

RECEIVED

JUL 26 2004

Department of Water Resources

Jeanette Wolfley, ISB # 3968
Attorney at Law
202 North Arthur
Pocatello, ID 83204
(208) 232-1922
Fax: (208) 232-7472

Attorney for Shoshone-Bannock Tribes

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

In Re SRBA	)	Water Rights Claims: 29-02322 and 29-239
	)	
Case No. 39576	)	MOTION TO FILE LATE CLAIMS
_____	)	

COMES NOW, the Shoshone-Bannock Tribes, by and through their attorney Jeanette Wolfley, and move this Court to grant their motion to file two separate late claims relating to lands owned by the Shoshone-Bannock Tribes ("Tribes"). On April 27, 2004, the Tribes filed these claims via a letter format after receiving such instructions from the Clerk's Office. At the hearing on July 20, 2004, the Court requested the Tribes file the late claims in the format of a motion, and the Tribes respectfully resubmit these claims and request that the motion be granted. The grounds for granting this motion are set forth below.

Claim 29-239.

1. In September 2003, the Shoshone-Bannock Tribes Water Resources Department was notified Ernest Carlsen, Eastern Region, State of Idaho Adjudication representative, that water right 29-239 was unclaimed in Basin 29.

2. The Tribes researched their records and discovered that this water right was originally decreed to the Fort Hall Reservation for Allotment 72 in the case of *United States v. Hibner*, 27 F.2d 909 (D.Idaho, E.D. 1928) and the Decree of the United States District Court, Eastern Division, dated April 8, 1929, and with a priority date of June 6, 1868.

3. During the negotiations of the 1990 Fort Hall Indian Water Rights Agreement, the parties inadvertently left out the water right number for Allotment 72 and sought to correct the oversight by placing Allotment 72 in the Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin (August 2, 1995) ("Consent Decree").

4. Allotment 72 is mentioned in the Consent Decree, under Right No. 29-00238.viii, however, water right 29-239 is omitted on the listed rights, and the Consent Decree does not set forth any water right for Allotment 72. The amount should be 1.679 CFS as established in the *Hibner* Decree.

5. There are other clerical errors for Allotment 72 including the use of water should be irrigation not stockwater; and the priority date should be June 6, 1868 as established in the *Hibner* Decree.

Claim 29-2322

6. In 1981, the Shoshone-Bannock Tribes purchased a groundwater right in the amount of 2 CFS for irrigation purposes from the City of American Falls.

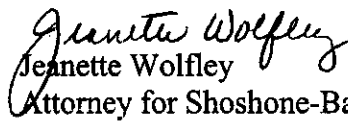
7. The Tribes sought a transfer of the water right with the Idaho Department of Water Resources and were advised that a late claim would be required to be filed for this particular water right.

WHEREFORE, the Tribes respectfully request this Court to grant their motion and issue an order:

1. Declaring that the Shoshone-Bannock Tribes have a water right under 29-239 in the amount of 1.679 CFS;
2. Declaring that water right 29-239 is a federally reserved water right as established under the 1990 Fort Hall Indian Water Rights Agreement and Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin;
3. Declaring water right 29-239 has a priority date of June 6, 1868;
4. Declaring the use of water right 29-239 is for irrigation purposes; and
5. Declaring a water right for the Shoshone-Bannock Tribes with water right no. 29-2322 for 2 CFS of groundwater to be used for irrigation purposes.

Dated this 23rd day of July, 2004.

Respectfully submitted,


Jeannette Wolfley
Attorney for Shoshone-Bannock Tribes

CERTIFICATE OF SERVICE

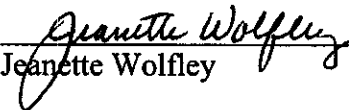
I HEREBY CERTIFY that on this 23rd day of July, 2004, I caused to be mailed postage prepaid, a true and correct copy of the Shoshone-Bannock Tribes Motion to File Late Claims to the following counsel:

David Barber
Attorney at Law
State of Idaho
Attorney General's Office
P.O. Box 44449
Boise, ID 83711-4449

Peter Monson
United States Department of Justice
Assistant Chief, Indian Resources Section
999 18th Street, Suite 945
Denver, CO 80202

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

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



Jeanette Wolfley