

OCT 25 2006

DEPARTMENT OF
WATER RESOURCES

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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

	) Subcases 51-02002, <i>et al.</i> [Exhibit A]
	) (Riddle Ranches / Jackson) ¹
	) and
In Re SRBA	) Subcases 51-12756, <i>et al.</i> [Exhibit B]
	) Subcases 51-12767, <i>et al.</i> [Exhibit C]
Case No. 39576	) (US / Shoshone-Paiute Tribes, Duck
	) Valley Indian Reservation)
	)
	) SPECIAL MASTER REPORT AND
	) RECOMMENDATION and ORDERS

FINDINGS OF FACT

Director's Reports and Objections:

Non-Consumptive, Instream Flow Claims [Exhibit B]

The Director of the Idaho Department of Water Resources filed his *Director's Report Part II: United States' and Tribal Non-Consumptive Claims* on March 31, 1994, reporting the federal reserved non-consumptive claims filed by the United States of America, as trustee on behalf of the Shoshone-Paiute Tribes of the Duck Valley Indian

¹ Claims filed by Riddle Ranches, Inc. ["the largest non-federal neighbor of the Reservation in Idaho"], and Nancy and Peter Jackson in Basins 51 and 55 were proceeding on the same track with the United States' and Shoshone-Paiute Tribes' Federal reserved water right claims until September, 2004, when the parties requested separate trial schedules. See *Order Granting Joint Motion to Modify Amended Trial Schedule and 2nd Amended Trial Schedule Order*, subcases 51-02002, *et al.* [Exhibit A], dated September 17, 2004; also see June 25, 2003, letter from United States Department of Justice attorney Peter C. Monson to former SRBA Presiding Judge Roger S. Burdick. This *Report and Recommendation* concerns only the United States' and Shoshone-Paiute Tribes' federal reserved water right claims. The Riddle Ranches / Jackson claims will be recommended separately. The United States noted it will withdraw its *Objections* to the Riddle Ranches claims as part of the *Second Revised Proposed Consent Decree*, ¶ 5, at 3.

Reservation.²

Idaho Power Company filed its *Objection* to the claims on October 12, 1995. On December 20, 1995, the State of Idaho, Riddle Ranches and J.R. Simplot Company, *et al.*³, were granted leave to file late *Objections*.

Consumptive Claims [Exhibit C]

The Director filed his *Director's Report, Irrigation and Other Uses, Reporting Area Six (IDWR Basins 51 & 55), Federal Reserved Water Rights Files on Behalf of the Shoshone-Paiute Tribes* on November 24, 1998, reporting the federal reserved consumptive claims filed by the United States, as trustee on behalf of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation.

The State of Idaho filed an *Objection* to the claims on March 18, 1999, alleging the water rights should not exist. Simplot Livestock Company, *et al.*, filed essentially the same *Objection* on March 31, 1999. J.R. Simplot Self-Declaration of Revocable Trust, M.L. Investment Company and TM Ranch Company filed similar *Objections* on April 12, 1999.

Intervention

On December 6, 1999, the Special Master entered an *Order Granting Tribes' Motion to Intervene* granting the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation leave "to intervene in the non-consumptive use claims and consumptive use claims filed on their behalf by the United States." Tribes' *Motion to Intervene*, at 2, filed January 12, 1999.

² On May 19, 1998, the United States was granted leave to amend its non-consumptive claims "to clarify and refine the amounts of water claimed for the Reservation, the times in which this water is needed, the priority dates of the claims, and the legal description of the claims." United States' *Motion to File: Amended Notice of Claim*, subcases 51-12756, *et al.*, filed February 27, 1998.

³ Objectors who joined with J.R. Simplot Company included: J.R. Simplot Self-Declaration of Revocable Trust, M.L. Investment Company and TM Ranch Company.

Trial Settings⁴

On May 17, 2002, the Special Master entered a *Trial Schedule Order* setting the matters for trial beginning January 13, 2005. A *2nd Amended Trial Schedule Order* was entered on September 17, 2004, resetting the trial to begin November 8, 2005. The *4th Amended Trial Schedule Order*, filed March 30, 2005, moved the trial date back one day to November 9, 2005. The April 22, 2005 *5th Amended Trial Schedule Order* reset the trial to begin May 1, 2006.

Lead Subcases and Joinder

On July 16, 2004, the Special Master entered an *Order Designating Lead Subcases* for the United States and Shoshone-Paiute Tribes non-consumptive and consumptive claims and requiring that the claims proceed to trial simultaneously, but without consolidation. Also see February 10, 2006 *Order Amending Exhibit C and Exhibit C Lead Subcase*.

Mandatory Settlement Conference

On July 15, 2005, the Special Master entered an *Amended Order Appointing Settlement Moderator and Setting Mandatory Settlement Conference*. A *2nd Amended Order* reset the date for the conference to August 12, 2005.

Settlement Moderator Brigitte Bilyeu filed a *Settlement Conference Report* on August 15, 2005, stating:

The parties had helpful discussions regarding a possible contribution by the U.S. government. An offer was made, however, no agreement was reached. The parties agreed to exchange comments on the Draft Settlement Agreement within 2 weeks. The parties agreed to hold a conference call within 3 weeks regarding the Draft Settlement Agreement.

⁴ Orders amending pretrial settings are omitted from this discussion.

Order Reducing Paperwork

On July 27, 2002, the Special Master entered an *Order Re: Court Filings* requiring the parties to file only one document in each of the lead subcases instead of filing the original plus 368 copies.

Motions for Summary Judgment:

State of Idaho

On September 23, 2005, the State filed its *Motion for Summary Judgment* seeking disallowal of some claims and deletion of all uses, except irrigation and livestock uses, in other claims.

United States

The United States filed its *Motion for Partial Summary Judgment* the same date seeking rulings on the purpose of creation of the Duck Valley Indian Reservation (“to create a permanent homeland for the Western Shoshone, Paiutes and other Indians who reside there”) and the uses of water to fulfill that purpose. The *Motion* also asked the SRBA Court to declare that it does not have jurisdiction over points of diversion on the Reservation outside Idaho. The Tribes joined in the United States’ *Motion* the same date it was filed.

Offer of Judgment

On December 21, 2005, the State and the United States filed a *Joint Motion for Scheduling Order* asking that the Special Master vacate the current trial scheduling order and set a schedule for filing of a motion for entry of partial consent decree “for the purpose of implementing the United States’ conditional acceptance of the offer of judgment.” Based on that *Joint Motion*, the Special Master vacated the trial schedule and set a hearing on the motion for entry of a partial consent decree.

Then, on January 9, 2006, the State and the United States filed a *Joint Motion for Approval of Consent Decree and Entry of Partial Final Decrees*. The same date, those

parties lodged a proposed *Consent Decree Approving Entry of 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*.

Tribes' Objection

The Shoshone-Paiute Tribes filed their *Objection to Entry of Consent Decree* on February 9, 2006, and supplemented the *Objection* on March 10, 2006.

Hearing on Objection

A hearing on the *Joint Motion for Approval of Consent Decree and Entry of Partial Final Decrees*, plus the Tribes' *Objection*, was held on April 13, 2006, at the SRBA Courthouse in Twin Falls, Idaho. Vanessa Boyd Willard and Frank S. Wilson appeared for the United States; Jeanne S. Whiteing appeared for the Shoshone-Paiute Tribes; David J. Barber appeared for the State of Idaho; Terry T. Uhling appeared for J.R. Simplot Company, along with Vic Conrad; Shelley M. Davis appeared for Idaho Power Company; and Chris M. Bromley appeared for IDWR.

Settlement

Before any rulings were made on the *Joint Motion for Approval of Consent Decree and Entry of Partial Final Decrees*, on May 10, 2006, the United States, the State and the Tribes lodged a *Status Report Concerning Resolution of Shoshone-Paiute Tribes' Objection to Proposed Consent Decree* "to inform the Court of the resolution by agreement of the Shoshone-Paiute Tribes Objections to the Proposed Consent Decree." Riddle Ranches and the J.R. Simplot Company joined in the agreement.

Revised Consent Decree

On May 24, 2006, the State and the United States, in agreement with Riddle Ranches and J.R. Simplot Company, filed a *Joint Motion for Approval of Revised Consent Decree and Entry of Revised Partial Final Decrees* seeking entry of "revised partial final decrees for the 369 claims described in the attachments to the revised

Consent Decree.”⁵ Along with the *Joint Motion*, the parties lodged a proposed *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*.

On August 17, 2006, the Shoshone-Paiute Tribes filed their *Withdrawal of Objections to Entry of Consent Decree*, but requested additional time “for review of the proposed consent decree by all parties for technical accuracy.”

Second Revised Consent Decree

On September 22, 2006, the United States, the State and Riddle Ranches filed their *Joint Motion for Technical Amendments and Entry of Second Revised Proposed Consent Decree and Second Revised Partial Final Decrees*. The parties noted that J.R. Simplot Company and the Tribes do not object to the *Joint Motion*. The *Joint Motion* sought amendments to Exhibits A, B and C, corrections of certain claimed priority dates and clarifications of several claims.

The same date, the United States, the State, Riddle Ranches and J.R. Simplot Company lodged a *Second Revised Proposed Consent Decree Approving Entry of Second 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*. Attached to the *Second Revised Proposed Consent Decree* was a list of the 22 claims to be disallowed (Attachment A) and proposed partial decrees for the 345 remaining federal reserved claims to be decreed (Attachment B).⁶

⁵ Footnote 1 to the *Joint Motion* stated:

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. Attachment B has since been revised to disallow 22 claims. The last two claims are deleted by paragraph 5 (“**Orders**”) of this *SPECIAL MASTER REPORT AND RECOMMENDATION and ORDERS*.

⁶ The 345 proposed partial decrees in Attachment B were not arranged numerically by basin or claim numbers. In accordance with customary practices of the SRBA Court, they are now arranged numerically in the Court’s files.

Draft Special Master Report and Recommendation and Orders

On October 3, 2006, a *Draft Special Master Report and Recommendation and Orders* was entered and mailed to the parties seeking their suggestions no later than October 20, 2006. The United States and the State lodged their *Joint List of Suggestions Regarding Draft Special Master Report and Recommendation and Orders* on October 20, 2006. They wrote that the Tribes and Riddle Ranches do not appear to have any objections. On October 23, 2006, the Tribes notified the Court that they join in the list of suggestions. Those suggestions have been incorporated into this *Report and Recommendation*.

ORDERS

THEREFORE, IT IS ORDERED that 1) the State and the United States' January 9, 2006 *Joint Motion for Approval of Consent Decree and Entry of Partial Final Decrees*, 2) the Tribes' March 10, 2006 *Motion for Extension of Time to Respond* and 3) the State and the United States' May 24, 2006 *Joint Motion for Approval of Revised Consent Decree and Entry of Revised Partial Final Decrees* are deemed moot in light of subsequent filings.

IT IS FURTHER ORDERED that the Shoshone-Paiute Tribes' August 17, 2006 *Withdrawal of Objections to Entry of Consent Decree* is **granted**.

IT IS FURTHER ORDERED that the parties' September 22, 2006 *Joint Motion for Technical Amendments* is **granted**:

1. The claimed priority date of 55-13799, 55-13800, 55-13801, 55-13803, 55-13804, 55-13806, 55-13808, 55-13811 and 55-13814 is amended to May 4, 1886.
2. The source of 55-13801 is corrected to Dry Creek and the beginning point is corrected to T 15S, R 3E, § 36, NW¼.
3. Exhibit C is amended by the addition of 55-12603.

4. The description of 51-12775 is clarified to include the following language: "This water right includes two separate springs located within this legal description."
5. Claims 51-12899 and 55-13822 are stricken from Exhibit C since they do not correspond to water right claims and it is not appropriate to either decree or disallow them as water rights.
6. Claim 51-12603, a USDI / BLM stockwater claim based on beneficial use, was inadvertently included in the November 24, 1998 *Director's Report, Irrigation and Other Uses, Reporting Area Six (IDWR Basins 51 & 55), Federal Reserved Water Rights Files on Behalf of the Shoshone-Paiute Tribes*, but was never included on Exhibits B or C.⁷

CONCLUSIONS OF LAW

1. The United States of America, as trustee on behalf of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation is entitled to partial decrees adjudicating the 345 non-consumptive and consumptive federal reserved water rights included in Attachment B to the *Second Revised Proposed Consent Decree Approving Entry of Second 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*.
2. The United States, as trustee on behalf of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, as part of the settlement resulting from the offer of judgment, agreed to withdraw the remaining 22 claims listed in Attachment A to the *Second Revised Proposed Consent Decree*.
3. Upon review of the *Second Revised Proposed Consent Decree* and there being no objections thereto, the Special Master is satisfied that the *Second Revised Proposed Consent Decree* is "fundamentally fair, adequate and reasonable." *United States v. Oregon*, 913 F.2d 576, 580 (9th Cir. 1990).

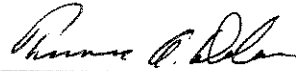
⁷ Water right 51-12603 was partially decreed to the USDI / BLM on April 10, 2000.

RECOMMENDATION

THEREFORE, IT IS RECOMMENDED that:

1. The *Joint Motion for Entry of Second Revised Proposed Consent Decree and Second Revised Partial Final Decrees* be **granted**.
2. The *Second Revised Proposed Consent Decree Approving Entry of Second 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* be entered by the Court adjudicating the 345 non-consumptive and consumptive federal reserved water rights included in Attachment B and disallowing the 22 claims listed in Attachment A.

DATED October 24, 2006.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

EXHIBIT A (Subcases 51-02002, *et al.*)

Riddle Ranches, Inc. / Nancy and Peter Jackson

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

EXHIBIT B (Subcases 51-12756, *et al.*)

United States of America, as trustee on behalf of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation

Non-Consumptive, Instream Flow Claims

55-13487

NOTE: Water right claim number 55-13487 was originally a non-consumptive claim which under the offer of judgment was recognized as a consumptive claim.

EXHIBIT C (Subcases 51-12767, *et al.*)

United States of America, as trustee on behalf of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation

Consumptive Claims

51-12767	51-12851	55-13495	55-13548	55-13585	55-13622
51-12768	51-12852	55-13496	55-13549	55-13586	55-13623
51-12769	51-12853	55-13506	55-13550	55-13587	55-13624
51-12770	51-12854	55-13508	55-13551	55-13588	55-13625
51-12771	51-12855	55-13512	55-13552	55-13589	55-13626
51-12772	51-12856	55-13514	55-13553	55-13590	55-13627
51-12773	51-12857	55-13515	55-13554	55-13591	55-13628
51-12774	51-12858	55-13518	55-13555	55-13592	55-13629
51-12775	51-12859	55-13519	55-13556	55-13593	55-13630
51-12776	51-12860	55-13520	55-13557	55-13594	55-13631
51-12777	51-12861	55-13521	55-13558	55-13595	55-13632
51-12778	51-12862	55-13522	55-13559	55-13596	55-13633
51-12779	51-12863	55-13523	55-13560	55-13597	55-13634
51-12780	51-12864	55-13524	55-13561	55-13598	55-13635
51-12781	51-12865	55-13525	55-13562	55-13599	55-13636
51-12782	51-12866	55-13526	55-13563	55-13600	55-13637
51-12783	51-12867	55-13527	55-13564	55-13601	55-13638
51-12784	51-12868	55-13528	55-13565	55-13602	55-13639
51-12785	51-12869	55-13529	55-13566	55-13603	55-13640
51-12786	51-12870	55-13530	55-13567	55-13604	55-13641
51-12787	51-12871	55-13531	55-13568	55-13605	55-13642
51-12788	51-12872	55-13532	55-13569	55-13606	55-13643
51-12789	51-12873	55-13533	55-13570	55-13607	55-13644
51-12790	51-12874	55-13534	55-13571	55-13608	55-13645
51-12791	51-12875	55-13535	55-13572	55-13609	55-13646
51-12792	51-12876	55-13536	55-13573	55-13610	55-13647
51-12793	51-12877	55-13537	55-13574	55-13611	55-13648
51-12794	51-12878	55-13538	55-13575	55-13612	55-13649
51-12795	51-12879	55-13539	55-13576	55-13613	55-13650
51-12796	51-12880	55-13540	55-13577	55-13614	55-13651
51-12797	51-12881	55-13541	55-13578	55-13615	55-13652
51-12798	51-12882	55-13542	55-13579	55-13616	55-13653
51-12799	51-12883	55-13543	55-13580	55-13617	55-13654
51-12800	-----	55-13544	55-13581	55-13618	55-13691
51-12801	55-13491	55-13545	55-13582	55-13619	55-13693
51-12802	55-13492	55-13546	55-13583	55-13620	55-13694
51-12803	55-13494	55-13547	55-13584	55-13621	55-13695

55-13697	55-13741	55-13785
55-13698	55-13742	55-13786
55-13699	55-13743	55-13787
55-13700	55-13744	55-13788
55-13701	55-13745	55-13789
55-13702	55-13746	55-13790
55-13703	55-13747	55-13791
55-13704	55-13748	55-13792
55-13705	55-13749	55-13793
55-13706	55-13750	55-13794
55-13707	55-13751	55-13795
55-13708	55-13752	55-13796
55-13709	55-13753	55-13797
55-13710	55-13754	55-13798
55-13711	55-13755	55-13799
55-13712	55-13756	55-13800
55-13713	55-13757	55-13801
55-13714	55-13758	55-13802
55-13715	55-13759	55-13803
55-13716	55-13760	55-13804
55-13717	55-13761	55-13805
55-13718	55-13762	55-13806
55-13719	55-13763	55-13807
55-13720	55-13764	55-13808
55-13721	55-13765	55-13809
55-13722	55-13766	55-13810
55-13723	55-13767	55-13811
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55-13727	55-13771	55-13815
55-13728	55-13772	55-13817
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55-13730	55-13774	55-13819
55-13731	55-13775	55-13820
55-13732	55-13776	
55-13733	55-13777	
55-13734	55-13778	
55-13735	55-13779	
55-13736	55-13780	
55-13737	55-13781	
55-13738	55-13782	
55-13739	55-13783	
55-13740	55-13784	

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ***SPECIAL MASTER REPORT AND RECOMMENDATION and ORDERS*** was mailed on October 24, 2006, with sufficient first-class postage to the following:

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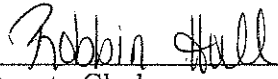
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