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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	)	UNITED STATES' OPPOSITION TO FHWUA
	)	MOTION FOR EXTENSION OF TIME TO
CASE NO. 39576	)	RESPOND TO U.S.' FIRST SET OF
	)	INTERROGATORIES, REQUESTS FOR
	)	ADMISSIONS, AND REQUEST FOR
	)	PRODUCTION OF DOCUMENTS TO FLOYD
	)	JOHNSON AND THE "FORT HALL WATER
	)	USERS ASSOCIATION"
	)	
	)	1990 FORT HALL INDIAN WATER RIGHTS
	)	AGREEMENT AND SUBCASE Nos: 01-10223,
	)	01-10248, 25-02160, 25-13615,
	)	27-02007, 27-11560, 27-11561.

DESCRIPTIVE SUMMARY

This is the United States' Opposition to the "FHWUA Motion for Extension of Time to Respond to the United States' First Set of Interrogatories, Requests for Admissions and Production of Documents to Floyd Johnson and the 'Fort Hall Water Users' Association'".

INTRODUCTION

On March 7, 1995, the United States received a Motion by the "Fort Hall Water Users Association (FHWUA), through its President, Floyd Johnson [which moved] for an extension of time from March 20, 1995 to April 28, 1995, within which to respond" to discovery requests propounded by the United States and served on counsel for the FHWUA on March 4, 1995.¹ Counsel for the FHWUA predicated the requested extension upon his obligations to prepare for an oral argument in an interstate water rights case, Nebraska v. Wyoming, which is currently set for March 21, 1995.

If the motion is granted, such responses would be served 39 days after they are otherwise due and ten days after the April 18, 1995, hearing on the Joint Motion of the United States, state of Idaho and Shoshone-Bannock Tribes to dismiss the FHWUA objections, which the Court has treated as a summary judgment motion. See e.g. Order Resetting Hearing on Summary Judgment, March 6, 1995.

ARGUMENT

Ordinarily, the United States is willing to cooperate with other counsel with respect to scheduling discovery and other pre-

¹ The United States' discovery requests were propounded with respect to each of the seven objections filed by Floyd Johnson on behalf of the Fort Hall Water Users Association. As we understand the court's rules, see Administrative Order No. 1, at Sec. 6., each objected-to water right is treated as a separate case and thus we have filed and served our discovery papers as well as our Joint Motion to Dismiss in each sub-case. While some of the requests were duplicative as to each objection, others are tailored to the specific objections made as to a particular water right by the objectors.

trial matters, to the extent that they are consistent with the Court's schedule. For example, the United States has agreed to the FHWUA counsel's request to extend the time to April 4, 1995 for them to file their response to the above referenced joint motions to dismiss/motion for summary judgment in these sub-cases, even though it reduces the time for us to prepare a reply. And, as noted below, we are willing to agree to a similarly limited extension to April 4, 1995 in which to provide their answers to our discovery requests, to give counsel two weeks between the argument in Nebraska v. Wyoming and the time for providing the responses. That offer was conveyed and rejected, however.

Unfortunately, in this instance, the United States was unable to reach such an agreement with respect to the discovery requests it propounded on Floyd Johnson and the "Fort Hall Water Users Association" thus necessitating this opposition. Our opposition is based on the following reasons:

1. The United States will be prejudiced by the requested extension in that we may be deprived of relevant information needed for the hearing on the motion to dismiss the objections. The discovery responses may disclose evidence which may be relevant to the afore-mentioned hearing on the motion to dismiss/motion for summary judgment. In that motion, we have challenged the standing of the Floyd Johnson and the "Fort Hall Water Users Association" to object to the water right claims filed by the United States and the Shoshone-Bannock Tribes. Many

of our discovery requests seek admissions and other information as to the status of the association and its authority to act as a representative of water users who hold contracts with the United States for the delivery of water within the Fort Hall Irrigation Project. See the attached excerpts from our discovery requests in sub-case 01-10223, at pp. 14-20. If the FHWUA intends to oppose the joint motion to dismiss/motion for summary judgment, we need to have all information which they may possess related to that motion in order to prepare a reply and to be adequately prepared for the hearing on that motion.

2. Further delay in these sub-cases will prejudice all parties to the Agreement, but in particular the Shoshone-Bannock Tribes in that, until a final decree is entered, the Tribes will be unable to enjoy the water rights and other benefits of the Agreement including certain monetary benefits.

UNITED STATES' COUNTER-PROPOSAL

In an effort to accommodate the scheduling concerns of counsel for the FHWUA, the United States is willing to agree to a more limited extension of time than that proposed by the FHWUA. The United States proposes that the time for responding to the United States' first set of discovery requests be extended from March 20, 1995, to April 4, 1995, the same time as counsel sought for responding to the Motion to Dismiss. If we receive the discovery responses by the date we will have minimally adequate time in which to conduct any necessary depositions and prepare any necessary responses related to the motion to be heard on

April 18, 1995. In that way all evidence relevant to the April 18, 1995, hearing on the pending motions to dismiss will be disclosed in sufficient time so as not to prejudice the United States and other parties to the Agreement.

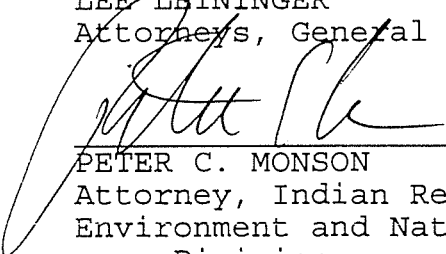
CONCLUSION

For the foregoing reasons, the motion by the FHWUA should be denied. Any extension of time by which the FHWUA is to respond to the United States discovery requests should not be later than April 4, 1995.

Respectfully submitted this 13th day of March, 1995.

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IN RE: SRBA	)	Sub-case No. 01-10223
	)	
CASE NO. 39576	)	UNITED STATES FIRST SET OF
	)	INTERROGATORIES, REQUESTS FOR
	)	ADMISSION AND REQUESTS
	)	FOR PRODUCTION OF DOCUMENTS TO
	)	FLOYD JOHNSON AND THE "FORT HALL
	)	WATER USERS ASSOCIATION"
	)	

DESCRIPTIVE SUMMARY

This document constitutes the United States' first set of interrogatories, first set of requests for admission, and first set of requests for production of documents to Floyd Johnson in his personal capacity and as a representative of the "Fort Hall Water Users Association."

TO: FLOYD JOHNSON, THE "FORT HALL WATER USERS ASSOCIATION," AND
THEIR ATTORNEYS OF RECORD:

ATTACHMENT

Interrogatory No. 6: Please identify all persons who are members of the Association. Include for each member the following: (a) member's name and address, (b) the net number of acres for which a right to receive water from the Project is claimed, (c) the legal description for the land within the Project owned by the member and claimed to be irrigated, (d) the volume of water, measured at the field headgate, per acre claimed to be needed and used for irrigation of the member's land within the Project, and (e) the crops raised and the number of acres of each crop. Please also state whether each member participated in the settlement process offered by the United States, Tribes, and the State of Idaho.

ANSWER:

Interrogatory No. 7: Please identify all persons who hold some executive or administrative office in the Association, including but not limited to a member of a governing board, chairman, president, secretary, treasurer, ditch rider, and watermaster.

ANSWER:

Interrogatory No. 3: Does the Association represent all non-Indian Project water users?

ANSWER:

Request for Production No. 4: Please produce all documents that establish the legal status of the Association, including but not limited to any articles of incorporation, articles of association, and bylaws.

ANSWER:

Request for Production No. 5: Please produce all documents that establish the procedures by which the Association conducts business.

ANSWER:

Interrogatory No. 9: Please state the dates of all meetings of the Association between January 1, 1985 and the date of your response and identify the person or persons who maintains minutes of all such meetings.

ANSWER:

Request for Production No. 6: Please produce the minutes of each meeting between January 1, 1985 and the date of your response.

ANSWER:

Request for Production No. 7: Please produce all documents that evidence the intention of all persons, including but not limited to those persons identified in your response to Interrogatory No. 6, to be a member of the Association.

ANSWER:

Request for Admission No. 1: Admit that at the time of filing the objections to water right number 01-10223 the Association was not incorporated under the laws of the State of Idaho.

ANSWER:

Request for Production No. 8: If your answer to Request for Admission No. 1 is anything other than an unqualified admission, please produce all documents that support your answer.

ANSWER:

Request for Admission No. 2: Admit that at the time of filing the objections to water right number 01-10223 the Association was not incorporated under the laws of a state other than the State of Idaho.

ANSWER:

Request for Production No. 9: If your answer to Request for Admission No. 2 is anything other than an unqualified admission, please produce all documents that support your answer.

ANSWER:

Request for Admission No. 3: Admit that at the time of filing the objections to water right number 01-10223 the Association was not organized as an association under the laws of the State of Idaho.

ANSWER:

Request for Production No. 10: If your answer to Request for Admission No. 3 is anything other than an unqualified admission, please produce all documents that support your answer.

ANSWER:

Request for Admission No. 4: Admit that the members of Association have not filed any notices of claim to a water right in the Snake River Basin Adjudication for the Project.

ANSWER:

Interrogatory No. 10: If your answer to Request for Admission No. 4 is anything other than an unqualified admission, please provide a list of members of the Association that have filed a notice of claim in the Snake River Basin Adjudication for the Project and a corresponding list of numbers for those notices of claims.

ANSWER:

Interrogatory No. 11: Please describe the authority of Floyd Johnson to act on behalf of the Association.

ANSWER:

Request for Production No. 11: Please produce all documents that relate to the authority of Floyd Johnson to file this objection on behalf of the Association.

ANSWER:

Request for Admission No. 5: Admit that Floyd Johnson had no legal authority to file objections on behalf of the Association.

ANSWER:

Request for Production No. 12: Please produce all documents that evidence an intention to have members of the Association represented by Floyd Johnson and by the firm Simms & Stein in connection with litigation of this objection.

ANSWER:

Interrogatory No. 12: Please list the names of all members of the Association that have evidenced an intention to have the Association represented by Floyd Johnson and by the firm of Simms & Stein in connection with litigation of this objection.

ANSWER:

Interrogatory No. 13: The Director's Report describes the irrigated and non-irrigated acreage of the fee lands owned by non-Indians that are assessed as Project lands as 13,630.13 acres. Do you contend that the irrigated and non-irrigated acreage of the fee lands that are assessed as Project lands exceeds 13,630.13 acres?

ANSWER:

Request for Production No. 13: If the answer to Interrogatory No. 13 is in the affirmative, then please produce a legal description of the irrigated and non-irrigated fee lands that you contend should be included within the Project.

ANSWER: