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RECEIVED

JUL 29 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

Steve and Deanne Hawks,

Claimant(s),

v.

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

Objector.

) Subcase Nos.: 91-7102

) AFFIDAVIT OF COUNSEL IN SUPPORT
) OF OBJECTOR'S MOTIONS FOR
) SUMMARY JUDGMNET

COMES NOW, the Coeur d'Alene Tribe, Objector, by and through its attorneys of record
 and hereby offers this affidavit of counsel in support of its motion for summary judgment.

AFFIDAVIT OF COUNSEL IN
 SUPPORT OF MOTION FOR
 SUMMARY JUDGMENT - 1

State of Idaho)
) ss.
County of Kootenai)

COMES NOW, Kinzo H. Mihara, after being duly sworn before an officer authorized to administer oaths, swears and declares as follows:

(1) My name is Kinzo H. Mihara. I am an attorney duly authorized to practice law in the State of Idaho, including, but not limited to its federal courts. I am also licensed to practice law in the Coeur d'Alene Tribal Courts. I am one of the attorneys who represent Objector in the above-noted subcases. I am over the age of 18 and am competent to testify to matters herein.

(2) Attached hereto as Exhibit 1 is a true, accurate, and correct copy of *Claimants Steve and Deanne Hawks Amended Responses to Objector's First Requests for Discovery* (subcase 91-7102), cover page, and pages 4 (RFA 5), 5 (RFA 5 and RFA 6), 6 (RFA 8), 7 (RFAs 10 and 11), 8 (RFA 11), 10 (Interrog. No. 3), 11 (Interrog. No. 4), and 13 (Interrog. No. 8).

(3) Attached hereto as Exhibit 2 is a true, accurate, and correct copy of *Claimants' Answers and Responses to Objector's Second Requests for Discovery* (subcase 91-7102), cover page, and pages 3 (RFA 20), 5 (RFA 27), 8 (RFA 34), 11 and 12 (Interrog. No. 15).

(4) Attached hereto as Exhibit 3 is a true, accurate, and correct copy of *Claimants Steve and Deanne Hawks' Second Amended and Supplemental Responses to Objector's First Requests for Discovery* (subcase 91-7102), cover page, and pages 2 (RFA 10), and 3 (RFA 11).

- (5) Attached hereto as Exhibit 4 is a true, accurate, and correct copy of *Claimants Steve and Deanne Hawks' Answers and Responses to Objector's Third Requests for Discovery* (subcase 91-7102), cover page, and page 3 (RFA 37).
- (6) On May 2, 2016 my office took the depositions of both Steve and Deanne Hawks. I was present during those depositions.
- (7) Attached hereto is Exhibit 5 is a true, accurate, and correct copy of exhibit 10 to the deposition of Steve Hawks.
- (8) Attached hereto as Exhibit 6 is a true, accurate, and correct copy of exhibit 7 to the deposition of Steve Hawks.
- (9) Attached hereto as Exhibit 7 is a true, accurate, and correct copy of the *Judgment & Decree* from the case, *United States v. Idaho*, 95, F.Supp.2d 1094 (D. Idaho 1998), signed by Judge Edward Lodge.
- (10) Attached hereto as Exhibit 8 is a true, accurate, and correct copy of the *State of Idaho's Responses to Objector's Second Requests for Discovery to the State of Idaho*, cover page, and pages 4 and 5 (RFA 22 and RFA 23).
- (11) Attached hereto as Exhibit 9 is a true, accurate, and correct copy of exhibit 19 to the deposition of Steve Hawks.
- (12) Attached hereto as Exhibit 10 is a true, accurate, and correct copy of a "certified copy" of patent No. 301011 my office obtained from the United States Bureau of Land Management.
- (13) Attached hereto as Exhibit 11 is a true, accurate, and correct copy of the *Judgment and Findings of Fact and Conclusions of Law* in Coeur d'Alene Tribal Court case No.

CV-DE-2016-0074.

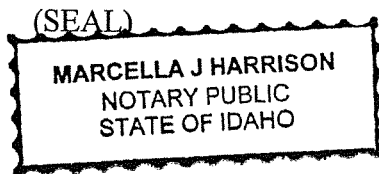
Further you affiant sayeth naught.

Respectfully submitted this 26th day of July, 2016.

Kinzo H. Mihara
Kinzo H. Mihara

NOTARIAL ATTESTATION

That on the 26th day of July, 2016, and after being duly sworn, Kinzo H. Mihara, personally known to me and upon showing sufficient identification, appeared before me and executed this document.



Marcella J. Harrison
Marcella J. Harrison, Notary Public
Residing at: Coeur d'Alene, ID
My commission expires: 4-14-20

Certificate of Service

I hereby certify that on the 26th day of July, 2016, a copy of the foregoing Affidavit of Counsel was served on the following counsel of record and other entities via the method indicated below:

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Moffatt, Thomas, Barrett, Rock & Fields, Chtd.

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Counsel for Claimant(s) and Respondent NIWRA members

Clive Strong

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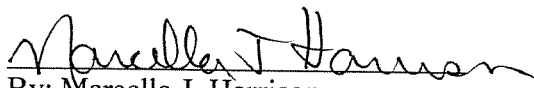

By: Marcella J. Harrison

EXHIBIT 1

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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' AMENDED RESPONSES TO
OBJECTOR'S FIRST REQUESTS FOR
DISCOVERY**

Steve and Deanne Hawks,

Claimants,

vs.

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

Objector.

waiving this objection, Claimants admit that in *United States v. Idaho*, 95 F. Supp. 2d 1094, 1117 (1998), the court stated the following: “[t]he State of Idaho is permanently enjoined from asserting any right, title or otherwise interest in or to the bed and banks of the Coeur d’Alene Lake and the St. Joe River lying within the current boundaries of the Coeur d’Alene Indian Reservation.” However, Claimants deny that the State of Idaho is permanently enjoined from asserting a right, title or interest in or to the bed and banks at Claimants’ point of diversion.

REQUEST FOR ADMISSION NO. 4: Please admit that the Coeur d’Alene Tribe has the inherent right to exclude non-members of the Coeur d’Alene Tribe from tribally owned lands within the Coeur d’Alene Reservation.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: Objection is made to Request for Admission No. 4 on the grounds that the terms “inherent right,” “non-members,” and “tribally owned lands within the Coeur d’Alene Reservation” are vague and that this Request is not reasonably calculated to lead to the discovery of any admissible evidence. Without waiving these objections, Claimants admit that in *United States v. Idaho*, 95 F. Supp. 2d 1094, 1117 (1998), the court stated the following: “[t]he Coeur d’Alene Tribe of Idaho, as the beneficially interested party of the trusteeship, [is] entitled to the exclusive use, occupancy and right to the quiet enjoyment of the bed and banks of the Coeur d’Alene Lake and the St. Joe River lying within the current boundaries of the Coeur d’Alene Indian Reservation.” However, Claimants deny that the Coeur d’Alene Tribe has any right to exclude Claimants from the lands at Claimants’ point of diversion.

REQUEST FOR ADMISSION NO. 5: Please admit that the point of diversion for this claim is located within the exterior boundary of the Coeur d’Alene Indian Reservation.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: Objection is made to Request for Admission No. 5 on the grounds that the term “exterior boundary of the Coeur d’Alene Indian Reservation” is vague. Without waiving this objection, Claimants admit that the point of diversion for this claim is located within the current boundary of the Coeur d’Alene Indian Reservation. However, Claimants deny that the United States and the Coeur d’Alene Tribe own the lands at Claimants’ point of diversion.

REQUEST FOR ADMISSION NO. 6: Please admit that the presumed OHWM for Coeur d’Alene Lake and the St. Joe River is 2128 feet above sea level.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: Objection is made to Request for Admission No. 6 on the grounds that the term “presumed OHWM” is vague and without temporal context. Without waiving this objection, Claimants admit that in *City of Coeur d’Alene v. Mackin (In re Ownership of Sanders Beach)*, the court stated the following: “[t]he current OHWM of the Lake is 2128 feet” and “the OHWM of Lake Coeur d’Alene has been 2128 feet since 1907.” 143 Idaho 443, 447, 147 P.3d 75, 79 (2006) (citing *Erickson v. State*, 132 Idaho 208, 211, 970 P.2d 1, 4 (1998)); *Id.* at 451, 83. However, Claimants deny that the historic OHWM or the natural high water mark for Coeur d’Alene Lake and the St. Joe River is or has always been 2128 feet.

REQUEST FOR ADMISSION NO. 7: Please admit that the point of diversion and/or some or all of the diversion works at issue in the above-encaptioned matter is below the presumed OHWM of the St. Joe River.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: Objection is made to Request for Admission No. 7 on the grounds that the term “presumed OHWM” is vague and without temporal context. Without waiving this objection, Claimants admit that in *City of Coeur*

d'Alene v. Mackin (In re Ownership of Sanders Beach), the court stated the following: “[t]he current OHWM of the Lake is 2128 feet” and “the OHWM of Lake Coeur d’Alene has been 2128 feet since 1907.” 143 Idaho 443, 447, 147 P.3d 75, 79 (2006) (citing *Erickson v. State*, 132 Idaho 208, 211, 970 P.2d 1, 4 (1998)); *Id.* at 451, 83. However, Claimants deny that the historic OHWM or the natural high water mark for 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.

REQUEST FOR ADMISSION NO. 8: Please admit that the waters overlying the bed and banks at the location of Claimant(s)[’] water diversion point are navigable.

RESPONSE TO REQUEST FOR ADMISSION NO. 8: Objection is made to Request for Admission No. 8 on the grounds that the term “navigable” is vague. Responding Claimants also object to this Request for Admission No. 8 because it seeks a legal conclusion or opinion regarding whether “the waters overlying the bed and banks at the location of Claimants’ water diversion point are navigable.” Without waiving these objections, Claimants admit that said waters are “navigable” according to Claimants’ understanding of the definition in Idaho Code Section 36-1601 and the definition in 33 U.S.C. § 1362.

REQUEST FOR ADMISSION NO. 9: Please admit that under Idaho law the point of diversion for a water right is the point at which water is diverted from a natural water channel and put to beneficial use.

RESPONSE TO REQUEST FOR ADMISSION NO. 9: Objection is made to Request for Admission No. 9 on the grounds that it seeks a legal conclusion or opinion on what constitutes “the point of diversion for a water right” under Idaho law and is not reasonably

calculated to lead to the discovery of any admissible evidence because it seeks a legal conclusion. Without waiving the objection, Claimants therefore deny the same.

REQUEST FOR ADMISSION NO. 10: Please admit that Claimant(s) did not have permission to encroach upon the submerged lands of the St. Joe River from either the United States or the Coeur d'Alene Tribe at the time the diversion works were constructed for this claim.

RESPONSE TO REQUEST FOR ADMISSION NO. 10: Objection is made to Request for Admission No. 10 on the grounds that the term "permission to encroach upon the submerged lands of the St. Joe River" is vague. Responding Claimants also object to this Request for Admission No. 10 because it seeks a legal conclusion or opinion regarding who owns the "submerged lands of the St. Joe River." Without waiving these objections, Claimants admit that they did not have a permit from either the United States or the Coeur d'Alene Tribe to encroach upon the submerged lands of the St. Joe River at the time the diversion works were constructed for this claim. However, Claimants deny that the United States or the Coeur d'Alene Tribe owns the land upon which the diversion works may have been constructed and further deny that any such permission was needed.

REQUEST FOR ADMISSION NO. 11: Please admit that since the time Claimant(s) began diverting water from the St. Joe River he/she has never received permission to encroach upon the submerged lands of the St. Joe River from either the United States or the Coeur d'Alene Tribe for Claimant(s)[] diversionary works.

RESPONSE TO REQUEST FOR ADMISSION NO. 11: Objection is made to Request for Admission No. 11 on the grounds that the term "permission to encroach upon the submerged lands of the St. Joe River" is vague and the Request is vague as to time. Responding

Claimants also object to this Request for Admission No. 11 because it seeks a legal conclusion or opinion regarding who owns the “submerged lands of the St. Joe River.” Without waiving these objections, Claimants admit that they have never received a permit from either the United States or the Coeur d’Alene Tribe to encroach upon the submerged lands of the St. Joe River for Claimants’ diversion works. However, Claimants deny that the United States or the Coeur d’Alene Tribe owns the land upon which the diversionary works may have been constructed and further deny that any such permission was needed.

REQUEST FOR ADMISSION NO. 12: Please admit that under Idaho law a water right may not be initiated or maintained in trespass.

RESPONSE TO REQUEST FOR ADMISSION NO. 12: Objection is made to Request for Admission No. 12 on the grounds that it seeks a legal conclusion or opinion on initiating a water right and trespass under Idaho law and is not reasonably calculated to lead to the discovery of any admissible evidence because it seeks a legal conclusion. Without waiving the objection, Claimants therefore deny the same.

REQUEST FOR ADMISSION NO. 13: Please admit that the Claimant(s) does not have the right to enter the lands of the Coeur d’Alene Tribe for the purposes of maintaining his/her diversion works.

RESPONSE TO REQUEST FOR ADMISSION NO. 13: Objection is made to Request for Admission No. 13 on the grounds that the terms “right” and “purposes of maintaining” are vague. Responding Claimants also object to this Request for Admission No. 13 on the grounds that it seeks a legal conclusion regarding who owns the lands at Claimants’ point of diversion and the rights of Claimants to their diversion works. Without waiving these

any assertion that Claimants have no right to make any consumptive use of water or right of access for the appropriation of water.

INTERROGATORIES

INTERROGATORY NO. 1: If you deny any of the Requests for Admissions 1-15 above, please state the legal and/or factual basis of each denial, if any.

ANSWER NO. 1: See Responses to Request for Admission Nos. 1-15.

INTERROGATORY NO. 2: Please identify the legal basis which you intend to rely upon for support of your statements in your response to the Tribe's objection:

"The U.S. did not reserve any other littoral or riparian rights in regard to the subject lands which are ordinarily attendant to waterfront property, including the right to access water, to wharfage, or to use the adjacent water. These rights are therefore appurtenant to and including [sic] with those waterfront lands sold by the U.S. and are subject only to State law regulation as provided by the Acts of Congress enabling the alienation of those lands."

ANSWER NO. 2: Objection is made to Interrogatory No. 2 on the grounds that the Claimants did not file the above-mentioned response to the Tribe's objection.

Notwithstanding the objection, the response to the Tribe's objection speaks for itself.

INTERROGATORY NO. 3: Does the Claimant(s) hold an encroachment permit from the Coeur d'Alene Tribe for any purpose? If so, what is the encroachment type and Tribal permit number?

ANSWER NO. 3: Claimants' encroachment permits from the Coeur d'Alene Tribe, if any, are available to and held by the Tribe.

INTERROGATORY NO. 4: Before installing the diversionary works in the St. Joe River, did Claimant(s), or Claimant(s)[] predecessors in title request the permission of either the United States or Tribe to encroach upon the submerged lands of the St. Joe River?

ANSWER NO. 4: Objection is made to Interrogatory No. 4 on the grounds that the term "permission...to encroach upon the submerged lands of the St. Joe River" is vague and the Interrogatory is vague as to time. Responding Claimants also object to this Interrogatory No. 4 because it seeks a legal conclusion or opinion regarding who owns the "submerged lands of the St. Joe River." Without waiving these objections, Claimants did not request permission of either the United States or the Coeur d'Alene Tribe to encroach upon the submerged lands of the St. Joe River for the installation of their diversionary works. However, Claimants did not need such permission because the United States and the Coeur d'Alene Tribe do not own the land upon which the diversionary works may have been installed.

INTERROGATORY NO. 5: Please state the name, address, telephone number, and type of testimony, lay or expert, for any witnesses you may call at trial of this matter.

ANSWER NO. 5: Claimants are unsure, at this time, whom they may call as witnesses at the time of hearing. Claimants reserve the right to supplement this answer in a timely manner prior to hearing and pursuant to any trial schedule produced by the court. Claimants may call any and all of the individuals identified during discovery, to include, but not be limited to the following individuals:

a) Claimants Steve and Deanne Hawks, c/o Norman Semanko, Attorney at Law, 101 S. Capitol Blvd., 10th Floor, P.O. Box 829, Boise, Idaho 83701-0829.

INTERROGATORY NO. 6: For each person listed as an expert witness above, please:

- (a) State the subject matter on which the expert is expected to testify;
- (b) Provide a complete statement of all opinions to be expressed and the basis and reasons therefore;

diversion works and water system, but reserve the right to supplement this answer in a timely manner.

INTERROGATORY NO. 8: If the Claimant(s) assert anyone other than the Coeur d'Alene Tribe owns the submerged lands underlying the claimant's point of diversion please list the name and contact information of such person or entity.

ANSWER NO. 8: Objection is made to Interrogatory No. 8 on the grounds that the Interrogatory is vague as to time. Responding Claimants also object to this Interrogatory No. 8 because it seeks a legal conclusion or opinion regarding who owns the "submerged lands underlying the claimant's point of diversion." Notwithstanding the objection, Claimants or the State of Idaho own the submerged lands underlying the Claimants' point of diversion. The name and contact information are as follows: Steve and Deanne Hawks, c/o Norman Semanko, Attorney at Law, 101 S. Capitol Blvd., 10th Floor, P.O. Box 829, Boise, Idaho 83701-0829; State of Idaho, c/o Attorney General's Office, P.O. Box 83720, Boise, ID 83720-0010.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce any documents you assert support your factual and/or legal basis in answering Requests for Admission Nos. 1-15 and Interrogatories Nos. 1-8.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Objection is made to Request for Production No. 1 on the grounds that it is vague and overly broad. Notwithstanding the objection, Claimants respond as follows: See documents previously produced or referenced and documents produced herewith.

REQUEST FOR PRODUCTION NO. 2: Please produce a true, accurate, correct, and admissible copy of the deed, or other document, by which you acquired title to your

EXHIBIT 2

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Sarah A. McCormack, ISB No. 9683
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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' ANSWERS AND
RESPONSES TO OBJECTOR'S
SECOND REQUESTS FOR
DISCOVERY**

Steve and Deanne Hawks,

Claimant(s),

vs.

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

Objector.

REQUEST FOR ADMISSION NO. 19: Pursuant to I.R.C.P. 36, please admit that the documents attached hereto as Attachment "1," bates numbers "CDAT OBJ-7102 0001 – 0005," 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) that Claimants produced to Objector or referenced in response to Objector's First Requests for Discovery to Claimants as Exhibit "A" thereto.

RESPONSE TO REQUEST FOR ADMISSION NO. 19: Admit.

REQUEST FOR ADMISSION NO. 20: Please admit that the source of water of the Claimants' water rights claim is the St. Joe River.

RESPONSE TO REQUEST FOR ADMISSION NO. 20: Admit.

REQUEST FOR ADMISSION NO. 21: Please admit that the point of diversion for the Claimants' water right claim is a point at which water is diverted from the St. Joe River.

RESPONSE TO REQUEST FOR ADMISSION NO. 21: Claimants admit that IDWR water right license no. 91-7102 states that the location of the point of diversion is the St. Joe River and deny the remainder of the Request for Admission. The point of diversion for the Claimants' water right claim is a point at which water is diverted from a man-made lagoon off the St. Joe River.

REQUEST FOR ADMISSION NO. 22: Please admit that the Claimants, individually and/or collectively, are members of the group known as the North Idaho Water Rights Alliance which has filed a Response to Objection in the foregoing subcase.

RESPONSE TO REQUEST FOR ADMISSION NO. 22: Admit. However, Claimants were not members of the group known as the North Idaho Water Right Alliance at the

REQUEST FOR ADMISSION NO. 26: Please admit that neither IDWR water permit no. 91-7102 nor IDWR water right license no. 91-7102 could have been initiated in trespass.

RESPONSE TO REQUEST FOR ADMISSION NO. 26: Objection is made to Request for Admission No. 26 because it seeks a legal conclusion. Without waiving the objection, Claimants admit that neither IDWR water permit no. 91-7102 nor IDWR water right license no. 91-7102 could have been initiated in trespass, but deny that they were initiated in trespass.

REQUEST FOR ADMISSION NO. 27: Please admit that in issuing IDWR water permit no. 91-7102 and/or IDWR water right license no. 91-7102, IDWR could not have authorized trespass.

RESPONSE TO REQUEST FOR ADMISSION NO. 27: Objection is made to Request for Admission No. 27 because it seeks a legal conclusion. Without waiving the objection, Claimants admit that in issuing IDWR water permit no. 91-7102 and/or IDWR water right license no. 91-7102, IDWR could not have authorized trespass, but deny that IDWR needed to authorize trespass in issuing the permit and license.

REQUEST FOR ADMISSION NO. 28: Please admit that neither IDWR water permit no. 91-7102 nor IDWR water right license no. 91-7102 authorize access to or across land not owned by Claimants.

RESPONSE TO REQUEST FOR ADMISSION NO. 28: Objection is made to Request for Admission No. 28 because it seeks a legal conclusion. Without waiving the objection, Claimants admit that neither IDWR water permit no. 91-7102 nor IDWR water right

lagoon has water in it, but deny that the water level at Claimants' point of diversion is capable of floating boats or canoes when the lagoon is dry.

REQUEST FOR ADMISSION NO. 34: Please admit that the St. Joe River at Claimants' point of diversion is a natural water source.

RESPONSE TO REQUEST FOR ADMISSION NO. 34: Claimants admit that the IDWR water right license no. 91-7102 states that the point of diversion is the St. Joe River, which is a natural water source, and deny the remainder of the Request for Admission. The point of diversion for the Claimants' water right claim is a point at which water is diverted from a man-made, artificially built lagoon off the St. Joe River.

INTERROGATORIES

INTERROGATORY NO. 9: If your answer to any of the Requests for Admission is anything other than an unqualified "admit" identify and describe in detail the facts upon which you rely in making your responses, all individuals with knowledge regarding such facts, and all documents relating in any way to your response(s).

ANSWER NO. 9:

With regard to Request for Admission No. 16, Claimants do not understand what "citizens of Idaho" means. The term was not defined.

With regard to Request for Admission Nos. 21, 23, 24 and 25, the Response speaks for itself.

With regard to Request for Admission Nos. 26, 27, 28 and 29, *see* Answer to Interrogatory No. 10.

With regard to Request for Admission No. 30, please *see* Idaho Code Sections 42-1101, 42-1102, 42-1105 and 58-1302.

ANSWER NO. 12: Claimants rely on all documents in their licensing file, Bates CDAT OBJ-7102 0006 – 0037, to provide the information requested from Request for Production No. 6.

INTERROGATORY NO. 13: Please identify, by bates numbers, those documents contained in Attachment “1” hereto that Claimants reference and specifically rely upon in their response or amended response to request for production number 7 contained in Objector’s first requests for discovery to Claimants.

ANSWER NO. 13: Claimants rely on Bates CDAT OBJ-7102 0006 – 0010 and 0022 – 0023.

INTERROGATORY NO. 14: Please state whether Claimants are relying upon and/or referencing any other documents which are not produced as part of Attachment “1” hereto (bates CDAT OBJ-7102 0001-0037) in any of their answers to interrogatories or responses to requests for production of documents in response to Objector’s First Requests for Discovery. If so, please identify such documents by the title and date of such document.

ANSWER NO. 14: Claimants did not rely on any other documents that were not produced as part of Attachment “1” in any of their answers to interrogatories or responses to requests for production of documents in response to Objector’s First Requests for Discovery. However, Claimants reserve the right to supplement their responses in a timely manner.

INTERROGATORY NO. 15: Please state the Benewah County tax identification number for the real property upon which Claimants’ point of diversion is physically located. If there is no such tax identification number, please indicate as much.

ANSWER NO. 15: As reported on the Director's Report, the Benewah County tax identification number for the real property upon which Claimants' point of diversion is physically located is Parcel No. RP005300200061A.

INTERROGATORY NO. 16: Please give the legal description of the "current boundaries of the Coeur d'Alene Indian Reservation" as that term is understood by Claimants and used by Claimants in their amended response for admission number 5.

ANSWER NO. 16: Claimants do not know the exact legal description of the "current boundaries of the Coeur d'Alene Indian Reservation" but know the "current boundaries of the Coeur d'Alene Indian Reservation" as indicated on road signs on the highway and as commonly depicted on maps of the current Reservation.

INTERROGATORY NO. 17: Please state the basis or describe the basis Claimants' denials in Requests for Admission Nos. 1, 5 10, 11, and 13 wherein Claimants' deny that "the United States and the Coeur d'Alene Tribe own any submerged bed and banks at Claimants' point of diversion," and Claimants' response to Interrogatory No. 8 wherein Claimants' assert that "Claimants or the State of Idaho own the submerged lands underlying the Claimants' point of diversion."

ANSWER NO. 17: The U.S. Supreme Court and the Ninth Circuit Court of Appeals specifically recognized that the United States reserved, or set aside, the submerged lands that existed prior to Statehood in 1890. *See generally Idaho v. United States*, 533 U.S. 262 (2001), and *United States v. Idaho*, 210 F.3d 1067 (9th Cir. 2000) (upholding the finding that the United States reserved 1873 submerged lands for the Tribe). It is these submerged lands within the reservation—and only these submerged lands—that are owned by the United States. It is well known that additional lands within the reservation boundary became submerged only after

EXHIBIT 3

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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

Steve and Deanne Hawks,

Claimants,

vs.

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

Objector.

Subcase Nos. 91-7102

**CLAIMANTS STEVE AND DEANNE
HAWKS' SECOND AMENDED AND
SUPPLEMENTAL RESPONSES TO
OBJECTOR'S FIRST REQUESTS FOR
DISCOVERY**

**CLAIMANTS STEVE AND DEANNE HAWKS' SECOND
AMENDED AND SUPPLEMENTAL RESPONSES TO OBJECTOR'S
FIRST REQUESTS FOR DISCOVERY - 1**

Client:4157344.1

COME NOW Claimants Steve and Deanne Hawks, by and through undersigned counsel of record, pursuant to the direction received from the Special Master at the Hearings on Objector's Motion to Compel and Motion to Determine Sufficiency of Objections and Deem Certain Matters Admitted on May 11, 2016, and provide second amended and supplemental responses to Objector's First Requests for Discovery, which replace Claimants' previous Responses to Request for Admission Nos. 10 and 11 and supplement Claimants' previous Answer to Interrogatory No. 7 and previous Response to Request for Production No. 13 as follows:

REQUEST FOR ADMISSION NO. 10: Please admit that Claimant(s) did not have permission to encroach upon the submerged lands of the St. Joe River from either the United States or the Coeur d'Alene Tribe at the time the diversion works were constructed for this claim.

RESPONSE TO REQUEST FOR ADMISSION NO. 10: The term "permission" is defined as "the act of permitting" or "a license or liberty to do something; authorization." BLACK'S LAW DICTIONARY 1176 (8th ed. 2004). Pursuant to this definition, Claimants admit that they did not have permission from either the United States or the Coeur d'Alene Tribe to encroach upon the submerged lands of the St. Joe River at the time the diversion works were constructed for this claim. However, Claimants deny that the United States or the Coeur d'Alene Tribe owns the land upon which the diversion works may have been constructed and further deny that any such permission was needed.

REQUEST FOR ADMISSION NO. 11: Please admit that since the time Claimant(s) began diverting water from the St. Joe River he/she has never received permission to

encroach upon the submerged lands of the St. Joe River from either the United States or the Coeur d'Alene Tribe for Claimant(s)[] diversionary works.

RESPONSE TO REQUEST FOR ADMISSION NO. 11: The term "permission" is defined as "the act of permitting" or "a license or liberty to do something; authorization." BLACK'S LAW DICTIONARY 1176 (8th ed. 2004). Pursuant to this definition, Claimants admit that they have never received permission from either the United States or the Coeur d'Alene Tribe to encroach upon the submerged lands of the St. Joe River at the time the diversion works were constructed for this claim. However, Claimants deny that the United States or the Coeur d'Alene Tribe owns the land upon which the diversion works may have been constructed and further deny that any such permission was ever needed.

INTERROGATORY NO. 7: Please describe the Claimant(s)[] diversion works and water system from the point of diversion to the place of use, including but not limited to, a description of all materials located in the water, the pump capacity (in gallons per minute), the conduit diameter(s) (in inches), any storage facilities on the property (and storage volume in gallons), and a description of the water conveyance on the property.

ANSWER NO. 7: Consistent with the licensing file, water is diverted from a private lagoon off the St. Joe River through a 1 1/2 inch pvc pipe to a 1/2 HP pump on Claimants' property. The water then travels through more pipe under the road to the place of use on Claimants' property through hoses and sprinklers. The lowest part of the diversion works within the private lagoon is a few feet in depth. However, the diversion works are not located underwater at all times of the year. The diversion works are only located underwater from

EXHIBIT 4

Norman M. Semanko, ISB No. 4761
Sarah A. McCormack, ISB No. 9683
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
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sam@moffatt.com
26002.0001

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.

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.

EXHIBIT 5

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE
WATER RIGHT NO. 91-07102

Priority: July 22, 1988

Maximum Diversion Rate:
Maximum Diversion Volume:¹

0.02 CFS
0.6 AF

This is to certify, that STEVE HAWKS
RT 2 BOX 86

ST. MARIES, ID 83861 has complied with the terms and conditions
of the permit, issued pursuant to Application for Permit dated July 22, 1988; and
has submitted Proof of Beneficial Use on October 19, 1988. An examination indicates
that the works have a diversion capacity of .020 cfs of water from:

ST. JOE RIVER tributary to COEUR D ALENE LAKE

source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
DOMESTIC	03/15 to 11/15	0.02 CFS	0.6 AF

LOCATION OF POINT(S) OF DIVERSION: LOT 7(NESE), Sec. 7, Township 46N, Range 02W
BENEAH County

PLACE OF USE: DOMESTIC

TWN RGE SEC

46N 02W 7 LOT 7(NESE)

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. Domestic use is for irriagation of ~~garden~~

RECEIVED

JUL 30 1990

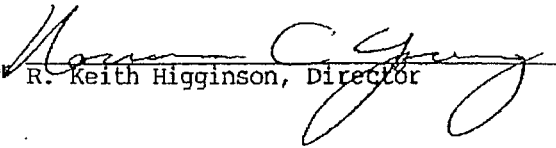
EXHIBIT	10
	DATE: 5/24/86
DEPONENT NAME: D. HAWKS	

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 91-07102

This license is issued pursuant to the provisions of Section 42-219, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this 20TH
day of July, 1990.

Acting for  R. Keith Higginson, Director

RECORDED

JUL 30 1990

EXHIBIT 6

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

APPROVED

1. Name of applicant Steve Hawks Phone 245-2403
Post office address Rt. 2 Box 86 St. maries, Id. 83861
2. Source of water supply ST JOE RIVER which is a tributary of COEUR D'ALENE LAKE
3. Location of point of diversion is NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of SE $\frac{1}{4}$, Govt. Lot 1
Sec. 7 Township 46N Range 2W B.M. Benewah County; additional
points of diversion if any: _____
4. Water will be used for the following purposes:
DOMESTIC
Amount 0.02 for garden watering purposes from 1 MAR to 1 DEC (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated is (a) 0.02 and/or (b) _____
cubic feet per second acre feet per annum
6. Proposed diverting works:
 - a. Description of ditches, flumes, pumps, headgates, etc. 1 1/4" pipe through
culvert to canal
 - b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
_____ to _____ inclusive.
 - c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
 - d. Is ground water with a temperature of greater than 90°F being sought? _____
7. Time required for the completion of the works and application of the water to the proposed beneficial use is
1 years (minimum 1 year).

MICROFILMED

DEC 27 1988

EXHIBIT	
7	
DEPONENT NAME:	DATE:
D. HAWKS	5/21/86

8. Description of proposed uses (if irrigation only, go to item 9):

- a. Hydropower; show total feet of head and proposed capacity in KW. _____
- b. Stockwatering; list number and kind of livestock. _____
- c. Municipal; show name of municipality. _____
- d. Domestic; show number of households. _____
- e. Other; describe fully. _____

9. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
46N	2W	7													D				35

Total number of acres to be irrigated 35

10. Describe any other water rights used for the same purposes as described above. Drinking water from well. I am 1/4 partner

11. a. Who owns the property at the point of diversion? Cyril Chase

b. Who owns the land to be irrigated or place of use? Steve Hawks

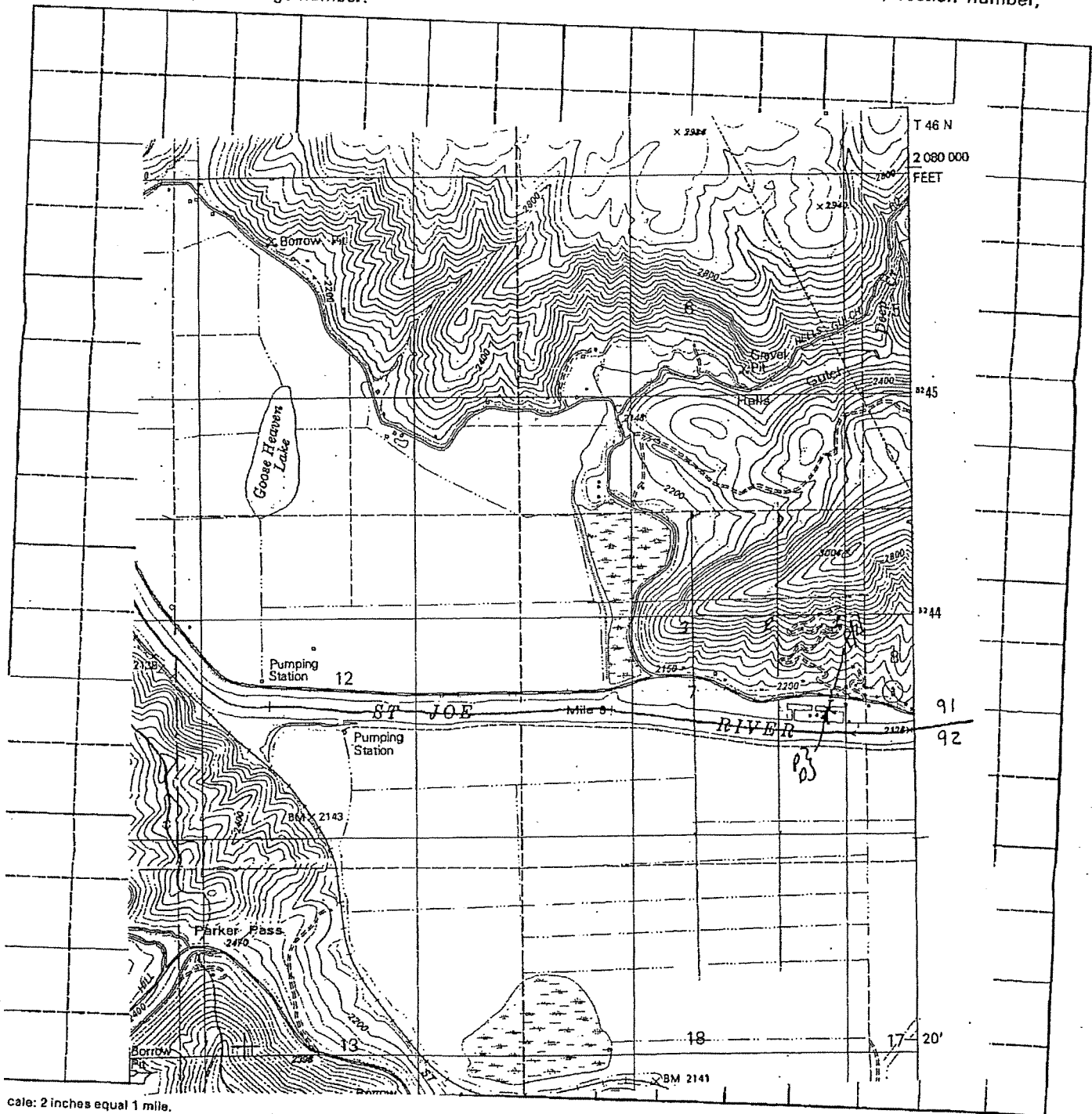
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

12. Remarks: _____

MICROFILMED

DEC 21 1988

13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



BE IT KNOWN that the undersigned **MICROFILMED** application for permit to appropriate the public waters of the State of Idaho as herein set forth.

DEC 27 1988

Shurtlows
(Applicant)

Received by KK Date 7/22/88 Time 1:00 PM Proposed Priority 7/22/88
Preliminary check by JK
Fee \$ 30⁰⁰ Received by JK # N 741 Date 7/26/88
Publication prepared by JK Date 8/16/88 Published in St. Paul Register
Publication approved JK Date 8/29/88

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 91-7102, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions:

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before November 1, 1989.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
- d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
- e. Other: The issuance of this permit in no way grants any right-of-way or easement across the land of another.

Witness my hand this 6th day of October, 1988.

J. Glen Saylor
for Director

MICROFILMED

DEC 27 1988

EXHIBIT 7

RECEIVED AUG 17 1998
DISTRICT COURT
DISTRICT OF IDAHO
Filed at 4:00pm

AUG 14 1998

CLERK, U.S. DISTRICT COURT
By W. H. H. H. Deputy

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

In re suit to quiet title to that portion of
the bed and banks of Coeur d'Alene Lake and
St. Joe River lying within the exterior
boundaries of the 1873 Coeur d'Alene
Reservation)

Case No. CIV-94-0328-N-EJL

UNITED STATES OF AMERICA,)

Plaintiff, Counterdefendant)

and)

COEUR D'ALENE TRIBE,)

Plaintiff in Intervention)

Counterdefendant in Intervention)

vs.)

STATE OF IDAHO,)

Defendant, Counterclaimant.)

JUDGMENT & DECREE

This action came on for trial before the Court, Honorable Edward J. Lodge, United States District Judge, presiding, from December 1 through December 12, 1997, and the issues having been duly heard and a July 28, 1998, MEMORANDUM DECISION AND ORDER having been duly rendered,

JUDGMENT AND DECREE - 1

IT IS ORDERED, ADJUDGED AND DECREED that:

1. Title is 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 all of the navigable waters lying within the current boundaries of the Coeur d'Alene Indian Reservation as those boundaries are described by the Act of March 3, 1891, 26 Stat. at 1027 and the Act of August 15, 1894, 28 Stat. at 322, which includes portions of Lake Coeur d'Alene and the St. Joe River, but which exclude those bed and banks of the navigable waters claimed by Idaho to be within Heyburn State Park, which waters and submerged lands were not at issue in this litigation;

2. The United States, as trustee, and the Coeur d'Alene Tribe, as the beneficially interested party of the trusteeship, are entitled to the exclusive use, occupancy and right to the quiet enjoyment of the bed and banks of all of the navigable waters lying within the current boundaries of the Coeur d'Alene Indian Reservation as those boundaries are described by the Act of March 3, 1891, 26 Stat. at 1027 and the Act of August 15, 1894, 28 Stat. at 322, which includes portions of Lake Coeur d'Alene and the St. Joe River, but which exclude those bed and banks of the navigable waters claimed by Idaho to be within Heyburn State Park, which waters and submerged lands were not at issue in this litigation;

3. The State of Idaho is permanently enjoined from asserting any right, title or otherwise interest in or to the bed and banks of all the navigable waters lying within the current boundaries of the Coeur d'Alene Indian Reservation as those boundaries are described by the Act of March 3, 1891, 26 Stat. at 1027 and the Act of August 15, 1894, 28 Stat. at 322, which includes portions of Lake Coeur d'Alene and the St. Joe River, but which exclude those bed and banks of the navigable waters claimed by Idaho to be within Heyburn State Park, which waters and

submerged lands were not at issue in this litigation;

4. The State of Idaho's counterclaim is denied;

5. For such other and further relief in accordance with the aforementioned July 28, 1998, MEMORANDUM DECISION AND ORDER, which by this reference is incorporated herein as if set forth verbatim; and

6. Costs are awarded to the Coeur d'Alene Tribe. By agreement the United States and the State of Idaho shall bear their own costs.

DATED this 14th day of August, 1998.

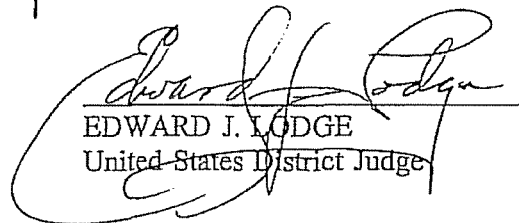

EDWARD J. LODGE
United States District Judge

EXHIBIT 8

LAWRENCE G. WASDEN
Attorney General
State of Idaho

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
STEVEN W. STRACK ISB No. 3906
Deputy Attorney General
Natural Resources Division
Office of the Attorney General
P.O. Box 83720
Boise, ID 83720-0010
Telephone No. (208) 334-4143
Fax No. (208) 854-8072

Attorneys for the State of Idaho

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	)	Subcase No.: 91-07102
	)	
Case No. 49576	)	STATE OF IDAHO'S RESPONSES TO
	)	OBJECTOR'S SECOND REQUESTS FOR
_____	)	DISCOVERY TO THE STATE OF
	)	IDAHO
Steve and Deanne Hawks,	)	
	)	
Claimants,	)	
	)	
v.	)	
	)	
Coeur d'Alene Tribe, a federally-recognized	)	
Indian Tribe,	)	
	)	
Objector.	)	
_____	)	

The State of Idaho ("State"), by and through its attorney of record, Deputy Attorney General Steven W. Strack, hereby submits this *State of Idaho's Response to Objector's First Requests for Discovery to the State of Idaho*.

accurate, and correct copies of documents (or in other words are "authentic" and/or "genuine" within the meaning of I.R.E. 901), and are public records and reports within the meaning of I.R.E. 901(b)(7).

ANSWER: Admitted that the described documents are, collectively, true, accurate, and correct copies of the documents as they appear in files maintained by State agencies.

REQUEST FOR ADMISSION NO. 21: Please admit that the point $\frac{3}{4}$ of a mile east of St. Joe City is upstream from Claimants' points of diversion for water right claims 91-7102 and 91-7173.

ANSWER: The State admits that the point on the St. Joe River $\frac{3}{4}$ mile east of St. Joe City is upstream from the legal description of the points of diversion as described in the recommendations for water right claims 91-7102 and claims 91-7173.

REQUEST FOR ADMISSION NO. 22: Please admit that the State of Idaho does not assert ownership of any of the submerged lands of the St. Joe River lying within the exterior boundaries of the Coeur d'Alene Indian Reservation.

ANSWER: The State admits it is enjoined from asserting ownership of the submerged lands of the St. Joe River lying below the natural ordinary high water mark within the exterior boundaries of the Coeur d'Alene Indian Reservation by the terms of the Judgment in *United States v. Idaho*, Case No. CIV-94-0328.

REQUEST FOR ADMISSION NO. 23: Please admit that the State of Idaho does not assert ownership of any of the submerged lands underlying navigable waters within 1000 feet of Claimants' points of diversion for either claim nos. 91-7102 or 91-7173.

ANSWER: Objection. Despite repeated requests, the Tribe has not presented the information necessary for the State to identify all submerged lands within 1,000 feet of either claim nos. 91-7102 or 91-7173. Without waiver of such objection, the State admits that that the Judgment in *United States v. Idaho*, Case No. CIV-94-0328 states as follows:

The State of Idaho is permanently enjoined from asserting any right, title or otherwise interest in or to the bed and banks of all the navigable waters lying within the current boundaries of the Coeur d'Alene Indian Reservation as those boundaries are described by the Act of March 3, 1891, 26 Stat. at 1027 and the

Act of August 15, 1894, 28 Stat. at 322, which includes portions of Lake Coeur d'Alene and the St. Joe River, but which exclude those bed and banks of the navigable waters claimed by Idaho to be within Heyburn State Park, which waters and submerged lands were not at issue in this litigation

REQUEST FOR ADMISSION NO. 24: Pursuant to I.R.C.P. 36, please admit that the documents attached hereto as Attachment "2," bates numbers CDAT OBJ-7102 0643 - 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*.

ANSWER: Admitted.

REQUEST FOR ADMISSION NO. 25: 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 o/Water from the Coeur d'Alene-Spokane River Basin Water System*.

ANSWER: Admitted.

REQUEST FOR ADMISSION NO. 26: Pursuant to I.R.C.P. 36, please admit that the documents attached hereto as Attachment "4," bates numbers CDAT OBJ-7102 0663 - CDAT OBJ-7102 0678, 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 subchapter 2.3 - Duties and Responsibilities of Water Rights Claimants in IDWR's *Adjudication Handbook*.

ANSWER: Denied. The *Adjudication Handbook* is no longer used by IDWR.

REQUEST FOR ADMISSION NO. 27: Pursuant to I.R.C.P. 36, please admit that the documents attached hereto as Attachment "5," bates numbers CDAT OBJ-7102 0679 - CDAT

EXHIBIT 9

IDAHO DEPARTMENT OF LANDS

P.O. BOX 670, COEUR D'ALENE, IDAHO 83814

STANLEY F. HAMILTON
DIRECTOR

November 30, 1988

BOARD OF LAND
COMMISSIONERS
CECIL D. ANDRUS
Governor
PETE T. CENARRUSA
Secretary of State
JIM JONES
Attorney General
JOE R. WILLIAMS
State Auditor
JERRY L. EVANS
Sup't of Public
Instruction

Steve Hawks
Route 2, Box 86
St. Maries, ID 83861

Re: 91-07102

~~Dear Mr. Woodhall:~~

Recently the Department of Lands received a copy of the above-referenced diversion application which you submitted to the Department of Water Resources. Since the St. Joe River is a navigable river, a temporary permit and an encroachment permit will be required from the Department of Lands for the pump and waterline.

If the application to Water Resources is for a system installed prior to 1974, please furnish drawings and the \$10 temporary permit fee.

If the application is for a new system, please complete the enclosed application as per the instructions on the back of the form. Mail along with your payment in the amount of \$60 to this office. The temporary permit fee is \$10, runs for five years, and is renewable. There is an encroachment application fee of \$25 and an advertising deposit of \$25. Please submit a plat and property description showing location of the waterline.

Sincerely,

L. Robert Schneider

L. ROBERT SCHNEIDER
Navigable Waters Specialist

IRS/mc
Enclosures

COPY

EXHIBIT

19

DEPONENT NAME:

S. HAWKS

DATE:

5/24/16

KEEP IDAHO GREEN
PREVENT WILDFIRE

CDAT OBJ-7173 0054

EXHIBIT 10

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, A CERTIFICATE OF THE REGISTER OF THE LAND OFFICE AT COEUR D'ALENE, IDAHO, HAS BEEN DEPOSITED IN THE GENERAL LAND OFFICE, WHEREBY IT APPEARS THAT FULL PAYMENT HAS BEEN MADE BY THE CLAIMANT UNCAS M. CASTLIO, ACCORDING TO THE PROVISIONS OF THE ACT OF CONGRESS OF APRIL 24, 1820, ENTITLED "AN ACT MAKING FURTHER PROVISION FOR THE SALE OF THE PUBLIC LANDS," AND THE ACTS SUPPLEMENTAL THERETO, FOR THE LOTS ONE AND TWO OF SECTION EIGHT AND THE LOTS ONE AND SEVEN AND THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION SEVEN IN TOWNSHIP FORTY-SIX NORTH OF RANGE TWO WEST OF THE BOISE MERIDIAN, IDAHO, CONTAINING ONE HUNDRED FORTY-SEVEN AND THIRTY-HUNDREDTHS ACRES, ACCORDING TO THE OFFICIAL PLAT OF THE SURVEY OF THE SAID LAND, RETURNED TO THE GENERAL LAND OFFICE BY THE SURVEYOR-GENERAL;

NOW KNOW YE, THAT THE UNITED STATES OF AMERICA, IN CONSIDERATION OF THE PREMISES, AND IN CONFORMITY WITH THE SEVERAL ACTS OF CONGRESS IN SUCH CASE MADE AND PROVIDED, HAS GIVEN AND GRANTED, AND BY THESE PRESENTS DOES GIVE AND GRANT, UNTO THE SAID CLAIMANT AND TO THE HEIRS OF THE SAID CLAIMANT THE TRACT ABOVE DESCRIBED; TO HAVE AND TO HOLD THE SAME, TOGETHER WITH ALL THE RIGHTS, PRIVILEGES, IMMUNITIES, AND APPURTENANCES, OF WHATSOEVER NATURE, THEREUNTO BELONGING, UNTO THE SAID CLAIMANT AND TO THE HEIRS AND ASSIGNS OF THE SAID CLAIMANT FOREVER; SUBJECT TO ANY VESTED AND ACCRUED WATER RIGHTS FOR MINING, AGRICULTURAL, MANUFACTURING, OR OTHER PURPOSES, AND RIGHTS TO DITCHES AND RESERVOIRS USED IN CONNECTION WITH SUCH WATER RIGHTS, AS MAY BE RECOGNIZED AND ACKNOWLEDGED BY THE LOCAL CUSTOMS, LAWS, AND DECISIONS OF COURTS; AND THERE IS RESERVED FROM THE LANDS HEREBY GRANTED, A RIGHT OF WAY THEREON FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES, AND ALL THE COAL OR OIL THEREIN OR THEREUNDER.

CERTIFIED

to be a true copy of a document on
file in the Idaho State Office

JUL 14 2016

BUREAU OF LAND MANAGEMENT

IN TESTIMONY WHEREOF, I, WILLIAM H. TAFT, PRESIDENT OF THE UNITED STATES OF AMERICA, HAVE CAUSED THESE LETTERS TO BE MADE PATENT, AND THE SEAL OF THE GENERAL LAND OFFICE TO BE HEREUNTO AFFIXED, GIVEN UNDER MY HAND, AT THE CITY OF WASHINGTON, THE NINETEENTH DAY OF NOVEMBER IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND TWELVE AND OF THE INDEPENDENCE OF THE UNITED STATES THE ONE HUNDRED AND THIRTY-SEVENTH.

RECORD OF PATENTS.
PATENT NUMBER.

301011

BY THE PRESIDENT; WM H. TAFT

BY M. P. LE ROY: SECRETARY,
H. W. SANFORD

RECORDER OF THE GENERAL LAND OFFICE.

THE LANDS ABOVE DESCRIBED ARE SUBJECT TO ALL RIGHTS UNDER AN APPLICATION BY THE WASHINGTON WATER POWER COMPANY, APPROVED FEBRUARY 2, 1909, UNDER THE ACT OF FEBRUARY 15, 1901 --31 STAT., 790--, BEING AN APPLICATION FOR A PERMIT FOR THE CONSTRUCTION OF A RESERVOIR FOR WATER POWER PURPOSES.

Land Patent Details						
Accession Nr: 301011 Document Type: Serial Patent State: Idaho Issue Date: 11/19/1912 Cancelled: No						
Names On Document			Miscellaneous Information			
☒ CASTLIO, UNCAS M 			Land Office:	Coeur D Alene		
			US Reservations:	Yes		
			Mineral Reservations:	Yes		
			Tribe:	---		
			Militia:	---		
Military Rank: ---			State In Favor Of:	---		
			Authority:	April 24, 1820: Sale-Cash Entry (3 Stat. 566)		
Document Numbers			Survey Information			
Document Nr:	04107		Total Acres:	147.30		
Misc. Doc. Nr:	---		Survey Date:	---		
BLM Serial Nr:	IDCDA 0004107		Geographic Name:	---		
Indian Allot. Nr:	---		Metes/Bounds:	No		
Land Descriptions						
State	Meridian	Twp - Rng	Aliquots	Section	Survey #	County
ID	Boise	046N - 002W	Lot/Trct 1	8		Benewah
ID	Boise	046N - 002W	Lot/Trct 2	8		Benewah
ID	Boise	046N - 002W	Lot/Trct 1	7		Benewah
ID	Boise	046N - 002W	Lot/Trct 7	7		Benewah
ID	Boise	046N - 002W	SE¼NE¼	7		Benewah

EXHIBIT 11

FILED

Date: 7-18-16

Time: 10:40

Coeur d'Alene
Tribal Court

RR
Court Clerk

by: _____

EVERETT B. COULTER, JR.
CHRISTOPHER J. KERLEY
EVANS, CRAVEN & LACKIE, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201-0910
(509) 455-5200; (509) 455-3632

Attorneys for Plaintiff

**IN THE TRIBAL COURT OF THE COEUR D' ALENE TRIBE
OF THE COEUR D' ALENE INDIAN RESERVATION**

COEUR D'ALENE TRIBE, a federally
recognized Indian Tribe,

Plaintiff,

vs.

STEVE W. HAWKS and DEANNE A.
HAWKS, husband and wife,

Defendants.

Case No. CV-DE-2016-0074

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

THIS MATTER coming regularly on for hearing before the Coeur d'Alene Tribal Court on June 21, 2016, at 11:00 a.m. The Court having reviewed the Summons and Complaint filed in Tribal Court on May 13, 2016, the Affidavit of Service indicating that the Defendants were served on May 24, 2016, the Motion and Affidavit for Default and Default Judgment, the Affidavit of Jason Brown, and considering the testimony of Jason Brown presented in Tribal Court in support of the relief requested by the Coeur d'Alene Tribe. The Court now makes the following:

FINDINGS OF FACT

1. The Coeur d'Alene Tribe is a federally recognized Indian Tribe with a tribal reservation in north Idaho including parts of Kootenai and Benewah County.
2. The Coeur d'Alene Tribal Reservation encompasses the southern part of Lake Coeur d'Alene and parts of the St. Joe River.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

3. Steve W. Hawks and Deanne A. Hawks are husband and wife and own an interest in real property abutting the Lake Coeur d'Alene waterway and specifically the St. Joe River within the confines of the Coeur d'Alene Tribal Reservation.

4. The Defendants have owned and maintained pilings in the St. Joe River below the ordinary high water mark of 2,128 feet.

5. The Court considered Plaintiff's Exhibit No. 1 which was admitted into evidence that depicts the location of the pilings in the bed of the St. Joe River below the river level of 2,128 feet.

6. The oral testimony of Jason Brown established that the Defendants have a waterline lying on the river bed out to pilings that are at an approximate water depth of 2,113 feet and that the waterline lies on the river bottom. The line is attached to a piling.

7. The Tribe's Exhibit Nos. 2 and 3 depict the Defendants' boat garage located within a side channel lagoon of the St. Joe River and that the boat garage is moored by way of a piling driven into the bed of the river lagoon. The Tribe's Exhibit Nos. 2 and 3 were admitted into evidence by the Court.

8. The pilings, waterline and boat garage constitute an encroachment as defined by the Coeur d'Alene Tribal Code.

9. Jason Brown is the program manager for the Coeur d'Alene Tribe pertaining to lake management and is the person in charge of processing and enforcing encroachment permits for property owners that have encroachments in the Coeur d'Alene waterway.

10. Starting in 2003 and 2004 Jason Brown submitted several letters and compliance orders to the Defendants advising the Defendants that they needed to obtain encroachment permits from the Coeur d'Alene Tribe pursuant to the Coeur d'Alene Tribal Code. The Defendants never responded to the letters or compliance orders.

11. Suit in this matter was filed on May 13, 2016, in the Coeur d'Alene Tribal Court and service of process was on May 24, 2016. Defendants did not appear or answer the Complaint.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

12. Defendants and their attorney did receive notice of the Motion for Default and default judgment hearing as evidenced by the Certificate of Mailing appended to the Notice of Hearing and the Motion for Default and Default Judgment.

13. More than twenty (20) days have elapsed since the Defendants were served with the Summons and Complaint.

14. The Coeur d'Alene Tribal Code Section 44-1.01 et seq. provides that the Coeur d'Alene Tribe may seek a civil penalty not to exceed \$500 per day for every day an encroachment exists without a permit from the Coeur d'Alene Tribe. The Tribe has not sought the maximum \$500 per day civil penalty but rather has sought \$100 per day from the date of filing on May 13, 2016, through June 21, 2016, for a total of 39 days at \$100 per day and a money judgment amount of \$3,900.

15. The Tribe has further sought a finding that the Defendants are trespassing upon Tribally controlled lands and that the Tribe is entitled to remove the encroachments due to a lack of a permit for the encroachments.

CONCLUSIONS OF LAW

1. The Coeur d'Alene Tribal Court has jurisdiction over this matter based upon *Idaho v. United States and Coeur d'Alene Tribe*, 533 U.S. 262 (2001) and the Coeur d'Alene Tribe's code provisions in Section 44-1.01 et seq. allowing the Tribe to regulate the Lake Coeur d'Alene waterway within the Coeur d'Alene Tribal Reservation boundary.

2. The Tribe has subject matter jurisdiction over the matter based upon the encroachments maintained by the Defendants without a permit from the Coeur d'Alene Tribe.

3. The Coeur d'Alene Tribal Court has personal jurisdiction over the Defendants based upon the Defendants owning real property within the reservation boundaries that is adjacent to the Lake Coeur d'Alene waterway and maintaining encroachments without a permit from the Coeur d'Alene Tribe.

4. The Coeur d'Alene Tribe has regulatory jurisdiction over the Lake Coeur d'Alene waterway and adjudicatory jurisdiction for violations of the Coeur d'Alene Tribal Code pertaining to encroachments without a Tribal permit.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

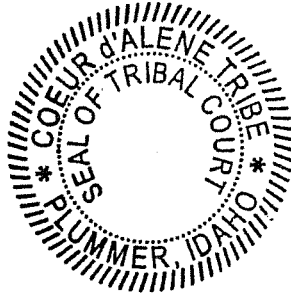
5. The Defendants are in default for failing to appear and defend in this matter and an Order of Default has been entered. The Court having reviewed the Complaint for damages and eviction filed in the Tribal Court takes the allegations in the Complaint as true.

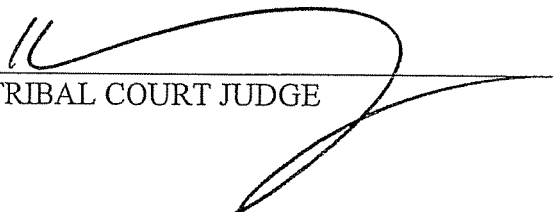
6. The Coeur d'Alene Tribe should be awarded a judgment against the Defendants in the amount of \$3,900.

7. The Court concludes that the Defendants are trespassing upon Tribally-controlled lands and that the Tribe is entitled to an Order of Eviction to remove the encroachments.

8. Pursuant to Coeur d'Alene Tribal Code Section 44-24.01(e), the Coeur d'Alene Tribal Court has exclusive jurisdiction over encroachment violations as defined in Chapter 44 of the Coeur d'Alene Tribal Code including suits for damages or trespass.

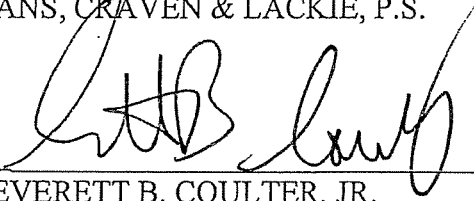
DONE IN OPEN COURT this 15th day of June, 2016.




TRIBAL COURT JUDGE

Presented by:

EVANS, CRAVEN & LACKIE, P.S.

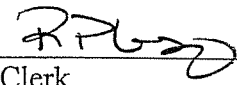
By 

EVERETT B. COULTER, JR.
Attorney for Plaintiff

CLERK'S CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18 day of July, 2016, the foregoing was delivered to the following persons in manner indicated:

Steven W. Hawks Deanne A. Hawks 89231 Highway 3 North St. Maries, ID 83861	Via Regular Mail [X] Via Certified Mail [] Via Facsimile [] Hand Delivered []
Norman Semanko Moffatt, Thomas, Barrett, Rock, Fields P.O. Box 829 Boise, ID 83701	Via Regular Mail [X] Via Certified Mail [] Via Facsimile [] Hand Delivered []
Everett B. Coulter, Jr. Evans, Craven & Lackie, P.S. 818 W. Riverside Ave., Ste. 250 Spokane, WA 99201	Via Regular Mail [X] Via Certified Mail [] Via Facsimile 509/455-3632 [] Hand Delivered []


Clerk

EVERETT B. COULTER, JR.
CHRISTOHER J. KERLEY
EVANS, CRAVEN & LACKIE, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201-0910
(509) 455-5200; (509) 455-3632

Attorneys for Plaintiff

FILED

Date: 7-18-16

Time: 10:40

Coeur d'Alene
Tribal Court

R

Court Clerk

by: _____

RECEIVED
JUL 20 2016

IN THE TRIBAL COURT OF THE COEUR D' ALENE TRIBE
OF THE COEUR D' ALENE INDIAN RESERVATION

COEUR D'ALENE TRIBE, a federally
recognized Indian Tribe,

Plaintiff,

vs.

STEVE W. HAWKS and DEANNE A.
HAWKS, husband and wife,

Defendants.

Case No. CV-DE-2016-0074

JUDGMENT

THIS MATTER having come on regularly for hearing upon the Motion and application of the Plaintiff for entry of a judgment against Defendants. The Court finds the following:

1. The Court has jurisdiction over this matter pursuant to CTC 44-1.01, *et seq.*, and *Idaho v. United States and Coeur d'Alene Tribe*, 533 U.S. 262 (2001);
2. The Court finds Defendants have received notice of this suit, and further finds the Defendants are in default and an Order of Default has been entered; and
3. The Court finds that a judgment should be entered against the Defendant for a civil penalty in the amount of \$ 3,900⁰⁰, and a finding that the Defendants are trespassing upon tribally controlled lands, and lastly the Tribe is entitled to remove the encroachments.

JUDGMENT

Page 1

NOW, THEREFORE IT IS ORDERED AND DECREED as follows:

1. A judgment in the amount of \$ 3,900⁰⁰ as a civil penalty is entered against Defendants and in favor of Plaintiff;
2. It is the judgment of this Court that the Defendant have trespassed against Plaintiff by maintaining encroachments without proper permits; and
3. The Tribe is entitled to remove the encroachments.

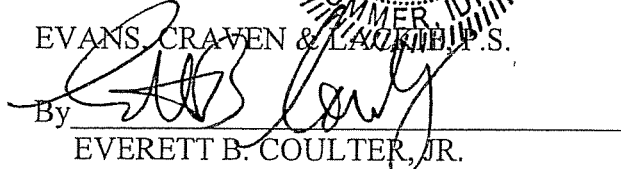
DONE IN OPEN COURT this 15th day of July ^(K)~~June~~, 2016.




TRIBAL COURT JUDGE

Presented by:

EVANS, CRAVEN & LACROIX P.C.

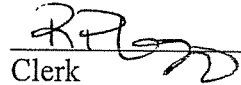
By 

EVERETT B. COULTER, JR.
Attorney for Plaintiff

CLERK'S CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the state of Idaho, that on the 18 day of July, 2016, the foregoing was delivered to the following persons in manner indicated:

Steven W. Hawks Deanne A. Hawks 89231 Highway 3 North St. Maries, ID 83861	Via Regular Mail [X] Via Certified Mail [] Via Facsimile [] Hand Delivered []
Norman Semanko Moffatt, Thomas, Barrett, Rock, Fields P.O. Box 829 Boise, ID 83701	Via Regular Mail [X] Via Certified Mail [] Via Facsimile [] Hand Delivered []
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Clerk