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DEPARTMENT OF
WATER RESOURCES

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

**W&H LLC'S MOTION TO
COMPEL RESPONSES TO
DISCOVERY**

COMES NOW Claimant W & H Limited Liability Company ("W&H"), by and through its attorneys of record, Givens Pursley LLP, and moves the Court, pursuant to Idaho Rule of Civil Procedure 37(a) for an order compelling Objector Greg Obendorf ("Obendorf") to respond to W&H's First Set of Discovery Requests to Greg Obendorf ("Discovery Requests"). The grounds for this motion are that Obendorf has failed to timely and appropriately respond to interrogatories propounded by W&H pursuant to I.R.C.P. 33(a) and failed to produce documents requested by W&H pursuant to I.R.C.P. 34(a) .

W&H's Discovery Requests were served on Obendorf on July 1, 2010. At the request of Obendorf's counsel for an extension of the discovery deadlines, Obendorf's responses were due to be served on W&H by August 16, 2010 and the Special Master extended the discovery

completion deadline to September 13, 2010 to allow Obendorf to serve discovery and receive responses from W&H within the 30-day response period provided by the Rules. Upon further request by Obendorf's counsel, counsel for W&H agreed to a further extension of time to August 23, 2010 for Obendorf to respond to the Discovery Requests, on the express condition that if the responses were untimely or incomplete, W&H would not be prejudiced by any existing discovery cutoff in seeking to compel the responses, which was August 27, 2010. On August 24, 2010, W&H's counsel received by mail *Obendorf's Responses to Claimant W & H Limited Liability Company's First Set of Discovery Requests* ("Responses"). A copy of the Responses is attached as Exhibit A to the Affidavit of Michael C. Creamer ("Creamer Affidavit") filed contemporaneously herewith.

The Responses are patently unresponsive, evasive, and incomplete and must be deemed as a failure to answer under I.R.C.P. 37(a)(3). I.R.C.P. 33(a) requires each interrogatory to be answered separately and fully in writing, and that requests for inspection of documents must be permitted, unless objected to, in which case the reasons for the objection shall be stated in lieu of an answer or production. Although Obendorf has stated numerous objections to each and every interrogatory and request for production, none of the objections are proper given the nature of the information sought by the interrogatories. W&H's Discovery Requests include the most basic and standard requests for information, including the identity of persons with knowledge, the identity of persons who may testify, the substance of their knowledge and expected testimony, and the identity and production of documents that bear on the subject matter of this litigation.

W&H certifies that its counsel has in good faith conferred with Obendorf's counsel concerning the Responses. Upon receiving the Responses in the mail on the afternoon of August 24, 2010, W&H's counsel, Michael C. Creamer, contacted Dana Hoffstetter, who is Obendorf's

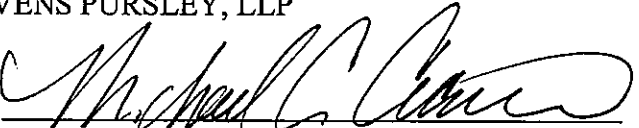
counsel, stating that the Responses were unresponsive and W&H would seek to compel discovery if an appropriate response was not provided to W&H by August 31, 2010. A copy of the letter sent by Mr. Creamer to Ms. Hoffstetter documenting this discussion is attached as Exhibit B to the Creamer Affidavit. As of the date of this Motion, no further discovery responses have been provided by Obendorf.

W&H is in the process of preparing for trial in this subcase, which is set for October 5 and 6, 2010. The information sought is relevant and central to this preparation.

For the foregoing reasons, W&H moves the Court for an order compelling Obendorf to respond to the Discovery Requests and ordering that Obendorf be required to pay W&H's reasonable expenses in obtaining such order as authorized by I.R.C.P. 37(a)(5).

DATED this 1st day of September, 2010.

GIVENS PURSLEY, LLP

By: 

Michael C. Creamer

Attorneys for W & H Limited Liability
Company

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

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U.S. Mail, postage prepaid
Express Mail
Hand Delivery
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Director of IDWR
IDWR Document Depository
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Environment and Natural Resources Division
550 W. Fort St., MSC 033
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Michael C. Creamer