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DEC 29 2003

Department of Water Resources



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Northwest Regional Office
911 N.E. 11th Avenue
Portland, Oregon 97232-4169



DEC 22 2003

Mr. Karl J. Dreher, Director
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Dear Mr. Dreher:

We have received the notice of the proposed expansion of and revision of the boundaries of Water District No. 120, American Falls Area, in Administrative Basin 29. After review of the proposed revisions to the boundary we would like to submit the following written testimony.

We support the appointment of a water master who, under the direction of the Director, would curtail illegal diversions and out of priority diverters, enforce agreements between senior and junior diverters and provide measurements of those water rights under State of Idaho control in Water District 120. At the same time, we would like to point out that there are a number of federal and Shoshone-Bannock tribal water rights in Administrative Basin 29, in the area that is proposed for inclusion in Water District No. 120, that are not under State of Idaho jurisdiction.

A portion of the area to the south of the Snake River in the American Falls Reservoir area that is proposed to be included in Water District 120 falls within the Fort Hall Indian Reservation on land including portions of the Michaud Division of the federal Fort Hall Irrigation Project. There are a number of existing wells with either federal or Shoshone-Bannock Tribes (Tribes) tribal water rights in the area. Some of these wells are irrigation wells operated by the Fort Hall Irrigation Project (Project) and serve both Indian trust and non-Indian farm lands included in the Project.

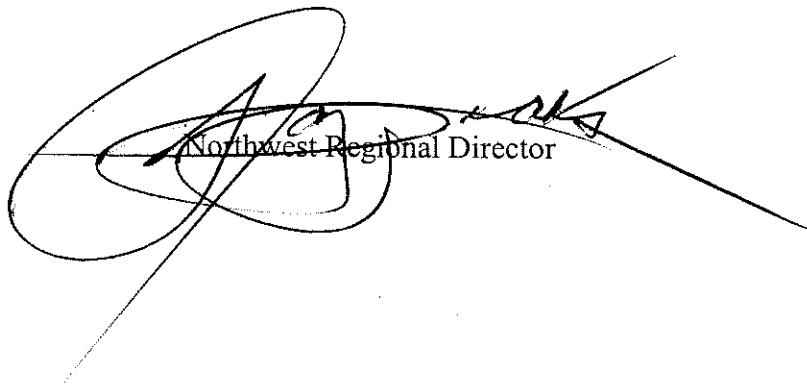
In 1995, the District Court of the Fifth Judicial District of the State of Idaho in and for the County of Twin Falls entered a Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin (Decree). The Decree incorporates the results of negotiations between the State of Idaho, Tribe and United States that are included in the 1990 Fort Hall Indian Water Rights Agreement (1990 Agreement). This Decree defines water rights for all portions of the Fort Hall Indian Reservation including the on-Reservation area south of the Snake River in Administrative Basin 29 that is proposed to be included in Water District No. 120. The Decree also defined water rights for the Project for use on non-Indian lands in the Project and water rights for the Bureau of Indian Affairs.

Under the terms of the Decree the Tribes shall administer the distribution of all tribal water rights within the Reservation, the United States shall administer the distribution of the Fort Hall Irrigation Project water rights and the State shall administer the distribution of only those rights on the Reservation that were acquired under state law. Since the Michaud Division water rights were not acquired under state law they are not subject to administrative control of the water master.

Thus, while recognizing Idaho Department Water Resources (IDWR) interest in proceeding with the revisors of boundaries in Water District No. 120 that the inclusion of the portion of Administrative Basin 29 proposed to be included in Water District 120 must not be allowed to impact the current use and future development of Tribal trust water rights, interfere with the provisions of the 1990 Agreement, the operations of the Project, and the Decree entered by the court in 1995 to define Tribal and federal water rights.

If you have any questions on this issue please contact Mr. Robert Fenton at (503)-231-6927.

Sincerely,



Northwest Regional Director