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Ident No. 73-11956
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MAR 22 2001

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

ORIGINAL

Department of Water Resources

NOTICE OF DIVERSION FOR INSTREAM STOCKWATER USE

(To provide notice of intent to divert surface water from a stream or riparian area to troughs or tanks for the watering of livestock)

1. Name of Right Holder Sulphur Creek Livestock Co. Phone 208-876-4406
Mailing address P.O. Box 151 May, Idaho 83253
2. Source of water supply Mahogany Creek tributary to Pahsimeroi River
3. Point of diversion is in Gov't. Lot 1/4 NW 1/4 SW 1/4, Section 11,
Township 10N Range 23E, B.M., Custer County.
4. Description of diversion and delivery system:
 - a) Describe the type of diversion: Screened plastic or metal pipe.
 - b) Describe the delivery system: Plastic pipe.
 - c) Describe the number, type and total capacity of troughs or tanks Three sets of two 495 gallon troughs or one 1,000 gallon trough.
 - d) Describe the automatic shutoff or flow control mechanism or means of Returning unused water to the source: Each trough will have a stop loss valve and float system to produce water on an as needed basis.
 - e) Describe how the system is designed to allow measurement of the rate of diversion: The intake diversion pipe will be sized to allow a maximum diversion rate of .02 cfs.
5. Describe the place of use by placing an X in the appropriate 40-acre tract(s) below:

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
11N	23E	25											X					
11N	23E	24														X		
11N	23E	12																X

6. Priority date claimed or established: 1915, 6-01
7. Rate of diversion: .02 cfs

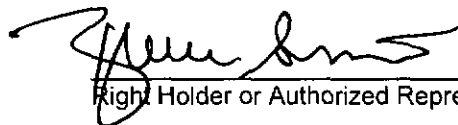
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8. Season of use: From 4-1 to 11-1
9. a) Who owns the property at the point of diversion? Bureau of Land Management
b) Who owns the property at the place of use? Bureau of Land Management
10. When will construction occur? March-April 2001
11. Comments: See Attached Exhibit A.

I hereby assert the following:

- a) Diversion is from a surface water source to which the livestock would otherwise have access. The land where the watering tanks or troughs will be located is land from which the livestock had access to the source of water from which diversion is being made.
- b) The diversion of water out of the stream as described in this notice is for watering livestock and will not injure other water rights.
- c) I will not alter the bed and banks of the source as the term is defined in section 42-3802, Idaho Code. I understand that I may place an inlet conduit into the source in a manner that does not require excavation or obstruction of the stream channel, unless the director of the department of water resources approves a stream channel alteration permit for additional work.
- d) I understand that upon determination of interference with other water rights, the Director may order curtailment of diversion or use of water under this notice or may require the diversion and delivery system to be modified to prevent injury.
- e) I will not divert more than 13,000 gallons per day for livestock watering from this diversion, and I will not use more than one point of diversion under this notice.
- f) I am authorized to make the changes described in this notice and that if the notice involves a federal grazing allotment, the permittee consents to the changes described in this notice.
- g) I understand that any willful misrepresentation on this notice will void any right to divert water for livestock under this notice.

Dated this 6th day of March, 2001


Right Holder or Authorized Representative

FOR DEPARTMENT USE

Received by HWS Date 3-8-01 Preliminary check by HWS
Fee: \$ 25 Receipted by HWS Receipt No. 5026527 Date 3-8-01
Water District No. 73 Entered into data base HWS By 3/8/01

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EXHIBIT A TO SULPHUR CREEK LIVESTOCK CO. NOTICE

This diversion is part of a multi-agency project to eliminate grazing impacts to Mahogany Creek. In 1999, the creek was fenced to protect riparian areas. This diversion and pipeline, to be constructed by the allotment permittee, will eliminate the need for instream stockwatering. It will fit into a larger pipeline project designed to eliminate livestock watering from an existing irrigation canal. See attached Biological Assessment for description of the Mahogany Creek pipeline project.

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**Biological Assessment for
Federally Listed and State Sensitive Salmonids
Bureau of Land Management - Challis Field Office**

A. Project/Action Information

Federal Action: Mahogany and Yribar Pipeline Projects
Watersheds Affected: Pahsimeroi River Watershed

Contact Biologist: Kate Forster, Fishery Biologist
Contact Resource Specialist: Mike Courtney, Rangeland Management Specialist

Date Prepared: 3/6/00

Purpose: This Biological Assessment analyzes the potential affects of installing the Mahogany ditch and Yribar pipelines on Federally listed and State of Idaho sensitive salmonids within the upper Pahsimeroi River Watershed. The purpose for developing these water sources is to provide a reliable livestock watering source for the western portions of the Upper Pahsimeroi Allotment and Donkey Hills Allotment. The water gaps currently used as a water source for these allotments have been identified as concern areas for Federally listed bull trout and are scheduled to be closed as soon as this alternative water source is developed.

Project Location: The Mahogany Creek pipeline would begin at a cistern located on the existing irrigation ditch in T10N, R23E, Sec 11. It will flow in a northerly direction through T10N, R23E, Sec. 11 and Sec. 2 then through Sections 36, 35, 25, 24, 13, 12, and 1 in T11N, R23E (map attached). The Yribar Pipeline will be located in T11N, R23E, Sections 1 and 2, and in T12N, R23E, Sections 34-36. Both projects will be located on the alluvial fans west of the Pahsimeroi River in an area dissected by ephemeral run-off channels. Elevation ranges from 6700' to 7500'.

Specific Activity: The proposed action involves installing a cistern and pipeline in the Mahogany ditch and locating water troughs (three sets of two 495 gallon troughs or one 1,000 gallon round trough) at approximately 1 1/2 mile intervals along the pipeline. The northern most trough would get water from the existing Yribar Springs water development. A spur line on the existing Yribar system would be extended into the Three-Cornered Pasture of the Donkey Hills Allotment. This line would provide water for one or two 495 gallon troughs. A map displaying the location of the water troughs and pipelines is attached to this assessment.

A nine square foot headbox and cistern would be excavated within the existing Mahogany Ditch with a backhoe. The location of this cistern is more than 300 feet from Mahogany Creek and the Pahsimeroi River as is required by PACFISH to protect federally listed salmonids and their habitats. The pipeline would be laid under the soil surface with the a pipe laying attachment mounted on a D-6 Caterpillar tractor. This method of installation minimizes soil and vegetation disturbance by inserting the pipe under the soil surface and allows for rapid, natural recovery. The troughs would be equipped with bird ladders to reduce small mammal and bird fatalities. All troughs would be designed with float systems to produce water on an as needed basis and troughs would be located in swales, whenever possible, to reduce visual impacts.

Following completion of the project, a few short fences will be constructed to close the water gaps along the Pahsimeroi River. These fences will be constructed to the same design standards as the existing fence as illustrated in BLM Manual Handbook H-1741-1 Chapter 4, Illustration 2. Wire spacing would be approximately 16", 22", 28", and 40" above the ground. The bottom wire would be smooth and the top 3 wires would be barbed. Any areas scarred by construction would be rehabilitated with native species to expedite the recovery of the area.

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B. Species Distribution Information

Species	Species Distribution	No Effect	May Affect	Cumulative Effects	Consultation Required
1. Sockeye Salmon	Absent	X		None	No
2. Chinook Salmon	Present	X		None	No
3. Bull Trout	Present	X		None	No
4. Westslope Cutthroat Trout	Present	X		None	No
5. Steelhead Trout	Present	X		None	No

Sockeye salmon use the mainstem of the Salmon River as a migration corridor to spawning and rearing habitats in the upper Salmon River near Stanley, Idaho and are not present in the Pahsimeroi Watershed.

Chinook salmon and steelhead trout use the Pahsimeroi River mainstem and many of its larger tributaries as migration, spawning and rearing habitat. All waters that drain in to the Salmon River, except for those located above a natural migration barrier, have been designated by the National Marine Fisheries Service as critical chinook salmon habitat. At this time, critical habitat has not been designated for steelhead trout. Chinook salmon and steelhead trout are unable to access the upper Pahsimeroi River drainage due to a natural "sinks" where water flows subsurface near the confluence of Goldberg Creek.

Bull trout and westslope cutthroat trout are present in the upper Pahsimeroi River mainstem and many of its tributaries. Both of these species use the smaller first order and second order tributaries as well as suitable mainstem habitats throughout the Pahsimeroi Watershed for spawning and rearing. Both of these species are present in the upper Pahsimeroi River but only bull trout have been identified in Mahogany Creek.

C. Evaluation Criteria to Prepare this Biological Assessment

Criteria	Yes, No, N/A
1. Does the BLM have discretionary authority to grant, modify, or amend provisions of the use authorization? If the answer is "NO", the evaluation is completed. If "YES", move to question #2.	YES
2. Are there Snake River sockeye and/or chinook salmon, steelhead trout, bull trout or Westslope cutthroat trout, present at any time of the year in riverine habitat directly or indirectly affected by the action? If "YES", continue with question #3 through #9.	NO
3. Is the action likely to change the existing input of Large Woody Debris (LWD) into occupied habitat?	NO
4. Is the action likely to affect stream morphology for occupied habitat?	NO
5. Is the action likely to affect properly functioning condition of the riparian area for occupied habitat?	NO
6. Is the action likely to affect water quality and/or quantity in occupied habitat?	NO
7. Is the action likely to affect the water flow regime/annual hydrography in occupied habitat?	NO
8. Is the action likely to affect juvenile or adult behavior related to survival or reproduction?	NO
9. Is the action likely to involve toxic and/or hazardous materials which may reach occupied habitat?	NO

D. Determination of Effect and Rationale

The proposed construction of the Mahogany Creek ditch and Yribar pipelines for livestock watering in the Upper Pahsimeroi Allotment and Donkey Hills Allotment will have **NO EFFECT** on Federally listed Snake River spring/summer chinook salmon, Snake River sockeye salmon, Snake River steelhead trout, bull trout, or westslope cutthroat trout. The rationale for this determination is based on the following:

SNAKE RIVER SOCKEYE SALMON individuals or their spawning, rearing, or migratory habitats are not present in the Pahsimeroi River Watershed. The proposed project is not of a scope or magnitude that has the potential to affect sockeye salmon habitat in the mainstem of the Salmon River.

SNAKE RIVER SPRING/SUMMER CHINOOK SALMON AND STEELHEAD TROUT are not present in the upper Pahsimeroi River due to a natural migration barrier near the confluence of Goldburg Creek. The location where the cistern will be constructed is more than 300 feet from Mahogany Creek and the upper Pahsimeroi River. Other than the location of the cistern, all ground disturbing activities associated with the project will be located approximately one-half mile or more from the nearest fish bearing stream. Due to the flat terrain, relative abundance of native vegetation, and lack of drainage features which could channel any fine sediment into a water course, no fine sediments are expected to reach the Pahsimeroi River as a result of the project. All disturbed areas will be seeded with native seed stocks upon project completion in order to expedite the recovery of all disturbed areas. On-site visual inspections by BLM staff will be done to ensure that soil does not move off the immediate project area. This project will not prevent the attainment of the Riparian Management Objectives described in PACFISH (Appendix C). It is likely that improvements in riparian condition will be achieved at the water gaps after the fences are constructed and livestock are eliminated from those areas.

BULL TROUT AND WESTSLOPE CUTTHROAT TROUT are present in the upper Pahsimeroi River, however, all proposed actions associated with this project will be located well away from the nearest fish bearing habitats and do not have the potential to affect aquatic resources. Other than the location of the cistern, all ground disturbing activities associated with the project will be located approximately one-half mile or more from the nearest fish bearing stream. Due to the flat terrain, relative abundance of native vegetation, and lack of drainage features which could channel any fine sediment into a water course, no fine sediments are expected to reach the Pahsimeroi River as a result of the project. One-half inch and 1/4 inch screens will be installed at the cistern intake to ensure that salmonids are not trapped in the intake and cannot access the Mahogany ditch past the cistern. On-site visual inspections by BLM staff will be done to ensure that soil does not move off the immediate project area. It is likely that some improvements in riparian condition will be achieved at the water gaps after the pipeline is installed and fences are constructed to close the water gaps.

E. Additional Remarks

At the present time, the Mahogany Ditch is not screened and bull trout and westslope cutthroat trout may be moving into the ditch. Although no incidents of mortality have been documented, there is the potential for salmonid mortality to occur. As a result of this project, the pipeline intake will be screened and will prevent salmonids from accessing the Mahogany Ditch beyond the cistern. This will eliminate the potential for fish mortality in the ditch.

This project is expected to result in a more efficient use of Mahogany Creek water than what has occurred in the past. Bull trout and westslope cutthroat trout may benefit from this water saving, however, these benefits may or may not be measurable.

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With the development of this pipeline, three water gaps along the Pahsimeroi River will be closed off and livestock will no longer be able to access the river. The water gaps have been identified as areas where livestock use has been heavy and unacceptable riparian conditions are present (i.e. streambank trampling, sediment introductions to the stream, loss of woody vegetation). By closing the water gaps, these impacts can be eliminated and approximately seven miles of the Pahsimeroi River will no longer be accessible to livestock grazing. Some localized improvements to the riparian conditions in those areas are likely to occur but these benefits may or may not be measurable.

No cumulative effects to any of the species identified above are expected to occur as a result of the project. The project is designed to use water more efficiently, remove livestock impacts to riparian areas, and prevent fish from becoming entrapped in the Mahogany Ditch. Due to the design of the project, less effects to federally listed salmonids and their habitats are expected to occur than that which would occur if the project were not implemented.

Implementing this project complies with the direction in PACFISH (Appendix C, Page 6) and will not prevent the attainment of the PACFISH Riparian Management Objectives.

Kate Forster

Kate Forster
Challis FO Fishery Biologist

3/6/00

Date

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STATE OF IDAHO

Department of Water Resources

Department of Water Resources

Notice of Diversion for Instream Stockwater Use
Section 42-113, Idaho Code

Name of Right Holder: Sulpher Creek Livestock
Initial Review By: HWT Date: 3/8/01
Based on prior recorded instream stockwater right? Yes ☐ No ☐
If yes, right number: _____ Instream Stock Div. No. _____
Also, if right was claimed in SRBA, this notice will amend claim.
If no, enter as statutory claim.

CHECK:

- ☒ Name & address
- ☒ Date of Priority
- ☒ Source
- ☒ Period of use
- ☒ Point of diversion (limited to 1 diversion)
- ☒ Location of use
- ☒ Signature
- ☒ \$25.00 filing fee
- ☒ Water District 73
- ☒ Amount of Water
- ☒ Description of diversion/delivery system.

Receipt No. E026527

Publish? Yes ☐ No ☒ (Regional Determination*)

☒ Review Complete
By: J. W. Jones
Date: 3-16-01

*Generally not advertised unless determined to be necessary by Regional Manager.

*Data entry checked by
S. Keen on 3/23/2001.
- Added condition 107.
- Corrected season of use to 4/1 to 11/1.*

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State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

March 16, 2001

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

Troy Ziegler
HC 63 Box 1571
Challis ID 83226

RE: Diversion for Instream Stockwater Use 73-11956

Dear Mr. Ziegler:

Enclosed please find a copy of a Notice of Diversion for Instream Stockwater Use issued within your district. If you have any questions, please feel free to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Harold W. Jones".

Harold W Jones
Water Right Supervisor

HWJ:sc

Enclosure

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State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

March 15, 2001

Sulphur Creek Livestock
PO Box 151
May ID 83253

RE: Instream Stock Diversion No 73-11956.
Notice of Diversion for Instream Stockwater Use

Dear Sir:

The Department of Water Resources acknowledges receipt of the water right notice you submitted under Section 42-113(3), Idaho Code. Please refer to the above referenced number in all future correspondence regarding this notice.

If exceptions to the notice are filed you will be sent a copy of the exceptions(s).

The filing of the notice does not confirm the validity of the water right. It will serve to record and preserve the information, including any exceptions, regarding the notice.

Please note that the diversion described in your notice may occur only if the following conditions are met.

- The water is diverted from a surface water source to a trough or tank through an enclosed water delivery system.
- The water delivery system is equipped with an automatic shutoff or flow control mechanism or includes a means for returning unused water to the surface water source through an enclosed delivery system, and the system is designed and constructed to allow the rate of diversion to be measured.
- The diversion is from a surface water source to which the livestock would otherwise have access and the watering tank or trough is located on land from which the livestock would have access to the surface water source from which the diversion is made.
- The diversion of water out of the stream in this manner does not injure other water rights.
- The use of the water diverted is for watering livestock.
- The bed and banks of the source shall not be altered as that term is defined in section 42-3802, Idaho Code, except that an inlet conduit may be placed into the source in a manner that does not require excavation or obstruction of the stream channel, unless additional work is approved by the Director of the Department of Water Resources.

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- The amount of water diverted for watering of livestock shall not exceed thirteen thousand (13,000) gallons per day.

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

We are enclosing a copy of the notice for your records. Please feel free to contact this office if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Harold W. Jones".

Harold W Jones
Water Right Supervisor

HWJ::sc

Enclosure

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MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AT LAW

225 NORTH 9TH STREET, SUITE 420
BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

DAVID H. BIETER
SUSAN E. BUXTON *
JOSEPH D. MALLET
JOHN J. MCFADDEN *‡
MICHAEL C. MOORE ‡
BRUCE M. SMITH
PAUL A. TURCKE ◊

* Also admitted in Oregon
‡ Also admitted in Washington
◊ Also admitted in South Dakota

March 6, 2001

Harold Jones
Idaho Department of Water Resources
900 North Skyline Drive
Idaho Falls, Idaho 83402-6105

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Department of Water Resources
Eastern Region

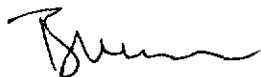
Re: *Sulphur Creek Notice of Diversion for Instream Stockwater Use*

Dear Harold:

Per our conversation, enclosed is a completed IDWR Form 42-113, for Sulphur Creek Livestock, a check for \$25.00 for the filing fee, and an extra copy of the form. Please assign a water right number and return the copy in the enclosed postage paid envelope with the new water right number for my records.

If you have any questions please contact me.

Sincerely,



Bruce M. Smith

BMS/to
Enclosure

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