



STATE OF UTAH

JAN GRAHAM
Attorney General

M E M O R A N D U M

TO: TED STEWART
DNR Executive Director

ROBERT L. MORGAN
State Engineer

LEE H. SIM
Assistant State Engineer

GERALD STOKER
Southwestern Regional Engineer

FROM: JOHN H. MABEY, JR. *JM*
Assistant Attorney General

DATE: March 29, 1993

RE: Dismissal of Tullis v. Utah Department of Natural Resources and Utah State Engineer, United States District Court Civil No. 92-C-412-B; "Takings" claim by New Castle Reservoir shareholder for trans-basin distribution dispute between Pinto Creek and Grass Valley drainages, Washington County.

Attached are an ORDER and a JUDGMENT dismissing the above case March 26, 1993. The case was dismissed on the grounds that the federal district court has no jurisdiction to adjudicate takings claims against a State.

The Plaintiff may attempt to refile in state court, but there are numerous defenses. Please contact Mike or me if you desire further information.

JHM/ac

Attachments

United States District Court

Central DISTRICT OF Utah

DANIEL E. TULLIS,
Plaintiff,

JUDGMENT IN A CIVIL CASE

v.

UTAH DEPARTMENT OF NATURAL
RESOURCES, et al.,
Defendants.

CASE NUMBER:

92-C-412B

- Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that judgment be entered in favor of the defendants and the plaintiff's cause of action dismissed.

March 26, 1993

Date

Markus B. Zimmer

Clerk



(By) Deputy Clerk

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United States District Court
for the
District of Utah
March 26, 1993

ce

* * MAILING CERTIFICATE OF CLERK * *

Re: 2:92-cv-00412

True and correct copies of the attached were mailed by the clerk to the following:

John H Mabey, Esq.
UTAH ATTY GENERAL'S OFFICE
1636 W North Temple, #300
Salt Lake City,, UT 84116

John P Soltis, Esq.
UTAH ATTORNEY GENERAL
330 S 300 E
Salt Lake City, UT 84111

Keith F Oehler, Esq.
216 South 200 West
P.O. Box 1234
Cedar City,, UT 84720

FILED IN UNITED STATES DISTRICT
COURT DISTRICT OF UTAH

MAR 10 1993

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JAN GRAHAM - 1231
Attorney General
JOHN P. SOLTIS - 3040
JOHN H. MABEY - 4625
Assistant Attorneys General
Attorneys for Defendants
236 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1016

By MARKUS B. ZIMMER, Clerk
DEPUTY CLERK

OFFICE OF
JUDGE DEE BENSON

IN THE UNITED STATES DISTRICT COURT DISTRICT OF UTAH,
CENTRAL DIVISION

DANIEL E. TULLIS, :

Plaintiff, :

vs. :

UTAH DEPARTMENT OF NATURAL :
RESOURCES, Division of water :
Rights; DEE C. HANSEN, :
Director; and ROBERT L. :
MORGAN, Utah State Engineer, :

Defendants. :

:
: ORDER

: Civil No. 92-C-412-B
: Judge Dee Benson

RECEIVED

MAR 15 1993

ATTORNEY GENERAL
NATURAL RESOURCE AGENCY

This matter came on regularly for hearing on the 9th day of December, 1992 before the Honorable Dee Benson, Judge of the above-entitled Court on the Defendants' Motion to Dismiss. The defendants were represented by John P. Soltis and John H. Mabey, Assistant Attorneys General and the plaintiff was represented by Keith F. Oehler.

The Court having heard argument by counsel and having reviewed the pleadings and memoranda of points and authorities finds that the Plaintiff has filed this action against the

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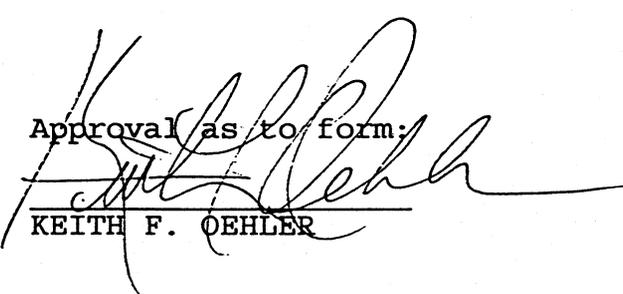
defendants Dee C. Hansen and Robert L. Morgan in their official capacities and that plaintiff's complaint and all causes of action contained therein against all of the above named defendants is jurisdictionally barred by the 11th Amendment to the United States Constitution.

The court being fully advised in the premises now makes and enters the following Order:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint and all causes of action contained therein against all defendants is dismissed.

DATED this 10th day of ~~January~~ ^{March}, 1993.

Approval as to form:



KEITH F. OEHLER



JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing ORDER, postage prepaid, this 20 day of January, 1993, to the following:

Keith F. Oehler, Esq.
Attorney for Plaintiff
216 South 200 West
P.O. Box 1234
Cedar City, Utah 84721-1234



Betty Behafield