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APR 07 2011

DEPARTMENT OF
WATER RESOURCES

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

InRe SRBA

Case No. 39576

) Subcase No. 27-4096
)
) PATRICK TANEY'S RESPONSE
) TO THE UNITED STATES' AND
) THE SHOSHONE-BANNOCK
) TRIBES' MOTION FOR
) ENFORCEMENT OF THE FORT
) HALL CONSENT DECREE
)

Comes now, Patrick Taney, a water user under sub-case number **27-00029D**, by and through his attorney of Record, Scott E. Axline, and hereby files his Response to the United States' and the Shoshone-bannock Tribes' Motion for Enforcement of the Fort Hall Consent Decree. It is Mr. Taney's understanding, pursuant to the Court's Order of February 18, 2011, the the sole issue presented to the Court at this point is a Motion for Partial Summary Judgement on the issue submitted to the Court on March 4, 2011 by the Tribe and the United States, to wit:

"Whether, under the facts set forth in the Motion for Enforcement of Fort Hall Indian Water Rights Consent Decree, and the Memorandum in Support and accompanying affidavits, the Shoshone-Bannock Tribes and the United States are entitled to an equitable adjustment as provided for in the decree of water right no. 27-11375.x.d?"

PATRICK TANEY'S RESPONSE
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MOTION FOR ENFORCEMENT OF
THE FORT HALL CONSENT DECREE

It is further Mr. Taney's understanding that, if the Court Rules in favor of the Tribe and United States on this Motion for Partial Summary Judgment, then and in that event the issue of the Remedy for the Equitable Adjustment will be taken up by the Court and the Parties.

SUMMARY JUDGEMENT

Summary Judgement is appropriate when there is no genuine issue of material fact and the Moving Parting is entitled to judgment as a matter of law. *Dorea Enterprises, Inc. v. City of Blackfoot*, 144 Idaho 422, 163 P.3d 211 (Idaho 2007). Disputed facts should be construed in favor of the non-moving party and all reasonable inferences are to be made in favor of the non-moving party. *Dorea*, supra.

Whether there is a question of fact is for the Court to determine. If the Court determines there is a material question of fact, then the Tribe's and United States' Motion should be denied. Whether the moving Parties have demonstrated that there is, in fact, a deficiency in the amount of water in the basin so that the Tribe is entitled to an equitable adjustment, is the specific question.

EQUITABLE ADJUSTMENT

From Mr. Patrick's position, the more specific question is: Even assuming, arguendo, that the moving parties have demonstrated there is such a deficiency as to entitled them to an equitable adjustment under the Agreement and Order of the Court, does that have any impact on the individual water users, such as Mr. Patrick. The answer is: No, it does not. The Agreement and the Court's previous Order are very specific that:

"The Tribes and the United States shall exercise this water right in a manner that ensures persons diverting natural flow from the Blackfoot River prior to January 1, 1990, whose rights are decreed in the SRBA will continue to receive their full legal entitlement under state law. The parties will specifically enumerate all rights protected by this provision once the SRBA Decree for this basin becomes final. These state created water rights are estimated to divert not more than 45,000 AFY of water from the Blackfoot River. In the event this estimate of the amount of existing diversion under

state created water rights is exceeded as a result of the Decree in the SRBA, the parties shall negotiate an equitable adjustment to the Tribal water rights to account for this change.”¹(Emphasis added).

An agreement, just as with an Order from the Court, should be given its plain meaning if the language is unambiguous. See: *Armstrong v. Farmers Ins. Co. of Idaho*, 147 Idaho 67, 205 P.3d 1203 (Idaho 2009). "A consent decree, which has attributes of a contract and a judicial act, is construed with reference to ordinary contract principles." *City of Las Vegas v. Clark County*, 755 F.2d 697, 702 (9th Cir. 1985). In *United States v. Asarco Inc.*, 430 F.3d 972, 980 (9th Cir. 2005), the Court noted, at page 980, that “A consent decree, like a contract, must be discerned within its four corners, extrinsic evidence being relevant only to resolve ambiguity in the decree.” If the plain language of a consent decree is clear, the Court does not need not evaluate any extrinsic evidence to ascertain the true intent of the parties. See: *Asarco*, supra at page 980.

Here, the language is unambiguous and its meaning is plain and should be given effect by the Court. Indeed, the moving parties have not even proposed, either in their Motion or their supplemental filing, that the language is ambiguous in this regard or that it should be construed in any other fashion. Indeed, they have withdrawn their Volumetric Objections to the individual water users’ rights, including that of Mr. Taney, in light of their Motion herein. Therefore, it is Mr. Taney’s position that, even if the Moving Parties have shown that they are entitled to an equitable adjustment, which he does not admit, that equitable adjustment can not, and should not, have any impact on his water rights because of the provisions in the 1995 Consent Degree.

CONCLUSION

Based on the forgoing, Mr. Taney respectfully submits that, whether the Tribe and the United

¹See: Article 7 of the Fort Hall Agreement and, more importantly, section 27-11375.x.d. of the 1995 Fort Hall Consent Decree.

States have proven they are entitled to an equitable adjustment or not, the Court should enter an Order that any such equitable adjustment shall not, under any circumstances, have any negative impact on Mr. Taney's water rights.

Respectfully submitted this 4th day of April, 2011.



Scott E. Axline

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that on the 4th day of April, 2011, I served a true copy of the foregoing document on the attorney(s) listed below:

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