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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - CSRBA Fifth Judicial District County of Twin Falls - State of Idaho	
APR 16 2024	
By _____	Clerk
_____	Deputy Clerk

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

SUBCASES: 95-2067, 95-9115 and
95-9119

Case No. 49576

ORDER ON MOTION TO CLARIFY

Avista Corporation (Avista) moved to clarify the *Order on Standard Form 5s* regarding the source element. Avista's *Motion for Clarification* asks whether the SF5s in 95-9115 and 95-9119 correctly included Coeur d'Alene Lake in the Source Element. The Coeur d'Alene Tribe filed a Response. The subcases at issue in this *Motion for Clarification* include Claims by the Avista Corporation (95-9115 and 95-9119). The State of Idaho also filed a Claim (95-2067).

The State of Idaho subsequently filed a *Motion to Strike* the Coeur d'Alene Tribe's Response. Although the U.S. and Tribe are not currently parties to these subcases, the Tribe and U.S. are movants in these matters relating to the propriety of the SF5s. As such, their participation is appropriate, and the *Motion to Strike* was **denied**.

I. BACKGROUND

Avista filed claims for 95-9115 and 95-9119 in 2014. The claims were, in part, for storage to maintain the elevation of Lake Coeur d'Alene at 2126.5 feet and 2128 feet for the generation of hydropower. The 2014 Claim included the Spokane River, Coeur d'Alene Lake and connected tributaries in the Source Element. The Source Element was described in the 2014 Claim as "St. Joe River, St. Maries River, Coeur d'Alene River, and Hepton Lake, tributaries to Coeur d'Alene Lake, and Coeur d'Alene Lake tributary to the Spokane River." 2014 Storage Claims, Ex. B-1 at 4. Avista's *Response to Joint Motion* at 5.

The Director's Reports were filed in 2018 and described the Source as the Spokane River, tributary to Columbia River. Additional language in the Director's Reports described Avista's storage in Lake Coeur d'Alene and also described Lake elevations. The United States and the

Coeur d'Alene Tribe did not file objections or responses. During settlement negotiations, IDWR and the parties agreed on a description of the Source including both the Spokane River and Lake Coeur d'Alene.

After settlement discussions, the parties entered into SF5s in September of 2023. The SF5s included both Coeur d'Alene Lake and the Spokane River in the Source Elements. The Coeur d'Alene Lake was included because the rights describe water stored in the Lake as previously set forth in the Claims.

II. ANALYSIS

A. Motion

The Coeur d'Alene Tribe argued that the *Motion for Clarification* was really a motion for reconsideration under I.R.C.P. 11.2(b). Such motions for reconsideration usually require new facts be brought to the Court. Avista explained that it did not seek a motion for reconsideration, but rather asked for clarification of the Court's ruling on whether the Source Element of Lake Coeur d'Alene in the SF5 should be treated as an expansion requiring Docket Sheet notice.

The Court understands Avista's *Motion for Clarification* as asking for direction on the Source Element. The Source Element was discussed in prior briefing by the movants and the parties, but was not addressed separately in the Court's *Order on Standard Form 5s*. Therefore, Avista's *Motion for Clarification* is properly understood as a request to elucidate the ruling on the Source Element. Therefore, the *Motion* is not a motion for reconsideration.

B. Source

The threshold issue is whether the Source Element described in the SF5s with both the Spokane River and Coeur d'Alene Lake is an expansion. If Lake Coeur d'Alene was previously described in the Source Element in the Claim or in the Director's Report, then including it in the SF5 is not an expansion.

AO1 4.d(4)(e) describes the rule.

If the settlement results in an expansion of the water right beyond what was originally claimed (i.e. increase in rate of diversion, acreage, more consumptive purpose of use, etc.), or results in a change that would potentially affect a party not already a Party to the Subcase, then an Amended Claim/Director's Report is required to provide notice to third parties not already parties to the Subcase.

The issue is simply whether the SF5s properly included Lake Coeur d'Alene in the Source Element. The answer depends on whether the Source Element in the SF5s are expansions of the

Claims or Director's Reports. The Court held that the test for whether a Standard Form 5 contains an impermissible expansion is whether it goes beyond the Claim or Director's Report.

C. Conclusion

In applying the rule, it appears that describing Lake Coeur d'Alene in the Source Element is not an expansion. When IDWR issued its Director's Reports in 2018, the Source Element was described as Source: Spokane River Tributary: Columbia River. The Source element did not include the Lake in the Director's Report. However, the Court does not look solely at the Director's Reports. The Court must also look at how the water rights were claimed. The Lake was clearly included in the Source element in the Claims.

The United States and Tribe argue that even though the Lake was included in the Claims, the interrelationship between the elements makes including the Lake an expansion. According to the Tribe, including the Lake in the Source Element is an expansion. The argument is that due to "the broader purposes sought beyond power generation, as well as the addition of the refill requirement in the quantity element," the Source Element was an expansion. *Coeur d'Alene Tribe's Response to Avista's Motion for Clarification* at 2.

The argument is not persuasive. The purposes described beyond power generation and the uses describing refill were recognized as expansions in the ***Order on Standard Form 5s***. Therefore, those will require additional Docket Sheet notice. The question on the Source element is different.

For the Tribe and U.S. to make a colorable argument that the SF5 Source Element is an expansion, the Movants would need to establish that the SF5s included a new or different source that was not included in the Claims. This they cannot do because the Claims clearly listed Source: Coeur d'Alene Lake Tributary: Spokane River. Thus, describing Lake Coeur d'Alene in the Source Element of the SF5s is not an expansion.

Date: April 16, 2024.


BRIGETTE BILYEU
Special Master
Coeur d'Alene-Spokane River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON MOTION TO CLARIFY was mailed on April 16, 2024, with sufficient first-class postage to the following:

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