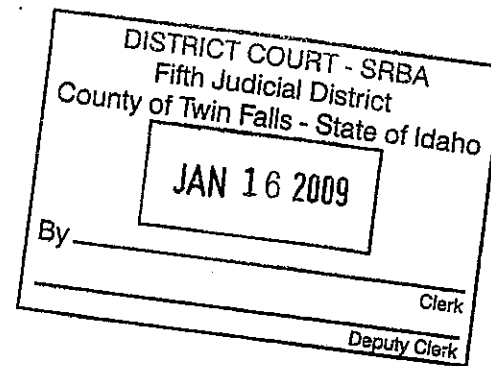


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JAN 21 2009

DEPARTMENT OF
WATER RESOURCES



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) Subcases 75-04126, 75-10392, 75-10400,
Case No. 39576) 75-10603, 75-14531, and 75-14532
)
) SECOND SETTLEMENT CONFERENCE
) REPORT

On December 11, 2008, Special Master Dolan issued and *Order Setting Telephonic Settlement Conference, Status Conference, and Trial* in subcases 75-04126 and 75-10400. The *Order* required the claimant of water right 75-04126 (Russell Kozacek) and the claimant of water right 75-10400 (Susan Kozacek) to attend a continued settlement conference with objectors Patrick Murphy and Daryl Hull¹ on December 30, 2008. The certificate of mailing for the December 11, 2008 *Order* indicates that it was also mailed to Jerry Rigby, attorney for Ann Heltsley and Stuart Felton. The settlement conference was held at the designated time, with the following persons participating by telephone: (1) Susan Kozacek; (2) Russell Kozacek; (3) Patrick Murphy; (4) Daryl Hull; (5) Deputy Attorney General Garrick Baxter; and (6) settlement moderator Theodore Booth. Although invited to attend, neither Jerry Rigby nor his clients attended. Because it was expected that Mr. Rigby would participate, the Clerk of the Court attempted to contact his office by telephone, but got a recorded message that Mr. Rigby's phone line had been disconnected.

At the settlement conference, the participants discussed a proposed settlement agreement that had been drafted by Mr. Murphy. At the conclusion of the conference, the claimants Russell Kozacek and Susan Kozacek orally agreed that the point of diversion for their water rights is located near a foot bridge located on Forest Service land (T25N R21E S15 SWSW) and not on private land owned by either Mr. Murphy and/or Mr. Hull

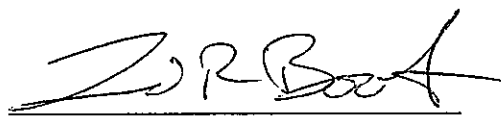
¹ The *Standard Form 1 Objections* submitted by Daryl Hull have been lodged with the Court but not filed due to the fact they were submitted after the applicable objection deadline.

(T25N R21E S15 SESW). The claimants further stated that they intended to sign both the settlement agreement drafted by Mr. Murphy and a *Standard Form 5 – Stipulated Elements of a Water Right* to be drafted by IDWR.

It is the understanding of the settlement moderator that the same issues that are involved in the claims made by Russell Kozacek and Susan Kozacek are involved in the claim by Stuart Felton (75-10603)² and the motion to file a late notice claim by Ann Heltsley (75-14531).³ It is further the understanding of the settlement moderator that all four of the water rights discussed herein share the same basis – i.e. a common water right established by diversion and beneficial use on May 1, 1887. Therefore, in the absence of a transfer⁴ of the point of diversion of any of these four water rights, presumably the points of diversion would be the same for all four of the rights. Accordingly, in the event that *Standard Forms 5* are filed for water rights 75-04126 and 75-10400, it is the recommendation of the settlement moderator that Special Master Dolan consider holding a hearing for the purpose of determining whether there is a factual basis for the possibility that water rights 75-10603 and/or late claim 75-14531 end up being decreed in the SRBA with points of diversion different from 75-04126 and 75-10400.

It is further the recommendation of the settlement moderator that Special Master Dolan schedule a mandatory telephonic settlement conference in subcase 75-10603 for the purpose of allowing the claimant Mr. Felton and/or his attorney to have a discussion with Mr. Murphy and Mr. Hull. Any order for a settlement conference regarding Mr. Felton's claim should invite the participation of Russell Kozacek, Susan Kozacek, and Ann Heltsley and her attorney.

Dated Jan. 16 2009


THEODORE R. BOOTH
Settlement Moderator

² The Felton claim 75-10603 was identified by IDWR as an uncontested claim that may be affected by the outcome of a contested matter. I.C. § 42-1412(7). Late objections have been lodged by Mr. Hull (on December 31, 2008), and by Mr. Murphy (on January 14, 2009).

³ Ms. Heltsley's *Motion to File Late Notice of Claim* is scheduled to be heard by Judge Melanson on February 17, 2009.

⁴ Such a transfer could either be an accomplished transfer pursuant to Idaho Code § 42-1425, or an administrative transfer pursuant to Idaho Code § 42-222.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SECOND SETTLEMENT CONFERENCE REPORT was mailed on January 16, 2009, with sufficient first-class postage to the following:

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