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RECEIVED
NOV 19 2004
DEPARTMENT OF
WATER RESOURCES

74-7305
74-15630
74-15631
74-15632
74-15633

*Also Licensed in Utah and Arizona
**Also Licensed in Missouri & Kansas

November 16, 2004

Roxanne Brown
Idaho Department of Water Resources
322 E. Front St.
PO Box 83720
Boise, ID 83720-0098

RE: McFarland Livestock Company, Inc. - Tex J. Kauer

Dear Ms. Brown:

As I understand it, Mr. Tex J. Kauer of McFarland Livestock Company, Inc., began to try to address this particular irrigation water matter on land west of Leadore, Idaho, by filing an application for a new permit here in the Idaho Falls office. At some point, he apparently had a conference with Mr. Roger Warner, and Mr. Warner wrote him a letter, dated October 26, 2004, a copy of which is enclosed with this letter and package of documents for ease of reference.

Eventually, Mr. Kauer came to our office for assistance, and after reviewing the history as he knows it, the available documentation and maps, we have recommended filing three (3) new SRBA claims and amending two (2) existing SRBA claims, all of which are enclosed with this letter.

I believe our recommendations resulting in the enclosed claims and amended claims can best be visualized by first referring to the enclosed aerial photo map prepared by Brockway Engineering in October of 2003, from the 1987 FSA aerial photo of portions of (primarily) Sections 4, 5, 8 and 9 of T.16N., R.25E.B.M. The map represents Brockway's analysis of acreage owned and irrigated by McFarland Livestock Company, Inc. after the 1984 changes were made. According to my math, from 1984 until the present, there is some 194.2 acres of land irrigated; some sprinkled under a partial pivot, some sprinkled with hand lines, and some flood irrigated. Neither Mr. Kauer nor I know the purpose or explanation for the red arrows and the red number "1888" on the map.

There are now five (5) sources from which water is collected in a small pond, most of which is near the northeast corner of the NENW, Section 8, and a portion of which extends into the northwest corner of the NWNE of the same section. From the pond, the water is diverted into a ditch system for some flood irrigation and pumped into mainline for the partial pivot and hand lines. The pump is located at the downstream end of the pond in the NWNWNE of Section 8.

The five (5) sources of water and the new or amended SRBA claims are as follows:

1 - A ditch which brings water from Mill Creek under water right number 74-2159 was adjusted in 1984 to deliver the water into the pond. We have amended the Notice of Claim for 74-2159 to reflect the expanded place of use and the accomplished transfer.

2 - Some relatively small springs which arise near the pond in the NENENW, Section 8, seem to be the same springs referenced in claim number 74-1560. We have amended this claim to also reflect the 1984 expansion in acres and the accomplished transfer. In addition, we think the point of diversion shown in the current record is slightly off. These springs appear to originate just upstream of the pond in the NENENW of Section 8 rather than downstream in the SWSE of Section 5.

3 - There are some larger springs located in the SWNENW of Section 8. In Mr. Kauer's experience, which extends from 1958 when he first came to the land, until the present, these springs have historically produced about 110 miner's inches or 2.2 cfs. When Mr. Kauer first came to the land in 1958, the water from these springs was diverted into an old ditch which flowed almost directly north, following the base of the hill, and provided water for flood irrigation of approximately 45 to 50 acres of land in the SW quarter of Section 5. For reasons that are not clear to Mr. Kauer, no claim reflecting this diversion and use appears to have been filed in the Lemhi Adjudication. During the period of that proceeding (1969 - 1982), Mr. Kauer's father-in-law was in control of such matters, and, particularly during the later part of that period, there were some serious health issues. In any event, Mr. Kauer has been personally involved in the use of this particular water source since 1958, and the ditch system had the appearance of having been in place and use for decades before he arrived. He obtained and we are enclosing the deed record for some of this land, beginning with the patent issued in 1914, the date claimed for the priority. In 1984, as we have indicated, Mr. Kauer installed the pump, mainline, partial pivot and hand lines and rearranged the ditch system to irrigate 194.2 acres as is presently done. He says the amount of land irrigated at that time was increased, probably by about 20 to 25 acres, hence this and the other claims rely on the enlargement and accomplished transfer provisions of Idaho Code §§ 42-1425 and 1426. Deducting the acreage irrigated under rights numbers 74-2159, 74-1560 and the 45 acres irrigated from the larger springs from the

Roxanne Brown
Idaho Department of Water Resources
November 16, 2004
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194.2 acres shown in the 1987 map prepared by Brockway leaves an enlargement of some 24.6 acres.

4 - On the map attached to the new SRBA claim for wastewater, we have marked with a blue marker three (3) "draws" from which wastewater from irrigation of lands up gradient have come onto the McFarland lands for as long as Mr. Kauer has been there and before. This water has always collected in the ditch system and contributed to the irrigation of all of the lands both prior to and since the 1984 changes. The priority date on the use of this wastewater we expect will not be very crucial and so we have claimed a priority date of May 1, 1958, which is when Mr. Kauer personally first observed this diversion and use.

5 - In the late 1980s, it became apparent that in drouth years there was not adequate water to irrigate all of the lands under the sprinkler system. In 1990, Mr. Kauer applied for and received a permit, number 74-7305, to divert groundwater and add it to or use it in place of the other sources. We understand there is little left to do to complete the license confirming this right. We have nevertheless prepared and are enclosing an SRBA claim for this right because it is really part of the package for this 194.2 acres. It appears to us that the acreages shown in the permit are not all consistent with the Brockway map, so we have prepared this claim to be more consistent with the others. The 194.2 acres would be the permissible place of use for the commingled water from all sources. But, we assume 74-2159 would be limited to 113.6 acres (plus 24.6 acres under the 1984 enlargement) of the total, 74-1560 would be limited to 11 acres (plus 24.6 acres under the 1984 enlargement) of the total, the new claim to the larger springs would be limited to 45 acres (plus 24.6 acres under the 1984 enlargement), the new claim for the wastewater would be limited to 169.6 acres (plus 24.6 acres under the 1984 enlargement) which, together, is the total, and that 74-7305 would be limited to 150 acres of the total 194.2 actually irrigated.

Besides the three (3) new SRBA claims, the two amended claims, the deeds and the maps, and the referenced letter, we are enclosing our check in the amount of \$370.00 for the filing fee. We arrived at this amount as follows: \$50.00 each for the three (3) new claims; \$50.00 each for the three (3) late fees; and \$70.00 for the additional acreage (69.6).

We will look forward to hearing from you.

Yours very truly,



Kent W. Foster

Enclosures

Idaho Department of Water Resources Receipt

Receipt ID C075867

Payment Amount Date Received Region Status
Payment Type Check Number

Payer Comment

Fee Detail

Amount	Description	Fund	FD	PCA	SO
\$370.00	ADJUDICATION FILING FEE	0337	41503	1155	

_____
Signature Line (Dept. Representative)

REFUND REQUEST

COPY

TO: S. Sherman to Log In
 FOR: D. Shaff/D. Allen
 FROM: R. Brown Date: 10/4/05
 SUBJ: Receipt No. C075867 (Please attach ARQ2 Receipt copy immediately behind blue form)

RE: PayOR Holden, Kidwell, Hahn & Crapo
 Address _____

Claimant(s) if NOT Payor McFarland Livestock Co, Inc

Refund Amount \$ 150.00 Claim Location (State Office / Region / Claimant)

Extension Filed? Y/N NA Copy Attached? Y/N NA

Late Fees Paid? Y/N NA Late Fee Receipt # _____

S.O. Verified Ext. by _____ on _____ D.B. Query by _____

Refund Generated By (☒ Agent () Claimant

Refund Category:

insufficient fees / claim incomplete / withdrawn / o-pmt

Date of Last Correspondence (copy attached) 11/16/2004

Claim No.	Use*	Fees		Rec't #
		Paid	Correct	
<u>74-7305</u>	<u>irrigation</u>	\$ <u>170.00</u>	<u>150.00</u>	<u>C075867</u>
<u>not numbered #1</u>	<u>"</u>	\$ <u>100.00</u>	<u>50.00</u>	<u>"</u>
<u>not numbered #2</u>	<u>"</u>	\$ <u>100.00</u>	<u>50.00</u>	<u>"</u>
		\$ _____	_____	_____
		\$ _____	_____	_____
Total		\$ <u>370.00</u>	\$ <u>220.00</u>	

*Incomplete claims or insufficient fees for irrigation use will generally NOT be refunded. D.E. claim in AJSP1 at minimum.

Detailed Reason(s) for Refund Attached Y/N
No late fee required; 74-7305 is a claim for a permit with a 1990 priority date; other claims were neglected when claims were originally filed by McFarland Livestock.

Region AJ Spvsr. Approval _____ S.O. AJ Spvsr. Approval _____
 Don Shaff Approval _____ Hold _____ To Fiscal _____

Data Base Modified? Y/N NA A &/or R Records By _____ on _____
 Logged _____



State of Idaho

DEPARTMENT OF WATER RESOURCES

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PHONE: (208) 525-7161 FAX: (208) 525-7177 WEB SITE: www.idwr.state.id.us

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 26, 2004

McFarland Livestock Company, INC.
P.O. Box 50
Lemhi, Idaho 83465

COPY

Re: Application for Permit Received October 6, 2004

Dr. Mr. Kauer,

I am in receipt of an application for permit for irrigation water in the amount of 1.08 cfs from springs in Lemhi County. In this application, you indicate that, "This ground was irrigated since 1914 but in 1984 water was put into a pump system to irrigate additional acres along with Mill Creek water."

There are several issues that affect the way this application may turn out. I will attempt to address them as follows:

1. If the ground were irrigated from springs since 1914, they would qualify as a valid water right on the basis of *beneficial use*. However, the right should have been claimed in the Lemhi Adjudication. Once an adjudication has been completed, all valid water rights claimed become *decreed* water rights. The remaining unclaimed water rights become null and void. I am assuming that you made no such claim in the Lemhi Adjudication or you would not be making a new application for permit.
2. In 1984, the only valid method of appropriating a new water right was through the permit process. The method of commingling spring water with Mill Creek water to irrigate additional acres would only have been valid through the application for permit process. However, when the Snake River Basin Adjudication (SRBA) began, the legislature recognized expansions that were made similar to yours and made it possible to entertain a new water right for the expanded acres. Here's the problem, if the water was not claimed in the Lemhi Adjudication, it would be considered invalid if you were to claim it in the SRBA. A visit with Roxanne Brown, Senior water agent at the state office SRBA may help clarify.
3. If I consider this a new application on it's own merits, I am obligated to inform you that it will be placed into a moratorium hold file. The areas pertaining to this application has been under moratorium (Wilderness and Salmon/Clearwater Moratoriums) for the past several years. However, a recent agreement was reached with parties related to at least one moratorium. It now appears that the department may begin to process new applications and/or those, which have been placed in the moratorium hold file. As of this time, I do not know how or when we will begin to process.

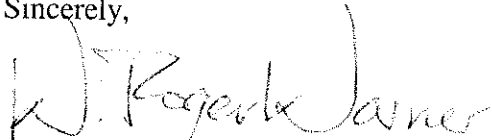
At this time, I am not sure what to do with your application. I can receipt your check and place the application in the moratorium hold file until instructions for processing are received from our state office. The benefit for you to do this is that you would get a priority date that would coincide with the date of which we received your application. Some have referred to this as, "holding your place in line." Another option would be for me to return the application with the uncashed check to you and then have you send in again when we are able to process.

COPY

Also, I am unaware of any authority (claim, permit, license, or decree) to continue to irrigate the lands described in the Application for permit and am obligated to inform you that to do so may put you at risk of violation with accompanying fines or civil penalties.

Please feel free to call me if you have any questions. For your convenience, I will forward a copy to Ms. Roxanne Brown for her information. I will not process your application until I have received instructions from you regarding which option you choose.

Sincerely,



W. Roger Warner
Water Rights Supervisor

Cc: Roxanne Brown – IDWR Boise
Tim Luke – IDWR Boise (w/ copy of application)