

MAY - 6 2003

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2. I called the following persons to notify them of the hearing set for May 6, 2003 at 10:00 a.m. in response to the **MOTION FOR ORDER TO SHORTEN TIME AND TO COMPEL DISCOVERY AND FOR STATUS CONFERENCE** filed by the State of Idaho on May 5, 2003:

Mr. R. Lee Leininger (303) 312-7322

Ms. Roxanne Brown 334-7900

3. I spoke with Mr. Leininger and advised him of the hearing.

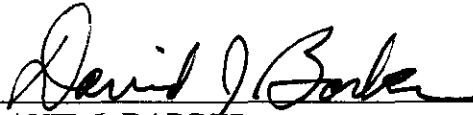
4. I spoke with Ms. Brown and advised her of the hearing. She informed me that she was not available and that she expected Mr. Spencer would participate on behalf of the Idaho Department of Water Resources. Since I had served the Idaho Department of Water Resources with the documents by Statehouse Mail, I sent a second copy to Mr. Nick Spencer by facsimile at (208) 327-7866 of the following documents:

- i. **MOTION FOR ORDER TO SHORTEN TIME AND TO COMPEL DISCOVERY AND FOR STATUS CONFERENCE.**
- ii. **AFFIDAVIT OF DAVID J. BARBER DATED MAY 5, 2003.**
- iii. **NOTICE OF SERVING DISCOVERY.**
- iv. **AFFIDAVIT OF SERVICE DATED MAY 5, 2003.**
- v. **NOTICE OF HEARING**

Further your Affiant sayeth naught.

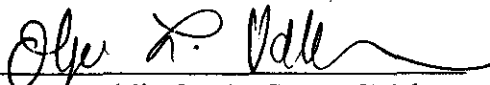
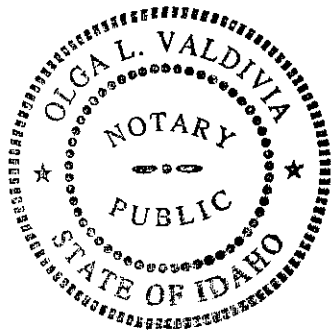
DATED this 5th day of May 2003.

LAWRENCE G. WASDEN
Attorney General



DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

Subscribed and sworn before me this 5th day of May, 2003.



Notary Public for the State of Idaho
Residing at Nampa, ID
My commission expires: 2-8-06

CERTIFICATE OF SERVICE

I certify that on this 5th day of May 2003, I caused to be served the original and true and correct copies of the **AFFIDAVIT OF SERVICE DATED MAY 5, 2003** to the following parties by the methods indicated below:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☒ Facsimile: (303) 312-7380
☐ Statehouse Mail

2. One copy to the claimant:

R. Lee Leininger
Trial Attorney
United States Department of Justice
Environ. & Nat. Res. Division
General Litigation Section
988 18th St. Suite 945
Denver, CO 80202

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
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☐ Statehouse Mail

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

STATEHOUSE MAIL

Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

(not applicable)

United States Department of Justice
Environment and Natural Resource Division
550 W. Fort Street, MSC 033
Boise, ID 83724

U.S. MAIL


DAVID J. BARBER
Deputy Attorney General

MAY - 6 2003

COPY

supplemental answers and responses if the United States obtains additional information after service of its original answers and document production. Such supplemental answers and responses shall be served from time to time, but not later than ten (10) days after such additional information has been obtained. In responding to these production requests, the United States should be guided by the definitions and instructions below.

I. GENERAL INSTRUCTIONS

A. In responding to the requests, furnish all information available to you, including information in the possession of your attorneys, or their investigators, and information to which you have a superior right to request or compel from a third party, such as your agent or representative. If you cannot respond to a request in full after exercising due diligence to secure the information, so state in your response and to the extent possible, produce whatever information you have.

B. If any document that would have been responsive to this Request has been destroyed or is no longer in the possession, custody, or control of the United States:

1. specify the date of the document, the names and job titles of the preparer(s), sender(s), and recipient(s) of the document; and
2. state the date of, and identify the person responsible for its destruction, loss, transfer, or other action by which the document left the possession, custody, or control of the United States; and
3. explain the circumstances surrounding the authorization of the destruction or disposition of the document(s).

C. If any document requested below is withheld on a claim of privilege, state the privilege you are asserting and all facts which support your assertion of the privilege including,

but not limited to: (1) the date of the document; (2) the nature of the document withheld (i.e. letter, memorandum, telex, facsimile, tape, video cassette, etc.); (3) the general subject matter of the document, the names and job titles of the preparer(s), sender(s) and recipient(s) of the document; (4) the names and job titles of all persons to whom copies of the document were furnished; (5) the subject matter of the document; (6) its present location and custodian. (7) its disposition, if any such document is no longer in the possession of, or subject to the control of plaintiff, and (8) the basis on which privilege is claimed.

D. Please take note of, and comply with, the duty to supplement and amend responses to this Request under Idaho Rule of Civil Procedure 26(e).

II. INSTRUCTIONS FOR INTERROGATORIES

1. Provide answers to these interrogatories within fifteen (15) days of service or such shorter period of time that may be set by the court by fully setting forth each interrogatory followed by an answer or objection to each interrogatory under oath in accordance with I.R.C.P. 33.

III. INSTRUCTIONS FOR REQUESTS FOR PRODUCTION

A. Please produce for inspection and copying those documents described below within the United States' possession or custody, under its control, or in the possession, control or custody of the United States' attorneys, consultants, accountants, auditors, or other professional persons, or experts, or investigators, or any other person acting on behalf of, of under the direction, or control of, the United States or the United States' attorneys.

The State of Idaho proposes that a reasonable method of responding to this request would be for Defendants to provide legible photocopies of the documents sought and copies of the photographs or other tangible things. In the event that the items cannot be readily copied or photographed, or are too voluminous for copying, Plaintiffs request that they be tendered for

inspection and copying, fifteen (15) days or such shorter period of time that may be set by the court after receipt of this request at a time mutually convenient for all attorneys of record.

IV. DEFINITIONS

In answering these requests for production, all terms used retain their normal meaning. The following terms, in addition to their commonly understood definitions, shall have the following meanings:

- A. The term "**communication**" means any meeting, conference, telephone conversation, face-to-face conversation, letter, or any other written or oral unilateral transmittal, or exchange, of information, data, irrespective of the method or form by such transmittal or exchange occurred, and the documents reflecting in any manner such communications.
- B. The term "**data**," as used in this document, refers to measurements, estimates, and observations made for the purposes of establishing and quantifying the ordinary high water mark ("OHWM") as claimed by the United States. The term "data" includes all files prepared in conjunction with the ordinary high water mark and other studies.
- C. The term "**document**" shall be defined in the broadest possible manner and shall, at a minimum, mean any original or copy of words or information, whether produced in original or copy form by printing, typing, recording, retrieval from electronic storage, manual reproduction, or other process regardless of the form. The term "document" includes, but is not limited to, writings, agreements, communication, correspondence, electronic mail messages, reports, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, diaries, records, maps, charts, plans, drawings, sketches, photographs, graphs, notes, summaries or records of meetings, conferences or congressional hearings, summaries or reports of investigations or

negotiations, opinions or reports of consultants, drafts of any document, phono-records, printouts from electronic storage or other data compilations from which information can be obtained or translated, if necessary, by the respondent through detection devices into reasonably usable form, marginal comments appearing on any document and all other writing.

D. Documents "**provided to**" or "**received from**" a person means documents "provided to" or "received from" by any method, including, but not limited, to hand-delivery, messenger service, mail, computer transmission, facsimile, electronic mail, computer, television, and any other method of transmission, without exception.

E. The term "**identify**" means:

- (1) as to documents, give the date of each such document, the addresser's name, position, and address, the addressee's name, position and address, any file, index or other identification number, title and general character of the document, and specify the name, address and position of the person or persons having custody and control thereof. Alternatively, the document may be appended to your answer.
- (2) as to a person, or entity, give the full name, business address and telephone number, home address and telephone number, the person's current employment, position and duties, the person's relationship to the United States, and the person's educational background.
- (3) as to conversations, including telephone communications, or meetings, give:
 - a. the date, place and time such communication occurred;

- b. the identity of each and every person between whom the communication was transmitted, who was present or who participated in the conversation, and any other person(s) who have knowledge of such communication;
 - c. the place at which such communication occurred, or in the case of telephone conversations, the location of each party; and
 - d. a detailed statement of the substance of what was discussed or what actions were taken.
- (4) as to administrative, judicial, or congressional proceedings, give:
- a. the caption of the proceeding;
 - b. the administrative or judicial tribunal or the name of congressional committee or subcommittee, including the business address and phone number; and
 - c. the date(s) a witness provided testimony.

- F. The phrases "**relate or refer**" or "**relating or referring**" means having some bearing, on an indicated subject matter or mentioning or reflecting the subject matter, in any manner or context.
- G. All uses of the conjunctive herein include the disjunctive and vice versa. Words in the singular include the plural and vice versa.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1: Produce the land entry records obtained from the National Archives for the applicant, Sophia Nielsen, for following parcels of land: W $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ of section 20; NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ of section 29; and E $\frac{1}{2}$ E $\frac{1}{2}$ of

section 30, all in Township 01 South, Range 41 East, Boise Meridian (related to subcase nos. 25-13635, 25-13637.)

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1:

INTERROGATORY NO. 1: Identify all persons who assisted in the preparation of the United States' Answers to these Responses to these Requests for Production.

RESPONSE TO INTERROGATORY NO. 2:

DATED this 5th day of May, 2003.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
STATE OF IDAHO



DAVID J. BARBER
Deputy Attorney General

RECEIVED

MAY - 6 2003

Department of Water Resources

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

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 Nos.: 25-13635, 25-13637, 25-13653, 65-19960,
	)	and 65-19962
	)	
	)	MOTION FOR ORDER TO SHORTEN TIME AND
Case No. 39576	)	TO COMPEL DISCOVERY AND FOR STATUS
	)	CONFERENCE
	)	
	)	

COMES NOW the State of Idaho, by and through the undersigned deputy attorney general, and moves this court for an order that does all of the following:

- i. That shortens the time for compliance with discovery;
- ii. That compels discovery of a file; and
- iii. That sets a date for immediate status conference on these subcases.

The **AFFIDAVIT OF DAVID J. BARBER DATED MAY 5, 2003**, is filed in support of this motion. The grounds for this motion are as follows:

MOTION

Page - 1

CERTIFICATE OF SERVICE

I certify that on this 5th day of May 2003, I caused to be served a true and correct copy of the **MOTION FOR ORDER TO SHORTEN TIME AND TO COMPEL DISCOVERY AND FOR STATUS CONFERENCE** to the following parties by the indicated methods:

1. Original to:

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☒ Facsimile: (303) 312-7380
☐ Statehouse Mail

2. One copy to the claimant:

R. Lee Leininger
Trial Attorney
United States Department of Justice
Environ. & Nat. Res. Division
General Litigation Section
988 18th St. Suite 945
Denver, CO 80202

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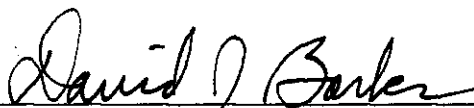
STATEHOUSE MAIL

Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

(not applicable)

United States Department of Justice
Environment and Natural Resource Division
550 W. Fort Street, MSC 033
Boise, ID 83724

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DAVID J. BARBER
Deputy Attorney General

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Department of Water Resources

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Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
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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	)	Subcase Nos.: 25-13635, 25-13637, 25-13653, 65-19960,
	)	and 65-19962
	)	
	)	AFFIDAVIT OF DAVID J. BARBER DATED
Case No. 39576	)	MAY 5, 2003
	)	
	)	
	)	
STATE OF IDAHO	)	
	)ss.	
County of Ada	)	

DAVID J. BARBER, being first duly sworn upon oath, deposes and says:

1. I make the following statements based on personal knowledge.

COPY

2. I am an attorney licensed to practice law within the State of Idaho. I am a Deputy Attorney General for the State of Idaho Office of the Attorney General. I am assigned to represent the State of Idaho in the designated subcases.

3. The Court held a hearing on these subcases on Thursday April 17, 2003. Counsel for the United States represented to the Court that the United States wanted to introduce a document from of a file obtained from the National Archives. I understood that the United States would informally disclose this file to the State of Idaho when the United States filed its amended motion to alter or amend.

4. The parties agreed to the following deadlines and hearing time, and the Court entered an order establishing these deadlines in these matters:

Deadline for United States to amend Motion to Alter or Amend	April 30, 2003
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Deadline for Memorandum from the State of Idaho	May 16, 2003
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Hearing by telephone	June 5, 2003
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5. Counsel for the United States called me on or about April 30, 2003, told me that it needed a short extension of time to consult with its client, and requested me to agree to the extension. I replied that I was willing to agree to an extension if the United States would not oppose a similar extension if I needed it. I also inquired about the status of the National Archive file, and counsel for the United States informed me that the United States would not make the file available to me.

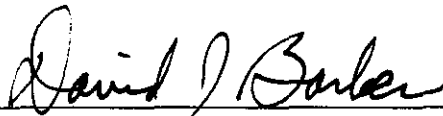
6. My agreement to the schedule set forth in paragraph 4 above was predicated on being able to review the National Archive file without a formal discovery request. It assumed that I would have from May 1, 2003 through May 16, 2003, to make a determination whether I needed to file any additional documents in response.

7. The failure and refusal of the United States to disclose the National Archive file to the State of Idaho makes it impossible to meet the deadlines agreed to by counsel and set by the Court.

Further your Affiant sayeth naught.

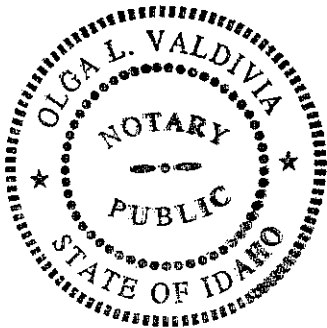
DATED this 5th day of May 2003.

LAWRENCE G. WASDEN
Attorney General



DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

Subscribed and sworn before me this 5th day of May, 2003.



Notary Public for the State of Idaho
Residing at Nampa, ID
My commission expires: 2-8-06

CERTIFICATE OF SERVICE

I certify that on this 5th day of May 2003, I caused to be served the original and true and correct copies of the **AFFIDAVIT OF DAVID J. BARBER DATED MAY 5, 2003** to the following parties by the methods indicated below:

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R. Lee Leininger
Trial Attorney
United States Department of Justice
Environ. & Nat. Res. Division
General Litigation Section
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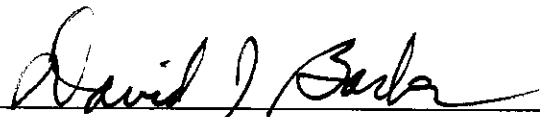
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DAVID J. BARBER
Deputy Attorney General

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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

) Subcase Nos.: 25-13635, 25-13637, 25-13653, 65-19960,
) and 65-19962
)
)

Case No. 39576

) **NOTICE OF SERVING STATE OF IDAHO'S FIRST**
) **SET OF DISCOVERY TO UNITED STATES**
)
)
)

On the 5th day of May 2003, the State of Idaho served a copy of the **STATE OF IDAHO'S FIRST SET OF DISCOVERY REQUESTS TO UNITED STATES** on R. Lee Leininger, General Litigation Section, U.S. Department of Justice. The State of Idaho made this service by transmitting this document by facsimile to Mr. Leininger at (303) 312-7380 and by U.S. Mail at the following address.

NOTICE OF SERVING

Page - 1

CERTIFICATE OF SERVICE

I certify that on this 5th day of May 2003, I caused to be served the original and true and correct copies of the **NOTICE OF SERVING STATE OF IDAHO'S FIRST SET OF DISCOVERY TO UNITED STATES** on the following parties by the indicated methods:

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United States Department of Justice
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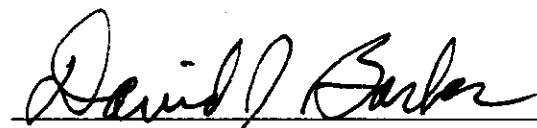
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DAVID J. BARBER
Deputy Attorney General

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) **NOTICE OF HEARING**
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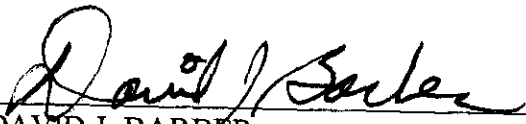
PLEASE TAKE NOTICE that the **MOTION FOR ORDER TO SHORTEN TIME
AND TO COMPEL DISCOVERY AND FOR STATUS CONFERENCE** will come on for
hearing on the 6th day of May 2003 at the 10:00 A.M. Telephone participation will be available
by calling 225-383-1099 and entering 675342 when prompted.

COPY

DATED this 5th day of May 2003.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
STATE OF IDAHO



DAVID J. BARBER
Deputy Attorney General

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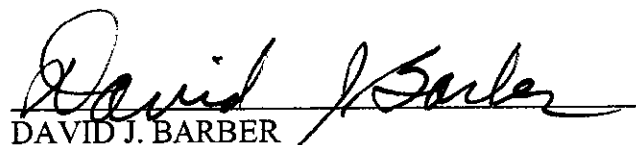
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550 W. Fort Street, MSC 033
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DAVID J. BARBER
Deputy Attorney General