

COPY

1-2064, 1-2068
et al
RECEIVED 12-7
DEC 10 2012
DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

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

MICHAEL C. ORR (ISB # 6720)
ANN Y. VONDE (ISB # 8406)
Deputy Attorney General
Natural Resources Division

700 West State Street – 2nd Floor
P.O. Box 44449
Boise, ID 83711-4449
(208) 334-2400

Attorneys for the State of Idaho

**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	)	
	)	Subcase Nos. See Attachment A
Case No. 39576	)	
	)	STATE OF IDAHO'S
	)	MOTION PURSUANT TO
	)	RULES 16(i) AND 37(b)(2)(B)

The State of Idaho ("State") by and through its counsel of record hereby moves
this Court for an order pursuant to Rules 16 and 37 of the Idaho Rules of Civil Procedure

prohibiting the City of Pocatello (“City”) at trial from calling witnesses in support of its case-in-chief.

This Court issued an order on October 1, 2012, that set a trial date of December 10, 2012. *Order Granting Motion To Amend Amended Trial Schedule and Amended Trial Schedule* (Oct. 1, 2012) (“*Scheduling Order*”). The principal and perhaps only issues remaining for trial under the City’s filings are its competing claim of ownership of the Palisades Reservoir water right (Subcase No. 01-2068Y), and its assertion that the partial decree for the Palisades Reservoir water right should include additional purposes of use that were not licensed, were not claimed by the United States, and were not recommended by the Director. *Order Adopting Stipulation* (Nov. 2, 2012).¹ The *Scheduling Order* established deadlines for identifying witnesses (October 12), completing discovery and filing expert reports (November 2), completing depositions (November 9), filing pre-trial statements (November 20), and a pre-trial conference (November 29). *Order Granting Motion To Amend Amended Trial Schedule and Amended Trial Schedule* (Oct. 1, 2012) (“*Scheduling Order*”).

Rule 16(i) provides “[i]f a party or a party’s attorney fails to obey a scheduling or pre-trial order,” a court “may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B).” I.R.C.P. 16(i). Rule 37(b)(2)(B), in turn, authorizes “[e]ntry of an order refusing to allow the disobedient party to support or oppose designated claims or defenses, including prohibiting that party from introducing designated matters in evidence.” I.R.C.P. 37(b)(2)(B) (emphasis added); see also *Harris, Inc. v. Foxhollow Const. & Trucking, Inc.*, 151 Idaho 761, 771, 264 P.3d 400, 410 (2011) (“a trial judge may impose sanctions on parties for failing to follow the

¹ The City seeks additional purposes of use for DCML, recharge and mitigation.

judge's scheduling orders. I.R.C.P. 16(i). Among the available sanctions is an order "prohibiting [a] party from introducing designated matters in evidence." *Id.* at 37(b)(2)(B)). Excluding proffered evidence under this authority is warranted "as a procedural matter, irrespective of evidentiary considerations," when a party "has failed to comply with [a] Scheduling Order." *Id.*

The City did not identify witnesses as required by this Court's *Scheduling Order*,² but the City's counsel has indicated via e-mails and telephone discussions that the City intends to call witnesses in support of its case-in-chief. Permitting the City to call witnesses in support of its case-in-chief at trial would violate the letter and intent of *Scheduling Order*, unnecessarily confuse and protract the proceedings, and prejudice the State because the *Scheduling Order*'s deposition deadline has passed and the trial is set for Monday, December 10.

The State therefore requests that this Court enter an order pursuant to Rules 16(i) and 37(b)(2)(B) prohibiting the City at trial from calling witnesses in its case-in-chief, and/or providing other relief authorized by Rule 16(i) as this Court deems necessary to narrow the legal and factual issues at trial and serve the purpose of securing "the just, speedy and inexpensive determination" of this action. I.R.C.P. 1(a).

Respectfully submitted this 7th day of December 2012.

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

² The City also did file any expert reports, conduct any depositions, or file a pre-trial statement.



MICHAEL C. ORR
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of December 2012, I caused the foregoing STATE OF IDAHO'S MOTION PURSUANT TO RULES 16(i) and 37(b)(2)(B) to be filed with the Court and true and correct copies served on the following parties by the methods indicated:

1. Original to:

Clerk Of The District Court Snake River Basin Adjudication 253 Third Avenue North PO Box 2707 Twin Falls, ID 83303-2707	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☒ Facsimile: (208) 736-2121 Phone: (208) 736-3011
---	---

2. Copies to:

Special Master Terrence A. Dolan Case Administrator Diana Delaney Snake River Basin Adjudication 253 Third Avenue North PO Box 2707 Twin Falls, ID 83303-2707	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: (208) 736-2121 ☒ E-Mail: tdolan@idcourts.net ☒ E-Mail: ddelaney@idcourts.net Phone: (208) 736-3011
James C. Tucker Idaho Power Co 1221 W. Idaho St. P.O. Box 70 Boise, ID 83707	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☒ E-Mail: JTucker@idahopower.com Phone: 388-2112
Adam DeVoe Brownstein, Hyatt, Farber, Schreck 410 17th Street, Suite 2200 Denver, CO 80202	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☒ E-Mail: adevoe@bhfs.com

C. Thomas Arkoosh 301 Main St P.O. Box 32 Gooding, ID 83330	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☒ E-Mail: <u>tarkoosh@capitollawgroup.com</u> Phone: (208) 934-8872
Roger D. Ling 615 H St P.O. Box 396 Rupert, ID 83350-0396	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☒ E-Mail: <u>rdl@idlawfirm.com</u> Phone: (208) 436-4717
Candice McHugh Racine, Olson, Nye, Budge & Bailey, Chtd. 101 Capitol Blvd., Ste. 300 Boise, ID 83702	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☒ E-Mail: <u>cmm@racinelaw.net</u> Phone: 395-0011
Randall C. Budge 201 E. Center St. P.O. Box 1391 Pocatello, ID 83204-1391	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☒ E-Mail: <u>rcb@racinelaw.net</u> Phone: (208) 232-6101
Travis L. Thompson 195 River Vista Place, Ste. 204 Twin Falls, ID 83301-3029	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☒ E-Mail: <u>tlt@idahowaters.com</u> Phone: (208) 733-0700
Paul L. Arrington 195 River Vista Place, Ste. 204 Twin Falls, ID 83301-3029	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☒ E-Mail: <u>pla@idahowaters.com</u> Phone: (208) 733-0700

John K. Simpson 1010 W. Jefferson, Ste 102 P.O. Box 2139 Boise, ID 83701-2139	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☒ E-Mail: jks@idahowaters.com Phone: 336-0700
W. Kent Fletcher Fletcher Law Office 1200 Overland Ave P.O. Box 248 Burley, ID 83318	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☒ E-Mail: wkf@pmt.org Phone: (208) 678-3250
David Gehlert US Department Of Justice 999 18 th Street, South Terrace, Ste. 370 Denver, CO 80202	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☒ E-Mail: david.gehlert@usdoj.gov Phone: (303) 844-1386
USDI Bureau Of Reclamation Represented By: US Department Of Justice Environment & Nat'l Resources 550 West Fort Street, MSC O33 Boise, ID 83724	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☐ E-Mail: _____
United States Of America Regional Director Pn Region Attn: Matt Howard, PN-3130 Bureau Of Reclamation Pn-3100 1150 N Curtis Rd Ste 100 Boise, ID 83706-1234	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☒ E-Mail: mhoward@usbr.gov
American Falls Reservoir Represented by: Craig D. Hobdey 125 5 th Ave. P.O. Box 176 Gooding, ID 83330	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☒ E-Mail: hobdeycraig@gmail.com Phone: (208) 934-4429

American Falls Spaceholders New Sweden Irrigation Dist. Represented by: Jerry R. Rigby 25 N. 2nd E. P.O. Box 250 Rexburg, ID 83440-0250	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☒ E-Mail: jrigby@rex-law.com Phone: (208) 356-3633
Josephine P. Beeman Beeman & Associates, P.C. 409 W Jefferson St Boise, ID 83702	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☒ E-Mail: jo.beeman@beemanlaw.com Phone: 331-0950
State Of Idaho Represented By: Natural Resources Div. Chief State Of Idaho Attorney General's Office P.O. Box 44449 Boise, ID 83711-4449	☐ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☐ E-Mail: ☒ Not applicable
IDWR Document Depository P.O. Box 83720 Boise, ID 83720-0098	☐ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☐ E-Mail: ☒ Statehouse Mail
Scott L. Campbell 101 S. Capitol Blvd. 10th Fl. P.O. Box 829 Boise, ID 83701-0829	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☒ E-Mail: slc@moffatt.com Phone: 345-2000
Charles F. McDevitt	☒ U.S. Mail, Postage Prepaid

420 W. Bannock St. P.O. Box 2564 Boise, ID 83701-0829	☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☒ E-Mail: chas@mcdevitt-miller.com Phone: 343-7500
Albert P. Baker Shelly M. Davis 1010 W. Jefferson, Ste. 102 P.O. Box 2139 Boise, ID 83701-2139	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☒ E-Mail: apb@idahowaters.com; smd@idahowaters.com Phone: 336-0700



Olga L. Valdivia
Legal Assistant

ATTACHMENT A

01-02064
01-02064A
01-02064E
01-02064F
01-02064L
01-10042
01-10042A
01-10042B
01-10053A
01-10190
(American Falls Subcases)

01-02068
01-02068D
01-02068E
01-02068F
01-02068M
01-02068Y
01-10043
01-10043A
01-10043E
01-10191
01-10389
(Palisades Subcases)