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FAX COVER SHEET

DATE: February 11, 2010

TO: IDWR

FAX: 287-6700

FROM: Dana Hofstetter

RE: SRBA Subcase Nos. 37-296A, 37-717, 37-1216 AND 37-7854

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ORIGINAL BY MAIL: YES ☐ NO ☒.

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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	)	Subcase Nos. 37-296A, 37-717, 37-1216
	)	and 37-7854
	)	
Case 39576	)	INDIAN CREEK RANCH OWNERS
	)	ASSOCIATION, INC.'S NOTICE OF
	)	INTENT NOT TO APPEAR; OR, IN
	)	THE ALTERNATIVE, MOTION FOR
	)	PROTECTIVE ORDER
	)	

The Indian Creek Ranch Owners Association, Inc. ("ICROA") by and through its above-captioned counsel of record and pursuant to Rules 26(b), 26(c), 30(b) and 34 of the Idaho Rules of Civil Procedure, hereby submits this Notice of Intent Not to Appear,

or, in the Alternative, Motion for Protective Order. This Motion is supported by the record. This Motion is made upon the following grounds:

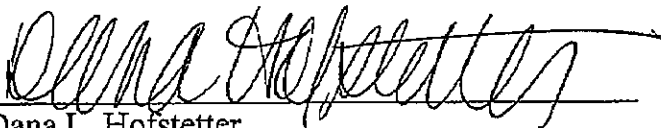
1. On or about January 19, 2010, Claimant City of Hailey filed and served the Notice of Deposition *Duces Tecum*: 30(b)(6), a copy of which is attached hereto as Exhibit A, (hereinafter the "Notice of Deposition"). The Notice of Deposition scheduled a deposition of ICROA's representative on February 12, 2010 at 10 a.m. and requested that the deponent bring certain "items" and "other tangible things" to the deposition. Pursuant to Rules 30(b)(5) and 34 of the Idaho Rules of Civil Procedure, at least 30 days notice is required for such a deposition associated with a production request. Service of the Notice of Deposition on January 19, 2010 did not provide the requisite 30 days notice.

2. The Notice of Deposition's "List of Subjects on Which Examination is Sought" is overbroad, unduly burdensome, ambiguous, violates the attorney work product doctrine, requests privileged information and includes information beyond the scope of discovery. Correspondingly, the Notice of Deposition's "List of Items to Bring to the Deposition" suffers from these same defects. For instance, the Notice of Deposition states that, "If no single person has ALL of the information requested, ICROA must produce at the deposition the number of witnesses needed to testify on each of the matters requested." (Emphases in original.) ICROA has about 200 members and to strictly comply with the Notice of Deposition's request to produce all witnesses with knowledge about "water right usage by each member of ICROA in the last 20 years," it would be necessary to depose all approximately 200 ICROA members along

with any predecessors in interest over the last 20 years. Further, it should be noted, in this regard, that the *City of Hailey's* water right claims are the subject matter of these subcases, not ICROA's, or the rights of any of its members. This example of the objectionable nature of the Notice of Deposition is for illustrative purposes; there also are objectionable issues with the other items on the Notice of Deposition's List of Subjects on Which Examination is Sought and List of Items to Bring to the Deposition.

3. Claimant has delayed over three (3) months in complying with ICROA's initial discovery requests, while it has admitted that there exists conforming data that has still not been produced. This delay has necessitated rescheduling of the trial for about a year from now. It is simply inequitable to allow Claimant the advantage of first deposition in this case under the circumstances of its discovery recalcitrance. Indeed, Claimant was generating this deposition notice, instead of responding to ICROA's months-old discovery requests.

DATED this 11th day of February, 2010.


Dana L. Hofstetter
Attorney for ICROA

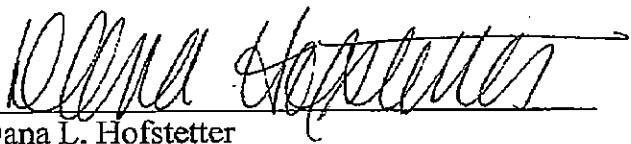
CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the foregoing document (including any attachments) this 11th day of February, 2010, 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

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


Dana L. Hofstetter

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HUTCHINSON & BROWN, LLP
104 Lincoln St., P.O. Box 207
Twin Falls ID 83303-0207
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

Case No. 39576

) Subcase Nos. 37-00296A, 37-00717,
) 37-01216 and 37-07854

) NOTICE OF DEPOSITION DUCES
) TECUM: 30(b)(6)

TO: ICROA and Big Wood Canal Co. and their counsel:

PLEASE TAKE NOTICE that the deposition of ICROA will be taken through the person or persons designated by ICROA to testify concerning matters shown on the LIST OF SUBJECTS ON WHICH EXAMINATION IS SOUGHT, which is part of this notice.

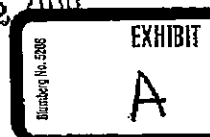
The deposition will be taken on **Friday, 2-12-10, 9:00 a.m.**, at the following location:

BLAINE COUNTY COURTHOUSE
201 2nd Ave. S.
Hailey ID 83333

Phone: 788-5521

NOTICE OF DEPOSITION DUCES TECUM: 30(b)(6) - 1

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The deposition will continue thereafter, from day to day, until completed. The reporter will be such reporter as M&M Court Reporting Service, phone (800) 234-9611, may designate. The deposition may be videotaped.

Pursuant to the rules of civil procedure, ICROA is directed to designate the person or persons to testify on behalf of the deponent organization, and, if the deponent organization so desires, the separate matters on which each person designated by the deponent organization will testify.

You are notified that the party giving this notice wishes to examine the witness or witnesses so designated by ICROA on the matters shown on the attached list of subjects on which examination is sought.

You are further notified that the person or persons designated by ICROA are to bring with them the things shown on the LIST OF ITEMS TO BRING TO THE DEPOSITION¹ which is a part of this notice.

ICROA is further notified that the witness or witnesses so designated must be prepared to testify to the matters known or reasonably available to ICROA. ICROA must search for and inform themselves of all matters known or reasonably available, and **who in ICROA has the information**. If no single person

¹ The term "items" mean all written, recorded or graphic matters, however produced or reproduced. This definition includes, but it is not limited to any and all of the originals, copies or drafts of any and all of the following: hand written notes, records, note summaries, schedules, contracts, agreements, drawings, sketches, invoices, orders, acknowledgements, diaries, reports, forecasts, appraisals, memorandum, telephone logs, letters, telegrams, telexes, cables, tapes, transcripts, recordings, photographs, pictures, films, e-mails, computer programs or other graphics, symbolic, recorded or written materials of any nature whatsoever and any form, including letters, words, pictures, sounds, symbols, or any combination thereof.

has ALL of the information requested, ICROA must produce at the deposition the number of witnesses needed to testify on each of the matters requested.

LIST OF SUBJECTS ON WHICH EXAMINATION IS SOUGHT

1. The negotiation, drafting, execution and implementation of the 1983 agreement;
2. The surface water rights and water right usage of ICROA in the last 20 years;
3. The surface water rights and water right usage by each member of ICROA in the last 20 years;
4. ICROA's knowledge about the City of Hailey's use of water since 1980;
5. ICROA's knowledge about the City of Hailey's water rights;
6. All information provided to any person who may testify as an expert for ICROA in any of the subcases; and
7. The sources of information relating to each of the above items.

LIST OF ITEMS TO BRING TO THE DEPOSITION

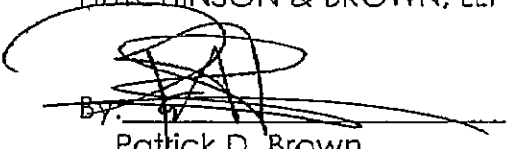
The following list does not require attorney-client privileged matter to be produced. If items are stored as electronic data, bring both an electronic copy and also a paper printout or other means of viewing the electronic data during the deposition.

ICROA IS REQUIRED TO BRING TO THE DEPOSITION:

All items of any type and all other tangible things in their knowledge or possession regarding the above-entitled matters.

Dated this 19 day of January, 2010.

HUTCHINSON & BROWN, LLP

By: 

Patrick D. Brown
Attorneys for Claimant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 19th day of January, 2010, (s)he served a true and correct copy of the within and foregoing document upon the following by depositing a copy thereof in the United States mail, postage prepaid, addressed to:

Dana Hofstetter & Michael Schwarzkopf
HOFSTETTER LAW OFFICE
608 W. Franklin St.

Boise ID 83702 424-7800; fax 424-8774; dana@idahowaterlaw.com
(for Indian Creek Ranch Owners Assoc. "ICROA")

Craig Hobdey
HOBDEY LAW OFFICE
125 5th Ave. W.
P.O. Box 176

Gooding ID 83330-0176 934-4429; fax 934-4420
(for Big Wood Canal Co.)

Director of IDWR
IDWR Document Depository
P.O. Box 83720
Boise ID 83720-0098

Chief, Natural Resources Div.
IDAHO ATTORNEY GENERAL
P.O. Box 44449
Boise ID 83711-4449

Environment & Natural Resource Div.
U.S. DEPT. OF JUSTICE
550 W. Fort St., MSC 033
Boise ID 83724

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

M&M COURT REPORTING SERVICE
421 W. Franklin St.
P.O. Box 2636
Boise ID 83701-2636

Connie Beel