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Department of Water Resources
Eastern Region

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Attorneys for Applicant City of Pocatello

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

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

**CITY OF POCATELLO'S MOTION
TO COMPEL DISCOVERY
RESPONSES OF PROTESTANT
JOHN SCHWARZ**

Applicant City of Pocatello (the "City"), by and through its attorneys of record, Givens Pursley LLP, respectfully moves the Idaho Department of Water Resources ("Department"), pursuant to Idaho Rule of Civil Procedure 37(a), and IDAPA 37.01.01.521, for an order compelling Protestant John Schwarz ("John") to supplement his discovery by providing complete responses to the City's first set of discovery requests to John, and to comply with the Department's April 21, 2011 *Order Setting Pre-Hearing Deadlines* ("Scheduling Order"). The reason for this motion is that John has disregarded the Department's Rules of Procedure governing discovery and the Hearing Officer's April 8, 2011 *Order Partially Granting Motion to Compel Discovery* ("Discovery Order") as set forth below. This Motion is supported by the Affidavit of Michael C. Creamer in Support of City of Pocatello's Motion to Compel Discovery Responses ("Creamer Affidavit"), filed contemporaneously herewith.

The City served its *First Discovery Requests to John Schwarz* ("Requests") on March 28, 2011. On April 6, 2011, the City received a copy of John's *Answers and Responses to Applicant City of Pocatello's First Discovery Requests* ("Responses"). Yet, the Responses contain only limited information concerning John's protest to The City's Application for Transfer No. 76779, and instead, repeatedly object that "[T]his Interrogatory exceeds the parameters of the Department's Order because it contains subparts." Creamer Affidavit, Ex. A.

In the responses, John also purports to "reserve the right to amend this statement at any time, including up to the time of the hearing." Creamer Affidavit, Ex. A. However, the Scheduling Order requires that responses to discovery be served on or before May 16, 2011. Thus, John does not have a right to unilaterally extend his discovery deadline to "up to the time of the hearing," and should be required to comply with the Department's discovery deadlines. Creamer Affidavit, Ex. A.

In light of the Discovery Order, counsel for the City mailed a letter to John, on April 13, 2011, requesting that he fully respond to the City's discovery requests by April 25, 2011. Creamer Affidavit, Ex. B. On April 25, 2011, the City received a response letter from John, dated April 20, A.D. 2011, in which he indicated "[T]his Protestant stands by the original Response given on April 4, 2011" and that "Protestant does agree to stick to the material facts listed on the *Notice of Protest, and Response and Answers*." Creamer Affidavit, Ex. C.

As such, and pursuant to IDAPA 37.01.01.531, the City respectfully requests the Department order John to fully respond to the Requests by amending or supplementing his Responses, and to comply with the Scheduling Order setting the May 16, 2011, deadline for discovery responses. The City further requests that if John fails to obey any order compelling discovery, the Department issue an order precluding him from introducing any evidence in this

proceeding as a party or as a witness for another party, which he has not previously disclosed through the discovery process, and from using any documents that he has not specifically identified and produced in response to the City's Requests.

DATED this 25th day of April, 2011.

GIVENS PURSLEY, LLP

By:



Michael C. Creamer

Attorneys for City of Pocatello

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of April, 2011, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

Original Filed With:

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Michael C. Creamer

APR 27 2011

Department of Water Resources
Eastern Region

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April 25, 2011

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Idaho Falls, ID 83402-6105

Re: *In the Matter of Application for Transfer No. 76779 in the Name of
the City of Pocatello*

Dear Mr. Cefalo:

Enclosed are the **originals** and one set of copies of the following:

1. *City of Pocatello's Motion to Compel Discovery Responses of Protestant John Schwarz;* and
2. *Affidavit of Michael C. Creamer in Support of City of Pocatello's Motion to Compel Discovery Responses of Protestant John Schwarz.*

Please file the enclosed Motion and Affidavit in the above-referenced transfer number, and return conformed copies of each document to our office in the postage-paid envelope provided for your use.

Your assistance is appreciated.

Sincerely,



Caralea Hopingardner
Legal Assistant to Michael C. Creamer