

APR 21 2008

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 Nos: 27-00029D; 27-02069; 27-12002;
	)	27-12003; 27-12121
	)	
	)	JOINT MOTION TO VACATE TRIAL
Case No. 39576	)	SCHEDULING ORDER
	)	
	)	
	)	

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 & Sons¹, by Jerry Rigby, Patrick Taney by Scott Axline², and Dennis

¹ Subcase 27-12003

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Lake by Dwight Baker³, respectfully move this Court for an Order vacating the trial schedule order previously entered in the above listed subcases. The grounds for this motion are as follows:

1. On December 13, 2007, the Court issued an Order Vacating Deadlines and Setting Scheduling Conference and Trial for the subcases on November 12, 13, and 14, 2008. On March 7, 2008, the parties discussed these subcases with the Court and explained to the Court that these subcases have similar objections based on the lack of a volume being placed on the water use in the Director's Report. In other similar subcases, the Court has provided the parties' experts and technical advisors time to 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 Subcase 27-.00029D

³ Subcases 27-2069

2. The parties' experts currently are in the process of analyzing the data which was collected this past irrigation season and will begin the data collection this month for the 2008 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, Dennis Lake, and Patrick Taney, believe that the present trial schedules 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 vacating and rescheduling of the trials in the instant subcases will further an 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.

6. 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, Dennis Lake, and Patrick Taney request as follows:

1. That the district court enters the proposed ORDER VACATING TRIAL SCHEULE that is attached hereto.

2. That the district court set this matter for a hearing.
3. That the district court grant such further or other relief that it deems just and proper.

Respectfully submitted this 18th day of April, 2008.

SHOSHONE-BANNOCK TRIBES

Jeanette Wolfley
JEANETTE WOLFLEY

PRESTON R. ALLEN & SONS PARTNERSHIP

Jerry R. Rigby ^{signature} JW - authorized per email
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PATRICK TANEY

Scott E. Axline JW - signature authorized per email
SCOTT E. AXLINE

UNITED STATES OF AMERICA

Peter C. Monson JW - signature authorized per email
PETER C. MONSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of April, 2008, I caused to be served a true and correct copy of the JOINT MOTION TO VACATE TRIAL SCHEDULING ORDER and ORDER VACATING TRIAL SCHEDULING ORDER via first class United States mail postage prepaid to the following:

Original to via Facsimile transmission and U.S. Mail:

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

Copies to:

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

United States Department of Justice
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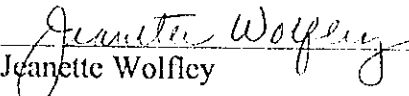
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Jeanette Wolfley

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. 27-29D; 27-2069; 27-12002;
	)	27-12003; and 27-12121
	)	
	)	
	)	ORDER VACATING TRIAL SCHEDULING
	)	ORDER
Case No. 39576	)	
	)	
	)	

On April 18, 2008 the State of Idaho, the United States, the Shoshone-Bannock Tribes Dennis Lake, Preston Allen & Sons and Patrick Taney filed a *Joint Motion to Vacate Trial Scheduling Order*, hereinafter referred to as the "*Joint Motion*." The purpose of the *Joint Motion* is to provide 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 over 300 water rights. These data would be used to establish the total volume of the actual irrigation diversions for the entire Blackfoot River Basin in 2007 and this year. The present trial schedule (November 12 14, 2008) will not allow for the collection and 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, and without the proposed change to the trial schedule, the parties will litigate some 300 contested sub-cases. Accordingly, the Court believes that granting this motion is in the interests of judicial economy.

The parties have demonstrated good cause for vacating the TRIAL SCHEDULING ORDER.

IT IS HEREBY ORDERED that the instant subcases shall follow the schedule governing the conduct of the proceedings of all objections filed by the United States or filed by the Shoshone-Bannock Tribes that relate to the irrigation use subcases.

DATED _____, 2008

BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication