

("DEC"), which is a subdivision of ANR. The Source Permit details fourteen separate Findings and Conditions, including Source Water Quality Results (#6); Source Water Quantity (#7); Source Construction (#8); Source Interference with Neighboring Wells (#9); and Source Protection Area (#10). None of these regulatory compliance details are challenged in this appeal. In fact, in reviewing all parties' most recent filings, and the Statements of Questions filed on behalf of both Appellant Virginia Houston and Cross-Appellant Jean R. Damon, we find no Finding or Conclusion from the Source Permit which is contested in this appeal proceeding. Rather, Appellant's eight Questions and Cross-Appellant's three Questions focus on a single general issue: whether a water supply source permit may be issued before the completion of separate superior court proceedings challenging the condemnation of land within the well head area or isolation zone.

When the DEC Water Supply Division first faced the complex legal issue of "ownership and control" of the applicable lands, it followed the wise course of completing its technical review of the application's compliance with the regulations governing public water supply wells. Some of those technical compliance issues are listed above; all appear to be addressed in the Source Permit; none of the applicable technical compliance issues appear to be challenged in this appeal. When faced with the legal issue of "ownership and control" of the applicable lands, the DEC Water Supply Division identified the necessary isolation zone, pursuant to the regulations, and then placed Condition 5(i) upon the permittee Town, requiring that ownership and control of the specified area "shall be maintained for the duration of this Source's use as a Public Water Supply." Id. We understand that Source Permit Condition 5(i) to require the Town to establish ownership and control of the specified lands prior to and during the use and operation of the supply well.

The parties and this Court have referenced in prior filings the undisputed limitations of this Court's jurisdictional authority. We see no need to recite those jurisdictional limitations again in this Entry order. Our jurisdiction does not include the authority to adjudicate property disputes. This Court is charged with the responsibility of administering "summary and expedited proceedings consistent with a full and fair determination" of legal issues within its jurisdiction. V.R.E.C.P. 1.

In the permit appeal now before us, we know of no legal issues that have been challenged for which we have the jurisdictional authority to adjudicate. We recognize that Appellant and Cross-Appellant have mounted sincere, serious challenges in the Washington Superior Court to the condemnation of small portions of their land for this project. The DEC Water Supply Division acknowledged the same by the inclusion of Condition 5(i) in the Source Permit it issued to the Town. Since no permit challenge over which we have jurisdiction has been raised in this appeal, we are required as a matter of law to remove the stay of these proceedings and the underlying permit, GRANT the Town summary judgment, and AFFIRM Source Permit #BR01-0008, including all of its applicable conditions.

The two year validity time period of Source Permit #BR01-0008 shall commence from the date these proceedings become final. This completes the proceedings before this Court concerning this appeal.

Thomas S. Durkin, Judge
July 14, 2009
Date

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Date copies sent: _____

Clerk's Initials _____

Copies sent to:

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Attorney Richard W. Darby for Cross-Appellant Jean R. Damon

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