



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

) ORDER AMENDING PARTIAL FINAL
) CONSENT DECREE DETERMINING
) THE RIGHTS OF THE SHOSHONE-
) BANNOCK TRIBES TO THE USE OF
) WATER IN THE UPPER SNAKE RIVER
) BASIN TO CORRECT CLERICAL
) ERROR, I.R.C.P 60(a).
) For water right: 92-22

I. FINDINGS OF FACT

A Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin was issued by the SRBA District Court August 2, 1995. The Consent Decree related to an agreement between the Shoshone-Bannock Tribes, the State of Idaho, the United States, and various Idaho water users entitled The 1990 Fort Hall Indian Water Rights Agreement. The Consent Decree is now consolidated in Subcase 92-22.

A Motion to Correct Clerical Errors Pursuant to Rule 60(a) was filed by the Shoshone-Bannock Tribes (the Tribes) on March 25, 2005. Service was made on all the parties who were signatories to the Consent Decree. An Order of Reference was made to Special Master Brigette Bilyeu. The Motion stated that a clerical error had been made in the transcription of the Consent Decree; specifically, that the Consent Decree had omitted parts of prior decrees that were to be the basis of the Consent Decree.

A hearing on the Motion was held before the Special Master on May 25, 2005. The Tribes, the United States, and the State of Idaho appeared at the hearing. There were no objections to the Motion. The Motion was granted at the hearing, and an Order Granting Motion to Correct Clerical Errors Pursuant to Rule 60(a) was issued May 26, 2005. On June 6, 2005, the Special Master issued a Special Master's Report

and Recommendation, recommending that the *Consent Decree* be amended and decreed. No motions to alter or amend were filed, and the time for challenges has no expired.

Based on the record and the *Special Master's Report and Recommendation*, it appears that a clerical error did occur in the transcription of the *Consent Decree*. Certain elements of rights were omitted, although those water rights were referred to in the *Partial Final Consent Decree*, were referred to in the agreement that resolved the Shoshone-Bannock Tribes water rights (*The 1990 Fort Hall Indian Water Rights Agreement*) and were also referred to in a prior decree relating to tribal rights, *United States v. Hibner*. Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f this Court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report* and wholly adopts them as its own.

Therefore, IT IS ORDERED, that the *Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin* is hereby amended and decreed as set forth in the attached *Appendix Containing Amendments to Consent Decree*.

Dated: August 22, 2005.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

Partial Final Consent Decree Determining Rights of the
Shoshone-Bannock Tribes to the Use of Water in the
Upper Snake River Basin (August 2, 1995), Subcase No. 92-22

Appendix Containing Amendments to Consent Decree

Consent Decree pages 27- 28:

Right No. 29-00231

- .i Source: Toponce Creek
- .ii Annual Diversion Volume: 259.3 AFY
- .iii Diversion Rate: 1.59 CFS
- .iv Annual Volume of Consumptive Use: 154.3 AFY
- .v Priority Date: July 6, 1868
- .vi Points of Diversion: Toponce Creek
- .vii Purpose and Period of Use:
Irrigation 1/1 – 12/31
- .viii Place of Use: Allotment 61 (NESW, SENW, Sec 35 Twp 6S
Rge 38E) for 79.53 acres.
- .ix Basis of Right: The Winters Doctrine per the Memorandum
Decision in United States v. Hibner, 27 F.2d 909 (D. Idaho, E.D. 1928)
and the Decree of the United States District Court, Eastern Division,
dated April 8, 1929.

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
AUG 24 2005	
By _____	Clerk
_____	Deputy Clerk

Right No. 29-00238

- .i Source: Toponce Creek
- .ii Annual Diversion Volume: 282.5 AFY

- .iii Diversion Rate: 1.733 CFS
- .iv Annual Volume of Consumptive Use: 168.14 AFY
- .v Priority Date: July 6, 1868
- .vi Points of Diversion: Toponce Creek
- .vii Purpose and Period of Use:
Irrigation 1/1 - 12/31
- .viii Place of Use: Allotment 71 (SEnw, SWNE, Sec 36 TWP 6S
Rge 38E) for 86.67 acres.
- .ix Basis of Right: The Winters Doctrine per the Memorandum
Decision in United States v. Hibner, 27 F.2d 909 (D. Idaho, E.D. 1928)
and the Decree of the United States District Court, Eastern Division,
dated April 8, 1929.

Right No. 29-00239

- .i Source: Toponce Creek
- .ii Annual Diversion Volume: 273.7 AFY
- .iii Diversion Rate: 1.679 CFS
- .iv Annual Volume of Consumption: 162.9
- .v Priority Date: July 6, 1868
- .vi Points of Diversion: Toponce Creek
- .vii Purpose and Period of Use: Irrigation 1/1 - 12/31
- .viii Place of Use: Allotment 72 (NESW, NWSE, Sec 36 Twp 6S Rge 38E)
for 83.97 acres.

- .ix. Basis of Right: The Winters Doctrine per the Memorandum Decision in United States v. Hibner, 27 F.2d 909 (D. Idaho, E.D. 1928) and the Decree of the United States District Court, Eastern Division, dated April 8, 1929.
- .x Matters necessary for definition, clarification or administration of the right: A corresponding reduction will be made to Right No. 29-12049.

Consent Decree page 25:

Right No. 29-12049

- .i Source: Bannock Creek
- .ii Annual Diversion Volume: 18,559.3 AFY
- .iii Diversion Rate: 98.87 CFS
- .iv Annual Volume of Consumptive Use: 11,042.10 AFY
- .v Priority Date: June 14, 1867
- .vi Existing Points of Diversion:
 - NENWSE Sec 32 Twp 7S Rge 33 E BM
 - SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM
 - NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp 9S Rge 33E BM
 - NESWSE Sec 6 Twp 7S Rge 33E BM
 - (3 – 20 HP pumps for Michaud Project)
 - Future Points of Diversion may be developed within the Bannock Creek basin to utilize this water right within the Bannock Creek drainage basin.
- .vii Purpose and Period of Use: 3/15 – 11/15

- .viii Place of Use: 4,708 present and future acres within the Reservation.
- .ix Basis of Right: Winters Doctrine
- .x Matter Necessary for Definition, Clarification or Administration of the Right:
 - .a The Tribes and the United States shall exercise this right in a manner that ensures person with water rights decreed in the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)] and that are confirmed in the SRBA continue to receive their full legal entitlement. This right is reduced to transfer water to Right No. 29-00239.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER AMENDING PARTIAL FINAL CONSENT DECREE DETERMINING THE RIGHTS OF THE SHOSHONE-TRIBES was mailed on August 24, 2005, with sufficient first-class postage to the following:

1990 FORT HALL INDIAN WATER

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DON MCFARLAND
SUNDANCE INC

Represented by:
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FORT HALL WATER USERS
KIM G BODILY

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ALLEN NOBLE FARMS INC

ALLEN T NOBLE
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CLEAR LAKES TROUT CO INC
COTTONWOOD CANAL CO
FARM DEVELOPMENT CORP
G PATRICK NORRIS
GIRNDSTONE BUTTE MUTUAL CANAL
JEFF BLANKSMA
NAMPA & MERIDIAN IRRIGATION
RAINBOW TROUT FARMS
RIM VIEW TROUT CO
SAILOR CREEK WATER COMPANY
WEST END PROJECT

AMALGAMATED SUGAR COMPANY

BASIC AMERICAN FOODS
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(Certificate of mailing continued)

U.S.A.

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