

DEPARTMENT OF
WATER RESOURCES

2008. Order Granting Motion to Vacate Trial Schedule and Setting Subcase Deadlines, sub-case Nos. 27-29D, et al., (July 18, 2008)(“July 18, 2008 Order”). This report is intended to fulfill the Court’s directive, and will address the settlement efforts that have taken place to date. In addition, we are filing and serving this report in the other sub-cases where objections related to the element of annual diversion volume have been raised in order to apprise all affected parties of the progress being made in the inter-governmental discussions as to this matter.

1. Progress on the Diversion Volume Issue. The Governmental Parties previously submitted a joint status report regarding the annual diversion issue to the Court on February 29, 2008. Governmental Parties’ Joint Status Report, February 29, 2008. (Filed in sub-cases 27-10028 and 27-12013). That report, together with the accompanying Exhibit B (“Preliminary Report, Equitable Adjustment Assessment”) described the technical work that had been performed to date, and identified a number of unresolved issues upon which the technical representatives of the governmental parties were to focus. Since the filing of that report, the technical representatives undertook additional research and conducted field investigations and interviews in order to better determine the irrigation practices and the total diversions being made by the non-Indian irrigators on the North Side of the Blackfoot River. As the Court noted in its July 18, 2008 Order, at a hearing held on July 9, 2008, “the governmental parties represented that they are diligently gathering water diversion data for the entire Blackfoot River Basin. The data is currently being analyzed so the parties can finalize an agreement on an equitable adjustment pursuant to the *1990 Fort Hall Indian Water Rights Agreement* and related *Partial Final Consent Decree*.”

Since the parties reported verbally to the Court on July 9, 2008, they have continued to work on the technical issues and to analyze the data collected this irrigation season. Attached as

Exhibit B is an updated "*Preliminary Report, Equitable Adjustment Assessment*" which describes the progress made and identifies the remaining technical issues to be addressed.

Updates are shown in italics on the document. As the updates indicate, progress is being made on all of the unresolved technical issues, but additional technical work remains to be completed.

In addition, a Settlement Conference, moderated by Special Master Dolan, was held on July 30, 2008, at the Idaho Water Center in Boise, Idaho. A copy of Special Master Dolan's "2nd Moderated Settlement Conference Report" is attached hereto as Exhibit C for the benefit of the Court and parties in all affected sub-cases.^{1/} In Special Master Dolan's report, he noted that the parties agreed the next steps in negotiations include an analysis by the technical representatives of the impact of return flows on depletion, in order to determine an appropriate amount by which the Tribes's decreed rights should be equitably adjusted to account for diversions in excess of 45,000 acre-feet per year.

In that regard, the state, tribal and federal technical representatives continue to work on the remaining technical issues, and to review the diversion data that continues to be collected. They are planning to hold a conference call on August 26, 2008 to review work undertaken by IDWR in connection with the Mike Basin Model.

While most of the effort on these sub-cases has been at the technical level, counsel for the parties are beginning work aimed at identifying and resolving legal issues. Counsel for the United States and Tribes have prepared a draft form of a settlement agreement and have shared that with counsel for the State of Idaho and the Committee of Nine and are awaiting their

^{1/}The Settlement Conference was held in sub-cases 27-10028 and 28-12013, which have been informally designated by Special Master Bilyeu as the lead case for purposes of the negotiations regarding the annual diversion volume issue. Special Master Dolan's report was filed in those sub-cases, but parties to other affected sub-cases may not have received a copy, so we are providing it to them herewith.

response.

2. Progress on Other Issues.

In March of 2008, Judge Bilyeu allowed a partial settlement of water rights that had multiple uses assigned to them. Many of the water rights had an irrigation and stock water use component, thereby delaying settlement of the stock water use because it was attached with an irrigated use that was included in the larger global settlement issue. After permission was granted to allow partial settlement of these types of water rights, the Tribe sent out "settlement agreements" to settle the stock water portion of the water right. In the settlement agreements the parties agreed to a volumetric limit upon the stock water portion of the water right. Within the group addressed within this report, a total of 35 of the listed water rights are in this category. Of these 35 water rights the Tribes reached agreement on 29 of the water rights. Of the 29 settlement agreements reached, 4 settlement agreements were forwarded to the Court. There are a remaining 6 unresolved multi use water rights, 4 in which the Tribes have been working with toward a settlement, and 2 water rights where the Tribes have been unable to contact the individual water right owners to enter into discussions for settlement purposes.

At the July, 30, 2008 Settlement Conference, IDWR reported that it had identified mistakes made on various water rights with the stock water component and asked that submission of the settlement agreements be put on hold. Counsel for IDWR has evaluated the cases and is working with the parties on how best to address the errors.

CONCLUSION

In conclusion, all governmental parties continue to work diligently and in good faith toward resolving the overarching issue of diversion volume and equitable adjustment together with other objections.

Respectfully submitted this 27th day of 2008.

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SHOSHONE-BANNOCK TRIBES

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Exhibit A - Irrigation Use

27-00001A	27-00037E	27-02126	27-11199	27-12136
27-00001B	27-00037F	27-02165	27-11236	27-12137
27-00002A	27-00037G	27-04001	27-11245	
27-00002B	27-00037H	27-04009	27-11261	
27-00003C	27-00037J	27-04010	27-11262	
27-00003D	27-00037L	27-04058	27-11269	
27-00003E	27-00037M	27-04068	27-11271	
27-00003G	27-00037N	27-04077	27-11273	
27-00004AC	27-00038	27-04078	27-11317	
27-00004F	27-00039	27-04079	27-11330	
27-00004H	27-00040	27-04096	27-11334	
27-00004M	27-00041	27-04097	27-11918	
27-00004S	27-00045	27-04141	27-11919	
27-00004Y	27-00047	27-07013	27-11930	
27-00004Z	27-00049	27-07089	27-11939	
27-00005A	27-00050	27-10096	27-11940	
27-00005B	27-00051A	27-10116	27-11946	
27-00012A	27-00051B	27-10207	27-11966	
27-00012B	27-00052	27-10292	27-11988	
27-00013A	27-00054	27-10296	27-11989	
27-00013B	27-00055A	27-10341	27-11992	
27-00014B	27-00055B	27-10344	27-11994	
27-00014C	27-00056	27-10357	27-11995	
27-00014D	27-00073	27-10358	27-11997	
27-00016A	27-00074	27-10362	27-12006	
27-00017	27-00076	27-10370	27-12014	
27-00020A	27-00085A	27-10388	27-12015	
27-00020B	27-00088	27-10390	27-12016	
27-00021A	27-00094	27-10398	27-12017	
27-00021B	27-00102	27-10452	27-12027	
27-00021C	27-00104	27-10505	27-12028	
27-00021D	27-00105	27-10539	27-12029	
27-00022D	27-00106	27-10545	27-12030	
27-00023B	27-02001	27-10550	27-12031	
27-00023C	27-02003A	27-10552	27-12032	
27-00023E	27-02003B	27-10555	27-12035	
27-00025B	27-02008	27-10557	27-12040	
27-00025C	27-02015	27-10657	27-12045	
27-00026A	27-02019A	27-10667	27-12050	
27-00026B	27-02026	27-10728	27-12051	
27-00026C	27-02041A	27-10756	27-12064	
27-00026D	27-02041B	27-10790	27-12068	
27-00026E	27-02043	27-10844	27-12069	
27-00028	27-02048	27-10847	27-12074	
27-00029B	27-02052	27-10878	27-12081	
27-00029C	27-02054	27-10943	27-12108	
27-00029E	27-02066	27-10994	27-12109	
27-00035D	27-02078	27-10999	27-12115	
27-00037A	27-02080A	27-11016	27-12116	
27-00037C	27-02080B	27-11117	27-12118	

PRELIMINARY REPORT, EQUITABLE ADJUSTMENT ASSESSMENT

(Prepared by the federal, tribal, state technical team)

Updated in Italic in Preparation for the July 30, 2008 Status Conference

INTRODUCTION

On July 5, 1990, the Shoshone-Bannock Tribes, the State of Idaho, the United States, and the Committee of Nine, (the Parties,) entered into an Agreement to settle the water rights claimed by the United States for the benefit of the Shoshone-Bannock Tribes (Tribes). On August 2, 1995, the presiding judge of the Snake River Basin Adjudication (SRBA) entered an Order approving the Agreement and decreeing water rights to the United States for the benefit of the Tribes.

The decree recognizes the Tribes' federal reserved right to use direct flow water from the Blackfoot River, with a senior priority date of 1867, up to an annual diversion of 150,000 acre-feet per year. However, the Tribes and United States agreed to exercise this water right such that persons diverting direct flow from the Blackfoot River prior to January 1, 1990, whose rights are decreed in the SRBA, hereinafter North Side Users or NS Users, will continue to receive their full entitlement under State law. The NS Users were estimated to divert not more than 45,000 acre-feet of water per year (AFY). If the NS Users are, in effect, diverting greater than 45,000 AFY, then the Parties agreed to negotiate an Equitable Adjustment to the Tribal water rights to account for this incremental increase in use.

The Idaho Department of Water Resources (IDWR), acting as the Blackfoot River watermaster, has carried out a water diversion measurement program for many of the NS Users from 2004 to 2008. Most of the major NS Users are located downstream of the USGS Blackfoot River stream gaging station at Shelley, Idaho. In addition, IDWR, in 2005, submitted a Director's Report which recommended water rights to be decreed by the SRBA Court but did not include volume limits on surface water rights. A review of the recent diversion measurements plus the nature and extent of the recommended surface water rights resulted in the preliminary conclusion that present diversions are more than the 45,000 acre-feet estimate. Allowable additional diversions that are not currently exercised could further add to the volume difference. As such, an Equitable Adjustment assessment is required.

To assist in refining diversion estimates, the United States and State of Idaho funded an expanded ditch diversion measurement program for essentially the July to September period in the middle (Wolverine Creek to Blackfoot Dam) and upper (above Blackfoot Dam) Blackfoot River watersheds in water year 2007. This supplemental measurement program provides important additional information on water use throughout the basin. Unfortunately, water year 2007 was a low flow year but the new diversion records allow meaningful assessments to be completed relative to the nature and extent of actual diversions taking place on the ground.

In 2008 IDWR continued its effort to improve data collection and interview water users to expand the understanding of water use by the NS Users in the Blackfoot River basin. Once again, 2008 was not a normal year and the cool late spring minimized the need to divert water for irrigation in the middle and upper Blackfoot River watersheds until later in the year and some water users with water rights whose season of use ends July 1 may not have diverted at all in 2008. In spite of the unusual conditions, the additional data and knowledge gained by IDWR make it possible to further refine the annual diversion volume of the NS Users.

A Technical Team (Team) of federal, state and tribal experts was established to facilitate the development of defensible estimates of recent diversions by the NS Users under dry and average year conditions. This Team was secondarily charged with addressing the effects of these diversions on water supplies available to be diverted from the North and Main Canals of the federal Fort Hall Irrigation Project. These results were to be compared to the 45,000 acre-foot Agreement base case assumptions. The Team was also responsible to identify key issues that must be further researched to facilitate final conclusions to be developed relative to the nature and extent of the Equitable Adjustment.

TECHNICAL APPROACH

Background Information

The 45,000 acre-foot diversion limit is for the entire Blackfoot River basin. However, for ease of assessment, the area of study was divided into a lower basin (downstream of the confluence of Wolverine Creek with the Blackfoot River to the mouth of the Blackfoot River) and the middle and upper basins. Historic diversions (2004 to 2008) are recorded for the majority of the lower basin while only limited diversion data are available for the middle and upper basins.

Currently irrigated acreage and ditch delivery information is available for the lower basin and additional information from 2008 is available to aid with estimates of current, recent and long-term idle acreage and associated water delivery infrastructure for the middle and upper basins. The IDWR Directors Report and associated exhibits were of major assistance.

Evapotranspiration and net irrigation requirement estimates for key crops in the area of study are available from the State of Idaho website. These values are determined to be sufficient for use in the study.

Lower Basin

Representatives from the Team had previously developed exhibits of surface and groundwater service areas and associated delivery systems for the lower basin service area. Several work sessions have been completed among the Team members and with IDWR to review the accuracy of the detailed exhibits and to verify the locations of diversions, measurement points and return flow nodes. Improvements have been made to maps and estimates of water diversions. The Team concluded that all Northside Water User diversions below the USGS, at Shelley, gaging station provided essentially no return flow above the Fort Hall Irrigation Project North and Main Canal diversions. As such, it was concluded that diversions equal depletions in the lower basin study area.

The Team then analyzed the IDWR diversion measurement records from 2004 to 2008. The Team is in general agreement with the recorded diversion values. The measurement accuracy is felt to be improving over time. There are some questions on selected power record calculations for diversions but these values are associated with minor water users. There is also a question as to whether the Younnie Ditch diversions are fully accounted for. These values can be refined with additional study.

Middle and Upper Basins

Extensive work was required to identify lands that are currently or have been recently irrigated. Points of diversion and conveyance systems were also mapped. Long-term idle lands were also identified. These are tracts that currently have non-functional irrigation systems and appear to be abandoned. Some of these lands fall within IDWR recommended water rights places of use. As such, they needed to be documented.

The places of use relative to the state recommended water rights base were used to establish the initial study boundaries. Aerial photo coverage for the 1980, 1987, 1988, 1992, 2004, and 2006 time periods were used to photo-interpret the irrigated land base. Most of the noted photography was stereoscopic and observed under a 3X ocular Lietz, MS-27 stereoscope. This markedly improved the quality of irrigated land mapping. This range of aerial photo coverage represented dry and average year runoff time frames and coincided with work products used by IDWR to develop conclusions on recommended water rights. Members of the Team performed aerial over-flights of the entire study area in late June and late July of 1999. Notes from these observations were valuable in confirming the photo interpretation. Several on-ground field investigations were completed by Team members over the last decade that further assisted in refining the mapping results.

Preliminary mapping of the historically irrigated land base was submitted to IDWR to assist them in the 2007 diversion measurement program. IDWR developed a numerical code that tied each measured diversion to a specific water right and/or owner. Extensive irrigated land tracts were found that had no recommended water rights plus multiple areas where none or only a portion of the recommended water right service area was irrigated. Further, the IDWR measurement sites (due to time/budget constraints) provided only partial coverage of all identified diversions. As such, diversion quantity estimates had to be independently developed for a large number of sites. These volumes were established from similar diversions that were measured.

Therefore, 30 comprehensive irrigated land maps were developed for the middle and upper basin study areas. Historically irrigated lands were identified as being either actively irrigated or long-term idle. Active irrigation was further divided into two categories based on water availability. Use was made of IDWR diversion records and monthly stream flow measurements made by BIA for most of the tributaries to the Blackfoot River in the area of study to evaluate supply. IDWR's interviews with several of the major water users and these inputs assisted in interpreting the diversion measurement data and aerial photo interpretation results. The first active irrigation category identifies those lands that would generally receive water during a dry year. The second category defined additional lands that appeared to be irrigated during average runoff periods. All of these irrigated land types were quantified.

A schematic accompanied each of the 30 irrigated land maps. For each primary point of diversion, summaries were presented relative to estimated active irrigation uses and associated recommended water right acreage, peak use rates and periods of use. The points of diversion were numbered so that they could be cross referenced to the IDWR diversion measurement program results for the 2007 irrigation season. Sources of supplies were documented so that the respective streams could be correlated to the monthly BIA stream gaging results.

An additional set of maps has been prepared reducing the number of categories mapped. The revised maps show land identified as being irrigated with a recommended water right, land identified as being irrigated without a recommended water right, and land identified as not recently irrigated with a recommended water right. This change in approach was, in part, an attempt to develop a single annual diversion amount rather than an average year amount and a dry year amount.

The Team then completed an assessment of diversion quantities for each drainage in the Upper and Middle Basins by point of diversion. The initial step was to develop estimates of diversion quantities for each point of diversion measured in dry year 2007. Unit diversions for estimated actively irrigated acreage were then established. These results were compared with calculated crop consumptive irrigation requirements for selected crops, periods of use and estimated ditch efficiencies. Cross checks were made against BIA monthly stream flow measurements in the drainage plus levels of water use identified on the aerial photographic coverage. The IDWR measured results seemed reasonable for a dry year. Using the same informational sources plus the results of the limited interviews with the water users in 2007, estimates were made of anticipated water diversions for estimated active irrigation in average years. Results were reviewed for reasonableness. Those diversions which were not measured in 2007 were correlated to similar diversions and irrigation use levels that had been measured by IDWR.

Most of the unit diversions were less than 2.5 acre-feet per estimated actively irrigated acre. As such, diversions were projected to be fully depleted. For service areas with larger diversions, depletions were estimated based on the crop consumptive irrigation requirement (generally grass pasture) plus irrecoverable losses of one-third of the potential return flow. An analysis was undertaken to evaluate whether adjustments should be made to crop water requirements relative to elevation. Elevation was documented as having only minor differences in the values calculated in the middle and upper basins and adjustments were not implemented.

RESULTS

Lower Basin

As previously documented, diversions were estimated to be depletions. Water year 2007 was designated as a dry year and diversions/depletions were measured at about 41,800 acre-feet. Water year 2006 was identified as being representative of an average year with diversion/depletions measured at about 43,700 acre-feet. These values may be adjusted slightly upward due to accuracy issues with certain measurements.

Diversions and uses are better understood and the team and IDWR have some confidence all diversions in the lower basin have been identified and accounted for. The diversion amounts noted above were actual diversions without regard to limitations due to diversion limits within the underlying water rights. The five year average diversions in the lower basin for 2004 through 2008, when capped by the water right diversion rate¹, is 39,092 acre-feet per year.

¹ The diversion rate cap was applied by multiplying the water right(s) diversion rate by a 153 day season of use to determine the maximum annual diversion volume. If this amount was less than the actual diversion the cap amount was used to determine the 5 year average instead of the actual diversions. Actual diversions will be regulated by the Watermaster in the future to limit the diversion of Blackfoot River natural flow to the amount of the water right.

Middle and Upper Basins

Based on dry year calculations, there are currently about 6,400 acres of actively irrigated land that diverts about 12,100 acre-feet of water, of which 10,700 acre-feet are estimated to be depleted. Under average year conditions, there are an estimated 7,800 irrigated acres with diversions and depletions of 16,800 acre-feet and 15,200 acre-feet, respectively. The actively irrigated acreage within the places of use of the recommended water rights, in an average year, is several thousand acres less than the IDWR recommended irrigated water rights acreage.

These estimates have been refined to an annual diversion amount of 17,407 acre-feet per year for currently irrigated acreage. This diversion volume is for existing irrigated acres with currently recommended water rights and those irrigated lands for which the owner is actively pursuing establishing the water right.

Total Basin

In the 1990 Agreement, the North Side Users were estimated to divert no more than 45,000 acre-feet per year. Based on the preliminary findings to date, the diversions in a dry year are 53,900 acre-feet and they increase to 60,500 acre-feet in an average year. These totals are based on an assessment of actively irrigated lands which was independent of the IDWR water right recommendations. Therefore, the totals include some irrigated lands that are outside the places of use for recommended water rights and exclude lands with recommended water rights found to not be actively irrigated.

As noted above, the annual diversion volume for the basin has been revised to 56,499 acre-feet per year.

These results establish the need to negotiate an Equitable Adjustment for the Tribal Water Right from the Blackfoot River. There are a number of additional key issues, most of which have been addressed by the Parties such that the Equitable Adjustment calculation can be finalized. These elements and their proposed resolution are addressed in the following section.

UNRESOLVED ISSUES

The Team has identified a number of issues that must be resolved by the Parties before a final Equitable Adjustment quantity can be established. They are summarized below.

- 1. Should irrigated acreage that extends outside recommended water rights boundaries be included?** There are extensive acres in the lower, middle and upper Blackfoot basins that are irrigated in dry or average years that are not included in a Director's recommended water right. Under the terms of the Agreement, we understand that these acres are not eligible for the benefit of the priority protection and should be excluded. IDWR should make every effort to contact these water users and let them know the consequences of their decision to not have a water right decreed for all their irrigated land in the SRBA. It is assumed that these owners will take the necessary steps to establish these water rights. If the acres are subsequently covered by a water right decreed in the SRBA and otherwise meet the terms of the Agreement, the acreage will

need to be included. As previously noted, the diversions for these lands are presently included in the current Blackfoot River basin diversion totals.

The irrigated acres in this category have been discussed with IDWR and many of the land owners were contacted. A few owners are taking active measures to have their water rights corrected to include the acreage shown to be irrigated. The diversion amounts for these acres are included in the annual total diversion volume. Those acres that the owners are not taking active measures to include in a valid water right are not included in the annual volume. The Watermaster will be responsible for ensuring lands without valid water rights will not be irrigated in the future.

2. **Should the significant acreage within the recommended water rights boundaries that shows no recent irrigation be included? If not, should the recommended water rights be reduced?** There are several thousand acres in the lower, middle and upper Blackfoot basins that are covered by recommended water rights that appear to have been idle for decades. It is assumed IDWR had ample evidence of an existing water right for these rights to be recommended to the SRBA court and to be eligible for the priority protection benefit of the Agreement. These acres should be monitored, preferably by IDWR, after entry of the partial decree and, at the end of 5 years of non-use, a forfeiture proceeding should be initiated to minimize the anticipated burden placed on water users to accomplish the Equitable Adjustment. If these tracts resume irrigation, then diversion quantities would increase and a modification must be made to the Equitable Adjustment.

There are an estimated 1,900 acres of land with a recommended water right that are not currently being irrigated noted as "Inactive Recommended Right" on accompanying maps. The proposal is to verify this acreage and estimate a water duty per acre that will be added to the annual diversion volume should any of these lands become actively irrigated. Irrigation of any of these acres in the future should not result in reinitiation of a formal procedure but rather the application of the previously established water duty to the number of acres brought into irrigation.

3. **Should CRP lands in areas of firm water supplies be included or not?** There are *several* hundred acres of CRP lands in the lower, middle and upper Blackfoot River basins. These lands are included in the current diversion totals. It is recommended that these acres be extracted and a re-opener provision be included in the Equitable Adjustment to accommodate these lands should they go back into production.

The recommendation for these rights remains the same. Some, if not all, of these water rights are in the water supply bank and some action with IDWR will be required to put them back to use. The team anticipates the water duties anticipated in Item 2. may be applicable to these lands as well.

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?** There are several hundred acres of land that fall into this category. These tracts fall into Issue No 2 above. They should, however, be closely monitored by IDWR since they are associated with a firm water supply. The water rights associated with these lands are not eligible for

transfer until they have been put fully back into use and the Equitable Adjustment volume modified.

See also Item 2. above.

5. **How should lands that have July 1 cutoff dates but divert water during the full irrigation season be addressed?** There are a few hundred acres in the middle and upper basins that have a season of use ending on July 1 but continue to divert water the full irrigation season. It is recommended that these water users be contacted by IDWR and be given the opportunity to provide proof that would permit their water rights to be decreed as full season water rights. If the water users fail to or are unable to provide such proof, the water use must be cut back to be within the decreed parameters of the right and enforced accordingly. If a full season right is obtained, the Equitable Adjustment quantity must be modified.

Water rights with the July 1 cutoff date will be regulated to that season of use. If claimants are successful in obtaining a longer season of use for any of their rights the Equitable Adjustment quantity must be modified.

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?** There are several thousand acres in the lower Blackfoot basin currently being irrigated by ground water but have available a surface water right from the Blackfoot River that can be used if ground water is no longer utilized. These lands were not considered in the Agreement and are not protected. It is recommended that these acres not be included at this time but a re-opener provision be included in the Equitable Adjustment to accommodate these lands should they go back to using Blackfoot River water for irrigation instead of ground water.

This recommendation remains the same. Most of the lands are covered by surface water rights whose annual diversion is presently limited by the diversion rate of their respective water rights. If additional acres are to be served under these water rights no additional diversion volume would be available under the water right. At least two water users presently using ground water have their own surface water rights, one from Sand Creek and the other from the Blackfoot River, and could increase diversions in the lower basin if they reverted from ground water back to surface water.

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?** It is recommended that this issue be dismissed because it either has no effect or minimal effect on the need for or the amount of Equitable Adjustment.

This recommendation remains the same with the additional provision that the Watermaster will need to account for Snake River water diverted by the various canals. Since a number of canals will be limited by the diversion rate of their Blackfoot River water right, any additional diversion of Snake River water will require the Watermaster be certain Snake River water is actually being provided from the Snake River.

It is proposed that these areas of concern be immediately addressed by the respective Parties so that final Equitable Adjustment values can be established. The Team recommends a meeting with IDWR to go over our findings and then a joint meeting of the Parties to establish that there is a clear understanding of these key seven (7) issues need resolution. A work plan can then be established to finalize the work product.

This report is being updated with the benefit of input from IDWR and is intended to aid the Parties prepare for the July 30, 2008 Status Conference. The technical team does propose to make one final revision to the annual diversion quantities when the final 2008 diversion quantities are available. Any adjustment is not anticipated to be large but would improve the confidence in the final total annual diversion volume quantity. Additionally, there are currently efforts by some claimants to modify their recommendations that may be completed in the next few months. The revised report could include any changes in the annual diversion volume based upon successful modifications to recommended rights that are completed over the next few months.

2008 AUG -5 AM 10:34

5th Judicial District-SRBA
TWIN FALLS CO., IDAHO
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
	)	(Gardners)
Case No. 39576	)	
	)	2nd MODERATED SETTLEMENT
	)	CONFERENCE REPORT

A second moderated settlement conference in two of the 255 Basin 27 "volume" or "equitable adjustment" subcases was held on July 30, 2008, at the Idaho Water Center, Boise, Idaho. The conference began at 10:15 a.m. and ended after 1:00 p.m. – almost three hours non-stop this time. Attached is the conference sign-in sheet. Claimant Leon J. Gardner participated by telephone briefly and Brett Bovee, consultant to the Tribes, participated by telephone the entire conference.

The parties' experts met informally the week before the conference and agreed on the amount of water needed in the upper and middle parts of the Blackfoot River Basin – 56,500 AFY based on a 5 year average of actual usage. However, the United States raised its concerns of accounting for possible future uses of water in those basins – on CRP and set aside lands. IDWR Director David R. Tuthill, Jr., gave an ARC View presentation on his concerns with accounting for return flows in high meadows above the Blackfoot Reservoir.

The State and the Tribes suggested now was the time for the parties to begin drafting mechanisms to "re-open" any equitable adjustment to Tribal water rights plus administration (monitoring and measuring). The United States agreed and now the issue is whether the adjustment will be done based on one number or annually.

The parties agreed the next steps in negotiations are: 1) integration of return flows (depletion) with the current MIKE Basin Model and 2) examination of the results by the United States' / Tribes' technical teams by the end of the irrigation season (October 31st).

IDWR announced it would soon send out proposals to the parties concerning how best to notify the claimants of errors in how certain uses of water were originally recommended.¹ It will also propose how best to submit its amended recommendations to the SRBA Court.

DATED August 5, 2008.



TERRENCE A. DOLAN
Settlement Moderator
Snake River Basin Adjudication

¹ Those categories of uses included: 1) instream stockwater with irrigation, 2) irrigation with stockwater and 3) stockwater only.

MANDATORY SETTLEMENT CONFERENCE

July 30, 2008, 10:00 a.m.

Idaho Water Center, Boise, ID

Terrence A. Dolan, Settlement Moderator

SIGN-IN SHEET

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CERTIFICATE OF MAILING

I certify that a true and correct copy of the 2ND MODERATED SETTLEMENT CONFERENCE REPORT was mailed on August 05, 2008, with sufficient first-class postage to the following:

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I certify that on the 27th day of August 2008, I served a true and correct copy of the foregoing **GOVERNMENTAL PARTIES JOINT STATUS AND CASE MANAGEMENT REPORT** as indicated:

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