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July 27, 2009

✓ Garrick Baxter
Deputy Attorney General
Idaho Department of Water Resources
322 E Front Street
PO Box 83720
Boise, ID 83720-0098

Andrea Courtney
Deputy Attorney General
Idaho Department of Water Resources
322 East Front Street
PO Box 83720
Boise, ID 83720-0098

Re: Snake River Basin Adjudication
Dennis Lake/Subcases 27-2069, 27-2075 and 27-12142
B & H Matter No. 5354

Dear Ms. Courtney and Mr. Baxter:

I am responding belatedly to Mr. Baxter's letter of March 19, 2009 and the three proposed stipulations he sent with that letter, Ms. Courtney's telephone call or e-mail of several weeks ago, and Peter Monson's recent e-mail.

I am not certain that I understand exactly what steps we need to take to settle the issues that we can settle with respect to Dennis Lake's water right 27-2069.

I therefore suggest the following:

I have prepared a proposed "Water Right Agreement" which I anticipate will be recorded in Caribou County, as we did with 27-2075.

My files reflect that Mr. Barber on behalf of the state of Idaho, Jeanette Wolfley on behalf of the Shoshone-Bannock Tribes, and you on behalf of the Idaho Department of Water Resources, did not believe that it was appropriate for their respective clients to sign the Water Right Agreement; only Mr. Monson signed the document for 27-2075, which was ultimately recorded.

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Accordingly, I have prepared the proposed Water Right Agreement for 27-2069 for your review and comment. I have forwarded the original to Mr. Monson for his execution and return, and we will see that the document is promptly recorded. Please advise immediately if there is any objection to this procedure. I will distribute the recorded document to all whose names follow.

If I understand the procedure we followed previously, you (IDWR) then assisted in preparing an Amended Notice of Claim to a Water Right, which I anticipate you would assist with again. I also note there was a map attached to that Amended Water Right (27-2075); I do not know that I have a map which is appropriate for that purpose, although I do have some aerial photos.

With respect to 27-2069, there is a reduction of acreage from 120 acres to 89.2 acres, which is acceptable to Mr. Lake. However, there is also a reduction in cfs from 2.4 to 1.8. To effectively and efficiently irrigate the irrigable acres in question, it is necessary to divert the entire spring, and hence Mr. Lake believes to right to divert ought to include the entire 2.4 cfs previously claimed. This is perceived to be a question of efficient diversion, and not a question of consumptive use. As a practical matter, the overflow flows into the Blackfoot Reservoir, whether the spring is diverted or not. He therefore desires to preserve his claim for 2.4 cfs, recognizing that diversion rate exceeds the usual .02 cfs/acre duty of water.

I assume the effective approach ought to be to modify the Stipulation to reserve Mr. Lake's volume objection, although I would appreciate any different suggestion as to an efficient way to approach the matter.

I understand the Amended Water Right then would be submitted to all parties with the Standard Form 5 settlement document, which I anticipate would be signed by attorneys for each of the involved parties.

I am enclosing an executed original of the Stipulation for 27-2075, as the reserved issue there is the only issue of which I am aware at the present time.

With respect to 27-12142, the Stipulation reserves Mr. Lake's objection as to a priority date of 1918 as opposed to 1954.

The proposed water right has been reduced from 32.8 to 29.0 acres, as a result a reduction of 2.2 acres apparently owned by the BLM. Mr. Lake has no objection to that reduction. The overriding volume objection by Shoshone-Bannock Tribes and the Bureau of Indian Affairs obviously remains an issue. The water right reduction to .58 cfs is acceptable. I have therefore executed the Stipulation for 27-12142. I believe we have previously agreed any reference to a Caribou County right is in error, as the water right point of diversion and place of use are both in Bingham County. I am uncertain as to whether the proposed water right accompanying the stipulation will be further amended to reflect that understanding. Subject to that concern, I have executed the stipulation and forwarded with this letter to Mr. Baxter.

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If this proposal is incorrect in any way, I assume you, or the persons to whom I have forwarded a copy, will draw any oversight or errors to my attention.

I look forward to your response.

Very truly yours,

BAKER & HARRIS

A handwritten signature in cursive script, reading "Dwight E. Baker".

Dwight E. Baker

DEB/lis

cc: Dennis Lake
Peter C. Monson
David Barber
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 No. 27-2075

Case No. 39576

**STIPULATION TO RESOLVE
OBJECTION**

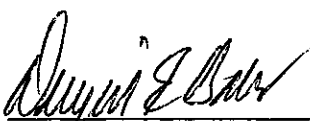
This form is used to report the stipulated elements of one water right acquired under state law and/or one federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary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

7-20-09

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

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. 27-12142
	)	
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

 7-10-09
Dwight E. Baker Date
Attorney for Claimant/Objector

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 NWSWSW Within CARIBOU County ~~Within Bingham County~~

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

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>	~~22.8 ACRES TOTAL~~

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 - Beneficial Use

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

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:

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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

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

WATER RIGHT AGREEMENT

This Agreement to be effective the 8th day of June 2009, by and between Dennis M. Lake, the "Claimant", and the United States Department of Justice.

WITNESSETH:

1. Lake is the owner of the NE $\frac{1}{4}$ SW $\frac{1}{4}$; NE $\frac{1}{4}$ SE $\frac{1}{4}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$; NW $\frac{1}{4}$ SE $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 9, Township 6 South, Range 42 East, Caribou County, Idaho; and
2. Lake is the owner of water right 27-2069 which is appurtenant to a portion of the above described property; and
3. Certain issues have been raised in the Snake River Basin Adjudication between the parties pertaining to said water right; and
4. The parties have reached an agreement with respect to said issues.

IT IS THEREFORE Stipulated as follows:

1. The parties acknowledge the current source of water right 27-2069 is from a spring which arises on the Claimant's property, and sinks back into the ground before ever reaching a waterway as such.
2. The parties agree this water right, from these sources, may never be conveyed, sold, transferred or used other than in the place of use described in this water right.

CLAIMANT

Dennis M. Lake

STATE OF IDAHO

County of Bingham

)
)
) ss:
)

On this ____ day of July, 2009, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Dennis M. Lake, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

Notary Public for Idaho
Residing at Blackfoot
My Commission Expires _____

COPY