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MAY 11 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

) 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: Blackfoot Springs Ranch, LLC

Address: 448 Seneca Road  
Great Falls, VA 22006

Phone: 208-433-2671

Name and Address of Attorney, if any:

Thomas J. Budge

PO Box 1391

Pocatello, ID 83204-1391

Water Right Number(s) for which I am filing this Response: 27-2039

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: See Exhibit A attached hereto

Signature: Thomas J. Budge

Dated: 5/9/11

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

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of May, 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

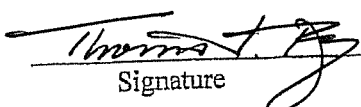
COMMITTEE OF NINE  
Represented By:  
Barker, Rosholt & Simpson, LLP  
1010 W. Jefferson, Ste. 102  
P.O. Box 2139  
Boise, ID 83701

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

## EXHIBIT A

Water right number 27-2039 should remain on the list of protected water rights under the Fort Hall Indian Water Rights Agreement (the “Fort Hall Agreement”) for the following reasons:

1. **Plain language of Agreement.** The *Committee of Nine’s Response to the Content of the State’s List of Rights* (the “*Committee of Nine Response*”) contradicts the plain language of the Fort Hall Agreement. The Fort Hall Agreement subordinates water right number 27-2039 to “persons diverting natural flow from the Blackfoot River prior to January 1, 1990, whose rights are decreed in the SRBA.” This provision is unambiguous and therefore must be construed according to its plain meaning. The priority date of water right number 27-2039 is in 1914. Therefore, it meets the criterion of having diverted water prior to 1990, and is protected under the plain meaning of the Agreement.

Since the Fort Hall Agreement is unambiguous, the SRBA Court cannot consider the *Affidavit of David Shaw* or any other parol evidence submitted by the Committee of Nine in attempt to change the plain meaning of the Agreement. The Committee of Nine’s attempt to have the SRBA Court rewrite the Fort Hall Agreement to mean that it only protects water rights “being irrigated in the 1986-87 timeframe” is without any legal basis and must be rejected.

2. **Unconstitutional.** Removing water right number 27-2039 from the list of rights that are protected under the Fort Hall Agreement violates the constitutional rule that water is to be administered based on priority of appropriation. The *Committee of Nine Response* would, if granted, cause water right number 27-2039 to effectively become subordinate to other Blackfoot River water rights with later priority dates (potentially as late as 1989). Further, removing certain pre-1990 water rights from subordination protection under the Fort Hall Agreement creates an enormous “rebound call” problem that would undermine the very purpose of the Agreement.
3. **Collateral attack on decree.** The *Committee of Nine Response* is an impermissible collateral attack on the SRBA partial decree entered on April 30, 2007, for Water Right No. 27-2039.
4. **Attorney fees and costs.** The *Committee of Nine Response* is unreasonable, frivolous, and without any basis in Idaho law. Therefore, Blackfoot Springs, LLC (the owner of water right number 27-2039) should be awarded its attorney fees and costs incurred in defending against the *Committee of Nine Response*, pursuant to Idaho Code sections 12-121 and/or 12-123.
5. **Reservation of defenses.** Blackfoot Springs, LLC reserves the right to raise additional defenses to the *Committee of Nine Response*, including but not limited to evidence of actual water use during the 1986-87 timeframe if necessary.