



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. SKYLINE DR., SUITE A, IDAHO FALLS, ID 83402-1718

PHONE: (208) 525-7161 FAX: (208) 525-7177 WEB SITE: www.idwr.state.id.us

EASTERN REGION

RECEIVED

NOV - 8 2004

DEPARTMENT OF
WATER RESOURCES

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 26, 2004

McFarland Livestock Company, INC.
P.O. Box 50
Lemhi, Idaho 83465

Re: Application for Permit Received October 6, 2004

Dr. Mr. Kauer,

RECEIVED

NOV - 8 2004

DEPARTMENT OF
WATER RESOURCES

I am in receipt of an application for permit for irrigation water in the amount of 1.08 cfs from springs in Lemhi County. In this application, you indicate that, "This ground was irrigated since 1914 but in 1984 water was put into a pump system to irrigate additional acres along with Mill Creek water."

There are several issues that affect the way this application may turn out. I will attempt to address them as follows:

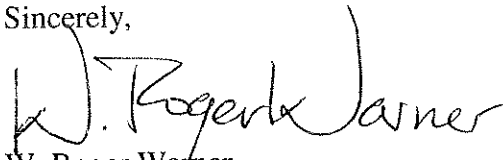
1. If the ground were irrigated from springs since 1914, they would qualify as a valid water right on the basis of *beneficial use*. However, the right should have been claimed in the Lemhi Adjudication. Once an adjudication has been completed, all valid water rights claimed become *decreed* water rights. The remaining unclaimed water rights become null and void. I am assuming that you made no such claim in the Lemhi Adjudication or you would not be making a new application for permit.
2. In 1984, the only valid method of appropriating a new water right was through the permit process. The method of commingling spring water with Mill Creek water to irrigate additional acres would only have been valid through the application for permit process. However, when the Snake River Basin Adjudication (SRBA) began, the legislature recognized expansions that were made similar to yours and made it possible to entertain a new water right for the expanded acres. Here's the problem, if the water was not claimed in the Lemhi Adjudication, it would be considered invalid if you were to claim it in the SRBA. A visit with Roxanne Brown, Senior water agent at the state office SRBA may help clarify.
3. If I consider this a new application on it's own merits, I am obligated to inform you that it will be placed into a moratorium hold file. The areas pertaining to this application has been under moratorium (Wilderness and Salmon/Clearwater Moratoriums) for the past several years. However, a recent agreement was reached with parties related to at least one moratorium. It now appears that the department may begin to process new applications and/or those, which have been placed in the moratorium hold file. As of this time, I do not know how or when we will begin to process.

At this time, I am not sure what to do with your application. I can receipt your check and place the application in the moratorium hold file until instructions for processing are received from our state office. The benefit for you to do this is that you would get a priority date that would coincide with the date of which we received your application. Some have referred to this as, "holding your place in line." Another option would be for me to return the application with the uncashed check to you and then have you send in again when we are able to process.

Also, I am unaware of any authority (claim, permit, license, or decree) to continue to irrigate the lands described in the Application for permit and am obligated to inform you that to do so may put you at risk of violation with accompanying fines or civil penalties.

Please feel free to call me if you have any questions. For your convenience, I will forward a copy to Ms. Roxanne Brown for her information. I will not process your application until I have received instructions from you regarding which option you choose.

Sincerely,

A handwritten signature in black ink that reads "W. Roger Warner". The signature is written in a cursive style with a large, prominent initial "W".

W. Roger Warner
Water Rights Supervisor

Cc: Roxanne Brown – IDWR Boise
Tim Luke – IDWR Boise (w/ copy of application)

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

RECEIVED
OCT 06 2004

To appropriate the public waters of the State of Idaho

Department of Water Resources
Eastern Region

1. Name of Applicant McFarland Livestock Co. LLC Phone (208) 768-2711

Mailing address PO Box 50 Lemhi ID 83465

2. Source of water supply Spring which is a tributary of Sinks

3. Location of point of diversion is Township 16N Range 2SE Sec. 8, in the _____
NE $\frac{1}{4}$, NW $\frac{1}{4}$, Govt. Lot _____, B.M., Lemhi County;

additional points of diversion if any: _____

4. Water will be used for the following purposes:

Amount 1.08 cfs for irrigation purposes from 4-1 to 11-1 (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated is (a) 1.08 cfs and/or (b) _____
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source pump + handlines

b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet

d. Is ground water with a temperature of greater than 85°F being sought? _____

e. If well is already drilled, when? _____; Drilling firm _____;

Well was drilled for (well owner) _____; Drilling Permit No. _____

7. Time required for completion of works and application of water to proposed beneficial use is 5 years (minimum 1 year)

8. Description of proposed uses (if irrigation only, go to item 9):

a. Hydropower; show total feet of head and proposed capacity in kW. _____

b. Stockwatering; list number and kind of livestock. _____

c. Municipal; show name of municipality. _____

d. Domestic; show number of households. _____

e. Other; describe fully. _____

3. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16N	25E	5												35.0				12.0	47.0
		8					7.0												7.0

Total number of acres to be irrigated 54.0

10. Describe any other water rights used for the same purposes as described above. _____

11. a. Who owns the property at the point of diversion? applicant

b. Who owns the land to be irrigated or place of use? applicant

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

12. Remarks: This land irrigated since August 1, 1914
But in 1984 water was put in to a pump system
to irrigate. Irrigated additional acres along
with Mill Creek water.

13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Tex J. Kauer
 Signature of Applicant (and title, if applicable)

Received by _____ Date _____ Time _____ Preliminary check by _____
 Fee \$ _____ Received by _____ # _____ Date _____
 Publication prepared by _____ Date _____ Published in _____
 Publication approved _____ Date _____

