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ATTORNEY GENERAL

SCOTT L. CAMPBELL, ISB No. 2251
Deputy Attorney General
Chief, Energy and Natural Resources Division

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Attorneys for Petitioner State of Idaho

<p>DISTRICT COURT - PRBA Fifth Judicial District County of Twin Falls - State of Idaho</p> <p>SEP 18 2025</p> <p>By _____ Clerk _____ Deputy Clerk</p>
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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: 87-11982—87-12004
(Nez Perce Tribe Instream Flow Claims)

**STATE OF IDAHO'S I.R.C.P. 26(b)(4)
EXPERT WITNESS DISCLOSURE**

Objector State of Idaho ("State") hereby discloses experts expected to testify at trial pursuant to I.R.C.P. 26(b)(4)(A)(i).

1. **Scott A. Miltenberger, Principal Historian, JRP Historical LLC**

A. Subject Matter: Historical fishing practices of the Nez Perce Tribe and the general history of the Nez Perce Tribe concerning Claimant's instream flow claims.

B. Substance of Opinions: The opinions Dr. Miltenberger will express and the bases and reasons for his opinions are set forth in the attached **Exhibit 1**, Declaration of Scott Miltenberger, dated September 15, 2025, which is incorporated herein by reference.

C. Facts and Data Relied Upon: Dr. Miltenberger will rely on his education, training, experiences as a historian, prior experience with tribal water rights issues, including work in the Coeur d'Alene-Spokane River Basin Adjudication, his review and evaluation of the expert reports prepared by Mario Battaglia and Ian Smith, as well as the attached technical and field data that the reports rely on, and his knowledge of generic historical literature concerning any subject he will be asked to testify about.

D. Qualifications: Dr. Miltenberger has a Bachelor of Arts Degree in History, a Master of Arts in United States History, and a Ph.D. in United States History from the University of California, Davis. He has been a consulting historian for JRP Historical Consulting LLC since 2006.

E. Publication History: Dr. Miltenberger's authored publications within the last ten years are included in his *curriculum vitae*, attached to Exhibit 1 as Exhibit A.

F. Testimony History: Dr. Miltenberger has been deposed and testified numerous times. A list of cases in which he has provided testimony is included in his *curriculum vitae*, attached to Exhibit 1 as Exhibit A.

G. Compensation: Dr. Miltenberger is being compensated at a rate of \$200 per hour for expert review and analysis and \$400 per hour for deposition and trial testimony, plus expenses billed at cost.

2. Joe DuPont, Clearwater Region Fisheries Manager for the Idaho Department of Fish and Game (“IDFG”)

A. Subject Matter: Fish species, fisheries, and personal knowledge of the Palouse River Basin (“PRB”) relating to the Claimant’s instream flow claims.

B. Substance of Opinions: The opinions Mr. DuPont will express and the bases and reasons for his opinions, are set forth in the attached **Exhibit 2**, Declaration of Joe DuPont, dated September 5, 2025, which is incorporated herein by reference.

C. Facts and Data Relied Upon: Mr. DuPont will rely upon his education, training, work experience, technical and personal knowledge of the fisheries within the PRB, data and information compiled by the Technical Advisory Committee for the Palouse River Basin Adjudication and his knowledge of generic natural resource literature concerning any subject he will be asked to testify about.

D. Qualifications: Mr. DuPont has a Bachelor of Science degree in Zoology and a Master of Science degree in Fisheries Resources from the University of Idaho. He has been involved in fisheries biology in Northern Idaho since 1994, serving

the last seventeen years as the Regional Fisheries Manager for the Idaho Clearwater Region.

E. Publication History: A list of Mr. DuPont's published, peer-reviewed publications is attached in Exhibit 2. *See* ¶ 11, Exhibit 2.

F. Testimony History: Mr. DuPont has not been deposed or testified as an expert at trial within the preceding four years.

G. Compensation: Mr. DuPont is not currently receiving compensation for his testimony in these proceedings beyond his standard compensation as an employee of IDFG. However, Mr. DuPont plans to retire on or about December 31, 2025. After retirement, Mr. Dupont has agreed to be retained as an expert witness in this matter. He will be compensated \$150 per hour for expert review, analysis and reports, \$300 per hour for deposition and trial testimony, plus expenses billed at cost.

3. Other Disclosures

Discovery in this matter is not yet complete. Therefore, the State reserves the right to alter, amend or supplement this disclosure to elicit further opinions and statements from the identified experts, as new or additional information is produced or made available to said experts. This disclosure is based on the state of discovery conducted thus far and the documents that have been produced to date.

The State reserves all rights to supplement, change, modify, or add to this designation of expert witnesses. The State also reserves the right not to call any of

the persons identified as expert witnesses and further reserves the right not to elicit some of the opinions disclosed.

The State reserves the right to call any and all expert witnesses disclosed for use at trial by any other party in this litigation to discuss issues related to their expert witness disclosures, their anticipated testimony, their affidavits, and any further depositions or discovery responses provided in this case.

DATED this 17th day of September 2025.

A handwritten signature in black ink, appearing to read 'D. Perkins', is written above a horizontal line.

DAVID S. PERKINS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of September 2025, I caused to be served a true and correct copy of the foregoing document by the methods indicated:

CLERK OF THE DISTRICT COURT PALOUSE RIVER BASIN ADJUDICATION 253 THIRD AVE NORTH P.O. BOX 2707 TWIN FALLS, ID 83303-2707	<input type="checkbox"/> By U.S. Postal Service/mail <input checked="" type="checkbox"/> Overnight w/FedEx <input type="checkbox"/> By email to:
NORMAN M SEMANKO PARSONS BEHLE & LATIMER 800 W MAIN STREET STE 1300 BOISE, ID 83702	<input checked="" type="checkbox"/> By U.S. Postal Service/mail <input checked="" type="checkbox"/> By email to: NSemanko@parsonsbehle.com
DIRECTOR OF IDWR PO BOX 83720 BOISE, ID 83720-0098	<input type="checkbox"/> By U.S. Postal Service/mail <input checked="" type="checkbox"/> By email to: file@idwr.idaho.gov
U S DEPARTMENT OF JUSTICE ENVIRO & NAT'L RESOURCES DIV 550 WEST FORT STREET, MSC 033 BOISE, ID 83724	<input checked="" type="checkbox"/> By U.S. Postal Service/mail <input checked="" type="checkbox"/> By email to: Emmi.Blades@usdoj.gov , Hillary.Hoffman@usdoj.gov
CHARLIE S BASER MICHAEL P LAWRENCE GIVENS PURSLEY LLP 601 W BANNOCK ST PO BOX 2720 BOISE, ID 83701-2720	<input checked="" type="checkbox"/> By U.S. Postal Service/mail <input checked="" type="checkbox"/> By email to: mpl@givenspursley.com
THOMAS MURPHY NATIVE AMERICAN RIGHTS FUND 250 ARAPAHOE AVE BOULDER, CO 80302	<input checked="" type="checkbox"/> By U.S. Postal Service/mail <input checked="" type="checkbox"/> By email to: murphy@narf.org
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P.O. BOX 107
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REBECCA WILLS

EXHIBIT 1

Declaration of Scott A. Miltenberger

.RAÚL R. LABRADOR
ATTORNEY GENERAL

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Deputy Attorney General
Chief, Energy and Natural Resources Division

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Attorneys for Petitioner 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: PRBA

Case No. 59576

Subcase: 87-11982—87-12004
(Nez Perce Tribe Instream Flow Claims)

**DECLARATION OF SCOTT A.
MILTENBERGER**

I, Scott Miltenberger, hereby state and declare:

1. My name is Scott Miltenberger. I am a professional consulting historian, specializing in environmental and natural resources issues.

2. I am currently a principal historian for JRP Historical Consulting LLC in Davis, California. I have been employed in this position since 2006.

3. Attached hereto as **Exhibit A** and incorporated herein by reference is a complete and accurate copy of my current *curriculum vitae*, which accurately summarizes my education, employment, and professional qualifications.

4. I graduated from the University of California, Davis (“U.C. Davis”) *summa cum laude* with a Bachelor of Arts degree in History. I continued my education at U.C. Davis, receiving my Master of Arts in United States History in 2001, before receiving my Ph.D. in United States History in 2006.

5. As a consulting historian, I have researched historical land and water use in California, Idaho, Arizona, and Oregon. Since 2006, I have worked for various local, state, and federal agencies, preparing expert reports and have given expert opinions before various state and federal courts. I have testified as an expert witness in numerous depositions and trials. A list of the cases in which I have provided testimony is included in my *curriculum vitae*.

6. In the last ten years I have authored two publications. These publications are listed in my *curriculum vitae* along with my professional qualifications and experience.

7. The State of Idaho (“State”) requested that I provide expert opinions concerning the historical information contained in the expert reports and supporting documents produced by the United States and the Nez Perce Tribe in the Palouse River Basin Adjudication (“PRBA”) litigation.

8. I am being compensated for my time spent reviewing materials, conducting analysis, and providing testimony in this matter. My compensation is \$200 per hour for expert review, analysis and reports, and \$400 per hour for deposition and trial testimony, plus expenses billed at cost.

9. In forming my expert opinions in this matter, I reviewed and considered the expert reports of Mr. Ian Smith, dated April 2025, and Mr. Mario Battaglia, dated April 16, 2025, as well as the technical data and field surveys appended to these reports.

10. The expert opinions contained in this declaration are based upon my education, training, and work experience. My work experience includes assisting my employer (and later business partner) Mr. Stephen Wee (retired) in researching issues for the State in the Coeur d'Alene-Spokane River Basin Adjudication. In the course of that work, I gained knowledge regarding the history and context of the Stevens Treaties in the Pacific Northwest.

11. I am not an attorney and do not offer opinions on legal rights or conclusions of law. My expert opinions are limited to the evaluation of historical facts and interpretations presented by Messrs. Smith and Battaglia, facts and interpretations which are within my professional expertise as a historian to evaluate.

12. I have been asked to assume, for purposes of this declaration, that "usual and accustomed fishing rights" provide Nez Perce tribal members a non-exclusive right to take fish at locations traditionally and customarily used by the

tribe. Such locations are historically established, remain in present use, and are and have been open and notorious to others.

13. I reviewed the documents relied on by Messrs. Smith and Battaglia to determine whether these documents establish support for the Nez Perce Tribe's claims that its tribal members have had or continue to have usual and accustomed fishing locations in the Palouse River Basin in Idaho ("PRB").

14. In my expert opinion, neither the United States' expert nor the Nez Perce Tribe's expert have established facts or historical evidence that support the Nez Perce Tribe's claim to "usual and accustomed fishing locations" in the PRB, as that phrase has been defined for me. Specifically, the historical documents relied upon do not identify facts that the Tribe and its members regularly or customarily fished at specific sites within the PRB or continue to do so today.

15. The United States' expert, Ian Smith, observes in his report that "anadromous species are not found in the Idaho portion of the [PRB] due to the presence of Palouse Falls." Ian Smith Report at Bates No. US0002744.

16. The Smith report further argues that "recent studies have shown that several non-anadromous fish species were highly prized by Nez Perce Tribal members, especially as their supplies of dried salmon and other food sources ran out." Ian Smith Report at Bates No. US0002744.

17. The Smith report indicates that non-anadromous fish caught by the Tribe included "whitefish, sturgeon, lamprey, chiselmouth, squawfish (pikeminnow), and suckers." Ian Smith Report at Bates No. US0002745 (quoting Landeen and

Pinkman, *Salmon and His People*, Attachment to Ian Smith's Report, Bates No. US0006544). The report goes on to identify "longnose dace, speckled dace, redbside shiner, largescale sucker, and the bridgelip sucker" as additionally located within "[t]he Basin...for which Tribal members fished." Ian Smith Report at Bates No. US0002745.

18. The cited Landeen report, however, does not specify fishing locations in the PRB – nor do other sources cited in the Smith Report in support of this claim. These other sources, moreover, are based primarily on studies of southeastern Washington state or watersheds outside the PRB. Tetra Tech, Inc., "Instream Assessment of Biota and Migration Patterns of the South Fork Palouse River Watershed," prepared for U.S. EPA Region 10, April 8, 2011, Attachment to Ian Smith's Report, Bates No. US0006569; and Ruth E. Griffith, "Preliminary Survey of the Parasites of Fish of the Palouse Area," *Transactions of the American Microscopical Society* 72, no. 1 (January 1953): 51-57, Attachment to Ian Smith's Report, Bates No. 0005037. Of the fish identified by the Smith Report as sought by the Nez Perce, Griffith notes the presence of only dace at Robinson Lake in Idaho and makes no claim that such fish were caught by members of the Tribe. Bates No. 0005042.

19. The Smith report also references maps to support the claim that the Tribe used traditional fishing sites above Palouse Falls. Verne F. Ray, *Maps of "Palus: Economic Use,"* Attachment to Ian Smith's Report, Bates No. US0005125-28. However, a review of these maps reveals that the identified sites are located in

eastern Washington, not in the PRB. Verne F. Ray, *Maps of "Palus: Economic Use,"* Attachment to Ian Smith's Report, Bates No. US0005125-28.

20. Based upon the historical record presented in the Smith report, it is possible that some tribal members historically fished from time to time in the PRB. Ian Smith's Report, Bates No. US0002747. However, in my expert opinion, the historical facts and expert opinions expressed in Mr. Smith's report do not establish that the Tribe and its members have traditionally used, and continue to use, any identifiable customary fishing locations in the PRB.

21. The Nez Perce Tribe's expert, Mario Battaglia, provides expert opinions similar to Mr. Smith's. Like Mr. Smith, Mr. Battaglia confirms that "Palouse Falls prevents fish passage." Mario Battaglia Report at Bates No. NPTPRBA04835.

22. Even so, Mr. Bataglia asserts in his report "there are several fish in the upper Palouse River and its upper tributaries that were caught by the Nez Perce tribe" as "[e]thnographic records of fish drying in Genesee, for example, testify to fishing in these streams and waterways." Mario Battaglia Report at Bates No. NPTPRBA04836. Yet, Mr. Battaglia's report is not specific as to what fish were purportedly caught or where such fish were allegedly caught.

23. Mr. Battaglia's report, moreover, quotes an interview by anthropologist Verne Ray with Nez Perce informant Dave Arthur recalling that "Genesee is a place where they dried salmon." Mario Battaglia Report at Bates No. NPTPRBA04837 (quoting an interview between Verne Ray and Dave Arthur). That interview between Verne Ray and David Arthur was not provided, could not be independently reviewed,

and is therefore of limited value in assessing the factual quality of the opinions expressed in Mr. Battaglia's report.

24. As both Mr. Smith and Mr. Battaglia acknowledge, no anadromous fish can reach the PRB. Given the fact that neither salmon nor steelhead can migrate over Palouse Falls into the PRB, it is impossible for the salmon that the Tribe reportedly dried at Genesee to have been caught within the PRB, and seems more likely given evidence presented in the Smith report that the salmon were caught on the Snake, Salmon, or Clearwater rivers. Ian Smith's Report, Bates No. US002743. Mr. Battaglia's report likewise identifies the Lewis and Clark expedition in 1805 as observing fishing by the Nez Perce on the Lochsa River "in the Clearwater drainage...near modern-day Powell just outside the PRB study area." Mario Battaglia Report at Bates No. NPTPRBA04836

25. Mr. Battaglia's report tacitly concedes that the Tribe presently does not have any usual and accustomed fishing sites within the PRB. Mr. Battaglia states that "there are several fish in the upper Palouse River and its upper tributaries that were caught by the Nez Perce tribe until fences were erected." Mario Battaglia Report at Bates No. NPTPRBA04836. I understand this statement to be an acknowledgment that even if the Tribe at one time had specific traditional and customary fishing places in the PRB – a fact not supported by the historical record presented – such places are no longer used.

26. As with the Smith report, the historical information presented in the Battaglia report suggests that some tribal members historically fished from time to

time in the PRB. Mario Battaglia Report at Bates No. NPTPRBA04836-04837. However, in my expert opinion, no evidence is offered that establishes the existence of traditional fishing locations in the PRB, in Idaho, that were usual and accustomed, open and notorious to other inhabitants.

27. If any undocumented traditional fishing locations had existed in the PRB at some time in past, it is my expert opinion that no evidence has been offered that supports the assertion that the Nez Perce Tribe has continued to rely on any such traditional fishing locations in the past 100 years.

I certify under penalty of perjury, under the laws of the State of Idaho that the foregoing is true and correct.

Dated this 15th day of September, 2025

A handwritten signature in black ink, reading "Scott A. Miltenberger", written over a horizontal line.

Scott A. Miltenberger, Ph.D.

EXHIBIT A

Scott A. Miltenberger Ph.D.

Scott A. Miltenberger, Ph.D.
Principal · Historian

Summary

Dr. Miltenberger is a professional consulting historian, specializing in environmental and natural resources issues. Since joining JRP in 2006, he has researched historical land and water use in California and elsewhere in the American West. Dr. Miltenberger has also led historical investigations of survey / boundary disputes, potentially responsible parties for toxic clean-up under the provisions of CERCLA, river meanders, levee construction and performance, and flood management operations. His clients have included local, state, and federal agencies, as well as private parties. Dr. Miltenberger has qualified as an expert historian and given expert witness testimony before the California State Water Resources Control Board; in Orange County Superior Court; in Sacramento County Superior Court; in Santa Barbara Superior Court; in Santa Clara County Superior Court; in Sonoma County Superior Court; in Maricopa County (Arizona) Superior Court; in United States District Court, Northern District of California and Eastern District of California (Fresno Division); and in a United States Supreme Court original action.

Selected Professional Experience

Expert Witness Work, Deposition, and Trial / Hearing Testimony

Five Point Holdings, LLC, et al., Plaintiffs, v. United States of America, Defendant, Case No. 3:20-cv-01480-JD; *Five Point Holdings, LLC, et al., Plaintiffs, v. Tetra Tech, Inc, et al., Defendants*, Case No. 3:20-cv-01481-JD; and *CPHP Development, LLC, et al., Plaintiffs, v. Tetra Tech, Inc., et al., Defendants*, Case No. 3:20-cv-01485-JD, United States District Court, Northern District of California. Prepared expert historian report (based on federal archival and library research and produced records) concerning the history of the development of the former San Francisco Naval Shipyard at Hunters Point and the presence of radiological material at the former US Navy (Navy) facility through the end of the 20th century, in anticipation of expert witness testimony for Five Point Holdings, LLC, CPHP Development, LLC, and Lennar. Los Angeles and San Francisco: Alston & Bird LLP, and O'Melveny & Myers LLP, 2025-Present.



Contact

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Education

Ph.D., United States History,
University of California, Davis,
2006

M.A., United States History,
University of California, Davis,
2001

A.B. History, *summa cum laude*,
Colgate University, New York,
1999

Academic Honors,

Fellowships, and Grants

Agricultural History Center
Dissertation Grant, University of
California, Davis, 2005-2006

Reed-Smith Dissertation-Year
Fellowship, University of
California, Davis, 2004-2005

Legacy Fellowship, American
Antiquarian Society, 2004

Distinction, Ph. D. Comprehensive
Examinations, University of
California, Davis, December
2001

Jacob K. Javits Graduate Fellowship,
United States Department of
Education, 2000-2004

Reed-Smith Incoming Graduate
Student Fellowship, University
of California, Davis, 1999

Charles A. Dana Fellowship, Colgate
University, 1997-1999

Alumni Memorial Scholarship,
Colgate University, 1995-1999

Phi Beta Kappa, Colgate University,
September 1998 (inducted)

Phi Alpha Theta, Colgate University,
September 1997 (inducted)

Professional Affiliations

American Historical Association
(Pacific Coast Branch)

American Society for Environmental
History

National Council on Public History
(Consultants' Committee)

Mojave Pistachios, LLC, et al., Plaintiffs, v. Indian Wells Valley Water District; et al., Defendants, Case No. 30-2021-01187275-CU-OR-CJC, Superior Court of the State of California, For the County of Orange, Civil Complex Center. Prepared expert historian report (based on research in federal, state, and local records in California, College Park, MD, and Washington, DC) for anticipated expert deposition and trial testimony for the United States Navy, Naval Air Weapons Station, China Lake, California concerning the history of the installation, its mission, population, and groundwater use for the purposes of a federal reserved water right claim. Washington, DC and Denver, CO: United States Department of Justice, 2021-Present.

State of Texas v. State of New Mexico and State of Colorado, No. 141, Original, Supreme Court of the United States. Prepared expert historian reports and declarations (based on extensive archival and library research in California, Colorado, Massachusetts, New Mexico, Texas, Washington, DC, and Wyoming), and provided expert witness deposition and trial testimony for the State of Texas concerning the development of the Rio Grande Compact of 1938. Sacramento, CA: Somach Simmons & Dunn, 2012-Present.

United States of America, Plaintiff, v. 331.46 Acres of Land, More or Less, Situated in Madera County, State of California, et al, Defendants, Case No. 1:23-CV-00735-NODJ-BAM, United States District Court, Eastern District of California, Fresno Division. Provided expert declaration of salient findings from historical research and analysis of the origins of Columbia Canal, the early history of Columbia Canal Company, and the relationship of the mutual water company to its shareholder, in support of Columbia Canal Company's opposition to the United States' Motion for Judgment. Sacramento: Downey Brand, LLP, 2024.

William Tourady, Ginger Tourady, Kelly Jenette, Carol J. Groves as Trustee of the Groves Family Trust, Plaintiffs, vs. Katherine Kemerait, et al., Defendants, Case No. SCV-265679, Superior Court of the State of California, County of Sonoma. Provided expert witness testimony for Katherine Kemerait evaluating historical evidence presented by plaintiffs of California riparian, prescriptive, and pre-1914 water rights. Petaluma, CA: Law Office of Peter Kiel, 2022.

Las Posas Valley Water Rights Coalition, et al., Plaintiffs, vs. Fox Canyon Groundwater Management Agency, et al, Defendants, Case No. VENC100509700, Superior Court of the State of California, County of Santa Barbara. Prepared expert historian report (based on library and archival research and review of corporate records) and provided expert deposition and trial testimony for Las Posas Valley Water Rights Coalition on the history of Del Norte Water Company and the historical relationship between the Company and its shareholders with regard to the development, distribution, and use of Las Posas Valley Groundwater Basin groundwater. Sacramento, CA: Downey Brand, LLP, 2021-2022.

In the Matter of Applications of North Kern Water Storage District and City of Shafter (Application 31673), City of Bakersfield (Application 31674), Buena Vista Water Storage District (Application 31675), Kern Water Bank Authority (Application 31676), Kern County Water Agency (Application 31677), and Rosedale-Rio Bravo Water Storage District (Application 31819), Phase 1B Hearing, California State Water Resources Control Board, Administrative Hearings Office. Provided expert witness testimony for the Kern Water Bank Authority regarding historical land and water use within present-day Buena Vista Water Storage District as well as the "Lower River Rights." Sacramento, CA: Downey Brand, LLP, 2018-2022.

The Vineyard House, LLC, Plaintiff, vs. Constellation Brands U.S. Operations, Inc., Defendant, Case No. 4:19-cv-1424-YGR, United States District Court, Northern District of California – Oakland. Prepared expert historian report (based on county records, and archival and library research), and provided expert witness deposition and trial testimony for The Vineyard House, LLC, regarding the name “To Kalon,” its historical association with a specific geographic place within the Oakville, California area, and the influence of H.W. Crabb, the original owner of To Kalon. San Francisco, CA: Buchalter, APC, 2019-2020.

Matt Pear and Mark Pear, Plaintiffs, vs. City and County of San Francisco, a municipal corporation, Does, 1-50, inclusive, Case No. 112CV227801, Superior Court of the State of California, County of Santa Clara. Provided expert witness testimony (based on research in federal, state, county, and municipal [San Francisco] records) for the City and County of San Francisco concerning historical land use and urban / suburban / industrial development of Santa Clara County in the 1950s as related to the Hetch Hetchy Aqueduct Right of Way. City and County of San Francisco, CA: City Attorney’s Office, San Francisco Public Utilities Commission, 2017.

Modesto Irrigation District vs. Heather Robinson Tanaka, et al. Case No. 34-2011-00112886, Superior Court of the State of California, County of Sacramento. Provided expert witness deposition and trial testimony (based on research in state and county records) for Modesto Irrigation District concerning the riparian status of a parcel in San Joaquin County and historical land and water uses on that parcel. Sacramento, CA: O’Laughlin & Paris LLP, 2014-2015.

In Re the General Adjudication of All Rights to Use Water in the Gila River System and Source. Civil Nos. W-1, W-2, W-3, and W-4, Contested Case No. W-1-11-605, Maricopa County Superior Court, State of Arizona. Prepared expert historian report (based on extensive archival and library research in Arizona, California, Colorado, and Washington, DC), and provided expert witness deposition and trial testimony for the United States Army and Fort Huachuca, Arizona concerning the history of the fort, its changing missions, population, and water use, for the purposes of a federal reserved water right claim. Washington, DC and Denver, CO: United States Department of Justice, 2012-2016.

Selected Consulting Historian Services Since 2006

Historical Review of Claims to Palouse River. Boise, ID: Natural Resources Division, Office of the Attorney General, State of Idaho, 2025-Present.

Historical Investigation of Colorado River Basin Water Right Claims and Disputes, 2024-Present.

Historical Investigation of San Joaquin River Meanders and Riparian Parcels, 2024-Present.

Historical Investigation of Water Development, Use, and Conservation, Byron-Bethany Irrigation District. Sacramento, CA: Somach, Simmons and Dunn, 2024-Present.

Historical Investigation of Groundwater Development in Oxnard-Pleasant Valley Area, Ventura County, 2023-Present.

Historical Investigation of Land Use and Water Right Entitlements in the Kings River Basin, 2022-Present.

Historical Investigation of Land Use and Water Right Entitlements in Calaveras County, CA, 2022-Present.

Historical Investigation of Groundwater Development in the Orange County Groundwater Basin, Orange County, CA, 2022-Present.

Historical Research and Analysis of "Cultivation," Agricultural Practices, and the Origins of California Water Code Section 1004. San Francisco, CA: Duane Morris LLP, 2020-Present.

Historical Investigation of Groundwater Development and Use in the Tulare Lake Basin, Kings and Tulare counties, CA, 2020-Present.

Historical Investigation of Riparian and Pre-1914 Appropriative Water Rights Claims along Bear Creek, Merced County, CA, 2020-Present.

Historical Investigation of Pre-1914 Water Rights for Agricultural Lands within the Fresno River Basin, Madera County, CA, 2020-Present.

Historical Investigation of Riparian and Pre-1914 Appropriative Water Rights for Agricultural Lands in Merced County, CA. San Francisco: Duane Morris LLP, 2019-Present.

Historical Investigation of Riparian and Pre-1914 Appropriative Water Rights for Sacramento-San Joaquin Delta Island Lands, 2016-Present.

Historical Investigation of Possible Water Right Entitlements in the Butte Basin, 2021-2023.

Historical Investigation of Historical Investigation of Riparian Water Rights for Coastal Property in San Mateo County, 2023.

Historical Investigation of Water Right Priorities in Tehama County, CA, 2022-2023.

Historical Investigation of Native American / Federal Reserved Water Rights Claims for Southern California "Mission Indians." Sacramento, CA: Downey Brand, 2022.

Due Diligence Research of Historical Water Right Entitlements and Easements for a Recreational Property in Monterey County, CA. San Francisco: Duane Morris LLP, 2021-2022.

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Historical Research of Operations and Water Use at a Power Plant on Lytle Creek, San Bernardino County, CA for California Public Utilities Commission Hearings. Fontana, CA: Fontana Water District; and Rosemead, CA: San Gabriel Water District, 2011.

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EXHIBIT 2

Declaration of Joe DuPont

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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

Consolidated Subcase No: 87-11982—87-12004
(Nez Perce Tribe Instream Flow Claims)

DECLARATION OF JOE DUPONT

I, Joe DuPont, hereby declare and state as follows:

1. My name is Joe DuPont. I am currently employed as the Clearwater Region Fisheries Manager for the Idaho Department of Fish and Game ("IDFG"). I have been employed in this position since 2008.
2. I graduated from the University of Idaho in 1988 with a Bachelor of Science degree in Zoology. The University of Idaho is located in Moscow, Idaho which is located within the Palouse River Basin ("PRB").
3. In 1994, I received a Master of Science degree in Fisheries Resources from the University of Idaho.
4. Since 1994, I have been continuously involved with fisheries management, including being employed as a fisheries biologist for two state agencies (the Idaho Department of Lands and IDFG) and a private entity (Washington Water Power Company, now known as Avista).
5. I began my career with Washington Power Company. For two years I evaluated and published studies on the effects of hydroelectric facilities on fisheries in the Clark Fork River drainage.
6. From 1996 to 2001 I worked for the Idaho Department of Lands ("IDL"). There I advised IDL staff on the habitat needs for fisheries and the potential impacts of land management activities on fish habitat.
7. Starting in 2001, I began working for IDFG. From 2001 to 2008, I was a fisheries biologist for the Idaho Panhandle Region. In this role I was responsible for evaluating the fisheries of the region. This included field and lab work, collecting and

analyzing data, and publishing findings for conservation and management recommendations.

8. In 2008, I was promoted to Regional Fisheries Manager for the Idaho Clearwater Region, which encompasses the PRB. For the past 17 years I have managed a staff of biologists and support staff who collect data on the fish species and habitat conditions in Idaho's Clearwater Region. The information collected is used to provide recommendations regarding habitat restoration, fish passage, water quality, and other fisheries related issues. My position often requires me to inspect IDFG's activities taking place out in the field.

9. The recommendations made by my office are used to inform and collaborate on projects with the public, other state and federal agencies, and other stakeholders, including the Nez Perce Tribe.

10. I have not been deposed or testified as an expert at trial within the preceding four years.

11. To my best recollection, I have co-authored at least seven peer-reviewed publications over my career pertaining to fisheries management. There have been additional published IDFG annual reports, fishing reports and other types of public announcements to which I contributed. These are my co-authored peer-reviewed publications:

- a. Co-author with James Lamansky Jr. *et al.*, *Incidence, Types, and Shedding and Ingestion Times of Metallic Fishing Tackle in the*

- Digestive Systems of White Sturgeon*, 38 N. Am. J. of Fish. Mgmt. 1152 (2018).
- b. Co-author with James Lamansky Jr. *et al.*, *Deep hooking, landing success and gear loss using inline and offset circle and J hooks when bait fishing for white sturgeon*, 27 Fish. Mgmt. and Ecology 100 (2017).
 - c. Co-author with Marika Dobos *et al.*, *Influences of Summer Water Temperatures on the Movement, Distribution, and Resource Use of Fluvial Westslope Cutthroat Trout in the South Fork Clearwater River Basin*, 36 N. Am. J. of Fish. Mgmt. 549 (2016).
 - d. Co-author with Brett Bowersox *et al.*, *Determining the Presence of Hooks Inside White Sturgeon Using Metal Detector and Portable X-Ray Technology*, 36 N. Am. J. of Fish. Mgmt. 1045 (2016).
 - e. Co-author with Michael Quist *et al.*, *Evaluating the Ability of Tiger Muskellunge to Eradicate Brook Trout in Idaho Alpine Lakes*, 35 N. Am. J. of Fish. Mgmt. 659 (2015).
 - f. Co-author with Bryan Stevens, *Summer Use of Side-Channel Thermal Refugia by Salmonids in the North Fork Coeur d'Alene River, Idaho*, 31 N. Am. J. of Fish. Mgmt. 683 (2011).
 - g. Co-author with Richard Brown and David Geist, *Unique Allacustrine Migration Patterns of a Bull Trout Population in the Pend Oreille River Drainage, Idaho*, 27 N. Am. J. of Fish. Mgmt. 1268 (2007).

12. I am not receiving any compensation for my testimony in this proceeding beyond my standard compensation as an employee of IDFG. However, I anticipate retiring from my current employment on or about December 31, 2025. Following my retirement, I have agreed to be retained as an expert witness in this matter. My compensation for such work will be \$150 per hour for expert review, analysis and reports, \$300 per hour for deposition and trial testimony, plus expenses billed at cost.

13. I was a member of the Technical Advisory Committee ("TAC") for the Palouse River Basin Adjudication ("PRBA"). The TAC consists of members selected by both the State of Idaho, the Nez Perce Tribe, and the United States.

14. The TAC was responsible for assisting the parties by summarizing the hydrology, biota, and ecosystem functions of the rivers and streams within the PRB.

15. Members of the TAC compiled known technical and scientific data relating to the hydrology, biota, and ecosystem functions of the rivers and streams within the PRB. The TAC then evaluated the data and provided their findings to the parties.

16. As a member of the TAC, I analyzed and provided fisheries information from the State of Idaho to the TAC.

17. The opinions contained in this declaration are based upon my education, training, work and life experiences (I was raised around the PRB), IDFG's publicly available and internal records, studies, reports and other information, my participation on the PRBA TAC, local, state and regional fisheries data, water quality data and personal observations.

18. All fish within the rivers and streams in the PRB are resident fish.

19. The term "resident fish" refers to fish species that spend their entire life cycle in the freshwater environment of a given area, without migrating to marine waters. The only fish species that historically inhabited the PRB were resident fish. The resident fish populations in the PRB are primarily restricted to the Palouse River, above Palouse Falls.

20. The native resident fish species in the PRB include Chiselmouth Cub, Longnose Dace, Speckled Dace, Redside Shiner, Largescale Sucker, Bridgelip Sucker, Northern Pikeminnow and Sculpin. These fish are not considered game fish and are rarely fished for in the PRB. Other resident fish in the PRB are introduced species such as Brook trout, Rainbow trout, and Brown Trout. A few Cutthroat Trout have been collected in the PRB, but it is unknown if they were introduced or not.

21. Many of these resident fish do not grow to more than 6 inches in length; others are limited in the size they can reach and their availability because their entire life cycle takes place in relatively small and often degraded freshwater systems.

22. In contrast to the resident fish, anadromous fish in Idaho are born in freshwater, develop into juvenal fish, migrate to the ocean as smolts, grow and develop into adults in the nutrient rich Pacific Ocean, and then return to Idaho as adults to reproduce. This unique life cycle provides anadromous fish with significantly more abundant food resources and room to grow than are available to the resident fish populations in the PRB.

23. Anadromous fish cannot migrate into the rivers and streams of the PRB because Palouse Falls (about 190 ft tall) acts as a natural barrier over which the anadromous fish cannot pass.

24. For the same reason, there is no record of sturgeon or Pacific lamprey in the PRB.

25. In my opinion, fish populations in the PRB are currently insufficient to serve as a reliable or sustainable food source because the water quality and flow conditions limit the carrying capacity of the rivers and streams in the PRB.

26. In my opinion, harvesting fish in the rivers and streams of the PRB at levels sufficient to meet the subsistence or dietary needs of even a small human population would result in rapid depletion of the resident fish populations. Without significant regulation, the populations of resident fish would be rapidly depleted.

27. In the past, the rivers and streams of the PRB were stocked by IDFG with fingerling and catchable sized trout species. However, IDFG discontinued stocking these waters in 2011 due to unsuitable habitat conditions, low survival rates of the stocked fish, and lack of public interest in fishing on these streams and rivers to justify the associated expense.

28. I am not an attorney and do not offer opinions on legal rights or conclusions of law. My opinions are limited to biological and resource-management issues within my professional and personal expertise.

29. I have been asked to assume, for purposes of this declaration, that "usual and accustomed fishing rights" provide tribal members a non-exclusive right

to take fish at locations traditionally and customarily used by the tribe. Such locations are historically established, remain in present use, and are and have been open and known to others.

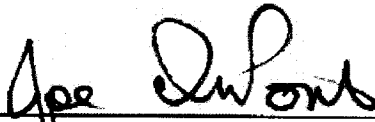
30. During my 29 years of professional experience and observation in the PRB, I have not learned of any reports from staff, fisheries data, agency reports, news articles, or other credible documentation indicating that members of any Indian tribe have asserted or exercised traditional and customary fishing rights within the PRB.

31. In my travels and experience in Northern Idaho, I have observed Nez Perce tribal members fishing at usual and accustomed places on the Clearwater, Snake, and Little Salmon Rivers. I have never seen what I believe to be Nez Perce tribal members fishing in this way on the rivers and streams in the PRB.

32. To my knowledge there are no known fishing locations in the PRB customarily used by the Nez Perce Tribe.

I certify under penalty of perjury, under the law of the State of Idaho that the foregoing is true and correct.

Dated this 5th day of September 2025.



Joe DuPont