

Clerk  
Deputy Clerk

ORDER GRANTING MOTIONS FOR  
PERMISSIVE APPEAL

request oral argument. The Court thus finds that oral argument on the *Motions* to be unnecessary.

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

6. The State of Idaho filed notice that it does not oppose the *Motions* filed by the United States or the Tribe for permissive appeal. The Tribe filed notice that it does not oppose the *Motions* filed by the State, Hecla Limited, or the North Idaho Water Rights Group for permissive appeal. No opposition to any of the *Motions* for permissive appeal has been filed by any party.

## II. ANALYSIS

Idaho Appellate Rule 12(b) authorizes a party to file a motion with this Court seeking permission to appeal from an interlocutory order or judgment “which involves a controlling question of law as to which there is substantial grounds for difference of opinion and in which an immediate appeal from the order or decree may materially advance the orderly resolution of the litigation.” The above-captioned proceeding involves 353 water right claims filed by the United States as trustee on behalf of the Tribe. The claims seek federal reserved water rights associated with the Coeur d’Alene Indian Reservation. In 2015, the Court consolidated the claims into the above-captioned subcase. It also bifurcated the litigation in this matter between issues of entitlement and quantification, with the issue of entitlement to be addressed first. The *Orders* of the Court identified above collectively address the issue of entitlement.

The Court agrees with the movants that all issues related to entitlement should be allowed to proceed collectively on appeal at this time. Allowing the issues to be appealed collectively will materially advance the orderly resolution of the litigation. It makes little sense for only those *Orders* the Court has Rule 54(b) certified to be appealed at this time. The Court has 54(b) certified only those *Orders* that finally disallow all, or a portion of, claims filed by the United States. However, the analysis, rationale, and reasoning in the Rule 54(b) certified *Orders* and the

non-certified *Orders* are intertwined and inextricably related to one another. The non-certified *Orders* provide the legal and factual grounds on which the certified *Orders* are founded. It is only logical that the certified and non-certified *Orders* be considered collectively on appeal to avoid piecemeal litigation and associated delays. Furthermore, the Court cannot proceed with the quantification phase of the claims until issues of entitlement are fully resolved.

The Court also agrees that the *Orders* involve controlling questions of law as to which there are substantial grounds for difference of opinion. These questions of law include the ascertainment of the primary and secondary purposes of the Coeur d'Alene Indian Reservation. These are important controlling legal questions where the parties have demonstrated that there are substantial grounds for differences of opinion. The Court therefore finds that the criteria for permission to appeal from the Court's non-certified *Orders* in conjunction with its certified *Orders* have been satisfied.

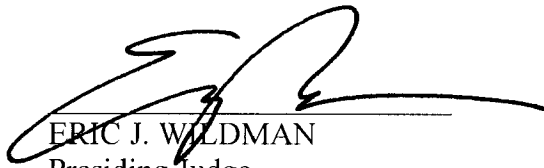
### III. ORDER

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

1. The State's *Motion for Permission to Appeal from Order on Motions for Summary Judgment, as Amended by Order Granting Motion to Reconsider and Order on Motion to Set Aside and Modify* **is hereby granted.**
2. The Tribe's *Motion for Leave to File Interlocutory Appeal* **is hereby granted.**
3. The United States' *Motion for Appeal by Permission* **is hereby granted.**
4. The North Idaho Water Rights Group's *Motion for Leave to File Interlocutory Appeal* **is hereby granted.**
5. Hecla Limited's *Motion for Leave to File Interlocutory Appeal* **is hereby granted.**

IT IS SO ORDERED.

Dated: August 16, 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
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92-10918	93-07507	93-07557	93-07607	94-09248	95-16682
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92-10920	93-07509	93-07559	93-07609	94-09250	95-16684

(Subcase list: CSRBATRIBE)

8/16/17

Subcase Nos:

95-16686	95-16740
95-16687	95-16741
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(Subcase list: CSRBATRIBE)  
8/16/17

**CERTIFICATE OF MAILING**

I certify that a true and correct copy of the ORDER GRANTING MOTIONS FOR PERMISSIVE APPEAL was mailed on August 16, 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

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

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

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

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

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  
PO BOX 83720  
BOISE, ID 83720-0010

SEMANKO, NORMAN M  
PARSONS BEHLE & LATIMER  
800 WEST MAIN STREET STE 1300  
BOISE, ID 83702

IDWR  
PO BOX 83720  
BOISE, ID 83720-0098

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

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

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

RONALD D HEYN  
828 WESTFORK EAGLE CREEK  
WALLACE, ID 83873