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CLERK OF DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

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	)	ORDER ON SUMMARY JUDGMENT
	)	
Case No. 39576	)	SUBCASE NO.: 27-29D
	)	
	)	

I. PROCEDURAL BACKGROUND

A notice of claim was filed for this water right pursuant to I.C. § 42-1409. The Director of the State of Idaho Department of Water Resources examined the water system for this reporting area. The *Director's Report* contained a recommendation for the elements of this water right.

The Shoshone-Bannock Tribes filed an *Objection* on March 8, 2006. The *Objection* by the Tribes asserted two issues. First, the *Objection* asserted the place of use incorrectly included land on the Fort Hall Reservation. Second, the *Objection* asserted the water right should include a volumetric limitation. The State of Idaho filed a *Response* April 28, 2006.

On January 16, 2007 Patrick Taney filed a *Motion for Partial Summary Judgment on Issue of Tribe's Objection Based on Boundary Dispute*. A hearing was held on June 20, 2007.

II. STANDARD OF REVIEW

I.R.C.P. 56 provides for summary judgment where there is no genuine issue as to any material fact. Summary judgment is appropriate when the pleadings, depositions, affidavits, and admissions on record show that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. In making a determination of whether an issue of material fact exists, all disputed facts are liberally construed in favor of the non-moving party. All reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party. *Garner v. Bartshi*, 139 Idaho 430, 432, 80 P3d 1031, 1034 (2003)

III. ANALYSIS

The *Summary Judgment Motion* only addressed the place of use / reservation issue. The *Motion* did not address the volumetric limitation issue. For the place of use issue the claimant submitted the *Affidavit of Patrick J. Taney in Support of Motion for Summary Judgment on Issue of Tribes Objection Based on Boundary Dispute*. (hereafter *Taney Affidavit*) The *Taney Affidavit* established that the claimant's property which relates to this claim is not located on the Fort Hall Indian Reservation. In addition, the *Taney Affidavit* establishes that the claimant's property was not previously located on the Fort Hall Indian Reservation. Those facts were not rebutted or disputed. In fact, at the hearing on summary judgment, the Shoshone-Bannock Tribes conceded that there is no dispute that the place of use is not located on the reservation. Thus, the pleadings, affidavits, and other documents leave a record showing no genuine issues of material fact on the place of use issue.

IV. CONCLUSION

There are no genuine issues of material fact regarding the Shoshone-Bannock Tribes *Objection* as to place of use. The claimant's property is not now and has never been located on the Fort Hall Reservation.

THEREFORE, the *Motion for Partial Summary Judgment* is **granted**.

Dated: August 13, 2007.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON SUMMARY JUDGMENT was mailed on August 13, 2007, with sufficient first-class postage to the following:

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