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*Attorneys for Kootenai Properties, Inc.*

DISTRICT COURT - CSRBA  
Fifth Judicial District  
County of Twin Falls, State of Idaho  
**LODGED**

DEC 19 2025

By                      Clerk  
                     Deputy Clerk

**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

Subcase Nos. 95-18274

**MEMORANDUM IN SUPPORT OF  
KOOTENAI PROPERTIES, INC.'S  
MOTION FOR SUMMARY  
JUDGMENT**

COMES NOW, Kootenai Properties, Inc. ("KPI"), a co-claimant and objector in the above-referenced subcase, and pursuant to the *Proposed Order on Stipulation to Amend Briefing*, the Court's Administrative Order No. 1, and I.R.C.P. 56, hereby files this memorandum in support of its motion for summary judgment. This memorandum is further supported by the *Declaration of Travis L. Thompson* ("Thompson Dec.") and attached exhibits. For the reasons set forth below the Special Master should grant KPI's motion as a matter of law.

## INTRODUCTION

This subcase concerns an admittedly confused attempt to file a “new” or “second” water right claim for the reservoir that is unnecessary. Chilco Lake Reservoir has a current active storage capacity of approximately 396 acre-feet. KPI holds decreed water rights for wildlife, recreation, and aesthetic storage uses totaling 295 acre-feet (95-2036A and 95-16449). *See Ex. A to Thompson Dec.* However, with the current diminished reservoir capacity, KPI has the right to store its water in about 52.6% of the reservoir’s active capacity (i.e. about 208 acre-feet). Water that enters the reservoir can be stored under the existing partial decrees, up to 560.3 acre-feet in a given year. Consequently, there is no basis to recommend or decree a “new” storage “refill” water right.

Since IDWR has no evidence of actual beneficial use to support water right claim 95-18274 the Special Master should recommend the right be disallowed. Alternatively, an enlarged use of the base storage rights could be recommended to cover seepage and evaporation losses (99 acre-feet) only. For the reasons set forth below, KPI respectfully requests the Special Master to grant its motion for summary judgment accordingly.

## PROCEDURAL BACKGROUND

Water right claim 95-18274 is based on decreed storage water rights individually held by a number of spaceholders. Each spaceholder filed individual water right claims in the Coeur d’Alene-Spokane River Basin Adjudication (CSRBA) that were partially decreed in 2020 and 2021. *See Ex. A to Thompson Dec.* The reservoir has historically operated on a continuous fill basis to satisfy the decreed water right quantities. The Idaho Department of Water Resources (“IDWR” or “Department”) dam safety records show that the storage capacity of the reservoir has decreased over time. The 1973 preliminary Engineering Report indicated a reservoir capacity

of 600 acre-feet (“AF”) on or around 1956 and 1957. The 1978 Phase 1 Inspection Report listed current storage capacity somewhere around 400-595 AF. By 2008, a dam safety report shows capacity at 400 AF.

On June 24, 2022, KPI, Idaho Forest Group, Curtis & Lana Carney, Martha W. & Max E. Jenkins, R&R Properties LLC, Gary W. Creagle and Karen B. Creagle 1995 Trust, R&R Smith Family Trust; Ryan & Crystal Smith, Jameson Mortgage Co.; Ed Jameson; and The David L. Haman Trust filed a joint *Motion to File a Late Notice of Claim* (“Motion”) and claim no. 95-18274. The Court g was granted on September 20, 2022. No objections were filed regarding the allowance of a late notice of claim.

On June 15, 2023, the Department issued its *Late Claims Director’s Report* (“LCDR”) for the CSRBA containing a recommendation for 95-18274. On August 4, 2023, a group of claimants, represented by Mr. Clive Strong, filed their objections to the LCDR. These claimants objected to the Department’s recommendation of the names and addresses, quantity, purpose of use, and place of use.

On August 1, 2023, KPI filed its objection to the LCDR. KPI objected to the Department’s recommendation of the quantity and purpose of use. On August 14, 2023, KPI filed an Amended Objection to the LCDR. The Amended Objection objected to the following elements in the Director’s recommendation: name and address, source, quantity, priority date, point of diversion, purpose of use, period of year, and place of use. Additionally, KPI checked the boxes next to “This water right should not exist” and “This water right was not recommended, but should be recommended with the elements described above.” On September 12, 2024, KPI filed a *Motion for Order of Supplemental Director’s Report (706 Report)*.

On May 9, 2025, IDWR issued its *Supplemental Director's Report Regarding Subcase 95-18274* ("706 Report"). The document identified the procedural background of this matter and discussed the objections filed by the parties.

The previously decreed rights that are relevant to this subcase are the following:

<b>Water Right</b>	<b>Owner</b>	<b>Total Acres</b>	<b>Volume</b>	<b>Decree Date</b>
95-2036A	Kootenai Properties, Inc.		145	01/07/2021
95-2036B	Idaho Forest Group, LLC		150	12/01/2020
95-16447	Jameson Mortgage Co.	4	5.2	12/01/2020
95-16448	LK Erickson Living Trust	4.7	6.1	12/01/2020
95-16449	Kootenai Properties, Inc.		160	12/01/2020
95-16450	The David L. Haman Trust	5	6.5	12/01/2020
95-16451	Carney, Curtis; Carney, Lana	39	50.6	12/01/2020
95-16452 <sup>1</sup>	Gary W. Creagle & Karen B. Creagle 1995 Trust; R&R Smith Properties	14.40	31.7	12/01/2020
95-16453	R&R Smith Properties	4.00	5.2	12/01/2020
	<b>Total</b>	<b>81.10</b>	<b>560.30 AF</b>	

On September 17, 2025, the *Order on Summary Judgment Schedule and Hearing* was filed establishing a summary judgment briefing and hearing schedule. The Special Master also issued an *Order Accepting Stipulated Amended Briefing Schedule* on December 9, 2025.

## FACTS

KPI submits the following facts are undisputed and support judgment as a matter of law as set forth below.

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<sup>1</sup> A notice of change of ownership was filed on April 18, 2022, and water right 95-16452 was subsequently reduced to 18.7 acre-feet and two new water rights were created for the balance, 95-18552 for 5.3 acre-feet and 95-18553 for 7.7 acre-feet. See 706 Report at 6-7.

1. The prior water right partial decrees issued by the CSRBA District Court authorize a total annual storage volume of 560.3 acre-feet at Chilco Lake Reservoir. *See* Ex. A to *Thompson Dec.*
2. The current active storage capacity in Chilo Lake Reservoir is approximately 396 acre-feet. *See* 706 Report at 6; Ex. 10.
3. The Department has no evidence of actual beneficial use to support an additional storage water right claim in Chilco Lake Reservoir for 659.3 acre-feet with an August 23, 1920 priority date. *See* Ex. B to *Thompson Dec.* IDWR confirmed that it does not have any records that would support a new “refill” water right for 164.3 acre-feet. *See id.*

#### **STANDARD OF REVIEW**

Idaho’s civil rules provide that a “party may move for summary judgment, identifying each claim or defense, or the part of each claim or defense, on which summary judgment is sought.” I.R.C.P. 56(a).

The court must grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Summary judgment is appropriate if the pleadings, affidavits, and discovery documents on file with the court, read in a light most favorable to the nonmoving party, demonstrate no material issue of fact such that the moving party is entitled to a judgment as a matter of law. *Dickenson Frozen Foods, Inc. v. J.R. Simplot Co.*, 164 Idaho 669, 676, 434 P.3d 1275, 1282 (2019) (internal citations omitted) (quoting *Lee v. Willow Creek Ranch Ests. No. 2 Subdivision Homeowners Ass’n, Inc.*, 164 Idaho 396, 399, 431 P.3d 4, 7 (2018)).

The moving party bears the burden of proving no material issue of fact. *Chandler v. Hayden*, 147 Idaho 765, 769, 215 P.3d 485, 489 (2009). “Once the moving party establishes the

absence of a genuine issue of material fact, the burden shifts to the nonmoving party to show the existence of a genuine issue of material fact.” *Id.* “[A] mere scintilla of evidence or only a slight doubt as to the facts is insufficient to withstand summary judgment.” *Franklin Bldg. Supply Co., Inc. v. Hymas*, 157 Idaho 632, 637, 339 P.3d 357, 362 (2014) (quoting *Corbridge v. Clark Equip. Co.*, 112 Idaho 85, 87, 730 P.2d 1005, 1007 (1986)).

For the reasons set forth below, the Special Master should grant KPI’s motion and recommend water right claim 95-18274 be decreed disallowed. Alternatively, KPI would not oppose an enlargement use recommended for 99 acre-feet for seepage and evaporation losses in the reservoir.

## **ARGUMENT**

### **I. Water Right Claim 95-18274 is Not Supported by Actual Beneficial Use and Should be Disallowed as a Matter of Law.**

The CSRBA was commenced on the basis that “[e]ffective management of the waters of northern Idaho requires that a comprehensive determination of the nature, extent and priority of the rights of users of surface and ground water be determined.” I.C. § 42-1406B. Assisting the Court, IDWR and its Director have a specific statutory duty to complete the following in the adjudication:

(1) Upon entry of the court’s order commencing a general adjudication . . . 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. The examination shall continue in a manner and for such a period of time as the director determines is necessary to evaluate the extent and nature of each water right for which a notice of claim under state law has been filed.

Idaho Code § 42-1410.

The Director has a plain legal duty to determine the “nature and extent” of each water right claim acquired under state law in the CSRBA. The Director’s recommendation must

include all of the statutory elements as well (name, source, quantity, etc.). *See* I.C. § 42-1411(2).

Upon request of the court or a party, the Director must present “the basis for the recommendations in the director’s report.” I.C. § 42-1412(4). Further, if a claim is objected to, the CSRBA Court must hear and determine those objections and ultimately enter a partial decree “determining the nature and extent of the water right which is the subject of the objection.” I.C. § 42-1412(6).

Prior to the adoption of a mandatory permit system in 1971, the constitutional declaration set forth in Art. XV, Section 3 was construed to authorize a person to appropriate the water of a stream by simply “actually diverting the water and applying it to a beneficial use.” *Fremont-Madison Irr. Dist. and Mitigation Group v. Idaho Ground Water Appropriators, Inc.*, 129 Idaho 454, 456, 926 P.2d 1301, 1303 (1996) (citing *Sand Point Water & Light Co. v. Panhandle Dev. Co.*, 11 Idaho 405, 413, 83 P. 347, 349 (1905)). This is referred to as the constitutional, or beneficial use, method of appropriation. *See id.* The Idaho Supreme Court elaborated on how such appropriations are made:

In Idaho it is “a well-settled rule of public policy that the right to the use of the public water of the state can only be claimed where it is applied to a beneficial use in the manner required by law.” *Albrethsen v. Wood River Land Co.*, 40 Idaho 49, 60, 231 P. 418, 422 (1924). Under the constitutional method of appropriation, appropriation is completed upon application of the water to the beneficial use for which the water is appropriated. When following the constitutional method, one “must depend upon actual appropriation, that is to say, actual diversion and application to beneficial use.” *Basinger v. Taylor*, 36 Idaho 591, 598, 211 P. 1085, 1086-87 (1922). . . . Under either the constitutional or statutory method of appropriation, the appropriator must apply the water to a beneficial use in order to have a valid water right in Idaho.

*United States v. Pioneer Irr. Dist.*, 144 Idaho 106, 110, 157 P.3d 600, 604 (2007).

The term “use of water” is a term of art in Idaho water law. Beneficial use is a vital component of a water right. *See* I.C. § 42-104 (“The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such purpose, the right ceases”). Further, the concept that beneficial use “acts as a measure and limit upon the extent of a water right is a consistent theme in Idaho water law.” *A&B Irr. Dist. v. IDWR*, 155 Idaho 640, 650, 315 P.3d 828, 838 (2013).

Storage water is water held in a reservoir and intended to assist the holders of the water right in meeting their decreed needs. *See In re SRBA, Case No. 39675, Subcase 00-91017*, 157 Idaho 385, 389, 336 P.3d 792, 796 (2014). A person may acquire a storage water right and receive a vested priority date and quantity, just as with any other water right. *See id.* A storage water right entitles the appropriator to divert, impound, and control water from a natural watercourse by means of a diversion structure such as a dam. *See id.; see also, Washington Cnty. Irr. Dist. v. Talboy*, 55 Idaho 382, 385, 43 P.2d 943, 945 (1935).

The Idaho Supreme Court described storage water rights in *In re SRBA* as follows:

The purpose of use element of a storage water right generally contains at least two authorized purposes of use. The first authorizes the storage of water for a particular purpose (i.e., “irrigation storage,” or “power storage”). The second authorizes the subsequent use of that stored water for an associated purpose, which is often referred to as the “end use” (i.e., “irrigation from storage,” or “power from storage”). Each purpose of use is assigned its own quantity and period of use, which may or may not differ from one another. . . .

Water diverted and stored pursuant to a storage water right need not be put to the end use immediately, but may be stored for a period of time prior to the end use:

157 Idaho at 389, 336 P.3d at 797.



In this case the Department has no evidence of actual beneficial use to support the additional water right for 659.3 acre-feet with an August 23, 1920 priority date.<sup>2</sup> In the 706

Report the Department notes the following:

By 2008 (the commencement of the Coeur d'Alene-Spokane River Basin Adjudication), a 2008 dam safety report shows the capacity at 400 AF. Exhibit 10. This indicates that the historic storage capacity of the reservoir more closely equated to the sum of the volumes decreed to those rights authorized to use Chilco Lake storage water. Over time, perhaps due to silting or other factors, the capacity of the reservoir decreased and to satisfy the decreed water rights, a certain level of refill must be occurring.

The total volume authorized under the individually decreed rights is 560.3 AF. The Department relied on the decreed rights as evidence of historic beneficial use of 560.3 AF. Exhibit 7.

706 Report at 6 (emphasis added).

In a January 9, 2025 *Review Memo*, IDWR staff Craig Saxton provided a narrative memo describing the Department's review and recommendation of the quantity element:

After the rights were decreed it was discovered the actual storage volume of the reservoir is 396 acre-feet. The sum of the volumes under the Chilco Reservoir rights is 164.3 acre-feet more than the storage capacity of the reservoir. Concerned about the Department's one-fill policy, claimants wanted to make sure that they could refill the reservoir to achieve the full decreed volume.

\* \* \*

In order to account for the practice of refilling the reservoir, the claimants filed a beneficial use claim with an advanced priority date. The volume was derived by adding the deficiency of 164.3 acre-feet of storage capacity to the actual storage capacity of 396 acre-feet of the reservoir to obtain a total annual storage volume equivalent to the 560.3 decreed volume of the storage rights. To allow delivery of this storage volume the claimed amount was increased by 99 acre-feet to account for evaporation and seepage loss resulting in a total claimed amount of 659.3 acre-feet.

*Review Memo* at 1-2 (emphasis added); Ex. B to *Thompson Dec.*

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<sup>2</sup> The Department's proposed "combined use" remark is irrelevant for purposes of establishing water right no. 95-18274. If water is stored under the prior decreed rights, up to 560.3 acre-feet, there is no available water to store under the "new" or "second" water right 95-18274. The Court cannot decree a water right that is not based upon actual beneficial use.

When questioned about supporting evidence for IDWR's recommendation, IDWR's counsel admitted the agency did not have any records or data:

2. Can you confirm whether the reservoir has ever refilled 164.3 af of empty space in a given year?

No, we don't have any records with this information.

*L. Rammell O'Brien Jan. 30, 2025 Email* (emphasis added); Ex. B to *Thompson Dec.*

The above information plainly shows IDWR was not relying upon any additional "beneficial use" beyond the previously decreed water rights.<sup>3</sup> Without evidence of additional beneficial use, IDWR cannot recommend a new storage water right in the adjudication as a matter of law. *See Joyce Livestock Co. v. United States*, 144 Idaho 1, 19, 156 P.3d 502, 520 (2007) ("In the absence of a beneficial use, actual or at least potential, a water right can have no existence") (citing *Strong v. Twin Falls Canal Co.*, 44 Idaho 427, 434, 258 P. 173, 175 (1927)); *State of Idaho v. United States*, 134 Idaho 106, 111, 996 P.2d 806, 811 (2000) ("Idaho water law generally requires an actual diversion and beneficial use for the existence of a valid water right. . . Only two exceptions to the diversion requirement exist. No diversion from a natural watercourse or diversion device is needed to establish a valid appropriative water right for stock watering. . . . In addition, State entities acting pursuant to statute may make non-diversionary appropriations for the beneficial use of Idaho citizens").<sup>4</sup>

The Department misconstrued the effect of the prior decreed water rights and both the claimants and IDWR mistakenly concluded that a "refill" water right claim was necessary to

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<sup>3</sup> The only additional quantity identified in claim 95-18274 separate from the prior decreed quantities (560.3 acre-feet) is related to evaporation and seepage (99 acre-feet), which is based strictly on IDWR's calculations. *See* 706 Report at 6; *see also*, Ex. B to *Thompson Dec.* ("IDWR has accepted use of the pond analysis spreadsheet to calculate evaporation & seepage losses reference on Page 4 of IDWR's Application Processing Memo #75. Evaporation and seepage loss calculations using IDWR's Pond Analysis spreadsheet found 99 AF of seepage losses").

<sup>4</sup> Neither exception to the diversion and use requirement identified in *Joyce Livestock* applies in this subcase.

“obtain a total annual storage volume equivalent to the 560.3 decreed volume of the storage rights.” See *Review Memo* at 2, Ex. B to *Thompson Dec.* To the contrary, although the reservoir capacity may be less than the decreed volume, that does not prevent the water right holders from storing the full 560.3 acre-feet in a given year. In other words, if the reservoir initially fills to 396 acre-feet, the reservoir can still store an additional 164.3 acre-feet pursuant to the existing decreed water rights. This is not a “refill,” but rather the “first complete fill” of the water rights as already decreed. Stated another way, the Department and any future watermaster will be bound to honor the decreed quantities. See I.C. § 42-607; *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 811, 252 P.3d 71, 92 (2011) (“The amounts of the Spring Users’ water rights had already been decreed based upon the amounts of water that they had diverted and applied to the beneficial use of fish propagation. Subject to the rights of senior appropriators, they are entitled to the full amount of water they have been decreed for that use”) (emphasis added).

IDWR and its watermasters cannot ignore the prior partial decrees for Chilco Lake Reservoir. See *State v. Nelson*, 131 Idaho 12, 16, 951 P.2d 943, 947 (1998) (“A decree is important to the continued efficient administration of the water right. The watermaster must look to the decree for instructions as to the source of the water. . . . If the provisions define a water right, it is essential that the provisions are in the decree, since the watermaster is to distribute water according to the adjudication or decree”); *City of Blackfoot v. Spackman*, 162 Idaho 302, 307-08, 396 P.3d 1184, 1189-90 (2017) (“Water rights are defined by elements. . . . By statute, ‘decree[s] entered in a general adjudication shall be conclusive as to the nature and extent of all water rights in the adjudicated water system’”).

As such, the first 560.3 acre-feet that flows into and is stored in the reservoir for the identified purposes of use is stored under the prior decreed water rights. *See Ex. A to Thompson Dec.* There is no legal or factual basis to change the priority of the water stored between 396 acre-feet (capacity of the reservoir) and 560.3 acre-feet (volume of decrees). Yet that is what IDWR's recommendation for water right 95-18274 impermissibly proposes to do. Since the total volume has already been decreed, and IDWR is bound to follow those decrees, the agency has no basis to recommend a "refill" water right claims of 164.3 acre-feet pursuant to a later in time 1920 priority water right. By the same token there is no need for a "refill" water right for that difference since the storage water right holders have a legal right to have that water delivered to the reservoir under the prior decrees' total volume (i.e. 560.3 acre-feet).

The present facts concerning Chilo Lake Reservoir are readily distinguishable from the "refill" issues related to the federal reservoirs at issue in the Basin-Wide Issue 17 in the Snake River Basin Adjudication (SRBA). In the subcases related to late claims in Basin 63, water was stored and subsequently released for flood control purposes and the spaceholders attempted to have the court address when the reservoir storage water right was considered "filled" in the first instance. The Presiding Judge described the accounting procedures as follows:

In conjunction with his duty to distribute water, the Director adopted an accounting methodology for carrying out his administrative duty with respect to the federal reservoirs. In accounting for the water that is distributed to the reservoirs, the accounting methodology takes into account that quantity of water passed through the reservoirs by the United States when the reservoir water rights are in priority and that water that has been previously stored but released by the United States to meet its flood control obligations. The result is that respective quantities for the reservoir water rights can be considered satisfied or partially satisfied irrespective of how much water is physically in the reservoirs after flood control measures have ceased for the season. This result has been referred to in these proceedings as "paper fill." The water that has been historically stored and later distributed to the spaceholders after flood control releases have ceased has been referred to as "refill." In his methodology, the Director referred to this water

as “unaccounted for storage.” It is this “refill” or “unaccounted for storage” water that is the subject of the beneficial use claims.

\* \* \*

Thereafter the United States and various other water users filed beneficial use late claims for “refill.” The filing of the late claims was unopposed and the Court found “good cause” for granting leave to allow the claims to proceed. However, it needs to be emphasized that leave was granted for the filing of beneficial use late claims that were separate and distinct from the previously decreed reservoir water rights. Namely, the claims were limited to water diverted and stored after the original rights were determined to be satisfied by the Director however that determination was made. . . . The reservoir water rights were claimed and decreed based on prior licenses. The late claims, on the other hand, were claimed based on beneficial use.

*Memorandum Decision and Order on Challenge and Order of Recommitment to Special Master* at 4-5, 7 (Subcase Nos. 63-33732 et al.) (Sept. 1, 2016).

Here, on the other hand, no one is challenging the ability of the Chilco Lake Reservoir storage right holders to store up to the decreed quantity of their water rights (560.3 acre-feet). Where the Basin 17 issue concerned the storage, release, and then the storage of additional water in quantities that exceeded the capacities of the reservoirs, here the right holders are just trying to store the total decreed quantity in the first place. Since the reservoir is limited to approximately 396 acre-feet, if any of that water is released, the first 164.3 acre-feet to fill any vacated space is water that must be distributed pursuant to the prior decrees, up to their total decreed quantities.

Since IDWR does not have any evidence of actual beneficial use of storing additional water in Chilco Lake Reservoir to support its recommendation for water right claim 95-18274, the Special Master should recommend that the claim be disallowed as a matter of law. *See* Ex. B to *Thompson Dec.* (“No, we don’t have any records with this information”). Alternatively, the Special Master could recommend an enlargement water right for a quantity to cover seepage and evaporation losses only as set forth below.

## **II. The Seepage and Evaporation Losses Can be Decreed with a March 9, 2020 Enlargement Claim Priority Condition.**

At most, the calculated seepage and evaporation losses could be recommended for decree under water right claim 95-18724 as an “enlargement” of the prior decreed water rights for the reservoir. IDWR calculated those losses to be 99 acre-feet based solely upon its pond analysis spreadsheet. *See* 706 Report at 6, Ex. B to *Thompson Dec.*

Idaho Code § 42-1426 allows claimants to obtain an enlargement use of the original water right in the CSRBA if certain conditions are met:

- 1) based upon diversion and application to beneficial use;
- 2) the combined rate of diversion of the original right and enlargement right does not exceed the original right;
- 3) the enlargement did not injure water rights existing on the date of enactment of this act (March 9, 2020); and
- 4) if injury to a water right later in time cannot be mitigate, then the new right for the enlarged use shall be advanced to a date one (1) day later than the priority date for the junior water right injured by the enlargement.

*See* I.C. § 42-1426(2).

If the calculated seepage and evaporation losses have been occurring over time, then any water right claim for that use, not covered by the storage quantities of the prior decrees, could be covered through an enlargement water right provided the above conditions are satisfied. There is no “rate of diversion” on any the prior decreed storage rights for the reservoir. *See* Ex. A to *Thompson Dec.* Hence, any enlargement priority could be conditioned to ensure no injury to any water rights by including a condition subordinating the use to all water rights prior to March 9, 2020 (the date when section 42-1426 was amended to add the CSRBA). *See* 2020 Sess. Laws, Chp. 50, pp. 118-119 (approved March 9, 2020).

If the court concludes that an additional enlarged use of the original decreed storage water rights exists, then claim 95-18274 could be recommended for a quantity of 99 acre-feet with a priority condition subordinating that use to March 9, 2020.

### **CONCLUSION**

Idaho law requires actual beneficial use to support a constitutional use (pre-1971) based water right claim in the CSRBA. Since IDWR does not have any evidence of additional storage and use of any water beyond the previously decreed total volume of 560.3 acre-feet, Idaho law requires the Special Master to recommend the claim be disallowed. Alternatively, an enlargement use water right for seepage and evaporation losses could be recommended consistent with section 42-1426. KPI respectfully requests the Special Master grant its motion for summary judgment accordingly.

DATED this 19<sup>th</sup> day of December, 2025.

PARSONS BEHLE & LATIMER

/s/ Travis L. Thompson

*Attorneys for Kootenai Properties, Inc.*

## CERTIFICATE OF SERVICE

I hereby certify that on this 19<sup>th</sup> day of December, 2025, I served a true and correct copy of the foregoing *Memorandum in Support of Kootenai Property Inc. 's Motion for Summary Judgment* on the following by the method indicated:

### ORIGINAL VIA HAND DELIVERY:

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/s/ Jessica Nielsen

Jessica Nielsen

Assistant for Travis L. Thompson