



**STATE OF IDAHO**  
 OFFICE OF THE ATTORNEY GENERAL  
 LAWRENCE G. WASDEN

August 10, 2015

DISTRICT COURT - CSRBA Fifth Judicial District County of Twin Falls - State of Idaho	
AUG 10 2015	
By <u><i>Lodges</i></u>	Clerk
Deputy Clerk	

Honorable Judge Wildman  
 Snake River Basin Adjudication Court  
 253 Third Avenue North  
 P.O. Box 2707  
 Twin Falls, Idaho 83303-2707

RE: Process for Settlement Discussion in Subcase No. 91-7755

Dear Judge Wildman:

Pursuant to the *Order Consolidating Subcases Order Bifurcating Proceedings Scheduling Order* in Subcase 91-7755, the State of Idaho lodges with the CSRBA Court the enclosed Memorandum of Agreement ("MOA") setting forth a proposed "framework" for pursuing settlement discussions regarding the "Tribal Claims." The MOA has been approved by the United States, the Coeur d'Alene Tribe, the State of Idaho, Avista, John McFaddin and all objectors represented by counsel.

The signatories to the MOA request that: 1) the MOA be posted on the CSRBA tribal water rights webpage; 2) Special Master Booth continue to moderate the settlement discussions; and 3) the MOA be reviewed by Special Master Booth at the next settlement meeting scheduled for September 24, 2015.

Sincerely,

CLIVE J. STRONG  
 Deputy Attorney General

CJS/mb

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("MOA"), is entered into by and between the State of Idaho ("State"), the United States, the Coeur d'Alene Tribe, the undersigned objectors and respondent (collectively hereinafter the "Parties") to establish this framework for the purpose of pursuing settlement discussions contemplated by House Concurrent Resolution No. 62 regarding issues related to the scope and the extent of the federal reserved water right claims filed by the United States and by the Coeur d'Alene Tribe of the Coeur d'Alene Indian Reservation in the Coeur d'Alene-Spokane River Basin Adjudication ("CSRBA"); the sovereign interests of the respective governments; and the private water rights of the claimants within the CSRBA.

### 1. Negotiation Principles

- A. The Parties pledge to provide credible fact-based information on which to base decisions and to negotiate in good faith.
- B. Negotiation shall be conducted concurrent with trial preparation. Should progress be made in these negotiations, nothing herein shall preclude the Parties from moving the Court for a modification of its scheduling order(s).
- C. Negotiation meetings will be held in the vicinity of Coeur d'Alene, Idaho.
- D. All CSRBA claimants shall be allowed to participate in negotiation sessions with reasonable time permitted to each claimant to discuss their interest and/or present alternatives.
- E. The negotiations will focus on interests, and not legal positions. The Parties will seek to focus on negotiating solutions that recognize and preserve the rights, needs and interests of both the Coeur d'Alene Tribe and the affected Idaho water right claimants.
- F. For purposes of negotiation only, the Parties agree to explore all options regarding the legal basis upon which a settlement might be based, including a basis other than federal reserved water rights.
- G. For purposes of negotiation only, the Parties agree to explore options that will protect existing water rights.
- H. The merits of legal arguments and the quality of scientific/technical data will not be argued in the negotiations.

- I. Use in litigation of any statements, suppositions, opinions, reports of any nature, data of any nature said or introduced in these negotiations shall be governed by I.R.E. 408 or other applicable law.
- J. The negotiation structure and process set forth herein is designed to reach agreements and understandings in principle. Therefore, no Party to this negotiation process shall be bound to any interim agreements or positions until a final agreement becomes effective. The Parties acknowledge that they have made various objections in the CSRBA and any provision herein notwithstanding, this document shall not operate to preclude a Party from voluntarily withdrawing its objection(s), or entering into settlements in individual subcases.
- K. The signatories to this MOA make no admission of fact or law, responsibility, fault, or liability by entering into this MOA.
- L. Any proposed settlement shall be contingent upon approval by the Idaho Legislature, the Coeur d'Alene Tribal Council, the CSRBA Court and, if necessary, the Congress of the United States.

## 2. Structure

- A. A Scheduling Committee will be formed to coordinate the negotiation meetings. The Scheduling Committee shall be composed of a representative from each of the following entities or groups: the United States; the Coeur d'Alene Tribe; the State of Idaho; Avista; objectors in Consolidated Subcase 91-7755; claimant non-objectors who are not a party to Consolidated Subcase 91-7755; and a State of Idaho legislator from District 2, 3, 4, 5 or 7. The claimant non-objector will be selected by the Idaho Legislators from District 2, 3, 4, 5 and 7.
- B. The Scheduling Committee shall develop an initial settlement schedule that includes, among other things, a general order and timeline for the designation of claims and/or issues to be addressed in negotiations.
- C. The Scheduling Committee will be responsible for: 1) setting the time and location of negotiation discussions; 2) setting the meeting agenda; 3) arranging for facilitation of the negotiation discussions; and 4) posting of negotiation information on the CSRBA website.

- D. The Scheduling Committee shall not make any decisions on the acceptability of any proposed settlements.
- E. Negotiation sessions are part of a judicial proceeding and therefore "claimants with valid Idaho water rights in the CSRBA, or representative thereof" who are not a party to Subcase 91-7755 but nonetheless desire to participate in the settlement discussions must consent to be bound by this MOA by executing a copy of Attachment A, which is attached hereto and incorporated herein by reference.
- F. The Scheduling Committee shall arrange to have a summary of each negotiation session prepared and posted on the CSRBA website. This website will be maintained by the CSRBA Court and open to the public for access.

### 3. Media Relations

- A. Media contacts shall be limited to joint press releases. The Scheduling Committee may draft press releases, but any press release must be approved by all the Parties prior to release to the media.
- B. Any media contact with a Party relative to the negotiations shall be referred to the CSRBA web page (<http://www.srba.state.id.us/CSRBA1.HTM>).

### 4. Information Exchange

- A. In recognition that negotiations will not succeed if there is significant inequality of technical data among the Parties the following process will be followed for exchanging data and other information:
  - 1) The United States and the Coeur d'Alene Tribe will provide to the State of Idaho the following data:
    - a. Surface and ground water supply data upon which the Tribal water right claims in the CSRBA are based.
    - b. Shape files showing the location of the various places of use, water storage sites and points of diversion for the Tribal water right claims in the CSRBA.
    - c. Land surface slope and soils data upon which the Tribal PIA water right claims in the CSRBA are based.

- d. Crop mix data upon which the Tribal PIA water right claims in the CSRBA are based.
  - e. Methodology used to establish quantities for Springs, Seeps and Wetlands Claims.
  - f. Methodology used to establish quantities for instream flow water right claims in the CSRBA.
  - g. A listing of owners of allotments.
- 2) The State of Idaho shall be responsible for providing the information disclosed by the United States and the Coeur d'Alene Tribe to other Parties to this MOA upon request.
  - 3) The State and other Parties to this MOA shall provide the United States and the Coeur d'Alene Tribe a copy of in kind data in the possession of the State and other Parties to this MOA that will be used during negotiation of the designated claims.
  - 4) The information exchange is limited to the exchange of data and does not extend to expert reports or other analysis of the data prepared in anticipation of litigation; however, as negotiations develop, the Parties may agree to expand the scope of the information exchange.
  - 5) Data shall only be disclosed to individuals or entities that agree to be bound by this MOA.

5. No Admission Against Interest

Any statements made in the course of settlement discussions shall not be construed as an admission against interest nor shall any Party use such statements in any way in any legal proceeding.

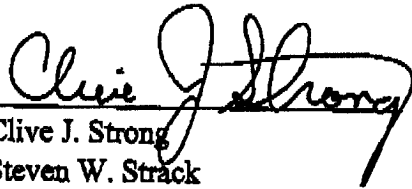
6. Effective Date

As to each Party, this MOA shall be effective upon signature, or upon execution of Attachment A, and shall continue in effect until April 3, 2017 or the trial date for the claims in

Consolidated Subcase 91-7755, whichever is later. The Parties may amend this MOA by joint agreement of the Parties at any time.

7. Signatures and Authorities

All of the following signatories represent that they have the authority to participate in settlement negotiations, subject to the terms and conditions in this MOA, and settle all issues arising in this litigation, either on their own behalf or, to reach a recommended settlement position for their respective clients and approving officials.



Clive J. Strong  
Steven W. Strack  
Ann Vonde

Date: 8/9/15

**Representing, and signing on behalf of, and for: State of Idaho**



Date: Aug 19 2015

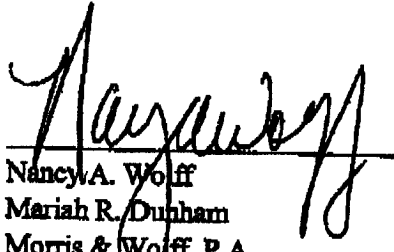
Albert Barker

Barker, Rosholt & Simpson, LLP

P.O. Box 2139

Boise, Idaho, 83701-2139

**Representing, and signing on behalf of, and for: Hecla Limited**



Date: 8/7/2015

Nancy A. Wolff  
Mariah R. Dunham  
Morris & Wolff, P.A.  
722 Main Avenue  
St. Maries, Idaho 83861

**Representing, and signing on behalf of, and for: City of Harrison; City of St. Maries; Benewah County, Board of County Commissioners; Buell Bros., Inc.; Jack A. and Eleanor L. Buell; David Bradley Corkill and Mary Corkill; Whiteman Lumber Co., Inc.**



*Candice McHugh*

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Date: 8/7/2015

Candice McHugh

Chris Bromley

McHugh Bromley, PLLC

380 S. 4th St., Ste. 104

Boise, Idaho 83702

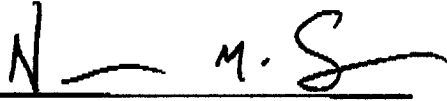
Jennifer Tinkey

City Attorney

710 Mullan Ave.

Coeur d'Alene, Idaho 83814

**Representing, and signing on behalf of, and for: City of Coeur d'Alene**

Date: 8-10-15

Norman M. Semanko

Moffatt Thomas Barrett Rock &amp; Fields, Chtd.

P.O. Box 829

Boise, Idaho 83701

**Representing, and signing on behalf of, and for: Rathdrum Power LLC; Hagadone Hospitality Co.; Harmon Property Owners Association, James and Molly Dolliver, Bruce Cyr, Gianotti Trust DTD 1991, Sutherland Family Revocable Trust, Greg Delavan, Stanley J. Harrison, David and Jill Christiansen, Thomas M. Patrick, Thomas M. Patrick Revocable Trust, Clyde H. Sheppard, Wayne and Carolyn Gianotti, JAKAR Ventris LLC, James Ventris, Peter G. Sutherland and Richard J. Clemson; the members of the North Idaho Water Rights Alliance listed in Attachment B, hereto; and each of the parties listed in Attachment C, hereto.**



Date: 8/10/15

**Christopher Meyer  
Michael P. Lawrence  
Givens Pursley LLP  
601 W. Bannock Street  
P.O. Box 2720  
Boise, Idaho 83701-1200**

**Representing, and signing on behalf of, and for: North Kootenai Water & Sewer District (a/k/a North Kootenai Water District); Alpine Meadows Water and Sewer District; Hauser Lake Water Association, Inc.; Potlatch Forest Holdings, Inc.; Potlatch Land & Lumber, LLC; Potlatch TRS Idaho, LLC.**

 Date: 8/6/15

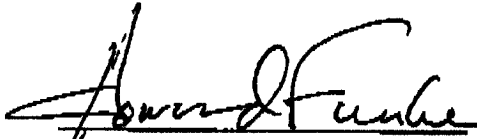
Vanessa Boyd Willard

Attorney, Indian Resources Section  
Environment and Natural Resources Division

U. S. Department of Justice  
999 18th Street, South Terrace, Suite 370

Denver, Colorado 80202

**Representing, and signing on behalf of, the United States of America.**



Date: 8.10.15

Howard Funke

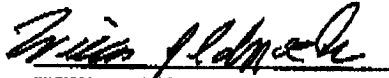
Howard Funke & Associates, P.C.

424 Sherman Avenue, Suite 308

P.O. Box 969

Coeur d'Alene, Idaho 83816

**Representing, and signing on behalf of, the Coeur d'Alene Tribe**



Date: 8/7/2015

William Schroeder  
Paine Hamblen LLP  
717 W. Sprague Avenue, Suite 1200  
Spokane, Washington 99201  
Representing, and signing on behalf of, Avista

*John T McFaddin*

Date: 8-6-2015

John McFaddin  
20189 S. Eagle Peak Rd.  
Cataldo, Idaho 83810

**Representing, and signing on behalf of, himself**

**CONSENT TO BE BOUND  
BY MEMORANDUM OF AGREEMENT**

I \_\_\_\_\_ am a claimant in the Coeur d'Alene-Spokane River Basin Adjudication ("CSRBA"). I desire to participate in the settlement discussions regarding issues related to the scope and extent of the federal reserved water right claims filed by the United States and the Coeur d'Alene Tribe of the Coeur d'Alene Indian Reservation in the CSRBA. I have reviewed the Memorandum of Agreement ("MOA") establishing the framework for these settlement discussions and agree to be bound by the terms of the MOA.

\_\_\_\_\_  
Claimant's Name

\_\_\_\_\_  
Claim Number(s)



## Attachment B

(Members of the North Idaho Water Rights Alliance)

Payne	Doug & Kristi
Oceanwood Oasis Trust	Pam Secord
Stanley	Robin & Leslee
Carver	Thomas and Mary
Mitchell	Gary & Patricia
Mullan School District #392	
Buell	Jack & Eleanor
Anderson	Edward & Candace
McCall	Norman
Harwood	Dick & Carole
Bostrom	Robert & Dianna
Anderson	Robert & Patty
Crows Nest Water Association	
Bruns	Nona
Weber	Bernard & Dawn
Banderob	Ralph & Martha
Weber Farms	
Clark	Carol
Devries	Ken & Yvonne
Havorson	Roderick & Beth
Day	Rick & Holly
Dohrman	Jean
DuHamel	Tom & Eileen
Mendive	Ronald & Sherlene
Ferris	John & Shirley
Michael	Roy & Linda
Furth	James & Victoria
Harrison	William & Gretchen
Hartel	Patrice
Gentry	Dean & Glenda
Johnson	J. Rachael

McAnich	William & Nancy
Murray	Terry & Wilma
Green	Martha
McMahon	John & Michelle
McFaddin	John & Agnes
Newson	Joel & Cindy
Powell	Richard L.
Petrie	Patrick & Annette
Smith	Paul & Colleen
Shippy	Jeff & Dede
Tuel	Lois
Short	Robert & Gail
Roberts	Elizabeth
Sotin	Larry & Susan
Vall	Don & Martha
Grubham	Harry
Wheeler	Marvin & MaryAnne
Boldt	Leland & Danielle
Brodie	Vic & Rita
Farrel	Edmond & Janet
McDaniel	Lance & J. Michele
Pinehurst Water District	
Ferriwood Water & Sewer District	
Shoshone County Public Works	
East Shoshone County Water District	
Shoshone County Sportsmen's Association	
Scott	Andrew & Heather
Kellogg School District	

## Attachment C

Addington	Steve
Aldredge	Linda
Andersen	R. Earl
Andersen	Audrey
Anderson	Carl W
Anderson	Dianne
Anderson	Naomi
Anderson	Perry
Backus	Dennis
Black Bear Water Assn	(Robert Nattleton)
Blalack	Arliss
Blalack	Carl
Blue Wolf Community Club	Marilyn Tanner, President
Boothe	John
Briggs	Gale
Briggs	Janet
Browning	Carol Felt
Burger	Terry
Cabeza	Miguel
Caroll	Norman
Carroll	Vicki
Chatfield-Dietrich	Annika
Cochrane	Carl
Coleman	Kevin
Conner	Bill L
Cooper	Cindy
Day	Julle
Day	Rick & Holly
Day	Tim
Dohrman	Jean
Donahoe	Larry
Donohoe	Bonnie (Eleanor Y)
Donohoe	Darby G
Donohoe	Russel
Doose	Bonnie
Dredge	Susan E
Dunn	Rickey

Dunnigan	Thomas F
Ecklund	Ernest & Myra
Ellis	Robert
Farber	Florence
Figueroa	Jeremie
Francis	Troy
Fritz	Herman
Frutchey	Frank
Funk	Jeff
Gilbreth	Terry
Graves	Phillip
Grunzweig	Robert & Julie
Hall	Warren
Hancock	Betty
Harpole	Barbara
Harrison	William B & Gretchen R
Hasz	Connie L
Hasz	Fred & Marcy
Hasz	William K
Herboldt	Dale
Higbee	Michael D.
Holm	Shella M.
Jacquemin	Helen
Jacquemin	Wendy
Johnson	Gary
Jordan	Kathy
Jordan	Lance M
Jordan	Wesley & Linda
Kahn	Kathryn
Kahn	Ralph
Klein	Beverly & Floyd
KleinKhecht	Keith
KleinKhecht	Nancy
Kraack	John R
Kropf	Mark P
Kuhnline	Mike & Tina
LaBolle	Daren
LaBolle	Daren & Janet

Layton	Barney
Layton	Dwayne
Layton	Rosie
Lehtola	Larry
Levine	Jaida
Levine	Phillip
Liss	Kim
Liss	Steven M
Littlejohn	Alan
Littlejohn	Linda
Lozano	Patricia
Lucas	Serena
Lucas	Tom
Luchini	Doug
Maddux	Bruce & Carol
Maehler	Michael R
Mainsey	Kaye A
Marsan	John M
Marsan	Shirley
Matthews	Stephen
McCaw	Donald & Christine
McDaniel	David & Kathy
McFadden	John & Agnes
McInturff	Douglas & Darcy
Mendive	Ron
Mitchell	Gary
Mitchell	Patricia
Morden	Joyce
Mortensen	Roy
Moyer	Derald
Murray	Paul
Neirinckx	John
Neirinckx II	John
Noel-Wessel	Daria
Owen	Vicki Hendrick & Sam
Powell	Jodi
Powell	Robert
Prueher	Cheryl
Radford	Ben

Razor Family Property Revocable Trust	
Redman	Jordon
Remmick	Daniel G
Renner	Glennie & Elizabeth
Renner	Johanna
Renner	Kevin & Tiffany
Renner	Patricia & Kenneth
Rider	Linda
Rider	Robert
Rodgers	Jed
Rodgers	Susan
Rush	Joseph
Ryssman	Linda & Dwayne
Sanders	Gordon
Segsworth	Paul
Shannon	Tim
Sherfey	Don H
Sheridan	David
Sheridan	Margaret
Sichlinger	Alfred
Simonsen	Kevin & Shannon
Skidmore	Eric & Susan
Smith	Sharon & Fred
Stewart	Marsha J
Stock	Joyce D & Charles R
Strom	Nell & Nancy
Sutton	Donald
Sutton	Gina
Takashina	Hisaya & Dorothy
Tanner	Russel & Marilyn
Thomson	Steve
Timken	Peggy
Tyler	Jeff
Vawter	Les
Wall	Terry L
Warren	Gene L & Wesley L
Webb	Gene
Weeks	Gary

Weingart	David & Janet
White	William
White	Robert & Norma
Wilson	Randy

Woempner	Carla
Woempner	Verland
Wood	Ron
Zaken	Ken & Aileen