

United States Department of the Interior
Bureau of Indian Affairs
Fort Hall Irrigation
P.O. Box 220
Fort Hall, Idaho 83203-0220



In Reply Refer To:
Fort Hall Irrigation Project

February 21, 2013

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FEB 22 2013

DEPARTMENT OF
WATER RESOURCES

Director
Department of Water Resources,
P.O. Box 83720
Boise, Idaho 83720-0098

Mr. Spackman,

Thank you for the opportunity to provide written comments concerning the
'Proposed Water District for Bannock Creek Basin.

Enclosed you will find our comments composed by our Consultants, DOWL
HKM.

Pease review and provide feedback or address questions concerning these
comments, if any.

Regards,

Randy A. Thompson (acting)

for Dean Fox, Superintendent
DOI-BIA Fort Hall Agency
Box 220
Fort Hall, Idaho 83203
(208) 238-1992

WRITTEN COMMENTS ON PROPOSED WATER DISTRICT FOR BANNOCK CREEK BASIN

PREPARED FOR BUREAU OF INDIAN AFFAIRS

BY DOWL HKM

FEBRUARY 20, 2013

The following comments are made on behalf of the Bureau of Indian Affairs (BIA) concerning the proposed water district to be created for the purpose of interim administration of both surface water and ground water rights in the Bannock Creek basin:

1. Although the water district boundary will overlap the portion of the basin including the Ft. Hall Indian Reservation outside the Eastern Snake Plain Aquifer(ESPA) , it is our understanding that Tribal and the BIA Ft. Hall Irrigation Project water rights within the boundary of the Ft. Hall Indian Reservation will not be administered by the proposed water district, but will occur as per the 1990 Ft. Hall Water Rights Agreement and as decreed in the 1995 Partial Final Consent Decree. As such, we have the following questions:
 - a. Will non-Indian water rights within the Ft. Hall Indian Reservation outside the ESPA be administered by the proposed district? While we are not aware of any such surface water rights, there may be some non-Indian, non-Project, non-stock/domestic use ground water rights within the Reservation outside the ESPA. If these rights are not administered by the district, who will administer these rights?
 - b. If the Tribal and the BIA Project rights will not be administered by the proposed district, please verify that no assessment for the proposed district setup and operation will be levied on the Tribes or BIA.
 - c. How will it be assured that the on-Reservation Tribal and BIA project water rights receive their proper amount of surface water. Some of the Tribal and BIA project water rights have seniority over other off-Reservation water rights per the 1907 Bannock Creek Decree and are not subordinated in the 1990 Ft. Hall Water Rights Agreement. In fact, the Tribes hold the senior surface water right in the basin (29-466) which is not subordinated. Will the district assure and measure the amount of Bannock Creek water bypassed to the Reservation?
 - d. Will the Tribes and/or BIA be required to measure the amount of surface water entering the Reservation and also measure their respective water right diversions?
2. To effectively administer both surface and ground water rights in the basin, the district needs to establish whether there is a connection between surface water and ground water. Barry Williams has contended that upstream ground water withdrawals are depleting the surface flow of Bannock Creek and negatively impacting his surface water rights. Williams rights are junior to some of the downstream Tribes and BIA project water rights. The BIA is also concerned about ground water withdrawals reducing the surface flow of Bannock Creek, and therefore requests that sufficient data be gathered to determine the impact of

groundwater withdrawals on Bannock Creek flows. Such data should include but not be limited to monitoring and measuring diversion and withdrawal data, obtaining depth to groundwater data, and establishing a streamflow gage network to measure Bannock Creek flows above and below the set of major ground water diversions. Information on all ground water uses need to be gathered, and while withdrawals for domestic and stockwater use need not be monitored or measured, the number of households and the number of livestock served from each well needs to be obtained so that estimates of such use can be developed.

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DEPARTMENT OF
WATER RESOURCES

Gary Spackman, Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Creation of Water District 29 in the Bannock Creek Drainage

Dear Director:

The following comments are submitted on behalf of the Committee of Nine ("Co of 9") relative to the "Proposed Creation of a Water District in the Bannock Creek Drainage Area of Administrative Basin 29."

The notice of hearing on the proposed creation of a Water District in part stated:

"On December 19, 2012, the Snake River Basin Adjudication ("SRBA") District Court issued an order authorizing the Director to distribute water pursuant to chapter 6, title 42, Idaho Code, in accordance with the Director's Reports and partial decrees that have superseded the Director's Reports within the Bannock Creek drainage area of Administrative Basin 29. A copy of the order is posted on the Department's website:

<http://www.idwr.idaho.gov/WaterManagementiWaterDistricts/BannockCreek/default.htm>

The Director proposes to create a water district for the Bannock Creek drainage area in Administrative Basin 29 as shown on the attached map. The proposed water district shall include surface water rights from Bannock Creek and tributaries of Bannock Creek, and all ground water rights within the Bannock Creek drainage area except for ground water domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A (11) and ground water rights within the Eastern Snake Plain

Aquifer (ESPA)¹. While the proposed water district boundary overlaps the boundary of the Fort Hall Indian Reservation, the administration of Tribal and Fort Hall Project water rights within the water district will occur as provided in the 1990 Fort Hall Indian Water Rights Agreement and as decreed by the Snake River Basin Adjudication District Court in its *Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin.*"

The Co of 9 agrees that the creation of the water district is appropriate. Additionally, there is agreement with Mr. Luke's statements at the hearing regarding the exclusion of non-Tribal water rights presently included in Water District #120. These rights are considered part of the ESPA diversions and administration of rights in the ESPA.

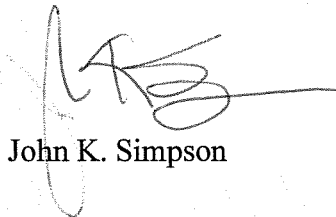
The Co of 9 would request that the Director re-analyze the proposed boundaries of the proposed water district and subsequent order to:

1. Ensure that groundwater rights on the southwestern edge of the Bannock Creek drainage are properly included;
2. Exclude or identify in the water district creation that the northern boundary of the district does not include American Falls Reservoir, and does not abut or overlap the high water mark of said Reservoir; and
3. That any overlap of the proposed water district and Water District #120 does not recognize any administrative or hydrologic connection at the present time.

The Co of 9 would welcome the opportunity to further explain any of the comments provided herein if such clarification would assist the Director in the proper creation of the water district. In submitting these comments, the Co of 9 would request that it receive all documents submitted or issued in this matter.

Sincerely,

BARKER ROSHOLT & SIMPSON



John K. Simpson

JKS/hr

¹ Ground water rights within the ESPA are included in Water District No. 120, except Tribal and Fort Hall Project groundwater rights and ground water domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A(11).