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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

**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: State of Idaho, Department of Fish and Game
Address: 600 S. Walnut Street
P.O. Box 25
Boise, Idaho 83707
Phone: (208) 334-4549

Name and Address of Attorney, if any:

David I. Stanish
Deputy Attorney General
Office of the Attorney General
Natural Resources Division
JRW Building, Second Floor
700 West State Street
P.O. Box 44449
Boise, Idaho 83711-4449

Water Right Number(s) for which I am filing this Response: 27-04096

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:**

In its *Response to Shoshone-Bannock Tribes' and United States' Motion for Enforcement*, the Committee of Nine asserts that those water rights that were not diverting during the 1986–87 timeframe should not receive the benefit of the subordination provision because those rights were not considered in arriving at the 45,000 acre-foot figure:

At the time the Subordination Provision was negotiated, David Shaw (IDWR Adjudication Bureau Chief) arrived at the 45,000 AFY over the 1986-1987 irrigation season based on extensive analysis. The number in the subordination provision was determined based on acreage that was irrigated in 1986-1987. . . . Those water rights on the State's list that were not being diverted in 1986-1987 should not receive the benefit of the subordination provision because they were not considered as part of the 45,000 AFY of diversions to which the Tribes subordinated their senior water rights.

Response to Shoshone-Bannock Tribes' and United States' Motion for Enforcement at 7 (Apr. 4, 2011) (citations omitted). According to the Committee of Nine, those water rights that were not diverting during that timeframe were identified as “Idle Lands” during the Fort Hall negotiations through analysis conducted by HKM Engineering:

As identified in my Affidavit dated December 5, 2008 filed in Basin-Wide Issue No. 00-92027, during the current negotiations involving the Blackfoot River basin that began in the Spring of 2007, maps were prepared by HKM Engineering, now DOWL HKM, identifying lands historically irrigated but idle in the 1986 – 1987 and earlier timeframe.

Affidavit of David B. Shaw at 4 (Mar. 21, 2011). It is these Idle Lands identified by HKM that the Committee of Nine now asserts should be excluded from the list of protected rights:

It is my belief the lands identified as idle by HKM were not included in the actively irrigated acreage used to estimate the 45,000 ac-ft per year water requirement for the North Side Users.

Affidavit of David B. Shaw at 4–5 (Mar. 21, 2011).

According to the analysis conducted by HKM, however, the place of use for water right no. 27-04096 was not considered Idle Lands. Instead, the map prepared by HKM—and submitted to the Court in 2008—clearly identifies water right no. 27-04096 as being “Recently Irrigated.” See Ex. 1, *Affidavit of David I. Stanish*. According to the Committee of Nine’s own analysis, water right no. 27-04096 was included in the actively

irrigated acreage used to estimate the 45,000 acre-foot figure, and thus, water right no. 27-04096 should not be removed from the list of protected rights.¹

Signature: _____

Dated: 5/5/2011

¹ See also *Affidavit of David I. Stanish* and *Affidavit of Paul B. Wackenhut* evidencing continued use through the 1986–87 timeframe.

CERTIFICATE OF SERVICE

I certify that on this 10th day of May 2011, I caused to be served the original and copies of the State of Idaho's **RESPONSE RE: REMOVAL OF WATER RIGHT(S) FROM LIST OF PROTECTED RIGHTS** on the following persons by the methods indicated:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
253 THIRD AVENUE NORTH
PO BOX 2707
TWIN FALLS, ID 83303-2707

☒ U.S. Mail, postage prepaid
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☐ Facsimile: (208) 736-2121
☐ Statehouse Mail

2. Copies to:

SHOSHONOE-BANNOCK TRIBES
Represented by:
JEANETTE WOLFLEY
SPECIAL COUNSEL
202 N. ARTHUR
POCATELLO, ID 83202

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INDIAN RESOURCES SECTION
999 18TH STREET
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☐ Federal Express
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DAVID I. STANISH
Deputy Attorney General