

Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for Chobani, LLC

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

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 47-17745 IN THE
NAME OF CHOBANI, LLC

CHOBANI'S FIRST
SUPPLEMENTAL RESPONSES TO
CITY OF TWIN FALLS' FIRST SET
OF DISCOVERY REQUESTS

The following are Chobani LLC's ("Chobani") first supplemental objections and responses ("First Supplemental Responses") to City of Twin Falls' First Discovery Requests dated November 21, 2023 ("Discovery Requests").

PRELIMINARY STATEMENT

Chobani, based upon its current understanding and belief of the facts and the information presently known, responds and objects to the Discovery Requests as set forth herein and in *Chobani's Responses to City of Twin Falls' First Set of Discovery Requests* dated December 5, 2023 ("*Chobani's Initial Responses*"). All matters set forth in the Preliminary Statement and General Objections sections of *Chobani's Initial Responses* are incorporated herein by reference. Chobani specifically incorporates all objections set forth in *Chobani's Initial Responses*. The supplemental responses contained herein are subject to those objections.

These First Supplemental Responses are based upon diligent exploration by Chobani and its counsel but reflect only the current state of Chobani's exploration and understanding and belief as to the matters of inquiry. It is anticipated that further discovery,

independent investigation, and consultation with experts may supply additional facts, add meaning to known facts, and establish entirely new factual conclusions and legal contentions, all of which may lead to substantial additions to, modifications of and variations from these Responses. These First Supplemental Responses are, therefore, made without prejudice to Chobani's right to produce evidence of subsequently discovered documents or facts which may become available.

GENERAL OBJECTIONS

Chobani asserts the following General Objections to each of the interrogatories and requests propounded in the Discovery Requests. These objections apply to each interrogatory and request for production and may or may not be reasserted or repeated specifically in each response. Each of these objections is incorporated into each response below as though set forth verbatim therein:

1. Chobani objects to the Discovery Requests, and to the definitions and instructions, to the extent they purport to require discovery responses beyond those required under the Rules of Procedure of the Idaho Department of Water Resources (IDAPA 37.01.01, hereinafter the "IDWR Rules"), the October 13, 2023 *Scheduling Order, Order Authorizing Discovery, Notice of Status Conference, and Notice of Hearing* ("*Scheduling Order*") filed in this matter, and the applicable Idaho Rules of Civil Procedure. These responses are provided in accordance with the IDWR Rules, the *Scheduling Order*, and any applicable provisions of Idaho Rules of Civil Procedure irrespective of any interrogatories, requests, definitions, and instructions that accompanied 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 or administrative hearing. All such objections are reserved and may be interposed at the time of the hearing.

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

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

5. In responding to the interrogatories and requests, unless otherwise noted, Chobani will utilize the terms defined in the Discovery Requests and Idaho law.

6. Chobani reserves the right to supplement these responses pursuant to the IDWR Rules and the applicable Idaho Rules of Civil Procedure.

7. Consistent with the *Scheduling Order* and the parties' practice in this case, Chobani will be responding to the Discovery Requests electronically and will also provide requested documents in the same fashion.

8. Nothing herein is intended to be nor should be construed as a waiver of any attorney-client privilege, work-product protection, or the right of privacy and, to the extent the Discovery Requests may be construed as calling for the disclosure of information protected by such privilege and/or doctrine, a General Objection to each and every of the Discovery Requests is hereby imposed.

Without waiving any General Objection, Chobani responds to the Discovery Requests as follows.

INTERROGATORIES

INTERROGATORY NO. 1: For each person answering this Discovery Request, state:

- a. the person's complete name and age;
- b. the person's residence;
- c. the person's business address;
- d. whether the person is an employee or agent for the Applicant; and
- e. any position held by the person with the Applicant.

RESPONSE TO INTERROGATORY NO. 1: Chobani is not answering this interrogatory per email communication from counsel for City of Twin Falls (Travis Thompson) to counsel for Chobani (Michael Lawrence) dated December 1, 2023.

INTERROGATORY NO. 2: State whether the person answering these interrogatories is using firsthand information to answer, and if not, state:

- a. the name of every person who supplied information for answers to these interrogatories; and
- b. specify for which interrogatories that person has supplied information.

RESPONSE TO INTERROGATORY NO. 2: Unless otherwise noted, Chobani's counsel Michael Lawrence is using firsthand information to answer these interrogatories, as such information is further understood by the pleadings, expert reports, and orders issued by the Idaho Department of Water Resources ("IDWR") in the above-captioned matter, as well as the files of the Department.

INTERROGATORY NO. 3: Please state the name and last known address of each person consulted as an expert witness on your behalf concerning this matter, and with respect to each, describe in detail all opinions and inferences to which the expert may testify and the facts and data upon which the expert relies.

RESPONSE TO INTERROGATORY NO. 3: Terry Scanlan, P.E., P.G., HDR, Inc., 412 E. Parkcenter Blvd., Suite 100, Boise, ID 83706-6659. Mr. Scanlan's opinions and inferences, and the facts and data he relied upon, are contained in his expert report dated October 20, 2023, which was served on the parties.

In addition, the following persons may testify as necessary to facts and/or opinions related to the water reuse project and facilities related to the Application, all of which have been disclosed to the City of Twin Falls previously through informal settlement proceedings and/or informal information exchange:

- Dillon Allen, Senior Project Manager at Chobani, 3450 Kimberly Road E., Twin Falls, ID 83301;

- Mark Eberhard, Senior Director of Engineering & Project Management at Chobani, 3450 Kimberly Road E., Twin Falls, ID 83301;
- Hugh Roddy, Senior Vice President, Global Engineering & Project Management at Chobani, 3450 Kimberly Road E., Twin Falls, ID 83301;
- Gregg Jones, Senior Hydrogeologist at HDR, Inc., consultant for Chobani, 412 E. Parkcenter Blvd., Suite 100, Boise, ID 83706-6659;
- Josh Reed, Senior Project Manager, Industrial Water Group, at Brown and Caldwell, consultant for Chobani, 1290 W. Myrtle St., Suite 340, Boise, ID 83702; and
- Rebecca Maco, Senior Director Client Services, Industrial Water Group, at Brown and Caldwell, consultant for Chobani, 701 Pike Street, Seattle, WA 98101.

INTERROGATORY NO. 4: Please name and identify the last known address and phone number of each person you may call as a lay witness at the hearing in this matter and briefly state the facts, and any opinion testimony, to which you expect each such witness to testify.

RESPONSE TO INTERROGATORY NO. 4: Chobani will identify the witnesses it plans to call at the hearing consistent with the deadlines in the *Scheduling Order*. See also the response to Interrogatory No. 3.

INTERROGATORY NO. 5: Please describe your contentions and the basis for each such contention regarding each of the criteria for approval of the Application set forth in Idaho Code § 42-203A(5).

RESPONSE TO INTERROGATORY NO. 5: Objection on grounds that this interrogatory requests legal conclusions. Notwithstanding the objection:

- (a) Chobani's Application, if approved, will not reduce the quantity of water under existing water rights because Chobani plans to mitigate for all groundwater withdrawals by injecting the same or greater amounts of water into the aquifer;
- (b) The water supply itself is sufficient for the purpose for which it is sought to be appropriated under the Application because Chobani will inject at least as much water into the aquifer as it withdraws;
- (c) The Application is made in good faith and not for delay or speculative purposes as Chobani owns the property upon which the proposed points of diversion and place of use are located, and is seeking authorization from the Idaho Department of Environmental Quality and IDWR to produce, use, and inject purified food grade water at its facility;
- (d) Chobani has sufficient financial resources to complete the work proposed in the Application, as the water treatment facilities to produce purified food grade water are already constructed and Chobani already has constructed multiple wells for test pumping;
- (e) Chobani's proposed use under the Application will not conflict with the local public interest as defined in section 42-202B, Idaho Code, as it proposes to withdraw less water than it injects into the aquifer and it proposes to inject water that is of the same or better quality than groundwater existing in the aquifer;
- (f) Chobani's proposed use under the Application promotes the conservation of water resources within the state of Idaho by maximizing the use of water at its facility and by potentially increasing the amount of water in the aquifer;

(g) Chobani's proposed use under the Application is not outside of the watershed or local area where the source of water originates and therefore will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates.

INTERROGATORY NO. 6: Please describe all facts that tend to support or discredit each basis for approval of the Application under the criteria set forth in Idaho Code § 42-203A(5).

RESPONSE TO INTERROGATORY NO. 6: See the expert report referenced in Response to Interrogatory No. 3. See also Chobani Water Reuse Preliminary Technical Report (Brown and Caldwell, October 29, 2021) which already has been provided to the City of Twin Falls. Mr. Scanlan and Mr. Reed supplied information for this response.

INTERROGATORY NO. 7: Please identify in detail, including the GPS locations if available, the proposed locations for the proposed points of diversion for the Application.

RESPONSE TO INTERROGATORY NO. 7: See the expert report referenced in Response to Interrogatory No. 3. GPS locations are provided on well driller reports for existing wells. However, Chobani will potentially drill additional wells anywhere within the quarter-quarter sections listed as points of diversion on the application for permit. Mr. Scanlan supplied information for this response.

INTERROGATORY NO. 8: Please identify in detail, including the GPS locations if available, the proposed locations for the proposed injection wells related to the mitigation plan for the Application.

RESPONSE TO INTERROGATORY NO. 8: See the expert report referenced in Response to Interrogatory No. 3. GPS locations are provided on well driller reports for existing

wells. However, Chobani will potentially drill additional wells anywhere within the quarter-quarter sections listed as points of diversion on the application for permit. Mr. Scanlan supplied information for this response.

INTERROGATORY NO. 9: Please describe precisely and in detail how the Applicant proposes to inject its treated wastewater pursuant to the proposed mitigation plan accompanying the Application.

RESPONSE TO INTERROGATORY NO. 9: See the expert report referenced in Response to Interrogatory No. 3. Also, purified food grade process water will be delivered to one or more injection wells. Water will be injected through pipe extending below the static water level. The injection wells will likely serve as production wells also. Injection and production pumping rates and volumes will be measured using totalizing flow meters and recorded daily. Mr. Scanlan supplied information for this response.

INTERROGATORY NO. 10: Please identify the authorizations, including water rights, that the Applicant has received or plans to receive for purposes of injection of its treated wastewater pursuant to the proposed mitigation plan accompanying the Application.

RESPONSE TO INTERROGATORY NO. 10: Chobani does not intend to seek any water rights for the injection of its treated wastewater because it is not required to under Idaho law. At this time, prior to injecting any treated wastewater, Chobani anticipates obtaining authorization from the Idaho Department of Environmental Quality (most likely in the form of a reuse permit) and injection well permit(s) from IDWR. Mr. Scanlan, Mr. Reed, and Mr. Allen supplied information for this response.

INTERROGATORY NO. 11: Please describe in detail why you contend the Application is not prohibited by the *Amended Snake River Bain Moratorium Order* (Oct. 21, 2022).

RESPONSE TO INTERROGATORY NO. 11: Objection on grounds that this interrogatory requests legal conclusions. Notwithstanding the objection, the Application is not prohibited by the *Amended Snake River Bain Moratorium Order* (Oct. 21, 2022) because it proposes to fully mitigate for its depletions to the groundwater source in time, quantity, and location.

INTERROGATORY NO. 12: Please describe in detail how the proposed mitigation in you plan will mitigate for the proposed use under the Application “in time, in kind, and in place”?

RESPONSE TO INTERROGATORY NO. 12: Objection on grounds that this interrogatory requests legal conclusions. Notwithstanding the objection: the proposed mitigation will mitigate for the proposed use “in time” because the injection of mitigation water into the aquifer will occur before any water is withdrawn, “in kind” because the mitigation water injected into the aquifer will be of better quality than the groundwater existing in the aquifer, and “in place” because the mitigation water will be injected into the same aquifer zones as the withdrawing wells and will be injected using one or more wells located within the same property (Chobani’s property) as the withdrawing wells and perhaps even using the same wells for injection and withdrawal. Mr. Scanlan supplied information for this response.

INTERROGATORY NO. 13: Please describe in detail the Applicant’s current water supplies and water use requirements for all water uses at its facility in Twin Falls, Idaho.

RESPONSE TO INTERROGATORY NO. 13: Chobani currently receives water from the City of Twin Falls municipal water system. In addition, Chobani receives some water from the raw milk used to produce yogurt. Chobani currently uses City of Twin Falls municipal water supply for all processes at its production facility in Twin Falls, including clean-in-place (aka

“CIP”), food contact, food ingredient, and utilities. On average, Chobani currently uses approximately 1.7 million gallons per day with peaks of approximately 2 million gallons per day at the Twin Falls facility. Mr. Allen and Mr. Eberhard supplied information for this response.

INTERROGATORY NO. 14: Please describe in detail the Applicant’s projected water supplies and water use requirements for all uses at its facility in Twin Falls, Idaho within the next five (5), ten (10), and twenty (20) years.

RESPONSE TO INTERROGATORY NO. 14: Chobani currently does not have any projections for water supply or use at its Twin Falls facility for the next five (5), ten (10), and twenty (20) years. Chobani is currently forecasting two (2) years out with an approximate 10% increase in water usage at the Twin Falls facility. Mr. Allen and Mr. Eberhard with Chobani supplied information for this response.

INTERROGATORY NO. 15: Please describe in detail your contention, if any, that water supplied by the City of Twin Falls will not meet the Applicant’s water use requirements identified in INTERROGATORY No. 14.

RESPONSE TO INTERROGATORY NO. 15: Chobani objects on grounds that the amount of water that it may purchase from the City of Twin Falls is irrelevant to this proceeding. Notwithstanding the objection, Chobani has exceeded the limits of its contractual water supply from the City of Twin Falls in the past and desires to reuse water supplies to avoid such circumstances in the future. In addition, Chobani desires to ensure that its operations are not disrupted if the City of Twin Falls water supply becomes unavailable for any reason. Mr. Allen and Mr. Eberhard with Chobani supplied information for this response.

INTERROGATORY NO. 16: Please describe precisely and in detail any and all communications you have had with the Director or any other staff at the Idaho Department of Water Resources regarding the Application of this contested case.

RESPONSE TO INTERROGATORY NO. 16: Chobani and its agents, including Givens Pursley LLP, HDR Engineering, and Brown and Caldwell, met with Idaho Department of Water Resources (“IDWR”) staff on March 10, 2021. This was a pre-application meeting at which the Application’s injection and withdrawal proposal was presented, consistent with the power point presentation provided with these Responses.

HDR Engineering, on behalf of Chobani, met with IDWR Underground Injection Control staff to discuss injection well permitting on July 6, 2023.

In addition, the following meetings with IDWR have occurred, all of which the protestants also attended and are familiar with the details and communications:

- A prehearing conference with IDWR and protestants was held on February 3, 2022.
- A Status and Scheduling Conference with IDWR and the protestants occurred on April 5, 2022.
- A second Status Conference with IDWR and the protestants was held on November 7, 2022.
- Informal settlement conferences with IDWR and the protestants on December 16, 2022, January 23, 2023, February 28, 2023, July 13, 2023, and August 25, 2023.
- A prehearing conference with IDWR and the protestants was held on October 11, 2023.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: Please provide all documents relied on in answering the above INTERROGATORIES.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Chobani provided documents responsive to this request on November 6, 2023 in response to the City of Twin Falls' informal discovery requests. In addition, Chobani is providing the presentation referenced in Interrogatory No. 16 with these Responses.

FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO.

1: Chobani is providing with these *First Supplemental Responses* the following documents which may be responsive to Request for Production No. 1:

1. Email chain ending 12/4/2023 from Dillon Allen to Tressa Nicholas at Idaho Department of Environmental Quality re: the "Road Map to Permit Purified Food Grade Water";
2. Chobani Water Center Performance Test Results Draft dated 8/31/2023;
3. TrojanUVFlex100 Advanced Oxidation System Performance Test Report dated 9/8/2023;
4. Food Safety Plan: Purified Food Grade Process Water, undated; and
5. Water Testing Results Final 102423.

Mr. Reed supplied information for this response.

REQUEST FOR PRODUCTION NO. 2: Please provide all documents that tend to support or discredit each basis for approval of the Application under the criteria set forth in Idaho Code § 42-203A(5).

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: See Response to Request for Production No. 1.

FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO.

2: See First Supplemental Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 3: For each expert who has consulted you in this contested case, please produce all data or information considered by the expert in forming their opinions, including any and all reports or exhibits to be used as a summary or to support the expert's opinion.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: See Response to Request for Production No. 1.

FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO.

3: See First Supplemental Response to Request for Production No. 1.

DATED this 8th day of December, 2023.

GIVENS PURSLEY LLP



By: _____

Michael P. Lawrence

Attorneys for Chobani, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 8th day of December, 2023, I served a true and correct copy of the above and foregoing document via the manner listed below to the following:

Travis L. Thompson
MARTEN LAW LLP
163 Second Ave. W.
PO Box 63
Twin Falls, ID 83303-0063
tthompson@martenlaw.com

DOCUMENT SERVED:

<input type="checkbox"/>	U.S. Mail, postage prepaid
<input type="checkbox"/>	Express Mail
<input type="checkbox"/>	Hand Delivery
<input type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	Email



By: _____
Michael P. Lawrence