

it has complied with the Court's scheduling order with respect to the disclosure of expert witness reports for Ms. Johnson and Mr. Kearns and the requirements of I.R.C.P. 26(b)(4)(A)(i), review of the scheduling order's plain language and the State's disclosure materials continues to disprove those assertions. The State's failures are not substantially justified or harmless. Accordingly, these improperly disclosed experts should be excluded from providing expert testimony in these federal subcases.

ARGUMENT

First, the State's disclosures regarding Ms. Johnson and Mr. Kearns failed to comply with the Court's scheduling order, which plainly required disclosure of "Objectors' Expert Witness Reports." *United States' Motion to Exclude the State of Idaho's Expert Witnesses and Memorandum in Support* (July 15, 2026) ("Motion") at Exhibit 1, page 1. The State would have the Court ignore the text of the scheduling order and appears to argue that the words "Expert Witness Reports" mean something other than "Expert Witness Reports." Response at 7-8. Namely, that general descriptions of what Ms. Johnson and Mr. Kearns will potentially testify to as written by the State's attorneys should suffice. This argument strains credulity for numerous reasons. Most importantly, it is simply not what the Court's December 12, 2025, and March 31, 2026, scheduling orders say. Motion at Exhibits 1 and 4 (both requiring "Expert Witness Reports"). The United States' arguments set forth in the Motion do not "engraft additional requirements" into the Court's scheduling order, *see* Response at 8, but merely read the Court's order in its plain terms. The only other parties who have disclosed expert witness reports pursuant to the Court's scheduling orders – the United States, the Tribe, and PotlatchDeltic Forest Holdings, Inc. and related entities – have read the Court's orders the same, disclosing expert reports prepared by their expert witnesses by the Court-ordered deadlines.

Moreover, even the State seems to understand that the "Expert Witness Reports" required by the Court's scheduling orders are something more than general descriptions of potential testimony written by the State's attorneys. The State's "Expert Witness Reports" disclosed on September 18, 2025, pursuant to the Court's December 12, 2024, scheduling order came in the form of declarations prepared and signed by those experts. *See State of Idaho's I.C.R.P 26(b)(4)*

Expert Witness Disclosure at 2-3. And, after the State failed to produce “Expert Witness Reports” on February 5, 2026, as required by the December 12, 2025, scheduling order, the State agreed in the parties’ March 25, 2026, Stipulation that it needed more time to “conduct [its] contemplated site visits” and “disclose its expert witness reports regarding springs consistent with the requirements of I.R.C.P. 26(b)(4)(A)(i).” Motion at Exhibit 3 p. 2.¹ On the new “Expert Witness Reports” disclosure deadline of May 26, 2026, set by the Court’s March 31, 2026, scheduling order, the State produced a signed declaration for one of its expert witnesses, Mr. Chris Tretter, *see* Motion at Exhibit 5, but did not remedy its conceded shortcomings by producing something similar for the two experts at issue here. Instead, the State produced more of the same for Ms. Johnson and Mr. Kearns: general statements of future testimony written by the State’s attorneys, and some data “relied on” by the experts without explanation of how that data was used or supports the potential testimony. In short, the State did not do what it agreed to in the Stipulation and did not remedy its conceded errors with respect to disclosing “Expert Witness Reports” for Ms. Johnson and Mr. Kearns as required by the Court’s scheduling orders. Ms. Johnson and Mr. Kearns should be excluded from providing expert testimony on that basis.

Second, even if there were not on-point Court orders specifically requiring “Expert Witness Reports,” the State’s disclosures regarding Ms. Johnson and Mr. Kearns do not comply with the requirements of I.R.C.P. 26(b)(4)(A)(i). With respect to Ms. Johnson, the “basis and reasons” for the opinions the State’s attorneys allege she will express and the “the data or other information considered by [Johnson] in forming” those opinions are lacking. The State asserts 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;” that the State produced “the subject conveyance documents” in its March 6, 2026, disclosure; and that the May 26, 2026, disclosure provided “all opinions to be expressed” by Ms. Johnson. Response at 5. But Exhibits 4 and 5 to the State’s March 6, 2026, disclosure, are not copies of the historical conveyance documents as

¹ The State argues that the “only relevant issue” for the Motion is the sufficiency of the State’s May 26, 2026, disclosure. Response at 3 n.3. The United States disagrees, since the State’s failure to properly disclose “Expert Witness Reports” on February 5, 2026, as required by the December 12, 2025, scheduling order provides important context, as discussed herein.

the State asserts. *See* Motion at Exhibit 6, page 2 and Exhibits 4 and 5, attached thereto. And the March 6, 2026, disclosure stated that Ms. Johnson will also “opine that she concurs with the opinions set forth by Ms. Bettis” in the State’s February 5, 2026, disclosure. Motion at Exhibit 5, page 3. In that February 5, 2026, disclosure Ms. Bettis opined as to the State’s current ownership of “the surface and subsurface rights” of certain lands and how the State “manages the timberland.” Motion at Exhibit 2, 2-4. Nothing in the “conveyance documents” the State provided in its March 6, 2026, disclosure speaks to the State’s current ownership and timberland management of the subject lands, and nothing in the State’s representations of Ms. Johnson’s opinions explains the basis and reasons for these opinions. These deficiencies are in clear violation of I.R.C.P. 26(b)(4)(A)(i).

With respect to Mr. Kearns, the State asserts that its February 5, 2026, disclosure “set forth *all opinions* of Mr. Kearns.” Response at 6-7. But it is clear from the February 5, 2026, disclosure that it does *not* include “a complete statement of all opinions to be expressed and the basis and reasons for the opinion” as required by I.R.C.P. 26(b)(4)(A)(i). Specifically, the February 5, 2026, disclosure states the Mr. Kearns will opine that certain springs “on endowment properties are connected to or adjacent to streams, rivers or other waterways” and that certain other springs “will require further field inspection to verify whether they are connected to or adjacent to streams, rivers, or other waterways” without any explanation of the basis and reasons for these opinions. Motion at Exhibit 2, 5-6. Similarly, the February 5, 2026, disclosure states that Mr. Kearns will testify “concerning the limitations of GIS mapping” and that he “may also testify or interpret information and facts collected by other experts and fact witnesses who conducted or will conduct on-site inspections.” *Id.* at 6. But the State has provided no explanation of what “limitations of GIS mapping” Mr. Kearns will testify to or the basis or reasons for those opinions, nor has the State provided any explanation of what opinions Mr. Kearns may express concerning “information and facts collected by other experts and fact witnesses who conducted or will conduct on-site inspections.” Moreover, while the State produced “GIS and LIDAR maps” on March 6, 2026, none of the data used to create those maps was provided and that disclosure did not include any explanation regarding how Mr. Kearns

relied on those maps. Motion at 8-9. The State asserts that it “produced the underlying data for the maps” when it provided four links to websites in its May 26, 2026, disclosure. Response at 6. But again, the May 26, 2026, disclosure included none of Mr. Kearns’s opinions, and no explanation regarding how Mr. Kearns relied on the website links, so the United States’ experts cannot compare the information Mr. Kearns allegedly reviewed to other information they have gathered. Motion at 8-9.

The United States’ arguments that support exclusion of Ms. Johnson and Mr. Kearns in these federal subcases are not “unreasonably superficial” or “merely an attempt to assert form over substance” as the State repeatedly alleges. Response at 7. The State ignores that it is the substance here that is missing as required by the Court’s scheduling orders and I.R.C.P. 26(b)(4)(A)(i), which are straightforward, clear, and important. The State’s failure to meet these requirements with respect to Ms. Johnson and Mr. Kearns is not substantially justified or harmless. The State had ample opportunity to disclose “Expert Witness Reports” consistent with the requirements of the Court’s orders and I.R.C.P. 26(b)(4)(A)(i), as evidenced by the March 25, 2026, Stipulation. Motion at Exhibit 3. The State’s continued failure to do so has deprived the United States of fair notice and an opportunity to prepare for trial, left to guess at what opinions are to be expressed, the basis and reasons for the opinions, and the data or other information considered by Ms. Johnson and Mr. Kearns in forming the opinions. As described in the Motion, Idaho Courts take these failures to disclose seriously, typically excluding such improperly disclosed experts from testifying. Motion at 4-5. The result should be the same here.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court exclude Ms. Johnson and Mr. Kearns from providing expert testimony in these federal subcases.

DATED this 14th day of August 2026.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that an original copy of the *United States' Reply re: Motion to Exclude the State of Idaho's Expert Witnesses* was sent via Fax Filing this 14th day of August 2026 to:

Clerk of the District Court, Twin Falls County
Palouse River Basin Adjudication
253 Third Avenue North
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I certify that true and correct copies of the document listed above were sent via electronic mail and/or U.S. Post to the parties below on this 14th day of August 2026.

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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
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87-12026	87-12049	87-12076	
87-12027	87-12051	87-12077	

Group F4

87-12050	87-12118	87-12140	87-12166
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87-12112	87-12134	87-12156	87-12364
87-12113	87-12135	87-12159	87-12365
87-12114	87-12136	87-12161	
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