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DEPARTMENT OF
WATER RESOURCES

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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 Nos. 01-00217, 01-00218,
01-04024, and 01-04025
(Minidoka Power Rights)

Subcase Nos. 01-02068 and 01-04054
(Palisades Power Rights)

**MEMORANDUM IN SUPPORT OF
MOTION TO AMEND DEPOSITION
SCHEDULE**

The State of Idaho, by and through the undersigned deputy attorney general, hereby submits its *Memorandum in Support of Motion to Amend Deposition Schedule*.

I. INTRODUCTION

The State seeks an order amending the deposition schedules in the above-entitled

subcases in order to accommodate the schedule of the State's deponent. The State's deponent is unavailable on the date/time currently set for his deposition. With that in mind, the State proposed to the Surface Water Coalition (SWC) to have the State's deposition take place at the time already set for the Director's deposition, and vice versa. The proposed change would not alter the dates that the various depositions are noticed up to take place, it would only change the order of the depositions. Nonetheless, the SWC has indicated that it is unwilling to accept the proposed schedule change.

II. FACTUAL BACKGROUND

As set forth in notices of deposition, depositions in the above-captioned subcases were to commence as follows:

Gary Spackman, IDWR Director	10/22/2009 at 8:00 a.m.
Lyle Swank, Watermaster	10/22/2009 at 1:30 p.m.
Bureau of Reclamation	10/23/2009 at 9:00 a.m.
State of Idaho:	10/23/2009 at 1:30 p.m.

Following the issuance of this Court's order on the State's and the United States' motions for protective order on October 13, 2009, the parties reengaged to discuss conflicts with the schedules set forth in the notices. In response to those concerns, Mr. W. Kent Fletcher indicated on October 14, 2009 that it would be acceptable to the SWC to amend the deposition schedule to allow the Bureau's deposition to take place the following Tuesday the 27th, and to move the State's deposition to the morning of the 23rd to accommodate counsel schedules in the afternoon:

Gary Spackman, IDWR Director	10/22/2009 at 8:00 a.m.
Lyle Swank, Watermaster	10/22/2009 at 1:30 p.m.
State of Idaho	10/23/2009 at 9:00 a.m.
Bureau of Reclamation	10/27/2009 at 9:00 a.m.

On October 15, 2009, counsel for the State of Idaho informed the parties that its deponent was not available on October 23rd. Counsel for the State proposed that the State's deposition take place at the time set for the Director's deposition, and vice versa:

State of Idaho	10/22/2009 at 9:00 a.m.
Lyle Swank, Watermaster	10/22/2009 at 1:30 p.m.
Gary Spackman, IDWR Director	10/23/2009 at 9:00 a.m.
Bureau of Reclamation	10/27/2009 at 9:00 a.m.

On October 15, 2009, Mr. C. Thomas Arkoosh and Mr. Travis L. Thompson indicated to counsel for the State that the SWC was unwilling to accommodate the proposed change.

III. DISCUSSION

A. STANDARD OF REVIEW

Control of discovery issues, such as the scheduling of depositions, is within the discretion of the trial court. *See Bailey v. Sanford*, 139 Idaho 744, 749, 86 P.3d 458, 463 (2009). Pursuant to I.R.C.P. 30(b)(3), the "court may for cause shown enlarge or shorten the time for taking the deposition."

B. THE COURT SHOULD AMEND THE DEPOSITION SCHEDULE WHERE THE STATE'S DEPONENT IS UNAVAILABLE AT THE TIME CURRENTLY SET FOR DEPOSITION AND WHERE THE PROPOSED ALTERNATIVE SCHEDULE WILL NOT PREJUDICE THE PARTIES.

The State seeks an order amending the deposition schedules in the above-entitled subcases in order to accommodate the schedule of the State's deponent. The State's deponent is unavailable on the date/time currently set for his deposition. With that in mind, the State proposed to the SWC to have the State's deposition take place at the time set for the Director's deposition, and vice versa. The proposed change would not alter the times or dates noticed for depositions, it would only change the order of the depositions. Nonetheless, the SWC has

indicated that it is unwilling to accept the proposed schedule change.

i. Moving The State's Deposition Forward One Day Is A Reasonable Accommodation.

As set forth in the facts above, the State is simply asking to switch the deposition times/dates with that of the Director. The State's deposition would take place Thursday morning October 22, and the Director's would take place Friday morning October 23. This simple change would accommodate the State's deponent, who is otherwise unavailable on Friday morning October 23.

ii. No Prejudice Will Result From The Schedule Change.

The SWC is certainly available during the times set forth in the proposed schedule change. The SWC's notices of deposition contemplated that all four depositions would take place on Thursday October 22 and Friday October 23—i.e., one in the morning and one in the afternoon of each day. Under the State's proposed schedule change, the State's and IDWR's depositions would both still take place on those same dates—i.e., the State's in the morning of Thursday October 22 and the IDWR Director's in the morning of Friday October 23.

Altering the schedule will cause no prejudice to the SWC, because the order that depositions are taken is irrelevant. The primary purpose of depositions is to discover facts relevant to the issues in the litigation. By their very nature, the facts in these subcases are not going to change over the course of a day or as a result of what is said by a deponent in a prior deposition.

IV. CONCLUSION

In order to accommodate the State's deponent's schedule, the State moves the Court for an order that would simply substitute one deposition for another. The accommodation would not alter the times or dates presented by the SWC in their notices of deposition, it would only change

the order of the depositions. Thus, good cause is shown for accommodating the State's deponent and for setting depositions in the above-captioned subcases to take place as follows:

State of Idaho	10/22/2009 at 9:00 a.m.
Lyle Swank, Watermaster	10/22/2009 at 1:30 p.m.
Gary Spackman, IDWR Director	10/23/2009 at 9:00 a.m.
Bureau of Reclamation	10/27/2009 at 9:00 a.m.

DATED this 15th day of October 2009.

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division



DAVID I. STANISH
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that on this 15th day of October 2009, I caused to be served the original and copies of the **MOTION TO AMEND DEPOSITION SCHEDULE** on the following persons by the methods indicated:

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