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DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA	)	Subcase Nos. 37-00481B, 37-00482G,
	)	37-00483B, 37-00665K, 37-00666J,
	)	37-00667N, 37-22155, 37-21463,
Case No. 39576	)	37-02625A, 37-02625B, 37-02638, and
	)	37-02700
	)	
	)	ROCKY SHERBINE'S RESPONSE TO
	)	REDSTONE'S FIRST SET OF
	)	DISCOVERY REQUESTS
	)	

COMES NOW, Objector, Rocky Sherbine, by and through his attorneys of record, Barker Rosholt & Simpson LLP, in response to Redstone's First Set of Discovery Requests to Rocky Sherbine, hereby makes the following responses in accordance with the Idaho Rules of Civil Procedure.

GENERAL OBJECTIONS

1. Rocky Sherbine objects to the Requests for Admission, Interrogatories, and Requests for Production 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.

2. 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.

3. Objector specifically objects 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 discovery relating to experts as set forth in Rule 26(b)(4). This objection is intended to apply to each of the discovery requests that seek such information and will not be repeated specifically for each request to which it applies. Rocky Sherbine, to the extent possible, construed each request as requesting only information and/or documents not subject to any applicable protection.

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

5. Each of these objections is incorporated into the response to each of the

Admissions, Interrogatories, and each of the Requests for Production of Documents as though set forth verbatim therein.

REQUESTS FOR ADMISSION AND INTERROGATORIES

REQUEST FOR ADMISSION NO. 1: Please admit that you have no objection to the Claimant's Water Rights other than those stated in your Objections: "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, rather than the quantities in the recommendation. Total volume of water delivered to this property from all water rights shall not exceed 3.5 AF per acre."

RESPONSE TO REQUEST FOR ADMISSION NO. 1: This Objector objected to quantity of water under each of the Redstone water rights at issue in the SRBA in part 3 of Basin 37. This Objector admits that the quote in Request for Admission No. 1 accurately reflects what is stated in Subpart E of the Standard Form No. 1 Reasons Supporting Objections. This Objection was directed at the use of the water by Claimant as recommended in the Directors Report. This Objection does not relate to any other uses of water to which Claimant may seek to put the water, beyond the irrigation use recommended in the Directors Report.

REQUEST FOR ADMISSION NO. 2: Please admit that you would withdraw your Objections if the Claimant's Water Rights were decreed with a condition on each right stating that the Claimant's Water Rights are limited to a combined total of 0.02 cfs per irrigated acre and 3.5 acre-feet per irrigated acre per year measured at the field headgate for the Claimant's Surface Water Rights and measured at the wellhead for the Claimant's Ground Water Rights.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: This Objector objects to this request on the grounds that it is an improper attempt to require this Objector to make an offer of compromise under Rule 408 of the Idaho Rules of Evidence. The request is not calculated to

lead to the discovery of admissible evidence, since the question of whether or the basis upon which this Objector may compromise his objections is information that is not admissible and not calculated to lead to the discovery of admissible evidence. This Objector is not willing to withdraw the objection on a promise of conditions by Claimant. Without waiving these objections, if Claimant is interested in resolving these objections, this Objector would be willing to discuss inclusion of a remark in SF5s for all of Claimant's water rights, similar to the language in his Reasons for Objections contained in his Objections.

INTERROGATORY NO. 1: If your response to the previous Request for Admission is anything but an unqualified admission, please state what condition or conditions you believe must be imposed on the Claimant's Water Rights to bring them into compliance with Idaho water law.

ANSWER TO INTERROGATORY NO. 1: See objections and response to Request for Admission No. 2.

REQUEST FOR ADMISSION NO. 3: Please admit that the Claimant's Ground Water Rights authorize irrigation of a total of 1,435.1 acres of land. For your convenience in responding to this Request for Admission, we note that the number 1,435.1 is derived from the following calculation: 399 acres (for water right No. 37-02625A), plus 194 acres (for Water Right No. 37-21463), plus 842.1 acres (for Water Right Nos. 37-02638 and 37-02700 combined).

RESPONSE TO REQUEST FOR ADMISSION NO. 3: The four water rights listed are irrigation groundwater rights, each of which has the same POU with acreage totaling 1,435.1, and having the individual limits (within the overall POU) listed above. The property also has another groundwater irrigation right (37-2625B for 1.8 acres). Further, Claimant has applied for a municipal right that includes irrigation of 198.4 acres, purportedly to be mitigated with existing

surface rights. Two additional groundwater rights (37-12193, for .04 cfs for domestic, and 37-12194, for .03 for stockwater), are also appurtenant to the same property. However, Claimant has claimed that it is irrigating 1572 acres, according to submissions made to Blaine County. The discrepancy from its recommended water rights is not explained, unless Claimant is water spreading.

REQUEST FOR ADMISSION NO. 4: Please admit that the Claimant's Ground Water Rights authorize diversion of a total of 5,055.5 acre-feet per year. For your convenience in responding to this Request for Admission, we note that the number 5055.5 is derived from the following calculation: 1,396.5 acre feet (for Water Right No. 37-02625A), plus 679.0 acre-feet (for Water Right No. 37-21463), plus 1,498.0 acre-feet (for Water Right No. 37-02638), plus 1,482.0 acre-feet (for Water Right No. 37-02700).

RESPONSE TO REQUEST FOR ADMISSION NO. 4: Denied. The volume limits in acre-feet stated above are included as conditions for each of the water rights and appear to be correctly reported. Not included is 37-2625B for .04 cfs, 1.8 acres, with a limit of 6.3 AFA, which does not include any combined use remark and is not described as a supplemental water right. The four water rights listed above are all supplemental rights with the following conditions:

- If the surface water rights appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
- The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to

those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.

- These rights also contain limitations on the number of acres which can be irrigated within the overall POU.
- These rights are junior rights which would not be available for use each year depending on availability of water.

Under these circumstances, the rights do not necessarily “authorize” the total diversion of 5055.5 acre feet per year.

REQUEST FOR ADMISSION NO. 5: Please admit that the Claimant’s Ground Water Rights combined authorize irrigation of 3.5 acre-feet per irrigated acre. For your convenience in responding to this Request for Admission, we note that the number 3.5 is derived from the following calculation: 5,055.5 acre-feet divided by 1,435.1 acres, rounded to the nearest tenth.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: This Objector admits that the math appears to be correct. This Objector denies that the groundwater rights authorize 3.5 acre feet per irrigated acre. These groundwater rights must be considered in conjunction with the surface water rights put to use on the same land and the fact that the groundwater rights are supplemental rights, which must be administered conjunctively with the surface water rights of Basin 37, so that the groundwater rights alone do not authorize a total volume of 3.5 acre feet per irrigated acre. See also Response to Request for Admission No. 4.

REQUEST FOR ADMISSION NO. 6: Please admit that the quantity of water available to the Claimants under its Ground Water Rights does not exceed the amount stated in your Objections (“Total volume of water delivered to this property from all water rights shall not exceed 3.5 AF

per acre.”).

RESPONSE TO REQUEST FOR ADMISSION NO. 6: Denied. Claimant’s groundwater rights and surface water rights are both appurtenant to the same land. When the quantity of water available under the groundwater rights and the surface water rights are added together, the quantity of water vastly exceeds the amount stated in the objection.

INTERROGATORY NO. 2: If your responses above have not already explained this, please explain why the statement in your Objections that “[t]otal volume of water delivered to this property from all water rights shall not exceed 3.5 AF per acre” is applicable to the Claimant’s Ground Water Rights.

ANSWER TO INTERROGATORY NO. 2: See Response to Request for Admission No. 6. The request for admission relates only to ground water not “all water rights” as stated in the Objection and therefore misstates the Objection.

REQUEST FOR ADMISSION NO. 7: Please admit that none of the Claimant’s Surface Water Rights state an annual volume limit on their face.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: Admit that the recommendations do not state an annual volume limit on Claimant’s surface water rights.

REQUEST FOR ADMISSION NO. 8: Please admit that it is IDWR’s practice not to state an annual volume limit on natural flow surface water rights for irrigation absent special circumstances.

RESPONSE TO REQUEST FOR ADMISSION NO. 8: Denied. Idaho Department of Water Resources has placed annual volume limits on a number of natural flow surface water rights including those in Basin 37 and elsewhere for irrigation purposes. This Objector also objects to this Request for Admission on the grounds that it is unclear, vague and ambiguous as to the basis

for Claimant's assertion that IDWR's "practice" is not to require volume limits when the IDWR has done so in numerous rights, and it is also unclear, vague and ambiguous what is meant by the phrase "absent special circumstances." As Claimant has not identified or defined what it contends are "special circumstances" giving rise to this undefined "practice", it is impossible to respond to this Request for Admission. Objector notes that the IDWR has published consumptive irrigation use requirements which include annual volume limitations on irrigation use in Basin 37 of 3.5 acre-feet per acre.

INTERROGATORY NO. 3: Is it your position that an annual volume limit must be stated on the face of all natural flow surface water rights for irrigation, and, if so, why?

ANSWER TO INTERROGATORY NO. 3: This Objector objects to this Interrogatory on the grounds that it calls for a legal conclusion. Objector did not object to "all natural flow surface water rights for irrigation." Without waiving this objection, Claimant has stated that the gross water requirements accounting for distribution and application efficiencies on its own property amounts to 3.5 acre-feet per acre. Hence, the 3.5 acre-feet is an appropriate condition on these rights. In addition, this Objector states that the request annual volume limits should be stated on the face of Claimant's water rights where the natural flow surface and ground water rights for irrigation purposes are combined on the same property as done on Claimant's property.

Otherwise, the annual volume limitations placed on the groundwater rights become meaningless.

See also Idaho Code section 42-1411(2).

INTERROGATORY NO. 4: Is it your position that an annual volume limit must be stated on the face of the Claimant's Surface Water Rights, and, if so, what special circumstances are applicable to the Claimant's Surface Water Rights?

ANSWER TO INTERROGATORY NO. 4: See Answer to Interrogatory No 3 and Response

to Request for Admission No. 8, which are incorporated by reference herein, including the objections set forth therein.

INTERROGATORY NO. 5: If your responses above have not already explained this, please explain why the statement in your Objections that “[t]otal volume of water delivered to this property from all water rights shall not exceed 3.5 AF per acre” is applicable to the Claimant’s Surface Water Rights.

ANSWER TO INTERROGATORY NO. 5: See response to Request for Admissions and answers to Interrogatories above.

REQUEST FOR ADMISSION NO. 9: Please admit that the total combined instantaneous diversion rate allowed for the Claimant’s Ground Water Rights is 21.85 cfs. For your convenience in responding to this Request for Admission, we note that the number 21.85 is derived from the following calculation: 7.96 cfs (for Water Right Nos. 37-02625A and 37-21463 combined), plus 4.01 cfs (for Water Right No. 37-02638), plus 9.88 cfs (for Water Right No. 37-02700).

RESPONSE TO REQUEST FOR ADMISSION NO. 9: The conditions of approval for 37-2625A, 37-21463, 37-2538 and 37-2700 all include the following stipulation:

- The rights listed below are limited to a total combined diversion rate of 21.85 cfs.

Combined Right Nos.: 37-2625A, 37-2638, 37-2700 and 37-21438.

As stated in the conditions of approval, water right 37-21463 is considered an enlargement of 37-2625A:

- This right is an enlargement of Right 37-2625A pursuant to Section 42-1426, Idaho Code.

Two rights together (37-2625A for 7.96 cfs and 1959 priority and 37-21463 for 3.88 cfs

with 1984 priority) are limited to 7.96 cfs.

Water right 37-21163 also is recommended as subordinated to pre-1994 Water Rights, as it is an end argument of 37-2625A.

The Claimants Ground Water rights also include 37-2625B for .04 cfs for 1.8 acres of irrigation, 37-12193 for .04 cfs for domestic, 37-12194 for .03 cfs for stockwater and an application for a municipal right (37-22161) for 4.46 cfs for municipal (which includes irrigation), which total another 4.57 cfs. The total instantaneous rate arrived at by adding the individual flow rates together of the four rights listed by the Claimant is 24.8 cfs; the instantaneous flow for all existing and proposed *ground water rights* is 29.37 cfs.

REQUEST FOR ADMISSION NO. 10: Please admit that the Claimant's Ground Water Rights combined authorize irrigation of 0.0152 cfs per irrigated acre. For your convenience in responding to this Request for Admission, we note that the number 0.0152 is derived from the following calculation: 21.85 cfs divided by 1,435.1 acres.

RESPONSE TO REQUEST FOR ADMISSION NO. 10: Claimant's math is correct; however, the surface water rights are also appurtenant to the same place of use as the groundwater rights which are supplemental to the surface water rights; other existing and proposed groundwater rights may add another 4.57 cfs (which would result in more than .02 cfs/acre for the water rights).

REQUEST FOR ADMISSION NO. 11: Please admit that the quantity of water available to the Claimants under its Ground Water Rights does not exceed the amount stated in your Objections ("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, rather than the quantities in the recommendation.").

RESPONSE TO REQUEST FOR ADMISSION NO. 11: Denied. The total quantity of water

recommended to Claimant under its combined water rights, ground and surface water rights, exceeds .02 cfs per acre.

INTERROGATORY NO. 6: If your responses above have not already explained this, please explain why the statement in your Objections quoted in the preceding Request for Admission is applicable to the Claimant's Ground Water Rights.

ANSWER TO INTERROGATORY NO. 6: See response to Requests for Admissions and answers to Interrogatories above.

REQUEST FOR ADMISSION NO. 12: Please admit that the rate of flow authorized to be diverted under Water Right No. 37-02625B does not exceed 0.02 cfs per acre or 3.5 acre-feet per acre per year.

RESPONSE TO REQUEST FOR ADMISSION NO. 12: Denied. This right provides for .04 cfs for 1.8 acres that may fall within the larger POU for all other rights. This right, *alone*, provides a diversion rate of .022 cfs/acre and a volume of 3.5 acre feet/acre. When considered in conjunction with all other rights appurtenant to the same property, it exceeds the flow and volume limits described above.

REQUEST FOR ADMISSION NO. 13: Please admit that there is no reason for you to object to Water Right No. 37-02625B.

RESPONSE TO REQUEST FOR ADMISSION NO. 13: Denied.

REQUEST FOR ADMISSION NO. 14: Please admit that the rate of flow authorized to be diverted under the Claimant's Water Rights is measured at the point of diversion stated in the IDWR recommendation for the water right.

RESPONSE TO REQUEST FOR ADMISSION NO. 14: Admit.

REQUEST FOR ADMISSION NO. 15: Please admit that the annual volume of water

authorized to be diverted under the Claimant's Water Rights is measured at the point of diversion stated in the IDWR recommendation for the water right.

RESPONSE TO REQUEST FOR ADMISSION NO. 15: This Objector can neither admit nor deny this request because many of Claimant's water rights do not have an annual volume of water authorized to be diverted stated in the Director's Recommendation.

REQUEST FOR ADMISSION NO. 16: Please admit that the point of diversion for each of the Claimant's Surface Water Rights is the headgate where the 45 Canal diverts from the Big Wood River.

RESPONSE TO REQUEST FOR ADMISSION NO. 16: Admit.

REQUEST FOR ADMISSION NO. 17: Please admit that the instantaneous diversion rate authorized to be diverted under the Claimant's Surface Water Rights includes a reasonable quantity to cover carriage loss in the 45 Canal between the diversion from the Big Wood River and the Claimant's field headgate.

RESPONSE TO REQUEST FOR ADMISSION NO. 17: Admit that some water would be required to convey water in the District 45 Canal from the diversion on the Big Wood River to the point of delivery to Claimant on the District 45 Canal.

REQUEST FOR ADMISSION NO. 18: Please admit that the annual volume of water authorized to be diverted under the Claimant's Surface Water Rights includes a reasonable quantity to cover carriage loss in the 45 Canal between the diversion from the Big Wood River and the Claimant's field headgate.

RESPONSE TO REQUEST FOR ADMISSION NO. 18: This Objector can neither admit nor deny this request because many of Claimant's water rights do not contain an annual volume of water authorized to be diverted stated in the Director's Recommendation. Admit that the

diversion rate should include a “reasonable” quantity of water to account for conveyance loss in the District 45 Canal.

REQUEST FOR ADMISSION NO. 19: Please admit that the water diverted under the Claimant’s Surface Water Rights is in fact subject to carriage loss in the 45 Canal occurring between the diversion from the Big Wood River and the Claimant’s field headgate.

RESPONSE TO REQUEST FOR ADMISSION NO. 19: Admit that there is some actual conveyance loss in the District 45 Canal.

REQUEST FOR ADMISSION NO. 20: Please admit that the carriage water serving the Claimant’s Surface Water Rights also benefits you by providing carriage of some or all of your water rights.

RESPONSE TO REQUEST FOR ADMISSION NO. 20: Objector objects to this request on the grounds that it is irrelevant to the legal issues and seeks information which is not calculated to lead to the discovery of admissible evidence. Without waiving this objection, this request is denied. Factually, water diverted for delivery into the eastern segment of the canal would not benefit users on other segments of the canal. Water delivered to Claimant in excess of the actual conveyance losses would not have any carriage benefit to any user on the canal. Objector admits that any attempt to transfer water out of the District 45 Canal would cause harm to other water users on the canal and would require Claimant to leave water in the canal to compensate for that injury.

REQUEST FOR ADMISSION NO. 21: Please admit that any limitation on the Claimant’s Surface Water Rights reducing the amount of carriage water available to the Claimant would also reduce the amount of water available to you as carriage water for some or all of your water rights.

RESPONSE TO REQUEST FOR ADMISSION NO. 21: Denied. See Response to Request

for Admission No. 20.

INTERROGATORY NO. 7: If your answer to the above Request for Admission is anything other than an unqualified admission, please explain why a reduction in the Claimant's carriage water would not reduce the amount of water available to you.

ANSWER TO INTERROGATORY NO. 7: If Claimant is delivering more than one inch per acre to its headgate on the District 45 Canal, then reducing the amount of water delivered to that point for irrigation purposes would not necessarily have any impact on conveyance loss to deliver the water to Claimant's headgate on the District 45 Canal.

REQUEST FOR ADMISSION NO. 22: Please admit that, as recommended, Water Right No. 37-22155 includes a condition stating: "The rights listed below are limited to a total combined diversion rate of 98.04 cfs. Combined Right Nos.: 37-481B, 37-482G, 37-483B, 37-665K, 37-666J, 37-667N and 37-22155."

RESPONSE TO REQUEST FOR ADMISSION NO. 22: Admit that this condition is included in the conditions for 37-22155, but that the condition is not included in any of the other rights listed above.

REQUEST FOR ADMISSION NO. 23: Taking into account the diversion rates authorized for each of the Claimant's Surface Water Rights as well as the condition quoted above for Water Right No. 37-22155, please admit that the total combined instantaneous diversion rate allowed for the Claimant's Surface Water Rights is 98.04 cfs.

RESPONSE TO REQUEST FOR ADMISSION NO. 23: The combined limit, as stated in 37-22155, which is only one of the seven surface water rights, allows for an instantaneous flow of 98.04 cfs; the rights themselves total 99.9 cfs.

REQUEST FOR ADMISSION NO. 24: Please admit that the total numbers of acres

authorized to be irrigated under the Claimant's Water Rights is 1,435.1 acres.

RESPONSE TO REQUEST FOR ADMISSION NO. 24: With the exception of 37-2625B

(.04 cfs for 1.8 acres), this appears to be correct. However, Claimant has claimed that it is irrigating 1572 acres, according to submissions made to Blaine County. The discrepancy from its recommended water rights is not explained, unless Claimant is water spreading.

REQUEST FOR ADMISSION NO. 25: Please admit that the authorized rate of diversion for all of the Claimant's Surface Water Rights (combined together) is 3.42 inches per irrigated acre (98.04, times 50, divided by 1,435.1).

RESPONSE TO REQUEST FOR ADMISSION NO. 25: Admit that all of Claimant's water rights, surface and groundwater, combine for nearly four and three tenths inches per acre for the same property, and that the surface water rights alone combine for nearly three and one-half inches per acre. All water rights combined total 4.28 cfs; this does not include flow limitations embedded in some of the rights.

REQUEST FOR ADMISSION NO. 26: Please admit that the quantity of carriage loss reflected the Claimant's Surface Water Rights is reasonable.

RESPONSE TO REQUEST FOR ADMISSION NO. 26: Denied.

INTERROGATORY NO. 8: If your response to the previous Request for Admission is anything but an unqualified admission, please state specifically what quantity of carriage loss water would be reasonable to include in the Claimant's Water Rights.

ANSWER TO INTERROGATORY NO. 8: Neither the Claimant nor the Department has separately identified in any of Claimant's water rights the amount of conveyance loss claimed necessary to deliver the rights to Claimant's property. If Claimant contends that the conveyance loss in the District 45 Canal is 2.42 inches per acre, no facts in the record for the rights suggest

whether that such a hypothetical amount is reasonable or necessary. Brockway's studies on conveyance loss in various reaches of the District 45 Canal from the late 1970s suggest that the conveyance loss was between 6 and 30% to the eastern lateral of the District 45 Canal, depending upon the quantities of water delivered. Claimant has provided information to the County indicating that there are greater conveyance losses when only the early priority water rights are being delivered because of cuts in delivery due to priority and thus that the conveyance loss would therefore be less for later priority rights, since there is less total volume in the Canal when only the early priority rights are being delivered and much greater amounts when the late priority rights are being delivered. Claimant has provided no evidence that conveyance loss in the District 45 Canal is on the order of 250%. Based on Brockway's analysis, at low water, canal losses will be about 30%; at high water, they might be as little as about 6%.

REQUEST FOR ADMISSION NO. 27: Please admit that you have no evidence that the Claimant's use of its Water Rights has deprived you of water to which you are entitled under your water rights.

RESPONSE TO REQUEST FOR ADMISSION NO. 27: This Objector objects to this Request for Admission on the grounds that it is irrelevant and not calculated to lead to the discovery of admissible evidence. Claimant and its attorneys are or should be aware that the Idaho Supreme Court in *Bray* held that an objector was not required to provide evidence of injury to his water right in order to object to another water right. Without waiving this objection, this Objector states that his rights have been materially injured by declining water deliveries in Basin 37, which appears to have resulted in part from excessive water deliveries to other lands such as those claimed by Claimant.

REQUEST FOR ADMISSION NO. 28: Please admit that you have no knowledge that the

amount of water applied to the place of use under the Claimant's Water Rights exceeds a flow rate one inch per irrigated acre.

RESPONSE TO REQUEST FOR ADMISSION NO. 28: Denied. The rights themselves suggest otherwise.

REQUEST FOR ADMISSION NO. 29: Please admit that you have no knowledge that the amount of water applied to the place of use under the Claimant's Water Rights exceeds a volume of 3.5 acre-feet per acre per year.

RESPONSE TO REQUEST FOR ADMISSION NO. 29: Denied. The rights themselves suggest otherwise, as does Claimant's suggestion that it has sufficient water rights to irrigate nearly 5000 acres.

REQUEST FOR ADMISSION NO. 30: Please admit that even if the Claimants are diverting or could divert more water from the Big Wood River than is necessary to irrigate land under their Surface Water Rights, such excessive diversions would not materially increase the consumptive use of the water so diverted.

RESPONSE TO REQUEST FOR ADMISSION NO. 30: Denied. Excessive diversions may increase the consumption of the water. Excessive diversions also deprive other water users of the ability to obtain deliveries to their rights. Excessive diversions may suggest water spreading.

REQUEST FOR ADMISSION NO. 31: Please admit that even if the Claimants are diverting or could divert more water from the Big Wood River than is necessary to irrigate land under their Surface Water Rights, such excessive diversions would result in a corresponding increase in return flows. For purposes of this Request for Admission, "return flows" should be understood to include recharge of the aquifer and/or discharges to Silver Creek, the Little Wood River, and/or the Big Wood River.

RESPONSE TO REQUEST FOR ADMISSION NO. 31: Denied. Claimant and others will merely recapture any return flows through groundwater rights located on the same property, thereby depriving the aquifer, Silver Creek, Big Wood River, and the Little Wood River of return flows. Moving water from the surface water resource to other locations, such as groundwater where it is not available to Objector and is available to junior well users, does not ultimately lead to any “increase” in return flows. In fact, studies show statistically significantly declining flows in the Big Wood River, the springs and the groundwater in southern Blaine County.

REQUEST FOR ADMISSION NO. 32: Please admit that that [sic] any increase in return flows (as defined above) resulting from excessive diversions of surface water by the Claimants (if any exist) would benefit you by increasing the supply of water available for diversion under some or all of your water rights.

RESPONSE TO REQUEST FOR ADMISSION NO. 32: Admit that there have been excessive diversions, deny there is a corresponding increase in return flows to benefit Objector. See response for Request for Admission No. 31.

INTERROGATORY NO. 9: Please explain how your water rights would be injured or diminished as a result of the Claimant’s diverting more surface water from the Big Wood River than is necessary to irrigate land under the Claimant’s Surface Water Rights.

ANSWER TO INTERROGATORY NO. 9: This Objector objects to this Request for Admission on the grounds that it is irrelevant and not calculated to lead to the discovery of admissible evidence. Claimant and its attorneys are or should be aware that the Idaho Supreme Court in *Bray* held that an objector was not required to provide evidence of injury to his water right in order to object to another water right. Without waiving this objection, this Objector states that his rights have been materially injured by declining water deliveries in the Basin which

includes excessive water deliveries to other lands such as those claimed by Redstone. See also response to Request for Admissions Nos. 31 and 32.

REQUEST FOR ADMISSION NO. 33: Please admit that you personally made no investigation of the Claimant's water rights, other than what appears on the face of the recommendation for each right, before filing your Objections.

RESPONSE TO REQUEST FOR ADMISSION NO. 33: This Objector objects to this Request for Admission on the grounds that it seeks to invade the attorney-client and work-product privileges as each of these objections were made after consultation with counsel.

REQUEST FOR ADMISSION NO. 34: Please admit that your Objections are based at least in part on the advice or opinions of Wendy Pabich.

RESPONSE TO REQUEST FOR ADMISSION NO. 34: This Objector objects to this Request for Admission on the grounds that it invades the attorney-client and work-product privileges, and is a premature attempt to delve into matters not at this time discoverable under Idaho Rule 26(b)(4) of the Idaho Rules of Civil Procedure. Without waiving this objection, this Objector admits that Dr. Wendy Pabich is a consulting expert.

REQUEST FOR ADMISSION NO. 35: Please admit that your Objections are based on the expert advice of no hydrologist, hydrogeologist, or other scientist other than Wendy Pabich.

RESPONSE TO REQUEST FOR ADMISSION NO. 35: This Objector objects to this Request for Admission on the grounds that it invades the attorney-client and work-product privileges, and is a premature attempt to delve into matters not at this time discoverable under Idaho Rule 26(b)(4) of the Idaho Rules of Civil Procedure. Without waiving this objection, this Objector admits that Dr. Wendy Pabich is a consulting expert.

REQUEST FOR ADMISSION NO. 36: Please admit that you have not pursued objections

against all water right holders on the 45 Canal that hold water rights with an authorized rate of diversion exceeding one inch per irrigated acre. For purposes of this Request for Admission, “not pursued objections” means either to have not filed an objection or to have withdrawn it.

RESPONSE TO REQUEST FOR ADMISSION NO. 36: This Objector admits that he has not filed objections against every water right holder claiming amounts of water in excess of one inch per acre.

INTERROGATORY NO. 10: Please explain why and on what basis you have pursued objections against some water right holders on the 45 Canal that hold water rights in excess of one inch per irrigated acre and not others.

ANSWER TO INTERROGATORY NO. 10: This Objector objects to this Interrogatory on the grounds that it invades the attorney-client and work-product privileges. The basis for filing objections or pursuing objections was made after consultation with counsel. Without waiving this objection, this Objector states that the amounts of water claimed by Claimant under all of its combined water rights (4.28 inches per acre) appear to be excessive claims.

INTERROGATORY NO. 11: If you response to any of the above Requests for Admission was anything other than an unqualified admission, if you have not done so already, please describe and explain in detail each of the reasons, facts, or circumstances that cause you to be unable to make the each of the requested admissions. In each case, please include in your explanation a statement of whether and how the interrogatory could be limited or modified to allow an unqualified admission.

ANSWER TO INTERROGATORY NO. 11: See responses to discovery requests set forth above.

REQUEST FOR PRODUCTION NO. 1: Please provide copies of any documents (excluding

documents available from the websites of IDWR or the Snake River Basin Adjudication Court) that you relied on to respond to these Discovery Requests.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: To the extent that there are any documents not available from the Claimant, the IDWR or SRBA. Those documents will be available for inspection and copying at a mutually convenient time and location.

DATED this 8th day of August, 2008.

BARKER ROSHOLT & SIMPSON LLP

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

VERIFICATION

I, **ROCKY SHERBINE**, declare, under penalty of perjury under the laws of the United States, that I have read the Plaintiff/Counterdefendant's Response to Redstone's First Set of Discovery Requests above are true, accurate, and complete to the best of my knowledge and belief.

Rocky Sherbine

CERTIFICATE OF MAILING

I hereby certify that on the 8th day of August, 2008, I mailed the original and copies of this notice to the following persons, by mailing the original and/or copies, postage prepaid and addressed as follows:

Original to:

Name: Redstone Partners LP
c/o Christopher H. Meyer
Michael P. Lawrence
GIVENS PURSLEY LLP
Address: 601 W. Bannock Street
P. O. Box 2720
Boise, ID 83701-2720

Copies to:

IDWR Document Depository
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front Street, 6th Floor
P. O. Box 83720
Boise, ID 83720-00098

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

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

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A handwritten signature in cursive script, appearing to read "Albert P. Barker", written in black ink.

Albert P. Barker