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

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DISTRICT COURT OF IDAHO
Fifth Judicial District
County of Twin Falls - State of Idaho

MAY -5 1995

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Department of Water Resources
Adjudication Bureau

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 RESPONSE OF UNITED STATES, SHOSHONE-
) BANNOCK TRIBES, AND STATE OF IDAHO
) TO MOTION FOR LEAVE TO FILE
) SUPPLEMENTAL MEMORANDUM
_____)

DESCRIPTIVE SUMMARY

This is the joint response of the United States, the Shoshone-Bannock Tribes, and the State of Idaho, asserting that the Court should deny the Motion for Leave to File Supplemental Memorandum filed by the Fort Hall Water Users Association.

ARGUMENT

A. The motion for leave to file a supplemental memorandum is untimely and in violation of this Court's prior orders.

The briefing schedule for the joint movants' *Motion to Dismiss Objections of Fort Hall Water Users Association* was established by Order of this Court on March 2, 1995. The Order provided for an answering brief on March 31, 1995, and a reply brief on April 12, 1995. Hearing was held on April 18, 1995.

It was not until ten days after the hearing that the Fort Hall Water Users Association ("Association") moved to file a supplemental memorandum. There is no justification provided in the memorandum for its late filing. Nor are there any extraordinary circumstances that would justify acceptance of the supplemental memorandum. The memorandum simply repeats and expands upon the Association's prior arguments. The Association had ample opportunity to present these same arguments in its responsive brief and at the hearing. The Association's attempt to get "one more bite of the apple" should be summarily rejected by this Court.

B. The supplemental memorandum fails to describe the proper standard for summary judgment.

The Association's stated reason for filing the supplemental memorandum is to inform the Court as to the proper standards for summary judgment. It fails to do so. During the oral argument, the Association asserted that it would present evidence at trial proving that the claims filed by the United States were filed "on behalf of" the non-Indian water users of the

Fort Hall Indian Irrigation Project ("Project"). As the Association recognizes, it bears the burden of proof on this issue. Under such circumstances, the standard for summary judgment is as follows:

The party moving for summary judgment initially carries the burden to establish that there is no "genuine issue of material fact" and that he or she is entitled to judgment as a matter of law. When the party moving for summary judgment will not carry the burden of production or proof at trial, the "genuine issue of material fact" burden may be met by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial. Once such an absence of evidence has been established, the burden then shifts to the party opposing the motion to establish, through further depositions, discovery responses or affidavits, that there is indeed a genuine issue for trial, or to offer a valid justification for the failure to do so under I.R.C.P. 56(f).

Dunnick v. Elder, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994) (citations omitted).

Employing this standard, it is clear that the Association failed to carry its burden. The joint movants fulfilled their initial burden by providing the Court with copies of the Notices of Claim filed by the United States for the water rights associated with the Project. The Notices of Claim are part of the record before this Court, and indeed, are the only evidence before the Court addressing the issue of whether the United States filed its claims on behalf of the non-Indian water users. The Notices of Claim do not contain any statement that they are filed "on behalf of" the Association or its members. Thus, the movants established the absence of any evidence supporting the Association's assertion that the United States filed the claims on behalf of the non-Indian water users. The burden then shifted to the Association, as the party bearing the burden of proof at trial, to establish by affidavit or other means that there is a genuine issue regarding the status of the Association as claimants. The Association failed to carry that burden. Therefore, the movants are entitled to a summary judgment dismissing the Association's objections.

The remainder of the Association's arguments regarding the inclusion of the Association's objections within the subject matter jurisdiction of the SRBA turn on the Association's standing as claimants in the SRBA. Furthermore, such issues are purely legal, and any discussion of the burden of proving the existence of undisputed material facts relating

to such issues is irrelevant. The joint movants have previously demonstrated as a matter of law that the issues raised by the Association are contractual in nature and therefore outside the scope of the SRBA. Therefore, the joint movants are entitled to summary judgment for the reasons stated above and in their prior briefs and argument.

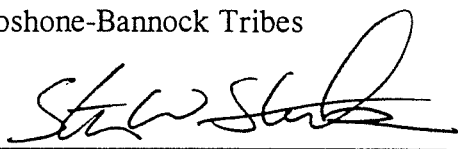
CONCLUSION

For the reasons stated above, the Motion for Leave to File a Supplemental Memorandum should be DENIED.

DATED this 5th day of May, 1995.

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CERTIFICATE OF SERVICE

I certify that on this 5th day of May, 1995, I served a true and correct copy of the JOINT RESPONSE OF UNITED STATES, SHOSHONE-BANNOCK TRIBES, AND STATE OF IDAHO TO MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM by U.S. Mail, postage prepaid to:

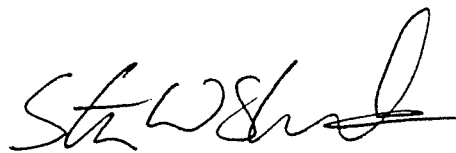
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