

Movant's Name:

UNITED STATES OF AMERICA

Attorneys' Names and Addresses:

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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	)	Sub-case No. 34-12639
	)	
Case No. 39576	)	MOTION FOR ORDER COMPELLING
	)	DISCOVERY AND FOR EXTENSION OF
	)	TIME ON SCHEDULED DATES
	)	

DESCRIPTIVE SUMMARY

This is the United States' Motion for an Order Compelling Discovery and for an Extension of Time on all Scheduled Dates and to have the Court consider this motion on an expedited basis. In this motion, the United States seeks to have the objector, VerNon Roche, answer the interrogatories served upon him and produce the documents requested. In addition, the United States requests an extension of time of four weeks on all scheduled dates to enable the United States sufficient time to acquire the necessary discovery and adequately defend its water right.

I. BACKGROUND

This subcase is currently pending before the Court. Mr. VerNon Roche is the objector, pro se, to a claim to a water right for de minimis stockwatering purposes filed by the United States on behalf of the Bureau of Land Management. The Court set a trial schedule for this subcase that includes dates for the completion of discovery, filing of summary judgment, a pretrial conference and 2-day trial.

The deadline for completion of discovery was May 1, 1996. The United States served on the objector a set of discovery requests on April 15, 1996. The United States also filed its Notice of Filing First Set of Discovery with the Court on April 15, 1996. The discovery asks the objector to respond to interrogatories, produce relevant documents and admit certain facts.

On April 22, 1996, the United States served a notice of taking oral deposition upon VerNon Roche. In addition, the United States requested and received from the Court a subpoena for the deposition of the objector's spouse, Ms. Joanne Roche. The parties agreed to commence both depositions on April 30 and, if necessary, continue the depositions to May 1, 1996.

Prior to the service of the subpoena, on April 26, William M. Ferry, counsel for the United States, received a phone call from Ms. Roche. Ms. Roche declared that she and her husband wished to settle the dispute and stated that Mr. Roche would withdraw his objection and withdraw as a party to this subcase.

The United States agreed to assist in the withdraw of Mr. Roche's objection and forwarded A Stipulation to Resolve Objection and Motion to Dismiss Party to the Roches via overnight delivery on May 26, 1996.

On reliance of the Roche's declared intention to withdraw, the United States agreed to forgo the noticed depositions in this matter. The United States understood that the Roches may motion for their withdrawal by a method other than the proposed stipulation, such as a letter to the Court. The United States contacted the Roches and inquired on numerous occasions throughout the month of May on the status of the parties' agreement to resolve this subcase. These telephonic contacts were initiated almost weekly. In every instance, the United States was assured of the objector's intent to withdraw his objection. Yesterday, on the afternoon of June 4, Mr. Bill Ferry, counsel for the United States tried unsuccessfully to reach the Roches via telephone. Mr. Ferry left a voice message informing the Roches that the United States must proceed with its motion to compel discovery and request for additional time.

To date and to the best of the United States' knowledge, Mr. Roche failed to sign and return the stipulation or submit a letter or any other document to resolve his objection in this subcase. Further, Mr. Roche has continued to ignore the set of discovery that was served upon him on April 15 and was due on May 1, 1996.

II. ARGUMENT

1. The United States is entitled to the discovery information it requested.

The objector has violated Idaho court rules on discovery. The United States filed its First Set of Discovery on April 15, 1996 pursuant to I.R.C.P. 33, 34, and 36. Under Rule 33(a)(2) and 34(a), the objector had 15 days after service to answer the interrogatories and produce the requested documents. The objector failed to respond at all.

Rule 37(a) provides for motions to compel discovery when a party fails to answer an interrogatory submitted under Rule 33 or a request for inspection of documents under Rule 34.¹ A motion for an order to compel is appropriate when a party fails to answer even a portion of interrogatories. Failure to answer interrogatories at all is especially egregious. "If a party entirely fails to respond to a set of interrogatories, sanctions can be imposed directly under Rule 37(d) and a motion under Rule 37(a)(2) is not required." 8A Wright and Miller, Federal Practice and Procedure § 2285 (1994).² Further, if a party

¹ The United States included in its First Set of Discovery requests for admission. Requests for admissions are deemed admitted 15 days after service of the request. I.R.C.P. 36(a). Therefore, the requests for admission served with the First Set of Discovery on April 15, 1996 are admitted. An order issued pursuant to a Rule 37(a) motion compels answers to interrogatories and responses to requests for inspection and does not go to the already admitted requests for admission.

² Idaho Rule of Procedure 37(a) is identical to Federal Rule 37(a) except for the reference to depositions taken in connection with out-of-state litigation.

fails to respond to a request for inspection of documents, "that inspection will be permitted as requested." Id.

The United States did not immediately file for an order to compel after the expiration of the 15 days allowed for discovery. The United States reasonably and in good faith expected the matter of discovery to be moot upon the filing of objector's withdrawal motion. The objector's failure to resolve this matter in a timely and reasonable manner, as he had indicated, has forced the United States to motion for an order to compel.

2. The United States is severely prejudiced by the objector's failure to respond to discovery and should be permitted an extension of all scheduled dates.

Due to the Objector's failure to submit answers to the United States' interrogatories and failure to provide requested documents for inspection, the United States is prevented from carrying out proper and effective pre-trial preparation. An immediate concern is that the United States cannot prepare a proper motion for summary judgment without discovery being completed. The deadline for filing a summary judgment motion in this subcase is currently set for June 28, 1996.

The United States requests that, in addition to an order compelling discovery, the parties be granted an extension on all dates to effectively litigate this dispute. The United States requests that discovery be permitted until July 1, 1996 and that the scheduled dates for filing a motion for summary

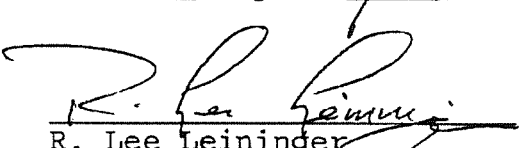
judgment, and all pre-trial and trial dates be extended for a 30 day period.

An extension will also provide the objector with an additional opportunity to submit his motion to withdraw. The objector continues to assert, through communications with his wife, Joanne, that he wishes to withdraw his objection to this case, but has failed to submit documentation to the Court to accomplish this intent. A further opportunity to submit the withdraw motion may assist all parties and prevent additional and potentially unnecessary costs and expenses.

III. CONCLUSION

Due to the objector's failure to reply to discovery and delay in submitting documentation to accomplish his expressed intent to withdraw as a party, the United States is forced to seek an order compelling discovery. The United States respectfully requests that this Court issue the attached order compelling discovery. Further, the United States requests an extension of time on all dates to adequately prepare its dispositive motion and to prepare for trial.

Respectfully submitted this 5th day of June, 1996.


R. Lee Leininger
William M. Ferry
Attorneys, United States
Department of Justice

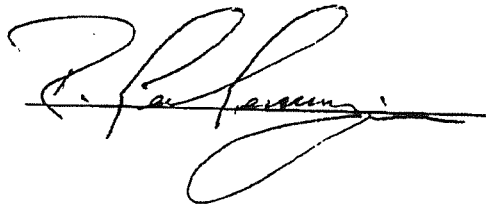
CERTIFICATE OF SERVICE

I certify that on the 5th day of June, 1996, I served a true and correct copy of the United States Motion for Order Compelling Discovery and Motion for Extension on Scheduled Dates for subcase 34-12639 upon the following individuals:

Matt Howard
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_____	)	

ORDER

This matter is before the Court on the United States' Motion for Order Compelling Discovery and Extension of Time on Scheduled Dates. Upon consideration of this matter, it is this _____ day of June, 1996,

ORDERED that the United States' motion should be and hereby is GRANTED; and it is further

ORDERED that

1. The objector, Mr. VerNon Roche, shall provide answers to the interrogatories and copies of documents requested in the movant's First Set of Discovery on or before 5:00 p.m. on June 12, 1996 at the office of the United States Department of Justice in Boise, Idaho.

2. The discovery cut-off for completion of all discovery is extended to July 1, 1996.

3. The deadline for the filing of motions for summary judgment and supporting affidavits is extended to July 31, 1996.

4. The pre-trial conference, exhibit and witnesses cut-off date, deadline of filing trial briefs and other pretrial motions is extended to September 20, 1996.

5. The 2-day trial is reset for September ____, 1996.

Brigette Bilyeu
Special Master of Reporting
Area 1 (Basin 34)



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