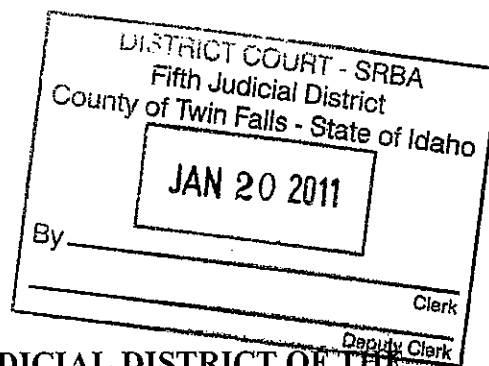


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JAN 21 2011

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	)	Subcase 75-10547
	)	(Murphy)
Case No. 39576	)	
	)	SPECIAL MASTER REPORT
	)	AND RECOMMENDATION

Findings of Fact

On November 3, 2000, former SRBA Presiding Judge Barry Wood partially decreed uncontested water right 75-10547 to Eva Jeanne and Kenneth Martens and Adele Crawford for .04 cfs from ground water for year-'round domestic use (1 home) with a priority date of September 14, 1982. IDWR records show the current owner is Patrick Murphy.

On October 12, 2010, Ann M. Heltsley filed an *Objection* to the water right objecting to source and alleging the water right should not exist. The next day, SRBA Presiding Judge Eric J. Wildman entered an *Order of Reference* "for further proceedings to determine the nature of the relief sought" – whether Ms. Heltsley seeks to set aside the *Partial Decree* or administrative relief through IDWR. On October 15, 2010, Stuart and Mitzi Felton filed virtually the same *Objection* as Ms. Heltsley.

The objectors alleged Mr. Murphy actually diverts surface water – not ground water – from an unnamed spring via a "shallow man made diversion box and a submersible pump." Presumably this surface water would otherwise join with the objectors' claimed spring source approximately 150' down-gradient from Mr. Murphy's "well." The objectors wrote: "I suggest that IDWR force the claimant cease & desist the use of water from an unnamed spring, in which the claimant has no legal water right."

An initial hearing on the two *Objections*, in the nature of motions to set aside the *Partial Decree*, was held by telephone on January 6, 2011. Ms. Heltsley appeared *pro se* as did the Feltons and Mr. Murphy. Garrick L. Baxter appeared for IDWR, along with Monica P. Van Bussum and Suzy Cooley-Denney.

At the initial hearing, Ms. Heltsley and the Feltons recalled that Mr. Murphy testified in an earlier proceeding¹ that his “well” was 12’ deep and located at the head of the unnamed spring. They essentially repeated their earlier written allegations:

Mr. Murphy has not obtained a well drilling permit and has not drilled a well. By definition of the Department of Water Resources, in order to qualify as ‘ground’ water use, a well must be at the depth of at least eighteen (18) feet.

Mr. Murphy said he pumps ground water flowing beneath the surface from the well which supplies his house with domestic water year-‘round.

Mr. Baxter reminded the parties that Idaho defines ground water as “all water under the surface of the ground whatever may be the geological structure in which it is standing or moving.” I.C. § 42-230(a). He noted that Idaho’s definition of a well – “an artificial excavation or opening in the ground more than eighteen (18) feet in vertical depth below land surface by which ground water of any temperature is sought or obtained” I.C. § 42-230(b) – is relevant to regulation of well drillers and does not necessarily define what may be ground water.

In Mr. Baxter’s opinion, the present matter concerns administration of water rather than the adjudication of water rights. Whether Mr. Murphy’s use of water under *Partial Decree 75-10547* is surface or ground water and whether it impacts the objectors’ water rights is properly addressed to IDWR, not the SRBA Court.

Conclusions of Law

The *Objections* filed by Ann M. Heltsley and Stuart and Mitzi Felton in subcase 75-10547 and the relief they seek are not properly addressed to the SRBA Court.

Recommendation

THEREFORE, IT IS RECOMMENDED that the *Objections* be **dismissed**.

DATED January 20, 2011.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

¹ See July 9, 2010 *Special Master Report and Recommendations*, subcases 75-10603 and 75-14531. In that matter, the Special Master held the source of the Felton and Heltsley claims is a natural stream and not a spring below Mr. Murphy’s well as they claimed. A hearing on a *Motion to Alter or Amend* filed by Stuart L. Felton and the Ann M. Heltsley Living Trust is set for February 3, 2011.

DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
JAN 20 2011	
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)
)
Case No. 39576)
)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

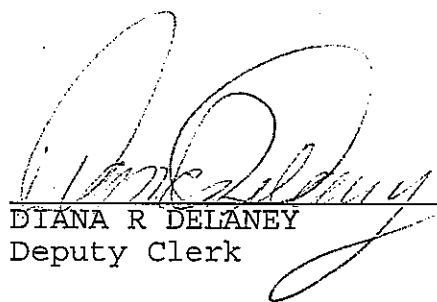
Water Right(s): 75-10547

On January 20, 2011, Special Master TERRENCE A. DOLAN 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 January 20, 2011.



DIANA R DELANEY
Deputy Clerk

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JAN 20 2011	
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)
)
Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 75-10547

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 January 20, 2011, with sufficient first-class postage prepaid to the following:

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

EVAJEANNE MARTENS
KENNETH J MARTENS
HC 10 BOX 26A
NORTH FORK, ID 83466
Phone: 208-865-2127

ANN M HELTSLEY
PO BOX 4
NORTH FORK, ID 83466
Phone: 208-865-2013

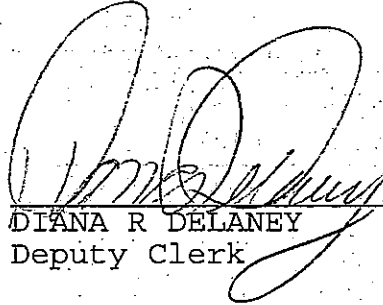
STUART & MITZI FELTON
PO BOX 8
NORTH FORK, ID 83466
Phone: 208-865-2243

CERTIFICATE OF MAILING

PAGE 1
01/20/11

PATRICK MURPHY
14 BLAZE TREE TRAIL
NORTH FORK, ID 83466

ADELE CRAWFORD
24155 HEWETT RD
ALPINE, OR 87456
Phone: 503-847-5199



DIANA R DELANEY
Deputy Clerk