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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	)	
	)	Subcase Nos.: 91-7102; 91-7173
Case No. 49576	)	
	)	
_____	)	
Steve and Deanne Hawks,	)	
	)	
Claimant(s),	)	OBJECTOR'S MEMORANDUM IN
	)	SUPPORT OF ITS MOTION TO COMPEL
v.	)	
	)	
Coeur d'Alene Tribe, a federally-recognized	)	
Indian Tribe,	)	
	)	
Objector.	)	
_____	)	

COMES NOW, Objector, the Coeur d'Alene Tribe (hereinafter "Tribe" and/or
"Objector"), and hereby offers the Court this memorandum of law in support of its motion to
compel. This memorandum is filed concurrently with and is incorporated into said motion.

MEMORANDUM IN
SUPPORT OF MOTION
TO COMPEL - 1

For the reasons set forth below the Tribe asserts that its interrogatories contained in *Objector's First Requests for Discovery to Claimants* served on February 5, 2016 are not vague as to meaning or as to time. Further, the interrogatories pose no legal conclusions or seek any opinions. In addition, the Tribe asserts Claimants' objections to request for production No. 1, alleging it is vague and over broad, along with Claimants' objections to the interrogatories on such bases noted herein are thus deficient, unfounded, and otherwise not substantially justified and should therefore be overruled.

Further, where Claimants did answer directing the Tribe to a range of documents contained in the Idaho Department of Water Resources' on-line file, Claimants failed to specify which document(s) they were referencing, requiring the Tribe to search for which documents may contain the information sought in the interrogatory.

The Tribe requests the Court overrule Claimants' objections contained in their amended answers to interrogatories; numbers 1, 4, 7, and 8, and order such interrogatories to be fully and fairly answered. The Tribe also requests the Court overrule Claimants' objection contained in their amended response to request for production No. 1.

At the outset it should be noted that *Claimants Steve and Deanne Hawks' Amended Responses to Objector's First Requests for Discovery* ("Claimants' Amended Responses") served on March 28, 2016 are significantly different than *Claimants Steve and Deanne Hawks' Responses to Objector's First Requests for Discovery* ("Claimants' Responses") served on March 7, 2016 in subcases 91-7102 and 91-7173. See Aff. of Counsel, Ex. 1 (91-7102), Ex. 2 (91-7173); *c.f.* Aff. of Counsel, Ex. 3 (91-7102) and Ex. 4 (91-7173).

FACTUAL BACKGROUND

On February 5, 2016, Objector served Steve and Deanne Hawks (hereinafter “Claimants”) and their attorney of record, Norman S. Semanko, with *Objector’s First Requests for Discovery to Claimant(s)* (“*Objector’s First Requests*”) appertaining to the claims, objections, and responses filed in the subcases noted above. *See* Aff. Counsel, ¶ 2.

On March 7, 2016 Claimants served *Claimants Steve and Deanne Hawks’ Responses to Objector’s First Requests for Discovery* (“*Claimants’ Responses*”) upon the Tribe. *Id.*, ¶ 3.

On March 14, 2016, counsel for the Claimants were notified that the Tribe believed the objections, answers, and responses to *Objector’s First Requests* were deficient, unfounded, and otherwise not substantially justified. *Id.*, ¶ 4.

On March 15, 2016 counsel for the Tribe met telephonically with attorneys for Claimants. *Id.*, ¶ 5. During that meeting the Tribe iterated, request by request, why it believed Claimants’ objections, answers, and responses to be deficient, unfounded, and otherwise not substantially justified or evasive. *Id.* A follow up call was scheduled between counsel for March 21, 2016 for the purpose of allowing Claimants’ attorneys time to formulate responses, if any, to the concerns set forth during the meeting of March 15, 2016. *Id.*, ¶ 6.

On March 21, 2016, attorneys for both Claimants and Objector met again telephonically to discuss Claimants’ responses to the concerns set forth during the meeting on or about March 15, 2016. *Id.*, ¶ 7. During this second phone call, counsel for Claimants agreed to serve amended answers and responses to Objector’s discovery requests. *Id.* Counsel for both parties agreed to an extension until March 25, 2016 for Claimants to serve their amended answers and responses to Objector’s discovery requests. *Id.* Counsel agreed that no further discovery would be served upon Claimants until after the amended answers and responses were served. *Id.*

On March 28, 2016, Claimants served and delivered *Claimants Steve and Deanne Hawks' Amended Responses to Objector's First Requests for Discovery* ("Claimants' Amended Responses") upon the Tribe. *Id.* ¶ 8.

Upon review of the objections asserted in *Claimants Amended Responses*, the Tribe believes and alleges that such objections are deficient, unfounded, and otherwise not substantially justified. *Id.* ¶ 9.

The Tribe's requests for admissions, interrogatories, and requests for production contained in *Objector's First Request*, along with the Claimants' original objections, answers, and responses contained in *Claimants' Responses* are attached to the affidavit of counsel filed contemporarily herewith. *Id.* ¶¶ 12, 13, Ex. 3 (91-7102) and Ex. 4 (91-7173). *Claimants' Amended Responses* are likewise attached to the affidavit of counsel filed contemporarily herewith. *Id.* ¶¶ 10, 11, Ex. 1 (91-7102) and Ex. 2 (91-7173).

STANDARD OF REVIEW

Motions to compel are reviewed under an abuse of discretion standard. *Taylor v. AIA Services Corp.*, 151 Idaho 552, 570 (2011) (citing *Jen-Rath Co. v. Kit Mfg. Co.*, 137 Idaho 330, 336 (2002) ("Control of discovery is within the discretion of the trial court.")).

The test for whether a trial court has abused its discretion is three-fold: (1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason. *DAFCO LLC v. Stewart Title Guar. Co.*, 156 Idaho 749, 755 (2014) (citing *Burgess v. Salmon River Canal Co., Ltd.* 127 Idaho 565 (1995)).

LAW RELEVANT TO DISCOVERY

It is well established that discovery allows, “the parties to obtain the fullest possible knowledge of the issues and facts before trial.” *Hickman v. Taylor*, 329 U.S. 495, 501 (1947).

The scope of discovery is very broad. I.R.C.P. 26(b)(1). Essentially, a party is entitled to discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, including the existence, description, nature, custody, condition and location of any books, documents, or tangible things and the identity and location of persons having knowledge of discoverable material. *Id.*

A party to litigation is entitled to propound interrogatories to other parties in the litigation. I.R.C.P. 33(a). The rule sets forth in pertinent part:

- (1) Use of Interrogatories. Any party may serve upon any other party written interrogatories to be answered by the party served ... who shall furnish such information as is available to the party.
- (2) Answers to Interrogatories. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers shall be signed by the party to whom they are directed, and the objections may be signed by the attorney making them. The party upon whom the interrogatories have been served shall serve the original of the answers, and objections if any, within 30 days after service of the interrogatories. ... The answers shall first set forth each interrogatory asked, followed by the answer or response of the party. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer any interrogatory.

Id. (emphasis added).

In lieu of answering an interrogatory, a party has an option of producing documents.

I.R.C.P. 33(c). The rule sets forth:

Where the answer to an interrogatory may be derived or ascertained from the business or other records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business or other records, or from a compilation, abstract or

summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

Id. (emphasis added).

The principal purpose of interrogatories is to afford parties information regarding facts involved in the issues in the suit and to enable the proposing party to prepare for trial and to reduce the possibility of surprise in the trial. *See Smith v. Big Lost River Irr. Dist.*, 83 Idaho 374 (1961).

In addition to requests for admission and interrogatories, a party to litigation may serve upon another party to the litigation requests for production of documents. I.R.C.P. 34(a). The rule sets forth in pertinent part:

Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the party's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono- records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things including electronic and data storage devices in any medium which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served...

Id. (emphasis added). The procedure for doing so is also set forth in the rules. I.R.C.P. 34(b). The rule sets forth in pertinent part:

(1) The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. ...

(2) The party upon whom the request is served shall serve a written response within 30 days after the service of the request. The response shall state, with respect to each item or category, that inspection and related activities will be

permitted as requested, unless the request is objected to, in which event any reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. ... If the responding party cannot through reasonable efforts retrieve the data or information requested or produce it in the form requested, the responding party must state an objection complying with these rules. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. If the court orders the responding party to comply with the request, the court may also order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.

Id. (emphasis added).

At its core, it has long been held that requests for production of documents in discovery allows “the parties to obtain the fullest possible knowledge of the issues and facts before trial.” *Hickman v. Taylor*, 329 U.S. 495, 501 (1947).

The Tribe’s interrogatories and request for production of documents No. 1 and Claimants’ respective amended responses are identical for both subcases 91-7102 and 91-7173. Each is set forth below, together with argument as to why each objection should be overruled and why each answer is deficient or otherwise does not fully and fairly respond to the interrogatory.

INTERROGATORY NO. 1

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.

Aff. of Counsel. Ex. 1, p. 10 (for Claim 91-7102) and Ex. 2, p. 10 (for Claim 91-7173).

Claimants’ amended responses to request for admissions numbered 1-15 are likewise attached to the affidavit of counsel. *Id.*, pp. 1- 9.

No objection was made to this interrogatory. As such, any further objection to this interrogatory is waived.

Claimants' answer to interrogatory No. 1 is deficient. It merely refers back to the Claimants' responses to admissions fail to cite any legal authority for the assertions made therein. Claimants fail to provide a single fact in support of their conclusory assertions made in their responses to the requests for admission.

Without going into detail on each request for admission, illustrative of Claimants' failure to fully and fairly respond is their answer to request for admission No. 1.¹

In request for admission No. 1, the question was: "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." *See* Aff. of Counsel, Ex.1, p. 2 and Ex. 2, p. 2. The term "bed and banks" was specifically defined in the general definitions which accompanied the request for admissions. *Id.*, Ex. 5, p. 4.

Claimants objected to request for admission No. 1 on the basis that the term "exterior boundaries of the Coeur d'Alene Indian Reservation" is a vague term. *See, e.g.,* Aff. of Counsel, Ex. 1, p. 2.

Claimants also objected to request for admission No. 1 on the basis the interrogatory sought a legal conclusion or opinion regarding who owns "the submerged

¹ The adequacy of Claimants' responses to Objector's requests for admissions is the subject of the Objector's *Motion to Determine Sufficiency of Objections and Deem Certain Matters Admitted* filed by the Tribe contemporarily herewith and will not be reiterated in this motion. The reasons for such alleged deficiencies made in the memorandum supporting that motion are incorporated herein.

bed and banks of Coeur d'Alene Lake and the St. Joe River within the exterior boundaries of the Coeur d'Alene Indian Reservation.” *Id.*

However, after making the foregoing objections, Claimants proceeded to quote the holding by the United States District Court for the District of Idaho in its opinion reported at *United States v. Idaho*, 95 F.Supp.2d 1094, 1117 (D. Idaho 1998).² *Id.*

Claimants thereafter denied the United States and the Tribe owned any of the submerged bed and banks at Claimants’ point of diversion. Aff. of Counsel, Ex. 1, p. 2. (“However, Claimants deny that the United States and the Coeur d’Alene Tribe own any submerged bed and banks at Claimants’ point of diversion.”).

The first objection should be overruled because Claimants fail to set forth a factual or legal basis as to why the term “exterior boundaries of the Coeur d’Alene Indian Reservation” was a vague term. No possible alternative readings of the alleged vague term were given. No facts were alleged or other explanation provided that would give rise to an inference that such term is vague in any respect. No legal authority was provided in regard to any court, executive, or administrative body has ever held such term to be vague.

The second objection should also be overruled because no legal conclusion or opinion was sought. Noted as part of Claimants’ response to the Tribe’s requests for admission, in the case of *United States v. Idaho*, 95 F.Supp.2d 1094 (D. Idaho 1998), *aff’d Idaho v. United States*, 210 F.3d 1067 (9th Cir. 2000), *aff’d Idaho v. United States*,

² “[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.” *Claimants Amended Responses*, p. 2.

533 U.S. 262 (2001), title to ownership 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” was quieted in favor of the United States as trustee, and the Coeur d’Alene Tribe as the beneficially interested party of the trusteeship and such ruling was affirmed by the Supreme Court of the United States. *Id.* at 533 U.S. 262 (2001). Thus, ownership has been determined as both a matter of fact and of law. The simple fact is that no legal conclusion or opinion was sought by the question.

As to the denial: “[h]owever, Claimants deny that the United States and the Coeur d’Alene Tribe own any submerged bed and bank at Claimants’ point of diversion ...” Such denial is simply unresponsive to the request for admission. Claimants were not asked to admit whether the Tribe owned any submerged bed and banks at the Claimants’ point of diversion – Claimants were asked to admit, *inter alia*, whether the United States and the Tribe owned the bed and banks of the St. Joe River.

The answer to interrogatory fails on technical grounds as well. Rule 33(a)(2) provides in pertinent part, “[t]he answers shall be signed by the party to whom they are directed, and the objections may be signed by the attorney making them.” I.R.C.P. 33(a)(2) (emphasis added). The rule clearly delineates between “the party to whom [interrogatories] are directed,” and an “attorney” who makes objections in such interrogatories. While counsel for Claimants, Mr. Norman Semanko, signed the responses and amended responses, the signatures and verification of Steve and Deanne Hawks are absent from any of the discovery answers and responses. *See* Aff. of Counsel, Exs. 1 – 4.

For the foregoing reasons, the Tribe asserts that Claimants’ objection is unfounded and unsustainable because their answer to the foregoing interrogatory is

deficient, unresponsive, and otherwise does not fully and fairly answer the interrogatory posed.

INTERROGATORY NO. 4

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 as to 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.

Aff. of Counsel, Ex. 1, pp. 10-11 (91-7102), Ex. 2, pp. 10-11 (91-7173).

The Tribe requests the Court overrule Claimants’ objections to this interrogatory and strike as unresponsive portions of the answer noted below.

Regarding the first objection alleging the term “permission...to encroach upon the submerged lands of the St. Joe River” is vague; like the interrogatories above, Claimants fail to state facts as to why such term is vague or to give any competing interpretations which would give rise to an inference of vagueness. Again, no legal authority was provided in regard to any court, executive, or administrative body ever having held such term to be vague.

As to the second objection on the grounds that the interrogatory is vague as to time, as part of the general instructions, instruction No. 2 reads as follows:

2. Time period. Unless otherwise indicated, these discovery requests apply to the time period from the priority date of the claim at issue in this litigation to the present time.

Aff. of Counsel, Ex. 5, p. 2. Further, the interrogatory itself specifies the time, “[b]efore installing the diversionary works.” *Id.*, Ex. 1, p. 10, Ex. 2, p. 10.

As to the third objection that the interrogatory seeks a legal conclusion or opinion regarding who owns the “submerged lands of the St. Joe River,” such objection is without basis and unresponsive for the same reasons discussed under interrogatory No. 1, above.

In fact, the terms “[s]ubmerged lands” and/or “bed and banks” were very specifically defined to mean, “the lands underlying the navigable waters of... the St. Joe River.” Aff. of Counsel, Ex. 5, p. 4 (definition no. 10).

Going to the substance of the answer, after Claimants state they did not request permission of either the United States or the Tribe to encroach upon the submerged lands of the St. Joe River before installing their diversion works, Claimants state, “[h]owever, 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.” *See, e.g.*, Aff. of Counsel, Ex. 1, p. 11.

That second sentence is unresponsive to the question and should be stricken. The interrogatory did not ask Claimants about who owned the land, it asked whether Claimants received permission from the United States or the Tribe to encroach upon such lands.

The answer to interrogatory No. 4 fails on technical grounds as well. Rule 33(a)(2) provides in pertinent part, “[t]he answers shall be signed by the party to whom they are directed, and the objections may be signed by the attorney making them.”

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I.R.C.P. 33(a)(2) (emphasis added). The rule very clearly delineates between “the party to whom [interrogatories] are directed,” and an “attorney” who makes objections in such interrogatories. While counsel for Claimants, Mr. Norman Semanko, signed the responses and amended responses, the signatures and verification of Claimants are absent from any of the discovery answers and responses. *See* Aff. of Counsel, Exs. 1 – 4.

For the foregoing reasons, the Tribe asserts that Claimants’ objections are deficient, unfounded, and otherwise not substantially justified and is thus unsustainable. Their answer to interrogatory No. 4 is deficient and does not fully and fairly respond to the interrogatory.

INTERROGATORY NO. 7

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

Aff. of Counsel, Ex. 1, pp. 12-13 (91-7102), Ex. 2, pp. 12-13 (91-7173).

The Tribe requests the Court overrule Claimants’ objection to this interrogatory and order Claimants to specifically direct the Tribe to which documents they refer.

In regard to the objection, counsel for the Tribe is unaware of any Idaho case law or other Idaho authority which would serve as a basis to sustain this objection.

Further, the Tribe concedes the Idaho Department of Water Resources' ("IDWR") electronic backfile contains some documents which in a very broad sense may describe the water conveyances on the property, however, such documents simply do not fully and fairly provide an answer to the question.

Review of the materials on the website referenced by Claimants reveals that no information is provided regarding the "description of all materials located in the water," "the pump capacity (in gallons per minute)," "the conduit diameter(s) (in inches)," or "any storage facilities on the property (and storage volume in gallons)."³

The Tribe concedes that, pursuant to I.R.C.P. 33(c), a party is given the option to produce records in lieu of an answer. However, Rule 33(c) requires a party to "specify the records from which the answer may be derived or ascertained.." I.R.C.P. 33(c) (emphasis added). The answer fails to direct the Tribe to any specific individual documents, leaving the Tribe to speculate as to which documents, if any, contained in IDWR's electronic backfile are responsive to the interrogatory. The answer is simply not in accord with either the language or spirit of Rules 33(a) or 33(c).

The answer to interrogatory fails on technical grounds as well. Rule 33(a)(2) provides in pertinent part, "[t]he answers shall be signed by the party to whom they are directed, and the objections may be signed by the attorney making them." I.R.C.P.

³ The Tribe concedes there are some photos in IDWR's backfile relating to claim 91-7173 which show some material in the water, the pump, conduits, and storage facilities. However, such photos do not give pump capacity in gallons per minute, give any frame of reference for the size of all conduits, nor provide storage volume in gallons. No such photos or documents were referenced or provided for claim 91-7102.

33(a)(2) (emphasis added). The rule clearly delineates between “the party to whom [interrogatories] are directed,” and an “attorney” who makes objections in such interrogatories. While counsel for Claimants, Mr. Norman Semanko, signed the responses and amended responses, the signatures and verification of Claimants are absent from any of the discovery answers and responses. *See* Aff. of Counsel, Exs. 1 – 4.

For the foregoing reasons the Tribe asserts that Claimants’ objection is deficient, unfounded, and otherwise not substantially justified and is thus unsustainable. Their answer to interrogatory No. 7 is deficient, and otherwise does not fully and fairly answer the interrogatory.

INTERROGATORY NO. 8

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 this 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: Steve and Deanne Hawks 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.

Aff. of Counsel, Ex. 1, p. 13 (91-7102), Ex. 2, p. 13 (91-7173).

The Claimants have answered this interrogatory, however, the Tribe requests the Court overrule Claimants’ objections.

In regard to the first objection as to time, nothing is vague as to the timeframe sought in the interrogatory. *See* Aff of Counsel, Ex. 5, p. 2. Clearly, the instruction defined the timeframe from the Claimants priority date to the current date. *Id.*

Again, in regard to the second objection that the interrogatory, “seeks a legal conclusion or opinion regarding who owns the ‘submerged lands underlying the claimant’s point of diversion[,]” the Tribe responds with the same argument offered for interrogatory No. 1, above. Under Rule 26, discovery is very broad and the question is appropriate.

The answer to interrogatory fails on technical grounds as well. Rule 33(a)(2) provides in pertinent part, “[t]he answers shall be signed by the party to whom they are directed, and the objections may be signed by the attorney making them.” I.R.C.P. 33(a)(2) (emphasis added). The rule clearly delineates between “the party to whom [interrogatories] are directed,” and an “attorney” who makes objections in such interrogatories. While counsel for Claimants, Mr. Norman Semanko, signed the responses and amended responses, the signatures and verification of Claimants are absent from any of the discovery answers and responses. *See* Aff. of Counsel, Exs. 1 – 4.

For the foregoing reasons, the Tribe asserts that Claimants’ objections are deficient, unfounded, and are otherwise not substantially justified and therefore unsustainable.

REQUEST FOR PRODUCTION NO. 1

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 NO. 1: Objection is made to Request for Production No. 1 on the grounds that it is vague and overly broad. Notwithstanding this objection,

Claimants respond as follows: See documents previously produced or referenced and documents produced herewith.

Aff. of Counsel, Ex. 1, p.13 (91-7102), Ex. 2, p.13 (91-7173).

The Tribe requests the Court overrule Claimants' objections to this request for production.

Regarding the first objection that the request for production is vague, nothing in the objection suggests which portion of the request was allegedly vague. The request is a common, generic discovery request – if you deny a question posed in a request for admission, please produce the documents in your possession, custody, and/or control which support the factual and/or legal bases of denial.

Regarding to the second objection that the request is overly broad, the Tribe limited its request to such documents Claimants are relying upon for their denial. Further, the general instructions provide:

Scope of Discovery. These discovery requests are directed to the above-named CSRBA Claimant(s) and cover all information in its [sic] possession, custody and control, including information in the possession of officers, employees, agents, servants, representatives, attorneys, or other persons directly or indirectly employed or retained by them, or anyone else acting on their behalf or otherwise subject to their control, and any merged, consolidated, or acquired predecessor or successor, parent, subsidiary, division, or affiliate.

Aff. of Counsel, Ex. 5, p. 2. The term “document” was specifically defined as:

“Document” means all writings of any kind, including, without limitation, the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise including, without limitation, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, bills of lading, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, governmental records, interoffice and intra-office communications, notations of any conversations (including, without limitation, telephone calls, meetings, and other communications), bulletins, printed matter, computer printouts, teletypes, telefax, invoices,

worksheets, graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic, mechanical, or electric records or representations of any kind (including, without limitation, tapes, cassettes, discs, recordings and computer memories), and all drafts, alterations, modifications, changes and amendments of any of the foregoing.

Id., pp. 3-4.

Simply put, the Tribe is seeking documents which support the factual and legal bases of the Claimants' denials in response to the Tribe's requests for admission. The Tribe is entitled to know the documentary bases for such denials. If such bases are simply the "documents previously produced or referenced and documents produced herewith[.]" so be it, but the Tribe is entitled to definitively know, without objection, those bases.

The Tribe therefore requests the Court over-rule Claimants' objection in their response to the Tribe's first request for production.

CONCLUSION

For the foregoing reasons, the Tribe requests this Court overrule Claimants' objections to Objector's First Discovery Requests to Claimants and to compel Claimants to fully and fairly respond to the Tribe's discovery requests. The Tribe also requests the Court strike as non-responsive portions of Claimants' answers to the discovery requests above. Pursuant to Rule 37(a)(4) the Tribe requests its reasonable costs, including attorney's fees, associated with the necessity of having to bring this motion.

Respectfully submitted this 15th day of April, 2016.

HOWARD FUNKE & ASSOCIATES, P.C.

By: Howard Funke

Howard Funke, Of the Firm
Attorneys for the Coeur d'Alene Tribe

Certificate of Service

I hereby certify that on the 16th day of April, 2016, a copy of the foregoing Memorandum in Support of Motion to Compel was served on the following counsel of record and other entities via the method indicated below:

Norman Semanko

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

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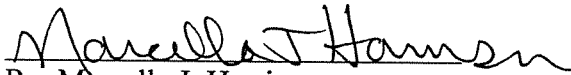
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