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DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case No. 39576

)
) Subcase Nos. 37-00867, 37-00870, 37-00895,
) 37-13043, 37-13112, 37-13113, 37-13114,
) 37-13116, 37-20733, 37-21401, 37-21402,
) 37-21403, 37-21404, 37-21405
)
)

) **BIG WOOD CANAL COMPANIES'**
) **RESPONSE TO SINCLAIR AND**
) **NEWFOUNDLAND'S FIRST SET OF**
) **REQUESTS FOR ADMISSIONS,**
) **INTERROGATORIES, AND REQUESTS**
) **FOR PRODUCTION OF DOCUMENTS**
)

COMES NOW BIG WOOD CANAL COMPANY by and through its attorneys of record and responds to SINCLAIR and NEWFOUNDLAND'S First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents as follows:

GENERAL OBJECTIONS

1. Respondent objects 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

**BWCC's RESPONSE TO SINCLAIR & NEWFOUNDLAND'S
FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

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.

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, a witness present and testifying in court. All such objections are reserved and may be interposed at the time of trial.

3. Respondent specifically objects to these discovery requests to the extent they seek information protected by the attorney-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. Respondent, 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 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.

5. Each of these objections is incorporated into the response to each of the Admissions, Interrogatories and Request for Production as through set forth verbatim therein.

Responses to Interrogatories, Requests for Admission and Production

REQUEST FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Please admit that you are the owner or claimant of the following water rights: 37-00870, 37-13043, 37-13112, 37-13113, 37-13114, 37-13116, 37-221401,

37-21402, 37-21403, 37-21404, and 37-21405, hereinafter referred to collectively as "Rights".

RESPONSE TO ADMISSION NO. 1: Neither admit nor deny as to the classification as "owner" as that term is not properly identified or defined. It is Big Wood Canal Company's understanding that they have a license or decree giving them the right to use of water pursuant to the above rights.

REQUEST FOR ADMISSION NO. 2: Please admit that the Rights, as recommended by the Idaho Department of Water Resources ("IDWR"), share the same place of use, namely 39,683 acres located as described and incorporated in the Director's Reports.

RESPONSE TO ADMISSION NO. 2: Deny, the place of use or at least one of the licenses is for 86,400 acres.

REQUEST FOR ADMISSION NO. 3: Please admit that the Rights, as recommended by the IDWR, collectively total a diversion quantity of 3,700.862 cfs.

RESPONSE TO ADMISSION NO. 3: Our calculation of total quantity of water is not 3,700.862 cfs. We calculate it to be 3,703.442 cfs.

REQUEST FOR ADMISSION NO. 4: Please admit that the irrigation of 39,683 acres at a rate of one inch, or 0.02 cfs, per acre requires the diversion of 793.66 cfs.

RESPONSE TO ADMISSION NO. 4: Object, not relevant. However, without waiving the Objection, the math appears correct.

REQUEST FOR ADMISSION NO. 5: Please admit that the Rights, as recommended by IDWR, do not contain a combined use limitation restricting their diversion to a combined one inch, or 0.02 cfs, per acre.

RESPONSE TO ADMISSION NO. 5: Admit.

REQUEST FOR ADMISSION NO. 6: Please admit that the combined use of the Rights, as recommended by IDWR, on the above-Referenced place of use exceeds one inch, or 0.02cfs, per acre.

RESPONSE TO ADMISSION NO. 6: Deny, as measured at the headgate the use on the irrigated acres serviced by the above water rights is less than one inch per acre.

INTERROGATORIES

INTERROGATORY NO. 1: If any of the above Request for Admission are denied either in whole

or in part, please provide a complete description of all facts relied upon in making the denial, along with the identity of all persons having sufficient knowledge of each fact to testify as a witness. Also, please provide a description of the substance and content of all expert opinions relied upon in making the denial.

ANSWER TO INTERROGATORY NO. 1: Each separate response above has been clarified.

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 about water use under the Rights or the Rights themselves, together with a summary of each person's knowledge.

ANSWER TO INTERROGATORY NO. 2: There are over seven hundred water users in the Big Wood Canal Company system, each of which have some knowledge as to the facts or evidence regarding the above the water rights or the rights themselves. Therefore, Big Wood Canal Company objects to this Interrogatory as seeking information beyond the scope of these proceedings. However, without waiving the above objection, Jerry Nance, who is the Chairman of the Board of Directors of Big Wood Canal Company and has been on the Board for approximately thirty-four years and has some knowledge as to the water and water rights and the use of the water. Additionally, Carl Pendleton, who was deposed by Objectors has some knowledge and has been on the Board for approximately thirteen years.

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: There have been no lay witnesses identified at this time, however see Response to Interrogatory No. 2.

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.

ANSWER TO INTERROGATORY NO. 4: There have been no experts identified to testify as witness at the trial in this matter.

INTERROGATORY NO. 5: If you contend that you are entitled to receive and/or use in excess of one inch, or 0.02 cfs, of water per acre, please describe in full and complete detail all facts and reasons supporting such a contention.

ANSWER TO INTERROGATORY NO. 5: Object, calls for a legal opinion, furthermore there is no contention that Big Wood Canal Company receives or uses in excess of one inch per acre on all irrigable lands within the Canal Company's jurisdiction. However, without waiving this Objection, Big Wood Canal Company asserts that the historical use of the water requires all the water and more if available, to irrigate the lands for which shareholders own shares within the District.

INTERROGATORY NO. 6: Please describe in full and complete detail the configuration and operation of your water delivery and distribution system, including but not limited to the physical dimensions and specifications of the system, the location of canals, laterals, ditches, and other water conduits, efficiency of the system, and the names and titles of those who operate and maintain the system.

ANSWER TO INTERROGATORY NO. 6: Object, the answer is too voluminous and complicated to be answered in an Interrogatory. However, Big Wood Canal Company would permit Objector or their representative, to inspect the records and maps of the District upon forty-eight hours notice. Such inspection can be made at 112 South Apple Street in Shoshone, Idaho between the hours of 9:00 a.m. and 4:30 p.m. during any non-holiday work day.

INTERROGATORY NO. 7: Please describe in full and complete detail any and all water conservation measures you have adopted related to the delivery and distribution of water throughout the above-referenced place of use since November 1, 1987.

ANSWER TO INTERROGATORY NO. 7: Object, not relevant. However, the Objectors have in their possession a report prepared by Bill Hazen from sometime in the early 1990's or late 1980's, setting forth some of the conservation measures. This Interrogatory also calls for information

beyond the scope of the litigation. However, see Response to Interrogatory No. 6.

REQUESTS FOR PRODUCTION OF DOCUMENTS

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 or interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: All documents relied upon in these Answers are on file at the Idaho Department of Water Resources and consists of the recommendations and back files of the Department of Water Resources.

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: See Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 3: Please produce copies of any notes, memoranda, letters or other correspondence prepared by you or between you and any other individual or entity regarding your Rights and water use by Objectors or you.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: We do not completely understand this Request. However we have no notes, memoranda, letters or other correspondence prepared by Big Wood Canal Company regarding this matter.

REQUEST FOR PRODUCTION NO. 4: Please produce copies of 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 review or analyze this matter and/or render expert testimony.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Big Wood Canal Company has not retained an expert to review or analyze any of the above Water Rights.

REQUEST FOR PRODUCTION NO. 5: 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. 5: Big Wood Big Canal Company has not retained an expert witness or consultant regarding the above Water Rights.

REQUEST FOR PRODUCTION NO. 6. Please produce copies of any or all statements previously made by Objectors 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 Objectors or its respective employees, agents or representatives.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: Big Wood Canal Company knows of no statements made by the Objectors or their employees, agents or representatives that Big Wood Canal Company has in its possession, regarding these water Rights.

REQUEST FOR PRODUCTION NO. 7: 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. 7: Big Wood Canal Company is not aware of any statements which any witness will use or anticipate to be used to refresh memory at deposition or trial. Provided, however, that the production documents set forth in Request for Production No. 1 will be relied upon by all parties.

REQUEST FOR PRODUCTION NO. 8: 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 PRODUCTION NO. 8: There are no specific communications between Big Wood Canal Company and other persons relating to the above Water Rights. However, Big Wood Canal Company objects to this Request as overly broad and refers the Objectors to the office of the Big Wood Canal Company located at 112 South Apple, Shoshone, Idaho between the hours of 9:00 a.m. and 4:30 p.m. during weekdays not otherwise a holiday, for reviewing and deciding for themselves, what may related to this matter.

REQUEST FOR PRODUCTION NO. 9: Please produce copies of any and all written reports, drawings, maps, photographs, invoices, receipts, operations manuals, installation manuals, maintenance records, management records, e-mails, letters, correspondence or documents of any kind whatsoever related to the configuration of your irrigation system, including but not limited to data that describes, identifies, or shows:

- (A) The construction of your water delivery and distribution system, including any water storage facilities;
- (B) The geospatial layout of your water storage, delivery and distribution system;
- (C) When construction of your water storage, delivery and distribution system was completed;
- (D) The existing configuration of your water storage, delivery and distribution system;
- (E) Post-construction improvements made to your water storage, delivery and distribution system;
- (F) The name, location, size, capacity, and physical dimensions (i.e., interior width, depth, rate of fall in elevation) of all ditches, canals, or laterals of your water storage, delivery and distribution system;
- (G) The name, location, size, and capacity of any water storage facilities that are part of your water storage, delivery and distribution system;
- (H) Whether any lining material was used in the construction of any ditch, lateral, canal, or other water conduit used for water storage, delivery, or distribution;
- (I) The location, size, length, diameter, and type of any piping used for water storage, delivery, or distribution; and
- (J) The location, size, and purpose of any other fixture or equipment used for water storage, delivery, or distribution.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: Object. Overly broad and irrelevant. Provided, however see Response to Request for Production No. 8.

REQUEST FOR PRODUCTION NO. 10: Please produce copies of any and all written reports, photographs, invoices, receipts, estimates, bids, contracts, subcontracts, operations manuals, installation manuals, resumes, advertisements, job description, job performance evaluations, payroll reports, maintenance records, management records, e-mails, letters, correspondence, or documents of any kind whatsoever related to the operation and maintenance of your irrigation system, including but not limited to data that describes identifies, or shows:

- (A) The name and address of any person or entity currently responsible for maintenance

and operations of any of your water storage and distribution facilities;

- (B) The name and address of any person or entity that has been responsible for maintenance and operation of your water storage and distribution facilities in the past;
- (C) The qualifications of any person or entity responsible for maintenance and operation of your water storage and distribution facilities, now or in the past;
- (D) The job description/duties of any person or entity responsible for maintenance and operation of your water storage and distribution facilities, now or in the past;
- (E) The name and address of any person or entity responsible for the installation or construction of any fixture, improvement, or piece of equipment for the purpose of water storage, delivery, or distribution
- (F) Any maintenance or improvement to your water storage, delivery and distribution facilities for which you are directly responsible; and
- (G) Any qualifications you have for the design, operation, maintenance, or improvement of water storage and distribution facilities.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10: See Response to Request for Production No. 8.

REQUEST FOR PRODUCTION NO. 11: Please produce copies of any and all documents regarding any water conservation measures you have adopted throughout the described place of use for the Rights.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: Big Wood Canal Company believes that there was a Conservation Plan written approximately fifteen years ago and is in the process of attempting to locate the same. At about that same time there was a report prepared by Bill Hazen, a copy of which Objectors have in their possession.

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 Objectors' 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: BWCC is not aware of any other information stored electronically.

REQUEST FOR INSPECTION

To the extent necessary to supplement the information received according to Objector's First Set of Requests for Admissions, Interrogatories, and Request for Production regarding configuration, operation, and maintenance of your water storage, delivery and distribution facilities, please make arrangement to permit entry upon any facilities in your control to enable inspection, measuring, surveying, and testing of the facilities.

RESPONSE TO REQUEST FOR INSPECTION: See Response to Admission No. 8.

DATED THIS 8 day of October, 2008.

BIG WOOD CANAL COMPANY


Jerry Nance - Chairman
of the Board of Directors

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of October, 2008, I served a true and correct copy of the foregoing BIG WOOD CANAL COMPANY'S RESPONSE TO SINCLAIR & NEWFOUNDLAND'S FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS by the method indicated below and addressed to the following:

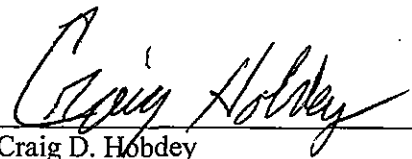
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