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## So. Fork Band Te-Moak Tribe of W. Shoshone Indians of Nev. v. 6th Judicial Dist. Ct., 7 P.3d 455 (Nev. 2000)

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would be impaired. Thus, the court instructed the trial court upon remand to permit Rosenfeld to join the trustee and beneficiaries as defendants. If joinder was not feasible, the trial court must determine whether indispensable parties exist.

*Nicole Anderson*

## NEVADA

**So. Fork Band Te-Moak Tribe of W. Shoshone Indians of Nev. v. 6th Judicial Dist. Ct., 7 P.3d 455 (Nev. 2000)** (holding an Indian tribe waived sovereign immunity when it took possession of reservation land subject to previously adjudicated water rights).

In 1913, the Nevada State Engineer ("State Engineer") initiated water rights adjudication procedures for the Humboldt River, eventually known as the Humboldt Decree ("Decree"). This required the state engineer and water commissioners to administer the water rights adjudicated under the Decree. The United States purchased land, subject to the Decree, to create the South Fork Reservation for the Te-Moak Tribe of the Western Shoshone Indians ("Tribe"). The Tribe cooperated with the State Engineer and the water commissioners, allowing them to cross the reservation to administer and maintain the Decree. Further, the Tribe paid assessment fees for administration of the Decree for at least ten years. In spite of this historical activity, on March 8, 1998, the Tribe adopted resolutions prohibiting the State Engineer and water commissioners from entering reservation land and determining the Tribe would no longer pay assessment fees as required by the Decree.

After the Tribe passed these resolutions, three water commissioners entered the reservation to access private land that was inaccessible through any other means, in order to regulate the river in accordance with the Decree. A tribal peace officer arrested the water commissioners for trespassing on the reservation.

Subsequently, the State Engineer and water commissioners filed a complaint with the Sixth Judicial District Court of the State of Nevada claiming the Tribe was in contempt for interference with authorities regulating and administering the Decree. When their motion to dismiss the complaint was denied, the Tribe filed a writ of prohibition contending the court lacked jurisdiction over the Tribe, and that the United States was an indispensable party to the contempt hearing.

In determining whether the district court had jurisdiction over the Tribe, the Supreme Court of Nevada recognized Indian tribes, like sovereign powers, enjoy common law immunity from suit. Sovereign immunity can be waived, but any waiver must be clearly expressed. However, a waiver does not require explicit declaration indicating that immunity is waived. The supreme court concluded the purchase of

the reservation land subject to previously adjudicated water rights constituted an express waiver of sovereign immunity. In addition, the supreme court concluded both the Tribe's benefits from and compliance with the Humboldt Decree for more than five decades ratified this waiver. Further, the district court had authority to hold in contempt anyone who interfered with or frustrated the ability of the State Engineer or water commissioners to administer the Decree. Tribe immunity to jurisdiction frustrated the district court's authority over administration of the Decree.

The supreme court rejected the Tribe's argument regarding failure to join an indispensable party. The Tribe caused the events leading up to the contempt complaint rather than the United States. Therefore, the supreme court denied the writ of prohibition.

*Holly Kirsner*

## NEW JERSEY

**Fed. Pac. Elec. Co. v. N.J. Dep't of Env'tl. Prot., 759 A.2d 851 (N.J. Super. Ct. App. Div. 2000)** (holding the New Jersey Department of Environmental Protection's failure to provide an electric company with notice of applicable groundwater remediation standards violated the Administrative Procedure Act).

The Federal Pacific Electric Company ("FPE") brought this action after the New Jersey Department of Environmental Protection ("Department") disapproved the groundwater component of its remedial action workplan. FPE submitted a remedial action workplan after it discovered trichloroethene ("TCE") groundwater contamination at its former manufacturing facility. The Department rejected FPE's remedial goal of 50 milligrams of TCE per liter, choosing instead, the Department's more demanding Groundwater Quality Standards ("GWQS"). FPE requested dispute resolution and argued GWQS were incompatible with the governing statute's standards. The Department's Bureau of Environmental Evaluation ("Bureau") disagreed. The Department maintained the GWQS established the appropriate criteria to attain discharge standards applicable to groundwater remediation. The Assistant Director of the Industrial Site Evaluation Element, the Director of the Division of Responsible Party Site Remediation, and the Assistant Commissioner of the Site Remediation Program agreed with the Bureau's initial response. After the various determinations, the Department's Commissioner declined FPE's dispute resolution request.

On appeal, FPE claimed the Department failed to adopt standards acceptable under the Administrative Procedure Act ("APA"). Additionally, FPE asserted the adopted standards violated existing