

Deferred *De Minimis* Domestic and/or Stockwater Use and the Process for Filing Deferred Claims in the Snake River Basin Adjudication (SRBA)

What is a *de minimis* domestic and/or stockwater use?

A small water use for domestic and/or stock purposes can be considered *de minimis* if the water use meets the following definitions:

- *De minimis* water use for “Domestic” purposes means (a) the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day, or (b) any other uses, if the total use does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day.
- *De minimis* domestic uses shall not include water for multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in section (b) above.
- *De minimis* water use for “Stock water” purposes means the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen thousand (13,000) gallons per day.

What is a deferred *de minimis* domestic and/or stockwater use claim?

In the SRBA, certain small stockwater and domestic water right holders were not required to file claims in the adjudication, but could opt to defer the filing until a later time. A deferred *de minimis* domestic and/or stockclaim is one which was not filed before the Order Granting State of Idaho’s Motion for Interim Order Implementing the Order Governing Procedures of Adjudication of Deferred *De Minimis* Domestic and Stock Water Claims was issued in the SRBA (Dec. 18, 2013).

Is there a filing deadline for a deferred *de minimis* domestic and/or stockwater use claim?

No. Deferrable *de minimis* domestic and/or stockwater use claims need not be immediately filed. In the SRBA’s Final Unified Decree, the Court specifically states that any domestic and/or stock water right, as defined in Idaho Code § 42-111, “shall not be lost by failure to file a notice of claim.” There is no deadline for filing a deferrable *de minimis* domestic and/or stockwater use claim.

What is the process for filing a deferred *de minimis* domestic and/or stockwater use claim?

To claim a deferred *de minimis* domestic and/or stockwater use in the SRBA, the claimant must file with the SRBA Court a [motion](#) for determination of the claim along with an attached completed [notice of claim](#). Each claim requires a separate motion. The claimant should contact the Idaho Department of Water Resources (IDWR) to get water right claim numbers before filing the motion and notice of claim. In addition to the motion and the notice of claim, the claimant shall pay a filing fee. As of July 1, 2017, for claims in which stockwater is the sole purpose of use claimed and the 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 additional stockwater-only claims, there are no additional filing fees for the additional claims.

If the water use claimed is domestic, or if the water uses claimed are domestic and stockwater, the claimant must publish a notice of the pendency and purpose of the motion (notice) once a week for not less than three (3) weeks in a newspaper of general circulation in the county in which the point of diversion is located or otherwise required by the SRBA Court. Service on the United States shall be accomplished by sending a copy of the motion and notice of claim by certified mail to the United States Attorney for the District of Idaho and the United States Attorney General in Washington, D.C. Once the claimant files an Affidavit of Publication with the SRBA Court evidencing that they have caused to be published in the appropriate newspaper the required notice, the Court will set a hearing on the motion for determination of the claim.

If the water use claimed is stockwater only, IDWR will publish the notice with the appropriate newspaper and file the Affidavit of Publication with the SRBA Court. The Court will then set a hearing on the motion for determination of the claim.

An objection to the claim may be filed within forty-five (45) days from the date of the first publication of the notice. The objector should use the SRBA Court's [standard objection form](#) and state the reasons for the objection on the form. A copy of the objection shall be served on the State of Idaho, the IDWR Director (Director), the United States, the person whose claim is being objected to, and all persons who have appeared in response to the motion.

The Director shall notify the SRBA Court within thirty (30) days of the expiration of the time fixed to file an objection that IDWR will conduct an examination of the claim and prepare a Director's Report (report) for submission to the SRBA Court. If the claim is for domestic use, or if the claim is for domestic and stockwater uses, IDWR will provide the claimant with an estimate of the costs that will be incurred in conducting the examination and of preparing the report. The claimant is then required to advance to the Director the estimated costs of conducting the examination and of preparing the report. Prior to the filing of the report with the SRBA Court, the claimant shall pay the balance of the Director's verified costs or be refunded

any unused estimated costs advanced to the Director. In the event the claimant contests the Director's costs, the SRBA Court shall determine a reasonable cost to be paid by the claimant.

If the claim is solely for stockwater, the claimant does not have to pay the costs incurred in conducting the examination and of preparing the report.

Upon completion, the Director shall file the report with the SRBA Court and serve a copy of the report to the United States, to all parties who filed objections, and to all persons against whom relief is sought. IDWR will also serve the State of Idaho. Objections to the report of the Director, responses to the objections, and the hearing upon the objections shall be in accordance with the provisions of Idaho Code § 42-1412 (2003).

What do I need to include with the filing of a deferred *de minimis* stockwater use claim on federal land?

In order to recommend your water right to the SRBA Court, the Department recommends all claims filed for a deferred *de minimis* stockwater use on federal land include the following documents with the motion and notice of claim:

- You must identify the “base property” or “base ranch” for which the stockwater right was established. The base property is the land the person or entity owned at the time the water right was perfected.
- You must also demonstrate that an owner of the base property perfected the stockwater right on federal land. You can do this by establishing linkage between the base property and grazing activity or a grazing permit on federal land. If the water use on federal land predates the Taylor Grazing Act (June 28, 1934), you must provide evidence of grazing on federal land in support of the claimed priority date. If the water use on federal land does not predate the Taylor Grazing Act, you must provide evidence of authority to graze stock on federal land. If you have a copy of the original grazing permit associated with the base property for the place of use claimed, please include that document with your claim. If a copy of the original grazing permit cannot be located, the earliest dated grazing permit available for the base property can support the claimed priority date.
- You must submit documents establishing a chain of title of the base property from the owner who appropriated the stockwater right to you. A land patent, deed, or other instrument of conveyance can identify and establish ownership of the base property. Land patents can be found online at: <https://glorerecords.blm.gov/default.aspx>
The chain of title must establish that the water rights were never reserved or severed from the base property when the property was conveyed from one owner to the next owner. Or, if the water rights were severed from the base property, you will need to submit

documentation showing when and how you obtained ownership of the water rights, and identify the new base property to which they are appurtenant.

- You must submit a copy of the current grazing permit and a map depicting the grazing allotment.
- If you are aware of water rights appurtenant to the place of use you are claiming (the grazing allotment) that were decreed to a federal agency in the SRBA, submit a list of the water right numbers for those decreed water rights.

[A checklist of this information can be found at the Department's website.](#)

Where can I find additional resources about filing deferred *de minimis* domestic and/or stockwater claims?

You can find additional information by:

- Visiting the Court's SRBA [website](#) and clicking the "Order" link (Order Granting State of Idaho's Motion for Interim Order Implementing the Order Governing Procedures of Adjudication of Deferred *De Minimis* Domestic and Stock Water Claims) and the "Instructions" link (Instructions for Filing Motion for Determination of Deferred *De Minimis* Domestic and/or Stock Water Use).
- Visiting the IDWR [webpage](#) about the SRBA.
- Contacting IDWR via the Adjudication Hotline 1-800-451-4129 or 1-208-287-4909, or via email: NIA.Help@idwr.idaho.gov
- Contacting IDWR at one of the following locations:

State Office
322 East Front Street
Boise, ID 83702
P: (208) 287-4800
F: (208) 287-6700

Northern Regional Office
7600 Mineral Drive, Ste 100
Coeur d'Alene, ID 83815
P: (208) 762-2800
F: (208) 762-2819

Eastern Regional Office
900 North Skyline Dr., Ste A
Idaho Falls, ID 83402
P: (208) 525-7161
F: (208) 525-7177

Western Regional Office
2735 Airport Way
Boise, ID 83705
P: (208) 334-2190
F: (208) 334-2348

Southern Regional Office
650 Addison Avenue West, Ste 500
Twin Falls, ID 83301
P: (208) 736-3033
F: (208) 736-3037