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DEPARTMENT OF
WATER RESOURCES

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

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,	)	
	)	OBJECTOR'S REPLY BRIEF IN
Claimant(s),	)	SUPPORT OF ITS MOTION TO COMPEL
	)	
v.	)	
	)	
Coeur d'Alene Tribe, a federally-recognized	)	
Indian Tribe,	)	
	)	
Objector.	)	
_____	)	

COMES NOW, Objector, by and through its counsel of record and hereby offers the
Court this reply brief in support of its motion to compel.

ADDITIONAL BACKGROUND

A complete timeline is set forth below for the benefit of providing the Court a clear picture of the factual background of this discovery dispute.

The Court held a status conference on December 2, 2015 which addressed the “encroachment” and/or “trespass” subcases in Basins 91 and 92.¹ During that status conference counsel for Claimants advised the Court and parties that he considered some of the cases more readily developed and wished to set those for trial.² Mr. Semanko represents all remaining Claimants in the “encroachment” and/or “trespass” subcases, with the exception of Claimants Jack and Eleanor Buell in subcase 92-7226. In the *Buell* subcase, 92-7226, Mr. and Mrs. Buell are jointly represented by Mr. Semanko and Ms. Nancy Wolff and Ms. Mariah Dunham of the firm Morris & Wolff, P.A.

The Court issued its *Trial Scheduling Order* for the above referenced subcases on December 4, 2016. *See Trial Scheduling Order*. May 20, 2016 was the deadline to complete discovery. *Id.* May 27, 2016 was the deadline to join parties, amend pleadings, to consolidate cases, and to file motions for summary judgment. *Id.* July 13, 2016 was the date set for any summary judgment hearing. *Id.*

This Court held an *additional scheduling conference* on January 13, 2016 which addressed the “encroachment” and/or “trespass” objection subcases in Basins 91 and 92 which were set for trial. *See Trial Scheduling Order* (December 4, 2015).

¹ The subcase numbers for such cases are: 91-4015; 91-7003; 91-7026; 91-7048; 91-7102; 91-7104; 91-7113; 91-7120; 91-7121; 91-7125; 91-7136; 91-7137; 91-7140; 91-7173; 91-7339; 91-7519; 91-7556; 92-0727; 92-7211; 91-7219; 92-7220; 92-7221; 92-7226; 92-7234; 92-10521.

² The subcase numbers for such cases are: 91-7102; 91-7120; 91-7173.

At the *additional scheduling conference* counsel for Claimants advised the Court and the other parties that he had inadvertently identified an incorrect subcase at the December 2, 2015 status conference and wished to substitute another case in the batch set for trial.

At the same hearing the Court ordered Mr. Semanko advise it, and the other parties, of the case which was inadvertently identified, as well as the case which he would seek to replace in its stead. The Court ordered Mr. Semanko to do so by February 17, 2016. The Court followed up its oral order with a written order. *See* Sched. Ord. (Jan. 15, 2016).

Not knowing which cases were potentially set for trial, Objector sent identical discovery to Claimants in all subcases noted in footnote 1 above. *See* Aff. Mihara (May 6, 2016), ¶ 17. Those discovery requests were all served on the same date, February 5, 2016. *Id.*

February 17, 2016 came and went without any notification of the subcase which counsel sought to strike from the trial scheduling order, nor of the subcase which he wished to add.

On February 24, 2016, this firm received a document from Claimants titled, “*Notice of Correct Subcase Numbers.*” Aff. Mihara (May 6, 2016), Ex. 6. The date the document was purportedly executed was February 10, 2016. *Id.*, p. 2. Likewise, the certificate of service of the document was also February 10, 2016. *Id.*, p. 3. Contrary to the dates certified by Mr. Semanko, the Court’s date stamp reads February 22, 2016. *Id.*, p. 1. The Court’s date stamp corresponds to the U.S. Postal Service acceptance stamp, as well as the Moffatt Thomas postage date on the envelope which transmitted the document. *Id.*, p. 4.

On March 4, 2016, Objector received discovery responses in the *Buell* matter, subcase 92-7226 from the office of Morris & Wolff, P.A.. *See* Aff. McCormack, ¶ 5, Ex. B; *see also* Aff. Mihara, Ex. “8.”³

On March 7, 2016, Objector received discovery responses in the subcases at issue in this motion. *Id.*, Ex. C.

On March 14, 2016, Counsel for both parties were notified that counsel for Objector believed that the discovery responses received were inadequate, evasive, or otherwise deficient. Aff. Mihara (Apr. 15, 2015), ¶ 4.

Counsel for all parties met and conferred on March 15, 2016 for the purposes of discussing Objector’s concerns regarding the discovery responses received. Aff. McCormack, ¶¶ 5-6. On that call, counsel for Objector explained the concerns regarding the discovery responses received, request by request. *Id.*, ¶ 5. On the call, all opposing counsel were unable to articulate any rationale or justification for the responses served on March 4, 2016 or March 7, 2016, respectively. Aff. Mihara (May 6, 2016), ¶ 21. Proposed paths forward for resolution were discussed to include either the Claimants filing amended responses or Objector filing amended requests. *Id.* While the meeting focused on the *Buell* matter, it was clear that the discussion was to apply to all of the encroachment subcases. *Id.* The fact that verification had been received from the Buells, but not from any of the other Claimants, was expressly discussed and it was noted that failure to properly verify discovery responses was a violation of the rules. *Id.* This meeting lasted for over an hour. *Id.*

³ While Objector has received a copy of Ms. McCormack’s affidavit, no exhibits or attachments to the affidavit were received via facsimile. This is evidenced by the facsimile transmittal in the upper right hand of the document noting only 7 pages were transmitted. Aff. Mihara (May 6, 2016), Ex. 7.

A follow up email was sent confirming the call and that counsel for Objector considered the call to apply to the discovery received for “all the encroachment cases.”⁴ *Id.*, Ex. “9.” As noted in the email, “I did not believe we fully resolved any of the issues,” “[w]e agreed that you would advise us on how you propose to collectively proceed, in light of our concerns, by close of business on Monday, March 21, 2016[,]” and that “it is my hope that we’re able to find some middle ground.” *Id.* During the March 15, 2016 call, a follow up call was confirmed between all counsel for March 21, 2016 to allow counsel for all Claimants to confer amongst themselves in order to formulate rationale or justification for the answers and responses they provided in their original disclosures. *Id.*; *see also* Aff. McCormack, ¶ 7.

On March 16, 2016 this Court held a Status Conference on subcases 91-7102, 91-7120, and 91-7173. *See Order Setting Deadline and Status Conference* (Jan. 15, 2016). At that status conference counsel for Objector noted that there were issues with discovery and that additional time may be needed to deal with such issues. The Court seemed unwilling at that time to entertain any extension of the existing trial scheduling deadlines. The Court set a follow up status conference for March 28, 2016. *See Order Setting Settlement Conference and Status Conferences* (March 16, 2016).

On March 21, 2016, counsel for Objector met and conferred again with opposing counsel pursuant to the agreement of March 15, 2016. Aff. McCormack, ¶ 9. During that call, it was agreed to by all counsel that amended responses for the subcases implicated in the Order Setting Settlement Conference and Status Conferences (91-7102, 91-7104, 91-7120, 91-7173) would be

⁴ The discovery served in all of the “encroachment” and/or “trespass” subcases was completely identical. As an offer of proof, and because no exhibits or attachments to the affidavit of Ms. McCormack have been received as of this date, a copy of the email referenced in her affidavit is included in the affidavit of Objector’s counsel so that the record is clear. Aff. Mihara (May 6, 2016), Ex. 8.

served by March 25, 2016 so that Objector's counsel could review prior to the March 28, 2016 status conference. *Aff. Mihara* (May 6, 2016), ¶ 23. It was agreed to by counsel that amended responses in the *Buell* matter (subcase No. 92-7220) would also be served, but were not as urgent. *Id.* It is estimated that this meeting lasted between 15 and 30 minutes. *Id.* It should be noted that the March 28, 2016 status conference was for the purpose to determine which of the foregoing four subcases would continue on the trial scheduling order.

On March 25, 2016, counsel for Claimants, Mr. Semanko, sent an email stating that the discovery would not be finalized until Monday morning, March 28, 2016. *Id.*, ¶ 24, Ex. 10.

On March 28, 2016, shortly before the scheduled status conference Mr. Semanko sent an email with attached, amended discovery responses for subcase numbers 91-7102 (Hawks), 91-7104 (Hopkins), 91-7120 (Bledsoe); and 91-7173 (Hawks). *Id.*, Ex. 11.

Also on March 28, 2016, at approximately 11:30 am, counsel for both Claimants and Objector had a telephone call in which both counsel agreed that the "test cases" for the "encroachment and/or "trespass" objections filed by Objector could be subcases 91-7102 and 91-7173. *Id.* ¶ 25. During that call, counsel for Claimants advised that he had just sent, or was going to send the discovery responses due in those subcases. *Id.*

This Court held its status conference on March 28, 2016. During that conference, the Court vacated its Trial Schedule for subcase 91-7120, but left the deadlines and trial dates intact for subcases 91-7102 and 91-7173. *See Order Vacating Trial Schedule* (March 29, 2016).

On April 1, 2016, amended discovery responses were received via email from Mr. and Mrs. Buell's other counsel at Morris & Wolff, P.A. *Aff. Mihara*, ¶ 27. The amended responses were signed by Ms. Wolff for Mr. Semanko. *Id.* The cover email which transmitted the Buells' amended responses included a notation that the verification for the amended responses would be

signed shortly thereafter and delivered hard-copy via USPS. *Id.*, Ex. 12. Mr. Semanko was copied on that email. *Id.* The verification was thereafter received. *Id.*

On April 5, 2016, an email was sent to counsel for Claimants seeking to set a mutually-available time for the deposition of Claimants Steve and Deanne Hawks. Aff. Mihara (May 6, 2016), Ex. 13.

On April 7, 2016, counsel for Claimants responded that May 2, 2016 would be an available date. *Id.*, Ex. 14. On April 8, 2016, notices of deposition were sent out. *Id.*, ¶ 30.

On April 12, 2016, Objector sent its second round of discovery to Claimants. *Id.*, ¶ 16.⁵ Claimants apparently assert, however, that such discovery was served on April 13, 2016. Aff. S. McCormack, ¶ 11.

On April 22, 2016, counsel for Claimants notified counsel for Objector that he had a scheduling conflict for May 4, 2016 and would be unable to argue the motions to compel and to determine adequacy of objections on that day. Aff. Mihara, Ex. 15.

On April 25, 2016, the hearing set for May 4, 2016 was rescheduled to May 11, 2016 to accommodate the schedule conflict. *See Amended Notice of Hearings* (dtd Apr. 25, 2016)

On May 2, 2016, the depositions of Claimants Steve and Deanne Hawks were taken. Aff. S. McCormack, ¶ 11. During the deposition, Claimants admitted to having other documents in their possession which were not produced in either *Claimants' Responses* or *Claimants' Amended Responses*.⁶ Aff. Mihara (May 6, 2016), ¶ 33.

⁵ The certificate of service, along with the facsimile confirmation documents confirm that such discovery was served on April 12, 2016. Aff. Mihara (May 6, 2016), Ex. 16.

⁶ Again, due to the timing of service of the documents noted in paragraph 11 of Ms. McCormack's affidavit, and the fact that the court reporter has been on other assignments this week, a transcript of the deposition – even on an expedited basis, is not available in time to provide to the Court in this reply Brief. *Id.*, Ex. 17.

Late in the day on May 3, 2016, Claimants faxed *Claimants Steve and Deanne Hawks Amended Responses to Objectors' First Requests for Discovery with Claimant Verification* for subcases 91-7102 and 91-7173. Aff. McCormack, ¶ 13.⁷

The documents received on May 3, 2016 did not include the documents which were acknowledged as being in the possession of Claimants during their May 2, 2016 deposition. *See* Aff. Mihara (Apr. 15, 2016), Exs. 1-4, *cf.* Aff. Mihara (May 6, 2016), Exs. 18-19.

Interestingly, the notarized verifications of Mr. and Mrs. Hawks purport to have been signed on April 30, 2016 – two full days before their deposition on May 2, 2016. Aff. Mihara (May 6, 2016), Exs. 18-19.⁸

Despite best efforts to secure an advanced, expedited copy of the deposition transcripts of Mr. and Mrs. Hawks from May 2, 2016, counsel for Objector is informed that the earliest the court reporter could provide such transcripts would be Monday, May 9, 2016. Aff. Mihara (May 6, 2016), ¶ 34, Ex. 17. As such, Objector is left to simply provide the Court the affidavit of its counsel as an offer of proof as to testimony which occurred at that deposition.

ARGUMENT

A. Objector has satisfied the “meet and confer” requirement of the I.R.C.P.

Claimants dedicate approximately half of their responsive briefing alleging Objector

⁷ Again, because no attachments or exhibits were received via the affidavit of Ms. McCormack, true, accurate, and correct copies of the documents noted therein are supplied by the affidavit of counsel filed contemporaneously herewith. Aff. Mihara (May 6, 2016), Exs. 18 and 19.

⁸ It appears as if only one verification was signed and placed on responses for both subcases 91-7102 and 91-7173. It cannot be known for sure, however, as Objector did not have the benefit of having possession of these documents at the May 2, 2016 deposition to question Claimants about them. *See* Aff. Mihara, Ex. 18-19. The verification pages are the last pages for both exhibits. *Id.*

failed to properly meet and confer under the applicable rules, instead of meeting the motion to compel head on and justifying their answers and objections. *See Claimants' Response to Objector's Motion to Compel*, at 1-5. Claimants fail to cite this Court or Objector to a single reported case which would support their arguments.

Given the similarity between the Idaho civil rules and their federal counterparts, and the lack of case law in Idaho, it is appropriate for Idaho courts to turn to federal authority for guidance. *See Herrera v. Estay*, 146 Idaho 674, 678, 201 P.3d 647, 651 (2009).

The purpose of the requirement under Rule 37(a)(2) is to meet in good faith to attempt to resolve the discovery dispute without the need for formal court involvement. *See Shuffle Master, Inc. v. Progressive Games, Inc.*, 170 F.R.D. 166, 171 (D. Nev. 1996)⁹ (“The certification requirement was added to subparagraph (a)(2)(B) of Fed.R.Civ.P. 37 in order to encourage litigants to resolve discovery disputes by informal means before filing a motion with the court”). The certification requirement is intended to facilitate courts’ interests in securing a just, speedy, and inexpensive determination in every action. *Id.*

In order to satisfy the rule, the moving party must have, in good faith conferred or attempted to confer with the nonresponsive party regarding the discovery dispute. *Id.* A party must have had or attempted to have had an actual meeting or conference. *Id.* Conferring under the rule must be a personal or telephonic consultation during which the parties engage in meaningful negotiations or otherwise provide legal support for their position. *Id.* at 172.

As noted above and affirmed by both counsel for Claimants as well as counsel for Objector, both via affidavit, attorneys for the parties met telephonically to discuss their relative

⁹ *Shuffle Master* has been cited as recently as 2014 for the proposition noted herein. *See Martin v. Nevada, Division of Insurance*, 2014 WL 1917703, No. 3:13-CV-00047-RCJ-WGC (D. Nev. 2014).

positions regarding this discovery dispute; once on March 15, 2016, and again on March 21, 2016. Aff. Mihara (May 6, 2016), ¶¶ 21, 23. The first meeting lasted over an hour, the second lasted between 15 and 30 minutes. Follow up emails were also sent pursuant to those calls. *Id.*, ¶ 22, 24.

It is readily apparent that the meet and confer requirement under Rule 37 has been met. Neither the rule's language or spirit requires a party to "re-meet and re-confer." Claimants are correct when they observe that, "Objector has even admitted that the First Responses are "significantly different" than the Amended Responses." *Claimants' Response to Objector's Motion to Compel*, p. 4. The answers, responses, and objections went from bad to worse.

1. **The fact that Claimants served amended responses only in subcases 91-7102, 91-7104, 91-7120, and 91-7173, and the *Buell* matter, is proof that the meet and confer process was intended by the parties to encapsulate subcases 91-7102 and 91-7173.**

Claimants argue that there was no "meet and confer" specifically regarding the discovery concerns for subcases 91-7102 and 91-7173. *Claimants' Responses to Objector's Motion to Compel*, p. 3. ("the topic of the March 15 conference call primarily addressed the responses from Jack and Nancy¹⁰ (sic) Buell, not Claimants.... Although the responses for the Buells and Claimants are similar, there was no clear explanation by Objector of the specific concerns with Claimants' First Responses. In fact, counsel for Objector made no attempt to meet and confer regarding Claimants (sic) First Responses.") It should be noted that the discovery requests were identical. Aff. Mihara (May 6, 2016), Ex. 8, *cf.* Aff. Mihara (Apr. 15, 2016), Exs. 1, 2. The responses for the Buells and Claimants were also largely similar, if not identical. *Id.*

¹⁰ Mrs. Buell's first name is Eleanor, not "Nancy." See caption for subcase No. 92-7226.

Claimants make their argument in the same document which they state, “[d]uring the conference call on March 21, 2016, Claimants [in subcases 91-7102 and 91-7173] agreed to provide amended responses to Objector’s discovery requests, in accordance with the concerns explained by Objector for the responses by Jack and Nancy (sic) Buell in Subcase No. 92-07226.” *Id.* (emphasis added).

In the affidavit of Claimants’ counsel, she acknowledges receipt of an email following up on the March 15, 2016 conference call which stated expressly, “[w]hile the discussion focused on the specific answers to the *Buell* matter, the theme of our concerns of deficiency run consistent throughout the discovery we received for all the encroachment cases.”¹¹ Aff. McCormack, ¶ 8 (emphasis added).

Again, subcases 91-7102 and 91-7173 were expressly discussed on the March 21, 2016 conference call and Claimants agreed to provide amended responses to discovery in those cases by March 25, 2016 – even though they didn’t actually produce such amended responses until just prior to the March 28, 2016 status conference. Aff. Mihara (May 6, 2016), ¶¶ 23, 26, Ex. 11.

Apparently under Claimants view, when a party serves identical discovery to multiple parties who are all represented by the same attorney, a “meet and confer” conference is required for each separate matter. Such an approach would hardly comport with the rule’s purpose of securing “a just, speedy, and inexpensive determination of every action.” *Shuffle Master*, 170 F.R.D. at 171. Objector’s discovery requests, as well as the responses received from all claimants, were nearly, if not totally, identical. Aff. Mihara (May 6, 2016), ¶ 17. Such an approach would be a needless waste of time.

¹¹ Again, the discovery requests in the *Buell* matter were identical to that of subcases 91-7102 and 91-7173. *See* Aff. Mihara (May 6, 2016), Ex. 12, *cf.* Aff. Mihara (Apr. 15, 2016), Exs. 3-4.

Actions speak louder than words. The rhetorical question becomes: if Claimants were so unsure as whether the meetings between counsel on March 15, 2016 and March 21, 2016 did not apply to their subcases – why did they produce amended discovery responses pursuant to those meetings?

Objector submits that Claimants' argument that there was a failure to meet and confer under Rule 37 in this matter is unfounded.

2. Claimants argument that Objector was compelled to meet and confer a second time on Claimants' Amended Responses is unfounded.

Again, Claimants fail to point this Court and Objector to any case law which would support their assertion that Objector was compelled to meet and confer a second time after receiving similarly deficient *amended* discovery responses.

Claimants state, "Objector made no attempt to confer regarding the Amended Responses provided by Claimants." *Claimants' Response to Objector's Motion to Compel* at 3. Claimants fail to grasp how Rule 37 was intended to operate.

Objector attempted to secure a proper disclosure to its discovery without formal court involvement via the telephone conferences on March 15, 2016 and March 21, 2016. Despite the fact that such conferences yielded inadequate amended responses subsequently to being provided inadequate original responses, Rule 37 does not require further consultation.

Claimants go on to address Objector's interrogatory No. 7 and their response thereto. *Id.* at 4. It should be noted that Claimants fail to specifically address either interrogatories No. 1 or 4, both of which were also part of the motion to compel. Similarly and interestingly, Claimants fail to assert that their response to interrogatory No. 7 was sufficient.

As an offer of proof, Objector asserts that facts came out in testimony at the May 2, 2016 deposition which were known to Claimants at the time the original and amended responses were

served and which were responsive to Interrogatory No. 7 – were not disclosed in either the original or amended responses. *Aff. Mihara* (May 6, 2016), ¶ 33.

Again, Claimants fail to point to any authority which would support such a reading of the rule. For the reasons articulated above, Objector submits that Claimants’ argument that Objector was required under Rule 37 to re-meet and re-confer is unfounded.

3. Claimants’ argument alleging a deficiency of “meet and confer” and their view on how the rule operates would eviscerate the right of a party to compel discovery.

According to Claimants, when a party propounds discovery and receives deficient responses, meets and confers regarding their concerns, and then receives similar or more deficient amended responses – the process should then start anew.

Claimants fail to point to any case law which would support such a reading of the discovery rules. *See Claimants’ Response to Objector’s Motion to Compel*.

Under Claimants’ approach, a party could simply stonewall and sandbag an opponent in a repetitious “meet and confer” cycle. Once the requirement is met for the original discovery, the party could then simply present similarly deficient, or worse, amended discovery responses to the requesting party (as in this case). The cycle could continue, *ad infinitum*, without any resolution – barring the party seeking discovery from ever being able to bring a motion to compel.

Adopting Claimants’ view on how the “meet and confer” requirement of Rule 37(a)(2) works would result in poor administration of justice, is bad public policy, and would eviscerate meaningful discovery.

4. Interrogatories 4 and 8 do not seek legal conclusions and Interrogatory No. 4 is not vague. Claimants never explained their answer to Interrogatory No. 1.

- a. **Interrogatory Nos. 4 and 8 do not seek legal conclusions, and any objection as to legal conclusions in the answers to those interrogatories has been waived.**

Claimants assert that the questions posed in interrogatories 4 and 8 require them to make a legal conclusion regarding ownership of submerged lands of the St. Joe River and submerged lands underlying their points of diversion. *Claimants' Response to Objector's Motion to Compel*, p. 5.

It is important to reference exactly what interrogatories 4 and 8 actually seek.

Interrogatory No. 4 and Claimants' Answer, in pertinent part, reads:

INTERROGATORY NO. 4: Before installing the diversionary works in the St. Joe River, did Claimant(s), or Claimant(s)[] predecessors in title request 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 this 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." ...

Aff. Mihara (Apr. 15, 2016), Exs. 1, 2, *cf.* Exs. 3, 4.

No portion of Interrogatory No. 4, on its face, seeks any establishment of ownership of any parcel of land. The interrogatory simply asks whether Claimants or their predecessors in title requested permission of the United States or the Tribe to encroach upon the submerged lands of the St. Joe River.

While Claimants identified specific language, "permission... to encroach upon the submerged lands of the St. Joe River," they did not specify *why* they believe such language was

allegedly vague.¹² Claimants do not specify why they believe such language to be vague in *Claimants' Response to Objector's Motion to Compel*.

Claimants attempt to validate their “vague as to time” objection.¹³ *Claimants' Response to Objector's Motion to Compel* at 7 (“Objector does not account for the long stretch of time that existed before diversionary works were installed and the possibility of multiple diversionary works installations at different times by different people”). However, Claimants did not include this specific reason for time vagueness in either their original or amended discovery responses. It took a motion to compel for Claimants to attempt to justify their objections in responsive briefing.

Interrogatory No. 8, and Claimants' Amended Response, in pertinent part, reads:

INTERROGATORY NO. 8: If the Claimant(s) assert anyone other than the Coeur d'Alene Tribe owns the submerged lands underlying 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.” ...

Aff. Mihara (Apr. 15, 2016), Ex. 1, 2.

Unlike interrogatory No. 4 above, Claimants do not attempt to justify the “vague as to time” objection in their response briefing as to interrogatory No. 8. *See Claimants' Response to Objector's Motion to Compel* at 7.

¹² Claimants failed to make such an objection in Claimants Responses, and as such it should be deemed waived. In *Ayers*, supra, the court observed that, “[a]ll objections must be stated with specificity and any objection not raised is waived.” 240 F.R.D. at 221. Claimants cannot make new objections in their amended responses which they did not make in Claimants' original responses.

¹³ Again, this objection was made first in *Claimants' Amended Responses* and not in *Claimants' Responses*, and as such it has been waived.

Interrogatory No. 8 seeks to establish whether anyone is *asserting* ownership. Whether or not someone *asserts* ownership is a matter of fact, not of law. Claimants' allegation that this interrogatory seeks a legal conclusion is simply unfounded.

In their response briefing Claimants note extensively that Objector is entitled to discover "facts." *Claimants' Response to Objector's Motion to Compel* at 5 (citing I.R.C.P. 26(b)(1) and I.R.C.P. 33(b)). Simply put, Objector is entitled to discover "facts," and obtain documents which support Claimants' legal theories. Claimants failed to fully and fairly provide any facts or specify documents which were responsive to the interrogatory.

Like interrogatory No. 4, the vagueness and "legal conclusion" objections contained in interrogatory No. 8 were waived because Claimants only made such objection in *Claimants' Amended Responses* and did not do so in their original *Claimants Responses*. See *Ayers, infra*, 240 F.R.D. at 221.

Claimants go on to assert that, "Claimants have their own legal conclusions and arguments on the issue of ownership of submerged lands, but are not required to use their discovery responses to provide Objector with those legal arguments." *Claimants' Response to Objector's Motion to Compel* at 6. The foregoing statement is indicative of the gamesmanship Claimants are engaging in with these subcases.

Knowing what legal theories Claimants are asserting is essential to be able to engage in meaningful discovery at all. This was the very topic of discussion at the March 16, 2016 hearing during which counsel for the Tribe complained of not knowing what legal theories were at issue. Without knowing what theories are at issue, there is simply no way of knowing where to focus discovery to seek facts which support such theories.

In the lone footnote of Claimants' responsive briefing, Claimants allege that counsel for Objector "admitted" that some of the interrogatories, specifically, interrogatories Nos. 8, 9, 12, 13, 14, and 15 sought legal conclusions. *Claimants' Response to Objector's Motion to Compel* at 5 n.1 (citing Aff. McCormack, ¶ 6).

Such an allegation is categorically denied. Aff. Mihara (May 6, 2016), ¶ 21. Ms. McCormack must be mistaken in her recollection. The record is clear that Objector only sought answers to eight (8) interrogatories from Claimants in its initial discovery requests. Aff. Mihara (Apr. 15, 2016), Exs. 1-2. There simply are no interrogatory Nos. 9, 12, 13, 14, and 15 contained in the discovery requests at issue. *Id.* It is impossible to make evidentiary concessions for interrogatories which were never asked. Furthermore, such allegations are red herrings as the only interrogatory at issue in the motion to compel is interrogatory No. 8. For the reasons set forth above, it is now before the Court as to whether such interrogatory seeks a legal conclusion and/or whether the objection has been waived.

Claimants go on to cast aspersions on opposing counsel alleging other agreements which were simply never made. Claimants allege in their footnote:

However, during the March 21 conference call, counsel for Objector reneged on his earlier offer to amend the requests and insisted that Claimants provide qualified answers, which is what the Claimants did in their Amended Responses.

Claimants' Response to Objector's Motion to Compel at 5 n.1 (citing Aff. McCormack, ¶ 6).

(emphasis added). The foregoing statement is an intentional misrepresentation to this Court and is refuted by the evidence in the record.

Paragraph 6 of Ms. McCormack's affidavit states in its entirety:

[d]uring the March 15 conference call counsel for Objector admitted that some of the interrogatories, specifically Interrogatory Nos. 8, 9, 12, 13, 14, and 15, sought a legal conclusion and offered to consider amending those requests or, alternatively, offered that Claimants should provide qualified answers.

Aff. McCormack, ¶ 6 (emphasis added). The operative language is “*offered to consider amending those requests.*” *Id.* By opposing counsel’s own language, there was no firm offer. An offer to *consider* doing something is completely different than an unequivocal offer to do something. Claimants conjure a concrete agreement with a weak foundation.

In fact, *considering* options available to the parties to resolve the discovery dispute is a duty of counsel under the rules. *Shuffle Master*, 70 F.R.D. at 171-72.

Again, Ms. McCormack cites to Mr. Mihara’s email following up on the very conversation she references in paragraph 6 of her affidavit. Aff. McCormack, Ex. D; *see also* Aff. Mihara (May 6, 2016), Ex. 9. That email reads, in pertinent part:

I did not believe we fully resolved any of the issues... We agreed that you would advise us on how you propose to collectively proceed, in light of our concerns, by close of business on Monday, March 21, 2016. Please let me know if my understanding is incorrect. ...

Moving forward, it is my hope that we’re able to find some middle ground. Again, I thank you for your time and willingness to address our concerns in good faith.

Aff. Mihara (May 6, 2016), Ex. 9 (emphasis added).

Ms. McCormack fails to note anywhere in her affidavit, and Claimants fail to allege anywhere in their responsive briefing that any counsel for Claimants (or even co-counsel for the Buell’s) had responded to that email alleging that Objector had unequivocally offered to amend their discovery requests.

For the foregoing reasons and reasons stated in its original motion to compel, Objector would submit that interrogatories 4 and 8 do not seek legal conclusions, that such objections have been waived, and that Claimants assertion that Objector had reneged on an alleged promise to amend its requests is unfounded. If there had been such agreement, then the words, “[w]e

agreed that you would advise us on how you propose to collectively proceed...” would be meaningless, because an agreement had been reached for Objector to amend its requests.

b. Interrogatory No. 4 is not vague.

Claimants address only their vagueness objection to interrogatory No. 4 head on.

Claimants’ Response to Objector’s Motion to Compel at 7.¹⁴

Claimants allege that “Objector does not account for the long stretch of time that existed before diversionary works were installed and the possibility of multiple diversionary works installations at different times by different people.” *Id.* Furthermore, “Claimants described the language they felt was vague, but still answered accordingly.” *Id.*

Despite Claimants’ explanation as to why they allege the interrogatory was vague as to time, such is not in keeping with the allegation that “Claimants described the language they felt was vague.” *Id.* Claimants attempt to mislead the reader. The specific language identified by Claimants as being allegedly vague in interrogatory No. 4 is “permission... to encroach upon the submerged lands of the St. Joe River.” Aff. K. Mihara (Apr. 15, 2016), Exs. 1, 2. The specific language identified in Claimants’ answer to interrogatory No. 4 had nothing to do with timing. Further, the quoted language is not vague at all.

While Claimants explain this lone temporal objection in their responsive briefing, they failed to explain their rationale for the objection (or any other objections) in their original or amended answers to discovery. *Id.*

For the foregoing reasons and reasons stated in its original motion to compel, Objector would submit that interrogatory No. 4 is not vague and that this Court should overrule the objections made and strike unresponsive portions of the answer.

¹⁴ Again, such objection has been waived for reasons noted above.

c. Claimants never explain their answer to Interrogatory No. 1.

Claimants allege “[s]pecifically regarding Interrogatory No. 1 and Request for Production No. 1, Claimants answered, explained and provided requested documents which were in their possession and control despite the objections made within its responses.”

It should be noted that Claimants’ answer to interrogatory No. 1 is precisely the same in *Claimants’ Amended Responses* as that originally submitted to Objector in *Claimants’ Responses*. Aff. Mihara (Apr. 15, 2016), Exs. 1, 2, *cf.* Exs. 3, 4. The precise language of Claimants’ answer to Interrogatory No. 1 should also be noted: “See Responses to Requests for Admissions Nos. 1-15.” Aff. Mihara (Apr. 15, 2016), Ex. 1-2 (emphasis added).

The foregoing answer was in regard to the question: “If you deny any of the Requests for Admission 1-15 above, please state the legal and/or factual basis for each denial, if any.” *Id.*

Despite the fact that the requests for admission and Claimants’ responses spanned approximately 8 pages, no facts were given and no legal theories were disclosed. Aff. Mihara (Apr. 15, 2016), Exs. 1, 2. Importantly, no objections were noted. *See Memo in Support of Motion to Compel* at 7-8. As such any objection to the interrogatory is waived.

The precise language of Claimants’ Response and Claimants’ Amended Responses to request for production No. 1 should also be noted:

REQUEST FOR PRODUCTION NO. 1: Please produce 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 this objection, Claimants respond as follows: See documents previously produced or referenced and documents produced herewith.

Aff. Mihara (Apr. 15, 2016), Exs. 1, 2; *cf.* Aff. Mihara (Apr. 15, 2016), Exs. 3 and 4.

Again, both the discovery request and the discovery response for both *Claimants' Responses* and *Claimants' Amended Responses* are identical. *Id.* Claimants fail to cite to any language in request for production No. 1 which they allege is vague, and they fail to give the reader an indication of how such a request is overly broad. *See Ayers*, *infra*, 240 F.R.D. at 221 (“[m]ere recitation of familiar litany that interrogatory is ‘overly broad, burdensome, oppressive, and irrelevant’ does not suffice as [a] specific objection.”).

Under Claimants’ view of discovery, however, despite the fact that Objector has received *verbatim* the same deficient answers a second time - Objector is required to meet and confer again on *Claimants' Amended Responses*. *Claimants' Response to Objector's Motion to Compel* at 3-4 (“even if the March 15 conference call was sufficient as a meet and confer for Claimants’ First Responses, counsel for Objector has not met and conferred with counsel for Claimants regarding the Amended Responses.”).

Because no objection to interrogatory No. 1 has been registered, this Court should order that Claimants fully and fairly answer this interrogatory. The Court’s order should require Claimants to set forth factual and legal bases which support their responses to each request for admission requested (Nos. 1-15).

Because Claimants fail to specify how request for production No. 1 is vague or overly broad, such objection should be overruled.

d. Claimants' argument that the information sought in the discovery requests was available by other means is unsupported in law.

Claimants go on to state,

“In addition, Objector served Claimants with *Objector's Second Requests for Discovery to Claimants* for both Subcase Nos. 91-7102 and 91-7173 on April 13, 2016, and subsequent to the filing of this Motion (sic), deposed Claimants on May 2, 2016. See *Aff. McCormack*, ¶ 11. These multiple discovery methods have

given Objector ample opportunity to request and receive information and documents from Claimants through less vague questions and requests.”

Claimants’ Response to Objector’s Motion to Compel at 7.

Despite Claimants’ assertion that these “multiple” discovery methods have given Objector ample opportunity to request and receive information and documents... Objector has received no new documents from Claimants, other than the verification pages received on May 3, 2016. *Aff. Mihara*, Exs. 18, 19. Claimants have not yet responded to *Objector’s Second Requests for Discovery to Claimants. Id.*, ¶ 31.

Apparently, according to Claimants, parties to litigation do not need to respond to discovery if there are alternate or subsequent discovery avenues available to obtain the information. Claimants may not have stopped to think they received a second round of discovery and were deposed *because* they failed to properly respond to Objector’s First Requests for Discovery.

A litigant should not be forced to resort to *additional* discovery methods because opposing litigants refuse to fully and fairly answer and respond to discovery requests.

5. The fact that no specificity for referenced documents was made in relation to subcases 91-7102 and 91-7173 was directly discussed at the March 15, 2016 conference call and unlike subcases 91-7102 and 91-7173.

Claimants allege that the issues related to interrogatory No. 7 were not discussed at the March 15, 2016 meet and confer telephone conference. *Claimants’ Response to Objector’s Motion to Compel* at 4.¹⁵ Again, like her recollection of the evidentiary concessions, Ms. McCormack may be mistaken. *Aff. Mihara* (May 6, 2016), ¶ 21.

¹⁵ This is the only time Claimants’ counsel alleges that an issue related to Objector’s Motion to Compel was not specifically discussed at that meeting. *See Aff. McCormack*. Opposing counsel has a different recollection. *Aff. Mihara* (May 6, 2016), ¶ 21. Despite the different recollection regarding the issue surrounding interrogatory No. 7, the only inference to be taken from Ms.
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The concerns noted in Objector's Motion to Compel, and supporting memoranda focuses on the fact that the referenced documents, e.g., those found on websites, were not specifically identified in regard to the question posed by the interrogatory. *Memorandum in Support of Motion to Compel* at 13-14.

The failure to specify documents referenced was a common complaint regarding Claimants' original discovery responses. Most of Claimants' responses to requests for production of documents contained in *Claimants' Responses* simply reference the IDWR website or direct Objector to documents held by the Idaho Department of Lands. Aff. Mihara (Apr. 15, 2016), Exs. 1-4 (Requests for Production Nos. 4, 5, 6, 7, 8, 9, 11, 12, and 13).

Claimants' answer to interrogatory No. 7 was the only answer to an interrogatory which referenced documents contained on a website. *Id.*

Even, *arguendo*, if the issue was not specifically directed to Claimants' answer for interrogatory No. 7, the *issue* of listing a website and not specifying which documents contained thereon were responsive to the discovery requests was most certainly discussed during the meet and confer telephone conferences of March 15, 2016 and March 21, 2016. Aff. McCormack, ¶ 5 ("During the conference call counsel for Objector explained its concerns regarding the discovery responses, request by request." (emphasis added)).

It should be noted that the failure to precisely specify documents referenced is lacking in both *Claimants' Responses* and *Claimants' Amended Responses*. Aff. Mihara (Apr. 15, 2016), Exs. 1-4.

McCormack's affidavit would be that the other bases for Objector's Motion to Compel were specifically discussed.

Claimants can hardly be “surprised” that their failure to address the specificity issues regarding references to websites after the March 15, 2016 and March 21, 2016 meet and confer conferences results in a motion to compel.

6. Under the rules, Claimants may not provide unresponsive answers to satisfy the duty to answer discovery requests fully and fairly.

Claimants repeatedly assert that despite their objections, they have properly answered Objector’s discovery requests. *Claimants’ Response to Objector’s Motion to Compel* at 6, 7.

It is telling that Claimants fail to discuss the specifics of their answers and responses to the discovery requests at issue in this motion, and why such answers and responses fully and fairly answer the questions posed. Claimants’ failure to address, head-on, any of their answers point the Court to the inescapable conclusion that the answers and responses provided did not fully and fairly answer the discovery requests.

Claimants allege that, “[s]pecifically regarding Interrogatory No. 1 and Request for Production No. 1, Claimants answered, explained and provided requested documents that were in their possession and control despite the objections made within its responses.” *Claimants’ Response to Objector’s Motion to Compel* at 7.

During her May 2, 2016 deposition, Mrs. Hawks acknowledged having *additional* documents in her and her husband’s possession and control which were not produced in any of the discovery responses provided by Claimants on March 7, 2016, March 28, 2016, and May 3, 2016. Aff. Mihara, ¶ 33. In fact, if it were not due to independent investigation by counsel for Objector, such documents may very well never have come to light.¹⁶

¹⁶ Such documents include, but are not limited to copies of deeds and maps of Claimants’ properties which were not produced. Aff. Mihara (May 6, 2016), ¶ 33. Counsel has attempted best efforts to obtain an expedited, advanced transcript of the deposition hearing on May 2, 2016, REPLY BRIEF IN SUPPORT OF OBJECTOR’S MOTION TO COMPEL - 24

Claimants may simply not provide unresponsive answers and claim to have fully and fairly responded to Objector's discovery requests.

7. Claimants must defend their objections and cannot stand upon them to preserve issues for trial.

Claimants assert that, "[t]he objections do not form the basis of the answer, but preserve issues to be decided during trial." *Claimants' Response to Objector's Motion to Compel* at 6.

Claimants may not simply stand on their objections to preserve issues to be decided during trial. Like discovery in general, the principal purpose of interrogatories is to afford parties information regarding facts involved in the issues in the suit to narrow the issues for trial, enable the requesting party to prepare for trial, and to reduce the possibility of surprise at trial. *See Smith v. Big Lost River Irr. Dist.*, 83 Idaho 374 (1961).¹⁷

Discovery requests must be given a reasonable construction, and a responding party has the obligation to explain and support its objections. *See, e.g., Ayers v. Continental Cas. Co.*, 240 F.R.D. 216, 221 (N.D. W.Va. 2007) ("Gamesmanship to evade answering as required is not allowed."). "[A]n objection to requested discovery may not be made until a lawyer has 'paused and consider[ed]' whether based on a 'reasonable inquiry,' there is a 'factual basis [for the]... objection.'" *Mancia v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354, 358 (D.Md. 2008).

In *Ayers*, the court observed that, "[a]ll objections must be stated with specificity and any objection not raised is waived." 240 F.R.D. at 221. The court went on, "[m]ere recitation of

but has been advised that the earliest such transcript could be available is on Monday, May 9, 2016 – the due date of this reply brief. *Id.*, Ex. 17.

¹⁷ Idaho R. Civ. P. 56 expressly allows for discovery to be used during summary judgment proceedings.

familiar litany that interrogatory is ‘overly broad, burdensome, oppressive, and irrelevant’ does not suffice as [a] specific objection.” *Id.* (citing *Momah v. Albert Einstein Medical Center*, 164 F.R.D. 412, 417 (E.D.Pa. 1996)).

In this case, Claimants make the barest of attempts to justify any of their objections. *See Claimants’ Response to Objector’s Motion to Compel*. It appears that Claimants’ “catch all” is that the purpose of objections is to preserve issues for trial. *Id.*, p. 6 (“The objections do not form the basis for the answer, but preserve issues to be decided during trial.”) Claimants also fail to cite to specific language and/or provide the factual bases for many of their objections.

Idaho R. Civ. P. 56 expressly allows for the use of discovery on summary judgment. I.R.C.P. 56; *see also Overton v. City of Harvey*, 29 F. Supp. 2d 894, 901 (N.D. Ill. 1998). The summary judgment motion deadline in this case is a short two weeks away, May 27, 2016. *See Trial Scheduling Order*.

It has become apparent that Claimants’ strategy is to use their objections as shields in an attempt to evade summary judgment. That is not the purpose of objections and this Court should not sustain such a strategy.

For the foregoing reasons and reasons set forth in the motion to compel and supporting memoranda, the Court should overrule Claimants’ objections and require them to fully and fairly answer the discovery requests.

8. Objector did not bring its motion to compel based solely on Claimants failure to verify their answers but such failure, alone, forms the basis of such motion.

It should be noted that Objector did not bring its motion to compel based solely on Claimants’ failure to verify their interrogatories. *See Memorandum in Support of Motion to Compel*. Claimants assert that incorrect verification of interrogatories does not justify a motion to compel. *Claimants’ Response to Objector’s Motion to Compel* at 8. Claimants attempt to sugar-

coat the issue. The issue is not that the verifications were “incorrect,” they were non-existent. Claimants did not verify anything until April 30, 2016, and did not deliver the verifications to Objector until one day after their May 2, 2016 depositions. Aff. Mihara (May 6, 2016), ¶ 33, Exs. 18, 19. Mr. Semanko, Claimants’ counsel attempted to verify Claimants’ discovery responses. Aff. Mihara (Apr. 15, 2016), Exs. 1-4. As will be shown below, such attempt is forbidden under the rules.

As in other parts of Claimants’ arguments, Claimants’ fail to cite any case law which supports their argument. Likewise, as opposed to other areas of their argument, Claimants do not cite to their affidavit of counsel to allege that the issue of failure of proper verification was not discussed during the March 15, 2016 and March 21, 2016 “meet and confer” telephonic status conferences. *cf. Claimants’ Response to Objector’s Motion to Compel*, p. 4 (“During the March 15 conference call, Objector did not address any of the issues described in its Motion to Compel regarding the Buells’ response to Interrogatory No. 7”).

As noted above, when Idaho case law is silent, Idaho courts should look to federal authority for guidance. *See Herrera v. Estay*, 146 Idaho 674, 678, 201 P.3d 647, 651 (2009).

Under Fed. R. Civ. Pro. 33, answers to interrogatories must be verified and must be signed by the person answering the interrogatory, not only by the party’s attorney. *Hindmon v. Natl.-Ben Franklin Life Ins. Corp.*, 677 F.2d 617, 619 (7th Cir. 1982) (observing that interrogatory answers signed by attorney and not party violated “the clear mandate of Federal Rule of Civil Procedure 33(a)”); accord *Overton v. City of Harvey*, 29 F. Supp. 2d 894, 901 (N.D. Ill. 1998) (striking as summary judgment exhibit plaintiff’s unverified answers to interrogatories signed only by attorney); *McDougall v. Dunn*, 468 F.2d 468, 472-73, 476 (4th Cir. 1972) (finding error in sustaining interrogatory responses signed under oath only by

counsel); *Fonville v. Dist. of Columbia*, 230 F.R.D. 38, 45 (D.D.C. 2005) (finding paralegal's signing of interrogatory answers "utterly improper" since interrogatories must be answered by party to whom they were served).

Requiring a party to sign interrogatory responses under oath serves the critical purpose of ensuring that the responding party attests to the truth of the responses. *Knights Armament Co. v. Optical Sys. Tech., Inc.*, 254 F.R.D. 463, 467 (M.D. Fla. 2008) (even supplemental interrogatory responses must be verified).

In addition to providing information, interrogatory answers may be used at trial "to the extent allowed by the Federal Rules of Evidence." Fed. R. Civ. P. 33(c). Pursuing information through interrogatories is "an efficient and cost-effective method of discovery and marshaling evidence for trial." *VICA Coal Co., Inc. v. Crosby*, 212 F.R.D. 498, 505 (S.D.W. Va. 2003); see also *Walls v. Paulson*, 250 F.R.D. 48, 52 (D.D.C. 2008) (noting dual function of interrogatories and rejecting argument that party's failure to sign interrogatory responses and supplemental responses is harmless).

Substituting an attorney's verification for the party's sworn statement would undermine that important function and effectively convert the attorney into a witness in the matter. *Saria v. Massachusetts Mut. Life Ins. Co.*, 228 F.R.D. 536, 538-39 (S.D.W. Va. 2005) (granting defendant's motion to compel complete verified interrogatory responses and noting that since interrogatory responses may be used at trial they are "nothing short of testimony").

Up until May 3, 2016 at the earliest, the only verifications in subcases 91-7102 and 91-7173 were signed solely by Mr. Semanko, Claimants' counsel. Aff. Mihara (Apr. 15, 2016), Exs. 1-4. Defendants' counsel's verification simply could not satisfy Claimants' obligations in responding to Objectors' interrogatories.

In light of the foregoing, extensive case law on the issue, and the fact that Claimants fail to make any argument to the contrary or cite to any case law which would support their failure to provide such verification prior to Objector filing its motion to compel.

In this case, non-verification of interrogatories was expressly discussed during the “meet and confer” meeting on March 15, 2016 as being a “technical violation of the rules.” Aff. Mihara (May 6, 2016), ¶ 21. It is also interesting to note that after the “meet and confer” meetings on March 15, 2016 and again on March 21, 2016, verification documents were provided for the *Buell* subcase, but not for the *Hawks*’ subcases. Aff. Mihara (May 6, 2016), Ex. 8, p. 2.

The actual verification of Claimants for their amended responses in subcases 91-7102 and 91-7173 were not served upon counsel for Objector until May 3, 2016. Aff. Mihara (May 6, 2016), ¶ 35, Exs. 18, 19. This is despite Claimants executing verification documents on April 30, 2016. *Id.*, Exs. 18, 19.

Claimants, and their attorney, were present during a deposition on May 2, 2016. Not a word was said about providing any verification. *Id.*, ¶ 33. This is especially egregious in that Claimants’ verifications were signed on April 30, 2016 – two days before the deposition. *Id.*, Exs. 18, 19.

As noted above, answers provided in discovery may be used as evidence at trial or other hearings. They may be used as admissions of a party opponent. Answers to interrogatories may also be used for impeachment purposes. Claimants actions, in not only failing to timely verify their original or amended discovery responses, as well as providing verification of discovery documents after depositions have occurred, are not simply minor violations of the discovery rules.

Such actions deprived Objector's ability to question Claimants during their May 2, 2016 depositions regarding their verifications produced on May 3, 2016.

Objector would, again, point out the fact that the failure to verify the discovery responses was not the only reason it brought its motion to compel. However, based on the case law cited above, Objector would submit that failure to properly verify discovery responses, alone, is indeed a proper basis to bring a motion to compel.

On this basis the Court should grant Objector's motion to compel.

CONCLUSION

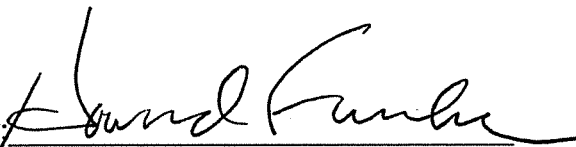
In light of the foregoing, there is but one inescapable conclusion that both Claimants' original and amended responses, and objections contained therein, were deficient and failed to fully and fairly respond to Objector's discovery requests.

The facts in the record establish that Claimants have been dilatory and have engaged in evasive discovery tactics which have prejudiced Objector's ability to discover evidence.

Based on the facts and law of this case the Court should grant Objector's motion to compel for the reasons set forth in its original motion, memorandum in support, and this reply memorandum.

Respectfully submitted this 6th day of May, 2016.

HOWARD FUNKE & ASSOCIATES, P.C.

By: 

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

Certificate of Service

I hereby certify that on the 6th day of May, 2016, a copy of the foregoing Reply Brief in Support of Objector's Motion to Compel was served on the following counsel of record and other entities via the method indicated below:

Norman Semanko

Sarah McCormack

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

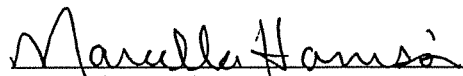
P.O. Box 83720

Boise, Idaho 83720-0098

☒ First Class Mail, Postage Prepaid

☐ Facsimile @ (208) 287-6700

☐ Hand-delivery


Marcella Harrison