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Department of Water Resources
Eastern Region

Attorneys for McCammon Ditch Company

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 POCA TELLO	)	ANSWER OF MCCAMMON DITCH
	)	COMPANY TO APPLICANT'S FIRST
	)	DISCOVERY REQUEST
	)	
	)	
	)	
_____	)	

COMES NOW McCammon Ditch Company, (hereafter "MDC"), pursuant to the Order
Authorizing Discovery and in response to the discovery request propounded by the Applicant,
City of Pocatello, (hereafter "City"), responds as follows:

INTERROGATORIES

INTERROGATORY NO. 1. Please identify each and every ground for your protest of
the Application that you may present at the hearing in this matter.

ANSWER TO INTERROGATORY NO. 1. Although "ground" is not defined, MDC
would submit that the specific protests to the application are found in its Notice of Protest dated
December 6, 2010, a copy of which has been previously provided to City and is a public record.

INTERROGATORY NO. 2. For each and every ground for your protest identified in your response to Interrogatory No. 1 above, please identify each fact and each document that supports, contradicts, or in any material way pertains to it.

ANSWER TO INTERROGATORY NO. 2. Although “ground” is not defined, the protest of MDC is based on the following basis:

1. That more and better measurements, recording and monitoring flows, are needed, perhaps with a totalizer, so as to better administer the flows and diversions of the river.
2. The release rate of up to 50 cfs from reservoir storage will be excessive if release of “Pocatello” water is combined with PMVCC release. Such combined releases in the summer months will cause river to rise beyond the natural banks of the river and flood into low-land. Such would constitute wasting of in-stream water of which users have priority status.
3. That no transit loss should be assessed in delivering the water to Pocatello”. This puts a junior right ahead of a senior right.
4. Related to #3 above, if the proposed diversion to Pocatello is run down to the hydro plant and not out of river bed at PMVCC river diversion gates, all loss should be determined and assessed from PMVCC River Diversion gates (Head of Canal) to point of measurement (0000 ft) (2 ½ miles) and deducted from total allowed for diversion and added to next user on river.
5. The “re-diversion” points on the application are unclear and not well defined.

As to item #1, MDC submits that existing measurement devices and those proposed by the transferee and the City are and would be insufficient to properly document a transfer of the amount of water proposed and need to be updated and /or installed. Such will be established by current records regarding the river, or lack thereof, responses to discovery by other parties and the City, testimony of witnesses at the hearing, including MDC witnesses, the water master, and

other water users.

As to item #2, MDC relies on the application itself, which can be read to propose that the 50 cfs is in addition to existing water rights; historic flooding in the river, even without the additional 50 cfs were not included. Such will be established by the application, responses to discovery by other parties and the City, flow rate records, testimony of witnesses at the hearing, including MDC witnesses, the water master, and other water users. Such flooding and resulting waste of water would be in violation of I.C. §42-105.

As to item #3, the City's application providing for "shrink free" delivery of the water is contrary to exiting Idaho law. In addition, the partial decree regarding the transferee's water rights was based upon the particular set of circumstances and agreements of the parties and did not anticipate nor include the proposed transfer and use of water. All agreements between the transferee and other water users, including MDC, resulting from the SRBA and otherwise, including but not limited to the Portneuf River Settlement Agreement, contemplates only irrigation uses of the water. The City was not a party to any of these historic agreements and rights and would be a junior right user, for none irrigation purposes. As such, the City should be bound by existing law and bear the loss of transmission of any water so as not to damage the rights of existing water right holders who were parties to the prior agreements and rights and are senior water holders, such as MDC.

As to item #4, the City's application is not clear if it proposes loss free delivery beyond the stretch of the transferee's historic delivery stretch. As such the arguments above regarding item #3 apply even more so if such is the proposal.

As to item #5, needs to be more fully explained as the term is used generally and no specifics are given as to the stated "re-diversion" points and whether they are a beneficial use.

Discovery is on-going and MDC expects to further develop the basis of its protest and reserves the right to supplement these answers.

INTERROGATORY NO. 3. If you contend that the Transfer will cause or exacerbate flooding of your property, or the lands of your shareholders, please describe the basis for this contention and identify each fact and each document that supports, contradicts, or in any material way pertains to it, including all known or estimated river flows at the time of such flooding and the extent and duration of any flooding of such property that has occurred historically.

ANSWER TO INTERROGATORY NO. 3. MDC does not contend that the transfer will cause or exacerbate flooding of the lands of its shareholders.

INTERROGATORY NO. 4. If you contend that the Transfer will cause excessive release rates from the Reservoir and/or wasting of in-stream water, please describe the basis for this contention and identify each fact and each document that supports, contradicts, or in any material way pertains to it.

ANSWER TO INTERROGATORY NO. 4. See answer to interrogatories no. 2 and 3. If the City's proposed water is added to existing rights in the river, flooding will occur as well as other transmission losses which will waste water and/or increase consumptive use of the water in violation of I.C. § §42-105, 42-222, and other applicable law. Such will be established by the application of the City, answers to discovery, flow rate records, testimony of witnesses at the hearing, including MDC witnesses, the water master, and other water users.

Discovery is on-going and MDC expects to further develop the basis of its protest and reserves the right to supplement these answers.

INTERROGATORY NO. 5. If you contend that the Transfer would injure your water rights, please describe the basis for this contention and identify each fact and each document that

supports, contradicts, or in any material way pertains to it.

ANSWER TO INTERROGATORY NO. 5. See answers to interrogatories no. 2 and 4 above.

INTERROGATORY NO. 6. If you contend that the Transfer Water Rights should not benefit from the “no conveyance loss” provision applicable to the Portneuf Marsh Valley Canal Company Water Rights, please identify the reasons therefore and describe what, if any, conveyance loss you believe should be imposed on the Transfer Water Rights, and any and all facts supporting such conveyance loss quantity, and identify each fact and document that supports, or in any material way pertains to, such contention.

ANSWER TO INTERROGATORY NO. 6. See answers to interrogatoies no. 2 and 4. The City should bear the conveyance loss resulting from the transfer of water rights. The burden of proposing a reasonable loss amount falls to the City in support of its application and currently the application proposes no loss, which is objectionable. If a reasonable loss amount were proposed, such would likely resolve this objection by MDC.

INTERROGATORY NO. 7. If you contend that suitable measuring devices do not exist to administer the Transfer Water Rights, please describe what kind of measuring device(s) you believe would be suitable.

ANSWER TO INTERROGATORY NO. 7. The burden falls on the City in support of its application to propose reasonable and sufficient measuring devices, and if reasonable devices are proposed, such would resolve that objection. MDC suggests at a minimum such should include accurate devices such as continuous recorders and a totalizer to monitor release and flow rates. Gauges are also needed at various points along the river to assist the water master in keeping the water within the river channel to avoid excess waste.

INTERROGATORY NO. 8. Please describe all causes of physical impairment or interference with channel capacity that affect the free flow of water in the Portneuf River reach adjacent to and/or traversing your property, and in so doing please identify each fact, and each document that supports, contradicts, or in any material way pertains to your answer.

ANSWER TO INTERROGATORY NO. 8. Not applicable as MDC receives its water via cannal from the river. But, physical impairments are well documented in the river and known to the water master and have been identified to the City, including but not limited to excessive vegetation in the river, sediment and natural channel restrictions.

INTERROGATORY NO. 9. If you contend that the Transfer, if approved, would conflict with the local public interest, please describe each and every basis for this contention and identify each fact and each document that supports, contradicts, or in any material way pertains to it.

ANSWER TO INTERROGATORY NO. 9. Not applicable as such contention is not made. In addition, “local public interest” is not defined and it is assumed how that term is defined could affect the answer as it pertains to rural as opposed to urban areas.

INTERROGATORY NO. 10. If you contend that the Transfer provision indicating “no transfer loss should be assessed in delivering water to Pocatello” puts a junior right ahead of a senior right, please describe each and every basis for this contention and identify each fact and each document that supports, contradicts, or in any material way pertains to it.

ANSWER TO INTERROGATORY NO. 10. See answers to interrogatories no. 2 and 4. MDC holds prior water rights, on record with the IDWR , and known to the City. The City’s proposed use and rights under the application and sale would be junior to the record rights of MDC.

INTERROGATORY NO. 11. If you contend that a specific method should be used to validate, determine, and assess possible loss under the Transfer, please describe each and every basis for this contention, identify what specific method you believe to be necessary or appropriate, and identify each fact and each document that supports, contradicts, or in any material way pertains to it.

ANSWER TO INTERROGATORY NO. 11. The burden of proposing a reasonable and accepted method lies with the City in its application. If a reasonable method were proposed it would be accepted by MDC. To date no such method has been proposed and the Application currently provides for no transfer loss, which is objectionable. Accurate measurement of the river at various points as set forth in answer to interrogatory no. 7 would be important in that determination.

INTERROGATORY NO. 12. Please state the name and address of each person you intend to call as a lay witness at the trial of this matter, and for each such person describe the substance of the facts and opinions to which he or she is expected to testify and identify the underlying facts and data and documents upon which the opinion and testimony is based.

ANSWER TO INTERROGATORY NO. 12. MCD has not finalized its witness list for the hearing on this matter and will supplement as needed when finalized. However, the following are prospective witnesses: Byron Allen, board member and president of MDC and member of the Portneuf river board. P.O. Box 258, McCammon, ID, 83250. Byron will testify as to MDC's water rights, river flows and diversion issues, measurement shortfalls, prior flooding on the river, agreements with the transferee on rights and use of water, shrink and consumption issues.

Howard Hall, former board member of MDC and former member of the Portneuf river board,

10159 S. Old Highway 91, McCammon, ID, 83250. Howard can testify to historic uses and diversions on the river, previous flooding, shrink and consumption issues and measurement shortfalls.

Steve Hebdon, water master. It is anticipated Mr. Hebdon will testify as to historic practices on the river, priority of rights, carrying capacity and previous flooding of the river, measurement devices, records and shortfalls, diversions, and shrink issues.

Ted Sorensen, Idaho Falls, Idaho, may be called to introduce flow records taken as part of the development of the hydro-power project on the river.

Other water users / parties, including but not limited to Lyndon and Candice Symons, may testify on historic practices on the river, previous flooding and capacity of the river, shrink and waste issues, and measurement shortfalls.

INTERROGATORY NO. 13. Please identify each person you intend to call as an expert witness pursuant to the Discovery Order, by stating the name and address of each such witness and including for each such witness, as provided in Idaho Rule of Civil Procedure 26(b)(4)(A)(i), a complete statement of all opinions to be expressed and the basis and reasons therefore, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the opinions, and any qualifications of the witness.

ANSWER TO INTERROGATORY NO. 13. None at this time. This interrogatory will be supplemented as needed.

INTERROGATORY NO. 14. Please identify the persons(s) providing the answers to the above Interrogatories. Byron Allen and Steve , with the assistance of Jim Spinner, attorney for MDC.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1. Please produce copies of all decrees, partial decrees, permits, and licenses evidencing or confirming your water rights.

ANSWER TO REQUEST FOR PRODUCTION NO. 1. Such are available for inspection and copying at counsel's office and also of public record. The City has also produced the SRBA decreed rights in answer to discovery.

REQUEST FOR PRODUCTION NO. 2. Please produce all documents that evidence the time, nature or extent of historical flooding of your property, or the lands of your shareholders, by the Portneuf River.

ANSWER TO REQUEST FOR PRODUCTION NO. 2. Not applicable, flooding has occurred on third party land prior to the water reaching MDC's diversion.

REQUEST FOR PRODUCTION NO. 3. Please produce all documents, exhibits, and/or other items of tangible evidence you expect to introduce or use, or may use, at the hearing in this matter. If such documents, exhibits, and/or other items of tangible evidence have been produced in response to any of these Discovery Requests, please identify the documents, exhibits, and/or other items of tangible evidence which you expect to introduce or use, or may use, at the hearing in this matter but please do not produce any of it more than once.

ANSWER TO REQUEST FOR PRODUCTION NO. 3. MCD has not finalized its exhibit list for the hearing on this matter and will supplement as needed when finalized and pursuant to the Order Setting Pre-Hearing Deadlines. Such documents are anticipated to include the City's application, MDC water rights, portions of discovery questions and answers of the various parties, flow records, Portneuf River Settlement Agreement and other user agreements, adjudication documentation, photos of the river and reservoir and measuring devices. This answer will be supplemented as necessary.

REQUEST FOR PRODUCTION NO. 4. To the extent not produced in response to Requests for Production Nos. 1 through 3, please produce all documents on which you relied, or which you identified, in responding to these Discovery Requests, or that in any way relate to or support your responses to these Discovery Requests.

ANSWER TO REQUEST FOR PRODUCTION NO. 4. MCD has utilized the City's application and answers to discovery from other parties as well as orders from the IDWR.

DATED this 13 day of May, 2011.

SERVICE & SPINNER
Attorneys for McCammon Ditch Company

By: _____

Jim Spinner

STATE OF IDAHO)
 ss
County of Bannock)

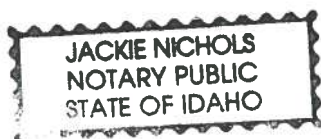
Byron Allen, being first duly sworn, deposes and says:
That he is the President of McCammon Ditch Company in the above-entitled and foregoing action; that he has read the foregoing answers to discovery, knows the contents thereof, and that the facts therein stated are true as he verily believes.

DATED this 13 day of May, 2011.

Byron Allen

SUBSCRIBED AND SWORN to before me this 13 day of May, 2011.

(SEAL)



NOTARY PUBLIC for Idaho
Residing at: Pocatello
Commission Expires: 12/20/2016

CERTIFICATE OF SERVICE

I HEREBY certify that on the 13 day of May, 2011, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

Michael C. Creamer
PO Box 2720
Boise, ID 83701-2720

☒ U.S. Mail, postage prepaid
☐ Express Mail
☐ Hand Delivery
☐ Facsimile

James Cefalo
Idaho Department of Water Resources
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402-6105

☒ U.S. Mail, postage prepaid
☐ Express Mail
☐ Hand Delivery
☐ Facsimile

Scott L. Campbell
PO Box 829
Boise, ID 83701-0829

☒ U.S. Mail, postage prepaid
☐ Express Mail
☐ Hand Delivery
☐ Facsimile

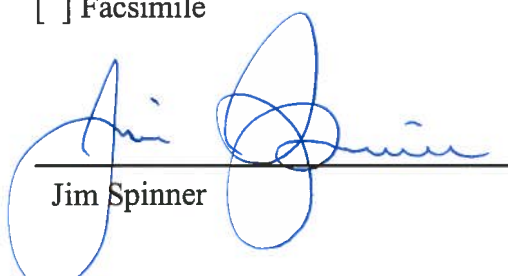
Lynden and Candice Symons
Symons Farm & Ranch
PO Box 604
Lava Hot Springs, ID 83246

☒ U.S. Mail, postage prepaid
☐ Express Mail
☐ Hand Delivery
☐ Facsimile

John Schwarz
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McCammon, ID 83250

☒ U.S. Mail, postage prepaid
☐ Express Mail
☐ Hand Delivery
☐ Facsimile

By:



Jim Spinner