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DEPARTMENT OF
WATER RESOURCES

Attorneys for Sinclair Oil Corporation
dba Sun Valley Company

Scott L. Campbell, ISB No. 2251
Tara Martens, ISB No. 5773
Dylan B. Lawrence, ISB No. 7136
Andrew J. Snook, ISB No. 7761
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 South Capitol Boulevard, 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
16845.0014

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA
Case No. 39576

Subcase Nos. 37-00415, 37-00416,
37-04108, 37-12111

**FIRST SET OF REQUESTS FOR
ADMISSIONS, INTERROGATORIES,
AND REQUESTS FOR PRODUCTION
TO MEMBERS OF THE
"CONCERNED WATER USERS"**

PLEASE TAKE NOTICE that Sinclair Oil Company, dba Sun Valley Company,
(hereafter "SVC"), by and through its attorneys of record, Moffatt, Thomas, Barrett, Rock &
Fields, Chartered, and pursuant to Idaho Rules of Civil Procedure 26, 33, 34, and 36 and
pursuant to Section 1 of the Court's Administrative Order 1, hereby submits its First Set of

**FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES,
AND REQUESTS FOR PRODUCTION TO MEMBERS OF THE
"CONCERNED WATER USERS" - 1**

Client:844337.4

Requests for Admissions, Interrogatories, and Requests for Production to members of the self-titled "Concerned Water Users" in their individual capacities¹ (hereafter "CWU") as follows:

I. INSTRUCTIONS

1. In responding to these Requests for Admissions, Interrogatories, and Requests for Production, you are requested to furnish all information available to you, or subject to your reasonable inquiry, including information in the possession of your attorneys, investigators, employees, agents, representatives, guardians, consultants, expert witnesses, and any other person or persons acting on your behalf, and not merely such information as is known to you by your own personal knowledge.

2. In responding to these requests, you must make a diligent search of your Records and all other papers and materials that are in your possession or available to you, or to the individuals described in the preceding paragraph. If any item has subparts, answer each part separately and in full. If you cannot answer any of the following requests in full after exercising due diligence to secure the information necessary to do so, please so state and answer or respond to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portions.

3. If you object to any request on the ground that the information sought is privileged and non-discoverable, please state the basis for your claim of privilege and, in the case

¹ Idaho law requires that an objector to a water right in the SRBA is also a water right claimant in the SRBA. IDAHO CODE § 42-1412(1). SRBA court records do not reflect any water right claims submitted by the "Concerned Water Users" or Blaine County Ranchers, Inc., the entity for which "Concerned Water Users" is an assumed name. Under these circumstances, the eight individual members of the CWU whose names appear on the CWU's Objections are parties to these subcases in their individual capacities, and the "Concerned Water Users" is simply a term of convenience. Therefore, the CWU members will be individually bound by the responses to these discovery requests.

of any request for production, identify the documents and records which you object to producing, in sufficient detail as to enable the court to rule upon claim of privilege.

4. These requests are deemed to be continuing. If, after responding to these requests, you acquire any further information responsive to them, you are hereby requested, pursuant to Idaho Rule of Civil Procedure 26(e), to file and serve supplemental answers or responses containing such further information.

5. If you fail to respond to one or more of these requests or if your response to one or more of these requests is evasive or incomplete, SVC may move the Court for an order compelling you to fully respond to these requests and to pay the reasonable expenses, including attorney fees, incurred by it in obtaining the order.

6. If you fail to produce documents and records requested herein on the ground that the necessary information, records or documents are not within your care, custody, possession or control, please state what efforts you have made to obtain such information, documents or records.

7. If you fail to respond to any of these requests in full or fail to supplement your answers or responses as requested, SVC may move the Court for an order precluding you from introducing into evidence, or otherwise using either at trial or on motion for summary judgment, any testimony, witness, exhibit, document, record, publication, or other item or information not timely disclosed in your responses to these requests.

II. DEFINITIONS

1. The term "communication(s)" shall include, without limitation, any dissemination of information or transmission of a statement from one person to another or in the presence of another, whether written, oral, or by action or conduct.

2. The terms “document(s)” and/or “record(s)” mean any tangible thing upon which has been placed handwriting, e-mail transmission, typewriting, printing, photocopying, photographing, digital or computerized data, or any other form of recording, communication or representation including, but not limited to, letters, words, pictures, sounds, magnetic impulses, symbols, numbers or any combination thereof, whether or not visible to the unassisted human eye. This definition shall include, but is not limited to, any and all originals, copies, or drafts of any and all of the following: Records, notes, summaries, schedules, contracts, agreements, orders, meeting minutes, design manuals, inventories, audits, acknowledgments, diaries, findings, forecasts, tests, appraisals, reports, memoranda, telephone recordings, telephone logs, telephone lists, diaries, calendars, planners, daytimers, correspondence and letters, e-mail, telegrams, telexes, facsimiles and faxes, cables, tapes, tape recordings, statements, receipts, invoices, transcripts, recordings, photographs, witness statements, pictures, films, videotapes, computer programs, computer databases, models, things and materials of any nature whatsoever. Any “document” which contains any comment, notation, addition, insertion or marking of any kind which is not part of another document is to be considered as a separate “document.”

3. The term “drawing(s)” shall include, without limitation, any and all drawings, as-builts, mylars, designs, blueprints, sketches, maps, plans, notes, graphic depictions, schematics, or similar items, whether prepared by an engineer, architect, surveyor, other licensed professional, or other person.

4. When asked to “identify” a person or entity or when asked for the “identity” of a person or entity, please include:

- (a) The name of the person or entity;

(b) The present or last known address and telephone number of the person or entity;

(c) The present or last known occupation, title, business, and employer of the person or entity; and

(d) The present or last known address and telephone number of the employer of the person or entity.

5. When asked to "identify" a record or document please include:

(a) The nature or type of record or document (*e.g.*, letter, photograph, map, drawing, tape recording, etc.);

(b) The subject matter of the record or document and/or a general description of its contents;

(c) The "identity" of the person who authored or created the record or document;

(d) The date of the document or, if it bears no date, the date on which it was prepared or created; and

(e) The physical location of the original and any copies of the document or record of which you are aware and the "identity" of the present custodian of the record or document.

III. REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: In its Objections to SVC water rights 37-415, 37-416, 37-4108, and 37-12111, CWU states that, "Combined use of this right along with other rights from the same place of use should be limited to one inch or 0.02 cfs per

acre. . . .” Please admit that this language references only the irrigation component of those water rights.

REQUEST FOR ADMISSION NO. 2: With respect to the language cited above in Request for Admission 1, please admit that CWU’s Objection applies only to the quantity of water actually used for irrigation under SVC’s water rights, and not to the quantity of water diverted.

REQUEST FOR ADMISSION NO. 3: Please admit that each one of the CWU members owns at least one water right recommendation in the SRBA which includes irrigation as a purpose of use.

REQUEST FOR ADMISSION NO. 4: In its Objections to SVC water rights 37-415, 37-416, 37-4108, and 37-12111, CWU states that, “Total volume of water delivered to this property from all water rights shall not exceed 3.5 AF per acre.” Please admit that this language references only the irrigation component of those water rights.

REQUEST FOR ADMISSION NO. 5: With respect to the language cited above in Request for Admission 4, please admit that CWU’s Objection applies only to the quantity of water used for irrigation under SVC’s water rights, and not to the quantity of water diverted.

REQUEST FOR ADMISSION NO. 6: Please admit that the term “minimum stream flow” as used in Idaho Code 42-1501, *et seq.*, refers to the maintenance of a “minimum flow of water in cubic feet per second of time or minimum lake level in feet above mean sea level” in “any lake, spring, creek, stream, river or other natural body of standing or moving water which is subject to appropriation under the laws of the state of Idaho.”

REQUEST FOR ADMISSION NO. 7: Please admit that the aesthetic, recreation, and wildlife uses of water under SVC's water rights 37-415, 37-416, and 37-12111 apply to the use of water within SVC's resort, after water has already been diverted from a natural stream.

REQUEST FOR ADMISSION NO. 8: Please admit that SVC's use of water under water rights 37-415, 37-416, and 37-12111 does not require or seek to maintain a minimum flow in Trail Creek or any other natural stream.

REQUEST FOR ADMISSION NO. 9: Please admit that SVC's use of water under water rights 37-415, 37-416, and 37-12111 does not require or seek to maintain a "minimum lake level in feet above mean sea level" in any lake or other natural body of standing water.

REQUEST FOR ADMISSION NO. 10: Please admit that individual members of the CWU own water rights with purposes of use of aesthetic, aesthetic storage, wildlife, and wildlife storage, including 37-20636, 37-20638, 37-20640, 37-20642, 37-20644, 37-20646, 37-20648, 37-20650, 37-20652, 37-20653, 37-20654, 37-20899 (all owned by Thomas M. O'Gara or the Thomas M. O'Gara Family Trust), and 37-8687 (owned by Gerald and Audrey Bashaw).

IV. INTERROGATORIES

INTERROGATORY NO. 1: If any of the above Requests for Admission are denied either in whole or in part, please provide a complete description of all facts relied upon in making the denial, along with the identity of all persons having sufficient knowledge of each fact to testify as a witness. Also, please provide a description of the substance and content of all expert opinions relied upon in making the denial.

INTERROGATORY NO. 2: Please identify each and every individual known to you who has any knowledge of, or who claims to have knowledge of, any facts or evidence discoverable in this matter, together with a summary of each person's knowledge.

INTERROGATORY NO. 3: Please identify each and every person you intend to call as a lay witness at the trial of this matter, together with a summary of the substance of each person's expected testimony.

INTERROGATORY NO. 4: Please identify each and every person you expect to call as an expert witness at the trial in this matter, and for each such person, state with particularity:

- (a) The qualifications upon which you intend to rely to establish said person as an expert witness;
- (b) The subject matter on which said person is expected to testify;
- (c) The substance of the facts and opinions to which he or she is expected to testify; and
- (d) The other information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure and Rule 705 of the Idaho Rules of Evidence.

INTERROGATORY NO. 5: Please identify each exhibit which you plan to offer into evidence at the trial of this matter and the proposed use and relevance of each such exhibit.

INTERROGATORY NO. 6: If you contend that SVC, or any individual(s) acting on behalf of SVC, has made any admission or statement against SVC's interests in this matter, please state the following:

- (a) the identity of the individual making the admission and/or statement;
- (b) the date, time, and location where the admission and/or statement was made;
- (c) the name and address of each individual present at the time the admission and/or statement was made;
- (d) whether the admission and/or statement was written or oral; and
- (e) if the admission and/or statement was oral, please state the complete content of the admission and/or statement to the best of your knowledge.

INTERROGATORY NO. 7: Please separately identify each communication which in any way relates to this matter or which you may offer into evidence at the trial of this action. For each such communication please identify:

- (a) Whether the communication was oral or written;
- (b) Who were the parties to the communication;
- (c) The date of the communication;
- (d) The substance of the communication; and
- (e) The relevance of the communication to the issues in this case.

INTERROGATORY NO. 8: Please separately identify each document, including without limitation, all e-mails, pictures, plans, drawings, correspondence, notes, and audio or video recordings which in any way relate to this matter.

INTERROGATORY NO. 9: Please identify, in full and complete detail, any diaries, journals, calendars, reports, records, day-timers or any other similar document of which you are aware and which relate in any way to this matter.

INTERROGATORY NO. 10: Please explain the factual and legal bases supporting CWU's assertion in its Objections to water rights 37-415, 37-416, 37-4108, and 37-12111 that the combined use of SVC's water rights "should be limited to one inch or 0.02 cfs per acre."

INTERROGATORY NO. 11: Please explain the factual and legal bases supporting CWU's assertion in its Objections to water rights 37-415, 37-416, 37-4108, and 37-12111 that the "[t]otal volume of water delivered to [SVC's] property from all [of SVC's] water rights shall not exceed 3.5 AF per acre."

INTERROGATORY NO. 12: Please explain the factual and legal bases supporting CWU's assertion in its Objections to water rights 37-415 and 37-416 that SVC's "aesthetic, wildlife and recreation [uses of water] are not beneficial uses" pursuant to Idaho Code 42-1501.

INTERROGATORY NO. 13: Please explain the factual and legal bases supporting CWU's assertion in its Objections to water rights 37-415 and 37-416 that "[i]f [SVC's aesthetic, wildlife and recreation] uses are allowed, [SVC's] right cannot carry a priority date earlier than the first date that the legislature authorized that beneficial use to be held by a private party."

INTERROGATORY NO. 14: Please state your position as to how CWU's assertion that "[c]ombined use of [an irrigation] right along with other rights from the same place

of use should be limited to one inch or 0.02 cfs per acre,” would apply to irrigation water rights owned by members of the CWU.

INTERROGATORY NO. 15: Please state your position as to how CWU’s assertion that the “[t]otal volume of water delivered to [irrigated] property from all water rights shall not exceed 3.5 AF per acre,” would apply to irrigation water rights owned by members of the CWU.

INTERROGATORY NO. 16: Please state your position as to how CWU’s assertion that “[u]nder Idaho Code 42-1501, aesthetic, wildlife and recreation are not beneficial uses authorized by the Idaho legislature or Constitution to be held in the name of private entities,” would apply to the water rights identified in Request for Admission 10.

INTERROGATORY NO. 17: In its Objection, CWU asserts that, “If such [aesthetic, wildlife and recreation] uses are allowed, the right cannot carry a priority date earlier than the first date that the legislature authorized that beneficial use to be held by a private party.” Please state your position as to how this assertion would apply to the water rights identified in Request for Admission 10.

INTERROGATORY NO. 18: Please identify each person consulted in responding to these discovery requests and identify the discovery request for which he or she was consulted.

V. REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce copies of any and all documents relied upon in, identified in, or responsive to your answers to each of the above-stated requests for admission and interrogatories.

REQUEST FOR PRODUCTION NO. 2: Please produce copies of all documents and exhibits that you expect to offer as evidence at the trial of this matter.

REQUEST FOR PRODUCTION NO. 3: Please produce copies of any notes, memoranda, letters or other correspondence between you and SVC regarding this matter.

REQUEST FOR PRODUCTION NO. 4: Please produce a copy of any and all documents including, without limitation, all notes, memoranda, drafts, reports, and work papers from or prepared by expert witnesses listed in your answers to the foregoing interrogatories.

REQUEST FOR PRODUCTION NO. 5: Please produce any and all written reports or documents of any kind whatsoever generated, relied upon, reviewed or possessed by expert witnesses of any type retained by you to renew or analyze this matter and/or render expert testimony.

REQUEST FOR PRODUCTION NO. 6: Please produce the current resume and/or curriculum vitae of each individual whom you may call as an expert witness at the trial of this matter.

REQUEST FOR PRODUCTION NO. 7: Please produce the current resume and/or curriculum vitae of all expert witnesses or consultants with whom you have consulted, either directly or indirectly in this matter.

REQUEST FOR PRODUCTION NO. 8: Please produce copies of any or all statements previously made by SVC or its respective employees, agents or representatives relating in any way to this matter, including any written statement signed or otherwise adopted or approved by SVC or its respective employees, agents or representatives.

REQUEST FOR PRODUCTION NO. 9: Please produce copies of any statements which your witnesses will use, or you anticipate may be used, to refresh their memory, either for deposition or trial.

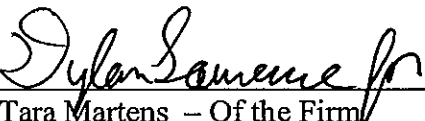
REQUEST FOR PRODUCTION NO. 10: Please produce copies of any communications including, without limitation, all meeting minutes and all e-mails, letters or other correspondence, between you and any other person, which relate in any way to this matter.

REQUEST FOR PRODUCTION NO. 11: Please produce a copy of any and all written agreements entered into by and between CWU (or any member thereof) and the Big Wood Canal Company and/or any expert witness retained thereby.

REQUEST FOR PRODUCTION NO. 12: To the extent not produced in response to the preceding requests for production, please produce all electronically stored information in your possession, custody, or control that is responsive to SVC's First Set of Requests for Admissions, Interrogatories, and Requests for Production pursuant to Idaho Rule of Civil Procedure 34(a), including, but not limited to, information stored on any desktop computer, laptop computer, blackberry, hard drive, external storage media, local area network, wide area network, handheld device, personal digital assistant, mobile phone, server, and/or archive/backup system.

DATED this 9th day of May, 2008.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Tara Martens – Of the Firm
Attorneys for Sinclair Oil Corporation
dba Sun Valley Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of May, 2008, I caused a true and correct copy of the foregoing **FIRST SET OF REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS FOR PRODUCTION TO MEMBERS OF THE "CONCERNED WATER USERS"** to be served by the method indicated below, and addressed to the following:

Director
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front St., 6th Floor
P.O. Box 83720
Boise, ID 83720-0098
Fax: (208) 287-6700

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Chief, Natural Resources Division
Office of the Attorney General
STATE OF IDAHO
P.O. Box 44449
Boise, ID 83711-4449
Fax: (208) 334-2530

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

UNITED STATES DEPARTMENT OF JUSTICE
Environment & Natural Resource Division
550 W. Fort St., MSC 033
Boise, ID 83724
Fax: (208) 334-1414

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Albert P. Barker
BARKER, ROSHOLT & SIMPSON, LLP
P.O. Box 2139
Boise, ID 83701
Fax: (208) 344-6034

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

Attorneys for Tom O'Gara, John F. Stevenson, Bill Molyneux, Pete Van Der Meulen, Grace Eakin, Rocky Sherbine, Gerald Bashaw, and Pepin Corso-Harris

Craig Hobdey
HOBDEY & HOBDEY
P.O. Box 176
Gooding, ID 83330
Fax: (208) 934-4420

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

Attorneys for Big Wood Canal Company

James P. Speck
SPECK & AANESTAD
120 East Avenue
P.O. Box 987
Ketchum, ID 83340
Fax: (208) 726-0752

*Attorneys for Barker Living Trust, Chaney Creek
Ranch LLC, Charles L. Mattiesen, Charles T. Foley,
Eagle Creek Irrigation Co, ECD Inc., Elise G. Lufkin,
Gimlet Property Owners Assn., Gregory Ranch LLC,
Lake Creek Meadows Homeowners, Michael E.
Willard, Michael Engl, Myer Berlow, Ralph W. &
Kandi L. Girton, River Rock Ranch LP, Rivers Edge
Associates LLC, Roy R. Woods, Steven D. Holzman
Trust, The Gulch Trust, The R. Daniel Olmstead,
William B. Gordon*

(X) U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
() Facsimile

Steven B. Andersen
P.O. Box 2527
Boise, ID 83701-2527
Fax: (208) 343-8869
Attorney for Charles L. Matthiesen

(X) U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
() Facsimile

Fritz X. Haemmerle
Special Master
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707
Fax: (208) 578-0564
Attorney for Flying Heart Ranch II

(X) U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
() Facsimile


Tara Martens