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April 16, 2007

Via email and Facsimile

Andrea J. Menaker
Chief, NAFTA Arbitration Division
Office of International Claims
and Investment Disputes
Office of the Legal Advisor
United States Department of State
Washington, D.C.

Re: Grand River Enterprises et al. v. United States of America

Dear Ms. Menaker:

As requested in your letter of March 30, 2007, I am providing information on my involvement in proceedings before the Inter-American Commission on Human Rights in the *Dann* case, as well as on my engagement in other challenges to positions or actions taken by United States agencies or political subdivisions. Although I freely disclose this information, I regard it as in no way undermining my independence or impartiality as a member of the Tribunal in the arbitration proceeding referenced above.

You are correct that I appeared at an informal meeting on March 5, 2007 in representation, along with co-counsel, of Carrie Dann. This meeting was convened by the Inter-American Commission to discuss non-binding recommendations it made to the United States in its Report no. 75/02 of December 27, 2002 concerning the human rights situation of the Danns and other Western Shoshone indigenous people. Ms. Dann, along with her sister, Mary, now deceased, submitted a petition in 1991 to the Inter-American Commission on Human Rights requesting the Commission's intervention in their efforts to have U.S. federal and state officials alter their course of conduct to recognize ongoing rights of the Western Shoshone to their ancestral lands in the state of Nevada. As you are already aware, I represented the Danns in the proceedings before the Commission up to the publication of the Commission's decision and recommendations in their favor in late 2002. At Carrie Dann's request, I resumed representing her in 2005 in relation to the Commission's ongoing monitoring of the situation. My representation of Ms. Dann is part of the work of the International Human Rights Advocacy Workshop, a clinical course I direct at the University of Arizona College of Law. Students and affiliated attorneys carry out the work on the *Dann* and other matters under my supervision.

The United States has long maintained that it is not legally bound by any decision of the Inter-American Commission on Human Rights, and it has reiterated this position in context of the *Dann* case. Without refuting this position, the Commission called the informal meeting of March 5 to discuss its recommendations in the case and to explore cooperative efforts to implement them. This was not to be an adversarial proceeding, although several representatives of the United States appeared at the meeting and vigorously contested the Commission's findings.

In your March 30 letter you also request disclosure of "any representation" by me since 2002 of "any party in any matter adverse to the United States." This is a broad request indeed, if as you suggest my representation of Carrie Dann in an advisory human rights proceeding, concerning the actions and omissions of federal and local land administration officials affecting an indigenous people in the state of Nevada, is regarded as a matter "adverse to the United States." You effectively are asking me to disclose any activity I have undertaken as a lawyer to assist with any challenge to official positions or actions of any agency or political subdivision of the United States, no matter how unrelated to the international trade dispute being addressed in the present arbitration. Although this request goes beyond what is material to my independence or impartiality in the present arbitration, I offer the following additional information in the interests of full disclosure.

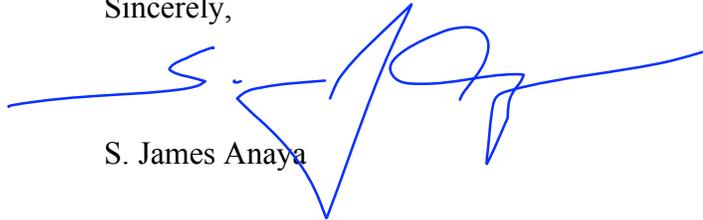
- I have supervised student and affiliated attorney work, again as part of the International Human Rights Advocacy Workshop which I direct at the University of Arizona College of law, to assist Western Shoshone tribes in submissions to the United Nations Committee on the Elimination of Discrimination. These submissions resulted in a non-binding decision by the Committee of March 2006 in which it called upon the United States to cease the authorization of actions in the state of Nevada that the Committee considered to be undermining the human rights of the Western Shoshone people in relation to ancestral lands. I have supervised follow-up submissions to the Committee to urge its continuing monitoring of the situation.
- I supervised submissions to the UN Special Rapportuer on the Fundamental Human Rights and Freedoms of Indigenous People and to the UN Human Rights Committee to inform them of the situation of the Western Shoshone and to urge their assistance.
- I have counseled various indigenous groups and non-governmental organizations from the United States and other countries in their advocacy for adoption by the United Nations of a Declaration on the Rights of Indigenous Peoples. The United States has opposed the text of the Declaration, which nonetheless was approved by the UN Human Rights Council in June 2006 and is now under consideration by the General

Assembly.

- I am counsel of record for the Border Action Network in its petition to the Inter-American Commission on Human Rights which was filed in April 2005. The petition alleges United States responsibility for the failure of federal and state officials to prevent and prosecute acts of violence by “viligantes” against immigrants in the area of the U.S.-Mexico border. The work on this petition is also being carried out by students and an affiliated attorney of the International Human Rights Advocacy Workshop which I direct. As pointed out, the petition procedure before the Inter-American Commission entails only the possibility of recommendations by the Commission and not a binding decision.
- I have counseled and represented the Chiricahua Apache Alliance, a group of which I am a part, in their opposition to federal and state authorizations of mining activities on lands considered sacred to the Chiricahua Apache people in the states of Arizona and New Mexico.
- I have assisted with *amicus* submissions in cases challenging the actions of U.S. officials in detaining suspects of terrorist acts against the United States.

I hope the above information is somehow useful to you.

Sincerely,



S. James Anaya

Copies by email and fax to:

Mr. Ucheora Onwuamaegbu, Secretary of the Tribunal

Copies by email only to:

Mr. Fali Nariman

Mr. John Crook

Mr. Todd Wieler, Esq.

Mr. Leonard Violi, Esq.

Ms. Chantell MacInnes Montour, Esq.

Mr. Robert Luddy, Esq.

Aril Ali, Esq.