

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 are true and correct copies of correspondence I sent to counsel for the CWU and counsel for the BWCC, requesting a deposition of Ms. Wendy Pabich. It is my understanding, based upon representations made by Carl D. Pendleton during his deposition as the BWCC's 30(b)(6) representative, that the objections filed by the BWCC and the CWU in the above-referenced subcases are based upon the research of Ms. Pabich, a professional hydrologist.

3. Attached hereto as Exhibit B is a true and correct copy of a faxed letter I received from counsel for the CWU refusing to produce Ms. Pabich for a deposition.

4. Attached hereto as Exhibit C are true and correct copies of correspondence I received from counsel for BWCC, refusing to produce Ms. Pabich for a deposition.

5. Attached hereto as Exhibit D is a true and correct copy of written discovery requests that my firm served upon the BWCC on May 9, 2008.

6. Attached hereto as Exhibit E is a true and correct copy of written discovery requests that my firm served upon the CWU on May 9, 2008.

7. Attached hereto as Exhibits F and G are true and correct copies of the discovery responses that I received from the BWCC on June 12, 2008.

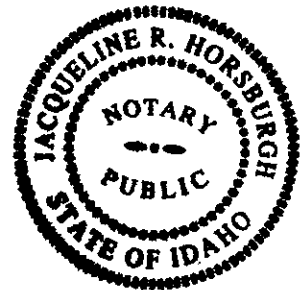
8. Attached hereto as Exhibit H is a true and correct copy of the discovery responses that I received from the CWU on June 10, 2008.

Further your affiant sayeth naught.

Tara Martens
Tara Martens

SUBSCRIBED AND SWORN to before me this 22nd day of July, 2008.

Jacqueline R. Horsburgh
NOTARY PUBLIC FOR IDAHO
Residing at Boise
My Commission Expires 8/16/2013



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 TARA MARTENS to be served by the method indicated below, and addressed to the following:

Albert P Barker
BARKER RSHOLT & 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.

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

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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☐ () Hand Delivered
☐ () Overnight Mail
☐ () Facsimile

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*

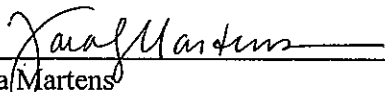
☒ (X) U.S. Mail, Postage Prepaid
☐ () Hand Delivered
☐ () Overnight Mail
☐ () Facsimile

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

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

Director
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front Street, 6th Floor
P.O. Box 83720
Boise, ID 83720

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



Tara Martens

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

EXHIBIT A
TO AFFIDAVIT OF TARA MARTENS

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Boise
Idaho Falls
Pocatello
Twin Falls

Eugene C. Thomas
John W. Barrett
R. B. Rock
Richard C. Fields
John S. Simko
John C. Ward
D. James Manning
David B. Lincoln
Gary T. Dance
Larry C. Hunter
Randall A. Peterman
Mark S. Prusynski
Stephen R. Thomas
Glenn M. Christensen
Gerald T. Husch
Scott L. Campbell
Robert B. Burns

Michael E. Thomas
Patricia M. Olsson
Christine E. Nicholas
Bradley J. Williams
Lee Radford
Michael O. Roe
David S. Jensen
James L. Martin
C. Clayton Gill
Michael W. McGraham
David P. Gardner
Tara Martens
Julian B. Gabiola
Kimberly D. Evans Ross
Jason G. Murray
Mark C. Peterson
Paul D. McFarlane

Jon A. Stenquist
Tyler J. Henderson
C. Edward Cather III
Andrew J. Waldera
Tyler J. Anderson
Dylan B. Lawrence
Benjamin C. Ritchie
Rebecca A. Rainey
Nathan R. Starnes
Andrew J. Snook
Robert E. Bakes, of counsel
Willis C. Moffatt, 1907-1980
Kirk R. Helvie, 1956-2003

April 29, 2008

US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Boise Idaho 83701 0829
208 345 2000
800 422 2889
208 385 5384 Fax
www.moffatt.com

Craig D. Hobdey
Attorney at Law
Post Office Box 176
Gooding, Idaho 83330-0176

Re: SRBA Subcase Nos.: 37-00415; 37-00416; 37-04108; 37-12111
MTBR&F File No. 16845.0014

Dear Craig:

As you may recall, during the course of the deposition of Carl D. Pendleton, several records were requested in accordance with the duces tecum notice of deposition, specifically including the following records in the care, custody, possession, or control of Big Wood Canal Company (or reasonably available to it):

- Minutes documenting Big Wood Canal Company's affiliation with the Concerned Water Users Group;
- Minutes reflecting discussions regarding objections to water rights, including, but not limited to, aesthetic uses;
- Correspondence (including, but not limited to electronic correspondence) with Roxanne Brown;
- Minutes of any Board meeting where Ms. Pabich or any member of the Concerned Water Users Group was present;
- Minutes of any Board meeting where any Director of the Department of Water Resources was present;
- Records of measurements from Magic Reservoir, apparently taken daily by the individual at the reservoir who manages the diversion below the reservoir, from the time of the construction of the facility;

Craig D. Hobdey
April 29, 2008
Page 2

- Copies of reports relating to seepage studies, including those by private parties, governmental entities and/or canal companies;
- Minutes of November 2007, December 2007 and March 2008 meetings, as well as audio recordings of the same;
- Copies of Minutes relating in any way to the Concerned Water Users; and
- Copies of minutes including the formal resolution or motion to join the Concerned Water Users.

Please provide such documents as soon as possible, but in any event no later than May 13, 2008.

In addition to the foregoing, it is our intent to take the deposition of your client's retained expert, Ms. Pabich. In an intent to accommodate your schedule, please coordinate with Ms. Pabich regarding her available dates for deposition in the months of May and June, 2008, as well as, your preferred location for the taking of her deposition. If most convenient for you and Ms. Pabich, we are willing to conduct the deposition at our offices.

Thank you for your attention to these matters. If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,


Tara Martens

TLM/slm

cc: Scott L. Campbell

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Boise
Idaho Falls
Pocatello
Twin Falls

Bugene C. Thomas	Michael E. Thomas	Jon A. Scenquist
John W. Barrett	Patricia M. Olsson	Tyler J. Henderson
R. B. Rock	Christine E. Nicholas	C. Edward Cather III
Richard C. Fields	Bradley J. Williams	Andrew J. Walders
John S. Simko	Lee Radford	Tyler J. Anderson
John C. Ward	Michael O. Roe	Dylan B. Lawrence
D. James Manning	David S. Jensen	Benjamin C. Ritchie
David B. Lincoln	James L. Martin	Rebecca A. Rainey
Gary T. Dance	C. Clayton Gill	Nathan R. Starnes
Larry C. Hunter	Michael W. McGreaham	Andrew J. Snook
Randall A. Peterman	David P. Gardner	
Mark S. Prusynski	Tara Martens	Robert E. Bakes, of counsel
Stephen R. Thomas	Julian E. Gabiola	
Glenna M. Christensen	Kimberly D. Evans Ross	Willis C. Moffatt, 1907-1980
Gerald T. Husch	Jason G. Murray	Kirk R. Helvie, 1956-2003
Scott L. Campbell	Mark C. Peterson	
Robert B. Burns	Paul D. McFarlane	

May 7, 2008

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Craig D. Hobdy
Attorney at Law
Post Office Box 176
Gooding, Idaho 83330-0176

Re: SRBA Subcase Nos. 37-00415, 37-00416, 37-04108 and 37-12111
MTBR&F File No. 16-845.14

Dear Craig:

I am in receipt of your letter dated April 30, 2008, together with the enclosed documents; thank you.

Based upon my initial review, the requested correspondence (including, but not limited to electronic correspondence) with Roxanne Brown does not appear to have been produced, yet the Minutes reference correspondence with her. Will you please produce this correspondence as soon as possible? In addition, with regard to the Minutes of the Big Wood Canal Company Special Board Meeting on April 25, 2007, it appears the minutes of the continuation meeting (from the Manhattan Café to the Canal Company Office) were not included. Please produce the minutes if they exist, or advise if there are no minutes of the continuation meeting. Finally, page 3 of the February 1, 2007 Minutes were omitted; please provide a copy of this page if it exists.

As requested by my letter, dated April 29, 2008, please provide available dates for the taking of the deposition of Wendy Pabich in the months of May and June, 2008, as soon as possible.

Thank you for your attention to these matters. Please feel free to contact me if you have any questions or concerns.

Very truly yours,


Tara Martens

TLM/slm

cc: Scott L. Campbell

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Boise
Idaho Falls
Pocatello
Twin Falls

Eugene C. Thomas
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Tyler J. Anderson
Dylan B. Lawrence
Benjamin C. Ritchie
Rebecca A. Rainey
Nathan R. Starnes
Andrew J. Snook

Robert E. Bakes, *of counsel*

Willis C. Moffatt, 1907-1980
Kirk R. Helvie, 1956-2003

June 5, 2008

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Boise, Idaho 83701 0829

208 345 2000
800 422 2889
208 385 5384 Fax
www.moffatt.com

Albert P. Barker
Barker, Rosholt & Simpson, LLP
Post Office Box 2139
Boise, Idaho 83701

Re: Wendy Pabich
MTBR&F File No. 16-845.14

Dear Mr. Barker:

As you may be aware, following the taking of the deposition of the 30(b)(6) deponent designated by Big Wood Canal Company, on behalf of our clients Sinclair Oil Corporation/Sun Valley Company and Newfoundland Partners, I requested the taking of the deposition of Wendy Pabich, an individual who the deponent testified had conducted research and evaluation relevant to providing for the "basis for determining whether the rights were correct in relation to upcoming Adjudication;" in addition, he testified regarding water rights analysis and research she had conducted and various opinions she had rendered regarding various objections during various meetings.

The request for the taking of Wendy Pabich's deposition was made through counsel to Big Wood Canal Company, Craig Hobdey. Initially, it was my understanding that the available dates for her deposition were being requested and would be forthcoming. However, on May 23, 2008 (via voice message) and on May 27, 2008 (via letter) Mr. Hobdey provided notice that Wendy Pabich would not be made available for deposition on the basis her retention is as a consultant, only, and not as an expert witness.

Enclosed, please find a copy of a letter to Mr. Hobdey which details my understanding of the position being advanced by Big Wood Canal Company relevant to Wendy Pabich, as her consultation may relate to our clients, Sinclair Oil Corporation/Sun Valley Company and Newfoundland Partners. I am writing to inquire of you as to whether your clients, the members of the "Concerned Water Users", are taking the same position as Big Wood Canal Company with respect to their retention of Wendy Pabich. Please review the enclosed letter to Mr. Hobdey and notify me on or before close of business on Tuesday, June 10, 2008, if the Concerned Water Users, or any of them, are taking a contrary position. In addition, in the event

Albert P. Barker
June 5, 2008
Page 2

Wendy Pabich is an expert witness retained by the Concerned Water Users, we respectfully request the opportunity to depose her on June 13, 2008. In the alternative, in the event she is not available on June 13, 2008, accommodation could be made to depose her on June 12, 2008. Please advise as soon as possible, but in any event no later than Tuesday, June 10, 2008.

Very truly yours,


Tara Martens

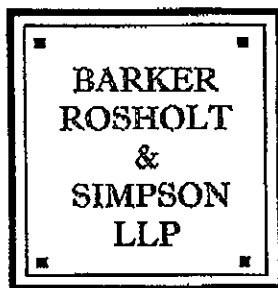
TLM/slm

cc: Scott L. Campbell

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

EXHIBIT B
TO AFFIDAVIT OF TARA MARTENS

ALBERT P. BARKER
JOHN A. ROSHOLT
JOHN K. SIMPSON
TRAVIS L. THOMPSON
SHELLEY M. DAVIS
PAUL L. ARRINGTON



1010 W. Jefferson, Suite 102
Post Office Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

113 Main Avenue West, Suite 303
Twin Falls, ID 83301-6167
(208) 733-0700 telephone
(208) 736-2444 facsimile
jar@idahowaters.com

Albert P. Barker
apb@idahowaters.com

June 11, 2008

VIA FACSIMILE – 208-734-7508

Tara Martens
Moffatt Thomas
101 S. Capitol Blvd. 10th Floor
P. O. Box 829
Boise, ID 83701-0829

Re: *Sinclair Oil Corporation/Concerned Water Users*

Dear Ms. Martens:

Your letter of June 5, 2008 arrived in my office on Monday, June 9th when I was in mediation. Yesterday, I was attending a Board meeting and have not the opportunity to respond to your letter until today. If there is the sense of urgency where you insist upon an answer by a certain time, there are more expeditious ways of reaching me rather than writing a letter and dropping it in the mail when it arrives the day before your deadline. Under the circumstances, neither I nor Ms. Pabich will be available for a deposition Thursday or Friday of this week. That demand is simply unacceptable.

Your demand for Ms. Pabich's testimony is at best premature and at worst impermissible. At this time, Ms. Pabich is a consulting expert for my clients. We have not decided whether or not she will be called as a witness at the trial of this matter. Rule 26(b)(4)(B) specifically provides that you may not discover facts known or opinions held by an expert who has been retained in anticipation of litigation who is not expected to be called as a witness at trial. We, by designating her as a consulting expert, are not inexorably bound not to designate her as a testifying witness at a later time, as your letter to Mr. Hobdey attempts. The Court will hold an initial hearing in this matter. The Court will establish a deadline for trial and pre-trial proceedings. We will designate our expert witnesses in accordance with a schedule either agreed upon with counsel or determined by the Court, in the event that no agreement can be reached with counsel. At the designated time, we will advise you who our expert witnesses are and provide you with the appropriate disclosures. Your demand that we turn Ms. Pabich over to you for inquiry before she has rendered any opinions for testimony in this case concerning Sinclair Oil rights is a impermissible attempt to interfere with the communication between counsel, clients, experts, and consultants. If she is called as a witness, Ms. Pabich will undoubtedly rely

Tara Martens
June 11, 2008
Page 2

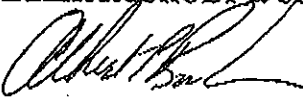
upon information developed during the course of discovery in this case including discovery from your clients who likely have additional information concerning their water rights beyond what is available through the Department of Water Resources files. We fully intend to engage in appropriate discovery in this case and, if we deem it necessary, may consult with Ms. Pabich concerning the discovery responses we receive from your clients.

This is not to say that, in the future, a request to depose Ms. Pabich concerning her expert opinions, if she is offered to testify at trial in this matter, would not be appropriate. We expect to engage in reciprocal discovery of expert testimony, whether that be by exchange of reports, deposition, or otherwise.

If you have any questions, please feel free to contact me.

Very truly yours,

BARKER ROUSHOLT & SIMPSON LLP



Albert P. Barker

APB/se

cc: Craig Hobdey (via Fax)
Concerned Water Users

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

EXHIBIT C
TO AFFIDAVIT OF TARA MARTENS

HOBDEY LAW OFFICE, PLLC

125 Fifth Avenue West

P.O. Box 176

Gooding, Idaho 83330-0176

Craig D. Hobdey
(208) 934-4429

Facsimile
(208) 934-4420

May 27, 2008

RECEIVED
MAY 29 2008

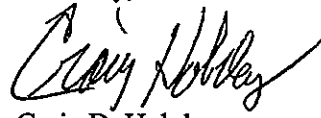
MOFFATT, THOMAS, BARRETT,
ROCK & FIELDS, CHTD.

Tara Martens
Moffatt Thomas
PO Box 829
Boise ID 83701-0829

Dear Tara:

I received a phone call from your assistant on Friday, May 23, 2008 regarding taking a deposition of Wendy Pabich. I apologize for not advising you earlier, but we have not yet identified Wendy Pabich as an expert who will be testifying on our behalf. Right now she is hired as a consultant only. If, or when, we determine that she will be testifying as an expert we will advise.

Sincerely,



Craig D. Hobdey

CDH:dm
c: client

Craig D. Hobdey
(208) 934-4429

HOBDEY LAW OFFICE, PLLC
125 Fifth Avenue West
P.O. Box 176
Gooding, Idaho 83330-0176

RECEIVED
JUN 10 2008
MOFFATT, THOMAS, BARRETT
ROCK & FIELDS, CHTD
Facsimile
(208) 934-4420

June 9, 2008

Tara Martens
Moffatt Thomas
PO Box 829
Boise ID 83701-0829

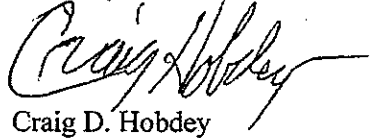
Re: Wendy Pabich Deposition

Dear Tara:

Thank you for your letter of June 5, 2008. For purposes of clarification, Big Wood Canal Company has not directly retained Ms. Pabich for anything. She is in fact not an employee or under contract with Big Wood. We have used some of the information she has generated in filing objections.

We have not identified any expert, at this time. If, and when, we identify an expert we will notify you. It may, in fact, be Ms. Pabich and I will respectfully notify you when the Board has made that decision.

Sincerely,


Craig D. Hobdey

CDH:dm

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

EXHIBIT D
TO AFFIDAVIT OF TARA MARTENS

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 BIG WOOD CANAL COMPANY**

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 Requests for Admissions, Interrogatories, and Requests for Production to Big Wood Canal Company (hereafter "BWCC") as follows:

**FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES, AND
REQUESTS FOR PRODUCTION TO BIG WOOD CANAL COMPANY - 1**

Client:908789.2

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 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.

**FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES, AND
REQUESTS FOR PRODUCTION TO BIG WOOD CANAL COMPANY - 2**

Client:908789.2

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:

**FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES, AND
REQUESTS FOR PRODUCTION TO BIG WOOD CANAL COMPANY - 4**

Client:908789.2

- (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, BWCC 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 BWCC'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 BWCC owns at least one water right recommendation in the SRBA which includes irrigation as a purpose of use.

FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES, AND REQUESTS FOR PRODUCTION TO BIG WOOD CANAL COMPANY - 5

Client:908789.2

REQUEST FOR ADMISSION NO. 4: In its Objections to SVC water rights 37-415, 37-416, 37-4108, and 37-12111, BWCC 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 BWCC'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.

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 BWCC'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 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."

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 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 BWCC'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 BWCC'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 BWCC.

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.

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.

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 the "Concerned Water Users" (or any member thereof) and BWCC and/or any expert witness retained thereby.

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

**FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES, AND
REQUESTS FOR PRODUCTION TO BIG WOOD CANAL COMPANY - 11**

Client:908789.2

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.

REQUEST FOR PRODUCTION NO. 13: 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 Dylan Saurane for
Tara Martens - Of the Firm
Attorneys for Sinclair Oil Corporation
dba Sun Valley Company

**FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES, AND
REQUESTS FOR PRODUCTION TO BIG WOOD CANAL COMPANY - 12**

Client:908789.2

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 BIG WOOD CANAL COMPANY** 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
Attorneys for Big Wood Canal Company

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☐ Overnight Mail
☒ Facsimile

FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES, AND REQUESTS FOR PRODUCTION TO BIG WOOD CANAL COMPANY - 13

Client:908789.2

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

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

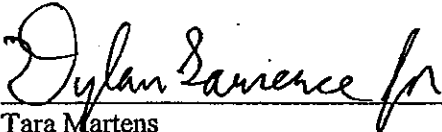
Attorneys for Barker Living Trust, Chaney Creek Ranch LLC, Charles L. Mattiesen, Charles T. Foley, Eagle Creek Irrigation Co, ECD Inc., Elise G. Lufkin, Gimlet Property Owners Assn., Gregory Ranch LLC, Lake Creek Meadows Homeowners, Michael E. Willard, Michael Engl, Myer Berlow, Ralph W. & Kandi L. Girton, 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

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

☒ 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

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


Tara Martens

**FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES, AND
REQUESTS FOR PRODUCTION TO BIG WOOD CANAL COMPANY - 14**

Client:908789.2

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

EXHIBIT E
TO AFFIDAVIT OF TARA MARTENS

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.

**FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES,
AND REQUESTS FOR PRODUCTION TO MEMBERS OF THE
"CONCERNED WATER USERS" - 3**

Client:844337.4

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;

**FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES,
AND REQUESTS FOR PRODUCTION TO MEMBERS OF THE
"CONCERNED WATER USERS" - 4**

Client:844337.4

- (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

**FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES,
AND REQUESTS FOR PRODUCTION TO MEMBERS OF THE
"CONCERNED WATER USERS" - 5**

Client:844337.4

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."

**FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES,
AND REQUESTS FOR PRODUCTION TO MEMBERS OF THE
"CONCERNED WATER USERS" - 6**

Client:844337.4

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.

**FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES,
AND REQUESTS FOR PRODUCTION TO MEMBERS OF THE
"CONCERNED WATER USERS" - 7**

Client:844337.4

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.

**FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES,
AND REQUESTS FOR PRODUCTION TO MEMBERS OF THE
"CONCERNED WATER USERS" - 9**

Client:844337.4

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

**FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES,
AND REQUESTS FOR PRODUCTION TO MEMBERS OF THE
"CONCERNED WATER USERS" - 10**

Client:844337.4

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.

**FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES,
AND REQUESTS FOR PRODUCTION TO MEMBERS OF THE
"CONCERNED WATER USERS" - 11**

Client:844337.4

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.

**FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES,
AND REQUESTS FOR PRODUCTION TO MEMBERS OF THE
"CONCERNED WATER USERS" - 12**

Client:844337.4

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.

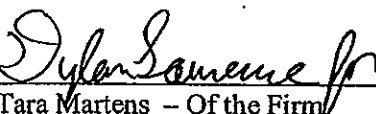
REQUEST FOR PRODUCTION NO. 10: Please produce copies of any communications including, without limitation, all meeting minutes and all e-mails, letters or other correspondence, between you and any other person, which relate in any way to this matter.

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

**FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES,
AND REQUESTS FOR PRODUCTION TO MEMBERS OF THE
“CONCERNED WATER USERS” - 14**

Client:844337.4

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, RSHOLT & 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
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☐ Overnight Mail
☒ Facsimile

Attorneys for Big Wood Canal Company

**FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES,
AND REQUESTS FOR PRODUCTION TO MEMBERS OF THE
"CONCERNED WATER USERS" - 15**

Client:844337.4

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. Luftkin,
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*

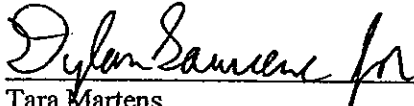
Steven B. Andersen
P.O. Box 2527
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Fax: (208) 343-8869
Attorney for Charles L. Matthiesen

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

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

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


Tara Martens

**FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES,
AND REQUESTS FOR PRODUCTION TO MEMBERS OF THE
"CONCERNED WATER USERS" - 16**

Client:844337.4

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

EXHIBIT F
TO AFFIDAVIT OF TARA MARTENS

Craig D. Hobdey
HOBDEY LAW OFFICE, PLLC
125 Fifth Avenue West
P.O. Box 176
Gooding, Idaho 83303-0176
Telephone (208) 934-4429
Facsimile (208) 934-4420
I.S.B. #3199

RECEIVED
JUN 12 2008
MOFFATT, THOMAS, BARRETT,
ROCK & FIELDS, CHTD.

Attorney for Big Wood Canal Company

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
REQUESTS FOR ADMISSIONS
FOR SINCLAIR OIL COMPANY,
dba SUN VALLEY COMPANY.

COMES NOW BIG WOOD CANAL COMPANY and responds to First Set of Requests
for Admissions:

REQUEST FOR ADMISSION NO. 1: In its Objections to SVC water rights 37-415, 37-416, 37-4108,
and 37-12111, BWCC 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;

RESPONSE FOR ADMISSION NO. 1: Deny.

REQUEST FOR ADMISSION NO. 2: With respect to the language cited above in Request for
Admission 1, please admit that BWCC's Objection applies only to the quantity of water actually

RESPONSE TO FIRST SET OF REQUEST FOR ADMISSIONS
FOR SINCLAIR OIL COMPANY dba SUN VALLEY COMPANY

Page 1 of 4

used for irrigation under SVC's water rights, and not to the quantity of water diverted.

RESPONSE FOR ADMISSION NO 2: Deny.

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

RESPONSE FOR ADMISSION NO. 3: Admit.

REQUEST FOR ADMISSION NO. 4: In its Objections to SVC water rights 37-415, 37-416, 37-4108, and 37-12111, BWCC 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.

RESPONSE FOR ADMISSION NO 4: Deny

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

RESPONSE FOR ADMISSION NO 5: Deny

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."

RESPONSE FOR ADMISSION NO 6: Admit that this Request for Admission quotes in part provisions of Idaho Code §§42-1502(f) and 42-1502(e). Further admit that Idaho Code §42-1501 *et seq.* establishes minimum stream flow as a beneficial use of water in the State of Idaho only when made pursuant to Idaho Code §42-1501 *et seq.* Objectors deny the remaining provisions of Request for Admission No. 6 and further state that there is no affirmative authorization in Idaho Code §42-1501 *et seq.* or any other provision of the Idaho Constitution or the Idaho Code for authorizing aesthetic, recreation or wildlife use by Sinclair Oil Corporation.

REQUEST FOR ADMISSION NO. 7: Please admit that the aesthetic, recreation, and wildlife used of water under SVC's water rights 37-415, 37-416, and 37-12111 apply to the use of water within

RESPONSE TO FIRST SET OF REQUEST FOR ADMISSIONS
FOR SINCLAIR OIL COMPANY dba SUN VALLEY COMPANY

Page 2 of 4

SVC's resort, after water has already been diverted from a natural stream.

RESPONSE FOR ADMISSION NO. 7: According to the recommendation, Sinclair Oil Corporation's water right Nos. 37-415 and 37-416, are for irrigation, aesthetic and wildlife uses. There are no recreation uses either recommended or claimed for those two rights. With respect to those two rights, the place of use appears to include area of Trail Creek as well as areas where water has been diverted from Trail Creek. The claims are not limited to uses after diversion from a natural stream. It is unclear whether and the extent to which Sinclair Oil Corporation is claiming aesthetic or wildlife uses instream of Trail Creek or within land after the water is diverted from Trail Creek. With respect to right No. 37-12111, this right does seek aesthetic, recreation and wildlife use for what appears to be an impoundment on Trail Creek as the place of use and the point of diversion are both identical. Therefore, this impoundment appears to be an instream use of water, and there is no off-stream use claimed.

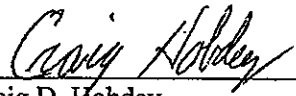
REQUEST FOR ADMISSION NO. 8: Please admit that SVC's use of water under water rights 37-415, 37-416, and 37-12111 does not require or seek to maintain a minimum flow in Trail Creek or any other natural stream.

RESPONSE FOR ADMISSION NO. 8: Deny. See Request to Response for Admission No. 7.

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.

RESPONSE FOR ADMISSION NO 9: Deny. See Request to Response for Admission No. 7. Specifically, it appears that, in Water Right 37-12111 Sinclair Oil Corporation does seek a minimum level of water impounded in a natural water body. It also appears that Water Rights 37-415 or 37-416 seek to maintain certain levels of water in aesthetic ponds which would be equivalent to a minimum lake level. It is not clear from Sinclair Oil's claim if any of these aesthetic ponds are natural bodies of water.

DATED THIS 11 day of June, 2008



Craig D. Hobdey
Attorney for Big Wood Canal Company

RESPONSE TO FIRST SET OF REQUEST FOR ADMISSIONS
FOR SINCLAIR OIL COMPANY dba SUN VALLEY COMPANY

Page 3 of 4

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
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS
PO Box 829
Boise ID 83701

U.S. Mail

Director
Idaho Department of Water Resources
PO Box 83720
Boise ID 83720-0098

U.S. Mail

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise ID 83711-4449

U.S. Mail

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise ID 83724

U.S. Mail

Albert Barker
BARKER, ROSHOLT & SIMPSON
PO Box 2139
Boise ID 83701

U.S. Mail

James Speck
SPECK & AANESTAD
PO Box 987
Ketchum ID 83340

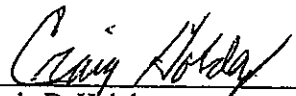
U.S. Mail

Steven Andersen
PO Box 2527
Boise ID 83701-2527

U.S. Mail

Fritz Haemmerle
Special Master
PO Box 2707
Twin Falls ID 83303-2707

U.S. Mail



Craig D. Hobdey

**RESPONSE TO FIRST SET OF REQUEST FOR ADMISSIONS
FOR SINCLAIR OIL COMPANY dba SUN VALLEY COMPANY**

Page 4 of 4

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

EXHIBIT G
TO AFFIDAVIT OF TARA MARTENS

Craig D. Hobdey
HOBDEY LAW OFFICE, PLLC
125 Fifth Avenue West
P.O. Box 176
Gooding, Idaho 83303-0176
Telephone (208) 934-4429
Facsimile (208) 934-4420
I.S.B. #3199

Attorney for Big Wood Canal Company

RECEIVED

JUN 12 2008

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

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

FILE

Page 1 of 11

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,

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

Page 2 of 11

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.

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

Page 3 of 11

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 of 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 ay individual(s) a cting 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 statement are contained in the back files and communications with the Department of Water

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

Page 4 of 11

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

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

Page 5 of 11

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

RESPONSE TO FIRST SET OF INTERROGATORIES
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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,

RESPONSE TO FIRST SET OF INTERROGATORIES
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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 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 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

RESPONSE TO FIRST SET OF INTERROGATORIES
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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

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

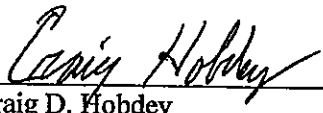
request that have not already been produced.

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

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

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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
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS
PO Box 829
Boise ID 83701
U.S. Mail

Director
Idaho Department of Water Resources
PO Box 83720
Boise ID 83720-0098
U.S. Mail

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise ID 83711-4449
U.S. Mail

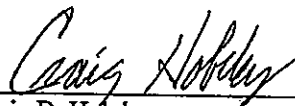
United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise ID 83724
U.S. Mail

Albert Barker
BARKER, ROSHOLT & SIMPSON
PO Box 2139
Boise ID 83701
U.S. Mail

James Speck
SPECK & AANESTAD
PO Box 987
Ketchum ID 83340
U.S. Mail

Steven Andersen
PO Box 2527
Boise ID 83701-2527
U.S. Mail

Fritz Haemmerle
Special Master
PO Box 2707
Twin Falls ID 83303-2707
U.S. Mail



Craig D. Hobdey

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

In Re SRBA,

Case No. 39576

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

EXHIBIT H
TO AFFIDAVIT OF TARA MARTENS

Albert P. Barker, ISB #2867
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson, Suite 102
P.O. Box 2139
Boise, ID 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

RECEIVED
JUN 10 2008
MOFFATT, THOMAS, BARRETT,
ROCK & FIELDS, CHTD.

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

**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
)

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

COMES NOW the Objectors Tom O'Gara, John Stevenson, Bill Molyneux, Pete Van
Der Meulen, Grace Eakin, Rocky Sherbine, Gerald Bashaw, and Pepin Corso-Harris, by and
through their attorneys of record, and pursuant to Rules 26, 33, 34 and 36 of the Idaho Rules of
Civil Procedure, hereby responds to Sinclair Oil Corporation's First Set of Requests for
Admissions, Interrogatories and Requests for Production.

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

Martens Affidavit
Exhibit H
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ORIGINAL

GENERAL OBJECTIONS

1. Respondents Tom O'Gara, John F. Stevenson, Bill Molyneux, Pete Van Der Meulen, Grace Eakin, Rocky Sherbine, Gerald Bashaw, and Pepin Corso-Harris object 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 orders 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 as 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 Respondents have responded to any discovery request or part thereof should not be taken as an admission that the Respondents accept that the discovery request or the response or objection thereto constitutes admissible evidence. Similarly, the fact that the Respondents have responded to all or part of a request is not intended to and shall not be construed to be a waiver by the Respondents of all or part of any objection to other requests. Respondents' answers to any discovery requests herein do not constitute a waiver of the Respondents' 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 though set forth verbatim therein.

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.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Deny.

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.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: Deny.

RESPONSE OF THE CONCERNED WATER USERS TO FIRST
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TO MEMBERS OF THE "CONCERNED WATER USERS" - 3

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.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: Admit.

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.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: Deny.

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.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: Deny.

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."

RESPONSE TO REQUEST FOR ADMISSION NO. 6: Admit that this Request for Admission quotes in part provisions of Idaho Code §§ 42-1502(f) and 42-1502(e). Further admit that Idaho Code § 42-1501 *et seq.* establishes minimum stream flow as a beneficial use of water in the state of Idaho only when made pursuant to Idaho Code § 42-1501 *et seq.* Objectors deny the remaining provisions of Request for Admission No. 6 and further state that there is no

RESPONSE OF THE CONCERNED WATER USERS TO FIRST
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affirmative authorization in Idaho Code § 42-1501 *et seq.* or any other provision of the Idaho Constitution or the Idaho Code for authorizing aesthetic, recreation or wildlife use by Sinclair Oil Corporation.

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.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: According to the recommendation, Sinclair Oil Corporation's water right Nos. 37-415 and 37-416 are for irrigation, aesthetic and wildlife uses. There are no recreation uses either recommended or claimed for those two rights. With respect to those two rights, the place of use appears to include area of Trail Creek as well as areas where water has been diverted from Trail Creek. The claims are not limited to uses after diversion from a natural stream. It is unclear whether and the extent to which Sinclair Oil Corporation is claiming aesthetic or wildlife uses instream of Trail Creek or within land after the water is diverted from Trail Creek. With respect to right No. 37-12111, this right does seek aesthetic, recreation and wildlife use for what appears to be an impoundment on Trail Creek as the place of use and the point of diversion are both identical. Therefore, this impoundment appears to be an instream use of water, and there is no off-stream use claimed.

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.

RESPONSE TO REQUEST FOR ADMISSION NO. 8: Deny. See Request to Response for Admission No. 7.

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.

RESPONSE TO REQUEST FOR ADMISSION NO. 9: Deny. See Request to Response for Admission No. 7. Specifically, it appears that, in Water Right 37-12111 Sinclair Oil Corporation does seek a minimum level of water impounded in a natural water body. It also appears that Water Rights 37-415 or 37-416 seek to maintain certain levels of water in aesthetic ponds which would be equivalent to a minimum lake level. It is not clear from Sinclair Oil's claim if any of these aesthetic ponds are natural bodies of 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).

RESPONSE TO REQUEST FOR ADMISSION NO. 10: Deny. The Thomas M. O'Gara Family Trust is not an objector in these subcases.

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.

RESPONSE OF THE CONCERNED WATER USERS TO FIRST
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TO MEMBERS OF THE "CONCERNED WATER USERS" - 6

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, 9, and 10 were denied for reasons set forth in Response to Request for Admissions No. 7, 8, 9, and 10.

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' objections 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.

RESPONSE OF THE CONCERNED WATER USERS TO FIRST
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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 NO. 4: Please identify each and every person you expect to call as an expert witness at 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.

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;

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- (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 only of the 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 of the 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 of the documents contained in the IDWR files and back files for these water rights.

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."

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 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.

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 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.

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 waters 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

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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 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."

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 1970s, 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 right 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 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.

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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 CWU's assertion that the "[t]otal volume of water delivered to [irrigated] property from all water rights shall not exceed 3.5 SF per acre," would apply to irrigation water rights owned by members of the CWU.

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 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.

ANSWER TO INTERROGATORY NO. 16: 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. See also Objection to Interrogatory No. 12, which is incorporated by reference herein.

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.

ANSWER TO INTERROGATORY NO. 17: 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. 18: 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. 18: All the Objectors were consulted regarding these discovery requests and responses. 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 the Plaintiffs. In addition, the water rights, claims, recommendations and back files on Sinclair Oil Corporation water rights are available to the Plaintiffs.

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.

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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 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.

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.

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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 CWU (or any member thereof) and the Big Wood Canal Company and/or any expert witness retained thereby.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: No such written agreements exists between Concerned Water Users 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.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: See Responses to Requests for Production Nos. 1 through 11.

DATED this 9th day of June, 2008.

BARKER ROSHOLT & SIMPSON LLP



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

CERTIFICATE OF SERVICE

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

Scott L. Campbell
Tara Martens
Dylan B. Lawrence
Andrew J. Snook
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS
101 So. Capital Blvd., 10th Floor
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Boise, ID 83701

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

Director
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front Street, 6th Floor
P. O. Box 83720
Boise, ID 83720-0098

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☐ Overnight Mail
☐ Facsimile
☐ Electronic Mail

Chief, Natural Resources Division
Office of the Attorney General
STATE OF IDAHO
P. O. Box 44449
Boise, ID 83711-2530

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

UNITED STATES DEPARTMENT OF JUSTICE
Environment & Natural Resource Division
550 W. Fort Street, MSC 033
Boise, ID 83724

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☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
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James P. Speck
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☐ Facsimile
☐ Electronic Mail

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HAEMMERLE AND HAEMMERLE
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Albert P. Barker

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