

Howard A. Funke, ISB No. 2720
Kinzo H. Mihara, ISB No. 7940
Dylan Hedden-Nicely, ISB No. 8856
HOWARD FUNKE & ASSOCIATES, P.C.
Attorneys at Law
424 Sherman Avenue, Suite 308
P. O. Box 969
Coeur d'Alene, Idaho 83816-0969
P (208) 667-5486
F (208) 667-4695

APR 19 2016

DEPARTMENT OF
WATER RESOURCES

Counsel for the Coeur d'Alene Tribe

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 FIRST REQUESTS FOR DISCOVERY TO THE STATE OF IDAHO

To: RESPONDENT, State of Idaho, and its attorney of record, Steven Strack, Office of the Attorney General, State of Idaho, P.O. Box 83720, Boise, Idaho 83720-0010.

OBJECTOR'S FIRST REQUESTS
FOR DISCOVERY TO IDAHO - 1

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

GENERAL INSTRUCTIONS

1. **Scope of Discovery.** These discovery requests are directed to the above-named CSRBA Claimant(s) and cover all information in its 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.
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.
3. **Supplemental Responses.** These document requests are continuing; supplemental documents must be provided pursuant to applicable civil discovery rules.
4. **Deletions from Documents.** Where anything has been deleted from a document produced in response to a document request:
 - a. specify the nature of the material deleted;
 - b. specify the reason for the deletion; and
 - c. identify the person responsible for the deletion.
5. **Organization of Documents in Response.** Documents submitted pursuant to a document request should be produced in the manner in which they are kept in the ordinary course of business and/or grouped and labeled according to the individual paragraph(s) of the document request. Within each group, the documents should be arranged, to the extent possible, in chronological order. If any document is responsive to more than one document request, you may provide a single copy indicating the requests to which it is responsive.
6. **Document No Longer in Possession.** If any document requested is no longer in the possession, custody, or control of the Claimant(s), state:
 - a. what was done with the document;
 - b. when such document was made;
 - c. the identify and address of the current custodian of the document;
 - d. the person who made the decision to transfer or dispose of the document; and
 - e. the reasons for the transfer or disposition.
7. **Privilege as Applied to Document Production.** If objection is made to producing any document, or any portion thereof, or to disclosing any information contained therein, on the basis of any claim of privilege, the Claimant(s) is requested to specify in writing the nature of such

information and documents, and the nature of the claim of privilege, so that the Court may rule on the propriety of the objection. In the case of documents, the Claimant(s) should state:

- a. the title of the document;
- b. the nature of the document (e.g., interoffice memorandum, correspondence, report, etc.);
- c. the author or sender;
- d. the addressee;
- e. the date of the document;
- f. the name of each person to whom the original or a copy was shown or circulated;
- g. the names appearing on any circulation list relating to the document;
- h. the basis on which privilege is claimed; and
- i. a summary statement of the subject matter of the document in sufficient detail to permit the Court to rule on the propriety of the objection.

Upon the agreement of counsel, certain documents may be excluded from these requirements.

8. Singular/Plural. Words used in the plural shall also be taken to mean and include the singular. Words used in the singular shall also be taken to mean and include the plural.

9. “And” and “Or.” The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

10. Reservation of Rights. The Coeur d’Alene Tribe (“Tribe”) reserves all rights, including its sovereign immunity from suit. No part of this discovery request should be interpreted or construed as a waiver of tribal sovereign immunity or as an acknowledgement by the Tribe that any particular issue will be litigated in this subcase.

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

Unless otherwise indicated, the following definitions shall apply to these discovery requests:

1. "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.
2. "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.
3. "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.
4. "Coeur d'Alene Lake" or "Lake Coeur d'Alene" means the lake identified by the U.S. Supreme Court in the case Idaho v. United States, 533 U.S. 262 (2001) to which title was quieted in favor of the United States and Coeur d'Alene Tribe.
5. "Communication" means any transmittal or exchange of information (in the form of facts, ideas, inquiries or otherwise), whether oral, written, or electronic.

6. "Court" or "CSRBA Court" shall mean the Coeur d'Alene-Spokane River Basin Adjudication Court, District Court in and for Twin Falls County, Idaho, Hon. Eric Wildman, or his successor, presiding.
7. "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.
8. "Elevation" means the elevation in feet above mean sea level.
9. "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.
10. "Identify" or "identification of," when used to refer to an entity other than a natural person, requests the following information about the entity:
 - d. Full name
 - e. The present or last-known address of its principal office or place of doing business and the telephone number; and
 - f. The type of entity (e.g., corporation, partnership, unincorporated association, municipality, etc.).
11. "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.
12. "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.
 13. "Legal basis" means any source of law you assert supports your legal position including, but not limited to, case law, common law, the Constitution, statutes, executive orders, executive actions, and regulations.
 14. "Legal description" means a formal description of real property complete enough that a particular piece of land can be located and identified.
 15. "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.
 16. "Objection" means the objection filed by the Tribe against Claimant(s) water rights in the above-captioned matter. If this term is used in any other context, it will be specifically noted where set forth herein.
 17. "Objection" or "Objections" means the Objections filed by the Tribe to the Director's Report for the Claim in the subcase number captioned above.
 18. "Ordinary High Water Mark" or "OHWM" means the presumed Ordinary High Water Mark of Coeur d'Alene Lake and the St. Joe River of 2128 feet elevation consistent with the holding of *In re Sanders Beach*, 143 Idaho 443 (2008).
 19. "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.
 20. "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."

21. "Relate to," "relating to," or "relates to" means constituting, defining, concerning, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to.
22. "Response to Objection" means the Standard Form 2 – Response to Objection filed by you, or your attorney on your behalf, and the language contained therein. If this term is used in any other context, it will be specifically noted where set forth herein.
23. "Right" means something that is due to a person by just claim, legal guarantee, or moral principle.
24. "Saint Joseph River" or "St. Joe River" means the river identified by the U.S. Supreme Court in the case *Idaho v. United States*, 533 U.S. 262 (2001) to which title was quieted in favor of the United States and Coeur d'Alene Tribe.
25. "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.
26. "Subject matter of this action" shall mean the facts and legal doctrines at issue and/or disputed in the Objection and Response(s) to Objection filed in the above-encaptioned matter.
27. "Submerged lands" and/or "bed and banks" shall mean the lands underlying the navigable waters of either Coeur d'Alene Lake or the St. Joe River.
28. "Tribe" and/or "Objector" shall mean the Coeur d'Alene Tribe.
29. "You" or "your" refers to: the State of Idaho and its agencies including, but not limited to, the Idaho Department of Water Resource and Idaho Department of Lands 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.

You are requested to file within thirty (30) days a written response to the following and to produce those documents for inspection and/or copying.

(a) Your written response shall state with respect to each item or category, that inspection-related activities will be permitted as requested, unless request is refused, in which event the reasons for refusal shall be stated. If the refusal relates to part of an item or category, that part shall be specified.

(b) In accordance, the documents shall be produced as they are covered in the usual course of business or you shall organize and label them to correspond with the categories in the request.

(c) These requests shall encompass all items within your possession, custody or control.

(d) These requests are continuing in character so as to require you to promptly amend or supplement your response if you obtain further material information.

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 current exterior boundaries of the Coeur d'Alene Indian Reservation.

ANSWER:

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.

ANSWER:

REQUEST FOR ADMISSION NO. 3: Please admit that Respondent 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.

ANSWER:

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.

ANSWER:

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

ANSWER:

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 mean sea level.

ANSWER:

REQUEST FOR ADMISSION NO. 7: Please admit that the St. Joe River at Claimants' point of diversion is navigable.

ANSWER:

REQUEST FOR ADMISSION NO. 8: 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. 9: 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. 10: 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. 11: Please admit that, in Idaho, 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 FIRST REQUESTS
FOR DISCOVERY TO IDAHO - 9

REQUEST FOR ADMISSION NO. 12: Please admit that the St. Joe River at Claimants' point of diversion is a natural water source.

ANSWER:

REQUEST FOR ADMISSION NO. 13: Please admit that IDWR can only issue water permits and/or licenses where the point of diversion is from a natural water source.

ANSWER:

INTERROGATORIES

INTERROGATORY NO. 1: 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. 2: 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:

INTERROGATORY NO. 3: 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:

INTERROGATORY NO. 4: If the Respondent asserts 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:

INTERROGATORY NO. 5: 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. 6: Describe all facts which support the basis for your response in this subcase.

ANSWER:

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. 1-13 and Interrogatories Nos. 1-6.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2: Please produce pertinent documents in the State's possession, custody, and/or control that evidence the OHWM of Lake Coeur d'Alene and/or the St. Joe River.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3: 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 above.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4: 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. 5: 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. 6: 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. 1-13 and Interrogatories Nos. 1-6.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7: 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 your response in the above-captioned subcase.

RESPONSE:

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 15th 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

☒ First Class Mail, Postage Prepaid

☐ Facsimile @ (208) 385-5384

☐ Hand-delivery

Counsel for Claimant(s) and Respondent NIWRA members

Clive Strong

Steven Strack

Office of the Attorney General

State of Idaho

P.O. Box 83720

Boise, Idaho 83720-0010

☐ First Class Mail, Postage Prepaid

☒ Facsimile @ (208) 334-4143

☐ Hand-delivery

Counsel for Respondent State of Idaho

U.S. Department of Justice

Environment & Nat'l Resources

550 W. Fort St., MSC 033

Boise, Idaho 83724

☒ First Class Mail, Postage Prepaid

☐ Facsimile @ (303) 844-1350

☐ Hand-delivery

Idaho Department of Water Resources

P.O. Box 83720

Boise, Idaho 83720-0098

☒ First Class Mail, Postage Prepaid

☐ Facsimile @ (208) 287-6700

☐ Hand-delivery

Marcella J. Harrison
By: Marcella J. Harrison