

Party's Name: Faulkner Land & Livestock Company

Attorney's Name and Address

Josephine P. Beeman
DILLION BOSCH DAW & BOCK Chtd.
Fidelity Building
242 N. 8th Street, Suite 200
Boise, Idaho 83702

g-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	)	
	)	RESPONSE TO McFADDEN
_____	)	OBJECTION

I. GENERAL INFORMATION

95-12-0056

1. Person responding to objection:

Name: Faulkner Land & Livestock Company

Address: 1989 South 1875 East
Gooding, ID 83303

Briefly describe your interest in this water right:

Faulkner Land & Livestock Company ("Faulkner") is a water claimant in reporting area 3 (Basin 36) who diverts from a common aquifer with McFadden.

2. Person who filed objection:

Name: Dan H. And Irma R. McFadden

Address: Route 1, Box 406
Hagerman, ID 83332

3. If this response is filed by an attorney:

Attorney Name: Josephine P. Beeman

Attorney Address: DILLION BOSCH DAW & BOCK Chtd.
Fidelity Building
242 N. 8th Street, Suite 200
BOISE, ID 83702

Attorney Phone No.: (208) 344-8990

II. STATEMENT OF THE RESPONSE

3. ☐ Quantity: I respond to the objection concerning:
- a. ☐ the total quantity of water used in cubic feet per second; or
8. ☐ Period of Year: I respond to the objection concerning the period of year when water is used or is necessary for the purpose stated.
9. ☐ Place of Use: I respond to the objection concerning:
- a. ☐ the legal description of the place of use; or
10. ☐ Consumptive Use: I respond to the objection concerning the annual volume of consumptive use.
11. ☐ Remarks: I respond to the objection concerning the "remarks" listed with the water right.
14. ☐ Other: I respond to the objection concerning:

All matters raised in the claimant's answer, affirmative defenses, and prayer for relief.

REASONS SUPPORTING EACH BOX CHECKED

A. Statement of Objections 3 and 3.a. In response to Statement of Objections 3 and 3.a., and all allegations of the objection regarding those items, Faulkner responds as follows: (1) the Idaho Department of Water Resources ("IDWR") recommended the amount of water it determined was being beneficially used; (2) the claimant is not entitled to any amount greater than that which is beneficially used; (3) the recommendation of the Director to the SRBA Court as to how the right should be decreed does not constitute a taking because it is simply a recommendation and not a final determination of the right; and (4) the eventual decree by the SRBA Court of the amount of water

beneficially used, even if less than the amount previously decreed, will not constitute a taking because the right is limited to that amount beneficially used.

B. Statement of Objection 8 In response to Statement of Objection 8, and all allegations of the objection regarding that item, Faulkner responds as follows: The decree asserted by the claimant does not contain a period of use decreed for this water right. Idaho Code § 42-1411(2)(g) requires the Director to determine the period of use of each water right acquired under state law that is recommended in the Director's report. Faulkner has developed irrigation season of use standards for various climatic areas throughout the state based on a 75% chance of a 24 degree Fahrenheit frost. The irrigation season of use cannot exceed the period in which water may be beneficially used. The period of the year during which this water right may be used is consistent with the standard irrigation season of use for the area in which the place of use of this water right is located. Water may be used for irrigation outside the standard season of use, subject to the conditions set forth in general provision 12b of the Director's report.

Faulkner further responds that for each use recommended, IDWR recommended the same season of use that was claimed. By now seeking to include a year-round season of use for irrigation, the claimant improperly seeks to use the objection process to amend the claim. A claimant must obtain leave of the court to amend a claim after a Director's report is filed, just as a party must obtain leave of the court to file a late claim after the Director's report is filed. Once leave of the court is granted, IDWR can investigate the amended claim and make an appropriate recommendation the court.

C. Statement of Objections 9 and 9.a. In response to Statement of Objections 9 and 9.a., and all allegations of the objection regarding those items, Faulkner responds that IDWR has found, in the Director's report, that the recommended water right accurately describes the place of use of the right, and Faulkner relies on the Director's report.

D. Statement of Objections 10 In response to Statement of Objections 10 and to all allegations of the objection regarding that item, Faulkner responds as follows: (1) the decree asserted by the claimant did not set an annual volume of consumptive use for this water right; (2) Idaho Code

§ 42-1411(2)(I) requires the Director to determine the annual volume of consumptive use for each water right acquired under state law and recommended in the Director's report; (3) the annual volume of consumptive use claimed and recommended for this right is three acre feet per acres. This is the maximum volume of water IDWR found to be consumed by the most water consumptive crop (pasture) that can be grown in the area during the period of year when water is used for irrigation, as provided for by Idaho Code § 42-1401A(2); (4) the recommendation of the Director to the SRBA Court as to how the right should be decreed does not constitute a taking because it is simply a recommendation and not a final determination of the right; (5) the eventual decree by the SRBA Court of the amount of water beneficially used, even if less than the amount previously decreed, will not constitute a taking because the right is limited to that amount beneficially used.

E. Statements of Objection 11 In response to Statement of Objection 11, and all allegations of the objection regarding that item, Faulkner responds that IDWR has authority pursuant to Idaho Code § 42-1411 and Idaho case law to include in its recommendations of water rights, and recommended in the Director's report, remarks and other matters that are necessary to define, clarify, or administer the right. The remarks objected to are necessary to adequately describe and define this water right.

F. Statement of Objection 14 In response to State of Objection 14, and all allegations of the objection regarding that item, see attached "Faulkner Land & Livestock's Response to Claimant's Answer, Affirmative Defenses and Prayer for Relief."

In response to the sentence listed in Changes to the Director's Report, whereby the claimant attempts to "reserve the right to claim all purposes of use and quantities of use as shown by the evidence at trial," Faulkner responds that, insofar as this purported reservation of rights may constitute an attempt to reserve the right to amend at trial the claimant's notice of claim, the claimant improperly seeks to use the objection process to amend the claim. A claimant must obtain leave of the court to amend a claim just as a party must obtain leave of the court to file a late claim after the Director's Report is filed.

CHANGES TO THE DIRECTOR'S REPORT

Faulkner proposes no changes to the description of this claim in the Director's report.

☐ Check here if you are submitting documents. Please list each document by the title and number of pages. You may use additional pages if necessary:

Affidavit of Josephine P. Beeman 2 pages

Faulkner Land & Livestock Company's 4 pages
Response to Claimant's Answer, Affirmative
Defenses and Prayer for Relief

VERIFICATION

State of IDAHO)
: SS
County of ADA)

Mike Faulkner, being first duly sworn, upon oath, deposes and says:

I am a principal in Faulkner Land & Livestock Company, a party to this proceeding, as defined by I.C. § 42-1401A(1) and (7); that Josephine P. Beeman is my attorney in fact for these matters and is authorized to verify this response; and I have read the foregoing response, know its contents and that the statements contained therein are true to the best of my knowledge and belief.

FAULKNER LAND & LIVESTOCK COMPANY

By: /s/
Mike Faulkner

DILLION BOSCH DAW & BOCK, Chtd.

By: /s/
Josephine P. Beeman, Attorney signing in
Representative capacity

Subscribed and sworn to before me this 18th day of August, 1995 .

151
Notary Public for _____
Residing at: _____
My Commission expires: _____

CERTIFICATE OF MAILING

I hereby certify that on the 18th day of August, 1995, I mailed the original and copies of the foregoing response, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copies to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, Box 33
Boise, Idaho 83734

Patrick D. Brown
HEPWORTH LEZAMIZ & HOHNHORST, Chtd.
P.O. Box 389
Twin Falls, ID 83303-0389

151
JOSEPHINE P. BEEMAN