

**DIRECTOR'S REPORT OF DEFERRED
DE MINIMIS DOMESTIC AND / OR STOCK WATER USE**

Claim No. 29-14188

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
Gary Spackman, Director
Carter Fritschle, Manager, Adjudication Section

January 17, 2017

DESCRIPTIVE SUMMARY

This is a Director's Report of Deferred De Minimis Domestic and / or Stock Water Use submitted by the Director of the Idaho Department of Water Resources (IDWR).

INTRODUCTION

A Motion for Determination of Deferred De Minimis Domestic or Stock Water Use (Motion) and Notice of Claim to Water Right were submitted to the Court on August 9, 2016, under water right claim no. 29-14188. The claimant, Ranae Meyers, published notice of the Motion, and the Director has now completed his examination of the water right claim. The examination was conducted by Carter Fritschle, Manager, Adjudication Section on behalf of the Director. The materials used in and results of the examination of the elements of water right claim no. 29-14188 are discussed below.

DISCUSSION

Priority Date – The remarks listed in the Notice of Claim to a Water Right state: “Since this property was obtained prior to 1899, livestock have utilized Bannock Creek for drinking. The survey performed in 1899 shows existing livestock fences on the property.” The survey plat submitted with the claim does confirm some improvements existed within the sections of Township 11 South, Range 33 East that were surveyed in 1899. The 1899 survey field notes were also included as an attachment to the claim, and those notes state the survey was commenced on August 7, 1899 and completed on August 12, 1899. The claimed priority date of 8/10/1899 appears to be a “median date” within the commencement and completion dates of the

survey. However, the 1899 survey predates the acquisition of the claimed place of use by a private party.

A land patent dated 1/30/1906 was issued to Charles A. Bailey. This land patent included a portion of the claimed place of use. More specifically, the land patent includes the East ½ of the Southeast ¼ of Section 1, Township 11 South, Range 33 East, Boise Meridian. This land patent was issued under the Homestead Act of 1862 which limited the filing of applications to surveyed government land. The original survey for Township 11 South, Range 33 East, Boise Meridian that included Section 1 was approved in 1900, so it is possible that the homestead application was filed that year. The general requirements of the Homestead Act of 1862 were that each homesteader had to live on the land, make improvements (construct a 14-by-28 dwelling) and farm or cultivate the land for 5 years before they were eligible to “prove up” and receive a land patent. When IDWR reviews a de minimis domestic and/or stockwater claim with a priority date that predates the land patent date, IDWR requires additional evidence that specifically supports the development of the claimed water use on the land. This evidence can be the documents filed for the proof of residency and the completion of the improvements required to receive a patent under the Homestead Act of 1862, or other evidence confirming earlier use of the land claimed as the place of use for the water use claimed. The depiction of portions of fences in the 1899 survey plat for Section 1 is not sufficient to confirm Bannock Creek was used as a source for watering livestock on the claimed place of use in 1899. When sufficient documentation for the earlier beneficial use of the water is not submitted with the claim, IDWR’s recommendation for the priority date for de minimis domestic and/or stockwater claims will

generally default to the date the land patent was issued, even though the ownership of livestock was not required prior to receiving the land patent.

A land patent for the remainder of the claimed place of use (Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 1, Township 11 South, Range 33 East, Boise Meridian) was acquired on 9/19/1912 by Annie Bailey from a cash sale based on what is generally referred to as the Land Sale Act of April 24, 1920. No prior residency or land improvements were required prior to the purchase of the property under the Land Sale Act of April 24, 1920.

The land acquired in 1912 is adjacent to the land acquired in 1906. It is not known if the fence depicted on the 1899 survey plat that appears to separate the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 1 from the East $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 1 would have allowed livestock access to Bannock Creek as of 1906. However, the 1987 aerial photo appears to show the land acquired under the 1906 patent and the land acquired under the 1912 patent as a common pasture area along Bannock Creek. Therefore, the entire place of use claimed can be recommended with the 1906 priority date as an accomplished change in the place of use under Section 42-1425, Idaho Code along with an accomplished change in point of diversion.

The document submitted with the claim, an excerpt from “Bannock Valley” by Laurie Ward, identified as attachment #7 has no information specific to the homesteading or purchasing the place of use claimed.

Points of Diversion – The claimed points of diversion for 29-14188 are in T11S, R33E, S01, SWSE (beginning point for instream stockwater) and T11S, R33E, S01, NESE (ending point for instream stockwater). Bannock Creek enters the claimed place of use in the SWSE of

Section 1, and flows out of the place of use in the NESE of Section 1. Therefore, the claimed points of diversion are recommended as claimed.

Source – The U.S.G.S. topographic map identifies the stream flowing through the claimed place of use as Bannock Creek.

Place of Use – The Esri one-foot resolution aerial photo cannot confirm the presence of livestock within the claimed place of use. However, this photo does show several small areas along the stream that appear to be devoid of riparian vegetation, and there are apparent paths from the adjacent land into the streambed at these locations. An examination of Google Earth images for the area show the paths are somewhat more distinct in the 2013 photo and are less obvious in the 2014 or 2015 photos.

Purpose of Use and Period of Use – Use of water by livestock is generally recommended as year round, even though it would be impractical to graze livestock on the claimed place of use during certain times of the year.

Quantity – The “standard” diversion rate recommended for claims for watering stock directly from a stream is 0.02 cfs. This rate is consistent with the findings in SRBA Basin-Wide Issue 12. The claimed 0.04 cfs cannot be recommended, but must be reduced to 0.02 cfs. An overlapping stockwater right (29-10283) with ground water as the source and a 1953 priority date was claimed in the SRBA with a partial decree issued for that claim in 1998. The point of diversion and place of use for 29-10283 appears to be at a corral located along the southern boundary of the SESE of Section 1. Therefore, a condition was added to the recommendation for

29-14188 limiting 29-10283 and 29-14188 to a combined daily diversion volume limit of 13,000 gallons.

CONCLUSION

There is sufficient evidence to recommend claim 29-14188 for the instream watering of livestock from Bannock Creek.

Pursuant to Judge Wildman's *Order Granting Motion Governing Procedures in the SRBA for Adjudication of Deferred De Minimis Domestic and Stock Water Claims*, dated June 28 2012, the Director submits this Director's Report of Deferred De Minimis Domestic Water Use, Claim No. 29-14188, which includes a recommendation of deferred de minimis water right no. 29-14188.

Respectfully submitted this 17th day of January, 2017.


CARTER FRITSCHLE
Manager, Adjudication Section

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-14188

NAME AND ADDRESS: RANAE MEYERS
1740 ELEVATOR RT
POCATELLO ID 83204

SOURCE: BANNOCK CREEK

TRIBUTARY: SNAKE RIVER

QUANTITY: 0.020 CFS

The quantity of water under Right Nos. 29-10283 and 29-14188 shall not exceed 13,000 gallons per day.

PRIORITY DATE: 01/30/1906

POINT OF

DIVERSION: T11S R33E S1 NESE End of Stream Flow Within POWER County

T11S R33E S1 SWSE Begin of Stream Flow Within POWER County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

STOCKWATER

01/01 12/31

0.020 CFS

Stockwater use is for the in-stream watering of livestock.

PLACE OF USE: STOCKWATER in POWER County

T11S R33E S01

NESE

T11S R33E S01

SWSE

T11S R33E S01

SESE

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. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Stockwater use is for 150 cattle and 40 horses.

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

Parcel No. RPD2615-00

CERTIFICATE OF SERVICE

I certify that on 1 - 17, 2017, I caused to be served a true and correct copy of this Director's Report of Deferred De Minimis Domestic and / or Stock Water Use, to the following persons, in the manner indicated and addressed as follows:

1. Original to:

Clerk of the District Court
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