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OCT 13 2010

DEPARTMENT OF
WATER RESOURCES

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

Attorney for Greg Obendorf, Respondent

**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 No. 63-32910
)

Case 39576

)
) **AFFIDAVIT OF DANA L. HOFSTETTER**
) **IN SUPPORT OF RESPONSE TO**
) **MOTION FOR EXPENSES**
)
_____)

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

Dana L. Hofstetter, being first being duly sworn upon oath, deposes and says:

(1) I am Dana L. Hofstetter, counsel of record in this matter for Respondent Greg Obendorf, and I have personal knowledge of the following.

(2) By email dated August 2, 2010, with settlement discussions active, I requested a two week extension until August 16, 2010 to respond to Claimant W&H Limited Liability Company's First Set of Discovery Requests ("Discovery Requests"). A true and correct copy of this email is attached hereto as Exhibit A.

(3) On August 16, 2010, in a telephone conversation with Claimant's counsel, I requested a further one week extension to respond to the Discovery Requests. This request was granted on the condition that corresponding additional time would be afforded if necessary for the filing of a Motion to Compel. An August 16, 2010 email from me to Claimant's counsel confirming this arrangement is attached hereto as Exhibit B.

(4) On August 23, 2010 I served on Claimant's counsel Responses to the Discovery Requests ("Responses").

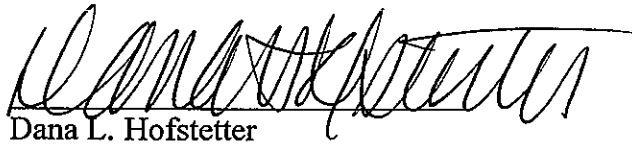
(5) On or about August 24, 2010, Claimant's counsel called me and demanded supplemental Responses by August 31, 2010. During this conversation, Claimant's counsel did not attempt to confer with me about when I would be able to provide supplemental Responses. If the matter had been discussed, perhaps a mutually acceptable date could have been reached for provision of supplemental Responses. However, Claimant's counsel did not appear to be willing to negotiate on the subject. Claimant's counsel sent me an August 25, 2010 letter reiterating his demands. A true and correct copy of this letter is attached hereto as Exhibit C.

(6) By email dated September 1, 2010, I inquired of Claimant's counsel as to the possibility of a stipulation to extend the trial date. A true and correct copy of this email is attached hereto as Exhibit D.

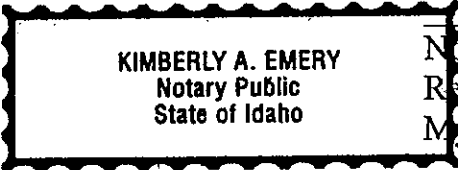
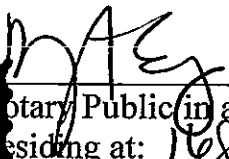
(7) On or about September 7, 2010, I filed Respondent's Motion to Vacate and Reset Trial after having received no response from Claimant's counsel as to the proposal to stipulate to a trial extension. If the trial date was not extended by the Court, I fully intended to supplement the Discovery Responses in accordance with the September 13, 2010 deadline.

FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 8th day of October, 2010.


Dana L. Hofstetter

SUBSCRIBED AND SWORN to before me this 8th day of October, 2010.

 
Notary Public in and for the State of Idaho
Residing at: 1688 W State St Base ID 83702
My Commission Expires: 12/14/2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of October, 2010, I caused to be served a true copy of the foregoing (with any attachments) by the method indicated below, and addressed to each of 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 (208) 388-1300

Director, IDWR
P.O. Box 83720
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile (208) 287-6700


Dana Hofstetter

Subject: RE: AGREEMENT FOR JOINT USE OF UPPER HAAS DITCH.DOC;Settlement Agreement.DOC [IWOV-GPDMS.FID446952]
From: Michael C Creamer <mcc@givenspursley.com>
Date: Mon, 2 Aug 2010 17:53:42 -0600
To: 'Dana Hofstetter' <Dana@IdahoWaterLaw.com>

Dana,

I'm in the middle of writing a reply brief on a SCt matter. Due Friday. I then will be in Colorado until the 16th. Of course, I can agree to an extension until then for you to respond to my discovery requests.

My desk is a mess with pacific reporters/transcripts/etc. I couldn't lay my hands on the sample decree w/ the subordination today, but will commence the search this evening and hope to e-mail to you in the next day or two. I'd prefer to confirm we are going to be able to settle with a subordination before taking time to draft an SF5. I've also had good luck with IDWR preparing it once the parties tell them what they've agreed to, but won't be able to get to that in any event until after my return on the 16th.

Mike

Michael C. Creamer
Givens Pursley LLP
601 W. Bannock St.
Boise, ID 83702
Direct: 208-388-1247
Fax: 208-388-1300

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

From: Dana Hofstetter [<mailto:Dana@IdahoWaterLaw.com>]
Sent: Monday, August 02, 2010 5:43 AM
To: Michael C Creamer
Cc: 'Gerald A. Waller (jaw@rmph.net)'; 'adh@rmph.net'
Subject: Re: AGREEMENT FOR JOINT USE OF UPPER HAAS DITCH.DOC;Settlement Agreement.DOC [IWOV-GPDMS.FID446952]

Mike:

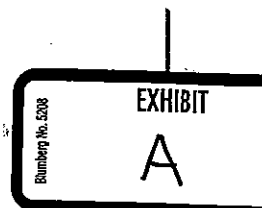
As you know, I am traveling until August 6. I will be checking my email periodically this week. I am hoping to be able to make progress on this matter this week as I understand that Greg will be out of town August 8-15. Could you email me the following information: The Partial Decree which includes the same or similar subordination language. A proposed draft SF5 for the W&H right.

Also, can I have a 2 week extension to respond to W&H's pending discovery requests until August 16?

Thank you,
Dana

On 7/12/2010 11:19 AM, Michael C Creamer wrote:

Dana:



Consistent with my phone message to you last week, I am attaching drafts of a proposed settlement agreement and a shared ditch agreement that include terms I understand would achieve the arrangement that Mr. Waller and Mr. Obendorf agreed to when they spoke with each other recently.

Would you please review these with Mr. Obendorf and then let me know if we can get a settlement done on these terms?

I will look forward to speaking with you.

Michael C. Creamer
Givens Pursley LLP
601 W. Bannock St.
Boise, ID 83702
Direct: 208-388-1247
Main: 208-388-1200
Fax: 208-388-1300
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Subject: Discovery Responses 63-32910
From: Dana Hofstetter <Dana@IdahoWaterLaw.com>
Date: Mon, 16 Aug 2010 16:01:07 -0600
To: Michael C Creamer <mcc@givenspursley.com>

Mike:

This will confirm our telephone conversation in which you granted an additional extension for Obendorf to respond to the pending discovery in this matter until August 23, 2010 with my agreement to allow corresponding additional time if necessary for you to file a Motion to Compel.

Thank you for your consideration in this regard,
Dana



GIVENS PURSLEY LLP

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MICHAEL C. CREAMER
DIRECT DIAL: (208) 388-1247
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Peter G. Barlow
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Curt R. Bolinder
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Conley E. Ward
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
10929-1_947348_1.DOC

EXHIBIT

C

Blumberg No. 5209

Subject: 63-32910 Trial

From: Dana Hofstetter <Dana@IdahoWaterLaw.com>

Date: Wed, 01 Sep 2010 15:51:46 -0600

To: Michael C Creamer <mcc@givenspursley.com>

Mike:

I was wondering if your client would consent to reset the trial date for a few months later out. I know that vacation schedules (especially mine) have interfered with our ability to work on possible settlement. Also, I note that with the late claims and possible complexities with other water rights, we may need more time than originally anticipated to develop a settlement. I would prefer to focus on working on a good mutually acceptable settlement over the coming weeks but I'm not sure that the current trial scheduling will allow much more time for that. I also note that even under the current rial scheduling it would be unlikely that a final decision would be issued before the end of the year. I checked with Diana Delaney, Special Master Booth's clerk, and his next available 2 day trial slots would be February 24-25, 2011 or March 17-18, 2011. Please let me know your thoughts on this.

Thank you,
Dana

