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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
MAY 24 2011	
By _____	Clerk Deputy Clerk

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

)
) BRIEFING AND ORAL ARGUMENT
) SCHEDULE ON STATE OF IDAHO'S
) MOTION FOR ACCOUNTING

)
)

On October 25, 2010, the State of Idaho filed a *Motion for 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* in the above-captioned subcase. The State's *Motion* identified 223 water rights it asserts are entitled to protections of paragraph 27-11375.x.d. of the *Fort Hall Consent Decree*. Paragraph 27-11375.x.d. provides in part as follows:

The Tribes and the United States shall exercise [water right no. 27-11375] in a manner that ensures persons diverting natural flow from the Blackfoot River prior to January 1, 1990, whose rights are decreed in the SRBA will continue to receive their full legal entitlement under state law.

On March 18, 2011, the Committee of Nine filed a *Response* to the State's *Motion* asserting that 23 of the rights identified by the State should be removed from the list of protected rights. The Committee of Nine argues that "only those non-Tribal Basin 27 water rights actually being diverted at the time of the Fort Hall Agreement was being negotiated [i.e., 1986-1987] were considered part of the estimated 45,000 AFY of water from the Blackfoot River," and as such only those water rights are protected by paragraph 27-11375.x.d. The Committee of Nine identifies 23 water rights it asserts are not entitled to the protections of paragraph 27-11375.x.d. because they were not in use during 1986-1987, even though they have priorities before January 1, 1990. Various water users have filed *Responses* to the Committee of Nine's assertions, arguing that their water rights should not be removed from the list of protected rights.

The legal issue identified by the parties in their *Responses* is as follows:

Issue: Whether the language of paragraph 27-11375.x.d. of the *Consent Decree* protects all persons diverting natural flow from the Blackfoot River prior to January 1, 1990, whose rights are decreed in the SRBA, OR whether the language of paragraph 27-11375.x.d. protects only those water users diverting natural flow from the Blackfoot River prior to January 1, 1990 who were diverting water in 1986-1987, and whose rights are decreed in the SRBA.

(“Legal Issue”). A scheduling conference on the State’s *Motion* was held on May 24, 2011. At that hearing, the Court determined that the economy of the parties and the Court directs that the parties address the above-identified legal issue prior to addressing any factual issues raised in the *Responses*.

THEREFORE THE FOLLOWING ARE HEREBY ORDERED:

1. Deadline for Response Briefs: Any party that wishes to file a Response Brief to the Committee of Nine’s *Response to the Content of The State’s List of Rights* must do so **on or before June 3, 2011**.
2. Deadline for Committee of Nine’s Reply Brief: The Committee of Nine may file a Reply Brief **on or before June 13, 2011**.
3. Subject of Briefing: All briefing filed by the parties at this stage in the proceeding shall be limited to addressing the Legal Issue identified above.
4. Oral Argument: Oral argument on the Legal Issues is set for **Thursday, June 16, 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.

DATED: May 24, 2011.


ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the BRIEFING AND ORAL ARGUMENT SCHEDULE ON STATE OF IDAHO'S MOTION FOR ACCOUNTING was mailed on May 24, 2011, with sufficient first-class postage to the following:

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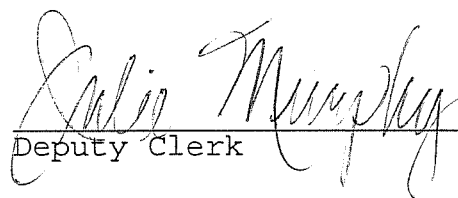
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