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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	)	Subcase Nos. 37-2502, 37-02618, 37-07663,
	)	37-07758, 37-07800
Case No. 39576	)	
	)	RESPONSE OF THOMAS M. O'GARA
	)	FAMILY TRUST TO SINCLAIR AND
	)	NEWFOUNDLAND'S SECOND SET OF
	)	INTERROGATORIES, REQUESTS FOR
	)	PRODUCTION AND REQUEST FOR
	)	INSPECTION TO THOMAS M. O'GARA
	)	FAMILY TRUST
	)	
	)	

COMES NOW, Claimant, THOMAS M. O'GARA FAMILY TRUST (THOMAS M. O'GARA), by and through their attorneys of record, Barker Rosholt & Simpson LLP, in response to Sinclair and Newfoundland's Second Set of Discovery Requests to THOMAS M. O'GARA FAMILY TRUST, hereby makes the following responses in accordance with the Idaho Rules of Civil Procedure.

GENERAL OBJECTIONS

1. THOMAS M. O'GARA objects to the Requests for Admission, Interrogatories, and Requests for Production and to the definitions and instructions to the extent they purport to

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

7. Claimant objects to discovery directed at water rights subject to previous transfers and licenses on the grounds that there is no legal basis for challenging these rights and that such requests are not calculated to lead to the discovery of admissible evidence. Claimant has provided Objectors with an outline of such rights, as agreed upon at the initial hearings. See attached. Objectors have not responded or provided any legal basis for objecting to any of these rights. Therefore, Claimant will not respond to discovery associated with these rights.

8. To the extent that Objectors' objections relate only to the season of use or period of use of some of these rights, these discovery requests are not calculated to lead to the discovery of admissible evidence, are unduly burdensome and served only for the purposes of harassment and unnecessary costs of litigation, and with respect to such rights and claimant will not respond to discovery unrelated to the period of use for those rights which were objected to on the grounds of period of use.

9. As THOMAS M. O'GARA does not own water rights 37-2618 or 37-7800, and as Objectors have been notified of that fact by IDWR in its NCAP of May 21, 2009, which was served on counsel for Objectors by IDWR through the SRBA process, THOMAS M. O'GARA

will not respond to any discovery concerning water rights on a subcase to which he is no longer a party. THOMAS M. O’GARA objects to this discovery directed at these water rights on the grounds that it is not calculated to lead to the discovery of admissible evidence, is unduly burdensome and served solely for the purpose of harassment and increasing costs of litigation.

INTERROGATORIES

INTERROGATORY NO. 8: Please identify each and every individual known to you who has any knowledge of, or who claims to have knowledge of, the claims before the Snake River Basin adjudication in Subcases 37-02502, 37-02618, 37-07663, 37-07758, 37-07800, hereinafter referred to collectively as “Rights.”

ANSWER TO INTERROGATORY NO. 8: See Answer to Interrogatory No. 2. To the extent Interrogatory No. 8 seeks information about people who have knowledge of the claims as opposed to knowledge of the water rights, Claimant is not aware of any other persons with knowledge of the “claims” as opposed to the rights. In addition, the following persons at Brockway Engineering have some knowledge of these rights and how they are recommended.

1. Chuck Brockway Sr.
2. Erick Powell
3. Jeff Rau (formerly with Brockway Engineering)

INTERROGATORY NO. 9: With respect to the Rights claimed, please identify the location(s) and type(s) of any and all diversions for irrigation, stockwater, or other uses, and describe the conveyance and distribution system associated with each diversion structure; please include, but not limited to identification of pump specifications, topographic mapping of piping and ditch diagrams.

ANSWER TO INTERROGATORY NO. 9: The rights that Sinclair and Newfoundland have objected to are not stockwater or other use rights and therefore there is no such diversion for stockwater or other uses. The rights objected to are groundwater rights pumped from wells to a pond and then to sprinklers.

INTERROGATORY NO. 10: Please identify any and all engineering, survey or other data, calculations or drawings depicting the location and/or hydraulic design of the diversions and/or distribution system related to the Rights.

ANSWER TO INTERROGATORY NO. 10: To the extent it exists, this information is contained in the IDWR back files which Objectors have obtained for these rights.

INTERROGATORY NO. 11: Please identify each and every individual known to you who has any knowledge of, or who claims to have knowledge of, the diversion, irrigation or distribution system, together with their address, associated expertise and qualifications, and registration as a professional, if applicable.

ANSWER TO INTERROGATORY NO. 11: See Answers to Interrogatories Nos. 2 and 8.

INTERROGATORY NO. 12: Please identify any and all reports, data and results of evaluation of properties of soils or other materials underlying the place of use associated with the Rights.

ANSWER TO INTERROGATORY NO. 12: Claimant is unaware of such reports specific to property served by these water rights.

INTERROGATORY NO. 13: Please identify any and all measurements, tests, evaluation or other analysis of operational seepage rates performed on any ditches or other channels conveying water pursuant to the Rights and/or any evaporation from any ponds or impoundments associated with irrigation under the Rights.

ANSWER TO INTERROGATORY NO. 13: These rights are not delivered by ditches or channels. The pond has a capacity of less than 24 hours of irrigation supply and claimant is unaware of any evaporation studies from this irrigation delivery pond.

INTERROGATORY NO. 14: Please identify all calculations, drawings, design or other data associated with sprinkler irrigation systems installed on the real property associated with the Rights.

ANSWER TO INTERROGATORY NO. 14: Claimant is not aware of the system design as it existed in 1987. Claimant understands that Nick Purdy designed the sprinkler system but is unaware of any original design calculations.

INTERROGATORY NO. 15: Please identify any and all data or analysis related to water quality performed on any water associated with the Rights, specifically including, but not limited to ground and surface water evaluation of dissolved oxygen, temperature, nutrients, and/or chemical evaluations.

ANSWER TO INTERROGATORY NO. 15: Claimant objects to this request on the grounds that it is unrelated to any of the Objections and is not calculated to lead to the discovery of admissible evidence. Without waiving this objection, Claimant has performed no water quality analysis on any of the water delivered under any of these rights.

INTERROGATORY NO. 16: Please identify each and every individual known to you who has any knowledge of, or who claims to have knowledge of, technical aspects of the irrigation facilities associated with the Rights, including, but not limited to irrigation operations, facilities, use of facilities, equipment, design, construction, irrigation system wells, water measuring devices, surface water control, scheduling data and procedures, surface runoff rate and

control and irrigation water management. Your answer should include identification of both governmental and private individuals.

ANSWER TO INTERROGATORY NO. 16: See Answer to Interrogatories No. 2, 8 and 11.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 14: Please produce copies of any and all documents relied upon, identified in, or responsive to your answers to each of the above-stated interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14: The Idaho Department of Water Resources files concerning these rights are already in the possession of objectors and will not be reproduced or produced herewith.

REQUEST FOR PRODUCTION NO. 15: Please produce specifications and other data regarding any flow measuring devices installed and/or operational for measurement of the total ditch flow and/or diversions discharge.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15: All the objected to water rights in O’Gara’s name are ground water rights, so measurement of surface water or ditch flow for other rights is not calculated to lead to the discovery of admissible evidence. Claimant is unaware of flow measuring devices in the wells.

REQUEST FOR PRODUCTION NO. 16: Please produce the results, data and/or analysis of any flow measuring device installed and/or operational for measurement of the total ditch flow and/or diversion discharge.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16: See Response to Request for Production No. 15.

REQUEST FOR PRODUCTION NO. 17: Please produce any and all Farm Service Agency crop data or imagery, specifically including, but not limited to acreages and crop type for farms served by irrigation water associated with the Rights.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17: Claimant does not have possession of such data.

REQUEST FOR PRODUCTION NO. 18: Please produce any and all water master delivery records associated with the Rights for the preceding twenty (20) years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18: The water master delivery records are not in the possession of Claimant. Delivery records during the pendency of the adjudication are irrelevant and not calculated to lead to the discovery of admissible evidence under the Facilities Volume Decision of this Court.

REQUEST FOR PRODUCTION NO. 19: Please produce any and all discharge measurement data and records and pump power records for wells (with place of use identified) associated the Rights.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19: Delivery records during the pendency of the adjudication are irrelevant and not calculated to lead to the discovery of admissible evidence under the Facilities Volume Decision of this Court. Claimant does not have discharge measurement data. Claimant will search for electricity usage records, if Objectors will provide a relevant time frame for such records.

REQUEST FOR INSPECTION

Please make arrangements to permit entry upon irrigated land in your control to enable inspection, analyses, measuring, surveying, and testing of the facilities, soils and operations.

RESPONSE TO REQUEST FOR INSPECTION: Claimant objects to Objectors' request for inspection of property on the grounds that it seeks information not calculated to lead to the discovery of admissible evidence in this matter and is unduly and unnecessarily intrusive. The Request for Inspection is overbroad and undefined. Objectors must identify the specific inspection, analyses, measuring, surveying, and testing that they intend to conduct, the time it will take, what equipment will be used, and whether destructive testing of any kind is requested. Objectors must further identify the persons and their qualifications who intend to conduct said inspections, analyses, measuring, surveying, and testing, and identify the purpose for which such inspections, analyses, measurements, surveying, and testing are intended. Any inspection, analysis, measuring, surveying, or testing permitted on any parcel of property must be tailored to the specific objection raised to the water right on that property and not be a "fishing expedition" on Claimant's property.

DATED this 20th day of July 2009

BARKER ROSHOLT & SIMPSON LLP



Albert P. Barker
Attorney for Claimant Thomas M. O'Gara

VERIFICATION

I, **THOMAS M. O’GARA**, declare, under penalty of perjury under the laws of the United States, that I have read the Response of Thomas M. O’Gara to Sinclair and Newfoundland’s Second Set of Interrogatories, Requests for Production and Request for Inspection to Thomas M. O’Gara Family Trust above are true, accurate, and complete to the best of my knowledge and belief.

Dated: _____

Thomas M. O’Gara

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of July, 2009, I mailed the original and copies of the **RESPONSE OF THOMAS M. O'GARA TO SINCLAIR AND NEWFOUNDLAND'S SECOND SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION AND REQUESTS FOR ADMISSION TO THOMAS M. O'GARA FAMILY TRUST** to the following persons, by mailing the original and/or copies, postage prepaid and addressed as follows:

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