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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 SECOND**
) **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, hereby submits its second supplemental answers and responses to *Claimants' First Set of Discovery Requests to Objector Coeur d'Alene Tribe*. The Tribe's original general denial, answers, responses, objections, in addition to its prior supplemental answers and responses, are incorporated into this filing and are supplemented as follows:

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

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discoverable in this matter, together with a summary of each person's knowledge, including your own.

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

(10) Mr. Scott Razor, PLS. The Tribe now designates Mr. Razor as a testifying expert in the above sub-cases. Mr. Razor is expected to testify as to his findings from a site visit to Claimants' properties, specifically Lots 6 and 13, Sylvia's Haven subdivision in or near St. Maries, Idaho. Mr. Razor may testify as to the boundaries and locations of Claimants' properties, the locations of Claimants' diversionary works, and the elevation of Claimants' points of diversion.

Mr. Razor has prepared exhibits of his findings as to the boundaries and locations of Claimants' properties, along with the location of Claimants' diversionary works, and the elevation of Claimants' points of diversion. Objector anticipates Mr. Razor will offer testimony, either live or via affidavit, consistent with his findings as depicted on his exhibits. Mr. Razor's affidavit and prepared exhibits are attached hereto, and incorporated herein as Bates CDAT OBJ-7102 0762 to 0769 and CDAT OBJ-7173 0757 to 0764.

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

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(d) Disclose all underlying facts and data upon which each expert bases his or her opinions.

SECOND 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), other than Mr. Rasor, 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 Second Supplemental Answer to Interrogatory No. 1 above - Objector has retained Mr. Scott Rasor, PLS, of Meckel Engineering as a testifying expert in subcases 91-7102 and 91-7173. Mr. Rasor's CV and Rule 26 materials have been previously provided 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. Mr. Rasor is expected to testify consistent with his affidavit and prepared exhibits disclosed herewith.

Mr. Rasor is expected to 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

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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 facts and data which form the basis of Mr. Rasor's opinions can be found herein and noted upon his prepared exhibits produced herewith.

This answer may be supplemented should additional information responsive to this interrogatory become 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.

SECOND 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, the Tribe intends to offer the *Judgment & Decree* from Case No. CIV-94-0328-N-EJL dated August 14, 1998, produced herewith as Bates CDAT OBJ-7102 0702 to 0704; and, CDAT OBJ-7173 0697 to 0699. The Tribe also intends to offer the affidavit and exhibits prepared by Scott Rasor, PLS, produced herewith as CDAT OBJ-7102 0698, 0699, and 0762 to 0769; and, CDAT OBJ-7173 0693, 0694, and 0757 to 0764.

Please also see documents identified or referenced in other areas of this document.

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
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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.

SECOND SUPPLEMENTAL 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 documents identified and noted herein, above and below.

Discovery is on-going and this answer 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.

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

Please see documents identified in the Second Supplemental answers above.

Specifically, in addition to the documents previously produced, the Tribe intends to utilize bates CDAT OBJ-7102 0698 to 0769 (e.g., CDAT OBJ-7102 0001 to 0769); and, CDAT OBJ-7171 0693 to 0764 (e.g., CDAT OBJ-7173 0001 to 0764). The Tribe may also utilize documents which were produced in the *Initial Disclosures* of the Tribe, the United States, and the State of Idaho in subcase 91-7755 (and 353 consolidated subcases). The Tribe may utilize documents which are exhibits to Claimants' depositions, along with documents received from Claimants in discovery ("Hawks" bates range).

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

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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.

SECOND SUPPLEMENTAL 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 those documents identified in the Tribe's Second Supplemental Response to Request for Production No. 3 above.

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.

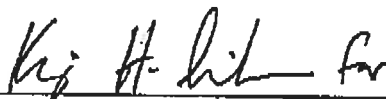
SECOND SUPPLEMENTAL RESPONSE: In addition to the previously-served objections and answers, such objections and answers being incorporated herein, please see the following supplemental information:

Please see documents identified and noted above as well as produced herewith.

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

DATED this 21st day of July, 2016.

HOWARD FUNKE & ASSOCIATES, P.C.



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

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VERIFICATION

I, Phillip J. Cernera, am the Lake Management Director for the Coeur d'Alene Tribe. I have reviewed the foregoing *Second 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 July, 2016.

*

Phillip J. Cernera

* Mr. Cernera is out of the office 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 21st day of July, 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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- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ E-Mail

Steven Strack
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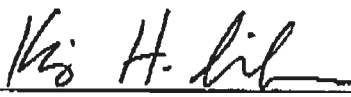
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- ☐ Overnight Mail
- ☒ Facsimile
- ☐ E-Mail



Mareella J. Harrison
Kinzo Mihara

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