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**Department of Water Resources**

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**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.: See Attachments A and B**  
 )  
**Case No. 39576** )  
 ) **NINTH JOINT STATUS REPORT**  
\_\_\_\_\_ )

**BACKGROUND**

In October of 2001, we advised the Court that the Tribes and the United States had reached agreements in principle towards settlements with the affected water users in both Idaho and Nevada, and that discussions had moved to obtaining federal approval and developing implementing legislation. See Eight Joint Status Report, October 31, 2001. We further suggested that we could complete those discussions during the period between October and May of this year.

The parties have made progress towards refining some remaining issues in the agreements in principle and have expanded the discussions to include other interested groups

such as the State of Oregon and the irrigators from the Owyhee Project (a federal reclamation project located downstream of the Reservation). Experience has shown, however, that we were overly optimistic in our estimation of how much time it will take for the federal negotiation team to be in a position to finalize a settlement with the Tribes. The Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Right Claims, published on March 12, 1990, 55 Federal Register 9223-9225, establishes general processes and guidelines for the federal negotiation teams, including the preparation of both a fact finding report and an assessment and recommendation report. That process assists the Secretary of the Interior in ascertaining whether it can support a settlement together with the proper amount of any federal financial contribution to a settlement.

In this case, that process, by itself, has consumed most of the time since last October. While the federal negotiation team has met with the Tribes twice since October, the federal team has not yet completed its assessment and recommendation and thus has not been able to seek additional negotiation authority from the Secretary, including authority to negotiate a specific federal monetary contribution. The Secretary has concluded that the Department's traditional process for addressing Indian water rights settlements will be continued. That process centers around a Working Group composed of the Assistant Secretaries of the Interior, the Solicitor, and a senior Departmental official who serves as the chairman. The Working Group has only recently begun to convene to address settlement matters.

The federal negotiation team will complete its assessment report and recommendation by May 17 and that report will be promptly forwarded to the Working Group with a request for further direction and authority. The Working Group will give the negotiation team direction for

negotiations with the Tribes as soon as possible. The other parties, including the States of Idaho and Nevada remain ready and willing to move forward to resolve remaining issues and conclude a settlement agreement once the tribal/federal discussions are fully engaged. We remain optimistic that we will be able to reach an agreement with the Tribes.

Accordingly, because this settlement is nearing completion, we request that this Court defer setting a trial date. Rather, we propose to advise the Court on a bi-monthly basis of the status of our discussions.

If, in the alternative, the Court desires to establish a trial schedule, we propose the following:

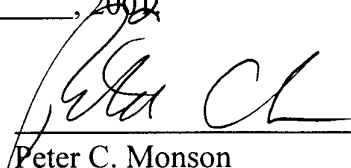
|                                                                     |                  |
|---------------------------------------------------------------------|------------------|
| Discovery begins (excluding expert reports and expert depositions): | November 2003    |
| Expert Reports exchanged:                                           | January 31, 2004 |
| Expert Depositions begin:                                           | February 2004    |
| Close of Discovery:                                                 | May 2004         |
| Dispositive Motions filed:                                          | July 2004        |
| Responses to Dispositive Motions:                                   | August 2004      |
| Replies:                                                            | September 2004   |
| Hearing on Dispositive Motions:                                     | October 2004     |
| Trial begins:                                                       | January 2005     |

As noted, the parties expect to have these sub-cases resolved by negotiated settlement. In the event that a settlement is not achieved, the objectors will need a field season to complete work which they feel is necessary to evaluate the claims.

## CONCLUSION

Considerable work has been devoted toward settlement by the private water users in both Idaho and Nevada, the Shoshone-Paiute Tribes, and the United States. We feel confident that a settlement can be achieved, but will take more time than we anticipated six months ago. We urge this Court to assist us in bringing these settlements to fruition.

Dated this 14<sup>th</sup> day of May, 2002.

  
Peter C. Monson  
Attorney for the United States of America

Dated this 14<sup>th</sup> day of May, 2002.

Jeanne S. Whiteing  
Jeanne S. Whiteing By PCM per tele. auth.  
Attorney for the Shoshone-Paiute Tribes

Dated this 14<sup>th</sup> day of May, 2002.

David J. Barber  
David J. Barber By PCM per tele. auth.  
Attorney for the State of Idaho

# CERTIFICATE OF MAILING

I hereby certify that on this 14<sup>th</sup> day of May 2002, I caused to be served true and correct copies of the foregoing "Ninth Joint Status Report" by first-class mail, postage prepaid upon the following:

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

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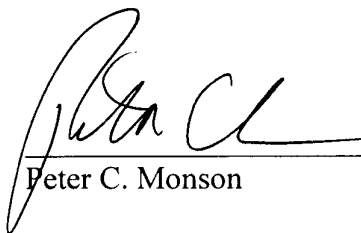
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Peter C. Monson

## **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