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Kinzo H. Mihara, ISB No. 7940  
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JUL 29 2016

DEPT. OF WATER RESOURCES

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

Subcase Nos.: 91-7173

AFFIDAVIT OF COUNSEL IN SUPPORT  
OF OBJECTOR'S MOTION FOR  
SUMMARY JUDGMENT

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

Objector.

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.

State of Idaho                 )  
                                              ) ss.  
County of Kootenai         )

COMES NOW, Dylan R. Hedden-Nicely, after being duly sworn before an officer authorized to administer oaths, swears and declares as follows:

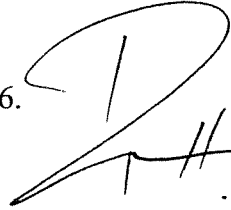
- (1) My name is Dylan R. Hedden-Nicely. I am an attorney duly authorized to practice law in the State of Idaho. I am one of the attorneys who represent the Objector in the above-noted subcases. I am over the age of 18 and am competent to testify to matters herein.
- (2) Attached hereto as Exhibit 1 is a true, accurate, and correct copy of *Claimants Steve and Deanne Hawks Responses to Objector's First Requests for Discovery*, cover page, and pages 4-5 (RFA 5), 6 (RFA 8), 10-11 (Interrog. No. 4), 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 Amended Second Requests for Discovery*, cover page, and pages 3 (RFA 18, RFA 20 and RFA 21), 4 (RFA 23 and RFA 24), 5 (RFA 26 and RFA 27), 5-6 (RFA 28 and 29), 7-8 (RFA 33), 8-10 (Interrog. No. 10), 13-14 (Interrog. No. 20), and (Attachment 1 thereto, referenced in RFA 18) bates CDAT OBJ-7173 0008-0009; 0013-0017.
- (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*, cover page, and pages 2 (RFA 10), and 2-3 (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*, cover page, and page 3 (RFA 37), 4 (RFA 41), 6 (RFA 45).

- (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 pages 20-22 of the transcript to the deposition of Steve Hawks.
- (8) Attached hereto is Exhibit 6 is a true, accurate, and correct copy of exhibit 17 to the deposition of Steve Hawks.
- (9) Attached hereto is Exhibit 7 is a true, accurate, and correct copy of exhibit 22 to the deposition of Steve Hawks.
- (10) Attached hereto as Exhibit 8 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.
- (11) Attached hereto as Exhibit 9 is a true, accurate, and correct copy of *State of Idaho's Responses to Objector's Second Requests for Discovery to the State of Idaho*, cover page and page 4 (RFA 22), p. 7 (Interrog. No. 9).
- (12) Attached hereto as Exhibit 10 is a true, accurate, and correct copy of a "Certified Copy" of Patent No. 301011 my office received from the U.S. Bureau of Land Management.
- (13) Attached hereto as Exhibit 11 is a true, accurate, and correct copy of the *Judgment* from the case, *Coeur d'Alene Tribe v. Steve and Deanne Hawks*, Case No. CV-DE-2016-0074 (Coeur d'Alene Tribal Court 2016).
- (14) Attached hereto as Exhibit 12 is a true, accurate, and correct copy of the *Findings of Fact and Conclusions of Law* from the case, *Coeur d'Alene Tribe v. Steve and Deanne Hawks*, Case No. CV-DE-2016-0074 (Coeur d'Alene Tribal Court 2016).

(15) Attached hereto as Exhibit 13 is a true, accurate, and correct copy of the *Memorandum Opinion* from the case, *Coeur d'Alene Tribe v. Kenneth and Donna Johnson*, Case No. CV-2016-25 (July 15, 2016).

Further you affiant sayeth naught.

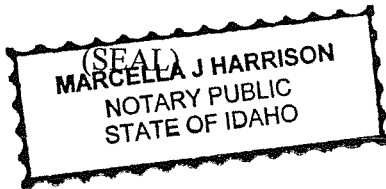
Respectfully submitted this 26<sup>th</sup> day of July, 2016.

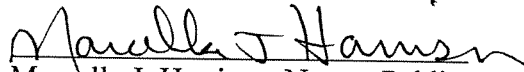


Dylan R. Hedden-Nicely

#### NOTARIAL ATTESTATION

That on the 26<sup>th</sup> day of July, 2016, and after being duly sworn, Dylan R. Hedden-Nicely, personally known to me and upon showing sufficient identification, appeared before me and executed this document.



  
Marcella J. Harrison, Notary Public  
Residing at Coeur d'Alene, ID  
My Commission Expires 4-14-20

### Certificate of Service

I hereby certify that on the 26<sup>th</sup> 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:

Norman Semanko

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

P.O. Box 829

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*Counsel for Claimant(s) and Respondent NIWRA members*

Clive Strong

Steven Strack

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*Counsel for Respondent State of Idaho*

U.S. Department of Justice

Environment & Nat'l Resources

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Idaho Department of Water Resources

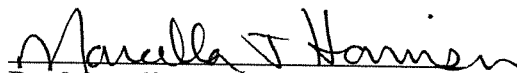
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By: Marcella J. Harrison

# EXHIBIT 1

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26002.0001

Attorneys for Claimants Steve Hawks 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. 91-7173

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

Steve Hawks 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, 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

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

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 Hawks 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

Norman M. Semanko, ISB No. 4761  
Sarah A. McCormack, ISB No. 9683  
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FIELDS, CHARTERED  
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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

Steve and Deanne Hawks,

Claimant(s),

vs.

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

Objector.

Subcase No. 91-7173

**CLAIMANTS' ANSWERS AND  
RESPONSES TO OBJECTOR'S  
AMENDED SECOND REQUESTS FOR  
DISCOVERY**

incomplete. A complete set of the documents in Claimants' licensing file can found in the attached documents at Hawks 0502-1000.

REQUEST FOR ADMISSION NO. 18: Pursuant to I.R.C.P. 36, please admit that the documents attached hereto as Attachment "1," bates numbers "CDAT OBJ-7173 0001 — 0023," 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 referenced in their response and/or amended response to Objector's First Requests for Discovery to Claimants.

RESPONSE TO REQUEST FOR ADMISSION NO. 18: Admit, but *see* Response to Request for Admission No. 17.

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-7173 0001 — 0006," 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: Admit.

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 time the Response to Objection in the foregoing subcase was filed. Responses were filed by the members of the group known as the North Idaho Water Right Alliance.

REQUEST FOR ADMISSION NO. 23: Please admit that Claimants' diversionary works extend past the legal description of Claimants' property on Blocks 1 and 2 of Sylvia's Haven, Benewah County, Idaho. [Please review documents Bates CDAT OBJ-7173 0010, CDAT OBJ-7173 0011, CDAT OBJ-7173 0016, CDAT OBJ-7173 0017, and CDAT OBJ-7173 0023, attached hereto, prior to answering this request for admission.]

RESPONSE TO REQUEST FOR ADMISSION NO. 23: Admit.

REQUEST FOR ADMISSION NO. 24: Please admit that there is water at Claimants' point of diversion at all times of the year. [Please review document at Bates CDAT OBJ-7173 0023, attached hereto as part of Attachment "1", prior to answering this request for admission.]

RESPONSE TO REQUEST FOR ADMISSION NO. 24: Admit. However, Claimant does not divert water during all times of the year and does not have the diversion structure in the St. Joe River at all times of the year.

REQUEST FOR ADMISSION NO. 25: Please admit that Claimants' point of diversion is below the ordinary low water mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 25: Claimants lack sufficient knowledge and information to answer this Request for Admission therefore deny the same. Claimants divert directly from the St. Joe River from a suspended pipeline and do not know what the ordinary low water mark is at that point of diversion.

REQUEST FOR ADMISSION NO. 26: Please admit that neither IDWR water permit no. 91-7173 nor IDWR water right license no. 91-7173 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. 91-7173 nor IDWR water right license no. 91-7173 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. 91-7173 and/or IDWR water right license no. 91-7173, 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. 91-7173 and/or IDWR water right license no. 91-7173, 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. 91-7173 nor IDWR water right license no. 91-7173 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. 91-7173 nor IDWR water right license no. 91-7173 authorize access to or across land not owned by Claimants, but deny that they authorize access to or across land not owned by Claimants.

REQUEST FOR ADMISSION NO. 29: Please admit the Claimant(s) cannot enter any lands, including submerged lands, owned by the Coeur d'Alene Tribe or by the United States in trust for the benefit of the Coeur d'Alene Tribe without permission from either the Tribe or the United States.

RESPONSE TO REQUEST FOR ADMISSION NO. 29: Claimants admit the Claimant(s) cannot enter any lands, including submerged lands, owned by the Coeur d'Alene Tribe or by the United States in trust for the benefit of the Coeur d'Alene Tribe without permission from either the Tribe or the United States, but deny that they have entered any lands, including submerged lands, owned by the Coeur d'Alene Tribe or by the United States in trust for the benefit of the Coeur d'Alene Tribe.

REQUEST FOR ADMISSION NO. 30: Please admit that Claimants' riparian and/or littoral rights do not include the right to make any consumptive use of the waters of the St. Joe River or any right of access for the purpose of appropriating water from the St. Joe River.

RESPONSE TO REQUEST FOR ADMISSION NO. 30: Claimants admit that Claimants' riparian and/or littoral rights do not include the right to make any consumptive use of the waters of the St. Joe River without a valid water right, but deny that Claimants' riparian and/or littoral rights do not include any right of access for the purpose of appropriating water from the St. Joe River.

REQUEST FOR ADMISSION NO. 31: Please admit that Claimants' [sic] do not have title insurance for the real property associated with the above-captioned water right claim.

RESPONSE TO REQUEST FOR ADMISSION NO. 31: Admit.

REQUEST FOR ADMISSION NO. 32: Please admit that the Coeur d'Alene Tribe is entitled to the exclusive use, occupancy, and right to quiet enjoyment of the bed and banks of the Coeur d'Alene Lake and the St. Joe River that are owned by the United States in trust for the Coeur d'Alene Tribe.

RESPONSE TO REQUEST FOR ADMISSION NO. 32: Objection is made to Request for Admission No. 32 on the ground that it has been asked and answered in Request for Admission No. 2 and Response to Request for Admission No. 2. Claimants also object to Request for Admission No. 32 on the ground that it seeks a legal conclusion regarding who owns "the bed and banks of the Coeur d'Alene Lake and the St. Joe River" and attorney work product. 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 United States, as trustee, and the Coeur d'Alene Tribe of Idaho, 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 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 United States and the Coeur d'Alene Tribe are entitled to the exclusive use, occupancy and right to the quiet enjoyment of all the bed and banks of Lake Coeur d'Alene and the St. Joe River, specifically not at Claimants' point of diversion.

REQUEST FOR ADMISSION NO. 33: Please admit that the water level at Claimants' point of diversion is capable of floating boats or canoes.

RESPONSE TO REQUEST FOR ADMISSION NO. 33: Admit.

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: Admit.

### **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 No. 17, 18 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.

With regard to Request for Admission No. 32, *see* Answer to Interrogatory No. 10.

INTERROGATORY NO. 10: If Claimants are claiming ownership of real property below the OHWM at the claimed point of diversion, please identify the basis of such an

assertion of ownership. If Claimants are not claiming ownership of such real property, please indicate such disclaimer.

ANSWER NO. 10: 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 the construction of one or more dams, culminating with the construction of Post Falls Dam in 1907. *In re Sanders Beach*, 143 Idaho 443, 147 P.3d 75 (2006); *Erickson v. State*, 132 Idaho 208, 970 P.2d 1 (1998); *Deffenbaugh v. Wash. Water Power Co.*, 24 Idaho 514, 135 P. 247 (1913); *Petajaniemi v. Wash. Water Power Co.*, 22 Idaho 20, 124 P. 783 (1912); *Wash. Water Power Co. v. Waters*, 19 Idaho 595, 115 P. 682 (1911). These additional submerged lands are beyond those recognized in *Idaho v. United States*. The United States only reserved those submerged lands that existed prior to Statehood. They did not—could not—reserve lands that would not become submerged until after the dams were built.

In addition, although the ordinary high water mark (“OHWM”) 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”). Claimants’ point of diversion is higher than 2120 feet, the elevation of the water above the submerged lands prior to Statehood, which precludes it from ownership by the United States.

INTERROGATORY NO. 11: 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 5 contained in Objector’s first requests for discovery to Claimants.

ANSWER NO. 11: Claimants rely on all documents in their licensing file, which include CDAT OBJ-7173 0007 – 0023, to provide the information requested from Request for Production No. 5.

INTERROGATORY NO. 12: 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 6 contained in Objector’s first requests for discovery to Claimants.

ANSWER NO. 12: Claimants rely on all documents in their licensing file, which include CDAT OBJ-7173 0007 – 0023, 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

submerged lands that existed prior to Statehood. They did not—could not—reserve lands that would not become submerged until after the dams were built.

INTERROGATORY NO. 18: Please state, by legal citation, court cases which discuss the legal theory or theories set forth in the answer to interrogatory number 17 above. [In lieu of answering, Claimants may provide documents responsive to this interrogatory.]

ANSWER NO. 18: Objection is made to Interrogatory No. 18 on the grounds that it calls for legal citation to court cases and thus is outside the scope of discovery allowed under Idaho Rule of Civil Procedure 33. Without waiving the objection and without waiving the right to cite additional cases in legal briefing in this subcase, *see* cited cases in Answer to Interrogatory No. 17.

INTERROGATORY NO. 19: Please identify and describe in detail those facts that Claimants' [sic] rely upon in their denials of Requests for Admission Nos. 1, 5 10, 11, and 13 wherein Claimants' [sic] 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' [sic] assert that "Claimants or the State of Idaho own the submerged lands underlying the Claimants' point of diversion." Please identify all individuals with knowledge regarding any such facts, and all documents relating in any way to your response.

ANSWER NO. 19: *See* Answer to Interrogatory No. 17. In addition, Claimants' point of diversion is higher than the elevation of the water above the submerged lands prior to Statehood, which precludes it from ownership by the United States.

INTERROGATORY NO. 20: Please state the elevation, in feet above mean sea level, of the ordinary, historic or natural high water mark of the St. Joe River, as referenced in

Claimants' answers to Requests for Admission Nos. 6 and 7, and the ordinary low water mark of the St. Joe River. Please identify all individuals with knowledge regarding any facts stated in your response, and all documents relating in any way to your response.

ANSWER NO. 20: Objection is made to Interrogatory No. 20 on the grounds that the ordinary low water mark was not referenced in Claimants' Responses to Requests for Admission Nos. 6 and 7. Without waiving the objection, Claimants have insufficient knowledge and information to give the ordinary low water mark of the St. Joe River. The ordinary high water mark is 2120. *See also* Response to Request for Admission No. 17.

All individuals with knowledge regarding such facts are Claimants.

INTERROGATORY NO. 21: Please provide the basis or describe the basis for the answer to Interrogatory No. 20, as well as the basis for Claimants' denial in Responses to Request for Admission Nos. 6 and 7 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 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." Please identify all individuals with knowledge regarding any facts stated in your response, and all documents relating in any way to your response.

ANSWER NO. 21: Although the ordinary high water mark ("OHWM") 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

# ATTACHMENT 1

74859

Ident. No. 91-7173

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

## APPLICATION FOR PERMIT

To appropriate the public water of the State of Idaho

RECEIVED  
JUN 20 2008  
IDWR/North

1. Name: STEVE HAWKS  
89231 HWY 3N  
ST MARIES ID 83861  
(208)245-2403

2. Source: ST JOE RIVER Tributary to: COEUR D ALENE LAKE

3. Location of Point of Diversion:

#1 ST JOE RIVER

L7 (NE1/4SE1/4)

Sec. 7, Twp 46N, Rge 02W, B.M.

BENEWAH County

4. Water will be used for the following purposes:

| Purpose  | From To        | RATE OF DIVERSION | ANNUAL VOLUME |
|----------|----------------|-------------------|---------------|
| DOMESTIC | 01/01 to 12/31 | 0.04 CFS          |               |

5. Total quantity to be appropriated is: 0.04 CFS

6. Proposed diverting works:

## POINT OF DIVERSION #1

a. Type and size of devices used to divert water from the source: 3/4 HP PUMP AND DISCHARGE LINE

b. Height of storage dam \_\_\_\_\_ feet;  
Active reservoir capacity \_\_\_\_\_ acre-feet;  
Total reservoir capacity \_\_\_\_\_ acre-feet;

c. Proposed well diameter is \_\_\_\_\_ inches;  
Proposed depth of well is \_\_\_\_\_ feet.

d. Is ground water with a temperature of greater than 85F being sought?

e. If well is already drilled, when? \_\_\_\_\_;

Drilling Firm \_\_\_\_\_;

Drilling Permit No. \_\_\_\_\_.

7. Time required for the completion of the works and application of the water to the proposed beneficial use is 1 year(s).

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**APPLICATION FOR PERMIT**

To appropriate the public water of the State of Idaho

8.

**PLACE OF USE:** DOMESTIC

| Twp Rge Sec | NE |    |    |    | NW |    |    |    | SW |    |    |    | SE |    |    |    | Totals |
|-------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
| 46N 02W 7   | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE |        |
|             |    |    |    |    |    |    |    |    |    |    |    |    | X  |    |    |    | L 7    |

9a. Who owns the property at the point of diversion? If other than applicant, describe the arrangement enabling the applicant to make this filing.

APPLICANT

9b. Who owns the land to be irrigated or place of use? If other than applicant, describe the arrangement enabling the applicant to make this filing.

APPLICANT

10. Remarks:

SUMMER RECREATIONAL USE

11. Map of proposed point of diversion and place of use attached? [ X ]

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

Shirley Hawker

Applicant

Received by Dianne / d Date 6/16/08 Time 10:45 Preliminary check by St. Marie's Gayette  
 Publication prepared by d Date 6/25/08 Published in St. Marie's Gayette 2/24/08  
 Publication approved d Date 7/11/08

Receipt No. N019318

Date: 6/16/08

Received by: Dianne

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
BENEFICIAL USE FIELD REPORT

**A. GENERAL INFORMATION**

Permit No: 91-7173

Exam Date:

1. Current Owner: STEVE HAWKS  
89231 HWY 3N  
ST. MARIES ID 83861  
208-245-2403
2. Accompanied by: Current Owner  
Phone No: Same  
Address: Same  
Relationship to Permit Holder:

3. SOURCE

ST JOE RIVER

TRIBUTARY

COEUR D'ALENE LAKE

**B. OVERLAP REVIEW**

1. Other water rights with the same place of use:
2. Other water rights with the same point of diversion:

**C. DIVERSION AND DELIVERY SYSTEM**1. LOCATION OF POINT(S) OF DIVERSION:

ST JOE RIVER

L7 NE1/4SE1/4

Sec. 7, Twp 46N, Rge 02W, B.M.

BENEWAH County

Method of Determination: Map and Aerial Photo

2.

PLACE OF USE: DOMESTIC

| Twp | Rge | Sec | NE |    |    |    | NW |    |    |    | SW |    |    |    | SE |    |    |    | Totals |
|-----|-----|-----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
| 46N | 02W | 7   | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE |        |
|     |     |     |    |    |    |    |    |    |    |    |    |    |    |    | X  |    |    |    |        |
|     |     |     |    |    |    |    |    |    |    |    |    |    |    |    | L7 |    |    |    |        |

## Method of Determination:

3. ☒ Delivery System Diagram Attached (required). Indicate all major components and distances between components. Indicate weir size/pipe as applicable.
- ☒ Map Attached Showing Location(s) of point(s) of diversion and place(s) of use (required). Scale must be 1:24,000 or greater.
- ☒ Aerial Photo Attached (required for irrigation of 10+ acres).
- ☒ Photo of Diversion and System Attached

4.

Well or Diversion  
ID No.\*

Motor MakeHpMotor Serial No.Pump Make

Pump Serial No. or Discharge  
Size

|  |        |     |       |      |       |
|--|--------|-----|-------|------|-------|
|  | Dayton | 1/2 | 9K649 | Teel | 1P852 |
|  |        |     |       |      |       |
|  |        |     |       |      |       |
|  |        |     |       |      |       |

\*Code to correspond with No. on map and aerial photo

## D. FLOW MEASUREMENTS

1.

Measurement  
Equipment

TypeMakeModel No.Serial No.SizeCalib. Date

|  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |

2. Measurements:

## E. FLOW CALCULATIONS

\_\_\_\_ Additional Computation Sheets Attached

Measured Method:

5 gallon bucket in 20 sec = 18 gpm = 0.04 cfs

**F. VOLUME CALCULATIONS**

## 1. Volume Calculations for Irrigation:

$$V_{I.R.} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) =$$

$$V_{D.R.} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation season}) \times 1.9835 =$$

$$V = \text{Smaller of } V_{I.R.} \text{ and } V_{D.R.} =$$

## 2. Volume Calculations for Other Uses: Domestic use volume = 1.2AF

**G. NARRATIVE/REMARKS/COMMENTS:** This water right is for one home with 1/2 ac of irrigation.

Have conditions of permit approval been met? ☒ Yes ☐ No

**H. RECOMMENDATIONS**

## 1. Recommended Amounts

| <u>BENEFICIAL USE</u> | <u>PERIOD OF USE</u> | <u>DIVERSION RATE</u> | <u>ANNUAL VOLUME</u> |
|-----------------------|----------------------|-----------------------|----------------------|
| DOMESTIC              | 01/01 to 12/31       | 0.040 CFS             | 1.2 AF               |
| <u>Totals:</u>        |                      | 0.040 CFS             | 1.2 AF               |

## 2. Recommended Amendments

☐ Change P.D. as reflected above ☐ Add P.D. as reflected above ☒ None

☐ Change P.U. as reflected above ☐ Add P.U. as reflected above ☐ Other

**I. AUTHENTICATION**

Field Examiner's Name *E. J. Perry* Date 11/14/08

Reviewer *[Signature]* Date 11/20/08

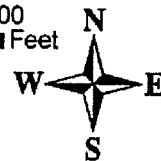
# DELIVERY SYSTEM



## Legend

- ⊙ Right POD
- ▨ Right POU

0 50 100 200 300 400 Feet



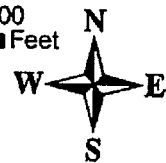
91-7173



**Legend**

- ⊙ Right POD
-  Right POU

0 50 100 200 300 400 Feet



# EXHIBIT 3

Norman M. Semanko, ISB No. 4761  
Sarah A. McCormack, ISB No. 9683  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 S. Capitol Blvd., 10th Floor  
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Telephone (208) 345-2000  
Facsimile (208) 385-5384  
nms@moffatt.com  
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. 91-7173

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

Steve and Deanne Hawks,

Claimants,

vs.

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

Objector.

**CLAIMANTS STEVE AND DEANNE HAWKS' SECOND  
AMENDED AND SUPPLEMENTAL RESPONSES TO OBJECTOR'S  
FIRST REQUESTS FOR DISCOVERY - 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, the 3/4 HP pump for the diversion works is located on Claimants property and is connected to a discharge line that extends about 100 feet out over and into the water of the St. Joe River. The lowest part of the diversion works within the St. Joe River is several 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 about May to October for summer domestic use. The diversion rate is 0.04 cfs and the volume is 1.2 acre feet.

# 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  
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Telephone (208) 345-2000  
Facsimile (208) 385-5384  
nms@moffatt.com  
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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. 91-7173

**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-7173 0153 to CDAT OBJ-7173 0158 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. 91-7173, 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. 91-7173 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 their chain of 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-7173 0116.

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-7173 0116. 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-7173 0116. 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. 44: Pursuant to I.R.C.P. 36, please admit that the documents attached hereto as Attachment "3," bates numbers CDAT OBJ-7173 0650 — CDAT OBJ-7173 0657, 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-7173 0650 to CDAT OBJ-7173 0657 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. 91-7173 is not physically located within the exterior boundaries of Parcel No. RP005300200130A.

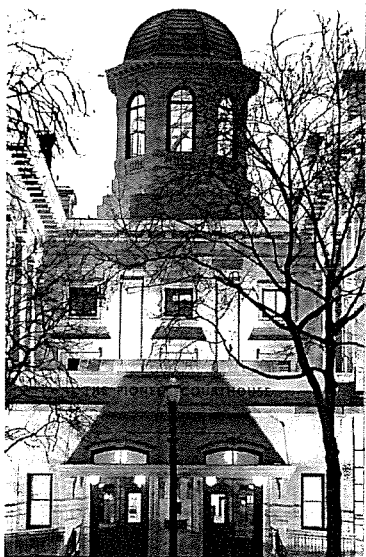
RESPONSE NO. 45: Admit.

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

# EXHIBIT 5



COURT REPORTING  
LEGAL VIDEOGRAPHY  
VIDEOCONFERENCING  
TRIAL PRESENTATION  
MOCK JURY SERVICES  
LEGAL TRANSCRIPTION  
COPYING AND SCANNING  
LANGUAGE INTERPRETERS



**NAEGELI**  
*Expect Excellence*

**DEPOSITION AND TRIAL**



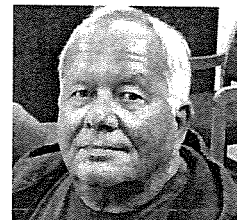
**(800) 528-3335**

**NAEGELIUSA.COM**

**DISTRICT COURT, 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, SUBCASE NOS. 91-7102; 91-7173

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

Objector.

DEPOSITION OF

STEVE HAWKS

TAKEN ON  
MONDAY, MAY 2, 2016  
1:17 P.M.

MORRIS AND WOLFF, P.A.  
722 MAIN AVENUE  
SAINT MARIES, IDAHO 83861

1 Q. Okay. Can you take a look at the second  
2 page and let me know if you've ever seen the second  
3 page of that exhibit?

4 A. (Witness complied.) No.

5 Q. Okay. Do you recognize what that exhibit  
6 purports to depict?

7 A. Sylvia's Haven.

8 Q. Like Exhibit 2, can you take the Sharpie  
9 marker and on the properties that are noted on it,  
10 can you draw a box around the properties that you  
11 claim to own?

12 A. (Witness complied.) An X?

13 Q. Yeah.

14 A. (Indicating.)

15 Q. Okay. And like Exhibit 2, can you put a Y  
16 where your points of diversion are?

17 A. (Witness complied.)

18 Q. Okay. I'll refer you to Exhibit 2. Can  
19 you read what's marked at the very bottom of that  
20 exhibit?

21 A. "Mean summer level" -- or "Mean summer  
22 water."

23 Q. Are you aware of what the term "mean  
24 summer water level" is?

25 A. Just what the level of the lake is in the

1 summer that's regulated by the dam.

2 Q. And the dam would be --

3 A. Post Falls.

4 Q. -- the dam -- just so we're making a  
5 written record, when I'm asking a question, before  
6 you answer or if -- I apologize if I interrupted  
7 you. So let's try to, if I'm speaking, to let me  
8 finish and if you're speaking, I will try my hardest  
9 to let you --

10 A. Okay.

11 Q. -- finish. It's for the benefit of the  
12 court reporter.

13 A. Okay.

14 Q. So the dam is located in Post Falls,  
15 correct?

16 A. Right.

17 Q. And that regulates the water level at your  
18 properties --

19 A. Yes.

20 Q. -- correct?

21 Now, is there a difference of water level  
22 between lot six and lot 13, meaning is the water  
23 adjacent to lot 13 any different level?

24 A. No.

25 Q. So it's the same level at the same time?

1 A. Yes.

2 Q. So if the water goes up on lot six, the  
3 water goes up on lot 13?

4 A. Yes.

5 Q. And if the water goes down on lot six, the  
6 water goes down on lot 13?

7 A. Yes.

8 Q. Okay. Now, I notice on Exhibit 2 and  
9 Exhibit 3 you marked your Y's inside the boxes  
10 (indicating), (indicating). And that's correct?

11 A. (Witness nods head.) Yeah.

12 Q. Okay. Now, for those diversions, do those  
13 diversions have piping?

14 A. Yes.

15 Q. And so would you say that the ends of  
16 those pipes are where you drew the Y?

17 A. No -- well, yeah, that one is  
18 (indicating). Yeah, it's pretty close.

19 Q. Okay. And when you say "that one," you're  
20 referring to lot six on Exhibit 3?

21 A. Yes.

22 Q. Okay. And that's the same for Exhibit --  
23 lot six on Exhibit 2?

24 A. Yes.

25 Q. So is it different on lot 13?

# EXHIBIT 6

State of Idaho  
Department of Water Resources  
**Permit to Appropriate Water**

NO. 91-07173

Priority: June 16, 2008

Maximum Diversion Rate: 0.04 CFS

This is to certify, that STEVE HAWKS  
89231 HWY 3N  
ST. MARIES ID 83861

has applied for a permit to appropriate water from:

Source: ST JOE RIVER

Tributary: COEUR D ALENE LAKE

and a permit is APPROVED for development of water as follows:

| <u>BENEFICIAL USE</u> | <u>PERIOD OF USE</u> | <u>RATE OF DIVERSION</u> | <u>ANNUAL VOLUME</u> |
|-----------------------|----------------------|--------------------------|----------------------|
| DOMESTIC              | 01/01 to 12/31       | 0.04 CFS                 |                      |

LOCATION OF POINT(S) OF DIVERSION:

ST JOE RIVER L7 (NE1/4SE1/4) Sec. 7, Twp 46N, Rge 02W, B.M.  
BENEWAH County

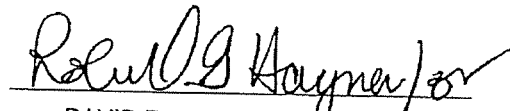
PLACE OF USE: DOMESTIC

| Twp Rge Sec | NE |    |    |    | NW |    |    |    | SW |    |    |    | SE |    |    |    | Totals |
|-------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
|             | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE |        |
| 46N 02W 7   |    |    |    |    |    |    |    |    |    |    |    |    | X  |    |    |    | L 7    |

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **August 01, 2009**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Domestic use is for 1 home.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 8<sup>th</sup> day of August, 2008.

  
DAVID R. TUTHILL, JR., Director

|                |         |
|----------------|---------|
| EXHIBIT        |         |
| 17             |         |
| DEPONENT NAME: | DATE:   |
| S. HAWKS       | 5/21/06 |

CDAT OBJ-7173 0012

# EXHIBIT 7

State of Idaho  
Department of Water Resources  
**Water Right License**

WATER RIGHT NO. 91-07173

Priority: June 16, 2008

Maximum Diversion Rate: 0.04 CFS  
Maximum Diversion Volume: 1.2 AF

It is hereby certified that STEVE HAWKS  
89231 HWY 3N  
ST. MARIES ID 83861 has complied with the terms and  
conditions of the permit, issued pursuant to Application for Permit dated June 16, 2008; and has  
submitted Proof of Beneficial Use on August 21, 2008. An examination indicates that the works have a  
diversion capacity of 0.04 cfs of water from:

SOURCE

ST JOE RIVER

Tributary: COEUR D ALENE LAKE

and a water right has been established as follows:

| <u>BENEFICIAL USE</u> | <u>PERIOD OF USE</u> | <u>DIVERSION RATE</u> | <u>ANNUAL<br/>DIVERSION VOLUME</u> |
|-----------------------|----------------------|-----------------------|------------------------------------|
| DOMESTIC              | 01/01 to 12/31       | 0.04 CFS              | 1.2 AF                             |

LOCATION OF POINT(S) OF DIVERSION:

ST JOE RIVER L7 (NE $\frac{1}{4}$ SE $\frac{1}{4}$ ) Sec. 7, Twp 46N, Rge 02W, B.M. BENEWAH County

PLACE OF USE: DOMESTIC

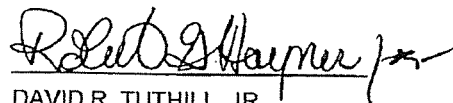
| Twp Rge Sec | NE |    |    |    | NW |    |    |    | SW |    |    |    | SE |    |    |    |        |
|-------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
|             | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | Totals |
| 46N 02W 7   |    |    |    |    |    |    |    |    |    |    |    |    | X  |    |    |    | L7     |

CONDITIONS OF APPROVAL

- Domestic use is for 1 home.
- This right does not grant any right-of-way or easement across the land of another.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 25<sup>th</sup> day of November, 2008.

  
DAVID R. TUTHILL, JR.  
Director

EXHIBIT

22

DEPONENT NAME:

S. HAWKS

DATE:

5/21/16

# EXHIBIT 8

RECEIVED AUG 17 1998  
U.S. DISTRICT COURT  
DISTRICT OF IDAHO  
Filed at Boise

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-NEJL

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

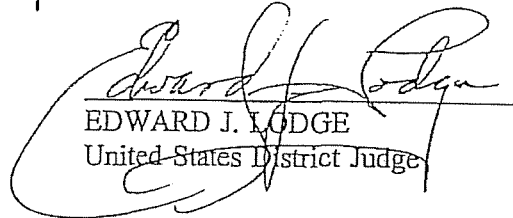
submerged lands were not at issue in this litigation;

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 14<sup>th</sup> day of August, 1998.

  
EDWARD J. LODGE  
United States District Judge

# EXHIBIT 9

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.: 91-07173          |
|                                             | ) |                                |
| Case No. 49576                              | ) | STATE OF IDAHO'S RESPONSES TO  |
|                                             | ) | OBJECTOR'S SECOND REQUESTS FOR |
| _____                                       | ) | DISCOVERY TO THE STATE OF      |
| Steve and Deanne Hawks,                     | ) | IDAHO                          |
|                                             | ) |                                |
| 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*.

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 ), 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

INTERROGATORY NO. 9: Please state the furthest point upstream that the waters of the St. Joe River are affected by the operation of the dam at Post Falls, Idaho.

ANSWER: Approximately the highway bridge  $\frac{3}{4}$  mile east of St. Joe City, Idaho.

INTERROGATORY NO. 10: Please state the furthest point upstream that the State of Idaho regulates encroachments.

ANSWER: The furthest point upstream that the State of Idaho regulates encroachments pursuant to the terms of title 58, chapter 13, Idaho Code, is the highway bridge  $\frac{3}{4}$  mile east of St. Joe City, Idaho.

INTERROGATORY NO. 11: Please state the furthest point upstream that the State of Idaho asserts the St Joe River is navigable.

ANSWER: Although the State of Idaho has not conducted studies to definitively determine the furthest point upstream of the St. Joe that is navigable for purposes of title, and therefore is unable to definitively answer this request, the State considers the St. Joe River to be navigable in fact through at least T45N, R7E.

INTERROGATORY NO. 12: Please state the elevation that Idaho asserts and/or believes to be the ordinary high water mark of the St Joe River from the mouth of the St. Joe River to the point approximately  $\frac{3}{4}$  of a mile east of St. Joe City. Please state the assumed/believed ordinary high water mark at claimants' points of diversion, if different.

ANSWER: Pursuant to the terms of title 58, chapter, 13, Idaho Code, the State regulates encroachments on those portions of the St. Joe River that qualify as "slack water" whether naturally or due to impoundment from Post Falls Dam. Due to the influx of water from the St. Joe River, the elevation of the summer slack water pool on the St. Joe River is not necessarily the same as the presumed OHWM of Coeur d'Alene Lake. Accordingly, the State does not limit its regulatory authority on the St. Joe River to waters at or below the presumed OHWM of Coeur d'Alene Lake.

INTERROGATORY NO. 13: Please state the factual basis for your answer to Interrogatory No. 12.

# 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  
SEAL

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                                                                                                                                                                                                                                                                                                                                                                                                                                               |         |          |         |              |               |                  |     |                       |     |        |     |          |     |                    |     |            |                                               |
| <input checked="" type="checkbox"/> CASTLIO, UNCAS M<br><br><br><br><br>                                        |                                               |             | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 30%;">Land Office:</td><td>Coeur D Alene</td></tr> <tr><td>US Reservations:</td><td>Yes</td></tr> <tr><td>Mineral Reservations:</td><td>Yes</td></tr> <tr><td>Tribe:</td><td>---</td></tr> <tr><td>Militia:</td><td>---</td></tr> <tr><td>State In Favor Of:</td><td>---</td></tr> <tr><td>Authority:</td><td>April 24, 1820; Sale-Cash Entry (3 Stat. 566)</td></tr> </table> |         |          |         | Land Office: | Coeur D Alene | US Reservations: | Yes | Mineral Reservations: | Yes | Tribe: | --- | Militia: | --- | State In Favor Of: | --- | Authority: | April 24, 1820; Sale-Cash Entry (3 Stat. 566) |
| Land Office:                                                                                                    | Coeur D Alene                                 |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |         |          |         |              |               |                  |     |                       |     |        |     |          |     |                    |     |            |                                               |
| US Reservations:                                                                                                | Yes                                           |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |         |          |         |              |               |                  |     |                       |     |        |     |          |     |                    |     |            |                                               |
| Mineral Reservations:                                                                                           | Yes                                           |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |         |          |         |              |               |                  |     |                       |     |        |     |          |     |                    |     |            |                                               |
| Tribe:                                                                                                          | ---                                           |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |         |          |         |              |               |                  |     |                       |     |        |     |          |     |                    |     |            |                                               |
| Militia:                                                                                                        | ---                                           |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |         |          |         |              |               |                  |     |                       |     |        |     |          |     |                    |     |            |                                               |
| State In Favor Of:                                                                                              | ---                                           |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |         |          |         |              |               |                  |     |                       |     |        |     |          |     |                    |     |            |                                               |
| Authority:                                                                                                      | April 24, 1820; Sale-Cash Entry (3 Stat. 566) |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |         |          |         |              |               |                  |     |                       |     |        |     |          |     |                    |     |            |                                               |
| Military Rank: ---                                                                                              |                                               |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |         |          |         |              |               |                  |     |                       |     |        |     |          |     |                    |     |            |                                               |
| 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

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

IR  
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 \$ 3,900<sup>00</sup>, and a finding that the Defendants are trespassing upon tribally controlled lands, and lastly the Tribe is entitled to remove the encroachments.

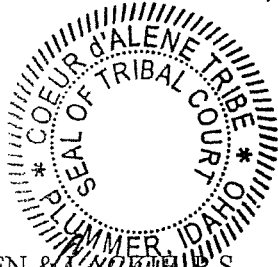
JUDGMENT

Page 1

NOW, THEREFORE IT IS ORDERED AND DECREED as follows:

1. A judgment in the amount of \$ 3,900<sup>00</sup> 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.

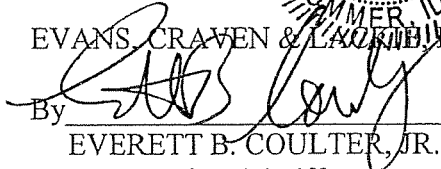
DONE IN OPEN COURT this 15<sup>th</sup> day of July <sup>(K)</sup>~~June~~, 2016.



  
TRIBAL COURT JUDGE

Presented by:

EVANS, CRAVEN & LACROIX, P.C.

By 

EVERETT B. COULTER, JR.  
Attorney for Plaintiff

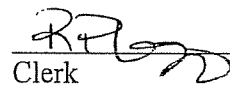
**JUDGMENT**

Page 2

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

  
Clerk

**JUDGMENT**

# EXHIBIT 12

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

FILED

Date: 7-18-16

Time: 10:40

Coeur d'Alene  
Tribal Court

RR  
Court Clerk

by: \_\_\_\_\_

RECEIVED

IN THE TRIBAL COURT OF THE COEUR D' ALENE TRIBE  
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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

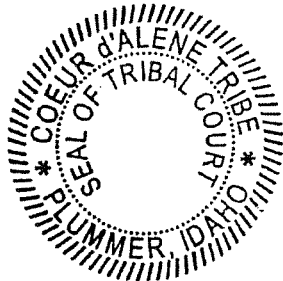
5. The Defendants are in default for failing to appear and defend in this matter and an Order of Default has been entered. The Court having reviewed the Complaint for damages and eviction filed in the Tribal Court takes the allegations in the Complaint as true.

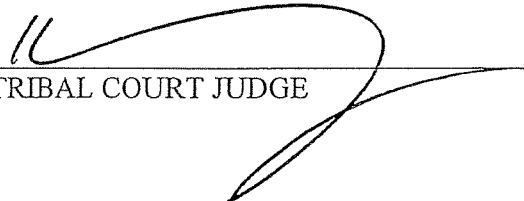
6. The Coeur d'Alene Tribe should be awarded a judgment against the Defendants in the amount of \$3,900.

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 15<sup>th</sup> day of June, 2016.



  
TRIBAL COURT JUDGE

Presented by:

EVANS, CRAVEN & LACKIE, P.S.

By 

EVERETT B. COULTER, JR.

Attorney for Plaintiff

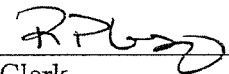
**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

Page 4

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

  
Clerk

8/26/14

1109

RP005300200130A  
Hawks, Steven W  
89231 HWY 3 North  
St. Maries, ID 83861

0506

0576

10/21/03



Side Channel/Lagoon

Illegal Boat Garage

Steven W Hawks  
89231 Hwy 3 North  
St. Maries, ID 83861  
Parcel ID RP005300200130A

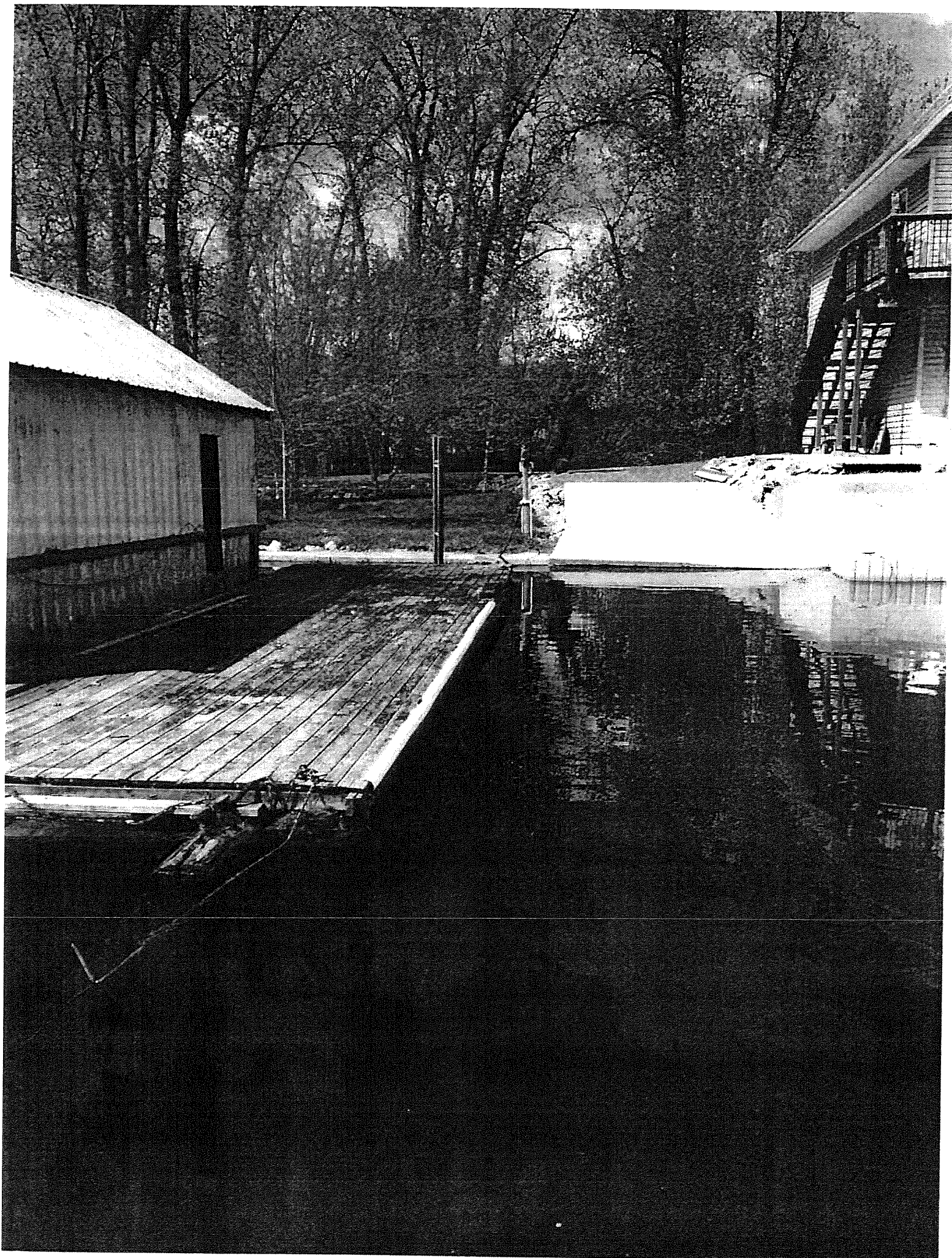
Illegal Pilings

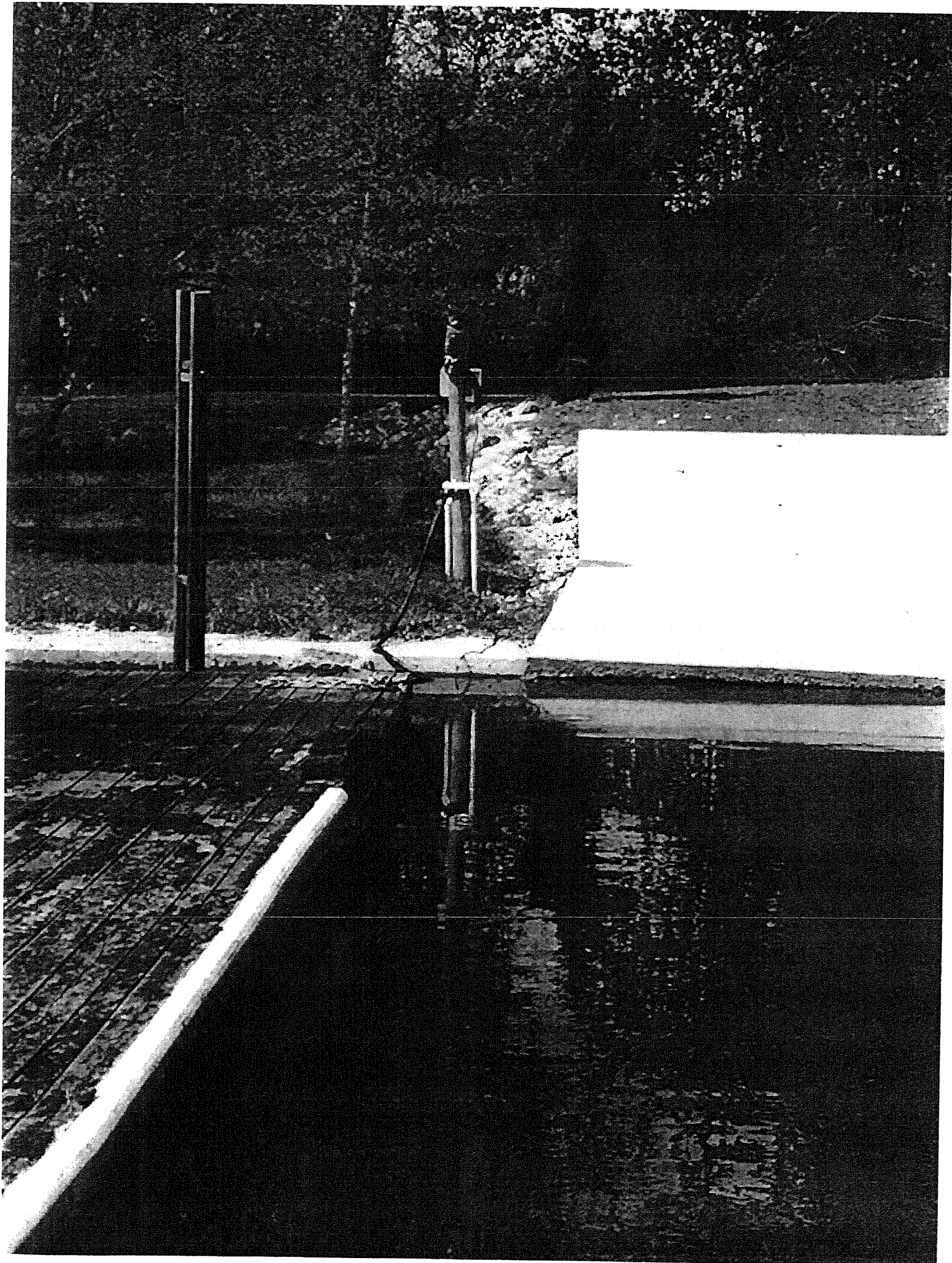


Side River



10/21/03





# EXHIBIT 13

COPY

BENEWAH COUNTY

2016 JUL 15 PM 12:37

BY:  DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BENEWAH

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

Plaintiff,

vs.

KENNETH and DONNA JOHNSON,

Defendants.

CASE NO. CV-2016-25

MEMORANDUM OPINION

I  
INTRODUCTION

Every year, in courts all across the State of Idaho, judgments entered in other state courts and federal courts are enforced in Idaho pursuant to the Enforcement of Foreign Judgments Act. I.C. §10-1301 *et. seq.* This case presents the question whether a judgment by the Coeur d'Alene Tribal Court against a non-tribal member may be enforced in similar fashion. While the question is simple to state, the answer is not so simple. The answer involves the interplay of state law, federal law, and tribal law. The answer also involves the

examination of state court decisions, federal court decisions, and tribal court decisions.

The Coeur d'Alene Tribe requests recognition of a default judgment issued by its tribal court in tribal case no. CV-SC-2014-260, fining defendants Kenneth and Donna Johnson, and entitling the Tribe to remove a dock encroaching on a riverbed held in trust for the tribe by the federal government. See, *Idaho v. United States*, 533 U.S. 262, 121 S. Ct. 2135, 150 L. Ed. 2d 326 (2001). The Johnsons oppose recognition of the judgment.

This appears to be a case of first impression in Idaho. Neither party has cited the court to a controlling opinion from an Idaho appellate court. Nor has the Court's research found any controlling legal authority.

## II

### FACTUAL AND PROCEDURAL BACKGROUND

The Plaintiff is the Coeur d'Alene Tribe (the Tribe), a federally recognized Indian Tribe. The defendants, Kenneth and Donna Johnson, (the Johnsons), own river front real property on the St. Joe River in Benewah County. The Johnsons have a dock and pilings that extend into the river from their property. The Johnsons are not members of the Tribe. The Tribe does not own the Johnson's real property.

The Tribe filed a lawsuit against the Johnsons in the tribal court of the Coeur d'Alene Tribe seeking damages and removal of the Johnson's dock because the Johnsons did not obtain a dock permit from the Tribe to allow them

to encroach upon lands controlled by the Tribe: the submerged lands beneath the St. Joe River within the boundaries of the Coeur d'Alene Tribal Reservation. Although the Johnsons were served with the summons and complaint in the tribal court proceeding, they did not appear or answer. As a result of their failure to appear in the tribal court proceeding, a default judgment was entered against them imposing a civil penalty of \$17,400 and entitling the Tribe to remove the encroachments.

The tribal court judgment was entered on April 1, 2015. It remains unsatisfied.

On January 22, 2016 the Tribe filed an Affidavit/Petition for Recognition of Foreign Judgment seeking an order validating and recognizing the tribal court judgment in order to begin enforcement efforts. The Tribe has satisfied the procedural requirements of I.C. §10-1301 *et seq.* by filing a certified copy of the tribal court judgment and supporting affidavit. After receiving notice of the filing of the judgment, the Johnsons retained counsel and have objected to the Tribe's request to have the tribal court judgment recognized by the State of Idaho.

Both parties have submitted legal memoranda in support of their respective positions. Both parties have submitted supporting affidavits. The Tribe has moved to strike the affidavit of Kenneth Johnson on the basis that it was untimely filed, is irrelevant, and contains hearsay. The Court will not strike the affidavit, but the Court will only consider the portions of the affidavit that would be admissible under the Idaho Rules of Evidence.

### III ISSUE

WHETHER OR NOT THE COURT SHOULD ISSUE AN ORDER RECOGNIZING A JUDGMENT FROM THE COEUR D'ALENE TRIBAL COURT AGAINST A NON-TRIBAL MEMBER FOR PURPOSES OF THE ENFORCEMENT OF FOREIGN JUDGMENTS ACT.

### IV DISCUSSION

#### A. The Coeur d'Alene Tribe's Motion

The Tribe's legal position is very straight forward. Pursuant to the decision of the Idaho Supreme Court in *Sheppard v Sheppard*, 104 Idaho 1, 655 P.2d 895, (1982), tribal court decrees are entitled to full faith and credit. The Tribe has satisfied the procedural requirements of I.C. §10-1301 *et seq*, and is now entitled to enforce the tribal court judgment in state court.

The application of the Enforcement of Foreign Judgments Act in most cases is simply a ministerial act as long a judgment creditor complies with the procedural requirements of the act. Enforcement of the foreign judgment can begin five days after the date the judgment is filed. I.C. §10-1303(c). The Tribe has not sought to enforce its judgment. Instead, and to the credit of both parties, the Johnsons and the Tribe have sought a court ruling before any enforcement actions have been sought based upon the tribal court judgment.

Whether or not an Idaho court will recognize a foreign judgment is a discretionary determination. Even if all of the procedural requirements of the Enforcement of Foreign Judgment Act have been satisfied, an Idaho court is not required to recognize a foreign judgment if the foreign judgment is not entitled to full faith and credit in this state. For example, if the court issuing the foreign

judgment allegedly did not have personal jurisdiction over the Idaho defendant, the Idaho Court can inquire into the jurisdictional basis of the foreign court's decision to see whether the judgment is entitled to full faith and credit. *Schwillling v. Horne*, 105 Idaho 294, 669 P.2d 183, (1983). A similar challenge can be made to enforcement of a foreign judgment on the basis of a lack of subject matter jurisdiction by the foreign court. *Sierra Life Ins. Co. v. Granata*, 99 Idaho 624, 596 P.2d 1068, (1978).

Once the foreign judgment has been filed and recognized in Idaho, the judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a district court of this state. I.C. §10-1302. If the foreign judgment has been reversed or modified by the issuing state, the Idaho court has the discretion to deny enforcement of the foreign judgment. *P & R Enterprises, Inc. v. Guard*, 102 Idaho 671, 637 P. 2d 1167, (1981).

#### B. The Johnson's Objections

The Johnsons arguments against recognizing the tribal court judgment against them may be summarized as follows. First, they contend that the tribal court judgment cannot be recognized under the plain language of I. C. §10-1301. Second, they argue that the tribal court judgment should not be given full faith and credit ,or be recognized as a matter of comity, because the tribal court lacked both subject matter jurisdiction and personal jurisdiction, and that the Johnson's were denied due process of law. Third, they argue that enforcement

or the tribal court judgment is prohibited by the penal law rule. Each of these challenges will be addressed below.

B(1) *Can a Tribal Court judgment be recognized under Idaho Code §10-1301?*

The Johnsons argue that the tribal judgment cannot be recognized by the state pursuant to Idaho Code § 10-1301, which, according to the Johnsons, is limited to judgments regarding support or the establishment of paternity. That provision states:

In this act "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court or an order of an administrative body of any state regarding the support of a child, spouse, or former spouse or the establishment of paternity which is entitled to full faith and credit in this state.

(Emphasis added.) As the tribe argues, because the disjunctive conjunction "or" precedes the referenced language, the limitations therein apply only to administrative bodies, not courts.

The tribe notes that *Sheppard v. Sheppard*, 104 Idaho 1, 7, 655 P.2d 895, 901 (1982) held: "Tribal court decrees . . . are . . . entitled to full faith and credit."

The Johnsons contend that *Sheppard* was based upon an interpretation of 28 U.S.C. § 1738 which has since been "supplanted" by courts in other jurisdictions. These courts have held that "judicial proceedings of any court of any such State, Territory or Possession," as set out in the statute, do not include tribal court proceedings. The *Sheppard* court noted the existence of such authority, but chose specifically not to follow it. The court held:

*[We agree with those courts which have found the phrase "Territories and Possessions" broad enough to*

include Indian tribes, at least as they are presently constituted under the laws of the United States. *Jim v. CIT Financial Services*, 87 N.M. 362, 533 P.2d 751 (1975); *In re Adoption of Buehl*, 87 Wash.2d 649, 555 P.2d 1334 (1976); *Raymond v. Raymond*, 83 F. 721 (8th Cir.1897); but see *Brown v. Babbit Ford, Inc.*, 117 Ariz. 192, 571 P.2d 689 (Ariz.App.1977) (tribal decrees entitled to comity but not full faith and credit); *In re Marriage of Red Fox*, 23 Or.App. 393, 542 P.2d 918 (1975). See generally Ragsdale, *Problems in the Application of Full Faith and Credit for Indian Tribes*, 7 N.M.L.Rev. 133 (1977); Comment, *Conflicts Between State and Tribal Law: The Application of Full Faith and Credit Legislation to Indian Tribes*, 1981 Ariz.St.L.J. 801 (1981). We believe that this holding will facilitate better relations between the courts of this state and the various tribal courts within Idaho.

*Sheppard*, 104 Idaho at 8, 655 P.2d at 902 (emphasis added). In footnote 2, the court stated:

It has come to the attention of this Court that, in an action related to this case, the Shoshone-Bannock appellate court, in reversing the tribal trial court, held that it was not required to give full faith and credit to the decrees of Idaho state courts. In part this decision was based on the belief that state courts did not accord tribal courts full faith and credit. As we have shown, some state courts, including this one, do. Secondly, the tribal court failed to acknowledge 28 U.S.C. § 1738, which requires "every court within the United States" to give full faith and credit to decrees of state courts. Along with this opinion extends the hope of a good working relationship between state and tribal courts, and we hope, therefore, that the Shoshone-Bannock courts will reconsider the application of full faith and credit in their proceedings. Indeed the commentators unanimously agree that tribal courts must afford other states full faith and credit.

*Id.* fn. 2 (emphasis added).

The Johnsons claim that because *Sheppard* involved a tribal court decree of adoption, the decision in *Sheppard* to accord tribal judgments full faith and credit was limited to family law judgments only. Nothing in the opinion, however, limited full faith and credit in that manner. *Sheppard* has not been overturned or

informed by a later opinion by the Idaho appellate courts. The district courts are bound to follow the pronouncements of the appellate courts. *Sheppard* is controlling precedent in Idaho and the rule of stare decisis dictates that lower courts follow it, unless it is manifestly wrong, unless it has proven over time to be unjust or unwise, or unless overruling it is necessary to vindicate plain, obvious principles of law and remedy continued injustice. *Houghland Farms, Inc. v. Johnson*, 119 Idaho 97, 803 P. 2d 978, (1990). The Idaho Supreme Court, not the district court, is the only court that can decide whether or not the *Sheppard* case is manifestly wrong, has proven to be unjust or unwise over time, or must be overruled to remedy an injustice.

Based on the plain language of I.C. §10-1031 and upon the *Sheppard* case, the court finds that tribal court judgments may be enforced under the Enforcement of Foreign Judgments Act. However, just because tribal court judgments can be enforced under this act does not necessarily mean that the judgment against the Johnsons is enforceable in this case.

*B(2) Did the tribal court have both subject matter jurisdiction and personal jurisdiction over the Johnsons to allow an Idaho court to grant full faith and credit to the tribal court judgment?*

The Johnson's claim that the tribal court judgment should not be enforceable against them because the court lacked jurisdiction to enter the judgment. A judgment entered by a foreign state that lacked personal or subject matter jurisdiction to enter the judgment is void, and should not be accorded full

faith and credit. *Schwilling v. Horne*, 105 Idaho 294, 669 P.2d 183 (1983); *Sierra Life Ins. Co. v. Granata*, 99 Idaho 624, 596 P.2d 1068, (1978). The Johnsons cite to *Wilson v. Marchington*, 127 F.3d 805, (9<sup>th</sup> Cir. 1997) in support of their position. This Ninth Circuit Court of Appeals decision is based upon federal law, not state law, so it is not controlling in Idaho in light of the *Sheppard* case. Even if principles of comity outlined in *Wilson v. Marchington* applied to this case, the analysis is the same: if the tribal court lacked proper subject matter and personal jurisdiction, then the judgment should not be recognized and enforced.

Tribal court jurisdiction over non-tribal members is a rather controversial subject. The United States Supreme Court has attempted to clarify this area of the law in a series of decisions beginning with *Oliphant v. Suquamish Indian Tribe*, 431 U.S. 191, 98 S.Ct. 1011, 55 L.Ed.2d 209 (1978), *superseded on other grounds by* 25 U.S.C. § 1301(2), (4) (1990). In *Oliphant*, the Court specifically held that a tribal court has no jurisdiction to criminally charge or incarcerate non-Indians. Later cases have established a set of precedents that impose limitations on the ability of a tribal court to exercise jurisdiction over a non-tribal member in a civil case.

In *Montana v. United States*, 450 U.S. 454, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981), the United States Supreme Court held that the inherent sovereign powers of an Indian tribe do not extend to non-members of the tribe. The court also held that there are two exceptions to this rule. They are commonly referred to as "the consensual relations" exception and the "direct effects" exception.

Though *Oliphant* only determined inherent tribal authority in criminal matters, the principles on which it relied support the general proposition that the inherent

sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe. To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. (citations omitted) A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. (citations omitted)

Montana v United States, 450 U.S. 455, (1981), at 565-566 (citations and footnote omitted).

There is no basis for applying the "consensual relations" exception here. The Johnsons have done nothing to support a finding that they have engaged in consensual relationships with the Tribe or its members in any way, shape, or form. This case does not arise out of a business transaction or a contract between the Johnsons and the Tribe or its members. They have not agreed to submit to the tribal court's jurisdiction. They are not tribal members. The Tribe does not own their land. As non-tribal members they have no say in tribal government issues, including any lake regulations and the operation of the tribal court system.

The second exception of *Montana v. United States* is more problematic. Under this exception, a tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when

that conduct threatens, or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe. *Id.* The United States Supreme Court has recognized the authority of the Tribe to regulate that portion of the bed and the banks of the St. Joe River that lie within the Coeur d'Alene reservation. See, *Idaho v. United States*, 533 U.S. 262, 121 S. Ct. 2135, 150 L. Ed. 2d 326 (2001). The Tribe's ability to regulate the activities affecting Coeur d'Alene Lake and the St. Joe River, such as encroachments, water quality, or other use of the natural resources, is an important aspect of the treaty rights that were recognized by the court. If the non-Indians who used the lake, or the river, or more specifically to this case, those who allegedly encroach on the submerged bed and banks of the waterways were not subject to the Tribe's rules, then the ruling by the United States Supreme Court in *Idaho v. United States* would certainly be a hollow victory for the Tribe. Any non-Indian could simply thumb their nose at the tribal enforcement efforts without any risk of consequence. The regulatory authority of the tribe would be meaningless with regard to non-Indians. The lake and the St Joe River are important to the tribe and the inability to control the conduct of non-Indians when it directly affects the lake and the St Joe River fall within the category of conduct that threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe.

This is not the first time an Indian tribe has exercised regulatory control over a waterway pursuant to treaty rights granted long ago. The Confederated Salish and Kootenai Tribes of the Flathead Reservation were involved in a long running battle over the control of a portion of Flathead Lake. See, *Confederated*

*Saisi and Kootenai Tribes of the Flathead Reservation v. Namen*, 665 F.2d 951 (1982). After years of litigation, the tribe's right to control the activities of non-tribal members was recognized when the activities affected that portion of Flathead Lake within the reservation boundaries. Much like the tribes involved with Flathead Lake, the Coeur d'Alene Tribe is exercising similar control over that portion of the bed and banks of the lake and the St. Joe River within the reservation.

There is another reason why the tribal court judgment in this case should be given full faith and credit, or be recognized as a matter of comity as is done in the federal court system. When a non-Indian defendant is sued in a tribal court and wishes to challenge the ability of the tribal court to exercise jurisdiction over them, the non-Indian defendant is normally required to challenge the tribal court's jurisdiction over them in the tribal court and exhaust all tribal remedies through every level of the tribal court system before they will be allowed to raise the jurisdictional issue in another forum. *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 105 S.Ct. 2447, 85 L.Ed.2d 818 (1985).

The Johnsons never appeared in tribal court to raise a jurisdictional challenge. The tribal court judgment in this case made a specific finding that it had jurisdiction over the subject matter of the dispute, and that the Johnsons were given notice of the suit and the opportunity to appear. The tribe contends that the tribal court judgment is entitled to full faith and credit because the Johnsons failed to exhaust their remedies in tribal court before challenging recognition of the tribal judgment in state court. *Evans v. Shoshone-Bannock*

*Land Use Policy Comm'n*, 736 F.3d 1298, 1302 (9th Cir.2013) set out four exceptions to the exhaustion requirement. The court stated:

"Exhaustion is prudential; it is required as a matter of comity, not as a jurisdictional prerequisite." *Boozer [v. Wilder]*, 381 F.3d [931,] at 935 [9th Cir. 2004]] (citations omitted). To this end, the Supreme Court has recognized four exceptions to the exhaustion requirement: "(1) when an assertion of tribal court jurisdiction is 'motivated by a desire to harass or is conducted in bad faith'; (2) when the tribal court action is 'patently violative of express jurisdictional prohibitions'; (3) when 'exhaustion would be futile because of the lack of an adequate opportunity to challenge the tribal court's jurisdiction,' and (4) when it is 'plain' that tribal court jurisdiction is lacking, so that the exhaustion requirement 'would serve no purpose other than delay.'" *Elliott [v. White Mountain Apache Tribal Court]*, 566 F.3d [842,] at 847 [(9th Cir. 2009)] (quoting *Nevada v. Hicks*, 533 U.S. 353, 369, 121 S.Ct. 2304, 150 L.Ed.2d 398 (2001) (internal alteration omitted)). . . .

To determine whether tribal court jurisdiction is plainly lacking, we analyze whether such "jurisdiction is colorable or plausible . . . ." *Elliott*, 566 F.3d at 848 (quoting *Atwood v. Fort Peck Tribal Court Assiniboine*, 513 F.3d 943, 948 (9th Cir.2008) (internal quotation marks omitted)). The plausibility of tribal court jurisdiction depends on the scope of the Tribes' regulatory authority, as "a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction." *Plains Commerce*, 554 U.S. at 330, 128 S.Ct. 2709 (quoting *Strate v. A-1 Contractors*, 520 U.S. 438, 453, 117 S.Ct. 1404, 137 L.Ed.2d 661 (1997)).

*Evans*, 736 F.3d at 1302.

The Johnsons have not shown that any exception applies. They have presented no evidence supporting the first two exceptions. There is no evidence in the record that would support a finding that the tribal court proceedings were motivated by a desire to harass or were conducted in bad faith. Because the tribal court action arose out of the Tribe's authority to regulate the portion of the St. Joe River within the reservation boundaries, the tribal court action is not plainly violative of any express jurisdictional prohibition.

Concerning the third exception, the Johnsons essentially contend that it would have been futile to challenge jurisdiction in tribal court because the tribal ordinance in which the tribe claims control over the riverbed was enacted by the Tribe. They allege that the Tribe is biased on questions of ownership regarding the submerged lands beneath the St. Joe River. They contend that the tribal court is dominated by tribal government, the plaintiff in the case. These bare allegations are not supported by the record in this case. The tribal court gave the Johnsons notice and an opportunity to be heard. No evidence has been presented that this notice and opportunity to be heard would not have been adequate for the Johnsons to present competent evidence supporting their claim that their dock was not located on the area of the riverbed lawfully controlled by the tribe, or otherwise challenge the assertion of jurisdiction over them in this case by the tribal court. An example of another approach to challenging a tribal court's jurisdiction over a non-Indian defendant is *County of Lewis v. Allen*, 163 F.3d 509, (9<sup>th</sup> Cir. 1998). In that case, a tribal member filed a civil action in the Nez Perce Tribal Court seeking damages against Lewis County and several non-Indian law enforcement officers. Rather than ignore the proceedings, the non-Indian defendants challenged the tribal court's exercise of jurisdiction over them every step of the way, eventually obtaining a ruling that the tribal court did not have jurisdiction and invalidated the jury verdict against the defendants. The entire process only took eleven years.

With regard to the fourth exception, *Grand Canyon Skywalk Dev., LLC v. 'Sa' Nyu Wa Inc.*, 715 F.3d 1196 (9<sup>th</sup> Cir.2013), cited by the Tribe, the court

considered whether the jurisdiction of the Hualapai tribal court was plainly lacking. That court held:

[A]lthough the main rule in *Montana v. United States*, [450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981)] is that a tribal court lacks regulatory authority over the activities of non-Indians unless one of its two exceptions apply, this case is not *Montana*. *Montana*, 450 U.S. at 565-66, 101 S.Ct. 1245. *Montana* considered tribal jurisdiction over nonmember activities on non-Indian land, held in fee simple, within a reservation. *Id.* at 547, 565-66, 101 S.Ct. 1245. The land underlying this case, however, is federal Indian land held in trust for the Hualapai Tribe. The dispute arose out of an agreement related to the development, operations, and management of the Skywalk, an asset located in Indian country.

With the exception of *Nevada v. Hicks*, 533 U.S. 353, 121 S.Ct. 2304, 150 L.Ed.2d 398 (2001), the Supreme Court has applied *Montana* "almost exclusively to questions of jurisdiction arising on non-Indian land or its equivalent." *Water Wheel [Camp Recreational Area, Inc. v. LaRance]*, 642 F.3d [802,] at 809 [(9th Cir.2011)]. **When deciding whether a tribal court has jurisdiction, land ownership may sometimes prove dispositive, but when a competing state interest exists courts balance that interest against the tribe's.** See *Hicks*, 533 U.S. at 360, 370, 121 S.Ct. 2304. Here, as the dispute centers on Hualapai trust land and there are no obvious state interests at play, the *Hicks* exception is unlikely to require *Montana's* application. At the very least, it cannot be said that the tribal court plainly lacks jurisdiction.

*Grand Canyon Skywalk* at 1205 (emphasis added).

The Johnsons have not shown a state interest that competes with the tribe's interest in regulating docks located on the riverbed controlled by the tribe. The Johnsons contend, however, that their dock is not located on an area of the riverbed that is lawfully controlled by the tribe. This argument was never presented to the tribal court by the Johnsons. The Johnsons argument may have a legal and factual basis, but it should have been presented to the tribal court in the first instance.

Defendant Kenneth Johnson has submitted an affidavit apparently in support of this argument. Johnson states that he removed part of the dock, but he has not supplied any evidence concerning when this occurred.

The tribe has moved to strike this affidavit. It argues that Johnson has not shown competence to make certain statements contained therein. Included in the affidavit are water levels as measured by Johnson on certain pilings in the riverbed. The affidavit makes reference to certain markings on the pilings that are apparently depicted in images attached to the affidavit. To the extent that the images and affidavit depict measurements of the distance between the bed of the river and the surface of the water as it came in contact with those pilings, Johnson is likely competent to make such measurements and to state what those measurements were.

Johnson also set out his observation of a measurement of the elevation of the surface of the river allegedly contained on the website of the National Oceanic and Atmospheric Administration. The affidavit does not indicate where this measurement was allegedly taken by NOAA. A river, by definition, would have a higher elevation at its source than at its mouth. Johnson does not allege that NOAA measured the elevation of the surface of the river where his property is located. It therefore does not prove such a fact.

Moreover, as the tribe contends, it is hearsay. The Johnson's argue that it is within the public records hearsay exception, citing *Bartlett v. Mut. Pharm. Co., Inc.*, 760 F. Supp. 2d 220 (D.N.H.2011), *aff'd sub nom. Bartlett v. Mut. Pharm. Co.*, 678 F.3d 30 (1st Cir.2012), *rev'd*, 133 S. Ct. 2466, 186 L. Ed. 2d 607 (2013)

which admitted under Federal Rules of Evidence 803(8) and 902 the following document: John K. Jenkins, Director, FDA Office of New Drugs, *Analysis and recommendations for Agency action regarding NSAIDs and cardiovascular risk* 12 (Apr. 6, 2005) as posted on the U.S. Food and Drug Administration's website. Plaintiff does not submit any public record however. Instead, he submits his *observations* of an alleged public record. Therefore, even if the alleged record itself were admissible, Johnson's hearsay statement concerning that alleged record would not, in turn, be admissible. Johnson's statement concerning NOAA's website should therefore be stricken.

Johnson states, in addition, that NOAA's measurement is "four inches below the summer river level." No foundation is laid for Johnson's opinion of the "summer river level," and it is based upon inadmissible hearsay concerning NOAA's website. As such, this statement should be stricken as well.

The Johnsons have not shown that their dock has not been located at any relevant time on the riverbed lawfully controlled by the tribe. They have not shown that the tribe's jurisdiction was plainly lacking, not colorable, or implausible.

Where a party to a state court action fails to exhaust his remedies in a prior tribal court action, full faith and credit principles require enforcement of the tribal judgment. See *Simmonds v. Parks*, 329 P.3d 995, 1007-08 (Alaska 2014). Since the Johnsons did not exhaust their remedies in tribal court, and since no exception to the exhaustion rule has been shown to apply, full faith and credit should be extended to the tribal court judgment against them.

The Johnsons also generally allege that the tribal court was biased against them. Bias does not appear to be a relevant consideration in this context. *Stewart v. Stewart*, 289 S.E.2d 652 (W.Va.1980) stated:

[I]n *Morris Lapidus Associates v. Airports, Inc.*, 240 Pa.Super. 80, 84, 361 A.2d 660, 663 (1976) . . . a New York judgment was sought to be enforced in Pennsylvania. The contention was made that the New York judgment was based on a New York arbitration award which had been rendered by biased arbitrators and that the award therefore violated due process concepts. The court in declining to permit this attack against full faith and credit principles stated:

[E]ven were we to conclude that the appearance of bias in arbitrators is a denial of due process, we could not permit the collateral attack on the judgment attempted by appellees in this case. The cases cited by appellees for the proposition that a judgment obtained in violation of due process is not entitled to full faith and credit are not on point. In those cases, the due process denied had the result of depriving the litigant of an opportunity to appear and defend. See *Griffin v. Griffin*, 327 U.S. 220, 66 S.Ct. 556, 90 L.Ed. 635, *reh. denied*, 328 U.S. 876, 66 S.Ct. 975, 90 L.Ed. 1645 (1946); *Hansberry v. Lee*, 311 U.S. 32, 61 S.Ct. 115, 85 L.Ed. 22 (1940); *Wetmore v. Karrick*, 205 U.S. 141, 27 S.Ct. 434, 51 L.Ed. 745 (1907).

*Stewart*, 289 S.E.2d at 656.

Even if bias were relevant, the Johnsons have not shown bias here. They claim "the tribal court is dominated by the tribal government" which is allegedly "biased" due to a tribal law providing for a \$500 per day fine. A maximum fine applicable to all dock owners who violate tribal law concerning those docks does not show bias against the Johnsons. Moreover, this allegation of bias is undermined by the fact that the tribe actually fined them a lesser \$100 per day amount instead. In addition, the Johnsons claim bias is shown by the fact that the tribe claims control of the riverbed. The existence of such a claim does not

show that the tribe would also exert regulatory control over areas of the riverbed that it knows are not held in trust for the tribe.

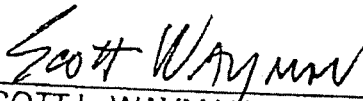
*B(3) Does the Penal Law Rule prohibit recognition and enforcement of the Tribal Court Judgment?*

The Johnsons claim the penal law rule, which prohibits enforcement of the penal judgments of other countries where there is no treaty for such enforcement, also prohibits enforcement of the tribal court judgment here. They have not provided any authority that this rule is applicable to tribal judgments, and independent research by the court has revealed none. The tribal court judgment in this case is not a penal judgment in any event. The judgment imposes a civil fine and allows for removal of a dock and pilings. The Johnsons are not subject to criminal prosecution or incarceration pursuant to the tribal court judgment.

### CONCLUSION

This Memorandum Opinion shall constitute the Court's findings of fact and conclusions of law. IT IS THEREFORE ORDERED that the judgment of the Coeur d'Alene Tribal Court in tribal case no. CV-SC-2014-260 is RECOGNIZED AS VALID AND FULLY ENFORCEABLE under the laws of the State of Idaho.

DATED this 15 day of July, 2016.

  
SCOTT L. WAYMAN, District Judge

I hereby certify a true and correct copy of the foregoing was sent this 15 day of July, 2016, as follows:

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DEANNA BRAMBLETT, Clerk of Court

By: 

Deputy Clerk

2016 JUL 15 14:12:37

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BENEWAH

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

Plaintiff,

CASE NO. CV-2016-025

vs.

JUDGMENT

KENNETH and DONNA JOHNSON,

Defendants.

JUDGMENT IS ENTERED AS FOLLOWS:

1. The plaintiff's Motion for Order of Recognition of Foreign Judgment is granted.

Dated this 15 day of July, 2016.

Scott Wayman  
Scott Wayman, District Judge

I hereby certify a true and correct copy of the foregoing was sent this 15 day of July, 2016, as follows:

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DEANNA BRAMBLETT, Clerk of Court

By: 

Deputy Clerk

BENEWAH COUNTY  
IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BENEWAH  
BY: [Signature] DEPUTY

|                                                                                                                                                |                                                                     |
|------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| COEUR D'ALENE TRIBE, a federally<br>recognized Indian Tribe,<br><br>Plaintiff,<br><br>vs.<br><br>KENNETH and DONNA JOHNSON,<br><br>Defendants. | CASE NO. CV-2016-25<br><br>ORDER STAYING ENFORCEMENT<br>OF JUDGMENT |
|------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|

The Court has now entered a Final Judgment in this case. Pursuant to Idaho Code §10-1303(c), enforcement of the judgment can begin five days after the judgment is filed.

This case is very important to the Johnsons and to others who may be similarly situated. They have raised legitimate questions regarding the enforceability of the tribal court judgment entered against them. This case is also very important to the Tribe because it may have an impact on the Tribe's ability to enforce the Tribe's regulations relating to Coeur d'Alene Lake and

the St. Joe River against non-tribal members. Both sides potentially have a lot at stake.

The Court has reviewed an enormous amount of legal research and case law relating to the issues in this case. The Court has attempted to make the correct decision in light of Idaho law and existing precedent. The Court is also aware that there are valid arguments being presented by both sides. If reviewed on appeal, the Court's decision may be reversed or modified by an appellate court. It could also be affirmed. The parties now have the Court's opinion to review and they should have time to evaluate what steps they may wish to take, or not take, in the future with regard to the judgment in this case.

To alleviate the potential pressure of the five day waiting period and looming enforcement proceedings, the court is exercising its discretion and granting a stay of enforcement proceedings pursuant to I.R.C.P. 62. The stay may be conditioned for the security of the adverse party "as are proper." The court finds that an appropriate condition would be to make the stay temporary, rather than open ended in length. The court does not find it appropriate to require the Johnsons to post any additional security in support of the temporary stay.

Enforcement proceedings shall be stayed for 42 days from the date of the judgment in this case. The stay shall automatically be lifted at the end of the 42 days unless otherwise ordered by the court.

The Court would also encourage the parties to consider attempting to resolve the case without engaging in protracted litigation. The parties may

wish to consider the use of a mediator to assist them in resolving this case. The litigation process can be lengthy, costly, and sometimes ends with a result that neither party likes. With litigation, the parties lose all control over the outcome of the case. With mediation, the parties retain control over the outcome. Both parties may benefit, in the long run, by an agreement in this case.

Dated this 15 day of July, 2016.

  
SCOTT WAYMAN  
District Judge

I hereby certify a true and correct copy of the foregoing was sent this 15 day of July, 2016, as follows:

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