

**Claimants Names:**

**Marathon Partners LLC**

**Attorney Name & Address:**

**James P. Speck, ISB#2067  
Speck & Aanestad  
A Professional Corporation  
120 East Avenue  
P. O. Box 987  
Ketchum, Idaho 83340  
(208) 726-4421  
FAX: (208) 726-0752**

**RECEIVED**

**JAN 10 2012**

**DEPT. OF WATER RESOURCES**

**RECEIVED**

**JAN 6 2011**

**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**

**Case No. 39576**

)

)

)

)

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**Subcase No. 37-21112**

**AFFIDAVIT OF JAMES P. SPECK**

**STATE OF IDAHO**

)

:ss

**County of Blaine**

)

I, JAMES P. SPECK, being over the age of eighteen years, make this affidavit based on personal information.

1. Attached hereto as Exhibit 1 are true and correct copies of pages 1 and 14 of the Claimant's First Discovery Requests to Objectors. In the Certificate of Service on p.14 the document is incorrectly identified as the "NOTICE OF APPEARANCE".

2. Attached hereto as Exhibit 2 are true and correct copies of Fax Cover Sheets and the associated Transaction Reports indicating that the document titled *Claimant's First Discovery Requests to Objectors* was faxed to and received by Mr. Craig Hobdey and Mr. Al Barker on

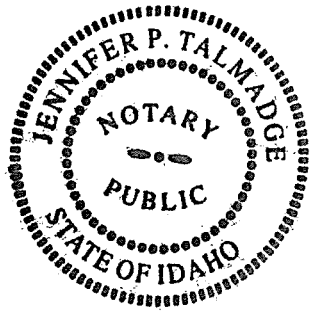
November 28, 2011.

3. Attached hereto as Exhibit 3 are true and correct copies of pages 1, 10 and 11 of Objector's Joint Response to Claimants's First Discovery Requests. The undersigned received this document by mail today.

DATED this 3<sup>rd</sup> day of January, 2012.

  
\_\_\_\_\_  
JAMES P. SPECK

SUBSCRIBED AND SWORN to before me this 3<sup>rd</sup> day of January, 2011.



  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at: Ketchum, ID  
Comm. Expires: 2-9-15

## CERTIFICATE OF SERVICE

I hereby certify that on the 3<sup>rd</sup> day of January, 2012, I served a true and correct copy of the foregoing on the following persons in the manner designated below:

Mr. Nicholas J. Spencer  
Idaho Department of Water Resources  
322 E. Front Street  
Boise ID 83720-0098  
Fax: (208) 287-6700

- ☐ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☒ Facsimile, with copy by United States Mail, Postage Prepaid

Albert P. Barker  
Barker, Rosholt & Simpson, LLP  
P.O. Box 2139  
Boise, ID 83701  
Fax: (208) 344-6034

- ☐ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☒ Facsimile, with copy by United States Mail, Postage Prepaid

Craig Hobdey  
Hobdey & Hobdey  
P.O. Box 176  
Gooding, ID 83330  
Fax: (208) 934-4420

- ☐ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☒ Facsimile, with copy by United States Mail, Postage Prepaid

  
\_\_\_\_\_  
JAMES P. SPECK

Claimants Names:

Marathon Partners LLC

Attorney Name & Address:

James P. Speck, ISB#2067  
Speck & Aanestad  
A Professional Corporation  
120 East Avenue  
P. O. Box 987  
Ketchum, Idaho 83340  
(208) 726-4421  
FAX: (208) 726-0752

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 37-21112           |
| Case No. 39576 | ) |                            |
|                | ) | CLAIMANT'S FIRST DISCOVERY |
|                | ) | REQUESTS TO OBJECTORS      |
| _____          | ) |                            |

TO: OBJECTORS AND THEIR ATTORNEYS OF RECORD

Pursuant to Rules 33, 34 and 36 of the Idaho Rules of Civil Procedure, Claimant, MARATHONPARTNERSLLC ("Claimant") hereby requests that you answer each of the following interrogatories, requests for production of documents and requests for admission separately and fully in writing under oath, and within thirty (30) days after service hereof.

a. Instructions:

1. In responding to these interrogatories and requests for production of documents, you are instructed to frame your responses in accordance with the instructions and definitions set forth herein, and you are required to furnish all information that is available to you, including information in the possession of your attorneys, or other persons directly or indirectly employed by or connected with you or your attorneys, and anyone else acting in your behalf or

CERTIFICATE OF SERVICE

I hereby certify that on the 28 day of November, 2011, I served a true and correct copy of the foregoing NOTICE OF APPEARANCE on the following persons in the manner designated below:

Chief, Natural Resources Division  
Office of the Attorney General, State of Idaho  
P. O. Box 44449  
Boise, ID 83711-4449

- ☒ United States Mail, Postage Prepaid  
☐ Hand Delivery  
☐ Facsimile, with copy by United States Mail, Postage Prepaid

The United States Department of Justice  
Environmental and Natural Resources  
Division  
550 West Fort Street  
Box 33  
Boise, ID 83724

- ☒ United States Mail, Postage Prepaid  
☐ Hand Delivery  
☐ Facsimile, with copy by United States Mail, Postage Prepaid

Idaho Department of Water Resources  
Document Depository  
P.O. Box 83720  
Boise, ID 83720-0098

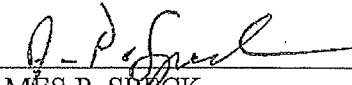
- ☒ United States Mail, Postage Prepaid  
☐ Hand Delivery  
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Albert P. Barker  
Barker, Rosholt & Simpson, LLP  
P.O. Box 2139  
Boise, ID 83701

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Craig Hobdey  
Hobdey & Hobdey  
P.O. Box 176  
Gooding, ID 83330

- ☐ United States Mail, Postage Prepaid  
☐ Hand Delivery  
☒ Facsimile, with copy by United States Mail, Postage Prepaid

  
JAMES P. SPECK

**SPECK & AANESTAD**  
A PROFESSIONAL CORPORATION  
ATTORNEYS  
P. O. Box 987  
Ketchum, ID 83340  
1-208-726-4421  
Fax: 1-208-726-0752

**FAX COVER SHEET/MEMO**

|                 |                                              |               |                                                      |
|-----------------|----------------------------------------------|---------------|------------------------------------------------------|
| <b>To:</b>      | Mr. Craig Hobdey<br>Hobdey & Hobdey          | <b>Date:</b>  | November 28, 2011                                    |
| <b>Fax:</b>     | (208) 934-4420                               | <b>Pages:</b> | 54<br><del>53</del> , including this cover<br>sheet. |
| <b>From:</b>    | Jennifer Talmadge<br>Asst. to James P. Speck |               |                                                      |
| <b>Subject:</b> | Marathon Partners, LLC                       |               |                                                      |

**COMMENTS:**

Attached please find *Claimant's First Discovery Requests to Objectors*.

Copy to follow by mail.

8507787000

P.01/01

# TRANSACTION REPORT

EXHIBIT 2 - PAGE 2

NOV/28/2011/MON 03:14 PM

FAX(TX)

| #   | DATE   | START T. | RECEIVER    | COM.TIME | PAGE | TYPE/NOTE | FILE    |
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| 001 | NOV/28 | 02:45PM  | 12089344420 | 0:28:48  | 54   | MEMORY OK | G3 9375 |

**SPECK & AANESTAD**  
A PROFESSIONAL CORPORATION  
ATTORNEYS  
P. O. Box 987  
Ketchum, ID 83340  
1-208-726-4421  
Fax: 1-208-726-0752

**FAX COVER SHEET/MEMO**

|                 |                                              |               |                                                      |
|-----------------|----------------------------------------------|---------------|------------------------------------------------------|
| <b>To:</b>      | Mr. Al Barker<br>BARKER ROSHALT & SIMPSON    | <b>Date:</b>  | November 28, 2011                                    |
| <b>Fax:</b>     | (208) 344-6034                               | <b>Pages:</b> | 54<br><del>53</del> , including this cover<br>sheet. |
| <b>From:</b>    | Jennifer Talmadge<br>Asst. to James P. Speck |               |                                                      |
| <b>Subject:</b> | Marathon Partners, LLC                       |               |                                                      |

**COMMENTS:**

Attached please find *Claimant's First Discovery Requests to Objectors*.

Copy to follow by mail.

8507787000

P.01/01

# TRANSACTION REPORT

EXHIBIT 2 - PAGE 4

NOV/28/2011/MON 04:56 PM

FAX (TX)

| #   | DATE   | START T. | RECEIVER    | COM.TIME | PAGE | TYPE/NOTE | FILE    |
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| 001 | NOV/28 | 04:40PM  | 12083446034 | 0:16:18  | 54   | MEMORY OK | G3 9382 |

RECEIVED

JAN 03 2011

SPECK &amp; AANESTAD

Craig D. Hobdey  
 HOBDEY LAW OFFICE, PLLC  
 125 Fifth Avenue West  
 P.O. Box 176  
 Gooding, Idaho 83303-0176  
 Telephone (208) 934-4429  
 Facsimile (208) 934-4420  
 I.S.B. #3199.

Attorney for Big Wood Canal Company

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. 37-21112                |
|                 | ) |                                     |
| Case No. 39576. | ) | <b>OBJECTOR'S JOINT RESPONSE TO</b> |
|                 | ) | <b>CLAIMANT'S FIRST DISCOVERY</b>   |
|                 | ) | <b>REQUESTS</b>                     |
|                 | ) |                                     |

COMES NOW BIG WOOD CANAL COMPANY and O'GARA et al. and responds to  
 Claimant's First Discovery Requests to Objectors:

**GENERAL OBJECTIONS**

1. Respondents object to the Interrogatories and to the definitions and instructions to the extent they purport to require discovery responses beyond that required under the local rules and order of the Idaho Rules of Civil Procedure. These responses are provided in accordance with the Idaho Rules of Civil Procedure irrespective of any definitions and instructions that may accompany the discovery requests.

2. These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such requests were asked of, or any statement, material, or information provided were made by witness present and testifying in

RESPONSE FOR ADMISSION NO. 9: Object as to relevance. However without waiving such objection it appears Exhibit 6 is a copy of the Objection.

REQUEST FOR ADMISSION NO. 10: Admit that attached hereto as Exhibit 7 is a true and correct copy of the Standard Form 5 - Stipulated Elements of a Water Right which your attorney signed and filed in Subcase 37-21114.

RESPONSE FOR ADMISSION NO. 10: Object as to relevance. Furthermore, object as to attorney/client privilege and work product. However without waiving such objection it appears Exhibit 7 is a copy of an SF-5.

REQUEST FOR ADMISSION NO. 11: Admit that attached hereto as Exhibit 8 is a true and correct copy of the Order of Partial Decree issued in the SRBA for Water Right 37-21114.

RESPONSE FOR ADMISSION NO. 11: Object as to relevance. However without waiving such objection it appears Exhibit 8 is a copy of a partial decree.

REQUEST FOR ADMISSION NO. 12: Admit that the irrigation diversion rate set forth in both the SF5 and Partial Decree for 37-21114 is 0.025 cfs per acre. 37-21114.

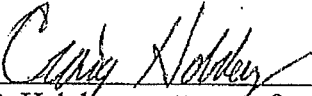
RESPONSE FOR ADMISSION NO. 12: See Response to Admission No. 7.

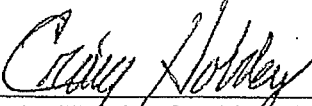
REQUEST FOR ADMISSION NO. 13: Admit that the Water Right and Water Right 37-21114 are splits of the same parent water right which was 37-12818A.

RESPONSE FOR ADMISSION NO. 13: Object as to relevance. However without waiving objections, Objectors are not experts in the splits and parents of water rights and are therefore without specific expert knowledge and unable to answer.

DATED THIS 30 day of December, 2011.

BIG WOOD CANAL COMPANY

  
\_\_\_\_\_  
Craig D. Hobdey as attorney for  
Big Wood Canal Company

  
\_\_\_\_\_  
Craig D. Hobdey for Al Barker as Attorney  
For O'Gara et al

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on the 30 day of December, 2011, I served a true and correct copy of the foregoing RESPONSE TO FIRST SET OF DISCOVERY REQUESTS by the method indicated below and addressed to the following:

James P. Speck  
Speck & Aanestad  
PO Box 987  
Ketchum ID 83340

*U.S. Mail*

Chief, Natural Resources Division  
Office of the Attorney General, State of Idaho  
PO Box 44449  
Boise ID 83711-4449

*U.S. Mail*

The United States Department of Justice  
Environmental and Natural Resources Division  
550 West Fort Street  
PO Box 33  
Boise ID 83724

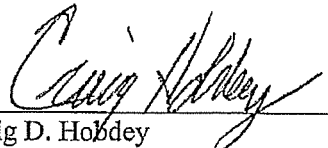
*U.S. Mail*

Idaho Department of Water Resources  
Document Depository  
PO Box 83720  
Boise ID 83720-0098

*U.S. Mail*

Albert Barker  
BARKER, ROSHOLT & SIMPSON  
PO Box 2139  
Boise ID 83701

*U.S. Mail*

  
\_\_\_\_\_  
Craig D. Hobdey