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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

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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

Case No. 49576

Steve and Deanne Hawks,

Claimant(s),

v.

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

Objector.

)
) Subcase Nos.: 91-7102; 91-7173
)
)
)
)
)
)
) OBJECTOR'S REPLY BRIEF IN
) SUPPORT OF ITS MOTION TO
) DETERMINE SUFFICIENCY OF
) OBJECTIONS AND TO DEEM CERTAIN
) MATTERS ADMITTED

COMES NOW, Objector, the Coeur d'Alene Tribe (hereinafter "Tribe" or "Objector"),

and hereby offers the Court this reply brief in support of its motion to determine adequacy of
answers or objections.

OBJECTOR'S REPLY BRIEF IN SUPPORT OF ITS
MOTION TO DETERMINE SUFFICIENCY OF OBJECTIONS
AND TO DEEM CERTAIN MATTERS ADMITTED - 1

ADDITIONAL BACKGROUND

The Tribe provides additional background information in its *Reply Brief in Support of its Motion to Compel*. The relevant facts in that brief are also relevant here and are incorporated herein.

ARGUMENT

1. Objector has Satisfied the “Meet and Confer” Requirement of the I.R.C.P.

The Tribe’s arguments under this section are identical to those made in its *Reply Brief in Support of its Motion to Compel* and are incorporated herein.

2. The Idaho Rules of Civil Procedure Specifically Allow for Motions to Determine the Sufficiency of an Objection to a Request for Admission

Claimants’ cite to Idaho Rule of Civil Procedure 36(a) and argue that they have followed the rule because “[d]espite the fact that Claimants objected to the Request for Admission, Claimants still answered all Requests for Admission with a denial or a qualified admission.” Claimants’ Response to Objector’s Motion to Determine Sufficiency of Objections and to Deem Certain Matters Admitted at 4, *In Re CSRBA*, No. 49576, subcase Nos.91-7102, 91-7173 (May 4, 2016) (hereinafter “Claimants’ Brief”). Although Claimants correctly cite I.R.C.P. 36(a) as the applicable rule, they do not quote the applicable portion of that rule to this case. Specifically, I.R.C.P. 36(a) provides that:

The party who has requested the admissions may move to determine the sufficiency of the answers *or objections*. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served.

Id. (emphasis added). The Idaho Rules of Civil Procedure specifically authorize the Tribe's motion to determine the sufficiency of the Claimants' objections and direct this Court to determine whether the objections lodged are justified.

Claimants argue that their objections operate to "preserve issues to be decided during trial." Claimants' Brief at 5. Claimants cite no authority that would suggest this is the proper procedure. Just the opposite, the Rules of Civil Procedure contemplate addressing objections to requests for admission during the discovery period, not at trial. I.R.C.P. 36(a). This point is further evidenced by the fact that requests for admission are admissible on summary judgement. I.R.C.P. 56(c). By allowing admissions at summary judgement, the Rules make clear that any objections to those admissions must be resolved prior to summary judgement and not during a later trial.

From a practical perspective, if these objections are not addressed until trial, after the discovery period has closed, then there would be no opportunity for the parties to reframe the questions asked consistent with the Court's ruling, if necessary. This would create exactly the type of surprise the Idaho Supreme Court has found discovery is supposed to prevent. *Smith v. Big Lost River Irr. Dist.*, 83 Idaho 374, 383 (1951).¹ Claimants have thrown an objection in front of every single request for admission lodged by the Tribe. As a result, if we wait until trial to resolve these objections, the Tribe will have no idea what evidence it will have at its disposal during trial and/or summary judgement. These objections must be resolved during the course of the discovery period in order for the parties to adequately prepare, avoid undue surprise, and to know the scope of evidence that may be available during summary judgement and/or trial.

¹ The rational in *Big Lost River Irr. Dist.* was applied specifically to interrogatories. However, the rational applies equally well to requests for admission.

Claimants also argue that “[The Tribe] acts as if, by objecting, Claimants have failed to answer the Requests for Admission,” and “[i]t does not matter that Objector does not like the answers provided by Claimants. Objector cannot compel Claimants to answer in a manner that they would prefer”. Claimants’ Brief at 5. This argument is not consistent with the relief requested by the Tribe in its motion wherein it stated “[o]nce the Court rules on the Claimants’ objections . . . the requests for admissions and Claimants’ answers thereto speak for themselves . . .” Objector’s Motion to Determine Sufficiency of Objections and to Deem Certain Matters Admitted at 2, *In Re CSRBA*, No. 49576, subcase Nos.91-7102, 91-7173 (April 15, 2016). With the exception of those requests for admission where Claimants failed to answer the question asked,² the Tribe is not seeking for Claimants to somehow amend their answers. Rather, it seeks to have the Claimants’ objections overruled and allow for Claimants’ answers to stand on their own.

Despite the Claimants’ unprecedented assertion to the contrary, the Idaho Rules of Civil Procedure specifically require objections to requests for admission be determined upon motion of the requesting party and during the discovery period, not at trial.

3. Unresponsive Answers Should be Deemed Admitted by this Court

Claimants argue its nonresponsive answers to certain requests for admission should not be deemed an admission. Claimants’ Brief at 5. Claimants’ argument boils down to the notion that so long as Claimants provide any answer, no matter how off base, the request for admission has been answered sufficient to satisfy the rules. However, the Rules do not allow unresponsive

² For example, Requests for Admission Nos. 1, 2, 3, and 4. Objector’s Memorandum in Support of its Motion to Determine Sufficiency of Objections and to Deem Certain Matters Admitted, *In Re CSRBA*, No. 49576, subcase Nos.91-7102, 91-7173 (April 15, 2016). See also, section 4, *infra*.

answers to satisfy the duty to answer requests for admission fully and fairly. Claimants themselves cite the rule that is on point in this particular instance:

The answer shall *specifically deny* the matter A denial shall *fairly meet the substance of the requested admission*, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or *deny the remainder*

I.R.C.P. 36(a) (emphasis added). Rule 36 goes on to specify that “if the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served.” *Id.* As such, this Court should find that a partial denial means the portion not denied is admitted, a qualified admission that does not deny the remainder is admitted, and an answer that does not meet the substance of the requested admission is admitted. As pointed out in our initial briefing on this matter, as well as in section 4, *infra*, Claimants failed, even after supplying three different sets of discovery responses, to specifically admit or deny the substance of Request for Admission Nos. 1, 2, 3, 4, 6, and 7. Instead, Claimants decided to answer questions that were not asked in an attempt to confuse the issues and manufacture objections.³ To the extent these Requests, or any other requests, have not been specifically denied, this Court should deem them admitted.

³ For example, in their own briefing, Claimants acknowledge that they

admitted that the cases, which matched the language used by the Objector in its requests, say what they say. Claimants went so far as to actually quote the language Objector referred to in order to make it clear that the Claimants were admitting the language of the cases. However, the Claimants denied those Requests for Admission because Claimants do not agree that the cases or language of the cases apply in this situation or agree that the cases stand for the legal conclusions Objector is assuming.

4. The Tribe's Requests for Admission go to Facts and the Application of Law to Facts

Claimants next make the conclusory argument that Requests for Admission Nos. 1, 2, 3, 4, 6, 7, 10, 11, and 13 all require Claimants to “make legal conclusions” in violation of I.R.C.P. 36(a). Claimants’ Brief at 6. Claimants do not explain how the Tribe’s request for admission go to pure legal questions, nor do they provide any case law that would support their position. Instead, Claimants’ conclude that “[i]t is clear that Objector is not attempting to discover an opinion or contention that relates to fact or the application of fact, as Rule 33(b) permits.” *Id.* Claimants conflate questions of law with questions that are bad for their case.

Unlike the Claimants, the Tribe has iterated out specific arguments in its initial brief as to why each of its Request for Admissions are either a question of fact or mixed question of law and fact. Objector’s Memorandum in Support of its Motion to Determine Sufficiency of Objections and to Deem Certain Matters Admitted, *In Re CSRBA*, No. 49576, subcase Nos. 91-7102, 91-7173 (April 15, 2016) (hereinafter “Tribe’s Memo in Support of Motions to Determine Sufficiency”).⁴ In proffering Requests for Admission 1, 2, 3, 4, and 13 the Tribe seeks to understand whether claimants admit or deny that the Tribe owns, and has certain rights to, the submerged lands underlying the navigable waters of the Coeur d’Alene Indian Reservation. This is undoubtedly a mixed question of law and fact. The Tribe’s requests for

Claimants’ Brief at 8. However, the Tribe’s requests for admission had nothing to do with whether certain cases “say what they say.” The Tribe sought an admission or denial as to the actual substantive questions posed in its requests for admission, not whether a certain case says something or not. The Tribe’s questions were clear on their face and the Claimants failed to answer them.

⁴ The Tribe emphasizes that Claimants have not made a single non-conclusory argument in either its response to the Tribe’s discovery requests or in its response to the Tribe’s motions to determine sufficiency and/or compel. The Tribe respectfully requests the Court keep this fact in mind in making its ruling on the Tribe’s motions.

admission are not calling for a bare “interpretation of documents, letters, communications, statutes [or] conclusions of law.” *Pittsburg Hotels Ass’n v. Urban Redevelopment Authority of Pittsburg*, 29 F.R.D. 512 (W.D. Penn. 1962). Instead, the Tribe’s question goes to the interrelationship between the law as it is applied to particular lands and facts that are relevant in this case. The Tribe seeks to know whether Claimants intend to litigate the issue of the Tribe’s ownership and rights to the submerged lands overlying navigable waters within the Reservation so that it can adequately prepare.

Requests for Admission Nos. 10 and 11 are pure questions of fact. Those questions seek the Claimants to admit that they do not currently, nor have they ever, received permission from the Tribe or the United States to have their diversion works over the submerged lands of the St. Joe River. Aff. Mihara, Ex. 1, p. 7-8. It bears repeating, these questions have *nothing* to do with who owns the submerged lands in question. It was the Claimants, not the Tribe that brings up the question of ownership in answering this question. However, the plain language of the question asks whether they had permission from the Tribe or the United States, regardless of ownership. The Claimants are welcome to qualify their answer to make clear they do not believe they need permission, but they cannot deliberately misconstrue the question in order to manufacture an objection.

Finally, Claimants did not lodge objections to Request for Admissions Nos. 6 and 7 on the basis that they called for a legal conclusion. Aff. Mihara, Ex. 1, p. 5-6. Although Claimants may wish they had lodged such an objection, they cannot use this briefing as an opportunity to create new objections.⁵

⁵ Importantly, since the time that the Tribe filed its motion to determine the sufficiency of objections and to deem certain matters admitted, Claimants have submitted yet another round of OBJECTOR’S REPLY BRIEF IN SUPPORT OF ITS MOTION TO DETERMINE SUFFICIENCY OF OBJECTIONS AND TO DEEM CERTAIN MATTERS ADMITTED - 7

Even if the Claimants had objected, the objection should be overruled. Once again, Claimants answer a question that was not asked in an effort to create an objection. The Tribe did not ask any questions regarding the “historic” or “natural” high water mark. *Id.* Instead, in Request for Admission No. 6 the Tribe seeks to know the Claimants’ position regarding whether they agree or do not agree that, as applied to the particular facts and circumstances related to their claim, the presumed ordinary high water mark outlined by the Idaho Supreme Court is applicable at their point of diversion. This, once again, is a mixed question of law and fact. Claimants have failed to actually answer this question, choosing instead to opine as to the “natural” or “historic” high water mark rather than either admitting or denying that the presumed ordinary high water mark for the Lake and the St. Joe River is 2128 feet. As a result, the Request for Admission should be deemed admitted.

Request for Admission No. 7 is a pure question of fact. That question asks the Claimants to admit that all/or some of the Claimants’ diversion works are below the presumed ordinary high water mark of the St. Joe River. *Aff. Mihara*, Ex. 1, p. 5. The term “ordinary high water mark” is defined to mean 2128 feet above sea level. *Aff. Mihara*, Ex. 5, p. 4. Therefore, this question asks the Claimants to admit that all/or some of the Claimants’ diversion works are below an elevation of 2128 feet. Whether or not Claimants’ diversion works are above or below a certain point is a pure question of fact that has nothing to do with the law. Claimants failed to answer this question. Instead, Claimants “den[ied] that the historic OHWM or the natural high

amended responses to the Tribe’s first requests for discovery. *Aff. K. Mihara* (May 6, 2016), Ex. 18, 19. No new objection was lodged in that amended response to Request for Admission Nos. 6 and 7 on the basis that it calls for a legal conclusion. As such, the first time the Tribe, or this Court, has seen this objection is in the Claimants’ Response to Objector’s Motion to determine Sufficiency. *See*, Claimants’ Brief at 6.

water mark for the Coeur d'Alene Lake and the St. Joe River is or has always been 2128 feet and further deny that the point of diversion and/or some or all of the diversion works at issue in this claim are below the applicable natural or ordinary high water mark." Aff. Mihara, Ex. 1, p. 4. This answer is nonresponsive and as such, once Claimants' objections are overruled, this question should be deemed admitted.

The Tribe's ultimate goal in proffering Requests for Admission in this case is to narrow the scope of the issues to be tried on summary judgement and/or at trial. *Boyd Truck Lines*, 11 F.R.D. at 70. The court in *Boyd Truck Lines* clearly stated that the rule "is not only referring to direct basic facts, but also to ultimate facts" *Id.* To date, Claimants have done an excellent job hiding the issues they plan to litigate in these subcases. Despite Claimants' bald assertions to the contrary, the Tribe is not "endeavoring to introduce certain legal conclusions through forced admissions in discovery rather than to litigate them during trial," but is instead endeavoring to know what issues will be litigated at trial. Claimants' Brief at 6. The Tribe is not looking for Claimants' "legal conclusions and arguments," but is instead seeking a straight up yes or no answer to its requests for admission so that it can prepare accordingly. Claimants' Brief at 7. The Tribe is entitled to know whether it should prepare to litigate and/or address issues related to the ownership of the submerged lands at Claimants' point of diversion, questions related to the elevation of the ordinary high water mark of Lake Coeur d'Alene and the St. Joe River, and/or whether Claimants assert some special right that allows them access to tribal submerged lands for the purpose of consumptively using water. *The process* that is proscribed for determining whether these issues are to be litigated is the discovery process.

This Court should overrule Claimants' objections because the Tribe's Requests for Admission are proper questions of fact and the application of law to the facts and are designed to narrow the scope of the litigation in these subcases.

5. The Claimants' Vagueness Objections Should be Overruled

Claimants argue that their objections should be sustained because they "specify which phrases and language were vague" Claimants' Brief at 8.⁶ The Tribe does not agree with Claimants' conclusory statement that their objections were sufficiently specific. *See, e.g.* Tribe's Memo in Support of Motions to Determine Sufficiency for Request for Admission Nos. 1, 4, 10, 11, and 13 ("Claimants have not explained why the term is vague, provided alternative readings of the allegedly vague term, or cited to any precedent that would suggest the term or similar terms are vague."). However, the thrust of the Tribe's argument has little to do with whether the Claimants properly explained their objections. Instead, the Tribe argues that Claimants' objections should be overruled because the objected-to terms are not vague in the first place.

At no point, in either their responses to the Tribe's discovery requests, or in their response to the Tribe's motion to determine the sufficiency of their answers, do the Claimants

⁶ In addition, Claimants argue that their responses to discovery are not deficient because "Claimants . . . answered every Request for Admission with an admission, denial, or qualified admission, regardless of the objections." Claimants' Brief at 8. This argument has already been addressed in section 2, *supra*. Claimants also argue that "it is excessive and unnecessary for Objector to file a motion to compel," at this point in the litigation because the Tribe has "not only deposed both Claimants . . . but has served Claimants with *Objector's Second Requests for Discovery to Claimants* for both subcase Nos. 91-7102 and 91-7173. Claimants do not explain why this is relevant to the question of whether their objections are sufficient under the Idaho Rules of Civil Procedure. The Tribe should not have to waste time and resources reframing questions that it believes were initially asked consistent with the Rules, regardless of how much time and opportunity it may have to do so. This is particularly true given the fact that Claimants' behavior to date makes it clear to the Tribe that, regardless of how it reframed its questions, Claimants would nonetheless object on vagueness grounds simply as a means to prevent having to directly admit anything, no matter how basic, in this litigation.

explain the basis for their conclusory assertion that the terms objected to are vague. In fact, the only argument made in its response brief regarding specific requests for admission are for Requests Nos. 5 and 8. The extent of Claimant's argument is that the terms "'exterior boundary' and 'navigable' . . . created ambiguity for Claimants." Claimants' Brief at 8. In contrast, the Tribe has explained, in detail, why each and every term objected to is not vague. *See*, Tribe's Memo in Support of Motions to Determine Sufficiency for Request for Admission Nos. 1, 4, 5, 6, 7, 8, 10, 11, and 13.

Further, some of the terms Claimants assert to be vague have been specifically defined by the Tribe in the definitions section of the Tribe's discovery requests. *See*, Tribe's Memo in Support of Motions to Determine Sufficiency for Request for Admission Nos. 6 and 7.

Rather than attempt to rebut the Tribe's arguments, Claimants make the conclusory statement that "Objector assumes Claimants can guess what it means by those terms, but this is not the case." *Id.* However, the Tribe should not have to define each and every term used in a discovery request in order to avoid unreasonable and excessive vagueness objections. This is particularly true as to terms that are in common usage in society and in the course of a water rights adjudication. *See e.g.*, Tribe's Memo in Support of Motions to Determine Sufficiency for Request for Admission Nos. 4, 8, 10, 11, and 13. Further, "where the question is somewhat ambiguous, but the nature of the information sought is apparent, the proper solution is to provide an appropriate response." *Deyo v. Kilbourne*, 84 Cal. App. 3d 771, 782 (1978). In this case, Claimants obviously understood the nature of the information sought because, as they readily admit in their response brief, "Claimants . . . answered every Request for Admission with an

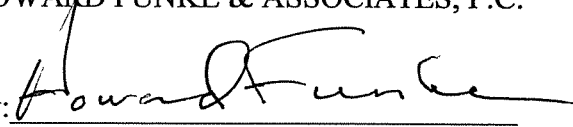
admission, denial or qualified admission, regardless of the objections.” *Id.*⁷ As such, rather than lodge unnecessary and needless objections, the Claimants proper course of action should have been to qualify their answers to make clear their understanding of the term and proceed to answer the question. Accordingly, Claimants’ objections on vagueness grounds should be overruled.

CONCLUSION

For the foregoing reasons, the Tribe requests this Court overrule Claimants’ objections to the Tribe’s discovery requests and to order certain matters admitted, and, where necessary, to further compel Claimants to fully and fairly respond to the Tribe’s discovery requests.

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

⁷ Just like the party in *Hunter v. International Systems Controls Corp.*, Claimants here have repeatedly objected to a Request for Admission on vagueness grounds and then go on to answer the question. As described by Claimants, the “obscure district court” in *Hunter*, also known as the United States Federal District Court for the District of Western Missouri, found that this sort of “misconstruction and failure to make discovery was a callous disregard of discovery obligations, and a designing, self-serving unilateral construction of [the interrogatories].” 56 F.R.D. 617, 625 (W.D. Mo 1972). Rather than distinguish their behavior from the behavior of the party in *Hunter*, Claimants argue that their behavior is okay “in the context of responses to requests for admission,” because “[t]he standard and procedure for responses to request for admission are undoubtedly different for interrogatories.” Claimants’ Brief at 7. However, the Federal District Court was clearly discussing this issue in the context of all party’s “discovery obligations,” not just interrogatories. *Hunter*, 56 F.R.D. at 625. Quite frankly, Claimants’ attempt to split hairs between their obligation to make good-faith answers in interrogatories versus their obligation to make good-faith answers in requests for admission is indicative of their behavior throughout the discovery process. Simply put, simultaneously calling a question ambiguous and then answering the question amounts to “deliberately misconstrue[ing] a question for the purpose of supplying an evasive answer.” *Deyo v. Kilbourne*, 84 Cal. App. 3d 771, 782 (1978).

Certificate of Service

I hereby certify that on the 6th day of May, 2016, a copy of the foregoing Objector's Reply Brief in Support of its Motion to Determine Sufficiency of Objections and to Deem Certain Matters Admitted 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

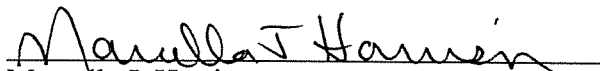
P.O. Box 83720

Boise, Idaho 83720-0098

☒ First Class Mail, Postage Prepaid

☐ Facsimile @ (208) 287-6700

☐ Hand-delivery


Marcella J. Harrison