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DEPARTMENT OF
WATER RESOURCES

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Intalco Aluminum Corporation

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION)	
FOR PERMIT NO. 75-13977 IN THE)	PROTESTANT INTALCO ALUMINUM
NAME OF FORMATION CAPITAL)	CORPORATION'S FIRST RESPONSE
CORPORATION)	TO PREHEARING ORDER
_____)	

Protestant Intalco Aluminum Corporation ("Intalco") submits the following information pursuant to the March 27, 2006, Prehearing Order issued by the Idaho Department of Water Resources.

1. A summary statement of each factual and legal issue(s) that might be raised at the contested case hearing.

The following is a list of issues that may be raised by Intalco at the hearing. The issues set forth below may be modified based on the results of further discovery and information obtained concerning Formation's mining plans, including the ongoing environmental review by the U.S. Forest Service. Moreover, we understand that Formation's mining plans are currently being revised.

**PROTESTANT INTALCO ALUMINUM CORPORATION'S
FIRST RESPONSE TO PREHEARING ORDER - 1.**

- a. Whether Formation has carried its burden of demonstrating that its proposed water uses will meet the criteria of Idaho Code § 42-203A.
- b. Whether Formation's application contains insufficient information upon which the Department and interested parties can assess the potential impacts of Formation's proposed use on existing water uses and the local public interest.
- c. Whether Formation's application is accurate and complete. Formation filed its application in 2001 and has not provided any updated information since that time.
- d. Whether Formation's proposed water use conflicts with the local public interest. *See* Idaho Code §42-203A(5)(e).
- e. Whether Formation's proposed uses, and the mining plan on which the proposed uses are interrelated and dependent, will adversely impact water quality and thereby conflict and interfere with the remediation of the Blackbird Mine Site pursuant to a 1995 federal Consent Decree and 1995 and 2003 EPA Orders.
- f. Whether Formation's proposed water uses, and the mining plan on which the proposed uses are interrelated and dependent, will reduce the quantity of water available for other ongoing uses at the Blackbird Mine Site, including the diversion and extraction of water pursuant to a 1995 Consent Decree and 1995 and 2003 EPA Orders. *See* Idaho Code § 42-203A(5)(a).
- g. Whether consideration, and any approval, of Formation's water rights application should be contingent upon Formation's receipt of final authorization and approval from the U.S. Forest Service of Formation's proposed mining plans.
- h. Whether Formation's assertion, concerning the illegal diversion of water from Bucktail Creek pursuant to the ongoing CERCLA cleanup at the Blackbird Mine Site, is invalid and not relevant to this proceeding.

Intalco reserves the right to modify and supplement the foregoing list of issues as a result of information produced in discovery and information obtained relating to Formation's mining plans, including the pending proceedings before the U.S. Forest Service.

2. A list of expert witnesses that may testify at the hearing.

Intalco has not yet identified expert witnesses that may testify for Intalco at the hearing. The need for expert testimony will depend in part on the results of further discovery and information obtained concerning Formation's mining plans, including the ongoing environmental review by the U.S. Forest Service. That being said, Intalco responds as follows.

- a. Intalco may offer expert testimony on all or some of the issues listed in Section 1 above, including without limitation whether Formation's proposed water uses will have an adverse impact on the environment and the ongoing Superfund remediation at the adjacent Blackbird Mine Site and whether the proposed uses meet the requirements of Idaho Code § 42-203A.
- b. Intalco has no knowledge of expert witnesses who may testify on behalf of other parties.

Intalco reserves the right to identify expert witnesses following issuance of the draft EIS as provided in the Prehearing Order.

3. A list of technical reports of which a party might possess or might have knowledge of that may be used to establish that party's respective position in the contested case.

Intalco reserves the right to identify such documents after Formation responds fully to Intalco's discovery requests. Intalco expects that documents exchanged between Formation and the U.S. Forest Service concerning the environmental review of Formation's proposed mine will be relevant to the issues identified in Section 2 above. The following is a general list of documents that Intalco believes may be responsive.

- a. Technical reports or other documents relating to the proposed mining plan for Formation's Idaho Cobalt Project, including the proposed water uses. We understand that Formation's mining plans have changed several times and are currently being revised.
- b. Technical reports or other documents prepared by or on behalf of Formation pursuant to the Forest Service review of Formation's proposed Idaho Cobalt Project in accord with the requirements of the National Environmental Policy Act, including but not limited to all reports prepared for and/or submitted to the Forest Service as part of the preparation of the draft Environmental Impact Statement for the proposed Idaho Cobalt Project.
- c. Technical reports or other documents prepared by or on behalf of any Federal or State agency pursuant to the Forest Service review of the proposed Idaho Cobalt Project in accord with the requirements of the National Environmental Policy Act, including but not limited to all reports prepared for and/or submitted to the Forest Service as part of the preparation of the draft Environmental Impact Statement for the proposed Idaho Cobalt Project.

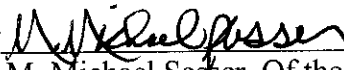
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- d. Technical reports or other documents prepared by or on behalf of Formation pursuant to its IDWR water rights application for water use associated with the Idaho Cobalt Project.

Intalco reserves the right to modify and supplement the foregoing list of categories of documents and to identify specific documents as a result of information produced in discovery and information obtained relating to Formation's mining plans, including the pending proceedings before the U.S. Forest Service.

DATED this 17th day of April, 2006.

SASSER & INGLIS, P.C.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of April, 2006, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

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Attorney for Noranda Mining, Inc., Noranda
Exploration, Inc., and Blackbird Mining Company
Limited Partnership


M. Michael Sasser

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**PROTESTANT INTALCO ALUMINUM CORPORATION'S
FIRST RESPONSE TO PREHEARING ORDER - 5.**