

DEPARTMENT OF
WATER RESOURCES

Scott L. Campbell, ISB No. 2251
Tara Martens, ISB No. 5773
Matthew J. McGee, ISB No. 7979
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16845.0014 and 18975.0004

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. 37-00114C 37-07609

AFFIDAVIT OF TARA MARTENS

[illegible]

Tara Martens, having been duly sworn upon oath, deposes and states as follows:

1. I am one of the attorneys providing legal services to Sinclair Oil Company, d/b/a Sun Valley Company, and Newfoundland Partners, LP (collectively

“Objectors”), in the above-captioned matter. I have knowledge of the files in this matter, and I make this affidavit based upon personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of excerpts of the *Response of Cattle Lack Ranch Homeowners Association to Sinclair and Newfoundland’s First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents to Cattle Lack Ranch Homeowners Association*, received on October 27, 2008.

3. I certify that I have in good faith conferred with counsel for the Concerned Water Users regarding their discovery deficiencies in an effort to secure adequate production and disclosures without involving the court.

4. Attached hereto as Exhibit B is a true and correct copy of correspondence from counsel for the Objectors to counsel for the Claimant, dated June 3, 2009, which was sent in an effort to meet and confer regarding deficiencies in the Claimant’s responses to the Objectors’ discovery requests.

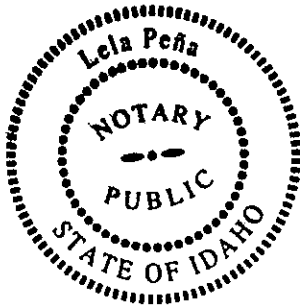
5. Attached hereto as Exhibit C is a true and correct copy of correspondence from counsel for the Claimant to counsel for the Objectors, dated July 13, 2009, which was sent in response to the meet and confer letter dated June 3, 2009.

6. Attached hereto as Exhibit D is a true and correct copy of correspondence from counsel for the Objectors to counsel for the Claimant, dated July 16, 2009, which further addressed the Objectors’ concerns about the Claimant’s discovery responses.

Further your affiant sayeth naught.

Tara Martens
Tara Martens

SUBSCRIBED AND SWORN to before me this 10th day of September, 2009.



Lela Peña
NOTARY PUBLIC FOR IDAHO
Residing at Boise
My Commission Expires 5-31-2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of September, 2009, I caused a true and correct copy of the foregoing **AFFIDAVIT OF TARA MARTENS** to be served by the method indicated below, and addressed to the following:

Albert P Barker
BARKER RSHOLT & SIMPSON
1010 W Jefferson, Suite 102
P.O. Box 2139
Boise, ID 83701-2139

*Representing: Cattle Lack Ranch Homeowners
Association, Michael Harris, and Pepin Corso-
Harris*

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

Michael C. Creamer
GIVENS PURSLEY LLP
601 W. Bannock Street
P.O. Box 2720
Boise, ID 83701-2720
Fax: (208) 388-1300

*Representing: Dana Dowers and The Valley
Club*

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☐ () Hand Delivered
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☐ () Facsimile

Director
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front Street, 6th Floor
P.O. Box 83720
Boise, ID 83720

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

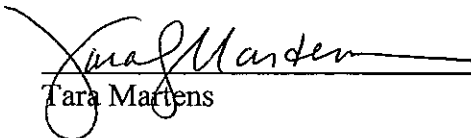

Tara Martens

EXHIBIT A

TO AFFIDAVIT OF TARA MARTENS

Albert P. Barker, ISB #2867
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson, Suite 102
P.O. Box 2139
Boise, ID 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for Cattle Lack Ranch Homeowners Association

RECEIVED
OCT 27 2008
MOFFATT, THOMAS, BARRETT,
ROCK & FIELDS, CHTD.

**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. 37-00114C, 37-07609
	)	
Case No. 39576	)	RESPONSE OF CATTLE LACK
	)	RANCH HOMEOWNERS
	)	ASSOCIATION TO SINCLAIR AND
	)	NEWFOUNDLAND'S FIRST SET OF
	)	REQUESTS FOR ADMISSION,
	)	INTERROGATORIES, AND
	)	REQUESTS FOR PRODUCTION OF
	)	DOCUMENTS TO CATTLE LACK
	)	RANCH HOMEOWNERS
	)	ASSOCIATION

COMES NOW, Claimant, **CATTLE LACK RANCH HOMEOWNERS ASSOCIATION**, by and through its attorneys of record, **Barker Rosholt & Simpson LLP**, in response to Sinclair and Newfoundland's First Set of Discovery Requests to **CATTLE LACK RANCH HOMEOWNERS ASSOCIATION**, hereby makes the following responses in accordance with the Idaho Rules of Civil Procedure.

GENERAL OBJECTIONS

1. **CATTLE LACK RANCH HOMEOWNERS ASSOCIATION** objects to the Requests for Admission, Interrogatories, and Requests for Production and to the

**RESPONSE OF CATTLE LACK RANCH HOA TO SINCLAIR AND
NEWFOUNDLAND'S FIRST SET OF DISCOVERY REQUESTS - 1**

ORIGINAL

REQUEST FOR ADMISSION NO. 3: Please admit that the IDWR has recommended that water right 37-00114C receive a diversion rate of 12.52 cfs, 9.13 cfs of which has been recognized as a conveyance loss.

RESPONSE TO REQUEST FOR ADMISSION NO.3: Admitted.

REQUEST FOR ADMISSION NO. 4: Please admit that the irrigation of 152 acres at a rate of one inch, or 0.02 cfs, per acre requires the diversion of 3.04 cfs.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: Admitted, without regard for rediversions, conveyance losses, or water availability issues.

REQUEST FOR ADMISSION NO. 5: Please admit that the recommendation for water right number 37-00114C, after accounting for conveyance losses of 9.13 cfs, recommends a quantity rate of 3.39 cfs for the irrigation of the above-referenced 152 acre place of use.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: Admit, with the clarification that the IDWR recommendation also contains a combined limit on the quantity, when said right is combined with all other rights; and that rediverison, conveyance loss, and water availability issues factor in.

REQUEST FOR ADMISSION NO. 6: Please admit that a diversion rate of 3.39 cfs on the above-referenced place of use (T01N, R18E, Section 25) exceeds one inch, or 0.02 cfs, per acre.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: Denied. This right also contains a total volume limitation.

REQUEST FOR ADMISSION NO. 7: Please admit that the field headgate requirement for the above-referenced place of use (T01N, R18E, Section 25) is 3.0 AFA.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: Denied.

REQUEST FOR ADMISSION NO. 8: Please admit that at a field headgate requirement of 3.0 AFA, the irrigation of 152 acres would require an annual volume of 456 AFA.

RESPONSE TO REQUEST FOR ADMISSION NO. 8: Admit that $3 \times 152 = 456$ AFA.

REQUEST FOR ADMISSION NO. 9: Please admit that the quantity of 532 AFA is excessive for the above-referenced place of use in that 532 AFA exceeds the application of 3.0 AFA over the above referenced place of use.

RESPONSE TO REQUEST FOR ADMISSION NO. 9: Denied.

REQUEST FOR ADMISSION NO. 10: Please admit that the customary season or period of use for lands lying within T01N, R.18E, Section 25, is April 15 to October 31 (200 days).

RESPONSE TO REQUEST FOR ADMISSION NO. 10: Admitted, except when licensed or recommended otherwise by IDWR. Admit that objected to water right 37-7609 is a groundwater right with a licensed season of use period of April 1-Nov. 1, is recommended for the licensed season of use, and admit that Objectors are precluded from challenging the License.

INTERROGATORIES

INTERROGATORY NO. 1: If any of the above Requests for Admission are denied either in whole or in part, please provide a complete description of all facts relied upon in making the denial, along with the identity of all persons having sufficient knowledge of

each fact to testify as a witness. Also, please provide a description of the substance and content of all expert opinions relied upon in making the denial.

ANSWER TO INTERROGATORY NO. 1: Request for Admission No. 6 is denied, in whole or in part, because there are rediversion, conveyance loss, and water availability issues that factor in. Request for Admission No. 7 is denied, based upon IDWR publication entitled "*Consumptive Irrigation Requirement, Field Headgate Requirement and Season of Use.*" Request for Admission No. 9 is denied, in whole or in part, because there are rediversion, conveyance loss, and water availability issues that factor in, and for the reasons set forth in Response to Request for Admission No. 7.

INTERROGATORY NO. 2: Please identify each and every individual known to you who has any knowledge of, or who claims to have knowledge of, any facts or evidence about the water use under the Rights or the Rights themselves, together with a summary of each person's knowledge.

ANSWER TO INTERROGATORY NO. 2: Michael Harris and Pepin Corso-Harris. Claimant presumes that the representatives of the Department of Water Resources, who investigated these rights, and the water master and his deputies, who deliver the water, have some knowledge of these rights.

INTERROGATORY NO. 3: Please identify each and every person you intend to call as a lay witness at the trial of this matter, together with a summary of the substance of each person's expected testimony.

ANSWER TO INTERROGATORY NO. 3: Claimant has not determined who will be called as a lay witness.

INTERROGATORY NO. 4: Please identify each and every person you expect to call as an expert witness at the trial in this matter, and for each such person, state with particularity:

(a) The qualifications upon which you intend to rely to establish said person as an expert witness;

(b) The subject matter on which said person is expected to testify;

(c) The substance of the facts and opinions to which he or she is expected to testify; and

(d) The other information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure and Rule 705 of the Idaho Rules of Evidence.

ANSWER TO INTERROGATORY NO. 4: Claimant has not determined whether any expert witnesses will be called at the trial of this matter.

INTERROGATORY NO. 5: If you contend that you are entitled to receive and/or use in excess of one inch, or 0.02cfs, of water per acre for irrigation purposes, please describe in full and complete detail all facts and reasons supporting such a conclusion.

ANSWER TO INTERROGATORY NO. 5: Claimant does not believe that the actual on-farm use exceeds that rate.

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. Additionally, Michael Harris has knowledge of on-farm operations.

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 (T01N, R18E, Section 25).

ANSWER TO INTERROGATORY NO. 7: Property is irrigated in accordance with IDWR guidelines.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: Please produce copies of any and all documents relied upon in, identified in, or responsive to your answers to each of the above-stated requests for admission or interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: According to the Motion to File Late Objections and the Affidavit of Andrew Waldera filed on behalf of Sinclair/Newfoundland, Sinclair/Newfoundland possess all of the back files related to the water rights for which it is presenting objections. See Motion to File Late Objection Request for Expedited Hearing, p.3. According to the Reply Memo, counsel has conducted a "diligent review" of those water rights in the files that with the Department of Water Resources. Accordingly, Claimants object to any requirement to produce any material already in the possession of objectors as a result of Objectors' diligent review of the records of the Department of Water Resources. Without waiving this objection, all such documents relied upon in answering the Interrogatories are in the files and the back files associated with these water rights.

REQUEST FOR PRODUCTION NO. 2: Please produce copies of all documents and exhibits that you expect to offer as evidence at the trial of this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: At this time, Claimant has not decided what documents it intends to offer in evidence at the trial of this matter.

REQUEST FOR PRODUCTION NO. 3: Please produce copies of any notes, memoranda, letters or other correspondence prepared by you or between you and any other individual or entity regarding your Rights and use of water under the Rights.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: Claimant objects to this Interrogatory to the extent that it seeks to infringe upon the attorney-client and work product privilege for any communication between counsel, counsel's consultants and the Claimant. Without waiving this objection, see Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 4: Please produce copies of any and all written reports or documents of any kind whatsoever generated, relied upon, reviewed or possessed by expert witnesses of any type retained by you to review or analyze this matter and/or render expert testimony.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Claimant objects to this request on the grounds that it infringes upon the attorney-client and work product privileges. Moreover, under Rule 26(b)(4) of the Idaho Rules of Civil Procedure, no testifying expert has been identified, and no such discovery into consultants is permitted. Without waiving these objections, see Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 5: Please produce the current resume and/or curriculum vitae of all expert witnesses or consultants with whom you have consulted.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: Claimant objects to this request on the grounds that it violates Idaho Rules of Civil Procedure 26(b)(4) as no testifying expert has been identified.

REQUEST FOR PRODUCTION NO. 6: Please produce copies of any or all statements previously made by Objectors or its respective employees, agents, or representatives relating in any way to this matter, including any written statement signed or otherwise adopted or approved by Objectors or its respective employees, agents or representatives.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: At this time, Claimants are not aware of any statements made by Objectors concerning this matter other than the documents on file with the Court in this Subcase which are equally available to Objectors as to Claimant.

REQUEST FOR PRODUCTION NO. 7: Please produce copies of any statements which your witnesses will use, or you anticipate may be used, to refresh their memory, either for deposition or trial.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: At this time, Claimant is unaware of any statements that he or any witnesses will be used to refresh their memory. See generally Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 8: Please produce copies of any communications including, without limitation, all meeting minutes and all e-mails, letter or other correspondence, between you and any other person, which relate in any way to this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: Claimant objects to this Interrogatory to the extent that it seeks to infringe upon the attorney-client and work product privilege for any communication between counsel, counsel's consultants and the Claimant. Without waiving this objection, see Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 9: Please produce copies of any and all written reports, drawings, maps, photographs, invoices, receipts, operation manuals, installation manuals, maintenance records, management records, e-mails, letters, correspondence or documents of any kind whatsoever related to the configuration of your irrigation system, including but not limited to data that describes, identifies, or shows:

- (a) The construction of your irrigation system;
- (b) The geospatial layout of your irrigation system;
- (c) When construction of your irrigation system was completed;
- (d) The existing configuration of your irrigation system;
- (e) Post-construction improvements made to your irrigation system;
- (f) The location, size, and capacity of any pumps used for irrigation, including the capacity of associated nozzles;
- (g) The location, capacity, and length of any ditches used for irrigation;
- (h) Whether lining material was used in the construction of any ditches used for irrigation;
- (i) The location, size, length, diameter, and type of any piping used for irrigation purposes; and
- (j) The location, size, and purpose of any other fixture or equipment used for irrigation purposes.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: Claimant objects to this

Request on the grounds that it is unduly burdensome and not calculated to lead to discovery of admissible evidence. Without waiving this objection, see Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 10: Please produce copies of any and all written reports, photographs, invoices, receipts, estimates, bids, contracts, subcontracts, operations manuals, installation manuals, resumes, advertisements, job descriptions, job performance evaluations, payroll reports, maintenance records, management records, e-mails, letters, correspondence, or documents of any kind whatsoever related to the operation and maintenance of your irrigation system, including but not limited to data that describes, identifies, or shows:

(a) The name and address of any person or entity currently responsible for maintenance or operation of your irrigation facilities;

(b) The name and address of any person or entity that has been responsible for maintenance or operation of your irrigation facilities in the past year;

(c) The qualifications of any person or entity responsible for maintenance or operation of your irrigation facilities, now or in the past;

(d) The job description/duties of any person or entity responsible for maintenance or operation of your irrigation facilities, now or in the past;

(e) The name and address of any person or entity responsible for the installation or construction of any fixture, improvement, or piece of equipment for irrigation purposes;

(f) Any maintenance or improvement to your irrigation facilities for which you are directly responsible; and

(g) Any qualifications you have for the design, operation, maintenance, or improvement of irrigation facilities.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10: Claimant objects to this Request on the grounds that it is unduly burdensome and not calculated to lead to discovery of admissible evidence. Without waiving this objection, see Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 11: Please produce copies of any and all written reports, photographs, invoices, receipts, estimates, bids, contracts, subcontracts, operations manuals, resumes, advertisements, maintenance records, management records, e-mails, letters, correspondence, or documents of any kind whatsoever related to the condition of your irrigated land and irrigation system, including but not limited to data that describes, identifies, or shows:

- (a) The reports of any soil analysis performed on your irrigated land;
- (b) The name and/or address of any person or entity responsible for performing any soil analysis on your irrigated land;
- (c) Crop yields on your irrigated land;
- (d) Crop yields in your locale;
- (e) Cropping patterns on your irrigated land;
- (f) Cropping patterns in your locale;
- (g) Crop consumptive use on your irrigated land;
- (h) Crop consumptive use in your locale;

(i) Application to your irrigated lands or facilities of fertilizers, sediment control materials, or any other chemicals;

(j) Readings from pressure instruments or results from any water pressure tests performed on your irrigation system; and

(k) The name and/or address of any person or entity responsible for performing any water pressure tests on your irrigation system.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: Claimant objects to this Request on the grounds that it is unduly burdensome and not calculated to lead to discovery of admissible evidence. Without waiving this objection, see Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 12: Please produce copies of any and all documents regarding any and all water conservation measures for irrigation of the above-referenced place of use (T01N, R18E, Section 25)

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: Claimant objects to this Request on the grounds that it is unduly burdensome and not calculated to lead to discovery of admissible evidence. Without waiving this objection, see Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 13: To the extent not produced in response to the preceding requests for production, please produce all electronically stored information in your possession, custody, or control that is responsive to Objectors' First Set of Requests for Admission, Interrogatories, and Requests for Production pursuant to Idaho Rule of Civil Procedure 34(a), including, but not limited to, information stored on any desktop computer, laptop computer, blackberry, hard drive, external storage media, local area network, wide

area network, handheld device, personal digital assistant, mobile phone, server, and/or archive/backup system.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13: Claimant objects to this Interrogatory to the extent that it seeks to infringe upon the attorney-client and work product privilege for any communication between counsel, counsel's consultants and the Claimant. Without waiving this objection, see Response to Request for Production No. 1.

REQUEST FOR INSPECTION

To the extent necessary to supplement the information received according to the Objectors' First Set of Requests for Admissions, Interrogatories, and Requests for Production regarding configuration, operation, and maintenance or irrigation facilities, please make arrangements to permit entry upon irrigated land in your control to enable inspection, measuring, surveying, and testing of the facilities.

RESPONSE TO REQUEST FOR INSPECTION: Claimant objects to this request on the grounds that it is not calculated to lead to the discovery of admissible evidence relating to Objectors' objections in this matter.

DATED this 24 day of October, 2008.

BARKER ROSHOLT & SIMPSON LLP

By 

Albert P. Barker
Attorneys for Cattle Lack Ranch Homeowners
Association

VERIFICATION

I, Pepi Corso-Hart of CATTLE LACK RANCH HOMEOWNERS ASSOCIATION, declare, under penalty of perjury under the laws of the United States, that I have read the Plaintiff/Counterdefendant's Response to Sinclair and Newfoundland's First Set of Discovery Requests to CATTLE LACK RANCH HOMEOWNERS ASSOCIATION above are true, accurate, and complete to the best of my knowledge and belief.

By: _____

Its _____

CERTIFICATE OF SERVICE

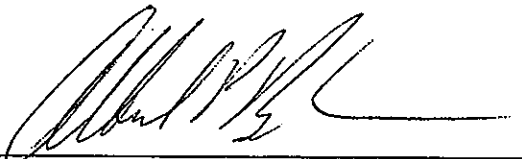
I hereby certify that on the 24 day of October, 2008, I mailed the original and copies of the **RESPONSE OF CATTLE LACK RANCH HOMEOWNERS ASSOCIATION TO SINCLAIR AND NEWFOUNDLAND'S FIRST SET OF REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO CATTLE LACK RANCH HOMEOWNERS ASSOCIATION** to the following persons, by mailing the original and/or copies, postage prepaid and addressed as follows:

Scott L. Campbell
Tara Martens
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS
101 So. Capital Blvd., 10th Floor
P. O. Box 829
Boise, ID 83701

Michael C. Creamer
GIVENS PURSLEY LLP
601 W. Bannock Street
P. O. Box 2720
Boise, ID 83701-2720

Richard A. Mecham
Box 262
Carey, ID 83320

Director
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front Street, 6th Floor
P. O. Box 83720
Boise, ID 83720-00098



Albert P. Barker

EXHIBIT B

TO AFFIDAVIT OF TARA MARTENS

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Boise
Idaho Falls
Pocatello
Twin Falls

Eugene C. Thomas
John W. Barrett
R. B. Rock
Richard C. Fields
John S. Simko
John C. Ward
D. James Manning
David B. Lincoln
Gary T. Dance
Larry C. Hunter
Randall A. Peterman
Mark S. Prusynski
Stephen R. Thomas
Glenna M. Christensen
Gerald T. Husch
Scott L. Campbell
Robert B. Burns

Michael E. Thomas
Patricia M. Olsson
Christine E. Nicholas
Bradley J. Williams
Lee Radford
Michael O. Roe
Nancy J. Garrett
David S. Jensen
James L. Martin
C. Clayton Gill
Michael W. McGraham
David P. Gardner
Tara Martens
Mark C. Peterson
Julian E. Gabiola
Kimberly D. Evans Ross
Jason G. Murray

Jon A. Stenquist
Tyler J. Anderson
Paul D. McFarlane
Tyler J. Henderson
C. Edward Cather III
Michelle C. Michaud
Andrew J. Waldera
Dylan B. Lawrence
Benjamin C. Ritchie
Rebecca A. Rainey
Matthew J. McGee

Robert E. Bakes, *of counsel*

Willis C. Moffatt, 1907-1980
Kirk R. Helvie, 1956-2003

June 3, 2009

1411 Falls Avenue East, Suite 615
PO Box 5481
Twin Falls Idaho 83303 5481

208 734 7500
208 734 7508 Fax
www.moffatt.com

Albert P. Barker and Shelley M. Davis
Barker Rosholt & Simpson, LLP
1010 W. Jefferson, Suite 102
P.O. Box 2139
Boise, ID 83701-2139

Re: Sinclair Oil Corporation d/b/a Sun Valley Company and Newfoundland Partners, LP
Cattle Lack Ranch Homeowners Association
Subcases 37-00114C; 37-07609
MTBR&F File No. 16-845.14 & 18-975.4

Dear Al and Shelley:

We are in receipt of the *Response of Cattle Lack Ranch Homeowners Association to Sinclair and Newfoundland's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents to Cattle Lack Ranch Homeowners Association*. The purpose of this correspondence is to attempt to confer pursuant to Rule 37(a)(2), Idaho Rules of Civil Procedure, to secure supplemental answers and responses without the necessity of filing a motion to compel.

Initially, while many of your objections to the discovery requests were based upon an assertion of privilege, no privilege log was provided with your responses, as requested by the discovery requests and as required by Rule 26(b)(5)(A), Idaho Rules of Civil Procedure. Please provide a conforming privilege log for all items withheld as privileged as soon as possible, but in any event, within 21 days of the date of this correspondence.

In addition, as set forth in the discovery requests, the requests for production included a request for production of all electronically stored information responsive to the discovery requests pursuant to Idaho Rule of Civil Procedure 34(a). To date, no such electronically stored information has been provided; therefore, please provide such information, together with the method and manner by which it was harvested and collected, as soon as possible, but in any event, within 21 days of the date of this correspondence.

In response to the discovery, no documents or items were produced. Many references were made to records being contained within IDWR files, which have not been produced. While we have attempted to obtain and review available information, the records and items suggested to be included are not included in the records we have independently obtained. Therefore, please produce the records relied upon in your Answer to Interrogatory No. 6, and referred to by your Responses to Requests for Production Nos. 1, 3, 4, 7, 8, 9, 10, 11, 12 and 13.

With respect to Answers to Interrogatories Nos. 5, 6 and 7, and Responses to Requests for Production Nos. 3, 4, 8, 9, 10, 11, 12 and 13, such answers and responses are not responsive to the interrogatories and requests set forth in the discovery requests. In addition, Answers to Interrogatories Nos. 1 and 2 are not complete. Please supplement with responsive and complete answers and responses.

In Answer to Interrogatory No. 4, the representation is made that Claimant has not yet made a determination as to who it will call as an expert witness in these Subcases. During the course of the initial hearings, it appeared that Ms. Pabich was assisting you as an expert. Has the determination yet been made as to whether Ms. Pabich will be designated as an expert with respect to these Subcases? If so, we would appreciate the opportunity to depose her as soon as possible following the inspection of the premises, as discussed hereinbelow. In the event it is your position that Ms. Pabich will not be made available for deposition due to her role as a consultant, please advise as soon as reasonably possible if she or any other person is expected to testify in any capacity as an expert witness.

In response to requests relevant to irrigation systems, crops, soils, irrigated lands and water conservation measures, no response was provided on the basis of a challenge to relevancy. In addition, an objection to Objectors' Request for Inspection was lodged referencing relevance as the only basis. Objectors submit the applicable Rules of Civil Procedure are extremely broad with respect to the issue of relevancy, and Claimant's lands, irrigation, water systems and related topics are highly relevant to the referenced Subcases; therefore, it is hereby requested that the answers and responses be supplemented and that arrangements be made to permit inspection of the premises and facilities. Inspection is requested within the next 30-45 days. Please provide available dates for such inspection at your earliest convenience. Without limitation, such inspection is appropriate and necessary for purposes of discovering and/or evaluating soil types, distribution system(s), usage, conservation, types and sizes of ditches and conveyance systems, laterals, measuring devices, conditions of transfer, inspection of operations and field configuration.

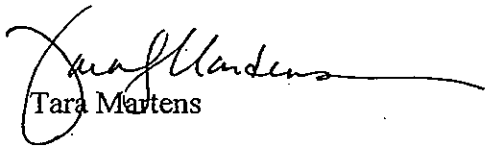
Finally, while Pepin Corso-Harris is referenced in the proposed Verification, there is no signature and no indication of her capacity or authority. Please provide verification in accordance with the Idaho Rules of Civil Procedure for the initial answers and responses and assure the supplemental answers and responses include appropriate verifications.

Albert P. Barker
June 3, 2009
Page 3

Again, please accept this correspondence as an attempt to confer in accordance with Rule 37(a)(2), Idaho Rules of Civil Procedure in an effort to avoid expending significant resources necessary to compel responses, answers and authorization to inspect. In the event supplemental answers, responses and authorization are not provided within 21 days from the date hereof, it is our understanding a motion to compel will be required to secure such responses. In addition, please advise as soon as possible regarding the request for inspection so that such inspection can be timely scheduled with consideration of counsel's, consultant's and Claimant's schedules.

In advance, we appreciate your attention to these matters. Please do not hesitate to contact me with any questions or concerns.

Sincerely,



Tara Martens

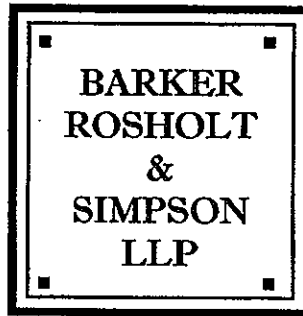
TLM/dbl

cc: Sun Valley Company
Newfoundland Partners

EXHIBIT C

TO AFFIDAVIT OF TARA MARTENS

ALBERT P. BARKER
JOHN A. ROSHOLT
JOHN K. SIMPSON
TRAVIS L. THOMPSON
SHELLEY M. DAVIS
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Albert P. Barker
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RECEIVED

JUL 15 2009

MOFFATT, THOMAS, BARRETT,
ROCK & FIELDS, CHTD.

July 13, 2009

Tara Martens
Moffatt Thomas
1411 Falls Avenue E, Suite 615
P. O. Box 5481
Twin Falls, ID 83303-5481

Re: *Sinclair Oil Corporation and Newfoundland Partners Objections*

Dear Ms. Martens:

I have your June 3, 2009 letters addressed to Shelley and me concerning Cattle Lack Ranch, Eakin, Stevenson, Molyneux, O'Gara, and Sherbine. Since these letters are identical in all important respects, I will simply respond to them in a single letter. Your first request is for a privilege log pursuant to the requirements of Rule 26(b)(5)(A). In response to the discovery requests, we made a general objection to discovery to the extent it infringed upon the Attorney-Client and the Work-Product privileges. We made specific objections on the grounds of privilege to Request for Production Nos. 3, 4 and 8. Those requests sought communications between the individual client and any other person, which could be construed to include the attorney. To the extent you are asking for all written communications between the client and the attorney regarding these water rights and Sinclair/Newfoundland objections, that was the basis for our objection. Rule 26(b)(5)(A) requires the person objecting to describe the nature of the documents and communications claimed as privileged. The nature of the documents and communications not produced are communications between these clients and this law firm concerning these water rights, and Sinclair's retaliatory litigation practices. Also included in the scope of the objection are any communications between counsel and the consultant retained for the purpose of assisting counsel. Third, this firm has conducted an in-house organization and evaluation of these objections. The privilege objection involves those three types of documents and communications. Accordingly, this letter provides you with the information required by Rule 26(b)(5)(A).

With respect to your request for electronically stored information, other than the information contained and electronically stored on the Department of Water Resources' website or copies of such documents electronically stored by this firm, we are aware of no such documents.

It is unclear exactly what your next request seeks. You have objected to referring you to the IDWR files for these rights. Are you asking us to download and copy all of the documents contained on the Department of Water Resources and the SRBA websites concerning these water rights and forward them to you? When this case was filed, Sinclair and Newfoundland represented to the Court that it was objecting to those "Concerned Water Users water rights for which it does possess back files." Motion to File Late Objection and Request for Expedited Hearing, p. 3. If the demand is to reproduce and send you documents that you have already collected from the IDWR files for the basis of filing these objections in the first place, or that the demand is to reproduce files that are currently available to you on the Department's website or have been served on all parties including Sinclair and Newfoundland involving these rights since that time, the demand is unreasonable, burdensome, and appears to be made solely for the purpose of harassment and causing undue expenses. If you are asking for something other than what is contained in the Department's back files which you represented to the Court that you already had, or which have been filed with the Court, that is something else entirely. If you have something specific with respect to any of these rights that you believe are missing from the back files, please let me know and I will attempt to determine whether or not any such documents exist or are in the possession of these clients.

Your next request broadly states that the answers are not responsive or not complete. Rule 33(c) specifically allows a party to respond to Interrogatories by providing reference to documents. The additional information you seek is available in the documents relating to each of these water rights on the back files. If there is something specific you are looking for that is not in the record, please let me know.

Your next request asks whether a determination has been made to call Dr. Pabich as a testifying expert. Dr. Pabich has been retained to provide assistance to these clients. However, it has not been determined whether she will be called as a testifying witness in any of the subcases. There has been no determination that she will be called with respect to any of these subcases objected to by Sinclair. As explained in our previous communications on the topic of the demand for a deposition of Dr. Pabich, we will make the determination of whether to call her as a witness on a case-by-case basis and in conjunction with the Scheduling Order in each particular subcase.

Your next questions relates to requests involving crops and soils, irrigation measures, and water conservation measures. As pointed out in at the initial hearings and in my letter to Scott Campbell concerning your same objections, a large number of your objections relate only to the season of use and relate to conditions in the water rights which are identical to conditions in previous licenses and transfers. At the initial hearings about these waters rights, counsel advised that Sinclair would evaluate these objections in light of the prior licenses and transfers. Your demands for information are indiscriminate. They are the same regardless of the nature of the

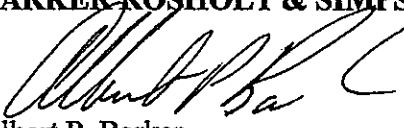
Tara Martens
July 13, 2009
Page 3

objection you have made, whether it is duty of water, place of use, or season of use, or whether the objections are to rights that are recommended as licensed. Your letter does not explain how the demands are relevant to each of the different types of objections you have made. You merely state that the information is "highly relevant" without explaining what it is "highly relevant" to. If you can explain the relevance of the broad discovery requests to the specific various types of objections you have made to the particular water rights, I will be happy to discuss your requests further.

With respect to the verifications, we provided you with signature pages for some, but not all, of the clients. I will get you copies of verifications for the missing clients.

Very truly yours,

BARKER ROUSHOLT & SIMPSON LLP



Albert P. Barker

APB/se

cc: Craig Hobdey
Concerned Water Users

EXHIBIT D

TO AFFIDAVIT OF TARA MARTENS

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Boise
Idaho Falls
Pocatello
Twin Falls

Eugene C. Thomas
John W. Barrett
R. B. Rock
Richard C. Fields
John S. Simko
John C. Ward
D. James Manning
David B. Lincoln
Gary T. Dance
Larry C. Hunter
Randall A. Peterman
Mark S. Prusynski
Stephen R. Thomas
Glenna M. Christensen
Gerald T. Husch
Scott L. Campbell
Robert B. Burns

Michael E. Thomas
Patricia M. Olsson
Christine E. Nicholas
Bradley J. Williams
Lee Radford
Michael O. Roe
Nancy J. Garrett
David S. Jensen
James L. Martin
C. Clayton Gill
Michael W. McGreaham
David P. Gardner
Tara Martens
Mark C. Peterson
Julian E. Gabiola
Kimberly D. Evans Ross
Jason G. Murray

Jon A. Stenquist
Tyler J. Anderson
Paul D. McFarlane
Tyler J. Henderson
C. Edward Cather III
Michelle C. Michaud
Andrew J. Waldera
Dylan B. Lawrence
Benjamin C. Ritchie
Rebecca A. Rainey
Matthew J. McGee

Robert E. Bakes, *of counsel*

Willis C. Moffatt, 1907-1980
Kirk R. Helvie, 1956-2003

July 16, 2009
via Facsimile
344-6034
and U.S. Mail

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Albert P. Barker
Barker Rosholt & Simpson
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P.O. Box 2139
Boise, ID 83701-2139

Re: Deficiencies in the Concerned Water Users' Discovery Responses
MTBR&F File No. 16845.0014

Dear Mr. Barker:

I am in receipt of your letter of July 13, 2009. It is respectfully submitted that said correspondence does not remedy the significant deficiencies in the discovery responses of the Concerned Water Users. The purpose of this correspondence is to further explain our client's position regarding such deficiencies and to offer you a final opportunity to produce responsive documents and provide dates for inspection of each of your clients' properties before the end of the 2009 irrigation season.

First, your characterization of what is required under Rule 26(b)(5)(A) is without merit. Your commentary acknowledges Rule 26(b)(5)(A) requires the objecting party to describe the nature of the documents and communications claimed as privileged and assert the Concerned Water User members have satisfied the standard. However, no logs were produced and describing three categories of privileged documents—attorney-client, retained consultant, and work product—does not satisfy the requirements of the rule. The description required by Rule 26(b)(5)(A) 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.” I.R.C.P. 26(b)(5)(A). In other words, a privilege log which refers to individual documents is required. This firm cannot assess the applicability of the privilege or protection to any given document based on what amounts to a brief definition of three types of privilege. Enclosed for your reference, as an exemplar, is the privilege log Sun Valley Company produced in response to discovery requests made by your clients, which demonstrates a form commonly utilized to comply with the requirements of the Rules of Civil Procedure.

Second, while I understand your confusion about what records this firm already has, for purposes of discovery, it seems that the best practice would simply be to provide answers and

July 16, 2009

Page 2

documents responsive to the discovery requests. Put another way, it is neither your option nor an efficient use of anyone's time to argue about which documents and information are already in this firm's possession. A good faith effort was made to collect documentation available from public agencies; nonetheless, the categories of documents and items your responses indicate are contained in those records cannot be found in the records. The rules of discovery clearly require that your clients provide complete and responsive answers and productions. Your clients are not absolved of the responsibility to comply with discovery rules simply because this firm indicated that it had previously consulted IDWR records in its initial investigation of the subject water rights. You indicated that if this firm desires "something specific," you will attempt to comply with the discovery rules. This firm desires the information and documents it very specifically detailed in the discovery requests propounded on September 17, 2008. Please investigate and comply with the stated requests.

Third, we do not dispute that Rule 33(c) allows a party to respond to an interrogatory by referring to documents. However, your characterization of the discovery rules is once again incomplete. A responding party must specify the responsive records and produce or provide access to them. Further, if a responding party chooses to respond by exercising its option to produce records, it has a duty to ensure that the answers are actually provided therein. In other words, if a requesting party cannot ascertain answers to interrogatories upon production of documents, the responding party is under a duty to search the records to provide the answers. See e.g., *Govas v. Chalmers*, 965 F.2d 298, 302 (7th Cir. 1992). Vaguely pointing to the "records of the IDWR" to answer an interrogatory about the detailed configuration, operation, efficiency, and maintenance of the irrigation system and irrigated property at issue in a particular subcase is neither responsive nor sufficient. Furthermore, upon receipt of my letter of June 3, 2009, you were clearly on notice that this firm cannot ascertain answers from your vague reference to IDWR records. Your clients have a duty to search the records and provide the answers. Once again, the "something specific" that is sought is detailed in the discovery requests themselves. Please investigate and comply by providing a responsive answer and a more specific identification of the documents to which you refer.

Fourth, your "relevance" objections are without support in the law. The Idaho Rules of Civil Procedure have "consistently been interpreted to allow **the broadest possible discovery.**" *Caldero v. Tribune Publ'g Co.*, 98 Idaho 288 (1977) (emphasis added). Likewise, 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 (1978) (emphasis added). In the context of these subcases, the Concerned Water Users are not justified in placing a burden on the objecting party to explain or demonstrate relevance during discovery. However, in the interest of resolving these issues and moving forward with discovery and the resolution of these subcases, the discovery requests regarding configuration and maintenance of each claimant's irrigation system, the soil and crops grown, and any conservation measures instituted by the claimant are all matters "highly relevant" to historical use and duty of water issues.

July 16, 2009

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Please note that the recommended duty of water for combined use is an issue common to the subcases of each of the Concerned Water Users.

It is unclear from your correspondence what steps were taken to comply with Rule 34(a) relevant to electronically stored information. No such electronically stored information has been provided; and there has been no certification that the electronically stored information of each of the claimants has been searched, or evaluated for responsiveness. Again, please provide such information, together with the method and manner by which it was harvested and collected, as soon as possible, or, in the alternative, certification, with respect to each claimant that a reasonable investigation has been undertaken with no responsive results.

Finally, the bases for the requested inspections is detailed in earlier correspondence; specifically, our consultants have indicated inspection is appropriate and necessary for purposes of discovering and/or evaluating soil types, distribution system(s), usage, conservation, types and sizes of ditches and conveyance systems, laterals, measuring devices, conditions of transfer, inspection of operations and field configuration. Of course, in order to avoid significant delay it is necessary that the inspections be scheduled to occur within the present irrigation season. As requested, please provide available dates for inspection.

Given the length of delay, the refusal to provide answers and responses to discovery, the refusal to schedule inspections and provide available dates for deposition, together with the forthcoming conclusion of the irrigation season, immediate response and scheduling is required. Please respond with production that satisfies the rules governing discovery and available dates for inspection within seven (7) days of the date of this correspondence or we will be forced to file a motion to compel. Please accept this correspondence as another attempt to confer in accordance with Rule 37(a)(2), Idaho Rules of Civil Procedure, in an effort to avoid expending significant resources necessary to compel responses, answers and authorization to inspect.

We appreciate your timely attention to these matters. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

**Dictated by author, but not read;
Sent without signature to avoid delay.**

Tara Martens

TLM/mjm
Enclosure

SUN VALLEY COMPANYS PRIVILEGE LOG									
ANSWERS AND RESPONSES TO CONCERNED WATER USERS' FIRST SET OF DISCOVERY REQUESTS									
Subcase Nos. 37-00415, 37-00416 and 37-12111									
April 2, 2009									
CASE/RANGE	DATE	DOCUMENT	TO	FROM	TYPE OF PRIVILEGE		GENERAL DESCRIPTION	FILE NAME (FOR REPORTING)	
SVC00128-141	1/9/2007	Fax	Scott Campbell	Wallace Huffman	AC		Correspondence between counsel and client	Second Mailing from IDWR	
SVC00229-239	8/20/1996	Fax	Wally Huffman	Carl Burke	AC		Correspondence between counsel and client	Removal of Silt and Repair of Dam at Sun Valley, Idaho; Sediment Management Plan for Trail Creek Reservoir	
SVC00259-261	4/1/1994	Letter	Wally Huffman	Carl Burke	AC		Correspondence between counsel and client, with attachment	NOV Matter	
SVC00269-274	3/3/1994	Letter	Wally Huffman and Scott Rattmell	Carl Burke	AC		Correspondence between counsel and client, with attachment	NOV/Trail Creek Dam	
SVC00289	8/23/1993	Letter	Kevin J. Beaton	Carl Burke	WP		Draft correspondence		
SVC00300-303	8/26/1996	Fax	Wally Huffman	Carl Burke	AC		Correspondence between counsel and client, with attachment	Notice of Violation, Sinclair Oil Corporation, Sun Valley Company	
SVC00418-423	10/6/1995	Fax	Wally Huffman	Carl Burke	AC		Correspondence between counsel and client, with attachment	Sun Valley/NOV	
SVC00435-438	6/17/1996	Fax	Wally Huffman	Carl Burke	AC		Correspondence between counsel and client, with attachments	Removal of Silt and Repair of Dam at Sun Valley, Idaho; Sun Valley/NOV	
SVC00439-442	6/17/1996	Fax	Wally Huffman	Carl Burke	AC		Correspondence between counsel and client, with attachments	Removal of Silt and Repair of Dam at Sun Valley, Idaho	
SVC00445-492	6/13/1995	Report	Wally Huffman	Keith E. Anderson	CCP, WPL		Fish Screens (Trail Creek Diversions), with attachments	Fish Screens (Trail Creek Diversions)	
SVC00493-497	11/18/1994	Letter	Wally Huffman	Carl Burke	AC		Correspondence between counsel and client, with attachment	8/7/93 Notice of Violation, Sinclair Oil Corporation, Sun Valley, Idaho	
SVC00498-545	6/9/1988	Letter	Wallace Huffman	Scott Campbell	AC		Correspondence between counsel and client, with attachments	Sun Valley Snow Making Water Rights Application	
SVC00546-552	11/14/1997	Letter	Wallace Huffman	Scott Campbell	AC		Correspondence between counsel and client, with attachment	Assignment of a Portion of Sun Valley Permit No. 37-08575	
SVC00553-583	7/25/1997	Letter	Wallace Huffman	Scott Campbell	AC		Correspondence between counsel and client, with attachment	Water Permit No. 37-08575 (River Run Snowmaking/Commercial Use)	
SVC00591-618	2/11/1998	Letter	Wallace Huffman	Scott Campbell	AC		Correspondence between counsel and client, with attachments	Water Permit No. 37-08575A	
SVC00633-684	6/30/1987	Report	R.E. Holding	James M. Montgomery	CCP, WPL		Irrigation Matters, with attachments	Irrigation Matters	
SVC00685-693	2/23/2006	E-Mail	Wallace Huffman	Scott Campbell	AC		Correspondence between counsel and client, with attachments	Trail Creek Data	
SVC00694-699	11/29/2006	E-Mail	Dave Ziegler	Scott Campbell	AC		Correspondence between counsel and client, with attachments	SRBA Claim Review	
SVC00700-702	7/19/___	Note	Wally Huffman	Rod Kump	AC		Communication between counsel and client, with attachment	Upper Wood River Water Users' Association, Inc.	
SVC00703-713	1/19/2007	Fax	Scott Campbell	Wallace Huffman	AC		Correspondence between counsel and client	Mailing from IDWR	
SVC00714-715	12/13/1996	Letter	Wallace Huffman	Charles G. Brockway	CCP, WPL		Water Supply and Water Use Report, with attachments	Water Supply and Water Use Report	

AC - Attorney-Client
WP - Attorney Work Product
WPL - Work Product in Anticipation of Litigation
R - Confidential Information - Redacted for Document Production
C - Confidential Information
CCP - Consultant-Client

SUN VALLEY COMPANY'S PRIVILEGE LOG

ANSWERS AND RESPONSES TO CONCERNED WATER USERS' FIRST SET OF DISCOVERY REQUESTS

Subcase Nos. 37-00415, 37-00416 and 37-12111

April 2, 2009

DATE RANGE	DATE	DOC TYPE	TO	FROM	NAME OF PRIVILEGE	GENERAL DESCRIPTION	DATE NAME FOR REWARDING
SVC00716-717	3/30/1994	Letter	Wallace Huffman	Scott Campbell	AC	Correspondence between counsel and client	NOV Matter
SVC00718-719	5/4/1994	Letter	Wally Huffman	Carl Burke	AC	Correspondence between counsel and client	8/7/93 Notice of Violation, Sinclair Oil Corporation, Sun Valley, Idaho

AC - Attorney-Client
 WP - Attorney Work Product
 WPL - Work Product in Anticipation of Litigation
 R - Confidential Information - Redacted for Document Production
 C - Confidential Information
 CCP - Consultant-Client