

RECEIVED

AUG 18 2003

Department of Water Resources

DISTRICT COURT-SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
AUG 15 2003	
By _____	Clerk
_____	Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase 51-04037
	)	(WaterOne Enterprises, LLC)
Case No. 39576	)	ORDER SETTING TRIAL
_____	)	

Background

A hearing on WaterOne Enterprises, LLC's *Motion to Alter or Amend the Special Master's Recommendation* signed by Matthew Olivas (no indication of corporate standing) and WaterOne Resources (?), LLC's *Motion for Attorneys Fees and Costs*, signed by the attorney for WaterOne Enterprises, LLC, was held on August 14, 2003, at the SRBA Courthouse in Twin Falls, Idaho. Teresa A. Hill and W. Christopher Pooser appeared by telephone for WaterOne Enterprises, LLC; non-attorneys Mr. Olivas and Don and Cecil Dozier sought to appear *pro se* on behalf of WaterOne Enterprises, LLC¹; David J. Barber appeared by telephone for the State of Idaho; and Garrick L. Baxter appeared for IDWR. The parties and IDWR suggested the matter be further stayed pending a determination in Owyhee County District Court of who owns and controls WaterOne Enterprises, LLC.

The Special Master noted in the *2nd Amended Special Master Report and Recommendation*, dated May 19, 2003, that Owyhee County District Judge James C. Morfitt has

¹ Messrs Olivas and Dozier told the Court that they were represented by attorney Roger D. Ling who was not in court nor on the telephone during the hearing. When the court called Mr. Ling, he said neither he nor his firm represented Mr. Olivas, Mr. Dozier or WaterOne Enterprises, LLC. On June 7, 2002, the Special Master entered an *Order Granting Motion to Withdraw* allowing Timothy J. Schneider (and by implication, the law firm of Ling & Robinson, of which Mr. Schneider was then an associate) to withdraw as attorney of record for WaterOne Enterprises, LLC (Idaho) because of "irreconcilable conflicts of interest having consulted with parties of both WaterOne Enterprises LLC (Idaho) and WaterOne Enterprises LLC (California)."

ruled that WaterOne Enterprises is the fee simple owner of Murphy Hot Springs. Judge Morfitt specifically held:

Further, the Court finds and concludes, as a matter of law that Defendants² ceased to be the “owner” of Murphy Hot Springs upon sale of the real property by the Chapter 7 Trustee and that Defendants have no homestead exemption in the real property sold by the Chapter 7 Trustee.

...

The Court finds and concludes that its ruling on the issues addressed above preclude any genuine issue of material fact as to the fee simple ownership of Murphy Hot Springs by WaterOne Enterprises, LLC, a California limited liability company, and that Plaintiffs³ are entitled to partial summary judgment on that issue.

Judge Morfitt’s *Memorandum Decision and Order* dated November 5, 2002, Case No. CV 2001-03402, at 18 and 21. This decision was not appealed.

Discussion

The SRBA Court is a court of limited jurisdiction established “both for the judicial determination of the extent and priority of the rights of all persons to use water from any water system within the State of Idaho that is conclusive as to the nature of all rights to the use of water in the adjudicated water system . . . and for the administration of those rights.” I.C. § 42-1401A(5). The SRBA Court has no jurisdiction nor expertise to determine who owns or controls corporate entities, whether or not a particular corporation claims ownership of a water right. In simple terms, the role of the SRBA Court is to determine the elements of water rights.

Judge Morfitt has properly ruled that WaterOne Enterprises, LLC is the fee simple owner of Murphy Hot Springs and its appurtenant water right (51-04037).⁴ That done, the only remaining elements to be decided and the only elements at issue are **quantity** and **purposes of use**.

Thomas Scroggins and attorney Kevin Beaton, on behalf of WaterOne Enterprises, LLC, signed a *Standard Form 5* on May 15, 2003, indicating they agreed that 51-04037 should be decreed to WaterOne Enterprises, LLC, for .06 cfs for year-round domestic and commercial uses. According to the *SF-5*, “Commercial use is for pool, baths, internal lodge use, and 1

² The defendants were Matthew Olivas and Trina Olivas, *et al.*

³ The plaintiffs were WaterOne Enterprises, LLC, a California limited liability company, Thomas Scroggins and Virginia Canavero.

⁴ “The right confirmed by such decree or allotment shall be appurtenant to and shall become a part of the land on which the water is used, and such right will pass with the conveyance of such land, and such decree shall describe the land to which such water shall become so appurtenant.” I.C. § 42-1402.

trailer.” Under the quantity element, is the remark: “The quantity of water under this right for domestic use shall not exceed 13,000 gallons per day.”

Mr. Olivas, on the other hand, allegedly “representing” WaterOne Enterprises, LLC, wants the 13,000 gallons per day remark stricken:

The use of the water right granted is for .06 CFS. Under N13, the use is limited to 13,000 gallons a day, which is not nearly sufficient for commercial use. It is inconsistent with the .06 CFS granted, which is the correct amount.

Affidavit of Matthew Olivas in Support of WaterOne’s Motion to Alter or Amend the Special Master’s Recommendation, at 2.

In the interest of moving the subcase along without further delay, it is the Special Master’s opinion that the two contested issues (quantity and purposes of use) can be heard at trial and determined without waiting for a decision on who owns or controls WaterOne Enterprises, LLC. Since Mr. Scroggins has settled the elements of the water right, it is expected that Messrs Olivas and Dozier will be the only ones to contest those issues.

Because WaterOne Enterprises, LLC, a corporation, is the owner of 51-04037, any person wishing to appear at trial and represent WaterOne Enterprises, LLC, must be an attorney admitted to practice in the State of Idaho (or an attorney duly admitted to appear in this subcase *pro hac vice*) and who has filed a written notice of appearance with the SRBA. Non-attorneys will **not** be allowed to represent WaterOne Enterprises, LLC, a corporation.⁵ In the event no attorney appears to represent WaterOne Enterprises, LLC, for the purpose of litigating the remaining two contested elements, the pending *Motion to Alter or Amend the Special Master’s Recommendation* will be dismissed as not properly filed and water right 51-04037 will continue as recommended in the **2nd Amended Special Master Report and Recommendation**. WaterOne Resources, LLC’s *Motion for Attorneys Fees and Costs* will be taken under advisement pending the trial and a determination of its interests in the matter.

⁵ The law in this state is that the inherent right of a person to represent himself *pro se* does not extend to the ability to represent any other person or corporation:

Where an entity chooses to incorporate under the laws of this state and receive the benefits and privileges to corporations . . . , the incorporated entity “cannot, when convenient, ask the court to ignore its corporate status and extend to it advantages to which an individual person is commonly entitled.”

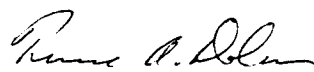
Former-Presiding Judge Daniel C. Hurlbutt, Jr.’s ***Order Denying Paul Nettleton’s Request to Represent Limited Partnership***, dated August 30, 1993, at 2, quoting from *Kyle v. Beco Corporation*, 109 Idaho 267, 707 P.2d 378 (1985), and citing *Weston v. Gritman Memorial Hospital*, 99 Idaho 717, 587 P.2d 1259 (1978). Also see I.C. § 3-104, Practicing without license a contempt, and I.C. § 3-420, Unlawful practice of law.

Order

THEREFORE, IT IS ORDERED that:

1. Trial on the contested issues of quantity and purposes of use only will be held on **Thursday, November 6, 2003, 11:00 a.m.** at the SRBA Courthouse, 253 3rd Avenue North, Twin Falls, Idaho; and
2. Any attorney who wishes to appear and represent WaterOne Enterprises, LLC, other than Kevin J. Beaton, Teresa A. Hill and W. Christopher Pooser (Stoel Rives, LLP), for the purposes of litigating the contested issues of quantity and purposes of use in subcase 51-04037 shall file a notice of appearance in writing with the SRBA Court **no later than Friday, September 26, 2003.**

DATED August 15, 2003.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER SETTING TRIAL** was mailed on August 15, 2003, with sufficient first-class postage to the following:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

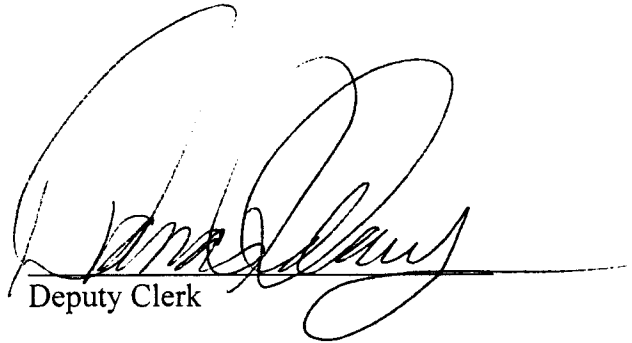
Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449

Kevin J Beaton
101 S Capitol Blvd Ste 1900
Boise, ID 83701-5958

WaterOne enterprises LLc
251 Versailles Ct
Tracy, CA 95376

Janet O'Crowley
317 W C St
Shoshone, ID 83352

WaterOne Enterprises LLC
Matthew Olivas
359 N 400 W
Paul, ID 83347



Deputy Clerk