

## What is a water right?

A water right is the right to divert public waters and beneficially use the water. This is also referred to as an appropriation of the water.

Idaho's constitution and statutes declare all waters of the state when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state and ground waters of the state, to be public waters. Idaho's constitution and statutes also guarantee the right to appropriate those public waters. When a person appropriates public waters, a water right is established that is a real property right (much like property rights in land), and Idaho law protects real property rights.

### New In-Stream Stockwater Right:

**I have a livestock operation and I want to acquire a new in-stream stockwater right on my federal grazing allotment. Must I file for a permit to establish a new in-stream stockwater right?**

No. Pursuant to Idaho Code § 42-113, a permit may be issued, but it is not required, for appropriation of water for the in-stream watering of livestock. Idaho Code § 42-113(3) also exempts certain out-of-stream diversions of water to a stock watering trough or tank from the permit process.

### New Out-of-Stream Stockwater Right:

**I have a livestock operation and I want to acquire a new water right for the out-of-stream**

## **watering of livestock on my federal grazing allotment. What is the process I must follow?**

If you want to acquire a new water right for an out-of-stream diversion from a surface water source (a spring, stream, river, lake, wetland, or naturally occurring pond is considered surface water), a water right permit will be required, unless the out-of-stream use meets the criteria of Idaho Code § 42-113(3).

If you want to acquire a new water right from a ground water source (a well), a water right permit is not required if the water use is limited to watering livestock and the volume of the water diverted or consumed by the livestock does not exceed 13,000 gallons per day.

The date an application for permit is filed establishes a prospective priority date. When the application for permit is approved as a permit, the application filing date becomes the date of priority. The application and instructions for filing a permit can be found here:

<http://www.idwr.idaho.gov/water-rights/forms.html#new-water-rights>

### Previously Established Stockwater Right:

**My livestock operation is located in the portion of Idaho that was included in the Snake River Basin Adjudication (SRBA). I want the SRBA Court to decree a previously established water right for the watering of livestock in my name or the name of my ranch for the water used by stock on my federal grazing allotment. What is the process I must follow?**

If you or your predecessor diverted water from a surface water source for the purpose of watering livestock and the diversion of the water commenced prior to May 20, 1971, or if your livestock drink directly from a surface water source (or through a trough or tank pursuant to Idaho Code § 42-113(3)), a notice of claim to a water right can be filed with the SRBA Court, provided the volume of the water diverted or consumed by the livestock does not exceed 13,000 gallons per day. A notice of claim to a water right can also be filed with the SRBA Court for water diverted for the watering of livestock from a ground water source if the volume of water diverted does not exceed 13,000 gallons per day.

If you or your predecessor diverted water from a surface water source for the purpose of watering livestock and the diversion was commenced *after* May 20, 1971 (and your diversion does not meet criteria of Idaho Code § 42-113(3)) or the volume of the water diverted exceeds 13,000 gallons per day, you must file an application for permit for a new water right. The application and instructions for filing a permit can be found here:

<http://www.idwr.idaho.gov/water-rights/forms.html#new-water-rights>

### **How do I file a notice of claim to a water right with the SRBA Court?**

The court has established a process for filing a notice of claim to a water right for *de minimis* domestic and/or stockwater uses that were deferred (not claimed) in the SRBA. The water can only be claimed for domestic and/or stockwater use if the amount of water diverted for domestic and/or stockwater use

does not exceed 13,000 gallons per day. The term *de minimis* means the water use is for a domestic use (as defined in Section 42-111, Idaho Code) and/or stockwater use where the total volume of water diverted does not exceed 13,000 gallons per day.

The court process begins with your filing a Motion for Determination of Deferred *De Minimis* Domestic or Stock Water Use. The motion or form that needs to be filed out can be found here:  
<http://srba.idaho.gov/forms/de%20minimis%20form.pdf>

Instructions for Filing a Motion for Determination of Deferred *De Minimis* Domestic or Stock Water Use can be found here:

<http://srba.idaho.gov/forms/de%20minimis.pdf>

The Notice of Claim to a Water Right form that you will need to file with your motion can be found here:

<http://www.idwr.idaho.gov/water-rights/adjudication/forms.html>

The instructions for filling out the Notice of Claim to a Water Right can be found here:

<http://www.idwr.idaho.gov/water-rights/adjudication/forms.html>

Additional information in the form of supplemental instructions for filing a Notice of Claim to a Water Right in which the place of use claimed is within a federal grazing allotment can be found here:

<http://www.idwr.idaho.gov/files/forms/42-1409-Stockwater-Only-Supplemental-for-Claims.pdf>

A checklist of the information you will need to support your Notice of Claim to a Water Right can be found here:

<https://idwr.idaho.gov/files/forms/checklist-of-items-required-for-each-deferred-de-minimis-stockwater-use.pdf>

The Idaho Department of Water Resource (IDWR) staff can assist you with filling out the Notice of Claim to a Water Right and research any existing water rights that have been claimed, licensed or decreed within the grazing allotment. IDWR does not have access to current or historic grazing permits or to the warranty deeds that establish the chain of title of your base property from the land patent to you.

**What if my livestock operation is located in the portion of Idaho that was included in the Coeur d'Alene Spokane River Basin Adjudication (CSRBA) or Palouse River Basin Adjudication (PRBA)? What process do I follow?**

The claim forms and instructions for filing a Notice of Claim to a Water Right in the CSRBA or the PRBA can be found here:

<http://www.idwr.idaho.gov/forms/adjudication.html-water-right.pdf>

**What are the fees for filing a stockwater claim in an adjudication?**

As of July 1, 2017, for claims in which stockwater is the sole purpose of use claimed, and the daily use is less than 13,000 gallons per day, the filing fee is \$25.00 each for the first four claims. If the same claimant files more than four claims in which stockwater is

the sole purpose of use claimed, there are no additional filing fees for the additional claims.

**What evidence must I submit to establish proof of an existing water right?**

In the Idaho Supreme Court case *Joyce Livestock Co. v. U.S.*, the Court held that a cattle rancher can establish an in-stream water right on federal land for the watering of livestock if the rancher had authority to access the federal land to graze cattle. The Court held that such a water right becomes appurtenant (or attached to) to the "base property" or "base ranch" for which the stockwater right was established. The base property is the private land used to support the livestock at the time the water right was perfected.

A person filing a claim for a previously established water right must submit evidence of the date when water was first beneficially used on the federal land. Evidence could include historical documents such as applications for grazing permits. Note: At this time, a copy of the original application that led to a Class 1 Grazing Permit appears to be the best evidence for establishing a priority date of 1929 or earlier on a BLM grazing allotment. This is because a Class 1 Grazing Permit could only be issued if the applicant grazed livestock on the public range for at least five years prior to the enactment of the Taylor Grazing Act of 1934.

The claimant must also submit evidence of the ownership of the water right. If the current owner of the base property is different from the owner of the base property when the

water right was established, a chain of title that shows the conveyance of the base property from the original owner to the current owner is necessary to ensure the water rights were conveyed to each new owner of the base property. If the deeds for each conveyance do not show that the water rights were withheld when the base property was conveyed, then it is assumed the water rights were conveyed with the base property.

A checklist of the documents you will need can be found here:

<http://www.idwr.idaho.gov/files/forms/checklist-of-items-required-for-each-deferred-de-minimis-stockwater-use.pdf>

**What if my livestock operation is located in a portion of Idaho that is not included in a current adjudication? How can I get an existing water right recognized?**

The Bear River Basin, the Clark Fork-Pend Oreille River Basins, and the Kootenai River Basin do not have current adjudications. A record of historic water use in these river basins can be made by filing a claim pursuant to Idaho Code § 42-243. The form can be found here:

<http://www.idwr.idaho.gov/files/forms/claim-to-a-water-right.pdf>

And, the instructions can be found here:

<http://www.idwr.idaho.gov/files/forms/instructions-for-completing-a-claim-to-a-water-right.pdf>

# LIVESTOCK WATER RIGHTS ON FEDERAL GRAZING ALLOTMENTS

**ANSWERS TO FREQUENTLY  
ASKED QUESTIONS  
REGARDING WATER RIGHTS  
ON FEDERAL GRAZING LAND**



IDAHO DEPARTMENT OF WATER RESOURCES  
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IDAHO DEPARTMENT OF WATER RESOURCES  
ADJUDICATION SECTION  
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