

John Schwarz, sui juris
c/o Box 240
McCammon, Idaho 83250
Telephone (208) 254-3634

COPY

RECEIVED
APR 05 2011
Department of Water Resources
Eastern Region

**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**

**PROTESTANT John Schwarz's
ANSWERS AND
RESPONSES TO APPLICANT
CITY OF POCATELLO'S FIRST
DISCOVERY REQUESTS**

COMES NOW Protestant John Schwarz ("Protestant"), a sentient man, sui juris (in his own right), on the land of Idaho, and pursuant to the Idaho Department of Water Resources ("IDWR" or "Department") *Order Authorizing Discovery and Notice of Status Conference*, dated February 8, 2011 (the "Order"), and hereby answers and responds to Applicant, City of Pocatello's ("Applicant" or "City") First Set of Discovery Request to Protestant. I object to having lawyers invade this common law venue. Therefore, the Protestant is answering only to a common law venue. Protestant is also regarding all Attorneys and/or Lawyers as counselors. Answers and Responses to *Applicant City of Pocatello's First Discovery Requests to John Schwarz* are as follows:

I

GENERAL OBJECTIONS

Protestant has not completed its own investigation and/or discovery as of yet. Accordingly, the responses that follow are based upon the best first hand knowledge, information and reasonable and prudent belief of the Protestant at this time.

Protestant reserves the right to make further responses if it appears that any omissions 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 and/or to present at hearing, evidence as may later be discovered or evaluated, as common sense, and common law allows.

Protestant also objects to the City's discovery requests and the instructions and Definitions to the extent they seem to require discovery responses beyond that required under the Department's Rules of Procedure, the Department's Order, or the Idaho Rules of Civil Procedure and common law. These responses are provided in accordance with the Department's Order, the Department's Rules of Procedure, and the Idaho Rules of Civil Procedure irrespective of any instructions and definitions 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 by witnesses present and testifying in any common law venue. All such objections are

reserved and may be interposed at the time of the hearing.

Protestant specifically objects to the discovery requests to the extent they seek information protected by the rules governing the discovery of facts of experts as set forth in Rule 26(b)(4), Idaho Rules 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 requiring only information and/or documents not subject to any applicable protection.

No incidental or implied admission intended. The fact that Protestant has responded to any discover request, or any part thereof, should not be mistaken 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 do not constitute a waiver of Protestant's rights to object to any future, additional, or supplemental discovery requests regarding the same matter.

II

ANSWER TO INTERROGATORIES AND RESPONSES TO REQUESTS FOR PRODUCTION

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.

ANSWER, 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 waving my objection, Protestant, in good faith responds to the first part of the Interrogatory only. In my opinion, being reasonable and prudent, common sense tells me, the loss of recharge has the potential

to negatively effect many of the people, on the land of South Bannock County, who have no direct connection with the water that the City is applying for the Transfer of.

INTERROGATORY NO. 2: Please identify 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.

ANSWER NO., 2: 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 waving my objection, Protestant, in good faith responds to the first part of the Interrogatory only. In my opinion, being reasonable and prudent, common sense tells me, using due diligence as to the duty of water, no private well log history, no proper data, and no proper recording stations exists. Therefore one can form a lawful defense for recharge, that can not be proven otherwise.

INTERROGATORY NO. 3: If you contend that the Transfer, if approved, 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.

ANSWER NO. 3: 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 waving my objection, Protestant, in good faith responds to the first part of the Interrogatory only. In my opinion, being reasonable and prudent, common sense tells me, using due diligence as to the duty of water, I am domiciled on the land of Bannock County, at McCammon city proper, therefore it is my duty to honorably, with due diligence, investigate any matter which

may effect, in any way and/or form, the value, of the way of life, property, and for the protection of my posterity. I could not find proper data to support my opinion, cause.

Therefore, I opine that current beneficial use and the duty of water should remain on the land that the current Water right and/or share are presently assigned to, and remain on that assigned water district. If the water in question is transferred out of the current beneficial use as municipal water, moved to wherever, whenever, however the Applicant wants, with no injury and no volume loss, while retaining the standing as to Priority Date, common sense tells me that the land will forever be injured, causing injury to Protestant, one of the People on the land. **See exhibit "A"**.

INTERROGATORY NO. 4: If you contend that the Transfer, if approved, would conflict with 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.

ANSWER NO. 4: 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 waving my objection, Protestant, in good faith responds to the first part of the Interrogatory only. In my opinion, being reasonable and prudent, common sense tells me, using due diligence as to the duty of water management, It would diminish the amount of water available for diversion to the current water right, and/or water share holders, of district 29A, thereby damaging the agricultural business operations of the current members to provide benefits to the City residents, all contrary to the *Idaho Constitution Article XV, Section 3 and 4; and Idaho Code Section 42-222*.

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.

ANSWER NO. 5: 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 waving my objection, Protestant, in good faith responds to the first part of the Interrogatory only. In my opinion, being reasonable and prudent, common sense tells me, using due diligence as to the duty of water management, the inconsistency with the conservation of water resources within the State lays in the fact that the Applicant's Transfer calls for delivery with no loss; and the ability to use the water as the Applicant sees fit. To a sentient individual, that has the potential to harm the current, intended, beneficial use within the State and Water District, ("District") as the Applicant could sell, lease and convey the described water to anyone, anywhere, at any agreed upon price. To the Protestant, that means it could be sold, leased and/or conveyed out of the current District, and/or State, if the Applicant wished it so.

INTERROGATORY NO. 6: If you contend that the Transfer, if approved, would adversely effect 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 s supports, contradicts, or in any material way pertains to it.

ANSWER NO. 6: 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 waving my objection, Protestant, in good faith responds to the first part of the Interrogatory only. See Answer no. 4 above.

INTERROGATORY NO. 7: If you contend that the Transfer, if approved, would significantly affect the agriculture 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.

ANSWER NO. 7: 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 waving my objection, Protestant, in good faith responds to the first part of the Interrogatory only. In my opinion, being reasonable and prudent, common sense tells me, using due diligence as to the duty of water management, the Transfer has the potential to cause harm to the agriculture base of the watershed mentioned above because, the *Portneuf River Settlement Agreement* ("Agreement") storage water rights restricted its terms to the parties to the Agreement, the City was not a party. Therefore, the terms in said Agreement, including "*no conveyance loss*" should not be utilized and/or assigned to the Applicant, including the Priority Date. If the Transfer is approved, with such blatant disregard to said Agreement, it may set precedence for further contract intrusions, which could lead to further losses of any rights of re-coupment regarding Water Rights; and/or Rights under the common law.

INTERROGATORY NO. 8: Please state the name and address of each person you intend to call as a lay witness at the trial in 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.

ANSWER NO.8: Objection. This Interrogatory exceeds the parameters of the Department's Order, because it contains subparts. Without waving my objection, Protestant, in good faith responds to the first part of the Interrogatory only. I reserve the right to amend this response at any time. At this time the Protestant does not intend to call any lay witnesses in this matter, as the IDWR has the final say in this matter.

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 by the Idaho Rules of Civil Procedure 26(b)(4)(A)(i), a complete statement of all opinions to be expressed and the basis and reason therefore, the data or other information considered 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 ten years.

ANSWER NO.9: This Interrogatory exceeds the parameters of the Department's Order, because it contains subparts. Without waving my objection, Protestant, in good faith responds to the first part of the Interrogatory only. I reserve the right to amend this response at any time. At this time the Protestant does not intend to call any person(s) as a witness in this matter, as the IDWR has the final say in this matter.

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

ANSWER NO.10: Objection. It calls for potential legal conclusions, which are not discoverable. In my opinion as, Sui juris, a sentient man, being reasonable and prudent, under common law, common sense tells me that using a word that is not defined in a document and/or contract can have different legal, negative meanings and/or consequences. Therefore the Protestant objects to being classed as “the person(s) providing the answers”). The Protestant is a living, sentient man, on the land of Idaho, not a legal person, legal fiction; and/or any class that gives up any unalienable rights for any privilege, license and/or any benefit issued, given or granted by any person(s), State and/or Corporations including Principals and or Agents thereof..

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

ANSWER NO.1: See exhibit “A” annexed hereto, City of McCammon – Utility Statement. I hereby reserve the right to amend this statement at any time, including up to the time of the hearing.

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.

ANSWER NO.2: See exhibits “B”, “C”, “D” annexed hereto; exhibit “B” is the “*Notice of Protest*”, filed with IDWR 12/6/2010; page 3-3 exhibit “A”; exhibit “C” titled “*Application Notes*” “Application ID # 76779, 99 page .pdf Document” are research notes taken from http://www.idwr.gov/apps/ExtSearch/DocsImages/ftlr01_.pdf, a 99 page document pertaining to Applicant; exhibit “D” Titled “*RightID306977*” is a print out, printed 12/05/2010 of <http://www.idwr.gov/apps/ExtSearch/largePOU.asp?RightID=306997&Uses=1>. I hereby reserve the right to amend this statement at any time, including up to the time of the hearing.

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.

ANSWER NO. 3: Protestant’s research is not complete at this time, future discovery and/or evidence may be forthcoming, therefore, I hereby reserve the right to amend this statement at any time, including up to the time of the hearing. I reviewed the IRCP, Department Rules of Procedure, Department Orders, Portneuf River Settlement Agreement, and several pages of Public Documents, with due diligence, used to form my opinions, and standing in an action at common law, as the to right to protest.

EXHIBIT "A"

CITY OF McCAMMON
P.O. BOX 9
McCAMMON, ID 83250
(208) 254-3200

UTILITY STATEMENT

JOHN & LINDA SCHWARZ
P.O. BOX 240
MCCAMMON ID 83250

Billing From: 03/01/2011
Billing To: 03/31/2011
Account No: 181001.01
Due Date: 04/15/2011

Service Address:
1010 CENTER STREET

PREVIOUS BALANCE	90.00
WATER	36.00
SEWER	41.00
GARBAGE	13.00
TOTAL DUE	90.00

PAYMENT \$ _____

PLEASE RETURN WITH PAYMENT

PRESENT READING

PREVIOUS READING

GALLONS USED

1

DESCRIPTION

AMOUNT

PREVIOUS BALANCE	90.00
PAYMENT ON ACCOUNT	90.00 CR
WATER	36.00
SEWER	41.00
GARBAGE	13.00

CURRENT BALANCE DUE

90.00

EXHIBIT "B"

City of Pocatello
Water Rights Application # 76799
Last Protest: 17:00 Hrs. December 6, 2010
IDWR – Idaho Falls, Idaho

Protest Outline:

- 1) No Incidental Recharge is addressed for the Upper Portneuf/Marsh Valley Area. [W]ill this DRY-UP thousands of acres and/or culinary/stock water wells of this region of South Bannock county, Yes or no?
- 2) Under "Right ID# 306977" the same PARCELS are listed as on "Table 4" of "Application# 76799". [I]s this considered "Water Stacking" and/or "Monopolizing" water, Yes or no?
- 3) Where is the proof that the City of Pocatello has, and/or will have, the storage capacity for 3100 AF, per annum, does the proof exist, Yes or no?
- 4) Where is the proof that the City of Pocatello has the acreage / infrastructure (capacity) as per Title 42, Chapter 2, § 217, PROOF OF APPLICATION TO BENEFICIAL USE, to utilize, and/or has utilized, all the water they have acquired in the past several years, not only out of the Portneuf River, but, also the Snake River, Palisades, (50,000 AF), and Chesterfield Reservoirs, does the proof exist, Yes or no?
- 5) Where is the proof that no harm will be caused to the People of South Bannock County by the granting of (1) "Transfer" off of the prescribed area; and (2) "Transfer Use" from "Private Use" to "Municipal Use", for profit? [T]o me that means, the "City" is "Drying" up 5000 + acres of South Bannock County so the "City" can use, sell, convey the water, in "this Application", unencumbered, does it not; Yes or no?
- 6) (a) Under Document on file dated November 12, 2010, (g7wq01_pdf, Attachment #2a and #3, Page 3 of 14), (Storage Water Agreement), AGREEMENT (2)) says, 620 AF over FIVE (5) years, "Annual Increments." [M]y question is, how did 620 AF per annum, turn into 3100 AF annual?
(b) Attachment #2 A and #3, page 6 of 14, Storage Water Agreement #10, (H) Transfers the Rights for the City Pocatello's (hereafter the "City(s)" use as the City chooses with no prior authorization or consent. (1) [T]o me that means, they do not have to get prior approval from anyone to use the water as the City sees fit; and (2) NO "Rights to any Damages are Reserved", does it not; Yes or no?

Proposal(s)

- 1) A five (5) year study of loss of recharge after all construction and upgrades, to existing Canal/Ditch Companies and Laterals, are calculated into the "Proof of Application to Beneficial Use".
- 2) Monies, set aside in Escrow, to cover damages to all individual well (Ground water), and/or Junior Water Right (Irrigation, Surface water/Stock water) holders.

Exhibit "A" = "B"

NOTICE OF PROTEST 3-2

EXHIBIT "C"

Application Notes:

Application ID # 76779, 99 page .pdf Document:

http://www.idwr.idaho.gov/apps/ExtSearch/Docshomes/fhr01_.pdf

Page number (from PDF header, not actual page number); and brief description

- 1) Page 2, Application for Transfer of Water Right (hereafter ATWR), Part 1, (A) 2. Instructions not followed correctly; and
- 2) Page 3, ATWR (cont.), Part 1, (B) 1 Box not checked under item #3; (B) 3 No points of diversion Box is checked, yet in (see #3 below) , they claim the "Right" to do, with the Water Right, what ever they want and/or claim; and
- 3) Page 24, Attachment #2 A and #3, Storage Water Agreement #10, (H) Transfers the Rights for the City Pocatello's (hereafter the "City(s)" use as the City chooses with no prior authorization or consent. That means, to me, they do not have to get prior approval from anyone to use the water as the City sees fit, no "Rights to any Damages are Reserved", does it not?; and
- 4) #13 of 3) above: Allows the "City" to purchase additional Water Rights on a Buyer Willing-Seller basis. Would this allow the "City" to acquire / convert additional Water Rights without prior approval? This is an attempt at "Water Stacking", or "Monopolizing" "Irrigation Storage" and "Conversion of Use" of the Water Rights in this application!
- 5) Page 31, Attachment #2 A and #3, Exhibit "B", "Water Right Warranty Deed", "..... without conveyance loss to the "delivery points" located on the Portneuf River within SE 1/4 of the SE 1/4 of the SW1/ 4 of Section 20 T9S, R37E, B.M., or within Lot 3, SW 1/4, SE 1/4, of Section 22, T9S, R37E, B.M.

~ C "

EXHIBIT "D"

Page 1 of 4

RightID306977

Place(s) of use:

Place of Use Legal Description: MUNICIPAL POWER County

SWME
TABLE #4
COPY

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
06S	33E	2		NESW			NWSW			SWSW			SESW	
		3		SWSW			SESW							
				SWSE			SESE							
		4		NESW			SWSW			SESW				
				NWSE			SWSE			SESE				
		9		NENE			NWNE			SWNE			SENE	
				NENW			NWNW			SWNW			SENE	
				NESW			NWSW			SWSW			SESW	
				NESE			NWSE			SWSE			SESE	
		10		NENE			NWNE			SWNE			SENE	
				NENW			NWNW			SWNW			SENE	
				NESW			NWSW			SWSW			SESW	
				NESE			NWSE			SWSE			SESE	
		11		NENW			NWNW			SWNW			SENE	
				NESW			NWSW			SWSW			SESW	
		14		NENW			NWNW			SWNW			SENE	
		15		NENE			NWNE			SWNE			SENE	
				NENW			NWNW			SWNW			SENE	
				NESW			NWSW			SWSW			SESW	
		16		NENE			NWNE			SWNE			SENE	
				NENW			NWNW			SWNW			SENE	
				NESW			NWSW			SWSW			SESW	
				NESE			NWSE			SWSE			SESE	
		17		SWNE			SENE							
				SWNW			SENE							
				NESW			NWSW			SWSW			SESW	
				NESE			NWSE			SWSE			SESE	
		20		NENE										
	34E	8		NESE			SESE							
		9		NESW			NWSW			SWSW			SESW	
				NESE			NWSE			SWSE			SESE	
		10		SENE										
				SWSW										
				NESE			NWSE						SESE	
		11		SWNE										
				SWNW			SENE							
				NESW			NWSW			SWSW			SESW	

COPY

D

<http://www.idwr.idaho.gov/apps/ExtSearch/largePOU.asp?RightID=306977&Uses=1>

12/5/2010

Dated this fourth (4th) day of April, in the year of our Lord, A.D. 2011

[Signature]
John Schwarz, sui juris, all Rights Reserved

CERTIFICATE OF SERVICE

I, John Schwarz, certify that on the 4th day of April, A.D. 2011, a true and correct copy of *Protestant John Schwarz's Answers and Responses to Applicant City of Pocatello's First Discovery Request* was served upon the following individuals by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed:

Givens Pursley
Michael Creamer
PO Box 2720
Boise, ID 83701
Attorney for City of Pocatello

Lynden and Candice Symons
Symons Farm & Ranch
PO Box 604
Lava Hot Springs, ID 83246

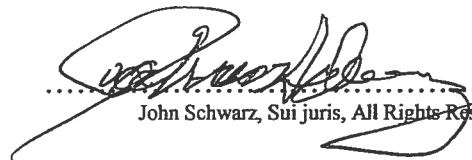
IDWR
James Cefalo, Hearing Officer
900 N Skyline Dr., Ste. A
Idaho Falls, ID 83402

James Spinner
PO Box 6009
Pocatello, ID 83205-6009
Attorney for McCammon Ditch Co.

Moffatt Thomas Barrett Rock & Fields Chtd.
Scott L. Campbell
101 S. Capital Blvd., 10th Floor
PO Box 829
Boise, ID 83701-0829
Attorneys for Portneuf Watershed Users Association Inc.

Racine Olson Nye Budge & Bailey
Randall C. Budge
PO Box 1391
Pocatello, ID 83204-1391

Baker Rosholt & Simpson
Travis Thompson
PO Box 485
Twin Falls, ID 83303-0485
Attorneys for A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North side Canal Company and Twin Falls Canal Company


.....
John Schwarz, Sui juris, All Rights Reserved