



State of Idaho

DEPARTMENT OF WATER RESOURCES

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BRAD LITTLE
Governor

GARY SPACKMAN
Director

June 7, 2021

CHARLES N WHITELEY
KATHERINE W WHITELEY
1040 DUTCH FLAT RD
TROY ID 83871-9641

2nd Notice

Re: 86-12094 - Motion for Determination of Deferred *De Minimis* Domestic or Stock Water Use

Dear Mr. and Ms. Whiteley,

On October 16, 2020, the Idaho Department of Water Resources (IDWR) received notice that you filed a **Motion for Determination of Deferred *De Minimis* Domestic or Stock Water Use** for claim 86-12094. The next step in the process is to publish a Notice of Pendency and Purpose of the Motion once per week for no less than three (3) weeks in a newspaper of general circulation in the county in which the point of diversion is located.

I am enclosing a copy of a form called "Deferred De Minimis Domestic and/or Stockwater Use and the Process for Filing Deferred Claims in the Snake River Basin Adjudication (SRBA)", that should help explain the process. I am also enclosing an example of how IDWR advertises notices of this type and a copy of your claim.

I am writing to let you know that IDWR cannot move forward in the process until the Affidavit of Publication is submitted to the court.

I know this can be a complicated process so please feel free to contact IDWR or the SRBA court if you have any questions.

Respectfully,

A handwritten signature in blue ink that reads "Craig L. Saxton". The signature is written in a cursive, flowing style.

Craig L. Saxton
Adjudication Section Manager
craig.saxton@idwr.idaho.gov
208.2857.4916

COPY**RECEIVED****OCT 16 2020****DEPARTMENT OF
WATER RESOURCES****IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS****IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM****CIVIL CASE NUMBER: 39576**Claim ID: 86-12094

Date Received: _____

Receipt No: _____

Claim Fee: _____ By: _____

NOTICE OF CLAIM TO A WATER RIGHT**ACQUIRED UNDER STATE LAW****For Domestic and/or Stockwater Purposes****Where Daily Use is less than 13,000 gallons per day**

Please type or print clearly

1. Name of claimant(s)
- CHARLES N. & KATHERINE W. WHITELEY
- Phone
- (208) 835-6142

Mailing address 1040 DUTCH FLAT ROAD, TROY, IDAHO Zip 83871
Street or Box City StateEmail address (optional) chip2@tds.net

2. Date of priority: (Only one per claim)
- 06/06/1978
- (Explain priority date selected in Remarks)
-
- Month/Day/Year (YYYY)

3. Source of water supply (Check one)
- Ground Water (X)
- or Other () (a) _____

which is tributary to (b) _____

4. Location of point of diversion is: Township
- 39N
- , Range
- 4W
- , Section
- 3

SE 1/4 of NE 1/4 or Govt. Lot _____ BM, County of _____

Parcel no. _____

Additional points of diversion, if any: _____

If available, GPS coordinates: _____

5. Description of diverting works (wells, pumps, spring boxes, pipelines, etc.) including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well.

8" CASING FOR 4" - REST THRU BASALT
WELL 230' DEEP - PUMP SET 185' / 175'

6. Water is claimed for the following: (limited to domestic and/or stockwater uses - see page 1 of the instructions)

For Residential purposes from 7-1 to 12-31 amount 0.04 cfs
Month/Day Month/Day cfs (V) or AFY ()

For _____ purposes from _____ to _____ amount _____

7. Total quantity claimed
- 0.04
- cfs (V) or AFY ()

8. Non-irrigation uses. Describe fully. (Domestic: give number of homes; Stockwater: list number and kind)

1 HOME (2 BATH, LAUNDRY, KITCHEN) 2 OUTSIDE BASKETS FOR YARD

9. Location of place of use is: Township 39N, Range 4W, Section 3,
SE 1/4 of NE 1/4, Govt. Lot _____ BM, Parcel no. _____

for (check one) Domestic ☒ Stock ☐ Domestic and Stock ☐ If different than shown in Item 4

Additional places of use, if any N/A

10. In which county(ies) are lands listed above as place of use located? LATAM

11. Do you own the property listed above as place of use? Yes ☒ No ☐
If the answer is No, describe in Remarks below the authority you have to claim this water right.

12. Describe any other water rights used at the same place and for the same purposes as described above.
_____ or None ☒

13. Remarks (include an explanation of the priority date selected):
WHEN WELL DRILLED. WATER IN USE IMMEDIATELY FOR
CONST. WELL ID # 281690

14. Basis of claim (check one) Beneficial Use ☒ Posted Notice ☐ License ☐ Permit ☐ Decree ☐
Court _____ Decree Date _____ Plaintiff v. Defendant _____
If applicable provide IDWR Water Right Number _____

15. Signature(s)
(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How You Will Receive Notice in the Snake River Basin Adjudication."
(b.) I/We do ☐ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s) Charles Whitely Date: 10/14/20
Eatherine Whitely Date: 09/30/2020

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am, and that I have signed the foregoing document in the space below as the

_____ of _____
Agent's title (Please print) Name of organization (Please print)

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____ Date _____

Printed Name of Authorized Agent _____

16. Notice of Appearance:

Notice is hereby given that I, (please print) _____, will be acting as attorney at law of behalf on the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____ Date _____

Address _____

Name of claimant(s) _____ Claim ID _____

Deferred *De Minimis* Domestic and/or Stockwater Use and the Process for Filing Deferred Claims in the Snake River Basin Adjudication (SRBA)

What is a *de minimis* domestic and/or stockwater use?

A small water use for domestic and/or stock purposes can be considered *de minimis* if the water use meets the following definitions:

- *De minimis* water use for “Domestic” purposes means (a) the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day, or (b) any other uses, if the total use does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day.
- *De minimis* domestic uses shall not include water for multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in section (b) above.
- *De minimis* water use for “Stock water” purposes means the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen thousand (13,000) gallons per day.

What is a deferred *de minimis* domestic and/or stockwater use claim?

In the SRBA, certain small stockwater and domestic water right holders were not required to file claims in the adjudication, but could opt to defer the filing until a later time. A deferred *de minimis* domestic and/or stockclaim is one which was not filed before the Order Granting State of Idaho’s Motion for Interim Order Implementing the Order Governing Procedures of Adjudication of Deferred *De Minimis* Domestic and Stock Water Claims was issued in the SRBA (Dec. 18, 2013).

Is there a filing deadline for a deferred *de minimis* domestic and/or stockwater use claim?

No. Deferrable *de minimis* domestic and/or stockwater use claims need not be immediately filed. In the SRBA’s Final Unified Decree, the Court specifically states that any domestic and/or stock water right, as defined in Idaho Code § 42-111, “shall not be lost by failure to file a notice of claim.” There is no deadline for filing a deferrable *de minimis* domestic and/or stockwater use claim.

What is the process for filing a deferred *de minimis* domestic and/or stockwater use claim?

To claim a deferred *de minimis* domestic and/or stockwater use in the SRBA, the claimant must file with the SRBA Court a [motion](#) for determination of the claim along with an attached completed [notice of claim](#). Each claim requires a separate motion. The claimant should contact the Idaho Department of Water Resources (IDWR) to get water right claim numbers before filing the motion and notice of claim. In addition to the motion and the notice of claim, the claimant shall pay a filing fee. As of July 1, 2017, for claims in which stockwater is the sole purpose of use claimed and the use is less than 13,000 gallons per day, the filing fee is \$25.00 each for the first four claims. If the same claimant files additional stockwater-only claims, there are no additional filing fees for the additional claims.

If the water use claimed is domestic, or if the water uses claimed are domestic and stockwater, the claimant must publish a notice of the pendency and purpose of the motion (notice) once a week for not less than three (3) weeks in a newspaper of general circulation in the county in which the point of diversion is located or otherwise required by the SRBA Court. Service on the United States shall be accomplished by sending a copy of the motion and notice of claim by certified mail to the United States Attorney for the District of Idaho and the United States Attorney General in Washington, D.C. Once the claimant files an Affidavit of Publication with the SRBA Court evidencing that they have caused to be published in the appropriate newspaper the required notice, the Court will set a hearing on the motion for determination of the claim.

If the water use claimed is stockwater only, IDWR will publish the notice with the appropriate newspaper and file the Affidavit of Publication with the SRBA Court. The Court will then set a hearing on the motion for determination of the claim.

An objection to the claim may be filed within forty-five (45) days from the date of the first publication of the notice. The objector should use the SRBA Court's [standard objection form](#) and state the reasons for the objection on the form. A copy of the objection shall be served on the State of Idaho, the IDWR Director (Director), the United States, the person whose claim is being objected to, and all persons who have appeared in response to the motion.

The Director shall notify the SRBA Court within thirty (30) days of the expiration of the time fixed to file an objection that IDWR will conduct an examination of the claim and prepare a Director's Report (report) for submission to the SRBA Court. If the claim is for domestic use, or if the claim is for domestic and stockwater uses, IDWR will provide the claimant with an estimate of the costs that will be incurred in conducting the examination and of preparing the report. The claimant is then required to advance to the Director the estimated costs of conducting the examination and of preparing the report. Prior to the filing of the report with the SRBA Court, the claimant shall pay the balance of the Director's verified costs or be refunded

any unused estimated costs advanced to the Director. In the event the claimant contests the Director's costs, the SRBA Court shall determine a reasonable cost to be paid by the claimant.

If the claim is solely for stockwater, the claimant does not have to pay the costs incurred in conducting the examination and of preparing the report.

Upon completion, the Director shall file the report with the SRBA Court and serve a copy of the report to the United States, to all parties who filed objections, and to all persons against whom relief is sought. IDWR will also serve the State of Idaho. Objections to the report of the Director, responses to the objections, and the hearing upon the objections shall be in accordance with the provisions of Idaho Code § 42-1412 (2003).

What do I need to include with the filing of a deferred *de minimis* stockwater use claim on federal land?

In order to recommend your water right to the SRBA Court, the Department recommends all claims filed for a deferred *de minimis* stockwater use on federal land include the following documents with the motion and notice of claim:

- You must identify the “base property” or “base ranch” for which the stockwater right was established. The base property is the land the person or entity owned at the time the water right was perfected.
- You must also demonstrate that an owner of the base property perfected the stockwater right on federal land. You can do this by establishing linkage between the base property and grazing activity or a grazing permit on federal land. If the water use on federal land predates the Taylor Grazing Act (June 28, 1934), you must provide evidence of grazing on federal land in support of the claimed priority date. If the water use on federal land does not predate the Taylor Grazing Act, you must provide evidence of authority to graze stock on federal land. If you have a copy of the original grazing permit associated with the base property for the place of use claimed, please include that document with your claim. If a copy of the original grazing permit cannot be located, the earliest dated grazing permit available for the base property can support the claimed priority date.
- You must submit documents establishing a chain of title of the base property from the owner who appropriated the stockwater right to you. A land patent, deed, or other instrument of conveyance can identify and establish ownership of the base property. Land patents can be found online at: <https://glorerecords.blm.gov/default.aspx>
The chain of title must establish that the water rights were never reserved or severed from the base property when the property was conveyed from one owner to the next owner. Or, if the water rights were severed from the base property, you will need to submit

documentation showing when and how you obtained ownership of the water rights, and identify the new base property to which they are appurtenant.

- You must submit a copy of the current grazing permit and a map depicting the grazing allotment.
- If you are aware of water rights appurtenant to the place of use you are claiming (the grazing allotment) that were decreed to a federal agency in the SRBA, submit a list of the water right numbers for those decreed water rights.

A checklist of this information can be found at the Department's website.

Where can I find additional resources about filing deferred *de minimis* domestic and/or stockwater claims?

You can find additional information by:

- Visiting the Court's SRBA [website](#) and clicking the "Order" link (Order Granting State of Idaho's Motion for Interim Order Implementing the Order Governing Procedures of Adjudication of Deferred *De Minimis* Domestic and Stock Water Claims) and the "Instructions" link (Instructions for Filing Motion for Determination of Deferred *De Minimis* Domestic and/or Stock Water Use).
- Visiting the IDWR [webpage](#) about the SRBA.
- Contacting IDWR via the Adjudication Hotline 1-800-451-4129 or 1-208-287-4909, or via email: NIA.Help@idwr.idaho.gov
- Contacting IDWR at one of the following locations:

State Office
322 East Front Street
Boise, ID 83702
P: (208) 287-4800
F: (208) 287-6700

Northern Regional Office
7600 Mineral Drive, Ste 100
Coeur d'Alene, ID 83815
P: (208) 762-2800
F: (208) 762-2819

Eastern Regional Office
900 North Skyline Dr., Ste A
Idaho Falls, ID 83402
P: (208) 525-7161
F: (208) 525-7177

Western Regional Office
2735 Airport Way
Boise, ID 83705
P: (208) 334-2190
F: (208) 334-2348

Southern Regional Office
650 Addison Avenue West, Ste 500
Twin Falls, ID 83301
P: (208) 736-3033
F: (208) 736-3037

NOTICE OF CLAIM TO A WATER RIGHT

The following Notice of Claim and Motion for Determination of Deferred De Minimis Domestic or Stock Water Use to a water right has been filed in the Snake River Basin Adjudication.

WATER RIGHT: 86-12078

NAME & ADDRESS: <FIRST NAME> <LAST NAME>
<ADDRESS>
<CITY> <STATE> <ZIP>

SOURCE: GROUND WATER TRIBUTARY:

PRIORITY DATE: 12/31/1890

POINT OF DIVERSION: T39N R02W S17 SENE

PURPOSE OF USE: DOMESTIC & STOCKWATER

PLACE OF USE: T39N R04W S10 SWNW

PERIOD OF USE: 1/1 thru 12/31

QUANTITY: 0.04 CFS

Any objection against the proposed claim must be filed with the Clerk of the District Court, Idaho Water Adjudications, 253 3rd Avenue North, PO Box 2707, Twin Falls, ID 83303-2707 within 45 days from the date of the first publication of this notice.