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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COURT OF TWIN FALLS

In Re SRBA	)	Subcase No. 27-04096
	)	PRE-TRIAL STATEMENT OF THE
Case No. 39576	)	SHOSHONE-BANNOCK TRIBES
	)	AND THE UNITED STATES
_____	)	

On November 10, 2010, Judge Wildman issued an *Initial Scheduling Order Setting Forth Procedures on State's Motion for Accounting and United States' and Tribes' Joint Motion to Enforce Re: Fort Hall Indian Water Rights Consent Decree*. As part of this Scheduling Order, the District Court discussed the proceedings before this Court and requested this Court to submit a recommendation as to whether the trial set on December 6 – 10, 2010 should go forward after hearing from the parties during the pre-trial conference scheduled on November 17, 2010. *Scheduling Order* at 6.

In light of the *Scheduling Order*, this Pre-Trial Statement is filed by the Shoshone-Bannock Tribes ("Tribes") and United States to provide the Court with a review of the issue to be determined at trial scheduled December 6 – 10, 2010 in the above-referenced test case.

The Tribes and the United States filed objections to numerous water rights claims which did not contain a volume on the element of the claim. These objections were intended to protect the Tribes' water rights in the Blackfoot River (Basin 27) as provided in the 1990 Fort Hall Agreement and 1995 Partial Consent Decree. In particular, a specific provision of the Consent Decree (27-11375.x.d) provides that the Tribes water right is subordinated to the water users who were using water prior to January 1, 1990 up to 45,000 acre-feet.

Once the objections were filed, the parties including the State of Idaho, United States, Tribes and other water users in Basin 27 and Basin 01 began earnestly to address the numerous provisions in the 1990 Fort Hall Agreement which had not been addressed since the Agreement and Consent Decree were approved. Through the numerous studies that were completed by the parties, we have determined that there has been an exceedence of the 45,000 acre feet limit with the exception of one year. Consequently the parties began to negotiate an equitable adjustment as provided under the 1990 Fort Hall Agreement and Consent Decree, and began work on the Blackfoot River Management Plan.

As the negotiations continued the parties realized that there was a real division between the parties, which could not be closed. Additionally, the Tribes recognized that placing a volume limit on each water right as requested by the United States and Tribes would not fully resolve the issue of equitable adjustment, and we looked for other means to fully resolve the primary issue of the exceedence of the 45,000 acre-feet per year limit. And, we realized that this issue of volume limits was more of a legal than factual issue, which could have been resolved via

summary judgment. The parties also identified other potential methodologies to be utilized with the Blackfoot River Management Plan to address the matter.

In other words, even if the United States and Tribes were to be successful at the December 6 trial, and the Court ordered that each water right contain a volume limit on their right, the parties would still have to seek further judicial relief under provision 27-11375.x.d to: (1) calculate how much the 45,000 acre-feet per year has been exceeded; (2) seek a determination that the equitable adjustment negotiations have been unsuccessful; (3) determine which water claimants benefit from the subordination provision; and (4) determine how an equitable adjustment will be tailored to ensure the protection of the Tribes water rights. The governmental parties intended these issues would best be reviewed and resolved by the District Court as it has continuing jurisdiction over the 1995 Consent Decree. Additionally, the Tribes and United States believe that it is a better use of judicial resources and efficiency to present these issues to the District Court rather than pursue a trial on the sole volume limit issue.

Given this situation the Tribes and United States are willing to withdraw their volume objections filed in this Court and proceed with the Motion to Enforcement pending before Judge Wildman, which we believe will provide a more complete resolution of the equitable adjustment issue. As this Court knows there have not been any pending issues other than whether a volume is required to be placed on the water right. The majority of the time and resources of the parties has been expended in attempting to reach a negotiated agreement to ensure that the 45,000 acre-feet is not exceeded and if it is to find a remedy to protect the Tribes' water rights. Unfortunately, the parties have not been successful in reaching such an agreement.

Furthermore, this volume issue is connected to the Tribes objections relating to source and season of use. The 1990 Fort Hall Agreement is based on volume limits. We, accordingly,

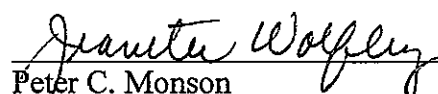
need a volume to determine whether the 45,000 acre-feet per year limit has been exceeded. The calculation of volume is quantity multiplied by the length of season multiplied by 2. The Tribes objected to the season of use because the length of the irrigation season affects the volume amount. Since the Tribes would withdraw their volume objections, they also will withdraw their season of use objections.

The Tribes' Source objections are related to the use of Snake River water or groundwater by water claimants before January 1, 1990. Again, as provided under the 1990 Fort Hall Agreement and 1995 Consent Decree, the water claimants receiving the benefit of the provision must be using the natural flows of the Blackfoot River prior to 1990, not groundwater or Snake River water. On November 10, 2010, the District Court in the Scheduling Order took jurisdiction over the State's Motion for An Accounting of Water rights to determine and enumerate who will benefit from the Blackfoot River provision. Based upon the District Court's *Scheduling Order*, the Tribes will withdraw their Source objections as the District Court will determine whose claims to water rights to Blackfoot River surface flows are protected by the subordination provision.

Date this 12th day of November, 2010.

Respectfully submitted,


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 for
Peter C. Monson
Attorney for the United States

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the PRE-TRIAL STATEMENT OF THE SHOSHONE-BANNOCK TRIBES were mailed via U.S. Mail, postage prepaid, on the November 12, 2010 to the following:

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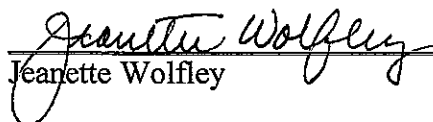
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