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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. 37-12130

NEWFOUNDLAND PARTNERS' ANSWERS  
AND RESPONSES TO CONCERNED WATER  
USERS' FIRST SET OF INTERROGATORIES,  
REQUESTS FOR ADMISSION, AND  
REQUESTS FOR PRODUCTION

COMES NOW Newfoundland Partners, LP ("Newfoundland"), by and through  
undersigned counsel, and answers and responds to Concerned Water Users' First Set of  
Interrogatories, Requests for Admission and Requests for Production, as follows:

**I.**  
**GENERAL STATEMENTS**

Newfoundland has not completed its investigation of the facts relating to this subcase, its discovery, nor its preparation for trial. The responses contained herein are based only upon such information and documents presently available to and known by it. Nothing contained herein shall be used to preclude Newfoundland from further research and investigation of the facts or from presentation of the results of that research and investigation at the time of trial.

The following responses are provided without prejudice to the right of Newfoundland to produce and introduce at the time of trial subsequently discovered evidence relating to the proof of presently known material facts, and to produce and introduce all evidence whenever discovered relating to the proof of subsequently discovered material facts. Moreover, because the facts and evidence now known may be imperfectly understood, or the relevancy or consequence of certain facts and evidence may be imperfectly understood, such facts and evidence in good faith may not be included in the following responses. Newfoundland reserves the right to refer to, conduct discovery with reference to, or offer into evidence at the time of trial, any and all documents and things notwithstanding the responses and objections interposed herein.

To the extent that a discovery request has not been objected to, Newfoundland has used and will use reasonable diligence to obtain information responsive to the requests responded to herein, based on examination of those files that may reasonably be expected to yield such information and interviews with those individuals reasonably expected to have such information. All relevant and unprivileged information so obtained is contained in these responses or will be contained in supplemental responses.

To the extent Objectors seek to require Newfoundland to do more than the foregoing, these Interrogatories are objected to on the grounds that they would subject Newfoundland to oppression, harassment, and undue burden and expense not commensurate with any legitimate discovery need.

## **II. GENERAL OBJECTIONS**

Newfoundland objects to the General Instructions, Instructions for Requests for Admissions, Instructions for Interrogatories, Instructions for Requests for Production (“Instructions”) and Definitions included at the beginning of this set of discovery as follows:

- (i) As applied to the specific interrogatories and requests, the “Instructions” and “Definitions” would call for information that is, in part, outside the scope of knowledge of lay individuals and may require expertise in fields beyond the scope of Newfoundland’s knowledge. Newfoundland anticipates that it will be designating expert witnesses to testify at the trial of this matter. Those experts have not yet been determined, but will be designated pursuant to the pretrial orders of this Court.
- (ii) As applied to the specific interrogatories and requests, the “Instructions” and “Definitions” would seek non-discoverable expert information which is not required to be disclosed under the Idaho Rules of Civil Procedure.
- (iii) As applied to the specific interrogatories and requests, the “Instructions” and “Definitions” would make such interrogatories and requests oppressive and burdensome, overly broad, harassing, and subject Newfoundland to undue expense.
- (iv) As applied to the specific interrogatories and requests, the “Instructions” and “Definitions” would make such interrogatories and requests vague and ambiguous.
- (v) As applied to the specific interrogatories and requests, the “Instructions” and “Definitions” would seek information that is subject to the attorney-client and work-product privileges, or information that was otherwise prepared in anticipation of litigation or preparation for trial containing information, conclusions, opinions, or legal theories of attorneys.
- (vi) As applied to the specific interrogatories and requests, the “Instructions” and “Definitions” purport to impose discovery burdens on Newfoundland in a manner not permitted by the Idaho Rules of Civil Procedure.

**III.**  
**RESPONSES TO 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.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Newfoundland objects to this request to the extent that it is vague, ambiguous and potentially misleading. Without waving said objections, and subject thereto, Newfoundland represents there are no permanent Idaho Department of Water Resource approved measuring devices.

Newfoundland reserves the right to supplement its response as discovery continues and facts become known.

**IV.**  
**ANSWERS TO 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.

ANSWER TO INTERROGATORY NO. 1: Newfoundland objects to this interrogatory on the grounds it is overly broad, vague, ambiguous, burdensome and potentially misleading. Newfoundland objects to this interrogatory to the extent it seeks the disclosure of impeachment evidence. Newfoundland further objects to this interrogatory on the basis of and to the extent it seeks the identity of and disclosure of facts known or opinions held by experts who have been retained or specially employed by it in anticipation of litigation or in preparation for trial and who are not expected to be called as witnesses at trial in accordance with Idaho Rule of Civil Procedure 26(b)(4)(B). Newfoundland objects to this interrogatory to the extent it seeks the disclosure of individuals merely contacted or consulted by it and who will not be retained as

expert witnesses, and to the extent it seeks the disclosure of information protected by the attorney/client and/or work product privileges, or information prepared in anticipation of litigation. Without waiving said objections, and subject thereto, Newfoundland represents that water has been used under water right no. 37-12130 on a continuous basis since spring of 1971. Water from Trail Creek is diverted through a metal/concrete headgate in Trail Creek, through a concrete pipe to the pond. Water from the pond returns to Trail Creek in sheet flow through a cobble rock channel. Copies of relevant documents are provided in Attachment A.

Newfoundland reserves the right to supplement its answer as discovery continues and facts become known.

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.

ANSWER TO INTERROGATORY NO. 2: Newfoundland objects to this interrogatory on the grounds it is overly broad, vague, ambiguous, burdensome and potentially misleading. Newfoundland objects to this interrogatory to the extent it seeks the disclosure of impeachment evidence. Newfoundland further objects to this interrogatory on the basis of and to the extent it seeks the identity of and disclosure of facts known or opinions held by experts who have been retained or specially employed by it in anticipation of litigation or in preparation for trial and who are not expected to be called as witnesses at trial in accordance with Idaho Rule of Civil Procedure 26(b)(4)(B). Newfoundland objects to this interrogatory to the extent it seeks the disclosure of individuals merely contacted or consulted by it and who will not be retained as expert witnesses, and to the extent it seeks the disclosure of information protected by the attorney/client and/or work product privileges, or information prepared in anticipation of

litigation. Without waiving said objections, and subject thereto, Newfoundland represents the pond was constructed in conjunction with construction of the residential structures located on the real property owned by the Claimant. The pond was constructed with excavation equipment and completion of construction occurred on or before May 1, 1971.

Newfoundland reserves the right to supplement its answer as discovery continues and facts become known.

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.

ANSWER TO INTERROGATORY NO. 3: Newfoundland objects to this interrogatory on the grounds it is overly broad, vague, ambiguous, burdensome and potentially misleading. Newfoundland objects to this interrogatory to the extent it seeks the disclosure of impeachment evidence. Newfoundland further objects to this interrogatory on the basis of and to the extent it seeks the identity of and disclosure of facts known or opinions held by experts who have been retained or specially employed by it in anticipation of litigation or in preparation for trial and who are not expected to be called as witnesses at trial in accordance with Idaho Rule of Civil Procedure 26(b)(4)(B). Newfoundland objects to this interrogatory to the extent it seeks the disclosure of individuals merely contacted or consulted by it and who will not be retained as expert witnesses, and to the extent it seeks the disclosure of information protected by the attorney/client and/or work product privileges, or information prepared in anticipation of litigation. Without waiving said objections, and subject thereto, Newfoundland represents there are no permanent Idaho Department of Water Resource approved measuring devices.

Newfoundland reserves the right to supplement its answer as discovery continues and facts become known.

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.

ANSWER TO INTERROGATORY NO. 4: Newfoundland objects to this interrogatory on the grounds it is overly broad, vague, ambiguous, burdensome and potentially misleading. Newfoundland objects to this interrogatory to the extent it seeks the disclosure of impeachment evidence. Newfoundland further objects to this interrogatory on the basis of and to the extent it seeks the identity of and disclosure of facts known or opinions held by experts who have been retained or specially employed by it in anticipation of litigation or in preparation for trial and who are not expected to be called as witnesses at trial in accordance with Idaho Rule of Civil Procedure 26(b)(4)(B). Newfoundland objects to this interrogatory to the extent it seeks the disclosure of individuals merely contacted or consulted by it and who will not be retained as expert witnesses, and to the extent it seeks the disclosure of information protected by the attorney/client and/or work product privileges, or information prepared in anticipation of litigation. Without waiving said objections, and subject thereto, Newfoundland represents it relied upon the on-site measurements and calculations of Mr. Sherl Chapman, a qualified water resources consultant, to determine the volume and rate of diversion claimed for storage in water right no. 37-12130. The measurements were conducted on April 17, 1990. A standard current meter was used for the measurements. On that date, the measured flow from Trail Creek into the diversion works was 1.604 cubic feet per second (cfs) and the measured flow discharge from the pond into Trail Creek was 1.721 cfs, a net gain of 0.117 cfs.

Newfoundland reserves the right to supplement its answer as discovery continues and facts become known.

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

ANSWER TO INTERROGATORY NO. 5: Newfoundland objects to this interrogatory on the grounds it is overly broad, vague, ambiguous, burdensome and potentially misleading. Newfoundland objects to this interrogatory to the extent it seeks the disclosure of impeachment evidence. Newfoundland further objects to this interrogatory on the basis of and to the extent it seeks the identity of and disclosure of facts known or opinions held by experts who have been retained or specially employed by it in anticipation of litigation or in preparation for trial and who are not expected to be called as witnesses at trial in accordance with Idaho Rule of Civil Procedure 26(b)(4)(B). Newfoundland objects to this interrogatory to the extent it seeks the disclosure of individuals merely contacted or consulted by it and who will not be retained as expert witnesses, and to the extent it seeks the disclosure of information protected by the attorney/client and/or work product privileges, or information prepared in anticipation of litigation. Without waiving said objections, and subject thereto, Newfoundland represents the diversion structure for diversion of water under water right number 37-12130 is a metal/concrete headgate in Trail Creek, connected to a 300 foot long concrete pipe.

Newfoundland reserves the right to supplement its answer as discovery continues and facts become known.

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.

ANSWER TO INTERROGATORY NO. 6: Newfoundland objects to this interrogatory to the extent its scope exceeds the provisions of the Idaho Rules of Civil Procedure applicable to disclosure of expert witnesses. Newfoundland further objects to this interrogatory on the basis of and to the extent it seeks the identity of and disclosure of facts known or opinions held by experts who have been retained or specially employed by them in anticipation of litigation or in preparation for trial and who are not expected to be called as witnesses at trial in accordance with Idaho Rule of Civil Procedure 26(b)(4)(B). Newfoundland objects to this interrogatory to the extent it seeks the disclosure of individuals merely contacted or consulted by it and who will not be retained as expert witnesses, and to the extent it seeks the disclosure of information protected by the attorney/client and/or work product privileges, or information prepared in anticipation of litigation.

Without waiving said objections, and subject thereto, Newfoundland has not made any final determination as to who will be called as expert witnesses at the trial of this action. At such time as a determination is made relative to expert witnesses, this Answer will be supplemented accordingly. Further, Newfoundland anticipates compliance with the pretrial Orders of the Court relative to disclosure of witnesses.

Newfoundland reserves the right to supplement its answer as discovery continues and facts become known.

**V.  
RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Newfoundland objects to this request on the grounds it is overly broad, vague, ambiguous, burdensome and potentially misleading. Newfoundland objects to this request to the extent it seeks the disclosure of impeachment evidence. Newfoundland objects to this request on the basis of and to the extent it seeks the identity of and disclosure of facts known or opinions held by experts who have been retained or specially employed by it in anticipation of litigation or in preparation for trial and who are not expected to be called as witnesses at trial in accordance with Idaho Rule of Civil Procedure 26(b)(4)(B). Newfoundland objects to this request to the extent it seeks the disclosure of individuals merely contacted or consulted by it and who will not be retained as expert witnesses, and to the extent it seeks the disclosure of information protected by the attorney/client and/or work product privileges, or information prepared in anticipation of litigation. Without waiving said objections, and subject thereto, Newfoundland represents none are known to Newfoundland, except as identified in Answer to Interrogatory No. 4.

Newfoundland reserves the right to supplement its response as discovery continues and facts become known.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Newfoundland objects to this request on the grounds it is overly broad, vague, ambiguous, burdensome and potentially misleading. Newfoundland objects to this request to the extent it seeks the disclosure of

impeachment evidence. Newfoundland objects to this request on the basis of and to the extent it seeks the identity of and disclosure of facts known or opinions held by experts who have been retained or specially employed by it in anticipation of litigation or in preparation for trial and who are not expected to be called as witnesses at trial in accordance with Idaho Rule of Civil Procedure 26(b)(4)(B). Newfoundland objects to this request to the extent it seeks the disclosure of individuals merely contacted or consulted by it and who will not be retained as expert witnesses, and to the extent it seeks the disclosure of information protected by the attorney/client and/or work product privileges, or information prepared in anticipation of litigation. Without waiving said objections, and subject thereto, *see* Attachment A.

Newfoundland reserves the right to supplement its response as discovery continues and facts become known.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: *See* Attachment A.

Newfoundland reserves the right to supplement its response as discovery continues and facts become known.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Newfoundland objects to this request on the grounds it is overly broad, vague, ambiguous, burdensome and potentially misleading. Newfoundland objects to this request to the extent it seeks the disclosure of

impeachment evidence. Newfoundland objects to this request on the basis of and to the extent it seeks the identity of and disclosure of facts known or opinions held by experts who have been retained or specially employed by it in anticipation of litigation or in preparation for trial and who are not expected to be called as witnesses at trial in accordance with Idaho Rule of Civil Procedure 26(b)(4)(B). Newfoundland objects to this request to the extent it seeks the disclosure of individuals merely contacted or consulted by it and who will not be retained as expert witnesses, and to the extent it seeks the disclosure of information protected by the attorney/client and/or work product privileges, or information prepared in anticipation of litigation. Without waiving said objections, and subject thereto, *see* Attachment A.

Newfoundland reserves the right to supplement its response as discovery continues and facts become known.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: Newfoundland objects to this request on the grounds it is overly broad, vague, ambiguous, burdensome and potentially misleading. Without waiving said objections, and subject thereto, *see* Attachment A.

Newfoundland reserves the right to supplement its response as discovery continues and facts become known.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: Newfoundland objects to this request on the grounds it is overly broad, vague, ambiguous, burdensome and potentially misleading. Newfoundland objects to this request to the extent it seeks the disclosure of impeachment evidence. Newfoundland objects to this request on the basis of and to the extent it seeks the identity of and disclosure of facts known or opinions held by experts who have been retained or specially employed by it in anticipation of litigation or in preparation for trial and who are not expected to be called as witnesses at trial in accordance with Idaho Rule of Civil Procedure 26(b)(4)(B). Newfoundland objects to this request to the extent it seeks the disclosure of individuals merely contacted or consulted by it and who will not be retained as expert witnesses, and to the extent it seeks the disclosure of information protected by the attorney/client and/or work product privileges, or information prepared in anticipation of litigation. Without waiving said objections, and subject thereto, *see* Attachment A.

Newfoundland reserves the right to supplement its response as discovery continues and facts become known.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: See Answer to Interrogatory No. 6, and objections thereto.

Newfoundland reserves the right to supplement its response as discovery continues and facts become known.

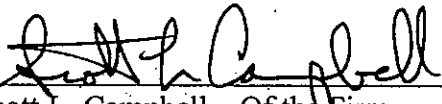
REQUEST FOR PRODUCTION NO. 8: For any documents withheld from production under a claim of privilege, please produce a privilege log in conformance with Idaho Rule of Civil Procedure 26(b)(5)(A).

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: See privilege log, attached hereto as Attachment B.

Newfoundland reserves the right to supplement its response as discovery continues and facts become known.

DATED this 10th day of March, 2009.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Scott L. Campbell – Of the Firm  
Attorneys for Newfoundland Partners

**VERIFICATION OF NEWFOUNDLAND PARTNERS' ANSWERS AND RESPONSES  
TO CONCERNED WATER USERS' FIRST SET OF INTERROGATORIES, REQUESTS  
FOR ADMISSION, AND REQUESTS FOR PRODUCTION**

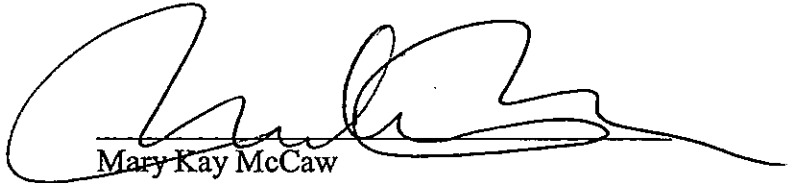
STATE OF WASHINGTON )

County of KING ) ss.

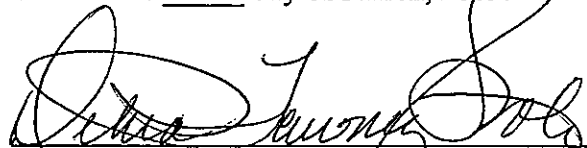
MARY KAY MCCAWE, being duly sworn, deposes and says:

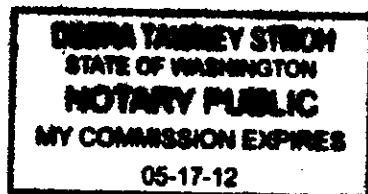
She is a PARTNER of NEWFOUNDLAND PARTNERS, the corporation named in the above-entitled proceeding and is authorized to make this verification in its behalf.

She has read the foregoing NEWFOUNDLAND PARTNERS' ANSWERS AND RESPONSES TO CONCERNED WATER USERS' FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSION, AND REQUESTS FOR PRODUCTION, knows the contents thereof, and the same are true to the best of her knowledge, information, and belief.

  
Mary Kay McCaw

SUBSCRIBED AND SWORN to before me this 6<sup>th</sup> day of March, 2009.

  
NOTARY PUBLIC FOR IDAHO  
Residing at MT. VERNON, WASHINGTON  
My Commission Expires 5-17-2012



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of March, 2009, I caused a true and correct copy of the foregoing NEWFOUNDLAND PARTNERS' ANSWERS AND RESPONSES TO CONCERNED WATER USERS' FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSION, AND REQUESTS FOR PRODUCTION to be served by the method indicated below, and addressed to the following:

*Representing: Bill Molyneux, Gerald Bashaw,  
Grace Eakin, John F. Stevenson, Pepin Corso-  
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*Representing: Big Wood Canal Company*  
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*Representing: Black Butte Hills LLC,  
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Dome LLC, SV Ranch LLC, Twin Lakes  
Reservoir & Irrigation*  
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*Representing: Evergreen ventures LLC, Flying  
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*Representing: United States of America and  
USDI Bureau of Reclamation*

UNITED STATES DEPARTMENT OF JUSTICE  
Environment & Natural Resources  
MSC 033

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Director

IDAHO DEPARTMENT OF WATER RESOURCES  
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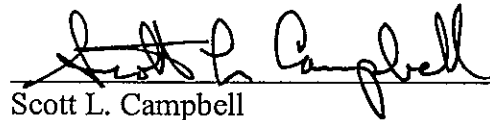
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*Representing: State of Idaho Department of  
Natural Resources*

Natural Resources Division Chief  
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\_\_\_\_\_  
Scott L. Campbell