

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____
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DEPARTMENT OF
WATER RESOURCES

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) Consolidated Subcase 03-10022
) (Nez Perce Instream Flow Claims);
)
) Consolidated Subcase 67-13701
) (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).
)
) SUPPLEMENTAL ORDER AMENDING
) CONSENT DECREE TO CORRECT
) CLERICAL ERRORS¹
)

I.
PROCEDURE

The *Order Approving Consent Decree* was issued January 30, 2007. After docketing the large number of actions taken with respect to all of the water rights covered by the *Consent Decree*, the Court identified some clerical errors with respect to certain claim numbers listed in the attachments to the consent decree as well as some outstanding

¹ This *Order* is styled as a *Supplemental Order Amending Consent Decree to Correct Clerical Errors* as it is not the intent of the Court to issue and serve amended attachments to the *Consent Decree*. Accordingly, all amendments are done by reference. The Court has issued all *Partial Decrees* as specified by the *Consent Decree*. The purpose of the amendments is to reconcile the claims to be decreed disallowed with the Court's register of actions.

claim numbers listed in the Court's register of actions. None of the errors identified pertained to the *Partial Decrees* issued for the various water rights. On March 9, 2007, the Court issued a *Notice of Hearing on Clerical Issues Pertaining to Consent Decree* identifying said errors. On April 12, 2007, the United States, Nez Perce Tribe and State of Idaho filed a *Joint Response* concurring with the Court's proposed action. On April 17, 2007, the Court held a hearing on its proposed action. No party appeared in opposition.²

II. ORDER

1. Attachment 3A to the *Consent Decree* lists water right 83-11938 as an instream flow claim to be decreed disallowed. Water right 83-11938 is an unrelated private claim and was incorrectly listed as an instream flow claim.

IT IS THEREFORE ORDERED AND ADJUDGED that water right 83-11938 is hereby removed by reference from Attachment 3A to the *Consent Decree*.

2. Attachment 3A to the *Consent Decree* omitted the following instream flow claims to be decreed disallowed: 85-12419, 85-12420, 85-12422, 85-12424, 85-12426, 85-12428, 85-12430, 85-12432, 85-12434, 85-12436, 85-12440, 85-12442, 85-12444, 85-12446, 85-12448, 85-12450 and 86-10862.

IT IS THEREFORE ORDERED AND ADJUDGED that Attachment 3A to the *Consent Decree* is hereby amended by reference to include the following water right claim numbers to be decreed disallowed: 85-12419, 85-12420, 85-12422, 85-12424, 85-12426, 85-12428, 85-12430, 85-12432, 85-12434, 85-12436, 85-12440, 85-12442, 85-12444, 85-12446, 85-12448, 85-12450 and 86-10862.

3. Attachment 3B to the *Consent Decree* lists water right number 79-13735 as a spring or fountain claim located on private or state owned land to be dismissed. This was

² Clinton Badley addressed the Court with respect to the Court's proposed action regarding 79-13828. However, the concerns he addressed went to the merits of the water right and were therefore beyond the scope of the purpose of the proceedings.

a duplicate claim number for water right claim 79-13755, which correctly appears on the list.

IT IS THEREFORE ORDERED AND ADJUDGED that water right claim 79-13735 is hereby removed by reference from Attachment 3B to the *Consent Decree*.

4. Attachment 3C to the *Consent Decree* lists the springs or fountains claims filed by the Nez Perce Tribe on its own behalf, which were decreed disallowed. The list includes water rights 69-11479, 78-12076 and 82-12057 as claims to be decreed disallowed. However, the Court has no register of action or other record for these claim numbers.

IT IS THEREFORE ORDERED AND ADJUDGED that water right claims 69-11479 and 82-12057 are hereby removed by reference from Attachment 3C to the *Consent Decree*. Water right number 78-12076 is hereby amended by reference to be 77-12076, which is the number reported in the director's report.

5. Attachment 3C to the *Consent Decree* lists water right 79-13828 as a claim to be disallowed. However, claim number 79-13828 was also decreed as a springs or fountain right for which a *Partial Decree* was issued. Apparently, two water rights were reported under the same claim number, one on public land and the other on private. In accordance with the settlement the claim on private land was to be disallowed and the other was to be decreed. Since the Court has already issued a *Partial Decree* for the correct water right, to wit: unnamed spring located at TN29N, R1E, S20, SE1/4SE1/4NW1/4, the Court finds that the reference to water right 79-13828 should be removed from Attachment 3C to avoid ambiguity. The only record of a water right under claim number 79-13828 will be the one for which the *Partial Decree* was issued.

IT IS THEREFORE ORDERED AND ADJUDGED that water right claim 79-13828 is hereby removed by reference from Attachment 3C to the *Consent Decree*.

6. Attachment 5 to the *Consent Decree* contains a court generated list of all of the *Partial Decrees* for the springs or fountains claims included in Attachment 5.³ Water rights 79-12230 and 79-12231 are listed in the Court generated list included with containing the springs or fountain claims that were decreed. However, the correct claim numbers should be 78-12230 and 78-12231 to correctly reflect the *Partial Decrees* issued for the two claims.

IT IS THEREFORE ORDERED AND ADJUDGED that water rights 79-12230 and 79-12231 in the list included in Attachment 5 are hereby amended by reference to be 78-12230 and 78-12231.

Dated: April 24, 2007

A handwritten signature in black ink, appearing to read 'J. Melanson', is written over a horizontal line.

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

³ Because of the large number of parties to the consolidated matter and the voluminous number of partial decrees, the Court created a list of the partial decrees included in the attachment to be served on most of the parties as opposed to sending copies of individual decrees.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SUPPLEMENTAL ORDER AMENDING CONSENT DECREE TO CORRECT CLERICAL ERRORS was mailed on April 24, 2007, with sufficient first-class postage to the following:

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