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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 Nos. 34-12894, 34-12894A, 34-
	)	12895, 34-12895A, 34-13335A,
	)	34-13336A, 34-13353, 34-13354
	)	
Case No. 39576	)	MOTION TO STRIKE OR, IN THE ALTERNATIVE,
	)	FOR A NEW SCHEDULING ORDER AND REQUEST
	)	FOR EXPEDITED CONSIDERATION

DESCRIPTIVE SUMMARY

This is the United States' motion to strike the discovery request of Wiley F. Smith and Carolyn Smith, or in the alternative, to reset the dates established in the Court's April 1, 1996 scheduling order and for expedited consideration.

MOTION

The United States hereby respectfully requests that the Court enter an order striking the discovery requests of Wiley F. Smith and Carolyn Smith in the above referenced subcases. In support of its request the United States states the following:

1. The Court, by order dated April 1, 1996, established a discovery cut-off date of July 26, 1996 for the above referenced subcases.

2. The trial scheduling order dated April 1, 1996, states:

7/26/1996 5:00 p.m. Discovery Cutoff Date. **All discovery shall be completed by this date** (emphasis added).

3. The objectors in these subcases, Wiley F. Smith and Carolyn Smith (hereinafter "objectors") served upon the United States a First Set of Request for Production of Documents, Requests for Admission, and Response to Interrogatories, on July 26, 1996.

4. The objectors' discovery request, filed on the last day of permissible discovery, does not allow for answers to be filed within the 15 day response period for interrogatories as required under Idaho Rule of Civil Procedure 33(a)(2) and for compliance with the trial scheduling order.

DISCUSSION

The SRBA Court has set an expedited and narrow schedule for the trial in this subcase. Defendant United States will be prejudiced by the objectors' disruption of this schedule. For example, the Court's April 1 scheduling order set an August 26 summary judgment deadline for dispositive motions. Motions for partial summary judgment may be appropriate in this case. However, if the objectors' late discovery is allowed, defendant United States will be required to immediately expend considerable time and effort in answering objectors' discovery during the

first two weeks of August. This is time and resources that counsel for the United States has dedicated to trial preparation and drafting of any dispositive motions.

In this subcase, striking of objectors' late discovery request is clearly an appropriate action. Striking the discovery will comply with the Idaho Supreme Court's mandate that "[s]anctions for pretrial order violations should both punish and encourage pretrial efficiency." Fish Haven Resort, Inc. v. Arnold, 121 Idaho 118, 122, 822 P.2d 1015, 1019 (1991). Only by striking objectors late discovery will the parties be able to maintain the present trial schedule and "encourage pretrial efficiency."

In the alternative, should the Court decline to strike objectors late discovery, the United States respectfully requests an extension of all pretrial and trial dates. Pretrial dates, including an extension of the discovery cut-off date, should be extended at least 21 days to account for objectors' late interrogatories, production requests and requests for admission and consideration of this motion.

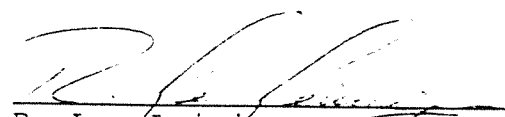
Conclusion

Based upon the foregoing discussion, the United States respectfully requests that the Court strike the objectors' late discovery requests. In the alternative, the United States requests a new scheduling order extending all scheduled pretrial dates, including discovery, for 21 days. Due to the pending

deadlines pursuant to I.R.C.P. 33(a)(2), the United States requests expedited consideration of this motion.

Respectfully submitted this ~~31st~~ day of July, 1996.

5th day of August


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CERTIFICATE OF MAILING

I certify that on ~~July 31~~ ^{August 5}, 1996, I served a true and correct copy of the United States' Motion to Strike Discovery or in the Alternative for New Scheduling Order in Subcases 34-12894A, 34-12895A, 34-13335A, 34-13336A, 34-13353, 34-13354 to the following persons by mailing the copies, postage prepaid and addressed as follows:

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