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DEPARTMENT OF
WATER RESOURCES

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 No: 27-11375
Case No. 39576)
) RESPONSE RE: REMOVAL OF
) WATER RIGHT(S) FROM LIST OF
) PROTECTED RIGHTS

Please Print or Type the Following Information:

NAME AND ADDRESS OF PERSON RESPONDING:

Name: Natural Guardian Limited Partnership
Address: 2880 N. 55th W.
Idaho Falls, ID 83402
Phone: (208) 528-6635

Name and Address of Attorney, if any:

Robert L. Harris and Luke H. Marchant
PO Box 50130
Idaho Falls, ID 83405

Water Right Number(s) for which I am filing this Response: 27-4L

Please Check Applicable Box:

- ✓ I have reviewed the Committee of Nine's Response to the content of the State of Idaho's list of protected rights and accompanying Affidavit of David B. Shaw.
- ✓ I disagree that my water right(s) should be removed from the list of protected rights.
- ✓ The reason(s) I believe my water right(s) should remain on the list of protected rights are as follows:* See attached sheet.

Signature: Robert L. Harris

Date: May 12, 2011

*Attach additional sheets of paper as necessary to provide complete explanation.

COPY

- The Committee of Nine misinterprets Article 7.1.18.x.d of the 1990 Fort Hall Water Rights Agreement. That section provides that “persons diverting natural flow from the Blackfoot River prior to January 1, 1990, whose rights are decreed in the SRBA will continue to receive that full legal entitlement under state law.” The Committee of Nine argues that water rights that were idle in 1986-87 should not be included in the list of water rights protected by the Subordination Provision. Whether or not water was diverted in 1986-87 is irrelevant. The pertinent questions are: (1) whether or not water was diverted prior to 1990; and, (2) whether or not those water rights have been decreed (or recommended) in the SRBA. Thus, according to the plain language of the Fort Hall Agreement, all decreed or recommended water rights diverting natural flow from the Blackfoot River prior to January 1, 1990 should be included in the list of water rights protected by the Subordination Provision.
- The Committee of Nine’s argument appears to be nothing more than a backhanded attempt to forfeit or change elements of water rights that have already been decreed or recommended in the SRBA. Water Right No. 27-4L received a partial decree on December 11, 2006 with a priority date of June 1, 1885. Even if this water right was not utilized in 1986-87, it has nonetheless received a partial decree with a priority date 105 years prior to the 1990 cutoff date of the Subordination Provision. Water Right No. 27-4L thus meets the requirements to be included in the list of water rights protected by the Subordination Provision.
- Even if this Court were to accept the Committee of Nine’s argument that water rights not diverted in 1986-87 should not be included in the list of water rights protected by the Subordination Provision, Water Right No. 27-4L should be included on the list because it was diverted in 1987. The GIS map attached as Exhibit A shows the place of use for water right no. 27-4L over the 1987 adjudication photo. The 1987 adjudication photo clearly shows that at least a portion of the place of use for Water Right No. 27-4L was irrigated in 1987.
- Natural Guardian reserves the right to assert additional bases for inclusion on the list of water rights protected by the Subordination Provision at a later date.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, on this 12th day of May, 2011.

**DOCUMENT SERVED: REMOVAL OF WATER RIGHT(S) FROM LIST OF
PROTECTED RIGHTS**

ATTORNEYS AND/OR INDIVIDUALS SERVED:

DIRECTOR OF IDWR	(☒) <i>First Class Mail</i>
PO Box 83720	() <i>Hand Delivery</i>
Boise, ID 83720	() <i>Facsimile</i>
	() <i>Overnight Mail</i>
	() <i>Email</i>

U.S. DEPARTMENT OF JUSTICE	(☒) <i>First Class Mail</i>
Attn: Peter C. Monson	() <i>Hand Delivery</i>
Indian Resources Section	() <i>Facsimile</i>
999 18 th Street	() <i>Overnight Mail</i>
Denver, CO 80202	() <i>Email</i>

COMMITTEE OF NINE	(☒) <i>First Class Mail</i>
Represented By:	() <i>Hand Delivery</i>
Barker, Rosholt & Simpson, LLP	() <i>Facsimile</i>
1010 W. Jefferson, Ste. 102	() <i>Overnight Mail</i>
PO Box 2139	() <i>Email</i>
Boise, ID 83701	

U.S.A.	(☒) <i>First Class Mail</i>
Represented By:	() <i>Hand Delivery</i>
United States Dept. of Justice	() <i>Facsimile</i>
Environmental & Natural Resource	() <i>Overnight Mail</i>
550 West Fort Street, MSC 033	() <i>Email</i>
Boise, ID 83724	

STATE OF IDAHO

Represented by:

State of Idaho

PO Box 44449

Boise, ID 83711-4449

(☒) *First Class Mail*

(☐) *Hand Delivery*

(☐) *Facsimile*

(☐) *Overnight Mail*

(☐) *Email*

SHOSHONE-BANNOCK TRIBES

Represented By:

Jeanette Wolfley, Special Counsel

202 N Arthur

Pocatello, ID 83202

(☒) *First Class Mail*

(☐) *Hand Delivery*

(☐) *Facsimile*

(☐) *Overnight Mail*

(☐) *Email*

STATE OF IDAHO

Office of Attorney General

Attn: Clive Strong /

Shasta Kilminster-Hadley

PO Box 83720

Boise, ID 83720

(☒) *First Class Mail*

(☐) *Hand Delivery*

(☐) *Facsimile*

(☐) *Overnight Mail*

(☐) *Email*

SRBA DISTRICT COURT

PO Box 2707

Twin Falls, ID 83303-2707

(☒) *First Class Mail*

(☐) *Hand Delivery*

(☐) *Facsimile*

(☐) *Overnight Mail*

(☐) *Email*

FMC PRODUCTION LLC

Represented By:

William G. Myers III

101 S Capital Blvd, Ste 1400

PO Box 2527

Boise, ID 83701

(☒) *First Class Mail*

(☐) *Hand Delivery*

(☐) *Facsimile*

(☐) *Overnight Mail*

(☐) *Email*

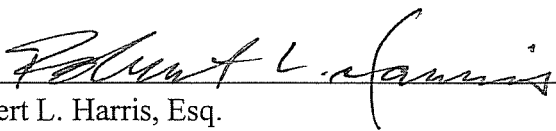

Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC

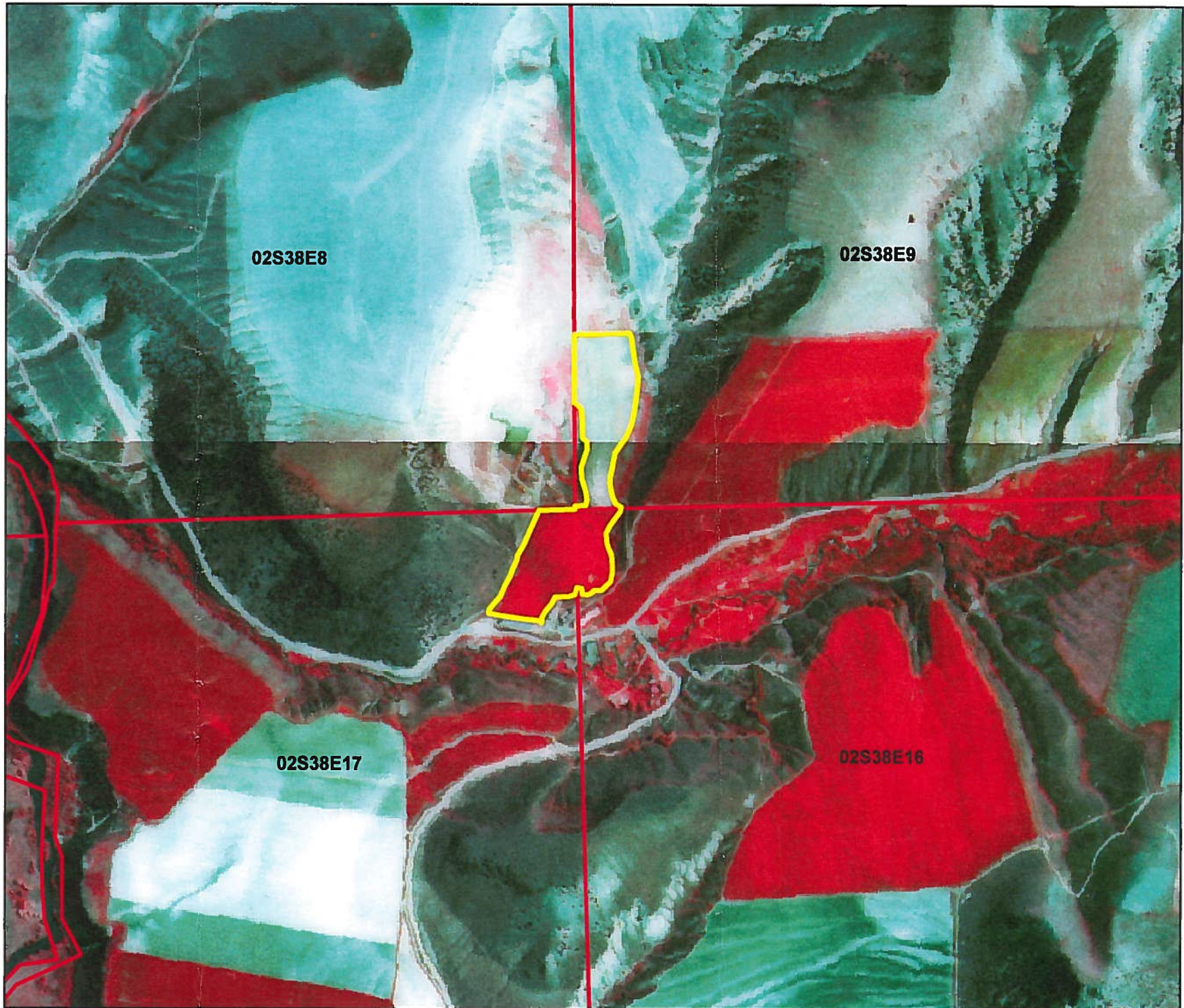
EXHIBIT A

NATURAL GUADIAN WATER RIGHT NO. 27-4L



Legend

-  27-4L Place of Use
-  Section Lines



1987 Adjudication Photo



Prepared by:
Luke H. Marchant