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RECEIVED

APR 15 2016

DEPARTMENT OF
WATER RESOURCES

Counsel for the Coeur d'Alene Tribe

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

 Steve and Deanne Hawks,

Claimant(s),

v.

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

Objector.

Subcase No.: 91-7102

OBJECTOR'S SECOND REQUESTS FOR
DISCOVERY TO CLAIMANTS

To: Claimants, Steve and Deanne Hawks, and their attorney of record, Norman Semanko, Esq., of the firm, Moffatt, Thomas, Barrett, Rock & Fields, Chtd., 101 S. Capitol Blvd., 10th Floor, P.O. Box 829, Boise, Idaho 83701-0829.

Please respond and answer these discovery requests in the time periods allowed
 under Idaho law.

OBJECTOR'S SECOND REQUESTS
 FOR DISCOVERY TO CLAIMANT(S) - 1

GENERAL INSTRUCTIONS

Please refer to the General Instructions contained in Objector's First Request for Discovery to Claimants, such instructions are hereby incorporated herein to control these requests and interrogatories as if expressly set forth herein.

In addition, please apply the following general instructions:

11. Responses. In responding to these requests for admission, interrogatories, and requests for production of documents, you must furnish all information available to you, including, but not limited to, information in the possession or control of your attorneys, experts, consultants, advisors, agents, associates, subcontractors, representatives, or any other person or entity over which you have control.
12. Objections. If there is any request for admission, interrogatory, or request for production of documents to which you object in whole or in part, state the nature and basis of your objection, *describe the facts upon which you base your objection*, and answer any remaining part to which you do not object.
13. Terms. Unless otherwise indicated, words used in these requests for admission, interrogatories, and requests for production of documents are to be taken and understood in their natural and ordinary sense. In the event that Claimants' believe a term is ambiguous or vague please contact Howard Funke, Howard Funke & Associates, at (208) 667-5486, for clarification.
14. Partial answers. If there are any requests for admission, interrogatory, or requests for production of documents which you cannot answer in its entirety or for which you cannot provide the exact information requested:
 - a. Answer any part as to which you have or can obtain information requested, and provide the information requested to the extent you know or can obtain such information;
 - b. State your best estimate of all information requests which you do not know and cannot obtain, including but not limited to, any names or dates for which you lack exact information; and
 - c. Identify each document, person, or communication upon which your estimate is based.
15. Entire document. If any portion of any document is response to any document request, you must produce the entire document.
16. Contact. If those persons responsible to answering these requests for admission, interrogatories, and requests for production have any questions about their scope, meaning, or intent, please contact Howard Funke, Howard Funke & Associates, at (208) 667-5486.

DEFINITIONS

Please refer to the Definitions contained in Objector's First Request for Discovery to Claimants, such definitions are hereby incorporated herein to control these requests and interrogatories as if expressly set forth herein.

In addition, unless otherwise indicated, the following definitions shall apply to these discovery requests:

14. "Legal description" means a formal description of real property complete enough that a particular piece of land can be located and identified.
15. "Ordinary low water mark" means that line or elevation on the bed of the waterbody marked or located by the average low water elevation over a period of years.
16. "Point of diversion" means, consistent with IDWR's instructions for filing notice of claim to a water right acquired under state law for domestic and/or stockwater purposes where daily use is less than 13,000 gallons per day, "the location at which the water is diverted from a natural water source."
17. "Right" means something that is due to a person by just claim, legal guarantee, or moral principle.
18. "And" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these discovery requests any information that might otherwise be construed to be outside their scope.
19. "Any" as well as "each" shall be construed to include either one or all of a group as necessary to bring within the scope of these interrogatories and requests for production any information that might otherwise be construed to be outside their scope.
20. "Claim" means the water right claim that was filed in the Coeur d'Alene-Spokane River Basin Adjudication ("CSRBA") for the subcase number captioned above.
21. "Communication" means any transmittal or exchange of information (in the form of facts, ideas, inquiries or otherwise), whether oral, written, or electronic.
22. "Identify" or "identification of," when used to refer to a natural person, requests the following information
 - a. The person's full name and present or last-known address and telephone number;
 - b. The person's present title and employer or other business affiliation; and
 - c. The person's employer and title at the time of the actions which are the subject of the interrogatory or request for admission.

23. "Identify" or "identification of," when used to refer to an entity other than a natural person, requests the following information about the entity:
- a. Full name
 - b. The present or last-known address of its principal office or place of doing business and the telephone number; and
 - c. The type of entity (e.g., corporation, partnership, unincorporated association, municipality, etc.).
24. "Identify" or "identification of," when used with respect to a document, requests the following information:
- a. The title of the document;
 - b. A summary of the contents of the document;
 - c. The date of the document;
 - d. The identity of the person or persons who wrote, contributed to, prepared or originated such document;
 - e. The identity of the person or persons to whom the document was directed or who received or reviewed the document or copies of the document or any portion thereof;
 - f. The present or last-known address and custodian of the document and the address and phone number of each such custodian.
25. "Identify" or "identification of," when used in reference to a communication, means, without limitation, to describe the communication by:
- a. Identifying the date of the communication;
 - b. Identifying the place where the communication took place or was made;
 - c. Identifying the means (e.g., face-to-face, by telephone) by which the communication was made;
 - d. Identifying the person making and the person receiving the communication, and any other persons present and aware of the communication when the communication was made or when it was received; and
 - e. Describing the subject matter and content of the communication.
26. "Legal title" refers to any instrument in writing or by operation of law which conveys an interest in land from a grantor to the grantee.
27. "Objection" or "Objections" means the Objections filed by the Tribe to the Director's Report for the Claim in the subcase number captioned above.
28. "State the basis" or "describe the basis" or "identify the basis" means to describe all facts, analyses, opinions, conclusions, inferences, arguments, or conjectures supporting the matter, statement, or contention in question.

29. "You" or "your" refers to: Steve and Deanne Hawks or any employee, agent, representative, subcontractor, consultant, investigator, present or former attorney, and any other person or entity who was or presently is authorized to act or purported to act on behalf of the aforementioned.
30. "United States" means the United States of America, and includes all agencies, subdivisions, or agents, authorized to act in its behalf.
31. "Tribe" means the Coeur d'Alene Tribe of Idaho, a federally recognized Indian Tribe.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 16: Please admit that Claimants are citizens of the State of Idaho.

ANSWER:

REQUEST FOR ADMISSION NO. 17: Please admit that documents attached hereto as Attachment "1," bates numbers "CDAT OBJ-7102 0006 – 0037," are the documents Claimants referenced in their answer or amended answer to interrogatory number 7 and responses and/or amended responses to Objector's requests for production of documents numbers 1, 4, 5, 6, 7, 8, 9, 11, 12, and 13. If only some of the documents referenced are responsive to a certain interrogatory or request for production of documents, please qualify your answer indicating which document is responsive to such certain interrogatory or request for production.

ANSWER:

REQUEST FOR ADMISSION NO. 18: Pursuant to I.R.C.P. 36, please admit that the documents attached hereto as Attachment "1," bates numbers "CDAT OBJ-7102 0001 – 0037," are admissible, true, accurate, and correct copies of documents (or in other words are "authentic" and/or "genuine" within the meaning of I.R.E. 901) that Claimants referenced in their response and/or amended response to Objector's First Requests for Discovery to Claimants.

ANSWER:

REQUEST FOR ADMISSION NO. 19: Pursuant to I.R.C.P. 36, please admit that the documents attached hereto as Attachment "1," bates numbers "CDAT OBJ-7102 0001 – 0005," are admissible, true, accurate, and correct copies of documents (or in other words are "authentic"

and/or “genuine” within the meaning of I.R.E. 901) that Claimants produced to Objector or referenced in response to Objector’s First Requests for Discovery to Claimants as Exhibit “A” thereto.

ANSWER:

REQUEST FOR ADMISSION NO. 20: Please admit that the source of water of the Claimants’ water rights claim is the St. Joe River.

ANSWER:

REQUEST FOR ADMISSION NO. 21: Please admit that the point of diversion for the Claimants’ water right claim is a point at which water is diverted from the St. Joe River.

ANSWER:

REQUEST FOR ADMISSION NO. 22: Please admit that the Claimants, individually and/or collectively, are members of the group known as the North Idaho Water Rights Alliance which has filed a Response to Objection in the foregoing subcase.

ANSWER:

REQUEST FOR ADMISSION NO. 23: Please admit that Claimants’ diversionary works extend past the legal description of Claimants’ property on Blocks 1 and 2 of Sylvia’s Haven, Benewah County, Idaho. [Please review documents Bates CDAT OBJ-7102 0022 and CDAT OBJ-7102 0023, attached hereto, prior to answering this request for admission.]

ANSWER:

REQUEST FOR ADMISSION NO. 24: Please admit that there is water at Claimants’ point of diversion at all times of the year. [Please review document at Bates CDAT OBJ-7102 0008, attached hereto as part of Attachment “1”, prior to answering this request for admission.]

ANSWER:

OBJECTOR’S SECOND REQUESTS
FOR DISCOVERY TO CLAIMANT(S) - 6

REQUEST FOR ADMISSION NO. 25: Please admit that Claimants' point of diversion is below the ordinary low water mark.

ANSWER:

REQUEST FOR ADMISSION NO. 26: Please admit that neither IDWR water permit no. 91-7102 nor IDWR water right license no. 91-7102 could have been initiated in trespass.

ANSWER:

REQUEST FOR ADMISSION NO. 27: Please admit that in issuing IDWR water permit no. 91-7102 and/or IDWR water right license no. 91-7102, IDWR could not have authorized trespass.

ANSWER:

REQUEST FOR ADMISSION NO. 28: Please admit that neither IDWR water permit no. 91-7102 nor IDWR water right license no. 91-7102 authorize access to or across land not owned by Claimants.

ANSWER:

REQUEST FOR ADMISSION NO. 29: Please admit the Claimant(s) cannot enter any lands, including submerged lands, owned by the Coeur d'Alene Tribe or by the United States in trust for the benefit of the Coeur d'Alene Tribe without permission from either the Tribe or the United States.

ANSWER:

REQUEST FOR ADMISSION NO. 30: Please admit that Claimants' riparian and/or littoral rights do not include the right to make any consumptive use of the waters of the St. Joe River or any right of access for the purpose of appropriating water from the St. Joe River.

ANSWER:

OBJECTOR'S SECOND REQUESTS
FOR DISCOVERY TO CLAIMANT(S) - 7

REQUEST FOR ADMISSION NO. 31: Please admit that Claimants' do not have title insurance for the real property associated with the above-captioned water right claim.

ANSWER:

REQUEST FOR ADMISSION NO. 32: Please admit that the Coeur d'Alene Tribe is entitled to the exclusive use, occupancy, and right to quiet enjoyment of the bed and banks of the Coeur d'Alene Lake and the St. Joe River that are owned by the United States in trust for the Coeur d'Alene Tribe.

ANSWER:

REQUEST FOR ADMISSION NO. 33: Please admit that the water level at Claimants' point of diversion is capable of floating boats or canoes.

ANSWER:

REQUEST FOR ADMISSION NO. 34: Please admit that the St. Joe River at Claimants' point of diversion is a natural water source.

ANSWER:

INTERROGATORIES

INTERROGATORY NO. 9: If your answer to any of the Requests for Admission is anything other than an unqualified "admit" identify and describe in detail the facts upon which you rely in making your responses, all individuals with knowledge regarding such facts, and all documents relating in any way to your response(s).

ANSWER:

INTERROGATORY NO. 10: If Claimants are claiming ownership of real property below the OHWM at the claimed point of diversion, please identify the basis of such an assertion of

ownership. If Claimants are not claiming ownership of such real property, please indicate such disclaimer.

ANSWER:

INTERROGATORY NO. 11: Please identify, by bates numbers, those documents contained in Attachment "1" hereto that Claimants reference and specifically rely upon in their response or amended response to request for production number 5 contained in Objector's first requests for discovery to Claimants.

ANSWER:

INTERROGATORY NO. 12: Please identify, by bates numbers, those documents contained in Attachment "1" hereto that Claimants reference and specifically rely upon in their response or amended response to request for production number 6 contained in Objector's first requests for discovery to Claimants.

ANSWER:

INTERROGATORY NO. 13: Please identify, by bates numbers, those documents contained in Attachment "1" hereto that Claimants reference and specifically rely upon in their response or amended response to request for production number 7 contained in Objector's first requests for discovery to Claimants.

ANSWER:

INTERROGATORY NO. 14: Please state whether Claimants are relying upon and/or referencing any other documents which are not produced as part of Attachment "1" hereto (bates CDAT OBJ-7102 0001-0037) in any of their answers to interrogatories or responses to requests for production of documents in response to Objector's First Requests for Discovery. If so, please identify such documents by the title and date of such document.

ANSWER:

INTERROGATORY NO. 15: Please state the Benewah County tax identification number for the real property upon which Claimants' point of diversion is physically located. If there is no such tax identification number, please indicate as much.

ANSWER:

INTERROGATORY NO. 16: Please give the legal description of the "current boundaries of the Coeur d'Alene Indian Reservation" as that term is understood by Claimants and used by Claimants in their amended response for admission number 5.

ANSWER:

INTERROGATORY NO. 17: Please state the basis or describe the basis Claimants' denials in Requests for Admission Nos. 1, 5 10, 11, and 13 wherein Claimants' deny that "the United States and the Coeur d'Alene Tribe own any submerged bed and banks at Claimants' point of diversion," and Claimants' response to Interrogatory No. 8 wherein Claimants' assert that "Claimants or the State of Idaho own the submerged lands underlying the Claimants' point of diversion."

ANSWER:

INTERROGATORY NO. 18: Please state, by legal citation, court cases which discuss the legal theory or theories set forth in the answer to interrogatory number 17 above. [In lieu of answering, Claimants may provide documents responsive to this interrogatory.]

ANSWER:

INTERROGATORY NO. 19: Please identify and describe in detail those facts that Claimants' rely upon in their denials of Requests for Admission Nos. 1, 5 10, 11, and 13 wherein Claimants' deny that "the United States and the Coeur d'Alene Tribe own any submerged bed and banks at Claimants' point of diversion," and Claimants' response to Interrogatory No. 8 wherein Claimants' assert that "Claimants or the State of Idaho own the submerged lands underlying the Claimants' point of diversion." Please identify all individuals with knowledge regarding any such facts, and all documents relating in any way to your response.

ANSWER:

OBJECTOR'S SECOND REQUESTS
FOR DISCOVERY TO CLAIMANT(S) - 10

INTERROGATORY NO. 20: Please state the elevation, in feet above mean sea level, of the ordinary, historic or natural high water mark of the St. Joe River, as referenced in Claimants' answers to Requests for Admission Nos. 6 and 7, and the ordinary low water mark of the St. Joe River. Please identify all individuals with knowledge regarding any facts stated in your response, and all documents relating in any way to your response.

ANSWER:

INTERROGATORY NO. 21: Please provide the basis or describe the basis for the answer to Interrogatory No. 20, as well as the basis for Claimants' denial in Responses to Request for Admission Nos. 6 and 7 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 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." Please identify all individuals with knowledge regarding any facts stated in your response, and all documents relating in any way to your response.

ANSWER:

INTERROGATORY NO. 22: Please provide the basis or describe the basis for Claimants' denial in Responses to Request for Admission Nos. 10 and 11 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." Please identify all individuals with knowledge regarding any facts stated in your response, and all documents relating in any way to your response.

ANSWER:

INTERROGATORY NO. 23: Please provide the elevation of the submerged lands at your point of diversion and/or the lowest part of the diversion works within the St. Joe River, the elevation of the high/low point of the water line, the length of water line (in feet) that is located underwater at all times of the year, and the depth of the pump.

ANSWER:

INTERROGATORY NO. 24: If Claimants have any other water right claims filed in the CSRBA other than the above-captioned claim, please list the applicable claim numbers.

ANSWER:

INTERROGATORY NO. 25: Identify each person who provided information for, or participated in, the preparation of the responses to these discovery requests, and identify the specific discovery requests or parts thereof, for which each person provided information.

ANSWER:

INTERROGATORY NO. 26: Identify each person who has personal knowledge of the facts that form the basis for your claim and/or defense to the Tribe's objection.

ANSWER:

INTERROGATORY NO. 27: Identify all exhibits you may rely upon as evidence at trial and/or as evidence in support of, or in opposition to, dispositive motions.

ANSWER:

INTERROGATORY NO. 28: Describe all facts which support the basis for your claim and/or your defense to the Tribe's objections.

ANSWER:

INTERROGATORY NO. 29: Identify all documents that support your claim and/or your defense to the Tribe's objections.

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 14: Please produce any other documents, if any, which Claimants relied upon, reviewed, and/or reference in their answers to interrogatories and/or requests for production of documents in response to Objector's First Requests for Discovery and which are not part of Attachment "1" hereto.

RESPONSE:

REQUEST FOR PRODUCTION NO. 15: Please produce all documents which you allege support your assertion of legal title to the property underlying your claimed point of diversion. If you took legal title to the by operation of law, in lieu of responding to the foregoing request, Claimants may state the method by which they took legal title, and give legal citation to legal authority which discusses Claimants' alleged legal title by operation of law.

RESPONSE:

REQUEST FOR PRODUCTION NO. 16: Please produce all documents you may rely upon at trial or any hearing in this matter, in support of dispositive motions, or in opposition to dispositive motions, or at any other stage of this proceeding.

RESPONSE:

REQUEST FOR PRODUCTION NO. 17: Please produce all exhibits you may rely upon at trial or any hearing in this matter, in support of dispositive motions, or in opposition to dispositive motions, or at any other stage of this proceeding.

RESPONSE:

REQUEST FOR PRODUCTION NO. 18: Please produce those documents in your possession, as well as the location, if known, of any documents not in your possession you reviewed, referred to, rely upon, and/or you assert support your basis in answering Requests for Admission Nos. 1-34 and Interrogatories Nos. 1-24.

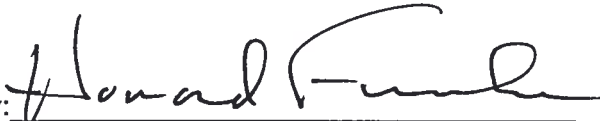
RESPONSE:

REQUEST FOR PRODUCTION NO. 19: Please produce any other documents in your possession, as well as the location, if known, of any documents not in your possession you assert support the above-captioned claim.

RESPONSE:

Respectfully submitted this 2th day of April, 2016.

HOWARD FUNKE & ASSOCIATES, P.C.

By: 

Howard A. Funke

Attorneys for the Coeur d'Alene Tribe

Certificate of Service

I hereby certify that on the 12th day of April, 2016, a copy of the foregoing Objector's Second Requests for Discovery to Claimant(s) was served on the following counsel of record and other entities via the method indicated below:

Norman Semanko

Moffatt, Thomas, Barrett, Rock & Fields, Chtd.

P.O. Box 829

Boise, Idaho 83701-0829

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☐ Hand-delivery

Counsel for Claimant(s) and Respondent NIWRA members

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By: Marcella J. Harrison

