

RECEIVED

NOV 01 2010

10-29

DEPARTMENT OF  
WATER RESOURCES

**JEANETTE WOLFLEY (ISB #3948)**  
Special Counsel for Shoshone-Bannock Tribes  
202 N. Arthur  
Pocatello, ID 83202  
(208) 232-1922  
**Counsel for the Shoshone-Bannock Tribes**

**PETER C. MONSON**  
Assistant Chief, Indian Resources Section  
Environment and Natural Resources Div.  
U.S. Department of Justice  
999 18<sup>th</sup> Street  
South Terrace – Suite 370  
Phone: (303) 844-1384  
Fax: (303) 844-1350  
**Counsel for the United States**

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. 27-11375             |
| Case No. 39576 | ) |                                  |
|                | ) | <b>MOTION FOR ENFORCEMENT</b>    |
|                | ) | <b>OF FORT HALL INDIAN WATER</b> |
| _____          | ) | <b>RIGHTS CONSENT DECREE</b>     |

The Shoshone-Bannock Tribes of the Fort Hall Reservation (hereinafter referred to as the "Tribes"), and 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") respectfully move this Court for an order directing the State of Idaho and aligned parties to comply with the provisions of the Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin (entered August 2, 1995, Subcase 92-22) (Hereinafter, "Consent Decree").

Specifically, the United States and Tribes ask this Court to:

1. Find that the 45,000 acre-feet per year limit in the Consent Decree has been exceeded;
2. Find that the parties have failed to negotiate an equitable adjustment to the Tribal water rights as contemplated by the Consent Decree; and
3. Interpret the Blackfoot River Basin "equitable adjustment" provision of the 1995 Consent Decree as requiring an increase to the Tribal Water Right by an amount equal to the annual diversions by persons diverting natural flow from the Blackfoot River minus 45,000 acre-feet per year, as provided for in right no. 27-11375.x.d.<sup>1</sup>

In addition, any adjustment to the Tribes water rights must have certain characteristics to be "equitable" as provided by Article 7: The water (1) must be available at the Tribes existing points of diversion; (2) must come at no cost to the Tribes; (3) must come from a source other than the Blackfoot River natural flows; (4) must not interfere with any of the

---

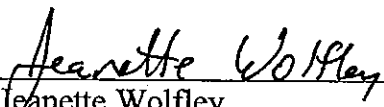
<sup>1</sup> Article 7 of the Fort Hall Agreement and Section II of the Court's Order, provides in pertinent part as follows:

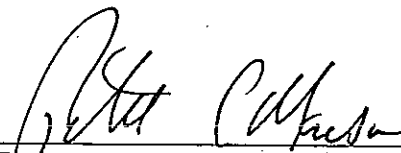
The Tribes and United States shall exercise this water right in a manner that ensures persons diverting natural flow from the Blackfoot River prior to January 1, 1990, whose rights are decreed in the SRBA will continue to receive their full legal entitlement under state law. The parties will specifically enumerate all rights protected by this provision once the SRBA Decree for this basin becomes final. These state created water rights are estimated to divert not more than 45,000 AFY of water from the Blackfoot River. In the event this estimate of the amount of existing diversion under state created water rights is exceeded as a result of the Decree in the SRBA, the parties shall negotiate an equitable adjustment to the Tribal water rights to account for this change.

Tribes' other decreed water rights; (5) must have the same priority date of use as the Blackfoot River right – June 14, 1867; and (6) must be provided in a timely way so that the Tribes can utilize it for irrigation purposes during the irrigation season.

The basis for this Motion is set forth in the accompanying Memorandum of law and the Affidavit of Woldezion Mesghinna, and the Affidavit of David A. Jarvis.

Respectfully submitted this 28<sup>th</sup> day of October, 2010.

  
\_\_\_\_\_  
Jeanette Wolfley  
Special Counsel for Shoshone-Bannock Tribes

  
\_\_\_\_\_  
Peter C. Monson  
Counsel for the United States