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*Attorneys for Non-parties The Church of Jesus Christ  
of Latter-day Saints & William John Dalling*

**IN THE DISTRICT COURT FOR THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT**

STATE OF IDAHO,

Plaintiffs,

vs.

LORI NOREN VALLOW AKA LORI  
NORENE DAYBELL,

Defendants.

Case No. CR22-21-1624

**MEMORANDUM IN SUPPORT OF  
MOTION TO QUASH OR MODIFY  
SUBPOENA DUCES TECUM**

Pursuant to Rules 7 and 45(d)(1) of the Idaho Rules of Civil Procedure and Rule 17 of the Idaho Criminal Rules, non-parties The Church of Jesus Christ of Latter-day Saints (the “Church”) and William John Dalling, in his personal capacity and as Stake President of the Rexburg Henry’s Fork Stake of The Church of Jesus Christ of Latter-day Saints, (collectively “Respondents”), respectfully move the Court for an order quashing or modifying the subpoena duces tecum served on them by Mrs. Lori Daybell (the “Subpoena”), which requests the production of irrelevant and privileged materials. Rule 45(d)(1) of the Idaho Rules of Civil Procedure and Rule 17(b) of the Idaho Criminal Rules give this Court authority to quash or modify a subpoena that seeks irrelevant material or that requires disclosure of privileged or otherwise protected materials.

If the Court requests, Respondents will produce the irrelevant and protected documents for *in camera* review so that the Court can confirm the merits of Respondents' objections.

#### **STATEMENT OF FACTS**

The Church is a religious organization with congregations throughout the world, including more than 1,100 congregations and 460,000 members in the State of Idaho. See <https://newsroom.churchofjesuschrist.org/facts-and-statistics/state/idaho>. The Church organizes its members into local congregations called "wards." See <https://newsroom.churchofjesuschrist.org/article/mormon-lay-ministry>. Each ward is led by a volunteer clergy member called a "bishop." *Id.* A group of wards in the same geographic area are organized into a "stake," led by another volunteer clergy member known as a "stake president."

Bishops and stake presidents care for the persons within their ward and stake, respectively. *Id.* Among their many duties, these clergy members help Church members repent of their sins by turning away from their sins and toward God.<sup>1</sup> Often, this takes the form of something akin to a counseling session. But sometimes, when a Church member has committed a serious transgression, Church clergy will convene a "membership council" to help the member with the repentance process. See, e.g., General Handbook: Serving in The Church of Jesus Christ of Latter-day Saints, §§ 32, 32.9, available at <https://www.churchofjesuschrist.org/study/manual/general-handbook/32-repentance-and-membership-councils?lang=eng>. As part of the membership council, a stake president, bishop, or other member of the Church's clergy will meet with the member to discuss their transgression and may discipline the individual by preventing the member from participating in sacred rituals for a period of time or by withdrawing the person's membership with the Church. *Id.* at § 32.9.

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<sup>1</sup>See General Handbook at § 32.1.

As part of the Church's doctrine, a person's membership in the Church may be withdrawn due to apostasy. The Church defines "apostasy" to include "[r]epeatedly acting in clear and deliberate public opposition to the Church, its doctrine, its policies, or its leaders," "teaching as Church doctrine what is not Church doctrine," acting to "weaken the faith and activity of Church members," following "the teachings of apostate sects," and "joining another church and promoting its teachings." *Id.* at § 32.6.3.2.

Church clergy "have a sacred duty to protect all confidential information shared with them" during any disciplinary proceedings such as membership councils. *Id.* at § 32.4.4.

On August 2, 2020, Mr. Dalling, in his role as a stake president, held a membership council and determined that Mr. Daybell's membership in the Church should be withdrawn.<sup>2</sup> Consistent with Church doctrine, Respondents have kept all records related to this membership council confidential.

Even though Respondents have kept its disciplinary actions confidential, the media has widely reported Mr. Daybell's apostasy from the Church. For instance, in February 2020, the East Idaho News published an article explaining that Mr. Daybell was "affiliated with several informal groups whose teachings go contrary to what one would hear in a typical Latter-day Saint congregation." *See* A Look at the Religious Circle Surrounding Chad and Lori Daybell, available at <https://www.eastidahonews.com/2020/02/a-look-at-the-religious-circle-surrounding-chad-and-lori-daybell>. A Utah reporter published a similar story in March 2020, detailing how

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<sup>2</sup> It is against Church policy for its clergy to hold a membership council for "conduct being examined by a civil or criminal trial court" before "a final judgment." *See id.* at § 32.4.3. In fact, the Church instructs its clergy to stop investigating any wrongdoing by a member that may be subject to a current law enforcement investigation. *Id.* "This is done to avoid possible claims that the leader may have obstructed justice." *Id.* In this case, the Church did not take action against Mr. Daybell for any criminal conduct.

membership in the same communities as Mr. Daybell may be “a sign of apostasy” and how members of these groups are “taking bits and pieces of LDS doctrine” and “twisting it.” *See* Fox 13 Investigates: Website Associates with Chad Daybell and his Followers Shuts Down, available at <https://www.fox13now.com/news/fox-13-investigates/fox-13-investigates-website-associated-with-chad-daybell-and-his-followers-shuts-down>.

On November 4, 2021, Mrs. Daybell issued a subpoena to Respondents. Subpoena at 2. A true and correct copy of the Subpoena is attached hereto as Exhibit A. Among the requests detailed in the Subpoena, Mrs. Daybell has requested “all records” related to Mr. Daybell’s disciplinary proceeding (Request 1),<sup>3</sup> documents showing when and where the disciplinary proceeding took place (Request 2),<sup>4</sup> evidence related to service of disciplinary correspondence on Mr. Daybell (Request 3), “evidence” of apostasy (Request 4), “factors” that influenced Respondents’ decision to discipline Mr. Daybell (Request 5), and communications with a host of individuals including Respondents’ attorneys (Request 6). The Church has produced some documents in response to this request including, for example, records of Mr. Daybell’s donations to the Church and record of his membership in the Church. Other documents are privileged or protected.

### **ARGUMENT**

This Court has authority to quash or modify the Subpoena because it calls for the production of materials that are irrelevant, privileged, or otherwise protected. *See, e.g.*, IDAHO R. CIV. P. 45(d)(1); IDAHO CRIM. R. 17(b). As the Idaho Supreme Court recently explained, a court may “consider whatever information it deems necessary to determine whether” a subpoena issued

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<sup>3</sup> Respondents produced non-privileged documents responsive to this request.

<sup>4</sup> Respondents produced non-privileged documents responsive to this request.

in a criminal proceeding “is unreasonable or oppressive,” including whether the subpoenaed information is relevant and whether the subpoena “requires the disclosure of privileged or other protected matter.” *State v. Loera*, 473 P.3d 802, 807 (Idaho 2020).

**A. The subpoenaed documents appear to have no relevance to the underlying matter. Upon the Court’s request, the Church is willing to produce them for *in camera* review.**

For the most part, the subpoenaed information appears to be irrelevant to any issue before the Court in this matter. Most of the records the Subpoena seeks relate solely to ecclesiastical matters—Mr. Daybell’s privileged disciplinary records (related to noncriminal actions). To the extent the Subpoena seeks irrelevant documents, Respondents request the Subpoena be modified or quashed.

**B. The Church’s disciplinary files are protected from disclosure by the First Amendment and, in any case, appear to have no relevance.**

In addition, Rule 45(d)(1) of the Idaho Rules of Civil Procedure permits a court to quash or modify a subpoena that “requires disclosure of privileged or other protected matter[s].” This standard applies with equal force to a subpoena issued in a criminal proceeding. *See Loera*, 473 P.3d at 807. Here, the Subpoena broadly requests the “entire file” related to Mr. Daybell’s membership council (i.e., Church disciplinary proceedings). Under Church doctrine, membership councils are confidential and Church clergy are instructed to maintain that confidentiality against all intruders. Accordingly, the Church always objects, as a matter of principle and belief, to production of Church disciplinary records. Compelling the Church to produce these documents would cause the Church to violate its doctrine and would entangle the court in purely ecclesiastical matters. Accordingly, the Church believes that documents recording what occurs in a membership council are protected by the First Amendment.

The First Amendment “‘gives special solicitude to the rights of religious organizations’ as religious organizations, respecting their autonomy to shape their own missions, conduct their own ministries, and generally govern themselves in accordance with their own doctrines as religious institutions.” *Korte v. Sebelius*, 735 F.3d 654, 677 (7th Cir. 2013) quoting *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171, 189 (2012). In other words, the First Amendment protects a church’s right to autonomy in purely ecclesiastical matters, which includes matters related to church discipline. Civil courts have “no jurisdiction” over “a matter which concerns theological controversy, *church discipline*, ecclesiastical government, or the conformity of members to the standard of morals required of them.” *Serbian Eastern Orthodox v. Milivojevich*, 426 U.S. 696, 713-14 (1976). *See also Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 115 (1952) (finding matters of church discipline are “strictly a matter of ecclesiastical government” and thus of no concern to the state.). Compelling disclosure of the Church’s sacred files is constitutionally impermissible. That was the precise holding of the Oklahoma Supreme Court in denying an attempt to compel the Church to produce such records. “The church’s immunity from disclosure rests neither on a statute nor a code of evidence. Rather its shield is of a constitutional dimension.” *Hadnot v. Shaw*, 826 P.2d 978, 989 (Okla. 1992). “Church judicature exercised within proper bounds of cognizance is not discoverable.” *Id.* at 990. Thus, the First Amendment protects Respondent’s right to maintain the confidentiality of ecclesiastical disciplinary records, especially where they appear to have no relevance.

**C. The disciplinary file at issue is also protected by the clergy-parishioner privilege.**

The ecclesiastical discipline records are also protected by the clergy-parishioner privilege, which protects communications between a person and his clergy “made to him in his professional character in the course of discipline enjoined by the church to which he belongs.” *See IDAHO*

CODE § 9-203(3). The clergy privilege has been recognized in this country for over two-hundred years. *See People v. Phillips*, N.Y. Ct. of Gen. Sessions (June 14, 1813), *reprinted in* 1 WESTERN L.J. (1843). Courts have taken a flexible approach to the clergy privilege to avoid punishing faiths that do not operate under the traditional confessional model that gave rise to the privilege. Otherwise, to “narrowly construe” the privilege “would virtually limit its application to the Roman Catholic Church,” which “would preclude protection to some communications that are confidential under the religious teachings of one faith, but allow those for other faiths.” *Scott v. Hammock*, 133 F.R.D. 610, 617, 618-19 (D. Utah 1990). All 50 states have some form of the privilege.<sup>5</sup> *See* IDAHO CODE § 9-203(3). Indeed, courts have repeatedly rejected attempts to seek Church disciplinary records and other confidential communications with clergy. *See, e.g., State v. Archibeque*, 221 P.3d 1045 (Ariz. App. 2009); *Jane Doe v. Corp. of the President of the Church of Jesus Christ of Latter-day Saints*, 90 P.3d 1147 (Wash. Ct. App. 2004); *Scott v. Hammock*, 870 P.2d 947 (Utah 1994).

Here, although Mr. Daybell did not participate in the membership council, the records nevertheless contain confidential statements he made to Church clergy before the council, confidential statements made by others to Church clergy, and materials considered by Church clergy in rendering their decision—all related to noncriminal conduct. Accordingly, the records are protected by the clergy privilege. *See, e.g.,* IDAHO CODE § 9-203(3); *Doe*, 90 P.3d at 1154 (concluding “under LDS Church doctrine” that the disciplinary file “is protected by the clergy-penitent privilege”).

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<sup>5</sup> The importance of confidentiality between clergy and parishioners has been repeatedly reaffirmed. *See Totten v. U.S.*, 92 U.S. 105, 107 (1875) (“suits cannot be maintained which would require a disclosure of the confidences of the confessional”); *Trammel v. United States*, 445 U.S. 40, 51 (1980) (“The priest-penitent privilege recognizes the human need to disclosure to a spiritual counselor, *in total and absolute confidence* ....”).

In any case, again, the Church believes the disciplinary file contains nothing relevant to this matter. Even if there were some questions about application of the First Amendment and the privilege, because the documents have no apparent relevance, any questions should be resolved against production. And before even considering compelling production, the Church invites the Court to review the file *in camera*.

**D. Respondents' communications with their attorneys are protected by the attorney-client privilege.**

Finally, the Subpoena also calls for the production of materials protected by the attorney-client privilege. Specifically, Request 6 calls for communications between Respondents and their legal counsel. This is the very definition of materials protected by the attorney-client privilege. *See* IDAHO R. EVID. 502(b).

**CONCLUSION**

The Subpoena should be modified or quashed to the extent it seeks irrelevant and protected documents. The ecclesiastical membership council records are protected by the First Amendment and the clergy-parishioner privilege. The communications between Respondents and their attorneys are also privileged. For these reasons, Respondents respectfully ask the Court to quash the Subpoena. In the alternative, Respondents request that the Court modify the Subpoena to exclude any irrelevant, privileged or otherwise protected materials. As indicated, upon request, Respondents will produce the withheld documents for the Court's review *in camera*.

DATED this 2nd day of December 2021.

**KIRTON McCONKIE**

/s/ Wade L. Woodard  
Wade L. Woodard  
*Attorney for Non-Parties*



## CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December 2021, a true and correct copy of the foregoing was served by the method indicated below, and addressed to the following:

Mark L. Means  
Means Law and Mediation  
429 SW 5<sup>th</sup> Ave., Ste. 110  
Meridian, ID 83642  
*Attorneys for Lori Daybell*

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Overnight Delivery
- ☒ iCourt Email: [icourtlaw@gmail.com](mailto:icourtlaw@gmail.com)

Lindsey Blake  
Fremont County Prosecutor  
22 W. 1<sup>st</sup> North  
St. Anthony, ID 83445  
*Attorneys for State of Idaho*

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Overnight Delivery
- ☒ iCourt Email: [prosecutor@co.fremont.id.us](mailto:prosecutor@co.fremont.id.us)

Robert Wood  
12 N. Center St.  
Rexburg, ID 83440  
*Attorneys for State of Idaho*

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Overnight Delivery
- ☒ iCourt Email: [mcpo@co.madison.id.us](mailto:mcpo@co.madison.id.us)

/s/ Wade L. Woodard

Wade L. Woodard

# **EXHIBIT A**

1 Mr. Mark L. Means (ISB 7530)  
2 Means Law and Mediation  
3 Means – Law  
4 429 SW 5<sup>th</sup> Ave. Suite 110  
5 Meridian, ID 83642  
6 Telephone: 2087943111  
7 Facsimile: 18662283429  
8 Email: [meanslawoffice@gmail.com](mailto:meanslawoffice@gmail.com)  
9 lcourt: [lcourtlaw@gmail.com](mailto:lcourtlaw@gmail.com)  
10 Website: [www.meanslawoffice.com](http://www.meanslawoffice.com)  
11 Attorney for MRS. LORI DAYBELL

12 **IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT STATE**  
13 **OF IDAHO COUNTY OF FREMONT**

14 STATE OF IDAHO,  
15 Plaintiff

CASE NO. CR22-21-1624

16 Vs.

**SUBPOENA DUCES TECUM**

17 LORI NORENE VALLOW  
18 AKA LORI NORENE DAYBELL  
19 DEFENDANT

20 **THE STATE OF IDAHO TO:**

21 The Church of Jesus Christ of Latter-Day Saints<sup>1</sup>  
22 Stake President Mr. William John Dalling  
23 Rexburg Henry's Fork State  
24 State of Idaho  
25 3091 N. 500 E.  
26 Rexburg, ID 83440

&

Mr. William John Dalling, personally.

<sup>1</sup> Hereafter LDS Church or Mormon Church.

1 YOU ARE HEREBY COMMANDED to produce or permit inspection and copying of the  
2 following documents or objects, including electronically stored information at the place, date  
3 and time specified below:

4 STATE OF IDAHO: To Stake President Mr. William John Dalling and to the person, Mr.  
5 William John Dalling you are hereby commanded to provide as instructed below the entire file  
6 (books, papers, documents, communications, correspondence, photographs, videos,  
7 recordings, notes, charts, emails, texts, telephone records, telephone calls and records,  
8 telephone recordings, and or other objects tangible/intangible) and its contents, witness  
9 identification<sup>2</sup>, participating member(s) of "council", witness(es) identification present for  
10 "council" (whether tangible or intangible) in regards to the Withdrawal of Membership and or  
11 "Excommunication"<sup>3</sup> of Defendant Chad Daybell, alleged evidence of apostacy and the like.<sup>4</sup>

12 By way of this subpoena, we seek the above/following records related to Defendant Mr.  
13 Chad Daybell's withdrawal of membership (excommunication) from The LDS Church, whether  
14 tangible or intangible, unredacted, and or transmitted (if transmitted) by means of personal,  
15 religious, or professional electronic devices, email servers, etc., or the like:

- 16 1. All records, reports, notes, charts, communications, correspondence, exhibits,  
17 evidence, data, recordings, deleted records, deletion records, partial files, voice  
18 mails, recordings, photographs, texts, emails, notes, statements, witness  
19 statements, person(s) identification who participated or attended said council or  
20 make up said "council", telephone records, text messages, emails, and the like.

21  
22 <sup>2</sup> When seeking identification of Witness(es) and or Council Member(s) we seek  
23 their full names, address(es), telephone number(s), LDS church corresponding  
24 email address(es) and other identifying information.

25 <sup>3</sup> More recently rephrased withdrawal of membership by the LDS Church. See:  
26 After changes to handbook terminology LDS church members no longer  
'excommunicated' | KUTV

<sup>4</sup> Please see attached correspondence from you dated 7/14/2020 and August 9,  
2020.

2. All dates, times and or locations of meetings regarding this council and its task of “consider evidence of apostacy”.
3. All evidence of attempts of service or actual service of this correspondence upon Defendant Chad Daybell.
4. All “Evidence” of alleged “apostacy.”
5. All factors, evidence and the like related to/supporting the “council” decision to:
  - a. Withdraw membership in the LDS Church;
  - b. Defendant “conduct contrary to the laws and order of the Church, specifically for apostasy and for promulgating teachings and doctrines contrary to those of the Church.”
6. All communications and the like between you personally, professionally, and or in your religious “calling” capacity with the and following individuals related to this Defendant:
  - a. Mr. Robert Wood, Prosecutor of Madison County, Former and or Current Bishop of LDS Church;
  - b. Defendant Mr. Chad Daybell bishop and or Bishopric at time of alleged “apostacy”;
  - c. Mrs. Heather Daybell, Fremont County, Sister-in-law of Defendant Mr. Chad Daybell;
  - d. Any and all persons regarding the “membership council.”
  - e. Any and all council members of said “membership council.”
  - f. Any and all witness(es) associated with related to “membership council” and or present (physically or virtually) for the “holding a membership council.”
  - g. Any and all individuals associated with the prosecution of Defendant Mr. Daybell and or Defendant Mrs. Lori N. Vallow (Daybell)
  - h. Any and all person(s) associated with the LDS Church and or LDS Church Legal Church Counsel.

- 1 i. Madison County Prosecution and or its agent(s);  
2 j. Fremont County Prosecution and or its agent(s);  
3 k. The Corporation of the Church of Jesus Christ of Latter-Day Saints, The  
4 Church of Jesus Christ of Latter-Day Saints, AKA the LDS Church, Mormon  
5 Church, and or its agent(s);  
6 l. Mr. Robert Wood, Madison County Prosecutor/Current or Former LDS  
7 Bishop;  
8 m. Rexburg Police Department and or its agent(s);  
9 n. Madison Sheriff's Department and or its agent(s);  
10 o. Fremont Sheriff's Department and or its agent(s);  
11 p. Utah Attorney Mr. Daniel McConkie and or his agents, employer or the like;

12 Please note that if any portion of this subpoena is "objected" to by the recipient please  
13 comply with all other requests as the objecting matter is resolved.

14 Furthermore, please note that we provide notice that all matters, documents, and the  
15 like referenced above or in relation to this matter are requested to be preserved and not  
16 destroyed.

17 **PLACE, DATE and TIME:**

18 **PLACE:**

19 Means Law Office, PLLC  
20 429 SW 5<sup>th</sup> Ave. Suite 110  
21 Meridian, ID 83642

22 **Telephone:** 2087943111

23 **Facsimile:** 18662283429

24 **Date:** Dec. 1, 2021

25 **Time:** 1:00 P.M.

26 *If any of this subpoena is objected to be the served/obligatory party, it is hereby  
requested that any above that is unobjected to by served/obligatory party be responded to in  
timely manner as set out above without delay.*

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**Subpoena Duces Tecum: Stake President Mr. William J. Dalling & Personally, Mr. William J.  
Dalling - 4**

1 You are further notified that if you fail to appear at the place and time specified above,  
2 or to produce or permit copying or inspection as specified above, that you may be held in  
3 contempt of Court and that the aggrieved party may recover from you the sum of \$100.00 and  
4 all damages which the party may sustain by your failure to comply with this subpoena.

5 DATED this 4 day of November 2021.

6 M.L. Means  
7 Attorney/Agent of the Court(s)  
8 Mark L. Means, Advocate for Ms. Lori Daybell  
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THE CHURCH OF  
**JESUS CHRIST**  
OF LATTER-DAY SAINTS

REXBURG ID HENRY'S FORK STAKE

**PERSONAL & PRIVATE**

July 14, 2020

Dear Brother Daybell

This letter is to notify you that the stake presidency is holding a membership council in your behalf. The membership council will be held on August 2, 2020 at 10:00 a.m. at the Rexburg Idaho Stake Center located at 1508 W 3000 N Rexburg, Idaho.

This council will consider evidence of apostasy including promulgating teachings and doctrines which are contrary to those of The Church of Jesus Christ of Latter-day Saints.

You are invited to provide a written statement to the council in your behalf. You may also provide written statements from other persons who could provide relevant information. You may invite such persons to speak to the council in your behalf if approved by me in advance. Anyone who attends must be willing to comply with the respectful nature of the council, including its procedures and confidentiality. Legal counsel and supporters beyond those referred to above may not be present. Any written statements should be provided directly to me at the address noted below prior to the date of the council. If additional time is needed to provide written statements, please notify me.

Any questions regarding this council can be directed to me at the following address and phone number:

President William J. Dalling  
3091 N 500 E  
Rexburg, ID 83440  
Phone: 208-243-1896

Sincerely,



President William J. Dalling  
Rexburg Idaho Henry's Fork Stake

**PERSONAL & PRIVATE**



THE CHURCH OF  
JESUS CHRIST  
OF LATTER-DAY SAINTS

REXBURG ID HENRY'S FORK STAKE

August 9, 2020

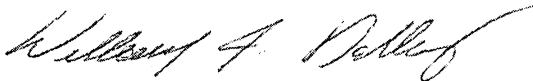
Dear Brother Daybell,

This letter is to notify you of the decision of the membership council held for you on August 2, 2020. The council decision was to withdraw your membership in The Church of Jesus Christ of Latter-day Saints for conduct contrary to the laws and order of the Church, specifically for apostasy and for promulgating teachings and doctrines contrary to those of the Church.

This decision means that you may not enjoy any privileges of Church membership. You may not enter a temple or wear temple garments. You may not exercise the priesthood or pay tithes and offerings. When possible, you are invited to attend public Church meetings and activities as long as your conduct is orderly, but you may not give a talk or lesson, offer a prayer in Church settings, partake of the sacrament, lead an activity in church, serve in a Church calling or participate in the sustaining of Church officers.

You have the right to appeal this decision within 30 days, if so desired. An appeal should be delivered to me in writing (3091 N 500 E Rexburg, ID 83440) specifying the alleged errors or unfairness in the procedure or decision. Any questions regarding the decision of the council can be directed to President William J. Dalling (208-243-1896).

Sincerely



President William J. Dalling, President  
Rexburg Henry's Fork Stake