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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. 63-03174

**MOTION TO VACATE TRIAL SCHEDULING
ORDER AND RESET DATES**

COMES NOW Jerry L. Tlucek and Mary Lou Tlucek (hereafter "Tluceks"), by
and through their counsel of record, Scott L. Campbell of the firm Moffatt, Thomas, Barrett,
Rock & Fields, Chartered, and hereby moves this Court to vacate the trial scheduling order
currently in place and reset the necessary dates in the above-captioned matter.

This motion is supported by the record before the Court, as well as the reasons set
forth below as follows:

1. The current Trial Scheduling Order, issued on October 1, 2007, provides that motions for summary judgment must be heard by November 30, 2007. *Affidavit of Scott L. Campbell*, ¶3. Pursuant to Rule 56(c) of the Idaho Rules of Civil Procedure, a motion for summary judgment, affidavits and supporting briefs must be properly served at least twenty-eight (28) days prior to the time fixed for the hearing, or in this case by Friday, November 2, 2007.

2. A motion for summary judgment shall be granted "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. Rule 56(c).

3. To date, the record of depositions, admissions, and affidavits necessary to develop the basis for a summary judgment motion, specifically with regard to depositions, has not been sufficiently established. *Campbell Aff.*, ¶4.

4. On or about September 17, 2007, the Supplemental Director's Report (hereafter "Report") regarding this action was received at the law offices of Moffatt, Thomas, Barrett, Rock & Fields, Chartered. *Campbell Aff.*, ¶5.

5. In connection with the Report, Tluceks intended to conduct depositions of the individuals associated with the drafting and development of the Report. Because of scheduling conflicts, counsel for Idaho Department of Water Resources (hereafter "IDWR") and counsel for the Tluceks were unable to communicate directly and coordinate depositions dates for a substantial period of time. Thereafter, IDWR provided Tluceks' counsel with the names of certain individuals, including Don Shaff, who were allegedly proper for such depositions. *Campbell Aff.*, ¶6.

6. Upon conducting the deposition of Don Shaff on October 25, 2007, Tluceks' counsel discovered that individuals in addition to those previously identified by the IDWR for depositions concerning the Report were actively involved in preparing it. *Campbell Aff.*, ¶7.

7. Tluceks' counsel was informed by the IDWR that individuals for depositions in connection with the drafting and development of the Report were David Tuthill, Jan Shurte, and Carter Fritschle. *Campbell Aff.*, ¶8.

8. Upon attempt by Tluceks' counsel to conduct depositions of the individuals named above in paragraph 7, Tluceks' counsel was informed by the IDWR that those individuals would not be available for depositions until on or after November 19, 2007. *Campbell Aff.*, ¶9.

9. As a result of the unavailability of said individuals identified above in paragraph 7, Tluceks' counsel has not been able to depose said individuals, and consequently has not had the proper opportunity to fully develop the record of this case. *Campbell Aff.*, ¶10.

Therefore, in light of the delay resulting from IDWR's inability to make the identified witnesses available in a timely fashion, and the current lack of time available to properly move for summary judgment, Tluceks respectfully request that the Court exercise its discretion by vacating the current trial scheduling order in place and resetting the necessary dates in this matter to times convenient to both the Court and counsel of record.

REQUEST FOR EXPEDITED CONSIDERATION

The Tluceks request the Court consider this Motion on an expedited basis.

DATED this 30th day of October, 2007.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
Scott L. Campbell – Of the Firm
Attorneys for Jerry L. Tlucek and
Mary Lou Tlucek

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of October, 2007, I caused a true and correct copy of the foregoing **MOTION TO VACATE TRIAL SCHEDULING ORDER AND RESET DATES** to be served by the method indicated below, and addressed to the following:

Director
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. Box 83720
Boise, ID 83720-0098
Fax: 208-287-6700

() U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
(X) Facsimile

Scott L. Campbell
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