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Attorneys for Defendant

**IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STRIDER CONSTRUCTION CO., INC.,

Plaintiff,

vs.

IDAHO WATER RESOURCE BOARD,

Defendant.

Case No. CV01-22-10932

**SECOND DECLARATION OF JENNIFER
REINHARDT-TESSMER IN SUPPORT
OF DEFENDANT'S MOTION TO
AMEND SCHEDULING ORDER**

STATE OF IDAHO)

County of Ada) : ss.

Jennifer Reinhardt-Tessmer, being first duly sworn upon oath, deposes and says:

1. I am an attorney with Kirton McConkie, counsel of record for Defendant, Idaho Water Resource Board (“IWRB”). I am over the age of 18 and base this declaration on my personal knowledge.

2. On June 14th and 15th, 2023, I emailed opposing counsel to request a meeting to confer, per the direction from the Court, to try and reach a stipulation on IWRB’s pending motion to amend the scheduling order. A copy of that exchange is attached hereto as **Exhibit A**. On June 16, 2023, I spoke in person with counsel for Strider to explain the good cause for IWRB’s request for an extension, as outlined herein. She indicated she would speak with her client, but his position had been he did not want to push out the trial date. On June 19, 2023, we had a follow-up phone conference. During that conference, counsel for Strider confirmed that Strider did not want to push out the trial date and that we would have to go before the Court on IWRB’s motion.

3. The Deputy Attorney Generals of record in this matter (hereinafter the “AG Office”) hired the lead attorney of record to handle all major responsibilities associated with the defense of this matter and prosecution of IWRB’s counterclaim. Due to a heavy workload, the AG Office’s role in this matter generally entails monitoring and informing outside counsel and assisting with the coordination of internal witnesses.

4. The lead attorney in this case has been on medical leave and hospitalized for ongoing treatment for the majority of the past 8 weeks with a serious health condition, which condition was not known at the time of the scheduling conference, and which will pose a direct conflict with his ability to prepare for and participate in the trial as currently scheduled.

5. The lead attorney is anticipated to undergo a medical procedure sometime shortly after August of 2023 that would necessarily require a period of recovery estimated at 6 weeks before returning to work.

6. The Kirton McConkie office currently has two other shareholders in our Litigation section based in Boise and one shareholder in the International section based in Boise. We are all covering cases while our partner is on medical leave.

7. In order to investigate and inspect what the parties believe is a void under the Priest Lake dam, including the size and location of the void, we retained an expert who recommended using 3D Ground Penetrating Radar imaging surveys along with camera inspections, which requires low water levels.

8. The inspection is a necessary component to IWRB's defense and counterclaim against Strider. Specifically, the inspection is anticipated to help determine the presence, location, and extent of the void and give our expert key information to respond to theories asserted by Plaintiff about its cofferdam failures.

9. We were retained in October of 2023 and thereafter immediately undertook efforts to identify a qualified geotechnical engineer to serve as a consultant on this matter. That geotechnical engineer assisted us in identifying a qualified geophysicist to perform the 3D Ground Penetrating Radar imaging surveys.

10. The identified geophysicist who will perform the surveys has expressed it is imperative to perform the surveys in appropriate field conditions for both safe physical access and optimal data quality. This includes less than 2 inches of water on the apron near Tainter gates 1-6.

11. Counsel for IWRB has requested access to inspect the void since February of 2023, but due to snow and rainfall we were unable to conduct the surveys in the Spring and early summer of 2023, and now, given the water levels and difficulty of dewatering, IWRB staff has told me the surveys cannot practically be performed until November.

12. Attached as **Exhibit B** is a true and correct copy of Plaintiff's Answers and Objections to Defendant's First Set of Interrogatories, Requests for Production and Requests for Admission.

13. Attached as **Exhibit C** are excerpts from the 30(b)(6) deposition of the Idaho Water Resource Board that was recently taken in this case on June 16, 2023.

DATED this 5th day of July 2023.

KIRTON McCONKIE

/s/ Jennifer Reinhardt-Tessmer

Jennifer Reinhardt-Tessmer

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of July 2023, a true and correct copy of the foregoing was served by the method indicated below, and addressed to the following:

Lindsay (Taft) Watkins
Pro Hae Vice Admission Pending
Kristina Southwell
Pro Hae Vice Admission Pending
AHLERS CRESSMAN & SLEIGHT PLLC
1325 4th Ave., Suite 1850
Seattle, WA 98101
Telephone: (206) 287-9900

- U.S. Mail
- Facsimile: (208) 388-1300
- Hand Delivery
- Overnight Delivery
- iCourt E-File/Serve:
lindsay.watkins@acslawyers.com
kristina.southwell@acslawyers.com

John H. Guin
LAW OFFICE OF JOHN H. GUIN, PLLC
P.O. Box 31210
Spokane, WA 99223
Telephone: (509) 443-0709
Attorneys for Plaintiff Strider Construction Co., Inc.

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Garrick L. Baxter
Meghan M. Carter
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Boise, Idaho 83720-0098
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garrick.baxter@idwr.idaho.gov
meghan.carter@idwr.idaho.gov


/s/ Jennifer Reinhardt-Tessmer
Jennifer Reinhardt-Tessmer

EXHIBIT A

From: [Jennifer Reinhardt-Tessmer](#)
To: [Lindsay Watkins](#)
Cc: [Kristina Southwell](#); john@guinlaw.com; [Ammon Hansen](#); [Madison Hyland](#); [Shannon Menard](#)
Subject: RE: Strider v. IWRB
Date: Thursday, June 15, 2023 1:06:00 PM
Attachments: [image001.png](#)

Lindsay,

Thank you for your agreement to extend all Expert Witness Disclosures and Deadlines; Lay Witness Disclosures and Deadlines; and Written Discovery Deadlines (as defined and set forth on pgs 3-4 of the Scheduling Order) by two weeks --- (by way of example, the Plaintiff's last day to disclose expert witnesses is now 7/10/23). In terms of our meeting to confer, I am happy to discuss tomorrow in person when we meet for the deposition. Otherwise, Monday is fine. Should we plan on 8:30 pacific if we don't have a chance to discuss tomorrow? Thanks.


Jennifer Reinhardt-Tessmer
Shareholder
d 208.370.3323
c 208.957.3939

From: Lindsay Watkins <lindsay.watkins@acslawyers.com>
Sent: Thursday, June 15, 2023 10:23 AM
To: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>
Cc: Kristina Southwell <kristina.southwell@acslawyers.com>; john@guinlaw.com; Ammon Hansen <ahansen@kmclaw.com>; Madison Hyland <mhyland@kmclaw.com>; Shannon Menard <smenard@kmclaw.com>
Subject: Re: Strider v. IWRB

CAUTION: EXTERNAL

Hi Jennifer,

I have been tied up in depositions but yes, no issue with the two weeks. Monday morning works best for me but if you need more times, let me know.

Lindsay Watkins
lindsay.watkins@acslawyers.com

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*****Please note our new address above**

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive e-mail correspondence on behalf of the addressee), you may not use, copy or disclose to anyone this message or any information contained in this message. If you have received this message in error, please advise the sender by reply e-mail at lindsay.watkins@acslawyers.com, and delete this message.

On Jun 14, 2023, at 9:18 AM, Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com> wrote:

Counsel –

Just following up on the below request for your available times for a call to confer on the schedule per the court's direction as well as your agreement to push out the below dates by 2 weeks while we work on an agreement. Thanks.

Jennifer Reinhardt-Tessmer

Shareholder

d 208.370.3323

c 208.957.3939

From: Jennifer Reinhardt-Tessmer

Sent: Tuesday, June 13, 2023 8:10 AM

To: Kristina Southwell <kristina.southwell@acslawyers.com>; john@guinlaw.com;

Lindsay Watkins <lindsay.watkins@acslawyers.com>

Cc: Ammon Hansen <ahansen@kmclaw.com>; Madison Hyland

<mhyland@kmclaw.com>; Shannon Menard <smenard@kmclaw.com>

Subject: Strider v. IWRB

Counsel:

The Court asked that we confer in an attempt to reach a stipulation on our request to amend the scheduling order (or otherwise appear 6/30). Can you let me know your availability this week for a call to discuss? Given the Plaintiff's expert witness disclosure deadline falls when we are set to appear before the Court, would you stipulate to a 2 week extension of all Expert Witness Disclosures and Deadlines; Lay Witness Disclosures and Deadlines; and Written Discovery Deadlines (as defined and set forth on pgs 3-4 of the Scheduling Order), while we attempt to reach an agreement?

Thank you,

Jennifer Reinhardt-Tessmer

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1100 W. Idaho St. #930
Boise, ID 83702
kmclaw.com

Shareholder

d 208.370.3323
c [208.957.3939](tel:208.957.3939)
jtessmer@kmclaw.com

CONFIDENTIALITY NOTICE: This communication may contain attorney-client privileged information. If you received this communication in error, please alert me by replying to this email and delete it immediately. Do not misuse or transmit the information to anyone. Thank you.

EXHIBIT B

Lindsay (Taft) Watkins, *Pro Hac Vice*
lindsay.watkins@acslawyers.com
Kristina Southwell, *Pro Hac Vice*
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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
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STRIDER CONSTRUCTION CO., INC.,

Plaintiff,

vs.

IDAHO WATER RESOURCE BOARD,

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Case No. CV01-22-10932

PLAINTIFF'S ANSWERS AND
OBJECTIONS TO DEFENDANT'S
FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION AND
REQUESTS FOR ADMISSION

Plaintiff Strider Construction Co., Inc. ("Strider"), by and through its undersigned counsel of record, hereby submits the following answers and responses to Defendant Idaho Water Resource Board's ("IWRB") First Set of Interrogatories, Requests for Production and Requests for Admission (the "Discovery Requests").

GENERAL OBJECTIONS

PLAINTIFF'S ANSWERS AND OBJECTIONS TO
DEFENDANT'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION AND REQUESTS FOR
ADMISSION – 1

Strider makes the following General Objections. Any answers are made subject to and without waiving any of the following general objections, which are incorporated in each and every answer and response:

1. Strider objects to each and every interrogatory and request for production to the extent that they seek to impose upon Strider any obligation beyond those required by law or the applicable Court Rules. Defendant's definitions and instructions are overly broad, unduly burdensome, vague, and confusing. Strider does not intend to be bound by the arbitrary definitions and instructions as stated in Defendant's discovery requests and will answer the discovery requests only as required by law or the applicable Court Rules.

2. Strider's responses to Defendant's Interrogatories, Requests for Production, and Requests for Admission represent its reasonable efforts to provide information within its possession, custody, or control after a reasonable search. Strider reserves the right to amend, supplement, or alter its answers set forth herein and to provide additional information that may be subsequently discovered.

3. Strider objects to each and every interrogatory, request for production, and request for admission to the extent that they seek information or documentation protected by any privilege, including without limitation the attorney-client privilege, the work-product doctrine, or any other applicable privilege. Strider hereby asserts all such privileges. Strider will not disclose such privileged information or documentation in response to Defendants' discovery requests. Any production of materials which are subject to privilege or protection is inadvertent and such materials are subject to claw back.

4. Strider objects to each and every interrogatory, request for production, and request for admission to the extent they are not limited in time.

5. Strider objects to each and every interrogatory, request for production, and request for admission to the extent that they are not limited to information that is within Strider's possession, custody, or control. Strider will disclose only responsive, non-privileged information that is within its possession, custody, or control.

6. Strider objects to each and every interrogatory, request for production, and request for admission to the extent they seek documents or information within the possession, custody, and control of Defendant and/or are equally as available to Defendant as they are to Strider.

7. Strider objects to each and every interrogatory, request for production, and request for admission to the extent they are overly broad, vague, ambiguous, unduly burdensome, oppressive, and/or not reasonably calculated to lead to the discovery of admissible evidence.

8. Strider objects to each and every interrogatory, request for production, and request for admission to the extent that they call for a "dress rehearsal" of trial and/or call for evidence upon which they intend to rely upon to prove any fact or facts.

9. Strider objects to each and every interrogatory, request for production, and request for admission that is not limited to factual inquiry and improperly seeks legal analysis, disclosure of legal theory, or comprehension and assessment of a legal concept.

10. Strider objects to each and every interrogatory, request for production, and request for admission to the extent that they request the identification of witnesses to be called at trial.

11. Nothing herein shall be construed as admission or waiver by Strider of (i) the right to object respecting admissibility, competency, relevance, privilege, materiality, and/or

authenticity of the information provided in the Answers or Responses, documents identified in the Answers or Responses, or the subject matter thereof; and (ii) the right to object to the use of information provided in the Answers or Responses, documents identified in the Answers or Responses, or the subject matter contained therein during a subsequent proceeding, including the trial of this or any other action.

12. Strider reserves the right to refer to, conduct discovery with reference to, or offer as evidence hereafter, such information that may have, in good faith, not been included in the Answers and Responses and production hereafter, despite their absence herein.

13. These General Objections are incorporated by reference into each and every answer and response of Strider to the Discovery Requests, and the answers, responses and objections thereto are made without waiver of any of these General Objections.

14. Strider reserves the right to raise additional objections in regard to specific interrogatories and requests for production as may be found applicable or necessary in the future.

15. Discovery is ongoing. Strider reserves the right to amend or supplement its following Answers and Responses, as necessary.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: Please Identify, as defined above, all persons who have knowledge that bears on any of the claims in the pleadings or on any defense that will be raised in this action and briefly state what such knowledge that person has.

ANSWER: Strider objects to this Interrogatory on the grounds that it is vague, overly broad, and unduly burdensome. Strider further objects that this Interrogatory calls for speculation about what others may know and seeks information that is held by IWRB and its current and former employees

and agents or is equally available to it. Subject to and without waiving the specific objections and general objections set forth, Strider responds as follows:

Strider Construction Co., Inc.

c/o Ahlers Cressman & Sleight PLLC
1325 4th Ave. Suite 1850
Seattle, WA 98101
206-287-9900

- **James A. Gebhardt P.E.** – Knowledge of Project, estimating, Contract, and construction operations.
- **Tim Yedinak** - Knowledge of Project, estimating, Contract, and construction operations.
- **Nathan Andersh** – Knowledge of Project field activities in Season 1.
- **Kyle J. Gebhardt P.E.** – Knowledge of Project generally and technical review of change conditions.
- **Ben Landis** – Knowledge of Project field activities and concrete and metal fabrication in Season 1.

Idaho Water Resource Board

- **Rick Collingwood** – Knowledge of Contract and Project generally.
- **Emily Skoro** – Knowledge of Project design, contract administration and field activities generally.
- **Mike Morrison** – Knowledge of Contract administration and field activities generally.
- **Doug Jones** – Knowledge of Project design, Contract and field activities generally, and dam safety.
- **Bob Stutz** – Knowledge of dam operation and pre-Contract condition.
- **Roy Pechan** – Knowledge of dam operation and pre-Contract condition.
- **John Falk** – Knowledge of Project design and dam safety.

David Evans & Associates

- **Josh James** – Knowledge of design, Contract administration, field activities, and quality control.
- **Keith Hall** – Knowledge of design, Contract administration, field activities, and quality control.
- **David Suhr** – Knowledge of Project inspection and oversight.

Mott MacDonald

- **John Dawson** – Knowledge of design and Contract administration.
- **Evan Sheesley** – Knowledge of design and Contract administration.

PLAINTIFF'S ANSWERS AND OBJECTIONS TO
DEFENDANT'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION AND REQUESTS FOR
ADMISSION – 5

- **Shem Kobialka** – Knowledge of design.
- **Shane Phillips** – Knowledge of design, field issues.

Frank Pita – Knowledge of geotechnical information and issues effecting construction. See also Interrogatory No. 6 and 23.

Mark Rohrbach – Knowledge of geotechnical information and issues effecting construction. See also Interrogatory No. and 23.

GeoEngineers

- **Lyle Stone** – Knowledge of geotechnical design, bid information.
- **Ethan Donahue** – Knowledge of geotechnical field conditions and drawdown test.

DG&S Construction

- **Jess Hammeren**– Knowledge of construction activities, cofferdam and civil sitework.

ALLWEST Testing & Engineering

- **Curtis Williams** – Knowledge of concrete and metals inspection / QC.

Interstate Concrete

- **Chris Braden** – Knowledge of concrete QC and field testing.

Waterman Industries

- **Jay Belt** – Knowledge of existing gates, j-seals, and field operations

Krazan & Associates

- **Wes Mahan** – Knowledge of Schmidt Hammer and Winsor probe and concrete QC.

PFC Manufacturing

- **Tom MacIntee** – Knowledge of metal fabrication.

Junso Consulting Group, LLC (Pinehurst, ID)

- **Brandon Junso, P.E.** – Knowledge of cofferdam and dewatering system design.

INTERROGATORY NO. 2: Please describe, in detail, the process you took for estimating the cost for design and implementation of the dewatering system in your Bid for the Contract.

ANSWER: Strider incorporates its general objections and answers as follows. Strider ordered and reviewed the Bid Documents. Strider representatives attended the mandatory teleconference bid meeting (June 23, 2020) and the mandatory site visit (June 29, 2020). Jim Gebhardt attended the site visit and the field discussion there focused on access, water levels and channel flows.

Two (2) geotechnical documents were provided in the Bid Documents, both of which were reviewed to determine the type of cofferdam and anticipate the requisite dewatering. In summary the information provided suggested:

1. Reference Drawings: Three (3) drill holes were identified on the “reference drawings” dating back to the construction of the Dam (1978). Two (#1 and #2) were on the present Dam Alignment and the other (#4) over 130 feet downstream. The report indicated fine grained material (Clay Silt) at excavation depth but offered no sieve analysis.
2. The Geotechnical Report prepared by GeoEngineers: The report is based upon one (1) bore hole taken upland from the existing north abutment. The report indicates the bottom of excavation at the apron is in Gray Silt, medium stiff.

In the absence of soils data, the specification indicate the design engineer’s assessment of the conditions Strider could reasonably be expected to encounter. The specification section 02 20 00 1.07.E states “the system may consist of pumps, standby pumps, sumps, sump pumps, ditches and necessary appurtenances...”. The use of “sumps and pumps” as the means to remove water from the work area is again mentioned in Section 02 20 00, 1.09A. There is no mention of wells or well points or other more aggressive means of water extraction. The suggested means and techniques are all surficial which is consistent with the description and characteristics (low permeability) of the anticipated fine grained soils.

Strider then based the dewatering system on sump and pumps, sizing the system based upon past experience. This assessment anticipated a very low volume of subgrade infiltration (given the low permeability soils) and minimal cofferdam thru-wall seepage as experienced in the numerous supersack cofferdam systems used on past Strider projects with similar conditions as those contemplated by the documents. This established an equipment package for which a price to rent and operate the system was developed. These costs were applied to the anticipated duration

of work requiring dewatering to develop a cost. This information was submitted to the Engineer in submittals for each season.

INTERROGATORY NO. 3: Please identify all persons you intend to call as a witness at the trial of this case and state briefly the substance of their anticipated testimony.

ANSWER: Strider objects to this Interrogatory as being overbroad and beyond the scope of IRCP 33 by asking for Strider to provide details of anticipated testimony. Strider objects to the extent this Interrogatory seeks a “dress rehearsal” of Strider’s case and further objects that it is premature as discovery is ongoing and depositions have not yet occurred. Subject to the specific objections and general objections provided, Strider answers as follows. Strider does not know who it will call at trial but will issue appropriate disclosures in accordance with applicable rules and the scheduling order. Without waiving any of the foregoing objections, Strider responds that it may call any of the witnesses identified in response to Interrogatory No. 1 and No. 6 or disclosed by IWRB in its discovery responses or others whose identities are not yet known or whose relevance is not yet known but are later discovered.

INTERROGATORY NO. 4: Please identify any and all Documents that you intend to use as exhibits at the trial of this case.

ANSWER: Strider objects to this Interrogatory as being overbroad, unduly burdensome, and beyond the scope of IRCP 33 by asking for Strider to “identify” anticipated trial exhibits by providing author, recipient, date, title and description of substance. Strider objects on the grounds

that this Interrogatory seeks a “dress rehearsal” of Strider’s case and further objects that it is

premature – Strider has not yet determined what documents it intends to use as exhibits at trial. Discovery is ongoing and depositions have not yet occurred. Strider will disclose its intended trial exhibits in accordance with the applicable rules and scheduling order.

INTERROGATORY NO. 5: As to your claims in this lawsuit, please provide an itemized list detailing and describing specifically each and every alleged problem with the Contract Documents, including construction specifications and geotechnical information, and each and every alleged damage that resulted; and, as to each and every alleged problem or damage identified, provide the following information:

- a. Identify the specific date when you first became aware of the alleged problem, and/or damage;
- b. State whether or not the Defendant was notified of the alleged problem and/or damage, and the date and manner in which the notification was made;
- c. Describe any action you took to mitigate the alleged problem and/or damage; and State with specificity the cost of repair or remediation of each problem and/or damage.

ANSWER: Strider objects that this Interrogatory is overbroad and unduly burdensome. Strider further objects on the grounds that the Interrogatory is vague and does not define “problem.” Strider also notes that this Interrogatory contains no fewer than four discrete subparts and therefore counts this as four interrogatories for purposes of Idaho Rule of Civil Procedure 33(a)(1). Subject to and without waiving its specific and general objections, Strider provides the following:

Structure Steel/Metal Fabrication Detailing: Dimensions indicated on Contract Drawing S-3, Section C are incorrect. During the project start-up phase (after gaining site access but prior to the in-water work window), on or about October 12, 2020, Strider discovered the new work for existing metal gates were incorrectly dimensioned in the Documents. The design also contemplated fabrication (rolling) of the metal which could not be achieved and therefore is/was not constructible. Strider notified the Engineer, through a series of emails and RFIs followed by the long process of redesign, through which a Work Change Directive (WCD) was developed with corresponding modifications to the structural design. This condition was further confirmed as in water access to the gates became available with dropping water levels.

1. Contract Drawing S-3, Section C shows a dimension of 1'-10 ½" between trunnion arm braces. This dimension is actually 3'-4".
 - a. Problem identified week of 10/12/20
 - b. RFI #2 submitted on 10/22/20
2. Contract Drawing S-3, Section C calls out for a curved WT8X22 vertical rib member. Rolling mills are not able to roll a WT8X22 without damage to the stem.
 - a. Problem identified week of 10/20/20
 - b. RFI #3 submitted on 11/02/20
3. Contract Drawing S-4, Detail 1 calls out a 1-1/2" dimension for top row of tension bolts. Existing top plate of gate will not allow room to install tension bolt.
 - a. Problem identified week of 1/25/21
 - b. RFI #25 submitted on 1/27/21

Addressing these errors, greatly impacted the fabrication schedule and created a condition wherein the delivery of the metal fabrication controlled the project schedule rather than the concrete apron and rock scour pad as originally scheduled. The damages include the cost of the work and the cost of the overall project schedule impacts, to include but not limited to dictating a

second construction season, extended field overhead. To avoid a long gap in operations and the cost implications of managing (e.g. running dewatering pumps) the coffered cells until the necessary materials were available, the in-water start date was reset by about three (3) weeks. The cost associated is \$189,235.25 plus the cost impacts of going into a second season.

Geotechnical Information/Subgrade Conditions:

The Contract Documents contemplated a firm subgrade upon which to construct apron improvements and found the cofferdam system (see Answer to Interrogatory No. 2). This subgrade was also characterized to be of low permeability. Contrary to the Contract Documents, yielding subgrade condition were discovered during the installation of the piezometers and precast concrete apron keyways and persisted through the placement of the rock scour protection pad. Letters of Notice:

- 12/22/2020 Strider Change of Conditions –Subgrade #1
- 12/29/2020 Strider Change of Conditions –Subgrade #2 w/Pita Report
- 1/2/2021 Strider Change of Conditions –Subgrade #3
- 1/4/2021 Strider Change of Conditions and Phase 2 Construction Request for Direction w/Pita Report
- 1/11/2021 Strider Change of Conditions –Subgrade #4

See Answer to Interrogatory No. 15 for further information. Costs associated with this problem include:

Field Overhead for Changed Conditions (Season 1): The Season 1 impact to the project schedule of the “changed condition” was an additional 14 calendar days (beyond the concurrent delay accounted for in the metals WCD issue). Amount: \$52,830.77

Subgrade Issues, Steel Plates and Dewatering (Season 1): In contrast to the as-planned excavation of the entire Phase 1 area followed by the Armor Rock section placement, the new

technique involved segmenting the Phase 1 area and completing the excavation and rock placement before moving to the next segment. This was substantially more expensive and required the addition of sheet pile, steel plates and liners; and extended/enhanced dewatering.

Amount: \$90,614.72

In Season 2/ Phase 2 the sheet pile cofferdams were installed both upstream and downstream of the Dam. This was out of scope work, a product of the Cofferdam (Diversion and Dewatering) design defect. As the water was being drawn down a substantial amount of water was observed to be flowing from under the Dam into the Phase 2 cell with led to the Stop Work Order from IWRB. The water infiltration was determined to be from under the Dam. Strider’s geotechnical engineering consultants demonstrated the flow path through the constructed under-apron bedding material (design section) to charge the pervious material under the apron and dam and cause an infiltration rate unacceptable to the Owner for reasons of Dam stability concerns. The Change Order, while agreed to by the Owner and under which the Owner has directed work, has yet to be provided.

Amount: \$276,983.00

This is a combination of:

Gatework Installation dewatering modification to dewater:		\$32,819.92
Notice:	Strider Letter	12/6/2021
Forward Pricing:	Strider Bentley Submittal	2/8/2021
Authorization to Proceed:	Strider Letter	6/6/2022
 Stop Work Order impacts:		 \$173,242.61
Notice:	Strider Letter	12/6/2021
Authorization to Proceed:	Meeting Minutes I-14	12/22/2021
Billing:	Strider Letter	4/19/2022
 Grout Test and Consulting:		 \$70,920.30
Notice:	Strider Letter	12/6/2021

Authorization to Proceed: Meeting Minutes I-14
Billing: Strider Letter

12/22/2021
3/18/2022

Cofferdam and Dewatering Design Defect:

The Contract Documents (and all Project permits acquired by the IWRB) contemplated/specified the use of “super sack” (or ecology block, or Port-a-dam, or Aqua Dam—Section 02 20 00; 2.01A) cofferdams and dewatering with sumps, ditches and pumps (Section 02 20 00: 1.07E) to manage surficial water which infiltrated through the cofferdam or from precipitation. All specified cofferdam systems are surficial, meaning they sit on top of the riverbed. However, the specified cofferdam system, while properly installed, did not provide sufficient isolation from infiltration. The inflows were too great to treat as the construction created turbidity within the coffered work area. Within the first week of cofferdam construction the condition was discovered and IWRB was given notice of a Changed Condition. The notice(s) included a corresponding (and repeated) request(s) for direction as to how to proceed, to include Strider letters dated:

- Cofferdam Letter #1, dated 12/8/2020,
- Cofferdam Letter #2, dated 12/14/2020,
- Cofferdam Letter #3, dated 12/22/2020

No response to the request for direction(s) was received in spite of the contractual requirement to notify and receive direction from the Engineer prior to proceeding.

Strider was forced to install a much more extensive and costly cofferdam system (sheet pile) than what is depicted in the Contract Documents. Strider is entitled to an equitable adjust to compensate for additional work on the cofferdam and dewatering systems.

The cofferdam costs stem from a design defect (specifying a cofferdam/dewatering system/method insufficient to allow proper access and/or performance of work, i.e. inadequate) and/or the Contract Documents failure to properly characterize the subgrade conditions. The geotechnical information provided at the time of bid indicates stable, reasonably strong, low permeability fine grained material should be expected and be upon which the super sack cofferdam would found.

The Phase 1 coffer cell was initially stabilized by adding sheet pile along the southern boundary of the Phase 1 Concrete Apron. Additional and extraordinary efforts were undertaken to enhance the super sack coffer cell walls and develop a much more robust pumping system. This effort included creating sub-cells to, in all ways possible, isolate turbid water from clean water to handle greater volumes of infiltration without overwhelming the turbid water treatment system. To allow excavation and preparation, these extra efforts required constant attention and well exceeded the sump and pump methods specified.

Costs arising from Cofferdam and Dewatering Design Defect:

Install Sheet Pile (Season 1): In order to achieve adequate isolation Strider advised IWRB it would drive sheet pile (initial 50 feet along southern edge of Phase 1 cell) in an attempt to cut off the subterranean infiltration of water into the coffered cell. This is consistent with the contingency plan discussed at the Pre-Construction Meeting where Strider indicated that if required it would be considered extra work and require an equitable adjustment to the Contract.

Amount: \$38,932.39

Additional Cofferdam and Dewatering (Season 1): The specified cofferdam and dewatering system had to be greatly enhanced and supplemented to achieve the conditions requisite to perform the Contract work. Work beyond the initial sheet pile included all extra work during the installation of the concrete apron.

Amount: \$66,874.24

Cofferdams and Dewatering (Season 2): The specified cofferdam and dewatering system failed in Season 1 requiring a different approach in Season 2. The Owner was asked for direction as to how Strider should proceed but provided none, nor was any additional geotechnical information provided in spite of a request for same. A full sheet pile cofferdam (3-sided) was designed and installed downstream of the Dam and the pumping system modified based on what was encountered in Season 1. The cost was forward priced to include a credit for the Phase 2 cofferdam work not performed in Season 1.

Amount: \$150,000.00

Sheet Pile at Upstream Cofferdam (Season 2): The specified cofferdam and dewatering system failed in Season 1 requiring a different approach in Season 2. As above, a sheet pile cofferdam was needed and installed upstream of the Dam. The cost was forward priced to include a credit for the Phase 2 cofferdam work not performed in Season 1.

Amount: \$84,000.00

INTERROGATORY NO. 6: Have you (or an attorney acting on your behalf) consulted with or engaged any experts in connection with this litigation? If so, please state for each such expert:

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- a. The name, current address and telephone number of such person(s);
- b. A complete statement of all opinions to be expressed and the basis and reasons thereof;
- c. The data or other information relied upon in forming such opinions by each expert;
- d. Identify any documents or things to be used as exhibits at trial in support of such opinions of each expert;
- e. The qualifications of each expert;
- f. A list of all publications authored by the expert witness in the proceeding ten (10) years;
- g. A list of any other cases in which the expert witness has testified as an expert at trial or in deposition within the preceding four (4) years, including the name of each case, the court in which it was litigated, the applicable case number and the dates of any trial or deposition testimony;
- h. Whether such expert has prepared a written report or other document concerning his or her opinions pertaining to this case; and
- i. The compensation to be paid for the testimony.

ANSWER: Strider objects to this Interrogatory as containing no fewer than two discrete subparts and therefore counting as two interrogatories for purposes of Idaho Rule of Civil Procedure 33(a)(1). Strider. Strider further objects to subparts as being premature (particularly c. and d.) and objects to the extent this Interrogatory seeks information beyond than required by the Idaho Rules of Civil Procedure or protected by attorney-client privilege or work product privileges. Subject to its

specific and general objections, Strider responds that it will produce expert materials in accordance with the Rules and applicable case schedule and further answers:

Mark Rohrback (RAM GeoServices, Inc.)
PO Box 731065, Puyallup, WA 98373
425-233-7211

Mr. Rohrback has not completed a report or analysis but may perform analysis and provide opinions in the areas of: civil engineering, soil mechanics, the flow of water through soil. Construction means and methods, reasonableness of Contract Documents, the completeness of design efforts, the typical and necessary response when unanticipated conditions are encountered, the nature of soils and other technical aspects of the Project. Mr. Rohrback's resume is attached and details his qualifications and publications. Mr. Rohrback has not testified as an expert at trial or in a deposition in the last 4 years. Mr. Rohrback's fee schedule is attached.

Frank Pita
3080 125th Ave NE
Bellevue, WA
425-785-1109

Mr. Pita has not yet prepared an analysis or report but may be asked to provide opinions on differing site conditions, Contract Documents quality and constructability compared to actual conditions, the Owner and representatives response to unforeseen conditions, or other topics yet to be determined. In the last four years Mr. Pita has testified as an expert in two cases

- Case # 19-2-10678-6 SEA, entitled 'Puget Sound Regional Transit Authority vs. Jacobs Associates'. Deposition taken on 5 Nov 2020.
- Case # 20-2-16193-3 SEA, called 'Regency Bellefield Holdings, LLC vs. Central Puget Sound Regional Transit Authority & Shimmick / Parsons Joint Venture' Deposition taken on 14 Jun 2022.

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Mr. Pita's qualifications and publications will be provided in accordance with the rules and case schedule. Mr. Pita charges \$275/hour for engineering work or report preparation and \$350/hour plus expenses for time in depositions or trial.

INTERROGATORY NO. 7: Please identify each and every statement, oral or written, obtained by you, or your agents or representatives, which relates to any of the issues involved in any part of this case and identify each document in which that statement or any portion of that statement is contained.

ANSWER: Strider objects to this Interrogatory on the grounds that it is vague, overbroad, and unduly burdensome. Requesting identification of "each and every statement. . . which related to any of the issues involved in any part of this case" and identification of each document in which any statement or part of statement can be found is extremely broad and unduly burdensome. The Interrogatory is vague and overbroad in defining "statement" and fails provide any specificity on what aspect of the various claims/ defenses/ counterclaims information is sought. Subject to its specific and general objections, Strider directs IWRB to all documents and "statements" contained in Bentley, its own records, and the documents and emails produced in response to the Requests for Production below.

INTERROGATORY NO. 8: For each Claim (as defined in the Contract) you are claiming payment or associated damages for in this lawsuit, please: (a) identify the Claim and state the date when the Claim (and each version or modification thereof) was submitted; (b) state when the Claim arose; (c) state when Defendant was given notice of the Claim; (d) state why the Claim was necessary and/or requested; and (e) state if or when you completed the work identified in the Claim.

ANSWER: Strider objects to this Interrogatory as containing no fewer than five discrete subparts and therefore counting as five interrogatories for purposes of Idaho Rule of Civil Procedure 33(a)(1). Strider objects to this Interrogatory as overbroad, vague, and unduly burdensome and as seeking legal analysis / legal conclusions. This Interrogatory asks Strider to restate information that is already known and in possession of IWRB and its attorneys. Strider directs IWRB to the records produced to date, records available to IWRB in Bentley, and information provided in response to other Interrogatories herein. Strider further answers as follows:

		Claim submitted / Payment Requested
Change Order Issues --Season 2 Stop Work Order (SWO)		
SWO Gate (Metals) Work Extra Costs	\$ 32,819.92	2/8/2022
SWO General Requirements and Impacts	\$ 173,242.61	4/19/2022
SWO Grout Plan, Consulting and Testing	\$ 70,920.30	3/18/2022
Change Order #3 "Disputed" Items		
Season 1		
Extended Field Overhead for Gate Metal Work and Related Issues	\$ 189,235.25	10/11/2021
Install Sheet Piles	\$ 38,932.39	2/5/2021
Additional Cofferdam and Dewatering	\$ 66,874.24	2/5/2021
Subgrade issues, steel plates and dewater	\$ 90,614.72	2/5/2021

	Field Overhead for Changed Conditions	\$ 52,149.80	3/26/2021
Season 2			
	Cofferdams and Dewatering	\$ 150,000.00	6/25/2021
	Contingency #2 Sheet pile at upstream cofferdam	\$ 84,000.00	6/25/2021
	CO#3--#9 Season 2 Mobilization	in P.E. #7	
	CO#3--#10 Season 2 Environmental Protection, Site Prep, Site Restoration	in P.E. #6, #7 & #8	
	CO#3--#11 Season 2 Temporary Access Road/Structure & River Crossing	in P.E. #7 & #8	

Strider also seeks unpaid Pay Estimates and termination costs as well as interest. See Interrogatory No. 20 and 25 and spreadsheet provided.

INTERROGATORY NO. 9: Please describe in detail the primary and material facts that support all the allegations contained in the first cause of action in your Complaint.

ANSWER: Strider objects that this Interrogatory is overbroad and vague because Strider’s first cause of action contains five discrete theories of breach. Strider objects to this Interrogatory as containing no fewer than five discrete subparts and therefore is counted as five interrogatories for purposes of Idaho Rule of Civil Procedure 33(a)(1). Strider further objects to this Interrogatory on the grounds that “primary and material facts” is vague and “all allegations” is overbroad and that this Interrogatory seeks a “dress rehearsal” of Strider’s case, calls for legal analysis and conclusions, and is not an appropriate use of written discovery under IRCP 33. Subject to and without waiving its specific and general objections, Strider responds as follows.

Breach of Contract's payment terms – IWRB failed to timely pay Pay Estimates 3, 6, 7, and 8 in full. IWRB improperly withheld payment for approved Change Order 3 costs. IWRB improperly refused to pay for work performed.

Breach of Contract's change provisions – IWRB unreasonably rejected and refused to execute Change Orders and Contract modifications addressing the changes in the work, extra work, and differing / changed conditions.

Breach of the duty of good faith and fair dealing – IWRB took an inactive and unreasonably passive approach to addressing and resolving the errors and omissions in its Contract Documents and changed / differing conditions encountered by Strider and discussed in answers to other Interrogatories.

Breach of implied warranty of plans and specifications – as detailed in other Interrogatory responses, the Contract Documents provided by IWRB contained errors and omissions that caused Strider to perform changed work, extra work, and incur additional costs and delays.

Breach of implied warranty to not interfere or hinder Contractor –The Board failed to provide Strider with timely access to the work after issuing a Notice to Proceed. As discussed in other responses to Interrogatories, The Board unreasonably reversed positions, failed to respond to Strider's Project correspondence, failed to provide necessary direction, and did not respond to or properly pay Strider's Pay Estimates. The IWRB's Stop Work Order also prevents Strider from having access and ability to perform work on the Project.

Discovery is ongoing and additional facts may be discovered to further support Strider's claims for breach.

INTERROGATORY NO. 10: Please describe in detail the primary and material facts that support all the allegations contained in the second cause of action in your Complaint.

ANSWER: Strider objects to this Interrogatory on the grounds that “primary and material facts” is vague and “all allegations” is overbroad and that this Interrogatory seeks a “dress rehearsal” of Strider’s case, calls for legal analysis and conclusions, and is not an appropriate use of written discovery under IRCP 33. Subject to and without waiving its specific and general objections, Strider responds as follows. Strider submitted Pay Estimates 3, 4, 6, 7, and 8 in accordance with the terms of the Contract. IWRB did not pay timely or timely provide written reasons for withholding within 10 days of the date Strider’s Pay Estimates were submitted.

INTERROGATORY NO. 11: Please describe in detail the primary and material facts that support all the allegations in the third cause of action in your Complaint.

ANSWER: Strider objects to this Interrogatory on the grounds that “primary and material facts” is vague and “all allegations” is overbroad and that this Interrogatory seeks a “dress rehearsal” of Strider’s case, calls for legal analysis and conclusions, and is not an appropriate use of written discovery under IRCP 33. Subject to and without waiving its specific and general objections, Strider responds as follows. IWRB issued a Stop Work Order on December 4, 2021 and has not identified any outstanding work that Strider can perform on the Project in light of the SWO.

INTERROGATORY NO. 12: Please describe in detail the primary and material facts that support the allegations in paragraph 3.12 of your Complaint.

ANSWER: Strider objects to this Interrogatory on the grounds that “primary and material facts” is vague and “all allegations” is overbroad and that this Interrogatory seeks a “dress rehearsal” of Strider’s case, calls for legal analysis and conclusions, and is not an appropriate use of written discovery under IRCP 33. Subject to and without waiving its specific and general objections, Strider responds as follows. The contract drawings contain dimensional and constructability errors identified by Strider in October of 2020 that require IWRB to issue Change Directive #2 on 12/08/2020 with revised contract drawings. The late delivery of CD #2 delayed fabrication, delivery and installation of gate rehabilitation metal work; adversely and significantly impacted the first season construction schedule and forced a second season of In–Water work. The schedule impact and associated costs were documented and submitted to IWRB using the required project document control system Bentley on the following dates.

- Strider letter Phase 2 Construction- Request for Direction, Contract Extension, and Equitable Adjustment to Contract, dated February 5th, 2021. Submitted in Bentley February 7th, 2021. No IWRB response received, currently 676 days overdue. This details the schedule impacts.
- Strider letter Extended Field Overhead to Cover Extra Gate Work, dated March 26th, 2021. Submitted in Bentley March 26th, 2021. No IWRB response received, currently 672 days overdue.
- Strider’s letter Dewatering for Extra Gate Work, dated March 26th, 2021. Submitted in Bentley March 26th, 2021. No IWRB response received, currently 672 days overdue.
- Strider letter Phase 1 Change Order Summary; Notice of Phase 2 Repricing, dated April 26th, 2021. Submitted in Bentley April 28th, 2021.
- Strider E-Mail to John Dawson M/M on June 7th, 2021 transmitting Request for Equitable Adjustment, Package III.
- Strider letter Season II Cost Proposal and Cost-To-Date Summary, dated June 25th, 2021. Submitted in Bentley June 28th, 2021. No IWRB response received, currently 535 days overdue.
- Strider letter Extended Field Overhead for Gate Metal Work \$189,235.25, dated October 11th, 2021. Submitted in Bentley October 12th, 2021. No IWRB response received, currently 430 days overdue.

There has been no substantive response to the presentation to date or effort to resolve the issue.

What has occurred are Strider's repeated demands to resolve the matter which have been largely ignored by IWRB. These demands are found in Strider letters of:

May 6, 2022 Open Issues—Demand for Resolution
June 6, 2022 Change Order #3 Dispute Resolution
June 15, 2022 Demand for IWRB Action

INTERROGATORY NO. 13: Please describe in detail the primary and material facts that support the additional costs you assert that the Idaho Water Resource Board was responsible for as they relate to paragraph 3.13 of your Complaint.

ANSWER: Strider objects to this Interrogatory on the grounds that “primary and material facts” is vague and “all allegations” is overbroad and that this Interrogatory seeks a “dress rehearsal” of Strider’s case, calls for legal analysis and conclusions, and is not an appropriate use of written discovery under IRCP 33. Subject to and without waiving its specific and general objections, Strider responds as follows. See Answer to Interrogatories No. 5 and 12. Change Order #3 was fully executed Oct 29, 2021 and clears the standard for notice, established the amount in dispute, and provides the requisite information for an equitable adjustment to the Contract. Less than three weeks later IDWR commits to resolution of the disputed items in Change Order #3 and other matters but has yet to do so.

INTERROGATORY NO. 14: Please describe in detail the primary and material facts that support the allegation in paragraph 3.22.

ANSWER: Strider objects to this Interrogatory on the grounds that “primary and material facts” is vague and “all allegations” is overbroad and that this Interrogatory seeks a “dress rehearsal” of Strider’s case, calls for legal analysis and conclusions, and is not an appropriate use of written discovery under IRCP 33. Subject to and without waiving its specific and general objections, Strider responds as follows. With the supersack cofferdam in place, and upon commencement of the dewatering pumps it became evident the specified surficial cofferdam would not seal the existing river bottom. Piping under the coffer wall resulted in subterranean flows into the Phase 1 work area and erosion. Strider identified the issue on or about December 2, 2020 and brought it to the attention of the project team during the weekly progress meeting. The condition persisted and created ever increasing problems.

Strider provided IWRB with the following notification letters:

- Cofferdam Letter #1, dated 12/8/2020,
- Cofferdam Letter #2, dated 12/14/2020,
- Cofferdam Letter #3, dated 12/22/2020

Though all the letters request information and/or direction of IWRB, Strider received no response from IWRB (or its Consultants). All letters can be found (and remain overdue) in the Bentley project document system. The notice letters also identify the efforts Strider proposed to mitigate the situation and that a contract modification was necessary to address the additional cost and schedule impacts.

INTERROGATORY NO. 15: Please describe in detail the primary and material facts that support the allegation in paragraph 3.25.

ANSWER: Strider objects to this Interrogatory on the grounds that “primary and material facts” is vague and “all allegations” is overbroad and that this Interrogatory seeks a “dress rehearsal” of Strider’s case, calls for legal analysis and conclusions, and is not an appropriate use of written discovery under IRCP 33. Subject to and without waiving its specific and general objections, Strider responds as follows. See Answers to Interrogatory No. 2 and 5.

INTERROGATORY NO. 16: Please describe in detail the primary and material facts that support the allegation in paragraph 3.26.

ANSWER: Strider objects to this Interrogatory on the grounds that “primary and material facts” is vague and “all allegations” is overbroad and that this Interrogatory seeks a “dress rehearsal” of Strider’s case, calls for legal analysis and conclusions, and is not an appropriate use of written discovery under IRCP 33. Subject to and without waiving its specific and general objections, Strider responds as follows. Existing streambed elevations in the cofferdam location upstream of Gates 6 to 11 (Phase 2) was found to be on average 1.5 feet lower than the average elevation of 2432.43 shown on drawing C-2. Existing streambed elevations downstream of Gates 8 & 9 are indicated in the Contract Documents to be as high as elevation 2438 or roughly 4 feet above apron concrete. The as-found condition was a depression at approximately elevation 2430. Grades indicated on the Contract Drawing would have been about 4 feet above the channel bottom (and 2 feet above the water level at time of construction), were in fact they were below the anticipated channel bottom by as much as 4 feet.

INTERROGATORY NO. 17: Please describe in detail the primary and material facts that support the allegation in paragraph 3.33 of your Complaint.

ANSWER: Strider objects to this Interrogatory on the grounds that “primary and material facts” is vague and “all allegations” is overbroad and that this Interrogatory seeks a “dress rehearsal” of Strider’s case, calls for legal analysis and conclusions, and is not an appropriate use of written discovery under IRCP 33. Subject to and without waiving its specific and general objections, Strider responds as follows. When Strider observed water was flowing out from under the Dam at Gate 7 at a rate that was carrying particulate, Strider immediately notified the IWRB representative of this condition (RFI dated 12/3/2021, with previous field discussion). IWRB then issued a Stop Work Order (SWO) on December 4, 2021. Strider placed IWRB on notice, in a letter dated Dec. 6, 2021, that all matters related to the SWO are a changed condition, outside the scope of the original Contract and therefore compensable for which a Contract Modification would be required. Strider’s letter further sought IWRB’s direction on how to proceed.

Strider’s letter to the IWRB of June 6, 2022 entitled “Grout Plan and Change of Conditions, Response to IWRB Letter of ay 16, 2022” summarizes the events that followed and presents the overall timeline. Attached to the June 6 letter are the Meeting Minutes, for the project as prepared by David Evans and Associates. In these Minutes Issue I-14 relates to the SWO. The timeline and evidence set forth in these documents indicates IWRB’s determination the work was beyond the scope of the Contract from the onset, for which a Contract Modification would be necessary. The Minutes, a contemporaneous record of the project discussions, indicate Strider was advised a Change Order was forth coming and should proceed accordingly. There is other and more detailed supporting evidence of IWRB’s determination, direction and assurance to Strider there of a forthcoming Contract Modification. Emails from IWRB to Strider starting December 8, 2021 clearly indicates IDWR considered the condition outside the scope of the Contract, which would culminate in a Change Order and so advised Strider. Given the lack of initiative on the part of IWRB’s Consultants, and recognizing

the project's time sensitive schedule, IWRB asked Strider have Strider's Geotechnical Engineer on site to evaluate the situation and conduct testing. The results of the December 14 & 15 drawdown test with conclusions were presented by RAM GeoServices to the entire project team on December 20, 2021. Knowing this, IWRB directed Strider to move forward with the development of the Grout Plan (as the chosen remedy to block the infiltration). Pricing for the extra work SWO was again discussed in the weekly progress meeting (January 12, 2022 Meeting Minutes, Issue I-14) and IWRB agreed that a T&M basis (with a not to exceed number) was a reasonable approach. Again in IWRB's Consultants' email (Sheesley) of January 20, 2022 Strider is requested to present the costs associated with Grouting (both plan and construction) indicating it to be extra work. This summary is not exhaustive, discovery is ongoing and Strider is likely to uncover additional facts related to IWRB's acknowledgment of the changed condition.

INTERROGATORY NO. 18: Please describe in detail the primary and material facts that support the allegation in paragraph 3.35 of your complaint.

ANSWER: Strider objects to this Interrogatory on the grounds that "primary and material facts" is vague and "all allegations" is overbroad and that this Interrogatory seeks a "dress rehearsal" of Strider's case, calls for legal analysis and conclusions, and is not an appropriate use of written discovery under IRCP 33. Subject to and without waiving its specific and general objections, Strider responds as follows. See Answer to Interrogatory No. 17.

INTERROGATORY NO. 19: Please describe in detail the primary and material facts that support the allegation in paragraph 3.37 of your complaint.

ANSWER: Strider objects to this Interrogatory on the grounds that “primary and material facts” is vague and “all allegations” is overbroad and that this Interrogatory seeks a “dress rehearsal” of Strider’s case, calls for legal analysis and conclusions, and is not an appropriate use of written discovery under IRCP 33. Subject to and without waiving its specific and general objections, Strider responds as follows. The cost amount does not actually include driving sheet pile as that is a Cofferdam and Dewatering Issue (though directly tied to the subgrade issue of Subgrade Changed Conditions) The amount is composed of the following for which the supporting documents are referenced:

Change Order #3—Disputed Items—Season 1	See Interrogatory 5, 8, 15, 16, and 25
Subgrade Issues, Steel Plates and Dewatering	\$ 90,614.72
Field Overhead for Changed Condition	\$ 52,830.77
Stop Work Order (SWO)—Season 2	See Interrogatory 5, 8, 15, 17, 18, and 25
SWO Gate (Metals) Work Extra Cost	\$ 32,819.92
SWO General Requirements and Impacts	\$173,242.61
SWO Grout Plan, Consulting and Testing	\$ 70,920.30
TOTAL	\$420,428.32

INTERROGATORY NO. 20: Please describe in detail the primary and material facts that support the allegation in paragraph 3.48 of your complaint including the specific amounts you allege were improperly withheld from each Pay Estimate.

ANSWER: Strider objects to this Interrogatory on the grounds that “primary and material facts” is vague and “all allegations” is overbroad and that this Interrogatory seeks a “dress rehearsal” of Strider’s case, calls for legal analysis and conclusions, and is not an appropriate use of written

discovery under IRCP 33. Subject to and without waiving its specific and general objections, Strider responds as follows.

Pay Estimate #3 - Work Period 1/1/21 to 1/31/21

\$74,820.00 for 87 cubic yards of concrete (Concrete Apron) placed in December was improperly withheld.

Pay Estimate #4 – Work Period 2/1/21 to 3/12/21

IWRB continues to withhold \$74,820.00 for concrete placed in December 2020.

Pay Estimate #6 – Work Period 12/1/21 to 12/31/21

IWRB continues to withhold \$74,820.00 for concrete placed in December 2020.

IWRB withholds \$6000.00 from Season 2 Environmental Protect, Site Prep, & Site Restoration.

Pay Estimate #7 – Work Period 1/1/22 to 2/28/22

IWRB continues to withhold \$74,820.00 for concrete placed in December 2020.

IWRB inappropriately requests all gate work (without reference to bid items or amounts) be removed from pay estimate. Approximately \$143,453.40 of a \$171,158.41 pay request.

Pay Estimate #8 – Work Period 3/1/22 to 4/22/22

IWRB continues to withhold \$74,820.00 for concrete placed in December 2020.

IWRB refuses to process Pay Estimate #7 further delaying the processing of Pay Estimate #8, \$77,150.00.

Total improper withholding from Pay Estimates *after retainage*.

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\$71,079.00 for concrete
\$162,600.49 Pay Estimate #7 (includes \$6,000.00 withheld from PE #6)
\$73,292.50 Pay Estimate #8
\$306,971.99 Total

IWRB is also refusing to issue a change order for extra work to complete gate work inside the Stop Work Order as previously agreed to for the sum of \$32,819.92 which is taking away Strider's means of billing and compensation. Additionally, IWRB's delays in responding to Pay Estimates timely interfered and hindered Strider's work.

INTERROGATORY NO. 21: Please describe in detail all instances in which your Request for Payment (i.e. pay estimate) was not submitted to the Idaho Water Resource Board pursuant to requirements of Article 7 of the Contract.

ANSWER: Strider objects to this Interrogatory to the extent it calls for legal analysis and is not an appropriate use of written discovery under IRCP 33. Subject to and without waiving its specific and general objections, Strider responds as follows. All pay estimates were submitted pursuant to requirements of Article 7. In adhering to the Contract prescribed process, Strider was to submit the Proposed Progress Estimate to the Project Inspector (DEA) to reconcile quantities of work performed and compliance with the Contract. This reconciliation typically took less than two (2) working days. The revisions, if any, would be made immediately, and the pay request resubmitted to DEA and simultaneously be submitted to IWRB (through prescribed Project Management System, Bentley). IWRB apparently did not use Bentley nor did IWRB communicate any concerns about the pay request in any formal or timely manner until the Progress Estimate delinquency was so egregious that Strider was forced to bring it to IWRB's attention.

INTERROGATORY NO. 22: Please describe in detail your process in developing your dewatering plan and identify all plans, drawings or other engineering documents that you followed.

ANSWER: Strider incorporates its general objections and answers as follows. See Strider's Answer to Interrogatory No. 2. IWRB provided geotechnical information upon which Strider relied to prepare the Dewatering Plan, as it is the same as used to prepare the Bid. Strider based the dewatering system on sumps and pumps (as specified), sizing the system based upon the specified 2" of water per hour over the work area (10,000 sf or 12,500 gallons/hr = 210 gpm) and past experience with cofferdams of similar construct in similar conditions. After reviewing similar past Strider projects, it was determined dry-prime centrifugal pumps with float controls (two each 6" pumps and one 8" pump) with a capacity up 6,000 gpm would be sufficient and met the specified redundancy requirement. This information was submitted to the Engineer in Submittal #11 for Season 1. In Season 2 Strider switched to submersible pumps, all 8" (4 total; 2 each 35hp and 2 each 27 hp) with a primary and a back-up generator, capable of pumping 4,600 gpm, with one pump in stand-by as indicated in Submittal #11.4.

This concept coupled with the use of the specified "supersack" cofferdam system was presented at the Aug 31, 2020 telecom Pre-Construction Meeting and again at the Sept 15, 2020 On-Site Pre-Construction meeting. The Pre-Construction on Sept. 15th also discussed, at the request of IWRB Consultants, what was Strider's contingency plan should the as-found conditions differ from those represented in the documents or specified cofferdam system prove inadequate. Strider's response was to utilize sheet pile, as Strider had the capability to self-perform that work, but such would be beyond the scope of the original Contract. As for the actual dewatering component, it would be observational and if more was required Strider would flex to

accommodate, at all times mindful of the turbidity issues. The cofferdam and dewatering submittals (combined) were initially prepared by a Strider Engineer, James A. Gebhardt, P.E. and submitted on 10/19/2020

The initial dewatering plan was submitted 10/19/2020 in combination with the cofferdam dam plan, a plan revision was submitted 10/30/2020, and subsequent revision made on 11/18/2020. The cofferdam Work did not start until 11/23/2020, and the initial cofferdam was completed and installation of the dewatering system started on or about 12/2/2020.

The plan resubmitted on 11/18/2020 was to satisfy the Idaho PE obligation (the only comment not addressed from Mott McDonald's 10/29/20 "Submittal Response"; all other comments had been addressed by Strider's 10/30/2020 Submittal). An Idaho certified professional engineer (Brandon Junso of Junso Consulting Group) reviewed Strider's initial submittal and certified the revised submittal dated 10/30/2020.

INTERROGATORY NO. 23: Please describe, in detail, all unforeseen conditions or changes in conditions you encountered during your work on the Project that justified an increase in the Fixed Price Contract Amount.

ANSWER: Strider objects that this Interrogatory is vague, overbroad, and unduly burdensome. Strider further objects to this Interrogatory on the grounds that it seeks a "dress rehearsal" of Strider's case, calls for legal analysis and conclusions, and is not an appropriate use of written discovery under IRCP 33. Subject to and without waiving its specific and general objections, Strider responds as follows. Subject to and without waiving its specific and general objections, Strider provides the following.

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Site Access Road and Access to the Work: IDWR failed to provide access to the work site as or when stated in the Contract Documents. The IDWR had not fully secured an Access agreement with the property Owner which resulted in a project start delay (access allowed slide from the specified Sept 15, 2020 to October 26, 2020), and significant design modification and a Contract Modification (CO#1). This was resolved by Change Order #1 but did delay start of in-stream work (contemplated to start November 2, 2020 but could not occur until the initial work of the modified access was complete on November 12, 2020).

Geotechnical Information/Subgrade Conditions:

See Strider's Answer to Interrogatory No. 5. The Contract Documents contemplated a firm subgrade upon which to construct apron improvements and found the cofferdam system. This subgrade was also characterized to be of low permeability. However, when exposed the subgrade became soft and yielding to the extent Strider was concerned about building upon it. Strider's geotechnical engineers (Frank Pita in Season 1/Phase 1 and/or Mark Rohrbach and Frank Pita in Season 2/Phase 2) were on-site to observe and evaluate the conditions in question; involved in all subsequent and relevant discussions with the IWRB; lead the discussion in developing a solution plan (with the IWRB Team) to overcome the as-found condition and allow the completion of Phase 1 condition. Strider's geotechnical engineers' conclusion was the as-found subgrade was much weaker than would have reasonably been expected given the geotechnical information provided in the Contract Documents.

In Season 2, the unforeseen condition was the lateral flow of water in the subgrade materials. See Answer to Interrogatory No. 5. The Design Geotechnical Engineer had failed to characterize or even consider the lateral flow of water in the subgrade materials and in fact created

a design section that exacerbated the lateral flow problem in Season 2/Phase 2. The SWO was a product of that oversight.

INTERROGATORY NO. 24: Please describe, in detail, all steps you took to ensure your metal fabricator for the Tainter gates met the Quality Assurance qualifications under the Contract.

ANSWER: Strider objects that this Interrogatory is vague, overbroad, and unduly burdensome. Strider further objects to this Interrogatory on the grounds that it seeks a “dress rehearsal” of Strider’s case, calls for legal analysis and conclusions, and is not an appropriate use of written discovery under IRCP 33. Strider also objects to the phrasing of the Interrogatory, which is not consistent with the Contract Documents and implies the scope of work included fabricating Tainter gates. It was not part of the Contract scope to fabricate the Tainter gates. All metal fabrications are either stiffeners or extensions to be attached to the existing gates. Subject to and without waiving its specific and general objections, Strider provides the following.

PFC Manufacturing was selected as metal fabricator because Strider has used PFC on previous projects of similar scope with successful in-service performance. PFC is a known metal fabricator to Strider and the construction industry for over 20 years. PFC had produced for Strider similar quantities of product well within the project timeline. PFC on average produces 50 tons of fabrications per month serving primarily commercial, industrial and process/manufacturing customers, both private and public sector.

RFI 04 was submitted in Bentley on 11/2/2020 requesting the use of PFC with resume attached. IBWR RFI response requested additional information that was submitted 11/10/21.

Submittal response took no exceptions.

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INTERROGATORY NO. 25: Please set forth a full and complete itemization of all damages you claim you are owed and the basis for the calculation of the amount owed (e.g., what work was completed, when it was completed, whether it was defect free, when or if it was billed, the invoice (pay estimate) the amount is billed in, etc.).

ANSWER: Strider objects to this Interrogatory as containing no fewer than two discrete subparts and therefore counts as two interrogatories for purposes of Idaho Rule of Civil Procedure 33(a)(1). Strider objects to this Interrogatory as overbroad, vague, and unduly burdensome and as seeking legal analysis / legal conclusions. This Interrogatory asks Strider to restate information that is already known and in possession of IWRB and its attorneys. Strider directs IWRB to the records produced to date, records available to IWRB in Bentley, and information provided in response to other Interrogatories herein. Subject to its specific and general objections, Strider further answers as follows: See Answers Interrogatory No. 8 and 20 and spreadsheet provided, entitled: Interrogatory Response Claims Spreadsheet 1-20-23 .xlsx.

All work for which Strider is making Claim has been completed. To the work documented in the other Answers to Interrogatories, Strider adds the following termination costs and considers this Interrogatory Answer to be notice of intent to make claim for the amount of \$190,388.41. The impacts and damages are summarized as follows and detailed in the attached spreadsheet entitled Cost of Termination:

- a. Cost of Internal Rent not in Job Cost
- b. Cost of Material on Hand, not incorporated in the Work
- c. Cost of Construction Materials Left in River
- d. Cost of Mediation

e. Less Cost of work in Contract and other Claimed Work in Dispute

INTERROGATORY NO. 26: Please identify all amounts that you claim you are owed that will be paid to any subcontractor or other third-party and Identify the subcontractor or third- party.

ANSWER: Strider has no outstanding payments due to its subcontractors or suppliers.

INTERROGATORY NO. 27: Please Identify each instance where the labor or material you provided to the Project deviated from the drawings or plans referenced in the Contract.

ANSWER: Subject to its general objections, Strider answers as follows. The Project phasing was changed from starting at the South half of the Dam to starting on the North half of the Dam. Trunnion pin materials: It was discovered through the material certification submittal process the originally supplied pins were not in conformance with Specification 05 12 00, 2.02 B. Pins in non-conformance installed in Gates 1 to 6 were removed and replaced with conforming material pins. Pins installed in Phase 2, Gates 7 to 11 were of conforming material. Construction joints in the apron extension at Piers 1 & 4 were eliminated with the pre-approval of the Engineer. A construction joint was added between the apron extension and the upstand with the pre-approval of the Engineer. Strider did not receive any non-conformance reports from the Project Inspectors for work completed. All other deviations from the original Contract Documents were a product of IWRB approved Change Orders and/or Change Directives.

INTERROGATORY NO. 28: Please identify each instance where the labor or material you provided deviated from the drawings, plans and/or specifications in the Contract.

ANSWER: Strider has no obligation to answer this Interrogatory and objects to this Interrogatory as over the limit of 40 Interrogatories, including discrete subparts, pursuant to IRCP 33(a)(1).

INTERROGATORY NO. 29: Describe in detail, all facts that support each of your affirmative defenses.

ANSWER: Strider has no obligation to answer this Interrogatory and objects to this Interrogatory as over the limit of 40 Interrogatories, including discrete subparts, pursuant to IRCP 33(a)(1). Strider further objects that this Interrogatory is overbroad and unduly burdensome and improperly seeking a “dress rehearsal” of trial. Strider asserted more than ten distinct affirmative defenses.

INTERROGATORY NO. 30: If any of your responses to any request for admission is anything other than an unqualified admission, then please state in detail, for each such response, all the facts and circumstances supporting your response.

ANSWER: Strider has no obligation to answer this Interrogatory and objects to this Interrogatory as over the limit of 40 Interrogatories, including discrete subparts, pursuant to IRCP 33(a)(1). Strider further objects that this Interrogatory is overbroad and an inappropriate use of IRCP 33 and IRCP 36. It is beyond the scope of the rules and overly burdensome to demand that Strider provide in detail each and every fact and circumstance for refusing to admit the Board’s Requests for Admissions, many of which inquire only on questions of law.

RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1. Please produce each and every statement, audio tapes or transcribed statements taken of or given by Plaintiff, you, or any other person who purports to have knowledge relating to the facts of this case. Please include statements obtained on your behalf whether obtained by you or your agents.

RESPONSE: Strider objects to Request for Production No. 1 on the grounds it is vague, overly broad, unduly burdensome, and to the extent it seeks production of documents protected from disclosure based on attorney-client privilege and/or the work product doctrine. “Statement” is not defined and “facts of the case” is overbroad. Strider further objects to the extent that this Request for Production seeks materials which are equally available to IWRB. Subject to and without waiving its specific and general objections, please see the documents produced herewith.

REQUEST FOR PRODUCTION NO. 2. Please produce each exhibit that you intend to offer into evidence at the trial of this case, either for evidentiary or illustrative purposes.

RESPONSE: Strider objects to Request for Production No. 2 on the grounds it is vague and unduly burdensome. Strider objects on the grounds that this Request is premature – Strider has not yet determined what documents it intends to use as exhibits at trial. Strider also objects on the grounds that requesting documents that may be possible illustrative exhibits seeks protected work product and materials prepared for litigation to which IWRB are not entitled under the rules or case schedule. Discovery is ongoing and depositions have not yet occurred. Strider will disclose its intended trial exhibits in accordance with the applicable rules and scheduling order. Until then, all produced materials should be considered possible exhibits.

REQUEST FOR PRODUCTION NO. 3. Please produce all documents, if any, that you or any other witness will rely on in testifying at the trial of this case.

RESPONSE: Strider objects to Request for Production No. 3 on the grounds it is vague and unduly burdensome. “Rely on” is vague and undefined. Strider objects on the grounds that this Request is premature – Strider has not yet determined what documents it intends to use as exhibits at trial. Strider also objects on the grounds that requesting documents that may be possible illustrative exhibits seeks protected work product and materials prepared for litigation to which IWRB are not entitled under the rules or case schedule. Discovery is ongoing and depositions have not yet occurred. Strider will disclose its intended trial exhibits in accordance with the applicable rules and scheduling order. Until then, all produced materials should be considered possible exhibits.

REQUEST FOR PRODUCTION NO. 4. Please produce copies of any document which I.R.C.P. Rule 26(b)(4) provides for related to each expert identified in your answer to Interrogatory No. 6, including without limitation: 1) the data or other information considered by the expert in forming his or her opinions and 2) any exhibits to be used as a summary of or support for the expert’s opinions.

RESPONSE: Strider objects to Request for Production No. 4 on the grounds it is premature. Strider will disclose its expert opinions and required information in accordance with the applicable rules and scheduling order.

REQUEST FOR PRODUCTION NO. 5. Please produce all correspondence or communications including without limitation, letters, notes, emails, memoranda or other documents between Defendant and you, or between you and any third party, relating to the subject matter of this litigation, including all persons hired as engineers, experts, advisors, consultants, or other contractors to inspect, test or confer on work related to the Contract.

RESPONSE: Strider objects to Request for Production No. 5 on the grounds it is vague, overly broad, unduly burdensome, and to the extent it seeks production of documents protected from disclosure based on attorney-client privilege and/or the work product doctrine. Strider further objects to the extent that this Request for Production seeks materials which are equally available to IWRB. Subject to and without waiving its specific and general objections, please see the documents produced herewith.

REQUEST FOR PRODUCTION NO. 6. Please produce all correspondence or communication by and between you and any expert(s) or consultants to the extent such information is discoverable pursuant to I.R.C.P. 26(b)(4).

RESPONSE: Strider objects to Request for Production No. 6 on the grounds it is vague, overly broad, unduly burdensome, and to the extent it seeks production of documents protected from disclosure based on attorney-client privilege and/or the work product doctrine. Subject to and without waiving its specific and general objections, please see the documents produced herewith.

REQUEST FOR PRODUCTION NO. 7. Please produce all documents in your possession, custody, or control that contain, or relate or refer to, your financial accountings for the Contract,

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including but not limited to all bid documents, budget documents, emails, letters, texts, invoices, receipts, QuickBooks files, Excel spreadsheets, ledgers, and/or other such financial records.

RESPONSE: Strider objects to Request for Production No. 7 on the grounds it is vague, overly broad, unduly burdensome, and to the extent it seeks production of documents protected from disclosure based on attorney-client privilege and/or the work product doctrine. Strider further objects to the extent that this Request for Production seeks materials which are equally available to IWRB. Subject to and without waiving its specific and general objections, please see the documents produced herewith.

REQUEST FOR PRODUCTION NO. 8. Please produce copies of any and all work logs (including submittal logs), timesheets, maps, diaries (including construction diaries), calendars, notes, tape recordings, memoranda, orders for materials (including fabrication of metal for Tainter gates) and personal documentation, including without limitation, calculations and determinations of Critical Path Method Schedules related to the Contract, excluding the work product of your attorneys, and all other documents relating to the matters and events which are relevant to this litigation.

RESPONSE: Strider objects to Request for Production No. 8 on the grounds it is vague, overly broad, unduly burdensome, and to the extent it seeks production of documents protected from disclosure based on attorney-client privilege and/or the work product doctrine. Strider further objects to the extent that this Request for Production seeks materials which are equally available to IWRB. Subject to and without waiving its specific and general objections, please see the documents produced herewith.

REQUEST FOR PRODUCTION NO. 9. Please produce a copy of all documents, including communications, in your possession, custody, and/or control that relate or refer to the Claims (as defined by the Contract).

RESPONSE: Strider objects to Request for Production No. 9 on the grounds it is vague, overly broad, unduly burdensome, and to the extent it seeks production of documents protected from disclosure based on attorney-client privilege and/or the work product doctrine. Strider further objects to the extent that this Request for Production seeks materials which are equally available to IWRB. Subject to and without waiving its specific and general objections, please see the documents produced herewith.

REQUEST FOR PRODUCTION NO. 10. Please produce all documents, information, files, whether paper or electronic, which relate, directly or indirectly, to or were referenced in preparation of your answers to Interrogatories contained herein above and herein below and identify to which Interrogatories each such document relates.

RESPONSE: Strider objects to Request for Production No. 10 on the grounds it is vague, overly broad, unduly burdensome, and to the extent it seeks production of documents protected from disclosure based on attorney-client privilege and/or the work product doctrine. Strider further objects to the extent that this Request for Production asks Strider to do anything more than produce materials. Strider also objects on the grounds that the Request for Production seeks materials which are equally available to IWRB. Subject to and without waiving its specific and general objections, please see the documents produced herewith.

REQUEST FOR PRODUCTION NO. 11. Please produce all documents, information, files, whether paper or electronic, which relate, directly or indirectly, to or were referenced in preparation of your responses to the Requests for Admissions, below, and in doing so, identify to which response such document relates.

RESPONSE: Strider objects to Request for Production No. 11 on the grounds it is vague, overly broad, unduly burdensome, and to the extent it seeks production of documents protected from disclosure based on attorney-client privilege and/or the work product doctrine. Strider further objects to the extent that this Request for Production asks Strider to do anything more than produce materials. Strider also objects on the grounds that the Request for Production seeks materials which are equally available to IWRB. Subject to and without waiving its specific and general objections, please see the documents produced herewith.

REQUEST FOR PRODUCTION NO. 12. Please produce all documents that support your allegation in paragraph 3.26 of your Complaint.

RESPONSE: Strider objects to Request for Production No. 12 on the grounds it is vague, overly broad, unduly burdensome, and to the extent it seeks production of documents protected from disclosure based on attorney-client privilege and/or the work product doctrine. Strider further objects to the extent that this Request for Production seeks materials which are equally available to IWRB. Subject to and without waiving its specific and general objections, please see the documents produced herewith.

REQUEST FOR PRODUCTION NO. 13. Please produce all documents that support your allegation in paragraph 3.32 of your Complaint.

RESPONSE: Strider objects to Request for Production No. 13 on the grounds it is vague, overly broad, unduly burdensome, and to the extent it seeks production of documents protected from disclosure based on attorney-client privilege and/or the work product doctrine. Strider further objects to the extent that this Request for Production seeks materials which are equally available to IWRB. Subject to and without waiving its specific and general objections, please see the documents produced herewith.

REQUEST FOR PRODUCTION NO. 14. Please produce all documents that support your allegation in paragraph 3.34 of your Complaint.

RESPONSE: Strider objects to Request for Production No. 14 on the grounds it is vague, overly broad, unduly burdensome, and to the extent it seeks production of documents protected from disclosure based on attorney-client privilege and/or the work product doctrine. Strider further objects to the extent that this Request for Production seeks materials which are equally available to IWRB. Subject to and without waiving its specific and general objections, please see the documents produced herewith.

REQUEST FOR PRODUCTION NO. 15. Please produce all documents involving communications with any third parties related to the facts involved in this litigation, including Travelers Insurance or any other insurer who may potentially have an interest in this action by

subrogation or otherwise, as well as any contractor or consultant, including your geotechnical engineer, RAM GeoServices.

RESPONSE: Strider objects to Request for Production No. 15 on the grounds it is vague, overly broad, unduly burdensome, and to the extent it seeks production of documents protected from disclosure based on attorney-client privilege and/or the work product doctrine. Subject to and without waiving its specific and general objections, please see the documents produced herewith.

REQUEST FOR PRODUCTION NO. 16. Please produce all documents that relate to submitted or not submitted Requests for Payment pursuant to Article 7 of the Contract.

RESPONSE: Strider objects to Request for Production No. 16 on the grounds it is vague, overly broad, unduly burdensome, and to the extent it seeks production of documents protected from disclosure based on attorney-client privilege and/or the work product doctrine. Strider further objects to the extent that this Request for Production seeks materials which are equally available to IWRB. Subject to and without waiving its specific and general objections, please see the documents produced herewith.

REQUEST FOR PRODUCTION NO. 17. Please produce all documents relating to your Quality Control including but not limited to, design, fabrication and workmanship, installation operation and removal pursuant to Contract Specifications 3.02.

RESPONSE: Strider objects to Request for Production No. 17 on the grounds it is vague, overly broad, unduly burdensome, and to the extent it seeks production of documents protected from

disclosure based on attorney-client privilege and/or the work product doctrine. Strider further objects to the extent that this Request for Production seeks materials which are equally available to IWRB. Subject to and without waiving its specific and general objections, please see the documents produced herewith.

REQUEST FOR PRODUCTION NO. 18. Please produce all communication between you and the Idaho Water Resource Board or any third party regarding your submissions of any dewatering plans pursuant to the Contract.

RESPONSE: Strider objects to Request for Production No. 18 on the grounds it is vague, overly broad, unduly burdensome, and to the extent it seeks production of documents protected from disclosure based on attorney-client privilege and/or the work product doctrine. Strider further objects to the extent that this Request for Production seeks materials which are equally available to IWRB. Subject to and without waiving its specific and general objections, please see the documents produced herewith.

RESPONSES TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that, pursuant to Section 13.2 of the Contract, all Claims (as defined in the Contract) must be made in writing within 10 days of the event or appearance of circumstance giving rise to the Claim and must provide all documentation and other information to substantiate the Claim.

RESPONSE: Strider objects to this Request for Admission because the Contract speaks for itself and because disputed interpretations are a question of law. Questions of law are not an appropriate subject of a Request for Admission. Without waiving the forgoing objections, Strider admits that Contract Section 13.2 contains language indicating that Claims (as defined in the Contract) should be made in writing within 10 days of the event or appearance of circumstances giving rise to the Claim, and Claims should be supported by substantiating information or documentation.

REQUEST FOR ADMISSION NO. 2: Admit that the Contract Specifications did not require Strider to select one of the systems for diversion and control of water listed in the Specification 02 20 00 – 2.01.A, but rather, required Strider to select a similar system of its own choosing.

RESPONSE: Strider objects on the grounds that the Request for Admission is vague, compound, and phrased in a confusing manner. Strider further objects because the Contract Specification speaks for itself. To the extent the Board may find the language of the Specification ambiguous, then this Request is objectionable because it raises a question of law. Without waiving objections, Strider admits that Specification 02 20 00 2.01.A provides that “Materials for diversion and control of water shall be selected by the Contractor and shall be similar to” the four systems listed in that Specification or “other Engineer-approved equivalent dewatering system.”

REQUEST FOR ADMISSION NO. 3: Admit that the Contract Specifications provide that Strider is responsible to design, furnish, install, operate and maintain such facilities necessary to accomplish the Flow Diversion/Dewatering Work Plan and Cofferdam System developed by Strider.

RESPONSE: Strider objects on the grounds that this Request seeks a conclusion of law on a matter of contract interpretation which is not an appropriate subject for a Request for Admission. Without waiving its objections, Strider admits that the Contract Specifications state that Strider is responsible for the maintenance, servicing, and repairs of the dewatering system during the life of the Contract; Strider is “responsible for the design of the dewatering and flow diversion systems”; and Strider “shall furnish all materials, tools, and equipment for the flow diversion and control of water system, including flow diversion and dewatering.” Strider denies that the Contract states that “Strider is responsible to design, furnish, install, operate and maintain such facilities necessary to accomplish the Flow Diversion/ Dewatering Work Plan and Cofferdam System developed by Strider.”

REQUEST FOR ADMISSION NO. 4: Admit that you failed to submit engineer-stamped design and calculations for the dewatering system as required under the Contract.

RESPONSE: Strider denies Request for Admission No. 4.

REQUEST FOR ADMISSION NO. 5: Admit that you began dewatering work on December 2, 2020, without an approved Dewatering Plan as required by the Contract.

RESPONSE: Strider denies Request for Admission No. 5.

REQUEST FOR ADMISSION NO. 6: Admit that during the pendency of the Contract, you failed to follow the procedures set forth in Article 7, causing certain payment requests to be rejected.

RESPONSE: Strider denies Request for Admission No. 6.

REQUEST FOR ADMISSION NO. 7: Admit that you invoiced the Idaho Water Resource Board for the same work and/or materials on more than one pending invoice (i.e. Pay Estimate).

RESPONSE: Strider denies that it invoiced the Idaho Water Resources Borad for the same work and/or materials on more than one pending invoice (i.e., Pay Estimate). Strider submitted Pay Estimate 8, which included Armor Stone, because the Idaho Water Resource Board rejected and improperly withheld Pay Estimate 7.

REQUEST FOR ADMISSION NO. 8: Admit that you invoiced the Idaho Water Resource Board for work outside the scope of the Contract and not approved by the Idaho Water Resource Board.

RESPONSE: Strider denies Request for Admission No. 8.

REQUEST FOR ADMISSION NO. 9: Admit that according to the Contract, and specifically, Section 10.2, GN-1 Drawings and Specifications Note No. 3, it is Strider's responsibility to take field measurements, verify all existing field conditions and dimensions and compare with the Contract Documents prior to commencing construction.

RESPONSE: Strider admits that it was responsible for taking field measurements, verifying field conditions, and comparing such measurements and conditions with the Contract Documents and that errors, inconsistencies, and/or omissions in the Contract Documents would be reported and could constitute a Claim. Strider denies to the extent that the Request for Admission says “prior to commencing construction” which is inconsistent with the language of the Contract and implies that Strider is required to take field measurements for all aspects of the construction before beginning any part of the construction.

REQUEST FOR ADMISSION NO. 10: Admit that you did not verify the existing field conditions and dimensions of the Tainter gates by taking field measurements prior to securing materials for your work on the Tainter gates.

RESPONSE: Strider denies Request for Admission No. 10.

REQUEST FOR ADMISSION NO. 11: Admit that during Phase 1 of Construction under the Contract, you did not observe water infiltrating the dewatered area under the apron slab.

RESPONSE: Strider denies Request for Admission No. 11.

REQUEST FOR ADMISSION NO. 12: Admit that you never constructed a concrete containment wall even though you submitted a corresponding Claim (change order) to do so.

RESPONSE: Strider denies Request for Admission No. 12.

REQUEST FOR ADMISSION NO. 13: Admit that Pay Estimates 3 and 7 that Plaintiff submitted included charges for work that was not performed in compliance with the Contract, as required under Article 7 of the Contract.

RESPONSE: Strider denies Request for Admission No. 13.

REQUEST FOR ADMISSION NO. 14: Admit that Pay Estimate 4 that Plaintiff submitted included costs disallowed by Defendant in Pay Estimate 3 as well as costs for the cofferdam.

RESPONSE: Strider denies Request for Admission No. 14.

REQUEST FOR ADMISSION NO. 15: Admit that Plaintiff's original Pay Estimate 6 included requests for work that was never performed and work that was submitted under a separate pay estimate.

RESPONSE: Strider denies Request for Admission No. 15.

The undersigned hereby agrees the foregoing answers are consistent with applicable Court Rules.

DATED: This 30th day of January, 2023.

AHLERS CRESSMAN & SLEIGHT PLLC

By: /s/ Kristina Southwell
Lindsay Taft Watkins, admitted *Pro Hac Vice*
Kristina Southwell, admitted *Pro Hac Vice*
Attorneys for Strider Construction Co., Inc.

LAW OFFICE OF JOHN H. GUIN, PLLC

By: /s/ John Guin
John H. Guin, ISB #5753
Attorneys for Strider Construction Co., Inc.

The undersigned affirms that he/she is the party named herein, or representative of that party, has read the discovery answers below and believes them to be true and correct.

DATED: This 30th day of January, 2023.

STRIDER CONSTRUCTION CO., INC.

By: /s/ Jim Gebhardt

EXHIBIT C

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STRIDER CONSTRUCTION CO., INC.,)
Plaintiff,) Case No.
vs.) CV01-22-10932
IDAHO WATER RESOURCE BOARD,)
Defendant.)
_____)

30 (B) (6) DEPOSITION OF IDAHO WATER RESOURCE BOARD
TESTIMONY OF MICHAEL W. MORRISON
TAKEN JUNE 16, 2023

REPORTED BY:
DIANA KILPATRICK, CSR No. 727, RPR
Notary Public

1 THE 30(B) (6) DEPOSITION OF IDAHO WATER
2 RESOURCE BOARD, TESTIMONY OF MICHAEL W. MORRISON, was
3 taken on behalf of the Plaintiff at the office of M&M
4 Court Reporting Service, 101 South Capitol Boulevard,
5 Suite 200, Boise, Idaho, commencing at 10:36 a.m. on
6 June 16, 2023, before Diana Kilpatrick, Certified
7 Shorthand Reporter and Notary Public within and for the
8 State of Idaho, in the above-entitled matter.
9 APPEARANCES:
10 For Plaintiff:
11 Ahlers Cressman & Sleight PLLC
12 BY LINDSAY WATKINS
13 1325 4th Avenue, Suite 1850
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16 For Defendant Idaho Water Resource Board:
17 Kirton McConkie
18 BY JENNIFER REINHARDT-TESSMER
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21 jtessmer@kmclaw.com
22 -and-
23 ///
24 ///
25 ///

1 APPEARANCES, CONT'D
2
3 For Defendant Idaho Water Resource Board:
4 Deputy Attorney General
5 Natural Resources Division
6 Water Resources Section
7 BY MEGHAN CARTER
8 322 East Front street
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10 meghan.carter@idwr.idaho.gov
11
12 ALSO PRESENT:
13 Hannah Liddiard
14
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1 Q. But the board did not pay Strider for the
2 development of that grout plan. Correct?
3 A. The grout plan was never completed.
4 Q. So is it the board's position that Strider
5 is not entitled to any compensation for its work on the
6 grout plan?
7 A. That is the board's position. Also, at the
8 time we were still open to the notion that Strider had
9 not caused the hole under the dam, and we don't believe
10 that Strider has ever shown us any evidence that they
11 didn't cause the hole under the dam. So we would not
12 pay them for a remediation for a problem that they
13 caused and that they never put into effect.
14 Q. But you also testified that you don't have
15 any evidence that shows Strider did cause the hole under
16 the dam.
17 MS. REINHARDT-TESSMER: Objection.
18 Misstates prior testimony.
19 THE WITNESS: I don't believe I testified
20 that.
21 BY MS. WATKINS:
22 Q. What evidence do you have that Strider
23 caused the hole under the dam?
24 A. There was no hole --
25 MS. REINHARDT-TESSMER: Just a sec.

1 working next to the dam, to document any voids that it
2 found under the dam, and to correct small ones, and
3 anything that was fairly large, they were supposed to
4 communicate to Mott MacDonald, and at no point did they
5 ever communicate that there was a hole under the dam,
6 any kind of a void. That is in the contract documents.
7 Q. To confirm, though, you -- the only evidence
8 that you have seen that there's a hole under the dam is
9 the fact of the water, the rate of the water coming into
10 the cell. Correct?
11 A. That is correct.
12 Q. Who submitted the grout plan to Dam Safety?
13 A. I don't remember if it was me or whether we
14 had -- I don't actually remember which one of us did it,
15 physically submitted the grout plan. Or you'll find our
16 name on the documentation. It may have been me. It may
17 have been Mott MacDonald.
18 Q. Okay. I'd like to look at Exhibit No. 12.
19 (Exhibit No. 12 Marked.)
20 BY MS. WATKINS:
21 Q. I'll give you a moment to read it. Okay.
22 Did you have time to review that?
23 A. Um-hum.
24 Q. So in front of you is Deposition Exhibit 12,
25 which is a letter dated May 16th, 2022, to Strider

1 Objection. Improper lay witness opinion and irrelevant.
2 Go ahead.
3 THE WITNESS: There was no hole under the
4 dam before Strider got there, and there was after. The
5 second that -- we'd asked Strider many times to show us
6 some kind of evidence that there was a preexisting hole
7 under the dam before they got there, and they never did.
8 Per the contract, again, I think I referred back to 13,
9 they were supposed to provide, when it comes to a
10 changed condition, what specifically changed, what
11 portion of the contract documents that pertained to a
12 bunch of other things they were supposed to do, and they
13 did not do those. And if I had believed that there was
14 a hole there, even if they didn't do that, I would point
15 it out to them.
16 BY MS. WATKINS:
17 Q. You would have pointed what out to them?
18 A. If I found evidence that I thought there was
19 a hole there, I would have pointed that out to Strider.
20 I mean, I was really trying to work with them on this.
21 Q. But you didn't find any evidence to point
22 out to Strider. Correct?
23 A. That is correct. I found no evidence that
24 there was a preexisting hole under the dam. I would
25 note that the contract requires Strider, as it was

1 Construction, and it's written by you. Correct?
2 A. Yes.
3 Q. Okay. And I'd like to direct your attention
4 to the grout plan discussion.
5 A. Yep.
6 Q. Okay. So --
7 A. Just a second.
8 Q. That's on the bottom of page 2?
9 A. Yes.
10 Q. I'm looking specifically at the paragraph
11 that says grout plan as the first two words.
12 A. Um-hum.
13 Q. It says: During our September 15, 2020
14 meeting, the outlet dam, Strider asserted that flow
15 under the dam apron into Strider's cofferdam was due to
16 a preexisting condition and hypothesized that it was due
17 to a void caused by a 1979 scouring event.
18 And then you discuss some additional
19 meetings and say: Strider must substantiated its claim
20 with convincing evidence in accordance with Contract
21 Section 13.
22 I would like to now introduce Deposition
23 Exhibit 13.
24 (Exhibit No. 13 Marked.)
25 MS. REINHARDT-TESSMER: I believe you said

1 December 15th, 2020, and it's 2021.
2 MS. WATKINS: Thank you. I may have misread
3 that.
4 THE WITNESS: Do you want me to read the
5 whole thing?
6 BY MS. WATKINS:
7 Q. I don't need you to read the whole thing.
8 We aren't going to talk about the whole thing.
9 Deposition Exhibit 13. This was the invitation to bid.
10 Correct?
11 A. Looks like it.
12 Q. And I'll direct you to the Bates numbers on
13 the bottom right-hand corner. If you could go to the
14 one that indicates 86 as the last two numbers.
15 A. Article 13, Claims.
16 Q. Yes. This is the contract language that was
17 ultimately Strider and the boards' contract. Correct?
18 A. I don't know if it is completely faithful or
19 not, but it does look like the contract that I worked
20 from.
21 Q. Okay. For Section 13, Claims, is that the
22 section you were referring to in your May 16, 2022
23 letter?
24 A. That's the Section 13 I was referring to.
25 Q. You mentioned that Strider, in your view,

1 did not comply with these provisions. Can you tell me
2 what provision you assert, or the board asserts that
3 Strider deponent comply with?
4 A. Give me a second to read down. Okay. So I
5 don't feel that they -- well, they did not ever tell us
6 what in the contract document they relied on that this
7 condition changed. No. This would be No. 6. I'm
8 sorry, No. 7. I was right the first time. The claim
9 must refer to the provision of the contract documents
10 that the contractor or owner asserts are part of the
11 claim. They did not do that.
12 Q. And it's your -- it's the board's
13 understanding that that requirement requires the
14 contractor to show documentation that demonstrates the
15 condition was different?
16 A. Yes.
17 MS. REINHARDT-TESSMER: Objection. Form.
18 Misstates prior testimony. Go ahead, Mike.
19 THE WITNESS: They just changed the
20 condition. They have to show me what changed. They're
21 going to have to tell me what section of the document,
22 or what they relied on when they submitted their bid.
23 And then they're going to have to show me what is not in
24 accordance with that, which would be the next thing,
25 which is documentation, other information, to

1 substantiate the claim. They make the point, and he
2 makes it many times, but he never provides documentation
3 to substantiate it. And he never provides any specific
4 information that I can go to and say, yeah, that did
5 change. He doesn't provide that in the contract, so he
6 doesn't provide either one of those. He does state
7 something changed, but at this point I really -- I still
8 don't know how things changed.
9 Q. Was there anything else that Strider failed
10 to meet in Section 13, to the board's understanding?
11 MS. REINHARDT-TESSMER: Objection. Form.
12 THE WITNESS: I think if you go to No. 5:
13 Describe in detail all known facts and circumstances
14 that contractor or owner support, assert support the
15 claim.
16 Other than Jim's statements that something
17 changed, our dewatering system isn't working, therefore
18 it must have been a pre-existing condition, simply was
19 not sufficient. He didn't provide any facts to
20 substantiate it. He didn't tell me what changed, didn't
21 point to a document or contract or specification and
22 say, this wasn't what we thought we were going to see.
23 So I, as far as some of the other things, I don't really
24 remember whether he made the claim within 10 days or
25 not. I don't remember whether -- you know, some of the

1 others I don't recall. I was more focused on trying to
2 see if the claim that he was making was valid, and I
3 never could have enough information to make that
4 determination.
5 BY MS. WATKINS:
6 Q. For the board, who makes that determination?
7 A. That would be me, normally.
8 Q. You say normally. In this case who made
9 that determination?
10 A. Me. I mean, I had help. Mott MacDonald
11 chimed in, we went back and talked to the DEA inspectors
12 who were on site, did you guys see a hole under the dam?
13 No.
14 Q. But no one's actually seen a hole under the
15 dam. Correct?
16 MS. REINHARDT-TESSMER: Objection.
17 Misstates prior testimony.
18 THE WITNESS: It's been inundated with
19 water, so no, nobody has seen it.
20 BY MS. WATKINS:
21 Q. Has the board sent out a request for
22 qualification for work to be performed on the project?
23 A. No.
24 Q. No? In August of 2022, did the board issue
25 a request for qualification for work on the project?

1 A. When you defined project earlier, you
2 defined it as the thing Strider worked on.
3 Q. That's a different project?
4 A. Yes.
5 Q. What's different about it?
6 A. Has a different project number, it's going
7 through a different procurement process. I explained
8 this before.
9 Q. Anything else?
10 A. This is to complete the work that Strider
11 started, repair work that was deficient, do some
12 inspections and repair work as required for those things
13 that were deficient, so it's somewhat different.
14 Q. Does this project have a new name?
15 A. Like I say, we go by the number. I think it
16 uses the same name or a very similar name, but we
17 usually go by the project number, so it's 2023-02.
18 Q. 2023-02?
19 A. Yeah.
20 Q. What was the previous project's number?
21 A. I don't really remember. Oh, it's right
22 there. 2020-02.
23 Q. Deposition Exhibit 14.
24 (Exhibit No. 14 Marked.)
25 ///

1 BY MS. WATKINS:
2 Q. And Deposition Exhibit 14 is a document that
3 indicates it's from you, Mr. Morrison, to Sascha
4 Marston.
5 A. Yes.
6 Q. Did I pronounce that correctly?
7 A. I think she usually goes by Sascha.
8 Q. Sascha. Thank you. And who is Sascha?
9 A. She is our head of our accounting section.
10 Q. And who is Mr. Roberts?
11 A. Good question. He was an assistant during
12 the first project. He was an assistant to Janet
13 Garrett. He is now taking her position, so he is our
14 procurement officer.
15 Q. Okay. And in this you indicate that your --
16 you state: You're probably aware that our relationship
17 with Strider has blown up. This is a very high-level
18 next steps meeting to figure out how to get the project
19 back on track.
20 And then you go through kind of an outline.
21 Do you see that?
22 A. Um-hum.
23 Q. Okay. And you say: Discuss my plan for
24 completing Priest Lake, the Priest Lake Outlook Dam in
25 Season 4. To do that will require an inventory to

1 determine what work needs to be done. This may include
2 the following activities. Inspection and surveying,
3 nondestructive testing for void identification. I'm not
4 sure if this can be done with dewatering.
5 Was an inventory created, as you are
6 referencing?
7 A. Yes. I referred to that sometimes as the
8 inventory or inspection. But yes, that was done.
9 Q. And who was that provided to?
10 A. It was provided to me.
11 Q. Who provided it to you?
12 A. Mott MacDonald.
13 Q. Okay. Do you recall when they provided it
14 to you?
15 A. I got it in dribbles and drabs. I think the
16 final document I got in January or February. I don't
17 recall the exact date.
18 Q. And was there any non-destructive testing
19 for void identification performed?
20 A. No, there was not.
21 Q. Why not?
22 A. Too much water on it to do the work that we
23 contemplated, ground-penetrating radar. GPR requires
24 dry contact. You can do it underwater, but the contact
25 has to be dry.

1 Q. Item B is a dewatering plan.
2 A. Um-hum.
3 Q. Was a dewatering plan created?
4 A. I need to be really clear. Part of the talk
5 of a dewatering plan was to enable the GPR survey.
6 Q. Was the dewatering plan created?
7 A. No. And we finally decided we couldn't
8 complete the whole thing in the time needed before
9 spring. We couldn't have done it.
10 Q. Has one been created since then?
11 A. It's out for bid now. And we expect the
12 contractor to supply the dewatering plan with their
13 bids.
14 Q. A plan with updated drawings and
15 specifications for completing the project. Was this
16 created?
17 A. Yes.
18 Q. And who created it?
19 A. I created the plan in conjunction with a new
20 engineer that we had there briefly. We communicated
21 that plan to Mott MacDonald. Mott MacDonald executed
22 the plan.
23 Q. Who was the new engineer?
24 A. His name was Sam. He only worked there for
25 about 3 months.

1 group?
2 A. Yes.
3 Q. Did the board review that section before it
4 issued it to bidders?
5 A. Yes.
6 Q. Has the board made any claim against Mott
7 MacDonald?
8 A. No.
9 Q. Why not?
10 A. Don't know why we would --
11 MS. REINHARDT-TESSMER: Objection. Work
12 product and privilege.
13 THE WITNESS: Yeah. I don't -- I don't have
14 any reason to.
15 MS. WATKINS: Let's look at Deposition
16 Exhibit 18.
17 (Exhibit No. 18 Marked.)
18 BY MS. WATKINS:
19 Q. Now, when we looked through the claim,
20 Section 13 of the contract, you indicated that Strider
21 had not provided any contract documents that it asserted
22 had changed. Do you recall that testimony?
23 MS. REINHARDT-TESSMER: Objection.
24 Misstates prior testimony. Go ahead, Mike.
25 ///

1 Section 13.2. Those are the things that were typically
2 deficient on their submittals. But sometimes they
3 submitted, they provided one thing, sometimes another.
4 But they didn't provide it all.
5 Q. Have you ever explained to Strider on this
6 issue what they specifically failed to provide?
7 A. In very, very likely detail.
8 Q. But only verbally. Correct?
9 A. No. I think it's in the letter that I
10 provided here, telling them that they had to conform
11 with Section 13. I think it's in a letter you just
12 provided me that I wrote. One of the exhibits.
13 Q. We can go back to that. Let's look at this
14 letter, Deposition Exhibit 18. Do you recall receiving
15 this? Did the board receive this letter?
16 A. The board received this letter, yes.
17 Q. Here the board provides a contract document
18 and it indicates specific changes that it's asserting.
19 Correct?
20 A. They are asserting changes, yes.
21 Q. And they provide a copy of a contract
22 drawing?
23 A. It's a contract, yes.
24 Q. With annotations. Correct?
25 A. Yes.

1 BY MS. WATKINS:
2 Q. Do you recall that testimony?
3 MS. REINHARDT-TESSMER: Go ahead, Mike.
4 THE WITNESS: Yes.
5 BY MS. WATKINS:
6 Q. Did I misstate that testimony?
7 MS. REINHARDT-TESSMER: Counsel,
8 argumentative. My objection stands for the record. Go
9 ahead.
10 THE WITNESS: Please restate the question.
11 I got a little lost there.
12 BY MS. WATKINS:
13 Q. In discussion about the claim section in the
14 contract, Section 13, you indicated that Strider had not
15 provided any contract documents that -- a support for
16 its assertion of changed conditions. Correct?
17 A. Yes.
18 Q. Now, in front of you is Deposition
19 Exhibit 18. And that's a letter dated December 8, 2020,
20 from Strider to the board. Do you see that?
21 A. Before we continue, I want to restate what I
22 just said. They did not provide the totality of those
23 things under 13. Sometimes they provided part of it,
24 but they did not provide all of that information. The
25 items you asked about, I think it was Nos. 5, 6, 7, 8 in

1 Q. Does this, in your view, meet the
2 requirements of Section 13?
3 A. If they had provided some proof to their
4 assertion that there's a changed condition. They don't
5 tell me what it was. I mean, they don't tell me what it
6 was, but this could possibly be something I could
7 compare their claim to and say, oh, yeah, that's
8 different. And then so this could be part of it,
9 depending on what they're asserting. I don't know what
10 they're asserting, though.
11 Q. So in this letter, at the beginning they
12 say: In the process of constructing the cofferdam and
13 making ready for dewatering, we have encountered a
14 condition which is not contemplated by the contract
15 documents. It is an issue known to the dam maintenance
16 personnel as they were on site probing the condition.
17 It appears the armor stone, both upstream and downstream
18 of the dam, is more extensive than contemplated, most
19 adversely in depth.
20 It goes on to say: This creates a condition
21 where the inside and outside of the coffer cell are
22 hydraulically linked through subterranean voids.
23 Do you see that?
24 A. Yes.
25 Q. Did the board investigate this --

1 A. Yes.
2 Q. And please, let me finish my question. Did
3 the board investigate Strider's claims in this letter?
4 A. Are you done?
5 Q. Sir, answer my question.
6 A. Yes.
7 Q. Do you need a break?
8 A. Hum-um.
9 Q. What was the investigation?
10 A. Called the dam operators. We investigated
11 this more than once. They brought this up again.
12 Called the dam operators, and they don't actually
13 recognize the conversation here. So they weren't able
14 to affirm this. Even if they were, they hadn't noticed
15 anything of it. What they're talking about is an issue
16 below a bunch of rocks that were there. They would not
17 have been able to see it anyway. So the dam operators
18 couldn't have corroborated.
19 Q. Who spoke with the dam operators?
20 A. I did.
21 Q. When did you speak with them?
22 A. It was the second time we went through
23 investigating it. It was the summer of 2021. Part of
24 my work with Emily Skoro, I was asked to take a second
25 look at all of this stuff and see what I thought of it.

1 Q. Because you didn't start on the project
2 until June of 2021. Is that correct?
3 A. That is correct.
4 Q. So you talked to the dam operators 6 months
5 after this letter?
6 A. Sounds about right.
7 Q. And so was it the board's position that
8 because the dam operators couldn't recall the
9 conversation, that there was no merit to this assertion
10 by Strider?
11 A. No. There is more to it than that.
12 Q. What else?
13 A. Appears --
14 (Inaudible reading.)
15 COURT REPORTER: I'm trying to write down
16 everything you're saying.
17 THE WITNESS: They're talking about a
18 condition where the inside and the outside of the cell
19 are hydraulically linked through voids, and I will
20 present to you, do you see all of that gravel and sand
21 and rocks? Those will have voids in them. That is what
22 was presented to them, are those, that right there. This
23 is going have voids in it. That is that picture of
24 gravel and sand, has voids. So even what they were
25 claiming, that is what is in that drawing.

1 BY MS. WATKINS:
2 Q. So your position is that the -- because
3 there is voids between the rocks, that this was a known
4 condition?
5 A. That's a feature of the design. It's
6 supposed to have those voids in it. That's what those
7 rocks are for, is to break up the flow of water over it.
8 Q. And did you communicate this to Strider in
9 writing or during the meetings?
10 A. I certainly communicated it during a
11 meeting, and I also certainly referred to it in writing.
12 I don't know that I communicated exactly the way I've
13 told you.
14 Q. Do the contract drawings provide the depth
15 of the armor stone?
16 A. Please clarify. The depth of the existing
17 armor stone or the depth of the stone be to be placed?
18 Q. The depth of the existing armor stone.
19 A. They should. There is also a qualifier in
20 that we're basing it on some old information, and asking
21 them to go through and do their own site survey prior to
22 construction.
23 Q. It's your position that Strider should have
24 performed a survey of subsurface conditions prior to
25 construction? Did I understand that correctly?

1 A. I don't recall if we used the term
2 subsurface condition. It was our position that they
3 should have performed a survey that is in the contract.
4 Q. And it's your position that there is a
5 requirement to perform a survey before construction?
6 A. Yes.
7 Q. Do you recall where that is located?
8 A. It's in some of the drawings somewhere.
9 It's in the -- I don't know if you've provided me those
10 particular pages of the drawings.
11 Q. I'm just asking if you recall the provision.
12 A. I do recall the provision, but I don't
13 recall the reference to it. But it does say that they
14 have to go out and do the survey measurements. They
15 haven't done them.
16 Q. Survey measurements of the work before they
17 perform it. Correct?
18 A. Um-hum.
19 Q. Is that the board's position, that that
20 would include subsurface measurements?
21 A. That it would include the measurements
22 across the dam face, yeah.
23 Q. Across the dam face. That's a little
24 different than subsurface conditions. Correct?
25 A. Again, I don't know that we specifically