

NOV 22 2006

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November 21, 2006

ALSO
MAILED 11/21/06Edwin C. Thomas
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322 E. Front Street
P.O. Box 83720
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Attn: Mr. Donald Shaff

Re: 73-187B - Objections to Preliminary Recommendation

Dear Mr. Shaff:

Following our lengthy telephone conversation on Wednesday, November 15, 2006, my wife and I decided to retain counsel to advise us in connection with the referenced objection. Mr. Fritz Haemmerle of Hailey has agreed to represent us in this regard.

We took this serious (and costly) step because of certain comments you made in our conversation on the 15th and because our review of the Department's electronic files relating to 73-187B turned up Roxanne Brown's remarkable memo to the file dated October 13, 2006.

When I met with Ms. Brown in May, Idaho in October, I produced a witness, Jud Whitworth, the previous owner of and signatory to claim #73-187A, who detailed for Ms. Brown his understanding of that claim and the historical delivery of Big Gulch water as between Summit Ranch and the Sulphur Creek property. I also submitted for her review documents created by IDWR's own representatives over the last 40 years which detail explicitly the water delivery practices at issue, all of which are contrary to the objected to recommendation.

I also informed Ms. Brown that additional witnesses besides Mr. Whitworth, including Messrs. Martiny and Hansen, were available to provide further testimony concerning delivery history of Big Gulch water. Ms. Brown specifically asked me to obtain affidavits from all three of these gentlemen and clearly indicated to Mr. Whitworth and myself that the evidentiary record thus created would be more than sufficient to sustain our objection to that part of the preliminary recommendation which reads: "This right may only be used when the total amount available from Hillside Creek and Graves Springs equals or exceeds 125 cfs."

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As you know, the referenced affidavits, letters and supporting documents were obtained and produced as requested and now comprise the evidentiary record submitted in support of our objection to the referenced part of the recommendation.

As I have noted previously, the record in front of you establishes beyond any dispute that Summit Ranch has continuously received approximately 1/2 of the Big Gulch waters for the last 85 years, including the 34 years preceding creation of the 814 document and the 51 years since that time. It is also beyond question that the Department's own representatives have never interpreted the 814 transfer in any fashion even close to that mandated by the objected to portion of the preliminary recommendation. In short, there is no evidence the Department can point to which comes close to supporting this part of its recommendation. All of the evidence is to the contrary.

Against this background, we have wondered where the inspiration for this errant interpretation came from in the first place. The answer may now be coming to light. I refer, of course, to Ms. Brown's October 13th memo, a copy of which is attached hereto as Exhibit A.

As you can see, Ms. Brown recites that "IDWR has been aware of a conflict between Mr. Thomas and the neighbor who owns 73-187A." This is news to us and, from the record, is completely erroneous. 73-187A claims no more than 125 inches from all three sources, including Big Gulch, and no claim has ever been made by this "neighbor" or anyone else, to Summit Ranch's share of Big Gulch water. In fact, Mr. Whitworth, the previous owner of 73-187A, has averred to the contrary. To clarify this remarkable situation, it would be helpful indeed if your office would provide answers to the following questions:

1. How did IDWR become aware of the alleged "conflict?" Please include dates, identities and substantive contents of any communications to, from or within IDWR which refer or relate to the alleged "conflict."
2. Identify and explain in complete detail the nature of the alleged "conflict." As noted, neither present nor previous owners of 73-187A have ever claimed Summit Ranch's share of Big Gulch waters. Nor could they, since Summit Ranch has beneficially used these waters since at least 1909, as reflected in the recommendation. Moreover, as we discussed on Wednesday, there is no possible way the 814 transfer can be read as conferring Summit Ranch's share of Big Gulch water upon the Sulphur Creek property. Indeed, the opposite is true, as the previous owner of that property has stated under oath. The 814 transfer grants to the Sulphur Creek property a total of 125 inches; no more, no less. Thus, even if your office should misconstrue the 814 grant to the effect that Summit Ranch gets no water at all

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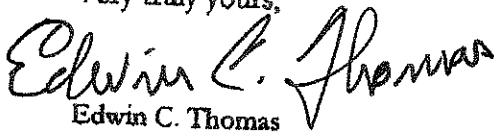
from Big Gulch (in the teeth of 85 years of demonstrated practice) that doesn't mean that Sulphur Creek would then accede to ownership of the 100 inches deeded to Summit Ranch. And, of course, no sensible argument can be made by anyone that the 814 transfer contemplates that the 100 inches left over from the basic 225 inches awarded under the 1910 degree should be abandoned to non-beneficial use.

The bottom line is that there is not now nor has there ever been a "conflict" between Summit Ranch and the owners of #73-187A concerning the disposition of Summit Ranch's share of Big Gulch water.¹ Thus, it is clear that if your office ignores the overwhelming evidence in this record (which it asked for) and maintains the objected to portion of the preliminary recommendations for the reasons stated in Ms. Brown's memo, it will be acting in derogation of its statutory responsibility.

Please forward your answers to the questions propounded herein to the attention of our counsel, Mr. Haemmerle.

Thank you for your attention to this matter.

Very truly yours,


Edwin C. Thomas

¹ Although we do not know the identity of the perpetrators, on November 19, 2006, we observed that the entire right side of the diversion structure had recently (within the last 10 days) been destroyed, apparently with an axe, so that all of the Big Gulch water flowed to this new "neighbor," in violation of our right to same under 73-11953. This matter is now the subject of a criminal investigation by the Sheriff of Custer County.

Idaho Dept. of Water Resources
State Office, Boise Idaho
October 13, 2006

To: 73-187B
From: Roxanne Brown
Subject: Notice of Error

Mr. Thomas met with me in May, Idaho and provided the attached affidavits. IDWR has been aware of conflict between Mr. Thomas and the neighbor who owns 73-187A.

Because this NOE represents a known conflict and the recommendation reports the water right as it exists in IDWR records, I will make no changes to the recommendation at this time.

This conflict should probably be resolved by objection to both rights: 73-187A and 73-187B. This will bring the parties together and lead to a resolution.