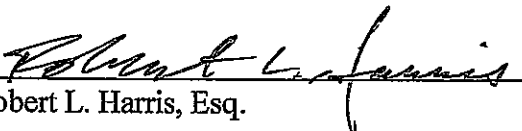
I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, on this 2nd day of February, 2011.

**DOCUMENT SERVED: RESPONSE TO AMERICAN FALLS RESERVOIR
DISTRICT NO. 2'S FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO
PALISADES WATER USERS, INC.**

ATTORNEYS SERVED:

C. Thomas Arkoosh
Isaac D. Kepple
Capitol Law Group
P.O. Box 32
Gooding, ID 83330

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Robert L. Harris, Esq.

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Attorneys for Palisades Water Users, Inc.

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

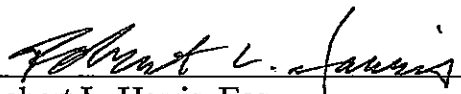
Case No. 39576

Subcase No. 01-00006

NOTICE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of February, 2011, I served a copy of
“**Response to American Falls Reservoir District No. 2’s First Set of Interrogatories and
Requests for Production of Documents to Palisades Water Users, Inc.**” on the following by
either mailing, hand delivery or by telecopying:

C. Thomas Arkoosh
Isaac D. Keppler
Capitol Law Group
P.O. Box 32
Gooding, ID 83330


Robert L. Harris, Esq.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, on this 2nd day of February, 2011.

DOCUMENT SERVED: NOTICE OF SERVICE

ATTORNEYS SERVED:

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State of Idaho Attorney
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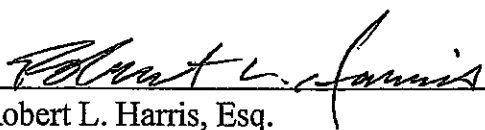
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