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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

Case No. 49576

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

**AVISTA’S REPLY TO COUER
D’ALENE TRIBE’S RESPONSE TO
AVISTA’S MOTION FOR
CLARIFICATION**

COMES NOW the Avista Corporation (“Avista”), by and through its counsel of record, Chris M. Bromley, McHugh Bromley, PLLC, and hereby files this *Reply* to the *Coeur d’Alene Tribe’s Response to Avista’s Motion for Clarification* (“Response”). The United States did not file a response to Avista’s *Motion for Clarification* (“Motion”).

First, the Coeur d’Alene Tribe (“Tribe”) argues that the *Motion* is “cloak[ed] [as] a motion for reconsideration pursuant to I.R.C.P. 11.2(b),” asserting that reconsideration cannot be granted because Avista has not brought “new facts” to the Court for consideration. *Response* at 2. To be clear, Avista did not file a motion for reconsideration, it has asked for clarification to address what appears to be the Court’s inadvertent omission of substantive discussion as to whether Coeur d’Alene Lake (“Lake”) was correctly added to the *SF5s* for subcase nos. 95-9115 and 95-9119. Asking the Court to clarify its *Order on Standard Form 5s* (“Order”) was correct

procedurally and is not a novel filing with the adjudication court. *See e.g. Order on United States' Motion for Clarification*, SRBA Subcase No. 91-00005 (Basin Wide Issue No. 5) (Feb. 27, 2002) (J. Burdick); *I.R.C.P. 7(b)(3) Notice, Order Denying Motion for Clarification and Motion for Reconsideration and Order Setting Pretrial/Scheduling Conference*, SRBA Subcase No. 67-13701 (United States and Nez Perce Tribe Springs or Fountains Claims) (June 18, 2003) (S.M. Dolan). Because the *Motion* was filed to clarify and not reconsider, Avista did not present “new facts” to the Court for consideration. Indeed, Avista is unaware of any “new facts” that could be brought to the Court on this issue because the Court has all of the facts before it in the *Claims*, *Director's Reports*, and *SF5s*.

Second, while the Tribe agrees that the Court identified the question of the Lake as a Source in the same section in which it addressed the Period of Use Element on page 7 of its *Order* – wherein it held that describing a year-round Period of Use (1/1 – 12/31) was not a claim expansion, thereby denying the relief sought by the Tribe and United States – the Tribe goes on to argue: “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 and for an Order Construing SF5s as Amended Claims / Director’s Reports” *Response* at 2. The issue of whether the Lake was properly added in the *SF5s* as a Source was raised by the Tribe and United States. The purpose of the *Motion* is to ask the Court to clarify whether the relief sought by the Tribe and United States was or was not granted.

As its third and final argument, the Tribe addresses the substance of the *Motion*, which is whether the Court should clarify its *Order*. Without ruling on Avista’s *Motion*, the parties and the non-party participants to the above-captioned subcases will be left without the necessary information to answer the issue that was correctly framed by the Court:

The *Motions to Participate* filed by the U.S. and Tribe assert that the *SF5s* include certain elements that go beyond what was claimed or reported in the *Director's Reports*. The overarching question in resolving the *Motions* is whether the *SF5s* go beyond the *Claims* or *Director's Reports*. If the *SF5s* do not go beyond the *Claims* or *Director's Reports*, non-parties cannot come in to undo a settlement. If the *SF5s* do go beyond what was in the *Claims* or *Director's Reports*, then the *SF5s* are Amended Claims or Amended Director's Reports which will be placed on the Docket Sheet. If the *SF5s* go back on the Docket Sheet, non-parties could file Objections or Responses only to the elements which were expansions beyond the *Claims* or *Director's Reports*. Docket Sheet notice would not invite a second bite of the apple on elements that did not contain expansions.

Order at 2.

As documented in the *Claims* and described in the *Motion* on pages 3-4, the Lake was listed as a Source in subcase nos. 95-9115 and 95-9119, putting all parties to the adjudication on notice to file objections or responses. Thus, the Tribe and United States should not be given a "second bite of the apple on elements that did not contain expansions." *Order at 2.*

Issuing an order that clarifies the Court's ruling will help bring closure to these subcases, which the parties to the subcases have labored at "for over four years." *Order at 2.* Conversely, if the Court does not clarify its ruling, the subcases will continue to linger. Therefore, the Court should grant Avista's *Motion for Clarification* in order to answer whether the Lake was correctly added as a Source in the *SF5s* and was not a claim expansion that requires Docket Sheet notice.

DATED this 22nd day of February, 2024.

MCHUGH BROMLEY, PLLC



Chris M. Bromley
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of February, 2024, I served a true and correct copy of the foregoing document was filed by facsimile and served by United States Mail electronic mail as indicated:

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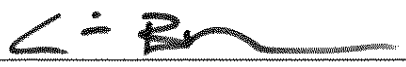
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