

RECEIVED

MAY 24 2004

DEPARTMENT OF
WATER RESOURCES

Peter C. Monson
Assistant Chief, Indian Resources Section
Environment and Natural Resources Division
U.S. Dept. Of Justice
999 18th St., Suite 945
Denver, CO 80202
(303) 312-7350

Jeanne Whiteing
Whiteing and Smith
1136 Pearl Street, Suite 203
Boulder, CO 83203
(303) 444-2549

**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 Nos.: 51-02002 et al. (Riddle Ranches)
	)	& 51-12761, et al. (US/Shoshone-Paiute Tribes)
	)	(See Attachments A & B)
Case No. 39576	)	
	)	UNITED STATES' AND SHOSHONE-PAIUTE
	)	TRIBES' JOINT RESPONSE TO THREE
	)	ORDERS RE: US/SHOSHONE-PAIUTE
	)	TRIBES CONSUMPTIVE USE CLAIMS
	)	

The United States and the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation
(hereinafter collectively referred to as "Claimants"), respectfully submit this response to the
following three orders recently entered by the Court:

1. "Order to Amend Claimant Record," dated May 4, 2004;
2. "Order Re: US/Shoshone-Paiute Tribes Consumptive Use Claims," dated May 4,
2004; and
3. "2nd Order Re: US/Shoshone-Paiute Tribes Consumptive Use Claims," dated May 5,
2004.

UNITED STATES' AND SHOSHONE -PAIUTE
TRIBES' JOINT RESPONSE TO THREE ORDERS
RE: US/SHOSHONE-PAIUTE TRIBES
CONSUMPTIVE USE CLAIMS

1. Order to Amend Claimant Record.

The Claimants concur with the Court's action amending the Court's IWATRS electronic database to show the correct claimant of federal reserved water right claim 55-13817 as the United States of America as trustee for the Shoshone-Paiute Tribes.

2. [1st] Order Re: US/Shoshone-Paiute Tribes Consumptive Use Claims.

In this Order, the Court identified 280 consumptive use claims, all located in Basin 55, which the court records indicate are "at issue" but which were not set for trial on January 13, 2005. The Court further directed that, "unless a party submits in writing to the Court no later than Friday, May 21, 2004, good cause why the 280 consumptive use claims should not be tried along with the above Riddle Ranches and Shoshone-Paiute Tribes claims, the 280 claims will be heard at trial on January 13, 2005."

As a general matter, the Claimants do not object to the Court's proposal to try the 280 consumptive use claims filed for the benefit of the Shoshone-Paiute Tribes with the other non-consumptive use claims filed for the benefit of the Tribes. As the Court correctly stated, the Claimants agree that, "it was clear from that [April 1, 1996] **Order** that Judge Hurlbutt, and presumably the parties, intended that the non-consumptive use claims for the Duck Valley Indian Reservation would be litigated with the Duck Valley Indian Reservation consumptive use claims." Indeed, it may well make sense to consolidate all of the claims filed for the benefit of the Shoshone-Paiute Tribes for both trial and pre-trial proceedings.

However, the Claimants do not believe that such a trial should also include claims for the Riddle Ranches or any other non-tribal, non-federal, claims. Aside from being neighbors who

have objected to each other's water right claims, the Riddle Ranches rights have little in common, legally or factually, with the federal reserved water rights claimed by the Tribes and the United States. We submit that the objections to the Riddle Ranches water rights claims should be tried separately and should not be consolidated with the tribal claims. To be sure, those claims have been grouped together by the Court for the purpose of reporting on settlement activities and for that purpose it made sense to consider the two sets of claims together. However, while the parties continue to discuss settlement options which may yet resolve all of the objections between the Tribes and Riddle Ranches, the two sets of claims should not be consolidated for trial.

3. 2nd Order Re: U.S./Shoshone-Paiute Tribes Consumptive Use Claims.

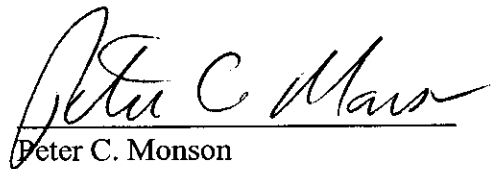
In this Order, the Court identified an additional 76 consumptive use claims, all located in Basin 51, which Court records indicate are at issue, much like the 280 claims in Basin 55 which were just discussed. We believe that these should also be tried together with the other consumptive and non-consumptive federal reserved water right claims filed by the United States for the benefit of the Shoshone-Paiute Tribes. We also submit that these claims should be tried separately from those filed by Riddle Ranches.

We note further that the list of claims provided by the Court in connection with this Order omits one claim: **No. 51-12603**. Also omitted are two claim numbers (**51-12899 and 55-13822**) which were assigned by Special Master Haemmerle to correspond with the first four pages of the claim (i.e., the claim form to which the appendices are attached). We wanted to bring this matter to the Court's attention so that the Court could decide whether to add these two claim numbers to

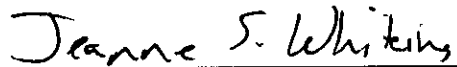
the list of claims to be heard at trial on January 13, 2005.

Finally, our records indicate that the only consolidation of the claims on behalf of the Shoshone-Paiute Tribes was of seven claims for nonconsumptive use consolidated under 51-12756. *See* Second Amended Case Management Order: Federal and Tribal Non-consumptive (Instream Flow) Claims (April 25, 1996). Since that consolidation, one of the instream flow claims was withdrawn (No. 51-12761) and four additional instream flow claims were added through amendments in 1998. In addition, four consumptive use claims were reported to the SRBA Court in 1998 (Nos. 51-12847, 51-12848, 55-13668, 55-13669). We believe that consolidation of all of the claims for the benefit of the Shoshone-Paiute Tribes – both consumptive and non-consumptive, in both basins 51 and 55 – makes sense for purposes of trying those claims, separate, however, from the trial of objections to the Riddle Ranches claims.

Respectfully submitted this 20th day of May 2004.



Peter C. Monson
Attorney for the United States of America



Jeanne S. Whiteing *By power email auth.*
Attorney for the Shoshone-Paiute Tribes

CERTIFICATE OF MAILING

I hereby certify that on this 20th day of May 2004, I caused to be served true and correct copies of the foregoing UNITED STATES' AND SHOSHONE-PAIUTE TRIBES' JOINT RESPONSE TO THREE ORDER RE: US/SHOSHONE-PAIUTE TRIBES CONSUMPTIVE USE CLAIMS by first-class mail upon the following:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Charles L. Honsinger
Ringert Clark, Chartered
455 S. Third St., P.O. Box 2773
Boise, ID 83701-2773

Jeanne S. Whiteing
Whiteing & Smith
1136 Pearl Street, Suite 203
Boulder, CO 80302

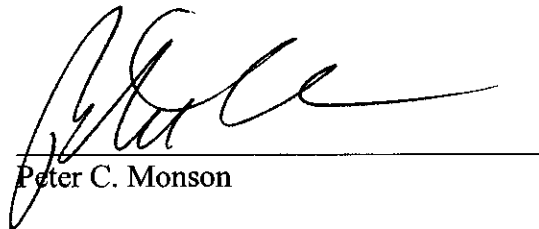
Jeanette Wolfley
Shoshone-Bannock Tribes
202 N Arthur
Pocatello, ID 83202

United States Department of Justice
Env. & Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724

John K. Simpson
Barker, Rosholt & Simpson
P.O. Box 2139
Boise, ID 83701-2139

Terry Uhling
Ronald Graves
P.O. Box 27
Boise, ID 83707

Frank and Mary Tanikuni
Route 1, Box 1162
Homedale, ID 83628


Peter C. Monson

UNITED STATES' AND SHOSHONE -PAIUTE
TRIBES' JOINT RESPONSE TO THREE ORDERS
RE: US/SHOSHONE-PAIUTE TRIBES
CONSUMPTIVE USE CLAIMS

ATTACHMENT A

SUBCASE NUMBERS

51-02002
51-10293
55-02009
55-02016
55-02032
55-02035
55-02039
55-02063
55-02064
55-02076
55-02080
55-02129
55-02131
55-02169
55-02174
55-02175
55-02181
55-02210
55-02211
55-02435
55-07002
55-07009
55-13479
55-13480

ATTACHMENT B

SUBCASE NUMBERS

51-12756
51-12761
55-13476
55-13477
55-13485
55-13486
55-13487

UNITED STATES' AND SHOSHONE -PAIUTE
TRIBES' JOINT RESPONSE TO THREE ORDERS
RE: US/SHOSHONE-PAIUTE TRIBES
CONSUMPTIVE USE CLAIMS