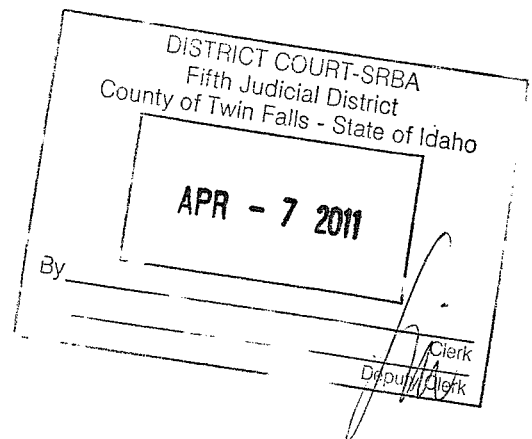


RECEIVED
APR 08 2011
DEPARTMENT OF
WATER RESOURCES



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

Case No. 39576

) Subcase No: 27-11375
)
) **THIRD SCHEDULING ORDER**
) **ON STATE'S *MOTION FOR***
) ***ACCOUNTING***
)
) **RE: FORT HALL INDIAN WATER**
) **RIGHTS CONSENT DECREE**
)
)
)

I.

PROCEDURE

This matter came before the Court pursuant to a status and scheduling conference held April 1, 2011, on the State of Idaho's *Motion for An Accounting of All Water Rights Benefitting From the Subordination Provisions of the Fort Hall Consent Decree and Insertion of a Remark Memorializing that Benefit on Each Affected Water Right* ("Motion for Accounting").

The State of Idaho previously filed a list of water rights it determined were protected by the subordination provision of the *Fort Hall Consent Decree* (referred to herein as "list of protected rights"). Claimants of surface water in Basin 27 were provided with personal service of notice and afforded the opportunity to object to their water

right(s) being excluded from the list of protected rights. In conjunction with the notice, claimants whose rights appeared on the list of protected rights were instructed that no further action was necessary and that they were not required to appear in the subcase. Thereafter, the issue was raised whether the content of the list of protected rights was over inclusive of the scope of protected rights contemplated by the *Fort Hall Consent Decree*. The Committee of Nine identified 23 water rights it alleges should be removed from the list of protected rights. These water rights include:

27-4L	27-2041B	27-11317
27-47	27-2048	27-11966
27-49	27-4096	27-12035
27-54	27-4097	27-12040
27-73	27-4147	27-12045
27-76	27-7071	27-12115
27-2039	27-7374	27-12118
27-2041A	27-11273	

The next step in the process is to serve notice on the holders of the above-listed 23 rights and provide them the opportunity to respond to the Committee of Nine's allegation that their right(s) should be removed from the list of protected rights and then proceed with hearings on the merits.

II.

ORDER

Therefore, based on the foregoing, THE FOLLOWING ARE HEREBY ORDERED:

1. Personal Service by the State of Idaho

The State of Idaho shall provide personal service of this **Order**, together with a copy of the *Committee of Nine's Response to the Content of the State's List of Rights* and accompanying *Affidavit of David B. Shaw*, on the holders of the above-identified 23 water right claims no later than **April 22, 2011**, and shall file a certificate of compliance with the Court.

2. Procedure for filing *Responses* setting forth reason(s) why water right(s) should remain on list of protected rights.

Parties wishing to respond in opposition to their above-listed right(s) being excluded from the list of protected rights shall file a *Response* using a copy of the attached form entitled “*Response Re: Removal of Water Right(s) from List of Protected Rights*” and serving it on the parties identified in the certificate of mailing attached to the form. Prior to completing the *Response* form, parties should review the *Committee of Nine’s Response to the Content of the State’s List of Rights* and accompanying *Affidavit of David B. Shaw* served with this *Order* and respond accordingly. Parties must set forth the reasons why they believe their right(s) should remain on the list of protected rights. All *Responses* shall be filed with the Court no later than **May 13, 2011**.

3. Failure to file a *Response* or set forth reasons in support of response.

PARTIES ARE NOT REQUIRED TO FILE A *RESPONSE*. HOWEVER, ANY OF THE 23 ABOVE-IDENTIFIED RIGHTS FOR WHICH NO TIMELY RESPONSE IS FILED WILL RESULT IN THE RIGHT(S) BEING REMOVED FROM THE LIST OF PROTECTED RIGHTS WITHOUT FURTHER HEARING.

***RESPONSES* FILED THAT DO NOT SET FORTH THE REASONS IN SUPPORT OF WHY A PARTICULAR WATER RIGHT SHOULD NOT BE REMOVED FROM THE LIST OF PROTECTED RIGHTS WILL RESULT IN A DISMISSAL OF THE *RESPONSE*.**

4. Procedure for filing a *Reply*.

The Committee of Nine or any other party to the *Motion for Accounting*, wishing to file a *Reply* to a *Response* may do so no later than **May 20, 2011**. The *Reply* shall be served on the parties identified in the certificate of mailing for this ***Order*** and on the party who’s *Response* the *Reply* is directed. No special form is provided for a *Reply*. However, a *Reply* must specifically identify the water right number(s) to which the *Reply* is directed and must specifically address the issues raised in the *Response(s)* to which the *Reply* is directed.

5. **Notice of Scheduling Conference on *Motion for Accounting*.**

A scheduling conference on the *Motion for Accounting* is set for **Tuesday, May 24, 2011 at 1:30 p.m. (Mountain Time)** at the Snake River Basin Adjudication District Court, 253 3rd Avenue North, Twin Falls, Idaho. Telephone participation will be available by dialing 1-215-446-0193 and entering 406128# when prompted. Video teleconferencing ("VTC") will also be available by appearing at the Idaho Department of Water Resources, Idaho Water Center, 322 E. Front St., Conference Rm. B, Boise, Idaho.

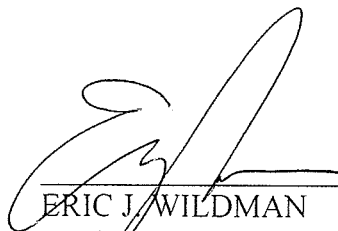
6. **Purpose of Scheduling Conference and consequences for failure to appear.**

The purpose of the scheduling conference is to set hearings on the water rights for which *Responses* were filed. Parties should be prepared to discuss whether there are any common factual or legal issues or similarly situated water rights that can be resolved in a common proceeding, and which hearings must be conducted individually. At that time the Court will segregate and re-designate the proceedings if necessary. **The failure of a party who filed a *Response* to appear either in person, by telephone or by VTC at the scheduling conference will result in removal of that party's right(s) from the list of protected rights.**

7. **Scheduling Conference on FMC Production, LLC's *Objection to Motion for Accounting* for water rights 27-2162, 27-2050 and 27-2053.**

The scheduling conference will also include setting a scheduling order on FMC Production, LLC's *Objection to Motion for Accounting* for water rights 27-2162, 27-2050 and 27-2053.

Dated April 7, 2011


ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

**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	)	RESPONSE RE: REMOVAL OF
	)	WATER RIGHT(S) FROM LIST OF
	)	PROTECTED RIGHTS

Please Print or Type the Following Information:

NAME AND ADDRESS OF PERSON RESPONDING:

Name: _____

Address: _____

Phone: _____

Name and Address of Attorney, if any:

Water Right Number(s) for which I am filing this Response: _____

Please Check Applicable Box:

- ☐ **I have reviewed the Committee of Nine's Response to the content of the State of Idaho's list of protected rights and accompanying Affidavit of David B. Shaw.**
- ☐ **I disagree that my water right(s) should be removed from the list of protected rights.**
- ☐ **The reason(s) I believe my water right(s) should remain on the list of protected rights are as follows: *** _____

Signature: _____ Dated: _____

* Attach additional sheets of paper as necessary to provide complete explanation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of _____, 2011, a true and correct copy of the foregoing was mailed with sufficient first-class postage to the following:

DIRECTOR OF IDWR
P.O. Box 83720
Boise, Idaho 83720

SHOSHONE-BANNOCK TRIBES
Represented By:
Jeanette Wolfley, Special Counsel
202 N. Arthur
Pocatello, ID 83202

U.S. DEPARTMENT OF JUSTICE
Attn: Peter C. Monson
Indian Resources Section
999 18th Street
Denver, CO 80202

STATE OF IDAHO
Office of Attorney General
Attn: Clive Strong / Shasta Kilminster-Hadley
P.O. Box 83720
Boise, ID 83720

COMMITTEE OF NINE
Represented By:
Barker, Rosholt & Simpson, LLP
1010 W. Jefferson, Ste. 102
P.O. Box 2139
Boise, ID 83701

SRBA DISTRICT COURT
P.O. Box 2707
Twin Falls, Idaho 83303-2707

U.S.A.
Represented By:
United States Dept. of Justice
Environmental & Natural Resource
550 West Fort Street, MSC 033
Boise, ID 83724

FMC PRODUCTION LLC
Represented By:
William G. Myers III
101 S. Capital Blvd., Ste. 1400
P.O. Box 2527
Boise, ID 83701

STATE OF IDAHO
Represented by:
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

Signature

CERTIFICATE OF MAILING

I certify that a true and correct copy of the THIRD SCHEDULING ORDER ON STATE'S MOTION FOR ACCOUNTING RE: FORT HALL INDIAN WATER RIGHTS CONSENT DECREE was mailed on April 07, 2011, with sufficient first-class postage to the following:

SHOSHONE-BANNOCK TRIBES

Represented by:
JEANETTE WOLFLEY
SPECIAL COUNSEL
SHOSHONE-BANNOCK TRIBE
202 N ARTHUR
POCATELLO, ID 83202
Phone: 208-232-1922

COMMITTEE OF NINE

Represented by:
JOHN K SIMPSON
1010 W JEFFERSON, STE 102
PO BOX 2139
BOISE, ID 83701-2139
Phone: 208-336-0700

PATRICK J TANEY

Represented by:
SCOTT E. AXLINE
PO BOX 100
BLACKFOOT, ID 83221
Phone: 208-785-6274

STATE OF IDAHO

Represented by:
STATE OF IDAHO
PO BOX 44449
BOISE, ID 83711-4449
Phone: 208-334-2400

U.S.A.

Represented by:
UNITED STATES DEPT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCE
550 WEST FORT STREET, MSC 033
BOISE, ID 83724
Phone: 208-387-0835

FMC PRODUCTION LLC

Represented by:
WILLIAM G MYERS III
101 S CAPITOL BLVD, STE 1400
PO BOX 2527
BOISE, ID 83701-2527
Phone: 208-342-5000

EASTERN IDAHO WATER CO

ATTN: LARRY HINDERAGER PRES
434 W RIVERTON RD
BLACKFOOT, ID 83221
Phone: 208-785-5678

U S DEPARTMENT OF JUSTICE

ATTN: PETER C MONSON
INDIAN RESOURCES SECTION
999 18TH ST
DENVER, CO 80202
Phone: 303-844-1384

DIRECTOR OF IDWR

PO BOX 83720
BOISE, ID 83720-0098

MARK B PRATT

279 N 400 E
BLACKFOOT, ID 83221
Phone: 208-785-6597

BRETT MC DANIEL

631 W 225 S
BLACKFOOT, ID 83221
Phone: 208-785-7837

GARY & SONJA WRIGHT

673 W 300 S
BLACKFOOT, ID 83221
Phone: 208-785-3434

MARVIN R YANCEY

691 W 300 S
BLACKFOOT, ID 83221
Phone: 208-785-3610

MERLIN YANCEY

707 W 300 S
BLACKFOOT, ID 83221
Phone: 208-785-0908

