Roda, Evan

From:	Roda, Evan
Sent:	Thursday, July 10, 2025 10:53 AM
To:	dylan@hedden-nicely.com
Cc:	'Lorraine Parlange'; 'Scott Mannakee'; 'Ray Entz'
Subject:	RE: CFPRBA Claim nos. 97-7541 & 97-7544

Good afternoon Dylan,

I apologize for the delayed response as I felt it was best to consult with our legal staff regarding your request.

Regarding claim 97-7544, the affidavit originally submitted in support of statutory claim 97-4012 is sufficient evidence for us to recommend the claim for stockwater use. However, the quantity of water claimed for that use (0.12 CFS) is not supported by the evidence on hand. Additional evidence reflecting the quantity and type of livestock watered will be needed before a higher diversion rate beyond 0.02 CFS can be recommended. Please keep in mind that claim 97-4012 described the use for 180 livestock, for which the diversion rate per IDWR standard would be 0.05 CFS. Another component of the claim that could use some clarification is the point of diversion (POD) location for the stockwater diversion. The POD noted for stockwater use in 97-4012 is in the NESW of Section 20. That POD location was also claimed in 97-7544; however, the Bonner County parcel data does not reflect any property owned by the Kalispel Tribe in that location. The listed owner of the property containing the claimed POD in the NESW (Parcel no. RP59N05W204802A) is Virginia Jepson. Is that the correct diversion location for the stockwater diversion?

To support the claimed irrigation use, you mentioned the "claim itself", which I gather is referring to statutory water right claim no. 97-4012, and how that claim can serve as evidence per I.C. 42-246. Statutory claim no. 97-4012 was submitted in September 1971 for the diversion and use of water from Blonk Creek for irrigation and stockwatering purposes. As far as that statutory claim serving as supportive evidence, there is limited application in this instance. I.C. 42-246 (included below) provides that a statement of claim filed pursuant to § 42-243 is admissible in a general water rights adjudication as evidence of the times of use and quantity of water utilized as of the year of the filing, but only if the time of use and quantities claimed are substantially in accord with those of the same when a controversy is mooted. It does not otherwise serve as evidence of priority. We do not have sufficient evidence supporting the claimed priority for irrigation use, nor has evidence been submitted to reflect the current diversion capacity or extent of beneficial use. Unless additional evidence is received, 97-7544 will be recommended for the diversion of 0.02 CFS for stockwater use only.

> 42-246. FILING OF CLAIM NOT DEEMED ADJUDICATION OF RIGHT — EVIDENCE. The filing of a claim does not constitute an adjudication of any claim to the right to use of waters as between the water use claimant and the state, or as between one (1) or more water use claimants and another or others. A statement of claim filed pursuant to section 42-243, Idaho Code, shall be admissible in a general adjudication of water rights as evidence of the times of use and the quantity of water the claimant was withdrawing or diverting as of the

year of the filing, if, *but only if, the quantities of water in use and the time of use when a controversy is mooted are substantially in accord with the times of use and quantity of water claimed in the claim. A claim shall not otherwise be evidence of the priority of the claimed water right.*

Thank you for connecting us with Ray Entz to get that field exam scheduled. Our Water Resource Agent in Northern, Michael Thompson has reached out to Mr. Entz on June 23 to schedule the field exam on site, and received a response stating he would get back to Michael in a couple days with proposed dates. However, he has not yet heard back from Mr. Entz since with those dates. Unfortunately, Michael will be out of the office for three weeks beginning tomorrow, so the exam will now need to be scheduled in early August. Michael will send a follow-up email Mr. Entz to try and get a date scheduled for that exam.

Respectfully,

~ Evan

Evan Roda | Adjudication Section Manager
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From: dylan@hedden-nicely.com <dylan@hedden-nicely.com>
Sent: Wednesday, June 11, 2025 6:13 AM
To: Roda, Evan <Evan.Roda@idwr.idaho.gov>
Cc: 'Lorraine Parlange' <lparlange@kalispeltribe.com>; 'Scott Mannakee' <SMannakee@kalispeltribe.com>; 'Ray Entz' <rentz@kalispeltribe.com>
Subject: RE: CFPRBA Claim nos. 97-7541 & 97-7544

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Hi Evan,
Thanks for getting back and apologies for the delay. Regarding 97-7544, I agree that the affidavit you have identified only mentioned domestic and stockwater. However, the notice of claim itself, which was also attested to in the same way as the affidavit (and which serve as evidence per I.C. 42-246), specifically says that Drake was using this water right for irrigation as well. That, plus the fact that the air photos clearly show cultivation at the site and the POU does not overlap entirely with 97-7541, indicates that Drake was using Bloncc Creek for irrigation purposes, probably in combination with water coming from Goose Creek (which, as you know would require a separate claim given its separate source). Given this, would you please reconsider your preliminary recommendation that 97-7544 and include irrigation as a purpose of use? We would be amenable to having it and 97-7541 be capped to some total amount between the two rights if you think that appropriate.

Also, Ray Entz, cc'd here, can coordinate with you on a field exam date and time.

Thank you again for your consideration.

DHN.

From: Roda, Evan <Evan.Roda@idwr.idaho.gov>
Sent: Monday, May 12, 2025 3:23 PM
To: dylan@hedden-nicely.com
Cc: 'Lorraine Parlange' <lparlange@kalispeltribe.com>; 'Scott Mannakee' <SMannakee@kalispeltribe.com>; 'Ray Entz' <rentz@kalispeltribe.com>
Subject: RE: CFPRBA Claim nos. 97-7541 & 97-7544

Good afternoon Dylan,

I'll respond to your inquiries below individually.

97-7541 –

- Unfortunately, the aerial photo with GIS overlay you have attached is inconclusive as to what is being depicted. The orange areas noted as "farmed area" are concealed by the overlayed shape. Additionally, that identified area represents only a small portion of the 71.5 acres claimed for irrigation purposes (approximately 15-20 acres). The remaining area within the claimed place of use appears much more raw and unimproved. As previously discussed, the 1932 aerial photo does reflect some possible cultivation in the approximate vicinity you highlighted in orange, but if we rely on that photo for evidence supporting our recommendation of the claim, the recommended place of use and quantity of water will need to be reduced accordingly. The first available evidence we have on hand that reflects cultivation and potential irrigation throughout the claimed place of use is the aerial photo taken October 3, 1958. That aerial photo, along with the affidavit describing the use of Goose Creek for irrigation on the Harry Drake Ranch, is the evidence that currently supports a possible recommendation of your claim. However, the diversion works and system capacity is not reflected in available evidence and must be determined before the claim can be recommended.
- As this claim is based on beneficial use, the primary elements of the water right need to be confirmed. While we have aerial photos reflecting cultivation of the claimed place of use, our review and analysis of the property and surrounding area has also found that much of that region is heavily saturated at times through natural processes such as seasonal runoff. As such, it is more difficult to determine the extent of actual irrigation on site vs what may be saturated through natural processes. A field examination of the diversion works and irrigation system is needed to determine the extent of land irrigation and overall capacity of the system utilized. If the system is not actively being used, it may not be possible for us to confirm the diversion capacity and extent of beneficial use. However, if we are able to observe the diversion pump(s), the irrigation pipes, and the sprinkler heads used, along with details of how they are typically installed and used to irrigate the property, we may be able to calculate the system's capacity through theoretical equations.
- Since the tribe was unable to secure a hay lease for this season and will not be irrigating, are you able to provide us with records of your previous hay leases from recent years for this property? That may be helpful to for us to determine the extent of land actively cultivated as the irrigation system is not currently operational.

97-7544 –