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DEPT. 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

Case No. 49576

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

**COEUR D'ALENE TRIBE'S
RESPONSE TO STATE OF IDAHO'S
MOTION TO STRIKE**

The Coeur d'Alene Tribe ("Tribe") hereby submits this opposition to the State of Idaho's ("State") Motion to Strike the Coeur d'Alene Tribe's Response to Avista's Motion for Clarification, *In re CSRBA Case No. 49576*, Subcase Nos. 95-9119, 95-9115 & 95-2067 (Feb. 22, 2024) ("Motion to Strike"). For the reasons below, the Court should deny the State's motion.

On September 7, 2023, the United States and Tribe filed a joint motion to participate in subcases 95-9119, 95-9115 and 95-2067, and sought an order construing the SF5s as amended claims. *See* United States' & Coeur d'Alene Tribe's Joint Mot. to Participate, *In re CSRBA Case No. 49576*, Subcase Nos. 95-9119, 95-9115 & 95-2067 (Sept. 7, 2023) ("Motion to Participate"). The motion was accompanied by a memorandum in support, and the United States and Tribe also filed a consolidated reply brief on October 10, 2023. This Court held oral argument on the joint motion on October 11, 2023, in which the Tribe and United States appeared before the Court and participated. *See* Notice of Hr'g Held, *In re CSRBA Case No. 49576*, Subcase Nos. 95-9119, 95-9115 & 95-2067 (Oct. 11, 2023). After oral argument, and with the permission of the Court, the Tribe and United States filed additional documents regarding the SF5s and the claims filed in the subcases. *See* United States' & Coeur d'Alene Tribe's Additional Docs., *In re CSRBA Case No. 49576*, Subcase Nos. 95-9119, 95-9115 & 95-2067 (Oct. 25, 2023). Then, on January 30, 2024, the Court issued its Order on Standard Form 5s, *In re CSRBA Case No. 49576*, Subcases Nos. 95-9119, 95-9115 & 95-2067 (Jan. 30, 2024) ("January 30 Order").

As shown above, the Tribe has fully participated in these subcases with respect to its Motion to Participate—and, appropriately, only with respect to its Motion to Participate. Avista's motion for clarification and the Tribe's response in opposition to it—which response the State now seeks to have this Court strike—directly relate to that Motion to Participate. After all, the motion purports to seek clarification of the January 30 Order, which stems directly from, and is an order ruling on arguments raised in, the Motion to Participate. Therefore, it is appropriate for the Tribe to file a response.

The State asserts that the Tribe's response to Avista's motion is an attempt to gain an "unfair and prejudicial advantage over the opposing parties." Mot. to Strike at 2. The State does

not provide any support for its statement, and it is simply untrue. Contrary to the State's assertion, as laid out above, the Tribe's response is simply its opportunity to be heard on a matter directly arising out of its Motion to Participate. Because Avista's motion stems from an order sought by the Tribe, as a matter of fairness and due process the Tribe should be able to provide its position on the motion.

CONCLUSION

For these reasons, the Tribe respectfully requests that this Court deny the State's motion to strike.

DATED this 27th day of February, 2024.

Respectfully Submitted,

By: /s/ Vanessa Ray-Hodge

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CERTIFICATE OF SERVICE

I hereby certify that on February 27th, 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:

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