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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
JUL 12 2010
By _____ Clerk Deputy Clerk

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

) ORDER ON DISCOVERY MOTIONS,
) AND SETTING SETTLEMENT
) CONFERENCE AND ADDITIONAL
) SCHEDULING CONFERENCE

) SUBCASE NOS.: 37-296A, 37-717,
) 37-1216, 37-7854, 37-296B, 37-19740
) and 37-21412

A hearing was held on Discovery matters on July 8, 2010. The City of Hailey filed a *Motion to Consolidate* additional subcases 37-296B, 37-19740 and 37-21412. The *Motion to Consolidate* was opposed by Indian Creek Ranch Owners Association Inc. (hereafter "Indian Creek") After the court heard argument on the *Motion*, IDWR reported that consolidation would be helpful because some subcases are based on the same root water right, and because the rights sought for consolidation could be reported more consistently if consolidated. The Court **granted** the *Motion to Consolidate*.

The City of Hailey brought a *Motion to Compel* seeking the data and information collected by Indian Creek during its inspection of the City of Hailey water system in March of 2010. The *Motion* was opposed. This motion apparently arose during the Rule 30(b)(6) deposition of Indian Creek taken by the City of Hailey. The court understands that Indian Creek provided Ben Hoff, the President of Indian Creek as the deponent under Rule 30(b)(6). Mr. Hoff apparently stated that he had taken some measurements during the inspection of the City of Hailey system.

Indian Creek argued that the measurements taken are not discoverable because they are protected under I.R.C.P. 26(b). Rule 26(b)(4)(B) sets forth in relevant part that "A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, except as provided in Rule 35(b) or except upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or

opinions on the same subject by other means.”

The court agrees that Indian Creek has no current obligation to disclose data and facts known or opinions held by an expert who has been retained or specially employed in anticipation of litigation who is not expected to be called at trial. However, the facts sought from the inspection appear to be of a different nature than those protected by Rule 26(b)(4)(B). The facts sought are measurements apparently taken by Mr. Hoff. The court understands that Mr. Hoff is not an expert retained in anticipation of litigation by Indian Creek. Indian Creek has retained a different expert. To the extent that Indian Creek’s expert took measurements during the inspection, those measurements would likely be protected as facts known or opinions held by an expert who is not expected to be called at trial. However, the measurements taken by Mr. Hoff appear to this court to be data or facts observed by a non-expert and therefore discoverable. The court **granted** the *Motion* and set a deadline of August 20, 2010 for production of the information.

Next the parties argued a *Motion for Protective Order* regarding the Depositions of Victor and Dana Hofstetter. The City of Hailey seeks factual information of Victor and Dana Hofstetter as owners of a lot in the Indian Creek subdivision. The court had previously scheduled the depositions be held on July 15, 2010. The court **denied** the *Motion for Protective Order*, but asked that the deposition of Mr. Hofstetter be taken first so that issues with regard to Attorney-Client Privilege, and Work Product could be avoided, if possible.

Finally, the parties raised some discovery concerns with regard to the continued Deposition of Indian Creek pursuant to Idaho Rule of Civil Procedure 30(b)(6). The parties made a record, and the court indicated that the deposition with production of documents would take place.

Additionally the court scheduled a Settlement Conference to take place on October 25, 2010. Parties only will participate with counsel available for consultation. The City of Hailey and Indian Creek shall be present in person at the SRBA Court in Twin Falls. IDWR is expected to participate by teleconference from Boise. Albert Barker’s clients and Big Wood Canal Company are excused from the Settlement Conference, but may participate if desired.

Therefore, IT IS ORDERED THAT the following dates have been set in these subcases:

July 21, 2010	11:30 am	<u>Additional Scheduling Conference</u>
		Location: Snake River Basin Adjudication
		253 3 rd Ave. North
		Twin Falls, Idaho 83301

Parties may participate by telephone for the Additional Scheduling Conference by dialing 1-215-446-0193 and when prompted enter participant code 926509. Any questions regarding telephone participation, please contact the clerk's office at (208)736-3011.

August 20, 2010

5:00 pm

Deadline for production of information from
Indian Creek Owners Association

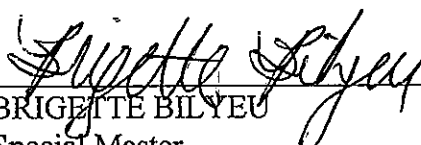
October 25, 2010

10:00 am

Mandatory Settlement Conference

Location: Snake River Basin Adjudication
253 3rd Ave. North
Twin Falls, Idaho 83301

Dated: July 12, 2010.



BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON DISCOVERY MOTIONS, AND SETTING SETTLEMENT CONFERENCE AND ADDITIONAL SCHEDULING CONFERENCE was mailed on July 12, 2010, with sufficient first-class postage to the following:

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