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Eastern Region

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March 10, 2011

James Cefalo
Water Resources Program Manager
Eastern Regional Office
Idaho Department of Water Resources
900 North Skyline Dr., Ste. A
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 for filing is an **original** and one copy of our *Affidavit of Service* regarding the City of Pocatello's response to Portneuf Watershed Users Association's first discovery requests. Please returned the conformed copy to our office in the postage-paid envelope provided for your use.

Your assistance is appreciated.

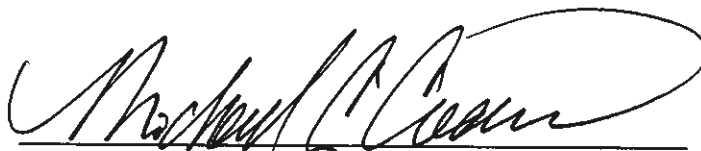
Sincerely,

Caralea Hopingardner
Legal Assistant to Michael C. Creamer

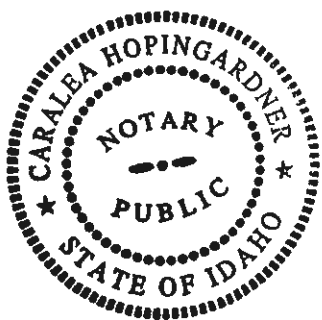
Enclosures

5902-6_1110160_1.DOC

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


Michael C. Creamer

SUBSCRIBED AND SWORN to before me this 10th day of March, 2011.




Notary Public for the State of Idaho
Residing at Boise, Idaho
My commission expires 5/21/2016

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of March, 2011, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

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PO Box 83720
Boise, ID 83720-0098

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North side Canal Company and Twin Falls
Canal Company*



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5902-6_1094715_5.DOC

Attorneys for Applicant City of Pocatello

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MAR 16 2011 MAR 11 2011
Department of Water Resources Eastern Region DEPARTMENT OF
WATER RESOURCES

COPY

**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
RESPONSE TO PROTESTANT PORTNEUF
WATERSHED USERS ASSOCIATION,
INC.'S FIRST SET OF DISCOVERY
REQUESTS**

Applicant City of Pocatello ("Pocatello" or the "City") hereby submits the following responses to protestant Portneuf Watershed Users Association, Inc.'s February 22, 2011 discovery requests.

PRELIMINARY STATEMENT

Pocatello has used its best efforts in conducting a thorough investigation of its records to respond to Portneuf Watershed Users Association, Inc.'s ("PWUA") discovery requests. Pocatello is conducting an ongoing factual investigation into the issues of the pending action, however, and may discover additional matters. Pocatello reserves the right to amend, modify or supplement its responses should it become aware of additional responsive information or documents through its continuing investigation consistent with the Idaho Rules of Civil Procedure ("IRCP") and procedural rules of the Idaho Department of Water Resources.

Pocatello assumes PWUA does not seek confidential information protected by a privilege. To the extent that PWUA is requesting privileged information, including but not limited to privileged attorney-client communications and documents protected from discovery under the work product doctrine, Pocatello objects. These responses do not include any such confidential material. Pocatello does not waive any objections it may have to the production and/or admissibility of any matter following.

Pocatello's responses to the PWUA's requests for production identify the responsive, non-privileged documents that Pocatello has been able to compile as of the date hereof. Pocatello reserves the right to amend, modify, or further supplement its responses should it become aware of additional responsive documents through its continuing investigations.

Pocatello reserves all objections to the admissibility at trial of any document provided herein including, without limitation, all objections on the grounds that such document is not relevant. Production of any information herein does not constitute an admission by Pocatello that such information is relevant to any claim, defense, or other issue in this litigation, or that it is reasonably calculated to lead to the discovery of admissible evidence. All documents provided in response to PWUA's requests for production are being produced for use in this litigation only and for no other purpose.

GENERAL OBJECTIONS

Pocatello objects to the interrogatories and discovery requests, including the "Definitions" and "Instructions" contained therein to the extent that they purport to enlarge or modify the scope of permissible discovery, or to impose discovery burdens on Pocatello in addition to or different from those allowed by the IDWR Rules of Procedure, IDWR's Order Authorizing Discovery or the IRCP. Pocatello will respond to the interrogatories and discovery

requests as required by the IDWR Rules of Procedure, IDWR's Order Authorizing Discovery or the IRCP.

Pocatello objects to the interrogatories and discovery requests to the extent that they purport to call for the identification of documents and disclosure of information protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity. Any disclosure of privileged material is inadvertent and shall not be deemed a waiver of the applicable privilege or privileges, or of any ground for objection to discovery with respect to such information or document, the subject matter of the information or document, or of Pocatello's right to object to the use of any such information or document during any subsequent proceeding in this action or elsewhere.

Pocatello objects to the interrogatories and discovery requests to the extent they include legal conclusions. All questions of law are respectfully referred to the Department and the courts.

Pocatello objects to the interrogatories and discovery requests to the extent they do not specify a time period for which a response is sought.

Pocatello objects to PWUA's discovery requests to the extent that they seek information with respect to the undefined term "the City's Water Rights." For purposes of Pocatello's Responses herein, Pocatello deems the City's water rights to be those water rights listed in Table 8 to the November 2010 Report in Support of The City of Pocatello's Application for Transfer of Water Rights prepared by Spronk Water Engineers, Inc., and appended to the Application.

RESPONSES TO PWUA INTERROGATORIES

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

RESPONSE TO INTERROGATORY NO. 1: Pocatello contends that the Transfer will not violate Idaho Code Section 42-105, which allows the use of natural waterways to convey a valid water right, provided that no prior water rights are diminished, a due allowance for loss by evaporation and seepage is made, the use is subject to the supervision, control and regulation by the Department and the watermaster, and the release and reclamation of the water is measured and reported.

As described in the Application, Pocatello contemplates implementing a detailed and comprehensive accounting of the Transfer Water Rights released from storage and placed to beneficial use, which would be subject to approval by the Department and subject to supervision, control and regulation by the Department and the Watermaster for Water District 29. Due allowance for loss and evaporation is proposed by the Application and accomplished via maintenance of the decreed administrative provisions governing the Water Rights, providing, among other things, that the storage water right is to be delivered without conveyance loss from the Reservoir to the PMVCC's point of diversion on the Portneuf River and by giving due consideration to the gaining nature of the reach of the Portneuf River downstream thereof. Suitable measuring devices are in place above and below the Reservoir and would be installed at other locations, as and when required by the Department to permit measurement and reporting of all storage water released to the Portneuf River as proposed by the Transfer.

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

RESPONSE TO INTERROGATORY NO. 2: Pocatello contends that the Transfer will not cause flooding of private property. The Transfer does not propose operations of the Reservoir that would result in releases to the Portneuf River under the Transfer Water Rights and PMVCC Water Rights exceeding quantities that historically have been released under the Original PMVCC Water Rights.

INTERROGATORY NO. 3: If you contend that the Transfer will not result in an enlargement of the water rights described in the proposed Transfer, please describe the basis for this contention.

RESPONSE TO INTERROGATORY NO. 3: Pocatello contends that the Transfer will not result in an enlargement of the water rights described in the proposed Transfer. The Original Water Rights authorize one fill of the Reservoir each year during the non-irrigation season and the use of the full quantity of water so stored, up to the Reservoir capacity, each year. Pocatello's agreement with PMVCC allows it to purchase and transfer the first 3,100 acre-feet of yield to storage available out of 16,410 acre-feet of storage authorized under Water Right Nos. 29-00053 and 29-00589, The Original Water Rights were decreed by the Snake River Basin Adjudication Court on February 15, 2008, and have been used as and to the extent available and needed by PMVCC since that time. Historical records show that PMVCC diverted the full volume of Water Right Nos. 29-00053 and 29-00589 during 2006 and 2009.

INTERROGATORY NO. 4: If you contend that there has been no forfeiture of some or all of the Transfer Water Rights or the PMVCC Water Rights, please describe the basis for this contention.

RESPONSE TO INTERROGATORY NO. 4: Pocatello contends that there has been no forfeiture of any portion of the Transfer Water Rights or the PMVCC Water Rights. Pocatello's agreement with PMVCC allows it to purchase and transfer the first 3,100 acre-feet of

yield to storage available out of 16,410 acre-feet of storage authorized under Water Right Nos. 29-00053 and 29-00589. The Original Water Rights were decreed by the Snake River Basin Adjudication Court on February 15, 2008, and have been used as and to the extent available and needed by PMVCC since that time. Historical records show that PMVCC diverted the full volume of Water Right Nos. 29-00053 and 29-00589 during 2006 and 2009.

INTERROGATORY NO. 5: If you contend that that suitable measuring devices have been installed on the Portneuf River both above and below Chesterfield Reservoir that allow determination of the amount of inflows to be passed through the Reservoir when it is not storing water in priority, please describe the basis for this contention.

RESPONSE TO INTERROGATORY NO. 5: Pocatello contends that suitable measuring devices have been installed on the Portneuf River both above and below Chesterfield Reservoir that allow the determination of the amount of inflows to be passed through the Reservoir when it is not storing water in priority. On information and belief, Pocatello understands that a Parshall Flume located downstream of the Reservoir outlet is used to measure releases from the Reservoir, and that a Parshall Flume located on the Toponce Feeder Canal a short distance downstream of the headgate is used to measure diversions to storage from Toponce Creek. According to the District 29 Watermaster, Steve Hebden, the Portneuf River channel upstream of Chesterfield Reservoir is wide and braided and is generally unsuited for installation of a permanent measuring device. Further, the area upstream of Chesterfield Reservoir is located on the Fort Hall Indian Reservation making construction access to the site difficult. Mr. Hebden has reported, however, that he routinely estimates or measures the Portneuf River inflow to the Reservoir during the irrigation season to determine the inflow rate that needs to be passed through the Reservoir for use by downstream users, and that he then inflates his inflow estimates to some extent to reflect a greater-than-the-estimated or measured

Reservoir inflow, resulting in the passing of more water through the Reservoir than is flowing in from the Portneuf River.

INTERROGATORY NO. 6: If you contend that suitable accounting and administration procedures are in place to distinguish the amount of inflow to be passed through Chesterfield Reservoir from the amount of stored water being released for delivery downstream, please describe the basis for this contention.

RESPONSE TO INTERROGATORY NO. 6: On information and belief, the Applicant understands that the Water District 29 Watermaster adjusts the Reservoir outlet each day during the irrigation season to release the sum of (a) the amount of storage water requested by the PMVCC, and (b) the inflow to the Reservoir; that the PMVCC diversions from the Portneuf River are regulated by the Watermaster to limit diversions to no more than the sum of the in-priority yield of PMVCC's natural flow water right, if any, plus the release of stored water from Chesterfield Reservoir (adjusted for the travel time between the Reservoir and the PMVCC canal headgate); and that the PMVCC is not permitted to divert the inflow that is being passed through the Reservoir unless such inflow can be diverted in-priority under the PMVCC natural flow water right. *See also* Pocatello's Response to Interrogatory No. 5 and the accounting, measurement and reporting procedures proposed in the Application.

INTERROGATORY NO. 7: If you contend that the delivery of the Transfer Water Rights to Pocatello or its use under the Transfer would not injure the Protestants' water rights or not adversely affect the Protestants' water supplies, please describe the basis for this contention.

RESPONSE TO INTERROGATORY NO. 7: The Application proposes no changes in the delivery of water stored in, or passed through, Chesterfield Reservoir with respect to water administration or water rights diverting above the PMVCC headgate, including the water rights

of PWUA members. The Reservoir fills during the non-irrigation season so diversions to storage can have no impact on the PWUA's natural flow water rights.

INTERROGATORY NO. 8: If you contend that the "no conveyance loss" provision in the partial decree for the Original PMVCC Water Rights, including Water Right No. 29-00589, should apply to the Transfer Water Rights and be recognized in the Transfer, please describe the basis for this contention.

RESPONSE TO INTERROGATORY NO. 8: The "no conveyance loss" provision has been decreed by the SRBA Court as necessary for administration of Water Right Nos. 29-00053 and 29-00589, with respect to its delivery from storage down the Portneuf River to the PMVCC headgate. The partial decrees imposing such provision are binding on all parties to the SRBA.

INTERROGATORY NO. 9: If you contend that any changes over time in Portneuf River gains or losses downstream of Chesterfield Reservoir have been due to the development of irrigation wells, please describe the basis for this contention.

RESPONSE TO INTERROGATORY NO. 9: To the extent that Portneuf River gains or losses may have changed over time, withdrawals from the hydraulically connected ground water source for irrigation and other purposes are likely a contributing factor. The United States Geological Survey has reported in Surface- and Ground-Water Relations on the Portneuf River, and Temporal Changes in Ground-Water Levels in the Portneuf Valley, Caribou and Bannock Counties, Idaho, 2001-02. Scientific Investigations Report 2004-5170, that ground water allocations for irrigation in the basin increased from near zero in 1951 to approximately 46,000 acre-feet per year in 1978. The irrigation wells associated with the ground water allocations are primarily completed in alluvial and colluvial deposits that are in hydraulic connection with the Portneuf River. The study concluded that ground water withdrawals for irrigation, evapotranspiration, and drought conditions increase the rate of water-level declines in the

aquifer. In addition, the study found that withdrawals of ground water for irrigation lengthen losing reaches and intensify the magnitude of streamflow depletion in losing reaches.

INTERROGATORY NO. 10: Please describe all sources or causes of physical impairment or interference with channel capacity that affect the free flow of water in the Portneuf River reaches adjacent to and/or traversing lands of Portneuf and its members.

RESPONSE TO INTERROGATORY NO. 10: Pocatello has no direct knowledge of the sources or causes of alleged physical impairment or interference with Portneuf River channel capacity in the reaches adjacent to the lands of the PWUA members. Pocatello has been provided no specific information by the PWUA or its members as to the location of the member lands.

INTERROGATORY NO. 11: If you contend that the Transfer, if approved, would not conflict with the local public interest, please describe the basis for this contention.

RESPONSE TO INTERROGATORY NO. 11: In addition to matters disclosed in the Application and supporting materials thereto and Pocatello's Responses herein, the Transfer will maximize the beneficial use of water within the State of Idaho, augment Pocatello's current and future municipal water supply requirements, and improve Portneuf River streamflows below the PMVCC headgate during periods when Pocatello is calling for storage releases from the Reservoir.

INTERROGATORY NO. 12: To the extent not fully disclosed by your earlier responses, please identify and describe any other basis or bases for your contention that the Transfer should be approved.

RESPONSE TO INTERROGATORY NO. 12: In addition to Pocatello's Responses herein, see the Application.

INTERROGATORY NO. 13: 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 upon which the opinion and testimony is based.

RESPONSE TO INTERROGATORY NO. 13: Discovery is ongoing and Pocatello has not yet identified the lay witnesses it expects to call to testify at hearing or the underlying facts and data upon which their opinions and testimony may be based. Pocatello will disclose such witnesses as and when identified in accordance with any subsequent scheduling order entered in this case. The foregoing notwithstanding, and without limiting the persons who Pocatello may call as a lay witness, the following persons may be expected to testify:

- a) Ron Jolley, President, Portneuf Marsh Valley Canal Company
- b) Steve Hebden, Water District 29 Watermaster, c/o Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098.
- c) Tim Luke, Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098.

Pocatello also may call any other person identified as a witness or any other person with knowledge identified by any other party.

INTERROGATORY NO. 14: For each person you have identified or will identify as an expert witness pursuant to the Discovery Order, please state the name and address of each such witness and include 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.

RESPONSE TO INTERROGATORY NO. 14: Discovery is ongoing and Pocatello has not yet identified the expert witnesses it expects to call to testify at hearing or the underlying facts and data upon which their opinions and testimony may be based. Pocatello will disclose such expert witnesses as and when identified in accordance with any subsequent scheduling order entered in this case. The foregoing notwithstanding, and without limiting the persons who Pocatello may call as an expert witness, the following persons may testify as experts:

- a. Greg Sullivan, Spronk Water Engineers, Inc., 1000 Logan Street, Denver, CO 80203
- b. Greg Lanning, City of Pocatello, Public Works Director, 911 N. 7th, P.O. Box 4169, Pocatello, ID 83205.
- c. Justin Armstrong, City of Pocatello, Water Department Superintendent, 911 N. 7th, P.O. Box 4169, Pocatello, ID 83205.
- d. Harold Hargraves, City of Pocatello, Water Operations Supervisor, City Water Department, 911 N. 7th, P.O. Box 4169, Pocatello, ID 83205.
- e. Jon Herrick, City of Pocatello, Water Pollution Control Department Superintendent, 911 N. 7th, P.O. Box 4169, Pocatello, ID 83205.
- f. Steve Hebden, Water District 29 Watermaster, c/o Idaho Department of Water Resources, P.O. Box 83720, Boise, ID 83720-0098.
- g. Tim Luke, Idaho Department of Water Resources, P.O. Box 83720, Boise, ID 83720-0098

The testimony and opinions that Pocatello's expert witnesses may give, and the facts and data upon which they may rely, is being developed, and will be disclosed consistent with appropriate trial scheduling order(s) governing disclosure of experts in this matter.

RESPONSES TO PWUA REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce all documents referring to: (1) the Reservoir; (2) the Application; (3) the Transfer; (4) the administration of water rights in the Portneuf River that affect or pertain to City's Water Rights, and (5) communications with the Portneuf Marsh Valley Canal Company or its representatives.

RESPONSE TO REQUEST FOR PRODUCTION No. 1: Pocatello objects to Request for Production No. 1 as vague, ambiguous, and overbroad, particularly with respect to the use of the words "all documents" and "referring to." Pocatello objects to this Request for Production No. 1 because it is unduly burdensome and it seeks information not relevant to this contested case and not reasonably calculated to lead to the discovery of admissible evidence. Pocatello further objects to Request for Production No. 1 because it seeks documents that are not in Pocatello's possession, custody, or control, and/or that fall within one or more of the following categories: (1) are in the possession, custody, or control of PWUA; (2) are in the public domain; and/or (3) are more easily obtainable by PWUA from parties or sources other than Pocatello. Pocatello further objects to Request for Production No. 1 because it contains no time period, specification, or limitation.

Subject to and without waiving the foregoing objections, and without waiving any objection to the relevance of any disclosed or produced documents, enclosed herewith are the following documents:

- 1) Files of the Department for Water District 29: PMVCC000001-2807;
- 2) Sullivan notes and photos from site visits: POCATELLO000001-79;
- 3) Sullivan notes of conversation w/ Steve Hebden: POCATELLO000080-89;
- 4) Palisades Contract: POCATELLO000090-182; and
- 5) Correspondence Records including Application; POCATELLO000183-506.

REQUEST FOR PRODUCTION NO. 2: Please produce all decrees, partial decrees, permits, and licenses evidencing or confirming City's Water Rights.

RESPONSE TO REQUEST FOR PRODUCTION No. 2: Enclosed herewith are the following documents:

- 1) Decrees/licenses: POCATELLO000507-583.

REQUEST FOR PRODUCTION NO. 3: Please produce all deeds, assignments, leases, mortgages or other instruments evidencing ownership of City's Water Rights.

RESPONSE TO REQUEST FOR PRODUCTION No. 3: Please see Response to Request for Production No. 2.

REQUEST FOR PRODUCTION NO. 4: Please produce all applications, approved transfers or exchanges, leases, rentals, and contracts affecting the delivery, ownership, current status or use of water diverted under City's Water Rights.

RESPONSE TO REQUEST FOR PRODUCTION No. 4: Enclosed herewith are the following documents:

- 1) Lease Agreement for Gibson/Jack Creek/Mink Creek 20-year lease: POCATELLO000584-593; and
- 2) Transfer of Airport water rights – Transfer No. 5452: POCATELLO000594-595.

REQUEST FOR PRODUCTION NO. 5: Please produce all applications, approved transfers or exchanges, leases, rentals, and contracts affecting the delivery, ownership, current status or use of water diverted under Portneuf Marsh Valley Canal Company's Water Rights.

RESPONSE TO REQUEST FOR PRODUCTION No. 5: Pocatello objects to Request for Production No. 5 because it is overbroad, unduly burdensome, and seeks information not relevant to this contested case nor reasonably calculated to lead to the discovery of admissible evidence. Pocatello further objects to Request for Production No. 5 because it seeks

documents that are not in Pocatello's possession, custody, or control, and/or that fall within one or more of the following categories: (1) are in the possession, custody, or control of PWUA; (2) are in the public domain; and/or (3) are more easily obtainable by PWUA from parties or sources other than Pocatello.

Subject to and without waiving these objections, Pocatello has made a diligent inquiry with respect to the existence of documents that may be responsive to Request for Production No. 5, and such documents as Pocatello has obtained through its investigation to date are produced herewith and bates numbered PMVCC000001-2930 and POCATELLO000001-609. Discovery is ongoing and Pocatello reserves the right to supplement this Response.

REQUEST FOR PRODUCTION NO. 6: Please produce all records of diversions of Portneuf Marsh Valley Canal Company's Water Rights, all deliveries to shareholders and irrigated area during the last 10 years.

RESPONSE TO REQUEST FOR PRODUCTION No. 6: Pocatello has made a diligent inquiry with respect to the existence of documents that may be responsive to Request for Production No. 6, and such documents as it has obtained through its investigation to date are specified in Response to Request for Production No. 1. On information and belief, Pocatello understands that PMVCC maintains no records of water deliveries to shareholders or irrigated areas. Discovery is ongoing and Pocatello reserves the right to supplement this Response.

REQUEST FOR PRODUCTION NO. 7: Please produce all records of diversions of City's Water Rights, all deliveries to shareholders and irrigated area during the last 10 years.

RESPONSE TO REQUEST FOR PRODUCTION No. 7: Pocatello objects to Request for Production No. 7 because it is ambiguous, overbroad, unduly burdensome, and seeks information not relevant to this contested case nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, and without waiving any objection to the relevance of any disclosed or produced documents, enclosed herewith are the following documents:

- 1) Pumping Records from City: POCATELLO000596-606;
- 2) Palisades Rentals 2001-2010 (Spronk Summary): POCATELLO000607;
- 3) Gibson Jack Water Consumption Summary: POCATELLO000608; and
- 4) Well Flows Summary 1998-2010: POCATELLO000609.

See also Table 5 and Table 6 appended to the November 2010 Report in Support of The City of Pocatello's Application for Transfer of Water Rights prepared by Spronk Water Engineers, Inc., and appended to the Application. Pocatello does not deliver water to shareholders.

The records for acreage are available on large GIS files. Contact counsel for the City of Pocatello to make arrangements regarding viewing and downloading of same from an FTP site.

REQUEST FOR PRODUCTION NO. 8: Please produce all reports, analyses, conservation plans, correspondence, and other documents pertaining to the operation or maintenance of the City's irrigation systems, and municipal wastewater treatment plant.

RESPONSE TO REQUEST FOR PRODUCTION No. 8: Pocatello objects to Request for Production No. 8 because it is ambiguous, overbroad, unduly burdensome, and seeks information not relevant to this contested case nor reasonably calculated to lead to the discovery of admissible evidence. Pocatello further objects to Request for Production No. 8 because it contains no time period, specification, or limitation. Subject to and without waiving these objections, documents that may be responsive to Request for Production No. 8 are maintained at the offices of the City of Pocatello, Wastewater Treatment Plant and at the offices of the City of Pocatello, Water Department. Because the City's records "pertaining to the operation and

maintenance of the City's irrigation systems, and municipal wastewater treatment plant" are extremely large, they will be made available for inspection and copying at the City offices during normal business hours upon prior coordination with the City's legal counsel and its records custodians.

In addition see 2006 Water Plan previously produced to PWUA informally.

REQUEST FOR PRODUCTION NO. 9: 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.

RESPONSE TO REQUEST FOR PRODUCTION No. 9: Pocatello has not yet identified exhibits it may offer into evidence or use at the hearing of this action; however, Pocatello will produce copies of documents identified as exhibits in accordance with any subsequent scheduling order entered in this case. The foregoing notwithstanding, without limiting its right to designate any documents as exhibits in accordance with any subsequent scheduling order entered in this case, and without waiving any objections stated by Pocatello in Response to the Interrogatories and Requests for Production herein, Pocatello may offer into evidence any documents produced by any party through discovery. Discovery is ongoing and Pocatello reserves the right to supplement this Response.

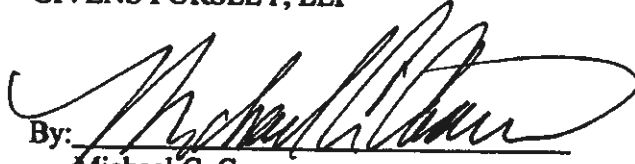
REQUEST FOR PRODUCTION NO. 10: To the extent not produced in response to Request for Production Nos. 1 through 9, please produce all documents on which you relied, or which you identified, in responding to these discovery requests.

RESPONSE TO REQUEST FOR PRODUCTION No. 10: See General Objections.

See Pocatello's Responses to Requests for Production 1-9 above.

DATED this 8th day of March, 2011.

GIVENS PURSLEY, LLP

By: 

Michael C. Creamer

Attorneys for City of Pocatello

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of March, 2011, pursuant to Idaho R. Civ. P. 33 and 34 and Idaho Department of Water Resources' Rule of Procedure 524, the **original** of *Applicant City Of Pocatello's Response To Protestant Portneuf Watershed Users Association, Inc.'s First Set Of Discovery Requests* was served on the following individual(s) by the method indicated:

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


Michael C. Creamer