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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	)	
	)	
	)	SUPPLEMENTAL MEMORANDUM
	)	
Case No. 39576	)	SUBCASE Nos. 01-10223, 01-10248, 25-02160
	)	25-13615, 27-02007, 27-11560, 27-11561.
	)	
	)	
_____	)	

Statement of Facts

The joint movants' motions to dismiss the FHWUA's objections were based on three grounds:

1. The FHWUA is not a claimant in the SRBA nor has it been served and joined as a party, and therefore the FHWUA may not file objections in the SRBA.
2. The objection filed by the FHWUA raises issues that are not within the scope of the SRBA Court.
3. This motion is further supported by the Memorandum in Support of Motion to Dismiss and the Affidavit of David Shaw filed herewith and the record and files in this case.

Mr. Shaw's affidavit attests only to the fact that the FHWUA "has not filed any notices of claims in the Snake River Basin Adjudication." The "records and files in the case" include the Director's Report and the objections. The Director's Report in

turn contains the 1990 Fort Hall Indian Water Rights Agreement, the proposed decree, and the United States' notices of claim. No other supporting affidavits were filed, and no other pleadings in which facts are asserted or from which factual inferences could be drawn are in the record, with the exception of eight pages of the deposition of Floyd Johnson, the Chairman of the Fort Hall Water Users Association.

Argument

The motion to dismiss raises two issues for summary judgment, viz., the standing of the FHWUA to file objections and whether the SRBA has subject matter jurisdiction over the issues raised by the objections. The motion seeks to have the standing issue treated first, raising the jurisdictional issue only if the court were to determine that the FHWUA has standing to file the objections. With respect to the related burden of proof, the initial burden of establishing the absence of a genuine issue of material fact rests with the joint movants. Tingley v. Harrison, 125 Idaho 86, 89, 867 P.2d 960, 963 (1994). The companion proposition is "[i]f a party moving for summary judgment raises issues in his motion but then fails to provide any evidence showing a lack of any genuine issue of material fact with respect to those issues, the non-moving party has no burden to respond with supporting evidence." Thomson v. Idaho Insurance Agency, Inc., ____ Idaho ____, 887 P.2d 1034, 1038 (1994). The evidence presented by the joint movants goes solely to the issue of standing. The joint movants have provided no evidence with respect to the jurisdictional question of whether the issues

raised by the objections are within the scope of the SRBA.

The legal basis of the joint movants' standing argument is that a "claimant" can only be a person who has filed a water right claim in the SRBA. Mr. Shaw's affidavit forms the sole factual basis of the legal argument. In response, we explained that the statute involved, i.e., I.C. § 42-1401A(1), creates two classes of claimants, viz., "any person asserting ownership of rights to the use of water within the State of Idaho or on whose behalf ownership of rights to the use of water is asserted." Because the FHWUA does not claim standing on the basis of the first class of claimants, i.e., as a person asserting ownership of rights, Mr. Shaw's affidavit is inapposite.¹

As pointed out in our response brief, the FHWUA asserts standing under the second class of claimants created by I.C. §42-1401A(1). The joint movants have provided no evidence that the members of the FHWUA are not claimants under the second class of claimants created by the statute. Instead, the joint movants simply argue that the statute does not mean what it says. In this regard, Idaho law holds "that where a statute or constitutional provision is plain, clear, and unambiguous, it 'speaks for itself and must be given the interpretation the language clearly

¹ Two separate motions to dismiss were filed with respect to the objections of Kim G. Bodily in Subcase Nos. 01-10248 and 27-11560. The motions do not raise a standing issue under I.C. § 42-1401A(1), but assert only the lack of subject matter jurisdiction. The joint movants admit that Mr. Bodily has filed a notice of claim as a "person asserting ownership of rights to the use of water. . . ." Likewise, Mr. Johnson has filed a claim and is a "person asserting ownership of rights to the use of water" in his individual capacity.

implies.'" Moon v. Investment Board, 97 Idaho 595, 548 P.2d 861 (1976). In other words, according to the Idaho Supreme Court, a district court is not at liberty to read an unambiguous statute differently. In this case, the United States, the State of Idaho, and the Tribes did not and could not assert an alternative meaning for the statute, just as they could not assert that it is ambiguous. I.C. § 42-1401A(1) means what it says. Accordingly, members of the Association are by statutory definition "claimants," who as such are empowered by I.C. § 42-1412 to file objections. They may be different than people who have filed notices of claim, but that distinction means nothing in regard to the issue of standing.

Once this aspect of the standing question is answered, the next question is whether the Association could have filed objections.² I.C. § 53-707 is the applicable statute. It states that an unincorporated association can participate in judicial, administrative, or other governmental proceedings. To fall within the statute, the Association need only show that one or more of its members are claimants in their own right, that the interests the Association seeks to protect are germane to the Association's purposes, and that the relief sought in the objections would not require the joinder of an individual member. We explained that we met these purely legal requirements in our response brief. In their reply brief, the joint movants did not attempt to rebut our

² The joint movants agreed with the FHWUA that this was the next question that the Court should address, and the briefs treated it this way.

argument, apparently because they had no basis upon which to do so. Accordingly, the FHWUA could have filed objections as an association acting on behalf of its members.

With respect to the second issue, i.e., the issue of subject matter jurisdiction, the same principles of summary judgment law apply. The joint movants have the initial burden of establishing the absence of a genuine issue of material fact and that they are entitled to prevail as a matter of law. The joint movants assert no factual basis upon which to conclude that there is no genuine issue of material fact. They base the second half of their motion to dismiss on the bare legal assertion that "[t]he pleadings filed by the FHWUA fail to allege matters relating to the elements of water rights at issue in the SRBA." According to the joint movants, the Association's "interests in the use of water are limited to 'contracts with the U.S. . . .'"

To assess the matter, the court should look to the proposed decree and the Association's objections. With respect to water right No. 01-10248, for example, the proposed decree sets forth the source, annual diversion volume, diversion rate, annual volume of consumptive use, priority date, point of diversion, purpose and period of use, place of use, and basis of the proposed Snake River right. The Association's "Standard Form 1 Objection" sets forth objections to the quantity of the proposed right, the place of use, and the amount of consumptive use. The "pleadings," in other words, set forth a number of disputes over three basic elements of the water rights held on behalf of the members of the FHWUA as they

have been proposed to be adjudicated in the 1990 Agreement. These "elements" of the water right are set forth in I.C. § 42-1409 as the elements that the SRBA is statutorily obliged to adjudicate.

While the joint movants do not disagree that the pleadings raise "matters relating to the elements of water rights at issue in the SRBA," they argue that the relationship between the United States and the Fort Hall water users somehow rises above the substantive dispute and renders the dispute "outside the scope of the SRBA." The argument is premised on the tacit assertion that certain contracts between the United States and the water users form the sole basis of the Fort Hall water users' rights to the use of water and that the users' rights have no independent basis in federal law. Without providing the court with any factual support for their characterization of the contracts, the joint movants assert that the water users are prematurely complaining of a failure to deliver water pursuant to some unidentified contract provision.

The joint movants, however, cannot rely on contracts not placed in evidence to support their assertion that this case involves only contract issues that are outside the scope of the SRBA. Idaho law in this regard is clear. It holds "that if a party moving for summary judgment raises issues in his motion but then fails to provide any evidence showing a lack of any genuine issue of material fact with respect to those issues, the nonmoving party has no burden to respond with supporting evidence." Thomson v. Idaho Insurance Agency, supra at 1038 (1994). Here, the joint

movants elected not to support their assertion that the nature of the contractual relationship between the United States and the Fort Hall water users supplants the substantive issues raised by the objections. They do not rely on a contract provision that contradicts or waives the Association's standing under § 42-1401A(1).³ In a factual vacuum, they simply argue that the contracts create a relationship between the United States and the Fort Hall water users that somehow negates their right to object or that the contracts effectively transform the substantive issues raised by the pleadings into the kind of contractual provision that the court has concluded are inappropriate for inclusion in a decree.⁴

³ Idaho Code § 42-1401A(1) contemplates by its terms some form of relationship between the United States and the members of the Association as persons "on whose behalf ownership of rights to the use of water is asserted." This relationship could be a trust relation between a trustee and a beneficiary or a contractual relationship. The statute does not limit the class of "claimants" it creates to persons in a particular kind of relationship. The mere fact that there are contracts involved does not resolve the issue of jurisdiction. The joint movants must show that the terms of these contracts and the relationship that they create transform the substantive issues to an issue outside the scope of the SRBA. They have neither done so nor attempted to do so.

⁴ In oral argument the United States urged that it is similar to an irrigation district or municipality. The United States, however, is clearly neither. The assertion that the relationship between the United States and the Fort Hall water users is the same as the relationship between an irrigation district or a municipality and their contracting water users is not supported by any evidence. The relationship between the United States and the non-Indian users of water in the Fort Hall Irrigation Project is unique. Unlike the situation in Idaho where an irrigation district may "own" the right of its water users, the United States sold the water rights appurtenant to the non-Indian lands in the Fort Hall Irrigation Project. Those rights have vested under federal and state law.

Instead of coming forward with any evidence to support their contention, the joint movants rely solely on an empty assertion of law. Because the joint movants have submitted no evidence, the FHWUA has no burden to respond with contradictory evidence. Thompson, supra. To so hold would not only shift the burden on the pending motion to the nonmoving party, but would simultaneously require the nonmoving party to produce evidence to rebut an unsupported assertion.

Conclusion

If the court concludes that Kim Bodily and the Fort Hall Water Users Association do not have standing under I.C. § 42-1401A(1), the objections should be dismissed for lack of standing, leaving the water users free to intervene. To reach such a conclusion, however, the plain meaning of the statute would have to be ignored.

Once past the issue of standing, the court is presented with the issue of whether the relationship between the United States and the Fort Hall water users precludes the water users from addressing the substantive issues relating to the elements of the water rights set forth in the 1990 Agreement. Simply knowing that the relationship involves the existence of contracts, however, does not resolve the issue. The question is whether the joint movants have provided the requisite evidentiary support for their bare assertion that the relationship between the United States and the water users changes the nature of the case to be tried.

DATED this 27th day of April, 1995.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

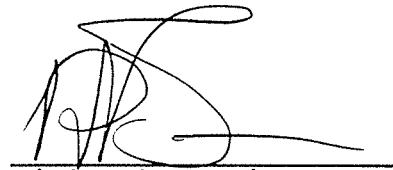
I hereby certify that the copies of the foregoing SUPPLEMENTAL MEMORANDUM were served by placing the same with Federal Express Courier on April 27, 1995 as follows:

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