

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

Claim No. 29-14189

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. 29-14189. 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. 29-14189 are discussed below.

DISCUSSION

Priority Date – The remarks listed in the Notice of Claim to a Water Right state: “Since this property was settled prior to 1899, livestock have utilized the springs for drinking. Settler Charles Bailey homesteaded with his brothers in early 1890s.” The survey plat submitted with the claim does confirm some improvements existed within the sections of Township 11 South, Range 34 East that were surveyed in 1899. But, none of those improvements appear within the claimed place of use. Survey field notes were included as an attachment to claim 29-14188, and those notes, which state the survey for Township 11 South, Range 33 East was commenced on August 7, 1899 and completed on August 12, 1899, appear to be the basis for the priority date claimed for 29-14189. The claimed priority date of 8/10/1899 appears to be derived as “median

date” within that date range listed in the 1899 survey notes for Township 11 South, Range 33 East. However, the 1899 survey predates the acquisition of the claimed place of use land 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 Lot 6 (Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$) of Section 6, Township 11 South, Range 34 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 34 East, Boise Meridian 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.

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.

Points of Diversion – The claimed points of diversion for 29-14189 are eleven (11) springs in T11S, R34E, S06, Lot 6 (NWSW) and one (1) spring in T11S, R34E, S06, Lot 7 (SWSW). Claim 29-14189 further states the stock drink directly from the springs, which implies the springs are undeveloped. Section 42-113, Idaho Code defines the phrase “in-stream watering of livestock” as the drinking of water by livestock directly from a natural stream, without the use of any constructed physical diversion works. Using high resolution Google Earth imagery from 2013, 2014 and 2015, each of the claimed points of diversion appear to have a “natural stream” emanating from the spring, and therefore the points of diversion claimed for 29-14189 can be construed as locations where livestock water directly from a natural stream without the use of any constructed physical diversion works.

Source – The U.S.G.S. topographic map identifies the first named stream in which water from the springs would flow into as Bannock Creek. The U.S.G.S. topographic map also indicates the area where the points of diversion are identified as having features of a marsh or swamp.

Place of Use – The Esri one-foot resolution aerial photo does show objects in the area of the northwest corner of Lot 6 (NWSW) that could be livestock. These objects are not visible in the Google Earth images from 2013, 2014 and 2015 that appear to have approximately the same resolution.

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.

CONCLUSION

There is sufficient evidence to recommend claim no. 29-14189 for the instream watering of livestock from the undeveloped springs which are tributary to 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. 29-14189, which includes a recommendation of deferred de minimis water right no. 29-14189.

Respectfully submitted this 17th day of January, 2017.


CARTER FRITSCHLE
Manager, Adjudication Section

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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:

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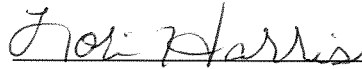
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