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SEP 02 2010

DEPARTMENT OF
WATER RESOURCES

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10929-1_954644_1.DOC

Attorneys for Claimant W & H Limited Liability Company

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

SUBCASE NO. 63-32910

**AFFIDAVIT OF MICHAEL C.
CREAMER IN SUPPORT OF W&H
LLC'S MOTION TO COMPEL**

STATE OF IDAHO)
) ss.
County of Ada)

MICHAEL C. CREAMER, being first duly sworn upon oath, deposes and states:

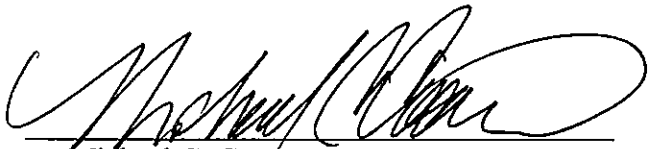
1. I am one of the attorneys of record for the Claimant W&H Limited Liability Company ("W&H") in the above-captioned subcase.
2. On July 1, 2010, I served on Objector Greg Obendorf ("Obendorf") *Claimant W & H Limited Liability Company's First Set of Discovery Requests to Greg Obendorf* ("Discovery Requests") containing six Interrogatories and five Requests for Production.
3. W&H's Interrogatories and Requests for Production are accurately reproduced as a preface to each of the responses given by Obendorf in *Obendorf's Responses to Claimant*

W & H Limited Liability Company's First Set of Discovery Requests ("Responses"), a true and correct copy of which is attached hereto as Exhibit A.

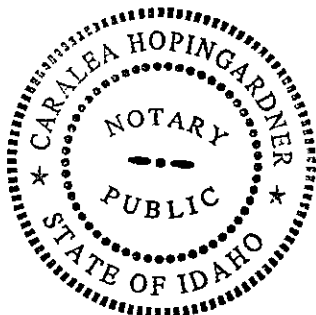
4. As a result of an extension of time to respond to the Discovery Requests requested by Obendorf's counsel, Dana Hoffstetter, and agreed to by W&H's counsel during a June 29, 2010 hearing on W&H's Motion to Amend Claim, Obendorf's Responses were due to be served on W&H by August 16, 2010.

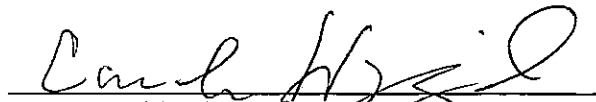
5. On August 16, 2010 I spoke by telephone with Ms. Hoffstetter and agreed to her requested additional extension of time to respond to the Discovery Requests until August 23, 2010. This agreement was expressly contingent on Ms. Hoffstetter's agreement that I would not be prejudiced in seeking to compel discovery if the responses were not provided or were not responsive.

6. On the afternoon of August 24, 2010 I received in the mail Obendorf's Responses, a copy of which is attached hereto as Exhibit A. Upon reviewing the Responses, I spoke with Ms. Hoffstetter by telephone to convey my objection to their non-responsiveness. The substance of my conversation with Ms. Hoffstetter is memorialized in a letter I forwarded to her on the morning of August 25, 2010, a true and correct copy of which is attached hereto as Exhibit B.


Michael C. Creamer

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




Notary Public for Idaho
Residing at Boise, ID
My Commission expires: 5/21/2016

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of September, 2010, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

Greg Obendorf

Represented by:

Dana L. Hofstetter
608 W. Franklin St.
Boise, ID 83702

☐ U.S. Mail, postage prepaid
☐ Express Mail
☒ Hand Delivery
☒ Facsimile (208) 424-8774

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

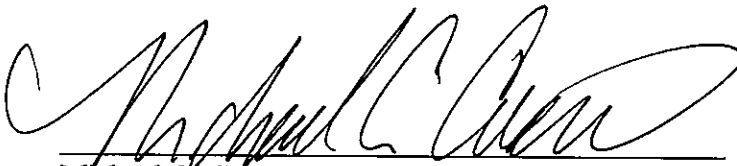
☒ U.S. Mail, postage prepaid
☐ Express Mail
☐ Hand Delivery
☐ Facsimile

U.S. Department of Justice
Environment and Natural Resources Division
550 W. Fort St., MSC 033
Boise, ID 83724

☒ U.S. Mail, postage prepaid
☐ Express Mail
☐ Hand Delivery
☐ Facsimile

Chief, Natural Resources Division
Office of the Atty. General
State of Idaho
700 West Jefferson, Room 210
P.O. Box 44449
Boise, ID 83711-4449

☒ U.S. Mail, postage prepaid
☐ Express Mail
☐ Hand Delivery
☐ Facsimile


Michael C. Creamer

Dana L. Hofstetter, ISB #3867
Hofstetter Law Office, LLC
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Boise, Idaho 83702
Telephone: (208) 424-7800
Facsimile: (208) 424-8774

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AUG 24 2011

Givens Pursley, LLP

Attorney for Greg Obendorf

**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

SUBCASE NO. 63-32910

**OBENDORF'S RESPONSES TO
CLAIMANT W & H LIMITED
LIABILITY COMPANY'S FIRST
SET OF DISCOVERY REQUESTS**

COMES NOW, Greg Obendorf, (hereinafter "Obendorf"), by and through his attorney of record, Dana L. Hofstetter of HOFSTETTER LAW OFFICE, LLC, and hereby responds to Claimant's First Set of Discovery Requests ("Requests") to Greg Obendorf in accordance with Rules 26, 33, and 34 of the Idaho Rules of Civil Procedure.

GENERAL OBJECTIONS

Obendorf objects to the Requests, including the definitions and instructions, to the extent that they can be construed to impose obligations that are beyond the scope of the Idaho Rules of Civil Procedure. Obendorf responds to the Requests in accordance with those Rules and not necessarily in accordance with the Claimant's instructions or definitions.



Obendorf further objects as these discovery requests were propounded early in the case investigation process. Therefore, Obendorf reserves the right to supplement these discovery responses as case investigation proceeds and further information is identified.

Obendorf objects to the Interrogatories to the extent that they (including subparts) exceed the permissible number of interrogatories allowed by the Idaho Rules of Civil Procedure. Obendorf further objects to these discovery requests to the extent that they seek information subject to attorney client privilege or the attorney work product doctrine or are beyond the scope of I.R.C.P. 26(b)(1). Without waiver of these objections, Obendorf responds as follows:

SPECIFIC RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: Please state the name, address and telephone number of each and every person who has knowledge of facts concerning the subject matter of this action, and for each such person, state:

- a. His or her residence address and telephone number.
- b. His or her business address and telephone number.
- c. Whether you, your agents, representatives and/or attorneys have spoken with said person and, if so, whether any oral or written statement has been obtained from said person;
- d. Identify each and every document, writing, photograph or other item of tangible or documentary evidence obtained by you, your agents, representatives and/or attorneys from said person or known to you, your agents, representatives and/or attorneys to be in the possession of said person.

RESPONSE TO INTERROGATORY NO. 1: Objection. Overbroad. Burdensome. Oppressive. Ambiguous. Vague. Requests privileged attorney-client communications.

Requests attorney work product. Requests information in the possession of and/or equally available to the propounder. Without waiving these objections and reserving the right to reassert the same, Obendorf responds as follows: Greg Obendorf, representatives of the Idaho Department of Water Resources ("IDWR"). Case investigation remains on-going and this response will be supplemented in accordance with applicable deadlines when additional persons subject to disclosure under this Request have been determined.

INTERROGATORY NO. 2: Please set forth the name, address and telephone number of each and every person you expect to call as a lay witness at the hearing of this matter, and for each such person, state the substance of his or her expected testimony.

RESPONSE TO INTERROGATORY NO. 2: Objection. Premature. Compound. Ambiguous. Vague. Requests privileged attorney-client communications. Requests attorney work product. Requests information in the possession of and/or equally available to the propounder. Without waiving these objections and reserving the right to reassert the same, Obendorf responds as follows: Greg Obendorf. The other witnesses that Obendorf will call at trial have not yet been identified and this response will be supplemented in accordance with applicable deadlines and requirements when such witnesses have been determined.

INTERROGATORY NO. 3: Please state the name, address and telephone number of each and every person you expect to call as an expert witness at the trial of this matter, and for each such person, state:

- a. The qualifications upon which you intend to rely to establish said person as an expert witness;
 - b. The substance of the facts and opinions to which he or she is expected to testify;
- and

c. Specifically and in detail the underlying facts and data upon which the expert's opinion and testimony is based.

RESPONSE TO INTERROGATORY NO. 3: Objection. Compound. Overbroad. Ambiguous. Vague. Requests privileged attorney-client communications. Requests attorney work product. Without waiving these objections and reserving the right to reassert the same, Obendorf responds as follows: The expert witnesses that Obendorf will call at trial have not yet been identified and this response will be supplemented in accordance with applicable deadlines and requirements when such witnesses have been determined.

INTERROGATORY NO. 4: Please describe each and every documentary, written or tangible item of evidence known to you that concerns the subject matter of this action. Please provide sufficient detail (e.g., date, author, subject matter, etc.) so each such item may be identified and distinguished from other items of documentary, written or tangible evidence.

RESPONSE TO INTERROGATORY NO. 4: Objection. Premature. Compound. Overbroad. Burdensome. Harassing. Oppressive. Ambiguous. Vague. Requests privileged attorney-client communications. Requests attorney work product. Requests information in the possession of and/or equally available to the propounder. Without waiving these objections and reserving the right to reassert the same, Obendorf reserves the right to supplement this Response as discovery and investigation proceeds.

INTERROGATORY NO. 5: Please describe each and every documentary, written or tangible item of evidence that you expect to introduce or use, or may use at the hearing of the above-described matter. Please provide sufficient detail (e.g., date, author, subject matter, etc.) so each such item may be identified and distinguished from other items of documentary, written or tangible evidence.

RESPONSE TO INTERROGATORY NO. 5: Objection. Premature. Compound.

Overbroad. Ambiguous. Vague. Requests privileged attorney-client communications. Requests attorney work product. Without waiving these objections and reserving the right to reassert the same, Obendorf responds as follows: The exhibits that Obendorf will use at trial have not yet been identified and this response will be supplemented in accordance with applicable deadlines and requirements when such exhibits have been determined.

INTERROGATORY NO. 6: Please state the full name and address of the person(s) participating in answering this discovery.

TO INTERROGATORY NO. 6: Objection. Overbroad. Burdensome. Oppressive. Harassing. Ambiguous. Vague. Requests privileged attorney-client communications. Requests attorney work product. Without waiving these objections and reserving the right to reassert the same, Obendorf responds as follows: Dana L. Hofstetter.

SPECIFIC RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce any and all documents and/or items of tangible evidence which you expect to introduce or use, or may use at trial of the above-described matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Please *see* Response to Interrogatory No. 5 which is incorporated herein as if set forth in full.

REQUEST FOR PRODUCTION NO. 2: Please produce any and all documents and/or items of tangible evidence, including but not limited to statements, reports, notes, diaries, or memoranda, in any form whatsoever obtained by you, your attorneys or representatives, or anyone acting on your or their behalf, from any person believed by you or by your attorney to

have knowledge of any of the events or happenings referred to in the pleadings or otherwise at issue in this case.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Please *see* Response to Interrogatory No. 4 which is incorporated herein as if set forth in full.

REQUEST FOR PRODUCTION NO. 3: Please produce any and all documents and/or items of tangible evidence seen, reviewed, maintained or generated by any expert witness who will testify on your behalf at the trial of this matter, including, but not limited to all documents which reflect, document or otherwise describe facts known and/or opinions held by any such expert witness.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: Please *see* Response to Interrogatory No. 3 which is incorporated herein as if set forth in full.

REQUEST FOR PRODUCTION NO. 4: Please produce any and all documents and/or items of tangible evidence which were referred to, or contain information responsive to, any of the Interrogatories set out above and served contemporaneously herewith.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Objection. Premature. Compound. Overbroad. Burdensome. Ambiguous. Vague. Irrelevant. Requests information beyond the proper scope of discovery. Requests privileged attorney-client communications. Requests attorney work product. Requests information in the possession of and/or equally available to the propounder. Without waiving these objections and reserving the right to re-assert the same, Obendorf responds as follows: Case investigation remains on-going. This response will be supplemented in accordance with applicable deadlines and requirements when such evidence has been determined.

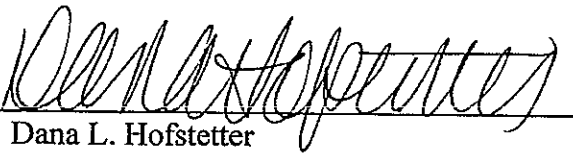
REQUEST FOR PRODUCTION NO. 5: Please produce any and all documents,

including but not limited to data, records, reports, summaries, measurements or observations in your possession or reviewed by you, of historical flow conditions in, or water diversions from, Baldridge and Meadows Drain, Upper Haas Ditch, and Lower Haas Ditch, including but not limited to any and all water diversions made by you.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: Please *see* Response to Interrogatory No. 3 which is incorporated herein as if set forth in full.

DATED this 23rd day of August, 2010.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter
Attorney for Obendorf

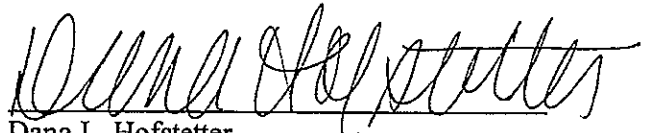
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of August, 2010, I caused the original of the foregoing **OBENDORF'S RESPONSES TO CLAIMANT W & H LIMITED LIABILITY COMPANY'S FIRST SET OF DISCOVERY REQUESTS** to be served by the method indicated below, and addressed to the following:

Michael C. Creamer
Michael P. Lawrence
GIVENS PURSLEY
P.O. Box 2720
Boise, ID 83701-2720

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile


Dana L. Hofstetter

GIVENS PURSLEY LLP

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MICHAEL C. CREAMER
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Elizabeth M. Donick
Kristin Bjorkman Dunn
Thomas E. Dvorak
Jeffrey C. Fereday
Justin M. Fredin
Martin C. Hendrickson

Steven J. Hippler
Donald E. Knickrehm
Deborah K. Kristensen
Anne C. Kunkel
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David R. Lombardi
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Kenneth R. McClure
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Cynthia A. Meillo
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Robert B. White

RETIRED
Kenneth L. Pursley
James A. McClure
Raymond D. Givens (1917-2008)

August 25, 2010

Via Email and Regular Mail

Dana L. Hofstetter, Esq.
Hofstetter Law Office
608 W. Franklin St.
Boise, ID 83702

Re: *W&H Limited Liability Company, SRBA Subcase No. 63-32910*

Dear Dana:

As we discussed by phone yesterday afternoon, I am disappointed by the unresponsiveness of your client's responses to W&H's Interrogatories and Requests for Production. Particularly, since you have had the benefit of a court granted extension of time to respond and, subsequently, my agreement to give you more time to respond. As we also discussed, absent an appropriate disclosure in response to W&H's discovery requests by August 31st, I intend to exercise my right to file a motion to compel (which you agreed you would not object to on timeliness grounds when I agreed to your requested additional extension) or a motion in limine.

Sincerely,



Michael C. Creamer

MCC:ch

cc: W&H Limited Liability Company
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