

RECEIVED

NOV 19 2008

DEPARTMENT OF
WATER RESOURCES

Attorneys for Claimants Jerry L. Tlucek
and Mary Lou Tlucek

Scott L. Campbell, ISB No. 2251
Dylan B. Lawrence, ISB No. 7136
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
22377.0002

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. 63-03323 & 63-03324

JERRY L. TLUCEK AND MARY LOU
TLUCEK'S RESPONSES TO STATE OF
IDAHO'S FIRST SET OF DISCOVERY
REQUESTS

COMES NOW the above-named claimants, Jerry L. Tlucek and Mary Lou Tlucek ("Claimants"), by and through undersigned counsel of record, and hereby answers and responds to State of Idaho's first set of discovery requests to Claimants as follows:

I.
GENERAL OBJECTIONS

Claimants have not completed their own investigations and/or discovery.

Accordingly, the responses that follow are based upon the best knowledge, information, and

belief of Claimants at this time. Claimants reserve the right to make any further responses if it appears that any omission or error has been made in connection with these responses or that more accurate information is or has become available. These responses are made without prejudice to Claimants' rights to use in later discovery or to present at trial, such evidence as may later be discovered or evaluated.

Claimants object to the definitions and instructions to the extent they purport to require discovery requests beyond that required under 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 these discovery requests.

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 interrogatory were asked of or any statement, material, or information provided were made by witnesses present and testifying in court. All such objections are reserved and may be interposed at the time of trial.

Claimants specifically object to these discovery requests to the extent they seek information protected by the attorney-client privilege, the attorney work product doctrine, and the rules governing the discovery of facts of experts as set forth in Rule 26(b)(4), Idaho Rule of Civil Procedure. This objection is intended to apply to all of the discovery requests that seek such information and will not necessarily be repeated for each request to which it applies. Claimants have, to the extent possible, construed each request as requesting only information and/or documents not subject to any applicable protection.

No incidental or implied admissions are intended. The fact that Claimants have responded to any discovery request, or part thereof, should not be taken as an admission that Claimants accept that the discovery request or the response or objection thereto constitutes admissible evidence. Claimants' answers to any discovery requests herein do not constitute a waiver of their rights to object to any future, additional, or supplemental discovery requests regarding the same or similar matter.

II.
INTERROGATORIES AND REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Produce a true and correct copy of the deed that evidences the claimants' acquisition of the place of use for subcase nos. 63-03323 and 63-03324.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: A copy of the deed is attached and labeled as Bates No. TLU000001-TLU000003.

INTERROGATORY NO. 1: Please identify the model numbers and manufacturers of the pumps and electric motors that divert water from the wells which are the points of diversion for subcase nos. 63-03323 and 63-03324.

ANSWER TO INTERROGATORY NO. 1:

63-03323: Hollow Shaft OS, serial number 1088191.

63-03324: Manufacturer of both primary and booster pump is U.S. Motor.

Model numbers are unavailable, but the serial number for the primary pump is 1142050.

INTERROGATORY NO. 2: Please describe any changes you have made to the wells, pumps or electric motors that divert water at the points of diversion for subcase nos. 63-03323 and 63-03324.

ANSWER TO INTERROGATORY NO. 2: Claimants have made no such changes.

REQUEST FOR PRODUCTION NO. 2: Produce all power records for the wells, pumps, and electric motors that divert water at the points of diversion for subcase nos. 63-03323 and 63-03324.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Power records possessed by Claimants that relate to these pumps are attached and labeled as Bates No. TLU000004-TLU000055.

INTERROGATORY NO. 3: Please identify all persons who have knowledge about the farming of the place of use or who have assisted in the irrigation of the place of use for subcase nos. 63-03323 and 63-3324, since you acquired the place of use for subcase nos. 63-03323 and 63-03324.

ANSWER TO INTERROGATORY NO. 3:

- Name: Jerry Tlucek
Business Address and Telephone Number: 15188 South Can-Ada Road, Melba, Idaho, 83641; (208) 495-2034
Home Address and Telephone Number: 15188 South Can-Ada Road, Melba, Idaho, 83641; (208) 495-2550
Current Employment, Position, and Duties: Member of and registered agent for Snake River Dairies, LLC; oversees the farming operation for Snake River Dairies, LLC
Relationship to Claimants: Claimant
Educational Background: High school graduate
- Name: Mary Lou Tlucek
Business Address and Telephone Number: 15188 South Can-Ada Road, Melba, Idaho, 83641; (208) 495-2034

Home Address and Telephone Number: 15188 South Can-Ada Road, Melba, Idaho, 83641; (208) 495-2550

Current Employment, Position, and Duties: Member of Snake River Dairies, LLC

Relationship to Claimants: Claimant

Educational Background: Graduated from Boise Junior College

- Name: Kevin Tlucek

Business Address and Telephone Number: 15188 South Can-Ada Road, Melba, Idaho, 83641; (208) 495-2034

Home Address and Telephone Number: 15222 South Can-Ada Road, Melba, Idaho, 83641; (208) 941-6144

Current Employment, Position, and Duties: Member of Snake River Dairies, LLC; oversees the dairy operation for Snake River Dairies, LLC

Relationship to Claimants: Son

Educational Background: High school graduate

REQUEST FOR PRODUCTION NO. 3: Produce all documents related to the construction of the wells that are the points of diversion for subcase nos. 63-03323 and 63-03324.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: Claimants do not possess well construction documents associated with these two water rights.

REQUEST FOR PRODUCTION NO. 4: Produce all data regarding measurements of the output of the wells for subcase nos. 63-03323 and 63-03324.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Claimants do not possess data regarding measurements of the output of the wells associated with these two water rights.

REQUEST FOR PRODUCTION NO. 5: Produce all pictures or video of the place of use and points of diversion for subcase nos. 63-03323 and 63-03324.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: Claimants do not possess pictures or video of the place of use or points of diversion associated with these two water rights.

REQUEST FOR PRODUCTION NO. 6: Please provide access to the production wells that are the points of diversion for subcase nos. 63-03323 and 63-03324 for purposes of conducting a flow measurement test, which measures the output of each well under normal operating conditions. A technician from IDWR will conduct the flow measurement test during the month of November. Please provide a date and time when the claimants will provide such access. The electricity must be available at the well for the flow measurement test to occur; the discharge pipe from the well must also be connected to the sprinkler system.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: Claimants object to this request for several reasons. First, pursuant to Idaho Code Section 42-1401B(1), IDWR is required to be an “independent expert and technical assistant,” not an expert that acts on behalf of a particular party to a subcase. (Emphasis added). This request for access creates a situation in which IDWR is acting on behalf of one party against the interests of another party, rather than acting as an “independent,” objective expert. This request therefore violates Section 42-1401B. Second, pursuant to Idaho Code Sections 42-1409, 42-1410, and 42-1411, IDWR is supposed to investigate claims before it issues its recommendation. This is supported by Rule 5(a) of AO1, which requires IDWR to obtain permission from the Claimants or leave of Court to conduct a field examination to investigate a claim after the Director’s Report recommendation has been issued. In essence, IDWR is attempting to use the State of Idaho’s discovery as a means for re-evaluating claims that it should have fully investigated prior to issuing the recommendations, in contravention of the adjudication statutes and rules. Third, Claimants are not authorized to

withdraw groundwater after November 15, as that date constitutes the end of the official irrigation season for this area of Idaho. Fourth, withdrawals of groundwater outside of the irrigation season are not necessarily indicative of groundwater withdrawals during the irrigation season. Therefore, Claimants would be unable to replicate “normal operating conditions,” as the State of Idaho has specified.

INTERROGATORY NO. 4: Identify all persons who assisted in the preparation of the notices of claim for subcase nos. 63-03323 and 63-03324.

ANSWER TO INTERROGATORY NO. 4:

- Name: Jerry Tlucek (Please see Answer to Interrogatory No. 3.)
- Name: Scott Campbell
Business Address and Telephone Number: 101 South Capitol Blvd, 10th Floor, Boise, Idaho 83702; (208) 385-5432
Current Employment, Position, and Duties: Moffatt Thomas Barrett Rock & Fields, Chartered, Attorney, Partner
Relationship to Claimants: Attorney for Claimants
Educational Background: Undergraduate degree, Whitman College, 1974; J.D., University of Idaho, 1978
- Name: Dylan Lawrence
Business Address and Telephone Number: 101 South Capitol Blvd, 10th Floor, Boise, Idaho 83702; (208) 385-5417
Current Employment, Duties and Position: Moffatt Thomas Barrett Rock & Fields, Chartered, Attorney, Associate
Relationship to Claimants: Attorney for Claimants
Educational Background: J.D., University of Texas, 2002; B.B.A., University of Texas, 1997
- Name: Tiffany Hudak

Business Address and Telephone Number: 101 South Capitol Blvd, 10th Floor, Boise, Idaho 83702; (208) 385-5435

Current Employment, Position, and Duties: Moffatt Thomas Barrett Rock & Fields, Chartered, Paralegal, assist attorneys for Claimants

Relationship to Claimants: Paralegal for Claimants

Educational Background: High school graduate; Paralegal Certificate, California State Polytechnic University

INTERROGATORY NO. 5: Please identify each and every person whom you expect to call as a fact witness in the trial of this matter, and state the substance of the facts upon which the person is expected to testify.

ANSWER TO INTERROGATORY NO. 5: At this point in time, Claimants do not “expect” to call fact witnesses during these summary judgment proceedings. However, if necessary, the individuals identified in the Answer to Interrogatory No. 3 may testify regarding Claimants’ operations, well operation, and water use.

INTERROGATORY NO. 6: Please identify each and every person whom you expect to call as an expert witness in this matter. For each such person identified, please state the subject matter on which the expert is expected to testify, the substance of the opinions to which the expert is expected to testify, and the underlying facts and data upon which the expert opinions are based.

ANSWER TO INTERROGATORY NO. 6: At this point in time, Claimants do not “expect” to call expert witnesses during these summary judgment proceedings. However, if necessary, the individuals identified below could testify as to their opinion of arguments made and conclusions drawn by the State of Idaho in these summary judgment proceedings regarding the Claimants’ use of water.

- Name: Scott King

Business Address and Telephone Number: 300 E. Mallard Drive Suite 350, Boise, Idaho 83706; (208) 383-4140

Current Employment, Position, and Duties: SPF Water Engineering, LLC, Supervising Engineer, provides consulting services on water rights issues, pump design, irrigation system evaluation, surface water hydrology, surface water modeling, and river hydraulics

Relationship to Claimants: Engineer for Claimants

Educational Background: M.S., Civil Engineering, University of Idaho; B.S., General Engineering, Idaho State University
- Name: Terry Scanlan

Business Address and Telephone Number: 300 E. Mallard Drive Suite 350, Boise, Idaho 83706; (208) 383-4140

Current Employment, Position, and Duties: SPF Water Engineering, LLC, Principal Engineer/Hydrogeologist, provides water resource consulting and engineering services

Relationship to Claimants: Engineer for Claimants

Educational Background: M.S., Geological Engineering, University of Idaho; B.S., Geological Engineering, University of Idaho

REQUEST FOR PRODUCTION NO. 7: For each person identified in your response to Interrogatory No. 8, please produce: (1) a curriculum vitae or resume, including a list of publications authored by that person, if any, as well as any other information which would demonstrate the person's knowledge or qualifications to state the facts or express the opinions to which the person is expected to testify; and (2) all documents containing or evidencing the underlying facts or data described in your response to Interrogatory No. 7.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: Copies of the curriculum vitae for Scott King and Terry Scanlan are attached and labeled as Bates No. TLU000056-TLU000064. Claimants currently do not possess other documents responsive to this request. Claimants object to this request on the grounds and to the extent that it seeks

documents protected by the attorney-client privilege and/or the work product doctrine.

Claimants also object to this request on the grounds and to the extent that it exceeds the scope of the Idaho Rules of Civil Procedure applicable to disclosure of expert witnesses, and on the grounds and to the extent that it seeks the identity of and/or disclosure of opinions or documents held by consultants contacted in anticipation of litigation or in preparation for trial, but who may not be called as a witness at trial. Subject to and without waiving said objections, Claimants will supplement this response in accordance with the Idaho Rules of Civil procedure and any relevant orders of the Court.

INTERROGATORY NO. 7: Identify all persons who assisted in the preparation of the claimants' responses to these interrogatories and requests for production.

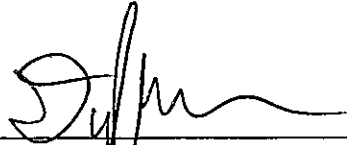
ANSWER TO INTERROGATORY NO. 7:

- Name: Jerry Tlucek (Please see Answer to Interrogatory No. 3.)
- Name: Mary Lou Tlucek (Please see Answer to Interrogatory No. 3.)
- Name: Scott Campbell (Please see Answer to Interrogatory No. 4.)
- Name: Dylan Lawrence (Please see Answer to Interrogatory No. 4.)
- Name: Tiffiny Hudak (Please see Answer to Interrogatory No. 4.)
- Name: Lela Wood
Business Address and Telephone Number: 101 South Capitol Blvd, 10th Floor, Boise, Idaho 83702; (208) 385-5435
Current Employer, Position, and Duties: Moffatt Thomas Barrett Rock & Fields, Chartered, Administrative Assistant, assist attorneys for Claimants
Relationship to Claimants: Administrative Assistant to attorneys for Claimants
Educational Background: High school graduate; Secretarial Certificate from ITT Technical Institute

DATED this 17th day of November, 2008.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By



Dylan B. Lawrence – Of the Firm
Attorneys for Claimants Jerry L. Tlucek
and Mary Lou Tlucek

CERTIFICATE OF SERVICE

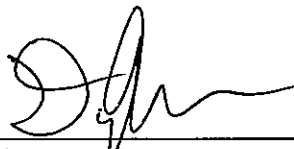
I HEREBY CERTIFY that on this 17th day of November, 2008, I caused a true and correct copy of the foregoing **JERRY L. TLUCEK AND MARY LOU TLUCEK'S RESPONSE TO STATE OF IDAHO'S FIRST SET OF DISCOVERY REQUESTS** to be served by the method indicated below, and addressed to the following:

Representing: State of Idaho
David J. Barber
Office of the Attorney General
STATE OF IDAHO
700 West State Street, 2nd Floor
P.O. Box 83720
Boise, ID 83720-0010
Fax: (208) 854-8072

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

Director
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. Box 83720
Boise, ID 83720-0098
Fax: (208) 287-6700

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



Dylan B. Lawrence