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DISTRICT COURT - SRBA
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

Case No. 39576

) Subcase Nos. 01-10223, 01-10248, 25-02160,
) 25-13615, 27-02007, 27-11560, 27-11561
)
) **ORDER GRANTING MOTION TO DISMISS**
) **OBJECTIONS OF FORT HALL WATER USERS**
) **ASSOCIATION;**
)
) **DENYING MOTION TO DISMISS OBJECTION**
) **OF KIM BODILY;**
)
) **DENYING CERTAIN DOCUMENTS**
) **ADMISSION INTO EVIDENCE; and**
)
) **DENYING MOTION FOR LEAVE TO FILE**
) **SUPPLEMENTAL MEMORANDUM**
)

Richard Simms, Simms & Stein, representing Fort Hall Water Users and Kim Bodily

Steven Strack, Deputy Attorney General, representing the State of Idaho

Candy L. Jackson, Tribal Counsel, representing the Shoshone-Bannock Tribes

Peter C. Monson, Department of Justice, representing the United States

John Rosholt, Rosholt Robertson & Tucker, representing the Twin Falls and North Side Canal Companies

**ORDER GRANTING MOTION TO DISMISS OBJECTIONS OF FORT HALL WATER
USERS ASSOCIATION; DENYING MOTION TO DISMISS OBJECTION OF KIM
BODILY; DENYING CERTAIN DOCUMENTS ADMISSION INTO EVIDENCE; AND
DENYING MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM**
5/11/95

Hearing on the *Motion to Dismiss Objection of Kim G. Bodily* and *Motion to Dismiss Objection of Fort Hall Water Users Association (Motions to Dismiss)*, jointly filed by the United States, the Shoshone-Bannock Tribes and the State of Idaho, was held on April 18, 1995.

There was no opposition to the *Motion to Participate* filed by the Twin Falls and North Side Canal Companies and this order memorializes the oral ruling of the court granting the *Motion to Participate* on April 18, 1995. Collectively, the United States, the Shoshone-Bannock Tribes, the State of Idaho and the Twin Falls and North Side Canal Companies will be referred to as Movants. Fort Hall Water Users Association and Kim Bodily will be referred to as Respondents.

Following hearing, Respondents filed a *Motion for Leave to File Supplemental Memorandum* and *Supplemental Memorandum*, dated April 27, 1995. Movants opposed the motion to supplement the record by *Joint Response of United States, Shoshone-Bannock Tribes, and State of Idaho to Motion for Leave to File Supplemental Memorandum*, dated May 5, 1995.

PRELIMINARY MOTIONS

At the conclusion of the hearing on the *Motions to Dismiss*, the Fort Hall Water Users Association offered two documents into evidence which were objected to by the Movants on the grounds of hearsay and relevancy. The first document, titled *Agreement for Water Right, Fort Hall Project* dated June 11, 1909, is one page and appears to be the first page of a standard form. There are neither any signatures nor is there anything on the face of the document which relates in any fashion to the Fort Hall Water Users Association or Kim Bodily. The second document is titled *This Form of Agreement to Be Executed By Contractor For the Acquiring of Water Rights Under the Fort Hall Indian Irrigation Project, in Idaho, Covering Lands Originally Acquired By Homestead Entry on the Ceded Area of the Fort Hall Indian Reservation Which Are Situated Above the Irrigation Canal and From Which Water Must Be Pumped Onto the Land*, dated July 19, 1943. This four page document is signed by a superintendent of the Fort Hall Indian Agency, a registrar in a land office in Blackfoot, Idaho, and some unknown "contractors." The document appears to be a contract to sell water rights on completion of construction contracts. There is nothing of record or on the face of this document which ties

it to any of the parties before the court or establishes relevancy to the pending motions. Therefore, the documents are **denied** admission for failing to establish the relevance to this proceeding.

The Fort Hall Water Users Association, subsequent to hearing, filed a *Motion for Leave to File Supplemental Memorandum* and its *Supplemental Memorandum*. The Movants objected to this motion on the basis that it is untimely.

The *Motion for Leave to File Supplemental Memorandum* and *Supplemental Memorandum* is **denied** as untimely. It was filed with the court nine days following hearing. The Fort Hall Water Users Association had ample opportunity to present evidence of record in support of its motion prior to or at the hearing. No evidence of good cause was presented in support of the request. It is, therefore, **denied**.

MOTION TO DISMISS FORT HALL WATER USERS ASSOCIATION

Movants assert the Fort Hall Water Users Association does not have standing to object to the *1990 Fort Hall Indian Water Rights Agreement (Agreement)*, that the SRBA Court does not have subject matter jurisdiction to entertain a contract action against the United States and, therefore, the objections fail to state a claim upon which relief can be granted. This court agrees.

The *Motions to Dismiss* are based on the record presently before the court, which consists solely of the pleadings (Notices of Claim, the *1990 Fort Hall Indian Water Rights Agreement* and Objections and Responses to the *Agreement*). Water rights disputes are non-jury civil matters and in considering a motion to dismiss in a non-jury case, "the court sits as a trier of fact and is not required to construe all evidence and inferences to be drawn therefrom in the light most favorable" to the non-moving party. See, e.g., *Keenan v. Brooks*, 100 Idaho 823, 825, 606 P.2d 473 (1980). The pleadings do not support the position take by the Respondents in resisting the *Motions to Dismiss*.

Movants first claim that the Fort Hall Water Users Association does not have standing to object to the *Agreement*. It is undisputed that the Fort Hall Water Users Association did not file a Notice of Claim to these or any rights in the Snake River Basin Adjudication. It is,

therefore, not a statutory party to the SRBA. I.C. § 42-1401A(7). It is significant that the objections filed by the Fort Hall Water Users Association to the rights at issue in the *Agreement* did not contest the "ownership" element of those water rights. Fort Hall Water Users Association now claims an ownership interest in some of these same rights notwithstanding their failure to file a claim or to object to the ownership element in the *Agreement*.

Because it is not a claimant, the Fort Hall Water Users Association is not a statutory party to the SRBA. Therefore, it lacks standing to object to the *Agreement*.

The Movants also contend that the Fort Hall Water Users Association's objections fail to state a claim on which relief may be granted. In support, Movants claim that the Fort Hall Water Users Association's interest in the water rights at issue is purely a matter of contract between them and the United States. Since any dispute in this regard sounds solely in contract and does not require a determination of any element of a water right, Movants argue that such a contract dispute is beyond the court's jurisdiction and no relief can be granted.

The United States admits that it is contractually liable to provide certain storage water to the Fort Hall Water Users Association. This storage water has, however, been claimed by the United States in the SRBA. The Fort Hall Water Users Association has never claimed ownership of these water rights prior to the instant motion. The Fort Hall Water Users Association claims that the *Agreement* will not allow the United States to fulfill its contractual obligations to provide storage water.

Again, since Fort Hall Water Users Association has neither filed a claim to this water in the Snake River Basin Adjudication nor objected to the ownership element of the rights in the *Agreement*, it may not now claim ownership in order to withstand the *Motions to Dismiss*. There is no evidence of record supporting Fort Hall Water Users Association's ownership claim. Any contractual action Fort Hall Water Users Association has against the United States as a result of the *Agreement*, if decreed, is beyond the scope of the SRBA Court's jurisdiction and would have to be initiated in a proper forum.

The *Motion to Dismiss Objection of Fort Hall Water Users Association* is **granted**. Fort Hall Water Users Association does not have standing to object and their objections fail to state a claim upon which relief can be granted.

MOTION TO DISMISS KIM BODILY

Kim Bodily, a claimant in the Snake River Basin Adjudication, individually filed an objection to the "ownership" element of water rights 01-10248 and 27-11560 which are part of the *Agreement*. As a party to the Snake River Basin Adjudication, he has standing to object to the *Agreement* and this court has subject matter jurisdiction to hear his objection to the ownership element for water rights 01-10248 and 27-11560. Therefore, the pleadings before the court do not support the dismissal of the objections filed by Kim Bodily and the motions as to him are **denied**.

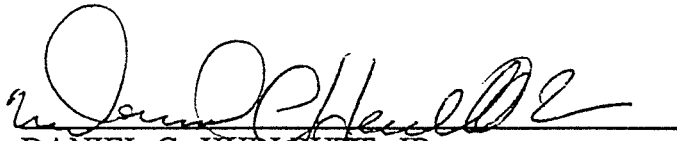
CONCLUSION

IT IS ORDERED that the objections filed by the Fort Hall Water Users Association to water rights 01-10223, 01-10248, 25-02160, 25-13615, 27-02007, 27-11560, 27-11561 are **dismissed** for lack of standing and failure to state a claim for which relief may be granted.

Kim Bodily's objections to water rights 01-01248 and 27-11560 will proceed to trial in accordance with the *Order Setting Subcases for Trial and Pretrial Scheduling Order* dated March 21, 1995.

IT IS SO ORDERED.

DATED May 11, 1995.


DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER GRANTING MOTION TO DISMISS OBJECTIONS OF FORT HALL WATER USERS ASSOCIATION; DENYING MOTION TO DISMISS OBJECTION OF KIM BODILY AND DENYING CERTAIN DOCUMENT ADMISSIONS INTO EVIDENCE** was mailed on May 11, 1995, with sufficient first-class postage to the following:

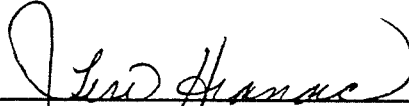
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