

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

Claim No. 55-13993

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 13, 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. 55-13993 were submitted to the Court on September 28, 2020. IDWR published a notice of the pendency and purpose of the Motion. *See Affidavit of Publication*, filed simultaneously herewith. The Director has now completed his examination of the claim. The examination for the above-mentioned water right claim was conducted by Craig L. Saxton, Adjudication Section Manager, 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

Tim Lequerica, President of Lequerica & Sons Inc., filed claim no. 55-13993 on behalf of Lequerica & Sons Inc., for the instream stockwater use. The claimed priority date of April 17, 1924, is supported by land patents issued to Julia A. Hungate Lennox (#903516), Alonzo B. Cooper (#936622, #869159), and Golda R. Cooper (#936621, #869160, #781502, #781503), that together include all the claimed place of use.

Land Patents #869159, #869160, #936621, and #936622¹ were established under the Homestead Act of 1862, and cover the majority of the place of use. The two most Jr. Patents are #936621 and #936622, and were issued on April 17, 1924, and therefore the claimed priority

¹ Land Patents #869159, #869160, #936621 and #936622 were established under the Homestead Act of 1862. To receive a patent, applicants were required to live on the property for 5 years for the purpose of settlement and cultivation. It's reasonable to assume that applicants would have stock that drank from available water sources. IDWR has regularly accepted land patents as evidence of instream or non-diverted stock water use.

date is April 17, 1924.

Land Patents #781502 and #781503 were established under the 1820 Sale Act on November 15, 1920. The 1820 Sale Act allowed someone to obtain a patent through purchase of land. A patent obtained through the 1820 Sale Act doesn't, in itself, prove evidence that stock were grazing the property when the patent was issued, but the property established under the 1820 Sale Act patents is adjacent to property obtained through the Homestead Act of 1862 and it is reasonable to assume that stock associated with the 1862 patented property also grazed on adjacent properties.

Land Patent #903516² was established under an Act of Congress approved July 1, 1898, which allowed for an exchange of settled land which had been subsequently granted to the Northern Pacific Railroad Co. The establishment of the patent itself doesn't prove evidence that stock were grazing on the property when the patent was issued, but the property established under patent #903516 is adjacent to property obtained through the Homestead Act of 1862 and it is reasonable to assume that stock associated with the 1862 patented property also grazed on adjacent properties.

The claimed priority date of April 17, 1924, is consistent with the issued date of the more junior of the patents covering the claimed place of use. The priority date is recommended as claimed.

Points of Diversion

The claimed points of diversion are in Township 8S, Range 5W, Sections 5, 6, 7, 8, & 9, representing beginning points and ending points for instream stockwater. The claimed points of

² Pg. 24 <https://www.loc.gov/law/help/statutes-at-large/55th-congress/session-2/c55s2ch546.pdf>

diversion were verified by identifying stream locations using USGS Quadrangle maps. The points of diversion are recommended as claimed.

Source

The sources of water include Lone Tree Creek and the unnamed streams tributary to Lone Tree Creek within the claimed place of use. The recommended sources of water are Lone Tree Creek tributary to Jordan Creek and Unnamed Stream tributary to Lone Tree Creek and can be verified using the USGS quadrangle maps.

Place of Use

The claim uses the public land survey to describe the place of use and includes each quarter-quarter or government lot between the beginning and ending points that Lone Tree Creek and the unnamed streams passes through.

The claimed place of use is entirely within Owyhee County parcel numbers RP08S05W067800, RP08S05W070001, RP08S05W054800, RP08S05W080001, and RP08S05W090600. According to the Owyhee County property records Lequerica & Sons Inc. own all five parcels.

Quantity

The quantity claimed 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 55-13993 for the instream watering of livestock from a Lone Tree Creek tributary Jordan Creek and the unnamed streams that are tributary to Lone Tree Creek.

Respectfully submitted this 13th day of September, 2021.

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

CRAIG L. SAXTON
Manager, Adjudication Section

CERTIFICATE OF SERVICE

I certify that on September 13, 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

Owyhee County Courthouse
20381 State Hwy 78
Murphy, ID 83650

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

Lequerica & Sons Inc.
3910 S Sumter way
Boise ID 83709-3745

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

IDWR Document Repository
PO Box 83720
Boise, ID 83720-0098

☐ Overnight Mail
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Signature of person delivering form

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

RIGHT NUMBER: 55-13993

NAME AND ADDRESS: LEQUERICA & SONS INC
3910 S SUMTER WAY
BOISE ID 83709-3745

SOURCE: LONE TREE CREEK TRIBUTARY: JORDAN CREEK
UNNAMED STREAM TRIBUTARY: LONE TREE CREEK

QUANTITY: 0.020 CFS

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

PRIORITY DATE: 04/17/1924

POINT OF DIVERSION: T08S R05W S8 SENW End of Stream Flow Within OWYHEE County
T08S R05W S6 NWSE End of Stream Flow Within OWYHEE County
T08S R05W S7 NENE End of Stream Flow Within OWYHEE County
T08S R05W S5 NESW End of Stream Flow Within OWYHEE County
T08S R05W S5 SWSW Lot 5 Begin of Stream Flow Within OWYHEE County
T08S R05W S8 NENE Begin of Stream Flow Within OWYHEE County
T08S R05W S9 SENW Lot 3 Begin of Stream Flow Within OWYHEE County
T08S R05W S5 NESW Begin of Stream Flow Within OWYHEE County
T08S R05W S7 NENE End of Stream Flow Within OWYHEE County
T08S R05W S7 SENE Begin of Stream Flow 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:

<u>STOCKWATER in OWYHEE County</u>			
T08S	R05W	S05	NESW
T08S	R05W	S06	NWSE
T08S	R05W	S06 Lot 10	SESE
T08S	R05W	S07	SENE
T08S	R05W	S08	NWNE
T08S	R05W	S08 Lot 1	SENE
T08S	R05W	S08	NENW
T08S	R05W	S08	SWNW
T08S	R05W	S09 Lot 4	SWNW
T08S	R05W	S09 Lot 3	SENE

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. RP08S05W067800, RP08S05W070001, RP08S05W054800, RP08S05W080001, RP08S05W090600