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Department of Water Resources
Eastern Region

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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 POCA TELLO

PROTESTANT PORTNEUF WATERSHED
USERS ASSOCIATION'S FIRST
SUPPLEMENTAL ANSWERS AND
RESPONSES TO APPLICANT CITY OF
POCA TELLO'S FIRST DISCOVERY
REQUESTS

COMES NOW Protestant Portneuf Watershed Users Association, Inc.

("Protestant" or "Portneuf"), by and through undersigned counsel of record and pursuant to the Idaho Department of Water Resources ("IDWR" or the "Department") *Order Authorizing Discovery and Notice of Status Conference*, dated February 8, 2011 (the "Order") and the subsequent *Order Partially Granting Motion to Compel Discovery*, dated April 8, 2011, and

hereby answers and responds to Applicant City of Pocatello's ("Applicant" or "City") First Set of Discovery Requests to Protestants, as follows:

**I.
GENERAL OBJECTIONS**

Protestant has not yet completed its own investigations and/or discovery.

Accordingly, the responses that follow are based upon the best knowledge, information, and belief of Protestant at this time. Protestant reserves the right to make any further responses if it appears that any omission or error has been made in connection with these responses or that more accurate information is or has become available. These responses are made without prejudice to Protestant's rights to use in later discovery or to present at hearing, such evidence as may later be discovered or evaluated.

Protestant objects to the City's discovery requests and the definitions and instructions to the extent they purport to require discovery responses beyond that required under the Department's Rules of Procedure, the Department's Orders, or the Idaho Rules of Civil Procedure. These responses are provided in accordance with the Department's Orders, the Department's Rules of Procedure, and the Idaho Rules of Civil Procedure irrespective of any definitions and instructions that may accompany these discovery requests.

These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such interrogatory were asked of or any statement, material, or information provided were made by witnesses present and testifying in court. All such objections are reserved and may be interposed at the time of hearing.

Protestant specifically objects to these discovery requests to the extent they seek information protected by the attorney-client privilege, the attorney work product doctrine, and the rules governing the discovery of facts of experts as set forth in Rule 26(b)(4), Idaho Rule of Civil Procedure. This objection is intended to apply to all of the discovery requests that seek such information and will not necessarily be repeated for each request to which it applies. Protestant has, to the extent possible, construed each request as requesting only information and/or documents not subject to any applicable protection.

No incidental or implied admissions are intended. The fact that Protestant has responded to any discovery request, or part thereof, should not be taken as an admission that Protestant accepts that the discovery request or the response or objection thereto constitutes admissible evidence. Protestant's answers to any discovery requests herein do not constitute a waiver of its rights to object to any future, additional, or supplemental discovery requests regarding the same or similar matter.

II. ANSWERS TO INTERROGATORIES AND RESPONSES TO REQUESTS FOR PRODUCTION

INTERROGATORY NO. 1: If you contend that the Transfer will violate Idaho Code § 42-105, 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. 1: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. It also calls for potential legal conclusions which are not discoverable. Without waiving any objection, Protestant, in good faith hereby responds to the first portion of the Interrogatory only. Idaho Code Section 42-105 protects the rights of Protestant members against diminishment of the

amount of water to which they are entitled to divert from the Portneuf River in that the proposed Transfer seeks to use the Portneuf River to convey stored water to its intended place of use. By using the channel of the natural waterway (Portneuf River) to convey this stored water, the proposed Transfer cannot be approved unless there will be not diminishment of the amount of water to which Protestant members are entitled to divert under their water rights. Because of the existing conditions in the Portneuf River, it is not likely that the "no diminishment" requirement of Idaho Code Section 42-105 can be met.

Additionally, the proposed Transfer seeks to preserve the so-called "no shrink" status of the portion of the PMVCC rights sought to be transferred. Approving the proposed Transfer with this "no shrink" provision would directly conflict with the mandatory language of Idaho Code Section 42-105 that in circumstances where the channel of a natural waterway is used for water conveyance "due allowance shall be made for loss by evaporation and seepage."

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 1: In addition to the foregoing answer above, and without waiving any objection, Protestant further answers as follows:

During the course of the irrigation season, the capacity of the channel of the Portneuf River is fully consumed by irrigation water for delivery—so much so that water overtops the natural bed and banks of the river on a near annual basis during storage water delivery periods. The channel of the Portneuf River also experiences sedimentation and the growth of moss and other aquatic plants during the irrigation season. This sedimentation and plant growth decreases channel capacity and efficiency, and is exacerbated by the presence and operation of Chesterfield Reservoir (via the release of warmer and sediment-containing water at quantities/rates that encourage downstream erosion). As a consequence, and for water delivery

purposes, more water needs to be diverted into the river channel to overcome the loss of channel efficiency. This leads to greater flooding potential and the need to rely upon more of the natural flows of the Portneuf River (water appropriated by the Protestant, among others) to deliver the proposed transfer water rights “shrink free” to their intended destination. Applicant Pocatello’s downstream use of Protestant’s natural flow rights in the Portneuf River as carriage water will lead to the impermissible diminishment of the Protestant’s water rights under Idaho Code Section 42-105.

Moreover, the quantity of water that Pocatello seeks to transfer represents an additional quantity of water that will allegedly be conserved/recaptured from the lining of the Portneuf Marsh Valley Canal Company’s main delivery canal. While the water conserved will be conserved and recaptured outside of the channel of the Portneuf River (*i.e.*, in the canal), Pocatello seeks to use the Portneuf River channel to deliver this conserved/recaptured water. Because the capacity of the Portneuf River channel is already consumed by current irrigation deliveries, the delivery of this newly recaptured, off channel water will further overwhelm the capacity of the river channel if other water is not displaced to accommodate the delivery. Further, the delivery of this additional, recaptured block of off channel water “shrink free” will require additional carriage water in the form of Portneuf River natural flows—flows already appropriated for upstream use by the Protestant, among others. This increased carriage demand will likely diminish Protestant’s natural flow-based water rights.

Additionally, the lining of the Portneuf Marsh Valley Canal Company’s main delivery canal will likely decrease seepage to the local, shallow aquifer(s). This, in turn could increase conveyance losses within the Portneuf River channel. Any increase in river channel conveyance losses, or the diminishment/negation of any groundwater-fed reach gains would

adversely impact the delivery of natural flow-based surface water rights, and create further carriage water demand/pressure to deliver Applicant's water "shrink free." This increased demand/pressure would further diminish Protestant's water rights.

Documents evidencing the seasonal vegetative growth within the Portneuf River, and flooding, include, but are not necessarily limited to: PWUA000067-71; PWUA000410-427; PWUA000454-459; PWUA001152-1153; and PWUA003122-3133. Documents evidencing the anticipated recapture of 3,100 or more acre feet of water that would otherwise seep from the Portneuf Marsh Valley Canal Company's main delivery canal include Applicant's Application for Transfer of Water Right (filed August 30, 2010); Attachment Nos. 2a, 3, and 9, thereto; and the Memorandum Re: Loss Estimates of PMVCC Canal (dated February 4, 2011), prepared by Rob Sampson and Bernard O'Doherty of the NRCS.

Protestant will further supplement this answer as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

INTERROGATORY NO. 2: If you contend that the Transfer will cause or exacerbate flooding of private property, 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 each parcel of private property you allege will be affected by flooding caused by the Transfer.

ANSWER TO INTERROGATORY NO. 2: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only. If approved, the Transfer would allow for conveyance delivery through the Portneuf River of water volumes in excess of historic deliveries of Chesterfield Reservoir storage water. Historic deliveries of this

storage water to the PMVCC diversion has caused flooding of property along the banks of the Portneuf River from the Reservoir downstream to the Topaz stream gauge during varying periods in the summer months, depending upon water and ambient air temperatures, rainfall events, natural stream flow conditions, and aquatic plant conditions.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 2: In addition to the foregoing answer above, and without waiving any objection, Protestant further answers as follows:

Please see Supplemental Answer to Interrogatory No. 1, above. Please also see Supplemental Answer to Interrogatory No. 14, below, and documents produced during the course of this litigation.

Protestant will further supplement this answer as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

INTERROGATORY NO. 3: If you contend that the Transfer will result in an enlargement of the Transfer Water Rights or the PMVCC 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. 3: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only. An enlargement would occur because the "no shrink" status would be substantially extended through the reach of the Portneuf River from the PMVCC diversion to the City of Pocatello diversion.

Additionally, the proposed uses will increase the consumptive use, as defined in Idaho Code Section 42-202B, and violate Idaho Code Section 42-222.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 3: In addition to the foregoing answer above, and without waiving any objection, Protestant further answers as follows:

Please see Supplemental Answer to Interrogatory No. 1, above. Further, and as Applicant is aware, the 3,100 acre-feet of reservoir storage that it purchased is the anticipated result of water recapture stemming from the lining of the Portneuf Marsh Valley Canal. Consequently, the water Applicant seeks to transfer is the result of delivery efficiency improvements and not necessarily the result of any decrease in consumptive irrigation use by the Portneuf Marsh Valley Canal Company. Absent a corresponding 3,100 acre-foot decrease in consumptive use by the canal company, Applicant's future consumptive use of the 3,100 acre-feet of recaptured water via transfer will enlarge the preexisting, historical consumptive use of the subject water rights. The same can also be said regarding place of use as well, to the extent that the Portneuf Marsh Valley Canal Company does not retire (dry up) irrigated acreage to match/off-set acreage proposed for irrigation by Applicant under the proposed transfer.

Additionally, the water rights Applicant seeks to transfer in this proceeding are irrigation water rights with a limited season of use. Applicant seeks to change both the nature of use and the season of use of the subject water rights to year-round uses/seasons. This increase in the season of use provides opportunity for the potential enlargement of the underlying water rights should the transfer, if approved, not be sufficiently conditioned accordingly.

Documents evidencing that the 3,100 acre-feet of water proposed for transfer is anticipated recapture water from the lining of the Portneuf Marsh Valley Canal Company's main canal include, but are not necessarily limited to: Applicant's Application for Transfer of Water Right (filed August 30, 2010); Attachment Nos. 2a, 3, and 9 thereto; and the Memorandum Re:

Loss Estimates of PMVCC Canal (dated February 4, 2011), prepared by Rob Sampson and Bernard O'Doherty of the NRCS. Further, Applicant's Application for Transfer of Water Right discloses that Applicant seeks to change the purpose of use and the corresponding season of use from irrigation to other uses, and to a year-round season of use.

Protestant will further supplement this answer as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

INTERROGATORY NO. 4: If you contend that there has been a forfeiture of some or all of the Transfer Water Rights or the PMVCC 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. 4: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only. None.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 4: By answering "none," Protestant is stating that it is not contending that there has been a forfeiture of all or part of the subject water rights.

INTERROGATORY NO. 5: If you contend that there is any error or deficiency in the methods, accuracy or findings of the November 2010 *Report in Support of the City of Pocatello's Application for the Transfer of Water Rights, Chesterfield Reservoir*, prepared by Spronk Water Engineers and submitted with the Application, please describe each fact, and identify each document, that supports, contradicts, or in any material way pertains to such contention.

ANSWER TO INTERROGATORY NO. 5: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only. Protestant is finalizing a response to this Interrogatory in consultation with Christian Petrich and will provide a response as soon as that process has been completed.

INTERROGATORY NO. 6: If you contend that that [sic] suitable measuring devices have not been installed on the Portneuf River both above and below the Reservoir that allow determination of the amount of inflows to be passed through the Reservoir when it is not storing water in priority, 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. 6: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only. Suitable measuring devices do not exist. See documents provided in response to City's Requests for Production.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 6: In addition to the foregoing answer above, and without waiving any objection, Protestant further answers as follows:

Protestant is concerned with the lack of data upon which Portneuf River operations/irrigation administration between Chesterfield Reservoir and Topaz Gage are based. Protestant is not aware of the existence of any official/Idaho Department of Water Resources-approved measuring device above the reservoir that measures reservoir inflows. Also, while a crude reservoir water level gage exists, the Idaho Department of Water Resources, among others, has questioned its accuracy in the past.

To the Protestant's knowledge, the USGS only measures Portneuf River flows at the Topaz gage and at the City of Pocatello. There are no active gaging stations above the Topaz gage, and the Protestant's members divert their water rights from the Portneuf River above the Topaz gage. USGS used to maintain an active gauging station at Pebble, upstream of the Topaz gage, but the Pebble gage has not been active for several years. Protestant believes that the Pebble gage was an important measurement because it measured natural, spring-based tributary inflows to the Portneuf River.

Lack of accurate gaging/measurement data recording inflows into Chesterfield Reservoir, releases from the reservoir, and tributary inflows to the Portneuf River in and downstream of the Pebble area concerns Protestant that senior priority, natural flow-based water right allocations are not being properly administered. This lack of measurement data implicates the thorough evaluation of Applicant's proposed transfer.

Documents evidencing lack of measuring devices, data confidence, and water allocation/administrative confidence include, but are not necessarily limited to:

PWUA000067-71; PWUA000410-427; PWUA001340-1341; PWUA001342-1343; PWUA001344-1345; PWUA001875-1878; PWUA001899-1903; and PWUA002391-2392.

Protestant will further supplement this answer as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

INTERROGATORY NO. 7: If you contend that suitable accounting and administration procedures are not in place to distinguish the amount of inflow to be passed through the Reservoir from the amount of stored water being released for delivery downstream, 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. 7: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only. Protestant and its members have never been provided with an accurate written accounting or other credible documentation demonstrating that their water rights have been delivered appropriately and have not been improperly diminished because of storage water releases into the Portneuf River to the PMVCC diversion. See documents provided in response to City's Requests for Production.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 7: In addition to the foregoing answer above, and without waiving any objection, Protestant further answers as follows:

Please see Supplemental Answer to Interrogatory No. 6, above, and documents produced during the course of this litigation.

Protestant will further supplement this answer as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

INTERROGATORY NO. 8: If you contend that that [sic] the delivery of the Transfer Water Rights to Pocatello or their use under the Transfer would injure the Protestants' water rights or adversely affect the Protestants' water supplies, 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. 8: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only. See answers to Interrogatory Nos. 1 through 7.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 8: In addition to the foregoing answer above, and without waiving any objection, Protestant further answers as follows:

Please see Supplemental Answers to Interrogatory Nos. 1, 2, 3, and 6, above, and documents produced during the course of this litigation. Moreover, this Interrogatory will be further answered by the forthcoming expert witness disclosure and anticipated report of Christian Petrich, Ph.D., P.E., P.G., an expert retained by Protestant for purposes of evaluating Applicant's proposed transfer. Protestant will further disclose Dr. Petrich, and any report he may author in connection with his evaluation of Applicant's transfer application, in conformance with the expert witness disclosure deadlines set forth in the Department's *Notice of Hearing and Order Setting Pre-Hearing Deadlines*, dated April 21, 2011.

Protestant will further supplement this answer as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

INTERROGATORY NO. 9: If you contend that the "no conveyance loss" provision in the partial decree for the Original PMVCC Water Rights, including Water Right No. 29-00589, should not apply to the Transfer Water Rights and be recognized in the Transfer, 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. 9: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. It also calls for potential legal conclusions which are not discoverable. Without waiving any objection, Protestant, in good faith hereby responds to the first portion of the Interrogatory only. See answers to Interrogatory Nos. 1 through 7. Additionally, the Portneuf River Settlement

Agreement which produced the PMVCC storage water rights restricted its terms to the parties to the Agreement. The City was not a party. Therefore, the terms agreed upon in the Agreement, including the “no conveyance loss” provision, cannot be utilized by the City.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 9: In addition to the foregoing answer above, and without waiving any objection, Protestant further answers as follows:

Please see Supplemental Answers to Interrogatory Nos. 1, 2, 3, and 6, above, and documents produced during the course of this litigation. Further, the SRBA Partial Decrees for Water Right Nos. 29-53 and 29-589 expressly provide that the delivery of storage water in Chesterfield Reservoir without conveyance loss applies to “irrigation” purposes, and only covers the delivery of “irrigation” storage water through the Portneuf River for the “Portneuf Marsh Valley Canal Company’s canal” at “T9S, R37E, Section 22, SWSENW (Lot 3),” not a point, or points, downstream. Consequently, the decreed beneficial use protected from conveyance loss under the subject water rights is “irrigation” only, and the conveyance loss coverage afforded is provided only to the Portneuf Marsh Valley Canal Company’s canal headgate.

Additionally, the irrigation use of these water rights, and the companion “without conveyance loss” language contained within the partial decrees, is limited to 5,103 acres located within the company’s delivery area, not downstream in Pocatello. The partial decrees do not contemplate any other uses of water, let alone protect other, non-irrigation-based uses of water from conveyance losses. As previously noted herein, Applicant seeks to change the nature of use and place of use of the subject water rights to include non-irrigation-based purposes of use, and a place of use far away from the company’s irrigation service area.

Moreover, the pertinent partial decrees also expressly provide that the operation and administration of the subject water rights (water right nos. 29-53 and 29-589) is “subject to the terms and conditions of the Portneuf River Settlement Agreement,” filed with the SRBA Court on April 22, 2005, and the Addendum thereto, filed on December 17, 2007. That settlement agreement contemplates only the “irrigation” use of the subject water rights, as described within Section 8 of the agreement, and as contained within the SF5 water right descriptions attached thereto and incorporated by reference therein. The settlement agreement also expressly provides that it “shall apply only to the parties to this Agreement with regards to the water rights covered by this Agreement.” Again, Applicant seeks shrink free (or “without conveyance loss”) status for non-irrigation-based water uses (a concept never contemplated or provided within the agreement), and Applicant was not a party to the agreement. Therefore, Applicant neither bears any of the burdens of the settlement agreement, nor shares in any of the benefits of the settlement agreement.

Both the Portneuf River Settlement Agreement, and the SRBA Partial Decrees that issued in response thereto were duly shepherded through the SRBA, an adjudication in which Applicant was a party. Protestant is not aware of Applicant taking any action with respect to either the agreement or the subsequent partial decrees for water right nos. 29-53 and 29-589. As a party to the SRBA, Applicant is bound by, and cannot collaterally attack or re-open, either the Portneuf River Settlement Agreement, or the partial decrees entered in response thereto.

Protestant will further supplement this answer as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

INTERROGATORY NO. 10: If you contend that any changes over time in Portneuf River gains or losses downstream of Chesterfield Reservoir have been due to the

development of irrigation wells, 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. 10: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only. Applicant has developed numerous wells which have negatively impacted the aquifer tributary to the Portneuf River. See documents provided in response to City's Requests for Production. Additionally, the Portneuf River Settlement Agreement ("Agreement") which produced the PMVCC storage water rights restricted its terms to the parties to the Agreement. The City was not a party. Therefore, the terms agreed upon in the Agreement, including the "no conveyance loss" provision, cannot be utilized by the City.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 10: In addition to the foregoing answer above, and without waiving any objection, Protestant further answers as follows:

Protestant is concerned that the development and pumping of groundwater wells over time has negatively impacted tributary aquifer (base flow) contributions to Portneuf River surface water flows, thereby decreasing surface water flows in the river. Reports considering the interrelationship between groundwater pumping and Portneuf River flows, or discussing the increase of local groundwater pumping over time include:

- *A Reconnaissance of the Water Resources in the Portneuf River Basin, Idaho* (Norvitch and Larson 1970);
- *Surface- and Ground-Water Relations on the Portneuf River, and Temporal Changes in Ground-Water Levels in the Portneuf Valley, Caribou and Bannock Counties, Idaho, 2001-02* (Barton 2004);

- *Geochemistry of the Southern Pocatello Aquifer and its Implications for Aquifer Recharge and Contamination Potential* (Meehan 2005);
- *Water Balance and Pumping Capacity of the Lower Portneuf River Valley Aquifer, Bannock County, Idaho* (Welhan 2006); and
- *City of Pocatello Water System Master Plan and Development of Water System Model* (2006).

In addition to the reports noted above, additional documents expressing concern over groundwater pumping and its potentially adverse effects upon Portneuf River surface water flows include, but are not necessarily limited to: PWUA000064; PWUA000326; PWUA000410-427; and PWUA002391-2392.

Protestant will further supplement this answer as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

INTERROGATORY NO. 11: Please describe all sources or causes of physical impairment or interference with channel capacity that affect the free flow of water in the Portneuf River reaches adjacent to and/or traversing your lands, 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. 11: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. It also calls for potential legal conclusions which are not discoverable. Without waiving any objection, Protestant, in good faith hereby responds to the first portion of the Interrogatory only. Ambient water temperature increases due to Chesterfield Reservoir, aquatic plant growth, "no shrink" conveyance of storage water to PMVCC diversion, and channel roughness. See documents provided in response to City's Requests for Production. Additionally, the Agreement which

produced the PMVCC storage water rights restructured its terms to the parties to the Agreement. The City was not a party. Therefore, the terms agreed upon in the Agreement, including the “no conveyance loss” provision, cannot be utilized by the City.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 11: In addition to the foregoing answer above, and without waiving any objection, Protestant further answers as follows:

Please see Supplemental Answers to Interrogatory Nos. 1, 2, 3, 6, and 10, above, and documents produced during the course of this litigation.

Protestant will further supplement this answer as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

INTERROGATORY NO. 12: If you contend that the Transfer, if approved, would conflict with the local public interest, please describe the basis for this contention and identify each document that supports, contradicts, or in any material way pertains to it.

ANSWER TO INTERROGATORY NO. 12: Objection. This Interrogatory exceeds the parameters of the Department’s Order because it contains subparts. It also calls for potential legal conclusions which are not discoverable. Without waiving any objection, Protestant, in good faith hereby responds to the first portion of the Interrogatory only. It would damage the real property of Protestant members because of increased flooding of the Portneuf River. It would diminish the amount of water available for diversion from the Portneuf River by members of Protestant (senior appropriators). This would damage the agricultural business operations of Protestant members to provide benefits to City of Pocatello residents, all contrary to Idaho Constitution Article XV, Sections 3 and 4; and Idaho Code Section 42-222. This proposed Transfer would also constitute a change in the nature of use from agricultural use

which would significantly affect the agricultural base of the local area, in violation of Idaho Code Section 42-222.

The Transfer would probably result in increased aquatic plant growth and contribute to water quality degradation of the Portneuf River.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 12: In addition to the foregoing answer above, and without waiving any objection, Protestant further answers as follows:

Please see Supplemental Answers to Interrogatory Nos. 1, 2, 3, 6, 7, 8, 9, 10, and 11, above, and documents produced during the course of this litigation.

Protestant will further supplement this answer as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

INTERROGATORY NO. 13: To the extent not fully disclosed by your earlier responses, please identify and describe any other basis or bases for your contention that the Transfer should not be approved and please identify each document that supports, contradicts, or in any material way pertains to it.

ANSWER TO INTERROGATORY NO. 13: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. It also calls for potential legal conclusions which are not discoverable. Without waiving any objection, Protestant, in good faith hereby responds to the first portion of the Interrogatory only. See answers to Interrogatory Nos. 1 through 12.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 13: In addition to the foregoing answer above, and without waiving any objection, Protestant further answers as follows:

Please see Supplemental Answers to Interrogatory Nos. 1, 2, 3, 6, 7, 8, 9, 10, 11, and 12, above, and documents produced during the course of this litigation.

Protestant will further supplement this answer as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

INTERROGATORY NO. 14: 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 upon which the opinion and testimony is based.

ANSWER TO INTERROGATORY NO. 14: Objection. This interrogatory exceeds the parameters of the Department's Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only.

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Lynden Symons
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Scott Gunnell
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Lava Hot Springs, ID 83246
(208) 776-5440

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 14: In addition to the foregoing answer above, and without waiving any objection, Protestant further answers as follows:

Dan N. Dimick: Mr. Dimick farms and ranches (owns and/or leases) 820 acres located in Lava Hot Springs, Idaho. One hundred and forty of the acres are irrigated. The Portneuf River flows through a portion of Mr. Dimick's leased acreage. Mr. Dimick has been

employed in agriculture continuously throughout his life. Further, Mr. Dimick has lived in the Portneuf River Valley since he was 8 years old. Consequently, Mr. Dimick has personal knowledge regarding the river, Chesterfield Reservoir, and the use of both for irrigation operations.

Mr. Dimick also possesses personal knowledge regarding irrigation season moss and plant growth problems in the Portneuf River channel, flooding of the river channel due to storage water releases and channel mossing, and that the river flooding impedes crop harvesting and can impede affected ground productivity. Mr. Dimick was also a participant in the Portneuf River Settlement Agreement proceedings (on behalf of the Dempsey and Lava Irrigating/Irrigation Companies) and is familiar with its negotiations and participants.

Mr. Dimick is also personally knowledgeable regarding his own irrigation practices and water shortages caused, in part, by mossing of the Portneuf River channel and the "shrink free" delivery of Portneuf Marsh Valley Canal Company water from Chesterfield Reservoir. These water shortages result in a shortened irrigation season and lower crop yield.

Kirk Irick: Mr. Irick farms and ranches (owns and/or leases) 258 acres of farm ground, and runs cattle on an additional 1,200 (+/-) of range/grazing ground, all within a 15 mile radius of Lava Hot Springs, Idaho. Fifty eight of the acres are irrigated. The Portneuf River is located south of Mr. Irick's farm ground. Mr. Irick has been farming in the Lava Hot Springs area for the past 31 years, and has personal knowledge regarding the river, Chesterfield Reservoir, and the use of both for irrigation operations.

Mr. Irick also possesses personal knowledge regarding irrigation season moss and plant growth problems in the Portneuf River channel, flooding of the river channel due to storage water releases and channel mossing, and that the river flooding impedes crop harvesting and can

impede affected ground productivity. Mr. Irick was also a participant in the Portneuf River Settlement Agreement proceedings (as a shareholder of the Lava Irrigation Company) and is familiar with its negotiations and participants.

Mr. Irick is also personally knowledgeable regarding his own irrigation practices and water shortages caused, in part, by mossaing of the Portneuf River channel and the “shrink free” delivery of Portneuf Marsh Valley Canal Company water from Chesterfield Reservoir. These water shortages result in a shortened irrigation season and lower crop yield. Mr. Irick is also personally familiar with local water administration efforts and the lack of suitable measuring devices monitoring reservoir operations and accounting for natural flow-based rights.

Wayne Avery: Mr. Avery farms (owns and/or leases) 300 acres located in Lava Hot Springs, Idaho. Two hundred and ten of the acres are irrigated. The southern portion of Mr. Avery’s farm borders the Portneuf River. Mr. Avery has been farming in the Lava Hot Springs area for the past 34 years, and has personal knowledge regarding the river, Chesterfield Reservoir, and the use of both for irrigation operations.

Mr. Avery also possesses personal knowledge regarding irrigation season moss and plant growth problems in the Portneuf River channel, flooding of the river channel due to storage water releases and channel mossaing, and that the river flooding impedes crop harvesting and can impede affected ground productivity. Mr. Avery was also a participant in the Portneuf River Settlement Agreement proceedings (as a board member of the Lava Irrigation Company) and is familiar with its negotiations and participants.

Mr. Avery is also personally knowledgeable regarding his own irrigation practices and water shortages caused, in part, by mossaing of the Portneuf River channel and the “shrink

free” delivery of Portneuf Marsh Valley Canal Company water from Chesterfield Reservoir.

These water shortages result in a shortened irrigation season and lower crop yield.

Glenn Christiansen: Mr. Christiansen farms and ranches (owns and/or leases) 89 acres located in Blackfoot and in Bannock County, Idaho. Seventy five of the acres are located in Bannock County, Idaho. The Portneuf River flows through Mr. Christiansen’ Bannock County ground. Consequently, Mr. Christiansen is personally familiar with the river and its flows.

Mr. Christiansen also possesses personal knowledge of annual river flooding in mid summer which he attributes to storage water releases that exceed the capacity of the river channel. This flooding impedes crop harvesting and can impede affected ground productivity.

Mr. Christiansen is also personally knowledgeable regarding his own irrigation practices and water shortages caused, in part, by the “shrink free” delivery of Portneuf Marsh Valley Canal Company water from Chesterfield Reservoir. These water shortages result in a shortened irrigation season and lower crop yield. This, in turn, also adversely effects Mr. Christiansen’s livestock care and feeding operations.

Earl H. Smith: Mr. Smith farms (owns and/or leases) 90 acres located in Bannock County, Idaho. All 90 acres of the farm are irrigated. The Portneuf River is located approximately one-half mile north of Mr. Smith’s farm. Mr. Smith has been farming the area for over 32 years, and has personal knowledge regarding the river, Chesterfield Reservoir, and the use of both for irrigation operations.

Mr. Smith also possesses personal knowledge regarding irrigation season moss and plant growth problems in the Portneuf River channel, flooding of the river channel due to

storage water releases and channel mossing, and that the river flooding impedes crop harvesting and can impede affected ground productivity.

Mr. Avery is also personally knowledgeable regarding his own irrigation practices and water shortages caused, in part, by mossing of the Portneuf River channel and the “shrink free” delivery of Portneuf Marsh Valley Canal Company water from Chesterfield Reservoir. These water shortages result in a shortened irrigation season and lower crop yield.

Gene Fagnant: Mr. Fagnant farms and ranches (owns and/or leases) 180 acres located in Lava Hot Springs, Idaho. Thirty of the acres are currently irrigated, though 50-60 acres were typically irrigated historically when water supplies were better. The Portneuf River is located approximately one and one-half miles south of Mr. Fagnant’s farm/ranch. Mr. Fagnant has lived and farmed in Lava Hot Springs all of his life.

Mr. Fagnant has experienced nearly annual water shortages that have impacted his irrigation practices, particularly over the last 10 years. Mr. Fagnant attributes these water shortages largely to the proliferation of groundwater wells which have decreased spring flows tributary to the Portneuf River. These water shortages result in a shortened irrigation season and lower crop yield. This, in turn, also adversely effects Mr. Fagnant’s livestock care and feeding operations.

Protestant is still gathering responsive, pertinent witness information from the remaining individuals previously identified within its original Answer to Interrogatory No. 14. Protestant will continually supplement its answer to this interrogatory as that witness information is gathered. Further, Protestant will additionally supplement this answer as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

INTERROGATORY NO. 15: For each person you have identified or will identify as an expert witness pursuant to the Discovery Order, please state the name and address of each such witness and include 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, any qualifications of the witness including a list of all publications authored by the witness within the preceding ten years, the compensation to be paid for the testimony, and a listing of any other cases in which the witness

ANSWER TO INTERROGATORY NO. 15: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only. Christian R. Petrich, Ph.D., P.E., SPF Water Engineering LLC, 300 East Mallard Drive, Suite 350, Boise, Idaho 83706; (208) 383-4140. Dr. Petrich will testify regarding the impacts of the proposed transfer. His analysis is not yet complete. This Answer will be properly supplemented when his analysis is complete.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 15: Protestant will further disclose Dr. Petrich, and any report he may author in connection with his evaluation of Applicant's transfer application, in conformance with the expert witness disclosure deadlines set forth in the Department's *Notice of Hearing and Order Setting Pre-Hearing Deadlines*, dated April 21, 2011.

REQUEST FOR PRODUCTION NO. 1: Please produce all articles, bylaws, or other documents under which PWUA, Lava, Dempsey, and Topaz are organized, and all

minutes, resolutions, correspondence, and other documents referring to: 1) the Reservoir, 2) the Application, 3) the Transfer, 4) the administration of water rights in the Portneuf River that affect or pertain to Protestants' Water Rights, and 5) your Protest.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: The requested documents will be made available for review and copying at the offices of Protestant's counsel at a mutually agreeable date and time.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 1:
Please see documents produced during the course of this litigation. Protestant will continue to produce documents, or make the same available for inspection at a mutually agreeable date and time, as they are received from Protestant's members.

Protestant will further supplement this response as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

REQUEST FOR PRODUCTION NO. 2: Please produce all decrees, partial decrees, permits, and licenses evidencing or confirming Protestants' Water Rights.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: The requested documents will be made available for review and copying at the offices of Protestant's counsel at a mutually agreeable date and time.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 2:
Please see documents produced during the course of this litigation. Protestant will continue to produce documents, or make the same available for inspection at a mutually agreeable date and time, as they are received from Protestant's members.

Protestant will further supplement this response as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

REQUEST FOR PRODUCTION NO. 3: Please produce all deeds, assignments, leases, mortgages or other instruments evidencing ownership of Protestants' Water Rights.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: The requested documents will be made available for review and copying at the offices of Protestant's counsel at a mutually agreeable date and time.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 3:
Please see documents produced during the course of this litigation. Protestant will continue to produce documents, or make the same available for inspection at a mutually agreeable date and time, as they are received from Protestant's members.

Protestant will further supplement this response as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

REQUEST FOR PRODUCTION NO. 4: Please produce all applications, approved transfers or exchanges, leases, rentals, and contracts affecting the delivery, ownership, current status or use of water diverted under Protestants' Water Rights.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: The requested documents will be made available for review and copying at the offices of Protestant's counsel at a mutually agreeable date and time.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 4:
Please see documents produced during the course of this litigation. Protestant will continue to produce documents, or make the same available for inspection at a mutually agreeable date and time, as they are received from Protestant's members.

Protestant will further supplement this response as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

REQUEST FOR PRODUCTION NO. 5: Please produce all records of diversions of Protestants' Water Rights, all deliveries to shareholders, irrigated area and crops raised during the last 10 years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: The requested documents will be made available for review and copying at the offices of Protestant's counsel at a mutually agreeable date and time.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 5:
Please see documents produced during the course of this litigation. Protestant will continue to produce documents, or make the same available for inspection at a mutually agreeable date and time, as they are received from Protestant's members.

Protestant will further supplement this response as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

REQUEST FOR PRODUCTION NO. 6: Please produce all reports, analyses, conservation plans, correspondence, and other documents pertaining to the operation or maintenance of the Protestants' irrigation systems, including any such documents pertaining to measures intended to improve flows in the Portneuf River or in any canal.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: The requested documents will be made available for review and copying at the offices of Protestant's counsel at a mutually agreeable date and time.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 6:
Please see documents produced during the course of this litigation. Protestant will continue to produce documents, or make the same available for inspection at a mutually agreeable date and time, as they are received from Protestant's members.

Protestant will further supplement this response as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

REQUEST FOR PRODUCTION NO. 7: 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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: The requested documents will be made available for review and copying at the offices of Protestant's counsel at a mutually agreeable date and time.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 7: Please see documents produced during the course of this litigation. Protestant will continue to produce documents, or make the same available for inspection at a mutually agreeable date and time, as they are received from Protestant's members.

Protestant will further supplement this response as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

REQUEST FOR PRODUCTION NO. 8: To the extent not produced in response to Request for Production Nos. 1 through 7, please produce all documents on which you relied, or which you identified, in responding to these Discovery Requests.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: The requested documents will be made available for review and copying at the offices of Protestant's counsel at a mutually agreeable date and time.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

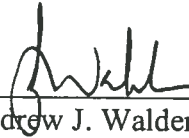
Please see documents produced during the course of this litigation. Protestant will continue to produce documents, or make the same available for inspection at a mutually agreeable date and time, as they are received from Protestant's members.

Protestant will further supplement this response as necessary during the course of this litigation pursuant to Idaho Rule of Civil Procedure 26(e).

DATED this 25th day of April, 2011.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By



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

STATE OF IDAHO)
)
County of _____) ss.

I am the _____ of **PORTNEUF WATERSHED
USERS ASSOCIATION, INC.** and am authorized to make this verification in its behalf.

NOTARY PUBLIC FOR IDAHO
Residing at _____
My Commission Expires _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of April, 2011, I caused a true and correct copy of the foregoing **PROTESTANT PORTNEUF WATERSHED USERS ASSOCIATION'S FIRST SUPPLEMENTAL ANSWERS AND RESPONSES TO APPLICANT CITY OF POCA TELLO'S FIRST DISCOVERY REQUESTS** to be served by the method indicated below, and addressed to the following:

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

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☐ () Overnight Mail
☐ () Facsimile

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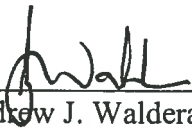
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Andrew J. Waldera