



IDAHO DEPARTMENT OF
WATER RESOURCES

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Governor Brad Little

Director Mathew Weaver

October 18, 2024

JOHN HAWLEY
KAREN HAWLEY
RYAN HAWLEY
6259 CARR ST #3
ARVADA, CO 80004

RE: Notice of Error Replies for CFPRBA Claim Nos. 97-7102, 97-9078, 97-9808, 97-9809, & 97-9810

Dear Claimants,

The Idaho Department of Water Resources has reviewed the Notice of Error Replies for the above referenced water right claims. We are unable to make all the requested revisions to your claim recommendations for the following reasons.

97-7102 – This claim was filed based upon a previously issued water right license for the diversion of 0.04 CFS from an unnamed stream for recreation storage, irrigation, and stockwater purposes. Your Notice of Error (NOE) reply requested that the recommended maximum diversion rate be increased from 0.04 CFS to 0.06 CFS. Because this claim is based on a previously established license, IDWR is restricted to only recommending the diversion rate originally authorized. The total diversion rate of 0.04 CFS authorized under license 97-7102, is based upon the maximum diversion capacity of that water system developed and is not a cumulative rate derived from the diversions for individual uses. You also requested that the combined 13,000 gallon per day limit between this right and the other domestic rights be removed from the recommendation. When you filed the claim, the stockwater use was claimed as a *de minimis* use meeting the requirements of Section 42-111, Idaho Code, which includes a 13,000 gallon per day limit because the \$2 variable fee wasn't paid for the stockwater use. If you submitted the \$2 variable fee for the stockwater use, IDWR could remove the condition limiting the stockwater use to 13,000 gallons per day.

97-9078 – This claim was filed for the diversion of 0.04 CFS from an unnamed stream for domestic and stockwater purposes with a claimed priority date of June 16, 1965. Your NOE reply requested that the 13,000 gallon per day limit between this right and the other domestic rights be removed from the recommendation. After further review, IDWR can remove 97-7102 and 97-9808 from the combined use condition, but 97-9078 and 97-9809 will still need to share the combined use condition.

These claims were filed as water rights developed through beneficial use meeting the domestic definition as described in Section 42-111, Idaho Code which limits diversion to less than 13,000 gallons per day. This claim (97-9078) and claim 97-9809, describe a staged development of a domestic use from the same system on the same property. Section 42-111(3), Idaho Code prevents “stacking” of domestic uses:

Multiple water rights for domestic uses or domestic purposes, as defined in this section, shall not be established or exercised in a manner to satisfy a single combined water use

or purpose that would not itself come within the definition of a domestic use or purpose under this section.

In order to preserve the different priority dates for the staged development, IDWR can recommend the rights separately, but when used together, they cannot exceed 13,000 gallons per day as provided in Section 42-111, Idaho Code. In the explanatory condition describing the shared point of diversion with 97-9809, you wrote in claim nos. 97-9808, 97-9809, and 97-9810, but also noted that the condition was "OK" which added some confusion. Previous correspondence from you described two separate diversion systems for the claims filed. Are these rights all sharing the same point of diversion? If so, we will need to revise the recommendations to reflect that.

97-9808 – This claim was filed for the diversion of 0.04 CFS from an unnamed stream for domestic and stockwater purposes with a claimed priority date of July 1, 1967. Your NOE reply requested that the 13,000 gallon per day limit between this right and the other domestic rights be removed from the recommendation. After further review, IDWR can remove 97-9078 and 97-9809 from the combined use condition, but 97-7102 and 97-9808 will still need to share the combined use condition. Unless variable fees are paid for claim 97-7102. See explanation under 97-7102. You also requested that the combined diversion rate limit between this right and 97-7102 be increased to 0.10 CFS. This rate cannot be increased as evidence submitted detailed that this water right shares the same diversion from the stream as 97-7102. IDWR staff conducted a field exam on site and determined the maximum capacity of that diversion system to be 0.04 CFS, and it therefore cannot be recommended at a higher rate. You also requested that the condition explaining the use as external only be removed. Our review of all evidence acquired relating to this claim included documentation that the home claimed collapsed due to snow load in approximately 1995, but the water use was continued. As the home has collapsed and internal water use would not be possible, only external water use would be associated with this right. Lastly, your request to increase the combined 1 acre limit between this right and 97-7102 to 1.5 acres can also not be recommended. The external water use associated with this claim is in the same location as was observed by IDWR staff when conducting a field exam for 97-7102 on September 14, 1981, and only 1 acre of total yard irrigation was observed and recorded.

97-9809 – This claim was filed for the diversion of 0.04 CFS from an unnamed stream for domestic and stockwater purposes with a claimed priority date of January 1, 1970. Your NOE reply requested that the 13,000 gallon per day limit between this right and the other domestic rights be removed from the recommendation. Please see the explanation under 97-9078 as to why the condition cannot be totally removed.

97-9810 – This claim was filed for the diversion of 0.04 CFS from an unnamed stream for domestic and stockwater purposes with a claimed priority date of January 1, 1975. The claim was recommended as disallowed, and your NOE reply requests that it be recommended as claimed. A letter was sent to you on May 9, 2024, explaining our reasons for disallowing the claim. Your claim states that the construction of the cabin began in 1970 and that is why you believe this claimed use to be lawful. However, there is already a domestic use for a different home that you have claimed at that same location (1967 cabin), and any water used prior to the completion of this additional home would be associated with that other domestic water right. Further, a Bonner County property assessment completed in 2016 documented only two standing structures which could be considered homes, and those have both been recommended under claim nos. 97-9078 and 97-9809. This claim must be recommended as disallowed.

Please keep in mind that these water right claim recommendations will not prevent the acquisition of new water rights on the property in the future. If you would like to acquire a water right for additional water uses from the stream, then an Application for Permit must be submitted. For your convenience, I have enclosed an Application for Permit form along with instructions.

Please note that IDWR acts as the technical expert to the court and is not party to the adjudication. If you still disagree with IDWR's recommendations, you will have the opportunity to file an objection and be heard by the court. Please feel free to contact me if you have any questions regarding this matter. I can be reached by phone during business hours at 208-762-2800.

Sincerely,

A handwritten signature in black ink, appearing to read 'Evan W. Roda', with a stylized, flowing script.

Evan W. Roda
Water Resources Supervisor
Northern Region

Enclosure(s): Application for Permit, Instructions