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JAN 28 2005

DEPARTMENT OF
WATER RESOURCES

Josephine P. Beeman (Idaho Bar # 1806)
Beeman & Associates, P.C.
409 West Jefferson Street
Boise, Idaho 83702
TELEPHONE: (208) 331-0950
FACSIMILE: (208) 331-0954
EMAIL: office@beemanlaw.com

Sarah A. Klahn
William A. Hillhouse II
Amy W. Beatie
White & Jankowski, LLP
511 Sixteenth Street, Suite 500
Denver, Colorado 80202
TELEPHONE: (303) 595-9441
FACSIMILE: (303) 825-5632
EMAIL: sarahk@white-jankowski.com

Attorneys for City of Pocatello

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF
WATER TO VARIOUS WATER RIGHTS
HELD BY OR FOR THE BENEFIT OF A & B
IRRIGATION DISTRICT, AMERICAN FALLS
RESERVOIR DISTRICT #2, BURLEY
IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, MINIDOKA
IRRIGATION DISTRICT, NORTH SIDE
CANAL COMPANY, and TWIN FALLS
CANAL COMPANY.

**AFFIDAVIT OF GREGORY K.
SULLIVAN, P.E. IN SUPPORT OF
IGWA'S AND POCATELLO'S MOTION
TO COMPEL PRODUCTION OF
DOCUMENTS OR IN THE
ALTERNATIVE MOTION *IN LIMINE***

STATE OF IDAHO)
) ss:
COUNTY OF ADA)

I, Gregory K. Sullivan, P.E., being first duly sworn upon oath depose and state as follows:

1. I am a senior water resources engineer and principal of Spronk Water Engineers, Inc. located in Denver, Colorado. I have a Bachelor of Science Degree in Civil Engineering from Colorado State University, and a Master of Science Degree from the University of Colorado. I am a licensed professional engineer in Idaho, Colorado and Nevada.

2. I have over 20 years experience as an engineer working in areas of water supply planning, water resources engineering and water rights engineering. I have worked in Idaho for over 10 years on various matters including the following:
 - a. Assisted in the development of various water right claims in the Snake River Basin Adjudication (“SRBA”).
 - b. Reviewed and assisted in filing objections to various water right claims in the SRBA.
 - c. Provided peer review of the development and application of the Eastern Snake Plain Aquifer Ground Water Model (“ESPAM”) as a member of the Eastern Snake Hydrologic Modeling Committee.
 - d. Assisted legal counsel in developing and reviewing the Idaho Conjunctive Management Rules.
 - e. Provided water supply planning and water rights engineering assistance to various irrigation, municipal and industrial water users, including the City of Pocatello.
3. My experience includes extensive work on matters related to conjunctive management and administration of ground water rights and surface water rights, including the following:
 - a. Development and operation of the Hydrologic-Institutional Model of the Arkansas River Basin in Colorado. This model was developed to support the State of Kansas’ claims against the State of Colorado relating to post-compact well development in violation of the Arkansas River Compact. The model has been adopted by the States and the U.S. Supreme Court as the tool for determining Arkansas River compact compliance.
 - b. Review of Arkansas River basin replacement water plans prepared by Colorado well users.
 - c. Development and review of various plans for augmentation in Colorado that allow out-of-priority diversions of tributary ground water provided that injury to senior surface water users is avoided.
 - d. Development of a conjunctive use model of the lower Rio Grande to assess the effects of operations of surface water and ground water uses in New Mexico on deliveries to Texas and Mexico.
4. I have been retained in this case by the City of Pocatello (“Pocatello”) to provide expert analysis and opinion in the fields of water resources, water engineering, surface water hydrology, ground water hydrology, consumptive use, crop requirements, water system and reservoir operations, farm application and system efficiencies, conjunctive management, mitigation of injury, water rights modeling, and related subjects; and to

respond to the analyses prepared by experts retained by the Surface Water Coalition ("SWC").

5. Pursuant to a January 10, 2006 Agreement ("Expert Disclosure Agreement") between the SWC, Pocatello and the Idaho Ground Water Appropriators, Inc. ("IGWA"), the SWC agreed to "[p]rovide or identify for ready access to IGWA and to Pocatello the data or other information considered by the witness in forming the opinions and relating to those subjects set out in the attached Exhibits A and B." See Affidavit of Brad V. Sneed, Exhibit B (Expert Disclosure Agreement).
6. The information, data, and analysis that was to be provided by the SWC to Pocatello is listed in Exhibit B to the Expert Disclosure Agreement, and generally consists of: (a) certain documents identified in the bibliography included in the December 30, 2005 SWC Expert Report ("SWC Report"); (b) historical diversion records, and summaries and analyses thereof; (c) data and analyses of irrigation diversion requirements for the SWC members; and (d) Water District 01 Accounting Program analyses described in Chapter 9 of the SWC Report and procedures used to perform said analyses.
7. On or about January 16, 2006, SWC supplied Pocatello with a compact disc purportedly containing the information and data listed in Exhibit B to the Expert Disclosure Agreement.
8. I have reviewed the information on the compact disc that was submitted to Pocatello by the SWC on or about January 16, 2006. The information, data and analysis submitted by SWC to Pocatello are incomplete, inadequate and insufficient for the purposes of reviewing the data and analyses performed by the SWC's experts.
 - a. Pocatello requested copies of 36 documents listed in the bibliography attached to the SWC Report. The SWC provided copies of two of the 36 documents requested and indicated that the remainder of the documents "[a]re in the public domain and can be obtained from libraries or on-line sources." See Affidavit of Brad V. Sneed, Exhibit I (SWC compact disk materials excerpt). In my experience it is customary for parties in litigation to provide copies of documents that their experts relied on when said documents are requested by another party. Given the tight schedule between the expert report submissions and the rebuttal deadline in this case, it is unreasonable to require Pocatello to locate and obtain copies of documents on which the SWC experts relied in forming their opinions.
 - b. Pocatello requested electronic data, summaries, spreadsheets and charts relating to (a) historical diversions in Idaho Water District 01, (b) historical diversions by the SWC members (Tables 8-1 through 8-14 and Figures 8-1 through 8-36 of the SWC Report) and (c) irrigation diversion requirements for the SWC members (Tables 8-15 and 8-16 of the SWC Report). In response to this request, the SWC sent the following Excel spreadsheets:
 - i. Annual diversions.xls

- ii. Daily natural flow diversions.xls
 - iii. Monthly diversions.xls
 - iv. Number of natural diversion days.xls
 - v. Tables and figures.xls
 - vi. A&B Water Requirements–CUREVL.xls
 - vii. AFRD2 Water Requirements–CUREVL.xls
 - viii. Burley ID Water Requirements–CUREVL.xls
 - ix. Milner Water Requirements–CUREVL.xls
 - x. Minidoka Water Requirements–CUREVL.xls
 - xi. NSCC Water Requirements–CUREVL.xls
 - xii. TFCC Water Requirements–CUREVL.xls
- c. The spreadsheets listed above contain diversion data and irrigation diversion requirement data for the SWC members. However, it is not possible to adequately review the data and analyses, nor is it possible to efficiently replicate the work of SWC’s experts contained in the spreadsheets because the spreadsheets were all provided in a password-protected form that precludes (a) tabulation and analysis of the data provided and (b) examination and review of the formulas in the spreadsheets. In the form provided, the spreadsheets are essentially images on a series of pages incapable of being critically examined and analyzed. In my experience, it is routine for experts to produce the spreadsheets underlying their conclusions and opinions in a form that the opposing experts can review and manipulate.
- d. These spreadsheets can be provided with minimal effort on the part of the SWC experts. It would take a week or more to recreate the spreadsheets through manual input of the SWC data and formulas.
- e. In response to Pocatello’s requests for electronic versions of the charts from Chapter 8 of the SWC Report, the SWC indicated that “[t]he data presented in Tables 8-1 to 8-14 are already provided in electronic format in the *.pdf submittal. The data used for Figures 8-1 to 8-36 is attached. The charts have already been submitted in electronic format in the *.pdf copy of the report.” See Affidavit of Brad V. Sneed, Exhibit I (SWC compact disk materials excerpts). Pocatello’s request was intended to elicit the referenced tables and charts as components of the spreadsheets in which

they were prepared so that Pocatello's experts could verify that the information in the tables and charts accurately portrays the data that the SWC purported to present.

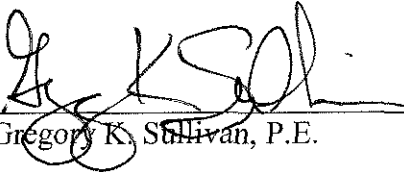
- f. In contrast to the actions of the SWC, the Pocatello experts provided complete and non-password-protected copies of the spreadsheets requested by the SWC that were used by the Pocatello experts in their analyses of the adequacy of the irrigation water supply of the SWC members.
 - g. In response to Pocatello's request for (a) data, input and output files, and summaries thereof for the Accounting Program analyses described in Chapter 9 of the SWC Report and (b) all materials describing how the accounting program analyses described in Chapter 9 were performed, the SWC submitted a collection of input and output files for the District 01 Accounting Program. They did not provide a copy of the accounting program itself (either source code or executable version). In addition, they may not have provided all of the input files necessary to run the program. Finally, the SWC did not provide sufficient description of the procedures they used to perform the accounting analyses described in Chapter 9.
9. On January 19, 2006, Pocatello sent a letter to the SWC describing the deficiencies in the materials received on the SWC compact disk ("Expert Disclosure Letter"). See Affidavit of Brad V. Sneed, Exhibit E (Expert Disclosure Letter). In response, on January 21, 2006, the SWC emailed IGWA and Pocatello a memorandum containing reference to information on an FTP site and procedures to access the site. See Affidavit of Brad V. Sneed, Exhibit H (SWC Memorandum). However, this additional information still does not provide me and my staff with the necessary information in a format that will allow us to efficiently reproduce and evaluate the work of the SWC's experts. For example:
- a. The FTP site contained electronic copies of only 21 of the 36 documents requested from the bibliography of the SWC Report (see paragraph 8.a., above). A list of the documents that were provided and the remaining 15 documents that were not provided is attached hereto as Exhibit A.
 - b. The Expert Disclosure Letter included a request for maps of the canal and lateral reaches used by the SWC's experts in estimating canal seepage losses by the Worstell method for each of the SWC members. Electronic images of the canal and lateral reaches were provided through access to the FTP site. However, the maps are not sufficiently detailed to allow the seepage calculations to be reviewed. An example of the maps is provided as Exhibit B attached hereto.
 - c. The SWC provided limited additional description of the procedures and data used to develop their estimates of irrigated diversion requirements for each of the SWC members. Included in this description were references to publications and personal communications used in developing their estimates of field application efficiencies used in diversion requirement analyses. Pocatello requests that copies of the referenced documents be provided. In addition, Pocatello requests copies of all written documents from the managers of the SWC members and notes from all

verbal communications with the managers that were relied on in developing the field application efficiency estimates be provided.

- d. The SWC still has not produced spreadsheets used in their analyses in a usable form (see paragraphs 8.c., 8.d., and 8.e., above).

I hereby certify that the facts set forth above are true and correct to the best of my information and belief.

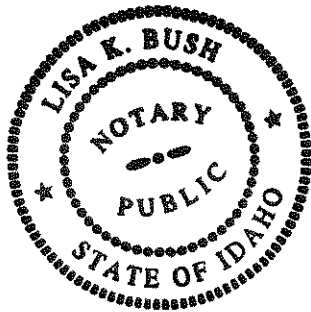
DATED this 24th day of January, 2006.

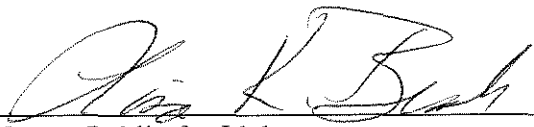


Gregory K. Sullivan, P.E.

SUBSCRIBED AND SWORN TO before me this 24th day of January, 2006.

Witness my hand and official seal.





Notary Public for Idaho
Residing at Bonito
My commission expires: 7/12/06

EXHIBIT A

SWC Expert Report Bibliography Documents Provided At Pocatello's Request

First Response, 1/16/2006

| Bibliography Reference | File Name |
|------------------------|-----------|
| HDR, 1998 | |
| McGuire, 2005 | |

Second Response, 1/21/2006 (Info Request Directory)

| Bibliography Reference | File Name |
|---|---|
| Alley, 1999 | circ_1186.djvu |
| Bendixsen, 1994 | gw_conditions_oakley fan.pdf |
| Mundorff, 1964 | Mundorff, MJ Ground water for irrigation in the Snake River Basin in Idaho wsp1654.djvu |
| Mundorff, 1967 | Mundorff, MJ Groundwater in vicinity of American Falls wsp_1846.djvu |
| Nace, 1958 | Nace, RL Records of springs in the Snake River Valley wsp_1463.djvu |
| National Marine Fisheries Service, 2005 | FinalUpperSnakeBiop033105 (National Marine Fisheries Service & NOAA).pdf |
| Olenichak, 2005 | 1012olen.asc |
| Reclamation, 1935 | 1-100 Upper Snake River Storage Investigations July 1935.pdf |
| Reclamation, 1948 (sic) | 190-040 Palisades Reservoir, General Plan Oct 1946.pdf |
| Reclamation, 1948 (sic) - DRAFT | Bur of Rec Wat Sup for Palisades Reservoir 699-931.pdf |
| Reclamation, 1968 | 190-100 Status Report August 1968.pdf |
| * Sandoval, 1992 | WD1 Sandoval Thesis.tif |
| Schmidt, 2003 - DRAFT | Writeup_12-3-03_Final.DOC |
| Stearns, 1938 | Stearns, HT Geology and ground water resources of the Snake River Plain wsp_774.djvu |
| * Sutter, 1980 | Sutter_1980(pages_out_of_order).pdf |
| Thomas, 1969 | wib09-inflow_snake_milner_kinghill.pdf |
| Young, 1989 | Young, H.W. Hydrology of the Oakley Fan Area wrir_88_4065.djvu |

Second Response, 1/21/2006 (Info Request Directory)

| Bibliography Reference | File Name |
|------------------------|--|
| Barnett, 2000 | Aberdeen-Springfield Canal Report.pdf |
| Janczak, 2001 (part 1) | Relationships_Spring Discharge & Aquifer Water Levels_Thousand Springs_1.pdf |
| Janczak, 2001 (part 2) | Relationships_Spring Discharge & Aquifer Water Levels_Thousand Springs_2.pdf |
| Janczak, 2001 (part 3) | Relationships_Spring Discharge & Aquifer Water Levels_Thousand Springs_3.pdf |
| Steward, 1927 | Report of the Water Situation along the Snake River.pdf |
| Olenichak, 1998b | Snake River Reach Gains Report.pdf |
| Rassier, 2004 | The Water Report_12-15-04.pdf |

Documents Not Provided

| Bibliography Reference | File Name |
|--|-----------|
| Abdulla, 1997 | |
| Andreadis, 2005 | |
| Bredehoeft, 1982 | |
| Claiborn, 1975 | |
| Hamlet, 1999 | |
| Karl, 1985 | |
| LaRue, 1905 | |
| Moreland, 1976 | |
| Nijssen, 1997 | |
| Olenichak, 1998a | |
| Sophocleous, 1997 | |
| State of Idaho Department of Reclamation, 1939-1970 | |
| State of Idaho Department of Reclamation, 1971- 1974 | |
| Steward, no date | |
| Wood, 1997 | |

* Document provided by SWC, but not requested by Pocatello.

EXHIBIT B

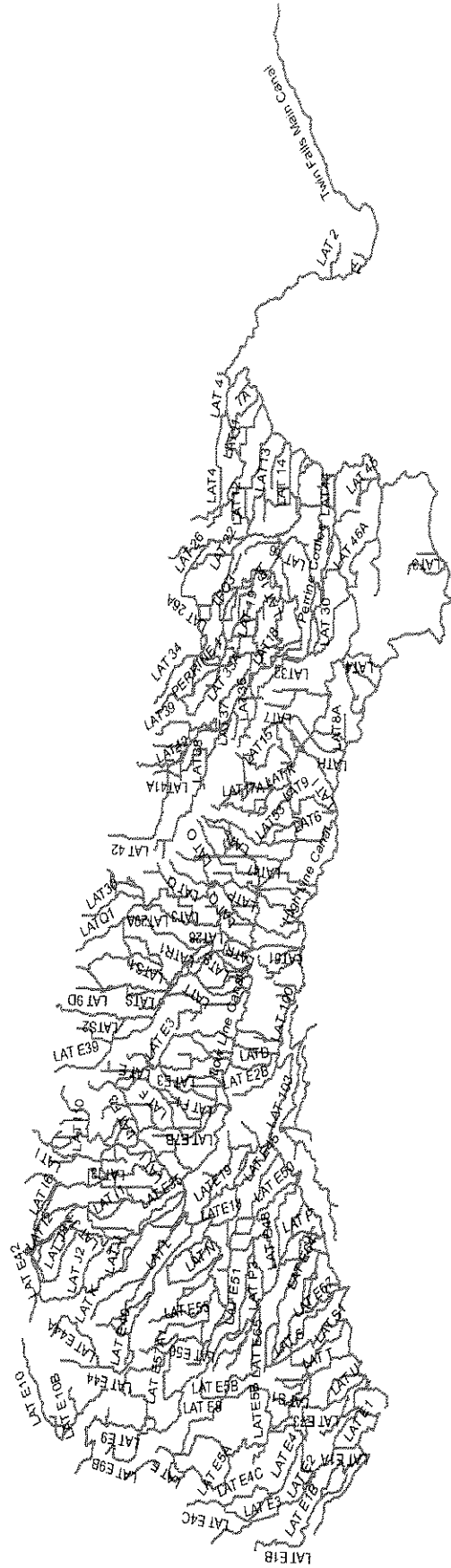


Exhibit B - Twin Falls CC C&L.jpg

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January 2006, I served a true and correct copy of the foregoing by delivering it to the following individuals by the method indicated below, addressed as stated.

| | | |
|-------------------------------------|--------------|----------------|
| Mr. Karl J. Dreher, Director | _____ | U.S. Mail |
| Idaho Department of Water Resources | _____ | Facsimile |
| 322 East Front Street | _____ | Overnight Mail |
| P.O. Box 83720 | <u> X </u> | Hand Delivery |
| Boise, ID 83720-0098 | _____ | E-mail |

| | | |
|----------------------------|--------------|----------------|
| C. Tom Arkoosh, Esq. | <u> X </u> | U.S. Mail |
| Arkoosh Law Offices, Chtd. | _____ | Facsimile |
| 301 Main Street | _____ | Overnight Mail |
| P.O. Box 32 | _____ | Hand Delivery |
| Gooding, ID 83330 | _____ | E-mail |

| | | |
|------------------------|--------------|----------------|
| W. Kent Fletcher, Esq. | <u> X </u> | U.S. Mail |
| Fletcher Law Office | _____ | Facsimile |
| P.O. Box 248 | _____ | Overnight Mail |
| Burley, ID 83318-0248 | _____ | Hand Delivery |
| | _____ | E-mail |

| | | |
|-------------------------|--------------|----------------|
| Roger D. Ling, Esq. | <u> X </u> | U.S. Mail |
| Ling, Robinson & Walker | _____ | Facsimile |
| 615 H St. | _____ | Overnight Mail |
| P.O. Box 396 | _____ | Hand Delivery |
| Rupert, ID 83350-0396 | _____ | E-mail |

| | | |
|--------------------------------|--------------|----------------|
| John A. Rosholt, Esq. | <u> X </u> | U.S. Mail |
| John K. Simpson, Esq. | _____ | Facsimile |
| Travis L. Thompson, Esq. | _____ | Overnight Mail |
| Barker, Rosholt & Simpson | _____ | Hand Delivery |
| 113 Main Avenue West, Ste. 303 | _____ | E-mail |
| Twin Falls, ID 83301-6167 | | |

| | | |
|---------------------------------|--------------|----------------|
| Kathleen Marion Carr, Esq. | <u> X </u> | U.S. Mail |
| Office of the Field Solicitor | _____ | Facsimile |
| U.S. Department of the Interior | _____ | Overnight Mail |
| 550 West Fort Street, MSC 020 | _____ | Hand Delivery |
| Boise, ID 83724-0020 | _____ | E-mail |

Matt J. Howard, Esq. U.S. Mail
U.S. Bureau of Reclamation Facsimile
Pacific Northwest Region Overnight Mail
1150 N. Curtis Road Hand Delivery
Boise, ID 83706-1234 E-mail

Scott L. Campbell, Esq. U.S. Mail
Moffatt Thomas Barrett Rock & Fields, Chtd. Facsimile
101 S. Capitol Blvd., 10th Floor Overnight Mail
P.O. Box 829 Hand Delivery
Boise, ID 83701-0829 E-mail

Michael S. Gilmore, Esq. U.S. Mail
Deputy Attorney General Facsimile
Civil Litigation Division Overnight Mail
Office of the Attorney General Hand Delivery
P.O. Box 83720 E-mail
Boise, ID 83720-0010


Jeffrey C. Fereday U.S. Mail
Michael C. Creamer Facsimile
Bradley V. Sneed Overnight Mail
GIVENS PURSLEY LLP E-mail
601 Bannock Street, Suite 200
P.O. Box 2720
Boise, ID 83701-2720

Terry T. Uhling, Esq. U.S. Mail
J.R. Simplot Company Facsimile
999 Main Street Overnight Mail
P.O. Box 27 Hand Delivery
Boise, ID 83707 E-mail

Mr. Ron Carlson U.S. Mail
Mr. Lewis Rounds Facsimile
Idaho Department of Water Resources Overnight Mail
Eastern Regional Office Hand Delivery
900 North Skyline Dr. E-mail
Idaho Falls, ID 83402-6105

Mr. Allen Merritt
Ms. Cindy Yenter
Idaho Department of Water Resources
Southern Regional Office
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3033

U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery
 E-mail



Michael R. Conroy