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DEPARTMENT OF
WATER RESOURCES

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

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 31-11845

)

)

ORDER LIMITING TESTIMONY OF BRYCE

)

CONTOR, TESTIMONY OF CHUCK

Case No. 39576

)

BROCKWAY AND DENYING MOTION TO
COMPEL

)

The State of Idaho filed *Motions to Limit the Testimony of Bryce Contor, to Exclude the Testimony of Chuck Brockway, to Compel Discovery, and for an Expedited Hearing*. The court granted the *Motion for Expedited Hearing* and heard arguments regarding the *Motions to Limit Testimony, to Exclude Testimony and to Compel Discovery*.

At the beginning of the hearing, counsel for Idaho Properties LLC and for Ben Jernberg represented that the claimant and objector would not be calling Chuck Brockway as a witness at trial.

At the hearing, the State of Idaho explained that Bryce Contor had been listed as a fact witness in the claimants/objectors Answers to Interrogatories. He was not listed as an expert witness. However, during the course of this litigation Mr. Contor has been referred to and discussed as a witness with specialized knowledge. He provided affidavits relating to the *Motion for Summary Judgment*, and the State of Idaho took Mr. Contor's deposition.

During that deposition, Mr. Contor apparently provided the substance of some expert opinions and the basis for those opinions. The parties did not describe the expert opinions provided at deposition or provide excerpts of the deposition.

The court **granted in part and denied in part** the *Motion to Limit the Testimony of Bryce Contor*. The court declined to preclude the expert testimony of Mr. Contor to the extent he can

be qualified at trial if the expert opinions offered were disclosed during his deposition. Any expert opinions that were not provided during his deposition will be excluded.

The final component of the motion was the *Motion to Compel Discovery*. This part of the motion sought the disclosure of two e-mails from Mr. Contor to counsel Michael Tribe. Mr. Tribe did not disclose the e-mails and asserted attorney work product. At the hearing, Mr. Tribe represented that the substance of those e-mails was work product because it discussed his trial strategy. Based on those representations, the court **denied** the *Motion to Compel Discovery* of the two e-mails.

DATED November 30, 2006.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER LIMITING TESTIMONY OF BRYCE CONTOR, TESTIMONY OF CHUCK BROCKWAY AND DENYING MOTION TO COMPEL was mailed on November 30, 2006, with sufficient first-class postage to the following:

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