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DEPARTMENT OF
WATER RESOURCES

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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, 37-1211
)
)

) **RESPONSE TO FIRST SET OF**
) **INTERROGATORIES AND REQUESTS**
) **FOR PRODUCTION FOR SINCLAIR**
) **OIL COMPANY, dba SUN VALLEY**
) **COMPANY.**
)
)

COMES NOW BIG WOOD CANAL COMPANY by and through its attorneys of record
and responds to Sinclair Oil's First Set of Requests for Interrogatories and Request for Production:

GENERAL OBJECTIONS

1. Respondent, Big Wood Canal Company (BWCC) objects to the method of service by Sinclair Oil Corporation. These discovery requests were served after business hours by fax on a Friday afternoon. These discovery requests should therefore be deemed served the following business day. Otherwise Sinclair Oil has deprived Respondents of their time for filing responses allowed by the Idaho Rules of Civil Procedure.

2. Respondents object to the Interrogatories and to the definitions and instructions to the extent they purport to require discovery responses beyond that required under the local rules and

RESPONSE TO FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION FOR SINCLAIR OIL COMPANY
dba SUN VALLEY COMPANY

order of the Idaho Rules of Civil Procedure. These responses are provided in accordance with the Idaho Rules of Civil Procedure irrespective of any definitions and instructions that may accompany the discovery requests.

3. These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such requests were asked of, or any statement, material, or information provided were made by witness present and testifying in court. All such objections are reserved and may be interposed at the time of trial.

4. Respondents specifically object to these discovery requests to the extent they seek information protected by the attorney-client privilege, the accountant-client privilege, the work product doctrine, and the rules governing the discovery relating to experts set forth in Rule 26(b)(4). The objection is intended to apply to all of the discovery requests that seek such information and will not be repeated specifically for each request to which it applies. Respondents, to the extent possible, construed each request as requesting only information and/or documents not subject to any applicable protection.

5. No incidental or implied admissions are intended. The fact that the Respondent has responded to any discovery request or part thereof should not be taken as an admission that the Respondent accepts that the discovery request or the response or objection thereto constitutes admissible evidence. Similarly, the fact that the Respondent has responded to all or part of a request is not intended to and shall not be construed to be a waiver by the Respondent of all or part of any objection to other requests. Respondent's answers to any discovery requests herein do not constitute a waiver of the Respondent's right to object to any future additional, or supplemental discovery requests regarding the same or similar matters.

6. Each of these objections is incorporated into the response to each of the Interrogatories as through set forth verbatim therein.

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.

ANSWER TO INTERROGATORY NO. 1: The Requests to Admissions No. 1, 2, 4, and 5 were denied because they mischaracterized the nature of the Objectors' objections. Request for Admission No. 6 was denied in part because Sinclair Oil Corporation quoted only a portion of the statute and mischaracterized Objectors' position with respect to the interpretation of the statute. Requests for Admissions No. 7, 8, and 9 were denied for reasons set forth in Response to Request for Admissions No. 7, 8, and 9.

With respect to the expert opinions relied upon in making the denial, at this time Objectors have not determined whether or not an expert will be called in the trial of this matter and any experts' objectors have relied upon are consultants not subject to discovery under Rule 26 of the Idaho Rules of Civil Procedure. Disclosure of expert witness testimony will be done in accordance with the Court's schedule for disclosure of expert testimony prior to trial.

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.

ANSWER TO INTERROGATORY NO. 2: At this time, Objectors are not aware of each and every individual who has knowledge of the facts discoverable regarding the Sinclair Oil Corporation's water rights and water use. At the very least, the individuals associated with and with knowledge of Sinclair Oil Corporation's use include employees of Sinclair Oil Corporation, including Wally Huffman and others, employees of the Idaho Department of Water Resources who have been dealing with Sinclair Oil Corporation on these water rights, including Department employees in the southern regional office and the Department employees involved in the field verification and recommendation for these water rights. Other individuals with knowledge include the Basin 37 Water Master and Assistant Water Master, Kevin Lakey and David Murphy. This Interrogatory will be supplemented as additional individuals with knowledge are discovered.

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.

ANSWER TO INTERROGATORY NO. 3: At this time, Objectors have not identified any individual to call as a lay witness at the trial of this matter.

INTERROGATORY 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 opinion 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.

ANSWER TO INTERROGATORY NO. 4: At this time, Objectors have not determined whether to call any person as an expert witness in the trial of this matter.

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.

ANSWER TO INTERROGATORY NO. 5: At this time, Objectors have not determined what exhibits they plan to offer into evidence at the trial of this matter. However, Objectors reserve the right to use any and all portions of the IDWR files and back files for the water rights, aerial photographs and maps of the use of water by Sinclair Oil Corporation.

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.

ANSWER TO INTERROGATORY NO. 6: At this time, Objectors are not aware of any admissions or statements against Sinclair Oil Corporation's interest in this matter except to the extent such statements are contained in the back files and communications with the Department of Water

Resources, all of which are available to the Sinclair Oil Corporation.

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.

ANSWER TO INTERROGATORY NO. 7: At this time, Objectors are aware there may be communications contained in the IDWR files and back files for these water rights.

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.

ANSWER TO INTERROGATORY NO. 8: At this time, Objectors are aware that there may be documents contained in the IDWR files and back files for these water rights.

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.

ANSWER TO INTERROGATORY NO. 9: At this time, Objectors are aware that there may be documents contained in the IDWR files and back files for these water rights.

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

ANSWER TO INTERROGATORY NO. 10: Previous decrees, including the Frost Decree, recognize that the beneficial use is one inch per acre. Objectors understand that studies have been undertaken by Brockway and others showing that aesthetic and pond use consumes approximately the same amount of water as irrigation use and the Department has applied such standard in its decisions in the Basin.

INTERROGATORY NO. 11: Please explain the factual and legal bases supporting BWCC'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."

ANSWER TO INTERROGATORY NO. 11: The Idaho Department of Water Resources, based upon studies by Allen and Brockway, has determined the consumptive irrigation requirement and field headgate requirements for the administrative basins throughout the state. The Department has determined for Basin 37, Part 3 that the field headgate requirement is 3.5 feet per acre.

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

ANSWER TO INTERROGATORY NO. 12: Objectors have sought permission of the Court to amend their objections to drop this portion of the objection. Hence, this interrogatory is not calculated to lead to the discovery of admissible evidence. Without waiving this objection, objectors state as follows: The Idaho Constitution provides for the right to divert water for beneficial use. It specifically authorizes the use of water for agricultural, manufacturing, mining, milling, and domestic uses. Idaho Constitution Article XV, Section 3. The Idaho Constitution does not authorize private parties to divert water for aesthetic, wildlife or recreation uses. Idaho Code §42-1501 authorizes and recognizes the use of certain water of the state for aesthetic, wildlife, and recreational uses. However, that code section does not authorize private parties to hold those rights and does not authorize any person to divert water for his own private use and label it as an aesthetic, wildlife, or recreation use. Instead, Idaho Code §42-1501 contemplates that such uses for fish and wildlife habitat, aquatic life, recreation, and aesthetic beauty should be held on behalf of the state for the people of the State as a whole, not by private individuals. These legal arguments are developed more extensively in the briefings filed by Sinclair Oil Corporation's counsel on behalf of Pioneer and Settlers Irrigation Districts in the Lucky Peak water right subcase.

INTERROGATORY NO. 13: Please explain the factual and legal bases supporting BWCC assertion in its Objections to water rights 37-415 and 37-416 the "(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."

ANSWER TO INTERROGATORY NO. 13: Assuming that a new right to put water to beneficial uses for aesthetic, wildlife, or recreation uses has been authorized for private parties by the legislature or the Department by the 1970's, such a right for aesthetic, wildlife, and recreation uses

was not previously recognized. When new use is created, the priority date for that new use should be no earlier than the date which the legislature authorized that particular use of water; otherwise creating new uses not previously recognized enlarges the water rights and would cause injury to existing water rights. This enlargement of a water right to add new uses should, under the enlargement statute, require a priority date of the date the enlarged use was recognized.

INTERROGATORY NO. 14: Please state your position as to how BWCC's assertion that "(c)combined use of (an irrigation) right along with other rights from the same place of use should be limited to one inch or 0.02cfs per acre," would apply to irrigation water rights owned by BWCC.

ANSWER TO INTERROGATORY NO. 14: Objectors object to this Interrogatory on the grounds that it is irrelevant and seeks information that is not calculated to lead to the discovery of admissible evidence and that it involves legal conclusions relating to water rights not at issue in this subcase.

INTERROGATORY NO. 15: Please state your position as to how BWCC'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 BWCC.

ANSWER TO INTERROGATORY NO. 15: Objectors object to this Interrogatory on the grounds that it is irrelevant and seeks information that is not calculated to lead to the discovery of admissible evidence and that it involves legal conclusions relating to water rights not at issue in this subcase.

INTERROGATORY NO. 16: Please identify each person consulted in responding to these discovery requests and identify the discovery request for which he or she was consulted.

ANSWER TO INTERROGATORY NO. 16: Lynn Harmon manager of BWCC was consulted. However most of the responses were, or could be, classified as attorney work product. No individual Board member was consulted and the Board has not met to either approve or disapprove these answers. Objectors object to any further response on the grounds that further responses to this Interrogatory would infringe on the attorney-client and work product privileges.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: The documents identify, relied upon or responsive to the Requests for Production include the quoted sections of the Idaho Constitution and the Idaho Code which are equally available to Sinclair. In addition, the water rights, claims,

recommendations and back files on Sinclair Oil Corporation water rights are available to Sinclair.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: At this point, Objectors have not decided what documents they intend to offer at 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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: The only documents that Objectors are aware of are the objections filed and served in this matter which are in the possession of Sinclair Oil Corporation.

REQUEST FOR PRODUCTION NO. 4: Please produces 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 answer to the foregoing interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Objectors object to producing any such information on the grounds that at this time no testifying expert has been identified.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: Objectors object to producing any such information on the grounds that at this time no testifying expert has been identified.

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: Objectors have not identified a testifying expert witness at this time.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: Objectors object to producing any such information on the grounds that at this time no testifying expert has been identified, and this request violates IRCP 26, and the attorney-client and work product privileges.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: See back files for the water rights held by Sinclair Oil Corporation which are in the possession of Sinclair Oil Corporation.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: To the extent that this Request seeks information protected by the attorney-client privilege, Objectors object thereto. However, at this time, there are no such statements anticipated to be used to refresh the recollection of any such witness.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10: Objectors object to this Request to the extent that it includes communications with counsel and consulting witnesses, and violates the attorney-client and work product privileges. Objectors are aware of no information relevant to this matter which is not protected by the attorney-client and work product privileges.

REQUEST FOR PRODUCTION NO. 11: Please produce a copy of any and all written agreements entered into by and between the "Concerned Water Users" (or any member thereof) and BWCC and/or any expert witness retained thereby.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: No such written agreements exists between BWCC or any of the Objectors concerning any testifying witness. Any other information concerning consultants is not discoverable under Rule 26 of the Idaho Rules of Civil Procedure. All copies of minutes have been provided.

REQUEST FOR PRODUCTION NO. 12: The first portion of the deposition of BWCC's 30(b)(6) representative, Carl D. Pendleton, in subcases 37-415, 37-416, 37-4108, and 37-12111 took place on Friday, March 14, 2008. During that deposition, several documents were requested by counsel for SVC, which counsel for BWCC agreed to produce. Those documents are enumerated in an April 29, 2008 letter to counsel for BWCC. Please produce the documents that are responsive to that

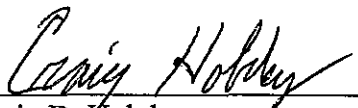
request that have not already been produced.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: All have been produced.

REQUEST FOR PRODUCTION NO. 13: To the extent not produced in response to the preceding request 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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13: To our knowledge, nothing in this request exists.

DATED THIS 11 day of June, 2008.



Craig D. Hobdey
Attorney for Big Wood Canal Company

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on the 11 day of June, 2008, I served a true and correct copy of the foregoing RESPONSE TO FIRST SET OF ADMISSIONS by the method indicated below and addressed to the following:

Scott Campbell
Tara Martens
Dylan Lawrence
Andrew Snook
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Idaho Department of Water Resources
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Boise ID 83720-0098

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Chief, Natural Resources Division
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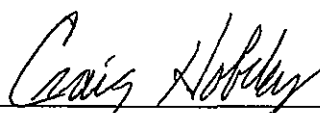
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Craig D. Hobdey

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AND REQUESTS FOR PRODUCTION FOR SINCLAIR OIL COMPANY
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