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**DEPARTMENT OF
WATER RESOURCES**

Attorneys for Objectors
Terry and Anita Clark

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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 No. 37-01005

**OBJECTORS' RESPONSES TO MULDOON
RANCH CO., LLC'S FIRST SET OF
DISCOVERY REQUESTS DIRECTED TO
OBJECTORS**

COME NOW Objectors Terry and Anita Clark ("Clark"), by and through
undersigned counsel of record, MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHTD., and
hereby respond to Claimant's First Set of Discovery Requests as follows:

I.
GENERAL OBJECTIONS

Clark has not yet completed their own investigations and/or discovery.

Accordingly, the responses that follow are based upon the best knowledge, information, and belief of Clark at this time. Clark reserves 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 Clark's rights to use in later discovery or to present at trial, such evidence as may later be discovered or evaluated.

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.

Clark specifically objects 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 Rules 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. Clark has, 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 Clark has responded to any discovery request, or part thereof, should not be taken as an admission that Clark accepts that the discovery request or the response or objection thereto constitutes admissible evidence. Clark's answers to any discovery requests herein do not constitute a waiver of Clark's right to object to any future, additional, or supplemental discovery requests regarding the same or similar matter.

II. RESPONSES TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Please admit that Muldoon Ditch (the irrigation ditch diverting water from Muldoon Creek in the NWSE quarter quarter section of Section 3, Township 02 North, Range 21 East, and traversing more or less the northern boundary of Muldoon Ranch) was constructed before 1900.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Clark lacks sufficient information to either admit or deny this request for admission and, therefore, denies the same. First, Clark is not the owner/operator of Muldoon Ditch, or the lands irrigated by the same. Therefore, Clark is not in possession of primary source documents regarding the construction/ownership of the same. Second, review of various records on file with the Idaho Department of Water Resources, including a professional water rights review report prepared at the request and direction of Claimant by Brockway Engineering, PLLC, dated April 27, 2006, indicate that Muldoon Ditch was constructed post 1900. For example, the Brockway Engineering report ("Brockway Report") states that Muldoon Ditch was constructed in or after 1919. Additionally, Claimant stated during a February 18, 2009 settlement conference held at the Idaho Department of Water Resources State Office that the remnants of an old, but

presently unused, Spring Creek diversion ditch was historically used to perform the irrigation of ranch lands lying within the vicinity of the Spring Creek drainage (Section 8, T02N, R21E). It is likely that Muldoon Ranch Section 8 acres (the decreed place of use of water right no. 37-1005) were irrigated from this original Spring Creek ditch as opposed to from Muldoon Ditch with a Muldoon Creek heading some 2.5 miles away.

REQUEST FOR ADMISSION NO. 2: Please admit that Muldoon Ditch (the irrigation ditch diverting water from Muldoon Creek in the NWSE quarter quarter section of Section 3, Township 02 North, Range 21 East, and traversing more or less the northern boundary of Muldoon Ranch) was constructed before 1886.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: Clark lacks sufficient information to either admit or deny this request for admission and, therefore, denies the same for the same reasons stated in Response to Request for Admission No. 1 above.

III. ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 1: Please state the name, address, and telephone number of each and every individual known to you who has any knowledge of, or who claims to have knowledge of, any facts or evidence discoverable in this matter (e.g., the historic source(s) of water right no. 37-1005, and/or the historic means of conveyance of said water right to its originally decreed place of use in Section 8, Township 02 North, Range 21 East), together with a brief summary of each person's knowledge.

ANSWER TO INTERROGATORY NO. 1: Daren T. Nelson, Hydrologist;
Brockway Engineering, PLLC, 2016, North Washington Street, Suite 4, Twin Falls, Idaho
83301; 208-736-8543.

Grant Ellsworth; 246 East Lehi Road, Mesa, Arizona 85201; 480-464-9445.

Carter Fritschle, Idaho Department of Water Resources, 322 East Front Street, 6th Floor, P.O. Box 83720, Boise, Idaho 83720-0098; 208-287-4800.

Discovery, including the Clarks' investigation into this matter, is ongoing. Therefore, Clark reserves the right to supplement this answer pursuant to the Idaho Rules of Civil Procedure as necessary.

INTERROGATORY NO. 2: Please state the name, address, and telephone number of any and all experts you plan to call upon at the hearing of this matter and please:

- (a) summarize each expert's background and qualifications;
- (b) state the subject matter of each expert's anticipated testimony;
- (c) state the substance of the facts and opinions to which each expert is expected to testify; and
- (d) disclose all underlying facts and data upon which each expert bases his or her expert opinion(s).

ANSWER TO INTERROGATORY NO. 2: Clark has yet to retain any expert witness(es) in connection with this matter. Clark will supplement this answer pursuant to the Idaho Rules of Civil Procedure as necessary.

INTERROGATORY NO. 3: Please identify each and every document that you intend to offer as an exhibit at the hearing of this matter.

ANSWER TO INTERROGATORY NO. 3: Clark has yet to identify what documents they might use at the trial of this matter. Clark, however, reserves the right to use any and all records maintained by the Idaho Department of Water Resources with respect to this water right (no. 37-1005), as well as any other water rights claimed or owned by Claimant for

use on the Muldoon Ranch. Clark also reserves the right to use any and all documents attached hereto, as well as any and all documents identified by Claimant. Clark will supplement this answer pursuant to the Idaho Rules of Civil Procedure as necessary.

INTERROGATORY NO. 4: If your response to Request for Admission No. 1 is anything other than an unqualified admission, please describe in full and complete detail any and all grounds supporting your response.

ANSWER TO INTERROGATORY NO. 4: Please see Response to Request for Admission No. 1. Please also see attached Brockway Report.

INTERROGATORY NO. 5: If your response to Request for Admission No. 2 is anything other than an unqualified admission, please describe in full and complete detail any and all grounds supporting your response.

ANSWER TO INTERROGATORY NO. 5: Please see Answer to Interrogatory No. 4.

INTERROGATORY NO. 6: Please describe in full and complete detail the chronology of the construction of Muldoon Ditch (*i.e.*, when the ditch was constructed, who constructed the ditch, and if the ditch was constructed in stages, when the respective segments were constructed and where each segment terminated).

ANSWER TO INTERROGATORY NO. 6: Please see Response to Request for Admission No. 1. Because Clark is not the owner or operator of Muldoon Ditch, nor the lands irrigated thereby, Clark is not in possession of any primary source documents regarding the construction of Muldoon Ditch. Presumably, Claimant is in the best position to address this issue.

IV.
RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: Please produce any and all documents you intend to introduce as exhibits at the hearing of this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Please see Answer to Interrogatory No. 3. Please also see attached Brockway Report.

REQUEST FOR PRODUCTION NO. 2: If your response to Request for Admission No. 1 is anything other than an unqualified admission, please produce any and all documents supporting, either in whole or in part, your response.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Please see Response to Request for Admission No. 1. Please also see attached Brockway Report.

REQUEST FOR PRODUCTION NO. 3: If your response to Request for Admission No. 2 is anything other than an unqualified admission, please produce any and all documents supporting, either in whole or in part, your response.

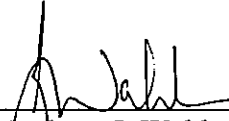
RESPONSE TO REQUEST FOR PRODUCTION NO. 3: Please see Response to Request for Production No. 2.

REQUEST FOR PRODUCTION NO. 4: Please produce any and all documents supporting, either in whole or in part, your response to any of the Interrogatories contained herein.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Please see attached Brockway Report. Please also see Answer to Interrogatory No. 3. Additionally discovery is ongoing, as is the Clark's investigation into this matter. Clark, therefore, reserves the right to supplement this response in accordance with the Idaho Rules of Civil Procedure as necessary.

DATED this 22nd day of June, 2009.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Andrew J. Waldera – Of the Firm
Attorneys for Objectors Terry and Anita
Clark

CERTIFICATE OF SERVICE

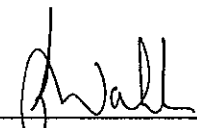
I HEREBY CERTIFY that on this 22nd day of June, 2009, I caused a true and correct copy of the foregoing **OBJECTORS' RESPONSES TO MULDOON RANCH CO., LLC'S FIRST SET OF DISCOVERY REQUESTS DIRECTED TO OBJECTORS** to be served by the method indicated below, and addressed to the following:

Gary D. Slette
Robertson & Slette, PLLC
P.O. Box 1906
Twin Falls, ID 83303-1906
Fax: (208) 933-0701

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

Director
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. Box 83720
Boise, ID 83720-0098
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☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile


Andrew J. Waldera