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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 DENYING MOTION TO ALTER OR
) AMEND JUDGMENT GRANTING MOTION TO
) DISMISS OBJECTIONS OF FORT HALL
) WATER USERS ASSOCIATION; AND
)
) ORDER GRANTING RECONSIDERATION OF
) ORDER DENYING MOTION TO DISMISS
) OBJECTION OF KIM BODILY; AND
)
) ORDER DENYING MOTION FOR PERMISSIVE
) APPEAL
)

On May 18, 1995, the Fort Hall Water Users Association (the Association) moved to alter or amend the judgment granting a *Motion to Dismiss Objections of the Association (Motion to Dismiss)*. The *Motion to Dismiss* the Association's objections was based on two grounds: the Association is not a "claimant" in the adjudication, and the SRBA court does not have jurisdiction over the subject matter of the action asserted by the Association's pleadings.

The *Motion to Dismiss* was decided solely on the pleadings (I.R.C.P. 12(b)) and was not decided under I.R.C.P. 56 standards, contrary to the statements of the Association in their *Brief in Support of Motion For Reconsideration and Alternative Motion For Permissive Appeal of Order Denying Motion to Dismiss Kim Bodily and Motion to Alter or Amend Judgment Granting*

ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT;
ORDER GRANTING RECONSIDERATION; and ORDER
DENYING MOTION FOR PERMISSIVE APPEAL
6/6/95

Motion to Dismiss Objections of Fort Hall Water Users Association. There were no matters outside of the pleadings which were considered in ruling on the *Motion to Dismiss*.

A motion to amend or alter a judgment pursuant to I.R.C.P. 59(e) is to be used to correct factual or legal errors. "Such proceedings must of necessity . . . be directed to the status of the case as it existed when the court rendered the decision on which the judgment is based." *Lowe v. Lym*, 103 Idaho 254, 263, 103 P.2d 259, 268 (Ct. App. 1982). Where a motion to amend or alter a judgment presents new information that was not presented to the court prior to the decision which resulted in a judgment, the motion shall be treated as a motion for relief from a judgment under I.R.C.P. 60(b). *Id.*

In its *Motion to Alter or Amend Judgment Granting Motion to Dismiss Objections of Fort Hall Water Users Association*, the Association presents information which was not previously presented to the court. The Association does not explain why the *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*, dated May 11, 1995 (*Order Re: Motions to Dismiss*) should be modified under I.R.C.P. 60(b). The Association only contends that because it might be able to establish that it is a statutory "claimant," it has made a sufficient showing to resist the *Motion to Dismiss*. In support, the Association argues that it could establish that individual members of the Association are "claimants" within the definition of I.C. § 42-1401(A). It further contends that the Association has standing to file objections to the 1990 Fort Hall Indian Water Rights Agreement which was negotiated on its behalf and which, when enforced, will adversely affect individual association members.

THE ASSOCIATION AS A "CLAIMANT"

The Association did not file a notice of claim for the water rights that are the subject of the 1990 Fort Hall Indian Water Rights Agreement. The Association contends that notices of claim filed by the United States were for the benefit of or "on behalf of" the Association. There is nothing in the record establishing this as fact. The notices of claim for the water at issue were filed by the United States of America as the "claimant." The "remarks" section in the notices of claim states the water rights are claimed by the United States for use on land owned

by non-Indian individuals which are served by the Fort Hall Irrigation Project. This notation does not establish that any of the water rights for which the United States filed notices of claim was for the benefit of or on behalf of the Association. The relationship between the United States and members of the Association has not been established by the pleadings except that the United States owns the water rights. The United States has responded to the Association's challenge by asserting that members of the group only have a contractual right to the water under an agreement with the federal government.

The Association is not a "claimant" under I.C. § 42-1401A(1). The Association did not and does not assert ownership of the rights which are the subject matter of the 1990 Fort Hall Indian Water Rights Agreement nor has there been any evidence introduced to establish that the United States' notices of claim are "claims on whose behalf ownership of the rights to the use of water is asserted." I.C. § 42-1401A(1). The Association does not have standing to prosecute its objections.

LACK OF SUBJECT MATTER JURISDICTION

Whether or not the United States filed notices of claim on behalf of the Association under I.C. § 42-1401(A)(1) is not the only basis for granting the *Motion to Dismiss*.

The substance of the Association's objections is that the terms of the 1990 Fort Hall Indian Water Rights Agreement negotiated between the State of Idaho, the Shoshone-Bannock Tribe, the United States and other signatories might operate to its detriment. Apparently it is in the enforcement of certain priority dates in the 1990 Fort Hall Indian Water Rights Agreement that the Association might be harmed.

A grievance with the express terms of the agreement which may affect the priority dates of the United States-owned water provided to the Association and other non-Indian water users as a matter of contract is not within the scope of the jurisdiction of this court. It should also be noted that the Association did not object to the "priority" dates included in the agreement.

Allegations of a breach by anticipatory repudiation or any other breach of contract issue on this separate contract between the United States and the Association or its members cannot be heard by the SRBA court under its subject matter jurisdiction.

The *Motion to Alter or Amend Judgment Granting Motion to Dismiss Objections of Fort Hall Water Users Association* is **DENIED** for the reason that I.R.C.P. 60(b) criteria have not been established.

**DECLARIFICATION OF ORDER DENYING
MOTION TO DISMISS OBJECTION OF KIM BODILY**

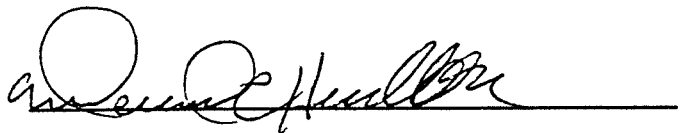
To clarify, the order denying the *Motion to Dismiss Kim G. Bodily* does not limit him to only prosecuting the "ownership" issue. Mr. Bodily's objections filed to the 1990 Fort Hall Indian Water Rights Agreement have been pending since May 31, 1994, and will be heard at trial.

MOTION FOR PERMISSIVE APPEAL

The *Alternative Motion for Permissive Appeal* does not need to be addressed given the clarification on Mr. Bodily's objections.

IT IS SO ORDERED.

DATED June 6, 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 DENYING MOTION TO ALTER OR AMEND JUDGMENT GRANTING MOTION TO DISMISS OBJECTIONS OF FORT HALL WATER USERS ASSOCIATION; AND ORDER GRANTING RECONSIDERATION OF ORDER DENYING MOTION TO DISMISS OBJECTION OF KIM BODILY; AND ORDER DENYING MOTION FOR PERMISSIVE APPEAL was mailed on June 6, 1995, with sufficient first-class postage to the following:

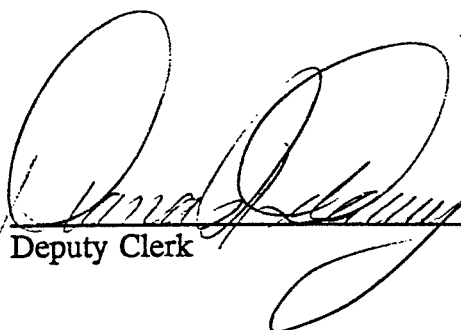
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Deputy Clerk

STATE OF NEW YORK

IN SENATE
JANUARY 10, 1906.
REPORT
OF THE
COMMISSIONER OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION
PASSED BY THE SENATE
MAY 10, 1905.
ALBANY: J. B. LIPPINCOTT & CO., PRINTERS.
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