

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

Claim No. 43-13795

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. 43-13795 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. 43-13795 for the stockwater use from Parke Spring. 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 with in 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 (USFS) 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 43-13795 overlaps existing water right 43-10711 decreed to the USFS in the Snake River Basin Adjudication (SRBA). The claimed point of diversion is in Township 13S, Range 30E, Section 15, SWSW which is consistent with decreed point of diversion for right 43-10711 and was verified by identifying the location of Parke Spring using USGS Quadrangle maps. The point of diversion is recommended as claimed.

Source

The claimed source is Parke Spring Tributary to Sinks which is consistent with the overlapping water right 43-10711. However, after reviewing USGS quadrangle map, it was determined that Parke Spring is actually tributary to Pine Creek. The source of water is recommended as Parke Spring tributary to Pine Creek.

¹ <https://foresthstory.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 Parke is in Township 13S, Range 27E, Section 18, NE $\frac{1}{4}$ NW $\frac{1}{4}$, 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 claim is appurtenant to the base property; however, the place of use described in the claim is consistent with the places of use described in the overlapping USFS water right 43-10711 and was verified by identifying the location of Parke Spring using USGS Quadrangle maps. The place of use is recommended as claimed.

Quantity

The quantity claimed in is for 0.02 cfs. The typical diversion rate recommended for claims for watering stock directly from a stream is 0.02 cfs. This rate is consistent with diversion rates claimed for *de minimis* instream stockwater use.

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 43-13795 for the instream watering of

livestock from Parke Spring tributary to Pine Creek.

Respectfully submitted this 7th day of September, 2021.

A handwritten signature in blue ink, reading "Craig L. Saxton", is written over a horizontal line.

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

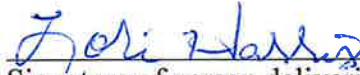
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U.S. Attorney's Office
1290 West Myrtle Street, Suite 500
Boise, ID 83702

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950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

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Signature of person delivering form

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

RIGHT NUMBER: 43-13795

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

SOURCE: PARKE SPRING

TRIBUTARY: PINE CREEK

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 SWSW 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 SWSW

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:

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. Idaho Code § 42-1412(6).

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use