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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) Sub-case Nos. 01-10248; 27-11560
)
CASE NO. 39576)
) JUDGMENT OF DISMISSAL
)
)
)
)
)
)

Candy L. Jackson, Tribal Attorney, for the Shoshone-Bannock Tribes

Peter C. Monson, U.S. Dept. of Justice, for the United States

Richard A. Simms, pro hac vice, and Margaret J. King, Simms & Stein, for Kim G. Bodily

Clive J. Strong, Deputy Attorney General, for the State of Idaho

John A. Rosholt and Norman M. Semanko, Rosholt Robertson & Tucker, representing the Twin Falls and North Side Canal Companies

On June 9, 1995, the parties to these two sub-cases agreed to the "United States' Offer of Judgment to Kim G. Bodily (Revised)", hereinafter referred to as the "Offer of Judgment." A copy of the Offer of Judgment is attached to this Judgment of Dismissal. The Offer of Judgment in accordance with its terms recognizes Mr. Bodily's right to receive water from the Fort Hall Irrigation Project and provides him a period of five years to complete application of the water from the Fort Hall Irrigation Project to a beneficial use.

On June 12, 1995, the District Court held a telephone conference call at the request of counsel for all parties to consider the Offer of Judgment. All parties to the sub-case were represented on the conference call by their counsel and each party through their respective counsel indicated a desire to have the Court enter a Judgment of Dismissal dismissing these sub-cases.

Based upon the Offer of Judgment, the representations of counsel, and for good cause shown,

IT IS ORDERED:

1. The trial previously scheduled to begin June 26, 1995 is hereby vacated;

2. The objections of Kim G. Bodily to water right nos. 01-10248 and 27-11560 are hereby dismissed with prejudice.

IT IS SO ORDERED.

DATED June ___, 1995.

DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River BASin Adjudication

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

IN RE: SRBA	)	Sub-case Nos. 01-10248; 27-11560
	)	
CASE NO. 39576	)	UNITED STATES' OFFER OF
	)	JUDGMENT TO KIM G. BODILY
	)	(Revised)
	)	
	)	
	)	

Pursuant to Rule 68, Idaho Rules of Civil Procedure, the United States, on its own behalf and on behalf of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, the Shoshone-Bannock Tribes, and the State of Idaho, (hereinafter "the parties") hereby makes the following offer of judgment to Mr. Kim G. Bodily which would resolve in their entirety Mr. Bodily's objections to the above-referenced water rights.

1. The parties will agree to allow Mr. Bodily five years from the entry of this judgment to apply water to beneficial use on the 7.26 acres of land he owns within the Fort Hall

OFFER OF JUDGMENT TO KIM G. BODILY
 SUB-CASE NOS. 01-10248; 27-11560 -- 1

Irrigation Project.

2. The parties agree that to the extent Mr. Bodily establishes that Project water has actually been applied to beneficial use on the 7.26 acres at the end of five years, the Secretary of the Interior or his representative will recognize a right to irrigate all of the acreage to which water has been beneficially applied as determined in the inspection described below.
3. On or before the end of the five years Mr. Bodily shall cause his land to be inspected by a registered professional engineer, approved by the parties, to determine the amount of acreage upon which water has been applied to beneficial use.
4. The findings of the registered professional engineer shall be binding on the parties and Mr. Bodily, and the United States agrees to adjust Mr. Bodily's future assessments for operation and maintenance costs in proportion to the amount of acreage upon which water has been applied to beneficial use as determined in the inspection.
5. In exchange for the foregoing stipulation by the United States, Mr. Bodily will agree to dismiss with prejudice the entirety of his objections to the above-referenced water rights.
6. All parties are to pay their own costs and attorneys fees.

7. Should this offer not be accepted within 14 days, the United States and other respondents to Mr. Bodily's objections shall reserve the right to seek recovery of their costs in accordance with the provisions of Rule 68.

Dated this 30th day of May, 1995.

Respectfully submitted,

CLIVE J. STRONG, ESQUIRE
Deputy Attorney General
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LOIS J. SCHIFFER
Acting Assistant Attorney General

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OFFER ACCEPTED THIS 9th DAY OF June, 1995.

Kim G. Bodily or his representative.

Margaret J. King

Movants' Names:

UNITED STATES OF AMERICA IDAHO 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 Nos.: See attached
	)	
Case No. 39576	)	STATUS REPORT
	)	
_____	)	

I. DISCUSSION

Pursuant to the Court's request following the May, 1995, settlement conference, the United States of America and the Idaho Department of Water Resources submit this status report regarding the subject subcases.

1. The subcases are all objections made by the United States on behalf of the Bureau of Land Management (BLM) to claims made by the United States on behalf of the BLM.

2. Although some of the objections are to more than one element of the water right, all objections involve the issue

STATUS REPORT

- 1 -

of the priority date recommended by IDWR. The parties have filed stipulations with the court resolving all the elements of the water rights except the priority date for all of the subcases except subcases 34-12742, 34-12742A, 34-04159, 34-04187 and 34-04162. The parties anticipate filing stipulations in these subcases by the end of the month.

3. The issue that still remains is whether the United States is barred from claiming a priority date earlier than the the decree in the case of Utah Construction v. Abbott, et al. for any of the United States' claims within the geographic area covered by that decree. The question is whether the United States is bound by the Utah Construction decree.

4. Over the past several weeks the parties have been exchanging information, holding informal discovery, negotiating and meeting to attempt to resolve the priority date issue. Both parties have turned over large quantities of data and discussed legal issues.

5. Despite the above efforts, there are still some factual issues remaining. There are voluminous documents relating to these factual issues contained in the Court records for the Utah Construction case, which are housed in the National Archives in Seattle, Washington. Both parties have requested pertinent portions of these court records and are currently awaiting the retrieval of these documents at the present time. It is anticipated that these documents will be received within the next several weeks.

6. Because these documents have not been received, all documents related to this matter have not been reviewed. As a result, there still remain some factual issues to be explored. Until these factual matters are fully explored it is not possible to identify what, if any, factual issues remain.

7. Because it is not possible to identify what factual issues remain, it is not possible to determine in what manner to proceed. For instance, if, after review of the documents, the parties agree that there are no factual issues remaining, the matter may be resolved with the parties filing a Standard Form 5. Alternatively, the parties may proceed to file motions for summary judgment, or, if factual disputes remain, a trial should be scheduled.

8. Given the current posture of these subcases, it would be in the interest of judicial economy to permit the parties to complete this discovery process before proceeding to a scheduling conference. This process should be concluded in the near future. Therefore, a lengthy delay is not anticipated.

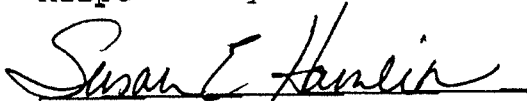
STATUS REPORT

- 3 -

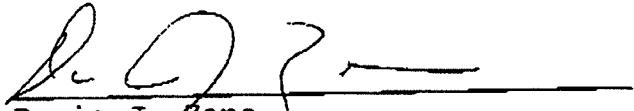
II. CONCLUSION

Given the above, the parties request that the Court provide that another status report be submitted on or before July 25, 1995. Alternatively, a telephonic status conference could be held on that date.

Respectfully submitted,



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DATED: June 19, 1995

STATUS REPORT

- 4 -

SUBCASE Nos.

34-04142	34-04150	34-04152	34-04156
34-04157	34-04158	34-04159	34-04161
34-04162	34-04163	34-04167	34-04170
34-04172	34-04174	34-04175	34-04176
34-04180	34-04181	34-04184	34-04185
34-04186	34-04187	34-04188	34-12440
34-12441	34-12442	34-12443	34-12444
34-12445	34-12446	34-12447	34-12448
34-12742	34-12742A		