

APPENDIX

1a

**UNITED STATES COURT OF APPEALS FOR THE
FEDERAL CIRCUIT**

**NOTICE OF ENTRY OF
JUDGMENT ACCOMPANIED BY OPINION**

**OPINION FILED AND JUDGMENT ENTERED:
07/11/2018**

The attached opinion announcing the judgment of the court in your case was filed and judgment was entered on the date above. The mandate will be issued in due course.

Information is also provided about petitions for rehearing and suggestions for rehearing en banc. The questions and answers are those frequently asked and answered by the Clerk's Office.

No costs were taxed in this appeal.

Regarding exhibits and visual aids: Your attention is directed Fed. R. App. P. 34(g) which states that the clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them. (The clerk deems a reasonable time to be 15 days from the date the final mandate is issued.)

FOR THE COURT

/s/Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

3a

Note: This disposition is nonprocedural.

*United States Court of Appeals
For the Federal Circuit*

James Lee Williams,
Plaintiff-Appellant

v.

United States,
Defendant-Appellee

2018-1689

Appeal from the United Court of Federal
Claims in No: 1:17-cv-00679-MCW, Judge Mary Ellen
Coster Williams.

Decided: July 11, 2018

James Lee Williams, Yuma, AZ, pro se

Joshua E. Kurland, Commercial Litigation Branch,
Civil Division, United States Department of Justice,
Washington, DC, for defendant-appellee. Also represent-
ed by Robert Edward Kirschman, Jr., Patricia M.
McCarthy, Chad A. Reader.

Before Newman, Chen, and Hughes, Circuit Judges.

Per Curiam.

James Lee Williams presently leases a parcel of agricultural land in an area located along the border of Arizona and California known as the Yuma Island. Purportedly in relation to the leasehold, Mr. Williams sued the United States in the Court of Federal Claims, alleging that U.S. agencies administered racially discriminatory policies and committed fraud that denied his ancestors the rights to acquire land and water rights on the Yuma Island and therefore an opportunity to build wealth. That in turn, Mr. Williams argued below, violated the Fifth Amendment Taking Clause and the Due Process Clause.

The trial court dismissed the action for lack of subject matter jurisdiction, finding his claims either timed-barred, sounding of tort, or unconnected to any identified money-mandating source of law within the court's jurisdiction. On appeal, Mr. Williams concedes in his informal opening brief that there exists no reversible error in the trial court's judgment. See Appellant's Informal Opening br. 1-2. He merely alleges anew that he seeks damages for decades of discrimination by U.S. agencies that deprived him of life, liberty, and the right to acquire property as a U.S. citizen, Appellant's Informal Opening Br. 2, and that the United States failed to provide equal protection on account of race, Appellant's Informal Reply Br. 7. But the law is well settled that neither the Due Process Clause of the Fifth or Fourteenth Amendment nor the Equal Protection vests the Court of Federal Claims with jurisdiction under the Tucker Act because those provisions do not mandate the payment of money by the United States. *Leblanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995); accord *Smith v. United States*, 709 F.3d 1114, 1116 (Fed. Cir. 2013).

In his notice of appeal, Mr. Williams additionally asserts that he “appeals(s) to provide the statute [42 U.S.C. § 2000d-7] that was omitted in the initial claim that is money mandating.” Notice of Appeal 5 ¶ 1, Docket No. 1 (mar. 15, 2018). To the extent that assertion can be construed as an argument challenging the trial court’s decision, the argument fails.¹ Section 2000d-7 “expressly waives states sovereign immunity for violations of... `title VI of the Civil Rights Act of 1964,” *Sossamon v. Texas*, 563 U.S. 277, 291 (2011) (emphasis added) (quoting § 2000d-7(a)(1)), and “[i]n a suit against a State,” §2000d-7(a)(2) (emphasis added), “makes `remedies (including remedies both at law and in equity)... available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State,” *Sossamon*, 563 U.S. at 291 (alteration in original) (quoting § 2000d-7(a)(2)). See also *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001) (stating that § 2000d-7 “expressly abrogated States’ sovereign immunity against suits brought in federal court to enforce Title VI” against them). The statute sets forth no private right of action for money damages against the *United States*, which could be enforced in the Court of federal Claims.

To the extent Mr. Williams raises additional arguments or allegations in support of jurisdiction in his informal reply brief, we are not persuaded that he cures the jurisdictional defect. Because Mr. Williams agrees that the court did not err and we do not discern any error in the

¹ The argument is also waived because it was not raised below. *Petro- Hunt, L.L.C. v. United States*, 862 F.3d 1370, 1383 (Fed. Cir. 2017), cert. denied sub no. *Petro-Hunt, LLC v. United States*, 138 S. Ct. 1989 (2018).

7a

4
States

Williams v. United

AFFIRMED

No costs.

8a

United States Court of Federal Claims
717 Madison Place, NW
Washington, DC 20439

Office of the Clerk of Court
(202) 357-6406

VIA CERTIFIED MAIL NO. 7016 3010 0000 4308 2603

James Lee Williams
137 N. 9th Avenue
Yuma, AZ 85364

Re: Complaint of Judicial Misconduct or Disability CL-
18-90159

Dear Mr. Williams,

Enclosed, please find the Opinion and Memorandum
issued by Chief Judge Susan G. Braden dismissing your
complaint.

You have the right to petition for review of this decision
by the entire court. The deadline for filing such a
petition is within forty-two (42) days after the date of the
Chief Judge's order.

Sincerely,

/s/Lisa Reyes
Lisa Reyes
Clerk of Court

Dated: 3-27-2018

Enclosure

In the United States Court of Federal Claims
No. 17-679C
(Filed: January 31, 2018)

JAMES LEE WILLIAMS

Plaintiff,

v.

THE UNITED STATES

Defendant.

ORDER OF DISMISSAL

Williams, Judge.

Plaintiff pro se James Wiliams leases land in the area along the border of California and Arizona as the Yuma Island. Plaintiff seeks \$400,000,000 in damages for himself and the other seven families residing on the Yuma Island, as descendants of the original black settlers, based upon discriminatory treatment of their ancestors and the taking of their water rights. Plaintiff requests that the Yuma Island land and water rights be deeded to him as well as the families who are still leasing land from the Arizona Land Department. Coml. Ex 3.

This matter comes before the Court on Defendant's motion to dismiss. For the reasons stated below, comes before the court on Defendant's motion to dismiss. For the reasons stated below, Defendant's motion to dismiss is granted.

Background²

In 1902, pursuant to The Reclamation Act of 1902,³ the Bureau of Reclamation initiated the Yuma Reclamation Project, which required all land along the Colorado River to be surveyed to determine suitability for farming.

Compl. Ex 2, at 1. Homesteading could not begin until canals were constructed to deliver water to irrigable land. Compl. Ex. 5, at 1. At this time, the Yuma Island belonged to the state of Arizona and was part of the North Gila Valley Division. However, by 1920, the Colorado River had changed course, leaving the Yuma Island in California. Compl. Ex.2, at 1. An African American community was established on the Yuma Island in the mid-1920s. Compl. Ex. 5, at 1.

Plaintiff Alleges:

In the mid-1920s, African American World War I veterans and friends came to Yuma County to homestead on public land because their Government was giving away free land as an incentive to settle the desert southwest. Even though they had military preferences; they were excluded from the Yuma Reclamation Project due to racially discriminatory policies administered by the Bureau of Reclamation

² This background is derived from Plaintiff's complaint and the 189 pages of exhibits. This background should not be construed as findings of facts.

³ The Reclamation Act of 1902 directed the Secretary of the Interior to reclaim arid lands in certain states through irrigation projects and open those lands to entry by homesteaders. 43 U.S.C. §§ 371 *et seq.* (2016); Klamath Irrigation Dis. V. United States, 67 Fed. Cl. 504, 507 (2005). Under a later amendment to the Reclamation Act, "individual water users served by a reclamation to determine suitability for project could acquire a 'water-right certificate' by proving that they had cultivated and reclaimed the land to which the certificate applied." 43 U.S.C. § 541.

and the Bureau of Land Management.

Out of necessity, they became squatters on public land when the Bureau of

Reclamation offered no assistance or facilities for African American to apply

For homestead because the country was legally segregated when the Supreme

Court approved "Separate But Equal" laws. In fact, African Americans'

Constitutional Rights were violated with impunity.

In 1931, Water Entitlements were approved for the land where the black

Community was established, which became known as the "Yuma Island".

However, as required by the 1902 Reclamation Act, the Bureau of Reclamation

Had to construct canals to deliver the water first before allowing settlers to apply

for homestead, which was never done. Their action excluded the black

community from the Yuma Reclamation Project, and it denied them the right

To acquire the land and water rights...

Compl. 2.

In 1928, the Boulder Canyon Act set the annual allotment of reclamation water for three of seven states that draw water from the Colorado River—California, Arizona, and Nevada. ⁴ Compl. Ex, at 2. The Act "mandated that California distribute the 4.4 million acres feet of water between seven districts," including the Yuma Reclamation Project. Id. In 1931, the Superintendent of the Yuma Reclamation Project

⁴ California, Arizona, and Nevada are known as the Lower Basin States, while Colorado, New Mexico, Utah, and Wyoming are known as the Upper Basin States. Compl. Ex. 5, at 2.

recommended that the state of California provide water to the Yuma Island from its annual allotment, as the land was in California rather than Arizona. Id. This recommendation was memorialized in the Boulder Canyon Project Agreement signed on August 18, 1931, also known as the Seven Party Agreement. Id.; see also Compl. Ex. 10.

The Seven Party Agreement formed a priority system for the seven California water districts drawing water from the Colorado River, and granted the Yuma Island priority-2, meaning that it was second only to the Palo Verde Irrigation District for purposes of receiving allocated water. Compl. Ex. 10. Plaintiff states that the Yuma Island was not included in the list of water entitlements the Bureau of Reclamation provided as a result of a Supreme Court decree in the case of Arizona v. California, which enforced the Boulder Canyon Act and authorized the water allotment each Lower Basin state would receive. Compl. Ex. 1, at 4, Ex. 5, at 3. Plaintiff alleges that this omission led to “discriminatory policies which deprived the black community of Water Entitlements and supported an ongoing effort that identified the Yuma Island community as unauthorized water users.” Compl. Ex. 1, at 4. In 1982, the Bureau of Land Management transferred the Yuma Island back to the state of Arizona. Id.

Discussion

Plaintiff has the burden of establishing subject-matter jurisdiction in this Court. See Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988). The Court must dismiss the action if it finds subject-matter jurisdiction to be lacking. Adair v. United States, 497 F.3d 1244, 1251 (Fed. Cir. 2007). The Court assumes all factual allegations as true, and will construe the complaint in a manner most favorable to Plaintiff when ruling on a motion to dismiss pursuant to Rule 12(b)(1). Pennington Seed, Inc v. Produce Exch. No. 299, 457 F.3d 1334, 1338 (Fed. Cir. 2006).

The filing of pro se litigants are held to ``less stringent standards than formal pleadings drafted by lawyers.” Naskar v. United States, 82 Fed. Cl. 319, 320 (2008) (quoting Haines v. Kerner, 404 U.S. 519, 520 (1972)). However,, pro se plaintiffs still bear the burden of establishing the Court’s jurisdiction and must do so by a preponderance of the evidence. See Reynolds, 846 F.2d at 748; Tindle v. United States, 56 Fed. Cl. 337, 341 (2003).

The Tucker Act provides that this Court:

Shall have jurisdiction to render judgment upon
any claim against the United
States founded either upon the Constitution or any
Act of Congress or any
Regulation of an executive department, or upon any
express or implied contract
with the United States or for liquidated or un-
liquidated damages in cases not
sounding in tort.

28 U.S.C. § 1491(a)(1) (2016). The Tucker Act is not money-mandating, but rather is a jurisdiction statute. United States v. Testan, 424 U.S. 392, 398 (1976). To establish jurisdiction, a plaintiff must seek money damages under a source of substantive law. “[T]he claimant must seek money damages under a source of substantive law he relies upon `can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained.” United States v. Mitchell, 463 U.S. 206, 216-17 (1983) (quoting Testan, 424 U.S. at 400); see Jan’s Helicopter Serv., Inc v. Aviation Admin., 525 F.3d 1299, 1306 (Fed. Cir. 2008) (“[A] plaintiff must identify a separate source of substantive law that creates the right to money damages.” (internal citation and quotation marks omitted)).

Plaintiff seeks to recover damages on behalf of himself and “seven other black families who are ancestors of the original black settlers.” However, under Rule 83.1 of the

United States Court of Federal Claims, a pro se plaintiff may only represent “oneself or a member of one’s immediate family, but may not represent...any other person....”

Immediate family is generally interpreted as being limited to a plaintiff’s parents, spouse, sibling, or children. *Fast Horse v. United States*, 101 Fed. Cl. 544, 547-48 (2011) (internal citations omitted). Therefore, this Court does not have jurisdiction over any claims brought on behalf of the other Yuma Island families.

Plaintiff names Secretary of the Interior, the Bureau of Land Management, the Bureau of Reclamation, and its employees Terrance J. Fulp, Director of the Lower Colorado Regional Office, Margot Selig, Water Administrator for the Lower Colorado Group, and Nancy DiDonato, Contract and Repayment Specialist for the Yuma Area Office, the Bureau of Indian Affairs, the President of the Quechan Tribe, the Executive Director of the Colorado River Board of California, the Chief Executive Officer of the Metropolitan Water District, Ron Derma, Manager of the Bard Water District, the Arizona State Land Commissioner, and Thomas Buschatzke, the Director of the Arizona Department of Water Resources. Compl. Ex.3. The only proper defendant in this Court is the United States, *United States v. Sherwood*, 312 U.S. 584, 588 (1941); *Berdick v. United States*, 612 F.2d 533, 536 (Ct. Cl. 1979). To the extent Plaintiff alleges claims against parties other than the United States, this Court lacks jurisdiction to entertain those claims.

The gravamen of Plaintiff’s complaint appears to be that the Department of Interior, Bureau of Reclamation and Bureau of Land Management, violated the Constitutional Rights of black settlers, Plaintiff’s ancestors, when the Government denied these settlers the right to homestead by administering racially discriminatory policies in the 1920s. Plaintiff alleges this conduct violated the Due Process Clauses of the Fifth Amendments to the Constitution, the Thirteenth Amendment to the Constitution, and the

Privileges and Immunities Clause of Article IV. However, because none of these provisions are money-mandating, they cannot form a basis for this Court's jurisdiction. Leblanc v. United States, 50 F.3d 1025, 1028 (Fed. Cir. 1995) (finding that the Due Process Clauses of the Fifth and Fourteenth Amendment are not money-mandating and therefore are insufficient as a basis for jurisdiction); Hardin v. United States, 123 Fed. Cl. 667, 671 (2015) (finding that Thirteenth Amendment is not money-mandating); Ivaldy v. United States, 123 Fed. Cl. 633, 637 (2015) (finding that the Privileges and Immunities Clause is not money-mandating).

Plaintiff alleges violations of 42 U.S.C. § 1983, arguing that Defendant excluded the African American living on the Yuma Island from the Yuma Island Reclamation Project failed to offer these families surface water support, denied the reclamation land settlers the right to homestead, and coerced the residents into signing agricultural permits. Compl. Ex. 1, at 2-3. This Court lacks jurisdiction over claims brought pursuant to 42 U.S.C. § 1983 as exclusive jurisdiction over those statutory claims is vested in the district courts. Del Rio v. United States, 87 Fed. Cl. 536, 540 (2009); see also Sharpe v. United States, 112 Fed. Cl. 468, 476 (2013) (stating that "the Court of Federal Claims is not a district court"). Plaintiff also alleges violated of 18 U.S.C. §§ 241-42, but this Court lacks jurisdiction over criminal matters. Joshua v. United States, 17 F.3d 378, 379 (Fed. Cir. 1994); Dumont v. United States, 85 Fed. Cl. 425, 430 (2009), aff'd 345 F. App'x 586 (Fed. Cir. 2009).

Plaintiff alleges conspiracy and fraud, but because these claims sound in tort, this Court lacks Jurisdiction to entertain them. Rick's Mushroom Serv., Inc. v. United States, 521 F.3d 1338, 1343 (Fed. Cir. 2008); Cycenas v. United States, 120 Fed. Cl. 485, 498 (2015) ("To the extent plaintiff's complaint asserts claims of conspiracy...those claims sound in tort...[and] this court lacks jurisdiction to adjudicate those claims.").

Plaintiff appears to allege a Fifth Amendment taking, that Defendant has prevented him from acquiring land and water rights. Compl. Ex. 5. However, even if Plaintiff has alleged a valid taking claim, this claim is time-barred. A claim brought under the Tucker Act must be filed within six years of the claim first accruing. 28 U.S.C. § 2501 (2016); see John R. Sand & Gravel Co. v. United States, 552 U.S. 130, 135-36 (2008); Martinez v. United States, 333 F.3d 1295, 1304 (Fed. Cir. 2003). This is a jurisdictional requirement that cannot be waived, as it is a prerequisite for the sovereign immunity in suits against the United States for money damages. John R. Sand & Gravel Co., 552 U.S. at 134. A taking claim “first accrues only when all the events which fix the government’s alleged liability have occurred,” and “the plaintiff was or should have been aware of their existence.” Casitas Mun. Water Dist. v. United States, 708 F.3d 1340, 1359 (Fed. Cir. 2013) (internal citation omitted); see also Navajo Nation v. United States, 631 F.3d 1268, 1273 (Fed. Cir. 2011). In other words, a taking claim accrues when the “taking action occurs.” Navajo Nation, F.3d at 1274.

Plaintiff alleges that the Bureau of Reclamation affected a taking of his right to acquire water rights, citing conduct that occurred decades ago that prejudiced his ancestors. Specifically, Plaintiff alleges that water entitlements for the Yuma Island were approved in 1931, but that the Bureau of Reclamation denied his ancestors the rights to acquire land and water rights because it failed to construct canals to deliver the water to the Yuma Reclamation Project, a prerequisite to opening the land to homesteading. Compl. 2. Because the Government conduct that gives rise to the alleged taking occurred 87 years ago, Plaintiff’s claim is time-barred.

Plaintiff appears to argue that takings occurred in two later periods, claiming: (1) that in 1960, after completion of the Yuma Reclamation Project, the Yuma

Reclamation Project, the Bureau of Reclamation still retained custody over the land, thus continuing to deny the Yuma Island residents the right to acquire property and water rights, and (2) that a 2005 decree, adopted in 2006, filed by a Supreme Court special master in *Arizona v. California*, granted the same water approved for use by the Yuma Island to the Quechan Indian Tribe of Arizona, instead of to descendants of the original settlers. Compl. Ex. 1, at 3, 5, at 6. Because the alleged Government conduct that gives rise to these takings occurred 68 and 13 years ago, respectively, Plaintiff's taking claims are time-barred.

In addition to alleging Tucker Act jurisdiction, Plaintiff also appears to invoke the Administrative Procedure Act ("APA") as a basis for this Court's jurisdiction. Compl. 1 ("[T]his claim is submitted in accordance with the Administrative Procedures Act of 1946 for violation of public policies by the Department of the Interior, the Bureau of Reclamation, and the Bureau of Land Management."). However, this Court does not have jurisdiction over claims brought pursuant to the APA. *Crocker v. United States*, 125 F.3d 1475, 1476 (Fed. Cir. 1997) (stating that the Court of Federal Claims "lacks the general question jurisdiction of the district courts, which would allow it to ... grant relief pursuant to the Administrative Procedures Act" (internal citation omitted)).

In addition to his request for monetary damages, Plaintiff seeks equitable relief, asking that the land and water rights on the Yuma Island "be deeded to the eight families who are still leasing the land from the Arizona Land Department." Compl. 3. However, this Court's authority to grant equitable relief is limited to certain tax cases, bid protests, and situations where such relief is an "incident of and collateral to monetary judgment. 28 U.S.C. §§ 1491(a)(2)-(b), 1507-08 (2016); *Martinez v. United States*, 333 F.3d 1295, 1303 (fed. Cir. 2003). As none of these conditions are met here, this court lacks authority to grant Plaintiff's requested equitable relief.

Conclusion

Defendant's motion to dismiss is GRANTED. The Clerk is directed to dismiss this action.

/s/Mary Ellen Coster Williams
Mary Ellen Coster Williams
Judge

**Additional material
from this filing is
available in the
Clerk's Office.**