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JAN 17 2007
DEPARTMENT OF
WATER RESOURCES

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	MOTION FOR PARTIAL SUMMARY
	)	JUDGMENT ON ISSUE OF TRIBE'S
Case No. 39576	)	OBJECTION BASED ON BOUNDARY
	)	DISPUTE
Subcase No. Of 27-00029D	)	
	)	

COMES NOW PATRICK TANEY, by and through his attorney of record, Scott E. Axline, Esq., and hereby Motions the Court for Summary Judgment against the Shoshone/Bannock Tribe. Said Motion for Summary Judgment is relative to the Objection filed by the Shoshone Bannock Tribe relative to the issue of a boundary dispute and is based on the following grounds and for the following reasons, to wit:

1. There is no factual basis for the Tribe's Objection to Mr. Taney's claim relative to the issue of boundary since Mr. Taney's property is not now, and has never been, located on, adjacent to, or near, the Fort Hall Indian Reservation. See: Affidavit of Patrick J. Taney attached hereto and incorporated thereby as if set forth in full.
2. The Tribe, in its Objection, has provided no factual basis for its Objection, nor any legal basis for its objection, nor can either be provided by the Tribe.

Summary Judgment should be granted if no genuine issue as to any material fact is found to exist after the pleadings, depositions, admissions, and affidavits have been construed in a light most favorable to the party opposing the summary judgment. The party opposing the Motion is also to be given the benefit of

MOTION FOR PARTIAL SUMMARY JUDGMENT
ON ISSUE OF TRIBE'S OBJECTION
BASED ON BOUNDARY DISPUTE

all favorable inferences which might be reasonably drawn from the evidence. *Anderson v. Ethington*, 103 Idaho 658, 651 P.2d 923 (1982). When a party moves for summary judgment, the initial burden of establishing the absence of a genuine of material fact rests with that party. *Thompson v. City of Idaho Falls*, 126 Idaho 587, 887 P.2d 1094 (Ct. App. 1994). Once that burden is met, it is incumbent upon the non-moving party to establish an issue of fact. *Yoakum v. Hartford Fire Insurance Company*, 129 Idaho 171, 923 P.2d 416 (1996).

Summary judgment or dismissal of a claim is appropriate where the plaintiff fails to submit evidence to establish an essential element of the claim. *Nelson v. City Rupert*, 128 Idaho 199, 911 P.2d 1111 (1996). To withstand a Motion for summary judgment, the opposing party's case must be anchored in something more solid than speculation; a mere scintilla of evidence is not enough to create a genuine issue. *Edwards v. Conchemco, Inc.*, 111 Idaho 851, 727 P.2d 1279 (Ct. App. 1986). Creating only a slight doubt as to the facts will not defeat a summary judgment Motion. *Snake River Equipment Co. v. Christensen*, 107 Idaho 541, 691 P.2d 787 (Ct. App. 1984).

Therefore, it is respectfully requested that the Court granted Summary Judgment to Mr. Taney relative to the Tribe's objection to his claim based upon the boundary dispute and that its Objection be Dismissed with Prejudice. It is further requested that the Court award Mr. Taney his attorney's fees and costs incurred in having to bring this Motion for Summary Judgment for a claim which has no basis in fact or law.

RESPECTFULLY SUBMITTED this 12th day of January, 2007.



Scott E. Axline, Esq.
Attorney for Claimant, Patrick Taney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of January, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

Original to:

Clerk of the District court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

One copy to the claimant of the water right at the following address:

Patrick Taney
P.O. Box 926
Blackfoot, ID 83221

Copies to:

Jeanette Wolfley
Special Counsel
Shoshone-Bannock Tribe
202 N. Arthur
Pocatello, ID 83202

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449



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