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Attorneys for Protestor, Clayne Hanson

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

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 76630)
IN THE NAME OF:)
JESSICA K AND TERRY A)
MCNELLIS)
)
)
)
)
)

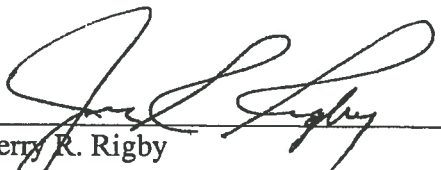
NOTICE OF SERVICE

I HEREBY CERTIFY that on the 6th day of December, 2010, I served a copy of

"Protestor's Answers to Applicants' First Discovery Requests to Clayne Hanson " on the

following by either by mailing, hand delivery, facsimile or electronic mail:

Robert L. Harris
Luke H. Marchant
Holden Kidwell
P.O. Box 50130
Idaho Falls, ID 83405



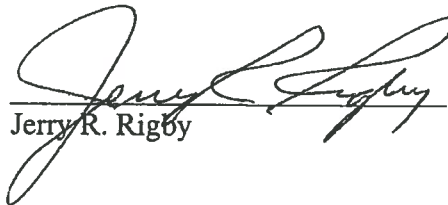
Jerry R. Rigby

CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY
OR FACSIMILE TRANSMISSION

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 6th day of December, 2010.

RIGBY, ANDRUS & RIGBY, Chartered


Jerry R. Rigby

Idaho Department of Water Resources
900 N. Skyline, Ste. A
Idaho Falls, ID 83402

☒ Mail
☐ Hand Delivery
☐ Facsimile

Robert L. Harris
Holden Kidwell
P.O. Box 50130
Idaho Falls, ID 83405

☐ Mail
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☐ Facsimile
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Attorneys for Protestor: Clayne Hanson

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

IN THE MATTER OF APPLICATION	)	PROTESTOR'S ANSWERS TO
FOR TRANSFER NO. 76630	)	APPLICANTS' FIRST DISCOVERY
IN THE NAME OF:	)	REQUESTS TO CLAYNE HANSON
JESSICA K AND TERRY MCNELLIS	)	

COME NOW PROTESTOR CLAYNE HANSON in the above entitled action and
answer Applicants' First Discovery Requests to Clayne Hanson as follows:

GENERAL OBJECTIONS AND COMMENTS

1. Protestor, Clayne Hanson (hereinafter "Mr. Hanson") responds to Applicants' requests upon present knowledge, information and belief based on investigation to date. Investigation and discovery are continuing. These answers and responses accordingly represent Mr. Hanson's reasonable efforts to provide the information and documents requested based upon what is presently known by or reasonably available to Mr. Hanson. Mr. Hanson reserves the right to produce additional evidence and to supplement, alter or amend these answers and responses, or otherwise assert additional factual and legal contentions, as additional facts are ascertained, analyses are made, discovery is conducted and legal research is completed. Mr. Hanson further reserves the right to supplement, make any use of, or introduce at any hearing or trial information not known to exist at this time, including but not limited to, information obtained in discovery or

from further investigation, as well as information known to exist but not disclosed herein because it was believed to be not responsive or not required to be disclosed.

2. These responses are provided in accordance with the Idaho Rules of Civil Procedure irrespective of the definitions and instructions which accompanied these requests, which were found to be overly broad, oppressive and burdensome, and not reasonably calculated to lead to discovery of admissible evidence.

3. Counsel's view as to whether an interrogatory or request is objectionable is based upon present information and understanding. As discovery and investigation proceed, counsel's view as to the propriety of a particular interrogatory or request or the responsiveness of information to a particular interrogatory or request may change as new facts come to light, or as new facts shed a different light on previously discovered facts, or as the development of the pertinent legal issues alter the perceived significance of known facts.

4. Mr. Hanson objects to each interrogatory and request to the extent it seeks information beyond the permissible scope of discovery provided under Rule 26 of the Idaho Rules of Civil Procedure, including but not limited to materials protected under the attorney/client privilege and/or as work product, including but not limited to materials obtained or prepared in anticipation of litigation or trial, materials prepared by and or for an attorney, and further including mental impressions, conclusions, opinions, or legal theories concerning anticipated or actual litigation.

5. Mr. Hanson objects to each interrogatory and request to the extent the same seeks information not in Hanson's possession, custody, or control or obtainable through reasonable effort by Mr. Hanson on the grounds such interrogatories and requests are unduly burdensome, oppressive and/or outside the permissible scope of discovery.

6. Mr. Hanson further objects to each interrogatory and request to the extent it is unduly vague, over broad, not reasonably calculated to lead to the discovery or production of admissible evidence or otherwise seeks disclosure outside the permissible scope of the Idaho Rules of Civil Procedure including, but not limited to, Rule 26 thereof.

7. To the extent any interrogatory or request calls for information already in the possession of Applicants, their counsel or their agents, or merely duplicates other discovery propounded, Mr. Hanson objects on the grounds that request is unnecessary, unduly burdensome, oppressive, and constitutes annoyance, harassment, and oppression of Mr. Hanson.

INTERROGATORIES

INTERROGATORY NO. 1: Please identify each individual of whom you are aware who has knowledge of the facts of this matter, who answered the following interrogatories, and/or who provided information necessary to respond to the following interrogatories and requests for production served concurrently herewith.

ANSWER:

Mr. Hanson is a relatively new owner of the property which diverts water from a natural channel located below Applicant's points of diversion subject to this transfer proceeding. Therefore, Mr. Hanson is without significant personal information regarding the history of water rights and their historical use and diversions. Therefore, Mr. Hanson has been required to rely upon the previous owner of his property, Mr. Boyd Andrews and the present watermaster, Mr. Pat McConnaghy. Mr. Hanson has also retained the services of W. Roger Warner of Rocky Mountain Environmental.

INTERROGATORY NO. 2: With respect to each person identified in response to Interrogatory No. 1, please set forth in detail the person's relationship to the facts of this matter,

and describe in detail the facts you believe are or may be know to such person.

ANSWER:

See Answer to Interrogatory No. 2 above. In addition, both Mr. McConnaghy and Mr. Andrews will testify as to their substantial knowledge of the area in a around the proposed transfer lands, including the decrease in natural flows within the natural channel and the decrease in return flows available to Mr. Hanson's property as a result of the diversion of all of Applicant's water at the highest point of diversion instead of the normal irrigation uses and points of diversion of the historical past.

Mr. Warner will testify as to the normal irrigation practices for crops in the general area and that as a result of the proposed change in diversion by Applicant, less water will be available for Mr. Hanson's water right. He will also testify as to the losing reach of the natural channel and its impacts and injury to Mr. Hanson's water right. He will also testify as to the benefit of normal bed loss to junior water right holders.

INTERROGATORY NO. 3: For each fact set forth in response to Interrogatory No. 2 above, identify any and all documents that describe, support, or otherwise reflect the facts known to each person.

ANSWER:

Presently, Mr. Hanson does not have any other documents in his possession which would be in addition to those presently on file for the above entitled proposed transfer. Mr. Hanson reserves the right to amend this answer should he discover any additional documentation. However, the testimony of the witnesses described in these responses all indicate that Applicant has gradually increased its diversions away from the natural channel and applied waters to lands not historically watered - all of which has injured the historical use of water by the lands owned

by Mr. Hanson.

INTERROGATORY NO. 4: Please set forth in detail your methodology for receiving, diverting, irrigating, and using water under your water rights at your authorized place of use.

ANSWER:

Mr. Hanson has a normally used diversionary structure within the natural channel which diverts his water right from the natural channel to his authorized place of use.

INTERROGATORY NO. 5: Please describe and explain any and all evidence you possess that water diverted pursuant to Transfer No. 76630 will injure other water rights as alleged in your protest. (See Idaho Code § 42-222(1).

ANSWER:

See answers to Interrogatories No. 1 & 2 above.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: For each fact set forth in response to Interrogatory No. 2, above, produce and all documents that describe, support, or otherwise reflect the facts known to each person.

RESPONSE: See Answer to Interrogatory No. 3 above.

REQUEST FOR PRODUCTION NO. 2: Please produce any and all reports, studies, examinations, hydrogeologic reports, studies, or any other documents or analyses which you believe demonstrate that water use under Transfer No. 76630 will impact or cause injury to the Protestants' water supplies, or to the other individuals/entities who are protestants in this matter.

RESPONSE: Mr. Hanson has just recently retained the services of Rocky Mountain Environmental and therefore does not presently have any reports, studies or documents requested. However, should Mr. Warner produce such a report, study or document, Mr. Warner

will

REQUEST FOR PRODUCTION NO. 3: Please produce copies of all documents

identified in response to Interrogatory No. 3.

RESPONSE: See Mr. Hanson's Response to Interrogatory No. 3 and Response to

Request for Production No. 2 above.

DATED this 6th day of December, 2010.


Jerry R. Rigby
on behalf of Protestor

**CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY
OR FACSIMILE TRANSMISSION**

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 6th day of December, 2010.

RIGBY ANDRUS & RIGBY, Chartered


Jerry R. Rigby

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Luke h. Marchant
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