

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

Claim Nos. 55-13930, 55-13931, 55-13932, 55-13933, and 55-13934

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

April 7 , 2018

DESCRIPTIVE SUMMARY

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

INTRODUCTION

Motions for Determination of Deferred *De Minimis* Stock Water Use (Motions) and Notices of Claim to Water Right for water right claim nos. 55-13930, 55-13931, 55-13932, 55-13933, and 55-13934 ("claims") were submitted to the Court on April 14, 2017. IDWR published notices of the pendency and purpose of the Motions, and the Director has now completed his examination of the claims. The examination for the above-mentioned water right claims 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 the claims are discussed below.

DISCUSSION

Priority Date – The priority date listed for all five claims is 10/26/1973. This date corresponds to a correction quitclaim deed dated 10/26/1973. The lands listed on the quitclaim deed include the claimed points of diversion and places of use for the claims. An additional correction quitclaim deed dated 8/14/1981 was also submitted with the claims which included the same lands as the quitclaim deed dated 10/26/1973. While neither quitclaim date is direct evidence of the use of water for livestock, they mention Frank E. Stanford was doing business as LS Cattle Co., suggesting livestock would most likely be grazing on the lands listed in the quitclaim deeds.

Each claim lists an undeveloped spring as the point of diversion. Idaho Code § 42-113 provides that a permit may be issued, but is not required, for appropriation of water for the in-stream watering of livestock. In addition, the Idaho Supreme Court in *Joyce Livestock Company v. United States of America*, reminds:

Although we refer to them as “instream” water rights, the water sources do not need to be streams. They can be any natural water source, including springs that simply form pools of water. Calling them instream water sources simply means that the water was applied to a beneficial use without diverting it from the water source.

156 P.3d 502, 505 n.1 (Idaho 2007).

Therefore, IDWR is willing to recognize the claimed priority date, 10/26/1973, as a valid date for appropriating water for livestock from an undeveloped spring.

Points of Diversion and Source – The points of diversion for each spring were identified on the maps submitted with the water right claims. High resolution aerial photos available online indicate “wet areas” exist in the vicinity of each claimed point of diversion. The pattern of the wet areas is consistent with the existence of a spring. Therefore, the claimed points of diversion and sources are recommended as claimed.

Place of Use – Cattle are visible in the vicinity of the point of diversion for 55-13930 in the Google Earth image dated 7/20/2013. What appear to be cow trails are visible leading to and from the point of diversion for 55-13931 in Google Earth images dated 7/20/2013 and 7/15/2016. Cattle and what appear to be cow trails are visible in the vicinity of the points of diversion for 55-13932 in an Esri image. What appear to be cow trails are visible in the vicinity of the point of diversion for 55-13933 and the point of diversion for 55-13934 in the Google Earth image dated 7/15/2016. All the aerial photos examined indicate livestock were or had been in the vicinity of

the springs and would have had access to the water at the claimed points of diversion and places of use.

Owyhee County tax parcel data indicates Chad and Dannelle Hensley own the claimed place of use for each claim.

Purpose of Use and Period of Use – Use of water by livestock is normally recommended as year-round. The place of use for each claim is privately owned rangeland with elevations exceeding 5,000 feet above sea level. Range management practices and climate conditions could limit the claimed period of use. However, year-round use would not otherwise be restricted.

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 0.03 cfs for each claim cannot be recommended, but must be reduced to 0.02 cfs.

CONCLUSION

There is sufficient evidence to recommend water right claims 55-13930, 55-13931, 55-13932, 55-13933, and 55-13934 for the instream watering of livestock from undeveloped springs.

Pursuant to Judge Wildman's *Order Amending Procedures in the SRBA for Adjudication of Deferred De Minimis Domestic and Stock Water Claims*, dated October 17, 2017, the Director submits this Director's Report of Deferred *De Minimis* Domestic or Stock Water Uses for Claim Nos. 55-13930, 55-13931, 55-13932, 55-13933, and 55-13934, which includes the recommendation of deferred *de minimis* water right nos. 55-13930, 55-13931, 55-13932, 55-13933, and 55-13934.

Respectfully submitted this 17th day of April, 2018.


CARTER FRITSCHLE
Manager, Adjudication Section

CERTIFICATE OF SERVICE

I certify that on April 17, 2018, I caused to be served a true and correct copy of this Director's Report of Deferred *De Minimis* Domestic or Stock Water Use, to the following persons, in the manner indicated 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, ID 83303-2707

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

2. Copies to:

Chief, Natural Resources Div.
Office of the Attorney General
P.O. Box 83720
Boise, ID 83720-0010

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

United States Department of Justice
Environment & Natural Resources Div.
550 W. Fort Street MSC 033
Boise, ID 83724

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Owyhee County Courthouse
PO Box 128
Murphy, ID 83650

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Chad Hensley
PO Box 102
Jordan Valley, OR 97910

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

U.S. Attorney's Office
800 Park Blvd., Ste. 600
Boise, ID 83712

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile



Signature of person delivering form

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

RIGHT NUMBER: 55-13930

NAME AND ADDRESS: CHAD HENSLEY
PO BOX 102
JORDAN VALLEY OR 97910

SOURCE: SPRING

TRIBUTARY: SINKS

QUANTITY: 0.020 CFS

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

PRIORITY DATE: 10/26/1973

POINT OF

DIVERSION: T04S R05W S2 SWSW Within OWYHEE 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 OWYHEE County

T04S R05W S02 SWSW

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 100 beef cattle.

Parcel No. RP04S05W026000A

04/17/2018

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

RIGHT NUMBER: 55-13931
NAME AND ADDRESS: CHAD HENSLEY
PO BOX 102
JORDAN VALLEY OR 97910
SOURCE: SPRING TRIBUTARY: SINKS
QUANTITY: 0.020 CFS
The quantity of water under this right shall not exceed 13,000 gallons per day.

PRIORITY DATE: 10/26/1973
POINT OF DIVERSION: T04S R05W S10 SESE Within OWYHEE County

PURPOSE AND PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER	01/01 12/31	0.020 CFS
Stockwater use is for the in-stream watering of livestock.		

PLACE OF USE: STOCKWATER in OWYHEE County
T04S R05W S10 SESE

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

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.

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Parcel No. RP04S05W100001A

Stockwater use is for 100 beef cattle.

04/17/2018

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

RIGHT NUMBER: 55-13932
NAME AND ADDRESS: CHAD HENSLEY
PO BOX 102
JORDAN VALLEY OR 97910
SOURCE: SPRING TRIBUTARY: SINKS
QUANTITY: 0.020 CFS
The quantity of water under this right shall not exceed 13,000 gallons per day.

PRIORITY DATE: 10/26/1973
POINT OF
DIVERSION: T04S R05W S10 SESW Within OWYHEE County
T04S R05W S10 SESW Within OWYHEE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER	01/01 12/31	0.020 CFS
Stockwater use is for the in-stream watering of livestock.		

PLACE OF USE: STOCKWATER in OWYHEE County
T04S R05W S10 SESW

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

Parcel No. RP04S05W100600A

Stockwater use is for 100 beef cattle.

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

RIGHT NUMBER: 55-13933
 NAME AND ADDRESS: CHAD HENSLEY
 PO BOX 102
 JORDAN VALLEY OR 97910
 SOURCE: SPRING TRIBUTARY: SINKS
 QUANTITY: 0.020 CFS
 The quantity of water under this right shall not exceed 13,000 gallons per day.

PRIORITY DATE: 10/26/1973
 POINT OF
 DIVERSION: T04S R05W S10 SWSW Within OWYHEE County
 PURPOSE AND
 PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER	01/01 12/31	0.020 CFS
Stockwater use is for the in-stream watering of livestock.		

PLACE OF USE: STOCKWATER in OWYHEE County
 T04S R05W S10 SWSW

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

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.

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Parcel No. RP04S05W100600A

Stockwater use is for 100 beef cattle.

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