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DEPARTMENT OF
WATER RESOURCES

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**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

)
) Subcase no. 01- 00006
)

Case No. 39576

)
) **STATE OF IDAHO'S RESPONSE**
) **TO AMERICAN FALLS**
) **RESERVOIR DISTRICT NO. 2'S**
) **MOTION TO COMPEL**
) **DISCOVERY**
)

INTRODUCTION

American Falls Reservoir District No. 2 has moved this Court for an order compelling the State of Idaho "to provide a complete answer to Interrogatory No. 12" of *American Falls Reservoir District No. 2's First Set of Interrogatories and Requests for Production of Documents to the State of Idaho*, dated October 21, 2010 ("District No. 2's

Discovery Requests”). *Motion to Compel Discovery I.R.C.P. 37(a)* (Mar. 2, 2011) (“*Motion*”). Pursuant to Rule 7(b)(3) of the Idaho Rules of Civil Procedure, the State of Idaho hereby files its response to the *Motion*. As discussed herein, the *Motion* should be denied because Interrogatory No. 12 seeks disclosure of confidential attorney work product and because the State has provided a sufficient answer to Interrogatory No. 12 pursuant to Rule 33(c) of the Idaho Rules of Civil Procedure.

In brief, Interrogatory No. 12 seeks to discover the State’s views of the “significance” of each page and line of historic documents provided to District No. 2, which would necessarily require State’s counsel to engage in a selective review of the documents, sifting the relevant facts from the irrelevant and identifying each passage that supports the State’s position or otherwise is “significant” to the State, thereby disclosing counsel’s mental impressions, opinions, conclusions and legal theories of the case. District No. 2 has had the historic documents that are the subject of the *Motion* for months and is entirely capable of performing such a legal analysis on its own and should not be allowed to exploit the State’s trial preparation efforts, which would undermine one of the principle purposes of the attorney work product doctrine. Further, District No. 2’s specious argument that the work product doctrine does not apply because the interrogatory was directed to the State rather than State’s counsel is foreclosed under Idaho law.

Finally, the State’s Rule 33(c) answer to Interrogatory No. 12 is sufficient because the burden of engaging in page-by-page, line-by-line relevance analysis of each historic document sought by Interrogatory No. 12 is either substantially the same for both parties or greater for the State, given District No. 2’s failure to identify its position in this

subcase and the issues it wishes to litigate. Granting the *Motion* would be particularly inappropriate in light of District No. 2's failure to answer to one of the same interrogatories that forms the basis of the *Motion*, because "the purpose of discovery rules is to provide discovery on both sides." *Lester v. Salvino*, 141 Idaho 937, 939; 120 P.3d 755, 757 (Ct. App. 2005) (internal quotation marks).

FACTS

Interrogatory No. 12 refers to Exhibit A and asks the State to "recite every page and line of whatever language" of each document identified in Exhibit A that the State believes supports its contentions as stated in its answer to Interrogatory No. 10.¹ Interrogatory No. 12, and the State's answer, are set forth below:

INTERROGATORY NO. 12: Please identify the language found in the documents identified in Exhibit A, attached hereto and incorporated herein, which you claim supports your contention identified in the answer to Interrogatory No. 10. By "Identify the language," this interrogatory requests that you recite every page and line of whatever language you contend supports your contention identified in the answer to Interrogatory No. 10.

ANSWER TO INTERROGATORY NO. 12: The State objects to this interrogatory to the extent it seeks disclosure of information protected by the attorney work product doctrine. Subject to and without waiving this objection, and pursuant to I.R.C.P. 33(c), the State answers that such documents speak for themselves and provides on the enclosed CD copies of the documents identified in Exhibit A.

¹ Interrogatory No. 10 asked the State to "describe how you contend the 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 water in language other than that set out in the Eagle Decree and the Palisades Contracts," and the State provided a full answer that District No. 2 has not challenged. *Motion* at 2. In striking contrast, District No. 2 simply refused to answer precisely the same contention interrogatory when it was subsequently propounded to District No. 2 by the State. See *American Falls Reservoir District No. 2's Responses to State of Idaho's Third Set of Discovery requests to American Falls Reservoir District No. 2* at 3, 4, 5, 6 (Feb. 8, 2011) ("*District No. 2's Third Set of Discovery Responses*") ("AFRD No. 2 is capable of describing water received by AFRD No. 2 as natural flow and water received by AFRD No. 2 as storage in language other than that in the *Eagle Decree* and Palisades Contracts, but perceives no present obligation to do so . . .") (italics in original).

Motion at 3.²

The “Exhibit A” referenced in Interrogatory No. 12 is a copy of a spreadsheet the State created and provided to District No. 2 (as well as to this Court and to all other parties to this subcase) on September 22, 2010.³ See “Exhibit 2” to the *Affidavit of Michael C. Orr* (Sept. 22, 2010). Exhibit A demonstrates the documents that are the subject of District No. 2’s *Motion* are almost all historic documents pertaining to the Eagle Decree and the Palisades Contracts, and particularly to the historic background of the Palisades Dam and Reservoir Project. As District No. 2 admits, the State produced these documents to District on August 10, 2010. *Motion* at 3 n. 2.

The principal reason the Exhibit A documents are potentially relevant in this subcase is that, as the State has explained more than once to District No. 2, these historic documents provide background and context for the Palisades Contracts and the Eagle Decree, and also may be useful in resolving any ambiguities that may exist or be identified in the provisions of the Eagle Decree and the Palisades Contracts pertaining to what is now known as water right 01-06.⁴ The vast majority of these historic documents through an ongoing research effort in various public document collections such as state and federal archives, libraries and various other sources open to the public.⁵ The State’s

² District No. 2 propounded Interrogatory No. 12 on October 22, 2010. The State served its answer on November 22, 2010.

³ The *Motion* is incomplete because it seeks an order compelling the State to “recite every page and line of whatever language” in each document listed in “Exhibit A” that supports the State’s answer to Interrogatory No. 10, but does not include a copy of “Exhibit A.” The State therefore has attached a copy of “Exhibit A” to this brief.

⁴ This water right is referred to as either permit or license “No. 15134” in the Eagle Decree and Palisades Contracts. The Director has recommended that the partial decree for water right no. 01-06 include as a remark the provision of the Eagle Decree that describes the water right. *Amended Director’s Report, Subcase No. 01-6* (Aug. 2, 2010). Neither the State nor District No. 2 has objected to that recommendation.

⁵ Contrary to what District No. 2 appears to believe, Water District 1 Program Manager Anthony Olenichak (who was designated as the deponent for the State in District No. 2’s Rule 30(b)(6) deposition of the State) did not participate in this document review or in the production of the Exhibit A documents, nor did State’s counsel consult with him on these matters.

attorney provided to District No. 2 only those historic documents that, based on counsel's ongoing review of the documents collected in the course of the Attorney General's research efforts, appear responsive to District No. 2's discovery requests or otherwise potentially relevant to the known issues in this subcase.

While the State has made a good faith effort to provide all potentially relevant documents, the State must note the difficulty of this task, because District No. 2 has not objected to the amended Director's report for water right no. 01-06, which recommends a remark that recites the pertinent language of the Eagle Decree. *Amended Director's Report, Subcase No. 01-6* (Aug. 2, 2010). While District No. 2 admitted in its discovery responses that the recommended language now "clearly and adequately" describes how District No. 2's diversions of natural flow and storage water should be categorized, *American Falls Reservoir District No. 2's Responses to State of Idaho's Third Set of Discovery requests to American Falls Reservoir District No. 2* at 3 ("*District No. 2's Third Set of Discovery Responses*"), District No. 2 has also suggested that it may seek some changes in the language, but without providing any indication of how the Director's language is deficient or what changes District No. 2 may seek. *Id.* at 6-7 (AFRD No. 2 contends that the language of the *Eagle Decree* and the Palisades Contracts correctly defines the elements of water right 01-0006. Beyond that, AFRD No. 2 has made no determination as to what language might be required for administering said water right.").

Moreover, while the State in good faith provided a succinct and straightforward answer to District No. 2's contention interrogatory asking for a description of the State's interpretation of the Eagle Decree language—Interrogatory No. 10⁶—District No. 2 objected and refused to answer on numerous grounds, including, ironically, the work

⁶ See *supra* note 1; see also *Motion* at 2-3 (reciting Interrogatory No. 10 and the State's answer).

product doctrine to the very same interrogatory when propounded by the State. District No. 2 stated that while it “is *capable of*” describing the categorization of natural flow and storage under the Eagle Decree in other language, it “perceive[d] no present obligation to do so.” *District No. 2’s Third Set of Discovery Response* at 3, 4; 5, 6 (italics in original).

District No. 2’s invocation of work product protections and refusal to answer the same interrogatory that it propounded to the State stand in sharp contrast to District No. 2’s claim in the *Motion* that the work product doctrine is inapplicable and the State is obligated to go beyond providing such an answer, and also recite every page and every line in each of the historic documents that the State believes support its answer.

STANDARD OF REVIEW

The question of whether to grant or deny a motion to compel is reviewed for abuse of discretion. *See Jen-Rath Co., Inc. v. Kit Mfg. Co.*, 137 Idaho 330, 336, 48 P.3d 659, 665 (2002) (denying motion to compel); *see also Smith v. Big Lost River Irr. Dist.*, 83 Idaho 374, 383, 364 P.2d 146, 151 (1961) (“a district court is vested with broad discretion to control the scope of the interrogatories and in considering objections to them”).

ARGUMENT

1. Interrogatory No. 12 Goes Far Beyond Simply Asking The State To Identify Which Documents Are Deemed Supportive Of The State’s Position.

District No. 2 argues that this Court should compel an answer to Interrogatory No. 12 because District No. 2 “is entitled to know which documents of those provided are deemed supportive” of the State’s position in this subcase. *Motion* at 4. This innocuous sounding argument misrepresents Interrogatory No. 12, which does not simply ask “which documents of those provided are deemed supportive” of the State’s position.

Interrogatory No. 12 instead asks something quite different and much more problematic: it asks the State to “*recite every page and line of whatever language you contend supports your contention identified in the answer to Interrogatory No. 10.*” Motion at 3 (italics added).

Interrogatory No. 12 expressly asks the State to provide, in painstaking detail, a breakdown of each every page and line in each document in Exhibit A that the State deems supportive of its position in this subcase.⁷ This demand goes far beyond District No. 2’s mischaracterization of Interrogatory No. 12 as simply asking which documents are relevant or significant and which are not. District No. 2 is seeking the mental impressions of the State’s attorney; such impressions are protected from discovery under the attorney work product doctrine.

2. The Issue Is Not Whether The State “Failed To Answer” Interrogatory No. 12 But Rather The Sufficiency Of The State’s Objection And Answer.

District No. 2 further argues the State effectively “failed to answer” Interrogatory No. 12 because the State’s answer was “wholly insufficient,” and “evasive and incomplete.” Motion To Compel Discovery I.R.C.P. 37(a) at 2, 4 (Mar. 2, 2011) (“Motion”). This contention cannot be credited, as a review of the State’s answer demonstrates.

The State objected to Interrogatory No. 12 on grounds that it sought confidential attorney work product, and without waiving that objection provided additional copies of the historic documents identified in Exhibit A, pursuant to Rule 33(c). Rule 33(c)

⁷ Further, the State answered District No. 2’s question of which documents are relevant and which are not months ago in a letter to District No. 2, informing it that all of the documents were potentially relevant. See *Second Affidavit of Michael C. Orr* (Mar. 24, 2011) (“*Second Orr Aff.*”) at Exhibits 1-2 (letters). As previously discussed, State’s counsel determined, based on a search of public document repositories, that all of the documents identified in Exhibit A were responsive to District No. 2’s discovery requests or otherwise potentially relevant in this subcase. This is why they were produced to District No. 2.

provides that "it is a sufficient answer" to provide copies of documents in response to an interrogatory, if the information sought "may be derived or ascertained" from the documents and "the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served." I.R.C.P. 33(c).

Nothing about this answer was "evasive" or "incomplete." To the contrary, the State's answer was straightforward and complete on its face, and expressly based on established Idaho law. While District No. 12 may disagree that the work product doctrine applies, and may further disagree that Rule 33(c) authorized the State to produce the documents in lieu of reciting the page and line of every conceivably relevant passage in each document, such disputes only question the sufficiency of the State's answer. They do not support any contention that the State "failed to answer."

Further, the State went above and beyond its obligations under Rule 33(c) by also providing District No. 2 with the spreadsheet that District No. 2 incorporated into Interrogatory No. 12 as Exhibit A. The spreadsheet identifies the historic documents provided by the State by bates number and date, and also includes a brief textual description of each document, neither of which the State was obligated to provide under Rule 33(c). It is ironic and contradictory for District No. 2 to rely on the spreadsheet, which the State provided, as a basis for arguing the State has failed to answer Interrogatory No. 12. In effect, the contention that the State has been evasive or failed to answer relies on undisputed facts that demonstrate the fallacy of that very contention.

In sum, District No. 2 resorts to hyperbole in declaring that the State "failed to answer" Interrogatory No. 12. The only issues District No. 2's *Motion* present to this

Court are the applicability of the State's attorney work product objection and the sufficiency of the State's Rule 33(c) answer.

3. Interrogatory No. 12 Seeks Disclosure Of Attorney Work Product.

A. Interrogatory No. 12 Does Not Attempt To Discover Facts, But Rather Inquires Into The State's Mental Impressions, Opinions, Conclusions And Legal Theories Of the Case With Respect To The Relevance Or Significance Of The Historic Documents.

Attorney work product is "free from discovery." *Dabestani v. Bellus*, 131 Idaho 542, 545, 961 P.2d 633, 636 (1998). Attorney work product consists of an attorney's mental impressions, conclusions, opinions and/or legal theories. *Sanders v. Ayrhart*, 89 Idaho 302, 311, 404 P.2d 589, 594 (1965); *see also* I.R.C.P. 26(b)(3) ("the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation"). Interrogatories are not a means of inquiring into the mental impressions, conclusions, opinions, or legal theories of an attorney, but rather are "intended to ferret out facts, witnesses and documents." *Theesen v. Continental Life & Accident Co.*, 90 Idaho 58, 62, 408 P.2d 177, 181 (1965); *see also* *Cordova v. Bonneville County Joint School Dist. No. 93*, 144 Idaho 637 n.1, 640, 167 P.3d 774, 777 n.1 (2007) ("The purpose of depositions, like that of interrogatories is the discovery of facts.")

Interrogatory No. 12 does not ask for any new facts, and is not intended to ferret out or discover any facts that District No. 2 does not already possess. Rather, it expressly seeks to obtain the views of State's counsel as to the significance of facts—documents—that have already been provided to District No. 2. Specifically, Interrogatory No. 12 requires the State *to recite each and every page and line of each of the historic documents listed in Exhibit A* that the State "claim[s] supports [its] contention" in answering

Interrogatory No. 10. *Motion* at 3. Thus, it is plain on the face of Interrogatory No. 12 that it is not intended to serve the authorized purpose of “ferret[ing] out facts, witnesses and documents.” *Theesen*, 90 Idaho at 62, 408 P.2d at 181.

District No. 2 frankly admits that Interrogatory No. 12 is not intended to obtain new facts, but rather to discover the State’s views of the “significance” of each page and line of the historic documents. *See Motion* at 4 (“clearly the documents have some significance to the State of Idaho. . . . counsel for AFRD No. 2 is unable to discern what that significance is”).⁸ The only way the State can enlighten District No. 2 as to the State’s view of the “significance” of each line of each page of each historic document for purposes of supporting the State’s position in this litigation is for State’s counsel to individually analyze each line and make a determination of whether and how each is potentially relevant or may support the State’s position. In short, Interrogatory No. 12 necessarily requires State’s counsel to sift through the evidence to determine what is relevant and what is not, based on counsel’s mental impressions, opinions, conclusions and legal theories of the case—and then provide this analysis to District No. 2.⁹

Such a selective legal review would not reveal any new “facts” to District No. 2, as it is already in possession of the facts: the historic documents, which speak for themselves. The only new information District No. 2 would obtain from such a review is a disclosure of the mental impressions, opinions, conclusions and legal theories of the

⁸ As previously discussed, the State has already informed District No. 2 that the historic documents are potentially relevant to resolving any alleged ambiguities in the Eagle Decree language that the Director has recommended, the roots of which go back to the late 1920s and early 1930s. District No. 2 also recognizes the potential “significance” of such historic documents in this subcase: the materials District No. 2 has produced to the State consist primarily of historic documents pertaining to the Eagle Decree and the Palisades Contracts—many of which also go back to the late 1920s and early 1930s.

⁹ As will be discussed, District No. 2’s contention that the work product doctrine is inapplicable because Interrogatory No. 12 is only directed to the State and not to State’s counsel is a specious and superficial argument and fails as a matter of law.

State's attorney as to which parts of each document are legally relevant and/or supportive of the State's position and which are not—precisely the type of information the work product doctrine protects. *Sanders*, 89 Idaho at 311, 404 P.2d at 594; *see also* I.R.C.P.

26(b)(3). District No. 2 is seeking a tactical litigation advantage: a preview of the State's arguments, not the discovery of "facts."

B. Interrogatory No. 12 Requires The State To Sift Relevant From Irrelevant Facts In Contravention Of The U.S. Supreme Court's Decision In *Hickman v. Taylor*.

The conclusion that Interrogatory No. 12 seeks disclosure of work product finds support in the United States' Supreme Court's decision in *Hickman v. Taylor*, 329 U.S. 495 (1947), a "seminal" decision that is often recognized as "the most important case in the evolution of the work product doctrine." *See, e.g., State ex rel. Atchison, Topeka and Santa Fe Ry. Co. v. O'Malley*, 898 S.W.2d 550, 552 (Mo. 1995). In explaining the work product doctrine, the Supreme Court in *Hickman* expressly recognized that an attorney must be free to, among other things, "sift what he considers to be the relevant from the irrelevant facts" without outside interference, and "[t]his work is reflected, of course, in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways." *Hickman*, 329 U.S. at 511 (underlining added).

Interrogatory No. 12 requires the State to engage in just such a "sifting [of] what [State's counsel] considers to be the relevant from the irrelevant facts," because the answer District No. 2 seeks can be provided only if State's counsel reviews all of the historic documents and identifies, for District No. 2's benefit, each and every page and line that counsel considers to be relevant or significant. Such an analysis would, of

course, also necessarily identify every page and line that counsel does not consider relevant or significant. Because Interrogatory No. 12 would unavoidably require State's counsel to "sift what he considers to be the relevant from the irrelevant facts" and provide the results of this analysis to District No. 2, the interrogatory plainly seeks attorney work product as explained in the Supreme Court's seminal *Hickman* decision. .

C. The Idaho Supreme Court's Decision In *Sanders v. Ayvart* Precludes Discovery Of Attorney Work Product Through Interrogatories Directed To A Party.

The fact that Interrogatory No. 12 inquires into attorney work product is illustrated by the fact that had State's counsel prepared a memorandum identifying which evidence was relevant and which was not, it clearly would be deemed work product and beyond the reach of a request for production. Under Idaho law, District No. 2 may not circumvent the attorney work product doctrine by seeking the very same information through an interrogatory rather than a request for production. This is the plain holding of the Idaho Supreme Court's *Sanders* decision, in which the Court held that if the rules' protections of written work product are to be effective, they "must be extended" to prevent extraction of the same confidential information "by the use of interrogatories":

[I]f I.R.C.P. 26(b) is to effective in protecting the "writings[s] obtained or prepared by the adverse party, his attorney, surety, indemnitor, or agent in anticipation of litigation and in preparation for trial," the scope of the provision must be extended so as to prevent the moving party from extracting the general nature of such statements by the use of interrogatories. Therefore, the defendant will not be required to answer interrogatories 13 and 22 in any degree whatsoever.

Sanders, 89 Idaho at 312, 404 P.2d at 594 (1965) (underlining added).¹⁰

¹⁰ In *Sanders*, the Idaho Supreme Court reversed a district court order compelling responses to interrogatories eliciting the content of witness statements and requests for production of the witness statements. *Sanders*, 89 Idaho at 302-12, 404 P.2d at 589-95.

The Court also explained in *Sanders* that work product protections are not to be “emasculated” under “the guise of liberal construction” of discovery rules: “Under the guise of liberal construction, we should not emasculate the rules by permitting something which never was intended or is not within the declared objects for which they were adopted.” *Id.* at 309, 404 P.2d at 592-93 (citation omitted). Similarly, Interrogatory No. 12 seeks to extract via interrogatories information that plainly would be protected as work product had it been prepared in writing, and the State’s work product objection to Interrogatory No. 12 is well-taken and should be upheld under *Sanders*.

The holdings and reasoning of *Sanders* also dispose of District No. 2’s novel and unsupported argument that the work product doctrine does not apply because Interrogatory No. 12 is directed to the “client” rather than counsel. *Motion* at 4. If this argument were credited, then no interrogatory would ever be objectionable on work product grounds, for the simple reason that by definition, interrogatories are always directed at parties rather than their attorneys. *See* I.R.C.P. 33(a) (“Any party may serve upon any other party written interrogatories . . .”). Nonetheless, the Idaho Supreme Court did not hesitate to rule in *Sanders* that the trial court erred in compelling answers to certain interrogatories that would necessarily have required disclosure of confidential work product. *Sanders*, 89 Idaho at 312, 404 P.2d at 594.¹¹

Moreover, District No. 2 is trying to have it both ways when it comes to whether the work product objection applies to interrogatories directed to the “client” rather than the attorney. While District No. 2 argues that the State may not assert a work product

¹¹ The interrogatories and the motion to compel in *Sanders* were, like District No. 2’s interrogatories and *Motion*, directed to the party rather than the party’s counsel. *See Sanders*, 89 Idaho at 306, 307, 404 P.2d at 590, 591. The Idaho Supreme Court took no notice of this distinction in ruling that the interrogatories were subject to a work product objection.

objection to an interrogatory directed to the State rather than State's counsel, District No. 2 has repeatedly asserted work product objections to the interrogatories that the State has propounded to District No. 2 rather than to its counsel—including interrogatories the State has answered but District No. 2 has not. *See, e.g., District No. 2's Third Set of Discovery Responses* at 5, 6 (asserting work product objections to Interrogatories Nos. 22, 23 and 24). District No. 2 should not be permitted to rely on the Idaho rules to overcome the State's work product objection while simultaneously hiding behind the same objection, particularly when the State's interrogatory answers already go above and beyond what is required while District No. 2 has simply refused to answer the same interrogatories. *See Lester v. Salvino*, 141 Idaho 937, 939, 120 P.3d 755, 757 (Ct. App. 2005) ("the purpose of discovery rules is to provide discovery on both sides.") (internal quotation marks omitted).

Further, the argument that District No. 2 is entitled to an order compelling an answer simply because the interrogatories were directed to the "client" rather than counsel is precisely the sort of crabbed and narrow interpretation of the work product doctrine that would "emasculate" its protections "under the guise" of construction. *Id.* at 309, 404 P.2d at 592-93. The Court in *Sanders* cautioned against limiting the work product doctrine through application of the very sort of superficial reasoning that District No. 2 relies upon in this case. District No. 2's contention that it entitled to an order compelling an answer because Interrogatory No. 12 was directed to the "client" rather than the attorney fails as a matter of Idaho law under *Sanders*.

D. Other Jurisdictions Also Follow The Rationale Articulated In *Sanders*.

These conclusions find ample support in the decisions of appellate courts of other jurisdictions barring the use of interrogatories that would force a party to sift the relevant and irrelevant facts. For instance, in *State Bd. Of Pharmacy v. Otto*, 866 S.W.2d 480 (Mo. Ct. App. 1993); the Missouri Court of Appeals held that an interrogatory asking the pharmacy board to describe in detail any investigation of a particular pharmacist was objectionable "because it inquires into the efforts of the Board's attorney to determine relevant facts which in turn leads to the preparation of legal theory, the planning of strategy and the recording of mental impressions." *Id.* at 483-84; *see also id.* at 483 ("Work product consists of the tangible and intangible material which reflects an attorney's efforts at investigating and preparing a case, including . . . a determination of the relevant facts").

In the case of *Hayes v. Xerox Corp.*, 782 P.2d 929 (Alaska 1986), the Alaska Supreme Court explained that an interrogatory to the plaintiff violated the work product rule because it "essentially require[d] the attorney to set forth what information he will choose to elicit at trial, which means the attorney must reveal his mental impressions, strategy, opinion and what evidence he considers significant." *Id.* at 942.

The above-cited decisions confirm that an interrogatory asking a party to specifically identify which facts are relevant effectively requires disclosure of an attorney's mental processes, opinions, conclusion and theories of the case. They also confirm that there is no merit in District No. 2's contention that an interrogatory cannot be objectionable on work product grounds simply because interrogatories are directed at "clients" rather than their attorneys. None of these decisions recognize any such distinction, and none of these courts hesitated to apply the work product doctrine to

interrogatories.¹² This makes sense because, as previously pointed out, if the distinction between clients and their attorneys was the dispositive factor, the work product doctrine could never be applied to any interrogatory, and all work product would be fair game as long as it was sought through an interrogatory directed to the “client” rather than other discovery methods. This would defeat the purpose of the work product doctrine.

E. Interrogatory No. 12 Does Not Seek Factual Information But Rather Seeks The Results Of A Selective Legal Review Of The Relevance And Significance Of Each Line And Page Of Each Historic Document.

District No. 2 nonetheless argues that Interrogatory No. 12 is not objectionable because answering it would only require the State to provide raw factual information: a list of documents and certain line and page numbers. This argument ignores the fact that compiling such a “factual” list would necessarily require the State’s counsel to engage in a selective review of the historic documents, the results of which—even if only a list raw facts—would if provided to District No. 2 necessarily disclose the mental impressions, opinions, conclusions and legal theories of State’s counsel. Courts do not ignore this reality, however, and regularly uphold work product objections to discovery requests that, like Interrogatory No. 12, seek the results of a selective review of purely factual material that is not work product—especially when the propounding party also has the factual material and can do its own review.

For instance, in *Shelton v. American Motors Corp.*, 805 F.2d 1323, 1329 (8th Cir. 1986), the Eight Circuit held that under the work product doctrine a deponent did not even have to reveal whether she was merely aware of the existence of certain purely

¹² The interrogatory in the Missouri case was directed to the Board, not its attorney. See *Otto*, 866 S.W.2d at 481-82. The interrogatories in the Alaska case also were directed to the clients rather than their counsel. *Hayes*, 718 P.2d at 940.

factual documents, much less answer any questions about her "selective review" of them:

"We believe Burns' selective review of AMC's numerous documents was based upon her professional judgment of the issues and defenses involved in this case. This mental selective process reflects Burns' legal theories and thought processes, which are protected as work product." *Shelton*, 805 F.2d at 1329 (underlining added).¹³

This analysis recognizes the important distinction between purely factual documents that must be produced, and the results of an attorney's selective review of the documents, which is protected. See *Sporck v. Peil*, 759 F.2d 312, 315 (3d Cir. 1985) ("The threshold issue in this case is whether the selection process of defense counsel in grouping certain documents together out of the thousands produced in this litigation is work product entitled to protection") As the Third Circuit held in *Sporck*: "We believe that the selection and compilation of documents by counsel in this case in preparation for pretrial discovery falls within the highly-protected category of opinion work product." *Id.* at 316; see also *James Julian, Inc. v. Raytheon Co.*, 93 F.R.D. 138, 144 (D.Del. 1982) ("In selecting and ordering a few documents out of thousands counsel could not help but reveal important aspects of his understanding of the case. Indeed, in a case such as this, involving extensive document discovery, the process of selection and distillation is often more critical than pure legal research.")

Even if the material sought is not an attorney's list or inventory of documents but simply consists of "short snippets of verbatim text" copied from the documents, it reflects an attorney's selective review and mental impressions, and therefore constitutes work

¹³ The Rule 30(b)(6) deponent in *Shelton* was an attorney who had been designated to testify for the client in the deposition. As discussed elsewhere in this brief, answering Interrogatory No. 12 would require State's counsel to undertake a legal analysis of the historic documents, and the only person the State could designate to provide the answer sought by Interrogatory No. 12 is State's counsel.

product. *Boyce & Isley, PLLC v. Cooper*, 673 S.E.2d 694, 699, 705. (N.C.Ct.App. 2009). In *Boyce*, the attorney had “inputted very short, select pieces of documents that she considered relevant to defendants’ litigation strategy,” and the opposing party already had copies of the documents. *Id.* at 704 (underlining added). The court agreed that disclosure of the attorney’s mere selection of such material, even though it was merely a verbatim recitation of portions of purely factual documents that were not protected,

would direct plaintiffs to the few documents and portions thereof that defendants’ counsel focused on and considered significant enough to emphasize from among a vast number of items. . . . Consequently, we conclude that the verbatim text entered in the computer of defendants’ counsel qualifies as opinion work product and is not discoverable, especially where plaintiffs, specifically Mr. Boyce, already have the underlying, original documents in their possession. As such, the trial court abused its discretion by concluding otherwise.

Id. at 705. The North Carolina also emphasized that when the opposing party “already ha[s] these documents in their possession,” there is “an even more compelling case for concluding” that the attorney work product doctrine protects against disclosure. *Id.* at 704.

Like the problematic discovery requests in these cases, Interrogatory No. 12 also calls for counsel to engage in a “selective review” of the historic documents, which “could not help but reveal important aspects of [the State’s attorney’s] understanding of the case.” *James Julian, Inc.*, 93 F.R.D. at 144. Thus, District No. 2’s contention that Interrogatory No. 12 is not objectionable because the answer would only consist of purely factual information is wrong as a matter of fact and law. Interrogatory No. 12 facially calls for disclosure of confidential attorney work product because it requires that the State’s attorney undertake a selective review of the historic documents and provide the results to District No. 2.

A simple example illustrates this fact. The information Interrogatory No. 12 seeks is the same information it would obtain if the State were required to produce "highlighted" copies of the historic documents identifying all of the passages that the State's counsel deemed to support the State's position, or as otherwise relevant or significant in this subcase. Similarly, production of such highlighted documents clearly would satisfy Interrogatory No. 12. But District No. 2 would be barred from obtaining such highlighted documents, because "highlighting reflects the thought processes of counsel in connection with a matter for which he was providing advice and services to his client and . . . should be protected from disclosure either under the attorney client privilege or as work product. *Rohm and Haas Co. v. Brotech Corp.*, 815 F.Supp. 793, 795 (D.Del.,1993); *see also* *Biben v. Card* 119 F.R.D. 421, 428 -429 (W.D.Mo. 1987) ("Any notations, highlighting, etc., made by counsel for objecting defendants upon copies of the transcripts already in counsel's possession would be protected from discovery by the attorney work-product rule.").

It does not matter whether highlighted passages are themselves purely factual and discoverable. It is the highlighting—that is, counsel's identification of the individual passages that she or he considers to be significant factual information—that embodies the attorney's conclusions and opinions based on mental impressions and theories of the case and therefore may not be obtained under the work product doctrine. *F.D.I.C. v. Singh*, 140 F.R.D. 252, 254 (D.Me. 1992) ("Although Cox's attached notes and highlighting on the memorandum itself are not subject to discovery, the memorandum is."). Interrogatory No. 12 seeks precisely the same type of confidential attorney work product: counsel's identification of the passages in the historic documents that he considers to be

relevant or significant. District No. 2 could not obtain this information by demanding highlighted copies, and under Idaho law, the protections afforded written attorney work product under Rule 26(b)(3) therefore “must be extended so as to prevent the moving party from extracting [the same information] by the use of interrogatories.” *Sanders*, 89 Idaho at 312, 404 P.2d at 594.

Other jurisdictions are in agreement that interrogatories purporting to seek only facts and not expressly seeking “work product” nonetheless are objectionable if they would have the effect of requiring disclosure of the results of an attorney’s sifting of the relevant facts from the irrelevant, or would otherwise in some way entail disclosure of counsel’s mental impressions, opinions, conclusions or theories of the case. *See Otto*, 866 S.W.2d at 483-84 (determining that an interrogatory inquiring into an attorney’s efforts “to determine relevant facts” was objectionable because it “leads to the preparation of legal theory, the planning of strategy and the recording of mental impressions”); *Hayes*, 782 P.2d at 942 (stating that an interrogatory that “essentially” required the attorney to set forth the information he would choose to elicit at trial “means the attorney must reveal his mental impressions, strategy, opinion and what evidence he considers significant”); *see also Marmon v. Hodry*, 287 N.W.2d 470, 478 (N.Dakota 1980) (“The petitioners . . . argue that . . . compelling them to answer certain interrogatories would in effect make them disclose an attorney’s work product A careful examination of the interrogatories . . . leaves us with the impression that at least to some degree the work product of an attorney is involved”) (underlining added). District No. 2’s contention that Interrogatory No. 12 is not objectionable simply because it does not expressly seek “work

product” must be rejected as yet another crabbed and narrow interpretation of the rules that is disfavored under *Sanders*.

F. Interrogatory No. 12 Seeks To Exploit The State’s Trial Preparation Efforts.

In addition to seeking disclosure of confidential work product, Interrogatory No. 12 is also contrary to another “principal function” of the doctrine, that is, to “prevent exploitation of a party’s efforts in preparing for litigation” and “to force each side to do its own work.” *Admiral Ins. Co. v. U.S. Dist. Court for Dist. of Arizona*, 881 F.2d 1486, 1494 (9th Cir. 1989) (internal quotation marks and citations omitted). “The effort of a party or his representative in generating information needed for trial generally does not create information that will not be available to others willing to invest similar effort in discovery.” *Id.* The Idaho Supreme Court has also recognized this common-sense purpose of the work product doctrine: “We think the better view is that if the witnesses themselves are available to the party and can be interviewed or examined by him, there will ordinarily be no occasion for ordering production of their statements.” *Sanders*, 89 Idaho at 311, 404 P.2d at 594. For similar reasons, interrogatories may not be used to obtain “a dress rehearsal” of summary judgment or trial:

the opposing counsel cannot be required to put on a dress rehearsal of the trial. While it is proper to elicit information as to evidentiary facts as contrasted with ultimate facts, nevertheless it is improper to ask a party to state evidence upon which he intends to rely to prove any fact or facts.

Weber v. Biddle, 431 P.2d 705, 710-11 (1967).

SRBA Special Master Bilyeu was clearly troubled by these same concerns in considering the City of Pocatello’s motion to compel the State to produce certain historic documents in subcases 29-11069:

MS. KLAHN: It sounds like you would benefit most, you think, from hearing about work product?

SPECIAL MASTER BILYEU: I don't know what I would benefit from. But I'm very concerned about that topic.¹⁴

....

SPECIAL MASTER BILYEU: True. But this is not fact. . . . it certainly doesn't seem to me to appear to be facts in the traditional sense. . . . Aren't you asking for Mr. Barber's research? And the thing that I'm concerned about is, you know, in ordering that kind of a thing, wouldn't I be getting into the position of having Mr. Barber's client pay for and do legal research that the City of Pocatello ought to be doing?¹⁵

....

SPECIAL MASTER BILYEU: Well, what would Mr. Barber possibly have that you can't get—that's what I can't understand—through legal research, through historical research?¹⁶

....

SPECIAL MASTER BILYEU: But aren't you required to do your own research? I mean, that's my bottom-line problem with this whole concept. Isn't each lawyer, each client, required to do its own research? . . . I mean, why wouldn't—if the discovery rules are to be read as broadly as you're suggesting them, why wouldn't the party just say, "Hey, you know what, the most cost effective thing for me to do is wait until the last minute, not do anything, not go to the expense of doing anything, and to get it all from discovery"¹⁷

The concerns Special Master Bilyeu expressed in subcase 29-11609 are of even greater concern in this matter, because in subcase 29-11609 the issue was simply whether the State should be compelled to produce documents, not the far more doubtful question

¹⁴ See *Second Orr Aff.*, Exhibit 3 (transcript, p. 16, lines 13 - 18).

¹⁵ *Id.*, p. 17, line 11 to p.18 line 13.

¹⁶ *Id.*, p. 20, lines 14 - 17.

¹⁷ *Id.*, p. 22, lines 8 - 20.

of whether the State should be ordered to identify which particular documents, and the specific passages therein, the State deems to be important or significant.¹⁸

The City's attorney made this very point during the hearing. In arguing that the work product doctrine did not apply to the City of Pocatello's motion to compel document production, the City's attorney contrasted the City's request for production with a hypothetical situation in which the State had already produced the documents and then the City propounded an interrogatory asking the State to "[p]lease identify which documents the State of Idaho believes are important to rebutting Pocatello's claims in this matter."¹⁹ The City's attorney argued "we would not be entitled to that information, because at that point, we're reducing what Mr. Barber has done with his own legal analyses in review of those historical documents, we're trying to reduce it to our own possession, and that's not appropriate under the work product doctrine."²⁰

Interrogatory No. 12 is almost identical to the hypothetical interrogatory in the City attorney's example—an attempt to appropriate opposing counsel's legal analysis of documents that have already been produced. In truth, Interrogatory No. 12 is even worse: it does not merely ask which documents are "important" or "significant" to the State in

¹⁸ Special Master Bilyeu ruled that the documents the State had not produced were protected by the work product doctrine:

The withheld documents were obtained by legal counsel for the State of Idaho while conducting legal research at the Idaho State Law Library, the Idaho State Library archives, and depository centers of the National Archives and Record Administration. . . . The research conducted by the State of Idaho appears to place these documents within the purview of the work product doctrine. . . . Accordingly, this legal research is protected under the work product doctrine.

Order on Motion to Compel, Motion to Strike and Motion to Accept, Subcase No. 29-11609, p.2 (Oct. 15, 2004) (copy attached to *Second Orr Aff.* as Exhibit 4).

¹⁹ *Second Orr Aff.* as Exhibit 4 (transcript, p. 23, line 25 to p. 24, line 4 (underlining added)).

²⁰ *Id.*, p. 24, lines 5 - 11.

this matter, but goes much further and asks the State to indentify each passage in each document that is important or significant.

The State has gone to considerable effort in performing historic research at public document repositories and District No. 2 had the opportunity to do the same type of research, but apparently chose not to. By producing historic documents obtained through its research efforts, the State has gone beyond its discovery obligations and allowed District No. 2 to share in the fruits of the State's labor. The State should not now be required to also spoon-feed its legal analysis of these very documents to District No. 2. *See Admiral Ins. Co.*, 881 F.2d at 1494 (stating that a "principal function" of the work product doctrine is to "prevent exploitation of a party's efforts in preparing for litigation" and "to force each side to do its own work") (internal quotation marks and citations omitted).

If the State were to answer Interrogatory No. 12 as District No. 2 demands, the only new information District No. 2 would obtain is a legal analysis of the historic documents already in its possession—something that District No. 2 is fully capable of doing on its own and has had seven months to do. *See In re Automotive Refinishing Paint Antitrust Litigation*, 2006 WL 1479819, *7 (E.D.Pa. 2006) ("any relevant facts contained within those documents had already been discovered. The only benefits to be derived from those requests were a greater insight into opposing counsel's 'conscious segregation' of certain documents"). The work product rule forbids District No. 2 from attempting to piggyback on the State's trial preparation efforts in this manner. Interrogatory No. 12 seeks information that is already available to District No. 2, if it will

simply shoulder the burden of reviewing the historic documents that have been in its possession since last August.

Interrogatory No. 12 plainly asks for “a dress rehearsal” of summary judgment and/or trial. By asking the State to identify with painstaking specificity which evidence in the historic documents—right down to the page and line—that the State believes supports its position in this subcase, Interrogatory No. 12 unmistakably seeks a detailed preview of the State’s arguments, and to establish with the utmost particularity what facts or evidence the State will present at summary judgment or trial. This type of inquiry seeks attorney work product and is far beyond the intended scope and purpose of discovery.

G. Rule 33(b) Does Not Authorize Interrogatories Seeking Discovery Of A Party’s Mental Impressions, Opinions, Conclusions Or Legal Theories.

District No. 2’s *Motion* does not argue that Rule 33(b) entitles District No. 2 to an order compelling the State to answer Interrogatory No. 12, but District No. 2’s counsel has expressed this view to the State’s counsel on several occasions. Rule 33(b) provides that an otherwise proper interrogatory “is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact.” I.R.C.P. 33(b)(1). District No. 2 focuses in particular on the phrase “an opinion or conclusion that relates to . . . the application of law to fact,” and has argued that it means the State must provide the information sought under Interrogatory No. 12.

This interpretation of Rule 33(b) stretches the rule far past its intended reach and would allow it to swallow the work product rule. The Idaho Supreme Court specifically cautioned against such overly liberal interpretations of the rules, which would

“emasculate” the work product doctrine “[u]nder the guise of liberal construction . . . by permitting something which never was intended or is not within the declared objects for which they were adopted.” *Sanders*, 89 Idaho at 309, 404 P.2d at 592-93 (citation omitted). Thus, under Idaho law, Rule 33(b)(1) may not be interpreted as creating the broad work product exception that District No. 2 reads into the rule.

The view finds support in the Alaska supreme court’s decision in *Hayes*, which rejected the very same Rule 33(b)(1) argument District No. 2 advances in this case. The Alaska supreme court held that an interrogatory that “essentially requires the attorney to set forth what information he will choose to elicit during trial . . . violated the work product rule because they requested the Hayeses’ attorney to reveal his mental impressions.” *Hayes*, 782 P.2d at 942. In reaching this conclusion, the court had considered and rejected the argument that the interrogatory was not objectionable under the provision of the Alaska rules that is identical to the I.R.C.P. 33(b) provision upon which District No. 2 relies. *See Hayes*, 782 P.2d at 941 (stating that interrogatories seeking “an opinion or conclusion that relates to . . . the application of law to fact” are not necessarily objectionable) (quoting Alaska Rule 33(b)).²¹

The Alaska court explained that Rule 33(b) should not be interpreted as authorizing discovery of work product: “An interrogatory, however, cannot require an attorney to state what evidence will be relevant, his conception of the law as applied to the particular facts, indicate on what legal principles he will rely, or reveal his conception of the strong and weak points of his case.” *Id.* at 941. After reviewing the Supreme Court’s *Hickman* decision, the Alaska court further explained that the interrogatories to the plaintiffs were objectionable despite Rule 33(b) because they “requested the Hayeses’

²¹ This provision of the Alaska rules has since been moved to Rule 33(c). Alaska Rules of Civ. Pro. 33(c).

counsel to disclose opinions and conclusion based upon his mental processes rather than opinions that were factually oriented.” *Id.* at 942. *See also Sav-On Drugs, Inc. v. Superior Court*, 15 Cal. 3d 1, 5 (Cal. 1975) (“A party’s contention may be the subject of discovery, but not the legal reasoning or theory behind the contention.”).

Further, courts frequently state that “opinion work product” or “intangible work product”—that is, counsel’s mental impressions, conclusions, opinions or legal theories—“enjoys almost absolute immunity” or is “virtually undiscoverable.” *See, e.g., Baker v. General Motors Corp.*, 209 F.3d 1051, 1054 (8th Cir. 2000); *In re Veiga*, 2010 WL 4340564, at *5 (D.C. Cir. 2010). An opposing party may obtain such work product “only in very rare and extraordinary circumstances, such as when the material demonstrates that an attorney engaged in illegal conduct or fraud,” *Baker*, 209 F.3d at 1054, or under a showing of “extraordinary justification.” *In re Veiga*, 2010 WL 4340564, at *5. This reasoning demonstrates that Rule 33(b)’s provision regarding “an opinion or contention that relates to . . . the application of law to fact” does not reach nearly so far as District No. 2 would have it, and clearly does not authorize an order compelling an answer that would contain no new facts, but rather would only inform District No. 2 of counsel’s mental impressions, conclusions, opinions and legal theories of the facts that District No. 2 already possesses.

H. Any Contention That District No. 2 Does Not Know Or Understand The State’s Position In This Subcase Is Contrary To The Undisputed Record And Should Not Be Credited.

District No. 2 nonetheless argues that its *Motion* should be granted because “[o]ne of the primary purposes of this discovery was to learn what the State’s position *actually* is in SRBA subcase 01-06,” *Motion* at 2 (italics in original), implying that District No. 2

does not know what the State's position is in this subcase. As previously discussed, any such assertion fails on the record and should not be credited. As the record clearly reflects and as District No. 2 well knows, the State supports the amended Director's report for water right no. 01-06, which simply recites the language of the Eagle Decree. Further, the State has, unlike District No. 2, provided a succinct statement of its understanding of the language of the Eagle Decree in response to a contention interrogatory. *Motion* at 2-3.

Moreover, District No. 2 has thoroughly explored the question of the interpretation of the Eagle Decree and how water right no. 01-06 has been, is, or should be administered under the Eagle Decree, raising it in four depositions it has conducted in this case: Water District 1 Program Manager Anthony Olenichak (twice), Water District 1 Watermaster Lyle Swank, former Water District 1 Watermaster Ron Carlson.²² District No. 2's contention that it does not know or understand the State's position in this subcase is entirely implausible and self serving.

Even it were to be accepted, for purposes of argument, District No. 2's far-fetched contention that it does not understand the State's position, such is not for lack of discovery opportunities or lack of cooperation by the State. District No. 2's purported inability to understand the information District No. 2 has obtained through extensive depositions and written discovery is no basis to force the State to disclose work product. *See, e.g., Baker*, 209 F.3d at 1054 (opinion work product may be obtained "only in very rare and extraordinary circumstances, such as when the material demonstrates that an attorney engaged in illegal conduct or fraud"); *In re Veiga*, 2010 WL 4340564, at *5

²² See *Affidavit of Michael C. Orr* (Sept. 22, 2010) ("*First Orr Aff.*"), Exhibits 3-5 (transcript excerpts); see also *Second Orr Aff.*, Exhibit 5 (transcript)

(opinion or intangible work product may not be obtained absent a showing of “extraordinary justification”).

District No. 2 is entitled to the facts upon which the State may rely, and the State has provided them.²³ District No. 2 is not entitled to a dress rehearsal of trial or an explanation of which facts fit into the State’s legal theory of the case simply because District No. 2 claims to not know or understand the State’s position.²⁴

I. District No. 2’s Contention That It Interrogatory No. 12 Is Directed Solely To The “Client” Is Not Only Legally Flawed But Also Factually Incorrect.

District No. 2 also argues that its *Motion* should be granted because the interrogatories are only directed to the “client,” not to State’s counsel.²⁵ This argument fails as a matter of law for reasons previously discussed. In addition, District No. 2’s argument that Interrogatory No. 12 was directed only to the client and not to counsel is factually incorrect.

²³ As previously discussed, the State’s review of the historic documents it has obtained through its extensive research in state and federal archives and other public domain collections is ongoing.

²⁴ The State, in contrast, has a legitimate basis for asserting that District No. 2’s insufficient discovery responses are attempts to hide or confuse the issues. On the one hand, District No. 2 has admitted in response to the State’s discovery requests that the language used in the amended Director’s report is “clear” and “adequate” for purposes of categorizing natural flow and storage in administration. *Second Orr Aff.*, Exhibit 6 (answers to interrogatories 16 and 17); *id.*, Exhibit 7 (responses to requests for admission 5 and 6). On the other hand, District No. 2 has implied in its discovery responses that additional provisions may be necessary for this purpose, *Second Orr Aff.*, Exhibit 6 (answer to interrogatory 18); *id.*, Exhibit 7 (answer to interrogatory 24), and further refuses to describe its contention in this case as to what the Eagle Decree actually means in administration. *Id.*, Exhibit 7 (responses to requests for admission 7 and 8; answer to interrogatories 22 and 23). Taken together, these responses are contradictory at best and evasive at worst, and in any event are clearly calculated to prevent the State from learning what District No. 2’s position “actually” is in this subcase. In short, while the State has not only responded fully and in good faith to District No. 2’s discovery requests, District No. 2 has fallen far short of the standards that it seeks to apply to the State in this *Motion*.

²⁵ District No. 2 attempts to argue that Water District 1 Program Manager Anthony Olenichak, “or some other person,” is the “client.” *Motion* at 4. This argument is misplaced, as the record unambiguously reflects that the “client” is the State of Idaho. See also Idaho Code § 42-1401C(2) (“The attorney general may appear in any general adjudication and shall represent the position of the State of Idaho.”) Mr. Olenichak is a state employee and was designated as the State’s deponent only for the purpose of District No. 2’s Rule 30(b)(6) deposition of the State of Idaho on the issue of “the difference between the language of the water right under license No. 15134 as set forth in the Eagle Decree and as recommended in the [original] SRBA Director’s report under water right 01-06”). *Notice of Deposition of State of Idaho* at 2 (Jun. 30, 2010). Neither this nor the fact that Mr. Olenichak was consulted in connection with the State’s responses to District No. 2’s discovery requests makes him the “client.”

District No. 2's own discovery requests expressly sought information "in the possession of your attorneys."²⁶ Further, and as District No. 2 was well aware prior to the filing of the *Motion*, the only person the State could designate to answer Interrogatory No. 12 is State's counsel.²⁷ The State, like District No. 2, is an institutional client that can speak only through its designated representatives. Also like District No. 2, the State relied primarily upon its attorneys to conduct its internal document review and identify the documents to be produced in response to discovery requests.²⁸ Further, and as the State specifically informed District No. 2, it was the State's counsel, not the "client," who located and identified the historic documents collected from public repositories that are the subject of Interrogatory No. 12.²⁹ As District No. 2 well knows, there is no other person other than counsel that the State could designate to provide the information Interrogatory No. 12 seeks.³⁰

There is nothing suspect or unusual about having attorneys conduct document review and production—it is a common fact of litigation, especially when the client is an institution, organization or entity rather than a natural person. District No. 2 is fully aware of this, as its attorneys also handled its document review and production.³¹

²⁶ *Second Orr Aff.*, Exhibit 8 (District No. 2's first set of discovery requests at 3).

²⁷ Letter from Michael C. Orr to Isaac D. Keppler at 3 (Dec. 20, 2010) (attached to District No. 2's *Motion*).

²⁸ *Second Orr Aff.*, Exhibit 10 (transcript at 8-9); *see also* Letter from Orr to Keppler at 3 (citing transcript).

²⁹ Letter from Orr to Keppler at 3. This is also why District No. 2 is incorrect in suggesting that it was prejudiced by the fact that the Exhibit A documents were provided in a supplement to its Rule 30(b)(6) deposition of the State rather than at the deposition. The documents were identified and provided by counsel, not by Mr. Olenichak, and were obtained from the Attorney General's office in Boise, not from Mr. Olenichak's office in Idaho Falls. Even if counsel had had time to conduct the file review and provide the Exhibit A documents at the deposition (which took place only seven days after it was noticed), Mr. Olenichak would not have been able to explain the "significance" of the Exhibit A documents to the State's position in this litigation. It should also be noted that contrary to what District No. 2 appears to argue, its deposition notice sought all responsive documents in the State's possession, not just those that happened to be in Mr. Olenichak's custody.

³⁰ The fact that District No. 2 filed the *Motion* despite this knowledge demonstrates that the *Motion* was filed specifically for the improper purpose of obtaining confidential attorney work product.

³¹ *Second Orr Aff.*, Exhibit 10 (transcript at 8-9); *see also* Letter from Orr to Keppler at 3 (citing transcript).

4. The State's Rule 33(c) Answer To Interrogatory No. 12 Is Sufficient Because The Burden Of Reviewing Each Page And Line Of Each Of The Historic Documents Is Substantially The Same For The State As For District No. 2.

District No. 2 also challenges the State's Rule 33(c) answer to Interrogatory No. 12 that "pursuant to I.R.C.P. 33(c), the State answers that such documents [the documents identified in Exhibit A] speak for themselves and provides on the enclosed CD copies of the documents identified in Exhibit A." *Motion* at 3. The reason the State provided this answer and the historic documents was Rule 33(c) provides that "it is a sufficient answer" to an interrogatory to provide copies of documents, if the information the interrogatory seeks "may be derived or ascertained" from the documents and "the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served." I.R.C.P. 33(c).³² Thus, the State did not fail to answer or provide an evasive answer, but simply directed District No. 2 to the documents from which it could derive or ascertain the information it sought, and also provided additional copies of the documents.

District No. 2 argues that Rule 33(c)'s "burden" exception should apply because "the burden for AFRD No. 2 to derive the answer from the documents themselves is clearly much greater than it is for the State to simply provide the answer." *Motion* at 4-5.

³² The full text of Rule 33(c) is as follows:

Where the answer to an interrogatory may be derived or ascertained from the business or other records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business or other records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

District No. 2 provides no facts or law in support of this wholly conclusory assertion. It simply hangs in the air, unexplained and unsupported, leaving the State and the Court to guess what District No. 2 views as being so “clear.”

If anything, it is clear that the burden of sifting through each document to identify each page and line of each of the documents that may support the State’s position in this subcase would be substantially the same for both parties. District No. 2 incorrectly assumes that the State can “simply provide the answer” to Interrogatory No. 12 immediately, without undertaking any further review of the Exhibit A documents. *Motion* at 4-5. While the State has conducted a preliminary review of the Exhibit A documents and believes that they are potentially relevant to the issues in this subcase, the State does not have at its fingertips a detailed, page-by-page, line-by-line relevance breakdown of each and every historic document.³³ In order to provide the detailed and specific breakdown of each document by each page and each line that District No. 2 seeks under Interrogatory No. 12, the State would itself first have to “derive or ascertain” that information through a careful and thorough review of each document, just as District No. 2 would have to. The burden is substantially the same for both parties.

This is confirmed by the nature of the Exhibit A documents, virtually all of which are historic public documents that the legal counsel for the State gathered from various state and federal document archives and other collections and/or libraries, all of which are open to the public. These documents provide historic background and context pertaining to water right 01-06 and particularly the Palisades Contracts and the Eagle Decree. Most of the Exhibit A documents are ancient or public records that speak for themselves, and

³³ Even if the State had already prepared such a detailed analysis, it would clearly be protected work product, for reasons previously discussed.

the State is in no better a position than District No. 2 to review or analyze the relevance of each page and line of these documents.

Further, it would be more difficult for the State to identify all of the language in each document relevant to the issues in this matter because District No. 2 refuses to identify its position or the issues it wishes to resolve in this subcase. District No. 2 has admitted that the language of Eagle Decree is "clear and adequate," and this very language has been recommended by the Director in his amended report for water right no. 01-06. Presumably the "clear and adequate" language of the amended recommendation resolved District No. 2's original reason for its participation in this subcase: District No. 2 objected to the initial Director's report because it did not recite the language of the Eagle Decree.³⁴ Yet, District No. 2 plainly desires to continue the litigation, despite having gotten the very decree language recommendation that it purported to be seeking. Further, District No. 2 has refused to answer the State's interrogatories asking what its contentions or positions are with respect to the interpretation of the Eagle Decree, and what changes, if any, District No. 2 seeks in the partial decree as proposed under the amended Director's report.³⁵

Under these circumstances, the State is left to guess at what the issues are, and District No. 2 cannot credibly claim that its burden in identifying the issues is greater than the State's or that the State should be compelled to conduct a line-by-line, page-by-page review of the Exhibit A documents. See *Lester v. Salvino*, 141 Idaho 937, 939, 120 P.3d 755, 757 (Ct. App. 2005) ("the purpose of discovery rules is to provide discovery on both sides") (internal quotation marks omitted).

³⁴ *Standard Form 1 Objection* (Sept. 21, 2006).

³⁵ *Second Orr Aff.*, Exhibit 7 (responses to requests for admission 7 and 8; answer to interrogatories 22 and 23); *id.*, Exhibit 6 (answer to interrogatory 18); *id.*, Exhibit 7 (answer to interrogatory 24).

CONCLUSION

Interrogatory No. 12 essentially seeks to have State's counsel perform a legal relevancy analysis of historic documents that District No. 2 has in its possession. District No. 2's counsel is fully capable of performing such an analysis. For these reasons, the State's attorney work product objection is well-taken and should be upheld, and the State's Rule 33(c) response to Interrogatory No. 12 "is a sufficient answer."³⁶ The State of Idaho therefore respectfully requests that the Special Master deny District No. 2's *Motion*.

REQUEST FOR EXPENSES AND ATTORNEY FEES

The State requests that the Court require District No. 2 to pay the State reasonable expenses, including attorney's fees, incurred in opposing District No. 2's *Motion* because it was not substantially justified by existing law or a good faith argument based upon the facts and was filed for the purpose of causing needless increase in the cost of litigation. I.R.C.P. 37(a)(4).

Respectfully submitted this 24th day of March 2011.

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³⁶ I.R.C.P. 33(c).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of March 2011, I caused a true and correct copy of the foregoing STATE OF IDAHO'S RESPONSE TO AMERICAN FALLS RESERVOIR DISTRICT NO. 2'S MOTION TO COMPEL DISCOVERY I.R.C.P. 37(a) to be filed with the Court and served on the following parties by the indicated methods:

Clerk of the SRBA Court 253 Third Avenue North P.O. Box 2707 Twin Falls, Idaho 83303-2707	☐ U.S. Mail ☒ Hand Delivery ☐ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: ☐ E-mail:
City of Pocatello Represented by: A. Dean Tranmer City of Pocatello PO Box 4169 Pocatello, ID 83201	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: ☒ E-mail: dtranmer@pocatello.us
American Falls Reservoir District No. 2 Represented by: C. Thomas Arkoosh Isaac D. Keppler Capitol Law Group, PLLC 205 N. 10th Street, 4th Floor Boise, ID 83701 and 301 Main St. PO Box 32 Gooding, ID 83330	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: ☒ E-mail: tarkoosh@capitollawgroup.net ikeppler@capitollawgroup.net
American Falls Reservoir District No. 2 Represented by: Craig D. Hobdey Hobdey & Hobdey PO Box 176 Gooding, ID 83330	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail, Return Receipt Requested ☐ Overnight Mail

	☐ Facsimile: ☒ E-mail: hobdeycraig@gmail.com
Blackfoot Irrigation Co. Fremont-Madison Irrigation United Canal Co. Represented by: Jerry R. Rigby Rigby, Andrus & Rigby, Chtd. 25 N. 2 nd E. PO Box 250 Rexburg, ID 83440-0250	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: ☒ E-mail: jrigby@rex-law.com
City of Pocatello The Amalgamated Sugar Co. Represented by: Josephine P. Beeman Beeman & Associates, PC 409 W. Jefferson St. Boise, ID 83702	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: ☒ E-mail: jo.beeman@beemanlaw.com
Independent Water Users of Jefferson Irrigation Dist. Montevue Canal Co. Mud Lake Water Users Inc. Producers Irrigation Co. Represented by: Robert L. Harris Holden, Kidwell, Hahn & Crapo, PLLC 1000 Riverwalk Dr., Ste. 200 PO Box 50130 Idaho Falls, ID 83405	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: ☒ E-mail: rharris@holdenlegal.com
Aberdeen American Falls Bingham Ground Water District Bonneville Jefferson Ground Carey Valley Ground Water Dist. Jefferson Clark Ground Water Madison Ground Water District Magic Valley Ground Water Dist. North Snake Ground Water Dist. Represented by: Randall C. Budge	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: ☒ E-mail: rcb@racinelaw.net cmm@racinelaw.net

Candice M. McHugh Racine, Olson, Nye, Budge & Bailey, Chtd. 201 E. Center, Ste. A2 PO Box 1391 Pocatello, ID 83204-1391 and 101 Capitol Blvd, Ste. 208 Boise, ID 83702	
City of Pocatello Represented by: Sarah A. Klahn White & Jankowski LLP 511 16th St., Ste. 500 Denver, CO 80202	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: ☒ E-mail: sarahk@white-jankowski.com
United States of America USDI Bureau of Reclamation Represented by: US Department of Justice Environment & Natural Resources 550 W. Fort St., MSC 033 Boise, ID 83724	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: ☐ E-mail:
E. Gail McGarry United States Department of the Interior Bureau of Reclamation 1150 N. Curtis Road, Suite 100 Boise, ID 83706-1234	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: ☐ E-mail: ☐ Not applicable
Chief, Natural Resources Division Office of the Attorney General State of Idaho P.O. Box 44449 Boise, ID 83720-4449	☐ U.S. Mail ☐ Hand Delivery ☐ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile:

	☐ E-mail: ☒ Not applicable
IDWR Document Depository PO Box 83720 Boise, ID 83720-0098	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: ☐ E-mail:


 Michael C. Orr

EXHIBIT A

Bates #	DocDate	Description
IOAG000000001	9/14/1949	Letter from Ernest MacFarland, Chair of Senate Committee on Interior & Insular Affairs, to Senator O'Mahoney re: Subcommittee Report on Legislation on Palisades Dam & Reservoir Project, Northside Pumping Division and Disposition of Reserved Space in American Falls Reservoir.
IOAG000000005	9/29/1949	US Senate Report No. 1116 re: Legislation on Palisades Dam & Reservoir Project, Northside Pumping Division and Disposition of Reserved Space in American Falls Reservoir
IOAG000000014	7/17/1950	Letter from F. J. Lawton, Director, Bureau of the Budget, Executive Office of the President, to Secretary of Interior re: Palisades Dam Project
IOAG000000024	10/8/1943	Memorandum for USBR Regional Director from E.H. Neal re: Water Right from Snake River for American Falls Reservoir Dist. #2
IOAG000000027	8/5/1968	Status Report - Workings of Palisades Water Savings Agreements
IOAG000000036	3/13/1989	Letter from John W. Keyes III, USBR Regional Director, to Alan D. Jensen. P.E., re: Documents Relating to Authorization of Palisades Dam and Reservoir (Project Authorization)
IOAG000000039	4/11/1957	Letter from E.G. Nielsen, Commissioner of Reclamation, to the Secretary of Interior re: Inter-Bureau Agreement on Water Supply for Michaud Division, Fort Hall Indian Reservation from American Falls & Palisades Reservoirs - Minidoka & Palisades Projects
IOAG000000042	2/21/1934	Letter from Lynn Crandall, USGS District Engineer to Dr. Elwood Mead, Commissioner of Reclamation re: Comments on Proposal to Construct a Government Power Plant at American Falls
IOAG000000045	1/31/1960	Table Entitled Existing and Proposed Holdings of American Falls, Jackson Lake and Palisades Reservoir Space, Minidoka-Palisades Projects.
IOAG000000048	10/1/1946	Water Supply for Palisades Reservoir Project - Project Planning Report 1-5.17-1 - A General Plan For The Elimination Of Winter Diversions, Coordinated Operation of Reservoirs, and Development of New Land (United States Dept of the Interior, Bureau of Reclamation)
IOAG000000073	11/27/1950	House Document No. 721 - A Report on the North Side Pumping Division of the Minidoka Project, Idaho, Pursuant to Public Law 864 (81st Congress, 2d Session) (Government Printing Office)
IOAG000000330	12/12/1941	House Document No. 457 - Report on the Palisades Dam Projects Near Idaho Falls, Idaho - Letter from the Secretary of the Interior Transmitting a Letter from the Commissioner of the Bureau of Reclamation Submitting the Engineering and Economic Report on the Palisades Dam Projects on the South Fork of the Snake River Near Idaho Falls, Idaho (77th Congress, 1st Session) (Government Printing Office)
IOAG000000359	11/27/1950	House Document No. 720 - Palisades Dam and Reservoir Project in Idaho - A Supplemental Report on Allocation & Repayment of Costs of the Palisades Dam & Reservoir Project Pursuant to Public Law 864 (81st Congress, 2d Session)
IOAG000000415	1/1/1935	Hoyt, W.G. - Water Utilization in the Snake River Basin - USGS Water Supply Paper 657
IOAG000000841	6/21/1937	Letter from B.E. Stoutemyer, USBR District Counsel, to R.W. Faris, Idaho State Commissioner of Reclamation re: Twin Falls Hydropower Site Expansion

EXHIBIT NUMBER

2

Bates #	DocDate	Description
IOAG000000845	3/12/1936	Findings of the Secretary of the Interior as to net profits from the Black Canyon and the Minidoka Power Plants, through sales of power on the Minidoka project and towns adjacent thereto, during the year 1935
IOAG000000849	2/21/1934	Letter from Lynn Crandall, USGS District Engineer to Dr. Wilwood Mead, Commissioner of Reclamation Mead re: Comments on Proposal to Construct a Government Power Plant at American Falls
IOAG000000852	2/21/1934	Letter from Lynn Crandall, USGS District Engineer to Dr. Wilwood Mead, Commissioner of Reclamation Mead re: Comments on Proposal to Construct a Government Power Plant at American Falls
IOAG000000855	8/1/1941	Excerpted Pages of Report on Palisades Dam Project, Corrections by E.B. Debler
IOAG000000896	9/17/1943	Letter from H.W. Bashore, Commissioner of Reclamation, to Congressman Dworshak re: Construction of Palisades Reservoir
IOAG000000898	12/9/1941	Letter from Harold L. Ickes, Secretary of Interior Ickes, to the President of the United States Senate re: Reclamation Report on the Palisades Project
IOAG000000900	8/20/1940	Letter from Lynn Crandall, USGS District Engineer, to S. O. Harper, Chief Engineer, U.S. Bureau of Reclamation re: Grand Valley Reservoir
IOAG000000903	8/16/1940	Letter from S.O. Harper, Chief Engineer, U.S. Bureau of Reclamation, to Lynn Crandall, USGS District Engineer re: Grand Valley Reservoir
IOAG000000905	6/1/1935	Report on Upper Snake River Storage Investigations, Volume I, Snake River Above Idaho Falls (U.S. Dep't of the Interior, Bureau of Reclamation)
IOAG000001060	8/1/1939	Report on Upper Snake River (South Fork) Storage Investigations - Project Investigations Report No. 34 (U.S. Dep't of the Interior, Bureau of Reclamation)
IOAG000001227	10/11/1940	Letter from S.O. Harper, Chief Engineer, Bureau of Reclamation, to Lynn Crandall, USGS District Engineer re: Comments on Report on Grand Valley Reservoir
IOAG000001230	9/25/1940	Letter from Lynn Crandall, USGS District Engineer, to S.O. Harper, Chief Engineer, Bureau of Reclamation, re: Report on Grand Valley Reservoir
IOAG000001236	9/25/1940	Letter from Lynn Crandall, USGS District Engineer, to S.O. Harper, Chief Engineer, Bureau of Reclamation, re: Report on Grand Valley Reservoir
IOAG000001241	8/1/1940	Report on Upper Snake River (South Fork) Storage Investigations, Grand Valley Reservoir, Project Investigations Report No. 34-A (U.S. Dep't of the Interior, Bureau of Reclamation)
IOAG000001367	9/8/1939	Letter from Lynn Crandall, USGS District Engineer, to B.E. Stoutemyer, USBR District Counsel re: Water Problems on the Snake River
IOAG000001375	9/8/1939	Letter from Lynn Crandall, USGS District Engineer, to B.E. Stoutemyer, USBR District Counsel re: Water Problems on the Snake River
IOAG000001383	9/8/1939	Letter from Lynn Crandall, USGS District Engineer, to B.E. Stoutemyer, USBR District Counsel re: Water Problems on the Snake River
IOAG000001392	6/24/1949	Letter from Michael W. Straus, Commissioner of Reclamation, to the Secretary of the Interior re: Supplemental Report on Palisades Dam and Reservoir Project

Bates #	DocDate	Description
IOAG000001395	6/12/1946	Letter from Oscar L. Chapman, Acting Secretary of the Interior, to Walter B. Sheppard re: The Palisades Project, Idaho
IOAG000001398	12/9/1941	Letter from Harold L. Ickes, Secretary of the Interior, to the Speaker of the House of Representatives re: Reclamation Report on the Palisades Project
IOAG000001400	6/17/1952	Memorandum from Michael W. Straus, Commissioner of Reclamation, to Oscar L. Chapman, Secretary of the Interior re: Repayment and water savings contracts - Minidoka and Palisades projects
IOAG000001405	12/6/1951	Memo from G.W. Lineweaver, Acting Commissioner of Reclamation, to Secretary of the Interior re: Extension for Completion of Palisades Water Savings Agreements
IOAG000001407	12/1/1960	Technical Record of Design and Construction, Palisades Dam and Power Plant (Part I, Introduction) (U.S. Dep't of the Interior, Bureau of Reclamation)
IOAG000001444	10/15/1934	Supplementary Water for Irrigation in Idaho, with Particular Reference to Boise and Snake River Valleys (Revised)
IOAG000001471	6/21/1937	Letter from B.E. Stoutemyer, USBR District Counsel, to R.W. Faris, Idaho State Commissioner of Reclamation re: Twin Falls License Stipulation
IOAG000001475	1/1/1960	Table Entitled Existing and Proposed Holdings of American Falls, Jackson Lake and Palisades Reservoir Space, Minidoka - Palisades Projects
IOAG000001478	12/31/1936	Water Distribution and Hydrometric Work, Water District No. 36, 1936 (Lynn Crandall, Watermaster)
IOAG000001508	6/15/2010	Letter from C. Tom Arkoosh to Gary Spackman, Director of Idaho Department of Water Resources re: American Falls Reservoir District No. 2
IOAG000001524	6/14/1937	Letters Between Dana Templin, Superintendent, Minidoka Project, and S.T. Baer, Manager, American Falls Reservoir District No. 2 re: Water Delivery Under Secretary of the Interior's Instructions
IOAG000001526	4/6/1936	Draft Letter from Superintendent of Minidoka Project to Lynn Crandall, Watermaster, and R.W. Faris, Idaho State Commissioner of Reclamation re: Secretary of the Interior Instructions for Delivery of Water Under Permit no. 15134
IOAG000001529	6/15/1937	Letter from Lynn Crandall, Watermaster, to S.T. Baer, Manager, American Falls Reservoir District No. 2 re: Water Delivery Under Secretary of the Interior's Instructions
IOAG000001531	4/6/1936	Letter from John C. Page, Acting Commissioner of Reclamation, to E.B. Darlington, Superintendent of Minidoka Project re: Instructions for Delivering Water Under Permit 15134
IOAG000001534	2/4/1936	Letter from B.E. Stoutemyer, USBR District Counsel, to P.T. Sutphen, Secretary of American Falls Reservoir District No. 2 re: Delivery of Water Under Permit 15134
IOAG000001538	6/14/1937	Letters Between Dana Templin, Superintendent, Minidoka Project, and S.T. Baer, Manager, American Falls Reservoir District No. 2 re: Water Delivery Under Secretary of the Interior's Instructions
IOAG000001540	6/15/1937	Letter from Lynn Crandall, Watermaster, to S.T. Baer, Manager, American Falls Reservoir District No. 2 re: Delivery of Water Under Secretary of the Interior's Instructions
IOAG000001542	4/6/1936	Letter from Superintendent of Minidoka Project to Lynn Crandall, Watermaster and R.W. Faris, Idaho State Commissioner of Reclamation re: Delivery of Water Under Secretary of the Interior's Instructions

Bates #	DocDate	Description
IOAG000001545	4/6/1936	Letter from John C. Page, Acting Commissioner of Reclamation, to E.B. Darlington, Superintendent of Minidoka Project re: Instructions for Delivering Water Under Permit 15134
IOAG000001548	2/4/1936	Letter from B.E. Stoutermyer, USBR District Counsel, to P.T. Sutphen, Secretary of American Falls Reservoir District No. 2 re: Delivery of Water Under Permit 15134
IOAG000001552	6/25/1929	Woodville Decree
IOAG000001587	3/30/1921	License and Certificate of Water Right, Water License No. 15134
IOAG000001646	8/1/1945	Idaho Reclamation News
IOAG000001650	1/1/1947	Idaho Reclamation News
IOAG000001654	1/1/1948	Idaho Reclamation News
IOAG000001658	3/1/1948	Idaho Reclamation News
IOAG000001662	10/1/1949	Idaho Reclamation News
IOAG000001666	10/1/1952	Idaho Reclamation News
IOAG000001670	10/1/1954	Idaho Reclamation News
IOAG000001674	5/10/2010	IDWR E-mails re: American Falls Reservoir District No. 2 Natural Historical Flow Records
IOAG000001679	2/17/2010	Memorandum from Tony Olenichak, Water District #1, to Garrick Baxter and IDWR Legal Staff re: Historical Documentation for AFRD2 Water Right
IOAG000001683	8/8/1949	The Palisades Dam & Reservoir Project - Hearings Before A Subcommittee on Irrigation & Reclamation of the Committee on Public Lands, House of Representatives and a Special Subcommittee of Committee on Interior & Insular Affairs - HR 5506 (81st Congress, 1st Session), (Government Printing Office)
IOAG000001813	8/5/1968	Status Report - Workings of Palisades Water Savings Agreement (U.S. Bureau of Reclamation)
IOAG000001823	6/28/2010	Idaho Department of Water Resource's Backfile for Water Right No. 01-2064