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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 FIRST SUPPLEMENTAL**
) **ANSWERS AND RESPONSES TO**
) **CLAIMANTS' FIRST SET OF**
) **DISCOVERY REQUESTS**
)

COMES NOW Objector Coeur d'Alene Tribe ("Objector" and/or "Tribe"), by and through undersigned counsel of record, pursuant to Idaho Rules of Civil Procedure and Special Master Brigitte Bilyeu's ("Special Master") *Order Amending Trial Scheduling Order* dated May 18, 2016, and hereby submits its first supplemental answers and responses to *Claimants' First Set of Discovery Requests to Objector Coeur d'Alene Tribe*. The Tribe's general denial, answers, responses, and objections are all incorporated into this filing, are expressly retained and are supplemented as follows:

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

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.

FIRST SUPPLEMENTAL ANSWER: In addition to the previously-served objections and answers, such objections and answers being incorporated herein, please see the following supplemental information:

(10) Mr. Scott Rasor. Mr. Rasor is a PLS land surveyor who is employed by Meckel Engineering, Coeur d'Alene, Idaho. At this time Meckel Engineering, specifically Mr. Scott Rasor, has been retained as a consulting, non-testifying expert pursuant to I.R.C.P. 26(b)(4)(B). Mr. Rasor visited Lots 6 and 13, Block 2 of Sylvia's Haven subdivision along with the adjacent waterway, on June 16, 2016. The Tribe reserves the right to timely redesignate Mr. Rasor as a testifying expert. Should the Tribe redesignate Mr. Rasor as a testifying expert, this answer will be supplemented and/or amended to reflect such designation.

(11) Dwight Greenfield. Mr Greenfield is an employee and staff member of Meckel Engineering. Mr. Greenfield was part of Mr. Rasor's staff who assisted in the site visit for Lots 6 and 13, Block 2 of Sylvia's Haven subdivision on June 16, 2016. Mr. Greenfield's knowledge, if any, is related to his involvement for that site visit.

(12) Eric Fairfield. Mr. Fairfield is an employee and staff member of Meckel Engineering. Mr. Fairfield was part of Mr. Rasor's staff who assisted in the site visit for Lots 6 and 13, Block 2 of Sylvia's Haven subdivision on June 16, 2016. Mr. Fairfield's knowledge, if any, is related to his involvement for that site visit.

Mr. Rasor, PLS, and the above-named members of his staff can be reached c/o Howard Funke & Associates, P.C., P.O. Box 969 Coeur d'Alene, Idaho 83816-0969; (208) 667-5486.

Despite not being a testifying expert witness, at this time, Mr. Rasor's curriculum vitae ("CV") containing his Rule 26 disclosures are produced herewith as bates CDAT OBJ-7102 0689 to CDAT OBJ-7102 0694; CDAT OBJ-7173 0684 to 0689.

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.

FIRST SUPPLEMENTAL 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.

The foregoing notwithstanding, please see First Supplemental Answer to Interrogatory No. 1 above - Objector has retained Mr. Scott Rasor, PLS, of Meckel Engineering as a non-testifying expert in subcases 91-7102 and 91-7173. Despite his status as a non-testifying, consulting expert, Mr. Rasor's CV and Rule 26 materials are attached hereto as bates CDAT OBJ-7102 0689 to CDAT OBJ-7102 0694; CDAT OBJ-7173 0684 to

CDAT OBJ-7173 0689, and Objector would refer Claimants to those materials in response to (a) and (b) above.

Mr. Rasor, along with his staff, physically visited and observed Lots 6 and 13, Block 2, of the Sylvia's Haven subdivision of Benewah County, in or near St. Maries, Idaho, along with the waterway adjacent thereto on June 16, 2016. Mr. Rasor and his staff have taken various and sundry measurements and calculations of the physical features of the foregoing properties, the elevation of the waterline of the St. Joe River as it existed on June 16, 2016 at both properties, along with the location and elevation of the points of diversion for the water right claims made in subcases 91-7102 and 91-7173.

If the Tribe designates Mr. Rasor as a testifying expert, he may testify regarding his findings as to (1) the boundaries of Lot 6 and 13, to include but not necessarily limited to the boundaries of those lots, the distance between the boundaries and Claimants' points of diversion, the depth and elevation of Claimants' water diversionary works below the water level of the St. Joe River, and the depth and elevation of the submerged lands underlying Claimants' points of diversion in the St. Joe River for those water right claims.

The Tribe reserves the right to timely redesignate Mr. Rasor as a testifying expert. Should the Tribe redesignate Mr. Rasor as a testifying expert, this answer will be supplemented and/or amended to reflect such designation.

It is anticipated that Mr. Rasor will be preparing an exhibit(s) of his findings. If the Tribe decides to designate Mr. Rasor as a testifying expert witness, such exhibit(s) will be supplemented in a timely manner and provided to Claimants and Respondents herein.

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

information responsive to this interrogatory become 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.

FIRST SUPPLEMENTAL ANSWER: In addition to the previously-served objections and answers, such objections and answers being incorporated herein, please see the following supplemental information:

Claimants made written statements on their applications for water rights permits and other documentation supplied to the State of Idaho. Such documents speak for themselves and have already been produced.

Claimants have made oral statements during their May 2, 2016 depositions. The complete content of such admissions can be gleaned from those deposition transcripts, such documents speak for themselves. Upon information and belief, such deposition transcripts were ordered by Claimants and the State of Idaho. Such deposition transcripts, along with exhibits thereto are being provided as bates Nos. CDAT OBJ-7102 0168 to CDAT OBJ-7102 0642 and CDAT OBJ-7173 0163 to CDAT OBJ-7173 0649.

Claimants have also, in writing, filed supplemental discovery answers and responses in subcases 91-7102 and 91-7173. The dates, time, and location of such supplemental discovery answers and responses are a matter of public record and Objector would refer Claimants to the file, date stamp, and certificates of service for such supplemental discovery answers and responses for that information. Specifically, Objector would point Claimants to

OBJECTOR'S FIRST SUPPLEMENTAL
RESPONSES TO CLAIMANTS' FIRST
SET OF DISCOVERY REQUESTS - 5

the statements they made in their answers and responses and supplemental answers and responses to Objector's requests for admission, interrogatories, and requests for production of documents.

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.

FIRST SUPPLEMENTAL ANSWER: In addition to the previously-served objections and answers, such objections and answers being incorporated herein, please see the following supplemental information:

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 or referenced 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.

FIRST SUPPLEMENTAL RESPONSE: In addition to the previously-served objections and answers, such objections and answers being incorporated herein, please see the following supplemental information:

Objector may offer testimony of some of the persons identified in the interrogatories

above. Specifically, as noted above, Mr. Rasor is a consulting, non-testifying expert. Should the Tribe determine Mr. Rasor's testimony at hearing and/or trial for water right claim Nos. 91-7102 and/or 91-7173 is necessary, this response will be supplemented and/or amended to reflect such designation(s).

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.

FIRST SUPPLEMENTAL RESPONSE: In addition to the previously-served objections and answers, such objections and answers being incorporated herein, please see the following supplemental information:

Objector may also offer the written statements, along with verification pages, of Claimants' answers and responses to the requests for admission, interrogatories, and requests for production of documents found in *Claimants Steve and Deanne Hawks' Responses to Objections First Requests for Discovery*; *Claimants Answers and Responses to Objector's Second Requests for Discovery*; as well as *Claimants Amended Answers and Responses to Objector's Second Requests for Discovery*. Such documents are believed to be in the possession of Claimants and thus will duplicate production will not be made.

Please also see exhibits to the depositions of Steve and Deanne Hawks, such depositions were taken on May 2, 2016. Specifically, please see Claimants' handwriting on those documents, including but not necessarily limited to, bates numbers CDAT OBJ-7102 0339; 0341; 0343; 0371; 0372; 0381; 0565; 0567; 0569; 0597; 0598; 0620; 0628; 0629;

0635; 0638; and 0642, along with documents bates numbers CDAT OBJ-7173 0334; 0336; 0338; 0366; 0367; 0376; 0381; 0382; 0560; 0562; 0564; 0592; 0593; 0615; 0623; 0624; 0630; 0633; and 0637.

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.

FIRST SUPPLEMENTAL RESPONSE: In addition to the previously-served objections and answers, such objections and answers being incorporated herein, please see the following supplemental information:

Objector may offer statements made by Steve and Deanne Hawks during their deposition of May 2, 2016, along with the exhibits thereto.

Objector may also offer the written statements, along with verification pages, of Claimants' answers and responses to the requests for admission, interrogatories, and requests for production of documents, along with documents produced therewith, found in *Claimants Steve and Deanne Hawks' Responses to Objections First Requests for Discovery*; *Claimants Answers and Responses to Objector's Second Requests for Discovery*; as well as *Claimants Amended Answers and Responses to Objector's Second Requests for Discovery* for subcases 91-7102 and 91-7173. Such documents are believed to be in the possession of Claimants and thus duplicate production will not be made.

Objector may also offer the written statements in, along with documents produced with the *State of Idaho's Responses to Objector's First Requests for Discovery to the State of Idaho* in subcases 91-7102 and 91-7173. Such documents are believed to be in the

possession of Claimants and thus duplicate production will not be made.

Objector may also offer documents specifically noted by bates or otherwise referenced herein.

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: In addition to the previously-served objections and answers, such objections and answers being incorporated herein, please see the following supplemental information:

Objector may offer some and/or all of the documents produced and/or referenced herein.

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.

FIRST AMENDED RESPONSE: In addition to the previously-served objections and answers, such objections and answers being incorporated herein, please see the following supplemental information:

Please see, specifically, documents bates CDAT OBJ-7102 0135 to CDAT OBJ-7102 0694 and CDAT OBJ-7173 0121 to CDAT OBJ-7173 0689.

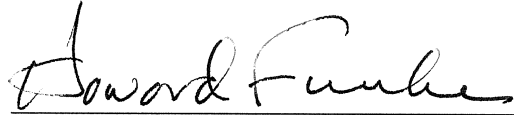
Please also see documents previously produced and/or referenced in Objector's answers and responses above.

OBJECTOR'S FIRST SUPPLEMENTAL
RESPONSES TO CLAIMANTS' FIRST
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Discovery is on-going and this answer may be supplemented should additional information responsive to this interrogatory becomes available.

DATED this 20th day of June, 2016.

HOWARD FUNKE & ASSOCIATES, P.C.

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

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

VERIFICATION

I, Phillip J. Cernera, am the Lake Management Director for the Coeur d'Alene Tribe. I have reviewed the foregoing first supplemental 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, subject to the objections made by the Tribe's attorneys.

DATED this _____ day of June, 2016.

*

Phillip J. Cernera

* Mr. Cernera is on vacation at this time and is not available to sign this verification. Upon his return he is anticipated to review at that time. If he reviews and agrees with the information provided, he is anticipated to sign and such verification will be provided. If there is information he does not agree with, such disagreement will be noted and any such answers and/or responses will be amended.

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of June, 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:

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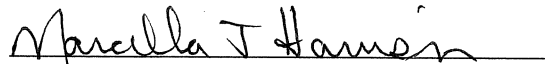
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