

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, Garrick Baxter 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 met with Department employees and discussed the Department's basis for its recommendation in this case. Based upon the information given to me by Department employees, I prepared a draft report and circulated it to certain Department employees, including the Adjudication Bureau Chief, for their review. Subsequent drafts were circulated electronically via email.

5. The drafts demonstrate Mr. Baxter'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. On October 25, 2007, I attended the morning session of the deposition of Donald V. Shaff taken by counsel for claimants and objectors, Jerry L. and Mary Lou Tlucek (the "Tluceks"). Attached hereto as Exhibit A is a true and correct copy of the pertinent pages of Mr. Shaff's deposition testimony.

8. 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.

9. On November 26, 2007, I attended the Tluceks' deposition of David R. Tuthill, Jr. Attached hereto as Exhibit B is a true and correct copy of the pertinent pages of Mr. Tuthill's November 26, 2007 deposition testimony.

10. On December 18, 2007, the Tluceks sent the Department notices of deposition for Mr. Baxter and me. Attached hereto as Exhibit C is a true and correct copy of the Notice of Deposition of Andrea L. Courtney.

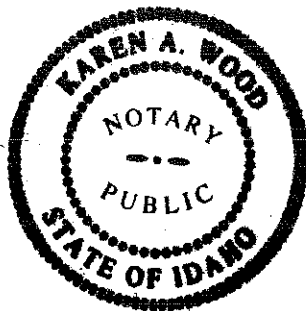
11. On January 4, 2008, the Tluceks sent the Department two subpoenas for the depositions of Mr. Baxter and me.

12. On January 7, 2008, the Tluceks hand-served me with a subpoena. Attached hereto as Exhibit D is a true and correct copy of the Subpoena for the Deposition of Andrea L. Courtney.

13. Further your affiant sayeth not.

Andrea L. Courtney
Andrea L. Courtney

SUBSCRIBED AND SWORN TO before me this 16 day of January, 2008.



Karen A. Wood
Notary Public for Idaho
My Commission Expires: November 13, 2012

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
)
)

DEPOSITION OF DONALD V. SHAFF

Law Offices of
Moffatt, Thomas, Barrett, Rock & Fields, Chartered
101 South Capitol Boulevard, 10th Floor
Boise, Idaho 83702

Thursday, October 25, 2007
Beginning at 9:00 o'clock a.m.

QnA COURT REPORTING
Lori A. Pulsifer, CSR, RMR, CRR
Idaho Certificate No. 354
PMB 219, 111 Broadway, Suite 133
Boise, Idaho 83702-7200
E-mail: realtimeqna@msn.com
Telephone: (208) 484-6309

(ELECTRONIC COPY)

Deposition of Donald V. Shaff

EXHIBIT

A

1 ~~want to assume something that is not correct, was there~~
2 anyone who worked on Exhibit No. 1, to your knowledge,
3 besides Jan Shurte and yourself -- you reviewed it;
4 correct?

5 A. Yes.

6 Q. Besides you and Jan Shurte, was there anyone
7 else who was involved in preparing or finalizing Exhibit
8 No. 1 who was not with the legal staff or the Attorney
9 General's Office or the Department of Water Resources?

10 ~~A. Not to my knowledge.~~

11 Q. Now, we have gone through the exercise with
12 regard to Jan Shurte. Can you tell me if you, yourself,
13 prepared any of the verbiage in Exhibit No. 1? Let me
14 clarify that question.

15 By "prepared," I am talking about actually
16 creating sentences, modifying words, that sort of
17 thing -- not reviewing the document but actually
18 crafting language in the document.

19 A. I received an electronic copy of this document.
20 I did do edits on the draft document and returned the
21 document to Ms. Courtney.

22 MR. CAMPBELL: I would like to have copies of
23 those e-mails. Can they be provided to me?

24 MR. BAXTER: Because they constitute
25 attorney-client-privileged communications, those

1 communications between the Department and the
2 Department's legal staff are not going to be provided.

3 MR. CAMPBELL: Did you get that on the record?

4 THE COURT REPORTER: Yes, sir.

5 ~~BY MR. CAMPBELL:~~

6 Q. Mr. Shaff, can you describe for me what the
7 process was, in terms of your review of the electronic
8 version of Exhibit No. 1 by you?

9 A. One, it allowed me to read the draft and to
10 make edits in sentences -- add sentences or double-check
11 numbers and facts presented in the document.

12 Q. You said, "One." I think I heard you say "one"
13 at the beginning of your answer; is that correct?

14 A. I beg your pardon?

15 Q. I think I heard you say "one" at the
16 beginning of your answer.

17 A. I'm not sure, now, what my reference to "one"
18 was. I'm sorry.

19 Q. Did I mishear you?

20 A. I'm sorry.

21 MR. BAXTER: Perhaps it would be helpful to
22 restate the question.

23 BY MR. CAMPBELL:

24 Q. I don't need to go through that. It is not
25 ~~that essential. How many e-mails did you receive from~~

1 ~~Q. Mr. Shaff, have you read Exhibit No. 1?~~

2 A. I have read Exhibit No. 1. Yesterday was the
3 last time I read Exhibit No. 1.

4 Q. So you read Exhibit No. 1 yesterday?

5 A. Yes.

6 Q. Okay.

7 ~~A. Prior to today.~~

8 Q. Is there anything in Exhibit No. 1 which you,
9 as the person with the Department who has responsibility
10 for the SRBA, disagree with at this point?

11 A. No, sir.

12 ~~Q. I would like to ask you some specific~~
13 questions, then, about certain aspects of Exhibit No. 1.
14 On page 3 of Exhibit No. 1, there is a reference on
15 line -- the lines aren't numbered, but it is under
16 subparagraph C. Do you see that caption?

17 A. Yes.

18 Q. If you could, count down for me so that I
19 can --

20 MR. BAXTER: Actually, stop. Might I ask a
21 favor? Could we get copies of Exhibit No. 1? Since we
22 are just starting to get started here, I wanted to do
23 that before we got any further. Thank you.

24 BY MR. CAMPBELL:

25 ~~Q. Page 3, again, subsection C, counting down from~~

1 ~~water rights, by limiting the water withdrawal to the~~
2 diversion rate?

3 ~~A. It's one component. Yes, sir.~~

4 Q. And I would like for you to turn to page 6 of
5 Exhibit No. 1. Again, you said that you reviewed this
6 document and that you reviewed prior drafts of the
7 document, Exhibit No. 1. Do you agree with everything
8 contained in Exhibit No. 1?

9 A. Yes, sir.

10 ~~Q. Would you look at footnote 5 for me, please, on~~
11 page 6?

12 A. Yes.

13 Q. Please go ahead and read that to yourself and
14 tell me when you have finished reading it. Have you
15 finished reading it?

16 A. I have read footnote 5 on page 6 to the word
17 "supply," period. There is a reference, "See also Part
18 III.D, infra." I have not referred to the reference.

19 Q. That's fine. Thank you. Now turn your
20 attention, if you would, Mr. Shaff, to page 3, again.

21 A. I am at page 3.

22 Q. Thank you. And line 7, under caption C. Do
23 you have line 7?

24 A. The first word is "directive"?

25 ~~Q. That's correct.~~

1 ~~A. I think well, the I will pick out of the~~
2 first paragraph on page 6 of Exhibit 1. Reading,
3 "Moreover, annual volume descriptors further define the
4 right, helping to settle the matter for future
5 administration," period, end of sentence.

6 Q. I am just going to take a second to review some
7 of my notes here real quick.

8 A. In the same paragraph, if I can continue --

9 Q. Okay.

10 A. Reading, "Quantifying volume associated with
11 each ground water right allows IDWR to consider and
12 administer the impact of existing (and future) rights
13 on an aquifer."

14 Q. So, Mr. Shaff, you did not type out all of this
15 document?

16 ~~A. No, I did not.~~

17 Q. But to your understanding, is this the position
18 of the Department? Does this document fairly
19 characterize the position of the Department with regards
20 to whether or not an annual volume should be listed on a
21 water right?

22 A. I communicated in the meetings I described
23 earlier that these were concepts I wanted in this
24 Supplemental Director's Report.

25 ~~Q. And, you know, I realized, actually, in my~~

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
)
)

DEPOSITION OF DAVID R. TUTHILL, JR.

Volume I

(Pages 1 through 34)

Law Offices of
Moffatt, Thomas, Barrett, Rock & Fields, Chartered
101 South Capitol Boulevard, 10th Floor
Boise, Idaho 83702

Monday, November 26, 2007
Beginning at 9:43 o'clock a.m.

QnA COURT REPORTING
Lori A. Pulsifer, CSR, RMR, CRR
Idaho Certificate No. 354
PMB 219, 111 Broadway, Suite 133
Boise, Idaho 83702-7200
E-mail: realtimeqna@msn.com
(ELECTRONIC COPY) Telephone: (208) 484-6309

Deposition of David R. Tuthill, Jr. (Volume I)

EXHIBIT

B

1 ~~Shurte?~~

2 MR. CAMPBELL: Yes.

3 MR. BAXTER: Okay.

4 BY MR. CAMPBELL:

5 Q. Dave, if you would, look at Exhibit No. 1 and
6 tell me if you can identify that document.

7 A. Yes. It is the Supplemental Director's Report
8 to which you have referred.

9 Q. And can you tell me if you had any role in the
10 preparation of this document?

11 A. Yes. I discussed with other staff the elements
12 of this report.

13 Q. By "elements," what do you mean exactly?

14 A. The basic, fundamental premise that it is
15 appropriate to include a quantity identifier for a
16 ground water irrigation water right.

17 Q. By "quantity identifier," are you referring to
18 the annual volume limitation?

19 A. Yes, on both the rate of flow and annual
20 ~~volume total annual volume diverted.~~

21 Q. Can you tell me what your comments were to the
22 individuals that you spoke to with respect to that
23 particular issue?

24 A. My recollection is that our discussion was that
25 I was aware that there was an objection to the total

1 volume quantity, and I was aware that we were preparing
2 a report to address that. I have read the report and
3 agree fully with the statements in the report, based on
4 our IDWR policy in this regard.

5 Q. This report was prepared and submitted to the
6 court -- the final version -- on September 14, 2007; is
7 that right? That is the date on page 9?

8 A. Yes. That's correct.

9 Q. And did you review the final version of this
10 document before it was sent to the court?

11 A. I don't recall reviewing the final version. I
12 was aware of what was happening, but I don't recall
13 reviewing the final version.

14 Q. But it is your testimony that you agree with
15 all of the material in this report, as far as a
16 policy?

17 A. Yes, yes. That is correct. Yes.

18 ~~Q. In terms of the date of submission of this~~
19 report to the Adjudication Court, what was your position
20 with the Department of Water Resources?

21 A. I was the Director of the agency.

22 Q. And in terms of the recommendation that you
23 said you prepared, which is, I believe, a part of this
24 report, can you tell me what your position was at the
25 ~~time the recommendation was prepared? It is Exhibit 2~~

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Boise Idaho 83701 0829

208 345 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.: 22377.0001

Number 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:	Andrea L. Courtney	Office of the Attorney General	287-6700	287-4810
	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.

EXHIBIT

C

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
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slc@moffatt.com
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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

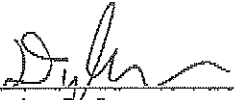
NOTICE OF DEPOSITION OF
ANDREA L. COURTNEY

PLEASE TAKE NOTICE that Jerry L. Tlucek and Mary Lou Tlucek will take testimony upon oral examination of Andrea L. Courtney, before an officer authorized to administer oaths on Thursday, January 24, 2008, at 1:30 p.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

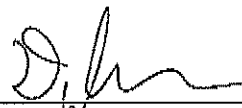
I HEREBY CERTIFY that on this 18th day of December 2007, I caused a true and correct copy of the foregoing NOTICE OF DEPOSITION OF ANDREA L. COURTNEY to be served by the method indicated below, and addressed to the following:

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
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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 ANDREA L. COURTNEY

I HEREBY CERTIFY that on this 18th day of December 2007, I caused a true
and correct copy of the NOTICE OF DEPOSITION OF ANDREA L. COURTNEY 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

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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

☐ 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: 1:30 p.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

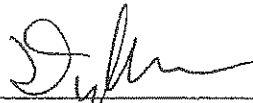
Dylan B. Lawrence, ISB No. 7136
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
U.S. Bank Plaza Building
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701-0829
Phone: 208-345-2000

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 ANDREA L. COURTNEY** 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
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Dylan B. Lawrence