

RECEIVED

JUN 0 1 1995

Respondents'/Claimants' Name:

Department of Water Resources
Adjudication Bureau

Twin Falls Canal Company
North Side Canal Company

Attorney's Name and Address:

John A. Rosholt
Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P.O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
05269501.NMS

RECEIVED

MAY 3 1 1995

OFFICE OF THE
ATTORNEY GENERAL

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
)
) RESPONSE TO FHWUA'S MOTION
) TO ALTER OR AMEND JUDGMENT
) AND KIM BODILY'S MOTION FOR
) RECONSIDERATION OR
) PERMISSIVE APPEAL

DESCRIPTIVE SUMMARY

This is the response of the Twin Falls Canal Company and the North Side Canal Company ("the Companies") in opposition to the Motion to Alter or Amend Judgment Granting Motion to Dismiss Objections of Fort Hall Water Users Association and the Motion for Reconsideration and Alternative Motion for Permissive Appeal of Order Denying Motion to Dismiss Kim Bodily, filed May 17, 1995.

ARGUMENT

The Companies agree with the arguments contained in the Joint Opposition to FHWUA Motion to Alter or Amend Judgment and to Kim Bodily's Motion for

1 Reconsideration and Alternative Motion for Permissive Appeal ("Joint Opposition"), filed
2 by the United States, State of Idaho and Shoshone-Bannock Tribes. To those arguments,
3 the Companies offers the following points for the court's consideration.

4 A. There is No Basis Upon Which to Grant the Motion to Alter or Amend the
5 Court's Order of May 11, 1995.

6 Motions to alter or amend a judgment are governed by I.R.C.P. 59 and
7 corresponding case law. The purpose of the rule is to allow a court to correct errors of
8 fact and law which had occurred in its proceedings. First Security Bank v. Neibaur, 98
9 Idaho 598, 603, 570 P.2d 276, 281 (1977).

10
11 It is clear from a review of the proceedings in this matter that there has
12 been no mistake of fact or law. The court properly interpreted I.C. Sec. 42-1401A and
13 the existing record to exclude the Fort Hall Water Users Association as a "claimant" in
14 the SRBA. Any other interpretation of the statute would open the SRBA up to an
15 entirely new class of "claimant" and unduly burden and prolong the proceedings.

16
17 There is nothing in the record to indicate that the Association filed a claim
18 in the SRBA or even that a claim was filed on its behalf. As pointed out in the Joint
19 Opposition, the relevant claims were made by the United States of America only, and no
20 mention is made in the Notice of Claim that the claims were filed on behalf of anyone,
21 let alone the Association.

22
23 Finally, as the Companies have argued all along, the relationship between
24 the United States and the members of the Association is a contractual one. The relevant
25 water rights are held by the United States, not the Association or its members. Despite
26 the Association's contentions to the contrary, the court's observation that the Association
27 chose not to contest the "ownership" element of the claims is indeed significant. It
28

1 undermines any assertion that the court has jurisdiction over the Association's objections.
2 The concerns reflected in the Association's objections relate to matters that are properly
3 resolved in a contract action in federal court and the SRBA court has no jurisdiction over
4 them. The court was correct in its adoption of this interpretation.

5 For these reasons, the motion to alter or amend the court's order of May
6 11, 1995 should be denied.
7

8 B. There is No Basis Upon Which to Grant the Motion for Reconsideration
9 or Alternative Motion for Permissive Appeal of the May 11, 1995 Order.

10 1. **The Motion for Reconsideration Should be Denied.**

11 Motions for reconsideration are governed by I.C.R.P. 11(a)(2)(B) and the
12 associated case law. As with a motion to alter or amend, a proper basis for granting
13 reconsideration would be evidence of an error of fact or law.

14 As with the Association's motion, Kim Bodily's motion carries with it no
15 proof that the court made any error in its order of May 11, 1995. The court noted that
16 Kim Bodily had indeed filed a claim in the SRBA and, therefore, is a claimant under I.C.
17 Sec. 42-1401A. Therefore, Bodily's objections cannot be dismissed on standing grounds.
18 In addition, the court found no jurisdictional bar to Bodily's objections to the "ownership"
19 element of the claims. The analysis ends there. There is no need for the court to
20 determine whether the relevant claims were filed by the United States on behalf of Kim
21 Bodily. As a result, Kim Bodily's objections, and the relevant subcases, should proceed
22 to trial in the manner provided for by the court.
23

24 2. **The Alternative Motion for Permissive Appeal Should be Denied.**

25 Motions for permissive appeal are governed by I.A.R. 12 and the relevant
26 case law. The intent of the rule was to provide an immediate appeal of an interlocutory
27

1 order if substantial issues of great public interest or legal questions of first impression are
2 involved. It is intended to create an appeal in the exceptional case. Budell v. Todd, 105
3 Idaho 2, 4, 665 P.2d 701, 703 (1983).

4 From any vantage point, this is not an exceptional case. It does not involve
5 issues of great public interest or a question of first impression. It does not involve a
6 controlling question of law as to which there is substantial grounds for difference of
7 opinion. Most importantly, an appeal from the order would not materially advance the
8 orderly resolution of the litigation.
9

10 In its May 11, 1995 order the court upheld Kim Bodily's ability to object
11 to the relevant claims. The matter is set for trial and should proceed accordingly.
12 Granting an appeal on the questions presented by Bodily would only slow the process,
13 without a compelling, or even clear, reason for doing so.
14

15 The Companies have no interest in prolonging this matter. It should
16 proceed to trial so that it can be resolved and the Fort Hall Water Rights Agreement can
17 be decreed, as agreed to in 1990 and previously approved by Congress, the Idaho State
18 Legislature and the Tribes.

19 CONCLUSION

20 For the reasons set forth above, the Motions by the Fort Hall Water Users
21 Association and Kim Bodily should be denied.
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED this 26 day of May, 1995.

ROSHOLT, ROBERTSON & TUCKER

By: Norm M. Semanko
for John A. Rosholt

By: Norm M. Semanko
Norman M. Semanko

Attorneys for Twin Falls Canal Company
and North Side Canal Company

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on this 26 day of May, 1995, I served a copy of the foregoing RESPONSE TO FHWUA'S MOTION TO ALTER OR AMEND JUDGMENT AND KIM BODILY'S MOTION FOR RECONSIDERATION OR PERMISSIVE APPEAL by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

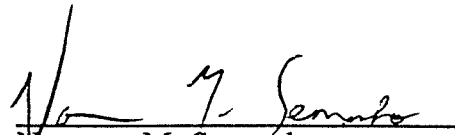
Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

United States Department of Justice
Environment & Natural Resources
Division
550 West Fort Street, Box 33
Boise, Idaho 83724

Candy L. Jackson
Attorney Shoshone-Bannock Tribes
P.O. Box 306
Fort Hall, Idaho 83203

Peter C. Monson
Attorney, Indian Resources Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th Street, Suite 945 North Tower
Denver, Colorado 80202

Margaret J. King
Richard A. Simms
Simms & Stein, P.A.
102 Aspen Lakes Drive
P.O. Box 3329
Hailey, Idaho 83333


Norman M. Semanko