

APR 06 2009

DEPARTMENT OF
WATER RESOURCES

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

OBJECTORS' RESPONSE TO MOTION
FOR ORDER COMPELLING DISCOVERY,
MOTION TO CLARIFY AND/OR MODIFY
TRIAL SCHEDULING ORDER

Objectors' Response to Motions – p. 1

FACTUAL BACKGROUND

On September 2, 2008, the Court entered a *Trial Schedule Order* attached as Exhibit A. For the purposes of this Response, the critical portion of the *Trial Schedule Order* states:

“March 6, 2009 Discovery cut-off; discovery shall be complete.”

On March 5, 2009 Aberdeen-Springfield Canal Company (ASCC) served Interrogatories, Requests for Production and a Notice of Taking Deposition – *Duces Tecum* upon the Objectors. This was one (1) day before the deadline imposed by the *Trial Schedule Order* for the completion of discovery.

The undersigned contacted Randall C. Budge, attorney for ASCC, by email on March 5, 2009 and advised him of the undersigned’s belief that the propounded discovery violated the Court’s *Trial Schedule Order*. The undersigned received no response to the email.

On March 24, 2009, Minidoka Irrigation District filed a *Notice of Objection to Discovery*, objecting to the discovery on the grounds that it violated the *Trial Schedule Order*. On March 27, 2009, the remaining Objectors filed a *Joint Notice of Objection to Discovery*, again stating that the discovery violated the *Trial Schedule Order*.

In response, ASCC filed a *Motion for Order Compelling Discovery*. It is interesting to note that the *Motion for Order Compelling Discovery* was filed before the deadline for responses to the discovery and before the Objectors, other than Minidoka Irrigation District, filed their objections.

Also in response to the objection, ASCC filed a Motion to Clarify and/or Modify Trial Scheduling Order.

APPLICABLE RULES OF CIVIL PROCEDURE

I.R.C.P. 33(a)(2) states that the party upon whom interrogatories have been served shall serve the original answers, and objections if any, within 30 days after the service of the interrogatories. The Court may allow a shorter or longer time. In this case, ASCC did not make any request of the Court to allow a shorter or longer time.

I.R.C.P. 34(b) states that a party upon whom a request for production is served shall serve a written response within 30 days after the service of the request.

I.R.C.P. 30(b)(1) states that a party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The Notice of Deposition served by ASCC stated that it would “take the testimony on oral examination of all the expert and lay witnesses identified by each of the above named objecting parties as witnesses in the matter of the Water Rights of Aberdeen-Springfield Canal Company identified in the above referenced subcases for purposes of the trial scheduled to commence on June 8, 2009...” and set the depositions to commence on April 1, 2009, four (4) weeks after the “cut-off” date ordered by the Court.

I.R.C.P. 37(a)(2) requires any party filing a motion to compel to include a certification that the movant has, in good faith, conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action. ASCC made no such attempt prior to filing its *Motion*, and its motions contain no such certification.

ASCC’S ARGUMENT

ASCC now argues that “it has always been the understanding of counsel for the claimant that the March 6th cut-off was a deadline to submit discovery requests rather than a deadline to submit discovery responses”, *ASCC Memorandum*, p. 6. ASCC goes on to argue that if the Court’s deadline is to be

enforced, then the Objectors will be given an opportunity to undertake “trial by ambush”, *ASCC Memorandum*, p. 6. ACSS also argues that ASCC will be unduly prejudiced by reason of this misunderstanding, that a full and fair trial will be potentially thwarted and the interests of justice undermined”, *ASCC Memorandum*, p.p. 6-7. In addition, without any factual basis, ASCC asserts, “Presumably Objector Minidoka Irrigation District and other SWC objectors will also assert that claimant’s dispositive motion for Summary Judgment filed by the March 27, 2009 dispositive motion deadline is also untimely, arguing that the motion had to be disposed of by that date”. *ASCC Motion to Clarify and/or Modify*, p. 2.

OBJECTORS’ RESPONSE

Objectors do not believe that any clarification is required in this case. The *Trial Schedule Order* is clear and unambiguous. It is hard to determine how the words “discovery cut-off, discovery shall be complete” (emphasis added) can be misinterpreted. ASCC is attempting to argue that the words “cut-off” and “complete” mean “commenced” or “started”. Obviously, that is not the case.

ASCC offers no explanation of why it waited over five (5) months following the issuance of the *Trial Schedule Order* to serve discovery. The only reason to serve discovery at such a late date would be to require the Objectors to attempt to be responding to discovery while at the same time attempting to prepare for the trial scheduled to commence June 8, 2009. The *Trial Schedule Order* sets forth reasonable times for the parties to conduct discovery in an orderly fashion. If ASCC wanted to engage in discovery it should have served its Interrogatories and Requests for Production more than thirty (30) days prior to the discovery “cut-off” date, and it should have set any depositions prior to the “cut-off” date.

ASCC's argument concerning the filing of summary judgment motions is without basis. The *Trial Schedule Order* states "March 27, 2009 - Deadline to file dispositive motions" (emphasis added). Objectors have never argued that the words "to file" mean "complete", as is asserted by ASCC. ASCC and the Objectors both complied with this portion of the *Trial Schedule Order*, and both have filed Motions for Summary Judgment that are now set for hearing on April 30th.

This matter has been set for trial for over seven (7) months. There is no valid reason at this point in time to continue the trial. It is the belief of the Objectors that many of the issues involved in this matter are legal issues, not factual issues, and may be resolved through the summary judgment process. In any event, the Objectors will be prepared to go forward with the trial on the scheduled date and based upon the filings of ASCC on its Motion for Summary Judgment, Objectors believe that ASCC will also be prepared to go forward with trial on June 8th.

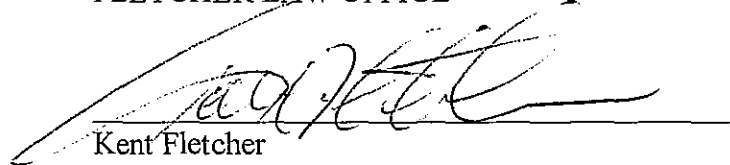
CONCLUSION

Objectors believe that no clarification of the *Trial Schedule Order* is required. The Order is not ambiguous – the discovery “cut-off”/ “complete” date was March 6, 2009. In addition, ASCC failed to comply with the provisions of I.R.C.P. 37(a)(2) by failing confer with any of the Objectors before filing its motion seeking to compel discovery and by failing the make the certification required by the rule. The discovery propounded by ASCC violated the provisions of the Order, ASCC did not comply with I.R.C.P. 37(a)(2) and the motion seeking to compel discovery should be denied.

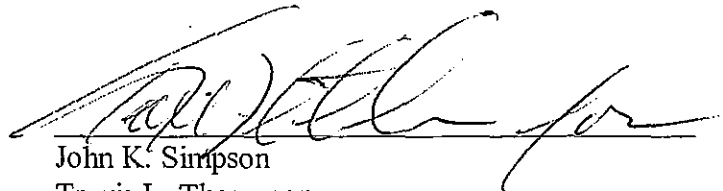
The Objectors request that the Court adhere to the *Trial Schedule Order* and that the matter go forward to trial as set forth in that Order.

DATED this 3rd day of April, 2009.

FLETCHER LAW OFFICE



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CERTIFICATE OF SERVICE

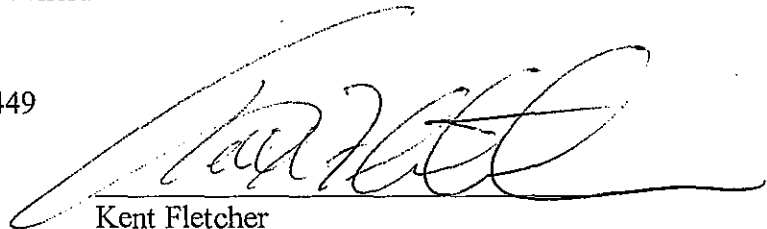
I hereby certify that on the 3rd day of April, 2009, I served by first class mail, postage prepaid, a copy of the foregoing OBJECTORS' RESPONSE TO MOTION FOR ORDER COMPELLING DISCOVERY, MOTION TO CLARIFY AND/OR MODIFY TRIAL SCHEDULING ORDER upon the following:

Randall C. Budge
Racine, Olson, Nye Budge & Bailey, Chartered
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IDWR Document Depository
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United States Department of Justice
Environment and Natural Resource Div.
550 W. Fort Street, MSC 033
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Chief, Natural Resource Division
Office of the Attorney General
State of Idaho
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A handwritten signature in black ink, appearing to read 'Kent Fletcher', is written over a horizontal line.

Kent Fletcher
Attorney for Minidoka Irrigation District
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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

Subcases 01-23B, 01-297, 35-2543,
35-4246

TRIAL SCHEDULE ORDER

A telephone scheduling conference was held on August 28, 2008. Randall C. Budge appeared for Aberdeen-Springfield Canal; David Negri appeared for the United States; David Barber appeared for the State of Idaho; Paul Arrington appeared for North Side Canal Company et al; Thomas Arkoosh appeared for American Falls Reservoir; Kent Fletcher appeared for Minidoka Irrigation District; and Andrea Courtney appeared for IDWR. The parties agreed on a trial schedule.

THEREFORE, IT IS ORDERED that the following schedule shall govern the conduct of proceedings through trial:

March 6, 2009	Discovery cut-off; discovery shall be complete.
March 27, 2009	Deadline to file dispositive motions.
May 21, 2009, 10:00 a.m.	Pretrial conference by telephone
Monday, June 8-12, 2009, 10:00 a.m.	Trial: SRBA Courthouse 253 3 rd Avenue North Twin Falls, Idaho.

Dated September 2, 2008


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication