



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WARDEN

December 9, 2014

Transmitted Via U.S. Mail and Electronic Mail

Carol Tippi Jarman
Randy Budge
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, Idaho 83204-1391

Re: Demand for Complete Discovery Responses Pursuant to I.R.C.P. 37(a)
(*ASCC v. IDWR – Power Cty Case No. CV-2014-165*)

Dear Ms. Jarman & Mr. Budge:

This letter is submitted to you pursuant to I.R.C.P. 37(a), which requires that IDWR make a good faith effort to confer and secure appropriate responses to its interrogatories and production requests, prior to seeking an order from the Court compelling acceptable answers.

On November 6, 2014 you submitted *Plaintiff ASCC's Responses to Defendant IDWR's First Set of Interrogatories and Requests for Production of Documents to ASCC and Plaintiff's Answers and Responses to IDWR's First Set of Interrogatories and Requests for Production to Jeffrey and Chana Duffin*. In addition on November 24, 2014 you submitted *Plaintiff ASCC's Supplemental Responses to Defendant IDWR's First Set of Interrogatories and Requests for Production of Documents to ASCC and Plaintiffs' Supplemental Answers and Responses to IDWR's First Set of Interrogatories and Requests for Production to Jeffrey and Chana Duffin*. These responses do not comply with the requirements under the I.R.C.P.

Your responses are evasive and incomplete. First of all, Duffin interrogatories 3-6 and ASCC interrogatories 3-7, were never answered in either the initial or the supplemental responses. Please provide answers to these questions. Additionally, you either object on grounds that requests are "overly broad, unduly burdensome and seek irrelevant information," or

you point to hundreds of pages of Board Minutes and Managers Reports that don't at all address very pointed questions.

For example, interrogatory 1, in both requests, asks for the GPS coordinates of the wells ASCC is claiming are operated as recovery wells. Rather than provide the information you refuse to answer and object. There is nothing overly broad or burdensome about this request and it goes to the heart of the nature of these wells. This is information that should be readily available or easily obtained.

Duffin interrogatories 9 and 10 ask for the amount of water pumped from the Duffin well, as well as which lands are irrigated from that well. Again there is nothing overly broad or burdensome about this request and it goes to the heart of the nature of these wells.

ASCC interrogatories 12 and 13, as well as requests for production 9-11, ask about ASCC's transfer policy for recovery wells, specifically what is the policy and when was it approved by ASCC. The response cites 300 pages of ASCC Board Minutes that date back to the 1930's and while that material references transfers it does not directly or concisely address the questions asked.

Requests for production Duffin 1-3 and ASCC 1-4 ask for drill permits, well records, well construction records, and diversion records for the wells mentioned in the complaint. The responses direct IDWR to over 1600 pages of ASCC Board Minutes and Manager Reports. These documents do not at all provide the information asked for, which is specific to each well. Additionally, any material within those 1600 some pages that would address the question cannot be identified because you have not provided a means to identify the wells in question. There are generic references to wells such as the "Davidson well" but IDWR has no way to determine which wells are relevant and what specific well the documents refer to.

Duffin response to request for production 2, and ASCC response to request for production 9 assert privilege. Per I.R.C.P. 26(b)(5)(a) when claiming privilege you "shall describe the nature of the documents...without revealing information itself privileged or protected, [that] will enable other parties to assess the applicability of the privilege or protection." This information was not provided.

I.R.C.P. 37(a)(2) and 37(a)(3) provides that if your clients do not provide complete answers, IDWR can move the court for an order compelling complete answers. If the motion is granted I.R.C.P. 37(a)(4) provides the court shall require your clients to pay "the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that opposition to the motion was substantially justified or that other circumstances make an award of expense unjust." IDWR sees no reason or justification as to why your clients will not provide complete answers to discovery. Finally, IDWR believes it essential to review your clients' answers to discovery before it can prepare and respond to motions for summary judgment.

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Accordingly the following responses are inadequate and should be answered concisely and correctly:

- ASCC Interrogatory Nos. 1, 2, 3, 4, 5, 6, 7, 12, and 13.
- ASCC Request for Production Nos. 1, 2, 3, 4, 5, 9, 10, 11.
- Duffin Interrogatory Nos. 1, 3, 4, 5, 6, 9, and 10.
- Duffin Request for Production Nos. 1, 2, and 3.

Please provided answers to these interrogatories by Friday, December 19th.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meghan Carter', with a long horizontal flourish extending to the right.

Meghan Carter
John Homan
Deputy Attorney Generals
Idaho Department of Water Resources

cc: Paul L. Arrington (via e-mail)
John K. Simpson (via e-mail)
Travis L. Thompson (via e-mail)
W. Kent Fletcher (via e-mail)