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Attorney for the Shoshone-Bannock Tribes

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

In Re SRBBA	)	Subcase Nos. 27-16C; 27-7285;
	)	27-7320; and 27-7308
Case No. 39576	)	
	)	REPORT ON SETTLEMENT PROGRESS
_____	)	

Pursuant to the Court's request, the Shoshone-Bannock Tribes respectfully submit this report on settlement progress in the above-captioned subcases. These four subcases involve a Tribal objection related to the place of use element by the claimants. The same objection has been made by the Tribes in other Basin 27 subcases (approximately 59) that are not set for trial on April 9 -10, 2008 as they involve other objections related to the absence of an annual volume of diversion.

The bases for the Shoshone-Bannock Tribes' ("Tribes") objections were that the land set forth in the place of use element claimed by the water claimants are located within the boundaries of the Fort Hall Reservation as surveyed by the U.S. Bureau of Land Management and the original 1877 Reservation boundary survey.

In 1964 the Army Corps of Engineers completed a local flood protection project on the Blackfoot River authorized under section 204 of the Flood Control Act of 1950. The project consisted of building levees, replacing irrigation diversion structures, replacing bridges, and

channel realignment. The channel realignment portion of the project moved segments of the Blackfoot River's "bed and banks" entirely within the boundaries of the Fort Hall Reservation. The Department of Interior, Bureau of Land Management, Cadastral Survey Office was authorized in 1991 to conduct surveys of the Blackfoot River and did so in 1999 through 2002, and has prepared plats representing the surveys that show the present course of the Blackfoot River and identify the Fort Hall Reservation borders that existed at the time the Reservation was established. *See* 67 Fed. Reg. 46,686 (July 16, 2002); 67 Fed. Reg. 64,656 (October 21, 2002); 68 Fed. Reg. 17,072 (April 8, 2003); 69 Fed. Reg. 2,157 (January 14, 2004); 70 Fed. Reg. 3,382 (January 24, 2005). The resurvey of the Upper Blackfoot River is due to be completed the Summer of 2008 which will verify the 1877 Reservation survey.

The completed survey identified that some Tribal and individual Indian owned lands are on the north side of the Blackfoot River and some water claimant owned lands are on the south side of the River. The issue has existed for a number of years. The Tribes have made a commitment to the water claimants that they will work with them to resolve this issue. The Tribes have gathered data and analyzed the data, and held technical discussions with the Department of Interior Bureau of Indian Affairs in an effort to provide the best estimate of the lands affected, and mapped the water rechannelization of the Blackfoot River. The Tribes held a meeting with the water claimants to discuss the available options to resolve the issue. The parties determined the best avenue to resolve the matter short of federal litigation was to reach agreement on proposing federal legislation, and seek a commitment from the Idaho Congressional delegation to support such legislation to resolve the existing land ownership issues. The Tribes and water claimants met with the Idaho Congressional delegation and have received a commitment to support such legislation.

In 2007, the Bureau of Indian Affairs notified all the individual Indian land owners, held meetings with them and obtained their written consent to pursue federal legislation. Mr. Marion Walker, the designated lead person for the water claimants, obtained consent letters from all the affected water claimants and forwarded them to the Idaho Congressional delegation. In January 2008, the Tribes and Mr. Walker met with the Idaho Congressional delegation to report the status. Following the meeting, the Tribes Business Council sent a letter to the Congressional delegation confirming their commitment to the process. Senator Michael Crapo has assigned a staff person in Idaho to begin drafting the required federal legislation to address the boundary issue.

The resurvey of the upper Blackfoot River (north of the Equalizer Dam) has not been completed. Given the urgency of the water issues and intertwined land issues, the BLM obtained special funding for the survey to be completed this summer 2008. The BLM will begin the survey on April 21, 2008 and expect to complete it and have the plat maps drawn in 2009.

Two of the subcases, 27- 7149 and 27-7306 set for trial have recently been resolved and the Tribes and water claimants have requested a dismissal of the subcases. On March 14, 2008, the Tribes met with Idaho Department of Water Resources attorneys Andrea Courtney and Garrick Baxter to discuss various options to resolve the remaining subcases through the SF5 process. The Tribes and IDWR thought the best way would be to split the water right between the Tribes and water claimant pending the federal legislation moving forward, and the Tribes began contacting the water claimants to discuss this proposal.

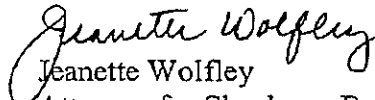
On March 24, 2008, David Barber on behalf of the State of Idaho sent a letter to the Tribes regarding the settlement efforts and raising the issue of the Court's jurisdiction over these land ownership issues. A copy of the letter is attached. Given the recent letter from the State of

Idaho, the Tribes request these issues be discussed more fully with the Court at the Pre-Trial conference on April 2, 2008.

If the parties are successful in the federal legislation effort, the boundary objections at issue in these subcases and several other subcases may be resolved. The Tribes request the Court to vacate the trials scheduled on April 9 and 10, 2008 to allow for the federal legislation to proceed. The parties should report to the Court on the progress of the federal legislation in three months.

Dated this 31st day of March, 2008.

Respectfully submitted,


Jeanette Wolfley
Attorney for Shoshone-Bannock Tribes

w/attachment

cc: Thomas J. Budge, Attorney for Marion Walker
Ken Wernette
Olivia Wernette
Michael Clawson
Connie Clawson
Karen Van Orden
David J. Barber, Deputy Attorney General
Andrea Courtney, IDWR Attorney
Garrick Baxter, IDWR Attorney



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

March 24, 2008

VIA U.S. MAIL AND
FACSIMILE (208) 232-7472

Ms. Jeanette Wolfley
Special Counsel to the Shoshone-
Bannock Tribes
202 N. Arthur St.
Pocatello, ID 83204

Re: Upcoming Trials on the Boundary Issue.
Dear Jeanette:

The boundary issue that is set for trial on April 9, 2008 presents some complex issues, for which the SRBA District Court does not have subject matter jurisdiction. As you are aware from the State of Idaho's response to the Shoshone-Bannock Tribes' request for treatment as a state with regard to certain environmental laws, the State of Idaho claims the bed of the original channel of the Blackfoot River in accordance with the Equal Footing Doctrine. Since the Corps of Engineers actions in straightening the Blackfoot River would be considered an avulsive change in the location of the Blackfoot River, the ownership would remain as defined by the original channel. The State of Idaho understands that the United States on behalf of the Tribes and the Tribes claim ownership of that portion of the bed of the original channel of the Blackfoot River south of the median line of that channel. Accordingly, there are dual claims to the southern half of the bed of the original channel of the Blackfoot River over which, again, the SRBA District Court lacks jurisdiction.

There is no need, however, to resolve our competing claims to the beds and banks of the Blackfoot River. Regardless of whether the United States or the State owns the beds, the Tribes and State of Idaho collectively have a better claim to the bed of the original channel of the Blackfoot River than the individual water user, and the SRBA District Court should simply exclude the acreage of the meanders that are now on the north side of the present channel of the Blackfoot River. Of course, to the extent that this acreage of the former meanders of the Blackfoot River constituted uplands above the ordinary high water mark, the State of Idaho does not have a claim of ownership to this land.

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March 24, 2008
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This approach does not resolve the ownership of the portion of the Blackfoot River north of the median line of the original channel of the river. The State of Idaho would also have a claim of ownership here. Perhaps the riparian owner would make a claim to this land as well. With respect to this land, I have recommended that the issue be presented to the Idaho State Board of Land Commissioners to consider whether to issue a disclaimer of interest for the benefit of the riparian land owner on the north side of the present channel of the river. To do this, the State of Idaho would need a legal description of the right bank and of the median line of the original channel of the Blackfoot River. I am uncertain whether a legal description exists of the right bank of the Blackfoot River for the original channel of the Blackfoot River. Any assistance that you could provide me would be very much appreciated. At some point I would like to discuss this proposal with you in a telephone call prior to the pre-trial conference.

Sincerely,



DAVID J. BARBER
Deputy Attorney General

DJB/ov

cc: Jerry R. Rigby
Thomas J. Budge
Ken F. Wernette
Olivia Wernette
Michael R. Clawson
Connie S. Clawson