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NEZ PERCE TRIBE

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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

Case No. 39576

Subcase Nos. 85-00016, 85-02049,
85-02063, 85-02065, 85-02146,
85-02147, 85-04483, 85-11087 and
85-15424

**JOINT MOTION
TO AMEND TRIAL SCHEDULE AND
NOTICE OF HEARING SAME**

COME NOW the United States of America ("United States"), the Lewiston Orchards Irrigation District ("LOID"), and the Nez Perce Tribe ("Tribe"), by and through their respective attorneys of record, and submit this *Joint Motion to Amend Trial Schedule and Notice of Hearing Same*. This motion is made on the grounds and for the reasons more fully set forth below.

On March 6, 2007, the Court conducted a scheduling conference to establish a mutually agreeable litigation schedule in the above subcases, and subsequently entered a *Trial Scheduling Order* on March 13, 2007. Upon receiving and reviewing the *Trial Scheduling Order*, counsel

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for the Parties realized that it may better serve the interests of judicial economy to make some adjustments to the litigation schedule. For example, counsel believe that it would be beneficial to complete discovery before the deadline for filing motions to amend the pleadings; and to have the Court's ruling on motions to amend the pleadings before the deadline for filing motions for summary judgment. Counsel believe that, by shortening some of the earlier dates on the schedule, we can complete discovery and still stay fairly close to the dates originally set by the Court for the motion hearings.

Therefore, counsel for the Parties respectfully request that the Court amend the *Trial Scheduling Order* as follows:

April 13, 2007	5:00 PM	Deadline for the United States and LOID to submit a proposed stipulation to the Tribe regarding the elements of the water right claims for LOID.
May 1, 2007	5:00 PM	Deadline for LOID to file a Motion to Participate. The Lewiston Orchards Irrigation District, which as of the date of this <i>Trial Scheduling Order</i> is not a party to these subcases as that term is defined in AO1(2)(p), shall file a motion to participate pursuant to AO1(10)(k), no later than this deadline.
May 1, 2007	5:00 PM	Deadline for Settlement Response from Tribe. The Nez Perce Tribe shall respond to the proposed stipulation from the United States and LOID regarding the elements of the water right claims for LOID no later than this deadline.
May 15, 2007	5:00 PM	Deadline to File Statement of Stipulated Facts and Amend Objections. In the event the parties are in agreement as to any materially relevant facts, they shall file a statement of those undisputed facts no later than this deadline. This is also the deadline for the Tribe to file amended objections, if any it has, to the claims filed by the United States on behalf of LOID.

June 20, 2007	5:00 PM	Deadline for Initial Disclosures. No later than this deadline each party must, without awaiting a discovery request, provide to the other parties: 1) the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information; and 2) a copy of, or description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment.
July 10, 2007	11:00 AM	Status Conference. Deadline for Motions for IDWR to Prepare a 706 Report, and Deadline for Additional Stipulated Facts. A status conference will be held at the Snake River Basin Adjudication Courthouse, 253 - 3 rd Avenue North, Twin Falls, Idaho. Parties may participate by telephone by dialing 225-383-1099 and when prompted entering the code 675342. Any party seeking to have IDWR prepare a report pursuant to Idaho Rule of Evidence 706 shall file a motion therefor no later than this deadline. In the event the parties have reached additional agreement as to any materially relevant facts resulting from the filing of amended objections, they shall file a statement of those additional undisputed facts no later than this deadline.
July 16, 2007	5:00 PM	Deadline for Service of Written Discovery Requests and Disclosure of Expert Witnesses. Service of written discovery requests and disclosure of all expert witnesses shall be completed by this deadline. All non-disclosed expert witnesses, except expert impeachment witness, shall be excluded from testifying in the trial unless permitted by the Special Master in the interests of justice. I.R.C.P. 16(e)(6)(J).
August 17, 2007	5:00 PM	Deadline for Responding to Written Discovery Requests and Disclosure of Fact Witnesses. Responses to written discovery requests, including production of any expert witness reports, shall be completed by this deadline. Disclosure of all lay witnesses, except lay impeachment witnesses, shall be completed by this deadline. All non-disclosed lay witnesses, except lay impeachment witness,

shall be excluded from testifying in the trial unless permitted by the Special Master in the interests of justice. I.R.C.P. 16(e)(6)(J).

September 17, 2007 5:00 PM

All Discovery Completed. Deadline for completion of all discovery, meaning that all discovery is served and response is complete, including the taking of depositions of lay and expert witnesses, all interrogatories, and requests for production, inspections and admissions. Motions to compel should be filed accordingly so as to accommodate this deadline. Deadline for completing all discovery including supplemental written discovery requests, fact witness depositions, and expert witness depositions.

September 21, 2007 5:00 PM

Motions to Amend Pleadings. All motions to amend pleadings pursuant to I.R.C.P. 15, and briefs in support thereof, shall be filed by this deadline. Response briefs shall be filed by September 28, 2007, and reply briefs shall be filed by October 5, 2007.

October __, 2007 _____

Hearing on Motions to Amend Pleadings **-OR-** Scheduling Conference. The hearing on any motions to amend pleadings will be held at the Snake River Basin Adjudication Courthouse, 253 3rd Avenue North, Twin Falls, Idaho. In the event no motions to amend the pleadings are filed, the Court will conduct a scheduling conference on this date to establish dates for the remaining litigation of these subcases. Parties may participate in the scheduling conference by telephone by dialing 225-383-1099 and when prompted entering the code 675342.

Counsel for the Parties respectfully submit that they will be unable to evaluate whether motions to amend the pleadings should be filed until discovery is completed. Counsel similarly believe that they will be unable to evaluate the necessity for, or extent of, motions for summary judgment until discovery is completed and until the Court has ruled on any motions to amend the pleadings. Therefore, the dates proposed above allow for the completion of discovery before the filing of motions to amend the pleadings and for issuance of the Court's ruling on any motions to

amend the pleadings before the filing of any motions for summary judgment. In the event there are no motions to amend the pleadings, counsel for the Parties respectfully request that the Court conduct a scheduling conference to establish dates for the remaining litigation of these subcases.

NOTICE OF HEARING

Please take notice that this *Joint Motion to Amend Trial Scheduling Order* will be heard by Special Master Booth on April 24, 2007, at 3:30 p.m. (Mountain Time) at the Snake River Basin Adjudication Courthouse, 253 3rd Avenue North, Twin Falls, Idaho. Parties may participate by telephone by dialing 225-383-1099 and when prompted entering the code 675342.

RESPECTFULLY SUBMITTED this 16th day of April, 2007

K. Heidi Gudgell
for David W. Gehlert
Attorney for the United States

K. Heidi Gudgell
for Earl L. McGeoghegan
Attorney for LOID

K. Heidi Gudgell
K. Heidi Gudgell, Senior Staff Attorney
David J. Cummings, Senior Staff Attorney
Ryan W. Sudbury, Staff Attorney
Attorneys for the Nez Perce Tribe

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on the 16th day of April, 2007, I caused a true and correct copy of the foregoing **JOINT PROPOSED TRIAL SCHEDULE** to be served via facsimile and United States Mail, postage pre-paid and addressed to the following:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls ID 83303-2707
Facsimile: (208) 736-2121

United States Department of Justice
Environment & Natural Resources Div
550 W. Fort Street, MSC 033
Boise ID 83724
Facsimile: (208) 387-0842

CACI, Inc.
161 E. Mallard Drive, Suite 110
Boise ID 83706
Facsimile: (208) 387-0842

IDWR Document Depository
P.O. Box 83720
Boise ID 83720-0098
Facsimile: (208) 287-6701

Earl L. McGeoghegan
1301 G Street
Lewiston ID 83501
Facsimile: (208) 746-4610

David W. Gehlert
Dept. of Justice, Nat. Resources Section
Environment & Nat. Resources Division
1961 Stout Street, 8th Floor
Denver CO 80294
Facsimile: (303) 844-1350


Ronda K. Nichols, Legal Assistant

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FAX COVER SHEET

TO: Snake River Basin Adjudication - Clerk of District Court

FACSIMILE: 208-736-2121

FROM: Ronda K. Nichols, Legal Assistant

DATE: April 16, 2007

COMMENTS: Attached is the **JOINT PROPOSED TRIAL SCHEDULE**.

RE: SUBCASE NUMBER(S): 85-00016, 85-02049, 85-02063, 85-02065, 85-02146, 85-02147, 85-04483, 85-11087 and 85-15424. Thank you, Ronda K. Nichols, Legal Assistant to K. Heidi Gudgell, Senior Staff Attorney, Nez Perce Tribe Office of Legal Counsel.

Please call (208) 843-7355 if you do not receive all pages.

NUMBER OF PAGES
(including this page): 7

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