

RECEIVED 2008 MAR 19 AM 10:42
MAR 20 2008 DISTRICT COURT-SRBA
DEPARTMENT OF TWIN FALLS CO., IDAHO
WATER RESOURCES FILED

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) Subcases 27-10028 and 27-12013
Case No. 39576) (Gardners)
)
) SETTLEMENT CONFERENCE REPORT
)

A mandatory settlement conference in 2 of the 255 Basin 27 "volume" subcases was held on March 14, 2008, at the Idaho Water Center, Boise, Idaho. The conference began at 10:00 a.m. and ended at 2:00 p.m. – 4 hours non-stop with only a 15 minute break.

Attached is a summary sheet prepared beforehand by Settlement Moderator Terrence A. Dolan from the SRBA Court's files, information from IDWR, the February 29, 2008 *Governmental Parties' Joint Status Report* and the *Preliminary Report, Equitable Adjustment Assessment*.¹ Also attached is the conference sign-in sheet. Claimant Leon J. Gardner and counsel for the USDI / BIA Peter C. Monson participated by telephone.

At the suggestion of IDWR attorney Garrick L. Baxter, the conference began with a PowerPoint® presentation of IDWR's "MIKE Basin Model" by Carter Borden of DHI. The MIKE Basin Model is a surface water budget model for major tributaries in the Blackfoot River Basin and may assist the parties to determine 1) annual diversions from the "north side" of the Blackfoot River and 2) appropriate equitable adjustment values required in the August 2, 1995 *Partial Final Consent Decree Determining the Rights of*

¹ The *Preliminary Report*, Exhibit B to the *Status Report*, was prepared by the federal, tribal and state technical team.

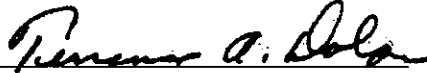
*the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin.*²

Mr. Borden reported the Model is 90% complete.

Following the hour-long PowerPoint® presentation and discussion, the parties shared extensive reporting criteria and data and agreed to further exchanges in the near future. They then turned to lengthy discussions of the 7 “unresolved issues” listed in the *Preliminary Report*, including whether the issues and appropriate equitable adjustment values can be resolved by the parties’ suggested deadline of August 31, 2008. Most parties agreed that deadline cannot be met in light of the need to continue the joint State / US measurement program to solve remaining technical issues. The Tribes will soon add their own off Reservation data. One other source of delay may be a possible effort by the Committee of Nine to join as a party to these subcases.

It is clear that the remaining issues will not be resolved in the near term because of incomplete data. Nevertheless, it was obvious that all the parties are working hard in good faith to reach a solution, whether it be complete or interim. The MIKE Basin Model will never be 100% complete given the vagaries of water supplies and crop requirements, but the parties are earnestly working to find an equitable adjustment to the Tribal water rights.

DATED March 19, 2008.


TERRENCE A. DOLAN
Settlement Moderator
Snake River Basin Adjudication

² An equitable adjustment to the Tribes’ water rights is required when existing diversions under state created water rights exceeds 45,000 AFY. The parties agreed that amount has been exceeded. The United States reported that annual diversion volumes from the north side of the Blackfoot River may be as high as 55,000 AFY in dry years and 62,000 AFY in average years.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SETTLEMENT CONFERENCE REPORT was mailed on March 19, 2008, with sufficient first-class postage to the following:

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MANDATORY SETTLEMENT CONFERENCE

March 14, 2008, 10:00 a.m.

Idaho Water Center, Boise, ID

Terrence A. Dolan, Settlement Moderator

Subcase 27-10028 – Bonnie and Leon Gardner

10.18 cfs (no AFY)

Sand Creek, Blackfoot River

Irrigation, 102 acres

April 1 – November 1

Stockwater

March 1 – November 30

June 1, 1919

Beneficial use

Subcase 27-12013– Gardners

1.44 cfs / (no AFY)

Sand Creek, Blackfoot River

Irrigation, 102 acres

April 1 – November 1

March 4, 1909

License

Objector – USDI/BIA (quantity)

Peter C. Monson

Objector – Shoshone-Bannock Tribes (quantity)

Jeanette Wolfley

Objector – Gardners (quantity & place of use, 27-10028)

pro se

Respondent – State of Idaho

David J. Barber

August 2, 1995 Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin:

[A]re estimated to divert not more than 45,000 AFY of water from the Blackfoot River. In the event this estimate of the amount of existing diversions under the state created water rights is exceeded as a result of the Decree in the SRBA, the parties shall negotiate an equitable adjustment to the Tribal water rights [27-11375] to account for this change.

MIKE Basin Model – surface water budget model for major tributaries in the Blackfoot River Basin

Field headgate requirements:

Upper watershed – 3.5 acre-feet/acre
66 % average conveyance efficiency = 5.3 acre-feet/acre
Lower watershed – 4.0 acre feet/acre
66% average conveyance efficiency = 6.0 acre-feet/acre

Diversions from north side of Blackfoot River:

53,900 AFY – dry years
60,500 AFY – average years

Unresolved issues:

1. Should irrigated acreage that extends outside recommended water rights boundaries be included?
2. Should the significant acreage within the recommended water rights boundaries that show no recent irrigation be included? If not, should the recommended water rights be reduced?
3. Should CRP lands in areas of firm water supplies be included or not?
4. Should long-time idle acreage, within recommended water right service area boundaries, that are located along the Blackfoot River be included as recently irrigated since they can be put quickly back into active use?
5. How should lands that have July 1 cutoff dates but divert water during the full irrigation season be addressed?
6. There are extensive groundwater irrigated tracts in the lower basin that have the right to convert back to surface water use. How should these lands be addressed?
7. There is insufficient documentation as to how Snake River injected flows were addressed in the 1990 Agreement. However, all lower basin ditches have recommended rights from the Blackfoot River. Should this issue be dismissed?

Estimated time to resolve issues and determine appropriate “equitable adjustment” values and undertake studies and actions called for in *Preliminary Report* – 6 months or no later than August 31, 2008.

Basin 27:

Director’s Report for Domestic and Stockwater, IDWR Basin 27 filed May 11, 1998.

Director’s Report for Irrigation and Other Uses, Reporting Area 11, IDWR Basin 27 filed November 10, 2005.

Recommendations – 270
Objections – 471
Contested “volume” subcases - 255

MANDATORY SETTLEMENT CONFERENCE

March 14, 2008, 10:00 a.m.

Idaho Water Center, Boise, ID

Terrence A. Dolan, Settlement Moderator

SIGN-IN SHEET

<u>NAME</u>	<u>ATTORNEY?</u>	<u>PARTY / INTEREST</u>
James Cefalo	Y	WDI / WD 27
Annea Courtney	Y	IDWR
Ran Williams	N	IDWR
Ernest Carlson	N	" "
GARRICK BAXTER	Y	IDWR
Carter Borden	N	DHI
David J. Barber	Y	Idaho A R
David Shaw	N	ERO / ID Att Gen
ELESE TETON	N	SHOSHONE-BANNOCK TRIBES
Ron Billstem	N	HKM / U.S. Technical Expert
Jeanette Wolfley	Y	Shoshone - Bannock Tribes
GAIL MARTIN	N	" "
Peter Hanson / Phoebe Leon Carpenter	"	early on
Tim LUKE	N	IDWR
David R. Turhill	N	IDWR