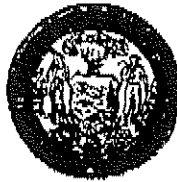


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STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WARDEN

September 28, 2006

VIA FACSIMILE

Special Master Terrance Dolan
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

Re: 35-13565 and 35-13566 in the name of Vello Degiulio

Dear Special Master Dolan:

There is a hearing set October 5, 2006, on the above late claims. The August 17, 2006, Order of Reference indicates that the issue to be discussed is prejudice. Although the Department has not made a full and final investigation into the elements of these water rights, based on an initial review by Dave Carlson, Water Resource Agent with the Department's Eastern Regional Office, the facts surrounding these late claims to ground water appear to show that the water has been used continuously on the lands claimed since 1987 and prior.

An adjudication claim was filed for licensed water right no. 35-2109 owned by Mr. and Mrs. Degiulio. Mr. Degiulio has since passed away. In reviewing the documents for licensed water right no. 35-2109, it seems that at the time of the field exam for 35-2109 in 1950, the examiner found that the original well was producing 3.05 cfs and was being used to irrigate 134 acres. However, because permit 35-2109 was approved for 1.5 cfs on 120 acres, the full amount of what was observed in 1950 could not be included on the license issued for 35-2109. Ultimately the license was issued for 1.5 cfs and 94 acres and a partial decree was issued in 2001 with similar elements to the license.

There is evidence that additional acres were developed over the years after 1950 up to the commencement of the SRBA. In 1987, NAPP photography shows a place of use of approximately 250 acres as irrigated with the original well and an additional well. It seems that the Degiulios should have filed additional SRBA claims associated with the place of use for 35-2109 at the time when claim no. 35-2109 was filed. However, this was apparently overlooked.

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Special Master Dolan
September 28, 2006
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One claim could have been filed for what was observed during the 1950 field exam for 35-2109 and another, for the enlargement of irrigated acres based on the 1987 NAPP aerial photography. David Carlson of the Department's Eastern Region Office helped prepare late claim nos. 35-13565 and 35-13566 to cover these uses. Mrs. Degiulio appears to have continuously irrigated the larger place of use since 1987. The 2004 aerial photos show the majority of the ground still being irrigated, with only pivot corners being dry.

In recent years, Mrs. Degiulio has filed temporary transfers to cover the pivot with other ground water rights in order to comply with Idaho law and has been diligently working with the Department to resolve the issues surrounding the irrigation of her property.

If you should have any further questions about this matter, Mr. Carlson and I will be participating at the October 5, 2006 hearing by telephone, or you may call me at (208) 287-4810.

Very Truly Yours,



Candice M. McHugh

Deputy Attorney General, IDWR

cc: David Carlson
Mrs. Degiulio