

DEPARTMENT OF
WATER RESOURCES

Attorneys for Committee of Nine

COMMITTEE OF NINE'S RESPONSE TO STATE OF IDAHO'S MOTION TO ALTER OR AMEND

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adjustment' *was not intended by the parties* to refer to the supplementation of the 27-11375 right with storage rights and/or groundwater as provided for in the *Consent Decree*." (Emphasis added). According to the State, use of the emphasized phrase means that the State, United States and Shoshone-Bannock Tribes ("Tribes") cannot consider storage rights and/or groundwater in relation to any "equitable adjustment" made pursuant to the *Consent Decree* and underlying settlement agreement. In doing so, according to the State, the Court undercut the flexibility inherent in the *Consent Decree* relative to resolving "equitable adjustment" issues.

The Committee does not oppose the State's motion, with one caveat: that the Court and parties recognize that any inherent flexibility contained in the *Consent Decree* does not create a right to injure other existing water users. Through the Fort Hall Agreement negotiations, the Committee surrendered a senior Snake River water right with an 1867 priority date (water right 01-10223) to the Tribes. The agreement is final and the *Consent Decree* is binding on this matter. A volume limitation was subsequently placed on water right 01-10223 to assure those within Water District 01 who use natural flow or storage that no further impact of their water supply would be imposed as a result of the Tribes' exercise of its rights. The Committee has relied on that finality and the assurances that no other existing water rights would be injured.

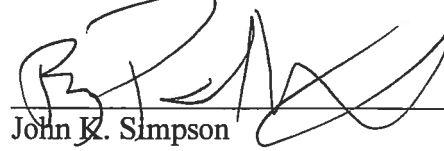
Through the surrender of water right 01-10223, the volume of Snake River water was well defined. As such, any "flexibility" created in the *Consent Decree* and underlying settlement agreement must be limited such that there are no further impacts to Snake River water rights.

Accordingly, should the Court grant the State's Motion, it should recognize that any "flexibility" in negotiating an "equitable adjustment" is limited such that there should be no further impact to Snake River water rights.

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Dated this 14th day of July, 2011.

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to be "John K. Simpson", is written over a horizontal line.

John K. Simpson
Travis L. Thompson

Attorneys for Committee of Nine

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of July, 2011, a true and correct copy of the foregoing was mailed with sufficient first-class postage to the following:

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720

Eastern Idaho Water Co.
c/o Larry Hinderager
434 W. Riverton Rd.
Blackfoot, ID 83221

William G. Myers III
HOLLAND & HART, LLP
P.O. Box 2527
Boise, ID 83701-2527

Mark B. Pratt
279 N. 400 E.
Blackfoot, ID 83221

Brett McDaniel
631 W. 225 S.
Blackfoot, ID 83221

Scott Axline
P.O. Box 100
Blackfoot, ID 83221

Merlin Yancey
707 W. 300 S.
Blackfoot, ID 83221

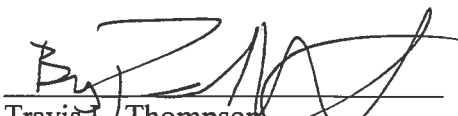
Clive Strong
Shasta Kilminster-Hadley
Natural Resources Division
IDAHO ATTORNEY GENERAL'S OFFICE
P.O. Box 44449
Boise, ID 83711-4449

Marvin R. Yancey
691 W. 300 S.
Blackfoot, ID 83221

Gary A. & Sonja J. Wright
673 W. 300 S.
Blackfoot, ID 83221

Jeanette Wolfley
SHOSHONE-BANNOCK TRIBES
202 N. Arthur
Pocatello, ID 83202

Peter Monson
Gloria Bainbridge
U.S. Dept. of Justice
Environmental & Natural Resources Div.
550 West Fort St., MSC033
Boise, ID 83724


Travis L. Thompson