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Attorneys for Claimants Steve and Deanne Hawks

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 No. 91-7102

**CLAIMANTS STEVE AND DEANNE
HAWKS' ANSWERS AND RESPONSES
TO OBJECTOR'S THIRD REQUESTS
FOR DISCOVERY**

Steve and Deanne Hawks,

Claimants,

vs.

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

Objector.

COME NOW Claimants Steve and Deanne Hawks, by and through undersigned counsel of record, and provide supplemental responses to Objector's Third Requests for Discovery, dated June 7, 2016, as follows:

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 35: Please admit that the verdict and judgment in the *Appel, et al. v. Washington Water Power Co.*, Case 24822 in the District Court for the First Judicial District in and for the County of Shoshone were vacated pursuant to a settlement of the parties in that case. The case referenced in this request for admission shall be the case which documents were produced, bates Hawks 1001-2879, with *Claimants' Answers and Responses to Objector's Second Requests for Discovery*.

RESPONSE NO. 35: Objection is made to Request for Admission No. 35 on the grounds that it seeks a legal conclusion regarding the legal disposition of *Appel, et al. v. Washington Water Power Co.*, Case 24822. Notwithstanding the objection, Claimants admit Request for Admission No. 35.

REQUEST FOR ADMISSION NO. 36: Pursuant to I.R.C.P. 36, please admit that the documents attached as Attachment "1," bates numbers CDAT OBJ-7102 0158 to CDAT OBJ-7102 0163, are admissible, true, accurate, and correct copies of documents (or in other words are "authentic" and/or "genuine" within the meaning of I.R.E. 901) which reflect the vacated judgment and verdict noted in request for admission No. 35 above.

RESPONSE NO. 36: Objection is made to Request for Admission No. 36 on the grounds that it seeks a legal conclusion regarding the admissibility of documents under I.R.E. 901. Notwithstanding the objection, Claimants lack sufficient information to either admit or deny Request for Admission No. 36 at this time and, therefore, deny the same. The documents

attached hereto as Attachment "1," bates numbers CDAT OBJ-7102 0158 to CDAT OBJ-7102 0163 speak for themselves. Claimants did not find, copy or produce these documents and therefore do not know whether they are admissible, true, accurate or correct copies of documents which reflect the vacated judgment and verdict noted in Request for Admission No. 35.

REQUEST FOR ADMISSION NO. 37: Please admit that Claimants did not file any objection to the issuance of their water right license for water right claim No. 91-7102, or seek administrative or judicial review of the license once issued.

RESPONSE NO. 37: Claimants admit that the water right license for water right claim No. 91-7102 was issued without objection by anyone, including Claimants and Objector, and without any administrative or judicial review.

REQUEST FOR ADMISSION NO. 38: Please admit that the level of water depicted on Exhibit 13 to the depositions of Mr. and Mrs. Hawks, such depositions taken on May 2, 2016, was 2126.65 mean feet above sea level according to National Oceanic and Atmospheric Administration, U.S. Department of Commerce data for the date of April 21, 2016 at 1:15pm (Pacific).

RESPONSE NO. 38: Objection is made to Request for Admission No. 38 on the grounds that it is vague. Claimants are unsure exactly where Objector obtained the cited 2126.65 mean feet above sea level reading. Notwithstanding the objection, Claimants lack sufficient information to either admit or deny Request for Admission No. 38 at this time and, therefore, deny the same. Claimants did not take a reading on April 21, 2016 of the mean feet above sea level depicted on Exhibit 13 to the depositions of Claimants and do not know how or where to obtain the reading cited by Objector in Request for Admission No. 38.

REQUEST FOR ADMISSION NO. 39: Please admit that neither Steve or Deanne Hawks had visited or seen Blocks 1, 2, or 3 of the Sylvia's Haven subdivision, St. Maries, Idaho prior to the year 1978.

RESPONSE NO. 39: Admit. *See* Steve Hawks Dep. 31:15-24, May 2, 2016.

REQUEST FOR ADMISSION NO. 40: Please admit that Claimants trace the chain of their title to their properties in blocks 1, 2, and 3 of Sylvia's Haven, Benewah County, Idaho to the patent found at bates CDAT OBJ-7102 0130.

RESPONSE NO. 40: Deny. As stated in both depositions of Steve Hawks and Deanne Hawks, Claimants are not familiar with the patent presented by Objector as Exhibit 1, CDAT OBJ-7102 0130. Steve Hawks Dep. 16:18-22, May 2, 2016; Deanne Hawks Dep. 16:5-24, May 2, 2016. In addition, Claimants are not in possession of the entire chain of title to their properties in blocks 1, 2, and 3 of Sylvia's Haven, Benewah County, Idaho.

REQUEST FOR ADMISSION NO. 41: Please admit that prior to the issuance of the patent referenced in Request for Admission No. 41, any land conveyed in that patent was owned by the United States in trust for the Coeur d'Alene Tribe.

RESPONSE NO. 41: Objection is made to Request for Admission No. 41 on the grounds that it seeks a legal conclusion regarding the ownership of the land conveyed in the patent found at bates CDAT OBJ-7102 0130. Notwithstanding the objection, pursuant to the above-mentioned patent, Claimants admit that prior to the issuance of the patent referenced in Request for Admission No. 41, any land conveyed in that patent was owned by the United States. Claimants deny the remainder of Request for Admission No. 41.

REQUEST FOR ADMISSION NO. 42: Please admit that chapter 11 of title 42 of the Idaho Code is not applicable to lands owned by the United States in trust for the benefit of an Indian Tribe.

RESPONSE NO. 42: Objection is made to Request for Admission No. 42 on the grounds that it seeks a legal conclusion regarding the application of chapter 11 of title 42 of the Idaho Code and is not reasonably calculated to lead to the discovery of any admissible evidence because it seeks a legal conclusion. Notwithstanding the objection, Claimants deny Request for Admission No. 42.

REQUEST FOR ADMISSION NO. 43: Pursuant to I.R.C.P. 36, please admit that the documents attached hereto as Attachment “2,” bates numbers CDAT OBJ-7102 0643 to CDAT OBJ-7102 0654, are admissible, true, accurate, and correct copies of documents (or in other words are “authentic” and/or “genuine” within the meaning of I.R.E. 901) which reflect IDWR’s *Instructions for Filing Notice of Claim to a Water Right Acquired under State Law in the General Adjudication of Rights to the Use of Water from the Coeur d’Alene-Spokane River Basin Water System*.

RESPONSE NO. 43: Objection is made to Request for Admission No. 43 on the grounds that it seeks a legal conclusion regarding the admissibility of documents under I.R.E. 901. Notwithstanding the objection, Claimants admit that the documents attached as Attachment “2,” bates numbers CDAT OBJ-7102 0643 to CDAT OBJ-7102 0654 seem to be true, accurate and correct copies of IDWR’s *Instructions for Filing Notice of Claim to a Water Right Acquired under State Law in the General Adjudication of Rights to the Use of Water from the Coeur d’Alene-Spokane River Basin Water System*. However, Claimants lack sufficient information to either admit or deny that the documents attached are admissible and therefore, deny the same.

REQUEST FOR ADMISSION NO. 44: Pursuant to I.R.C.P. 36, please admit that the documents attached hereto as Attachment “3,” bates numbers CDAT OBJ-7102 0655 — CDAT OBJ-7102 0662, are admissible, true, accurate, and correct copies of documents (or in other words are “authentic” and/or “genuine” within the meaning of I.R.E. 901) which reflect IDWR’s *Instructions for Filing Notice of Claim to a Water Right Acquired under State Law for Domestic and/or Stockwater Purposes Where Daily Use is Less than 13,000 Gallons Per Day in the General Adjudication of Rights to the Use of Water from the Coeur d’Alene-Spokane River Basin Water System.*

RESPONSE NO. 44: Objection is made to Request for Admission No. 44 on the grounds that it seeks a legal conclusion regarding the admissibility of documents under I.R.E. 901. Notwithstanding the objection, Claimants admit that the documents attached as Attachment “3,” bates numbers CDAT OBJ-7102 0655 to CDAT OBJ-7102 0662 seem to be true, accurate and correct copies of IDWR’s *Instructions for Filing Notice of Claim to a Water Right Acquired under State Law for Domestic and/or Stockwater Purposes Where Daily Use is Less than 13,000 Gallons Per Day in the General Adjudication of Rights to the Use of Water from the Coeur d’Alene-Spokane River Basin Water System.* However, Claimants lack sufficient information to either admit or deny that the documents attached are admissible and therefore, deny the same.

REQUEST FOR ADMISSION NO. 45: Please admit that Claimants’ point of diversion for water right claim No. 91-7102 is not physically located within the exterior boundaries of Parcel No. RP005300200061A.

RESPONSE NO. 45: Deny.

REQUEST FOR ADMISSION NO. 46: Please admit that prior to the Coeur d’Alene Allotment Act of June 21, 1906 all lands within the current boundary of the

Coeur d'Alene Indian Reservation were owned by the United States in trust for the Coeur d'Alene Tribe.

RESPONSE NO. 46: Objection is made to Request for Admission No. 46 on the grounds that it seeks a legal conclusion regarding the interpretation of the Coeur d'Alene Allotment Act of June 21, 1906. Notwithstanding the objection, Claimants lack sufficient information to either admit or deny Request for Admission No. 46 at this time and, therefore, deny the same.

INTERROGATORIES

INTERROGATORY NO. 30: If your answer to any Request for Admission is anything other than an unqualified "admit," identify the Request for Admission and describe in detail the facts upon which you rely in making your answers and/or responses, name all individuals with knowledge regarding such facts, and state the documents supporting your answers and/or responses.

ANSWER NO. 30:

With regard to Request for Admission No. 36, the Response speaks for itself.

With regard to Request for Admission No. 37, see the Claimants' licensing file online on the Idaho Department of Water Resources' website at <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>. All individuals with knowledge regarding such facts are Claimants.

With regard to Request for Admission Nos. 38, 40, 41, 42, 43, and 44, the Responses speak for themselves.

With regard to Request for Admission No. 45, Claimants measured their property boundary and determined that their point of diversion for water right claim No. 91-7102 is

physically located within the exterior boundaries of Parcel No. RP005300200061A. All individuals with knowledge regarding such facts are Claimants.

With regard to Request for Admission No. 46, the Response speaks for itself.

INTERROGATORY NO. 31: Please state the circumstances which led to the “man-made, artificially built lagoon off the St. Joe River[’s]” alleged creation. In explaining said factual circumstances, please include dates events are asserted to have occurred, whether any witnesses, documents, or photos exist that can corroborate Claimants’ assertions. Please state whether authorization was sought or received from the State of Idaho, the United States, or the Coeur d’Alene Tribe for its alleged creation. The term “man-made, artificially built lagoon off the St. Joe River,” as used in this interrogatory shall have the same meaning as that term used in Claimants’ response to request for admission No. 34 in *Claimants’ Answers and Responses to Objector’s Second Requests for Discovery*.

ANSWER NO. 31: Castillo’s Tracts was subdivided in 1914. See Hawks 3001 to Hawks 3002. Cy Chase purchased Lots 6-9 of Castillo’s Tracts through two transactions in 1964 and one other transaction in 1967. See Hawks 3003 to Hawks 3005. Sylvia’s Haven was subdivided in 1968 from Lots 6-9 of Castillo’s Tracts. Cy Chase was the developer for Sylvia’s Haven, which included plans for a moorage lagoon. Aerial photographs were taken of the area in 1965, which show the St. Joe River and no outlet for the moorage lagoon. The referenced aerial photographs, Bates numbered Hawks 3006 to Hawks 3008, were provided by the Benewah County Assessor’s Office and were drawn on by hand to show the plans for the lots and a moorage lagoon for Sylvia’s Haven. The Benewah County Assessor’s Office also provided a picture after the lagoon was built. See Hawks 3009 to Hawks 3010. Claimants are unsure exactly when the lagoon was completed, but Claimants believe it was completed before 1969.

As an additional witness who can corroborate Claimants' assertions, Marjorie Pugh, who grew up in the area and currently lives in Goosehaven, St. Maries (2 miles north of Sylvia's Haven), remembers that there was no lagoon when she moved to the area in 1958. She remembers when there was no development in the area of Sylvia's Haven and remembers that Cy Chase removed fill from the area during development.

Other than Exhibit 2 to the depositions of Steve and Deanne Hawks, presented by Objector during the May 2, 2016 depositions, Claimants are unsure if any other authorization was received since they were not the ones who built or completed the lagoon.

INTERROGATORY NO. 32: Please state the factual basis for which Claimants allege the elevation of the ordinary high water mark of the St. Joe River is 2120 feet.

ANSWER NO. 32: Although the ordinary high water mark is currently 2128 feet and has been at that level since 1907 (*Erickson*, 132 Idaho at 211, 970 P.2d at 4), this higher level is the result of "the dam [that] raised the water level . . . in both the lake and in the Coeur d'Alene and St. Joe rivers that feed into the lake." The dam has been recognized as "raising the elevation of the water . . . approximately 6 1/2 feet This increased height in the dam naturally resulted in submerging the lands adjacent to Coeur d'Alene Lake and the streams flowing into the lake to an elevation of at least 2,126.5 feet." *In re Sanders Beach*, 143 Idaho 443, 147 P.3d 75 (emphasis added); *see also Deffenbaugh*, 24 Idaho at 520-21, 135 P.2d at 253-54 ("the elevation is raised six or eight feet above the ordinary elevation of the water in the summer and fall"). The elevation of 2120 feet is the level that exists on the St. Joe River "uninfluenced by man-made dams or works." *See* Idaho Code Section 58-1302(c). *See* documents previously produced in *Claimants' Answers and Responses to Objector's Second*

Requests for Discovery. See also, documents produced, Bates numbered Hawks 2962 to Hawks 2999.

INTERROGATORY NO. 33: Please identify which map(s) Claimants reference in their answer to Interrogatory No. 16 in *Claimants' Answer and Responses to Objector's Second Requests for Discovery*.

ANSWER NO. 33: Claimants do not recall any specific maps they meant in their answer to Interrogatory No. 16, but instead meant to reference "maps of the current Reservation" generally.

INTERROGATORY NO. 34: For water right claim No. 91-7102, please identify the method and instruments used by Claimants in measuring their property boundary.

ANSWER NO. 34: Claimants used a tape measure from identifiable property boundary markers located on their property, consistent with their deed.

INTERROGATORY NO. 35: Please state the date on which the photos attached to *Claimants Steve and Deanne Hawks' Second Supplemental Responses to Objector's First Requests for Discovery*, Exhibit C attached thereto, were taken. If the photos were taken on multiple dates, please identify the photo and state the date upon which it was taken.

ANSWER NO. 35: The four photos on page one attached as Exhibit C were taken on October 16 or 17, 2015. The one photo on page two attached as Exhibit C was taken during winter between 2006 and 2014.

INTERROGATORY NO. 36: Please state the individual's name whose handwriting appears on the photos attached to *Claimants Steve and Deanne Hawks' Second Supplemental Responses to Objector's First Requests for Discovery* as Exhibit C thereto.

ANSWER NO. 36: The handwriting on the photos attached as Exhibit C is Claimant Deanne Hawks' handwriting.

INTERROGATORY NO. 37: Please state the approximate elevation of the St. Joe River, as measured by the USGS gage for Coeur d'Alene Lake (No. 12415500) when the lagoon becomes dry.

ANSWER NO. 37: Objection is made to Interrogatory No. 37 on the grounds that the information requested is public record and equally available to the Tribe as to the Claimants. Notwithstanding the objection, Claimants do not know the approximate elevation of the St. Joe River as measured by the USGS gage for Coeur d'Alene Lake (No. 12415500) when the lagoon becomes dry.

INTERROGATORY NO. 38: For water right claim No. 91-7102, please state the depth of the lowest part of the diversionary works below the surface of the water (in feet and inches). Please state the depth of the submerged lands underlying the lowest part of the diversionary works (in feet and inches). Please state the date and time measured.

ANSWER NO. 38: *See Answer to Interrogatory No. 7 in Claimants Steve and Deanne Hawks' Second Amended and Supplemental Responses to Objector's First Requests for Discovery.* Claimants do not know the depth of the submerged lands underlying the lower part of the diversionary work.

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 20: Please produce documents you assert support your factual and/or legal bases in answering the requests for admission and interrogatories above.

RESPONSE NO. 20: *See Hawks 2962 to Hawks 3012.*

REQUEST FOR PRODUCTION NO. 21: Please produce the documents in Claimants' possession, custody, and control which support Claimants' allegation that the ordinary high water mark is 2120 as noted in Claimants' answer to Interrogatory No. 20 in *Claimants' Answer and Responses to Objector's Second Requests for Discovery*.

RESPONSE NO. 21: See documents previously produced; see also Hawks 2962 to Hawks 2999.

REQUEST FOR PRODUCTION NO. 22: Please produce a copy of the map(s) which Claimants refer to in their answer to interrogatory No. 16 in *Claimants' Answer and Responses to Objector's Second Requests for Discovery*.

RESPONSE NO. 22: See Answer to Interrogatory No. 33. There are no maps to produce.

REQUEST FOR PRODUCTION NO. 23: Please produce true, accurate, and correct copies of real property tax documents from or to Benewah County, Idaho for Lot 6, Block 2, Sylvia's Haven subdivision, Benewah County, Idaho from the dates Claimants acquired ownership of said property to the present date.

RESPONSE NO. 23: Objection is made to Request for Production No. 23 on the grounds that the information requested is public record and equally available to the Tribe as to the Claimants. Notwithstanding the objection, Claimants have produced all real property tax documents that are in their possession.

REQUEST FOR PRODUCTION NO. 24: Please produce color photos attached to *Claimants Steve and Deanne Hawks' Second Supplemental Responses to Objector's First Requests for Discovery*, as Exhibit C thereto.

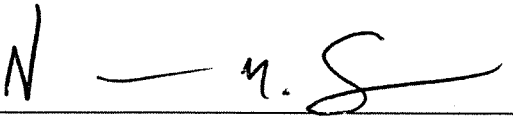
RESPONSE NO. 24: See Hawks 3011 to Hawks 3012.

REQUEST FOR PRODUCTION NO. 25: Please produce any photos (in color) in Claimants' possession that purport to show the dry lagoon. Please provide the date(s) photos were taken.

RESPONSE NO. 25: See Hawks 3000 (photo previously produced).

DATED this 8th day of July, 2016.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 

Norman M. Semanko – Of the Firm
Attorneys for Claimants Steve and
Deanne Hawks

STATE OF IDAHO)
) ss.
 County of Benewah)

STEVE HAWKS, being first duly sworn, deposes and says:

I have read the foregoing **CLAIMANTS STEVE AND DEANNE HAWKS' ANSWERS AND RESPONSES TO OBJECTOR'S THIRD REQUESTS FOR DISCOVERY**, know the contents thereof and that the same are true to the best of my knowledge, information, and belief.

Steve Hawks

Steve Hawks

SUBSCRIBED AND SWORN to before me this 6th day of ^{July}~~June~~, 2016.

MARIAH R. DUNHAM
 NOTARY PUBLIC
 STATE OF IDAHO

Mariah R. Dunham
 NOTARY PUBLIC FOR IDAHO
 Residing at St. Maries, ID
 My Commission Expires 6/21/2018

STATE OF IDAHO)
) ss.
 County of Benewah)

DEANNE HAWKS, being first duly sworn, deposes and says:

I have read the foregoing **CLAIMANTS STEVE AND DEANNE HAWKS' ANSWERS AND RESPONSES TO OBJECTOR'S THIRD REQUESTS FOR DISCOVERY**, know the contents thereof and that the same are true to the best of my knowledge, information, and belief.

Deanne Hawks

Deanne Hawks

SUBSCRIBED AND SWORN to before me this 6th day of ^{July}~~June~~, 2016.

MARIAH R. DUNHAM
 NOTARY PUBLIC
 STATE OF IDAHO

Mariah R. Dunham
 NOTARY PUBLIC FOR IDAHO
 Residing at St. Maries ID
 My Commission Expires 6/21/2018

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of July, 2016, I caused a true and correct copy of the foregoing **CLAIMANTS STEVE AND DEANNE HAWKS' ANSWERS AND RESPONSES TO OBJECTOR'S THIRD REQUESTS FOR DISCOVERY** to be served by the method indicated below, and addressed to the following:

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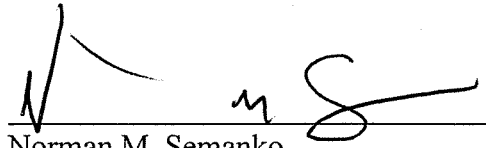
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
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Norman M. Semanko