

10-21-2016

## USA-CDAT Joint Mtn SJ

John C. Cruden

*Assistant Attorney General, US Department of Justice*

Vanessa Boyd Willard

*Trial Attorney, Indian Resources Section Environment & Natural Resources Division, US Department of Justice*

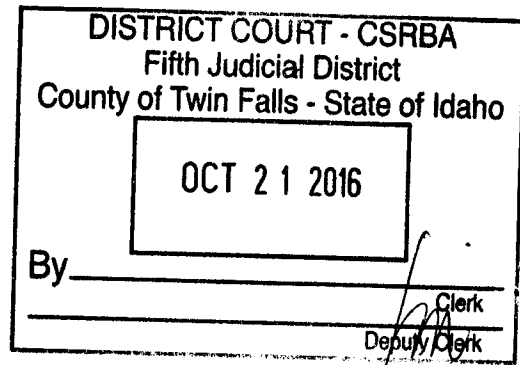
Follow this and additional works at: <https://digitalcommons.law.uidaho.edu/all>

---

### Recommended Citation

Cruden, John C. and Willard, Vanessa Boyd, "USA-CDAT Joint Mtn SJ" (2016). *Hedden-Nicely Collection, All*. 34.  
<https://digitalcommons.law.uidaho.edu/all/34>

This Brief is brought to you for free and open access by the Digital Commons @ UIdaho Law at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Hedden-Nicely Collection, All by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).



JOHN C. CRUDEN  
 Assistant Attorney General  
 VANESSA BOYD WILLARD  
 Trial Attorney, Indian Resources Section  
 Environment & Natural Resources Division  
 U.S. DEPARTMENT OF JUSTICE  
 999 18<sup>th</sup> Street, South Terrace, Suite 370  
 Denver, Colorado 80202  
 Tel. (303) 844-1353  
 Fax (303) 844-1350

HOWARD A. FUNKE, ISB 2720  
 KINZO H. MIHARA, ISB 7940  
 DYLAN HEDDEN-NICELY, ISB 8856  
 Howard Funke & Associates, P.C.  
 P.O. Box 969  
 424 Sherman Avenue, Suite 308  
 Coeur d'Alene, Idaho 83816-0969  
 Tel. (208) 667-5486  
 Fax (208) 667-4695

*Attorneys for the United States*

*Attorneys for the Coeur d'Alene Tribe*

**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**

) Consolidated Subcase No. 91-7755  
 )  
 )  
 ) **UNITED STATES' AND COEUR D'ALENE**  
 ) **TRIBE'S JOINT MOTION FOR**  
 ) **SUMMARY JUDGMENT**  
 )  
 )

Pursuant to the Idaho Rule of Civil Procedure 56(a) and the Court's Scheduling Orders in this Consolidated Subcase, the United States of America ("United States") and the Coeur d'Alene Tribe ("Tribe") hereby move this Court for an order granting summary judgment on entitlement to federal reserved water rights for the Coeur d'Alene Indian Reservation. Summary

judgment is appropriate here because there is no genuine dispute as to any material fact related to the question of entitlement, therefore, the United States and Tribe are entitled to judgment as a matter of law. This motion is supported by the United States' Memorandum in Support of Motion for Summary Judgment ("US Memorandum"), the Tribe's Memorandum in Support of Motion for Summary Judgment ("Tribe Memorandum"), and the United States and Tribe's Joint Statement of Undisputed Facts, including supporting Affidavits of Ian Smith, Dudley Reiser, Richard Hart, Cajetan Matheson, and Vanessa Boyd Willard and attachments thereto ("Facts") filed concurrently herewith.

As explained in the Memoranda and supported by the Facts, the United States and Tribe are entitled to an order declaring the following:

1. The United States as trustee and the Coeur d'Alene Tribe as beneficiary are entitled to federal reserved water rights to surface and groundwater to serve the purpose of the Coeur d'Alene Indian Reservation.

2. The purpose of the Coeur d'Alene Indian Reservation was, and continues to be, to provide a permanent homeland for the Coeur d'Alene people and any other Indians who reside thereon.

3. The water rights necessary to serve the purpose to provide a permanent homeland on the Coeur d'Alene Indian Reservation include the following: domestic, commercial, municipal and industrial; instream flows for fish habitat; irrigated agriculture; maintenance of lake levels in Coeur d'Alene Lake; and maintenance of wetlands, springs and seeps for game habitat and gathering activities.

4. The priority date of the water rights necessary to support the homeland purpose of the Coeur d'Alene Indian Reservation is time immemorial for traditional water uses that predate the

creation of the Reservation (domestic and municipal; instream flows for fish habitat; maintenance of lake levels in Coeur d'Alene Lake; and maintenance of wetlands, springs and seeps for game habitat and gathering activities).

5. The priority date of the water uses necessary to support the homeland purpose of the Coeur d'Alene Indian Reservation is November 8, 1873—the date the Reservation was established—for water uses that began generally at the time that the Reservation was created (commercial, industrial, and irrigated agriculture).

Based on the foregoing, the United States and Tribe move this Court for an order granting summary judgment on the issue of entitlement to the federal reserved water rights claimed by the United States on behalf of the Coeur d'Alene Tribe. Should the Court not grant all the relief requested by this motion, the United States and Tribe move, pursuant to I.R.C.P. 56(f), for an order stating those item(s) of material fact that are not genuinely in dispute and treating such fact(s) as established in the case.


Pursuant to I.R.C.P. 7(b)(3)(D), the United States and Tribe request and reserve oral argument on this motion.

DATED this 20<sup>th</sup> day of October, 2016.

By: 

John C. Cruden  
Assistant Attorney General  
Vanessa Boyd Willard  
Trial Attorney, Indian Resources Section  
Environment & Natural Resources Division  
United States Department of Justice

*Attorneys for the United States*

By:   
Howard A Funke  
Howard Funke & Associates, P.C.

*Attorneys for the Coeur d'Alene Tribe*

**CERTIFICATE OF SERVICE**

I certify that original copies of the *UNITED STATES' AND COEUR D'ALENE TRIBE'S JOINT MOTION FOR SUMMARY JUDGMENT*, *UNITED STATES' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT*, and *UNITED STATES' AND COEUR D'ALENE TRIBE'S JOINT STATEMENT OF FACTS* with attachments were sent via Federal Express this 20<sup>th</sup> day of October, 2016 to:

Clerk of the District Court  
Coeur d'Alene-Spokane River Basin Adjudication  
253 Third Avenue North  
PO Box 2707  
Twin Falls, ID 83303-2707

I certify that true and correct copies of the documents listed above were provided to the parties below on a DVD mailed on this 20<sup>th</sup> day of October, 2016.

ALBERT P. BARKER  
BARKER ROSHOLT & SIMPSON LLP  
PO BOX 2139  
BOISE, ID 83701-2139

MARIAH R. DUNHAM  
& NANCY A. WOLFF  
MORRIS & WOLFF, P.A.  
722 MAIN AVE  
ST MARIES, ID 83861

US DEPARTMENT OF JUSTICE  
ENVIRONMENT & NATL' RESOURCES  
550 WEST FORT STREET, MSC O33  
BOISE, ID 83724

CHIEF NATURAL RESOURCES DIV  
OFFICE OF THE ATTORNEY GENERAL  
STATE OF IDAHO  
PO BOX 83720  
BOISE, ID 83720-0010

CHRISTOPHER H. MEYER,  
JEFFREY C. FEREDAY,  
JEFFERY W. BOWER  
& MICHAEL P. LAWRENCE  
GIVENS PURSLEY LLP  
PO BOX 2720  
BOISE, ID 83701-2720

WILLIAM J. SCHROEDER  
PAINE HAMBLEN LLP  
717 W SPRAGUE AVE, STE 1200  
SPOKANE, WA 99201-3505

CANDICE M MCHUGH  
CHRIS BROMLEY  
MCHUCH BROMLEY PLLC  
380 S 4<sup>TH</sup> STREET STE 103  
BOISE, ID 83702

IDWR DOCUMENT DEPOSITORY  
PO BOX 83720  
BOISE, ID 83720-0098

NORMAN M. SEMANKO  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS CHARTERED  
PO BOX 829  
BOISE, ID 83701-0829

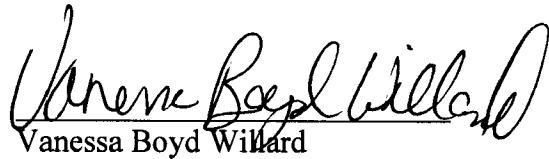
HOWARD A. FUNKE  
PO BOX 969  
COEUR D ALENE, ID 83816-0969

JOHN T. MCFADDIN  
20189 S. EAGLE PEAK RD  
CATALDO, ID 83810

RATLIFF FAMILY LLC #1  
13621 S HWY 95  
COEUR D'ALENE, ID 83814

WILLIAM GREEN  
2803 N 5<sup>TH</sup> ST  
COEUR D'ALENE, ID 83815

RONALD HEYN  
828 WESTFORK EAGLE CREEK  
WALLACE, ID 83873

  
Vanessa Boyd Willard