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DEC 04 2009

DEPARTMENT OF
WATER RESOURCES

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. 27-16C; 27-7285; 27-7320 and
	)	27-7308
	)	
Case No. 39576	)	INFORMATIONAL FILING REGARDING
	)	STATUS OF FEDERAL LEGISLATION
	)	
	)	
	)	

The Shoshone-Bannock Tribes submit this Informational Filing Regarding the Status of Federal Legislation involving the above-captioned subcases.¹ The Court has scheduled a trial, on March 8 – 12, 2010, in the subcases relating to the Basin 27 water right claims that include a place of use on Indian lands located on the Fort Hall Reservation (known as the “Boundary subcases”). The Basin 27 water claimants, the United States Bureau of Indian Affairs and the Shoshone-Bannock Tribes (“Tribes”) have been working diligently to draft federal legislation and present to the Idaho Congressional delegation for introduction to the Congress for passage. This federal legislation would resolve the historical land issues resulting from realignment of the

¹ The Tribes and Marion Walker have entered into a lease of the land, and are filing a Stipulation for Dismissal of Standard Form 1 Objection in Subcase 27-16C. The same objection has been made by the Tribes in approximately 59 other Basin 27 subcases, which are not set for trial as they involve other objections related to the absence of an annual volume of diversion.

River by the Corps of Engineers in 1964, and is an essential component to the resolution of the Tribes' objections to the water claims. The parties have made good progress.

In the Spring 2009, following numerous meetings among the Basin 27 landowners, water claimants and Indian landowners, and preparation of maps and exhibits showing land and its owners, the Shoshone-Bannock Tribes presented to Senator Michael Crapo a Discussion Draft of the bill known as the "Blackfoot River Land Settlement Act of 2009" (the "Bill"). This draft Bill was circulated among all the Idaho Congressional delegation and several meetings were held in Washington, D.C. to review and discuss the Bill with Senators Michael Crapo and James Risch, and Representatives Mike Simpson and Walt Minnick. On August 7, Representative Simpson and Legislative Aides from Senator Crapo's office toured the Blackfoot River area with Tribal representatives and non-Indian landowners to fully understand the boundary issues and potential impacts.

Since July, the Bill has undergone legislative legal counsel review by the respective Congressional offices, review by the Department of Justice and the Solicitor's Office at the Department of Interior. On November 2 – 3, 2009, the Tribes met with Senator Crapo, Representative Simpson and Representative Minnick in Washington, D.C., to discuss the progress of the Bill and to urge introduction of it. We advised them that a court trial had been scheduled in the subcases in early March 2010. Senator Crapo committed to introducing the Bill and Representative Simpson committed to introducing the same Bill in the House of Representatives once it was introduced in the Senate.

On November 19, Senators Crapo introduced the Bill. Senator Risch is a co-sponsor. A copy of Senate Bill 2802 is attached. Representative Simpson will be introducing a companion bill in the House of Representatives. S.2802 will resolve the land ownership issues on both sides

of the realigned Blackfoot River by extinguishing title to the non-Indian owned lands on the south side (Fort Hall Reservation side) with the Tribes gaining ownership, and the title to the Indian owned lands on the north side being extinguished with the non-Indians gaining ownership. The legislation also compensates the Indian and non-Indian landowners for years of trespass and for the value of their lands, which results in a fair and final settlement of all claims arising from the controversy. This means that those non-Indians who made water claims that included a place of use on the south side of the Blackfoot River or Indian lands will no longer own those lands and thus will not have a water claim for those lands. Once the legislation is passed, the Tribes will dismiss their current related place of use objections filed in the subcases.

The Tribes, non-Indian and Indian landowners are very pleased that the federal legislation has been introduced into the Congress. Thus far, this legislation has been non-controversial and is expected to move along smoothly in the Congress.

Respectfully submitted this 2nd day of December, 2009.



Jeanette Wolfley
Counsel for Shoshone-Bannock Tribes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of December, 2009, I caused to be mailed postage prepaid, a true and correct copy of the INFORMATIONAL FILING REGARDING STATUS OF FEDERAL LEGISLATION to the following:

Original to:

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

Copies to:

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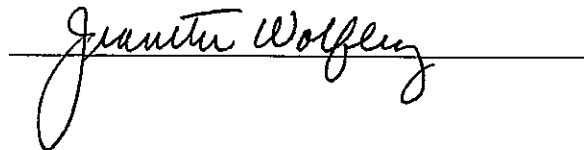
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Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449

A handwritten signature in cursive script, reading "Jeanette Wolfley", is written over a horizontal line.

111TH CONGRESS
1ST SESSION

S. 2802

To settle land claims within the Fort Hall Reservation.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To settle land claims within the Fort Hall Reservation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Blackfoot River Land
5 Settlement Act of 2009”.

6 **SEC. 2. FINDINGS; PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

8 (1) it is the policy of the United States to pro-
9 mote tribal self-determination and economic self-suf-
10 ficiency and encourage the resolution of disputes
11 over historical claims through mutually agreed-upon

1 settlements between Indian tribes and the United
2 States;

3 (2) the Shoshone-Bannock Tribes, a federally
4 recognized Indian tribe with tribal headquarters at
5 Fort Hall, Idaho—

6 (A) adopted a tribal constitution and by-
7 laws on March 31, 1936, that were approved by
8 the Secretary of the Interior on April 30, 1936,
9 pursuant to the Act of June 18, 1934 (25
10 U.S.C. 461 et seq.) (commonly known as the
11 “Indian Reorganization Act”);

12 (B) has entered into various treaties with
13 the United States, including the Second Treaty
14 of Fort Bridger, executed on July 3, 1868; and

15 (C) has maintained a continuous govern-
16 ment-to-government relationship with the
17 United States since the earliest years of the
18 Union;

19 (3)(A) in 1867, President Andrew Johnson des-
20 ignated by Executive order the Fort Hall Reserva-
21 tion for various bands of Shoshone and Bannock In-
22 dians;

23 (B) the Reservation is located near the cities of
24 Blackfoot and Pocatello in southeastern Idaho; and

1 (C) article 4 of the Second Treaty of Fort
2 Bridger secured the Reservation as a “permanent
3 home” for the Shoshone-Bannock Tribes;

4 (4)(A) according to the Executive order referred
5 to in paragraph (3)(A), the Blackfoot River, as the
6 river existed in its natural state—

7 (i) is the northern boundary of the Res-
8 ervation; and

9 (ii) flows in a westerly direction along that
10 northern boundary; and

11 (B) within the Reservation, land use in the
12 River watershed is dominated by—

13 (i) rangeland;

14 (ii) dry and irrigated farming; and

15 (iii) residential development;

16 (5)(A) in 1964, the Corps of Engineers com-
17 pleted a local flood protection project on the River—

18 (i) authorized by section 204 of the Flood
19 Control Act of 1950 (64 Stat. 170); and

20 (ii) sponsored by the Blackfoot River Flood
21 Control District No. 7;

22 (B) the project consisted of building levees, re-
23 placing irrigation diversion structures, replacing
24 bridges, and channel realignment; and

1 (C) the channel realignment portion of the
2 project severed various parcels of land located con-
3 tiguous to the River along the boundary of the Res-
4 ervation, resulting in Indian land being located
5 north of the Realigned River and non-Indian land
6 being located south of the Realigned River;

7 (6) beginning in 1999, the Cadastral Survey
8 Office of the Bureau of Land Management con-
9 ducted surveys of—

10 (A) 25 parcels of Indian land; and

11 (B) 19 parcels of non-Indian land;

12 (7) in 1988, many non-Indian landowners and
13 non-Indians acquiring Indian land filed claims in the
14 Snake River Basin Adjudication seeking water rights
15 that included a place of use on Indian land; and

16 (8) the enactment of this Act and the distribu-
17 tion of funds in accordance with section 12(b) would
18 represent an agreement among—

19 (A) the Tribes;

20 (B) the allottees;

21 (C) the non-Indians acquiring Indian land;

22 and

23 (D) the non-Indian landowners.

24 (b) PURPOSES.—The purposes of this Act are—

1 (1) to resolve the disputes resulting from re-
2 alignment of the River by the Corps of Engineers
3 during calendar year 1964 pursuant to the project
4 described in subsection (a)(5); and

5 (2) to achieve a fair, equitable, and final settle-
6 ment of all claims and potential claims arising from
7 those disputes.

8 **SEC. 3. DEFINITIONS.**

9 In this Act:

10 (1) ALLOTTEE.—The term “allottee” means an
11 heir of an original allottee of the Reservation who
12 owns an interest in a parcel of land that is—

13 (A) held in trust by the United States for
14 the benefit of the Tribes; and

15 (B) located north of the Realigned River
16 within the exterior boundaries of the Reserva-
17 tion.

18 (2) INDIAN LAND.—The term “Indian land”
19 means any parcel of land that is—

20 (A) held in trust by the United States for
21 the benefit of the Tribes or the allottees;

22 (B) located north of the Realigned River;
23 and

24 (C) identified in exhibit A of the survey of
25 the Bureau of Land Management entitled “Sur-

1 vey of the Blackfoot River of 2002 to 2005”,
2 which is located at—

3 (i) the Fort Hall Indian Agency office
4 of the Bureau of Indian Affairs; and

5 (ii) the Blackfoot River Flood Control
6 District No. 7, 75 East Judicial, Black-
7 foot, Idaho.

8 (3) NON-INDIAN ACQUIRING INDIAN LAND.—

9 The term “non-Indian acquiring Indian land” means
10 any individual or entity that—

11 (A) has acquired or plans to acquire In-
12 dian land; and

13 (B) is included on the listed contained in
14 exhibit C of the survey referred to in paragraph
15 (2)(C).

16 (4) NON-INDIAN LAND.—The term “non-Indian
17 land” means any parcel of fee land that is—

18 (A) located south of the Realigned River;
19 and

20 (B) identified in exhibit B of the survey re-
21 ferred to in paragraph (2)(C).

22 (5) NON-INDIAN LANDOWNER.—The term
23 “non-Indian landowner” means any individual who
24 holds fee title to non-Indian land.

1 (6) REALIGNED RIVER.—The term “Realigned
2 River” means that portion of the River that was re-
3 aligned by the Corps of Engineers during calendar
4 year 1964 pursuant to the project described in sec-
5 tion 2(a)(5).

6 (7) RESERVATION.—The term “Reservation”
7 means the Fort Hall Reservation established by Ex-
8 ecutive order during calendar year 1867.

9 (8) RIVER.—The term “River” means the
10 Blackfoot River located in the State of Idaho.

11 (9) SECRETARY.—The term “Secretary” means
12 the Secretary of the Interior.

13 (10) TRIBES.—The term “Tribes” means the
14 Shoshone-Bannock Tribes.

15 **SEC. 4. EXTINGUISHMENT OF CLAIMS AND TITLE.**

16 Except as provided in sections 5 and 6, effective be-
17 ginning on the date on which the amounts appropriated
18 pursuant to section 12 are distributed in accordance with
19 that section, all claims and all past, present, and future
20 right, title, and interest in and to the Indian land and
21 non-Indian land shall be extinguished.

22 **SEC. 5. LAND TO BE PLACED INTO TRUST FOR TRIBES.**

23 Effective beginning on the date on which the amounts
24 appropriated pursuant to section 12 are distributed in ac-
25 cordance with that section to the Blackfoot River Flood

1 Control District No. 7, the non-Indian land shall be con-
2 sidered to be held in trust by the United States for the
3 benefit of the Tribes.

4 **SEC. 6. TRUST LAND TO BE CONVERTED TO FEE LAND.**

5 Effective beginning on the date on which the amounts
6 appropriated pursuant to section 12 are distributed in ac-
7 cordance with that section to the tribal trust fund account
8 and the allottee trust account, the Indian land shall be
9 transferred to the Blackfoot River Flood Control District
10 No. 7 for conveyance to the non-Indians acquiring Indian
11 land.

12 **SEC. 7. TRIBAL TRUST FUND ACCOUNT AND ALLOTTEE**
13 **TRUST ACCOUNT.**

14 (a) TRIBAL TRUST FUND ACCOUNT.—

15 (1) ESTABLISHMENT.—There is established in
16 the Treasury of the United States an account, to be
17 known as the “tribal trust fund account”, consisting
18 of such amounts as are deposited in the account
19 under section 12(b)(1).

20 (2) INVESTMENT.—The Secretary of the Treas-
21 ury shall invest amounts in the tribal trust fund ac-
22 count for the benefit of the Tribes, in accordance
23 with applicable laws and regulations.

24 (3) DISTRIBUTION.—The Secretary of the
25 Treasury shall distribute amounts in the tribal trust

1 fund account to the Tribes pursuant to a budget
2 adopted by the Tribes that describes—

3 (A) the amounts required by the Tribes;
4 and

5 (B) the intended uses of the amounts, in
6 accordance with paragraph (4).

7 (4) USE OF FUNDS.—The Tribes may use
8 amounts in the tribal trust fund account (including
9 interest earned on those amounts), without fiscal
10 year limitation, for activities relating to—

11 (A) construction of a natural resources fa-
12 cility;

13 (B) water resources needs;

14 (C) economic development;

15 (D) land acquisition; and

16 (E) such other purposes as the Tribes de-
17 termine to be appropriate.

18 (b) ALLOTTEE TRUST ACCOUNT.—

19 (1) ESTABLISHMENT.—There is established in
20 the Treasury of the United States an account, to be
21 known as the “allottee trust account”, consisting of
22 such amounts as are deposited in the account under
23 section 12(b)(2).

24 (2) DEPOSIT INTO IIMS.—Not later than 60
25 days after the date on which amounts are deposited

1 in the allottee trust account under section 12(b)(2),
2 the Secretary of the Treasury shall deposit the
3 amounts into individual Indian money accounts for
4 the allottees.

5 (3) INVESTMENT.—The Secretary of the Treas-
6 ury shall invest amounts in the individual Indian
7 money accounts under paragraph (2) in accordance
8 with applicable laws and regulations.

9 **SEC. 8. ATTORNEYS FEES.**

10 (a) IN GENERAL.—Subject to subsection (b), of the
11 amounts appropriated pursuant to section 12(a), the Sec-
12 retary shall pay to the attorneys of the Tribes and the
13 non-Indian landowners such attorneys fees as are ap-
14 proved by the Tribes and the non-Indian landowners.

15 (b) LIMITATION.—The total amount of attorneys fees
16 paid by the Secretary under subsection (a) shall not exceed
17 [] percent of the amounts distributed to the Tribes
18 and the non-Indian landowners under section 12(b).

19 **SEC. 9. EFFECT ON ORIGINAL RESERVATION BOUNDARY.**

20 Nothing in this Act affects the original boundary of
21 the Reservation, as established by Executive order during
22 calendar year 1867 and confirmed by treaty during cal-
23 endar year 1868.

1 **SEC. 10. EFFECT ON TRIBAL WATER RIGHTS.**

2 Nothing in this Act extinguishes or conveys any water
3 right of the Tribes to the River or any other stream, as
4 established in the agreement entitled “1990 Fort Hall In-
5 dian Water Rights Agreement” and ratified by section 4
6 of the Fort Hall Indian Water Rights Act of 1990 (Public
7 Law 101–602; 104 Stat. 3060).

8 **SEC. 11. DISCLAIMER REGARDING CLAIMS OF THE STATE**
9 **OF IDAHO.**

10 (a) FINDINGS.—Congress finds that—

11 (1) the State of Idaho claims ownership of the
12 beds and banks of the River pursuant to the equal
13 footing doctrine of the Constitution of the United
14 States;

15 (2) the United States and the Tribes claim that
16 the northern boundary of the Reservation extends to
17 the center of the River; and

18 (3)(A) certain non-Indians acquiring Indian
19 land claim that the State of Idaho did not acquire
20 on the date of statehood ownership of the beds and
21 banks of the River pursuant to the equal footing
22 doctrine; and

23 (B) those non-Indians acquiring Indian land
24 claim ownership of the beds and banks of the River.

25 (b) EFFECT.—Nothing in this Act—

1 (1) affects in any manner the sovereign claim
2 of the State of Idaho to title in and to the beds and
3 banks of the River under the equal footing doctrine
4 of the Constitution of the United States;

5 (2) affects any action by the State of Idaho to
6 establish that title under section 2409a of title 28,
7 United States Code (commonly known as the "Quiet
8 Title Act"); or

9 (3) affects the ability of the Tribes or the
10 United States to claim ownership of the beds and
11 banks of the River.

12 **SEC. 12. FUNDING.**

13 (a) AUTHORIZATION OF APPROPRIATIONS.—There is
14 authorized to be appropriated to carry out this Act
15 \$1,000,000.

16 (b) DISTRIBUTION.—After the date on which all at-
17 torneys fees are paid under section 8, the amount appro-
18 priated pursuant to subsection (a) shall be distributed
19 among the Tribes, the allottees, and the Blackfoot River
20 Flood Control District No. 7 as follows:

21 (1) 25 percent shall be deposited into the tribal
22 trust fund account established by section 7(a)(1).

23 (2) 28 percent shall be deposited into the allot-
24 tee trust account established by section 7(b)(1).

1 (3) 47 percent shall be provided to the Black-
2 foot River Flood Control District No. 7 for—

3 (A) distribution to the non-Indian land-
4 owners on a pro rata, per-acre basis; and

5 (B) associated administrative expenses.

6 (c) . PER CAPITA PAYMENTS PROHIBITED.—No
7 amount received by the Tribes under this Act shall be dis-
8 tributed to a member of the Tribes on a per capita basis.

9 **SEC. 13. EFFECTIVE DATE.**

10 This Act takes effect on the date on which the
11 amount described in section 12(a) is appropriated.