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DISTRICT COURT-SRBA  
TWIN FALLS CO, IDAHO  
FILED TMK

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     | ) | AMENDED CASE MANAGEMENT            |
|                | ) | ORDER:                             |
|                | ) | Federal and Tribal Non-Consumptive |
| Case No. 39576 | ) | (Instream Flow) Claims             |
|                | ) |                                    |
|                | ) |                                    |
|                | ) | 96-04-0003                         |

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IT IS ORDERED that the following procedures shall govern the litigation of objections to the non-consumptive (instream flow) claims filed by the United States and Indian tribes.

I. SCOPE

This Order governs the litigation of objections to all claims for federal and tribal non-consumptive uses reported in the Director's Report dated March 31, 1994, and the Supplemental Director's Report dated April 17, 1995. It is anticipated that additional case management orders will be issued in the future as necessary to govern remaining issues.

II. CONSOLIDATION

A. Forest Service Claims:

1. Wild and Scenic Rivers Claims.

All subcases arising under Claim Numbers 75-13316, 77-11941, 77-13844, 78-10568, 78-11961, 81-10472, 81-10513 and 81-10625, filed by the United States on behalf of the Department of Agriculture, Forest Service, in connection with Wild and Scenic Rivers are consolidated into a single subcase.

## **2. MUSYA Claims.**

All subcases arising under Claim Numbers 63-25239, 65-19559, 71-10444, 77-11791, 77-11828, 78-10669, 79-10764, 81-10501, 81-10623, 82-10523, 82-10953, 82-10967, 82-10972, 83-10806, 84-10884, 65-19472, 65-19505, 81-10679, 82-10955, 65-19487, 71-10364, 71-10368, 71-10370, 71-10372, 72-11015, 77-10665, 78-10564, 63-25279, 63-25347, 63-25430, 71-10416, 72-11183, 72-11218, 75-13504, 77-10986, 82-10950 and 83-10807, filed by the United States on behalf of the Department of Agriculture, Forest Service, in connection with the Multiple Use and Sustained Yield Act are consolidated into a single subcase.

## **3. Organic Act Claims.**

All subcases arising under Claim Numbers 63-25243, 65-19565, 71-10434, 77-11792, 77-11837, 78-10670, 79-10755, 81-10492, 81-10622, 82-10946, 82-10949, 82-10954, 82-10976, 83-10805 and 84-10893, filed by the United States on behalf of the Department of Agriculture, Forest Service, in connection with the Forest Service Organic Administration Act are consolidated into a single subcase.

## **4. Wilderness Claims.**

All subcases arising under Claim Numbers 75-13605, 75-13606, 77-12774, 77-12775, 77-12776, 81-11191 and 82-11120, filed by the United States on behalf of the Department of Agriculture, Forest Service, in connection with federal wilderness reservations are consolidated into a single subcase.

## **5. Sawtooth NRA Claims.**

All subcases arising under Claim Numbers 65-20766, 71-10761 and 72-16272, filed by the United States on behalf of the Department of Agriculture, Forest Service, in connection with the Sawtooth National Recreation Area are consolidated into a single subcase.

## **6. Hells Canyon NRA Claim.**

The subcase arising under Claim Number 79-13597, filed by the United States on behalf of the Department of Agriculture, Forest Service, in connection with the Hells Canyon National Recreation Area is a single subcase and does not require consolidation.

## **B. Deer Flat Refuge Claims:**

All subcases arising under Claim Numbers 02-10063, 02-10064, 03-10020 and 03-10021, filed by the United States on behalf of the Fish and Wildlife Service for the Deer Flat National

Wildlife Refuge are consolidated into a single subcase.

**C. Tribal Instream Flow Claims:**

All subcases arising under tribal instream flow claims are consolidated into the following categories:

**1. Nez Perce Claims.**

All instream flow claims filed by the United States as trustee for the benefit of the Nez Perce Tribe and all claims filed by the Nez Perce Tribe on its own behalf.

**2. Fort Hall Claims.**

All instream flows below Hells Canyon Dam filed by the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation.

**3. Northwestern Band Claims.**

All instream flow claims filed by the Northwestern Band of the Shoshoni Nation.

**4. Duck Valley Claims.**

All instream flow claims filed by the United States as trustee for the benefit of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation.

### **III. SCHEDULE**

**A. United States Forest Service and United States Fish and Wildlife Service Claims.**

All pretrial litigation activities (including discovery and motion) shall be governed by this case management order and the terms of the Stipulation and Motion Governing Discovery Concerning United States' Claims Filed on Behalf of the U.S.D.A. Forest Service, filed March 25, 1996 ("Stipulation").

Partial Stay of Discovery: Pursuant to the "Stipulation," discovery by all parties is stayed until completion of initial disclosure in that subcase.

**1. Wild and Scenic Rivers Claims:**

|                                  |                   |
|----------------------------------|-------------------|
| Initial disclosure:              | April 1, 1996     |
| Phased disclosures:              | See "Stipulation" |
| Continued scheduling conference: | July 16, 1996     |

**2. MUSYA Claims:**

|                     |               |
|---------------------|---------------|
| Initial disclosure: | April 1, 1996 |
|---------------------|---------------|

|                                                                                           |                    |
|-------------------------------------------------------------------------------------------|--------------------|
| Phased disclosures:                                                                       | See "Stipulation"  |
| Continued scheduling conference:                                                          | July 16, 1996      |
| <b>3. <u>Organic Act Claims:</u></b>                                                      |                    |
| Initial disclosure:                                                                       | April 1, 1996      |
| Phased disclosures:                                                                       | See "Stipulation"  |
| Continued scheduling conference:                                                          | July 16, 1996      |
| <b>4. <u>Deer Flat Refuge Claims:</u></b>                                                 |                    |
| Initial disclosure:                                                                       | April 1, 1996      |
| Continued scheduling conference:                                                          | July 16, 1996      |
| <b>5. <u>Wilderness Claims:</u></b>                                                       |                    |
| Initial disclosure:                                                                       | April 1, 1996      |
| Phased disclosures:                                                                       | See "Stipulation"  |
| Completion of discovery:                                                                  | September 27, 1996 |
| Deadline for filing dispositive motions,<br>including supporting memoranda and materials: | November 22, 1996  |
| <b>6. <u>Sawtooth NRA Claims:</u></b>                                                     |                    |
| Initial disclosure:                                                                       | April 1, 1996      |
| Phased disclosures:                                                                       | See "Stipulation"  |
| Completion of discovery:                                                                  | September 27, 1996 |
| Deadline for filing dispositive motions,<br>including supporting memoranda and materials: | November 22, 1996  |
| <b>7. <u>Hells Canyon NRA Claim:</u></b>                                                  |                    |
| Initial disclosure:                                                                       | April 1, 1996      |
| Phased disclosures:                                                                       | See "Stipulation"  |
| Completion of discovery:                                                                  | September 27, 1996 |
| Deadline for filing dispositive motions,<br>including supporting memoranda and materials: | November 22, 1996  |
| <b>8. <u>Nez Perce Claims:</u></b>                                                        |                    |

To continue negotiating toward a resolution of consumptive and non-consumptive claims both on and off-reservation and consistent with the stipulation of the parties, all litigation activity,

including discovery and motion practice, on the Nez Perce Claims, are STAYED until June 30, 1996. Informal exchange of documents shall proceed as provided for in the Nez Perce Memorandum of Agreement dated December 14, 1995. In addition, the following provisions shall apply:

(a) The parties are to report to the Court at each regularly scheduled monthly Status Conference about progress made in the negotiations;

(b) A continued scheduling conference will be held July 16, 1996 to review progress made during negotiations and to set the schedule for the case.

**9. Fort Hall Claims.**

To continue negotiating toward a resolution of consumptive and non-consumptive claims both on and off-reservation and consistent with the stipulation of the parties, all litigation activity, including discovery and motion, on the Fort Hall Claims, are STAYED until June 30, 1996. Informal exchange of documents shall proceed as provided in the stipulation of the parties filed April 1, 1996. In addition, the following provisions shall apply:

(a) The parties are to report to the Court at each regularly scheduled monthly Status Conference about progress made in the negotiations;

(b) A continued scheduling conference will be held July 16, 1996 to review progress made during negotiations and to set the schedule for the case.

**10. Northwestern Band Claims:**

These claims are closely related to the Fort Hall Claims. For purposes of judicial economy, all litigation activity, other than discovery regarding the non-consumptive claims of this tribe are STAYED until June 30, 1996. A continued scheduling conference is set for July 16, 1996.

**11. Duck Valley Claims.**

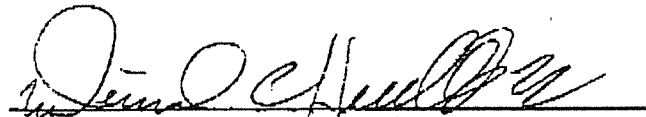
These claims are geographically limited to the exterior boundaries of the reservation and are geographically distinct from the other federal instream flow claims. There are ongoing negotiations for these and on reservation consumptive claims, which also include the state of Nevada, since a portion of the reservation lies within that state's boundaries.

Accordingly, it is Ordered that any litigation activity on the Duck Valley Claims, other than discovery, is STAYED until the consumptive claims are reported, either in the form of a

negotiated agreement or in a Director's Report. When the stay is lifted, the non-consumptive use claims for the Duck Valley Reservation shall be litigated with the Duck Valley Claims (consumptive use claims).

IT IS SO ORDERED.

DATED April 1, 1996.

  
\_\_\_\_\_  
DANIEL C. HURLBUTT, JR.  
Presiding Judge  
Snake River Basin Adjudication

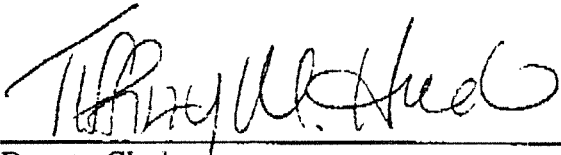
## CERTIFICATE OF MAILING

I certify that a true and correct copy of the CASE MANAGEMENT ORDER: was mailed on April 1, 1996 with sufficient first-class postage to the following:

Court Certificate of Mailing for Expedited Hearings

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

The United States Department of Justice  
Environment and Natural Resources Division  
550 West Fort Street, MSC 033  
Boise, ID 83724

  
\_\_\_\_\_  
Deputy Clerk

DISTRICT COURT  
SNAKE RIVER BASIN ADJUDICATION  
STATE OF IDAHO



DANIEL C. HURLBUTT, JR.  
PRESIDING JUDGE  
(208) 736-3011  
FAX (208) 736-2121

SRBA CHAMBERS  
P.O. BOX 2707  
TWIN FALLS, IDAHO 83303-2707

TO: Mr. Clive Strong

Telephone: (208) 334-4126  
Fax: (208) 334-2690

FROM: SNAKE RIVER BASIN ADJUDICATION

Telephone: 208-736-3011

Fax: 208-736-2121

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