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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Claimants Gordon G. Rathbun
and Ruth B. Rathbun

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. 92-7221

**CLAIMANTS GORDON G. RATHBUN
AND RUTH B. RATHBUN'S
AMENDED RESPONSES TO
OBJECTOR'S FIRST REQUESTS FOR
DISCOVERY**

Gordon G. Rathbun and Ruth B. Rathbun,

Claimants,

vs.

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

Objector.

**CLAIMANTS GORDON G. RATHBUN AND RUTH B. RATHBUN'S
AMENDED RESPONSES TO OBJECTOR'S FIRST REQUESTS
FOR DISCOVERY - 1**

COME NOW Claimants Gordon G. Rathbun and Ruth B. Rathbun, by and through undersigned counsel of record, and provide amended responses to Objector's First Requests for Discovery, which replace in total Claimants' 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 Claimants also object 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, Claimants admit 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, Claimants deny that the United States and the Coeur d'Alene Tribe own any submerged bed and banks at Claimants' 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, Claimants admit 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, Claimants deny 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 Claimants' 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, Claimants admit 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, Claimants deny that the State of Idaho is permanently enjoined from asserting a right, title or interest in or to the bed and banks at Claimants' 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, Claimants admit 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, Claimants

deny that the Coeur d'Alene Tribe has any right to exclude Claimants from the lands at Claimants' 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, Claimants admit that the point of diversion for this claim is located within the current boundary of the Coeur d'Alene Indian Reservation. However, Claimants deny that the United States and the Coeur d'Alene Tribe own the lands at Claimants' 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, Claimants admit 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, Claimants deny 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-captioned 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, Claimants admit 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, Claimants deny 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 deny 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 Claimants also object 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 Claimants’ water diversion point are navigable.” Without waiving these objections, Claimants admit that

said waters are “navigable” according to Claimants’ 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, Claimants therefore deny 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 Claimants also object 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, Claimants admit that they 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, Claimants deny that the United States or the Coeur d’Alene

Tribe owns the land upon which the diversion works may have been constructed and further deny 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 Claimants also object 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, Claimants admit that they have 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 Claimants' diversion works. However, Claimants deny that the United States or the Coeur d'Alene Tribe owns the land upon which the diversionary works may have been constructed and further deny 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, Claimants therefore deny 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 Claimants also object to this Request for Admission No. 13 on the grounds that it seeks a legal conclusion regarding who owns the lands at Claimants' point of diversion and the rights of Claimants to their diversion works. Without waiving these objections, Claimants deny the Request for Admission No. 13, including any assertion that the Coeur d'Alene Tribe owns the lands at Claimants' 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 Claimants also object 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,

Claimants therefore deny the same, including any assertion that Claimants have trespassed or are 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 Claimants also object 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, Claimants therefore deny the same, including any assertion that Claimants have 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 Claimants 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: Claimants’ 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 Claimants also object 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, Claimants 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 their diversionary works. However, Claimants 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: Claimants are unsure, at this time, whom they may call as witnesses at the time of hearing. Claimants reserve the right to supplement this answer in a timely manner prior to hearing and pursuant to any trial schedule produced by the court. Claimants may call any and all of the individuals identified during discovery, to include, but not be limited to the following individuals:

a) Claimants, Gordon G. Rathbun and Ruth B. Rathbun, 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: Claimants are unsure, at this time, whom they may call as witnesses at the time of hearing. Claimants reserve 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 Claimants. Notwithstanding the objection, documents containing the information requested in Interrogatory No. 7 are available in the Claimants' licensing file online on the Idaho Department of Water Resources' website at <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>. Claimants do not have possession, custody or control of any additional description of their diversion works and water system, but reserve 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 Claimants also object 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, Claimants or the State of Idaho own the submerged lands underlying the Claimants’ point of diversion. The name and contact information are as follows: Gordon G. Rathbun and Ruth B. Rathbun, 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, Claimants respond 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: Claimants do not have documents responsive to this request, but reserve the right to supplement this answer in a timely manner.

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 Claimants. Notwithstanding the objection, documents requested in Request for Production No. 4 are available in the Claimants' licensing file online on the Idaho Department of Water Resources' website at <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>. Claimants do not have possession, custody or control of any additional engineering/draftsman drawings, reports, or other documents related to Claimants' water-system, but reserve 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 Claimants. Notwithstanding the objection, the documented information requested in Request for Production No. 5, if any, is available in the Claimants' 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 Claimants. Notwithstanding the objection, the documented information requested in Request for Production No. 6, if any, is available in the Claimants' 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 Claimants' 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>. Claimants do not have possession, custody or control of any additional photos showing the diversion works and water-system, but reserve 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 Claimants' 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>. Claimants do 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 Claimants'

point of diversion, but reserve 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 Claimants' 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 B 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: Claimants are unsure, at this time, whom they may call as witnesses at the time of hearing. Claimants reserve 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 Claimants. Notwithstanding the objection, documents requested in Request for Production No. 11 are available in the Claimants' licensing file online on the Idaho Department of Water Resources' website at <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>. Claimants do 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 reserve 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.

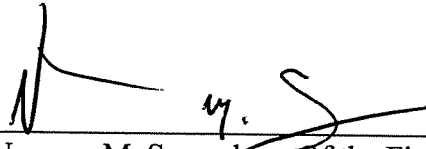
RESPONSE TO REQUEST FOR PRODUCTION NO. 12: Objection is made to Request for Production No. 12 on the grounds that the information requested is equally available to the Tribe as to the Claimants. Notwithstanding the objection, documents requested in Request for Production No. 12 are available in the Claimants' 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 Claimants. Notwithstanding the objection, documents requested in Request for Production No. 13 are available in the Claimants' 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>. Claimants do not have possession, custody or control of any additional documents which may be relevant to, or support, Claimants' water right claim, Objector's objection, and/or any responses to the objection which have been filed in this matter, but reserve the right to supplement this answer in a timely manner.

DATED this 1st day of April, 2016.

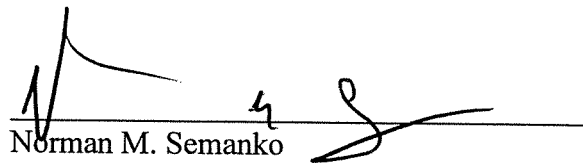
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FIELDS, CHARTERED

By 
Norman M. Semanko – Of the Firm
Attorneys for Claimants Gordon G.
Rathbun and Ruth B. Rathbun

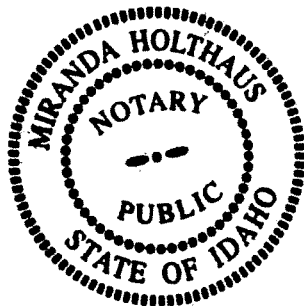
STATE OF IDAHO)
) ss.
County of Ada)

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

He is the attorney for the Claimants Gordon G. Rathbun and Ruth B. Rathbun, in the above-entitled cause and makes this verification for and on behalf of said Claimants; that he has read the foregoing **CLAIMANTS GORDON G. RATHBUN AND RUTH B. RATHBUN'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 **CLAIMANTS GORDON G. RATHBUN AND RUTH B. RATHBUN'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

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

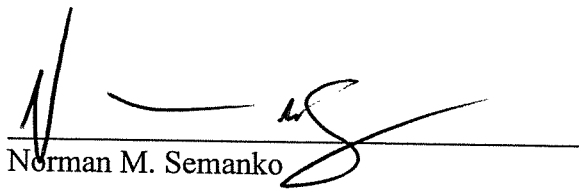

Norman M. Semanko

EXHIBIT A

0193907

93 SEP 3 PM 2:56

*Deanna Wilson, dep.*BENEWAH COUNTY
KAY SATHER, CLERK *6.00*
** Park & Rogers*PERSONAL REPRESENTATIVE'S DEED

This Deed, made by MARIE SHEPHERD, individually and as Personal Representative of the Estate of Clarence R. Shepherd, deceased, hereinafter called the Grantor, to GORDON G. RATHBUN and RUTH B. RATHBUN, husband and wife, of P. O. Box 338, St. Maries, Idaho 83861, Grantees.

WHEREAS, Grantor is the qualified Personal Representative of said Estate of Clarence Shepherd, deceased, filed as Probate Case No. SP 88-9648 in the District Court of the First Judicial District of the State of Idaho, in and for the County of Benewah; and

WHEREAS, Grantees herein are the purchasers of the hereinafter described real property from the said estate; now

THEREFORE, for \$10.00 and other valuable consideration received, the Grantor sells and conveys to Grantees, all of the right, title and interest of Clarence Shepherd, deceased, in and to the following described real property situated in Benewah County, Idaho:

Lot Eighty-one (81), Shadowy St. Joe
Lagoon First Addition, as recorded
in Benewah County records,

SUBJECT TO AND TOGETHER WITH all current
taxes, exceptions, easements, uses,
rights-of-way, restrictions, covenants
and reservations apparent or of record,

with all appurtenances.

IN WITNESS WHEREOF, the undersigned has executed
this deed this 31st day of DECEMBER, 1992.

Marie Shepherd
MARIE SHEPHERD, individually
and as Personal Representative
of the Estate of Clarence Shepherd,
deceased.

263238

AFTER RECORDING MAIL TO:

RECEIVED

Gordon Rathbun and Ruth Rathbun
1710 Shephard Rd
St. Maries, ID 83861

2012 AUG 1 AM 10 38

BENEWAH COUNTY
MICHELE MCDANIEL, CLERK

Michele McDaniel
TO FILE

QUITCLAIM DEED

File No.: 425883-SM (ps)

Date: July 05, 2012

For Value Received, **Gordon G. Rathbun and Ruth B. Rathbun**, do(es) hereby convey, release, remise, and forever quit claim unto **Rathbun Living Trust**, whose address is **1710 Shephard Road St. Maries ID 83861**, herein after called the Grantee, the following described premises situated in **Benewah County, Idaho**, to-wit:

Lot 81, Shadowy St. Joe Lagoon First Addition, according to the recorded plat thereof, Benewah County, Idaho.

together with its appurtenances.

Dated: 7/27/12

By: *Gordon G. Rathbun*
Gordon G. Rathbun

By: *Ruth B. Rathbun*
Ruth B. Rathbun

STATE OF Idaho)
SS.
COUNTY OF Benewah)

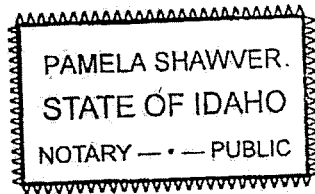
On this 27th day of July, 2012, before me, a Notary Public in and for said State, personally appeared **Gordon G. Rathbun and Ruth B. Rathbun**, known or identified to me to be the person(s) whose name(s) ARE subscribed to the within instrument, and acknowledged to me that THEY executed the same.

263238

APN:

Quitclaim Deed - continued

File No.: 425883-SM (ps)
Date: 07/05/2012



Pamela Shawver

Notary Public of Idaho
Residing at: St. Maries
Commission Expires: 1-20-2016

EXHIBIT B

STANLEY F. HAMILTON - DIRECTOR

ENCROACHMENT PERMIT NO. L-95-S-3998

Permission is hereby granted to GORDON RATHBUN
of P.O. Box 338 St. Maries, ID 83861 to install and maintain 6' x 5'
ramp & 34' x 24' single-slip floating dock w/ 4 piling & place 110' lineal
feet riprap for shoreline stabilization located: St. Joe River, Shadowy St.
Joe Lagoon 1st Add., Lot 81, Section 16, 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 in accordance with the Administrative Procedures Act, Idaho Code title 67, chapter 52.
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 identification number is displayed on the outermost area of the encroachment.
8. If the activity authorized herein is not completed on or before the 11th day of March, 1997 (three years from the date of issuance), this permit shall automatically expire unless it was previously revoked or otherwise extended.

BOARD OF LAND
COMMISSIONERS
CECIL D. ANDRUS
Governor
PETE T. CENARRUSA
Secretary of State
LARRY ECHOHAWK
Attorney General
J.D. WILLIAMS
State Auditor
JERRY L. EVANS
Sup't of Public
Instruction

KEEP IDAHO GREEN
PREVENT WILDFIRE

EQUAL OPPORTUNITY EMPLOYER

9. White bead foam flotation shall be completely encased in a manner that will maintain the structural integrity of the foam. The encasement shall be resistant to the entry of rodents.
10. Permanent dock covers will not be permitted. For single-family encroachments a fabric canopy of a color which will blend with the surrounding uplands is acceptable. These colors shall be shades of browns or greens.
11. Removal of any pre-existing facilities is a condition of this permit.
12. This permit supersedes and voids any permit previously issued for this property unless otherwise noted.
13. No trees or vegetation shall be removed without written approval of the Idaho Department of Lands for upland placement of riprap and ramps.
14. Creosote or pentachlorophenol (Penta) treated piling and lumber shall not be used on, in, or over the water. Piling and lumber that are in continual contact with lakewaters shall not be treated with protection material. Treated materials not in contact with the water shall be completely dry before use in or near navigable water. Contact Idaho Department of Health and Welfare, Division of Environmental Quality, with questions regarding treated materials.
15. This permit authorizes you to place a maximum of 85 cubic yards of riprap for shoreline stabilization.
16. Location of this material must be placed as specified in the site plan.
17. All construction material must be stockpiled landward of the ordinary high water mark.
18. Operation of excavation equipment will be held to a minimum below the ordinary high water mark. Equipment may be operated only on dry land above the present level of the lake. Construction machinery may not be operated in the water.
19. Approximately 36 cubic yards of material may be excavated below the ordinary high water mark in order to key rocks into the riverbed. No excavated material shall be placed below this trench.
20. No riprap shall be placed in excess of the minimum needed for erosion control.
21. Material shall be placed on a slope not steeper than 1 1/2 to 1 (1 1/2 horizontal to 1 vertical).
22. 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.
23. No material shall be placed within a wetland area.
24. Riprapped or disturbed area shall be revegetated with willow cuttings incorporated into the riprap to create cover for fish and wildlife.

25. Riprap shall be placed along the present shoreline. No riprap shall be placed in excess of the minimum needed for bank stabilization.
26. A fiber filter shall be placed between the natural shoreline and riprap material.
27. The permittee shall maintain the structure or work authorized herein in a good and safe condition and in accordance with the plans and drawings attached hereto.
28. All construction will be done according to the specifications detailed in the attached design plan.
29. The disturbed portion of the lakebed shall be shaped to its original contour upon completion of the project.
30. Excavated material shall be sidecast to only one side of the trench.
31. Excavated material shall be replaced in the trench.
32. Excavated material not replaced shall be removed to an area above the ordinary high water mark and in a position such that it will not reenter the lake.
33. 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.
34. A silt curtain, fence, or straw bales shall be installed waterward of the project site. It will remain in place and functional until the turbidity level inside the curtain or fence equals the turbidity outside the curtain or fence.
35. An adequate supply of petroleum-absorbing products shall be on site in the event of a spill.
36. Upon transfer of this real property, you are required to inform this office of the subsequent name change.

FOR THE DIRECTOR

By: Carl Washburn
CARL WASHBURN
Navigable Waters Specialist

STATE OF IDAHO)
) ss
COUNTY OF KOOTENAI)

Subscribed and sworn to before me this 11th day of
March, 1994.

Merna Cherry
Notary Public for Idaho
Residing at Post Falls, Idaho
Commission expires: 1/24/98

