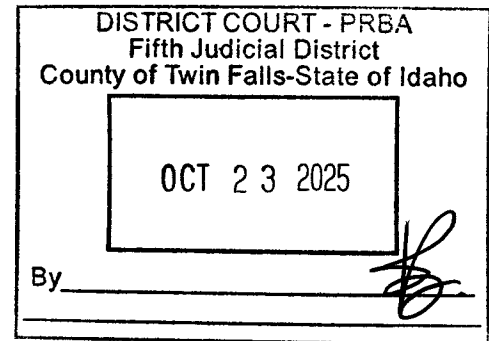


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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

IN RE: PRBA

CASE NO. 59576

Subcase No.: 87-12164

**RESPONSE TO OBJECTION TO
SUBPOENA FOR INSPECTION OF
PREMISES**

The Nez Perce Tribe, by and through its undersigned counsel, hereby submits the following response to the Objection to Subpoena for Inspection of Premises filed on October 13, 2025, by Richard L. Emerson, acting as "Agent" for Myron R. Emerson ("Objector"):

INTRODUCTION

On October 1, 2025, the Nez Perce Tribe ("Tribe") filed a Notice of Intent to Serve Subpoena for Inspection of Premises. Following expiration of the seven (7) day period allowing for parties to object to the Notice of Intent under I.R.C.P. 45(c)(2)(A), and upon issuance of the Subpoena (attached as **Exhibit A**) by the Court, the Tribe served Myron Emerson seeking to

inspect the following premises to confirm the existence of a spring corresponding to Subcase No. 87-12164:

PLACE: The Southwest Quarter-Quarter of Section 2 of the Southwest Quarter of Township 40 North, Range 4 West
DATE: October 16, 2025
TIME: 1:30 p.m.

Prior to the stated date and time, Richard L. Emerson, acting as “Agent for Myron R. Emerson,” filed an “Objection to Subpoena for Inspection of Premises” (“Objection”) on behalf of Myron R. Emerson. The Objection requests that the Court quash the Subpoena under I.R.C.P. 45(d) on the grounds that: (1) the subpoena is unreasonable; (2) the property may be inspected only by the Idaho Department of Water Resources (“IDWR”) under Idaho Code § 42-1410; and (3) the inspection is outside the boundaries of the claimed point of diversion and place of use, and is not relevant to the Tribe’s claimed water right.

RESPONSE

1. There is Legal Authority for the Issuance of a Subpoena for Inspection of Premises.

The Subpoena was issued pursuant to I.R.C.P. 45(c)(2), which provides:

Subpoena to a Non Attending Party. A subpoena to command a person who is not a party to produce or to permit inspection and copying of documents, electronically stored information, or tangible things, *or to permit inspection of premises* may be served at any time after all parties have either appeared or have been defaulted, unless otherwise ordered.

(emphasis added). Any doubt about the applicability of this rule is resolved by PRBA

Administrative Order 1, “Rules of Procedure,” (“PRBA AO#1”) which provides:

The litigation of the Palouse River Basin Adjudication (“PRBA”) will be governed by the Idaho Rules of Civil Procedure (“I.R.C.P.”), the Idaho Rules of Evidence (“I.R.E.”) and the Idaho Appellate Rules (“I.A.R.”).

PRBA AO#1 § 1(a) at 1. Discovery is currently ongoing in the PRBA, and the Subpoena was lawful and appropriate under the I.R.C.P.

Objector's claim that inspections may be conducted only by IDWR pursuant to Idaho Code § 42-1410 is incorrect for two reasons:

First, Objector's reliance on Idaho Code § 42-1410 is misplaced. Section 42-1410(2) provides:

The director and other employees of the department shall have authority to go upon all lands, both public and private, for the purpose of investigating the uses of water from any water source and may require the cooperation of the claimant in investigating the claimant's water use.

Objector claims that “*only* the Director of the Idaho Department of Water Resources or authorized personnel may enter upon private property for adjudication-related investigations.” Objection at 2 (emphasis added). The actual language of the statute, however, is not exclusive; it simply authorizes IDWR “to go upon all lands, both public and private.” Here, there is another statute or rule authorizing the inspection of the premises – I.R.C.P. 45(c).

Second, the context of the authorization for IDWR to enter upon lands to investigate the uses of water is in the context of IDWR's duties upon the commencement of a general adjudication. Idaho Code § 42-1410(1) provides that, “[u]pon entry of the court's order commencing a general adjudication ... Idaho Code, the director shall commence an examination of the water system, the canals and ditches and other works, and the uses being made of water diverted from the water system for water rights acquired under state law.” This investigation is followed by the issuance of a director's report on the water system. Idaho Code § 42-1411(1). Notably, IDWR does not investigate or make recommendations for water right claims based upon federal law.

2. The Inspection of Premises is Necessary to Confirm the Existence of a Spring.

The need for the Subpoena is not only stated on the Subpoena itself, “to confirm the existence of a spring,” but also can be inferred from the map attached to the Objection. In its Notice of Provisional Claim, the Tribe identified the Point of Diversion as Township; 40N, Range; 04W, Section; 11, Q: Boise, QQ: NWNW. As the map attached to the Objection notes, the point of diversion is at the very northern edge of Section 11 (in fact, the claim number, 87-12164 appears on Mr. Emerson’s property on the map). Mr. Emerson’s property is located immediately north of Section 11.

As noted in the Affidavit of Allison Lebeda, filed separately and incorporated herein, in an initial site visit to the property identified in Claim No. 87-12164 on September 24, 2025, she and another Tribal technical staff member did not locate a spring on Township 40N, Range 04W, Section 11, and Quarter-Quarter NWNW, at the Point of Diversion as described in the Tribe’s claim but did locate evidence of a spring approximately 60 feet away believed to be on Township 40N, Range 04W, Section 2, and Quarter-Quarter SWSW, which is Mr. Emerson’s property. Affidavit of Allison Lebeda ¶¶ 2-5. Consistent with the methodologies Ms. Lebeda used to investigate the existence of this and several other springs within Administrative Basin 87, she believes that the spring associated with Subcase No. 12164 may in fact be present at this location on Mr. Emerson’s property but must conduct a field examination to confirm its existence. *Id.* ¶ 6.

Before serving the subpoena on Mr. Emerson, the Tribe made diligent efforts to contact Mr. Emerson to conduct a voluntary field examination on his property. The Tribe sent letters to Mr. Emerson at his address of record on September 16, 2024, and July 28, 2025, describing the Tribe’s provisional spring claim and requesting Mr. Emerson’s cooperation in allowing the Tribe to conduct a field visit on his property to confirm the spring’s existence. Ms. Lebeda and a Tribal

technical staff representative also stopped by Mr. Emerson's home on September 24, 2025, and spoke with Mr. Emerson's wife. *Id.* ¶ 7. Ms. Lebeda explained the purpose of their visit and provided Ms. Emerson a copy of one of the Tribe's letters to Mr. Emerson. *Id.* Ms. Emerson accepted the letter, explained they have been having mail trouble and been traveling a lot but would review the letter. *Id.* However, the Tribe's efforts were unsuccessful.

3. Idaho's Uniform Power Of Attorney Act Does Not Authorize the Practice of Law by Nonlawyers in the PRBA.

The Tribe has concerns with the manner in which the Objection was made. Richard L. Emerson filed the Objection as "Agent for Myron R. Emerson." Attached to the Objection is a "Limited Power of Attorney," dated October 12, 2025, which purports to appoint Richard L. Emerson as attorney-in-fact for Myron R. Emerson. The Limited Power of Attorney also purports to grant Richard L. Emerson the authority to:

- Prepare, sign, file, serve, and receive filings, objections, motions, discovery responses, correspondence, and other papers in PRBA Case No. 59576, Subcase 87-12164;
- Communicate and confer with the Court, the Clerk, the Idaho Department of Water Resources (IDWR), counsel for other parties, and any court-appointed special master regarding the subcase;
- Request, obtain, and receive copies of pleadings, orders, discovery, and records relating to the subcase;
- Endorse and acknowledge certificates of service and proofs of mailing or delivery for filings the Agent prepares or submits on my behalf;
- Take all other actions reasonably necessary and incidental to the foregoing authorities in connection with Subcase 87-12164.

Objection at 4. Through the Limited Power of Attorney, Richard L. Emerson has apparently assumed for himself the right to practice law in Idaho. However, this type of nonlawyer representation is not permitted.

First, powers of attorney under Idaho law do not permit nonlawyer representation. Powers of attorney in Idaho are governed by the Uniform Power of Attorney Act ("UPOAA"), Idaho Code

§§ 15-2-101 through 15-2-403. Idaho's UPOAA is a comprehensive statute which addresses nearly every area a power of attorney might cover. Idaho Code § 15-12-212 provides that "[u]nless a power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to perform any *lawful* act on behalf of the principal in connection with claims and litigation." (emphasis added). However, this provision in the UPOAA does not permit the practice of law by a nonlawyer who is designated as an agent through a power of attorney. *See Eby v. Johnston Law Office, P.C. et al.*, 518 P.3d 517 (Nev. App. 2022) (nonlawyer agent operating under a power of attorney granted under Nevada's UPOAA concerning claims and litigation may not litigate an action pro se in place of the principal or otherwise engage in the practice of law on the principal's behalf).

Second, Idaho law permits the practice of law only by licensed attorneys or by representatives in the magistrate's division under certain conditions. Idaho's law regarding the practice of law is clear. Idaho Code § 3-101 provides that, "[a]ny individual who is of the age of majority, of good moral character, and who possesses the necessary qualifications of learning and ability may, under such rules as the Supreme Court may prescribe, be admitted as an attorney and counselor in all courts of this state." Idaho Code § 3-104 provides:

If any person shall practice law or hold himself out as qualified to practice law in this state without having been admitted to practice therein by the Supreme Court and without having paid all license fees now or hereafter prescribed by law for the practice of law he is guilty of contempt both in the Supreme Court and district court for the district in which he shall so practice or hold himself out as qualified to practice. Provided, that any person may appear and act in a magistrate's division of a district court as representative of any party to a proceeding therein so long as the claim does not total more than \$300, and so long as he or his employer has no pecuniary interest in the outcome of the litigation, and that he shall do so without making a charge or collecting a fee therefor.

This provision allows an individual the right to appear as the representative of a party in a magistrate's division only under certain limited conditions.

Third, Idaho law has held that the prohibition against practicing law includes drafting and filing pleadings for another person. Idaho courts have held that "[Idaho Code § 3-104]'s prohibition against practicing law without a license unquestionably applies to representation of another in court proceedings and the drafting and filing of pleadings for another." *State v. Bettwieser*, 143 Idaho 582, 587 (Ct. App. 2006) (citing *Idaho State Bar v. Meservy*, 80 Idaho 504, 508 (1959); *In re Matthews*, 57 Idaho 75, 83 (1936); *State v. Wees*, 138 Idaho 119, 122 (Ct. App. 2002)); *see also Idaho State Bar v. Villegas*, 126 Idaho 191 (1994) (a "public adjuster" who was not licensed to practice law was enjoined from engaging in activities which involved the determination of legal rights and responsibilities, giving legal advice and counsel, representing clients to negotiate and settle personal injury claims, or preparing legal instruments or contracts).

Fourth, cases from other jurisdictions support the proposition that a power of attorney does not authorize the practice of law. *State v. Hunt*, 880 P.2d 96, 102 (Wash. App. 1994); *In re Estate Wheeler*, 824 S.E.2d 715, 717 (Ga. App. 2019) (citation omitted). "A power of attorney does not grant an individual the power to act as an attorney. The practice of law is limited to pro se litigants seeking to vindicate their own rights and licensed attorneys admitted to practice before the court." *Manship v. Thomson*, 2011 WL 147880 *2 (W.D. Va. 2011) (citation omitted). "While non-attorneys may appear pro se on their own behalf, a non-attorney has no authority to appear as an attorney for others than himself. Though Plaintiff's durable power of attorney makes Mr. Rowe his attorney in fact, attorneys in fact are not authorized to practice law." *Markussen v. Warner*, 2016 WL 6496723 *1 n.1 (W.D. Wash. 2016) (citations omitted).

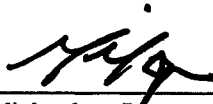
PRBA AO#1 only recognizes the right of a litigant to appear to represent himself or herself pro se. PRBA AO#1 § 25 at 31. The PRBA does not authorize nonlawyer representation of an individual or party.

Given that Richard L. Emerson does not have the authority under Idaho law to act as an attorney before this Court, the Court should overrule the Objection and/or strike the Objection.

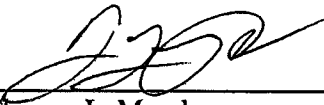
CONCLUSION

For these reasons, the Objection to Subpoena for Inspection of Premises should be overruled and/or stricken and the Court should establish a specific date and time for the inspection of the premises described in the Subpoena.

DATED this 23rd day of October, 2025.



Michael A. Lopez



Thomas L. Murphy

Attorneys for the Nez Perce Tribe

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

IN RE: PRBA CASE NO. 59576	SUBCASE NO. 87-12164 SUBPOENA FOR THE INSPECTION OF PREMISES
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FROM THE STATE OF IDAHO TO:

MYRON EMERSON
1030 Boller Road
Potlatch, Idaho 83855

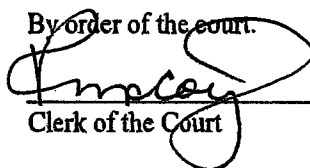
YOU ARE COMMANDED to permit the inspection of the following premises (to confirm the existence of a spring) at the date and time specified below:

PLACE: The Southwest Quarter-Quarter of Section 2 of the Southwest Quarter of Township 40 North, Range 4 West
DATE: October 16, 2025
TIME: 1:30 p.m.

YOU ARE FURTHER NOTIFIED THAT if you fail to permit inspection of the premises at the place, date and time specified above, you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100 and all damages which the party may sustain by your failure to comply with this subpoena.

DATED this 2 day of October, 2025.

By order of the court.


Clerk of the Court

Deputy Clerk

Issued at the request of:
Michael A. Lopez, Idaho State Bar. No. 8356
Nez Perce Tribe, Office of Legal Counsel
P.O Box 305
Lapwai, ID 83540
Telephone: (208) 843-7355
mlopez@nezperce.org
Attorney for the Nez Perce Tribe

DISTRICT COURT - PRBA Fifth Judicial District County of Twin Falls-State of Idaho
OCT 2 2025
By 

EXHIBIT A

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 23, 2025, I filed a true and correct copy of the RESPONSE TO OBJECTION TO SUBPOENA FOR INSPECTION OF PREMISES via facsimile to the Clerk of the District Court at the address listed below.

CLERK OF THE DISTRICT COURT
Palouse River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707
Fax: (208) 736-2121

I FURTHER CERTIFY that on October 23, 2025, Native American Rights Fund legal staff served a true and correct copy of the foregoing by the methods indicated below:

IDWR DOCUMENT DEPOSITORY P.O. BOX 83720 BOISE, ID 83720-0098	☒ U.S. First Class Mail, Postage Prepaid ☐ Hand-Delivered ☐ Overnight Delivery ☐ Facsimile ☒ E-mail: Lacey.Rammell-OBrien@idwr.idaho.gov
U.S. DEPARTMENT OF JUSTICE ENVIRONMENT & NATURAL RESOURCES DIVISION P.O. BOX 7611 BEN FRANKLIN STATION WASHINGTON, D.C. 20044-7611	☐ U.S. First Class Mail, Postage Prepaid ☐ Hand-Delivered ☐ Overnight Delivery ☐ Facsimile ☒ E-mail: emmi.blades@usdoj.gov hillary.hoffman@usdoj.gov
CHIEF, NATURAL RESOURCES DIVISION OFFICE OF THE ATTORNEY GENERAL P.O. BOX 83720 BOISE, ID 83720-0010	☐ U.S. First Class Mail, Postage Prepaid ☐ Hand-Delivered ☐ Overnight Delivery ☐ Facsimile ☒ E-mail: David.Perkins@ag.idaho.gov rowdy.keller@ag.idaho.gov
POTLATCH TRS IDAHO, LLC, POTLATCHDELTIC FOREST HOLDINGS, INC., POTLATCHDELTIC LAND AND LUMBER LLC Represented by: MICHAEL P LAWRENCE	☐ U.S. First Class Mail, Postage Prepaid ☐ Hand-Delivered ☐ Overnight Delivery ☐ Facsimile ☒ E-mail: mpl@givenspursley.com

CHARLIE S BASER 601 W BANNOCK ST PO BOX 2720 BOISE, ID 83701-2720	<u>charliebaser@givenspursley.com</u>
CAROL & GLEN BARNETT, AMY & ROB LARSON, KYLE HAWLEY, RANDY SEXTON BEN BARSTOW, SHAWN NILSSON, K4 LLC, JULIE & MARTIN HAARR Represented by: NORMAN M SEMANKO PARSONS BEHLE & LATIMER 800 W MAIN STREET STE 1300 BOISE, ID 83702	☐ U.S. First Class Mail, Postage Prepaid ☐ Hand-Delivered ☐ Overnight Delivery ☐ Facsimile ☒ E-mail: <u>NSemanko@parsonsbehle.com</u>
RICHARD L. EMERSON 6893 E CUB RIVER ROAD PRESTON, ID 83263	☒ U.S. First Class Mail, Postage Prepaid ☐ Hand-Delivered ☐ Overnight Delivery ☐ Facsimile ☒ E-mail: <u>Richemerson19@gmail.com</u>
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By 