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DEPARTMENT OF
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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. 37-0115D 37-02561
37-02582 37-02682 37-04114

SINCLAIR AND NEWFOUNDLAND'S
MEMORANDUM IN SUPPORT OF MOTION
TO COMPEL

I.
INTRODUCTION

On September 17, 2008, Sinclair Oil Corporation d/b/a Sun Valley Company and Newfoundland Partners LP ("Objectors") served on the claimant William T. "Rocky" Sherbine ("Claimant") *Sinclair and Newfoundland's First Set of Requests for Admission, Interrogatories and Requests for Production of Documents to William T. Sherbine* ("Requests"). On October 24,

2008, the Claimant responded with its *Response of William T. "Rocky" Sherbine to Sinclair and Newfoundland's First Set of Discovery Requests* ("Response"). See Affidavit of Tara Martens, Ex. A. The Claimant did not produce any documents, nor did the Claimant give any indication that it planned to supplement the Response. On June 3, 2009, counsel for the Objectors mailed a letter to the Claimant's counsel in an attempt to confer pursuant to Idaho Rule of Civil Procedure 37(a)(2), and to secure supplemental answers and responses without the necessity of filing a motion to compel. See Martens Aff., Ex. B.

On July 13, 2009, the Concerned Water Users collectively responded to the Objectors' meet and confer letter. See Martens Aff., Ex. C. The Claimant's letter stated (1) that the explanation in the letter regarding assertions of privilege was sufficient to satisfy Rule 26(b)(5)(A); (2) that the Claimant was not "aware" of any electronically stored information; (3) that the Claimant would not produce any documentation because back files for each water right are on the Idaho Department of Water Resources website; (4) that there has been no determination regarding whether Dr. Pabich will testify as an expert witness; and (5) that the Objectors have not explained the relevance of certain requests.

On July 16, 2009, the Objectors responded to the Claimant's letter in order to further clarify and explain their positions regarding deficiencies in the Claimant's responses and to offer another opportunity for the Claimant to cure such deficiencies. See Martens Aff., Ex. D. The Claimant failed to respond or comply with the Objectors' requests. To date, no documents have been produced, no experts have been identified, and no dates have been provided for inspection of the Claimant's respective properties.

By failing to produce any substantive information or documentation in response to the Objectors' discovery requests, and without an adequate explanation about its failures, the

Claimant has effectively stalled discovery and the ultimate resolution of these subcases. The Objectors' cannot, for example, effectively conduct necessary depositions without the appropriate production of requested documents and a corresponding inspection of the property. The purpose of this Motion to Compel is to ensure that the Objectors have the opportunity to conduct the factual inquiry afforded them by the Idaho Rules of Civil Procedure. For the reasons set forth below, the Objectors request that the Court enter an order compelling the Claimant to answer the propounded interrogatories in a responsive and complete fashion and to produce the documents and items responsive to the requests for production. The Objectors further request that the Court order the Claimant to provide the Objectors with available dates for inspection of the Claimant's land and irrigation operations during the 2009 irrigation season.

II. ARGUMENT

Idaho Rule of Civil Procedure 37(a)(2) provides that a motion to compel may be brought to compel a party to respond to discovery requests propounded pursuant to Rule 33 and Rule 34. IDAHO R. CIV. P. 37(a)(2). Whether to grant a motion to compel is within the sound discretion of the court. *See Merrifield v. Arave*, 128 Idaho 306 (Ct. App. 1996). In light of the Claimant's general refusal to produce any documents or allow an inspection of the irrigated land and operations at issue, it is also important to note that Rule 26(b)(1) permits "broad discovery of any matter that is not privileged, even if it is inadmissible, so long as it is 'reasonably calculated to lead to the discovery of admissible evidence.'" *Kirk v. Ford Motor Co.*, 141 Idaho 697, 703-04 (2005). The key is that the discovery requests seek information that is relevant to the matter at hand. *See, e.g., Aeschliman v. State*, 132 Idaho 397, 401 (Ct. App. 1999).

A. The Claimant's Failure To Produce A Single Document Is Inexcusable

In responding to seven interrogatories and thirteen requests for production, the Claimant failed to produce a single document. The Claimant largely relied upon statements made by counsel for the Objectors—statements which indicated that a review of available IDWR files had been conducted—to explain that failure. Such an explanation is a mischaracterization of the Objectors' preliminary review of the subject water rights and is without any basis in the rules of discovery.

1. Claimant's Responses To Requests For Production 1, 3, 4, 7, 8, 9, 10, 11, 12 and 13

In response to a number of the Objectors' Rule 34 requests for production, Claimant suggests that the Objectors' assertion that their counsel reviewed certain IDWR files related to the water rights at issue should absolve Claimant of its responsibility to respond to requests for production of documents. *See* Response, p. 9. In other words, Claimant suggests that because the Objectors have access to IDWR's files for the water rights at issue and have reviewed such files, Claimant need not produce any documents. There is no support in the Rules for such a position.

First, the Rules provide that a party may request the production or inspection of documents within the broad scope of Rule 26(b) "which are in the possession, custody or control of the party upon whom the request is served." IDAHO R. CIV. P. 34(a). The Rules do not provide an exception to this possession, custody or control requirement. Put simply, if a responsive document is not privileged and is in the Claimant's possession, custody or control, Claimant must produce that document.

Second, and related, while the Objectors have attempted to obtain and review available information on the subject water rights from other sources, the Objectors are not

required to rely entirely upon an administrative record—which may or may not be complete—as they continue to prepare their case. As counsel for the Objectors indicated in efforts to meet and confer regarding discovery deficiencies, the Objectors propounded the discovery requests at issue in order to obtain information which they did **not** already have. *See Martens Aff., Ex. B.* The Claimant’s assertion that the Objectors are in possession of all of the responsive documents does not follow from counsel for the Objector’s prior statement that it had reviewed IDWR records. Under the Idaho Rules of Civil Procedure, the Claimant remains obligated to produce records and documents in accordance with the discovery requests.

Accordingly, with respect to Request for Production Nos. 1, 3, 4, 7, 8, 9, 10, 11, 12 and 13, the Objectors request that the Court enter an order compelling the Claimant to produce any and all responsive documents that are in the Claimant’s possession, custody or control.

2. Claimant Failed To Provide Any Electronically Stored Information

Idaho Rule of Civil Procedure 34 provides that a party may request the production of electronically stored information (“ESI”). IDAHO R. CIV. P. 34(a). Subsection (b) of that Rule requires that a requesting party make a specific request for ESI. IDAHO R. CIV. P. 34(b). In accordance with that requirement, the Objectors specifically requested all ESI in the Claimant’s possession that is responsive to the discovery requests. *See Response*, p. 20. Even more, the Objectors delineated examples of the sources of such ESI in the Definitions section and in the Request for Production itself. *See Response*, p. 15. Despite such explicit instructions, the Claimant failed to produce any ESI and/or indicate whether the ESI of Claimant had even been searched.

Upon the Objectors' efforts to meet and confer, the Claimant simply stated that it was not "aware" of any ESI. *See* Martens Aff., Ex. C. A responding party must make a reasonable inquiry and if such inquiry does not result in information sufficient to answer, the response must describe the inquiry made. *See* WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE, § 2177, at 559. Information available to a party, its employees, investigators and agents, including attorneys, must be furnished, even if it is not within the responder's personal knowledge and even if it requires research. *See Gen. Dynamics Corp. v. Selb Mfg. Co.*, 481 F.2d 1204, 1210-11 (8th Cir. 1973), *cert. denied*, 414 U.S. 1162. In other words, the Claimant must make an affirmative investigation and cannot rely upon "unawareness" to avoid responding to a discovery request. Accordingly, the Objectors request that the Court enter an order compelling the Claimant to appropriately investigate and produce ESI responsive to the Objectors' discovery requests.

3. Claimant's Answer To Interrogatory No. 6 Does Not Adequately Specify Records

The Claimant's vague reference to the "records of the IDWR" is an insufficient response to Interrogatory No. 6. The interrogatory and answer thereto state:

INTERROGATORY NO. 6: Please describe in full and complete detail the configuration and operation of your irrigation system, including but not limited to the physical specifications of the system, the efficiency of the system, and the names and titles of those who operate and maintain the system.

ANSWER TO INTERROGATORY NO. 6: Configuration of the irrigation system is contained in the records of the IDWR which, according to Objectors' Motion for Late Objections are in Objector's possession.

See Response, p. 13.

Presumably, in making its answer, the Claimant relied upon Rule 33(c), which allows a responding party to specify and refer to the records from which an answer to an interrogatory may be derived instead of providing a narrative answer. In particular, Rule 33(c) provides that "it is a sufficient answer to such interrogatory to **specify the records** from which the answer may be derived or ascertained and to **afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records.**" IDAHO R. CIV. P. 33(c) (emphasis added). In this case, the Claimant has neither adequately specified the responsive records nor afforded the Objectors a reasonable opportunity to inspect.

Even when a responding party produces all of the documents in its possession, if the information sought in an interrogatory is allegedly contained in the produced files and records and the requesting party cannot ascertain answers to interrogatories upon production thereof, the responding party is under a duty to search the records to provide the answers. *See Govas v. Chalmers*, 965 F.2d 298, 302 (7th Cir. 1992). In other words, since the Objectors' cannot discern a response from the materials generally referenced by the Claimant, the Claimant must search the records and provide the answer.

In short, when responding to Interrogatory No. 6, the Claimant may not make assumptions about what the Objectors have reviewed. The Idaho Rules of Civil Procedure do not provide the Claimant with the authority to presume that the Objectors are already in possession of all responsive documents or are aware of where the answers to their discovery requests can be found. Allowing a responding party to recite such presumptions in lieu of producing responsive documents would largely destroy the utility of the discovery process. While the Objectors have attempted to obtain and review available information, the records and items responsive to Interrogatory No. 6 are not entirely included in the records the Objectors

have independently obtained. Furthermore, as described in Section II.A.1 *supra*, the Objectors are not required to rely upon an administrative record which may or may not be complete.

If the Claimant chooses to respond to Interrogatory No. 6 by exercising its option to produce records in lieu of a narrative answer, it must more narrowly specify the responsive records and produce them or make them available for the Objectors' review. The Objectors request that the Court enter an order compelling the Claimant to either (1) provide a complete and responsive answer to Interrogatory No. 6; or (2) narrowly specify and produce responsive documents and information, including any electronically stored information, as demanded, in accordance with Rule 33(c).

B. The Claimant Failed To Provide A Privilege Log

When a party responding to discovery asserts the protections of attorney client and work product privilege, a privilege log describing the withheld documents should be produced. IDAHO R. CIV. P. 26(b)(5). The Claimant has generally objected to the Objectors' discovery requests, asserting "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)." Response, p. 2. The Claimant has also specifically asserted the attorney-client and work product privilege in regards to the Objectors' Request for Production Nos. 3, 4, 8, and 13. Response, p. 10, 11, 15.

Idaho Rule of Civil Procedure 26(b)(5)(A) provides:

When a party withholds information otherwise discoverable under these rules by claiming it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and *shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.*

IDAHO R. CIV. P. 26(b)(5)(A) (emphasis added). The burden to establish the existence of privilege is on the party resisting disclosure. *See Kirk v. Ford Motor Co.*, 141 Idaho 697, 703-04 (2005). Because the Claimant has failed to produce any privilege log to date, the Objectors have had no opportunity to examine the Claimant's assertions of privilege. In response to the Objectors' meet and confer letter, the Claimant asserts that simply describing three categories of privileged documents—attorney-client communications, retained consultant, and work product—satisfies the requirements of Rule 26(b)(5)(A). Such an argument is not in accord with the plain language of the Rule. The description is to be made “in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.” The Objectors cannot assess the applicability of the privilege or protection to undefined and unquantified documents based on what the Claimant has provided, which amounts to a brief definition of three types of privilege.

The Claimant has failed to comply with Rule 26(b)(5)(A). Although the Idaho Supreme Court has not addressed the issue, there exists 9th Circuit authority holding that a party waives any privilege it may have when it fails to produce a privilege log in accordance with Rule 26(b)(5)(A). *See Burlington Northern & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont.*, 408 F.3d 1142, 1149 (9th Cir. 2005) (holding that district court did not abuse its discretion in ordering production of documents after a litigant waited more than five months to produce a privilege log). The Objectors urge that the Court, in light of the Claimant's blatant disregard for discovery rules and in an exercise of its broad discretion, deem the Claimant's assertion of privilege waived and order the production of all responsive documents. At a minimum, the Objectors request that the Court enter an order compelling Claimant to produce all responsive non-privileged documents and to provide the Objectors with a corresponding privilege log.

C. The Objectors' Requests Are Relevant And Calculated To Lead To Discovery Of Admissible Evidence

The standards for discovery under the Idaho Rules of Civil Procedure are broad.

Idaho Rule of Civil Procedure 26(b) provides that:

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows. . . . Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.

IDAHO R. CIV. P. 26(b)(1). "It is well settled that under Federal Rule of Civil Procedure 26(b), upon which I.R.C.P. 26(b) is patterned, relevancy to the subject matter is the basic test as to discoverability." *Sanders v. Ayrhart*, 89 Idaho 302 (1965). Relevancy, in the discovery context, "has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 350 (1978). "It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." IDAHO R. CIV. P. 26(b)(1). The Idaho Supreme Court, in *Caldero v. Tribune Publ'g Co.*, 98 Idaho 288 (1977), stated the following in regard to Rule 26(b)(1):

This rule [Rule 26(b)(1)] has consistently been interpreted to allow ***the broadest possible discovery***; in *Hickman v. Taylor*, 329 U.S. 495, 67 S. Ct. 385, 91 L. Ed. 451 (1947), a case in which the U.S. Supreme Court discussed the scope of discovery under this rule, that Court observed:

"No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case." 329 U.S. at 507, 67 S. Ct. at 392.

Id. at 306 (emphasis added). Each of the Objectors' discovery requests fall squarely within the broad conception of relevance in the context of discovery.

1. Request For Production Nos. 9, 10, 11 & 12 Are Relevant Under The Liberal Discovery Standards

In response to the Objectors' Request For Production Nos. 9, 10, 11, and 12, the Claimant objected on relevance grounds. *See* Responses, pp. 12-15. However, in these subcases, each of the requests is highly relevant to the subject matter involved in the pending litigation and is calculated to lead to the discovery of admissible evidence. The broad subject matter at issue is a right to water and the corresponding elements of such a water right. In particular, among the issues central to these subcases is the quantity element of the subject water rights and conditions placed thereon.

In Request for Production No. 9, the Objectors requested production of documents and items which relate to the configuration of the Claimant's irrigation system. *See* Response, pp. 16-17. Configuration of an irrigation system certainly may affect the quantity of water delivered to irrigated land. In light of the Objectors' quantity-based objections and the Claimant's repeated references to "rediversions and conveyance losses" in response to requests for admission regarding quantity, the configuration of the Claimant's irrigation infrastructure is clearly relevant. *See e.g.*, Response, p. 10. It certainly encompasses a matter "that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case." *See Oppenheimer, supra.*

Likewise, in Request for Production No. 10, the Objectors requested production of documents and items which relate to the maintenance and improvement of the Claimant's irrigation system. *See* Response, pp. 17-18. Maintenance of an irrigation system may affect the quantity of water delivered to irrigated land. In light of the Objectors' quantity-based objections,

the maintenance of the Claimant's irrigation system encompasses a matter which falls within the broad scope of Rule 26(b)(1).

Similarly, in Request for Production No. 11, the Objectors requested production of documents and items which relate to the soils and the crops grown on the Claimant's irrigated land. *See* Response, pp. 18-19. Soil and cropping use may affect the quantity of water to which the Claimant is entitled. In light of the Objectors' quantity-based objections, information about the soil and crops associated with the Claimant's irrigable acreage encompasses a matter which falls within the broad scope of Rule 26(b)(1).

Finally, in Request for Production No. 12, the Objectors requested production of documents and items which relate to any water conservation measures that may been implemented for the irrigation of the Claimant's property. *See* Response, p. 19. Water conservation measures may affect the quantity of water to which the Claimant is entitled. In light of the Objectors' quantity-based objections and the Claimant's repeated references to "rediversions and conveyance loss" in response to requests for admission regarding quantity, any water conservation measures taken by the Claimant encompass a matter which falls within the broad scope of Rule 26(b)(1). *See e.g.*, Response, p. 10.

Each of the foregoing Requests for Production are relevant and calculated to lead to the discovery of admissible evidence. The Claimant's relevance objection is without merit, especially in light of the liberal standards of civil discovery. Therefore, the Objectors request that the Court enter an order compelling Claimant to produce all non-privileged items and documents responsive to the Objectors' discovery requests, including Request for Production Nos. 9, 10, 11, and 12.

2. The Request For Inspection Is Relevant Under The Liberal Discovery Standards

An inspection of the real property at issue in this litigation and the irrigation operations occurring thereon is appropriate pursuant to Idaho Rule of Civil Procedure 34(a), which provides that:

Any party may serve on any other party a request . . . to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

IDAHO R. CIV. P. 34(a).

In response to the Objectors' Request for Inspection, the Claimant objected on the grounds that an inspection of the subject property is not calculated to lead to the discovery of admissible evidence. *See* Response, pp. 15-16. However, an inspection of the irrigated acreage is highly relevant to the subject matter involved in the pending litigation. In fact, in order to complete an analysis of the water rights at issue, the Objectors' consultants require an inspection of the subject property. *See* Affidavit of Charles Brockway, ¶ 2. Because all of the elements of the water rights at issue—including quantity—are or may be at issue in these subcases, an inspection of the Claimant's property and irrigation infrastructure is clearly relevant under the liberal discovery standards. *See Oppenheimer, supra*; IDAHO R. CIV. P. 26(b)(1).

Furthermore, to the extent the Claimant has any concerns about the nature or scope of the inspection, the Objectors' retained consultant, Dr. Brockway, will not conduct any destructive testing. *See* Brockway Aff., ¶ 3. The scope of testing and analysis will be limited to issues relevant to the Claimant's subcases.

Finally, it is imperative that the inspection occur before the fast-approaching end of the irrigation season. If the Claimant does not provide access to its facilities during the 2009 irrigation season, the proceedings on the above-referenced subcases will be further delayed until next irrigation season. The Objectors request that the Court enter an order compelling Claimant to provide access to its land and facilities before the end of the 2009 irrigation season.

D. The Objectors' Requests Are Not Unduly Burdensome

In response to the Objectors' Request For Production Nos. 9, 10, 11, and 12, the Claimant also objected on the grounds that responsive production is unduly burdensome. Under the discovery rules, parties are required to produce all relevant information that is "obtainable without undue labor and expense." *Ashby v. W. Council, Lumber Prod. & Indus. Workers*, 117 Idaho 684, 687 (1990) (citing WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE § 2174). "What is unduly burdensome depends on the particular facts of each case and no hard and fast rule can be applied to resolve the question." *FTC v. Shaffner*, 626 F.2d 32, 38 (7th Cir. 1980). In these subcases, the facts suggest that the production of documents would not be burdensome or expensive. As previously described, the requests require production of documents and items related to the Claimant's irrigation infrastructure, system maintenance, soils, and water conservation measures. The Objectors' have no reason to believe that such documentation would not be conveniently located in the possession of the Claimant or the Claimant's representatives and/or agents. Even if the production is not conveniently located, it is well-established that inconvenience alone does not rise to the level of an undue burden. *See Isaac v. Shell Oil Co.*, 83 F.R.D. 412 (D.C.Mich. 1979) (good cause for a protective order was not established solely by a showing of inconvenience and expense). Finally, because these issues are highly relevant and necessary to the resolution of these subcases, the unreasonableness of the

burden or expense on the Claimant must be correspondingly high in order to avoid or limit production. *See* WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE § 2036 (noting that as the need for certain discovery decreases, the burden or expense that must be demonstrated also decreases).

Furthermore, the Claimant has not made any showing as to the burdensome nature of the requested production, nor has Claimant moved for a protective order on the grounds of undue burden or expense. If it is the Claimant's position that production amounts to an undue burden, it cannot simply refuse to comply with discovery requests on such grounds. The Claimant must move for a protective order in order to avoid the alleged undue burden. *See* IDAHO R. CIV. P. 26(c). In so moving, the Claimant bears the burden of demonstrating the existence of such an undue burden as good cause for a protective order. *Id.* The Claimant has not provided any indication, in either its discovery responses or in response to the Objectors' attempts to meet and confer, that its claim of "undue burden" is anything more than a boilerplate objection. Accordingly, the Objectors request that the Court enter an order compelling the production of all documents and items responsive to the Objectors' discovery requests.

E. The Claimant's Interrogatory Responses Are Largely Non-Responsive And/Or Incomplete

"The discovery rules require a defendant's answer to be responsive, full, complete and unevasive." *Lester v. Salvino*, 141 Idaho 937, 941 (Ct. App. 2005). However, the Claimant's responses to Interrogatory Nos. 2, 5, 6, and 7 are incomplete and/or non-responsive and evasive. For example, in response to Interrogatory No. 2, which requests identification of each person with knowledge of the water rights *and* a summary of the person's knowledge, the Claimant identifies William T. "Rocky" Sherbine as being familiar with the rights and generally refers to representatives of IDWR and the water master. *See* Response, pp. 11-12. The Claimant

failed to provide any summary of knowledge or an adequate representation of those with knowledge.

Interrogatory No. 7 provides an example of the Claimant's vague approach to discovery:

INTERROGATORY NO. 7: Please describe in full and complete detail any and all water conservation measures you have adopted related to the irrigation of the above-referenced place of use (T02N, R18E, Section 5; T01S, R19E, Section 6; T01S, R19E, Section 7; T01N, R19E, Section 31; T01S, R19E, Section 8).

ANSWER TO INTERROGATORY NO. 7: Properties are irrigated by a combination of sprinklers and gravity irrigation.

See Response, p. 13.

It is evident that the Claimant did not provide a responsive, full and complete answer, especially in light of the fact that the Claimant did not produce any corresponding documentation. The interrogatory very clearly requests a detailed description of "any and all water conservation measures" adopted by the Claimant. A single sentence noting the use of both gravity and sprinklers on the subject property is insufficient to answer the interrogatory. The provided answer is evasive and contrary to the purpose of discovery. Similar evasive and non-responsive answers are provided in response to Interrogatory Nos. 5 and 6. Therefore, the Objectors request that the Court enter an order compelling the Claimant to produce supplemental answers to Interrogatory Nos. 2, 5, 6, and 7 that are complete and responsive to the queries contained therein.

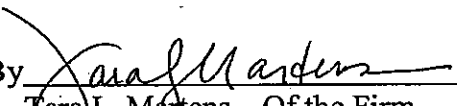
III. CONCLUSION

For the foregoing reasons, the Objectors request that the Court enter an order compelling the Claimant to answer the propounded interrogatories in a responsive and complete

fashion and to produce the documents and items responsive to the requests for production. The Objectors further request that the Court order the Claimant to provide the Objectors with available dates for inspection of the Claimant's land and irrigation operations during the 2009 irrigation season.

DATED this 10th day of September, 2009.

MOFFATT, THOMAS, BARRETT, ROCK &
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By 
Tara L. Martens – Of the Firm
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of September, 2009, I caused a true and correct copy of the foregoing SINCLAIR AND NEWFOUNDLAND'S MEMORANDUM IN SUPPORT OF MOTION TO COMPEL to be served by the method indicated below, and addressed to the following:

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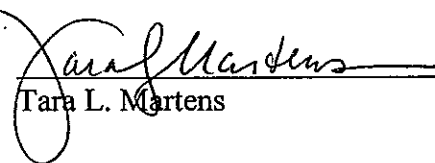
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