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DEPARTMENT OF
WATER RESOURCES

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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. 37-21412

**CITY OF HAILEY'S STATEMENT
OF ISSUES AND EXHIBIT AND
WITNESS LISTS**

Objector City of Hailey ("City"), through its attorneys Givens Pursley LLP, pursuant to the Special Master's January 26, 2012 *Order Setting Deadline, Mandatory Settlement Conference and Continued Motion/Pretrial Conference* and the parties' January 31, 2012 *Joint Motion to Extend Deadline for Witness and Exhibit List Exchange and to Extend Deadline for Statement of Issues*, hereby files its statement of issues and exhibit and witness lists for trial in the above-captioned subcase.

BACKGROUND

City struggles to understand why it, or Claimant Indian Creek Ranch Owner's Association, Inc. ("Homeowners"), or the Idaho Department of Water Resources ("Department") must prepare for, file papers in anticipation of, or travel to and attend a trial in this subcase. There is no dispute between these parties as to how the elements of water right no. 37-21412

should be decreed. The only reason a trial still is scheduled is because another objector (Dana Hofstetter, who with her husband Victor also is a respondent) seeks to have the water right decreed in a more expansive way than desired by the claimant or recommended by the Department.

Based on City's agreement and understanding with Homeowners concerning this subcase and certain other subcases in which both are involved, City does not intend to pursue its objection to the Department's September 30, 2010 *Amended Director's Report* recommendation of the Homeowners' claim no. 37-21412 or present evidence at trial in support of its objection (except for purposes of rebuttal, as described below). City also understands that Homeowners will not contest the Department's recommendation. Nevertheless, because the Hofstetters have indicated their intent to present evidence at trial, City feels compelled to continue to participate.

Ms. Hofstetter's objection asserts that right no. 37-21412 should be decreed "as claimed" in the Homeowners' February 19, 2010 *Amended Notice of Claim* ("Amended Claim")—a claim that Ms. Hofstetter filed when she was the Homeowners' attorney. The Department's recommendation did not include certain elements (sources, diversion rates, instream flows, purposes and places of use) that were included in the Amended Claim. Rather, the recommendation recognizes that the same reservoir used for irrigation storage under recommended right no. 37-19740 also has aesthetic, wildlife, and recreational storage uses.¹

In short, by asserting that right no. 37-21412 should be decreed "as claimed," Ms. Hofstetter is simply trying to obtain a more expansive right than recommended to the Homeowners by defending the legal and factual theories she developed when she was the

¹ Right no. 37-21412 is recommended as an enlargement of right no. 37-19740, and merely adds aesthetic, wildlife, and recreational storage uses to the irrigation use authorized under 37-19740. At a mandatory settlement conference on January, 31, 2012, City, Homeowners', IDWR, and the Hofstetters agreed that the reservoir's storage volume under both rights could be decreed at 22.5 acre-feet instead of the recommended 19.6 acre-feet.

Homeowners' attorney even though the Homeowners (whom Ms. Hofstetter has not represented since September 2010) do not wish to pursue those theories.

The Hofstetters own a lot within the Indian Creek Ranch Subdivision and are members of the Indian Creek Ranch Owner's Association, Inc. The Hofstetters filed a SRBA claim in 2011 for a *de minimis* domestic groundwater right. Otherwise, the Hofstetters own, and have claimed, no other water rights—the Hofstetters' lot is currently irrigated by water owned, claimed and recommended to the Homeowners.

Homeowners and City are the only water users with water rights claims to Indian Creek Spring and Indian Creek. Indian Creek is a separate stream. (*See Director's Report for Basin 37, Part 3 for Irrigation and Other Rights, General Provisions, Attachment 1*). Homeowners has authority under its Articles of Incorporation to represent its lot owners relative to water rights beneficially used within the Indian Creek Ranch Subdivision.

STATEMENT OF ISSUES

The issues for trial in this matter are as follows:

1. Whether an objector (the Hofstetters) can force a claimant (the Homeowners) to accept a more expansive water right decree than the claimant desires.
2. Whether, under the SRBA Presiding Judge's September 5, 2006 *Memorandum Decision and Order Dismissing Objections In Part With Prejudice and In Part Without Prejudice*, the Hofstetters can demonstrate sufficient injury-in-fact or in-law to their *de minimis* water right to avoid dismissal of their objection for failing to state a claim upon which relief can be granted under Idaho Rule of Civil Procedure 12(B)(6).

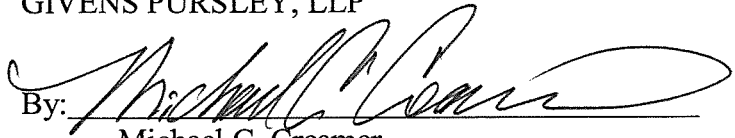
3. Whether the Hofstetters' objection to the Department's recommendation is outside the jurisdiction of the SRBA Court because it effectively is a challenge to the Homeowners' decision to accept the recommendation.

EXHIBIT AND WITNESS LISTS

City will offer no exhibits or witnesses in support of its objection at trial. City reserves the right to offer exhibits or witnesses to rebut evidence presented by other parties, and further reserves the right to cross-examine other parties' witnesses and to present argument to the Court. The exhibits City may offer or use for rebuttal include, without limitation, any of the documents attached to the Department's December 17, 2010 *Supplemental Director's Report Regarding Subcase Nos. 37-296A, 37-717, 37-1216, and 37-7854*, the November 30, 2011 Amended Settlement Agreement Term Sheet executed by the Homeowners and the City, and any documents or exhibits offered or used by other parties at trial.

DATED this 8th day of February, 2012.

GIVENS PURSLEY, LLP

By: 
Michael C. Creamer
Attorneys for City of Hailey

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of February, 2012, a true and correct copy of the *City of Hailey's Statement of Issues and Exhibit and Witness Lists* was served upon the following individual(s) by the means indicated:

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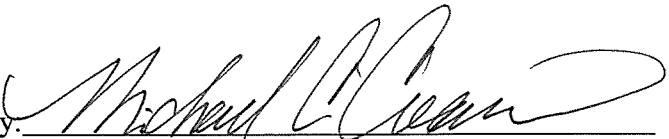
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