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DEPARTMENT OF
WATER RESOURCES

**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. 37-02629, 37-02658,
	)	37-07584, 37-07651
Case No. 39576	)	
	)	RESPONSE OF A. W. MOLYNEUX TO
	)	SINCLAIR AND NEWFOUNDLAND'S
	)	FIRST SET OF REQUESTS FOR
	)	ADMISSION, INTERROGATORIES,
	)	AND REQUESTS FOR PRODUCTION
	)	OF DOCUMENTS TO A. W.
	)	MOLYNEUX
	)	
	)	

COMES NOW, Claimant, A. W. MOLYNEUX, by and through his attorneys of record, Barker Rosholt & Simpson LLP, in response to Sinclair and Newfoundland's First Set of Discovery Requests to A. W. MOLYNEUX, hereby makes the following responses in accordance with the Idaho Rules of Civil Procedure.

GENERAL OBJECTIONS

1. A. W. MOLYNEUX 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. Claimant 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. A. W. MOLYNEUX, 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 A. W. MOLYNEUX has responded to any discovery request or part thereof should not be taken as an admission that A. W. MOLYNEUX accepts that the discovery request or the response or objection thereto constitutes admissible evidence. Similarly, the fact that A. W. MOLYNEUX has responded to all or part of a request is not intended to and shall not be construed to be a waiver by A. W. MOLYNEUX of all or part of any objection to other requests. A. W. MOLYNEUX'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 ADMISSION

REQUEST FOR ADMISSION NO. 1: Please admit that you are the owner or claimant of the following water rights: 37-00706C, 37-01082C, 37-02629, 37-07584, 37-11754, 37-21996, 37-21998, 37-22000, and 37-22002, hereinafter referred to collectively as “Rights.”

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Admit. Also admit that Objectors did not object to any of these rights other than 37-02629 and 37-07584, which are ground water rights.

REQUEST FOR ADMISSION NO. 2: Please admit that the Rights, as recommended by the Idaho Department of Water Resources (“IDWR”), share the same irrigation place of use, namely 284 acres located within T01S, R19E, Section 13 and T01S, R20E, Section 19.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: Admit that these rights share the same POU, with the exception that the POU also includes land in Section 24 of T015, R19E, and that these rights contain combined-acreage limitations.

REQUEST FOR ADMISSION NO. 3: Please admit that the Rights, as recommended by the IDWR, collectively total a diversion quantity of 11.715 cfs.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: Admit that these rights if totaled, as to paper rights, without regard for rediversions, conveyance losses or water availability, and without regard to the fact that the recommendation for the objected to water rights (37-7584 and 37-2629) require use of the surface water before these rights can be used, and without regard to the fact that water right number 37-11754 is a waste water right available only when there is waste water, would reach the quantity described.

REQUEST FOR ADMISSION NO. 4: Please admit that the irrigation of 284 acres at a rate of one inch, or 0.02 cfs, per acre requires the diversion of 5.68 cfs.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: Admit that irrigation of 284 acres at a rate of one inch per acre (0.02 cfs/acre) would require delivery to the field of 5.68 cfs, without regard for rediversions, conveyance losses, water availability, or restrictions on supplemental groundwater rights, and deny that irrigation of these 284 acres at one inch per acre would require the diversion of the specified amount.

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 REQUEST FOR ADMISSION NO. 5: Denied. Objected to water right 37-07584 contains that provision.

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 (T01S, R19E, Section 13 and T01S, R20E, Section 19) exceeds one inch, or 0.02 cfs per acre.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: Denied. See Response to Request for Admission Nos. 3, 4, and 5.

REQUEST FOR ADMISSION NO. 7: Please admit that the combined use of the Rights, as recommended by IDWR, on the above-referenced place of use (T01S, R19E, Section 13 and T01S, R20E, Section 19) exceeds the delivery of 3.5 AFA per acre to the field headgate.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: Denied. Water right No. 37-7584 contains a 3.0 acre feet/acre limitation. Water right No. 37-2629 contains a volume limit which does not exceed 3.5 AFA. Admit as to the paper water in the remainder of the rights, with the clarification that there are rediversions and conveyance losses beyond the field headgate, as well as water availability issues that factor in, and therefore deny as to the actual water available and used on this POU.

REQUEST FOR ADMISSION NO. 8: Please admit that the customary season or period of use for lands lying within T01S, R19E and T01S, R20E is April 15 to October 31 (200 days).

RESPONSE TO REQUEST FOR ADMISSION NO. 8: Object to the undefined term "customary" as vague. Otherwise, admitted, except when otherwise licensed or recommended by IDWR. Admit that objected to water right no. 37-2629 has a recommended season of use of April 15-Oct. 31. Admit that objected to water right no.

37-7584 was licensed for a season of use of April 1-Nov. 1, is recommended for that same season of use, and that Objectors are barred from challenging the license.

REQUEST FOR ADMISSION NO. 9: Please admit that the customary season or period of use for lands lying within T01N, R18E and T01S, R18E is April 15 to October 31 (200 days).

RESPONSE TO REQUEST FOR ADMISSION NO. 9: Object to the undefined term “customary” as vague. Otherwise, admitted, except when otherwise licensed or recommended by IDWR. Admit that objected to water right 37-2658 was licensed with a period of use of April 1-Nov.1, is recommended with the same season of use, and that Objectors are barred 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: See Responses to Requests for Admission. In addition, Request No. 5 is partially denied because the recommendation for water right number 37-7584 does contain a combined use limitation restricting its diversion to a combined one inch, or 0.02 cfs, per acre. Request Nos. 6 and 7 are denied, in whole or in part, because the recommendation for water right number 37-7584 contains a combined use limitation restricting its diversion to provide no more than 3.0 afa per acre when combined with all other rights, and because there are rediversions, conveyance

losses, and water availability are not considered in Objector's requests. Requests No. 8 and 9 are denied for the reasons set forth therein:

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: A.W. Molyneux is the person most familiar with these rights. Claimant presumes that representatives of the Department of Water Resources, who investigated these rights, and the water master and deputies who deliver the rights 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 0.02 cfs, or water per acre for irrigation purposes, please describe in full and complete detail all facts and reasons supporting such a contention.

ANSWER TO INTERROGATORY NO. 5: Claimant does not believe that his 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, John Molyneux and William L. Molyneux have 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 (T01S, R19E, Section 13 and T01S, R20E, Section 19).

ANSWER TO INTERROGATORY NO. 7: The property is irrigated by a combination of gravity and sprinklers.

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 and 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 to 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, letters 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, 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 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 PRODUCT 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 (T01S, R19E, Section 13 and T01S, R20E, Section 19).

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 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: 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

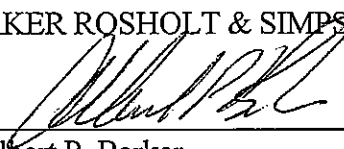
To the extent necessary to supplement the information received according to the Objectors' First Set of Requests for Admissions, Interrogatories, and Requests for Production regarding configuration, operation, and maintenance of irrigation facilities,

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

Attorney for A.W. Molyneux

VERIFICATION

I, A. W. MOLYNEUX, 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 A. W. MOLYNEUX above are true, accurate, and complete to the best of my knowledge and belief.

A. W. MOLYNEUX

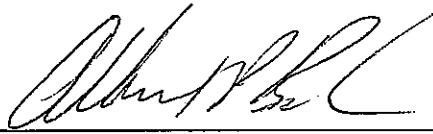
CERTIFICATE OF SERVICE

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

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