ERX=8

Rebuttal of Initial Decision and Order date 10-7-2020

First ,I would like to make note that in the entire order no cross-examination testimony was presented by the court, even though such testimony would to a large degree exonerate the defendant in this matter. I will attempt to go through the document and I will point out different viewpoints not mentioned.

Under part A the ALJ states in a general permit authorization to discharge require written notice from the EPA. This is a moot point considering Erlanson never received a general permit. Erlanson applied as instructed by the Idaho letter permit(enclosed) on May 17th and was notified approximately three months later on August 14 ,2015. In this letter, it stated that I could apply for an individual permit. **THERE WAS NO PERMIT AVAILABLE FOR SUCTION DREDGING IN 2015 ON THE SOUTH FORK CLEARWATER RIVER IDAHO CONSIDERING THE APRIL 1 APPLICATION DATE FOR SAID PERMIT. REMEMBER ERLANSON, RESPONDENT IS A CITIZEN OF IDAHO AND AS SUCH HAS IDAHO CONSTITUTIONAL RIGHTS. ERLANSON HAD A LEGAL IDAHO PERMIT IN HIS POSSESSION SO WHO HAS THE JURISDICTION HERE?**

Hughes testimony

Hughes estimated the plume at over 220+ feet;.much discussion about the legality of this distance ensued. The bottom line is that the EPA expert witnesses did not know the legal distance that being 500 feet mixing zone. Mr. Hughes materially interfered with the respondent's business of mineral extraction without written authorization from the Red River district ranger(see F.L.I.P.M.A. 1976) ,clearly a violation of the federal statute. Attorneys for the EPA bring up the fact that Erlanson did not have an individual NPDES permit while withholding the time frame needed and the costs involved to obtain such a permit ,to the court. However, when one looks at the federal register final issuance dated April 4th, 2013 for general NPDES Permits for Small Suction Dredges in Idaho one does not see any mention of a need to obtain an individual permit for the South Fork Clearwater river. Nor in the final modification dated in December of 2013 is there a mention in the federal register of the South Fork of the Clearwater river **NOT** having permit availability !

Daniel Kenny testimony

In the decision, the A.L.J. states that respondents stipulated that he indeed created hole number 5 and number 7 this is a false statement(Erlanson) respondent stated that he BEGAN hole number 5 and tailings number 7 but did not finish. Under cross-examination which A.L.J. failed to mention Mr.Kenny when asked by respondent whether any witness so far in the proceeding had any proof that I finished hole number 5 and tailings number 7 along with any other holes in the area, Mr. Kenny's answer was no! Also under Kenny the EPA's 800 foot rule was mentioned which is an impairment and deprivation of Private property afforded due process protections under the fifth amendment AS A FEDERAL MINING CLAIM IS CONSIDERED TO BE PRIVATE PROPERTY ,THEREFORE A CONSTITUTIONAL ISSUE HERE ![SEE ADAMS V WITMER]

Arthaud testimony

Mr. Arthaud testified that S.F.C.R. has a high sentiment amount which is due to historic mining operations. Any regulatory program such as T.M.D.L. are in direct violation of Idaho code title 39 chapter 3611(3). Mr. Arthaud discussed at length his opinions without scientific proof to substantiate them. When the respondent questioned him to as specific studies that he may or may not have been aware of the respondent was denied(procedural due process concern).
See ATTACHMENT EPX = 9

Tara Martich

Of great concern with her testimony was the fact that Ms. Martich did not know the proper enforcement process to be followed by the EPA (see 33 U.S.C. at 1319 section A and B) respondent contends that as a citizen of Idaho Jurisdiction of this matter was to be held in the district court(see 28 U.S.C. at 1331).(Also see Title 16>Chapter 2>Subchapter 1> Section 480)(Also see Idaho statute title 42-3811)[enclosed.] Further in her testimony Ms. Martich was questioned about the degree of willfulness .She stated that she upped the penalty by 20%. I suggest to the court they look at U.S. vs Bishop 346 "If you've relied on prior decisions of the supreme court you have a perfect defense for willfulness" I will mention briefly here the two S.C.O.T.U.S. cases I rely on 1) Los Angeles County Flood Control District v. Natural Resources Defense Council 2013. 2) South Florida water management District v. Miccosukee Tribe of Indians 2004. The take away here is in line with the EPA own Clean Water Rule which states the C.W.A. permit is only needed if W.O.T.U.S. are going to be polluted or destroyed. No NPDES permit, is needed for W.O.T.U.S. as containing pollutants or are polluted waters(see I.D.E.Q. Intergrated water report sections 4a and 4c) these sections unambiguously show the S.F.C.R. as containing pollutants and in fact is a polluted water body. Ms. Martichs testimony also discusses sediment and suspended solids as interchangeable entities this is an erroneous statement. Sediment and suspended solids are not listed in section 502 of the Clean Water Act as source point pollutants conversely both are listed as non-point pollutants not regulable under a 402 N.P.D.E.S. permit. They are under the control of the state therefore this case should be dismissed for not only lack of credibility but of jurisdiction in the matter. As our brief has stated but was ignored by this court. Ms. Martich testimony references a letter dated to respondent in October 2014 but that letter does not state that there will be no general permit available for S.F.C.R. in 2015 Ms. Martich also agreed with the respondent that the I.D.W.R. letter permit for 2015 stated that the EPA required an N.P.D.E.S. general permit by the EPA there was no other language or information to otherwise oblige an Idaho citizen to apply for any other permit in 2015 that he had no knowledge of as per the federal register .

I am also forwarding to the E.A.B. respondents post-trial brief(penalty phase) to further show inconsistencies, irregularities with the A.L.J. decision dated October 7th 2020.