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NIWRG's Memo in Opposition to USA-CDAT Joint Mtn SJ

Norman M. Semanko
Attorney, Moffatt, Thomas, Barrett, Rock & Fields, Chartered

Aleksandra N. Semanko
Attorney, Moffatt, Thomas, Barrett, Rock & Fields, Chartered

ORIGINAL

Norman M. Semanko, ISB No. 4761
Aleksandra N. Semanko, ISB No. 10186
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
nms@moffatt.com
ans@moffatt.com
25934.0000

Attorneys for members of the North Idaho Water Rights Alliance, members of the Northwest Property Owners Alliance, members of the Coeur d'Alene Lakeshore Property Owners Association, Rathdrum Power, LLC and Hagadone Hospitality Co.

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	Consolidated Subcase No. 91-7755 **NORTH IDAHO WATER RIGHTS GROUP'S MEMORANDUM IN OPPOSITION TO UNITED STATES' AND COEUR D'ALENE TRIBE'S JOINT MOTION FOR SUMMARY JUDGMENT**

Objectors and Respondents, members of the North Idaho Water Rights Alliance ("NIWRA"), members of the Northwest Property Owners Alliance ("NWPOA"), members of the Coeur d'Alene Lakeshore Property Owners Association ("CLPOA"), Rathdrum Power, LLC

("Rathdrum") and Hagadone Hospitality Co. ("Hagadone") (collectively, the "North Idaho Water Rights Group"), through undersigned counsel of record, hereby file this Memorandum in Opposition to the United States' and the Coeur d'Alene Tribe's Joint Motion for Summary Judgment pursuant to Idaho Rule of Civil Procedure 56 and Rule 7(f)(4)(b) of CSRBA Administrative Order 1, Rules of Procedure. This memorandum is supported by the *Affidavit of Norman M. Semanko* ("Semanko Aff."), which affidavit was previously filed in support of the *North Idaho Water Rights Group's Motion for Summary Judgment* in this matter.

I. INTRODUCTION AND BACKGROUND

The North Idaho Water Rights Group joins in, and hereby incorporates by reference, the arguments and authorities set forth in the *State of Idaho's Memorandum in Response to United States' and Coeur d'Alene Tribe's Joint Motion for Summary Judgment* ("Joint Motion"). The North Idaho Water Rights Group also incorporates by reference the *State of Idaho's Statement of Additional Facts*, as filed in this matter, as well as the North Idaho Water Rights Group's Memorandum in Support of its Motion for Summary Judgment and the Semanko Affidavit filed previously in this matter.

On January 31, 2014, the United States of America ("United States"), as trustee on behalf of the Coeur d'Alene Tribe (the "Tribe"), filed a Notice of Claim in the Coeur d'Alene Spokane River Basin Adjudication ("CSRBA") for federal reserved water rights, which included 353 claims in five (5) categories on and off the Coeur d'Alene Indian Reservation (the "Reservation"). The United States described the basis for the claim as the doctrine of federal reserved water rights articulated by the United States Supreme Court in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny, "as well as the operative documents and circumstances surrounding the creation of the Coeur d'Alene Reservation." *See* Semanko Aff. ¶ 2, Ex. A.

The North Idaho Water Rights Group filed objections and responses to the claims made by the United States, as did numerous other parties. Separate motions for summary judgment have been filed by several parties, including: (1) the State of Idaho; (2) the United States and the Coeur d'Alene Tribe; (3) Hecla; and (4) the North Idaho Water Rights Group.

II. ARGUMENT

A. There Is No Legal Basis for Federal Reserved Rights to Groundwater.

The United States and the Tribe argue that claims to groundwater have the same legal standing as claims to surface water under the federal reserved water rights doctrine. The Joint Motion requests an order declaring that the United States and the Tribe "are entitled to federal reserved water rights to surface and groundwater." However, the case law does not support the recognition of federal reserved water rights to groundwater. The United States' claims to groundwater on behalf of the Tribe should therefore be denied as a matter of law.

The United States and the Tribe claim that federal reserved water rights on Indian reservations were extended to both surface water and groundwater in *United States v. Cappaert*, 503 F.2d 313, 317 (9th Cir. 1974), *aff'd on other grounds*, 426 U.S. 128, 138-39 (1976). However, they neglect to mention that *Cappaert* was not an Indian reservation case at all; it dealt with a National Monument. More importantly, they fail to mention that the United States Supreme Court declined to apply the federal reserved water rights doctrine to groundwater. *Cappaert*, 426 U.S. at 142. The Supreme Court based its holding on a conclusion that the water in the underground pool at issue was surface water, not groundwater. *Id.* The Ninth Circuit Court of Appeals had, it turns out incorrectly, reached the opposite conclusion. *Cappaert*, 503 F.2d at 317. As a result, this case does not stand for the proposition cited by the United States and the Tribe.

Recognizing that there was no pertinent case law establishing that the federal reserved water rights doctrine extends to groundwater, the Wyoming Supreme Court refused to recognize such a right. *In re Gen. Adjudication All Rights to Use Water in the Big Horn River Sys.* ("*Big Horn II*"), 753 P.2d 76, 99-100 (Wyo. 1988), *aff'd without opinion sub nom., Wyoming v. United States*, 492 U.S. 406 (1989). While it may be pointed out that the SRBA court decreed federal reserved water rights for groundwater pursuant to the terms of the 1990 Fort Hall Water Rights Agreement, this was done in furtherance of a settlement between the parties and there was no determination made on the merits regarding federal reserved water rights for groundwater. Therefore, it cannot be cited as precedent. *Rumsfeld v. United Techs. Corp.*, 315 F.3d 1361, 1373 n.16 (Fed. Cir. 2003) (decision accepting parties' agreement did not constitute precedent).

Given the lack of any binding legal precedent, the Court should deny summary judgment as to the groundwater claims made by the United States and the Tribe and instead decree these claims as disallowed as a matter of law.

B. Irrigation Water Is Not Necessary to Fulfill the Agricultural Purposes of the Reservation.

The United States and the Tribe point out that in *Winters* the United States Supreme Court recognized "the necessity of water for irrigation purposes." *United States' Summary Judgment Memorandum* at 6. Of course, "necessity" is a key prerequisite for establishing a federal reserved water right. "An intent to reserve water is inferred if it is necessary for the primary purpose of the reservation and if, without water, the purposes of the reservation will be entirely defeated." *State v. United States*, 12 P.3d 1284, 1287 (Idaho 2000), citing *United States v. New Mexico*, 438 U.S. 128, 139 (1978).

The problem with the claims made by the United States in this case is that irrigation has not been shown to be necessary for the agricultural purposes of the Reservation. While the Joint Motion states that "irrigated agriculture" is one of the "water uses that began generally at the time that the Reservation was created," no proof of this alleged fact has been offered.

Nowhere in the United States' detailed description of the agricultural purposes of the Reservation, and the methods for achieving those purposes, is irrigation mentioned, let alone demonstrated to be necessary. "For example, the 1873 Agreement provided for the government to provide the Tribe with, among other things, wagons, plows, mares, mowers, harrows, grain cradles and a grist mill." *United States' Summary Judgment Memorandum* at 31. There is no mention of irrigation or its necessity. In fact, just the opposite is true. There has been no irrigation and the federal government concluded that irrigation water was not necessary to accomplish the agricultural objectives of the Reservation. *See* Semanko Aff. ¶ 7, Ex. F, OBJ 2094-2114.

By all accounts, the members of the Coeur d'Alene Tribe have been excellent agriculturalists since the Reservation was set aside, without the need for irrigation water. As a result, the irrigation claims made by the United States must be denied on summary judgment during the entitlement phase and there is no basis to proceed to quantification on these claims.

C. There Is No Need for a Federal Reserved Water Right for Lake or River Maintenance.

The United States claims nonconsumptive "in situ" water rights for Lake Coeur d'Alene and the St. Joe River and asks that they be granted on summary judgment. In its responsive brief, the State of Idaho presents several compelling reasons why this claim should be denied, which the North Idaho Water Rights Group agrees with. As an additional reason, the

Court should recognize that a federal reserved water right is not necessary to maintain the level of the lake or the flow levels in the St. Joe River.

In 1927, the Idaho State Legislature authorized and directed the Governor of the State of Idaho to appropriate in trust for the people of the State of Idaho all the unappropriated water of Lake Coeur d'Alene, or so much as may be necessary to preserve the lake in its current condition. The preservation of the water in the lake was for scenic beauty, health, recreation, transportation and commercial purposes necessary and desirable for all the inhabitants of the State. Each succeeding Governor in office shall be deemed to be a holder of the water right, in trust for the people of the State. IDAHO CODE § 67-4304.

The Governor applied for and was granted the water right for the preservation of Lake Coeur d'Alene, which right was licensed and became vested pursuant to the laws of the State of Idaho as water right no. 95-2067 and has been claimed in the CSRBA. This water right exists over the entirety of the lake, unlike the United States' claim, which only encompasses a portion of the lake due to the substantial diminishment of the Reservation.

"Implied water rights must be recognized if failing to do so will defeat the purposes of the reservation." *New Mexico*, 438 U.S. at 700. As in the Deer Flat National Wildlife Refuge case in the SRBA, "[t]he United States has not shown that the principal objects of the reservations will be defeated without a reserved water right." *U.S. v. State of Idaho*, 135 Idaho 655, 664 (2001). In the Deer Flat case, the Idaho Supreme Court observed that the reclamation projects assured that there would be sufficient water to maintain the islands without a federal reserved water right. *Id.* at 666. In the instant case, the licensed, vested water right for the preservation of Lake Coeur d'Alene, held in trust by the Governor for the benefit of all of the

people in the State of Idaho, assures that there will continue to be sufficient water to maintain the level of the lake without a federal reserved water right.

The State of Idaho has illustrated additional reasons – including operations under the FERC license for Post Falls Dam and the natural barrier at the lake's outlet – why a federal reserved water right is not necessary to fulfill the asserted purposes of the Reservation.

Given that the federal reserved water right claim is not necessary to preserve the level of the lake, the United States' motion for summary judgment must be denied and the claim should be decreed as disallowed.

The same holds true for the United States' claim for a federal reserved instream flow water right for the St. Joe River. The "in situ" values of this body of water are already preserved through the 1992 priority licensed minimum stream flow water right no. 91-7122, held by the Idaho Water Resource Board and decreed by the CSRBA court on November 13, 2015, for the protection of fish and wildlife habitat, aquatic life and recreational values in the St. Joe River.

D. Federal Reserved Waters Rights Can Only Be Claimed for Lands Actually Reserved by the United States for the Coeur d'Alene Tribe.

The United States and the Tribe seek summary judgment regarding federal reserved water right claims both on and off the Reservation. Because the lands outside of the Reservation were not reserved by the United States, there can be no federal reserved water right associated with these lands. Within the boundaries of the Reservation, the United States and the Tribe seek summary judgment for federal reserved water right claims associated with land that they do not own, including private lands. These lands have not been reserved by the United States and, therefore, there can be no federal reserved water right associated with these lands.

The power of establishing water rights within its dominion undoubtedly belongs to the State. *Kansas v. Colorado*, 206 U.S. 46, 86 (1907). However, "an exception to the general rule is recognized when the federal government withdraws land from the public domain, either through legislation, executive order, treaty or other agreement." *See* Semanko Aff. ¶ 4, Ex. C, at 24. When the federal government withdraws land from the public domain, it may claim a "reserved" water right needed for the "reserved" federal land. *Cappaert*, 508 F.2d at 322 . When the withdrawal of public land is silent as to the issue of water rights, the Supreme Court has said that the "implied-reservation-of-water doctrine" may give the federal government the ability to reserve "only that amount of water necessary to fulfill the purpose of the reservation, no more." *Cappaert*, 426 U.S. at 128, 141. The Congressional intent in this case demonstrates no such intent to reserve federal reserved water rights and, therefore, the Tribe cannot claim an implied reservation of water rights. *See* Semanko Aff. ¶ 7, Ex. F, OBJ 2094-2114.

Here, the United States claimed federal reserved water rights both on and off the Reservation. *See* Semanko Aff. ¶ 2, Ex. A. However, a "reserved water right must be based on a reservation of land." *United States v. City of Challis*, 133 Idaho 525, 529, 988 P.2d 1199, 1203 (1999). "[T]he threshold question is whether the government has in fact withdrawn and reserved lands" for which those water rights are claimed. *Sierra Club v. Block*, 622 F. Supp. 842, 854 (D. Colo. 1985). In other words, implied federal reserved water rights can only be claimed in connection with federal reserved lands. When the land is not reserved, there can be no reservation of a federal water right. This distinction is of particular importance when applied to the submerged lands underlying Lake Coeur d'Alene and the St. Joe River within the current boundaries of the Reservation. Some of these lands were submerged and reserved by the United States at the time the Reservation was set aside. Other lands, which became submerged only

after the construction of Post Falls Dam in 1907 and other subsequent activities, were not among the class of lands included in the federal reservation of submerged lands.

The Snake River Basin Adjudication ("SRBA") court dealt with a similar issue regarding claims made by the Nez Perce Tribe and the extent of the federal lands reserved by the United States. *See* Semanko Aff. ¶ 4, Ex. C. In the SRBA, the Nez Perce Tribe claimed implied federal reserved water rights for fishing on lands ceded by them. *Id.* at 23. The court held that the Nez Perce Tribe was not entitled to reserve instream flow water rights extending beyond the boundaries of the present Nez Perce Tribe Reservation because the Nez Perce Tribe or the United States did not specifically intend to reserve an off-reservation instream flow water right for purposes of maintaining a fishing right and, pursuant to certain agreements, the Nez Perce Tribe ceded all interest in unalloted lands not expressly reserved to the tribe. *Id.* at 47. This holding made the initial determination regarding the extent of the federal reservation of critical importance. Similarly, the Coeur D'Alene Tribe is not entitled to federal reserved water rights beyond the boundaries of the present Reservation or for any lands within the boundaries of the present Reservation that were not reserved by the United States, that have been ceded by the Tribe, or that have been conveyed to others by the United States.

The Reservation was established by Executive Order in 1867. *United States v. Idaho (In re Coeur d'Alene Lake)*, 95 F. Supp. 2d 1094, 1095 (D. Idaho 1998). The boundaries of the Reservation were established and significantly enlarged by a 1873 Executive Reservation of Lands to include "a small portion of the Lake, the Coeur d'Alene River, from its mouth to the Sacred Heart Mission, the St. Joe River, from its mouth to the present-day site of St. Maries, and a tract of land lying to the south of the Spokane River." *Id.* at 1105. In exchange for this enlarged Reservation, the Tribe agreed "to relinquish all claims to the remainder of its aboriginal

lands." *Id.* The Tribe subsequently agreed to cede a significant portion of the lands reserved in 1873 in the Agreement of 1889, which was approved by Congress in 1891. *Id.* at 1096-97. This resulted in a significant diminishment of the Reservation.

The provisions of these federal documents demonstrate two things. The first is that the reservation of lands was limited to including the submerged lands of Lake Coeur d'Alene and the St. Joe River as they existed at the time of the reservation of lands. The reservation of submerged lands did not include lands that were not yet submerged and would not become submerged until well after the Reservation was set aside. The second is that the United States, on behalf of the Tribe, relinquished all claims to the remainder of its aboriginal lands not included within the boundaries of the current Reservation. As established above, federal reserved water rights cannot be established without the reservation of federal lands and are limited to those lands actually reserved.

E. The Extent of the Submerged Federal Lands Is Limited to Those Lands That Were Submerged at the Time the Reservation Was Set Aside.

The federal reserved water right claims made by the United States on behalf of the Tribe on the Reservation include a claim to a minimum lake level for the historic level that existed at the time the Reservation was created, prior to the construction of Post Falls Dam in 1907. This claim, if it is to be recognized at all, is limited to those submerged lands actually reserved by the United States.

The Tribe has argued that the Supreme Court in *Idaho v. United States*, 533 U.S. 262 (2001), quieted title in favor of the United States to all submerged lands of Lake Coeur d'Alene and the St. Joe River within the boundaries of the current Reservation, including lands

that did not become submerged until well after the Reservation was set aside.[1] In doing so, the Tribe attempts to significantly expand its limited federal reserved lands within the current boundaries of the Reservation to all lands that are submerged by the waters of Lake Coeur d'Alene and the St. Joe River. In other words, the Tribe claims all submerged lands, even those subsequently added submerged lands on the Reservation. However, contrary to the Tribe's position, the extent of the submerged federal lands is limited to those lands that were submerged at the time the Reservation was set aside. The extent to which the footprint of Lake Coeur d'Alene and the corresponding submerged lands have expanded after the construction of Post Falls Dam in 1907 is readily apparent from historic surveys, maps and other sources. *See* Semanko Aff. ¶¶ 5-6, Exs. D-E and ¶ 9, Ex. H.

The United States Supreme Court and the Ninth Circuit Court of Appeals specifically recognized that the United States reserved, or set aside, the submerged lands beneath Lake Coeur d'Alene and the St. Joe River that existed prior to Statehood in 1890. *See generally Idaho v. United States*, 533 U.S. 262 (2001), and *United States v. Idaho*, 210 F.3d 1067 (9th Cir. 2000) (upholding the finding that the United States reserved 1873 submerged lands for the Tribe) (emphasis added). It is these submerged lands within the Reservation—and only these submerged lands—that are owned by the United States in trust for the Tribe and that define the extent of the federally-reserved submerged lands for which a water right can even be claimed. Additional lands have since become submerged subsequent to the 1873 Executive Reservation of Lands and the 1889 Agreement approved by Congress in 1891 due to the construction of Post

[1] The Tribe made this argument to support objections that it filed to water right claim nos. 91-7102 and 91-7173 ("Encroachment Test Subcases"). It is instructive that the United States did not file similar objections or join in the arguments made by the Tribe in the Encroachment Test Subcases, which have since been settled by the parties.

Falls Dam and the activities of private owners on lands within the Reservation. *See* Semanko Aff. ¶ 5, Ex. D and ¶ 9, Ex. H. There is no issue of material fact that would preclude a legal finding that these classes of additional submerged lands are not part of the federal submerged lands reserved by the United States for the Tribe.

1. Additional lands submerged by the construction of Post Falls Dam after the time the Reservation was set aside are not reserved federal submerged lands.

The North Idaho Water Rights Group readily admits that there is case law quieting title in favor of the United States, as trustee, and the Tribe, as the beneficially interested party of the trusteeship, to certain submerged beds and banks of Lake Coeur d'Alene and the St. Joe River within the current boundaries of the Reservation, as those submerged lands existed at the time of the reservation of lands. *See generally Idaho v. United States*, 533 U.S. 262 (2001). However, the North Idaho Water Rights Group challenges the Tribe's expansive interpretation and application of *Idaho v. United States* to all subsequently submerged lands in and around Lake Coeur d'Alene and its tributaries.

The Ninth Circuit specifically stated as follows:

> In construing the parties' pleadings, we bear in mind that the current physical situation in and around [Heyburn State] Park differs from the situation that existed in 1873, at the time of the executive reservation, and in 1908 and 1911, the years, respectively, that the Park was authorized and conveyed to the State. Due to the construction of [Post Falls] dam, three small lakes have combined with the [Coeur d'Alene] Lake into one large body of water. We read the United States' complaint in light of the physical situation as it existed prior to the construction of the dam.

United States, 210 F.3d at 1079, n.18 (emphasis added). The Ninth Circuit made it clear that the area submerged in the Heyburn State Park area could not be included in the submerged lands quieted to the United States because the construction of Post Falls Dam expanded that area to

include more submerged lands than those reserved by the United States. *United States*, 210 F.3d at 1079, n.18.

It has been well-established by the Idaho Supreme Court that additional lands became submerged only after the construction of one or more dams, culminating with the construction of Post Falls Dam in 1907. *In re Sanders Beach*, 143 Idaho 443, 147 P.3d 75 (2006); *Erickson v. State*, 132 Idaho 208, 970 P.2d 1 (1998); *Deffenbaugh v. Wash. Water Power Co.*, 24 Idaho 514, 135 P. 247 (1913); *Petajaniemi v. Wash. Water Power Co.*, 22 Idaho 20, 124 P. 783 (1912); *Wash. Water Power Co. v. Waters*, 19 Idaho 595, 115 P. 682 (1911).

While the presumed ordinary high water mark ("OHWM") is currently 2,128 feet and has been at that level since 1907 (*Erickson*, 132 Idaho at 211, 970 P.2d at 4), this higher level is the result of "the dam [that] raised the water level . . . in both the lake and in the Coeur d'Alene and St. Joe rivers that feed into the lake." The dam has been recognized as "raising the elevation of the water . . . approximately 6 1/2 feet . . . . This increased height in the dam naturally resulted in submerging the lands adjacent to Coeur d'Alene Lake and the streams flowing into the lake to an elevation of at least 2,126.5 feet." *In re Sanders Beach*, 143 Idaho 443, 147 P.3d 75 (emphasis added); *see also Deffenbaugh*, 24 Idaho at 520-21, 135 P.2d at 253-54 ("the elevation is raised six or eight feet above the ordinary elevation of the water in the summer and fall").

These additional submerged lands are well beyond those recognized in *Idaho v. United States*. The United States only reserved those submerged lands that existed prior to Statehood. They did not—could not—reserve lands that would not become submerged until after the dams were built.

2. Additional lands submerged by private entities after the Reservation was set aside are not reserved federal submerged lands.

The North Idaho Water Rights Group also challenges the Tribe's expansive interpretation and application of *Idaho v. United States* to privately owned lands in and around Lake Coeur d'Alene and its tributaries within the current Reservation boundary. Lake Coeur d'Alene and the St. Joe River are expansive and the portions not within the current boundaries of the Reservation, or that came into existence only after the Reservation was set aside, are not owned by the United States in benefit for the Tribe. *See* Semanko Aff. ¶ 6, Ex. E and ¶ 9, Ex. H. These lands are either owned by the State or private owners.

In *Jefferis v. East Omaha Land Co.*, 134 U.S. 178 (1890), the Supreme Court made clear that privately owned land that later becomes submerged does not change ownership simply because it becomes submerged. In *Jefferis*, the Court stated: "the person whose land is bounded by a stream of water which changes its course gradually by alluvial formations, shall still hold by the same boundary." *Jefferis*, 134 U.S. at 188. In the same way, the Tribe cannot expand the lands lawfully quieted to the United States in trust for it by claiming all submerged lands, including patented and privately deeded and owned lands. The United States does not become the owner of land because it becomes submerged at any time. This idea would cut against Idaho's fundamental policy of protecting private property. *Roark v. Caldwell*, 87 Idaho 557, 561, 394 P.2d 641, 642-43 (1964) ("It is fundamental that [Idaho Constitution Article 1, Sections 13 and 14] prohibit the taking of private property for a public use without just compensation.").

It seems clear that the United States has no legitimate claim to water rights for off-Reservation lands. However, in addition, there are on-Reservation lands that the United States and the Tribe are also not entitled to because the land was transferred to private owners.

In 1906, the land office of Idaho opened lands within the Reservation that the State purchased from the Tribe to patent for private ownership. *See* Semanko Aff. ¶ 7, Ex. F, OBJ 2088. Certain members of the North Idaho Water Rights Group still own lands on the beds and banks of Coeur d'Alene Lake and the St. Joe River within the Reservation that were opened up in 1906. The fact that many private lands became partially submerged due to the activities of these owners does not mean that the ownership automatically transferred to the United States on behalf of the Tribe. Yet this is exactly the position the Tribe has advocated.[2]

For example, NIWRA members Steve and Deanne Hawks ("Claimants") claim a point of diversion in CSRBA Subcase No. 91-7102 that is on deeded, privately owned land that later became submerged with the construction of a private moorage lagoon. *See* Semanko Aff. ¶ 8, Ex. G. The location of the lots where Claimants divert and use their licensed water is part of a subdivision called "Sylvia's Haven." *Id.* Sylvia's Haven is part of a larger area originally called "Castillo's Tracts," which was first subdivided in 1914. *Id.* A private owner purchased Lots 6-9 of Castillo's Tracts and developed the land into Sylvia's Haven, which included the construction of a moorage lagoon for private boat access for residents of Sylvia's Haven. *Id.*

For water right claim no. 91-7102, the lands that are licensed and claimed for the point of diversion and place of use were and are within the private land purchased and developed by the private developer. *Id.* Before the moorage lagoon was built over Block 2, the location of the point of diversion was on dry land and clearly within the land described by the deeds transferred to the private owner of the land. *Id.* Just because the moorage lagoon was built and water filled the area does not mean the Tribe suddenly owned the land. Both the point of

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[2] Again, the United States did not join the Tribe in this argument in the Encroachment Test Subcases.

diversion and place of use are still part of the private land that is now known as Sylvia's Haven and, specifically, part of the sections owned by Claimants. *Id.*

In scenarios like these it is even more clear that the United States could only have reserved those submerged lands for the Tribe that were submerged at the time the Reservation was set aside. Therefore, the extent of the submerged federal lands now is limited to those lands that were submerged at the time the Reservation was set aside.

III. CONCLUSION

For the reasons stated above, the United States' and Coeur d'Alene Tribe's Joint Motion for Summary Judgment should be denied.

DATED this 23rd day of February, 2017.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

For By _____
Norman M. Semanko – Of the Firm
Attorneys for the North
Idaho Water Rights Group

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Aleksandra N. Semanko – Of the Firm
Attorneys for the North
Idaho Water Rights Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of February, 2017, I caused a true and correct copy of the foregoing **NORTH IDAHO WATER RIGHTS GROUP'S MEMORANDUM IN OPPOSITION TO UNITED STATES' AND COEUR D'ALENE TRIBE'S JOINT MOTION FOR SUMMARY JUDGMENT** to be served by the method indicated below, and addressed to the following:

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENTAL & NATURAL RESOURCES DIVISION
550 W. Fort St., MSC 033
Boise, ID 83724

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

Vanessa Willard
U.S. DEPARTMENT OF JUSTICE
999 18th St.
South Terrace Suite 370
Denver, CO 80202

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

Clive Strong
Steven W. Strack
IDAHO ATTORNEY GENERAL'S OFFICE
NATURAL RESOURCE DIVISION
P.O. Box 83720
Boise, ID 83720-0010

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

Howard A. Funke
Kinzo H. Mihara
Dylan Hedden-Nicely
HOWARD FUNKE & ASSOCIATES, P.C.
424 Sherman Ave., Suite 308
P.O. Box 969
Coeur d'Alene, ID 83816-0969

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

Albert P. Barker
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson St., Suite 102
P.O. Box 2139
Boise, ID 83701-2139

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

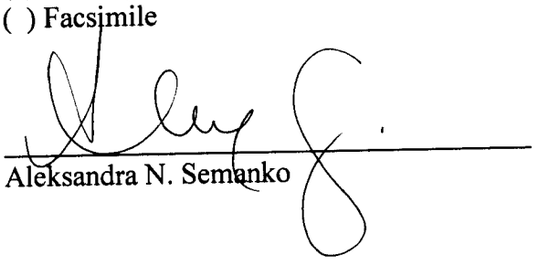
Christopher H. Meyer Jeffrey C. Fereday Jeffrey W. Bower Michael P. Lawrence GIVENS PURSLEY LLP 601 W. Bannock St. P.O. Box 2720 Boise, ID 83701-2720	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Chris M. Bromley Candice M. McHugh MCHUGH BROMLEY PLLC 380 S. 4th St., Suite 103 Boise, ID 83702	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Mariah R. Dunham Nancy A. Wolff MORRIS & WOLFF PA 722 Main Ave. St. Maries, ID 83861	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
John T. McFaddin 20189 S. Eagle Peak Rd. Cataldo, ID 83810	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
William J. Schroeder PAINE HAMBLEN LLP 717 W. Sprague Ave., Suite 1200 Spokane, WA 99201-3505	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Ronald D. Heyn 828 Westfork Eagle Creek Wallace, ID 83873	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Director of IDWR IDWR DOCUMENT DEPOSITORY P.O. Box 83720 Boise, ID 83720-0098	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile

Ratliff Family LLC #1
13621 S. Hwy. 95
Coeur d'Alene, ID 83814

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

William M. Green
2803 N. 5th St.
Coeur d'Alene, ID 83814

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile



Aleksandra N. Semanko