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NEZ PERCE TRIBE

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**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**

**Subcase Nos.: 85-00016, 85-02049,  
85-02063, 85-02065, 85-02146,  
85-02147, 85-04483, 85-11087 and  
85-15424**

**NEZ PERCE TRIBE'S FIRST SET OF  
REQUESTS FOR ADMISSIONS,  
INTERROGATORIES, AND REQUESTS  
FOR PRODUCTION OF DOCUMENTS  
TO THE UNITED STATES AND THE  
LEWISTON ORCHARDS IRRIGATION  
DISTRICT**

This document contains the first set of Interrogatories, Requests for Admission, and Requests for Production of Documents submitted by the Nez Perce Tribe (the "Tribe") to the United States and the Lewiston Orchards Irrigation District. These Interrogatories, Requests for

*Nez Perce Tribe's First Set of Requests for Admissions, Interrogatories, and Requests for Production to the United States and the Lewiston Orchards Irrigation District – page 1 of 16*

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Admission, and Requests for Production are made pursuant to and are governed by the orders of the SRBA District Court and by Rules 26, 33, 34, and 36 of the Idaho Rules of Civil Procedure.

### **GENERAL INSTRUCTIONS**

1. The Tribe requests that the United States and the Lewiston Orchards Irrigation District (“LOID”) answer the following discovery requests separately and fully, in writing, under oath, and in accordance with Rules 26, 33, 34, and 36 of the Idaho Rules of Civil Procedure, and produce the documents requested, either by providing the Tribe with photocopies or by producing the responsive documents for inspection and copying, in accordance with Rules 25 and 34 of the Idaho Rules of Civil Procedure, at a time and location to be agreed upon by the United States, LOID, and the Tribe.

2. When answering these interrogatories, requests for admission, and requests for production of documents, please type the interrogatory or request as well as your response or objection in accordance with all provisions of Rules 33, 34, and 36 of the Idaho Rules of Civil Procedure. Please serve the original type-written responses to these Interrogatories, Requests for Admission, and Requests for Production of Documents with a copy of your notice of service on the Tribe.

3. These Interrogatories, Requests for Admission, and Requests for Production of Documents are deemed continuing in nature, and your responses are to be supplemented as additional information and knowledge becomes available or known to you as provided in Rule 26(e) of the Idaho Rules of Civil Procedure.

4. In answering these Interrogatories, Requests for Admission, and Requests for Production of Documents, furnish all information which is known or available to you, however obtained, including, but not limited to, information known of your personal knowledge, hearsay information, information obtainable by the diligent search of sources of information available to you, and all information in the possession of or available to any person or persons acting on your behalf or under your control or under the control of any of your attorneys, agents, employees, experts, subcontractors, independent contractors, insurers, investigators, representatives, or others with whom you have a relationship and from whom you are capable of deriving information, documents, or material.

5. If you withhold any information, in whole or in part, which is called for in an interrogatory, request for admission, or request for production of documents on the ground that it is subject to attorney-client privilege, or other privilege, please provide the following information:

- (a) Principals. The name, title, and address(es) of the author(s), sender(s), and recipients(s). Identify each person or entity having knowledge of the basis for each claim of privilege or other objection.
- (b) Date. The date the document was originated.
- (c) Publications. The date and title of each person to whom the contents of the document has been communicated (by copy, exhibition, reading, summarization, or otherwise).
- (d) Descriptions. A description of the nature and subject matter of the document.
- (e) Privilege. A statement of the privilege and the grounds upon which it is asserted. Notwithstanding a claim that a document is privileged, any document so withheld must be produced with the portion claimed to be protected excised.

6. If you object to or otherwise decline to answer any portion of an interrogatory, request for admission or request for production of documents for reasons other than privilege, please state that a complete response is not being provided, state the reason for the incomplete response, and provide all information requested which is not subject to the objection or refusal to answer. If you object to an interrogatory on the ground that to provide an answer would be unduly burdensome, please state that a complete response is not being provided and provide all requested information that can be supplied without creating an undue burden.

7. If you are unable to produce any document requested, state the reason you are unable to produce the document and identify the document with as much accuracy as possible.

8. Identify each person who provided information for or participated in the preparation of the responses to these Interrogatories, Requests for Admission, and Requests for Production of Documents. Identify the specific interrogatories and/or requests for which each such person provided information.

#### **INSTRUCTIONS FOR RESPONDING TO INTERROGATORIES**

1. Pursuant to the Court's April 25, 2007 *Amended Trial Scheduling Order* in these matters, you must respond to these interrogatories by 5:00 p.m. on August 17, 2007. The response shall first set forth each interrogatory asked, followed by the answer or objection of the party given under oath.

2. Where exact statistical or numerical information, including dates, or times, cannot be furnished, supply estimated or approximate information and, state in detail the reason(s) why exact statistical or numerical information cannot be furnished. Where an estimation or

approximation is supplied, it should be so indicated, and an explanation provided as to the basis upon which the estimate or approximate information was derived.

### **INSTRUCTIONS FOR ANSWERING REQUESTS FOR ADMISSION**

1. The answer to a request for admission shall specifically admit or deny the matter or set forth in detail the reasons why you cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that you qualify your answer or deny only part of the matter of which an admission is requested, you shall specify so much of it as is true and qualify or deny the remainder. If you claim to be without knowledge or information sufficient to form a belief as to the truth or falsity of the information sought by a request for admission, state the grounds for such an assertion with particularity. You may not give lack of information or knowledge as a reason for failure to admit or deny unless you state that you have made a reasonable inquiry and that the information known or readily obtainable by you is insufficient to enable you to admit or deny.

2. Pursuant to the Court's April 25, 2007 *Amended Trial Scheduling Order* in these matters, you must answer these requests for admissions by 5:00 p.m. on August 17, 2007. You must serve an answer or objection addressed to the matters set forth in each request for admission, signed under oath by you or your attorney in accordance with Rule 36(a) of the Idaho Rules of Civil Procedure. Otherwise, you will be deemed to have admitted the truth of the matters set forth in these requests for admission. Your response must set forth each request for admission, followed by the admission, denial, or objection.

3. If an objection is made to a requested admission, the reasons therefor shall be stated with particularity. You may not object to a request for admission solely on the ground that the matter of which an admission has been requested presents a genuine issue of fact for trial. You may not object to a request for admission on the ground that an answer requires an opinion of fact or the application of law to fact.

**INSTRUCTIONS FOR RESPONDING TO  
REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. Pursuant to the Court's April 25, 2007 *Amended Trial Scheduling Order* in these matters, you must respond to these requests for production of documents by 5:00 p.m. on August 17, 2007. If you will make the originals of the requested documents available at a subsequent time, upon reasonable notice, then the requests for production of documents may be satisfied by mailing true, correct, and legible copies of each and every requested document to the undersigned in accordance with Rule 34(b) of the Idaho Rules of Civil Procedure together with your responses to the interrogatories and your answers to the requests for admission. Alternatively, you may produce the documents and things for inspection and copying at a time and place which is mutually convenient for all counsel and which will allow compliance with the deadlines set forth in the Court's April 25, 2007 *Amended Trial Scheduling Order* in these matters. Please contact the undersigned to discuss the time and place of such production. Inspection and copying will be conducted by the undersigned attorney or her agents and will continue from time to time and from day to day until completed.

2. Each document to be produced shall be provided in a manner which preserves its sequential relationship with other documents being produced and shall include the file folder and

folder tabs associated with its file location. If the file location is not apparent on the folder and tabs, the document shall be accompanied by information indicating from where the file was taken and such additional information sufficient to indicate the file's origin.

3. If you refuse to produce any document, you must identify it as specified in these instructions and state the legal grounds for non-production. If any document requested cannot be located, describe in detail:

- (a) the type of document;
- (b) the types of information contained therein;
- (c) the effort made to locate the document;
- (d) the person (name, affiliation, title, business address and telephone number) who made such an effort;
- (e) the source and custodian of documentation consulted and searched;
- (f) the identity of all persons having knowledge of the contents thereof;
- (g) whether any government agencies would have retained a copy of any of the documents;
- (h) whether the document was destroyed, and if so, at whose direction, when, and the reasons for its destruction; and
- (I) whether the document was lost, and if so, at what approximate date, by whom, and under what circumstances.

### **DEFINITIONS**

In answering these interrogatories, requests for admission, and requests for production, all terms retain their normal meaning. Terms used in these interrogatories when used in the singular shall be construed to include the plural, and vice versa. Words used with reference to a person of

the male gender shall also be construed to refer to a person of the female gender, and vice versa.

The following terms, in addition to their commonly understood definitions, shall have the following meanings:

1. The words "you" or "your client" refer to the United States and the Lewiston Orchards Irrigation District individually and your present and former attorneys, officers, directors, employees, agents, representatives, subcontractors, consultants, investigators and any other persons who were and/or are presently authorized to act or purporting to act in your behalf.
2. The word "agent" when used without qualifying adjective, means all persons or entities presently or formerly associated with you, including employees, officers, directors, consultants, insurance company agents, contractors, subcontractors, representatives, investigators, shareholders, attorneys, trustees, and any other person authorized to act in your behalf.
3. The terms "United States" and "Government" include all agencies, subdivisions, or agents authorized to act in its behalf, including the Bureau of Reclamation.
4. The term "Tribe" or "Nez Perce Tribe" means the federally recognized Indian tribe of that name.
5. The term "Lewiston Orchards Project" or "LOP" means the water system owned by the Bureau of Reclamation, operated by the Lewiston Orchards Irrigation District, and located in Nez Perce County, Idaho, including the reservoirs, storage facilities, water mains, conduits, aqueducts, pipelines, pumping stations, filtration plants, and all appurtenances and machinery, and each of them, necessary or useful for obtaining, storing, treating, or transporting water for use within the Lewiston Orchards Irrigation District.
6. The term "Lewiston Orchards Irrigation District" or "LOID" means the irrigation district of that name located in Lewiston, Idaho, that operates the Lewiston Orchards Project water system and that owns and operates its own water system for providing potable drinking water to its customers, including storage facilities, water mains, conduits, aqueducts, pipelines, pumping stations, filtration plants, and all appurtenances and machinery, and each of them, necessary or useful for obtaining, storing, treating, or transporting potable drinking water for use by customers of the Lewiston Orchards Irrigation District.

7. The term "person" as used herein, includes any natural person, corporation, partnership, or other business association or entity recognized by law, and the employees or independent contractors thereof, and any domestic or foreign government body, commission, board, agency, branch, department, component or element thereof.
8. The term "Snake River Basin Adjudication," "Adjudication," or "SRBA" refers to In Re SRBA No. 39576 (5th Judicial District, Twin Falls County, Idaho).
9. The term "document" includes all items identified in Idaho Rule of Civil Procedure 34(a), and, also is used herein in its broad and literal sense and at a minimum means any written, drawn, typed, printed, recorded, photostated, computer generated, microfiched, microfilmed or graphic matters, whether produced, reproduced, or stored on paper, cards, disc, tape, film, electronic facsimile, computer storage or any other media, whether an original, master or duplicate including, but not limited to accounts, advertisements, affidavits, agreements, analyses, appraisals, applications, appointment books, appointment calendars, bank checks, bills, blueprints, books, bookkeeping entries, bulletins, cablegrams, cache logs, calculations, canceled checks, cashier's checks, catalogs, charts, check stubs, circulars, communications, compilations, computer printouts, computer source codes and object codes, contracts, correspondence, court filings, day books, data, declarations, depositions, desk calendars, diagrams, diaries, diary entries, documents, drafts, drawings, electronic mail, electronic files stored on a computer disk, CD-ROM, or other computer disk or tape technology, expense reports, field notebooks, files, financial statements, flowcharts, forecasts, graphs, invoices, itineraries, interview notes, ledgers, letters, lists, log books, mailgrams, manuals, memoranda, minutes, notebooks, note pads, notes, pamphlets, papers, periodicals, photographs, plans, projections, proposals, prospectuses, publications, receipts, records, reports, returns, sketches, sound recordings, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings, conferences or legislative, judicial, or other public hearings, summaries or reports of investigations or negotiations, opinions and/or reports of consultants, tax returns, telefax, telegrams, telephone logs, tickets, time records, time sheets, transcriptions, transcripts, travel reports, travel vouchers, vouchers, working papers, worksheets, and all other papers, writings, drawings, recordings, or physical things containing information, including all original and amended versions of the documents, preliminary and subsequent drafts or marginal notes appearing on any documents, however denominated or described by the parties to whom the particular interrogatories and/or requests for admission and requests for production are directed. The term "document" shall further collectively include the original, duplicate original, and any or all copies or reproductions of the

original document, to the extent that any or all copies are different in any way from the original document, whether by interlineation, receipt stamps, notation, indication of copies sent or received otherwise, which are in your possession, custody or control.

10. The term "data," as used herein, refers to measurements, estimates, and observations made by, or to be made by, or for you in support of your objections to the springs and fountains claims filed by, or for the benefit of, the Tribe in the instant subcase. The following list illustrates, but does not limit, the types of documents that should be produced in response to requests for production regarding the Tribe's springs and fountains claims and your justification for the injury you contend will be sustained if the Tribe's springs and fountains claims are decreed:
  - (a) Summary of research logistics, including project initiation, expected completion dates, and current project status;
  - (b) field data books and all data, both raw and calibrated; and
  - (c) map(s) of study sites, including maps showing permanent benchmarks, transects and dimensions necessary to relocate all study areas.
11. "Describe in detail" or "state in detail" as used herein, means the following:

Describe fully by reference to the underlying facts, rather than the ultimate facts or conclusions of law or facts, and particularize as to:

  - (a) the identity of each person involved in each such event, including, but not limited to persons employed by you and those persons purporting to act for you;
  - (b) the specific acts of each person participation in each such event;
  - (c) the date and time of each such event;
  - (d) the address and location of such an event; and
  - (e) the identity of each person present during each such event.
12. "Identify" or identity" shall have the following meaning:

- (a) When used in reference to an organization, the response shall state the full name and present or last known address of the corporation, partnership, firm or other entity.
  - (b) When used in reference to an individual, the response shall state his or her full name, present or last known address, present or last known business affiliation and job description, any past or present affiliation with plaintiff or defendant, and the manner in which he or she relates to any of the issues or facts in this litigation, and the source and extent of his or her knowledge about any of these facts or issues. If you do not know the present address or present employer of any such person, please so indicate.
  - (c) When used in reference to a document, the response shall state the type of document (e.g., memorandum, letter, note, contract), its date, author(s), addressee(s) (if any), synopsis of content, and present location. In lieu of providing this information, plaintiff may attach a copy of the document to its answers.
  - (d) When used in reference to a source of information, the response shall identify each individual providing information. The response shall also state whether the information has been reduced to writing or other tangible form. If so, this writing or other record shall be identified in the manner described above.
13. The word "substantiate" means to: identify with precision, specificity and particularity each document upon which you rely in making the reference, contention, or response; to identify each person whose statements are or will be relied upon to support the reference, contention, or response; to state with precision, specificity and particularity any other facts relating to the reference, contention, or response; and to identify any and all legal bases (including common law, statutes, regulations, etc.) for the reference, contention or response.
14. Documents to be identified or facts to be stated are described as those which "relate to" any entity, a person, an action, a document or event. For purposes of responding to these interrogatories, the term "relate to" shall mean to name, to refer to either directly or indirectly, to comment upon, analyze, review, report on, form the basis of, be considered in the preparation of, result from, be in any way connected with, emanate from, or have any logical relation to the entity, person, document, event, or action.

**INTERROGATORIES, REQUESTS FOR ADMISSION, AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS**

**TO THE UNITED STATES AND**  
**THE LEWISTON ORCHARDS IRRIGATION DISTRICT**

**Request for Admission No. 1.** Admit that you no longer use water from the above claim numbers, or any of them, for the purpose of supplying domestic potable water to customers of the Lewiston Orchards Irrigation District.

**Answer:**

**Interrogatory No. 1.** If your response to Request for Admission No. 1 is anything other than an unqualified admission, please describe in detail and with particularity the basis for your response.

**Answer:**

**Request for Production No. 1.** Please produce all documents, with specific citations to those portions upon which you rely, supporting your answer to Interrogatory No. 1.

**Answer:**

**Request for Admission No. 2.** Admit that the Lewiston Orchards Project is not capable of handling the total amount of water claimed by way of the above water rights.

**Answer:**

**Interrogatory No. 2.** If your response to Request for Admission No. 2 is anything other than an unqualified admission, please describe in detail and with particularity the basis for your response.

Answer:

**Request for Production No. 2.** Please produce all documents, with specific citations to those portions upon which you rely, supporting your answer to Interrogatory No. 2.

Answer:

**Request for Admission No. 3.** Admit that the Lewiston Orchards Irrigation District is not capable of handling the total amount of water claimed by way of the above water rights.

Answer:

**Interrogatory No. 3.** If your response to Request for Admission No. 3 is anything other than an unqualified admission, please describe in detail and with particularity the basis for your response.

Answer:

**Request for Production No. 3.** Please produce all documents, with specific citations to those portions upon which you rely, supporting your answer to Interrogatory No. 3.

Answer:

**Request for Admission No. 4.** Admit that the total amount of water claimed by way of the above water rights is more than 1 c.f.s per 50 acres of irrigable land within the Lewiston Orchards Irrigation District.

**Answer:**

**Interrogatory No. 4.** If your response to Request for Admission No. 4 is anything other than an unqualified admission, please describe in detail and with particularity the basis for your response.

**Answer:**

**Request for Production No. 4.** Please produce all documents, with specific citations to those portions upon which you rely, supporting your answer to Interrogatory No. 4.

**Answer:**

**Request for Admission No. 5.** Admit that the total amount of water claimed by way the above water rights for irrigation purposes is more than is currently being beneficially applied on land within the Lewiston Orchards Irrigation District.

**Answer:**

**Interrogatory No. 5.** If your response to Request for Admission No. 5 is anything other than an unqualified admission, please describe in detail and with particularity the basis for your response.

**Answer:**

**Request for Production No. 5.** Please produce all documents, with specific citations to those portions upon which you rely, supporting your answer to Interrogatory No. 5.

**Answer:**

**Request for Admission No. 6.** Admit that the total amount of water claimed by way the above water rights for irrigation purposes is more than historically has been beneficially applied on land within the Lewiston Orchards Irrigation District

**Answer:**

**Interrogatory No. 6.** If your response to Request for Admission No. 6 is anything other than an unqualified admission, please describe in detail and with particularity the basis for your response.

**Answer:**

**Request for Production No. 6.** Please produce all documents, with specific citations to those portions upon which you rely, supporting your answer to Interrogatory No. 6.

**Answer:**

**Interrogatory No. 7.** When did you stop using water from the above claim numbers, or any of them, for potable drinking water purposes?

**Answer:**

**Request for Production No. 7.** Please produce all documents, with specific citations to those portions upon which you rely, supporting your answer to Interrogatory No. 7.

**Answer:**

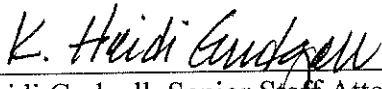
**Interrogatory No. 8.** Historically, how much water from the above claim numbers, or any of them, was used by you for potable drinking water purposes and for what periods of time?

**Answer:**

**Request for Production No. 8.** Please produce all documents, with specific citations to those portions upon which you rely, supporting your answer to Interrogatory No. 8.

**Answer:**

DATED this 16<sup>th</sup> day of July, 2007.



K. Heidi Gudgell, Senior Staff Attorney  
Office of Legal Counsel