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Department of Water Resources
Adjudication Bureau

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Attorneys for O'Gara, et al., Objectors

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 No. 37-12130
	)	
Case No. 39576	)	FIRST INTERROGATORIES,
	)	REQUESTS FOR ADMISSION AND
	)	REQUESTS FOR PRODUCTION TO
	)	CLAIMANT NEWFOUNDLAND
	)	PARTNERS-Claim No. 37-12130
	)	

COMES NOW, the Objectors, O'Gara et al, by and through their attorneys of record,
Barker Rosholt & Simpson LLP, and submit these **FIRST INTERROGATORIES,**
REQUESTS FOR ADMISSION AND REQUESTS FOR PRODUCTION TO CLAIMANT
NEWFOUNDLAND PARTNERS-Claim No. 37-12130 pursuant to Rules 26, 33, 34, and 36 of
the Idaho Rules of Civil Procedure.

GENERAL INSTRUCTIONS

1. Objectors request that Claimant, answer the following interrogatories and requests for production separately and fully, in writing, under oath, and in accordance with Rules 26 and 33 of the Idaho Rules of Civil Procedure, and produce the documents requested, either by providing the Objectors with photocopies or by producing the responsive documents for inspection and copying, in accordance with Rules 25 and 34 of the Idaho Rules of Civil Procedure.

2. When answering these interrogatories, requests for admission and requests for production, please type the interrogatory or request as well as your response or objection in accordance with all provisions of Rules 33 and 36 of the Idaho Rules of Civil Procedure. Please serve the original typewritten responses to **RESPONSES TO FIRST INTERROGATORIES, REQUEST FOR ADMISSION AND REQUESTS FOR PRODUCTION TO CLAIMANT NEWFOUNDLAND PARTNERS – Claim No. 37-12130** with a copy of your notice of service on the Objectors.

3. These interrogatories, requests for admission, and requests for production of documents are deemed continuing in nature, and your responses are to be supplemented as additional information and knowledge becomes available or known to you as provided in Rule 26(e) of the Idaho Rules of Civil Procedure.

4. In answering these interrogatories, requests for admission and requests for production of documents, furnish all information which is known or available to you, however obtained, including, but not limited to, information known of your personal knowledge, hearsay information, information obtainable by the diligent search of sources of information available to you, and all information in the possession of or available to any person or persons acting on your behalf or under your control or under the control of any of your attorneys, accountants, agents, employees, experts, subcontractors, independent contractors, insurers, investigators, representatives, or others with whom you have a relationship and from whom you are capable of deriving information, documents, or material.

5. If you withhold any information, in whole or in part, which is called for in an interrogatory, request for admission or request for production on the ground that it is subject to attorney-client privilege, or other privilege, please provide the following information:

- (a) Principals. The name, title, and address(es) of the author(s), sender(s), and recipients(s). Identify each person or entity having knowledge of the basis for each claim of privilege or other objection.
- (b) Date. The date the document was originated.
- (c) Publications. The date and title of each person to whom the contents of the document has been communicated (by copy, exhibition, reading, summarization, or otherwise).
- (d) Descriptions. A description of the nature and subject matter of the document.
- (e) Privilege. A statement of the privilege and the grounds upon which it is asserted. Notwithstanding a claim that a document is privileged, any document so withheld must be produced with the portion claimed to be protected excised.

6. If you object to or otherwise decline to answer any portion of an interrogatory, request for admission or request for production for reasons other than privilege, please state that a complete response is not provided, state the reason for the incomplete response, and provide all information requested which is not subject to the objection or refusal to answer. If you object to an interrogatory on the ground that to provide an answer would constitute an undue burden, provide all requested information that can be supplied without undertaking an undue burden.

7. If you are unable to produce any document requested, state the reason you are unable to produce the document and identify the document with as much accuracy as possible.

8. Identify each person who provided information for or participated in the preparation of the responses to these requests for production, interrogatories, and requests for production of documents. Identify the specific interrogatories and/or requests for which each such person provided information.

INSTRUCTIONS FOR REQUESTS FOR ADMISSIONS

1. Please answer the following requests for admissions separately and fully, in writing, under oath, and in accordance with Rule 36(a) of the Idaho Rules of Civil Procedure within thirty (30) days of service hereof.

2. When answering these requests for admissions, please type the request for admission as well as your response in accordance with all provisions of Rules 33 and 36 of the Idaho Rules of Civil Procedure. Please serve the original typewritten responses to these Requests for Admissions with a copy of your notice of service on the Objectors.

3. In answering these requests for admissions, furnish all information which is known or available to you, however obtained, including, but not limited to, information known of your personal knowledge, hearsay information, information obtainable by the diligent search of sources of information available to you, and all information in the possession of or available to any person or persons acting on your behalf or under your control or under the control of any of your attorneys, accountants, agents, employees, experts, subcontractors, independent contractors, insurers, investigators, representatives, or others with whom you have a relationship and from whom you are capable of deriving information, documents, or material.

4. Identify each person who provided information for or participated in the preparation of the responses to these requests for admissions. Identify the specific requests for which each such person provided information.

INSTRUCTIONS FOR INTERROGATORIES

1. Responses to these interrogatories, and objections if any, must be served upon the Objectors within thirty (30) days of service hereof in accordance with Rule 33(a) of the Idaho Rules of Civil Procedure. The response shall first set forth each interrogatory asked, followed by the answer or objection of the party given under oath.

2. Where exact statistical or numerical information, including dates, or times, cannot be furnished, supply estimated or approximate information and, state in detail the reason(s) why exact statistical or numerical information cannot be furnished. Where an estimation or approximation is supplied, it should be so indicated, and an explanation provided as to the basis upon which the estimate or approximate information was derived.

INSTRUCTIONS FOR REQUESTS FOR PRODUCTION

1. Please provide, within thirty (30) days from the date of service of these requests, clear and legible photocopies of the requested documents by mailing them to the undersigned in accordance with Rule 34(b) of the Idaho Rules of Civil Procedure together with your responses to interrogatories and requests for production. Inspection and copying will be conducted by the undersigned attorneys or their agents and will continue from time to time and from day to day until completed. If you will make the originals of the requested documents available at a subsequent time, upon reasonable notice, including trial, then the requests for production of documents may be satisfied by mailing true, correct, and legible copies of each and every requested document to Albert P. Barker, Barker Rosholt & Simpson LLP, 1010 W. Jefferson St., Ste. 102, P.O. Box 2139, Boise, Idaho 83701-2139 within the prescribed time.

2. Each document to be produced shall be provided in a manner which preserves its sequential relationship with other documents being produced and shall include the file folder and folder tabs associated with its file location. If the file location is not apparent on the folder and tabs, the document shall be accompanied by information indicating from where the file was taken and such additional information sufficient to indicate the file's origin.

3. You are requested to provide a response within thirty (30) days of service. If you refuse to produce any document, you must identify it as specified in these instructions and state

the legal grounds for non-production. If any document requested cannot be located, describe in detail:

- (a) the type of document;
- (b) the types of information contained therein;
- (c) the effort made to locate the document;
- (d) the person (name, affiliation, title, business address and telephone number) who made such an effort;
- (e) the source and custodian of documentation consulted and searched;
- (f) the identity of all persons having knowledge of the contents thereof;
- (g) whether any government agencies would have retained a copy of any of the documents;
- (h) whether the document was destroyed, and if so, at whose direction, when, and the reasons for its destruction; and
- (i) whether the document was lost, and if so, at what approximate date, by whom, and under what circumstances.

DEFINITIONS

In answering these interrogatories, requests for admission and requests for production of documents, all terms retain their normal meaning. Terms used in these interrogatories when used in the singular shall be construed to include the plural, and vice versa. Words used with reference to a person of the male gender shall also be construed to refer to a person of the female gender, and vice versa. The following terms, in addition to their commonly understood definitions, shall have the following meanings:

1. The words "Newfoundland Partners" "Newfoundland" "Claimant," or "you," refers to Newfoundland Partners, the Claimant identified in this action, and your present and former attorneys, officers, directors, employees, agents,

representatives, subcontractors, material suppliers, consultants, investigators and any other persons who were and/or are presently authorized to act or purporting to act in your behalf.

2. The word “agent” when used without a qualifying adjective, means all persons or entities presently or formerly associated with you, including employees, officers, directors, consultants, insurance company agents, contractors, subcontractors, representatives, investigators, shareholders, attorneys, trustees, and any other person authorized to act in your behalf.
3. The term “person” as used herein, includes any natural person, corporation, partnership, or other business association or entity recognized by law, and the employees or independent contractors thereof, and any domestic or foreign government body, commission, board, agency, branch, department, component or element thereof.
4. The term “document” includes all items identified in Idaho Rule of Civil Procedure 34(a)(1), and, also is used in this first set of interrogatories and requests for production in its broad and literal sense and at a minimum means any written, drawn, typed, printed, recorded, Photostatted, computer generated, microfiche, microfilmed or graphic matters, whether produced, reproduced, or stored on paper, cards, disc, tape, film, electronic facsimile, computer storage or any other media, whether an original, master or duplicate including, but not limited to accounts, advertisements, affidavits, agreements, analyses, appraisals, applications, appointment books, appointment calendars, bank checks, bills, blueprints, books, bookkeeping entries, bulletins, cablegrams, cache logs,

calculations, canceled checks, cashier's checks, catalogs, charts, check stubs, circulars, communications, compilations, computer printouts, computer source codes and object codes, contracts, correspondence, court filings, day books, data, declarations, depositions, desk calendars, diagrams, diaries, diary entries, documents, drafts, drawings, electronic mail, electronic files stored on a computer disk, CD-ROM, or other computer disk or tape technology, expense reports, field notebooks, files, financial statements, flowcharts, forecasts, graphs, invoices, itineraries, interview notes, ledgers, letters, lists, log books, mailgrams, manuals, memoranda, minutes, notebooks, note pads, notes, pamphlets, papers, periodicals, photographs, plans, projections, proposals, prospectuses, publications, receipts, records, reports, returns, sketches, sound recordings, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings, conferences or legislative, judicial, or other public hearings, summaries or reports of investigations or negotiations, opinions and/or reports of consultants, tax returns, telefax, telegrams, telephone logs, tickets, time records, time sheets, transcriptions, transcripts, travel reports, travel vouchers, vouchers, working papers, worksheets, and all other papers, writings, drawings, recordings, or physical things containing information, including all original and amended versions of the documents, preliminary and subsequent drafts or marginal notes appearing on any documents, however denominated or described by the parties to whom the particular interrogatories and/or requests for production are directed. The term "document" shall further collectively include the original, duplicate original, and any or all copies or

reproductions of the original document, to the extent that any or all copies are different in any way from the original document, whether by interlineations, receipt stamps, notation, indication of copies sent or received otherwise, which are in your possession, custody or control.

7. “Describe in detail” or “state in detail” as used herein, means the following:

Describe fully by reference to the underlying facts, rather than the ultimate facts or conclusions of law or facts, and particularize as to:

- (a) the identity of each person involved in each such event, including, but not limited to persons employed by you and those persons purporting to act for you;
- (b) the specific acts of each person participation in each such event;
- (c) the date and time of each such event;
- (d) the address and location of such an event; and
- (e) the identity of each person present during each such event.

8. “Identify” or “identity” shall have the following meaning:

- (a) When used in reference to an organization, the response shall state the full name and present or last known address of the corporation, partnership, firm or other entity.
- (b) When used in reference to an individual, the response shall state his or her full name, present or last known address, present or last known business affiliation and job description, any past or present affiliation with plaintiff or defendant, and the manner in which he or she relates to any of the issues or facts in this litigation, and the source and extent of his or her knowledge about any of these facts or issues. If you do not know the present address or present employer of any such person, please so indicate.
- (c) When used in reference to a document, the response shall state the type of document (e.g., memorandum, letter, note, contract), its date, author(s), addressee(s) (if any), synopsis of content, and present location. In lieu of providing this information, plaintiff may attach a copy of the document to its answers.

- (d) When used in reference to a source of information, the response shall identify each individual providing information. The response shall also state whether the information has been reduced to writing or other tangible form. If so, this writing or other record shall be identified in the manner described in subparagraph (7) above.
9. The word “substantiate” means to: identify with precision, specificity and particularity each document upon which you rely in making the reference, contention, or response; to identify each person whose statements are or will be relied upon to support the reference, contention, or response; to state with precision, specificity and particularity any other facts relating to the reference, contention, or response; and to identify any and all legal bases (including common law, statutes, regulations, etc.) for the reference, contention or response.
10. Documents to be identified or facts to be stated are described as those that “relate to” any entity, a person, an action, a document or event. For purposes of responding to these interrogatories, the term “relate to” shall mean to name, to refer to either directly or indirectly, to comment upon, analyze, review, report on, form the basis of, be considered in the preparation of, result from, be in any way connected with, emanate from, or have any logical relation to the entity, person, document, event, or action.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Please admit that there are no measuring devices on or above the pond(s) claimed under this right.

INTERROGATORIES

INTERROGATORY NO. 1: Please describe in detail the historical use of water claimed in water right no. 37-12130, and describe all documents relied upon to support your claim.

INTERROGATORY NO. 2: Please describe in detail the construction of the storage structure represented in water right no. 37-12130 including its origins and any modifications that have been made since it was originally constructed.

INTERROGATORY NO. 3: Please identify by type and location all measuring devices installed at the storage structure represented by water right claim no. 37-12130.

INTERROGATORY NO. 4: Please describe in detail the manner and/or method upon which claimant relied to determine the volume and rate of diversion claimed for storage in water right no. 37-12130.

INTERROGATORY NO. 5: Please describe in detail all diversion structures in place used to measure any diversion of water from Trail Creek.

INTERROGATORY NO. 6: Please identify any person or entity which you have retained to undertake an expert analysis of the any of the matters at issue in this SRBA subcase, and indicate the subject of the expert's study and analysis and whether the expert is expected to produce a report and testify at the trial of this matter.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce all records of diversion and/or delivery of water, for water diverted under water right no. 37-12130 from 1970 to the present.

REQUEST FOR PRODUCTION NO. 2: Please produce all reports, correspondence, photographs, memoranda, and all other documents relied upon or referred to by claimant or its agents to respond to the requests for admission and interrogatories served contemporaneously herewith, excluding those documents which claimant contends are protected by a privilege.

REQUEST FOR PRODUCTION NO. 3: Please produce all aerial photographs, maps and other depictions in the possession of claimant depicting the place of use for water right no. 37-12130 since its initial construction to the present.

REQUEST FOR PRODUCTION NO. 4: Please produce the results of any study undertaken by claimant to support any claim that it needs more than one inch per acre of water for storage for wildlife and aesthetic purposes.

REQUEST FOR PRODUCTION NO 5: Please produce all records relating to the initial construction of and any expansion or modification of the storage ponds and/or aesthetic and wildlife amenities on your property claimed under this water right.

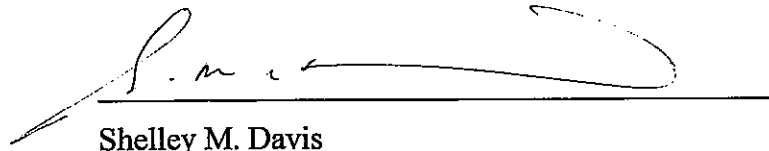
REQUEST FOR PRODUCTION NO. 6: Please produce all records which indicate the rate of, and volume of, transmission and/or conveyance loss for all locations within the place of use for water right no. 37-12130.

REQUEST FOR PRODUCTION NO. 7: Please produce any expert reports generated in response to, or for the purpose of resolving any matter at issue in SRBA subcase no. 37-12130.

REQUEST FOR PRODUCTION NO. 8: For any documents withheld from production under a claim of privilege, please produce a privilege log in conformance with Idaho Rule of Civil Procedure 26(b)(5)(A).

Dated January 4th, 2009.

BARKER ROSHOLT & SIMPSON LLP



Shelley M. Davis

Attorneys for Tom O’Gara, John F. Stevenson,
Bill Molyneux, Pete Van Der Meulen, Grace Eakin,
Rocky Sherbine, Gerald Bashaw, and
Pepin Corso-Harris

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of January, 2009, I caused to be served a true and correct copy of the foregoing **FIRST INTERROGATORIES, REQUESTS FOR ADMISSION AND REQUESTS FOR PRODUCTION TO CLAIMANT NEWFOUNDLAND PARTNERS.-Claim No. 37-12130** by the method indicated below, and addressed to each of the following:

Scott L. Campbell

Tara Martens

Dylan B. Lawrence

Andrew J. Snook

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS

101 So. Capital Blvd., 10th Floor

P. O. Box 829

Boise, ID 83701

☒ U.S. Mail, Postage Prepaid

☐ Hand Delivered

☐ Overnight Mail

☐ Facsimile

☐ Electronic Mail

Director

IDAHO DEPARTMENT OF WATER RESOURCES

322 E. Front Street, 6th Floor

P. O. Box 83720

Boise, ID 83720-00098

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Chief, Natural Resources Division

Office of the Attorney General

STATE OF IDAHO

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Boise, ID 83711-2530

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UNITED STATES DEPARTMENT OF JUSTICE

Environment & Natural Resource Division

550 W. Fort Street, MSC 033

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James P. Speck

SPECK & AANESTAD

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☐ Facsimile
☐ Electronic Mail

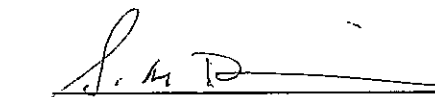

Shelley M. Davis

EXHIBIT A

ATELIER CONDOMINIUMS
BITTER ROUTE SUB
COMMUNITY SCHOOL SUB
COTTONWOOD CONDOS
DOLLAR MEADOW CONDOS
DOLLAR ROAD TOWNHOUSES
EAST LAKE SALE PARCELS
EAST LAKE SUBDIVISION
FAIRWAY SUB
FISCHER-REUTHER SUB
FR NESE TL 2656, TL 2804
FR NWSE
LODGE APTS II
NEW VILLAGER CONDOS
PROSPECTOR SUB
PROSPECTOR SUB #2
PROSPECTOR WELLS SUB
RUUD MOUNTAIN SUB
SNOW CREEK CONDOS
SUN VALLEY CONDOS
SUN VALLEY VILLAGE
TRAIL CREEK SUB
TRAIL CREEK SUB #2
TRAIL CREEK SUB #2 REPLAT
UPPER FAIRWAY SUB #1 REV
UPPER FAIRWAY SUB #2
UPPER FAIRWAY SUB #3
VILLAGER CONDOS
WILDFLOWER CONDOS