

11-14-2016

Affidavit of S. Strack (2nd)

Steven W. Strack
Deputy Attorney General, State of Idaho

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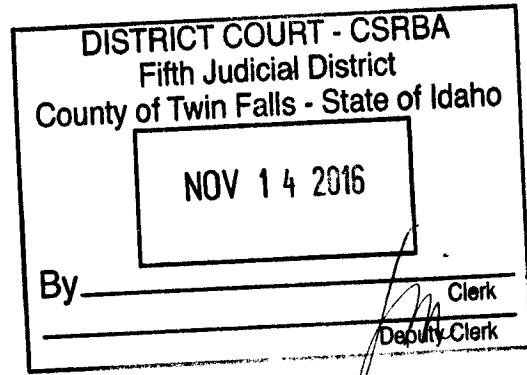
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Attorneys for the State of Idaho

**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) Consolidated Subcase No. 91-7755
))
Case No. 49576) SECOND AFFIDAVIT OF STEVEN
) W. STRACK
))
))
))

State of Idaho)
 : ss
County of Ada)


STEVEN W. STRACK, under oath, deposes and states as follows:

- 1. That I am over eighteen years of age and employed as a Deputy Attorney General for the State of Idaho, and I represent the State of Idaho in in this matter.
- 2. That I have caused to be gathered true, accurate and correct copies of the following documents from the sources identified below:

Exhibit 24: Excerpts from the Coeur d'Alene Tribe's Responses to Idaho's First Set of Discovery Requests, CSRBA Consolidated Subcase No. 91-7755 (Sept. 12, 2016): Request for Admission No. 39, Request for Admission No. 46, Interrogatory No. 31, and Request for Production No. 4. .-

Further your affiant sayeth not.

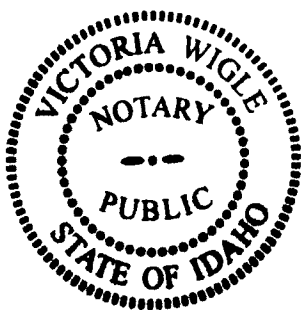
Dated this 9th day of November 2016.



STEVEN W. STRACK
Deputy Attorney General

Subscribed and sworn to before me this 9th day of November, 2016.

S
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A
L



Notary Public
Residing at Boise, Idaho Attorney General's Office
My Commission expires on 11/22/22

ORIGINAL

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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)	Consolidated Subcase No. 91-7755
)	
Case No. 49576)	COEUR D'ALENE TRIBE'S RESPONSES
)	TO IDAHO'S FIRST SET OF DISCOVERY
)	REQUESTS
)	
)	

COMES NOW Claimant, Coeur d'Alene Tribe ("Objector or Tribe"), by and through undersigned counsel of record, pursuant to Idaho Rules of Civil Procedure 26, 33, 34 and 36 and the Court's *Order Granting Joint Motion to Amend Scheduling Order* dated August 4, 2016, and hereby submits its discovery responses to the State of Idaho first set of discovery requests as follows:

GENERAL DENIAL

Any matter not specifically admitted herein is denied. The fact that the Tribe has responded to all or part of a discovery request below is not intended as, and shall not be construed as a waiver by the Tribe of all or part of any objection to other discovery requests. The Tribe's answer or response to any discovery requests herein does not constitute waiver of the Tribe's right to object to any future additional or supplemental discovery requests regarding the same or similar matters.

GENERAL OBJECTIONS

The Tribe objects to the State's definitions, instructions and discovery requests to the extent they purport to require responses and answers beyond that required under the Idaho

COEUR D'ALENE TRIBE'S RESPONSES TO IDAHO'S
FIRST SET OF DISCOVERY REQUESTS - 1



MAIL126244

Request for Admission No. 39: Please admit that the Easement described in Attachment 4 [Bates Nos. ST.ID.7755.00124 through ST.ID.7755.00142], applies to some or all of the lands described as the place of use for Water Right Claim No. 92-10912.

Response: Please see the following objection and answer.

Objection – Relevance. Pursuant to Court order, the entitlement and quantification of the Tribal water claims in the above noted subcase have been bifurcated. This request for admission, as framed, is irrelevant to the disposition of whether the United States and Tribe are entitled to water rights as described in the cover letter from the United States to IDWR dated January 30, 2014 and the claim forms which it transmitted.

Without waiving the foregoing objection, and subject thereto, the Tribe answers as follows:
Admitted.

Request for Admission No. 46: Please admit that, as measured by surface area at the OHWM, less than one-fifth of Coeur d'Alene Lake is within the current exterior boundaries of the Coeur d'Alene Indian Reservation.

Response: Please see the following objection and answer.

Objection – Relevance. Pursuant to Court order, the entitlement and quantification of the Tribal water claims in the above-noted subcase 91-7755 (and consolidated subcases) have been bifurcated. The interrogatory, as framed, is irrelevant to the disposition of whether the United States and Tribe are entitled to water use for the intended primary purposes for which the Tribe's reservation was created. The Tribe also notes its water right claim for Coeur d'Alene Lake (e.g., 95-16704) is limited to the portion of the Lake lying within the current exterior boundaries of the Coeur d'Alene Indian Reservation and to which title of the submerged lands were quieted in favor of the United States and Tribe in *Idaho II*.

Objection – Definition and vagueness. The Tribe objects to the State's definition of OHWM as used in this request for admission. The OHWM within the boundaries of the Tribe's is defined by federal law. To the extent the State is attempting to overlay a State-law definition of OHWM to this request for admission, such definition is objectionable.

Without waiving the foregoing objections, and subject thereto, the Tribe answers as follows:
Denied. Please also see the Tribal claims made by the United States on behalf of the Tribe and adopted by the Tribe. Please also see Cover Letter dated January 30, 2014, p. 4, and Attachment V thereto. In regard to surface area, while it does not necessarily agree or disagree with the content of the data, the Tribe would refer the State to bates STATE.RESP.7755.00550 to 00553.

The Tribe reserves the right to supplement and/or amend its answer to this request for admission.

Interrogatory No. 31: If your response to Request for Admission No. 39 is anything other than an unqualified admission, then please identify the percentage of Coeur d'Alene Lake, as measured by surface area at the OHWM, that you contend is within the current exterior boundaries of the Coeur d'Alene Indian Reservation.

Response: Please see the following objection and answer.

Objection - Relevance. Pursuant to Court order, the entitlement and quantification of the Tribal water claims in the above-noted subcase 91-7755 (and consolidated subcases) have been bifurcated. The interrogatory, as framed, is irrelevant to the disposition of whether the United States and Tribe are entitled to water use for the intended primary purposes for which the Tribe's reservation was created.

Without waiving the foregoing objection, and subject thereto, the Tribe answers as follows: Please see response to request for admission No. 39 above, which is incorporated herein.

The Tribe reserves its right to supplement and/or amend its answer to this request for admission.

Request for Production No. 4: Please produce all maps, tables, electronic geographic information, or other documents that you have created, developed or gathered which depict or identify: (1) lands within the current boundaries of the Coeur d'Alene Reservation held by the United States in trust for the Tribe; (2) lands within the current boundaries of the Coeur d'Alene Reservation held by the United States in trust for members of the Tribe; (3) lands within the current boundaries of the Coeur d'Alene Reservation held by the United States in trust for non-members of the Tribe; (4) lands within the current boundaries of the Coeur d'Alene Reservation owned by the United States but not held in trust for the Tribe or members of the Tribe; and (5) lands within the current boundaries of the Coeur d'Alene Reservation owned in fee by the Tribe.

Response: Please see the following objections and response.

Objection -- Joint Litigation and Common Interest Confidentiality Agreement/Attorney-Client Privilege/Work Product. As phrased this interrogatory seeks information protected under the joint litigation and common interest doctrine which is essentially an extension of the attorney client privilege for the purpose of maintaining and defending substantially the same cause on behalf of other parties in the same litigation. In addition, to the extent certain documents may have been produced by Tribal attorneys and staff for the purpose of legal analyses of the claims and defenses in the above-noted subcases such documents are work product.

Objection -- Relevance. Pursuant to Court order, the entitlement and quantification of the Tribal water claims in the above-noted subcase 91-7755 (and consolidated subcases) have been bifurcated. The interrogatory, as framed, is irrelevant to the disposition of whether the United States and Tribe are entitled to water use for the intended primary purposes for which the Tribe's reservation was created.

Objection - Unduly burdensome and overly-broad. As phrased, this request is overly broad and unduly burdensome to the extent it seeks documents which, "all maps, tables, electronic geographic information, or other documents that you have created, developed or gathered which depict or identify" any lands held by the United States in trust for the Tribe or its members, or which is held in fee by the Tribe or its members. Such information could include deeds, plats, wills, contracts, aerial photographs, etc. of any sort, without time limitation. As such the request is overly broad and unduly burdensome. The time and effort necessary for staff to track down the information requested in the interrogatory and attorneys to review prior to production is unduly burdensome and cost-prohibitive.

Without waiving the foregoing objections, and subject thereto, the Tribe responds as follows:

Please see documents produced as part of the Initial Disclosures of the United States and Tribe, along with the Initial Disclosures of the State of Idaho. In addition, please see the information

provided, i.e., mapping and narratives of each water right claim filed by the United States on behalf of the Tribe. Responsive documents and information may also be found within the expert reports of Richard Hart, Ian Smith, Stephen Wee, and the expert rebuttal reports of Richard Hart, Ian Smith, and Dudley Riser. Further, the Tribe and United States have informally provided information to the State of Idaho and other objectors pursuant to the negotiations MOA § 4.A.1.f.

The Tribe is currently investigating this request for production and pursuant to agreement of counsel, such data may be provided via amendment or supplement by or on September 16, 2016.

The Tribe reserves the right to supplement and/or amend its response to this request for production.

CERTIFICATE OF SERVICE

I certify that on November 9, 2016, I caused a true and correct copy of the foregoing SECOND AFFIDAVIT OF STEVEN W. STRACK to be mailed, with sufficient first-class postage, to the Court and to the parties to this Consolidated Subcases, as follows:

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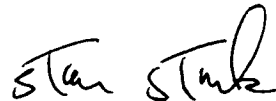
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