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1996 JAN 10 AM 11:14 Department of Water Resources

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

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	)	
	)	ORDER GRANTING MOTIONS TO
	)	QUASH and FOR PROTECTIVE
	)	ORDER and ORDER DENYING
_____		MOTIONS FOR SANCTIONS

On January 8, 1996, IDWR filed its *Motion to Quash and Motion for Protective Order; Motion for Sanctions; Motion for Expedited Hearing (Motions)*. Attached were an affidavit of David B. Shaw and memorandum. Essentially, IDWR sought protection from six depositions noticed by claimants in the above six subcases scheduled to begin immediately after settlement conferences on January 9, 1996. IDWR also sought sanctions because it argued the purpose of the discovery was "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."

Just before an expedited hearing on the *Motions*, the six claimants filed an affidavit of Patrick D. Brown with attachments to demonstrate his firm's efforts "since last summer to work with the Idaho Department of Water Resources to economically and efficiently resolve subcases."

He argued that a mandatory settlement conference before discovery is “unproductive and tends to drag out the process.”¹

An expedited hearing on IDWR’s *Motions* was held late on January 8, 1996, in the SRBA Courtroom, Twin Falls, Idaho. Nicholas B. Spencer appeared by telephone for IDWR and Patrick D. Brown appeared in person for the claimants. At the conclusion of argument, the claimants also moved for attorney fees and costs. This Order sets forth the court’s ruling from the bench.

After considering the pleadings and arguments of counsel, it is apparent that the discovery sought is unduly burdensome in view of its scope and the short notice to potential witnesses. The claimants made no effort to contact IDWR beforehand to arrange a mutually agreeable time. Instead, they chose to serve subpoenas *duces tecum* late on Friday for depositions to begin the following Tuesday. That amounts to less than two days notice. Further, the depositions required IDWR to designate someone, not necessarily those who normally attend settlement conferences, to appear and testify:

- (a) concerning the existence, nature and extent of a water right under claim no. [each of the six subcases];
- (b) concerning use of water under that claim or on the property claimed; and
- (c) concerning IDWR’s past, present, or future administration of water on that land or in association with that claim of right or use [emphasis added].

Notice of Taking Deposition Duces Tecum Upon Oral Examination of the Idaho Department of Water Resources at 2.

Besides being asked to testify about those matters, the deponent was required to bring “all documents of any type in your possession, control, and custody that relate to the above matters.”

Having found that the discovery is unduly burdensome under these circumstances and therefore, the subpoenas should be quashed, the court is not convinced that sanctions are warranted. Under I.R.C.P. Rule 26(b)(1), the claimants may discover “any matter, not privileged, which is relevant to the subject matter involved in the pending action.” That includes

¹ On December 14, 1995, five of these six claimants, among others, asked the court to stay all proceedings, particularly settlement conferences, until issues concerning partial forfeiture can be decided basin-wide. In that motion, the claimants said nothing about postponing settlement conferences pending discovery. The motion to stay was denied on January 2, 1996. Three days later, these depositions were noticed.

discovery from IDWR. Given more notice to the possible deponents and perhaps a more defined scope of inquiry, the depositions would have been less burdensome and therefore permissible.

Therefore, IT IS ORDERED:

1. That IDWR's *Motion to Quash* and *Motion for Protective Order* are **granted**.
Depositions of IDWR noticed by the claimants for January 9, 1996, are **vacated** and the subpoenas *duces tecum* are **quashed**; and
2. That IDWR's and the claimants' *Motions for Sanctions* are **denied**.

DATED: January 10, 1996.



TERRENCE A. DOLAN
Special Master, Reporting Area 3
Snake River Basin Adjudication

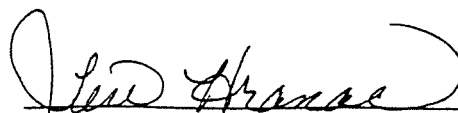
CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTIONS TO QUASH and FOR PROTECTIVE ORDER and ORDER DENYING MOTIONS FOR SANCTIONS was mailed on January 10, 1996, with sufficient first-class postage to the following:

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State of Idaho
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Boise, ID 83711-4449

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Patrick Brown
P.O. Box 389
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Deputy Clerk

