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ATTORNEYS FOR THE IDAHO
DEPARTMENT OF WATER RESOURCES

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. 36-00003C,
	)	36-00047, 36-00079, 36-00089A,
	)	36-00108B, and 36-10223
	)	
Case No. 39576	)	MOTION TO QUASH AND MOTION
	)	FOR PROTECTIVE ORDER; MOTION
	)	FOR SANCTIONS; MOTION FOR
	)	EXPEDITED HEARING
	)	
	)	

Descriptive Summary

This is IDWR's motion to quash six subpoenas and deposition notices served on it by counsel for claimants in the above-referenced subcases, as well as its motion for a protective order vacating those depositions and prohibiting the claimants from seeking to undertake discovery against IDWR pending completion of court-ordered settlement conferences. It also is IDWR's motion for sanctions against counsel for these claimants; and IDWR's motion for expedited hearing requested for Monday, January 8, 1996.

MOTION TO QUASH SUBPOENA AND NOTICE OF DEPOSITION;
MOTION FOR PROTECTIVE ORDER; MOTION FOR SANCTIONS;
MOTION FOR EXPEDITED HEARING, Page 1

Basis of IDWR's Appearance

The Idaho Department of Water Resources (IDWR) hereby appears, by and through its undersigned legal counsel of record, as a statutorily designated non-party independent expert and technical assistant who has been involuntarily subjected to compulsory judicial process apparently in its capacity as a prospective witness in the above-referenced subcases. Although a non-party in the SRBA, IDWR asserts the right to appear both to be heard in opposition to the imposition against it of said compulsory process and to seek judicial relief and redress therefor.

Motions

MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER

IDWR hereby moves the Court, pursuant to Rule 45(b)(2), Idaho Rules of Civil Procedure, for its order quashing six subpoenas duces tecum and deposition notices duces tecum in the above-referenced subcases served on it on January 5, 1996, on the ground that the depositions in question are unreasonable and oppressive, particularly so since each deposition is scheduled to begin fifteen minutes after the beginning time scheduled for the court-ordered mandatory settlement conference set for that subcase. IDWR further moves the Court, pursuant to Rule 26(c), Idaho Rules of Civil Procedure, for a protective order vacating the six depositions and prohibiting legal counsel for these claimants from undertaking to depose any IDWR employee or instituting any other formal discovery against IDWR during the pendency of court ordered settlement

MOTION TO QUASH SUBPOENA AND NOTICE OF DEPOSITION;
MOTION FOR PROTECTIVE ORDER; MOTION FOR SANCTIONS;
MOTION FOR EXPEDITED HEARING, Page 2

conferences between IDWR and any claimants identified as members of the Hagerman Water Right Owners, Inc. (HWRO). IDWR so moves for the following reasons:

1. Discovery during the pendency of the settlement conferences is burdensome, oppressive, and prejudicial to the Court's intention that good faith settlement negotiations shall occur before the HWRO subcases progress toward trial.

2. Depositions at the present time are unnecessary.

3. Neither the Court nor the claimants have yet requested, pursuant to Idaho Code §42-1412(4), IDWR to present the basis of its recommendations.

4. Counsel for these claimants has failed to provide reasonable notice of the depositions, as is required by Rule 30(b)(1), Idaho Rules of Civil Procedure.

5. IDWR is not available for depositions at the scheduled times.

6. The deposition notices' direction for designation of deponents is both overly broad and burdensome.

7. The deposition notices' direction for production of documents is overly broad, burdensome, and beyond the scope of permissible discovery.

8. Service of the subpoenas failed to comply with the requirements of Rule 4(d)(5), Idaho Rules of Civil Procedure.

MOTION FOR SANCTIONS

IDWR hereby moves the Court, pursuant to Rules 11(a)(1) and 26(f)(2), Idaho Rules of Civil Procedure, for its order sanctioning legal counsel for these claimants by ordering counsel personally to pay IDWR's reasonable attorney's fees incurred in bringing the present motions, in a sum to be subsequently determined. IDWR brings this motion on the ground that the totality of circumstances outlined in the motion to quash and the motion for protective order, and the supporting memorandum, establishes that said legal counsel has interposed the subpoenas and deposition notices for the purpose of harassment and causing unnecessary delay to, and needless increase in the cost of IDWR's good faith participation in, the presently scheduled court-ordered settlement conferences.

MOTION FOR EXPEDITED HEARING

IDWR further moves the Court to set these motions for immediate hearing, at the Court's earliest convenience on Monday, January 8, 1996, for the reason that the first of the depositions in question is presently scheduled for the following morning. IDWR further requests that its legal counsel be permitted to appear and conduct oral argument via telephone.

Memorandum in Support of Motions

All grounds in support of each of the above-stated motions are discussed in detail in a supporting memorandum, submitted contemporaneously herewith.

DATED this 8th day of January, 1996.

A. Lynne Krogg for
NICHOLAS B. SPENCER
Deputy Attorney General
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of January, 1996, I served a true and correct copy of the foregoing MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER; MOTION FOR SANCTIONS; MOTION FOR EXPEDITED HEARING on the following via facsimile transmission to the address and FAX number listed below.

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MOTION TO QUASH SUBPOENA AND NOTICE OF DEPOSITION;
MOTION FOR PROTECTIVE ORDER; MOTION FOR SANCTIONS;
MOTION FOR EXPEDITED HEARING, Page 5