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MAY 17 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: Stucki Revocable Trust
c/o John R. & Shirley O. Stucki
Address: 325 Algonquin Dr.
Ballwin, MO 63011
Phone:

Name and Address of Attorney, if any:

Luke H. Marchant
PO Box 50130
Idaho Falls, ID 83405

Water Right Number(s) for which I am filing this Response: 27-2041B

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 attached sheet.

Signature: Luke H. Marchant

Date: 5/13/11

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

- The Committee of Nine misinterprets Article 7.1.18.x.d of the 1990 Fort Hall Water Rights Agreement. That section provides that “persons diverting natural flow from the Blackfoot River prior to January 1, 1990, whose rights are decreed in the SRBA will continue to receive that full legal entitlement under state law.” The Committee of Nine argues that water rights that were idle in 1986-87 should not be included in the list of water rights protected by the Subordination Provision. Whether or not water was diverted in 1986-87 is irrelevant. The pertinent questions are: (1) whether or not water was diverted prior to 1990; and, (2) whether or not those water rights have been decreed (or recommended) in the SRBA. Thus, according to the plain language of the Fort Hall Agreement, all decreed or recommended water rights diverting natural flow from the Blackfoot River prior to January 1, 1990 should be included in the list of water rights protected by the Subordination Provision.
- The Committee of Nine’s argument appears to be nothing more than a backhanded attempt to forfeit or change elements of water rights that have already been decreed or recommended in the SRBA. Water Right No. 27-2041B has been recommended in the SRBA with a priority date of August 23, 1917. Even if this water right was not utilized in 1986-87, it nonetheless has a recommended priority date 73 years prior to the 1990 cutoff date of the Subordination Provision. Water Right No. 27-2041B thus meets the requirements to be included in the list of water rights protected by the Subordination Provision.
- Even if this Court were to accept the Committee of Nine’s argument that water rights not diverted in 1986-87 should not be included in the list of water rights protected by the Subordination Provision, Water Right No. 27-2041B should be included on the list because it was diverted in 1987. The GIS map attached as Exhibit A shows the place of use for water right no. 27-2041B over the 1987 adjudication photo. The 1987 adjudication photo clearly shows that the place of use for Water Right No. 27-2041B was irrigated in 1987.
- Stucki Revocable Trust reserves the right to assert additional bases for inclusion on the list of water rights protected by the Subordination Provision at a later date.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, on this 13th day of May, 2011.

DOCUMENT SERVED: REMOVAL OF WATER RIGHT(S) FROM LIST OF PROTECTED RIGHTS

ATTORNEYS AND/OR INDIVIDUALS SERVED:

DIRECTOR OF IDWR
PO Box 83720
Boise, ID 83720

(☒) *First Class Mail*
(☐) *Hand Delivery*
(☐) *Facsimile*
(☐) *Overnight Mail*
(☐) *Email*

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

(☒) *First Class Mail*
(☐) *Hand Delivery*
(☐) *Facsimile*
(☐) *Overnight Mail*
(☐) *Email*

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

(☒) *First Class Mail*
(☐) *Hand Delivery*
(☐) *Facsimile*
(☐) *Overnight Mail*
(☐) *Email*

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

(☒) *First Class Mail*
(☐) *Hand Delivery*
(☐) *Facsimile*
(☐) *Overnight Mail*
(☐) *Email*

STATE OF IDAHO

Represented by:

State of Idaho

PO Box 44449

Boise, ID 83711-4449

(☒) *First Class Mail*
(☐) *Hand Delivery*
(☐) *Facsimile*
(☐) *Overnight Mail*
(☐) *Email*

SHOSHONE-BANNOCK TRIBES

Represented By:

Jeanette Wolfley, Special Counsel

202 N Arthur

Pocatello, ID 83202

(☒) *First Class Mail*
(☐) *Hand Delivery*
(☐) *Facsimile*
(☐) *Overnight Mail*
(☐) *Email*

STATE OF IDAHO

Office of Attorney General

Attn: Clive Strong /

Shasta Kilminster-Hadley

PO Box 83720

Boise, ID 83720

(☒) *First Class Mail*
(☐) *Hand Delivery*
(☐) *Facsimile*
(☐) *Overnight Mail*
(☐) *Email*

SRBA DISTRICT COURT

PO Box 2707

Twin Falls, ID 83303-2707

(☐) *First Class Mail*
(☐) *Hand Delivery*
(☒) *Facsimile*
(☐) *Overnight Mail*
(☐) *Email*

FMC PRODUCTION LLC

Represented By:

William G. Myers III

101 S Capital Blvd, Ste 1400

PO Box 2527

Boise, ID 83701

(☒) *First Class Mail*
(☐) *Hand Delivery*
(☐) *Facsimile*
(☐) *Overnight Mail*
(☐) *Email*



Luke H. Marchant, Esq.

HOLDEN, KIDWELL, HAHN & CRAPO, PLLC

EXHIBIT A

STUCKI REVOCABLE TRUST WATER RIGHT NO. 27-2041B



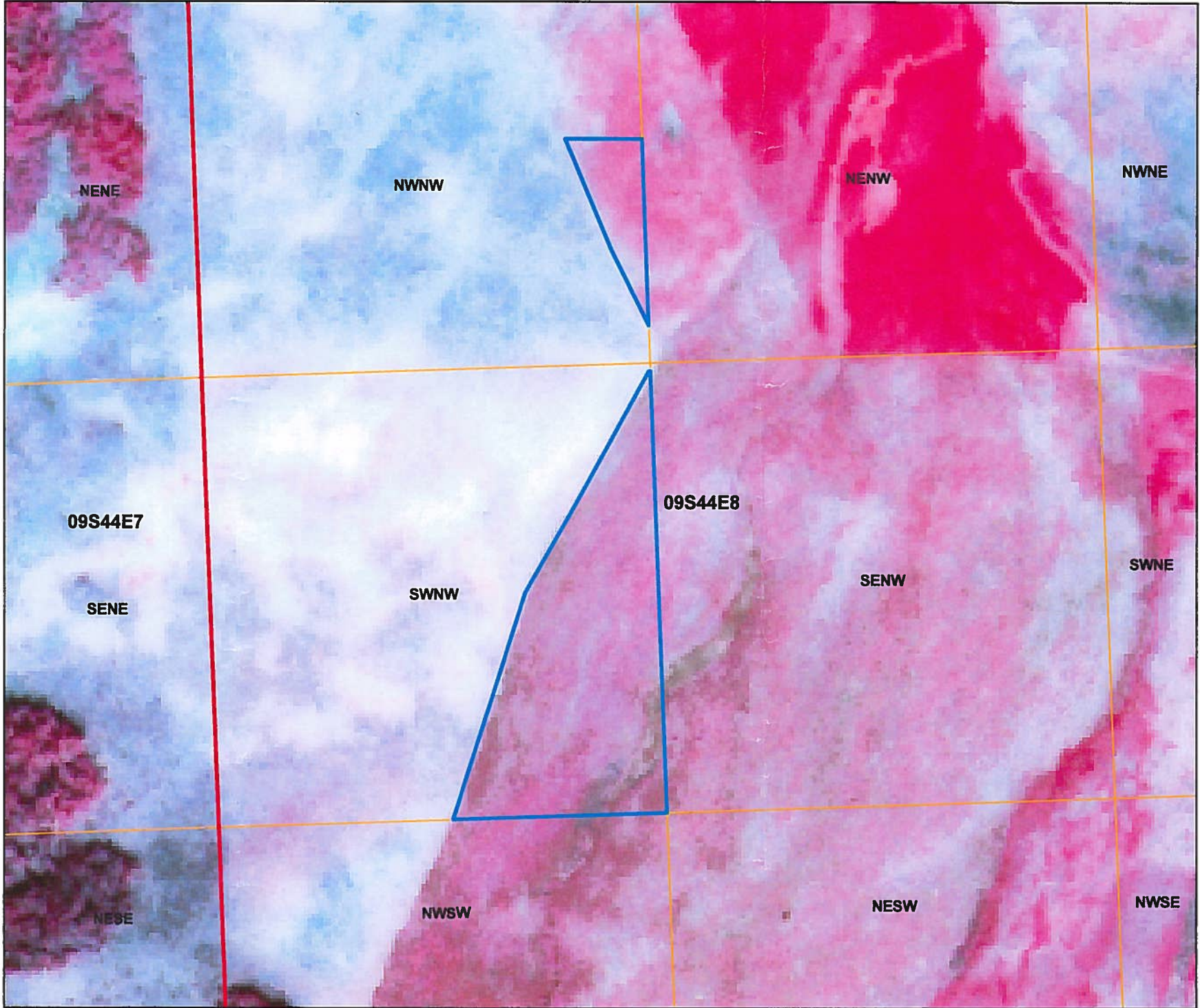
Legend

27-2041B

Place of Use

Section Lines

Quarter Quarters



1987 Adjudication Photo



Prepared by:
Luke H. Marchant