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MAY 19 2016

DEPARTMENT OF
WATER RESOURCES

Counsel for the Coeur d'Alene Tribe

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

In re CSRBA

Case No. 49576

)
) Subcase Nos.: 91-7102 and 91-7173
)
) **OBJECTOR'S ANSWERS AND**
) **RESPONSES TO CLAIMANTS' FIRST**
) **SET OF DISCOVERY REQUESTS**
)
)
)

COMES NOW Objector Coeur d'Alene Tribe ("Objector or Tribe"), by and through undersigned counsel of record, pursuant to Idaho Rules of Civil Procedure and Special Master Brigitte Bilyeu's ("Special Master") Trial Scheduling Order dated December 4, 2015, and hereby submits its responses to *Claimants' First Set of Discovery Requests to Objector Coeur d'Alene Tribe* as follows:

OBJECTOR'S RESPONSES TO CLAIMANTS'
FIRST SET OF DISCOVERY REQUESTS - 1

REQUESTS FOR ADMISSION

General Denial: Any matter not specifically admitted in the following requests for admission is hereby denied.

REQUEST FOR ADMISSION NO. 1: Please admit that the United States of America is the owner of any submerged lands that you claim an interest in.

RESPONSE: Please see the following objections and response.

Objection on the ground that the term “owner” as used in this request for admission is vague and ambiguous. The Tribe is unsure of how Claimants define the foregoing term. Such term is not defined in the definitions section of *Claimants’ First Set of Discovery Requests to Objection Coeur d’Alene Tribe* (“*Claimants First Discovery Requests*”). The term “owner” could mean owner of legal title, or it could mean owner of beneficial title.

Objection on the ground that the term “submerged lands” as used in this request for admission is vague and ambiguous. The Tribe is unsure of how Claimants define the foregoing term. Such term is not defined in the definitions section of *Claimants’ First Discovery Requests*. The term “submerged lands” could mean submerged lands underlying either navigable or non-navigable waters.

Objection on the grounds of relevance. Ownership of submerged lands, either navigable or non-navigable, Objector claims ownership interests in at points other than Claimants’ point of diversion is irrelevant to the resolution of the two subcases noted above. Thus, this request seeks information beyond the scope of I.R.C.P. 26.

Without waiving these objections, and subject thereto, the Tribe partially admits this request for admission in that the United States is the legal owner of title to the submerged lands underlying navigable waters at Claimants’ point of diversion. The request for admission is denied to the extent the Tribe holds beneficial title to the same lands.

Pursuant to the case of *United States v. Idaho*, 95 F.Supp.2d 1094 (D. Idaho 1998), *aff'd Idaho v. United States*, 210 F.3d 1067 (9th Cir. 2000), *aff'd Idaho v. United States*, 533 U.S. 262 (2001), title was quieted in favor of the United States, as trustee, and the Coeur d'Alene Tribe, as the beneficially interested party of the trusteeship, to the bed and banks of the St. Joe River lying within the current boundaries of the Coeur d'Alene Indian Reservation.

Objector expressly denies that Claimants own the submerged beds and banks of the St. Joe River underlying their point of diversion.

REQUEST FOR ADMISSION NO. 2: Please admit that the United States of America is not a party in the two above-captioned subcases.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 3: Please admit that you did not file a protest to the application for water right permit for either of the water rights claimed in the two above-captioned subcases and that a water right license was issued by the State of Idaho for both water rights.

RESPONSE: Please see the following objection and response.

Objection on relevancy grounds. Whether Objector did, or did not, file a protest to the application for [a] (sic) water right permit for either of the water rights claimed in the two above-captioned subcases and that a water right license was issued by the State of Idaho for both rights is irrelevant to whether such rights claimed were initiated and/or maintained in trespass. As noted in the permit for claim 91-7102, "[t]he issuance of this permit in no way grants any right-of-way or easement across the land of another." *See* CDAT OBJ-7102 0016. Likewise, for claim 91-7173, "[t]his right does not grant any right-of-way or easement across the land of another." *See* CDAT OBJ-7173 0012. Both referenced documents are produced herewith. Objector expressly denies that failure to file any protest results in permission for Claimants to encroach and/or trespass upon any lands owned by the Tribe.

Notwithstanding the foregoing objection and denial, and subject thereto, the Tribe

responds as follows: Admitted.

REQUEST FOR ADMISSION NO. 4: Please admit that the St. Joe River is the source of water for the water rights claimed in the two above-captioned subcases.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 5: Please admit that the point of diversion for each water right claimed in the above-captioned subcases is at the point described in the Director's Report for those water rights.

RESPONSE: Please see the following objections and response.

Objection on the ground that the term “point described in the Director’s Report for those water rights” as used in this request for admission is vague and ambiguous. The Tribe is unsure of how Claimants define the foregoing term. Such term is not defined in the definitions section of *Claimants’ First Discovery Requests*. In responding below, the Tribe’s response is based on the understanding the Claimants are referring to two water right claims, however, the term “point” used in this request for admission is used in the singular tense. In addition, the Director’s Report describes an area, not a point, for the point of diversion.

Without waiving the foregoing objection, and subject thereto, and to the extent Claimants are referring to two different areas, one for each water right claim, the request for admission is partially admitted for claims 91-7102 and 91-7173 to the extent and reasons therefore set forth below, the remainder is denied.

For water right claim 91-7102, the Director’s Report, under “Other Provisions Necessary for Definition / Administration of this Water Right” in the “Explanatory Material” expressly states, “Parcel No. RP001300200061A for point of diversion.” Upon information and belief after review of the documents referenced by Claimants in their responses to the Tribe’s discovery requests, exhibits marked by Claimants at their May 2, 2016 deposition, and documents produced herewith, Objector denies that the point of diversion for water right claim 91-7102 is within the

boundaries of Parcel No. RP001300200061A.

For water right claims 91-7102 and 91-7173, the point of diversion elements are listed as, “T46N R02W S07 LOT7 (NESE) Within Benewah County.” Objectors admit that Claimants’ point of diversion for 91-7102 is likely located somewhere within government lot 7, as reported by the director. Objectors deny that the point of diversion for 91-7173 is within government lot 7. Further, the legal description reported for both claims is for an area larger than the property owned by Claimants. Objector admits that Claimants own certain lands within government lot 7 but denies that Claimants own the land where Claimants’ points of diversion for water right claims Nos. 91-7102 and 91-7173 are actually located.

INTERROGATORIES

INTERROGATORY NO. 1: Please identify each and every individual known to you who has any knowledge of, or who claims to have knowledge of, any facts or evidence discoverable in this matter, together with a summary of each person's knowledge, including your own.

ANSWER: Please see the following objections and answer.

Objection on the grounds that the interrogatory calls for a speculative answer. The Tribe does not know of all persons who purport to have knowledge of claims to have knowledge of, any facts or evidence discoverable in this matter. Further, to the extent the Tribe knows of persons who may have such knowledge, it is unable to provide a complete summary of all such knowledge as such knowledge can only be known by such persons.

Objection on the ground that the term “summary” as used in this interrogatory is vague and ambiguous. The Tribe is unsure of how Claimants define the foregoing term. Such term is not defined in the definitions section of *Claimants’ First Discovery Requests*. The term could mean a “brief” summary, or it could also mean an “extensive” summary, and thus the scope of the term

undefined.

Without waiving the foregoing objections and subject thereto, the Tribe answers as follows: the following list are those individuals currently known to the Tribe who may have knowledge or, or who claims to have knowledge of, any facts or evidence discoverable in this matter, together with the topics of those persons' knowledge:

(1) Mr. Steve Hawks. A deposition of Mr. Hawks occurred on May 2, 2016. Claimants ordered a transcript of the foregoing deposition. The deposition speaks for itself. Mr. Steve Hawks c/o Norman Semanko, Attorney at Law, 101 S. Capitol Blvd., 10th Floor, P.O. Box 829, Boise, Idaho 83701-0829. (208) 345-2000. Mr. Hawks' occupation, title, and business, upon information and belief, is that of an independent carpenter.

(2) Ms. Deanne Hawks. A deposition of Ms. Hawks occurred on May 2, 2016. Claimants ordered a transcript of the foregoing deposition. The deposition speaks for itself. Ms. Deanne Hawks c/o Norman Semanko, Attorney at Law, 101 S. Capitol Blvd., 10th Floor, P.O. Box 829, Boise, Idaho 83701-0829. (208) 345-2000. Ms. Hawks' is believed to be retired.

(3) Mr. Phillip Cernera. Mr. Cernera is the Director, Lake Management Department - a Tribal employee charged with managing the Tribe's Lake Management Department. Mr. Cernera has general knowledge of the ordinary high water mark ("OHWM") and submerged lands. Mr. Cernera has knowledge of Tribal codes and enforcement regulations relating to Tribal submerged lands underlying navigable waters. Mr. Phillip Cernera c/o Howard Funke & Associates, P.C., P.O. Box 969, Coeur d'Alene, Idaho 83816-0969. (208) 667-5486.

(4) Mr. Jason Brown. Mr. Brown is a Tribal employee charged with encroachment enforcement. Mr. Brown has general knowledge of the ordinary high water mark ("OHWM") and submerged lands in relation to Claimants' diversionary works at Claimants' point of diversion. Mr.

Brown also has knowledge of Tribal codes and enforcement regulations relating to Tribal submerged lands underlying navigable waters. Mr. Jason Brown c/o Howard Funke & Associates, P.C., P.O. Box 969, Coeur d'Alene, Idaho 83816-0969. (208) 667-5486.

(5) Mr. Scott Fields. Mr. Fields is a Tribal employee and is the Program Manager for the Tribe's Water Resources office. Mr. Fields has general knowledge of the ordinary high water mark ("OHWM") and submerged lands. Mr. Fields has knowledge of Tribal codes and enforcement regulations relating to Tribal submerged lands underlying navigable waters. Mr. Scott Fields c/o Howard Funke & Associates, P.C., P.O. Box 969, Coeur d'Alene, Idaho 83816-0969. (208) 667-5486.

(6) Mr. Richard Hart. Mr. Hart is an employee of Hart West & Associates. Mr. Hart has knowledge of the history of Tribal ownership of submerged lands underlying navigable waters. Mr. Hart has knowledge of historical documents relating to such ownership. Mr. Hart has produced an expert report which has been previously provided to counsel for Claimants in Subcase Number 91-7755 (and consolidated subcases). Mr. Hart has also produced expert reports disclosed to counsel for Claimants in the United States and Tribe's Initial Disclosures filed in 2015 in Subcase Number 91-7755 (and consolidated subcases). Mr. Richard Hart c/o Howard Funke & Associates, P.C., P.O. Box 969, Coeur d'Alene, Idaho 83816-0969. (208) 667-5486.

(7) Mr. Frederick Price. Mr. Price is a U.S. Bureau of Land Management ("BLM") employee who has worked on federally reserved water rights cases in the SRBA and CSRBA. Mr. Price's title is Water Rights Specialist. Mr. Price has knowledge of documents held, maintained, and/or controlled by the BLM in its official files. Mr. Frederick Price c/o David Negri, US Department of Justice, Environment & Natural Resources Division, c/o US Attorney's Office, 800 Park Blvd., Suite 600, Boise, Idaho 83712. (208) 334-1936.

(8) Mr. James Brady. Mr. Brady is an Idaho Department of Lands (“IDL”) employee who works in the IDL submerged lands department. Mr. Brady’s title is Resource Supervisor – Lands & Waterways. Mr. Brady has knowledge of the OHWM as well as the State of Idaho’s practice of issuing encroachment permits at or near Claimants’ points of diversion for water rights 91-7102 and 91-7173. Mr. Brady also has knowledge of documents held, maintained, and/or controlled by the IDL in its official files. Upon information and belief, Mr. Brady has knowledge of IDL use of the terms “ordinary summer pool,” “summer storage level,” “normal pool,” and “OHWM.” Mr. James Brady c/o Steven W. Strack, Deputy Attorney General, Natural Resources Section Chief, Office of the Attorney General, P.O. Box 83720, Boise, Idaho 83720-0010. (208) 334-4143.

(9) Mr. Carter Fritchle. Mr. Fritchle is an Idaho Department of Water Resources (“IDWR”) employee who works on the CSRBA adjudication. Mr. Fritchle’s title is Adjudication Section Manager. Mr. Fritchle has knowledge of official policies of IDWR and IDWR’s position regarding encroachments upon submerged lands. Mr. Fritchle also has knowledge of IDWR’s official positions regarding the effect of comments in IDWR-issued permits and licenses. Mr. Carter Fritchle c/o Ms. Meghan Carter, Deputy Attorney General, Natural Resources Division, Water Resources Section, 322 E. Front Street, P.O. Box 83720, Boise, Idaho 83720-0098. (208) 287-4810.

Discovery is on-going and this answer may be supplemented should additional information responsive to this interrogatory becomes available.

INTERROGATORY NO. 2: Please identify each person who participated in preparing answers, responses and producing Documents pursuant to this first set of discovery requests.

ANSWER: Please see the following objection and answer.

Objection on the basis that this interrogatory seeks information protected by the attorney

work product doctrine and attorney-client privilege. To the extent that this interrogatory seeks information regarding the interaction between Tribal officers, agents, and employees with Tribal attorneys, this interrogatory is objectionable.

Without waiving the foregoing objection, and subject thereto, the Tribe answers as follows: Tribal employees, Mr. Phillip J. Cernera, Lake Management Director, Coeur d'Alene Tribe and Mr. Jason Brown, participated in the drafting, preparation, and review of Objector's answers and responses to this first set of discovery. Please also see signature of counsel and verification of Mr. Cernera below.

Discovery is on-going and this answer may be supplemented should additional information responsive to this interrogatory becomes available.

INTERROGATORY NO. 3: Please identify any and all expert witnesses you intend to call at the trial of this matter, and please:

- (a) Summarize each expert's background and qualifications;
- (b) State the subject matter of each expert's expected testimony;
- (c) State the substance of the facts and opinions to which each expert is expected to testify; and
- (d) Disclose all underlying facts and data upon which each expert bases his or her opinions.

ANSWER: Objector is unsure, at this time, of any other person(s) whom it may call as an expert witness(es) at the trial of this matter. Expert witness(es), if any, whom the Objector intends to call at trial will be disclosed pursuant to the Court's pretrial order.

Discovery is on-going and this answer may be supplemented should additional information responsive to this interrogatory becomes available.

INTERROGATORY NO. 4: If you contend that Claimants have made any admission or statement against Claimants' interests in this matter, please state the following:

- (a) The identity of the individual making the admission or statement;
- (b) The date, time and location where the admission or statement was made;
- (c) Whether the admission or statement was written or oral; and

(d) If the admission or statement was oral, please state the complete content of the admission or statement to the best of your recollection and knowledge.

ANSWER: Mr. Steve Hawks. The exact date, time and location of when and where the statements were made are currently unknown, but upon information and belief occurred sometime in the years 1987, 1988, 1995, and/or 1997. The statements were written as part of Mr. Hawks' application for water permit(s) to IDWR and in Claimants' joint application for an encroachment permit to the Idaho Department of Lands (IDL) and U.S. Army Corps of Engineers. Further, upon information and belief, Mr. Hawks attested in writing to certain documents submitted to the IDL and U.S. Army Corps of Engineers by other persons. Documents evidencing such statements are provided below in response to requests for production of documents and such documents speak for themselves.

Mr. Hawks made statements, orally and in writing, at his May 2, 2016 deposition. Claimants have ordered that deposition, with exhibits, and such deposition and exhibits speak for themselves.

Mrs. Hawks has also made statements, orally and in writing, at her May 2, 2016 deposition. Claimants have ordered that deposition, with exhibits, and such deposition and exhibits speak for themselves.

Discovery is on-going and this answer may be supplemented as additional information becomes available.

INTERROGATORY NO. 5: Please identify each and every Document or item that you intend to offer as an exhibit at the trial of this matter.

ANSWER: Objector has not identified trial exhibits, if any, that it intends to introduce at trial of this matter. Trial exhibits will be disclosed pursuant to the Court's pretrial order.

Notwithstanding the foregoing and subject thereto, Objector answers as follows: Objector

may offer some and/or all of the documents referenced herein and/or produced herewith and such documents speak for themselves. Specifically, please see documents identified by bates numbers in other areas of this document.

Discovery is on-going and this answer may be supplemented as additional information becomes available.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: For every expert you intend to call to testify as an expert witness at a hearing of this matter, please produce any and all reports (both formal and informal), opinions, analyses and summaries relating in any way to the issues in this matter, and any other Document that reflects an opinion relating to this matter.

RESPONSE: Please see the following objection and response.

Objection on the grounds of. The terms “relating in any way to the issues in this matter” and “an opinion relating to this matter” as used in this request for production are vague and ambiguous. The Tribe is unsure of how Claimants define the foregoing terms. Such terms were not specifically defined in *Claimants' First Discovery Requests*. There is no complaint or answers in the foregoing subcases which set forth alleged facts, legal theories or issues to be tried.

Notwithstanding the foregoing objection and subject thereto, Objector answers as follows: Please see answer to Interrogatory No. 3 above. In addition, Objector is unsure, at this time, as to which expert witness(es) it intends to call at any hearing or trial in this matter.

Objector may offer testimony of some of the persons identified in the interrogatories above. Objector is currently unaware of any expert reports, opinions, analyses, and summaries prepared by such individuals in this matter.

Discovery is on-going and this answer may be supplemented should additional information

responsive to this interrogatory becomes available.

REQUEST FOR PRODUCTION NO. 2: If any of the admissions or statements identified in Interrogatory No. 4 were written, please produce a copy of any and all documentation of the admissions and statements.

RESPONSE: Please see the following objection and response.

Objection on the grounds that the request calls for a legal conclusion. Interrogatory No. 4 noted that “[i]f you contend that Claimants have made any admission or statement against Claimants' interests in this matter...” See Interrogatory No. 4 above (emphasis added). This request for production seemingly assumes such contentions are indeed admissions or statements against interest. Such determination can only be made by a court of competent jurisdiction upon attempt of introduction of such alleged admissions or statements and thus the request calls for a legal conclusion.

Without waiving the foregoing objections, and subject thereto, the Objector responds that the following documents may be relevant and responsive to the request above:

Please see documents, bates ranges CDAT OBJ-7102 0001 to 0157 and CDAT OBJ-7173 0001 to 0152 produced herewith. In particular, please see bates CDAT OBJ-7102 0014; 0022; 0023; 0031; 0062; 0063; 0064; 0070 to 0072; 0083 to 0099; 0119 to 0121; 0129. Please also see bates CDAT OBJ-7173 0011; 0016; 0048 to 0050; 0056; 0057; 0069 to 0085; 0105 to 0107; 0113 to 0115.

Please also see documents with handwriting of Claimants attached as exhibits to their May 2, 2016 deposition.

Discovery is on-going and this response may be supplemented should additional information responsive to this interrogatory becomes available.

REQUEST FOR PRODUCTION NO. 3: Please produce any and all exhibits identified in your answer to Interrogatory No. 5.

RESPONSE: Objector has not identified trial exhibits, if any, that it intends to introduce at trial of this matter. Trial exhibits will be disclosed pursuant to the Court's pretrial order.

Notwithstanding the foregoing and subject thereto, Objector responds as follows: Please see some and/or all of the documents referenced herein and/or produced herewith and such documents speak for themselves. Specifically, please see documents, bates ranges CDAT OBJ-7102 0001 to 0157 and CDAT OBJ-7173 0001 to 0152 produced herewith.

Objector may also offer some and/or all of the documents produced and/or referenced in *Claimants Steve and Deanne Hawks' Responses to Objector's First Requests for Discovery* and *Claimants Steve and Deanne Hawks' Amended Responses to Objector's First Requests for Discovery*.

Objector may also offer some or all of the exhibits attached to the depositions of Steve and Deanne Hawks which occurred on May 2, 2016.

Discovery is on-going and this answer may be supplemented should additional information responsive to this interrogatory becomes available.

REQUEST FOR PRODUCTION NO. 4: Please produce any and all Documents and things that you may offer into evidence at the trial of this matter.

RESPONSE: Objector has not identified trial exhibits, if any, that it intends to introduce at trial of this matter. Trial exhibits will be disclosed pursuant to the Court's pretrial order.

Notwithstanding the foregoing and subject thereto, Objector answers as follows:

Objector may offer some and/or all of the documents referenced herein and/or produced herewith and such documents speak for themselves.

Objector may also offer some and/or all of the documents produced and/or referenced in *Claimants Steve and Deanne Hawks' Responses to Objector's First Requests for Discovery* and

Claimants Steve and Deanne Hawks' Amended Responses to Objector's First Requests for Discovery. Objector may also seek to introduce the *Initial Disclosures* and/or any expert reports of the United States, the State of Idaho, and the Tribe in CSRBA Subcase 91-7755 (and consolidated subcases), documents which are currently in the possession, custody, and control of Claimants' counsel.

Please also see the *State of Idaho's Responses to Objector's First Requests for Discovery to the State of Idaho* and the documents produced therewith. Objector has not yet received such documents, and therefore cannot identify any with specificity.

Discovery is on-going and this answer may be supplemented should additional information responsive to this interrogatory becomes available.

REQUEST FOR PRODUCTION NO. 5: Please produce any and all Documents and Records in your possession that indicate, or in any way relate to, the historic level of the St. Joe River.

RESPONSE: Please see the following objections and response to this request for production of documents.

Objection on the ground that the term "historic level of the St. Joe River" is a vague and ambiguous as to meaning and time, and the request is overly-broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Such term was not specifically defined in *Claimants' First Discovery Requests*. The term could potentially mean "ordinary summer pool," "summer storage level," "normal pool," "OLWM," and/or "OHWM." The term "historic level of the St. Joe River" could mean any level the St. Joe River has ever been between high and low water flows, at any location between its mouth and its headwaters, at any time between the present and time immemorial.

Objection on the grounds of relevance. The "historic level of the St. Joe River" is irrelevant to the resolution of the two subcases noted above to the extent that historic levels of the St. Joe

River may differ from the ordinary high water mark (“OHWM”). The OHWM is not determined by how often the water drops or rises about a certain level. Claimants’ ownership of any upland ends at the OHWM. Thus, this request seeks information beyond the scope of I.R.C.P. 26.

Objection on the grounds that the term “in any way relate to” as used in this request is overly-broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. In addition to the foregoing objections, Objector is in possession of many documents it has developed or received through litigation spanning over five decades which may somehow “relate to” the historic levels of the St. Joe River. A good-faith estimate is that Objector has in its possession of hundreds of thousands, if not well over a million pages of documents which may “relate” to historic levels of the St. Joe River. Some of the documents may relate to, *inter alia*, fish propagation, encroachments other than those of Claimants, navigational impediments, environmental regulations, licensing of water power and/or water storage upon submerged lands underlying navigable waters, etc. which have no relevance to the claims, objections, or responses to objections in the subcases above. The time and cost to wade through such documents is excessive, burdensome, and seeks documents protected by the attorney work product doctrine and attorney-client privilege.

Without waiving the foregoing objections, and subject thereto, the Objector responds that the following documents may be relevant and responsive to the request above:

Please see documents, including but not limited to, bates ranges CDAT OBJ-7102 0001 to 0157 and CDAT OBJ-7173 0001 to 0152 produced herewith. In particular, please see bates CDAT OBJ-7102 0008 to 0010; 0015; 0016; 0021 to 0023; 0025; 0026. Please also see bates CDAT OBJ-7173 0005; 0010 to 0012; 0016 to 0018; 0021; 0022; 0023; 0024; 0025; 0026; 0027; 0036; 0037; 0040; 0046; 0050; 0054; 0055; 0058; 0059; 0060; 0061 to 0097; 0103; 0107; 0111; 0115;

0116; and 0117.

In addition, Objector would refer Claimants to the *Initial Disclosures* of the United States, the State of Idaho, and the Coeur d'Alene Tribe in CSRBA Subcase No. 91-7755 (and 353 consolidated subcases) produced to Claimants' and Respondents' counsel in 2015 which upon information and belief were the foregoing entities' trial exhibits in the case of *United States v. Idaho*, 95 F.Supp.2d 1094 (D. Idaho 1998), *aff'd Idaho v. United States*, 210 F.3d 1067 (9th Cir. 2000), *aff'd Idaho v. United States*, 533 U.S. 262 (2001).

Please also see the *State of Idaho's Responses to Objector's First Requests for Discovery to the State of Idaho* and the documents produced therewith.

Discovery is on-going and this answer may be supplemented should additional information responsive to this interrogatory become available.

REQUEST FOR PRODUCTION NO. 6: Please produce any and all Documents and Records in your possession that indicate, or in any way relate to, the historic ownership of the land at Claimants' point(s) of diversion.

RESPONSE: Please see the following objection and response to this request for production of documents.

Objection on the grounds that the term "in any way relate to" as used in this request is vague, overly-broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Such term was not specifically defined in *Claimants' First Discovery Requests*. In addition to the objections in prior interrogatories and requests for production, Objector is in possession of many documents it has developed or received through litigation spanning over five decades which may somehow "relate to" ownership. A good-faith estimate is that Objector has in its possession of hundreds of thousands, if not well over a million pages of documents which may "relate" to historic ownership of land at Claimants' point of diversion.

Some of the documents may relate to, *inter alia*, fish harvest, aboriginal encroachments, navigational impediments, environmental regulations, licensing of water power and/or water storage upon submerged lands underlying navigable waters, etc. which have no relevance to the claims, objections, or responses to objections in the subcases above. The time and cost to wade through such documents is excessive, burdensome, and seeks documents protected by the attorney work product doctrine and attorney-client privilege.

Objection on the grounds that this request is vague and ambiguous as to the term “historic ownership” and that the request is vague as to timeframe sought. Such term was not specifically defined in *Claimants’ First Discovery Requests*. The term “historic ownership” could potentially relate to legal as opposed to beneficial ownership. The foregoing term could also potentially relate to aboriginal and/or sovereign ownership and control. In addition, it is not clear as to whether Claimants mean “historic ownership” as of the present time, or whether they mean “historic ownership” as of a timeframe prior to when they allegedly acquired any title to parcel Nos. RP005300200061A, RP00530010009AA, RP005300100095A, and/or RP005300200130A.

Without waiving the foregoing objections, and subject thereto, the Objector responds that the following documents may be relevant and responsive to the request above:

Please see documents, including but not limited to, bates ranges CDAT OBJ-7102 0001 to [0134] and CDAT OBJ-7173 0001 to [0120] produced herewith. In particular, please see bates CDAT OBJ-7102 0001 to 0005; 0007; 0008; 0014 to 0016; 0021 to 0023; 0025; 0026; 0038 to 0046; 0059; 0064; 0065; 0068; 0071 to 0134. Please also see bates CDAT OBJ-7173 0001 to 0006; 0010; 0011; 0016 to 0018; 0023 to 0032; 0044 to 0047; 0050; 0054; 0055; 0057; 0059; 0097; 0116 to 0118.

In addition, Objector would refer Claimants to the *Initial Disclosures* of the United States,

the State of Idaho, and the Coeur d'Alene Tribe in CSRBA Subcase 91-7755 (and consolidated subcases) produced in 2015 which upon information and belief were the foregoing entities' trial exhibits in the case of *United States v. Idaho*, 95 F.Supp.2d 1094 (D. Idaho 1998), *aff'd Idaho v. United States*, 210 F.3d 1067 (9th Cir. 2000), *aff'd Idaho v. United States*, 533 U.S. 262 (2001).

Please also see the *State of Idaho's Responses to Objector's First Requests for Discovery to the State of Idaho* and the documents produced therewith.

Discovery is on-going and this answer may be supplemented should additional information responsive to this interrogatory becomes available.

REQUEST FOR PRODUCTION NO. 7: Please produce any and all additional documentation that is in any way supportive of your answers to any of the foregoing interrogatories.

RESPONSE: Please see the following objections and response to this request for production.

Objection on the ground that the term "in any way supportive" is vague, ambiguous, and speculative. Such term was not specifically defined in *Claimants' First Discovery Requests*. Further, the term requires Objector to speculate upon how documents may, or may not, be supportive to certain interrogatories and requests for production.

Objector hereby incorporates its objections from the foregoing interrogatories and requests for production of documents into this response to the extent that this request seeks such information related to such objections.

Notwithstanding the objections and subject thereto, Objector responds as follows:

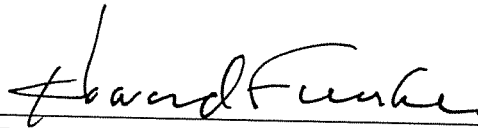
Please see documents previously produced and/or referenced in Objector's answers and responses above.

Discovery is on-going and this answer may be supplemented should additional information

responsive to this interrogatory becomes available.

DATED this 13th day of May, 2016.

HOWARD FUNKE & ASSOCIATES, P.C.

A handwritten signature in cursive script, appearing to read "Howard Funke", written over a horizontal line.

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

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May, 2016, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Sarah McCormack
Norman M. Semanko
Moffat Thomas
PO Box 829
Boise, ID 83701-0829
Facsimile (208) 385-5319
nms@moffatt.com

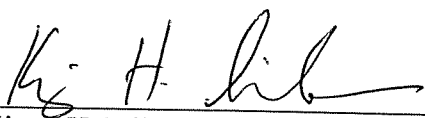
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E Mail

Steven Strack
Clive Strong
Chief, Natural Resources Division
IDAHO ATTORNEY GENERAL OFFICE
700 W. State St., 2nd Floor
P.O. Box 83720
Boise, ID 83720-0010
Facsimile (208) 854-8072

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
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☐ Facsimile
☐ E-Mail

Director
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front St.
P.O. Box 83720
Boise, ID 83720-0098
Facsimile (208) 287-6700

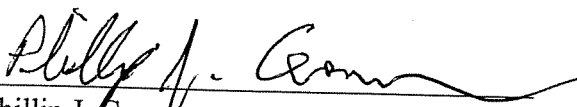
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☐ Facsimile
☐ E-Mail


By: Kinzo H. Mihara

VERIFICATION

I, Phillip J. Cernera, am the Lake Management Director for the Coeur d'Alene Tribe. I have reviewed the foregoing answers and responses to *Claimants' First Set of Discovery Requests to Objector Coeur d'Alene Tribe* and believe the same to be true, accurate, and correct to the best of my knowledge and belief, subject to the objections made by the Tribe's attorneys.

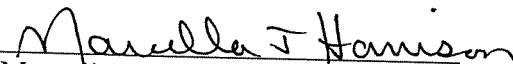
DATED this 13 day of May, 2016.


Phillip J. Cernera

NOTARIAL ATTESTATION

That on the 13th day of May, 2016, and after being duly sworn, Phillip J. Cernera, personally known to me and upon showing sufficient identification, appeared before me and executed this document.




Marcella J. Harrison, Notary Public
Residing at: Coeur d'Alene ID

My commission expires: 4.14.20