

3-10

DEPARTMENT OF
WATER RESOURCES

*Attorneys for Indian Creek Ranch Owners
Association, Inc.*

**AFFIDAVIT OF CANDICE M.
MCHUGH IN SUPPORT OF
MOTION TO STRIKE AFFIDAVIT
AND EXHIBITS**

STATE OF IDAHO)
) SS.
COUNTY OF ADA)

Candice M. McHugh, being fully sworn upon oath, deposes and states as follows:

1. I am one of the attorneys representing Indian Creek Ranch Owners Association, Inc. and make the following Affidavit upon my personal knowledge of the facts and circumstances set forth herein.

2. Attached hereto as Exhibit A is a true and correct copy of the City of Hailey's *Claimant's 1st Answers & Responses to Objector's 1st Set of Interrogatories & Requests for Production* for subcase number 37-296A served on December 24, 2009.

3. Attached hereto as Exhibit B is a true and correct copy of the City of Hailey's *Claimant's 1st Answers & Responses to Objector's 1st Set of Interrogatories & Requests for Production* for subcase number 37-717 served on December 24, 2009.

4. Attached hereto as Exhibit C is a true and correct copy of the City of Hailey's *Claimant's 1st Answers & Responses to Objector's 1st Set of Interrogatories & Requests for Production* for subcase number 37-1216 served on December 24, 2009.

5. I have examined the files in this matter and was unable to locate Exhibit Numbers 3 through 8 attached to the Affidavit Supporting Hailey's Response to Motion for Summary Judgment.

DATED this 9th day of March, 2011.

By:


CANDICE M. MCHUGH

SUBSCRIBED AND SWORN to before me by Candice M. McHugh this 9th day of March, 2011.


Notary Public
Commission Expires: 9-12-13

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th day of March, 2011, I mailed a true and complete copy of the foregoing document, postage prepaid, to each of the following:

CLERK OF THE DISTRICT COURT SNAKE RIVER BASIN ADJUDICATION 253 THIRD AVENUE NORTH PO BOX 27207 TWIN FALLS, ID 83303-2707	☐ U.S. Mail/Postage Prepaid ☐ Facsimile 208-736-2121 ☒ Overnight Mail ☐ Hand Delivery ☐ E-mail
ALBERT P BARKER 1010 W JEFFERSON, STE 102 PO BOX 2139 BOISE, ID 83701-2139 Phone: 208-336-0700	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☐ E-mail
DANA L. HOFSTETTER 608 WEST FRANKLIN STREET BOISE, ID 83702 Phone: 208-424-7800 E-Mail: dana@idahowaterlaw.com	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☒ E-mail
PATRICK D BROWN HUTCHINSON & BROWN LLP 104 LINCOLN ST PO BOX 207 TWIN FALLS, ID 83303-0207 Phone: 208-733-9300 E-Mail: patbrown@cableone.net	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☒ E-mail
US DEPARTMENT OF JUSTICE ENVIRONMENT & NAT'L RESOURCES 550 WEST FORT STREET, MSC 033 BOISE, ID 83724	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☐ E-mail
IDWR DOCUMENT REPOSITORY PO BOX 83720 BOISE, ID 83720-0098	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☐ E-mail

CHIEF, NATURAL RESOURCES DIVISION
OFFICE OF THE ATTORNEY GENERAL
STATE OF IDAHO
PO BOX 44449
BOISE, ID 83711-4449

☒ U.S. Mail/Postage Prepaid
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery
☐ E-mail



Signature of person mailing form

Patrick D. Brown, ISB #4413
HUTCHINSON & BROWN, LLP
104 Lincoln Street
P.O. Box 207
Twin Falls ID 83303-0207
Telephone: (208) 733-9300
Fax: (208) 733-9343
Attorney for **Claimant City of Hailey**

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. **37-00296A**
)
)
) CLAIMANT'S 1st ANSWERS &
) RESPONSES TO OBJECTOR'S 1st SET OF
) INTERROGATORIES &
) REQUESTS FOR PRODUCTION
)

COMES NOW Claimant and gives the following Answers and Responses to the 9-16-09 OBJECTORS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION. Discovery is continuing and Claimant reserves the right to supplement these Answers and Responses as discovery progresses:

INTERROGATORY NO. 1: Please set forth the name, address, telephone number, and occupation of each and every individual known to you or your counsel who has knowledge of or who purports to have knowledge relating to your Claim, and set forth a full and accurate summary of the knowledge possessed by each such person.

RECEIVED DEC 24 2009

ANSWER NO. 1: Understanding the interrogatory to request the identity of persons who have knowledge of the claim, Claimant states the following people purport to have knowledge of the claim:

1. Tom Hellen, Public Works Director/City Engineer, City of Hailey
2. The City's current and former legal counsel, Patrick Brown and James Speck.
3. As indicated in IDWR's records regarding this claim, which are public and equally available to proponents, numerous IDWR personnel, engineers, court personnel and others purport to have knowledge of the claim as set forth in those documents.

INTERROGATORY NO. 2: Please set forth the name, address, telephone number, and occupation of each person you may call as a witness at trial in this Subcase, and for each such witness, state the substance of his/her expected testimony.

ANSWER NO. 2: Claimant objects to this Interrogatory to the extent it seeks protected work product and is beyond the scope of I.R.C.P. 26(b). Pretrial rules permit discovery of the names of people with "knowledge of relevant facts", but do not authorize compelling a party to reveal witnesses (other than experts, who are not presently involved in this case) which the party expects to use at the time of trial. Claimant will disclose witnesses consistent with any pretrial order entered by the Court.

INTERROGATORY NO. 3: Please identify each person whom you may call as an expert witness at the trial of this Subcase and state the subject matter on which such expert witness is expected to testify, the substance of the facts to which such expert witness is expected to testify and the substance of the opinions to which such expert witness is expected to testify as required by Rule 26(b)(4) of the

Idaho Rules of Civil Procedure together with all of the underlying facts and data as required by Rule 705 of the Idaho Rules of Evidence.

ANSWER NO. 3: Claimant has not retained experts for the purpose of testifying at this point in time, but rather reserves the right to do so, especially in response to a purported expert testimony to be given by proponents.

INTERROGATORY NO. 4: Please identify each person with whom you or your representatives have communicated seeking information which in any way relates to your Claim.

ANSWER NO. 4: Claimant objects to this interrogatory to the extent it seeks privileged work product and statements prepared in anticipation of litigation for which Objector has made no showing of hardship under I.R.C.P. 26(b). Claimant also objects that the interrogatory is overbroad, unduly burdensome, and vague in that it purports to require Claimant to determine what relates to the claim and whether or not the communication has occurred in the regard. Without waiving the objection, Claimant is unaware that they have communicated with anyone seeking information related to the claim except with respect to the findings and communications with the court & IDWR which communications are identified in the claims file maintained by those entities and communications with the proponents and their representatives.

INTERROGATORY NO. 5: Please identify each person who supplied answers to these Interrogatories and designate the answers or answer or part thereof supplied by each such person. (This interrogatory is intended to discover principal sources of information and does not seek to ascertain the identity of typists or other persons responsible for the mechanical preparation of these answers.)

ANSWER NO. 5:

1. Tom Hellen, Public Works Director, City Engineer: Place of diversion and Power production and overall claim information.
2. Reese Dibble, Water Superintendent: Flow measurement records and flow measurement devices.
3. Bob Schulz, Previous Water Superintendent: Flow measurement records and flow measurement devices.
4. Answers were also generated by counsel and from IDWR files and records, all of which are equally available to proponents of the interrogatory.

INTERROGATORY NO. 6: Please separately identify each communication which in any way relates to your Claim. For each such communication, please identify:

- a. Whether the communication was oral or written;
- b. Who were the parties to the communication;
- c. The date of the communication;
- d. The substance of the communication; and
- e. The relevance of the communication to the issues in this Subcase.

ANSWER NO. 6: Claimant objects to this interrogatory to the extent it seeks privileged work product and statements prepared in anticipation of litigation for which Objector has made no showing of

hardship under I.R.C.P. 26(b). Claimant also objects that the interrogatory is overbroad, unduly burdensome, and vague in that it purports to require Claimant to determine what "relates to the claim" and whether or not some communication within that vague concept has occurred. Without waiving the objection, proponent is referred to the Court records and IDWR's claim's file which reflect communications about the claim.

REQUEST FOR PRODUCTION NO. 1: Please produce a copy of each and every written communication identified in your answer to Interrogatory No. 6.

RESPONSE NO. 1: See Answer No. 6 - such documents are public records equally available to proponent without imposing the costs of production on respondent.

INTERROGATORY NO. 7: Please separately identify each document which in any way relates to your Claim, and describe its significance.

ANSWER NO. 7: Claimant objects to this interrogatory as being overbroad, unduly burdensome and vague in that it purports to require the respondent to determine what relates to the claim and, without waiving the objection, refers the proponent to Response No. 1, above. The public documents identify themselves.

REQUEST FOR PRODUCTION NO. 2: Please produce copies of each and every document identified in your answer to Interrogatory No. 7.

RESPONSE NO. 2: See Answer No. 7.

INTERROGATORY NO. 8: Please identify each exhibit which you may offer into evidence at the trial in this Subcase, and describe as to each such exhibit the fact or facts intended to be proved by the use of the exhibit or the relevance of which is felt to justify the use of the exhibit and as to each such exhibit which consists of more than 15 pages or more than 3,000 words, quote or otherwise specifically designate each portion of such exhibit which you contend is the relevant portions thereof.

ANSWER NO. 8: Claimant objects to this Interrogatory to the extent it seeks protected work product and is beyond the scope of I.R.C.P. 26(b). Pretrial rules do not authorize compelling a party to reveal exhibits which the party expects to use at the time of trial. Claimant will disclose exhibits consistent with any pretrial order entered by the Court.

REQUEST FOR PRODUCTION NO. 3: Please produce a copy of each and every exhibit identified in your answer to Interrogatory No. 8.

RESPONSE NO. 3: See Answer No. 8.

INTERROGATORY NO. 9: Please identify each statement made by anyone on your behalf, oral or written, which relates in any way to your Claim. For each such statement please identify:

- a. Whether the statement was oral or written;
- b. Who made the statement;
- c. The person to whom the statement was made;
- d. The date of the statement;
- e. The substance of the statement; and

f. The relevance of the statement to the issues in this Subcase.

ANSWER NO. 9: Claimant objects to this interrogatory to the extent it seeks privileged work product and statements prepared in anticipation of litigation for which Objector has made no showing of hardship under I.R.C.P. 26(b). Claimant also objects to this Interrogatory on the grounds that it is overly broad, too general, unduly burdensome in that the respondent is unable to determine what the proponent may consider a "statement about a claim".

Without waiving the objection, the proponent is referred to the Court records and IDWR's claim file which reflect communications about the claim.

REQUEST FOR PRODUCTION NO. 4: Please produce a copy of each and every written statement identified in your answer to Interrogatory No. 9.

RESPONSE NO. 4: See Answer No. 9.

INTERROGATORY NO. 10: If you contend that the Indian Creek Ranch Owners Association, Inc., or any agent, predecessor in interest or other person who could make an admission binding on it, has admitted a fact material to your position with respect to the Claim, please describe who made each admission, what the admission is and whether there are any documents which purport to reflect that an admission occurred.

ANSWER NO. 10: To date, such a contention has not been made.

REQUEST FOR PRODUCTION NO. 5: Please produce all documents that you assert support or may support your Claim.

RESPONSE NO. 5: Claimant objects to this request on the grounds that it is overly broad, too general, unduly burdensome in that the respondent is unable to determine what the proponent may consider supporting a claim. A request for production must identify documents or other things sought with reasonable particularity. Seeking anything that might support a claim does not identify what is being sought with reasonable particularity, and certainly not with the particularity needed for the respondent to identify and produce what is being sought. Without waiving the objection, the proponent is referred to the Court records and IDWR's claim file which reflect communications about the claim.

INTERROGATORY NO. 11: In your Claim, you contend that the Water Right, or a portion thereof, should be in the name of the City of Hailey. Please describe all the facts that support this contention.

ANSWER NO. 11: Claimant objects to this interrogatory to the extent it purports to require the respondent to decide any and everything that supports the contention. Interrogatories are permitted to elicit basic facts, not a compendium of every fact ranging from the use of every water user within the City of Hailey for the last century to the payment of a bill by each of those users to

prove who owns the right. Without waiving the objections, Claimant contends the water right should be in the name of the City because the City owns the right and is the sole user of the right.

REQUEST FOR PRODUCTION NO. 6: Please produce all documents relating to your answer to Interrogatory No. 11.

RESPONSE NO. 6: See the Court's and IDWR's records with respect to this claim, all of which are equally available to the proponent. Claimant objects to the production of documents for the reasons set forth in Answer No. 11, above, and because this request does not identify items with reasonable particularity. The production of every document or item related to any fact regarding use, payment and consequent recognition of ownership for more than a century is not reasonable.

INTERROGATORY NO. 12: In your Claim, you contend that the priority date of the Water Right is "April 1, 1880". Please describe all the facts that support this contention.

ANSWER NO. 12: Please see Frost Decree.

REQUEST FOR PRODUCTION NO. 7: Please produce all documents relating to your answer to Interrogatory No. 12.

RESPONSE NO. 7: The Frost Decree and all documents relating to it are equally available to the proponent and are part of the Court's and IDWR's files. They therefore will not be reproduced here.

INTERROGATORY NO. 13: In your Claim, you contend that the source of your portion of the Water Right is "Indian Springs tributary to Indian Creek". Please describe all the facts that support this contention.

ANSWER NO. 13: Claimant objects to the extent the interrogatory purports to compel the description of "all facts" as such is beyond the scope of what may be required by an interrogatory. Without waiving the objection, please see the Court's and IDWR's files, including the portions thereof which reflect the collection system where the right is diverted. Furthermore, Claimant points out that proponents have been allowed to inspect the source and are well aware of facts related thereto.

REQUEST FOR PRODUCTION NO. 8: Please produce all documents relating to your answer to Interrogatory No. 13.

RESPONSE NO. 8: See Answer No. 13.

INTERROGATORY NO. 14: In your Claim, you contend that the point of diversion of your portion of the Water Right is located in the "SW1/4SE1/4NW1/4 of Section 23, Township 3 North, Range 18 East in Blaine County". Please describe all the facts that support this contention.

ANSWER NO. 14: Please see Answer No. 13.

REQUEST FOR PRODUCTION NO. 9: Please produce all documents relating to your answer to Interrogatory No. 14.

RESPONSE NO. 9: Please see Answer No. 13.

INTERROGATORY NO. 15: Please describe the equipment you use for diverting water under your portion of the Water Right from the source and conveying it to the place of use, including in your response, without limitation, descriptions of all pumps, pipelines, tanks, conduits and other facilities employed in such diversion and distribution systems.

ANSWER NO. 15: Please see Answer No. 13. Claimant has allowed the proponents to inspect the collection and distribution system which is comprised of underground drain pipe collecting water at the source. The water then passes through a weir into underground, which runs down to the hydropower generator and water storage reservoir at the lower end of the valley. From there the water is piped underground to the City of Hailey where it is distributed to its users.

REQUEST FOR PRODUCTION NO. 10: Please produce all documents relating to your answer to Interrogatory No. 15.

RESPONSE NO. 10: Please see the Answer No. 15.

INTERROGATORY NO. 16: Please describe any and all measurement equipment used for measuring your diversions of water under the Water Right from the source.

ANSWER NO. 16: Measurement occurs through a fixed weir and through an ultrasonic measurement system at the collection point, where the water enters the reservoir, and at various points where individual users within the City have their water metered. Pursuant to the proponent's inspection of the facilities, they were

shown the weir and allowed to measure it. They and their engineers were also allowed to photograph and document the measurement systems and question the City officials about the particulars of each of the measurement systems.

REQUEST FOR PRODUCTION NO. 11: Please produce all documents relating to your answer to Interrogatory No. 16.

RESPONSE NO. 11: Respondent does not possess responsive documents at this time.

INTERROGATORY NO. 17: In your Claim, you contend that your portion of the Water Right is for "Municipal Purpose". Please describe all the facts that support this contention.

ANSWER NO. 17: Claimant objects to the extent the interrogatory purports to compel the description of "all facts" as such is beyond scope of what may be required by and interrogatory. Without waiving the objection, the respondent submits the water from Indian Creek has been used to supply the municipal needs of the City of Hailey for as long as any one presently at the City can remember and such uses have been recognized since at least the time of the Frost decree.

REQUEST FOR PRODUCTION NO. 12: Please produce all documents relating to your answer to Interrogatory No. 17.

RESPONSE NO. 12: See attached documents.

INTERROGATORY NO. 18: In your Claim, you contend that your portion of the Water Right has a season of use of "1-1 to 12-31". Please describe all the facts that support this contention.

ANSWER NO. 18: Municipal water supply has an inherent use year-round as most people use it for culinary purposes daily, and in this case, as set forth in the above answers, the water has been used for those purposes for more than a century without any cessation.

REQUEST FOR PRODUCTION NO. 13: Please produce all documents relating to your answer to Interrogatory No. 18.

RESPONSE NO. 13: Flow records of the flows from the springs are attached.

INTERROGATORY NO. 19: In your Claim, you contend that your portion of the Water Right is for 2.620 cubic feet per second "cfs". Please describe all the facts that support this contention.

ANSWER NO. 19: Please see Frost Decree and IDWR's claim file.

REQUEST FOR PRODUCTION NO. 14: Please produce all documents relating to your answer to Interrogatory No. 19.

RESPONSE NO. 14: See Answer No. 19.

REQUEST FOR PRODUCTION NO. 15: Please produce all documents that contain any measurement records of Indian Creek and/or Indian Springs flows or diversion quantities.

RESPONSE NO. 15: Please see attached flow records.

REQUEST FOR PRODUCTION NO. 16: Please produce all documents referenced in, relating to or supporting any of your answers to the Interrogatories above that are not otherwise being produced in response to another Request for Production herein.

RESPONSE NO. 16: All responsive documents are being produced, except as noted above.

Dated this 28 day of December, 2009.

HUTCHINSON & BROWN, LLP

By: 

Patrick D. Brown
Attorneys for Claimant

Patrick D. Brown, ISB #4413
HUTCHINSON & BROWN, LLP
104 Lincoln Street
P.O. Box 207
Twin Falls ID 83303-0207
Telephone: (208) 733-9300
Fax: (208) 733-9343
Attorney for **Claimant City of Hailey**

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. **37-00717**
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) CLAIMANT'S 1st ANSWERS &
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COMES NOW Claimant and gives the following Answers and Responses to the 9-16-09 **OBJECTOR'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION**. Discovery is continuing and Claimant reserves the right to supplement these Answers and Responses as discovery progresses:

INTERROGATORY NO. 1: Please set forth the name, address, telephone number, and occupation of each and every individual known to you or your counsel who has knowledge of or who purports to have knowledge relating to your Claim, and set forth a full and accurate summary of the knowledge possessed by each such person.

ANSWER NO. 1: Understanding the interrogatory to request the identity of persons who have knowledge of the claim, Claimant states the following

people purport to have knowledge of the claim:

1. Tom Hellen, Public Works Director/City Engineer, City of Hailey
2. The City's current and former legal counsel, Patrick Brown and James Speck.
3. As indicated in IDWR's records regarding this claim, which are public and equally available to proponents, numerous IDWR personnel, engineers, court personnel and others purport to have knowledge of the claim as set forth in those documents.
4. Ray Hyde, Previous Public Works Director
5. Daryl James, Previous City Administrator

INTERROGATORY NO. 2: Please set forth the name, address, telephone number, and occupation of each person you may call as a witness at trial in this Subcase, and for each such witness, state the substance of his/her expected testimony.

ANSWER NO. 2: Claimant objects to this Interrogatory to the extent it seeks protected work product and is beyond the scope of I.R.C.P. 26(b). Pretrial rules permit discovery of the names of people with "knowledge of relevant facts", but do not authorize compelling a party to reveal witnesses (other than experts, who are not presently involved in this case) which the party expects to use at the time of trial. Claimant will disclose witnesses consistent with any pretrial order entered by the Court.

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ANSWER NO. 3: Claimant has not retained experts for the purpose of testifying at this point in time, but rather reserves the right to do so, especially in response to a purported expert testimony to be given by proponents.

INTERROGATORY NO. 4: Please identify each person with whom you or your representatives have communicated seeking information which in any way relates to your Claim.

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INTERROGATORY NO. 5: Please identify each person who supplied answers to these Interrogatories and designate the answers or answer or part thereof supplied by each such person. (This interrogatory is intended to discover principal sources of information and does not seek to ascertain the identity of typists or other persons responsible for the mechanical preparation of these answers.).

ANSWER NO. 5:

1. Tom Hellen, Public Works Director, City Engineer: Place of diversion and Power production and overall claim information.
2. Reese Dibble, Water Superintendent: Flow measurement records and flow measurement devices.
3. Bob Schulz, Previous Water Superintendent: Flow measurement records and flow measurement devices.
4. Answers were also generated by counsel and from IDWR files and records, all of which are equally available to proponents of the interrogatory.

INTERROGATORY NO. 6: Please separately identify each communication which in any way relates to your Claim. For each such communication, please identify:

- a. Whether the communication was oral or written;
- b. Who were the parties to the communication;
- c. The date of the communication;
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- e. The relevance of the communication to the issues in this Subcase.

ANSWER NO. 6: Claimant objects to this interrogatory to the extent it seeks privileged work product and statements prepared in anticipation of litigation for which Objector has made no showing of

hardship under I.R.C.P. 26(b). Claimant also objects that the interrogatory is overbroad, unduly burdensome, and vague in that it purports to require Claimant to determine what "relates to the claim" and whether or not some communication within that vague concept has occurred. Without waiving the objection, proponent is referred to the Court records and IDWR's claim's file which reflect communications about the claim.

REQUEST FOR PRODUCTION NO. 1: Please produce a copy of each and every written communication identified in your answer to Interrogatory No. 6.

RESPONSE NO. 1: See Answer No. 6 - such documents are public records equally available to proponent without imposing the costs of production on respondent.

INTERROGATORY NO. 7: Please separately identify each document which in any way relates to your Claim, and describe its significance.

ANSWER NO. 7: Claimant objects to this interrogatory as being overbroad, unduly burdensome and vague in that it purports to require the respondent to determine what relates to the claim and, without waiving the objection, refers the proponent to Response No. 1, above. The public documents identify themselves.

REQUEST FOR PRODUCTION NO. 2: Please produce copies of each and every document identified in your answer to Interrogatory No. 7.

RESPONSE NO. 2: See Answer No. 7.

INTERROGATORY NO. 8: Please identify each exhibit which you may offer into evidence at the trial in this Subcase, and describe as to each such exhibit the fact or facts intended to be proved by the use of the exhibit or the relevance of which is felt to justify the use of the exhibit and as to each such exhibit which consists of more than 15 pages or more than 3,000 words, quote or otherwise specifically designate each portion of such exhibit which you contend is the relevant portions thereof.

ANSWER NO. 8: Claimant objects to this Interrogatory to the extent it seeks protected work product and is beyond the scope of I.R.C.P. 26(b). Pretrial rules do not authorize compelling a party to reveal exhibits which the party expects to use at the time of trial. Claimant will disclose exhibits consistent with any pretrial order entered by the Court.

REQUEST FOR PRODUCTION NO. 3: Please produce a copy of each and every exhibit identified in your answer to Interrogatory No. 8.

RESPONSE NO. 3: See Answer No. 8.

INTERROGATORY NO. 9: Please identify each statement made by anyone on your behalf, oral or written, which relates in any way to your Claim. For each such statement please identify:

- a. Whether the statement was oral or written;
- b. Who made the statement;
- c. The person to whom the statement was made;
- d. The date of the statement;

- e. The substance of the statement; and
- f. The relevance of the statement to the issues in this Subcase.

ANSWER NO. 9: ANSWER NO. 9: Claimant objects to this interrogatory to the extent it seeks privileged work product and statements prepared in anticipation of litigation for which Objector has made no showing of hardship under I.R.C.P. 26(b). Claimant also objects to this Interrogatory on the grounds that it is overly broad, too general, unduly burdensome in that the respondent is unable to determine what the proponent may consider a "statement about a claim".

Without waiving the objection, the proponent is referred to the Court records and IDWR's claim file which reflect communications about the claim.

REQUEST FOR PRODUCTION NO. 4: Please produce a copy of each and every written statement identified in your answer to Interrogatory No. 9.

RESPONSE NO. 4: See Answer No. 9.

INTERROGATORY NO. 10: If you contend that the Indian Creek Ranch Owners Association, Inc., or any agent, predecessors in interest or other person who could make an admission binding on it, has admitted a fact material to your position with respect to the Claim, please describe who made each admission, what the admission is and whether there are any documents which purport to reflect that an admission occurred.

ANSWER NO. 10: To date, such a contention has not been made.

REQUEST FOR PRODUCTION NO. 5: Please produce all documents that you assert support or may support your Claim.

RESPONSE NO. 5: Claimant objects to this request on the grounds that it is overly broad, too general, unduly burdensome in that the respondent is unable to determine what the proponent may consider supporting a claim. A request for production must identify documents or other things sought with reasonable particularity. Seeking anything that might support a claim does not identify what is being sought with reasonable particularity, and certainly not with the particularity needed for the respondent to identify and produce what is being sought. Without waiving the objection, the proponent is referred to the Court records and IDWR's claim file which reflect communications about the claim.

INTERROGATORY NO. 11: In your Claim, you contend that the Water Right should be in the name of the City of Hailey. Please describe all the facts that support this contention.

ANSWER NO. 11: Claimant objects to this interrogatory to the extent it purports to require the respondent to decide any and everything that supports the contention. Interrogatories are permitted to elicit basic facts, not a compendium of every fact

ranging from the use of every water user within the City of Hailey for the last century to the payment of a bill by each of those users to prove who owns the right. Without waiving the objections, Claimant contends the water right should be in the name of the City because the City owns the right and is the sole user of the right.

REQUEST FOR PRODUCTION NO. 6: Please produce all documents relating to your answer to Interrogatory No. 11.

RESPONSE NO. 6: See the Court's and IDWR's records with respect to this claim, all of which are equally available to the proponent. Claimant objects to the production of documents for the reasons set forth in Answer No. 11, above, and because this request does not identify items with reasonable particularity. The production of every document or item related to any fact regarding use, payment and consequent recognition of ownership for more than a century is not reasonable.

INTERROGATORY NO. 12: In your Claim, you contend that the priority date of the Water Right is "August 1, 1907." Please describe all the facts that support this contention.

ANSWER NO. 12: Please see Frost Decree.

REQUEST FOR PRODUCTION NO. 7: Please produce all documents relating to your answer to Interrogatory No. 12.

RESPONSE NO. 7: The Frost Decree and all documents

relating to it are equally available to the proponent and are part of the Court's and IDWR's files. They therefore will not be reproduced here.

INTERROGATORY NO. 13: In your Claim, you contend that the source of Water Right is "Indian Springs tributary to Indian Creek". Please describe all the facts that support this contention.

ANSWER NO. 13: Claimant objects to the extent the interrogatory purports to compel the description of "all facts" as such is beyond the scope of what may be required by an interrogatory. Without waiving the objection, please see the Court's and IDWR's files, including the portions thereof which reflect the collection system where the right is diverted. Furthermore, Claimant points out that proponents have been allowed to inspect the source and are well aware of facts related thereto.

REQUEST FOR PRODUCTION NO. 8: Please produce all documents relating to your answer to Interrogatory No. 13.

RESPONSE NO. 8: See Answer No. 13.

INTERROGATORY NO. 14: In your Claim, you contend that the point of diversion of the Water Right is located in the "SW1/4SE1/4NW1/4 of Section 23, Township 3 North, Range 18 East in Blaine County". Please describe all the facts that support this contention.

ANSWER NO. 14: Please see Answer No. 13.

REQUEST FOR PRODUCTION NO. 9: Please produce all

documents relating to your answer to Interrogatory No. 14.

RESPONSE NO. 9: Please see Answer No. 13.

INTERROGATORY NO. 15: Please describe the equipment you use for diverting water under the Water Right from the source and conveying it to the place of use, including in your response, without limitation, descriptions of all pumps, pipelines, tanks, conduits and other facilities employed in such diversion and distribution systems..

ANSWER NO. 15: Please see Answer No. 13. Claimant has allowed the proponents to inspect the collection and distribution system which is comprised of underground drain pipe collecting water at the source. The water then passes through a weir into underground, which runs down to the hydropower generator and water storage reservoir at the lower end of the valley. From there the water is piped underground to the City of Hailey where it is distributed to its users.

REQUEST FOR PRODUCTION NO. 10: Please produce all documents relating to your answer to Interrogatory No. 15.

RESPONSE NO. 10: Please see Answer No. 15.

INTERROGATORY NO. 16: Please describe any and all measurement equipment used for measuring your diversions of water under the Water Right from the source.

ANSWER NO. 16: Measurement occurs through a fixed weir and through an ultrasonic measurement system at the collection

point, where the water enters the reservoir, and at various points where individual users within the City have their water metered. Pursuant to the proponent's inspection of the facilities, they were shown the weir and allowed to measure it. They and their engineers were also allowed to photograph and document the measurement systems and question the City officials about the particulars of each of the measurement systems.

REQUEST FOR PRODUCTION NO. 11: Please produce all documents relating to your answer to Interrogatory No. 16.

RESPONSE NO. 11: Respondent does not possess responsive documents at this time.

INTERROGATORY NO. 17: In your Claim, you contend that the Water Right is for "Municipal Purpose". Please describe all the facts that support this contention.

ANSWER NO. 17: Claimant objects to the extent the interrogatory purports to compel the description of "all facts" as such is beyond scope of what may be required by and interrogatory. Without waiving the objection, the respondent submits the water from Indian Creek has been used to supply the municipal needs of the City of Hailey for as long as any one presently at the City can remember and such uses have been recognized since at least the time of the Frost decree.

REQUEST FOR PRODUCTION NO. 12: Please produce all documents relating to your answer to Interrogatory No. 17.

RESPONSE NO. 12: See attached documents.

INTERROGATORY NO. 18: In your Claim, you contend that the Water Right has a season of use of "1-1 to 12-31". Please describe all the facts that support this contention.

ANSWER NO. 18: Municipal water supply has an inherent use year-round as most people use it for culinary purposes daily, and in this case, as set forth in the above answers, the water has been used for those purposes for more than a century without any cessation.

REQUEST FOR PRODUCTION NO. 13: Please produce all documents relating to your answer to Interrogatory No. 18.

RESPONSE NO. 13: Flow records of the flows from the springs are attached.

INTERROGATORY NO. 19: In your Claim, you contend that your portion of the Water Right is for 1.830 cubic feet per second "cfs". Please describe all the facts that support this contention.

ANSWER NO. 19: Please see Frost Decree and IDWR's claim file.

REQUEST FOR PRODUCTION NO. 14: Please produce all documents relating to your answer to Interrogatory No. 19.

RESPONSE NO. 14: See Answer No. 19.

REQUEST FOR PRODUCTION NO. 15: Please produce all documents that contain any measurement records of Indian Creek and/or Indian Springs flows or diversion quantities.

RESPONSE NO. 15: Please see attached flow records.

REQUEST FOR PRODUCTION NO. 16: Please produce all documents referenced in, relating to or supporting any of your answers to the Interrogatories above that are not otherwise being produced in response to another Request for Production herein.

RESPONSE NO. 16: All responsive documents are being produced, except as noted above.

Dated this 23rd day of December, 2009.

HUTCHINSON & BROWN, LLP

By: 

Patrick D. Brown
Attorneys for Claimant

Patrick D. Brown, ISB #4413
HUTCHINSON & BROWN, LLP
104 Lincoln Street
P.O. Box 207
Twin Falls ID 83303-0207
Telephone: (208) 733-9300
Fax: (208) 733-9343
Attorney for **Claimant City of Hailey**

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. **37-01216**
)
)
) CLAIMANT'S 1st ANSWERS &
) RESPONSES TO OBJECTOR'S 1st
) INTERROGATORIES & REQUESTS FOR
) PRODUCTION
)

COMES NOW Claimant and gives the following Answers and Responses to the 9-16-09 **OBJECTOR'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION**. Discovery is continuing and Claimant reserves the right to supplement these Answers and Responses as discovery progresses:

INTERROGATORY NO. 1: Please set forth the name, address, telephone number, and occupation of each and every individual known to you or your counsel who has knowledge of or who purports to have knowledge relating to your Claim, and set forth a full and accurate summary of the knowledge possessed by each such person.

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ANSWER NO. 1: Understanding the interrogatory to request the identity of persons who have knowledge of the claim, Claimant states the following people purport to have knowledge of the claim:

1. Tom Hellen, Public Works Director/City Engineer, City of Hailey
2. The City's current and former legal counsel, Patrick Brown and James Speck.
3. As indicated in IDWR's records regarding this claim, which are public and equally available to proponents, numerous IDWR personnel, engineers, court personnel and others purport to have knowledge of the claim as set forth in those documents.
4. Ray Hyde, Previous Public Works Director
5. Daryl James, Previous City Administrator

INTERROGATORY NO. 2: Please set forth the name, address, telephone number, and occupation of each person you may call as a witness at trial in this Subcase, and for each such witness, state the substance of his/her expected testimony.

ANSWER NO. 2: Claimant objects to this Interrogatory to the extent it seeks protected work product and is beyond the scope of I.R.C.P. 26(b). Pretrial rules permit discovery of the names of people with "knowledge of relevant facts", but do not authorize compelling a party to reveal witnesses (other than experts, who are not presently involved in this case) which the party expects to use at the time of trial. Claimant will disclose witnesses consistent with any pretrial order entered by the Court.

INTERROGATORY NO. 3: Please identify each person whom you may call as an expert witness at the trial of this Subcase and

state the subject matter on which such expert witness is expected to testify, the substance of the facts to which such expert witness is expected to testify and the substance of the opinions to which such expert witness is expected to testify as required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure together with all of the underlying facts and data as required by Rule 705 of the Idaho Rules of Evidence.

ANSWER NO. 3: Claimant has not retained experts for the purpose of testifying at this point in time, but rather reserves the right to do so, especially in response to a purported expert testimony to be given by proponents.

INTERROGATORY NO. 4: Please identify each person with whom you or your representatives have communicated seeking information which in any way relates to your Claim.

ANSWER NO. 4: Claimant objects to this interrogatory to the extent it seeks privileged work product and statements prepared in anticipation of litigation for which Objector has made no showing of hardship under I.R.C.P. 26(b). Claimant also objects that the interrogatory is overbroad, unduly burdensome, and vague in that it purports to require Claimant to determine what relates to the claim and whether or not the communication has occurred in the regard. Without waiving the objection, Claimant is unaware that they have communicated with anyone seeking information related to the claim except with respect to the findings and communications with the court & IDWR which communications are identified in the claims

file maintained by those entities and communications with the proponents and their representatives.

INTERROGATORY NO. 5: Please identify each person who supplied answers to these Interrogatories and designate the answers or answer or part thereof supplied by each such person. (This interrogatory is intended to discover principal sources of information and does not seek to ascertain the identity of typists or other persons responsible for the mechanical preparation of these answers.).

ANSWER NO. 5:

1. Tom Hellen, Public Works Director, City Engineer: Place of diversion and Power production and overall claim information.
2. Reese Dibble, Water Superintendent: Flow measurement records and flow measurement devices.
3. Bob Schulz, Previous Water Superintendent: Flow measurement records and flow measurement devices.
4. Answers were also generated by counsel and from IDWR files and records, all of which are equally available to proponents of the interrogatory.

INTERROGATORY NO. 6: Please separately identify each communication which in any way relates to your Claim. For each such communication, please identify:

- a. Whether the communication was oral or written;
- b. Who were the parties to the communication;
- c. The date of the communication;
- d. The substance of the communication; and
- e. The relevance of the communication to the issues in this Subcase.

ANSWER NO. 6: Claimant objects to this interrogatory to the extent it seeks privileged work product and statements prepared in anticipation of litigation for which Objector has made no showing of hardship under I.R.C.P. 26(b). Claimant also objects that the interrogatory is overbroad, unduly burdensome, and vague in that it purports to require Claimant to determine what "relates to the claim" and whether or not some communication within that vague concept has occurred. Without waiving the objection, proponent is referred to the Court records and IDWR's claim's file which reflect communications about the claim.

REQUEST FOR PRODUCTION NO. 1: Please produce a copy of each and every written communication identified in your answer to Interrogatory No. 6.

RESPONSE NO. 1: See Answer No. 6 - such documents are public records equally available to proponent without imposing the costs of production on respondent.

INTERROGATORY NO. 7: Please separately identify each document which in any way relates to your Claim, and describe its significance.

ANSWER NO. 7: Claimant objects to this interrogatory as being overbroad, unduly burdensome and vague in that it purports to require the respondent to determine what relates to the claim and,

without waiving the objection, refers the proponent to Response No. 1, above. The public documents identify themselves.

REQUEST FOR PRODUCTION NO. 2: Please produce copies of each and every document identified in your answer to Interrogatory No. 7.

RESPONSE NO. 2: See Answer No. 7.

INTERROGATORY NO. 8: Please identify each exhibit which you may offer into evidence at the trial in this Subcase, and describe as to each such exhibit the fact or facts intended to be proved by the use of the exhibit or the relevance of which is felt to justify the use of the exhibit and as to each such exhibit which consists of more than 15 pages or more than 3,000 words, quote or otherwise specifically designate each portion of such exhibit which you contend is the relevant portions thereof.

ANSWER NO. 8: Claimant objects to this Interrogatory to the extent it seeks protected work product and is beyond the scope of I.R.C.P. 26(b). Pretrial rules do not authorize compelling a party to reveal exhibits which the party expects to use at the time of trial. Claimant will disclose exhibits consistent with any pretrial order entered by the Court.

REQUEST FOR PRODUCTION NO. 3: Please produce a copy of each and every exhibit identified in your answer to Interrogatory No. 8.

RESPONSE NO. 3: See Answer No. 8.

INTERROGATORY NO. 9: Please identify each statement made by anyone on your behalf, oral or written, which relates in any way to your Claim. For each such statement please identify:

a. Whether the statement was oral or written;

- b. Who made the statement;
- c. The person to whom the statement was made;
- d. The date of the statement;
- e. The substance of the statement; and
- f. The relevance of the statement to the issues in this Subcase.

ANSWER NO. 9: ANSWER NO. 9: Claimant objects to this interrogatory to the extent it seeks privileged work product and statements prepared in anticipation of litigation for which Objector has made no showing of hardship under I.R.C.P. 26(b). Claimant also objects to this Interrogatory on the grounds that it is overly broad, too general, unduly burdensome in that the respondent is unable to determine what the proponent may consider a "statement about a claim".

Without waiving the objection, the proponent is referred to the Court records and IDWR's claim file which reflect communications about the claim.

REQUEST FOR PRODUCTION NO. 4: Please produce a copy of each and every written statement identified in your answer to Interrogatory No. 9.

RESPONSE NO. 4: See Answer No. 9.

INTERROGATORY NO. 10: If you contend that the Indian Creek Ranch Owners Association, Inc., or any agent, predecessors in interest or other person who could make an admission binding on it, has admitted a fact material to your position with respect to the

Claim, please describe who made each admission, what the admission is and whether there are any documents which purport to reflect that an admission occurred.

ANSWER NO. 10: To date, such a contention has not been made.

REQUEST FOR PRODUCTION NO. 5: Please produce all documents that you assert support or may support your Claim.

RESPONSE NO. 5: Claimant objects to this request on the grounds that it is overly broad, too general, unduly burdensome in that the respondent is unable to determine what the proponent may consider supporting a claim. A request for production must identify documents or other things sought with reasonable particularity. Seeking anything that might support a claim does not identify what is being sought with reasonable particularity, and certainly not with the particularity needed for the respondent to identify and produce what is being sought. Without waiving the objection, the proponent is referred to the Court records and IDWR's claim file which reflect communications about the claim.

INTERROGATORY NO. 11: In your Claim, you contend that the Water Right should be in the name of the City of Hailey. Please describe all the facts that support this contention.

ANSWER NO. 11: Claimant objects to this interrogatory to the extent it purports to require the respondent to decide any and

everything that supports the contention. Interrogatories are permitted to elicit basic facts, not a compendium of every fact ranging from the use of every water user within the City of Hailey for the last century to the payment of a bill by each of those users to prove who owns the right. Without waiving the objections, Claimant contends the water right should be in the name of the City because the City owns the right and is the sole user of the right.

REQUEST FOR PRODUCTION NO. 6: Please produce all documents relating to your answer to Interrogatory No. 11.

RESPONSE NO. 6: See the Court's and IDWR's records with respect to this claim, all of which are equally available to the proponent. Claimant objects to the production of documents for the reasons set forth in Answer No. 11, above, and because this request does not identify items with reasonable particularity. The production of every document or item related to any fact regarding use, payment and consequent recognition of ownership for more than a century is not reasonable.

INTERROGATORY NO. 12: In your Claim, you contend that the priority date of the Water Right is "April 1, 1880." Please describe all the facts that support this contention.

ANSWER NO. 12: Please see Frost Decree.

REQUEST FOR PRODUCTION NO. 7: Please produce all documents relating to your answer to Interrogatory No. 12.

RESPONSE NO. 7: The Frost Decree and all documents relating to it are equally available to the proponent and are part of the Court's and IDWR's files. They therefore will not be reproduced here.

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ANSWER NO. 14: Please see Answer No. 13.

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RESPONSE NO. 12: See attached documents.

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ANSWER NO. 18: Municipal water supply has an inherent use year-round as most people use it for culinary purposes daily, and in this case, as set forth in the above answers, the water has been used for those purposes for more than a century without any cessation.

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RESPONSE NO. 13: Flow records of the flows from the springs are attached.

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ANSWER NO. 19: Please see Frost Decree and IDWR's claim file.

REQUEST FOR PRODUCTION NO. 14: Please produce all documents relating to your answer to Interrogatory No. 19.

RESPONSE NO. 14: See Answer No. 19.

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RESPONSE NO. 16: All responsive documents are being produced, except as noted above.

Dated this 23rd day of December, 2009.

HUTCHINSON & BROWN, LLP

By: 
Patrick D. Brown
Attorneys for Claimant