

<b>THE HUMAN POTENTIAL FOUNDATION,</b>	)	<b>AGBCA No. 2001-139-1</b>
	)	
Appellant	)	
	)	
<b>Representing the Appellant:</b>	)	
	)	
Sonja A. Inglin	)	
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12100 Wilshire Boulevard, 15th Floor	)	
Los Angeles, California 90025	)	
	)	
<b>Representing the Government:</b>	)	
	)	
Wen Yen	)	
Office of the General Counsel	)	
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San Francisco, California 94105-4511	)	

**DECISION OF THE BOARD OF CONTRACT APPEALS**

July 13, 2001

**Before HOURY, POLLACK, and VERGILIO, Administrative Judges.**

**Opinion for the Board by Administrative Judge VERGILIO.**

By letter dated March 12, 2001, The Human Potential Foundation (HPF) of Melville, New York, submitted to this Board what is captioned a notice of appeal. The U. S. Department of Agriculture, Forest Service, is the respondent. HPF asserts that in fighting the McKinley fire in the Los Padres National Forest (the fire was located approximately 30 miles northwest of Santa Barbara, California) on June 28 and 29, 2000, the Government removed approximately 113 helicopter loads of water from a lake HPF owns, Zaca Lake in Los Olivos, California. Further, it contends that after the water was removed, it noticed a loss in the koi fish population of the lake.

HPF submitted to the Government a claim to recover \$14,654.72. The contracting officer granted \$404.72 (for the water removed) and denied \$14,250 (for fish) of an HPF claim. The decision states that it is subject only to appeal as provided in the Disputes clause of the contract. HPF seeks here to recover the denied portion of its claim, said to represent the cost of replacing 950 koi at \$1,500 each (the purported market price), allegedly depleted from the lake when the Government removed the water. Although the calculation is off by a factor of 100 (950 x \$1,500 = \$1,425,000), HPF seeks to recover \$14,250. HPF asserts that the Government lacked an express or an implied contract to

remove water from the lake owned by HPF, and that HPF would not have authorized the Government to remove water.

The Government concurs that there was neither an express nor an implied contract to remove the water (or fish) from the lake. Accordingly, the Government has filed a motion to dismiss the appeal for lack of jurisdiction. HPF has filed a response stating that it does not oppose the motion to dismiss for lack of jurisdiction. It agrees that no agreement, either express or implied, existed between the parties. It requests that the Board dismiss the matter without prejudice to its pursuing its rights and remedies.

A prerequisite to this appeal before the Board under the Contract Disputes Act of 1978, 41 U.S.C. §§ 610-613, as amended, is the existence of a contract between the party bringing the suit and the Government. No such contract exists. Therefore, this Board lacks jurisdiction to resolve the dispute.

**DECISION**

The Board lacks jurisdiction over this dispute, and so dismisses this appeal, without reaching the merits of the dispute.

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**JOSEPH A. VERGILIO**  
Administrative Judge

We concur:

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**EDWARD HOURY**  
Administrative Judge

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**HOWARD A. POLLACK**  
Administrative Judge

**Issued at Washington, D.C.**  
**July 13, 2001**