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Department of Water Resources
Eastern Region

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Attorneys for Applicant City of Pocatello

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION
FOR TRANSFER NO. 76779 IN THE
NAME OF THE CITY OF POCATELLO

APPLICANT CITY OF POCATELLO'S
RESPONSE TO PROTESTANT PORTNEUF
WATERSHED USERS ASSOCIATION,
INC.'S SECOND SET OF DISCOVERY
REQUESTS

Applicant City of Pocatello ("Pocatello" or the "City") hereby submits the following responses to protestant Portneuf Watershed Users Association, Inc.'s May 2, 2011 discovery requests.

PRELIMINARY STATEMENT

Pocatello has used its best efforts in conducting a thorough investigation of its records to respond to Portneuf Watershed Users Association, Inc.'s ("PWUA") discovery requests. Pocatello is conducting an ongoing factual investigation into the issues of the pending action, however, and may discover additional matters. Pocatello reserves the right to amend, modify or supplement its responses should it become aware of additional responsive information or documents through its continuing investigation consistent with the Idaho Rules of Civil Procedure ("IRCP") and procedural rules of the Idaho Department of Water Resources.

Pocatello assumes PWUA does not seek confidential information protected by a privilege. To the extent that PWUA is requesting privileged information, including but not limited to privileged attorney-client communications and documents protected from discovery under the work product doctrine, Pocatello objects. These responses do not include any such confidential material. Pocatello does not waive any objections it may have to the production and/or admissibility of any matter following.

Pocatello's responses to the PWUA's requests for production identify the responsive, non-privileged documents that Pocatello has been able to compile as of the date hereof. Pocatello reserves the right to amend, modify, or further supplement its responses should it become aware of additional responsive documents through its continuing investigations.

Pocatello reserves all objections to the admissibility at trial of any document provided herein including, without limitation, all objections on the grounds that such document is not relevant. Production of any information herein does not constitute an admission by Pocatello that such information is relevant to any claim, defense, or other issue in this litigation, or that it is reasonably calculated to lead to the discovery of admissible evidence. All documents provided in response to PWUA's requests for production are being produced for use in this litigation only and for no other purpose.

GENERAL OBJECTIONS

Pocatello objects to the interrogatories and discovery requests, including the "Definitions" and "Instructions" contained therein to the extent that they purport to enlarge or modify the scope of permissible discovery, or to impose discovery burdens on Pocatello in addition to or different from those allowed by the IDWR Rules of Procedure, IDWR's Order Authorizing Discovery or the IRCP. Pocatello will respond to the interrogatories and discovery

requests as required by the IDWR Rules of Procedure, IDWR's Order Authorizing Discovery or the IRCP.

Pocatello objects to the interrogatories and discovery requests to the extent that they purport to call for the identification of documents and disclosure of information protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity. Any disclosure of privileged material is inadvertent and shall not be deemed a waiver of the applicable privilege or privileges, or of any ground for objection to discovery with respect to such information or document, the subject matter of the information or document, or of Pocatello's right to object to the use of any such information or document during any subsequent proceeding in this action or elsewhere.

Pocatello objects to the interrogatories and discovery requests to the extent they include legal conclusions. All questions of law are respectfully referred to the Department and the courts.

Pocatello objects to the interrogatories and discovery requests to the extent they do not specify a time period for which a response is sought.

Pocatello objects to PWUA's discovery requests to the extent that they seek information with respect to the undefined term "the City's Water Rights." For purposes of Pocatello's Responses herein, Pocatello deems the City's water rights to be those water rights listed in Table 8 to the November 2010 Report in Support of The City of Pocatello's Application for Transfer of Water Rights prepared by Spronk Water Engineers, Inc., and appended to the Application.

RESPONSES TO PWUA INTERROGATORIES

INTERROGATORY NO. 15: The SRBA Partial Decrees for the transfer-subject water rights (Water Right Nos. 29-00053 and 29-00589) contain the following provision:

This storage water right is to be delivered without conveyance loss from the reservoir to the point of division located on the Portneuf River at T9S R37E SEC 22 NWNESW (Lot 3) for the Portneuf-Marsh Valley Canal Companys [sic] Canal through said Companys [sic] Drainage Canal and the Portneuf River.

Please describe in full and complete detail the origins of this provision (including the historical circumstances and developments giving rise to the “without conveyance loss” delivery of water to the Portneuf-Marsh Valley Canal Company), and in doing so, please identify each fact and document that supports or in any way pertains to your answer.

RESPONSE TO INTERROGATORY NO. 15: The City is aware that Water Right Nos. 29-00053 and 29-00589 were decreed to Portneuf-Marsh Valley Canal Company with a “no-conveyance loss” or “free from loss” provision in *Union Grain & Elevator Co. v. McCammon Ditch Co., et al* 1932 Decree. Water Right Nos. 29-00053 and 29-00589 were subsequently claimed by Portneuf-Marsh Valley Canal Company in the Snake River Basin Adjudication, and partial decrees were issued by the SRBA Court on February 15, 2008 with the subject language included as a provision necessary for definition or administration of the subject water rights. Among others, Water Right Nos. 29-00053 and 29-00589 were the subject of subcase litigation in the SRBA involving the following parties: Portneuf-Marsh Valley Canal Company, McCammon Ditch Company, Portneuf Irrigating Company, Lava Irrigation Company, Dempsey Irrigating Company, Topaz Irrigation Company, Indian Falls Property Association/Indian Falls Water Users Association and Fish Creek Irrigating Company. The subcase litigation was resolved by the Portneuf River Settlement Agreement dated March 23, 2005 filed with the SRBA Court on April 22, 2005, as supplemented by an undated Addendum

Agreement to the Portneuf River Settlement Agreement, Basin 29: Portneuf River, and Addendum Agreement dated October 18, 2007 each of which was filed with the SRBA Court on December 17, 2007.

RESPONSE TO PWUA REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 11: Please produce any and all documents identified within, relied upon, or supporting, either in whole or in part, your Answer to Interrogatory No. 15.

RESPONSE TO REQUEST FOR PRODUCTION No. 11: Pocatello objects to Request for Production No. 1 as vague, ambiguous, and overbroad, particularly with respect to the use of the words “all documents”. Pocatello objects to this Request for Production because it is unduly burdensome and it seeks information not relevant to this contested case and not reasonably calculated to lead to the discovery of admissible evidence. Pocatello further objects to this Request for Production because it seeks documents that are not in Pocatello’s possession, custody, or control, and/or that fall within one or more of the following categories: (1) are in the possession, custody, or control of PWUA; (2) are in the public domain; and/or (3) are more easily obtainable by PWUA from parties or sources other than Pocatello. Pocatello further objects to this Request for Production because it contains no time period, specification, or limitation.

Subject to and without waiving the foregoing objections, and without waiving any objection to the relevance of any disclosed or produced documents, the SRBA partial decrees for Water Right Nos. 29-00053 and 29-00589 and the Settlement Agreement and Addenda thereto referred to in Pocatello’s Answer to Interrogatory No. 15 above have previously been produced

to PWUA in response to PWUA's First Set of Interrogatories and Requests for Production, and are accessible from the SRBA Court, or the Department's online database at <http://www.idwr.idaho.gov/apps/ExtSearch/RelatedDocs.asp?Basin=29&Sequence=589&SplitSuffix=>

DATED this 16th day of May, 2011.

GIVENS PURSLEY LLP

By: 
Michael C. Creamer
Attorneys for City of Pocatello

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of May, 2011, pursuant to Idaho R. Civ. P. 33 and 34 and Idaho Department of Water Resources' Rule of Procedure 524, *Applicant City Of Pocatello's Response To Protestant Portneuf Watershed Users Association, Inc.'s Second Set Of Discovery Requests* was served on the following individual(s) by the method indicated:

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