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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

**APPLICANT'S REPLY TO
PORTNEUF WATERSHED USERS
ASSOCIATION'S RESPONSE TO
APPLICANT'S MOTION TO
COMPEL DISCOVERY
RESPONSES**

COMES NOW Applicant City of Pocatello ("City"), by and through its attorneys of record, Givens Pursley LLP, and respectfully files this Reply to Portneuf Watershed Users Association's ("PWUA") Response ("Response") to Applicant's Motion to Compel Discovery Responses ("Reply").

INTRODUCTION

PWUA's Response mischaracterizes the situation at hand. The City's interrogatories to PWUA aim solely to gain relevant information regarding the issues in this case and all the facts and documents already known to PWUA that bear on its protest. Such information is necessary for the City to prepare for the hearing of this matter. The City has not engaged in any harassing or annoying behavior toward PWUA regarding the Motion to Compel ("Motion") as PWUA

suggests. Counsel for PWUA takes undue and unwarranted liberties in suggesting the City has engaged in such conduct. Rather, the City made several attempts to resolve the discovery conflicts before filing the Motion as evidenced by the Affidavit of Michael C. Creamer in Support of Applicant's Reply to Protestant's Response to the Motion to Compel ("Creamer Affidavit") filed herewith. The exchange of correspondence documents a difference of opinion, not harassment.

ARGUMENT

A. The City Is Entitled To All Facts Related to PWUA's Protest, Not Only Facts Helpful To PWUA's Position Or That It Intends To Raise At The Hearing.

The scope of discovery under the Idaho Rules of Civil Procedure ("IRCP") allows full exchange of information between the parties to ensure an opportunity to prepare.¹ The City is entitled to obtain any discovery, not privileged, which is relevant and reasonably calculated to lead to the discovery of admissible evidence.² The goal of discovery is for parties to learn each others' facts. *Edmunds v. Kraner*, 142 Idaho 867, 136 P.3d 338 (2006) ("The purpose of discovery rules is to facilitate fair and expedient pretrial fact gathering.").

Here, the City has requested information relevant to PWUA's protest in order to properly prepare for the hearing of this matter. The City is entitled to all relevant facts and documents bearing on PWUA's claims, rather than just the few facts PWUA deems useful to support its allegations. PWUA has more than a duty to later supplement discovery with the substance of witness testimony. Rather, PWUA must now offer the facts of its current allegations.

¹ "I.R.C.P. 26(b)(1) permits broad discovery of any matter that is not privileged, even if it is inadmissible, so long as it is 'reasonably calculated to lead to the discovery of admissible evidence.'" *Kirk v. Ford Motor Company*, 141 Idaho 697, 703-04, 116 P.3d 27, 33-34 (2005) (emphasis added).

² In truth, PWUA's discovery requests to the City do not materially differ from the City's requests at issue. PWUA's requests ask that the City describe the basis for its contentions, and, at the outset of the requests, essentially defines "describe" to mean all relevant facts should be included in the response.

For example, PWUA has raised the issue of private property flooding, yet when asked about such potential flooding in the City's Interrogatory No. 2, PWUA did not offer a full explanation of the facts relating to the flooding issue and failed to identify the parcels it claims will be flooded. Indeed, it objects to providing these facts on the grounds that they have been requested pursuant to an improper subpart. The City is entitled to analyze the flooding issue in preparation for the hearing, and it cannot do so without knowing what property PWUA thinks will be flooded, or when flooding might occur, or at what flow levels, etc. The City should not be required to hope that these facts would be disclosed in response to an interrogatory of PWUA's choosing – i.e. Interrogatory No. 14, which pertains only to witnesses PWUA may elect to call at the hearing.

B. The City Has Not Harassed PWUA Or Ignored Its “Responsiveness.”

PWUA claims that the City's Motion is an effort to harass and annoy PWUA. This is simply not true.³ The City extensively communicated with PWUA's counsel regarding the faulty discovery responses as evidenced by the communications in Exhibit A to the Creamer Affidavit. The City explained its concerns numerous times and PWUA stood by its objections. Creamer Affidavit, Ex. A. The City also offered PWUA drafts of the Motion before it was filed in an attempt to identify and resolve these issues and avoid bringing this dispute before the Department. However, PWUA continued to suggest the City's concerns would somehow be addressed as discovery was supplemented in the future and failed to offer all facts presently relating to its protest.

³ PWUA also includes a request for attorney fees incurred in responding to the Motion to Compel. Response at p. 12. Such an award is unwarranted here and, moreover, not authorized by the Department's rules, which only allow for sanctions for failure to comply with an order compelling discovery. IDAPA 37.01.01.531.

C. The Present Conflict is Rooted in the Department's Unique Discovery Standards.

An underlying problem here is the Department's non-standard discovery rules that unnecessarily limit the breadth of discovery. The Department's strict requirements allow less than half of the number of interrogatories allowed under the IRCP. This constraint, combined with a purported "subpart" prohibition, is seemingly arbitrary and inefficient for facilitating an adequate discovery process given the number of issues presented in this case and when the purpose of interrogatories "is to afford parties information in the possession of the other party regarding the issues in suit to enable the propounding party to prepare for trial and to reduce the possibility of surprise....." *Lester v. Salvino*, 141 Idaho 937, 940, 120 P.3d 755, 758 (Idaho Ct. App. 2005) (citing *Smith v. Big Lost River Irrigation Dist.*, 83 Idaho 374, 383, 364 P.2d 146, 151 (1961)). Moreover, the Department's Discovery Order's divergence from the standards of IRCP by purporting to prohibit "subparts" simply provides the opportunity for disputes such as this one, which diverts time and effort from getting on with preparations for the hearing with full knowledge of all the facts. The Department's rules do not allow for the necessary exchange of information.

CONCLUSION

The rules of discovery authorize (as PWUA agrees) the City to discover all facts known to PWUA and all documents in their possession or control relevant to the protest, not just those facts and documents PWUA selectively decides to provide as supporting evidence for its claims. The City has made reasonable requests but has not received all facts that relate to the protest.

DATED this 12th day of April, 2011.

GIVENS PURSLEY LLP

By: 

Michael C. Creamer

Attorneys for Applicant City of Pocatello

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:

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April 12, 2011

Via Federal Express

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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. *Applicant's Reply to Portneuf Watershed Users Association's Response to Applicant's Motion to Compel Discovery Responses; and*
2. *Affidavit of Michael C. Creamer in Support of Applicant's Reply to Protestant's Response to the Motion to Compel.*

Please file the enclosed Reply and Affidavit in the above-referenced transfer number, and return the conformed copies 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