

**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 1

**ORDER GRANTING JOINT MOTION
FOR PROTECTIVE ORDER**

Certain parties to these subcases including the State of Idaho, the United States of America, the Nez Perce Tribe, the City of Moscow, the Potlatch entities, Schweitzer Properties LLC, the University of Idaho, and other individuals and entities filed a *Joint Motion for Protective Order* on December 6, 2022. A hearing was held on March 1, 2023. The parties discussed the *Motion* at length, and there was no opposition to the *Motion*. Therefore, to expedite the settlement process in these subcases, the Court orders that the following provisions shall govern the disclosure of information in settlement discussions that a party claims to be confidential. The provisions of this *Order Granting Joint Motion for Protective Order (Protective Order)* do not determine the confidentiality, privilege, or treatment of protected documents in the litigation of these subcases. In addition, this *Protective Order* does not require the exclusion of, or affect the admissibility of evidence in these subcases merely because it was presented in the settlement discussions and designated confidential.

IT IS HEREBY ORDERED:

1. The *Protective Order* governs and applies to the settlement process for the subcases listed in Attachment 1.

2. "Confidential Information" shall mean any material or information which a party to this settlement process (a) considers to contain or constitute trade secrets, proprietary business or commercial information, or other privileged, confidential, or sensitive information; (b) designates as confidential; and (c) provides to any other party, either orally or in writing, as part of the settlement process.

3. In the event a party elects to provide documents or other information to any other party during settlement negotiations which such party considers confidential, the party shall mark each page of such documents "CONFIDENTIAL" at the time the documents are produced to any other party, or if such information is provided orally during settlement negotiations, such information shall presumptively be treated as confidential unless stated otherwise.

4. Confidential Information provided by a party shall be controlled and maintained in a manner that precludes access to such information (a) by any other party to the settlement process unless the party providing the Confidential Information has consented or otherwise agreed to share that information with other parties for purposes of the settlement process; or (b) by any person that is not entitled to access Confidential Information under the Court's *Protective Order*.

5. A party may disclose Confidential Information to third-party experts or consultants as the party may engage or utilize in the context of this settlement process, provided that such disclosure is intended to advance the progress of the settlement process and that the staff, expert, or consultant to whom such disclosure is made shall first be shown a copy of the *Protective Order* and shall sign a certificate of compliance. A signed copy of the certificate of compliance shall be provided to all parties to the *Protective Order*.

6. Confidential Information provided by any party in the context of this settlement process shall be used only for purposes of the settlement process of the water right claims involved in this

litigation. Confidential Information shall not be used by any party or person bound by the *Protective Order* for any commercial, business, competitive, or other purposes, or in or for any judicial or administrative proceedings, disputes, or cases, including the litigation of these subcases, unless obtained through discovery in the litigation of the subcases or public records.

7. If at any time any Confidential Information governed by the *Protective Order* is subpoenaed or otherwise required to be produced by any court, administrative or legislative body, or by any person or entity purporting to have authority to require the production of such Confidential Information, the party to whom the subpoena or request is directed shall immediately give written notice thereof to the party who designated such information as confidential and shall file a copy of the *Protective Order* with the forum from which the subpoena or request for production originated. The party to whom the subpoena or request is directed shall continue to be bound by the *Protective Order* until otherwise ordered by this Court, the forum from which the subpoena or request for production originated, or an affirmative release by the party designating the information as confidential.

8. If any Confidential Information is disclosed by any party, through inadvertence or otherwise, to any person not authorized to receive it under this Order, the party shall promptly (1) identify the recipient(s) and the circumstances of the unauthorized disclosure to the relevant producing party and (2) use best efforts to bind the recipient(s) to the terms of the *Protective Order*. If the recipient of such disclosure is a party to the *Protective Order*, that party shall immediately destroy the information as soon as he or she realizes that they should not have received the information and promptly confirm in writing that such information is no longer in his or her possession. The party shall also promptly notify the parties to this Order about the disclosure. No

information designated as confidential by a party shall lose its confidential status because of disclosure to a person not authorized to receive it under the *Protective Order*.

9. The *Protective Order* shall remain in full force and effect and shall continue to be binding on the parties and affected persons after the subcases listed in Attachment 1 terminate. Within 120 days after a final decision of all aspects of all subcases, including appeals, all originals and copies of any Confidential Information shall either be returned to the party providing the Confidential Information, destroyed, or stored in files in a manner that will prevent disclosure. No party or person affected by the *Protective Order* shall publish Confidential Information in any form.

10. This Court shall retain jurisdiction even after the subcases listed in Attachment 1 terminate in order to adjudicate any dispute respecting improper use or disclosure of Confidential Information.

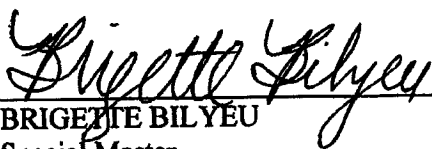
11. No party shall, either during or subsequent to the termination of the settlement process, report or disclose to this Court any matters or information related to the substance of the negotiations or the positions taken by any party to the settlement process.

12. Statements made or positions taken in the settlement process shall not be disclosed to any person or entity not a party to the settlement process and shall not be admissible in any trial or other proceeding pertaining to the establishment, quantification, or administration of the reserved water rights that are the subject of this settlement process or to the water rights or water rights claims of any of the objectors in these subcases. The parties shall not be prohibited by this paragraph from utilizing and presenting as evidence at trial any factual data or technical materials created, compiled or utilized by a party in the settlement process that are properly acquired through the discovery process and found to be admissible. No party shall disclose the fact that a party submitted such data or technical material to any other party to the *Protective Order* as part of the

settlement process. This paragraph shall not enlarge nor diminish the rights of any party to seek discovery under the Idaho Rules of Civil Procedure.

13. The protections set forth in the *Protective Order* are in addition to, and not a substitute for, the confidentiality protections of Idaho rules of Evidence 408 and 507, which are extended to mediations by Idaho rule of Civil Procedure 37.1(k).

Dated: March 9, 2023.



BRIGETTE BILYEU
Special Master
Palouse River Basin Adjudication

ATTACHMENT 1

Subcase Nos:

87-04060	87-11171	87-12007	87-12057	87-12109	87-12159
87-04181	87-11209	87-12008	87-12058	87-12110	87-12160
87-04182	87-11213	87-12009	87-12059	87-12111	87-12161
87-07055	87-11214	87-12010	87-12060	87-12112	87-12162
87-07060	87-11334	87-12011	87-12061	87-12113	87-12163
87-07091	87-11341	87-12012	87-12062	87-12114	87-12164
87-07107	87-11349	87-12013	87-12063	87-12115	87-12165
87-07108	87-11409	87-12014	87-12064	87-12116	87-12166
87-07125	87-11440	87-12015	87-12066	87-12117	87-12167
87-07145	87-11453	87-12016	87-12067	87-12118	87-12168
87-07146	87-11457	87-12017	87-12068	87-12119	87-12169
87-07148	87-11486	87-12018	87-12069	87-12120	87-12170
87-07163	87-11609	87-12019	87-12071	87-12121	87-12171
87-07192	87-11632	87-12020	87-12072	87-12122	87-12172
87-07203	87-11752	87-12021	87-12073	87-12123	87-12173
87-07205	87-11778	87-12022	87-12074	87-12124	87-12174
87-07215	87-11804	87-12023	87-12075	87-12125	87-12175
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87-10776	87-12000	87-12050	87-12102	87-12152	
87-10786	87-12001	87-12051	87-12103	87-12153	
87-10787	87-12002	87-12052	87-12104	87-12154	
87-10788	87-12003	87-12053	87-12105	87-12155	
87-10789	87-12004	87-12054	87-12106	87-12156	
87-11035	87-12005	87-12055	87-12107	87-12157	
87-11116	87-12006	87-12056	87-12108	87-12158	

(Subcase list: B87STFED)
3/08/23

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