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DEPARTMENT OF
WATER RESOURCES

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Department of Water Resources
Eastern Region

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Portneuf Watershed Users Association, Inc.

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

PROTESTANT PORTNEUF WATERSHED
USERS ASSOCIATION, INC.'S FIRST SET OF
DISCOVERY REQUESTS TO APPLICANT
CITY OF POCA TELLO

TO: City of Pocatello

PLEASE TAKE NOTICE that the Portneuf Watershed Users Association, Inc.
("Portneuf" or "Protestant"), by and through its counsel of record, hereby requires you to
respond to the following discovery requests.

The following Introduction and Definitions shall apply to these discovery
requests:

I. INTRODUCTION

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 14 days after service of these discovery requests, no later than March 8, 2011.

In responding to these discovery requests, you must make a diligent search of your records and all other papers and materials that are in your possession or available to you or your representatives. If you cannot answer any of the following discovery requests in full after exercising due diligence to secure the information necessary to do so, please so state and answer or respond to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portions.

If you object to any discovery request on the ground that the information sought is privileged and nondiscoverable, please state the basis for your claim of privilege and, in the case of any request for production, "identify" the "documents" and "records" which you object to producing, in sufficient detail as to enable the court to rule upon your claim of privilege.

These discovery requests are deemed to be continuing. If, after responding to these discovery requests, you acquire any further information responsive to them, you are hereby requested, pursuant to Idaho Department of Water Resources Procedural Rule 520.02 (IDAPA 37.014.01.520.02) and Idaho Rule of Civil Procedure 26(e), to file and serve supplemental answers or responses containing such further information. If you fail to respond to

one or more of these discovery requests or if your responses are evasive or incomplete, Portneuf may move for an order compelling you to fully respond to these discovery requests and to pay the reasonable expenses, including attorney fees, incurred by Portneuf in obtaining the order.

If you fail to produce “documents” and “records” requested herein or fail to answer any interrogatory on the ground that the necessary information, “documents,” or “records” are not within your care, custody, possession or control, please state what efforts you have made to obtain such information, “documents,” or “records.”

If you fail to answer or respond to any of these discovery requests in full or fail to supplement your answers or responses as requested, Portneuf may move for an order precluding you from introducing into evidence, or otherwise using either at hearing or on motion for summary judgment, any testimony, witness, exhibit, “document,” “record,” publication, or other item or information not timely disclosed in your response to these discovery requests.

II. 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.
3. “Transfer” means these changes contemplated in the Application.
4. “Describe” means to explain with particularity and in detail, setting forth all facts material to such explanation.

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

6. “IDWR” or the “Department” mean the Idaho Department of Water Resources.

7. “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.

8. “Protest” means the November 23, 2010 protest to the Application filed in this matter by Portneuf Watershed Users Association, Inc. (“Portneuf” or “PWUA”).

9. “Reservoir” means Chesterfield Reservoir and the irrigation water stored in it.

10. “Transfer Water Rights” means those portions of water rights 29-00053 and 29-00589 that are subject to the Application.

“PMVCC Water Rights” means the portion of water rights 29-00053 and 29-00589 retained, or to be retained, by the Portneuf-Marsh Valley Canal Company after the Transfer.

11. “Original PMVCC Water Rights” means water rights 29-00053 and 29-00589 prior to the Transfer.

12. When asked to “identify” a person or entity or when asked for the “identity” of a person or entity, please state:

(a) The name of the person or entity;

(b) The present or last known address and telephone number of the person or entity;

(c) The present or last known occupation, business, and employer of the person or entity; and

(d) The present or last known address and telephone number of the employer of the person or entity.

13. When asked to "identify" a record or document or when asked for the "identity" of a "record" or "document," please state:

(a) The nature or type of "record" or "document" (e.g., letter, photograph, tape recording, etc.);

(b) The subject matter of the "record" or "document" and/or a general description of its contents;

(c) The "identity" of the person who authored or created the "record" or "document";

(d) The date of the document or, if it bears no date, the date on which it was prepared or created; and

(e) The physical location of the original and any copies of the "record" or "documents" of which you are aware and the "identity" of the present custodian of the "record" or "document."

In responding to these discovery requests, the following definitions shall apply:

The terms "record" and/or "document(s)" mean any tangible thing upon which has been placed handwriting, e-mail transmission, typewriting, printing, photocopying, photographing, digital or computerized data, or any other form of recording, communication or representation, including but not limited to letters, words, pictures, sounds, magnetic impulses, symbols, numbers or any combination thereof, whether or not visible to the unassisted human

eye. This definition shall include, but is not limited to, any and all originals, copies or drafts of any and all of the following: records, notes, summaries, schedules, contracts, agreements, drawings, blueprints, sketches, invoices, orders, acknowledgments, diaries, reports, findings, forecasts, tests, appraisals, reports, memoranda, telephone recordings, telephone logs, telephone lists, diaries, calendars, planners, daytimers, correspondence and letters, e-mail, telegrams, telexes, facsimiles and faxes, cables, tapes, tape recordings, statements, receipts, invoices, check registers, transcripts, recordings, photographs, witness statements, pictures, films, videotapes, computer programs, computer databases, models, things and materials of any nature whatsoever. Any "document" which contains any comment, notation, addition, insertion or marking of any kind which is not part of another document is to be considered as a separate "document."

III. 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.

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

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.

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.

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.

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.

INTERROGATORY NO. 7: If you contend that 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.

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.

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.

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.

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.

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.

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.

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.

IV. 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.

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

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

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.

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.

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.

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.

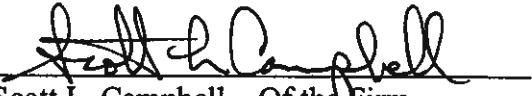
REQUEST FOR PRODUCTION NO. 8: Please produce all reports, analyses, conservation plans, correspondence, and other documents pertaining to the operation or maintenance of the City's irrigation systems, and municipal wastewater treatment plant.

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.

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.

DATED this 22nd day of February, 2011.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Scott L. Campbell – Of the Firm
Attorneys for Portneuf Watershed Users
Association, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of February, 2011, I caused a true and correct copy of the foregoing **PROTESTANT PORTNEUF WATERSHED USERS ASSOCIATION, INC.'S FIRST SET OF DISCOVERY REQUESTS TO APPLICANT CITY OF POCA TELLO** to be served by the method indicated below, and addressed to the following:

Director
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. Box 83720
Boise, ID 83720-0098

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

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Jeffrey C. Fereday
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Boise, ID 83701-2720
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☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Lynden and Candice Symons
SYMONS FARM & RANCH
10098 E. Symons Road
Lava Hot Springs, ID 83246-0604

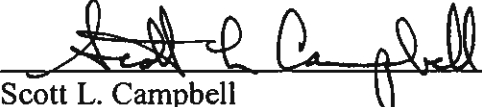
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
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John Schwarz
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James A. Spinner
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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

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

NOTICE OF SERVICE OF PROTESTANT
PORTNEUF WATERSHED USERS
ASSOCIATION, INC.'S FIRST SET OF
DISCOVERY REQUESTS TO APPLICANT
CITY OF POCATELLO

NOTICE IS HEREBY GIVEN that on this 22nd day of February, 2011, a true
and correct copy of PROTESTANT PORTNEUF WATERSHED USERS ASSOCIATION, INC.'S FIRST
SET OF DISCOVERY REQUESTS TO APPLICANT CITY OF POCATELLO and the foregoing
NOTICE OF SERVICE was served by the method indicated below, and addressed to the following:

Director
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. Box 83720
Boise, ID 83720-0098

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
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☐ Facsimile

NOTICE OF SERVICE OF PROTESTANT PORTNEUF
WATERSHED USERS ASSOCIATION, INC.'S FIRST SET
OF DISCOVERY REQUESTS TO APPLICANT CITY OF POCATELLO - 1

Client:1946453.1

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