



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

March 19, 2009

Dwight E. Baker
266 West Bridge
Blackfoot, ID 83221

RE: SRBA Subcase Nos. 27-2069, 27-2075, 27-12142 (Lake)

Dear Mr. Baker:

Enclosed are proposed stipulations to partially resolve the objections filed by the United States of America ("United States") and Mr. Dennis Lake to the above referenced water rights. These are only partial stipulations because the State of Idaho and the Idaho Department of Water Resources (IDWR) continue in settlement negotiations with the United States and the Shoshone-Bannock Tribe ("Tribe") regarding the volume objections filed by the United States and the Tribe in Basin 27. The settlement negotiations involve implementation of the Fort Hall Settlement Agreement and directly implicate the objections filed by the United States and the Tribe. The parties participating in the settlement discussions believe the negotiations are making progress and hope a settlement will be reached that negates the need for litigation over the irrigation volume issue.

To assist you in your review of the stipulations, I detail the changes in the recommendations below:

27-2069

IDWR received a proposed stipulation from the Tribe to resolve 27-2069. The Tribe's stipulation included a proposed volume for the irrigation element of the water right. As mentioned above, negotiations continue regarding the irrigation volume issue so IDWR has not included a volume in IDWR's proposed stipulation.

Furthermore, the Tribe's proposed stipulation sought to modify the place of use by deleting some acres and adding acres in other quarter-quarter sections. IDWR can agree to delete acres. IDWR's proposed stipulation submitted with this letter includes the proposed reductions in acres and a corresponding reduction in quantity. However, court rules do not allow us to recommend acres in a place of use that has not been documented through a claim. If Mr. Lake would like to add acres in unclaimed quarter-quarter sections, he first needs to seek leave

of the court to amend his claim to add the quarter-quarter sections. Should the court grant the motion to amend the claim, IDWR will likely be able to add the additional acres sought.

Finally, the Tribe's proposed stipulation included an agreement to not move the place of use for this right. IDWR cannot agree to the inclusion of this type of language in the decree. However, IDWR can agree to include a comment that references a private agreement that has been recorded. Please see the proposed stipulation for 27-2075 for an example of the type of comment that is acceptable to IDWR. If Mr. Lake and the United States enter into another agreement like they did for 27-2075, IDWR would be willing to include a similar comment in this water right.

27-2075

IDWR has included a comment that references Mr. Lake's private agreement with the United States. This should resolve the objection of the United States as to the validity of the water right.

27-12142

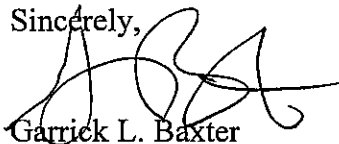
The United States objected to 27-12142 claiming the place of use includes federal land. The attached stipulation should remove the federal lands from the place of use element. Because the total number of irrigated acres has been reduced, there has been a corresponding reduction quantity of water. This should resolve the objection of the United States as to the number of acres irrigated.

In response to Mr. Lake's objection that the wrong county is identified for the point of diversion, Bingham County has been struck out and Caribou County has been inserted.

Mr. Lake also objected to the priority date for 27-12142, claiming that the priority date should be 1918 instead of 1954. IDWR continues to recommend 1954 as the priority date because the three affidavits submitted to IDWR only establish proof of beneficial use dating back to 1954. As such, the Department has not changed the recommended priority date in the stipulation. Additional proof of beneficial use dating back to 1918 is needed for IDWR to change its recommendation. I have included language in the stipulation coversheet making it clear that Mr. Lake's objection to priority date is not resolved by the stipulation.

In conclusion, please review the stipulations with your client. If acceptable, please sign the coversheets and initial each page of the recommendations and then return to me. I will then ensure that they are forwarded to the rest of the parties for signature. If you should have any questions or comments, please don't hesitate to contact me at 287-4811.

Sincerely,



Garrick L. Baxter
Deputy Attorney General, IDWR

cc: Denise Kidman
Jeanette Wolfley
Peter Monson
David Barber

In Re SRBA	)	Subcase No. 27-2069
	)	
Case No. 39576	)	
	)	STIPULATION TO RESOLVE
	)	OBJECTION
	)	

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OBJECTORS:

Peter C. Monson, USDOJ Date
Attorney for BIA

Jeanette Wolfley Date
Attorney for Shoshone-Bannock Tribes

RESPONDENT:

David J. Barber Date
Attorney for State of Idaho

IDWR Concurrence:

Denise Kidman Date
Water Resource Agent

Garrick L. Baxter Date
Deputy Attorney General
Attorney for IDWR

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 27-2069

NAME AND ADDRESS: DENNIS M LAKE
830 TABER RD
BLACKFOOT ID 83221

SOURCE: Source: Tributary:
WARM SPRING SINKS

QUANTITY: ~~2.400 CFS~~ 1.26 CFS

PRIORITY DATE: 08/30/1918

POINT OF DIVERSION: ~~T06S R42E S9 NWSE Within CARIBOU County~~
T06S R42E S9 SENWSE Within CARIBOU County

PURPOSE AND PERIOD OF USE:	Purpose of use	Period of use:	Quantity:
	IRRIGATION	04/15 10/31	~~2.400 CFS~~ <u>1.26 CFS</u>

PLACE OF USE:	IRRIGATION	within CARIBOU County
	~~T06S R42E S09 SWSW 39.8~~	<u>T06S R42E S09 SESW 28.6</u>
	~~T06S R42E S09 SESW 39.8~~	<u>T06S R42E S09 SWSE 34.6</u>
	~~T06S R42E S09 SWSE 39.8~~	

<u>63.2 ACRES TOTAL</u>	~~119.4 ACRES TOTAL~~
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OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

CERTIFICATE OF MAILING

I certify that on _____, 2009, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copies to:

SHOSHONE-BANNOCK TRIBES
Represented by:
JEANETTE WOLFLEY
SPECIAL COUNSEL
SHOSHONE-BANNOCK TRIBE
202 N. ARTHUR
POCATELLO, ID 83202

STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIV. CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
P.O. BOX 44449
BOISE, ID 83711-4449

UNITED STATES OF AMERICA
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

DIRECTOR OF IDWR
P.O. BOX 83720
BOISE, ID 83720-0098

DENNIS M. LAKE
Represented by:
DWIGHT E. BAKER
266 WEST BRIDGE
BLACKFOOT, ID 83221

Signature of person or attorney mailing the form

**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 No. 27-2075
	)	
Case No. 39576	)	
	)	STIPULATION TO RESOLVE
	)	OBJECTION
	)	

This form is used to report the stipulated elements of one water right acquired under state law and/or one federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; that they have been served with sufficient process, according to the law; and that they have appeared, prosecuted, and defended their positions with regard to this water right dispute.

The claimant and IDWR agree and stipulate that the elements of this water right should be described per the attached and that this stipulation resolves the claimant's objection to the Director's Report. **The parties and IDWR acknowledge that the objections to the Director's Report filed by the Shoshone-Bannock Tribe concerning an annual irrigation diversion volume and the period of use, and the Bureau of Indian Affairs objections concerning an annual irrigation diversion volume.** The parties and IDWR have further indicated their concurrence by initialing the attached page.

CLAIMANT/RESPONDENT:
Dennis M. Lake

Dwight E. Baker	Date
Attorney for Claimant/Respondent	

OBJECTORS:

Peter C. Monson, USDOJ Date
Attorney for BIA

Jeanette Wolfley Date
Attorney for Shoshone-Bannock Tribes

RESPONDENT:

David J. Barber Date
Attorney for State of Idaho

IDWR Concurrence:

Denise Kidman Date
Water Resource Agent

Garrick L. Baxter Date
Deputy Attorney General
Attorney for IDWR

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 27-2075
NAME AND ADDRESS: DENNIS M LAKE
830 TABER RD
BLACKFOOT ID 83221
SOURCE: Source: Tributary:
SPRINGS SINKS
QUANTITY: 0.330 CFS 0.000 AFY
PRIORITY DATE: 09/02/1919

POINT OF DIVERSION:

T06S R42E S9 NENWSW Within CARIBOU County
T06S R42E S9 NENWSW Within CARIBOU County
T06S R42E S9 SENWSW Within CARIBOU County

PURPOSE AND PERIOD OF USE:	Purpose of use	Period of use:	Quantity:
	IRRIGATION	04/15 10/31	0.330 CFS

PLACE OF USE: IRRIGATION within CARIBOU County
T06S R42E S09 NESW 2.5
T06S R42E S09 NWSW 14.0

16.5 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This water right is subject to a private agreement entered into between the United States of America and Dennis M. Lake and recorded on May 21, 2008 in the Caribou County Recorder's Office as Instrument Number 180662.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

STIPULATION

27-02075

CERTIFICATE OF MAILING

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Represented by:
JEANETTE WOLFLEY
SPECIAL COUNSEL
SHOSHONE-BANNOCK TRIBE
202 N. ARTHUR
POCATELLO, ID 83202

STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIV. CHIEF
STATE OF IDAHO
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UNITED STATES OF AMERICA
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US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

DIRECTOR OF IDWR
P.O. BOX 83720
BOISE, ID 83720-0098

DENNIS M. LAKE
Represented by:
DWIGHT E. BAKER
266 WEST BRIDGE
BLACKFOOT, ID 83221

Signature of person or attorney mailing the form

**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 No. 27-12142
	)	
Case No. 39576	)	
	)	STIPULATION TO RESOLVE
	)	OBJECTION
_____	)	

This form is used to report the stipulated elements of one water right acquired under state law and/or one federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; that they have been served with sufficient process, according to the law; and that they have appeared, prosecuted, and defended their positions with regard to this water right dispute.

The claimant and IDWR agree and stipulate that the elements of this water right should be described per the attached and that this stipulation resolves the claimant's objection to the Director's Report. **The parties and IDWR acknowledge that the objections to the Director's Report filed by the Shoshone-Bannock Tribe and the Bureau of Indian Affairs objections concerning an annual irrigation diversion volume are still outstanding, as well as Mr. Lake's objection to the priority date.** The parties and IDWR have further indicated their concurrence by initialing the attached page.

CLAIMANT/OBJECTOR:

Dennis M. Lake

Dwight E. Baker Date
Attorney for Claimant/Objector

OBJECTORS:

Peter C. Monson, USDOJ Date
Attorney for BIA

Jeanette Wolfley Date
Attorney for Shoshone-Bannock Tribes

IDWR Concurrence:

Denise Kidman Date
Water Resource Agent

Garrick L. Baxter Date
Deputy Attorney General
Attorney for IDWR

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 27-12142

NAME AND ADDRESS: DENNIS M LAKE
830 TABER RD
BLACKFOOT ID 83221

SOURCE: Source: Little BLACKFOOT RIVER Tributary: BLACKFOOT RIVER

QUANTITY: 0.580 CFS ~~0.650 CFS~~

PRIORITY DATE: 04/15/1954

POINT OF DIVERSION: T06S R42E S10 NWSW Within CARIBOU County ~~Within Bingham County~~

PURPOSE AND PERIOD OF USE:	Purpose of use IRRIGATION	Period of use: 4/15 07/01	Quantity: <u>0.580 CFS</u> ~~0.650 CFS~~
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PLACE OF USE: IRRIGATION within CARIBOU County ~~within Bingham County~~

~~T06S R42E S09 NESE 2.2~~	T06S R42E S09 SESE 29.0
~~T06S R42E S16 NENE 1.6~~	
<u>29 ACRES TOTAL</u>	~~32.8 ACRES TOTAL~~

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

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DIRECTOR OF IDWR
P.O. BOX 83720
BOISE, ID 83720-0098

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Signature of person or attorney mailing the form

