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Hahn & Crapo P.L.L.C.
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June 11, 2010

James Cefalo
Hearing Officer
Idaho Department of Water Resources
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402

RECEIVED
JUN 14 2010
Department of Water Resources
Eastern Region

Re: Witness and Exhibit Lists for Transfer No. 75471, in the Name of Caribou Lands, LLC.

Dear James:

Enclosed please find copies of our responses to Caribou Lands' First Set of Interrogatories and Requests for Production of Documents. We are providing this document to you as our witness and exhibit list for the upcoming hearing, as this was requested in these discovery requests. We are also enclosing a copy of Mr. Burton's responses, who is *pro se*, but has elected to nearly entirely adopt the responses of Mr. Haderlie.

If you have any questions or concerns, please let me know.

Best Regards,

Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

G:\WPDATA\RLH\15299 Haderlie, Dennis\James Cefalo ltr 061110.wpd:cdv

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Luke H. Marchant, Esq. (ISB #7944)
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Idaho State Bar Number 7018

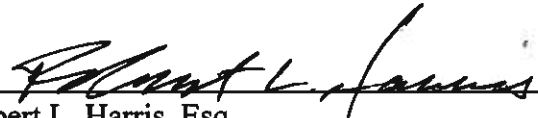
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 75471, IN THE NAME OF
CARIBOU LANDS, LLC

**NOTICE OF SERVICE - RESPONSE TO
APPLICANT'S FIRST SET OF
INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS**

PLEASE TAKE NOTICE that Dennis Haderlie, pursuant to the Idaho Rules of Civil Procedure, is forwarding a copy of Response to Applicant's Interrogatories and Requests for Production of Documents, by service upon Applicant's counsel, Michael P. Tribe, of the law firm Robison, Anthon & Tribe.

DATED this 14th day of June, 2010.


Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF MAILING

I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, on this 1st day of June, 2010.

**DOCUMENT SERVED: NOTICE OF SERVICE - RESPONSE TO APPLICANT'S
FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS**

ATTORNEYS AND/OR INDIVIDUALS SERVED:

Michael Holliday
10498 Hwy. 95
Payette, ID 83661

(☒) *First Class Mail*
(☐) *Hand Delivery*
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David H. Burton
PO Box 430
Iona, ID 83427

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Rupert, ID 83350

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Pete Nelson
2346 Fairview Rd.
American Falls, ID 83211

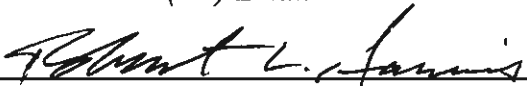
(☒) *First Class Mail*
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Erika Ingersoll
PO Box 159
Aberdeen, ID 83210

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Caribou Lands, LLC
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Scottsdale, AZ 85260

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Idaho State Bar Number 7018

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 75471, IN THE NAME OF
CARIBOU LANDS, LLC

**RESPONSE TO APPLICANT'S FIRST
SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF
DOCUMENTS**

Dennis Haderlie, ("Haderlie") by and through his counsel of record Holden, Kidwell, Hahn & Crapo, P.L.L.C., hereby answers and responds to Applicant's First Set of Interrogatories and Requests for Production of Documents as follows:

GENERAL OBJECTIONS

1. Haderlie objects to these Interrogatories and Requests for Production, and to the definitions and instructions, to the extent they purport to require discovery responses beyond that required under the local rules and orders of the Idaho Rules of Civil Procedure. These responses are provided in accordance with the Idaho Rules of Civil Procedure irrespective of any definitions and instructions that may accompany the discovery requests.

2. 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 requests were asked of, or any statement, material, or information provided or made by a witness present and testifying in Court. All such objections are reserved and may interpose at the time of trial.

3. Haderlie specifically objects to these discovery requests to the extent they seek information protected by the attorney-client privilege, the accountant-client privilege, the work product doctrine, and the rules governing discovery related to experts as set forth in Rule 26(b)(4). This objection is intended to apply to each of the discovery requests that seeks such information and will not be repeated specifically for each request for which it applies. Haderlie, to the extent possible, construed each request as requesting only information and/or documents not subject to any applicable protection.

4. No incidental or implied admissions are intended. The fact that Haderlie has responded to any discovery request or part thereof should not be taken as an admission that Haderlie accepts that the discovery request or the response or objection thereto constitutes admissible evidence. Similarly, the fact that Haderlie has responded to all or part of a request is not intended to, and shall not be construed to be a waiver by Haderlie of all or part of any objection to other requests. Haderlie's answers to any discovery request herein does not constitute a waiver of its right to object to any future additional, or supplemental discovery request regarding the same or similar matters.

5. Each of these objections is incorporated into the response to each of the Interrogatories and each of the Requests for Production of Documents as though set forth verbatim therein.

INTERROGATORY NO. 1.: Please state the name, address and telephone number of each and every person known to you or your attorney who has any knowledge of, or purports to have any knowledge of the facts of this case.

ANSWER TO INTERROGATORY NO. 1.: Objection, Haderlie does not know each and every person who purports to have knowledge of the facts of this case. Without waiving said objection, Haderlie is aware that the following individuals have knowledge of the facts of this case. Robert L. Harris, Holden, Kidwell, Hahn & Crapo, P.L.L.C., PO Box 50130, Idaho Falls, ID 83405-0130, 208-523-0620; all protestants in this matter, their names, addresses and phone numbers of a

matter of record. David Teuscher, Idaho Department of Fish & Game, Regional Fisheries Manager, Southeast Region, 232-4703. We further presume that the applicant and their representatives are aware of the application.

INTERROGATORY NO. 2.: Please state the name, address and telephone numbers of all persons you intend to call as a witness at the trial of this matter. With respect to the witnesses, whom you intend or expect to call at the trial of this action, please also provide the following information: the current occupation of the witness and a summary of the substance of each witness' testimony.

ANSWER TO INTERROGATORY NO. 2.:

1. David H. Burton, PO Box 430, Iona, ID 83427; Occupation: convenient store worker.
2. Linda Nelson, 2346 Fairview Rd., American Falls, ID 83211; Occupation: Rancher and school employee.
3. Erika Ingersoll, PO Box 159, Aberdeen, ID 83210; Occupation: school teacher.

Each witness will testify as to the historic use of the property upon which the applicant is attempting to change the nature of use of one of its water rights. The applicants will testify as to the various elements contained in Idaho Code § 42-222 regarding why this application for transfer should be denied. They will also testify as to historic mosquito problems, which the proposed ponds will exacerbate, and testify to the best of their information and belief that the rerouting of an entire stream through a private pond is not in the local public interest.

We also reserve the right to call any and all of the applicant's witnesses.

INTERROGATORY NO. 3.: Please provide a list of all exhibits that you intend or expect to utilize at the trial of this cause, giving a description of each exhibit and a summary of the exhibit's relevance to the case.

ANSWER TO INTERROGATORY NO. 3.: See attached photographs and letter from James Cefalo to David Teuscher of the Idaho Department of Fish & Game. The photos are self explanatory as to their relevance. See Response to Request for Production No. 1 below.

REQUEST FOR PRODUCTION NO. 1.: Please produce copies of all documents you intend to use as exhibits at the trial of this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1.: See attached documents.

INTERROGATORY NO. 4.: Describe each and every document or other writing in your possession, including any written notes, electronically-transmitted messages, memoranda or written statements of any kind, whether in your possession or your attorney's, which in any way pertain to the facts and circumstances at issue in this particular action.

ANSWER TO INTERROGATORY NO. 4.: Objection, this request requests disclosure of communications protected by the attorney-client privilege. Without waiving said objection, we have received some documents from the applicant regarding this proposal, which are already in possession of the applicant.

REQUEST FOR PRODUCTION NO. 2.: Please produce copies of any document or other writing in your possession, including electronically-transmitted messages, written notes, memoranda or statements which pertain to the facts and circumstances in this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2.: See Answer to Interrogatory No. 4 above.

INTERROGATORY NO. 5.: Have you consulted with any expert witnesses concerning the events referred to in this litigation?

ANSWER TO INTERROGATORY NO. 5.: No.

INTERROGATORY NO. 6.: If you answer to the preceding Interrogatory is in the affirmative, please state the identity of each person whom you expect to call as an expert witness and the opinions to which the expert will testify.

ANSWER TO INTERROGATORY NO. 6.: Not applicable.

INTERROGATORY NO. 7.: Will the proposed transfer reduce the quantity of water under the existing water rights of the applicant?

ANSWER TO INTERROGATORY NO. 7.: Objection, this interrogatory is unintelligible. It requests whether the proposed transfer will reduce the quantity of water under the existing water rights of the applicant. Idaho Code § 42-222 does not limit impact to other water rights strictly to those owned by the applicant. To the extent this Interrogatory requests if it would reduce existing water rights of the applicant, we are without knowledge to answer the Interrogatory. To the extent this Interrogatory requests whether the quantity of water would reduce other water rights, we submit that it will. With the storage of water in the pond, there will be increased evaporation and seepage, which will reduce water for existing water rights. Additionally, with the

newly constructed meanders in the stream channel, this will necessarily require water to travel a greater distance, which will increase seepage losses, and potentially impact availability of water for other water rights.

INTERROGATORY NO. 8.: If your answer to the preceding Interrogatory is in the affirmative, please explain your answer.

ANSWER TO INTERROGATORY NO. 8.: See Answer to Interrogatory No. 7 above.

INTERROGATORY NO. 9.: Does the proposed transfer constitute an enlargement in use of the original right?

ANSWER TO INTERROGATORY NO. 9.: Yes. It is unclear from the documents submitted by the applicant whether or not the transfer was prepared consistent with the Department's conversion factors obtained from the ETIdaho website and other Department policies. We anticipate this being a question at the hearing on this matter.

INTERROGATORY NO. 10.: If you answer to the preceding Interrogatory is in the affirmative, please explain your answer.

ANSWER TO INTERROGATORY NO. 10.: See Answer to Interrogatory No. 9 above.

INTERROGATORY NO. 11.: Do you maintain that the proposed transfer will be contrary to the conservation of water resources within the State of Idaho?

ANSWER TO INTERROGATORY NO. 11.: See Answer to Interrogatory No. 7 above.

INTERROGATORY NO. 12.: If your answer to the preceding Interrogatory is in the affirmative, please explain your answer.

ANSWER TO INTERROGATORY NO. 12.: See Answer to Interrogatory No. 7 above.

INTERROGATORY NO. 13.: Do you believe that the proposed transfer will conflict with the local public interest?

ANSWER TO INTERROGATORY NO. 13.: Yes.

INTERROGATORY NO. 14.: If you answer to the preceding Interrogatory is in the affirmative, please explain your answer.

ANSWER TO INTERROGATORY NO. 14.: This application is contrary to the local public interest for a number of reasons. First, it may potentially limit rights of access held by individuals that fish along Grouse Creek, as the entire creek will now be routed through a private

pond for a private development. Secondly, the meanders in the stream channel will impact other water rights on Grouse Creek and water courses to which it is tributary because it will increase the length of the stream channel, which may cause additional seepage losses, and make less water available to other water users. Third, the ponds will likely increase water temperature, which will likely have an impact on trout species that utilize Grouse Creek for spawning and rearing habitat. Fourth, the fire pond and other wetland areas will provide habitat for mosquitos, which is already a problem in this particular area, and therefore result in additional mosquitos being prevalent in the general area. Fifth, during the transition period when the entire stream is placed in the pond, it will temporarily dewater the stream and have negative impacts. Sixth, it is not in the local public interest to have a fire pond on the property, which will result in additional consumptive use of water and mosquito propagation, when the property is already protected under the Freedom Fire Protection District.

INTERROGATORY NO. 15.: Do you live in close proximity of the proposed transfer?

ANSWER TO INTERROGATORY NO. 15.: Objection, close proximity is not well defined. Without waiving said objection, Haderlie contends that he lives within driving distance of the location of the proposed transfer, and is therefore aware of the previously unauthorized stream channel work, subsequent mitigation for the unauthorized work, and the application for transfer that has now been filed.

INTERROGATORY NO. 16.: If you answer to the preceding Interrogatory is in the affirmative, please state your address;

- a. The proximity of your residence to the proposed place of transfer;
- b. Other residences you maintain;
- c. What portion of the year you live at the other residence(s).

ANSWER TO INTERROGATORY NO. 16.: The proximity of my residence is one-quarter ($\frac{1}{4}$) mile. I maintain another residence at 290 Beamer Dr., Overton, Nevada 89040. I live in my Nevada residence for approximately six (6) months of the year.

INTERROGATORY NO. 17.: Will you be directly affected by the proposed water use?

ANSWER TO INTERROGATORY NO. 17.: Objection, directly affected is not well defined. Without waiving said objection, please see responses to the components of Idaho Code § 42-222, and in particular, that the transfer is not in the local public interest, of which I am a part.

INTERROGATORY NO. 18.: If your answer to the preceding Interrogatory is in the affirmative, please explain your answer.

ANSWER TO INTERROGATORY NO. 18.: See Answer to Interrogatory No. 17 above.

INTERROGATORY NO. 19.: Will the proposed transfer adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates?

ANSWER TO INTERROGATORY NO. 19.: Yes.

INTERROGATORY NO. 20.: If you answer to the preceding Interrogatory is in the affirmative, please explain your answer.

ANSWER TO INTERROGATORY NO. 20.: The privatization of a portion of Grouse Creek with the pond, which will likely attract fish, may result in fewer recreational opportunities in the general vicinity, which when combined with other losses of recreational activities, may have an impact on the local economy.

INTERROGATORY NO. 21.: Will the proposed transfer significantly affect the agricultural base of the local area?

ANSWER TO INTERROGATORY NO. 21.: Objection, significantly affect is not well defined. Without waiving said objection, the subdivision has taken agriculture out of production, and likewise, conversion of a former irrigation right to a recreation right will have an impact on the local area because it will reduce the number of acres that will therefore be irrigated on the property.

INTERROGATORY NO. 22.: If you answer to the preceding Interrogatory is in the affirmative, please explain your answer.

ANSWER TO INTERROGATORY NO. 22.: See Answer to Interrogatory No. 21 above.

INTERROGATORY NO. 23.: If your answer to the preceding Interrogatory is in the affirmative, please explain your answer.

ANSWER TO INTERROGATORY NO. 23.: See Answer to Interrogatory No. 22 above.

INTERROGATORY NO. 24.: What effects will the proposed transfer application have on recreation, fish and wildlife resources in the local area affected by the proposed transfer?

ANSWER TO INTERROGATORY NO. 24.: See Answer to Interrogatory No. 13 above.

INTERROGATORY NO. 25.: If you answer to the preceding Interrogatory is in the affirmative, please state your reasons for such answer.

ANSWER TO INTERROGATORY NO. 25.: See Answer to Interrogatory Nos. 15, 19 and 20 above.

REQUEST FOR PRODUCTION NO. 3.: Please produce any scientific data, expert analysis or scholarly reports that would support your answers to Interrogatory Nos. 24 & 25.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3.: Haderlie does not possess any specific scientific data, expert analysis or scholarly reports that were prepared in specific conjunction with this application. However, it perhaps goes without saying that routing an entire creek through a private pond will likely attract fish, and therefore impact the ability of other individuals to successfully fish on other portions of Grouse Creek. Additionally, it is well documented that temperature increases for fish species is detrimental to them, as indicated in the attached letter from David Teuscher of the Idaho Department of Fish & Game. Additionally, even in the applicant's own documentation, we believe they will install an aerator in the pond, which is necessary to circulate water to prevent a detrimental increase in temperature. The applicant is already in possession of these documents. Also, Haderlie has visited with David Teuscher of the Idaho Department of Fish and Game. See the attached email and letter.

INTERROGATORY NO. 26.: Do you believe that an entrenched, channelized streambed is better fish habitat than a meandering, vegetated streambed?

ANSWER TO INTERROGATORY NO. 26.: This Interrogatory cannot be answered with a direct yes or no answer. We believe the question relates specifically to the proposal made by Caribou Lands, LLC, which purports to reroute the entire stream channel through a private pond. We believe that while the pond may provide a place of refuge for fish habitat, the potential for temperature increases will have a greater negative impact than the positive benefits of having a place of refuge for fish. Additionally, we believe the channelized streambed that has long existed, and was complete with vegetation, is better fish habitat than the rechannelized, barren, and vegetationless stream channel at the present time is not better fish habitat than the previously existing stream channel.

INTERROGATORY NO. 27.: If you answer to the preceding Interrogatory is in the affirmative, please state your reasons for such answer.

ANSWER TO INTERROGATORY NO. 27.: See Answer to Interrogatory No. 26 above.

REQUEST FOR PRODUCTION NO. 4.: Please produce any scientific data, expert analysis or scholarly reports that would support your answers to Interrogatory Nos. 26 & 27.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4.: See Response to Request for Production No. 3 above.

INTERROGATORY NO. 28.: Please describe in detail all damage you claim will result to the local watershed due to the proposed transfer? (sic)

ANSWER TO INTERROGATORY NO. 28.: See answers to previous interrogatories.

INTERROGATORY NO. 29.: Please describe in detail the material value of the stream to the community? (sic)

ANSWER TO INTERROGATORY NO. 29.: Objection, material value is not well defined, and Haderlie cannot answer for the entire community. However, the stream is critically important to Haderlis as a spawning stream.

INTERROGATORY NO. 30.: Please describe in detail the social value of the stream to the community? (sic)

ANSWER TO INTERROGATORY NO. 30.: Objection, social value is not well defined.

INTERROGATORY NO. 31.: Please explain any likely lost employment opportunities or revenue changes to the local economy due to the proposed application for transfer? (sic)

ANSWER TO INTERROGATORY NO. 31.: See Answer to Interrogatory No. 19 above.

INTERROGATORY NO. 32.: Will the proposed transfer adversely affect the stream's water quality?

ANSWER TO INTERROGATORY NO. 32.: Haderlie is without knowledge as to whether or not the transfer will adversely affect the stream's water quality over time. However, to the extent water temperature is included within the definition of water quality, we submit that it will have an impact. Initially, with the new channel, sediment will be flushed downstream and will impact water quality.

INTERROGATORY NO. 33.: If you answer to the preceding Interrogatory is in the affirmative, please state your reasons for such answer.

ANSWER TO INTERROGATORY NO. 33.: See Answer to Interrogatory No. 32 above.

INTERROGATORY NO. 34.: Do you maintain that the proposed application is not in compliance with environmental standards set by state and federal agencies?

ANSWER TO INTERROGATORY NO. 34.: Objection, this interrogatory is vague and ambiguous. To the extent the question asks whether or not the proposed application and the associated unauthorized stream channel alterations and the installation of headgates and prior use of water without authorization from the Idaho Department of Water Resources was compliant with standards set by state and federal agencies, we submit they were not. As to the current state of whether or not this project is in compliance with environmental standards set by state and federal agencies, we are without sufficient knowledge or information to know whether or not they are in compliance with state or federal agencies currently.

INTERROGATORY NO. 35.: If your answer to the preceding Interrogatory is in the affirmative, please state your reasons for such answer.

ANSWER TO INTERROGATORY NO. 35.: See Answer to Interrogatory No. 34 above.

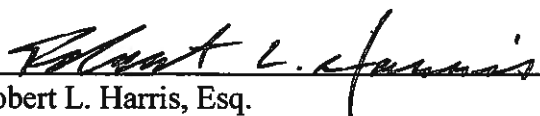
INTERROGATORY NO. 36.: Do you claim that the mosquito population will increased based on this application for transfer?

ANSWER TO INTERROGATORY NO. 36.: Yes.

REQUEST FOR PRODUCTION NO.:(sic) Please produce any scientific data, expert analysis or scholarly reports that would support your answers to Interrogatory Nos. 36 & 37.

RESPONSE TO REQUEST FOR PRODUCTION NO.: See attached newspaper articles.

DATED this 10th day of June, 2010.


Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

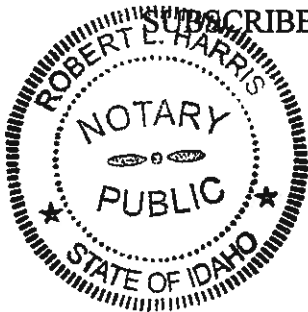
STATE OF IDAHO)
)ss
County of Bonneville)

Dennis Haderlie, being sworn, says:

That he is a PROTESTANT in the above-entitled action; that all the statements in the foregoing Responses to Applicant's First Interrogatories and Requests for Production are true and correct to the best of his knowledge and belief.

Dated this 10th day of June, 2010.

Dennis J. Haderlie
Dennis Haderlie



SUBSCRIBED AND SWORN TO before me this ____ day of June, 2010.

Robert L. Harris
Notary Public for Idaho
Residing at: Ammon, ID
My Commission Expires: 11/18/2010

CERTIFICATE OF MAILING

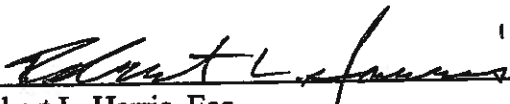
I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, on this 1st day of June, 2010.

**DOCUMENT SERVED: RESPONSE TO APPLICANT'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION
OF DOCUMENTS**

ATTORNEYS AND/OR INDIVIDUALS SERVED:

Michael Tribe
Matt Darrington
Robinson Anthon & Tribe
PO Box 396
Rupert, ID 83350

(☒) *First Class Mail*
() *Hand Delivery*
() *Facsimile*
() *Email*


Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

G:\WPDATA\RLH\15299 Haderlie, Dennis\Disc., Resp., 060910.wpd:cdv

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 75471, IN THE NAME OF
CARIBOU LANDS, LLC

**RESPONSE TO APPLICANT'S FIRST
SET OF INTERROGATORIES AND
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DOCUMENTS**

David Burton, ("Burton") hereby answers and responds to Applicant's First Set of Interrogatories and Requests for Production of Documents as follows:

GENERAL OBJECTIONS

1. Burton objects to these Interrogatories and Requests for Production, and to the definitions and instructions, to the extent they purport to require discovery responses beyond that required under the local rules and orders of the Idaho Rules of Civil Procedure. These responses are provided in accordance with the Idaho Rules of Civil Procedure irrespective of any definitions and instructions that may accompany the discovery requests.

2. 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 requests were asked of, or any statement, material, or information provided or made by a witness present and testifying in Court. All such objections are reserved and may interpose at the time of trial.

3. Burton specifically objects to these discovery requests to the extent they seek information protected by the attorney-client privilege, the accountant-client privilege, the work product doctrine, and the rules governing discovery related to experts as set forth in Rule 26(b)(4). This objection is intended to apply to each of the discovery requests that seeks such information and will not be repeated specifically for each request for which it applies. Burton, to the extent possible,

construed each request as requesting only information and/or documents not subject to any applicable protection.

4. No incidental or implied admissions are intended. The fact that Burton has responded to any discovery request or part thereof should not be taken as an admission that Burton accepts that the discovery request or the response or objection thereto constitutes admissible evidence. Similarly, the fact that Burton has responded to all or part of a request is not intended to, and shall not be construed to be a waiver by Burton of all or part of any objection to other requests. Burton's answers to any discovery request herein does not constitute a waiver of its right to object to any future additional, or supplemental discovery request regarding the same or similar matters.

5. Each of these objections is incorporated into the response to each of the Interrogatories and each of the Requests for Production of Documents as though set forth verbatim therein.

INTERROGATORY NO. 1.: Please state the name, address and telephone number of each and every person known to you or your attorney who has any knowledge of, or purports to have any knowledge of the facts of this case.

ANSWER TO INTERROGATORY NO. 1.: Objection, Burton does not know each and every person who purports to have knowledge of the facts of this case. Without waiving said objection, Burton is aware that the following individuals have knowledge of the facts of this case. Robert L. Harris, Holden, Kidwell, Hahn & Crapo, P.L.L.C., PO Box 50130, Idaho Falls, ID 83405-0130, 208-523-0620; all protestants in this matter, their names, addresses and phone numbers of a matter of record. David Teuscher, Idaho Department of Fish & Game, Regional Fisheries Manager, Southeast Region, 232-4703. We further presume that the applicant and their representatives are aware of the application.

INTERROGATORY NO. 2.: Please state the name, address and telephone numbers of all persons you intend to call as a witness at the trial of this matter. With respect to the witnesses, whom you intend or expect to call at the trial of this action, please also provide the following information: the current occupation of the witness and a summary of the substance of each witness' testimony.

ANSWER TO INTERROGATORY NO. 2.:

1. Dennis Haderlie, PO Box 257, Freedom, WY 83120; Occupation: Retired.
2. Linda Nelson, 2346 Fairview Rd., American Falls, ID 83211; Occupation: Rancher and school employee.
3. Erika Ingersoll, PO Box 159, Aberdeen, ID 83210; Occupation: school teacher.

Each witness will testify as to the historic use of the property upon which the applicant is attempting to change the nature of use of one of its water rights. The applicants will testify as to the various elements contained in Idaho Code § 42-222 regarding why this application for transfer should be denied. They will also testify as to historic mosquito problems, which the proposed ponds will exacerbate, and testify to the best of their information and belief that the rerouting of an entire stream through a private pond is not in the local public interest.

We also reserve the right to call any and all of the applicant's witnesses.

INTERROGATORY NO. 3.: Please provide a list of all exhibits that you intend or expect to utilize at the trial of this cause, giving a description of each exhibit and a summary of the exhibit's relevance to the case.

ANSWER TO INTERROGATORY NO. 3.: See attached photographs and letter from James Cefalo to David Teuscher of the Idaho Department of Fish & Game. The photos are self explanatory as to their relevance. See Response to Request for Production No. 1 below.

REQUEST FOR PRODUCTION NO. 1.: Please produce copies of all documents you intend to use as exhibits at the trial of this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1.: See attached documents.

INTERROGATORY NO. 4.: Describe each and every document or other writing in your possession, including any written notes, electronically-transmitted messages, memoranda or written statements of any kind, whether in your possession or your attorney's, which in any way pertain to the facts and circumstances at issue in this particular action.

ANSWER TO INTERROGATORY NO. 4.: Objection, this request requests disclosure of communications protected by the attorney-client privilege. Without waiving said objection, we have received some documents from the applicant regarding this proposal, which are already in possession of the applicant.

REQUEST FOR PRODUCTION NO. 2.: Please produce copies of any document or other writing in your possession, including electronically-transmitted messages, written notes, memoranda or statements which pertain to the facts and circumstances in this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2.: See Answer to Interrogatory No. 4 above.

INTERROGATORY NO. 5.: Have you consulted with any expert witnesses concerning the events referred to in this litigation?

ANSWER TO INTERROGATORY NO. 5.: No.

INTERROGATORY NO. 6.: If you answer to the preceding Interrogatory is in the affirmative, please state the identity of each person whom you expect to call as an expert witness and the opinions to which the expert will testify.

ANSWER TO INTERROGATORY NO. 6.: Not applicable.

INTERROGATORY NO. 7.: Will the proposed transfer reduce the quantity of water under the existing water rights of the applicant?

ANSWER TO INTERROGATORY NO. 7.: Objection, this interrogatory is unintelligible. It requests whether the proposed transfer will reduce the quantity of water under the existing water rights of the applicant. Idaho Code § 42-222 does not limit impact to other water rights strictly to those owned by the applicant. To the extent this Interrogatory requests if it would reduce existing water rights of the applicant, we are without knowledge to answer the Interrogatory. To the extent this Interrogatory requests whether the quantity of water would reduce other water rights, we submit that it will. With the storage of water in the pond, there will be increased evaporation and seepage, which will reduce water for existing water rights. Additionally, with the newly constructed meanders in the stream channel, this will necessarily require water to travel a greater distance, which will increase seepage losses, and potentially impact availability of water for other water rights.

INTERROGATORY NO. 8.: If your answer to the preceding Interrogatory is in the affirmative, please explain your answer.

ANSWER TO INTERROGATORY NO. 8.: See Answer to Interrogatory No. 7 above.

INTERROGATORY NO. 9.: Does the proposed transfer constitute an enlargement in use of the original right?

ANSWER TO INTERROGATORY NO. 9.: Yes. It is unclear from the documents submitted by the applicant whether or not the transfer was prepared consistent with the Department's conversion factors obtained from the ETIdaho website and other Department policies. We anticipate this being a question at the hearing on this matter.

INTERROGATORY NO. 10.: If you answer to the preceding Interrogatory is in the affirmative, please explain your answer.

ANSWER TO INTERROGATORY NO. 10.: See Answer to Interrogatory No. 9 above.

INTERROGATORY NO. 11.: Do you maintain that the proposed transfer will be contrary to the conservation of water resources within the State of Idaho?

ANSWER TO INTERROGATORY NO. 11.: See Answer to Interrogatory No. 7 above.

INTERROGATORY NO. 12.: If your answer to the preceding Interrogatory is in the affirmative, please explain your answer.

ANSWER TO INTERROGATORY NO. 12.: See Answer to Interrogatory No. 7 above.

INTERROGATORY NO. 13.: Do you believe that the proposed transfer will conflict with the local public interest?

ANSWER TO INTERROGATORY NO. 13.: Yes.

INTERROGATORY NO. 14.: If you answer to the preceding Interrogatory is in the affirmative, please explain your answer.

ANSWER TO INTERROGATORY NO. 14.: This application is contrary to the local public interest for a number of reasons. First, it may potentially limit rights of access held by individuals that fish along Grouse Creek, as the entire creek will now be routed through a private pond for a private development. Secondly, the meanders in the stream channel will impact other water rights on Grouse Creek and water courses to which it is tributary because it will increase the length of the stream channel, which may cause additional seepage losses, and make less water available to other water users. Third, the ponds will likely increase water temperature, which will likely have an impact on trout species that utilize Grouse Creek for spawning and rearing habitat. Fourth, the fire pond and other wetland areas will provide habitat for mosquitos, which is already a problem in this particular area, and therefore result in additional mosquitos being prevalent in the

general area. Fifth, during the transition period when the entire stream is placed in the pond, it will temporarily dewater the stream and have negative impacts. Sixth, it is not in the local public interest to have a fire pond on the property, which will result in additional consumptive use of water and mosquito propagation, when the property is already protected under the Freedom Fire Protection District.

INTERROGATORY NO. 15.: Do you live in close proximity of the proposed transfer?

ANSWER TO INTERROGATORY NO. 15.: Objection, close proximity is not well defined. Without waiving said objection, Burton contends that he in Iona, Idaho, and does not maintain a residence near the site.

INTERROGATORY NO. 16.: If you answer to the preceding Interrogatory is in the affirmative, please state your address;

- a. The proximity of your residence to the proposed place of transfer;
- b. Other residences you maintain;
- c. What portion of the year you live at the other residence(s).

ANSWER TO INTERROGATORY NO. 16.: Not applicable.

INTERROGATORY NO. 17.: Will you be directly affected by the proposed water use?

ANSWER TO INTERROGATORY NO. 17.: Objection, directly affected is not well defined. Without waiving said objection, please see responses to the components of Idaho Code § 42-222, and in particular, that the transfer is not in the local public interest, of which I am a part.

INTERROGATORY NO. 18.: If your answer to the preceding Interrogatory is in the affirmative, please explain your answer.

ANSWER TO INTERROGATORY NO. 18.: See Answer to Interrogatory No. 17 above.

INTERROGATORY NO. 19.: Will the proposed transfer adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates?

ANSWER TO INTERROGATORY NO. 19.: Yes.

INTERROGATORY NO. 20.: If you answer to the preceding Interrogatory is in the affirmative, please explain your answer.

ANSWER TO INTERROGATORY NO. 20.: The privatization of a portion of Grouse Creek with the pond, which will likely attract fish, may result in fewer recreational opportunities in

the general vicinity, which when combined with other losses of recreational activities, may have an impact on the local economy.

INTERROGATORY NO. 21.: Will the proposed transfer significantly affect the agricultural base of the local area?

ANSWER TO INTERROGATORY NO. 21.: Objection, significantly affect is not well defined. Without waiving said objection, the subdivision has taken agriculture out of production, and likewise, conversion of a former irrigation right to a recreation right will have an impact on the local area because it will reduce the number of acres that will therefore be irrigated on the property.

INTERROGATORY NO. 22.: If you answer to the preceding Interrogatory is in the affirmative, please explain your answer.

ANSWER TO INTERROGATORY NO. 22.: See Answer to Interrogatory No. 21 above.

INTERROGATORY NO. 23.: If your answer to the preceding Interrogatory is in the affirmative, please explain your answer.

ANSWER TO INTERROGATORY NO. 23.: See Answer to Interrogatory No. 22 above.

INTERROGATORY NO. 24.: What effects will the proposed transfer application have on recreation, fish and wildlife resources in the local area affected by the proposed transfer?

ANSWER TO INTERROGATORY NO. 24.: See Answer to Interrogatory No. 13 above.

INTERROGATORY NO. 25.: If you answer to the preceding Interrogatory is in the affirmative, please state your reasons for such answer.

ANSWER TO INTERROGATORY NO. 25.: See Answer to Interrogatory Nos. 15, 19 and 20 above.

REQUEST FOR PRODUCTION NO. 3.: Please produce any scientific data, expert analysis or scholarly reports that would support your answers to Interrogatory Nos. 24 & 25.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3.: Burton does not possess any specific scientific data, expert analysis or scholarly reports that were prepared in specific conjunction with this application. However, it perhaps goes without saying that routing an entire creek through a private pond will likely attract fish, and therefore impact the ability of other individuals to successfully fish on other portions of Grouse Creek. Additionally, it is well documented that temperature increases for fish species is detrimental to them, as indicated in the attached letter from David Teuscher of the Idaho Department of Fish & Game. Additionally, even in the applicant's own

documentation, we believe they will install an aerator in the pond, which is necessary to circulate water to prevent a detrimental increase in temperature. The applicant is already in possession of these documents. Also, Burton has visited with David Teuscher of the Idaho Department of Fish and Game. See the attached email and letter.

INTERROGATORY NO. 26.: Do you believe that an entrenched, channelized streambed is better fish habitat than a meandering, vegetated streambed?

ANSWER TO INTERROGATORY NO. 26.: This Interrogatory cannot be answered with a direct yes or no answer. We believe the question relates specifically to the proposal made by Caribou Lands, LLC, which purports to reroute the entire stream channel through a private pond. We believe that while the pond may provide a place of refuge for fish habitat, the potential for temperature increases will have a greater negative impact than the positive benefits of having a place of refuge for fish. Additionally, we believe the channelized streambed that has long existed, and was complete with vegetation, is better fish habitat than the rechannelized, barren, and vegetationless stream channel at the present time is not better fish habitat than the previously existing stream channel.

INTERROGATORY NO. 27.: If you answer to the preceding Interrogatory is in the affirmative, please state your reasons for such answer.

ANSWER TO INTERROGATORY NO. 27.: See Answer to Interrogatory No. 26 above.

REQUEST FOR PRODUCTION NO. 4.: Please produce any scientific data, expert analysis or scholarly reports that would support your answers to Interrogatory Nos. 26 & 27.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4.: See Response to Request for Production No. 3 above.

INTERROGATORY NO. 28.: Please describe in detail all damage you claim will result to the local watershed due to the proposed transfer? (sic)

ANSWER TO INTERROGATORY NO. 28.: See answers to previous interrogatories.

INTERROGATORY NO. 29.: Please describe in detail the material value of the stream to the community? (sic)

ANSWER TO INTERROGATORY NO. 29.: Objection, material value is not well defined, and Burton cannot answer for the entire community. However, the stream is critically important to Haderlis as a spawning stream.

INTERROGATORY NO. 30.: Please describe in detail the social value of the stream to the community? (sic)

ANSWER TO INTERROGATORY NO. 30.: Objection, social value is not well defined.

INTERROGATORY NO. 31.: Please explain any likely lost employment opportunities or revenue changes to the local economy due to the proposed application for transfer? (sic)

ANSWER TO INTERROGATORY NO. 31.: See Answer to Interrogatory No. 19 above.

INTERROGATORY NO. 32.: Will the proposed transfer adversely affect the stream's water quality?

ANSWER TO INTERROGATORY NO. 32.: Burton is without knowledge as to whether or not the transfer will adversely affect the stream's water quality over time. However, to the extent water temperature is included within the definition of water quality, we submit that it will have an impact. Initially, with the new channel, sediment will be flushed downstream and will impact water quality.

INTERROGATORY NO. 33.: If you answer to the preceding Interrogatory is in the affirmative, please state your reasons for such answer.

ANSWER TO INTERROGATORY NO. 33.: See Answer to Interrogatory No. 32 above.

INTERROGATORY NO. 34.: Do you maintain that the proposed application is not in compliance with environmental standards set by state and federal agencies?

ANSWER TO INTERROGATORY NO. 34.: Objection, this interrogatory is vague and ambiguous. To the extent the question asks whether or not the proposed application and the associated unauthorized stream channel alterations and the installation of headgates and prior use of water without authorization from the Idaho Department of Water Resources was compliant with standards set by state and federal agencies, we submit they were not. As to the current state of whether or not this project is in compliance with environmental standards set by state and federal agencies, we are without sufficient knowledge or information to know whether or not they are in compliance with state or federal agencies currently.

INTERROGATORY NO. 35.: If your answer to the preceding Interrogatory is in the affirmative, please state your reasons for such answer.

ANSWER TO INTERROGATORY NO. 35.: See Answer to Interrogatory No. 34 above.

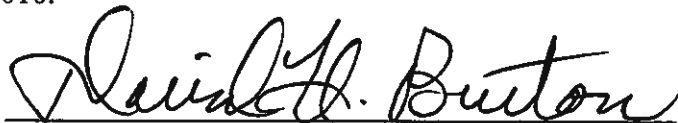
INTERROGATORY NO. 36.: Do you claim that the mosquito population will increased based on this application for transfer?

ANSWER TO INTERROGATORY NO. 36.: Yes.

REQUEST FOR PRODUCTION NO.:(sic) Please produce any scientific data, expert analysis or scholarly reports that would support your answers to Interrogatory Nos. 36 & 37.

RESPONSE TO REQUEST FOR PRODUCTION NO.: See attached newspaper articles.

DATED this 11 day of June, 2010.

A handwritten signature in cursive script, reading "David H. Burton". The signature is written in black ink and is positioned above a horizontal line.

David Burton

STATE OF IDAHO)
)ss
County of Bonneville)

David Burton, being sworn, says:

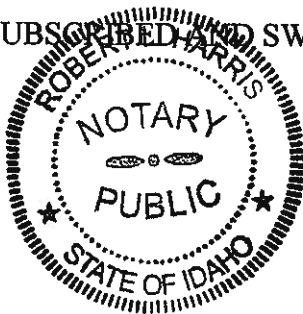
That he is a PROTESTANT in the above-entitled action; that all the statements in the foregoing Responses to Applicant's First Interrogatories and Requests for Production are true and correct to the best of his knowledge and belief.

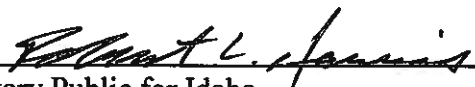
Dated this 11 day of June, 2010.



David Burton

SUBSCRIBED AND SWORN TO before me this 11th day of June, 2010.





Notary Public for Idaho
Residing at: Ammon, ID
My Commission Expires: 4/16/2010

CERTIFICATE OF MAILING

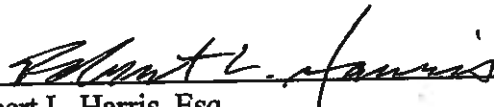
I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, on this 11th day of June, 2010.

**DOCUMENT SERVED: RESPONSE TO APPLICANT'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION
OF DOCUMENTS**

ATTORNEYS AND/OR INDIVIDUALS SERVED:

Michael Tribe
Matt Darrington
Robinson Anthon & Tribe
PO Box 396
Rupert, ID 83350

(☒) *First Class Mail*
() *Hand Delivery*
() *Facsimile*
() *Email*



Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

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