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DEPARTMENT OF
WATER RESOURCES

January 20, 2010

COPY

-- via fax 736-2121 / 12 pages --

Clerk of District Court
SNAKE RIVER BASIN ADJUDICATION
253 3rd Ave. N.
P.O. Box 2707
Twin Falls ID 83303-2707

Re: **Hailey**, City of - Water Rights
Subcase Nos. 37-00296A, 37-00717, 37-01216 & 37-07854

Dear Clerk:

Enclosed herewith for filing please find a copy of MOTION FOR PROTECTIVE ORDER. The original and an additional 2 copies will be provided by USPS (in order to provide one for each of the above-numbered Subcases).

Thank you.

Sincerely,



Patrick D. Brown

↓
Enclosed.

/cb

Enc.

cc: Dana Hofstetter & Michael Schwarzkopf, w/enc. (via email)
Craig Hobdey, w/enc.
✓ Director of IDWR, w/enc.
Chief, Natural Resources Div., w/enc.
Environment & Natural Resource Div., w/enc.
City of Hailey, w/enc.

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Telephone: (208) 733-9300
Attorneys for **Claimant City of Hailey**

IN THE DISTRICT COURT OF THE 5th JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

* * * * *

In Re SRBA	)	Subcase Nos. 37-00296A, 37-00717,
	)	37-01216 and 37-07854
Case No. 39576	)	
	)	MOTION FOR PROTECTIVE ORDER
	)	
_____	)	

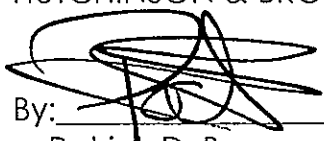
COMES NOW the City of Hailey and moves the Court under IRCP 12(c) to enter a protective order. The grounds for this motion are that ICROA seeks to compel production of certain documents against the City and its counsel on 7 particular items. The documents and other information they seek have not been properly sought through discovery and the City is not in any way in violation of any rule or order of the Court by not producing the information. A request for production, under Rule 34, requires a description of documents with reasonable particularity. That has not occurred with respect to any documents in this case. Second, a party is not in violation of a request for production or order because it does not produce documents which do not exist.

Because ICROA has sought to compel production of this information improperly and caused the City and its counsel to engage in substantial additional costs, without good cause, for the OCROA motion, the Court should award sanctions, including attorney fees and costs, according to IRCP 26(c) and 37(a)(4).

This motion is supported by the attached spreadsheet which is being produced in response to ICROA's motions.

Dated this 20 day of January, 2010.

HUTCHINSON & BROWN, LLP

By: 
Patrick D. Brown
Attorneys for Claimant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 20th day of January, 2010, (s)he served a true and correct copy of the within and foregoing document upon the following by the method indicated:

Dana Hofstetter & Michael Schwarzkopf

HOFSTETTER LAW OFFICE

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via email: dana@idahowaterlaw.com

(for Indian Creek Ranch Owners Assoc. "ICROA")

Craig Hobdey

HOBDEY LAW OFFICE

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CITY OF HAILEY
115 Main St. S., Ste. H
Hailey ID 83333

via USPS



Email 1/15/10 1:03 pm Alleged Deficiency 1: Allege that spring and creek flow data we have provided does not indicate the location of collection/diversi on works where data was taken.		Conclusion: The City has no idea what Interrogatory or Request for Production purports to require the information requested and as such we cannot provide same.
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Email 1/15/10
1:35 pm
Alleged
Deficiency 2:
States we have
not provided
any construction
or facilities
drawings per
RP 10 of 296A

	RFP 10	Please produce all documents relating to your answer to Interrogatory No. 15	NOTES: They want construction or facilities drawings for anything used to diver water from the source and convey it to the place of use.	Conclusion: 1 15 seeks a description of equipment used to divert water and convey it. The answer to 15 states how the water is diverted. There is nothing about how water is diverted which relates to flow measurements or details about flow measurements. Construction and facility blueprints are not referenced in answer 15 and are not necessary in describing how the water is diverted or conveyed. RP 10 simply asks for documents relating to the answer to I 15. IT does not meet the requirement of identifying documents to be produced with reasonable particularity.
	RFP 10 RESP	Please see the Answer No. 15		
	INT 15	Please describe the equipment you use for diverting water under your portion of the Water Right from the source and conveying it to the place of use, including in your response, without limitation, descriptions of all pumps, pipelines, tanks, conduits, and other facilities employed in such diversion and distribution systems.	NOTES: They contend there is measuring equipment at 2 points on the creek.	
	INT 15 ANS	Please see Answer No. 13. Claimant has allowed the proponents to inspect the collection and distribution system which is comprised of underground drain pipe collecting water at the source. The water then passes through a weir into underground, which runs down do the hydropower generator and water storage reservoir at the lower end of the valley. From there the water is piped underground to the City of Hailey where it is distributed to its users.		

Email 1/15/10 1:35 pm Alleged Deficiency 3: States we have not provided Indian Creek flow measurement records				
	RFP 13	Please produce all documents relating to your answer to Interrogatory No. 18		NOTES: Contends they are requesting information from the creek itself, and that you have provided information regarding the municipal water supply. Also want turbine flow SCADA data at 15 minute intervals. Conclusion: The city has produced the flow records it has of the spring and the creek.
	RFP 13 RESP	Flow records of the flows from the springs are attached.		
	INT 18	In your Claim, you contend that your portion of the Water Right has a season of use of "1-1 to 12-31". Please describe all the facts that support this contention.		
	INT 18 ANS	Municipal water supply has an inherent use year-round as most people use it for culinary purposes daily, and in this case, as set forth in the above answers, the water has been used for those purposes for more than a century without cessation.		

Email 1/15/10 1:35 pm Alleged Deficiency 5: Requests underlying measurement data in relation to the Municipal Water System Demand and Supply Analysis			Conclusion: Information SPF utilized to analyze system demands is information SPF may have. The city does not know if it has such data. ICROA's contention that some sort of flow data at 15 minute intervals is identified on Page 4 Paragraph 2 of the SPF report is unhelpful. If they mean digital Page 4, the only information referenced is municipal wells, which are not at issue in these cases. If they mean printed page 4, there is no reference whatsoever to flow measurements. Their Request for Production consequently does not describe what they seek to have produced with reasonable particularities.
Email 1/15/10 1:35 pm Alleged Deficiency 6: Not a deficiency, rather a statement they believe we provided duplicate documents			

Email 1/15/10 1:35 pm Alleged Deficiency 7: Refers to gaps in the chronology of Council Meeting minutes we provided	
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We have produced what we believe is pertinent. We reiterate the offer to allow ICROA to inspect and copy any minutes of City Council meetings. If some Minutes have been omitted, such omission is purely oversight.

			the back file for 37-8754, which the ICROA already possesses. There is also a standing offer to have the city employees clarify any questions the ICROA engineers may have about the equipment as such equipment was being calibrated when the inspection occurred.
RFP 11	Please produce all documents relating to your answer to Interrogatory No. 16.	NOTES: See Int 16 above; Also refers to wanting turbine flow SCADA data at 15 minute intervals	
RFP 11 RESP	Respondent does not possess responsive documents at this time.		
RFP 15	Please produce all documents that contain any measurement records of Indian Creek and/or Indian Springs flows or diversion quantities	NOTES: Wants turbine flow SCADA data at 15 minute intervals.	Conclusion: The city has produced the flow records responsive to the Request for Production. It's answer is not deficient because the ranch owners think there was a contractual requirement to keep additional records. A Request for Production can only compel the production of documents in existence. Those have been provided.
RFP 15 RESP	Please see attached flow records		

Other Notes: 1) Per Schwarzkopf email of 1-18-10, 6:40 pm, paragraph 3, lines 2-4: Where spring water enters the municipal collection diversion works, they would like all the flow data from each measuring point and an indication of which data applies to which point, and the time periods involved. 2) They would like full records of Council Meetings (references missing minutes from March 8, 1982 but suggest there might be more missing)