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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Protestant
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 POCATELLO

**PROTESTANT PORTNEUF WATERSHED
USERS ASSOCIATION'S ANSWERS AND
RESPONSES TO APPLICANT CITY OF
POCATELLO'S FIRST DISCOVERY
REQUESTS**

COME NOW Protestant Portneuf Watershed Users Association, Inc. ("Protestant" or "Portneuf"), by and through undersigned counsel of record and pursuant to the Idaho Department of Water Resources ("IDWR" or the "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 Requests to Protestants, as follows:

I. GENERAL OBJECTIONS

Protestant has not yet completed its own investigations and/or discovery.

Accordingly, the responses that follow are based upon the best knowledge, information, and belief of Protestant at this time. Protestant reserves the right to make any further responses if it appears that any omission 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 or to present at hearing, such evidence as may later be discovered or evaluated.

Protestant objects to the City's discovery requests and the definitions and instructions to the extent they purport 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. 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 definitions and instructions 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 were made by witnesses present and testifying in court. All such objections are reserved and may be interposed at the time of hearing.

Protestant specifically objects to these discovery requests to the extent they seek information protected by the attorney-client privilege, the attorney work product doctrine, and

the rules governing the discovery of facts of experts as set forth in Rule 26(b)(4), Idaho Rule 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 requesting only information and/or documents not subject to any applicable protection.

No incidental or implied admissions are intended. The fact that Protestant has responded to any discovery request, or part thereof, should not be taken 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 herein do not constitute a waiver of their rights to object to any future, additional, or supplemental discovery requests regarding the same or similar matter.

II. ANSWERS TO INTERROGATORIES AND RESPONSES TO REQUESTS FOR PRODUCTION

INTERROGATORY NO. 1: If you contend that the Transfer will violate Idaho Code § 42-105, 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 TO INTERROGATORY 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 waiving any objection, Protestant, in good faith hereby responds to the first portion of the Interrogatory only. Idaho Code Section 42-105 protects the rights of Protestant members against diminishment of the amount of water to which they are entitled to divert from the Portneuf River in that the proposed Transfer seeks to use the Portneuf River to convey stored water to its intended place of use. By

using the channel of the natural waterway (Portneuf River) to convey this stored water, the proposed Transfer cannot be approved unless there will be not diminishment of the amount of water to which Protestant members are entitled to divert under their water rights. Because of the existing conditions in the Portneuf River, it is not likely that the “no diminishment” requirement of Idaho Code Section 42-105 can be met.

Additionally, the proposed Transfer seeks to preserve the so-called “no shrink” status of the portion of the PMVCC rights sought to be transferred. Approving the proposed Transfer with this “no shrink” provision would directly conflict with the mandatory language of Idaho Code Section 42-105 that in circumstances where the channel of a natural waterway is used for water conveyance “due allowance shall be made for loss by evaporation and seepage.”

INTERROGATORY NO. 2: If you contend that the Transfer will cause or exacerbate flooding of private property, 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, including each parcel of private property you allege will be affected by flooding caused by the Transfer.

ANSWER TO INTERROGATORY NO. 2: Objection. This Interrogatory exceeds the parameters of the Department’s Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only. If approved, the Transfer would allow for conveyance delivery through the Portneuf River of water volumes in excess of historic deliveries of Chesterfield Reservoir storage water. Historic deliveries of this storage water to the PMVCC diversion has caused flooding of property along the banks of the Portneuf River from the Reservoir downstream to the Topaz stream gauge during varying

periods in the summer months, depending upon water and ambient air temperatures, rainfall events, natural stream flow conditions, and aquatic plant conditions.

INTERROGATORY NO. 3: If you contend that the Transfer will result in an enlargement of the Transfer Water Rights or the PMVCC 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 TO INTERROGATORY NO. 3: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only. An enlargement would occur because the "no shrink" status would be substantially extended through the reach of the Portneuf River from the PMVCC diversion to the City of Pocatello diversion.

Additionally, the proposed uses will increase the consumptive use, as defined in Idaho Code Section 42-202B, and violate Idaho Code Section 42-222.

INTERROGATORY NO. 4: If you contend that there has been a forfeiture of some or all of the Transfer Water Rights or the PMVCC 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 TO INTERROGATORY NO. 4: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only. None.

INTERROGATORY NO. 5: If you contend that there is any error or deficiency in the methods, accuracy or findings of the November 2010 *Report in Support of the City of Pocatello's Application for the Transfer of Water Rights, Chesterfield Reservoir*, prepared by

Spronk Water Engineers and submitted with the Application, please describe each fact, and identify each document, that supports, contradicts, or in any material way pertains to such contention.

ANSWER TO INTERROGATORY NO. 5: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only. Protestant is finalizing a response to this Interrogatory in consultation with Christian Petrich and will provide a response as soon as that process has been completed.

INTERROGATORY NO. 6: If you contend that that [sic] suitable measuring devices have not been installed on the Portneuf River both above and below the 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 and identify each fact, and each document, that supports, contradicts, or in any material way pertains to it.

ANSWER TO INTERROGATORY NO. 6: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only. Suitable measuring devices do not exist. See documents provided in response to City's Requests for Production.

INTERROGATORY NO. 7: If you contend that suitable accounting and administration procedures are not in place to distinguish the amount of inflow to be passed through the Reservoir from the amount of stored water being released for delivery downstream, 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 TO INTERROGATORY NO. 7: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only. Protestant and its members have never been provided with an accurate written accounting or other credible documentation demonstrating that their water rights have been delivered appropriately and have not been improperly diminished because of storage water releases into the Portneuf River to the PMVCC diversion. See documents provided in response to City's Requests for Production.

INTERROGATORY NO. 8: If you contend that that [sic] the delivery of the Transfer Water Rights to Pocatello or their use under the Transfer would injure the Protestants' water rights or adversely affect the Protestants' water supplies, 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 TO INTERROGATORY NO. 8: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only. See answers to Interrogatory Nos. 1 through 7.

INTERROGATORY NO. 9: 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 not apply to the Transfer Water Rights and be recognized in the Transfer, 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 TO INTERROGATORY NO. 9: 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 waiving any objection, Protestant, in good faith hereby responds to the first portion of the Interrogatory only. See answers to Interrogatory Nos. 1 through 7. Additionally, the Portneuf River Settlement Agreement which produced the PMVCC storage water rights restricted its terms to the parties to the Agreement. The City was not a party. Therefore, the terms agreed upon in the Agreement, including the “no conveyance loss” provision, cannot be utilized by the City.

INTERROGATORY NO. 10: 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 and identify each fact, and each document, that supports, contradicts, or in any material way pertains to it.

ANSWER TO INTERROGATORY NO. 10: Objection. This Interrogatory exceeds the parameters of the Department’s Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only. Applicant has developed numerous wells which have negatively impacted the aquifer tributary to the Portneuf River. See documents provided in response to City’s Requests for Production. Additionally, the Portneuf River Settlement Agreement (“Agreement”) which produced the PMVCC storage water rights restricted its terms to the parties to the Agreement. The City was not a party. Therefore, the terms agreed upon in the Agreement, including the “no conveyance loss” provision, cannot be utilized by the City.

INTERROGATORY NO. 11: 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 your lands, and in so doing please identify

each fact, and each document, that supports, contradicts, or in any material way pertains to your answer.

ANSWER TO INTERROGATORY NO. 11: 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 waiving any objection, Protestant, in good faith hereby responds to the first portion of the Interrogatory only. Ambient water temperature increases due to Chesterfield Reservoir, aquatic plant growth, "no shrink" conveyance of storage water to PMVCC diversion, and channel roughness. See documents provided in response to City's Requests for Production. Additionally, the Agreement which produced the PMVCC storage water rights restructured its terms to the parties to the Agreement. The City was not a party. Therefore, the terms agreed upon in the Agreement, including the "no conveyance loss" provision, cannot be utilized by the City.

INTERROGATORY NO. 12: If you contend that the Transfer, if approved, would conflict with the local public interest, please describe the basis for this contention and identify each document that supports, contradicts, or in any material way pertains to it.

ANSWER TO INTERROGATORY NO. 12: 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 waiving any objection, Protestant, in good faith hereby responds to the first portion of the Interrogatory only. It would damage the real property of Protestant members because of increased flooding of the Portneuf River. It would diminish the amount of water available for diversion from the Portneuf River by members of Protestant (senior appropriators). This would damage the agricultural business operations of Protestant members to provide benefits to City of Pocatello residents, all contrary

to Idaho Constitution Article XV, Sections 3 and 4; and Idaho Code Section 42-222. This proposed Transfer would also constitute a change in the nature of use from agricultural use which would significantly affect the agricultural base of the local area, in violation of Idaho Code Section 42-222.

The Transfer would probably result in increased aquatic plant growth and contribute to water quality degradation of the Portneuf River.

INTERROGATORY NO. 13: 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 not be approved and please identify each document that supports, contradicts, or in any material way pertains to it.

ANSWER TO INTERROGATORY NO. 13: 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 waiving any objection, Protestant, in good faith hereby responds to the first portion of the Interrogatory only. See answers to Interrogatory Nos. 1 through 12.

INTERROGATORY NO. 14: 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.

ANSWER TO INTERROGATORY NO. 14: Objection. This interrogatory exceeds the parameters of the Department's Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only.

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Earl H. Smith
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Glenn Christiansen
316 N. 200 W.
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Kirk Irick
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Brett Casperson
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Lynden Symons
SYMONS FARM & RANCH
10098 E. Symons Road
Lava Hot Springs, ID 83246-0604
(208) 776-5248

Indian Falls Water
c/o Farrell Stevens
7184 S. Pheasant Drive
Lava Hot Springs, ID 83246
(435) 279-4247

Scott Gunnell
10396 E. Old Oregon Trail Road
Lava Hot Springs, ID 83246
(208) 776-5440

INTERROGATORY NO. 15: 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

ANSWER TO INTERROGATORY NO. 15: Objection. This Interrogatory exceeds the parameters of the Department's Order because it contains subparts. Protestant, in good faith hereby responds to the first portion of the Interrogatory only. Christian R. Petrich, Ph.D., P.E., SPF Water Engineering LLC, 300 East Mallard Drive, Suite 350, Boise, Idaho 83706; (208) 383-4140. Dr. Petrich will testify regarding the impacts of the proposed transfer. His analysis is not yet complete. This Answer will be properly supplemented when his analysis is complete.

REQUEST FOR PRODUCTION NO. 1: Please produce all articles, bylaws, or other documents under which PWUA, Lava, Dempsey, and Topaz are organized, and all minutes, resolutions, correspondence, and other 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 Protestants' Water Rights, and 5) your Protest.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: The requested documents will be made available for review and copying at the offices of Protestant's counsel at a mutually agreeable date and time.

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: The requested documents will be made available for review and copying at the offices of Protestant's counsel at a mutually agreeable date and time.

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: The requested documents will be made available for review and copying at the offices of Protestant's counsel at a mutually agreeable date and time.

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 Protestants' Water Rights.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: The requested documents will be made available for review and copying at the offices of Protestant's counsel at a mutually agreeable date and time.

REQUEST FOR PRODUCTION NO. 5: Please produce all records of diversions of Protestants' Water Rights, all deliveries to shareholders, irrigated area and crops raised during the last 10 years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: The requested documents will be made available for review and copying at the offices of Protestant's counsel at a mutually agreeable date and time.

REQUEST FOR PRODUCTION NO. 6: Please produce all reports, analyses, conservation plans, correspondence, and other documents pertaining to the operation or maintenance of the Protestants' irrigation systems, including any such documents pertaining to measures intended to improve flows in the Portneuf River or in any canal.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: The requested documents will be made available for review and copying at the offices of Protestant's counsel at a mutually agreeable date and time.

REQUEST FOR PRODUCTION NO. 7: 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. 7: The requested documents will be made available for review and copying at the offices of Protestant's counsel at a mutually agreeable date and time.

REQUEST FOR PRODUCTION NO. 8: To the extent not produced in response to Request for Production Nos. 1 through 7, please produce all documents on which you relied, or which you identified, in responding to these Discovery Requests.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: The requested documents will be made available for review and copying at the offices of Protestant's counsel at a mutually agreeable date and time.

DATED this 3rd day of March, 2011.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

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

**VERIFICATION OF PROTESTANT PORTNEUF WATERSHED USERS
ASSOCIATION'S ANSWERS AND RESPONSES TO APPLICANT
CITY OF POCA TELLO'S FIRST DISCOVERY REQUESTS**

STATE OF IDAHO)
) ss.
County of _____)

_____, being first duly sworn, deposes and says:

I am the _____ of **PORTNEUF WATERSHED
USERS ASSOCIATION, INC.** and am authorized to make this verification in its behalf.

I have read **PROTESTANT PORTNEUF WATERSHED USERS
ASSOCIATION'S ANSWERS AND RESPONSES TO APPLICANT CITY OF
POCA TELLO'S FIRST DISCOVERY REQUESTS**, know the contents thereof and that the
same are true to the best of my knowledge, information, and belief.

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

NOTARY PUBLIC FOR IDAHO
Residing at _____
My Commission Expires _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of March, 2011, I caused a true and correct copy of the foregoing **PROTESTANT PORTNEUF WATERSHED USERS ASSOCIATION'S ANSWERS AND RESPONSES TO APPLICANT CITY OF POCA TELLO'S FIRST DISCOVERY REQUESTS** 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

Michael C. Creamer
Jeffrey C. Fereday
GIVENS PURSLEY, LLP
601 W. Bannock Street
P.O. Box 2720
Boise, ID 83701-2720
Fax: (208) 388-1300

☒ 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

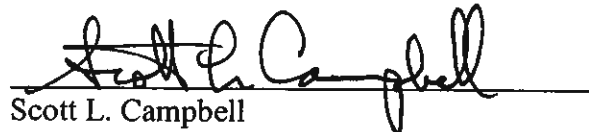
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
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John Schwarz
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James A. Spinner
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Attorneys for Protestant
Portneuf Watershed Users Association, Inc.

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 POCATELLO

NOTICE OF SERVICE OF PROTESTANT
PORTNEUF WATERSHED USERS
ASSOCIATION'S ANSWERS AND RESPONSES
TO APPLICANT CITY OF POCATELLO'S
FIRST DISCOVERY REQUESTS

NOTICE IS HEREBY GIVEN that on this 3rd day of March, 2011, a true and correct copy of PROTESTANT PORTNEUF WATERSHED USERS ASSOCIATION'S ANSWERS AND RESPONSES TO APPLICANT CITY OF POCATELLO'S FIRST DISCOVERY REQUESTS 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
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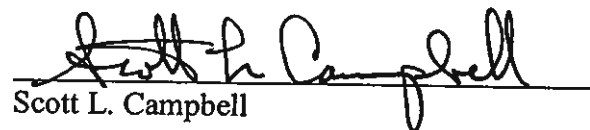
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