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DEPARTMENT OF
WATER RESOURCES

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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 In Re SRBA	)	Subcase Nos. 27-10028 and 27-12013
	)	
Case No. 39576	)	JOINT REPORT ON SETTLEMENT
	)	PROGRESS
_____	)	

Pursuant to the Order Granting Motion to Vacate Trial Setting Deadline, and Hearing entered October 12, 2007, the Shoshone-Bannock Tribes, the State of Idaho, and the United States ("Undersigned Parties") respectfully submit this report on settlement progress in the

above-captioned subcases. Because these subcases involve objections related to the absence of a director's recommendation as to the annual volume of diversion which is at issue in numerous other subcases in Basin 27, this report will address the efforts to settle this global issue.

The Shoshone-Bannock Tribes of the Fort Hall Indian Reservation ("Tribes") filed objections to both of the subject water rights. The bases for the Tribes' objections were that in order for these water rights to "comply with the 1995 Partial Consent Decree of this Court, [they must] include a total annual diversion volume limit" In addition, the United States objected to both of the subject water rights on the basis that the element of quantity, "must include the total annual volume of diversion as necessary for the proper administration of the water right." As was reported by the claimant, Mr. Leon Gardner, and by counsel for the Tribes, Ms. Jeanette Wolfley, at the hearing on October 10, 2007, a resolution of the Tribes' and United States' objections with respect to both water rights was memorialized in the form of a proposed Standard Form 5. The Department of Water Resources and the State of Idaho have not yet signed the Standard Form 5, presumably because of the inclusion of a stipulated diversion volume amount.

These subcases are situated similarly to all others to which the Tribes or the United States objected because of the failure of the Director to recommend a diversion volume. These objections were prompted by a provision in 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). In particular, the decree for water right No. 27-11375 confirms the federal reserved right of the Tribes to use water from the Blackfoot River, subject to a provision subordinating the tribal right to state-created rights to diversions of natural flow from the Blackfoot River which are subsequently decreed in the SRBA. The Decree notes that, "[t]hese state created water rights are estimated to divert no more than 45,000 AFY of water from the

Blackfoot River. In the event this estimate of the amount of existing diversions under state created water rights is exceeded as a result of the Decree in the SRBA, the parties shall negotiate an equitable adjustment to the Tribe water rights to account for this change.” Partial Final Consent Decree, at 31 (Water right No. 27-11375, subsection .x.d.).

As has been reported to the Court in other subcases, data collection efforts, analyses, and related technical discussions by the governmental parties have been underway this past summer in an effort to provide a better estimate of the total annual volume of diversions under state created water rights in the Blackfoot River basin. Comprehensive diversion data for the Blackfoot River has not been maintained, and it has been only in recent years that the State has begun to collect diversion data in the lower Blackfoot River Basin, and only in this past summer that the State has begun to collect data in the upper Blackfoot River Basin.

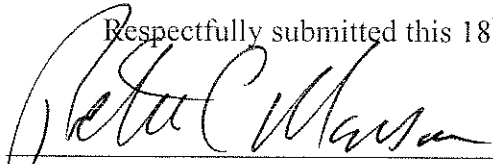
Data from the Upper Blackfoot River Basin has been gathered by the State this year, however, and technical representatives from the State of Idaho, the Shoshone-Bannock Tribes, and the United States have been reviewing it and attempting to assess the best way to determine and model diversion volumes in this Basin. The governmental parties’ technical representatives have advised counsel that they need an additional three to six months to review and analyze the data, and then having done so, to ascertain whether these diversions exceed the 45,000 AFY cap, and if so, to negotiate an appropriate methodology by which an equitable adjustment can be determined consistent with this Court’s Consent Decree. If the parties are successful in this effort, the diversion volume objections at issue in this subcase as well as in several hundred other subcases may be resolved.

Because these two subcases raise the same issues as the other subcases involving diversion volumes, the parties believe that they should proceed along the same track. The Court has vacated pre-trial deadlines in several other subcases, and set a scheduling conference for

March, 2008. *See e.g.*, Order Vacating Deadlines and Setting Scheduling Conference and Trial, Subcase Nos. 27-29D, 27-2069, 27-2075, 27-12002, 27-12003, and 27-12121 (December 13, 2007). *See also*, Settlement Conference Report, Subcase Nos. 27-12002 and 27-12003 by Settlement Moderator Terrence A. Dolan (October 12, 2007). Indeed, Mr. Dolan noted that these subcases (including the instant ones) will likely settle as a group because the parties all agree on the goal of following the letter and spirit of Judge Hurlbutt's **Partial Final Consent Decree**.

For the foregoing reasons, the Undersigned Parties believe that the Court should adopt the approach utilized in other similarly situated cases, and should vacate any pre-trial deadlines in this case to allow for the necessary technical analyses and negotiations to proceed.

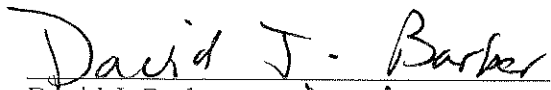
Respectfully submitted this 18th day of December, 2007.


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CERTIFICATE OF SERVICE

I certify that on this 18th day of December 2007, I served a true and correct copy of the foregoing JOINT REPORT ON SETTLEMENT PROGRESS as indicated below:

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