

**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	)	Consolidated Subcase 03-10022
	)	(Nez Perce Tribe Instream Flow Claims)
Case No. 39576	)	
	)	<b>ORDER ON MOTION TO STAY</b>
_____	)	<b>PROCEEDINGS PENDING APPEAL</b>

**I.  
APPEARANCES**

Mr. Albert Barker, Esq., Hawley Troxell Ennis & Hawley, Boise, Idaho, for the Boise Kuna Irrigation District, Federal Claims Coalition, et al.

Mr. Steven Strack, Esq., Boise, Idaho, Deputy Attorney General for the State of Idaho

Mr. Michael Mirande, Esq., Miller Bateman LLP, Seattle, Washington, for the Idaho Power Company

Mr. Peter Monson, Esq., Denver, Colorado, for the United States Department of Justice, Bureau of Indian Affairs

Mr. Steven Moore, Esq., Native American Rights Fund, Boulder, Colorado, for the Nez Perce Tribe

Mr. Douglas B.L. Endreson, Esq., Sonosky Chambers Sachse & Endreson, Washington, D.C., for the Shoshone-Bannock Tribe

**II.  
MATTER DEEMED FULLY SUBMITTED FOR DECISION**

This Court having heard oral arguments on this matter on December 21, 1999, with no party seeking additional briefing and the Court having requested none, the matter is deemed fully submitted for decision on the next business day, or December 22, 1999.

### III. BRIEF PROCEDURAL AND FACTUAL BACKGROUND

1. On April 26, 1996, an Order was entered by Judge Hurlbutt consolidating all of the in-stream flow claims filed by the United States (1133 claims) as trustee for the benefit of the Nez Perce Tribe and all claims filed by the Nez Perce Tribe (1134 claims) on its behalf, designated under the lead subcase number of 03-10022. *See Second Amended Case Management Order: Federal and Tribal Non-Consumptive (Instream Flow) Claims*, (April 26, 1996).
2. On November 10, 1999, this Court issued its ruling on the various motions for summary judgment filed by the Objectors to the consolidated subcases. The Court's ruling, however, was limited to claims for in-stream flows located outside the present boundaries of the Nez Perce Reservation. Also, on November 10, 1999, in accordance with I.R.C.P. 58(a), this Court issued a judgment granting the motions for partial summary judgment, together with an I.R.C.P. 54(b) certificate. The Court expressly limited the scope of the judgment to the November 19, 1999, ruling as to in-stream flow water rights located off the Reservation.
3. Previously, on August 31, 1999, the Objectors filed a motion to dismiss the Nez Perce claims based on the Tribe's failure to pay filing fees. The matter was set for oral argument to be heard on November 18, 1999.
4. On November 17, 1999, the Nez Perce Tribe filed a *Notice of Appeal*. On December 21, 1999, the United States also filed a *Notice of Appeal*.
5. On November 18, 1999, at the time and place set for hearing on the Objectors' motion to dismiss, this Court acknowledged on the record the automatic fourteen day stay of proceedings in accordance with I.A.R. 13(a), and vacated the scheduled hearing. The hearing was then reset for December 21, 1999.

6. On December 14, 1999, the Federal Claims Coalition filed a motion for a scheduling order, seeking a scheduling order relative to the completion of discovery in the consolidated subcases.
7. Also on December 14, 1999, the Nez Perce Tribe filed a motion to vacate the scheduled hearing on the motion to dismiss, together with a supporting memorandum, and a motion for an expedited hearing on the matter, asserting that this Court lost jurisdiction once the appeal had been filed.
8. A hearing was held on the matter on December 21, 1999. The Court took the matter under advisement.

#### **IV. ISSUES PRESENTED**

The subject consolidated subcase is comprised of 1134 (plus 1133 claims brought by the United States) individual claims or subcases. The claims are for in-stream flows located both within and outside of the present boundaries of the Nez Perce Reservation. The Court's ruling that is presently on appeal is limited to those in-stream flow claims located outside of the present boundaries of the Reservation. The Court did not decide the claims for in-stream flows located within the boundaries of the Reservation. At issue is whether pursuant to I.A.R. 13(b) and I.R.C.P. 54(b), this Court loses jurisdiction over the entire 1134 (plus the 1133 claims brought by the United States) consolidated separate subcases or only over those subcases within the scope of the Court's limited ruling.

## V. DECISION

The Nez Perce Tribe asserts that pursuant to the express terms of I.R.C.P 54(b) and I.A.R. 13(b), and as the provisions have been interpreted by the Idaho Appellate Courts, that this Court is divested jurisdiction to take further action in the consolidated subcases except as expressly enumerated in I.A.R. 13(b). This Court agrees.

The general rule regarding the jurisdiction of the district court on appeal is that once a notice of appeal has been perfected, the district court is divested of jurisdiction and the proceedings are stayed during the pendency of the appeal. *Diamond v. Sandpoint Title Ins., Inc.* 132 Idaho 145, 148, 968 P.2d 240, 243 (1998) *reh'g denied* (citing *H & V Engineering, Inc., v. Idaho St. Board of Eng'rs*, 113 Idaho 646, 648, 747 P.2d 55, 57 (1987)). The limited exceptions to the general rule are enunciated in I.A.R. 13. *Id.* In actions regarding multiple claims and/or multiple parties, the issuance of a Rule 54(b) certificate by the Court, which certifies less than all of claims as final, also divests the Court of jurisdiction as to the remaining claims and/or parties to the action. I.R.C.P. 54(b). This rule operates differently in the SRBA, which is one giant case (general stream adjudication) comprised of approximately 180,000 individual subcases. As such, when a subcase is appealed, the remainder of the SRBA can still proceed. *See Order Appointing District Judge and Determining Venue of Petition for General Adjudication of Water Rights in Snake River Basin*, Idaho Supreme Court No. 99143 (June 26, 1987).

Unlike the situation where the appeal is from a partial judgment entered in a single case involving multiple claims or parties, this consolidated case involves multiple individual cases which have been consolidated for administrative purposes, and thus effectively treated as one subcase. In this regard, however, the law appears to be the same. In *Jones v. Jones*, 117 Idaho 621, 790 P.2d 914 (1990), the Idaho Supreme Court held that: [T]he consolidation of two cases does not have the effect of merging the two cases into a single action. Rather, 'consolidation is permitted as a matter of convenience and economy in administration, but does not merge the suits into a single cause, or change the rights of the parties.'" *Id.* At 624, 790 P.2d at 917 (quoting *Johnson v. Manhattan Ry.*, 289 U.S. 479, 496-98, 53 S.Ct. 721, 727-28, 77 L.Ed. 1331 (1933)).

However, in *Matter of Doe*, 128 Idaho 144, 147-148, 911 P.2d 140-144 (Ct. App. 1996), the Idaho Court of Appeals extended the Rule 54(b) requirements to consolidated cases and held that an interim judgment entered in consolidated cases, which certifies less than all of the individual cases as final, is not ripe for appeal unless also accompanied by a Rule 54(b) certificate. Although the Court did not specifically address the issue regarding the district court's jurisdiction over the remaining cases, the Court held:

Rule 54(b) authorizes the trial court to give effect to a judgment where, in a single action, a partial judgment has disposed of less than all of the claims or parties. We see no reason why this authority should not also be committed to the trial court when multiple actions have been consolidated. This procedure also will provide clarity for the parties, for litigants can be certain that filing an interim appeal is neither permitted nor necessary to preserve the ultimate right of appeal unless a Rule 54(b) certification has been entered. Finally, this rule will prevent piecemeal appeals except in circumstances where, in the trial court's judgment, an interim appeal will expedite the litigation or serve important interests of the litigants. The appellate courts will retain final authority, however, to determine whether an interim appeal is appropriate. If the appellate court finds that a Rule 54(b) certification was granted in error, the appeal may be dismissed. . . . In addition, where the trial court has declined to enter a Rule 54(b) certificate, an aggrieved litigant may request leave to take a permissive appeal pursuant to I.A.R. 12.

*Id.* (citations omitted).

Based on the foregoing reasoning, it is clear that the Court of Appeals intended that multiple actions, which have been consolidated, be treated the same as single actions involving multiple claims and/or parties for purposes of perfecting an interim appeal. Since the provisions of Rule 54(b) divest the trial court of jurisdiction over remaining claims and/or parties in single actions, it follows that a Rule 54(b) certification also divests the Court of jurisdiction over remaining cases where there has been a consolidation. Accordingly, this Court is without jurisdiction to entertain the remaining subcases except as to issues involving those limited exceptions enumerated in I.A.R. 13 or absent a directive from the Supreme Court.

It should be stated however, that this result is contrary to the intent and spirit of the Court's consolidation order. Unfortunately, the order of consolidation was not as

specific as it should have been regarding the purposes for which the cases were consolidated. The consolidation order entered was in an effort to facilitate the effective administration of the 1134 individual cases (2267 including the claims filed by the United States) so that the common issues could be decided together. However, because not all of the consolidated claims share common issues (i.e. off-reservation claims v. on-reservation claims) it does not follow that the remaining claims not affected by the Court's ruling should be delayed during the pendency of the appeals. In this regard, Objectors seeking to continue to litigate the subcases unaffected by the appeal have the option of making application with the Supreme Court pursuant to I.A.R. 13.4.

## **VI. CONCLUSION**

For the foregoing reasons, the Nez Perce Tribe's motion to vacate further proceeding in the above-entitled consolidated subcase is hereby granted. This Court is without further jurisdiction over any matter in the case except as expressly enumerated in I.A.R. 13 or until otherwise directed from the Supreme Court.

IT IS SO ORDERED:

DATED: JANUARY 21, 2000.

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BARRY WOOD  
Administrative District Judge and  
Presiding Judge of The  
Snake River Basin Adjudication