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Attorneys for Claimants Steve and Deanne Hawks

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

Steve and Deanne Hawks,

Claimants,

vs.

Coeur d'Alene Tribe, a federally-recognized
Indian tribe,

Objector.

Subcase No. 91-7102; 91-7173

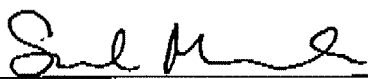
NOTICE OF ERRATA

COMES NOW Claimants Steve and Deanne Hawks (collectively "Claimants"),
by and through undersigned counsel of record, and provide a notice of errata to correct Claimants

Response to Objectors Motion to Compel ("Claimants' Response") and Affidavit of Sarah McCormack in Support of Claimants Response to Objectors Motion to Compel and Motion to Determine Sufficiency of Objections and to Deem Certain Matters Admitted ("McCormack Affidavit"), filed May 4, 2016. It came to the attention of counsel that Claimants' Response and the McCormack Affidavit inadvertently reflected that counsel for Objector, the Coeur d'Alene Tribe, "admitted that some of the **interrogatories**, specifically **Interrogatory** Nos. 8, 9, 12, 13, 14 and 15, sought a legal conclusion." (Emphasis added). Accordingly, by this Notice, Claimants correct Claimants' Response and the McCormack Affidavit to reflect that counsel for Objector, the Coeur d'Alene Tribe, "admitted that some of the **requests for admission**, including **Request for Admission** Nos. 8, 9, 12, 13, 14 and 15, sought a legal conclusion." (Emphasis added). The corrected page 5 of Claimants' Response and the corrected page 3 of the McCormack Affidavit are attached to this Notice.

DATED this 9th day of May, 2016.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By  for Norman Semanko
Norman M. Semanko - Of the Firm
Attorneys for Claimants
Steve and Deanne Hawks

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of May, 2016, I caused a true and correct copy of the foregoing **NOTICE OF ERRATA** to be served by the method indicated below, and addressed to the following:

Howard A. Funke
Kinzo H. Mihara
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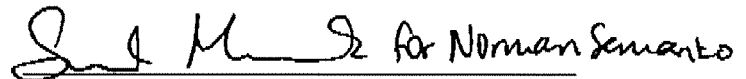
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Norman M. Semanko

among the parties. If Objector would have met its obligation to meet and confer with Claimants, this issue could have been addressed and resolved. However, Objector chose to ignore its obligation, thereby violating Rule 37(a) and unnecessarily bringing discovery issues before the Special Master.

B. Objector Is Not Entitled to Discovery Responses That Seek a Legal Conclusion.

Under Idaho Rule of Civil Procedure 33(b), “[i]nterrogatories may relate to any matters which can be inquired into under Rule 26(b).” The foundational element of the scope of allowable discovery is that it must be “relevant to the subject matter involved in the pending action.” IDAHO R. CIV. P. 26(b)(1). Relevant means “having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable” See IDAHO R. EVID. 401 (emphasis added). Although a party may discover “an opinion or contention that relates to fact or the application of law to fact,” IDAHO R. CIV. P. 33(b) (emphasis added), discovery is not a fishing expedition meant to require a party to admit or provide legal conclusions meant to be addressed during trial.

Objector argues that neither Interrogatory Nos. 4 nor 8 seeks a legal conclusion.¹ Objector’s Mem. Supp. Mot. to Compel at 12, 16. However, this simply is not true. The questions in both Interrogatory Nos. 4 and 8 require Claimants to make a legal conclusion regarding the ownership of submerged lands of the St. Joe River and submerged lands underlying their point of diversion. This is not a question of fact. The issue of ownership of submerged lands of the St. Joe River and Lake Coeur d’Alene has been extensively litigated in the court systems. It is clear that Objector is not attempting to discover an opinion or contention that relates to fact or the application

¹ Claimants note that during the March 15 conference call, counsel for Objector admitted that some of the requests for admission, specifically Request for Admission Nos. 8, 9, 12, 13, 14 and 15, sought a legal conclusion and offered to consider amending those requests or, alternatively, offered that Claimants should provide qualified answers. However, during the March 21 conference call, counsel for Objector reneged on his earlier offer to amend the requests and insisted that Claimants provide qualified answers, which is what Claimants did in their Amended Responses. Aff. McCormack ¶ 6.

5. On March 15, 2016, I, along with Norman Semanko of this law firm, co-counsel for the Buells and counsel for Objector participated in a conference call regarding the discovery responses from the Buells. During the conference call counsel for Objector explained its concerns regarding the discovery responses, request by request. However, Objector did not address any of the issues described in its Motion to Compel regarding the Buells' response for Interrogatory No. 7. In fact, Objector informed counsel for Claimants that he found the Buells' licensing file online and had reviewed the documents.

6. During the March 15 conference call counsel for Objector admitted that some of the requests for admission, specifically Request for Admission Nos. 8, 9, 12, 13, 14 and 15, sought a legal conclusion and offered to consider amending those requests or, alternatively, offered that Claimants should provide qualified answers. However, during the March 21 conference call, counsel for Objector reneged on his earlier offer to amend the requests and insisted that Claimants provide qualified answers.

7. At the end of the March 15 conference call, counsel for the parties agreed to schedule a follow-up call for March 21, 2016, to give time for Claimants to develop a plan to address Objector's concerns.

8. On March 15, 2016, Kinzo Mihara, counsel for Objector, sent a follow-up e-mail confirming the agreement between the parties. Attached hereto as **Exhibit D** is a true and correct copy of Kinzo Mihara's e-mail to counsel regarding the March 15 conference call, dated March 15, 2016.

9. On March 21, 2016, I, along with Norman Semanko of this law firm, co-counsel for the Buells and counsel for Objector participated in a follow-up conference call