

RECEIVED
 MAY 16 1966
 U.S. DEPT. OF JUSTICE

200 JUN 12 07 10 AM

DEPARTMENT OF
WATER RESOURCES

COPY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re Snake River Basin Adjudication
("SRBA"),

) Subcase No. 63-3174

Case No. 39576

) **AFFIDAVIT OF GARRICK L. BAXTER**
) **IN SUPPORT OF STATE OF IDAHO'S**
) **MOTION FOR PROTECTIVE ORDER**

STATE OF IDAHO

)

) ss.

County of Ada

)

I, Garrick L. Baxter, being first duly sworn, depose and say:

1. I am counsel with the Attorney General's Office, state of Idaho, assigned to the Idaho Department of Water Resources (hereinafter "Department of Water Resources" or "Department"). My client in this matter is the Department of Water Resources and those officers and employees of the Department who request my legal assistance and advice.

2. The Director of the Department, as well as the Adjudication Bureau Chief, authorized me to act to protect the attorney-client privilege in this matter with respect to my

involvement in the preparation of the Supplemental Director's Report Regarding Subcase No. 63-3174 ("Supplemental Director's Report").

3. My communications with Department employees at issue here occurred during the course of my employment and revolved around the preparation of the Supplemental Director's Report in August and September of 2007. In preparing the Supplemental Director's Report, I had an expectation of confidentiality, and my communications with employees of the Department with respect to the Supplemental Director's Report also occurred in a confidential setting. I am not aware of any disclosure to third parties with respect to the preparation of the Supplemental Director's Report.

4. At the request of the Department, Andrea Courtney and I assisted the Department in the creation of the Supplemental Director's Report in this matter. During the creation of the Supplemental Director's Report, I made comments on the report and circulated those comments electronically via email.

5. The drafts demonstrate Ms. Courtney's and my thought processes as well as contain actual questions and comments by us and the Department's responses to those questions and comments. The attorney-client communication process was achieved largely via writings and is documented in the email drafts.

6. I have been advised in this matter by my client, individuals at the Department, not to waive any attorney-client privilege in this matter, and I have not done so to my knowledge.

7. During the Supplemental Scheduling Conference on September 25, 2007, and perhaps again during the hearing on the Tluceks' motion to amend the trial schedule held October 31, 2007, counsel for the Tluceks admitted that there were no facts in dispute and agreed that summary judgment would obviate the need for trial in this matter.

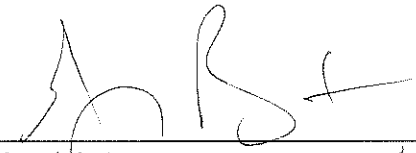
8. On December 18, 2007, the Tluceks sent the Department notices of deposition for Ms. Courtney and me. Attached hereto as Exhibit A is a true and correct copy of the Notice of Deposition of Garrick L. Baxter.

9. On January 4, 2008, the Tluceks sent the Department two subpoenas for the depositions of Ms. Courtney and me.

10. On January 7, 2008, the Tluceks hand-served me with a subpoena. Attached hereto as Exhibit B is a true and correct copy of the Subpoena for the Deposition of Garrick L. Baxter.

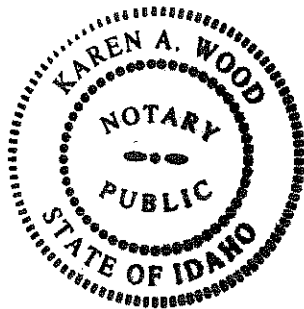
11. Attached hereto as Exhibit C is a true and correct copy of the relevant pages of Office of the Attorney General's ("OAG") Handbook.

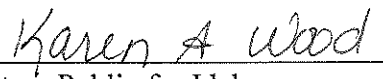
12. Further your affiant sayeth not.



Garrick L. Baxter

SUBSCRIBED AND SWORN TO before me this 17 day of January, 2008.





Notary Public for Idaho
My Commission Expires: November 13, 2012

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Boise Idaho 83701 0829208 345 2000
208 385 5384 Fax
208 385 5442 Direct**FACSIMILE****From:** Lela L. Wood
Administrative Assistant to Dylan B. Lawrence**Date:** December 18, 2007**Re:** Subcase No. 63-03174**File No.:** 22377.0001Number of pages being transmitted including the cover page: **5**
Please call fax operator at (208) 345-2000 if all pages are not received.

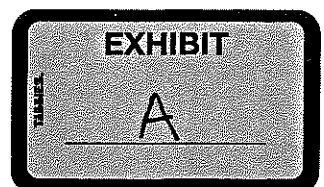
	Name	Organization	Fax No.	Voice No.
To:	Garrick Baxter	Idaho Department of Water Resources	287-6700	287-4811
		Attorney General State of Idaho		
	Director	Idaho Department of Water Resources	287-6700	287-4800
	Lori Pulsifer	QNA Court Reporting	286-7426	484-6309

Message:

Please see following Notice of Deposition.

PLEASE DELIVER IMMEDIATELY

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If you have received this communication in error, please immediately notify us by telephone to arrange for return of the original document to us. Thank you.



Attorneys for Jerry L. Tlucek
and Mary Lou Tlucek

Scott L. Campbell, ISB No. 2251
Dylan B. Lawrence, ISB No. 7136
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
slc@moffatt.com
dbl@moffatt.com
22377.1

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

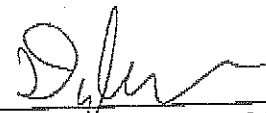
NOTICE OF DEPOSITION OF
GARRICK L. BAXTER

PLEASE TAKE NOTICE that Jerry L. Tlucek and Mary Lou Tlucek will take testimony upon oral examination of Garrick L. Baxter, before an officer authorized to administer oaths on Thursday, January 24, 2008, at 9:00 a.m., and continuing thereafter from day to day until completed, at the offices of MOFFATT THOMAS BARRETT ROCK & FIELDS, CHARTERED, located at 101 S. Capitol Boulevard, 10th Floor, Boise, Idaho 83702, at which time and place you are notified to appear and take such part in the examination as you may deem proper.

This deposition shall be taken pursuant to the Idaho Rules of Civil Procedure.

DATED this 18th day of December 2007.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Dylan B. Lawrence - Of the Firm
Attorneys for Jerry L. Tlucek and
Mary Lou Tlucek

CERTIFICATE OF SERVICE

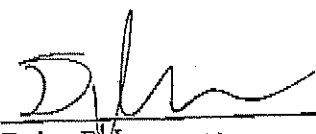
I HEREBY CERTIFY that on this 18th day of December 2007, I caused a true and correct copy of the foregoing NOTICE OF DEPOSITION OF GARRICK L. BAXTER to be served by the method indicated below, and addressed to the following:

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

Lori Pulsifer
QNA Court Reporting
PMB 219
111 Broadway, Suite 133
Boise, ID 83702
Fax: 208-286-7426

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


Dylan B. Lawrence

Attorneys for Jerry L. Tlucek
and Mary Lou Tlucek

Scott L. Campbell, ISB No. 2251
Dylan B. Lawrence, ISB No. 7136
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
slc@moffatt.com
dbi@moffatt.com
22377.1

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

NOTICE OF SERVICE OF DEPOSITION
NOTICE OF GARRICK L. BAXTER

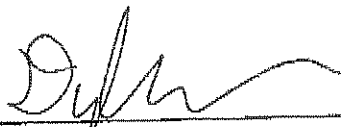
I HEREBY CERTIFY that on this 18th day of December 2007, I caused a true
and correct copy of the NOTICE OF DEPOSITION OF GARRICK L. BAXTER and the foregoing
NOTICE OF SERVICE to be served by the method indicated below, and addressed to the
following:

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
☒ Facsimile

Lori Pulsifer
QNA Court Reporting
PMB 219
111 Broadway, Suite 133
Boise, ID 83702
Fax: 208-286-7426

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile



Dylan B. Lawrence

Attorneys for Jerry L. Tlucek
and Mary Lou Tlucek

Scott L. Campbell, ISB No. 2251
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
slc@moffatt.com
22377.1

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

SUBPOENA FOR THE DEPOSITION OF
GARRICK L. BAXTER

THE STATE OF IDAHO TO: GARRICK L. BAXTER
Office of the Attorney General
322 E. Front Street
Boise, ID 83720

YOU ARE HEREBY COMMANDED:

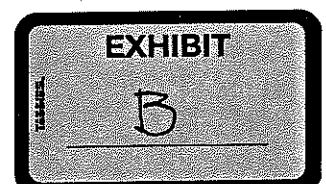
☒ to appear at the place and time specified below to testify in the above case.

☐ to produce or permit inspection and copying of the following documents
or objects, including electronically stored information, at the place, date, and time specified
below.

See Exhibit A attached hereto.

SUBPOENA FOR THE DEPOSITION
OF GARRICK L. BAXTER - 1

BOI_MT2:673926.1



☐ to permit inspection of the following premises at the date and time specified below.

PLACE: Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
101 S. Capitol Blvd., 10th Floor
Boise, Idaho 83701

DATE: Thursday, January 24, 2008

TIME: 9:00 a.m.

YOU ARE FURTHER NOTIFIED that if you fail to appear at the place and time specified above, or to produce or permit copying or inspection as specified above, that you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100 and all damages which the party may sustain by your failure to comply with this subpoena.

DATED this 4th day of January 2008.

ISSUING OFFICER SIGNATURE AND TITLE



Dylan B. Lawrence - Of the Firm
Attorneys for Jerry L. Tlucek and
Mary Lou Tlucek

ISSUING OFFICER'S NAME, ADDRESS,
AND PHONE NUMBER

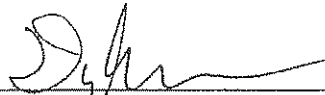
Dylan B. Lawrence, ISB No. 7136
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
U.S. Bank Plaza Building
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701-0829
Phone: 208-345-2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of January 2008, I caused a true and correct copy of the foregoing **SUBPOENA FOR THE DEPOSITION OF GARRICK L. BAXTER** 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
- ☒ Facsimile



Dylan B. Lawrence

STATE OF IDAHO



OFFICE OF THE ATTORNEY GENERAL

LAWRENCE WASDEN

EMPLOYEE HANDBOOK

EXHIBIT

C

3.4 RELATIONSHIPS WITH CLIENTS

Most of the Attorney General's clients are set forth in the Idaho Code. Idaho Code §§ 67-1401 and 67-1406. As in any law firm, maintaining good client relationships is critical to the operation of the OAG. It is also essential to being successful as an attorney.

All deputies and staff of the OAG function as agents of the Attorney General, but the Attorney General is ultimately responsible for providing legal services to the clients. Any communication problems that might arise with clients are to be brought to the immediate attention of the Division Chief.

The Idaho Rules of Professional Conduct (IRPC) make it clear that the Attorney General has a traditional attorney-client relationship with his clients. Rule 1.6 of the IRPC reads in pertinent part: "The requirement of maintaining confidentiality of representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance."

Similar to a private law firm, the attorney-client relationship binds all OAG employees to abide by and respect all associated duties and privileges, including the traditional attorney-client privilege, attorney work product, and rules of confidentiality.

To some extent, state laws, such as the Open Meeting Law and the Public Records Law, govern certain aspects of our client relationships in a manner different than private attorneys and law firms.

Questions involving these issues should always be directed to the Division Chief.

Last Change: March 11, 2005

3.5 LEGAL ETHICS

The observance of high ethical standards by the employees of the OAG is essential to the conduct of free and good government. Individuals hold their positions as a public trust and any effort to realize personal gain through official conduct is a violation of that trust. All OAG employees are bound by the Idaho Rules of Professional Conduct and by the rules and regulations of the Idaho State Bar.

As a general rule, ethical questions should always be brought to the immediate attention of the Division Chief.

INTRODUCTION

These guidelines do not replace the Idaho Rules of Professional Conduct, which control the conduct of all attorneys in the office. The Rules expressly recognize the fact that the Attorney General and his deputies have constitutional and statutory mandates that may dictate different conduct than that which is appropriate for private sector attorneys. Unfortunately, the Rules do not spell out these differences in detail. The guidelines set forth below attempt to fill in the gaps.

Each deputy attorney general should review these guidelines thoroughly. The guidelines themselves are but brief summaries of lengthy research that has been done in each problem area. If, after consulting these guidelines, you are still in doubt or you believe an exception should be made, consult with your Division Chief. It is the responsibility of the Division Chief to resolve the problem or to bring it to the attention of the Chief Deputy or the Attorney General.

WHO IS THE CLIENT?

The Attorney General represents the State of Idaho and the public interest, ultimately, the people of the State of Idaho. In daily practice, the term "client" as it appears in these guidelines, means a particular agency, the highest officer(s) in the agency, and other officials up the organizational chain of command, including the board, the governor or other constitutional officers as the case may be. By analogy, the Bar ethics rules assume that a corporate counsel's client is the corporate entity itself and, in daily practice, the company management officers and the CEO, but, also, when necessary, the board of directors and, ultimately, the shareholders of the corporation.

The Attorney General, not the individual deputy, determines what is in the interest of the state and the people. A deputy who perceives that there is a conflict between the wishes of the agency and the best interests of the state should bring the perceived conflict to his or her Division Chief.

Further guidance regarding the duties and clients of the Attorney General is found in Idaho Code § 67-1401. Every deputy within the office should be familiar with this code provision.