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DEPT. OF WATER RESOURCES

VANESSA L. RAY-HODGE (ISB # 10565)
Sonosky, Chambers, Sachse,
Endreson & Perry, LLP
9900 SW Wilshire Ave., Suite 240
Portland, OR 97005
Tel. (503) 573-8446
Fax (503) 305-3654

ERIC VAN ORDEN (ISB #4774)
Coeur d'Alene Tribe
P.O. Box 408
Plummer, Idaho 83851
Tel. (208) 686-6116
Fax (208) 686-9102

DYLAN HEDDEN-NICELY (ISB #8856)
1075 Saddle Ridge Rd.
Moscow, ID 83843
Tel. (208) 863-0341

Attorneys for the Coeur d'Alene Tribe

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

IN RE: CSRBA

Case No. 49576

Subcase Nos. 95-9115, 95-9119 and 95-2067

**COEUR D'ALENE TRIBE'S RESPONSE
TO AVISTA'S MOTION FOR
CLARIFICATION**

In accordance with Idaho Rule of Civil Procedure ("I.R.C.P.") 7(b)(3)(B), the Coeur d'Alene Tribe ("Tribe") hereby submits this response to Avista Corporation's ("Avista") motion for clarification in the above captioned subcases. For the reasons below, the Court should deny Avista's motion.

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First, Avista's motion raises legal arguments and attempts to cloak what is actually a motion for reconsideration pursuant to I.R.C.P. 11.2(b) as a motion for clarification. "The decision to grant or deny a request for reconsideration generally rests in the sound discretion of the trial court." *Jordan v. Beeks*, 21 P.3d 908, 914 (Idaho 2001). Such motions are governed by certain standards. For example, the moving party has the burden of bringing new facts, if any, bearing on the correctness of the order. *Devil Creek Ranch, Inc. v. Cedar Mesa Reservoir & Canal Co.*, 879 P.2d 1135, 1138 (Idaho 1994). If no new facts are presented, the moving party must demonstrate errors of law or fact in the initial decision. *See Johnson v. Lambros*, 147 P.3d 100, 104-05 (Idaho Ct. App. 2006). Here, Avista provides substantive legal arguments for the Court's consideration but has failed to allege any new facts in this subcase or demonstrate that this Court made any errors of law or fact in its initial decision. Thus, the Court should deny Avista's motion.

Second, as Avista pointed out, the Court's section dealing with period of use also applied to Avista's claimed source in its SF5. *See Order on Standard Form 5s, In re CSRBA Case No. 49576*, Subcases Nos. 95-2067, 95-9115, 95-9119, at 7-8 (Jan. 30, 2024) ("Jan. 30 Order"). Instead, Avista's motion is an attempt to relitigate and gain a better footing on the issues presented in the United States' and Coeur d'Alene Tribe's Joint Motion to Participate and for an Order Construing SF5s as Amended Claims / Director's Reports, *In re CSRBA Case No. 49576*, Subcases Nos. 95-2067, 95-9115, 95-9119 (Sept. 7, 2023) ("Joint Motion").

Lastly, if the Court believes the motion is appropriate, the Court should not indiscriminately grant it. The United States and Tribe argued in support of their Join Motion that—given the strong interrelationship between the elements contained in the SF5—adding the Lake as a source in the SF5 was an expansion when considered together with the broader purposes sought beyond power generation, as well as the addition of the refill requirement in the quantity

element. *See, e.g.,* United States' & Coeur d'Alene Tribe's Joint Mem. in Supp. of Mot. to Participate, *In re CSRBA Case No. 49576*, Subcases Nos. 95-2067, 95-9115, 95-9119, at 21 (Sept. 7, 2023). In partially granting our motion, this Court carefully analyzed the elements to determine whether the SF5 resulted in an expansion and clearly determined that the purpose of use and quantity elements contained expansions that required docket sheet notice. *See* Jan. 30 Order. The Tribe believes that the Court's carefully developed analysis should stand as written and the Court should decline Avista's attempt to confuse the issues or expand the Court's ruling beyond its clearly defined terms.

CONCLUSION

For these reasons, the Tribe respectfully requests that this Court deny Avista's motion for clarification.

DATED this 20th day of February, 2024.

Respectfully Submitted,

By: /s/VanessaRay-Hodge

Vanessa L. Ray-Hodge
Eric Van Orden
Dylan Hedden-Nicely

Attorneys for the Coeur d'Alene Tribe

CERTIFICATE OF SERVICE

I hereby certify that on February 20th, 2024, I e-mailed and/or mailed via First-Class, U.S.

Mail, a true and correct copy of the foregoing document to the following recipients:

Clerk of the District Court
Coeur d'Alene- Spokane River Basin
Adjudication
253 Third Ave. North
PO Box 2707
Twin Falls, ID 83303-2707
Fax: 208-736-2121

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098
Fax: 208-287-6700

United States Dept. of Justice
Env. & Nat'l Res. Div.
550 W. Fort St., MSC 033
Boise, ID 83724

Chris Bromley
Candice M. McHugh
MCHUGH BROMLEY, PLLC
Attorneys at Law
380 S. 4th St., Ste. 103
Boise, ID 83702
cbromley@mchughbromley.com
cmchugh@mchughbromley.com

Idaho Dept. of Water Res.
380 S. 4th St.
Boise, ID 83702
garrick.baxter@idwr.idaho.gov
craig.saxton@idwr.idaho.gov
lacey.rammell-obrien@idwr.idaho.gov

Vanessa Boyd Willard
Daniel F. McCarl
Katherine M. Kane
US DEPT. OF JUSTICE
Indian Resources Section Env. & Natural
Resources Division
999 18th St., S. Terrace, Ste. 370
Denver, CO 80202
vanessa.willard@usdoj.gov
daniel.mccarl@usdoj.gov
katherine.kane@usdoj.gov

Chief, Natural Resources Div.
OFFICE OF THE ATTY. GEN.
State of Idaho
PO Box 83720
Boise, ID 83720-0010
scott.campbell@ag.idaho.gov
david.perkins@ag.idaho.gov
joy.vega@ag.idaho.gov

Norman M. Semanko
PARSONS BEHLE & LATIMER
800 W. Main St., Ste. 1300
Boise, ID 83702
nsemanko@parsonsbehle.com

/s/ Vanessa Ray-Hodge
Vanessa L. Ray-Hodge