

DISTRICT COURT - PRBA Fifth Judicial District County of Twin Falls - State of Idaho	
OCT 31 2025	
By _____	Clerk
	Deputy Clerk

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

In Re PRBA	)	ORDER DENYING MOTION TO
	)	QUASH SUBPOENA
Case No. 59576	)	
_____	)	SUBCASE NO.(s): 87-12164

I. Procedural Background

A *Subpoena* was issued on Oct. 2, 2025 to Myron Emerson. The *Subpoena* was for the purpose of inspecting T40N, R04W, Section 2. On October 14, 2025, Richard Emerson filed a letter stating an objection to the *Subpoena* because the claimant, Nez Perce Tribe, claimed a water right in Section 11, not Section 2. The Court indicated it was treating the letter as a *Motion to Quash Subpoena* and set the Motion for hearing. ***Order Setting Hearing on Motion to Quash Subpoena*** (Oct. 14, 2025).

The Nez Perce Tribe filed a *Response to Objection to Subpoena for Inspection of Premises* (Oct. 23, 2025). In addition, the Nez Perce Tribe filed the *Affidavit of Allison Lebeda*.

II. Argument

The *Response* argued that Richard Emerson could not represent his father Myron Emerson unless he was an attorney. The Tribe moved to strike the *Motion to Quash Subpoena*. In addition, the *Response* explained that the Tribe sought the inspection of Section 2 after it had done an inspection of Section 11. During that inspection, the tribe did not find any spring in Section 11. However, the *Affidavit of Allison Lebeda* stated that during the site visit of Section 11, Ms. Lebeda visually identified on Section 2 some wetland plant species which she could see from her vantage point in Section 11. There were additional features of the land in Section 2

which led Ms. Lebeda to conclude that there could be a spring in Section 2.

During oral argument at the hearing on October 29, 2025, counsel for the Nez Perce Tribe argued that IRCP 26 and IRCP 45 permit an inspection of the land in Section 2. The Tribe asked to visually inspect the land, to photograph the area and any water present, to catalog the vegetation present, and to take one small soil sample with a garden trowel.

At the hearing, Garrett Kitamura entered an oral notice of limited appearance as attorney for Mr. Emerson. Mr. Kitamura endorsed the contents of the letter from Mr. Richard Emerson except the argument that inspections of land are limited to site those conducted by the Idaho Department of Water Resources. Therefore, the request to strike the *Motion to Quash* was denied.

The Court held that no part of the proposed inspection appeared unreasonable, or created an undue burden on Mr. Emerson. The Court found that the inspection could go forward, at a time the parties could agree. Therefore, the Court **denied** the *Motion to Quash Subpoena*.

Subsequently, the parties notified the Court that the inspection could go forward on November 7 at 3:00 p.m.

Therefore, IT IS ORDERED that the inspection of T40N, R04W, Section 2 shall go forward. The Tribe shall have two people at the inspection to determine whether a spring is present. The Tribe may observe, make notes, catalog plant species, and take photographs. Mr. Emerson and a representative may be present during the inspection as well. They may observe, take notes, catalog plant species and take photographs as well.

If any soil samples are taken, the Tribe shall return the soil to its natural condition.

THEREFORE, the *Motion to Quash Subpoena* is **Denied**; it is FURTHER ORDERED that the inspection in T40N, R04W, Section 2 shall go forward on **November 7, 2025**.

DATED: October 31, 2025.


BRIGETTE BILYEU
Special Master
Palouse River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING MOTION TO QUASH SUBPOENA was mailed on October 31, 2025, with sufficient first-class postage to the following:

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