

10-21-2016

Errata Idaho's Memo in Support for Mtn SJ

Lawrence Wadsen
Attorney General, State of Idaho

Clive J. Strong
Deputy Attorney General, Chief, Natural Resources Division, State of Idaho

Steven W. Strack
Deputy Attorney General, State of Idaho

Follow this and additional works at: <https://digitalcommons.law.uidaho.edu/all>

Recommended Citation

Wadsen, Lawrence; Strong, Clive J.; and Strack, Steven W., "Errata Idaho's Memo in Support for Mtn SJ" (2016). *Hedden-Nicely Collection, All*. 26.
<https://digitalcommons.law.uidaho.edu/all/26>

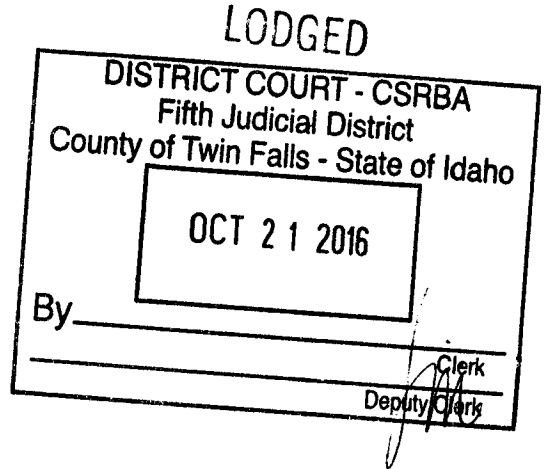
This Brief is brought to you for free and open access by the Digital Commons @ UIIdaho Law at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Hedden-Nicely Collection, All by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG, ISB No. 2207
Deputy Attorney General
Chief, Natural Resources Division

STEVEN W. STRACK, ISB. No. 3906
Deputy Attorney General
700 W. State Street – 2nd Floor
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-2400
Facsimile: (208) 854-8072

Attorneys for the 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 CSRBA)	Consolidated Subcase No. 91-7755
)	
Case No. 49576)	ERRATA TO STATE'S
)	MEMORANDUM IN SUPPORT OF
)	MOTION FOR SUMMARY
)	JUDGMENT
)	

Due to last-minute formatting issues, an intended edit to the State's brief was omitted from the version filed with the Court. In order to correct this error, please substitute the following paragraph for the paragraph that begins at the bottom of page 49 and continues to the top of page 50:

Given the dearth of authority for implying the separate reservation of water rights for commercial, industrial, and municipal purposes, the Court

should, if it recognizes such rights at all, limit them to the type of industrial activities specifically anticipated and provided for in the 1891 Act. The Act provided for construction of a steam powered saw mill and a grist mill—the common thread being that these are the types of industries intended to support the agrarian purposes of the Reservation. There is no support, however, for implying water rights for recreation and tourist-based attractions, including the claims of reserved water rights for a casino, hotel, golf courses, and water park. Creating commercial attractions geared to non-Indian customers was not a purpose of the 1887 or 1889 Agreements, which set apart the Reservation “as Indian land” and as a home for the Tribe. There is nothing in the text of the agreements, the negotiation transcripts, or the historical record to suggest that promoting recreational visitation was a primary purpose of the Reservation. Given the complete lack of any such documentation, it is not possible to conclude that Congress, in ratifying the 1887 and 1889 Agreements, intended to reserve water for tourism-based commercial activities.

Dated this 21st day of October 2016.

LAWRENCE WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division



STEVEN W. STRACK
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Errata to the State's Memorandum in Support of Motion for Summary Judgment was mailed on October 21, 2016, with sufficient first-class postage to the following:

SRBA COURT
253 3RD AVENUE NORTH
TWIN FALLS, IDAHO 83303-2707

ALBERT P BARKER
BARKER ROSHOLT & SIMPSON LLP
1010 W JEFFERSON ST STE 102
PO BOX 2139
BOISE, ID 83701-2139

US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

CHRISTOPHER H MEYER
JEFFREY C PEREDAY
JEFFREY W BOWER
MICHAEL P LAWRENCE
GIVENS PURSLEY LLP
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720

DIRECTOR OF IDWR
PO BOX 83720
BOISE ID 83720-0098

RATLIFF FAMILY LLC #1
13621 S HWY 95
COEUR D'ALENE, ID 83814

HOWARD A. FUNKE
424 SHERMAN AVE STE 308
PO BOX 969
COEUR D'ALENE, ID 83816-0969

CANDICE M MCHUGH
MCHUGH BROMLEY PLLC
380 S 4TH STREET STE 103
BOISE, ID 83702

NORMAN M SEMANKO
MOFFATT THOMAS
101 S CAPITOL BLVD 10TH FL
PO BOX 829
BOISE, ID 83701-0829

MARIAH R DUNHAM
NANCY A WOLFF
MORRIS & WOLFF PA
722 MAIN AVE
ST MARIES, ID 83861

WILLIAM J SCHROEDER
PAINE HAMBLEN LLP
717 W SPRAGUE AVE, STE 1200
SPOKANE, WA 99201-3505

JOHN T MCFADDIN
20189 S EAGLE PEAK RD
CATALDO, ID 83810

WILLIAM M GREEN
2803 N 5TH ST
COEUR D'ALENE, ID 83815

RONALD D HEYN
828 WESTFORK EAGLE CREEK
WALLACE, ID 83873



Steven W. Strack