

LAWRENCE G. WASDEN
ATTORNEY GENERAL

DAVID G. HIGH, ISB No. 1820
Chief of Civil Litigation

MICHAEL S. GILMORE, ISB No. 1625
Deputy Attorney General
Statehouse, Room 210
Boise, ID 83720
Telephone: (208) 334-4130
Telefax: (208) 334-2830

Attorneys for State Agency Ground Water Users
q:\water resources\swc call\p5216mga.doc

RECEIVED

AUG 05 2005

DEPARTMENT OF
WATER RESOURCES

ORIGINAL

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

IN THE MATTER OF THE PETITION FOR)	
ADMINISTRATION BY A&B IRRIGATION)	STATE AGENCY GROUND
DISTRICT, AMERICAN FALLS RESERVOIR)	WATER USERS' MOTION FOR
DISTRICT # 2, BURLEY IRRIGATION)	LETTER TO AUTHORIZE
DISTRICT, MILNER IRRIGATION DISTRICT,)	INTERROGATORIES TO THE
MINIDOKA IRRIGATION DISTRICT, NORTH)	CANAL COMPANIES THAT
SIDE CANAL COMPANY, AND TWIN FALL)	MADE THE SURFACE WATER
CANAL COMPANY)	COALITION CALL

The Idaho Department of Fish & Game, the Idaho Department of Health & Welfare, the Idaho Department of Juvenile Corrections, and the Idaho Transportation Department, who have intervened as the State Agency Ground Water Users (SAGWU), by and through their counsel of record, Michael S. Gilmore, Deputy Attorney General, file this Motion for Letter to Authorize Interrogatories to the Canal Companies that Made the Surface Water Coalition Call.

The Director's Scheduling Order of July 22, 2005, paragraph 2(d), p. 2, provided that before serving written Interrogatories on another party, "the proponent of interrogatories must submit to the Director a detailed written explanation of the subject matter to be discovered and must also show that the information cannot be obtained through other sources of information. The Director may consider depositions as another source of information. General interrogatories asking for identification of witnesses, the nature of the witnesses' testimony, and statements of issues for hearing are not acceptable."

The SAGWU move for permission to file the Written Interrogatories attached to this Motion and for the Director to issue a letter allowing their submission to the canal companies that made the Surface Water Coalition call. The SAGWU move for permission to submit these written Interrogatories because the questions posed in them involve often unique ground water rights that may or may not be treated like the irrigation ground water rights that constitute the bulk of the ground water rights that are subject to the Surface Water Coalition call.

Regarding the first two Interrogatories, there are two SAGWU ground water rights that SAGWU believes date back to the late 19th or early 20th century. SAGWU wants to know whether the Surface Water Coalition will be contending that it is entitled to curtail ground water usage for the St. Anthony Juvenile Correction Center or for State Hospital South and/or require mitigation. The importance of maintaining a water supply for these longstanding State institutions cannot be overstated. Although it is theoretically possible that SAGWU could obtain the basic information whether the Petitioners will seek curtailment of these rights or mitigation by noticing a deposition on that subject under Idaho Rule of Civil Procedure 30(b)(6), it seems more efficient and less costly to simply ask the question and not to schedule a deposition if the answer would be nothing more than the canal company(ies) do not contest the priorities and would not seek curtailment of the St. Anthony Juvenile Correction Center's or State Hospital South's ground water rights or mitigation for their water use.

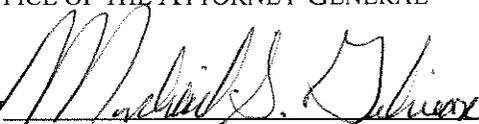
Next, the remaining Interrogatories concern non-irrigation water rights or unusual irrigation rights like drip irrigation for an Interstate Highway windbreak. SAGWU wants to know whether the Surface Water Coalition views these rights as consumptive or depletive water rights similar to ordinary irrigation rights. These rights include domestic rights for a highway rest stop, industrial rights for a maintenance shed, wildlife rights, and drip irrigation rights for a windbreak. As before, it is theoretically possible that SAGWU could obtain the basic information whether the Petitioners will seek curtailment of these rights or mitigation by noticing a deposition on that subject matter under Idaho Rule of Civil Procedure 30(b)(6), but it seems more efficient and less costly to simply ask the question and not schedule a deposition if the answer

would be nothing more than the canal company(ies) would not seek curtailment of one or more of these rights or mitigation for their water use.

These Interrogatories do not generally ask for a list of witnesses, but specifically ask for a designation of witnesses who will address the narrow issues defined by the Interrogatories. Thus, the Interrogatory does not run afoul of the Director's prohibition against a "general interrogatory asking for identification of witnesses [and] the nature of their testimony." The Interrogatories are not general, but ask for identification of witnesses for very specific issues, and only if those issues will be contested.

DATED this 5th day of August, 2005.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By 
MICHAEL S. GILMORE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of August, 2005, I caused to be served a true and correct copy of the foregoing by regular U.S. Mail, postage prepaid, to:

Roger D. Ling
LING ROBINSON & WALKER
PO Box 396
Rupert, Idaho 83330

C. Tom Arkoosh
ARKOOSH LAW OFFICES, CHTD.
PO Box 32
Gooding, Idaho 83330

John A. Rosholt
Travis L. Thompson
BARKER ROSHOLT & SIMPSON LLP
113 Main Ave. West, Suite 303
Twin Falls, Idaho 83301-6167

W. Kent Fletcher
FLETCHER LAW OFFICE
PO Box 248
Burley, Idaho 83318

John Simpson
BARKER ROSHOLT & SIMPSON LLP
PO Box 2139
Boise, Idaho 83301-6167

Scott L. Campbell
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHTD
101 S. Capitol Blvd., 10th Floor
PO Box 829
Boise, Idaho 83701

Jeffrey C. Fereday
Michael C. Creamer
GIVENS PURSLEY LLP
601 Bannock Street, Suite 200
PO Box 2720
Boise, Idaho 83701-2729

Kathleen Marion Carr
OFFICE OF THE FIELD SOLICITOR
550 W. Front Street, MSC 020
Boise, Idaho 83724

Matt Howard, PN-3130
US Bureau of Reclamation
1150 N. Curtis Road
Boise, Idaho 83706

James S. Lochhead
Adam T. DeVoe
BROWNSTEIN HYATT & FARBER, P.C.
410 17th Street, 22nd Floor
Denver, Colorado 80202

Josephine P. Beeman
BEEMAN & ASSOCIATES, P.C.
409 West Jefferson Street
Boise, Idaho 83702

Sarah A. Klahn
WHITE & JANKOWSKI, LLP
511 16th St. Suite 500
Denver, Colorado 80202

James Tucker, Senior Attorney
Idaho Power Company, Legal Department
1221 West Idaho Street
Boise, Idaho 83702


Michael S. Gilmore
Deputy Attorney General

ATTACHMENT TO MOTION TO AUTHORIZE WRITTEN INTERROGATORIES

LAWRENCE G. WASDEN
ATTORNEY GENERAL

DAVID G. HIGH, ISB No. 1820
Chief of Civil Litigation

MICHAEL S. GILMORE, ISB No. 1625
Deputy Attorney General
Statehouse, Room 210
Boise, ID 83720
Telephone: (208) 334-4130
Telefax: (208) 334-2830
Attorneys for State Agency Ground Water Users
q:\water resources\swc call\p5216mga.doc

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

IN THE MATTER OF THE PETITION FOR)
ADMINISTRATION BY A&B IRRIGATION) **STATE AGENCY GROUND**
DISTRICT, AMERICAN FALLS RESERVOIR) **WATER USERS'**
DISTRICT # 2, BURLEY IRRIGATION) **INTERROGATORIES TO THE**
DISTRICT, MILNER IRRIGATION DISTRICT,) **CANAL COMPANIES THAT**
MINIDOKA IRRIGATION DISTRICT, NORTH) **MADE THE SURFACE WATER**
SIDE CANAL COMPANY, AND TWIN FALL) **COALITION CALL**
CANAL COMPANY)

The Idaho Department of Fish & Game, the Idaho Department of Health & Welfare, the Idaho Department of Juvenile Corrections, and the Idaho Transportation Department, who have intervened as the State Agency Ground Water Users (SAGWU), by and through their counsel of record, Michael S. Gilmore, Deputy Attorney General, file the following Interrogatories to the Canal Companies that Made the Surface Water Coalition Call.

These interrogatories are submitted to each canal company participating in the Surface Water Coalition Call: A&B Irrigation District, American Falls Irrigation District, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company. Two or more canal companies may combine their answers to these Interrogatories, *i.e.*, it is not necessary for each canal company to answer separately. Answers to these Interrogatories are due fifteen days after the Director issues a letter authorizing the submission of these Interrogatories. See Idaho Rule of Civil Procedure 33(a)(2); Scheduling

ATTACHMENT TO MOTION TO AUTHORIZE WRITTEN INTERROGATORIES

Order paragraphs 2(d) and 2(f). These Interrogatories are not to be considered served upon you and are not to be considered as requiring an answer until the Director has issued a letter authorizing their use.

When these Interrogatories use the pronoun "you" or its possessive "your", "you" and "your" refer to the canal company(ies) that is(are) answering these Interrogatories and to their agents, employees, contractees, attorneys, experts, etc., and to individual surface water users taking their water from the canal company(ies). In answering these Interrogatories, please furnish all information available to you, including information in the possession of your attorneys and investigators, experts, etc., retained by you or by your attorneys and to individual surface water users taking their water from the canal companies.

If you cannot answer the following Interrogatories in full, after exercising due diligence to secure the information to do so, so state, and answer the remainder, and state whatever information and knowledge you have concerning the unanswered portion.

If you contend that any information requested is privileged, in whole or in part, or otherwise object to any part of any interrogatory, or believe that any requested information would be excludable from disclosure in discovery, regardless of its relevance, please identify with particularity each piece of information for which you claim a privilege, state the reasons for each objection or grounds for exclusion, identify each person or entity having knowledge of the factual basis, if any, on which the privilege or ground is asserted, and identify each interrogatory in any way related to either the privileged information or the factual basis for the claim or privilege.

These interrogatories are deemed to be continuing in nature so as to require you to supplement your answers if you obtain further or different information than that reflected in your answers to interrogatories. If any interrogatory contains several parts, please ensure that your answer accurately reflects which part is being answered.

DEFINITIONS

As used in these interrogatories:

1. The term "ESPA" means Eastern Snake Plain Aquifer as that term is used and

ATTACHMENT TO MOTION TO AUTHORIZE WRITTEN INTERROGATORIES

defined in the Director's Orders in this proceeding.

2. The term "identify" when used in respect to a person, or a request for the description or identification of a person, includes a request for the following information with respect to such person:

- (1) The person's full name;
- (2) The person's last known telephone number and business address (or residential address if there is no business address available).

3. "Person(s)" means any natural person or business organization.

INTERROGATORIES

1. INTERROGATORY REGARDING WATER RIGHT NO. 21-11972 FOR THE IDAHO DEPARTMENT OF JUVENILE CORRECTION'S ST. ANTHONY JUVENILE CORRECTIONS CENTER NEAR ST. ANTHONY, IDAHO:

Please state whether you will contest that Water Right No. 21-11972:

- (a) has a priority date on or before January 1, 1909, and
- (b) is not subject to curtailment or mitigation to satisfy your water rights with priority dates after January 1, 1909.

If you plan to contest this priority date or to contend that this water right is subject to curtailment or mitigation for the benefit of water rights with priorities after January 1, 1909, please identify the person(s) who will testify in support of those positions.

2. INTERROGATORY REGARDING WATER RIGHT NO. 27-11987 FOR THE IDAHO DEPARTMENT OF HEALTH & WELFARE'S STATE HOSPITAL SOUTH NEAR BLACKFOOT, IDAHO:

Please state whether you will contest that Water Right No. 27-11987

- (a) has a priority date on or before April 1, 1899, and
- (b) is not subject to curtailment or mitigation to satisfy your water rights with priority dates after April 1, 1899.

If you plan to contest this priority date or to contend that this water right is subject to curtailment or mitigation for the benefit of water rights with priorities after January 1, 1909, please identify the person(s) who will testify in support of those positions.

ATTACHMENT TO MOTION TO AUTHORIZE WRITTEN INTERROGATORIES

3. INTERROGATORY REGARDING WATER RIGHT NOS. 31-2316 AND 31-2448B FOR THE IDAHO DEPARTMENT OF FISH & GAME'S IRRIGATION AND WILDLIFE WATER RIGHTS NEAR MUD LAKE:

Please state whether you will contend that use of the wildlife portion of this irrigation and wildlife water right

(a) results in a substantial depletion of ground water in the ESPA,

(b) if the answer to part (a) is yes, whether the alleged substantial depletion is hydrologically connected to surface water flows in the Snake River and/or its tributaries upstream from your canal company's diversion(s) from the Snake River,

(c) if the answers to parts (a) and (b) are yes, whether that substantial depletion has caused or will cause material injury to persons using your canal company's surface water by leaving one or more of them with insufficient water for their crops for irrigation uses of water or insufficient water for other beneficial uses if your call includes non-irrigation uses, and

(d) whether you will seek curtailment of the wildlife portion of these rights in whole or in part or mitigation for continued use of the wildlife portion of these rights, in whole or in part.

If your answer to parts (a), (b),(c) or (d) is yes, please identify the person(s) who will testify in support of those positions.

4. INTERROGATORY REGARDING WATER RIGHT NO. 35-8624 FOR THE IDAHO DEPARTMENT OF FISH & GAME'S WATER RIGHT NEAR AMERICAN FALLS RESERVOIR (JOHNSON SEGMENT OF THE STERLING WILDLIFE MANAGEMENT AREA):

Please state whether you will contend that use of this wildlife water right

(a) results in a substantial depletion of ground water in the ESPA,

(b) if the answer to part (a) is yes, whether the alleged substantial depletion is hydrologically connected to surface water flows in the Snake River and/or its tributaries upstream from your canal company's diversion(s) from the Snake River,

(c) if the answers to parts (a) and (b) are yes, whether that substantial depletion has caused or will cause material injury to persons using your canal company's surface water by leaving one or more of them with insufficient water for their crops for irrigation uses of water or insufficient water for other beneficial uses if your call includes non-irrigation uses, and

(d) whether you will seek curtailment of these rights in whole or in part or mitigation for continued use of these rights, in whole or in part.

ATTACHMENT TO MOTION TO AUTHORIZE WRITTEN INTERROGATORIES

If your answer to parts (a), (b),(c) or (d) is yes, please identify the person(s) who will testify in support of those positions.

5. INTERROGATORY REGARDING WATER RIGHT NO. 31-7372 FOR THE IDAHO TRANSPORTATION DEPARTMENT'S WATER RIGHT FOR ITS MUD LAKE MAINTENANCE SHED:

Please state whether you will contend that use of this industrial water right

(a) results in a substantial depletion of ground water in the ESPA,

(b) if the answer to part (a) is yes, whether the alleged substantial depletion is hydrologically connected to surface water flows in the Snake River and/or its tributaries upstream from your canal company's diversion(s) from the Snake River,

(c) if the answers to parts (a) and (b) are yes, whether that substantial depletion has caused or will cause material injury to persons using your canal company's surface water by leaving one or more of them with insufficient water for their crops for irrigation uses of water or insufficient water for other beneficial uses if your call includes non-irrigation uses, and

(d) whether you will seek curtailment of these rights in whole or in part or mitigation for continued use of these rights, in whole or in part.

If your answer to parts (a), (b),(c) or (d) is yes, please identify the person(s) who will testify in support of those positions.

6. INTERROGATORY REGARDING WATER RIGHT NO. 35-9041 FOR THE IDAHO TRANSPORTATION DEPARTMENT'S WATER RIGHT FOR A WIND-BREAK NEAR INTERSTATE 15:

Please state whether you will contend that use of this drip irrigation water right

(a) results in a substantial depletion of ground water in the ESPA,

(b) if the answer to part (a) is yes, whether the alleged substantial depletion is hydrologically connected to surface water flows in the Snake River and/or its tributaries upstream from your canal company's diversion(s) from the Snake River,

(c) if the answers to parts (a) and (b) are yes, whether that substantial depletion has caused or will cause material injury to persons using your canal company's surface water by leaving one or more of them with insufficient water for their crops for irrigation uses of water or insufficient water for other beneficial uses if your call includes non-irrigation uses, and

(d) whether you will seek curtailment of these rights in whole or in part or mitigation for continued use of these rights, in whole or in part.

ATTACHMENT TO MOTION TO AUTHORIZE WRITTEN INTERROGATORIES

If your answer to parts (a), (b),(c) or (d) is yes, please identify the person(s) who will testify in support of those positions.

7. INTERROGATORY REGARDING WATER RIGHT NO. 35-8625 FOR THE IDAHO TRANSPORTATION DEPARTMENT'S DOMESTIC WATER RIGHT FOR ITS INTERSTATE 15 REST STOP:

Please state whether you will contend that use of this domestic water right

(a) results in a substantial depletion of ground water in the ESPA,

(b) if the answer to part (a) is yes, whether the alleged substantial depletion is hydrologically connected to surface water flows in the Snake River and/or its tributaries upstream from your canal company's diversion(s) from the Snake River,

(c) if the answers to parts (a) and (b) are yes, whether that substantial depletion has caused or will cause material injury to persons using your canal company's surface water by leaving one or more of them with insufficient water for their crops for irrigation uses of water or insufficient water for other beneficial uses if your call includes non-irrigation uses, and

(d) whether you will seek curtailment of these rights in whole or in part or mitigation for continued use of these rights, in whole or in part.

If your answer to parts (a), (b),(c) or (d) is yes, please identify the person(s) who will testify in support of those positions.

DATED this _____ day of August, 2005.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By _____
MICHAEL S. GILMORE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of August, 2005, I caused to be served a true and correct copy of the foregoing by regular U.S. Mail, postage prepaid, to:

Roger D. Ling
LING ROBINSON & WALKER
PO Box 396
Rupert, Idaho 83330

C. Tom Arkoosh
ARKOOSH LAW OFFICES, CHTD.
PO Box 32
Gooding, Idaho 83330

ATTACHMENT TO MOTION TO AUTHORIZE WRITTEN INTERROGATORIES

John A. Rosholt
Travis L. Thompson
BARKER ROSHOLT & SIMPSON LLP
113 Main Ave. West, Suite 303
Twin Falls, Idaho 83301-6167

W. Kent Fletcher
FLETCHER LAW OFFICE
PO Box 248
Burley, Idaho 83318

John Simpson
BARKER ROSHOLT & SIMPSON LLP
PO Box 2139
Boise, Idaho 83301-6167

Scott L. Campbell
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHTD
101 S. Capitol Blvd., 10th Floor
PO Box 829
Boise, Idaho 83701

Jeffrey C. Fereday
Michael C. Creamer
GIVENS PURSLEY LLP
601 Bannock Street, Suite 200
PO Box 2720
Boise, Idaho 83701-2729

Josephine P. Beeman
BEEMAN & ASSOCIATES, P.C.
409 West Jefferson Street
Boise, Idaho 83702

Kathleen Marion Carr
OFFICE OF THE FIELD SOLICITOR
550 W. Front Street, MSC 020
Boise, Idaho 83724

Sarah A. Klahn
WHITE & JANKOWSKI, LLP
511 16th St. Suite 500
Denver, Colorado 80202

Matt Howard, PN-3130
US Bureau of Reclamation
1150 N. Curtis Road
Boise, Idaho 83706

James Tucker, Senior Attorney
Idaho Power Company, Legal Department
1221 West Idaho Street
Boise, Idaho 83702

James S. Lochhead
Adam T. DeVoe
BROWNSTEIN HYATT & FARBER, P.C.
410 17th Street, 22nd Floor
Denver, Colorado 80202

Michael S. Gilmore
Deputy Attorney General