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MAY 07 2007

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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	)	Subcase Nos: Exhibits A & B
	)	
	)	
	)	
Case No. 39576	)	JOINT MOTION TO AMEND TRIAL
	)	SCHEDULE ORDER AND REQUEST FOR
	)	EXPEDITED HEARING
	)	
	)	

The State of Idaho, the United States of America as Trustee on behalf of the Shoshone-Bannock Tribes of the Fort Hall Reservation (hereinafter referred to as the "United States"), and the Shoshone-Bannock Tribes respectfully move this Court for an Order amending the trial schedule order previously entered in this matter and request an expedited hearing of this motion

in accordance with AO1 6(f)(2). The grounds for this motion are as follows:

1. The Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin, (August 2, 1995), contains a provision whereby the Shoshone-Bannock Tribes and United States agreed to subordinate the exercise of the Tribal water right No. 27-11375 to certain water rights in the Blackfoot River. The subordination was based upon an estimate by the parties' water engineers that the total annual diversion volume of these water rights would not exceed 45,000 acre-feet-year in total annual diversion volume. However, very little hard data regarding diversion volumes presently exists in this basin. In order to administer all water rights on the Blackfoot River, it is necessary for the total annual volume of diversions be determined with respect to each water right in Basin 27 to assist in a determination of whether an equitable adjustment under the 1990 Fort Hall Water Rights Settlement Agreement is required, and if so, to determine the amount of the adjustment. The Tribal water rights are defined in the Partial Final Decree by the total annual diversion volume. As of this date, the State of Idaho, United States and Shoshone-Bannock Tribes do not have adequate historical water diversion data to make any reasonable determination on the equitable adjustment issue. See Affidavit of David B. Shaw, attached hereto and incorporated herein.

2. The State of Idaho and United States have agreed in principle to participate in funding of collection of additional water diversion data this year, which will be used in the equitable adjustment determination. The purpose of the data collection is to establish the total volume of the actual irrigation and nonirrigation diversions for the entire Blackfoot River Basin. The data collection should be finalized and total volume numbers calculated by November 30, 2007.

3. In addition, the parties' water engineers will be working together to develop a model or methodology to utilize in making an equitable adjustment on an annual basis, if such an adjustment proves necessary. The undersigned parties are optimistic that the combination of the data collection and the development of a methodology for annually determining equitable adjustment would likely resolve the United States and Shoshone-Bannock Tribal objections

4. The Shoshone Bannock Tribes concur that the collection of the additional water diversion data may assist in resolving its objections in the Blackfoot River basin.

5. The State of Idaho, the United States, and the Shoshone-Bannock Tribes believe that the present trial schedule will not allow for the collection and analysis of this additional water diversion data or for the negotiations of any determination of an equitable adjustment under the 1990 Fort Hall Indian Water Rights Settlement.

6. The State of Idaho, the United States, and the Shoshone-Bannock Tribes recognize that this collection of additional water diversion data is primarily focused on irrigation diversions in the Upper Blackfoot River basin. Nonetheless, these parties expect to produce a determination of whether an equitable adjustment is necessary and a procedure for providing that adjustment. Accordingly, this change in trial schedule should apply to both irrigation and non-irrigation uses and the July 1st issue. The parties do not perceive a need to change the trial schedule for the Blackfoot River boundary issue.

7. The proposed trial schedule is submitted with this motion as a separate Proposed Order. The State of Idaho, the United States, and the Shoshone-Bannock Tribes negotiated the proposed FIRST AMENDED TRIAL SCHEDULE ORDER. All parties represent that the proposed schedule resolves present concerns about the existing trial schedule.

8. This motion needs to be resolved on an expedited basis because of the existing deadline for Summary Judgment motions which are due on May 11, 2007..

9. A01 6(f)(2) provides as follows:

Expedited Hearing – Any party moving for an order to expedite a hearing shall send a copy of the motion and supporting documents to all parties listed in Section 6e(2) and each person on the current copy of the *Court Certificate of Mailing for Expedited Hearings* which is available from the Clerk of the SRBA Court.

The certificate of service in this matter demonstrates compliance with AO 6(f)(2).

10. Oral argument by telephone, or otherwise as the Court deems proper, is requested on this motion.

WHEREFORE, the State of Idaho, the United States, and the Shoshone-Bannock Tribes request as follows:

1. That the district court enter the proposed FIRST AMENDED TRIAL SCHEDULE ORDER that is attached hereto.

2. That the district court set this matter for an expedited hearing.

3. That the district court grant such further or other relief that it deems just and proper.

RESPECTFULLY SUBMITTED this 4th day of May 2007.

STATE OF IDAHO

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STATE OF IDAHO

UNITED STATES OF AMERICA

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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	)	Subcase Nos: Exhibits A & B
	)	
	)	
	)	
Case No. 39576	)	AFFIDAVIT OF DAVID B. SHAW DATED
	)	MAY 3, 2007
	)	
	)	
	)	

STATE OF IDAHO)
) ss:
COUNTY OF ADA)

DAVID B. SHAW, being first duly sworn, deposes and states.

1. My name is David B. Shaw, and my work address is ERO Resources Corporation, 3314 Grace Street, Boise, ID 83703-5836. My telephone number is 208-373-7983.

2. My educational background includes a bachelor of science and master of science degrees in Agricultural Engineering from the University of Idaho in 1966 and 1972, respectively. I am a registered professional engineer in the States of Idaho, Arizona and Oregon, and a registered professional land surveyor in the State of Idaho. I continue to attend seminars and short courses in the areas of water law, water rights and applicable technology. I have made numerous presentations at seminars covering water law and water right issues, most often regarding some aspect of water right adjudication.

3. My work experience includes five years of teaching at the University of Idaho in the College of Engineering from 1968 to 1973. I was with the Idaho Department of Water Resources (department) and its predecessor agencies from November 1973 until July 1996. With the department, I served in a number of technical and administrative positions including Regional Supervisor for the department's western region from 1978 to 1985 and Adjudication Bureau Chief from 1985 to 1996. As Adjudication Bureau Chief, I was responsible for all the department's obligations in the Snake River Basin Adjudication of water rights (SRBA). The SRBA is an adjudication of all water rights in the Snake River basin in Idaho and includes about 150,000 claims to water rights. The department's obligations included serving notice of the SRBA to all potential water users, assisting claimants file their claims to water rights, investigating each state law based claim and making a recommendation as to each state law

based claim to the SRBA Court. If a recommendation was protested (contested) the department was obligated to put on the evidence to justify its recommendation. My experience with the department includes successfully managing the SRBA for 11 years and resolving a variety of water right, water supply and water delivery situations.

4. Since July 1996 I have been employed by ERO Resources Corporation (ERO) providing consulting services to clients in the areas of water rights, water right adjudication, and water distribution and management. In January 2003 I became a Principal of ERO, one of 11 employee owners of the firm. ERO is a natural resources consulting firm based in Denver, Colorado with satellite offices in Boise, Idaho and Durango, Colorado. ERO has a long history of, among other services, providing expertise to clients in water right adjudications around the West. We currently have water right adjudication clients in Arizona, Idaho and Oregon.

5. The 1990 Fort Hall Indian Water Right Agreement, the Agreement, relied, in part, upon an estimate of the amount of water used by non-Indians diverting from the Blackfoot River basin. The Agreement includes a provision for "... an equitable adjustment to the Tribal water rights ..." if the actual amount of existing diversions exceeds the estimate of 45,000 acre-feet per year.

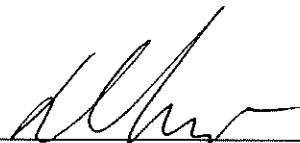
6. The Blackfoot River Watermaster has compiled usable records of water diversions in the lower Blackfoot River basin for the years 2004 through 2006. These records can be analyzed to determine, with reasonable certainty, actual water diversions from the lower Blackfoot River basin but do not provide any basis for determining or estimating actual water diversions in the upper Blackfoot River basin.

7. Water diversion records from the upper Blackfoot River basin are essential for an analysis of actual water diversions by non-Indian water users in the Blackfoot River basin. The

water diversion data scheduled to be collected this year will be the first and only data available representing actual water diversion data in the upper Blackfoot River basin.

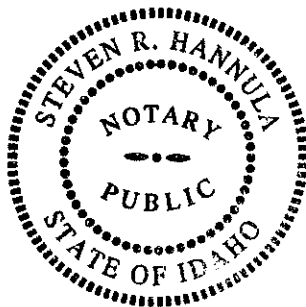
8. Water diversion data collected this year from the upper Blackfoot River basin will be combined with water use data from the lower Blackfoot River basin for the most accurate and complete assessment of actual water use by non-Indians from the Blackfoot River basin to date. The result of this assessment is essential to a determination of whether an equitable adjustment to the Tribal water right is needed to ensure the Tribes get the benefit of the Agreement. If an equitable adjustment is required, the assessment will be essential to the quantification of that adjustment.

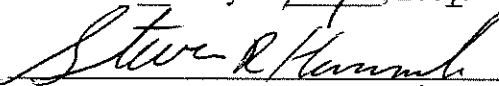
9. FURTHER YOUR AFFIANT SAYETH NAUGHT.



DAVID B. SHAW

SUBSCRIBED and SWORN to before me this 3th day of May, 2007.





NOTARY PUBLIC FOR Idaho
Residing at: Ada County
My Commission Expires: 8-18-11

CERTIFICATE OF SERVICE

I certify that on this 4th day of May 2007, I caused to be served the original and/or copy of this JOINT MOTION TO AMEND TRIAL SCHEDULE ORDER AND REQUEST FOR EXPEDITED HEARING, PROPOSED FIRST AMENDED TRIAL SCHEDULE AND NOTICE OF HEARING on all parties listed on the Court's expedited mailing list by U.S. Mail, postage prepaid, and on the following persons by the indicated method:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☒ Facsimile: (208) 736-2121
☐ Statehouse Mail

2. Copies to:

United States Department of Justice
Envir. and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (303) 312-7379
☐ Statehouse Mail

David Barber
Deputy Attorney General
P.O. Box 44449
Boise, ID 83711-44449

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
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☐ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☐ Statehouse Mail

Each Person Designated on the Court
Certificate of Mailing for Expedited
Hearings

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (208) 232-7472
☐ Statehouse Mail

Each Person Designated on Exhibit C

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (208) 232-7472
☐ Statehouse Mail

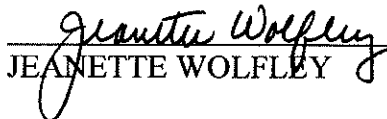

JEANETTE WOLFLEY

EXHIBIT A

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27-00003C	27-00037G	27-02080B
27-00003D	27-00037H	27-02123
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EXHIBIT A

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EXHIBIT B

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EXHIBIT C

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c/o Larry Hinderager
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Larry Hinderager
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Brent Steffler
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EXHIBIT C

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Shelley, ID 83274

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Grace, ID 83241-5352

Glenna Rasmussen
Lynn Rasmussen
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Grace, ID 83241-5352

Lynn Rasmussen
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Grace, ID 83241-5352

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Blackfoot, ID 83221

Lila Oleson
Steven Oleson
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Blackfoot, ID 83221

Cindy Telford
Wayne M. Telford
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Shelley, ID 83274

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Blackfoot, ID 83221

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Blackfoot, ID 83221-0308

EXHIBIT C

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Olivia Wernette
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Firth, ID 83236

Karen T. Van Orden
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Blackfoot, ID 83221

Connie S. Clawson
Michael R. Clawson
740 E 450 N
Firth, ID 83236

Bonnie P. Gardner
Leon J. Gardner
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Blackfoot, ID 83221

Marvin R. Yancey
Nola B. Yancey
691 W 300 S
Blackfoot, ID 83221

Gary A. Wright
Sonja J. Wright
673 W 300 S
Blackfoot, ID 83221

David & Kathy Daniels
436 Riverton Rd.
Blackfoot, ID 83221

Bill D. Haddon
412 W. Riverton Rd.
Blackfoot, ID 83221

David R. Stark
Denise C. Stark
410 W. Riverton Rd.
Blackfoot, ID 83221

Mikala Gneiting
Quinton Gneiting
216 S 550 W
Blackfoot, ID 83221

Jason Leiseth
Megan Leiseth
212 S 550 W
Blackfoot, ID 83221

Jorgensen Farms Ltd. Partnership
1928 Old Hwy 30
Bancroft, ID 83217

Gordon H. Durney
Leda D. Durney
208 S 550 W
Blackfoot, ID 83221

Becky Davis
Charlotte Reid
Rich Reid
213 Little Indian Rd.
Firth, ID 83236

Lindon A. Mickelsen
Loreen A. Mickelsen
2011 Riverton Rd.
Blackfoot, ID 83221

Barbara K. Hoskins
Robert A. Hoskins
674 W 275 S
Blackfoot, ID 83221

Adrian J. Young
Margot B. Young
36 E. Rich Ln.
Blackfoot, ID 83221

Robert J. Ganske
Trudy Ganske
255 S 625 W
Blackfoot, ID 83221

EXHIBIT C

John Hamilton
2000 Riverton Rd.
Blackfoot, ID 83221

Cordell E. Stewart
Judith Ann Stewart
563 W 200 S
Blackfoot, ID 83221

Florian Wernette
Opal Wernette
494 N 600 E
Firth, ID 83236

Gary L. Empey
Marva I. Empey
830 Riverton Rd.
Blackfoot, ID 83221

John Warren
Lisa Warren
880 Riverton Rd.
Blackfoot, ID 83221

Doran Jorgenson
Shira Jorgenson
561 W 200 S
Blackfoot, ID 83221

Diane B. Powell
Neal K. Powell
252 E 100 N
Blackfoot, ID 83221

Roger D. Ling
Ling, Robertson & Walker
P.O. Box 396
Rupert, ID 83350-0396

Rulon Jones
3985 N 3775 E
Liberty, UT 84310

Elna V. Mulberry
Steve N. Mulberry
2243 W 81 S
Idaho Falls, ID 83402

Ruby I. Hanft Trust
208 Horrocks Dr.
Blackfoot, ID 83221

Lewis Brothers, Inc.
3808 E 65 S
Idaho Falls, ID 83406

Ronald Esplin and Sons
747 E 1000 N
Shelley, ID 83274

Carol L. Dansie
Charles N. Dansie
301 E 200 N
Blackfoot, ID 83221

Nora Mulberry
Theodore E. Mulberry
2521 W 81 S
Idaho Falls, ID 83402

Collin D. Peterson
Hallie F. Peterson
1046 E 700 N
Shelley, ID 83274

Bradley Torgeson
Craig Pearson
720 E 400 N
Soda Springs, ID 83276

David Stanley
474 W. Riverton Rd.
Blackfoot, ID 83221

EXHIBIT C

Leo Wallace
Richard M. Wallace
Sherrilynn Bair
Starla Thompson
1921 W. Taber Rd.
Blackfoot, ID 83221

Howard S. Nation
Jacquelyn C. Nation
594 W 200 S
Blackfoot, ID 83221

Linda Lee Stoor
Ralph E. Stoor
3804 Wayan Loop S
Wayan, ID 83285-5120

Diane Sharp
Ronald Sharp
3100 W. 142 St.
Leawood, KS 66224

Craig Webster
Diane Webster
John Webster
Paul Webster
322 S. Angel
Kaysville, UT 84037

Joyce Novosad
652 W 275 S
Blackfoot, ID 83221

Helen Hansen
666 W 275 S
Blackfoot, ID 83221

Casey Clements
420 S. University
Blackfoot, ID 83221

Bryce J. Fielding
Mary W. Fielding
720 N 1100 E
Shelley, ID 83274

Blue Bird Ranch LLC
149 N 200 E
Blackfoot, ID 83221

Joe Dean Brantzeg
153 N 400 W
Blackfoot, ID 83221

Angelo Trayis, Jr.
9103 W. Pocatello Creek Rd.
Pocatello, ID 83201

Linda De McDaniel
Paul B. McDaniel
275 S 625 W
Blackfoot, ID 83221

Doris Bollar Hayden
P.O. Box 598
Soda Springs, ID 83276

Smith-Maxwell Ditch Co.
c/o Layne Hamilton
839 W. Riverton Rd.
Blackfoot, ID 83221

CV Ranches
3124 Nipper Rd.
Bancroft, ID 83217

Charles Brent Weaver
802 W Riverton Rd
Blackfoot, ID 83221

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	)	Subcase Nos. Exhibits A & B
	)	
	)	
	)	
	)	FIRST AMENDED TRIAL SCHEDULE
	)	ORDER
Case No. 39576	)	
	)	
_____	)	

On May 4th, 2007, State of Idaho, the United States, and the Shoshone-Bannock Tribes filed a *Joint Motion to Amend Trial Schedule Order and Request for Expedited Hearing*, hereinafter referred to as the "*Joint Motion*." The purpose of the *Joint Motion* is to provide time for collection of additional water diversion data which the parties believe is necessary for the resolution of the diversion volume issue raised by objections to some 400 water rights. These data would be used to establish the total volume of the actual irrigation diversions for the entire Blackfoot River Basin this year. The present trial schedule will not allow for the collection and analysis of this additional water diversion data or for the negotiations of any determination of an equitable adjustment under the 1990 Fort Hall Indian Water Rights Settlement, and without the proposed change to the trial schedule, the parties will litigate some 400 contested sub-cases. Accordingly, the Court believes that granting this motion is in the interests of judicial economy.

The parties expect to produce at the end of this year's irrigation season a determination of whether an equitable adjustment is necessary and a procedure for providing that adjustment. Accordingly, this change in trial schedule should apply to both irrigation and non-irrigation uses and the July 1st issue. The parties do not perceive a need to change the trial schedule for the boundary issue.

The parties have demonstrated good cause for amendment of the TRIAL SCHEDULE ORDER.

IT IS HEREBY ORDERED That the following schedule shall govern the conduct of the proceedings through trial of all objections filed by the United States or filed by the Shoshone-Bannock Tribes that are related to irrigation and non-irrigation uses and July 1st issue:

December 15, 2007	5:00 pm	Deadline for Discovery to be Completed.
January 25, 2008	5:00 pm	Deadline to file Standard Form 5.
January 25, 2008	5:00 pm	Deadline to file Motion for Summary Judgment.
February 27, 2008	5:00 pm	Summary Judgment Hearing Location: Snake River Basin Adjudication 253 3 rd Ave. North Twin Falls, Idaho 83301
April 30, 2008	1:30 pm	Scheduling Conference Location: Snake River Basin Adjudication 253 3 rd Ave. North Twin Falls, Idaho 83301

Parties may participate by phone for the Scheduling Conference by dialing 1-225-383-1099 and when prompted enter participant code 926509.

DATED _____, 2007

BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication