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*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 )  
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 )

**POCATELLO'S REPLY IN  
SUPPORT OF ITS  
RENEWAL OF MOTION TO  
COMPEL**

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COMES NOW, City of Pocatello ("Pocatello" or "City") to reply in support of its renewal of its Motion to Compel.

1. Based on SWC's September 7, 2007, Response to a portion of Pocatello's September 6, 2007 Motion for Orders, the documents that SWC must still provide are two voluminous reports, identified in the Bibliography of the December 2005 SWC experts' report as:

State of Idaho Department of Reclamation, 1939-1970 Water Distribution and Hydrometric Work District No. 36

State of Idaho Department of Water Administration, 1971-1974, Water distribution and Hydrometric Work District No. 1.

2. Based on representation of SWC counsel, these documents are apparently historic data relating to Water Master administration of the Snake River between Blackfoot and Milner.
  - a. All parties agree that historic data, back as far as 1901, related to Snake River flows, administration and deliveries of water to senior users may be relevant to this matter.
  - b. Further, SWC's experts apparently relied on this information as it is cited in their Bibliography.
  - c. Pocatello is entitled to the data and information contained in these references.
3. Now SWC asks for relief from providing this information to Pocatello. However, SWC has already agreed to provide these documents.
  - a. On January 10, 2006, counsel for SWC agreed to provide these two documents—as well as approximately 34 other documents—after nearly a week of discussions and an afternoon spent in mediation with counsel for IGWA, Pocatello, and SWC. *See*, Exhibit 4 (Excerpt<sup>1</sup> from January 24, 2006 Affidavit of Brad Sneed, counsel for IGWA<sup>2</sup>, please see the attachment to Affidavit marked “B”).
  - b. Its obligation to provide this information was also identified in a letter from Pocatello's counsel, William A. Hillhouse II, to Director Karl Dreher, February 9, 2006. *See* Exhibit 5.
4. SWC cannot escape its obligations, reflected in the January 10, 2006 Agreement. It was reminded that it had failed to produce these documents by means of the document list appended to the January 10, 2006 Agreement, by the January 24, 2006 Motion to Compel, and in a February 9, 2006 letter from Pocatello's counsel, William A. Hillhouse II (Exhibit 5). And, once it became clear that the stay in the instant matter had been lifted this year following the decision in *AFRD #2 v. IDWR*, in a June 13, 2007 email from Pocatello's counsel.
5. Pocatello's direct expert testimony is due in approximately two weeks (September 26, 2007). Pocatello respectfully requests that the Hearing Officer order the SWC to provide the documents identified above in ¶1 in electronic format. Pocatello further requests that SWC be ordered to provide this information immediately, in a format that can be immediately opened and reviewed by counsel and consultants.
6. Pocatello reserves any further reply in support of the remainder of its Motion, pending response from the SWC and/or direction of the Hearing Officer.

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<sup>1</sup> The Affidavit itself is complete; however, the Affidavit also contained Exhibits A-I. Of those Exhibits to Mr. Sneed's Affidavit, only Exhibit B, the January 10, 2006 Agreement, and the exhibits to the January 10, 2006 Agreement are included.

<sup>2</sup> At that time. Subsequent to that filing, Mr. Budge and Ms. McHugh took over as IGWA's counsel in this matter.

7. On the Motion to Compel, a draft order is provided for the convenience of the Hearing Officer.

Respectfully submitted, this 10<sup>th</sup> day of September, 2007.

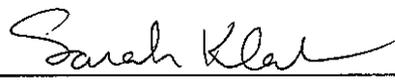
CITY OF POCATELLO ATTORNEY'S OFFICE

Attorneys for the City of Pocatello

By   
A. Dean Tranmer

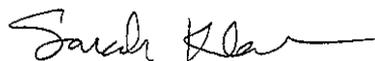
WHITE & JANKOWSKI, L.L.P.

Attorneys for the City of Pocatello

By   
Sarah A. Klahn

## CERTIFICATE OF SERVICE

I hereby certify that on this 10<sup>th</sup> day of September 2007, I caused to be served a true and correct copy of the foregoing **Pocatello's Reply in Support of Its Renewal of Motion to Compel and Proposed Order** by electronic mail, facsimile or regular U.S. Mail, postage prepaid, to:



Sarah A. Klahn, White & Jankowski, LLP

<p>Gerald F. Schroeder Hearing Officer State of Idaho Dept of Water Resources 322 E Front St Boise ID 83720-0098 facsimile – 208-287-6700 <a href="mailto:fcjschroeder@gmail.com">fcjschroeder@gmail.com</a> <a href="mailto:Victoria.Wigle@idwr.idaho.gov">Victoria.Wigle@idwr.idaho.gov</a></p>	<p>Daniel V. Steenson Ringert Clark PO Box 2773 Boise ID 83701 facsimile – 208-342-4591 <a href="mailto:dvs@ringertclark.com">dvs@ringertclark.com</a></p>	<p>Josephine P. Beeman, Esq. Beeman &amp; Associates 409 W Jefferson Boise ID 83702 facsimile – 208-331-0954 <a href="mailto:jo.beeman@beemanlaw.com">jo.beeman@beemanlaw.com</a></p>
<p>C. Tom Arkoosh Arkoosh Law Office PO Box 32 Burley ID 83330 *** service by facsimile facsimile – 208-934-8873 <a href="mailto:alo@cablone.net">alo@cablone.net</a></p>	<p>J. Dee May May Sudweeks &amp; Browning PO Box 1846 Twin Falls ID 83303 facsimile – 208-733-7180 <a href="mailto:jdmay@tflaw.com">jdmay@tflaw.com</a></p>	<p>Michael Gilmore Deputy Attorney General Statehouse, Room 210 Boise ID 83720 *** service by U.S. mail facsimile – 208-334-2830 <a href="mailto:mike.gilmore@ag.idaho.gov">mike.gilmore@ag.idaho.gov</a></p>
<p>W. Kent Fletcher Fletcher Law Office PO Box 248 Burley, ID 83318-0248 facsimile – 208-878-2548 <a href="mailto:wkf@pmt.org">wkf@pmt.org</a></p>	<p>Scott Campbell Moffatt Thomas PO Box 829 Boise ID 83701 facsimile – 208-385-5384 <a href="mailto:slc@moffatt.com">slc@moffatt.com</a></p>	<p>Terry Uhling J.R. Simplot Co 999 Main St Boise ID 83702 <a href="mailto:tuhling@simplot.com">tuhling@simplot.com</a></p>
<p>Roger D. Ling Ling Robinson PO Box 396 Rupert ID 83350-0396 facsimile – 208-436-6804 <a href="mailto:rdl@idlwfarm.com">rdl@idlwfarm.com</a></p>	<p>Kathleen Carr US Dept Interior 960 Broadway Ste 400 Boise ID 83706 *** service by facsimile facsimile – 208-334-1918 <a href="mailto:kmarioncarr@yahoo.com">kmarioncarr@yahoo.com</a></p>	<p>James Tucker Idaho Power Co 1221 W Idaho St Boise ID 83702 <a href="mailto:jamestucker@idahopower.com">jamestucker@idahopower.com</a></p>
<p>John Rosholt Travis Thompson Barker Rosholt 113 Main Ave West Ste 303 Twin Falls ID 83301-6167 facsimile – 208-735-2444 <a href="mailto:jar@idahowaters.com">jar@idahowaters.com</a> <a href="mailto:tlr@idahowaters.com">tlr@idahowaters.com</a></p>	<p>Matt Howard U.S. Bureau of Reclamation 1150 N Curtis Road Boise ID 83706-1234 facsimile – 208-378-5003 <a href="mailto:mhoward@pn.usbr.gov">mhoward@pn.usbr.gov</a></p>	<p>James Lochhead Adam DeVoe Brownstein Hyatt 410 – 17<sup>th</sup> St 22<sup>nd</sup> Floor Denver CO 80202 <a href="mailto:jlochhead@bhf-law.com">jlochhead@bhf-law.com</a> <a href="mailto:adevoe@bhf-law.com">adevoe@bhf-law.com</a></p>

<p>John Simpson Barker Rosholt PO Box 2139 Boise ID 83701-2139 facsimile – 208-344-6034 <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a></p>	<p>Lyle Swank IDWR 900 N Skyline Dr Idaho Falls ID 83402-6105 facsimile – 208-525-7177 <a href="mailto:lyle.swank@idwr.idaho.gov">lyle.swank@idwr.idaho.gov</a></p>	<p>Michael C Creamer Jeffrey C. Fereday Givens Pursley 601 W Bannock St Ste 200 PO Box 2720 Boise ID 83701-2720 <a href="mailto:mcc@givenspursley.com">mcc@givenspursley.com</a> <a href="mailto:jcf@givenspursley.com">jcf@givenspursley.com</a></p>
<p>Randy Budge Racine Olson PO Box 1391 Pocatello ID 83204-1391 <a href="mailto:rcb@racinelaw.net">rcb@racinelaw.net</a></p>	<p>Allen Merritt Cindy Yenter IDWR 1341 Fillmore St Ste 200 Twin Falls ID 83301-3033 facsimile – 208-736-3037 <a href="mailto:allen.merritt@idwr.idaho.gov">allen.merritt@idwr.idaho.gov</a> <a href="mailto:cindy.yenter@idwr.idaho.gov">cindy.yenter@idwr.idaho.gov</a></p>	<p>Candice McHugh Racine Olson Nye Budge &amp; Bailey 101 S Capitol Blvd Ste208 Boise ID 83702 facsimile – 208-232-6109 <a href="mailto:cmm@racinelaw.net">cmm@racinelaw.net</a></p>
<p>A. Dean Tranmer City of Pocatello PO Box 4169 Pocatello ID 83201 facsimile – 208-234-6297 <a href="mailto:dtranmer@pocatello.us">dtranmer@pocatello.us</a></p>		

ORIGINAL

RECEIVED

JAN 24 2006

DEPARTMENT OF WATER RESOURCES

Jeffrey C. Fereday (Idaho State Bar # 2719)  
Michael C. Creamer (Idaho State Bar # 4030)  
John M. Marshall (Idaho State Bar # 5628)  
Bradley V. Sneed (Idaho State Bar # 6254)  
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Boise, ID 83701-2720  
Telephone: (208) 388-1200  
Facsimile: (208) 388-1300

*Attorneys for Idaho Ground Water Appropriators, Inc.*

**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 BRAD V. SNEED 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         )

Bradley V. Sneed, being first duly sworn on oath, deposes and hereby states as follows:

1. I am one of the attorneys of record for Idaho Ground Water Appropriators, Inc. ("IGWA"), in the above-captioned matter before the Idaho Department of Water Resources.

2. Attached hereto as Exhibit A is a true and correct copy of a demand letter from White & Jankowski, L.L.P. to counsel for the Surface Water Coalition members dated January 5, 2006.

3. Attached hereto as Exhibit B is a true and correct copy of an agreement executed by the Surface Water Coalition, IGWA, and the City of Pocatello on January 10, 2006 ("Expert Disclosure Agreement"), whereby the parties agreed to exchange certain information and data considered by each of the parties' experts in preparing their written expert reports pursuant to the July 22, 2005 Scheduling Order.

4. Exhibit C is a true and correct copy of the Director's approval of the Expert Disclosure Agreement, dated January 13, 2006.

5. Attached hereto as Exhibit D is a true and correct copy of a letter dated January 19, 2006, from Givens Pursley LLP to counsel for four of the SWC members, wherein IGWA again requested certain data and information from SWC pursuant to the parties' Expert Disclosure Agreement.

6. Attached hereto as Exhibit E is a true and correct copy of a letter dated January 19, 2006, from White & Jankowski, L.L.P to counsel for four of the SWC members, wherein Pocatello again requested certain data and information from SWC pursuant to the parties' Expert Disclosure Agreement.

7. Attached hereto as Exhibit F is a true and correct copy of page 1-3 from the Surface Water Coalition's expert report filed in this matter.

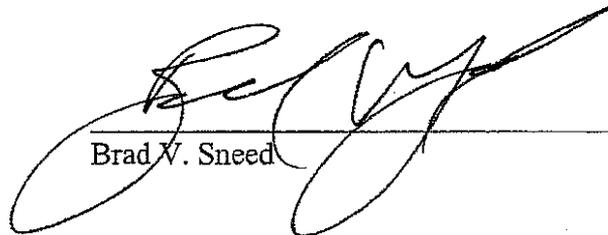
8. Attached hereto as Exhibit G are two documents from a number of documents that were attached to a January 20, 2006, email from John Simpson to IGWA and Pocatello. These documents were intended to update the Surface Water Coalition's expert report filed in this case.

9. Attached hereto as Exhibit H is a true and correct copy of a document prepared by SWC entitled "Second Information Response, Surface Water Coalition Experts, January 20, 2006", which SWC emailed to IGWA and Pocatello at approximately 6:51p.m. on Friday,

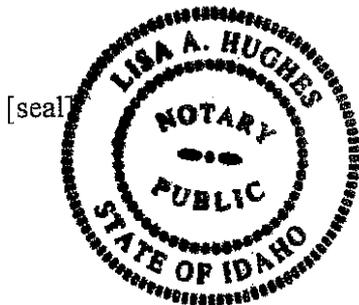
January 20, 2006, and which was received by IGWA at approximately 12:13p.m. on Saturday, January 21, 2006.

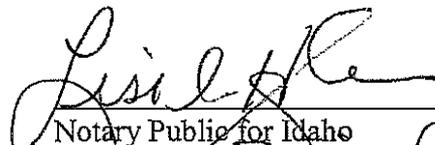
10. On or about January 16, 2006, SWC supplied IGWA and Pocatello with a compact disc purportedly containing the information and data requested pursuant to the Expert Disclosure Agreement. Attached hereto as Exhibit I is a true and correct copy of an excerpt from that compact disc, indicating SWC's response to Pocatello's information requests set forth in Exhibit B to the Expert Disclosure Agreement.

DATED this 24th day of January, 2006.

  
\_\_\_\_\_  
Brad V. Sneed

SUBSCRIBED AND SWORN TO before me this 24<sup>th</sup> day of January, 2006.



  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at Bore Idaho  
My commission expires 3-22-2007

## CERTIFICATE OF SERVICE

I hereby certify that on this 24<sup>th</sup> 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	<input type="checkbox"/>	U.S. Mail
Idaho Department of Water Resources	<input type="checkbox"/>	Facsimile
322 East Front Street	<input type="checkbox"/>	Overnight Mail
P.O. Box 83720	<input checked="" type="checkbox"/>	Hand Delivery
Boise, ID 83720-0098	<input type="checkbox"/>	E-mail

C. Tom Arkoosh, Esq.	<input checked="" type="checkbox"/>	U.S. Mail
Arkoosh Law Offices, Chtd.	<input type="checkbox"/>	Facsimile
301 Main Street	<input type="checkbox"/>	Overnight Mail
P.O. Box 32	<input type="checkbox"/>	Hand Delivery
Gooding, ID 83330	<input type="checkbox"/>	E-mail

W. Kent Fletcher, Esq.	<input checked="" type="checkbox"/>	U.S. Mail
Fletcher Law Office	<input type="checkbox"/>	Facsimile
P.O. Box 248	<input type="checkbox"/>	Overnight Mail
Burley, ID 83318-0248	<input type="checkbox"/>	Hand Delivery
	<input type="checkbox"/>	E-mail

Roger D. Ling, Esq.	<input checked="" type="checkbox"/>	U.S. Mail
Ling, Robinson & Walker	<input type="checkbox"/>	Facsimile
615 H St.	<input type="checkbox"/>	Overnight Mail
P.O. Box 396	<input type="checkbox"/>	Hand Delivery
Rupert, ID 83350-0396	<input type="checkbox"/>	E-mail

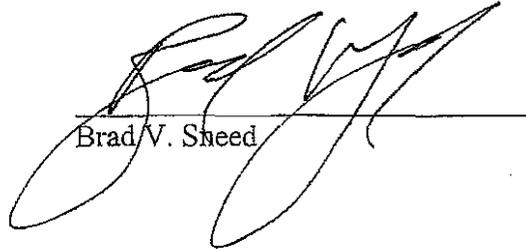
John A. Rosholt, Esq.	<input checked="" type="checkbox"/>	U.S. Mail
John K. Simpson, Esq.	<input type="checkbox"/>	Facsimile
Travis L. Thompson, Esq.	<input type="checkbox"/>	Overnight Mail
Barker, Rosholt & Simpson	<input type="checkbox"/>	Hand Delivery
113 Main Avenue West, Ste. 303	<input type="checkbox"/>	E-mail
Twin Falls, ID 83301-6167		

Kathleen Marion Carr, Esq.	<input checked="" type="checkbox"/>	U.S. Mail
Office of the Field Solicitor	<input type="checkbox"/>	Facsimile
U.S. Department of the Interior	<input type="checkbox"/>	Overnight Mail
550 West Fort Street, MSC 020	<input type="checkbox"/>	Hand Delivery
Boise, ID 83724-0020	<input type="checkbox"/>	E-mail

Matt J. Howard, Esq. U.S. Bureau of Reclamation Pacific Northwest Region 1150 N. Curtis Road Boise, ID 83706-1234	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-mail
Scott L. Campbell, Esq. Moffatt Thomas Barrett Rock & Fields, Chtd. 101 S. Capitol Blvd., 10th Floor P.O. Box 829 Boise, ID 83701-0829	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-mail
Michael S. Gilmore, Esq. Deputy Attorney General Civil Litigation Division Office of the Attorney General P.O. Box 83720 Boise, ID 83720-0010	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-mail
Josephine P. Beeman, Esq. Beeman & Associates PC 409 West Jefferson Boise, ID 83702-6049	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-mail
Sarah A. Klahn, Esq. White & Jankowski, LLP 511 16th Street, Suite 500 Denver, CO 80202	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> E-mail
Terry T. Uhling, Esq. J.R. Simplot Company 999 Main Street P.O. Box 27 Boise, ID 83707	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-mail
Mr. Ron Carlson Mr. Lewis Rounds Idaho Department of Water Resources Eastern Regional Office 900 North Skyline Dr. Idaho Falls, ID 83402-6105	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-mail

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



Brad V. Sneed

**AGREEMENT**

The following agreement is made as of January 10, 2006, between the Surface Water Coalition (A&B Irrigation District, American Falls Reservoir District No. 2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Irrigation Company and Twin Falls Canal Company), Idaho Ground Water Appropriators, Inc. ("IGWA"), and the City of Pocatello ("the Parties"). These entities are Parties to the Surface Water Delivery Case scheduled for hearing before IDWR beginning March 6, 2006, and this Stipulation is made for purposes of those proceedings.

**Recitals**

1. On July 22, 2005, the Director of the IDWR ("Director") entered a Scheduling Order, which addressed, among other things, expert disclosures to be made by the Parties. The Scheduling Order reads, in pertinent part, as follows:

"By October 17, 2005, the parties must submit expert witness reports. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; ...."

2. The date for submission of the expert reports later was modified, but the language describing their content was not.
3. The Parties timely exchanged expert reports. Subsequently, they have discussed what "data or other information considered" must be provided to each other. IGWA has requested materials from the Surface Water Coalition, as described in the attached Exhibit A, and Pocatello has requested information from the Surface Water Coalition, as described in the attached Exhibit B. The information requested from IGWA and Pocatello by the Surface Water Coalition is attached as Exhibit C.
4. The Parties also have discussed the timing of expert depositions and of expert rebuttal reports, and agree that conducting depositions of experts before the exchange of rebuttal expert reports is a more expeditious means to proceed with discovery while maintaining the current hearing date.

**NOW, THEREFORE, THE PARTIES DO HEREBY AGREE:**

5. The expert rebuttal report deadline, currently scheduled for January 13, 2006, should be extended until February 10, 2006 to allow depositions to be conducted before exchanging rebuttal reports.

**B**

6. The Surface Water Coalition will provide 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. IGWA and Pocatello will provide or identify for ready access to the Surface Water Coalition the data or other information considered by the witness in forming the opinions and relating to those subjects set out in Exhibit C.
7. The Parties will make best efforts to exchange the data and information described in paragraphs 5 - 7 above, wherever possible, no later than 5pm, MST on Monday, January 16, 2006, with the exception of data and information relating to the VIC Model, which the Surface Water Coalition will make best efforts to deliver to IGWA and Pocatello no later than Wednesday, January 18, 2006.
8. If any Party claims that any of the foregoing data and information is proprietary, that Party shall propose to provide such material under a protective stipulation, to be tendered by such Party no later than January 12, 2006, which will limit the use of such material to this proceeding only, and provide for the return of the same.
9. The Parties will begin expert depositions in Boise, Idaho, beginning in the afternoon of Monday, January 23, 2006. The Parties currently estimate that it will take approximately three weeks to conduct these expert depositions. The Parties will use their best efforts to agree no later than January 12, 2006 upon which witnesses will be deposed and on what schedule.
10. The Parties will jointly move the Director for this change in schedule, and provide him with a copy of this stipulation.

**IF A PARTY DOES NOT RECEIVE THE DATA AND INFORMATION REQUESTED AS DESCRIBED ABOVE, THE FOLLOWING ADDITIONAL PROVISIONS SHALL APPLY:**

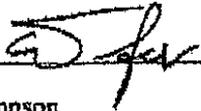
11. The Party alleging that the appropriate data and information has not been received (the "Complaining Party") shall move to compel the same after appropriate request and conference.

This agreement is made as of January 10, 2006, as a stipulation in these proceedings.



C. Tom Arkoosh

American Falls Reservoir District #2



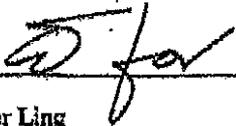
John Simpson

Twin Falls Canal Company, Milner Irrigation Dist. and North Side Canal Company



W. Kent Fletcher

Minidoka Irrigation District



Roger Ling

A & B Irrigation and Burley Irrigation District



Michael C. Creamer

For the Idaho Ground Water Appropriators, Inc.

  
for William A. Hillhouse II

For the City of Pocatello

LAW OFFICES  
501 W. Barnock Street  
PO Box 2720, Boise, Idaho 83701  
TELEPHONE: 208 398-1200  
FACSIMILE: 208 386-1300  
WEBSITE: www.givenspursley.com

Gary G. Allen  
Kristan A. Alwood  
Kelly T. Barbour  
Christopher J. Beason  
William C. Cole  
Michael C. Creamer  
Thomas E. Dvorsik  
Roy Lewis Elguren  
Timothy P. Feamside  
Jeffrey C. Feresday  
Melissa A. Finocchio  
Steven J. Hippler  
Karl T. Klein  
Debra K. Kristensen  
Anne C. Kunkel

Jeremy G. Ladle  
Franklin G. Lee  
David R. Lombardi  
Emily A. MacMaster  
John M. Marshall  
Konnoth R. McClure  
Kolly Greens McConnell  
Cynthia A. Melillo  
Christopher H. Meyer  
L. Edward Miller  
Patrick J. Miller  
Judson B. Montgomery  
Angela K. Nelson  
Deborah E. Nelson  
W. Hugh O'Riordan, LL.M.

Kenneth L. Pursley  
Bradley V. Sneed  
H. Barton Thomas, LL.M.  
J. Will Varin  
Conley E. Ward  
Robert B. White

Raymond D. Givens  
RETIRED

James A. McClure  
RETIRED  
*Licensed in California*

January 5, 2006

John K. Simpson, Esq.  
Barker, Rosholt & Simpson, LLP  
205 North 10th, Suite 520  
P.O. Box 2139  
Boise, ID 83701-2139

Re: Surface Water Coalition Expert Report  
Our File No. 3915-81

Dear John:

I tried unsuccessfully to reach you by phone this afternoon. In reviewing the expert reports that the Surface Water Coalition produced last Friday, Chuck Brendecke has noted that the underlying data files used by HDR, particularly with respect to various model runs and water supply analysis, were not included on the CD which was provided. These will need to be provided so that Chuck will be able to evaluate the data, assumptions, etc. that underlie HDR's analysis and conclusions in contemplation of preparing his rebuttal expert report. I have enclosed a list of the files that Chuck will need.

Chuck will need to obtain these files in computer readable form, unless those files are IDENTICAL to what is available from the IDWR or IWRRI web/ftp sites. I expect that other parties will want to have access to these files as well.

Please contact me as soon as possible so that we can arrange a suitable means for delivering these data files.

Sincerely,



Michael C. Creamer

Enclosure

cc: Mr. Karl J. Dreher  
W. Kent Fletcher, Esq.  
Matt J. Howard, Esq.  
Josephine P. Beeman, Esq.  
James C. Tucker, Esq.

Phillip J. Rassier, Esq.  
Roger D. Ling, Esq.  
Scott L. Campbell, Esq.  
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C. Tom Arkoosh, Esq.  
Kathleen Marion Carr, Esq.  
Michael S. Gilmore, Esq.  
Terry T. Uhling, Esq.

MCC:kdt S:\CLIENTS\391581\MCC Ltr to John Simpson re SWC Expert Report Data.DOC

## Electronic Data Request

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### Hydrology and Hydroclimate Data

1. Site information (e.g. SNOTEL), and snow water equivalent data used in the analysis described in Appendix U.
2. Precipitation data for stations in Appendix V.
3. VIC Model (exact version used), source code and compiled model (specify platform and compiler used in model compilation), Input datasets, and Outputs from the UW VIC analysis described in Appendix X.
4. Data used to plot figures in Appendix Y.
5. Input data used in calculating unregulated annual Snake River inflow above American Falls, Appendix Z.
6. Historical ground water level data for wells plotted on map in Appendix AF.
7. Ground water level data for wells, if any, in addition to wells used in Appendix AF.
8. Test settings (e.g. two-sided versus one-sided Kendall test, alternative hypotheses) for the StatsDirect statistical package used in trend analysis presented in Appendix AF.
9. Data for wells presented in Appendix AK.
10. Data for wells and precipitation data presented in Appendix AL.
11. Spring flow data, and settings for statistical tests presented in Appendix AM.

### Ground Water Modeling Files

12. Model input and output files for ESPAM ver 1.1 curtailment runs.

### Accounting Model files, Return Flow and Reach Gains Data

The following model files are needed for both the 2004 actual water distribution run and the hypothetical water distribution run that assumes groundwater pumping never occurred.

1. Input files.
  - 1.1. All indicator files (main indicator file, reservoir storage rights indicator file, system indicator file, canal/pump indicator file)
  - 1.2. All Hydrologic data files (exchange well history file, river flow history file, diversion history file, reservoir history file)
  - 1.3. All allocation files (diversion allocation file, reservoir allocation file, miscellaneous allocation file).
  - 1.4. Exchange pump list file, diversion list file, and water rights file.
2. All output files including report files.
3. Other files (system information file, diversion name file, river flow station name file)
4. Source code and executable files.

Data for return flow calculations (presented in appendix AC of SWC rebuttal report).

1. All the raw diversion data and return flow data used to calculate returns as a percentage of irrigation diversions for Heise to Shelley, Shelley to near Blackfoot, Near Blackfoot to Neeley, Neeley to Minidoka, and Minidoka to Milner reaches.
2. The workbook or spreadsheet that includes all the data and calculations.

All the temporal reach gains data used to develop Appendix AN figures of SWC rebuttal report.

All groundwater level and reach gains data used to develop Appendix AO figures of SWC rebuttal report.

# Exhibit B

**White & Jankowski** *Lawyers*

January 5, 2006

## VIA ELECTRONIC TRANSMISSION

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Re: Surface Water Coalition Expert Report

Gentlemen:

For purposes of Pocatello's preparing rebuttal expert reports, please provide us copies of those documents that are checked on the attached copy of the bibliography, which is contained in your expert report.

Also, please provide copies of the following reports, documents, data or other information (referred to here collectively as "materials"), with respect to Chapters 8 and 9 of the expert report:

*White & Jankowski, L.L.P.  
Kittredge Building, 511 Sixteenth Street, Suite 500, Denver, Colorado 80202  
(303) 595-9441 Fax (303) 825-3632 mail@white-jankowski.com*

January 5, 2006  
Page 2

1. Electronic data and summaries of WDO1 diversions (natural flow, storage and total) for the 1930 - 2004 period (all data, not limited to the April - September period).
2. Electronic data and summaries, spreadsheets and charts relating to historical diversions of the SWC members individually and collectively (Table 8-1 through 8-14 and Figures 8-1 through 8-36).
3. Electronic data and summaries, spreadsheets and charts relating to the irrigation diversion requirements for the SWC members (Tables 8-15 and 8-16).
4. Data, input and output files, and summaries thereof for the Accounting Program analyses described in Chapter 9.
5. All materials describing how the accounting program analyses described in Chapter 9 were performed.

Because the rebuttal reports are due on January 13, 2006, we request that you provide these materials to us by electronic communication no later than next Monday, January 9. We later may request additional materials for purposes of the expert depositions, but we will appreciate your providing the materials designated above now.

Sincerely,



William A. Hillhouse II

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# Exhibit C

## Document Request to IGWUA

- All Brendecke spreadsheets used to prepare graphs and tables in Expert Report.
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## Document Request to City

- Sullivan's water budget spread sheet.
- All spreadsheets used to prepare the tables and graphs in the Franzoy affidavit.

# White & Jankowski

Lawyers

FAXED  
2-9-06

February 9, 2006

VIA FAX 208-287-6700  
Karl Dreher, Director  
Idaho Department of Water Resources  
322 East Front Street  
Boise, ID 83720-0098

Re: Data and information considered by SWC  
experts, but not yet provided to Pocatello

Dear Director Dreher:

This letter supplements the February 6, 2006, letter to you from Sarah Klahn. At that time, as you requested, Pocatello reported that it had received a DVD of certain data and information considered by SWC experts, as promised by counsel for SWC late last week. However, we were unable at that time to ascertain whether all information that had been requested by Pocatello had been provided. Gregory K. Sullivan, P.E., at Spronk Water Engineers, has now made a determination that the following information is still missing:

1. Electronic versions of the tables in the SWC expert report. Pocatello received on Monday electronic files associated with analyses described in the SWC expert report, but the results in two of the "Water Requirement Spreadsheets" do not match the corresponding results in Table 8-15 of the expert report. Specifically, the results for the A&B and Milner Districts are significantly different from what was provided in the SWC expert report. There is no explanation for the difference, and we are unable to determine which results for Table 8-15, those in the expert report or those on the DVD, express the SWC's position with regard to water requirements for A&B and Milner.
2. Field application efficiencies. At a meeting with SWC counsel during the week of January 23, we specifically asked for the bases of the SWC field application irrigation efficiency analyses. Table 8-15 of the SWC expert report, in computing diversion requirements for each of the SWC members, sets out monthly and annual field efficiencies (expressed as percentages). However, there is no

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explanation in the expert report, in the electronic spreadsheet for Table 8-15 or in the materials recently provided of how these efficiencies were derived. Understanding the derivation of the field efficiency numbers is critical to evaluating river headgate diversion requirements.

3. Publications regarding field irrigation efficiency. SWC provided a list of several publications that its experts reportedly relied on in developing field efficiency estimates. It did not provide copies of all of the publications, and while we have been able to locate copies of some, we do not have a complete set. Moreover, the materials provided by the SWC do not explain how these publications were utilized to develop efficiency numbers in the expert report. Pocatello is entitled to receive the analyses by which SWC arrived at its field efficiency values.

4. Copies of documents listed in the SWC expert report.

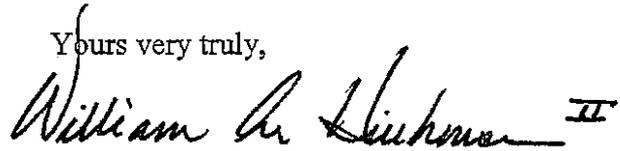
Despite our requests, we have not received certain documents listed in the bibliography to the SWC expert report, which we requested in early January. SWC has not yet provided the following documents, identified here by author:

- a. Andreadis, 2005
  - b. Bredehoeft, 1982
  - c. Nijssen, 1997
  - d. Sophocleous, 1997
  - e. State of Idaho Department of Reclamation, 1939-1970
  - f. State of Idaho Department of Reclamation, 1971-1974
5. Resume of Charles Brockway. Pocatello also requested the current resume for SWC expert, Dr. Charles Brockway. This resume has not yet been provided.
  6. Brockway publications listed in an older version of Dr. Brockway's resume. Pocatello requested copies of 30 publications listed in a 2002 resume for Mr. Brockway (obtained from another source). None of these articles has been provided, despite the agreement of SWC counsel to provide these.

Pocatello is reporting these deficiencies to the Director, based on the Director's decision at the Friday, February 3, 2006, status conference to retain jurisdiction over the Motion to Compel. We also are sending copies of this letter to counsel for the SWC, so that they will have an opportunity to cure these deficiencies before the Director is required to act. Sarah Klahn spoke with Tom Arkoosh about this today, and we understand that he is willing to provide the requested information.

If the SWC fails to provide the above-referenced information to counsel for Pocatello no later than Tuesday, February 14, 2006, Pocatello will so advise the Director. If the SWC does not provide the information, Pocatello respectfully requests that the Director order the SWC to produce it forthwith and, if it is not so produced, bar the use of this information or testimony supported by this information by the SWC at any hearing in this matter.

Yours very truly,

A handwritten signature in cursive script that reads "William A. Hillhouse II". The signature is written in black ink and is positioned above the printed name.

William A. Hillhouse II

cc: Counsel of record (by fax).

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February 2006, I caused to be served a true and correct copy of the foregoing **Letter to Karl Dreher, Director** by facsimile only:

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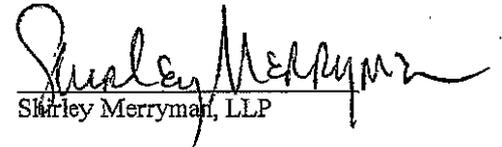
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Shirley Merrymar, LLP

**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 )  
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 )

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**ORDER GRANTING  
MOTION TO COMPEL**

The Hearing Officer, being fully apprised on the premises, hereby GRANTS Pocatello's Motion to Compel. The Hearing Officer ORDERS:

1. The Surface Water Coalition to make available to Pocatello the two documents listed below in electronic format.

State of Idaho Department of Reclamation, 1939-1970 Water Distribution and Hydrometric Work District No. 36

State of Idaho Department of Water Administration, 1971-1974, Water distribution and Hydrometric Work District No. 1.

2. If the documents are not currently available in electronic format, the Hearing Officer Orders that copies of the material be provided to Pocatello no later than September 17, 2007.

Dated this \_\_\_\_ September, 2007.

\_\_\_\_\_  
Hearing Officer