

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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