

**STARTING
LEFT
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FILE**

SCANNED
MAR 05 2008

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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32061 IN THE)
NAME OF SUNCOR IDAHO, LLC.)
_____)
DEFAULT ORDER

This matter having come before the Idaho Department of Water Resources ("Department"), the Department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On May 24, 2006, the Department served a Notice of Proposed Default Order upon Willowbrook Development ("Willowbrook") and Hillsdale Estates Homeowners ("Hillsdale") for failure to appear at a Prehearing Conference held on September 8, 2005, in Boise, Idaho in the above captioned matter.
2. The protestants did not respond to the Notice of Proposed Default Order.

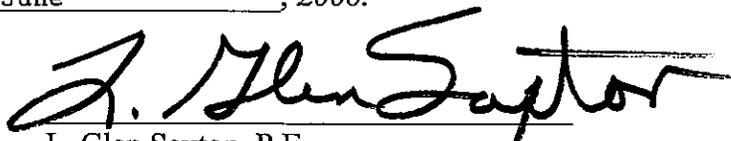
CONCLUSIONS OF LAW

1. IDAPA Rule 37.01.01702 (Rule of Procedure 702) authorizes the Department to issue a Default Order for failure to timely respond to the Notice of Proposed Default Order.
2. The Department should issue a Default Order.

ORDER

IT IS THEREFORE, HEREBY ORDERED that Willowbrook Development and Hillsdale Estates Homeowners are in default, and that the protests of Willowbrook Development and Hillsdale Estates Homeowners are **SET ASIDE** and will not be further considered in the above captioned matter by the Department.

Dated this 6th day of June, 2006.



L. Glen Saxton, P.E.
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of June, 2006, a true and correct copy of the document(s) described below were served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: DEFAULT ORDER

SUNCOR IDAHO LLC
C/O ALBERT P BARKER
BARKER ROSHOLT & SIMPSON
PO BOX 2139
BOISE ID 83701-2139

ROD DAVIDSON
2220 LAAN LN
NYSSA OR 97913-5526

GARTH BALDWIN
6050 HWY 55
HORSESHOE BEND ID 83629

PHILLIP FRY
4122 HOMER RD
EAGLE ID 83616

LYLE MULLINS
1574 N ELLINGTON WAY
EAGLE ID 83616

IDWR – WESTERN REGION
2735 AIRPORT WAY
BOISE ID 83705-5082

DEFAULTED PARTIES:
WILLOWBROOK DEVELOPMENT
210 MURRAY ST
BOISE ID 83714

HILLSDALE ESTATES
ATTN ROY B JOHNSON
210 MURRAY ST
BOISE ID 83714



Deborah J. Gibson
Administrative Assistant
Idaho Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32061 IN THE)
NAME OF SUNCOR IDAHO, LLC.)
_____)

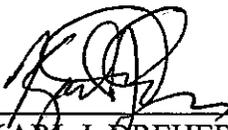
**ORDER
APPOINTING HEARING
OFFICER**

This matter having come before the Director of the Idaho Department of Water Resources ("Department"), as a result of protests filed against the referenced application, the Department makes the following Order:

ORDER

IT IS THEREFORE, HEREBY ORDERED that L. Glen Saxton, is appointed effectively April 25, 2006 to serve as hearing officer, and is authorized to hear this matter on behalf of the Department pursuant to IDAPA Rules 37.01.01.410-413 and the provisions of chapter 52, title 67, Idaho Code.

Dated this 27th day of April, 2006.



KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of April, 2006, a true and correct copy of the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following

Document(s) Served: Order Appointing Hearing Officer

SUNCOR IDAHO LLC
C/O ALBERT P BARKER
BARKER ROSHOLT & SIMPSON
PO BOX 2139
BOISE ID 83701-2139
Fax: (208)344-6034

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ROD DAVIDSON
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6050 HYW 55
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WILLOWBROOK DEVELOPMENT
210 MURRAY ST
BOISE ID 83714

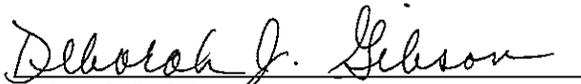
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 E-mail


Deborah J. Gibson
Administrative Assistant

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32061 IN THE)
NAME OF SUNCOR IDAHO, LLC.)
_____)

**ORDER REMOVING
HEARING OFFICER**

On February 27, 2006, Allen Merritt, Regional Manager for the southern regional office of the Idaho Department of Water Resources ("Department") was appointed as the hearing officer for the above contested case.

Because of deadlines for completion of reports for the Snake River Adjudication ("SRBA") District Court, Department employees in the southern regional office of the Department have recently been reassigned from other water right processes to SRBA claims review. Allen Merritt is supervising all work activities in Department's southern regional office and is also reviewing SRBA claims. Because of this additional workload, Mr. Merritt is no longer available to oversee and conduct a hearing for the above matter.

ORDER

IT IS THEREFORE, HEREBY ORDERED that hearing officer Allen Merritt is removed as the hearing officer in the above titled matter.

IT IS FURTHER ORDERED that another hearing officer will be appointed in the near future.

Dated this 17th day of March, 2006.



KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of March, 2006, a true and correct copy of the above and foregoing documents described below were served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Order Removing Hearing Officer

SUNCOR IDAHO LLC
C/O ALBERT P BARKER
BARKER ROSHOLT & SIMPSON
PO BOX 2139
BOISE ID 83701-2139
Fax: (208)344-6034

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ROD DAVIDSON
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LYLE MULLINS
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HORSESHOE BEND ID 83629

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PHILLIP FRY
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WILLOWBROOK DEVELOPMENT
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 E-mail

HILLSDALE ESTATES
ROY B JOHNSON
210 MURRAY ST
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 Facsimile
 E-mail



Deborah Gibson
Administrative Assistant
Water Allocation Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	ORDER DISQUALIFYING
FOR PERMIT NO. 63-32061 IN THE	)	HEARING OFFICER AND
NAME OF SUNCOR IDAHO, LLC.	)	APPOINTING HEARING
_____	)	OFFICER

On February 8, 2006, the Director of the Idaho Department of Water Resources (“Director” or “Department”) issued an order appointing Steve Lester as a hearing officer in the above protested matter.

On February 21, 2006, the Director received a Notice of Disqualification Without Cause of Hearing Officer from Garth Baldwin, a protestant in this matter.

ORDER

IT IS THEREFORE, HEREBY ORDERED that hearing officer Steve Lester, is disqualified without cause.

IT IS FURTHER ORDERED that Allen Merritt is appointed to serve as hearing officer, and is authorized to hear this matter on behalf of the Idaho Department of Water Resources pursuant to IDAPA Rules 37.01.01.410-413 and the provisions of chapter 52, title 67, Idaho Code.

Dated this 27th day of February, 2006.



KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of February, 2006, a true and correct copy of the above and foregoing documents described below were served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Order Disqualifying Hearing Officer, and Appointing Hearing Officer

SUNCOR IDAHO LLC
C/O ALBERT P BARKER
BARKER ROSHOLT & SIMPSON
PO BOX 2139
BOISE ID 83701-2139
Fax: (208)344-6034

U.S. Mail, Postage Prepaid
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ROD DAVIDSON
PO BOX 2026
EAGLE ID 83616

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 E-mail



Deborah Gibson
Administrative Assistant
Water Allocation Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	ORDER DISQUALIFYING
FOR PERMIT NO. 63-32061 IN THE	)	HEARING OFFICER, AND
NAME OF SUNCOR IDAHO, LLC.	)	APPOINTING HEARING
_____	)	OFFICER

On January 30, 2006, the Director of the Idaho Department of Water Resources (IDWR) issued an order appointing John Westra as a hearing officer in the above protested matter.

On February 7, 2006, IDWR received a Notice of Disqualification Without Cause of Hearing Officer from Lyle Mullins, a protestant in this matter.

ORDER

IT IS THEREFORE, HEREBY ORDERED that hearing officer John Westra, is disqualified without cause.

IT IS FURTHER ORDERED that Steve Lester is appointed to serve as hearing officer, and is authorized to hear this matter on behalf of the Idaho Department of Water Resources pursuant to IDAPA Rules 37.01.01.410-413 and the provisions of chapter 52, title 67, Idaho Code.

Dated this 8th day of February, 2006.



Karl J. Dreher
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of February, 2006, a true and correct copy of the above and foregoing documents described below were served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Order Disqualifying Hearing Officer, and Appointing Hearing Officer

SUNCOR IDAHO LLC
C/O ALBERT P BARKER
BARKER ROSHOLT & SIMPSON
PO BOX 2139
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Deborah Gibson
Administrative Assistant
Water Allocation Bureau

**STARTING
RIGHT
SIDE OF
FILE**

Rec'd
10-31-06

Albert P. Barker, ISB #2867
Paul L. Arrington, ISB #7198
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1010 W. Jefferson, Suite 102
P.O. Box 2139
Boise, Idaho 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

RECEIVED
OCT 31 2006
DEPARTMENT OF
WATER RESOURCES

Attorneys for Suncor Idaho LLC (n.k.a. Avimor, LLC)

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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32061 IN THE) **AVIMOR LLC'S PREHEARING**
NAME OF SUNCOR IDAHO, LLC) **MEMORANDUM**
)
)
)
)

Avimor filed an application for water right # 63-32061 in January 2005, over 20 months ago, seeking a diversion rate of 5 cfs for use in a planned community in the foothills north of Eagle. This water right protest is just another in a long series of efforts by Protestants seeking to prevent the development of the project. See Exhibits 46-48 (Protestants' testimony before Planning & Zoning and Ada County). There is absolutely no indication that this water right will injure any of Protestants' water rights or any other water rights, and Protestants will offer no expert testimony to establish any such injury. Indeed, two of the Protestants do not even hold any water rights. Exhibits 49-50 (Davidson, Mullins). This protest is not about water rights, but

about some Protestants' opposition to the development or some Protestants' desire to have the Department change the law of prior appropriation in the State, something the Department decidedly lacks the power to do.

Idaho Code Section 42-202(1) describes the required content of the application. Avimor complied with these provisions, and additionally responded to questions posed by the Department.¹ Exhibit 58. If a protest is filed and a hearing scheduled, the guidelines for granting, denying or conditioning a permit are found in Idaho Code Section 42-203A.

In all applications ... where the proposed use is such *(a)* that it will reduce the quantity of water under existing water rights, or *(b)* that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or *(c)* where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or *(d)* that the applicant has not sufficient financial resources with which to complete the work involved therein, or *(e)* that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or *(f)* that it is contrary to conservation of water resources within the state of Idaho, or *(g)* that it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

At the hearing, the applicant has the ultimate burden of persuasion. Water Appropriation Rules 40.04.c (IDAPA 37.03.08.40.04.c). However, the burden of "coming forward with evidence to present a prima facie case" is divided between the applicant and protestant. *Id.* For factors (a) through (d), the application has the individual burden. *Id.* at 40.04.b.i. For factor (e), the applicant must come forward with any evidence "of which he is knowledgeable or reasonably

¹ Water Appropriation Rule 40.05 provides a list of "Additional Information Requirements" that applicants must provide. However, according to 40.05.c, these requirements "are waived for filings which seek to appropriate five (5) cfs or less." SunCor/Avimor's application is for 5 cfs. Despite this waiver, the Department requested, and Avimor provided, substantial additional information.

can be expected to be knowledgeable.” Rule 40.04.b.ii. The protestant must come forward with evidence “of which the protestant can reasonably be expected to be more cognizant than the applicant.” *Id. See also In the Matter of Application for Permit No. 65-22357 in the name of Westrock Associates, LLC (“Westrock”),* p. 2 (December 20, 2002).

Section 42-202B(5)(c) defines a “municipal provider” as a “*corporation or association which supplies water for municipal purposes* through a water system regulated by the state of Idaho as a ‘*public water supply*’ as described in section 39-103(10)”(emphasis added).

“Municipal purposes refers to *water for residential, commercial ... irrigation of parks and open space, and related purposes* ... which a municipal provider is entitled or obligated to supply to all those users within a service area” Idaho Code § 42-202B(6)(emphasis added). A

“public water supply” means

[A]ll mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use in incorporated municipalities; or unincorporated communities where ten (10) or more separate premises or households are being served or intended to be served; or any other supply which serves water to the public and which the department declares to have potential health significance.

Idaho Code § 39-103(10)(emphasis added).

THE CRITERIA

I. Section 42-203A(5)(a) – If the proposed use “will reduce the quantity of water under existing water rights?”

Dr. Christian Petrich and Mr. Terry Scanlan have extensively studied the aquifer, which is the source for this application and the surrounding aquifers. They will testify that the proposed use will not reduce the quantity of water under any existing rights. *See Exs. 26-42.*

The Department has determined that the Payette is not an overdraft position, but contains unappropriated water. *Westrock* Final Order, ¶ 31. Protestants have offered no witnesses or exhibits to establish the contrary.

II. Section 42-203A(5)(b) – If the water supply itself is insufficient for the purpose for which it is sought to be appropriated?

Dr. Christian Petrich and Mr. Terry Scanlan have extensively studied this aquifer. The water supply is sufficient for the intended purpose. *See* Exs. 26-42. Existing use has not affected the water levels. They will show that the Willow Creek aquifer is tributary to the Payette River Basin. Protestants have offered no witnesses or exhibits to establish the contrary.

III. Section 42-203A(5)(c) – If the application was made in good faith or for delay or speculative purposes?

The *Westrock* Order issued by the Director and Rule 45.01.c provide criteria for evaluating this factor:

- A. *Director must analyze the intentions of the application through the “substantive actions that encompass the proposed project”*
- B. *Speculation is an “intention to obtain a permit ... without the intention of applying the water to beneficial use with reasonable diligence” (This does not prevent the applicant from selling the project for a profit)*
- C. *Good Faith can be found when:*
 - i. *The applicant has legal access to the property;*
 - ii. *The applicant is in the process of obtaining other necessary permits;*
 - iii. *No obvious impediments prevent successful completion of the project*

Mr. Taunton will explain Avimor’s legal rights of access, and the status of the permitting process now underway. In addition, the Department has already determined that Avimor has legal access to the property covered by the POU in this application. *See* Permit No. 63-31966.

IV. Section 42-203A(5)(d) – If the applicant has sufficient financial resources with which to complete the proposed project?

This criteria is not in doubt or challenged by Protestants. Mr. Taunton will testify concerning Avimor's financial ability to complete the project and commitment to the project.

See Exs. 2-3.

V. Section 42-203A(5)(e) – If the application will conflict with the local public interest (defined as “the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource”).

It is unfortunate that the Department's regulations, which date to 1993 on this criteria, have not been updated to conform to the 2003 Amendments to Section 42-202B(3) and 42-203A(5)(3). 2003 Sess. Laws, Chap. 298, § 2. The old rules (Rule 45.03) have been superseded by the new statutory requirements and should not be considered. Protestants claim to be interested in the “environmental impacts of the water right.” Protestants' Response to Objection to Motion for Extension of Time for Hearing, p. 2. Protestants have offered no exhibits or testimony on the environmental impacts of the proposed water right, or any other environmental impact.

The 2003 amendments to the water code were intended to focus the hearing solely on the issue of impact to the water resources. Dr. Petrich and Mr. Scanlan will describe in detail the impact to public water resource of this application. Protestants have no such expert testimony. Idaho law is clear that application of water for irrigation or other beneficial uses is in the public interest. *In the Matter of Application of Permit to Appropriate Water No. 65-13971 in the name of Greg and Lori Linsey* (July 23, 2003). See Idaho Const., Art. XV, § 3 (right to appropriate

unappropriated waters for beneficial uses shall never be denied). The evidence will show that there is no conflict with the local citizens' use of this public water resource.

VI. Section 42-203A(5)(f) – If the proposed use is contrary to conservation of water resources?

The Department has promulgated no regulations applicable to this criterion. Since this is a proposed municipal use, there is minimal consumptive use, so conservation will not be a significant concern. Mr. Taunton will testify concerning Avimor's water conservation efforts and requirements. Mr. Scanlan will testify that this proposed use is consistent with or less than similar projects approved by the Department.

VII. Section 42-203A(5)(g) – If the project will adversely affect the local economy of the watershed or local area within which the sources of water for the proposed use originates if the proposed use is outside the local area?

This section was a 2003 addition to the statute. 2003 Sess. Laws, Chap. 298, § 2. The Department has promulgated no regulations applicable to this criterion. This provision was intended to allow the Director to consider local economic impacts if the appropriator intended to take the water outside the local area and put it to use elsewhere. This section is irrelevant, as Avimor intends to use the water in the same general locale.

VIII. Section 42-202B(5)(c) – If Avimor qualifies as a municipal provider?

Section 42-202B(5)(c) requires the following elements to qualify as a "municipal provider:"

1. *That Avimor is or has a corporation or association which will provide water;*
2. *That the water is for "municipal purposes;"*
3. *That the water is delivered through a "public water supply" that is regulated by the State. See Westrock Final Order (where Director granted municipal right to developer upon condition that the developer conform to the Idaho Rules for Public Drinking Water system in the future).*

Avimor will show that it intends to use the water for residential, commercial, irrigation of parks and open space, and related uses. Avimor will present evidence showing that it has formed separate entities for the purpose of providing water and sewer to the development. Ex. 20. It will demonstrate its plans to comply with the public water supply system requirements, including providing water to a large residential, planned community. Avimor's plans are at least as mature as the public water supply plans approved by the Director in the *Westrock* Final Order.

Protestants seem to argue (although their position on this point is opaque at best) that Avimor must have the public water supply authority confirmed by DEQ in advance of any water right permit being issued. Protestants' position is inconsistent with the Department's previous *Westrock* precedent, is inconsistent with Idaho Code Section 42-203A(5), which expressly authorizes the Director to condition permits, *see also* Rule 50.01, and is inconsistent with the DEQ procedures for recognizing public water systems. Avimor agrees that a proper condition to a municipal water right is proof that the water delivery system meets DEQ's public water supply requirements.

CONCLUSION

Protestants' nonwater-related concerns are irrelevant. Protestants have no proof of any injury to any existing water supply or to the water resource. Applicant has a constitutional right to appropriate unappropriated waters. The evidence is not in any real dispute that there is unappropriated water available. Protestants' efforts to contest Avimor's right to obtain a municipal water right evidence a misunderstanding of Idaho law and procedure. In any event, the argument raises a pure legal issue of the power of the Department to condition a permit. This is a power which the Department unquestionably has under the law, and has consistently applied in the same manner requested herein.

DATED this 31st day of October, 2006.

BARKER ROSHOLT & SIMPSON, LLP



Albert P. Barker
Attorneys for SunCor Idaho, LLC
now known as Avimor LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of October, 2006, I served a true and correct copy of the foregoing AVIMOR LLC'S PREHEARING MEMORANDUM on the person(s) listed below, in the manner indicated below:

Idaho Department of Water Resources
322 E. Front Street
P. O. Box 83720
Boise, ID 83720-0098

U.S. Mail, Postage Prepaid
 Facsimile 287-6700
 E-Mail
 Hand Delivery

Judith M. Brawer
1502 N. 7th Street
Boise, ID 83702

U.S. Mail, Postage Prepaid
 Facsimile 343-2070
 E-Mail
 Hand Delivery

Phillip Fry
4122 Homer Road
Eagle, ID 83616

U.S. Mail, Postage Prepaid
 Facsimile
 E-Mail: **idphil@earthlink.net**
 Hand Delivery



Albert P. Barker

State of Idaho
Department of Water Resources



ROSTER OF ATTENDANCE

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-32061 IN THE NAME
OF SUNCOR IDAHO, LLC

Date: October 31, 2006
Time: 9:00 a.m.
Location: IDWR Conference Rooms A & B
322 East Front Street, 6th Floor
Boise, ID
Hearing Officer: L. Glen Saxton

** Please Print **

NAME	ADDRESS	REPRESENTING (Applicant, Protestant)
Judi Brewer	1502 N. 7th 83702	Protestants
Terry Scanlan	600 E River Park Ln Boise 06	Applicant
CHRISTIAN PETRICH	600 E RIVER PARK LN BOISE	APPLICANT
BOB TAUNTON	48 E. RIVERSIDE DR. EAGLE, ID	SUNCOR
Albert Barker	1010 W. Johnson Boise	Applicant
Lyle Mallis	1574 N. Ellington Way Eagle 2220 LAAN LANE	Protestant
Red Davidson	NYSSA, OR 97913	PROTESTANT
Phil Fry	4122 Home Rd Eagle ID	Protestant
GARTH BALLOU	6000 Hiway 50. Horseshoe Bend	PROTESTANT
John Simpson	1010 Johnson 83605	



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

JAMES E. RISCH
Governor

KARL J. DREHER
Director

October 30, 2006

Re: Application for Permit No. 63-32061 in the name of Suncor Idaho, LLC.

Dear Parties:

Enclosed is a copy of an Amended Certificate of Service page for your information and attachment to the "Denial of Motion for Extension of Time for Hearing and Approval of Agreement to Extend Time for Filing Exhibits and Witness Lists," as served on October 20, 2006.

If you have any questions, please do not hesitate to contact me at (208) 287-4942.

Sincerely,

A handwritten signature in cursive script that reads "Deborah J. Gibson".

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosure(s)

**AMENDED
CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20th day of October, 2006, a true and correct copy of the document described below was served by placing a copy of the same by facsimile or email, as noted, to the following:

Document Served: **DENIAL OF MOTION FOR EXTENSION OF TIME FOR HEARING
AND APPROVAL OF AGREEMENT TO EXTEND TIME FOR FILING
EXHIBITS AND WITNESS LIST**

SUNCOR IDAHO LLC
C/O ALBERT P BARKER
BARKER ROSHOLT & SIMPSON
PO BOX 2139
BOISE ID 83701-2139
Fax: 344-6034

PHILLIP FRY
4122 HOMER RD
EAGLE ID 83616
Email: idphil@earthlink.net

FURTHER, I HEREBY CERTIFY that on this 23rd day of October, 2006, a true and correct copy of the document described below was served by hand delivering a copy of the same to the following:

ROD DAVIDSON
GARTH BALDWIN
LYLE MULLINS
C/O JUDITH BRAWER
1502 N 7TH ST
BOISE ID 83702


Deborah J. Gibson
Administrative Assistant
Idaho Department of Water Resources



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov.

JAMES E. RISCH
Governor

KARL J. DREHER
Director

October 30, 2006

JUDITH M. BRAWER
ATTORNEY AT LAW
1502 N 7TH STREET
BOISE, ID 83702

via FACSIMILE
343-2070

Re: Application to Appropriate Water no. 63-32061, Attendance of Department
Witnesses

Dear Ms. Brawer:

A hearing for protests filed against application to appropriate water no. 63-32061 (Suncor) is scheduled for October 31 and November 1, 2006. On October 26, 2006, you filed a motion for issuance of subpoenas to the following employees of the Idaho Department of Water Resources (IDWR): John Westra, Steve Lester, Jeff Peppersack, and Shelley Keen. In addition, you also requested issuance of a subpoena for L. Glen Saxton, the hearing officer.

On October 27, 2006, I spoke to you on the telephone about issuance of the subpoenas. Because of the short time between the date you filed your motion and the hearing date, I assured you that the IDWR witnesses would be available to appear at the hearing upon two-hour notice. We agreed that if the witnesses would be available, issuance of the subpoenas would be unnecessary. We also agreed that the protestants would not expect to call the IDWR witnesses until Wednesday, November 1, 2006.

The purpose of this letter is to document that the IDWR witnesses will be on-call on Wednesday, November 1, 2006. Upon receiving verbal notice from you that a particular witness will be called, the witness will be at the hearing location within two hours of my receiving notice. This letter also confirms that it will not issue a subpoena for the hearing officer.

Because there is a pending objection to the issuance of subpoenas, the hearing officer must determine whether the IDWR witnesses can testify.

Sincerely,

Gary Spackman

cc. Albert Barker (via fax: 344-6034)
Phil Fry (via email: idphil@earthlink.net)

**IDAHO DEPARTMENT OF
WATER RESOURCES**

FAX

To:	Judith Brawer	From:	Deborah J. Gibson (208) 287-4942
Fax:	343-2070	Date:	October 30, 2006
Phone:		Pages:	2
Re:	Suncor & IDWR witnesses	CC:	Albert Barker & Phil Fry

Urgent For Review Please Comment Please Reply Please Recycle

Please see attached letter in response to your request for issuance of Subpoenas for the Suncor hearing.

Please contact me at the above number if you have any problems with the transmission of this fax, or if you have any questions.

* * * Personal Journal (Oct. 30. 2006 4:54PM) * * *

1) Idaho Dept of Water Resources
2)

(Manual print)

< TX >	Date	Time	Destination	Mode	TXtime	Page	Result	User Name	File No.
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< RX >	Date	Time	Sender	Mode	RXtime	Page	Result	User Name	File No.

TX Count

033620

RX Count

022193

: Batch
M : Memory
S : Standard
Y : Reduction
Q : RX Notice Req.

C : Confidential
L : Send later
D : Detail
H : Stored/D. Server
A : RX Notice

S : Transfer
@ : Forwarding
F : Fine
* : LAN-Fax

P : Polling
E : ECM
U : Super Fine
+ : Delivery

* * * Personal Journal (Oct. 30. 2006 4:54PM) * * *

1) Idaho Dept of Water Resources
2)

(Manual print)

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TX Count

033620

RX Count

022193

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+ : Delivery

Judith M. Brawer (ISB # 6582)
1502 N. 7th Street
Boise, ID 83702
208-871-0596 (phone)
208-343-2070 (fax)

RECEIVED
OCT 27 2006
DEPARTMENT OF
WATER RESOURCES

a

Attorney for Protestants

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

IN THE MATTER OF APPLICATION) FOR PERMIT NO. 63-32061 IN THE) NAME OF SUNCOR IDAHO, LLC))	PROTESTANTS' MOTION TO DISQUALIFY HEARING OFFICER FOR CAUSE
--	--

Pursuant to Idaho Code § 67-5252 and IDAPA 37.01.101.412, protestants ROD DAVIDSON, LYLE MULLINS and GARTH BALDWIN (hereinafter "Protestants") hereby respectfully move for the disqualification of Hearing Officer Glen Saxton for cause in the above captioned contested case. Protestants are filing this petition promptly upon discovering facts establishing grounds for disqualification, as explained below. *Idaho Code § 67-5252(2)(b), IDAPA 37.01.01.412.*

Pursuant to § 67-5252, any party has a right to move to disqualify for bias, prejudice, interest, substantial prior involvement in the matter other than as a presiding officer, status as an employee of the agency hearing the contested case, or any cause for which a judge is or may be disqualified. Here, Protestants have recently learned that Mr. Saxton may have bias, substantial prior involvement in a matter of importance to this case, and was, until recently, an employee of the Idaho Department of Water Resources (hereinafter "IDWR") – the agency hearing the contested case.

Mr. Saxton may have bias and has prior involvement regarding the issue of whether SunCor Idaho, LLC (hereinafter "SunCor") is a municipal water provider under Idaho Code § 42-202B(5)(c), and whether SunCor's application to appropriate water as a municipal water provider is complete. Both of these issues are central to Protestants' claims in this contested case.

Mr. Saxton's bias and prior involvement is exemplified by several things recently discovered by Protestants. First is a 2003 IDWR Memorandum directed to Mr. Saxton while he was an employee at IDWR. *See Declaration of Judith M. Brawer, Exhibit 1.* This Memorandum discusses IDWR's interpretation of the laws regarding whether an applicant such as SunCor qualifies for status as a municipal provider; and what information the applicant must provide to IDWR and the public in its application *before* a public hearing and *before* being authorized to appropriate water as a municipal provider. It appears that Mr. Saxton signed off on this memorandum – his initials are above his name with the word "OK" – possibly indicating his agreement with this interpretation, which Protestants contest here.

Second, Mr. Saxton authored a 1998 Memorandum regarding IDWR's interpretation of the 1996 Amendments to the Idaho Code related to municipal providers and what must be included in an application for appropriation of water as a municipal provider. *See Brawer Declaration, Exhibit 2.* Again, this directly relates to Protestants' claims that SunCor does not qualify as a municipal provider and/or did not submit a complete application for IDWR to make such a determination.

Third, while he was an employee of IDWR, Mr. Saxton signed SunCor's previous water permit, No. 63-31966, for Mr. Karl Dreher, the IDWR director. *See Brawer Declaration, Exhibit 3.* This permit was issued without questioning whether SunCor even qualifies as a municipal provider, and allowing SunCor to complete its application and provide proof that it is a

municipal provider at some later time. This permit is directly tied to the permit at issue in this contested case.

Accordingly, because Mr. Saxton's previous significant involvement in this matter as the signatory of SunCor's initial permit to appropriate water as a municipal provider; and because of Mr. Saxton's stated opinions and interpretations of law which are directly at issue in this contested case, Protestants respectfully move that he be disqualified as the hearing officer in this case.

Dated this 23rd of October, 2006.

Respectfully submitted,



Judith M. Brawer

Judith M. Brawer (ISB # 6582)
1502 N. 7th Street
Boise, ID 83702
208-871-0596 (phone)
208-343-2070 (fax)

Attorney for Protestants

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

IN THE MATTER OF APPLICATION) FOR PERMIT NO. 63-32061 IN THE) NAME OF SUNCOR IDAHO, LLC))	DECLARATION OF JUDITH M. BRAWER
--	--

I, Judith M. Brawer, declare:

1. I am counsel of record for Protestants Rod Davidson, Lyle Mullins and Garth Baldwin in this matter. I have personal knowledge of the matters set forth below.
2. Attached hereto as Exhibit 1 is a true and correct copy of a Memorandum, dated August 15, 2003, to Jeff Peppersack and Glen Saxton, From Shelley W. Keen, regarding Application for Municipal Water Use. I personally obtained this document from the IDWR website.
3. Attached hereto as Exhibit 2 is a true and correct copy of a Memorandum dated March 18, 1998, to Water Allocation Bureau, Adjudication Bureau and Regional Offices, from L. Glen Saxton, regarding Water Rights for Municipal Use. I personally obtained this document from the Handbook on Idaho Water Law, © 2005 Givens Pursley, LLP.

4. Attached hereto as Exhibit 3, is the Permit to Appropriate Water, No. 63-31966, issued to SunCor Idaho, LLC and signed by Glen Saxton for Karl Dreher. I personally obtained this document from the IDWR website.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 23rd day of October, 2006, at Boise, Idaho.



Judith M. Brawer

MEMORANDUM

DATE: August 15, 2003

TO: Jeff Peppersack and Glen Saxton

FROM: Shelley W. Keen (SWK)

RE: Application for Municipal Water Use

Northern region has been receiving a considerable number of applications for permit for municipal use in multiple ownership subdivisions. Other regions have received a few similar applications. The applications are submitted as "municipal" use rather than "domestic" use because the applicant purports to be a municipal provider under §42-202B(5)(c), *Idaho Code*, which defines a municipal provider as:

A corporation or association which supplies water for municipal purposes through a water system regulated by the state of Idaho as a "public water supply" as described in section 39-103(10), *Idaho Code*.

Developers, homeowners, or other individuals, who do not meet the requirement that a municipal provider must be a corporation or association, have submitted a number of the applications. We have handled this issue by asking the applicants to assign the application to an association or corporation registered with the Secretary of State to do business in Idaho.

A slightly more complicated issue, however, is that Bob Haynes was told by IDEQ that it does not necessarily issue a public water supply number until after the project is built and is serving water to the users. Therefore, it is not always possible for the water right applicants to provide IDWR with a document stating that they are public water suppliers. Bob Haynes and I discussed the matter, and we propose that a copy of correspondence from IDEQ showing that it has been contacted about the proposed municipal water use and that it is asserting jurisdiction over the well site, engineering plans and specs, etc., should be sufficient to demonstrate that the applicant is being regulated as a public water supply. The permit could be issued with a condition that the permit holder must provide a document from IDEQ with the public water supply number when submitting proof of beneficial use. The only possible drawback that we can see is that if the proposed subdivision materializes in a smaller form than anticipated, resulting in IDEQ never issuing a public water supply number, then the permit may have to be amended to show domestic use instead of municipal use. Is this approach acceptable to you?

Condition

#134

MEMORANDUM

To: Water Allocation Bureau
Adjudication Bureau
Regional Offices

From: L. Glen Saxton *LS*

RE: WATER RIGHTS FOR MUNICIPAL USE

Date: March 18, 1998

Amendments enacted in 1996 provided for entities meeting the definition of a municipal provider to obtain and hold water rights for reasonable anticipated future needs (RAFN) for a planning horizon (PH). Changes relative to municipal use appear in several code sections including 42-202, 42-202B, 42-217, 42-219 and 42-222, Idaho Code. The purpose of this memo is to provide general guidance for processing municipal use applications and permits and to address two questions concerning the application of these concepts to existing permits.

In the past, municipal water right holders generally have already utilized the benefits offered by the amended code sections, since the department has issued municipal water rights which provide for future development up to the volume of water capable of being produced by the installed diverting works. An effect of the amendments is to include additional entities under the term municipal provider who have not previously been included.

The state office has received applications which propose municipal use but do not describe whether the applicant proposes development which will be accommodated during the permit development period or whether the applicant intends to include RAFN/PH in the application. In order to clarify the intent of an applicant, the regional office should determine the following:

- a) That the applicant qualifies as a municipal provider. Any questionable application for municipal use needs to be accompanied by appropriate supporting information.
- b) The intent of the applicant prior to advertisement of an application. If the application is filed to accommodate RAFN, the applicant needs to describe the service area, the planning horizon, the type and quantity of use in connection with future needs. The length of the planning horizon may vary according to specific needs of a given municipal provider. If the extent of proposed development will be completed during the permit development period, the applicant does not need to provide the additional information relative to RAFN/PH.

Memo - Pg 1

Two specific questions have been raised concerning the 1996 amendments as follows:

Question 1. Can a municipal provider apply the concepts to an existing permit?

An existing permit, held by an entity that qualifies as a municipal provider under Section 42-202B(3), Idaho Code, can be amended to provide for RAFN over a PH if the permit was issued prior to the effective date of the municipal provider amendments and proof of beneficial use of water has not been submitted for the permit. Permits issued after the effective date of the amendments may not be amended because the permit holder had the opportunity to use the provisions when the permit was obtained.

Question 2. Will the department issue a license for a diversion rate larger than has actually been installed if the permit was issued or subsequently amended to provide for RAPN/PH.

No. Section 42-219(1), Idaho Code provides in pertinent part as follows:

A license may be issued to a municipal provider for an amount up to the full capacity of the system constructed or used in accordance with the original permit provided that the director determines that the amount is reasonably necessary to provide for the existing uses and reasonably anticipated future uses within the service area and otherwise satisfies the definitions and requirements specified in this chapter for such use. (Emphasis added).

This section should not be interpreted to mean that the director will issue a license for a diversion rate larger than the installed capacity of the diversion works as determined during the license examination.

c: Norman C. Young

Memo - Pg 2

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-31966

Priority: May 21, 2004

Maximum Diversion Rate: 5.00 CFS

This is to certify, that SUNCOR IDAHO LLC
485 E RIVERSIDE DR STE 300
EAGLE ID 83616

has applied for a permit to appropriate water from:

Source: GROUND WATER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
MUNICIPAL	01/01 to 12/31	5.00 CFS

LOCATION OF POINTS OF DIVERSION:

GROUND WATER	L6 (NW¼SW¼)	Sec. 6, Twp 05N, Rge 02E, B.M., ADA County
GROUND WATER	L7 (SW¼SW¼)	Sec. 6, Twp 05N, Rge 02E, B.M., ADA County
GROUND WATER	NW¼SE¼	Sec. 7, Twp 05N, Rge 02E, B.M., ADA County
GROUND WATER	SE¼SE¼	Sec. 7, Twp 05N, Rge 02E, B.M., ADA County
GROUND WATER	SW¼NE¼	Sec. 18, Twp 05N, Rge 02E, B.M., ADA County
GROUND WATER	SE¼SE¼	Sec. 1, Twp 05N, Rge 01E, B.M., ADA County
GROUND WATER	SE¼SE¼	Sec. 1, Twp 05N, Rge 01E, B.M., ADA County

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **March 01, 2010**.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
5. Water bearing zone to be appropriated is from 50 to 500 feet.
6. Place of use is within the area served by the public water supply system of Suncor Idaho, LLC for use within Spring Valley Ranch. The place of use is generally located within Sections 1, 12, 13 and 24, Township 05N, Range 01E; Sections 5, 6, 7, 17, 18 and 20, Township 05N, Range 02E; Section 36, Township 06N, Range 01E; Sections 31 and 32, Township 06N, Range 02E.
7. The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.

Exhibit
3

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-31966

8. Prior to diversion of water under this right, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.
9. Prior to or in connection with the proof of beneficial use statement to be submitted for municipal water use under this right, the right holder shall provide the department with documentation showing that the water supply system is being regulated by the Idaho Department of Environmental Quality as a public water supply and that it has been issued a public water supply number.
10. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 11th day of March, 2005.

Karl J Dreher
for KARL J DREHER, Director

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of October 2006, I caused a true and correct copy of the foregoing PROTESTANTS' MOTION TO DISQUALIFY HEARING OFFICER FOR CAUSE, the DECLARATION OF JUDITH M. BRAWER, and a copy of the exhibits attached thereto, to be served on the following persons **via facsimile**.

Albert P. Barker
Fax No. 208-344-6034

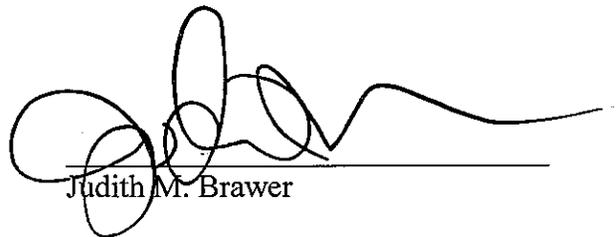
Glen Saxton, Hearing Officer
C/o Debbie Gibson
Fax No. 208-287-6700

I hereby certify that on this 24th day of October 2006, I caused a true and correct copy of the foregoing PROTESTANTS' MOTION TO DISQUALIFY HEARING OFFICER FOR CAUSE, the DECLARATION OF JUDITH M. BRAWER, and a copy of the exhibits attached thereto, to be served on the following persons **via first class mail, postage pre-paid**.

Albert P. Barker
BARKER ROSHOLT & SIMPSON
P.O. Box 2139
Boise, Idaho 83701-2139

Glen Saxton, Hearing Officer
C/o Debbie Gibson
IDWR
322 E. Front Street
Boise, ID 83702

Phillip Fry
4122 Homer Road
Eagle, ID 83616



Judith M. Brawer

RECEIVED

OCT 27 2006

DEPARTMENT OF WATER RESOURCES

Judith M. Brawer (ISB # 6582)
1502 N. 7th Street
Boise, ID 83702
208-871-0596 (phone)
208-343-2070 (fax)

Attorney for Protestants

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	PROTESTANTS' RESPONSE TO
FOR PERMIT NO. 63-32061 IN THE	)	APPLICANT'S OPPOSITION TO
NAME OF SUNCOR IDAHO, LLC	)	MOTION TO DISQUALIFY HEARING
	)	OFFICER FOR CAUSE

Protestants, Rod Davidson, Lyle Mullins and Garth Baldwin (hereinafter "Protestants"), by and through their attorney of record, hereby respectfully file this Response to Applicant's Opposition to Protestants' Motion to Disqualify Hearing Officer for Cause.

Applicant continues to assert that Protestants are attempting to delay the hearing in this case. This accusation is without merit. Applicant appears to have forgotten that both it and IDWR also disqualified hearing officers without cause. In addition, Protestants did not attempt to vacate the hearing, but merely to postpone it for just over thirty days to provide time for Protestants' recently hired attorney to get up to speed and be prepared for the hearing. Thus there is no basis or evidence for Applicant's repeated claims of delay – a short delay of an administrative hearing upon request by newly appointed legal counsel is a common occurrence, as well as a common courtesy. Unfortunately, that courtesy was denied without explanation.

Instead, Applicant is attempting to forcefully push through its application for a water right permit without a complete application and without providing adequate evidence of its status as a municipal water provider. Contrary to Applicant's assertion that Protestants' claims are

unclear, these, and Protestants' other claims, have been stated repeatedly and clearly throughout the proceedings in this case.

Applicant attempts to further discredit Protestants' motion by claiming that it was untimely filed. It is true that Protestants' counsel raised the issue of potential bias in the Motion for Extension of Time for Hearing. This was to provide notice to both the Applicant and the Hearing Officer that this was of concern to the Protestants, and it was merely a week before Protestants filed their motion to disqualify Mr. Saxton for cause.. Upon Protestants' counsel finding *further* evidence of potential bias in the form of an additional memorandum that he authored and the previous water right permit being signed by Mr. Saxton, counsel immediately filed its motion to disqualify. This satisfies IDWR's rule regarding when a party may petition for disqualification, which states that "any party may promptly petition for the disqualification of a hearing officer after receiving notice that the officer will preside at a contested case or upon discovering facts establishing grounds for disqualification, *whichever is later. DAPA 37.01.01.412 (emphasis added).*

Also contrary to Applicant's assertions, Mr. Saxton has more than "some passing familiarity" with these issues, and there is no "gamesmanship" here. Indeed, Mr. Saxton has written IDWR policy interpretations of the issues of who may qualify as a municipal water provider, and what proof must be provided, and when that proof must be provided, to demonstrate that an applicant is a municipal provider. These issues are at the heart of this contested case, and as stated in their motion, Protestants have serious concerns about Mr. Saxton's potential bias concerning them – this is evidenced by Mr. Saxton's signing SunCor's previous water right permit, thus effectively agreeing that SunCor is a municipal provider without requiring the necessary proof. In fact, Protestants' counsel listed Mr. Saxton as a

potential witness to testify regarding the two memorandums and IDWR's municipal provider policies at issue here.

Applicant attempts to provide insight into the interpretation of "for cause" by citing two cases interpreting IRCP 40(d)(2). Yet, IDWR's rule for disqualification of a hearing officer in a contested case is much broader than this. *IDAPA 37I.01.01.412*. Indeed, the Rule states that *in addition to* the reasons for which a judge is or may be disqualified, "hearing officers are subject to disqualification for bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, status as an employee of the agency..." *Id.* Accordingly, the reasons for disqualifying a hearing officer in an IDWR contested case such as this must be interpreted more broadly than those for disqualifying a judge pursuant to the IRCP, and thus the two cases cited by Applicant's counsel, which are narrowly tailored to IRCP 40(d)(2), are not applicable here.

Because of the reasons set forth in Petitioners' Motion for Disqualification of Hearing Officer for Cause, and in this Response, Petitioners respectfully request that Mr. Saxton be disqualified as the hearing officer in the above captioned case.

Respectfully submitted this 25th day of October, 2006.



Judith M. Brawer
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October 2006, I caused a true and correct copy of the PROTESTANTS' RESPONSE TO APPLICANT'S OPPOSITION TO MOTION TO DISQUALIFY HEARING OFFICER FOR CAUSE to be served on the following persons **via facsimile**.

Albert P. Barker
Fax No. 208-344-6034

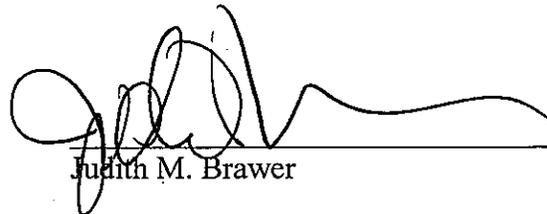
Glen Saxton, Hearing Officer
C/o Debbie Gibson
Fax No. 208-287-6700

I hereby certify that on this 25th day of October 2006, I caused a true and correct copy of the PROTESTANTS' RESPONSE TO APPLICANT'S OPPOSITION TO MOTION TO DISQUALIFY HEARING OFFICER FOR CAUSE to be served on the following persons **via first class mail, postage pre-paid**.

Albert P. Barker
BARKER ROSHOLT & SIMPSON
P.O. Box 2139
Boise, Idaho 83701-2139

Glen Saxton, Hearing Officer
C/o Debbie Gibson
IDWR, 6th Floor
322 E. Front Street
Boise, ID 83702

Phillip Fry
4122 Homer Road
Eagle, ID 83616



Judith M. Brawer

John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington



1010 W. Jefferson St., Suite 102
Post Office Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@dahowaters.com

113 Main Avenue West, Suite 303
Twin Falls, ID 83301-6167
(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@dahowaters.com

FACSIMILE COVER SHEET

DATE: October 27, 2006

RE: *In the Matter of Application for Permit No. 63-32061/Avimor LLC*

TO: Department of Water Resources Fax # 287-6700
Attn: Deborah Gibson

FROM: Albert P. Barker

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 6

XX Original will not be sent.
Original will be sent by first class mail.
Original will be sent by Federal Express.

MESSAGE:

Attached for filing is APPLICANT'S OBJECTION TO PROTESTANTS' MOTION FOR ISSUANCE OF SUBPOENAS AND MOTION TO QUASH SUBPOENAS in the above entitled action. If you have any questions, please give me a call. Thank you.

CONFIDENTIALITY NOTICE - THE INFORMATION CONTAINED IN THIS FACSIMILE COMMUNICATION IS ATTORNEY/CLIENT PRIVILEGED AND/OR CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS COVER PAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION OR THE INFORMATION CONTAINED HEREIN IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY CALL (208) 336-0700, AND RETURN THIS FACSIMILE TO US AT THE ABOVE ADDRESS. WE APPRECIATE YOUR COOPERATION.

cc'd Glen -

Albert P. Barker, ISB #2867
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson, Suite 102
P.O. Box 2139
Boise, Idaho 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for Suncor Idaho LLC (n.k.a. Avimor, LLC)

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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32061 IN THE) **APPLICANT'S OBJECTION TO**
NAME OF SUNCOR IDAHO, LLC) **PROTESTANTS' MOTION FOR**
) **ISSUANCE OF SUBPOENAS AND**
) **MOTION TO QUASH SUBPOENAS**
)

Protestants have requested issuance of subpoenas for five employees of the Idaho Department of Water Resources. These subpoenas are overbroad, unduly burdensome, seek to get into irrelevant and inadmissible areas of testimony, and are part of the Protestants' calculated strategy to continue delay in the proceeding--particularly the proposed subpoena addressed to the Hearing Officer, Glen Saxton. The subpoenas should be quashed.

Protestants' first problem is that they have failed to avail themselves of the procedures available under the Department's rules for obtaining evidence from the Department about the Department's position on issues involved in a disputed water rights case. The rule relied upon by the Protestants for the subpoena is Rule 525, which merely authorizes the issuance of a subpoena to any person. The more specific rule concerning obtaining information from the

Department is in Rule 602. Rule 602 provides that the parties are to be notified of the *specific facts* at issue, if there is to be any reliance on agency staff memoranda or data. Protestants have not complied with Rule 602. They did not request a staff memorandum and did not request that the Hearing Officer take official notice of Department memoranda. Protestants have made no effort to notify Applicant of any *specific facts*. They merely refer to agency memoranda and give vague statements that Department employees are to testify about the agency memoranda. The party against whom the material is offered then has the opportunity to rebut the facts or materials noticed, including by cross-examination of the Department. Rule 602.

In this case, a prehearing conference was held. No party requested a staff memorandum be prepared. The Hearing Officer did not request that a staff memorandum be prepared. Neither the Hearing Officer nor any party requested that agency staff reports be utilized at the hearing. Accordingly, the presiding officer cannot take official notice of the agency staff memoranda and staff reports, because Protestants' have failed to follow the procedures in the Department's rules for contested cases. It is only when the Hearing Officer proposes to notice the agency staff memoranda or staff reports that the responsible staff employees or agencies shall be made available for cross-examination. Rule 602. Not otherwise. Since the Hearing Officer has not proposed to take official notice of any agency staff memoranda or staff reports, there is no basis for calling any of the staff employees or agencies for cross-examination.

For the Protestants to have the right to seek cross-examination of the witnesses preparing those staff reports, it would be only if the Hearing Officer or the Applicant sought to seek official notice of staff reports. That did not happen. Rather, the Protestants are seeking to offer the internal agency reports under the pretext of creating the opportunity to cross-examine

Department staff. The Protestants cannot try to create a conflict by offering evidence solely for the purpose of cross-examining a witness.

Should the Department be inclined to issue subpoenas for some of the Department employees, Applicant strongly objects to the effort to subpoena Mr. Saxton as a witness. First, it is apparent from the Protestants' listing of the proposed testimony of the Department witnesses that Mr. Saxton, Mr. Peppersack, Ms. Keen, Mr. Lester, and Mr. Westra are all cumulative. Indeed, Protestants state that Mr. Saxton, Mr. Peppersack, and Ms. Keen's testimony is the "same." The agency has the authority to exclude cumulative and unduly repetitious evidence. Rule 600. Second, Mr. Saxton's role in the Administrative Record for the Avimor water right is decidedly sparse and does not rise to the level of participation that would make Mr. Saxton a fact witness in this proceeding. In fact, the Director himself observed, "The Director's participation in the reformulation and recalibration of the ESPA groundwater model and his use of the model in preparing the Amended Order does not make him a potential fact witness in the present proceeding." Order on Petitions, p. 2 (June 3, 2005)(Surface Water Coalition Priority Call). Likewise, use of the model runs under the direction of the Director, his reliance on information gathered by Department employees, and his involvement in settlement discussions was not sufficient to make the Director a fact witness in that case. *Id.* Clearly, Mr. Saxton, and indeed none of the Department employees, has had involvement in the application to the level of the Director's involvement in the Surface Water Priority Call, which did not authorize calling the Director as a fact witness.

In the Clear Springs Delivery Call, the Director refused to disqualify himself and appoint an independent hearing officer, even though the Director had prepared the original proposed findings of fact and conclusions of law. As the Director noted in that Order, "The hearing

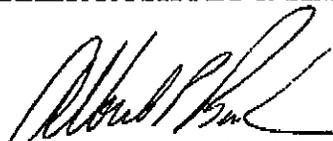
provides an opportunity for any party to demonstrate to the Director through the introduction of evidence and presentation of legal argument why he should modify the order. . . ." Order on Request for Hearing and Appointment of Independent Hearing Officer (July 29, 2005)(Clear Springs Delivery Call).

To the extent that Protestants claim that Avimor does not qualify as a municipal supplier under Idaho statutes, they have the opportunity to produce factual evidence to support that theory (if any can be presented). The employees of the Department of Water Resources have no personal knowledge of Avimor's municipal provider status and therefore would not be in any position to provide any kind of competent factual testimony concerning Avimor's status as a municipal supplier. Their testimony on that ground would be excluded as irrelevant. Rule 600. The Department employees are not Protestants' expert witnesses, nor could they be. To the extent the Protestants seek to elicit legal conclusions from the Department employees who are lay witnesses, that, too, is inadmissible opinion evidence. IRE 701. *See Richard J. and Esther E. Wooley Trust v. Debest Plumbing*, 133 Idaho 180 (1999)(error to allow lay witnesses to give opinion on ultimate legal issue).

The Department witnesses are not offered as fact witnesses. Protestants propose to use them to offer legal conclusions about Avimor's status as a municipal provider. This evidence is inadmissible and immaterial. Accordingly, for the reasons set forth herein, Avimor moves to quash the subpoenas and Protestants' motion for issuance of subpoenas. Additionally, no subpoena can be issued for the Hearing Officer for the reasons set forth in the Applicant's Opposition to the Motion to Disqualify Mr. Saxton and for the reasons set for in the Director's Orders in the Surface Water Priority Call and Clear Springs Delivery Call.

DATED this 27th day of October, 2006.

BARKER ROSHOLT & SIMPSON, LLP



Albert P. Barker
Attorneys for SunCor Idaho, LLC
now known as Avimor LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of October, 2006, I served a true and correct copy of the foregoing **APPLICANT'S OBJECTION TO PROTESTANTS' MOTION FOR ISSUANCE OF SUBPOENAS AND MOTION TO QUASH SUBPOENAS** on the person(s) listed below, in the manner indicated below:

Idaho Department of Water Resources
322 E. Front Street
P. O. Box 83720
Boise, ID 83720-0098

U.S. Mail, Postage Prepaid
 Facsimile 287-6700
 E-Mail
 Hand Delivery

Judith M. Brawer
1502 N. 7th Street
Boise, ID 83702

U.S. Mail, Postage Prepaid
 Facsimile 343-2070
 E-Mail
 Hand Delivery

Phillip Fry
4122 Homer Road
Eagle, ID 83616

U.S. Mail, Postage Prepaid
 Facsimile
 E-Mail: idphil@earthlink.net
 Hand Delivery



Albert P. Barker



To: Debbie Gibson, IDWR, Fax # 287-6700
From: Judith M. Brawer
Date: October 25, 2006
Re: Permit No. 63-32061, Protestants' Response to Appellant's Opposition to Motion to Disqualify Hearing Officer for Cause.

Please find included in this facsimile the following:

1. Revised Certificate of Service – 1 page

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October 2006, I caused a true and correct copy of the PROTESTANTS' RESPONSE TO APPLICANT'S OPPOSITION TO MOTION TO DISQUALIFY HEARING OFFICER FOR CAUSE to be served on the following persons **via facsimile**.

Albert P. Barker
Fax No. 208-344-6034

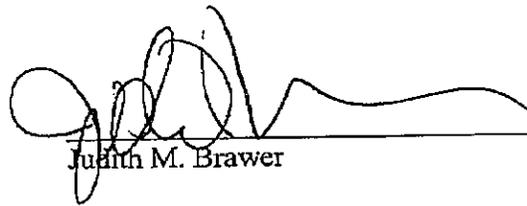
Glen Saxton, Hearing Officer
C/o Debbie Gibson
Fax No. 208-287-6700

I hereby certify that on this 25th day of October 2006, I caused a true and correct copy of the PROTESTANTS' RESPONSE TO APPLICANT'S OPPOSITION TO MOTION TO DISQUALIFY HEARING OFFICER FOR CAUSE to be served on the following persons **via first class mail, postage pre-paid**.

Albert P. Barker
BARKER ROSHOLT & SIMPSON
P.O. Box 2139
Boise, Idaho 83701-2139

Glen Saxton, Hearing Officer
C/o Debbie Gibson
IDWR, 6th Floor
322 E. Front Street
Boise, ID 83702

Phillip Fry
4122 Homer Road
Eagle, ID 83616



Judith M. Braw

Judith M. Brawer
Attorney & Counselor at Law
1502 N. 7th Street • Boise, Idaho 83702
208-871-0596 (P) • 208-343-2070 (F)
jbrawer@jbrawerlaw.com
www.jbrawerlaw.com

To: Debbie Gibson, IDWR, Fax # 287-6700
From: Judith M. Brawer
Date: October 25, 2006
Re: Permit No. 63-32061, Protestants' Motion to Disqualify Hearing Officer for Cause.

Please find included in this facsimile the following:

1. Protestants' Response to Applicant's Opposition to Motion to Disqualify Hearing Officer for Cause – 3 pages
2. Certificate of Service – 1 page

Judith M. Brawer (ISB # 6582)
 1502 N. 7th Street
 Boise, ID 83702
 208-871-0596 (phone)
 208-343-2070 (fax)

Attorney for Protestants

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

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-32061 IN THE NAME OF SUNCOR IDAHO, LLC))))	PROTESTANTS' RESPONSE TO APPLICANT'S OPPOSITION TO MOTION TO DISQUALIFY HEARING OFFICER FOR CAUSE
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Protestants, Rod Davidson, Lyle Mullins and Garth Baldwin (hereinafter "Protestants"), by and through their attorney of record, hereby respectfully file this Response to Applicant's Opposition to Protestants' Motion to Disqualify Hearing Officer for Cause.

Applicant continues to assert that Protestants are attempting to delay the hearing in this case. This accusation is without merit. Applicant appears to have forgotten that both it and IDWR also disqualified hearing officers without cause. In addition, Protestants did not attempt to vacate the hearing, but merely to postpone it for just over thirty days to provide time for Protestants' recently hired attorney to get up to speed and be prepared for the hearing. Thus there is no basis or evidence for Applicant's repeated claims of delay – a short delay of an administrative hearing upon request by newly appointed legal counsel is a common occurrence, as well as a common courtesy. Unfortunately, that courtesy was denied without explanation.

Instead, Applicant is attempting to forcefully push through its application for a water right permit without a complete application and without providing adequate evidence of its status as a municipal water provider. Contrary to Applicant's assertion that Protestants' claims are



unclear, these, and Protestants' other claims, have been stated repeatedly and clearly throughout the proceedings in this case.

Applicant attempts to further discredit Protestants' motion by claiming that it was untimely filed. It is true that Protestants' counsel raised the issue of potential bias in the Motion for Extension of Time for Hearing. This was to provide notice to both the Applicant and the Hearing Officer that this was of concern to the Protestants, and it was merely a week before Protestants filed their motion to disqualify Mr. Saxton for cause.. Upon Protestants' counsel finding *further* evidence of potential bias in the form of an additional memorandum that he authored and the previous water right permit being signed by Mr. Saxton, counsel immediately filed its motion to disqualify. This satisfies IDWR's rule regarding when a party may petition for disqualification, which states that "any party may promptly petition for the disqualification of a hearing officer after receiving notice that the officer will preside at a contested case or upon discovering facts establishing grounds for disqualification, *whichever is later*. DAPA 37.01.01.412 (*emphasis added*).

Also contrary to Applicant's assertions, Mr. Saxton has more than "some passing familiarity" with these issues, and there is no "gamesmanship" here. Indeed, Mr. Saxton has written IDWR policy interpretations of the issues of who may qualify as a municipal water provider, and what proof must be provided, and when that proof must be provided, to demonstrate that an applicant is a municipal provider. These issues are at the heart of this contested case, and as stated in their motion, Protestants have serious concerns about Mr. Saxton's potential bias concerning them – this is evidenced by Mr. Saxton's signing SunCor's previous water right permit, thus effectively agreeing that SunCor is a municipal provider without requiring the necessary proof. In fact, Protestants' counsel listed Mr. Saxton as a

potential witness to testify regarding the two memorandums and IDWR's municipal provider policies at issue here.

Applicant attempts to provide insight into the interpretation of "for cause" by citing two cases interpreting IRCP 40(d)(2). Yet, IDWR's rule for disqualification of a hearing officer in a contested case is much broader than this. *IDAPA 371.01.01.412*. Indeed, the Rule states that *in addition to* the reasons for which a judge is or may be disqualified, "hearing officers are subject to disqualification for bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, status as an employee of the agency..." *Id.* Accordingly, the reasons for disqualifying a hearing officer in an IDWR contested case such as this must be interpreted more broadly than those for disqualifying a judge pursuant to the IRCP, and thus the two cases cited by Applicant's counsel, which are narrowly tailored to IRCP 40(d)(2), are not applicable here.

Because of the reasons set forth in Petitioners' Motion for Disqualification of Hearing Officer for Cause, and in this Response, Petitioners respectfully request that Mr. Saxton be disqualified as the hearing officer in the above captioned case.

Respectfully submitted this 25th day of October, 2006.



Judith M. Brawer
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October 2006, I caused a true and correct copy of the foregoing PROTESTANTS' RESPONSE TO APPLICANT'S OPPOSITION TO MOTION TO DISQUALIFY HEARING OFFICER FOR CAUSE to be served on the following persons via facsimile.

Albert P. Barker
Fax No. 208-344-6034

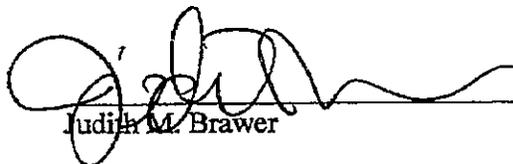
Glen Saxton, Hearing Officer
C/o Debbie Gibson
Fax No. 208-287-6700

I hereby certify that on this 25th day of October 2006, I caused a true and correct copy of the foregoing PROTESTANTS' MOTION TO DISQUALIFY HEARING OFFICER FOR CAUSE, the DECLARATION OF JUDITH M. BRAWER, and a copy of the exhibits attached thereto, to be served on the following persons via **first class mail, postage pre-paid.**

Albert P. Barker
BARKER ROSHOLT & SIMPSON
P.O. Box 2139
Boise, Idaho 83701-2139

Glen Saxton, Hearing Officer
C/o Debbie Gibson
IDWR, 6th Floor
322 E. Front Street
Boise, ID 83702

Phillip Fry
4122 Homer Road
Eagle, ID 83616


Judith M. Brawer

John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington



1010 W. Jefferson St., Suite 102
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Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

113 Main Avenue West, Suite 303
Twin Falls, ID 83301-6167
(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

FACSIMILE COVER SHEET

DATE: November 6, 2006

RE: *In the Matter of Application for Permit No. 63-32061/Avimor LLC*

TO: Department of Water Resources
Attn: Deborah Gibson

Fax # 287-6700

FROM: Albert P. Barker

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 2

XX Original will not be sent.
Original will be sent by first class mail.
Original will be sent by Federal Express.

MESSAGE:

**Attached is a copy of APPLICANT'S OPPOSITION TO PROTESTANTS'
MOTION TO DISQUALIFY HEARING OFFICER FOR CAUSE in the above
entitled action. Thank you.**

CONFIDENTIALITY NOTICE - THE INFORMATION CONTAINED IN THIS FACSIMILE COMMUNICATION IS ATTORNEY/CLIENT PRIVILEGED AND/OR CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS COVER PAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION OR THE INFORMATION CONTAINED HEREIN IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY CALL (208) 336-0700, AND RETURN THIS FACSIMILE TO US AT THE ABOVE ADDRESS. WE APPRECIATE YOUR COOPERATION.

Albert P. Barker, ISB #2867
Paul L. Arrington, ISB #7198
BARKER ROHOLT & SIMPSON LLP
1010 W. Jefferson, Suite 102
P.O. Box 2139
Boise, Idaho 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for Suncor Idaho LLC (n.k.a. Avimor, LLC)

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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32061 IN THE) **APPLICANT'S OPPOSITION TO**
NAME OF SUNCOR IDAHO, LLC) **PROTESTANTS' MOTION TO**
) **DISQUALIFY HEARING OFFICER FOR**
) **CAUSE**
)

COMES NOW, Avimor, Inc., formerly known as SunCor Idaho, LLC, by and through its attorneys of record, and hereby opposes Protestants' Motion to Disqualify Hearing Officer for Cause. Messrs. Davidson, Mullins, and Baldwin are engaged in a long-running effort to do whatever they can to delay the hearing in this case. Thus, each have filed successive motions for disqualification of successive hearing officers without cause, even though they share the same interest. Then, upon hiring a lawyer, their attorney moved to vacate the hearing. Now that the motion to vacate the hearing is denied, Protestants are indirectly attempting to vacate the hearing by disqualifying the hearing officer for cause. Applicant has been trying to get this application heard for over a year, and all these Protestants want to do is delay the proceedings. This motion

to disqualify Glen Saxton as the hearing officer for cause is another in a long line of efforts to delay this proceeding.

The petition for disqualification must be brought within fourteen (14) days after receipt of notice indicating the person who will preside in the contested case or promptly on discovering facts establishing grounds for disqualification. Idaho Code § 67-5252(2)(a) & (b).

Glen Saxton was appointed the Hearing Officer in this matter on April 27, 2006 by the Director. An informal prehearing conference was held on July 26, 2006 before Glen Saxton. At that time, Mr. Saxton advised all the parties that he had previously been an employee of the Department, that he was now retired, and that he had, in his capacity working for the water rights bureau for the Department, some passing familiarity with the issues in the case.

The motion to disqualify asserts that Protestants only "recently learned" that Mr. Saxton may be biased, may have a substantial prior involvement in a matter of importance, and was an employee of the Department. Interestingly, *before* the Hearing Officer acted on the motion to vacate, counsel for Protestants stated in writing that she was aware of grounds for bias, citing the same memo then she cites now. Now that the Hearing Officer has ruled on that motion and determined that the hearing should proceed, Protestants seek to disqualify him. It is gamesmanship at its worst to ask the Hearing Officer for relief, and, when it is denied, try to remove the Hearing Officer. The facts also shows the motion to disqualify was not brought "promptly" as required by Idaho Code § 67-5252(2)(b).

There is no way that, given Mr. Saxton's disclosures at the July Prehearing Conference or even with a minimal amount of due diligence by the Protestants, they did not know that Mr. Saxton was a former employee of the Department. The motion to disqualify Mr. Saxton as a previous employee of the Department is not brought promptly and not brought within fourteen

(14) days of his appointment as required by Idaho Code Section 67-5252(2). Therefore, Protestants' motion cannot be granted on that requested ground.

The second basis for the Protestants' motion to disqualify is the allegation that Mr. Saxton is *biased* and had a prior involvement in a significant issue (not in this matter, however). This allegation relates to *two* memoranda in the Department's files concerning the criteria for qualification as a municipal provider.

The one document authored by Mr. Saxton involving the qualifications of an applicant as a municipal provider merely says "any questionable application for municipal use needs to be accompanied by appropriate supporting information." There is nothing in that 1998 memorandum which expresses any bias or any prior disposition concerning the Avimor application here. The other document is a 2003 memorandum from Shelley Keen which discusses a potential condition to be placed upon the application requiring proof of IDEQ approval of the municipal water source prior to application of the water to beneficial use. This policy is consistent with Department policy involving every other type of permit required by an outside agency. There is no indication that the Mr. Saxton has made a determination on the extent to which Avimor qualifies as a municipal provider under Idaho Code Section 42-202(b)(5)(c) then or now. However, the municipal provider statute does *not* require that the entity be an incorporated city, but it is written more expansively to include a corporation or association which supplies water for municipal purposes as a public water supplier described in the Idaho DEQ statutes. Idaho Code § 42-202(b)(5)(c). Avimor qualifies as such a corporation or association

The only other allegation raised by the Protestants is that Mr. Saxton signed Permit No. 63-31966 on behalf of Director when that permit was issued to SunCor. That permit was

protested but all the protests were withdrawn. There was no hearing. The Hearing Officer has not had to make a decision on Protestants' objections to Avimor's status as a municipal water provider (whatever those objections might be, and their objections are unclear, as Protestants have not articulated any legal basis for denying Avimor that status).

The Director of the Department made it clear in his Order on Petitions dated June 3, 2005, involving the delivery call by the Surface Water Users, that involvement in the policies of the Department is insufficient grounds to challenge the hearing officer for bias and, indeed, in that case, even the Director's involvement in settlement negotiations among the parties was insufficient to require disqualification for cause. Order, p. 3. Protestants have not shown any "cause" for bias, as that term has been construed by the courts.

While there is no law specifically addressing Idaho Code Section 67-5252(2), court decisions interpreting the "for cause" disqualification provisions of IRCP 40(d)(2) provide valuable insight. See IDAPA with Comments and Model Rules at p. 36. ("A presiding officer may be disqualified for any cause sufficient for disqualifying a hearing officer").

A party may move to disqualify a judge from presiding on the grounds of bias. ... Adverse rulings, by themselves, do not demonstrate disqualifying bias. [] To be disqualifying, the alleged bias "must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." [] *A judge's participation in prior legal proceedings involving related parties or issues is not grounds for disqualification for bias.*

Samuel v. Hepworth, Nungester & Lezamiz, Inc., 134 Idaho 84, 88, 996 P.2d 303, 307

(2000)(emphasis added); see also, e.g., *Roselle v. Heirs and Devisees of Grover*, 117 Idaho 530, 534, 789 P.2d 526, 530 (Ct. App. 1990) ("Merely because a judge has participated in prior legal

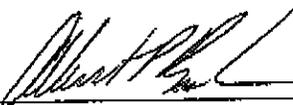
proceedings involving related parties or issues does not provide grounds for the judge to recuse himself").

Protestants' claim that Mr. Saxton's involvement with the Department, its municipal provider guidelines or in signing the prior SunCor permit for the Director fails, as a matter of law, of rising to the level of "cause."

The Protestants' blatant attempt to cause further delay and disruption to this application proceeding should not be permitted, the motion to disqualify the hearing officer should be denied, and the hearing should take place as scheduled on October 31, 2006. All parties have exchanged exhibits, identified witnesses, and the general scope of their testimony. The hearing is scheduled to go forward, and there is simply no just reason for delay.

DATED this 24th day of October, 2006.

BARKER ROSHOLT & SIMPSON, LLP



Albert P. Barker
Attorneys for SunCor Idaho, LLC
now known as Avimor LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of October, 2006, I served a true and correct copy of the foregoing **APPLICANT'S OPPOSITION TO PROTESTANTS' MOTION TO DISQUALIFY HEARING OFFICER FOR CAUSE** on the person(s) listed below, in the manner indicated below:

Idaho Department of Water Resources
322 E. Front Street
P. O. Box 83720
Boise, ID 83720-0098

U.S. Mail, Postage Prepaid
 Facsimile 287-6700
 E-Mail
 Hand Delivery

Judith M. Brawer
1502 N. 7th Street
Boise, ID 83702

U.S. Mail, Postage Prepaid
 Facsimile 343-2070
 E-Mail
 Hand Delivery

Phillip Fry
4122 Homer Road
Eagle, ID 83616

U.S. Mail, Postage Prepaid
 Facsimile
 E-Mail: idphil@earthlink.net
 Hand Delivery



Albert P. Barker

Albert P. Barker
John A. Rosholt
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington



1010 W. Jefferson St., Suite 102
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(208) 344-6034 facsimile
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113 Main Avenue West, Suite 303
Post Office Box 485
Twin Falls, Idaho 83303-0485
(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

Albert P. Barker
apb@idahowaters.com

October 23, 2006

RECEIVED

OCT 23 2006

DEPARTMENT OF
WATER RESOURCES

VIA HAND DELIVERY

Idaho Department of Water Resources
322 E. Front St.
P.O. Box 83720
Boise, Idaho 83720-0098

*Re: In the Matter of Application for Permit No. 63-32061
In the Name of SunCor Idaho LLC*

Ladies and Gentlemen:

Enclosed you will find two (2) copies of the Appellant's Exhibits in the above matter—one of which is for the Hearing Officer, L. Glen Saxton. If you have any questions, please feel free to give me a call. Thank you.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP

Albert P. Barker

APB/cp

Enclosure (binder) w/IDWR copies

Judith M. Brawer
Attorney & Counselor at Law
1502 N. 7th Street • Boise, Idaho 83702
208-871-0596 (P) • 208-343-2070 (F)
jbrawer@jbrawerlaw.com
www.jbrawerlaw.com

To: IDWR, ATTN: DEBBIE GIBSON, Fax # 287-6700
From: Judith M. Brawer
Date: October 23, 2006
Re: Permit No. 63-32061, Protestants' Motion to Disqualify Hearing Officer for Cause.

Please find included in this facsimile the following:

1. Protestants' Motion to Disqualify Hearing Officer for Cause – 3 pages
2. Declaration of Judith M. Brawer – 2 pages
3. Exhibits 1, 2 and 3 to Brawer Declaration – 5 pages
4. Certificate of Service – 1 page

Judith M. Brawer (ISB # 6582)
1502 N. 7th Street
Boise, ID 83702
208-871-0596 (phone)
208-343-2070 (fax)

Attorney for Protestants

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

IN THE MATTER OF APPLICATION)	PROTESTANTS' MOTION TO
FOR PERMIT NO. 63-32061 IN THE)	DISQUALIFY HEARING OFFICER
NAME OF SUNCOR IDAHO, LLC)	FOR CAUSE
)	

Pursuant to Idaho Code § 67-5252 and IDAPA 37.01.101.412, protestants ROD DAVIDSON, LYLE MULLINS and GARTH BALDWIN (hereinafter "Protestants") hereby respectfully move for the disqualification of Hearing Officer Glen Saxton for cause in the above captioned contested case. Protestants are filing this petition promptly upon discovering facts establishing grounds for disqualification, as explained below. *Idaho Code § 67-5252(2)(b), IDAPA 37.01.01.412.*

Pursuant to § 67-5252, any party has a right to move to disqualify for bias, prejudice, interest, substantial prior involvement in the matter other than as a presiding officer, status as an employee of the agency hearing the contested case, or any cause for which a judge is or may be disqualified. Here, Protestants have recently learned that Mr. Saxton may have bias, substantial prior involvement in a matter of importance to this case, and was, until recently, an employee of the Idaho Department of Water Resources (hereinafter "IDWR") – the agency hearing the contested case.

Mr. Saxton may have bias and has prior involvement regarding the issue of whether SunCor Idaho, LLC (hereinafter "SunCor") is a municipal water provider under Idaho Code § 42-202B(5)(c), and whether SunCor's application to appropriate water as a municipal water provider is complete. Both of these issues are central to Protestants' claims in this contested case.

Mr. Saxton's bias and prior involvement is exemplified by several things recently discovered by Protestants. First is a 2003 IDWR Memorandum directed to Mr. Saxton while he was an employee at IDWR. *See Declaration of Judith M. Brawer, Exhibit 1.* This Memorandum discusses IDWR's interpretation of the laws regarding whether an applicant such as SunCor qualifies for status as a municipal provider; and what information the applicant must provide to IDWR and the public in its application *before* a public hearing and *before* being authorized to appropriate water as a municipal provider. It appears that Mr. Saxton signed off on this memorandum – his initials are above his name with the word "OK" – possibly indicating his agreement with this interpretation, which Protestants contest here.

Second, Mr. Saxton authored a 1998 Memorandum regarding IDWR's interpretation of the 1996 Amendments to the Idaho Code related to municipal providers and what must be included in an application for appropriation of water as a municipal provider. *See Brawer Declaration, Exhibit 2.* Again, this directly relates to Protestants' claims that SunCor does not qualify as a municipal provider and/or did not submit a complete application for IDWR to make such a determination.

Third, while he was an employee of IDWR, Mr. Saxton signed SunCor's previous water permit, No. 63-31966, for Mr. Karl Dreher, the IDWR director. *See Brawer Declaration, Exhibit 3.* This permit was issued without questioning whether SunCor even qualifies as a municipal provider, and allowing SunCor to complete its application and provide proof that it is a

municipal provider at some later time. This permit is directly tied to the permit at issue in this contested case.

Accordingly, because Mr. Saxton's previous significant involvement in this matter as the signatory of SunCor's initial permit to appropriate water as a municipal provider; and because of Mr. Saxton's stated opinions and interpretations of law which are directly at issue in this contested case, Protestants respectfully move that he be disqualified as the hearing officer in this case.

Dated this 23rd of October, 2006.

Respectfully submitted,



Judith M. Braw

Judith M. Brawer (ISB # 6582)
 1502 N. 7th Street
 Boise, ID 83702
 208-871-0596 (phone)
 208-343-2070 (fax)

Attorney for Protestants

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

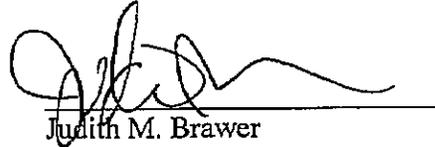
IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-32061 IN THE NAME OF SUNCOR IDAHO, LLC))))	DECLARATION OF JUDITH M. BRAWER
---	------------------	---

I, Judith M. Brawer, declare:

1. I am counsel of record for Protestants Rod Davidson, Lyle Mullins and Garth Baldwin in this matter. I have personal knowledge of the matters set forth below.
2. Attached hereto as Exhibit 1 is a true and correct copy of a Memorandum, dated August 15, 2003, to Jeff Peppersack and Glen Saxton, From Shelley W. Keen, regarding Application for Municipal Water Use. I personally obtained this document from the IDWR website.
3. Attached hereto as Exhibit 2 is a true and correct copy of a Memorandum dated March 18, 1998, to Water Allocation Bureau, Adjudication Bureau and Regional Offices, from L. Glen Saxton, regarding Water Rights for Municipal Use. I personally obtained this document from the Handbook on Idaho Water Law, © 2005 Givens Pursley, LLP.

4. Attached hereto as Exhibit 3, is the Permit to Appropriate Water, No. 63-31966, issued to SunCor Idaho, LLC and signed by Glen Saxton for Karl Dreher. I personally obtained this document from the IDWR website.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 23rd day of October, 2006, at Boise, Idaho.



Judith M. Brawer

MEMORANDUM

DATE: August 15, 2003

TO: Jeff Peppersack and Glen Saxton *JKM*

FROM: Shelley W. Keen *SWK*

RE: Application for Municipal Water Use

Northern region has been receiving a considerable number of applications for permit for municipal use in multiple ownership subdivisions. Other regions have received a few similar applications. The applications are submitted as "municipal" use rather than "domestic" use because the applicant purports to be a municipal provider under §42-202B(5)(c), *Idaho Code*, which defines a municipal provider as:

A corporation or association which supplies water for municipal purposes through a water system regulated by the state of Idaho as a "public water supply" as described in section 39-103(10), *Idaho Code*.

Developers, homeowners, or other individuals, who do not meet the requirement that a municipal provider must be a corporation or association, have submitted a number of the applications. We have handled this issue by asking the applicants to assign the application to an association or corporation registered with the Secretary of State to do business in Idaho.

A slightly more complicated issue, however, is that Bob Haynes was told by IDEQ that it does not necessarily issue a public water supply number until after the project is built and is serving water to the users. Therefore, it is not always possible for the water right applicants to provide IDWR with a document stating that they are public water suppliers. Bob Haynes and I discussed the matter, and we propose that a copy of correspondence from IDEQ showing that it has been contacted about the proposed municipal water use and that it is asserting jurisdiction over the well site, engineering plans and specs, etc., should be sufficient to demonstrate that the applicant is being regulated as a public water supply. The permit could be issued with a condition that the permit holder must provide a document from IDEQ with the public water supply number when submitting proof of beneficial use. The only possible drawback that we can see is that if the proposed subdivision materializes in a smaller form than anticipated, resulting in IDEQ never issuing a public water supply number, then the permit may have to be amended to show domestic use instead of municipal use. Is this approach acceptable to you?

Condition #134

Exhib 1

MEMORANDUM

To: Water Allocation Bureau
 Adjudication Bureau
 Regional Offices

From: E. Glen Saxton *MS*

RE: WATER RIGHTS FOR MUNICIPAL USE

Date: March 18, 1998

Amendments enacted in 1996 provided for entities meeting the definition of a municipal provider to obtain and hold water rights for reasonably anticipated future needs (RAFN) for a planning horizon (PH). Changes relative to municipal use appear in several code sections including 42-202, 42-202B, 42-217, 42-219 and 42-222, Idaho Code. The purpose of this memo is to provide general guidance for processing municipal use applications and permits and to address two questions concerning the application of these concepts to existing permits.

In the past, municipal water right holders generally have already utilized the benefits offered by the amended code sections, since the department has issued municipal water rights which provide for future development up to the volume of water capable of being produced by the installed diverting works. An effect of the amendments is to include additional entities under the term municipal provider who have not previously been included.

The state office has received applications which propose municipal use but do not describe whether the applicant proposes development which will be accommodated during the permit development period or whether the applicant intends to include RAFN/PH in the application. In order to clarify the intent of an applicant, the regional office should determine the following:

- a) That the applicant qualifies as a municipal provider. Any questionable application for municipal use needs to be accompanied by appropriate supporting information.
- b) The intent of the applicant prior to advertisement of an application. If the application is filed to accommodate RAFN, the applicant needs to describe the service area, the planning horizon, the type and quantity of use in connection with future needs. The length of the planning horizon may vary according to specific needs of a given municipal provider. If the extent of proposed development will be completed during the permit development period, the applicant does not need to provide the additional information relative to RAFN/PH.

Memo - Pg 1

Exhib
2

Two specific questions have been raised concerning the 1996 amendments as follows:

Question 1. Can a municipal provider apply the concepts to an existing permit?

An existing permit, held by an entity that qualifies as a municipal provider under Section 42-202B(3), Idaho Code, can be amended to provide for RAFN over a PH if the permit was issued prior to the effective date of the municipal provider amendments and proof of beneficial use of water has not been submitted for the permit. Permits issued after the effective date of the amendments may not be amended because the permit holder had the opportunity to use the provisions when the permit was obtained.

Question 2. Will the department issue a license for a diversion rate larger than has actually been installed if the permit was issued or subsequently amended to provide for RAFN/PH.

No. Section 42-219(1), Idaho Code provides in pertinent part as follows:

A license may be issued to a municipal provider for an amount up to the full capacity of the system constructed or used in accordance with the original permit provided that the director determines that the amount is reasonably necessary to provide for the existing uses and reasonably anticipated future uses within the service area and otherwise satisfies the definitions and requirements specified in this chapter for such use. (Emphasis added).

This section should not be interpreted to mean that the director will issue a license for a diversion rate larger than the installed capacity of the diversion works as determined during the license examination.

c: Norman C. Young

Memo - Pg 2

State of Idaho
 Department of Water Resources
Permit to Appropriate Water

NO. 63-31966

Priority: May 21, 2004

Maximum Diversion Rate: 5.00 CFS

This is to certify, that **SUNCOR IDAHO LLC**
 485 E RIVERSIDE DR STE 300
 EAGLE ID 83616

has applied for a permit to appropriate water from:

Source: GROUND WATER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
MUNICIPAL	01/01 to 12/31	5.00 CFS

LOCATION OF POINTS OF DIVERSION:

GROUND WATER	L6 (NW¼SW¼)	Sec. 6, Twp 05N, Rge 02E, B.M., ADA County
GROUND WATER	L7 (SW¼SW¼)	Sec. 6, Twp 05N, Rge 02E, B.M., ADA County
GROUND WATER	NW¼SE¼	Sec. 7, Twp 05N, Rge 02E, B.M., ADA County
GROUND WATER	SE¼SE¼	Sec. 7, Twp 05N, Rge 02E, B.M., ADA County
GROUND WATER	SW¼NE¼	Sec. 18, Twp 05N, Rge 02E, B.M., ADA County
GROUND WATER	SE¼SE¼	Sec. 1, Twp 05N, Rge 01E, B.M., ADA County
GROUND WATER	SE¼SE¼	Sec. 1, Twp 05N, Rge 01E, B.M., ADA County

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **March 01, 2010**.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
5. Water bearing zone to be appropriated is from 50 to 500 feet.
6. Place of use is within the area served by the public water supply system of Suncor Idaho, LLC for use within Spring Valley Ranch. The place of use is generally located within Sections 1, 12, 13 and 24, Township 05N, Range 01E; Sections 5, 6, 7, 17, 18 and 20, Township 05N, Range 02E; Section 36, Township 06N, Range 01E; Sections 31 and 32, Township 06N, Range 02E.
7. The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.

Exhibit
3

Page 2

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 63-31966

- 8. Prior to diversion of water under this right, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.
- 9. Prior to or in connection with the proof of beneficial use statement to be submitted for municipal water use under this right, the right holder shall provide the department with documentation showing that the water supply system is being regulated by the Idaho Department of Environmental Quality as a public water supply and that it has been issued a public water supply number.
- 10. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 11th day of March, 2005

Karl J Dreher
for
KARL J DREHER, Director

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of October 2006, I caused a true and correct copy of the foregoing PROTESTANTS' MOTION TO DISQUALIFY HEARING OFFICER FOR CAUSE, the DECLARATION OF JUDITH M. BRAWER, and a copy of the exhibits attached thereto, to be served on the following persons **via facsimile**.

Albert P. Barker
Fax No. 208-344-6034

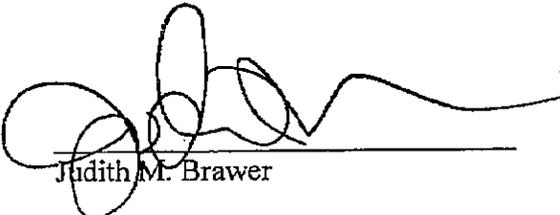
Glen Saxton, Hearing Officer
C/o Debbie Gibson
Fax No. 208-287-6700

I hereby certify that on this 24th day of October 2006, I caused a true and correct copy of the foregoing PROTESTANTS' MOTION TO DISQUALIFY HEARING OFFICER FOR CAUSE, the DECLARATION OF JUDITH M. BRAWER, and a copy of the exhibits attached thereto, to be served on the following persons **via first class mail, postage pre-paid**.

Albert P. Barker
BARKER ROSHOLT & SIMPSON
P.O. Box 2139
Boise, Idaho 83701-2139

Glen Saxton, Hearing Officer
C/o Debbie Gibson
IDWR
322 E. Front Street
Boise, ID 83702

Phillip Fry
4122 Homer Road
Eagle, ID 83616



Judith M. Brawer

Judith M. Brawer
Attorney & Counselor at Law
 1502 N. 7th Street • Boise, Idaho 83702
 208-871-0596 (P) • 208-343-2070 (F)
 jbrawer@jbrawlerlaw.com
 www.jbrawlerlaw.com

To: Debbie Gibson, IDWR, 287-6700
 Albert Barker 344-6034

Please find attached an amended

Certificate of Service for
 Protestants' list of witnesses &

Exhibits for Permit 063-32061

~~REDACTED~~

Judi

CERTIFICATE OF SERVICE

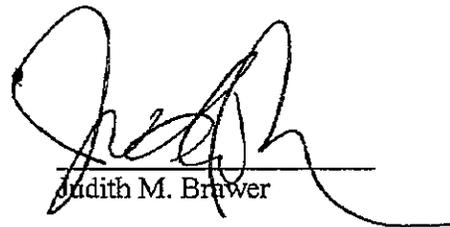
I hereby certify that on this 23rd day of October 2006, I caused a true and correct copy of the foregoing PPROTESTANTS' LIST OF WITNESSES AND EXHIBITS, and A COPY OF EACH EXHIBIT, to be served on the following persons via HAND DELIVERY

Albert P. Barker
BARKER ROSHOLT & SIMPSON LLP
205 N. Tenth St., Suite 520
Boise, Idaho 83701-2139

Glen Saxton, Hearings Officer
C/o Debbie Gibson
IDWR
322 E. Front Street
Boise, ID 83702

I hereby certify that on this 23rd day of October 2006, I caused a true and correct copy of the foregoing PPROTESTANTS' LIST OF WITNESSES AND EXHIBITS, and A COPY OF EACH EXHIBIT, to be served on the following persons via FIRST CLASS MAIL, postage pre-paid

Phillip Fry
4122 Homer Road
Eagle, ID 83616



Judith M. Brewer

Albert P. Barker, ISB #2867
 Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
 1010 W. Jefferson, Suite 102
 P.O. Box 2139
 Boise, Idaho 83701-2139
 Telephone: (208) 336-0700
 Facsimile: (208) 344-6034

Attorneys for Suncor Idaho LLC (n.k.a. Avimor, LLC)¹

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

IN THE MATTER OF APPLICATION)
 FOR PERMIT NO. 63-32061 IN THE) **APPLICANT'S INITIAL DISCLOSURES**
 NAME OF SUNCOR IDAHO, LLC)
 _____)

COMES NOW, SUNCOR IDAHO LLC (n.k.a. Avimor, LLC), by and through its attorneys of record, BARKER ROSHOLT & SIMPSON, LLP, pursuant to the Notice of hearing and Pre-Hearing Order issued by the Hearing Officer on August 7, 2006, and hereby submits the following initial disclosures:

Idaho Code § 42-203A(5)(e) permits the Department to consider the impact to the local public interests arising from the application for a permit. The authority of the Director is limited to issues relating to water resources within the State of Idaho and the Department has not been granted the authority to act as a super-zoning agency. Consequently, Applicant objects to consideration of issues outside the area of expertise of the Department under the guise of local public interest.

¹ On March 7, 2006, Suncor Idaho, LLC filed an Articles of Amendment to Articles of Organization with the Idaho Secretary of State to effectuate a name change to Avimor, LLC.

POTENTIAL HEARING WITNESSES

1. Bob Taunton, General Manager, Avimor, LLC, 485 E. Riverside Dr., Suite 300, Eagle, ID 83616. In the event that Mr. Taunton is unavailable, Mike Wardle, Vice President of Planning and Governmental Affairs, SunCor Idaho, Inc., will testify about these same matters.

Mr. Taunton will be called to testify that Avimor, LLC is a limited liability corporation, formerly known as Suncor Idaho LLC (which is also formerly known as Spring Valley Development LLC), created to develop the Avimor development which will initially include 840 home sites, parks and other common areas. That such municipal purposes will require water which will be delivered by a water delivery system set up to comply with applicable regulations imposed by the relevant city, county and state authorities. Mr. Taunton will further testify that future development of the surrounding areas, also controlled by Avimor, LLC, will lead to development of approximately 4000 homes over the next 20 years, that this planning horizon requires more water than is immediately necessary, and that the appropriate planning and zoning requirements are in the processing of being met regarding both the initial phase of the development as well as future development on the property.

Mr. Taunton may testify regarding any and all of the elements required by Idaho Code § 42-203A. In particular, Mr. Taunton will testify to the application process that Avimor, LLC has undertaken for this water right. He may testify concerning any matters described on the Application.

Mr. Taunton will testify that Avimor, LLC has obtained the right to develop the property pursuant to an agreement with the former owners of the property, Spring Valley Livestock Company, Inc., and that the property is held in trust for the benefit of Avimor LLC. He will also

testify concerning Avimor's right of access to the well sites, where those sites are not on Avimor property.

Mr. Taunton will testify concerning the steps taken to obtain other permits necessary for the project and the status of the permit applications. In particular, as to those permits, he will testify that the initial phase of development has received a Comprehensive Plan Amendment, rezoning to PC (Planned Community) and Specific Plan approval by Ada County. He will describe the status of that plan approval as of the time of the hearing in this matter. He will testify concerning the other permit approvals, including the grading permit, preliminary plat, 404 permit, IDEQ approvals, ACHD approvals, NPDES permits. Mr. Taunton will also describe the status of the Ada County Comprehensive Plan process, the North Ada County Foothills planning process, and the City of Eagle visioning and scenario planning process, and how Avimor's development plans are consistent with this planning process.

Mr. Taunton will testify concerning the design and specifications for the project. He will also describe the water needs of the project and the conservation measures that Avimor has committed to in the Avimor specific plan approved by the County.

Mr. Taunton will explain that Suncor has incorporated a separate water company to provide drinking water and irrigation water to the planned community and the status of obtaining approvals to supply water to the community and a separate sewer company for the community.

Mr. Taunton or the expert witnesses will discuss the agreement with the North Ada County Foothills Association to and the neighborhood association's protest in exchange for an agreement to monitor wells (which is on file with the Department, and previously served on the parties) and the resolution of other protests, including the City of Eagle's.

Mr. Taunton will discuss the estimated project construction costs and Avimor, LLC's financial resources to complete the work associated with the project.

Mr. Taunton will testify concerning the need for the project and the community benefits arising from the construction of this project and conclude that the project is in the local public interest.

Mr. Taunton will testify regarding the water conservation measures to be incorporated into the development regarding irrigation of lawns, gardens, and other outside areas, and Suncor's long history of encouraging water conservation in its other developments.

Mr. Taunton will discuss the local economy of the watershed and local area and how this project will improve the economy with the influx of residents to boost local business growth, to provide more potential employees for the workforce, increase tax revenues to the local community and to develop otherwise vacant land.

Mr. Taunton will testify concerning the nature of this water right and how it fits into the overall strategy to supply water to this development. He will testify that Avimor has elected not to seek a POD for two proposed PODs in the Northern Margin aquifer.

Terry Scanlan and Christian Petrich, SPF Water Engineering, LLC, 600 E. River Park Lane, Suite 105, Boise, ID 83706 will testify as expert witnesses on behalf of the Applicant.

Mr. Scanlan and Mr. Petrich will testify about the preparation of the application, including the points of diversion and the place of use of the water right and responses to questions raised by the Department. They will discuss the aquifer studies that they have performed in this area and the information available concerning the aquifers in the Treasure Valley and in this locale. They will testify concerning the assumptions relative to the water needs of the Avimor Development and how this application is consistent with the conservation of

water resources in the area. They will explain the different aquifers in the area, and the impact of Avimor's decision to withdraw the application with respect to the two proposed points of diversions in the Northern Margin aquifer. Mr. Scanlan and Mr. Petrich will discuss the characteristics of the aquifers in the area, including the Willow Creek, Northern Margin, and Treasure Valley aquifers. They will explain that the Willow Creek aquifer (and other Foothills aquifers) are hydrologically distinct from the Northern Margin aquifers. They will discuss the impacts to the aquifers from the application, and explain the extent of the recharge and the capacity of the aquifer to support the proposed withdrawals. They will explain why the withdrawals proposed will not impact the Treasure Valley aquifers. They will explain why the water withdrawals will not injure the Willow Creek aquifer users or reduce the quantity of water available under existing water rights. They will explain that the Protestants' water rights will not be injured by the proposed water withdrawals and the basis for these conclusions. They may explain how and why the other protests have been resolved.

Mr. Scanlan and Mr. Petrich will explain how the application is consistent with the Department's handling and granting of previous municipal water right applications. They will explain the relationship between this application for Permit No. 63-32061 and Permit No. 63-31966 for the Sandy Hill aquifer, including the potential for aquifer recharge.

Mr. Scanlan and Mr. Petrich will provide the factual and technical support for these conclusions and may testify concerning any of the factual and technical material in the exhibits supplied contemporaneously herewith. They will also testify about their qualifications to draw the conclusions to be presented at the hearing.

DATED this 23rd day of October, 2006.

BARKER ROSHOLT & SIMPSON, LLP



Albert P. Barker
Attorneys for SunCor Idaho, LLC
now known as Avimor LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of October, 2006, I served a true and correct copy of the foregoing **APPLICANT'S INITIAL DISCLOSURES AND APPLICANT'S EXHIBITS** on the person(s) listed below, in the manner indicated below:

Idaho Department of Water Resources
322 E. Front Street
P. O. Box 83720
Boise, ID 83720-0098

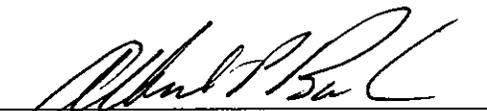
U.S. Mail, Postage Prepaid
 Facsimile 287-6700
 E-Mail
 Hand Delivery

Judith M. Brawer
1502 N. 7th Street
Boise, ID 83702

U.S. Mail, Postage Prepaid
 Facsimile
 E-Mail
 Hand Delivery

Phillip Fry
4122 Homer Road
Eagle, ID 83616

U.S. Mail, Postage Prepaid
 Facsimile
 E-Mail
 Hand Delivery



Albert P. Barker

**IDAHO DEPARTMENT OF
WATER RESOURCES**

FAX

To: Albert Barker & Judith Brawer **From:** Deborah J. Gibson
(208) 287-4942

Fax: 344-6034 & 343-2070 **Date:** October 20, 2006

Phone: **Pages:** 4

Re: Suncor Idaho Appl. For Permit **CC:**
No. 63-32061

Urgent For Review Please Comment Please Reply Please Recycle

Attached is the hearing officer's order entitled Denial of Motion for Extension of Time for Hearing and Approval of Agreement to Extend Time for Filing Exhibits and Witness Lists. This copy is the only service copy of this order you will receive.

Please contact me immediately at the above number if you have any problems with the transmission of this fax.

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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32061 IN THE)
NAME OF SUNCOR IDAHO, LLC)
_____)

**DENIAL OF MOTION FOR EXTENSION OF
TIME FOR HEARING AND APPROVAL OF
AGREEMENT TO EXTEND TIME FOR FILING
EXHIBITS AND WITNESS LISTS**

On August 7, 2006, the hearing officer in the above captioned matter issued a Notice of Hearing and Pre-Hearing order as follows:

1. The hearing will be conducted on:

Date: **October 31 and November 1, 2006**
Time: 9:00 a.m.
Place: IDWR Conference Rooms "A & B"
322 East Front Street, 6th Floor
Boise, ID

2. The parties shall identify and exchange the names of expert and lay witnesses at least 14 days before the hearing and shall provide the information to the hearing officer.
3. The parties shall exchange proposed exhibits and shall provide a copy to the hearing officer at least 14 days before the hearing.

On October 13, 2006, Judith M. Brawer filed a Motion for Extension of Time For Hearing on behalf of protestants Rod Davidson and Lyle Mullins.

On October 13, 2006, the applicant, Suncor Idaho, LLC filed an Objection to Motion For Extension of Time For Hearing.

On October 16, 2006, protestants Rod Davidson, Lyle Mullins and Garth Baldwin filed Protestant's Response to Objection to Motion For Extension of Time For Hearing.

On October 16, 2006, the protestants including protestant Phillip Fry submitted a Stipulated Agreement to Extend Time-For Filing Exhibits and Witness List to October 23, 2006.

On October 19, 2006, the applicant submitted Consent to the Extension of Time for Filing Exhibits and Witness Lists agreeing to extend the date to October 23, 2006.

ORDER

Having reviewed the above described motion, objection, response, and consent, the hearing officer hereby orders as follows:

1. The protestants' motion to extend the date of the hearing scheduled to start on October 31, 2006 is **DENIED**.

2. The agreement of the parties to extend the date for the exchange of exhibits and to identify **witnesses** is **APPROVED** extending the date to October 23, 2006. The parties shall also serve the hearing officer by this date.

Dated this 20th day of October, 2006.



L. GLEN SAXTON, P.E.
Hearing Officer

CERTIFICATE OF SERVICE

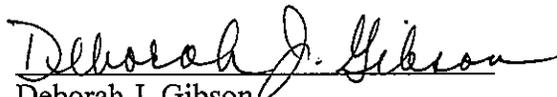
I HEREBY CERTIFY that on this 20th day of October, 2006, a true and correct copy of the document described below was served by placing a copy of the same by facsimile or email to the following:

Document Served: **DENIAL OF MOTION FOR EXTENSION OF TIME FOR HEARING AND APPROVAL OF AGREEMENT TO EXTEND TIME FOR FILING EXHIBITS AND WITNESS LIST**

SUNCOR IDAHO LLC
C/O ALBERT P BARKER
BARKER ROSHOLT & SIMPSON
PO BOX 2139
BOISE ID 83701-2139
Fax: 344-6034

PHILLIP FRY
4122 HOMER RD
EAGLE ID 83616
Email: idphil@earthlink.net

ROD DAVIDSON
GARTH BALDWIN
LYLE MULLINS
C/O JUDITH BRAWER
1502 N 7TH ST
BOISE ID 83702
Fax: 343-2070


Deborah J. Gibson
Administrative Assistant
Idaho Department of Water Resources

Albert P. Barker, ISB #2867
BARKER ROUSHOLT & SIMPSON LLP
205 N. 10th St., Suite 520
P.O. Box 2139
Boise, ID 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for SunCor Idaho LLC

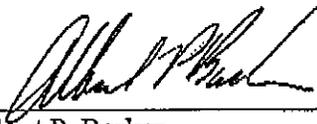
**BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32061 IN THE)
NAME OF SUNCOR, IDAHO, LLC.)
_____)
CONSENT TO THE
EXTENSION OF TIME
FOR FILING EXHIBITS
AND WITNESS LISTS

Comes now the applicant Suncor Idaho LLC, now known as, Avimor, LLC by and through its counsel of record and hereby consents to the Protestants' proposal that exhibits filing and exchange, and identification of witness be moved to Monday October 23, 2006, for all parties.

DATED this 19 day of October, 2006.

BARKER ROUSHOLT & SIMPSON LLP



Albert P. Barker
Attorneys for SunCor Idaho LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19 day of October, 2006, I served a true and correct copy of the CONSENT TO THE EXTENSION OF TIME FOR FILING EXHIBITS AND WITNESS LISTS upon:

Judith M. Brawer
1502 N. 7th St.
Boise, ID 83702
Attorney for Davidson, Mullins & Baldwin

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

Phillip Fry
4122 Homer Road
Eagle, ID 83616

U.S. Mail, Postage Prepaid
 Facsimile
 E-Mail

Albert P. Barker

*John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington*



1010 W Jefferson St, Suite 102
Post Office Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

113 Main Avenue West, Suite 303
Twin Falls, ID 83301-6167
(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

FACSIMILE COVER SHEET

DATE: October 19, 2006

RE: *Permit No. 63-32061, Suncor, Idaho, LLC/Avimor, LLC*

TO: Debbie Gibson **FACSIMILE#:** 287-6700

FROM: Albert Barker

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 3

- Original will not be sent.**
- Original will be sent by first class mail**
- Original will be sent by Federal Express.**

MESSAGE:

CONFIDENTIALITY NOTICE - THE INFORMATION CONTAINED IN THIS FACSIMILE COMMUNICATION IS ATTORNEY-CLIENT PRIVILEGED AND/OR CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS COVER PAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION OR THE INFORMATION CONTAINED HEREIN IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY CALL (208) 336-0700, AND RETURN THIS FACSIMILE TO US AT THE ABOVE ADDRESS. WE APPRECIATE YOUR COOPERATION.

Judith M. Brawer (ISB # 6582)
1502 N. 7th Street
Boise, ID 83702
208-871-0596 (phone)
208-343-2070 (fax)

Attorney for Protestants

WA
RECEIVED

OCT 19 2006

DEPARTMENT OF
WATER RESOURCES

Rec'd by fax 10/16/06

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

IN THE MATTER OF APPLICATION) FOR PERMIT NO. 63-32061 IN THE) NAME OF SUNCOR IDAHO, LLC))	STIPULATED AGREEMENT TO EXTEND TIME FOR FILING EXHIBITS AND WITNESS LIST
--	---

Protestants ROD DAVIDSON, LYLE MULLINS and GARTH BALDWIN, hereby file this stipulated agreement to extend the time for identifying and exchanging the names of expert and lay witness and for exchanging proposed exhibits in the above-captioned case.

On August 7, 2006 the Hearing Officer issued a Pre-Hearing order scheduling a hearing for October 31 and November 1, 2006 in this case, and requiring the parties to identify and exchange the names of expert and lay witnesses and to exchange proposed exhibits at least 14 days before the hearing, which is October 17, 2006. On October 12, 2006 the Protestants filed a Motion for Extension of Time for Hearing, which the Applicant opposed.

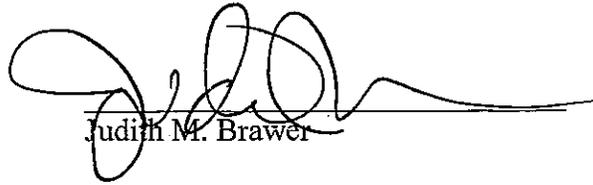
The Hearing Officer is currently out of town and unable to rule on the Motion for Extension of Time prior to the October 17, 2006 filing deadline. At the request of counsel for Protestants Davidson, Mullins and Baldwin, the parties have agreed to postpone this filing and exchange until Monday, October 23, 2006. Protestants' counsel, Judith M. Brawer, conferred with the other parties in this case, Mr. Albert Barker, counsel for SunCor Idaho, LLC, and Mr. Phillip Fry and all have agreed to this extension and that the extension will apply to all parties. The Hearing Officer will have an opportunity to rule on Protestants' Motion for Extension of

Time for Hearing, and Protestants' attorney will have an opportunity to compile the required exhibits and witness list.

This Stipulation does not replace or amend Protestants' Motion for Extension of Time for Hearing, or Applicant's opposition thereto.

Dated this 16th Day of October, 2006.

Respectfully Submitted,



Judith M. Brawer

RECEIVED

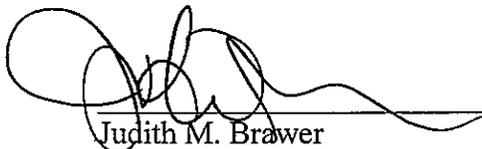
OCT 19 2006

DEPARTMENT OF
WATER RESOURCES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of October, 2006, a true and correct copy of the STIPULATED AGREEMENT TO EXTEND TIME FOR FILING EXHIBITS AND WITNESS LIST were served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

SUNCOR IDAHO LLC C/O ALBERT P. BARKER BARKER ROSHOLT & SIMPSON P.O. Box 2139 Boise, ID 83701-2139 Via Facsimile: 344-6034	PHILLIP FRY 4122 Homer Road Eagle, ID 83616
ROD DAVIDSON 2220 Laan Lane Nyssa OR 97913-5526	LYLE MULLINS 1574 Ellington Way Eagle, ID 83616
GARTH BALDWIN 6050 HWY 55 Horseshoe Bend, ID 83629	IDWR – WESTERN REGION ATTN: L. GLEN SAXTON HEARING OFFICER 322 E. Front Street P.O. Box 83720 Boise, ID 83720-0098 Via Facsimile: 287-6700


Judith M. Brawer

Judith M. Brawer (ISB # 6582)
 1502 N. 7th Street
 Boise, ID 83702
 208-871-0596 (phone)
 208-343-2070 (fax)

Attorney for Protestants

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

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-32061 IN THE NAME OF SUNCOR IDAHO, LLC)))))	STIPULATED AGREEMENT TO EXTEND TIME FOR FILING EXHIBITS AND WITNESS LIST
---	-----------------------	---

Protestants ROD DAVIDSON, LYLE MULLINS and GARTH BALDWIN, hereby file this stipulated agreement to extend the time for identifying and exchanging the names of expert and lay witness and for exchanging proposed exhibits in the above-captioned case.

On August 7, 2006 the Hearing Officer issued a Pre-Hearing order scheduling a hearing for October 31 and November 1, 2006 in this case, and requiring the parties to identify and exchange the names of expert and lay witnesses and to exchange proposed exhibits at least 14 days before the hearing, which is October 17, 2006. On October 12, 2006 the Protestants filed a Motion for Extension of Time for Hearing, which the Applicant opposed.

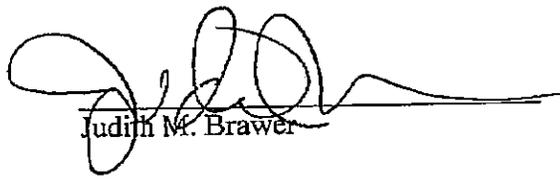
The Hearing Officer is currently out of town and unable to rule on the Motion for Extension of Time prior to the October 17, 2006 filing deadline. At the request of counsel for Protestants Davidson, Mullins and Baldwin, the parties have agreed to postpone this filing and exchange until Monday, October 23, 2006. Protestants' counsel, Judith M. Brawer, conferred with the other parties in this case, Mr. Albert Barker, counsel for SunCor Idaho, LLC, and Mr. Phillip Fry and all have agreed to this extension and that the extension will apply to all parties. The Hearing Officer will have an opportunity to rule on Protestants' Motion for Extension of

Time for Hearing, and Protestants' attorney will have an opportunity to compile the required exhibits and witness list.

This Stipulation does not replace or amend Protestants' Motion for Extension of Time for Hearing, or Applicant's opposition thereto.

Dated this 16th Day of October, 2006.

Respectfully Submitted,



Judith M. Brawer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of October, 2006, a true and correct copy of the STIPULATED AGREEMENT TO EXTEND TIME FOR FILING EXHIBITS AND WITNESS LIST were served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

<p>SUNCOR IDAHO LLC C/O ALBERT P. BARKER BARKER ROSHOLT & SIMPSON P.O. Box 2139 Boise, ID 83701-2139 Via Facsimile: 344-6034</p>	<p>PHILLIP FRY 4122 Homer Road Eagle, ID 83616</p>
<p>ROD DAVIDSON 2220 Laan Lane Nyssa OR 97913-5526</p>	<p>LYLE MULLINS 1574 Ellington Way Eagle, ID 83616</p>
<p>GARTH BALDWIN 6050 HWY 55 Horseshoe Bend, ID 83629</p>	<p>IDWR – WESTERN REGION ATTN: L. GLEN SAXTON HEARING OFFICER 2735 Airport Way Boise, ID 83705-5082 Via Facsimile: 287-6700</p>



Judith M. Brawer

Judith M. Brawer (ISB # 6582)
1502 N. 7th Street
Boise, ID 83702
208-871-0596 (phone)
208-343-2070 (fax)

Attorney for Protestants

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

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-32061 IN THE NAME OF SUNCOR IDAHO, LLC))))	PROTESTANTS' RESPONSE TO OBJECTION TO MOTION FOR EXTENSION OF TIME FOR HEARING
---	------------------	---

COMES NOW, the Protestants ROD DAVIDSON, LYLE MULLINS and GARTH BALDWIN¹ (hereinafter "Protestants"), by and through their attorney, Judith M. Brawer, hereby file this Response to Applicant, SunCor Idaho LLC's objection to petitioners' request an extension of time for the hearing in the above-captioned case. Petitioners also urge the Department to act on this motion for extension and objection prior to Tuesday, October 17, when the parties are required to exchange exhibits and identify witnesses.

In its objection, the Applicant attempts to paint the Protestants in a negative light by accusing them of deliberately attempting to delay the hearing by filing subsequent notices of disqualifications of hearing officers. What the Applicant does not admit is that it also filed a notice of disqualification of hearing officer on October 7, 2005. As the IDWR regulations make clear, any party may petition for the disqualification of a hearing officer. *IDAPA 37.01.01.412.*

¹ Protestant Garth Baldwin joins in the previously filed request by Petitioners Davidson and Mullins to extend the hearing.

It is unconscionable for Applicant to attack Protestants for simply exercising this right, especially when the Applicant has done the same thing.

It is common practice to postpone a hearing when one party retains new legal counsel. This is simply common courtesy to enable the new counsel to learn the facts and intricacies of the case and adequately prepare for the hearing.

Protestants did not bring in counsel in a way that would cause disruption or delay the proceedings, as the Applicant accuses. The Protestants, individual local landowners concerned with the environmental impacts of the requested water right, attempted to do as much work as possible *pro se* because of the high costs of retaining legal counsel. Yet it has now come to a point where engaging legal counsel is necessary. As stated in the Motion for Extension of Time for Hearing, Protestants began their effort to retain counsel immediately after the Prehearing Conference. Because of conflicts of interest of a number of attorneys that Protestants contacted, however, they were unable to find counsel until recently.

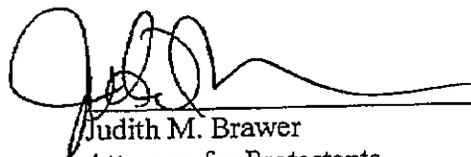
Postponing the hearing for a mere 30 to 40 days will not prejudice the Applicant, as it claims here. To the contrary, *not* postponing the hearing will prejudice the Protestants because their counsel will not have adequate time to become familiar with the intricacies of this case and prepare the exhibits and list of witnesses as required by the Prehearing Order. One of the issues in this case – the claim by Applicant that it is a municipal water user – is a novel issue that is of concern to both the Protestants and to IDWR, as is evident by a number of IDWR memos in Protestants' possession. Indeed, one such memo, dated August 15, 2003, was addressed to the hearing officer, Glen Saxton, and raises the issue of whether Mr. Saxton should be disqualified as the hearing officer and instead be called as a witness in this case. Thus, given the novelty of

this issue and the potential conflict of interest of the Hearing Officer, additional time is necessary to research this issue further.

Again, Protestants respectfully request that their Motion for Extension of Time for Hearing be granted. Further, Protestants respectfully request that the Hearing Officer rule on this motion before the exchange of exhibits and identification of witnesses.

DATED this 16 day of October, 2006.

Respectfully submitted,



Judith M. Brawer
Attorney for Protestants

Judith M. Brawer (ISB # 6582)
1502 N. 7th Street
Boise, ID 83702
208-871-0596 (phone)
208-343-2070 (fax)

Attorney for Protestants

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

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-32061 IN THE NAME OF SUNCOR IDAHO, LLC))))	PROTESTANT'S NOTICE OF ATTORNEY APPEARANCE
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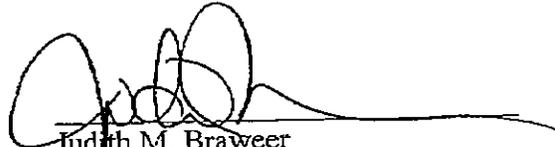
Protestant GARTH BALDWIN (hereinafter "protestants") hereby give notice of the appearance of Judith M. Brawer as counsel for protestant in the above captioned case.

Service of all papers by U.S. Mail and Federal Express should be addressed as follows:

Judith M. Brawer
Attorney & Counselor at Law
1502 N. 7th Street
Boise ID 83702

Facsimiles may be transmitted to Ms. Brawer at 208-343-2070.

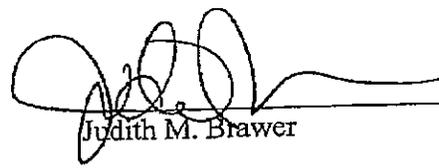
Respectfully submitted this ^{16th} day of October, 2006.


Judith M. Braweer
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of October, 2006, a true and correct copy of the PROTESTANTS' RESPONSE TO OBJECTION TO MOTION FOR EXTSION OF TIME FOR HEARING and PROTESTANT'S NOTICE OF ATTORNEY APPEARANCE were served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

<p>SUNCOR IDAHO LLC C/O ALBERT P. BARKER BARKER RSHOLT & SIMPSON P.O. Box 2139 Boise, ID 83701-2139 Via Facsimile: 344-6034</p>	<p>PHILLIP FRY 4122 Homer Road Eagle, ID 83616</p>
<p>ROD DAVIDSON 2220 Laan Lane Nyssa OR 97913-5526</p>	<p>LYLE MULLINS 1574 Ellington Way Eagle, ID 83616</p>
<p>GARTH BALDWIN 6050 HWY 55 Horseshoe Bend, ID 83629</p>	<p>IDWR - WESTERN REGION ATTN: L. GLEN SAXTON HEARING OFFICER 2735 Airport Way Boise, ID 83705-5082 Via Facsimile: 287-6700</p>



Judith M. Brawer

John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington



1010 W. Jefferson St., Suite 102
Post Office Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

113 Main Avenue West, Suite 303
Twin Falls, ID 83301-6167
(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

FACSIMILE COVER SHEET

DATE: October 13, 2006

RE: *In the Matter of Application for Permit No. 63-32061/SunCor Idaho LLC*

TO: Department of Water Resources Fax # 287-6700

FROM: Albert P. Barker

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 5

XX Original will not be sent.
Original will be sent by first class mail.
Original will be sent by Federal Express.

MESSAGE:

Attached for filing is an OBJECTION TO MOTION FOR EXTENSION OF TIME FOR HEARING in the above entitled action. If you have any questions, please give me a call. Thank you.

CONFIDENTIALITY NOTICE - THE INFORMATION CONTAINED IN THIS FACSIMILE COMMUNICATION IS ATTORNEY/CLIENT PRIVILEGED AND/OR CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS COVER PAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION OR THE INFORMATION CONTAINED HEREIN IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY CALL (208) 336-0700, AND RETURN THIS FACSIMILE TO US AT THE ABOVE ADDRESS. WE APPRECIATE YOUR COOPERATION.

Albert P. Barker, ISB #2867
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
205 North Tenth St., Suite 520
P.O. Box 2139
Boise, Idaho 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for SunCor Idaho, LLC

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

IN THE MATTER OF APPLICATION FOR)	
PERMIT NO. 63-32061 IN THE NAME OF	)	OBJECTION TO MOTION FOR
SUNCOR IDAHO, LLC	)	EXTENSION OF TIME FOR
	)	HEARING
_____)	

COMES NOW, the Applicant, SunCor Idaho LLC, now known as Avimor LLC, by and through its attorneys of record, Barker Rosholt & Simpson, and hereby objects to the Request for Extension of Time by Davidson and Mullins. Applicant also urges the Department to act on this motion for extension and objection prior to Tuesday, October 17, when the parties are required to exchange exhibits and identify witnesses.

The Application for Permit was filed January 23, 2005, more than 20 months ago. Mr. Davidson and Mr. Mullins filed a joint Protest May 19, 2005, more than 16 months ago. A Prehearing Conference was held in September of 2005, at which time Mr. Davidson and Mr. Mullins had the opportunity to learn about the administrative process.

Even though Mr. Davidson and Mr. Mullins have been acting in concert, they have been engaged in an active effort to delay the hearing of this matter by filing subsequent notices of

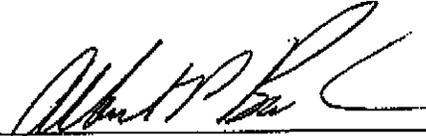
disqualification of hearing officers. Mr. Davidson filed his Notice of Disqualification on November 21, 2005. Mr. Mullins filed a separate Notice of Disqualification on February 6, 2006. These Notices of Disqualification substantially delayed the hearing. Now we have another attempt to delay the hearing with a last minute request for delay, occasioned by the last minute retention of an attorney. A Prehearing Conference was held nearly three months ago, at which time a hearing date was attempted to be established. Some of the Protestants raised possibility that the Protestants would retain counsel even asking them to show up at the hearing with counsel unannounced. The Hearing Officer advised Protestants that they could bring in counsel, but stated that bringing in counsel at the last minute would not be done in a way that would cause disruption or delay to the proceedings. Now, the Protestants are attempting to do exactly what they were told they would not be permitted to do—delay and disrupt the proceeding and further prejudice the Applicant. At the Prehearing, Applicant requested the hearing be set in September. The Hearing Officer set the hearing date in the latter part of October because the Protestants asserted that they could not be present for a hearing in September. Now, Protestants are seeking a further delay until December of 2006, placing the hearing nearly two years after filing of the original Application.

While counsel might have only been recently retained, the Protestants have known about this matter for a long time. They have had more than adequate time, since the filing of their Protest in May of 2005, to retain counsel. It is unconscionable for them to request a delay in the proceedings only a handful of days before the deadline for identifying witnesses and exhibits after being told that retaining counsel would not be a reason for delay. SunCor is ready to proceed. SunCor is entitled to proceed without further delay. The Motion for Extension of Time should be denied, and Protestants be held to the date that they requested. Applicant requests that

the Hearing Officer rule on this motion *before* the exchange of exhibits and identification of witnesses.

DATED this 13th day of October, 2006.

BARKER ROUSHOLT & SIMPSON, LLP



Albert P. Barker
Attorneys for SunCor Idaho, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of October, 2006, I served a true and correct copy of the foregoing **OBJECTION TO MOTION FOR EXTENSION OF TIME FOR HEARING** on the person(s) listed below, in the manner indicated below:

Idaho Department of Water Resources
322 E. Front Street
P. O. Box 83720
Boise, ID 83720-0098

U.S. Mail, Postage Prepaid
 Facsimile 287-6700
 E-Mail

Garth Baldwin
6050 Hiway 55
Horseshoe Bend, ID 83629

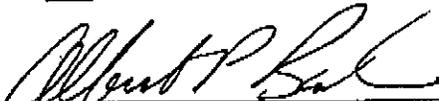
U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

Phillip Fry
4122 Homer Road
Eagle, ID 83616

U.S. Mail, Postage Prepaid
 Facsimile
 E-Mail

Judith M. Brawer
1502 N. 7th Street
Boise, ID 83702

U.S. Mail, Postage Prepaid
 Facsimile
 E-Mail



Albert P. Barker

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OCT 16 2006

DEPARTMENT OF WATER RESOURCES

WA

RECEIVED

OCT 13 2006

WATER RESOURCES WESTERN REGION

Judith M. Brawer (ISB # 6582)
1502 N. 7th Street
Boise, ID 83702
208-871-0596 (phone)
208-343-2070 (fax)

Attorney for Protestants

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

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-32061 IN THE NAME OF SUNCOR IDAHO, LLC))))	MOTION FOR EXTENSION OF TIME FOR HEARING
---	------------------	---

For the reasons set forth below protestants ROD DAVIDSON and LYLE MULLINS (hereinafter "protestants"), by and through their attorney, Judith M. Brawer, hereby respectfully request an extension of time for the hearing in the above-captioned case.

Until now, protestants have been operating *pro se* in all administrative procedures related to this matter. Upon receipt of the August 7, 2006 Notice of Hearing and Pre-Hearing Order and with all other parties represented by legal counsel, however, protestants realized that it is in their best interest to retain an attorney. Protestants have been diligently looking for an attorney since the August 7, 2006 Notice of Hearing. Nonetheless, it was not until recently that they were able to find legal counsel who did not have a conflict of interest and who could represent them in this matter.

Pursuant to the Notice of Hearing and Pre-Hearing Order, the hearing is currently scheduled for October 31 and November 1, 2006. Further, all expert and lay witnesses and exhibits must be identified and exchanged 14 days before the hearing, or by October 17, 2006.

This gives petitioners' recently retained legal counsel very limited time to learn the details of this case and to comply with the requirements of the Pre-Hearing Order.

Thus, protestants respectfully request that the hearing be postponed until the beginning of December. Specifically, because one of the protestants will be out of town for most of November, we respectfully request that the hearing be held some time between December 4 and December 15, 2006.

Respectfully submitted this 12th day of October, 2006.



Judith M. Brawer
Attorney for Protestants

RECEIVED

OCT 13 2006

WATER RESOURCES
WESTERN REGION

Judith M. Brawer (ISB # 6582)
1502 N. 7th Street
Boise, ID 83702
208-871-0596 (phone)
208-343-2070 (fax)

Attorney for Protestants

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

IN THE MATTER OF APPLICATION) FOR PERMIT NO. 63-32061 IN THE) NAME OF SUNCOR IDAHO, LLC))	PETITIONERS' NOTICE OF ATTORNEY APPEARANCE
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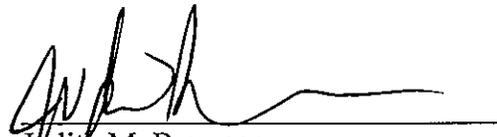
Protestants ROD DAVIDSON and LYLE MULLINS (hereinafter "protestants")
hereby give notice of the appearance of Judith M. Brawer as counsel for protestants in the
above captioned case.

Service of all papers by U.S. Mail and Federal Express should be addressed as
follows:

Judith M. Brawer
Attorney & Counselor at Law
1502 N. 7th Street
Boise ID 83702

Facsimiles may be transmitted to Ms. Brawer at 208-343-2070.

Respectfully submitted this 12th day of October, 2006.

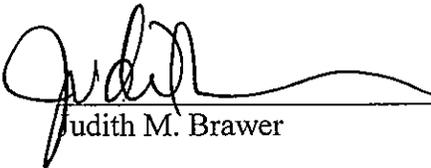


Judith M. Brawer
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of October, 2006, a true and correct copy of the MOTION FOR EXTENSION OF TIME FOR HEARING and PETITIONERS' NOTICE OF ATTORNEY APPEARANCE were served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

SUNCOR IDAHO LLC C/O ALBERT P. BARKER BARKER ROSHOLT & SIMPSON P.O. Box 2139 Boise, ID 83701-2139	PHILLIP FRY 4122 Homer Road Eagle, ID 83616
ROD DAVIDSON 2220 Laan Lane Nyssa OR 97913-5526	LYLE MULLINS 1574 Ellington Way Eagle, ID 83616
GARTH BALDWIN 6050 HWY 55 Horseshoe Bend, ID 83629	IDWR -- WESTERN REGION ATTN: L. GLEN SAXTON HEARING OFFICER 2735 Airport Way Boise, ID 83705-5082


Judith M. Brawer

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

GARTH BALDWIN
6050 HWY 55
HORSESHOE BEND ID 83629

63-32061

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *Garth Baldwin* Agent Addressee

B. Received by (Printed Name) *Garth Baldwin* C. Date of Delivery *8/11/06*

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ROD DAVIDSON
2220 LAAN LN
NYSSA OR 97913-5526

63-32061

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *Rod Davidson* Agent Addressee

B. Received by (Printed Name) *Rod Davidson* C. Date of Delivery *8/11/06*

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) 7005 1160 0000 1544 5638
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

2. Article Number (Transfer from service label) 7005 1160 0000 1544 5614
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SUNCOR IDAHO LLC
C/O ALBERT P BARKER
BARKER RSHOLT & SIMPSON
PO BOX 2139
BOISE ID 83701-2139

63-32061

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *B Knight* Agent Addressee

B. Received by (Printed Name) *B Knight* C. Date of Delivery *8/11/06*

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:
PO Box 2139 Boise ID 83701

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

PHILLIP FRY
4122 HOMER RD
EAGLE ID 83616

63-32061

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *Lida Fry* Agent Addressee

B. Received by (Printed Name) *LIDA FRY* C. Date of Delivery *8-9-06*

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) 7005 1160 0000 1544 5607
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

2. Article Number (Transfer from service label) 7005 1160 0000 1544 5621
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

LYLE MULLINS
1574 N ELLINGTON WAY
EAGLE ID 83616

63-32061

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *Lyle Mullins* Agent Addressee

B. Received by (Printed Name) *L Mullins* C. Date of Delivery *8/9/06*

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) 7005 1160 0000 1544 5645
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

GARTH BALDWIN
6050 HWY 55
HORSESHOE BEND ID 83629

63-32061

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *Garth Baldwin* Agent Addressee

B. Received by (Printed Name) *Garth Baldwin* C. Date of Delivery *8/11/06*

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ROD DAVIDSON
2220 LAAN LN
NYSSA OR 97913-5526

63-32061

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *Rod Davidson* Agent Addressee

B. Received by (Printed Name) *Rod Davidson* C. Date of Delivery *8/11/06*

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) 7005 1160 0000 1544 5638
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

2. Article Number (Transfer from service label) 7005 1160 0000 1544 5614
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-15

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SUNCOR IDAHO LLC
C/O ALBERT P BARKER
BARKER RSHOLT & SIMPSON
PO BOX 2139
BOISE ID 83701-2139

63-32061

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *B Knight* Agent Addressee

B. Received by (Printed Name) *B Knight* C. Date of Delivery *8/11/06*

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:
PO Box 2139 Boise ID 83701

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

PHILLIP FRY
4122 HOMER RD
EAGLE ID 83616

63-32061

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *Lida Fry* Agent Addressee

B. Received by (Printed Name) *LIDA FRY* C. Date of Delivery *8-9-06*

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) 7005 1160 0000 1544 5607
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

2. Article Number (Transfer from service label) 7005 1160 0000 1544 5621
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-15

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

LYLE MULLINS
1574 N ELLINGTON WAY
EAGLE ID 83616

63-32061

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *Lyle Mullins* Agent Addressee

B. Received by (Printed Name) *L Mullins* C. Date of Delivery *8/9/06*

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) 7005 1160 0000 1544 5645
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

UNITED STATES POST SERVICE
BOISE ID 837

21 AUG 2006 PM 3 T

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

WA

RECEIVED
AUG 22 2006

IDAHO DEPT OF WATER RESOURCES
ATTN DEBORAH GIBSON
PO BOX 83720
BOISE ID 83720-0098

720+0038

UNITED STATES POST SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

WA

RECEIVED

IDAHO DEPT OF WATER RESOURCES
ATTN DEBORAH GIBSON
PO BOX 83720
BOISE ID 83720-0098

720+0038

UNITED STATES POST SERVICE



WA

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

RECEIVED

AUG 10 2006

IDAHO DEPT OF WATER RESOURCES
ATTN DEBORAH GIBSON
PO BOX 83720
BOISE ID 83720-0098

720+0038

UNITED STATES POST SERVICE
BOISE ID 837



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

09 AUG 2006 PM 1 T

• Sender: Please print your name, address, and ZIP+4 in this box •

RECEIVED

AUG 10 2006

WA

IDAHO DEPT OF WATER RESOURCES
ATTN DEBORAH GIBSON
PO BOX 83720
BOISE ID 83720-0098

720+0038

UNITED STATES POST SERVICE
BOISE ID 837

09 AUG 2006 PM 2 T



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

RECEIVED

AUG 10 2006

IDAHO DEPT OF WATER RESOURCES
ATTN DEBORAH GIBSON
PO BOX 83720
BOISE ID 83720-0098

WA

720+0038

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 Domestic Mail Only; No Insurance Coverage Provided

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	8/8/06 Postmark Here dg
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To

Street, or PO Box
 City, State, ZIP+4®

PS Form 3800, June 2002 (Instructions)

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 Domestic Mail Only; No Insurance Coverage Provided

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	8/8/06 Postmark Here dg
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To

Street, or PO Box
 City, State, ZIP+4®

PS Form 3800, June 2002 (Instructions)

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 Domestic Mail Only; No Insurance Coverage Provided

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To

Street, or PO Box
 City, State, ZIP+4®

PS Form 3800, June 2002 (Instructions)

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 Domestic Mail Only; No Insurance Coverage Provided

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	8/8/06 Postmark Here dg
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To

Street, or PO Box
 City, State, ZIP+4®

PS Form 3800, June 2002 (Instructions)

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
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For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	8/8/06 Postmark Here dg
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To

Street, or PO Box
 City, State, ZIP+4®

PS Form 3800, June 2002 (Instructions)

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

IN THE MATTER OF APPLICATION)	
FOR PERMIT NO. 63-32061 IN THE)	NOTICE OF HEARING AND
NAME OF SUNCOR IDAHO, LLC)	PRE-HEARING ORDER
_____)	

On January 25, 2005, SunCor Idaho, LLC ("applicant"), submitted the above captioned application to the Department of Water Resources ("Department"). The Department subsequently received protests against approval of the application. Since two pre-hearing conferences did not resolve the contested matter, the Department has scheduled a hearing as described below. The presiding officer at the hearing will be **L. Glen Saxton**.

ORDER

IT IS THEREFORE HEREBY ORDERED as follows:

1. The hearing will be conducted on:

Date:	October 31 and November 1, 2006
Time:	9:00 a.m.
Place:	IDWR Conference Rooms "A & B" 322 East Front Street, 6 th Floor Boise, ID

2. The parties shall identify and exchange the names of expert and lay witnesses at least 14 days before the hearing and shall provide the information to the hearing officer.
3. The parties shall exchange proposed exhibits and shall provide a copy to the hearing officer at least 14 days before the hearing.

The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, the adopted Rules of Procedure of the Department and IDAPA 37.03.08040 and 37.03.08045 (Water Appropriation Rules 40 and 45). A copy of the rules is available on the Department's internet homesite at www.idwr.state.id.us or may be obtained from the Department upon request.

The hearing will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please so advise the Department within (10) days prior to the hearing.

Failure to comply with this Notice of Hearing and Pre-Hearing Order is cause for the hearing officer to issue a Notice of Proposed Default to dismiss a party's pleading as provided in IDAPA 37.01.01700 (Rule of Procedure 700).

Dated this 7th day of August, 2006.


L. GLEN SAXTON, P.E.
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of August, 2006, a true and correct copy of the document(s) described below was served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: NOTICE OF HEARING AND PREHEARING ORDER

SUNCOR IDAHO LLC
C/O ALBERT P BARKER
BARKER ROSHOLT & SIMPSON
PO BOX 2139
BOISE ID 83701-2139

ROD DAVIDSON
2220 LAAN LN
NYSSA OR 97913-5526

GARTH BALDWIN
6050 HWY 55
HORSESHOE BEND ID 83629

PHILLIP FRY
4122 HOMER RD
EAGLE ID 83616

LYLE MULLINS
1574 N ELLINGTON WAY
EAGLE ID 83616

IDWR – WESTERN REGION
2735 AIRPORT WAY
BOISE ID 83705-5082


Deborah J. Gibson
Administrative Assistant
Idaho Department of Water Resources

SUNCOR/IDWR PREHEARING CONFERENCE

07/26/06

Protestant: Lyle K. Mullins

Issues and questions relating to SunCor ID, LLC's application No. 63-32061 for permit to appropriate the public waters of the State of Idaho:

General questions:

- 1) What is the status of SunCor's discussions with the IPUC regarding SunCor's delivery of water to Avimor as a "**municipal provider**"?
- 2) What is the status of SunCor's discussions with the IDEQ regarding SunCor's delivery of water to Avimor as a "**municipal provider**"?

Issues and questions relating to reduction of the quantity of water under the existing senior water rights of the Lexington Hills subdivision.

- 1) My primary concern as it relates to this "junior water rights" application is the absolute protection of the Lexington Hills subdivision's "senior water rights". I believe that it is the legal responsibility of IDWR under Idaho Administrative Code IDAPA 37.03.11 Conjunctive Management of Surface and Ground Water Resources to protect the long-term senior water rights of the Lexington Hills subdivision. SunCor's application will require 5cfs (10 total cfs) 365 days a year into the future. Add another 5cfs for the SunCor application No. 63-31966 that has already been approved for a grand total of 10 cfs.
 - a) Does this requirement for water have the potential for impacting the Lexington Hills subdivision's water supply in the future?
 - b) Does SunCor or IDWR have water studies that shows there is enough water in water area 63 where the SunCor wells will be extracting water to provide for the total 10 cfs without any impact now or in the future to the Lexington Hills subdivision's senior water rights?
 - c) As the demand for water increases in the future will there be enough water to meet the needs of the current users?
 - d) Will IDWR assure the citizens of the Lexington Hills subdivision that there is enough water in area 63 to supply the current users and SunCor's proposed development of 700 new homes plus an undetermined number (up to 14,000 in the foothills) of additional homes?
 - e) If the application is approved, how will IDWR and/or SunCor monitor the usage and depletion of the aquifers (Sandy Hill and Big Gulch) to ensure that the rights of senior water users are protected?
 - f) Who will pay for the monitoring?
 - g) How will SunCor mitigate any consumptive use issues in the future?

SUNCOR/IDWR PREHEARING CONFERENCE

07/26/06

- 2) SunCor's application states: "The applicant proposes that this ground water is tributary to the Payette River instead of the Boise River." My understanding is that water area 63 is tributary to the Boise River.
 - a) What is IDWR's position on this statement?
 - b) If area 63 is considered tributary to the Boise River then this application could have significant impact on an already heavily utilized aquifer.
 - c) Who decides which tributary the ground water flows toward?
 - d) What basis was/will be used to make this determination?

- 3) I also have questions that relate to the Idaho Administrative Code for the Department of Water Resources IDAPA 37.03.11 (Conjunctive Management of Surface and Ground Water Resources).
 - a) Under rule 010.10.01 Area Having A Common Ground Water Supply, can IDWR explain how this rule pertains to SunCor's application and its impact on current senior water rights holders?
 - b) Under rule 010.10.09 Ground Water Management Area, is IDWR contemplating defining area 63 as a ground water management area? I believe that area 63 should be considered as a unique ground water management area now.
 - c) Under rule 010.10.15 Mitigation Plans, what is SunCor's plan for mitigation and what would IDWR demand from SunCor to protect the senior water rights holders?
 - d) Under rule 010.10.18 Reasonable Ground Water Pumping Level, what is IDWR's plan to establish and enforce a reasonable level for SunCor's proposed extraction of water resource so the senior water rights holders are protected in the future?
 - e) Under rule 010.10.19 Reasonably Anticipated Average Rate Of Future Natural Recharge, what has IDWR done to establish the monitoring of the rate of annual recharge?

Issues and questions relating to the quality of water delivered to the Lexington Hills subdivision.

- 1) I have significant concerns about the arsenic levels in the Big Gulch area where the wells will be located.
 - a) Has there been any testing of the new wells that SunCor has drilled?
 - b) If so what do these tests show?
 - c) If these tests have not been completed, will IDWR require tests be completed before making a decision on the application?
 - d) What is IDWR's plan for requiring ongoing testing of water quality in the future?
 - e) How will IDWR guarantee through testing and monitoring that there will be NO future cross contamination of arsenic, mercury, or other heavy metals

SUNCOR/IDWR PREHEARING CONFERENCE

07/26/06

that may have migrated down slope into the Sandy Hill and Big Gulch/Willow Creek aquifers from the intensively mined area at Pearl?

Document and information requests:

- 1) Copies of all formal and informal correspondence (including email) between SunCor and any Idaho state government agency (IDWR, IDEQ, IPUC, Idaho State Senators and Representatives) relating to SunCor ID, LLC's application No. 63-32061 for permit to appropriate the public waters of the State of Idaho.
- 2) Copies of all formal and informal correspondence (including email) between any Idaho state government agency (IDWR, IDEQ, IPUC, Idaho State Senators and Representatives) and SunCor relating to SunCor ID, LLC's application No. 63-32061 for permit to appropriate the public waters of the State of Idaho.

State of Idaho
Department of Water Resources



ROSTER OF ATTENDANCE

IN THE MATTER OF APPLICATION FOR PERMIT NO.
63-32061 IN THE NAME OF SUNCOR IDAHO, LLC

Date: July 26, 2006
Time: 9:00a.m.
Location: IDWR Conference Rooms "C & D"
322 East Front Street, 6th Floor
Boise, ID
Hearing Officer: L. Glen Saxton

** Please Print **

NAME	ADDRESS	REPRESENTING
Albert Barker	205 N. 40 th Suite 520 Boise	Avimon
Rod Davidson	1808 N 30th Boise ID 83703	MYSELF
GARTH BALOWIN	6050 Hi Way St MS PD 83629	MYSELF
Lyle Mullins	1574 N. Ellington Way Eagle ID 83616	Myself
Del Bunce	1375 N. MANFIELD PL EAGLE, ID 83616	L. Mullins
Terry Scanlan	400 E. River Park Ln #105 Boise 83708	Suncor
Bob Taunton	485 E. Riverside Dr #300 Eagle 83616	SUNCOR
Phil Fry	4122 Homer Rd Eagle ID	self

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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32061 IN THE)
NAME OF SUNCOR IDAHO, LLC)
_____)

**NOTICE OF
PREHEARING CONFERENCE**

On January 25, 2005, Suncor Idaho, LLC filed with the Idaho Department of Water Resources ("IDWR" or "Department") an application for permit to appropriate the public waters of the State of Idaho. The application was protested by Rod Davidson, Garth Baldwin, Philip Fry and Lyle K. Mullins.

The hearing officer for IDWR has set the matter of protest for a second informal prehearing conference to be held on **July 26, 2006, beginning at 9:00 am** at IDWR Conference Rooms "C & D", 322 East Front Street, 6th Floor, Boise, Idaho.

The purpose of the conference is to formulate and simplify the issues, obtain concessions of fact, identify documents to avoid unnecessary proof, schedule discovery (if allowed), arrange for the exchange of proposed exhibits and prepared testimony, identify and limit witnesses, discuss settlement offers, schedule the hearing, establish procedure at hearing and address other matters which may expedite orderly conduct and disposition of the proceeding or its settlement.

The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Practice of IDWR, and Rules 40 and 45 of the adopted Water Appropriation rules of IDWR.

The conference will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the Department within (10) days prior to the conference.

Dated this 28th day of June, 2006.



L. GLEN SAXTON, P.E.
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of June, 2006, a true and correct copy of the document(s) described below was served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: NOTICE OF PREHEARING CONFERENCE

SUNCOR IDAHO LLC
C/O ALBERT P BARKER
BARKER RSHOLT & SIMPSON
PO BOX 2139
BOISE ID 83701-2139

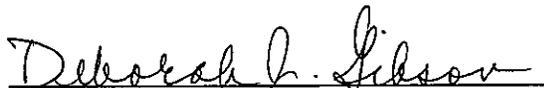
ROD DAVIDSON
2220 LAAN LN
NYSSA OR 97913-5526

GARTH BALDWIN
6050 HWY 55
HORSESHOE BEND ID 83629

PHILLIP FRY
4122 HOMER RD
EAGLE ID 83616

LYLE MULLINS
1574 N ELLINGTON WAY
EAGLE ID 83616

IDWR – WESTERN REGION
2735 AIRPORT WAY
BOISE ID 83705-5082



Deborah J. Gibson
Administrative Assistant
Idaho Department of Water Resources



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov.

JAMES E. RISCH
Governor

KARL J. DREHER
Director

June 6, 2006

WILLOWBROOK
DEVELOPMENT INC
210 MURRAY ST
BOISE ID 83714

HILLSDALE ESTATES
ROY B JOHNSON
210 MURRAY ST
BOISE ID 83714

COPY

RE: In the Matter of Application for Permit No. 63-32061 in the name of Suncor Idaho, LLC.

Dear Protestants:

Enclosed is a Default Order, issued against both of you by the hearing officer on behalf of the department in the above-referenced matter. The department did not receive a response from you regarding its Notice of Proposed Default Order, dated May 24, 2006. Therefore, this order officially sets aside your protests according to IDAPA Rule 37.01.01.702, which states in part, "all further proceedings necessary to complete the contested case shall be conducted without participation of the party in default."

Sincerely,

A handwritten signature in cursive script that reads "Deborah J. Gibson". The signature is written in black ink and is positioned above the typed name and title.

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosure

c: Certificate of Service List

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

COPY

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32061 IN THE)
NAME OF SUNCOR IDAHO, LLC.)
_____)

DEFAULT ORDER

This matter having come before the Idaho Department of Water Resources ("Department"), the Department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On May 24, 2006, the Department served a Notice of Proposed Default Order upon Willowbrook Development ("Willowbrook") and Hillsdale Estates Homeowners ("Hillsdale") for failure to appear at a Prehearing Conference held on September 8, 2005, in Boise, Idaho in the above captioned matter.
2. The protestants did not respond to the Notice of Proposed Default Order.

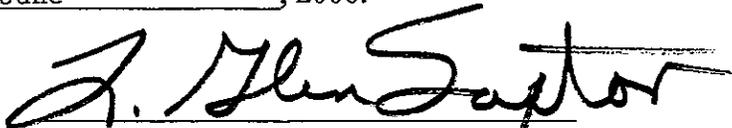
CONCLUSIONS OF LAW

1. IDAPA Rule 37.01.01702 (Rule of Procedure 702) authorizes the Department to issue a Default Order for failure to timely respond to the Notice of Proposed Default Order.
2. The Department should issue a Default Order.

ORDER

IT IS THEREFORE, HEREBY ORDERED that Willowbrook Development and Hillsdale Estates Homeowners are in default, and that the protests of Willowbrook Development and Hillsdale Estates Homeowners are **SET ASIDE** and will not be further considered in the above captioned matter by the Department.

Dated this 6th day of June, 2006.



L. Glen Saxton, P.E.
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of June, 2006, a true and correct copy of the document(s) described below were served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: DEFAULT ORDER

SUNCOR IDAHO LLC
C/O ALBERT P BARKER
BARKER ROSHOLT & SIMPSON
PO BOX 2139
BOISE ID 83701-2139

ROD DAVIDSON
2220 LAAN LN
NYSSA OR 97913-5526

GARTH BALDWIN
6050 HWY 55
HORSESHOE BEND ID 83629

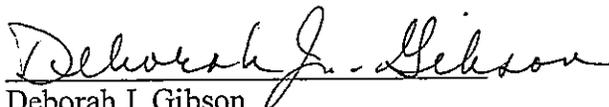
PHILLIP FRY
4122 HOMER RD
EAGLE ID 83616

LYLE MULLINS
1574 N ELLINGTON WAY
EAGLE ID 83616

IDWR – WESTERN REGION
2735 AIRPORT WAY
BOISE ID 83705-5082

DEFAULTED PARTIES:
WILLOWBROOK DEVELOPMENT
210 MURRAY ST
BOISE ID 83714

HILLSDALE ESTATES
ATTN ROY B JOHNSON
210 MURRAY ST
BOISE ID 83714


Deborah J. Gibson
Administrative Assistant
Idaho Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
322 East Front Street, P.O. Box 83720
Idaho 83720-0098

Return Service Requested

PRESORTED
FIRST CLASS



02 1A
0004389390
MAILED FROM ZIP CODE 83702

\$ 00.29³

MAY 24 2006

RECEIVED

MAY 30 2006

DEPARTMENT OF
WATER RESOURCES

*Suncor 63-32061
Notice of Proposed
Default Order -
Resent 4/1/06 - dg*

ROD DAVIDSON
PO BOX 2026
EAGLE ID 8361

DAVI026* 836162017 1306 05 05/26/06
RETURN TO SENDER
DAVIDSON, ROD
2220 LAAN LN
NYSSA OR 97913-5526

RETURN TO SENDER

05/26/06 09:43:16



SENDER: COMPLETE THIS SECTION

- Complete items 1 and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hillsdale Estates
210 Murry
Boise ID 83714

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Winnie Buena* Agent Addressee

B. Received by (Printed Name)

Winnie Buena

C. Date of Delivery

*6-7-06*D. Is delivery address different from item 1? Yes No

If YES, enter delivery address below:

*P.O. Box 414869**Boise ID 83714*

3. Service Type

 Certified Mail Express Mail Registered Return Receipt for Merchandise Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes

2. Article Number

(Transfer from service label)

70051160 000015443658

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

UNITED STATES POSTAL SERVICE

BOISE ID 837

07 JUN 2006 PM 1 T

Class Mail
age & Fees Paid
Permit No. 640

• Sender: Please print your name, address, and ZIP+4 in this box •

State of ID Water Resources

322E Front Street

P.O. Box 87720

Boise ID 83720

RECEIVED

JUN 07

DEPARTMENT OF
WATER RESOURCES

000000000000

SENDER: COMPLETE THIS SECTION

- Complete items 1 and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

HILLSDALE ESTATES
ROY B JOHNSON
210 MURRAY ST
BOISE ID 83714

63-32061

2. Article Number

(Transfer from service label)

7005 1160 0000 1544 3658

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

- A. Signature
X *Norita Stricker* Agent
 Addressee
- B. Received by (Printed Name) C. Date of Delivery
NORITA STRICKER 5/25
- D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1 and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

WILLOWBROOK
DEVELOPMENT INC
210 MURRAY ST
BOISE ID 83714

63-32061

2. Article Number

(Transfer from service label)

7005 1160 0000 1544 3641

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

- A. Signature
X *Norita Stricker* Agent
 Addressee
- B. Received by (Printed Name) C. Date of Delivery
NORITA STRICKER 5/25
- D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

7005 1160 0000 1544 365A

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

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OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

5/24/06
Postmark Here
dg

Sent 1
Street or PO
City, &
PS Fo

WILLOWBROOK
DEVELOPMENT INC
210 MURRAY ST
BOISE ID 83714

Instructions

7005 1160 0000 1544 365A

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

5/24/06
Postmark Here
dg

Sent 1
Street or PO
City, &
PS Fo

HILLSDALE ESTATES
ROY B JOHNSON
210 MURRAY ST
BOISE ID 83714

Instructions

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

IN THE MATTER OF APPLICATION)	
FOR PERMIT NO. 63-32061 IN THE)	NOTICE OF PROPOSED
NAME OF SUNCOR IDAHO, LLC.)	DEFAULT ORDER
_____)	

On June 22, 2005, the Idaho Department of Water Resources ("Department") served all parties to this matter, including Willowbrook Development ("Willowbrook") and Hillsdale Estates Homeowners ("Hillsdale"), a *Notice of Prehearing Conference* ("conference"). The notice contained a certificate of mailing showing the parties were duly served. The notice scheduled a Prehearing Conference for September 8, 2005.

On September 8, 2005, beginning at 10:00 a.m., John Westra, Manager of the Department's Western Region, conducted a Prehearing Conference for settlement of the protests filed against Application for Permit No. 63-32061. Protestants Willowbrook and Hillsdale did not appear at the conference.

Based upon these facts, the Department notifies protestants Willowbrook and Hillsdale that the following default order is proposed to be issued because of the failure of the protestants to appear at the time and place set for conference pursuant to IDAPA 37.01.01.700.

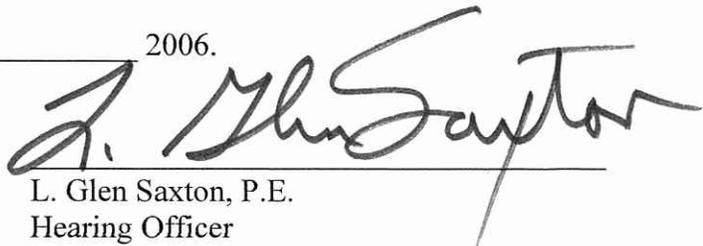
PROPOSED DEFAULT ORDER

Based upon Protestants Willowbrook and Hillsdale's failure to appear at the time and place set for hearing, it is ORDERED that Willowbrook and Hillsdale are dismissed as parties to the contested case.

RIGHT TO CHALLENGE

Pursuant to IDAPA 37.01.01.701, Protestants Willowbrook and Hillsdale have seven (7) days after the service of this *Notice of Proposed Default Order* to file a written petition requesting that a default order not be entered. The petition must state the grounds why the petitioning party believes that default should not be entered.

Dated this 24th day of May 2006.



L. Glen Saxton, P.E.
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of May, 2006, a true and correct copy of the above and foregoing documents described below were served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Notice of Proposed Default Order

SUNCOR IDAHO LLC
C/O ALBERT P BARKER
BARKER ROSHOLT & SIMPSON
PO BOX 2139
BOISE ID 83701-2139

ROD DAVIDSON
PO BOX 2026
EAGLE ID 83616

GARTH BALDWIN
6050 HWY 55
HORSESHOE BEND ID 83629

PHILLIP FRY
4122 HOMER RD
EAGLE ID 83616

LYLE MULLINS
1574 N ELLINGTON WAY
EAGLE ID 83616

DAVID HEAD
N ADA COUNTY FOOTHILLS ASSN
855 STILLWELL DR
EAGLE ID 83616

I FURTHER CERTIFY that on this 24th day of May, 2006, a true and correct copy of the above and foregoing documents described below were served on the following by placing a copy of the same in the United States mail, certified with return receipt requested, postage prepaid and properly addressed to the following:

Document(s) Served: Notice of Proposed Default Order

WILLOWBROOK DEVELOPMENT
210 MURRAY ST
BOISE ID 83714

HILLSDALE ESTATES
ATTN ROY B JOHNSON
210 MURRAY ST
BOISE ID 83714


Deborah J. Gibson
Administrative Assistant

COPY

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32061 IN THE)
NAME OF SUNCOR IDAHO, LLC.)
_____)
ORDER
APPOINTING HEARING
OFFICER

This matter having come before the Director of the Idaho Department of Water Resources ("Department"), as a result of protests filed against the referenced application, the Department makes the following Order:

ORDER

IT IS THEREFORE, HEREBY ORDERED that L. Glen Saxton, is appointed effectively April 25, 2006 to serve as hearing officer, and is authorized to hear this matter on behalf of the Department pursuant to IDAPA Rules 37.01.01.410-413 and the provisions of chapter 52, title 67, Idaho Code.

Dated this 27th day of April, 2006.



KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of April, 2006, a true and correct copy of the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following

Document(s) Served: Order Appointing Hearing Officer

SUNCOR IDAHO LLC
C/O ALBERT P BARKER
BARKER ROSHOLT & SIMPSON
PO BOX 2139
BOISE ID 83701-2139
Fax: (208)344-6034

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

ROD DAVIDSON
PO BOX 2026
EAGLE ID 83616

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

GARTH BALDWIN
6050 HYW 55
HORSESHOE BEND ID 83629

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

PHILLIP FRY
4122 HOMER RD
EAGLE ID 83616

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

WILLOWBROOK DEVELOPMENT
210 MURRAY ST
BOISE ID 83714

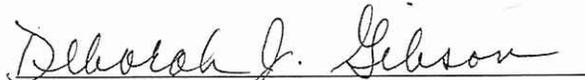
U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

HILLSDALE ESTATES
ROY B JOHNSON
210 MURRAY ST
BOISE ID 83714

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

LYLE MULLINS
1574 N ELLINGTON WAY
EAGLE ID 83616

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail


Deborah J. Gibson
Administrative Assistant



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 2, 2006

David Head
North Ada County Foothills Association
855 W. Stillwell Drive
Eagle, ID 83616

VIA FACSIMILE TO (208) 939-9727 AND FIRST CLASS MAIL

Re: Request for Comprehensive Ground Water Resource Evaluation
and Consideration of New Water Rights Moratorium

Dear Mr. Head:

I am writing in response to your two letters to me dated January 25, 2006, and February 21, 2006, requesting a comprehensive ground water resource evaluation and moratorium on authorizing new appropriations of ground water in northern Ada County (area bounded on the south by Beacon Light Road, on the north by the Ada/Gem county line, on the west by State Highway 16, and on the east by State Highway 55). I apologize for my delay in responding to you and for not being available to meet with you as you requested in your February 21 letter.

I agree with you that when an area such as northern Ada County is subject to significant development and land use change, it is important to understand the availability of water for new uses and how those new uses may affect established uses under prior rights before authorizing the new uses. That is why I initiated collaborative hydrogeologic studies extending from 1996 through 2004 comprising what was called the "Treasure Valley Hydrologic Project" and why I have initiated a similar effort currently underway in north Idaho in cooperation with the State of Washington and the U. S. Geological Survey called the "Spokane Valley – Rathdrum Prairie Aquifer Study." This is also why Idaho Code § 42-203A requires that an applicant for a new appropriation of surface water or ground water, whether such application is protested or not, show that based on technical evidence the new appropriation will not reduce the quantity of water under existing water rights and that the water supply available is sufficient for the purpose for which it is sought to be appropriated.

While accurately determining the extent of available water for new uses will reduce future conflicts, such conflicts cannot be entirely avoided. As you know, the State of Idaho has adopted and implemented the prior appropriation doctrine as the basis for its laws regarding the appropriation and use of both surface and ground water. The prior appropriation doctrine is

based on the presumption that there will always be time periods when there will not be sufficient water supplies for all uses, hence the priority dates for water rights are used to distribute the available supply in accordance with the principle that "first in time is first in right."

Another fundamental principle of the prior appropriation doctrine is "optimal utilization" of available water resources. Although water supplies in the west are not sufficient at all times for all uses, this does not mean that that finite water resources are over-appropriated or that at some point in time additional appropriations of a water source are prohibited because the established rights and uses might need the water at some time in the future. Rather, new appropriations are allowed when there is unappropriated water available to make optimal use of the water resource, recognizing that such newer rights are subject to curtailment when older rights from the same source of water are not receiving the water to which they are entitled. As a result, every year in every state that has implemented the prior appropriation doctrine to allocate water, junior rights are curtailed in favor of senior rights, which creates conflicts.

Regarding the northern Ada County area, the Treasure Valley Hydrologic Study did not focus on this area, but rather was directed at the regional aquifer system underlying the valley floor. The Treasure Valley study was not intended to provide a detailed evaluation of the unique local aquifer conditions in the Boise foothills. Because of anticipated land use changes and the associated new appropriations of ground water that will be sought in the northern Ada County area, as well as the adjacent areas to the west in Canyon County and around Emmett in Gem County, I have assigned staff the task of preparing a plan of study for developing comprehensive hydrogeologic characterizations of these areas. Like the studies I mentioned in the second paragraph of this letter, the approach will be collaborative and is envisioned to include a public information/ education component.

Some of the aquifers in northern Ada County have different geologic and hydraulic characteristics than the regional aquifer system underlying the Treasure Valley. There are at least four aquifers that have been identified in northern Ada County that to various degrees are hydraulically isolated from one another. The aquifers have been referred to as the: (1) Northern Margin Aquifer; (2) Willow Creek Aquifer; (3) Sandy Hill Aquifer; and (4) Spring Valley Aquifer. The composition of these aquifers ranges from interbedded sand, silt, and clay sediments in the Northern Margin Aquifer to coarse-grained, highly transmissive sediments in the Willow Creek and Sandy Hill aquifers. Because of the geologic complexities and limited hydraulic connection between some of these aquifers, it is not clear that a ground water model of the area would be appropriate. However, additional hydrogeologic characterization, development of water budgets, and ongoing monitoring of ground water levels and surface water flows are needed. These are key components for which funding will be requested in the Department's upcoming budget request for FY2008 (beginning on July 1, 2007) that will be submitted in August. Your association's support of the Department's budget request for this effort would be appreciated and helpful in securing the needed funding.

In the meantime, and based on presently available information, I have determined that a moratorium on new applications for permits to appropriate ground water is not warranted for

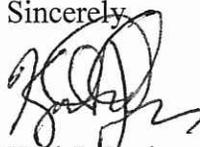
David Head
May 2, 2006
Page 3 of 3

northern Ada County. Article XV, Sec.3, of the Idaho Constitution states: "The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied" In furtherance of this constitutional provision, Idaho Code § 42-226 states in part "while the doctrine of 'first in time is first in right' is recognized, a reasonable exercise of this right shall not block full economic development of underground water resources." Current information indicates unappropriated ground water is available in northern Ada County. While additional studies and ongoing monitoring are warranted, as discussed above, it would be inappropriate at this time to deny applicants the opportunity to present technical evidence to demonstrate that unappropriated ground water is available and that additional appropriations can be made without reducing the quantity of water under existing water rights. If sufficient technical evidence is not submitted by an applicant to demonstrate that unappropriated ground water is available and can be developed without reducing the quantity of water under existing water rights, or any of the other requirements in Idaho Code § 42-203A are not satisfied, in accordance with Idaho law I will reject such application and refuse to issue a permit to appropriate water.

When the plan of study for the hydrogeologic characterization and development of water budgets for the aquifers in northern Ada County is completed, a copy will be provided to your association. In that regard, it would be helpful if you would provide my office with information about the exact location of the 8 wells that will be monitored by SunCor, a description of the wells to be monitored and their uses, together with the agreed upon protocol for monitoring.

Thank you for expressing your concerns on these important topics.

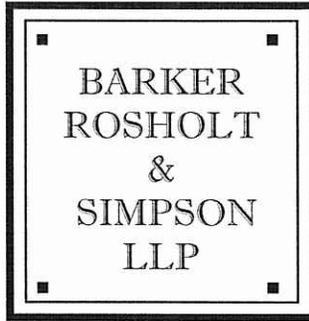
Sincerely



Karl J. Dreher
Director

c: Senator Brad Little
Senator Hal Bunderson
Representative Stan Bastion
Ada County Commissioner Judy Peavey-Derr
Ada County Commissioner Fred Tiolman
Ada County Commissioner Rick Yzaguirre
Mayor Dave Bieter
Mayor Tammy de Weerd
Mayor Nancy Merrill
John Westra – IDWR Western Regional Manager

Albert P. Barker
John A. Rosholt
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington



Albert P. Barker
apb@idahowaters.com

May 11, 2006

Idaho Department of Water Resources
322 E. Front St.
P.O. Box 83720
Boise, Idaho 83720-0098

**Re: In the Matter of Application for Permit No. 63-32061
In the Name of SunCor Idaho LLC**

Ladies and Gentlemen:

Enclosed for filing is the original copy of the **Renewed Request for Pretrial Conference and Hearing** and **Renewed Motion to Dismiss Protests** in the above entitled case. If you have any questions, please feel free to give me a call. Thank you for your assistance in this regard.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP

Albert P. Barker

APB/cp

Enclosures

113 Main Avenue West, Suite 303
Post Office Box 485
Twin Falls, Idaho 83303-0485
(208) 333-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

RECEIVED

MAY 15 2006

DEPARTMENT OF
WATER RESOURCES
205 North 10th Street, Suite 520
Post Office Box 2139
Boise, Idaho 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

Albert P. Barker, ISB #2867
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
205 North Tenth St., Suite 520
P.O. Box 2139
Boise, Idaho 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for SunCor Idaho, LLC

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

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 63-32061 IN THE NAME OF) **RENEWED MOTION TO**
SUNCOR IDAHO, LLC) **DISMISS PROTESTS**
)
)
)
)

COMES NOW, SunCor Idaho, LLC, by and through its attorneys of record, Barker Rosholt & Simpson LLP, and hereby renews its MOTION TO DISMISS PROTESTS. This motion is renewed following the lengthy series of disqualifications of hearing officers. Now that all parties have exhausted their disqualification motions, this matter is ready to proceed. SunCor seeks the dismissal of protests filed by Willowbrook Development and Hillsdale Estates Homeowners Association (collectively "Protestants") as the Protestants have failed to appear or participate in this matter despite a express request from the Department of Water Resources (hereinafter "Department").

In a Prehearing Conference held on September 8, 2005, the Protestants failed to appear or otherwise participate. The Department recognized this failure in a letter dated that same day and order that the Protestants "submit to the Department in writing just cause why [they] failed to

appear.” (Emphasis in original). The letter further provided that if “no response is received by **October 11, 2005**, the Department will consider dismissing your protest.” (Emphasis in original). Then, on September 9, 2005, the Department issued a *Notice of Failure to Appear at the Prehearing Protest Conference*.

As of May 11, 2006, the Protestants have still not filed any response to the notice or made any attempt to justify their failure to appear or participate in this matter. The Department should dismiss the protests of the Protestants in accordance with the Notice.

Respectfully submitted this 11th day of May, 2006,

BARKER ROSHOLT & SIMPSON, LLP



Albert P. Barker
Attorneys for SunCor Idaho, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May, 2006, I served a true and correct copy of the foregoing ***RENEWED TO DISMISS PROTESTS*** on the person(s) listed below, in the manner indicated

- | | |
|---|---|
| Rod Davidson
P. O. Box 2026
Eagle, ID 83616 | <input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
<input type="checkbox"/> Facsimile
<input type="checkbox"/> E-mail |
| Garth Baldwin
6050 Hiway 55
Horseshoe Bend, ID 83629 | <input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
<input type="checkbox"/> Facsimile
<input type="checkbox"/> E-mail |
| Phillip Fry
4122 Homer Road
Eagle, ID 83616 | <input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
<input type="checkbox"/> Facsimile
<input type="checkbox"/> E-Mail |
| Willowbrook Development
210 Murray Street
Boise, ID 83714 | <input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
<input type="checkbox"/> Facsimile
<input type="checkbox"/> E-mail |
| Hillsdale Estates
Roy B. Johnson
210 Murray Street
Boise, ID 83714 | <input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
<input type="checkbox"/> Facsimile
<input type="checkbox"/> E-Mail |
| Lyle Mullins
1574 N. Ellington Way
Eagle, ID 83616 | <input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
<input type="checkbox"/> Facsimile
<input type="checkbox"/> E-Mail |



Albert P. Barker

Albert P. Barker, ISB #2867
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
205 North Tenth St., Suite 520
P.O. Box 2139
Boise, Idaho 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for SunCor Idaho, LLC

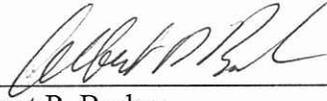
**BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 63-32061 IN THE NAME OF) **RENEWED REQUEST FOR**
SUNCOR IDAHO, LLC) **PRETRIAL CONFERENCE &**
) **HEARING**
)
)
_____)

COMES NOW, SunCor Idaho, LLC, by and through its attorneys of record, Barker Rosholt & Simpson LLP, and hereby renews its REQUEST FOR PRETRIAL CONFERENCE & HEARING. This request is renewed following the lengthy series of disqualifications of hearing officers. Now that all parties have exhausted their disqualification motions, this matter is ready to proceed. SunCor requests that the Department set a Pretrial Conference pursuant to I.D.A.P.A. 37.01.01.510. A pretrial conference is necessary to discuss the current status of the protests and set a hearing date. The previous tentative hearing date of December 2005 has long since passed.

DATED this 11th day of May, 2006.

BARKER ROSHOLT & SIMPSON, LLP



Albert P. Barker
Attorneys for SunCor Idaho, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May, 2006, I served a true and correct copy of the foregoing ***RENEWED REQUEST FOR PRETRIAL CONFERENCE & HEARING*** on the person(s) listed below, in the manner indicated

Rod Davidson
P. O. Box 2026
Eagle, ID 83616

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

Garth Baldwin
6050 Hiway 55
Horseshoe Bend, ID 83629

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

Phillip Fry
4122 Homer Road
Eagle, ID 83616

U.S. Mail, Postage Prepaid
 Facsimile
 E-Mail

Willowbrook Development
210 Murray Street
Boise, ID 83714

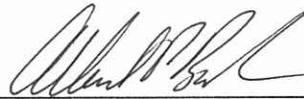
U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

Hillsdale Estates
Roy B. Johnson
210 Murray Street
Boise, ID 83714

U.S. Mail, Postage Prepaid
 Facsimile
 E-Mail

Lyle Mullins
1574 N. Ellington Way
Eagle, ID 83616

U.S. Mail, Postage Prepaid
 Facsimile
 E-Mail



Albert P. Barker

State of Idaho
Department of Water Resources
% Deborah Gibson
P.O. Box 83720
Boise, Idaho 83720

February 16, 2006

RECEIVED
FEB 21 2006
DEPARTMENT OF
WATER RESOURCES

Deborah;

I received a notice from Albert Barker who represents Sun Cor LLC in the water issues concerning this project, requesting a pre-trial con & hearing.

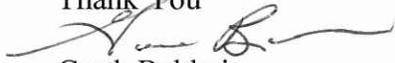
We had a pre conference hearing at Eagle and see no reason for you allowing another one, as it was Sun-Cors feeling at that hearing they would work with us to get this resolved and this has not happened, at least with a few of the protestants?

Also, I do not believe that there is any law because Willowbrook Dev. And Hillsdale Estates did not show up at that conference that they should be dismissed from this case?

Therefore I do not believe water resource dept. would have the authority to dismiss them as a protestant?

Please keep me informed of your decision on these two items.

Thank You



Garth Baldwin
6050 Hi way 55
Horseshoe Bend, Id. 83629

Garth Baldwin
6050 Hyw 55
Horseshoe Bend, ID 83629

RECEIVED
FEB 21 2006
DEPARTMENT OF
WATER RESOURCES

Protestant

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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32061 IN THE)
NAME OF SUNCOR, IDAHO, LLC.)
_____)

**NOTICE OF DISQUALIFICATION
WITHOUT CAUSE OF HEARING
OFFICER**

COMES NOW, Garth Baldwin, Protestant, hereby provides notice that I have elected to exercise my right to disqualify without cause the Hearing Officer designated to serve as presiding officer in this matter. This notice is brought pursuant to Idaho Code § 67-5252. This motion is also brought pursuant to the authority under that statute recognized in the Order of the Director dated January 25, 2005 in the following action: *In the Matter of Request for Water Right Administration of Water District No. 120 and Petition for Water Right Administration and Designation of the Eastern Snake Plain Aquifer as a Groundwater Management Area, p. 4.*

This notice is brought within fourteen (14) days of the date of the Order Appointing the Hearing Officer, which Order is dated February 8, 2006. This notice is filed and served on February 17, 2006, the ninth day following the date of the Order. Accordingly, this notice is both legally valid and timely. Protestant, Garth Baldwin requests that the Director appoint a new Hearing Officer as expeditiously as possible.

DATED this 17th day of February 2006.



Garth Baldwin
Protestant

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 17th day of February, 2006, the above and foregoing **NOTICE OF DISQUALIFICATION WITHOUT CAUSE OF HEARING OFFICER** was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

SUNCOR IDAHO LLC
C/O Albert P. Barker
Barker Rosholt & Simpson
PO Box 2139
Boise, ID 83701-2139

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

Rod Davidson
PO Box 2026
Eagle, ID 83616

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 E-mail

Phillip Fry
4122 Homer Road
Eagle, ID 83616

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 E-mail

Willowbrook Development
210 Murray Street
Boise, ID 83714

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Hillsdale Estates
Roy B. Johnson
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Lyle Mullins
1574 N Ellington Way
Eagle, ID 83616

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail



Garth Baldwin
Protestant

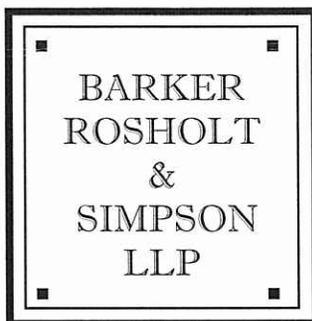
RECEIVED

FEB 14 2006

113 Main Avenue West, Suite 303
Post Office Box 485
Twin Falls, Idaho 83303-0485
(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

205 North 10th Street, Suite 520
Post Office Box 2139
Boise, Idaho 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

Albert P. Barker
John A. Rosholt
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington



Albert P. Barker
apb@idahowaters.com

February 10, 2006

Idaho Department of Water Resources
322 E. Front St.
P.O. Box 83720
Boise, Idaho 83720-0098

**Re: In the Matter of Application for Permit No. 63-32061
In the Name of SunCor Idaho LLC**

Ladies and Gentlemen:

Enclosed for filing is the original copy of the **Request for Pretrial Conference and Hearing** and **Motion to Dismiss Protests** in the above entitled case. If you have any questions, please feel free to give me a call. Thank you for your assistance in this regard.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP

Albert P. Barker /cp

Albert P. Barker

APB/cp

Enclosures

FEB 14 2006

DEPARTMENT OF
WATER RESOURCES

Albert P. Barker, ISB #2867
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
205 North Tenth St., Suite 520
P.O. Box 2139
Boise, Idaho 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for SunCor Idaho, LLC

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

IN THE MATTER OF APPLICATION FOR)	
PERMIT NO. 63-32061 IN THE NAME OF	)	REQUEST FOR PRETRIAL
SUNCOR IDAHO, LLC	)	CONFERENCE & HEARING
)	
)	
)	

COMES NOW, SunCor Idaho, LLC, by and through its attorneys of record, Barker, Rosholt & Simpson, LLP, and hereby enters this REQUEST FOR PRETRIAL CONFERENCE & HEARING. SunCor requests that the Department set a Pretrial Conference pursuant to I.D.A.P.A. 37.01.01.510. A pretrial conference is necessary so that parties may discuss the current status and set a hearing date. The previous tentative hearing date of December 2005 has long since passed.

DATED this 10th day of February, 2006.

BARKER ROSHOLT & SIMPSON, LLP



Albert P. Barker
Attorneys for SunCor Idaho, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of February, 2006, I served a true and correct copy of the foregoing **REQUEST FOR PRETRIAL CONFERENCE & HEARING** on the person(s) listed below, in the manner indicated

Rod Davidson
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6050 Hiway 55
Horseshoe Bend, ID 83629

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 E-Mail



Albert P. Barker

FEB 14 2006

DEPARTMENT OF WATER RESOURCES

Albert P. Barker, ISB #2867
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
205 North Tenth St., Suite 520
P.O. Box 2139
Boise, Idaho 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for SunCor Idaho, LLC

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

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 63-32061 IN THE NAME OF) **MOTION TO DISMISS PROTESTS**
SUNCOR IDAHO, LLC)
_____))

COMES NOW, SunCor Idaho, LLC, by and through its attorneys of record, Barker, Rosholt & Simpson, LLP, and hereby enters this MOTION TO DISMISS PROTESTS. SunCor seeks the dismissal of protests filed by Willowbrook Development and Hillsdale Estates Homeowners Association (collectively "Protestants") as the Protestants have failed to appear or participate in this matter despite a express request from the Department of Water Resources (hereinafter "Department").

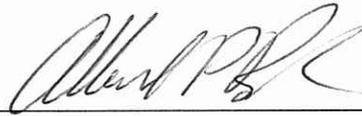
In a Prehearing Conference held on September 8, 2005, the Protestants failed to appear or otherwise participate. The Department recognized this failure in a letter dated that same day and order that the Protestants "submit to the Department in writing just cause why [they] failed to appear." (Emphasis in original). The letter further provided that if "no response is received by **October 11, 2005**, the Department will consider dismissing your protest." (Emphasis in

original). Then, on September 9, 2005, the Department issued a *Notice of Failure to Appear at the Prehearing Protest Conference*.

As of February 9, 2006, the Protestants have not filed anything with the Department or made any attempt to justify their failure to appear or participate in this matter. The Department should dismiss the protests of the Protestants in accordance with the Notice.

Respectfully submitted this 10th day of February, 2006,

BARKER ROSHOLT & SIMPSON, LLP

A handwritten signature in cursive script, appearing to read "Albert P. Barker", written in black ink.

Albert P. Barker
Attorneys for SunCor Idaho, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of February, 2006, I served a true and correct copy of the foregoing **MOTION TO DISMISS PROTESTS** on the person(s) listed below, in the manner indicated

Rod Davidson
P. O. Box 2026
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Lyle Mullins
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Albert P. Barker

RECEIVED
FEB 07 2006
DEPARTMENT OF
WATER RESOURCES

Lyle Mullins
1574 N Ellington Way
Eagle, ID 83616
Telephone: 208-939-3190

Protestant

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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32061 IN THE)
NAME OF SUNCOR, IDAHO, LLC.)
_____)

**NOTICE OF DISQUALIFICATION
WITHOUT CAUSE OF HEARING
OFFICER**

COMES NOW, Lyle Mullins, Protestant, hereby provides notice that I have elected to exercise my right to disqualify without cause the Hearing Officer designated to serve as presiding officer in this matter. This notice is brought pursuant to Idaho Code § 67-5252. This motion is also brought pursuant to the authority under that statute recognized in the Order of the Director dated January 25, 2005 in the following action: *In the Matter of Request for Water Right Administration of Water District No. 120 and Petition for Water Right Administration and Designation of the Eastern Snake Plain Aquifer as a Groundwater Management Area, p. 4.*

This notice is brought within fourteen (14) days of the date of the Order Appointing the Hearing Officer, which Order is dated January 30, 2006. This notice is filed and served on February 6, 2006, the seventh day following the date of the Order. Accordingly, this notice is both legally valid and timely. Protestant, Lyle Mullins requests that the Director appoint a new Hearing Officer as expeditiously as possible.

DATED this 6th day of February 2006.



Lyle Mullins
Protestant

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 6th day of February, 2006, the above and foregoing **NOTICE OF DISQUALIFICATION WITHOUT CAUSE OF HEARING OFFICER** was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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Hillsdale Estates
Roy B. Johnson
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David Head
N. Ada County Foothills Association
855 Stillwell Drive
Eagle, ID 83616

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail



Lyle Mullins
Protestant