

Dana L. Hofstetter, ISB #3867
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, Idaho 83702
Telephone (208) 424-7800
Facsimile: (208) 424-8774
Email: Dana@IdahoWaterLaw.com

RECEIVED

JUN 07 2010

DEPARTMENT OF
WATER RESOURCES

Attorney 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

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)
)
)
)

Subcase No. 37-7854

Case 39576

AFFIDAVIT OF DANA L. HOFSTETTER

STATE OF IDAHO)

) ss.

COUNTY OF ADA)

Dana L. Hofstetter, being first being duly sworn upon oath, deposes and says:

(1) I am Dana L. Hofstetter, 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) On April 28, 2010, I served ICROA's *Second Set of Interrogatories and Requests for Production to Claimant City of Hailey* ("Discovery Requests") by facsimile on Claimant City of Hailey's counsel, Patrick Brown;

(4) Attached hereto as Exhibit A, is a true and correct copy of those Discovery Requests (including facsimile confirmation pages);

(5) This discovery was propounded in good faith, and the information sought thereby was reasonably requested and essential to ICROA's case;

(6) Pursuant to the Idaho Rules of Civil Procedure, Claimant's answers and responses to these Discovery Requests were due thirty (30) days later, on May 28, 2010;

(7) Claimant's counsel has never requested an extension of time in which to answer and/or respond to these Discovery Requests and Claimant's counsel has never given me any definite time by which he would provide any answers;

(8) Even after I sent Mr. Brown a letter by facsimile on June 2, 2010 (attached hereto as Exhibit B, and including the facsimile confirmation page) requesting that he inform me by June 3, 2010 at 5 p.m. whether he could serve answers to these Discovery Requests by June 11, 2010, I did not receive any response from Mr. Brown as to this letter;

(9) As of today, June 4, 2010, I have not received any answers to these Discovery Requests and Claimant's counsel has yet to attempt to contact me regarding this matter;

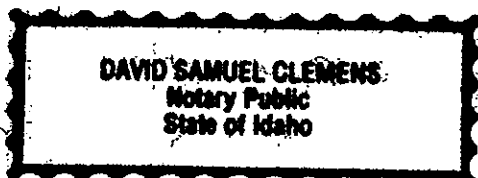
(10) As such, I certify that ICROA has in good faith attempted to meet and confer with the Claimant to resolve the overdue discovery answers and avoid the need for court action. Despite this attempt, Claimant's counsel has never responded. The case schedule necessitates that ICROA receives answers to these discovery requests immediately.

FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 4th day of June, 2010.


Dana L. Hofstetter

SUBSCRIBED AND SWORN to before me this 4th day of June, 2010.




Notary Public in and for the State of Idaho
Residing at: BOISE, IDAHO
My Commission Expires: 7/18/2014

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the foregoing document (including any attachments) this 4th day of June, 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

Patrick D. Brown

Hutchinson & Brown

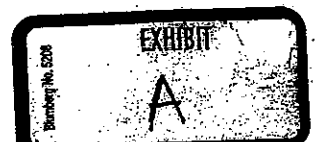
104 Lincoln Street

P.O. Box 207

Twin Falls, Idaho 83303

☐ U.S. Mail ☐ Fed Ex ☐ Hand ☒ Fax


Dana L. Hofstetter



attorneys (and investigators, experts, etc., retained by you and your attorneys), not merely information known of your own personal knowledge. If you cannot respond to the following in full, after exercising due diligence to secure the information to do so, so state, then respond to the extent possible, specifying your inability to respond to the remainder, and stating whatever information and knowledge you have concerning the unanswered portion.

You may respond to the Requests for Production of Documents by producing for inspection and/or reproduction the originals or true and correct copies of the documents and items listed below, in whatever form, whether electronic, written, xeroxed, filmed or otherwise, at Hofstetter Law Office, 608 West Franklin Street, Boise, Idaho 83702, within thirty (30) days of service hereof. Objector ICROA will reimburse you for any reasonable copying expense incurred in complying with these Requests.

If there is any Interrogatory or Request for Production of Documents to which you object in whole or in part, or as to which you claim a privilege in whole or in part, or as to which you claim protection from discovery in whole or in part, state the nature and basis of your objection or claim of protection from discovery, describe in detail the facts upon which you base your objection, and answer any remaining part to which you do not object, do not claim a privilege, or do not claim protection from discovery.

These Interrogatories and Requests for Production are deemed continuing, and your answers and responses thereto are to be supplemented as additional information and knowledge becomes available or known to you.

The following definitions will be used with respect to these Interrogatories and Requests:

1. The word "you" refers to the individually named party addressed herein, the City of Hailey, as well as that party's employees, directors, partners, officers, City Council members, Mayor, trustees, beneficiaries, agents, attorneys, representatives, servants, and any expert witnesses expected to testify at hearing or trial.
2. The word "document" means any written, typed, graphic, electronically or digitally stored or printed matter, in its entirety, including any addenda, supplements, amendments, revisions, exhibits, and appendices thereto, in its original form (or copies thereof where bearing notations, memoranda or other written information not on the original) including, but not limited to, books, pamphlets, brochures, notebooks, correspondence, telegrams, notes or taped or sound recordings of any type of conversation or meeting or conference, notes or tape or sound recordings of any type of statements of witnesses, minutes of meetings, reports, photographs, memoranda, interoffice or intraoffice communications, notes, data, measurements, graphs, maps, studies, analyses, governmental records, results of investigations, reviews, contracts, licenses, agreements, ledgers, books of account, vouchers, bank checks and drafts, invoices, charge slips, receipts, bills, working papers, data records, statistical records, costs sheets, stenographer's notebooks, desk calendars, appointment books, diaries, time sheets or logs, maps, computer input data, computer output data, computer runs, voice mail, e-mail, work sheets or work papers or other materials, including, without limitation, all such defined documents of which you are aware, which are in your possession,

custody or control or which were submitted to your experts or attorneys or submitted by your experts or attorneys to you, or papers similar to any of the foregoing.

3. The word "person" means any natural person, partnership, firm or corporation or any other type of business or legal entity, its agents, employees and representatives.

4. If any document or portion thereof, which is responsive to any request herein, is or will be withheld from production, inspection or copying, please fully identify such document or portion thereof in your response, in accordance with definition 5 below, and fully describe in your response, the reason it is or will be withheld.

5. "Identify" or "identification" means

(a) In each instance wherein you are asked to "identify" or describe a document, your description should include, but not be limited to, the following:

(i) The name, address, telephone number, occupation, job title and employer of the present custodian of the document;

(ii) The date of the making of the document, and the name, address, telephone number, occupation, job title and employer of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence;

(iii) The identity of the author; and

(iv) The title, date, and subject matter of the document;

(b) With respect to an oral communication by personal means, "identify" means a complete statement setting forth the date, the approximate time and place, the name and address of each person present, whether any conversation

was recorded and, if so, the name and address of the person who recorded it and the name and address of the person who has custody or possession of such recording, and whether any notes or memoranda were made of any conversations and, if so, the name and address of the person who made such notes or memoranda and the name and address of each person who has custody or possession of the original notes or memoranda.

(c) With respect to a telephone conversation, "identify" means a complete statement setting forth the date, the approximate time, the name of the person initiating the call, the location from which the call was placed, the words spoken or the substance of what was said by the person initiating the call and by the person called, whether anyone else listened in on one or both sides of such telephone conversation and, if so, the name and address of such person, whether such conversation was recorded and, if so, the name and address of the person who recorded it and the name and address of the person who has custody or possession of such recording and whether any notes or memoranda were made of such conversation and, if so, the name and address of each person who has custody or possession of the original notes or memoranda.

(d) With respect to a document for which you claim a privilege, "identify" means the name of the person who prepared it, the name of the person who signed it or in whose name it was issued, the name of each person to whom it was addressed or circulated, the nature and substance of the writing and its title, if any, its date, and if it bears no date, the date when it was prepared, the physical location of the original and any copies of which you are aware, the name and

address of each person having custody or control of the document, and the name and number of the file, if any, in which it is contained and the basis for the privilege for which you claim.

(e) When used in reference to a person, "identify" means the person's full name, state of incorporation (if applicable), last known business address, last known home address (if applicable), last known business, profession, or occupation, last known job title, list of officers, directors, agents, representatives and employees (if applicable) and relationship to you.

6. The term "knowledge" includes firsthand knowledge and information derived from any other source, including, but not limited, to hearsay knowledge.

7. The term "describe" or "description" means to set forth all facts which exhaust your information, knowledge, and belief with respect to the subject matter of the discovery request.

8. The term "relating to" or "relates to" means pertaining to or in any way concerning, whichever meaning has the broadest application in the context used.

9. The term "related entity" refers to any trust, corporation, partnership, limited liability company, joint venture, sole proprietorship or any other kind of business or legal entity or other legal or business relationship in which you have an interest.

10. The term "Subcase" refers to the above-captioned SRBA Subcase No. 37-7854.

11. The term "Water Right" refers to Idaho Water Right No. 37-7854.

12. The term "Claim" refers to your Snake River Basin Adjudication Claim for the Water Right, as amended (if any) and appropriately filed.

13. The term "Indian Creek/Springs Water System" refers to the City of Hailey's system for diverting, conveying, storing, discharging and/or using water in the Indian Creek drainage which extends generally from the collection area at the Northeastern end of the Indian Creek Ranch Subdivision to the Southwestern entrance of the Indian Creek Ranch Subdivision near Buttercup Road in Blaine County, Idaho.

INTERROGATORIES AND REQUESTS FOR PRODUCTION

INTERROGATORY NO. 21: Please describe any and all measurement equipment used at any time for measuring water in or discharged from your Indian Creek/Springs Water System, as defined above. Please include in your response, without limitation, the location(s) where such measurements were/are taken, the kind(s) of measurement equipment utilized at each location, the kind(s) of measurements taken at each location, the parameter(s) measured, any measurements of discharges, bypasses and/or overflows, the respective units of such measurements, whether such measurements are recorded, the frequency of such measurements and the time period over which each respective measurement has been taken.

REQUEST FOR PRODUCTION NO. 20: Please produce all documents relating to your answer to Interrogatory No. 21.

REQUEST FOR PRODUCTION NO. 21: Please produce all documents containing measurement records relating to your answer to Interrogatory No. 21.

INTERROGATORY No. 22: From the Water Right's priority date to the present, please describe whether any calibrations of the measurement equipment identified in your answer to Interrogatory No. 21 above have been undertaken and, if so, please identify, without limitation, the date(s) of such calibration(s), the respective

equipment calibrated and the reason for the calibration.

REQUEST FOR PRODUCTION NO. 22: Please produce all documents relating to your answer to Interrogatory No. 22.

REQUEST FOR PRODUCTION NO. 23: Please produce construction and design documents relating to your Indian Creek/Springs Water System, as defined above, or any portion of your Indian Creek/Springs Water System. Please include in your response, without limitation, all design diagrams, as built diagrams, blueprints, equipment specifications and flowcharts for any and all portions of such system.

REQUEST FOR PRODUCTION NO. 24: Please produce any and all documents relating to the capacity of your Indian Creek/Springs Water System, as defined above, or any portion of your Indian Creek/Springs Water System.

REQUEST FOR PRODUCTION NO. 25: Please produce all documents relating to the negotiation of the Agreement dated September 23, 1983 between the City of Hailey and the Indian Creek Ranch Owners Association, Inc.

REQUEST FOR PRODUCTION NO. 26: Please produce all documents relating to the Agreement dated September 23, 1983 between the City of Hailey and the Indian Creek Ranch Owners Association, Inc.

INTERROGATORY No. 23: From the Water Right's priority date to the present, please describe whether portions of your Indian Creek/Springs Water System have been replaced or reconstructed and, if so, please identify, without limitation, the date(s) and nature of each such replacement and/or reconstruction, and the portions of your Indian Creek/Springs Water System replaced and/or reconstructed.

REQUEST FOR PRODUCTION NO. 27: Please produce all documents

relating to your answer to Interrogatory No. 23.

REQUEST FOR PRODUCTION NO. 28: Please produce all documents referenced in, relating to or supporting any of your answers to the Interrogatories above, that are not otherwise being produced in response to another Request for Production herein.

DATED this 28th day of April, 2010.

HOFSTETTER LAW OFFICE, LLC


Dana L. Hofstetter

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of April, 2010, I caused to be served a copy of the foregoing ICROA's Second Set of Interrogatories and Requests for Production to Claimant City of Hailey on the following person(s) by the method(s) indicated below:

Patrick Brown, Esq.
Hutchinson & Brown LLP
104 Lincoln Street
P.O. Box 207

Twin Falls, Idaho 83303-0207

☐ U.S. Mail ☐ FedEx Overnight ☐ Hand Delivery ☒ Fax


Dana L. Hofstetter

HOFSTETTER LAW OFFICE, LLC

608 West Franklin Street

Boise, Idaho 83702

Phone: (208) 424-7800

Fax: (208) 424-8774

E-Mail: Dana@IdahoWaterLaw.com

FAX COVER SHEET

DATE: April 28, 2010

TO: Pat Brown

FAX: (208) 733-9343

FROM: Dana Hofstetter

RE: SRBA Subcase 37-7854

The information contained in this facsimile may be confidential information or attorney work product or both and is for the exclusive use of the intended recipient listed above. Any reading, disclosure, use or reproduction of this communication other than by the intended recipient is prohibited. If you have received this communication in error, please notify us by collect telephone call immediately and return the communication to us by U. S. Mail.

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<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
Apr 28	5:00PM	Fax Sent	12087339343	4:14	11	OK

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702

Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

June 2, 2010

Via Facsimile (208) 733-9343

Patrick D. Brown
Hutchinson & Brown, LLP
P.O. Box 207
Twin Falls, Idaho 83303-0207

Re: Snake River Basin Adjudication ("SRBA") Subcase No. 37-7854

Dear Pat:

On April 28, 2010, I served you by facsimile with the Indian Creek Ranch Owners Association, Inc.'s *Second Set of Interrogatories and Requests for Production to the City of Hailey* in the above-referenced SRBA Subcase. Thus, according to the Idaho Rules of Civil Procedure, responses to these Discovery Requests were due May 28, 2010. However, as of my sending this letter, I have not received any such discovery responses, any request for extension of time or any other communication from you concerning this matter. Unless you inform me by Thursday, June 3, 2010 at 5 p.m. of a date on or before June 11, 2010 when I can expect you to serve these discovery answers, I will need to request a meeting with the Special Master and/or pursue a Motion to Compel to address this matter. Thank you for your attention to this matter.

Sincerely,

HOFSTETTER LAW OFFICE, L.L.C.



Dana L. Hofstetter

HP Officejet 7310xi
Personal Printer/Fax/Copier/Scanner

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Jun 02 2010 10:52AM

Last Transaction

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Jun 2	10:51AM	Fax Sent	12087339343	0:57	2	OK

HOFSTETTER LAW OFFICE, LLC

608 West Franklin Street

Boise, Idaho 83702

Phone: (208) 424-7800

Fax: (208) 424-8774

E-Mail: Dana@IdahoWaterLaw.com

FAX COVER SHEET

DATE: June 2, 2010

TO: Pat Brown

FAX: (208) 733-9343

FROM: Dana Hofstetter

RE: SRBA Subcase 37-7854

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