

Department of Water Resources

ION 2W 28

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

CIVIL CASE NUMBER: 39576

IN RE THE GENERAL ADJUDICATION OF RIGHTS TO THE USE OF WATER
FROM THE SNAKE RIVER BASIN WATER SYSTEM

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE AND FEDERAL LAW

U.S. DEPT. OF INTERIOR
BUREAU OF LAND MGMT.
IDAHO STATE OFFICE
3380 AMERICANA TERRACE
BOISE ID 83706
TELEPHONE: 208-334-1401

PRIORITY DATE: 1874-01-01 *AL5-20035*
(RESERVED..... 1926-04-17)
AGENCY NUMBER: 6501480465
BLM NUMBER: 6501480465
BASIS OF CLAIM: BENEFICIAL USE
(SUBSEQUENT FEDERAL RESERVE)
BASIN NUMBER: 65

SOURCE	TRIBUTARY TO
-----	-----
UNNAMED SPRING	RATTLESNAKE CREEK

DESCRIPTION OF DIVERSION WORKS

INSTREAM

PURPOSE OF USE	DIVERSION RATE	DIVERSION VOLUME	PERIOD OF USE FROM	TO
-----	-----	-----	-----	-----
STOCKWATER	0.070	0.00	0101	1231
DOMESTIC	0.020	0.00	0101	1231
WILDLIFE	0.070	0.00	0101	1231
TOTAL:	0.090 CFS	0.00 AF		

NON-IRRIGATION USES

282 RANGE CATTLE, DOMESTIC

				POINT OF DIVERSION			
TWP	RNG	SEC	TRACT1	TRACT2	TRACT3	LOT	COUNTY
---	---	---	---	---	---	---	-----
10N	02W	28	SE	NE	NW	00	WASHINGTON

PLACE OF USE							IRRIGATED	
TWP	RNG	SEC	TRACT1	TRACT2	LOT	COUNTY	OWNED	ACRES
---	---	---	---	---	---	-----	-----	-----
10N	02W	28	NE	NW	00	WASHINGTON	YES	0.0

MICROFILMED

AUG 05 1994

BLM NUMBER: 6501480465

PAGE: 2

10N 02W 28 NE NW 00 WASHINGTON YES 0.0

TOTAL ACRES IRRIGATED: 0.0

TOTAL CONSUMPTIVE USE IS: DE MINIMUS ACRE FEET PER ANNUM

OTHER WATER RIGHTS

WATER FEDERALLY RESERVED, SEE REMARKS

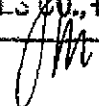
REMARKS

RESERVED - EXECUTIVE ORDER DATED APR 17, 1926 PWR NO. 107

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)
) PARTIAL DECREE PURSUANT TO
) I.R.C P. 54(b) FOR
Case No 39576)
) Water Right 65-20035

2004 OCT 26 PM 1:15

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED 

NAME AND ADDRESS USDI BLM
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE, ID 83709-1657

SOURCE SPRING TRIBUTARY RATTLESNAKE CREEK

QUANTITY- 0 02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 04/17/1926

THIS WATER RIGHT IS CLAIMED BASED ON FEDERAL LAW WITH AN
APRIL 17, 1926, DATE OF PRIORITY PURSUANT TO AN EXECUTIVE ORDER
SIGNED THE SAME DATE AND KNOWN AS PUBLIC WATER RESERVE 107.

POINT OF DIVERSION- T10N R02W S28 NESENW Within Washington County

PURPOSE AND PERIOD OF USE	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0 02 CFS

PLACE OF USE: Stockwater Within Washington County
T10N R02W S28 SENW

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

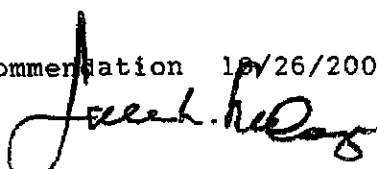
THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

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

Recommendation 10/26/2004



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

2004 OCT 26 PM 1:15

DISTRICT COURT - SRBA
TWIN FALLS CO IDAHO
FILED

**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

) **SPECIAL MASTER'S REPORT AND**
) **RECOMMENDATION ON FEDERAL**
) **RESERVED WATER RIGHT**
) **PURSUANT TO PWR 107**

)
) **FINDINGS OF FACT AND**
) **CONCLUSIONS OF LAW**

) **For subcases: 65-20035 and 65-20152.**
)
)

I. PROCEDURAL BACKGROUND

The above-captioned water rights were claimed by the United States, Department of Interior, Bureau of Land Management as dual based water rights, meaning the rights were claimed as state law-based beneficial use water rights and alternatively as federal reserve water rights pursuant to Public Water Reserve 107 (PWR 107). Notice of the elements of each claim was reported by the Idaho Department of Water Resources. Objections were filed by the State of Idaho.

An *Order Rescinding Order of Reference to Thomas R. Cushman* was entered on July 8, 2004, stating Judge John M. Melanson would proceed in the above subcases in the manner specified by *Administrative Order 1* for Special Masters. On July 20, 2004, a status conference was held.

On August 30, 2004, *Standard Form 5/Amended Claim* forms signed by the claimant and the objector with IDWR concurrence was filed in each of the above subcases. The *SF5* resolved the objections, and retained the dual basis for each right. No objections were filed to the *Amended Director's Report*.

On October 19, 2004, a hearing was held on these claims pursuant to Idaho Code 42-1411A(12), which requires the United States to demonstrate a *prima facie* showing of the existence of the claimed federal reserve water right. In conjunction with that hearing, the United States filed the *Affidavit of Fredric Price* and the *Affidavit of Robert R. Mallis*.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the file and record in this subcase, and the affidavits presented at the hearing on the matter, the Court makes the following findings of fact and conclusions of law:

1. Prior to April 17, 1926, no water rights had been established pursuant to state law for the use of the water from the subject water source for each claim.
3. On April 17, 1926, President Coolidge executed Public Water Reserve 107, which withdrew the 40 acre tract of land upon which the subject water source for the claims is located from the public domain. The tract of land withdrawn for each claim is described as the "place of use" element on the attached *Special Master's Recommendations*.
4. The subject water sources for the claims consist of a spring or water hole of the type contemplated by Public Water Reserve 107.
5. Contemporaneously with the withdrawal of the land, President Coolidge impliedly reserved enough water to fulfill the primary purpose of the land reservation for each claim.
6. The minimum amount of water necessary to fulfill the primary purpose of the land reservation is the amount set forth in the "quantity" element on the attached *Special Master's Recommendation* for each claim.
7. The United States has satisfied its burden under Idaho Code section 42-1411A(12) as to the nature and existence of the claimed federal reserve water right for each claim.
8. The elements of the federal reserved water right for each claim are set forth on the attached *Special Master's Recommendation*.

III. RECOMMENDATION

Therefore, based on the file and record herein, IT IS RECOMMENDED that the above-captioned water right be decreed as a federal reserved water right with the elements as set forth in the attached *Special Master's Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*. It is further recommended that to the extent any concomitant state-law water rights were

claimed in the alternative for the above-captioned right, that said right not be confirmed in any partial or final decree.

Dated October 26 2004. .


JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

2004 OCT 26 PM 1:15

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO

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

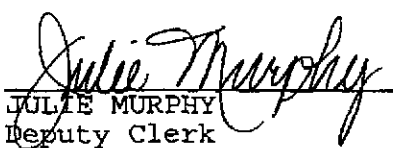
Water Right(s): 65-20035

On October 26, 2004, 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 October 26, 2004.


JULIE MURPHY
Deputy Clerk

RECEIVED

AUG 05 1998

Department of Water Resources
Adjudication Bureau

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

A.

Subcase See Attached List 65-19756

(Insert water right number)

DOMESTIC AND
STOCK WATER RIGHT
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: State of Idaho
Address: 700 W. Jefferson, Room 210
P.O. Box 44449
Boise, Idaho 83711-4449
Phone: Work: (208) 334-2400 Home: N/A

Name and Address of Attorney, if any:

Attorney Name: ALAN G. LANCE
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
PETER J. AMPE
Deputy Attorney General
Attorney Address: Office of the Attorney General
700 W. Jefferson, Room 210
P.O. Box 44449
Boise, ID 83711-4449
Attorney Phone No. (208) 334-2400

COPY

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: United States of America Acting Through
Address: USDI Bureau of Land Management
1387 S. Vinnell Way
Boise, Idaho 83709-1657

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Points of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
11. **I object because:**
 - ☒ This water right should not exist.
 - ☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): This water right is claimed solely pursuant to state law. Claimant's assertions that Congress gave permission to private parties to operate on the public domain and that Congress passed various acts insuring that water sources on the public domain were not monopolized does not provide a basis for a water right under state law. Alternatively, the United States has failed to establish any legal and/or factual basis for any claimed priority date for stockwater purposes with a date prior to the enactment of the Taylor Grazing Act, June 28, 1934.

The State further objects to this claim as to any part based on federal law as the claimed source is declared tributary to a flowing stream and so cannot be based upon the executive order known as Public Water Reserve 107 (April 17, 1926).

The State reserves the right to amend this objection as to any part of this claim based on federal law, based on the final decision reached in Basin-Wide Issue #9 (PWR 107) (Idaho Supreme Court No. 23587).

F. VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

Peter J. Ampe, Deputy Attorney General, being first duly sworn, upon oath, deposes and says:

That the State of Idaho, in both its sovereign and proprietary capacity, pursuant to I.C. § 42-1411A(16) is filing this objection and that I am a Deputy Attorney General authorized to represent the State of Idaho, which is a party/claimant in this proceeding, as defined by I.C. § 42-1401A(1) and (7), and I have read this objection, know its contents and that the statements are true to the best of my knowledge and belief.

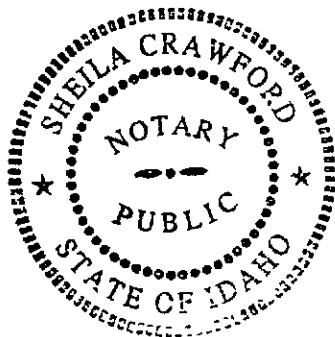
ALAN G. LANCE
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
PETER J. AMPE
Deputy Attorney General



By Attorney signing in representative capacity

Subscribed and sworn to before me on: August 4, 1998

(Insert Date)




Notary Public for IDAHO
Residing at: BOISE, ID
My commission expires: May 9, 2002

INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on August 4, 1998, I mailed the original and copies of this objection, including all attachments, to the following persons:

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. One copy to the owner of the water right at the following address:

United States of America Acting Through
USDI Bureau of Land Management
1387 S. Vinnell Way
Boise, Idaho 83709-1657

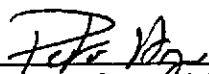
3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

(not applicable)

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, Idaho 83724



Signature of party, claimant or attorney

65-19736	65-20025
65-19738	65-20027
65-19742	65-20029
65-19744	65-20031
65-19746	65-20033
65-19748	65-20035
65-19750	65-20037
65-19810	65-20039
65-19812	65-20041
65-19814	65-20043
65-19816	65-20045
65-19818	65-20047
65-19820	65-20049
65-19822	65-20051
65-19824	65-20053
65-19826	65-20055
65-19840	65-20057
65-19851	65-20059
65-19853	65-20061
65-19855	65-20063
65-19857	65-20065
65-19859	65-20067
65-19886	65-20069
65-19888	65-20071
65-19890	65-20114
65-19909	65-20116
65-19911	65-20119
65-19913	65-20129
65-19915	65-20134
65-19917	65-20135
65-19944	65-20142
65-19946	65-20152
65-19948	65-22175
65-19950	
65-19952	
65-19954	
65-19956	
65-19958	
65-19960	
65-19962	
65-19964	
65-19994	
65-20017	
65-20019	
65-20021	
65-20023	

AJ0749NP
No. R65-20035

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 02/26/98
PAGE: 1

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OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	UNITED STATES OF AMERICA ACTING THROUGH USDI BUREAU OF LAND MANAGEMENT IDAHO STATE OFFICE 1387 S VINNELL WAY BOISE ID 837091657 (208) 373-4000	01/01/1874	STOCKWATER	01-01 12-31	0.02 CFS	
TOTAL DIVERSION:					0.02 CFS	

Water Source: SPRING

Tributary to: RATTLESNAKE CREEK

Stage: BENEFICIAL USE

Point(s) of Diversion:

T10N R02W S28

NESENW

WASHINGTON County

Place of use Legal Description for: STOCKWATER

				NE				NW				SW				SE				
T	R	S	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	:
10N	02W	28	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:

POU County: WASHINGTON

Conditions of Approval:

- D01 - *****
- * 4/17/1926 CLAIMED UNDER FEDERAL RESERVED WATER RIGHT. *
 - * *
 - * THIS WATER RIGHT IS ALSO CLAIMED BASED ON FEDERAL LAW *
 - * WITH AN APRIL 17, 1926, DATE OF PRIORITY PURSUANT TO AN *
 - * EXECUTIVE ORDER SIGNED THE SAME DATE AND KNOWN AS PUBLIC *
 - * WATER RESERVE 107. *
 - *****
- N11 - THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
- DETERMINATION OF HISTORICAL BENEFICIAL USE.
- N13 - THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
- GALLONS PER DAY.

Remarks: EXP BLM RECORD ID = 6501480465
STOCKWATER, 282 RANGE CATTLE

Dates: Exam Made Date: Verified Date: 02/26/1998 Objection Filed Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

AJ0749NP
No. R65-20035

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 02/26/98
PAGE: 2

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Comments: Date: 01/13/1998 User-ID: AJU5-JSH Subject: AJU5 STOCK ONLY UPDATE
USE-NOT-IRRIGATION FIELD TEXT DELETED AND MADE EXP REMARK.
CONDITION CODES N11 AND N13 ADDED IF NOT ALREADY PART OF RECORD.
ANY GEN REMARK CHANGED TO EXP REMARK. IF BLM/USFS, DELETED L12.

Audit: 02/26/98 SBOCK

AJ5809NP
No. R65-20035

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 02/18/98
PAGE: 58

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	UNITED STATES OF AMERICA ACTING THROUGH USDI BUREAU OF LAND MANAGEMENT IDAHO STATE OFFICE 1387 S VINNELL WAY BOISE ID 837091657 (208) 373-4000	01/01/1874	STOCKWATER	01-01 12-31	0.02 CFS	
TOTAL DIVERSION:					0.02 CFS	

Water Source: SPRING

Tributary to: RATTLESNAKE CREEK

Stage: BENEFICIAL USE

Point(s) of Diversion:

T10N R02W S28

SENE

NE SENE

WASHINGTON County

Place of use Legal Description for: STOCKWATER

				NE				NW				SW				SE							
T	R	S	:	NENE	NWNE	SWNE	SENE	:	NENW	NWNW	SWNW	SENW	:	NESW	NWSW	SWSW	SESW	:	NESE	NWSE	SWSE	SESE	:
Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac
10N	02W	28	:					:					:					:					:

POU County: WASHINGTON

Other Rights: WATER FEDERALLY RESERVED, SEE REMARKS

Conditions of Approval:

- D01 - *****
- * 4/17/1926 CLAIMED UNDER FEDERAL RESERVED WATER RIGHT. *
- * * * *
- * THIS WATER RIGHT IS ALSO CLAIMED BASED ON FEDERAL LAW *
- * WITH AN APRIL 17, 1926, DATE OF PRIORITY PURSUANT TO AN *
- * EXECUTIVE ORDER SIGNED THE SAME DATE AND KNOWN AS PUBLIC *
- * WATER RESERVE 107. *
- *****
N11 - THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
- DETERMINATION OF HISTORICAL BENEFICIAL USE.
N13 - THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
- GALLONS PER DAY.

Remarks: EXP BLM RECORD ID = 6501480465
282 RANGE CATTLE, DOMESTIC

Dates: Exam Made Date:

Verified Date:

Objection Filed Date:

Misc: Water District Number:

Field Inspection Flag:
Presumption Flag:

AJ5809NP
No. R65-20035

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 02/18/98
PAGE: 59

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Comments: Date: 01/13/1998 User-ID: AJU5-JSH Subject: AJU5 STOCK ONLY UPDATE
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ANY GEN REMARK CHANGED TO EXP REMARK. IF BLM/USFS, DELETED L12.

Audit: 01/10/98 AJCTR 01/12/98 AJU5-JSH

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

In Re SRBA

AMENDED NOTICE of CLAIM for
Water Right number

Case No. 3957

65-20035 (IDWR number)

NAME and
ADDRESS

United States of America acting through
Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, ID 83709 - 1657

BLMIDENT

6501480465

Stg	StFed
J	X

SOURCE

Source	Tributary
UNNAMED SPRING	RATTLESNAKE CREEK

QUANTITY

0.02	CFS	or VOLUME	0	Acre Feet
------	-----	-----------	---	-----------

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

PRIORITY DATE

1/1/1874	Diversion Means	SPRING
----------	-----------------	--------

REMARKS:

Also reserved pursuant to EO 4/17/26, PWR 107

POINT of
DIVERSION:

Township	Range	Section	T1	T2	T3	LOT	B/E	within the	County of
10N	02W	28	SE	NE	NW			87	WASHINGTON

PURPOSE
and
PERIOD
OF USE

Purpose of Use	Period of Use (from - to)	Rate in CFS	or	Volume in AcFt
04	0101 1231	0.02		

CONSUMPTIVE
USE

de minimis	stockwater use	DATE	06-Feb-98	7 11 AM
------------	----------------	------	-----------	---------

OTHER PROVISIONS NECESSARY FOR DEFINITION or ADMINISTRATION OF THIS WATER RIGHT

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

PLACE
of USE

Water Use	Twn	Rge	Sec	T1	T2	LOT	within the County of
04	10N	02W	28	NE	NW		87 WASHINGTON

RECEIVED

DEC 11 1997

Department of Water Resources

Paddock Valley Res.

650148.0465

10N 2W 28

