

9-6-2017

Notice of Appeal- Idaho

Steven W. Strack
Deputy Attorney General, State of Idaho

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

Recommended Citation

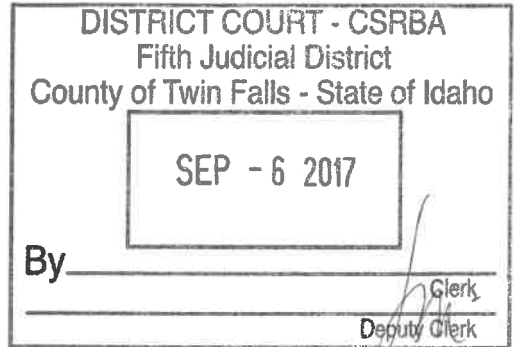
Strack, Steven W., "Notice of Appeal- Idaho" (2017). *Hedden-Nicely Collection, All*. 80.
<https://digitalcommons.law.uidaho.edu/all/80>

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

LAWRENCE G. WASDEN
Attorney General

DARRELL G. EARLY, ISB No. 4748
Deputy Attorney General
Chief, Natural Resources Division

STEVEN W. STRACK, ISB. No. 3906
Deputy Attorney General
700 W. State Street – 2nd Floor
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-2400
Facsimile: (208) 854-8072
steve.strack@ag.idaho.gov



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) NOTICE OF APPEAL
_____)

TO: RESPONDENTS UNITED STATES OF AMERICA AND COEUR D'ALENE
TRIBE AND ALL OTHER PARTIES AND THE PARTIES' ATTORNEYS LISTED
ON THE ATTACHED SUBCASE MAILING LIST (Attachment 1), AND THE CLERK
OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1a. The State of Idaho hereby appeals to the Idaho Supreme Court the SRBA
District Court's *Amended Final Order Disallowing Water Right Claims*, entered in the
above-entitled action on July 26, 2017, the Honorable Eric J. Wildman, presiding, and
attached hereto as Attachment 2. The *Amended Final Order* was certified under I.R.C.P.
54(b) as a final order.

1b. Additionally, the State of Idaho hereby appeals the *Order on Motion to Set
Aside and Modify*, entered in the above-entitled action on July 26, 2017, the Honorable

Eric J. Wildman, presiding, and attached hereto as Attachment 3, which affirms and incorporates by reference the *Final Order Disallowing Purposes of Use*, entered in the above-entitled action on May 3, 2017, and attached hereto as Attachment 4. The *Order on Motion to Set Aside and Modify* was certified under I.R.C.P. 54(b) as a final order. Likewise, the *Final Order Disallowing Purposes of Use* was certified under I.R.C.P. 54(b) as a final order, and, pursuant to Idaho Appellate Rule 14, the time for appealing such Order was terminated by the filing of a Motion to Set Aside and Modify, which motion was denied in the *Order on Motion to Set Aside and Modify*, so that the State's appeal addresses the content of both the *Order on Motion to Set Aside and Modify* and the incorporated *Final Order Disallowing Purposes of Use*.

3. Preliminary statement of issues to be presented on appeal:
 - a. Did the District Court err in not disallowing reserved water right claims for instream flows within the boundaries of the Coeur d'Alene Indian Reservation?
 - b. Did the District Court err in not disallowing reserved water right claim 95-16669 for a future fish hatchery?
 - c. Did the District Court err in not disallowing reserved water right claim 95-16704 for lake level maintenance for the purposes of fish and wildlife habitat?
 - d. Did the District Court err in not disallowing reserved water right claims for springs, seeps, and wetlands for purposes of wildlife and plant habitat for hunting?

4. A Protective Order was entered on February 28, 2017, sealing a map submitted by the Coeur d'Alene Tribe titled "Coeur d'Alene Tribal Lands at Claim Locations and Adjacent to Reservation Streams." As indicated below, the State of Idaho requests that the Protective Order and attached map, under seal, be included in the record on appeal.

5. A reporter's transcript is requested for the following hearings:

- a. Hearing re: Motions for Summary Judgment, March 30, 2017.
- b. Hearing re Motion for Reconsideration and Motion to Set Aside and Modify Partial Decree or Final Order Disallowing Water Right Claim, June 26, 2017.

6. In lieu of the standard inclusion of all pleadings, the State of Idaho avers that due to concerns expressed by the clerk of the SRBA Court regarding the very large number of claims, objections, and responses filed in the 353 subcases consolidated into Consolidated Subcase 91-7755, the State is working with other appellants and respondents to craft a stipulation identifying specific claims, objections, and responses that are representative of all claims, objections, and responses at issue in this appeal.

7. In addition to the claims, objections, and responses to be identified in the anticipated Stipulation, the State of Idaho requests that the following documents from Consolidated Subcase 91-7755 be included in the clerk's record:

- a. 02-17-2015 Order Bifurcating Proceedings;
- b. 10-21-2016 State of Idaho's Motion For Summary Judgment;
- c. 10-21-2016 State of Idaho's Memorandum In Support of Motion for Summary Judgment
- d. 10-21-2016 Errata to States Memorandum In Support of Motion for Summary Judgment
- e. 10-21-2016 Affidavit of David B Shaw;

- f. 10-21-2016 Affidavit of Steven W Strack;
- g. 10-21-2016 Exhibits 1-11 to Strack Affidavit;
- h. 10-21-2016 Exhibits 12-23 to Strack Affidavit;
- i. 10-21-2016 Hecla's Motion for Summary Judgment;
- j. 10-21-2016 North Idaho Water Rights Group's Motion for Summary Judgment;
- k. 10-21-2016 United States and Coeur d'Alene Tribe's Joint Motion For Summary Judgment;
- l. 10-21-2016 United States and Coeur d'Alene Tribe's Joint Statement Of Facts;
- m. 10-21-2016 Affidavit of Vanessa Boyd Willard;
- n. 10-21-2016 Affidavit of Richard Hart
- o. 10-21-2016 Exhibits 1-5 to Hart Affidavit
- p. 10-21-2016 Exhibits 1-5 to Hart Affidavit
- q. 10-21-2016 Exhibit 6 Part 1 to Hart Affidavit
- r. 10-21-2016 Exhibit 6 Part 2 to Hart Affidavit
- s. 10-21-2016 Exhibit 6 Part 3 to Hart Affidavit
- t. 10-21-2016 Exhibit 6 Part 4 to Hart Affidavit
- u. 10-21-2016 Exhibit 7 to Hart Affidavit
- v. 11-28-2016 Order Granting Motion to Strike in Part /Denying in Part /Order Amending Summary Judgment Hearing and Briefing Schedule /Order Vacating Trial;
- w. 2-24-2017 State of Idaho's Memorandum In Response to United States' and Coeur d'Alene Tribe's Joint Motion For Summary Judgment
- x. 2-24-2017 State of Idaho's Statement of Additional Facts;
- y. 2-24-2017 Third Affidavit of Steven W. Strack;
- z. 2-24-2017 Affidavit of Steven Wee;
- aa. 2-28-2017 Protective Order;

- bb. 3-20-2017 State of Idaho's Memorandum In Reply to Responses of United States And Coeur d'Alene Tribe
- cc. 3-20-2017 Fourth Affidavit of Steven W. Strack;
- dd. 3-30-2017 Minutes;
- ee. 5-3-2017 Order on Motions for Summary Judgment;
- ff. 5-3-2017 Final Order Disallowing Water Right Claims;
- gg. 5-3-2017 Final Order Disallowing Purposes of Use;
- hh. 5-16-2017 State of Idaho's Motion to Reconsider Order on Motions for Summary Judgment;
- ii. 5-17-2017 Motion to Set Aside and Modify Partial Decree or Final Order Disallowing Water Right Claim;
- jj. 6-23-2017 Minutes;
- kk. 7-26-2017 Order Granting Motion to Reconsider;
- ll. 7-26-2017 Order on Motion to Set Aside and Modify;
- mm. 7-26-2017 Amended Final Order Disallowing Water Right Claims;
- nn. 8-16-2017 Order Granting Motions for Permissive Appeal.

8. The State of Idaho certifies that:

(a) A copy of this notice of appeal has been served on the Official Court Reporter for the SRBA District Court, Sabrina Vasquez, at the address set out below:

Sabrina Vasquez
Official Court Reporter
SRBA District Court
P.O. Box 2707
Twin Falls, ID 83303-2707

(b) Sabrina Vasquez, the Official Court Reporter for the SRBA District Court, has agreed to bill the State of Idaho for the cost of preparing the reporter's transcript in this appeal.

(c) That the State of Idaho is exempt from paying the estimated fee for preparation of the record under the terms of Idaho Code § 67-2301.

(d) That the State of Idaho is exempt from paying the appellate filing fee under the terms of Idaho Code § 67-2301 and I.A.R. 23.

DATED this 5th day of September, 2017.

LAWRENCE WASDEN
Attorney General

DARRELL G. EARLY
Deputy Attorney General
Chief, Natural Resources Division



STEVEN W. STRACK
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that on the 5th day of September, 2017, I caused to be served the foregoing Notice of Appeal as follows:

Original and two (2) copies by U.S. Mail, postage prepaid to:

Ms. Diana Delaney
Chief Deputy Clerk
SRBA District Court
P.O. Box 2707
Twin Falls, ID 83303-2707

One copy by U.S. Mail, postage prepaid, to:

Sabrina Vasquez
Official Court Reporter
SRBA District Court
P.O. Box 2707
Twin Falls, ID 83303-2707

One copy by U.S. Mail, postage prepaid, to:

Howard A Funke
424 Sherman Ave Ste 308
PO Box 969
Coeur d'Alene, ID 83816-0969

US Department of Justice
Environment & Nat'l Resources
550 West Fort Street, MSC 033
Boise, ID 83724

Vanessa Boyd Willard
US Dept of Justice
Environment & Nat'l Resources Div
999 18th Street, South Terrace Ste 370
Denver CO 80202

Albert P Barker
Barker Rosholt & Simpson LLP
1010 W Jefferson St Ste 102
PO Box 2139
Boise, ID 83701-2139

Mariah R Dunham
Nancy A Wolff
Morris & Wolff PA
722 Main Ave
St Maries, ID 83861

Candice M McHugh
Chris Bromley
McHugh Bromley PLLC
380 S 4th Street Ste 103
Boise, ID 83702

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

John T McFaddin
20189 S Eagle Peak Rd
Cataldo, ID 83810

Director of IDWR
PO Box 83720
Boise ID 83720-0098

Norman M Semanko
Moffatt Thomas
101 S Capitol Blvd 10th Fl
PO Box 829
Boise, ID 83701-0829

William J Schroeder
Paine Hamblen LLP
717 W Sprague Ave, Ste 1200
Spokane, WA 99201-3505

Ronald D Heyn
828 Westfork Eagle Creek
Wallace, ID 83873

Christopher H Meyer
Jeffrey C Fereday
Jeffrey W Bower
Michael P Lawrence
Givens Pursley LLP
601 W Bannock St
PO Box 2720
Boise, ID 83701-2720



STEVEN W. STRACK
Deputy Attorney General

Attachment 1

CSRBA Subcase Mailing List 91-7755

(Listing Parties and Parties' Attorneys)

CSRBA

SUBCASE MAILING LIST 91-07755

[Return to CSRBA Home Page](#)

[Return to CSRBA IWATRS Reports](#)

HECLA LIMITED

Represented by:

ALBERT P BARKER
1010 W JEFFERSON ST STE 102
PO BOX 2139
BOISE, ID 83701-2139
Phone: 208-336-0700

CITY OF COEUR D'ALENE

Represented by:

CANDICE M MCHUGH
380 S 4TH STREET STE 103
BOISE, ID 83702
Phone: 208-287-0991

STATE OF IDAHO

Represented by:

CHIEF NATURAL RESOURCES DIV
OFFICE OF THE ATTORNEY GENERAL
STATE OF IDAHO
PO BOX 83720
BOISE, ID 83720-0010
Phone: 208-334-2400

CITY OF COEUR D'ALENE

Represented by:

CHRIS M BROMLEY
380 S 4TH STREET STE 103
BOISE, ID 83702
Phone: 208-287-0991

HAGADONE HOSPITALITY CO
HARMON PROPERTY OWNERS ASSN
NORTH KOOTENAI WATER & SEWER
PINEHURST WATER DISTRICT

Represented by:

CHRISTOPHER H MEYER
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

COEUR D ALENE TRIBE OF THE

Represented by:

HOWARD A. FUNKE
424 SHERMAN AVE STE 308
PO BOX 969
COEUR D ALENE, ID 83816-0969
Phone: 208-667-5486

HARMON PROPERTY OWNERS ASSN
POTLATCH FOREST HOLDINGS INC
POTLATCH LAND & LUMBER LLC
POTLATCH TRS IDAHO LLC

Represented by:
JEFFREY C FEREDAY
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

HAGADONE HOSPITALITY CO
HARMON PROPERTY OWNERS ASSN
POTLATCH FOREST HOLDINGS INC
POTLATCH LAND & LUMBER LLC
POTLATCH TRS IDAHO LLC

Represented by:
JEFFREY W BOWER
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

BENEWAH COUNTY BOARD OF
BUELL BROS INC
CITY OF HARRISON
CITY OF ST MARIES
JACK A & ELEANOR L BUELL
WHITEMAN LUMBER CO INC

Represented by:
MARIAH R DUNHAM
722 MAIN AVE
ST MARIES, ID 83861
Phone: 208-245-2523

HARMON PROPERTY OWNERS ASSN
POTLATCH FOREST HOLDINGS INC
POTLATCH LAND & LUMBER LLC
POTLATCH TRS IDAHO LLC

Represented by:
MICHAEL P LAWRENCE
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

BENEWAH COUNTY BOARD OF
BUELL BROS INC
CITY OF HARRISON
CITY OF ST MARIES
JACK A & ELEANOR L BUELL
WHITEMAN LUMBER CO INC

Represented by:
NANCY A WOLFF
722 MAIN AVE
ST MARIES, ID 83861
Phone: 208-245-2523

AVISTA CORPORATION

Represented by:

SCHROEDER, WILLIAM J
KSB LITIGATION PS
221 N WALL STE 210
SPOKANE, WA 99201
Phone: 509-624-8988

ALAN LITTLEJOHN
ALFRED SICHLINGER
ANDREW & HEATHER SCOTT
ANNIKA CHATFIELD-DIETRICH
ARLISS BLALACK
AUDREY ANDERSEN
BARBARA HARPOLE
BARNEY LAYTON
BARRY & PAMELA MEYERS
BEN RADFORD
BERNARD & DAWN WEBER
BETTY HANCOCK
BEVERLY & FLOYD KLEIN
BILL L CONNER
BLACK BEAR WATER ASSN
BLUE WOLF COMMUNITY CLUB
BONNIE (ELEANOR Y) DONOHOE
BONNIE DOOSE
BRUCE & CAROL MADDUX
BRUCE CYR
CARL BLALACK
CARL COCHRANE
CARL W ANDERSON
CARLA WOEMPNER
CAROL CLARK
CAROL FELT BROWNING
CHERYL PRUEHER
CINDY COOPER
CLYDE H SHEPPARD
CONNIE L HASZ
CROWS NEST WATER ASSOCIATION
DALE HERBOLDT
DANIEL G REMMICK
DARBY G DONOHOE
DAREN & JANET LABOLLE
DAREN LABOLLE
DARLA NOEL-WESSEL
DAVID & JANET WEINGART
DAVID & JILL CHRISTIANSEN
DAVID & KATHY MCDANIEL
DAVID "BRAD" & MARY CORKILL
DAVID SHERIDAN
DEAN & GLENDA GENTRY
DENNIS BACKUS
DERALD MOYER
DIANNE ANDERSON
DICK & CAROLE HARWOOD
DON & MARTHA VAIL
DON H SHERFEY
DONALD & CHRISTINE MCCA
DONALD SUTTON
DORIS MILLER
DOUG LUCHINI

DOUGLAS & DARCY MCINTURFF
 DWAYNE LAYTON
 EAST SHOSHONE COUNTY WATER
 EDDIE A BAILEY
 EDMOND & JANET FERREL
 EDWARD & CANDACE ANDERSON
 ELIZABETH ROBERTS
 ERIC & SUSAN SKIDMORE
 ERNEST & MYRA ECKLUND
 FERNWOOD WATER & SEWER DIST
 FLORENCE FARBER
 FRANK FRUTCHEY
 FRED & MARCY HASZ
 GALE BRIGGS
 GARY & PATRICIA MITCHELL
 GARY JOHNSON
 GARY MITCHELL
 GARY WEEKS
 GENE L & WESLEY L WARREN
 GENE WEBB
 GIANOTTI TRUST DTD 1991
 GINA SUTTON

Represented by:

SEMANKO, NORMAN M
 PARSONS BEHLE & LATIMER
 800 WEST MAIN STREET STE 1300
 BOISE, ID 83702
 Phone: 208-562-4900

GLENNIE & ELIZABETH RENNER
 GORDON SANDERS
 GREG DELAVAN
 HAGADONE HOSPITALITY CO
 HARMON PROPERTY OWNERS ASSN
 HARRY GRUBHAM
 HELEN JACQUEMIN
 HERMAN FRITZ
 HISAYA & DOROTHY TAKASHINA
 J RACHAEL JOHNSON
 JACK & ELEANOR BUELL
 JAIDA LEVINE
 JAKAR VENTRIS LLC
 JAMES & MOLLY DOLLIVER
 JAMES & VICTORIA FURTH
 JANET BRIGGS
 JEAN DOHRMAN
 JED RODGERS
 JEFF & DEDE SHIPPY
 JEFF FUNK
 JEFF TYLER
 JEREMIE FIGUEROA
 JODI POWELL
 JOEL & CINDY NEWSON
 JOHANNA RENNER
 JOHN & AGNES MCFADDIN
 JOHN & CHRISTIE THOMAS
 JOHN & MICHELLE MCMAHON
 JOHN & SHIRLEY FERRIS
 JOHN BOOTHE
 JOHN M MARSAN

JOHN NEIRINCKX
JOHN NEIRINCKX II
JOHN R KRAACK
JORDON REDMAN
JOSEPH RUSH
JOYCE D & CHARLES R STOCK
JOYCE MORDEN
JULIE DAY
KATHRYN KAHN
KATHY JORDAN
KAYE A MAINSEY
KEITH KLEINKHECHT
KELLOGG SCHOOL DISTRICT
KEN & AILEEN ZAKEN
KEN & YVONNE DEVRIES
KENT L & DONNA J DAVIS
KEVIN & SHANNON SIMONSEN
KEVIN & TIFFANY RENNER
KEVIN COLEMAN
KIM LISS
KRISTI & DOUG PAYNE
LANCE & J MICHELE MCDANIEL
LANCE M JORDAN
LANCE STANLEY
LARRY & SUSAN SOTIN
LARRY DONAHOE
LARRY LEHTOLA
LELAND & DANIELLE BOLDT
LEROY BAILEY
LES VAWTER
LESLEE STANLEY
LINDA & DWAYNE RYSSMAN
LINDA ALLDREDGE
LINDA LITTLEJOHN
LINDA RIDER
LOIS TUEL
MARGARET SHERIDAN
MARK P KROPF
MARSHA J STEWART
MARTHA GREEN
MARVIN & MARYANNE WHEELER
MICHAEL D HIGBEE
MICHAEL R MAEHLER
MIGUEL CABEZA

Represented by:
SEMANKO, NORMAN M
PARSONS BEHLE & LATIMER
800 WEST MAIN STREET STE 1300
BOISE, ID 83702
Phone: 208-562-4900

MIKE & TINA KUHNLINE
MITCHELL, GARY & PATRICIA
MULLAN SCHOOL #392
MULLAN SCHOOL DISTRICT #392
NANCY KLEINKHECHT
NAOMI ANDERSON
NEIL & NANCY STROM
NONA BRUNS
NORMAN CARROLL

NORMAN MCCALL
PAM SECORD FOR OCEANWOODS
PATRICELE HARTEL
PATRICIA & KENNETH RENNER
PATRICIA LOZANO
PATRICIA MITCHELL
PATRICK & ANNETTE PETRIE
PAUL & COLLEEN SMITH
PAUL MURRAY
PAUL SEGSWORTH
PEGGY TIMKEN
PERRY ANDERSON
PHILLIP GRAVES
PHILLIP LEVINE
PINEHURST WATER DISTRICT
R EARL ANDERSEN
RALPH & MARTHA BANDERROB
RALPH KAHN
RANDY WILSON
RASOR FAMILY PROPERTY
RATHDRUM POWER LLC
RICHARD J CLEMSON
RICHARD L POWELL
RICK & HOLLY DAY
RICKEY DUNN
ROBERT & DIANNA BOSTROM
ROBERT & GAIL SHORT
ROBERT & JULIE GRUNZWEIG
ROBERT & NORMA WHITE
ROBERT & PATTY ANDERSON
ROBERT ELLIS
ROBERT POWELL
ROBERT RIDER
ROBIN & LESLEE STANLEY
ROBIN STANLEY
RODERICK & BETH HALVORSON
RON MENDIVE
RON WOOD
RONALD & SHERLENE MENDIVE
ROSIE LAYTON
ROY & LINDA MICHAEL
ROY MORTENSEN
RUSSEL & MARILYN TANNER
RUSSEL DONOHOE
SERENA LUCAS
SHARON & FRED SMITH
SHEILA M HOLM
SHIRLEY MARSAN
SHOSHONE COUNTY BOARD OF
SHOSHONE COUNTY PUBLIC WORKS
SHOSHONE COUNTY SPORTSMEN'S
STANLEY J HARRISON
STEPHEN MATTHEWS
STEVE ADDINGTON
STEVE THOMSON
STEVEN M LISS
SUSAN E DREDGE
SUSAN RODGERS
SUTHERLAND FAMILY REVOCABLE
TERRY & WILMA MURRAY

TERRY BURGER
TERRY GILBRETH
TERRY L WALL
THOMAS F DUNNIGAN
THOMAS G & MARY M CARVER
THOMAS M PATRICK REVOCABLE

Represented by:
SEMANKO, NORMAN M
PARSONS BEHLE & LATIMER
800 WEST MAIN STREET STE 1300
BOISE, ID 83702
Phone: 208-562-4900

TIM DAY
TIM SHANNON
TOM & EILEN DUHAMEL
TOM LUCAS
TONY ZELLER
TROY FRANCIS
VERLAND WOEMPNER
VIC & RITA BRODIE
VICKI CARROLL
VICKI HENDRICK & SAM OWEN
WARREN HALL
WEBER FARMS
WENDY JACQUEMIN
WESLEY & LINDA JORDAN
WILLIAM & GRETCHEN HARRISON
WILLIAM & NANCY MCANINCH
WILLIAM B & GRETCHEN HARRISON
WILLIAM K HASZ
WILLIAM WHITE

Represented by:
SEMANKO, NORMAN M
PARSONS BEHLE & LATIMER
800 WEST MAIN STREET STE 1300
BOISE, ID 83702
Phone: 208-562-4900

UNITED STATES OF AMERICA AS
UNITED STATES OF AMERICA AS TR

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

RATLIFF FAMILY LLC #1
13621 S HWY 95
COEUR D'ALENE, ID 83814
Phone: 208-691-4431

JOHN T MCFADDIN
20189 S EAGLE PEAK RD
CATALDO, ID 83810
Phone: 208-689-3156

RONALD D HEYN
828 WESTFORK EAGLE CREEK
WALLACE, ID 83873
Phone: 208-682-3088

[Return to CSRBA IWATRS Reports](#)
[Return to CSRBA Home Page](#)

Attachment 2

Amended Final Order Disallowing Water Right Claims

CSRBA Consolidated Subcase 91-7755

July 26, 2017



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) Subcase Nos. See Attached List
Case No. 49576)
) AMENDED FINAL ORDER DISALLOWING
) WATER RIGHT CLAIMS
)

On March 26, 2014, the United States filed the above-captioned water right claims as trustee on behalf of the Coeur d'Alene Tribe ("Tribe"). The claims seek federal reserved water rights associated with the Coeur d'Alene Indian Reservation. Objections and responses to some or all claims were filed by various parties. Motions for Summary Judgment seeking disallowal of the claims were subsequently filed by the State of Idaho, Hecla Limited, and the North Idaho Water Rights Group. Various other Objectors joined in the Motions. On May 3, 2017, the Court entered a Final Order Disallowing Water Right Claims setting forth a list of claims to be disallowed. On May 17, 2017, the United States and the Tribe filed a Motion to Set Aside and Modify Partial Decree or Final Order Disallowing Water Right Claim ("Motion"). The Court entered an Order on the Motion contemporaneously herewith. The Court now amends its Final Order Disallowing Water Right Claims consistent with that Order.

Therefore, IT IS ORDERED that the above water right claims are hereby disallowed with prejudice and shall not be confirmed in any partial decree or in any final decree entered in the Coeur d'Alene-Spokane River Basin Adjudication, Case No. 49576, in whatever form that final decree may take or be styled.

DATED July 26, 2017.

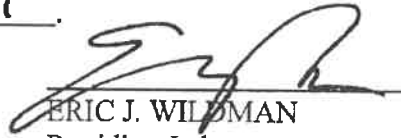
ERIC J. WILDMAN
Presiding Judge
Coeur d'Alene-Spokane River Basin Adjudication

1 The term "North Idaho Water Rights Group" refers collectively to the Objectors identified on Exhibit A attached hereto.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED July 26, 2017.



ERIC J. WILMAN

Presiding Judge

Coeur d'Alene-Spokane River Basin Adjudication

Subcase Nos:

| | |
|----------|----------|
| 91-07755 | 94-09266 |
| 91-07756 | 94-09267 |
| 91-07757 | 94-09268 |
| 91-07758 | 94-09269 |
| 91-07759 | 94-09270 |
| 91-07760 | 95-16668 |
| 91-07761 | 95-16670 |
| 91-07762 | 95-16671 |
| 91-07763 | 95-16673 |
| 91-07764 | 95-16674 |
| 91-07765 | 95-16675 |
| 91-07766 | 95-16676 |
| 91-07767 | 95-16686 |
| 91-07768 | 95-16687 |
| 91-07769 | 95-16688 |
| 91-07770 | 95-16689 |
| 91-07771 | 95-16690 |
| 91-07772 | 95-16691 |
| 91-07773 | 95-16692 |
| 91-07774 | |
| 91-07775 | |
| 91-07776 | |
| 92-10908 | |
| 92-10909 | |
| 92-10910 | |
| 92-10911 | |
| 93-07462 | |
| 93-07463 | |
| 93-07464 | |
| 93-07465 | |
| 93-07466 | |
| 94-09247 | |
| 94-09248 | |
| 94-09249 | |
| 94-09250 | |
| 94-09251 | |
| 94-09252 | |
| 94-09253 | |
| 94-09254 | |
| 94-09255 | |
| 94-09256 | |
| 94-09257 | |
| 94-09258 | |
| 94-09259 | |
| 94-09260 | |
| 94-09261 | |
| 94-09262 | |
| 94-09263 | |
| 94-09264 | |
| 94-09265 | |

(Subcase list: SETASIDE)
6/28/17

Exhibit A

| | | | |
|------------------------------|-----------------------------|-----------------------------|-------------------------------|
| Alan Littlejohn | Gale Briggs | Leland & Danielle Boldt | Roy & Linda Michael |
| Alfred Sichelinger | Gary Johnson | Leroy Bailey | Roy Mortensen |
| Andrew & Heather Scott | Gary Mitchell | Les Vawter | Russel & Marilyn Tanner |
| Annika Chatfield-Dietrick | Gary Weeks | Leslee Stanley | Russel Donohoe |
| Arliss Blalack | Gene I. & Wesley L Warren | Linda & Dwayne Ryssman | Serena Lucas |
| Audrey Andersen | Gene Webb | Linda Alldredge | Sharon & Fred Smith |
| Barbara Harpole | Gianotti Trust DTD 1991 | Linda Littlejohn | Sheila M Holm |
| Barney Layton | Gina Sutton | Linda Rider | Shirley Marsan |
| Barry & Pamela Meyers | Glennie & Elizabeth Renner | Lois Tuel | Shoshone County Commission |
| Ben Radford | Gordon Sanders | Margaret Sheridan | Shoshone County Public Works |
| Bernard & Dawn Weber | Greg Delavan | Mark P Kropf | Shoshone County Sportsmen's |
| Betty Hancock | Hagadone Hospitality Co | Marsha J Stewart | Stanley J Harrison |
| Beverly & Floyd Klein | Hannon Property Owners Assn | Martha Green | Stephen Matthews |
| Bill L Conner | Harry Grubham | Marvin & Maryanne Wheeler | Steve Addington |
| Black Bear Water Assn | Helca Jacquemin | Michael D Higbee | Steve Thomas |
| Blue Wolf Community Cvb | Herman Fritz | Michael R Maehler | Steven M Liss |
| Bonnie (Eleanor Y) Donohoe | Hisaya & Dorothy Takashina | Miguel Cabeza | Susan E Dredge |
| Bonnie Doose | J Rachael Johnson | Mike & Tina Kuhlline | Susan Rodgers |
| Bruce & Carol Maddux | Jack & Eleanor Buell | Mitchell, Gary & Patricia | Sutherland Family Revocable |
| Bruce Cyr | Jaida Levine | Mullan School District #392 | Terry & Wilma Murray |
| Carl Blalack | Jakar Ventris LLC | Nancy Kleinkhecht | Terry Burger |
| Carl Cochran | James & Molly Dolliver | Naomi Anderson | Terry Gilbreth |
| Carl W Anderson | James & Victoria Furth | Neil & Nancy Strom | Terry L Wall |
| Carla Woempner | Janet Briggs | Nona Bruns | Thomas F Dunningan |
| Carol Clark | Jean Dohrman | Norman Carroll | Thomas G & Mary M Carver |
| Carol Felt Browning | Jed Rodgers | Norman McCall | Thomas M Patrick Revocable |
| Cheryl Prueher | Jeff & Dede Shippy | Pam Secord for Oceanwoods | Tim Day |
| Cindy Cooper | Jeff Funk | Patricee Hartel | Tim Shannon |
| Clyde H Sheppard | Jeff Tyler | Patricia & Kenneth Renner | Tom & Ellen Duhamel |
| Connie L Hasz | Jeremie Figueroa | Patricia Lozano | Tom Lucas |
| Crows Nest Water Association | Jodi Powell | Patricia Mitchell | Tony Zeller |
| Dale Herboldt | Joel & Cindy Newson | Patrick & Annette Petrie | Troy Francis |
| Daniel G Kemmick | Johanna Renner | Paul & Colleen Smith | Verland Woempner |
| Darby G Donohoe | John & Agnes McFaddin | Paul Murray | Vic & Rita Brodie |
| Daren & Janet Labotte | John & Christine Thomas | Paul Segsworth | Vicki Carroll |
| Daren Labotte | John & Michelle McMahon | Peggy Timken | Vicki Hendrick & Sam Owen |
| Darla Noel-Wessel | John & Shirley Ferris | Perry Anderson | Warren Hall |
| David & Janet Weingart | John Boothe | Phillip Graves | Weber Farms |
| David & Jill Christiansen | John M Marsan | Phillip Levine | Wendy Jacquemin |
| David & Kathy McDaniel | John Neirinckx | Pinehurst Water District | Wesley & Linda Jordan |
| David "Brad" & Mary Corkill | John Neirinckx II | R Earl Andersen | William & Gretchen Harrison |
| David Sheridan | John R Kraack | Ralph & Martha Banderroth | William & Nancy McAninch |
| Dean & Glenda Gentry | Jordan Redman | Ralph Kahn | William B & Gretchen Harrison |
| Dennis Backus | Joseph Rush | Randy Wilson | William K Hasz |
| Derald Moyer | Joyce D & Charles R Stock | Razor Family Property | William White |
| Dianne Anderson | Joyce Morden | Rathdrum Power LLC | |
| Dick & Carole Harwood | Julie Day | Richard J Clemson | |
| Don & Martha Vail | Kathryn Kahn | Richard L Powell | |
| Don H Sherfey | Kathy Jordan | Rick & Holly Day | |
| Donald & Christine McCaw | Kaye A Mainsey | Rickey Dunn | |
| Donald Sutton | Keith Kleinkhecht | Robert & Dianna Bostrom | |
| Doris Miller | Kellogg School District | Robert & Gail Short | |
| Doug Luchini | Ken & Aileen Zaken | Robert & Julie Grunzweig | |
| Douglas & Darcy McInnuff | Ken & Yvonne Devries | Robert & Norma White | |
| Dwayne Layton | Kent L & Donna J Davis | Robert & Paity Anderson | |
| East Shoshone County Water | Kevin & Shannon Simonsen | Robert Ellis | |
| Eddie A Bailey | Kevin & Tiffany Renner | Robert Powell | |
| Edmond & Janet Ferrel | Kevin Coleman | Robert Rider | |
| Edward & Canduce Anderson | Kim Liss | Robin & Leslee Stanley | |
| Elizabeth Roberts | Kristi & Doug Puyne | Robin Stanley | |
| Eric & Susan Skidmore | Lance & J Michele McDaniel | Roderick & Beth Halvorson | |
| Ernest & Myra Ecklund | Lance M Jordan | Ron Mendive | |
| Fernwood Water & Sewer Dist | Lance Stanley | Ron Wood | |
| Florence Farber | Larry & Susan Sotin | Ronald & Sherlene Mendive | |
| Frank Frutchey | Larry Donahoe | Rosie Layton | |
| Fred & Marcy Hasz | Larry Lehtola | | |

CERTIFICATE OF MAILING

I certify that a true and correct copy of the AMENDED FINAL ORDER DISALLOWING WATER RIGHT CLAIMS was mailed on July 26, 2017, with sufficient first-class postage to the following:

ALBERT P BARKER
BARKER ROSHOLT & SIMPSON LLP
1010 W JEFFERSON ST STE 102
PO BOX 2139
BOISE, ID 83701-2139

PO BOX 83720
BOISE, ID 83720-0010

IDWR
PO BOX 83720
BOISE, ID 83720-0098

US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

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

CHRISTOPHER H MEYER
JEFFREY C FEREDAY
JEFFREY W BOWER
MICHAEL P LAWRENCE
GIVENS PURSLEY LLP
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720

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

SCHROEDER, WILLIAM J
KSB LITIGATION PS
221 N WALL STE 210
SPOKANE, WA 99201

WILLIAM M GREEN
2803 N 5TH ST
COEUR D'ALENE, ID 83815

HOWARD A. FUNKE
424 SHERMAN AVE STE 308
PO BOX 969
COEUR D ALENE, ID 83816-0969

CANDICE M MCHUGH
CHRIS M BROMLEY
MCHUGH BROMLEY PLLC
380 S 4TH STREET STE 103
BOISE, ID 83702

RONALD D HEYN
828 WESTFORK EAGLE CREEK
WALLACE, ID 83873

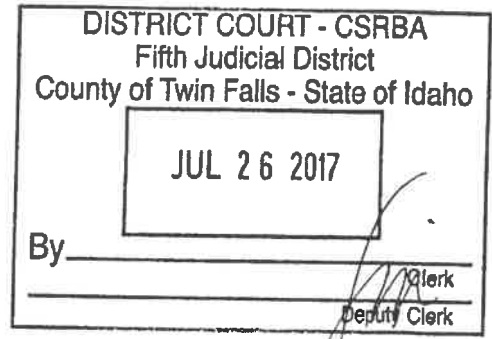
NORMAN M SEMANKO
MOFFATT THOMAS BARRETT ROCK
& FIELDS CHARTERED
999 WEST MAIN STREET STE 1300
PO BOX 829
BOISE, ID 83701-0829

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

CHIEF NATURAL RESOURCES DIV
OFFICE OF THE ATTORNEY GENERAL
STATE OF IDAHO

Attachment 3

Order on Motion to Set Aside and Modify
CSRBA Consolidated Subcase 91-7755
July 26, 2017



**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) **Subcase No. 91-7755**
) **(353 consolidated subcases (see attached list))**
Case No. 49576)
) **ORDER ON MOTION TO SET ASIDE AND**
) **MODIFY**
)
)
)
)

I.

BACKGROUND

1. On May 3, 2017, the Court entered an *Order on Motions for Summary Judgment*, a *Final Order Disallowing Water Right Claims*, and a *Final Order Disallowing Purposes of Use*. The background set forth in the *Order on Motions for Summary Judgment* is incorporated herein by reference and will not be repeated.

2. On May 17, 2017, the United States and the Coeur d'Alene Tribe ("Tribe") filed a *Motion to Set Aside and Modify Partial Decree or Final Order Disallowing Water Right Claim* ("*Motion*").

3. The State of Idaho and Hecla Limited filed responses in opposition to the *Motion*. The following Objectors join in the State's opposition: Hecla Limited, Benewah County; City of St. Maries; City of Harrison; Buell Bros., Inc.; Jack Buell; Eleanor Buell; David Corkill; Mary Corkill; Whiteman Lumber Co., Inc.; Potlatch Forest Holdings, Inc.; Potlatch Land & Lumber, LLC; Potlatch TRS Idaho, LLC; and the North Idaho Water Rights Group.¹ The following Objectors join in Hecla Limited's opposition: Benewah County; City of St. Maries; City of

¹ The term "North Idaho Water Rights Group" refers collectively to the Objectors identified on Exhibit A to the Court's *Order on Motions for Summary Judgment*.

Harrison; Buell Bros., Inc.; Jack Buell; Eleanor Buell; David Corkill; Mary Corkill; Whiteman Lumber Co., Inc.; and the North Idaho Water Rights Group

4. A hearing on the *Motion* was held on June 23, 2017, at the Kootenai County Courthouse in Coeur d'Alene, Idaho.

II. ANALYSIS

The *Motion* seeks two categories of relief. First, it requests that the Court set aside and modify its *Final Orders* to allow the United States' federal reserved water right claims for gathering to proceed in the adjudication. Second, it requests that the Court set aside and modify its *Final Order Disallowing Water Right Claims* to remove certain water rights disallowed by that *Order*.

A. **The Court declines to amend the *Final Orders* to allow the United States' federal reserved water right claims for gathering to proceed in the adjudication.**

The United States and the Tribe ask the Court to reconsider its disallowal of the United States' federal reserved claims for plant habitat for Tribal gathering. Rule 59(e) allows a district court to "correct legal and factual errors in proceedings before it." *Straub v. Smith*, 145 Idaho 65, 71 (2007). A Rule 59(e) "motion to amend a judgment is addressed to the discretion of the court." *Lowe v. Lym*, 103 Idaho 259, 263 (Ct. App. 1982). In its *Order on Motions for Summary Judgment*, the Court analyzed the United States' claims under the reserved rights doctrine. Pursuant to the primary-secondary purposes distinction set forth in *U.S. v. New Mexico*, 438 U.S. 696, 715 (1978), the Court found the primary purposes of the Coeur d'Alene Indian Reservation to be agriculture, fishing and hunting, and domestic. It disallowed the United States' claims for all other purposes of use as a matter of law. The United States and Tribe do not offer any new argument regarding the Court's primary-secondary purposes analysis, but simply reiterate arguments already made to this Court. The Court fully addressed the primary purposes of the reservation in its *Order on Motions for Summary Judgment* and does not find any legal or factual error in the analysis. It therefore declines to amend its *Final Orders* as requested by the United States and the Tribe.

B. The Court will amend its *Final Order Disallowing Water Right Claims* to remove water right claims erroneously included therein.

The United States and the Tribe ask the Court to remove the following water right claims from its *Final Order Disallowing Water Right Claims*: 91-7777; 92-10906; 92-10907; 93-7469; 93-7470; 94-9244; 94-9245; 94-9246; 95-16678; 95-16679; 95-16680; 95-16681; 95-16682; 95-16683; and 95-16684. The claims seek federal reserved water rights for “fish habitat for fish species harvested within the Reservation” On summary judgment, the Court found fishing and hunting to be a primary purpose of the Coeur d’Alene Indian Reservation. That said, it limited the United States’ claims to those located within the boundaries of the reservation. The Court therefore disallowed the United States’ claims for off-reservation federal reserved water rights in its *Final Order Disallowing Water Right Claims*.

The United States and Tribe assert that water right claims 92-10906, 94-9244, 94-9245, 95-16680, 95-16681, 95-16682, 95-16683, and 95-16684 are located entirely within the boundaries of the reservation. Since the claims are for on-reservation water rights it was not the intent of the Court to disallow these claims. The claims were included on the list of rights disallowed by the Court’s *Final Order* as a result of clerical error. Therefore, the claims will be removed from the Court’s *Final Order* pursuant to Idaho Rule of Civil Procedure 60(a).

The United States and the Tribe assert that water right claims 91-7777, 92-10907, 93-7469, 93-7470, 94-9425, 94-9246, 95-16678, and 95-16679 straddle the reservation boundaries. Portions of these claims are located within the boundaries of the reservation and portions are located outside the boundaries of the reservation. Since the claims seek on-reservation water rights in part, it was not the intent of the Court to disallow these claims. Rather, it was the intent of the Court to allow the claims to proceed limited to points of diversion and places of use located within the reservation’s boundaries. The claims were included on the list of rights disallowed by the Court’s *Final Order* as a result of clerical error. Therefore, the claims will be removed from the Court’s *Final Order* pursuant to Idaho Rule of Civil Procedure 60(a).

The Objectors contend the United States’ claims for fish habitat in waterways other than Lake Coeur d’Alene and the Coeur d’Alene and St. Joe Rivers were correctly disallowed. They assert the Court’s *Order on Motions for Summary Judgment* concluded the primary purpose of the reservation was to provide the Tribe with the important waterways needed to facilitate its traditional fishing and hunting practices. Further, that those important waterways are limited to

Lake Coeur d'Alene and the Coeur d'Alene and St. Joe Rivers. In its *Order*, the Court found fishing and hunting to be a primary purpose of the reservation. It did not limit claims for such purposes to Lake Coeur d'Alene and the Coeur d'Alene and St. Joe Rivers. The Court found that the Tribe's historic fishing and hunting practices "were reliant upon important waterways *such as* Lake Coeur d'Alene and the Coeur d'Alene and St. Joe Rivers." The Court's identification of these three waterways provided an illustrative list, not an exhaustive one. Since the Court found fishing and hunting to be a primary purpose of the reservation the United States may seek such claims within the boundaries of the reservation necessary to fulfill that purpose.

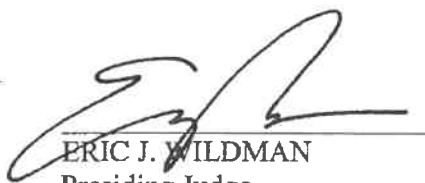
III.
ORDER

THEREFORE, BASED ON THE FOREGOING, THE FOLLOWING ARE HEREBY ORDERED:

1. The *Motion* is granted in part and denied in part.
2. The request that the Court amend its *Final Orders* to allow federal reserved water right claims for plant habitat for Tribal gathering is hereby denied.
3. The request that the Court amend its *Final Order Disallowing Water Right Claims* to remove water right claims 91-7777; 92-10906; 92-10907; 93-7469; 93-7470; 94-9244; 94-9245; 94-9246; 95-16678; 95-16679; 95-16680; 95-16681; 95-16682; 95-16683; and 95-16684 is hereby granted.

IT IS SO ORDERED.

Dated: July 26, 2017



ERIC J. WILDMAN
Presiding Judge
Coeur d'Alene-Spokane River Basin Adjudication

Subcase Nos:

| | | | | | |
|----------|----------|----------|----------|----------|----------|
| 91-07755 | 92-10921 | 93-07510 | 93-07560 | 93-07610 | 94-09251 |
| 91-07756 | 92-10922 | 93-07511 | 93-07561 | 93-07611 | 94-09252 |
| 91-07757 | 93-07462 | 93-07512 | 93-07562 | 93-07612 | 94-09253 |
| 91-07758 | 93-07463 | 93-07513 | 93-07563 | 93-07613 | 94-09254 |
| 91-07759 | 93-07464 | 93-07514 | 93-07564 | 93-07614 | 94-09255 |
| 91-07760 | 93-07465 | 93-07515 | 93-07565 | 93-07615 | 94-09256 |
| 91-07761 | 93-07466 | 93-07516 | 93-07566 | 93-07616 | 94-09257 |
| 91-07762 | 93-07467 | 93-07517 | 93-07567 | 93-07617 | 94-09258 |
| 91-07763 | 93-07468 | 93-07518 | 93-07568 | 93-07618 | 94-09259 |
| 91-07764 | 93-07469 | 93-07519 | 93-07569 | 93-07619 | 94-09260 |
| 91-07765 | 93-07470 | 93-07520 | 93-07570 | 93-07620 | 94-09261 |
| 91-07766 | 93-07471 | 93-07521 | 93-07571 | 93-07621 | 94-09262 |
| 91-07767 | 93-07472 | 93-07522 | 93-07572 | 93-07622 | 94-09263 |
| 91-07768 | 93-07473 | 93-07523 | 93-07573 | 93-07623 | 94-09264 |
| 91-07769 | 93-07474 | 93-07524 | 93-07574 | 93-07624 | 94-09265 |
| 91-07770 | 93-07475 | 93-07525 | 93-07575 | 93-07625 | 94-09266 |
| 91-07771 | 93-07476 | 93-07526 | 93-07576 | 93-07626 | 94-09267 |
| 91-07772 | 93-07477 | 93-07527 | 93-07577 | 93-07627 | 94-09268 |
| 91-07773 | 93-07478 | 93-07528 | 93-07578 | 93-07628 | 94-09269 |
| 91-07774 | 93-07479 | 93-07529 | 93-07579 | 93-07629 | 94-09270 |
| 91-07775 | 93-07480 | 93-07530 | 93-07580 | 93-07630 | 94-09271 |
| 91-07776 | 93-07481 | 93-07531 | 93-07581 | 93-07631 | 94-09272 |
| 91-07777 | 93-07482 | 93-07532 | 93-07582 | 93-07632 | 94-09273 |
| 91-07778 | 93-07483 | 93-07533 | 93-07583 | 93-07633 | 94-09274 |
| 91-07779 | 93-07484 | 93-07534 | 93-07584 | 93-07634 | 94-09275 |
| 91-07780 | 93-07485 | 93-07535 | 93-07585 | 93-07635 | 94-09276 |
| 91-07781 | 93-07486 | 93-07536 | 93-07586 | 93-07636 | 94-09277 |
| 91-07782 | 93-07487 | 93-07537 | 93-07587 | 93-07637 | 94-09278 |
| 91-07783 | 93-07488 | 93-07538 | 93-07588 | 93-07638 | 94-09279 |
| 91-07784 | 93-07489 | 93-07539 | 93-07589 | 93-07639 | 94-09280 |
| 91-07785 | 93-07490 | 93-07540 | 93-07590 | 93-07640 | 94-09281 |
| 91-07786 | 93-07491 | 93-07541 | 93-07591 | 93-07641 | 94-09282 |
| 91-07787 | 93-07492 | 93-07542 | 93-07592 | 93-07642 | 94-09283 |
| 91-07788 | 93-07493 | 93-07543 | 93-07593 | 93-07643 | 95-16668 |
| 91-07789 | 93-07494 | 93-07544 | 93-07594 | 93-07644 | 95-16669 |
| 92-10906 | 93-07495 | 93-07545 | 93-07595 | 93-07645 | 95-16670 |
| 92-10907 | 93-07496 | 93-07546 | 93-07596 | 93-07646 | 95-16671 |
| 92-10908 | 93-07497 | 93-07547 | 93-07597 | 93-07647 | 95-16672 |
| 92-10909 | 93-07498 | 93-07548 | 93-07598 | 93-07648 | 95-16673 |
| 92-10910 | 93-07499 | 93-07549 | 93-07599 | 93-07649 | 95-16674 |
| 92-10911 | 93-07500 | 93-07550 | 93-07600 | 93-07650 | 95-16675 |
| 92-10912 | 93-07501 | 93-07551 | 93-07601 | 93-07651 | 95-16676 |
| 92-10913 | 93-07502 | 93-07552 | 93-07602 | 93-07652 | 95-16677 |
| 92-10914 | 93-07503 | 93-07553 | 93-07603 | 94-09244 | 95-16678 |
| 92-10915 | 93-07504 | 93-07554 | 93-07604 | 94-09245 | 95-16679 |
| 92-10916 | 93-07505 | 93-07555 | 93-07605 | 94-09246 | 95-16680 |
| 92-10917 | 93-07506 | 93-07556 | 93-07606 | 94-09247 | 95-16681 |
| 92-10918 | 93-07507 | 93-07557 | 93-07607 | 94-09248 | 95-16682 |
| 92-10919 | 93-07508 | 93-07558 | 93-07608 | 94-09249 | 95-16683 |
| 92-10920 | 93-07509 | 93-07559 | 93-07609 | 94-09250 | 95-16684 |

(Subcase list: CSRBATRIBE)

7/26/17

Subcase Nos:

95-16686 95-16740
95-16687 95-16741
95-16688 95-16742
95-16689
95-16690
95-16691
95-16692
95-16693
95-16694
95-16695
95-16696
95-16698
95-16699
95-16700
95-16701
95-16702
95-16703
95-16704
95-16705
95-16706
95-16708
95-16709
95-16710
95-16711
95-16712
95-16713
95-16714
95-16715
95-16716
95-16717
95-16718
95-16719
95-16720
95-16721
95-16722
95-16723
95-16724
95-16725
95-16726
95-16727
95-16728
95-16729
95-16730
95-16731
95-16734
95-16735
95-16736
95-16737
95-16738
95-16739

(Subcase list: CSRBATRIBE)
7/26/17

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON MOTION TO SET ASIDE AND MODIFY was mailed on July 26, 2017, with sufficient first-class postage to the following:

ALBERT P BARKER
BARKER ROSHOLT & SIMPSON LLP
1010 W JEFFERSON ST STE 102
PO BOX 2139
BOISE, ID 83701-2139

PO BOX 83720
BOISE, ID 83720-0010

IDWR
PO BOX 83720
BOISE, ID 83720-0098

US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

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

CHRISTOPHER H MEYER
JEFFREY C FEREDAY
JEFFREY W BOWER
MICHAEL P LAWRENCE
GIVENS PURSLEY LLP
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720

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

SCHROEDER, WILLIAM J
KSB LITIGATION PS
221 N WALL STE 210
SPOKANE, WA 99201

WILLIAM M GREEN
2803 N 5TH ST
COEUR D'ALENE, ID 83815

HOWARD A. FUNKE
424 SHERMAN AVE STE 308
PO BOX 969
COEUR D ALENE, ID 83816-0969

CANDICE M MCHUGH
CHRIS M BROMLEY
MCHUGH BROMLEY PLLC
380 S 4TH STREET STE 103
BOISE, ID 83702

RONALD D HEYN
828 WESTFORK EAGLE CREEK
WALLACE, ID 83873

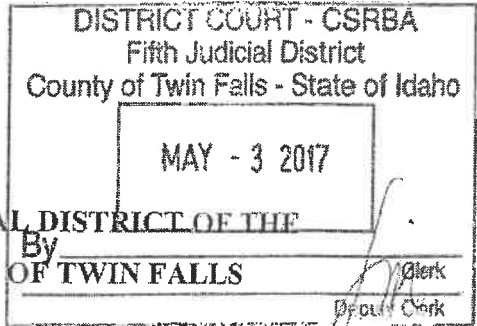
NORMAN M SEMANKO
MOFFATT THOMAS BARRETT ROCK
& FIELDS CHARTERED
999 WEST MAIN STREET STE 1300
PO BOX 829
BOISE, ID 83701-0829

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

CHIEF NATURAL RESOURCES DIV
OFFICE OF THE ATTORNEY GENERAL
STATE OF IDAHO

Attachment 4

Final Order Disallowing Purposes of Use
CSRBA Consolidated Subcase 91-7755
May 3, 2017



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) Subcase Nos. See Attached List
)
 Case No. 49576)
)
) FINAL ORDER DISALLOWING PURPOSES
) OF USE
)

On March 26, 2014, the United States filed the above-captioned water right claims as trustee on behalf of the Coeur d'Alene Tribe. The claims seek federal reserved water rights associated with the Coeur d'Alene Indian Reservation. With respect to water right claim 95-16704, the United States claims the following purposes of use:

Present and future uses, including but not limited to: food; fiber; transportation; recreation; religious, cultural and ceremonial; fish and wildlife habitat; lake level and wetland maintenance; water storage; power generation; and aesthetics – as a component of a water right necessary to fulfill the homeland purpose of the Coeur d'Alene Reservation. . . .

With respect to the remainder of the claims, the United States claims the following purposes of use:

Wildlife and plant habitat for hunting and gathering rights as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses – as a component of a water right necessary to fulfill the homeland purpose of the Coeur d'Alene Reservation. . . .

Objections and responses to some or all claims were filed by various parties.

A *Motion for Summary Judgment* seeking disallowal of the claims was subsequently filed by the State of Idaho. Various other Objectors joined in the *Motion*. Following hearing, the Court entered an *Order on Motions for Summary Judgment* contemporaneously herewith. In its *Order*, the Court held that the United States may seek federal reserved water rights for the following uses associated with the Coeur d'Alene Indian Reservation: agriculture, fishing and hunting, and domestic use. It further held that all other purposes of use may not be pursued as federal reserved water rights as a matter of law.

THEREFORE, BASED ON THE FOREGOING, THE FOLLOWING ARE HEREBY ORDERED:

1. With respect to water right claim 95-16704, it is ordered that the following claimed purposes of use are hereby disallowed with prejudice: food; fiber; transportation; recreation; religious, cultural and ceremonial; lake level and wetland maintenance; water storage; power generation; and aesthetics. This claim will proceed to the quantification phase of this litigation on its "fish and wildlife habitat" purpose of use.

2. With respect to the remainder of the above-captioned water right claims, it is ordered that the following claimed purposes of use are hereby disallowed with prejudice: wildlife and plant habitat for gathering rights as well as other tribal traditional, cultural, spiritual, ceremonial, and/or religious uses. These claims will proceed to the quantification phase of this litigation on their "wildlife and plant habitat for hunting" purpose of use.

IT IS SO ORDERED.

DATED May 3, 2017.



ERIC J. WILDMAN
Presiding Judge
Coeur d'Alene-Spokane River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED May 3, 2017.



ERIC J. WILDMAN
Presiding Judge
Coeur d'Alene-Spokane River Basin Adjudication

Subcase Nos:

| | | | | |
|----------|----------|----------|----------|----------|
| 91-07779 | 93-07532 | 93-07582 | 93-07632 | 95-16721 |
| 91-07780 | 93-07533 | 93-07583 | 93-07633 | 95-16722 |
| 91-07781 | 93-07534 | 93-07584 | 93-07634 | 95-16723 |
| 91-07782 | 93-07535 | 93-07585 | 93-07635 | 95-16724 |
| 91-07783 | 93-07536 | 93-07586 | 93-07636 | 95-16725 |
| 91-07784 | 93-07537 | 93-07587 | 93-07637 | 95-16726 |
| 91-07785 | 93-07538 | 93-07588 | 93-07638 | 95-16727 |
| 91-07786 | 93-07539 | 93-07589 | 93-07639 | 95-16728 |
| 91-07787 | 93-07540 | 93-07590 | 93-07640 | 95-16729 |
| 91-07788 | 93-07541 | 93-07591 | 93-07641 | 95-16730 |
| 91-07789 | 93-07542 | 93-07592 | 93-07642 | 95-16731 |
| 92-10913 | 93-07543 | 93-07593 | 93-07643 | 95-16734 |
| 92-10914 | 93-07544 | 93-07594 | 93-07644 | 95-16735 |
| 92-10915 | 93-07545 | 93-07595 | 93-07645 | 95-16736 |
| 92-10916 | 93-07546 | 93-07596 | 93-07646 | 95-16737 |
| 92-10917 | 93-07547 | 93-07597 | 93-07647 | 95-16738 |
| 92-10918 | 93-07548 | 93-07598 | 93-07648 | 95-16739 |
| 92-10919 | 93-07549 | 93-07599 | 93-07649 | 95-16740 |
| 92-10920 | 93-07550 | 93-07600 | 93-07650 | 95-16741 |
| 92-10921 | 93-07551 | 93-07601 | 93-07651 | 95-16742 |
| 92-10922 | 93-07552 | 93-07602 | 93-07652 | |
| 93-07503 | 93-07553 | 93-07603 | 94-09271 | |
| 93-07504 | 93-07554 | 93-07604 | 94-09272 | |
| 93-07505 | 93-07555 | 93-07605 | 94-09273 | |
| 93-07506 | 93-07556 | 93-07606 | 94-09274 | |
| 93-07507 | 93-07557 | 93-07607 | 94-09275 | |
| 93-07508 | 93-07558 | 93-07608 | 94-09276 | |
| 93-07509 | 93-07559 | 93-07609 | 94-09277 | |
| 93-07510 | 93-07560 | 93-07610 | 94-09278 | |
| 93-07511 | 93-07561 | 93-07611 | 94-09279 | |
| 93-07512 | 93-07562 | 93-07612 | 94-09280 | |
| 93-07513 | 93-07563 | 93-07613 | 94-09281 | |
| 93-07514 | 93-07564 | 93-07614 | 94-09282 | |
| 93-07515 | 93-07565 | 93-07615 | 94-09283 | |
| 93-07516 | 93-07566 | 93-07616 | 95-16704 | |
| 93-07517 | 93-07567 | 93-07617 | 95-16705 | |
| 93-07518 | 93-07568 | 93-07618 | 95-16706 | |
| 93-07519 | 93-07569 | 93-07619 | 95-16708 | |
| 93-07520 | 93-07570 | 93-07620 | 95-16709 | |
| 93-07521 | 93-07571 | 93-07621 | 95-16710 | |
| 93-07522 | 93-07572 | 93-07622 | 95-16711 | |
| 93-07523 | 93-07573 | 93-07623 | 95-16712 | |
| 93-07524 | 93-07574 | 93-07624 | 95-16713 | |
| 93-07525 | 93-07575 | 93-07625 | 95-16714 | |
| 93-07526 | 93-07576 | 93-07626 | 95-16715 | |
| 93-07527 | 93-07577 | 93-07627 | 95-16716 | |
| 93-07528 | 93-07578 | 93-07628 | 95-16717 | |
| 93-07529 | 93-07579 | 93-07629 | 95-16718 | |
| 93-07530 | 93-07580 | 93-07630 | 95-16719 | |
| 93-07531 | 93-07581 | 93-07631 | 95-16720 | |

CERTIFICATE OF MAILING

I certify that a true and correct copy of the FINAL ORDER DISALLOWING PURPOSES OF USE was mailed on May 03, 2017, with sufficient first-class postage to the following:

ALBERT P BARKER
BARKER ROSHOLT & SIMPSON LLP
1010 W JEFFERSON ST STE 102
PO BOX 2139
BOISE, ID 83701-2139

PO BOX 83720
BOISE, ID 83720-0010

IDWR
PO BOX 83720
BOISE, ID 83720-0098

US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

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

CHRISTOPHER H MEYER
JEFFREY C FEREDAY
JEFFREY W BOWER
MICHAEL P LAWRENCE
GIVENS PURSLEY LLP
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720

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

WILLIAM M GREEN
2803 N 5TH ST
COEUR D'ALENE, ID 83815

SCHROEDER, WILLIAM J
KSB LITIGATION PS
221 N WALL STE 210
SPOKANE, WA 99201

HOWARD A. FUNKE
424 SHERMAN AVE STE 308
PO BOX 969
COEUR D ALENE, ID 83816-0969

CANDICE M MCHUGH
CHRIS M BROMLEY
MCHUGH BROMLEY PLLC
380 S 4TH STREET STE 103
BOISE, ID 83702

RONALD D HEYN
828 WESTFORK EAGLE CREEK
WALLACE, ID 83873

NORMAN M SEMANKO
MOFFATT THOMAS BARRETT ROCK
& FIELDS CHARTERED
101 S CAPITOL BLVD 10TH FL
PO BOX 829
BOISE, ID 83701-0829

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

CHIEF NATURAL RESOURCES DIV
OFFICE OF THE ATTORNEY GENERAL
STATE OF IDAHO

Attachment 4

Order on Motion to Set Aside and Modify

CSRBA Consolidated Subcase 91-7755

July 26, 2017