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Movants: United States, Shoshone-Bannock Tribes, and State of Idaho

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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
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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	)	Water Right Nos. 01-10223; 01-10248; 25-02160;
	)	25-13615; 27-02007; 27-11560; 27-11561
Case No. 39576	)	
	)	JOINT REPLY OF UNITED STATES, SHOSHONE-
	)	BANNOCK TRIBES, AND STATE OF IDAHO
	)	RE MOTION TO DISMISS OBJECTIONS
	)	TO 1990 FORT HALL INDIAN
	)	WATER RIGHTS AGREEMENT
_____	)	

DESCRIPTIVE SUMMARY

This is the joint reply brief of the United States, the Shoshone-Bannock Tribes, and the State of Idaho, responding to the *Response Of Kim Bodily And The Fort Hall Water Users Association To Joint Motion To Dismiss Objections To 1990 Fort Hall Indian Water Rights Agreement*.

ARGUMENT

The United States, the Shoshone-Bannock Tribes, and the State of Idaho (hereinafter the “joint movants”) moved this court to dismiss the objections of Mr. Bodily and the Fort Hall Water Users Association (hereinafter jointly referred to as the “Association”) to the 1990 Fort Hall Indian Water Rights Agreement (“Agreement”). The issues presented by the motion to dismiss are the standing of the Association to object to the Agreement, and whether the scope of the SRBA includes the issues raised in the Association’s objections. All facts relevant to the issue of standing are undisputed. It is undisputed that the members of the Association have not filed claims in the SRBA for the water rights delivered to them by the Fort Hall Indian Irrigation Project (“Project”) pursuant to Project contracts. It is also undisputed that they have not otherwise been joined as parties through the methods provided in the Idaho Rules of Civil Procedure. Thus, the only remaining issue relating to standing is whether there is some construction of the adjudication statutes that nonetheless gives the members of the Association the status of claimants.¹

¹ During the depositions of Mr. Bodily it was averred that he had filed a notice of claim for a non-project groundwater right. IDWR records show that Mr. Johnson, President of the Association, has filed a similar claim for groundwater. While the filing of such claims would give Mr. Bodily and Mr. Johnson (and by inference, the Association) status as “claimants,” neither has alleged standing as claimants based on their non-Project claims. In any event, the Project claims put at issue by their objections have no effect on their groundwater rights. Thus, the joint movants assume that Mr. Bodily and the Association have chosen to waive any argument based on their status as claimants of groundwater, instead choosing to base their standing on their argument that the members of the Association are claimants because the United States has filed claims on their behalf. Accordingly, as is proper in a reply brief, the joint movants have restricted themselves to responding to this assertion.

A. The Fact That The Members Of The Association Receive Water Pursuant To Contracts With the Project Does Not Give Them Standing As Claimants Or Parties In The SRBA.

The Association appears to assert that its members possess some sort of “entitlement” to Project waters. Such an assertion demonstrates the fundamental flaw in their argument supporting standing. The mere fact that members of the Association receive water from a federal water delivery system does not vest them with any “title” to the water. Without such a claim to title, the Association’s members are neither claimants nor parties, as these terms are used in the statutes establishing the SRBA.

The Association argues that it is entitled to standing as a claimant on the basis of I.C. § 42-1401A, which defines claimants as “any person asserting ownership of rights to the use of water within the state of Idaho or on whose behalf ownership of rights to the use of water is asserted.” The Association avers that the United States, by filing claims for the Project, has filed claims “on behalf” of the Association’s members.

The Association’s argument might have had merit if the United States had filed claims for each individual water user within the Project. It did not. The United States filed its claims on its own behalf, as owner and manager of the Project. Nothing on the face of the Notice of Claim filed by the United States asserts that the claim is filed on behalf of the non-Indian water users. It simply states that “[t]he water rights are claimed by the United States for use on land owned by non-Indian individuals which are served by the Fort Hall Irrigation Project.” Notice of Claim at 2, attached as Appendix A. This simple description of the place of use does not rise to the level of a legal relationship wherein the United States can be said to be filing the claim “on behalf” of the non-Indian water users. Any legal relationship between the United States and the non-Indian water users is defined solely by the contracts the parties have entered into for the delivery of water.

Nothing in the case law cited by the Association requires a different result. Nobody denies that the members of the Association have a legally protectible interest in the delivery of water to their lands. That interest, however, remains defined by the terms of the contracts entered into between the United States and the water users. The Agreement explicitly recognizes and protects such contract rights: section 12.2 of the Agreement states that “[t]he Secretary shall continue to provide all project water users within the Fort Hall Indian irrigation project their project water entitlements pursuant to their project contracts.”

The Association’s assertion of “party” status also fails as a matter of statutory construction. There is nothing in the adjudication statutes to indicate that the legislature intended persons in the position of the Association’s members to have either “claimant” or “party” status for the purpose of filing objections and other pleadings. The adjudication statutes, when read in their entirety, clearly contemplate that the term “claimant” is limited to the persons actually named on the notice of claim. For example, I.C. § 42-1409 provides that the notice of claim shall include “the name and address of the claimant.”²

The Legislature’s limitation of claimants to the parties named in the notice of claim is consistent with general law and the Idaho Rules of Civil Procedure. It is generally recognized that “when a statute speaks of a party it ordinarily refers to a party to the record, a plaintiff or defendant, and generally those who are not named as such in the record are not properly regarded as parties and may not avail themselves of rights given to parties.” 59 Am.Jur.2d *Parties* § 8 (1987). The Rules of Civil Procedure require parties to be designated by name. I.R.C.P. 3(b).

² The Association’s argument that the term “claimants” includes unnamed persons who possess contractual rights to the use of a claimed water right would lead to absurd results. For example, I.C. § 42-1411 provides that the director must file a notice of filing of director reports with each claimant. If the term “claimant” includes unnamed persons such as the members of the Association, however, the Director could never be in compliance with the notice provisions, since he would have no way of knowing the names of all claimants.

The claim filed by the United States for the water rights at issue, in the space designated for name of claimants, lists only the "United States of America." Notice of Claim at 1, attached as Appendix A. The United States' designation of itself as the sole claimant of the Project's water rights is dispositive. If the United States had intended to file its claim on behalf of the Associations' members, it would have done so expressly, as it has in other instances. For example, the claims filed by the United States for the Nez Perce Tribe expressly state that they are being filed by the "United States of America as trustee on behalf of the Nez Perce Tribe." Under the terms of I.C. § 42-1409, the members of the Association have not been properly joined as claimants or otherwise joined as parties in the SRBA.³

**B. The Issues Raised By The Association
Are Outside The Scope Of The SRBA.**

In their opening brief, the joint movants asserted that the issues raised by the Association are outside the scope of the SRBA. Although the Association engages in some mild ridicule of the movants' position, it does not actually respond, other than to assert that the issues raised by the Association's objections "are not water delivery matters." Unfortunately, the Association fails to explain why they are not, other than to make vague and ambiguous allegations inferring, but never explicitly stating, that the members of the Association hold water rights cognizable in the SRBA. They also provide vague citations to the McCarran Amendment, due process, and the decision in *Young Harvey Walker v. Big Lost River Irrigation Dist.*, 124 Idaho 78, 856 P.2d 868 (1994). The joint movants will respond to each of these issues in turn.

³ Even if the members of the Association are found to be claimants, the joint movants reserve the right to challenge the authority of the Association to act on its members' behalf. During the deposition of Floyd Johnson, Mr. Johnson was unable to produce minutes of any meeting authorizing him to file objections on the Association's behalf. Deposition of Floyd Johnson at 29-33, attached as Appendix B. This issue, involving questions of material fact, is properly reserved for trial.

1. *Water Rights*

The Association fails to clearly articulate the nature of the rights that it asserts to the delivery of water. At times, it refers to its members' rights as "vested rights," as "water rights," and as "water rights of the United States on behalf of the non-Indian water users." Association's Brief at 2, 11. What the Association fails to recognize is that many persons hold "rights" to the use of water, but not all such rights rise to the level where they may receive judicial protection through the adjudication process. A familiar example is municipal water users supplied by public utilities. While such users undoubtedly have rights to the use of the water, they are not cognizable in a general stream adjudication. *See, e.g.,* Robert E. Beck, in 1 *Waters and Water Rights* § 4.01 (1991)

The rights of the Association's members are defined primarily by the statutes authorizing and establishing the Project, and by the contracts entered into pursuant to those statutes. The primary act establishing the Project is the Act of March 1, 1907, 34 Stat. 1024. The Act provides that water rights would be "sold" to water users for six dollars per acre. 34 Stat. 1024. The Act also provides that "water rights acquired or provided for in this measure shall be appurtenant to the lands irrigated." *Id.*

The provisions of the 1907 Act are very similar to the provisions of the Reclamation Act that were interpreted in *Ickes v. Fox*, 300 U.S. 82 (1937). In *Ickes*, the Supreme Court found that land owners using water from water projects developed under the Reclamation Act were the holders of the project's water rights, and that the United States "was and remained simply a carrier and distributor of the water." *Id.* at 95. The Court based its conclusion on language in the Reclamation Act providing that water rights were made "appurtenant to the land irrigated." *Id.* at 93.

Thus, a case *could* be made that the *original* intent of Congress was that the non-Indian water users within the Project would eventually be issued water rights that could be recognized and decreed as are other water rights under state law. The Association fails, however, to

provide any documentation demonstrating that this intent was ever carried out. Indeed, it fails to even allege that water rights have ever been conveyed to the Association's members. It could not, for it is undisputed that the United States has never conveyed water rights to the members of the Association.

Because no conveyance of water rights to Project water users ever occurred, the rights of Project water users continue to be defined solely by the contracts between the users and the United States. It is clear that the Idaho Legislature did not intend such issues to be included in the SRBA. The SRBA is a proceeding to determine the relative rights of all water users vis-à-vis one another. The universe of relative rights at issue in the SRBA is defined by the notices of claim filed. Having failed to file notices of claim, the alleged "water rights" of the Association's members are not at issue. The sole issue raised by the Association is whether the United States will continue to meet its contractual obligations to deliver water to the Association's members. The SRBA is not the proper forum to decide such internal disputes between water delivery organizations and their users.

An example of this is seen in *Farmer's Co-operative Ditch Co. v. Riverside Irrig. Dist. Ltd.*, 14 Idaho 450, 94 P. 761 (1908). In that case, the party initiating the adjudication had only named as parties the various irrigation districts and ditch companies diverting water from the Boise River, not the individual consumers served by the districts and companies. *Id.* at 457. The appellant challenged the validity of the water rights decree, asserting that all persons using water provided by ditch companies were necessary parties to the adjudication. *Id.* The court held that such water users were not necessary parties to a stream adjudication, noting that any controversy such users may have "is with the ditch company from which he receives water or with other consumers under the ditch over the question of priority of use." *Id.* at

459.⁴ Likewise, any controversy raised by the Association is solely between it and the United States, and does not affect other water users in the SRBA.

2. *McCarran Amendment*

Nothing in the McCarran Amendment requires that delivery of water pursuant to federal irrigation project contracts be included within the scope of general stream adjudications. The McCarran Amendment leaves states free to define what constitutes a “water right” for purposes of decreeing rights to the use of water under state law. Idaho law provides that licenses for irrigation projects over 25,000 acres may be issued in the name of the entity operating the project. I.C. § 42-219.⁵ Idaho cases recognize that stream adjudications involving water delivery entities need only adjudicate the right held by the entity actually appropriating the water, and need not include rights held by the consumers served by the entity. *Farmer’s Co-op, supra*. By inclusion of all appropriative water rights in the SRBA, the state’s obligation to provide a “comprehensive” general stream adjudication has been fulfilled.

3. *Due Process*

The Association makes a vague reference to due process, but fails to explain how a jurisdictional limitation on the scope of issues to be decided in a general stream adjudication would violate such provisions. Due process guarantees “an opportunity . . . granted at a meaningful time and in a meaningful manner . . . for a hearing appropriate to the nature of the case.” *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971)(citations and quotation marks

⁴ Even though the court held that the water users were not necessary parties, it noted that they could be joined as parties. 14 Idaho at 458. This dicta, however, referred to the provisions of the 1903 adjudication code, which did not contain the restrictions on subject matter jurisdiction found in the 1986 amendments.

⁵ The net irrigable acreage of the Fort Hall Project is over 47,000 acres. See Act of June 30, 1948, 62 Stat. 1167, § 4.

omitted). It does not guarantee that the opportunity to be heard will take place in any particular forum or in any particular form. *See Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 483 (1982)(no particular form of procedure is dictated by due process clause). So long as a forum exists that can provide meaningful relief to the Association, any allegation of due process violations is baseless. If, for some reason, the United States proves unable to meet its contractual obligations to the members of the Association, a forum is available to them in the form of a breach of contract action before the federal district courts or the Court of Federal Claims. *See* 28 U.S.C. §§ 1346, 1491. Another forum available to the Association if it believes the United States has breached its contractual obligations is to pursue the administrative remedies available through the Department of Interior, including appeal to the Interior Board of Indian Appeals. 25 C.F.R. § 2.4. Questions regarding operation of the Project have been resolved using these administrative processes in the past. *See, e.g.*, 56 Int. Dec. 7 (1936). It cannot be seriously contended that these federal forums do not meet the basic due process requirement of “[a] fair trial in a fair tribunal.” *In re Murchison*, 349 U.S. 133, 136 (1955).⁶

4. *Young Harvey Walker v. Big Lost River Irrigation District*

The decision in *Young Harvey Walker* (“Walker”) does not support the Association’s argument. It is true that *Walker* involved a question relating to delivery of water rights, but any similarity stops there. As the Court noted, the issue in *Walker* was “delivery of the individual irrigation district member’s decreed water rights.” 124 Idaho at 79 (emphasis added). The court concluded that the case, by its nature, required an adjudication of the water rights held by Walker, and therefore came within the scope of the jurisdiction vested in the SRBA Court by I.C. §§ 42-1401 through 42-1423. Unlike *Walker*, the objections filed by the

⁶ The availability of administrative forums may also require the exhaustion of administrative remedies. *See e.g., Pounds v. Denison*, 115 Idaho 381, 383, 766 P.2d 1262, 1264 (Ct. App. 1988).

Association neither ask for nor require an adjudication of water rights held by the Association's members. Indeed, the Association fails to even allege the existence of any water rights held by its individual members. Because it ignores this fundamental difference between *Walker* and the present situation, the Association's reliance on *Walker* is misplaced.

**C. The "Facts" Asserted in the Association's Response Brief
Are Neither Accurate Nor Material To The Issues At Hand**

Mr. Bodily and the Association (hereinafter jointly referred to as the "Association"), attempt to obfuscate the issue of standing by asserting a series of "undisputed" facts in their responsive brief. Unfortunately, those "facts" are described in a contextual vacuum that is at best confusing, and at worst, misleading. Although the asserted "facts" are not material to the issues raised in the motion to dismiss, the joint movants are compelled to respond in order to set the record straight. Therefore, the joint movants provide the following critique of the "facts" asserted by the Association, and describe the actual facts, where appropriate, in the context of the history of the project, the water rights held by the United States, and the relationship of the United States and the water users of the Project.

First, the Association asserts that it is "undisputed" that the Agreement will abrogate state water law and prior court decrees. This so-called "fact" is false. The Agreement simply recognizes the possibility that if the Tribes chose to litigate they would be awarded substantial amounts of water under the federal reserved water rights doctrine, and that such water would have a priority date of June 14, 1867, the date the Fort Hall Reservation was established. If the Tribes had achieved this result through litigation, effects on existing water users, including the Association, would be substantial. In order to avoid unnecessary effects on existing users, the parties to the Agreement agreed to recognize a tribal reserved water right in return for the relinquishment of equivalent amounts of water currently held by the United States pursuant to state law. Moreover, the Tribes and the United States agreed to subordinate their rights under

the Agreement to water users on the Blackfoot River and Bannock Creek. The Agreement represents a reasoned settlement of disputed issues, and by no means abrogates any state law or prior decree. Nor does it establish precedent for other federal reserved water right claims. Agreement, § 11.2.⁷

Another “fact” asserted by the Association is that the reduction in acreage from 13,221 acres to 12,667 acres will result in a 10% increase in operation and maintenance costs to the non-Indian water users. First of all, nothing in the Agreement “reduces” project acreage. The calculation of Project acreage is within the authority of the United States, as evidenced by the fact that Project acreage has fluctuated over time. The Agreement simply recognizes the fact that only 12,667 acres are currently being irrigated with Project water. Any reduction in acreage is due to the actions of the Association’s members, who, over time, have taken acreage out of production by building homes, pouring driveways, and undertaking similar activities. This reduction in the number of irrigable acres does not, as the Association infers, affect total operation and maintenance costs. The non-Indian water users, as a group, will continue to pay the same amount for operations and maintenance under the Agreement.⁸ The only effect of the reduction in acreage is to increase the per-acre assessment. Even then, the increase in the per-acre assessment is not 10%, but only 4.36%.⁹ The effect on individual water users will vary. Water users whose actual irrigated acreage is less than that historically claimed will pay less, some will pay slightly more, but the majority of the water users will probably notice little difference.

⁷ Moreover, the Association has asserted that apart from issues relating to quantity, it has no problem with the creation of a reserved water right for the Tribes. Deposition of Floyd Johnson at 96, attached as Appendix B.

⁸ The Court should take note that the Indian portion of the Project also pays, through the United States, its proportion of operations and maintenance costs.

⁹ For example, if operations and maintenance costs totaled \$100,000, the assessment per acre for 13,221 acres would be \$7.56 per acre, and the assessment per acre for 12,667 acres would be \$7.89.

The Association also asserts that the Agreement will reduce the non-Indians' "entitlement" to storage water from 125,440 acre feet to 25,500 acre feet. Yet, as the Association freely admits, the Project's water rights are owned by the United States and their only entitlement is to have water delivered pursuant to their contracts with the United States. Moreover, the Association fails to inform the Court that although the United States has reduced its claim for storage water from Blackfoot and Gray's Lake Reservoirs for use on the non-Indian portion of the Project, it has replaced that by an increased claim for water diverted from the Snake River and other sources.

The Association's argument is based on the fact that the Fort Hall Unit of the Project was historically administered so that storage water from Blackfoot Reservoir and Gray's Lake Reservoir was allocated to Indian and non-Indian water users in a manner proportional to Indian/non-Indian acreage, *i.e.*, 72:28. This historic practice, however, is not mandated by either federal or state law. Nothing in the 1907 Act authorizing construction of the Blackfoot Reservoir and Gray's Lake Reservoir requires strict allocation of the water between Indian and non-Indian water users. Likewise, neither state statutes nor the state licenses that the United States holds for the water stored in Blackfoot Reservoir and Gray's Lake Reservoir require its distribution on a 72:28 basis.

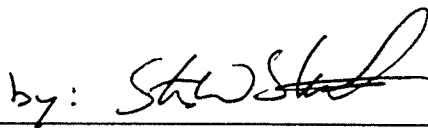
The Association fails to present any authority for the proposition that they are entitled, as consumers of the Project, to retention of historic operational practices of the Project. Indeed, they could not, since the rights of the Association's members are defined solely by the terms of the contracts that they have entered into with the United States for the delivery of water. The Association has failed to present any evidence that such contracts require the delivery of storage water instead of natural flow water from the Snake River. The Agreement expressly provides that the United States "shall continue to provide all project water users within the Fort Hall Indian Irrigation Project their project water entitlements pursuant to their project contracts. Agreement, § 12.2. So long as the United States delivers the amount of

water required by the terms of the contracts, the fact that such water comes from natural flows rather than storage is simply irrelevant.

CONCLUSION

For the reasons stated in the foregoing memorandum and the opening memorandum of the joint movants, the objections of the Association and Mr. Bodily should be DISMISSED.

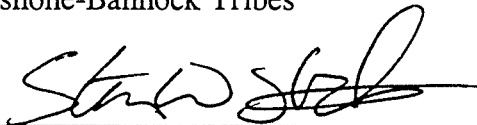
DATED this 11th day of April, 1995.

by: 

PETER C. MONSON
Trial Attorney
Environment and Natural Res. Div.
U.S. Department of Justice

by: 

CANDY L. JACKSON
Tribal Attorney
Shoshone-Bannock Tribes



STEVEN W. STRACK
Deputy Attorney General
State of Idaho

P5097NSB

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the JOINT REPLY OF UNITED STATES, SHOSHONE-BANNOCK TRIBES, AND STATE OF IDAHO RE MOTION TO DISMISS OBJECTIONS TO 1990 FORT HALL INDIAN WATER RIGHTS AGREEMENT was sent by placing the same, on April 11, 1995, with Federal Express overnight delivery service for delivery to the following:

Margaret J. King
Simms & Stein, P.A.
102 Aspen Lakes Drive
Hailey, ID 83333

I further certify that true and correct copies of the JOINT REPLY OF UNITED STATES, SHOSHONE-BANNOCK TRIBES, AND STATE OF IDAHO RE MOTION TO DISMISS OBJECTIONS TO 1990 FORT HALL INDIAN WATER RIGHTS AGREEMENT were mailed on April 11, 1995, with sufficient first-class postage to the following:

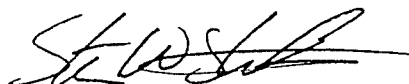
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DATED this 11th day of April, 1995.



Steven W. Strack
Deputy Attorney General

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number _____

Date Received _____

Receipt Number _____

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

RECEIVED

MAR 25 1983

Deposited at _____

Please type or print clearly

1. Name of Claimant (s) UNITED STATES OF AMERICA Phone (503) 231-6702
Mailing Address BUREAU OF INDIAN AFFAIRS 911 NE 11TH AVE, PORTLAND Zip 97232-4169
OREGON
2. Date of Priority (Only one (1) per claim) SEE ATTACHED
3. Source of water supply (a) SEE ATTACHED
which is tributary to (b) _____
4. a. Location of existing point of diversion is: Township _____ Range _____ Section SEE ATTACHED
_____ 1/4 of _____ 1/4 of _____ 1/4, Govt. Lot, _____ B.M., County of _____
Additional points of diversion if any: SEE ATTACHED
- b. If instream flow, beginning point of claimed instream flow is:
Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,
Govt. Lot _____ B.M., County of _____
ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____
_____ 1/4, Govt. Lot _____ B.M., County of _____
5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well.
SEE ATTACHED

6. Water is claimed for the following purposes: SEE ATTACHED
(both dates are inclusive) (cfs) (acre feet)

For _____ purposes from _____ to _____ amount _____ or _____
 For _____ purposes from _____ to _____ amount _____ or _____
 For _____ purposes from _____ to _____ amount _____ or _____
 For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) SEE ATTACHED (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is _____ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) _____

10. Description of place of use: SEE ATTACHED

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	

Total number of acres irrigated SEE ATTACHED

11. In which county (ies) are lands listed above as place of use located? BINGHAM, BANNOCK, POWER

12. Do you own the property listed above as place of use? Yes _____ No XX
 If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above. _____ or None ()

14. Remarks: SEE ATTACHED. THE WATER RIGHTS ARE CLAIMED BY THE UNITED STATES FOR USE ON LAND OWNED BY NON-INDIAN INDIVIDUALS WHICH ARE SERVED BY THE FORT HALL IRRIGATION PROJECT.

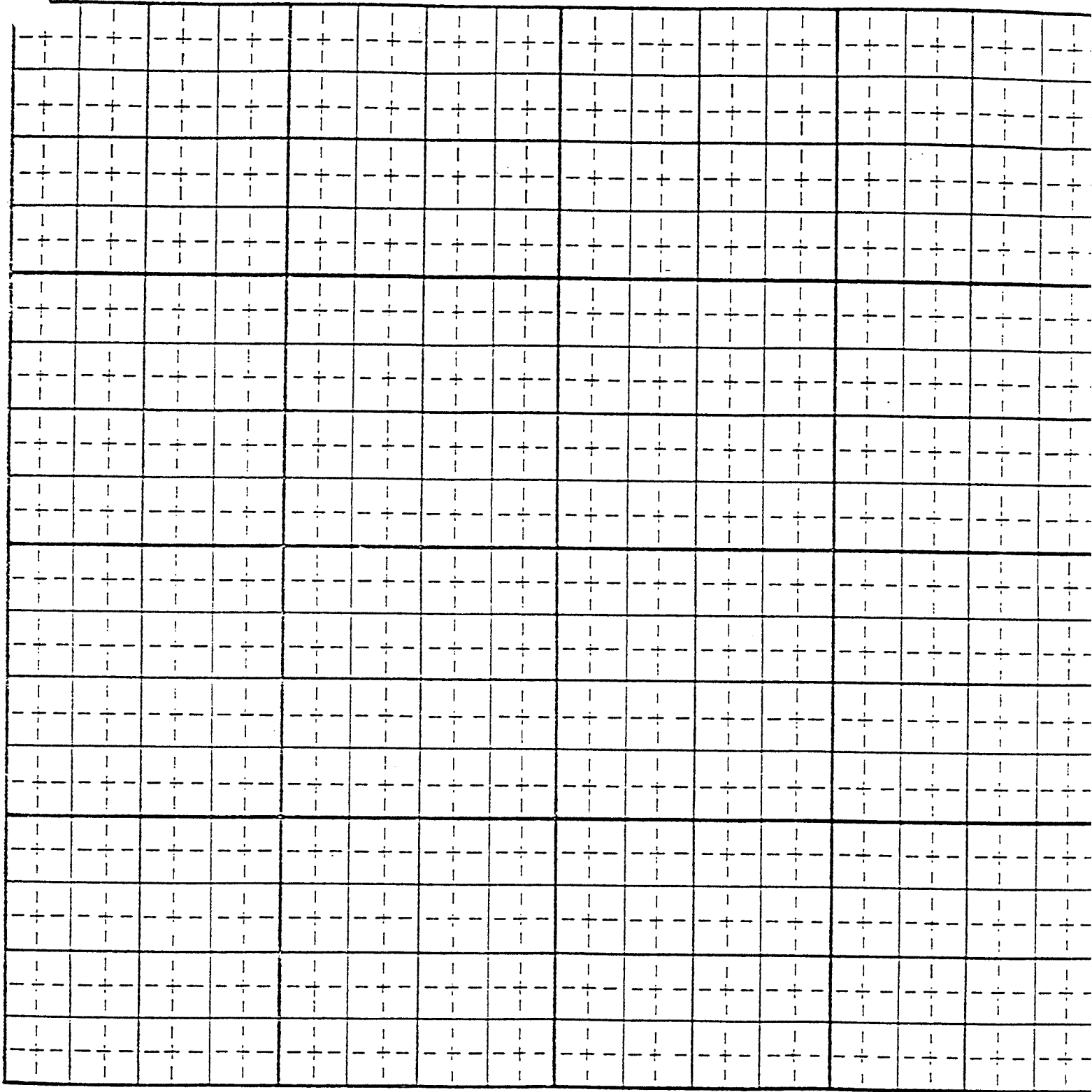
Last Name _____ Ident No. _____

Copies: White -State, Yellow-Claimant

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

2 ATTACHED MAPS



Last Name _____ Ident No. _____

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) ☐ Trial Use ☐ Posted Notice ☐ Use ☐ Permit
Dec. _____
If applicable provide IDWR Water Right Number _____ Decree Date _____
Court _____ Case Number _____
Plaintiff vs Defendant _____

16. Signature (s)
(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled
"How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____
wish to receive and pay a small annual fee for monthly copies of the docket sheet.
Number of attachments _____
For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true
and correct.
Signature of Claimant (s) _____ Date _____
_____ Date _____

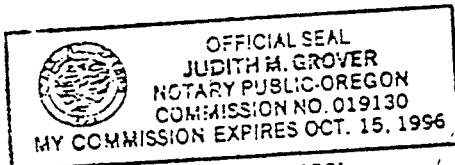
For Organizations: I do solemnly swear or affirm that I am THE ACTING PORTLAND AREA DIRECTOR Title _____
of THE BUREAU OF INDIAN AFFAIRS Organization _____, that I have signed the foregoing
document in the space below as ACTING PORTLAND AREA DIRECTOR Title _____ of THE BUREAU OF INDIAN AFFAIRS Organization _____
and that the statements contained in the foregoing document are true and correct.
Signature of Authorized Agent _____
Title and Organization ACTING PORTLAND AREA DIRECTOR Date 3-14-93
BUREAU OF INDIAN AFFAIRS

State of Idaho/or OREGON)
County of Multnomah) SS.

Subscribed and sworn (or affirmed) before me this _____ day of _____ 1993

SEAL

Notary Public Judith M. Grover
Residing at Portland, Oregon
My Commission Expires 10-15-96



17. Notice of Appearance:
Notice is hereby given that I, Peter C. Manson will be acting as attorney at law on behalf
of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above
should be mailed to me at the address listed below.

Signature _____
Address Indian Resources Section - ENRD
U.S. Dept. of Justice
550 W. Fort Street, Box 33
Boise, Idaho 83734
Date March 22, 1993

Last Name _____ Ident. Number _____

Copies White-State, Yellow-Claimant

DESCRIPTIVE ATTACHMENT TO UNITED STATES' CLAIM FOR
WATER RIGHTS FOR THE FORT HALL IRRIGATION PROJECT

ARTICLE 1.2 Surface Water Rights

.1 Right From Bannock Creek.

- i. Source: Bannock Creek
- ii. Annual Diversion Volume: 80 AFY
- iii. Diversion Rate: 3.0 CFS
- iv. Annual Volume of Consumptive Use: 50 AFY
- v. Priority Date: April 1, 1887
- vi. Point of Diversion: SW SW SE Sec. 21, Twp 8 S,
Rge 33 E, BM
- vii. Purpose and Periods of Use: Irrigation and
Stockwater, 3/15 to 11/15
- viii. Place of Use: 20 acres more or less located in
the SW NW Sec. 4, Twp 8 S, Rge 33 E, BM as shown
on the maps attached hereto and labeled Attachment
A
- ix. Basis of Right: Bannock Creek Decree
- x. Remarks:
 - a. To the extent a non-Indian water user is
adjudicated a non-Project water right for the
Project lands described above, the amount of
that non-Project water right will be deducted
from the Project water rights on a 1:1 basis.

.2 Right From Snake River.

- i. Source: Snake River
- ii. Annual Diversion Volume: 60,000 AFY
- iii. Diversion Rate: 260 CFS
- iv. Annual Volume of Consumptive Use: 35,672.5 AFY
- v. Priority Date: December 14, 1891

vi. Point of Diversion:

SE SW NE Sec. 31, Twp 1 N, Rge 37 E, BM
(Reservation Canal)

vii. Purpose and Period of Use: Irrigation, 3/15 to
11/15

viii. Place of Use: 13,221.24 acres as shown on the
maps attached hereto and labeled Attachment A.

ix. Basis of Right: Rexburg Decree for Snake River

x. Remarks:

- a. This right is used in combination with the right described in Article 1.2.3. The combined diversion rate of this right and the right described in Article 1.2.3 shall not exceed 260 CFS and the combined diversion volume shall not exceed 60,000 AFY. The combined rights may be used to irrigate not more than 13,221.24 acres from the combined water sources.
- b. To the extent a non-Indian water user is adjudicated a non-Project water right for the Project lands shown on Attachment A, the amount of that non-Project water right will be deducted from the Project water rights on a 1:1 basis.
- c. As the United States and owners of lands within the ceded area relinquish their rights to use water under this right on the Project lands shown on Attachment A, the cap on the annual diversion rate and volume of the Tribal water right described in Article 7.1.1 of the 1990 Fort Hall Indian Water Rights agreement shall be increased by a like amount until the ultimate diversion rate of 470 c.f.s. and ultimate diversion volume of 115,000 AFY are reached.
- d. The water rights described in this Article and Article 1.2.3, 1.2.4, 1.2.5, 1.2.6 and 1.2.7 are to be used on the same acres as shown on the maps attached hereto as Attachment A. The total annual volume of consumptive use from these rights shall not exceed 35,672.5 AFY for the lands identified

on the maps attached hereto and labeled Attachment A.

- e. In the event the natural water supply from the Snake River under the 1891 priority date is not available, the non-Indian Fort Hall Project Water users shall continue usage of their Sand Creek water supply at a diversion rate not to exceed 260 cfs until the annual diversion volume of 60,000AFY is met.

.3 Right From Sand Creek.

- i. Source: Sand Creek
- ii. Annual Diversion Volume: 60,000 AFY
- iii. Diversion Rate: 260 CFS
- iv. Annual Volume of Consumptive Use: Included in the right described in Article 1.2.2
- v. Priority Date: April 4, 1914
- vi. Point of Diversion:
 - NE NW NW Sec. 7, Twp 2 S, Rge 37 E, BM
(Sand Creek)
- vii. Purpose and Period of Use: Irrigation, 3/15 to 11/15
- viii. Place of Use: 13,221.24 acres as shown on the maps attached hereto and labeled Attachment A.
- ix. Basis of Right: Constitutional Right
- x. Remarks:
 - a. This right is used in combination with the right described in Article 1.2.2. The combined diversion rate of this right and the right described in Article 1.2.2 shall not exceed 260 CFS and the combined diversion volume shall not exceed 60,000 AFY. The combined rights may be used to irrigate not more than 13,221.24 acres from the combined water sources.
 - b. To the extent a non-Indian water user is adjudicated a non-Project water right for the Project lands shown on Attachment A, the

amount of that non-Project water right will be deducted from the Project water rights on a 1:1 basis.

- c. As the United States and owners of lands within the ceded area relinquish their rights to use water under this water right on the Project lands, the cap on the annual diversion rate and annual diversion volume of the Tribal water right described in Article 7.1.1 of the 1990 Fort Hall Indian Water Rights Agreement shall be increased by the like amount until the ultimate diversion rate of 470 c.f.s. and ultimate diversion volume of 115,000 AFY are reached.
- d. The water rights described in this Article and Article 1.2.2, 1.2.4, 1.2.5, 1.2.6 and 1.2.7 are to be used on the same acres as shown on the maps attached hereto and labeled Attachment A. The total annual volume of consumptive use from these rights shall not exceed 35,672.5 AFY for the lands identified on the maps attached hereto and labeled Attachment A.
- e. In the event the natural water supply from the Snake River under the 1891 priority date is not available, the non-Indian Fort Hall Project water users shall continue usage of their Sand Creek water supply at a diversion rate not to exceed 260 cfs until the annual diversion volume of 60,000 AFY is met.
- f. When the Snake River is under regulation, the non-Indian project water users' portion of the available inflow from Sand Creek shall be counted as 15 percent (15%) of the flow of Sand Creek actually diverted through the North and Main Canals. The diversion rate for this right shall be limited to a rate equal to 15 percent (15%) of the flow of Sand Creek actually diverted through the North and Main Canals not to exceed 260 cfs.

.4 Right From Blackfoot River

- i. Source: Blackfoot River
- ii. Annual Diversion Volume: 56,200 AFY
- iii. Diversion Rate: Not Limited

iv. Annual Volume of Consumptive Use: Included in the right described in Article 1.2.2

v. Priority Date: September 3, 1907

vi. Points of Diversion:

NW NE Sec. 12, Twp 5 S, Rge 40 E, BM
(Blackfoot Reservoir)
SW SW Sec. 1, Twp 5 S, Rge 42 E, BM
(Clarks Cut)

SE NW Sec. 7, Twp 2 S, Rge 38 E, BM
(Little Indian Canal)

NE NE Sec. 13, Twp 3 S, Rge 35 E, BM
(Main Canal)

NW NE Sec. 14, Twp 3 S, Rge 35 E, BM
(North Canal)

vii. Purposes and Period of Use:

Storage for Irrigation 1/1 to 12/31

Irrigation from Storage 3/15 to 11/15

viii. Place of Use: 13,221.24 acres as shown on the maps attached hereto and labeled Attachment A.

ix. Basis of Right: License No. 3117 acquired pursuant to Fort Hall Irrigation Project Act.

x. Remarks:

- a. To the extent a non-Indian water user is adjudicated a non-project water right for the Project lands shown on Attachment A, the amount of that non-Project water right will be deducted from the Project water rights on a 1:1 basis.
- b. The water rights described in this Article and Article 1.2.2, 1.2.3, 1.2.5, 1.2.6 and 1.2.7 are to be used on the same acres as shown on the maps attached hereto and labeled Attachment A. The total annual volume of consumptive use from these rights shall not exceed 35,672.5 AFY for the lands identified on the maps attached hereto and labeled Attachment A.

- c. The total annual diversion under this right and the right described in Article 1.2.5 shall not exceed 84,300AFY.
- d. The total annual volume of water stored under this right and right no. 27-02007 shall not exceed 348,000 acre-feet.

.5 Right From Grays Lake.

- i. Source: Grays Lake
- ii. Annual Diversion Volume: 28,100 AFY
- iii. Diversion Rate: Not Limited
- iv. Annual Volume of Consumptive Use: Included in the right described in Article 1.2.2
- v. Priority Date: August 23, 1919
- vi. Points of Diversion:

NW NE Sec. 12, Twp 5 S, Rge 40 E, BM
(Blackfoot Reservoir)

SW SW SW Sec. 1, Twp 5 S, Rge 42 E, BM
(Clarks Cut)

SE NW NW Sec. 7, Twp 2 S, Rge 38 E, BM
(Little Indian Canal)

NE NE NE Sec. 13, Twp 3 S, Rge 35 E, BM
(Main Canal)

NW NE NW Sec. 14, Twp 3 S, Rge 35 E, BM
(North Canal)

- vii. Purposes and Period of Use:

Storage for Irrigation 1/1 to 12/31

Irrigation from Storage 3/15 to 11/15

- viii. Place of Use: 13,221.24 acres as shown on the maps attached hereto and labeled Attachment A.
- ix. Basis of Right: Permit numbers 14247 and R-161 acquired pursuant to the Fort Hall Irrigation Project Act

x. Remarks:

- a. To the extent a non-Indian water user is adjudicated a non-Project water right for the Project lands shown on Attachment A, the amount of that non-Project water right will be deducted from the Project water rights on a 1:1 basis.
- b. The water rights described in this Article and Article 1.2.2, 1.2.3, 1.2.4, 1.2.6 and 1.2.7 are to be used on the same acres as shown on the maps attached hereto and labeled Attachment A. The total annual volume of consumptive use from these rights shall not exceed 35,672.5 AFY for the lands identified on the maps attached hereto and labeled Attachment A.
- c. The total annual diversion under this right and the right described in Article 1.2.4 shall not exceed 84,300 AFY.
- d. The total annual volume of water stored under this right and right no. 25-02160 shall not exceed 100,000 acre-feet.

.6 Right From Unnamed Spring.

- i. Source: Unnamed Spring
- ii. Annual Diversion Volume: 4,052 AFY
- iii. Diversion Rate: 8.34 cfs
- iv. Annual Volume of Consumptive Use: 2,229 AFY
- v. Priority Date: August 1, 1891
- vi. Points of Diversion:
 - SE NW NW Sec. 7, Twp 2 S, Rge 38 E, BM
(Little Indian Canal)
 - NE NE NE Sec. 13, Twp 3 S, Rge 35 E, BM
(Main Canal)
 - NW NE NW Sec. 14, Twp 3 S, Rge 35 E, BM
(North Canal)
- vii. Purposes and Period of Use:

Irrigation and stockwater: 3/15 to 11/15

viii. Place of Use: 13,221.24 acres as shown on the maps attached hereto and labeled Attachment A.

ix. Basis of Right: Stevens Decree

x. Remarks:

- a. To the extent a non-Indian water user is adjudicated a non-Project water right for the Project lands shown on Attachment A, the amount of that non-Project water right will be deducted from the Project water rights on a 1:1 basis.
- b. The water rights described in this Article and Article 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6 and 1.2.7 are to be used on the same acres as shown on the maps attached hereto and labeled Attachment A. The total annual volume of consumptive use from these rights shall not exceed 35,672.5 AFY for the lands identified on the maps attached hereto and labeled Attachment A.

.7 Right From Minor Tributaries.

- i. Source: Surface flows of Balckfoot River
Tributaries: Grave Creek, Brush Creek, Wolverine Creek, and Corral Creek.
- ii. Annual Diversion Volume: 11,563 AFY
- iii. Diversion Rate: 23.8 cfs
- iv. Annual Volume of Consumptive Use: 6,360
- v. Priority Date: September 3, 1907
- vi. Points of Diversion:

SE NW NW Sec. 7, Twp 2 S, Rge 38 E, BM
(Little Indian Canal)

NE NE NE Sec. 13, Twp 3 S, Rge 35 E, BM
(Main Canal)

NW NE NW Sec. 14, Twp 3 S, Rge 35 E, BM
(North Canal)

vii. Purposes and Period of Use:

Irrigation and Stockwater: 3/15 to 11/15

- viii. Place of Use: 13,221.24 acres as shown on the maps attached hereto and labeled Attachment A.
- ix. Basis of Right: License.
- x. Remarks:
 - a. To the extent a non-Indian water user is adjudicated a non-Project water right for the Project lands shown on Attachment A, the amount of that non-Project water right will be deducted from the Project water rights on a 1:1 basis.
 - b. The water rights described in this Article and Article 1.2.2, 1.2.3, 1.2.4, 1.2.5 and 1.2.6 are to be used on the same acres as shown on the maps attached hereto and labeled Attachment A. The total annual volume of consumptive use from these rights shall not exceed 35,672.5 AFY for the lands identified on the maps attached hereto and labeled Attachment A.

.8 Right For Blackfoot Reservoir and Tributaries.

- i. Source: Blackfoot River and tributaries and the Blackfoot Reservoir and tributaries
- ii. Annual Diversion Volume: 14.54 AFY
- iii. Diversion Rate: 0.20 CFS
- iv. Annual Volume of Consumptive Use: De minimis
- v. Priority Date: March 1, 1907
- vi. Points of Diversion:

Twp 7 S, Rge 41 E, BM

Twp 7 S, Rge 42 E, BM

Twp 6 S, Rge 41 E, BM

Twp 6 S, Rge 42 E, BM

Twp 5 S, Rge 40 E, BM

Twp 5 S, Rge 41 E, BM

Twp 5 S, Rge 42 E, BM

Twp 4 S, Rge 40 E, BM

Twp 4 S, Rge 41 E, BM

vii. Purpose and Period of Use: Stockwater, 1/1 to 12/31

viii. Place of Use:

Twp 7 S, Rge 41 E, BM

Twp 7 S, Rge 42 E, BM

Twp 6 S, Rge 41 E, BM

Twp 6 S, Rge 42 E, BM

Twp 5 S, Rge 40 E, BM

Twp 5 S, Rge 41 E, BM

Twp 5 S, Rge 42 E, BM

Twp 4 S, Rge 40 E, BM

Twp 4 S, Rge 41 E, BM

ix. Basis of Right: Beneficial Use

x. Remarks

a. Water will be used for stock water for range cattle for the grazing rights associated with Blackfoot Reservoir.

.9 Right from Equalizing Reservoir and Tributaries

i. Source: Blackfoot River and tributaries and Equalizing Reservoir and tributaries

ii. Annual Diversion Volume: 0.70 AFY

iii. Diversion Rate: 0.01 CFS

iv. Annual Volume of Consumptive Use: De minimis

v. Priority Date: March 1, 1907

vi. Points of Diversion:

Twp 3 S, Rge 36 E, BM

Twp 3 S, Rge 35 E, BM

vii. Purpose and Period of Use: Stockwater, 1/1 to 12/31

viii. Place of Use:

Twp 3 S, Rge 36 E, BM

Twp 3 S, Rge 35 E, BM

ix. Basis of Right: Beneficial Use

x. Remarks:

- a. Water will be used for stock water for range cattle for the grazing rights associated with the Equalizing Reservoir.

.10 Right from Meadow Creek, Grays Lake and Tributaries.

i. Source: Meadow Creek and tributaries and Grays Lake and tributaries

ii. Annual Diversion Volume: 14.54 AFY

iii. Diversion Rate: 0.20

iv. Annual Volume of Consumptive Use: De minimis

v. Priority Date: March 1, 1907

vi. Points of Diversion:

Twp 3 S, Rge 43 E, BM

Twp 4 S, Rge 42 E, BM

Twp 4 S, Rge 43 E, BM

Twp 5 S, Rge 42 E, BM

Twp 5 S, Rge 43 E, BM

vii. Purpose and Periods of Use: Stockwater 1/1 to 12/31

viii. Place of Use:

Twp 3 S, Rge 43 E, BM

Twp 4 S, Rge 42 E, BM

Twp 4 S, Rge 43 E, BM

Twp 5 S, Rge 42 E, BM

Twp 5 S, Rge 43 E, BM

ix. Basis of Right: Beneficial Use

x. Remarks:

a. Water will be used for stock water for range cattle for the grazing rights associated with Grays Lake

1.3 Groundwater Rights

.1 Right From Groundwater.

i. Source: Groundwater

ii. Annual Diversion Volume: 277 AFY

iii. Diversion Rate: 2.06 CFS

iv. Annual Volume of Consumptive Use: 210 AFY

v. Priority Date: August 23, 1954

vi. Point of Diversion:

S1/2 SE SW Sec. 28, Twp 6 S, Rge 32E, BM

vii. Purpose and Period of Use: Irrigation, 3/15 to 11/15

viii. Place of Use: 102.58 acres located in the NE SW and SE SW, Sec. 28, Twp 6 S, Rge 32 E, and the NE NW, Sec. 33, Twp 6 S, Rge 32 E, BM as shown on the maps attached hereto and labeled Attachment A.

ix. Basis of Right: Act of August 31, 1954 (Michaud Act), 68 Stat. 1026

x. Remarks:

- a. To the extent a non-Indian water user is adjudicated a non-Project water right for these Project lands described above, the amount of that non-Project water right will be deducted from the Project water rights on a 1:1 basis.
- b. The pumping capacity for this diversion is actually 1500 GPM.

.2 Right From Groundwater

- i. Source: Groundwater
- ii. Annual Diversion Volume: 616 AFY
- iii. Diversion Rate: 4.0 CFS
- iv. Annual Volume of Consumptive Use: 431 AFY
- v. Priority Date: August 23, 1954
- vi. Points of Diversion: Wells located at the following locations:
 - SW SE SW Sec. 3, Twp 7 S, Rge 32 E, BM
 - SE NW SE Sec. 3, Twp 7 S, Rge 32 E, BM
 - NW NW SW Sec. 2, Twp 7 S, Rge 32 E, BM
 - NE SE NW Sec. 2, Twp 7 S, Rge 32 E, BM
 - NW NE NE Sec. 1, Twp 7 S, Rge 32 E, BM
 - SW NW NW Sec. 6, Twp 7 S, Rge 33 E, BM
 - NE SE SW Sec. 6, Twp 7 S, Rge 33 E, BM
 - NE SE SW Sec. 6, Twp 7 S, Rge 33 E, BM
 - SW SW SW Sec. 30, Twp 6 S, Rge 33 E, BM
- vii. Purpose and Period of Use: Irrigation, 3/15 to 11/15
- viii. Place of Use: 187.7 acres as shown on the map attached hereto and labeled Attachment A.
- ix. Basis of Right: Act of August 31, 1954 (Michaud Act), 68 Stat. 1026
- x. Remarks:

- a. The lands identified in this right are also supplied water from the Portneuf River pumping plant under an exchange of federal contract storage rights described in Article 7.3.1. of the 1990 Fort Hall Indian Water Rights Agreement. This right and the water supplied from the Portneuf River provide a single water supply for these lands.
- b. This right is to supplement the surface water supply and will be used at the discretion of the Fort Hall Irrigation Project manager to optimize the available water supply for the Project.
- c. To the extent a non-Indian water user is adjudicated a non-Project water right for the Project lands described above, the amount of that non-Project water right will be deducted from the Project water rights on a 1:1 basis.

.3 Right from Groundwater

- i. Source: Groundwater
- ii. Annual Diversion Volume: 12.40 AFY
- iii. Diversion Rate: 0.04 CFS
- iv. Annual Volume of Consumptive Use: De minimis
- v. Priority Date: April 15, 1957
- v. Point of Diversion: NE SE Sec. 9, Twp 6 S, Rge 42 E, BM
- vii. Purposes and Periods of Use: Domestic and Commercial, 1/1 to 12/31
- viii. Place of Use: NE SE Sec. 9, Twp 6 S, Rge 42 E, BM
- ix. Basis of Right: Beneficial Use
- x. Remarks:
 - a. The water will be used by the United States Department of Interior, Bureau of Indian Affairs, Fort Hall Agency, for domestic use at the home site at the White Locks Marina.

1.4 Federal Contract Storage Rights.

- .1 The United States holds in trust federal contract storage rights for water that accrues to two and eight thousand fifty-nine ten-thousandths percent (2.8059%) of the storage space in American Falls Reservoir and six and nine thousand nine hundred seventeen ten-thousandths percent (6.9917%) of the storage space in Palisades Reservoir for the benefit of the Tribes and 187.7 acres of other lands served by the Michaud Division of the Fort Hall Indian Irrigation Project. These federal contract storage rights are presently equivalent to the following storage space in American Falls and Palisades Reservoirs:

American Falls Reservoir	46,931 a.f.
Palisades Reservoir	83,900 a.f.

- .2 The Secretary will continue to exchange storage water accruing to the space described in Article 1.4.1 for water diverted from the Portneuf River as provided for in Article 8 of the Michaud Contract.
- .3 For irrigation of the 187.7 acres of non-Indian lands shown on the maps attached hereto and labeled Attachment A, the share of the water described in 1.4.1 and 1.4.2 will not exceed a maximum annual diversion of 616 acre-feet/year and a maximum annual volume of consumptive use from such diversion of 431 acre-feet/year.

Section 4

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,	)	Sub Case Nos. 01-10223;
	)	01-10248; 25-02160;
Case No. 39576	)	25-13615; 27-02007;
	)	27-11560; 27-11561

ORAL DEPOSITION OF FLOYD O. JOHNSON
Taken on April 5, 1995

APPEARANCES:

For the Shoshone- Bannock Tribes:	CANDY L. JACKSON Attorney at Law P. O. Box 306 Fort Hall, Idaho
For the State of Idaho:	DAVID J. BARBER Attorney at Law Statehouse Boise, Idaho
For the U.S. Department of Justice:	PETER C. MONSON Attorney at Law 999 18th Street, North Tower Denver, Colorado
For the Deponent:	RICHARD A. SIMMS MARGARET J. KING Simms & Stein Attorneys at Law 102 Aspen Lakes Drive Hailey, Idaho
Also Present:	Gail Martin Ross Waples Len Brenchley Alan Oliver

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1 (Discussion off the record.)
2 Q. Mr. Johnson, you provided this list in
3 response to an interrogatory which indicated that these
4 individuals were in support of the objections; is that
5 correct?
6 A. Yes.
7 Q. Are these the only members who are deemed to
8 be in support of the association?
9 A. No.
10 Q. Is there another means of determining who else
11 might be in support of the objections filed?
12 A. We have asked people and they have indicated
13 that they support us.
14 Q. They just haven't paid their assessments?
15 A. Right.
16 Q. So if a person is in support but doesn't pay
17 their assessment, that doesn't do anything to their
18 membership in the association.
19 A. No.
20 Q. Deposition Exhibit No. 4, could you explain
21 what that is, please?
22 A. This is a list of the water associations that
23 belong to the membership.
24 Q. Do the associations belong themselves as an
25 entity?

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1 A. Yes.
2 Q. Do the individuals also belong to the
3 association that make up those particular water
4 associations?
5 A. Yes.
6 Q. And who pays the assessments for the
7 association, the individuals or --
8 A. The secretary, the members authorize the
9 secretary to pay the assessment.
10 Q. On behalf of these associations in Deposition
11 Exhibit No. 4?
12 A. Right.
13 Q. Is this a list of all the persons who have
14 paid their assessment as a group?
15 A. I assume it is, I don't know.
16 Q. Referring to Deposition Exhibit No. 4, there
17 are some paid marks on the left-hand side. Does that
18 reflect payment of assessments?
19 A. Yes.
20 Q. So, for instance, Hill Chase Park has not paid
21 any assessment; is that correct?
22 A. I don't know how current this is.
23 Q. But for purposes of this list the persons that
24 are marked as paid are the persons who have paid
25 assessments on behalf of the entire association.

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1 A. Yes.
2 Q. And it is possible some of the members of this
3 association have in addition paid individual assessments
4 as well?
5 A. If they were in another association or
6 otherwise had some land somewhere.
7 Q. They might have paid another assessment.
8 A. Yes.
9 Q. And where did you get this list of water user
10 associations?
11 A. I believe we got it from the Fort Hall Water
12 Irrigation District.
13 Q. Do you know of any individual members of the
14 association that do not support the objections filed by
15 the Fort Hall Water Users?
16 A. I don't know of any.
17 Q. Do you know of any organizations or other
18 water user associations which do not support the
19 objections filed?
20 A. No, I don't.
21 Q. Has any member of the association ever
22 expressed at a meeting that they did not support the
23 filing of the objections?
24 A. No.
25 Q. Going back to the objections that you filed on

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1 June 1 of 1994 on behalf of the Fort Hall Water Users
2 Association, you signed that document as president of
3 the organization; is that correct?
4 A. I think so.
5 Q. And president is the same as chairperson of
6 the board?
7 A. Yes.
8 Q. Those were signed by you in front of a notary
9 I believe on May 31 of 1994. At that time what
10 authority did you have to sign the objections on behalf
11 of the Fort Hall Water Users?
12 A. As chairman of the board of directors.
13 Q. Did the board direct you to sign?
14 A. Yes.
15 Q. And at that time the board members were the
16 list that you gave me or you gave us in the answers,
17 except for Mr. Kim Bodily?
18 A. That's right.
19 Q. And was it done at a meeting where they
20 directed you to sign and file those objections?
21 A. Yes, we discussed it; we had to very quickly
22 get the job done because the deadline was on us.
23 Q. Did you have meetings where you discussed the
24 objections and then a meeting where you took the vote?
25 A. I don't recall that.

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1 Q. The reason I am asking you is that I have gone
2 through the minutes that were provided from 1993, were
3 the first set of minutes, on through June 14, 1994, and
4 I couldn't find any discussion or note of a vote where
5 the board took a vote to authorize you to file the
6 objections.

7 MS. JACKSON: Can we go off the record for a
8 second.

9 (Discussion off the record.)

10 MS. JACKSON: Mark this, please.

11 (Deposition Exhibit No. 5 marked for
12 identification.)

13 Q. Deposition Exhibit No. 5 is a copy of all of
14 the minutes that were provided by your attorneys to Mr.
15 Monson in response to interrogatories as to minutes of
16 the meetings. They seem to start from the back. They
17 are not in particularly good order, but there were
18 minutes provided starting December 14 of 1993, the first
19 set of minutes we have. Do you have those?

20 A. Yes.

21 Q. And in the answers to the interrogatories it
22 was indicated that previous to December 14, 1993, no
23 minutes of meetings were kept.

24 A. They were not available, we couldn't find
25 them.

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1 Q. I think the answer says the
2 secretary-treasurer for nearly 25 years prior to 1993
3 did not take minutes. Is that accurate?

4 A. That's probably generally so.

5 Q. I am just wondering if maybe there were
6 minutes out there that might be somewhere that you just
7 don't know where they are.

8 A. I don't know.

9 MR. SIMMS: The record should reflect that an
10 attempt was made to find minutes going back to everybody
11 who is still living who was an officer of the board and
12 its past president, Mr. Spanbauer, was unaware of any
13 and the past secretary referred to in the answer that
14 you alluded to, Ms. Jackson, Roy Miller, apparently did
15 not take any.

16 Q. So as far as we know these are the minutes
17 that reflect the business of the association from
18 December of 1993, correct?

19 A. Yes.

20 Q. You may take a couple of minutes and take a
21 look through those ones. I could not determine where it
22 was indicated that a vote was taken to authorize you as
23 president or chairman to file the objections.

24 (Pause in proceedings.)

25 A. I don't see any that indicate that.

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1 Q. Do the board minutes get approved by the
2 board?

3 A. We read them every meeting.

4 Q. And then you approve them?

5 A. (Witness nods head.)

6 Q. Are there additional minutes kept which were
7 not provided here?

8 A. No.

9 Q. Is it possible that the vote was left out of
10 the minutes?

11 A. I suppose that would be possible.

12 Q. Would you be able to determine that?

13 A. I probably could.

14 Q. And are there minutes kept during the meeting
15 by Mr. Brenchley?

16 A. Yes.

17 Q. So reviewing his notes, his draft notes --

18 A. Yes.

19 Q. They would be reflected in there, perhaps?

20 A. Yes.

21 Q. Could you provide the minutes for the meeting
22 at which you were authorized -- you indicated that there
23 was a vote taken to authorize you to file those
24 objections?

25 A. If they are available, yes.

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1 Q. How did you determine what objections to file?
2 A. We objected to those which impacted our water
3 supply.

4 Q. Who put those together, the objections?

5 A. Several of us on the board.

6 Q. Who was involved?

7 A. Arden Hansen, me; I don't recall whether Len
8 was present or not. He was on vacation, I think, about
9 that time. I think maybe Wendell Larsen was privy to
10 it, too.

11 Q. So there were three board members at least
12 present at the time they were drafted.

13 A. Yes.

14 MS. JACKSON: Why don't we go ahead and mark
15 the objections, if we could:

16 (Deposition Exhibit No. 6 marked for
17 identification.)

18 Q. There are seven objections there. You might
19 want to count to make sure.

20 A. (Witness complies.)

21 Q. Are they all there?

22 A. Yes.

23 Q. Taking a look at the first one, Water Right
24 No. 27-11561. Is that on top?

25 A. Yes.

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1 my assessment and I say no? What's the consequence by
2 my failure to pay, what happens to me?

3 A. Nothing.

4 Q. Does that mean that at a meeting the next
5 Monday I could come in and vote even though I haven't
6 paid the assessment?

7 A. Sure. We haven't beaten anybody up yet. Have
8 been attempting, but . . .

9 Q. And, as I understand it, the Fort Hall Water
10 Users Association, the association itself has no
11 contract with the federal government; is that correct?

12 A. That's right.

13 Q. And so the association has no control over any
14 laterals; is that correct?

15 A. No -- that is correct, yes.

16 Q. They have no control. So it's not like a
17 ditch user's association where if I am a part of that
18 association and someone doesn't pay their assessment, I
19 don't provide them water, it doesn't work that way?

20 A. That's right.

21 Q. Now, with respect to the voting, you mentioned
22 that you have these various water associations and we
23 have a list of them in one of the deposition exhibits
24 here, and you have also testified today that there might
25 be 50 people who were a party of that association. So

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1 when we come to one of your meetings and that
2 association votes, does it get one vote or 50 votes, how
3 much does it get?

4 A. Every individual that comes gets a vote.

5 Q. So the association to have 50 votes, assuming
6 there are 50 people in the association, all of the 50
7 people would have to show up; is that correct?

8 A. That's right.

9 MR. BARBER: I think I am done. I want to
10 take one last look at my notes.

11 (Pause in proceedings.)

12 Q. The voting that takes place at these meetings,
13 I notice according to the minutes there is no recorded
14 vote as to who voted for and who voted against. What do
15 you do, just raise hands or what do you do?

16 A. Raise hands.

17 Q. What does the association do when a vote is
18 close?

19 A. We haven't had a close one yet.

20 Q. You haven't had one. Has the association
21 begun preparation of a set of bylaws or anything like
22 that?

23 A. Yes, we have.

24 Q. Are those completed?

25 A. No, they are not.

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1 Q. And has the association begun preparing other
2 legal documents such as articles of incorporation?

3 A. We have.

4 Q. When do you expect to have those completed?

5 A. Well, when we get time, I don't know;
6 hopefully very soon.

7 Q. Let me go back to something Mr. Monson was
8 talking about, and that is let's assume that the court
9 agrees with you and throws out the agreement and turns
10 to you and says what relief do you want, how do you want
11 this to work out, what is your preferred resolution of
12 this?

13 A. Well, we have discussed this quite a bit and
14 that would come as such a shock to us that I don't know
15 what we would say. As I said before, our first
16 inclination was that we wanted the whole project to
17 remain as it was. Anything over and above that is fine;
18 I mean if the Indians got winter's water out of the
19 Snake River or wherever, that was not a problem to us.

20 Q. So is my understanding correct you don't have
21 a problem with creation of a winter's water right for
22 the tribes; is that what you are telling me?

23 A. Basically.

24 Q. Is it correct to state, then, that your main
25 problem is with the quantities; is that correct?

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1 A. The quantities and the supply, the
2 availability.

3 Q. Let's assume for a minute that you had the
4 ability to write a Congressional bill to change the Fort
5 Hall authorization, and let's assume it changed it to
6 give you some of the Palisades water. Is that something
7 that would satisfy you, resolve your concerns about
8 water supply?

9 A. I think it would very likely. We would have
10 to certainly study it and see what all it entails.

11 Q. And has the Fort Hall Water Users Association
12 contemplated contracting with Mitigation, Inc., for some
13 of that Palisades water?

14 A. We understand that's not Palisades water.

15 Q. Have you considered contracting with Palisades
16 for the unallocated storage in Ririe, if I am correct?

17 A. That's right.

18 Q. Have you considered contracting for that as a
19 way of relieving your believed shortfall?

20 A. We have talked about it, yes.

21 MR. SIMMS: Mitigation, Inc., also has a right
22 to the unallocated storages.

23 MR. BARBER: That was my recollection, that it
24 was unallocated in both of those.

25 A. We understand that it's a pretty iffy water