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DEPARTMENT OF
WATER RESOURCES

Attorney for Shoshone-Bannock Tribes

**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. 29-00239
	)	
	)	
Case No. 39576	)	MEMORANDUM IN SUPPORT OF MOTION
	)	TO CORRECT CLERICAL ERRORS
	)	PURSUANT TO RULE 60(a)
	)	

INTRODUCTION

Pursuant to Rule 60(a), I.R.C.P, the Shoshone-Bannock Tribes respectfully request this Court to enter an order correcting the clerical errors in the Partial Final Consent Decree Determining Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin (August 2, 1995) ("1995 Consent Decree"). The Shoshone-Bannock Tribes ("Tribes") by and through their attorney, file this memorandum of law in support of their motion.

There are two primary reasons this motion should be granted. First, in 1929 the federal district court in *United States v. Hibner*, adjudicated the Tribes' water rights and established certain priority dates, use and amount of water for the Tribes. The 1995 Consent Decree prepared by counsel for the Shoshone-Bannock Tribes, the United States and the State of Idaho, and presented to the Court incorrectly set forth certain Tribal water rights recognized in the

Hibner Decree. These dates, water amounts and use of water are easily corrected by reliance upon a prior court record/decision --the *Hibner* decree.

Second, amending the terms of the 1995 Consent Decree will accurately reflect the terms of the earlier *Hibner* decree upon which the 1995 Consent Decree was to have been based. It also will effectuate the accord reached by the Tribes, United States and State of Idaho in the 1990 Fort Hall Indian Water Rights Agreement.

FACTS

In 1867, President Andrew Johnson by Executive Order designated the Fort Hall Reservation ("Reservation") for various Shoshone and Bannock bands who occupied the area from time immemorial. On July 3, 1868, the Shoshone and Bannock Tribes concluded the Second Treaty of Fort Bridger which was ratified by the United States Senate on February 24, 1869, 15 Stat. 673. Subsequent cession agreements with the United States reduced the Reservation to its present size and allotted the Reservation. Agreement of May 14, 1880, ratified by Act of February 23, 1889, 25 Stat. 687; the Act of March 3, 1911, ch. 210, 36 Stat. 1058, 1063.

Under the cession agreements, the United States took Tribal lands on the Reservation and gave each individual Indian a parcel of land (known as an "allotment") to be held in trust for the benefit of that individual. Individual Tribal members received 40 acre, 160 and 320 acre parcels, for grazing or agricultural purposes. Today, the Reservation includes lands that are located on the reduced Reservation and the lands that remain in the ceded area. There are several allotments, including Allotments 61, 71 and 72, located in the Toponce Creek area, off the Reservation. Tribal members utilize the water from Toponce Creek for irrigation and grazing purposes.

In *United States v. Hibner*, 27 F.2d 909 (D. Idaho. 1928) and April 8, 1929 Decree, an action was filed to adjudicate water rights in Toponce Creek. The *Hibner* Decree is attached hereto as Exhibit 1. The *Hibner* Decree establishes water rights for non-Indian and Tribal water users in the Tribes' ceded area. Numerous Indian trust allotments were listed in the Decree, including Allotment 61, Allotment 71 and Allotment 72. The Decree shows for Allotments 61 and 71 a priority date of July 6, 1868. Page 3 of Exhibit 1. Similarly, the Decree provided for Allotment 72 a priority date of July 6, 1868 for 1.679 cfs from Toponce Creek for irrigation of 83.97 acres. P. 4 of Exhibit 1.

During the negotiations of the 1990 Fort Hall Indian Water Rights Agreement, the Tribes, United States and State of Idaho agreed to incorporate the *Hibner* Decree water rights into the final Agreement. Pertinent provisions of the 1990 Fort Hall Indian Water Rights Agreement are attached hereto as Exhibit 2. The parties listed several allotments from the *Hibner* Decree, including Allotment 61 and Allotment 71, but inadvertently omitted Allotment 72 from the final Agreement. Pp. 33 and 34, Exhibit 2.

The parties noted the omission and Allotment 72 was consequently listed in the 1995 Consent Decree under Allotment 71 (Water Right No. 29-00238). Pertinent provisions of the 1995 Consent Decree are attached hereto as Exhibit 3. Unfortunately, although the Allotment 72 was listed along with the legal description and acreage, neither the quantity or flow rates were corrected to include the water necessary for the approximate 80 acres, and the priority date given is February 16, 1869. It appears that Allotment 72 was to be included as Water Right 29-00239, but that right is not listed in the Consent Decree. See pp. 27-28, viii., Exhibit 3.

The priority date for Allotment 61 (Right No. 29-00231) and Allotment 71 (Right No. 29-00238) are incorrectly listed as February 16, 1869 in the 1990 Fort Hall Agreement and the

Consent Decree. P. 33-34, Exhibit 2; p. 27, Exhibit 3. The *Hibner* decree clearly states July 6, 1868 as the priority date. Exhibit 1.

In the April 2004, the Tribes discovered the errors in the Consent Decree for Allotment 72. The Tribes filed a Late Claim with the Court for Allotment 72. More recently, the Tribes discovered the errors for Allotments 61 and 71. Following discussions with the attorneys for the United States and the State of Idaho, it was agreed that these were oversights by counsel, and a motion should be filed to correct the errors in the 1995 Consent Decree. On December 6, 2004, a status conference was held with the Court and it was ordered that the Tribes had until January 26, 2005 to file a Motion to Correct Clerical Errors pursuant to Rule 60(a).

ARGUMENT

RULE 60(a) AUTHORIZES THIS COURT TO CORRECT ERRORS AND OMISSIONS IN THE 1995 CONSENT DECREE

Courts have the “power and duty to correct judgments which contain clerical errors or judgments which have issued due to inadvertence or mistake.” *American Trucking Ass’n v. Frisco Transp. Co.*, 358 U.S. 133, 145 (1958). Rule 60(a) of the Idaho Rules of Civil Procedure, like the federal rule, is the mechanism by which courts are empowered to correct errors in “judgments, orders or other parts of the records . . . as errors arising from oversight or omission.” 11 Wright & Miller, Fed. Prac. And Proc. § 2854. The present case is illustrative of the instance in which the court should take action to correct omissions in the record.

Rule 60(a), I.R.C.P., provides in part,

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

The Rule embodies a conclusion that justice requires the finality of judgment “be subject to corrective power” in order to ensure a correct result is reached. Moore & Rogers, *Federal Relief from Civil Judgments*, 55 YALE L.J. 623 (1946). Indeed, the purpose of Rule 60(a) is to permit the discrepancies in the record or judgment in order to make them “speak the truth.” Wright and Miller, *supra* at § 2854.

In *Gagnon v. United States*, 193 U.S. 451, 453 (1904), the Supreme Court recognized the inherent power of the court to amend its record and correct mistakes, “[t]he power to amend its own records to correct mistakes of the court or other officers of the court, inadvertencies of counsel, or to supply defects or omissions in the record, even after the lapse of the term, is inherent in courts of justice.” (citations omitted). The Idaho Supreme Court has similarly held in *State v. Winter*, 24 Idaho 749, 135 P. 739 (1913), and stated, “[i]t is a familiar and established doctrine that courts always have jurisdiction over their own records to make them conform to the facts and what was actually done at that time.” Accord, *State v. Douglas*, 35 Idaho 140, 208 P. 236, 237 (1922) (“The power of the court to make such corrections is not lost by the lapse of time.”).

Rule 60(a) clerical mistakes need not be made by a clerk. The phrase “clerical error” merely describes the,

type of error identified with mistakes in transcription, alteration or omission of any papers and documents which are traditionally or customarily handled or controlled by clerks but which papers or documents may be handled by others. It is a type of mistake or omission mechanical in nature which is apparent in the record and which does not involve a legal decision or judgment by an attorney.

In re Mary Queen Transfer Corp., 266 F.Supp. 605, 607 (E.D.N.Y. 1967), accord *Dursterler v. Dursterler*, 112 Idaho 594, 597, 733 P.2d 814 (Ct. App. 1987). Thus, courts have read Rule

60(a) to include errors committed by a party to a proceeding, *In Application of Levis*, 46 F.Supp. 527 (D. Md. 1942), and by the jury. *Myrtle v. Checker Taxi Cab Co.*, 279 F.2d 930 (7th Cir. 1960).

A court can amend a document in the record or a judgment itself to correct typographical errors, *Esquire Radio & Elecs. v. Montgomery Ward & Co.*, 804 F.2d 787, 795-96 (2d Cir. 1986) (granting motion to amend jury verdict forms from \$269,686.89 to \$296,686.89 after judgment), to correct misnomers, *Silas v. Paroh S.S. Co.*, 175 F.Supp. 35, 38-39 (E.D. Va. 1948)(amending default judgment entered against defendant “company” rather than defendant “corporation”), and correct incorrect dates. *Application of Levis*, 46 F.Supp. 527, 530-31 (D. Md. 1942) (holding date may be amended if unintentionally and incorrectly entered).

In this matter, the Tribes seek to correct inadvertent oversights that were made by counsel in the preparation of the 1995 Consent Decree and as issued by the Court. Attorneys for the Tribes, the State of Idaho and United States negotiated and drafted the 1990 Fort Hall Indian Water Rights Agreement to settle the claims by the Tribes and the United States to water rights in the Upper Snake River Basin and its tributaries. The Court ratified and confirmed this Agreement pursuant to the 1995 Consent Decree on August 2, 1995. As part of the negotiations, the attorneys intended to incorporate the findings by the Idaho federal district court in the *United States v. Hibner*, 27 F.2d 909 (D. Idaho 1928), and April 8, 1929 Decree, into the Fort Hall Agreement and 1995 Consent Decree. Unfortunately, due to oversight the priority date for Allotments 61 and 71 are incorrect, and the priority dates, amounts of water and use are incorrect for Allotment 72.

In the *Hibner* Decree, the federal district court determined the water rights for numerous individually owned allotments held by Tribal members including Allotments 61, 71 and 72. The Decree clearly sets out the priority dates, amounts of and use of water for these three allotments. The *Hibner* Decree established a priority date for Allotments 61 and 71 of July 6, 1868. The 1995 Consent Decree mistakenly provides February 16, 1869.

Similarly, the *Hibner* Decree established for Allotment 72 a priority date of July 6, 1868 for 1.679 cfs from Toponce Creek for irrigation of 83.97 acres. Although Allotment 72 is listed along with its legal description and acreage in the 1995 Consent Decree, through inadvertent error, the quantity of water and rate flows are omitted, and the priority date is set at February 16, 1869. The data are in direct conflict with the intentions of the parties and the record.

Correction of the errors for Allotments 61, 71 and 72 in the 1995 Consent Decree would effectuate the purpose of Rule 60(a) to let the record "speak the truth." Here, as we have shown, the 1995 Consent Decree mistakenly omitted the prior court decreed provisions of the *Hibner* Decree. The *Hibner* Decree is unambiguous and clear with regard to Allotments 61, 71 and 72. The Tribes seek merely the correction of the inadvertence in the 1995 Consent Decree. Accordingly, the motion to correct the errors pursuant to Rule 60(a) should be granted, and an order amending the 1995 Consent Decree be issued .

Dated this 4th day of January 2005.

Respectfully submitted,


Jeanette Wolfley

**MOTION TO CORRECT CLERICAL ERROR
PURSUANT TO RULE 60(a)**

EXHIBIT 1

(1)

27-A1

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE
DISTRICT OF IDAHO, EASTERN DIVISION

United States of America,
upon the relation of H. J.
Ray, United States Attorney
for the District of Idaho,

Plaintiff,

v.

Julia Hibner, Kepler Tassiana,
Merchants Trust Company, a corporation,
successor in interest to J. Knollin,
Continental National Bank of Salt Lake
City, a corporation, successor in
interest to Thomas J. Ripper, John W.
Symons, George A. Whitworth, George
John, Jordalia Warner, Dempsey Irrigat-
ing Company, a corporation, Texas
Irrigation Company, a corporation,
Thomas Hillman, V. A. Reed, James H.
Byington, Noah Reese, Lava Irrigation
Company, a corporation, Mrs. A. A.
Fairchild, Fortneuf Irrigating Company,
a corporation, Fortneuf Marsh Valley
Canal Company, a corporation, A. T.
Shumway, J. T. Clifton, J. J. Lewis,
McCammon Bitch Company, a corporation,
Amesiah Benson, Brigham H. Green, Erson
V. Robbins, Royal T. Hale, Samuel Orgill,
C. H. Romriell, William J. Lewis, Ed
Murphy, Thomas Orgill, George Goodenough,
Oregon Short Line Railroad Company, A. J.
Butterfield, Harley P. Jensen, Don D.
Jensen, George Brangham, Westside Canal
Company, a corporation, Torrance Canal
Company, a corporation, First National
Bank of Pocatello, a corporation,
successors in interest of Joseph and
William F. Purvis, J. A. Eldridge, Union
Grain & Elevator Company, a corporation,
Michael Whitworth, National Loan Company,
a corporation, C. H. Brangham, and
Village of McCammon, a municipal corpora-
tion,

Defendants.

In Equity No. 479

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This cause came on to be further heard at this term.

Additional proofs being submitted and the cause being further ar-

RECORDED
MAY 15 1906

passed by counsel and thereupon, upon consideration thereof,

IT IS ORDERED, ADJUDGED AND DECREED as follows, viz.:

I.

1. The plaintiff herein, the United States of America, is, pursuant to law, the trustee for the rights of certain Indians hereinafter named who are wards of the government, and the adjudication of the rights hereinafter particularly recited are for the use and benefit of the respective Indian wards.

2. That the decree of the water for Indian lands hereinafter adjudicated is fixed at one minor inch per second of time per acre measured at the point of diversion and the right to the use of such water upon Indian lands is continuous and the failure of any of the Indians to use the water hereinafter adjudicated will not cause either an abandonment or a forfeiture of their rights thereto, provided however, the next appropriator in point of time shall have the right to the use of the water hereinafter adjudicated to the Indians when said water is not diverted and used for irrigation or domestic purposes by said Indians, but the relief from forfeiture or abandonment shall not extend to the ownership of said lands in persons other than Indians.

II.

"C.F.S." is used herein to designate a flow of one cubic foot of water per second of time.

Allotment numbers used herein are the numbers of the allotments made by the United States Government to Indians on the Fort Hall Indian Reservation.

INDIAN'S RIGHTS

The names of the Indian wards of the government, the date of priority, the point of diversion and the lands upon which the water is to be used are as hereinafter set forth under specified headings as follows, to-wit:

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MAY 15 1906

No. of Allotment	Name of Claimant	Date of Priority	Amount in Acres	Point of Diversion and Place of Use
29 0228 57	Chenite	July 6, 1868	1.295	Said water to be diverted from Toponce Creek at a point within or without the confines of the lands herein designated for the irrigation of 64.89 acres in the East Half of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 2, Township 7 South, Range 38, E.B.M.
29 0229 59	Joe Warren	July 6, 1868	1.372	Said water to be diverted from Toponce Creek at a point within or without the confines of the lands herein designated for the irrigation of 68.60 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, Township 6, South, Range 38 E.B.M.
29 0230 60	Wanbabosah	July 6, 1868	.927	Said water to be diverted from Toponce Creek at a point within or without the confines of the lands herein designated for the irrigation of 46.36 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, Township 6, South, and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, Township 7 South, Range 38 E.B.M.
29 0231 61	Tanquata	July 6, 1868	1.59	Said water to be diverted from Toponce Creek at a point within or without the confines of the lands herein designated for the irrigation of 79.53 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, Township 6 South, Range 38 E.B.M.
29 0232 65	Shyanne	July 6, 1868	1.03	Said water to be diverted from Toponce Creek at a point within or without the confines of the lands herein designated for the irrigation of 50.18 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, Township 6 South, Range 38 E.B.M., and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, Township 7 South, Range 38 E.B.M.
29 0233 64	Ahneeah	July 6, 1868	1.487	Said water to be diverted from Toponce Creek at a point within or without the confines of the lands herein designated for the irrigation of 74.35 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, Township 6, Range 38 E.B.M.

MAY 15 1896

No. of Allotment	Name of Claimant	Date of Priority	Amount in Second	Point of Diversion and Place of Use
T. 2327 9 0234 66	Teachend	July	1.764	Said water to be diverted from Toponce Creek at a point within or without the confines of the lands herein designated for the irrigation of 88.21 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, Township 6 South Range 38 E.B.M.
T. 2327 9 0235 67	Jack Hoyt	July 6, 1868	1.58	Said water to be diverted from Toponce Creek at a point within or without the confines of the lands herein designated for the irrigation of 79.24 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, Township 6 South, Range 38 E.B.M.
T. 2327 9 0236 69	Mary Hoyt	July 6, 1868	.31	Said water to be diverted from Toponce Creek at a point within or without the confines of the lands herein designated for the irrigation of 15.53 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, Township 6 South, Range 38 E.B.M.
T. 2327 9 0237 70	Kate Hoyt	July 6, 1868	1.076	Said water to be diverted from Toponce Creek at a point within or without the confines of the lands herein designated for the irrigation of 53.80 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, Township 7 South, Range 38 E.B.M.
T. 2327 9 0238 71	Kemenatse	July 6, 1868	1.733	Said water to be diverted from Toponce Creek at a point within or without the confines of the lands herein designated for the irrigation of 86.67 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, Township 6 South Range 38 E.B.M.
T. 2327 9 0239 72	Novish	July 6, 1868	1.679	Said water to be diverted from Toponce Creek at a point within or without the confines of the lands herein designated for the irrigation of 83.97 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, Township 6 South Range 38 E.B.M.

UNRECORDED
MAY 15 1903

III.

INDIAN RIGHTS OWNED BY OTHERS THAN INDIANS

No. of Allotment	Name of Claimant	Date of Priority	Amount of Second Feet	Point of Diversion and Place of Use
0247 43	J.T. Gittins	July 6, 1868	0.68 (23 inches)	Said water to be diverted through the Cutler Ditch which has its intake from the Fortneuf River in Lot 1, Section 21, Township 9 South, Range 37 East. From the NE corner of Section 21, the point of diversion bears south 32 degrees, West 1970 feet, across said section 21, an said ditch is at present constructed, for the irrigation of lands in the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$, Sec. 20, and in the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ Sec. 17, Twp. 9 S., R. 37 E.B.M. Said waters to be carried from Toponce Creek into the natural channel of the Fortneuf River to the point of diversion above described.
0248 44	J.T. Gittins	July 6, 1868	1.40 (70 inches)	Said water to be diverted through the said Cutler ditch last above described for the irrigation of lands in Lot 4, Sec. 20, and in Lot 3, Sec. 19, Twp. 9 S., R. 37 E.B.M., said water to be carried from Toponce Creek into the natural channel of the Fortneuf River to the point of diversion above described.
0249 53	National Loan Co., a corporation	July 6, 1868	1.057	Said water to be diverted from Toponce Creek at a point without the confines of the lands herein designated for the irrigation of 52.88 acres - Lot 2 and the SW $\frac{1}{4}$ of Section 2, Township 9 South of Range 38 E.B.M.
0250 68	Michael Whitworth	July 6, 1868	1.40 (80 inches)	For the irrigation of 30 acres being the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 25 and the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 26 in Twp. 6 S., R. 38 E.B.M., & said waters to be diverted from Toponce Creek through the following ditches:

MAY 15 1900

No of Allotment	Name of Claimant	Date of Priority	Amount in Second	Point of Diversion and Place of Use
0240 72 1327	Charlie Pizoka	July 6, 1868	.822	Said water to be diverted from Toponce Creek at a point without the confines of the lands herein designated for the irrigation of 43.72 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, Township 6 South, Range 38 E.B.M.
0241 74	Ghege	July 6, 1868	.913	Said water to be diverted from Toponce Creek at a point without the confines of the lands herein designated for the irrigation of 40.67 acres in Lots 3 and 4, Section 1, Township 7 South, Range 38 E.B.M.
0242 75	Meekewar	July 6, 1868	.71	Said water to be diverted from Toponce Creek at a point without the confines of the lands herein designated for the irrigation of 35.5 acres in Lots 1 and 2, Section 1, Township 7 South, Range 38 E.B.M.
29 002 0243 76	Albert Kiwona	July 6, 1868	1.393	Said water to be diverted from Toponce Creek at a point without the confines of the lands herein designated for the irrigation of 69.12 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, Township 7 South, Range 38 E.B.M.
29 002 0244 77	Hattie Kiwona	July 6, 1868	1.439	Said water to be diverted from Toponce Creek at a point without the confines of the lands herein designated for the irrigation of 71.96 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, Township 7 South, Range 38 E.B.M.
0245 78	Thomas Kennedy	July 6, 1868	1.33	Said water to be diverted from Toponce Creek at a point without the confines of the lands herein designated for the irrigation of 66.68 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, Township 7 South, Range 38 E.B.M.
9 0246 79	Pocsoah	July 6, 1868	1.6	Said water to be diverted from Toponce Creek at a point without the confines of the lands herein designated for the irrigation of 80.24 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, Township 7 South, Range 38 E.B.M.

Trans # 1052

MAY 15 1868

No. of Allotment	Name of Claimant	Date of Priority	Amount of Second Foot	Point of Diversion and Place of Use
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Through a ditch having its intake or point of diversion heading on the middle branch of Toponce Creek, and said point of diversion being located at a point 2,785 feet south and 800 feet east of the northwest corner of Sec. 35, Twp. 6 S., R. 38 East Boise Meridian

Through a ditch having its intake or point of diversion heading on the middle branch No. 3 of Toponce Creek, and said point of diversion being located at a point 723 feet west of the south quarter corner of Section 35, Township 6 South, Range 38 East of the Boise Meridian

0251
62

Michael Whitworth July 6, 1868 1.38
(79 inches)

For the irrigation of 79.92 acres, being the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 35, Twp. 6 S., R. 38 E.B.M., and said waters to be diverted from Toponce Creek through the following ditches:

Through a ditch having its intake or point of diversion heading on the middle branch of Toponce Creek and said point of diversion being located at a point 2,785 feet south and 800 feet east of the northwest corner of Sec. 35, Twp. 6 South, Range 38 East of the Boise Meridian.

Through a ditch having its intake or point of diversion heading on the middle branch No. 8 of Toponce Creek and said point of diversion being located at a point 2000 feet south and 510 feet east of the northwest corner of Sec. 35, Twp. 6 South, Range 38 East of the Boise Meridian.

Through a ditch having its intake or point of diversion heading on the middle branch No. 3 of Toponce Creek, and said point of diversion being located at a point 723 feet west of the south quarter corner of Section 35, Township 6 South, Range 38 East Boise Meridian

0252
63

O.R. Brangham July 8, 1868 1.38
(69 inches)

For the irrigation of 69.20 acres in the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 35 and the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 36, all in Township 6 S., R. 38 E.B.M., and

RECORDED
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**MOTION TO CORRECT CLERICAL ERROR
PURSUANT TO RULE 60(a)**

EXHIBIT 2

**THE 1990 FORT HALL INDIAN
WATER RIGHTS AGREEMENT**

*** * ***

By and Between

**THE SHOSHONE-BANNOCK TRIBES
OF THE FORT HALL INDIAN RESERVATION,
THE STATE OF IDAHO, THE UNITED STATES,
and CERTAIN IDAHO WATER USERS**

- .v Priority Date: June 14, 1867
- .vi Points of Diversion:
Future Points of Diversion may be developed within the Portneuf River basin upstream from the point the river enters the Portneuf Reservoir in Sec 11 Twp 6S Rge 38E BM for use within the Portneuf River basin.
- .vii Purpose and Period of Use:
Irrigation 4/1 - 11/1
- .viii Place of Use: 485 present and future acres.
- .ix Basis of Right: Winters Doctrine
- .x Remarks:

.15 Right No. 29-00231

- .i Source: Toponce Creek
- .ii Annual Diversion Volume: 259.3 AFY
- .iii Diversion Rate: 1.59 CFS
- .iv Annual Volume of Consumptive Use: 154.3 AFY
- .v Priority Date: February 16, 1869
- .vi Points of Diversion: Toponce Creek
- .vii Purpose and Period of Use:
Irrigation 1/1 - 12/31
- .viii Place of Use: Allotment 61 (NESW, SENW, Sec 35 Twp 6S Rge 38E) for 79.53 acres.
- .ix Basis of Right: The Winters Doctrine per the Memorandum Decision in 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.

.x Remarks:

.16 Right No. 29-00238

- .i Source: Toponce Creek
- .ii Annual Diversion Volume: 282.5 AFY
- .iii Diversion Rate: 1.733 CFS
- .iv Annual Volume of Consumptive Use: 168.14 AFY
- .v Priority Date: February 16, 1869
- .vi Points of Diversion: Toponce Creek
- .vii Purpose and Period of Use:
Irrigation 1/1 - 12/31
- .viii Place of Use: Allotment 71 (SEnw, SWNE, Sec 36 Twp 6S Rge 38E) for 86.67 acres.
- .ix Basis of Right: The Winters Doctrine per the Memorandum Decision in 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.

.x Remarks:

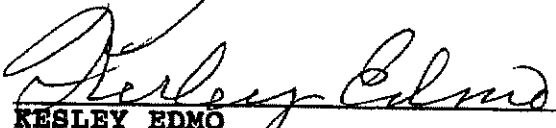
.17 Right No. A29-12051

- .i Source: Mink Creek
- .ii Annual Diversion Volume: 104.3 AFY
- .iii Diversion Rate: 0.75 CFS
- .iv Annual Volume of Consumptive Use: 62.1 AFY

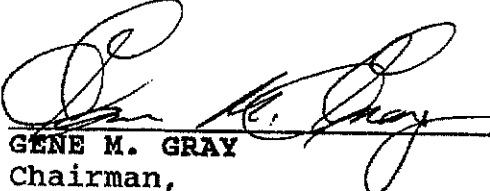
The parties have executed this Agreement on the date following their respective signatures.


CECIL ANDRUS
Governor, State of Idaho

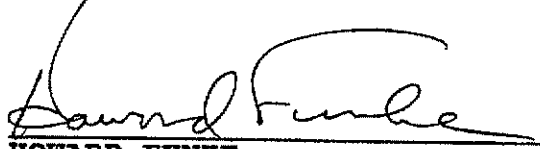
7-5-90
Date


KESLEY EDMO
Chairman, Shoshone-Bannock
Tribal Council

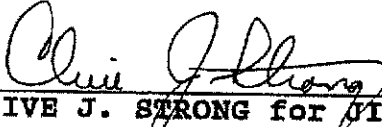
7/5/90
Date


GENE M. GRAY
Chairman,
Idaho Water Resource Board

7-5-90
Date


HOWARD FUNKE
Tribal Attorney
Shoshone-Bannock Tribes

7/5/90
Date


CLIVE J. STRONG for JIM JONES
Attorney General,
State of Idaho

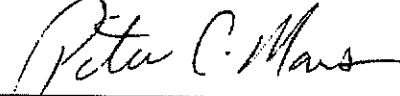
7/5/90
Date


MR. EDDIE F. BROWN
Assistant Secretary for
Indian Affairs

7-10-90
Date


PAUL BERGGREN
Chairman
Committee of Nine

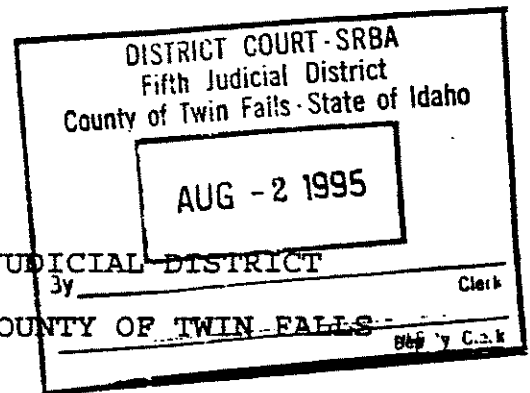
7/9/90
Date


RICHARD B. STEWART
Assistant Attorney General
Land and Natural Resources
Division
U.S. Department of Justice

7/10/90
Date

**MOTION TO CORRECT CLERICAL ERROR
PURSUANT TO RULE 60(a)**

EXHIBIT 3



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

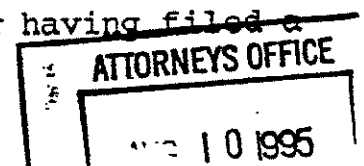
In Re SRBA

Case No. 39576

)
)
) PARTIAL FINAL
) CONSENT DECREE
) DETERMINING THE RIGHTS OF
) THE SHOSHONE-BANNOCK
) TRIBES TO THE USE OF
) WATER IN THE UPPER SNAKE
) RIVER BASIN
)

The District Court of the Fifth Judicial District in and for the County of Twin Falls having entered on November 19, 1987 its COMMENCEMENT ORDER commencing the Snake River Basin adjudication; the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, the State of Idaho, the United States, and certain Idaho Water Users having entered into THE 1990 FORT HALL INDIAN WATER RIGHTS AGREEMENT (hereinafter Agreement) in settlement of claims made by the United States on behalf of the Shoshone-Bannock Tribes to water rights in the Upper Snake River Basin; the Agreement having been submitted to this Court in lieu of a claim as provided by Idaho Code Section 42-1409(6) (1990); the Northside Canal Company having agreed by Resolution dated July 19, 1990, to receive natural flow water from Sand Creek in exchange for making storage water available to the Tribes as required by the Agreement; the United States and the State having agreed upon claims submitted for the non-Indian portion of the Fort Hall Irrigation Project and the Fort Hall Agency, Bureau of Indian Affairs; the Director having filed a

CONSENT DECREE - 1



- .vii Purpose and Period of Use:
Irrigation 4/1 - 11/1
- .viii Place of Use: 485 present and future acres within the
Reservation.
- .ix Basis of Right: Winters Doctrine

Right No. 29-00231

- .i Source: Toponce Creek
- .ii Annual Diversion Volume: 259.3 AFY
- .iii Diversion Rate: 1.59 CFS
- .iv Annual Volume of Consumptive Use: 154.3 AFY
- .v Priority Date: February 16, 1869
- .vi Points of Diversion: Toponce Creek
- .vii Purpose and Period of Use:
Irrigation 1/1 - 12/31
- .viii Place of Use: Allotment 61 (NESW, SENW, Sec 35 Twp 6S
Rge 38E) for 79.53 acres.
- .ix Basis of Right: The Winters Doctrine per the
Memorandum Decision in 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..

Right No. 29-00238

- .i Source: Toponce Creek
- .ii Annual Diversion Volume: 282.5 AFY
- .iii Diversion Rate: 1.733 CFS

- .iv Annual Volume of Consumptive Use: 168.14 AFY
- .v Priority Date: February 16, 1869
- .vi Points of Diversion: Toponce Creek
- .vii Purpose and Period of Use:
Irrigation 1/1 - 12/31
- .viii Place of Use: Allotment 71 (SENW, SWNE, Sec 36 Twp 6S Rge 38E) for 86.67 acres. Allotment 72 (NESW and NWSE Sec 36 Twp 6S Rge 38E) for 80 acres.
- .ix Basis of Right: The Winters Doctrine per the Memorandum Decision in 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.

Right No. 29-12051

- .i Source: Mink Creek
- .ii Annual Diversion Volume: 104.3 AFY
- .iii Diversion Rate: 0.75 CFS
- .iv Annual Volume of Consumptive Use: 62.1 AFY
- .v Priority Date: February 26, 1869
- .vi Points of Diversion: SWNW Sec 21 Twp 7S Rge 35E BM
- .vii Purpose and Period of Use:
Irrigation 3/15 - 11/15
- .viii Place of Use: Allotment T-8 (SWNW Sec 21 Twp 7S Rge 35E BM for 31.75 acres) as shown on Attachment A.
- .ix Basis of Right: The Winters Doctrine per Decree of District Court of the Fifth Judicial District Court of

defined, and decreed, and each of the parties shall respect the superior rights of all others adjudicated in the SRBA.

Dated this 2 day of ^{August}~~July~~, 1995.

/s/ DANIEL C. HURLBUTT JR.
DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication

54(b) CERTIFICATE

With respect to the issues determined by the above Partial Final Consent Decree it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED the 2 day of ^{August}~~July~~, 1995.

/s/ DANIEL C. HURLBUTT JR.
DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication