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WATER RESOURCES

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

In Re the CSRBA

Case No. 49576

) Subcase Nos. 95-9115, 95-9119 and 95-
) 2067
)
) **UNITED STATES' AND COEUR**
) **D'ALENE TRIBE'S CONSOLIDATED**
) **REPLY TO AVISTA'S AND STATE OF**
) **IDAHO'S RESPONSES TO UNITED**
) **STATES' AND COEUR D'ALENE**
) **TRIBE'S JOINT MOTION AND**
) **MEMORANDUM IN SUPPORT OF**
) **MOTION TO PARTICIPATE AND**
) **FOR AN ORDER CONSTRUING SF5S**
) **AS AMENDED CLAIMS/DIRECTOR'S**
REPORTS

The United States of America ("United States") and Coeur d'Alene Tribe ("Tribe") file
this Consolidated Reply to Avista Corporation's ("Avista's") *Response to United States' and*

Coeur d'Alene Tribe's Joint Motion and Memorandum in Support of Motion to Participate and for an Order Construing SF5s as Amended Claims/Director's Reports ("Avista's Response") and *State of Idaho's Opposition to United States and Tribe's Joint Motion to Participate and For Order Construing SF5s as Amended Claims/Director's Reports* ("State's Response").

There is a threshold issue in this case regarding whether the SF5s are expansions of the underlying Claims and/or Director's Reports or whether the SF5s result in a change that would potentially affect the United States' and Tribe's interest in the Lake.¹ See AO1 4(d)(4)(e) (emphasis added). If either threshold is met, AO1 4(d)(4)(e) requires that the SF5s be construed as Amended Claims and / or Director's Reports with public notice and an opportunity to object. Moreover, if the SF5s are expansions of the Claims and / or Director's Reports or result in a change that would potentially affect the United States' and Tribe's interest in the Lake, then the other issues raised in the Response Briefs are also addressed, such as timeliness of the *United States' and Coeur d'Alene Tribe's Joint Motion and Memorandum to Participate and for an Order Construing the SF5s as Amended Claims / Director's Reports* (Sept. 6, 2023) ("Joint Motion"). Because resolution of the Joint Motion and Response Briefs necessarily flows from these threshold inquiries, the United States and Tribe provide the Reply below in the following order: 1) the reasons that the SF5s are in fact an expansion of the Claims and/or Director's

¹ This case also raises the issue of which documents should be compared against the SF5 to determine whether the SF5 is an "expansion" under Rule 4(d)(4)(e). Avista argues for a "plain language" interpretation of Rule 4(d)(4)(e) that would exclude consideration of the Director's Recommendations for the rights, while the State points to authority under which the Court should consider the Director's Recommendations, in addition to the claims. Compare Avista's Response at 13-14 with State's Response at 9-10. The United States and Tribe have argued that, regardless of whether the SF5s are compared against the Director's Recommendations or the claims, the SF5s expand the water rights, but that the Director's Recommendation should be considered, "in addition to considering the substance of the changes made in the SF5 relative to the original claim." See Joint Motion at 18, see also Avista Response at 7 (citing Idaho Code § 42-1411 as providing for objections to the Director's Recommendation).

Reports; 2) an explanation of the United States's and Tribe's interest in the Lake; and 3) a resolution of the remaining issues based on the SF5s expanding the Claims and / or Director's Reports or resulting in a change that could potentially affect the United States' and Tribe's interest in the Lake.

A. The SF5s are Expansions

1. Avista - Expansion of Quantity

In the Joint Motion, the United States and Tribe explain that the following language in the SF5 expands the quantity of the storage rights in 95-9115 and 95-9119 by providing a refill right that was not contemplated in the 2014 Claim Forms, the 2018 Claim Forms, and the Director's Recommendations:

A volume of water in addition to the volume described above may be stored in a single year if the additional volume is necessary for the purpose of stabilizing and maintaining the elevation of Coeur d Alene Lake at or near [2128] feet.

See Joint Motion at 20.

In its Response, Avista acknowledges that it views this language as providing it with a “refill” right, that is, a right to refill beyond the fixed acre-feet amounts identified in the SF5s (e.g., under the 2018 Amended Claims 53,338.00 AFY for 95-9119 and 213,440 AFY for 95-9115). *See* Avista's Response at 18-20. However, Avista argues that the refill right set forth in the SF5 is not an expansion because it finds support in the: (1) “or larger” language in an Exhibit of its 2014 Claim Form (importantly, the language actually reads “if larger”); and (2) language in the 2018 Director's Recommendation for the rights. Avista is wrong on both accounts. Moreover, the Court should reject Avista's attempt to gloss over its refill expansion based on arguments that (3) it doesn't claim a diversion; or (4) is junior in priority based on subordination provisions. *Avista's Response* at 19-20. Each of these issues is discussed more fully below.

a. The “if larger” language does not contemplate a refill right.

To justify the “refill” right outcome in the SF5, Avista points to the following language in one of the exhibits to its 2014 Claim Form:

The stated quantity of water claimed for storage under this Notice of Claim to a Water Right Acquired Under State Law is [60,600] acre feet (“af”) or, if larger, that volume calculated to be the difference between the storage in the Reservoir [at] Coeur d’Alene Lake . . . elevation of 2126.5 feet [and 2128.0] feet above mean sea level as measure[s] by the USGS gage at Coeur d’Alene, Idaho.

Avista’s 2014 Storage Claim, 95-9119, Attachment B at 1, ¶ 4 (emphasis added).

In its 2014 Claim Form for 95-9119, Avista sought a volume of 60,600 acre-feet, because that is what Avista calculated as the volume of water required to bring the Lake level from 2126.5 feet MSL to 2128 feet MSL. *See* 2018 Claim Form, Attached Narrative (“For CSRBA claim no. 95-9119, the volume of [53,338] acre-feet for Power Storage and Power from Storage is based on the amount of usable storage between 2,120.5 msl and 2,126.5 msl, which is quantified based on bathymetry.”). The “if larger” language in ¶ 4 simply indicated that if 60,600 acre-feet was not the correct volume of water required to raise the elevation of the Lake from 2,126.5 MSL to 2128 MSL, then the claim might need to be adjusted to account for the potential error in its calculation (hence, “if larger”). In fact, Avista later determined that the amount required to raise the Lake from 2,126.5 MSL to 2128 MSL was less than 60,600 AF – in its 2018 Claim Form for 95-9119, Avista only sought 53,338 AFY. Thus, in ¶ 4, Avista was only accounting for its potential error in calculating the volume of water required to fill the Lake from 2126.5 MSL to 2128 MSL. The language does not support a refill right.²

² These arguments are made here relative to 95-9119, but the same arguments apply to 95-9115.

b. The Director's Recommendation does not contemplate a refill right.

Avista also points to the following language in the 2018 Director's Recommendation to support its claim to a "refill" right:

The volume of water for power storage under this right is deemed satisfied when the elevation of Coeur d Alene Lake stabilizes at or near 2128 feet above mean sea level (MSL) following the spring runoff as measured at the USGS Coeur d Alene Lake Gage (12415500) at Coeur d Alene, ID.

2018 Director's Recommendation, 95-9115 and 95-9119.

This language also does not support a "refill" right. Rather, it imposes an extra limitation on the right beyond and in addition to its fixed acre-foot/year quantity limitation. Namely, regardless of whether Avista has exercised the entirety of its storage amount (e.g., 53,338 acre-feet for 95-9119), the right is "deemed satisfied" and cannot be invoked (i.e., Avista cannot call for any more storage water) after the Lake stabilizes at or near 2,128 feet above MSL following the spring runoff. For example, in any given water year, if Avista only needs to call for 40,000 acre-feet to bring the lake to 2,128 feet above MSL, then the right is "deemed satisfied," and Avista may not call for additional water until the following water year. Thus, contrary to Avista's argument, the clause it cites, which the SF5 would eliminate (arguably, another form of an expansion of the right), is an additional limitation on the right, independent of the fixed acre-feet quantity identified. Thus, Avista cannot find support for a "refill" right in its Claim Forms or the Director's Recommendations for 95-9115 and 95-9119.

c. The fact that Avista is claiming volumetric storage rights (AF) rather than direct flow rights (CFS) does not immunize it the rights from Rule 4.

Avista also claims that "Here, there is no increase in diversion rate because a diversion rate was not claimed and the SF5s do not authorize one." Avista's Response at 19. Clearly, an increase in the volumetric storage amount of a water right (e.g., increasing a storage right from

UNITED STATES' AND COEUR D'ALENE TRIBE'S CONSOLIDATED REPLY TO AVISTA'S AND STATE'S RESPONSES TO JOINT MOTION- 5

10 AF to 20 AF) is an expansion of the right within the meaning of Rule 4, just like an increase in rate of diversion (e.g., 1 to 2 CFS). Just because a storage right is involved, rather than a direct flow right with rate of diversion, does not immunize Avista from Rule 4. Both types of expansions are capable of potentially affecting other water users—and here, Avista’s expansions affect the United States and Tribe.

d. Avista’s subordination provisions do not immunize it from AO1 4.d(4)(e).

Avista’s claim that the subordination provisions immunize it from Rule 4 is equally unconvincing. *See* Avista’s Response at 20. Nothing in Rule 4 exempts junior water right users from the requirement that an expansion of a claim in an SF5 must be noticed and any water user, including a senior water user, has standing to object. Here, there is no doubt that the SF5 inclusion of a refill right would “potentially affect” the United States’s and Tribe’s interest in the Lake, Joint Motion at 25-28, as well as potentially their interests in other claims upstream of the Lake, such as instream flow claims in tributary streams. Other water users in the Basin, including with claims for water rights junior to July 25, 2018, should also receive notice of Avista’s expanded rights to store water.

2. Avista - Purpose of Use

The United States’ and Tribe’s Joint Motion also points to the following language in the SF5 as an expansion of the right:

The quantity identified is to achieve a water surface elevation at or near 2128 feet and to generate power from storage.

See Joint Motion at 20; *see, e.g.*, 2018 Director’s Recommendation, 95-9119 (emphasis added).

As discussed in the Joint Motion, the “and to” language suggests that Avista may invoke this right simply to maintain the elevation of the Lake at 2128 MSL, independent of its

hydropower demands, which is an expansion of Avista's water rights. See Joint Motion at 19-20.

In contrast, as an example, the following language would more faithfully adhere to the purpose of the right contemplated by the Claim Forms and Director's Recommendation:

The quantity identified may be stored to achieve a water surface elevation at or near 2128 feet one time, between May 1 and September 2, for the purpose of using the water to generate power from storage during the period of use for "power from storage."

In its Response, Avista does not argue that anything in the Claim Forms or the Director's Recommendations would support storage independent of hydropower purposes. See Avista's Response at 15-17. In fact, Avista confirms the United States' and the Tribe's interpretation of the new, alternative purposes of the SF5 rights by emphasizing the "incidental benefits" of storage, such as "recreation, aesthetics, wildlife, and more." See Avista's Response at 16-17.³ Avista's rights, both as claimed, and as set forth in the Director's Recommendation, may only be used to store water in the Lake to reach an elevation of 2,128 MSL one time during the year, with that water released for hydropower generation during the prescribed period of use. The SF5s would eliminate these important limitations, thereby expanding the rights.

3. Avista - Period of Use & Source

Avista argues that the SF5s do not expand the period of use for the rights because both the 2014 Claim Forms and the 2018 Claim Forms identify the period of use as 1/1 to 12/31.

However, consistent with the "Narrative" attached to the 2018 Claim Form, the Director's

³ The term "incidental benefits" may sound innocuous, however, the use of this terminology by Avista speaks to its motives to expand a hydropower right into a broader right to the Lake that would have the power to ensure such "incidental benefits" continue into the future. Avista is only entitled to water rights for storage necessary to run its turbines for hydropower. Any "incidental benefits" of its storage rights are not entitled to a separate water right. Moreover, "incidental benefits" may actually cause negative potential affects to other water rights holders as the United States and Tribe have shown.

Recommendation would only allow for storage during specific times of the year. *See* Narrative, 2018 Claim Form, 95-9115 (“Avista operated near that elevation during the summer, after which Avista would initiate a drawdown as described above.”) (emphasis added). The SF5s do not make clear that Avista may only invoke the rights to achieve target Lake elevation one time, after spring runoff, with the water released to generate hydropower that same year (and not in any subsequent year, or for Lake level maintenance purposes generally). The SF5s are therefore inconsistent with the Director’s Recommendations for the rights as well as Avista’s historic beneficial use of the rights, as described in the Narrative accompanying its 2018 Amended Claims.

4. State – Purpose of Use

In its memorandum in opposition to the Joint Motion, the State concedes that “Water right 95-2067 will not allow for ‘artificial’ manipulation of lake levels” but is instead “an *in situ* water right that will allow for the preservation of Lake Coeur d’Alene in its ‘natural condition.’” State Response at 7. However, that admission is contrary to the plain language of the SF5 filed with this Court. The Director’s recommendation for a water right for aesthetic purposes would have been the appropriate purpose if the State sought an “*in situ* water right” to preserve the Lake. Instead, it seeks a water right for “lake level maintenance,” which necessarily implies the ability to affect actual lake levels. Furthermore, the SF5 does not provide for a water right to keep the Lake “in its ‘natural condition,’” but instead allows the State to maintain it in its “near natural condition.” Read together, these changes paint a different picture than the *in situ* water right the State argues for in its briefing. If the State simply seeks an *in situ* water right and truly does not seek the ability to manipulate lake levels, it must amend its SF5 to make that clear and plain.

Along similar lines, the State accuses the United States and Tribe of collaterally attacking the State's 1927 license. In actuality, the United States and Tribe seek to participate in the State's subcase to keep it from collaterally attacking its own license in a way that expands the right beyond its original purpose. *Order on Challenge (Consolidated Issues) of "Facility Volume" Issue and "Additional Evidence" Issue*, In re SRBA, Subcases 36-02048, et al. (holding that a license holder may not collaterally attack their own license). The State's license provides for a water right for "scenic beauty, health and recreation purposes." Consistent with this, the Director's Report recommended a water right for "aesthetic" purposes, the purpose that most closely aligns with the purpose laid down in the license. Now the State seeks to amend the purpose of its water right to something beyond what was licensed in 1927 and recommended by the Director in this adjudication, which is the definition of a collateral attack. In this case, that change to "lake level maintenance" signals the State's intent to expand the scope of this water right into something that was not envisioned in 1927 or at any time before this SF5 was filed.

Finally, the State argues that "[t]he Tribe and the United States . . . cannot raise the issue of trespass in the CSRBA." State Response at 7. It goes on to make the argument that "[u]sing an interest in trespass as the basis for intervention in this matter would require this Court to step outside its authority and consider matters of land ownership that are outside the scope of the CSRBA Court's jurisdiction." *Id.* at 8. At the outset, this Court need not consider matters of land ownership in this case. That question was conclusively resolved by the United States Supreme Court when it affirmed the federal district court's judgment quieting title of the portion of Coeur d'Alene Lake within the current reservation boundaries. *Idaho v. United States*, 533 U.S. 262 (2001). Furthermore, a fundamental principle of Idaho water law is that a water right may not be initiated in trespass. *Lemmon v. Hardy*, 95 Idaho 778, 780, (1974) (a water right, "initiated by

trespass on private property is invalid.”). As a result, this Court, like the SRBA court before it, has routinely addressed matters of trespass when addressing the validity of water rights.

B. The Idaho Supreme Court has Recognized that the United States and Tribe have Reserved Water Rights from Coeur d’Alene Lake to support hunting, fishing, gathering, cultural, and agricultural purposes.

The United States’ and Tribe’s interest in the Lake is raised as an issue and mischaracterized in both responses. For example, Avista misrepresents the status of the Tribal Lake Claim by focusing only on the denial of “lake level maintenance” as a purpose of the Reservation, while ignoring the other important portions of the Idaho Supreme Court decision related to Tribal Claims. Avista Response at 6, note 9. Likewise, the State argues that the United States’s and Tribe’s interest in the Lake cannot be impaired. State Response at 6-9. To reply to these arguments, the United States and Tribe provide the following clarifying explanation of their interest in the Lake.

The Idaho Supreme Court has recognized and confirmed that the United States and Tribe hold reserved water rights to fulfill the homeland purpose for the creation of the Coeur d’Alene Reservation, including both non-consumptive and consumptive water rights in Lake Coeur d’Alene. *In Re CSRBA Case No. 49576 Subcase No. 91-7755*, 165 Idaho 517, 545 (2019) (“*In Re CSRBA*”). While the Court affirmed the district court’s decision that lake level maintenance was not in-and-of-itself a purpose for the creation of the Coeur d’Alene Reservation, *id.* at 545, it affirmed that fishing and hunting were purposes for the creation of the Reservation. *Id.* at 543. Moreover, and importantly, the Court reversed the district court’s finding that the Tribe was not entitled to water for gathering and the perpetuation of cultural practices finding that those are purposes of the Reservation. *Id.* at 548. These holdings affirm the District Court’s decision to include the non-consumptive Tribal Claim No. 95-16704 in the Lake as a claim that will move to

trial in the quantification phase to support hunting, fishing, gathering and cultural purposes of the Reservation. *Amended Final Order Disallowing Water Right Claims, In Re CSRBA Case No. 49576, Consolidated Subcase No. 91-7755* at 3 (July 26, 2017) at 3 (omitting Claim No. 95-16704). Likewise, the Tribal Claim No. 95-16703 for consumptive use of water from the Lake for irrigated agriculture was also affirmed. *In Re CSRBA* at 545.

Throughout the Supreme Court's decision is the Court's acknowledgement of the integral role the Lake historically played in the furtherance of Tribal traditional purposes, the role they continued to play when the Reservation was created, and the important role they continue to play for the Coeur d'Alene Tribe today. The primary basis for both the district court and Idaho Supreme Court's decisions on these points was the United States Supreme Court's decision in *Idaho v. United States*, 533 U.S. 262 (2001). That decision affirmed the judgment of the federal district court that quieted title "in favor of the United States, as trustee, and the Coeur d'Alene Tribe of Idaho, as the beneficially interested party of the trusteeship, 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" *United States and Coeur d'Alene Tribe v. Idaho*, 95 F.Supp.2d 1094, 1117 (D. Idaho 1998). Importantly, that judgment also permanently enjoined the State of Idaho from doing exactly what it seeks to do in this SF5 by claiming a water right to store water on tribal submerged lands: "assert[] a[] 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." *Id.*

Based on those concrete and direct interests, contrary to Avista's argument, the United States and Tribe have standing to bring this motion. They have pending claims for water in the Lake, and they hold title to submerged lands within the Lake. Likewise, contrary to the State's

argument, the United States and the Tribe have significant property and sovereign interests in both the submerged lands and water of Lake Coeur d'Alene that will be "potentially affected" by these SF5s. *See* AO1 4(d)(4)(e).

C. Remaining issues resolved because SF5s are expansions and "potentially affect" non-parties pursuant to AO1 4d(4)(e).

1. The United States and Tribe do not claim to represent other parties.

Avista misconstrues the United States' and Tribe's argument that public notice is required if a claim is expanded by arguing that the United States and Tribe are asserting the rights of "other water users in the Basin." *See* Avista Response at 9 (citing Joint Motion at 3). Contrary to Avista's assertions, the United States and Tribe's identification of due process violations ignoring the need for public notice of an expanded claim does not equate to asserting claims on behalf of others. Second, the United States and Tribe point to the potential interest of other water users in the Basin because Rule 4(d)(4)(e), at its heart, is a due process provision, meant to protect the public interest. The purpose of Rule 4, which is reflected in its language, is to provide notice to all water users in the Basin, whenever there is an expansion of the right "or" where it could potentially affect a non-party. *See* Rule 4(d)(4)(e) (emphasis added). Each provides an independent ground under which an Amended Director's Report is required. Regardless, in the United States' and the Tribe's case, they have shown both that the SF5s would expand the rights at issue and that their specific rights and interests will be affected if they are not provided an opportunity to object.

2. The Joint Motion is Timely.

Avista argues that the Joint Motion is untimely because the United States and Tribe have known of Avista's claims since 2014, did not object to the Director's Recommendations, and did not seek to participate until SF5s were filed. Avista Response 9-12. Those arguments fail to

UNITED STATES' AND COEUR D'ALENE TRIBE'S CONSOLIDATED REPLY TO AVISTA'S AND STATE'S RESPONSES TO JOINT MOTION- 12

account for the basic problem that the SF5s expand Avista's claims as well as the Director's Recommendation. The United States and Tribe did not object to the Director's Recommendation on Avista's claims because they viewed them as consistent with agreements between the Tribe and Avista, thus, complimentary to the Tribal Lake Claim. Once those rights are expanded, Rule 4(d)(4)(e) restarts the clock for objections. Indeed, the precise reason that the SF5 form includes a box for parties to check "Amended Claim / Directors Report" is to provide notice to parties who may not have objected originally, but must be provided notice and an opportunity to object to the expanded attributes proposed for settlement. The Joint Motion is timely as it was filed as soon as the SF5 identified the claim expansion.

3. Cases cited in State's Response are inapplicable.

Idaho cites to several SRBA cases to contest the Joint Motion. However, none of those cases are applicable in this case.

First, with the exception of the Order Denying Motions to Participate in Subcases 63-33732 et al., each case that the State cites to was well beyond the SF5 stage of the case. *State v. United States* dealt with whether a party may intervene after the Special Master had written their recommendation to the district court. 996 P.2d 806, 808 (Idaho 2000). The parties were at the same stage in *North Snake Groundwater Dist. v. Gisler*, 136 Idaho 747 (2002). The parties there had reached an SF5 and the Master had written and submitted his report to the district court. *Memorandum Decision and Order on Challenge, In Re SRBA Case No. 39576, Subcase No. 36-00077D* (Gisler) at 2 (June 30, 2000) (Gissler Order). This difference was crucial to the district court's holding in *Gissler*, wherein it held that to "[p]ermit parties to enter a subcase after the fact finding stage of the process is completed and a special master's recommendation has been issued, and argue that the basis for the SF5 is not supported by 'substantial evidence,' runs

contrary to the entire purpose of the SF5 settlement procedure.” *Id.* at 14 (emphasis added).

Thus, the State is wrong that submission of the SF5 provides it with some sort of safe harbor from a motion to participate. Instead, under this Court’s and the Idaho Supreme Court’s precedent, that motion is timely anytime before the filing of the special master’s report with the district court, which moves us beyond the fact finding stage of the proceeding.

Second, none of the cases cited by the State addressed the situation where the intervenor successfully asserted the SF5 was an expansion of the water right. The would-be intervenor in *State v. United States* wanted to litigate the question of “what constitutes a diversion?” and not whether a particular water right was being expanded. *Order Denying Joint Motion to File Late Claim and Granting, in Part, Alternative Joint Motion to Participate, In Re SRBA Case No. 39576*, Subcase No. 36-15452 at 4 (Jan. 29, 1996). Similarly, the intervenors in *Gissler* were arguing that “the evidence of the quantity element was . . . insufficient” in that case, not that the quantity sought was an expansion of the right. *Gissler Order* at 2. Finally, in *Subcase Nos. 63-33732, et al. Order Denying Motions to Participate, In Re SRBA Case No. 39576, Subcase Nos. 63-33732, et al.* at 13 (July 8, 2019), the district court expressly rejected the City of Boise and Mountain Home’s argument that the SF5 created new water rights in *Subcase Nos. 63-33732, et al. Order Denying Motions to Participate, In Re SRBA Case No. 39576, Subcase Nos. 63-33732, et al.* at 13 (July 8, 2019). The Court expressly acknowledged, however, that “new claims require the filing of a Director’s Report and allow parties to file objections and responses.” *Id.* at 13. Therefore, if the Court ultimately agrees that the State and Avista’s water rights are an expansion of their recommended claims then the United States’ and Tribe’s motion to participate remains timely.

Finally, the principal case relied on by the State—*State v. United States*—addressed the standard for permissive intervention and is, therefore, to no avail. First, that case involved an attempt to intervene after the special master had submitted their report to the district court. Second, as set forth in the Joint Motion, we agree that in that case, the Idaho Supreme Court affirmed the finding of the district court that the intervenor there “made no showing that disposition of the . . . claim might impair their ability to protect their interests.” 996 P.2d at 810. Thus, the Court concluded that “a ‘generalized interest is insufficient to intervene in the subcase as a matter of right’” after the special master had submitted their report to the district court. *Id.*, *see also* Joint Motion at 16. In contrast, the United States and Tribe here do not argue they have a generalized interest but instead that they have a right to intervene because the expansion of the State’s water right threatens to have direct and significant impacts of the tribal water rights as well as the sovereign ownership and control of Coeur d’Alene Lake within the Reservation. *Id.* at 17, 25-28.

Conclusion

For the reasons above, the Court should grant the United States’ and Tribe’s Joint Motion and order the relief requested therein.

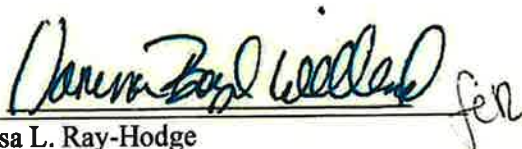
DATED this 6th day of October, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that original copies of the UNITED STATES' AND COEUR D'ALENE TRIBE'S JOINT RESPONSE TO AVISTA'S MOTION TO STRIKE EXHIBIT 4 AND 5 ATTACHED TO THE AFFIDAVIT OF VANESSA BOYD WILLARD AND REQUEST FOR THE COURT TO TAKE JUDICIAL NOTICE OF ITS FILES IN SUBCASE NOS. 95-9115 AND 95-9119 was sent via FedEx this 6th day of October, 2023 to:

Clerk of the District Court
Coeur d'Alene-Spokane River Basin Adjudication
253 Third Avenue North
Twin Falls, ID 83303-2707
Fax: 208.736.2121

I certify that true and correct copies of the documents listed above were sent via U.S. Post to the party listed below on this 6th day of October, 2023.

DIRECTOR OF IDWR
PO BOX 83720
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I certify that true and correct copies of the documents listed above were sent via electronic mail to the parties below on this 6th day of October, 2023.

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