

12-13-2006

Revised Consent Decree Approving Entry of Partial 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

Fifth Judicial District Court, Twin Falls County, Idaho

Follow this and additional works at: <http://digitalrepository.unm.edu/nawrs>

 Part of the [Indian and Aboriginal Law Commons](#)

Preferred Citation

Revised Consent Decree Approving Entry of Partial 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, In re Snake River Basin Adjudication, No. 39576, Fifth Judicial District Court of the State of Idaho (Dec. 13, 2006)

This Post-settlement court orders/ decree is brought to you for free and open access by the Native American Water Rights Settlement Project (NAWRS) at UNM Digital Repository. It has been accepted for inclusion in Native American Water Rights Settlement Project by an authorized administrator of UNM Digital Repository. For more information, please contact amywinter@unm.edu.

two of the existing notices of claim into a total of six notices of claim. The Court granted the Motion to Amend.¹ Thus, the total number of notices of claim was 369.

The State of Idaho, J. R. Simplot Company and Riddle Ranch, hereinafter collectively referred to as the "Objectors," filed objections to the notices of claim filed by the United States.² The Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, hereinafter referred to as the "Tribes," filed a motion to intervene in those subcases filed by the United States on its behalf, and the Court granted the motion. In addition, the Tribes also filed a motion to participate in most of the notices of claim for the Riddle Ranch listed on Attachment C, which the Court also granted.

Pursuant to I.R.C.P. 68, the Objectors made an offer of judgment to the United States on October 13, 2005, which was clarified by several subsequent letters and an e-mail. The United States notified the Objectors in writing on November 15, 2005 that the United States conditionally accepted the offer of judgment.

2. Entry of Partial Final Decrees for federal reserved water rights. The Parties agree to entry of and incorporate herein the partial decrees for federal reserved water rights set forth in Attachment A for the beneficial use of the Shoshone-Paiute Tribes of the Duck Valley Indian

¹ The Court also added two claim numbers to allow parties to object to written narrative in the Director's Report. Five other discrepancies need to be noted. The Director's Report listed notice of claim number 51-12603 for a stockwater claim. This notice of claim number did not end up on the Court's list of notices of claim in Exhibits B and C to the Special Master's Report and Recommendation. The Director also had assigned notice of claim number 51-12603 to a stockwater claim for the U.S. Department of Interior, Bureau of Land Management, and the Court later entered a partial decree for that agency. Thus, the Director had inadvertently assigned notice of claim number 51-12603 to two separate water uses. Another problem existed. The first two digit number in a water right number denotes the hydrologic basin where the water is diverted. Notices of claim 51-12603 through 51-12607 were water uses in basin 55 and not Basin 51 as their number indicates. The Director filed on January 6, 2006 a Notice of Change of Subcase Numbers. This notice changed notice of claim numbers 51-12603 through 51-12607 for the United States as trustee for the benefit of the Shoshone-Paiute Tribes to notice of claim numbers 55-13603 through 55-13607. Notice of claim number 51-12603 remains assigned to a water use decreed for the U.S. Department of the Interior, Bureau of Land Management.

² The term "Riddle Ranch" refers to Riddle Ranch, Inc. and Nancy and Peter Jackson collectively.

Reservation within the Snake River Basin in the State of Idaho. As set forth in each of the partial decrees in Attachment A, these are federal reserved water rights, which are not subject to loss through non-use. These water rights describe purposes of use, points of diversion and places of use, which are not intended to preclude the Tribes' ability to change those purposes of use, points of diversion and places of use within the Duck Valley Indian Reservation pursuant to a tribal water code, provided however, that any change shall not enlarge the right.

3. Remaining water right claims disallowed. With the exception of the partial final decrees set forth in Attachment A, the Parties agree that the remaining claims asserted by the United States as trustee for the benefit of the Shoshone-Paiute Tribes in the SRBA within the State of Idaho will be decreed as disallowed. Attachment B provides a list of all claim numbers to be disallowed. These claims will be dismissed by a separate order issued contemporaneously herewith.

4. Withdrawal of United States' objections to Riddle Ranch. The objections of the United States to the notices of claim for the Riddle Ranch listed in Attachment C shall be withdrawn with prejudice. A separate order dismissing the objections with prejudice will be issued contemporaneously herewith.

5. Administration of water rights. The exercise of the water rights on the Duck Valley Indian Reservation outlined in the Final Partial Decrees set forth in Attachment A shall be administered by the Tribes pursuant to a tribal water code or in accordance with applicable federal law.

6. Waivers and releases. Except as provided in Attachment A, the United States, as trustee for the benefit of the Shoshone-Paiute Tribes, waive and release all existing claims for

water rights within the Snake River Basin in Idaho. No water right claims that the United States has asserted or may in the future assert on behalf of the Shoshone-Paiute Tribes outside the Snake River Basin in Idaho shall require water to be supplied from the Snake River Basin in Idaho to satisfy such claims. This Consent Decree is also in full satisfaction of all water rights or claims to water rights within the state of Idaho by the United States for the Bureau of Indian Affairs' Duck Valley Agency and the Duck Valley Indian Irrigation Project. Nothing in this Consent Decree shall preclude the United States or the Tribes from acquiring water rights in the future pursuant to state law, provided the water rights confirmed in this Consent Decree have been fully utilized at the time the application is made, or are not physically available for use through reasonable diversion facilities.

7. No establishment of precedent. Nothing in this Consent Decree shall be construed or interpreted to establish any standard to be used for the quantification of federal reserved water rights or any other Indian water claims of any other Indian Tribes in any judicial or administrative proceeding. This Consent Decree is the result of good faith negotiations between the Parties for the purpose of implementing the United States' conditional acceptance of the Objectors' offer of judgment regarding the United States' claims for the benefit of the Shoshone-Paiute Tribes. The Parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding and nothing in this Consent Decree shall be read as an admission or determination by the Parties that any of the actions anticipated by this Consent Decree are necessarily required under any federal or state law.

8. Resolution and Finality. The Parties agree that the Consent Decree and final partial decrees represent a just, fair, adequate and equitable resolution of the water right claims of the United States as trustee for the benefit of the Shoshone-Paiute Tribes in the SRBA within the State of Idaho.


9. Costs and Fees. The Parties will bear their own costs and fees with regard to the entry of the Consent Decree and all litigation relating to the water right claims submitted in the SRBA by the United States as trustee for the benefit of the Shoshone-Paiute Tribes.

IT IS SO ORDERED.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED December 12, 2006.



JOHN MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the **REVISED CONSENT DECREE APPROVING ENTRY OF PARTIAL 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** were mailed on December 12, 2006, by first-class mail to the following:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment & Natural Resources Div.
550 West Fort Street, MSC 033
Boise, ID 83724

Albert P. Barker
1010 W Jefferson, Ste 102
PO Box 2139
Boise, ID 83701-2139

Jeanne S Whiteing
Whiteing & Smith
1136 Pearl Street, Ste 203
Boulder, CO 80302

Ringert Clark Chartered
455 S Third St
PO Box 2773
Boise, ID 83701-2773

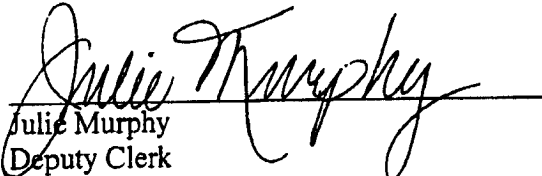
Jeanette Wolfley
Special Counsel
Shoshone-Bannock Tribes
202 N Arthur
Pocatello, ID 83202

John K. Simpson
1010 W Jefferson, Ste 102
PO Box 2139
Boise, ID 83701-2139

Shelley M. Davis
1010 W Jefferson, Ste 102
PO Box 2139
Boise, ID 83701-2139

Terry T. Uhling
J. R. Simplot Company
999 Main St., 13th Floor
PO Box 27
Boise, ID 83707

Lawrence S. Roberts
United States Dept. of Justice
Environmental & Natural Resources Div.
550 W Fort Street, MSC 033
Boise, ID 83724


Julie Murphy
Deputy Clerk

**ATTACHMENT A
REVISED CONSENT DECREE**

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

Consumptive Claims

51-12767	51-12851	55-13495	55-13548	55-13585	55-13622
51-12768	51-12852	55-13496	55-13549	55-13586	55-13623
51-12769	51-12853	55-13506	55-13550	55-13587	55-13624
51-12770	51-12854	55-13508	55-13551	55-13588	55-13625
51-12771	51-12855	55-13512	55-13552	55-13589	55-13626
51-12772	51-12856	55-13514	55-13553	55-13590	55-13627
51-12773	51-12857	55-13515	55-13554	55-13591	55-13628
51-12774	51-12858	55-13518	55-13555	55-13592	55-13629
51-12775	51-12859	55-13519	55-13556	55-13593	55-13630
51-12776	51-12860	55-13520	55-13557	55-13594	55-13631
51-12777	51-12861	55-13521	55-13558	55-13595	55-13632
51-12778	51-12862	55-13522	55-13559	55-13596	55-13633
51-12779	51-12863	55-13523	55-13560	55-13597	55-13634
51-12780	51-12864	55-13524	55-13561	55-13598	55-13635
51-12781	51-12865	55-13525	55-13562	55-13599	55-13636
51-12782	51-12866	55-13526	55-13563	55-13600	55-13637
51-12783	51-12867	55-13527	55-13564	55-13601	55-13638
51-12784	51-12868	55-13528	55-13565	55-13602	55-13639
51-12785	51-12869	55-13529	55-13566	55-13603	55-13640
51-12786	51-12870	55-13530	55-13567	55-13604	55-13641
51-12787	51-12871	55-13531	55-13568	55-13605	55-13642
51-12788	51-12872	55-13532	55-13569	55-13606	55-13643
51-12789	51-12873	55-13533	55-13570	55-13607	55-13644
51-12790	51-12874	55-13534	55-13571	55-13608	55-13645
51-12791	51-12875	55-13535	55-13572	55-13609	55-13646
51-12792	51-12876	55-13536	55-13573	55-13610	55-13647
51-12793	51-12877	55-13537	55-13574	55-13611	55-13648
51-12794	51-12878	55-13538	55-13575	55-13612	55-13649
51-12795	51-12879	55-13539	55-13576	55-13613	55-13650
51-12796	51-12880	55-13540	55-13577	55-13614	55-13651
51-12797	51-12881	55-13541	55-13578	55-13615	55-13652
51-12798	51-12882	55-13542	55-13579	55-13616	55-13653
51-12799	51-12883	55-13543	55-13580	55-13617	55-13654
51-12800	-----	55-13544	55-13581	55-13618	55-13691
51-12801	55-13491	55-13545	55-13582	55-13619	55-13693
51-12802	55-13492	55-13546	55-13583	55-13620	55-13694
51-12803	55-13494	55-13547	55-13584	55-13621	55-13695

55-13697	55-13741	55-13785
55-13698	55-13742	55-13786
55-13699	55-13743	55-13787
55-13700	55-13744	55-13788
55-13701	55-13745	55-13789
55-13702	55-13746	55-13790
55-13703	55-13747	55-13791
55-13704	55-13748	55-13792
55-13705	55-13749	55-13793
55-13706	55-13750	55-13794
55-13707	55-13751	55-13795
55-13708	55-13752	55-13796
55-13709	55-13753	55-13797
55-13710	55-13754	55-13798
55-13711	55-13755	55-13799
55-13712	55-13756	55-13800
55-13713	55-13757	55-13801
55-13714	55-13758	55-13802
55-13715	55-13759	55-13803
55-13716	55-13760	55-13804
55-13717	55-13761	55-13805
55-13718	55-13762	55-13806
55-13719	55-13763	55-13807
55-13720	55-13764	55-13808
55-13721	55-13765	55-13809
55-13722	55-13766	55-13810
55-13723	55-13767	55-13811
55-13724	55-13768	55-13812
55-13725	55-13769	55-13813
55-13726	55-13770	55-13814
55-13727	55-13771	55-13815
55-13728	55-13772	55-13817
55-13729	55-13773	55-13818
55-13730	55-13774	55-13819
55-13731	55-13775	55-13820
55-13732	55-13776	
55-13733	55-13777	
55-13734	55-13778	
55-13735	55-13779	
55-13736	55-13780	
55-13737	55-13781	
55-13738	55-13782	
55-13739	55-13783	
55-13740	55-13784	

**United States of America, as trustee on behalf of the Shoshone-Paiute Tribes of the Duck
Valley Indian Reservation**

Non-Consumptive, Instream Flow Claims

55-13487

NOTE: Water right claim number 55-13487 was originally a non-consumptive claim which under the offer of judgment was recognized as a consumptive claim.

ATTACHMENT B
REVISED CONSENT DECREE

Claims Deceeed to be Disallowed

Claims filed by the:

Area Director, Portland Area Office
Department of Interior
Bureau of Indian Affairs
911 N.E. 11th Avenue
Portland, OR 97232

Claim Nos.

51-12756
51-12847
51-12848
51-12849
51-12850
55-13476
55-13477
55-13485
55-13486
55-13493
55-13499
55-13500
55-13501
55-13507
55-13509
55-13510
55-13511
55-13668
55-13669
55-13692
55-13696
55-13816

Additional Claims to be Disallowed:

Claim Nos.

51-12899
55-13822

ATTACHMENT C
REVISED CONSENT DECREE

Riddle Ranches, Inc. / Nancy and Peter Jackson

51-02002

51-10293

55-02009

55-02016

55-02032

55-02035

55-02039

55-02063

55-02064

55-02076

55-02080

55-02129

55-02131

55-02169

55-02174

55-02175

55-02181

55-02210

55-02211

55-02435

55-07002

55-07009

55-13479

55-13480