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August 2, 2007

Chris Bromley
Idaho Attorney General's Office
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RECEIVED

AUG 06 2007

DEPARTMENT OF
WATER RESOURCES

Re: McFarland Livestock - Claims Nos. 74-15630, 74-15631, 74-15632 and 74-15633

Dear Chris:

I am still working on the McFarland Livestock claims and hope to make some progress with respect to some of them with this letter. As you know, subcases 74-15049, 74-15588, 74-15591, 74-15630, 74-15631, 74-15632 and 74-15633 are grouped together in the trial scheduling order. We are trying to learn more about the first three, but this letter will focus only on the last four, 74-15630, 74-15631, 74-15632 and 74-15633.

I discovered, after some struggling, that these four are related to three other claims: 74-1560, 74-2159 and 74-7305. From our file I found we wrote to Roxanne Brown on November 16, 2004, enclosing three new SRBA claims and two amended claims. We are sure there is wonderful logic to what she did with them but we don't know what it might be. Unfortunately for us, she never communicated with us about what she did, and it has taken some time and some effort to try to get all of the pieces back together so we can understand what she did, even if we don't entirely understand why.

We are enclosing a copy of our November 16, 2004, letter. As you can see, we intended to document the five sources of water used to irrigate some 194.2 acres of land. Our strategy was to amend claims nos. 74-1560 and 74-2159, and to file three new claims, one for 74-7305 and two unnumbered ones to cover sources and uses not claimed in the Lemhi Adjudication. (We still find the automatic rejection of such claims offensive, but this letter is not intended to deal with that issue).

Chris Bromley
Idaho Attorney General's Office
August 2, 2007
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Apparently Roxanne took the two unnumbered new claims and assigned nos 74-15630 and 74-15631 to them, then recommended they be disallowed. The third new claim was for (then) permit no 74-7305. It has since been both licensed and decreed.

But, she apparently assigned nos 74-15632 and 74-15633 to the intended amendments of 74-1560 and 74-2159, and then she disallowed both of them. We filed these, not as new claims, but as amendments to cover the enlargement and accomplished transfers. The enlargement and transfers occurred in 1984. That is after the completion of the Lemhi Adjudication and prior to the commencement of the SRBA. Is there something about the Lemhi Basin that precludes enlargements and accomplished transfers?

We have enclosed two maps. The first you already have; it is the Place of Use map prepared by Brockway which accompanied our November 16, 2004 letter to Roxanne. The second is a map we prepared, using the map IDWR has for the Adjudication, with the shapes for the recommendations for 74-1560, 74-2159 and 74-7305 superimposed. By comparing it with the Brockway map, it appears we are basically short on acreage by the enlargement acres which were put under irrigation in 1984.

As nearly as we can tell, Tex Kauer (on behalf of McFarland Livestock) objected to the disallowance of 74-15632 and 74-15633 (as well as 74-15630 and 74-15631) but not to the recommendations for 74-1560 and 74-2159.

We would appreciate your thoughts on how best to approach this. Can 74-15632 and 74-15633 serve as enlargement claims if such need to be separate from the main rights? Or do we need to file motions to file late objections to 74-1560 and 74-2159?

Yours very truly,



Kent W. Foster

Enclosure

cc: Tex Kauer (Encl.)

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