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

Claim Nos. 67-15213, 67-15214, 67-15215, 67-15216, 67-15217, 67-15218, 67-15219, 67-15220, 67-15221, 67-15222, 67-15223, 67-15224, 67-15225, 67-15226, 67-15227A, 67-15227B, 67-15228, 67-15229, 67-15230, 67-15231, 67-15232, 67-15233, 67-15234, 67-15235, 67-15236, 67-15237, 67-15238, 67-15239, 67-15240, 67-15241, 67-15242, 67-15243, 67-15244, 67-15245, 67-15246, 67-15247, 67-15248, 67-15249, 67-15250, 67-15251, 67-15252, 67-15253, and 67-15254

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 3, 2019

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. 67-15213, 67-15214, 67-15215, 67-15216, 67-15217, 67-15218, 67-15219, 67-15220, 67-15221, 67-15222, 67-15223, 67-15224, 67-15225, 67-15226, 67-15227A, 67-15227B, 67-15228, 67-15229, 67-15230, 67-15231, 67-15232, 67-15233, 67-15234, 67-15235, 67-15236, 67-15237, 67-15238, 67-15239, 67-15240, 67-15241, 67-15242, 67-15243, 67-15244, 67-15245, 67-15246, 67-15247, 67-15248, 67-15249, 67-15250, 67-15251, 67-15252, 67-15253, and 67-15254 were submitted to the Court on June 13, 2018. IDWR published notices of the pendency and purpose of the Motions. *See Affidavit of Publication*, filed simultaneously herewith. 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 claims are discussed below.

DISCUSSION

Priority Date

1. General overview of priority date considerations for stockwater claims on federal land

The Idaho Supreme Court in *Joyce Livestock Co. v. United States of America*, 144 Idaho 1 (2007) made clear ranchers could establish beneficial use instream water rights on federal land

for watering their livestock if the ranchers held a valid grazing permit for grazing livestock on the federal land. The Court also determined that these instream water rights so acquired by ranchers were appurtenant to the ranchers' patented or base property. The Court remanded for redetermination of the priority date of the water rights because the ranchers claimed priority dates that predated their grazing authorization from the Bureau of Land Management (BLM). The Court noted a BLM Class 1 grazing license could only be issued to a rancher if the rancher had been grazing livestock on the public range for at least five years prior to the enactment of the Taylor Grazing Act in 1934.

Following the remand of *Joyce Livestock Co.* and companion case *LU Ranching Co. v. United States,* 144 Idaho 89 (2007), the SRBA district court determined the priority dates for LU Ranching Co.'s 15 water rights based on applications for grazing permits filed by LU Ranching Co.'s predecessors. *See Memorandum Decision on Remand and Order of Amended Partial Decrees* (SRBA Subcase no. 55-10288B, et al.) (July 3, 2008). "Accordingly, the Court need only look at the earliest date that a water right can be established that is associated with a particular parcel of homestead or base ranch property." *Id.* at 4-5. Recognizing a Class 1 grazing license required grazing that predated the grazing permit application, the court held that a Class 1 grazing license was sufficient evidence to establish priority dates predating the Taylor Grazing Act for LU Ranching Co.'s water rights on the federal land.

Therefore, for beneficial use instream stockwater claims on federal land, IDWR reviews information about base property or properties (initial through current) and grazing license(s)/permit(s) (historical to current).

2. Soulen's claimed priority date

The priority date listed on all of the claims is 3/15/1928. This date is derived from the Application for Grazing Permit filed by Mesa Sheep Company on July 20, 1935 and signed by H. B. Soulen as President of the Mesa Sheep Company. In the grazing permit application, the applicant stated that Mesa Sheep Company's livestock had grazed the lands covered by the permit for the previous seven years from March 1 to January 1. A letter to Mesa Sheep Company from the United States Department of Interior Division of Grazing dated March 19, 1936 stated the Advisory Board of Idaho No. 1 Grazing District had recommended allowance of the application to graze 13,400 sheep and 350 cattle in common on accessible, vacant, unreserved public domain. A Class 1 License dated April 1, 1936 was issued to Mesa Sheep Company for grazing 13,400 sheep and 350 cattle on public lands.

A business entity search on the Idaho Secretary of State's website for Mesa Sheep Company returned two entities. The first entity had an initial filing date of July 25, 1927, and a forfeited status on December 1, 1930. The second entity had an initial filing date of September 5, 1929, and a forfeited status on November 30, 1941. A business entity search on the Idaho Secretary of State's website for Soulen Livestock Co. returned one entity. Soulen Livestock Co. had an initial filing date of March 1, 1965. According to the Secretary of State's website, Soulen Livestock Co. is active and in good standing. The Articles of Incorporation for Soulen Livestock Co. lists Harry B. Soulen, Beulah M. Soulen, Philip B. Soulen, and Erlene C. Soulen as incorporators. Harry B. Soulen signed the Articles of Incorporation as H. B. Soulen, and that signature appears to match the signature of H. B. Soulen on Mesa Sheep Company's July 1935 grazing permit application.

To establish the link between Mesa Sheep Company and Soulen Livestock Co., Soulen Livestock Co. provided a copy of a Bargain and Sale Deed, dated June 11, 1941, between Mesa Sheep Company and a limited partnership formed and operated under the partnership name Soulen Livestock Company. The partners listed on the June 1941 deed are H. B. Soulen, E. G. Van Hoesen and Elizabeth Soulen David. Soulen Livestock Co. also submitted a warranty deed dated March 1, 1965, that conveys numerous parcels of land, including the base property listed for the present stock claims, from Soulen Livestock Company, a partnership consisting of H. B. Soulen and Beulah Soulen, husband and wife, Philip B. Soulen and Erlene Soulen, husband and wife, Elizabeth Soulen David and Donald K. David, husband and wife, and E. G. Van Hoeson and Freda Van Hoeson, husband and wife, to Soulen Livestock Co., an Idaho corporation. The signature of H. B. Soulen on the warranty deed appears to match the signature of H. B. Soulen on Mesa Sheep Company's July 1935 grazing permit application.

In addition to the documents listed above, Soulen Livestock Co. also provided a copy of the BLM *Case File Summary Soulen Livestock Company 1960* which includes the following historical summary:

> This operation began in the early days and was known as the Mesa Sheep Company when their first application was made in 1935 with Harry B. Soulen as president. The operation remained in the name of Mesa Sheep Company through the 1941 summer license and was changed to the Soulen Livestock Company on the fall license of that same year. There is no document found in the file to show this change. However, Mr. Soulen has remained in control of the operation.
>
> The base property appears to have remained pretty much intact except for minor changes. The 1944 application states, "Lost the Bertelson Lease." There is no indication of what this lease consisted of nor was there any apparent change in the license.

Based on the review of all of the documents described above, there is sufficient evidence to recommend the claimed priority date of 3/15/1928 to Soulen Livestock Co. for the water that was originally appropriated by Mesa Sheep Company.

Points of Diversion

All of the claims filed by Soulen Livestock Co. for use of water within the Crane Creek Allotment overlap existing water rights decreed to the BLM in the Snake River Basin Adjudication (SRBA) and have points of diversion that correspond to points of diversion of the BLM water rights with two exceptions. Claims 67-15277A and 67-15277B overlap BLM water right 67-12742, except for the portion of water right 67-12742 that is not located within the Crane Creek Allotment. Claim 67-15277A has been recommended with the same beginning point of diversion as listed on water right 67-12742, but has an ending point of diversion at the location Crane Creek flows out of the Crane Creek Allotment. Claim 67-15277B has a beginning point of diversion at the location where Crane Creek flows back into the Crane Creek Allotment, and the ending point of diversion for claim 67-15277B is the same as the ending point of diversion for water right 67-12742.

Source

IDWR verified the claimed sources on a topographic map and recommends all of the claims with the same source as decreed for the overlapping BLM water rights.

Place of Use

The claimed beneficial use of the water occurs within the BLM's Crane Creek Allotment. The base property for this allotment is land owned by Soulen Livestock Co. in Township 12 North, Range 3 West, Section 12, which is primarily located within the Crane Creek Allotment.

All of the claims are appurtenant to the base property; however, the places of use described in the claims are consistent with the places of use described in the overlapping BLM water rights, with the following two exceptions. First, as noted under the Points of Diversion, BLM water right 67-12742 flows out of and back into the Crane Creek Allotment. Overlapping claims 67-15277A and 67-15277B do not include the place of use described in BLM's water right 67-12742 that is not within the Crane Creek Allotment. Second, BLM water right 67-13006 was decreed with a place of use in Township 12 North, Range 4 West, Section 19, Lot 3 (NWSW). (Emphasis added). This appears to be a clerical error because the beginning point of diversion for this water right is in Township 12 North, Range 3 West, Section 19, Lot 3 (NWSW). (Emphasis added).

Quantity

All of the claims seek 0.02 cfs as the diversion rate, which is the same diversion rate decreed in the SRBA to the overlapping BLM water rights within the Crane Creek Allotment. IDWR recommends each claim with a combined quantity condition limiting the combined diversion rate of the claim and the diversion rate of the corresponding overlapping BLM water right to 0.02 cfs. Also, IDWR recommends each claim and its corresponding overlapping decreed BLM water right should be limited to a combined total of 13,000 gallons per day. The combined limit conditions are necessary to limit the water rights to the actual amount of water beneficially used.

Purpose and Period of Use

Mesa Sheep Company's Class 1 License authorized the grazing of sheep and cattle on public lands from March 15, 1936 to June 1, 1936 and from November 1, 1936 to December 1, 1936. The overlapping BLM water rights have the purpose of use listed as stockwater with a

year-round (1/1 to 12/31) period of use. The claimed period of use from 3/15 to 12/1 is recommended because those dates are consistent with the beginning and ending dates of the Class 1 License and do not exceed the period of use decreed for the overlapping BLM water rights. The claimed and recommended purpose of use is stockwater.

CONCLUSION

All of the claims submitted by Soulen Livestock Co. for watering livestock within the Crane Creek Allotment are hereby recommended as claimed. IDWR's standard conditions have been added where necessary to further describe specific elements of the water rights. Because of the particular type of claim, each of the Soulen Livestock Co. claims and each of the overlapping decreed BLM water rights describe a single combined water use, and should not be considered "additive" to each other in terms of the extent of the beneficial use of the water.

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. 67-15213, 67-15214, 67-15215, 67-15216, 67-15217, 67-15218, 67-15219, 67-15220, 67-15221, 67-15222, 67-15223, 67-15224, 67-15225, 67-15226, 67-15227A, 67-15227B, 67-15228, 67-15229, 67-15230, 67-15231, 67-15232, 67-15233, 67-15234, 67-15235, 67-15236, 67-15237, 67-15238, 67-15239, 67-15240, 67-15241, 67-15242, 67-15243, 67-15244, 67-15245, 67-15246, 67-15247, 67-15248, 67-15249, 67-15250, 67-15251, 67-15252, 67-15253, and 67-15254, which includes the recommendation of the deferred *de minimis* water right numbers listed above.

Respectfully submitted this 3rd day of January, 2019.

CARTER FRITSCHLE
Manager, Adjudication Section

CERTIFICATE OF SERVICE

I certify that on January 4, 2019, 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 X Regular Mail _ Hand-Delivered _ E-mail

2. Copies to:

Chief, Natural Resources Div. Office of the Attorney General P.O. Box 83720 Boise, ID 83720-0010	_ Overnight Mail X Regular Mail _ Hand-Delivered _ E-mail
United States Department of Justice Environment & Natural Resources Div. 550 W. Fort Street MSC 033 Boise, ID 83724	_ Overnight Mail X Regular Mail _ Hand-Delivered _ E-mail
Washington County Courthouse P.O. Box 670 Weiser, ID 83672	_ Overnight Mail X Regular Mail _ Hand-Delivered _ E-mail
Soulen Livestock Co. P.O. Box 827 Weiser, ID 83672	_ Overnight Mail X Regular Mail _ Hand-Delivered _ E-mail
U.S. Attorney's Office 800 Park Blvd., Ste. 600 Boise, ID 83712	_ Overnight Mail X Regular Mail _ Hand-Delivered _ E-mail

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

__Overnight Mail
X Regular Mail
__Hand-Delivered
__E-mail

Jodi Harris
Signature of person delivering form

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

RIGHT NUMBER: 67-15228

NAME AND ADDRESS: SOULEN LIVESTOCK CO
PO BOX 827
WEISER ID 83672

SOURCE: UNNAMED STREAM TRIBUTARY: CRANE CREEK

QUANTITY: 0.020 CFS

The quantity of water under Right Nos. 67-12743 and 67-15228 shall not exceed 13,000 gallons per day.

Right Nos. 67-12743 and 67-15228 are limited to a total combined diversion rate of 0.02 cfs.

PRIORITY DATE: 03/15/1928

POINT OF DIVERSION: T11N R03W S5 SENE Begin of Stream Flow Within WASHINGTON County

T11N R03W S7 NWNE End of Stream Flow Within WASHINGTON County

This right does not grant any right-of-way or easement across the land of another.

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
STOCKWATER	03/15 12/01	0.020 CFS

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

PLACE OF USE: STOCKWATER in WASHINGTON County

T11N R03W S05 Lot 2 NWNE	T11N R03W S05 SWNE
T11N R03W S05 SENE	T11N R03W S05 Lot 3 NENW
T11N R03W S05 Lot 5 SWNW	T11N R03W S05 SENW
T11N R03W S05 Lot 6 NWSW	T11N R03W S05 Lot 7 SWSW
T11N R03W S06 SESE	T11N R03W S07 NENE
T11N R03W S07 NWNE	

This right is appurtenant to the base property described below:
T12N, R03W, S24.

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. Idaho Code § 42-1412(6).

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 Nos. RP11N03W050000, RP11N03W060000 and RP11N03W070000

BLM Record ID = 6701480849