



United States
Department of
Agriculture

Forest
Service

Caribou-Targhee National Forest
Montpelier Ranger District

322 North Fourth Street
Montpelier, ID 83254
208-847-0375

File Code: 2540-1

Date: November 21, 2005

H.D. Williams
19 East 200 South, STE 1080
Salt Lake City, UT 84111

Dear Mr. Williams,

We have become aware that you have filed a claim for a water right with the Idaho Department of Water Resources (IDWR) for stock water in the SWNW of Section 21, T16S, R43E, Boise Meridian. This is for water from a spring and the place of use is also in the SWNW of Section 21. Our records show that this is National Forest System (NFS) land and that you are not authorized to occupy and use NFS land for this purpose. Forest Service personnel visited this site last week and using Global Positioning System technology verified the land ownership at this location. More specifically, this area is part of the Fish Haven Cattle Allotment on the Cache National Forest (Administered by the Caribou-Targhee National Forest). We have no record of you having acquired grazing privileges on NFS land or having applied for a term grazing permit. In addition, the Forest Service installed a trough connected to a spring in the SWNW of Section 21 in 1947 and re-constructed it in 1976.

You need to be aware that all occupancy and use of NFS land to construct and operate water diversion and transport facilities or to use water on NFS land must be authorized by the Forest Service under 19 U.S.C. 551, 43 U.S.C. 1761, 36 CFR 222, 36 CFR 251.50, 36 CFR 261.7(a), and 36 CFR 261.10(a). Because you are not authorized to occupy and use NFS land for the purpose shown on your claim there is no ability to exercise the beneficial use stated in your application. To do so could be a violation of the laws and regulations cited above.

This letter is notice to you that you must comply with applicable federal law and policy to obtain authorization to occupy and use NFS land. If you desire to pursue this matter or have questions please contact me or Heidi Heyrend of my staff at (208) 847-0375 so that we can discuss the situation.

Sincerely,

DENNIS DUEHREN
District Ranger

cc: Idaho Department of Water Resources



Cox, Sharla

From: Steven M Spencer [sspencer@fs.fed.us]
Sent: Monday, November 21, 2005 4:15 PM
To: sharla.cox@idwr.idaho.gov
Cc: Dennis Duehren; Heidi Heyrend; Lee Leffert; Michael E Collette
Subject: Claim 11-07533



FS map.jpg

The Forest Service has reviewed this Claim To A Water Right filed under Idaho Code 42-243. We understand it to be a Statutory Claim and not an actual water right. We have some serious concerns pertaining to claim no. 11-07533. The map offered by the claimant appears to accurately delineate the SWNW of Section 21, T16S, R43E, Boise Meridian. The map lacks any land ownership information and the claim form does not request the claimant to provide any information on land ownership.

The primary concern is that according to our land ownership information this claim is completely on National Forest System (NFS) land. A copy of a letter to the claimant, H.D. Williams, from the District Ranger identifying this problem is being sent to you in the US Mail.

The claimant is not authorized to go onto NFS land for any purpose that would necessitate obtaining a water right for stock water. The land in question is part of the Fish Haven Cattle Allotment. The claimant does not have a grazing permit, so any use of the water by his livestock would be a federal trespass infraction.

There may be some error in the legal description. The affidavits of Howell and Smith both indicate a home approximately one mile from Hwy 89. The SWNW of Section 21 is about 1.8 miles from Hwy 89, or an 80% error! The Williams affidavit talks about a small home or cabin and water being used for culinary and gardening purposes. It is interesting that the affidavits discuss what would be considered domestic water uses such as a home, small home, cabin, culinary purposes and a garden and continuous use from 1971 to today. In addition the only purpose of use is stockwater when use by livestock is not even eluded to as a historic beneficial use.

We have no information on a water line going from a spring on NFS land in the SWNW of Section 21 to a home on private land. Quite the opposite, we have information about a spring and trough installation in 1947 and replacement of that trough in 1976 in this same quarter-quarter for cattle authorized to graze on the Fish Haven Allotment.

To the best of our knowledge water is not being used, nor has it ever been used on NFS land as represented in this application. For these reasons we feel that it would be prudent for the Department to suspend further processing and consideration of this claim until the facts are known.

If you have any questions about this matter, please contact me. Thank you for your consideration.

(See attached file: FS map.jpg)

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