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DEPARTMENT OF
WATER RESOURCES

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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 RENEWED
	)	NOTICE OF INTENT NOT TO APPEAR;
	)	OR IN THE ALTERNATIVE,
	)	RENEWED 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(c), 30(b)(5) and 34 of the Idaho Rules of Civil Procedure, hereby submits this Renewed Notice of Intent Not to Appear, or in the Alternative, Renewed Motion for Protective Order. This Motion is supported by the record. This Motion is made upon the following grounds:

INDIAN CREEK RANCH OWNERS ASSOCIATION, INC.'s RENEWED NOTICE OF INTENT NOT TO APPEAR, OR, IN THE ALTERNATIVE, RENEWED MOTION FOR PROTECTIVE ORDER -- 1

1. On or about January 19, 2010, Claimant City of Hailey filed and served on ICROA a Notice of Deposition Duces Tecum: 30(b)(6) ("Notice of Deposition"). The Notice of Deposition scheduled a deposition of ICROA 's representative and requested that the deponent bring certain "items" and "other tangible things" to the deposition.

2. In connection with that Notice of Deposition, on or about February 11, 2010, ICROA filed and served a Notice of Intent Not to Appear; or In the Alternative Motion for Protective Order asserting *inter alia* the following:

a. " The Notice of Deposition's 'List of Subjects on Which Examination is Sought' is overbroad, burdensome, ambiguous and includes information beyond the scope of discovery. 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.) The ICROA has about 200 members and to strictly comply with the 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 and any prior lot owners over the last 20 years. Further, it is noted 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 is for illustrative purposes; there are similar issues with the other items on the List of Subjects on Which Examination is sought;" and

b. "Claimant has delayed over three (3) months in complying with ICROA's initial discovery requests. This delay has necessitated rescheduling of the trial for about a year from now. Despite Claimant's prior delay in complying with discovery requests and the extended trial date of about a year hence, Claimant expects ICROA to submit to deposition immediately, without having yet received complete information from Claimant."

3. One day later, on or about February 12, 2010, the City of Hailey filed and served on ICROA an Amended Notice of Deposition Duces Tecum: 30(b)(6) ("Amended Deposition Notice"). The Amended Deposition Notice retained verbatim the "List of Subjects On Which Examination is Sought" from the original Deposition Notice which ICROA objected to in its February 11, 2010 Notice of Intent Not to Appear; or In the Alternative Motion for Protective Order. Therefore, ICROA renews its prior objections in that Notice of Intent Not to Appear; or In the Alternative Motion for Protective Order, providing the following further detail about its objections to the Notice of Deposition and the Amended Deposition Notice:

a. "The negotiation, drafting, execution and implementation of the 1983 agreement," the first item listed on the list of deposition subjects, is overbroad, beyond the scope of a Rule 30(b)(6) deposition and is further objectionable to the extent it seeks attorney client privileged information . Since the Amended Deposition Notice directs that **"ICROA must produce at the deposition the number of witnesses needed to testify on each of the matters requested,"** the Amended Deposition Notice would

require that ICROA locate and have appear former ICROA officers or directors involved in the contract negotiations, over 25 years ago. None of ICROA's current board members were involved in those contract negotiations. Requiring ICROA to bring to a Rule 30(b)(6) deposition board members or other officers from 25 years ago would be burdensome and beyond the proper scope of a 30(b)(6) deposition of an organization. Further, attorneys representing the parties would have been involved in these contract negotiations and these attorneys' would be precluded from testifying about this subject in significant respects based on the attorney-client privilege.

b. "The surface water rights and water right usage of ICROA in the last 20 years," the second subject on the list, is beyond to scope of discovery and seeks information (and witnesses) protected by the attorney-client privilege and the attorney work product doctrine. These subcases involve certain City of Hailey SRBA claims, not ICROA claims. A deposition concerning ICROA's water rights and water usage is not likely to lead to the discovery of admissible evidence concerning the subject matter of these Subcases, Hailey's water rights and water usage. Further, it is noted that the time period of the last 20 years identified in the Amended Deposition Notice generally is not relevant in the SRBA as accomplished transfer and tolling principles generally focus SRBA proceedings on the period of time prior to 1987 which is over 20 years ago. Finally ICROA's experts and attorneys would be precluded from testifying on these subjects based on the attorney-client privilege and the attorney work product doctrine.

c. "The surface water rights and water right usage by each member of ICROA in the last 20 years," the third item on the list and the item primarily discussed in the prior Notice of Intent Not to Appear or Motion for Protective Order, is beyond the scope of discovery, is overbroad, burdensome and seeks privileged information. The bases for these objections are discussed in section 2a above and are incorporated herein as if set forth in full.

d. "ICROA's knowledge about the City of Hailey's use of water since 1980," the fourth item on the list, seeks attorney work product and privileged information to the extent this request asks to depose ICROA's attorneys or experts working for ICROA's attorneys in these Subcases. ~~Further this request is overbroad in that it is not~~ limited to just the City of Hailey's water use associated with the source involved in these Subcases, but, rather, appears to apply to all of the City's water uses.

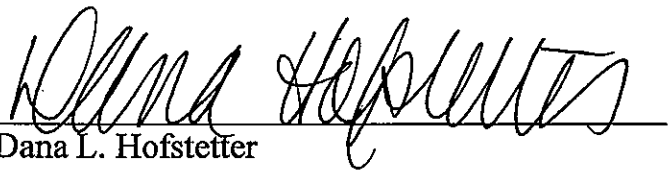
e. "ICROA's knowledge about the City of Hailey's water rights," the fifth item on the list, has the same objectionable issues discussed in section 3d above, which objections are incorporated herein as if set forth in full.

f. "All information provided to any person who may testify as an expert for ICROA in any of the Subcases," the sixth item on the list, violates the attorney-work product rule, I.R.C.P. 26(b)(4) in that only facts of experts who are identified to testify at trial are discoverable.

g. ""The sources of information relating to each of the above items," the seventh and final item on the list, is objectionable for the same reasons that are identified

for the first six item above since this item refers to all of those others. Thus, the objections above as to items 1-6 on the "List of Subjects on Which Examination is Sought" is incorporated herein as if set forth in full. Further, ICROA objects to the "List of Items to Bring to the Deposition" on these same bases which are incorporated as if set forth in full here in that the items requested to be brought concern the same items. Further ICROA objects to the extent the Amended Deposition Notice requests items that are not in the possession of ICROA and to the extent that the City of Hailey has not completed responding12134 to outstanding discovery that ICROA has served.

DATED this 11th day of March, 2010.


Dana L. Hofstetter
Attorney for ICROA

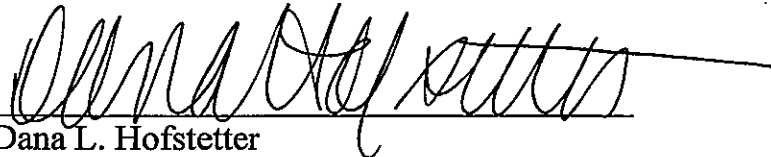
CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the foregoing document (including any attachments) this 11th day of March, 2010, by the pre-paid method(s) indicated below to:

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