

JUL 29 2021

DEPARTMENT OF
WATER RESOURCES

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Attorneys for Claimants-Respondents Kathryn Spackman, Daniel Barkley, and Melissa Stocking

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

In Re CSRBA

Case No. 49576

**Subcase Nos. 95-02138, 95-13699, 95-14511,
95-17232**

**KATHRYN SPACKMAN, DANIEL
BARKLEY, AND MELISSA STOCKING
FIRST SET OF DISCOVERY REQUESTS
TO SUSAN MARTELL**

Pursuant to the *Scheduling Order* issued in this matter on May 3, 2021, *CSRBA Administrative Order 1, Rules of Procedure*, and Idaho Rules of Civil Procedure 26, 33, 34 and 36, Kathryn Spackman, Daniel Barkley, and Melissa Stocking (“Claimants-Respondents”), by and through their undersigned counsel, hereby requests that Susan Martell (“Objector”) respond to the following interrogatories, requests for production, and request for admission (collectively, “Discovery Requests”), in accordance with the instructions below, within thirty (30) days after

service, at the offices of Norman M. Semanko, Parsons Behle & Latimer, 800 W. Main Street, Suite 1300, Boise, Idaho 83702.

DEFINITIONS AND INSTRUCTIONS

1. “Objector,” “you” and/or “your” shall refer to Susan Martell, or anyone acting on her behalf.

2. The term “document” means and includes any and all written or graphic matter, however produced or reproduced, of every kind and description, and all magnetic, electromagnetic, and electronic sound recordings or written transcripts thereof, and specifically includes, but is not limited to, all communications, correspondence, letters, emails, telegrams, notes, memoranda, minutes of meetings, reports, directives, proposals, spreadsheets, intra-company communications, inter-company communications, diaries, journals, studies, surveys, manuals, day-timer or PDA entries, electronic calendars, transcriptions, logs, receipts, working papers, desk calendars, appointment books, notices, drawings, photographs, movie or video films, video recordings on tapes, slides, work sheets, or any and all digital recordings, opinions or reports of consultants, records of telephone conversations, reports or summaries of investigations, cables, publications, charts, plans, rules, regulations, protocols, summaries of interviews, writings of any kind or description whatsoever, tape recordings, computer tapes, computer discs and printouts, data encoded on computer or computer media, information or data stored on backup tapes or disks, information contained in any computer, server, or data retention system, or other electronic or

mechanical information or data of any kind or description whatsoever, including both originals and copies. The term “document” shall specifically include all forms of electronic data.

3. As used herein, every draft, revision, version or non-identical copy of a “document” is a separate “document” within the meaning of this term and must be produced in response to this request.

4. “Relating to,” “relates to,” “referring to,” “reflecting” or “refers to” means comprising, constituting, concerning, mentioning, evidencing, representing, discussing, describing, pertaining to, connected to, or having any relationship to in any way logically or factually with stated subject matter.

5. “Communication” shall mean the disclosure, transfer, transmission and/or exchange of information (in the form of facts, ideas, inquiries, or otherwise) by any means, including, but not limited to, any meeting, conversation, discussion, conference, correspondence, message, or other written or oral transmission, exchange, or transfer of information in any form between two or more persons, including in person or by telephone, facsimile, telegraph, telex, letter, e-mail, text message, social media message, or other medium.

6. As used herein, the terms “and” and “or” are meant as both conjunctive and disjunctive.

7. The singular and plural forms of words are used interchangeably, as are the masculine and feminine forms.

8. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

9. The terms “identify” or “identity” when used in reference to a natural person means to state: (1) the name of the person; (2) the home and business addresses and telephone numbers of the person; and (3) the nature of the business in which the person is involved and the business or professional title of the person.

10. Each answer or response should include all information currently known or available to you. If the information is not sufficient to respond to any interrogatory or request, you should provide whatever information is known or available, state what portion of the interrogatory or request cannot be answered or responded to, and identify any and all documents and/or persons that might have knowledge or information relevant to the answer or response sought. If information to respond to any interrogatory or request is available, but incomplete, please indicate the known or available information and state when completion of such further information as requested is expected. If you cannot complete an answer or response until further discovery has been completed, you are requested to so indicate and to answer or respond to the best of his ability in view of the present state of discovery.

11. If any answer or response is based upon information or belief, in whole or in part, please so state and identify each person, document or oral communication that has provided a factual basis for such information or belief. Where exact data cannot be furnished, estimated data should be supplied and identified as such.

12. If objection is made to any part of a particular interrogatory or request, that part should be specified and the grounds for the objection stated, and any other portion of the interrogatory or request to which no objection is made should be responded to.

13. If you object to any interrogatory or request on the grounds of privilege or the like, identify the specific privilege upon which such objection is based, state the portion of the interrogatory or request to which the privilege is claimed to apply, provide sufficient information to permit an evaluation of the propriety of the claim of privilege, and provide all information and/or documents responsive to the interrogatory or request that does not fall within the claim of privilege.

14. With respect to any requested document that is known to have been destroyed, please describe the date(s) the document bore or was created or revised, the name and address of each person who wrote or created it, the name and address of each person who received or may have received a copy of the document, a description of the document (*e.g.*, letter, memo, etc.), the last known custodian of the document, the circumstances or reasons for the destruction of the document, and the date the document was destroyed.

15. The following interrogatories and requests shall be deemed continuing so as to require you, to the extent required by Rule 26(e) of the Idaho Rules of Civil Procedure, to provide additional information or produce additional documents if you or your agents, representatives, or attorneys gain access to additional documents or information which are or may be responsive to these interrogatories or requests between the time the answers and responses to these interrogatories and requests are signed and the time of trial.

INTERROGATORIES

INTERROGATORY NO. 1: Please state the name, address, phone number, and relation to you of each person answering these Discovery Requests.

INTERROGATORY NO. 2: Please state the name, address, phone number, and relation to you of each person who has supplied information for answers to the Discovery Requests herein, and specify the Discovery Request(s) for which such person has supplied information.

INTERROGATORY NO. 3: Please identify each person who has or who you believe may have knowledge of the facts or events giving rise to or otherwise relating to this proceeding, or any other facts, events, and/or information material to this proceeding. For each such person,

(a) state whether you, your agents, representatives, and/or attorneys have spoken with said person and, if so, whether any oral or written statement has been obtained from said person; and

(b) summarize the basis upon which you believe that person has such knowledge.

INTERROGATORY NO. 4: Please name and identify the last known address and phone number of each person you may call as a witness at the trial in this action and briefly state the facts to which you expect each such witness to testify.

INTERROGATORY NO. 5: Please state the name and last known address of each person consulted as an expert witness on your behalf concerning this matter, and with respect to each, state the following:

(a) The scientific, technical, or other specialized knowledge possessed by such person;

(b) The knowledge, skill, experience, training, and education which qualifies such person as an expert;

(c) All facts and data upon which the expert bases his or her opinion; and

(d) All opinions and inferences to which the expert may testify and the reasons therefor.

INTERROGATORY NO. 6: Please identify each item that you may attempt to introduce into evidence at the hearing in this matter and explain the alleged significance of each item by quoting or otherwise specifically designating the portion of such item that you contend is relevant to this matter.

INTERROGATORY NO. 7: Please identify in full and complete detail each and every document, writing, or other physical thing that pertains in any way, in whole or in part, to any objection asserted in any part of this proceeding, and provide the location of each document, writing, or other physical thing.

INTERROGATORY NO. 8: Please identify in full and complete detail each and every document, writing, or other piece of physical evidence which you intend to offer as an exhibit in the trial of this matter.

INTERROGATORY NO. 9: Please identify in full and complete detail each and every document, writing, or other piece of physical evidence which evidences or otherwise relates to your objections as outlined in your *Standard Form 1 Objection* filed July 12, 2019 and pertaining to Subcase 95-2138.

INTERROGATORY NO. 10: Please identify in full and complete detail each and every document, writing, or other piece of physical evidence which evidences or otherwise relates to your objections as outlined in your *Standard Form 1 Objection* filed July 12, 2019 and pertaining to Subcase 95-13699.

INTERROGATORY NO. 11: Please identify in full and complete detail each and every document, writing, or other piece of physical evidence which evidences or otherwise relates to your objections as outlined in your *Standard Form 1 Objection* filed July 12, 2019 and pertaining to Subcase 95-14511.

INTERROGATORY NO. 12: Please identify in full and complete detail each and every document, writing, or other piece of physical evidence which evidences or otherwise relates to your objections as outlined in your *Standard Form 1 Objection* filed July 12, 2019 and pertaining to Subcase 95-17232.

INTERROGATORY NO. 13: Please identify in full and complete detail each and every communication or writing between you and any other party, whether written, verbal, telephonic, by email, etc., during which the priority date, ownership, or administration of any water rights owned by Daniel A. Barkley was discussed in any meaningful way.

INTERROGATORY NO. 14: Please identify in full and complete detail each and every communication or writing between you and any other party, whether written, verbal, telephonic, by email, etc., during which the priority date, ownership, or administration of any water rights owned by Kathryn M. Spackman was discussed in any meaningful way.

INTERROGATORY NO. 15: Please describe each any every communication that you have had with each and every watermaster or employee of the IDWR regarding your responses to the interrogatories above. In the response to this interrogatory, specifically describe any instructions, directions, or other requests that you provided to said personnel and response(s) received.

INTERROGATORY NO. 16: Please identify in full and complete detail each and every document, writing, or other piece of physical evidence which evidences or otherwise relates to your objection in Section E., *Standard Form 1 Objection*, Subcase: 95-2138, that “quantity of water under this right for domestic use shall not exceed 13,000 gallons per day” was not included in 95-2138’s license.”

INTERROGATORY NO. 17: Please identify in full and complete detail each and every document, writing, or other piece of physical evidence which evidences or otherwise relates to your objections in Section D., *Standard Form 1 Objection*, Subcase: 95-2138, specifically relating to “Quantity, Should be: Remark should be removed” and “Point of Diversion, Should be: Remarks should be removed”.

INTERROGATORY NO. 18: Please identify in full and complete detail each and every document, writing, or other piece of physical evidence which evidences or otherwise relates to your objections in Section D., *Standard Form 1 Objection*, Subcase: 95-13699, including that “This water right should not exist” and the reasons supporting objection(s) that there is: “No evidence of water use prior to 1971.”

INTERROGATORY NO. 19: Please identify in full and complete detail each and every document, writing, or other piece of physical evidence which evidences or otherwise relates to your objections in Section D., *Standard Form 1 Objection*, Subcase: 95-14511, including that “This water right should not exist” and the reasons supporting objection(s) that there is: “No evidence of water use prior to 1971.”

INTERROGATORY NO. 20: Please identify in full and complete detail each and every document, writing, or other piece of physical evidence which evidences or otherwise relates to your objection in Section D., *Standard Form 1 Objection*, Subcase: 95-17232, specifically relating to “Point of Diversion, Should be: Remarks should be removed”.

INTERROGATORY NO. 21: Please identify in full and complete detail each and every document, writing, or other piece of physical evidence which evidences or otherwise relates to your objection in Section E., *Standard Form 1 Objection*, Subcase: 95-17232, that “the remark in ‘Explanatory Material’ stating that right nos. 95-13699 and 95-14511 are diverted through 95-17232’s points of diversion should be deleted because 95-13699 and 95-14511 should not exist”.

INTERROGATORY NO. 22: For each established water right that you own or claim to own in your basis for objecting to the subcases 95-2138 and 95-17232 (See *Standard Form 1 Objection(s)* filed July 12th, 2019), please state the following:

- (a) The water right number and date of priority for each such water right;
- (b) The purpose and current use of each such water right;

(c) The current authorized and actual point(s) of diversion location designated by GPS location coordinates and U.S. Public Land Survey description, and any common diversion name or water district diversion identifier, if applicable, as well as the IDWR metal tag number/point of diversion identifier for each such water right;

(d) The historical quantities of water actually diverted and/or stored at each point of diversion under each such water right, including when such diversions commenced and ended each year, and segregated by 24-hour time segments, months, and years, including peak instantaneous diversion rate and annual diversion and/or volume;

(e) The current authorized and actual place(s) of use for each such water right, designated by acreage, number of acres, and U.S. Public Land Survey description;

(f) A complete description of the diversion and delivery system for the water used under each such water right, including without limitation, descriptions, illustrations, maps, GIS shape files, or schematics of points of diversion, water diversion and delivery works, and any and all channels or delivery paths within which water is conveyed to the place of use; and

(g) Any and all expenses incurred for the diversion and delivery of water from the source to the place of use for each such water right.

INTERROGATORY NO. 23: For each established water right objected to in Subcases 95-13699 and 95-14511 (See *Standard Form 1 Objection(s)* filed July 12th, 2019), please state the following:

(a) The water right number and date of priority for each such water right;

- (b) The purpose and current use of each such water right;
- (c) The current authorized and actual point(s) of diversion location designated by GPS location coordinates and U.S. Public Land Survey description, and any common diversion name or water district diversion identifier, if applicable, as well as the IDWR metal tag number/point of diversion identifier for each such water right;
- (d) The historical quantities of water actually diverted and/or stored at each point of diversion under each such water right, including when such diversions commenced and ended each year, and segregated by 24-hour time segments, months, and years, including peak instantaneous diversion rate and annual diversion and/or volume;
- (e) The current authorized and actual place(s) of use for each such water right, designated by acreage, number of acres, and U.S. Public Land Survey description;
- (f) A complete description of the diversion and delivery system for the water used under each such water right, including without limitation, descriptions, illustrations, maps, GIS shape files, or schematics of points of diversion, water diversion and delivery works, and any and all channels or delivery paths within which water is conveyed to the place of use; and
- (g) Any and all expenses incurred for the diversion and delivery of water from the source to the place of use for each such water right.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: Please produce the following materials and information for each expert who has been retained or employed by you in preparation for the hearing in this proceeding:

- (a) All data or other information considered by the expert in forming the opinions, including any and all exhibits to be used as a summary or to support the expert's opinion;
 - (b) The qualifications of the expert, including a list of all publications authored by the expert within the preceding ten years;
 - (c) All reports and draft reports which relate directly or indirectly to this proceeding;
- and,
- (d) List of all cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

REQUEST FOR PRODUCTION NO. 2: Please produce any and all reports or other documents prepared by persons who have been used as consultants by you in this proceeding.

REQUEST FOR PRODUCTION NO. 3: Please produce each and every document, writing, or other piece of physical evidence which you intend to introduce as an exhibit in the trial of this matter.

REQUEST FOR PRODUCTION NO. 4: Please produce each and every document, writing, or other piece of physical evidence that was identified in the above Interrogatories or that otherwise relates, in whole or in part, to your answers to any and all of the above Interrogatories.

REQUEST FOR PRODUCTION NO. 5: Please produce any and all statements and other documents from persons with knowledge of the subject matter of this proceeding.

REQUEST FOR PRODUCTION NO. 6: Please produce each and every document in your possession relating to Subcases 95-02138, 95-13699, 95-14511 and 95-17232.

REQUEST FOR PRODUCTION NO. 7: Please produce each and every document in your possession relating to your *Standard Form 1 Objection(s)* filed on July 12, 2019, for Subcases 95-02138, 95-13699, 95-14511 and 95-17232.

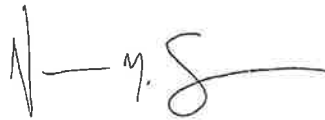
REQUEST FOR PRODUCTION NO. 8: Please produce a copy of each and every communication relating to the administration of water right nos. 95-02138, 95-1369, 95-14511 and 95-17232.

REQUEST FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Please admit that evidence exists in IDWR's files demonstrating beneficial use of Water Right Nos. 95-14511 and 95-13699 prior to 1971.

DATED this 27th day of July, 2021.

PARSONS BEHLE & LATIMER

A handwritten signature in black ink, appearing to read "N-M. S.", written over a horizontal line.

By _____

Norman M. Semanko

*Attorneys for Daniel Barkley, Melissa Stocking
and Kathryn Spackman*

CERTIFICATE OF SERVICE

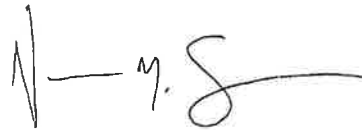
I hereby certify that on this 27th day of July, 2021, I served a true and correct copy of the foregoing document on the parties listed below by their designated method of service.

Michael P. Lawrence
Givens Pursley LLP
601 West Bannock St.
P.O. Box 2720
Boise, ID 83701-2720

- ☒ U.S. First Class Mail, Postage Prepaid
- ☐ U.S. Certified Mail, Postage Prepaid
- ☐ Federal Express
- ☐ Hand Delivery

IDWR
P.O. Box 83720
Boise, ID 83720-0098

- ☒ U.S. First Class Mail, Postage Prepaid
- ☐ U.S. Certified Mail, Postage Prepaid
- ☐ Federal Express
- ☐ Hand Delivery



Norman M. Semanko