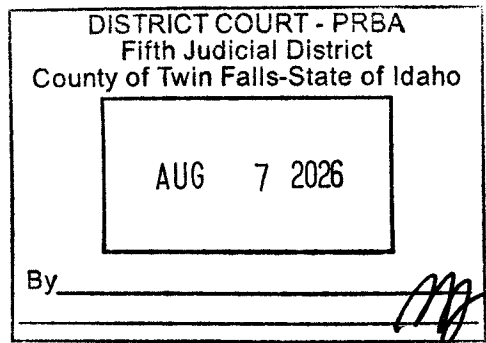


RAÚL R. LABRADOR
ATTORNEY GENERAL

JOY M. VEGA
Chief, Energy and Natural Resources Division

DAVID S. PERKINS, ISB No. 4381
ROWDY J. KELLER, ISB No. 12494
Deputy Attorneys General
Energy and Natural Resources Division
700 W. State St, 2nd Floor
Boise, ID 83720-0010
Telephone: (208) 334-2400
Facsimile: (208) 854-8072
Email: joy.vega@ag.idaho.gov
david.perkins@ag.idaho.gov
rowdy.keller@ag.idaho.gov

Attorneys for Objector 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 Nos: **Attachment A**

**STATE OF IDAHO'S RESPONSE TO
UNITED STATES' MOTION TO
EXCLUDE EXPERT WITNESSES**

The State of Idaho's ("State") experts, Ms. Johnson and Mr. Kearns, were properly disclosed pursuant to Idaho Rule of Civil Procedure ("I.R.C.P.") 26(b)(4)(A)(i) and this Court's orders.¹ The State provided the required information for Ms. Johnson

¹ The Court first issued its order on December 12, 2024, setting a litigation schedule. Subsequently, stipulated scheduling orders were issued on December 12, 2025, and March 31, 2026.

and Mr. Kearns required by I.R.C.P. 26 and this Court's orders. Therefore, the United States' Motion to Exclude should be denied.

FACTS

On December 27, 2019, the United States filed water rights claims in the Palouse River Basin Adjudication on behalf of the Nez Perce Tribe. *See* Cover Letter from USDOJ to IDWR (Dec. 27, 2019). In particular, the United States filed water right claims for springs and fountains, off reservation, located on various private, state, and federal lands.

On November 21, 2025, attorneys for the State became aware of the respective interests in federal springs claims located on state owned lands and began investigating which agencies owned or managed those lands. Some of the claims were determined to no longer be owned or managed by the State, while the remaining claims were found to be located on endowment lands² managed by the Idaho Department of Lands ("IDL"). Thus, the State promptly began working with agency staff to develop the necessary facts and evidence relating to these springs claims. While these employees' anticipated testimony would be admissible from fact witnesses, the State determined that the identified agency staff met the definition of an expert under Idaho Rule of Evidence 702 and disclosed them based upon the facts and their knowledge, training, and experience. The State drafted expert disclosures based on the facts and opinions provided by the experts.

² The State received approximately 2.4 million acres of "endowment lands" when it was admitted as a state. The endowment lands are held in trust and managed for the benefit of Idaho's public schools and certain other state institutions.

On February 5, 2026, Idaho disclosed their experts, including Mr. Tom Kearns, Ms. Renee Bettis, and Mr. Chris Tretter, for the springs claims on IDL lands. United States Ex. 2. The State disclosed all information available then, with the caveat that it would supplement its disclosure when additional information became known. For example, the State's disclosure regarding Mr. Tretter's testimony was delayed due to weather conditions preventing Mr. Tretter from conducting field examinations.

On March 6, 2026, the State served its First Supplemental Expert Disclosure that included the documents relied on by Ms. Bettis and Mr. Kearns in forming their opinions. *See* United States Ex. 6. Due to delays in receiving information and the upcoming deadline for Claimants' rebuttal experts, the parties mutually agreed to "modif[y] [the] litigation schedule to allow the State the opportunity to conduct the contemplated site visits and to disclose its expert witness reports regarding the springs consistent with the requirements of I.R.C.P. 26(b)(4)(A)(i)." United States Ex. 3 at 2. The stipulation also extended the deadline for Claimants' rebuttal expert reports regarding the springs claims. *Id.* On March 31, 2026, the Court entered a stipulated order extending the deadline for Objector expert disclosures to May 26, 2026, and Claimants rebuttal expert disclosure to July 20, 2026. United States Ex. 4.

On May 26, 2026, the State timely served its Second Supplemental Expert Disclosure. *See* United States Ex. 5.³ The supplemental disclosure included replacing

³ Though the United States attempts to interject claims that earlier disclosures made by the State were deficient, the only relevant issue in the present motion is the sufficiency of the May 26, 2026, disclosure which was timely served in accordance with the stipulation of the parties and the Court's March 31, 2026, order.

Ms. Bettis with Ms. Johnson, who has assumed Ms. Bettis's position, and provided the necessary information under I.R.C.P. 26(b)(4)(A)(i). *Id.* at 3-4. The disclosure also included the remaining information that the United States requested regarding Mr. Kearns' testimony. *Id.* at 2.

The State's expert disclosure of Ms. Johnson and Mr. Kearns provided the parties, including the United States, with all the opinions and supporting information of both Ms. Johnson and Mr. Kearns in compliance with the requirements of I.R.C.P. 26(b)(4)(A)(i) and this Court's orders.

ARGUMENT

I. The State Disclosures of Ms. Johnson and Mr. Kearns Meet All Requirements Under Rule 26.

The State's expert disclosure complies with I.R.C.P. 26. "A party must disclose to the other parties by answer to interrogatory, or if required by court order, the identity of any witness it expects to ask to present evidence under Rule 702, 703 and 705, Idaho Rules of Evidence." I.R.C.P. 26(b)(4)(A). For employees of the party, in contrast to the federal rules, the party must disclose:

- a complete statement of all opinions to be expressed and the basis and reasons for the opinion must be disclosed;
- the data or other information considered by the witness in forming the opinions;
- any exhibits to be used as a summary of or support for the opinions;
- any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years;
- the compensation to be paid for the testimony; and
- a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

I.R.C.P. 26(b)(4)(A)(i). The information that the State provided for Ms. Johnson and Mr. Kearns satisfies each of the Rule 26 requirements. In fact, the State's disclosures

specifically headed each section to follow the requirements of I.R.C.P. 26(b)(4)(A)(i). *See United States' Ex. 2; see also United States' Ex. 5.* Therefore, Ms. Johnson and Mr. Kearns should not be excluded from offering their opinions or otherwise testifying.

A. The Information Provided for Ms. Johnson Complies with the Disclosure Requirements of Rule 26.

Originally, the State disclosed Ms. Bettis to provide facts and opinions on the State's acquisition of endowment lands from the United States. United States Ex. 2. However, Ms. Bettis retired before May 26, 2026. *See United States Ex. 4.* The State disclosed and produced the subject conveyance documents in its First Supplemental Expert Disclosure on March 6, 2026. *See United States' Ex. 6.*

The State's Second Supplemental Expert Witness disclosure, dated May 26, 2026, timely informed the parties that Ms. Johnson replaced Ms. Bettis. The State included in its disclosure that Ms. Johnson "will opine as to the acquisition of lands the United States endowed in trust to the State... ." United States Ex. 5 at 3. The United States argues that the disclosure for Ms. Johnson only provides general statements of testimony she will give. However, the disclosure explicitly provides that Ms. Johnson will opine as to how the State acquired the endowment lands from the United States, and the contents of the conveyance documents. The disclosure provided "all opinions to be expressed" by Ms. Johnson. I.R.C.P. 26(b)(4)(A)(i).

Further, the supplementation of Ms. Johnson for Ms. Bettis was timely because it was made within the Court ordered deadline of May 26, 2026, and the testimony of Ms. Johnson is nearly identical to Ms. Bettis. The State's timely Second

Supplemental Disclosure stated that Ms. Johnson concurred with the opinions of Ms. Bettis in the State's Expert Disclosure. United States' Ex. 5 at 3; *see also* United States' Ex. 2 at 2-4. Ms. Johnson's opinions were based on her review of Ms. Bettis's disclosure and the conveyance documents that Ms. Bettis relied on which were previously produced. Additionally, the State included Ms. Johnson's qualifications, attached as Exhibit 4 to the State's Second Supplemental Expert Witness Disclosure, and stated Ms. Johnson's publication history, trial history as an expert witness, and that she was not receiving compensation outside of her standard compensation as a state employee. United States Ex. 5 at 4. Therefore, the State's expert disclosure for Ms. Johnson fully complies with I.R.C.P. 26(b)(4)(A)(i) and should not be excluded.

2. The Information Provided for Mr. Kearns Complies with the Disclosure Requirements of Rule 26.

The State disclosed Mr. Kearns as an expert witness in its February 5, 2026, Expert Witness Disclosure. United States' Ex. 2 at 5-6. The disclosure set forth *all opinions* of Mr. Kearns, the facts and data considered, qualifications, and compensation. *Id.* After meeting with counsel for the United States following the February 5 disclosure, the State supplemented its disclosure with the maps that Mr. Kearns relied on. United States' Ex. 6 at 2. After further conferral with counsel for the United States, the State produced the underlying data for the maps disclosed in its First Supplemental Expert Disclosure. United States Ex. 5 at Exhibit 2.

The United States again asserts that the State's disclosures were insufficient for Mr. Kearns because they provided "general statements by the State's attorneys of testimony yet to come..." United States' Motion to Exclude Expert Witnesses and

Memorandum in Support (“Brief”) at 8. However, the United States fails to acknowledge that these “general statements” are *the statements* regarding Mr. Kearns’ testimony. They encompass the entirety of Mr. Kearns’ testimony. The United States’ arguments concerning this assertion are unreasonably superficial and merely attempt to assert form over substance. Therefore, Mr. Kearns’ testimony complies with I.R.C.P. 26(b)(4)(A)(i) and should not be excluded.

II. The State Complied with the Court’s Orders.

Even though Ms. Johnson and Mr. Kearns could be considered fact witnesses, the State disclosed them as experts to be transparent with the parties as to identify the relevant facts and the foundation for the admission of those facts through the testimony of persons with the knowledge, training, and expertise to testify to the facts. As is set forth above, the disclosures complied with all the requirements of I.R.C.P. 26. Like the United States’ allegations claiming that the disclosures were deficient under I.R.C.P. 26, the United States’ allegations that the State did not comply with the Court’s orders are also unreasonably superficial and merely attempt to assert form over substance.

In this case, the Court’s order simply requires disclosure of “Objector’s Expert Reports.” It does not specify in what form those reports must be made or the manner in which the disclosures had to be presented. Nor did it mandate that the disclosure be prepared or signed by the expert. In contrast to Federal Rule of Civil Procedure 26, I.R.C.P. 26 does not require a Rule 26 disclosure to be “accompanied by a written report—prepared and signed by the witness.” *Compare* I.R.C.P. 26(b)(4)(A)(i) *with* F.R.C.P. 26(a)(2)(B). The United States’ narrow interpretation of the Court’s order of

“expert reports” versus “expert disclosures” in this state case is hyper technical and fails to account for the fact that the State’s disclosures of Ms. Johnson and Mr. Kearns complied with Idaho law and provided all the information the United States would have obtained had the State produced disclosures in a form the United States purportedly desire.

In attempting to engraft additional requirements into the Court’s Order beyond the requirements of I.R.C.P. 26, the United States attempts to argue that the Court’s December 12, 2024, order “clearly distinguished between expert reports and expert disclosures,” United States’ Brief at 6, based upon its assertion that the order had set separate dates for the Claimants to file “Rule 26 witness disclosures” and “expert witness reports.” *Id.* (emphasis added). However, this argument actually undermines the United States’ assertion concerning any purported distinction between an “expert disclosure” and an “expert report” because it ignores the distinction between fact witnesses and expert witnesses under the Idaho rules. I.R.C.P. 26(b)(1)(A) provides for the discovery of “the identity and location of persons who know of any discoverable matter.” The Court’s December 12 Order simply made a distinction between the deadlines for the Claimants’ disclosure of the two types of witnesses.

Although the United States’ March 3, 2025, disclosure asserted it was an I.R.C.P. 26(b)(4) disclosure, it unquestionably failed to comply with the expert disclosure rule requirements. The disclosure did not provide a complete statement of the expert’s opinions, the basis of the opinions, the information considered by the

expert or any exhibits. *See* Decl. of Counsel Ex. A. Despite its title, the disclosure was not actually an I.R.C.P. 26(b)(4) disclosure. To further underscore this point, in its Second Response to the State's discovery requests, the United States only identified expert witnesses, not fact witnesses, in response to interrogatories seeking information concerning the identity of "all witnesses who have any knowledge of any fact pertaining" to "the Nez Perce's springs claims" and "all persons you intend to call as witnesses at trial." *See* Decl. of Counsel Ex. B. Accordingly, it appears that its experts are the only witnesses it had to disclose in its "Rule 26 witness disclosures," and it elected to identify its "witnesses" as improperly disclosed experts.

The United States' argument also fails to recognize that I.R.C.P. 16(a)(2)(B) requires a scheduling order to provide deadlines for "disclosing expert witnesses." In contrast to the Claimants' separate witness and expert witness disclosure deadlines, the Court's scheduling order for the Objectors only contained an expert disclosure deadline pursuant to Rules 16 and I.R.C.P. 26(b)(4).

The State's expert disclosures contain the opinions of the experts. In preparing the subject disclosures, attorneys for the State obtained Mr. Kearns, Ms. Bettis, and subsequently Ms. Johnson's specific opinions and interpretations of the respective documents that were later attached to the State's disclosures. Both Ms. Johnson and Mr. Kearns confirmed that the information the State included in its disclosure was accurate.

As stated above, the disclosure for both Ms. Johnson and Mr. Kearns complies with I.R.C.P. 26(b)(4)(A)(i). Accordingly, the United States has not been "deprived of

‘fair notice and an opportunity to prepare for trial.’” United States’ Brief at 7 (citing *Aguilar v. Coonrod*, 262 P.3d 671, 677, 151 Idaho 642, 648 (2011)). The State produced the information it had available at the February 5, 2026, deadline, keeping in mind that it would timely supplement its disclosure when additional information became available. However, given the concerns raised by the United States, the parties agreed to file a stipulation that not only gave the State time to supplement its disclosure but also gave the United States an extension of time to file its rebuttal reports for the springs claims. *See* United States’ Ex. 1. The United States was provided with all the information required by I.R.C.P. 26 in ample time to receive and respond to the State’s expert disclosures for the springs claims and has not impaired its ability to prepare for trial. The United States’ claim that it was prejudiced by the form in which the disclosure was made is baseless. Therefore, Ms. Johnson and Mr. Kearns should not be excluded as experts for the State.

CONCLUSION

The United States’ Motion to Exclude should be denied because it fails to show that the State’s expert disclosures of Ms. Johnson and Mr. Kearns are deficient under I.R.C.P. 26(b)(4)(A)(i) and the Court’s orders.

Respectfully submitted this 6th day of August 2026



Rowdy J. Keller
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of August 2026, 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 NORMAN M SEMANKO PARSONS BEHLE & LATIMER 800 W MAIN STREET STE 1300 BOISE, ID 83702 DIRECTOR OF IDWR PO BOX 83720 BOISE, ID 83720-0098 U S DEPARTMENT OF JUSTICE ENVIRO & NAT'L RESOURCES DIV PO Box 7611, Ben Franklin Station WASHINGTON D.C. 20044-7611 CHARLIE S BASER MICHAEL P LAWRENCE GIVENS PURSLEY LLP 601 W BANNOCK ST PO BOX 2720 BOISE, ID 83701-2720 THOMAS MURPHY NATIVE AMERICAN RIGHTS FUND 250 ARAPAHOE AVE BOULDER, CO 80302 JOSEPH BUSHYHEAD NEZ PERCE TRIBE LEGAL COUNSEL 100 AGENCY RD PO BOX 305 LAPWAI, ID 83540	☐ By U.S. Postal Service ☒ Overnight w/FedEx ☐ By email to: ☐ By U.S. Postal Service ☒ By email to: <u>NSemanko@parsonsbehle.com</u> ☐ By U.S. Postal Service ☒ By email to: <u>file@idwr.idaho.gov</u> ☐ By U.S. Postal Service ☒ By email to: <u>Emmi.Blades@usdoj.gov</u>, <u>Hillary.Hoffman@usdoj.gov</u> ☐ By U.S. Postal Service ☒ By email to: <u>mpl@givenspursley.com</u> ☐ By U.S. Postal Service ☒ By email to: <u>murphy@narf.org</u> ☐ By U.S. Postal Service ☒ By email to: <u>joeb@nezperce.org</u>
--	---

TRAVIS L. THOMPSON
ABIGAIL R. BITZENBURG
PARSONS BEHLE AND LATIMER
P.O. BOX 63
TWIN FALLS, ID 83303-0063

JAMES BROWITT
BROWITT LAW OFFICE
1317 PROSPECT AVE
LEWISTON, ID 83501

CANDICE M. MCHUGH
CHRIS BROMLEY
P.O. BOX 107
BOISE, ID 83701

☐ By U.S. Postal Service
☒ By email to:
tthompson@parsonsbehle.com
abitzenburg@parsonsbehle.com
jnielsen@parsonsbehle.com

☐ By U.S. Postal Service
☒ By email to: jbrowitt@browittlaw.com

☐ By U.S. Postal Service
☒ By email to:
cmchugh@mchughbromley.com
cbromley@mchughbromley.com



DEPUTY ATTORNEY GENERAL

ATTACHMENT A

ALLOTMENT SUBCASES

87-12157
87-12158

INSTREAM FLOW SUBCASES

Group F2

87-11982	87-11988	87-11994	87-12000
87-11983	87-11989	87-11995	87-12001
87-11984	87-11990	87-11996	87-12002
87-11985	87-11991	87-11997	87-12003
87-11986	87-11992	87-11998	87-12004
87-11987	87-11993	87-11999	

SPRINGS AND FOUNTAINS SUBCASES

87-12338

Group F3

87-12007	87-12028	87-12052	87-12078
87-12008	87-12029	87-12054	87-12079
87-12009	87-12030	87-12055	87-12080
87-12010	87-12031	87-12056	87-12081
87-12011	87-12032	87-12057	87-12082
87-12012	87-12033	87-12059	87-12083
87-12013	87-12036	87-12060	87-12084
87-12014	87-12037	87-12062	87-12085
87-12015	87-12038	87-12063	87-12086
87-12016	87-12039	87-12064	87-12088
87-12017	87-12040	87-12066	87-12089
87-12018	87-12041	87-12067	87-12090
87-12019	87-12042	87-12068	87-12092
87-12020	87-12043	87-12069	87-12106
87-12021	87-12044	87-12071	87-12107
87-12022	87-12045	87-12072	87-12108
87-12023	87-12046	87-12073	87-12111
87-12024	87-12047	87-12074	87-12342
87-12025	87-12048	87-12075	87-12366
87-12026	87-12049	87-12076	

87-12027	87-12051	87-12077	
Group F4			
87-12050	87-12117	87-12138	87-12162*
87-12091	87-12118	87-12139	87-12163*
87-12093	87-12119	87-12140	87-12165*
87-12095	87-12120	87-12141	87-12166*
87-12096	87-12121	87-12142	87-12167*
87-12097	87-12122	87-12143	87-12168*
87-12098	87-12123	87-12144	87-12169*
87-12099	87-12124	87-12145	87-12170*
87-12100	87-12125	87-12146	87-12171*
87-12101	87-12126	87-12147	87-12172*
87-12102	87-12127	87-12148	87-12173*
87-12103	87-12128	87-12149	87-12174*
87-12104	87-12129	87-12150	87-12176*
87-12105	87-12130	87-12151	87-12337
87-12109	87-12131	87-12152	87-12339
87-12110	87-12132	87-12153	87-12340
87-12112	87-12133	87-12154	87-12343
87-12113	87-12134	87-12155	87-12344
87-12114	87-12135	87-12156	87-12346
87-12115	87-12136	87-12159*	87-12364
87-12116	87-12137	87-12161*	87-12365