

**FILED**

DATE 8-3-98

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**POHNPEI**  
TRIAL DIVISION

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8 IN THE SUPREME COURT OF THE  
9 FEDERATED STATES OF MICRONESIA  
10 TRIAL DIVISION - STATE OF POHNPEI

10 STATE OF CHUUK, STATE OF KOSRAE, ) Civil Action No. 1995-085  
11 STATE OF POHNPEI, and STATE OF YAP, )  
12 Plaintiffs, ) DEFENDANT'S OPPOSITION TO  
13 vs. ) PLAINTIFF'S MOTION TO ALTER OR  
14 SECRETARY OF DEPARTMENT OF ) AMEND JUDGMENT  
15 FINANCE, FEDERATED STATES OF )  
16 MICRONESIA and the National Government )  
17 of the FEDERATED STATES OF )  
18 MICRONESIA, )  
19 Defendants

20 **Statement of the Case**

21 On July 28, 1995 plaintiffs, the four states of the Federated States of Micronesia, filed a  
22 complaint seeking declaratory judgment on the proper division of the fishing access fees collected  
23 by the defendants, the Federated States of Micronesia National Government, from foreign fishing  
24 entities permitted to fish within the Federated States of Micronesia's (hereinafter FSM) Exclusive  
25 Economic Zone (hereinafter EEZ). On November 25, 1995, they amended their complaint to  
26 include claims for injunctive relief compelling the Secretary of the Department of Finance to pay  
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1 to the states portions of the previously collected fishing access fees. On September 23, 1997,  
2 plaintiffs filed a motion for summary judgment.

3 On November 17, 1997, defendants filed an opposition to plaintiff's motion for summary  
4 judgment and filed their own cross-motion for summary judgment. On November 24, 1997,  
5 plaintiffs filed a reply to defendants' cross-motion. All motions for summary judgment were  
6 argued before the court on December 16, 1997, in a hearing that lasted the entire day. On April  
7 8, 1998, plaintiffs filed a notice of supplemental authority.

8 Judgment was entered on July 17, 1998, in favor of the defendants and the case was  
9 dismissed with prejudice. The Judgment and attendant opinion was disseminated to the parties on  
10 July 24, 1998. Plaintiffs now move this Court for an extension of time in which to file a motion to  
11 reconsider the opinion.  
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16 **Extension of Time to File a Motion under**  
17 **FSM Rule of Civil Procedure, 59(e) is not allowed.**

18 Although plaintiffs entitle their motion "Plaintiffs' Motion to Alter or Amend Judgment",  
19 and state in the body of the motion that they are meeting the ten day deadline pursuant to the  
20 FSM Rules of Civil Procedure, Rule 59(e), the only relief requested is an extension of time in / ?  
21 which to file such a motion.  
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23 The FSM Rules of Civil Procedure, 59(e) entitled "Motion to Alter or Amend a  
24 Judgment", states "A motion to alter or amend the judgment shall be served not later than 10  
25 days after entry of the judgment." FSM Rules of Civil Procedure (hereinafter Rules) 6(b),  
26 granting the court discretion to enlarge time for taking action, specifically prohibits the extension  
27 of time for taking action under Rule 59(e).  
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1 In applying these rules, the FSM Supreme Court has held that a motion for relief under  
2 Rule 59(e) is subject to a strict time limit of 10 days which cannot be enlarged by the court.  
3 Kihara real Estate v. Estate of Nanpei, 6 FSM Intrm. 354, 355-56.

4 Further, the United States Rules of Federal Procedure, Civil Rule 59(e) is identical in  
5 wording to the FSM Rule of Civil Procedure, 59(e). It is a settled rule of statutory construction  
6 that a statute adopted from another jurisdiction is presumed to have been adopted as construed by  
7 the courts of that jurisdiction. Andohn v. Federated States of Micronesia, 1 FSM Intrm. 433  
8 (App. 1984.) In Wright, Miller and Kane, 11 Federal Practice and Procedure, Civil Procedure 2d,  
9 §2817, page 176, discussing the application of Rule 59(e), it is unequivocally stated "The court is  
10 not permitted to extend the time in which to make the motion."  
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12 Thus, although plaintiffs correctly note that the Judgment was disseminated a week after  
13 the filing of the Judgment, there is no remedy for this situation provided in the Rules. Indeed, the  
14 remedy requested by plaintiffs is specifically prohibited.  
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16 It should be noted that plaintiffs are not prohibited from bringing a motion to reconsider  
17 under Rule 60(b), which does not carry with it the stringent time requirements of Rule 59(e).  
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21 **Plaintiffs' Stated Grounds For Altering or**  
22 **Amending the Judgment Lack Merit**  
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24 Rule 59(e) states the time parameters only for filing a motion to Alter or Amend the  
25 Judgment. No other criteria is given for the granting or denial of such a motion. FSM case law  
26 interpreting this rule deals exclusively with the issue of timely filing.  
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1 Looking to U.S. case law for guidance, Rule 59 generally recognizes the common-law  
2 principle that it is the duty of a judge who is not satisfied with the verdict of a jury to set the  
3 verdict aside. It combines with that the equity practice on petitions for rehearing. Wright, Miller  
4 and Kane, 11 Federal Practice and Procedure, Civil Procedure 2d, §2801. Grounds for  
5 Amendment or Alteration of Judgment Rule has been interpreted as permitting a motion to vacate  
6 a judgment rather than merely amending it. Foman v. Davis, (1962) 83, S.Ct. 227, 9 L.Ed.2d  
7 222.  
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10 Rule 59(e) covers a broad range of motions. The only real limitations placed on use of  
11 this rule is that the motion must request a substantive alteration of the judgment, not merely the  
12 correction of a clerical error, or relief of a type wholly collateral to the judgment. Wright, Miller  
13 and Kane, 11 Federal Practice and Procedure, Civil Procedure 2d, §2810.1. It is difficult to assess  
14 whether the plaintiffs in the present case are asking this court to make substantive changes to the  
15 judgment, since, as noted above, the only relief requested is for additional time.  
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18 Regardless of the relief requested, the grounds presented by plaintiffs as providing the  
19 basis for a motion under Rule 59(e) are without merit. Wright, Miller and Kane, 11 Federal  
20 Practice and Procedure, Civil Procedure 2d, §2810.1, page 125, identifies four basic grounds  
21 upon which a 59(e) motion may be granted. They are:  
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- (1) To correct a manifest error of law or fact upon which the judgment is based;
  - (2) To present newly discovered or previously unavailable evidence;
  - (3) To prevent a manifest injustice;
  - (4) It is justified by an intervening change in controlling law.

1            A Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or  
2 present evidence that could have been raised prior to the entry of judgment. Wright, Miller and  
3 Kane, 11 Federal Practice and Procedure, Civil Procedure 2d, §2810.1, page 127-128.

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5            Plaintiffs ask to reopen certain areas of argument, deemed in their motion to be worthy of  
6 reconsideration by the court. None of their reasons for requesting reconsideration constitute  
7 proper grounds under Rule 59(e). All of the issues they wish to address were raised during the  
8 briefing and oral arguments on the motions for summary judgment. Each of the four requests by  
9 plaintiff petition for the opportunity to explain or clarify a matter that has already been litigated.

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11            Plaintiffs ask to address in greater detail the reasons why fishing resources and mineral  
12 resources were treated differently in the FSM constitution. The fact that these resources are  
13 treated differently was raised by the Court in oral argument and plaintiffs were given an  
14 opportunity to address the issue. Further, in defendant's Opposition to Plaintiff's Motion for  
15 Summary Judgment and Cross Motion for Summary Judgment, (hereinafter, Cross Motion.)  
16 defendants argue that fishing resources carry no requirement of fee splitting with the states.  
17 Plaintiffs had ample opportunity to respond and present whatever rationale they wanted to the  
18 Court in their Reply to defendant's Cross Motion and in oral argument.

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20            Plaintiffs ask to clarify whether fishing fees can be as high as 11% as asserted in the  
21 affidavit by Bernard Thoulag. This is a factual question. Plaintiffs filed a Motion for Summary  
22 Judgment in this case, thereby assuring the Court that there were no material facts in dispute. At  
23 no time did they ask to withdraw any part of that motion. Mr. Thoulag's affidavit was filed as an  
24 exhibit with defendant's Cross Motion to which the plaintiffs filed a reply. Evidence that was  
25 available to a party during the pendency of a motion for summary judgment may not later be  
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1 introduced on a motion to reconsider. Sussman v. Salem, Saxon and Nielson, P.A.D.C. Fla 1994,  
2 153 F.R.D. 689. Again, plaintiffs had more than adequate time to address any issues they felt this  
3 evidence raised.

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5 Plaintiffs ask to explain to the court how the revenues from the fishing fees are being  
6 expended by the defendants. To this end, an exhibit is attached to the plaintiffs current motion.  
7 Again, this is a factual issue. Plaintiffs aggressively argued financial abuse by defendants at the  
8 oral arguments. They could have presented any factual evidence they wished the court to  
9 consider at any stage of the proceedings. Presentation of newly discovered evidence only applies  
10 to evidence that was in existence at the time of the proceedings but could not, with due diligence,  
11 have been presented. Plaintiffs ask this court to review and consider a publication entitled the  
12 Congressional Advisor. The issue date on the publication is June, 1998. Clearly this document  
13 was not in existence last December, at the time the matter was submitted to this Court. Creation  
14 of this document after submission of the matter to the court is not grounds for reopening  
15 litigation.

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19 Plaintiffs ask to clarify five legal issues, all of which were raised in defendant's Cross  
20 Motion and all of which plaintiffs had sufficient opportunity to address prior to and during oral  
21 argument. The relevance of customary rights to the question of ownership of the Exclusive  
22 Economic Zone (hereinafter EEZ) was raised in defendant's Cross Motion, page 27. Whether the  
23 States existed prior to the creation of the FSM was raised in defendant's Cross Motion, page 26.  
24 Whether the States have paren patriae rights in this situation was argued in defendant's Cross  
25 Motion, pages 29 - 31. Whether fishing fees would constitute an unconstitutional tax because of  
26 lack of uniformity was raised in defendant's Cross Motion, page 43. Whether the fishing revenues  
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1 can be characterized as the sale of a resource was argued in defendant's Cross Motion, pages 34 -  
2 42. That plaintiffs either chose not to respond in detail to the arguments presented by defendants  
3 or that their arguments were not persuasive is not grounds for granting a motion under Rule 59(e)

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5 Local rules governing motions for reconsideration are to be narrowly construed and  
6 strictly applied so as to avoid repetitive arguments on issues that have been fully considered by the  
7 court. Wright, Miller and Kane, 11 Federal Practice and Procedure, Civil Procedure 2d, §2810.1,  
8 127-128. The court addressed in detail all five of the legal issues which plaintiffs believe need  
9 clarification or explanation. The relevance of customary rights to the question of ownership of  
10 the EEZ is addressed by the Court on pages 43 through 47 of the opinion. Whether the States  
11 existed prior to the creation of the federation is addressed by the Court on pages 46 and 47 of the  
12 opinion. Whether the States have *parens patriae* rights in this situation is addressed by the Court  
13 on pages 47 and 48 of the opinion. Whether fishing revenues, as a tax, would be unconstitutional  
14 because they are not uniform is addressed by the Court of pages 51, 65 and 67 of the opinion.

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18 The Court, on page 57 through 65, analyzes the fishing revenues as fees, rather than the  
19 sale of a resource as urged by the defendants. Thus, whether the resource is renewable or not  
20 would appear to be irrelevant. Even if tangentially relevant to the Court's opinion, the fact that  
21 the plaintiffs have, after the issuance of an opinion, thought of additional arguments to one of the  
22 issues in controversy is not grounds for granting a motion pursuant to Rule 59(e).

### 23 24 25 26 **Conclusion**

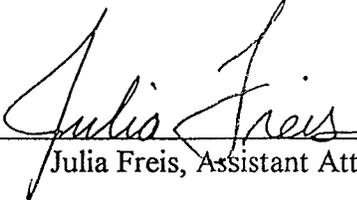
27 Plaintiffs' motion requests relief specifically prohibited by the FSM Rules of Civil  
28 Procedure. Further, the grounds upon which they base a motion to reconsider are without merit.

1 For these reasons, defendants request that plaintiffs' Motion to Alter or Amend the Judgment be  
2 denied.

3 Respectfully submitted

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6 Lam Dang, Acting Secretary  
7 Department of Justice, FSM

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9 Date: 8/3/98

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Julia Freis, Assistant Attorney General

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	)	PLAINTIFF'S MOTION TO ALTER OR
vs.	)	AMEND JUDGMENT
	)	
SECRETARY OF DEPARTMENT OF	)	
FINANCE, FEDERATED STATES OF	)	
MICRONESIA and the National Government	)	
of the FEDERATED STATES OF	)	
MICRONESIA,	)	
	)	
Defendants	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT in the above entitled case was served by mail on the following individuals. on this 3rd day of August, 1998.

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AND

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