

COPY

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
MICHAEL ORR (ISB #6720)
Deputy Attorneys General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
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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	)	
	)	Subcases 51-02002, <i>et al.</i> [Exhibit A]
	)	(Riddle Ranches/Jackson)
	)	and
Case No. 39576	)	Subcases 51-12756, <i>et al.</i> [Exhibit B]
	)	Subcases 51-12604, <i>et al.</i> [Exhibit C]
	)	(US/Shoshone-Paiute Tribes)
	)	
	)	AFFIDAVIT OF DAVID J. BARBER DATED
	)	JANUARY 9, 2006
	)	
State of Idaho	)	
	)	ss
County of Ada	)	

DAVID J. BARBER, being first duly sworn, deposes and states:

1. I am a deputy attorney general assigned to the Snake River Basin Adjudication. I

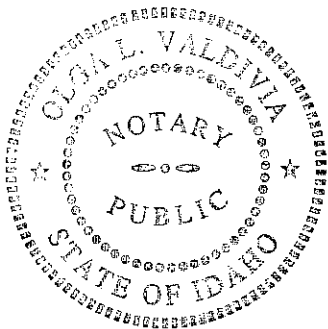
am a competent adult over the age of eighteen years, and the statements made herein are based upon my own personal knowledge of the events described.

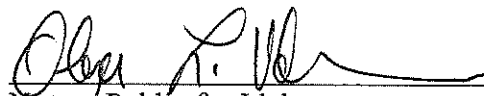
2. Attached to this affidavit are true and correct copies of the following documents:
(i) Letter dated October 13, 2005, (ii) Letter dated October 28, 2005, (iii) Letter November 8, 2005, (iv) e-mail dated November 10, 2005, and (v) Letter dated November 15, 2005. All of these documents relate to the offer of judgment made by the State of Idaho, Riddle Ranch, and J.R. Simplot Company to the United States and to its acceptance by the United States.

3. Further your affiant sayeth naught.


DAVID J. BARBER
Deputy Attorney General

Subscribed and sworn (or affirmed) to before me, a notary public in and for the State of Idaho, this 9th day of January 2006.




Notary Public for Idaho
Residing at Boise, ID
My Commission expires: 2/8/06

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OCT 14 2005

OFFICE OF THE
ATTORNEY GENERAL

October 13, 2005

VIA U.S. MAIL and E-MAIL

Vanessa Boyd-Willard
Peter Monson
United States Department of Justice
999 18th Street, Suite 945
Denver, CO 80202

Re: Offer of Judgment Pursuant to I.R.C.P. 68 and I.R.E. 408

Dear Vanessa and Peter:

The undersigned objectors jointly make the following offer of judgment in full satisfaction of all of the United States' federal reserved water right claims filed on behalf of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation in the SRBA. This offer of judgment is inadmissible in any legal proceeding other than for the purposes authorized by I.R.C.P. 68 and I.R.E. 408.

Upon acceptance of this offer of judgment, the undersigned objectors agree to execute SF-5 forms recognizing the following claims:

1. All domestic, commercial, municipal and industrial water right claims set forth in Attachment I beginning with Claim No. 55-13518 and ending with Claim No. 55-13563. See Attachment I to Director's Report. The total diversion under these water rights shall not exceed 381 acre-feet per year.
2. All stockwater claims set forth in Attachment II beginning with Claim No. 55-13712 and ending with Claim No. 55-13815. See Attachment II to Director's Report. The total diversion under these water rights shall not exceed 687 acre-feet per year.
3. Irrigation Claim Nos. 55-13496, 55-13506, 55-13514, 55-13491, 55-13492, 55-13494, 55-13495, 55-13508, 55-13512, 55-13515, 55-13691, 55-13817 and 55-13819 as set forth in Attachment III to Director's Report. Excluded from this offer of judgment are Claim Nos. 55-13818, 55-13820, and 55-13816. These latter claims are excluded because they relate to recovery of recharge water from Nevada sources.
4. Claim Nos. 55-13653 and 55-13654 as set forth in Attachment IV to Director's Report, provided however, that the purpose of use is limited to irrigation storage.

NATURAL RESOURCES



NA 10635

Vanessa Boyd-Willard
Peter Monson
October 13, 2005
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In exchange for the recognition of these disputed claims, the United States would agree to dismiss with prejudice all remaining claims of the United States on behalf of the Shoshone Paiute Tribes of the Duck Valley Indian Reservation set forth in the Director's Report and any amendments thereto. In addition, the United States would dismiss its objections to the water right claims of the undersigned objectors within Basins 51 and 55. All parties would bear their own attorney's fees and costs.

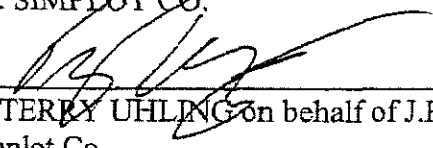
Please present this offer of judgment to your client, the United States Department of Interior. Because of the urgency of this matter, we respectfully request a response within fourteen days of the date of this letter.

Sincerely,

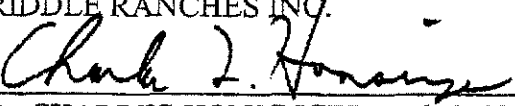
STATE OF IDAHO

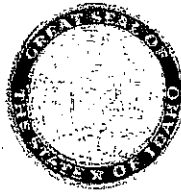

By CLIVE J. STRONG on behalf of
Governor Dirk Kempthorne, and the Idaho
Water Board

J.R. SIMPLOT CO.


By TERRY UHLING on behalf of J.R.
Simplot Co.

RIDDLE RANCHES INC.


By CHARLES HONSINGER, on behalf of
Riddle Ranches Inc.



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OCT 31 2005
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STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

October 28, 2005

Peter Monson
Vanessa Boyd-Willard
United States Department of Justice
999 18th Street Suite 945
Denver, CO 80202

Re: Clarification of Offer of Judgment Regarding Duck Valley Claims

Dear Peter and Vanessa:

The purpose of this letter is to confirm the objectors' agreement to extend the date for acceptance of the offer of judgment and to memorialize the verbal clarifications of the offer of judgment we discussed on October 26, 2005.

The other parties signatory to the offer of judgment have authorized me to grant the United States an additional week for consideration of the offer of judgment. Your acceptance or rejection of the offer of judgment will be due on November 4, 2005.

Based upon our conversations, you may assume the following facts as included in the offer of judgment:

1. All domestic, municipal and stock water claims set forth in the Director's Report are included in the offer of judgment. The attached SF-5 form sets forth those claims. Please note, however, that because of changes by IDWR in the water rights numbers, we are still reviewing these claims to ensure the accuracy of the water right numbers.
2. The offer of judgment includes those elements of the water rights claimed in the State of Nevada that are actually exercised in the State of Idaho. The State of Idaho does not assert jurisdiction over those elements of water rights that exist within the State of Nevada, but rather, intends to recognize the right of the United States to use water diverted under such valid Nevada water rights within the State of Idaho as set forth in the attached SF-5 form.

SRBA



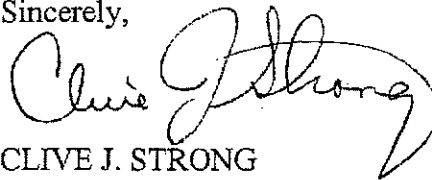
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Peter Monson
Vanessa Boyd-Willard
October 28, 2005
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3. Water right no. 55-13487, for irrigation storage out of Boyle Creek is included in the offer of judgment. It was inadvertently omitted from the initial offer.
4. Nothing in the offer of judgment precludes the United States or the Tribe from acquiring a new water right in accordance with the laws of the State of Idaho.
5. This offer of judgment only addresses the water right claims of the United States for the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation within the Snake River Basin within the State of Idaho and does not address or affect any other matters.

Please contact me if you have any further questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Clive J. Strong", with a large, sweeping flourish at the end.

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

CJS/pb
Enclosure



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WARDEN

November 8, 2005

VIA U.S. MAIL & FACSIMILE
(303) 312-7379

Peter Monson
Vanessa Boyd-Willard
U.S. Department of Justice
999 18th Street Suite 945
Denver, CO 80202

Re: Response to Frank Wilson's Concerns about the Offer of Judgment.

Dear Peter and Vanessa:

This letter responds to the concerns expressed in Frank Wilson's Memorandum dated November 3, 2005. Rather than restate the issues, I have provided our proposed resolution. The language proposed to be included in water right decrees for DVIR water rights is as follows: "This water right is a federal reserved Indian water right and will be administered according to applicable law."

With regard to the recharge water rights (55-13818 and 55-13820) the following two sentences are proposed to be substituted for the current last sentence. "This water right when combined with water right 55-13693 shall provide no more than 0.0255 cfs per acre nor more than 3.2 acre-feet per acre for the irrigation of the lands served. This water right when combined with water right 55-13694 shall provide no more than 0.0231 cfs per acre nor more than 2.9 acre-feet per acre for the irrigation of the lands served."

The season of use from 4/15 to 10/15 was developed during negotiations but if the claimed season of use from 4/1 to 9/30 is preferred the SF-5s can be changed. Either season of use is acceptable.

Mr. David Shaw used the current GLO Plat Maps for his description of the place of use. He sent them by e-mail to Laura McKusick for her review. The total difference in acreage for the Idaho rights is 22 acres and the total difference for the Nevada rights used in Idaho is 60 acres. Several different situations occur, in some cases more than 40 acres is claimed in a 40 acre tract and Mr. Shaw reduced the acreage to 40 acres. In some cases more acres were claimed in a Government Lot than exist in the lot even though the total is less than 40 acres. In those cases Mr. Shaw reduced the acreage to the Government Lot acreage. Finally, in some cases

more than 40 acres were claimed in a 40 acre tract but the GLO Plat made it apparent the acreage should be split between 2 Government Lots. In those cases, the total acreage is the same but it was described in 2 Government Lots rather than a 40 acre tract with more than 40 acres. The 1998 claims describe acres as the place of use that do not exist. If this method of identifying place of use is to appear in the decree, the acreage needs to be correctly described.

The place of used description by 40 acre tract or Government Lot satisfies the requirements of § 42-1409 (1) (h) (ii) for irrigation (consumptive) water use. An alternative description that may be acceptable is to describe the existing irrigation use by 40 acre tract or Government Lot and describe the future uses as within a specific part of the reservation by reservation date and, perhaps, drainage area or basin. Existing irrigation use should be determined by criteria similar to that used by IDWR to determine existing irrigation under state law based claims.

If PLS legal descriptions are going to be used in the decree the descriptions should contain Government Lot descriptions where Government Lots exist. That should be possible from the GLO Plats available.

If there is a preference to remove the "Diversion" column from the description of the stock water rights that should not be a problem. The "means of diversion" is an item requested on the SRBA claim forms to aid in understanding and identifying each water right. The means of diversion is not normally included in the decree of a water right but, if the SRBA Court is willing, there should not be any harm in including that information in the decree. It is common practice to include the "tributary to" information with an SRBA claim and that information is specifically requested on the State Law based claims to water rights form. The information helps identify the water right and where it fits within the drainage when smaller springs and streams are claimed as the source of water. This information can be verified and included without difficulty.

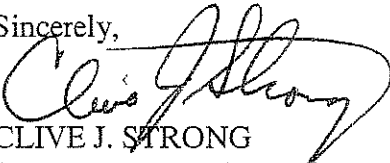
The description of the future DCMi rights can be modified to remove the basin reference and include only the 1877 or 1886 Reservation. The legal description of the respective reservations should be included in the decree of water rights as is now proposed for the 1877 future uses to make the decree be self-contained and eliminate the need for someone to look up additional information to understand the description of water rights in the decree. The 1886 description can be added to the new domestic use of 50 wells and the reference to Blue Creek basin eliminated. As far as the municipal use is concerned, it seems if the water is to be used in the 1886 portion of the reservation it should be used with an 1886 priority date. Alternatives that come to mind are to split the right with a portion for the 1877 Reservation and a portion for the 1886 Reservation. Another alternative is to describe two water rights, one for each part of the reservation with its respective priority date and include language that limits the total use from the 2 rights to 381 acre-feet per year.

The typographical error (December 32) has been corrected in the descriptions of the storage water rights.

Peter Monson & Vanessa Boyd-Willard
November 8, 2005
Page 3

The storage rights included in the Offer of Judgment are for irrigation purposes and the place of use for that stored water is upon the lands being irrigated. It is not appropriate to include the reservoir location as a place of use for an irrigation storage water right.

Sincerely,



CLIVE J. STRONG
Deputy Attorney General

DBS/DJB/CJS/olv

cc: Frank Wilson (Fax: (503) 231-2166)
Jeanne Whiteing (Fax: (303) 444-2365)

Monson, Peter C (ENRD)

From: clive.strong@ag.idaho.gov
Sent: Thursday, November 10, 2005 3:32 PM
To: Monson, Peter C (ENRD); jwhiteing@whiteingsmith.com
Subject: Offer of Judgment Extension of time

Pursuant to my conversation with each of you, the time for responding to the offer of judgment is extended until November 16, 2005. Sincerely, Clive J. Strong



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NOV 18 2005

OFFICE OF THE
ATTORNEY GENERAL

U.S. Department of Justice

Environment and Natural Resources Division

SCA:PCMonson:lcd

Peter C. Monson
U.S. Department of Justice
Environment and Natural Resources Division
Indian Resources Section
999 18th Street, Suite 945
Denver, Colorado 80202

Telephone: (303) 312-7350
Facsimile: (303) 312-7379
peter.monson@usdoj.gov

November 15, 2005

Clive Strong
Deputy Attorney General
Office of the Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-0010



Terry T. Uhling
JR Simplot Company
P.O. Box 27
Boise, ID 83707

Charles L. Honsinger
Ringert, Clark Chtd.
P.O. Box 2773
Boise, ID 83701-2773

Re: SRBA; Duck Valley and Riddle Ranches sub-cases.

Dear Messrs. Strong, Honsinger, and Uhling:

I am responding as counsel for the United States to the letter dated October 13, 2005 which transmitted an Offer of Judgment from the State and other objectors. The terms of this offer were subsequently clarified in telephone conversations which were memorialized by letters from Mr. Strong dated October 28, 2005 and November 8, 2005. Those letters, together with an email dated November 10, 2005, also confirmed extensions of time for responding to the offer, a courtesy which we appreciate.

The offer and clarifications have been reviewed by senior policymakers at the Interior and Justice Departments. We have also discussed the offer on two separate occasions with the Shoshone-Paiute Tribal Council and with their legal counsel, although the Tribes are likely to provide their views separately.

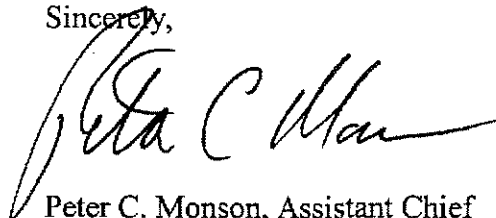
The Departments of the Interior and Justice have conferred and agree that the United States should conditionally accept the offer of judgment, contingent upon certain language being included in the Standard Forms 5 (SF-5's) which will be submitted to the Court and which will form the basis for the court decree which is to resolve this matter. The language to be included would read as follows: "This water right is a federal reserved water right, is not subject to loss

due to non-use, and its exercise on-reservation shall be administered by the Shoshone-Paiute Tribes pursuant to a tribal water code or by the United States as trustee for the benefit of the Tribes." This language, which is slightly more specific than that which was proposed in your letter of November 8, 2005, is modeled after provisions contained in other tribal water right decrees and agreements in the SRBA -- notably Nez Perce and Fort Hall -- and elsewhere, and should not be controversial, particularly given the unique geographic and demographic features of the Duck Valley Indian Reservation.

As indicated in your letter of November 8, 2005, there are a number of technical details which remain to be worked out in the text of the SF-5's. We look forward to working diligently with you and your staff to resolve these issues so that the SF-5's -- and thus the court decrees -- accurately reflect the agreement which we have reached.

If there are any questions, please feel free to contact me. We thank you and your clients for your efforts in resolving this matter in a cost-effective and expeditious way.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter C. Monson", written in a cursive style.

Peter C. Monson, Assistant Chief
Indian Resources Section, ENRD

cc:

Jeanne Whiteing, Esq.
Sue Ellen Wooldridge, Esq.
John Bezdek, Esq.
Frank Wilson, Esq.

CERTIFICATE OF SERVICE

I certify that on this 9th day of January 2006, I caused to be served the original and/or copy of this AFFIDAVIT OF DAVID J. BARBER DATED JANUARY 9, 2006 on the following persons by the indicated method:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to

Nancy Jackson
Peter Jackson
Riddle Ranches, Inc.
Charles L. Honsinger
P.O. Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: 342-4657
- ☐ Statehouse Mail

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Shoshone-Paiute Tribes
Rep. By:
Jeanette Wolfley
Special Counsel
Shoshone-Bannock Tribes
202 North Arthur
Pocatello, ID 83204

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 232-7472
- ☐ Statehouse Mail

Shoshone-Paiute Tribes
Rep. By:
Jeanne S. Whiteing
Whiteing & Smith
1136 Pearl Street, STE 203
Boulder, CO 80302

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 444-2365
- ☐ Statehouse Mail

Idaho Power Company
Rep. By:
John K. Simpson
205 N. 10th St. STE 520
PO Box 2139
Boise, ID 83701-2139

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: 344-6034
- ☐ Statehouse Mail

JR Simplot Co.
Simplot Livestock Co.
Rep. By: Terry T. Uhling
and
JR Simplot Self-Declaration
ML Investment Co.
TM Ranch Co.
Rep. By: Ronald N. Graves
PO Box 27
Boise, ID 83707

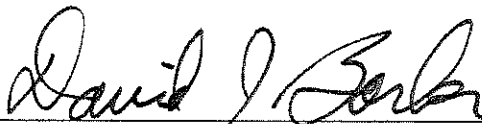
- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: 389-7515
- ☐ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ Statehouse Mail

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

Not Applicable



DAVID J. BARBER
Deputy Attorney General