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In re CSRBA (Coeur d'Alene)

Hedden-Nicely

9-6-2017

Notice of Appeal- NIWRG

Norman M. Semanko
Attorney, Parsons Behle & Latimer

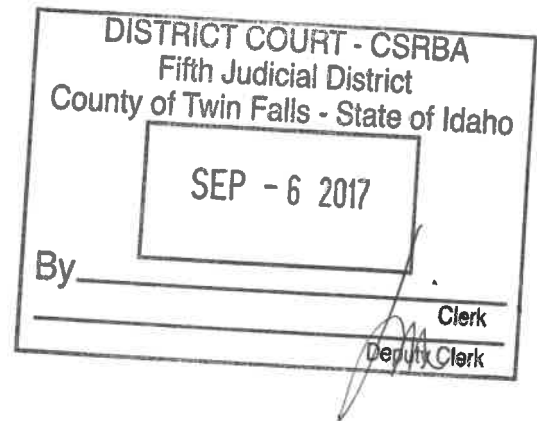
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Attorneys for Members of the North Idaho Water Rights Alliance,
Members of the North West Property Owners Alliance, Members of the
Coeur d'Alene Lakeshore Property Owners Association, Rathdrum
Power, LLC, and Hagadone Hospitality Co.

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

NORTH IDAHO WATER RIGHTS
ALLIANCE, MEMBERS OF THE NORTH
WEST PROPERTY OWNERS ALLIANCE,
MEMBERS OF THE COEUR D'ALENE
LAKESHORE PROPERTY OWNERS
ASSOCIATION, RATHDRUM POWER,
LLC and HAGADONE HOSPITALITY CO.,

Appellants,

vs.

UNITED STATES OF AMERICA and
COEUR D'ALENE TRIBE,

Respondents.

Consolidated Subcase No. 91-7755

NOTICE OF APPEAL

Fee Category IAR 23(a)(1)
\$94.00

TO: EACH PARTY AND THE PARTIES' ATTORNEYS LISTED ON THE ATTACHED CERTIFICATE OF SERVICE, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1(a). Members of the North Idaho Water Rights Alliance, Members of the North West Property Owners Alliance; Members of the Coeur d'Alene Lakeshore Property Owners Association; Rathdrum Power, LLC; and Hagadone Hospitality Co. (collectively, the "North Idaho Water Rights Group" or "NIWRG") hereby appeal 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, which is attached hereto and marked Exhibit A. The *Amended Final Order* was certified under I.R.C.P. 54(b) as a final order.

1(b). Additionally, the NIWRG hereby appeals the *Final Order Disallowing Purposes of Use*, entered in the above-entitled action on May 3, 2017, the Honorable Eric J. Wildman, Presiding, which is attached hereto as Exhibit B. The Amended Final Order 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 Court's *Order on Motion to Set Aside and Modify*, entered in the above-entitled action on July 26, 2017.

2. NIWRG has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule 11(a)(3).

3. Preliminary Statement of issues to be presented on appeal:

- a. Whether the district court erred in recognizing fishing and hunting as a primary purpose of the Coeur d'Alene Reservation.

- b. Whether the district court erred in not disallowing ground water claims within the Coeur d'Alene Reservation.
- c. Whether the district court erred in not disallowing instream flow claims within the Coeur d'Alene Reservation.
- d. Whether the district court erred in not disallowing claim no. 95-16704 (Lake Coeur d'Alene) within the Coeur d'Alene Reservation.
- e. Whether the district court erred in not disallowing irrigation claims within the Coeur d'Alene Reservation.
- f. Whether the district court erred by allowing claims to proceed to the quantification phase without first making determinations of necessity during the entitlement phase.

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."

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, NIWRG 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, NIWRG 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. NIWRG requests that the following documents be included in the clerk's record.
 - a. 10-21-2016 North Idaho Water Rights Group's Motion for Summary Judgment;
 - b. 10-21-2016 Memorandum In Support of the North Idaho Water Rights Group's Motion for Summary Judgment;
 - c. 10-21-2016 Affidavit of Norman M. Semanko in Support of North Idaho Water Rights Group's Motion for Summary Judgment
 - d. 10-21-2016 Exhibits A-E to Semanko Affidavit;
 - e. 10-21-2016 Exhibit F (Part 1) to Semanko Affidavit;
 - f. 10-21-2016 Exhibit F (Part 2) to Semanko Affidavit;
 - g. Exhibits G-H to Semanko Affidavit.
 - h. North Idaho Water Rights Group's Memorandum in Opposition to United States' and Coeur d'Alene Tribe's Joint Motion for Summary Judgment;
 - i. North Idaho Water Rights Group's Reply to Responses of the United States and the Coeur D'Alene Tribe.

8. NIWRG 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 NIWRG for the cost of preparing the reporter's transcript in this appeal.
- (c) All appellate filing fees have been paid.

DATED September 6, 2017.

PARSONS BEHLE & LATIMER

By 
Norman M. Semanko

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

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the **NOTICE OF APPEAL** were mailed on the 6th day of September, 2017, by first-class mail to the following:

Albert P. Barker
Barker Rosholt & Simpson LLP
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PO Box 2139
Boise, ID 83701-2139

Chief Natural Resources Div
Office of the Attorney General
State of Idaho
PO Box 83720
Boise, ID 83720-0010

Christopher H. Meyer
Jeffrey C. Fereday
Jeffrey W. Bower
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Givens Pursley LLP
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PO Box 2720
Boise, ID 83701-2720

U.S. Department of Justice
Environment & National Resources
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Boise, ID 83724

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Wallace, ID 83873

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

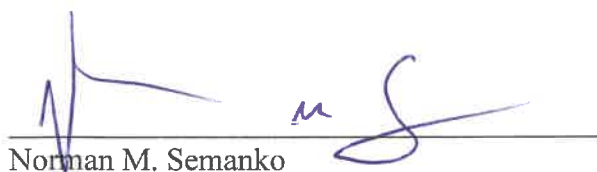

Norman M. Semanko

EXHIBIT A

JUL 26 2017

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

By _____ Clerk
_____ Deputy Clerk

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.

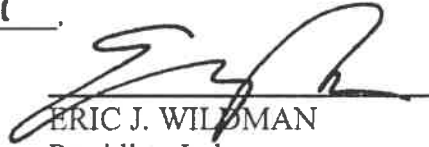

ERIC J. WILDMAN
Presiding Judge
Coeur d'Alene-Spokane River Basin Adjudication

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. WILOMAN
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
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94-09264
94-09265

(Subcase list: SETASIDE)
6/28/17

Exhibit A

Alan Littlejohn	Gale Briggs	Leland & Danielle Boldt	Roy & Linda Michael
Alfred Sichlinger	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 Bialack	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	Helen Jacquemin	Michael D Higbee	Steve Thomas
Blue Wolf Community Cub	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 Kuhlmeier	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 Ventrjs LLC	Nancy Kleinkhecht	Terry Burger
Cari 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 Duhrman	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	Patrice Hartel	Tim Shannon
Clyde H Sheppard	Jeff Tyler	Patricia & Kenneth Renner	Tom & Eileen 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 Remmick	Johanna Renner	Paul & Colleen Smith	Verland Woempner
Darby G Donohoe	John & Agnes McFaddin	Paul Murray	Vic & Rita Brodie
Daren & Janet Lubolle	John & Christine Thomas	Paul Segsworth	Vicki Carroll
Daren Lubolle	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 Banderrob	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 Mansey	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 & Patty 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 Payne	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
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BOISE, ID 83724

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13621 S HWY 95
COEUR D'ALENE, ID 83814

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

EXHIBIT B



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
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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
US DEPARTMENT OF JUSTICE ENVIRONMENT & NATL' RESOURCES 550 WEST FORT STREET, MSC 033 BOISE, ID 83724	IDWR PO BOX 83720 BOISE, ID 83720-0098
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	RATLIFF FAMILY LLC #1 13621 S HWY 95 COEUR D'ALENE, ID 83814
SCHROEDER, WILLIAM J KSB LITIGATION PS 221 N WALL STE 210 SPOKANE, WA 99201	JOHN T MCFADDIN 20189 S EAGLE PEAK RD CATALDO, ID 83810
CANDICE M MCHUGH CHRIS M BROMLEY MCHUGH BROMLEY PLLC 380 S 4TH STREET STE 103 BOISE, ID 83702	WILLIAM M GREEN 2803 N 5TH ST COEUR D'ALENE, ID 83815
NORMAN M SEMANKO MOFFATT THOMAS BARRETT ROCK & FIELDS CHARTERED 101 S CAPITOL BLVD 10TH FL PO BOX 829 BOISE, ID 83701-0829	HOWARD A. FUNKE 424 SHERMAN AVE STE 308 PO BOX 969 COEUR D ALENE, ID 83816-0969
MARIAH R DUNHAM NANCY A WOLFF MORRIS & WOLFF PA 722 MAIN AVE ST MARIES, ID 83861	RONALD D HEYN 828 WESTFORK EAGLE CREEK WALLACE, ID 83873
CHIEF NATURAL RESOURCES DIV OFFICE OF THE ATTORNEY GENERAL STATE OF IDAHO	