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August 19, 2005

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AUG 22 2005

Department of Water Resources
Southern Region

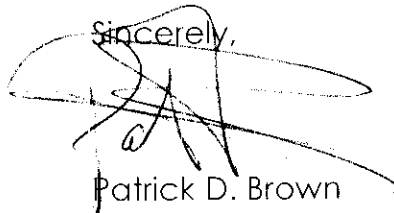
Clerk
IDAHO DEPARTMENT OF WATER RESOURCES
1341 Fillmore St., Ste. 200
Twin Falls ID 83301-3380

Re: **Matthews**, Hurd, et al , v. Millenkamp
Transfer No. 71604

Dear Clerk:

Enclosed herewith for filing please find PROTESTANTS' OBJECTION TO APPLICATION AMENDMENT, MOTION TO VACATE HEARING, MOTION TO COMPEL DISCOVERY, AND ALTERNATIVE MOTION IN LIMINE.

Thank you.

Sincerely,

Patrick D. Brown

/cb
Enc.

cc: Gary Spackman, Hearing Officer, w/enc., via fax 287-6700
Timothy J. Stover, w/enc., via fax 736-0041
Lee Halper, w/enc., via fax ~~324-4422~~ 324-2240
Steven Hurd, w/enc.
William Gulley, w/enc.
Steve Matthews, w/enc.
Doyle Schwisow, w/enc.

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Department of Water Resources
Southern Region

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Attorney for **Protestants Hurd, Gulley, Matthews & Schwisow**

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

* * * * *

In the Matter of Application for	)	
Transfer No. 71604,	)	PROTESTANTS' OBJECTION TO
William & Susan Millenkamp,	)	APPLICATION AMENDMENT,
	)	MOTION TO VACATE HEARING,
Applicants,	)	MOTION TO COMPEL DISCOVERY,
	)	AND
Steven R. Hurd, Lee Justus Halper,	)	ALTERNATIVE MOTION IN LIMINE
William F. Gulley, Steve R. Matthews, &	)	
Doyle Schwisow,	)	
	)	
Protestants.	)	

* * * * *

COME NOW Protestants Hurd, Gulley, Matthews and Schwisow and object to the Amended Application which indicates it was signed on August 8, 2005, and was received by Protestants' counsel on August 15, 2005. Protestants object because the amendment is not timely, it has not been advertised and otherwise noticed as required by the Department's rules and statute. Furthermore, proceeding on the amendment is unfair and unduly prejudicial to Protestants'

ability to prepare for hearing on August 30, especially given the insufficient discovery responses by the Applicant and Mr. Prescott's failure to produce documents subpoenaed to deposition on August 8, 2005.

Protestants also move to vacate the hearing scheduled on August 30, 2005, given the need for Applicant to supplement discovery, for documents to be obtained from Mr. Prescott which he has yet to produce, and for the Protestants and their experts to be able to receive that information, review it and prepare opinions or reports before hearing.

Protestants also move to compel discovery under IRCP 26, 33, 34 and 37. The grounds for this are that Applicant's discovery responses are incomplete, insufficient responses and should be treated as a failure to respond under IRCP 37. Protestants have not been provided with clear statements of what expert opinions may be given, other than generic responses such as Dr. Brockway will testify that all statutes have been complied with in order for the transfer to be approved. Neither Protestants nor their witnesses are in a position to know what opinions may be presented with any degree of specificity, prepare to meet those opinions. Protestants have been denied important documents pertinent to any opinions that may be given which are yet to be produced.

In the alternative, if the Hearing Officer is not inclined to compel further discovery, Protestants move in limine for the exclusion of all expert and other

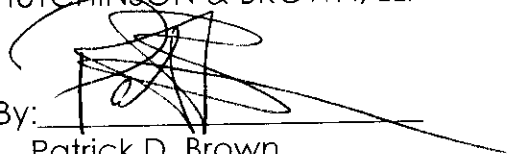
testimony and the introduction of any evidence other than that previously produced by Applicant.

Finally, Protestants move the Hearing Officer for an order compelling Mr. Prescott to obtain and produce the documents which were subpoenaed, but not produced at the August 8, 2005, deposition.

Oral argument is requested on these motions as soon as possible.

Dated this ~~15~~ ^{19th} day of August, 2005.

HUTCHINSON & BROWN, LLP

By: 
Patrick D. Brown
Attorneys for Protestants Hurd,
Gulley, Matthews & Schwisow

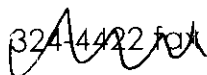
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 19th day of August, 2005, (s)he served a true and correct copy of the within and foregoing document upon the following by faxing a copy thereof to:

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