

Movant's Name
Faulkner Land & Livestock Company

Attorney's Name & Addresses
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8-18

**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. 36-00048A
	)	
Case No. 39576	)	AFFIDAVIT OF MIKE
	)	FAULKNER IN SUPPORT
	)	OF MEMORANDUM
_____	)	

Mike Faulkner, duly sworn on oath, states as follows:

1. I am an officer of Faulkner Land & Livestock Company, the Movant in this matter.
2. Faulkner Land & Livestock Company is the owner of water rights located in Basin 36 of the Snake River Basin Adjudication ("SRBA").
3. Dan McFaddan ("McFaddan") has objected to the Director's Report with respect to its water right number 36-10283A in Basin 36. The source of the water is Billingsley Creek. The water right has a claimed priority date of June 26, 1881. The differences between the Director's Report and McFaddan's objection are significant. The IDWR file for 36-00048A shows that Dan H.

McFaddan and Irma R. McFaddan claimed 10 cfs (500 inches of water) for the irrigation of 178.5 acres. This is equivalent to 2.8 inches to the acre. After an examination of the McFaddan property and the applicable diversion and delivery system, the Director recommended 1.04 cfs for the irrigation of 104 acres within a permissible place of use of 175.5 acres. The claim verification report in the IDWR file for 36-00048A shows that the delivery system for McFaddan under this right is limited by a pump with a capacity of 1.04 cfs. McFaddan claimed a season of use from March 15 to November 15 and the Director recommended March 15 to November 15. The McFaddan objection seeks a year round use for irrigation. McFaddan's claim is in excess of the beneficial use of the water, Cf. IDAHO CODE § 42-220 and the capacity of McFaddan's diversion and delivery apparatus. Reputable studies, including the Department's, indicate that the statutory standard of one inch per acre is sufficient, on average, to irrigate property such as McFaddan's. These facts, if established, would constitute a meritorious defense to the McFaddan objection.

4. Based on the pleadings and party status of IDWR prior to the 1994 amendments to the SRBA statutes, Faulkner Land & Livestock Company decided not to participate in this subcase, choosing instead to rely on the Director's report and IDWR's defense of its pleading. The facts of this situation show that the IDWR, had it remained a party to this subcase, would have been, without substantial outside assistance, able to defend its report and significantly reduce the claimed diversion rate by McFaddan.

6. With the removal of IDWR and the Director as a party to the SRBA and all subcases, parties such as Faulkner Land & Livestock Company who opted to rely on IDWR to litigate and advocate in favor of the Director's Report are unable to do so.

DATED: August 18, 1995

LSI
Mike Faulkner, officer

STATE OF IDAHO)
) ss
County of Ada)

Subscribed and sworn before me on August 18, 1995.

LSI
Notary Public for Idaho
Residing at Boise, Idaho
Commission Expires: _____