



U.S. Department of Justice

Environment and Natural Resources Division

VBW:DAJ

90-6-2-63

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May 23, 2006

via FedEx Mail

Diana R. Delaney, Chief Deputy Clerk
Snake River Basin Adjudication
DISTRICT COURT
253 Third Ave., North
Twin Falls, Idaho 83303-2707

Re: SRBA Case No. 39576
Subcase Nos. 51-02002, *et al.*; 51-12756, *et al.*; 51-12767, *et al.*

Dear Ms. Delaney:

Enclosed for filing are the original and two copies of the following documents in the above mentioned subcases:

1. **JOINT MOTION FOR APPROVAL OF REVISED CONSENT DECREE AND ENTRY OF REVISED PARTIAL FINAL DECREES**
2. **REVISED CONSENT DECREE** w/ attached partial decrees

Due to the size of this filing and the inclusion of three complete sets, this filing is in two parts. Part 1 of 2 contains the original copies being filed. Part 2 of 2 contains the additional two copies which complete the Court's filing requirements. Thank you for your time and attention in this matter.

Sincerely,

David A. Jarvis
Paralegal

Enclosures

attachments to the revised Consent Decree.^{1/} This Motion and the revised Consent Decree filed herewith are intended to replace the previous Joint Motion for Approval of Consent Decree and Entry of Partial Final Decrees, dated January 9, 2006. This Motion incorporates the Brief in Support of Joint Motion for Entry of Consent Decree, dated January 9, 2006, because that same reasoning applies here. The grounds for this motion are as follows:

1. The State of Idaho, Riddle Ranches, and J.R. Simplot Company ("Objectors") made an offer of judgment in this matter on October 13, 2005 to the United States. The Objectors clarified the offer of judgment in letters dated October 28, 2005 and November 8, 2005 and in an e-mail dated November 10, 2005.

2. The United States conditionally accepted the offer of judgment in a letter dated November 15, 2005.

3. The Objectors and United States implemented the offer of judgment by filing a Joint Motion for Approval of Consent Decree and Entry of Partial Final Decrees on January 9, 2006.

4. The Shoshone-Paiute Tribes of the Duck Valley Indian Reservation ("Tribes") filed Objections to Entry of the Consent Decree on February 8, 2006 and March 9, 2006. A hearing was held on the Tribes' Objections on April 13, 2006.

5. Subsequent to the hearing, the State of Idaho, United States and Tribes reached an agreement which resolves the Tribes' Objections to the Consent Decree. The agreement, which

^{1/}There were a total of 369 claims at issue in this case. Attachment A to the revised Consent Decree filed herewith contains 345 revised Partial Final Decrees which the Parties seek to have entered by the Court. The remaining 24 claims are accounted for in Attachment B to the Revised Consent Decree, which outlines the claims to be disallowed. It should be noted that Attachment B was not revised but is included here to provide the Court with a complete set of documents with the Revised Consent Decree.

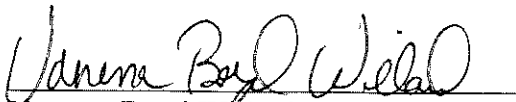
was outlined in the Status Report Concerning Resolution of Shoshone-Paiute Tribes' Objections to Proposed Consent Decree, dated May 10, 2006, is incorporated into the Revised Consent Decree and Revised Partial Final Decrees filed herewith.

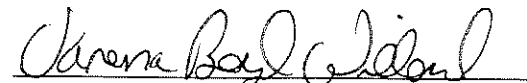
6. It is the understanding of the United States and State that the Tribes intend to file a withdrawal of their objections simultaneously with this Motion.

Respectfully submitted this 23rd day of May 2006.

Sue Ellen Wooldridge
Assistant Attorney General
Peter C. Monson
Assistant Chief, Indian Resources Section

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Vanessa Boyd Willard
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 For
David J. Barber
Deputy Attorney General

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)
	)	
	)	REVISED CONSENT DECREE APPROVING
	)	ENTRY OF REVISED PARTIAL FINAL DECREES
	)	DETERMINING THE RIGHTS OF THE UNITED
	)	STATES AS TRUSTEE FOR THE BENEFIT OF
	)	THE SHOSHONE-PAIUTE TRIBES TO THE USE
	)	OF WATER IN THE SNAKE RIVER BASIN
	)	WITHIN IDAHO

The Parties to this Consent Decree are the United States as trustee for the benefit of the Shoshone-Paiute Tribes, the State of Idaho, Riddle Ranches and J.R. Simplot Company, hereinafter collectively referred to as the "Parties":

1. Procedural History and Offer of Judgment. The United States as trustee for the benefit of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, hereinafter the "United States," filed a Notice of Claim To A Water Right Under Federal Law on February 4, 1998, hereinafter the "1998 Notice of Claim." The Idaho Department of Water Resources assigned a total of 363 claim numbers to the water right descriptions contained in the 1998 Notice of Claim. Later, the United States filed a Motion to Amend certain designated notices of claim, which split two of the existing notices of claim into a total of six notices of claim. The Court granted

the Motion to Amend.¹ Thus, the total number of notices of claim was 369.

The State of Idaho, J. R. Simplot Company and Riddle Ranch, hereinafter collectively referred to as the "Objectors," filed objections to the notices of claim filed by the United States.² The Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, hereinafter referred to as the "Tribes," filed a motion to intervene in those subcases filed by the United States on its behalf, and the Court granted the motion. In addition, the Tribes also filed a motion to participate in most of the notices of claim for the Riddle Ranch listed on Exhibit A, which the Court also granted.

Pursuant to I.R.C.P. 68, the Objectors made an offer of judgment to the United States on October 13, 2005, which was clarified by several subsequent letters and an e-mail. The United States notified the Objectors in writing on November 15, 2005 that the United States conditionally accepted the offer of judgment.

2. Entry of Partial Final Decrees for federal reserved water rights. The Parties agree to entry of and incorporate herein the partial decrees for federal reserved water rights set forth in Attachment A for the beneficial use of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation within the Snake River Basin in the State of Idaho. As set forth in each of the final partial decrees in Attachment A, these are federal reserved water rights, which are not subject to

¹ The Court also added two claim numbers to allow parties to object to written narrative in the Director's Report. Five other discrepancies need to be noted. The Director's Report listed notice of claim number 51-12603 for a stockwater claim. This notice of claim number did not end up on the Court's list of notices of claim in Exhibits B and C. The Director also had assigned notice of claim number 51-12603 to a stockwater claim for the U.S. Department of Interior, Bureau of Land Management, and the Court later entered a partial decree for that agency. Thus, the Director had inadvertently assigned notice of claim number 51-12603 to two separate water uses. Another problem existed. The first two digit number in a water right number denotes the hydrologic basin where the water is diverted. Notices of claim 51-12603 through 51-12607 were water uses in basin 55 and not Basin 51 as their number indicates. The Director filed on January 6, 2006 a Notice of Change of Subcase Numbers. This notice changed notice of claim numbers 51-12603 through 51-12607 for the United States as trustee for the benefit of the

loss through non-use. These water rights describe purposes of use, points of diversion and places of use, which are not intended to preclude the Tribes' ability to change those purposes of use, points of diversion and places of use within the Duck Valley Indian Reservation pursuant to a tribal water code, provided however, that any change shall not enlarge the right.

3. Remaining water right claims disallowed. With the exception of the partial final decrees set forth in Attachment A, the Parties agree that the remaining claims asserted by the United States as trustee for the benefit of the Shoshone-Paiute Tribes in the SRBA within the State of Idaho will be decreed as disallowed. Attachment B provides a list of all claim numbers to be disallowed.

4. Withdrawal of United States' objections to Riddle Ranch. The objections of the United States to the notices of claim for the Riddle Ranch shall be withdrawn with prejudice.

5. Administration of water rights. The exercise of the water rights on the Duck Valley Indian Reservation outlined in the Final Partial Decrees set forth in Attachment A shall be administered by the Tribes pursuant to a tribal water code or in accordance with applicable federal law.

6. Waivers and releases. Except as provided in Attachment A, the United States, as trustee for the benefit of the Shoshone-Paiute Tribes, waive and release all existing claims for water rights within the Snake River Basin in Idaho. No water right claims that the United States has asserted or may in the future assert on behalf of the Shoshone-Paiute Tribes outside the Snake River Basin in Idaho shall require water to be supplied from the Snake River Basin in Idaho to satisfy such claims. This Consent Decree is also in full satisfaction of all water rights or

Shoshone-Paiute Tribes to notice of claim numbers 55-13603 through 55-13607. Notice of claim number 51-12603 remains assigned to a water use decreed for the U.S. Department of the Interior, Bureau of Land Management.

claims to water rights within the state of Idaho by the United States for the Bureau of Indian Affairs' Duck Valley Agency and the Duck Valley Indian Irrigation Project. Nothing in this Consent Decree shall preclude the United States or the Tribes from acquiring water rights in the future pursuant to state law, provided the water rights confirmed in this Consent Decree have been fully utilized at the time the application is made, or are not physically available for use through reasonable diversion facilities.

7. No establishment of precedent. Nothing in this Consent Decree shall be construed or interpreted to establish any standard to be used for the quantification of federal reserved water rights or any other Indian water claims of any other Indian Tribes in any judicial or administrative proceeding. This Consent Decree is the result of good faith negotiations between the Parties for the purpose of implementing the United States' conditional acceptance of the Objectors' offer of judgment regarding the United States' claims for the benefit of the Shoshone-Paiute Tribes. The Parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding and nothing in this Consent Decree shall be read as an admission or determination by the Parties that any of the actions anticipated by this Consent Decree are necessarily required under any federal or state law.

8. Resolution and Finality. The Parties agree that the Consent Decree and final partial decrees represent a just, fair, adequate and equitable resolution of the water right claims of the United States as trustee for the benefit of the Shoshone-Paiute Tribes in the SRBA within the State of Idaho.

² The term "Riddle Ranch" refers to Riddle Ranch, Inc. and Nancy and Peter Jackson collectively.

9. Costs and Fees. The Parties will bear their own costs and fees with regard to the entry of the Consent Decree and all litigation relating to the water right claims submitted in the SRBA by the United States as trustee for the benefit of the Shoshone-Paiute Tribes.

DATED this ____ day of _____, 2006.

JOHN MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I hereby certify that on this 23rd day of May 2006, I caused to be served true and correct copies of the attached **Joint Motion for Approval of Revised Consent Decree and Entry of Revised Partial Final Decrees and Revised Consent Decree** as follows:

By FedEx mail:

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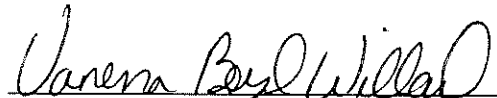
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ATTACHMENT "A" CAN BE VIEWED IN THE REPOSITORY OR LEGAL FILES