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JUL 25 2008

DEPARTMENT OF
WATER RESOURCES

Attorneys for Sinclair Oil Corporation d/b/a Sun
Valley Company and Newfoundland Partners LP

Scott L. Campbell, ISB No. 2251
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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. 37-415, 37-416,
37-12111, 37-12130

AFFIDAVIT OF SCOTT L. CAMPBELL

STATE OF IDAHO)

)

County of Ada)

I, SCOTT L. CAMPBELL, being first duly sworn upon oath, depose and state as
follows:

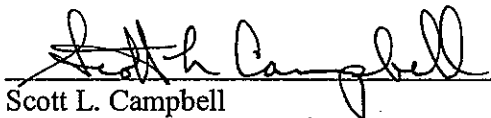
1. I am a duly licensed Idaho attorney with the law firm Moffatt, Thomas,
Barrett, Rock & Fields, Chartered. My firm represents Sinclair Oil Corporation d/b/a Sun Valley
Company and Newfoundland Partners LP in the above-referenced SRBA subcases. I have

access to my clients' files in this matter and make this affidavit based upon personal knowledge, and in support of their Response in Opposition to Motions to Amend Objections filed contemporaneously herewith.

2. Attached hereto as Exhibit A is a letter I received on May 27, 2008, from counsel for CWU, Albert Barker.

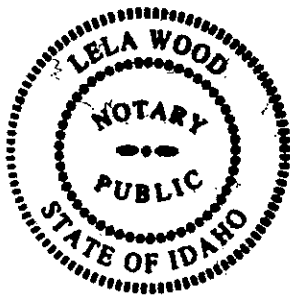
3. Attached hereto as Exhibit B is a true and correct copy of excerpts from the deposition transcript of Carl D. Pendleton, the 30(b)(6) representative designated by the Big Wood Canal Company, which took place on March 14, 2008, in Twin Falls, Idaho.

Further your affiant sayeth naught.



Scott L. Campbell

SUBSCRIBED AND SWORN to before me this 24th day of July, 2008.





NOTARY PUBLIC FOR IDAHO
Residing at Boise, ID
My Commission Expires 5-31-2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of July, 2008, I caused a true and correct copy of the foregoing AFFIDAVIT OF SCOTT L. CAMPBELL to be served by the method indicated below, and addressed to the following:

Albert P Barker
BARKER ROSHOLT & SIMPSON
1010 W Jefferson, Suite 102
P.O. Box 2139
Boise, ID 83701-2139

*Representing: Bill Molyneux, Gerald Bashaw,
Grace Eakin, John F Stevenson, Pete Van Der
Meulen, Rocky Sherbine, and Tom O Gara*

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

Craig D. Hobdey
HOBDEY & HOBDEY
P.O. Box 176
Gooding, ID 83330
Representing: Big Wood Canal Co.

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Fritz X. Haemmerle
HAEMMERLE AND HAEMMERLE, P.L.L.C.
P.O. Box 1800
Hailey, Idaho 83333-1800
Representing: Flying Heart Ranch II

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James P. Speck
SPECK & AANESTAD
120 East Avenue
P.O. Box 987
Ketchum, ID 83340
*Representing: Barker Living Trust, Chaney
Creek Ranch LLC, Charles L Matthiesen,
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, and William B Gordon*

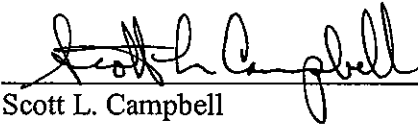
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Pepin Corso-Harris
c/o Concerned Water Users
P.O. Box 1200
Bellevue, ID 83313

☒ U.S. Mail, Postage Prepaid
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Director
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front Street, 6th Floor
P.O. Box 83720
Boise, ID 83720

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Scott L. Campbell

In Re SRBA,

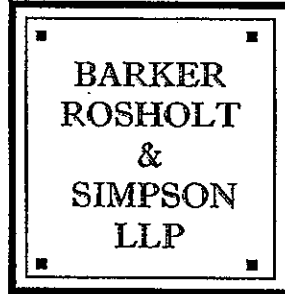
Case No. 39576

Subcase Nos. 37-415, 37-416,
37-12111, 37-12130

EXHIBIT A

TO AFFIDAVIT OF SCOTT L. CAMPBELL

ALBERT P. BARKER
JOHN A. ROSHOLT
JOHN K. SIMPSON
TRAVIS L. THOMPSON
SHELLEY M. DAVIS
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Albert P. Barker
apb@idahowaters.com

May 23, 2008

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MAY 27 2008

MOFFATT, THOMAS, BARRETT,
ROCK & FIELDS, CHTD.

Scott L. Campbell
Moffatt Thomas
P. O. Box 829
101 So. Capitol Blvd, 10th Floor
Boise, ID 93701-0829

Re: *Water Right No. 37-415, 37-416, 37-12111 (Sinclair Oil),
37-12130 (Newfoundland Partners)*

Dear Scott:

The individuals making up the Concerned Water Users have filed objections to water rights held by your clients identified above on the grounds that the rights for aesthetic, wildlife or recreation uses are not appropriate rights to be held by a private party without due authorization from the legislature, which has not been given in any of the water right statutes. We understand that you may have a different view of the Department's ability to grant or your client's authority to obtain an aesthetic, recreation or wildlife right in the absence of legislative authorization. I am not writing here to debate that issue. Instead, I am proposing a method for resolution of the objections by the Concerned Water Users to your clients rights for aesthetic, wildlife and recreational uses.

My clients are more concerned about the practical effects of impounding water in the upper portions of the basin than in debating the fine points of constitutional law or the authority of the Department of Water Resources. Accordingly, my clients are willing to withdraw their objections to aesthetic, wildlife, and recreational uses on the following conditions dealing with elements of the water right, rather than whether the water right can exist in the first place. The elements which concern my clients, along with a proposal of how to deal with those concerns, are set forth below.

1. Diversion Rate. The diversion rate would be set at the same diversion rate as an irrigation right: one inch per acre for every acre of surface area of the aesthetic, recreation or wildlife used. Studies have been done over the years suggesting that the seepage and evaporation from ponds and other aesthetic amenities are approximately the same as that of an

irrigated field. The Department has acknowledged pond use to be roughly equivalent consumptive use to irrigated fields in a number of decisions over the years. If the aesthetic, wildlife, or recreational use was transferred from a preexisting water right, as these appear to have been, the diversion rate cannot exceed the diversion rate on a per acre basis of the preexisting right.

2. Volume. As with the diversion rate, the consumptive use from the pond or other aesthetic, recreation or wildlife use should be limited to the irrigation annual total volume of 3.5 feet per acre, not to exceed the right from which the aesthetic, recreational, and wildlife use is derived. We also believe that a provision to ensure that this consumptive use requirement would not be exceeded should be handled by inclusion of the following remark, which has been used by the Department in rights in the Basin.

"At the end of each irrigation season, the right holder shall measure the remaining volume in the storage pond. Any year that the storage volume drops below ____ acre feet [the storage volume of the ponds] irrigation the following year shall be reduced by 1.0 acre for every 2.5 acre feet required to increase the volume to the storage volume of the pond.

3. Measurement. Many of the water rights in the basin including some of your clients rights have a generic measurement requirement which typically states something like the following:

"The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the water master suitable control of the diversion."

With aesthetic, recreational, and wildlife uses, a single measuring device is not sufficient for the water master to adequately measure the usage by the ponds and other aesthetic streamlets. Therefore, the following remark regarding measuring devices for the ponds and other aesthetic uses would be necessary. The Department has recognized this need in a number of water rights in the Basin. This remark should be carried forward into all of these rights. The following language would be acceptable.

"Prior to diversion of water, flow measuring devices specified by the Department and/or water master shall be installed by the right holder at the point of diversion [from the stream/or to storage] and the point of discharge back to the stream. The flow measuring devices shall provide a means of measurement and lockable controlling works which will provide suitable control of the diversions."

4. Administration. There have been instances in the Big Wood where individual water right holders have attempted to lock out the water master from performing his duties. The following remark is contained in some of the recommendations for your clients rights, where it is not, the following remark shall be included:

"Use of the water under this water right will be regulated by the water master of State Water District No. 37."

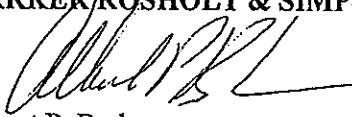
5. Water Quality. The Big Wood River is a water quality limited segment. Ponds increase water temperature and nutrients which are returned to the Big Wood River. The Department has included water quality provisions in other water rights. To protect the Big Wood River, the following remark shall be included:

"Water used under this right when discharged back to a natural channel shall comply with Idaho Water Quality Standards. Monitoring may be conducted by the Idaho Department of Water Resources and/or the Idaho Department of Environmental Quality."

The individuals making up the Concerned Water Users believe that these conditions are both reasonable and consistent with requirements of Idaho Water Law. If your clients are willing to accept these conditions on the use of water in the ponds and other aesthetic recreational wildlife rights, the Concerned Water Users withdraw their objections to the existence of these rights. We have consulted with Big Wood Canal Company and they agree to withdraw their objections to these rights on these same conditions. I think you will agree that this is a significant proposal from the objectors and we hope that it will result in resolution of these objections. It will mean that a large scale legal battle can be avoided. If this proposal is not acceptable to resolve the objections, the Concerned Water Users will amend their objections to raise these conditions as to the use of the water under these rights.

Very truly yours,

BARKER, ROUSHOLT & SIMPSON LLP


Albert P. Barker

APB/jcm

cc: Concerned Water Users
Craig Hobdey
Chris Bromley (IDWR)

In Re SRBA,
Case No. 39576
Subcase Nos. 37-415, 37-416,
37-12111, 37-12130

EXHIBIT B
TO AFFIDAVIT OF SCOTT L. CAMPBELL

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	)	Subcase Nos. 37-00415
	)	37-00416
Case No. 39576.	)	37-04108
	)	37-12111

DEPOSITION OF CARL D. PENDLETON

Volume I

(Pages 1 through 77)

Law Offices of
Moffatt, Thomas, Barrett, Rock & Fields,
Chartered
1411 Falls Avenue East, Suite 614
Twin Falls, Idaho 83301

Friday, March 14, 2008
Beginning at 10:10 o'clock a.m.

QnA COURT REPORTING
Lori A. Pulsifer, CSR, RDR, CRR
Idaho Certificate No. 354
PMB 219, 111 Broadway, Suite 133
Boise, Idaho 83702-7200
E-mail: realtimeqna@msn.com
Telephone: (208) 484-6309

(COPY)

1 Q. Did the Board have any discussions about filing
2 objections generally to water rights in a particular
3 category on the Big Wood River?

4 A. As I stated before, not in particular to any
5 water right. However, yes, generally, we object to
6 aesthetic uses and the appropriateness of those
7 aesthetic uses up in the Valley. So that's a general
8 class that we objected to.

9 I think, as part of your question — how did we
10 get to the point of these objections?

11 Q. Right. Discussions that the Board had about
12 that?

13 A. Exactly. We had hired an individual out of
14 Boise, probably nearly a year ago — it was less than a
15 year ago — to answer some questions that we had about
16 some particular rights or classes of rights. That was
17 not fruitful.

18 In October, probably, I met with one of the
19 individuals involved in the Concerned Water Users Group.
20 It became apparent that they had information and had
21 been compiling information for a year on multitudes of
22 rights and were prepared to file numerous objections.

23 So a component of our Board met with their
24 group after some of their leadership had come to one of
25 our Board meetings, and we joined forces. We used their

13

1 data that they have been collecting to file as the basis
2 for the filing of the objections.

3 Q. You did not bring that data with you today?

4 A. We don't have a copy of that data. We met with
5 their group, with their hydrologist and support people
6 there.

7 We discussed what the bases of their objections
8 were going to be; and we adopted their list and threw
9 our support behind them, or in conjunction with them, to
10 file the objections.

11 Q. And when was that, sir?

12 A. That meeting was in November.

13 Q. Of last year?

14 A. Yes, 2007.

15 Q. Where did it take place? Do you know?

16 A. It took place at Pete Van Der Meulen's
17 bunkhouse on the Bellevue Triangle, at his farm.

18 Q. And who was the hydrologist that they had
19 retained to provide this analysis that you folks
20 evaluated at this meeting?

21 A. Dr. Wendy Pabich. It's P-a-b-i-c-h.

22 Q. And do you know where she resides?

23 A. I think it's P-a-b-i-c-h. Pardon me?

24 Q. Do you know where she resides?

25 A. In the Hailey area.

14

1 Q. Did you personally examine any of the
2 documentation that she had prepared with respect to the
3 water use issues that are involved with this particular
4 set of objections that the Canal Company filed?

5 A. I believe I saw some of the documentation that
6 she presented.

7 Q. Can you describe it to me?

8 A. A lot of the issues of the water transfers and
9 those types of things were based on research by research
10 folks working under her.

11 I know I looked at one file that was shown to
12 me; I cannot tell you even who that file was on. Those
13 were notes, for the most part, and copies of documents
14 that were found in the Blaine County Courthouse or even
15 as far back as the others.

16 Q. In terms of the meeting that occurred in
17 November, was Dr. Pabich — is it "Pabich"?

18 A. Yes.

19 Q. Was she present?

20 A. Yes, she was.

21 Q. Do you recall what she said at the meeting?

22 A. Our discussions were, of course, with the
23 entire group. Her part of that meeting was to
24 categorize, talk about some of the things that had been
25 found, point out some of the ones that appeared to be

15

1 flagrant, in terms of over-diversion or missteps in
2 transfers or the question of aesthetic use and that sort
3 of thing and whether it was appropriate.

4 MR. HOBDEY: I am going to object at this time
5 and ask that the questions pertain to these subcases
6 only and not to the general — this is not relevant.
7 The questions you ask aren't relevant to these
8 subcases — either that or he didn't understand it that
9 way.

10 MR. CAMPBELL: You can have a continuing
11 objection, if you would like, so you don't have to
12 repeat that. That's fine.

13 MR. HOBDEY: I do.

14 BY MR. CAMPBELL:

15 Q. So, Mr. Pendleton, were there specific
16 references to specific transfers identifying property
17 owners in the Big Wood River that Dr. Pabich identified?

18 A. Yes.

19 Q. Do you recall the names of any of them?

20 A. I don't believe any of these four were part of
21 that. There was reference made to Lane Ranch
22 diversions. There was general reference to the number
23 and quantity and legality of impoundments.

24 Q. And —

25 A. Non —

16

1 Q. Go ahead. I'm sorry.

2 A. Non-consumptive use impoundments with no outlet
3 to flow back to the river. So the question becomes: Is
4 that a non-consumptive use, and is it appropriate?

5 Q. Was that a comment by Dr. Pabich about this
6 particular type of water use or this particular type of
7 category of water use?

8 A. If not a direct comment, I would say, yes, that
9 was the crux of the conversation on that matter.

10 Q. Did Dr. Pabich offer any kind of opinions with
11 respect to whether or not a particular transfer was
12 appropriate?

13 A. Yes. Based on research that was done and
14 documents that had been found, there appeared to be some
15 anomalies that we needed to object to.

16 Q. Did she identify what those anomalies were?

17 A. In some cases.

18 Q. What were some of the cases?

19 A. As I think I have stated before, whether the
20 recorded -- the historic diversion quantity to a lake
21 was appropriate and, based on the record, was it extreme
22 compared to the right that was held?

23 Q. During that meeting, did she describe any other
24 water rights involving aesthetic or wildlife use that
25 were not transfers?

17

1 A. You're going to have to go a little deeper on
2 that question.

3 Q. You mentioned transfers, that that --

4 A. Correct.

5 Q. -- was sort of the focus of Dr. Pabich and she
6 had evaluated, or her people had evaluated, several
7 transfers; is that correct?

8 A. Transfers -- probably to add to that would be
9 changes of use, those types of transfers.

10 Q. Well, okay. That's fine.

11 A. Okay.

12 Q. Did she or her employees evaluate any water
13 rights that did not involve transfers but dealt with
14 aesthetic or wildlife uses?

15 A. Yes, yes.

16 Q. And how many of those did she discuss?

17 A. Oh, I think, a small number. A very small
18 number. I don't know how many. As we discussed a
19 category of objections, if you will, there may have been
20 one, two, or three examples of each.

21 So the classes of objections are pretty -- are
22 pretty defined. Maybe we talked about, you know, ten,
23 in the entire meeting, offered as examples.

24 Q. Do you recall the members of the Big Wood Canal
25 Company who were present during that meeting, besides

18

1 yourself?

2 A. Yes.

3 Q. Can you give the names, please?

4 A. Chairman Jerry Nance was there; Vice President
5 Mike Faulkner was there; myself -- I was there -- Greg
6 Lehmann, who is a Director, was there.

7 Q. How do you spell the last name?

8 A. Oh, L-e-h-r-m-a-n-n, I believe.

9 Am I close?

10 Q. This is your recollection. I was just asking
11 you. Anyone else?

12 A. Attorney Hobday was there.

13 Q. And the members of the Concerned -- is it the
14 Concerned Water Users?

15 A. Yes, I believe so.

16 Q. Do you know who of that group was present at
17 the meeting?

18 A. I'm sure I would miss some. Do you want some
19 names, though?

20 Q. The names you can recall.

21 A. Pete Van Der Meulen, Jerry Bashaw, Grace Eakin,
22 Bill Molyneux, Pepin Corso-Barris. There were a couple
23 more faces, but I can't put the names there.

24 Q. And Dr. Pabich?

25 A. Dr. Pabich was there.

19

1 Q. Was there anyone else with her group that was
2 there, besides her?

3 A. She has a clerical person, a researcher, by the
4 name of Sunny. I don't recall her last name.

5 Q. She was present?

6 A. She was present. Also, one of the
7 researchers -- Murphy is his last name -- David Murphy
8 was there.

9 Q. And he is with her group?

10 A. Yes. He is also a Deputy Watermaster for 37
11 Water District, but he does research for this group.

12 Q. Was anyone else present that you recall?

13 A. As I indicated, there were some other members
14 of that Concerned Water Users Group; and I don't recall.

15 Q. Was their attorney present?

16 A. No.

17 Q. All right. Following this meeting in November
18 with the Concerned Water Users Group, did the Big Wood
19 Canal Company Board of Directors have a subsequent
20 meeting to discuss these issues?

21 A. We had our regular meeting which would be the
22 first working day of December.

23 Q. Did this particular topic generate any
24 discussion?

25 A. It did. The discussion was, of course, whether

20

1 to join the group and to financially support the group.
 2 Q. And what was the result of that discussion?
 3 A. That we would fund their research and
 4 hydrological activities for the month of December and
 5 then continue to be affiliated with the group and fund a
 6 portion of those same activities for the coming year,
 7 including Adjudication-type activities.
 8 Q. With respect to that decision to fund a portion
 9 of the costs of this group, the Concerned Citizens, did
 10 that include funding for preparation of objections to be
 11 filed by the Big Wood Canal Company against the water
 12 rights that were the subject of concern?
 13 A. Yes, it did.
 14 Q. Did that include funding to prepare objections
 15 to the water rights identified in the Notice of
 16 Deposition, Exhibit No. 1?
 17 A. Yes, it did.
 18 Q. Who actually prepared the objections that were
 19 filed by the Big Wood Canal Company?
 20 A. Attorney Barker, Al Barker.
 21 Q. Is Mr. Barker retained as counsel for the Big
 22 Wood Canal Company, also?
 23 A. He is retained as counsel for the Concerned
 24 Water Users.
 25 Q. I see. So he does not represent the Big Wood

21

1 Canal Company?
 2 A. Only at the consent of Mr. Hobday.
 3 Q. I would like you to look at what has been
 4 marked as Deposition Exhibit No. 2, if you would, sir.
 5 Tell me after you have had a chance to review that
 6 document, please.
 7 Have you reviewed the document?
 8 A. I have.
 9 Q. Can you tell me if you can identify the
 10 document?
 11 A. It would be the Recommendation by the Director
 12 for a water right for Sinclair Oil Company.
 13 Q. Have you ever seen a copy of this document
 14 before?
 15 A. I have.
 16 Q. Can you tell me the context of when you saw it
 17 before?
 18 A. On the website concerning Adjudication issues
 19 from IDWR.
 20 Q. And when did that occur?
 21 A. Actually, yesterday.
 22 Q. So was that the first time that you saw this
 23 particular document?
 24 A. It is.
 25 Q. So do you know if anyone else with the Big Wood

22

1 Canal Company reviewed this particular document before
 2 yesterday?
 3 A. I doubt it very much.
 4 Q. Why do you say that?
 5 A. Other than activities of our Manager, there
 6 really is no one on the Board, other than myself, that
 7 is dealing with any particular water right. Since I was
 8 the one selected for this deposition from the Board, it
 9 is part of my responsibility.
 10 Q. And you mentioned the Manager?
 11 A. Yes.
 12 Q. His name is what?
 13 A. Lynn Harmon.
 14 Q. Is he involved in the strategy with respect to
 15 the objections filed against the Sun Valley Company
 16 Water Rights?
 17 A. No. And I will now qualify that. He also was
 18 in attendance at the meeting with the Concerned Water
 19 Users.
 20 Q. In November of 2007?
 21 A. In November of 2007. But particular — you are
 22 asking, particularly, about this particular filing or
 23 any other?
 24 I think, generally, as we move ahead, our
 25 Manager would be very key in the daily ongoings of our

23

1 Adjudication and filings. But to review these
 2 particular ones? I don't believe he has.
 3 Q. Well, we can ask him later on. So before the
 4 Big Wood Canal Company filed its objection to Water
 5 Right No. 37-00415, your testimony is that no one
 6 reviewed Exhibit No. 2; is that correct?
 7 A. That's correct.
 8 Q. Mr. Pendleton, you mentioned that you reviewed,
 9 on the website, the electronic version of Exhibit No. 2;
 10 is that correct?
 11 A. Uh-huh.
 12 Q. What else did you review yesterday on the
 13 website? What other documents or information?
 14 A. I just reviewed the four documents — or the
 15 subcases that you had indicated for the deposition.
 16 Q. Now, by reviewing those documents for those
 17 subcases, was it just the recommendation that you
 18 reviewed or did you review --
 19 A. Yes. I'm sorry. I will let you continue.
 20 Q. So your answer is, yes, that is all you
 21 reviewed on the website?
 22 A. Uh-huh.
 23 Q. Is that a yes?
 24 A. Yes, it is.
 25 Q. Thank you. Did you review the claims filed by

24

1 A. That's correct.
 2 Q. Can you tell me the basis for the Big Wood
 3 Canal Company asserting that the Sun Valley Company
 4 should not have a total volume of water delivered to the
 5 property in excess of 3.5 acre-feet per acre?
 6 A. I believe that is established either in policy
 7 or someplace by Idaho Water Resources. That would be
 8 the annual diversion required to raise a crop in that
 9 particular area, given their soils.
 10 Q. Given their soils?
 11 A. Given their soils and their environment and
 12 their growing season.
 13 Q. By "their," do you mean the Sun Valley
 14 Company's soils?
 15 A. The soils of the region which would include
 16 their soils, yes.
 17 Q. What region are you talking about, just so I
 18 have a better sense of the geography?
 19 A. I understand. That would be, most likely,
 20 attached to the Bellevue Triangle area below,
 21 significantly below. I think that is a general water
 22 use amount that's been established for that area,
 23 including the Upper Valley.
 24 Q. Is there any other basis for the statement that
 25 I just read, other than what you have described?

33

1 A. Not to my knowledge.
 2 Q. The next sentence states -- and I will read
 3 it -- "Under Idaho Code Section 42-1501, aesthetic,
 4 wildlife, and recreation are not beneficial uses
 5 authorized by the Idaho Legislature or Constitution to
 6 be held in the name of private entities."
 7 Did I read that correctly?
 8 A. Yes.
 9 Q. With respect to that statement, Mr. Pendleton,
 10 can you tell me whether or not the Big Wood Canal
 11 Company is focusing exclusively upon Idaho Code Section
 12 42-1501 for the proposition that aesthetic, wildlife,
 13 and recreation are not beneficial uses which can be held
 14 in the name of private entities?
 15 MR. HOBDEY: Object; calls for a legal opinion.
 16 Go ahead and answer it.
 17 THE WITNESS: Apparently, in the statement,
 18 that's what we are doing. It's a very narrow
 19 interpretation of the Code because it is not mentioned.
 20 BY MR. CAMPBELL:
 21 Q. So the Big Wood Canal Company's position is it
 22 is restricting its position to Idaho Code Section
 23 42-1501; is that right?
 24 MR. HOBDEY: Standing objection to anything
 25 that calls for a legal opinion.

34

1 MR. CAMPBELL: Sure.
 2 THE WITNESS: You know, I am not certain.
 3 However, as stated there, it is hanging its hat on that
 4 Code.
 5 BY MR. CAMPBELL:
 6 Q. Moving on to the final sentence in the
 7 paragraph on page 3 of Exhibit 3, Mr. Pendleton, I will
 8 read the sentence outloud.
 9 "If such uses are allowed, the right cannot
 10 carry a priority date earlier than the first date that
 11 the legislature authorized that beneficial use to be
 12 held by a private party."
 13 Did I read that correctly?
 14 A. Yes.
 15 Q. The emphasis on that was incorrect; but in
 16 terms of that particular sentence, can you tell me what
 17 the position of the Big Wood Canal Company is with
 18 respect to priority date and the first date that the
 19 legislature authorized the beneficial use to be held by
 20 a private party? I am not understanding that.
 21 A. My interpretation of that is that beneficial
 22 uses in streams is quite often authorized but carries
 23 that priority date, much less -- much like a minimum
 24 flow right; those types of issues. So they carry the
 25 date they are established.

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1 To convert -- our position would be that to
 2 convert an irrigation right to a non-consumptive
 3 aesthetic right -- if it's not a beneficial use accepted
 4 under the Constitution, then how can that priority date
 5 attach to that change of views?
 6 MR. CAMPBELL: Well, you raised the issue that
 7 was discussed under my question about 42-1501. I guess
 8 now is a good time to bring this out.
 9 (Deposition Exhibit No. 4 was marked for
 10 identification by the court reporter.)
 11 BY MR. CAMPBELL:
 12 Q. Mr. Pendleton, I will represent to you that
 13 Exhibit 4 is a copy of the Idaho Constitution, with
 14 Amendments, from the Idaho Secretary of State's website.
 15 I will not ask you to read the whole thing because we
 16 would be here for a long time.
 17 Given your answer and, also, in the context of
 18 the paragraph on page 3 of Exhibit 3 where there is a
 19 reference to the Constitution, the Idaho Constitution,
 20 can you identify any of the provisions of the Idaho
 21 Constitution in Exhibit 4 that you are relying upon --
 22 that is, by "you," the Big Wood Canal Company?
 23 MR. HOBDEY: Object; calls for a legal opinion.
 24 Do your best to answer it.
 25 THE WITNESS: Other than referencing 42-1501,

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1 as stated in the paragraph here -- to find it in the
2 document here? No, I can't.

3 MR. CAMPBELL: Well, let's go to that
4 particular document.

5 (Deposition Exhibit No. 5 was marked for
6 identification by the court reporter.)

7 BY MR. CAMPBELL:

8 Q. You have been handed what has been marked as
9 Exhibit No. 5. I will represent to you that that is a
10 copy, from the Idaho Statutes website, the State of
11 Idaho website, of the provisions of Idaho Code Section
12 42-1501 through 1508.

13 You can go ahead and review that, sir. Tell me
14 when you have had a chance to review it to the extent
15 that you feel comfortable.

16 A. Okay.

17 Q. There are other provisions, but I am going to
18 just ask you about 1501. Can you tell me,
19 Mr. Pendleton, for the Big Wood Canal Company, what
20 portion of Idaho Code Section 42-1501 you, the Company,
21 believes pertains to your statement of the reasons
22 supporting objections which are contained on page 3 of
23 Exhibit 3?

24 MR. HOBDEY: Standing objection still.

25 THE WITNESS: My interpretation of 1501 is it

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1 deals with minimum stream flows. We have to take issue
2 with the fact that a stream flow -- that a constructive
3 diversion from the stream through a park and into a
4 puddle and on private land is not a minimum stream flow.

5 And I believe, to my reading and my
6 interpretation of this, it's dealing with a public
7 stream flow and a public stream.

8 We get back to the next statement -- or the
9 other statement that's in here. Can that right be held
10 by an individual, or is it a State-held right for a
11 minimum stream flow within a public stream? That's my
12 personal interpretation of this paragraph.

13 BY MR. CAMPBELL:

14 Q. You say it is your personal interpretation. Do
15 you know that the Big Wood Canal Company has any other
16 interpretation, other than what you have stated?

17 A. I don't believe so.

18 Q. Do you know if there have been any discussions
19 at Board meetings concerning the interpretation of Idaho
20 Code Section 42-1501 in the context of these
21 objections?

22 A. Not in the context of these objections, no.

23 Q. Have there been discussions not in the context
24 of the objections but other general discussions about
25 42-1501?

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1 A. Potentially. As I was involved in a Legacy
2 Project, this was one of the Idaho statutes that we used
3 in that procedure -- "Legacy Project" being an effort,
4 combined with Idaho Rivers United, to place voluntary
5 donations into the Wood River from folks up north.

6 Q. Does that pertain to Section 42-1508?

7 A. It should be. Yes, it does.

8 MR. CAMPBELL: Why don't we take a break?

9 (Ten-minute recess.)

10 (Deposition Exhibit Nos. 6 through 11,
11 inclusive, were marked for identification by the court
12 reporter.)

13 BY MR. CAMPBELL:

14 Q. Mr. Pendleton, we are back on the record in
15 your deposition. Please remember that you are still
16 under oath and your testimony is sworn testimony. Do
17 you understand that?

18 A. Yes.

19 Q. I have asked the court reporter to provide to
20 you what we have marked as Exhibits 6 through 11. I
21 will represent to you, Mr. Pendleton, that those
22 documents are the Director's recommendations and the
23 objections filed against those recommendations for the
24 other three water rights which are listed as the water
25 rights for this deposition, from the Notice of

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1 Deposition which is Exhibit No. 1. You can confirm
2 that. Is that your understanding, also?

3 A. Yes. Yes, it is.

4 Q. In an effort to expedite your deposition and
5 save everyone some money, I am going to ask you a
6 general question as it relates to all of those exhibits,
7 6 through 11.

8 Previously, we talked about your examination of
9 certain documents on the Department of Water Resources
10 website relating to the recommendations for the water
11 rights. Would your answers that you gave with respect
12 to Water Right 37-00415 also apply to Exhibits 6 through
13 11?

14 A. Yes, they would.

15 Q. Would they vary in any respect from your
16 answers that relate to Water Right 37-00415?

17 A. No, they would not.

18 Q. And, also, with regard to the documents which
19 are the objections of the Big Wood Canal Company, would
20 your answers vary at all, compared to the questions I
21 asked with respect to Water Right 37-003415?

22 A. They would not.

23 Q. All right. Mr. Pendleton, has the Big Wood
24 Canal Company Board of Directors had any individual
25 meetings with Dr. Wendy Pabich without the Concerned

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1 concerning whether or not the Canal Company diverts more
2 than one inch per acre from Magic Reservoir, you said
3 you could not answer that question; is that right?

4 A. That's right. That was my answer.

5 Q. Do you know who could answer that question?

6 A. I think the Manager of the Company could answer
7 that question. You've got to realize that the flows
8 from Magic Reservoir have significantly declined, either
9 from actions in the Upper Valley or from global warming
10 or whatever you subscribe to. So there are many years
11 that it's been abbreviated.

12 Q. I am not --

13 A. The season has been abbreviated because we just
14 didn't have the water coming out of the Reservoir,
15 however you want to couch that.

16 Q. What is your Manager's name, again? Lynn?

17 A. Lynn Harmon.

18 Q. Harmon?

19 A. Uh-huh.

20 Q. Now, Mr. Pendleton, you mentioned a number of
21 different meetings at which Dr. Pabich was present; is
22 that correct?

23 A. Yes.

24 Q. Let's talk about the meeting in November of
25 2007 again. Can you tell me what Dr. Pabich said to

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1 you, as the Big Wood Canal Company Board Members, that
2 related to filing objections?

3 MR. HOBDEY: Object; calls for hearsay.

4 Go ahead and answer it.

5 THE WITNESS: She indicated the number of
6 rights that they had succeeded in preparing for
7 objection on behalf of Concerned Water Users. She
8 indicated some of the objection bases and classes as
9 the basis for general categories of the rights. That
10 was probably the context.

11 BY MR. CAMPBELL:

12 Q. You mentioned previously transfers that they
13 had evaluated; is that correct?

14 A. That's right.

15 Q. Did she provide you any specific information
16 concerning the hydrologic evaluation of these transfers
17 or any other water rights at that meeting?

18 A. No, I don't believe so.

19 Q. Did she indicate the extent of the analysis
20 that she and her employees had undertaken with respect
21 to the objections that they had prepared?

22 A. Yes. To a certain extent, indicating
23 historical record searches and evaluation of those and
24 then the subsequent existence of a right after a
25 transfer, a split, or a change of use.

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1 Q. And what records, again, did they evaluate?

2 A. They would be records found in the Blaine
3 County Courthouse, for instance, of the origination of
4 the right and how it transpired to subsequent users and
5 owners.

6 Q. Was there anything else that she presented
7 orally to you, as Members of the Big Wood Canal Company
8 Board, at the November meeting?

9 A. No.

10 Q. Did she indicate, at that meeting, why she was
11 in attendance?

12 A. She is an employee of the Concerned Water Users
13 Group. I assumed she was also in attendance at their
14 meetings -- for update.

15 Q. Do you know when she was first retained by the
16 Concerned Water Users Group?

17 A. I do not. But I understand they have been
18 doing work for about a year.

19 Q. How do you understand that, sir?

20 A. Just from what was said by individuals with the
21 Concerned Water Users Group.

22 Q. And which individuals?

23 A. Oh, I don't recall which one. One or more of
24 the folks that were in attendance.

25 Q. Did any of those individuals explain what their

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1 charge or their direction to Dr. Pabich had been when
2 they first retained her?

3 A. Only in the same context that the Big Wood
4 Canal Company would have gotten involved, and that is to
5 start to lay the basis for determining whether the
6 rights were correct in relation to the upcoming
7 Adjudication.

8 Q. And the rights being the rights of other water
9 users; is that correct?

10 A. Other water users and I think, also, the
11 membership of the Concerned Water Users, as well, to
12 determine if their rights were whole.

13 Q. I see. Let's move on to the meeting in March
14 of this year with the Big Wood Canal Company Board.

15 A. Yes.

16 Q. Who was present besides the Board of Directors
17 and Dr. Pabich?

18 A. I believe she had her clerical person with her,
19 Sunny. In addition, at our meetings, there are always
20 our Manager and our Assistant Manager. There may have
21 been some stockholders, but I'm not certain.

22 On occasion, we have one or two stockholders in
23 attendance; but I don't recall if any of them were
24 there.

25 Q. Would the minutes reflect who was present at

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1 A. Mr. Barker. Uh-huh.
 2 Q. Did you discuss with her any aspects of
 3 hydrology impacts to the Big Wood Canal Company Water
 4 Rights by the Sun Valley Company water use, under their
 5 rights?
 6 A. No. Not particularly, no.
 7 Q. Did you discuss, generally, the impacts of the
 8 Sun Valley Company Water Rights to the Big Wood Canal
 9 Company Water Rights?
 10 A. Not particularly in relation to the Sun Valley
 11 Water Rights. Generally, we know the hydrology of the
 12 region up there and the uses that are taking place. To
 13 that, we take objection.
 14 Q. I am talking about specific discussions with
 15 Dr. Pabich.
 16 A. Correct.
 17 Q. Did you discuss that general concept with Dr.
 18 Pabich during the meeting in March where you
 19 individually met with her?
 20 A. No, no, no.
 21 Q. I am talking about just that meeting now.
 22 A. I understand.
 23 Q. At that March meeting -- again with just you --
 24 was anyone else present?
 25 A. Mr. Hobday was present.

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1 Q. Did you discuss with Dr. Pabich whether or not
 2 she had conducted any hydrologic evaluations of the
 3 impacts of the Sun Valley Company Water Rights to the
 4 Big Wood Canal Company Water Rights?
 5 A. No, not that day.
 6 Q. Did you discuss that issue with her any other
 7 day?
 8 A. My point here is I have enough background that
 9 that discussion did not have to occur.
 10 Q. I am not asking whether or not you have the
 11 background. We will get into that in a minute. I am
 12 asking whether or not you had a discussion with Dr.
 13 Pabich about that issue.
 14 A. No.
 15 Q. Do you know if anyone else with the Big Wood
 16 Canal Company had a discussion with Dr. Pabich about
 17 that issue of whether or not hydrologic evaluations had
 18 been done with respect to the impacts of the Sun Valley
 19 Water Rights upon the Big Wood Canal Company Water
 20 Rights?
 21 A. No.
 22 Q. Did you have any other meetings with Dr. Pabich
 23 after the March 2008 meeting?
 24 A. No, I have not.
 25 Q. Did you have any telephone conversations with

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1 Dr. Pabich after the March meeting?
 2 A. No.
 3 Q. Did you have any telephone conversations with
 4 Dr. Pabich before the March meeting?
 5 A. I have not.
 6 Q. Did you have any conversations with any
 7 employees of Dr. Pabich at any point in time?
 8 A. No.
 9 Q. Have you had any conversations with Mr. Al
 10 Barker concerning this matter?
 11 A. I have not.
 12 Q. Have you had any conversations with any of the
 13 associates or partners working in Mr. Barker's firm
 14 concerning this matter?
 15 A. No.
 16 Q. You mentioned you looked at the IDWR website
 17 before the deposition today; is that correct?
 18 A. Yes.
 19 Q. That was yesterday?
 20 A. Yes, it was.
 21 Q. Did you review anything on the website other
 22 than what you have described previously?
 23 A. No.
 24 Q. Did you review any other documents, besides
 25 what you reviewed on the website, in preparation for

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1 your deposition?
 2 A. Only the November minutes.
 3 Q. You did not bring those with you today?
 4 A. I did not, no. I had a copy of those in my
 5 pile of paper.
 6 Q. Mr. Pendleton, I am almost finished. I may
 7 have asked this question, and I apologize for asking it
 8 again. Can you tell me when the Board of Directors of
 9 the Big Wood Canal Company decided to join in with the
 10 Concerned Citizens Group and file objections?
 11 A. November of 2007.
 12 Q. At the November meeting in the bunkhouse?
 13 A. Well, actually, that was the contingent of the
 14 Board; and we made a commitment contingent upon the
 15 Board making a final decision, as a Board, at the
 16 December 1st meeting. They upheld that.
 17 Q. So the decision actually was made at the
 18 December 2007 Board meeting?
 19 A. Yes.
 20 Q. Can you tell me what considerations the Board
 21 evaluated prior to making its decision?
 22 A. The Concerned Water Users, after considerable
 23 expense and a year's worth of effort, had the basis, we
 24 felt, that we required to join in objections to water
 25 rights in the Basin under the Adjudication.

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1 Q. And what was that based upon? The meeting in
2 November with Dr. Pabich?

3 A. Yes, it was.

4 Q. Was there any discussion of documentation that
5 was provided to the Board, either prior to or at the
6 December meeting of 2007, when this decision was
7 reached?

8 A. Did you say "discussion of presentation"?

9 Q. "Documentation." Was there any documentation
10 that was provided to the Board?

11 A. No, there wasn't.

12 Q. Was there any correspondence from the Concerned
13 Water Users to the Board?

14 A. No, there was not.

15 Q. Was there any oral presentation by a Member of
16 the Concerned Water Users, apart from the November
17 meeting in 2007, to the Board of Directors?

18 A. Right. I'm trying to recall a date. We did
19 have Mr. Bashaw and, I believe, Mr. Van Der Meulen come
20 to a regular Board meeting in either November or
21 December on behalf of the Concerned Water Users.

22 Q. Do you recall what they said at that meeting?

23 A. They just outlined their expenses in the last
24 year and an outline of what they had accomplished or
25 thought they had accomplished and had ready, in terms of

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1 the Adjudication process and the filings.

2 Q. Did the Board of the Big Wood Canal Company
3 pass a formal motion or resolution at its meeting in
4 December when it decided to join with the Concerned
5 Water Users?

6 A. Yes.

7 Q. Is that reflected in the minutes?

8 A. Yes. It should be in the minutes.

9 Q. So it is the December meeting with the minutes
10 that reflects that?

11 A. Yes.

12 MR. CAMPBELL: We would ask for those, too. In
13 fact, we would ask for any minutes relating to —

14 MR. HOBDEY: I think you have already asked for
15 that. I have, up here, "Copies of minutes with anything
16 to do with with Concerned Water Users."

17 BY MR. CAMPBELL:

18 Q. Mr. Pendleton, did the Board of Directors of
19 the Big Wood Canal Company conduct a general
20 stockholders or shareholders meeting concerning this
21 decision to file objections against all of these water
22 rights in the Upper Big Wood System?

23 A. No.

24 Q. Why not?

25 A. We had been charged at previous annual

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1 meetings — we have annual meetings of our stockholders
2 to report ongoing Company business.

3 We have been charged, for the last several
4 years, by those water users to do whatever we can to
5 enhance our rights or to protect our rights.

6 Q. Based upon those prior determinations by the
7 shareholders, you felt within your authority, as a
8 Member of the Board of Directors, to take this action?

9 A. Yes, we did.

10 Q. When the Board made its decision to join with
11 the Concerned Water Users and file objections, were
12 there any dissenting votes?

13 A. I don't believe there were any dissenting
14 votes.

15 MR. CAMPBELL: All right. Mr. Pendleton, at
16 this point in time, that is all I have.

17 I will state for the record that, given the
18 documents that have not been provided, this deposition
19 will be recessed for reconvening after I have the
20 documents. For now, I am finished today.

21 (An off-the-record discussion was held.)

22 BY MR. CAMPBELL:

23 Q. Mr. Pendleton, in terms of the documents that
24 you provided to me that you accessed from the website, I
25 note that one of them, at least, has some handwritten

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1 number notations on the side. Can you explain what that
2 was?

3 A. It was just out of the field of the printer;
4 and it involved, like, a zero or a last number on an
5 acreage notation.

6 MR. CAMPBELL: That is what I assumed. That is
7 fine.

8 Again, this deposition is recessed subject to
9 coordination with your counsel after the documents have
10 been provided to us. We will accommodate your schedule
11 as we need to reset it.

12 Thank you very much.

13 (The deposition stood in recess at 12:20 p.m.,
14 to be re-adjoined at a time mutually convenient to the
15 witness and all counsel.)

16 (Signature requested.)

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C E R T I F I C A T E

I, LORI A. PULSIFER, Certified Shorthand Reporter, do hereby certify that:

The foregoing proceedings were taken before me, at which time the witness was placed under oath;

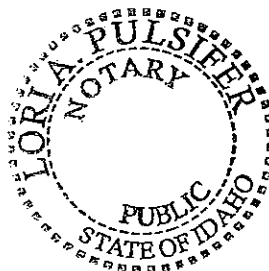
The testimony and all objections made were recorded stenographically by me and were thereafter transcribed by me;

The foregoing is a true and correct record, to the best of my skill and ability; and

Pursuant to request, notification was provided that the deposition is available for review and signature; and

I am not a relative or an employee of any attorney, nor am I financially interested in the action.

I have hereunto set my hand and seal this 21st day of March 2008.



Lori A. Pulsifer
LORI A. PULSIFER, CSR, RDR, CRR
Certified Shorthand Reporter
Idaho Certificate 354

