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DEPARTMENT OF
WATER RESOURCES

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

Subcase Nos. 47-02330 and 47-11236

**CLAIMANT'S FIRST SET OF DISCOVERY
REQUESTS TO THE IDAHO DEPARTMENT
OF WATER RESOURCES**

COMES NOW Claimant Seneca Foods Corporation by and through its undersigned counsel of record and pursuant to Idaho Rules of Civil Procedure 26, 33, 34 and 36, and hereby requests that the Idaho Department of Water Resources respond to the following requests for admission, interrogatories, and requests for production under oath and no later than thirty (30) days from the date of receipt thereof as provided in said Rules.

I.
INTRODUCTION

In responding to these discovery requests, you are requested to furnish all information available to you, or subject to your reasonable inquiry, including information in the possession of your attorneys, investigators, employees, agents, representatives, guardians, consultants, expert witnesses and/or any other person or persons acting on your behalf, and not merely such information as is known to you by your own personal knowledge.

In responding to these discovery requests, you must make a diligent search of your records and all other papers and materials that are in your possession or available to you or your representatives. If any item has subparts, please answer each part separately and in full. If you cannot answer any of the following discovery requests in full after exercising due diligence to secure the information necessary to do so, please so state and answer or respond to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portions.

If you object to any of these discovery requests on the ground that the information sought is privileged and nondiscoverable, please state the basis for your claim of privilege and, in the case of any request for production, “identify” the “documents” and “records” which you object to producing in sufficient detail as to enable the court to rule upon a claim of privilege.

These discovery requests are deemed to be continuing. If, after responding to these discovery requests, you acquire any further information responsive to them, you are hereby requested, pursuant to Rule 26(e), to file and serve supplemental answers or responses containing such further information. If you fail to answer or respond to one or more of these discovery requests, or if your answer or response to one or more of these discovery requests is evasive or incomplete, Claimant may move for an order compelling you to fully answer or respond to these

discovery requests and to pay the reasonable expenses, including attorney fees, incurred by it in obtaining the order.

If you fail to produce “documents” and “records” requested herein or fail to answer any of these discovery requests on the ground that the necessary information, “records” or “documents” are not within your care, custody, possession, or control, please state what efforts you have made to obtain such information, “documents,” or “records.”

If you fail to answer or respond to any of these discovery requests in full or fail to supplement your answers or responses as requested, Claimant may move the Court for an order precluding you from introducing into evidence, or otherwise using either at trial or at any hearing, any testimony, witness, exhibit, “document,” “record,” publication, or other item or information not timely disclosed in your response to these discovery requests.

II. DEFINITIONS

When asked to “identify” a person or entity or when asked for the “identity” of a person or entity, please state:

- (a) The name of the person or entity;
- (b) The present or last known address and telephone number of the person or entity;
- (c) The present or last known occupation, business, and employer of the person or entity; and
- (d) The present or last known address and telephone number of the employer of the person or entity.

When asked to “identify” a record or document or when asked for the “identity” of a “record” or “document,” please state:

- (a) The nature or type of “record” or “document” (*e.g.*, letter, photograph, tape recording, radiology report, etc.);
- (b) The subject matter of the “record” or “document” and/or a general description of its contents;
- (c) The “identity” of the person who authored or created the “record” or “document”;
- (d) The date of the document or, if it bears no date, the date on which it was prepared or created; and
- (e) The physical location of the original and any copies of the “document” or “record” of which you are aware and the “identity” of the present custodian of the “record” or “document.”

In responding to these requests for admission, interrogatories, and requests for production, the following definitions shall apply:

The terms “document(s)” and/or “record(s)” mean any tangible thing upon which has been placed handwriting, e-mail transmission, typewriting, printing, photocopying, photographing, digital or computerized data, or any other form of recording, communication or representation, including but not limited to letters, words, pictures, sounds, magnetic impulses, symbols, numbers or any combination thereof, whether or not visible to the unassisted human eye. This definition shall include, but is not limited to, any and all originals, copies or drafts of any and all of the following: records, notes, summaries, schedules, contracts, agreements, drawings, blueprints, sketches, invoices, orders, acknowledgments, diaries, reports, findings, forecasts, tests, appraisals, reports, memoranda, medical records, telephone recordings, telephone logs, telephone lists, diaries, calendars, planners, daytimers, correspondence and letters, e-mail,

telegrams, telexes, facsimiles and faxes, cables, tapes, tape recordings, statements, receipts, invoices, check registers, transcripts, recordings, photographs, witness statements, pictures, films, videotapes, computer programs, computer databases, models, surveys, things and materials of any nature whatsoever. Any “document” which contains any comment, notation, addition, insertion or marking of any kind which is not part of another document is to be considered as a separate “document.”

III. REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Please admit that the basis of water right no. 47-02330 is License and Certificate of Water Right (“License”) No. G-28509. For convenience, please see the copy of said License attached hereto.

REQUEST FOR ADMISSION NO. 2: Please admit that the License describes and defines the quantity (or, in the parlance of the License: “the amount of water to which such right is entitled”) of water right no. 47-02330 as 1.78 cubic feet per second (“cfs”).

REQUEST FOR ADMISSION NO. 3: Please admit that the License does not describe and define the quantity of water right no. 47-02330 in terms of a volume (*e.g.*, in terms of acre-feet per annum (“AFA”) or acre-feet per year (“AFY”)).

REQUEST FOR ADMISSION NO. 4: Please admit that the Idaho Department of Water Resources Snake River Basin Adjudication (“SRBA”) Director’s Report recommendation for water right no. 47-02330 does, in part, describe and define the quantity of water right no. 47-02330 in terms of a volume (*e.g.*, in terms of acre-feet per annum (“AFA”) or acre-feet per year (“AFY”), namely “264.00 AFY”).

REQUEST FOR ADMISSION NO. 5: Please admit that the “264.00 AFY” volumetric description and definition of the quantity of water right no. 47-02330 referenced

above results in a limitation or restriction of the amount of water that could otherwise be diverted under the right based upon the instantaneous diversion rate of 1.78 cfs.

REQUEST FOR ADMISSION NO. 6: Please admit that the “264.00 AFY” volumetric description and definition of the quantity of water right no. 47-02330 referenced above imposes a limitation or restriction upon the diversion and use of the water right that is not contained within the underlying License.

REQUEST FOR ADMISSION NO. 7: Please admit that the License does not contain a combined use limitation with respect to water right no. 47-02330 being used in conjunction with other water rights.

REQUEST FOR ADMISSION NO. 8: Please admit that the Idaho Department of Water Resources SRBA Director’s Report recommendation for water right no. 47-02330 contains a combined use limitation with respect to water right no. 47-02330 being used in conjunction with other water rights (namely, used in conjunction with water right no. 47-11236).

REQUEST FOR ADMISSION NO. 9: Please admit that the combined use limitation contained within the Idaho Department of Water Resources SRBA Director’s Report recommendation for water right no. 47-02330 imposes a limitation or restriction upon the diversion and use of the water right that is not contained within the underlying License.

REQUEST FOR ADMISSION NO. 10: Please admit that the Idaho Department of Water Resources has not undertaken or completed any formal administrative rulemaking process regarding the inclusion of volumetric limitations (or annual diversion volumes) in SRBA Director’s Report recommendations in instances where the underlying water right licenses contain no such quantity-based description, definition, or limitation.

REQUEST FOR ADMISSION NO. 11: Please admit that the Idaho Department of Water Resources does not possess any administrative policy or guidance regarding the inclusion of volumetric limitations (or annual diversion volumes) in SRBA Director's Report recommendations for industrial use water rights.

**IV.
INTERROGATORIES**

INTERROGATORY NO. 1: Please state the name, address, and telephone number of each and every individual known to you who has any knowledge of, or who claims to have knowledge of, any facts or evidence discoverable in this matter, together with a brief summary of each person's knowledge.

INTERROGATORY NO. 2: Please state the name, address, and telephone number of any and all fact witnesses you plan to call upon in this matter, together with a brief summary of each person's knowledge.

INTERROGATORY NO. 3: Please state the name, address, and telephone number of any and all experts you plan to call upon in this matter and please:

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

INTERROGATORY NO. 4: Please identify each and every document that you intend to offer as an exhibit in this matter.

INTERROGATORY NO. 5: If you contend that Claimant, or any individual(s) acting on behalf of Claimant, has made any admission or statement against Claimant's interests in this matter, please state the following:

- (a) the identity of the individual making the admission and/or statement;
- (b) the date, time, and location where the admission and/or statement was made;
- (c) the name and address of each individual present at the time the admission and/or statement was made;
- (d) whether the admission and/or statement was written or oral; and
- (e) if the admission and/or statement was oral, please state the complete content of the admission and/or statement to the best of your knowledge.

INTERROGATORY NO. 6: To the extent that your answers to any of Request for Admission Nos. 1 through 11 are anything other than unqualified admissions, please explain in full and complete detail the bases supporting your answers. When answering this interrogatory, please separately identify each request for admission(s) being addressed within your answer.

INTERROGATORY NO. 7: Please explain in full and complete detail how the "264.00 AFY" volume contained within the Idaho Department of Water Resources SRBA Director's Report recommendation for water right no. 47-02330 was calculated/created.

INTERROGATORY NO. 8: Please explain in full and complete detail why the "264.00 AFY" volume contained with the Idaho Department of Water Resources SRBA Director's Report recommendation for water right no. 47-02330 was calculated/created.

INTERROGATORY NO. 9: Please identify and enumerate in list format any and all Idaho Department of Water Resources policy memoranda, guidance documents, reports, or directives relied upon in calculating and including the “264.00 AFY” volume contained within the Idaho Department of Water Resources SRBA Director’s Report recommendation for water right no. 47-02330.

INTERROGATORY NO. 10: Please identify and enumerate in list format any and all legal authorities (*e.g.*, each statute, case law, and/or administrative rule) relied upon in calculating and including the “264.00 AFY” volume contained within the Idaho Department of Water Resources SRBA Director’s Report recommendation for water right no. 47-02330.

**V.
REQUESTS FOR PRODUCTION OF DOCUMENTS**

REQUEST FOR PRODUCTION NO. 1: Please produce any and all documents supporting, either in whole or in part, your answers to any of the requests for admission contained herein.

REQUEST FOR PRODUCTION NO. 2: Please produce any and all documents supporting, either in whole or in part, your answers to any of the interrogatories contained herein.

REQUEST FOR PRODUCTION NO. 3: Please produce any and all documents you intend to introduce as exhibits in this matter.

REQUEST FOR PRODUCTION NO. 4: Please produce any and all documents including, without limitation, all notes, memoranda, drafts, reports, and work papers from or prepared by expert witnesses listed in your answers to the foregoing interrogatories.

REQUEST FOR PRODUCTION NO. 5: Please produce 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.

REQUEST FOR PRODUCTION NO. 6: Please produce the current resume and/or curriculum vitae of each individual whom you may call as an expert witness at the trial of this matter.

REQUEST FOR PRODUCTION NO. 7: Please produce the current resume and/or curriculum vitae of all expert witnesses or consultants with whom you have consulted, either directly or indirectly in this matter.

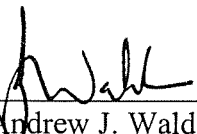
REQUEST FOR PRODUCTION NO. 8: If any of the admissions or statements against Claimant's interests you identify within your Answer to Interrogatory No. 5, above, were written, please produce copies of said written admissions and/or statements.

REQUEST FOR PRODUCTION NO. 9: Please produce copies of all materials identified within your Answer to Interrogatory No. 9, above.

REQUEST FOR PRODUCTION NO. 10: Please produce copies of all materials identified within your Answer to Interrogatory No. 10, above.

DATED this 15th day of April, 2011.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 

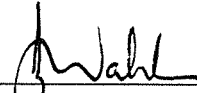
Andrew J. Waldera – Of the Firm
Attorneys for Seneca Foods Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of April, 2011, I caused a true and correct copy of the foregoing **CLAIMANT'S FIRST SET OF DISCOVERY REQUESTS TO THE IDAHO DEPARTMENT OF WATER RESOURCES** to be served by the method indicated below, and addressed to the following:

Director
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front Street, 6th Floor
P.O. Box 83720
Boise, ID 83720-0098
Fax: (208) 287-6700

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



Andrew J. Waldera

State of Idaho
License and Certificate of Water Right

Water License No. G-28509 47-2330

Amount 1.78 c.f.s.

Water District No.....

Priority...February...26, 1960

THIS IS TO CERTIFY that
of Buhl, Idaho, made application for a permit to appropriate the
public waters of the State of Idaho, dated February 26, 1960; that Permit No. G-28509
was issued under said application; that Certificate of Completion of works, with a carrying capacity of
1.78 second feet, was issued thereunder on August 3, 1965, showing that said works
were completed on the 8th day of March, 1965; and that on the 8th
day of March, 1965,

of Buhl, State of Idaho, made proof to the satisfaction of the State Reclamation Engineer of Idaho, of the right to use the waters of a well, a tributary of subterranean flow, for the purpose of Industrial Use, Food Processing under Use Permit No. G-28509 of the Department of Reclamation and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the State Reclamation Engineer of Idaho and entered of record in Volume 13 of Licenses at page 8205, on the 3 day of August, 1965:

The right hereby confirmed dates from February 26, 1960:

The Point of Diversion is located

in the NW ¼ SW ¼, Sec. 31, Tp. 9 S, R. 15 E, B. M. County of Twin Falls

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 1.28 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
9 S	15 E	31	NW¼ SW¼ For Industrial Use, Food Processing		

The right to the use of the water ~~aforsaid~~ hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this

3rd day of August, 1965.

/s/ RALPH W. THOMAS
Deputy State Reclamation Engineer. 17 2030

(SEAL)