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MAR 07 1995

OFFICE OF THE
ATTORNEY GENERAL

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

)
) MOTION TO QUASH SUBPOENA
)

Case No. 39576

) SUBCASE Nos: 01-10248; 27-11560
)
)
)
)

COMES NOW Kim Bodily, a member of the Fort Hall Water Users Association and Board, and hereby moves to quash the subpoena issued to him on March 3, 1995, and in support hereof states:

1. On March 25, 1993, the United States of America filed its Notice of Claim to a Water Right Acquired Under State Law "for use on land owned by non-Indian individuals which (sic) are served by the Fort Hall Irrigation Project." See Director's Report for the 1990 Fort Hall Indian Water Rights Agreement (Reporting Area 25), "Descriptive Attachment to the United States' Claim for Water Rights for the Fort Hall Irrigation Project."

2. On June 1, 1994, Kim Bodily filed objections in Subcases Nos.

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01-10248 and 27-11560. The objections were verified by Kim Bodily, being first duly sworn, as the "claimant" filing each objection as defined by I.C. § 42-1401A(1). The "owner" of the water right was identified as "the United States for use on Non-Indian lands on the Fort Hall Irrigation Project"

3. I.C. § 42-1401A(1) defines a claimant as "any person asserting ownership of rights to the use of water within the State of Idaho or on whose behalf ownership of rights to the use of water is asserted."

4. On March 3, 1995, Kim Bodily retained Simms & Stein, P.A., to represent him in these proceedings.

5. On March 6, 1995, a Notice of Appearance was filed on behalf of Kim Bodily.

6. On Saturday, March 4, 1995, Kim Bodily, was served with the following subpoena issued by Robert S. Fort, Clerk, and Diana Delaney, Deputy Clerk, for the District Court of the Fifth Judicial District:

You are commanded to appear and attend before a notary public in and for the County of Bingham, State of Idaho at the offices of the Tribal Attorneys, Fort Hall Business Center, Pima and Bannock Avenues, Fort Hall Idaho on Tuesday, the 21st day of March, 1995 at the hour of 10:00 a.m. as a witness in the above entitled action.

You are further commanded to bring with you the following items and documents: Any and all documents which were relied upon in filing your objections in the above captioned subcases.

You are further notified that if you fail to appear at the place and time specified above, that you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100 and all damages which the party may sustain by your failure to attend as a witness.

Dated this 3rd day of March, 1995.

By order of this court.

The subpoena was "Approved for Service" by a Tribal Judge of the Shoshone-Bannock Tribes.

7. Pursuant to Rule 45(a) of the Idaho Rules of Civil Procedure, "[s]ubpoenas shall be used only to require attendance of a witness at a trial, deposition, or hearing." No trial or hearing has been set by the court in the Snake River Basin Adjudication at the offices of the Shoshone-Bannock Tribes' Tribal Attorneys.

8. Rule 30(b)(1) of the Idaho Rules of Civil Procedure requires 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." No notice of deposition has been provided to Kim Bodily. Nor has any attempt been made to confer with Mr. Bodily with respect to mutually convenient times for the purpose of taking his deposition.

9. Pursuant to Rule 45(d)(1) of the Idaho Rules of Civil Procedure, no proof of service of a notice to take a deposition as provided in Rules 30 and 31 or a stipulation for taking a deposition was provided to the Clerk or Deputy Clerk to constitute sufficient authorization for the issuance of the subpoena.

10. The subpoena commands the client to appear at Fort Hall, Idaho at 9:00 a.m. on March 21, 1995. At 10 a.m. on March 21, 1995, the client's counsel will be participating in oral argument in Nebraska v. Wyoming, Original No. 108, at the United States Supreme Court in Washington, D.C.

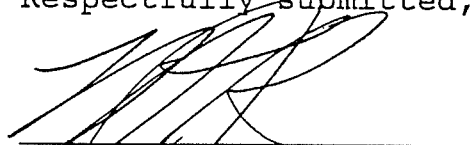
11. Movant does not request a hearing.

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WHEREFORE, the claimant, Kim Bodily, hereby moves that the
aforementioned subpoena be quashed and that counsel for the
Shoshone-Bannock Tribes be ordered to confer with the undersigned
to arrange a mutually convenient time and place to take the
deposition of Kim Bodily, if that is what counsel intends to do.

Dated this 5th day of March, 1995.

Respectfully submitted,



Margaret J. King

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CERTIFICATE OF SERVICE

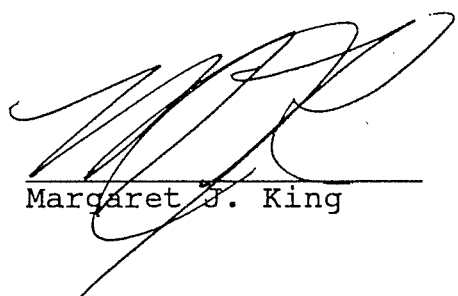
I certify that on this 6th day of March, 1995, I served a true and correct copy of the foregoing MOTION TO QUASH SUBPOENA by faxing or placing a copy thereof in the United States mail, first class postage prepaid to each person listed below.

Clerk of the SRBA Court (faxed)
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707
Fax (208) 736-2121

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