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OFFICE OF THE
ATTORNEY GENERAL

Claimants: Ya-Ta-Hay Investments, Inc.
Attorney Name and Address: HEPWORTH, LEZAMIZ & HOHNHORST,
CHARTERED
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Twin Falls, ID 83303-0389
Telephone: (208)734-7510

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. 36-10283A
)
)
) 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 Ya-Ta-Hay Investments, Inc. ("Ya-Ta-Hay") to prevent, or postpone, the proposed November 21, 1995 deposition of Ya-Ta-Hay Investments, Inc. by May Farms, Ltd. ("May") pursuant to May's November 12, 1995 deposition notice.

MOTION FOR PROTECTIVE ORDER

Ya-Ta-Hay, through its attorneys, Hepworth, Lezamiz & Hohnhorst, and

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

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

12 Ya-Ta-Hay requests an expedited hearing.

13 MEMORANDUM

14 On or about August 18, 1995, May filed a Motion to File Late Response to Ya-
15 Ta-Hay Objection, which seeks leave to file late responses to the objections to the Basin 36
16 director's report filed by Ya-Ta-Hay Investments, Inc. (subcase 36-10283A). May waived his
17 right to be a party to the subcase by failing to timely file a response to Ya-Ta-Hay's objection
18 pursuant to Administrative Order 1, Rule 6.f., which reads as follows:

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

21 No relief has been granted to set aside May's waiver and, therefore, May is not a party to
22
23

1 the subcase and has no right to conduct discovery. As I.R.C.P. 30(A) reflects only a party
2 is entitled to conduct discovery.

3 Pursuant to the affidavits of Patrick D. Brown and LeAnn McMillan filed
4 simultaneously herewith, May's deposition notice is intended to delay discovery by Ya-Ta-
5 Hay. I.R.C.P. 26(d) specifically provides "the fact that a party is conducting discovery,
6 whether by deposition or otherwise, shall not operate to delay any other party's discovery."

7 Ya-Ta-Hay does not assert immunity from discovery. However, for the above
8 reasons, the depositions should not be conducted by May at this time. Ya-Ta-Hay
9 respectfully requests that the court grant this motion for protective order.

10 Dated this 15th day of November, 1995.

11 HEPWORTH, LEZAMIZ & HOHNHORST,
12 CHARTERED

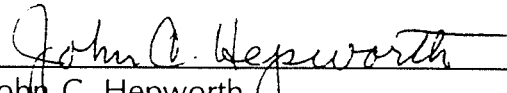
13 By: John C. Hepworth
14 John C. Hepworth, Attorneys for
Ya-Ta-Hay
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CERTIFICATE OF SERVICE

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 15th 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.	☒ U.S. Mail
Office of the Attorney General	☐ Hand Delivered
State of Idaho	☐ Overnight Mail
P. O. Box 44449	☐ Telecopy (Fax)
Boise, ID 83711-4449	

Josephine P. Beeman	☒ U.S. Mail
Dillion, Bosch, Daw & Bock, Chtd.	☐ Hand Delivered
Fidelity Building	☐ Overnight Mail
242 N. 8th Street, Suite 200	☐ Telecopy (Fax)
Boise, ID 83702	


John C. Hepworth

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