



October 2, 2007

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DEPARTMENT OF
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TRIBAL EXECUTIVE COMMITTEE
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Sent via facsimile only

Clerk of the District Court
Snake River Basin Adjudication
PO Box 2707
Twin Falls, ID 83303-2707
Facsimile: (208) 736-2121

Dear Sir or Madam:

**RE: SRBA Case No.: 39576; Subcase No's.: 85-00016, 85-02049, 85-02063,
85-02065, 85-02146, 85-02147, 85-04483, 85-11087, 85-15424**

Enclosed please find for filing an original **SECOND JOINT MOTION TO AMEND TRIAL SCHEDULE AND NOTICE OF HEARING SAME** in the above referenced case.

Thank you for your time and attention to this matter. Please feel free to contact our office should you have any questions or concerns.

Respectively,

A handwritten signature in cursive script, appearing to read "Ronda K. Nichols".

Ronda K. Nichols
Legal Assistant to
K. Heidi Gudgell, Senior Staff Attorney

RKN:tbm

Enclosure: As stated above

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WATER RESOURCES

Names of Party Filing Document:

NEZ PERCE TRIBE

Attorneys' Names and Addresses:

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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

**SECOND 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") (collectively, the "Parties"), by and through their respective attorneys of record, and submit this *Second Joint Motion to Amend Trial Schedule and Notice of Hearing Same*. This motion is made because the September 6, 2007 *Supplemental Director's Report* (the "706 Report") for the above subcases, as well as the discovery conducted by the parties to date, have created a need for additional time to depose the

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author of the *706 Report*, to prepare the expert statement of the United States' expert witness, and to depose the United States' expert witness.

On March 13, 2007, the Court entered a *Trial Scheduling Order* in the above subcases that was amended on April 25, 2007, primarily to allow the parties to complete discovery before filing motions for summary judgment. The *Amended Trial Scheduling Order* contained deadlines for the Tribe to respond to a proposed stipulation from the United States, filing a statement of stipulated facts, filing amended objections, service of initial disclosures, requesting a 706 report, service of written discovery requests and disclosures of expert witnesses, and responding to written discovery requests and disclosure of fact witnesses. To date, the parties have met all of the deadlines contained in the *Amended Trial Scheduling Order* except September 17, 2007 deadline for completion of all discovery – because the discovery that has been accomplished has led to the necessity for additional discovery.

At the July 10, 2007 status conference, in accordance with the *Amended Trial Scheduling Order*, the Tribe requested a 706 Report. On July 11, 2007, the Court entered an *Order Granting Motion for 706 Report* and properly noted that Rule 706 of the Idaho Rules of Evidence allows any party to depose an expert witness appointed by the Court. After reviewing IDWR's timely report dated September 6, 2007, counsel for the Tribe determined that it would be necessary to depose the author(s) of the report. In addition, the United States also has identified an expert witness to be called at the trial of these subcases, but that witness has not had time to prepare a statement. The United States needs time for its expert to prepare his statement, and the Tribe will need time to review that statement and depose the United States' expert.

Counsel for the Parties respectfully submit that they will be not be able to evaluate the necessity for, or extent of, motions for summary judgment until the United States' expert witness has prepared his statement, there has been an opportunity to depose the United States' expert, and there has been an opportunity to depose the author(s) of the *706 Report*. In addition, family medical issues, the holiday season, and counsels' work load both within and without the SRBA have created previously unexpected demands on counsels' time. In particular, counsel for the United States may be out of the office most of October and November dealing with family medical problems, and he has several trials scheduled in Basin 63 in February and March of 2008; counsel for the Tribe will be out of the office most of October on other matters, and she will need time to review the statement of the United States' expert and to coordinate and conduct the depositions of the expert witnesses.

The dates proposed below reflect the Parties best efforts to accomplish the additional discovery necessary to adequately prepare motions for summary judgment and to avoid having to ask the Court for any additional extensions of time. The Parties also have been working, and will continue to work, to resolve these subcases by way of a settlement agreement, and the dates proposed below will accommodate that effort. In the event the settlement effort is not successful, counsel for the Parties believe that effort will at least result in limiting both the number of issues and the number of subcases that will actually need to be tried.

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

January 25, 2008	5:00 PM	United States' Expert Witness Statement. Deadline for service of the United States' expert witness statement.
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March 7, 2008	5:00 PM	Expert Witness Depositions. Deadline for completing the depositions of the United States' expert witness and the author of the <i>706 Report</i> completed.
April 18, 2008	5:00 PM	Summary judgment motions due.
May 9, 2008	5:00 PM	Summary judgment responses due.
May 23, 2008	5:00 PM	Summary judgment replies due.
June 3, 2008	_____	Summary judgment hearing.
July 11, 2008	5:00 PM	Pre-trial memoranda due.
July 15, 2008	_____	Pre trial conference. Pursuant to I.R.C.P. 16, a final pre-trial 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.
August __, 2008	_____	Trial. The trial in these subcases will begin on August __, 2008, at _____ am and continue on August __, 2008, if necessary. The trial will be held in Courtroom ____ at the Nez Perce County Courthouse, 1230 Main Street, Lewiston, Idaho.

NOTICE OF HEARING

Please take notice that this *Second Joint Motion to Amend Trial Scheduling Order* will be heard by Special Master Booth on October 9, 2007, at 3:00 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 2nd day of October, 2007.

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

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of October, 2007, I served a true and correct copy of the foregoing **SECOND JOINT MOTION TO AMEND TRIAL SCHEDULE AND NOTICE OF HEARING SAME** as follows:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

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United States Department of Justice
Environment & Natural Resources Div.
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Boise, ID 83724

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Boise, ID 83706

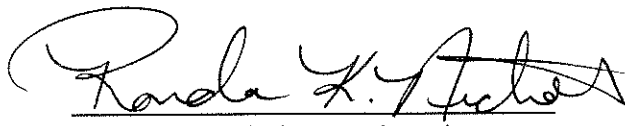
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Ronda K. Nichols, Legal Assistant