

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

RECEIVED

JUN 17 2010

DEPARTMENT OF
WATER RESOURCES

In Re SRBA

)

)

Case No. 39576

) Subcase No. 37-00296A,

) 37-00717, 37-01216 and

) 37-07854

30(b)(6) DEPOSITION OF INDIAN CREEK

RANCH OWNERS' ASSOCIATION

VIDEOTAPED TESTIMONY OF EINAR BENJAMIN HOFF,

MARCH 17, 2010

REPORTED BY:

DIANA KILPATRICK, CSR No. 727, RPR

Notary Public

EXHIBIT

tabbies

A

1 THE 30(b)(6) DEPOSITION OF THE
2 DEPOSITION OF INDIAN CREEK RANCH OWNERS'
3 ASSOCIATION, VIDEOTAPED TESTIMONY OF EINAR
4 BENJAMIN HOFF, was taken on behalf of the
5 Claimant City of Hailey at the office of The City
6 of Hailey, 115 Main Street South, Hailey, Idaho,
7 commencing at 10:00 a.m. on March 17, 2010,
8 before Diana Kilpatrick, Certified Shorthand
9 Reporter and Notary Public within and for the
10 State of Idaho, in the above-entitled matter.

APPEARANCES:

12 For Claimant:

13 Hutchinson & Brown, LLP

14 BY MR. PATRICK D. BROWN

15 104 Lincoln

16 P.O. Box 207

17 Twin Falls, Idaho 83303

18 For Indian Creek Ranch Owners' Association:

19 Hofstetter Law Office

20 BY MS. DANA HOFSTETTER

21 608 West Franklin Street

22 Boise, Idaho 83702

23

24 VIDEOGRAPHER:

25 Tom Hellen

10:14 1 MR. BROWN: This is the time and the
10:15 2 place for the deposition of a 30(b)(6) deposition
10:15 3 of the Indian Creek Ranch Owners' Association.
10:15 4 The deposition is being videotaped pursuant to
10:15 5 Rule 30(b)(4). The operator's name and business
10:15 6 and address of the camera is Tom Hellen, who is
10:15 7 the -- one of the -- works for the Claimants in
10:15 8 this case. He's employed by the City of Hailey.
10:15 9 His address is 115 Main Street South, Hailey,
10:15 10 Idaho.

10:15 11 The date, time and place of the
10:15 12 deposition is March 17th, and it's approximately
10:15 13 10:15 right now, 2010. The caption in the case
10:15 14 is In Re SRBA Case No. 39576, Subcase Nos.
10:16 15 37-00296A, 37-00717, 37-01216, and 37-07854. The
10:16 16 name of the witness is Ben Hoff. Is that
10:16 17 correct, sir?

10:16 18 THE WITNESS: I gave her my full name,
10:16 19 but yes.

10:16 20 MR. BROWN: Okay. Go ahead and give
10:16 21 your --

10:16 22 MS. HOFSTETTER: Before we start, I have
10:16 23 a few matters that I'd like to get on the record.

10:16 24 MR. BROWN: Let me finish the 30(b)(4)
10:16 25 requirements. The party on whose behalf the

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10:16 1 deposition is being taken is the City of Hailey,
10:16 2 and I am Patrick Brown, I'm counsel for the City
10:16 3 of Hailey. Also in the room accompanying me is
10:16 4 Tom Hellen, the City Engineer. Counsel, can you
10:17 5 identify yourself on the record.

10:17 6 MS. HOFSTETTER: I'm Dana Hofstetter of
10:17 7 Hofstetter Law Office, attorney for Indian Creek
10:17 8 Ranch Owners' Association.

10:17 9 MR. BROWN: At this point we're ready to
10:17 10 begin the deposition.

10:17 11 MS. HOFSTETTER: I have a few matters
10:17 12 that I'd like to address first, if I might. As
10:17 13 an initial matter, I'd like to request a copy of
10:17 14 the videotape and also the transcript, the
10:17 15 written transcript of this deposition. Pursuant
10:17 16 to Rule 30(b)(4)(A). And with regard to the
10:17 17 notice requirements for a video deposition in
10:17 18 30(b)(4)(E), I believe that the notice of this
10:17 19 deposition was deficient in that it didn't say
10:17 20 specifically that the deposition will be recorded
10:18 21 by audiovisual means.

10:18 22 I'd like to also object to the operator
10:18 23 also in attendance and serving as the video
10:18 24 technician, as he is a witness in this case, as
10:18 25 you know also. Further, we can proceed with

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10:18	1 those objections.	10:20	1 Q. And are you a certified engineer?
10:18	2 EINAR BENJAMIN HOFF,	10:20	2 A. I was registered in probably 20 states.
10:18	3 first duly sworn to tell the truth relating to	10:21	3 Q. Are you registered in Idaho?
10:18	4 said cause, testified as follows:	10:21	4 A. I am registered in Idaho.
10:18	5 EXAMINATION	10:21	5 Q. In your capacity as an expert, have you
10:18	6 QUESTIONS BY MR. BROWN:	10:21	6 ever given testimony with respect to water rights
10:18	7 Q. Mr. Hoff, can you start off by stating	10:21	7 or water rights usage?
10:18	8 your name and address?	10:21	8 A. No. I never have.
10:18	9 A. Einar B. Hoff, 101 Shoshone Drive,	10:21	9 Q. Do you have any expertise in that area?
10:19	10 Hailey, Idaho.	10:21	10 A. No.
10:19	11 Q. You're aware that this is a deposition	10:21	11 Q. Okay. We can go through this, but maybe
10:19	12 of the organization Indian Creek Ranch Owners'	10:21	12 we don't need to. Do you understand what a
10:19	13 Association. Is that right?	10:21	13 30(b)(6) deposition is?
10:19	14 A. I have a little bit of trouble hearing,	10:21	14 A. Do I understand?
10:19	15 if you would say that again.	10:21	15 Q. What's called a 30(b)(6) deposition.
10:19	16 Q. Okay. You understand that today's	10:21	16 A. I have no idea.
10:19	17 deposition is a deposition of the Indian Creek	10:21	17 Q. Okay. Briefly, we, on behalf of the
10:19	18 Ranch Owner's Association?	10:21	18 City of Hailey, sent notice to you and your
10:19	19 A. Yes.	10:21	19 counsel, the ranch owners, then it's for the
10:19	20 Q. Let's back up. Have you had a	10:21	20 ranch owners to designate someone to testify.
10:19	21 deposition taken before of yourself?	10:21	21 A. Right.
10:19	22 A. Yes.	10:21	22 Q. Officers, managers, people who know --
10:19	23 Q. And how many occasions?	10:22	23 A. I understand.
10:19	24 A. Probably as many as 10.	10:22	24 Q. To testify for the organization.
10:19	25 Q. In what capacity were you deposed,	10:22	25 A. Right.
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10:19	1 generally?	10:22	1 Q. So you understand that you're testifying
10:19	2 A. In probably the majority of those, as an	10:22	2 for the organization today?
10:19	3 expert witness. Then I've been involved in one	10:22	3 A. Yes, yes.
10:19	4 lawsuit where -- as a result of an automobile	10:22	4 Q. Tell me, what kind of entity is Indian
10:19	5 accident.	10:22	5 Creek Ranch Owners' Association?
10:20	6 Q. In which you were a plaintiff or	10:22	6 A. What kind?
10:20	7 defendant?	10:22	7 Q. What type of entity? Is it a
10:20	8 A. I was a defendant.	10:22	8 corporation?
10:20	9 Q. Okay. In your capacity, giving	10:22	9 A. It is incorporated.
10:20	10 deposition testimony as an expert, what type of	10:22	10 Q. Okay. In the State of Idaho?
10:20	11 expert were you?	10:22	11 A. Yes.
10:20	12 A. Primarily in the wood product industry,	10:22	12 Q. Who are its officers and directors?
10:20	13 the log handling and log processing, for	10:22	13 A. Well, I'm the president, and Steve
10:20	14 primarily the pulp and paper industry.	10:22	14 Gerrish is the treasurer, and Gene Latham is the
10:20	15 Q. And I take it as your -- your expertise	10:22	15 secretary. There is another man by the name of
10:20	16 was in engineering?	10:22	16 Bob Mobley, who is another director.
10:20	17 A. Yes.	10:22	17 Q. Okay --
10:20	18 Q. Okay. What kind of engineering?	10:22	18 A. And John Peavey is a director.
10:20	19 A. Well, my specialty was a hybrid between	10:23	19 Q. Okay. And does the organization --
10:20	20 mechanical and civil engineering, that I designed	10:23	20 those are its directors you've told me about so
10:20	21 wood handling systems, which were basically	10:23	21 far?
10:20	22 materials handling.	10:23	22 A. Yes.
10:20	23 Q. For paper or wood production?	10:23	23 Q. Does the organization have managers?
10:20	24 A. Right. Conveyors, cranes, mobile	10:23	24 A. There is a general manager. That's Resa
10:20	25 equipment, things like that.	10:23	25 Williams, Theresa Williams.

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10:23 1 Q. Theresa Williams?

10:23 2 A. Yes.

10:23 3 Q. She's employed full-time, or is it

10:23 4 part-time?

10:23 5 A. Part-time.

10:23 6 Q. What is her job for the organization?

10:23 7 A. She primarily handles day-to-day

10:23 8 problems, or requirements, business-type dealings

10:23 9 like hiring people to do different things that

10:23 10 the Association needs, paying the bills, keeping

10:23 11 the correspondence, holding meetings, keeping the

10:24 12 records of the organization.

10:24 13 Q. Okay. Who -- how long has she been the

10:24 14 manager?

10:24 15 A. Probably -- I don't know -- I don't

10:24 16 remember exactly. Probably about three years.

10:24 17 Q. Okay. What I want to do, you understand

10:24 18 we're here today to talk about the City of

10:24 19 Hailey's water rights and the objections the

10:24 20 ranch owners have made to it?

10:24 21 A. Yes.

10:24 22 Q. Let's start back with, say, 1975. Let's

10:24 23 back up. How long have you been associated with

10:24 24 the Homeowners' Association?

10:24 25 A. In an initial capacity since 1999.

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10:24 1 Q. I take it you have to be a homeowner

10:24 2 or --

10:24 3 A. Yes.

10:24 4 Q. -- property owner within the boundaries

10:24 5 of the Association to be an officer?

10:25 6 A. Right.

10:25 7 Q. How long have you been a homeowner?

10:25 8 A. We bought our original house here in

10:25 9 1984. We actually moved here in 1991.

10:25 10 Q. When did you first become involved in

10:25 11 the affairs of the Association?

10:25 12 A. In 1999.

10:25 13 Q. You're aware that the objections in

10:25 14 part filed by your organization reference an

10:25 15 Agreement between the City and the Homeowner's

10:26 16 Association?

10:26 17 A. I've read that Agreement, yes.

10:26 18 Q. When did you first become aware of

10:26 19 the -- what I'm referring to -- it's attached to

10:26 20 your objection. I'm sure you're familiar with

10:26 21 it. It's an Agreement dated -- on the first

10:26 22 line -- second line, it says it's dated

10:26 23 September, 1983. Are you familiar with that

10:26 24 Agreement?

10:26 25 A. Yes.

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10:26 1 MS. HOFSTETTER: I'm going to object.

10:26 2 Are we going to mark that as an exhibit?

10:26 3 MR. BROWN: No. Not at this point.

10:26 4 BY MR. BROWN:

10:26 5 Q. When did you first become aware of that

10:26 6 Agreement?

10:26 7 A. I don't really remember, to be perfectly

10:26 8 honest with you. I know that -- I've known about

10:26 9 it for a long time, but probably, like, 2000,

10:26 10 2001, something like that.

10:27 11 Q. Since you became an officer?

10:27 12 A. Yes.

10:27 13 Q. I trust, as an officer, that you have

10:27 14 access to information about the history of that

10:27 15 Agreement. Is that correct?

10:27 16 A. Yes.

10:27 17 Q. Tell me what the -- give me just a real

10:27 18 brief summary --

10:27 19 MS. HOFSTETTER: I'm going to object on

10:27 20 the basis of attorney-client privilege. Many of

10:27 21 the documents relate to letters from attorneys

10:27 22 that represented Indian Creek Ranch Owners'

10:27 23 Association in connection with the 1983 Agreement

10:27 24 negotiations, so much of the information that Ben

10:27 25 would be aware of that you're specifically asking

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10:28 1 him about would be attorney-client

10:28 2 communications, so I'm going to instruct him not

10:28 3 to answer that question.

10:28 4 MR. BROWN: So the record is clear,

10:28 5 you're instructing him, he cannot tell me about

10:28 6 the history of the '83 Agreement, because you

10:28 7 claim it's all privileged under attorney-client

10:28 8 communication?

10:28 9 MS. HOFSTETTER: Well, I believe your

10:28 10 question -- we can have the court reporter to

10:28 11 reread it -- but I believe your question went to,

10:28 12 as an officer, you're familiar with materials in

10:28 13 connection with the negotiations for the 1983

10:28 14 Agreement, and so he -- a large part of those

10:28 15 materials would be attorney-client

10:28 16 communications. So to the extent that you're

10:28 17 asking about materials he's reviewed that are

10:28 18 attorney-client communications, he cannot respond

10:28 19 to your question.

10:28 20 MR. BROWN: I'm not asking for the

10:28 21 content of the communication. I'm asking for the

10:28 22 history of the Agreement that was made with the

10:28 23 City.

10:28 24 ///

10:28 25 BY MR. BROWN:

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10:28	1	Q. Do you understand that?	10:31	1	relation to the homeowners' properties?
10:28	2	A. Yes.	10:31	2	A. Well, it would have been west of the
10:29	3	Q. Can you tell me what the history of the	10:31	3	current location, and up on the side of a hill
10:29	4	Agreement is?	10:31	4	that was not part of Indian Creek.
10:29	5	A. All right. Most of my information would	10:31	5	Q. So you're referring to west of the
10:29	6	come from records, not personal knowledge, in	10:31	6	current underground reservoir?
10:29	7	that the Agreement was drafted before I ever	10:31	7	A. Right.
10:29	8	became involved with Indian Creek. My	10:31	8	Q. What did --
10:29	9	understanding is that the City wanted to build --	10:31	9	A. And it was going to be an above-ground
10:29	10	from the records that I've seen, the City wanted	10:32	10	structure.
10:29	11	to build a reservoir, and they were going to do	10:32	11	Q. So it was going to be a water tank on
10:29	12	that on BLM land, just opposite the Indian Creek	10:32	12	the hillside?
10:29	13	property, which was up on a hill and very	10:32	13	A. Right.
10:29	14	visible. Indian Creek objected to that, and	10:32	14	Q. And the homeowners didn't want that for
10:29	15	wanted to have that in a less visible spot. And	10:32	15	aesthetic reasons, I take it?
10:29	16	as a result of that, the City and Indian Creek	10:32	16	A. Exactly.
10:29	17	agreed on a location, and went through the	10:32	17	Q. What did the homeowners do to negotiate
10:29	18	process of arriving at the Agreement that we're	10:32	18	that Agreement?
10:30	19	talking about.	10:32	19	MS. HOFSTETTER: I'm going to object
10:30	20	Q. The written 1983 Agreement?	10:32	20	again, because my review of the records indicates
10:30	21	A. Yes.	10:32	21	that the negotiations were largely between
10:30	22	Q. Just so our record's clear, a couple of	10:32	22	attorneys, and furthermore -- so again, to the
10:30	23	things. When you're referring to Indian Creek,	10:32	23	extent Ben has information that derives from
10:30	24	the context in which you're referring to it,	10:32	24	communications with the Indian Creek Ranch
10:30	25	you're referring to the Ranch Owners'	10:32	25	Owners' attorney, I'm going to instruct him not
Page 15			Page 17		
10:30	1	Association?	10:32	1	to answer to the extent that he has confidential
10:30	2	A. Yes.	10:32	2	information in that regard.
10:30	3	Q. So we don't need to keep repeating that?	10:32	3	But to the extent there's publicly
10:30	4	A. Okay. Right.	10:32	4	available information, he can discuss that, but
10:30	5	Q. And I'm referring to the same thing, if	10:32	5	again, he wasn't involved in those negotiations
10:30	6	I say Homeowners' Association or the Ranch	10:32	6	because of the timing, as he explained. So what
10:30	7	Owners' --	10:32	7	he's testifying to is non-confidential, and also
10:30	8	A. Okay.	10:33	8	what he's heard, or reviewed in publicly
10:30	9	Q. And we can't talk at the same time, or	10:33	9	available documents, just to clarify.
10:30	10	we're going to get in trouble with the court	10:33	10	So Ben, you can go ahead, with those
10:30	11	reporter. Okay? Well, the first list on which	10:33	11	clarifications.
10:30	12	we've sought to conduct this deposition is the	10:33	12	THE WITNESS: It's the same -- to answer
10:30	13	negotiation, drafting, execution and	10:33	13	to your question to me is I don't know. I really
10:30	14	implementation of the 1983 Agreement.	10:33	14	have no knowledge of how that negotiation
10:30	15	A. Okay.	10:33	15	proceeded.
10:30	16	Q. I understand that you're saying the	10:33	16	BY MR. BROWN:
10:30	17	Agreement arose out of the fact that the City was	10:33	17	Q. Okay. Let's back up. You are the
10:31	18	going to build a reservoir on BLM ground, somehow	10:33	18	person the homeowners are designating to give
10:31	19	Indian Creek objected to that and began,	10:33	19	testimony about this subject. Correct?
10:31	20	apparently, to negotiate to come up with an	10:33	20	A. Yes.
10:31	21	Agreement to resolve that issue. Correct?	10:33	21	Q. Okay. And your testimony is you do not
10:31	22	A. Well, they were looking for an	10:33	22	know about the negotiations?
10:31	23	alternative site, because of the visibility of	10:33	23	A. That's correct.
10:31	24	what Hailey wanted to do.	10:33	24	Q. Do you know who was involved in the
10:31	25	Q. And where was that reservoir proposed in	10:33	25	negotiations?

5 (Pages 14 to 17)

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10:33	1 A. I know who the people who signed the	10:36	1 Mr. Rosholt used to be partners.
10:33	2 document are.	10:36	2 A. Well, it could have been the same law
10:33	3 Q. Who was that?	10:37	3 firm. I don't know.
10:33	4 A. Nick Latham and Jim Holcombe.	10:37	4 Q. That was my question. Do you know if it
10:34	5 Q. Do you know who negotiated the	10:37	5 was that law firm representing you?
10:34	6 Agreement?	10:37	6 A. It could have been that they were both
10:34	7 A. Well, John Rosholt, I believe, was the	10:37	7 members of that law firm at the time they did
10:34	8 attorney.	10:37	8 work for us.
10:34	9 Q. For the ranch owners?	10:37	9 Q. Okay. And then when did Mr. Rosholt
10:34	10 A. Yes.	10:37	10 stop being the attorney?
10:34	11 Q. Do you know who he negotiated with?	10:37	11 A. I don't know the answer to that. It
10:34	12 A. No.	10:37	12 would have been some time ago. It would have
10:34	13 Q. Do you have any documents, other than	10:37	13 been after this Agreement was signed, but I'm not
10:34	14 the Agreement itself, that relate to the	10:37	14 sure exactly when.
10:34	15 negotiations?	10:37	15 Q. Do you know when Mr. Speck became the
10:34	16 A. Indian Creek has some documents, and I	10:37	16 attorney?
10:34	17 don't know what the extent of those are.	10:37	17 A. No -- he -- no.
10:34	18 Q. Can you generally describe what they	10:37	18 Q. Okay. I take it he was after
10:34	19 are?	10:37	19 Mr. Rosholt?
10:34	20 A. Well, the information that I would have	10:37	20 A. Yes.
10:34	21 would have to do with preliminary drafts that the	10:37	21 Q. When did Mr. Speck stop being the
10:34	22 attorney might have made, or both attorneys might	10:37	22 attorney?
10:34	23 have made. There was a -- most of my reference	10:37	23 A. Well, he sent us a letter, as well as
10:35	24 material is contained in a box of information	10:37	24 the City a letter, excusing himself from
10:35	25 that came from Jim Speck to us that we gave to	10:38	25 representing us, and I think that was in 2007.
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10:35	1 Dana. In reviewing that, I'd be hard-pressed to	10:38	1 It was somewhere in that range, 2006, 2007.
10:35	2 tell you specifically what those documents are,	10:38	2 Q. I'm going to represent to you that the
10:35	3 but there are some there.	10:38	3 ranch owners submitted objections to the City's
10:35	4 Q. Okay. And this box of documents, you	10:38	4 water rights, and it was verified and signed by
10:35	5 indicated came from Jim Speck. Jim Speck's an	10:38	5 Dennis Kavanaugh on November 13, 2007.
10:35	6 attorney. Correct?	10:38	6 A. Um-hum.
10:35	7 A. He was our water rights attorney prior	10:38	7 Q. Was Mr. Speck still the attorney at that
10:35	8 to us engaging Dana.	10:38	8 point in time, when the objections were filed?
10:35	9 Q. Okay. Let's start with, say -- let's	10:38	9 A. When that was signed?
10:35	10 start with 1980 and work forward. Who	10:38	10 Q. Yes.
10:35	11 represented the ranch owners as an attorney in	10:38	11 A. Most likely, because it was after he
10:36	12 regard -- with respect to its water rights or	10:38	12 realized that we had a conflict that he excused
10:36	13 other people's water rights, and during what	10:38	13 himself.
10:36	14 timeframe?	10:38	14 Q. Okay. And you believe he sent a letter
10:36	15 A. What I know about that is that the first	10:39	15 to both you and the City indicating that he had a
10:36	16 attorney that I was introduced to was Sledde, I	10:39	16 conflict?
10:36	17 think his name's Jim.	10:39	17 A. He did, yes.
10:36	18 Q. Gary Sledde?	10:39	18 Q. Do you have that letter?
10:36	19 A. Gary Sledde, and John Rosholt, then Jim	10:39	19 A. There is a copy of it in Indian Creek
10:36	20 Speck, and then Dana.	10:39	20 files, yes.
10:36	21 Q. Okay. During what time was Mr. Sledde	10:39	21 Q. Okay. Let's go back. You said most of
10:36	22 representing the ranch owners?	10:39	22 the information you had came from a box of
10:36	23 A. I really don't remember. That goes back	10:39	23 information you got from Mr. Speck. Describe to
10:36	24 before 1980, I believe.	10:39	24 me what was in the box.
10:36	25 Q. And I'll represent to you Mr. Sledde and	10:39	25 A. Well, it was predominantly history.

6 (Pages 18 to 21)

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10:39	1 MS. HOFSTETTER: I'm going to object,	10:41	1 like to put some documents into the record to --
10:39	2 because clearly what comes from Jim Speck's	10:41	2 correspondence between you and myself.
10:39	3 office would be attorney-client, in large part	10:42	3 MR. BROWN: Ms. Hofstetter, you know
10:39	4 attorney-client communication, and I'm going to	10:42	4 that's not correct. We spoke last Friday, you
10:39	5 instruct the witness not to discuss any substance	10:42	5 indicated that your document people may not be
10:39	6 as to what was in that box.	10:42	6 there, and I said we would go ahead with the
10:40	7 BY MR. BROWN:	10:42	7 deposition, dealing with it at the time of the
10:40	8 Q. Are you following your counsel's advice?	10:42	8 deposition. We have not stipulated that you
10:40	9 A. I'm a little hard-pressed to be able to	10:42	9 could not produce documents, or otherwise avoid
10:40	10 tell you specifically what's in there. There was	10:42	10 the requirements of the deposition notice.
10:40	11 a lot of Indian Creek history.	10:42	11 MS. HOFSTETTER: If I could, I'd like to
10:40	12 Q. Okay. Who has that box?	10:42	12 have these four pieces of correspondence included
10:40	13 A. Dana has the box.	10:42	13 as Exhibits 1 through 4 in the record, and
10:40	14 Q. Does the ranch owners have a copy of it?	10:42	14 they --
10:40	15 A. I'm reasonably sure that the ranch	10:42	15 MR. BROWN: Excuse me. This is my
10:40	16 owners have copies of a fair amount of that	10:42	16 deposition.
10:40	17 documentation.	10:42	17 MS. HOFSTETTER: But I need to make sure
10:40	18 Q. Okay. How much of that have you brought	10:42	18 that the deposition reflects the fact that we
10:40	19 with you today?	10:42	19 proceeded with the current scheduling with your
10:40	20 A. None.	10:42	20 specific understanding that this was not going to
10:40	21 Q. You are aware that the deposition notice	10:42	21 be a document production.
10:40	22 was what's called a duces tecum deposition, which	10:42	22 MR. BROWN: No. We proceeded with the
10:40	23 asked you to bring documents that related --	10:42	23 deposition with the specific understanding that
10:40	24 MS. HOFSTETTER: I'm going to --	10:42	24 you were trying to get me to agree that you
10:40	25 MR. BROWN: Let me finish.	10:42	25 didn't need to produce documents, based on
Page 23		Page 25	
10:40	1 BY MR. BROWN:	10:43	1 representations made for the first time last
10:40	2 Q. -- which related to any of the seven	10:43	2 Friday, after having more than two months to
10:40	3 topics upon which the deposition is being	10:43	3 comply, and you indicated to me that you had not
10:41	4 conducted. Were you aware of that?	10:43	4 collected the documents, because you didn't
10:41	5 A. Yes.	10:43	5 anticipate going ahead with the deposition.
10:41	6 Q. Have you brought any documents with you	10:43	6 MS. HOFSTETTER: Pat, we clearly have a
10:41	7 today?	10:43	7 difference of opinion. What I am suggesting,
10:41	8 A. No.	10:43	8 that I would like to put in the record, my
10:41	9 Q. And you are the person designated for	10:43	9 correspondence with you and from your office on
10:41	10 the deposition to speak on behalf of the	10:43	10 this issue, and we can let the record reflect
10:41	11 organization?	10:43	11 that we have a difference of opinion on this
10:41	12 A. Yes.	10:43	12 issue.
10:41	13 MS. HOFSTETTER: I'm going to object at	10:43	13 MR. BROWN: You can put that into
10:41	14 this point, because before this deposition was	10:43	14 whatever motion you want. I don't know why it
10:41	15 scheduled, Mr. Brown, you and I discussed the	10:43	15 would be a part of this deposition.
10:41	16 fact that Theresa Williams, who is the general	10:43	16 MS. HOFSTETTER: Well, because I
10:41	17 manager and the custodian of the documents for	10:43	17 think --
10:41	18 the Indian Creek Ranch Owners' Association is out	10:43	18 MR. BROWN: If you want to file a motion
10:41	19 of the state, out on the East Coast until the end	10:43	19 with the Court, you're welcome to submit whatever
10:41	20 of March, and I gave you the option specifically	10:43	20 you want to the Court.
10:41	21 of rescheduling the deposition for another time,	10:43	21 MS. HOFSTETTER: Let me read into the
10:41	22 when she would be available to provide documents	10:43	22 record, then, if you're objecting and refusing to
10:41	23 pursuant to your request, or to go ahead today	10:43	23 allow my correspondence, and your office's
10:41	24 without documents, and you elected to go ahead	10:43	24 correspondence as well, I'm going to read into
10:41	25 today without documents. And in this regard, I'd	10:43	25 the record --

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10:56 1 the case is proceeding, so I'm going as to -- to 10:56 2 the extent your question asks for attorney-client 10:56 3 communication information. 10:56 4 BY MR. BROWN: 10:56 5 Q. Can you answer the question? 10:56 6 A. Would you mind restating it? 10:56 7 (Last Question Read Back.) 10:56 8 THE WITNESS: Yes. That's correct. 10:56 9 BY MR. BROWN: 10:56 10 Q. That was a bad question. When you say 10:56 11 it's correct -- 10:56 12 A. We don't -- 10:56 13 Q. You don't contend the City lost water 10:56 14 rights by nonuse? 10:56 15 A. No. 10:56 16 Q. So any loss of water rights is solely as 10:56 17 a matter of the September 23rd, '83 Agreement? 10:57 18 A. Yes. 10:57 19 Q. Does -- do the homeowners agree that, 10:57 20 prior to signing the Agreement, the '83 10:57 21 Agreement, the City of Hailey had the four water 10:57 22 rights, though technically the hydro permit 10:57 23 wasn't done yet, so the three other water rights, 10:57 24 296 A, 717, and 1216? 10:57 25 A. Well, I don't know what the signers of	10:59 1 Q. Do you understand my question? 10:59 2 A. Um-hum. 10:59 3 Q. Can you -- 10:59 4 A. I don't know what the legalities of it 10:59 5 are, but my impression is that these quantities, 10:59 6 whether they apply -- whatever water right they 10:59 7 apply to, is -- is the maximum quantity that the 10:59 8 City is entitled to. 10:59 9 Q. Because of the Agreement? 10:59 10 A. Not necessarily because of the 10:59 11 Agreement. 10:59 12 Q. Okay. Explain that to me. 10:59 13 A. Well, I'm having a little trouble 11:00 14 remembering why -- I have the opinion that the 11:00 15 2.62 CFS, that was basically in place before the 11:00 16 Agreement was signed, was the total amount of 11:00 17 water that the City was entitled to. How that 11:00 18 applies to the three water rights that those -- 11:00 19 that those three numbers, 296, 717 and 1250, how 11:00 20 those numbers -- how that water's allocated, I 11:00 21 don't have any idea. 11:00 22 MS. HOFSTETTER: I'm going to object to 11:00 23 any questioning that asks Mr. Hoff to make legal 11:00 24 conclusions that might relate to advice that 11:00 25 attorneys for the Indian Creek Ranch Owners'
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10:57 1 that Agreement felt at that time, but I guess our 10:57 2 position is that the quantities stated in 10:57 3 Exhibit A are the rights that the City of Hailey 10:58 4 has. 10:58 5 Q. I understand you're saying that -- as 10:58 6 set forth in the Objection, you're saying that's 10:58 7 the full extent of the City's rights. 10:58 8 A. Yes. 10:58 9 Q. My question is, do you contend that the 10:58 10 other rights, the 717 and 1216, were abandoned or 10:58 11 something, through the '83 Agreement? 10:58 12 A. I think there's some question as to 10:58 13 whether or not they exist. That's why we're 10:58 14 here. 10:58 15 Q. Okay. Let me back up, then. I want you 10:58 16 to understand, I'm asking you to draw a 10:58 17 distinction between what rights the City had that 10:58 18 existed up until this Agreement was signed, as 10:58 19 opposed to whatever impact the Agreement may have 10:59 20 had on some of its -- of the City's rights? 10:59 21 MS. HOFSTETTER: I'm going to object. 10:59 22 That calls for a legal analysis, legal 10:59 23 conclusion, and the witness is not prepared to 10:59 24 give legal conclusions or analysis. 10:59 25 BY MR. BROWN:	11:00 1 Association may have employed. I'm going to 11:01 2 instruct him not to answer any more questions 11:01 3 relating to legal analysis of the City of 11:01 4 Hailey's water rights, because his knowledge 11:01 5 would be based on legal advice that was provided 11:01 6 to the Indian Creek Ranch Owners' Association. 11:01 7 BY MR. BROWN: 11:01 8 Q. Let's talk for a minute -- 11:01 9 MR. BROWN: Based on your objection and 11:01 10 your instructing him not to answer, there's no 11:01 11 point in my asking further questions about the 11:01 12 homeowners' opinions about what water rights 11:01 13 exist or not. 11:01 14 MS. HOFSTETTER: Legal positions. Legal 11:01 15 positions. I think factual positions -- 11:01 16 MR. BROWN: It is not a proper objection 11:01 17 to object on the ground that something calls for 11:01 18 a legal opinion. 11:01 19 MS. HOFSTETTER: Well -- 11:01 20 MR. BROWN: Are you instructing him not 11:01 21 to answer that or provide that information? 11:01 22 MS. HOFSTETTER: I'm instructing him not 11:01 23 to answer information that might relate to legal 11:01 24 theories and analysis in this case that would be 11:01 25 supplied or upon the advice of counsel.

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11:02	1	11:04	1 Right?
11:02	2	11:04	2 A. Right.
11:02	3	11:04	3 Q. But when you make a claim for damages,
11:02	4	11:05	4 you don't get to claim that, Well, I talked to my
11:02	5	11:05	5 attorney about it, so I'm not going to tell you
11:02	6	11:05	6 what my damages are. I'm not asking you to
11:02	7	11:05	7 disclose the content of a communication with your
11:02	8	11:05	8 counsel. I'm asking you for what the basis of
11:02	9	11:05	9 your position is, what facts support your
11:02	10	11:05	10 position, or what other evidence. Do you
11:02	11	11:05	11 understand that?
11:02	12	11:05	12 A. Yes.
11:02	13	11:05	13 Q. Tell me what facts, other than the
11:02	14	11:05	14 document itself, the September, '83 Agreement,
11:02	15	11:05	15 support your position about the City's rights.
11:03	16	11:05	16 MS. HOFSTETTER: I'm going to object
11:03	17	11:05	17 again, because many of those facts are developed
11:03	18	11:05	18 by the attorneys under the Attorney Work Product
11:03	19	11:05	19 Rule, and provided to the Indian Creek Ranch
11:03	20	11:05	20 Owners' Association, so to the extent that facts
11:03	21	11:05	21 were collected at the attorneys' request, in
11:03	22	11:05	22 anticipation of litigation, they would also not
11:03	23	11:05	23 be discoverable.
11:03	24	11:06	24 So to the extent Mr. Hoff has
11:03	25	11:06	25 information that -- of a factual nature that has
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11:03	1	11:06	1 not come from his attorneys, he can answer the
11:03	2	11:06	2 question. But I would suspect that information
11:03	3	11:06	3 may not extend very far beyond the 1983
11:03	4	11:06	4 Agreement.
11:03	5	11:06	5 THE WITNESS: Other than the fact that
11:03	6	11:06	6 it would appear that both Indian Creek and the
11:03	7	11:06	7 City of Hailey, because of that Agreement, agreed
11:03	8	11:06	8 to the 131 miner's inches, which is the 2.62.
11:04	9	11:06	9 Included in that Agreement is a hydro plant,
11:04	10	11:06	10 which is where the other quantity of water comes
11:04	11	11:06	11 from, but beyond that, I can't -- I can't
11:04	12	11:06	12 identify any facts that I can present to you that
11:04	13	11:07	13 came to me somewhere -- from some other source.
11:04	14	11:07	14 BY MR. BROWN:
11:04	15	11:07	15 Q. In other words, you're saying the facts
11:04	16	11:07	16 you're aware of all came from your attorney?
11:04	17	11:07	17 A. I'm not sure that --
11:04	18	11:07	18 Q. I want the record to be clear. You're
11:04	19	11:07	19 being told not to answer things on the grounds
11:04	20	11:07	20 that the attorneys developed the facts, or
11:04	21	11:07	21 discovered the facts. All I want to know is, if
11:04	22	11:07	22 the attorneys are claiming that privileged and
11:04	23	11:07	23 we're not allowed to know it, that's fine. I
11:04	24	11:07	24 want the record to be clear, though, because if
11:04	25	11:07	25 you're not going to disclose it, we object to any
11:03	1		going to object. I think you're asking for
11:03	2		advice and information that's provided by water
11:03	3		right attorneys. As you know, water rights are a
11:03	4		complex area, a very specialized form of legal
11:03	5		knowledge. So to a large extent, if not
11:03	6		entirely, the positions that the Indian Creek
11:03	7		Ranch Owners' Association has taken in this
11:03	8		litigation relate to advice and opinions provided
11:04	9		by their counsel. So you may be asking a
11:04	10		question that, to the -- it calls for information
11:04	11		that's largely confidential, in my opinion.
11:04	12		That's probably why Mr. Hoff can't answer your
11:04	13		questions, because a large part of what Indian
11:04	14		Creek Ranch Owners' Association does in this
11:04	15		case, the filings it's made, the positions it's
11:04	16		taken are based on legal advice.
11:04	17		And the Association itself does not have
11:04	18		expertise in water law and those underlying
11:04	19		issues. So a lot of those complex legal issues
11:04	20		are not -- Mr. Hoff can't testify to that.
11:04	21		BY MR. BROWN:
11:04	22		Q. Okay. Mr. Hoff, you understand that if
11:04	23		you get run over by a car, and you hire an
11:04	24		attorney, your attorney makes a claim for
11:04	25		whatever damages they think you're entitled to.

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11:07 1 use of any fact that you don't disclose.
 11:07 2 MS. HOFSTETTER: Let me clarify. I
 11:07 3 think you're mischaracterizing what I said, Pat.
 11:07 4 I said that many of the facts were developed,
 11:07 5 obtained under the Attorney Work Product
 11:08 6 Doctrine, by experts, by -- at the request of the
 11:08 7 attorney, people working for the attorney. So to
 11:08 8 the extent facts were -- those facts are covered
 11:08 9 by the Attorney Work Product Doctrine and the
 11:08 10 attorney-client privilege, so those are the facts
 11:08 11 that Mr. Hoff cannot testify as to today.
 11:08 12 But to the extent he has facts from
 11:08 13 other sources, he can testify as to that. But
 11:08 14 I'm guessing that he may not have many other
 11:08 15 facts from other sources.
 11:08 16 MR. BROWN: You're making a speaking
 11:08 17 objection again.
 11:08 18 BY MR. BROWN:
 11:08 19 Q. Do you have any facts, as your counsel
 11:08 20 just said, from any source other than your
 11:08 21 attorneys?
 11:08 22 A. Well, in reviewing documents, such as
 11:08 23 the ones that Jim Speck had, some of the -- there
 11:08 24 are numerous references to the 131 inches or 2.62
 11:09 25 CFS in property transfers, things of that nature.

11:09 1 I can't specifically refer -- I can't tell you
 11:09 2 which of those documents have those numbers in
 11:09 3 them, but they're repeated numerous times.
 11:09 4 Q. When you say those numbers, do you mean
 11:09 5 water right numbers or do you mean the
 11:09 6 131 inches?
 11:09 7 A. The 131 inches.
 11:09 8 Q. Okay. Are you referring to property
 11:09 9 transfers before 1983?
 11:09 10 A. Oh, yes. Yeah. This is ancient
 11:09 11 history.
 11:09 12 Q. Okay. Let's finish with one topic here.
 11:09 13 Topic 1 has to do with the 1983 Agreement. I've
 11:09 14 asked you about the negotiation of it. You've
 11:10 15 claimed that you don't know, other than your
 11:10 16 counsel was involved, Mr. Rosholt. Correct?
 11:10 17 A. (Inaudible Response.)
 11:10 18 Q. You need to verbally answer.
 11:10 19 A. Yes, yes.
 11:10 20 Q. And any other information regarding the
 11:10 21 negotiations your counsel is claiming a privilege
 11:10 22 to.
 11:10 23 A. Well, I had no participation in that
 11:10 24 Agreement at all.
 11:10 25 Q. Who had participation in the Agreement

11:10 1 for the homeowners?
 11:10 2 A. Well, Nick Latham would have, and so
 11:10 3 would Jim Holcomb.
 11:10 4 Q. At any time before we began this
 11:10 5 deposition today, have you spoken with Nick
 11:10 6 Latham about anything to do with the Agreement or
 11:10 7 its negotiation?
 11:10 8 A. Other than to confirm that he had --
 11:10 9 that he -- he participated in that discussion,
 11:10 10 no.
 11:11 11 Q. What did he tell you his involvement
 11:11 12 was?
 11:11 13 A. Well, apparently it was somewhat
 11:11 14 contentious initially, but beyond that, I don't
 11:11 15 really know any facts that would relate to
 11:11 16 that -- that would impact on that Agreement.
 11:11 17 Q. At that time, before the Agreement was
 11:11 18 executed, did the homeowners do anything to
 11:11 19 attempt to ascertain what the full extent of the
 11:11 20 City's water rights were from Indian Creek? So I
 11:11 21 don't have to keep repeating, when I talk about
 11:11 22 the water rights, we're talking about the water
 11:11 23 rights from Indian Creek. Okay? Or the springs.
 11:11 24 A. Okay.
 11:11 25 MS. HOFSTETTER: I'm going to object,

11:11 1 because again it gets into attorney-client. To
 11:11 2 the extent Ben wasn't involved in 1983, he's
 11:11 3 already said that. And to the extent he has
 11:12 4 knowledge of what they did or didn't look into
 11:12 5 going into the 1983 contract, would be from the
 11:12 6 Indian Creek Ranch Owners' records, involving
 11:12 7 John Rosholt, which would be attorney-client
 11:12 8 communication. So to the extent it asks what
 11:12 9 kind of legal analysis went into the Agreement,
 11:12 10 I'm going to instruct him not to answer that
 11:12 11 question.
 11:12 12 BY MR. BROWN:
 11:12 13 Q. Do you have --
 11:12 14 A. I really don't know. That's the short
 11:12 15 answer.
 11:12 16 Q. Is it fair to say that the ranch owners
 11:12 17 depended upon Mr. Rosholt to inform them whatever
 11:12 18 water rights the City had?
 11:12 19 MS. HOFSTETTER: Objection. He wasn't
 11:12 20 involved at the time.
 11:13 21 THE WITNESS: I don't know that I know
 11:13 22 the answer to that.
 11:13 23 BY MR. BROWN:
 11:13 24 Q. Who would know the answer to that?
 11:13 25 A. Well, the people that negotiated the

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11:13 1 Agreement. 11:13 2 Q. Okay. And I understand you're saying 11:13 3 for the homeowners. That was Latham, Holcomb and 11:13 4 Rosholt. Is that correct? 11:13 5 A. Yes. That's my belief. 11:13 6 Q. Does the -- do the homeowners have any 11:13 7 documents that reflect who negotiated, or was 11:13 8 involved in negotiations for the homeowners? 11:13 9 A. I don't recall ever having seen some. 11:13 10 We may have some, but I don't recall ever having 11:13 11 seen any. 11:13 12 Q. You're aware that in the City records 11:13 13 there is a letter from John Rosholt to Brian 11:13 14 Clark, it says Brian Clark, who apparently was 11:14 15 the head of the homeowners at the time, that 11:14 16 describes -- it's a several-page document from 11:14 17 Mr. Rosholt to Mr. Clark, advising the homeowners 11:14 18 about the City's water rights and the -- 11:14 19 A. I'm not familiar with that document. 11:14 20 Q. You're not familiar with that. Do you 11:14 21 contend that document is privileged? 11:14 22 MS. HOFSTETTER: Objection. Calls for a 11:14 23 legal conclusion. 11:14 24 THE WITNESS: I don't have an opinion 11:14 25 about that.	11:16 1 for some background. You told me who was on the 11:16 2 board when we started, for the homeowners. 11:16 3 A. Whoa. I told on you who's on the board 11:16 4 now. 11:16 5 Q. Yes. Correct. Did the board take any 11:16 6 official action to designate you as the deponent 11:16 7 today? In other words, my question is -- let me 11:16 8 back up even further. 11:16 9 A. Okay. 11:16 10 Q. How is the Homeowners' Association set 11:16 11 up to deal with the water right issues? By that 11:17 12 I mean, do you have a committee, are you assigned 11:17 13 to do it, how does that function? 11:17 14 A. Well, the board deals with decisions as 11:17 15 it relates to those things. When a decision is 11:17 16 required, I have been the contact person with 11:17 17 Dana and the board to -- and in that role, I made 11:17 18 every effort to make sure the directors have 11:17 19 whatever correspondence we have, and whatever 11:17 20 decisions are required, I've tried to get that 11:17 21 information in front of them. 11:17 22 Q. Okay. So in other words, you -- you've 11:17 23 been designated to handle the issues, and then 11:17 24 report to the board when a decision needs to be 11:17 25 made?
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11:14 1 BY MR. BROWN: 11:14 2 Q. Tell me what water rights the 11:14 3 Homeowners' Association believe the City of 11:14 4 Hailey possessed the day before the 1983 11:15 5 Agreement was signed. In other words, what I'm 11:15 6 asking you is not what effect the '83 Agreement 11:15 7 had, but what the City had a day before they 11:15 8 signed the Agreement. 11:15 9 A. I don't really know. 11:15 10 Q. Who knows? Who would know, for the 11:15 11 homeowners? 11:15 12 A. I suspect if you asked anybody, 11:15 13 including the two guys who signed the Agreement, 11:15 14 they would not have an opinion about that either. 11:15 15 I'm not sure. You're asking me something that I 11:15 16 just don't have any knowledge on. 11:15 17 Q. Okay. Have you looked through the 11:15 18 records the Association has to see if there's 11:15 19 information about that in the records? 11:15 20 A. No. 11:16 21 Q. Why not? 11:16 22 A. Primarily because I was unsure when this 11:16 23 deposition was going to take place, nor when we 11:16 24 needed those documents. 11:16 25 Q. Okay. Let's back up a little bit, just	11:17 1 A. For decisions. That's correct. 11:17 2 Q. Okay. What did you do to prepare for 11:18 3 the deposition today? 11:18 4 A. I met with Dana yesterday, and -- 11:18 5 Q. I don't want to know the substance of 11:18 6 what you met with her, but what else did you do? 11:18 7 A. Well, I looked through the documents 11:18 8 like the one you've handed me in Exhibit A, for 11:18 9 Indian Creek's water rights, as well as the 11:18 10 documents that Hailey claims as water rights. 11:18 11 Q. Okay. Anything else? 11:18 12 A. No. 11:18 13 Q. Identify for me what the significant 11:18 14 documents are with respect to what the water 11:18 15 rights are. 11:18 16 MS. HOFSTETTER: Could you clarify the 11:18 17 question? What water rights are you talking 11:18 18 about? 11:18 19 MR. BROWN: The City's and the -- 11:18 20 THE WITNESS: The City's water rights? 11:18 21 BY MR. BROWN: 11:18 22 Q. Yes. 11:18 23 A. The ones that we've had from IDWR's 11:19 24 website is 296 A, 717, 1250, and the hydro water 11:19 25 right, and I don't remember the number of that

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11:19 1 one. 11:19 2 Q. Okay. I understand that those are the 11:19 3 four water rights the City claims. You've 11:19 4 identified the 1983 Agreement as being something 11:19 5 significant to defining what rights the City has, 11:19 6 what it wanted. 11:19 7 A. Um-hum. 11:19 8 Q. Any other documents you're aware of? 11:19 9 A. Not really. Other than the Agreement, 11:19 10 whether the Agreement is pertinent to that. 11:19 11 Q. Have you told me everything you know 11:19 12 about the negotiation, drafting, execution and 11:19 13 implementation of the 1983 Agreement? 11:19 14 MS. HOFSTETTER: Objection. Just to 11:20 15 clarify, to the extent it's not privileged. 11:20 16 (Last Question Read Back.) 11:20 17 THE WITNESS: Yes. 11:20 18 BY MR. BROWN: 11:20 19 Q. Okay. We'll move on to the next topic. 11:20 20 MR. BROWN: Do you want -- we can take a 11:20 21 quick break. We are going to shut the camera off 11:20 22 while we take a quick break. 11:20 23 (A Break Was Taken.) 11:27 24 MR. BROWN: Okay. The camera is back on 11:27 25 and we are resuming the deposition after taking a	11:29 1 MS. HOFSTETTER: I'm going to object 11:29 2 because that goes to the substance of 11:29 3 attorney-client communication, why an attorney's 11:29 4 hired to do what. 11:29 5 BY MR. BROWN: 11:29 6 Q. Are you aware of the fact that the 11:29 7 homeowners made John Rosholt their Attorney of 11:29 8 Fact? 11:29 9 A. No. No. 11:29 10 Q. You're not aware of that. You 11:30 11 understand what an Attorney of Fact is? 11:30 12 A. My assumption is that he is designated 11:30 13 as Indian Creek's attorney for water rights 11:30 14 issues. 11:30 15 Q. Okay. Well, it's a little different 11:30 16 than designating him as an attorney. It's 11:30 17 designating him as a person that's able to 11:30 18 factually respond. 11:30 19 A. Then I don't know -- 11:30 20 Q. Do you have any reason to deny that the 11:30 21 homeowners appointed John Rosholt as the Attorney 11:30 22 of Fact? 11:30 23 A. No. 11:30 24 Q. Are you aware of the fact that the 11:30 25 homeowners signed a Power of Attorney giving
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11:27 1 brief break. 11:27 2 BY MR. BROWN: 11:28 3 Q. Mr. Hoff, are the homeowners aware of 11:28 4 any documents, other than the Agreement and the 11:28 5 drafts that you've mentioned, that relate to the 11:28 6 Homeowners' Association's understanding of the 11:28 7 City's water rights at the time the 1983 11:28 8 Agreement was made? 11:28 9 A. The only thing that I'm aware of that 11:28 10 impacts on that are some of the deed transfers 11:28 11 that I talked about, to different parties through 11:28 12 the -- you know, starting back in the early 11:28 13 1900s, through to the point where Indian Creek 11:28 14 ended up with the property and the subdivision 11:28 15 and the water that they got as a result of those 11:29 16 property transfers, but that -- the 2.62 CFS is 11:29 17 referenced in those a few times. 11:29 18 Q. And you believe those, like, deeds -- 11:29 19 A. Deeds, yes. 11:29 20 Q. -- deeds or other transfer documents? 11:29 21 A. Yes. Property transfer. And I'm not 11:29 22 smart enough to know, you know, to follow that. 11:29 23 I haven't made any attempt to follow that. 11:29 24 Q. Do you know if Mr. Rosholt was hired to 11:29 25 do that?	11:30 1 Mr. Rosholt all power to conduct the -- 11:30 2 A. It seems to me that I have seen 11:30 3 documents -- and I'm not sure that John Rosholt 11:30 4 was the party involved -- but I have seen 11:30 5 documents where Indian Creek has designated 11:30 6 people as attorneys, or as -- giving them power 11:31 7 of attorney. 11:31 8 Q. So as you sit here today, you're not 11:31 9 aware, on behalf of the homeowners, of what the 11:31 10 City's water rights were at the time of the 1983 11:31 11 Agreement. Is that correct? 11:31 12 A. No. I was -- I had no knowledge of that 11:31 13 at the time of that Agreement. 11:31 14 Q. Okay. Let's -- I want to skip down to 11:31 15 Topic No. 4 in the deposition notice, which is 11:31 16 your knowledge about the City of Hailey use of 11:31 17 water since 1980. In other words, we're talking 11:31 18 about the City's use, not the homeowners' use. 11:32 19 A. Yes. 11:32 20 Q. For the sake of breaking things down 11:32 21 into time segments, we'll have our first time 11:32 22 segment be before the 1983 Agreement was signed. 11:32 23 Do the homeowners have knowledge about what the 11:32 24 City was actually using at any time before the 11:32 25 1983 Agreement was signed?

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11:32 1 A. I don't believe so.
 11:32 2 Q. Is there anybody in the organization
 11:32 3 that might have more information than you do?
 11:32 4 A. Not that I'm aware of.
 11:32 5 Q. What about, then, from 1983 to 1987?
 11:32 6 The reason I'm using 1987 is that's when the
 11:32 7 adjudication started.
 11:32 8 A. Um-hum.
 11:32 9 Q. What's the homeowners' knowledge about
 11:32 10 the City's use of water from '83 to '87?
 11:33 11 A. To my knowledge, I have had no
 11:33 12 information at all about the City's use of water.
 11:33 13 Q. Okay. For that timeframe?
 11:33 14 A. For that timeframe.
 11:33 15 Q. What about from 1987 to the present?
 11:33 16 A. Well, other than the information that
 11:33 17 came from our field visit that we made, and some
 11:33 18 documents that Tom turned over to us, that's the
 11:33 19 only information I'm aware of that had anything
 11:33 20 to do with the City's use of water.
 11:33 21 Q. Okay. Let's talk about the documents
 11:33 22 from Tom. You're referring to the documents you
 11:33 23 requested and got through the discovery process?
 11:33 24 A. Where we had some indication of what the
 11:33 25 flows were from the springs down to the hydro

11:34 1 plant.
 11:34 2 Q. Okay. Then you referred to the field
 11:34 3 visit last October, I believe it was.
 11:34 4 A. Um-hum.
 11:34 5 Q. We met at Indian Creek?
 11:34 6 A. Right.
 11:34 7 Q. So that you and your attorneys and your
 11:34 8 engineers could view the system. Correct?
 11:34 9 A. Yes.
 11:34 10 Q. Who were your engineers?
 11:34 11 A. Steve Hannula, H-a-n-n-u-l-a. I believe
 11:34 12 that's right.
 11:34 13 Q. And he works for what company?
 11:34 14 A. ERO, out of Boise.
 11:34 15 Q. Okay. Do you know if ERO at that time
 11:34 16 took any measurements?
 11:35 17 A. Did they take any measurements?
 11:35 18 Q. Yes.
 11:35 19 A. I don't believe so. I took a
 11:35 20 measurement of the weir in the bottom of that
 11:35 21 house that's there.
 11:35 22 Q. Of the collection house?
 11:35 23 A. Of the collection house.
 11:35 24 Q. So you measured the weir?
 11:35 25 A. Yes.

11:35 1 Q. And have you compiled what you measured
 11:35 2 into any kind of --
 11:35 3 A. Well, we did a resulting quantity as a
 11:35 4 result of that. I don't remember the number, but
 11:35 5 it -- well, I just don't remember the number.
 11:35 6 Q. But I take it you wrote it down?
 11:35 7 A. Yes.
 11:35 8 Q. What your calculations were?
 11:35 9 A. Yes.
 11:35 10 Q. Who has copies of what you wrote down?
 11:35 11 A. Well, I think -- I think I gave that
 11:35 12 information to Steve Hannula.
 11:36 13 Q. Has Mr. Hannula been hired to testify on
 11:36 14 behalf of the homeowners in this case?
 11:36 15 MS. HOFSTETTER: I can answer that
 11:36 16 question. At this point he has been hired to
 11:36 17 advise me on this case, but he hasn't been
 11:36 18 identified that he would testify at this point.
 11:36 19 BY MR. BROWN:
 11:36 20 Q. Have the homeowners hired any experts to
 11:36 21 give testimony about the City of Hailey's water
 11:36 22 rights?
 11:36 23 A. Not to my knowledge.
 11:36 24 Q. Have they hired anybody to give
 11:36 25 testimony about the homeowners' water rights?

11:36 1 A. No.
 11:36 2 Q. Do they intend to?
 11:36 3 A. That would be something we would follow
 11:36 4 on the advice of our attorney. We haven't had a
 11:36 5 discussion about that.
 11:36 6 Q. What compilation of information or
 11:36 7 testing has Mr. Hannula done?
 11:37 8 MS. HOFSTETTER: I'm going to object.
 11:37 9 That's attorney work product. Mr. Hannula is
 11:37 10 working for me on this matter.
 11:37 11 BY MR. BROWN:
 11:37 12 Q. Has Mr. Hannula shared his information
 11:37 13 with anybody other than your attorney, to your
 11:37 14 knowledge?
 11:37 15 A. Not that I'm aware of.
 11:37 16 Q. There are no other companies involved?
 11:37 17 A. No.
 11:37 18 Q. At one point Dr. Brockway, Brockway
 11:37 19 Engineering was mentioned. Has the Homeowners'
 11:37 20 Association hired Mr. Brockway?
 11:37 21 A. We did, back in the year 2000, I
 11:37 22 believe. Maybe it was 2002.
 11:37 23 Q. For what purpose?
 11:37 24 A. Well, he assisted us in doing some
 11:37 25 things that would allow us to do -- to improve on

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11:37	1 our irrigation system.	11:41	1 Q. Do you know how much that was?
11:38	2 Q. So you hired him to -- not for purposes	11:41	2 A. I don't remember how much that was.
11:38	3 of the water rights adjudication, but for	11:41	3 Q. Does the -- do the homeowners contend
11:38	4 purposes of --	11:41	4 that if more than 3.38 CFS ever go over the weir
11:38	5 A. Applying water for irrigation purposes.	11:41	5 that the City is using more than it's entitled to
11:38	6 Q. Okay. And what did he do for you in	11:41	6 under its rights?
11:38	7 that regard?	11:41	7 A. I don't think so.
11:38	8 A. Well, he had a young fellow by the name	11:41	8 Q. Tell me what you as homeowners, do you
11:38	9 of Jeff Rowe who came up and worked with me on	11:41	9 contend the City's entitled to use. The biggest,
11:38	10 installing some diversions and putting in some	11:41	10 largest quantity.
11:38	11 flood-type irrigation for -- in three or four	11:41	11 A. There's a physical limitation in the
11:38	12 different diversion locations. We did that for a	11:41	12 size of the pipe.
11:38	13 while. That's -- that was the extent of that --	11:41	13 Q. The pipe from the weir down to the
11:38	14 the work that he did there.	11:41	14 reservoir?
11:39	15 Q. Have you had anybody measure the water,	11:41	15 A. Down to the reservoir.
11:39	16 or have you yourself measured the quantity of	11:41	16 Q. Okay. And have you calculated what
11:39	17 water being used by the City at any point in	11:41	17 the --
11:39	18 time, other than what you said about the weir	11:41	18 A. I have not.
11:39	19 that day?	11:41	19 Q. -- theoretical capacity is?
11:39	20 A. By the City, no.	11:41	20 A. No.
11:39	21 Q. Any information on whether or not the	11:41	21 Q. Do you know if anybody has?
11:39	22 data that the City produced regarding water flows	11:42	22 MS. HOFSTETTER: I'm going to object to
11:39	23 is accurate or not?	11:42	23 the extent it might ask for attorney-client
11:39	24 MS. HOFSTETTER: I'm going to object to	11:42	24 communication, attorney work product.
11:39	25 the extent it relates to attorney work product.	11:42	25 BY MR. BROWN:
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11:39	1 (Last Question Read Back.)	11:42	1 Q. Do you know if anybody has calculated
11:39	2 THE WITNESS: I don't have an opinion	11:42	2 the capacity of the pipeline?
11:39	3 about that. We didn't do any testing of the	11:42	3 MS. HOFSTETTER: I'm going to ask him
11:39	4 City's measuring equipment or anything of that	11:42	4 not to answer that question.
11:40	5 nature. The assumption would be that the	11:42	5 MR. BROWN: On the grounds it is
11:40	6 number's correct, but we don't really have any	11:42	6 privileged?
11:40	7 substantiation of that.	11:42	7 MS. HOFSTETTER: Attorney work product.
11:40	8 BY MR. BROWN:	11:42	8 MR. BROWN: I didn't ask him what you
11:40	9 Q. I guess that's my question. Do you	11:42	9 did. I asked if anybody's measured it or
11:40	10 question the reliability of those measurements or	11:42	10 calculated it.
11:40	11 not?	11:42	11 MS. HOFSTETTER: And I'm objecting on
11:40	12 A. I'm not aware of any reason to question	11:42	12 the basis of attorney work product, to the extent
11:40	13 them.	11:42	13 you're seeking substantive information.
11:40	14 Q. All right. When you measured from the	11:42	14 MR. BROWN: Are you instructing him not
11:40	15 weir at the field visit, as you referred to it	11:42	15 to answer?
11:40	16 last October, do you recall what the measurement	11:42	16 MS. HOFSTETTER: Attorney-client,
11:40	17 was?	11:42	17 attorney work product, yes.
11:40	18 A. No. It was a measurement of the water	11:42	18 BY MR. BROWN:
11:40	19 dip above the weir, and there are some standard	11:42	19 Q. Are you aware of any calculations or
11:40	20 formulas you can use to come up with quantities.	11:43	20 measurements of the City's water rights, other
11:40	21 That's really what I did.	11:43	21 than by your attorney?
11:40	22 Q. Did you use a weir table or something to	11:43	22 A. No.
11:40	23 calculate a flow rate based on what you measured	11:43	23 Q. Except for the one you did. Now, did
11:40	24 going over the weir?	11:43	24 you do the calculations?
11:41	25 A. Yes, I did.	11:43	25 A. I did a calculation on that weir.

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11:43 1 Q. Okay. I assume you looked up a weir 11:43 2 table or somehow other -- 11:43 3 A. That's correct. 11:43 4 Q. Okay. Where did you get the weir table? 11:43 5 A. Out of a Cameron's Hydraulic Data book. 11:43 6 Q. But you don't recall what the -- 11:43 7 A. My recollection is that it's very close 11:43 8 to the 2.6 CFS. I don't remember the number. 11:44 9 Q. On that day in October, when you -- 11:44 10 Mr. Hannula and everyone else visited the City 11:44 11 facilities, you agree that the City was diverting 11:44 12 all water available at the spring source? 11:44 13 A. There is a bypass, or a bypass around 11:44 14 the weir, where the collection area -- where the 11:44 15 water flows into the weir. There's a bypass 11:44 16 there, so that all of the water was not going 11:44 17 over the weir. 11:44 18 Q. So you're saying when you looked at it 11:44 19 that day, there was water going through the 11:44 20 bypass also? 11:44 21 A. I did not see that, but I was told that 11:44 22 there is a bypass, and that water flows through 11:44 23 that bypass. 11:44 24 Q. Are you aware of whether or not water 11:45 25 was going through the bypass on the day you	11:46 1 Q. You're not aware of anybody who does 11:46 2 dispute that? 11:46 3 A. No. 11:46 4 Q. Okay. Is it -- do the homeowners 11:46 5 maintain -- the Association maintain that the 11:46 6 City has ever interfered with the homeowners' use 11:46 7 of the homeowners' water rights out of the Indian 11:47 8 Creek? 11:47 9 A. We don't have any knowledge of that. We 11:47 10 don't -- no. The answer to your question is no. 11:47 11 Q. Okay. In other words, you're not aware 11:47 12 of a time when the homeowners needed water under 11:47 13 their right and couldn't get it because of 11:47 14 something the City was doing? 11:47 15 A. I don't recall ever having -- having had 11:47 16 that set of circumstances. 11:47 17 Q. Have the homeowners, since 1980, ever 11:47 18 asked the City to shut off or reduce what the 11:47 19 City diverts out of Indian Creek? 11:47 20 A. Not to my knowledge. 11:47 21 Q. Does the Association have any other 11:48 22 knowledge about the City's use of water since 11:48 23 1980, other than what you've already told me 11:48 24 today? 11:48 25 A. No.
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11:45 1 visited? 11:45 2 A. No. I did not confirm that. 11:45 3 Q. I'll represent to you that the City 11:45 4 maintains that it has diverted all the water 11:45 5 available at the spring at that collection house 11:45 6 that you observed, and it's been consistently 11:45 7 diverting that water since 1980. Do you have any 11:45 8 reason to disagree with that? 11:45 9 THE WITNESS: Read me that question 11:46 10 again, would you? 11:46 11 (Last Question Read Back.) 11:46 12 THE WITNESS: I have no knowledge that 11:46 13 would cause me to agree with it or disagree with 11:46 14 it, because we don't have access to that. 11:46 15 BY MR. BROWN: 11:46 16 Q. You understand what I'm asking is if 11:46 17 there's any evidence out there, or anybody who 11:46 18 purports to have knowledge about that otherwise. 11:46 19 A. I don't think so. 11:46 20 Q. In other words, is there any dispute 11:46 21 about the fact that the City's consistently 11:46 22 diverted all the water at the collection box 11:46 23 since 1980? 11:46 24 A. I don't have any reason to dispute that, 11:46 25 no.	11:48 1 Q. Okay. Let's switch, then, and talk for 11:48 2 a minute about the Association's water rights. 11:48 3 You are familiar with the Association's water 11:48 4 right claims. Correct? 11:48 5 A. I think so, yes. 11:48 6 Q. Again, I take it you've been appointed 11:48 7 by the board to take the lead on that also? 11:48 8 A. Yes. 11:48 9 Q. As you've described with respect to the 11:48 10 City's rights? 11:48 11 A. Yes. 11:48 12 Q. Who else on the part of the Association 11:48 13 has knowledge of the Association's use of its 11:48 14 rights? 11:48 15 A. Of the Association's -- 11:48 16 Q. Use of the Association's water rights 11:49 17 that it's claimed in the adjudication. 11:49 18 A. All of our directors would have 11:49 19 knowledge of the use of the water, because 11:49 20 we've -- we've -- we irrigate, we discuss those 11:49 21 irrigation plans, and the way we execute it, so 11:49 22 the board -- the information has been presented 11:49 23 to them, and the assumption is that they all know 11:49 24 about it. 11:49 25 Q. Why don't you briefly describe how that

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11:49	1 information flows, then. In other words, who	11:53	1 A. The name Bruce Liam is the person that
11:49	2 does the irrigation, and how does that	11:53	2 is the name I remember. I'm not positive that he
11:49	3 information get to the board?	11:53	3 was the person who did this, but that's the name
11:49	4 A. Well, we have a man that we have	11:53	4 I remember.
11:49	5 contracted with to do the raising of hay on the	11:53	5 Q. What is Mr. Liam's profession?
11:49	6 Association's common area. He's brand new with	11:53	6 A. I have no idea.
11:50	7 that, in that last year was his first year at	11:53	7 Q. I take it -- I take it he was working
11:50	8 that. Prior to that we had hired some	11:53	8 for the homeowners?
11:50	9 landscaping people to do the irrigation and some	11:53	9 A. Yes.
11:50	10 other people to do harvesting, baling, those	11:53	10 Q. Do you know what the scope of his work,
11:50	11 kinds of activities. But Association directors	11:53	11 if you will, was?
11:50	12 have all been certainly aware of those plans and	11:53	12 A. Other than the preparation of that
11:50	13 the execution of those plans.	11:53	13 transfer, I don't -- I don't -- and I'm not
11:50	14 Q. Okay. I don't know if it's easier to	11:53	14 totally sure that he's the one that executed the
11:50	15 work forwards or backwards. Water right	11:54	15 transfer. That's my recollection of what I read.
11:50	16 37-296 B --	11:54	16 Q. Do you know if you had an attorney for
11:50	17 A. Um-hum.	11:54	17 the Association in the transfer proceedings?
11:50	18 Q. -- that's a water right that you claim	11:54	18 A. My suspicion is that we probably did,
11:50	19 is for how much?	11:54	19 but I don't remember that.
11:51	20 A. Well, it was originally presented as	11:54	20 Q. Do you know if there's any documents
11:51	21 4.01 cubic feet a second, and 200 acres of	11:54	21 that the Association has regarding the transfer?
11:51	22 irrigation.	11:54	22 A. Yes. We do have documents.
11:51	23 Q. What do you mean originally presented?	11:54	23 Q. I take it Ms. Williams has those?
11:51	24 A. It was originally claimed on that basis.	11:54	24 A. Yes.
11:51	25 Q. Now, you mean claimed in the	11:54	25 Q. In other words, we don't need to go
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11:51	1 adjudication? Claimed in the Snake River	11:54	1 through the discussion we already had?
11:51	2 Adjudication?	11:54	2 A. They're also public record. They're
11:51	3 A. Yes.	11:54	3 filed with the Department of -- the Idaho
11:51	4 Q. Okay. Who was involved in the	11:54	4 Department of Water Resources.
11:51	5 preparation and filing of that claim for the	11:54	5 Q. So you're talking about the documents in
11:51	6 Association?	11:54	6 the IDWR file for the transfer?
11:51	7 A. I don't remember. And I don't know that	11:55	7 A. Yes. They would have been prepared, and
11:51	8 I ever knew. That was done in, probably the	11:55	8 the transfer was approved.
11:51	9 early '80s, right around 1980, somewhere in that	11:55	9 Q. I don't know if we're talking about the
11:51	10 range.	11:55	10 same thing or not. When we speak about this
11:51	11 Q. Okay. You indicated that was what it	11:55	11 transfer, can you tell me what you understand the
11:52	12 originally was claiming.	11:55	12 purpose of the transfer was? In other words, let
11:52	13 A. Right.	11:55	13 me give you some context. You said that
11:52	14 Q. How was that changed?	11:55	14 originally there was a 4.01, 200-acre claim?
11:52	15 A. Well, it was a transfer that was	11:55	15 A. Yes.
11:52	16 instigated in, I believe, 1996. I don't remember	11:55	16 Q. Then it went to 2.72 CFS on 35 acres?
11:52	17 the exact date, but there was a transfer that was	11:55	17 A. Yes.
11:52	18 proposed and accepted by the State.	11:55	18 Q. Why would you need to do a transfer to
11:52	19 Q. What was transferred?	11:55	19 just use less water on less acres?
11:52	20 A. Well, the transfer amounted to -- I can	11:55	20 A. I can't tell you the rationale behind
11:52	21 tell you that number -- 2.72 CFS on 35 acres.	11:55	21 why it was done. I don't have any knowledge of
11:52	22 Q. That's irrigation?	11:56	22 that.
11:53	23 A. Yes.	11:56	23 Q. Okay. Do you know who would?
11:53	24 Q. Okay. Who did the transfer for the	11:56	24 A. Not really.
11:53	25 homeowners?	11:56	25 Q. You indicated that it was originally the

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11:56 1 4.01, then the 2.72. Is that what you're still
 11:56 2 claiming?
 11:56 3 A. Well, yes.
 11:56 4 Q. So you're not claiming more than the
 11:56 5 2.72?
 11:56 6 A. Well, another claim that came from that,
 11:56 7 in the execution of that transfer, there was
 11:56 8 another -- the balance of the water, 1.29 CFS,
 11:56 9 was never -- was never handled in any other way.
 11:56 10 It was just left there.
 11:56 11 Q. Is the 1.29 the difference between
 11:56 12 those --
 11:56 13 A. Yes. The 4.01, yes.
 11:57 14 Q. So you're saying that water was --
 11:57 15 A. There was no designation made of what
 11:57 16 happened to that water at that time.
 11:57 17 Q. So there was no designation of it in the
 11:57 18 transfer proceeding?
 11:57 19 A. No.
 11:57 20 Q. I'm confused. I'm confused. Can you
 11:57 21 explain what you mean?
 11:57 22 A. It's a confusing set of circumstances,
 11:57 23 because it was never dealt with.
 11:57 24 Q. Explain to me what you mean when you say
 11:57 25 it was never dealt with.

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11:57 1 A. This was that quantity of water that
 11:57 2 still belonged to Indian Creek, that was not
 11:57 3 designated as part of that transfer.
 11:57 4 Q. Okay. So you're saying up until '96
 11:57 5 there was 4.01, the transfer dealt with 2.72 --
 11:57 6 A. And that left 1.29 that was not dealt
 11:57 7 with.
 11:57 8 Q. Is there any reference in any of the
 11:58 9 documents you've ever seen to what became of or
 11:58 10 happened to the 1.29 CFS?
 11:58 11 A. Only at a later date.
 11:58 12 Q. Explain to me what you mean by that.
 11:58 13 A. Well, as a result of some -- some
 11:58 14 discussions which had to do with, I believe it's
 11:58 15 the 1997 designated date, where -- this
 11:58 16 adjudication -- I'm not familiar with the legal
 11:58 17 details of what I'm talking about, but there was
 11:58 18 a court decision that gave you the option to not
 11:58 19 irrigate -- whatever you were irrigating before
 11:58 20 that, you could continue to irrigate.
 11:58 21 So we, through Brockway and Jim Speck
 11:59 22 and Norm Semanko, we went back to the State and
 11:59 23 reclaimed the 1.29 CFS, and that claim was
 11:59 24 37-21412, which reinstated 67.9 acres and 1.29
 11:59 25 CFS, which gave us back the 4.01 CFS.

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11:59 1 Q. How did it affect acreage?
 11:59 2 A. Well, the acreage went to, then to 101.
 11:59 3 That was IDWR's recommendation at the time.
 11:59 4 Q. So we mentioned the 296 right and the
 11:59 5 21412. Is that right?
 11:59 6 A. Yes.
 12:00 7 Q. Are those the only two rights the
 12:00 8 homeowners claim to have for irrigation?
 12:00 9 A. Well, I think the pond right is a
 12:00 10 storage for irrigation right, and that number is
 12:00 11 19740. That's -- it's designated as irrigation
 12:00 12 and aesthetics, recreation and wildlife.
 12:00 13 Q. Do you know what the priority date of
 12:00 14 that right is?
 12:00 15 A. 1930, I believe.
 12:00 16 Q. I guess my first question is, what --
 12:00 17 before we get to acres, let's talk about the
 12:01 18 diversion points. Starting with 296 B, B is the
 12:01 19 homeowners' right?
 12:01 20 A. Um-hum. Um-hum.
 12:01 21 Q. Since 1980, where have the homeowners --
 12:01 22 where has the Association diverted that water
 12:01 23 from?
 12:01 24 A. Well, there are four different
 12:01 25 diversions. One is onto what we refer to as

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12:01 1 Field 9, which is a field just below the dam and
 12:01 2 the reservoir.
 12:01 3 Q. Okay. We're talking about the -- we're
 12:01 4 not talking about the City's underground
 12:01 5 reservoir. We're talking about the
 12:01 6 homeowners' --
 12:01 7 A. Yes. Further down the valley. It's the
 12:01 8 pond, the big pond.
 12:02 9 Q. So the record's clear, can you just
 12:02 10 describe the ponds the homeowners have?
 12:02 11 A. Well, we've actually got four ponds.
 12:02 12 Q. Okay. Working downstream.
 12:02 13 A. Working downstream, there's a big pond,
 12:02 14 which is a water reservoir where the Claim
 12:02 15 37-19740 is.
 12:02 16 Q. Okay.
 12:02 17 A. There is a pond north of there, which is
 12:02 18 just north of the road that is below where the
 12:02 19 City's water intake is. If you come south from
 12:02 20 the City's water intake, there's a pond right
 12:02 21 before you get to the first road that you come
 12:02 22 to.
 12:02 23 Q. Okay. So you're talking a quarter mile,
 12:02 24 half mile below the City's collection house?
 12:03 25 A. Right. There's a pond in the spring.

12:03 1 Right.
 12:03 2 Q. That's the one that 19740 takes --
 12:03 3 A. No. That's not. That's 8873.
 12:03 4 Q. What is 8873, then?
 12:03 5 A. That's a pond for aesthetics, recreation
 12:03 6 and wildlife, as well as fire protection and
 12:03 7 stock water.
 12:03 8 Q. Okay. Is that above or below?
 12:03 9 A. That's above the big pond.
 12:03 10 Q. So it's above the big pond to which you
 12:03 11 claim the irrigation storage right?
 12:03 12 A. That's correct.
 12:03 13 Q. And below the City's collection system?
 12:03 14 A. Yes.
 12:03 15 Q. Is it on the creek?
 12:03 16 A. Yes. The creek runs through it,
 12:04 17 actually.
 12:04 18 Q. You're saying there's a water right,
 12:04 19 8873, on that one?
 12:04 20 A. Yes.
 12:04 21 Q. What is that for, the purpose of the
 12:04 22 right? Aesthetic pond?
 12:04 23 A. Yes. It's aesthetics, recreation and
 12:04 24 wildlife, as well as fire protection and stock
 12:04 25 water.

12:04 1 Q. But it's not a point of diversion for
 12:04 2 the 290 --
 12:04 3 A. It's not a point of diversion.
 12:04 4 Q. Working downstream, where are the two
 12:04 5 other ponds?
 12:04 6 A. Well, when you get below the big pond,
 12:04 7 there's another pond just before Indian Creek
 12:04 8 crosses Indian Creek Road, just north of there,
 12:04 9 and I believe that number is 8872, and that's
 12:05 10 another pond that's in the stream flow. The
 12:05 11 stream flows in it and overflows from it, and
 12:05 12 there is no irrigation diversion there.
 12:05 13 Q. Okay. And then where is -- I take it
 12:05 14 there's one more pond?
 12:05 15 A. There's one more pond, just south and
 12:05 16 west of the City's water reservoir.
 12:05 17 Q. Okay.
 12:05 18 A. And that's 8872, I believe -- no.
 12:05 19 08721.
 12:05 20 Q. And that, again, is for aesthetics?
 12:05 21 A. Yes.
 12:05 22 Q. Wildlife?
 12:05 23 A. Right.
 12:06 24 Q. But no point of diversion for
 12:06 25 irrigation?

12:06 1 A. No diversion there.
 12:06 2 Q. Tell me where the diversions are for the
 12:06 3 296, for irrigation?
 12:06 4 A. The one is just below the big pond on
 12:06 5 the stream, just south of Indian Creek Road.
 12:06 6 Q. Okay.
 12:06 7 A. There's another one that is -- I don't
 12:06 8 know how best to describe this, but it's west of
 12:06 9 Sioux Drive, and flows into what we call Field 6.
 12:06 10 Q. Okay.
 12:06 11 A. And there's another point of diversion
 12:06 12 that is -- I don't know how best to describe
 12:06 13 that. It's further -- it's further down Indian
 12:07 14 Creek, but it's -- I don't remember the street
 12:07 15 name right now -- it's north of what we call
 12:07 16 Field 3. We irrigate Field 3 from that point of
 12:07 17 diversion. Our Fields 1 and 2, which are at the
 12:07 18 entrance to Indian Creek, are fed from another
 12:07 19 diversion just before Indian Creek runs into the
 12:07 20 Hiawatha Canal.
 12:07 21 Q. Okay. I think the homeowners have a map
 12:07 22 or something that identifies each of these
 12:07 23 fields?
 12:07 24 A. Oh, yes. Yes they do.
 12:07 25 Q. Under the 39 -- or the 296 right, do you

12:08 1 know how it is that the original claim was
 12:08 2 established at 4.01 CFS?
 12:08 3 A. Other than it was historically
 12:08 4 established, I don't know.
 12:08 5 Q. Okay. Do you know how or when the
 12:08 6 division of the 296 right came about between the
 12:08 7 City and the homeowners or their predecessors?
 12:08 8 A. I don't know that.
 12:08 9 Q. Is that something -- I know you don't
 12:08 10 understand the details, you say you don't know --
 12:08 11 but do you know if that's recent history or
 12:09 12 ancient history?
 12:09 13 A. That's ancient history. It's my belief
 12:09 14 that it's ancient history.
 12:09 15 Q. So in the time that you've been with the
 12:09 16 board in the '90s, you haven't done anything --
 12:09 17 A. No. That's not been an issue of
 12:09 18 discussion.
 12:09 19 Q. You indicated with respect to the
 12:09 20 irrigation that you have a contractor. Now, you
 12:09 21 say he's haying it for the first year. Did he
 12:09 22 hay it in the 2009 -- summer of 2009?
 12:09 23 A. Um-hum.
 12:09 24 Q. He did?
 12:09 25 A. Yes.

12:09 1 Q. So he's done it for one year?
 12:09 2 A. Yes.
 12:09 3 Q. Who was that?
 12:09 4 A. That's correct. His name is John
 12:09 5 Brooks.
 12:09 6 Q. Do you know where he is from?
 12:10 7 A. He's from Richfield. I don't have his
 12:10 8 address on the top of my head.
 12:10 9 Q. Is the property leased to him, or is
 12:10 10 it --
 12:10 11 A. No. It's an agreement, just a verbal
 12:10 12 agreement with him.
 12:10 13 Q. Does he irrigate it also?
 12:10 14 A. Yes. He does the irrigation.
 12:10 15 Q. And all the farming of it?
 12:10 16 A. And all the farming of it.
 12:10 17 Q. Okay. How many acres does he presently
 12:10 18 do, did he do last year?
 12:10 19 A. Well, last year it would have
 12:10 20 approximated to 101 acres.
 12:10 21 Q. You indicated that you were -- your
 12:10 22 claim went to 35 acres, and then somehow you were
 12:10 23 then claiming 102 acres?
 12:10 24 A. 101, I think is the number. It could be
 12:11 25 102, but it was a combination of the 35 and the

12:11 1 67.9. That would be roughly 102, 102 to 103.
 12:11 2 Q. Okay. So the 35 acres is still claimed
 12:11 3 under the 296 B right. Correct?
 12:11 4 A. That's correct.
 12:11 5 Q. Where does the 67 acres come from?
 12:11 6 A. From the 21412.
 12:11 7 Q. 21412. Which is this revised 1.9 CFS?
 12:11 8 A. 1.29.
 12:11 9 Q. 1.29.
 12:12 10 A. Yes.
 12:12 11 Q. Okay. When did the homeowners -- when
 12:12 12 they revised that right, the 21412, when did they
 12:12 13 first irrigate 102 acres?
 12:12 14 A. It would have been -- well, first off,
 12:12 15 the recommendation from IDWR came to us in 2007.
 12:12 16 We -- the earliest in my recollection of where we
 12:12 17 put in an irrigation system, such as pumps and
 12:12 18 hand lines, that kind of thing, that occurred
 12:12 19 about 2004. Prior to that we were doing flood
 12:12 20 irrigation.
 12:12 21 Q. Okay. So the record's clear, we went
 12:13 22 through diversion points for the 296 right.
 12:13 23 A. Um-hum.
 12:13 24 Q. I take it it's the same diversion points
 12:13 25 for the 21412?

12:13 1 A. Yes.
 12:13 2 Q. So those are the two surface water
 12:13 3 rights for irrigation?
 12:13 4 A. That's correct.
 12:13 5 Q. And they share the same points of
 12:13 6 diversion?
 12:13 7 A. Yes.
 12:13 8 Q. So you put in a system in 2004
 12:13 9 consisting of what?
 12:13 10 A. Thereabouts, I don't remember exactly
 12:13 11 the year, but it was about 2004.
 12:13 12 Q. What kind of system did you put in?
 12:13 13 A. Well, we have pumps at those points of
 12:13 14 diversion, and we use main lines and hand lines
 12:13 15 to do the irrigation from those.
 12:13 16 Q. Okay. So you pump to wheel lines and
 12:14 17 hand lines?
 12:14 18 A. Not wheel lines. Main lines that you
 12:14 19 can hook hand lines to.
 12:14 20 Q. Okay. I just want to be sure we're not
 12:14 21 talking past each other. When you say hand
 12:14 22 lines, are you talking about solid set lines, or
 12:14 23 are you talking about lines that are on,
 12:14 24 whatever, four-foot wheels?
 12:14 25 A. No. These are lines that are set out by

12:14 1 hand and moved by hand.
 12:14 2 Q. Okay. So aluminum sprinkler pipes?
 12:14 3 A. That's correct.
 12:14 4 Q. Whatever they are, 20-foot sections?
 12:14 5 A. With spray nozzles on them.
 12:14 6 Q. Okay. Before -- from 2002, or whenever
 12:14 7 that system was put in, until last year, when you
 12:14 8 had Mr. Brooks involved, who did the irrigation,
 12:15 9 the physical irrigation, the labor?
 12:15 10 A. It's been -- there was a mish-mash of
 12:15 11 people that did that. We used volunteers from
 12:15 12 Indian Creek for a number of years, which didn't
 12:15 13 work very well.
 12:15 14 Q. It was less and less every year, I take
 12:15 15 it?
 12:15 16 A. Exactly. And the same half a dozen
 12:15 17 people showed up every time.
 12:15 18 Q. Okay. From the time -- the transfer in
 12:15 19 '96 established the 2.72 CFS in 35 acres. From
 12:15 20 '96 until whenever things changed, which I take
 12:16 21 it --
 12:16 22 A. About 2000, 2000 to 2002.
 12:16 23 Q. During that time, from '96 to 2000,
 12:16 24 2002, who irrigated the property?
 12:16 25 A. I really don't know. I was -- I got

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12:16	1	involved in this thing about the end of the year	12:18	1	call Field 9.
12:16	2	1999. That was my first involvement on the	12:19	2	Q. Okay. Which is how many acres, about?
12:16	3	board.	12:19	3	A. Just about 50 -- 45 to 50.
12:16	4	Q. I take it Mr. Brooks is haying it,	12:19	4	Q. I'm trying to think which way the road
12:16	5	farming it. Correct?	12:19	5	runs there.
12:16	6	A. Yes.	12:19	6	A. Actually, the road --
12:16	7	Q. Was it farmed at any time from 1980 up	12:19	7	Q. The big pond you referred to is adjacent
12:16	8	until the '96 transfer?	12:19	8	to the road?
12:16	9	A. There was some farming that was done.	12:19	9	A. Right.
12:16	10	My recollection has to do with seeing people out	12:19	10	Q. Okay. So if you were going up the
12:16	11	there cutting hay and baling hay on parts of the	12:19	11	canyon, the pond would be on the left side of the
12:16	12	Indian Creek common area. I was not involved in	12:19	12	road?
12:17	13	that, like I said, until after 1999.	12:19	13	A. Yes.
12:17	14	Q. So I take it the sprinklers were put in	12:19	14	Q. Is the field on that same side of the
12:17	15	in 2002?	12:19	15	road?
12:17	16	A. 2004. It was about the timeframe.	12:19	16	A. No. It's on the right side.
12:17	17	Q. So any irrigation before 2004 would have	12:19	17	Q. The field's on the right side of the
12:17	18	been done through ditches?	12:19	18	road?
12:17	19	A. It would have been flood irrigation.	12:19	19	A. And the diversion is on the right side
12:17	20	Right.	12:19	20	of the road. The creek crosses the road right
12:17	21	Q. Were there any pipelines in place before	12:19	21	below that pond.
12:17	22	that?	12:19	22	Q. Okay. And it's taken out after it
12:17	23	A. No.	12:20	23	crosses the road?
12:17	24	Q. So it was open ditches?	12:20	24	A. Yes.
12:17	25	A. Open ditches. Right.	12:20	25	Q. What were the diversion structures in
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12:17	1	Q. From '80 to the present, you're not	12:20	1	place before the sprinkler system was put in?
12:17	2	aware of any diversions in or near the collection	12:20	2	A. These are predominantly these irrigation
12:17	3	facility of the City? In other words, the first	12:20	3	flood gates where there's kind of a knife-gate
12:17	4	place water was diverted by the homeowners was	12:20	4	valve that you can shut off the creek and back up
12:17	5	down at the ponds you've described?	12:20	5	water and send it down the irrigation ditch.
12:17	6	A. Well, we didn't -- I don't know that	12:20	6	Q. So what's referred to as a slide gate?
12:18	7	we've ever diverted directly from the ponds.	12:20	7	A. Slide gate.
12:18	8	Q. Okay. I think you described the	12:20	8	Q. So it's metal and it slides in the
12:18	9	diversions as being adjacent to the ponds. Is	12:20	9	channel --
12:18	10	that correct?	12:20	10	A. I think these may be, -- they're part
12:18	11	A. No. These are in the creek, actually.	12:20	11	plastic and part metal.
12:18	12	Q. What's the -- since '80, what is the	12:20	12	Q. Then they're attached to some sort of,
12:18	13	diversion point that's up the creek? How	12:20	13	is it a concrete structure or something?
12:18	14	far --	12:20	14	A. I think these were just put in in
12:18	15	A. Which is just below the big dam, the big	12:20	15	earthen structures, filled in with earth.
12:18	16	lake.	12:21	16	Q. When were those structures put in?
12:18	17	Q. So that's approximately how far below	12:21	17	A. That would have been about the year
12:18	18	the City's collection system?	12:21	18	2000, about the time we started flood irrigating.
12:18	19	A. Probably half a mile.	12:21	19	Q. Okay.
12:18	20	Q. So water goes into the big pond, and	12:21	20	A. From those diversions.
12:18	21	below that it's diverted?	12:21	21	MS. HOFSTETTER: Are we going to take a
12:18	22	A. It's where the first diversion is.	12:21	22	break soon? I'm just noting the time.
12:18	23	Q. Where does that run to, where it's	12:21	23	MR. BROWN: We can take a break now.
12:18	24	diverted out there?	12:21	24	Let's turn off the camera to take a break for
12:18	25	A. It's diverted there to irrigate what we	12:21	25	lunch.

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12:21	1 (A Break Was Taken.)	13:46	1 A. We get a separate bill for each pump.
13:43	2 MR. BROWN: We took a break for lunch.	13:46	2 Q. What I'm trying to get to, as an
13:43	3 It's about a quarter to 2:00 right now and we're	13:46	3 engineer I'm sure you're familiar that they can
13:43	4 resuming the deposition. We just turned the	13:46	4 take power records and other information and work
13:43	5 camera back on.	13:46	5 backwards to figure out what's been pumped?
13:43	6 BY MR. BROWN:	13:46	6 A. Yes. Pump capacity.
13:43	7 Q. When we took lunch, we were talking	13:46	7 Q. And actual pumpage, only, if they have
13:43	8 about the Association's use of its surface water	13:46	8 enough information. My question is, are those
13:43	9 rights. You'd indicated going back to about 2000	13:46	9 four places on four separate meters?
13:43	10 is when you believed you started using more than	13:46	10 A. Yes, they are.
13:44	11 the 35 acres. Is that right?	13:46	11 Q. At each place, is the electricity that's
13:44	12 A. Yes. That would have been -- yeah.	13:46	12 being metered solely for the irrigation system?
13:44	13 Q. Okay. And at that time you said you had	13:46	13 A. Yes.
13:44	14 what I call slide gates in place at the four	13:46	14 Q. In order, it's not --
13:44	15 places?	13:46	15 A. There's no power that goes to anything
13:44	16 A. Yes.	13:46	16 other than the irrigation pump.
13:44	17 Q. Do those -- I take the it the slide	13:46	17 Q. So any metered usage would reflect the
13:44	18 gates come straight out of the creek?	13:46	18 actual pumping --
13:44	19 A. Yes. They're still in place.	13:46	19 A. That's correct.
13:44	20 Q. Do they go into a ditch, or a pipeline,	13:46	20 Q. -- of the water through the irrigation
13:44	21 or what?	13:47	21 season -- system. Excuse me.
13:44	22 A. In all these cases where we've got slide	13:47	22 A. That's correct.
13:44	23 gates, they go into a ditch that feeds into a	13:47	23 Q. Before 2000, we started with -- let's
13:44	24 pump sump.	13:47	24 start with '80 to '87, on the surface rights.
13:44	25 Q. Okay. Which is like a culvert or	13:47	25 MS. HOFSTETTER: I'm going to object
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13:44	1 something that you buried vertically?	13:47	1 because Mr. Hoff has already testified that his
13:44	2 A. What it actually is is a septic tank.	13:47	2 knowledge on behalf of the Association is dated
13:45	3 Q. Okay.	13:47	3 1999. I'll let him answer, but I want to note
13:45	4 A. But they set the pump on top of it.	13:47	4 that.
13:45	5 Q. So it's piped into the tank, and then	13:47	5 BY MR. BROWN:
13:45	6 pumped out of there?	13:47	6 Q. Do you have any knowledge whatsoever
13:45	7 A. Right.	13:47	7 about the Association, about what the irrigation
13:45	8 Q. Since 2000 -- there's three places or	13:47	8 was from '80 to '87?
13:45	9 four, four places?	13:47	9 A. Not really, no. I didn't move here
13:45	10 A. There are four places.	13:47	10 until '91.
13:45	11 Q. Are each of those places separately	13:47	11 Q. Okay. Do you know of somebody who's a
13:45	12 metered?	13:47	12 homeowner or part of the Association that would
13:45	13 A. We don't have any meters on any of them,	13:47	13 have knowledge of that?
13:45	14 other than the pumps, the capacity of the pump.	13:47	14 A. There could be. I'm not aware of
13:45	15 Q. I guess my question, then, is, are the	13:47	15 somebody who would have that knowledge, but it's
13:45	16 pumps out of each of the four places, are they	13:48	16 certainly possible.
13:45	17 electric pumps?	13:48	17 Q. Let's talk for a minute about the
13:45	18 A. Yes.	13:48	18 Association. Is it true that the only people who
13:45	19 Q. From where do they get power?	13:48	19 are members are lot owners?
13:45	20 A. They each have an individual power	13:48	20 A. Yes, yes. You become a member of the
13:45	21 supply.	13:48	21 Association by virtue of owning a lot.
13:45	22 Q. And how -- is there a meter for each of	13:48	22 Q. So each lot owner gets a membership?
13:45	23 those individual places?	13:48	23 A. Yes.
13:45	24 A. Yes. Um-hum.	13:48	24 Q. I assume that each person who owns a lot
13:46	25 Q. So in other words --	13:48	25 within the area of the Association has to be a

13:48 1 member?

13:48 2 A. They have to be -- and they have a vote

13:48 3 in anything that comes up, like election of

13:48 4 directors, special assessments, things where we

13:48 5 require an authority -- the authority of the

13:48 6 membership, then they all get a vote for the lot

13:49 7 that they own.

13:49 8 Q. Okay. And then do you have an

13:49 9 individual vote on each type of thing the

13:49 10 Association's going to do?

13:49 11 A. No -- the only things that we have

13:49 12 membership votes on would be if we -- if we were

13:49 13 going to want to sell an asset, if we wanted to

13:49 14 increase the annual maximum dues that we can

13:49 15 assess a member, those kinds of things require a

13:49 16 vote of the membership.

13:49 17 Q. In other words, what I typically refer

13:49 18 to as extraordinary business, not the day-to-day

13:49 19 business.

13:49 20 A. No. That's correct.

13:49 21 Q. The day-to-day business, how broad is

13:49 22 the scope of that? I assume you have some kind

13:49 23 of architectural review, aesthetic-type function?

13:49 24 A. We have a design review committee, and

13:49 25 we have a paid architect that's part of that.

13:50 1 Q. Okay.

13:50 2 A. We have -- we have fees that people pay

13:50 3 for approval of their plans and things like that,

13:50 4 that feed into that.

13:50 5 Q. Okay. Then as far as just did -- does

13:50 6 the Association have day-to-day functions?

13:50 7 A. Telephone bills and power bills. We

13:50 8 have snow removal and road maintenance.

13:50 9 Q. That's what I'm trying to get to. You

13:50 10 maintain the roads in the subdivision?

13:50 11 A. That's correct.

13:50 12 Q. Any other types of utilities?

13:50 13 A. We have a bike path that we maintain.

13:50 14 We have -- in the wintertime, we have a

13:50 15 cross-country ski trail.

13:50 16 Q. Okay.

13:50 17 A. We have some aeration on the big pond

13:51 18 that's -- and we pay a landscaper to maintain the

13:51 19 park area that's next to that big pond.

13:51 20 Q. Okay. As part of that, the

13:51 21 Association -- the Association runs everything

13:51 22 with respect to the use of the water and the

13:51 23 water rights? In other words --

13:51 24 A. In essence that's correct. Yes.

13:51 25 Q. There aren't individual homeowners or

13:51 1 anybody that has the rights to use the

13:51 2 Association's water?

13:51 3 A. We do have a number of homeowners who

13:51 4 have pumps in the creek. They've been there ever

13:51 5 since I've been there, as least as far as I know,

13:51 6 they have been. I don't know that I ever knew

13:51 7 how many there are, but there's -- you know,

13:51 8 there is a list of them.

13:51 9 Q. And those are used to irrigate?

13:51 10 A. Irrigate their own lots.

13:51 11 Q. Their own lots, their yards?

13:52 12 A. Right.

13:52 13 Q. Are any of the Association's rights

13:52 14 associated with irrigation of individual lots, or

13:52 15 is it all just a community property that the

13:52 16 Association owns?

13:52 17 A. Some of those individual rights have

13:52 18 been rolled into that last Hailey water right

13:52 19 that I was talking about after the transfer,

13:52 20 21412. There have been some individual pumps

13:52 21 that have been identified as points of diversion.

13:52 22 Q. Okay. I'm kind of unclear on that.

13:52 23 21412 is claimed to be owned by the Association?

13:52 24 A. That's correct.

13:53 25 Q. And not by any individual homeowners?

13:53 1 A. No.

13:53 2 Q. Okay. So what you're saying is that

13:53 3 some individual homeowners may pump out of the

13:53 4 creek?

13:53 5 A. They do.

13:53 6 Q. Under the Association's 21412 right?

13:53 7 A. Yes.

13:53 8 Q. For how long has that been the case?

13:53 9 A. Been going on as long as I've lived

13:53 10 there.

13:53 11 Q. So since at least '91?

13:53 12 A. Yes.

13:53 13 Q. Do you know how much the individual

13:53 14 homeowners use of the right?

13:53 15 A. Not really, no.

13:53 16 Q. Do you know if anybody's measured it?

13:53 17 A. No.

13:53 18 Q. Back to how the Association functions.

13:53 19 Its sole source of income is assessments from

13:53 20 homeowners?

13:53 21 A. Property owners. Right.

13:54 22 Q. Is that done -- tell me the basis on

13:54 23 which it assesses.

13:54 24 A. It is so much for each individual lot.

13:54 25 It's not allocated by acreage or anything else.

13:54 1 If you own a lot, you pay the annual assessment
 13:54 2 that everybody else pays.
 13:54 3 Q. Okay. So it's done on an annual basis?
 13:54 4 A. Yes. If it's -- you know -- and the
 13:54 5 board of directors sets the assessment at the
 13:54 6 beginning of the year, and if that's 500 or a
 13:54 7 thousand dollars, that's what you pay per lot.
 13:54 8 Q. Has the Association ever leased out --
 13:54 9 does it derive income from leasing out or farming
 13:54 10 of any of the ground?
 13:54 11 A. No.
 13:54 12 Q. Who at the Association would know who
 13:54 13 has irrigated the ground? I'm trying figure out
 13:54 14 who would know how the irrigation practice is.
 13:55 15 Let's start with the '80 to '87, and work to the
 13:55 16 present.
 13:55 17 A. Probably the bulk of the people that
 13:55 18 live there have built their homes, probably since
 13:55 19 the mid '90s, people who had lots there prior
 13:55 20 to -- or had homes there -- and there are records
 13:55 21 of who has been there within that timeframe. I
 13:55 22 just don't know who they are. I know two or
 13:55 23 three people that have been there since earlier,
 13:55 24 but I don't know all of them by any means.
 13:55 25 Q. Okay. Since '99, when you became an

13:55 1 officer --
 13:55 2 A. Um-hum.
 13:55 3 Q. -- have you been the point man, the man
 13:55 4 who knows for the Association what's going on
 13:55 5 with its water rights?
 13:56 6 A. Primarily, yes.
 13:56 7 Q. Then you report to the board,
 13:56 8 presumably?
 13:56 9 A. Yes.
 13:56 10 Q. I take it you also report to the
 13:56 11 members?
 13:56 12 A. Yes.
 13:56 13 Q. By --
 13:56 14 A. We do that through a newsletter.
 13:56 15 Q. So you send out a news --
 13:56 16 A. And an annual meeting. We have an
 13:56 17 annual meeting of the membership.
 13:56 18 Q. So I take it the Association keeps
 13:56 19 records of the newsletters it sends out to the
 13:56 20 homeowners?
 13:56 21 A. Yes, they do.
 13:56 22 Q. Has it provided the members newsletters
 13:56 23 about the City's water rights?
 13:56 24 A. I don't -- well, in a very general way,
 13:56 25 because we've been -- you know, I guess we've

13:56 1 been -- we've been advised, if you will, not
 13:56 2 to -- not to disclose details of that, because of
 13:57 3 the sensitivity of the information.
 13:57 4 Q. Because of the water right claims? Is
 13:57 5 that what you're saying, because of the
 13:57 6 adjudication?
 13:57 7 A. Yes.
 13:57 8 Q. Try not to talk at the same time here.
 13:57 9 A. I'm sorry.
 13:57 10 Q. I'm getting some looks. Has the
 13:57 11 Association, to your knowledge, done anything to
 13:57 12 keep track of its water right -- quantity of
 13:57 13 water as utilized from the surface sources?
 13:57 14 A. No.
 13:57 15 Q. And it hasn't -- I already asked you
 13:57 16 that. I did already ask you, it hasn't done
 13:57 17 anything to track what the City uses?
 13:57 18 A. We really don't have any way to do that.
 13:57 19 Q. Okay. I guess what I'm trying to get an
 13:58 20 understanding of is, who I would discuss, who I
 13:58 21 would go talk to to find out about how many acres
 13:58 22 were irrigated for each year, and for how long?
 13:58 23 You indicated that you don't have contracts, you
 13:58 24 don't lease out the property.
 13:58 25 A. No.

13:58 1 Q. Correct?
 13:58 2 A. No.
 13:58 3 Q. Who would I talk to to find out how much
 13:58 4 irrigation occurred each year?
 13:58 5 A. Well, I guess, from my perspective, I'm
 13:58 6 not sure that anybody would have that
 13:58 7 information. We'd have to -- and the only basis
 13:59 8 that we'd have for determining what it was would
 13:59 9 be through these power records, that would not
 13:59 10 exist prior to, say 2004.
 13:59 11 Q. Okay. So where each of the four
 13:59 12 diversion points are, where the slide gates are,
 13:59 13 there are no measuring devices?
 13:59 14 A. There is no metering devices.
 13:59 15 Q. No weirs?
 13:59 16 A. No.
 13:59 17 Q. No flumes or anything?
 13:59 18 A. No.
 13:59 19 Q. Have those been measured, to your
 13:59 20 knowledge?
 13:59 21 A. Not really.
 13:59 22 Q. What do you mean by that? Does that
 13:59 23 mean a little bit, or sort of?
 13:59 24 A. The answer to the question is no, they
 13:59 25 haven't been measured.

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13:59	1 Q. Okay. I want to ask you about, there	14:02	1 other words, a limitation or restriction on the
14:00	2 are some people that show up in some of the	14:02	2 water rights of the City?
14:00	3 records, I kind of just want to know who's around	14:02	3 A. I'm not sure I understand the question.
14:00	4 and who's not.	14:02	4 Q. Okay. When I read the Objection, I
14:00	5 A. You want to know who is?	14:02	5 understand it to be saying that The Agreement
14:00	6 Q. Who is around, who is accessible, who is	14:02	6 limits the City's water rights and the quantity
14:00	7 not.	14:02	7 of the water rights to the 131 inches, and then
14:00	8 A. Some of them I may know, some of them I	14:03	8 the power right. Is the Association saying that
14:00	9 may not, but I'll be glad to tell you the ones I	14:03	9 Agreement should become a part of the water
14:00	10 do know.	14:03	10 rights -- a restriction on the water rights?
14:00	11 Q. One is Dennis Kavanagh, and he signed	14:03	11 A. My impression is that that restriction
14:00	12 the objections as president.	14:03	12 existed prior to the 1983 Agreement, by the deeds
14:00	13 A. He's still here. He's still a property	14:03	13 that were transferred, and that water quantity
14:00	14 owner.	14:03	14 that they became entitled to as a result of those
14:00	15 Q. Okay. Do you know how long he has been	14:03	15 property transfers.
14:00	16 a member?	14:03	16 Q. But I'm trying to understand where the
14:00	17 A. Early '90s, I would say. I don't know	14:03	17 City's coming from in that regard. The 131
14:00	18 precisely.	14:03	18 inches of the City, or 2.62 CFS --
14:00	19 Q. Does the organization have records that	14:03	19 A. Right.
14:00	20 show who its officers were each year?	14:03	20 Q. And the 2.72 CFS the homeowners have
14:00	21 A. Oh, yes, yes.	14:03	21 claimed, add up to the five-point whatever it is,
14:00	22 Q. I guess it would be easy to find them?	14:04	22 of one of the prior decreed rights. Correct?
14:00	23 A. Yes.	14:04	23 A. I don't understand. I don't follow what
14:00	24 Q. Does that -- how far back do those	14:04	24 you're saying.
14:01	25 records go?	14:04	25 Q. What I'm saying, the water right the
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14:01	1 A. Well, probably to the late '70s or early	14:04	1 City has for the 131 inches, that same 296 right
14:01	2 '80s, because that's when the Association was	14:04	2 that's been split into 296-A and 296-B --
14:01	3 formed.	14:04	3 A. Right.
14:01	4 Q. That was my next question. I understand	14:04	4 Q. -- comes from -- back to the old court
14:01	5 it was owned by someone and farmed as a farm, and	14:04	5 decrees. Correct?
14:01	6 then became --	14:04	6 A. That's my understanding.
14:01	7 A. A development.	14:04	7 Q. What I want to understand is the basis
14:01	8 Q. A development?	14:04	8 on which the Association believes that there is
14:01	9 A. That's correct.	14:04	9 131 inches for the City, plus the 4.01 --
14:01	10 Q. Has the Homeowners' Association been in	14:04	10 A. The 4.01 claimed from the very
14:01	11 place since the land was originally developed?	14:04	11 beginning. That was a water right going back to
14:01	12 A. Yes.	14:05	12 the time of the ranch that was there.
14:01	13 Q. So that was in the '70s?	14:05	13 Q. I understand that, I guess. Are you
14:01	14 A. Probably late '70s, yes. I want to say	14:05	14 contending that there is -- there are prior
14:01	15 '78, but that may or may not be accurate.	14:05	15 decreed rights for the 4.01 plus the 2.62? In
14:01	16 Q. Okay. I just want to be sure that this	14:05	16 other words --
14:01	17 isn't a new organization. There was some	14:05	17 A. There were some early measurements by a
14:01	18 predecessor?	14:05	18 fellow by the name of Newby, I believe his name
14:01	19 A. No. It's been around for a while, and	14:05	19 was. I don't remember the dates of those, but
14:01	20 there should be records that go back to that	14:05	20 they were early, like in the 1980s, early '80s,
14:01	21 time.	14:05	21 where he measured the creek over a pretty good
14:01	22 Q. Okay. Do you know the basis -- let me	14:05	22 period of time, and was getting readings between
14:02	23 start over. I take it the Association is	14:05	23 six and seven CFS.
14:02	24 claiming the 1983 Agreement should be referenced	14:05	24 Q. And where have you seen those records?
14:02	25 or be a part of the water rights for the City, in	14:05	25 I take it there are records somewhere?

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14:05	1	A. They exist, and Indian Creek should have	14:08	1	A. That's?
14:06	2	those, copies of those.	14:08	2	Q. That's what the 10-inch wooden pipe
14:06	3	Q. Newby, is it Reid Newby?	14:08	3	carried?
14:06	4	A. I think it is.	14:08	4	A. Yes. It's not a wooden pipe. That was
14:06	5	Q. That used to be the water master?	14:08	5	a 10-inch steel pipe.
14:06	6	A. If that's the right name.	14:08	6	Q. And it was a seven-inch wooden pipe
14:06	7	Q. He used to be the water master?	14:09	7	prior to that?
14:06	8	A. He's the one that did the	14:09	8	A. That's my understanding.
14:06	9	measurements.	14:09	9	Q. Do you know if it was more than one pipe
14:06	10	Q. So you understand he did the	14:09	10	taking water from Indian Creek to the City?
14:06	11	measurements in the '80s and was measuring --	14:09	11	A. It's not my impression that there was
14:06	12	A. Between six and seven CFS.	14:09	12	more than one.
14:06	13	Q. And it's the homeowners' position that	14:09	13	Q. You're aware there was more than one
14:06	14	anything above the 131 inches belongs to the	14:09	14	water company serving the City?
14:06	15	homeowners?	14:09	15	A. Yes. But not at the same time.
14:06	16	A. Yes.	14:09	16	Q. So you're saying your understanding is
14:06	17	Q. When did the homeowners first claim they	14:09	17	there was never more than one company supplying
14:06	18	were entitled to everything over and above the	14:09	18	water to the City of Hailey?
14:06	19	first 131 inches?	14:09	19	A. That's correct.
14:06	20	A. I'm not familiar with a document that	14:09	20	Q. What do you base that on?
14:06	21	formalizes that, but as I said, these deed	14:09	21	A. Primarily on these deeds that I've
14:07	22	documents that I referred to refer to the 2.62	14:09	22	looked through.
14:07	23	CFS as being what Hailey's entitled to.	14:09	23	Q. Anything else?
14:07	24	Q. Do any of the documents you're talking	14:09	24	A. No.
14:07	25	about say that that's the only water Hailey is	14:09	25	Q. These water measurements Mr. Newby took
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14:07	1	entitled to?	14:09	1	in the '80s --
14:07	2	A. I'm not sure that they'd qualify it by	14:09	2	A. Yes.
14:07	3	saying that's the only water, but that is the	14:09	3	Q. -- what is the source of documents for
14:07	4	water that was transferred in that document, in	14:09	4	where those can be found?
14:07	5	that deed transfer.	14:09	5	A. Well, they're in a -- they're in a
14:07	6	Q. So what about water rights that were	14:10	6	letter that I remember seeing, and you know, I
14:07	7	acquired by purchase of the water company?	14:10	7	had -- we had some discussions with Idaho
14:07	8	A. Well, those -- the purchase of the water	14:10	8	Department of Water Resources that had access to
14:07	9	company was that quantity.	14:10	9	those numbers.
14:07	10	Q. Okay. You're aware that there has been	14:10	10	Q. At what point in time would that have
14:08	11	more than one water company?	14:10	11	been?
14:08	12	A. Yes.	14:10	12	A. Well, I think in our meeting in Boise
14:08	13	Q. Alturas Water Company?	14:10	13	here a month ago, or two or three weeks ago, they
14:08	14	A. Yes.	14:10	14	referred to Reid Newby's measurements.
14:08	15	Q. And Hailey Water and Power, something to	14:10	15	Q. Do you think the Department of Water
14:08	16	that effect?	14:10	16	Resources have measurements from Mr. Newby?
14:08	17	A. My reading of this is this started out	14:10	17	A. I really don't know, but I have that
14:08	18	with a seven-inch wooden pipe, and the first	14:10	18	impression as a result of that discussion.
14:08	19	quantity was how much you could get through a	14:10	19	Q. Have the homeowners acquired copies of
14:08	20	seven-inch wooden pipe. Then when they replaced	14:10	20	whatever these documents are?
14:08	21	it to a 10-inch pipe, which was some time, I	14:10	21	A. I have a copy -- Indian Creek has a copy
14:08	22	think, in the '30s, that became the quantity.	14:11	22	of the measurement information that Reid Newby
14:08	23	That's where the 2.62 came from.	14:11	23	took.
14:08	24	Q. You're saying that's what the 10-inch	14:11	24	Q. And who is that provided -- who is that
14:08	25	wooden pipe carried?	14:11	25	from?

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14:11 1 A. Well, Resa Williams would have the 14:11 2 access to the document. 14:11 3 Q. Okay. 14:11 4 A. But it was Reid Newby's measurements. 14:11 5 That was the source of the measurements. 14:11 6 Q. Do you know why he was measuring? 14:11 7 A. No. I have no idea. 14:11 8 Q. You indicated that you understand he was 14:11 9 measuring between six and seven CFS? 14:11 10 A. That's correct. 14:11 11 Q. Do you know where the measurements were 14:11 12 taken? 14:11 13 A. If I recall, they're documented in that 14:11 14 letter. 14:11 15 Q. Okay. So you don't recall off the top 14:11 16 of your head? 14:11 17 A. I don't know where the measurements were 14:12 18 taken, no. 14:12 19 Q. Let's say prior to 1987, did the 14:12 20 homeowners -- do the homeowners claim that before 14:12 21 1987 they had water rights for anything other 14:12 22 than irrigation? 14:12 23 A. The pond. 14:12 24 Q. Okay. Are you referring to the one that 14:12 25 you said was for the irrigation storage?	14:14 1 last farmed it and sold it to whoever developed 14:14 2 it? 14:14 3 A. I'm not absolutely sure of that, but I 14:14 4 believe that's case. 14:14 5 Q. Do you know where Mr. Buttram is? Is he 14:14 6 alive, I take it? 14:14 7 A. No. He's not alive. 14:14 8 Q. Who has copies of the statement he made 14:14 9 concerning -- 14:15 10 A. That affidavit exists. I assume Resa 14:15 11 would have a copy of it. 14:15 12 Q. Does he talk in terms of how much was 14:15 13 irrigated, also? 14:15 14 A. Not -- not that I recall. I don't 14:15 15 recall any documentation on that kind of thing. 14:15 16 Q. Okay. I understand under the decreed 14:15 17 right, that apparently you're now claiming as 14:15 18 4.01, that that water right has been solely a 14:15 19 right for irrigation. In other words, as an 14:16 20 irrigation right, the Association's only had the 14:16 21 right to use it during the irrigation season? 14:16 22 MS. HOFSTETTER: I'm going to object, 14:16 23 because it calls for a legal conclusion as to 14:16 24 what a water right is and what it allows one to 14:16 25 do. With that being said, with that
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14:12 1 A. Yes. 14:12 2 Q. Any other purposes? 14:12 3 A. I don't recall any. Well, the pond has 14:12 4 always had -- been referred to as a place of 14:12 5 recreation, wildlife and aesthetics, and been 14:13 6 part of the attraction of Indian Creek as a 14:13 7 subdivision. 14:13 8 Q. Okay. So what you're saying is -- are 14:13 9 you saying you believe that use has lasted, 14:13 10 existed since the late '70s or whenever it was 14:13 11 subdivided? The irrigation storage, aesthetic 14:13 12 and wildlife right for the pond, you're saying 14:13 13 that you believe that pond has been used for 14:13 14 those purposes since it became a subdivision in 14:13 15 the late '70s? 14:13 16 A. Well, there's some documentation from 14:13 17 the ranch owner, and I'm groping for a name right 14:13 18 now -- the guy who owned the ranch at the time 14:14 19 that they sold it to the Indian Creek, he had 14:14 20 a -- he had a -- he gave us a statement to the 14:14 21 effect that they -- that the pond had been used 14:14 22 for recreation all during the time that it was a 14:14 23 ranch. Buttram is the man's name I'm trying to 14:14 24 think of. 14:14 25 Q. So I understand, he's the person who	14:16 1 clarification, that Mr. Hoff is not really able 14:16 2 to make legal conclusions, I'll allow him to 14:16 3 answer to the best of his ability. 14:17 4 (Last Question Read Back.) 14:17 5 THE WITNESS: That's my understanding. 14:17 6 BY MR. BROWN: 14:17 7 Q. Given that, does the Association have 14:17 8 any documentation to show whatever the difference 14:17 9 between what Reid Newby was measuring, five to 14:17 10 six CFS, or six to seven -- 14:17 11 A. Six to seven. 14:17 12 Q. Six to seven, how was that water used 14:17 13 during the winter? 14:17 14 A. During the winter? 14:17 15 Q. Yes. When the Association is not using 14:17 16 the 4.01 it claims. 14:17 17 A. Originally, the way the irrigation was 14:17 18 done on the ranch was that they would empty the 14:17 19 pond and flood the entire valley with the 14:17 20 contents of the pond. Then the stream refilled 14:18 21 the pond, and they went through those 14:18 22 exercises -- I don't know whether they did that 14:18 23 numerous times or only once during the farming 14:18 24 season, but it's conceivable that that water 14:18 25 could have been recharged into that pond during

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14:18	1	the wintertime. I don't know the answer to	14:21	1	Q. And you don't believe that there was
14:18	2	that.	14:21	2	a -- there was only one pipeline that was ten
14:18	3	Q. Has that pond remained essentially the	14:21	3	inches in size since the '30s?
14:18	4	same size?	14:21	4	A. That's correct. Well, at the time that
14:18	5	A. No. It was one size in 1930 when it was	14:21	5	they put the reservoir in, I understand they used
14:18	6	built, but since that time the dam has been	14:21	6	some 12-inch pipe in a portion of that line, but
14:18	7	raised and the pond level has been raised, and	14:21	7	it would be controlled by the section of the pipe
14:18	8	Dennis Kavanagh would know what those numbers	14:21	8	that was 10 inches.
14:18	9	are. I don't remember the details, but the pond	14:21	9	Q. When was -- when was the 12-inch pipe
14:18	10	is deeper now, or bigger now, than it was.	14:22	10	installed?
14:18	11	Q. Okay. Do you know when it was expanded?	14:22	11	A. That would have been whenever the
14:19	12	A. No, I don't.	14:22	12	reservoir went in, and would have been some time
14:19	13	Q. Do you know -- was it after it became a	14:22	13	after 1983, when this Agreement was signed. '84,
14:19	14	subdivision?	14:22	14	maybe even '85.
14:19	15	A. Oh, yes. And it was done at the	14:22	15	Q. So is it your understanding that the
14:19	16	insistence of the people who inspect ponds, and I	14:22	16	City has increased the size of the pipe since
14:19	17	don't know who those are -- or dams, I should	14:22	17	then?
14:19	18	say. The legal entity that inspects dams	14:22	18	A. Not since that -- not since the
14:19	19	insisted that that be done.	14:22	19	installation of that hydro unit and that
14:19	20	Q. That would be the Department of Water	14:22	20	reservoir.
14:19	21	Resources for some safety reason?	14:22	21	Q. Okay. I'll represent to you that in the
14:19	22	A. Yes. It was a safety issue.	14:22	22	records for the permit for the City's hydro
14:19	23	Q. I take it the Association has documents	14:22	23	right -- I take it you've seen those records --
14:19	24	about that?	14:23	24	when the City proved up on its hydro right --
14:19	25	A. Yes. I would -- in my opinion, I think	14:23	25	A. Um-hum.
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14:19	1	we probably do have.	14:23	1	Q. -- the records show that IDWR measured
14:19	2	Q. Okay. Other than to refill that pond,	14:23	2	more than five CFS being diverted into the pipe,
14:19	3	are you aware of any uses of the six to seven CFS	14:23	3	then the 3.38 going through the generator, the
14:20	4	during the winter season?	14:23	4	turbine. Are you aware of that?
14:20	5	A. No.	14:23	5	A. No.
14:20	6	Q. Do you have any reason to disagree with	14:23	6	Q. Do you have any reason to dispute IDWR's
14:20	7	the assertion that the City used the full amount	14:23	7	measurements at that time?
14:20	8	of the spring that was available where it diverts	14:23	8	A. No, no.
14:20	9	the water during the non-irrigation season?	14:24	9	Q. The 1983 Agreement, which is Exhibit A,
14:20	10	A. I'm of the opinion that they couldn't	14:24	10	if you'll look at the sixth page of The
14:20	11	get that flow through a 10-inch pipe.	14:24	11	Agreement, which is Exhibit A.
14:20	12	Q. It's your opinion that they can get how	14:24	12	A. Page 2?
14:20	13	much through a 10-inch pipe?	14:24	13	Q. Six. Provision No. 9 states -- it's got
14:20	14	A. Well, it would be closer to three CFS.	14:24	14	a title, No Contest -- and it says, "The parties
14:20	15	I don't know the answer to that question. I have	14:24	15	agree that they will not contest the beneficial
14:20	16	not gone through that calculation.	14:24	16	uses of water of the other, and acknowledge that
14:20	17	Q. Do you know anyone has?	14:24	17	said present beneficial uses are perfected."
14:20	18	A. Yes, and that was -- that's what	14:24	18	What's your understanding of the meaning of that
14:20	19	established that initial quantity back when the	14:24	19	provision?
14:20	20	10-inch pipe went in, based on the deed	14:25	20	A. That we would not contest the uses of
14:20	21	information that I've referred to. That number	14:25	21	the water up to -- up to what -- up to what the
14:21	22	was generated by what would flow through a	14:25	22	agreed quantities were.
14:21	23	10-inch steel pipe.	14:25	23	Q. Okay. How do you read into that
14:21	24	Q. So are you saying it's the 131 inches?	14:25	24	something about agreed quantities?
14:21	25	A. Yes.	14:25	25	A. Well, you've got a quantity you agreed

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14:25 1 to up here. 14:25 2 Q. But where is the quantity agreed to? 14:25 3 A. The 131 inches. 14:25 4 Q. Where does any -- is there anywhere in 14:25 5 the Agreement that it says the City has no more 14:25 6 rights than the right to 131 inches? 14:25 7 A. The way I read that number is the 14:26 8 City -- that's what the City is entitled to. 14:26 9 Q. Well, okay. Turn to page 3, Provision 14:26 10 No. 3, beginning in the middle, approximately. 14:26 11 Second full sentence, then, entitled Protection 14:26 12 of Existing Water Sources. 14:26 13 A. Where are you now? 14:26 14 Q. Page 3 of The Agreement. Page 3, second 14:26 15 sentence in Provision 3. 14:26 16 A. Okay. 14:26 17 Q. It says, "While it is acknowledged that 14:26 18 water measurements on Indian Creek are infrequent 14:26 19 and inconclusive, it appears that the approximate 14:26 20 six CFS of flow is totally utilized either by 14:27 21 diversion to Hailey, through their pipeline, or 14:27 22 by the owners during the irrigation season." 14:27 23 A. Okay. 14:27 24 Q. Do you have any reason to think that's 14:27 25 an inaccurate statement?	14:34 1 MR. BROWN: We're back on the record, we 14:34 2 just took a short break. We're turning the 14:34 3 camera back on. Could you please read back the 14:35 4 last question I asked? 14:35 5 (Last Question Read Back.) 14:35 6 MR. BROWN: We did get an answer. 14:35 7 BY MR. BROWN: 14:35 8 Q. I'll represent to you when IDWR did the 14:35 9 beneficial use exam in the year 2000, they 14:35 10 measured 6.26 CFS going into the pipeline at the 14:35 11 collector building that you're familiar with, 14:35 12 where the weir is located. Do you have any 14:35 13 reason to disagree with that? 14:35 14 A. They measured 2.62? 14:35 15 Q. 6.26. 14:35 16 MS. HOFSTETTER: I'm going to -- can we 14:35 17 look at that document? We don't know what you're 14:35 18 referring to. 14:35 19 MR. BROWN: I'm just telling you, IDWR, 14:35 20 when they did the beneficial use exam in 2000 for 14:36 21 the hydro power right, measured 6.26 CFS going 14:36 22 into the pipe system at the collector. 14:36 23 BY MR. BROWN: 14:36 24 Q. Do you have any reason to disagree with 14:36 25 that measurement?
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14:27 1 A. Do I have any reason to believe that is? 14:27 2 Q. Is not an accurate statement of fact. 14:27 3 A. No. 14:27 4 Q. So during the non-irrigation season, the 14:27 5 City of Hailey was totally utilizing the 14:27 6 approximate six CFS of flow? 14:27 7 MS. HOFSTETTER: I'm going to object. 14:27 8 That sentence reads only as to the irrigation 14:27 9 season. 14:27 10 BY MR. BROWN: 14:27 11 Q. Do you agree that it's true that the 14:27 12 City of Hailey at that time would fully divert 14:28 13 six CFS of flow during the non-irrigation season? 14:28 14 A. Well, my opinion is that they could not 14:28 15 utilize six CFS, and anything over and above what 14:28 16 the pipe would convey would be bypassed. 14:28 17 Q. Do you have any reason to believe they 14:28 18 did not use the full amount that the pipe could 14:28 19 convey at that time? 14:28 20 A. I really don't have any reason -- any 14:28 21 way to know. Do you think I might be able to go 14:28 22 to the men's room here? 14:28 23 MR. BROWN: Yeah. Let's take a break 14:28 24 and turn off the camera. 14:28 25 (A Break Was Taken.)	14:36 1 MS. HOFSTETTER: I'm going to object, 14:36 2 because you're asking for speculation at this 14:36 3 point, because Mr. Hoff hasn't seen that 14:36 4 document, and is not familiar with the 14:36 5 circumstances, so you're asking for speculation 14:36 6 at this point. With that objection, you may 14:36 7 proceed to answer the question. 14:36 8 THE WITNESS: As a practical matter, I 14:36 9 would have a -- I would question the quantity, 14:36 10 just because of the pipe size. 14:36 11 BY MR. BROWN: 14:36 12 Q. Okay. But you have not calculated the 14:36 13 pipe size capacity? 14:36 14 A. No, no. 14:36 15 Q. But you have the opinion that the pipe 14:36 16 could not carry the six CFS? 14:36 17 A. That's correct. 14:36 18 Q. And that opinion is based on what? 14:37 19 A. Well, let's start with the deed that 14:37 20 went way back where -- when the 10-inch pipe was 14:37 21 put in, the quantity that was assigned to that 14:37 22 flow was the 2.62 CFS as being the quantity that 14:37 23 that 10-inch pipe would convey. 14:37 24 Q. And you believe that that's reflected 14:37 25 somewhere in some deeds?

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14:37 1 A. I believe that is?

14:37 2 Q. You believe that that's reflected in

14:37 3 some deeds somewhere?

14:37 4 A. Yes.

14:37 5 Q. Do you know who measured?

14:37 6 A. No. I have no idea.

14:38 7 Q. Okay. You're aware of the fact that,

14:38 8 other than the water under the 296 right, A and

14:38 9 B, which is the five CFS, there are other rights

14:38 10 that were decreed from Indian Creek. In other

14:38 11 words, 37-717 and 37-1216?

14:38 12 A. I am familiar with that, yes.

14:38 13 Q. The 717 right, do you have any

14:38 14 information about what quantity of water it was,

14:38 15 from the deeds?

14:38 16 A. From the number that was -- well, on the

14:39 17 right that IDWR publishes, that number was 1.83

14:39 18 CFS.

14:39 19 Q. Okay. What about 1216?

14:39 20 A. Their number on that was nine-tenths of

14:39 21 a CFS, and that relates to the seven-inch pipe.

14:39 22 Q. Okay. Do you have any reason to dispute

14:39 23 that the seven-inch pipe carried .9 CFS?

14:39 24 A. No.

14:39 25 Q. Do you have any reason to dispute that

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14:39 1 the 1.83 under 717 was utilized?

14:39 2 A. Would you repeat that question for me?

14:39 3 Q. Do you have any information from which

14:39 4 to dispute that the 1.83 CFS was used by the

14:40 5 City?

14:40 6 A. No.

14:40 7 Q. When do you contend the City stopped

14:40 8 using the 1.83 CFS, if you do believe they

14:40 9 stopped using it?

14:40 10 A. I don't believe this they stopped using

14:40 11 the 2.62 ever, but I think the 2.62 is -- results

14:40 12 from both 717 and 1215, and should have been

14:40 13 incorporated in 1296 A.

14:40 14 Q. So what you're saying is, if you add up

14:40 15 the .9 and the .183 --

14:40 16 A. You end up with a tenth of cubic feet a

14:41 17 second over and above the 262.

14:41 18 Q. So you have 2.73. Okay? So it's your

14:41 19 contention the City is limited to the 2.62 and

14:41 20 always has been?

14:41 21 A. Yes.

14:41 22 Q. But you don't know whether or not

14:41 23 there's ever been a time when they used --

14:41 24 limited their use to 2.62?

14:41 25 A. We have never had access to any water

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14:41 1 quantities that the City of Hailey used, or took

14:41 2 out of Indian Springs.

14:41 3 Q. So back to page 6, Provision No. 9,

14:42 4 that's the No Contest provision, it's your

14:42 5 understanding that provision, which says, "There

14:42 6 will not be a contest to the beneficial uses of

14:42 7 the water of the other," that was intended to

14:42 8 recognize only 2.62 CFS of beneficial use for the

14:42 9 City.

14:42 10 A. That's my -- that's my understanding.

14:42 11 This Agreement modifies that based on the hydro

14:42 12 unit.

14:42 13 Q. Well, the Agreement says the hydro right

14:43 14 can be five CFS. Correct?

14:43 15 A. Yeah. But that's not what IDWR's

14:43 16 numbers say, or at least the right numbers say.

14:43 17 Q. Do you know where IDWR measured the 3.38

14:43 18 CFS?

14:43 19 A. I have no idea, and I don't know why

14:43 20 there's a discrepancy.

14:43 21 Q. Let me represent to you that they've

14:43 22 indicated you viewed the facility where the

14:43 23 pipeline from the springs daylighted inside the

14:43 24 building, before -- just before the pipe splits,

14:43 25 and part of that water goes through the turbine,

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14:43 1 and part of that water goes directly into the

14:43 2 reservoir. You're familiar with that?

14:43 3 A. I remember -- I don't remember that

14:43 4 piping that well. I was under the impression

14:43 5 that the water went through -- went either over,

14:43 6 either into the reservoir or through the hydro

14:44 7 unit.

14:44 8 Q. Well, it goes through the hydro unit and

14:44 9 then into the reservoir?

14:44 10 A. Yes.

14:44 11 Q. Or it bypasses the hydro --

14:44 12 A. And into the reservoir.

14:44 13 Q. Are you aware of the fact that the 3.38

14:44 14 was a measurement of only what was going through

14:44 15 hydro unit, and not what was going through the

14:44 16 bypass that goes directly to the reservoir?

14:44 17 A. I'm not sure where the 3.83 measurement

14:44 18 came from in the first place.

14:44 19 Q. If I want you to assume that that is in

14:44 20 fact where they measured, and if that's the case,

14:44 21 are you aware of any facts which would suggest

14:44 22 that measurement is wrong?

14:44 23 A. Well, there is a flow meter in that

14:44 24 house that measures that quantity, and that would

14:44 25 be the best source of information. I don't know

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14:45 1 of any other measuring device. 14:45 2 Q. I guess what I'm trying to be clear on 14:45 3 is whether you have any information from which to 14:45 4 call into question IDWR's measurements at the 14:45 5 time they licensed -- 14:45 6 A. Pat, we haven't had access to any of the 14:45 7 City's flows, their measurements or anything 14:45 8 else. As a result of that, I don't have an 14:45 9 opinion about IDWR's measurements. 14:45 10 Q. That's what I'm trying to understand. 14:45 11 My understanding from your testimony is that you 14:45 12 have the opinion that the City could not utilize 14:45 13 the six CFS of flow, the six CFS that's mentioned 14:45 14 in The Agreement in Exhibit A. And I've 14:46 15 represented to you that IDWR measured what was 14:46 16 going into the pipeline as 6.26 CFS. In light of 14:46 17 the 6.0 in the Agreement, and the 6.26 measured 14:46 18 by IDWR, do you still hold the opinion that the 14:46 19 pipeline could not utilize that amount? 14:46 20 A. I do. 14:46 21 Q. What is the basis for that opinion? 14:46 22 A. Back to the deed we talked about -- 14:46 23 Q. You don't need to repeat what you 14:46 24 already told me, where you said -- 14:46 25 A. That's the answer to your question.	14:48 1 work-product-related. 14:48 2 BY MR. BROWN: 14:48 3 Q. When you hired Dr. Brockway in about 14:48 4 2000, as you've just described you hired him so 14:48 5 he could consult with you about how much water 14:48 6 the Association could utilize to irrigate the 14:48 7 place? 14:48 8 A. Um-hum. 14:48 9 Q. Who has records of what happened with 14:48 10 Dr. Brockway? 14:48 11 A. Who has those records? 14:48 12 Q. Yes. 14:48 13 A. We would have some, and I'm sure he has 14:48 14 some too. 14:49 15 Q. You mentioned earlier, when you hired 14:49 16 Brockway you had Speck working for you, and Norm? 14:49 17 A. That was a later time. That was a 14:49 18 second exercise where we -- where between Jim 14:49 19 Speck, Norm Semanko and Brockway, they are the 14:49 20 ones who filed to recover this other 1.83 -- no, 14:49 21 not 1.83. The 1.29 CFS that got us back to the 14:49 22 4.01 after the transfer. 14:49 23 Q. When they were hired to do that? 14:49 24 A. Yes. 14:49 25 Q. Did they do anything with respect to
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14:46 1 Q. So the answer is that you think it's the 14:46 2 131 inches, going back to the deeds where you 14:46 3 understand that's what the 10-inch pipe carried? 14:46 4 A. Yes. 14:46 5 Q. No other reason? 14:46 6 A. No. 14:47 7 Q. I understand that Dr. Brockway, for a 14:47 8 time, as you mentioned, was employed by the 14:47 9 homeowners? 14:47 10 A. Yes. 14:47 11 Q. Was he employed solely with respect to 14:47 12 the irrigation rights of the Association? 14:47 13 A. I'm not sure what the delineation of 14:47 14 those terms are, but we hired him to help us 14:47 15 determine how to get water, divert water onto the 14:47 16 fields in order to irrigate, and that was our -- 14:47 17 that was our initial contact with Brockway. 14:48 18 Q. And you told me that -- that was 2000? 14:48 19 A. That was about the year 2000, as I 14:48 20 remember. 14:48 21 MS. HOFSTETTER: I'm going to need to 14:48 22 object to any questioning about the substance of 14:48 23 Dr. Brockway's advice. It may have been done 14:48 24 under Jim Speck's advice and counsel, and 14:48 25 therefore it might be attorney	14:50 1 monitoring or measuring or assessing what the 14:50 2 City's -- 14:50 3 A. No. 14:50 4 Q. -- use was? 14:50 5 A. Again, we have absolutely no access to 14:50 6 the City's property, we don't have any access, 14:50 7 any capability to measure the water that they're 14:50 8 using, so we know absolutely nothing about the 14:50 9 water coming out of Indian Springs, and that 14:50 10 includes work that Brockway did. 14:50 11 Q. Other than Brockway, and you've 14:50 12 mentioned Steve Hannula, and you mentioned a guy 14:50 13 named Bruce Liam? 14:50 14 A. Yeah. That's a name that came out of 14:50 15 some of our documentation. I don't know anything 14:50 16 about Bruce Liam. 14:50 17 Q. Okay. Other than those three, have you 14:50 18 had anybody else measure, assess, or advise you 14:51 19 on what your system -- 14:51 20 A. Well, we had some help from a fellow 14:51 21 over in Boise who is a -- who helped us lay out 14:51 22 and -- with the -- with recommendations on how we 14:51 23 irrigate, how we lay out our irrigation lines, 14:51 24 the pumps that we used, that work, but it did not 14:51 25 have anything to do with measuring water.

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14:51	1 Q. And that would have been with respect to	14:54	1 City is limited to the 131 inches based on a
14:51	2 2004?	14:54	2 10-inch pipe?
14:51	3 A. Yes, yes. That fellow's name is Moyer.	14:54	3 A. That's correct.
14:51	4 I can't remember his first name right now.	14:54	4 Q. Notwithstanding any measurements of
14:51	5 Q. So he was more of a person who specced	14:54	5 more?
14:51	6 out what kind of irrigation system to use?	14:54	6 A. Right.
14:51	7 A. Yes. The irrigation system.	14:54	7 Q. Do you have any further information
14:52	8 Q. Okay. So I think we've covered item	14:54	8 about that?
14:52	9 No. 1, which was negotiating, tracking,	14:54	9 A. No.
14:52	10 execution, implementation of the 1983 Agreement.	14:54	10 Q. The sixth item asked you to testify
14:52	11 We've talked about the Association's use of its	14:54	11 about the information provided to any person who
14:52	12 surface water rights, and I understand there are	14:55	12 may testify as an expert in any of these City
14:52	13 no other measurements other than what you've told	14:55	13 cases.
14:52	14 about today?	14:55	14 MS. HOFSTETTER: I'm going to object
14:52	15 MS. HOFSTETTER: Could you clarify the	14:55	15 based on the attorney-client privilege, Attorney
14:52	16 question? Measurements of what?	14:55	16 Work Product Doctrine, to that question. Under
14:52	17 BY MR. BROWN:	14:55	17 the Attorney Work Product Doctrine, as you know,
14:52	18 Q. Of the Association's use of its surface	14:55	18 until the experts who will testify are
14:52	19 rights.	14:55	19 identified, their information on which they rely
14:52	20 A. No.	14:55	20 is not discoverable. So I'm going to ask
14:52	21 Q. No other measurements?	14:55	21 Mr. Hoff not to respond to that question as to
14:52	22 A. No.	14:55	22 the substance of information that's been provided
14:52	23 Q. Are you -- I asked that question a bad	14:55	23 to expert witnesses at this point, or potential
14:52	24 way. I don't know if you're saying no, you don't	14:55	24 expert witnesses that have not been designated at
14:53	25 agree with me, or no, there are no other	14:56	25 this point.
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14:53	1 measurements.	14:56	1 BY MR. BROWN:
14:53	2 A. No. There are no other measurements.	14:56	2 Q. The last item is the sources of
14:53	3 Q. Clear that up. Okay. The third item,	14:56	3 information regarding each of the above items.
14:53	4 the third item is the surface water rights and	14:56	4 Let's just go through it real briefly. Have you
14:53	5 water rights usage by each member of the	14:56	5 told me about all the sources of information
14:53	6 Association. Now, you've told me that there are	14:56	6 you're aware of, which I understand are, one, the
14:53	7 several pumps that were in the creek?	14:56	7 Association's records, which we don't have today,
14:53	8 A. Yes.	14:56	8 and two, IDWR's records concerning the 1983
14:53	9 Q. But to your knowledge, the Association	14:56	9 Agreement. Any other sources?
14:53	10 has not measured or kept track of their usage?	14:56	10 A. No.
14:53	11 A. We have not monitored those. I'm not --	14:56	11 MS. HOFSTETTER: I want to -- I'd like
14:53	12 we have a listing. I'm not sure whether it's	14:56	12 to clarify, just a general clarification that, as
14:53	13 even a complete listing, but we have a listing of	14:56	13 I've objected throughout, a large part of the
14:53	14 owners who have pumps in the creek.	14:56	14 Association's information comes from the advice
14:53	15 Q. Okay. The next item is the	14:56	15 of counsel, and so to the extent that that
14:53	16 Association's knowledge about the City's use of	14:56	16 information comes from legal counsel, that
14:54	17 water since 1980. Is there anything that the	14:56	17 information has not been included in this
14:54	18 Association is aware of about the City's use that	14:57	18 deposition. So with that caveat, Mr. Hoff can
14:54	19 we haven't already discussed?	14:57	19 respond to the source of the information, with
14:54	20 A. I have no knowledge of any of the City's	14:57	20 the understanding that attorney-client
14:54	21 usage.	14:57	21 information has not been provided at this
14:54	22 Q. The fifth item is the Association's	14:57	22 deposition.
14:54	23 knowledge about the City's water rights. Now,	14:57	23 BY MR. BROWN:
14:54	24 what you've told me is -- in that regard, is that	14:57	24 Q. You just heard your counsel's objection.
14:54	25 you understand under the deeds, you believe the	14:57	25 Do you have information, other than what you told

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14:57	1	me was in a box from Speck, about the history of	15:00	1	A. Well, at the time these documents were
14:57	2	these rights?	15:00	2	prepared, we had a number of discussions at our
14:57	3	A. Other than Indian Creek's records, and	15:00	3	board meetings about that.
14:57	4	there's probably a good bit of duplication	15:00	4	Q. Okay. So in 2007 he was the president,
14:57	5	between that and what Jim Speck has.	15:00	5	so he was presumably at the board meeting?
14:57	6	Q. Ms. Hofstetter became your counsel when?	15:00	6	A. Yes, he was.
14:57	7	A. 19 -- 2008.	15:00	7	Q. When did his tenure as president end?
14:57	8	MS. HOFSTETTER: I'm not sure if it was	15:00	8	A. Well, I took over from him in the spring
14:57	9	2007, 2008.	15:00	9	of 2008.
14:57	10	THE WITNESS: Might have been late 2007.	15:00	10	Q. And he's no longer on the board?
14:58	11	BY MR. BROWN:	15:00	11	A. He's no longer on the board.
14:58	12	Q. Exhibit A, the Objection. Was signed by	15:00	12	Q. Before that time -- well, I'm just
14:58	13	Mr. Kavanagh on 11/13/2007?	15:00	13	trying to clarify. You said from 1999 on, you've
14:58	14	A. Yes. Um-hum.	15:00	14	pretty much been the person responsible for the
14:58	15	Q. Ms. Hofstetter was your counsel at that	15:00	15	water rights for the Association?
14:58	16	time, I take it?	15:00	16	A. That's correct.
14:58	17	MS. HOFSTETTER: I was not hired -- I'm	15:00	17	Q. Who else at the Association have you
14:58	18	looking at my file, my pleading file here. My	15:00	18	worked with on those, besides Mr. Kavanagh?
14:58	19	Notice of Appearance was filed in early 2008 in	15:01	19	A. Well, early on, one of our members, Jim
14:58	20	this case.	15:01	20	Baldwin, was somebody that I communicated with,
14:58	21	MR. BROWN: All right.	15:01	21	because he manages the Eccles farm and knows a
14:58	22	BY MR. BROWN:	15:01	22	good bit about irrigation. With the exception of
14:58	23	Q. Who prepared the Objection, which is	15:01	23	him, I'd say that's probably the extent of it.
14:58	24	marked as Exhibit A?	15:01	24	Q. Do you know if Mr. Baldwin is familiar
14:58	25	MS. HOFSTETTER: Ben may not know that,	15:01	25	with any of the irrigation that occurred before
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14:58	1	because he -- looked like Dennis --	15:01	1	2004 at Indian Creek?
14:58	2	MR. BROWN: Please, no more speaking	15:01	2	A. Well, he would be, because he and I --
14:59	3	objections.	15:01	3	he was involved with me in 2000.
14:59	4	THE WITNESS: I think you prepared	15:01	4	Q. Okay.
14:59	5	those, as I remember, and I think that was just	15:01	5	A. But anything prior to that, I don't know
14:59	6	about the same time that Jim Speck recused	15:01	6	about.
14:59	7	himself.	15:01	7	Q. And you have no idea who farmed the
14:59	8	BY MR. BROWN:	15:02	8	property in the '80s?
14:59	9	Q. I understand Ms. Hofstetter owns	15:02	9	A. In the '80s?
14:59	10	property in the subdivision?	15:02	10	Q. Yes.
14:59	11	A. That's my understanding, yes.	15:02	11	A. No.
14:59	12	Q. Okay. When did she become a member?	15:02	12	Q. Do you know anybody who was a member, or
14:59	13	A. I don't know the answer to that.	15:02	13	anybody that knows?
14:59	14	Q. Was it before or after she was hired as	15:02	14	A. Potentially there are some people. I
14:59	15	an attorney?	15:02	15	just don't know who they are.
14:59	16	A. Before.	15:02	16	Q. In other words, is there anybody you're
14:59	17	Q. So she purchased the property before.	15:02	17	talking to to try to find out who irrigated the
14:59	18	Okay. In going through the records, some of the	15:02	18	property back then?
14:59	19	other names, you said Mr. Kavanagh is still in	15:02	19	A. I could conceivably find out.
15:00	20	the area?	15:02	20	Q. Who would you talk to?
15:00	21	A. Yes.	15:02	21	A. Who some of those people are?
15:00	22	Q. Still a member?	15:02	22	Q. Who would you find out from?
15:00	23	A. Yes.	15:02	23	A. Well, your Hailey City attorney, Ned
15:00	24	Q. Have you had any discussions with	15:02	24	Williamson, hired some of those folks when he was
15:00	25	Mr. Kavanagh about the City's water rights?	15:02	25	living out there.

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15:02	1 Q. Okay. So you're referring to	15:05	1 all on that.
15:02	2 Mr. Williamson?	15:05	2 Q. Concerning how much is pumped?
15:02	3 A. Yes.	15:05	3 A. Yes. No.
15:02	4 Q. He is a homeowner out there now?	15:05	4 Q. Any other sources of information
15:03	5 A. Yes. I think so.	15:05	5 concerning the usage by members?
15:03	6 Q. For how long has he been a homeowner?	15:05	6 A. No. Not that I'm aware of.
15:03	7 A. I don't know.	15:05	7 Q. Okay. Any sources you haven't told me
15:03	8 Q. Do you know if he's ever done legal work	15:06	8 about concerning the Association's knowledge of
15:03	9 on water rights for the Association?	15:06	9 the City's use of its water?
15:03	10 A. I don't believe so.	15:06	10 A. No. We have absolutely no knowledge of
15:03	11 Q. You indicated he hired people out there.	15:06	11 the City use of water.
15:03	12 A. Hired -- he did some of the negotiation	15:06	12 Q. Okay. Any knowledge about -- just start
15:03	13 with the farmers who came out there and mowed the	15:06	13 over. Any other sources that we haven't talked
15:03	14 hay and baled the hay, sold the hay.	15:06	14 about concerning the Association's knowledge
15:03	15 Q. Other than Ned Williamson, who else	15:06	15 about the City's water rights?
15:03	16 might know about the history of the farming?	15:06	16 A. No.
15:03	17 A. He is the only one who had first class	15:06	17 Q. Okay. And I would ask you about No. 6,
15:03	18 dealings with those people.	15:06	18 but I understand you've already been instructed
15:03	19 Q. What about -- you indicated before,	15:06	19 not to answer. But I do want to know if there
15:03	20 Mr. Holcomb and Mr. Latham?	15:06	20 are other sources of information, other than what
15:03	21 A. Yes.	15:06	21 you've told me, which is essentially your
15:03	22 Q. Do you know whether or not they had any	15:06	22 attorney's claiming that all information is from
15:03	23 dealings with people?	15:06	23 her regarding --
15:03	24 A. No, I don't.	15:06	24 MS. HOFSTETTER: I'm not claiming that.
15:03	25 Q. So bottom line is you're not aware of	15:07	25 I'm just claiming a large part of it. I think
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15:03	1 anybody other than Ned Williamson?	15:07	1 he's testified as to the information that's not
15:03	2 A. Not really.	15:07	2 from me. Just to correct.
15:04	3 Q. We were talking about the sources of	15:07	3 BY MR. BROWN:
15:04	4 information you had. Are there any other sources	15:07	4 Q. I'm trying to find out if you've
15:04	5 of information we haven't talked about regarding	15:07	5 disclosed every -- all the information that's
15:04	6 Item No. 3, the surface rights and usage by the	15:07	6 been provided to your experts that was not
15:04	7 members?	15:07	7 provided by your counsel.
15:04	8 A. Not that I know of.	15:07	8 A. There is no information that I have --
15:04	9 Q. Can you give me the names of any of the	15:07	9 that Indian Creek has provided to potential
15:04	10 members who pump out of the creek?	15:07	10 experts.
15:04	11 A. Well, I know that Dana probably does	15:07	11 Q. Okay. Well, then, at this point in
15:04	12 that. Jim McClatchy is another one, and I	15:07	12 time, I'm not going to end the deposition. I'm
15:04	13 believe Jim Holcomb is -- pumps out of the creek.	15:07	13 going to recess the deposition pending the
15:04	14 Those are the three people that I know from	15:07	14 production of documents, and pending rulings on
15:05	15 personal experience. I don't really know any	15:07	15 other things on what information we are or are
15:05	16 others. As I said, there's a list of those.	15:07	16 not entitled to. With that, I'm done with my
15:05	17 Q. There's a list of all the people who	15:08	17 questions, except to follow up if Dana asks
15:05	18 pump out of the creek?	15:08	18 questions.
15:05	19 A. There is a list of people who pump out	15:08	19 MS. HOFSTETTER: Could we go off the
15:05	20 of the creek. It may or may not be all of them.	15:08	20 record for a minute? I need to talk to Mr. Hoff,
15:05	21 Q. And does that list also contain	15:08	21 see if I need to ask some questions.
15:05	22 information about the pumps used, etcetera?	15:08	22 MR. BROWN: We're going to go off the
15:05	23 A. No, no.	15:08	23 record.
15:05	24 Q. In order to determine how much --	15:08	24 (A Break Was Taken.)
15:05	25 A. I don't think we have any information at	15:13	25 MR. BROWN: We've turned the camera back

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15:13 1 on after a short break. Ms. Hofstetter, you were 15:13 2 going to ask questions? 15:13 3 MS. HOFSTETTER: Yes, I have a few 15:13 4 follow-up questions. 15:13 5 EXAMINATION 15:13 6 QUESTIONS BY MS. HOFSTETTER: 15:14 7 Q. Mr. Hoff, at the beginning of your 15:14 8 testimony you indicated that you first became a 15:14 9 board member for the Indian Creek Ranch Owners' 15:14 10 Association in 1999. Is that correct? 15:14 11 A. That's correct. 15:14 12 Q. So would your testimony today 15:14 13 relating -- as a designated person for the Indian 15:14 14 Creek Ranch Owners' Association, only date back 15:14 15 to 1999? 15:14 16 MR. BROWN: I object to the question. 15:14 17 It's leading. 15:14 18 BY MS. HOFSTETTER: 15:14 19 Q. So Mr. Hoff, in regard to your testimony 15:14 20 today on behalf of the Indian Creek Ranch Owners' 15:14 21 Association, how far back would your knowledge on 15:14 22 behalf of the Association extend? 15:14 23 A. I first became on the board of directors 15:14 24 of Indian Creek Ranch Owners in 1999, and that 15:14 25 would be my first access to any information about	15:17 1 to the Association's wintertime use? 15:17 2 MR. BROWN: I'm going to object to the 15:17 3 question. It's not a question. It's vague and 15:17 4 ambiguous. Asking him to clarify is not a 15:17 5 meaningful question which allows me in any way to 15:17 6 challenge or see to it that accurate testimony is 15:17 7 provided. 15:17 8 BY MS. HOFSTETTER: 15:17 9 Q. Could you provide an explanation of the 15:17 10 Association's non-irrigation season water uses? 15:17 11 MR. BROWN: I'm going to object again, 15:17 12 and ask a question in aid of the objection. The 15:17 13 question is, we just took a break. During the 15:17 14 break, were you informed of where your testimony 15:17 15 was or was not accurate? 15:17 16 THE WITNESS: Is that a question to me? 15:17 17 MR. BROWN: Yes. 15:17 18 MS. HOFSTETTER: I'm going to object, 15:18 19 because -- because it asks for information about 15:18 20 potentially what would be attorney-client 15:18 21 communication. 15:18 22 MR. BROWN: An attorney is not 15:18 23 privileged to discuss or change the testimony at 15:18 24 a break. 15:18 25 MS. HOFSTETTER: Well, is that your
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15:14 1 the history or the workings of Indian Creek Ranch 15:15 2 Owners. 15:15 3 Q. So on behalf of the Ranch Owners' 15:15 4 Association, you can only speak as to matters 15:15 5 going back to what date, would you say, 15:15 6 approximately? 15:15 7 A. As far as dealing with those issues in a 15:15 8 knowledgeable -- in other words, having firsthand 15:15 9 knowledge, primary knowledge of those issues, it 15:15 10 would be after 1999. 15:15 11 Q. Okay. Earlier you testified that the -- 15:15 12 the first point of diversion for irrigation was 15:15 13 below the large pond. Is that correct? Is that 15:16 14 your testimony, as you recall it? 15:16 15 A. It's not specifically correct. There 15:16 16 are some homeowners who have pumps in the creek 15:16 17 north of the big pond, or between the big pond 15:16 18 and Hailey's intake. 15:16 19 Q. Okay. And prior to 1999, would you have 15:16 20 any knowledge about where the points of diversion 15:16 21 for the Association were located? 15:16 22 A. No. 15:16 23 Q. Mr. Brown asked you earlier about the 15:16 24 Association's wintertime use, and in that regard, 15:17 25 would you like to clarify any matters with regard	15:18 1 question? You know -- I don't think that -- I 15:18 2 think anything that goes on between an attorney 15:18 3 and a client is privileged. If you want to 15:18 4 suggest that I advised him to change his 15:18 5 testimony, I don't think that -- you know, you're 15:18 6 free to make that suggestion, but at this point 15:18 7 I'm going to ask him the question, ask him to 15:18 8 continue to further clarify the winter -- 15:18 9 non-irrigation season water uses of the 15:18 10 subdivision. 15:19 11 THE WITNESS: Well, the -- 15:19 12 MR. BROWN: Same objection. Go ahead 15:19 13 and answer. 15:19 14 THE WITNESS: I'm sorry? 15:19 15 MR. BROWN: I'm just making my objection 15:19 16 again. You go ahead and answer. 15:19 17 THE WITNESS: The aesthetics, recreation 15:19 18 and wildlife use of the entire -- the entire of 15:19 19 Indian Creek is important all year round. As is 15:19 20 indicated in our Agreement, there is a concern 15:19 21 about being sure that there is flow of water in 15:19 22 the creek all year round, and those are important 15:19 23 issues, as well as stock water usage and wildlife 15:19 24 usage of the water in Indian Creek. 15:19 25 BY MS. HOFSTETTER:

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15:19	1 Q. And by Agreement, Mr. Hoff, did you	15:22	1 that objection and coaching the witness. Can you
15:20	2 refer to the 1983 Agreement with the City? Is	15:22	2 tell me --
15:20	3 that what you're referring to? In your last	15:22	3 MS. HOFSTETTER: I object to the
15:20	4 statement you referred to an Agreement. Were you	15:22	4 question. He can proceed to answer the question,
15:20	5 referring to the 1983 Agreement?	15:22	5 but that calls for a legal conclusion.
15:20	6 A. Yes.	15:22	6 BY MR. BROWN:
15:20	7 MS. HOFSTETTER: I have no further	15:22	7 Q. Can you tell me whether or not Indian
15:20	8 questions.	15:22	8 Creek Homeowners' -- Ranch Owners' Association,
15:20	9 FURTHER EXAMINATION	15:22	9 claims an in-stream flow right to Indian Creek?
15:20	10 QUESTIONS BY MR. BROWN:	15:22	10 A. I don't think I said that. What I think
15:20	11 Q. Let's talk about the Agreement. Where	15:22	11 I said was that having water in the creek is an
15:20	12 in the Agreement -- is it paragraph 4 you're	15:22	12 important aspect of the aesthetics of Indian
15:20	13 talking about?	15:22	13 Creek to the individual owners that live there.
15:20	14 A. Where it indicates a bypass of water	15:22	14 It's a very important part of why they live in
15:20	15 into the -- into the creek, and certain flows.	15:22	15 Indian Creek.
15:20	16 On page 3, Item 4, ".75 CFS will be required in	15:22	16 Q. Is that important to all members?
15:20	17 the creek channel below the inflow from the	15:23	17 A. My impression that it is, yes. It was
15:20	18 wells, and one and a half CFS below the lake."	15:23	18 obviously important to the drafters of this
15:20	19 It is an important issue to Indian Creek owners.	15:23	19 Agreement, or they wouldn't have put it in there.
15:21	20 Q. Do Indian Creek owners have an in-stream	15:23	20 Q. So your understanding of the
15:21	21 flow right for Indian Creek?	15:23	21 Agreement -- let's back up. You were just asked
15:21	22 MS. HOFSTETTER: I'm going on object to	15:23	22 by Ms. Hofstetter if you had knowledge about the
15:21	23 that question, because it asks for a legal	15:23	23 matters before you became a board member in 1999?
15:21	24 determination that's beyond the --	15:23	24 A. Um-hum.
15:21	25 THE WITNESS: I don't know the answer.	15:23	25 Q. And I understand your answers to be --
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15:21	1 BY MR. BROWN:	15:23	1 your answer was that you could only speak to the
15:21	2 Q. You don't know if Indian Creek has an	15:23	2 matters --
15:21	3 in-stream flow right to Indian Creek?	15:23	3 A. That's true.
15:21	4 MS. HOFSTETTER: It asks for a legal	15:23	4 Q. -- from '99 forwards?
15:21	5 determination. I'm going to object again.	15:23	5 A. That's correct.
15:21	6 THE WITNESS: No.	15:23	6 Q. So how do you know what was intended by
15:21	7 BY MR. BROWN:	15:23	7 the 1983 Agreement?
15:21	8 Q. No, you don't know if it has one or not?	15:23	8 A. Well, it's my interpretation of what's
15:21	9 A. I don't know.	15:23	9 written in the Agreement, and nothing else.
15:21	10 Q. Okay. Well, I understood your testimony	15:23	10 Q. Okay. But that's an interpretation
15:21	11 a moment ago to be that the wildlife, aesthetic	15:23	11 based --
15:21	12 and recreation uses of the entire Indian Creek	15:23	12 A. That's an opinion.
15:21	13 were important rights to the homeowners. Did I	15:24	13 Q. -- based on information acquired at the
15:21	14 misunderstand?	15:24	14 earliest in 1999?
15:21	15 MS. HOFSTETTER: I'm going to object.	15:24	15 A. Yes.
15:21	16 You mischaracterize. He didn't say that they	15:24	16 Q. You also testified that the points of
15:21	17 were important rights, he said they were	15:24	17 diversion included homeowners pumping out of the
15:21	18 important to the subdivision. When you get into	15:24	18 creek above the pond?
15:21	19 asking him what water rights the subdivision has,	15:24	19 A. Yeah. That's correct.
15:21	20 you get into legal conclusions.	15:24	20 Q. But there were no diversions utilized by
15:21	21 MR. BROWN: If I ask him what property	15:24	21 Indian Creek Ranch Owners' Association above
15:22	22 he owns, you could call that a legal conclusion.	15:24	22 that, other than what individual users may
15:22	23 The problem is, it's not a proper objection to	15:24	23 have --
15:22	24 object because something calls for a legal	15:24	24 A. That's correct.
15:22	25 conclusion, so I ask again that you stop making	15:24	25 Q. So since the time of the Agreement,

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15:24 1 Indian Creek Ranch Owners' Association -- 15:24 2 MS. HOFSTETTER: I'm going to object. 15:24 3 He's testified that his knowledge of the 15:25 4 Association dates from 1999. The Agreement was 15:25 5 1983. So you keep saying from the time of the 15:25 6 Agreement. He can't testify from the time of the 15:25 7 Agreement what's been going on. 15:25 8 MR. BROWN: All right. 15:25 9 BY MR. BROWN: 15:25 10 Q. Are you aware that the notice of 15:25 11 deposition required the Homeowners' Association, 15:25 12 Ranch Owners' Association, to designate people to 15:25 13 be witnesses going clear back at least to 1980, 15:25 14 as set forth in the information? 15:25 15 MS. HOFSTETTER: Pat, I'm going to 15:25 16 object to that question, because you and I have 15:25 17 had discussions on that subject before this 15:25 18 deposition, and I explained to you that Ben Hoff 15:25 19 is the current board member officer of the 15:25 20 Association, with the most knowledge, but that 15:25 21 none of the board members would have knowledge 15:25 22 dating back 20 years. And we agreed that all the 15:26 23 Association needed to do for purposes of this 15:26 24 deposition was designate the board member or 15:26 25 officer of the Association with the most	15:27 1 the year 2000. 15:27 2 BY MR. BROWN: 15:27 3 Q. And there's no one else here today to 15:27 4 testify as to the Association's knowledge before 15:27 5 '99? 15:27 6 A. That's true. 15:27 7 MR. BROWN: I don't have any further 15:27 8 questions at this point in time. We need to -- I 15:27 9 want to clarify, though, I'm not terminating the 15:27 10 deposition. We're just ending it for the day. 15:27 11 So with that given, we're concluding the 15:27 12 deposition for today and we're turning off the 15:27 13 camera. 15:28 14 (Deposition Adjourned at 3:28 p.m.) 15:32 15 (Signature Was Requested.) 15:32 16 * * * * * 15:32 17 15:32 18 15:32 19 15:32 20 15:32 21 15:32 22 15:32 23 15:32 24 15:32 25
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15:26 1 information, and that's what we've done. I don't 15:26 2 think it's fair to discuss that issue with 15:26 3 Mr. Hoff. He was not involved in those 15:26 4 discussions between you and me. 15:26 5 MR. BROWN: Well, first of all, as far 15:26 6 as our discussion, the only agreement we ever 15:26 7 made that was you would, under the Rule, 15:26 8 designate whoever it was you elected to 15:26 9 designate. 15:26 10 MS. HOFSTETTER: Well, we have a 15:26 11 different -- 15:26 12 BY MR. BROWN: 15:26 13 Q. So as you're sitting here today, you're 15:26 14 saying that you have no knowledge prior to '99. 15:26 15 Correct? 15:26 16 A. Knowledge of what? 15:26 17 Q. Of each of these topics we went through. 15:26 18 We just went through a whole deposition, and you 15:26 19 were talking about 1983 Agreements, uses that 15:26 20 predated that. And now I'm being told that you 15:27 21 don't have knowledge of anything pre-1999. 15:27 22 MS. HOFSTETTER: On behalf -- 15:27 23 THE WITNESS: If we're talking about 15:27 24 water and the usage of water in Indian Creek, my 15:27 25 knowledge of that started in 1999, or maybe even	

ORIGINAL

CHANGE SHEET FOR EINAR BENJAMIN HOFF

PAGE 9 LINE 14 REASON FOR CHANGE MISPELLING

READS GENE

SHOULD READ JEAN

PAGE 9 LINE 24 REASON FOR CHANGE MISPELLING

READS RESA

SHOULD READ RISA

PAGE 99 LINE 19 REASON FOR CHANGE SPELLING/MEANING

READS DIP

SHOULD READ DEPTH

PAGE 106 LINE 10 REASON FOR CHANGE MISPELLING

READS RESA

SHOULD READ RISA

PAGE 108 LINE 10 REASON FOR CHANGE MISPELLING

READS RESA

SHOULD READ RISA

PAGE 126 LINE 5 REASON FOR CHANGE MISPELLING

READS SPECCED

SHOULD READ SPEC'D

PAGE 27 LINE 29 REASON FOR CHANGE MISPELLING

READS BRANCH

SHOULD READ RANCH

PAGE 32 LINE 19 REASON FOR CHANGE WRONG WORD

READS CAN

SHOULD READ DID

"OVER"

DEPONENT SIGNATURE:

Einar S. Hoff 4/20/10
22808B4 (Due May 9, 2010)

PAGE 36 LINE 19 REASON FOR CHANGE WRONG W/R NUMBER

READS 1250

SHOULD READ 1216

PAGE 49 LINE 24 REASON FOR CHANGE WRONG W/R NUMBER

READS 1250

SHOULD READ 1216

PAGE 92 LINE 18 REASON FOR CHANGE INCORRECT NAME

READS HAILEY

SHOULD READ ICROA (INDIAN CREEK RANCH OWNERS ASSOC.)

PAGE 119 LINE 12 REASON FOR CHANGE WRONG W/R NUMBER

READS 1215

SHOULD READ 1216

PAGE 119 LINE 13 REASON FOR CHANGE WRONG W/R NUMBER

READS 1296 A

SHOULD READ 296 A

PAGE 121 LINE 17 REASON FOR CHANGE WRONG QUANTITY

READS 3.83

SHOULD READ 3.38

SSS
4/20/10

CERTIFICATE OF EINAR BENJAMIN HOFF

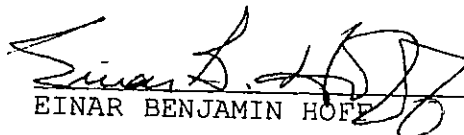
ORIGINAL

I, EINAR BENJAMIN HOFF, being first duly sworn, depose and say:

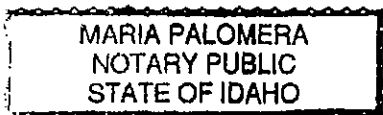
That I am the witness named in the foregoing deposition; that I have read said deposition and know the contents thereof; that the questions contained therein were propounded to me; and that the answers therein contained are true and correct, except for any changes that I may have listed on the Change Sheet attached hereto.

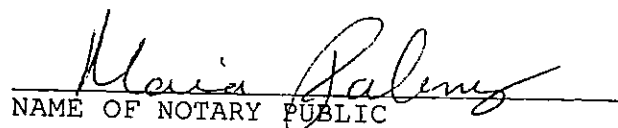
DATED this 20 day of April, 2010.

CHANGES ON ERRATA SHEET YES ☒ NO ☐


EINAR BENJAMIN HOFF

SUBSCRIBED AND SWORN to before me this 20th day of April, 2010.




NAME OF NOTARY PUBLIC

NOTARY PUBLIC FOR Wells Fargo Bank
RESIDING AT Hailey
MY COMMISSION EXPIRES 10-15-2013

22808B4 (Due May 9, 2010)

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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) A. Subcase 37-296A
) (Insert water right number)
Case No. 39576)
)
)
)
)
)
)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

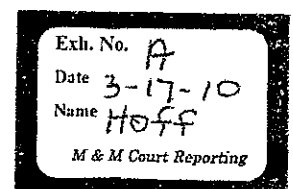
B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Indian Creek Ranch Owners Association, Inc.
Address: P.O. Box 3411
Hailey, Idaho 83333
Daytime Phone: (208) 788-9887

Name & Address of Attorney, if any:

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: City of Hailey
Address: 115 S. Main Street #11
Hailey, Idaho 83333



D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

General Provisions Basin 37, Part 3, General Provision 1, Attachment 1

1. **Name and Address**
Should be: _____
2. ☒ **Source**
Should be: Indian Creek Spring, which is a separate stream source.
3. ☒ **Quantity**
Should be: Combined quantities with 37-7854 should be described.
4. **Priority Date**
Should be: _____
5. **Point(s) of Diversion**
Should be: _____
6. **Instream Flow Description**
Should be: _____
7. **Purpose(s) of Use**
Should be: _____
8. ☒ **Period of Year**
Should be: Combined quantity limitations with 37-7854 during irrigation and non-irrigation seasons should be described.
9. **Place of Use**
Should be: _____
10. ☒ **Other Provisions**
Should be: Right should be listed on Attachment 1 which is referenced in General Provision 1.

11. I object because:

This water right should not exist.

This water right was not recommended, but should be recommended with the elements described above.

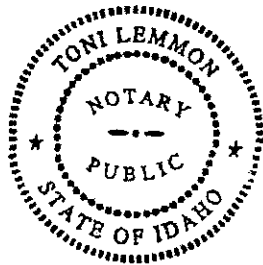
E. **REASONS SUPPORTING OBJECTION(S):** Pursuant to the September 23, 1983 Agreement with the Indian Creek Ranch Owners Association, Inc., 37-7854 together with this right cannot exceed 2.62 cfs during the irrigation season and 3.38 cfs during the non-irrigation season. Indian Creek Spring is tributary to Indian Creek which is a separate streams source based on the Frost Decree.

F. VERIFICATION (must be completed)

State of Idaho)
)ss.
County of Blaine)

Dennis Kavanagh, President, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Dennis Kavanagh
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

11-13-2007
Toni Lemmon
Notary Public for Idaho
Residing at: Reichum
My Commission Expires: 7/31/09

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted.**
You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on November 13, 2007, I filed the original with the SRBA Court and mailed copies of this Objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court (*via FedEx Overnight Mail*)
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

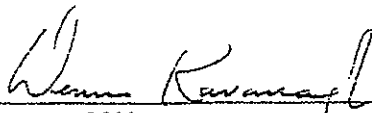
City of Hailey
115 S. Main Street #H
Hailey, Idaho 83333

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Signature of Objector or attorney
mailing on Objector's behalf

ORIGINAL

AGREEMENT

THIS AGREEMENT, made and entered into this 13 day of September, 1983, by and between the City of Hailey, an instrumentality of the State of Idaho, party of the first part, hereinafter called "City", and the Indian Creek Ranch Owners Association, incorporated under the laws of the State of Idaho, party of the second part, hereinafter called "Owners", is as follows:

W I T N E S S E T H:

WHEREAS, City was issued State of Idaho Water Permit No. 37-7854 with a priority date of July 23, 1980, for the purpose of developing additional water from the Indian Creek Springs to augment the flows so as to be able to generate power with a total of 5 c/f/s by partially using their existing system; and,

WHEREAS, Owners represent an association of 182 lot owners and 20 townhouse sites who have succeeded to certain decreed water rights; and,

WHEREAS, Owners have filed Application for Permit No. 37-7909 requesting the use of 6 c/f/s of water from Indian Creek at places substantially below the springs which the City seeks to develop and the owners have filed Application No. 37-8035 for 3.5 c/f/s of ground-water for domestic purposes; and,

WHEREAS, the City protested Application No. 37-7909, and the issuance of said permit depends upon the agreement of the parties hereto, and Application No. 37-8035 has been published but is not issued; and,

WHEREAS, this issue and other issues need to be resolved concerning the waters of Indian Creek Springs and Indian Creek and the parties wish to delineate their agreement in writing; and,

WHEREAS, the City of Hailey intends to construct a water reservoir and piping facility in the Indian Creek area. The City has applied for a Conditional Use Permit with Blaine County to build the project. Some of the individuals of the Ranch Owners Association have protested the project proposed by the City. The owners are desirous of deeding an alternate site to the City pursuant to the terms of this Agreement. An appeal is presently pending before the Blaine County Board of Commissioners regarding the issue of whether Hailey may build a water reservoir and piping facility on BLM property adjacent to Ranch Owners property.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, and other good and valuable consideration, the parties hereto agree as follows:

1. Purpose. The purpose of this agreement is to delineate and to prioritize as between the parties hereto, the rights of the parties to previously unappropriated waters of Indian Creek during the non-irrigation season as well as to the methods of protection of certain base flows in the stream. A further purpose is to provide a site for the City's water reservoir and piping facility and related purposes.

2. Decreed Water Rights. The parties acknowledge that the City owns and has priority to 131 miner's inches of the waters of Indian Creek Spring which may be diverted for "municipal" purposes on a year-round basis. The Owners are entitled to and were decreed all of the water over and above the 131 inches for irrigation and other beneficial uses during the irrigation season and for stock water and other related non-irrigation season uses. The parties further recognize that all of the waters of Indian Creek Spring and Indian Creek are presently utilized for beneficial purposes during the irrigation season.

2a. The parties acknowledge that in a year where there is not more than 131 miner's inches available in the waters of Indian Creek Spring at the City's pipeline diversion, the City would be entitled to all of

its 131 miner's inches, before the Owners are entitled to any water.

3. Protection of Existing Water Source. The parties acknowledge that their primary interest is the protection of the present respective water supply from the Indian Creek Springs. While it is acknowledged that water measurements on Indian Creek are infrequent and inconclusive, it appears that the approximate 6 c/f/s of flow is totally utilized either by diversion to Hailey through their pipeline or by the Owners during the irrigation season. Consequently, any increased diversions by the City to 5 c/f/s pursuant to Permit No. 37-7854, may require further development of the springs. The City acknowledges and agrees that if said development is pursued and results in a decline in present spring flows, or would force the pumping of water so as to make the present water amounts available, that the City shall be responsible for the installation of pumping equipment and all of the annual operation and maintenance costs so to insure the flow to the Owners.

4. Minimum Flow. Owners agree that if the City is to proceed pursuant to Permit No. 37-7854, the City agrees that the stream will be protected by the establishment of a minimum flow. Two continuous measurements will be made to insure said flow. .75 c/f/s will be required in the creek channel below the inflow from the artesian well in the NW 1/4 SW 1/4, Section 23; and 1.5 c/f/s will be required below the lake in the NW 1/4 NE 1/4 of Section 27. City shall install and maintain measuring devices at these locations. Any water which arises below City's pipeline shall also be deemed subject to Owners' rights under 37-7909.

5. Power Development. It is understood and agreed that the City's power development may not be feasible. In the event that the City elects not to pursue power development, Owners may pursue power development. If no power proposal is pursued to completion, it is acknowledged as between the parties hereto that the other uses identified in Owners'

Application 37-7909 shall be deemed in full force and effect for the purpose of water right perfection.

6. Fire Protection - Use of Penstock. Under the plan of the City, if a water project is developed as the City now proposes, the addition of valves at given points along the penstock could help Owners solve their fire protection problems. If the City's water project is constructed, provision will be made for said valves at locations where requested by Owners, all at the expense of Owners. An operating criteria shall be developed by the City and Owners concerning the operation of said valves, it being understood that said use will only be in times of emergency. Owners shall be liable for any damages to the City which may result from the unauthorized or non-emergency use of said valves and appurtenant fire protection equipment installed by the Owners.

7. Easements. Some question exists as to the City's easement rights. This agreement (entered into by Owners as an Association) should not be construed as a grant of easement across the particular parcels (if one needs to be obtained) for the enlargement of the existing pipeline or for any other purposes. However, the parties acknowledge and understand that the entire agreement and its enforceability is contingent upon the grant of certain permanent easements for pipelines,, power lines and mains, as well as access to the project itself, and certain temporary construction easements or licenses for the purposes of excavation, construction, installation and refilling ditches and trenches for the location of such pipelines, power lines and mains, more fully described as follows:

a. A permanent easement from the project site to the dead end of Homestead Drive between lots 41 and 42 for access to the project, pipelines, power lines and mains, 40 feet in width.

b. A temporary construction easement or license for the construction of the same, possibly 40 feet in width on either side of the permanent easement.

c. A permanent easement for the construction of the same within the Homestead Drive right-of-way along side lots 42 extending SSW and continuing NW on the road alongside the southern border of lot 40 or the northern border of lot 37, terminating at the intersection with the City of Bailey's existing pipeline easement.

d. A temporary construction easement or license for the same and alongside the permanent easements, on lots 42 and 40 or 37, approximately 40 feet in width.

e. It is agreed that any parcel of property subject to a temporary construction easement will be returned to the state existing prior to construction.

f. Owners acknowledge and agree to grant all permanent easements with regard to common area of Owners and to use best efforts to secure the remaining easements regarding individual lot ownership. Owners agree to convey by deed the "alternate site" described on Exhibit "A", attached hereto. The parties agree that the deed will contain a restrictive covenant and reversion providing that the "alternate site" be used by the City only for water reservoir and piping facilities and purposes directly related thereto, including hydroelectric power generation.

WJR
JK
JA.
g. It is understood that the association does not have the authority to grant easements on private lots.

h. All easements are described on Exhibit "B", attached hereto and incorporated herein.

8. Domestic Water. Owners have filed Application No. 37-8035 to use subterranean water.

The Owners acknowledge and agree that if current diversions of subterranean waters or any increased diversions by the Owners pursuant to Application No. 37-8035 result in a decline in the present flows, or would force the pumping of water so as to make the present water available, that the Owners shall

be responsible for the installation of pumping equipment and all the annual operation and maintenance costs so as to insure the flow to which the City is entitled.

9. No Contest. The parties agree that they will not contest the beneficial uses of water of the other, and acknowledge that said present beneficial uses are perfected.

10. Withdrawal of Protest. The City agrees to withdraw its protest to the Owners' application 37-7909. The provisions of this agreement shall be deemed as conditions to the City's Permit No. 37-7854, and to the issuance of Owner's Application No. 37-7909, and incorporated therein and made a part thereof as binding conditions.

11. Authority of Owners. Owners are an Association under state law. The Board of Directors have authority to bind their members to this Agreement. The parties to this Agreement understand that the Association has been polled prior to the execution of this Agreement.

12. Work in Process on Permits. The parties hereto waive the requirements of Idaho Code §42-311 concerning Permit No. 37-7854 and 37-7909 as between each other. Both agree not to contest applications of the other to extensions of time under their respective permits.

13. Disclaimer Responsibility. Both parties hereto waive causes of action against the other except for injuries caused as a result of the negligence or intentional acts of the other's agents or employees, or as otherwise stated herein.

14. Variations in Water Flows. It is anticipated that from time to time scheduled maintenance of a power facility will require dumping of water into the stream channel so as to bypass the power facilities for the purposes of conducting such maintenance. It is understood and agreed that the City shall give forty-eight

(48) hours notice of scheduled maintenance. In the event of emergency turn-offs or by-pass, the City shall give as much notice as possible to the Owners.

15. Waiver as to Claims of Right for Diversions Below Owners. It is understood that there are other lands below those of Owners on Indian Creek which may have some right to the creek water during the irrigation season. This Agreement is entered into without knowledge, nor representation as to those additional rights, if any.

16. Measuring Devices. The parties herein agree to furnish and properly maintain measuring devices at their own points of diversion (exclusive of the devices required by Paragraph 4) according to standard specification for measuring devices recognized by the Idaho Department of Water Resources.

17. Blaine County Approval. The Ranch Owners Association agrees to cooperate with the City of Hailey in securing Blaine County approval of a Conditional Use Permit on the alternate site. This Agreement is expressly made contingent upon Blaine County approval of the Hailey project on the alternate site.

18. Owners' Design Review Committee Approval. It is agreed that prior to project construction, the City shall secure the Ranch Owners' Design Review Committee approval of the following with respect to the project:

a. Landscaping, building design and materials, fencing, berming, noise abatement (0 decibel increase at 300 feet). Other than the specified noise abatement, said approval shall not be unreasonably withheld. The parties agree that this provision has been complied with as of the date of the execution of this agreement.

19. Attorney's Fees. In the event that either party hereto must initiate legal action to remedy a default or to terminate through foreclosure action the other's rights, the prevailing party shall be awarded reasonable attorney's fees.

20. The parties hereto bind themselves, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused their presence to be executed the day and year first above written.

CITY OF HAILEY

By: Worrell J. Rainey
WORDELL J. RAINES,
Mayor

ATTEST:

Constance M. Ellway
Constance M. Ellway
Clerk

INDIAN CREEK RANCH OWNERS
ASSOCIATION

By: Nicholas L. Allen
President

ATTEST:

James R. Holcomb
Secretary

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: March 11, 2010

TO: Pat Brown

FAX: (208) 733-9343

FROM: Dana Hofstetter

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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March 17 Deposition

Subject: March 17 Deposition

From: Hofstetter Law Office <Dana@IdahoWaterLaw.com>

Date: Fri, 12 Mar 2010 16:59:03 -0700

To: Pat Brown <patbrown@cableone.net>

BCC: Ben Hoff <benhoff@mindspring.com>, 'Indian Creek Owners Assn' <icroainfo@indiancreek.info>

Pat:

As a follow up to our conversation earlier today, an ICROA representative is available to be deposed on March 17. However, ICROA's Manager and document custodian is in the East until March 26 and so we could not bring all responsive non-privileged documents to the March 17 deposition. Thus, subject to our discussions earlier today if you want to proceed without the duces tecum (production of documents) on March 17 we can do so. However, otherwise, we would need to reschedule due to lack of availability of the ICROA document custodian on that date.

Please let me know by Monday, March 15 at noon how you want to proceed.
Thank you,
Dana

P.S. I will also fax you this email to ensure your prompt receipt.

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: March 12, 2010

TO: Pat Brown

FAX: (208) 733-9343

FROM: Dana Hofstetter

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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ORIGINAL BY MAIL: YES NO X.

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

March 15, 2010

Via Facsimile (208) 733-9343

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

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

Dear Pat:

I notified you on Friday, March 12, 2010, by both email and fax of the unavailability on March 17, 2010 of my client's record custodian and asked you to notify me by noon today whether you wanted to proceed with the deposition without document production or whether you wanted to reschedule for another time. Since I did not hear from you by noon today, as requested, I will assume that you intend to reschedule the deposition for another time. If I am incorrect in this regard, I must know by 5 p.m. today in order to make arrangements to travel to Hailey tomorrow. Therefore, if you do intend to proceed with the deposition on March 17, 2010 under these circumstances, contact me no later than 5 p.m. today. Thank you for your attention to this matter.

Sincerely,

HOFSTETTER LAW OFFICE, L.L.C.



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: March 15, 2010

TO: Pat Brown

FAX: (208) 733-9343

FROM: Dana Hofstetter

RE: SRBA Subcase Nos. 37-296A, 37-717, 37-1216 and 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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ORIGINAL BY MAIL: YES NO X

Keith E. Hutchinson, Esq.
Patrick D. Brown, Esq.

HUTCHINSON
&
BROWN, LLP

ATTORNEYS AT LAW

PHONE: (208) 733-9300
WATS: (800) 753-2529
FAX: (208) 733-9343

March 15, 2010

-- via facsimile (208) 424-8774 / 1 page --

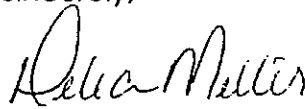
Dana Hofstetter
HOFSTETTER LAW OFFICE
608 W. Franklin St.
Boise ID 83702

Re: **Hailey**, City of - Water Rights

Dear Ms. Hofstetter:

Mr. Brown has asked me to notify you that he is proceeding with the deposition as scheduled on Wednesday, March 17, 2010.

Sincerely,



Delea Miller, Legal Assistant

/cm
cc: Tom Hellen

TRANSMISSION VERIFICATION REPORT

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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

March 15, 2010

Via Facsimile (208) 733-9343

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

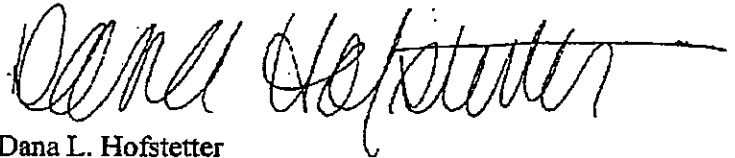
Re: Subcase Nos. 37-296A, 37-717, 37-1216, and 37-7854

Dear Pat:

I just received your assistant's letter informing me of your decision to proceed with the deposition on March 17, 2010. As we discussed last week on the telephone, there will be one representative of Indian Creek Ranch Owners Association, Inc. (ICROA) appearing to testify at the deposition, although the Amended Deposition Notice could be interpreted to request the appearance of innumerable witnesses. You indicated in our conversations that only 1 or 2 witnesses would need to be designated to testify for ICROA at the 30(b)(6) deposition and we are proceeding on this basis.

Sincerely,

HOFSTETTER LAW OFFICE, L.L.C.



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: March 15, 2010

TO: Pat Brown

FAX: (208) 733-9343

FROM: Dana Hofstetter

RE: SRBA Subcase Nos. 37-296A, 37-717, 37-1216 and 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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ORIGINAL BY MAIL: YES NO X

Connie Bell

From: Patrick Brown [patbrown@cableone.net]
Sent: Tuesday, March 16, 2010 2:24 PM
To: Connie Bell
Subject: FW: 30(b)(6) deposition

-----Original Message-----

From: Hofstetter Law Office [mailto:Dana@IdahoWaterLaw.com]
Sent: Tuesday, March 16, 2010 12:35 PM
To: Patrick Brown
Subject: Re: 30(b)(6) deposition

Pat:

The record is clear. The terms under which we are proceeding are documented in my correspondence of Friday, March 12 and Monday, March 15. I gave you the option to reschedule due to the unavailability of the ICROA document custodian and you elected to proceed without rescheduling per your assistant's letter of yesterday. I need to leave for Hailey literally within minutes and tomorrow will be too late to change your decision in regard to possible rescheduling. During our conference call last Friday, Special Master Bilyeu didn't rule on the Motion for Protective Order and I don't recall her requiring that the deposition occur on March 17. As a matter of fact, she indicated that the Motion could not be heard until after March 17. The current ICROA board member with the most knowledge about the topics you identified will appear for the deposition per our discussions.

Dana

Patrick Brown wrote:

> Dear Dana:

>

> In response to your letter last night, I want to be clear
> about what I have and have not agreed to.

>

> You informed me last Friday you did not know who would be
> available because you had not anticipated going forward with the
> deposition. In discussing what Rule 30(b)(6) does and does not
> require, I pointed out it doesn't require the production of every
> witness who might know something about a particular topic, only the
> witnesses the organization elects to produce to testify about what the
> organization knows about the topic. I also pointed out that the Rule
> provides the organization and its counsel will make the designation of
> who will be the witnesses about that topic. Consistent with the Rule,
> I continue to maintain the position that who, and how many people, you
> elect to have testify is up to you and your client. Accordingly, it is
> not my role to agree or not agree about how many people should testify
> given a particular subject. I will leave that to you and your clients.

>

> You also indicated that the organization's custodian of
> records is back East and not available for the deposition. Therefore
> you stated you will not be producing documents in response to the
> duces tecum portion of the deposition notice. Again, given the fact
> that you have had notice of the documents I am seeking for about 2
> months, I am not willing to reschedule with respect to producing
> documents. We can take up the issue of what documents have and have
> not been produced when I see what is produced during the deposition.

>

> Finally, while I remain willing to talk about scheduling, I
> think I have clearly communicated that I need and intend to proceed

> with the deposition pursuant to the Rules of Civil Procedure. Given
> the scheduling of the case Special Master Bilyeu has confirmed that is
> what should occur on Wednesday. Any issues concerning the production
> of witnesses or documents can be taken upon the record at that time.

>

> I look forward to addressing any outstanding issues at that time.

>

> Sincerely,

>

> Pat

>

> Hutchinson & Brown LLP

> P.O. Box 207

> 104 Lincoln St

> Twin Falls, ID 83303-0207

> 208-733-9300

> 800-753-2529

> Fax: 208-733-9343

>

>

>

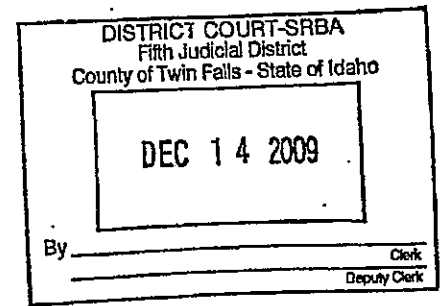
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>

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DEC 15 2009

DEPARTMENT OF
WATER RESOURCES



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 No. 39576

) ORDER GRANTING MOTION TO
) FILE AMENDED CLAIM, SETTING
) SUBCASE DEADLINES AND STATUS
) CONFERENCE

) SUBCASE NOS.: 37-296B, 37-19740, and
) 37-21412
)

I. PROCEDURAL BACKGROUND

A Status Conference was held on December 2, 2009. At the hearing, claimants Indian Creek Ranch Owners and Victor & Dana Hofstetter made an oral *Motion to Amend Claims*. There was no opposition to the *Motion*.

II. STANDARD OF REVIEW

The SRBA Court administrative rules establish that motions to amend claims "shall be freely given when justice so requires." *SRBA Administrative Order 1 (A01)* § 4d (2) (k)

III. FINDINGS

Counsel Dana Hofstetter explained that the claimants seek to amend their claims to take into account additional information and recent case law. There was no opposition to the *Motion*. Therefore, the oral *Motion to File Amended Notice of Claims* is **granted** subject to the filing of written amended claims.

IT IS ORDERED that the following deadlines shall govern further proceedings:

February 19, 2010	5:00 pm	Deadline to file Amended Claims
March 26, 2010	5:00 pm	Deadline to File Amended Director's Report

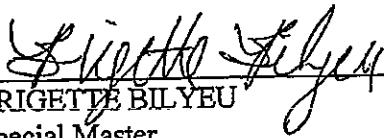
April 23, 2010

5:00 pm Deadline to File Objection

May 14, 2010

5:00 pm Deadline to File Response

DATED: December 14, 2009.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO FILE AMENDED CLAIM, SETTING SUBCASE DEADLINES AND STATUS CONFERENCE was mailed on December 14, 2009, with sufficient first-class postage to the following:

BILL MOLYNEUX
GERALD BASHAW
GRACE EAKIN
JOHN F STEVENSON
PEPIN CORSO-HARRIS
PETE VAN DER MEULEN
ROCKY SHERBINE
TOM O GARA

Represented by:
ALBERT P BARKER
1010 W JEFFERSON, STE 102
PO BOX 2139
BOISE, ID 83701-2139
Phone: 208-336-0700

SINCLAIR OIL CORPORATION
Represented by:
ANDREW J WALDERA
101 S CAPITOL BLVD 10TH FLOOR
PO BOX 829
BOISE, ID 83701-0829
Phone: 208-345-2000

BILL MOLYNEUX
GERALD BASHAW
GRACE EAKIN
JOHN F STEVENSON
PETE VAN DER MEULEN
ROCKY SHERBINE
TOM O GARA
Represented by:
BARKER ROSHOLT & SIMPSON LLP
1010 W JEFFERSON, STE 102
PO BOX 2139
BOISE, ID 83701-2139
Phone: 208-336-0700

BIG WOOD CANAL CO
BIG WOOD CANAL COMPANY
Represented by:
CRAIG D. HOBDEY
125 5TH AVE
PO BOX 176
GOODING, ID 83330
Phone: 208-934-4429

INDIAN CREEK RANCH OWNERS
VICTOR U & DANA L HOFSTETTER
Represented by:
DANA L. HOFSTETTER
608 WEST FRANKLIN STREET
BOISE, ID 83702
Phone: 208-424-7800

NEWFOUNDLAND PARTNERS
SINCLAIR OIL CORPORATION
Represented by:
SCOTT L CAMPBELL
101 S CAPITOL BLVD 10TH FLOOR
PO BOX 829
BOISE, ID 83701-0829
Phone: 208-345-2000

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098


Deputy Clerk

Keith E. Hutchinson, Esq.
Patrick D. Brown, Esq.

HUTCHINSON
— & —
BROWN, LLP
ATTORNEYS AT LAW

PHONE: (208) 733-9300
WATS: (800) 753-2529
FAX: (208) 733-9343

March 2, 2010

-- via fax 424-8774 / 1 page --

Dana Hofstetter
HOFSTETTER LAW OFFICE
608 W. Franklin St.
Boise ID 83702

Re: **Hailey**, City of - Water Rights

Dear Ms. Hofstetter:

Pat Brown has been scheduled for surgery on 3-18-10. Therefore, it is necessary that we reschedule the depositions of you and Victor Hofstetter.

I would appreciate it if you could let me know whether you and Mr. Hofstetter are available for deposition on any of the following dates:

April: 26, 27, 28, 29 or 30

Thank you.

Sincerely,



Connie Bell, Legal Assistant

/cb
cc: ✓ Tom Hellen

104 LINCOLN STREET • P.O. BOX 207 • TWIN FALLS, IDAHO 83303-0207



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