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Department of Water Resources
Eastern Region

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DEPARTMENT OF
WATER RESOURCES

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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 CITY OF
POCATELLO'S FIRST DISCOVERY
REQUESTS TO JOHN SCHWARZ**

TO: Protestant, John Schwarz

PLEASE TAKE NOTICE that the City of Pocatello ("City"), by and through its counsel, hereby requires you to respond to the following Discovery Requests.

INSTRUCTIONS

These Discovery Requests are issued to you pursuant to the Hearing Officer's February 8, 2011 *Order Authorizing Discovery and Notice of Status Conference* ("Discovery Order"), IDWR's Rules of Procedure (IDAPA §§ 37.01.01.001.02 and 37.01.01.520 through 37.01.01.532), and Rules 33, 34, and 36 of the Idaho Rules of Civil Procedure, which are incorporated by reference in the Department's Rules (IDAPA § 37.01.01.520.02). Pursuant to the Discovery Order, your responses are due fourteen (14) days after service of these Discovery Requests.

Your responses to these Discovery Requests must be made under oath.

In responding to these Discovery Requests, please base your responses on all information available to you, including information in the possession of your attorneys, experts, members, and consultants.

If you cannot respond to these Discovery Requests in full after exercising due diligence to secure the information to do so, so state and respond to the extent possible, specifying your inability to respond to the remainder, and providing whatever information, documents, and knowledge you have concerning the unanswered portion.

Requests to identify or produce documents include all documents in your possession or under your control, including documents in your possession and all attorneys, accountants, expert witnesses, lay witnesses or other agents or persons from whom you have a legal right to obtain such document.

The documents requested shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories of these Discovery Requests.

If any document or any portion of any document requested herein is or will be withheld from production, inspection or copying (whether because it is claimed to be attorney work product, communication from attorney to client, or is entitled to be withheld for any other reason), please fully identify each such document or portion thereof by providing the following information as to each such document withheld:

- a. the identity of the document;
- b. the subject matter of the document;
- c. the date the document was prepared;
- d. the identity of the person(s) preparing the document;
- e. the identity of each person to whom the document was sent or given;

- f. the identity of each person possessing a copy of the document;
- g. the privilege(s) claimed;
- h. the facts upon which each claim of privilege is based; and
- i. the identity of the current custodian of the document.

If any document is practically impossible to produce for inspection or copying, please fully identify such document and the reason for the practical impossibility.

Each of these Discovery Requests is deemed continuing. If, after responding to any Request, you acquire any document or other information requested herein, or any information related to any document herein, which is not included in the documents produced or your responses, you must file a supplemental response or indicate to the City's counsel the existence of such document or other information. Such supplementation is required by Rule 26(e)(3) of the Idaho Rules of Civil Procedure upon this request.

DEFINITIONS

As used herein, the following terms have the following meanings:

- 1. "Applicant" means City of Pocatello.
- 2. "Application" means the Applicant's *Amended Application for Transfer of Water Right No. 76779* by which the Applicant proposes to change certain re-diversion points, purposes of use, and timing of releases of a certain volume of storage water stored in and released from Chesterfield Reservoir under water right nos. 29-00053 and 29-0589. "Transfer" means the changes contemplated in the Application.
- 3. "Describe" means to explain with particularity and in detail, identifying all facts and all documents that support, contradict, or in any material way pertains to the subject matter of the inquiry, whether or not you may offer them at the hearing in this matter.

4. “Discovery Requests” or “Request(s)” means these Interrogatories and Requests for Production, or any one of them, as the case may be.

5. “Document” means and includes any and all tangible things and papers, whether written, recorded, graphic, typewritten, printed, photographed, stored in electronic and data storage devices or other mediums, or otherwise produced or reproduced, and whether produced manually or by mechanical, electrical, electronic, other artificial process, or a combination of these methods, including, but not limited to, papers, computer records or files, emails, minutes, records, accounting books, maps, plans, blueprints, sketches, charts, drawings, diagrams, photographs, films, videotapes, recordings, checks, receipts, analyses, surveys, transcriptions, and recordings of which you have any knowledge or information, referring, relating or pertaining in any way to the subject matters in connection with which the word is used. The term “document” also includes, without limitation all engineering, hydrologic, hydrogeologic, and other technical analyses and all non-privileged legal analyses and all originals and all drafts prepared in connection with all of the writings described in this paragraph 5, whether used or not, all file copies, and all other copies in whatever medium they are stored.

6. “Identify” means to describe. When used in relation to a document, it also means to set forth the information pertaining to the document listed as items a-i in the above Instructions. When used with reference to a water right, it means to provide the number assigned by the Department or court decree or partial decree to any permit, license or decreed water right.

7. “IDWR” or the “Department” means the Idaho Department of Water Resources.

8. “Or” as used herein is not intended to refer strictly to the disjunctive, and means and includes “and/or,” whichever is broader in the context.

9. “Protest” means the protest to the Application filed in this matter by you.

10. “Your water rights” means any surface or ground water rights, including any storage rights, owned, diverted, or used by you.
11. “Reservoir” means Chesterfield Reservoir and the irrigation water stored in it.
12. “Transfer Water Rights” means those portions of water rights 29-00053 and 29-00589 that are subject to the Application.
13. “You” or “your” or “Protestant” refers to John Schwarz.

INTERROGATORIES

INTERROGATORY NO. 1. Please identify each and every ground for your protest of the Application that you may present at the hearing in this matter.

INTERROGATORY NO. 2. For each and every ground for your protest identified in your response to Interrogatory No. 1 above, please identify each fact, and each document, that supports, contradicts, or in any material way pertains to it.

INTERROGATORY NO. 3. If you contend that that Transfer would injure your 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.

INTERROGATORY NO. 4. If you contend that the Transfer, if approved, would conflict with the local public interest, please describe each and every basis for this contention and identify each fact and each document that supports, contradicts, or in any material way pertains to it.

INTERROGATORY NO 5. If you contend that the Transfer, if approved, would be inconsistent with the conservation of water resources within the State of Idaho, please describe each and every basis for this contention and identify each fact and each document that supports, contradicts, or in any material way pertains to it.

INTERROGATORY NO. 6. If you contend that the Transfer, if approved, would adversely affect the local economy of the Portneuf River watershed, please describe each and every basis for this contention and identify each fact and each document that supports, contradicts, or in any material way pertains to it.

INTERROGATORY NO. 7. If you contend that the Transfer, if approved, would significantly affect the agricultural base of the Portneuf River watershed, please describe each and every basis for this contention and identify each fact and each document that supports, contradicts, or in any material way pertains to it.

INTERROGATORY NO. 8. 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 and documents upon which the opinion and testimony is based.

INTERROGATORY NO. 9 Please identify each person you intend to call as an expert witness pursuant to the Discovery Order, by stating the name and address of each such witness and including 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 has testified as an expert at trial or by deposition within the preceding four years.

INTERROGATORY NO. 10 Please identify the person(s) providing the answers to the above Interrogatories.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1. Please produce copies of all decrees, partial decrees, permits, and licenses evidencing or confirming your water right(s).

REQUEST FOR PRODUCTION NO. 2. 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.

REQUEST FOR PRODUCTION NO. 3. To the extent not produced in response to Request for Production Nos. 1 through 2, please produce all documents on which you relied, or which you identified, in responding to these Discovery Requests.

DATED this 28th day of March, 2011.

GIVENS PURSLEY LLP

By



Michael C. Creamer

Attorneys for the City of Pocatello

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March, 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

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*Attorneys for Portneuf Watershed Users
Association, Inc.*

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The **original** of *Applicant City of Pocatello's First Discovery Requests to John Schwarz*,
will be retained at the office of Givens Pursley LLP.


Michael C. Creamer