

JAN 21 2022

DEPARTMENT OF
WATER RESOURCESIN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)

A.)

Subcase)

67-15269

(Insert water right number
From the Objection Form)

Case No. 39576)

STANDARD FORM 2
RESPONSE TO OBJECTION

Please print or type the following information:

B. NAME AND ADDRESS OF PERSON RESPONDING

Name: KEITH R. HOOD / KAREN M. HOOD

Address: P.O. BOX 100

CAMBRIDGE, ID 83610

Daytime Phone: 208-550-3884

Name & Address of Attorney, if any:

N/A

C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO
WHICH YOU ARE RESPONDING

Name: DEPT. OF INTERIOR - BUREAU LAND MGMT / IDAHO

Address: 1387 SOUTH VINNELL WAY

BOISE, IDAHO 83709-1657

D. I am responding to the Objections to the following elements or general provision. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
2. ☐ **Source**
3. ☐ **Quantity**
4. ☒ **Priority Date** (SEE ATTACHED)
5. ☐ **Point of Diversion**
6. ☐ **Instream Flow Beginning and Ending Point**
7. ☐ **Purpose(s) of Use**
8. ☐ **Period of Year**
9. ☐ **Place of Use**
10. ☐ **General Provision**
11. ☐ **Recommendation:**

☐ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

 1/18/2022
(Signature of person filing)

(Attorney signing in representative capacity)

INSTRUCTIONS FOR MAILING

You must mail the Response, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

E. CERTIFICATE OF MAILING

I certify that on JANUARY 20, 2022, I mailed the original and copies of this response, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court

~~Court of Appeals Spokane River Basin Adjudication~~

253 Third Avenue North

PO Box 2707

Twin Falls, ID 83303-2707

Snake River Basin Adjudication

2. One copy to the claimant of the water right at the following address:

Name: KEITH & KAREN HOOD (SELF)
Address: P.O. BOX 100
CAMBRIDGE, ID 83610

3. One copy to the party who filed the Objection at the following address:

Name: DEPT. OF INTERIOR - BUREAU OF LAND MGMT / IDAHO
Address: 1387 SOUTH VINNELL WAY
BOISE, IDAHO 83709-1657

4. Copies to:

IDWR Document Depository

PO Box 83720

Boise, ID 83720-0098

United States Department of Justice

Environment & Nat'l Resources Div

550 W Fort Street, MSC 033

Boise, ID 83724

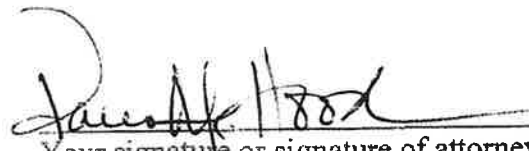
Chief, Natural Resources Division

Office of Attorney General

State of Idaho

PO Box 83720

Boise, ID 83720-0010



Your signature or signature of attorney
mailing on your behalf

We believe the objection submitted regarding our requested priority date filed by Mr. Frederic W. Price, Water Rights Specialist representing the Department of Interior, Bureau of Land Management, Idaho State Office (BLM) is not based upon facts, but speculation and is not clear in his intent. It appears that he did not review our documentation submitted with our applications but was merely focused on the priority date.

The stated REASONS FOR SUPPORTING OBJECTIONS do not recognize stockgrazing and stockwater rights granted and protected through legislated Acts of Congress, and State and Territorial laws, and validated by State Supreme court cases as well as U.S. Supreme Court cases.

His statement that “General grazing activities that occurred on federal land prior to patents being issued for what is now the claimants’ base property were not conveyed to the claimant’s predecessors”. This statement is incorrect in that it does not recognize that the 1795 and 1834 Commerce Acts that created an implied license for free grazing upon unclaimed and unoccupied ‘federal’ lands (Buford v Houty, Ash Sheep Co v United States, 1920). It was lawful for settlers to run their livestock upon unclaimed and unoccupied lands.

Charles Roy Edwards by testimony of his initial Application for Grazing Permit with the United States Department of the Interior, Division of Grazing, as per the Taylor Grazing Act of 1934, please note on the top of page 3, #8 under the question “Have you previously used the lands covered by this application for grazing permit? **YES**. If so, how many years and what is the usual period of use each year? **FOR PAST 40 YEARS**. The date of this document he signed certifying that the foregoing answers and statements are true and correct to the best of his knowledge is July 27th, 1935. So by calculation of using the date of the application and subtracting the number of years he says grazed livestock on lands that are now the Horse Flat Grazing Allotment it clearly shows the year livestock were first grazed on ‘federal’ lands... $1935 - 40 = 1895$. David G. Edwards, Charles Roy Edwards and the Edwards family had grazed livestock on ‘federal’ lands since 1895 at the time the Taylor Grazing Act of 1934. We requested 1896 because at that time we did not have the original grazing application document when we applied for the applications. We were required by the BLM to submit an official FOIA request in order to see the historical grazing back files relevant to our grazing allotment file because we were not related to the applicants C.R. Edwards and Melvin & Inez Dotson by blood or by legal representation despite this file being of importance showing the historical use and operation of our grazing allotment since the inception of the Taylor Grazing Act of 1934.

In regards to the Braden patent land, between 1885 to 1898 the Post Office of Spring, Idaho was in operation on the land identified on Mr. Price’s BLM base property map as the patent for Braden. The Post Mistress was Mrs. Elizabeth Cole, who herself had a registered livestock brand for her stock. All that exists of the town of Spring are several rubble rock foundations, a rock wall and the spring. There were no patents for the Post Office land at that time nor for any settlers for this location. The post office was closed and the land remained unoccupied and unsettled until the Edwards family homesteaded.

1872 Mineral Land Act and the 1875 Grazing Rights Act gave stockraisers a surface claim or ‘surface title’. As an adverse claimant under the 1872 Act, which incorporated Sec 13 of the the 1870 Act, there is no mention of grazing permits. Settlers ran livestock over unfenced, unoccupied and unclaimed lands.

The Survey Act of March 3, 1853, Sec 8 granted right of occupation and cultivation only to settlers on or near mineral lands. There was no acreage limit on the number of locations claimed. Each stockwater site is a 'location' under mineral land laws.

The Grazing Rights Act of 1875 validated the right of settlers to graze cattle, horses and other stock animals on any land open to settlement under the homestead preemption or mineral land laws.

The Enclosure Act of 1885 authorized stockraisers surface claims containing stockwater locations to fence in their grazing surface claims. (Cameron v United States, 1893)

Section 10 of the Ditch & Canal Act of 1866 provided for entry under the Homestead Act of 1862 without acreage limitation where the surface was more suitable for agricultural use (14 Stat 253). July 26, 1866 Ditch Act also states that water rights that existed under State or Territorial law in the West were validated.

The National Forests Management Act clearly states that "all present and future permits, contracts and other instruments shall be subject to valid existing rights". The Federal Land Policy Management Act states that "all actions by the Secretary concerned under this Act shall be subject to valid existing rights".

Mr. Price/BLM stated that 'Homesteaders who received patents from the U.S. for claimants' base property would have established their own separate priority dates for water uses'. The patent dates are irrelevant to these stockwater applications. We are not claiming de minimis stockwater rights for our deeded patent lands which make up our base property. We are claiming the de minimis stockwater rights for are all within our grazing allotment, NOT private deeded lands. The BLM and Forest Service did not exist in 1895 when the Edwards family homesteaded the land. The first time the Edwards family put those waters and water sources to beneficial use on lands that is now Horse Flat Grazing Allotment was when their livestock drank from those stockwater locations in 1895 per his signed testimony on his original grazing application 'permit' dated in 1935 (attached with this rebuttal) under the Taylor Grazing Act of 1934 and correspondence to the Owyhee Grazing District No 1 Advisory board dated December 28, 1955 (that document was submitted with our stockwater applications).

The definition of 'base property' under 43 CFR 4110.2-1 states that the authorized officer shall find land or water owned by an 'applicant' to be base property. It is land that is capable of producing crops or forage that can be used to support authorized livestock for a specific period of the year or water that is suitable for consumption by livestock and is available and accessible to authorized livestock. There is nothing in this statute about patent dates, land size or water limits. If you can't graze on the 'federal' land for some reason, you have some place to feed and water your stock.

In the Joyce Livestock Co vs United States, the State of Idaho Supreme Court held that the United States "bases its claim upon the constitutional method of appropriation. Under Idaho law that method requires that the appropriator actually apply the water to beneficial use". Idaho Title 42 Chapter 1 Appropriation of Water-General Provisions, Section 42-113 Instream and other water uses for livestock (2) For rights to the use of water for instream or out-of-stream livestock purposes associated with grazing on federally owned or managed land, established under the diversion and application to beneficial use method of appropriation:

(a) the priority date shall be the first date that water historically was used for livestock watering associated with grazing on the land...

David G. Edwards first beneficially used the waters and water sources on the lands which consist of the Horse Flat grazing allotment. David G. Edwards, his son Charles R. Edwards, Melvin & Inez Dotson, lessors Charles Edwards (Dotsons nephew) & Ford Ranch, and we, the claimants, have applied the waters and water sources available within our grazing allotment to beneficial use for over 126 years.

Mr. Price/BLM makes note that David G. Edwards did not apply for a grazing permit in 1935. He died in 1916 but he did own livestock prior to his death which he willed to his son, Charles R. Edwards. Document 299-Instrument 52081 (10-26-1928) is attached to show the inheritance of land and livestock from David G. Edwards to his son, Charles R. Edwards.

The 1935 original grazing use application signed by Charles R. Edwards also has an attached plat map showing the property he owned and the property he intended to graze. That map did not identify the 640 acre base property divided up into separate 'patent' properties. It shows one piece of property and this map was recognized by and accepted the authorizing officer of the grazing district. These stockwater applications are for de minimis stockwater rights within our grazing allotment for livestock, not for watering our private deeded land.

Mr. Price/BLM also states "Forfeited for non-use (1993-2014)" then states that our "immediate predecessor, (Melvin & Inez) Dotson, leased his base property to Charles Edwards" (NOTE: This is not Charles Roy Edwards – he died in 1961. This Charles Edwards is his grandson and was a nephew to Inez Dotson).

Charles Edwards did lease the Dotson base property from 1993 – 2010 for reason to run cattle on the grazing allotment. There would be no other reason to submit a base property lease agreement with BLM without the intent of running additional cattle not owned by him, on the grazing allotment. Without the submittal of the lease between Edwards and Dotsons to the BLM, Charles would not have been allowed to run additional cattle under the Dotson grazing 'permit'. Dotsons still owned some cattle but Melvin Dotson suffered from dementia. Mr. Price/BLM failed to include documents supporting that the grazing allotment was indeed grazed by Edwards under the Dotson 'permit' since BLM notified Charles that two Dotson grazing allotments 10-year term was about to 'renew' and that he needed to submit a new, signed lease before turnout. Fees were paid and collected. Charles was a co-owner of the Horse Flat grazing allotment by 'permit' that was passed down from his father. The Dotson property was put up for sale in 2008 after the death of Melvin & Inez Dotson. The executor of their estate continued the lease with Charles Edwards until 2010. We purchased the property in late 2012 and did not graze cattle on our grazing allotment in 2013 and 2014 – we did not own cattle at the time.

BLM neglected to include in his timeline that we leased our base property and grazing allotment numbers to Ford Ranch in 2015 and 2016, which were allowed by the authorized officer. That we were authorized for nonuse in 2017, grazed stock in 2018-2019, and then suffered the Woodhead Fire in September 2020 which prevented fall turnout and 2021 we chose non-use to allow the range to recover instead of grazing. Leasing the base property with the grazing allotment right does not constitute forfeiture. BLM is incorrect to claim that the 'permit' was 'forfeited for non-use' when in fact the allotment is directly tied to our base property per Acts of Congress. Though we may not own the

mineral rights (physical land) we do own the surface rights. And per the terms and conditions of our grazing allotment 'permit' allotment holders can make 'temporary' changes each year prior to turn out. On our grazing 'permit' application 43 CFR 4130.4 (e) - Authorization of temporary changes in grazing use within the terms and conditions of 'permits' and leases, including temporary nonuse.

It reads as follows:

(1) Temporary nonuse is authorized -

- (i) Only if the authorized officer approves in advance, and
- (ii) For no longer than one year at a time.

(2) 'Permittees' or lessees applying for temporary nonuse use must state on their application the reasons supporting nonuse. The authorized officer may authorize nonuse to provide for:

- (i) Natural resource conservation, enhancement, or protection, including more rapid progress toward meeting resource condition objectives or attainment of rangeland health standards, or
- (ii) the business or personal needs of the 'permittee' or lessee.

The authorizing officer approved all nonuse requests for the years requested above. They also approved all submitted base property lease agreements and collected fees associated with it.

We continue to believe that our request for a 1896 priority date for the Horse Flat grazing allotment is not unreasonable based upon Charles Roy Edwards first original grazing application that he and his father grazed 'federal' lands for 40 years prior to the enactment of the Taylor Grazing Act of 1934. The 1955 correspondence of Charles R Edwards to the grazing district advisory board (we submitted with our applications for de minimis stock water rights) reiterated that fact.

We also believe that the de minimis stockwater rights have been put to beneficial use and that the priority date of 1896 be accepted. Wild animals and livestock have drank out of these natural streams, sinks, springs and seasonal streams within this grazing allotment regardless of the date of base property land patents or approval from some authorized official. The Edwards family homesteaded this land in 1895 and their stock ran freely over the unclaimed, undeveloped and unfenced land. This is a 'fence out' state. This practice continues to this day. Their livestock drank where there was water available, as do ours to this day within the grazing allotment. Charles R. Edwards stated that the date Edwards livestock used the resources within the now defined grazing allotment was in 1895... 40 years prior to the Taylor Grazing Act.

Thank you for your consideration,

Sincerely,



Keith Hood



Karen Hood

Dated January 19, 2022