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DEPARTMENT OF
WATER RESOURCES

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

AUG - 9 2013

By _____

Clerk

Deputy Clerk

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

) ORDER GRANTING JOINT MOTION

) TO INCLUDE SUBORDINATION

) REMARK ON WATER RIGHT 27-2162,

) 27-2050 and 27-2053

)

I.

PROCEDURAL BACKGROUND

1. On August 2, 1995, the *Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin* ("Consent Decree") was entered in the Snake River Basin Adjudication ("SRBA").

2. The *Consent Decree* partially decreed all water rights of the United States for the Shoshone-Bannock Tribes ("Tribes") in the Upper Snake River Basin, for the Bureau of Indian Affairs, Fort Hall Agency and for the Fort Hall Irrigation Project.

3. Water right 27-11375 is one of several water rights partially decreed in favor of the United States for the use and benefit of the Tribes in the *Consent Decree*. It provides the Tribes with the right to divert 150,000 afy from the Blackfoot River to irrigate 30,469 present and future acres within the Fort Hall Indian Reservation. Paragraph 27-11375.x.d. of the *Consent Decree* contains the following remark regarding the administration of water right 27-11375:

The Tribes and United States shall exercise this water right in a manner that ensures persons diverting natural flow from the Blackfoot River prior to January 1, 1990, whose rights are decreed in the SRBA will continue to receive their full legal entitlement under state law. The parties will specifically enumerate all rights protected by this provision once the SRBA Decree for this basin becomes final. These state created water rights are estimated to divert not more than 45,000 AFY of water from the Blackfoot River. In the event this estimate of the amount of existing diversions under state created water rights is exceeded as a

result of the Decree in the SRBA, the parties shall negotiate an equitable adjustment to the Tribal water rights to account for this change.

Paragraph 27-11375.x.d., *Consent Decree*, p.31.

4. On October 25, 2010, the State of Idaho filed a *Motion for an Accounting of All Water Rights Benefitting from the Subordination Provisions of the Fort Hall Consent Decree and Insertion of a Remark Memorializing that Benefit on Each Affected Water Right* (“*Motion for Accounting*”). The *Motion for Accounting* requested permission to begin an accounting of the water rights protected by Paragraph 27-11375.x.d. and for the inclusion of a remark on each of the water rights entitled to the protections of Paragraph 27-11375.x.d. Appendix A to the State’s *Motion for Accounting* contained a list of water rights the State had determined were entitled to the protection of Paragraph 27-11375.x.d.

5. On November 10, 2010, this Court issued an *Initial Scheduling Order* in the above-captioned matter. The *Initial Scheduling Order* directed the State of Idaho, the United States and the Tribes to provide personal service of the *Motion for Accounting* and the *Initial Scheduling Order* to all surface water claimants in Basin 27. It further directed that both documents appear on the docket sheet for November 2010 pursuant to the SRBA docket sheet procedures.

6. Pursuant to the *Initial Scheduling Order*, any party wishing to object to their water right(s) being excluded from Appendix A to the State’s *Motion for Accounting* were required to file and serve an objection to that effect on or before January 4, 2011. The *Initial Scheduling Order* instructed:

PARTIES FAILING TO OBJECT TO THEIR WATER RIGHT(S) BEING EXCLUDED FROM THE LIST OF PROTECTED RIGHTS WILL BE PRECLUDED FROM LATER RAISING AND BEING HEARD ON THAT ISSUE.

Initial Scheduling Order, p.4.

7. On November 22, 2010, certificates of services were filed with the Court demonstrating personal service of the *Motion for Accounting* and *Initial Scheduling Order* on all surface water claimants in Basin 27.

8. An *Objection* to the *Motion for Accounting* was filed by FMC Production, LLC, asserting that three of its water rights should be added to the list of water rights the State had determined were entitled to the protection of Paragraph 27-11375.x.d.

ORDER GRANTING JOINT MOTION TO INCLUDE SUBORDINATION REMARK ON WATER RIGHT - 2 -
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9. On July 29, 2011, a *Stipulation Resolving Objection* was filed wherein the Tribes, the United States, the State of Idaho and FMC Production, LLC agreed that the protections of paragraph 27-11375.x.d. apply to *de minimis* stockwater right nos. 27-2162, 27-2050 and 27-2053 held by FMC Production LLC.

10. On August 3, 2011, the Court entered an *Order* based on the *Stipulation* directing that FMC Production LLC's three water right are entitled to the protection of paragraph 27-11375.x.d. of the *Consent Decree*.

11. On July 10, 2013, the United States, the Tribes, the State of Idaho, the Committee of Nine and FMC Production, LLC (collectively "Joint Movants") filed a *Joint Motion to Include Subordination Remark on Water Right 27-2162, 27-2050 and 27-2053* ("Joint Motion"). The *Joint Motion* requests that this Court enter an order requiring that the *Partial Decrees* issued in the SRBA for water right nos. 27-2162, 27-2050 and 27-2053 be amended to include the following remark: "This water right is entitled to the protections of paragraph x.d of water right 27-11375."

12. A hearing on the *Joint Motion* was held before this Court on July 23, 2013. No one appeared in opposition to the *Joint Motion*. At the hearing on July 23, 2013, the Court granted the *Joint Motion*, set forth its rationale on the record, and notified the parties that it would following up its decision with a written order.

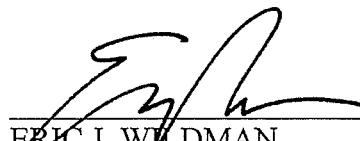
II.

ORDER

BASED ON THE FOREGOING, THE FOLLOWING ARE HEREBY ORDERED:

1. The Joint Movants' *Joint Motion* is hereby granted.
2. The *Partial Decrees* for the water right nos. 27-2162, 27-2050 and 27-2053 shall be amended to include the following remark in the "Other Provision Necessary for Definition or Administration" section: "This water right is entitled to the protections of paragraph x.d of water right 27-11375."

DATED: August 9, 2013


ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

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27-2162, 27-2050 and 27-2053.

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CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING JOINT MOTION TO INCLUDE SUBORDINATION REMARK ON WATER RIGHT NO 27-2162, 27-2050 AND 27-2053 was mailed on August 09, 2013, with sufficient first-class postage to the following:

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ORDER

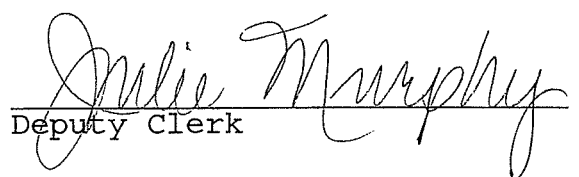
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A handwritten signature in cursive script, reading "Julie Murphy", is written over a horizontal line. The signature is in dark ink and is positioned to the right of the printed text "Deputy Clerk".