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DEPARTMENT OF
WATER RESOURCES

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Indian Creek Ranch Owners Association, Inc.

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

In Re SRBA	)	Subcase Nos. 37-296A, 37-717, 37-1216
	)	and 37-7854
	)	
Case 39576	)	INDIAN CREEK RANCH OWNERS
	)	ASSOCIATION, INC.'S RESPONSE TO
	)	CLAIMANTS' MOTION TO COMPEL
	)	DEPOSITIONS OF THE
	)	HOFSTETTERS; OR IN
	)	THE ALTERNATIVE, MOTION FOR
	)	PROTECTIVE ORDER
_____	)	

The Indian Creek Ranch Owners Association, Inc. ("ICROA"), by and through its above-captioned counsel of record and pursuant to Rule 26(c) of the Idaho Rules of Civil Procedure and matters discussed at the June 21, 2010 hearing in these Subcases, hereby submits this Response to Claimant's Motion to Compel the Depositions of the Hofstetters; or in the Alternative, Motion for Protective Order. This Motion for Protective Order is supported by the contemporaneously filed Affidavit of Dana L.

Hofstetter and the record. Oral argument is requested. This Motion is made upon the following grounds:

1. On or about February 12, 2010, Claimant City of Hailey filed and served a Notice of Depositions: Hofstetters, scheduling the depositions of Victor and Dana Hofstetter (hereinafter the "Hofstetters") for March 18, 2010 in Hailey in the above-captioned SRBA Subcases. At the time, the Hofstetters were Respondents in these four Subcases.

2. On or about March 2, 2010 counsel for Claimant City of Hailey, vacated the Hofstetters' depositions scheduled for March 18, 2010 due to his planned surgery. *Affidavit of Dana Hofstetter Regarding Hofstetter Depositions, Exhibit A.* At this time, Claimant's counsel also requested the Hofstetters' available dates the week of April 26, 2010 to reschedule the depositions. *Id.* Mr. Hofstetter is the AP Calculus teacher at Borah High School in Boise and the week of April 26, 2010, being one week before the scheduled May 5, 2010 AP Calculus exams, was a particularly inopportune time for Mr. Hofstetter to miss at least one day of work to attend the deposition in Hailey. *Id.* Further, the Hofstetters had filed the Responses in the instant Subcases prior to Ms. Dana Hofstetter being asked to represent ICROA as legal counsel in these Subcases. *Id.* After Ms. Hofstetter was retained as legal counsel for ICROA, Ms. Hofstetter intended to withdraw Victor and Dana Hofstetter's Responses in the instant Subcases. *Id.*

3. On or prior to March 17, 2010, the date of the City Of Hailey's 30(b)(6) deposition of ICROA, Ms. Hofstetter informed Claimant's counsel, Pat Brown, of her intention of withdrawing Victor and Dana Hofstetter's Responses in these four Subcases

and indicated that this should preclude the need for scheduling the Hofstetters' Depositions. *Id.* Mr. Brown did not respond, suggesting that he concurred with this approach. *Id.*

4. Neither Mr. Brown nor his office attempted to reschedule the Hofstetters' depositions until filing the June 16, 2010, Motion to Compel. *Id.*

5. At the June 21, 2010. hearing, Ms. Hofstetter moved on the record to withdraw the Hofstetters' Responses in these Subcases. The Special Master approved the withdrawal and ordered the Hofstetters' Responses "dismissed with prejudice" on the record. Accordingly, the Hofstetters are no longer parties to the above-captioned Subcases. Thus, any future attempt to depose them as non-parties in these Subcases should require the service of Subpoenae pursuant to I.R.C.P., Rule 45(a), which have not been heretofore served. *Id.*

6. Putting aside Ms. Hofstetter's legal representation of ICROA in the above-captioned Subcases, the Hofstetters would have virtually no knowledge concerning the matters at issue in these proceedings that is not generally known by the public at large. *Id.* Accordingly, at this point, to continue to seek to depose the Hofstetters without also seeking to depose other similarly situated members of the public would constitute thinly veiled litigation harassment of the Hofstetters and ICROA because of Ms. Hofstetter's representation of ICROA, rather than a valid attempt for the Claimant to get information to support its own SRBA Claims in this proceeding. Further, since the City of Hailey is a governmental instrumentality, its apparently continued attempt to single out the Hofstetters for deposition even after the withdrawal of their Responses, would constitute

violations of the due process and equal protection clauses of the United States and Idaho Constitutions, as the City has identified no special reason to single out the Hofstetters for deposition.

7. Even if the depositions of the Hofstetters were to proceed, it is noted that the attorney- client privilege, the attorney work product doctrine and the spousal privilege would limit any useful information that would be disclosed in depositions of the Hofstetters. Because these important privileges and principles are at stake, if the Court is inclined nevertheless to grant the City's Motion to Compel in this regard, at a minimum, any deposition questions to be asked of the Hofstetters should be submitted in writing for an opportunity to object, as appropriate, and Court pre-screening.

8. At the present time, the City of Hailey has requested consolidation of the above-captioned Subcases with ICROA Subcase Nos. 37-296B, and 37-19740 and 37-21412. Such Motion is pending and, in any event, the City has filed no Motion to File Late Objections or to otherwise become parties in those other ICROA Subcases at the present time. Accordingly, ICROA does not address here, but reserves the right to address in the future, if necessary, any attempt by the City to depose the Hofstetters in connection with ICROA's Subcases.

DATED this 24th day of June, 2010.


Dana L. Hofstetter
Attorney for ICROA

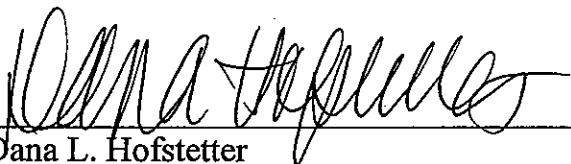
CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the foregoing document (including any attachments) this 24th day of June, 2010, by the pre-paid method(s) indicated below to:

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