

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

Claim No. 43-13794

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
Craig L. Saxton, Manager, Adjudication Section

September 7, 2021

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

A Motion for Determination of Deferred *De Minimis* Stock Water Use (Motion) and Notice of Claim to Water Right for water right claim no. 43-13794 was submitted to the Court on August 23, 2017. IDWR published a notice of the pendency and purpose of the Motion, and the Director has now completed his examination of the claim. The examination for the above-mentioned water right claim was conducted by Craig Saxton, Manager, Adjudication Section, on behalf of the Director. The materials used in and results of the examination of the elements of the claim 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. *Joyce Livestock*, 144 Idaho at 12. 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). *Id.* at 16. 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. *Id.* The court held

that instream stockwater rights based on BLM Class 1 grazing permits pass with the land as a matter of law, unless the water right is expressly reserved. *Id.* at 14.

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). Because instream stockwater rights based on Class 1 grazing permits pass with the land as a matter of law, Judge Melanson held that a court determining the priority date of an instream stockwater right under Class 1 licenses "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 in conjunction with representations of earlier water use made by the claimant is sufficient evidence to establish priority dates predating the Taylor Grazing Act for LU Ranching Co.'s water rights on the federal land. *See Id.* at 7.

Effective July 1, 2021, the Idaho Legislature passed House Bill No. 186 which modified Section 42-1411, Idaho Code, to instruct the Director of the Idaho Department of Water Resources to accept the date of the first grazing permit issued on the federal grazing allotment to establish the date of priority and that there shall be a rebuttable presumption that the claimant's base property relates back to the base property when the first grazing permit was issued on the federal grazing land or when water was first applied to beneficial use on the federal land.

Therefore, for beneficial use instream stockwater claims on federal land, IDWR reviews information about the earliest available grazing permit applicable to the federal grazing allotment which the claimant has authorization to graze stock.

2. Robert Parke's claimed priority date

Robert Parke filed claim no. 43-13794 for the stockwater use from Summit Springs. The

claimed priority date of April 1, 1909, is supported by a Notice to Grazing Applicant issued to Mr. Ether Parke on February 18, 1909 by the United States Department of Agriculture Forest Service (USFS), informing Mr. Parke that his application No. 40 has been approved for grazing 50 head of cattle and 5 head of horses within the Minidoka National Forest. The Minidoka National Forest was created on July 1, 1908, and then added to Sawtooth National Forest on July 1, 1953¹.

Mr. Parke provided IDWR with a copy of the current Term Grazing Permit No. 01360 issued on March 13, 2013, authorizing Robert Parke to graze 215 cattle within the United States Forest Service Cold Springs C&H Grazing Allotment. The Cold Springs C&H Grazing Allotment is within the Sawtooth National Forest. The permit expires on December 31, 2022.

The priority date is recommended as claimed.

Points of Diversion

Claim 43-13794 overlaps existing water right 43-10751 decreed to the USFS in the Snake River Basin Adjudication (SRBA). The claimed points of diversion are in Township 13S, Range 30E, Section 15, NENW and SENW, which is consistent with decreed points of diversion for right 43-10751 and were verified by identifying the location of Summit Springs using USGS Quadrangle maps. The point of diversion is recommended as claimed.

Source

The source for water is Summit Springs tributary to the Sinks and can be verified using the USGS quadrangle maps.

¹ <https://foresthistory.org/wp-content/uploads/2017/01/National-Forests-of-the-U.S.pdf> (pg 45).

Place of Use

The claimed beneficial use of water occurs within the USFS's Cold Springs C&H Allotment. The base property for grazing permit 01360 held by Robert Park is in Township 13S, Range 27E, Section 18, NE¼NW¼, and was verified with the USFS by e-mail on June 30, 2020. The base property can also be identified as Cassia County parcel number RP13S27E182400. According to the Cassia County property records Robert Parke owns the base property.

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 USFS water right 43-10751.

Overlapping water right 43-10751 describes a place of use that is supplied water from Summit Springs by diverting the springs into a pipe and trough system and conveying spring water to individual troughs within the Cold Springs C&H grazing allotment. Even though overlapping water right 43-10751 held by the USFS was decreed with a priority date of August 29, 1969, IDWR does not have evidence of when the current delivery system was completed and first used for stockwater to the extent claimed.

USFS claim record for 43-10751 describes the diversion works description as "Combo". IDWR will recommend the place of use consistent with an instream or non-diverted stockwater use where the place of use is consistent with the location of the spring locations and where stock would have access water in 1909, when the original grazing permit was issued.

Quantity

The quantity claimed is for 0.04 cubic feet per second ("cfs"). In Basin Wide Issue # 12, the SRBA court determine *de minimis* instream stockwater rights cannot exceed 0.02 cfs because

a diversion rate greater than 0.02 cfs results in a 24-hour diversion volume that exceeds 13,000 gallons per day. This claim is being recommended for instream use and therefore the recommended diversion rate is 0.02 cfs.

Purpose and Period of Use

The extent of the water use can be described as in-stream *de minimis* stockwater use. Water used for stockwater purposes is generally recommended for year-round use if year-round use is claimed.

CONCLUSION

There is sufficient evidence to recommend claim 43-13794 for the instream watering of livestock from Summit Springs tributary to the Sinks.

Respectfully submitted this 7th day of September, 2021.



CRAIG L. SAXTON
Manager, Adjudication Section

CERTIFICATE OF SERVICE

I certify that on September 10, 2021, 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
☐ E-mail

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
☐ E-mail

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

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ E-mail

Cassia County Courthouse
1459 Overlay Ave
Burley, ID 83318

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ E-mail

Robert Parke
2025 S 2050 E
Malta ID 83342-8612

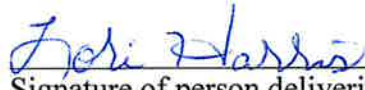
☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ E-mail

U.S. Attorney's Office
1290 West Myrtle Street, Suite 500
Boise, ID 83702

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ E-mail

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

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A handwritten signature in blue ink, appearing to read "Jori Harris", is written over a horizontal line.

Signature of person delivering form

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

RIGHT NUMBER: 43-13794

NAME AND ADDRESS: ROBERT PARKE
2025 S 2350 E
MALTA ID 83342-8612

SOURCE: SUMMIT SPRINGS

TRIBUTARY: SINKS

QUANTITY: 0.020 CFS

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

PRIORITY DATE: 04/01/1909

POINT OF DIVERSION: T13S R30E S15 SENW Within ONEIDA County
T13S R30E S15 NENW Within ONEIDA County

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

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.

The period of use under this water right is limited to the period of use authorized by the United States for grazing on Federal land as described in the applicable grazing permit, annual operating instructions, and other controlling documents.

PLACE OF USE:

STOCKWATER in ONEIDA County
T13S R30E S15 NENW T13S R30E S15 SENW

This right is appurtenant to the base property described below:
T13S, R27E, S18, NENW.

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