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RECEIVED

OCT 30 2007
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	)	Subcase Nos: 27-00029D; 27-02069; 27-02075;
	)	27-12121; 27-12003; 27-12002
	)	
	)	JOINT MOTION TO AMEND TRIAL
Case No. 39576	)	SCHEDULE ORDER AND REQUEST FOR
	)	EXPEDITED HEARING
	)	
	)	

The Shoshone-Bannock Tribes, 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 Preston Allen & Sons, by Jerry Rigby, respectfully move this Court for an Order amending the trial schedule order previously entered in the above subcases (hereinafter the "instant subcases") and request an expedited hearing of this motion in accordance with AOI 6(f)(2). The grounds for this motion are as follows:

1. On May 4, 2007, the 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* was to provide time for collection of additional water diversion data which the parties believed was necessary for the resolution of the diversion volume issue raised by objections to some 306 water rights claims. These data would be used to establish the total volume of the actual irrigation diversions for the entire Blackfoot River Basin this year. The parties would then use the total volume data to assist in a determination of whether an equitable adjustment under the 1990 Fort Hall Indian Water Rights Settlement Agreement and subsequent Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin, 92-22, Augst 2, 1995, is required and, if so, to determine the amount of the adjustment. The parties anticipate that this information would resolve the objections raised by the United States and Shoshone-Bannock Tribes to the Director’s decision not to include an annual volume of diversion in his water right recommendations for surface water uses in Basin 27 (Blackfoot River).

2. On June 29, 2007, the Court granted the parties’ Joint Motion to allow for the collection and analysis of this additional water diversion data. Although the instant subcases raise the same issue concerning the annual volume of diversion, they were not included in the Court’s order, however, because the Court has previously entered trial schedule orders governing their litigation.

3. The parties’ experts currently are in the process of analyzing the data which was collected this past irrigation season.

4. Additionally, the parties have initiated discussions to identify key issues that will be part of an agreement to determine an equitable adjustment procedure under the 1990 Fort Hall

Indian Water Rights Agreement. This process would be applied to the some pending 306 subcases and the instant subcases which are part of this Motion.

5. The Shoshone-Bannock Tribes, State of Idaho, the United States and Preston Allen & Sons believe that the present trial schedules established for the instant subcases will not allow for the 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 Agreement.

6. The parties discussed these issues with Special Master Dolan at the October 9, 2007 Mandatory Settlement conference for subcases 27-1002 and 27-1003. On October 12, Judge Dolan filed his Report recommending that the two subcases set for trial on November 14, 2007 should be included in the larger grouping of Basin 27 irrigation and nonirrigation subcases set for trial in 2008. Special Master Dolan also opined that the other instant subcases would likely settle as a part of the larger group.

7. The instant motion is consistent with, and intended to effectuate, Special Master Dolan's recommendations.

8. The State of Idaho, the United States, and the Shoshone-Bannock Tribes expect to produce an agreement establishing a procedure for providing an equitable adjustment as contemplated under the Fort Hall Water Agreement and Partial Final Consent Decree by the end of December 2007. The vacating and rescheduling of the trials in the instant subcases will further an amicable resolution of the cases, assist in the establishment of a procedure between the parties that will be used for all the irrigation cases (306 subcases) in which the United State and Shoshone-Bannock Tribes have filed objections, and support judicial economy.

9. The proposed trial schedule is submitted with this motion as a separate Proposed

Order.

10. This motion needs to be resolved on an expedited basis because of the existing deadlines in the present trial schedule order -- pretrial scheduled on November 7, and trials on November 14, 15, 16.

11. 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).

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

13. Counsel Jeanette Wolfley contacted the attorneys for the claimants via email and facsimile and forwarded them a copy of the proposed motion. At the time of filing this motion, Counsel did not receive any responses.

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

1. That the district court enters the proposed 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 grants such further or other relief that it deems just and proper.

RESPECTFULLY SUBMITTED this 26th day of October, 2007.

STATE OF IDAHO

David Barber *by J. Wolfley
authorized per
telephone*
DAVID J. BARBER
Deputy Attorney General

UNITED STATES

Peter Monson *by J. Wolfley
authorized per
telephone*
PETER C. MONSON
Assistant Section Chief
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SHOSHONE-BANNOCK TRIBES

Jeanette Wolfley
JEANETTE WOLFLEY
Special Counsel to the Shoshone-Bannock Tribes

Preston Allen & Sons

Jerry Rigby *by Jeanette Wolfley authorized per email*
JERRY RIGBY
Counsel for Preston Allen & Sons

CERTIFICATE OF SERVICE

I certify that on this 26th day of October 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 on all parties listed on the Court's expedited mailing list by U.S. Mail, postage prepaid::

1. Original to:

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

2. Copies to

United States Department of Justice
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JEANNETTE WOLFLEY
Special Counsel to the Shoshone-Bannock Tribes

ORDER GRANTING MOTION TO AMEND TRIAL SCHEDULE

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The following schedule shall apply to the above listed subcases:

December 5, 2007	11:00 am	Scheduling Conference Location: Snake River Basin Adjudication 253 3 rd Ave. North Twin Falls, Idaho 83301
December 14, 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	9:30 am	Summary Judgment Hearing 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