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

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

In Re SRBA	)	Subcase No. 03-10022
	)	
Case No. 39576	)	**PROTECTIVE ORDER FOR MEDIATION**
	)	
	)	

To expedite the mediation process in the above captioned subcase, this Court, pursuant to I.R.C.P. 16(k)(11) and the stipulation of the parties participating in the mediation, orders that the following provisions shall govern the disclosure of information in the mediation process that a party claims to be confidential. This Order does not address issues of confidentiality, privilege or the treatment of protected documents in the litigation of this subcase, nor does this Order require the exclusion, or otherwise affect the admissibility, of evidence obtained through discovery or public record requests merely because it is presented to the Mediator in the course of the mediation process and designated "Confidential."

IT IS HEREBY ORDERED:

1. This Protective Order for Mediation (hereinafter "Order") shall govern and apply to the mediation process initiated by the *Order of Mediation and Appointment* dated December 22, 1998.

2. As used in this Order, "Confidential Information" shall mean any material or information which a party to this mediation (a) considers to contain or constitute trade secrets, proprietary business information, or other privileged, confidential or sensitive information; (b) designates as confidential; and (c) provides to the Mediator, either orally or in writing, as a part of the mediation process.

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3. In the event a party elects to provide documents or other information to the Mediator, which such party considers confidential, the party shall mark each page of such documents "CONFIDENTIAL" at the time the documents are produced to the Mediator, or if such information is provided orally, advise the Mediator that such information shall be treated as confidential.

4. Confidential Information provided to the Mediator by a party shall be controlled and maintained by the Mediator in a manner that precludes access to such information by any other party to the mediation or by any person that is not entitled to access either under this Order or by specific authorization of the party providing such Confidential Information. The Mediator may disclose Confidential Information to either his staff or such other experts or consultants as the Mediator may engage or utilize in the context of the mediation, provided that such disclosure is intended to advance the progress of the mediation and that the staff, expert or consultant to whom such disclosure is made shall first be shown a copy of this Order and shall sign a certificate of compliance in the form attached hereto as Exhibit A. The Mediator shall retain all original signed certificates obtained from any person provided access to Confidential Information and shall provide a copy of each signed certificate to the party originally providing the Confidential Information.

5. Confidential Information provided by any party in the context of this mediation shall be used only for purposes necessary to the mediation or negotiation and settlement of the water right claims and related issues involved in this litigation. Confidential Information shall not be used by either the Mediator or any other party or person bound by this Order for any commercial, business, competitive or other purposes, or in or for any judicial or administrative

proceedings, disputes, or cases, including the litigation of this subcase, unless specifically authorized by this Court.

6. If at any time any Confidential Information governed by this Order is subpoenaed or otherwise required to be produced by any court, administrative or legislative body, or by any other person or entity purporting to have authority to require the production of such Confidential Information, the Mediator, or the party to whom the subpoena or request is directed if other than the Mediator, shall immediately give written notice thereof to the party who designated such information as confidential and shall file a copy of this Order with the forum from which the subpoena or request for production originated. The Mediator or party to whom the subpoena or request is directed shall continue to be bound by this Order until otherwise ordered by this Court, the forum from which the subpoena or request for production originated, or an affirmative release by the party designating the information as confidential.

7. If any Confidential Information is disclosed by the Mediator, through inadvertence or otherwise, to any person not authorized to receive it under this Order, the Mediator shall promptly (1) identify the recipient(s) and the circumstances of the unauthorized disclosure to the relevant producing party and (2) use best efforts to bind the recipient(s) to the terms of this Order. No information designated as confidential by a party shall lose its confidential status because of disclosure to a person not authorized to receive it under this Order.

8. This Order shall remain in full force and effect and shall continue to be binding on the Mediator and all parties and affected persons after this subcase terminates. Within 120 days after a final decision of all aspects of this subcase, including appeals, all originals and copies of any Confidential Information shall either be returned to the party providing the

Confidential Information or destroyed. Neither the Mediator nor any party or person affected by this Order shall publish such Confidential Information in any form.

9. This Court shall retain jurisdiction even after this subcase terminates in order to (1) make such amendment, modifications and additions to this Order as it may deem appropriate upon good cause shown and (2) adjudicate any dispute respecting improper use or disclosure of Confidential Information.

10. The Mediator shall not, either during or subsequent to the termination of this mediation, report or disclose to this Court any matters or information relating to the substance of the negotiations or the positions taken by any party to the mediation during that process. The Mediator shall confine his communications to the Court concerning the substance of the mediation or negotiations to (1) a description of why, if such a need arises, it is necessary to seek the participation of an additional person or entity in the mediation and (2) a statement of the final decision or resolution reached in the mediation.

11. Statements made or positions taken in the mediation shall not be disclosed to any person or entity not a party to the mediation and shall not be admissible in any trial or other proceeding pertaining to the establishment, quantification or administration of the reserved water rights that are the subject of the mediation or to the water rights of any of the objectors in this subcase. The parties shall not be prohibited by this paragraph from utilizing and presenting as evidence at trial any factual data or technical material created, compiled or utilized by a party in the mediation, which is otherwise discoverable or admissible, solely on the ground that the data or material was discussed in the mediation; provided, however, no party shall disclose the fact that a party submitted such data or technical material to the Mediator. This paragraph shall not

enlarge nor diminish the rights of any party to seek discovery under the Idaho Rules of Civil Procedure.

DATED this 21st day of July, 1999.

SPECIAL MASTER BRIGETTE BILYEU

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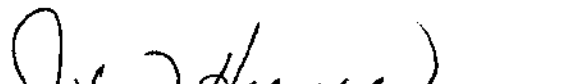
CERTIFICATE OF MAILING

I certify that a true and correct copy of the **Protective Order for Mediation** was mailed on Jul 21, 1999, with sufficient first-class postage prepaid to the following:

All parties listed on the attached
Certificate of Mailing for
Nez Perce Claims (03-10022)



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 SRBA	)	Subcase No. 03-10022
	)	
Case No. 39576	)	**CERTIFICATE OF COMPLIANCE**
	)	**EXHIBIT A TO**
	)	**PROTECTIVE ORDER FOR MEDIATION**
	)	

I hereby acknowledge that I have read and understand the *Protective Order for Mediation* entered on _____, 1999, in the above-captioned case, a copy of which is attached hereto and incorporated herein by reference. I recognize that I am bound by the terms of that protective order, and I agree to comply with those terms. I agree not to disclose information designated as "confidential" to any person not entitled to access to such confidential information under the protective order. I understand that unauthorized disclosure of designated confidential information constitutes contempt of court. I will not copy, use or disclose confidential information except in connection with the mediation process and not for any other purpose unless authorized by the terms of the protective order. I hereby consent to the jurisdiction of the District Court of the State of Idaho with respect to any proceedings relative to the enforcement of the attached protective order.

DATED this ____ day of _____, 1999.

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