

APR 04 2011

DEPARTMENT OF
WATER RESOURCES**Larry Hinderager**

President, Eastern Idaho Water Company
 434 West Riverton Road
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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 27-11375
	)	
Case No. 39576	)	EASTERN IDAHO WATER COMPANY
	)	RESPONSIVE BRIEF ON LEGAL ISSUES
	)	PERTAINING TO ENTITLEMENT
_____	)	

On February 18, 2011 the court, among other matters directed that the Motion to Enforce "... should be bifurcated between those legal issues pertaining to entitlement and those issues pertaining to remedy." This briefing is in response to the legal issues of entitlement.

On October 29, 2010 the Shoshone-Bannock Tribes of the Fort Hall reservation ("Tribes") and the United States of America as Trustee on behalf of the Shoshone-Bannock Tribes of Fort Hall Reservation ("United States") filed a Motion for Enforcement of the Fort Hall Water rights Decree along with a Memorandum in Support of that motion. One of the basis of those documents is that the 45,000 acre feet stated in the 1990 Fort Hall Agreement has been exceeded in the past and that it is a foregone conclusion that it will be exceeded in the future.

PAST HISTORY

It is well recognized that historical records for District 27 are very inaccurate and that enforcement of water rights was limited at best. Many diversions did not have measurement and control devices of any kind. The SRBA adjudication process was started in 1987 and prior to 2010 was unenforceable. There was no river management plan in place for Basin 27. Because of such factors the Tribes' claim that 45,000 acre-feet has been exceeded in the past has very limited bearing on what can be projected for the future.

2010 AND BEYOND

In April 2008 the Idaho Department of Water Resources issued an order requiring that each active diversion of District 27 must have a functioning

headgate and an adequate measurement section before the beginning of the 2010 irrigation season.

A technical team began working on development of a River Management Plan in 2008. One of the provisions in that plan is a method of measuring and calculating the "Primary Volume" which is the number that applies to the 45,000 acre-feet referred to in the 1990 Fort Hall Agreement. That Management Plan had been reviewed and generally agreed to by interested parties by the beginning of the 2010 irrigation season. Even though it had not been formally signed it was decided to manage the river in 2010 based on that River Management Plan.

In July 2009 the State of Idaho made a Motion for Order of Interim Administration of Surface and Storage Water Rights in Basin 27 in Accordance With the Director's Report and Applicable Partial Decrees and Notice of Hearing. That motion was approved by the court prior to the 2010 irrigation season.

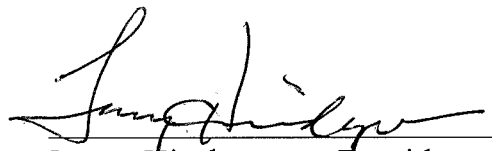
With the above items in place the result of the 2010 irrigation season was that the "Primary Volume" was nearly thirty percent below the 45,000 acre-feet number which would trigger an equitable adjustment. In other words, no equitable adjustment was necessary.

The Committee of Nine has filed a Response to the Content of the State's List of Water Rights with the court. Long term risk of new water consumption would be significantly affected by the outcome of their recommendation to the court.

CONCLUSION

It is our belief that we only have one year of meaningful experience and that year does not indicate a need for enforcement of an equitable adjustment. We recognize that one year may not be adequate to guarantee the future, but even if it becomes necessary to address a remedy in the future, additional experience and data would provide a much better basis for defining a remedy. Also, the parallel Motion for Accounting outcome needs to be settled. Therefore, based on the only year with adequate measurement and control devices as well as authority to enforce, no injury has been experienced. The Motion to Enforce should be put on a three year moratorium.

Dated this 2nd day of April, 2011.


Larry Hinderager, President,
Eastern Idaho Water Company

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of EASTERN IDAHO WATER COMPANY RESPONSIVE BRIEF ON LEGAL ISSUES PERTAINING TO ENTITLEMENT were mailed on April 2, 2011, by first class mail to the following:

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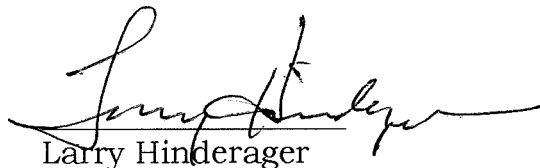
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