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DEPARTMENT OF
WATER RESOURCES

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**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

**CLARIFICATION OF BASIN 27 WATER
USERS' SETTLEMENT AGREEMENT
"CONCERNS"**

**I.
BACKGROUND**

In the "JOINT STATUS REPORT RE: EQUITABLE ADJUSTMENT PROPOSAL" submitted to the court on the 17th of December, 2012, the parties noted:

*"Since the October 17, 2012 draft was presented to the Basin 27 water users, **the parties have attempted over the past three months, to address the non-Indian Blackfoot water users' concerns and have revised language in the proposed settlement to that end.** The parties presented the non-Indian Blackfoot water users with the most recent draft on December 17, 2012."* (emphasis added)

However, the non-Indian Blackfoot water users' concerns have remained constant over the past three months. The Basin 27 Advisory Board has attempted to clearly communicate our concerns to the parties involved in revising the language of the

proposed settlement agreement. The revised language has failed to address our concerns. The "RESPONSE BRIEF IN OPPOSITION TO THE PARTIES' BLACKFOOT RIVER EQUITABLE ADJUSTMENT AGREEMENT PURSUANT TO THE 1990 FORT HALL INDIAN WATER RIGHTS SETTLEMENT AGREEMENT REVISED OCTOBER 17, 2012" was another attempt by the Basin 27 Advisory Board to clarify the concerns of the non-Indian Blackfoot water users.

II. CONCLUSION

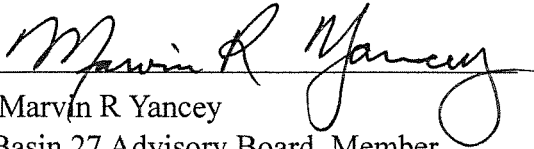
Since the various revisions of the Blackfoot River Equitable Adjustment Settlement Agreement are subject to IRE 408 and the Basin 27 Advisory Board members were not party to the negotiations resulting in the language changes to the agreement, the details of the specific language changes will not be reviewed. "Exhibit 1" is attached providing a summary of the concerns of the non-Indian water users with Sections 1 through 3 of the "Terms and Conditions" of the three most recent revisions of the "Blackfoot River Equitable Adjustment Settlement Agreement." The Basin 27 water users' concerns remain unchanged and unaffected by recent changes in the language of the Settlement Agreement.

III. ATTACHMENT

Exhibit 1--Clarification of Basin 27 Settlement Agreement Concerns

RESPECTFULLY SUBMITTED this 21st day of December, 2012.

BASIN 27 WATER USERS' ADVISORY BOARD MEMBER


Marvin R Yancey
Basin 27 Advisory Board, Member

Clarification of Basin 27 Settlement Agreement “Concerns”

August 31, 2012
Revision
B27 Concerns

Available Credit Limits
Maximum Balance = 40,000 afy
Maximum Accrual = 20,000 afy
Maximum Use = 12,000 afy
Start Balance = 20,000 af

Available Insurance Water
Maximum Balance = 10,000 afy
Maximum Accrual = 1,000 afy
Maximum Use = 10,000 afy
Start Balance = 5,000 af

Basin 27 Primary Volume Diversions

Annual Insurance Water Used
≤ 45,000 afy + Credit + Water Used

Basin 27 Primary Volume Diversion Limits

≤ 45,000 to 67,000 afy

Variable dependent on annual weather patterns

October 17, 2012
Revision
B27 Concerns

Available Credit Limits
Maximum Balance = 40,000 afy
Maximum Accrual = 20,000 afy
Maximum Use = 12,000 afy
Start Balance = 20,000 af

Available Equitable Adjustment Water
Maximum Balance = 10,000 afy
Maximum Accrual = 1,000 afy
Maximum Use = 10,000 afy
Start Balance = 5,000 af

Basin 27 Primary Volume Diversions

Annual Equitable Adjustment Water Used
≤ 45,000 afy + Credit + Water Used

Basin 27 Primary Volume Diversion Limits

≤ 45,000 to 67,000 afy

Variable dependent on annual weather patterns

Email from Clive Strong 10/18/12 with 10/17/12 Revision Attached: "The Attached agreement seeks to address most of the concerns you expressed in the meeting with the State and the Committee of Nine as proposed changes in your October 15th Proposal."

December 17, 2012
Revision
B27 Concerns

Available Credit Limits
Maximum Balance = 40,000 afy
Maximum Accrual = 20,000 afy
Maximum Use = 12,000 afy
Start Balance = 20,000 af

Available Equitable Adjustment Water
Maximum Balance = 10,000 afy
Maximum Accrual = 1,000 afy
Maximum Use = 10,000 afy
Start Balance = 5,000 af

Basin 27 Primary Volume Diversions

Annual Equitable Adjustment Water Used
≤ 45,000 afy + Credit + Water Used

Basin 27 Primary Volume Diversion Limits

≤ 45,000 to 67,000 afy

Variable dependent on annual weather patterns

Conclusion: The “Parties” claim they have addressed Basin 27 Water Users’ “Concerns” over the past few months of negotiations but, as shown in the above table, the **Basin 27 Water Users’ “Concerns”** remain **unchanged and un-affected** by recent changes to the Settlement Agreement. The settlement agreement **SHOULD PROVIDE an EQUITABLE ADJUSTMENT** to the Tribal Water Rights and **NOT PLACE LIMITS** on the Basin 27 non-Indian Water Rights protected by the 1990 Fort Hall Agreement to **“their full legal entitlement under state law.”**

CERTIFICATE OF MAILING

I certify that a true and correct copy of the "**CLARIFICATION OF BASIN 27 WATER USERS' SETTLEMENT AGREEMENT "CONCERNS"**" was mailed on December 21, 2012, with sufficient first-class postage to the following:

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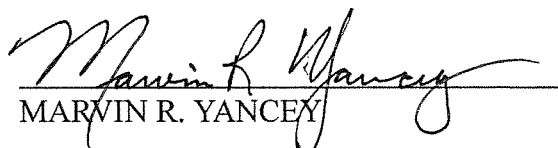
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