

Michael C. Creamer, ISB #4030
Jeffrey C. Fereday, ISB # 2719
Elizabeth M. Donick, ISB # 8019
GIVENS PURSLEY LLP
601 W. Bannock St.
Post Office Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Facsimile: 208-388-1300
5902-6_1139264_1

Attorneys for Applicant City of Pocatello

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

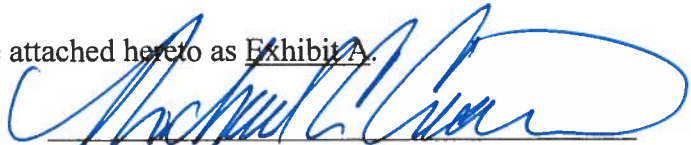
IN THE MATTER OF APPLICATION
FOR TRANSFER NO. 76779 IN THE
NAME OF THE CITY OF POCA TELLO

**AFFIDAVIT OF MICHAEL C.
CREAMER IN SUPPORT OF
APPLICANT'S REPLY TO
PROTESTANT'S RESPONSE TO
THE MOTION TO COMPEL**

STATE OF IDAHO)
) ss.
County of Ada)

MICHAEL C. CREAMER, being first duly sworn upon oath, deposes and states:

1. I am one of the attorneys for the Applicant City of Pocatello ("City") in the above-captioned case.
2. Before filing the Motion to Compel in this matter, I had several communications with counsel for Protestant Portneuf Watershed Users Association ("PWUA"), in which I explained the City's position regarding the discovery requests at issue and attempted to resolve the discovery dispute prior to seeking relief from this Department. True and correct copies of the electronic portions of such communications are attached hereto as Exhibit A.



Michael C. Creamer

SUBSCRIBED AND SWORN to before me this 12th day of April, 2011.



C. H. Hopingardner
Notary Public for Idaho
Residing at Boise ID
My Commission expires: 5/21/2016

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of April, 2011, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

Director of IDWR
PO Box 83720
Boise, ID 83720-0098

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

Scott L. Campbell
Moffatt Thomas Barrett Rock & Fields, Chtd.
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701-0829
Fax: 208-385-5384

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

slc@moffatt.com

*Attorneys for Portneuf Watershed Users
Association, Inc.*

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
Box 240
McCammon, ID 83250

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

James A. Spinner
Attorney at Law
PO Box 6009
Pocatello, ID 83205-6009
Fax: 208-232-1808

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

spinjim@cableone.net

Attorney for McCammon Ditch Company

Travis L. Thompson
Barker, Rosholt & Simpson, LLP
113 Main Avenue West, Ste. 303
P.O. Box 485
Twin Falls, ID 83301-6167
Fax: 208-735-2444

tltp@idahowaters.com

*Attorneys for A&B Irrigation District, Burley
Irrigation District, Milner Irrigation District,
North side Canal Company and Twin Falls
Canal Company*

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

Randall C. Budge
Racine Olson Nye Budge & Bailey, Chtd.
201 East Center St., Ste. A2
P.O. Box 1391
Pocatello, ID 83204-1391
Fax: (208) 232-6109
rcb@racinelaw.net

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


Michael C. Creamer

EXHIBIT A

City's Electronic Communications with PWUA's Counsel

Michael C Creamer

From: Michael C Creamer [mcc@givenspursley.com]
Sent: Tuesday, March 22, 2011 4:22 PM
To: 'Andy Waldera'; 'Scott L. Campbell'
Cc: Jeffrey C Fereday; Elizabeth M. Donick; Caralea Hopingardner; dtranmer@pocatello.us; 'Greg Sullivan'
Subject: FW: City of Pocatello Storage Transfer - PWUA Discovery Responses [IWOV-GPDMS.FID454070]
Attachments: RE: City of Pocatello Storage Transfer - PWUA Discovery Responses [IWOV-GPDMS.FID454070]

Andy and Scott,

I appreciate your taking the time to discuss the discovery issues with me and your response below summarizing your position. Nevertheless, I will be seeking an order compelling PWUA to fully respond to each of the City's discovery requests, including those portions that you have objected to as impermissible subparts.

While I understand that you intend to supplement your responses to two interrogatories concerning lay and expert witnesses, and provide the facts and documents to be introduced through them at the hearing (which the City will be doing as well), of particular concern for the City is its current need, and entitlement under the discovery rules, to discover all facts and documents that your clients are aware of/have in their possession or control that bear on their protest, not simply those they may believe are most favorable to their position and will seek to introduce into evidence as testimony or exhibits at the hearing.

I have sent our motion and supporting affidavit to IDWR today and have asked that the matter be taken up at the April 1 status conference, which should provide you ample time to respond.

Sincerely,

Michael C. Creamer
Givens Pursley LLP
601 W. Bannock St.
Boise, ID 83702
Direct: 208-388-1247
Fax: 208-388-1300

From: Andy Waldera [mailto:AJW@moffatt.com]
Sent: Monday, March 21, 2011 5:54 PM
To: Michael C Creamer
Cc: Scott Campbell
Subject: RE: City of Pocatello Storage Transfer - PWUA Discovery Responses [IWOV-GPDMS.FID454070]

Mike,

I am writing in follow-up to your proposed motion to compel, a copy of which you provided to me last Friday for review. As a general matter, I can tell you two things:

1. The PWUA stands by its existing discovery responses and the contents of my email to you, dated 3/10/11 (copy attached); and

4/11/2011

2. The PWUA is committed to supplementing its discovery responses as it continues to locate additional documents.

I know that we will agree to disagree on the interpretation of the "subpart" issue. However, as we discussed, the factual bases of the PWUA's protest are really going to boil down to two things: (1) document production, and (2) the expert findings of Christian Petrich. As you know, we have been producing documents (which some of the interrogatory responses rely upon), and we will continue to do so. I also know that Christian is preparing for me a list of reports and other materials he has been using in his review, and if he knows he will be relying upon him, we can provide the materials to you in advance of any more formal (and yet to be scheduled) expert witness disclosure. In sum, if there is something that the PWUA is going to rely upon in supporting its protest, you are going to get a copy of it. The Association is not going to hide the ball or withhold anything...to do so would only handicap its use of the same in support of its case. While I know that the written discovery time period is fairly compressed (ending in mid May), the discovery period is still only recently begun and I truly believe that your concerns will dissipate, if not disappear altogether, as supplementation and additional document production occurs.

In specifically addressing the perceived discovery response deficiencies expressly noted in Section "A" of the Argument portion of your proposed motion, I offer the following:

1. PWUA has not, and does not "refuse to provide the requested facts and information." Again, responsive documents and information continue to come available, and PWUA will supplement its current discovery responses accordingly.

2. Regarding Interrogatory No. 6, it is my understanding that there is no measuring device upstream of the reservoir. The watermaster has confirmed that there is no actual installed/official device above the reservoir. Thus, "suitable measuring devices" above Chesterfield Reservoir "do not exist." There is also no gage/measurement of springs located below the reservoir, which the PWUA question from an accounting perspective for determination/delivery of their natural flow rights. The PWUA is concerned with what it views as a systemic lack of formal river flow and reservoir storage measurement/accounting from a general perspective for purposes of evaluating the transfer.

3. Regarding Interrogatory No. 8, I believe that the Association's answers to ROG Nos. 1, 3, 6, 7, and 10 are instructive/responsive. Moreover, this is another instance where additional supplementation and document production over time will continue to refine these answers...as well as disclosures from the expert review of Christian Petrich. While I know that you feel differently, from my perspective it is a bit premature to be talking about motions to compel at this stage of the discovery process.

4. Regarding Interrogatory No. 10, I believe that you have now received (via your first document inspection), or are otherwise already in possession of the following reports:

--Whelan 2006;
--USGS 2004; and
--Meehan 2005.

It is my understanding that each of these reports discuss that the development of groundwater pumping by Pocatello and others has negatively impacted aquifer flows tributary to the Portneuf River because groundwater pumping is more often than not outstripping annual recharge of the aquifer. Much like the ESPA problem, groundwater pumping is decreasing surface water flows (via decreasing groundwater baseflow contributions) in the river. Unless and until Christian advises me otherwise, the above-referenced reports provide the factual bases underpinning the Association's response. If you do not have copies of these reports, I can provide them. Again, however, it is my understanding that you do already possess the reports.

5. Regarding Interrogatory No. 4 (the "None" answer), it is my understanding that the answer does, in fact, mean that the Association is not contending forfeiture as your Footnote No. 2 questions.

As you know, I have not been able to devote much time to this matter given my trial in Preston this week. However, I have tried to address each of the concerns expressly raised (by interrogatory number) within the body of your proposed motion to compel. The PWUA is committed to supplementing its discovery responses in accordance with Rule 26(e), and it will continue to provide documents as they are located and forwarded to us.

Christian Petrich's forthcoming analysis will also provide you with the "facts" and analysis that your client desires. I am not interested in playing discovery games as it is expensive and counter-productive. Consequently, the Association is always willing to consider and address your client's concerns as they arise.

If you do not find the contents of this email satisfactory, then you are free to file your motion to compel. In my estimation such a motion is premature, but how you proceed is certainly your (and your client's) prerogative.

--Andy

From: Michael C Creamer [mailto:mcc@givenspursley.com]
Sent: Friday, March 18, 2011 11:26 AM
To: Andy Waldera
Cc: Tiffany Hudak; Scott Campbell; Jeffrey C Fereday
Subject: RE: City of Pocatello Storage Transfer - PWUA Discovery Responses [IWOV-GPDMS.FID454070]

Andy,

I can come to your office this afternoon after 2:30 pm to look at the additional documents.

As a heads-up for you and Scott, on further consideration, Pocatello cannot agree that PWUA's contemplated responses to the City's interrogatory no. 14 will serve as a sufficient response to the City's other interrogatories. You had asked that I set out for you the specific concerns the City has with PWUA's responses. I will bring with me this afternoon the motion and supporting affidavit I intend to file with IDWR absent PWUA's agreement to respond fully to each of the City's interrogatories. I will need to know by close of business on Monday whether, after having had an opportunity to review our motion, PWUA will agree to provide full responses. Unless PWUA does agree, I will file the motion and request an expedited hearing and/or decision from the Department.

Sincerely,

Mike



Michael C. Creamer
Givens Pursley LLP
601 W. Bannock St.
Boise, ID 83702
Direct: 208-388-1247
Fax: 208-388-1300

From: Andy Waldera [mailto:AJW@moffatt.com]
Sent: Thursday, March 17, 2011 6:12 PM
To: Michael C Creamer
Cc: Tiffany Hudak
Subject: RE: City of Pocatello Storage Transfer - PWUA Discovery Responses [IWOV-GPDMS.FID454070]

Mr. Creamer,

In further follow-up to your email below, Tiffany was not able to get to the privilege log or cover letter done due to an emergency project that fell into her lap this afternoon. We will have those items completed for your tomorrow, and you can pick up the documents, etc. when you come to inspect the Topaz minute

books.

I apologize for the delay.

--Andy

From: Michael C Creamer [mailto:mcc@givenspursley.com]
Sent: Thursday, March 17, 2011 5:11 PM
To: Andy Waldera
Cc: Jeffrey C Fereday
Subject: RE: City of Pocatello Storage Transfer - PWUA Discovery Responses [IWOV-GPDMS.FID454070]

Andy:

Nothing showed up here today. Re: the additional documents (bylaws, minutes, etc.) that you have dating back to circa 1905, I would like to review them tomorrow at your office with the expectation that I will want them all produced. Please confirm a time that you, Scott or perhaps Tiffany would be available so that I can inspect them.

Thank you in advance.

Sincerely,

Mike



Michael C. Creamer
Givens Pursley LLP
601 W. Bannock St.
Boise, ID 83702
Direct: 208-388-1247
Fax: 208-388-1300

From: Andy Waldera [mailto:AJW@moffatt.com]
Sent: Thursday, March 17, 2011 11:53 AM
To: Michael C Creamer
Subject: RE: City of Pocatello Storage Transfer - PWUA Discovery Responses [IWOV-GPDMS.FID454070]

Mr. Creamer,

In further follow-up to your email (embedded below), we do have the documents back from the vendor. Tiffany Hudak is preparing a short privilege log (2 documents were withheld) and a cover letter. We expect to deliver everything to your office this afternoon.

Thanks,

Andy

From: Michael C Creamer [mailto:mcc@givenspursley.com]
Sent: Wednesday, March 16, 2011 6:00 PM
To: Andy Waldera
Subject: RE: City of Pocatello Storage Transfer - PWUA Discovery Responses [IWOV-GPDMS.FID454070]

Andy,

I would like an update on the production of documents which I reviewed and requested last Friday. I will send a runner to retrieve them and would like to do so Thursday (tomorrow) morning.

Mike



Michael C. Creamer
Givens Pursley LLP
601 W. Bannock St.
Boise, ID 83702
Direct: 208-388-1247
Fax: 208-388-1300

From: Andy Waldera [mailto:AJW@moffatt.com]
Sent: Friday, March 11, 2011 12:09 PM
To: Michael C Creamer
Subject: RE: City of Pocatello Storage Transfer - PWUA Discovery Responses [IWOV-GPDMS.FID454070]

Mr. Creamer,

I am writing to let you know that I received your note from your document inspection session. We are sending the documents out for copying today, and they should be available for you early next week.

Regarding the seemingly missing CD 4 folder, that folder is not missing. Instead, it contains duplicates of certain of the documents that were already contained within the other folders. Consequently, you were not missing anything from today's review.

I will keep you posted as we continue to receive documents from our clients.

Thank you, and have a good weekend.

--Andy

From: Michael C Creamer [mailto:mcc@givenspursley.com]
Sent: Wednesday, March 09, 2011 3:59 PM
To: Andy Waldera
Cc: Scott Campbell; dtranmer@pocatello.us; Jeffrey C Fereday
Subject: City of Pocatello Storage Transfer - PWUA Discovery Responses [IWOV-

GPDMS.FID454070]

Andy,

Thank you for your e-mail today and for speaking with me this afternoon. Per our discussion this afternoon, the City of Pocatello deems your clients' responses to its discovery requests to be non-responsive—in particular the objections on the basis that the City's Interrogatories contain unpermitted subparts, and PWUA's refusal to respond fully to the questions posed. Unless PWUA agrees to respond fully, by providing the facts upon which PWUA relies for the positions taken in its Protest and recited in its partial responses to interrogatories, I intend to file a Motion to Compel with the Department. We discussed that Scott Campbell is currently out of the office, and I am willing to wait until Friday for a response that PWUA will immediately provide the requested information. If I have not received such a response by then, or if PWUA's response is that it does not intend to provide the requested information immediately, I intend to file my motion the first of next week.

Also, as we discussed, I will come to your office on Friday morning (I expect by 9am) to review documents produced by PWUA in response to the City's Production requests. I look forward to seeing you then.

Sincerely,

Mike

Michael C. Creamer
Givens Pursley LLP
601 W. Bannock St.
Boise, ID 83702
Direct: 208-388-1247
Main: 208-388-1200
Fax: 208-388-1300
www.givenspursley.com

CONFIDENTIALITY NOTICE: This e-mail contains confidential information that is protected by the attorney-client and/or work product privilege. It is intended only for the use of the individual(s) named as recipients. If you are not the intended recipient of this e-mail, please notify the sender. Please do not deliver, distribute or copy this e-mail, or disclose its contents or take any action in reliance on the information it contains.

NOTICE: This e-mail, including attachments, constitutes a confidential attorney-client communication. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this communication in error, do not read it. Please delete it from your system without copying it, and notify the sender by reply e-mail or by calling (208) 345-2000, so that our address record can be corrected. Thank you.

NOTICE: To comply with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this e-mail, including attachments, is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any penalties that may be imposed by the Internal Revenue Service.

NOTICE: This e-mail, including attachments, constitutes a confidential attorney-client communication. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this communication in error, do not read it. Please delete it from your system without copying it, and notify the sender by reply e-mail or by calling (208) 345-2000, so that our address

4/11/2011

record can be corrected. Thank you.

NOTICE: To comply with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this e-mail, including attachments, is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any penalties that may be imposed by the Internal Revenue Service.

NOTICE: This e-mail, including attachments, constitutes a confidential attorney-client communication. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this communication in error, do not read it. Please delete it from your system without copying it, and notify the sender by reply e-mail or by calling (208) 345-2000, so that our address record can be corrected. Thank you.

NOTICE: To comply with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this e-mail, including attachments, is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any penalties that may be imposed by the Internal Revenue Service.

NOTICE: This e-mail, including attachments, constitutes a confidential attorney-client communication. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this communication in error, do not read it. Please delete it from your system without copying it, and notify the sender by reply e-mail or by calling (208) 345-2000, so that our address record can be corrected. Thank you.

NOTICE: To comply with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this e-mail, including attachments, is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any penalties that may be imposed by the Internal Revenue Service.

Michael C Creamer

From: Andy Waldera [AJW@moffatt.com]
Sent: Thursday, March 10, 2011 4:46 PM
To: Michael C Creamer
Cc: Scott Campbell; dtranmer@pocatello.us; Jeffrey C Fereday
Subject: RE: City of Pocatello Storage Transfer - PWUA Discovery Responses [IWOV-GPDMS.FID454070]
 Mr. Creamer,

I am writing in response to our prior discussions, and in response to your follow-up email (embedded below) now that I have had the chance to dig into the discovery in this case. I am hopeful that we can reach an amicable resolution of your concerns.

In reviewing your client's discovery requests, our clients' responses, and the Department's Order Authorizing Discovery and Notice of Status Conference ("Order" dated February 8, 2011), I believe I understand the nature of your disagreement. However, I do not readily see how your client's discovery responses markedly differ from the manner/fashion in which the PWUA's answers/responses were presented.

As a threshold matter, I recall from your prior voice mail and our subsequent conversations that you were particularly disappointed with the fact that while we identified a number of witnesses with their contact information, we failed to also disclose the areas of knowledge/testimony expected from each of the witnesses identified. See Interrogatory No. 14, and Answer to Interrogatory No. 14. Though your Interrogatory No. 14 is compound, I agree that disclosure of general facts/areas of knowledge is important for purposes of determining which witnesses your client might want to depose. Consequently, we are willing to supplement our Answer to Interrogatory No. 14 to further flesh out each witnesses' area of knowledge. This being said, I presume that you and your client are willing to do the same with respect to Pocatello's Response to Interrogatory No. 13; the same substantive interrogatory, and for which Pocatello did not yet disclose areas of knowledge (or in the parlance of the response, the "facts and data upon which their testimony may be based."). I acknowledge that Pocatello "has not yet identified the lay witnesses it expects to call," and in reality, the same can largely be said of PWUA. However, rather than hide behind the generic "we don't know yet," PWUA at least wanted to provide you with names of potential witnesses in its Answer to Interrogatory No. 14. In the same vein, I appreciate Pocatello's efforts to do the same via the disclosure of Ron Jolley, Steve Hebden, and Tim Luke.

In turning to the compound nature of your client's interrogatories, we can all agree that the applicable Order in this matter plainly states: "Division of a single interrogatory into multiple sub-questions is not permissible." Order at 1. While I recognize that your client did not specifically delineate lettered or numbered "subparts" within its interrogatories, I think we can agree that the pending interrogatories are compound. For example:

INTERROGATORY NO. 1: If you contend that the Transfer will violate Idaho Code Section 42-105, please describe the basis for this contention **AND IDENTIFY** each fact and each document that supports, contradicts, or in any materials way pertains to it.

The remainder of your client's interrogatories contain the same compound clause (linked by the "and"), and in some case, link in other compound clauses:

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.

Thus, your client's Interrogatory No. 1 seeks: (a) an explanation/description of any 42-105-based contention (which your client substantively received); and (b) the separate identification of any documents

4/11/2011

tied to that any 42-105-based contention. I expect that subpart (b) of the interrogatory will be satisfied by your document review tomorrow, or by subsequent discovery supplementation, document inspections, and/or expert disclosures in the future.

Likewise, Pocatello's Interrogatory No. 2 seeks: (a) an explanation/description of any Transfer-driven flooding contention/concern (which your client substantively received); (b) the separate identification of any documents tied to any flooding contention/concern; and (c) the separate identification of affected, or potentially affected, parcels of land. Similar to subpart (b) of Interrogatory No. 1 above, I expect that subparts (b) and (c) of Pocatello's Interrogatory No. 2 will be satisfied by your document review tomorrow, or by subsequent discovery supplementation, document inspections, and/or expert disclosures in the future.

Conversely, you rightly realized that the PWUA largely asked more or less the same interrogatories of your clients, from a contention perspective, **with one crucial difference**. The PWUA interrogatories were not compound (with the exception of a few interrogatories; namely No. 10 with the "and/or" clause, No. 13 with the two "and" clauses, and No. 14 with the several conjunctive clauses). Instead, the PWUA interrogatories, largely derived from your client's interrogatories, **omitted the compound clauses and only sought the explanation/description of the subject contention**. For example:

INTERROGATORY NO. 1: If you contend that the Transfer will not violate Idaho Code Section 42-105, please describe the basis for this contention.

INTERROGATORY NO. 2: If you contend that the Transfer will not cause flooding of private property, please describe the basis for this contention.

When compared to Pocatello's Interrogatory Nos. 1 and 2 above, it is clear that the PWUA versions of the same did not include the compound clauses/subparts pointed out above. This same analysis applies equally to the remaining PWUA interrogatories other than Interrogatory Nos. 10, 13, and 14. Consequently, when you told me over the phone that Pocatello did not object to the PWUA's interrogatories on the grounds that they were compound, or impermissibly contained subparts, the reason is because the vast majority of PWUA's interrogatories were not in fact compound, containing subparts.

Moreover, for those interrogatories of the PWUA that were compound (again Nos. 10, 13, and 14), I note that your client answered those interrogatories in very similar substantive fashion as did PWUA, *i.e.*, largely with names and contact information only, as opposed to the additional requested disclosure of the nature of expected testimony, factual underpinnings of that expected testimony, expert witness qualifications, witness exhibits, etc. As your client's answers rightly point out, discovery has only just begun, is ongoing, and many items regarding witness selection, opinions, exhibits, reports, etc. (especially from an expert witness standpoint) have yet to be determined or scheduled/ordered by IDWR. This same rationale also applies to the PWUA.

To be clear, I am not interested in engaging in any needless discovery disputes. I and the PWUA are committed to working with you and Pocatello in good faith to move this case along in a cooperative fashion. Motions practice and gamesmanship only drive up costs and leads to ill will. To that end, I will work on the supplementation of PWUA's Answer to Interrogatory No. 14 in particular—at least to provide the positions/offices held by any of the identified individuals, if any, and what knowledge (at least generally speaking) those individuals possess. However, PWUA's objections to Pocatello's compound interrogatories are, in my opinion, legitimate. Particularly where Pocatello answered similar interrogatories in a substantively similar, arguably incomplete, manner (minus, of course, the compound/subpart objections of the PWUA).

My suspicion is that most, if not all of your concerns will be alleviated by:

- Our supplementation of PWUA's Answer to Interrogatory No. 14;
- Your subsequent review of documents/photos/other materials our client has provided to us, and continues to provide to us; and
- The PWUA's expert witness disclosures (whenever IDWR gets around to ordering that disclosure).

As you well know, transfer proceedings focus heavily upon expert opinion and testimony. Thus, many PWUA Transfer contentions will be spelled out and specifically supported in the forthcoming expert witness disclosure. However, I do understand that your client is currently entitled to the receipt of non-privileged materials responsive to their pending discovery requests. My hope is that you will perform your document review tomorrow, reevaluate

your discovery disagreements after, and factor in our willingness to supplement Answer to Interrogatory No. 14. I would like the parties to work this case up in a cooperative fashion. However, I cannot dictate your client's chosen path, and do not presume to do so. I would ask, however, that if your client is inclined to proceed forward with a motion to compel, that you first provide me with a substantive written inventory of your concerns (by specific interrogatory number) so that I can better determine/consider those concerns. At this point, we have only spoken in general terms, and you have only sent me the brief email embedded below. Regardless, it appears to me that PWUA did substantively respond to a number of Pocatello's compound interrogatories notwithstanding the objections raised.

I look forward to working with you on this matter, and I will see you tomorrow when you arrive for your scheduled document inspection. FYI, and if it matters, Scott Campbell will not be back in the office until next Thursday (3/17). Also FYI, while speaking with Dan Dimick this morning (Dan is the President of the PWUA), I was informed that Mr. Farrel Stevens (a witness we disclosed on behalf of Indian Falls Water) recently passed away in an unexpected fashion. Consequently, Dan is working to locate a replacement witness. We will supplement our discovery responses accordingly.

Regards,

Andy

From: Michael C Creamer [mailto:mcc@givenspursley.com]
Sent: Wednesday, March 09, 2011 3:59 PM
To: Andy Waldera
Cc: Scott Campbell; dtranmer@pocatello.us; Jeffrey C Fereday
Subject: City of Pocatello Storage Transfer - PWUA Discovery Responses [IWOV-GPDMS.FID454070]

Andy,

Thank you for your e-mail today and for speaking with me this afternoon. Per our discussion this afternoon, the City of Pocatello deems your clients' responses to its discovery requests to be non-responsive—in particular the objections on the basis that the City's Interrogatories contain unpermitted subparts, and PWUA's refusal to respond fully to the questions posed. Unless PWUA agrees to respond fully, by providing the facts upon which PWUA relies for the positions taken in its Protest and recited in its partial responses to interrogatories, I intend to file a Motion to Compel with the Department. We discussed that Scott Campbell is currently out of the office, and I am willing to wait until Friday for a response that PWUA will immediately provide the requested information. If I have not received such a response by then, or if PWUA's response is that it does not intend to provide the requested information immediately, I intend to file my motion the first of next week.

Also, as we discussed, I will come to your office on Friday morning (I expect by 9am) to review documents produced by PWUA in response to the City's Production requests. I look forward to seeing you then.

Sincerely,

Mike

Michael C. Creamer
 Givens Pursley LLP
 601 W. Bannock St.
 Boise, ID 83702
 Direct: 208-388-1247
 Main: 208-388-1200
 Fax: 208-388-1300
www.givenspursley.com

CONFIDENTIALITY NOTICE: This e-mail contains confidential information that is protected by the attorney-client and/or work product privilege. It is intended only for the use of the individual(s) named as recipients. If you are not the intended recipient of this e-mail, please notify the sender. Please do not deliver, distribute or copy this e-mail, or disclose its contents or take any action in reliance on the information it contains.

NOTICE: This e-mail, including attachments, constitutes a confidential attorney-client communication. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this communication in error, do not read it. Please delete it from your system without copying it, and notify the sender by reply e-mail or by calling (208) 345-2000, so that our address record can be corrected. Thank you.

NOTICE: To comply with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this e-mail, including attachments, is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any penalties that may be imposed by the Internal Revenue Service.