

**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 Case No. 39576) Subcases 51-02002, et al. [Exhibit A]) (Riddle Ranches / Jackson)¹) and) Subcases 51-12756, et al. [Exhibit B]) Subcases 51-12767, et al. [Exhibit C]) (US / Shoshone-Paiute Tribes, Duck) Valley Indian Reservation))) DRAFT SPECIAL MASTER REPORT) AND RECOMMENDATION and) ORDERS
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FINDINGS OF FACT

Director’s Reports and Objections:

Non-Consumptive, Instream Flow Claims [Exhibit B]

The Director of the Idaho Department of Water Resources filed his *Director’s Report Part II: United States’ and Tribal Non-Consumptive Claims* on March 31, 1994, reporting the federal reserved non-consumptive claims filed by the United States of

¹ Claims filed by Riddle Ranches, Inc. [“the largest non-federal neighbor of the Reservation in Idaho”], and Nancy and Peter Jackson in Basins 51 and 55 were proceeding on the same track with the United States’ and Shoshone-Paiute Tribes’ Federal reserved water right claims until September 2004 when the parties requested separate trial schedules. See *Order Granting Joint Motion to Modify Amended Trial Schedule and 2nd Amended Trial Schedule Order*, subcases 51-02002, et al. [Exhibit A], dated September 17, 2004; also see June 25, 2003, letter from United States Department of Justice attorney Peter C. Monson to former SRBA Presiding Judge Roger S. Burdick. This *Report and Recommendation* concerns only the United States’ and Shoshone-Paiute Tribes’ federal reserved water right claims. The Riddle Ranches / Jackson claims will be recommended separately. The United States noted it will withdraw its *Objections* to the Riddle Ranches claims as part of the *Second Revised Proposed Consent Decree*, ¶ 5, at 3.

America, as trustee on behalf of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation.²

Idaho Power Company filed its *Objection* to the claims on October 12, 1995. On December 20, 1995, the State of Idaho, Riddle Ranches and J.R. Simplot Company, *et al.*³, were granted leave to file late *Objections*.

Consumptive Claims [Exhibit C]

The Director filed his *Director's Report, Irrigation and Other Uses, Reporting Area Six (IDWR Basins 51 & 55), Federal Reserved Water Rights Files on Behalf of the Shoshone-Paiute Tribes* on November 24, 1998, reporting the federal reserved consumptive claims filed by the United States, as trustee on behalf of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation.

The State of Idaho filed an *Objection* to the claims on March 18, 1999, alleging the water rights should not exist. Simplot Livestock Company, *et al.*, filed essentially the same *Objection* on March 31, 1999. J.R. Simplot Self-Declaration of Revocable Trust, M.L. Investment Company and TM Ranch Company filed similar *Objections* on April 12, 1999.

Intervention

On December 6, 1999, the Special Master entered an ***Order Granting Tribes' Motion to Intervene*** granting the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation leave "to intervene in the non-consumptive use claims and consumptive use claims filed on their behalf by the United States." Tribes' *Motion to Intervene*, at 2, filed January 12, 1999.

² On May 19, 1998, the United States was granted leave to amend its non-consumptive claims "to clarify and refine the amounts of water claimed for the Reservation, the times in which this water is needed, the priority dates of the claims, and the legal description of the claims." United States' *Motion to File: Amended Notice of Claim*, subcases 51-12756, *et al.*, filed February 27, 1998.

³ Objectors who joined with J.R. Simplot Company included: J.R. Simplot Self-Declaration of Revocable Trust, M.L. Investment Company and TM Ranch Company.

Trial Settings⁴

On May 17, 2002, the Special Master entered a *Trial Schedule Order* setting the matters for trial beginning January 13, 2005. A *2nd Amended Trial Schedule Order* was entered on September 17, 2004, resetting the trial to begin November 8, 2005. The *4th Amended Trial Schedule Order*, filed March 30, 2005, moved the trial date back one day to November 9, 2005. The April 22, 2005 *5th Amended Trial Schedule Order* reset the trial to begin May 1, 2006.

Lead Subcases and Joinder

On July 16, 2004, the Special Master entered an *Order Designating Lead Subcases* for the United States and Shoshone-Paiute Tribes non-consumptive and consumptive claims and requiring that the claims proceed to trial simultaneously, but without consolidation. Also see February 10, 2006 *Order Amending Exhibit C and Exhibit C Lead Subcase*.

Mandatory Settlement Conference

On July 15, 2005, the Special Master entered an *Amended Order Appointing Settlement Moderator and Setting Mandatory Settlement Conference*. A *2nd Amended Order* reset the date for the conference to August 12, 2005.

Settlement Moderator Brigette Bilyeu filed a *Settlement Conference Report* on August 15, 2005, stating:

The parties had helpful discussions regarding a possible contribution by the U.S. government. An offer was made, however, no agreement was reached. The parties agreed to exchange comments on the Draft Settlement Agreement within 2 weeks. The parties agreed to hold a conference call within 3 weeks regarding the Draft Settlement Agreement.

⁴ Orders amending pretrial settings are omitted from this discussion.

Order Reducing Paperwork

On July 27, 2002, the Special Master entered an *Order Re: Court Filings* requiring the parties to file only one document in each of the lead subcases instead of filing the original plus 368 copies.

Motions for Summary Judgment:

State of Idaho

On September 23, 2005, the State filed its *Motion for Summary Judgment* seeking disallowal of some claims and deletion of all uses, except irrigation and livestock uses, in other claims.

United States

The United States filed its *Motion for Partial Summary Judgment* the same date seeking rulings on the purpose of creation of the Duck Valley Indian Reservation (“to create a permanent homeland for the Western Shoshone, Paiutes and other Indians who reside there) and the uses of water to fulfill that purpose. The *Motion* also asked the SRBA Court to declare that it does not have jurisdiction over points of diversion on the Reservation outside Idaho. The Tribes joined in the United States’ *Motion* the same date it was filed.

Offer of Judgment

On December 21, 2005, the State and the United States filed a *Joint Motion for Scheduling Order* asking that the Special Master vacate the current trial scheduling order and set a schedule for filing of a motion for entry of partial consent decree “for the purpose of implementing the United States’ conditional acceptance of the offer of judgment.” Based on that *Joint Motion*, the Special Master vacated the trial schedule and set a hearing on the motion for entry of a partial consent decree.

Then, on January 9, 2006, the State and the United States filed a *Joint Motion for Approval of Consent Decree and Entry of Partial Final Decrees*. The same date, those

parties lodged a proposed *Consent Decree Approving Entry of Partial Final Decrees Determining the Rights of the United States as Trustee for the Benefit of the Shoshone-Paiute Tribes to the Use of Water in the Snake River Basin Within Idaho*.

Tribes' Objection

The Shoshone-Paiute Tribes filed their *Objection to Entry of Consent Decree* on February 9, 2006, and supplemented the *Objection* on March 10, 2006.

Hearing on Objection

A hearing on the *Joint Motion for Approval of Consent Decree and Entry of Partial Final Decrees*, plus the Tribes' *Objection*, was held on April 13, 2006, at the SRBA Courthouse in Twin Falls, Idaho. Vanessa Boyd Willard and Frank S. Wilson appeared for the United States; Jeanne S. Whiteing appeared for the Shoshone-Paiute Tribes; David J. Barber appeared for the State of Idaho; Terry T. Uhling appeared for J.R. Simplot Company, along with Vic Conrad; Shelley M. Davis appeared for Idaho Power Company; and Chris M. Bromley appeared for IDWR.

Settlement

Before any rulings were made on the *Joint Motion for Approval of Consent Decree and Entry of Partial Final Decrees*, on May 10, 2006, the United States, the State and the Tribes lodged a *Status Report Concerning Resolution of Shoshone-Paiute Tribes' Objection to Proposed Consent Decree* "to inform the Court of the resolution by agreement of the Shoshone-Paiute Tribes Objections to the Proposed Consent Decree." Riddle Ranches and the J.R. Simplot Company joined in the agreement.

Revised Consent Decree

On May 24, 2006, the State and the United States, in agreement with Riddle Ranches and J.R. Simplot Company, filed a *Joint Motion for Approval of Revised Consent Decree and Entry of Revised Partial Final Decrees* seeking entry of "revised partial final decrees for the 369 claims described in the attachments to the revised

Consent Decree.”⁵ Along with the *Joint Motion*, the parties lodged a proposed *Revised Consent Decree Approving Entry of Revised Partial Final Decrees Determining the Rights of the United States as Trustee for the Benefit of the Shoshone-Paiute Tribes to the Use of Water in the Snake River Basin Within Idaho*.

On August 17, 2006, the Shoshone-Paiute Tribes filed their *Withdrawal of Objections to Entry of Consent Decree*, but requested additional time “for review of the proposed consent decree by all parties for technical accuracy.”

Second Revised Consent Decree

On September 22, 2006, the United States, the State and Riddle Ranches filed their *Joint Motion for Technical Amendments and Entry of Second Revised Proposed Consent Decree and Second Revised Partial Final Decrees*. The parties noted that J.R. Simplot Company and the Tribes do not object to the *Joint Motion*. The *Joint Motion* sought amendments to Exhibits A, B and C, corrections of certain claimed priority dates and clarifications of several claims.

The same date, the United States, the State, Riddle Ranches and J.R. Simplot Company lodged a *Second Revised Proposed Consent Decree Approving Entry of Second Revised Partial Final Decrees Determining the Rights of the United States as Trustee for the Benefit of the Shoshone-Paiute Tribes to the Use of Water in the Snake River Basin Within Idaho*. Attached to the *Second Revised Proposed Consent Decree* was a list of the 22 claims to be disallowed (Attachment A) and proposed partial decrees for the 345 remaining federal reserved claims to be decreed (Attachment B).⁶

⁵ Footnote 1 to the *Joint Motion* stated:

There were a total of 369 claims at issue in this case. Attachment A to the revised Consent Decree filed herewith contains 345 revised Partial Final Decrees which the Parties seek to have entered by the Court. The remaining 24 claims are accounted for in Attachment B to the Revised Consent Decree, which outlines the claims to be disallowed.

⁶ The 345 proposed partial decrees in Attachment B were not arranged numerically by basin or claim numbers. In accordance with customary practices of the SRBA Court, they are now arranged numerically in the Court’s files.

ORDERS

THEREFORE, IT IS ORDERED that 1) the State and the United States' January 9, 2006 *Joint Motion for Approval of Consent Decree and Entry of Partial Final Decrees*, 2) the Tribes' March 10, 2006 *Motion for Extension of Time to Respond* and 3) the State and the United States' May 24, 2006 *Joint Motion for Approval of Revised Consent Decree and Entry of Revised Partial Final Decrees* are deemed moot in light of subsequent filings.

IT IS FURTHER ORDERED that the Shoshone-Paiute Tribes' August 17, 2006 *Withdrawal of Objections to Entry of Consent Decree* is **granted**.

IT IS FURTHER ORDERED that the parties' September 22, 2006 *Joint Motion for Technical Amendments* is **granted**:

1. The claimed priority date of 55-13799, 55-13800, 55-13801, 55-13803, 55-13804, 55-13806, 55-13808, 55-13811 and 55-13814 is amended to May 4, 1886.
2. The source of 55-13801 is corrected to Dry Creek and the beginning point is corrected to T 15S, R 3E, § 36, NW¼.
3. Exhibit C is amended by the addition of 55-12603.
4. The description of 51-12775 clarified to include the following language: "This water right includes two separate springs located within this legal description."
5. Claims 51-12899 and 55-13822 are stricken from Exhibit C since they do not correspond to water right claims and it is not appropriate to either decree or disallow them as water rights.
6. Claim 51-12603, a USDI / BLM stockwater claim based on beneficial use, was inadvertently included in the November 24, 1998 *Director's Report, Irrigation and Other Uses, Reporting Area Six (IDWR Basins 51 & 55), Federal Reserved Water Rights Files on Behalf of the Shoshone-Paiute Tribes*, but was never included on Exhibits B or C.⁷

⁷ Water right 51-12603 was partially decreed to the USDI / BLM on April 10, 2000.

FINALLY, IT IS ORDERED that pursuant to I.R.C.P 53(e)(5), this *Draft Special Master Report and Recommendation* is submitted to counsel for the parties and IDWR for the purpose of receiving their suggestions. Suggestions must be filed with the SRBA Court, with copies to all parties, no later than **Friday, October 20, 2006**.

CONCLUSIONS OF LAW

1. The United States of America, as trustee on behalf of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation is entitled to partial decrees adjudicating the 345 non-consumptive and consumptive federal reserved water rights included in Attachment B to the *Second Revised Proposed Consent Decree Approving Entry of Second Revised Partial Final Decrees Determining the Rights of the United States as Trustee for the Benefit of the Shoshone-Paiute Tribes to the Use of Water in the Snake River Basin Within Idaho*.

2. The United States, as trustee on behalf of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation is **not** entitled to partial decrees for the remaining 22 claims listed in Attachment A to the *Second Revised Proposed Consent Decree*.

RECOMMENDATION

THEREFORE, IT IS RECOMMENDED that:

1. The *Joint Motion for Entry of Second Revised Proposed Consent Decree and Second Revised Partial Final Decrees* be **granted**.

2. The *Second Revised Proposed Consent Decree Approving Entry of Second Revised Partial Final Decrees Determining the Rights of the United States as Trustee for the Benefit of the Shoshone-Paiute Tribes to the Use of Water in the Snake River Basin Within Idaho* be entered by the Court adjudicating the 345 non-consumptive and

consumptive federal reserved water rights included in Attachment B and disallowing the 22 claims listed in Attachment A.

DATED October 3, 2006.

 /s/ Terrence A. Dolan
TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication