

AUG 11 2016

DEPARTMENT OF
WATER RESOURCES

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

In re CSRBA	)	Subcase Nos. 91-7102; 91-07173
	)	
Case No. 49576	)	STATE OF IDAHO'S MEMORANDUM
	)	IN OPPOSITION TO OBJECTOR'S
	)	MOTION FOR SUMMARY
	)	JUDGMENT
Steve and Deanne Hawks,	)	
	)	
Claimants,	)	
	)	
v.	)	
	)	
Coeur d'Alene Tribe, a federally-recognized	)	
Indian Tribe,	)	
	)	
Objector.	)	
	)	

For the reasons set forth in the State's Memorandum in Support of Motion for Summary

Judgment filed in these above-referenced subcases, which is adopted in its entirety as if fully set

forth herein, the State opposes the motions for summary judgment filed by Objector Coeur d'Alene Tribe in the above-referenced subcases.

Further, even if the Court were to assume for purposes of argument only that the Tribe were correct in asserting that the water rights at issue were initiated in trespass, such assertion would be relevant only if raised in opposition to the issuance of the licenses. Here, the assertion that the water rights were initiated in trespass, raised many years after the fact, constitutes a prohibited collateral attack on the license. "The SRBA Court has repeatedly held that attempting to amend a licensed water right in the SRBA proceedings based on circumstances existing prior to the issuance of the license constitutes an impermissible collateral attack on a license." SRBA Subcase Nos. 37-07454 and 37-07602, *Order Conditionally Granting Motion to Set Aside Partial Decrees* at 11 (Dec. 3, 2003) (emphasis added). Thus, the Tribe's assertion that a trespass existed at the time the license was issued is not a basis for denying the claim. And, for the reasons stated in the State's Memorandum in Support of Motion for Summary Judgment, any allegation that a current trespass requires the Court to decree the right to not exist must be rejected. Rather, the Court may resolve the Tribe's objections, and preserve the rights of the State, the Tribe, and the water claimants, by decreeing the rights as recommended, with the inclusion of a remark noting that the water right "does not grant any right-of-way or easement across the land of another." Such a remark does not impermissibly amend or condition the license, but rather simply states existing Idaho law.

Respectfully submitted this 10th day of August, 2016.

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CERTIFICATE OF SERVICE

I certify that on the 10th day of August, 2016 I caused to be served a true and correct copy of the foregoing STATE OF IDAHO'S MEMORANDUM IN OPPOSITION TO OBJECTOR'S MOTION FOR SUMMARY JUDGMENT upon the following parties by the method listed below:

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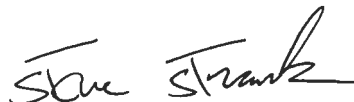
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