

Scott L. Campbell, ISB No. 2251
Andrew J. Waldera, ISB No. 6608
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
slc@moffatt.com
ajw@moffatt.com
24810.0000

Attorneys for Protestant
Portneuf Watershed Users Association, Inc.

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

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

TO: City of Pocatello

PLEASE TAKE NOTICE that the Portneuf Watershed Users Association, Inc.
("Portneuf" or "Protestant"), by and through its counsel of record, hereby requires you to
respond to the following discovery requests.

The following Introduction and Definitions shall apply to these discovery
requests:

I. INTRODUCTION

These discovery requests are issued to you pursuant to the Hearing Officer's February 8, 2011 Order Authorizing Discovery and Notice of Status Conference ("Discovery Order I"), the Hearing Officer's subsequent April 21, 2011 Notice of Hearing and Order Setting Pre-Hearing Deadlines ("Discovery Order II"), IDWR's Rules of Procedure (IDAPA §§ 37.01.01.001.02 and 37.01.01.520 through 37.01.01.532), and Rules 33, 34, and 36 of the Idaho Rules of Civil Procedure, which are incorporated by reference in the Department's Rules (IDAPA § 37.01.01.520.02). Pursuant to Discovery Orders I and II, your responses are due 14 days after service of these discovery requests, no later than May 16, 2011.

In responding to these discovery requests, you must make a diligent search of your records and all other papers and materials that are in your possession or available to you or your representatives. If you cannot answer any of the following discovery requests in full after exercising due diligence to secure the information necessary to do so, please so state and answer or respond to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portions.

If you object to any discovery request on the ground that the information sought is privileged and nondiscoverable, please state the basis for your claim of privilege and, in the case of any request for production, "identify" the "documents" and "records" which you object to producing, in sufficient detail as to enable the court to rule upon your claim of privilege.

These discovery requests are deemed to be continuing. If, after responding to these discovery requests, you acquire any further information responsive to them, you are hereby requested, pursuant to Idaho Department of Water Resources Procedural Rule 520.02 (IDAPA 37.014.01.520.02) and Idaho Rule of Civil Procedure 26(e), to file and serve

supplemental answers or responses containing such further information. If you fail to respond to one or more of these discovery requests or if your responses are evasive or incomplete, Portneuf may move for an order compelling you to fully respond to these discovery requests and to pay the reasonable expenses, including attorney fees, incurred by Portneuf in obtaining the order.

If you fail to produce “documents” and “records” requested herein or fail to answer any interrogatory on the ground that the necessary information, “documents,” or “records” are not within your care, custody, possession or control, please state what efforts you have made to obtain such information, “documents,” or “records.”

If you fail to answer or respond to any of these discovery requests in full or fail to supplement your answers or responses as requested, Portneuf may move for an order precluding you from introducing into evidence, or otherwise using either at hearing or on motion for summary judgment, any testimony, witness, exhibit, “document,” “record,” publication, or other item or information not timely disclosed in your response to these discovery requests.

II. DEFINITIONS

As used herein, the following terms have the following meanings:

1. “Applicant” means City of Pocatello.
2. “Application” means the Applicant’s Amended Application for Transfer of Water Right No. 76779 by which the Applicant proposes to change certain re-diversion points, purposes of use, and timing of releases of a certain volume of storage water stored in and released from Chesterfield Reservoir under water right nos. 29-00053 and 29-00589.
3. “Transfer” means these changes contemplated in the Application.
4. “Describe” means to explain with particularity and in detail, setting forth all facts material to such explanation.

5. “Discovery requests” or “request(s)” means these Interrogatories and Requests for Production, or any one of them, as the case may be.
6. “IDWR” or the “Department” mean the Idaho Department of Water Resources.
7. “Or” as used herein is not intended to refer strictly to the disjunctive, and means and includes “and/or,” whichever is broader in the context.
8. “Protest” means the November 23, 2010 protest to the Application filed in this matter by Portneuf Watershed Users Association, Inc. (“Portneuf” or “PWUA”).
9. “Reservoir” means Chesterfield Reservoir and the irrigation water stored in it.
10. “Transfer Water Rights” means those portions of water rights 29-00053 and 29-00589 that are subject to the Application.
- “PMVCC Water Rights” means the portion of water rights 29-00053 and 29-00589 retained, or to be retained, by the Portneuf-Marsh Valley Canal Company after the Transfer.
11. “Original PMVCC Water Rights” means water rights 29-00053 and 29-00589 prior to the Transfer.
12. When asked to “identify” a person or entity or when asked for the “identity” of a person or entity, please state:
- (a) The name of the person or entity;
 - (b) The present or last known address and telephone number of the person or entity;

(c) The present or last known occupation, business, and employer of the person or entity; and

(d) The present or last known address and telephone number of the employer of the person or entity.

13. When asked to “identify” a record or document or when asked for the “identity” of a “record” or “document,” please state:

(a) The nature or type of “record” or “document” (*e.g.*, letter, photograph, tape recording, etc.);

(b) The subject matter of the “record” or “document” and/or a general description of its contents;

(c) The “identity” of the person who authored or created the “record” or “document”;

(d) The date of the document or, if it bears no date, the date on which it was prepared or created; and

(e) The physical location of the original and any copies of the “record” or “documents” of which you are aware and the “identity” of the present custodian of the “record” or “document.”

In responding to these discovery requests, the following definitions shall apply:

The terms “record” and/or “document(s)” mean any tangible thing upon which has been placed handwriting, e-mail transmission, typewriting, printing, photocopying, photographing, digital or computerized data, or any other form of recording, communication or representation, including but not limited to letters, words, pictures, sounds, magnetic impulses, symbols, numbers or any combination thereof, whether or not visible to the unassisted human

eye. This definition shall include, but is not limited to, any and all originals, copies or drafts of any and all of the following: records, notes, summaries, schedules, contracts, agreements, drawings, blueprints, sketches, invoices, orders, acknowledgments, diaries, reports, findings, forecasts, tests, appraisals, reports, memoranda, telephone recordings, telephone logs, telephone lists, diaries, calendars, planners, daytimers, correspondence and letters, e-mail, telegrams, telexes, facsimiles and faxes, cables, tapes, tape recordings, statements, receipts, invoices, check registers, transcripts, recordings, photographs, witness statements, pictures, films, videotapes, computer programs, computer databases, models, things and materials of any nature whatsoever. Any "document" which contains any comment, notation, addition, insertion or marking of any kind which is not part of another document is to be considered as a separate "document."

III. 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 diversion located on the Portneuf River at T9S R37E SEC 22 NWNESW (Lot 3) for the Portneuf-Marsh Valley Canal Companys Canal through said Companys Drainage Canal and the Portneuf River.

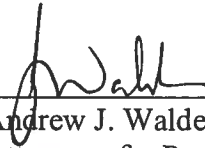
Please describe in full and complete detail the origins of this provision (including the historical circumstances and developments giving rise to the "without conveyance loss" delivery of water to the Portneuf-Marsh Valley Canal Company), and in doing so, please identify each fact and document that supports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

**IV.
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.

DATED this 2nd day of May, 2011.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Andrew J. Waldera – Of the Firm
Attorneys for Portneuf Watershed Users
Association, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of May, 2011, I caused a true and correct copy of the foregoing **PROTESTANT PORTNEUF WATERSHED USERS ASSOCIATION, INC.'S SECOND SET OF DISCOVERY REQUESTS TO APPLICANT CITY OF POCA TELLO** to be served by the method indicated below, and addressed to the following:

James Cefalo, Hearing Officer
IDAHO DEPARTMENT OF WATER RESOURCES
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402
Fax: (208) 525-7177

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Michael C. Creamer
Jeffrey C. Fereday
GIVENS PURSLEY, LLP
601 W. Bannock Street
P.O. Box 2720
Boise, ID 83701-2720
Fax: (208) 388-1300

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Lynden and Candice Symons
SYMONS FARM AND RANCH LLC
P.O. Box 604
Lava Hot Springs, ID 83246

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

John Schwarz
Box 240
McCammon, ID 83250

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

James A. Spinner
ATTORNEY AT LAW
P.O. Box 6009
Pocatello, ID 83205-6009
Fax: (208) 232-1808

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Travis L. Thompson
BARKER ROSHOLT & SIMPSON, LLP
1010 W. Jefferson, Suite 102
P.O. Box 2139
Boise, ID 83701-2139

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Randall C. Budge
RACINE OLSON NYE BUDGE & BAILEY, CHTD.
201 E. Center
P.O. Box 1391
Pocatello, ID 83204-1391

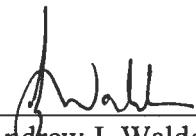
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Tom Barnes, President
PORTNEUF-MARSH VALLEY CANAL COMPANY
22465 S. Cambridge Road
Downey, ID 83234

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Mark Bennett, Secretary
PORTNEUF-MARSH VALLEY CANAL COMPANY
3670 E. Richards Road
Downey, ID 83234

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile



Andrew J. Waldera