

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF CERTAIN BASIN 75
WATER RIGHTS, IN THE NAME OF THE
UNITED STATES

Docket No. P-OSC-2022-001

**ORDER GRANTING REQUEST FOR
HEARING; ORDER STAYING
HEARING**

**(FOURTH OF JULY CREEK
ALLOTMENT)**

BACKGROUND

On May 23, 2022, Jaycob J. and Sheyenne A. Smith (collectively, “Petitioners”) filed with the Idaho Department of Water Resources (“Department”) a *Verified Petition for Order to Show Cause* (“Petition”). Petitioners ask the Department to issue an order pursuant to Idaho Code § 42-224(1) “to show cause why the Water Rights” (*see* Petition Exhibit A) on the federal grazing allotment known as the Fourth of July Creek Allotment (“Allotment”) “have not been lost through forfeiture pursuant to Idaho Code Sec. 42-222(2).” *Petition* at 1.

On June 22, 2022, the Director issued an *Order Partially Granting Petition; Order to Show Cause* (“Order”) in this matter. In it, the Director partially granted the Petition and ordered the United States of America acting through the Department of Agriculture, Forest Service (“Forest Service”) to show cause why 11 of the 16 stockwater rights at issue had not been lost through forfeiture pursuant to Idaho Code § 42-222(2). *See Order* at 5.

The Order gave the Forest Service 21 days from the completion of service to request in writing a hearing pursuant to Idaho Code § 42-1701A(1)–(2). *Order* ¶ 4, at 5. Service upon the Forest Service, via certified mail with return receipt, was completed on June 27, 2022. On July 15, 2022, counsel for the Department received and forwarded to the Department a special appearance letter from the United States Department of Agriculture, Office of the General Counsel (“USDA Letter”). The USDA Letter includes a request, on behalf of the Forest Service, for a hearing and a stay of said hearing in this case matter “until the conclusion of a lawsuit that the United States filed on June 2, 2022, in the U.S. District Court for the District of Idaho, Civil No. 1:22-cv-00236-DKG, to challenge the lawfulness of the order[.]” *USDA Letter* at 1, 3.

ANALYSIS

Idaho Code § 42-224 states in pertinent part: “The stockwater right owner has twenty-one (21) days from completion of service of the order to show cause to request in writing a hearing pursuant to section 42-1701A(1) and (2), Idaho Code.” I.C. § 42-224(6), as amended by H.B. 608 (2022). The Forest Service was served a copy of the Order on June 27, 2022. Because the Forest Service’s request for hearing was received within 21 days from completion of service, the Director will grant the Forest Service’s request for hearing.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the United States of America acting through the Department of Agriculture, Forest Service's request for hearing is GRANTED.

IT IS FURTHER ORDERED that the hearing requested by the United States of America acting through the Department of Agriculture, Forest Service is STAYED pending the outcome of the contested U.S. District Court case, Civil No. 1:22-cv-00236-DKG or until otherwise ordered by the Director.

DATED this 28th day of July 2022.


GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of July 2022, I caused to be served a true and correct copy of the foregoing *Order Granting Request for Hearing; Order Staying Hearing (Fourth of July Creek Allotment)*, by the method indicated below, upon the following:

Alison C. Hunter
William G. Meyers III
HOLLAND & HART LLP
P.O. Box 2527
Boise, ID 83701
achunter@hollandhart.com
wmyers@hollandhart.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

*Attorneys for Petitioners and Grazing Permit
Holders Jaycob J. and Sheyenne A. Smith*

USDA Forest Service
550 W Fort St., MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☐ Email

Stockwater Right Owner

USDI BLM
Idaho State Office
1387 S. Vinnell Way
Boise, ID 83709

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☐ Email

Stockwater Right Owner

COURTESY COPIES TO:

John Murdock
U.S. Department of the Interior
Office of the Solicitor
Boise Field Office
960 South Broadway A venue, Suite 400
Boise, Idaho 83706-6240
john.murdock@sol.doi.gov

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

David Negri
United States Department of Justice
Environment and Natural Resources
Division
550 W. Fort St., MSC 033
Boise, ID 83724
david.negri@usdoj.gov

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Nicholas Pino
U.S. Department of Agriculture
Office of the General Counsel
26 Fort Missoula Road
Missoula, MT 59804
nicholas.pino@usda.gov

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email


Megan Jenkins
Administrative Assistant II