

COPY

RECEIVED

JUL 11 2006

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 No. 31-11845
	)	
	)	
	)	
Case No. 39576	)	MOTION TO VACATE TRIAL DATE, TO ENTER AN
	)	AMENDED TRIAL SCHEDULE ORDER AND TO
	)	REQUEST AN EXPEDITED HEARING
	)	
	)	

COMES NOW the State of Idaho, by and through the undersigned deputy attorney general, and moves the Court to vacate the scheduled trial date of July 19-20, 2006, to enter a THIRD AMENDED TRIAL SCHEDULED ORDER, and to enter an order for expedited hearing. The grounds for this motion are as follows:

1. The Idaho Department of Water Resources conducted an additional field examination of the place of use for water right no. 31-11845 during June 2006 and produced a

MOTION TO VACATE TRIAL DATE, TO ENTER AMENDED TRIAL SCHEDULE ORDER
AND TO REQUEST AN EXPEDITED HEARING

Page - 1

topographic map of the place of use. The State of Idaho advised the Court at the hearing on June 28, 2006 that its review of the topographic map indicated that it was incomplete because it failed to include elevations of the top of the water delivery ditches and that this absence of information substantially affected the conclusions that could be drawn from the topographic map.

2. The State of Idaho also advised the Court at the hearing on June 28, 2006 that it had identified the soils at the place of use as a significant issue, since the Natural Resources and Conservation Service had identified only a small acreage of the soils within the place of use as irrigable. The State of Idaho needs to conduct an on-the ground review of the soils to make more specific the existing soil survey of the place of use.

3. To provide for full disclosure of the information developed during this additional field work, it is necessary to reopen the period for discovery.

4. An amended trial schedule is submitted with this motion as a separate Proposed
THIRD AMENDED TRIAL SCHEDULE ORDER.

5. This motion needs to be resolved on an expedited basis because of the existing deadlines in the present trial schedule order.

6. AO1 6(f)(2) provides as follows:

Expedited Hearings – Any party moving for an order to expedite a hearing shall send a copy of the motion and supporting documents to all parties listed in Section 6e(2) and each person on the current copy of the *Court Certificate of Mailing for Expedited Hearings* which is available from the Clerk of the SRBA Court.

The certificate of service in this matter demonstrates compliance with AO 6(f)(2).

7. The counsel for the State of Idaho advised counsel for Idaho Properties LLC and Ben Jernberg of this motion on July 11, 2006, and counsel for these parties indicated that he opposes this motion. Counsel for the State of Idaho would have advised counsel for Idaho

Properties LLC and Ben Jernberg on Monday, but counsel was unavailable on that date since he was in San Diego attending a funeral.

8. Oral argument is requested on this motion. This motion is also supported by the AFFIDAVIT OF NORMAN C. YOUNG DATED JULY 11, 2006, which is filed contemporaneously herewith.

WHEREFORE, the State of Idaho requests as follows:

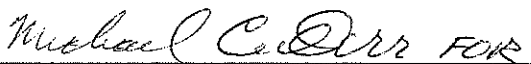
1. That the District Court vacate the trial date of July 19-20, 2006.
2. That the District Court enter the proposed THIRD AMENDED TRIAL SCHEDULE ORDER that is attached hereto.
3. That the District Court set this matter for an expedited hearing.
4. That the District Court grant such further or other relief that it deems just and proper.

RESPECTFULLY SUBMITTED this 10th day of July, 2006.

STATE OF IDAHO
LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
CHIEF, NATURAL RESOURCES DIVISION

DEP. ATTY GENERAL
JSB 6720



DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

CERTIFICATE OF SERVICE

I certify that on this 10th day of July 2006, I caused to be served the original and/or copy of the MOTION TO VACATE TRIAL DATE, TO ENTER AN AMENDED TRIAL SCHEDULE ORDER AND TO REQUEST AN EXPEDITED HEARING on each of the following persons by the indicated method:

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: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to

Special Master Brigitte Bilyeu
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: _____
- ☐ Statehouse Mail

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

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☐ Statehouse Mail

Ben D. Jernberg
Represented by:
ROGER D. LING
615 H St.
PO Box 396
Rupert, ID 83350-0396

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☒ Facsimile: (208) 436-6804
- ☐ Statehouse Mail

IDAHO PROPERTIES, LLC
Represented by:
ROGER D. ING
615 H St.
PO Box 396
Rupert ID 83350-0396

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☒ Facsimile: (208) 436-6804
- ☐ Statehouse Mail

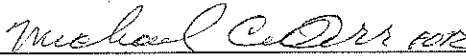
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ 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

*DEP. ATTY GENERAL
ISP 6720*



DAVID J. BARBER
Deputy Attorney General