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DEC 08 2009

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
DEC - 4 2009	
By _____	Clerk
Deputy Clerk	

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	)
	) AMENDED 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 P. Van Bussum. 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." On July 15, 2009, the Special Master entered a *Request for Suggestions Re: Draft Special Master Report and Recommendation* but no suggestions were submitted.

The Special Master entered a *Report and Recommendation* on December 2, 2009, but on December 4, 2009, IDWR contacted the Court to note an error in the place of use. The attached *Amended Special Master Recommendation for Amended Partial Decree for Water Right 74-1557* corrects the error.

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 *Amended Special Master Recommendation for Amended Partial Decree for Water Right 74-1557*.

DATED December 7, 2009.



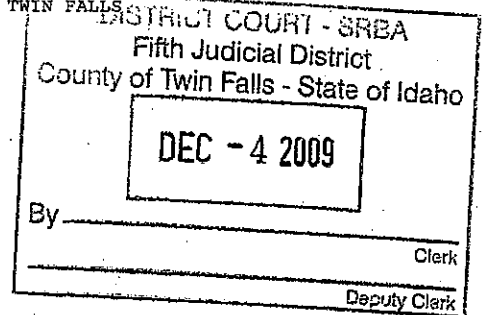
TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

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

AMENDED

In Re SRBA)
)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
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 (SNNW)	
S03 LOT 2 (SWNE)	LOT 1 (SENE)
LOT 3 (SENN)	
S16	NWNE
	SENE
	NWNW
	SENN
	NWSW
	SESW
	NWSE
	SESE

Place of use does not include federal public lands.

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

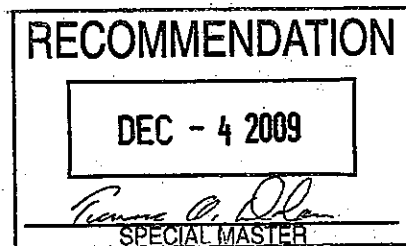
The quantity of water decreed for this water right is not a
determination of historical beneficial use.

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).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication



DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
DEC - 4 2009	
By _____	Clerk
_____	Deputy Clerk

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

Case No. 39576

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

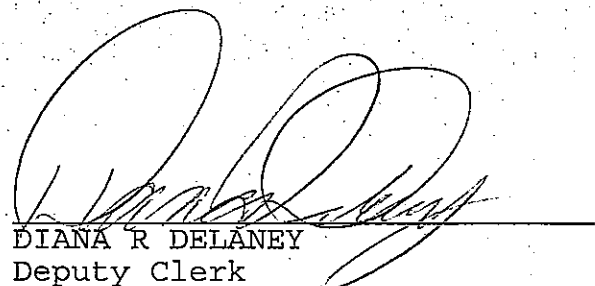
Water Right(s): 74-01557

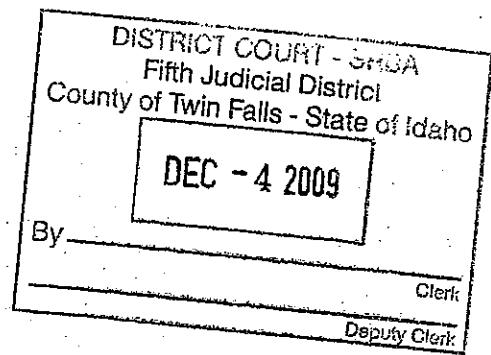
On December 04, 2009, Special Master JOHN M MELANSON issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED December 04, 2009.


DIANA R DELANEY
Deputy Clerk



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)

Case No. 39576)
_____)

CERTIFICATE OF MAILING

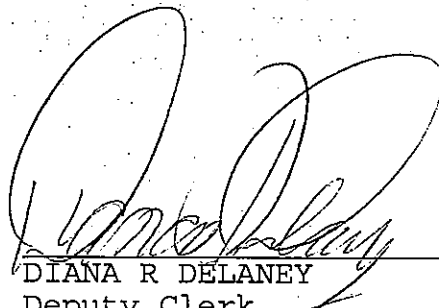
Water Right(s): 74-01557

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on December 04, 2009, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

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



DIANA R DELANEY
Deputy Clerk

CERTIFICATE OF MAILING

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12/04/09