

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

CITY OF POCA TELLO,) Case No: CV42-23-1668
)
Plaintiff,) **ORDER FOR SCHEDULING**
) **CONFERENCE**
)
vs.)
)
IDAHO WATER RESOURCES BOARD,)
IDAHO DEPARTMENT OF WATER)
RESOURCES, GARY SPACKMAN in his)
capacity as Director of the Idaho)
Department of Water Resources, and)
TONY OLENICHAK in his capacity as)
Water District 01 Watermaster,)
)
Defendants,)
)
&)
)
CITY OF BLISS, CITY OF BURLEY,)
CITY OF CAREY, CITY OF DECLO,)
CITY OF DIETRICH, CITY OF)
GOODING, CITY OF HAZELTON,)
CITY OF HEYBURN, CITY OF)
JEROME, CITY OF PAUL, CITY OF)
RICHFIELD, CITY OF RUPERT, CITY)
OF SHOSHONE, CITY OF WENDELL,)
BURLEY IRRIGATION DISTRICT,)
FREMONT-MADISON IRRIGATION)
DISTRICT, and IDAHO IRRIGATION)
DISTRICT,)
)
Intervenors.)
_____)

PURSUANT TO I.R.C.P. 16(b) IT IS HEREBY ORDERED that the above-captioned case is scheduled for a scheduling conference to commence **July 27, 2023, at 3:00 p.m.** The scheduling conference will be conducted via Zoom.

The purpose of the conference will be to enter a scheduling order regarding the deadlines contained in the attached schedule. Counsel must be the handling attorney, or be fully familiar with the case, and have authority to bind his/her client and law firm on all matters set forth in I.R.C.P. 16(a) and 16(b).

In lieu of this scheduling conference, all parties may stipulate to deadlines and other information required in the enclosed **Stipulation for Scheduling and Planning**. This stipulation must be completed as written and not modified in any way. It must be signed by all parties, and filed with the court **at least (3) days before** the scheduling conference. The hearing will not be vacated until: (1) the attached stipulation is received by the court; and (2) counsel contact the court at the number set forth below.

IT IS FURTHER ORDERED that the following shall apply to motions filed in this case.

1. **SCHEDULING AND HEARINGS**. Absent an order shortening time, all motion practice other than motions for summary judgment will be governed by I.R.C.P. 7. As a matter of courtesy, counsel are expected to contact the court to schedule hearings, and to confirm the availability of opposing counsel for proposed hearing dates. As an accommodation to out-of-town counsel and parties, hearings on any pretrial motion (except pre-trial conference, motions for summary judgment or hearings at which testimony is to be offered) may be conducted by telephone conference call pursuant to I.R.C.P. 7(b)(4). Counsel requesting a hearing by conference call will be responsible for arranging for placement of the call, and the cost thereof. Arrangements for telephone conference of any hearing must be pre-arranged at least two (2) days prior to the date of the hearing.

2. **MOTIONS GENERALLY** (applies to every motion).

a. One additional copy marked or stamped "Judge's Copy" of the motion and of all moving or opposing papers (including affidavits and briefs) must be submitted to the judge's chambers when such documents are filed or lodged with the clerk of the court, as well as a copy sent via e-mail to the staff attorney at pharrington@idcourts.net.

If a party relies upon any case decided by an appellate court outside of Idaho, a copy of such case must be attached to the copy of the brief submitted to the judge's chambers.

b. The amount of time each side will be allotted for oral argument on a motion will be set by the court.

c. If a notice of hearing is not filed within fourteen (14) days after the motion is filed, the motion will be deemed withdrawn.

3. MOTIONS FOR SUMMARY JUDGMENT.

a. **NO HEARING ON ANY SUMMARY JUDGMENT WILL BE PERMITTED IN THE 60-DAY PERIOD PRIOR TO TRIAL, REGARDLESS OF WHEN THE MOTION IS FILED**

b. The party moving for summary judgment shall prepare as separate documents: (1) motion, (2) legal memorandum containing a written statement of reasons in support of the motion, (3) a concise statement of the material facts, and (4) a notice of hearing with date and time blank to be set by the court. Each statement of a fact shall include a reference to the particular place in the record which supports the fact. The legal memorandum shall include a statement, supported by authority, of the elements of any claim or defense relevant to the motion.

c. The party opposing a motion for summary judgment shall prepare as separate documents: (a) legal memorandum containing a written statement of reasons in opposition to the motion, and (b) a concise statement of the facts which are genuine issues of material fact and/or which are material facts omitted from the moving party's statement of facts. Each statement of a fact shall include a reference to the particular place in the record which supports that fact. The legal memorandum shall include a statement, supported by authority, of the elements of any claim or defense relevant to the motion.

d. The schedule for service of briefs and affidavits set forth in Idaho Rule of Civil Procedure 56(c) is hereby modified as follows:

i. The motion, affidavits and supporting brief shall be served at least thirty-five (35) days before the time fixed for hearing.

- ii. If the adverse party desires to serve opposing affidavits the party must do so at least twenty-one (21) days prior to the date of the hearing.
- iii. The moving party may thereafter serve a reply brief not less than fourteen (14) days prior to the date of the hearing.

e. **OBJECTIONS/MOTIONS TO STRIKE.** Any party objecting to an opposing party's affidavits must file a written objection and motion to strike and have the matter noticed for hearing, in order to preserve the objection and to give the court and the parties sufficient notice regarding the same. Oral objections regarding any affidavit **WILL NOT** be considered, and the right referenced in *Hecla Mining Co. v. Star-Morning Mining Co.*, 122 Idaho 778, 782–83, 839 P.2d 1192, 1196–97 (1992) to make oral objections at summary judgment is hereby specifically **PROHIBITED**. I.R.C.P. 16(b); *Gem State Insurance Co. v. Hutchinson*, 145 Idaho 10, 175 P.3d 172 (2007).

f. The hearing on a motion for summary judgment will be set **AFTER** the moving party has submitted the motion, legal memorandum and statement of facts along with Judge's copies of said documents. The hearing date can then be obtained from the court. This pertains to all motions for summary judgment and motions for partial summary judgment.

g. Each party will be allotted thirty (30) minutes for oral argument.

4. **JUDICIAL NOTICE:** If either party requests the court to take judicial notice of any documents not in the file at issue, counsel shall provide, under separate cover, all such documents for the court's review.

5. **ALTERNATE JUDGES:** Notice is hereby given that the presiding judge assigned to this case intends to utilize the provisions of I.R.C.P. 40(d)(1)(G). Notice is also given that if there are multiple parties, any disqualification pursuant to I.R.C.P. 40(d)(1)(A) is subject to a prior determination under I.R.C.P. 40(d)(1)(C). The panel of alternate judges consists of the following judges who have otherwise not been disqualified in this action: Judges Butler, Copsey, Huskey, Ryan, Shindurling, Stephens, St. Clair, Williamson, Harris, Emory, Wilper, and Wood.

Dated July 12, 2023

A handwritten signature in blue ink, appearing to read 'Eric J. Wildman', is written over a horizontal line.

ERIC J. WILDMAN
District Judge

CERTIFICATE OF SERVICE

I certify that on this day I served a copy of the attached to:

Garrick Baxter [X] By E-mail
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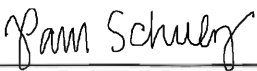
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Clerk of the Court

Dated: 7/12/2023 03:09 PM

By 
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

CITY OF POCA TELLO,)	Case No: CV42-23-1668
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Plaintiff,)	STIPULATION FOR SCHEDULING
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vs.)	
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IDAHO WATER RESOURCES BOARD,)	
IDAHO DEPARTMENT OF WATER)	
RESOURCES, GARY SPACKMAN in his)	
capacity as Director of the Idaho)	
Department of Water Resources, and)	
TONY OLENICHAK in his capacity as)	
Water District 01 Watermaster,)	
)	
Defendants,)	
)	
&)	
)	
CITY OF BLISS, CITY OF BURLEY,)	
CITY OF CAREY, CITY OF DECLO,)	
CITY OF DIETRICH, CITY OF)	
GOODING, CITY OF HAZELTON,)	
CITY OF HEYBURN, CITY OF)	
JEROME, CITY OF PAUL, CITY OF)	
RICHFIELD, CITY OF RUPERT, CITY)	
OF SHOSHONE, CITY OF WENDELL,)	
BURLEY IRRIGATION DISTRICT,)	
FREMONT-MADISON IRRIGATION)	
DISTRICT, and IDAHO IRRIGATION)	
DISTRICT,)	
)	
Intervenors.)	
_____)	

The above parties hereby stipulate to the following scheduling deadlines:

A. EXPERT WITNESSES

(Plaintiff's experts)

1. _____ days before trial, plaintiff shall disclose each person plaintiff intends to call as an expert witness at trial and state the subject matter on which the witness is expected to testify.
2. _____ days before trial, plaintiff shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding expert witnesses.
3. _____ days before trial, defendant shall complete any depositions of the plaintiff's initial expert witnesses.

(Defendant's experts)

4. _____ days before trial, defendant shall disclose each person defendant intends to call as an expert witness at trial and state the subject matter on which the witness is expected to testify.
5. _____ days before trial, defendant shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding expert witnesses.
6. _____ days before trial, plaintiff shall complete any depositions of the defendant's expert witnesses.

(Plaintiff's rebuttal experts)

7. _____ days before trial, plaintiff shall disclose each person plaintiff intends to call as an expert witness at trial to rebut new information on issues disclosed or raised by the defendant.
8. _____ days before trial, plaintiff shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding the rebuttal expert witnesses.
9. _____ days before trial, defendant shall complete any depositions of the plaintiff's rebuttal expert witnesses.

B. LAY WITNESSES

1. _____ days before trial, plaintiff shall disclose each person plaintiff intends to call as a lay witness at trial (excluding impeachment witnesses).

2. _____ days before trial, defendant shall disclose each person defendant intends to call as a lay witness at trial, (excluding impeachment witnesses).

3. _____ days before trial, plaintiff shall disclose each lay witness (excluding impeachment witnesses) plaintiff intends to call at trial to rebut new information or issues disclosed or raised by the defendant.

4. _____ days before trial, all parties shall complete any depositions of lay witnesses.

C. DEADLINES FOR INITIATING DISCOVERY

1. _____ days before trial is the last day for serving interrogatories, requests for production, requests to permit entry upon land or other property, and requests for admission.

2. _____ days before trial is the last day for filing motions for a physical or mental examination.

D. DEADLINE FOR SUPPLEMENTAL RESPONSES TO DISCOVERY

1. _____ days before trial, all parties must serve any supplemental response to discovery required by Rule 26(e) of the Idaho Rules of Civil Procedures.

E. STIPULATION TO ALTER DISCOVERY DEADLINES

1. The parties may alter any discovery deadline by written agreement without the necessity of obtaining a court order.

F. PRETRIAL MOTIONS

1. _____ days before trial is the last day to file motions to add additional parties to the lawsuit.

2. _____ days before trial is the last day to file a motion to amend the claims between existing parties to the lawsuit, including to add a claim for punitive damages.

3. All other non-dispositive pre-trial motions (including, but not limited to motions *in limine*) must be filed and scheduled for hearing not less than fourteen (14) days before trial. Exceptions will be granted infrequently, and only when justice so requires.

G. MOTIONS FOR SUMMARY JUDGMENT

1. All motions for summary judgment must be filed at least **ninety-six (96) days** before trial.

2. No hearing on any summary judgment will be permitted in the **sixty (60) day** period prior to trial.

H. TRIAL SETTING

1. This case can be set for a trial to commence on or after _____. **Note that, absent extremely compelling circumstances, no case will be set for trial more than 510 days from the date of filing the complaint.**

2. It is estimated that the trial will take _____ days.

3. This case is to be tried as a:

court trial

jury trial

4. Parties preference for trial dates: **(Please confer and complete. Do not attach “unavailable dates”).**

(a) _____, 20__.

(b) _____, 20__.

(c) _____, 20__.

5. **The parties will submit a pretrial conference memorandum pursuant to I.R.C.P. 16(d), which shall be filed with the Clerk no later than seven (7) days before the pre-trial conference. The memorandum may be filed as a joint submission or separately.**

I. MEDIATION

1. The parties agree to mediation: Yes _____ No _____

2. If yes:

a. The parties agree to submit to mediation with a mediator mutually agreed upon.

b. Mediation shall be _____ days prior to trial.

c. Unless otherwise agreed in writing between the parties, the cost of mediation shall be equally divided between the parties.

The parties reserve the right to amend this stipulation by agreement of all parties, subject to court approval; each party reserves the right to seek amendment hereof by court order, and to request further status conferences for such purpose, in accordance with I.R.C.P. 16(a) and 16(b).

Appearances:

Counsel for Plaintiff(s):

Date _____

Counsel for Defendant(s)

Date _____

Counsel for Other Parties

Date _____

Date _____

Date _____

Date _____

Date _____

Date _____