

9-6-2017

Notice of Appeal- Idaho

Steven W. Strack
Deputy Attorney General, State of Idaho

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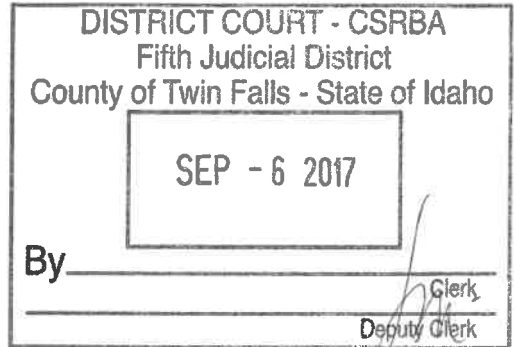
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Attorneys for the State of Idaho

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) 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.

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Chief, Natural Resources Division



STEVEN W. STRACK
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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
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Twin Falls, ID 83303-2707

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

Sabrina Vasquez
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Attachment 1

CSRBA Subcase Mailing List 91-7755

(Listing Parties and Parties' Attorneys)

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SUBCASE MAILING LIST 91-07755

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Attachment 2

Amended Final Order Disallowing Water Right Claims

CSRBA Consolidated Subcase 91-7755

July 26, 2017

DISTRICT COURT - CSRBA
 Fifth Judicial District
 County of Twin Falls - State of Idaho

JUL 26 2017

Clerk
 Deputy Clerk

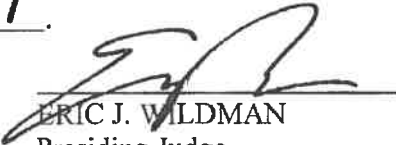
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re CSRBA) 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.¹ 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.

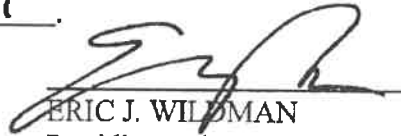

 ERIC J. WILDMAN
 Presiding Judge
 Coeur d’Alene-Spokane River Basin Adjudication

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
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91-07764 95-16674
91-07765 95-16675
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(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 Dunnigan
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 Labolle	John & Christine Thomas	Paul Segsworth	Vicki Carroll
Daren Labolle	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 McInurff	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:

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ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
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13621 S HWY 95
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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

DISTRICT COURT - CSRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

JUL 26 2017

By _____ Clerk
 _____ Deputy Clerk

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

<p>In Re CSRBA</p> <p>Case No. 49576</p> <hr style="width: 25%; margin-left: 0;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Subcase No. 91-7755</p> <p>(353 consolidated subcases (see attached list))</p> <p>ORDER ON MOTION TO SET ASIDE AND MODIFY</p>
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**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.

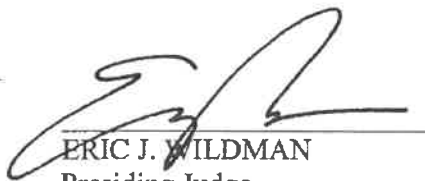
III.
ORDER

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
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91-07781	93-07486	93-07536	93-07586	93-07636	94-09277
91-07782	93-07487	93-07537	93-07587	93-07637	94-09278
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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
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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
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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:

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OFFICE OF THE ATTORNEY GENERAL
STATE OF IDAHO

Attachment 4

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

DISTRICT COURT - CSRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
MAY - 3 2017	
By _____	_____ Clerk
	Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re CSRBA) 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
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93-07519	93-07569	93-07619	95-16708	
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93-07523	93-07573	93-07623	95-16712	
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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:

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Attachment 4

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