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Claimants: Dan H. and Irma R. McFaddan

Attorney Name and Address: HEPWORTH, LEZAMIZ & HOHNHORST,
CHARTERED
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P.O. Box 389
Twin Falls, ID 83303-0389
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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	)	Subcase No. 36-00049
	)	
	)	MOTION AND MEMORANDUM FOR
	)	PROTECTIVE ORDER AND
	)	REQUEST FOR EXPEDITED HEARING
Case No. 39576	)	
	)	

DESCRIPTIVE SUMMARY

This document contains the Motion for Protective Order filed by Dan H. McFaddan and Irma R. McFaddan ("McFaddans") to prevent, or postpone, the proposed November 21, 1995 depositions of Dan H. McFaddan and Irma R. McFaddan by Faulkner Land & Livestock ("Faulkner") pursuant to Faulkner's November 12, 1995 deposition notices.

MOTION FOR PROTECTIVE ORDER

McFaddans, through their attorneys, Hepworth, Lezamiz & Hohnhorst, and

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MOTION FOR AND MEMORANDUM FOR PROTECTIVE ORDER
AND REQUEST FOR EXPEDITED HEARING - 1

1 pursuant to Rule 26(c) I.R.C.P., hereby move the Court for an order protecting McFaddans
2 from the depositions that Faulkner seeks to conduct on November 21, 1995, on the grounds
3 that such depositions, at this time and carried out by this entity, would be untimely,
4 oppressive and unreasonable. A copy of Faulkner's November 12, 1995 deposition notices
5 served on McFaddans (the "deposition notices") are attached hereto for the Court's
6 reference.

7 McFaddans request that the Court order that: 1) such discovery may be had
8 only after Faulkner has been allowed to become a party to a subcase in which McFaddans
9 are also parties; 2) the deposition requests are interposed for the purpose of causing
10 unnecessary delay and attempting to prohibit the McFaddans from proceeding with
11 discovery; 3) Faulkner is not a proper entity to engage in such discovery; and 4) Faulkner
12 pay McFaddans' reasonable attorney fees and expenses in seeking this order, pursuant to
13 I.R.C.P. 37(a)(4).

14 McFaddans request an expedited hearing.

15 MEMORANDUM

16 On or about August 18, 1995, Faulkner filed a Motion to File Late Response
17 to McFaddan Objection, which seeks leave to file late responses to the objections to the
18 Basin 36 director's report filed by Dan and Irma McFaddan (subcases 36-00048 and 36-
19 00049). Faulkner waived its right to be a party to the subcases by failing to timely file a
20 response to McFaddans' objections pursuant to Administrative Order 1, Rule 6.f., which
21 reads as follows:
22
23

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Hohnhorst

MOTION FOR AND MEMORANDUM FOR PROTECTIVE ORDER
AND REQUEST FOR EXPEDITED HEARING - 2

1 A party to the adjudication who does not file an objection or response waives
2 the right to be a party to the subcase and to receive notice of further
proceedings in the subcase. (Emph. added).

3 No relief has been granted to set aside Faulkner's waiver and, therefore, Faulkner is not a
4 party to the subcases and has no right to conduct discovery. As I.R.C.P. 30(A) reflects only
5 a party is entitled to conduct discovery.

6 Pursuant to the affidavits of Patrick D. Brown and LeAnn McMillan filed
7 simultaneously herewith, Faulkner's deposition notices are intended to delay discovery by
8 the McFaddans. I.R.C.P. 26(d) specifically provides "the fact that a party is conducting
9 discovery, whether by deposition or otherwise, shall not operate to delay any other party's
10 discovery."

11 McFaddans do not assert immunity from discovery. However, for the above
12 reasons, the depositions should not be conducted by Faulkner at this time. McFaddans
13 respectfully request that the court grant this motion for protective order.

14 Dated this 14th day of November, 1995.

15 HEPWORTH, LEZAMIZ & HOHNHORST,
16 CHARTERED

17 By: John C. Hepworth
18 John C. Hepworth, Attorneys for
19 McFaddans
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MOTION FOR AND MEMORANDUM FOR PROTECTIVE ORDER
AND REQUEST FOR EXPEDITED HEARING - 3

CERTIFICATE OF SERVICE

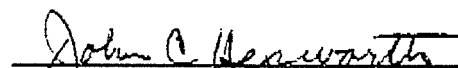
The undersigned, a resident attorney of the State of Idaho, with offices at 133 Shoshone St. North, P.O. Box 389, Twin Falls, Idaho 83303, and one of the attorneys for the claimants in this matter, certifies that on the 14th day of November, 1995, he served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Chief, Natural Resources Div.
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy (Fax)

Josephine P. Beeman
Dillion, Bosch, Daw & Bock, Chtd.
Fidelity Building
242 N. 8th Street, Suite 200
Boise, ID 83702

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy (Fax)


John C. Hepworth

(WATER\600049.MTN)

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MOTION FOR AND MEMORANDUM FOR PROTECTIVE ORDER
AND REQUEST FOR EXPEDITED HEARING - 4