

RECEIVED

MAR 15 1995

Movant's Name: Department of Water Resources
Adjudication Bureau

Twin Falls Canal Company
North Side Canal Company
John A. Rosholt
Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P.O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 336-0700
03049503.NMS

Attorney's Name and Address:

RECEIVED

MAR 14 1995

OFFICE OF THE
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 SRBA) Subcase Nos. 01-10223; 01-10248;
Case No. 39576) 25-02160; 25-13615; 27-02007;
) 27-11560; 27-11561
)
) MEMORANDUM IN SUPPORT OF
) JOINT MOTIONS TO DISMISS
) OBJECTIONS TO THE 1990
) FORT HALL INDIAN WATER
) RIGHTS AGREEMENT

DESCRIPTIVE SUMMARY

Memorandum on behalf of the Twin Falls Canal Company and the North Side Canal Company (the Companies) in support of the joint motions of the United States, the Shoshone-Bannock Tribes and the State of Idaho to dismiss objections filed by the Fort Hall Water Users Association and Kim Bodily to the proposed consent decree implementing the 1990 Fort Hall Indian Water Rights Agreement ("Agreement").

ARGUMENT

The Companies concur with the arguments set forth by the United States, the Shoshone-Bannock Tribes and the State of Idaho in their Joint Memorandum

MEMORANDUM IN SUPPORT OF JOINT MOTION TO DISMISS OBJECTIONS
TO THE 1990 FORT HALL INDIAN WATER RIGHTS AGREEMENT - 1

1 Supporting Motions to Dismiss Objections to 1990 Fort Hall Indian Water Rights
2 Agreement ("Joint Memorandum"), filed in this court on February 27, 1995. The
3 Companies have an interest in seeing that the water rights are decreed as agreed to in
4 1990 and request that the court dismiss the objections for the reasons set forth in the
5 joint motions.
6

7 In expanding on the joint movants' argument that the objections are outside
8 the scope of the SRBA¹, the Companies assert that the decreeing of water rights, as set
9 forth in the Agreement, would not jeopardize or impair the ability of the objectors to
10 proceed against the holder of those decreed rights for satisfaction of the objectors'
11 contractual concerns. In fact, the Agreement provides that the Secretary of Interior "shall
12 continue to provide all project water users within the Fort Hall Irrigation Project their
13 project water entitlements pursuant to their project contracts." Agreement, Art. 12.2.
14

15 As contract right holders or beneficiaries, or the representative of contract
16 right holders or beneficiaries, the objectors' contract grievances are properly directed at
17 the holder of the water rights that are to be decreed. However, the objectors have not
18 objected to any element of the proposed water rights, as contemplated by Idaho Code
19 Section 42-1411 and the other statutes governing the SRBA, and their objections are
20 therefore outside the scope of the SRBA. Any contract claims must be heard in the
21 court of proper jurisdiction. As indicated by the joint movants², such claims are
22 properly filed in the federal courts, not the SRBA District Court.
23
24
25

26 ¹ See Joint Memorandum, pp. 5-8.

27 ² See Joint Memorandum, pp. 7-8.
28

1 As an additional argument to those set forth in the Joint Memorandum, the
2 Companies' urge the court to dismiss the remaining objections in order to avoid further
3 exposing the Companies' rights to the tribal claims. As explained in the Companies'
4 Memorandum in Support of Motion to Participate in the subcases, the Companies' have
5 expended considerable time and money in pursuing a settlement of the tribal claims. If
6 the tribal claims and the Agreement are re-opened, the Companies' stand to incur
7 additional costs as the result of having their rights further exposed to the tribal claims.
8 The Companies seek to avoid the possibility of having their rights prejudiced and
9 incurring additional expenses.
10

11 As a result, the joint motions, seeking to dismiss the objections to the 1990
12 Fort Hall Indian Water Rights Agreement, should be granted.
13

14 DATED this 13 day of March, 1995.

15 ROSHOLT, ROBERTSON & TUCKER

16 By: John A. Rosholt
17 John A. Rosholt
18

19 By: Norman M. Semanko
20 Norman M. Semanko
21

22 Attorneys for Twin Falls Canal Company
23 and North Side Canal Company
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on this 13 day of March, 1995, I served a copy of the foregoing MEMORANDUM IN SUPPORT OF JOINT MOTIONS TO DISMISS OBJECTIONS TO THE 1990 FORT HALL INDIAN WATER RIGHTS AGREEMENT, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

United States Department of Justice
Environment & Natural Resources
Division
550 West Fort Street, Box 33
Boise, Idaho 83724

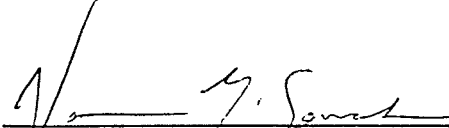
Candy L. Jackson
Attorney Shoshone-Bannock Tribes
P.O. Box 306
Fort Hall, Idaho 83203

Peter C. Monson
Attorney, Indian Resources Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th Street, Suite 945 North Tower
Denver, Colorado 80202

Carolyn Minder
SRBA Attorney
7283 Obsidian
Boise, Idaho 83709

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

Kim G. Bodily
11696 North Philbin
Pocatello, Idaho 83202


Norman M. Semanko