

JUL 02 2010

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

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

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)
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)

AFFIDAVIT OF DANA L. HOFSTETTER
RE: CITY'S MOTION TO COMPEL

) ss.
)

- (1) I am Dana L. Hofstetter, counsel of record in this matter for Indian Creek Ranch Owners Association, Inc. ("ICROA");
- (2) I have personal knowledge of the facts set forth herein;
- (3) This Affidavit is intended to address and respond to certain of the Motion to Compel issues raised in the City of Hailey's June 16, 2010, Motion to Compel and the supporting Affidavit of Patrick D. Brown;

AFFIDAVIT OF DANA L. HOFSTETTER
RE: CITY'S MOTION TO COMPEL -- 1

**ICROA's Disclosure of Facts, Data, Results of Testing and Inspections it Conducted
of Hailey's Facilities Through Its Engineers on October 29, 2009.**

(4) As of this date, I have not determined the experts I expect to ask to testify in this matter.

(5) I do not recall Mr. Patrick Brown, ever requesting of me personally prior to June 16, 2010, that I disclose facts, data, or results of testing from an inspection conducted of the City of Hailey's facilities on October 29, 2009;

(6) If he had made such a request of me prior to filing the June 16, 2010, Motion to Compel, I would have informed him that Rule 26(b)(4)(B) precluded the disclosure of any such information unless and until an expert was designated to testify as to such matters which has not yet occurred. If he believed that there was another basis for the disclosure of such information, I would have considered it. In other words, Mr. Brown, never attempted to confer with me in connection with this matter pursuant to Rule 37(a)(2), I.R.C.P.: "The motion [to compel] must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action."

The City's 30(b)(6) Deposition of ICROA

(7) On or about January 19, 2010, the City of Hailey served its first Notice of Deposition 30(b)(6) *Duces Tecum* on ICROA, scheduling the deposition for February 12, 2010;

(8) On or about February 11, 2010, ICROA filed and served its Notice of Intent Not to Appear; or, In the Alternative, Motion for Protective Order, raising issue with the City's failure to provide the requisite 30 days notice under the I.R.C.P., the broad scope of the subject matter of the deposition, as described in the Notice, and the large number of witnesses potentially requested to appear;

(9) On or about February 12, 2010, the City of Hailey issued an Amended Notice of Deposition 30(b) (6) *Duces Tecum* rescheduling the deposition for March 17, 2010, but otherwise retaining the same broad objectionable language and scope of the January 19, 2010, Deposition Notice. I do not recall Mr. Brown consulting with me regarding the rescheduling of this deposition for March 17, 2010;

(10) ICROA accordingly renewed its Notice of Intent Notice of Intent Not to Appear; or, In the Alternative, Motion for Protective Order on or about March 11, 2010, and by email dated March 11, 2010, a true and correct copy of which is attached hereto as Exhibit A, I began to arrange a telephone conference with the Special Master for March 12, 2010 to discuss "deposition issues." Although at the informal March 12, 2010 telephone conference, the Special Master offered her thoughts to counsel on the issues raised, I do not believe that the Special Master ever has formally ruled on ICROA's original or Renewed Notice of Intent Notice of Intent Not to Appear; or, In the Alternative, Motion for Protective Order;

(11) On March 12, 2010, the same day as the telephone conference with the Special Master, I recall discussing with Mr. Brown on the telephone, perhaps, apart from the conversation with the Special Master that day, the structure of ICROA and the limited knowledge of any of the current ICROA Board members as to all of the subject matter listed and as to the earlier extent of the 20-30 year time period referred to in the Amended Notice of Deposition 30(b) (6) *Duces Tecum*. As indicated in his email of March 16, 2010, a copy of which is attached hereto as Exhibit B, Mr. Brown stated that at a 30(b)(6) deposition, he did not expect an organization to provide every witness with any information as to a particular subject, but only those representatives of the organization who can testify about the organization's knowledge of a particular subject. Therefore, based on Mr. Brown's remarks, as reflected in his

email of March 16, 2010, I concluded that regardless of the breadth of his Deposition Notice, he expected that only one or two current officers or directors of ICROA having the most knowledge on the subjects identified would need to appear on behalf of ICROA at the 30(b)(6) deposition, not all of the current lot owners or former lot owners in the subdivision and not any of the former ICROA officers or directors, as indeed, these people would not be current official representatives of ICROA, nor would ICROA be in a position to require these parties' attendance.

(12) My email (and fax) to Mr. Brown, on March 12, 2010, a copy of which is attached hereto as Exhibit C, reflects this understanding that only one ICROA representative would appear at the deposition. Further this email and a subsequent exchange of correspondence between me and Mr. Brown, attached hereto as Exhibit D, indicate that Mr. Brown was aware that the ICROA records custodian, who was the only person with access to ICROA's records, was out of State at the time, that ICROA offered to Mr. Brown to reschedule the deposition for after her return or to continue with the deposition on March 17, 2010, without the document production and that he elected to proceed on March 17, 2010;

(13) Between the March 17, 2010 deposition and the filing of the City's June 16, 2010 Motion to Compel, Mr. Brown, never requested of me to resume the 30(b)(6) deposition of ICROA for the production of documents or for any other reason. I likely would have agreed to resume the deposition for the purpose of the document production. Therefore, before filing the Motion to Compel, he did not attempt to confer with me to resolve his concerns about the March 17, 2010 deposition pursuant to Rule 37(a)(2), I.R.C.P. "The motion [to compel] must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action;"

The Scheduling of ICROA's 30(b)(6) Deposition of the City

(14) Attached hereto as Exhibit E is a true and correct copy of a May 6, 2010, email I sent to Mr. Patrick Brown, which I also faxed to him, requesting available dates in June 2010 for ICROA's 30(b)(6) Deposition of the City of Hailey. I never received a response to this email.

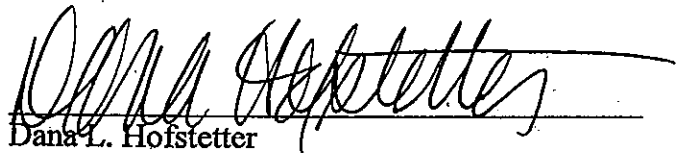
(15) Attached hereto as Exhibit F is a true and correct copy of a May 26, 2010, email I sent to Mr. Patrick Brown, which I also faxed to him, again requesting available dates for ICROA's 30(b)(6) Deposition of the City of Hailey by 5 p.m. on May 27, 2010. I never received a response to this email.

(16) I served notice of the July 1, 2010, 30(b)(6) deposition of the City of Hailey on May 28, 2010, after receiving no response from Mr. Brown to my two requests for available dates.

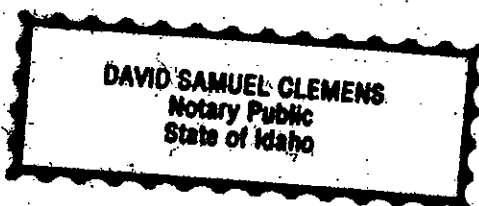
(17) Mr. Brown never contacted me prior to filing the June 16, 2010, Motion to Compel to request rescheduling of the July 1, 2010, deposition.

FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 1st day of July, 2010.


Dana L. Hofstetter

SUBSCRIBED AND SWORN to before me this 1st day of July, 2010.




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

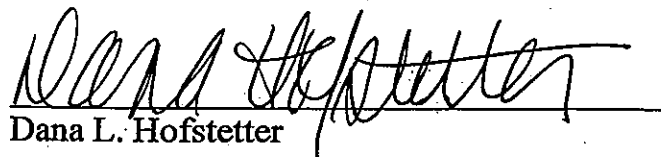
CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the foregoing document (including any attachments) this 1st day of July, 2010, by the pre-paid method(s) indicated below to:

IDWR
Document Depository
P.O. Box 83720
Boise, Idaho 83720-0098
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Patrick D. Brown
Hutchinson & Brown
104 Lincoln Street
P.O. Box 207
Twin Falls, Idaho 83303
☐ U.S. Mail ☐ Fed Ex ☐ Hand ☒ Fax

Craig Hobdey
P.O. Box 176
Gooding, Idaho 83330
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax


Dana L. Hofstetter

Subject: City of Hailey - 37-296A et al

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

Date: Thu, 11 Mar 2010 14:10:53 -0700

To: bbilyeu@srba.state.id.us

CC: Janet Connell <jconnell@srba.state.id.us>, patbrown@cableone.net

Special Master Bilyeu:

Would you be available for a conference call at 10 a.m. tomorrow to discuss deposition issues?

Thank you,
Dana Hofstetter

Subject: 30(b)(6) deposition

From: "Patrick Brown" <patbrown@cableone.net>

Date: Tue, 16 Mar 2010 10:47:51 -0600

To: "Hofstetter Law Office" <Dana@IdahoWaterLaw.com>

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.

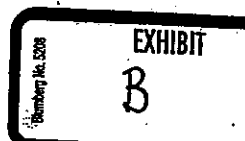
Finally, while I remain willing to talk about scheduling, I think I have clearly communicated that I need and intend to proceed with the deposition pursuant to the Rules of Civil Procedure. Given the scheduling of the case Special Master Bilyeu has confirmed that is what should occur on Wednesday. Any 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



* 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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(208) 424-8774
Mar 12 2010 5:03PM

Last Transaction

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
Mar 12	5:02PM	Fax Sent	12087339343	0:50	2	OK

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702

Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

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

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

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Mar 15	3:16PM	Fax Sent	12087339343	0:57	2	OK

HOFSTETTER LAW OFFICE, LLC

608 West Franklin Street

Boise, Idaho 83702

Phone: (208) 424-7800

Fax: (208) 424-8774

E-Mail: Dana@IdahoWaterLaw.com

FAX COVER SHEET

DATE: 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

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HUTCHINSON
&
BROWN, LLP

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

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 -

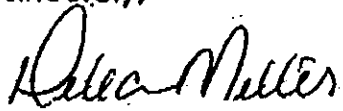
Dana Hofstetter
HOFSTETTER LAW OFFICE
608 W. Franklin St.
Boise ID 83702

Re: **Halley, 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

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

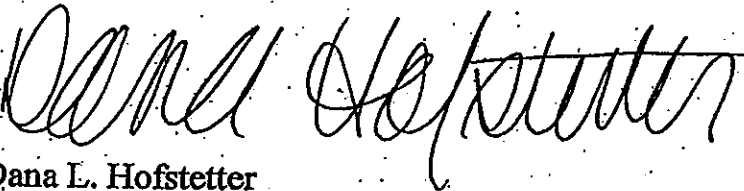
Re: Subcase Nos. 37-296A, 37-717, 37-1216, and 37-7854

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

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Mar 15	4:54PM	Fax Sent	12087339343	0:55	2	OK

Subject: SRBA 37-296A et al
From: Dana Hofstetter <Dana@IdahoWaterLaw.com>
Date: Thu, 06 May 2010 13:54:27 -0600
To: Pat Brown <patbrown@cableone.net>

Pat:

I would like to schedule a 30(b)(6) deposition of the City of Hailey for some time this June. Could you provide me available dates in June?

Thank you,
Dana

Hofstetter Law Office, LLC
608 West Franklin Street
Boise, Idaho 83702
Telephone: (208) 424-7800
Facsimile: (208) 424-8774



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: May 6, 2010

TO: Pat Brown

FAX: (208) 733-9343

FROM: Dana Hofstetter

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

MESSAGE: This email also is being faxed to ensure receipt.

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May 06 2010 2:47PM

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May 6	2:46PM	Fax Sent	12087339343	0:47	2	OK

Subject: Deposition of City of Hailey
From: Dana Hofstetter <Dana@IdahoWaterLaw.com>
Date: Wed, 26 May 2010 16:52:41 -0600
To: Pat Brown <patbrown@cableone.net>

Pat:

On May 6, 2010, I emailed and faxed you a request for available dates for the 30(b)(6) deposition of the City of Hailey in SRBA Subcase Nos. 37-717, 37-296A, 37-1216 and 37-7854. I never received a reply. Due to case preparation requirements, I need to notice the deposition on Friday of this week. If you provide me available dates in late June and July 2010 by 5 p.m. tomorrow (Thursday, May 27), I will take these into account in deposition scheduling. Otherwise, I will have no alternative but to schedule the deposition without this information.

Thank you,
Dana Hofstetter

Hofstetter Law Office, LLC
608 West Franklin Street
Boise, Idaho 83702
Telephone: (208) 424-7800
Facsimile: (208) 424-8774



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: May 26, 2010

TO: Pat Brown

FAX: (208) 733-9343

FROM: Dana Hofstetter

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

MESSAGE: This email also is being faxed to ensure receipt.

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May 26 2010 5:03PM

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May 26	5:02PM	Fax Sent	12087339343	0:50	2	OK