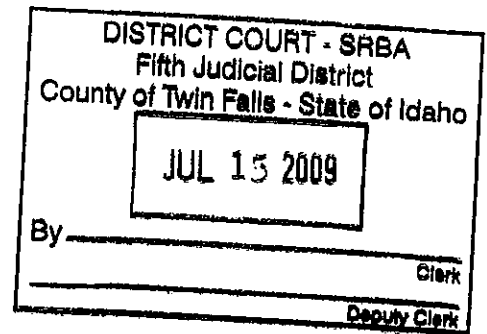


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JUL 16 2009

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 74-1557
Case No. 39576) (McFarland Livestock Company, Inc.)
)
) REQUEST FOR SUGGESTIONS RE:
) DRAFT SPECIAL MASTER REPORT
) AND RECOMMENDATION

A *Draft Special Master Report and Recommendation* is hereby submitted to the claimant and IDWR for their suggestions pursuant to I.R.C.P. 53(e)(5). Suggestions will be considered until **Friday, August 7, 2009**, after which the Special Master will file a *Special Master Report and Recommendation* with the Court.

DATED July 15, 2009.

A handwritten signature in cursive script, reading "Terrence A. Dolan".

TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

DRAFT

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 74-1557
	)	(McFarland Livestock Company, Inc.)
Case No. 39576	)	
	)	DRAFT SPECIAL MASTER REPORT
	)	AND RECOMMENDATION

Findings of Fact

On August 25, 2000, former SRBA Presiding Judge Barry Wood entered a *Partial Decree* in uncontested subcase 74-1557 to McFarland Livestock Company, Inc., c/o Tex J. Kauer, P.O. Box 50, Lemhi, Idaho, 83465, for .1 cfs from Eighteenmile Creek for stockwater use in Lemhi County from May 1 to November 1 with a priority date of June 1, 1940, based on a decree.

McFarland Livestock filed a *Motion to Set Aside Partial Decree* on February 18, 2009, because "it was recently discovered by the owner of this water right that the SRBA partial decree significantly omits a portion of the water right place of use which was specifically listed in the Lemhi partial decree." On February 18, 2009, SRBA Presiding Judge John M. Melanson entered an *Order of Reference Appointing Special Master Terrence A. Dolan* "to issue a recommendation . . . as to the *Motion* and to the underlying merits as to how the *Partial Decree* should be amended, if it is determined that said *Partial Decree* should be set aside or amended."

A hearing on the *Motion* was held by telephone on May 14, 2009. Robert L. Harris appeared for McFarland Livestock and Chris M. Bromley appeared for IDWR, along with Monica VanBussum. The claimant argued that "it appears that there was a clerical error made to not include Sections 3 and 16 of Township 13N, Range 28E as part

of the authorized place of use for Water Right No. 74-1557, and the SRBA partial decree for this water right should be set aside pursuant to Idaho Rule of Civil Procedure 60(a).”

Following the hearing, IDWR submitted a draft partial decree of how it would recommend the right if the Court were to set aside and amend the *Partial Decree* adding to the places of use and the remark: “Place of use does not include federal public lands.”

Conclusions of Law

McFarland Livestock Company, Inc., has shown good cause to have the *Partial Decree* set aside and amended under IC.R.C.P. 60(a). For some unknown reason, places of use decreed in the Lemhi Adjudication were omitted from the SRBA *Partial Decree* and the claimant reasonably relied on the elements decreed earlier being included in the SRBA *Partial Decree*.

Recommendation

THEREFORE, IT IS RECOMMENDED that the *Partial Decree* in subcase 74-1557 be set aside and amended as described in IDWR’s draft partial decree and the attached *Special Master Recommendation for Amended Partial Decree for Water Right 74-1557*.

DATED July 15, 2009.

DRAFT

TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

DRAFT

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
Case No. 39576) I.R.C.P. 54(b) FOR
) Water Right 74-01557

NAME AND ADDRESS: MC FARLAND LIVESTOCK CO INC
C/O TEX J KAUER
PO BOX 50
LEMHI, ID 83465

SOURCE: EIGHTEENMILE CREEK TRIBUTARY: LEMHI RIVER

QUANTITY: 0.10 CFS

The quantity of water under this right shall not exceed 13,000
gallons per day.

PRIORITY DATE: 06/01/1940

POINT OF DIVERSION: T13N R28E S02 LOT 3 (NENW) Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	05-01 TO 11-01	0.10 CFS

PLACE OF USE:	Stockwater	Within Lemhi County
	T13N R28E S02 LOT 4 (SWNW)	
	S03 LOT 2 (SWNE)	LOT 1 (SENE)
	LOT 3 (SWNW)	
	S16 NENE	NWNE
	SWNE	SENE
	NENW	NWNW
	SWNW	SENW
	NESW	NWSW
	SWSW	SESW
	NESE	NWSE
	SWSE	SESE

Place of use does not include federal public lands.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

The quantity of water decreed for this water right is not a
determination of historical beneficial use.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

CERTIFICATE OF MAILING

I certify that a true and correct copy of the REQUEST FOR SUGGESTIONS RE: DRAFT SPECIAL MASTER REPORT AND RECOMMENDATION was mailed on July 15, 2009, with sufficient first-class postage to the following:

MC FARLAND LIVESTOCK CO INC

Represented by:

ROBERT L HARRIS

1000 RIVERWALK DR, STE 200

PO BOX 50130

IDAHO FALLS, ID. 83405

Phone: 208-523-0620

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098