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— & —
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ATTORNEYS AT LAW

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August 19, 2005

RECEIVED

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

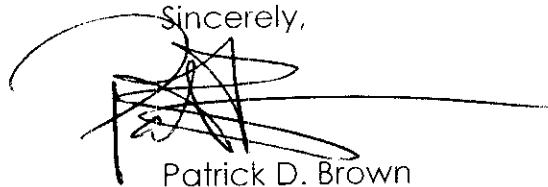
Re: **Matthews**, Hurd, et al , v. Millenkamp
Transfer No. 71604

Dear Clerk:

Enclosed herewith for filing please find BRIEF SUPPORTING PROTESTANTS'
MOTION TO COMPEL AND 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.
Steven Hurd, w/enc.
William Gulley, w/enc.
Steve Matthews, w/enc.
Doyle Schwisow, w/enc.

AUG 22 2005

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

The interrogatory responses simply reference exhibits, which is acceptable under some circumstances but only if " ... the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served ... ". IRCP 33(c). In this case, such references are clearly unacceptable, as the documents do not respond to the interrogatory in any meaningful manner. For example, Interrogatory No. 12 seeks the opinions experts may testify to at trial and the factual basis therefore. The response is generic and refers to the exhibits. From the response and exhibits, the best anyone can reasonably ascertain is that the opinion is that the transfer meets statutory requirements because Dr. Brockway will say it does.

1. Interrogatory No. 1 asks for the specific places of use of each water right proposed to be transferred. Request for Production No. 1 asked for documents which identify those rights or other supplies of water. The generic response is a reference to exhibit A, which is the compilation of documents. The only information within those documents referencing the place of use for water being transferred from the Prescott property is a map dated July 6, 2005, prepared by Brockway Engineering. Proposed Exhibit 17. Nothing identifies how many water rights have been used within the place of use or whether other supplies of water, like canal shares, are included. By not providing information as to the specific place of use for each water right or other supply of water, Applicant prevents Protestants from knowing whether not the water being transferred is supplemental or primary water on any of the places from which the transfer is proposed.
2. Request for Production No. 2 asked for documents which directly or indirectly show the **use of water** during the last 15 years. Request for Production No. 3 asked for documents which directly or indirectly show the **amount and timing of water used** during that period. The responses are a reference to "Exhibit B". Exhibit B contains no documents reflecting measurements of water, which the law requires groundwater users to do,

or other documents reflecting the use of water either on the Prescott property or the Millenkamp properties. It omits crop acreage reports and other information commonly used to show water was used.

3. Request for Production No. 4 asked for documents directly or indirectly showing the amount and timing of power and other energy used to put water on the places of use. Again, the response is of reference to Exhibit B which contains no responsive documents.
4. Request for Production No. 5 similarly asked for documents reflecting the amount and timing of water consumptively used, and Exhibit B includes no such documents.
5. Interrogatory No. 2 asks for a description of the irrigation systems used during the last 15 years, including information about configuration, capacity of pipes, ditches, the configuration of fields, type of crop grown, etc. The response is again reference to Exhibit B, which does not contain the descriptions requested.
6. Request for Production No. 6 asked for documents reflecting the information asked for in Interrogatory 2 and contains the same, incomplete response.
7. Request for Production No. 7 asks for FSA reports of acreage and arials or maps of the appeal use, with the same response. Exhibit B contains none of this information requested. Along with an amended application received on 8-15-05, Applicant did include one aerial of the Prescott property relating to the new POU and a crop acreage report for 1 year, but the aerial has the POU's colored over.
8. Request for Production No. 8 asked for documents reflecting water measurements and delivery records, but none are provided in Exhibit B.
9. Interrogatory No. 3 asks for the identification of documents which evidence this local extent of beneficial use under the right proposed to be transferred, and Request for Production No. 9 asked that those documents be produced. The responses are another reference to Exhibit B which does not contain responsive documents.
10. Interrogatory No. 4 asks for the actual period of use of the rights proposed transferred to, during last 15 years, and the responses merely reference to

Exhibit B which contains no responsive to information.

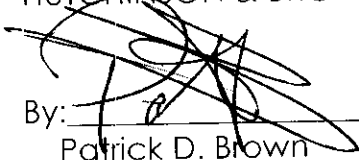
11. Request for Production No. 13, seeks documents reflecting the period during which rights were actually used, and Exhibit B contains no responsive documents.
12. Interrogatory No. 6 asks what Applicant considers to be a reasonable pumping level and what is the factual basis for the position. The response is a reference to Interrogatory No. 5 which in turn refers to Exhibit B. Exhibit B contains no responsive information.
13. Interrogatory No. 7 asks what if any mitigation is proposed to prevent injury to existing rights in the basis for any proposal. The response is directed to Exhibit B which contains no responsive information.
14. Interrogatory No. 8 asks for the factual basis and any assumptions, opinions or conclusions that they've presented at hearing in regard to whether the transfer will affect the amount of water available under existing rights or produce that amount below that historically the recorder used by those rights. Again the response is to Exhibit B through Interrogatory No. 5 and contains no responsive information.
15. Interrogatory No. 9 and Request for Production No. 18, seek information concerning the factual basis for any contention that the transfer is consistent with the conservation of water resources. The unresponsive reply is the same as the last several indicated above.
16. Interrogatory No. 10 and Request for Production No. 19, ask for documents and the basis upon which Applicant contends the transfer is in the local public interest. The response references, again, Exhibit B through Interrogatory No. 5. Those references contain no discernible basis whatsoever for the proposition that the transfer is in the local public interest.
17. Interrogatory No. 12 seeks, among other things, the skills, experience, and educational background of any expert who may testify, as well as each opinion or conclusion that may be stated, the factual basis for the testimony, the substance of the testimony and the significance of the opinion or conclusion to any issue in the case. Rather than stating what the opinions are and the factual basis for those opinions, the response is, for example, that Dr. Brockway will testify to facts and opinions regarding

the transfer and that the annual volume at the new place of use will be reduced, resulting in compliance with all statutory requirements for the transfer. The basis for compliance is said to be more particularly described in Exhibit A. Exhibit A is nothing more than the May 25, 2005, letter from Dr. Brockway to Allen Merritt regarding the amended transfer, along with the summary of the proposal and amended application. This hardly provides the factual basis for such testimony.

18. Interrogatory No. 13 asks for identification of the documents each expert has considered. The response is merely a reference to the response to Interrogatory No. 5 and Exhibit B. In short, Applicant would have us conclude that Dr. Brockway and other experts only considered Exhibit B, which clearly is not the case.
19. Request for Production Nos. 22 and 23 seek the documents reviewed and those relied upon by any expert. The response is the same reference to Interrogatory No. 5 and Exhibit B, which clearly excludes documents reviewed or relied upon, including the exhibits purportedly prepared by those experts.

Dated this 19 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 transmitting a copy as indicated, either by fax transmission or by depositing a copy thereof in the United States mail, postage prepaid, addressed to:

Timothy J. Stover
ROBERTSON, HEPWORTH, SLETTE, WORST & STOVER

161 5th Ave. S., Ste. 100
P.O. Box 1906
Twin Falls ID 83303-1906
(for Applicants)

736-0041 fax

LEE HALPER
331 South 230 West
Jerome ID 83338

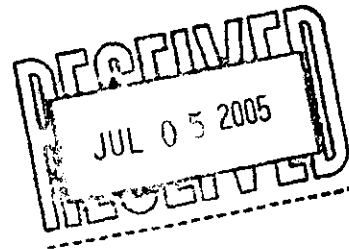
(via USPS)

GARY SPACKMAN, Hearing Office
Idaho Dept. of Water Resources
P.O. Box 83720
Boise ID 83720-0098

287-6700 fax

Connie Bell

1
2 Timothy J. Stover, ISB #4842
3 ROBERTSON, HEPWORTH, SLETTE
4 WORST & STOVER, PLLC
5 161 5th Avenue South, Suite 100
6 P.O. Box 1906
7 Twin Falls, Idaho 83303-1906
8 Telephone: (208) 734-0700
9 Facsimile: (208) 736-0041



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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 71604)

William & Susan Millenkamp,)

Applicants)

Steven R. Hurd, Lee Justus Halper, William F.)
Gulley, Steve R. Matthews, & Doyle)
Schwisow,)

Protestants.)

APPLICANTS' RESPONSE TO
INTERROGATORIES &
REQUESTS FOR PRODUCTION

Source: Groundwater
County: Jerome

COME NOW, Applicants, WILLIAM & SUSAN MILLENKAMP, ("Millenkamp") and
hereby respond to INTERROGATORIES & REQUESTS PRODUCTION TO APPLICANTS
propounded to them on April 18, 2005, by Protestants Hurd, Gulley, Matthews and Schwisow
as follows:

INTERROGATORY NO. 1. What are the specific **places of use** and each **water right**,
share or other supply of water used on the places of use from which you propose to transfer water?

ANSWER TO INTERROGATORY NO. 1: With the exception of the Application for
Transfer, a true and correct copy of which is attached hereto as **Exhibit "A"** and incorporated
herein by this reference, Applicant is unaware of or does not have custody of any information

1
2 responsive to this Interrogatory and Applicants reserve the right to supplement their answer.

3 REQUEST FOR PRODUCTION NO. 1. Produce every document in your possession,
4 custody or control which identifies the **rights**, shares or other supply of water on the places of use
5 from which you propose to transfer water.

6 RESPONSE TO REQUEST FOR PRODUCTION NO. 1: See Answer to Interrogatory
7 No. 1.

8 REQUEST FOR PRODUCTION NO. 2. Produce every document in your possession,
9 custody or control which shows, directly or indirectly, **use of water** during the last 15 years.

10 RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Although not entirely clear,
11 Applicants assume that Request for Production No. 2 refers to the water, which is proposing to be
12 transferred pursuant to Application for Transfer No. 71604. To the extent that this assumption is
13 correct, see **Exhibit "B"** attached hereto.

14 To the extent Request for Production No. 2 is requesting on a water right other than the
15 water right appurtenant to the proposed transfer pursuant to Application for Transfer No. 71604,
16 Applicants object to this Request for Production on the basis that it is overbroad, burdensome,
17 not calculated to lead to admissible evidence, and not calculated to lead to relevant evidence.
18 Discovery in this matter is continuing and Applicants reserve the right to supplement their
19 Response to this Request for Production.

20 REQUEST FOR PRODUCTION NO. 3. Produce every document in your possession,
21 custody or control which shows, directly or indirectly, the amount of timing of **water used** during
22 the last 15 years.

23 RESPONSE TO REQUEST FOR PRODCUTION NO. 3: See Response to Request for
24 Production No. 2.

25 REQUEST FOR PRODUCTION NO. 4. Produce every document in your possession,
26 custody or control which shows, directly or indirectly, the amount of timing of **power** or other
energy used during the last 15 years to put water on the places of use from which you propose to
transfer water.

RESPONSE TO REQUEST FOR PRODCUTION NO. 4: See Response to Request for
Production No. 2.

REQUEST FOR PRODUCTION NO. 5. Produce every document in your possession,

1
2 custody or control which shows, directly or indirectly, the amount of timing of **water**
3 **consumptively used** during the last 15 years.

4 RESPONSE TO REQUEST FOR PRODUCTION NO. 5: See Response to Request for
5 Production No. 2.

6 INTERROGATORY NO. 2. Fully describe the **irrigation system(s)** which has been used
7 during the last 15 years, and any changes thereto, including:

- 8 A. the type, size, configuration and capacity of pipes, ditches and other conveyance
9 systems;
10 B. the brand, type, size, configuration and capacity of any pumps, including booster
11 pumps;
12 C. the brand, type, size, configuration, number and capacity of nozzles, hoses, and/or
13 siphon tubes, furrows and corrugates used;
14 D. the layout, direction and manner in which water has been applied to each field
15 irrigated from the system(s); and
16 E. the crops grown on each field and the yields.

17 ANSWER TO INTERROGATORY NO. 2: See Response to Request for Production No.
18 2.

19 REQUEST FOR PRODUCTION NO. 6. Produce all documents that describe or show
20 the **irrigation system(s)** described in the above answer.

21 RESPONSE TO REQUEST FOR PRODUCTION NO. 6: See Response to Request for
22 Production No. 2.

23 REQUEST FOR PRODUCTION NO. 7. Produce all crop and crop yield records,
24 including without limitation all FSA "**Reports of Acreage**" and maps/aerials for each field using
25 water from the system during the last 15 years.

26 RESPONSE TO REQUEST FOR PRODUCTION NO. 7: See Response to Request for
Production No. 2.

REQUEST FOR PRODUCTION NO. 8. Produce all documents reflecting **water**
measurements, and/or delivery records, and bills or payment for delivery of water from any
entity which recorded any deliveries, through the irrigation system(s) during the last 15 years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: See Response to Request for

1
2 Production No. 2.

3 INTERROGATORY NO. 3. Identify any documents not previously identified which,
4 alone or in conjunction with other information, evidence the **historic extent of beneficial use**
5 under the water right proposed to be transferred.

6 ANSWER TO INTERROGATORY NO. 3: See Response to Request for Production No.
7 2.

8 REQUEST FOR PRODUCTION NO. 9. Produce any documents which, alone or in
9 conjunction with other information, evidence the **historic extent of beneficial use** under the
10 water right proposed to be transferred.

11 RESPONSE TO REQUEST FOR PRODCUTION NO. 9: See Response to Request for
12 Production No. 2.

13 REQUEST FOR PRODUCTION NO. 10. Produce any documents reflecting **water**
14 **master** recommendations about the proposed transfer.

15 RESPONSE TO REQUEST FOR PRODCUTION NO. 10: See Response to Request for
16 Production No. 2.

17 REQUEST FOR PRODUCTION NO. 11. Produce any documents reflecting
18 communications with anyone **who owns the right** proposed to be transferred, or rights
19 historically used in conjunction with that right, or who have any interest in the diversion works,
20 irrigation system or land on which the right has been historically used.

21 RESPONSE TO REQUEST FOR PRODCUTION NO. 11: See Response to Request for
22 Production No. 2.

23 REQUEST FOR PRODUCTION NO. 12. Produce any documents in your possession,
24 custody or control relating to the right proposed to be transferred, or rights historically used in
25 conjunction with that right, except privileged documents, used in the **Snake River Basin**
26 **Adjudication.**

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: See Response to Request for
Production No. 2.

INTERROGATORY NO. 4. For each of the last 15 years, what is the **period of use**
during which the right proposed to be transferred was actually used?

ANSWER TO INTERROGATORY NO. 4: See Response to Request for Production No.

1
2 RESPONSE TO REQUEST FOR PRODCUTION NO. 16: See Answer to Interrogatory
3 No. 5.

4 INTERROGATORY NO. 6. What do you consider to be **reasonable pumping level** for
5 any wells within five miles of the proposed point(s) of diversion and what is the factual basis for
6 your position?

7 ANSWER TO INTERROGATORY NO. 6: See Answer to Interrogatory No. 5.

8 INTERROGATORY NO. 7. What, if any, **mitigation** do you propose to prevent injury to
9 any existing water rights and what is the factual basis for your position?

10 ANSWER TO INTERROGATORY NO. 7: See Answer to Interrogatory No. 5.

11 INTERROGATORY NO. 8. If you contend the proposed transfer, if approved, will not
12 affect the amount of **water available under existing rights** nor reduce the amount available
13 below that recorded or historically used by those rights, what is the factual basis for that position
14 and what assumptions, opinion and conclusions may be presented at hearing?

15 ANSWER TO INTERROGATORY NO. 8: See Answer to Interrogatory No. 5.

16 REQUEST FOR PRODUCTION NO. 17. Produce any documents that reflect, directly or
17 indirectly, whether the amount of **water available under existing rights** or claims might be
18 reduced below the amount reported or historically used by those rights.

19 RESPONSE TO REQUEST FOR PRODCUTION NO. 17: See Answer to Interrogatory
20 No. 5.

21 INTERROGATORY NO. 9. What is the factual basis for contending that the proposed
22 transfer is consistent with the **conservation of water** resources within the State of Idaho.

23 ANSWER TO INTERROGATORY NO. 9: See Answer to Interrogatory No. 5.

24 REQUEST FOR PRODUCTION NO. 18. Produce any documents that reflect whether or
25 not the proposed transfer is consistent with the **conservation of water** resources within the State
26 of Idaho.

RESPONSE TO REQUEST FOR PRODCUTION NO. 18: See Answer to Interrogatory
No. 5.

1
2 INTERROGATORY NO. 10. On what basis do you contend that the proposed transfer is
3 in the local public interest?

4 ANSWER TO INTERROGATORY NO. 10: See Answer to Interrogatory No. 5.

5 REQUEST FOR PRODUCTION NO. 19. Produce any documents that support your
6 contention the proposed transfer is in the local public interest.

7 RESPONSE TO REQUEST FOR PRODCUTION NO. 19: See Answer to Interrogatory
8 No. 5.

9 INTERROGATORY NO. 11. If you or any other person or entity that you are aware of
10 has given any **statement**, including letters, relating to the water you propose to transfer or the use
you propose to make of that water, please state:

- 11 A. the name, address and telephone number of the person who gave the statement;
12 B. the name, address and telephone number of the person or persons whom the
13 statement was given;
14 C. the dates upon which such statement was given; and
15 D. the details of the contents of such statement.

16 ANSWER TO INTERROGATORY NO. 11: Applicants do not have any statements at
17 this time. Discovery in this matter is continuing and Applicants reserve the right to supplement
their Answer to this Interrogatory.

18 INTERROGATORY NO. 12: Please list the name, address and telephone number of each
19 **witness** you may utilize at hearing and, for each such listed witness who is or purports to be an
20 **expert** regarding any aspect of this case or may express opinions at any hearing, state in detail the
21 entirety of the skills, experience and educational back ground of the expert. For any expert who
22 may testify, state:

- 23 A. each opinion or conclusion the expert may state or imply;
24 B. the factual basis for the testimony;
25 C. the substance of the testimony; and
26 D. the significance of the opinion or conclusion to any issue in this case.

ANSWER TO INTERROGATORY NO. 12:

1
2 Chuck Brockway, Sr.
3 Brockway Engineering, PLLC
4 2016 North Washington #4
5 Twin Falls, ID 83301
6 (208) 736-8543

7 Mr. Brockway will testify as to facts and expert opinion regarding the transfer and the
8 fact that the annual volume at the new place of use will be reduced, resulting in the compliance
9 and all statutory requirements for the transfer. The transfer's compliance with said
10 requirements are more particularly described in Exhibit A.

11 George Yerion
12 Agriculture Resource Consulting
13 1976 South Lincoln
14 Jerome, ID 83338
15 (208) 324-1373

16 Mr. Yerion who is the employee of Agriculture Resource consulting and the individual
17 who drafted the site plan for the Applicants' expanded calf raising operation which is included in
18 Exhibit B. Mr. Yerion will testify regarding all aspects of the design of the facilities related to the
19 Applicant's calf raising operation.

20 Matt Thompson
21 AgTec
22 139 River Vista Place, Suite 102
23 Twin Falls, ID 83301
24 (208) 733-6372

25 Mr. Thompson is employed by Ag Tec and is the individual who worked closely with the
26 Department of Agriculture in developing the design and aided in the construction of the
27 Applicants' calf raising facility to ensure compliance with all applicable rules, regulations and
28 ordinances.

29 INTERROGATORY NO. 13: Please uniquely identify each documents, including
30 without limitation any treatises or authoritative texts, reviewed, relied on or **considered by each**
31 **expert** who may testify for you or no your behalf.

1
2 ANSWER TO INTERROGATORY NO. 13: See Answer to Interrogatory No. 5.

3 INTERROGATORY NO. 14: Please list and describe, in detail, each **exhibit** you may
4 utilize at hearing, including:

- 5 A. what the exhibit is;
6 B. what it depicts or purports to depict;
7 C. who prepared it and/or where it came from; and
8 D. who has possession or control of the original.

9 ANSWER TO INTERROGATORY NO. 14: See Answer to Interrogatory No. 5.

10 REQUEST FOR PRODUCTION NO. 20: If you, your attorney or your agents have in
11 their possession or control any **statements(s)** identified in your Answer No. 4 above, please
12 produce a copy of such statement(s).

13 RESPONSE TO REQUEST FOR PRODUCTION NO. 20: See Answer to Interrogatory
14 No. 11.

15 REQUEST FOR PRODUCTION NO. 21: Please produce a copy of each **exhibit** that
16 may be used at any hearing.

17 RESPONSE TO REQUEST FOR PRODUCTION NO. 21: See Answer to Interrogatory
18 No. 5.

19 REQUEST FOR PRODUCTION NO. 22: Please produce any document **relied upon** by
20 any expert you may have testify.

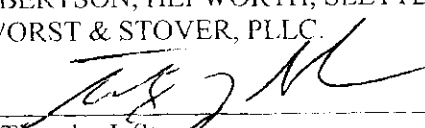
21 RESPONSE TO REQUEST FOR PRODUCTION NO. 22: See Answer to Interrogatory
22 No. 5.

23 REQUEST FOR PRODUCTION NO. 23: Please produce any document **reviewed**
24 **and/or considered** by any expert you may have testify.

25 RESPONSE TO REQUEST FOR PRODUCTION NO. 23: See Answer to Interrogatory
26 No. 5.

DATED this 1 day of July, 2005.

ROBERTSON, HEPWORTH, SLETTE
WORST & STOVER, PLLC.

By: 

Timothy J. Stover

CERTIFICATE OF SERVICE

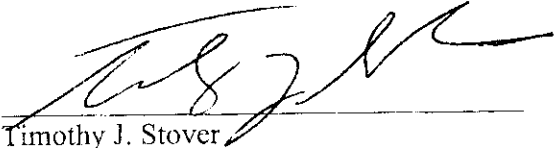
The undersigned certifies that on the 7 day of July, 2005, he caused a true and correct copy of the foregoing instrument to be served upon the following persons in the following manner:

Patrick D. Brown
HUTCHINSON & BROWN, LLP
P.O. Box 207
Twin Falls, ID 83303-0207

☐ Hand Deliver
☒ U.S. Mail
☐ Overnight Courier
☐ Facsimile Transmission

Lee Justus Halper
331 S 230 W
Jerome, ID 83338

☐ Hand Deliver
☒ U.S. Mail
☐ Overnight Courier
☐ Facsimile Transmission


Timothy J. Stover