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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Claimant William Kopp

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In re CSRBA

Case No. 49576

Subcase No. 91-7140

**CLAIMANT WILLIAM KOPP'S
AMENDED RESPONSES TO
OBJECTOR'S FIRST REQUESTS FOR
DISCOVERY**

William Kopp,

Claimant,

vs.

Coeur d'Alene Tribe, a federally-recognized
Indian tribe,

Objector.

COMES NOW Claimant William Kopp, by and through undersigned counsel of record, and provides amended responses to Objector's First Requests for Discovery, which replace in total Claimant's previous Responses to Objector's First Requests for Discovery, dated March 7, 2016, as follows:

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Please admit that the United States of America is the legal owner, and the Coeur d'Alene Tribe is the beneficial owner of the submerged bed and banks of Coeur d'Alene Lake and the St. Joe River within the exterior boundaries of the Coeur d'Alene Indian Reservation.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Objection is made to Request for Admission No. 1 on the grounds that the term "exterior boundaries of the Coeur d'Alene Indian Reservation" is vague. Responding Claimant also objects to this Request for Admission No. 1 because it seeks a legal conclusion or opinion regarding who owns "the submerged bed and banks of Coeur d'Alene Lake and the St. Joe River within the exterior boundaries of the Coeur d'Alene Indian Reservation." Without waiving these objections, Claimant admits that in *United States v. Idaho*, 95 F. Supp. 2d 1094, 1117 (1998), the court stated the following: "[t]itle is quieted in favor of the United States, as trustee, and the Coeur d'Alene Tribe of Idaho, as the beneficially interested party of the trusteeship, to the bed and banks of the Coeur d'Alene Lake and the St. Joe River lying within the current boundaries of the Coeur d'Alene Indian Reservation." However, Claimant denies that the United States and the Coeur d'Alene Tribe own any submerged bed and banks at Claimant's point of diversion.

REQUEST FOR ADMISSION NO. 2: Please admit that the United States of America, as the trustee, and the Coeur d'Alene Tribe, as the beneficially interested party of the

trusteeship, is entitled to the exclusive use, occupancy, and right to the quiet enjoyment of the bed and banks of the Coeur d'Alene Lake and the St. Joe River within the current boundaries of the Coeur d'Alene Indian Reservation.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: Objection is made to Request for Admission No. 2 on the grounds that it seeks a legal conclusion or opinion regarding who owns “the bed and banks of the Coeur d'Alene Lake and the St. Joe River within the current boundaries of the Coeur d'Alene Indian Reservation.” Without waiving this objection, Claimant admits that in *United States v. Idaho*, 95 F. Supp. 2d 1094, 1117 (1998), the court stated the following: “[t]he United States, as trustee, and the Coeur d'Alene Tribe of Idaho, as the beneficially interested party of the trusteeship, are entitled to the exclusive use, occupancy and right to the quiet enjoyment of the bed and banks of the Coeur d'Alene Lake and the St. Joe River lying within the current boundaries of the Coeur d'Alene Indian Reservation.” However, Claimant denies that the United States and the Coeur d'Alene Tribe are entitled to the exclusive use, occupancy, and right to the quiet enjoyment of the bed and banks at Claimant's point of diversion.

REQUEST FOR ADMISSION NO. 3: Please admit that the State if [sic] Idaho is permanently enjoined from asserting any right, title or otherwise interest in or to the bed and banks of the Coeur d'Alene Lake and the St. Joe River within the current boundaries of the Coeur d'Alene Indian Reservation.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: Objection is made to this Request for Admission No. 3 because it seeks a legal conclusion or opinion regarding the State of Idaho's right, title or interest “in or to the bed and banks of the Coeur d'Alene Lake and the St. Joe River within the current boundaries of the Coeur d'Alene Indian Reservation.” Without

waiving this objection, Claimant admits that in *United States v. Idaho*, 95 F. Supp. 2d 1094, 1117 (1998), the court stated the following: “[t]he State of Idaho is permanently enjoined from asserting any right, title or otherwise interest in or to the bed and banks of the Coeur d’Alene Lake and the St. Joe River lying within the current boundaries of the Coeur d’Alene Indian Reservation.” However, Claimant denies that the State of Idaho is permanently enjoined from asserting a right, title or interest in or to the bed and banks at Claimant’s point of diversion.

REQUEST FOR ADMISSION NO. 4: Please admit that the Coeur d’Alene Tribe has the inherent right to exclude non-members of the Coeur d’Alene Tribe from tribally owned lands within the Coeur d’Alene Reservation.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: Objection is made to Request for Admission No. 4 on the grounds that the terms “inherent right,” “non-members,” and “tribally owned lands within the Coeur d’Alene Reservation” are vague and that this Request is not reasonably calculated to lead to the discovery of any admissible evidence. Without waiving these objections, Claimant admits that in *United States v. Idaho*, 95 F. Supp. 2d 1094, 1117 (1998), the court stated the following: “[t]he Coeur d’Alene Tribe of Idaho, as the beneficially interested party of the trusteeship, [is] entitled to the exclusive use, occupancy and right to the quiet enjoyment of the bed and banks of the Coeur d’Alene Lake and the St. Joe River lying within the current boundaries of the Coeur d’Alene Indian Reservation.” However, Claimant denies that the Coeur d’Alene Tribe has any right to exclude Claimant from the lands at Claimant’s point of diversion.

REQUEST FOR ADMISSION NO. 5: Please admit that the point of diversion for this claim is located within the exterior boundary of the Coeur d’Alene Indian Reservation.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: Objection is made to Request for Admission No. 5 on the grounds that the term “exterior boundary of the Coeur d’Alene Indian Reservation” is vague. Without waiving this objection, Claimant admits that the point of diversion for this claim is located within the current boundary of the Coeur d’Alene Indian Reservation. However, Claimant denies that the United States and the Coeur d’Alene Tribe own the lands at Claimant’s point of diversion.

REQUEST FOR ADMISSION NO. 6: Please admit that the presumed OHWM for Coeur d’Alene Lake and the St. Joe River is 2128 feet above sea level.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: Objection is made to Request for Admission No. 6 on the grounds that the term “presumed OHWM” is vague and without temporal context. Without waiving this objection, Claimant admits that in *City of Coeur d’Alene v. Mackin (In re Ownership of Sanders Beach)*, the court stated the following: “[t]he current OHWM of the Lake is 2128 feet” and “the OHWM of Lake Coeur d’Alene has been 2128 feet since 1907.” 143 Idaho 443, 447, 147 P.3d 75, 79 (2006) (citing *Erickson v. State*, 132 Idaho 208, 211, 970 P.2d 1, 4 (1998)); *Id.* at 451, 83. However, Claimant denies that the historic OHWM or the natural high water mark for Coeur d’Alene Lake and the St. Joe River is or has always been 2128 feet.

REQUEST FOR ADMISSION NO. 7: Please admit that the point of diversion and/or some or all of the diversion works at issue in the above-encaptioned matter is below the presumed OHWM of the St. Joe River.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: Objection is made to Request for Admission No. 7 on the grounds that the term “presumed OHWM” is vague and without temporal context. Without waiving this objection, Claimant admits that in *City of Coeur*

d'Alene v. Mackin (In re Ownership of Sanders Beach), the court stated the following: “[t]he current OHWM of the Lake is 2128 feet” and “the OHWM of Lake Coeur d’Alene has been 2128 feet since 1907.” 143 Idaho 443, 447, 147 P.3d 75, 79 (2006) (citing *Erickson v. State*, 132 Idaho 208, 211, 970 P.2d 1, 4 (1998)); *Id.* at 451, 83. However, Claimant denies that the historic OHWM or the natural high water mark for Coeur d’Alene Lake and the St. Joe River is or has always been 2128 feet and further denies that the point of diversion and/or some or all of the diversion works at issue in this claim are below the applicable natural or ordinary high water mark.

REQUEST FOR ADMISSION NO. 8: Please admit that the waters overlying the bed and banks at the location of Claimant(s)[’] water diversion point are navigable.

RESPONSE TO REQUEST FOR ADMISSION NO. 8: Objection is made to Request for Admission No. 8 on the grounds that the term “navigable” is vague. Responding Claimant also objects to this Request for Admission No. 8 because it seeks a legal conclusion or opinion regarding whether “the waters overlying the bed and banks at the location of Claimant’s water diversion point are navigable.” Without waiving these objections, Claimant admits that said waters are “navigable” according to Claimant’s understanding of the definition in Idaho Code Section 36-1601 and the definition in 33 U.S.C. § 1362.

REQUEST FOR ADMISSION NO. 9: Please admit that under Idaho law the point of diversion for a water right is the point at which water is diverted from a natural water channel and put to beneficial use.

RESPONSE TO REQUEST FOR ADMISSION NO. 9: Objection is made to Request for Admission No. 9 on the grounds that it seeks a legal conclusion or opinion on what constitutes “the point of diversion for a water right” under Idaho law and is not reasonably

calculated to lead to the discovery of any admissible evidence because it seeks a legal conclusion. Without waiving the objection, Claimant therefore denies the same.

REQUEST FOR ADMISSION NO. 10: Please admit that Claimant(s) did not have permission to encroach upon the submerged lands of the St. Joe River from either the United States or the Coeur d'Alene Tribe at the time the diversion works were constructed for this claim.

RESPONSE TO REQUEST FOR ADMISSION NO. 10: Objection is made to Request for Admission No. 10 on the grounds that the term "permission to encroach upon the submerged lands of the St. Joe River" is vague. Responding Claimant also objects to this Request for Admission No. 10 because it seeks a legal conclusion or opinion regarding who owns the "submerged lands of the St. Joe River." Without waiving these objections, Claimant admits that he did not have a permit from either the United States or the Coeur d'Alene Tribe to encroach upon the submerged lands of the St. Joe River at the time the diversion works were constructed for this claim. However, Claimant denies that the United States or the Coeur d'Alene Tribe owns the land upon which the diversion works may have been constructed and further denies that any such permission was needed.

REQUEST FOR ADMISSION NO. 11: Please admit that since the time Claimant(s) began diverting water from the St. Joe River he/she has never received permission to encroach upon the submerged lands of the St. Joe River from either the United States or the Coeur d'Alene Tribe for Claimant(s)[] diversionary works.

RESPONSE TO REQUEST FOR ADMISSION NO. 11: Objection is made to Request for Admission No. 11 on the grounds that the term "permission to encroach upon the submerged lands of the St. Joe River" is vague and the Request is vague as to time. Responding

Claimant also objects to this Request for Admission No. 11 because it seeks a legal conclusion or opinion regarding who owns the “submerged lands of the St. Joe River.” Without waiving these objections, Claimant admits that he has never received a permit from either the United States or the Coeur d’Alene Tribe to encroach upon the submerged lands of the St. Joe River for Claimant’s diversion works. However, Claimant denies that the United States or the Coeur d’Alene Tribe owns the land upon which the diversionary works may have been constructed and further denies that any such permission was needed.

REQUEST FOR ADMISSION NO. 12: Please admit that under Idaho law a water right may not be initiated or maintained in trespass.

RESPONSE TO REQUEST FOR ADMISSION NO. 12: Objection is made to Request for Admission No. 12 on the grounds that it seeks a legal conclusion or opinion on initiating a water right and trespass under Idaho law and is not reasonably calculated to lead to the discovery of any admissible evidence because it seeks a legal conclusion. Without waiving the objection, Claimant therefore denies the same.

REQUEST FOR ADMISSION NO. 13: Please admit that the Claimant(s) does not have the right to enter the lands of the Coeur d’Alene Tribe for the purposes of maintaining his/her diversion works.

RESPONSE TO REQUEST FOR ADMISSION NO. 13: Objection is made to Request for Admission No. 13 on the grounds that the terms “right” and “purposes of maintaining” are vague. Responding Claimant also objects to this Request for Admission No. 13 on the grounds that it seeks a legal conclusion regarding who owns the lands at Claimant’s point of diversion and the rights of Claimant to his diversion works. Without waiving these

objections, Claimant denies the Request for Admission No. 13, including any assertion that the Coeur d'Alene Tribe owns the lands at Claimant's point of diversion.

REQUEST FOR ADMISSION NO. 14: Please admit that a decreed water right and/or an IDWR water permit or license does not authorize the holder of said right, permit, or license to trespass on the land of another for any purpose.

RESPONSE TO REQUEST FOR ADMISSION NO. 14: Objection is made to Request for Admission No. 14 on the grounds that the terms "IDWR water permit or license" and "for any purpose" are vague. Responding Claimant also objects to this Request for Admission No. 14 because it seeks a legal conclusion or opinion on the rights of a water right holder and trespass under Idaho law and is not reasonably calculated to lead to the discovery of any admissible evidence because it seeks a legal conclusion. Without waiving these objections, Claimant therefore denies the same, including any assertion that Claimant has trespassed or is trespassing on the land of another.

REQUEST FOR ADMISSION NO. 15: Please admit that under Idaho law riparian rights are limited to the right to maintain adjacency to navigable waters and to build or use aids to navigation but does not provide for any right to make any consumptive use of water or right of access for the appropriation of water.

RESPONSE TO REQUEST FOR ADMISSION NO. 15: Objection is made to Request for Admission No. 15 on the grounds that the term "right to maintain adjacency to navigable waters" is vague. Responding Claimant also objects to this Request for Admission No. 15 because it seeks a legal conclusion or opinion on riparian rights under Idaho law and is not reasonably calculated to lead to the discovery of any admissible evidence because it seeks a legal conclusion. Without waiving the objection, Claimant therefore denies the same, including

any assertion that Claimant has no right to make any consumptive use of water or right of access for the appropriation of water.

INTERROGATORIES

INTERROGATORY NO. 1: If you deny any of the Requests for Admissions 1-15 above, please state the legal and/or factual basis of each denial, if any.

ANSWER NO. 1: See Responses to Request for Admission Nos. 1-15.

INTERROGATORY NO. 2: Please identify the legal basis which you intend to rely upon for support of your statements in your response to the Tribe's objection:

"The U.S. did not reserve any other littoral or riparian rights in regard to the subject lands which are ordinarily attendant to waterfront property, including the right to access water, to wharfage, or to use the adjacent water. These rights are therefore appurtenant to and including [sic] with those waterfront lands sold by the U.S. and are subject only to State law regulation as provided by the Acts of Congress enabling the alienation of those lands."

ANSWER NO. 2: Objection is made to Interrogatory No. 2 on the grounds that the Claimant did not file the above-mentioned response to the Tribe's objection.

Notwithstanding the objection, the response to the Tribe's objection speaks for itself.

INTERROGATORY NO. 3: Does the Claimant(s) hold an encroachment permit from the Coeur d'Alene Tribe for any purpose? If so, what is the encroachment type and Tribal permit number?

ANSWER NO. 3: Claimant's encroachment permits from the Coeur d'Alene Tribe, if any, are available to and held by the Tribe.

INTERROGATORY NO. 4: Before installing the diversionary works in the St. Joe River, did Claimant(s), or Claimant(s)[] predecessors in title request the permission of either the United States or Tribe to encroach upon the submerged lands of the St. Joe River?

ANSWER NO. 4: Objection is made to Interrogatory No. 4 on the grounds that the term “permission...to encroach upon the submerged lands of the St. Joe River” is vague and the Interrogatory is vague as to time. Responding Claimant also objects to this Interrogatory No. 4 because it seeks a legal conclusion or opinion regarding who owns the “submerged lands of the St. Joe River.” Without waiving these objections, Claimant did not request permission of either the United States or the Coeur d’Alene Tribe to encroach upon the submerged lands of the St. Joe River for the installation of his diversionary works. However, Claimant did not need such permission because the United States and the Coeur d’Alene Tribe do not own the land upon which the diversionary works may have been installed.

INTERROGATORY NO. 5: Please state the name, address, telephone number, and type of testimony, lay or expert, for any witnesses you may call at trial of this matter.

ANSWER NO. 5: Claimant is unsure, at this time, whom he may call as witnesses at the time of hearing. Claimant reserves the right to supplement this answer in a timely manner prior to hearing and pursuant to any trial schedule produced by the court. Claimant may call any and all of the individuals identified during discovery, to include, but not be limited to the following individuals:

a) Claimant, William Kopp, c/o Norman Semanko, Attorney at Law, 101 S. Capitol Blvd., 10th Floor, P.O. Box 829, Boise, Idaho 83701-0829.

INTERROGATORY NO. 6: For each person listed as an expert witness above, please:

- (a) State the subject matter on which the expert is expected to testify;
- (b) Provide a complete statement of all opinions to be expressed and the basis and reasons therefore;

(c) Provide the facts, data or other information considered by the witness in forming his or her opinions;

(d) Note any exhibits to be used by the expert witness as a summary of or support for the opinions; and,

(e) Provide the qualifications of the witness, including a list of all publications (co)authored by the witness within the preceding ten (10) years, the compensation to be paid for the testimony, and a list of other cases in which the witness has testified as an expert at trial or by deposition within the four preceding years.

ANSWER NO. 6: Claimant is unsure, at this time, whom he may call as witnesses at the time of hearing. Claimant reserves the right to supplement this answer in a timely manner prior to hearing and pursuant to any trial schedule produced by the court.

INTERROGATORY NO. 7: Please describe the Claimant(s)[] diversion works and water system from the point of diversion to the place of use, including but not limited to, a description of all materials located in the water, the pump capacity (in gallons per minute), the conduit diameter(s) (in inches), any storage facilities on the property (and storage volume in gallons), and a description of the water conveyance on the property.

ANSWER NO. 7: Objection is made to Interrogatory No. 7 on the grounds that the information requested is equally available to the Tribe as to the Claimant. Notwithstanding the objection, documents containing the information requested in Interrogatory No. 7 are available in the Claimant's licensing file online on the Idaho Department of Water Resources' website at <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>. Claimant does not have possession, custody or control of any additional description of his

diversion works and water system, but reserves the right to supplement this answer in a timely manner.

INTERROGATORY NO. 8: If the Claimant(s) assert anyone other than the Coeur d'Alene Tribe owns the submerged lands underlying the claimant's point of diversion please list the name and contact information of such person or entity.

ANSWER NO. 8: Objection is made to Interrogatory No. 8 on the grounds that the Interrogatory is vague as to time. Responding Claimant also objects to this Interrogatory No. 8 because it seeks a legal conclusion or opinion regarding who owns the "submerged lands underlying the claimant's point of diversion." Notwithstanding the objection, Claimant or the State of Idaho own the submerged lands underlying the Claimant's point of diversion. The name and contact information are as follows: William Kopp, c/o Norman Semanko, Attorney at Law, 101 S. Capitol Blvd., 10th Floor, P.O. Box 829, Boise, Idaho 83701-0829; State of Idaho, c/o Attorney General's Office, P.O. Box 83720, Boise, ID 83720-0010.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce any documents you assert support your factual and/or legal basis in answering Requests for Admission Nos. 1-15 and Interrogatories Nos. 1-8.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Objection is made to Request for Production No. 1 on the grounds that it is vague and overly broad. Notwithstanding the objection, Claimant responds as follows: See documents previously produced or referenced and documents produced herewith.

REQUEST FOR PRODUCTION NO. 2: Please produce a true, accurate, correct, and admissible copy of the deed, or other document, by which you acquired title to your

property. If you acquired your property by operation of law, please produce any documents which evidence the factual basis of your acquisition.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: See Exhibit A attached hereto.

REQUEST FOR PRODUCTION NO. 3: Please produce a true, accurate, correct, and admissible copy of any title insurance policy (with declarations page) covering the real property to which the water right claim at issue in this matter is appurtenant.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: See Exhibit B attached hereto.

REQUEST FOR PRODUCTION NO. 4: Please produce a true, accurate, correct, and admissible copy of any available engineering/draftsman drawings, reports, or other documents related to your property's water-system.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Objection is made to Request for Production No. 4 on the grounds that the information requested is equally available to the Tribe as to the Claimant. Notwithstanding the objection, documents requested in Request for Production No. 4 are available in the Claimant's licensing file online on the Idaho Department of Water Resources' website at <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>. Claimant does not have possession, custody or control of any additional engineering/draftsman drawings, reports, or other documents related to Claimant's water-system, but reserves the right to supplement this answer in a timely manner.

REQUEST FOR PRODUCTION NO. 5: Please produce a true, accurate, correct, and admissible copy of a scaled elevation-view (side-cut view) diagram of the diversion works at issue in this case. On the diagram, please draw the OHWM and the ordinary low water mark.

Please provide the elevation of the pump, the elevation of the high/low point of the water line, the length of the water line (in feet), and depth of pump (in feet below OHWM). Please provide the lowest elevation of the entire diversion works.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: Objection is made to Request for Production No. 5 on the grounds that it is overly burdensome and the information requested is equally available to the Tribe as to the Claimant. Notwithstanding the objection, the documented information requested in Request for Production No. 5, if any, is available in the Claimant's licensing file online on the Idaho Department of Water Resources' website at <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>.

REQUEST FOR PRODUCTION NO. 6: Please produce a true, accurate, correct, and admissible copy of a scaled plan-view (top view) diagram of the property and diversion works at issue in this case. On the diagram, please include all property boundaries, structures, pasture, yard, gardens, and other locations where water use is occurring. Please include the location of the St. Joe River, the location of all components of the diversion works, pump, and water line, and the location of all water conveyance systems on the property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: Objection is made to Request for Production No. 6 on the grounds that it is overly burdensome and the information requested is equally available to the Tribe as to the Claimant. Notwithstanding the objection, the documented information requested in Request for Production No. 6, if any, is available in the Claimant's licensing file online on the Idaho Department of Water Resources' website at <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>.

REQUEST FOR PRODUCTION NO. 7: Please produce a true, accurate, correct, and admissible copy of photos showing the diversion works and water-system, including but not limited to the pump, water lines and/or piping, pump house, and irrigation system.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: Documents requested in Request for Production No. 7, if any, are available in the Claimant's licensing file online on the Idaho Department of Water Resources' website at <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx> and the Idaho Department of Water Resources' Coeur d'Alene Spokane River Basin Adjudication claims database at <http://www.srba.state.id.us/SREPT.HTM>. Claimant does not have possession, custody or control of any additional photos showing the diversion works and water-system, but reserves the right to supplement this answer in a timely manner.

REQUEST FOR PRODUCTION NO. 8: Please produce a true, accurate, correct, and admissible copy of any deeds, surveys, plats, or other document which relates to the property at the location of your point of diversion. In this request the term "property" means land appurtenant to your point of diversion.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: Documents requested in Request for Production No. 8 are available in the Claimant's licensing file online on the Idaho Department of Water Resources' website at <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx> and the Idaho Department of Water Resources' Coeur d'Alene Spokane River Basin Adjudication claims database at <http://www.srba.state.id.us/SREPT.HTM>. Claimant does not have possession, custody or control of any additional deeds, surveys, plats, or other documents that relate to the property at the location of the Claimant's

point of diversion, but reserves the right to supplement this answer in a timely manner. See also Response to Request for Production No. 2.

REQUEST FOR PRODUCTION NO. 9: Please produce a true, accurate, correct, and admissible copy of any water withdrawal permit(s) and license(s) and/or encroachment permit(s) you may hold from the Idaho Department of Water Resources and/or the Idaho Department of Lands.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: Objection is made to Request for Production No. 9 on the grounds that the information requested is equally available to the Tribe as to the Claimants in the Claimant's licensing file online on the Idaho Department of Water Resources' website at <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx> and by public records request to the Idaho Department of Lands. Notwithstanding the objection, see Exhibit C attached hereto.

REQUEST FOR PRODUCTION NO. 10: Please produce all I.R.C.P. Rule 26 material for any witness listed or noted as an expert witness in your answer to Interrogatories Nos. 5 and 6 above.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10: Claimant is unsure, at this time, whom he may call as witnesses at the time of hearing. Claimant reserves the right to supplement this answer in a timely manner prior to hearing and pursuant to any trial schedule produced by the court.

REQUEST FOR PRODUCTION NO. 11: Please produce documents related to available water use data for the diversion works and/or the property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: Objection is made to Request for Production No. 11 on the grounds that the information requested is equally available

to the Tribe as to the Claimant. Notwithstanding the objection, documents requested in Request for Production No. 11 are available in the Claimant's licensing file online on the Idaho Department of Water Resources' website at <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>. Claimant does not have possession, custody or control of any additional documents related to available water use data for the diversion works and/or the property, but reserves the right to supplement this answer in a timely manner.

REQUEST FOR PRODUCTION NO. 12: Please produce any documents related to other sources of water used by the Claimant(s) on the property and/or other claims made in the CSRBA by the Claimant(s) for other water rights appurtenant to the property and/or any additional water use permits or licenses acquired by the claimant since the commencement of the CSRBA for water use appurtenant to the property at issue.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: Objection is made to Request for Production No. 12 on the grounds that the information requested is equally available to the Tribe as to the Claimant. Notwithstanding the objection, documents requested in Request for Production No. 12 are available in the Claimant's licensing file online on the Idaho Department of Water Resources' website at <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx> and the Coeur d'Alene Spokane River Basin Adjudication claims database at <http://www.srba.state.id.us/SREPT.HTM>.

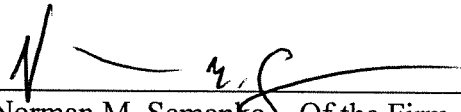
REQUEST FOR PRODUCTION NO. 13: Please produce any other documents which may be relevant to, or support, Claimant(s)' water right claim, Objector's objection, and/or any responses to the objection which have been filed in this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13: Objection is made to Request for Production No. 13 on the grounds that it is overly broad and the information

requested is equally available to the Tribe as to the Claimant. Notwithstanding the objection, documents requested in Request for Production No. 13 are available in the Claimant's licensing file online on the Idaho Department of Water Resources' website at <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx> and the Coeur d'Alene Spokane River Basin Adjudication claims database at <http://www.srba.state.id.us/SREPT.HTM>. Claimant does not have possession, custody or control of any additional documents which may be relevant to, or support, Claimant's water right claim, Objector's objection, and/or any responses to the objection which have been filed in this matter, but reserves the right to supplement this answer in a timely manner.

DATED this 1st day of April, 2016.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Norman M. Semanko Of the Firm
Attorneys for Claimant William Kopp

STATE OF IDAHO)
) ss.
County of Ada)

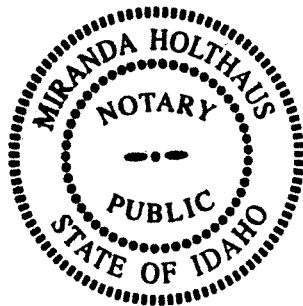
NORMAN M. SEMANKO, being first duly sworn, deposes and says:

He is the attorney for the Claimant William Kopp in the above-entitled cause and makes this verification for and on behalf of said Claimant; that he has read the foregoing **CLAIMANT WILLIAM KOPP'S AMENDED RESPONSES TO OBJECTOR'S FIRST REQUESTS FOR DISCOVERY**, knows the contents thereof, and that the same are true to the best of his knowledge, information and belief.



Norman M. Semanko

SUBSCRIBED AND SWORN to before me this 1st day of April, 2016.





NOTARY PUBLIC FOR IDAHO
Residing at Meridian, ID
My Commission Expires 01/09/18

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of April, 2016, I caused a true and correct copy of the foregoing **CLAIMANT WILLIAM KOPP'S AMENDED RESPONSES TO OBJECTOR'S FIRST REQUESTS FOR DISCOVERY** to be served by the method indicated below, and addressed to the following:

Howard A. Funke
Kinzo H. Mihara
Dylan Hedden-Nicely
HOWARD FUNKE & ASSOCIATES, P.C.
424 Sherman Avenue, Suite 308
P.O. Box 969
Coeur d'Alene, Idaho 83816-0969
Facsimile (208) 667-4695

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

and true copies of the **CLAIMANT WILLIAM KOPP'S AMENDED RESPONSES TO OBJECTOR'S FIRST REQUESTS FOR DISCOVERY** and **NOTICE OF SERVICE** were served by the method indicated below and addressed to the following:

Chief, Natural Resources Division
OFFICE OF THE ATTORNEY GENERAL
STATE OF IDAHO
P.O. Box 83720
Boise, ID 83720-0010

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Director
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. Box 83720
Boise, ID 83720-0098

☒ U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
() Facsimile

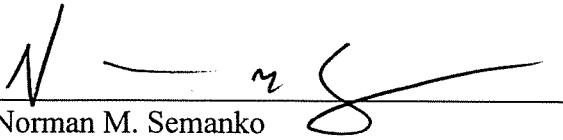

Norman M. Semanko

EXHIBIT A

226350

RECEIVED
BENEWAH COUNTY

After recording, mail to:
Land Title Company of Benewah County, Inc.
831 Main Avenue
St. Maries, Idaho 83861

2002 MAY -3 12:11:54
3²⁰

KIM SATHER, CLERK
Barbara Regan - Deputy
To: Land Title

WARRANTY DEED

For Value Received

JACK L. PARKINS and ALICE M. PARKINS Husband and Wife

the grantors, do hereby grant, bargain, sell, and convey unto

WILLIAM J. KOPP, a Single Person

whose address is: P.O. Box 61
St. Maries, Idaho 83861

the grantee, the following described real estate, situated in the County of Benewah, State of Idaho, to wit:

Lot 24B, COTTONWOOD POINT FIRST ADDITION, according to the amended plat thereof, recorded July 28, 1980 as Instrument Number 149295, in Book 154 of Miscellaneous at Page 3821, records of Benewah County, Idaho.

TO HAVE AND TO HOLD the said premises, with the appurtenances unto the said Grantee, his heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that they are the owners in fee simple of said premises; that they are free from all encumbrances EXCEPT: Reservations, Covenants, Restrictions, Permits, and Agreements of Record; and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: May 2, 2002

Jack L. Parkins
Jack L. Parkins

Alice M. Parkins
Alice M. Parkins

STATE OF IDAHO)
County of BENEWAH) ss.

On this 2 day of May, 2002, before me, the undersigned, a Notary Public in and for the said State, personally appeared Jack L. Parkins and Alice M. Parkins, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Richard M. Shisler
Notary Public for Idaho
Residing at: St. Maries
Commission Exp: 7-15-03



1858-858

EXHIBIT B

Owner's Policy

American Land Title Association Owner's Policy 10-17-92



Policy Number **SV 3504935**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Minnesota corporation, herein called the Company,

insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

- 1 Title to the estate or interest described in Schedule A being vested other than as stated therein;
- 2 Any defect in or lien or encumbrance on the title;
- 3 Unmarketability of the title;
- 4 Lack of a right of access to and from the land

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations

IN WITNESS WHEREOF, the said Old Republic National Title Insurance Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers as of the date shown in Schedule A, the policy to be valid when countersigned by an authorized officer or agent of the Company.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

- 1 (a) Any law, ordinance or governmental regulation (including, but not limited to, building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land, (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy
- 2 Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
- 3 Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
- 4 Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (i) to timely record the instrument of transfer; or
 - (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor

Issued through the Office of.

Land Title Company of Benewah County
831 Main Avenue
St. Maries, Idaho 83861

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

A Stock Company

400 Second Avenue South, Minneapolis, Minnesota 55401

(612) 371-1111

Authorized Signatory **Richard N. Shisler**

ORT Form 402 - AITA Owner's Policy 10-17-92

By

President

Attest

Secretary

SCHEDULE B

File Number B-8581

Policy Number SV 3504935

PAGE 2.

This Policy does not insure against loss or damage by reason of the following:

Standard Exceptions:

- (a) Rights or claims of parties in possession or claiming to be in possession not shown by the public records.
- (b) Easements, or claims of easements, not shown by the public records.
- (c) Encroachments, or questions of location, boundary, and area which are dependant upon a correct survey or inspection of the premises for determination.
- (d) Any lien, or right to a lien, for services, labor, or material heretofore to hereafter furnished, imposed by law and not shown by the public records.
- (e) Unpatented mining claims, reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.
- (f) Any service, installation, or connection charge for sewer, water, or electricity.
- (g) General taxes not now payable; matters relating to special levies or assessments, if any, preceding the same becoming a lien.

Special Exceptions:

- 1. Any right, title, or interest in any mineral rights, or related matters, including but not limited to oil, gas, coal, and other hydrocarbons.
- 2. GENERAL TAXES, which are a lien, Parcel Number RP00100020024BA are as follows:

Year	Amount	Status
2002	-----	Not yet due or payable.

SCHEDULE B CONTINUED ON PAGE 3.



OLD REPUBLIC
National Title Insurance Company

FILE NUMBER: B-8581

3. Said land lies within the boundary of The Coeur d'Alene Indian Reservation.
 - 1.(a) Any law, ordinance, or regulation of an Indian Tribe or Nation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting, or relating to (I) the occupancy, use, or enjoyment of the land; (II) the character, dimensions, or location of any improvement now or hereafter erected on the land; (III) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (IV) environmental protection, or the effect of any violation of these laws, ordinances, or regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy. (b) Any exercise of police power by an Indian Tribe or Nation not excluded by (a) above except to the extent that a notice of the exercise thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy. 2. Rights of eminent domain exercised by an Indian Tribe or Nation unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
4. THIS POLICY DOES NOT INSURE title to any portion of the property lying below the ordinary high water mark of the St. Joe River or any rights in the adjoining water.
5. COVENANTS AND RESTRICTIONS executed by ST. JOE RECREATION PROPERTIES; recorded October 7, 1976 as Instrument Number 136235 in Book 154 of Miscellaneous at Page 2106, records of Benewah County, Idaho. Amendment to Covenants to Restrictions; recorded June 7, 1977 as Instrument Number 138353 in Book 154 of Miscellaneous at Page 2332, records of Benewah County, Idaho. Second Amendment to Covenants of Restrictions; recorded September 22, 1980 as Instrument Number 149870 in Book 154 of Miscellaneous at Page 3914, records of Benewah County, Idaho.

SCHEDULE B CONTINUED ON PAGE 4.

FILE: B-8581

6. TERMS, CONDITIONS, AND PROVISIONS of the Amended Plat of Cottonwood Point First Addition, recorded July 28, 1980, as Instrument Number 149295 in Book 154 of Miscellaneous at Page 3821, records of Benewah County:
1. A strip of land 10 feet in width to be dedicated as roadway for public use, described as being a strip of land 10 feet in width, the southerly line of which is coincident with the northerly line of Cottonwood Drive as shown and platted on plat of Cottonwood Point.
 2. A 60 foot wide roadway as herein platted as a continuation of COTTONWOOD DRIVE to be dedicated to public use.
 3. An easement across each lot as may be required for construction and maintenance of sewage disposal and water supply systems.
 4. A 10 foot wide easement, the centerline of which follows each lateral lot boundary, as may be necessary for public utilities.
 5. Maintenance easements as shown herein.
 6. Reservation of a parcel for sewer lagoons as shown herein.
 7. Unobstructed access to and along the present dike for maintenance and/or improvement of said structure.
7. ENCROACHMENT PERMIT granted to JACK L. PARKINS from IDAHO DEPARTMENT OF LANDS for the purpose of placement of Rip Rap on the St. Joe River Bank, as disclosed in Instrument Number 184253, recorded September 10, 1990, Records of Benewah County, Idaho.
8. AGREEMENT FOR COMMON DRIVEWAY by and between LAWRENCE W. McDONALD and MERI KAY McDONALD, Husband and Wife, and JACK L. PARKINS and ALICE M. PARKINS, Husband and Wife, as disclosed in Instrument Number 182970, Recorded March 28, 1990, Records of Benewah County, Idaho.
9. DEED OF TRUST to secure the indebtedness in the amount herein stated, and any other amount payable, records of Benewah County, Idaho.

Amount: 
Dated: May 3, 2002
Recorded: May 3, 2002
Instrument No: 226351
Grantor: WILLIAM J. KOPP
Trustee: First American Title Company
Beneficiary: CITIBANK, F.S.B.

END OF SCHEDULE B.



SCHEDULE A

File No. B-8581

Policy No. SV 3504935

Amount \$

1. Policy Date MAY 3, 2002 at 11:56 a.m.
2. The Insured hereunder, in whom title to the fee simple estate is vested at the date hereof, is:
WILLIAM J. KOPP, a Single Person
3. The land referred to in this policy is situated in the county of Benewah, State of Idaho, and is described as follows:

Lot 24B, COTTONWOOD POINT FIRST ADDITION, according to the amended plat thereof, recorded July 28, 1980 as Instrument Number 149295, in Book 154 of Miscellaneous at Page 3821, records of Benewah County, Idaho.



OLD REPUBLIC
National Title Insurance Company

EXHIBIT C

STANLEY F. HAMILTON
DIRECTOR

ENCROACHMENT PERMIT NO. I-95-S-3082A *St. Maries, ID 83861*

20 SEP 1993 11:31

John Shatt Deputy

KAY S. ...

Jack L. Parkins
P.O. Box 195

BOARD OF LAND
COMMISSIONERS
CECIL D. ANDRI
Governor
PETE T. CENARRI
Secretary of State
JIM JONES
Attorney General
J. D. WILLIAMS
State Auditor
JERRY L. EVAN
Superintendent of Public
Instruction

Permission is hereby granted to JACK L. PARKINS
of P.O. Box 195 St. Maries, ID 83861 for placement of 40 cubic yards of
riprap material along 115' for shoreline stabilization to be located as
follows: St. Joe River, Lot 24B Cottonwood Point, Section 17,
Township 46 North, Range 2 West, Boise Meridian, Benewah County.

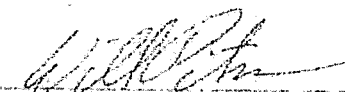
1. All applicable provisions of the Rules for Regulation of Beds, Waters, and Airspace over Navigable Lakes and Streams in the State of Idaho are incorporated herein by reference and made a part hereof.
2. Construction will follow details and specifications shown on the approved drawings and data provided by the applicant. Should such information and data prove to be materially false, incomplete and/or inaccurate, this authorization may be modified, suspended, or revoked upon notice and hearing as provided for in the adopted rules.
3. This permit does not convey the State's title to or jurisdiction or management of lands lying below the natural or ordinary high water mark.
4. Acceptance of this permit constitutes permission by the Permittee for representatives of the Department of Lands to come upon Permittee's lands at all reasonable times to inspect the encroachment authorized by this permit.
5. The Permittee assumes all liability for damages which may result from the exercise of this permit.
6. This permit does not relieve the Permittee from obtaining additional local or federal permits as required.
7. This permit is not valid until the enclosed permit tag is displayed on the outermost area of the encroachment.
8. If the activity authorized herein is not completed on or before the 5th day of September, 1993 (three years from the date of issuance), this permit shall automatically expire unless it was previously revoked or otherwise extended.

September 7, 1990
Page 156

9. This permit authorizes you to place a maximum of 40 cubic yards of riprap along 117 feet of shoreline for stabilization.
10. Location of this material must be placed as specified in the site plan.
11. All construction material must be stockpiled landward of the ordinary high water mark.
12. Operation of excavation equipment will be held to a minimum below the ordinary high water mark. Equipment shall be operated only on dry ground above the 2121 WWP Datum. Construction machinery may not be operated in the water.
13. No riprap shall be placed in excess of the minimum needed for erosion control.
14. Rock for riprap shall consist of sound, dense, durable, angular rock fragments, resistant to weathering and free from large quantities of soil, shale, or organic matter. The length of a stone must not be more than three times its width or thickness. Rounded cobbles, boulders, and streambed gravels are not acceptable as placed riprap material.
15. A fiber filter shall be placed between the natural shoreline and riprap material.
16. All construction shall be completed in accordance with descriptions and methods provided unless otherwise specified. Any changes shall be approved in writing by the department prior to construction.

FOR THE DIRECTOR

By:


W. R. PITMAN, PE, Manager
Idaho Lake Protection Act

STATE OF IDAHO)
) ss
COUNTY OF ROUTINAI)

Subscribed and sworn to before me this 6th day of
September, 1990.


Notary Public for Idaho
Residing at Rest Falls, ID
Commission expires: 12-20-94