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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 re SRBA     | ) |                           |
|                | ) | Subcase No. 27-04020      |
|                | ) |                           |
| Case No. 39576 | ) | <b>MOTION FOR SUMMARY</b> |
|                | ) | <b>JUDGMENT</b>           |
| _____          | ) |                           |

COMES NOW William Bart Conlin, pro se, pursuant to Rule 56(b) of the Idaho Rules of Civil Procedure, and respectfully moves that this court grant summary judgment dismissing this subcase from the instant litigation on the basis that the water right in question is based on a 50-plus year history of consistent and uninterrupted use of water from a spring that never reaches, touches, enters, or impacts the Blackfoot River or water used or claimed by the Bannock-Shoshone tribes. In the alternative, I respectfully move that the Shoshone-Bannock tribes and I be permitted to reach a final settlement agreement involving my water right and to end my further participation in this litigation.

The factual basis supporting this motion is set forth in the accompanying *Affidavit of Wm. Bart Conlin in Support of Motion for Summary Judgment*.

**ARGUMENT**

This motion should be granted because this water right is improperly included in this litigation. This water and its use does not impact the Shoshone-Bannock Indians or the

Blackfoot River and as such, is not the proper subject of this litigation. By personal inspection by the IDWR and/or its agents and employees, the spring in question rises from the surface approximately one half mile away from the Blackfoot River, runs for approximately one quarter mile, and sinks back into the ground. The water never reaches, enters or impacts the Blackfoot River, nor, for that matter, does it enter, reach or impact any other creek, stream, or body of water. My use of this water does not decrease the water available to any other person or entity. Therefore, any claim regarding the need to determine the “actual diverted volume” in regards to this spring is irrelevant to this litigation because no water is diverted from the Blackfoot River. The only water diverted for domestic, stock, and irrigation purposes is spring water unrelated to the subject matter of the litigation; any other volume regulations regarding this water should not be decided in this proceeding.

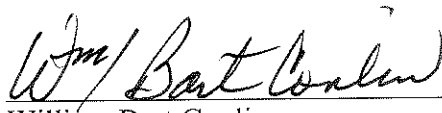
Alternatively, if the court finds that this water is properly the subject of this litigation, the court should find that since the real parties, the Shoshone-Bannock tribes and I, are fairly close to agreeing on the irrigation volume, we may discuss settlement possibilities and have the ability to reach a settlement agreement outside of this litigation. In other words, if the Shoshone-Bannock tribes in fact have a right to enter into an agreement regarding the restriction of my spring water volume usage, (despite the fact that this water never enters or reaches the Blackfoot River), we are likely to reach a final agreement on terms acceptable to us both if we were permitted to do so. In that event, no further IDWR volume testing addressing all water rights in the Snake River basin, including mine, should be required prior to my being permitted to work out a final settlement directly with the Shoshone-Bannock tribes.

Furthermore, I understand that the next step proposed by the IDWR is to conduct a study to define “actual diverted volumes.” First, as previously mentioned, my water use is not

“diverted” from the Blackfoot River. My spring does not enter any other creek, stream, or body of water from which I “divert” water. My use of the spring does not decrease the water available for use by any other person or entity. Even so, the IDWR has already conducted volume testing on this spring in the summer of 2007. Historically speaking, the testing was conducted in a low-volume water year; however, obtaining a perfectly accurate volume is probably not possible, and would, presumably, require waiting for an unpredictable event to occur—the happenstance of a heavy snow year—to measure volume in a high-volume year to provide an appropriate average. This is unreasonable; such a delay is neither necessary nor proper especially since the results will not have any impact on the volume of water available for use by any other person or entity.

WHEREFORE, I respectfully ask the court to grant this motion dismissing me and my water right from this case or, in the alternative, permitting me to reach and finalize a settlement agreement directly with the Bannock-Shoshone Tribes.

DATED this 11 day of January, 2008.

  
\_\_\_\_\_  
William Bart Conlin

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was mailed, first-class, postage prepaid, on the 11 day of January, 2008, to the following:

1. Original to: Clerk of the District Court US Mail  
Snake River Basin Adjudication  
253 Third Avenue North  
P.O. Box 2707  
Twin Falls, ID 83303-2707

2. One copy to the party who filed the objection at the following address:  
Shoshone-Bannock Tribes US Mail  
Jeanette Wolfley  
202 N. Arthur  
Pocatello, ID 83204

3. Copies to: IDWR Document Depository US Mail  
P. O. Box 83720  
Boise, ID 83720-0098

United States Department of Justice US Mail  
Environment & Natural Resource Division  
550 West Fort Street, MSC 033  
Boise, ID 83724

David Barber, Deputy Attorney General US Mail  
Office of the Attorney General  
State of Idaho  
P. O. Box 44449  
Boise, ID 83711-4449

State of Idaho, IDWR US Mail  
Cindy Bird  
P. O. Box 935  
Soda Springs, ID 83276

Adjudication Bureau US Mail  
Idaho Dept of Water Resources  
900 N. Skyline, Ste A  
Idaho Falls, ID 83401-3653



Wm. Bart Conlin