

RECEIVED

FEB 04 2008

DEPARTMENT OF  
WATER RESOURCES

**JEANETTE WOLFLEY**, ISB #3948  
Special Counsel for Shoshone-Bannock Tribes  
202 N. Arthur  
Pocatello, ID 83202  
(208) 232-1922

**SCOTT SMITH**, ISB # 6014  
Racine Olson Nye Budge & Bailey  
P.O. Box 1391  
Pocatello, ID 83204-1391  
(208) 232-6101

**PETER C. MONSON**  
Managing Attorney  
Environment and Natural Resources Division  
U.S. Department of Justice  
1961 Stout Street, 8<sup>th</sup> Floor  
Denver, Colorado, 80294  
(303) 844-1384

**JERRY RIGBY**, ISB #2470  
Rigby, Andrus & Moeller  
25 North 2<sup>nd</sup> East  
P.O. Box 250  
Rexburg, ID 83440

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: Listed in Exhibit A           |
|                | ) |                                            |
|                | ) |                                            |
|                | ) |                                            |
| Case No. 39576 | ) | <b>JOINT MOTION TO AMEND TRIAL</b>         |
|                | ) | <b>SCHEDULE ORDER, REQUEST TO SEPARATE</b> |
|                | ) | <b>WATER CLAIMS AND REQUEST FOR</b>        |
|                | ) | <b>EXPEDITED HEARING</b>                   |
|                | ) |                                            |

The Shoshone-Bannock Tribes, 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"), Preston Allen & Sons<sup>1</sup>, by Jerry Rigby, and Alma Hubbard and other claimants<sup>2</sup> by Scott Smith respectfully move this Court for an Order (1) amending the trial schedule order previously entered in the subcases listed in Exhibit A; (2) separating the stockwater and other

<sup>1</sup> Subcases 27-27-04141; 27-11016; 27-11334; 27-12000; 27-12004; 27-12005; 27-12009.

<sup>2</sup> Subcases 27-00076; 27-00085A; 27-00105; 27-00106; 27-04010; 27-11245; 27-11261; 27-11262; 27-11317; 27-11366; 27-11988; 27-11989; 27-11992; 27-12050; 27-12092; 27-12093; 27-12106; 27-12117; 27-12119; 27-12120; 27-12122; 27-12123; 27-12124; 27-12125.

non-irrigation use claims from the irrigation water claims; and (3) requesting an expedited hearing of this motion in accordance with AO1 6(f)(2).. The grounds for this motion are as follows:

1. On December 17, 2007, the Court issued an Order Setting Deadline and Continued Scheduling Conference. The Order vacated the discovery deadline, SF5 deadline and summary judgment deadline, and provides 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 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 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, August 2, 1995, is required and, if so, to determine the form or 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 water uses in Basin 27 (Blackfoot River).

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

3. Additionally, the parties have initiated discussions to identify key issues that will be part of an agreement to determine if an equitable adjustment is necessary, and if so, 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.

4. The Shoshone-Bannock Tribes, the United States, Preston Allen & Sons and Alma Hubbard and other claimants believe that the present trial schedules<sup>3</sup> 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.

5. The primary reason the Tribes objected to these subcase claims based on period of use (i.e. July 1 issue) on many of the upper basin water rights was because without an annual diversion volume limitation on the water right, the flow rates recommended on the water rights could theoretically be diverted for the entire period of use, which extends well beyond July 1 for most of the water rights as recommended in the Director's Report. The Tribes' concern is ultimately that the 45,000 acre-feet per year limitation would be exceeded if the period of use written on the water right exceeds the typical period of use for the place of use indicated on the water right.

6. The resolution of the Irrigation Use subcases will serve as the overall schedule for all Tribal objections in Basin 27. Further, the Tribes would drop their July objections if a volume representative of the actual irrigation practices was placed on the water right. The reason is that placing a volumetric limitation on the upper basin diversion would negate the need for a shorter period of use ending on July 1.

7. The vacating and rescheduling of the trials in the instant subcases will further an

---

<sup>3</sup> The current court schedule for the July 1/Non-irrigation Use subcases includes a January 25, 2008 deadline for SF5s and Summary Judgment deadline, and summary judgment hearing on February 27, 2008 for these subcases. The court schedule for the Irrigation Use subcases includes a scheduling conference on March 7, 2008 and trials in November 2008.

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 States and Shoshone-Bannock Tribes have filed objections, and support judicial economy.

8. Currently, there are 114 Irrigation and Non-irrigation subcases pending before the Court (see Exhibit A). These subcases are on different tracks for hearing. Of these 114 subcases: (1) 33 have a combined irrigation/stockwater/domestic use<sup>4</sup>; (2) the Tribes and water claimants have reached settlement in 16<sup>5</sup> of the 33 subcases and submitted a request for the development of a SF5 to IDWR, which are being held because it has an irrigation volume; (3) the Tribes and water claimants are seeking to reach settlement in the other 17 subcases; (4) 9 subcases<sup>6</sup> have pending SF5s involving only stockwater use before IDWR which we anticipate will be resolved; (5) the Tribes and water claimants have reached a stipulation in 13 subcases<sup>7</sup> with either an irrigation or combined irrigation/stockwater right; (6) 28 subcases<sup>8</sup> have solely irrigation use; and (7) 60 subcases have not been resolved.

9. Pursuant to I.R.C.P 42, the Court may order a separation of the issues. The parties agree that separation of the stockwater and other non-irrigation uses from the irrigation use issues in the listed subcases would expedite and permit the resolution of the stockwater and

---

<sup>4</sup> 27-00045; 27-00047; 27-00051B; 27-00054; 27-00055A; 27-00055B; 27-00076; 27-00085A; 27-00094; 27-00102; 27-02052; 27-2078; 27-02080A; 27-2080B; 27-04020; 27-04058; 27-04068; 27-04077; 27-04078; 27-04079; 27-04096; 27-04097; 27-11016; 27-11245; 27-11317; 27-11330; 27-11988; 27-11989; 27-11992; 27-12050; 27-12108; 27-12115; 27-12118.

<sup>5</sup> 27-00045; 27-00047; 27-00051B; 27-00054; 27-00055A; 27-00055B; 27-00094; 27-00102; 27-02080A; 27-2080B; 27-04020; 27-04058; 27-04068; 27-04077; 27-04078; 27-04097.

<sup>6</sup> 27-04101; 27-10903; 27-11728; 27-11729; 27-11730; 27-12000; 27-12004; 27-12005; 27-12009.

<sup>7</sup> 27-00045; 27-00085A; 27-00094; 27-00102; 27-00105; 27-00106; 27-02078; 27-04058; 27-11330; 27-11930; 27-11992; 27-12040; 27-12050.

<sup>8</sup> 27-00023B; 27-00051A; 27-00105; 27-00106; 27-02001; 27-02003A; 27-02003B; 27-02008; 27-02015; 27-02026; 27-02041A; 27-02041B; 27-02048; 27-02054; 27-02066; 27-02165; 27-04010; 27-04141; 27-10207; 27-11261; 27-11262; 27-11334; 27-11918; 27-11930; 27-12035; 27-12040; 27-12045; 27-12109.

other non-irrigation uses and allow the irrigation uses to be resolved under the schedule established by the Court for irrigation uses.

10. This motion needs to be resolved on an expedited basis because of the existing deadlines in the present trial schedule order on , 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.

WHEREFORE, the Shoshone-Bannock Tribes, the United States, Preston Allen & Sons, and Alma Hubbard and other claimants request as follows:

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

2. That the district court enter an Order separating the stockwater use claims from the irrigation use claims in the AMENDED TRIAL SCHEDULE ORDER.

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

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

Respectfully Submitted this 31<sup>th</sup> day of January, 2008.

PRESTON ALLEN & SONS

UNITED STATES

*Jerry Rigby by Jeanette Wolfley*  
JERRY RIGBY  
RIGBY, ANDRUS & MOELLER

*Peter C. Monson by Jeanette Wolfley*  
PETER C. MONSON  
Managing Attorney  
U.S. Dept. of Justice, ENRD

SHOSHONE-BANNOCK TRIBES

*Jeanette Wolfley*  
JEANETTE WOLFLEY  
Special Counsel for the Shoshone-Bannock Tribes

ALMA HUBBARD & OTHER CLAIMANTS

*Scott Smith*  
SCOTT SMITH  
Racine Olson Nye Budge & Bailey, Chartered

## EXHIBIT A

## JULY 1/NON-IRRIGATION USE

|           |          |          |
|-----------|----------|----------|
| 27-00023B | 27-04102 | 27-12035 |
| 27-00045  | 27-04141 | 27-12039 |
| 27-00047  | 27-10207 | 27-12040 |
| 27-00051A | 27-10318 | 27-12043 |
| 27-00051B | 27-10416 | 27-12045 |
| 27-00054  | 27-10903 | 27-12050 |
| 27-00055A | 27-11009 | 27-12052 |
| 27-00055B | 27-11010 | 27-12053 |
| 27-00076  | 27-11016 | 27-12054 |
| 27-00085A | 27-11245 | 27-12055 |
| 27-00094  | 27-11261 | 27-12056 |
| 27-00102  | 27-11262 | 27-12057 |
| 27-00105  | 27-11317 | 27-12058 |
| 27-00106  | 27-11330 | 27-12059 |
| 27-02001  | 27-11334 | 27-12060 |
| 27-02003A | 27-11355 | 27-12061 |
| 27-02003B | 27-11366 | 27-12084 |
| 27-02008  | 27-11728 | 27-12085 |
| 27-02015  | 27-11729 | 27-12092 |
| 27-02026  | 27-11730 | 27-12093 |
| 27-02041A | 27-11762 | 27-12109 |
| 27-02041B | 27-11763 | 27-12106 |
| 27-02043  | 27-11897 | 27-12108 |
| 27-02048  | 27-11898 | 27-12115 |
| 27-02052  | 27-11915 | 27-12117 |
| 27-02054  | 27-11916 | 27-12118 |
| 27-02066  | 27-11918 | 27-12119 |
| 27-02078  | 27-11928 | 27-12120 |
| 27-02080A | 27-11930 | 27-12122 |
| 27-02080B | 27-11945 | 27-12123 |
| 27-02165  | 27-11996 | 27-12124 |
| 27-04010  | 27-11988 | 27-12125 |
| 27-04020  | 27-11989 |          |
| 27-04058  | 27-11992 |          |
| 27-04068  | 27-12000 |          |
| 27-04077  | 27-12004 |          |
| 27-04078  | 27-12005 |          |
| 27-04079  | 27-12007 |          |
| 27-04096  | 27-12008 |          |
| 27-04097  | 27-12009 |          |
| 27-04101  | 27-12010 |          |

RECEIVED

FEB 04 2008

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

DEPARTMENT OF  
WATER RESOURCES

|                |   |                                             |
|----------------|---|---------------------------------------------|
| In Re SRBA     | ) | Subcase Nos. See Exhibit List               |
|                | ) |                                             |
|                | ) |                                             |
|                | ) |                                             |
|                | ) | <b>ORDER GRANTING MOTION TO AMEND TRIAL</b> |
|                | ) | <b>SCHEDULE AND REQUEST TO SEPARATE</b>     |
| Case No. 39576 | ) | <b>WATER CLAIMS</b>                         |
|                | ) |                                             |
| _____          | ) |                                             |

1. On January 30, 2008, the Shoshone-Bannock Tribes, the United States, Preston Allen & Sons, by Jerry Rigby, and Alma Hubbard and other claimant, by Scott Smith, filed a *Joint Motion to Amend Trial Schedule Order, and Request to Separate Water Claims*, hereinafter referred to as the "Joint Motion," in the above subcases. The purpose of the Joint Motion is to provide time for analysis of additional water diversion data to assist in establishing 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 is required and, if so, to determine the amount of the adjustment.

2. The present trial schedule of 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 Settlement. The parties expect to produce a determination of whether an equitable adjustment is necessary and an agreement for procedure for providing that adjustment. Accordingly, the Joint Motion to Amend Trial Schedule Order is granted.

The following schedule shall apply to the above listed subcases:

|                   |                   |                                                                                                                                |                                                                                                                                   |
|-------------------|-------------------|--------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| VACATED           | January 10, 2008  | 5: 00 pm                                                                                                                       | Deadline for Discovery to be Completed                                                                                            |
| VACATED           | January 25, 2008  | 5:00 pm                                                                                                                        | Deadline to file Standard Form 5                                                                                                  |
| VACATED           | January 25, 2008  | 5:00 pm                                                                                                                        | Deadline to file Motion for Summary Judgment                                                                                      |
| VACATED           | February 27, 2008 | 9:30 am                                                                                                                        | Summary Judgment Hearing<br>Location: Snake River Basin Adjudication<br>253 3 <sup>rd</sup> Ave. North<br>Twin Falls, Idaho 83301 |
| February 29, 2008 | 5:00 pm           | Deadline for Technical Report                                                                                                  |                                                                                                                                   |
| March 14, 2008    | 11:00 am          | Scheduling Conference<br>Location: Snake River Basin Adjudication<br>253 3 <sup>rd</sup> Ave. North<br>Twin Falls, Idaho 83301 |                                                                                                                                   |

3. Pursuant to I.R.C.P 42, the Court may order a separation of the issues. The parties agree that separation of the stockwater and other non-irrigation uses from the irrigation use issues in the listed subcases would expedite and permit the resolution of the stockwater and other non-irrigation uses and allow the irrigation uses to be resolved under the schedule established by the Court for irrigation uses. Accordingly, the Joint Motion to Separate stockwater and other non-irrigation uses from the irrigation use issues in the listed subcases is granted.

DATED \_\_\_\_\_, 2008

---

BRIGETTE BILYEU  
Special Master  
Snake River Basin Adjudication

## EXHIBIT A

## JULY 1/NON-IRRIGATION USE

|           |          |          |
|-----------|----------|----------|
| 27-00023B | 27-04102 | 27-12035 |
| 27-00045  | 27-04141 | 27-12039 |
| 27-00047  | 27-10207 | 27-12040 |
| 27-00051A | 27-10318 | 27-12043 |
| 27-00051B | 27-10416 | 27-12045 |
| 27-00054  | 27-10903 | 27-12050 |
| 27-00055A | 27-11009 | 27-12052 |
| 27-00055B | 27-11010 | 27-12053 |
| 27-00076  | 27-11016 | 27-12054 |
| 27-00085A | 27-11245 | 27-12055 |
| 27-00094  | 27-11261 | 27-12056 |
| 27-00102  | 27-11262 | 27-12057 |
| 27-00105  | 27-11317 | 27-12058 |
| 27-00106  | 27-11330 | 27-12059 |
| 27-02001  | 27-11334 | 27-12060 |
| 27-02003A | 27-11355 | 27-12061 |
| 27-02003B | 27-11366 | 27-12084 |
| 27-02008  | 27-11728 | 27-12085 |
| 27-02015  | 27-11729 | 27-12092 |
| 27-02026  | 27-11730 | 27-12093 |
| 27-02041A | 27-11762 | 27-12109 |
| 27-02041B | 27-11763 | 27-12106 |
| 27-02043  | 27-11897 | 27-12108 |
| 27-02048  | 27-11898 | 27-12115 |
| 27-02052  | 27-11915 | 27-12117 |
| 27-02054  | 27-11916 | 27-12118 |
| 27-02066  | 27-11918 | 27-12119 |
| 27-02078  | 27-11928 | 27-12120 |
| 27-02080A | 27-11930 | 27-12122 |
| 27-02080B | 27-11945 | 27-12123 |
| 27-02165  | 27-11996 | 27-12124 |
| 27-04010  | 27-11988 | 27-12125 |
| 27-04020  | 27-11989 |          |
| 27-04058  | 27-11992 |          |
| 27-04068  | 27-12000 |          |
| 27-04077  | 27-12004 |          |
| 27-04078  | 27-12005 |          |
| 27-04079  | 27-12007 |          |
| 27-04096  | 27-12008 |          |
| 27-04097  | 27-12009 |          |
| 27-04101  | 27-12010 |          |

## CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 31<sup>ST</sup> day of January, 2008, I caused to be mailed postage prepaid, at true and correct copy of the Shoshone-Bannock Tribes' JOINT MOTION TO AMEND TRIAL SCHEDULE ORDER, REQUEST TO SEPARATE WATER CLAIMS AND REQUEST FOR EXPEDITED HEARING and ORDER GRANTING MOTION TO AMEND TRIAL SCHEDULE AND REQUEST TO SEPARATE WATER CLAIMS to the following:

### Original To:

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

### Copies to:

Cheryl H Thompson  
3411 Long Valley Rd  
Soda Springs, ID 83276

Attn Jon Goode Nu-West Mining Inc  
3010 Conda Rd  
Soda Springs, ID 83276

### Copies to:

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

United States Department of Justice  
Environment & Nat'l Resources Div  
550 W Fort Street, MSC 033  
Boise, ID 83724

Chief, Natural Resources Division  
Office of Attorney General  
PO Box 44449  
Boise, ID 83711-4449

W M Bart Conlin Inc  
NY NY S Mission 85-69 60th Dr  
New York, NY 11373

Lynn Rasmussen  
2204 Lago-Liberty Rd  
Grace, ID 83241

Cindy & Wayne M Telford  
1016 E 1000 N  
Shelley, ID 83274

Dept of Fish & Game Dept of Fish &  
Game  
PO Box 25  
Boise, ID 83707

Beth Ann Winschell  
190 S Stout Ave  
Blackfoot, ID 83221

Wendy Pratt  
Eastern Idaho Grazing Association  
PO Box 308  
Blackfoot, ID 83221

Kathy and Rulon Jones  
Cedar Creek Grazing Assn  
3985 N 3775 E  
Liberty, UT 84130

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

Lindon A Mickelsen  
2011 Riverton Rd  
Blackfoot, ID 83221

Jane Crawford  
Rawlings Creek Land & Livestock Co.  
843 N 550 E  
Firth, ID 83238

P Thomas Blotter Family LTD  
3250 N 1200 E  
Logan, UT 84321

Hunsaker Ranching  
3804 Blackfoot River Road  
PO Box 324  
Soda Springs, ID 83276

Ronald Jensen  
708 E 800 N  
FIRTH, ID 83236

Lloyd Stolworthy Family LTD  
1525 E Wolverine Rd  
Firth, ID 83236

Susan Morales  
1577 E Wolverine Rd  
Firth, ID 83236

Brent Steffler  
625 N 800 E  
Firth, ID 83236

David Bosen Meadow Creek Ranch  
2330 S Dallin St  
Salt Lake City, UT 84109

David W Beckstead  
1498 S 800 E  
Preston, ID 83263

Jougard Sheep Co Inc  
PO Box 245  
Rupert, ID 83350

John R & Shirley O Stucki  
325 Algonquin Dr  
Ballwin, MO 63011

Layne Hamilton  
Smith Maxwell Ditch Co  
839 W Riverton Rd  
Blackfoot, ID 83221

CV Ranches  
3124 Nipper RD  
Bancroft, ID 83217

Randy Budge  
PO Box 1391  
Pocatello, ID 83204-1391

Jerry Rigby  
25 N 2nd E PO Box 250  
Rexburg, ID 83440-0250

Dwight Baker  
PO Box 557  
Blackfoot, ID 83221

Christopher H. Meyer  
PO Box 2720  
Boise, ID 83701

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

Joe Dean Brantzeg  
153 N 400 W  
Blackfoot, ID 83221

Preston R Allen & Sons Partnership  
2601 E 300 S  
Declo, ID 83323

Justin Oleson  
PO Box 1047  
Blackfoot, ID 83221

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

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

Charles & Carol Dansie  
301 East 200 North  
Blackfoot, ID 83221

Leo & Richard M Wallace Bair,  
Sherrilynn  
1921 W Taber Rd  
Blackfoot, ID 83221

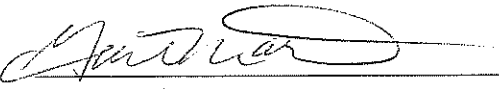
Merlin Yancey  
707 W 300 S  
Blackfoot, ID 83221

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

Paul Webster  
322 S Angel  
Kaysville, UT 84037

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

Hallie F Peterson  
1046 E 700 N  
Shelley, ID 83274

  
Gail Martin