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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JUL - 9 2010	
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	) Subcases
	) 75-10603 (Felton)
Case No. 39576	) 75-14531 (Heltsley)
	)
_____	) SPECIAL MASTER REPORT

Findings of Fact

75-10603 (Felton)

The Director of the Idaho Department of Water Resources filed his *Director's Report, Irrigation & Other Uses, Reporting Area 23, Basin 75* on January 11, 2007. The Director recommended claim 75-10603 to Stuart L. Felton, P.O. Box 8, North Fork, Idaho, 83466, for .26 cfs from a "spring" to irrigate 9 acres in Lemhi County from April 1 to October 31 with a priority date of May 1, 1887, based on beneficial use.

Daryl Hull and Patrick Murphy were granted leave to file late *Objections* on March 18, 2009, both objecting to point of diversion.

75-14531 (Heltsley)

Former SRBA Presiding Judge John M. Melanson entered an *Order Granting Late Notice of Claim* on February 18, 2009, in claim 75-14531 and referred the matter to the Special Master. The Director filed his *Director's Report for Late Claims* on June 10, 2009, recommending the claim to the Ann M. Heltsley Living Trust ("Heltsley"), P.O. Box 83, Idaho City, Idaho, 83631, for .14 cfs from an "unnamed stream" to irrigate 6.7 acres in Lemhi County from April 1 to October 31 with a priority date of May 1, 1887, based on beneficial use.

Heltsley filed an *Objection* on August 6, 2009, objecting to the claim not being recommended as claimed:

The recommended water right does not specify that the gathering point of the unnamed spring is the primary point of diversion [T 25N, R 21E, § 15, SESW]. Water is diverted from this gathering point and carried by a man made ditch to the place of use.

Messrs Hull and Murphy each filed nearly identical *Responses* on August 26, 2009.

Mr. Murphy wrote:

There is no historical documentation supporting a water right from this spring tributary. There is only one point of diversion which is located on Forest Service property, SESWSW T25N, R21E, Sec 15, as recommended by the Idaho Department of Water Resources.

The United States of America, Department of Agriculture, Forest Service, filed its *Response* on November 2, 2009.

Trial

Trial in the two subcases was held in Twin Falls, Idaho, on February 26, 2010. Jerry R. Rigby appeared for Stuart and Missy Felton and Heltsley; Messrs Hull and Murphy appeared *pro se*; Steve Spencer monitored the proceedings for the Forest Service; and Garrick L. Baxter appeared for IDWR, along with Monica P. Van Bussum, Bob Foster and Suzy Cooley-Denney.

At the beginning of trial, Mr. Baxter announced that a second Heltsley claim set for trial (75-14532) was settled and Mr. Rigby withdrew his client's *Objection*. So, only subcases 75-10603 (Felton) and 75-14531 (Heltsley) were tried on the same closely related issues – source and point of diversion. Are the source and point of diversion for both claims a “spring” located on Mr. Hull’s property (§ 15, SESW) or are the source and point of diversion an “unnamed stream” approximately 1,000 feet downstream on Forest Service land as recommended by IDWR (§ 15, SESWSW)?¹ To answer that question, a fundamental issue must be resolved – whether

¹ Attached is an aerial map prepared at the Special Master’s request to graphically demonstrate the issue at trial (compare with IDWR Exhibit 2 prepared before IDWR amended its recommendation of 75-10603). Claimants Felton and Heltsley argued the source and point of diversion for 75-10603 and 75-14531 are the same – an unnamed spring (red dot) on the Hull property (§ 15, SESW). IDWR recommended, and objectors / respondents Hull and Murphy agreed, that while some of the claimed water may rise at the spring, the water flows down a gaining natural stream channel where it is diverted by the claimants on Forest Service land (yellow dot) (§ 15, SESWSW).

the channel below the spring is a man-made ditch or a natural stream.² The following evidence will be reviewed in much the same order as it was presented at trial.

Monica P. Van Bussum

Ms. Van Bussum is a senior water resource agent with IDWR and designated an expert in water rights administration and assessing stream channel geometry and characteristics. She began her testimony by amending IDWR's recommended source and point of diversion for 75-10603 (Felton) from a "spring" to an "unnamed stream" – the same source and point of diversion recommended for 75-14531 (Heltsley). IDWR Exhibit 1.

Ms. Van Bussum visited the site near North Fork, Idaho, on May 1, 2009, with Mr. Murphy and Daryl and Pat Hull. At trial, Ms. Van Bussum narrated her findings while offering 27 color photos, with captions, of the channel from the spring to the recommended point of diversion and below. IDWR Exhibits 3 and 4. Portions of her captions, in quotes below, summarized her findings:

Photo numbers in sequence, IDWR Exhibit 3

3. In the channel just below the spring, "There is a lot of vegetation and common water plants in the area."
4. Further downstream, "A lot of deadfall is visible in background along channel. In foreground, water plants are visible in channel. These types of plants are not common in regularly maintained ditches. No indication on channel of any kind of manipulation – shovels, picks, Cats, etc."
5. In a close-up photo of the streambed, "Notice great quantities of plants. Also, cobbles are clearly visible. This type of substrate composition is not common in maintained ditches, but is more indicative of natural channels."
6. A view of the channel shows a "clear view of copious deadfall and aquatic plants. Again, conditions here indicate a natural channel and not a maintained ditch."
7. "A view of the channel as it winds through some trees. This type of meandering channel again indicates a natural stream as opposed to a human-altered stream. Usually ditches on reasonably flat ground are modified to run along a straight line as opposed to meandering like this. Meandering channels are more indicative of natural paths."
8. Further along the stream channel on the Murphy property, "Again, substrate composition and this type of channel geometry (wide, shallow channel) is indicative of natural channel and channel does not show signs of maintenance."

² After trial, objectors Hull and Murphy filed separate *Findings of Fact and Conclusions of Law* on April 28, 2010. Claimants / objectors Felton and Heltsley filed their *Closing Arguments and Proposed Findings of Fact and Conclusions of Law* on April 30, 2010.

9. Near the footbridge on Forest Service land, “The extent of aquatic plants here is again indicative of a lack of human intervention in the stream channel, as is the deadfall clearly evidence. . . . Flow rate was very slow, which would facilitate evaporation, again indicating a natural channel.”

10. “Copious amounts of aquatic plants and deadfall can be seen. Channel geometry is particularly evident here. Note how the channel is broad and flat. Usually ditches in an area like this would be D-shaped and much narrower.”

14. Thirty to fifty yards downstream from the footbridge, there is a berm, “the first indication of human intervention on the stream [IDWR’s recommended source and point of diversion]. If the berm was not in place, the water would flow straight out from the perspective of this photo and continue along into a flat, shallow floodplain resembling a wetland/swampland similar to that seen upstream of the footbridge.”

15. The ditch/channel below the berm: “Note the more uniform shape of the channel and lack of aquatic plants and deadfall.”

16. In a view of the ditch and North Fork Salmon River, “Again, the ditch/channel exhibits the characteristics of a human-altered and maintained ditch in this area, particularly in channel geometry (D-shaped channel), lack of aquatic plants and lack of deadfall.”

17. In another view of the ditch and North Fork Salmon River, “a marsh/swampland is visible. If not bermed, this is where the spring water would run, eventually converging with the North Fork. Instead, the ditch water is conveyed to downstream users.”

19. Back upstream above the berm and the recommended source and point of diversion, “the channel exhibits wide, shallow geometry indicative of a natural channel, with extensive aquatic plants. Streambanks also are indicative of a natural channel in that they are sinuous where most ditches maintain uniform banks.”

At trial, Ms. Van Bussum said that when she visited the site in 2009, she did not see a spring box at the “spring headwaters” but she noticed a number of springs feeding the natural channel downstream. In her opinion, even a 100-year-old ditch would show the hallmarks of a man-made ditch, but she saw no such indications above the recommended point of diversion on Forest Service land – only below. She described the earthen berm, the recommended point of diversion, as the first change from the natural gradient. She said that is “where water leaves the natural system.”

W. Roger Warner

On August 20, 2009, Mr. Warner, a hydrologist for Rocky Mountain Environmental Associates in Idaho Falls, Idaho, wrote a letter to Mr. Rigby, the claimants’ attorney. IDWR Exhibit 5. Mr. Warner recalled he visited the area accompanied by Ann Heltsley and Stewart

(Stuart) Felton. Mr. Warner was only able to view the spring source from the highway. The language is a bit confusing, but he described a spring-fed ditch both above the Murphys' driveway ("significantly less vegetation") and below where additional springs increase the flow. Below the driveway, he described the channel as the "higher ditch . . . [where] portions of the stream already existed along the base of the slope" and the "lower ditch . . . excavated into the hillside preserving its optimum elevation for maximum capability of irrigation."

Mr. Warner generally agrees with Ms. Van Bussum that the channel from the unnamed spring (claimed source and point of diversion) to the berm or headgate control structure (IDWR's recommended source and point of diversion) is a natural stream:

Conversation with Felton and Heltsley indicate that thereafter [after homestead improvements] the ditch was cared for annually by walking and pulling and clearing debris by hand. This is reasonable since the water is from a spring source suitable for drinking purposes. It is likely that the manual maintenance was employed to preserve the quality of the water. All involved with use of the ditch cared for it in this manner and have continued to this day. For this reason, the ditch does not appear as a ditch but appears as a natural stream.

At trial, Mr. Warner testified somewhat differently from his August 20, 2009 letter. He said he walked some portion of the ditch in 2009, but when asked to leave the premises, he observed the site from the adjacent Highway 93. At first, he found it difficult to describe the channel below the spring as a ditch because it has been very poorly maintained for a long time. He said Ms. Van Bussum's observations were correct, but because he has "more experience" with IDWR than she has and based on "evidence at the office and in the file", he considered the waterway a ditch, not a natural channel.

Mr. Warner said irrigators often use natural waterways to avoid building new ditches, but at the same time try to keep the water high. In this case, if there were no man-made ditch, the water would flow more directly to the North Fork than suggested by Ms. Van Bussum. He cautioned everyone to tread lightly on the upper end of the ditch because heavy maintenance might damage the spring.

Nancy J. Liebrecht

A month after Mr. Warner wrote his August 20, 2009 letter to Mr. Rigby, his associate, Ms. Liebrecht, an environmental planner and wetland scientist with Rocky Mountain Environmental Associates, wrote a second letter to Mr. Rigby. IDWR Exhibit 6. She wrote:

The Felton Heltsley ditch arises from a natural spring on foothills bordering an expanse of meadow between the North Fork of the Salmon River and the toe of the Bitterroot Mountain Range. Flow from the subject spring goes into a relatively straight channel that follows the base of the mountains for a distance of approximately one-half mile to the southwest, at which point the channel joins the North Fork. The channel is lined by relatively mature cottonwoods and willows, which give the impression that the channel emanating from the subject spring is natural in origin.

From a review of the aerial photography and from personal knowledge of farming and grazing practices, it would be my best professional opinion that the channel from the subject spring is largely, if not completely man-made.

Mature vegetation (trees and tall shrubs) may give an impression that the existing channel is natural, but native black cottonwoods and willows are very fast-growing and will easily reach maturity in 40 to 50 years. . . . It is probable that the existing mature woody riparian plant community colonized the ditch corridor after the channel was dug by early settlers.

At trial, Ms. Liebrecht repeated Mr. Warner's statement that irrigators work to keep their irrigation water high and in this case, some work was needed to do that. She reported the landscape was highly altered, including the channel of the North Fork itself – maybe straightened along the highway. In her opinion, the water course below the spring is most likely a ditch. On cross examination, Ms. Liebrecht conceded she did not do a site visit, but relied on documents submitted by Mr. Rigby plus site work "in the area."

Jim Gregory

A third letter (undated) admitted at trial is from Mr. Gregory, Gregory Aquatics of Mackay, Idaho, who was hired by Messrs Murphy and Hull. IDWR Exhibit 7. Mr. Gregory was asked whether the channel located on the Hull and Murphy properties is a ditch or a natural stream. Based on his field observations on November 8, 2009, he concluded:

The water in the spring discussed is clearly in the natural channel from the spring source downstream approximately 1000 feet to the point where an earth dam removes it from the natural channel. Not only is this the observed point where water is removed from the natural spring channel, it is the expected point where water would be removed from the natural channel. It is the expected point because diverting water from the actual spring would result in non-diversion of additional water that enters the spring channel as groundwater inflow between the spring and the earth dam. Additionally, during my field visit I observed no evidence that the spring channel upstream from the earth dam had been modified in any way that could be construed as making it into a ditch. Therefore, the

physical point of diversion is clearly located on Forest Service land northwest of the Forest Service guard station.

At trial, Mr. Gregory said he holds a masters degree in fisheries biology and has 15 years experience related to irrigation structures and fish passages. He said water flowing from the spring forms finger channels away from the North Fork and then it is turned at a right angle on Forest Service land – the first point where water is diverted from the natural channel. He saw no evidence of work to keep the channels above the point of diversion open.

Eldridge Homestead

Elizabeth M. Eldridge, a single woman from Missouri, built a house on Homestead Entry Survey No. 61 in the Salmon National Forest in the spring of 1889, and acquired a homestead patent for 74.14 acres on May 10, 1913. By then, 35 acres were under cultivation, improvements totaled \$3,000 and the lands “are covered with three main ditches leading from the North Fork of the Salmon River.” Heltsley/Felton Exhibits 1 and 2 and Hull Exhibits 4 and 5. There was no mention of a spring source.³

Velma H. Ravndal

A written statement, dated July 13, 1984, by Ms. Ravndal (Mrs. Gerald B. Ravndal) who was then living in Salmon, Idaho, added several layers of confusion to the history of the Eldridge Homestead. Heltsley/Felton Exhibits 3. Ms. Ravndal wrote that Elizabeth and David Eldridge built a two-story log house at the mouth of Hughes Creek in the spring of 1887, and received domestic, stock and irrigation water from a spring on Harold Hanson’s property by “building the ‘Spring Ditch’, coming across Forest Service property to the said Eldridge property.” There was no mention of the other two “main ditches.” Hers is the first mention of a spring source.

Ms. Ravndal wrote that Eric and Hattie Ravndal bought the Eldridge Homestead in 1918, then Gerald and Velma Ravndal acquired it (year?) followed by Lou (or Lew) and Sybil Gohmes in 1957. Ms. Ravndal said the “Spring Ditch” had been used continuously from 1887 to 1957.

³ The record suggests that lands owned by claimants Felton (75-10603) and Heltsley (75-14531) lie wholly or partially within the Eldridge Homestead and both receive water from the unnamed stream recommended by IDWR or the unnamed spring argued by the claimants. Others have claimed water rights appurtenant to former-Eldridge Homestead land; more on their claims later.

Ms. Ravndal offered no explanation of who David Eldridge was (Elizabeth's deceased husband?) or why the two year discrepancy when the log house was built. More importantly, though, is the confusion arising from the map attached to Ms. Ravndal's statement. Obviously, the hand-drawn map is not to scale and the private parcels do not align with IDWR's 2004 aerial photography. IDWR Exhibit 2. But Ms. Ravndal's map places nearly all of the "Spring Ditch" in Sections 22 and 21 with the beginning point (presumably the spring) barely inside Section 15. Note that Ms. Ravndal drew the beginning point of the "Spring Ditch" near the Salmon National Forest boundary close to where Ms. Van Bussum placed the berm, "the first indication of human intervention on the stream." If not for where Ms. Ravndal marked the private parcels, the map closely matches IDWR's recommended point of diversion on Forest Service land in Section 15.

Hughes Ranger Station

Ms. Van Bussum located the source and point of diversion for claims 75-10603 and 75-14531 in the pasture behind the Hughes Ranger Station alongside Highway 93 (§ 15, SESWSW). A 1908 map of the Ranger Station shows an irrigation ditch running through the same pasture onto the Eldridge Homestead. Hull Exhibit 3. Curiously, the drawing shows the irrigation ditch diverting water from the North Fork Salmon River, not a spring. The only other ditch shown on the map is an "old placer flume", but none of the parties suggested its source was a spring.

Gohmes Special-Use Permit

On September 6, 1962, Lew R. Gohmes, who bought the Eldridge Homestead from the Ravndals in 1957, applied for and was granted a special-use permit from the Forest Service for "cleaning and rebuilding the old ditch" on .8 acre of National Forest land. Hull Exhibit 2. The attached map showed a "live spring" on Harold Hanson's property (now owned by objector Patrick Murphy) with the ditch beginning 150 feet inside the adjacent Forest Service pasture – right where Ms. Van Bussum located the point of diversion. The 14 foot wide ditch was then described as continuing 2,502 feet until it entered Mr. Gohmes' private land. The ditch permitted to Mr. Gohmes in 1962 closely resembles the 1908 ditch suggesting that is the "old ditch" he wanted to clean and rebuild.

Westman/Taylor Claims

On October 13, 1976, John Westman from Scottsdale, Arizona, filed water right claim 75-4055 with IDWR for 1.13 cfs from a spring with the point of diversion in the same quarter-quarter (§ 15, SESW) identified as the source and point of diversion by claimants Felton and Heltsley. Heltsley/Felton Exhibit 4. Mr. Westman described a “ditch to capture spring water” to irrigate his 28.2 acres located below the Hughes Ranger Station, including land now owned by Mr. Felton and Heltsley.

On May 10, 1990, Harold W. Taylor from Park City, Utah, filed the same water right claim 75-4055 in the SRBA, this time claiming the same quantity of water but for 21.2 acres. Heltsley/Felton Exhibit 5. SRBA records indicate the claim was disallowed on November 13, 2009, with no objections.

Kozacek Claims and Partial Decrees

On June 13, 1979, Russell and Susan Kozacek filed water right claim 75-4126 with IDWR claiming .36 cfs from an “unnamed spring” locating the point of diversion in the same quarter-quarter (§ 15, SWSW) recommended by IDWR for the Felton and Heltsley claims. Heltsley/Felton Exhibit 6. They described the means of diversion as a headbox and open ditch approx. 14' x 3975' and referenced a USFS permit.

The Kozaceks attached to their claim a March 5, 1979 affidavit by Harold H. Hanson who wrote:

I have lived on H.E.S. 95 [now owned by objector Patrick Murphy] since 1948 and do hereby certify the water that raises on the lower end of my ranch is caught in a ditch that goes to irrigate part of the ranch known to me as the old Ravndal Ranch on Hughes Creek, North Fork, Idaho, part of which Russ Kozacek has purchased.

Also see Heltsley/Felton Exhibit 10.

On March 16, 1990, the Kozaceks signed a second water right claim 75-4126, this time in the SRBA, claiming the same source (“unnamed spring”) and nearly the same point of diversion as before – § 15, S½SW. The map attached to this claim refined the point of diversion to the same location claimed by Mr. Felton and Heltsley – § 15, SESW.

On July 25, 1996, Susan K. Kozacek signed a special-use application with the Forest Service seeking a permanent water system easement for a ditch across Forest Service land for

irrigation and stockwater uses on private land. Heltsley Exhibit 9. This is the same ditch Lew R. Gohmes cleaned and rebuilt under a special-use permit back in 1962. Hull Exhibit 2.

Ms. Kozacek said the ditch was constructed before 1890 and has been in continuous use since. She also wrote:

Headgate on private land collects water from spring. Water then flows in the ditch across Forest Service land and then onto private land.

For SRBA claim 75-10400, signed by Susan K. Kozacek on March 16, 1990, she claimed the same source (“unnamed spring”) and point of diversion for water right 75-4126. However, on December 26, 2007, Ms. Kozacek wrote a letter to Mr. Murphy saying she agreed that IDWR’s recommended point of diversion for water right 75-10400 is correct:

I agree with the objection that you and Daryl Hull filed in October regarding the point of diversion for my water right #75-10400. You are correct that the point of diversion is on US Forest Service at T25N 21E Sec 15 SESWSW.

Murphy/Hull Exhibit 1.

Both of the Kozaceks’ water rights 75-4126 and 75-10400 were partially decreed by the SRBA Court on October 30, 2009, after the Kozaceks agreed with IDWR’s recommendations – the source for both water rights is an “unnamed stream” and the point of diversion for both is § 15, SESWSW on Forest Service land.

Noyes Claim

The final water right claim mentioned at trial was signed by Ann M. Noyes on February 18, 1983. No claim number appears on the document. Ms. Noyes claimed .36 cfs from an “unnamed spring” with a point of diversion in § 15 SWSW. Heltsley/Felton Exhibit 7. She wrote:

Spring flows through an open ditch by means of a head box. An association is being formed with the Forest Service & a permit has been issued.

The map attached to Ms. Noyes’ claim locates a spring in the approximate area of the spring claimed by Felton and Heltsley and the place of use for domestic and irrigation uses is within the Eldridge Homestead. Ms. Noyes also signed an application for permit for the same claim on March 2, 1983. However, there is no indication that either the claim or the application for permit were ever filed with IDWR or the SRBA Court. There is no record of any water right being decreed by the SRBA Court to Ms. Noyes.

Adelle Crawford

Ms. Crawford said between 1968 and 1988, she lived on what is now the Hull property where Mr. Felton and Heltsley claim their source and point of diversion. She recalled digging a 4' x 4' hole at the spring and installing a box and pump with Harold Hanson. She placed the spring *above* the dirt road shown near the claimed source and point of diversion on IDWR Exhibit 2 as well as other springs lower down. Ms. Crawford had not been on the property for over 20 years, but she remembered maintaining the ditch on her property below the spring and said if it was not kept up, the water would have flooded her land. She did not use the water from the ditch; rather, it was needed for lambing sheds below, presumably below her property.

Mitzi Felton

Ms. Felton, Stuart Felton's wife, said they bought their property in 1979, where they irrigate 9 acres and raise livestock. She recalled walking to the spring box and seeing the ditch built by the Eldridges in the early 1890s. Harold Hanson maintained the ditch between 1979 and 1992, to keep the water from breaking out of the ditch banks and flowing to the North Fork. The Feltons want the spring decreed as their point of diversion because now they are prohibited from entering the Murphy and Hull property to maintain the ditch.

Lawrence Heltsley

Ann Heltsley's brother, Lawrence Heltsley, helped build his sister's house and worked on her irrigation ditch the first time 30 years ago. Ten to fifteen years ago, he used hand tools to repair a breakout on the ditch between the spring and IDWR's recommended point of diversion on Forest Service land. Seven years ago, he helped repair a second breakout on Forest Service land. The ditch has not been maintained the last two years.

Ann Heltsley

Ms. Heltsley testified she has lived on Hughes Creek, below the Hughes Ranger Station, since 1977. She helped Harold Hanson maintain the Spring Ditch until 1980. There were lots of problems with beavers, especially on Forest Service land. The ditch was maintained with hand tools all the way to the spring until five years ago when Patrick Murphy posted a no trespassing

sign. A ditch blowout on the Murphy property would allow the water to flow to the North Fork. Her concern is that Messrs Hull and Murphy are not caring for the ditch on their property.

Daryl Hull

Mr. Hull said he has owned the land where the spring is located, above and adjacent to Mr. Murphy's property, for eight years. Irrigation water on his land runs southwest, away from the North Fork, toward the channel below the spring. The same is true on Mr. Murphy's property.

Patrick Murphy

Mr. Murphy said a ditch begins 100' below the foot bridge on Forest Service land. Above that, water flows from a live spring down a stable channel. He remembered only the Kozaceks asked about access to his property because of beavers.

Conclusions of Law

These two subcases presented irreconcilable evidence offered by experts and lay-people alike on the definitions of "man-made-ditch" versus "natural stream." The evidence is even uncertain as to where and how the water claimed by Mr. Felton and the Ann M. Heltsley Living Trust originates. For instance, Adelle Crawford, who lived on the Hull property from 1968 to 1988, placed the spring *above* the dirt road leading to Mr. Murphy's home, but Mr. Murphy said that is the spring and pump providing his home with domestic water. The spring claimed by Mr. Felton and Heltsley is *below* the road.

Then, Ms. Van Bussum recalled she saw no spring box during her site visit and none shows in her photographs where the water first rises from the ground. On the other hand, Ms. Crawford recalled helping Harold Hanson install a box and pump in a 4' x 4' hole at the spring. Perhaps this was Mr. Murphy's domestic water supply?

Mitzi Felton recalled walking the length of the ditch to the spring box. Even Susan Kozacek initially claimed a headbox and open ditch as her means of diversion even though she later agreed with IDWR that the point of diversion was actually further downstream on Forest Service land. Presumably, she changed her mind about any diversion from a headbox.

The evidence is that early on, the Eldridge Homestead was served by three ditches diverting water from the North Fork, not a spring. The 1908 map of the Hughes Ranger Station showed a ditch across Forest Service land to the Homestead diverting from the North Fork, not a spring. In 1984, Velma Ravndal was the first to describe a spring on Harold Hanson's property (Hull property) supplying water to the Homestead by the "Spring Ditch coming across Forest Service property." As noted earlier, Ms. Ravndal's map could be interpreted as locating the "Spring Ditch" beginning on Forest Service land, not at the spring.

It seems reasonable to conclude that while several witnesses described diverting spring water, they may have meant water from a spring was diverted well down stream from the spring. That means that spring water flowed down a natural stream until it reached Forest Service land where it was first diverted into the "Spring Ditch."

There was abundant testimony concerning maintenance of a ditch. Roger Warner suggested the claimants cleared debris by hand from the ditch below the spring to preserve the quality of the water: "For this reason, the ditch does not appear as a ditch but appears as a natural stream." Nancy Liebrecht added that mature trees "give the impression that the channel emanating from the subject spring is natural in origin."

Lew Gohmes cleaned and rebuilt the "old ditch" on Forest Service land in 1962, with no hint of a man-made ditch above that. Lawrence Heltsley repaired breakouts on and above the Forest Service land as late as two years ago. But, as pointed out by counsel for IDWR, maintenance of a natural waterway does not mean it is a ditch.

There was testimony that early irrigators used natural waterways to convey their irrigation water but they often tried to keep the water high to reach their fields. The claimants' experts suggested that if the ditch were not excavated into the hillside, the elevation would be less than optimal and the water would flow toward the North Fork across Mr. Murphy's property – well before it reaches Forest Service land. On the other hand, the objectors and their experts said irrigation water on their private lands flows *away* from the North Fork toward the natural channel before it reaches IDWR's recommended point of diversion.

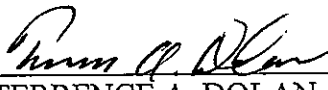
Finally, there is the description of the natural stream itself. Ms. Van Bussum provided graphic evidence of dense vegetation, substrate composition, deadfall, aquatic plants, channel geometry, flow rate and meandering channels, all indicating a natural stream, not a man-made ditch.

There was testimony from IDWR and both sides that the channel below the spring is a gaining reach, meaning other springs along the channel add to the flow. That being the case, it would make more sense for an appropriator to divert the flow below that reach to access the maximum amount of water. Then there were observations that near the point of maximum gain, the water turns sharply to the left away from its natural channel. That point is the berm or earth dam, “the first indication of human intervention on the stream”, IDWR’s recommended source and point of diversion.

Ms. Liebrecht noted that the landscape around the Hull, Murphy, Felton and Heltsley properties is highly altered, including the North Fork itself. Perhaps construction and improvements of Highway 93 are the causes. In any event, an attempt to determine the source and point of diversion for 1887 water rights is like drawing a map in the dark. The best we can do is rely on sometimes incomplete and conflicting evidence. But under these circumstances, the greater weight of evidence is that the channel below the spring is a natural stream.

The source for both claims is an “unnamed stream” and point of diversion is on Forest Service land – T 25N, R 21E, § 15, SESWSW. Claimants Felton and Heltsley are entitled to water rights as recommended by IDWR and as described in the attached *Special Master Recommendations for Partial Decrees for Water Rights 75-10603 and 75-14531*.

DATED July 9, 2010.


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication



Idaho Department of Water Resources

75-10603 and 75-14531 POD overview



Prepared by Monica Van Bussum
On February 18, 2010
2004 Aerial Photography

0 50 100 200 300 400
Meters

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)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 75-10603

NAME AND ADDRESS: STUART L FELTON
PO BOX 8
NORTH FORK, ID 83466

SOURCE: UNNAMED STREAM TRIBUTARY: NORTH FORK SALMON RIVER

QUANTITY: 0.26 CFS

PRIORITY DATE: 05/01/1887

POINT OF DIVERSION: T25N R21E S15 SESWSW Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.26 CFS

PLACE OF USE: Irrigation Within Lemhi County
T25N R21E S21 NWNE 1.5 SWNE 7.5
9.0 Acres Total

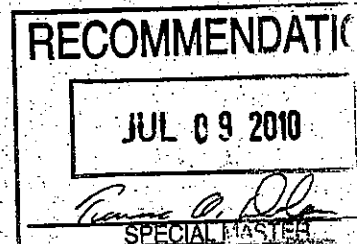
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication



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)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 75-14531

NAME AND ADDRESS: ANN M HELTSLEY LIVING TRUST
PO BOX 83
IDAHO CITY, ID 83631

SOURCE: UNNAMED STREAM TRIBUTARY: NORTH FORK SALMON RIVER

QUANTITY: 0.14 CFS

PRIORITY DATE: 05/01/1887

POINT OF DIVERSION: T25N R21E S15 SESWSW Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.14 CFS

PLACE OF USE:	Irrigation	Within Lemhi County
	T25N R21E S21	NENE 0.4 NWNE 3.1 SENE 1.0
	6.7 Acres Total	

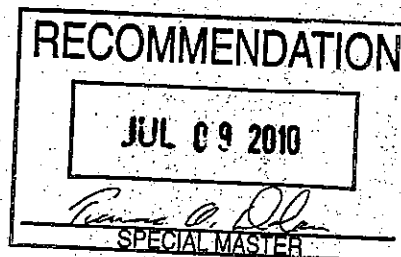
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

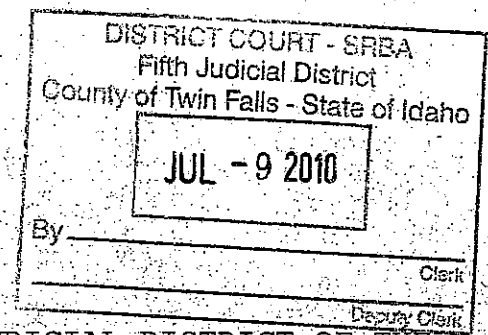
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P.; that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication





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)

Case No. 39576)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 75-10603

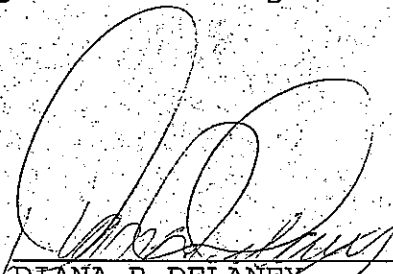
75-14531

On July 09, 2010, Special Master ERIC J. WILDMAN
issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s)
pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

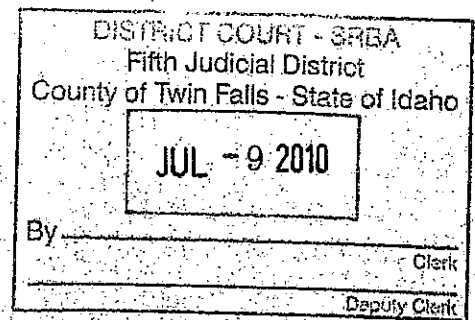
Pursuant to SRBA Administrative Order 1, Section 13a, any party
to the adjudication including parties to the subcase, may file a Motion
to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate
in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION
shall constitute a waiver of the right to challenge it before the
Presiding Judge.

DATED July 09, 2010.



DIANA R. DELANEY
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)

CERTIFICATE OF MAILING

Case No. 39576)
_____)

Water Right(s): 75-10603
75-14531

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on July 09, 2010, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

ANN M HELTSLEY LIVING TRUST
STUART L FELTON

Represented by:
JERRY R. RIGBY
25 N 2ND E
PO BOX 250
REXBURG, ID 83440-0250
Phone: 208-356-3633

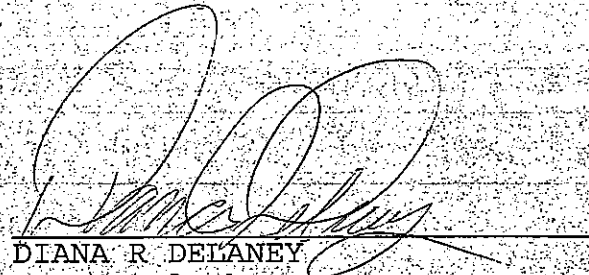
UNITED STATES OF AMERICA
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

CERTIFICATE OF MAILING

PAGE 1
07/09/10

PATRICK MURPHY
14 BLAZE TREE TRAIL
NORTH FORK, ID 83466
Phone: 208-756-6022

DARYL HULL
15 BLAZE TREE TRAIL
NORTH FORK, ID 83466
Phone: 208-865-2075



DIANA R. DELANEY
Deputy Clerk