

John E. Burns
Box 264
Carmen, Idaho 83462

January 5, 2010

Garrick Baxter
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720 - 0098

In Re SRBA
Case No. 39576

Subcases 75-69A, et al.
(See Attached List)
Carmen Creek

Dear Attorney Baxter:

As you know, we are extremely concerned with the Idaho Department of Water Resources' approach to the Rule 706 Report which was ordered by the court on March 25, 2009, and due last June 30. In the Status Conference on December 17, 2009 you were unable to predict when it will be completed.

I expressed my concern in the December 17, 2009 conference that the Department has posted extensive new "recommendations" on the IDWR Public Information Website. These new "recommendations" are a complete reversal of the Director's Reports submitted to the court on January 8, 2007. Publishing new conflicting "recommendations" without completion of the Rule 706 Report seems very improper and is in fact prejudicial to our interests.

You stated that the IDWR Public Information Website is used by Department staff as a work site and is not really for the public since most private individuals do not know how to access it anyway. In reality the IDWR public web site is the principal communications tool where the Department provides water related information in many categories to the public. I can find nothing on the website or any part of it that indicates it is not designed for public use and communication.

I also expressed concern that uncorrected Department transcription and data entry errors are being repeated in the new postings. You will recall I was advised that "the beauty of this process" is that such errors can ultimately be challenged in court. I believe the Department has an obligation to be accurate, and to correct its data entry mistakes promptly, and not force court action to correct its mistakes.

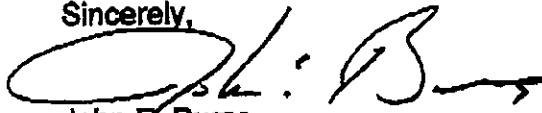
Our understanding is that the "Rule 706 Report," was to be an actual professional level field review. I do not believe that the Department's short van tour last summer of Carmen Creek can be considered to be an actual field review such as an expert witness would perform. Nor do I believe it was proper to exclude us from being present in the tour, however abbreviated, especially in light of the conflict of interest concerns we previously expressed.

IDWR, page 2

My understanding of Rule 706, admittedly from a layman's perspective, is that an "expert witness" should not accept the assignment unless they are willing to perform the task. I suggest that being able to perform the task in the specified time is a requisite component of "willing."

We ask no more than that the Department conduct an actual field review which is timely, technically thorough, professionally assembled, and properly evaluated and presented. Unless this occurs the intent of a Rule 706 Report will not be met and the burden of the current litigation will only be increased.

Sincerely,



John E. Burns

208-756-3645

treeboxmules@centurytel.net

Copy to:

Director of Idaho Department of Water Resources
Attn: Garrick Baxter
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Chief, Natural Resources
Office of Attorney General
P.O. Box 44449
Boise, Idaho 83711 - 4449

United States of America
U.S. Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, Idaho 83724

ATTACHMENT

Subcase Nos:

75-00069A 75-10062W
75-00069B 75-10062X
75-00069F 75-10062Y
75-00069H 75-10136A
75-00069K 75-10136B
75-00069L 75-10137A
75-00069M 75-10137B
75-00069N 75-10678
75-00069P 75-14019
75-00069Q 75-14021
75-00069S 75-14023
75-00069W 75-14025
75-00069X 75-14027
75-00070A 75-14029
75-00070B 75-14038
75-00070F 75-14040
75-00070H 75-14044
75-00070K 75-14046
75-00070L 75-14049
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75-00070X 75-14058
75-00070Y 75-14387
75-10061A 75-14388
75-10061AA 75-14393
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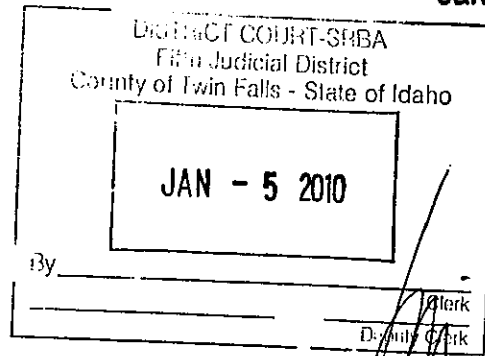
(Subcase list: B75LTOBJ-1)
3/25/09

John E. Burns
Box 264
Carmen, Idaho 83462

Hon. Terrence A. Dolan
Special Master
District Court – SRBA
Fifth Judicial District
P.O. Box 2707
Twin Falls, Idaho 83303 – 2707

In Re SRBA
Case No. 39576

January 5, 2010



Subcases 75-69A, et al.
(See Attached List)
Carmen Creek

Dear Special Master Dolan:

I and others involved in this litigation are extremely concerned with the Idaho Department of Water Resources approach to the Rule 706 Report which you ordered on March 25, 2009. The Department was unable to submit the report, due June 30, 2009, and at the Status Conference on December 17, 2009 were unable to predict when it will be completed.

Dates for discovery cut-off, dispositive motions filing and hearing, witness lists, and pre-trial conference were all set last March. Dates for those steps were vacated in the December 17, 2009 conference and new dates were not set because completion of the Rule 706 Report remains an unknown. The new trial date, October 27, 2010 is conditional.

Nonetheless the Department has posted on the IDWR Public Information Website extensive new "recommendations" which are a reversal of the Director's Reports submitted to the court in January 8, 2007. Publishing new conflicting "recommendations" without completion of the Rule 706 Report seems very improper.

As you know, I expressed this concern in the December 17 conference. I was told that the IDWR Public Information Website is used by staff as a work site and is not really for the public since most private individuals do not know how to access it anyway. In reality the IDWR public web site is the principal communications tool where the Department provides water related information in various categories to the public.

I also expressed concern that uncorrected Department transcription and data entry errors are being repeated in the new postings. You will recall I was advised that "the beauty of this process" is that such errors can ultimately be challenged in court.

Our understanding is that the "Rule 706 Report," was to secure an actual detailed field review. I do not believe that the Department's short van tour last summer of Carmen Creek can be considered to be an actual field review such as an expert witness would perform.

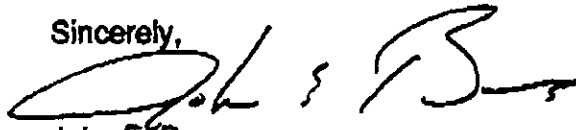
Special Master, page 2

Nor do I believe it was proper to exclude us from being present in the tour, however abbreviated, especially in light of the conflict of interest concerns we previously expressed to the Department.

My understanding of Rule 706, admittedly from a layman's perspective, is that an "expert witness" should not be named unless they are willing to perform the task. I suggest that being able to perform the assignment in the specified time is a requisite component of "willing."

We ask no more than that the Department conduct an actual field review which everyone concerned can accept as timely, technically thorough, professionally evaluated, and properly presented. Unless this occurs the intent of a Rule 706 Report will not be met.

Sincerely,



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75-00070X	75-14058
75-00070Y	75-14387
75-10061A	75-14388
75-10061AA	75-14393
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