

# In the United States Court of Federal Claims

No. 09-714C  
(Filed: April 27, 2010)  
(not for publication)

**FILED**  
  
APR 27 2010  
  
U.S. COURT OF  
FEDERAL CLAIMS

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GLEN HEISKELL, *pro se*,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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## ORDER OF DISMISSAL

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Plaintiff *pro se* Glen Heiskell seeks redress for injuries allegedly caused by the North Plains Groundwater Conservation District (“NPGCD”), a Texas state governmental entity. In 2008, the NPGCD assessed civil penalties, fees, and costs in the amount of \$11,955.40 against Plaintiff for his refusal to report water usage as required by NPGCD rules. Compl. Ex. I. Plaintiff alleges that the NPGCD’s actions constitute a taking of his private property, and seeks damages in the amount of \$10,578,700 for loss of income, decrease in value of his crop land, and loss of water rights. Compl. 15. Though Plaintiff names the United States as a defendant -- along with the president, general manager, and board of directors of the NPGCD, as well as a private attorney representing them -- Plaintiff has not claimed that the United States or any of its agencies took any action in connection with the events giving rise to his complaint. The Government therefore seeks dismissal pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims (“RCFC”).<sup>1</sup> Because complaints against state entities fall outside this Court’s jurisdiction, the Court grants the Government’s motion, and Plaintiff’s complaint is dismissed.

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<sup>1</sup> On January 19, 2010, Plaintiff filed a “motion to dismiss Defendant’s motion to dismiss,” which the Court construes as a response to the Government’s motion to dismiss. In this motion, Plaintiff alleges “lack of lawful and / or proper service” of Defendant’s motion to dismiss. However, as Plaintiff’s motion attached copies of Defendant’s motion, the Court finds that service was effected.

## Background<sup>2</sup>

Plaintiff owns certain mineral and water rights acquired from his deceased father's estate. Compl. 3. In November 2007, the NPGCD sent Annual Production Reporting Forms to Plaintiff seeking information on his water usage. Compl. Ex. E. In April and May of 2008, the NPGCD attempted to notify Plaintiff by phone that the reporting forms were due. Id. On May 20, 2008, the NPGCD sent a reminder notice by mail to Plaintiff. Id. The NPGCD proposed a settlement agreement whereby Plaintiff could avoid litigation by filing the requisite reporting forms, installing an NPGCD-approved flow meter on each well on his property, and paying a settlement amount of \$500. Id. Plaintiff did not agree to this settlement offer. Id. On September 2, 2008, the NPGCD notified Plaintiff by letter that penalties of not less than \$1,500, plus \$50 per each day of continuing violation, would be assessed for Plaintiff's failure to comply with the reporting rules. Id.

On September 19, 2008, the NPGCD issued a Show Cause Order, notifying Plaintiff that a hearing would be held on October 14, 2008, at which civil penalties could be assessed and Plaintiff's well permits could be suspended, cancelled, or limited. Compl. Ex. F. After several continuances by the NPGCD, the hearing on the Show Cause Order was held on July 10, 2009. Compl. Ex. J. Plaintiff failed to appear at this hearing, and the NPGCD heard testimony and evidence in his absence. Id. The NPGCD assessed a civil penalty in the amount of \$6,550, plus \$50 per day of continuing violation from June 12, 2009, until the date the Annual Production Reporting Form is filed. Id. By letter dated July 23, 2009, counsel for the NPGCD requested payment of this amount, plus \$2,500 in attorney's fees, and informed Plaintiff that if he did not respond by August 22, 2009, the NPGCD could file suit in the appropriate court in Moore County, Texas. Id.

On October 21, 2009, Plaintiff filed the instant complaint, claiming that his property "has never been subject to the rules and regulations of the [NPGCD]" and accusing the NPGCD of trespass, bribery, extortion, blackmail, coercion, making false statements, and various constitutional violations. Compl. 4-5, 13. Plaintiff alleges that the actions of the NPGCD have caused his crop land to decrease in value and seeks current and future damages from the NPGCD's interference with his alleged water rights, totaling \$10,578,700. Compl. 15.

## Discussion

Defendant moves for dismissal for lack of subject matter jurisdiction pursuant to RCFC 12(b)(1). Subject matter jurisdiction must be established before the Court may proceed to the merits of the action. BearingPoint, Inc. v. United States, 77 Fed. Cl. 189, 193 (2007) (citing Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 88-89 (1998)). "If the Court finds that it lacks jurisdiction over the subject matter, it must dismiss the claim." Naskar v. United States, 82 Fed. Cl. 319, 320 (2008) (internal quotation omitted). When deciding a motion pursuant to RCFC 12(b)(1), this Court must assume that all undisputed facts alleged in the complaint are true and must draw all reasonable

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<sup>2</sup> This background is derived from Plaintiff's complaint and the attachments thereto, and the parties' motion papers. This background should not be construed as findings of fact.

inferences in the nonmovant's favor. Newby v. United States, 57 Fed. Cl. 283, 290 (2003). The Plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence. Thomson v. Gaskill, 315 U.S. 442, 446 (1942).

Complaints drafted by pro se litigants are held to “less stringent standards than formal pleadings drafted by lawyers.” Naskar, 82 Fed. Cl. at 320 (quoting Haines v. Kerner, 404 U.S. 519, 520 (1972)). However, this latitude does not allow a pro se plaintiff to subvert the Court's jurisdictional requirements. See Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995). Pro se plaintiffs still bear the burden of establishing the Court's subject matter jurisdiction. Tindle v. United States, 56 Fed. Cl. 337, 341 (2003).

Under the Tucker Act, this Court has jurisdiction over claims against the government “not sounding in tort.” 28 U.S.C. § 1491(a)(1); Keene Corp. v. United States, 508 U.S. 200, 214 (1993). The Tucker Act does not create any substantive rights of recovery for money damages. Rather, the plaintiff must allege a money-mandating source of law to bring the matter within the Court's jurisdiction. United States v. Mitchell, 463 U.S. 206, 216-17(1983); United States v. Testan, 424 U.S. 392, 398 (1976). This Court may only render judgment for money when the violation of a constitutional provision, statute, or regulation independently mandates payment of money damages by the United States. See Khan v. United States, 201 F.3d 1375, 1377-78 (Fed. Cir. 2000).

To prevail in a takings claim, a plaintiff must show that “the federal government has done some affirmative act that deprives the plaintiffs of their property or that interfered with or disturbed their property rights.” Custom Contemporary Homes, Inc. v. United States, 5 Cl. Ct. 88, 90 (1984) (citing D.R. Smalley & Sons, Inc. v. United States, 178 Ct. Cl. 593, 598-99 (1967)). “The United States cannot be held liable if private property is taken by the action of a State or local government entity.” Id. (citing Griggs v. Allegheny Co., 369 U.C. 84, 89 (1962)).

Although the United States is a listed defendant, Plaintiff has not identified any act by the United States or its agents which gives rise to a claim for monetary damages. Plaintiff makes no factual allegation or assertion as to why the United States or any of its agencies is responsible for his alleged injuries. Rather, the factual predicate giving rise to Plaintiff's complaint stems exclusively from the acts of the NPGCD, a Texas state entity.

In Custom Contemporary Homes, Inc., this Court granted summary judgment in favor of the Government where the plaintiffs “[did] not allege any affirmative acts on the part of the United States that deprive them of any of their property.” 5 Cl. Ct. at 92. In that case, the Court found that a New Jersey agency, not the United States, acted as the acquiring sovereign in authorizing right-of-way acquisitions for the construction of Interstate 287 through the state. Id. Under such circumstances, the Court held that “[l]iability, if any, lies with the State, and not the federal government,” and dismissed the plaintiff's complaint. Id. See also B & G Enters. v. United States, 43 Fed. Cl. 523, 527 (1999) (“The United States cannot be held liable if private property is taken by acts or omissions of the state.”); Blue v. United States, 21 Cl. Ct. 359, 362 (1990) (“Federal government liability for a taking claim is dependent on federal government action.”).

Because Plaintiff's complaint is premised solely on actions taken by the NPGCD, a Texas state entity, it falls outside the subject matter jurisdiction of this Court.

**Conclusion**

For the foregoing reasons, Defendant's motion to dismiss is **GRANTED**, and Plaintiff's Complaint is **DISMISSED**.

  
**MARY ELLEN COSTER WILLIAMS**  
Judge