

**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)	Consolidated Subcase No.
)	03-10022, Nez Perce Tribe
Case No. 39576)	Off-Reservation Instream
)	Flow Claims
)	
)	DISCLOSURE PURSUANT
)	TO I.R.C.P. RULE
_____)	40(d)(2)(A)

1. I, Roderick Barry Wood, am currently the Presiding Judge in the Snake River Basin Adjudication (SRBA).

2. On February 4, 2000, the United States of America filed *United States' Motion Requesting Status Conference and Request for Expedited Consideration*. The Motion was supported by the *Affidavit of Peter C. Monson*.

3. On February 7, 2000, the Nez Perce Tribe filed *Nez Perce Tribe's Motion to Set Aside All Decisions, Judgments and Orders on Instream Flow Claims Entered in Consolidated Subcase 03-10022 by Judge R. Barry Wood and Motion to Disqualify Judge Wood*. The Motion was supported by the *Affidavit of K. Heidi Gudgell*.

4. Each of the Motions raised questions pursuant to I.R.C.P. Rule 40(d)(2)(A)(1) & (2), which Rule provides as follows:

Rule 40(d)(2). Disqualification for cause.

(A) Grounds. Any party to an action may disqualify a judge or magistrate for cause from presiding in any action upon any of the following grounds:

1. That the judge or magistrate is a party, or is interested, in the action or proceeding.

2. That the judge or magistrate is related to either party by consanguinity or affinity within the third degree, computed according to the rules of law.

5. This disclosure filing is made to facilitate all interested parties and persons in responding to the above motions, which are set to be heard February 22, 2000, at 1:30 p.m. at the Snake River Basin Adjudication District Court in Twin Falls, Idaho.

I.R.C.P. 40(d)(2)(A)(1) – Interests of the Judge

6. By Order dated December 22, 1998, entered by Chief Justice Trout, I became the Presiding Judge of the SRBA effective January 1, 1999. A true copy of this Order is attached hereto as Exhibit A. This Order was subsequently amended on March 9, 1999. A true copy of the Amended Order is attached hereto as Exhibit B.

7. Idaho Code § 1-806(3)(e) requires that I reside in either Gooding or Jerome County, Idaho.

8. In order to comply with I.C. § 1-806(3)(e), in 1994, I acquired an interest in some real property in Gooding County, Idaho, via a lease with an option to purchase. The land is slightly less than 13 acres (I believe something like 12.997 acres) and is legally described as follows:

That part of Lot 7 lying South of the U.S. Highway 20-26, in Section 6, Township 6 South, Range 16 East of the Boise Meridian, Gooding County, Idaho. The U.S. Highway 20-26 land is referred to as Project No. F-2351(3), and is described in a Deed, dated May 6, 1965, recorded June 24, 1965, as Instrument No. 15175, records of Gooding County, Idaho.

9. I was ultimately able to obtain fee title to the property and the Warranty Deed was recorded in the records of Gooding County, Idaho as Instrument No. 177939 on November 16, 1998.

10. The relatively small parcel of land described in paragraph 8 above was a portion of a much larger parcel of land, most of which is irrigated farmland; both parcels were owned by my predecessor in interest. Fee title on this much larger piece of land was acquired by Jim and Julie Wolfe in November 1998. I will henceforth reference the parcel described in paragraph 8 above as the “Wood parcel” and this remainder larger parcel as the “Wolfe parcel.” Both parcels together are referred to as the “entire parcel.”

11. Based upon my belief acquired from records (not personal knowledge) my predecessors in title, I believe in 1988, filed two water right claims in the SRBA relative

to the entire parcel. One was a domestic and stockwater right which well is physically located on what is now the Wood parcel. The other was an irrigation well for irrigation of the entire parcel (less the homestead on the Wood parcel).

12. When I acquired fee title to the Wood parcel on November 16, 1998, I also acquired legal title to the domestic water well, which has been assigned claim no. 37-11243 by IDWR in the SRBA. As part of this process, IDWR's Change of Ownership form for this right was submitted. While the original water right back in 1988 was for domestic and stock, I presently have no stock, save and except my pet cat, "Wilder."

13. Wolfes acquired fee title to the Wolfe parcel on or about November 16, 1998. The irrigation well, now represented by water right claim nos. A37-07252A & B is located on the Wolfe parcel. Because the well serviced the entire parcel, a split and change in ownership of the land required the water right claim to be split – A37-07252A to Wolfe for approximately 148 acres and A37-07252B to Wood for approximately 10 acres (with corresponding amounts/ratios of water).

14. Disclosure of these two interests was first made by me to Chief Justice Linda Trout on November 3, 1998, at a meeting of the Fifth Judicial District Judges in Twin Falls, Idaho. That meeting was held at the request of the Chief Justice in an effort to find a replacement presiding judge in the SRBA occasioned by Judge Hurlbutt's retirement. In response to my disclosure, I was specifically told by the Chief Justice that because of the extreme vastness and uniqueness of the SRBA and the miniscule nature of the water right claims on my property, that my ownership of real property which is subject to the above described claims in the SRBA presented no conflict in my presiding over the SRBA; at least until a future point in time if and when a dispute were to arise over a claim in which I was directly involved (an event which has not yet occurred, and is highly unlikely that it would occur because my understanding is this well is based on a license issued by IDWR). After November 3, 1998, I have at other times openly discussed my interests and the Orders of Assignment with the Chief Justice.

15. A review of the records and files of the SRBA by my clerk on February 11, 2000, reveals the following status of the two respective claims involving my real property:

37-11243 (Domestic & Stockwater)

1. Notice of Claim filed by Greenhorn Farms on September 2, 1988.
2. The claim was reported by the Director on March 5, 1999.
3. The objection period expired on September 10, 1999.
4. There were no objections filed.
5. The hearing on the uncontested portion of the Director's Report for Basin 37, Domestic and Stockwater Right Claims was held on November 18, 1999, in Orofino, Idaho.
6. This claim is ready for partial decree; and there is no estimated date for issuance – just when the SRBA staff gets to the ministerial task of issuing it (and many others).

A37-07252B (Split) (Irrigation)

1. Notice of Claim filed with IDWR by Greenhorn Farms on September 2, 1988.
2. The claim has not been reported by the Director.
3. IDWR's current time table for reporting irrigation rights in Basin 37 is expected to be sometime in the year 2003.

16. Attached hereto as Exhibit C is a copy of Orders Creating the North Snake Ground Water District (NSGWD), which is comprised of large portions of Lincoln, Jerome and Gooding Counties. The Order creating the NSGWD is dated January 4, 1996.

17. I learned for the first time on February 9, 2000, that my real property described in paragraph 8 above is located within the legal description boundaries of the NSGWD.

18. Despite the inclusion, however, to my knowledge I have never paid any taxes or assessments to such District. Attached hereto as Exhibit D is a copy of my most current tax notice which does not list any assessment to NSGWD. Likewise, I have never received any notice of being included in NSGWD, nor have I ever voted as a member thereof. Jim Wolfe farms the irrigated portions of both the Wolfe parcel and the Wood parcel. Other than my garden plot and some trees, I am engaged in no agricultural

pursuits. I receive no income from the irrigated portion of my property. I believe that I am not a “groundwater user,” as the domestic well is exempt I.C. § 42-5201(8), and my share in the irrigation well is leased to Wolfe. I believe Wolfe is the “member” who has the only vote in NSGWD regarding the irrigation well. I.C. § 42-5210.

19. Lastly, it has been asserted that I own shares of stock in the Big Wood Canal Company (for the benefit and use on my property described in paragraph 8 above) as well as owning “ditch rights.”

20. With respect to Big Wood Canal Company shares, to my knowledge, I own no such shares. My property receives no water from this or any other canal company. There is no existing headgate from which water of the Big Wood Canal Company could physically be delivered to my property. I have never received an assessment from the Big Wood Canal Company. Attached hereto as Exhibit E is the Affidavit of Jane Sabala, Office Manager of the Big Wood Canal Company, dated February 8, 2000, in which she states a search of the business records of the Big Wood Canal Company reveals I own no shares. Also, when I acquired my initial interest in the property in 1994, I was informed there were no canal company shares being sold with this property.

21. As for the asserted “ditch rights” I own, there is a small lateral ditch or canal which is owned by the Big Wood Canal Company which traverses my property in the northeast corner. My property serves as the “servient tenement” or “servient estate,” meaning it is my land which is legally and physically burdened by the easement of the Big Wood Canal Company.

I.R.C.P. 40(d)(2)(A)(2) – Family Interests

22. Attached hereto as Exhibit F is a Table of Consanguinity showing degrees of relationship, and upon which I rely to make disclosures pursuant to I.R.C.P. 40(d)(2)(A)(2).

23. Beginning with my parents, both are living and their names are Frederick L. Wood, Jr. and Marguerite H. Wood, and they reside at Homedale, Idaho. On February 11, 2000, in a telephone conversation with my father, he advised me that my mother and he own no water rights (the real property and attendant claim no. 57-10415 referenced in

the *Affidavit of Peter C. Monson* were sold to one of my sisters in, I believe, November of 1993 and is hereinafter discussed). It is also his belief that my mother and he, some years back, acquired a small lot in Murphy Hot Springs, Idaho. It is his recollection that the deed was recorded in my mother's name and my son Peter's name. It is his further memory that there are no accompanying water rights filed in the SRBA. I have not had time to research the full facts relating to this lot and, in the interest of time in making this filing, do not intend to do so. If any party wishes me to do so in the future, I will attempt to do so.

24. I have no living grandparents or great-grandparents.

25. I have no aunts or uncles living in Idaho, and to my knowledge, of those who are living, none own any real property or water rights in Idaho.

26. I am not now married (divorced 10-plus years ago). I have three children, all living. None have filed any claims to water rights in the SRBA. As disclosed in paragraph 23 above, my son Peter may have an interest in a lot in Murphy Hot Springs, Idaho. None of my children have any children, hence I have no grandchildren or great-grandchildren.

27. As for brothers and sisters, and therefore nephews and nieces, I have the following:

A. Brother Frederick L. Wood, III and wife, Amy, of Burley, Idaho. My brother has three biological children, all living. My brother owns approximately 10 acres at Burley, Idaho. He informed me on February 11, 2000, that he filed a claim in the SRBA for domestic and stock for the domestic well located on the property. I believe this is claim no. 45-11341. The records of the SRBA reflect that this right was uncontested and a *Partial Decree* was issued July 27, 1998. My brother informed me that the irrigated portion of his 10 acre parcel is provided water by the Burley Irrigation District and that he pays assessments to that District. None of his three children own any water rights.

While a matter of public record for several years, this brother also serves as a commission member of the Idaho Fish & Game Commission.

It is my understanding that he receives some small remuneration from the State of Idaho, who is an interested party in this action, for this service.

B. Brother Jeffrey K. Wood and wife, Sharron, who live in Florida. They have one child who is living. My brother advised me on February 11, 2000, that they own no water rights in Idaho. He advised me that they own a one-week-per-year time share at Lava Hot Springs, Idaho. Their child owns/claims no water rights in Idaho.

C. Sister Sheila F. Eismann and her husband, Daniel T. Eismann of Eagle, Idaho. My sister has three biological children, all living. Dan advised me on February 10, 2000, that they own a small ¼ acre homesite at Eagle, Idaho. The ¼ acre homesite is within a Homeowner's Association and they receive and pay an annual assessment of approximately \$112.00 per year from the Association for a pressurized lawn irrigation system. They also pay domestic water fees. He advised me that to his knowledge, none of Sheila's three children owned/claimed any water rights in Idaho.

Also, as a matter of public record, Dan is District Judge in the State of Idaho, and serving as Administrative District Judge of the Fourth Judicial District of the State of Idaho. As such, he too is an employee of the State of Idaho, an interested party in this action.

D. I am child 4, and have made disclosure above.

E. Sister Sharon L. Backus and husband, G. Lynn Backus, of Sparks, Nevada. Sharon has one biological child who is living. Sharon advised me that she and her husband have water right claims in the SRBA identified as claim nos. 72-00155, 72-00156, 72-00157, and 72-16276. My understanding is that these relate to real property owned in the Challis, Idaho area, but which property I have never seen. My clerk at the SRBA informed me on February 11, 2000, that all 4 of these rights have been

reported out by the Director; that the objection period deadline was June 2, 1999; that all 4 were unobjected to; that the hearing on the uncontested portions of the Director's Report was held on August 6, 1999; and that, these are simply awaiting the ministerial act of entering partial decrees (along with many others).

F. Sister Martha K. Wood Sweeney and her husband Norman Sweeney of Winnemucca, Nevada. Martha has two biological children, both living. Martha informs me that she purchased my parents' land (homesite) at Homedale, Idaho, in approximately November of 1993. This parcel is 1.837 acres and has the attendant water right no. 57-10415. My clerk at the SRBA advised me on February 11, 2000, that the records of the SRBA indicate that this claim was unobjected to and a *Partial Decree* was issued November 15, 1996. I am informed that neither of Martha's children claim any water rights in Idaho.

Other Perhaps Pertinent Disclosures of Interests in Water (although not raised in the Motions)

28. I received my license to practice law in Idaho in September of 1976. I am informed that my State Bar number is 1947. I practiced law as a general practitioner in the Homedale/Caldwell area of Idaho from September 1976 through December 1986. In that capacity, I represented numerous clients, some of whom most probably have now filed claims in the SRBA, although I have made no effort to ascertain this. I became a Magistrate Judge in January 1986 before the SRBA was even commenced, which was November 19, 1987. As such, I have never represented anyone in the SRBA action or proceeding. I.R.C.P. 40(d)(2)(A)(3).

29. I am a citizen of the United States of America, which entity is an interested party in the SRBA. I also pay taxes to the United States of America.

30. I am a resident of the State of Idaho and I am employed as a District Judge by the State of Idaho, which entity is an interested party in the SRBA. I also pay taxes to the State of Idaho.

31. I am a consumptive user of water; specifically I drink water every day and I use water in my daily household routine. I eat food daily which has been grown in Idaho with water.

32. I use electricity which is generated by the use of water, i.e., hydroelectric power user and I receive and pay monthly power bills to Idaho Power Company, which entity is an interested party. Prior to my being assigned as the Presiding Judge of the SRBA, I owned a nominal number of shares of stock in Idaho Power Company. This fact was disclosed to the Chief Justice as well. Upon being permanently appointed the Presiding Judge, I promptly disposed of this stock.

33. I engage in recreational pursuits involving water, specifically fishing and drift boating.

34. I have filed no objections or responses to any claims filed in the SRBA and to my knowledge and belief, no one within the third degree of consanguinity or affinity to me has filed any such objection and/or response in the SRBA.

35. Lastly, my staff was informed by IDWR on February 11, 2000, that there is something like 150,000 water rights claimed in the SRBA by something like 100,000 different claimants.

DATED: February 11, 2000.

BARRY WOOD
Administrative District Judge and
Presiding Judge of the
Snake River Basin Adjudication