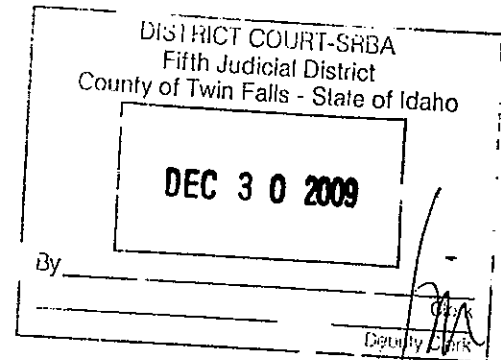


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 Facsimile: (208) 424-8774
 Email: Dana@IdahoWaterLaw.com

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Attorneys for
 Indian Creek Ranch Owners Association, Inc.



**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 39576 	))))))))	Subcase Nos. 37-296A, 37-717, 37-1216 and 37-7854 AFFIDAVIT OF MICHAEL B. SCHWARZKOPF
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STATE OF WASHINGTON COUNTY OF YAKIMA	)) ss.)
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Michael B. Schwarzkopf, being first being duly sworn upon oath, deposes and
 says:

AFFIDAVIT OF MICHAEL B. SCHWARZKOPF -- 1

(1) I am Michael B. Schwarzkopf, counsel of record in this matter for Indian Creek Ranch Owners Association, Inc. ("ICROA");

(2) I have personal knowledge of the facts set forth herein;

(3) City of Hailey did not Answer or Respond ICROA's Discovery Requests (which were the subject of ICROA's November 4, 2009 Motion to Compel) by the Court-ordered date of December 11, 2009;

(4) I am also informed and believe that neither did City of Hailey alert ICROA that it would not be able to do so (in any event, it did not so alert me);

(5) I am also informed and believe that neither did City of Hailey initiate any communication with ICROA about the status of its Answers or Responses *after* the Court-ordered date passed (in any event it did not initiate any such communication with me);

(6) It was only after I made inquiry by email to counsel for City of Hailey on December 15, 2009 (*a true and correct copy of which is attached as Ex. 1*), and then followed it up by phone message the following day, that counsel for City of Hailey, on December 17, 2009, finally undertook a communication, with me, about the two month overdue Answers/Responses;

(7) In the course of that December 17, 2009 phone call, counsel for City of Hailey gave no explanation for the continuing delay and refused to give me his availability for an effort to informally address the discovery and scheduling issues with

the Court by telephone before the Christmas holiday (as the Court had encouraged the parties to do during the Motion to Compel hearing);

(8) I followed this conversation up with a letter (*a true and correct copy of which is attached as Ex.2*) later that same day, December 17, 2009, confirming that City of Hailey's counsel had committed in the phone call to serve the Answers and Responses on Monday, December 21, 2009;

(9) In that letter, I also asked that he serve them by courier to avoid further delay, and asked that he communicate if courier was not possible, so that I could try again to arrange an informal conference call with the Court about discovery and scheduling matters before the Christmas holiday;

(10) I was informed and believe that City of Hailey by U.S. Mail finally served its Answers/Responses on ICROA on Wednesday, December 23, 2009. (The result of which was that ICROA didn't receive the Answers/Responses until late in the afternoon of Christmas Eve);

(11) City of Hailey did not give me the courtesy of the call I asked for if the Answers/Responses weren't actually going to be in ICROA's hands on December 21, 2009, three days earlier, as requested.

(12) This last failure made it nearly impossible for me to treat the rescheduling of deadlines issue informally with the Court, given the intervening holiday and this Motion's approaching filing cutoff date so that the hearing could coincide with the January 13, 2010 Status Conference in this matter.

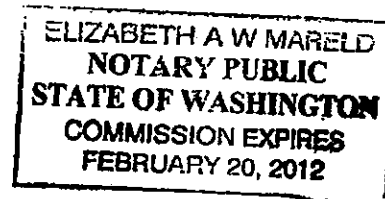
FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 30th day of December, 2009.


Michael B. Schwarzkopf

SUBSCRIBED AND SWORN to before me this 30th day of December, 2009.

Elizabeth A W Mareld
Notary Public in and for the State of Washington
Residing at: Yakima
My Commission Expires: Feb. 20, 2012



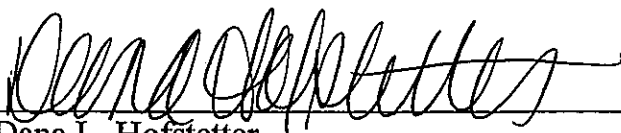
CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the foregoing document (including any attachments) this 30th day of December, 2009, by the pre-paid method(s) indicated below to:

IDWR
Document Depository
P.O. Box 83720
Boise, Idaho 83720-0098
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Craig Hobdey
P.O. Box 176
Gooding, Idaho 83330
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Patrick D. Brown
Hutchinson & Brown
104 Lincoln Street
P.O. Box 207
Twin Falls, Idaho 83303
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☒ Fax


Dana L. Hofstetter

Subject: Discovery

From: Mike schwarzkopf <mbschwarzkopf@yahoo.com>

Date: Tue, 15 Dec 2009 15:14:13 -0800 (PST)

To: patbrown@cableone.net

Pat:

Dana tells me we have not received your response to our outstanding discovery, despite the order of the Special Master. I have also reviewed the court document summary and find no evidence of service having been made. Neither Dana nor I have heard from you about this situation either. If you have an explanation that would bear on why ICROA should not move for sanctions against you and your client, I'd like to hear it right away. Either way, please immediately provide me your availability during the next seven days to participate in a conference call with the Special Master on this subject and its effects. Thank you.

Mike Schwarzkopf

Michael B. Schwarzkopf
ATTORNEY AT LAW
P.O. Box 1965
Yakima, Washington 98907
(208)841-8227

December 17, 2009

Via Facsimile (208) 733-9343 and U.S. Mail

Pat Brown
Hutchinson & Brown
P.O. Box 207
Twin Falls, Idaho 83303-0207

Re: SRBA Subcase Nos. 37-296A, 37-717, 37-1216 and 37-7854

Dear Pat:

Thanks for calling me this morning regarding the outstanding discovery answers.

You indicated in our phone conversation that you have now received all of the information you needed from your client, and would spend the weekend putting that information into an answer to be served on Monday, December 21. I understand that there is a courier service between Twin Falls and Boise so that you could actually deliver the answer to Dana on Monday. Due to the immanency of the holidays and pending case deadlines, we would appreciate actual delivery of the answers on Monday. Please let me know immediately, if you do not expect to be able to deliver the discovery answers to Dana's Boise office on, Monday, December 21.

Our discussion about the remaining discovery issues we face, and about the summary judgment deadline, was helpful. We would like to receive your answers to the Interrogatories and Requests for Production so that we can speak more intelligently about how to address these other issues. Thus, I would like to follow up our receipt of your answers with a more specific discussion of the remaining discovery issues and the summary judgment deadline, no later than Wednesday, next week. This should allow us to have a phone conference with the Special Master, if necessary, before Christmas. I believe that proceeding in this way may reduce the number of times we will need to bother her with these issues.

Sincerely,
Drafted by Mr. Schwarzkopf
but sent without his signature
to avoid delay.
Michael B. Schwarzkopf