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DEPARTMENT OF
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. 95-2067, 95-9115, and
) 95-9119
)
) **UNITED STATES' AND COEUR**
) **D'ALENE TRIBE'S JOINT RESPONSE**
) **TO AVISTA'S SUBMISSION OF**
) **TABLES**
)
)
)

The United States of America ("United States") and Coeur d'Alene Tribe ("Tribe") file this Response to Avista Corporation's ("Avista") *Explanation of Tables Request by Special Master Bilyeu*, filed on October 25, 2023 ("Avista's Explanation"). Avista's argument in its narrative that "[t]he Director's Report recommended the volume . . . with 'refill' conditions in

both recommendations” is argument cloaked as fact. No refill condition appeared in the record until Avista filed its SF5. The language Avista points to underscores this conclusion by clarifying that the Right is “deemed satisfied when the elevation of Coeur d’Alene Lake stabilizes at or near 2128 feet” Avista’s Explanation at 4. That language provides no indication that it has a refill right, but rather demonstrates that the right is satisfied once lake level hits 2128 feet.

Furthermore, it remains uncontroverted that the SF5’s language under “Quantity” results in lake level maintenance becoming a separate purpose from hydropower which is not contemplated in the Claims or Director’s Report. *See e.g.*, SF5 Quantity - “The quantity identified is to achieve a water surface elevation at or near 2128 and to generate power from storage.” (emphasis added). This language indicates that Avista could maintain a lake level *per se* - separate from the hydropower purpose. The United States and Tribe acknowledge that Avista’s water rights allow it to store water for a limited period for the single purpose of generating hydropower. But that Right does not allow lake level maintenance *per se*. When that lake level maintenance language is coupled with a year-round period of use that begins “as early as practicable” and an unlimited right to refill, the SF5 expands this right into a water right that could allow Avista to maintain the lake at 2128 feet at all times of the year and for any purpose. *See*, United States’ and Coeur d’Alene Tribe’s Joint Memorandum at 19-21; United States’ and Coeur d’Alene Tribe’s Consolidated Reply at 3; 6-8. This is a clear expansion of their historic operations, the water right claimed by Avista, and recommended by the Director.

DATED this 1st day of November, 2023.

Respectfully submitted,

By: 
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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 SUBMISSION OF TABLES was Fax Filed this 1st day of November, 2023 to:

Clerk of the District Court
Coeur d'Alene-Spokane River Basin Adjudication
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PO Box 2707
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 1st day of November, 2023.

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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 1st day of November, 2023.

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