

**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)	ORDER DENYING MOTION TO
)	DISCLOSE WITHOUT PREJUDICE
Case No. 39576)	
)	Consolidated Subcase No. 03-10022.
_____)	

On August 8, 2005, the Shoshone-Bannock Tribes (the Tribes), by and through their counsel of record, William F. Bacon, filed a *Motion to Disclose* in the above consolidated subcase asking that the Shoshone-Bannock Tribes be allowed to “disclose limited draft portions of the proposed settlement agreement that may be covered by the Protective Order for Mediation dated July 21, 1999 to the Court.”

On August 12, 2005, several parties to the consolidated subcase filed a *Joint Response to Motion to Disclose*, opposing the Tribes’ *Motion* on several grounds. The parties to this motion raised several objections to the *Motion to Disclose* including: 1) The *Motion* did not identify the specific documents that the Tribes intended to disclose; 2) the ***Protective Order*** of July 21, 1999 prohibits the disclosure sought by the Shoshone Bannock Tribes; 3) Rules of Evidence prohibit the disclosure of draft settlement agreements.

Hearing and argument on the matter was heard on August 16, 2005. The Court, being fully advised, therefore makes the following conclusions of law:

1. Timeliness of the Tribes’ *Motion*. On August 3, 2005, this Court entered a ***Scheduling Order*** setting forth the procedures for implementing the proposed Settlement Agreement in the Consolidated Subcase and for addressing the objections of the Shoshone-Bannock Tribes. The ***Scheduling Order*** stated that the Tribes were to submit a statement of issues by August 31, 2005 to address the following two issues: 1) the present status of the outstanding 56 objections of the Shoshone-Bannock Tribes to the Nez Perce Claims; and 2) whether the Shoshone-Bannock tribes were excluded from negotiations leading to the *Mediator’s Term Sheet*, and if so, whether the Shoshone-Bannock Tribes were prejudiced by such exclusion. The Court’s direction to the Tribes was to submit a statement of issues stating with particularity the factual and legal basis for any objections related to the above two issues.

At this point, the Tribes’ *Motion* is premature because the disclosure sought by the Tribes is not

necessary in order to complete the statement of issues.

2. Issues regarding the ***Protective Order For Mediation***. On July 20, 1999, the State of Idaho filed a *Motion to Approve Protective Order for Mediation* in the Consolidated Subcase. The *Motion* stated that the State of Idaho, the United States, the Nez Perce Tribe, the Shoshone-Bannock Tribes and private objectors developed the protective order. On July 21, 1999, Special Master Brigitte Bilyeu entered the ***Protective Order For Mediation***. The ***Protective Order*** set forth guidelines for handling confidential information within the mediation process. Notably, the ***Protective Order*** stated that:

Confidential Information provided by any party in the context of this mediation shall be used only for purposes necessary to the mediation or negotiation and settlement of the water right claims and related issues involve in the litigation. Confidential Information shall not be used by either the Mediator or any other party or person bound by this Order for any commercial, business, competitive or other purposes, or in or for any judicial or administrative proceedings, disputes, or cases, including the litigation of this subcase, unless specifically authorized by this Court.

Protective Order For Mediation, Subcase No. 03-10022 at 2-3 (July 21, 1999).

On April 21, 2004, this Court signed an ***Order Modifying Protective Order for Mediation***. This ***Order***, entered at the request of the parties to the settlement, allowed for briefing to outside parties who agree to abide by the ***Protective Order*** and to allow for public disclosure of the proposed settlement terms. The ***Order Modifying Protective Order*** did not lift the ***Protective Order***, and allowed for terms to be disclosed only with the approval of all parties to the mediation. At this time, the parties, including the Shoshone-Bannock Tribes, are still bound by the ***Protective Order***. After the Shoshone-Bannock Tribes submits their statement of issues, there may be grounds for the Court to further modify the standing ***Protective Order***, particularly if the other parties bound by the ***Protective Order*** are informed of which documents the Shoshone-Bannock Tribes wish to disclose.

Therefore, IT IS ORDERED that the *Motion to Disclose* filed in the above Consolidated Subcase is hereby **denied without prejudice**.

Dated: August 22, 2005.

/s/ John M. Melanson
JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication