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DEPARTMENT OF
WATER RESOURCES

Attorneys for Cattle Lack Ranch Homeowners Association

**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. 37-00114C, 37-07609
	)	
Case No. 39576	)	RESPONSE OF CATTLE LACK
	)	RANCH HOMEOWNERS
	)	ASSOCIATION TO SINCLAIR AND
	)	NEWFOUNDLAND'S FIRST SET OF
	)	REQUESTS FOR ADMISSION,
	)	INTERROGATORIES, AND
	)	REQUESTS FOR PRODUCTION OF
	)	DOCUMENTS TO CATTLE LACK
	)	RANCH HOMEOWNERS
	)	ASSOCIATION

COMES NOW, Claimant, **CATTLE LACK RANCH HOMEOWNERS ASSOCIATION**, by and through its attorneys of record, Barker Rosholt & Simpson LLP, in response to Sinclair and Newfoundland's First Set of Discovery Requests to **CATTLE LACK RANCH HOMEOWNERS ASSOCIATION**, hereby makes the following responses in accordance with the Idaho Rules of Civil Procedure.

GENERAL OBJECTIONS

1. **CATTLE LACK RANCH HOMEOWNERS ASSOCIATION** objects to the Requests for Admission, Interrogatories, and Requests for Production and to the

**RESPONSE OF CATTLE LACK RANCH HOA TO SINCLAIR AND
NEWFOUNDLAND'S FIRST SET OF DISCOVERY REQUESTS - 1**

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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. CATTLE LACK RANCH HOMEOWNERS ASSOCIATION, 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 CATTLE LACK RANCH HOMEOWNERS ASSOCIATION has responded to any discovery request or part thereof should not be taken as an admission that CATTLE LACK RANCH HOMEOWNERS ASSOCIATION accepts that the discovery request or the

response or objection thereto constitutes admissible evidence. Similarly, the fact that CATTLE LACK RANCH HOMEOWNERS ASSOCIATION has responded to all or part of a request is not intended to and shall not be construed to be a waiver by CATTLE LACK RANCH HOMEOWNERS ASSOCIATION of all or part of any objection to other requests. CATTLE LACK RANCH HOMEOWNERS ASSOCIATION'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.

6. Claimant objects to the discovery requests directed at water rights which were not objected to by Objectors on the grounds that such discovery is unduly burdensome, oppressive and not calculated to lead to the discovery of admissible evidence.

REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1: Please admit that you are the owner or claimant of the following water rights: 37-00114C and 37-07609.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Admitted.

REQUEST FOR ADMISSION NO. 2: Please admit that water right number 37-00114C, as recommended by the Idaho Department of Water Resources ("IDWR"), is appurtenant to a 152 acre place of use located with T01N, R18E, Section 25.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: Admitted.

REQUEST FOR ADMISSION NO. 3: Please admit that the IDWR has recommended that water right 37-00114C receive a diversion rate of 12.52 cfs, 9.13 cfs of which has been recognized as a conveyance loss.

RESPONSE TO REQUEST FOR ADMISSION NO.3: Admitted.

REQUEST FOR ADMISSION NO. 4: Please admit that the irrigation of 152 acres at a rate of one inch, or 0.02 cfs, per acre requires the diversion of 3.04 cfs.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: Admitted, without regard for rediversions, conveyance losses, or water availability issues.

REQUEST FOR ADMISSION NO. 5: Please admit that the recommendation for water right number 37-00114C, after accounting for conveyance losses of 9.13 cfs, recommends a quantity rate of 3.39 cfs for the irrigation of the above-referenced 152 acre place of use.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: Admit, with the clarification that the IDWR recommendation also contains a combined limit on the quantity, when said right is combined with all other rights; and that rediverison, conveyance loss, and water availability issues factor in.

REQUEST FOR ADMISSION NO. 6: Please admit that a diversion rate of 3.39 cfs on the above-referenced place of use (T01N, R18E, Section 25) exceeds one inch, or 0.02 cfs, per acre.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: Denied. This right also contains a total volume limitation.

REQUEST FOR ADMISSION NO. 7: Please admit that the field headgate requirement for the above-referenced place of use (T01N, R18E, Section 25) is 3.0 AFA.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: Denied.

REQUEST FOR ADMISSION NO. 8: Please admit that at a field headgate requirement of 3.0 AFA, the irrigation of 152 acres would require an annual volume of 456 AFA.

RESPONSE TO REQUEST FOR ADMISSION NO. 8: Admit that $3 \times 152 = 456$ AFA.

REQUEST FOR ADMISSION NO. 9: Please admit that the quantity of 532 AFA is excessive for the above-referenced place of use in that 532 AFA exceeds the application of 3.0 AFA over the above referenced place of use.

RESPONSE TO REQUEST FOR ADMISSION NO. 9: Denied.

REQUEST FOR ADMISSION NO. 10: Please admit that the customary season or period of use for lands lying within T01N, R.18E, Section 25, is April 15 to October 31 (200 days).

RESPONSE TO REQUEST FOR ADMISSION NO. 10: Admitted, except when licensed or recommended otherwise by IDWR. Admit that objected to water right 37-7609 is a groundwater right with a licensed season of use period of April 1-Nov. 1, is recommended for the licensed season of use, and admit that Objectors are precluded from challenging the License.

INTERROGATORIES

INTERROGATORY NO. 1: If any of the above Requests for Admission are denied either in whole or in part, please provide a complete description of all facts relied upon in making the denial, along with the identity of all persons having sufficient knowledge of

each fact to testify as a witness. Also, please provide a description of the substance and content of all expert opinions relied upon in making the denial.

ANSWER TO INTERROGATORY NO. 1: Request for Admission No. 6 is denied, in whole or in part, because there are redirection, conveyance loss, and water availability issues that factor in. Request for Admission No. 7 is denied, based upon IDWR publication entitled "*Consumptive Irrigation Requirement, Field Headgate Requirement and Season of Use.*" Request for Admission No. 9 is denied, in whole or in part, because there are redirection, conveyance loss, and water availability issues that factor in, and for the reasons set forth in Response to Request for Admission No. 7.

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

ANSWER TO INTERROGATORY NO. 2: Michael Harris and Pepin Corso-Harris. Claimant presumes that the representatives of the Department of Water Resources, who investigated these rights, and the water master and his deputies, who deliver the water, have some knowledge of these rights.

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: Claimant has not determined who will be called as a lay witness.

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: Claimant has not determined whether any expert witnesses will be called at the trial of this matter.

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

ANSWER TO INTERROGATORY NO. 5: Claimant does not believe that the actual on-farm use exceeds that rate.

INTERROGATORY NO. 6: Please describe in full and complete detail the configuration and operation of your irrigation system, including but not limited to the physical specifications of the system, the efficiency of the system, and the names and titles of those who operate and maintain the system.

ANSWER TO INTERROGATORY NO. 6: Configuration of the irrigation system is contained in the records of the IDWR which, according to Objectors' Motion for Late

Objections are in Objector's possession. Additionally, Michael Harris has knowledge of on-farm operations.

INTERROGATORY NO. 7: Please describe in full and complete detail any and all water conservation measures you have adopted related to the irrigation of the above-referenced place of use (T01N, R18E, Section 25).

ANSWER TO INTERROGATORY NO. 7: Property is irrigated in accordance with IDWR guidelines.

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: According to the Motion to File Late Objections and the Affidavit of Andrew Waldera filed on behalf of Sinclair/Newfoundland, Sinclair/Newfoundland possess all of the back files related to the water rights for which it is presenting objections. See Motion to File Late Objection Request for Expedited Hearing, p.3. According to the Reply Memo, counsel has conducted a "diligent review" of those water rights in the files that with the Department of Water Resources. Accordingly, Claimants object to any requirement to produce any material already in the possession of objectors as a result of Objectors' diligent review of the records of the Department of Water Resources. Without waiving this objection, all such documents relied upon in answering the Interrogatories are in the files and the back files associated with these water rights.

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 time, Claimant has not decided what documents it intends to offer in evidence at the trial of this matter.

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 use of water under the Rights.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: Claimant objects to this Interrogatory to the extent that it seeks to infringe upon the attorney-client and work product privilege for any communication between counsel, counsel's consultants and the Claimant. Without waiving this objection, see Response to Request for Production No. 1.

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: Claimant objects to this request on the grounds that it infringes upon the attorney-client and work product privileges. Moreover, under Rule 26(b)(4) of the Idaho Rules of Civil Procedure, no testifying expert has been identified, and no such discovery into consultants is permitted. Without waiving these objections, see Response to Request for Production No. 1.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: Claimant objects to this request on the grounds that it violates Idaho Rules of Civil Procedure 26(b)(4) as no testifying expert has been identified.

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: At this time, Claimants are not aware of any statements made by Objectors concerning this matter other than the documents on file with the Court in this Subcase which are equally available to Objectors as to Claimant.

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: At this time, Claimant is unaware of any statements that he or any witnesses will be used to refresh their memory. See generally Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 8: Please produce copies of any communications including, without limitation, all meeting minutes and all e-mails, letter or other correspondence, between you and any other person, which relate in any way to this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: Claimant objects to this Interrogatory to the extent that it seeks to infringe upon the attorney-client and work product privilege for any communication between counsel, counsel's consultants and the Claimant. Without waiving this objection, see Response to Request for Production No. 1.

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

- (a) The construction of your irrigation system;
- (b) The geospatial layout of your irrigation system;
- (c) When construction of your irrigation system was completed;
- (d) The existing configuration of your irrigation system;
- (e) Post-construction improvements made to your irrigation system;
- (f) The location, size, and capacity of any pumps used for irrigation,

including the capacity of associated nozzles;

- (g) The location, capacity, and length of any ditches used for irrigation;
- (h) Whether lining material was used in the construction of any ditches used

for irrigation;

- (i) The location, size, length, diameter, and type of any piping used for irrigation purposes; and

- (j) The location, size, and purpose of any other fixture or equipment used for irrigation purposes.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: Claimant objects to this Request on the grounds that it is unduly burdensome and not calculated to lead to discovery of admissible evidence. Without waiving this objection, see Response to Request for Production No. 1.

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 descriptions, 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 or operation of your irrigation facilities;
- (b) The name and address of any person or entity that has been responsible for maintenance or operation of your irrigation facilities in the past year;
- (c) The qualifications of any person or entity responsible for maintenance or operation of your irrigation facilities, now or in the past;
- (d) The job description/duties of any person or entity responsible for maintenance or operation of your irrigation 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 irrigation purposes;

(f) Any maintenance or improvement to your irrigation facilities for which you are directly responsible; and

(g) Any qualifications you have for the design, operation, maintenance, or improvement of irrigation facilities.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10: Claimant objects to this Request on the grounds that it is unduly burdensome and not calculated to lead to discovery of admissible evidence. Without waiving this objection, see Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 11: Please produce copies of any and all written reports, photographs, invoices, receipts, estimates, bids, contracts, subcontracts, operations manuals, resumes, advertisements, maintenance records, management records, e-mails, letters, correspondence, or documents of any kind whatsoever related to the condition of your irrigated land and irrigation system, including but not limited to data that describes, identifies, or shows:

- (a) The reports of any soil analysis performed on your irrigated land;
- (b) The name and/or address of any person or entity responsible for performing any soil analysis on your irrigated land;
- (c) Crop yields on your irrigated land;
- (d) Crop yields in your locale;
- (e) Cropping patterns on your irrigated land;
- (f) Cropping patterns in your locale;
- (g) Crop consumptive use on your irrigated land;
- (h) Crop consumptive use in your locale;

(i) Application to your irrigated lands or facilities of fertilizers, sediment control materials, or any other chemicals;

(j) Readings from pressure instruments or results from any water pressure tests performed on your irrigation system; and

(k) The name and/or address of any person or entity responsible for performing any water pressure tests on your irrigation system.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: Claimant objects to this Request on the grounds that it is unduly burdensome and not calculated to lead to discovery of admissible evidence. Without waiving this objection, see Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 12: Please produce copies of any and all documents regarding any and all water conservation measures for irrigation of the above-referenced place of use (T01N, R18E, Section 25)

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: Claimant objects to this Request on the grounds that it is unduly burdensome and not calculated to lead to discovery of admissible evidence. Without waiving this objection, see Response to Request for Production No. 1.

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 Objectors' First Set of Requests for Admission, 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: Claimant objects to this Interrogatory to the extent that it seeks to infringe upon the attorney-client and work product privilege for any communication between counsel, counsel's consultants and the Claimant. Without waiving this objection, see Response to Request for Production No. 1.

REQUEST FOR INSPECTION

To the extent necessary to supplement the information received according to the Objectors' First Set of Requests for Admissions, Interrogatories, and Requests for Production regarding configuration, operation, and maintenance or irrigation facilities, please make arrangements to permit entry upon irrigated land in your control to enable inspection, measuring, surveying, and testing of the facilities.

RESPONSE TO REQUEST FOR INSPECTION: Claimant objects to this request on the grounds that it is not calculated to lead to the discovery of admissible evidence relating to Objectors' objections in this matter.

DATED this 24 day of October, 2008.

BARKER ROSHOLT & SIMPSON LLP

By 

Albert P. Barker
Attorneys for Cattle Lack Ranch Homeowners
Association

VERIFICATION

I, Pepi Corso-Hart of CATTLE LACK RANCH HOMEOWNERS ASSOCIATION, declare, under penalty of perjury under the laws of the United States, that I have read the Plaintiff/Counterdefendant's Response to Sinclair and Newfoundland's First Set of Discovery Requests to CATTLE LACK RANCH HOMEOWNERS ASSOCIATION above are true, accurate, and complete to the best of my knowledge and belief.

By: _____

Its _____

CERTIFICATE OF SERVICE

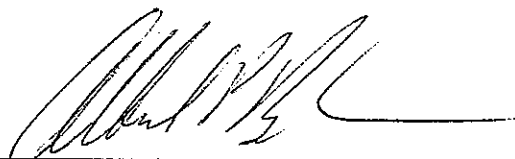
I hereby certify that on the 24 day of October, 2008, I mailed the original and copies of the **RESPONSE OF CATTLE LACK RANCH HOMEOWNERS ASSOCIATION TO SINCLAIR AND NEWFOUNDLAND'S FIRST SET OF REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO CATTLE LACK RANCH HOMEOWNERS ASSOCIATION** to the following persons, by mailing the original and/or copies, postage prepaid and addressed as follows:

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