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DEPARTMENT OF
WATER RESOURCES

U.S. Department of Justice

Environment and Natural Resources Division

VBW:DAJ

90-6-2-63

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November 2, 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
Consolidated Subcase Nos. 03-10022, 67-13701, and 92-80 and Subcase Nos.
51-12767, *et al.*

Dear Ms. Delaney:

Enclosed are the original and an three copies of the following original documents in the above mentioned subcases for your files:

1. **JOINT MOTION FOR CLERICAL AMENDMENTS TO PROPOSED PARTIAL DECREES /w attached CD**

As per our phone conversation of October 31, 2006, I have provided file copies for each of the consolidated subcases and one additional copy for Subcase No. 71-10886 only (the lead subcase in the 140 State Minimum Stream Flow Claims). If you should determine that you need additional copies of the joint motion and CD for the other State Minimum Stream Flow Claim files, please let me know and I will provide those as well.

Thank you for your time and attention in this matter.

Sincerely,

David A. Jarvis
Paralegal

Enclosures

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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	)	Consolidated Subcase 03-10022
	)	(Nez Perce Instream Flow Claims)
	)	
	)	Consolidated Subcase 67-13701
Case No. 39576	)	(Nez Perce Springs or Fountains Claims)
	)	
	)	Subcases 71-10886, et al.
	)	(State Minimum Stream Flow Claims)
	)	

) Consolidated Subcase 92-80
) (Nez Perce Multiple-Use Claims)
)
) **JOINT MOTION FOR CLERICAL**
) **AMENDMENTS TO PROPOSED**
_____) **PARTIAL DECREES**

Pursuant to the *Scheduling Order and Notice of Hearing on Joint Motion for Entry of Consent Decree*, dated October 13, 2006, the United States, the Nez Perce Tribe ("Tribe"), and the State of Idaho ("State") hereby file this Joint Motion seeking clerical amendments to the proposed partial decrees. The complete set of proposed partial decrees is attached to the consent decree which was filed together with the *Joint Motion for Approval of Consent Decree, Entry of Final Partial Decrees, and Entry of Scheduling Order*, dated June 29, 2005. The parties to this Motion informed the Court and other parties of the need for certain clerical corrections in the *Joint Status Report and Suggestions for Proceeding with Scheduling of Hearing for Approval of Consent Decree*, dated October 3, 2006.

The requested clerical amendments are described below. In addition, amended versions of the relevant proposed partial decrees which incorporate the clerical amendments are included on the attached CD. The CD contains three separate PDF files: 1) amended springs or fountains claims; 2) amended versions of the seven Clearwater River claims (a subset of the multiple use claims); and 3) amended versions of the remaining multiple use claims. The CD does not contain copies of the State's minimum stream flow partial decrees, which did not require amendments, nor does it contain the consent decree itself. Once the Court rules on whether to allow the clerical corrections, the parties to this Motion are prepared to provide the Court with a revised CD containing the consent decree and complete set of proposed partial decrees, including the partial decrees which are corrected. The parties' intention in providing a new copy of the consent decree CD in its entirety is

to save the Court the time required to sift through the clerical amendments and insert the corrected partial decrees into the overall consent decree.

OVERVIEW OF CLERICAL AMENDMENTS

The following discussion outlines the clerical amendments needed in the proposed partial decrees.

A. Amendments to the Springs or Fountains decrees. (PDF # 1 on CD)

1. Correct paragraph 10.b in springs or fountains partial decrees.

The parties to the consent decree relied on the merging functions of word processing programs to create the large number of partial decrees related to the consent decree. Some inadvertent errors resulted from the merging process. One such error is that the springs or fountains partial decrees contain two separate versions of paragraph 10.b. This inconsistency should be corrected so that all springs or fountains decrees contain the following language in paragraph 10.b:

Quantification of this water right as up to one-half of natural flow quantifies the diversion amount only and does not imply a flow maintenance right.

The amended versions of the springs or fountains partial decrees, including the correct version of paragraph 10.b, are located in PDF # 1 on the CD attached hereto.

2. Correct date of the signature line.

The springs or fountains partial final decrees have a signature line dated 2005. This date should be amended to 2007, the year which the parties anticipate that the Court would actually sign the decrees. The amended versions of the springs or fountains partial decrees, including the correct date, are located in PDF # 1 on the CD attached hereto.

B. Amendments to the 7 mainstem Clearwater River surface water claims (Claims 85-15593, 83-11941, 81-11932, 84-12213, 86-11955, 82-12218, and 85-15595). (PDF # 2 on CD)

1. Clarify paragraph 2 in mainstem Clearwater River claims.

The parties to the consent decree intended to make clear that the source of surface water was limited to the mainstem rivers for the seven multiple use claims to the mainstem of the Clearwater River as well as the North Fork, Middle Fork, and South Fork of the Clearwater River.^{1/} This intention was to be reflected in maps which would be filed with IDWR. However, it has proven impractical to adequately depict this intent cartographically. Therefore, the parties request an amendment to paragraph 2 in each of these seven partial decrees which identifies the surface water source as the mainstem river within the relevant IDWR Administrative Basin. For example, for water right claim number 85-15593, paragraph 2 would be amended as follows:

Those portions of the Clearwater River included within the Idaho Department of Water Resources Administrative Basin No. 85 and groundwater sources hydrologically connected thereto.

A similar change would be made in water right claim numbers 83-11941, 81-11932, 84-12213, 86-11955, 82-12218, and 85-15595. The amended versions of these seven mainstem Clearwater River claims, including amended paragraph 2, are located in PDF # 2 on the CD attached hereto.

2. Delete certain language in paragraph 11.a in water right claim nos. 82-12218 and 85-15595.

Another error due to the merging functions of word processing programs appears to be the

^{1/}In addition to surface water diversion from the mainstem Clearwater River, these water rights include the right to divert water from groundwater sources that are demonstrated to be hydrologically connected to the mainstem river such that water levels in the aquifer respond to changes in surface water elevation. The parties do not contemplate any changes to the description of the hydrologically connected groundwater sources.

inclusion of an unnecessary sentence in paragraph 11.a of water right claim numbers 82-12218 and 85-15595. The sentence which was included in both of these partial decrees was:

The total water diverted by the Tribe from this water right shall not exceed the Annual Volume specified above.

While this concept is correct, the sentence is not necessary in light of other language in the partial decrees which clarifies the maximum diversion allowed. In order to assure consistency, the parties propose to delete this sentence in both water right claim numbers. The amended versions of these two partial decrees are located in PDF # 2 on the CD attached hereto.

3. Amend title of mainstem claims and add signature line.

The multiple use claims on the reservation are currently entitled “NEGOTIATED AGREEMENT FOR Federal Reserved Water Right _____.” In order to conform with the other partial final decrees and prepare the decrees for final approval, these titles need to be changed to “PARTIAL FINAL DECREE FOR Federal Reserved Water Right _____.” In addition, a signature line for court approval should be added to these partial final decrees. The amended versions of the mainstem claims, including the correct title and signature line, are located in PDF # 2 on the CD attached hereto.

C. Amendments to remaining multiple use claims. (PDF # 3 on CD)

1. Implement the Court order regarding the effect of water right nos. 84-12214 on Mark Jackson’s water right no. 84-12161.

In the Memorandum Decision and Order Dismissing Objections in Part with Prejudice and in Part without Prejudice, dated September 5, 2006, the Court ordered that “it be clarified, through an amendment to the partial decree for water right 84-12214 or other means acceptable to the parties, that Mr. [Mark] Jackson’s groundwater right [84-12161] be administered in conjunction with the subordination provisions of 84-12214.” *Id.* at 16. In order to implement this Order, the

parties propose that the language outlined in bold below be added as paragraph 11.b in the Tribe's multiple-use water right 84-12214:

b. Notwithstanding the Priority Date of this water right, the Tribe and the United States shall exercise this water right in a manner that ensures persons lawfully diverting water prior to April 20, 2004, **including groundwater in the amount of .06 c.f.s. diverted in accordance with water right 84-12161**, will continue to receive their full legal entitlement under state law.

The United States, State and Tribe informed Mr. Jackson of this proposed change via letter, dated October 3, 2006. During the hearing on October 10, 2006, Mr. Jackson indicated to the Court and parties that this proposed amendment satisfied his concerns. The amended version of water right claim number 84-12214 is located in PDF # 3 on the CD attached hereto.

2. Amend title of multiple use claims and add signature line.

Similar to the mainstem claims discussed in Section B above, the other multiple use claims on the reservation are currently entitled "NEGOTIATED AGREEMENT FOR Federal Reserved Water Right _____." In order to conform with the other partial final decrees and prepare the decrees for final approval, these titles need to be changed to "PARTIAL FINAL DECREE FOR Federal Reserved Water Right _____." In addition, a signature line for court approval should be added to these partial final decrees. The amended versions of the mainstem claims, including the correct title and signature line, are located in PDF # 3 on the CD attached hereto.

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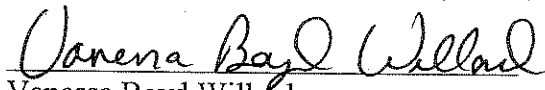
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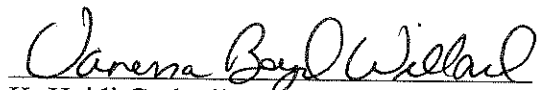
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Respectfully submitted this 2nd day of November 2006.

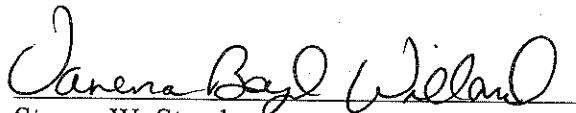
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Certificate of Service

I hereby certify that on November 2nd, 2006 I caused to be served true and correct copies of the attached **Joint Motion for Clerical Amendments to Proposed Partial Decrees** as follows:

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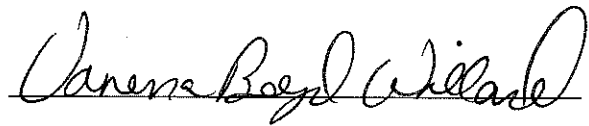
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A handwritten signature in cursive script, reading "Candace Boyd Wiland", written over a horizontal line.