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*Attorneys for Defendants the State of Idaho, the Idaho Department of Water Resources,
and Gary Spackman, in his official capacity as Director of the Idaho Department of
Water Resources*

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

v.

The STATE OF IDAHO; the IDAHO
DEPARTMENT OF WATER
RESOURCES, an agency of the State of
Idaho; and GARY SPACKMAN, in his
official capacity as the Director of the
Idaho Department of Water Resources,

Defendants,

v.

IDAHO HOUSE OF REPRESENTATIVES;
MIKE MOYLE, in his official capacity as
Majority Leader of the House; IDAHO

Case No. 1:22-cv-00236-DCN

**DECLARATION OF
GARY SPACKMAN**

SENATE; and CHUCK WINDER, in his official capacity as President Pro Tempore of the Senate,

Intervenor-Defendants.

I, Gary Spackman, declare and state as follows:

1. My name is Gary Spackman. I am over eighteen years of age and submit the following statements based upon my personal knowledge.

2. I am the Director of the Idaho Department of Water Resources ("IDWR"). I offer the statements in this declaration in my capacity as Director of IDWR. I have been Director or Interim Director of IDWR since 2009. I have been employed by IDWR continuously since 1986.

3. IDWR is an executive department of the State of Idaho. IDWR's executive and administrative authorities are defined by Idaho statutes. The Director of IDWR is vested with authorities regarding the management and administration of Idaho's water, except those specifically assigned to the Idaho Water Resource Board.

4. The IDWR proceedings at issue in this case were initiated by five petitions filed with IDWR pursuant to Idaho Code § 42-224(1) in 2021 and 2022. The petitions alleged that certain stockwater rights held by the United States had not been put to beneficial use for a term of five (5) years. Subsection (1) of Idaho Code § 42-224 requires the Director to determine whether such petitions or other information present "prima facie" evidence that a stockwater right has been lost through forfeiture pursuant to Idaho Code § 42-222(2). After determining whether stockwater rights were lost through forfeiture, the Director must act in one of two

ways. If the Director determines the petition or other information is insufficient to present a “prima facie” showing of forfeiture, subsection (1) of Idaho Code § 42-224 requires the Director to notify the petitioner that the petition or other information is insufficient to support a “prima facie” showing of forfeiture. If the Director determines the petition or other information does contain “prima facie” evidence of forfeiture due to non-use, subsection (2) of Idaho Code § 42-224 requires the Director to issue an order to the stockwater right holder to show cause before the Director why the stockwater right has not been lost through forfeiture pursuant to Idaho Code § 42-222(2).

5. IDWR assigned the following docket numbers to the petitions: P-OSC-2021-001, P-OSC-2021-002, P-OSC-2021-003, P-OSC-2021-004, and P-OSC-2022-001. I will refer to these IDWR dockets as 2021-1, 2021-2, 2021-3, 2021-4, and 2022-1. Copies of the petitions filed in these dockets are attached hereto as Exhibit 1 (2021-1), Exhibit 2 (2021-2), Exhibit 3 (2021-3), Exhibit 4 (2021-4), and Exhibit 5 (2022-1).

6. I directed IDWR staff to prepare memoranda regarding the stockwater rights identified in the petitions. Based on the information in the petitions and the staff memoranda, I determined that the petitions and other information contained “prima facie” evidence of forfeiture for some of the stockwater rights in question, but not for all of them. Consequently, I issued show-cause orders granting in part and denying in part the petitions filed in these IDWR dockets. Copies of these show-cause orders are attached hereto as Exhibit 6 (2021-1), Exhibit 7 (2021-2), Exhibit 8 (2021-3), Exhibit 9 (2021-4), and Exhibit 10 (2022-1).

7. After I issued the show-cause order in IDWR docket 2021-3, I was presented with a copy of a limited agency agreement between the United States Forest Service and Rex Baker (holder of an active Forest Service grazing permit for the Cow Creek Allotment) regarding the establishment and maintenance of the stockwater rights at issue in IDWR docket 2021-3. After reviewing this information, I issued an order withdrawing the show-cause order and dismissing the matter. A copy of this order is attached hereto as Exhibit 11.

8. After I issued the show-cause orders in IDWR dockets 2021-1, 2021-2, and 2021-4, I became aware that some of the water rights identified in those show-cause orders were based on federal law. I directed that the show-cause orders issued in these matters be amended to add these federal water rights to the list of water rights for which the petitions were denied in part. Deputy Director Mat Weaver signed the amended show-cause orders on my behalf because I was not available on the day the orders were finalized by staff, and I wanted the amended show-cause orders to be issued without further delay. Copies of the amended show-cause orders issued in IDWR dockets 2021-1, 2021-2, and 2021-4 are attached hereto as Exhibit 12 (2021-001), Exhibit 13 (2021-2), and Exhibit 14 (2021-4).

9. The show-cause orders are not determinations that any stockwater rights have been or actually will be forfeited. The orders are only determinations that the petitions and other available information contain “prime facie” evidence that some of the stockwater rights have been lost to forfeiture pursuant to Idaho Code § 42-222(2). Moreover, subsection (6) of Idaho Code § 42-224 authorizes the United

States to request an administrative hearing before the Director under IDWR's rules of procedure, and the show-cause orders notified the United States of this opportunity. The United States did submit requests for hearings via special appearances, but also requested that the hearings be stayed pending the outcome of this case. I issued orders granting the United States' requests and staying the hearings pending the outcome of this case or until otherwise ordered by the Director. Under IDWR's rules of procedure, the United States is entitled to request discovery and to present evidence and argument showing that the stockwater rights have not been forfeited, including evidence of agency relationships between the United States and its federal grazing permittees. Nothing in Idaho Code § 42-224 or the show-cause orders imposes any limitation on form or type of evidence the United States can offer for this purpose in an administrative hearing requested pursuant to subsection (6) of Idaho Code § 42-224.

10. The United States can also respond to the show-cause orders by submitting evidence to the Director of a principal/agent relationship between the United States and its grazing permittees. The United States did this in response to a previous show-cause order, which I withdrew on the basis of the evidence the United States submitted. Nothing in Idaho Code § 42-224 or the show-cause orders prohibits such a response or prohibits the Director from considering whatever evidence the United States might submit in such a response.

11. Under subsection (9) of Idaho Code § 42-224, any order the Director issues determining that a stockwater right has been forfeited "shall have no legal

effect” on the stockwater right. Subsection (11) of Idaho Code § 42-224 states that the only effect of such a determination by the Director is that it constitutes “prima facie” evidence of forfeiture in a civil action in the SRBA District Court. I interpret these subsections to establish that the Director lacks authority to issue an order that actually results in forfeiture of any stockwater rights in the pending administrative proceeding. This procedural framework is similar to the process employed in Idaho’s general water right adjudications, where the Director submits recommendations to the SRBA District Court as to whether claimed water rights should be decreed or disallowed, and those recommendations constitute “prima facie” evidence in the SRBA District Court.

12. As I understand Idaho Code § 42-224, it can apply to any state law-based stockwater right, regardless of who owns the right. Further, the United States is not the only holder of decreed stockwater rights that typically permits others to graze cattle on its lands, rather than grazing its own livestock on the land. For instance, the Idaho Department of Lands (“IDL”) also owns many stockwater rights but the lands IDL manages are often grazed by livestock that IDL does not own. There may also be private individuals or entities that own Idaho stockwater rights but rent or lease their lands for livestock grazing purposes.

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Pursuant to the provisions of 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

DATE: March 15th, 2023



GARY SPACKMAN

Director

Idaho Department of Water Resources

EXHIBIT 1

Declaration of Gary Spackman

DEPARTMENT OF
WATER RESOURCES

)

- Checking, moving, and salting livestock
- Checking water sources including springs, creeks, and stock ponds
- Spring and Fall checking and maintenance of gates and fences
- Springtime lambing and branding activities
- Fall inspections during hunting season
- Providing food and supplies to livestock herders

8. At no time over the past five years have Petitioners, their officers, employees, or agents witnessed, read about, or heard of the existence of livestock owned or controlled by the BLM or any other individual or entity on the Allotment either to graze or to use water under the Water Rights.

9. At no time in Petitioners' numerous and regular visits with agency staff from the BLM Four Rivers Field Office has BLM staff stated or suggested that BLM has placed livestock owned or controlled by BLM on the Allotment in the last five years.

10. At no time since Petitioner Soulen Grazing Association has been authorized to use the Allotment beginning in 2015, and at no time since Petitioner Soulen Livestock Co. and its predecessors-in-interest have been authorized to use the Allotment shortly after enactment of the Taylor Grazing Act in 1934 has either Petitioner, their members or their agents or employees ever witnessed, read about, or heard of the BLM applying the Water Rights to the beneficial use of watering livestock that the BLM owns or controls on the Allotment.

11. Petitioners are not now, nor have they ever been, an agent of the BLM for the purpose of acquiring water rights for the BLM on the Allotment.

12. The undersigned individual is authorized by each Petitioner to file this Petition on its behalf.

WHEREFORE, pursuant to Idaho Code Sec. 42-224, Petitioners petition the Director of the Idaho Department of Water Resources to expeditiously issue an order to the United States of America, acting through BLM, to show cause why the Water Rights should not be lost through forfeiture pursuant to Idaho Code Sec. 42-222(2).

STATE OF IDAHO)
County of Ada) : ss.

That Soulen Livestock Co. is a Petitioner herein, and that as the President thereof, I have read the foregoing instrument, know the contents thereof, and believe the contents thereof to be true and correct to the best of my knowledge.

Soulen Livestock Co.
an Idaho corporation

By: Harry C. Soulen
President, Soulen Livestock Co.

Subscribed and sworn to before me this 16th day of September, 2021.



Saura Babcock
Notary Public
Residing at: Meridian, Idaho
My Commission Expires: 6-1-26

STATE OF IDAHO__)
: ss.
County of Ada)

Harry C. Soulen, President of Soulen Livestock Company, the Manager of Soulen Grazing Association, LLC, being first duly sworn, deposes and says as follows:

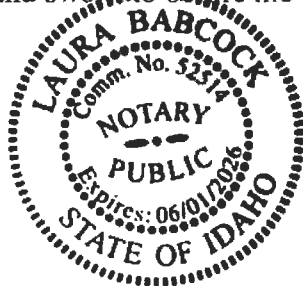
That Soulen Grazing Association, LLC is a Petitioner herein, and that as the President of Soulen Livestock Co. which is the Manager of Soulen Grazing Association, LLC, I have read the foregoing instrument, know the contents thereof, and believe the contents thereof to be true and correct to the best of my knowledge.

DATED this 16 day of Sept, 2021.

Soulen Grazing Association, LLC
an Idaho corporation

Harry C. Soulen
By: Harry C. Soulen,
President, Soulen Livestock Co. as
Manager, Soulen Grazing Association,
LLC

Subscribed and sworn to before me this 16th day of September, 2021.



Laura Babcock
Notary Public
Residing at: Meridian, Idaho
My Commission Expires: 6-1-26

17148832_v1

Exhibit 1

BasinNumber	SequenceNumber	SplitSuffix	OrganizationName	BLM Overlapping Water Rights
67	15213		SOULEN LIVESTOCK CO	67-12395
67	15214		SOULEN LIVESTOCK CO	67-12396
67	15215		SOULEN LIVESTOCK CO	67-12397
67	15216		SOULEN LIVESTOCK CO	67-12398
67	15217		SOULEN LIVESTOCK CO	67-12399
67	15218		SOULEN LIVESTOCK CO	67-12400
67	15219		SOULEN LIVESTOCK CO	67-12401
67	15220		SOULEN LIVESTOCK CO	67-12405
67	15221		SOULEN LIVESTOCK CO	67-12408
67	15222		SOULEN LIVESTOCK CO	67-12409
67	15223		SOULEN LIVESTOCK CO	67-12508
67	15224		SOULEN LIVESTOCK CO	67-12509
67	15225		SOULEN LIVESTOCK CO	67-12740
67	15226		SOULEN LIVESTOCK CO	67-12741
67	15227 A		SOULEN LIVESTOCK CO	67-12742
67	15227 B		SOULEN LIVESTOCK CO	67-12742
67	15228		SOULEN LIVESTOCK CO	67-12743
67	15229		SOULEN LIVESTOCK CO	67-12744
67	15230		SOULEN LIVESTOCK CO	67-12745
67	15231		SOULEN LIVESTOCK CO	67-12764
67	15232		SOULEN LIVESTOCK CO	67-12747
67	15233		SOULEN LIVESTOCK CO	67-12749
67	15234		SOULEN LIVESTOCK CO	67-12749
67	15235		SOULEN LIVESTOCK CO	67-12750
67	15236		SOULEN LIVESTOCK CO	67-12753
67	15237		SOULEN LIVESTOCK CO	67-12754
67	15238		SOULEN LIVESTOCK CO	67-13006
67	15239		SOULEN LIVESTOCK CO	67-13008
67	15240		SOULEN LIVESTOCK CO	67-13009
67	15241		SOULEN LIVESTOCK CO	67-13010
67	15242		SOULEN LIVESTOCK CO	67-13013
67	15243		SOULEN LIVESTOCK CO	67-13014
67	15244		SOULEN LIVESTOCK CO	67-13015
67	15245		SOULEN LIVESTOCK CO	67-13140
67	15246		SOULEN LIVESTOCK CO	67-12427
67	15247		SOULEN LIVESTOCK CO	67-12429
67	15248		SOULEN LIVESTOCK CO	67-12431
67	15249		SOULEN LIVESTOCK CO	67-12433
67	15250		SOULEN LIVESTOCK CO	67-12435
67	15251		SOULEN LIVESTOCK CO	67-12437
67	15252		SOULEN LIVESTOCK CO	67-12443
67	15253		SOULEN LIVESTOCK CO	67-12445
67	15254		SOULEN LIVESTOCK CO	67-12447

Exhibit 1

OPERATOR COPY

AUTH NUMBER: 1101236
DATE PRINTED: 2/3/2016Form 4130-2a
(February 1999)UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

GRAZING PERMIT

STATE ID
OFFICE LLIDB01000
AUTH NUMBER 1101236
PREFERENCE CODE 03
DATE PRINTED 02/03/2016
TERM 03/01/2016 TO 02/28/2026SOULEN GRAZING ASSOCIATION LLC
~~1760 PATRICK DR~~
WEISER ID 83672-1215 **861827**BUREAU OF LAND MANAGEMENT
FOUR RIVERS FIELD OFFICE
3948 DEVELOPMENT AVE
BOISE ID 83705-5339

THIS GRAZING PERMIT IS OFFERED TO YOU UNDER 43 CFR PART 4100 BASED ON YOUR RECOGNIZED QUALIFICATIONS. YOU ARE AUTHORIZED TO MAKE GRAZING USE OF LANDS, UNDER THE JURISDICTION OF THE BUREAU OF LAND MANAGEMENT AND COVERED BY THIS GRAZING PERMIT, UPON YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS GRAZING PERMIT AND PAYMENT OF GRAZING FEES WHEN DUE. CONTACT YOUR LOCAL BLM OFFICE AT 208-384-3300 IF YOU HAVE QUESTIONS.

MANDATORY TERMS AND CONDITIONS

ALLOTMENT	PASTURE	LIVESTOCK		GRAZING PERIOD		% PL TYPE USE	AUMS
		NUMBER	KIND	BEGIN	END		
00307 DRY LAKE		4000	SHEEP	02/27	02/28	100 ACTIVE	53
		4000	SHEEP	03/01	03/03	100 ACTIVE	79
00361 CRANE CREEK		3000	SHEEP	03/28	06/05	33 ACTIVE	456
		200	CATTLE	04/01	10/10	33 ACTIVE	419
00370 PADDOCK VALLEY		2000	SHEEP	03/28	04/15	30 ACTIVE	75
		3000	SHEEP	03/28	06/05	30 ACTIVE	414
		2000	SHEEP	05/02	06/20	30 ACTIVE	197
		230	CATTLE	04/01	04/30	30 ACTIVE	68
		900	CATTLE	04/01	06/20	30 ACTIVE	719
		365	CATTLE	04/01	10/10	30 ACTIVE	695
00059 MINNIE		1	SHEEP	05/15	06/14	100 ACTIVE	1

OTHER TERMS AND CONDITIONS:

THE ALLOTMENTS SHOWN ON THIS PERMIT SHALL MEET THE REQUIREMENTS AS DESCRIBED IN 43 CFR SUBPART 4180 --FUNDAMENTALS OF RANGELAND HEALTH AND THE STANDARDS AND GUIDELINES FOR GRAZING ADMINISTRATION. ANY CHANGES IN MANAGEMENT WILL BE BASED UPON THE RESOURCE EVALUATIONS AND ANALYSIS AS SCHEDULED AND COMPLETED BY THE AREA MANAGER.

GRAZING ON PUBLIC LAND RIPARIAN AREAS WILL BE MANAGED TO ATTAIN AND MAINTAIN PROPER FUNCTIONING CONDITION. THIS MANAGEMENT WILL INCLUDE LEAVING ADEQUATE PERENNIAL HERBACEOUS AND WOODY VEGETATION BY THE END OF THE GROWING SEASON TO PROTECT RIPARIAN AREAS FROM EROSION. MAINTAIN STREAMBANK INTEGRITY, PROVIDE FOR SEDIMENT CATCHMENT AND ALLOW FOR DIVERSITY IN VEGETATION STRUCTURE AND AGE CLASS.

TURN-OUT IS SUBJECT TO BOISE DISTRICT RANGE READINESS CRITERIA.

YOUR CERTIFIED ACTUAL USE REPORT IS DUE WITHIN 15 DAYS OF COMPLETING YOUR AUTHORIZED ANNUAL GRAZING USE.

SALT AND/OR SUPPLEMENT SHALL NOT BE PLACED WITHIN ONE QUARTER 1/4 MILE OF SPRINGS, STREAMS, MEADOWS, ASPEN STANDS, PLAYAS OR WATER DEVELOPMENTS.

CHANGES TO THE SCHEDULED USE REQUIRES PRIOR APPROVAL.

TRAILING ACTIVITIES MUST BE COORDINATED WITH THE BLM PRIOR TO INITIATION. A TRAILING PERMIT OR SIMILAR AUTHORIZATION MAY BE REQUIRED PRIOR TO CROSSING PUBLIC LANDS.

Exhibit 1

AUTH NUMBER: 1101236
DATE PRINTED: 2/3/2016

Standard Terms and Conditions

1. Grazing permit or lease terms and conditions and the fees charged for grazing use are established in accordance with the provisions of the grazing regulations now or hereafter approved by the Secretary of the Interior.
2. They are subject to cancellation, in whole or in part, at any time because of:
 - a. Noncompliance by the permittee/lessee with rules and regulations.
 - b. Loss of control by the permittee/lessee of all or a part of the property upon which it is based.
 - c. A transfer of grazing preference by the permittee/lessee to another party.
 - d. A decrease in the lands administered by the Bureau of Land Management within the allotment(s) described.
 - e. Repeated willful unauthorized grazing use.
 - f. Loss of qualifications to hold a permit or lease.
3. They are subject to the terms and conditions of allotment management plans if such plans have been prepared. Allotment management plans MUST be incorporated in permits or leases when completed.
4. Those holding permits or leases MUST own or control and be responsible for the management of livestock authorized to graze.
5. The authorized officer may require counting and/or additional or special marking or tagging of the livestock authorized to graze.
6. The permittee's/lessee's grazing case file is available for public inspection as required by the Freedom of Information Act.
7. Grazing permits or leases are subject to the nondiscrimination clauses set forth in Executive Order 11246 of September 24, 1964, as amended. A copy of this order may be obtained from the authorized officer.
8. Livestock grazing use that is different from that authorized by a permit or lease MUST be applied for prior to the grazing period and MUST be filed with and approved by the authorized officer before grazing use can be made.
9. Billing notices are issued which specify fees due. Billing notices, when paid, become a part of the grazing permit or lease. Grazing use cannot be authorized during any period of delinquency in the payment of amounts due, including settlement for unauthorized use.
10. The holder of this authorization must notify the authorized officer immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony (cultural items), stop the activity in the area of the discovery and make a reasonable effort to protect the remains and/or cultural items.
11. Grazing fee payments are due on the date specified on the billing notice and MUST be paid in full within 15 days of the due date, except as otherwise provided in the grazing permit or lease. If payment is not made within that time frame, a late fee (the greater of \$25 or 10 percent of the amount owed but not more than \$250) will be assessed.
12. No Member of, or Delegate to, Congress or Resident Commissioner, after his/her election of appointment, or either before or after he/she has qualified, and during his/her continuance in office, and no officer, agent, or employee of the Department of the Interior, other than members of Advisory committees appointed in accordance with the Federal Advisory Committee Act (5 U.S.C. App.1) and Sections 309 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) shall be admitted to any share or part in a permit or lease, or derive any benefit to arise therefrom; and the provision of Section 3741 Revised Statute (41 U.S.C. 22), 18 U.S.C. Sections 431-433, and 43 CFR Part 7, enter into and form a part of a grazing permit or lease, so far as the same may be applicable.

THIS GRAZING PERMIT:

1. CONVEYS NO RIGHT, TITLE OR INTEREST HELD BY THE UNITED STATES IN ANY LANDS OR RESOURCES

2. IS SUBJECT TO (A) MODIFICATION, SUSPENSION OR CANCELLATION AS REQUIRED BY LAND PLANS AND APPLICABLE LAW; (B) ANNUAL REVIEW AND MODIFICATION OF TERMS AND CONDITIONS AS APPROPRIATE; AND (C) THE TAYLOR GRAZING ACT, AS AMENDED, THE FEDERAL LAND POLICY AND MANAGEMENT ACT, AS AMENDED, THE PUBLIC RANGELANDS IMPROVEMENT ACT, AND THE RULES AND REGULATIONS NOW OR HEREAFTER PROMULGATED THEREUNDER BY THE SECRETARY OF THE INTERIOR.

ACCEPTED:
SIGNATURE OF PERMITTEE:

DATE:

2/3/2016

APPROVED
BLM AUTHORIZED OFFICER:

DATE:

03/04/2016

EXHIBIT 2

Declaration of Gary Spackman

RECEIVED
SEP 16 2021
DEPARTMENT OF
WATER RESOURCES

In the Matter of Certain Basin 65) **Verified Petition for Order to Show**
and Basin 67 Water Rights) **Cause**
)

Pursuant to Idaho Code Sec. 42-224(1), Soulen Livestock Co. and Soulen Grazing Association, LLC (jointly, “Petitioners”) hereby petition the Director of the Idaho Department of Water Resources (“IDWR”) to order the owner of water rights listed on Exhibit A as currently owned by the “BLM”, attached hereto, (collectively, “Water Rights”) to show cause why the Water Rights have not been lost through forfeiture pursuant to Idaho Code Sec. 42-222(2). As grounds for this Petition, Petitioners state as follows:

1. According to IDWR's records, the Water Rights are currently owned by the United States of America acting through the Department of the Interior, Bureau of Land Management ("BLM"). The Water Rights owned by the BLM correspond to the water rights owned by Petitioner Soulen Livestock Co., the managing member of Petitioner Soulen Grazing Association, LLC. See Exhibit A.

2. The Water Rights meet the requirements of Idaho Code Sec. 42-1401A(11) because the beneficial use of each water right is solely for stockwater in a quantity not to exceed 13,000 gallons per day.

3. Based upon Petitioners' knowledge of the Water Rights, including their sources, points of diversion, and places of use, as well as IDWR's records, the Water Rights' points of diversion or places of use are located on a federal grazing allotment known as the Paddock Valley Allotment (#370) and managed by the Four Rivers Field Office of the BLM.

4. Except for the water rights owned by Soulen Livestock Co., Exhibit A, there are no other water right decrees, licenses or permits known to have the same place of use or point of diversion.

5. Petitioner Soulen Grazing Association has held a valid permit from BLM to graze cattle and sheep on the Paddock Valley Allotment each of the last five years. A copy of this Permit No. 1101236 is attached as Exhibit B. Petitioner Soulen Grazing Association is the only permittee authorized by BLM to place livestock on the Allotment.

6. Petitioner Soulen Grazing Association has grazed its livestock on the Allotment in compliance with the permit for each year of the permit term.

7. As a permittee on the Paddock Valley Allotment, Petitioner Soulen Grazing Association's members and their officers, employees, or agents have regularly visited the

Exhibit 2

Allotment each grazing season of use and at other times outside the season of use each year for more than the past five years. These visits have included, but are not limited to:

- Checking, moving, and salting livestock
- Checking water sources including springs, creeks, and stock ponds
- Spring and Fall checking and maintenance of gates and fences
- Springtime lambing and branding activities
- Fall inspections during hunting season
- Providing food and supplies to livestock herders

8. At no time over the past five years have Petitioners, their officers, employees, or agents witnessed, read about, or heard of the existence of livestock owned or controlled by the BLM or any other individual or entity on the Allotment either to graze or to use water under the Water Rights.

9. At no time in Petitioners' numerous and regular visits with agency staff from the BLM Four Rivers Field Office has BLM staff stated or suggested that BLM has placed livestock owned or controlled by BLM on the Allotment in the last five years.

10. At no time since Petitioner Soulen Grazing Association has been authorized to use the Allotment beginning in 2015, and at no time since Petitioner Soulen Livestock Co. and its predecessors-in-interest have been authorized to use the Allotment shortly after enactment of the Taylor Grazing Act in 1934 has either Petitioner, their members or their agents or employees ever witnessed, read about, or heard of the BLM applying the Water Rights to the beneficial use of watering livestock that the BLM owns or controls on the Allotment.

11. Petitioners are not now, nor have they ever been, an agent of the BLM for the purpose of acquiring water rights for the BLM on the Allotment.

12. The undersigned individual is authorized by each Petitioner to file this Petition on its behalf.

WHEREFORE, pursuant to Idaho Code Sec. 42-224, Petitioners petition the Director of the Idaho Department of Water Resources to expeditiously issue an order to the United States of America, acting through BLM, to show cause why the Water Rights should not be lost through forfeiture pursuant to Idaho Code Sec. 42-222(2).

VERIFIED PETITION FOR ORDER TO SHOW CAUSE - 2

Exhibit 2

VERIFICATIONS

STATE OF IDAHO)
: ss.
County of Ada)

Harry C. Soulen, the President of Soulen Livestock Co., being first duly sworn, deposes and says as follows:

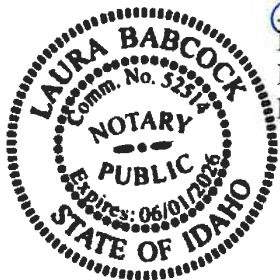
That Soulen Livestock Co. is a Petitioner herein, and that as the President thereof, I have read the foregoing instrument, know the contents thereof, and believe the contents thereof to be true and correct to the best of my knowledge.

DATED this 16 day of Sept, 2021.

Soulen Livestock Co.
an Idaho corporation

Harry C. Soulen
By: Harry C. Soulen
President, Soulen Livestock Co.

Subscribed and sworn to before me this 16th day of September 2021.



Laura Babcock
Notary Public
Residing at: Meridian, Idaho
My Commission Expires: 6-1-26

VERIFIED PETITION FOR ORDER TO SHOW CAUSE - 3

Exhibit 2

STATE OF IDAHO__)
 : ss.
 County of Ada)

Harry C. Soulen, President of Soulen Livestock Company, the Manager of Soulen Grazing Association, LLC, being first duly sworn, deposes and says as follows:

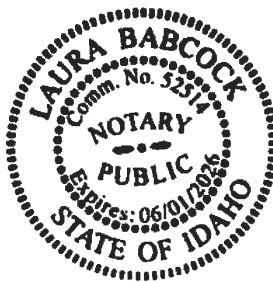
That Soulen Grazing Association, LLC is a Petitioner herein, and that as the President of Soulen Livestock Co. which is the Manager of Soulen Grazing Association, LLC, I have read the foregoing instrument, know the contents thereof, and believe the contents thereof to be true and correct to the best of my knowledge.

DATED this 16 day of Sept., 2021.

Soulen Grazing Association, LLC
 an Idaho corporation

Harry C. Soulen
 By: Harry C. Soulen,
 President, Soulen Livestock Co. as
 Manager, Soulen Grazing Association,
 LLC

Subscribed and sworn to before me this 16th day of September, 2021.



Laura Babcock
 Notary Public
 Residing at: Meridian, Idaho
 My Commission Expires: 6-1-26

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VERIFIED PETITION FOR ORDER TO SHOW CAUSE - 4

Exhibit 2

Basin	Sequence	Suffix	Current Owner		Basin	Sequence	Suffix	Current Owner
65	23868		SOULEN LIVESTOCK CO	Corresponds to	65	19685		BLM
65	23869		SOULEN LIVESTOCK CO	Corresponds to	65	19750		BLM
65	23870		SOULEN LIVESTOCK CO	Corresponds to	65	19812		BLM
65	23871		SOULEN LIVESTOCK CO	Corresponds to	65	19814		BLM
65	23872		SOULEN LIVESTOCK CO	Corresponds to	65	19816		BLM
65	23873		SOULEN LIVESTOCK CO	Corresponds to	65	19818		BLM
65	23874		SOULEN LIVESTOCK CO	Corresponds to	65	19820		BLM
65	23875		SOULEN LIVESTOCK CO	Corresponds to	65	19822		BLM
65	23876		SOULEN LIVESTOCK CO	Corresponds to	65	19824		BLM
65	23877		SOULEN LIVESTOCK CO	Corresponds to	65	19894		BLM
65	23878		SOULEN LIVESTOCK CO	Corresponds to	65	19897		BLM
65	23879		SOULEN LIVESTOCK CO	Corresponds to	65	20003		BLM
65	23881		SOULEN LIVESTOCK CO	Corresponds to	65	20010		BLM
65	23882		SOULEN LIVESTOCK CO	Corresponds to	65	20011		BLM
65	23883		SOULEN LIVESTOCK CO	Corresponds to	65	20012		BLM
65	23884		SOULEN LIVESTOCK CO	Corresponds to	65	20015		BLM
65	23885		SOULEN LIVESTOCK CO	Corresponds to	65	20055		BLM
65	23886		SOULEN LIVESTOCK CO	Corresponds to	65	20057		BLM
65	23887		SOULEN LIVESTOCK CO	Corresponds to	65	20059		BLM
65	23888		SOULEN LIVESTOCK CO	Corresponds to	65	20061		BLM
65	23889		SOULEN LIVESTOCK CO	Corresponds to	65	20063		BLM
65	23890		SOULEN LIVESTOCK CO	Corresponds to	65	20065		BLM
65	23891		SOULEN LIVESTOCK CO	Corresponds to	65	20067		BLM
65	23892		SOULEN LIVESTOCK CO	Corresponds to	65	20069		BLM
65	23893		SOULEN LIVESTOCK CO	Corresponds to	65	20071		BLM
65	23894		SOULEN LIVESTOCK CO	Corresponds to	65	20370		BLM
65	23895		SOULEN LIVESTOCK CO	Corresponds to	65	20388		BLM
65	23896		SOULEN LIVESTOCK CO	Corresponds to	65	20390		BLM
65	23897		SOULEN LIVESTOCK CO	Corresponds to	65	20464		BLM
65	23898		SOULEN LIVESTOCK CO	Corresponds to	65	20468		BLM
65	23899		SOULEN LIVESTOCK CO	Corresponds to	65	20469		BLM
65	23900		SOULEN LIVESTOCK CO	Corresponds to	65	20471		BLM
65	23901		SOULEN LIVESTOCK CO	Corresponds to	65	20472		BLM
65	23902		SOULEN LIVESTOCK CO	Corresponds to	65	20475		BLM
65	23903		SOULEN LIVESTOCK CO	Corresponds to	65	20476		BLM
65	23904		SOULEN LIVESTOCK CO	Corresponds to	65	20477		BLM
65	23905		SOULEN LIVESTOCK CO	Corresponds to	65	20478		BLM
65	23906		SOULEN LIVESTOCK CO	Corresponds to	65	20479		BLM
65	23907		SOULEN LIVESTOCK CO	Corresponds to	65	20480		BLM
65	23908		SOULEN LIVESTOCK CO	Corresponds to	65	20484		BLM
65	23909		SOULEN LIVESTOCK CO	Corresponds to	65	20486		BLM
65	23910		SOULEN LIVESTOCK CO	Corresponds to	65	20487		BLM
65	23911		SOULEN LIVESTOCK CO	Corresponds to	65	20488		BLM
65	23912		SOULEN LIVESTOCK CO	Corresponds to	65	20489		BLM
65	23913		SOULEN LIVESTOCK CO	Corresponds to	65	20597		BLM
67	15339		SOULEN LIVESTOCK CO	Corresponds to	67	12386		BLM
67	15340		SOULEN LIVESTOCK CO	Corresponds to	67	12751		BLM
67	15341		SOULEN LIVESTOCK CO	Corresponds to	67	12752		BLM
67	15342		SOULEN LIVESTOCK CO	Corresponds to	67	12775		BLM
67	15343		SOULEN LIVESTOCK CO	Corresponds to	67	12776		BLM
67	15344		SOULEN LIVESTOCK CO	Corresponds to	67	12777		BLM
67	15345		SOULEN LIVESTOCK CO	Corresponds to	67	12809		BLM
67	15346		SOULEN LIVESTOCK CO	Corresponds to	67	12810		BLM
67	15347	A	SOULEN LIVESTOCK CO	Corresponds to	67	12841		BLM
67	15347	B	SOULEN LIVESTOCK CO	Corresponds to	67	12841		BLM
67	15348		SOULEN LIVESTOCK CO	Corresponds to	67	12900		BLM
67	15349		SOULEN LIVESTOCK CO	Corresponds to	67	12999		BLM
67	15350		SOULEN LIVESTOCK CO	Corresponds to	67	13085		BLM
67	15351		SOULEN LIVESTOCK CO	Corresponds to	67	13086		BLM
67	15352		SOULEN LIVESTOCK CO	Corresponds to	67	13141		BLM
67	15353		SOULEN LIVESTOCK CO	Corresponds to	67	13142		BLM
67	15354		SOULEN LIVESTOCK CO	Corresponds to	67	13147		BLM
67	15355		SOULEN LIVESTOCK CO	Corresponds to	67	13148		BLM

Exhibit A

Exhibit 2

OPERATOR COPY

AUTH NUMBER: 1101236
DATE PRINTED: 2/3/2016Form 4130-2a
(February 1999)UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

GRAZING PERMIT

STATE ID
OFFICE LLIDB01000
AUTH NUMBER 1101236
PREFERENCE CODE 03
DATE PRINTED 02/03/2016
TERM 03/01/2016 TO 02/28/2026SOULEN GRAZING ASSOCIATION LLC
1760 PATRIMONT DR
WEISER ID 83672-1215 B6X827BUREAU OF LAND MANAGEMENT
FOUR RIVERS FIELD OFFICE
3948 DEVELOPMENT AVE
BOISE ID 83705-5339

THIS GRAZING PERMIT IS OFFERED TO YOU UNDER 43 CFR PART 4100 BASED ON YOUR RECOGNIZED QUALIFICATIONS. YOU ARE AUTHORIZED TO MAKE GRAZING USE OF LANDS, UNDER THE JURISDICTION OF THE BUREAU OF LAND MANAGEMENT AND COVERED BY THIS GRAZING PERMIT, UPON YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS GRAZING PERMIT AND PAYMENT OF GRAZING FEES WHEN DUE. CONTACT YOUR LOCAL BLM OFFICE AT 208-384-3300 IF YOU HAVE QUESTIONS.

MANDATORY TERMS AND CONDITIONS

ALLOTMENT	PASTURE	LIVESTOCK		GRAZING PERIOD		% PL TYPE USE	AUMS
		NUMBER	KIND	BEGIN	END		
00307 DRY LAKE		4000	SHEEP	02/27	02/28	100 ACTIVE	53
		4000	SHEEP	03/01	03/03	100 ACTIVE	79
00361 CRANE CREEK		3000	SHEEP	03/28	06/05	33 ACTIVE	456
		200	CATTLE	04/01	10/10	33 ACTIVE	419
00370 PADDOCK VALLEY		2000	SHEEP	03/28	04/15	30 ACTIVE	75
		3000	SHEEP	03/28	06/05	30 ACTIVE	414
		2000	SHEEP	05/02	06/20	30 ACTIVE	197
		230	CATTLE	04/01	04/30	30 ACTIVE	68
		900	CATTLE	04/01	06/20	30 ACTIVE	719
		365	CATTLE	04/01	10/10	30 ACTIVE	695
00059 MINNIE		1	SHEEP	05/15	06/14	100 ACTIVE	1

OTHER TERMS AND CONDITIONS:

THE ALLOTMENTS SHOWN ON THIS PERMIT SHALL MEET THE REQUIREMENTS AS DESCRIBED IN 43 CFR SUBPART 4180 --FUNDAMENTALS OF RANGELAND HEALTH AND THE STANDARDS AND GUIDELINES FOR GRAZING ADMINISTRATION. ANY CHANGES IN MANAGEMENT WILL BE BASED UPON THE RESOURCE EVALUATIONS AND ANALYSIS AS SCHEDULED AND COMPLETED BY THE AREA MANAGER.

GRAZING ON PUBLIC LAND RIPARIAN AREAS WILL BE MANAGED TO ATTAIN AND MAINTAIN PROPER FUNCTIONING CONDITION. THIS MANAGEMENT WILL INCLUDE LEAVING ADEQUATE PERENNIAL HERBACEOUS AND WOODY VEGETATION BY THE END OF THE GROWING SEASON TO PROTECT RIPARIAN AREAS FROM EROSION, MAINTAIN STREAMBANK INTEGRITY, PROVIDE FOR SEDIMENT CATCHMENT AND ALLOW FOR DIVERSITY IN VEGETATION STRUCTURE AND AGE CLASS.

TURN-OUT IS SUBJECT TO BOISE DISTRICT RANGE READINESS CRITERIA.

YOUR CERTIFIED ACTUAL USE REPORT IS DUE WITHIN 15 DAYS OF COMPLETING YOUR AUTHORIZED ANNUAL GRAZING USE.

SALT AND/OR SUPPLEMENT SHALL NOT BE PLACED WITHIN ONE QUARTER 1/4 MILE OF SPRINGS, STREAMS, MEADOWS, ASPEN STANDS, PLAYAS OR WATER DEVELOPMENTS.

CHANGES TO THE SCHEDULED USE REQUIRES PRIOR APPROVAL.

TRAILING ACTIVITIES MUST BE COORDINATED WITH THE BLM PRIOR TO INITIATION. A TRAILING PERMIT OR SIMILAR AUTHORIZATION MAY BE REQUIRED PRIOR TO CROSSING PUBLIC LANDS.

Exhibit 2

AUTH NUMBER: 1101286
DATE PRINTED: 2/3/2016

Standard Terms and Conditions

1. Grazing permit or lease terms and conditions and the fees charged for grazing use are established in accordance with the provisions of the grazing regulations now or hereafter approved by the Secretary of the Interior.
2. They are subject to cancellation, in whole or in part, at any time because of:
 - a. Noncompliance by the permittee/lessee with rules and regulations.
 - b. Loss of control by the permittee/lessee of all or a part of the property upon which it is based.
 - c. A transfer of grazing preference by the permittee/lessee to another party.
 - d. A decrease in the lands administered by the Bureau of Land Management within the allotment(s) described.
 - e. Repeated willful unauthorized grazing use.
 - f. Loss of qualifications to hold a permit or lease.
3. They are subject to the terms and conditions of allotment management plans if such plans have been prepared. Allotment management plans MUST be incorporated in permits or leases when completed.
4. Those holding permits or leases MUST own or control and be responsible for the management of livestock authorized to graze.
5. The authorized officer may require counting and/or additional or special marking or tagging of the livestock authorized to graze.
6. The permittee's/lessee's grazing case file is available for public inspection as required by the Freedom of Information Act.
7. Grazing permits or leases are subject to the nondiscrimination clauses set forth in Executive Order 11246 of September 24, 1964, as amended. A copy of this order may be obtained from the authorized officer.
8. Livestock grazing use that is different from that authorized by a permit or lease MUST be applied for prior to the grazing period and MUST be filed with and approved by the authorized officer before grazing use can be made.
9. Billing notices are issued which specify fees due. Billing notices, when paid, become a part of the grazing permit or lease. Grazing use cannot be authorized during any period of delinquency in the payment of amounts due, including settlement for unauthorized use.
10. The holder of this authorization must notify the authorized officer immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony (cultural items), stop the activity in the area of the discovery and make a reasonable effort to protect the remains and/or cultural items.
11. Grazing fee payments are due on the date specified on the billing notice and MUST be paid in full within 15 days of the due date, except as otherwise provided in the grazing permit or lease. If payment is not made within that time frame, a late fee (the greater of \$25 or 10 percent of the amount owed but not more than \$250) will be assessed.
12. No Member of, or Delegate to, Congress or Resident Commissioner, after his/her election of appointment, or either before or after he/she has qualified, and during his/her continuance in office, and no officer, agent, or employee of the Department of the Interior, other than members of Advisory committees appointed in accordance with the Federal Advisory Committee Act (5 U.S.C. App.1) and Sections 309 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) shall be admitted to any share or part in a permit or lease, or derive any benefit to arise therefrom; and the provision of Section 3741 Revised Statute (41 U.S.C. 22), 18 U.S.C. Sections 431-433, and 43 CFR Part 7, enter into and form a part of a grazing permit or lease, so far as the same may be applicable.

THIS GRAZING PERMIT:

1. CONVEYS NO RIGHT, TITLE OR INTEREST HELD BY THE UNITED STATES IN ANY LANDS OR RESOURCES

2. IS SUBJECT TO (A) MODIFICATION, SUSPENSION OR CANCELLATION AS REQUIRED BY LAND PLANS AND APPLICABLE LAW; (B) ANNUAL REVIEW AND MODIFICATION OF TERMS AND CONDITIONS AS APPROPRIATE; AND (C) THE TAYLOR GRAZING ACT, AS AMENDED, THE FEDERAL LAND POLICY AND MANAGEMENT ACT, AS AMENDED, THE PUBLIC RANGELANDS IMPROVEMENT ACT, AND THE RULES AND REGULATIONS NOW OR HEREAFTER PROMULGATED THEREUNDER BY THE SECRETARY OF THE INTERIOR.

ACCEPTED:
SIGNATURE OF PERMITTEE:

Harry C. Spokes

DATE: 2/3/2016

APPROVED
BLM AUTHORIZED OFFICER:

[Signature]

DATE: 03/04/2016

EXHIBIT 3

Declaration of Gary Spackman

Exhibit 3

RECEIVED

SEP 24 2021

DEPARTMENT OF
WATER RESOURCES

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Certain Basin 79)	Verified Petition for Order to Show
Water Rights)	Cause
)	

Pursuant to Idaho Code Sec. 42-224(1), Gill Family Ranches, LLC ("Petitioner") hereby petitions the Director of the Idaho Department of Water Resources ("IDWR") to order the owner of water rights listed on Exhibit A, attached hereto, (collectively, "Water Rights") to show cause why the Water Rights have not been lost through forfeiture pursuant to Idaho Code Sec. 42-222(2). As grounds for this Petition, Petitioner states as follows:

1. According to IDWR's records, the Water Rights are currently owned by the United States of America acting through the United States Forest Service, Exhibit A.
2. The Water Rights meets the requirements of Idaho Code Sec. 42-1401A(11) because the beneficial use is solely for stockwater in a quantity not to exceed 13,000 gallons per day.
3. Based upon Petitioner's knowledge of the Water Rights, including their sources, points of diversion, places of use, as well as IDWR's records, the Water Rights' points of diversion or places of use are on a federal grazing allotment known as the Cow Creek Allotment and managed by the Nez Perce National Forest.
4. There are no other water right decrees, licenses or permits known to have the same place of use, source, and point of diversion.
5. Petitioner has held a valid permit from the Forest Service to graze cattle on the Cow Creek Allotment each of the last five years. A copy of this Permit No. 01045 spanning the last five years is attached as Exhibit B. Petitioner is authorized to by the Forest Service to place livestock on the Allotment.
6. Petitioner has grazed its livestock on the Allotment in compliance with the permit for each year of the permit term.
7. As the permittee on the Cow Creek Allotment, Petitioner's employees, officers, and family of its officers and employees have regularly visited the Allotment, which borders Petitioner's private property, each grazing season of use and at other times outside the season of use each year for more than the past five years. Yearly documentation shows Petitioner's presence on some part of the Cow Creek Allotment over 75% of the permitted days use over the last five years. These visits have included, but are not limited to:

- tending and herding cattle

VERIFIED PETITION FOR ORDER TO SHOW CAUSE - 1

Exhibit 3

- monitoring grazing conditions and use
- fixing and maintaining allotment fences
- salting the cattle
- cutting and monitoring trails
- checking and maintaining water sources
- checking fire danger
- dealing with other public lands users

8. At no time over the past five years has Petitioner, its officers, employees, their families, or agents, witnessed or heard of the existence of livestock owned or controlled by the Forest Service on the Allotment either to graze or to use water under the Water Rights.

9. At no time in Petitioner's numerous and regular visits with Forest Service staff from the Slate Creek Ranger District of the Nez Perce National Forest has staff stated or suggested that the Forest Service has placed livestock owned or controlled by Forest Service on the Allotment in the last five years.

10. At no time since Petitioner's family use of the area since the early 1900s has Petitioner ever witnessed or heard of the Forest Service applying the Water Rights to the beneficial use of watering livestock the Forest Service owns or controls on the Allotment.

11. Petitioner is not now, nor has it ever been, an agent of the Forest Service for the purpose of acquiring water rights for the Forest Service on the Allotment.

12. The undersigned individual is the Manager and registered agent of Petitioner and is authorized by Petitioner to file this Petition on its behalf.

WHEREFORE, pursuant to Idaho Code Sec. 42-224, Gill Family Ranches, LLC petitions the Director of the Idaho Department of Water Resources to expeditiously issue an order to the United States of America, acting through the United States Forest Service, to show cause why the Water Rights should not be lost through forfeiture pursuant to Idaho Code Sec. 42-222(2).

VERIFIED PETITION FOR ORDER TO SHOW CAUSE - 2

Exhibit 3

VERIFICATION

STATE OF IDAHO)
County of Layette : ss.

Marty I. Gill, the Manager of Gill Family Ranches, LLC, being first duly sworn, deposes and says as follows:

That Gill Family Ranches, LLC is the Petitioner herein, and that as the Manager thereof, I have read the foregoing instrument, know the contents thereof, and believe the contents thereof to be true and correct to the best of my knowledge.

DATED this 21 day of Sept., 2021.

Gill Family Ranches, LLC
an Idaho corporation

Marty I. Gill
By: Marty I. Gill
Manager
Gill Family Ranches, LLC

Subscribed and sworn to before me this 21 day of September, 2021.

SAMANTHA HERRERA
COMM. #20191984
NOTARY PUBLIC
STATE OF IDAHO

[Signature]
Notary Public
Residing at: Fruitland, ID
My Commission Expires: 9-26-25

VERIFIED PETITION FOR ORDER TO SHOW CAUSE - 3

Exhibit 3

Basin	Sequence	Process	Basis	Status	Draft	RightID	Priority Date	Diversion Rate	Source List	Tributary List	Water Use List	Current Owner	Water District	Admin by WD
79	4134	Water Right	Decreed	Active	N	414284	5/1/1887	0.020	SPRING	SINKS	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4138	Water Right	Decreed	Active	N	414285	5/1/1880	0.020	SPRING	SINKS	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4139	Water Right	Decreed	Active	N	414286	5/1/1887	0.020	SPRING	CORRAL CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4149	Water Right	Decreed	Active	N	414294	5/1/1887	0.020	DAVIS SPRING	SINKS	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4165	Water Right	Decreed	Active	N	414306	5/1/1887	0.020	SPRING	KIRKWOOD CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4212	Water Right	Decreed	Active	N	414341	5/1/1887	0.020	SPRING	CLARKS FORK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4234	Water Right	Decreed	Active	N	414352	5/1/1902	0.020	SPRING	SINKS	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4235	Water Right	Decreed	Active	N	414353	5/1/1902	0.020	SPRING	CLARKS FORK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4238	Water Right	Decreed	Active	N	414354	5/1/1902	0.020	SPRING	CLARKS FORK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4237	Water Right	Decreed	Active	N	414355	5/1/1902	0.020	SPRING	CLARKS FORK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4238	Water Right	Decreed	Active	N	414356	5/1/1902	0.020	SPRING	SINKS	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4239	Water Right	Decreed	Active	N	414357	5/1/1902	0.020	SPRING	SINKS	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4240	Water Right	Decreed	Active	N	414358	5/1/1902	0.020	SPRING	SINKS	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4324	Water Right	Decreed	Active	N	414399	5/1/1880	0.020	SPRING	COW CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4325	Water Right	Decreed	Active	N	414400	5/1/1880	0.020	BUCKHORN SPRING	COW CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4327	Water Right	Decreed	Active	N	414401	5/1/1880	0.020	SPRING	SINKS	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4328	Water Right	Decreed	Active	N	414402	5/1/1880	0.020	SPRING	ELFERS CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4329	Water Right	Decreed	Active	N	414403	5/1/1880	0.020	SPRING	SINKS	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4330	Water Right	Decreed	Active	N	414404	5/1/1880	0.020	SPRING	SINKS	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4333	Water Right	Decreed	Active	N	414405	5/1/1880	0.020	SPRING	GRAVE CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4334	Water Right	Decreed	Active	N	414407	5/1/1880	0.020	SPRING	KESSLER CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4335	Water Right	Decreed	Active	N	414408	5/1/1880	0.020	KESSLER CREEK SPRING	KESSLER CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4336	Water Right	Decreed	Active	N	414409	5/1/1880	0.020	SPRING	KESSLER CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4337	Water Right	Decreed	Active	N	414410	5/1/1880	0.020	SPRING	SINKS	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4338	Water Right	Decreed	Active	N	414411	5/1/1880	0.020	HORNER SPRINGS	LITTLE CHINA CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4339	Water Right	Decreed	Active	N	414412	5/1/1880	0.020	SPRING	LITTLE CHINA CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4340	Water Right	Decreed	Active	N	414413	5/1/1880	0.020	FISH DAM SPRING	CHINA CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4341	Water Right	Decreed	Active	N	414414	5/1/1880	0.020	THOMAS SPRING	CHINA CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4342	Water Right	Decreed	Active	N	414415	5/1/1880	0.020	SPRING	COW CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	4343	Water Right	Decreed	Active	N	414416	5/1/1880	0.020	SPRING	SINKS	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10505	Water Right	Decreed	Active	N	414479	5/1/1880	0.020	LITTLE CHINA CREEK	CHINA CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10506	Water Right	Decreed	Active	N	414480	5/1/1880	0.020	CHINA CREEK	SALMON RIVER	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10507	Water Right	Decreed	Active	N	414481	5/1/1880	0.020	COW CREEK	SALMON RIVER	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10508	Water Right	Decreed	Active	N	414482	5/1/1880	0.020	CABIN CREEK	COW CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10509	Water Right	Decreed	Active	N	414483	5/1/1880	0.020	SOUTH FORK COW CREEK	COW CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10510	Water Right	Decreed	Active	N	414484	5/1/1880	0.020	SPRING	KESSLER CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10511	Water Right	Decreed	Active	N	414485	5/1/1880	0.020	KESSLER CREEK	RACE CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10512	Water Right	Decreed	Active	N	414486	5/1/1880	0.020	GRAVE CREEK	RACE CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10513	Water Right	Decreed	Active	N	414487	5/1/1880	0.020	REMOTE SPRING	RACE CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10514	Water Right	Decreed	Active	N	414488	5/1/1880	0.020	WEST FORK RACE CREEK	RACE CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10515	Water Right	Decreed	Active	N	414489	5/1/1880	0.020	BEAN CREEK	RACE CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10519	Water Right	Decreed	Active	N	414493	5/1/1880	0.020	ELFERS CREEK	SALMON RIVER	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10559	Water Right	Decreed	Active	N	414524	5/1/1887	0.020	CORRAL CREEK	SNAKE RIVER	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10588	Water Right	Decreed	Active	N	414526	5/1/1887	0.020	SPRING	KIRKWOOD CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10572	Water Right	Decreed	Active	N	414529	5/1/1887	0.020	KIRKWOOD CREEK	SNAKE RIVER	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10573	Water Right	Decreed	Active	N	414530	5/1/1887	0.020	LOST VALLEY CREEK	KIRKWOOD CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10611	Water Right	Decreed	Active	N	414535	5/1/1902	0.020	CLARKS FORK	SHEEP CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10612	Water Right	Decreed	Active	N	414536	5/1/1902	0.020	MIDDLE FORK CLARKS FORK	CLARKS FORK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10720	Water Right	Decreed	Active	N	414591	5/1/1880	0.020	SPRING	SINKS	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	10722	Water Right	Decreed	Active	N	414592	5/1/1880	0.020	CHINA SPRING	LITTLE CHINA CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	13647	Water Right	Decreed	Active	N	414616	5/1/1887	0.020	SPRING	KIRKWOOD CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	13658	Water Right	Decreed	Active	N	414638	5/1/1895	0.020	SOUTH FORK RACE CREEK	RACE CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	13664	Water Right	Decreed	Active	N	414650	5/1/1887	0.020	SPRING	GRAVE CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No
79	13679	Water Right	Decreed	Active	N	414658	5/1/1887	0.020	SPRING	KIRKWOOD CREEK	STOCKWATER	USA acting through USDA Forest Service	NWD - No Water District	No

Exhibit A

Exhibit 3

USDA-Forest Service

FS-2200-10 (v 06-2013)

TERM GRAZING PERMIT - Parts 1 and 2

(Reference FSM 2230)

Page 1 of 9

Permittee: 604923010602

Permit Number: 01045

PART 1

GILL FAMILY RANCHES, LLC of 188 GILL RANCH ROAD, PO BOX 386, LUCILE, ID 83542 hereinafter called the permittee is hereby authorized to graze livestock owned by the permittee upon designated lands and is administered by the Forest Service within the Nez Perce-Clearwater National Forest.

1. Description of range. The livestock shall be grazed only upon the area described as follows: described on attached page and/or delineated on the attached maps, dated 05/01/2015, which is part of this permit (Strike out item or items not applicable).

2. The number, kind, and class of livestock, period of use, and grazing allotment on which the livestock are permitted to graze are as follows, unless modified by the Forest Service in the Bill for Collection:

LIVESTOCK			PERIOD OF USE		GRAZING ALLOTMENT
Number	Kind	Class	From	To	
10	CATTLE	MATURE COW W/NURSING CALF	12/2	3/31	COW CREEK
10	CATTLE	MATURE COW W/NURSING CALF	4/1	5/31	COW CREEK
558	CATTLE	MATURE COW W/NURSING CALF	6/1	12/1	COW CREEK
10	HORSE	HORSE OR MULE	6/1	12/1	COW CREEK

3. It is fully understood and agreed that this permit may be suspended or cancelled, in whole or in part, after written notice, for failure to comply with any of the terms and conditions specified in Parts 1, 2, and 3 hereof, or any of the regulations of the Secretary of Agriculture on which this permit is based, or the instructions of the Forest officers issued thereunder; or for knowledge and willingly making a false statement or representation in the permittees grazing application, and amendments thereto; or for conviction for failure to comply with Federal laws or regulations or State and local laws relating to livestock control and to protection of air, water, soils and vegetation, fish and wildlife, and other environment values when exercising the grazing use authorized by the permit. This permit can also be cancelled, in whole or in part, or otherwise modified, at any time during the term to conform with the needed changes brought about by law, regulation, Executive order, allotment management plans, land management planning; numbers permitted or seasons of use necessary because of resource conditions, or the lands described otherwise being unavailable for grazing. Any suspension or cancellation action may be appealed pursuant to 36 CFR 214.

4. This permit supersedes permit no. 01033, issued on 05/19/2009, to Gill, Melvin C. and Margaret L.

I have reviewed and accepted the terms of this permit.

Signature of Permittee or His Authorized Agent		Date	
<i>O. Michelle Neal, manager</i>		4/29/2015	
Signature of Forest Officer	Name (Print)	Title	Date
<i>Jeff Shinn</i>	JEFF SHINN	DISTRICT RANGER	4/29/15

Exhibit B

Exhibit 3

USDA-Forest Service

PART 2 - GENERAL TERMS AND CONDITIONS

FS-2200-10 (v 06-2013)

1. Validation of Permit. The issuance of a Bill for Collection, payment of fees and actual turning on at least 90 percent of livestock the first grazing season after the permit is issued will validate this permit for the number, kind, and class of livestock, grazing allotment, and period of use for the particular year.

2. Bill for Collection. Each year, after validation and prior to the beginning of the grazing season, the Forest Service will send the permittee a Bill for Collection specifying for the current year the kind, number, and class of livestock allowed to graze, the period of use, the grazing allotment, and the grazing fees. This bill, when paid, authorizes use for that year and becomes part of this permit.

3. Payment of Fees. The permittee will not allow owned or controlled livestock to be on Forest Service-administered lands unless the fees specified in the Bill for Collection are paid.

4. Administrative Offset and Credit Reporting. Pursuant to 31 USC 3716 and CFR Part 3, Subpart B, any monies that are payable or may become payable from the United States, under this permit, to any person or legal entity not an agency or subdivision of a State or local government may be subject to administrative offset for the collection of a delinquent debt the person or legal entity owes to the United States. Information on the person's or legal entity's responsibility for a commercial debt or delinquent consumer debt owned the United States shall be disclosed to consumer or credit reporting agencies.

5. Interest, Penalty, and Administrative Costs. Pursuant to 31 USC 3717 and 7 CFR Part 3, Subpart B, interest shall be charged on any payment or fee amount not paid within 30 days from the date the payment was due. Interest shall be charged using the most current rate prescribed by the United States Department of the Treasury Fiscal Requirements Manual (TFRM-6-8020.20). Interest shall accrue from the date the payment was due. In addition, in the event the account becomes delinquent, administrative costs may be assessed. A penalty of 6 percent per year shall be assessed on any payment or fee amount overdue in excess of 90 days from the date the first billing was due. Payments will be credited on the date received by the designated collection officer or deposit location. If the due date(s) for any of the above payments falls on a non-workday, the charges shall not apply until the close of business on the next workday.

6. Term of Permit. This permit is effective until 12/31/2024, unless waived, cancelled, or otherwise terminated as provided herein. The permittee has first priority for receipt of a new permit at the end of the term subject to modification deemed necessary by the Forest Service.

In order to update terms and conditions, this permit may be cancelled at any time provided a new permit is issued to the existing permit holder for a new term of 10 years following this update.

7. Ownership Requirement

(a) Only livestock owned by the permittee are authorized to graze under this permit. To exercise use of the permit, the permittee will furnish all evidence of ownership requested by the Forest Service. Livestock purchased and subsequently sold back to the original owner, or to an agent, assignee, or anyone representing or acting in concert with the original owner, within a 24-month period without prior written approval by the Forest officer in charge will not be considered valid ownership of the livestock.

(b) Base property owned and used by the permittee to qualify for a term grazing permit must meet minimum base property requirements approved by the officer in charge.

8. Range and Livestock Management

(a) The allotment management plan for the land described on page 1, Part 1 is part of the permit, and the permittee will carry out its provisions, other instructions, or both as issued by the Forest officer in charge for the area under permit and will require employees, agents, and contractors and subcontractors do likewise.

(b) The number, kind, and class of livestock, period of use, and grazing allotment specified in the permit may be modified when determined by the Forest Officer in charge to be needed for resource protection. Except in extreme emergencies where resource conditions are being seriously affected by livestock use or other factors, such as fire, drought, or insect damage, notice of a scheduled reduction of numbers of livestock or period of use under a term permit will be given one (1) full year before a modification in permitted numbers or period of use becomes effective. This does not apply to annual adjustment in grazing as provided for in Section 8(c).

(c) When, in the judgment of the Forest Officer in charge, the forage is not ready to be grazed at the beginning of the designated grazing season, the permittee, upon request of the Forest Officer, will defer placing livestock on the grazing allotment to avoid damage to the resources. The permittee will remove livestock from Forest Service-administered lands before the expiration of the designated grazing season upon request of the Forest officer when it is apparent that further grazing will damage the resources.

(d) The permittee will allow only the numbers, kind, and class of livestock on the allotment during the period specified in Part 1 hereof or the annual Bill for Collection, including any modifications made as provided for in Section 8(c). If livestock owned by the permittee are found to be grazing on the allotment in greater numbers, or at times or places other than permitted in Part 1 hereof, or specified on the annual Bill for Collection, the permittee shall be billed for excess use at the unauthorized use rate and may face suspension or cancellation of this permit.

(e) The permittee will not allow owned or controlled livestock to be upon any area of Forest Service-administered lands not described in either Part 1 hereof or the annual Bill for Collection.

(f) The Forest officer in charge may, at any time, place or fasten or require the permittee to place or fasten upon livestock covered by this permit appropriate marks or tags that will identify them as livestock permitted to graze on lands administered by the Forest Service. When requested by the Forest officer, the permittee will, at any time during the permitted period of use, including entry and removal dates, gather permitted livestock to enable an accurate count to be made thereof. The Forest Service may, at its option, gather and hold for counting all livestock grazing on the allotment.

(g) Only livestock marked, tagged, or branded as shown in the application upon which this permit is based, and as may be required under Section 8(f), will be allowed to graze under this permit unless the permittee has advance written approval from the Forest officer in charge to do otherwise.

(h) The permittee will pay the costs of, perform, otherwise provide for the proportionate share of cooperative improvements and management practices on the permitted area when determined by the Forest officer in charge that such improvements and practices are essential to proper protection and management of the resources administered by the Forest Service.

(i) This permit is issued and accepted with the provision that the permittee will maintain all range improvements, whether private or Government-owned, that are assigned for maintenance to standards of repair, orderliness, and safety acceptable to the Forest Service. Improvements to be maintained and acceptable to maintenance are specified in Part 3 of this permit. The Government may maintain or otherwise improve said improvements when, in its opinion, such action will be to its advantage.

9. Nonuse. At least 90 percent of the livestock permitted must be grazed each year, unless the Forest officer in charge approves nonuse. Failure to place livestock on the allotted range/pasture without approved nonuse may result in cancellation of the term grazing permit in whole or in part.

10. Protection. The permittee, or the permittee's agents and employees, when acting within the scope of their employment, and contractors and subcontractors will protect the land and property of the United States and other land under jurisdiction of the Forest Service covered by and used in conjunction with this permit. Protection will include taking all reasonable precautions to prevent, make diligent efforts to suppress, and report promptly all fires on or endangering such land and property. The permittee will pay the United States for any damage to its land or property, including range improvements, resulting from negligence or from violation of the provisions and requirements of this permit or any law or regulation applicable to the National Forest System.

11. General.

(a) The Forest officer in charge may at any time require the permittee to give good and sufficient bond to insure payment for all damage or costs to prevent or mitigate damages sustained by the United States through the permittee's failure to comply with the provisions and requirements of this permit or the regulations of the Secretary on which it is based.

(b) This permit will be cancelled, in whole or in part, whenever the area described in this permit is withdrawn from the National Forest System by land exchange, modification of boundaries, or otherwise, or whenever the area described in this permit is to be devoted to a public purpose that precludes grazing.

(c) The permittee will immediately notify the Forest officer in charge of any change in control of base property, ownership of livestock, or other qualifications to hold this grazing permit.

(d) The permanent improvements constructed or existing for use in conjunction with this permit are the property of the United States Government unless specifically designated otherwise or covered by a cooperative agreement. They will not be removed nor compensated for upon cancellation of this permit, except in the National Forests in the 16 contiguous Western States when cancelled, in whole or in part, to devote land to another public purpose including disposal. In the event of such cancellation on the National Forests in the 16 Contiguous Western States, the permittee will be compensated for the adjusted value of approved range improvements installed or placed by him.

(e) The permittee may not transfer, assign, lease, or sublet this permit in whole or part.

(f) This permit includes the terms and conditions of Part 3 hereof, consisting of page 3 through 9 which follow.

FS-2200-010

Exhibit 3

USDA-Forest Service	FS-2200-10a (12/99)
GRAZING PERMIT - PART 3	Page 3 of 9
(Reference FSM 2230)	Permittee: 604923010602
	Permit Number: 01045

Special Terms and Conditions**Responsibilities for Construction and Maintenance of Structural Improvements or for Range Rehabilitation.**

(List the specific responsibilities of the permittee; or incorporate into the permit the cooperative agreement, management plan or other document which sets forth these responsibilities in detail. Fully identify the particular document or documents.)

Structural Improvements

As a condition of this permit, the permittee is authorized to use and is assigned improvement maintenance. The Nez Perce National Forest has filed water rights with the State of Idaho for other consumptive uses in the allotment area. By issuing this grazing permit, the Forest Service does not convey ownership of any water rights in the allotment area. Forest Service ownership of the water rights assures that the use of the water will be both appurtenant to the land and available for current and future uses on the National Forest.

Materials needed for maintenance of range improvements shall be provided by the permittee. Native material may be available upon approval by the District Ranger. A Permit Modification for Range Improvements will be completed for construction of new range improvements.

This permit is issued and accepted with the provision that the permittee will maintain all the range improvements listed on page 3 and 4, and as indicated on the allotment map, page 10.

Wire Fences

1. Straighten bent steel posts (or replace).
2. Replace or reset brace poles if not in brace securely.
3. Straighten and re-tamp brace posts.
4. Replace rotted brace posts.
5. Splice broken wires and re-stretch.
6. Re-space wires where spacing has been altered.
7. Replace missing staples and steel post clips.
8. Straighten wire stays which have been bent.
9. Tighten or replace brace wires.
10. Replace broken gate stays on wire gates and shut the gates.
11. Cut trees which have fallen across fence & remove from fenceline.
12. All limbs and trees which have fallen on fences will be cut and removed at least yearly and the wires stretched tight again after removal of the tree.
13. Missing staples or nails will be replaced. Staples will be tight against wire on solid posts but must provide for movement of the wire (1-1/2" staples should be used). Loose or replaced staples should be driven to desired depth. Do not kink the wire by driving staples too deep.
14. Let Down Fences: The let-down design will be maintained. Retighten let-down spans that have become slack. Replace missing staples or wire loops. Drop the fence spans within two weeks after it is no longer needed to control livestock.

Wood Fences

1. Broken poles will be replaced.
2. Cut trees which have fallen across fence & remove from fenceline.
3. Loose poles will be re-nailed
4. Rotten or broken posts or jacks will be replaced.

FENCE on COW CREEK 00104

Number	Name	Location	Units
104101	COW/SHERWIN BOUNDARY FENCE	Section 20, T26N, R1E	1.75
104102	COW CREEK CORRAL CREEK FENCE	Section 24, T26N, R1W	1.5

FS-2200-10a

Exhibit 3

USDA-Forest Service	FS-2200-10a (12/99)
GRAZING PERMIT - PART 3	Page 4 of 9 Permittee: 604923010602 Permit Number: 01045
(Reference FSM 2230)	

Special Terms and Conditions**Responsibilities for Construction and Maintenance of Structural Improvements or for Range Rehabilitation.**

(List the specific responsibilities of the permittee; or incorporate into the permit the cooperative agreement, management plan or other document which sets forth these responsibilities in detail. Fully identify the particular document or documents.)

FENCE on COW CREEK 00104

Number	Name	Location	Units
104103	TRIANGLE MTN BOUNDARY FENCE	Section 27, T26N, R1W	2
104104	LOCK GATE FENCE	Section 28, T26N, R1W	.4
104105	DITCH SADDLE INTERIOR FENCE	Section 26, T26N, R1W	2
104106	BAKER KIRKWOOD INTERIOR FENCE	Section 25, T26N, R1W	2.4
104107	KIRKWOOD CORRALS FENCE	Section 26, T26N, R1W	.2
104109	BLUE JACKET BOUNDARY FENCE	Section 34, T26N, R1W	1.7
104110	CHINA ON/OFF FENCE	Section 32, T26N, R1E	0
104111	2060 ROAD BOUNDARY FENCE	Section 9, T25N, R1W	.72
104112	DUTCH OVEN BOUNDARY FENCE	Section 25, T25N, R1W	.4
104113	COW CREEK/COLD SPRINGS BOUNDARY FENCE	Section 17, T25N, R1W	.5
104115	BEAN KESSLER BOUNDARY FENCE	Section 20, T25N, R1E	.9
104116	ROUND KNOB SPRING EXCLOSURE FENCE	Section 28, T25N, R1W	.1
104117	COW GRAVES BOUNDARY FENCE	Section 36, T25N, R1W	.75
104121	CLARKS HOLE BOUNDARY FENCE	Section 29, T25N, R1W	0

Total Miles of Fence: 14.73

Spring Developments

1. Maintain spring source fence according to above specifications.
2. Clean spring boxes of debris, and secure cover.
3. Water should be level in the trough and not allowed to overflow the sides of the troughs. Supply pipelines need to be functioning with broken pipes replaced. Overflow pipes must be kept clean and overflow water piped away from troughs at least 50 feet. The end of the overflow pipe must be protected from trampling livestock. Water from the overflow pipe must be directed away from the trough area.
4. Replace broken trough braces and framing.
5. All troughs shall be equipped with an escape structure secured near one end of the top rim of the trough and extending out into the trough far enough to provide a platform from which birds and small animals can drink or escape from the trough.
6. Troughs, storage tanks, and pipelines will be drained and cleaned periodically to prevent moss and debris buildup and reduce damage from freezing.

WATER_SYSTEM_RANGE on COW CREEK 00104

Number	Name	Location	Units
104201S	DAVIS SPRING	Section 18, T26N, R1E	1
104202T	HORNER SPRING TROUGH	Section 20, T26N, R1E	1
104203S	KEARNEY SPRING	Section 20, T26N, R1W	1
104204S	CHINA RIDGE SPRING	Section 21, T26N, R1E	1
104205S	ED THOMAS SPRING	Section 30, T26N, R1E	1
104206S	FISH DAM SPRING	Section 29, T26N, R1E	1
104207S	BAKER SPRING	Section 25, T26N, R1W	1
104208T	DITCH SADDLE TROUGH	Section 26, T26N, R1W	1
104209S	KIRKWOOD COW CAMP SPRING	Section 26, T26N, R1W	1
104210S	DITCH SADDLE SPRING	Section 26, T26N, R1W	1
104211S	JENKINS RIDGE SOURCE	Section 8, T25N, R1E	1

FS-2200-10a

Exhibit 3

USDA-Forest Service	FS-2200-10a (12/99)
GRAZING PERMIT - PART 3	Page 5 of 9
(Reference FSM 2230)	Permittee: 604923010602
	Permit Number: 01045

Special Terms and Conditions**Responsibilities for Construction and Maintenance of Structural Improvements or for Range Rehabilitation.**

(List the specific responsibilities of the permittee; or incorporate into the permit the cooperative agreement, management plan or other document which sets forth these responsibilities in detail. Fully identify the particular document or documents.)

WATER_SYSTEM_RANGE on COW CREEK 00104

Number	Name	Location	Units
104212S	COLD SPR COW CAMP SPRING	Section 16, T25N, R1W	1
104213T	BEEFTRAILSPRING TROUGH	Section 16, T25N, R1W	1
104214T	COLD SPRINGS COW CAMP TROUGH	Section 16, T25N, R1W	1
104217S	9904 SPRING	Section 14, T25N, R1W	1
104218T	SWITCHBACK TROUGH	Section 20, T25N, R1W	1
104219T	TELEPHONE SPRING TROUGH	Section 20, T25N, R1E	1
104220T	BEAN CREEK RIP TANK	Section 19, T25N, R1E	1
104221T	COW/RACE BOUNDARY SPRING TROUGH	Section 30, T25N, R1E	1
104222T	ROUND KNOB SPRING TROUGH	Section 26, T25N, R1W	1
104223T	KESSLER SPRING TROUGH	Section 36, T25N, R1W	1
104224P	GRAVES PIPELINE TROUGH	Section 2, T24N, R1W	0
104224T	GRAVES CREEK SPRING TROUGH	Section 34, T25N, R1W	1
104225S	WEST FORK SPRING	Section 14, T25N, R1W	1

FS-2200-10a

Exhibit 3

USDA-Forest Service	FS-2200-10b (12/99)
GRAZING PERMIT - PART 3	Page 6 of 9
(Reference FSM 2230)	Permittee: 604923010602
	Permit Number: 01045

Special Terms and Conditions**Management Practices.**

(List the specific management practices required of the permittee, such as salting, riding and movement of cattle, herding or bedding of sheep; or incorporate into the permit the specific allotment management plan or other document which outlines these practices in detail. If you need additional space, use next page.)

I. On and Off. This permit provides for grazing a total of 150 head of cattle for the grazing period 12/2 to 5/31, on Forest Service administered land controlled by the permittee which together form a natural grazing unit, hereby named the China/Cow ON/OFF pasture. The use by these livestock will be approximately 7 percent on Forest Service administered land and 93 percent on the lands controlled by the permittee.

The livestock will graze only upon the specified grazing allotment and only during the permitted grazing period. Any grazing use in excess of that authorized will be treated as a violation of the terms and conditions of the permit.

The lands described below constitute the "off" portion of this permit: T26N R1E Section 32: S1/2 NW1/4 (80 acres); NE1/4 SW1/4 (40 acres); NE1/4 NW1/4 SW1/4 (10 acres); NW1/4 SE1/4 SW1/4 (10 acres); W1/2 NW1/4 SE1/4 (20 acres)

II. General Allotment Management Direction (Forest Plan)

Livestock will be managed to protect soil and water resources, threatened and endangered species under the Endangered Species Act including federal listed fish species, and will meet or move towards the Forest Plan Goal of enhancing or maintaining habitat for riparian dependent species.

The following Forest Plan Management Direction is made a part of this permit.

A. Distribute livestock in a manner that protects low productive forest lands (MA-1).

B. Protect vulnerable prehistoric, historical, archaeological, and/or paleontological sites from livestock grazing (MA-3). Structural range improvements may be used where needed to protect these sites. Permittees may be required to share in the costs of needed improvements.

C. Restrict livestock grazing from mined areas (MA-4) during the reclamation phase of the operation.

D. Livestock are not permitted in developed recreation sites (MA-7) during times the site is open to the public.

E. The permittee will assure sufficient forage is available in wildlife winter range (MA-16 & 18) to meet big game (elk) needs through proper livestock distribution and forage utilization as stated in the Annual Operating Instructions.

F. Maintain range condition (MA-19 grasslands) at or above fair condition. Permittees may be required to share in the cost of improvements needed to maintain range conditions.

G. Riparian Habitat (MA-10)

GM-1: Grazing will be modified if livestock management retards or prevents attainment of Riparian Management Objectives (RMOs) or is likely to adversely affect listed anadromous fish. Grazing may be suspended if modifying practices are not effective in meeting RMOs and avoiding adverse effects on listed anadromous fish.

GM-2: New livestock handling/management facilities will be located outside of Riparian Habitat Areas (RHCA).

GM-3: Livestock trailing, bedding, watering, salting, handling/management activities will be limited to areas and times that will not retard or prevent attainment of Riparian Management Objectives (RMO).

H. Direction from the Hells Canyon National Recreation Area: (i.e. Comprehensive Management Plan, Forest Plan Amendment #29.):

a. The use of motorized and mechanical equipment would be prohibited off open designated FS roads, trails, and backcountry airstrips, except where authorized by permit. (Acc-S1).

b. The Sheep Creek Allotment area is closed to permitted livestock use. The vacant Pittsburgh Allotment will require further NEPA before grazing is considered.

FS-2200-10b

Exhibit 3

USDA-Forest Service	FS-2200-10b (12/99)
GRAZING PERMIT - PART 3	Page 7 of 9
(Reference FSM 2230)	Permittee: 604923010602
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Special Terms and Conditions**Management Practices.**

(List the specific management practices required of the permittee, such as salting, riding and movement of cattle, herding or bedding of sheep; or incorporate into the permit the specific allotment management plan or other document which outlines these practices in detail. If you need additional space, use next page.)

III. Allotment Grazing Management.

As a result of decisions made in Biological Opinions and Biological Assessments under the Endangered Species Act, the following grazing standards have been adopted for the Cow Creek Allotment. These standards will be used to administer grazing on the allotment. Utilization percentages represent the maximum that will be allowed based on current livestock management practices.

A. Grazing Rotation: Cow Creek Allotment

The permittee's livestock will normally enter the Forest in three or four separate herds by way of China Creek pasture, Bean Creek pasture, and Cow Creek pasture. The majority of pasture boundaries are natural barriers such as steep terrain or heavy timber.

One or two herds averaging around 125 cow/calf pairs will enter the Forest via the China Creek pasture. These cattle will be moved to Schoolhouse and Kirkwood pastures, and then will meet up with the rest of the herd in the Cold Springs pasture.

Two or three herds averaging around 125 cow/calf pairs will enter the Forest via the Cow Creek and Bean Creek pastures, and will join up in the Cold Springs pasture with the herd that entered through the China Creek pasture.

From the Cold Springs pasture, entire herd will then be moved to Kessler and Clarks Hole pastures, then drift back to the Kirkwood pasture through the Cold Springs, Bean Creek and Cow Creek pastures. Generally, the calves will be shipped off the Forest from Kirkwood Corrals. The remaining cows will move through the Schoolhouse pasture and then off the Forest through the China Creek pasture.

Move dates are subject to meeting grazing utilization standards.

B. Riparian Grazing Standards:

Allowable Forage Utilization: 35% of available herbaceous forage species within riparian areas.

Allowable Woody Utilization: 30% of annual, available growth of woody riparian species.

Bank Disturbance: 10% of the linear distance along a streambank.

Stubble Height Objective: 6" stubble height.

C. Upland Grazing Standards:

Allowable Forage Utilization:

45% of available herbaceous forage species within upland areas.

30% of available herbaceous forage within upland areas inside the HCNRA wilderness.

Allowable Woody Utilization:

30% of annual, available growth of woody upland species inside the HCNRA wilderness.

40% of annual, available growth of woody upland species outside the HCNRA wilderness.

The permittee may be asked to contribute to the monitoring of livestock forage utilization, streambank disturbance, and stubble height along selected streams and upland areas within the allotment.

D. Closed Areas.

FS-2200-10b

Exhibit 3

USDA-Forest Service	FS-2200-10b (12/93)
GRAZING PERMIT - PART 3	Page 8 of 9
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Special Terms and Conditions**Management Practices.**

(List the specific management practices required of the permittee, such as salting, riding and movement of cattle, herding or bedding of sheep; or incorporate into the permit the specific allotment management plan or other document which outlines these practices in detail. If you need additional space, use next page.)

No known "closed areas" are currently within the allotment.

E. Herding/Salting.

1. Salt placement will be emphasized in under-utilized areas for better livestock distribution.
2. Salt placement will not be within 1/4 mile of any riparian area. Salt will not be placed adjacent to springs or meadows.
3. Active herding and riding will be required to maintain proper distribution and use under-utilized areas where forage is available, and to limit livestock use on sensitive riparian and upland areas.

F. Annual Operating Instructions.

Annual Operating Instructions (AOI) will be developed annually with the permittee. The AOI will state the specific actions and management requirements for the current grazing season. The AOI when signed by the Forest Officer becomes a part of this Term Grazing Permit.

IV. General Management Requirements

- A. The permittee will inform the Forest Officer of the date and number of livestock that will enter the Forest and, if called upon to do so, will provide for having the animals marked and/or counted before they enter the Forest and at any time during the life of this permit.
- B. Each herder or camp will be equipped with serviceable shovel and axe or such other combination of tools as the District Ranger may require for use in extinguishing campfires and forest fires.
- C. During periods when the Forest is closed to smoking, the person or persons in charge of livestock covered by this permit will refrain from smoking while away from the headquarters camp in pursuing duties connected with the management of livestock in their charge.
- D. All fires built for any purpose by the person or persons in charge of the livestock covered by this permit will be completely extinguished and will not be left unattended for any reason whatsoever.
- E. Owners of all livestock grazed under this permit must comply with the state livestock laws.
- F. When an animal covered by this permit dies from a contagious or infectious disease, its carcass must be disposed of by a method approved by State Laws and Regulations. If any animal dies or is killed in the vicinity of headquarters camps, streams, lakes, roads, trails, or recreational areas, its carcass must be moved to a point at least 100 yards from live water or as far as practicable when terrain makes that distance impossible.
- G. Camps must be kept and left in a sanitary condition. All flammable refuse may be burned and inflammable refuse must be packed off the National Forest.
- H. Any hay or straw used in association with this permit, will be certified as noxious weed free, or noxious weed seed free.
- I. The permittee is required to keep accurate records concerning movement of livestock, including stragglers outside authorized use periods, and to furnish such information to the Forest Service. Actual use reports will be supplied to the Forest Service in writing at the end of the grazing season.

V. Designated Base Property.

The following property is considered base property for this permit:

FS-2200-10b

Exhibit 3

USDA-Forest Service	FS-2200-10b (12/99)
GRAZING PERMIT - PART 3	Page 9 of 9
(Reference FSM 2230)	Permittee: 604923010602
	Permit Number: 01045

Special Terms and Conditions**Management Practices.**

(List the specific management practices required of the permittee, such as salting, riding and movement of cattle, herding or bedding of sheep; or incorporate into the permit the specific allotment management plan or other document which outlines these practices in detail. If you need additional space, use next page.)

Cow Creek Property

T25N R1E Section 3

NW1/4 of the SW1/4 - 40 acres

VI. Other. This permit grants the use of the Kirkwood Cow Camp site for a cabin (Range Improvement #104501), located in SESE of Section 26 T26N R1W, for allotment administration purposes. Any exterior modifications need prior authorization by the district ranger.

FS-2200-10b

EXHIBIT 4

Declaration of Gary Spackman

RECEIVED
OCT 15 2021

DEPARTMENT OF
WATER RESOURCES

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Certain Basin 79) **Verified Petition for Order to Show**
Water Rights) **Cause**
)

Pursuant to Idaho Code Sec. 42-224(1), Gill Family Ranches, LLC ("Petitioner") hereby petitions the Director of the Idaho Department of Water Resources ("IDWR") to order the owner of water rights listed on Exhibit A, attached hereto, (collectively, "Water Rights") to show cause why the Water Rights have not been lost through forfeiture pursuant to Idaho Code Sec. 42-222(2). As grounds for this Petition, Petitioner states as follows:

1. According to IDWR's records, the Water Rights are currently owned by the United States of America acting through the Department of the Interior, Bureau of Land Management ("BLM"), Exhibit A.
2. The Water Rights meet the requirements of Idaho Code Sec. 42-1401A(11) because the beneficial use is solely for stockwater in a quantity not to exceed 13,000 gallons per day.
3. Based upon Petitioner's knowledge of the Water Rights, including their sources, points of diversion, places of use, as well as IDWR's records, the Water Rights' points of diversion or places of use are on one or both of two federal grazing allotments known as the Butcher Bar Allotment and the China Creek Allotment and managed by the Cottonwood Field Office of the BLM located in Cottonwood, Idaho.
4. There are no other water right decrees, licenses or permits known to have the same place of use, source, and point of diversion.
5. Petitioner has held a valid lease from the BLM to graze cattle on the two Allotments each of the last five years. A copy of this Lease No. 1105152 spanning the last five years is attached as Exhibit B.
6. Petitioner has grazed its livestock on the Allotments in compliance with the lease for each year of the lease term.
7. As the lessee on the Allotments, Petitioner's employees, officers, and their families have regularly visited the Allotments, which borders Petitioner's private property, each grazing season of use and at other times outside the season of use each year for more than the past five years. Yearly documentation shows Petitioner's presence on some part of the Allotments over 75% of the permitted days' use over the last five years. These visits have included, but are not limited to:

- tending and herding cattle

- monitoring grazing conditions and use
- fixing and maintaining allotment fences
- salting the cattle
- cutting and monitoring trails
- checking and maintaining water sources
- checking fire danger
- dealing with other public lands users

8. At no time over the past five years has Petitioner, its officers, employees, their families, or agents, witnessed or heard of the existence of livestock owned or controlled by the BLM on either Allotment either to graze or to use water under the Water Rights.

9. At no time in Petitioner's numerous and regular visits with BLM staff from the Cottonwood Field Office has staff stated or suggested that the BLM has placed livestock owned or controlled by BLM on either Allotment in the last five years.

10. At no time since Petitioner's family use of the area since the early 1900s has Petitioner ever witnessed or heard of the BLM applying the Water Rights to the beneficial use of watering livestock the BLM owns or controls on either Allotment.

11. Petitioner is not now, nor has it ever been, an agent of the BLM for the purpose of acquiring water rights for the BLM on either Allotment.

12. The undersigned individual is the Manager of Petitioner and is authorized by Petitioner to file this Petition on its behalf.

WHEREFORE, pursuant to Idaho Code Sec. 42-224, Gill Family Ranches, LLC petitions the Director of the Idaho Department of Water Resources to expeditiously issue an order to the United States of America, acting through BLM, to show cause why the Water Rights should not be lost through forfeiture pursuant to Idaho Code Sec. 42-222(2).

VERIFICATION

STATE OF IDAHO)
County of Payette : ss.

Marty I. Gill, the Manager of Gill Family Ranches, LLC, being first duly sworn, deposes and says as follows:

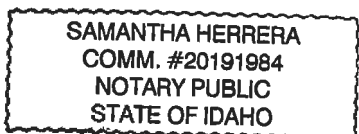
That Gill Family Ranches, LLC is the Petitioner herein, and that as the Manager thereof, I have read the foregoing instrument, know the contents thereof, and believe the contents thereof to be true and correct to the best of my knowledge.

DATED this 12 day of October, 2021.

Gill Family Ranches, LLC
an Idaho corporation

Marty I. Gill
By: Marty I. Gill
Manager,
Gill Family Ranches, LLC

Subscribed and sworn to before me this 12 day of October, 2021.



[Signature]
Notary Public
Residing at: Fruitland, ID
My Commission Expires: 9-26-25

17453010_v1

Exhibit 4

Allotment	Basin	Sequence	Process	Basis	Status	Draft	RightID	Priority Date	Diversio n Rate	Source List	Tributary List	Water Use List	Current Owner	Water District	Admin by WD
Butcher Bar	79	11259	Water Right	Decreed	Active	N	413144	6/28/1934	0.020	UNNAMED STREAM	SALMON RIVER	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH BLM	NWD - No Water District	No
Butcher Bar	79	11261	Water Right	Decreed	Active	N	413146	6/28/1934	0.020	WET GULCH CREEK	SALMON RIVER	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH BLM	NWD - No Water District	No
China Creek	79	11372	Water Right	Decreed	Active	N	413222	6/28/1934	0.020	SALMON RIVER	SNAKE RIVER	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH BLM	NWD - No Water District	No
China Creek/Butcher Bar	79	11373	Water Right	Decreed	Active	N	413223	6/28/1934	0.020	CHINA CREEK	SALMON RIVER	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH BLM	NWD - No Water District	No
China Creek	79	11374	Water Right	Decreed	Active	N	413224	6/28/1934	0.020	LITTLE CHINA CREEK	CHINA CREEK	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH BLM	NWD - No Water District	No
China Creek	79	11376	Water Right	Decreed	Active	N	413225	6/28/1934	0.020	UNNAMED STREAM	LITTLE CHINA CREEK	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH BLM	NWD - No Water District	No
Butcher Bar	79	11756	Water Right	Decreed	Active	N	389160	6/28/1934	0.020	UNNAMED STREAM	SALMON RIVER	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH BLM	NWD - No Water District	No
China Creek	79	11784	Water Right	Decreed	Active	N	389186	4/17/1926	0.020	SPRING	CHINA CREEK	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH BLM	NWD - No Water District	No

Exhibit 4

OPERATOR COPYAUTH NUMBER: 1105152
DATE PRINTED: 7/28/2015Form 4130-2a
(February 1999)UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

GRAZING LEASE

STATE ID
OFFICE LLIDC02000
AUTH NUMBER 1105152
PREFERENCE CODE 15
DATE PRINTED 07/28/2015
TERM 03/01/2016 TO 02/28/2026BUREAU OF LAND MANAGEMENT
COTTONWOOD FO
1 BUTTE DRIVE
COTTONWOOD ID 83522-9498GILL FAMILY RANCHES, LLC
C/O O. MICHELLE NEAL
188 GILL RANCH ROAD
P.O. BOX 3886
LUCILE ID 83542

THIS GRAZING LEASE IS OFFERED TO YOU UNDER 43 CFR PART 4100 BASED ON YOUR RECOGNIZED QUALIFICATIONS. YOU ARE AUTHORIZED TO MAKE GRAZING USE OF LANDS, UNDER THE JURISDICTION OF THE BUREAU OF LAND MANAGEMENT AND COVERED BY THIS GRAZING LEASE, UPON YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS GRAZING LEASE AND PAYMENT OF GRAZING FEES WHEN DUE. CONTACT YOUR LOCAL BLM OFFICE AT 208-962-3245 IF YOU HAVE QUESTIONS.

MANDATORY TERMS AND CONDITIONS

<u>ALLOTMENT</u>	<u>PASTURE</u>	<u>LIVESTOCK</u>		<u>GRAZING PERIOD</u>		<u>% PL TYPE USE</u>	<u>AUMS</u>
		<u>NUMBER</u>	<u>KIND</u>	<u>BEGIN</u>	<u>END</u>		
36138 BUTCHER BAR		75	CATTLE	03/01	04/15	33 ACTIVE	37
		50	CATTLE	12/20	01/20	33 ACTIVE	17
36191 CHINA CREEK		60	CATTLE	04/01	06/01	9 ACTIVE	11
		60	CATTLE	12/01	02/15	9 ACTIVE	14

OTHER TERMS AND CONDITIONS:

SALT CAN NOT BE PLACED WITHIN 1/4 MILE OF ANY WATER SOURCE ON PUBLIC LANDS. SUPPLEMENTAL FEED CAN NOT BE PLACED ON PUBLIC LANDS.

UNDER 4130.3-2(H) LESSEES SHALL PROVIDE REASONABLE ACCESS ACROSS PRIVATE AND LEASED LANDS TO THE BLM FOR THE ORDERLY MANAGEMENT AND PROTECTION OF THE PUBLIC LANDS.

ALLOTMENT(S) LISTED ON THIS GRAZING LEASE ARE SUBJECT TO THE REQUIREMENTS OF 43 CFR 4180 FUNDAMENTALS OF RANGELAND HEALTH AND STANDARDS AND GUIDELINES(S&G) FOR GRAZING ADMINISTRATION.

THIS LEASE SHALL BE MODIFIED, IF NECESSARY, TO MEET THESE REQUIREMENTS UPON COMPLETION OF A S&G ASSESSMENT AS SCHEDULED BY THE AUTHORIZED OFFICER.

RANGE IMPROVEMENTS MUST BE MAINTAINED PRIOR TO TURN-OUT.

THIS LEASE IS ISSUED UNDER THE AUTHORITY OF SECTION 402(C)(2) OF FLPMA, 1976 AS AMENDED, AND CONTAINS THE SAME TERMS AND CONDITIONS AS THE PREVIOUS PERMIT OR LEASE.

THIS PERMIT OR LEASE MAY BE CANCELED, SUSPENDED, OR MODIFIED, IN WHOLE OR IN PART TO MEET THE REQUIREMENTS OF APPLICABLE LAWS AND REGULATIONS.

ALLOTMENT SUMMARY (AUMS)

<u>ALLOTMENT</u>	<u>ACTIVE AUMS</u>	<u>SUSPENDED AUMS</u>	<u>TEMP SUSPENDED AUMS</u>	<u>PERMITTED USE</u>
36138 BUTCHER BAR	53	0	0	53
36191 CHINA CREEK	24	0	0	24

OPERATOR COPY

AUTH NUMBER: 1105152
DATE PRINTED: 7/20/2015

Standard Terms and Conditions

1. Grazing permit or lease terms and conditions and the fees charged for grazing use are established in accordance with the provisions of the grazing regulations now or hereafter approved by the Secretary of the Interior.
2. They are subject to cancellation, in whole or in part, at any time because of:
 - a. Noncompliance by the permittee/lessee with rules and regulations.
 - b. Loss of control by the permittee/lessee of all or a part of the property upon which it is based.
 - c. A transfer of grazing preference by the permittee/lessee to another party.
 - d. A decrease in the lands administered by the Bureau of Land Management within the allotment(s) described.
 - e. Repeated willful unauthorized grazing use.
 - f. Loss of qualifications to hold a permit or lease.
3. They are subject to the terms and conditions of allotment management plans if such plans have been prepared. Allotment management plans MUST be incorporated in permits or leases when completed.
4. Those holding permits or leases MUST own or control and be responsible for the management of livestock authorized to graze.
5. The authorized officer may require counting and/or additional or special marking or tagging of the livestock authorized to graze.
6. The permittee's/lessee's grazing case file is available for public inspection as required by the Freedom of Information Act.
7. Grazing permits or leases are subject to the nondiscrimination clauses set forth in Executive Order 11246 of September 24, 1964, as amended. A copy of this order may be obtained from the authorized officer.
8. Livestock grazing use that is different from that authorized by a permit or lease MUST be applied for prior to the grazing period and MUST be filed with and approved by the authorized officer before grazing use can be made.
9. Billing notices are issued which specify fees due. Billing notices, when paid, become a part of the grazing permit or lease. Grazing use cannot be authorized during any period of delinquency in the payment of amounts due, including settlement for unauthorized use.
10. The holder of this authorization must notify the authorized officer immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony (cultural items), stop the activity in the area of the discovery and make a reasonable effort to protect the remains and/or cultural items.
11. Grazing fee payments are due on the date specified on the billing notice and MUST be paid in full within 15 days of the due date, except as otherwise provided in the grazing permit or lease. If payment is not made within that time frame, a late fee (the greater of \$25 or 10 percent of the amount owed but not more than \$250) will be assessed.
12. No Member of, or Delegate to, Congress or Resident Commissioner, after his/her election of appointment, or either before or after he/she has qualified, and during his/her continuance in office, and no officer, agent, or employee of the Department of the Interior, other than members of Advisory committees appointed in accordance with the Federal Advisory Committee Act (5 U.S.C. App.1) and Sections 309 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) shall be admitted to any share or part in a permit or lease, or derive any benefit to arise therefrom; and the provision of Section 3741 Revised Statute (41 U.S.C. 22), 18 U.S.C. Sections 431-433, and 43 CFR Part 7, enter into and form a part of a grazing permit or lease, so far as the same may be applicable.

THIS GRAZING LEASE:

1. CONVEYS NO RIGHT, TITLE OR INTEREST HELD BY THE UNITED STATES IN ANY LANDS OR RESOURCES

2. IS SUBJECT TO (A) MODIFICATION, SUSPENSION OR CANCELLATION AS REQUIRED BY LAND PLANS AND APPLICABLE LAW; (B) ANNUAL REVIEW AND MODIFICATION OF TERMS AND CONDITIONS AS APPROPRIATE; AND (C) THE TAYLOR GRAZING ACT, AS AMENDED, THE FEDERAL LAND POLICY AND MANAGEMENT ACT, AS AMENDED, THE PUBLIC RANGELANDS IMPROVEMENT ACT, AND THE RULES AND REGULATIONS NOW OR HEREFTER PROMULGATED THEREUNDER BY THE SECRETARY OF THE INTERIOR.

ACCEPTED:

SIGNATURE OF LESSEE: *D. Michelle Neal, manager*

DATE: 8/1/2015

APPROVED

BLM AUTHORIZED OFFICER: *Wick K...*

DATE: 08/30/2015

EXHIBIT 5

Declaration of Gary Spackman

RECEIVED

MAY 23 2022

DEPARTMENT OF
WATER RESOURCES

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Certain Basin 75)
Water Rights) **Verified Petition for Order to Show**
) **Cause**
)

Pursuant to Idaho Code Sec. 42-224(1), Jaycob J. and Cheyenne A. Smith ("Petitioners") hereby petition the Director of the Idaho Department of Water Resources ("IDWR") to order the owner of water rights listed on Exhibit A, attached hereto, (collectively, "Water Rights") to show cause why the Water Rights have not been lost through forfeiture pursuant to Idaho Code Sec. 42-222(2). As grounds for this Petition, Petitioners state as follows:

1. According to IDWR's records, the Water Rights are currently owned by the United States of America acting through the U.S. Department of Agriculture, Forest Service, or the U.S. Bureau of Land Management, Exhibit A.

2. The Water Rights meet the requirements of Idaho Code Sec. 42-1401A(11) because the beneficial use is solely for stockwater in a quantity not to exceed 13,000 gallons per day.

3. Based upon Petitioners' knowledge of the Water Rights, including their sources, points of diversion, places of use, as well as IDWR's records, the Water Rights' points of diversion or places of use are partially or completely on a federal grazing allotment known as the Fourth of July Creek #70213 Allotment ("Allotment") and managed by the Salmon-Cobalt Ranger District of the Salmon-Challis National Forest headquartered in Salmon, Idaho ("Forest Service").

4. There are no other water right decrees, licenses or permits known to have the same place of use, source, and point of diversion.

5. Petitioners have held a valid permit from the Forest Service to graze cattle on the Allotment each of the last five years. A copy of this Permit No. 70024 spanning the last five years is attached as Exhibit B.

6. Petitioners have grazed their livestock on the Allotment in compliance with the permit for each year of the permit term.

7. As the permittees on the Allotment, Petitioners' employees, officers, and their families have regularly visited the Allotment, which borders Petitioners' leased property, each grazing season of use and at other times outside the season of use each year for more than the past five years. Petitioners have utilized the Allotment over each of the last five years. This usage has included, but is not limited to:

VERIFIED PETITION FOR ORDER TO SHOW CAUSE - 1

- tending and herding cattle
- monitoring grazing conditions and use
- fixing and maintaining allotment fences
- salting the cattle
- cutting and monitoring trails
- checking and maintaining water sources
- checking fire danger
- dealing with other public lands users

8. At no time over the past five years have Petitioners, their officers, employees, their families, or agents, witnessed or heard of the existence of livestock owned or controlled by the United States, the Department of Agriculture, the Forest Service, or the Bureau of Land Management (collectively and individually, “Federal government”) on the Allotment either to graze or to use water under the Water Rights.

9. At no time in Petitioners’ numerous and regular visits with Forest Service staff from the Ranger District has staff stated or suggested that the Federal government has placed livestock owned or controlled by the Federal government on the Allotment in the last five years.

10. At no time since Petitioners’ family began using the Allotment in 2006 have Petitioners ever witnessed or heard of the Federal government applying the Water Rights to the beneficial use of watering livestock the Federal government owns or controls on either Allotment.

11. Petitioners are not now, nor have they ever been, agents of the Federal government for the purpose of acquiring water rights for the Federal government on the Allotment.

12. The undersigned individuals are the sole permittees on the Allotment and sign this Petition on his and her behalf.

WHEREFORE, pursuant to Idaho Code Sec. 42-224, Jaycob J. and Cheyenne A. Smith petition the Director of the Idaho Department of Water Resources to expeditiously issue an order to the United States of America, acting through the U.S. Department of Agriculture, Forest Service, or the U.S. Bureau of Land Management to show cause why the Water Rights should not be lost through forfeiture pursuant to Idaho Code Sec. 42-222(2).


VERIFIED PETITION FOR ORDER TO SHOW CAUSE - 2

County of Lemhi)

Cheyenne A. Smith, being first duly sworn, deposes and says as follows:

That I am a Petitioner herein, and I have read the foregoing instrument, know the contents thereof, and believe the contents thereof to be true and correct to the best of my knowledge.


DATED this 2nd day of May. 2022.


Cheyenne A. Smith

Subscribed and sworn to before me this 2nd day of May, 2022.



1810492 v1

m. Chae 
Notary Public
Residing at: 11/15/23^{new} Salina, ID
My Commission Expires: 11/15/23

VERIFIED PETITION FOR ORDER TO SHOW CAUSE - 4

Exhibit A

Basin - Sequence	Basis	Status	Priority Date	Diversion Rate	Source List	Tributary List	Water Use List	Current Owner
75-2225	Decreed	Active	1/9/1963	0.010	SPRING	KRILEY CREEK	STOCKWATER	USA THRU BLM
75-4236	Statutory Claim	Active	6/1/1969	0.020	BROWNS SPRING	SINKS	STOCKWATER	USDA, Forest Service
75-4241	Statutory Claim	Active	6/1/1967	0.020	OLD KRILEY SPRING	SINKS	STOCKWATER	USDA, Forest Service
75-7279	License	Active	2/25/1982	0.020	SOUTH FORK UPPER KRILEY SPRING	SINKS	STOCKWATER	USDA, Forest Service
75-7288	License	Active	2/25/1982	0.020	SPRING	SINKS	STOCKWATER	USDA, Forest Service
75-7335	License	Active	12/22/1982	0.020	LOWER MAGPIE SPRING	SINKS	STOCKWATER	USDA, Forest Service
75-7672	License	Active	2/4/2000	0.020	SPRING	SINKS	STOCKWATER, WILDLIFE	USDOI, BLM
75-11102	Decreed	Active	6/1/1876	0.020	NORTH FORK TOWER CREEK	TOWER CREEK	STOCKWATER	US THRU USDA Forest Service
75-13804	Decreed	Active	6/1/1876	0.020	EAST KRILEY SPRING	SINKS	STOCKWATER	US THRU USDA Forest Service
75-13808	Decreed	Active	6/1/1876	0.020	CHUTE GULCH SPRING	SINKS	STOCKWATER	US THRU USDA Forest Service
75-13813	Decreed	Active	6/1/1876	0.020	MAGPIE SPRING	SINKS	STOCKWATER	US THRU USDA Forest Service
75-13822	Decreed	Active	6/1/1876	0.020	LOWER COTTONWOOD CREEK SPRING	SINKS	STOCKWATER	US THRU USDA Forest Service
75-13825	Decreed	Active	6/1/1969	0.020	KRILEY GULCH SPRING	SINKS	STOCKWATER	US THRU USDA Forest Service
75-13826	Decreed	Active	6/1/1876	0.020	UPPER COTTONWOOD CREEK SPRING	SINKS	STOCKWATER	US THRU USDA Forest Service
75-13899	Decreed	Active	6/1/1876	0.020	SOUTH FORK UPPER KRILEY SPRING	SINKS	STOCKWATER	US THRU USDA Forest Service
75-13912	Decreed	Active	6/1/1876	0.020	LOWER MAGPIE SPRING	SINKS	STOCKWATER	US THRU USDA Forest Service

Exhibit 5

USDA Forest Service

FS-2200-10 (v 06-2013)

TERM GRAZING PERMIT - PARTS 1 AND 2 (Reference FSM 2230)	Page 1 of 10
	Permittee Number
	SMITH, JAY J
	Permit Number
70024	

PART 1

Jay J. and/or Chyenne A. Smith of 24 Smith Ranch Road, Carmen, ID 83462 hereinafter
(Name of Permittee) (Post Office Address, Including Zip)

called the permittee, is hereby authorized to graze livestock owned by the permittee upon designated lands administered by the Forest Service within the Salmon-Challis (X appropriate box)
☒ National Forest ☐ National Grassland under the following terms and conditions:

1. Description of range. The livestock shall be grazed only upon the area described as follows: ~~described on attached page and/or~~ delineated on the attached map dated 2/19/2016, which is part of this permit.

2. The number, kind, and class of livestock, period of use, and grazing allotment on which the livestock are permitted to graze are as follows, unless modified by the Forest Service in the Bill for Collection:

LIVESTOCK			PERIOD OF USE		GRAZING ALLOTMENT
NUMBER	KIND	CLASS	FROM	TO	
60	Cattle	Mature cow w/nursing calf	06/01	08/31	Fourth of July Creek #70213
					Use in accordance with AOI
					Not to exceed 181 HMs

3. It is fully understood and agreed that this permit may be suspended or cancelled, in whole or in part, after written notice, for failure to comply with any of the terms and conditions specified in Parts 1, 2, and 3 hereof, or any of the regulations of the Secretary of Agriculture on which this permit is based, or the instructions of Forest officers issued thereunder; or for knowingly and willingly making a false statement or representation in the permittee's grazing application, and amendments thereto; or for conviction for failure to comply with Federal laws or regulations or State and local laws relating to livestock control and to protection of air, water, soils and vegetation, fish and wildlife, and other environmental values when exercising the grazing use authorized by the permit. This permit can also be cancelled, in whole or in part, or otherwise modified, at any time during the term to conform with needed changes brought about by law, regulation, Executive order, allotment management plans, land management planning, numbers permitted or seasons of use necessary because of resource conditions, or the lands described otherwise being unavailable for grazing. Any suspension or cancellation action may be appealed pursuant to 36 CFR 214.

4. This permit supersedes permit #70023 issued 3/27/2006 to Jay J. Smith.

I HAVE REVIEWED AND ACCEPT THE TERMS OF THIS PERMIT

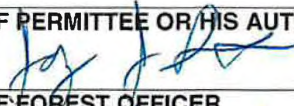

SIGNATURE OF PERMITTEE OR HIS AUTHORIZED AGENT			DATE
			<u>5-3-16</u>
SIGNATURE OF FOREST OFFICER	NAME (PRINT)	TITLE	DATE
	<u>Jay Winfield</u>	<u>5-C District Ranger</u>	<u>5/10/16</u>

Exhibit B

USDA Forest Service

F-2200-10 (v 06-2013)

PART 2 - GENERAL TERMS AND CONDITIONS

1. Validation of Permit. The issuance of a Bill for Collection, payment of fees and actual turning on at least 90 percent of livestock the first grazing season after the permit is issued will validate this permit for the number, kind, and class of livestock, grazing allotment, and period of use for the particular year.

2. Bill for Collection. Each year, after validation and prior to the beginning of the grazing season, the Forest Service will send the permittee a Bill for Collection specifying for the current year the kind, number, and class of livestock allowed to graze, the period of use, the grazing allotment, and the grazing fees. This bill, when paid, authorizes use for that year and becomes part of this permit.

3. Payment of Fees. The permittee will not allow owned or controlled livestock to be on Forest Service-administered lands unless the fees specified in the Bill for Collection are paid.

4. Administrative Offset and Credit Reporting. Pursuant to 31 USC 3716 and CFR Part 3, Subpart B, any monies that are payable or may become payable from the United States, under this permit, to any person or legal entity not an agency or subdivision of a State or local government may be subject to administrative offset for the collection of a delinquent debt the person or legal entity owes to the United States. Information on the person's or legal entity's responsibility for a commercial debt or delinquent consumer debt owed the United States shall be disclosed to consumer or credit reporting agencies.

5. Interest, Penalty, and Administrative Costs. Pursuant to 31 USC 3717 and 7 CFR Part 3, Subpart B, interest shall be charged on any payment or fee amount not paid within 30 days from the date the payment was due. Interest shall be charged using the most current rate prescribed by the United States Department of the Treasury Fiscal Requirements Manual (TFRM-6-8020.20). Interest shall accrue from the date the payment was due. In addition, in the event the account becomes delinquent, administrative costs may be assessed. A penalty of 6 percent per year shall be assessed on any payment or fee amount overdue in excess of 90 days from the date the first billing was due. Payments will be credited on the date received by the designated collection officer or deposit location. If the due date(s) for any of the above payments falls on a non-workday, the charges shall not apply until the close of business on the next workday.

6. Term of Permit. This permit is effective until 12/31/2025 unless waived, cancelled or otherwise terminated as provided herein. The permittee has first priority for receipt of a new permit at the end of the term subject to modification deemed necessary by the Forest Service.

In order to update terms and conditions, this permit may be cancelled at **any time** provided a **new permit is issued** to the existing permit holder for a new term of 10 years **following this update**.

7. Ownership Requirement

(a) Only livestock owned by the permittee are authorized to graze under this permit. To exercise use of the permit, the permittee will furnish all evidence of ownership requested by the Forest Service. Livestock purchased and subsequently sold back to the original owner, or to an agent, assignee, or anyone representing or acting in concert with the original owner, within a 24-month period without prior written approval by the Forest officer in charge will not be considered valid ownership of the livestock.

(b) Base property owned and used by the permittee to qualify for a term grazing permit must meet minimum base property requirements approved by the officer in charge.

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8. Range and Livestock Management

(a) The allotment management plan for the land described on page 1, Part 1 is part of the permit, and the permittee will carry out its provisions, other instructions, or both as issued by the Forest officer in charge for the area under permit and will require employees, agents, and contractors and subcontractors do likewise.

(b) The number, kind, and class of livestock, period of use, and grazing allotment specified in the permit may be modified when determined by the Forest Officer in charge to be needed for resource protection. Except in extreme emergencies where resource conditions are being seriously affected by livestock use or other factors, such as fire, drought, or insect damage, notice of a scheduled reduction of numbers of livestock or period of use under a term permit will be given one (1) full year before a modification in permitted numbers or period of use becomes effective. This does not apply to annual adjustment in grazing as provided for in Section 8(c).

(c) When, in the judgment of the Forest Officer in charge, the forage is not ready to be grazed at the beginning of the designated grazing season, the permittee, upon request of the Forest officer, will defer placing livestock on the grazing allotment to avoid damage to the resources. The permittee will remove livestock from Forest Service-administered lands before the expiration of the designated grazing season upon request of the Forest officer when it is apparent that further grazing will damage the resources.

(d) The permittee will allow only the numbers, kind, and class of livestock on the allotment during the period specified in Part 1 hereof or the annual Bill for Collection, including any modifications made as provided for in Section 8(c). If livestock owned by the permittee are found to be grazing on the allotment in greater numbers, or at times or places other than permitted in Part 1 hereof, or specified on the annual Bill for Collection, the permittee shall be billed for excess use at the unauthorized use rate and may face suspension or cancellation of this permit.

(e) The permittee will not allow owned or controlled livestock to be upon any area of Forest Service-administered lands not described in either Part 1 hereof or the annual Bill for Collection.

(f) The Forest officer in charge may, at any time, place or fasten or require the permittee to place or fasten upon livestock covered by this permit appropriate marks or tags that will identify them as livestock permitted to graze on lands administered by the Forest Service. When requested by the Forest officer, the permittee will, at any time during the permitted period of use, including entry and removal dates, gather permitted livestock to enable an accurate count to be made thereof. The Forest Service may, at its option, gather and hold for counting all livestock grazing on the allotment.

(g) Only livestock marked, tagged, or branded as shown in the application upon which this permit is based, and as may be required under Section 8(f), will be allowed to graze under this permit unless the permittee has advance written approval from the Forest officer in charge to do otherwise.

(h) The permittee will pay the costs of, perform, or otherwise provide for the proportionate share of cooperative improvements and management practices on the permitted area when determined by the Forest officer in charge that such improvements and practices are essential to proper protection and management of the resources administered by the Forest Service.

(i) This permit is issued and accepted with the provision that the permittee will maintain all range improvements, whether private or Government-owned, that are assigned for maintenance to standards of repair, orderliness, and safety acceptable to the Forest Service. Improvements to be maintained and acceptable to maintenance are specified in Part 3 of this permit. The Government may maintain or otherwise improve said improvements when, in its opinion, such action will be to its advantage.

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9. Nonuse. At least 90 percent of the livestock permitted must be grazed each year, unless the Forest officer in charge approves nonuse. Failure to place livestock on the allotted range/pasture without approved nonuse may result in cancellation of the term grazing permit in whole or in part.

10. Protection. The permittee, or the permittees' agents and employees, when acting within the scope of their employment, and contractors and subcontractors will protect the land and property of the United States and other land under jurisdiction of the Forest Service covered by and used in conjunction with this permit. Protection will include taking all reasonable precautions to prevent, make diligent efforts to suppress, and report promptly all fires on or endangering such land and property. The permittee will pay the United States for any damage to its land or property, including range improvements, resulting from negligence or from violation of the provisions and requirements of this permit or any law or regulation applicable to the National Forests System.

11. General.

(a) The Forest officer in charge may at any time require the permittee to give good and sufficient bond to insure payment for all damage or costs to prevent or mitigate damages sustained by the United States through the permittee's failure to comply with the provisions and requirements of this permit or the regulations of the Secretary on which it is based.

(b) This permit will be cancelled, in whole or in part, whenever the area described in this permit is withdrawn from the National Forest System by land exchange, modification of boundaries, or otherwise, or whenever the area described in this permit is to be devoted to a public purpose that precludes grazing.

(c) The permittee will immediately notify the Forest officer in charge of any change in control of base property, ownership of livestock, or other qualifications to hold this grazing permit.

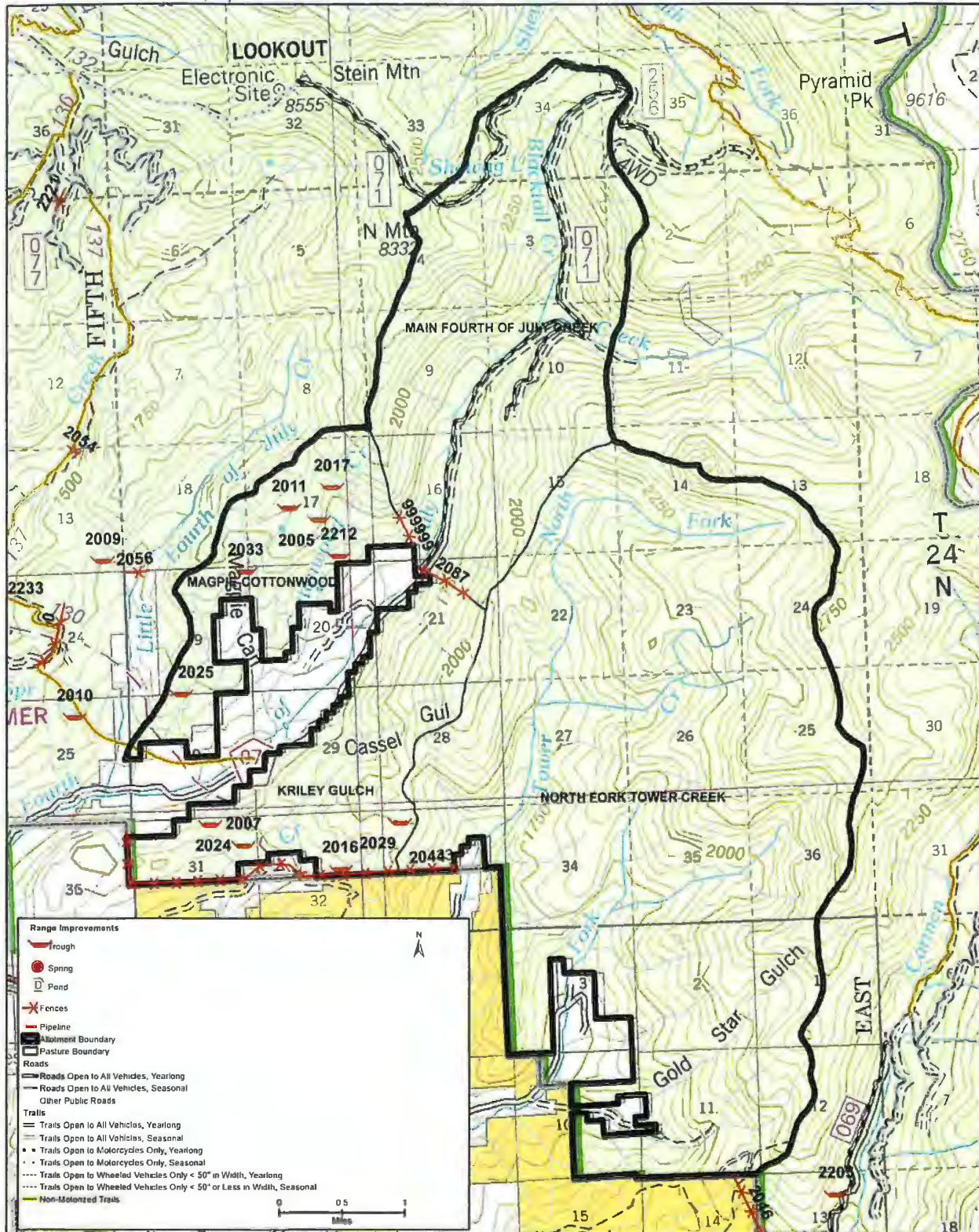
(d) The permanent improvements constructed or existing for use in conjunction with this permit are the property of the United States Government unless specifically designated otherwise or covered by a cooperative agreement. They will not be removed nor compensated for upon cancellation of this permit, except in the National Forests in the 16 contiguous Western States when cancelled, in whole or in part, to devote land to another public purpose including disposal. In the event of such cancellation on the National Forests in the 16 Contiguous Western States, the permittee will be compensated for the adjusted value of approved range improvements installed or placed by him.

(e) The permittee may not transfer, assign, lease, or sublet this permit in whole or part.

(f) This permit includes the terms and conditions of Part 3 hereof, consisting of page 5 through 10 which follow.

Fourth of July Creek Allotment

This map shows the Fourth of July Creek Allotment for use in term grazing permit # 70024 issued to: Jay and/or Chyenne Smith on 5/10/16 by TAY KNEIFED, District Ranger, North Fork Ranger District Page 5 of 10



File: T:\SINFS\Salmon\Challis\Program\2200Range\GIS\NorthZone\FourthofJulyPermitAdministration\Map\FourthofJulyPermitMap2016PortLetter.mxd
Projection: UTM 11 N, NAD83
Produced: 2/19/2016

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Special Terms and Conditions – Range Improvements

Responsibilities for Maintenance of Structural Improvements.

In accordance with part II, 8 (h and i) of this permit, you are required to maintain range improvements assigned to you to a standard at, or as near as possible to, their original condition when constructed. Annual maintenance is necessary to assure improvements are functional and to prevent physical deterioration of structures due to normal use over time. Maintenance must be accomplished before livestock enter the grazing unit and during the period livestock are authorized in the grazing unit. Fence maintenance must be accomplished while livestock are authorized on either side of the fence.

The specific improvements you are responsible for maintaining are listed on page 8 of this permit and depicted on the map on page 5.

Standards for maintenance of structural range improvements are listed below.

STOCKWATER DEVELOPMENTS (troughs, pipelines and ponds):

1. All spring source facilities will be adequately protected or fenced; fences will be maintained to prevent livestock from getting into the source or the headbox.
2. Headbox lids or covers shall be in place to prevent dirt, rodents or other refuse from getting into the headbox.
3. All outlet pipes and valves from headboxes will be functioning and any leaking should be kept to a very minimum.
4. Water troughs will be kept at heights which make them usable to livestock and wildlife. Troughs which become elevated from trampling should be periodically backfilled to maintain usable height.
5. Troughs which become uneven due to settling shall be reset and leveled.
6. Water will not be allowed to overflow the sides of the troughs. Overflow pipes must be kept clear. Overflow water will be piped away from troughs at least 50 feet. The end of the overflow pipe must be protected from trampling. The overflow pipe must direct water away from the trough area.
7. Inlet and outlet pipes shall be protected by being anchored and/or supported by a brace, post, or pole, etc. Inlet and outlet pipelines will be buried as much as possible for their protection.
8. All troughs should be equipped with a wildlife escape ramp which provides access from the water all along two opposing inside edges of the trough. While a floating board or secured pole can provide a platform from which birds and rodents can drink, such does not provide an avenue of escape.

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9. Troughs, storage tanks, and pipelines will be drained and cleaned to prevent moss and debris buildup and damage from freezing.
10. Poles, posts and trough-framing materials used in the construction of the water development will be maintained, repaired or replaced as needed.
11. All above-ground, pipeline-supported structures will be maintained to keep the pipes at gradient and prevent sagging.
12. Pipelines with air and drain valves will be protected to prevent rodents and dirt from entering the pipe. Pipeline with valve cover boxes will be kept covered and repaired when needed.
13. Pipeline leaks will be repaired or the damaged section replaced with materials similar to the original construction materials.
14. Spillways will be cleaned and maintained to prevent washout or becoming plugged. Damage to and trees growing on dams will be reported to the Forest Officer.

RANGE FENCES:

1. Broken or rotten posts will be replaced to maintain proper spacing and fence integrity.
2. Replacement of broken or rotten braces or jacks will be completed to maintain fence integrity.
3. Gate tension should be sufficient to prevent the gate from sagging and yet still be easily opened and closed. Gate loops will be made from SMOOTH wire. Gate rests will be placed where a mounted gate is closed, as well as open, to prevent premature failure on gate hinges and brace posts.
4. The permittee will close all gates before livestock enter the grazing units.
5. All broken wires will be spliced and repaired such that tension on a wire can be maintained. Wire splices will be made with 12 gauge tie wire or type of wire used in initial construction.
6. Broken or missing stays will be replaced where needed.
7. Fence staples should support the wire, but not crimp the strands. Staples should be set at an angle to the grain of the post. Staples and clips will be replaced where and when needed to maintain the fence.
8. Where rocks are used to tie down posts or anchor braces, they will be at least 50 pounds and secured with smooth wire.

Exhibit 5

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9. Let down fences will be put up no more than two weeks prior to livestock entering the unit and let down no later than two weeks following the livestock leaving the unit. This is to allow for protection of wildlife, specifically sage grouse and elk, during times when livestock are not present.

Description of improvements to be maintained on the Fourth of July Creek Allotment:

<u>ID.</u>	<u>Name</u>	<u>Type</u>
702005	Lower Cottonwood Spring	Water Development
702007	Kriley Gulch W.D.	Water Development
702011	Upper Magpie W.D.	Water Development
702016	Lower So. Fk. Kriley W.D.	Water Development
702017	Upper Cottonwood W.D.	Water Development
702024	Brown Spring	Water Development
702025	Chute Gulch W.D.	Water Development
702029	Upper So. Fk. Kriley W.D.	Water Development
702033	Lower Magpie W.D.	Water Development
702044	Kriley Gulch Boundary	Fence
702087	Fourth of July Drift	Fence
702212	Lower Cottonwood W.D.	Water Development

ID numbers on the Fourth of July Creek Map, page 5 of 10, displays the locations of these improvements.

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Special Terms and Conditions**Management Practices - Forest Plan requirements or practices to achieve Forest Plan objectives.**

Background: The authority for the Forest Plan is through Act of Congress; it must be considered as a local extension of applicable laws. Therefore, all activities on the Salmon National Forest portion of the Salmon-Challis National Forest must comply with the Forest Plan. Excerpts from the Forest Plan applicable to range and livestock management on the allotment are listed below and hereby made part of this permit.

1. It is your responsibility to recognize use standards. If you need assistance determining utilization contact your Range Management Specialist as a minimum. Ensure all livestock are removed from each unit in accordance with use standards, and with unit scheduling identified in your Annual Operating Instructions.
2. Annual use indicators on key species are 50% utilization by weight in riparian areas, 50 % utilization by weight on uplands unless otherwise indicated.
3. Where practical, stock driveways and trailing routes will be located outside of riparian zones. Limit livestock trailing, bedding, watering, salting, loading, and other handling efforts to those areas and times that would not retard or prevent attainment of Riparian Management Objectives or adversely affect native fish.
4. Water developments constructed for livestock will provide access for wildlife and will be fitted with a wildlife escape ramp.

Special Terms and Conditions, Other

1. Any motorized travel off of routes not designated in the Salmon-Challis National Forest Travel Plan must have specific District Ranger written authorization in advance. This authorization must be displayed in windshield for trucks or carried on ATV's, UTV's and motorcycles.
2. Any hay or straw used in association with this permit will be certified and tagged as noxious weed free as directed by the Forest Special Order.
3. If a permitted animal dies in the vicinity of streams, lakes, roads, trails, or recreational areas, its carcass must be moved at least 100 yards from live water, roads, trails or recreational areas, or as far as practicable when conditions makes that distance impossible.
4. A camp and its operation may be authorized under Forest Officer Instruction, Part 2, Clause 8(a) for express purpose of meeting the terms of this grazing permit. Each location will be identified in the Annual Operating Instructions. Camps must be kept and left in a sanitary condition. All flammable refuse must be burned and nonflammable refuse must be packed out. All equipment/temporary structures must be removed within 10 days of the end of the authorized season or as directed by the Forest Officer. Camps must be equipped with tool(s) for extinguishing campfires.

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5. Annual Operating Instructions identify management direction applicable to the current grazing year, so as to comply with the terms and conditions of the term grazing permit, Forest Plan direction and other applicable laws and regulations. Annual Operating Instructions are part of the term grazing permit identified as Forest Officer instructions in Part 1, Clause 3 and Part 2, Clause 8 of the term grazing permit.
6. An annual Actual Use Report is required to be submitted within 15 days of the latest scheduled off date in the AOI.
7. Pursuant to Part 2, Clause 9, requests for nonuse must be submitted in writing at least 45 days in advance of the on ("from") date in Part 1. Any billing change deemed necessary may result in an administrative fee.
8. Pursuant to Part 2, Clause 11(c), 30 days shall be sufficient time to "immediately notify the Forest Officer" of any change in the qualifications to hold a term grazing permit.

Special Terms and Conditions – Additional Management Practices Required by Consultation

1. A rest rotation grazing system will continue to be used.
2. The on date will be varied so that livestock will be placed on the allotment at range readiness.
3. Annual use indicators will dictate when livestock are moved between Units or off the Allotment, within the terms of the term grazing permit. This will include moves in response to fish spawning.
4. Salt and/or mineral blocks will not be placed within one-fourth mile of springs, streams or riparian habitat.
5. Permittees will direct livestock away from streams and associated riparian areas (ride) at least once every 2 weeks to reduce potential impacts on spawning areas and designated critical habitat.
6. The following use indicators and triggers apply to the Fourth of July Allotment:

Key Area Location	Unit Name/ Creek Name	Monitoring Attribute	Use Indicator	Key Species	Trigger
M334	Main 4 th of July Creek/ 4 th of July Creek	Browse Use	50% 30%	Willow/ Alder	45% 25%
		Greenline stubble	4 in.	Hydric spp.	5 in.
		Bank Alteration	20%	n/a	15%
Upland Sites	All Units	Utilization	50%	Upland grass spp	45%
Riparian Areas	All Units	Utilization by Key Species	50%	Riparian grass spp	45%

EXHIBIT 6

Declaration of Gary Spackman

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF CERTAIN BASIN 67
WATER RIGHTS, IN THE NAME OF THE
UNITED STATES OF AMERICA ACTING
THROUGH THE DEPARTMENT OF
INTERIOR, BUREAU OF LAND
MANAGEMENT

Docket No. P-OSC-2021-001

**ORDER PARTIALLY GRANTING
PETITION; ORDER TO SHOW
CAUSE**

(CRANE CREEK ALLOTMENT)

BACKGROUND

On September 16, 2021, Soulen Livestock Co. and Soulen Grazing Association, LLC (collectively, “Petitioners”) filed with the Idaho Department of Water Resources (“Department”) a *Verified Petition for Order to Show Cause* (“Petition”).¹ Petitioners ask the Department to issue an order pursuant to Idaho Code § 42-224(1) “to show cause why the Water Rights [(see Petition Exhibit A, “BLM Overlapping Water Rights”)]” on the federal grazing allotment known as the Crane Creek Allotment (“Allotment”) “have not been lost through forfeiture pursuant to Idaho Code § 42-222(2).” *Petition* at 1.²

Petitioners assert that the water rights listed in Exhibit A, under “BLM Overlapping Water Rights” (“BLM Water Rights”) are owned by the United States of America acting through the Department of Interior, Bureau of Land Management (“BLM”). *Id.* ¶ 1; *see Petition* Ex. A. Additionally, Petitioners assert that the points of diversion and places of use for the BLM Water Rights are located on the Allotment. *Petition* ¶ 3. Petitioners claim that no other water rights, other than the water rights owned by Soulen Livestock Co., share “the same place of use or point of diversion” as the BLM Water Rights. *Id.* ¶ 4.

Petitioners maintain that Soulen Grazing Association has, for at least the last five years, held a valid BLM grazing permit for livestock grazing on the Allotment. *Id.* ¶ 5; *see Petition* Ex. B. Petitioners assert that Soulen Grazing Association’s livestock have grazed on the Allotment “each year of the permit term.” *Petition* ¶ 6. Petitioners claim that Soulen Grazing Association’s members have “regularly visited the Allotment each grazing season of use and at other times outside the season of use each year for more than the past five years.” *Id.* ¶ 7. Petitioners allege that “[a]t no time over the past five years have Petitioners, their officers, employees, or agents

¹ When submitting the Petition, Petitioners failed to include copies of the exhibits referenced in the Petition. Petitioners submitted the supporting exhibits (Exhibit A and Exhibit B) to the Department on September 23, 2021.

² On the same day, Petitioners also filed a second verified petition, seeking an order to show cause why certain BLM water rights on the federal grazing allotment known as the Paddock Valley Allotment have not been lost through forfeiture. *See Verified Petition for Order to Show Cause, In re Basin 65 & 67 Water Rts., In Name of U.S. Dep’t of Interior, Bureau of Land Mgmt.*, No. P-OSC-2021-002 (Idaho Dep’t of Water Res. Sep. 16, 2021), <https://idwr.idaho.gov/wp-content/uploads/sites/2/legal/P-OSC-2021-002/20210916-Verified-Petition-for-Order-to-Show-Cause.pdf> [hereinafter Paddock Valley Petition].

ORDER PARTIALLY GRANTING PETITION; ORDER TO SHOW CAUSE (CRANE
CREEK ALLOTMENT) – 1

witnessed, read about, or heard of the existence of livestock owned or controlled by the BLM” on the Allotment to use water under the BLM Water Rights. *Id.* ¶ 8, at 2. Petitioners allege that at no time since Soulen Grazing Association has been authorized to use the Allotment “has either Petitioner, their members or their agents or employees ever witnessed, read about, or heard of the BLM applying the [BLM] Water Rights to the beneficial use of watering livestock that the BLM owns or controls on the Allotment.” *Id.* ¶ 10. Petitioners assert that no agency relationship exists between Petitioners and the BLM “for the purpose of acquiring water rights for the BLM on the Allotment.” *Id.* ¶ 11. The Petition is verified by Harry C. Soulen, President of Soulen Livestock Co. and manager of Soulen Grazing Association, LLC. *Id.* at 3–4.

To comply with the statutory service requirements of Idaho Code § 42-224(4),³ the Department submitted a Freedom of Information Act (“FOIA”) request to the BLM on September 23, 2021, for a copy of all active grazing permits on the Crane Creek Allotment and the adjoining Paddock Valley Allotment. On October 8, 2021, in response to the Department’s FOIA request, the BLM sent copies of four grazing permits. One permit sent by the BLM matches Permit No. 1101236, issued March 4, 2016, that Petitioners filed as Exhibit B. On October 21, 2021, the BLM confirmed that they sent one permit in error and that it is not currently active. The remaining two permits, sent by the BLM, are active Crane Creek Allotment grazing permits held by the following: Jerome and Jill Grandi, and David Maddox.

APPLICABLE LAW

Idaho Code § 42-224 states in pertinent part:

(1) Within thirty (30) days of receipt by the director of the department of water resources of a petition or other information that a stockwater right has not been put to beneficial use for a term of five (5) years, the director must determine whether the petition or other information, or both, presents prima facie evidence that the stockwater right has been lost through forfeiture pursuant to section 42-222(2), Idaho Code.⁴ If the director determines the petition or other information, or both, is insufficient, he shall notify the petitioner of his determination, which shall include a reasoned statement in support of the determination, and otherwise disregard for the purposes of this subsection the other, insufficient, information.

(2) If the director determines the petition or other information, or both, contains prima facie evidence of forfeiture due to nonuse, the director must within thirty (30) days issue an order to the stockwater right owner to show cause before the director

³ Idaho Code § 42-224(4) was amended during the Second Regular Session of the Sixty-sixth Idaho Legislature, effective March 24, 2022. Both prior to and after the 2022 amendment, the service requirements outlined within Idaho Code § 42-224(4) are substantially the same regarding the persons who must be served a copy of an order to show cause issued by the Department.

⁴ Prior to the 2022 amendment of Idaho Code 42-224(1), the Director was not required by law to determine, within a period of 30 days, whether a stockwater right has been put to beneficial use for a term of five years. In this matter, the Department considers the start of the newly codified 30-day requirement to be March 24, 2022, the day the statutory amendment went into effect.

why the stockwater right has not been lost through forfeiture pursuant to section 42-222(2), Idaho Code.⁵ Any order to show cause must contain the director's findings of fact and a reasoned statement in support of the determination.

I.C. § 42-224(1)–(2) (current version as amended in 2022). Therefore, to issue an order to show cause as Petitioners have requested, the Director must conclude that the Petition makes a “prima facie showing” that the BLM has not put its BLM Water Rights to beneficial use for at least five years. “Prima facie” is defined by *Black’s Law Dictionary* as: “Sufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue <a prima facie showing>.” *Prima facie*, *Black’s Law Dictionary* (11th ed. 2019).

FINDINGS OF FACT

After careful review of the Petition (including Exhibit A and Exhibit B), the Department’s associated research memorandum,⁶ and Petitioners’ concurrently filed Paddock Valley Petition, the Director issues the following findings:

1. Petitioners requested the Department issue an order to the BLM to show cause why the BLM’s Water Rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2). *See Petition* at 1. The following is a list of the water rights at issue: 67-12395, 67-12396, 67-12397, 67-12398, 67-12399, 67-12400, 67-12401, 67-12405, 67-12408, 67-12409, 67-12427, 67-12429, 67-12431, 67-12433, 67-12435, 67-12437, 67-12443, 67-12445, 67-12447, 67-12508, 67-12509, 67-12740, 67-12741, 67-12742, 67-12743, 67-12744, 67-12745, 67-12746,⁷ 67-12747, 67-12748,⁸ 67-12749, 67-12750, 67-12753, 67-12754, 67-13006, 67-13008, 67-13009, 67-13010, 67-13013, 67-13014, 67-13015, 67-13140. *See Petition* Ex. A; *Memorandum*.

⁵ Prior to the 2022 amendment of Idaho Code 42-224(2), the Director was not required by law to issue an order to show cause within 30 days of his determination. *See generally supra* note 4.

⁶ For the Director to give a reasoned statement supporting a determination in favor of or opposing forfeiture pursuant to Idaho Code § 42-222(2), Department staff utilized the Department’s water right files and database to thoroughly review, analyze, and document the locations of the places of use for the water rights listed in Exhibit A of the Petition. *See* Mem. from Glen Gardiner & Craig Saxton, Water Allocations Analyst and Adjudication Section Manager, Idaho Dep’t of Water Res., to Shelley Keen, Water Allocation Bureau Chief, Idaho Dep’t of Water Res. 1 (Nov. 8, 2021) (attached to this Order as Attachment A) [hereinafter *Memorandum*].

⁷ Exhibit A of the Petition identifies water right 67-12764 as one of the BLM’s overlapping water rights. The inclusion of water right 67-12764 appears to be a typographical error as 67-12764 is out of sequence with the other water rights listed in Exhibit A and the Department has no record of a water right with that number. *Memorandum* at 1 n.2. The intended water right number is believed to be 67-12746, as water right 67-12746 is a BLM water right with a point of use located within the Allotment. *Id.* at 1. In this matter, the Director will substitute water right 67-12746 in place of 67-12764, since this is most likely a simple transposition of numbers.

⁸ Exhibit A of the Petition includes water right 67-12749 twice. This appears to be another typographical error. Based on the Department’s review, it is believed that the first reference to 67-12749 in Exhibit A should have been 67-12748. *See Memorandum* at 5. In this matter, the Director will substitute water right 67-12748 for the first reference to water right 67-12749.

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2. Using the Department's water rights database, the Department reviewed the places of use for the Water Rights. *Memorandum* at 1.

3. Petitioners' allegations in the Petition are specific to non-use within the Allotment and do not extend to use beyond the Allotment. *See Petition* at 1–2.

4. Based on the Memorandum, the Director finds that the places of use for the following water rights, are entirely within the Allotment: 67-12395, 67-12396, 67-12399, 67-12400, 67-12401, 67-12427, 67-12429, 67-12431, 67-12433, 67-12435, 67-12443, 67-12445, 67-12447, 67-12740, 67-12743, 67-12744, 67-12746, 67-12747, 67-12748, 67-12749, 67-12750, 67-12753, 67-12754, 67-13008, 67-13009, 67-13010, and 67-13013. *See Memorandum* at 1, 5.

5. Harry C. Soulen is an officer and member in Soulen Livestock Co. and Soulen Grazing Association, LLC. *Petition* at 3–4. The allegations in the Petition attribute observations of nonuse of water in the Allotment to the officers and members of Soulen Livestock Co. and Soulen Grazing Association, LLC. *Id.* at 1–2. Accordingly, the Director finds that Harry C. Soulen's statements are based on personal knowledge.

6. As described in footnote 2 above, on September 16, 2021, Petitioners filed the Paddock Valley Petition. The Paddock Valley Petition is similar to the Petition, except it contains specific allegations related to the Paddock Valley Allotment. Within the Paddock Valley Petition, Harry C. Soulen, an officer and member in Soulen Livestock Co. and Soulen Grazing Association, LLC, alleges nonuse of water by the BLM. Petitioners' allegations in the Paddock Valley Petition are specific to non-use within the Paddock Valley Allotment and do not extend to use beyond the Paddock Valley Allotment. *See Paddock Valley Petition* at 1–2.

7. The Paddock Valley Petition attributes allegations of non-beneficial use of water, authorized by federal water rights within the Paddock Valley Allotment, to the officers and members of Soulen Livestock Co. and Soulen Grazing Association, LLC. *Paddock Valley Petition* ¶¶ 8–10. Accordingly, the Director finds that Harry C. Soulen's statements in the Paddock Valley Petition are based on personal knowledge.⁹

8. Based on the Memorandum, the Director finds that the places of use for three of the water rights, 67-12741, 67-12745, and 67-13140, are entirely within both the Allotment and the Paddock Valley Allotment. *Memorandum* at 3, 5.

9. The Director finds that some of the water rights at issue have a place of use that extends beyond both the Allotment and the Paddock Valley Allotment. The water rights with a place of use that extends beyond the boundaries of the Allotment and the Paddock Valley Allotment are: 67-12397, 67-12398, 67-12405, 67-12408, 67-12409, 67-12437, 67-12508, 67-12509, 67-12742, 67-13006, 67-13014, and 67-13015. *See Memorandum* at 2–5.

⁹ The Paddock Valley Petition is also addressed in the Director's *Order Partially Granting Petition; Order to Show Cause (Paddock Valley Allotment)*. Order Part. Granting Pet.; Order to Show Cause (Paddock Valley Allot't), *In re Basin 65 & 67 Water Rts., In Name of U.S. Dep't of Interior, Bureau of Land Mgmt.*, No. P-OSC-2021-002 (Idaho Dep't of Water Res. Apr. 25, 2022), <https://idwr.idaho.gov/wp-content/uploads/sites/2/legal/P-OSC-2021-002/P-OSC-2021-002-20220425-Order-to-Show-Cause-Paddock-Valley>.

Exhibit 6

10. The Director has not received written evidence that a principal/agent relationship existed, during the five-year period calculated pursuant to Idaho Code § 42-224(1), between the BLM and any Crane Creek Allotment or Paddock Valley Allotment livestock grazing permit or lease holders for the purpose of maintaining the BLM Water Rights.

ANALYSIS

Forfeiture is disfavored in Idaho law. *Application of Boyer*, 73 Idaho 152, 159, 248 P.2d 540, 544 (1952) (“Forfeitures are abhorrent and all intendments are to be indulged against a forfeiture.”). To make a prima facie showing that the BLM has not beneficially used water authorized by its water rights for five years, for each water right at issue here, Petitioners must present sufficient evidence establishing forfeiture over the entire place of use—not just those portions of the place of use within the Allotment. The Department’s Memorandum, which includes an analysis of its associated due diligence investigation, clarifies that some of the places of use of the BLM Water Rights extend beyond the boundaries of the Allotment and the related Paddock Valley Allotment. *See Memorandum* at 2–5. As noted in finding 3 and 6 above, Petitioners do not offer evidence of BLM’s non-use of water beyond the boundaries of the Allotment and the Paddock Valley Allotment. Therefore, the Petition, even when combined jointly with the Paddock Valley Petition, does not include sufficient evidence for the Director to issue an order to show cause to the extent that Petitioners have requested.

The Department must limit the scope of an order to show cause issued in this matter to those BLM Water Rights with a place of use that is located entirely within the property boundaries for which the Department has received supporting statements alleging non-use of water. Accordingly, for those BLM Water Rights that have a place of use that is located either entirely or partially outside of the Allotment and the Paddock Valley Allotment (see finding 9 above), Petitioners have failed to make a “prima facie showing” in accordance with Idaho Code § 42-224 that the BLM has not beneficially used water authorized by its water rights for five years. However, Petitioners’ statements based on personal knowledge (see findings 5 and 7 above), when combined with the analysis within the Department’s Memorandum, amount to a “prima facie showing” in accordance with Idaho Code § 42-224 that the BLM has not beneficially used water authorized by its water rights that have a place of use entirely within the Allotment and the Paddock Valley Allotment within the last five years.

CONCLUSION OF LAW

The Director concludes that the “prima facie showing” burden of proof, set forth in Idaho Code § 42-224, has been satisfied to the extent that he should partially grant Petitioners’ request and issue an order to the BLM to show cause before the Director why those BLM Water Rights that have a place of use entirely within the Allotment and the Paddock Valley Allotment have not been lost through forfeiture pursuant to Idaho Code § 42-222(2).

ORDER

Based on the foregoing, the following are HEREBY ORDERED:

1. The *Verified Petition for Order to Show Cause* at issue is GRANTED for ONLY the following water rights: 67-12395, 67-12396, 67-12399, 67-12400, 67-12401, 67-12427, 67-12429, 67-12431, 67-12433, 67-12435, 67-12443, 67-12445, 67-12447, 67-12740, 67-12741, 67-12743, 67-12744, 67-12745, 67-12746, 67-12747, 67-12748, 67-12749, 67-12750, 67-12753, 67-12754, 67-13008, 67-13009, 67-13010, 67-13013, and 67-13140.

2. The *Verified Petition for Order to Show Cause* at issue is DENIED for the following water rights: 67-12397, 67-12398, 67-12405, 67-12408, 67-12409, 67-12437, 67-12508, 67-12509, 67-12742, 67-13006, 67-13014, and 67-13015.

3. In accordance with Idaho Code § 42-224(2), the United States of America acting through the Department of Interior, Bureau of Land Management must show cause before the Director of the Idaho Department of Water Resources why the following stockwater rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2): 67-12395, 67-12396, 67-12399, 67-12400, 67-12401, 67-12427, 67-12429, 67-12431, 67-12433, 67-12435, 67-12443, 67-12445, 67-12447, 67-12740, 67-12741, 67-12743, 67-12744, 67-12745, 67-12746, 67-12747, 67-12748, 67-12749, 67-12750, 67-12753, 67-12754, 67-13008, 67-13009, 67-13010, 67-13013, and 67-13140.

4. In accordance with Idaho Code § 42-224(6), the United States of America acting through the Department of Interior, Bureau of Land Management has 21 days from completion of service of this order to request in writing a hearing pursuant to Idaho Code § 42-1701A(1)–(2). If the United States requests such a hearing, it must also serve a copy of the request upon the petitioners and the livestock grazing permit holders listed on the included certificate of service.

5. In accordance with Idaho Code § 42-224(7), if the United States fails to respond to the above order to show cause within 21 days, the stockwater rights for which the *Verified Petition for Order to Show Cause* has been partially granted shall be considered forfeited, and the Director shall issue an order within 14 days stating the stockwater rights have been forfeited pursuant to Idaho Code § 42-222(2).

6. In accordance with Idaho Code §§ 42-224(1) and 42-224(4), Soulen Livestock Co., Soulen Grazing Association, LLC, and all active Crane Creek Allotment and Paddock Valley Allotment livestock grazing permit or lease holders will be served a copy of this order.

DATED this 25th day of April 2022.

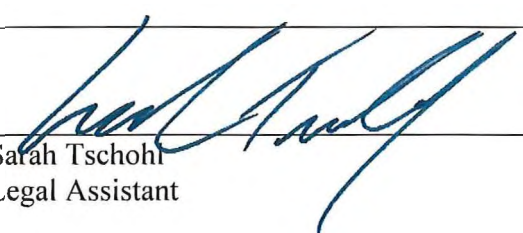

GARY SPACKMAN
Director

ORDER PARTIALLY GRANTING PETITION; ORDER TO SHOW CAUSE (CRANE CREEK ALLOTMENT) – 6

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of April 2022, I caused to be served a true and correct copy of the foregoing *Order Partially Granting Petition; Order to Show Cause (Crane Creek Allotment)*, by the method indicated below, upon the following:

Soulen Livestock Co. & Soulen Grazing Association, LLC P.O. Box 827 Weiser, ID 83672 <i>Petitioners</i>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
Jerome & Jill Grandi 2294 Weiser River Rd. Weiser, ID 83672 <i>Livestock Grazing Permit Holder</i>	<input checked="" type="checkbox"/> Certified U.S. Mail with return receipt <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
David Maddox 1021 Lower Crane Rd. Weiser, ID 83672 <i>Livestock Grazing Permit Holder</i>	<input checked="" type="checkbox"/> Certified U.S. Mail with return receipt <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
USDI BLM Idaho State Office 1387 S. Vinnell Way Boise, ID 83709 <i>Stockwater Right Owner</i>	<input checked="" type="checkbox"/> Certified U.S. Mail with return receipt <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
<i>Courtesy Copy:</i> United States Department of Justice Environment and Natural Resources Division 550 W. Fort St., MSC 033 Boise, ID 83724 William G. Myers III HOLLAND & HART LLP P.O. Box 2527 Boise, ID 83701 wmyers@hollandhart.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email <input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email



Sarah Tschohl
Legal Assistant

ORDER PARTIALLY GRANTING PETITION; ORDER TO SHOW CAUSE (CRANE CREEK ALLOTMENT) – 7

Memorandum

To: Shelley Keen

Prepared by: Glen Gardiner & Craig Saxton
GG *CS*

Date: November 8, 2021

Re: Review of Federal water rights within the Crane Creek Allotment (#361) which were identified as Exhibit A of Soulen Livestock Co's Verified Petition for Order to Show Cause.

Comparison of Partial Decrees to IDWR Database Records and Shapefiles

On September 16, 2021, Soulen Livestock Company and Soulen Grazing Association, LLC ("Soulen") petitioned the Director of the Idaho Department of Water Resources ("IDWR") to issue a show cause order pursuant to Idaho Code § 42-224(1) for a list of water rights "located on a federal grazing allotment known as the Crane Creek Allotment (#361)." Soulen's petition refers to the list of water rights as Exhibit A. For each of the water rights on Exhibit A, we compared information on SRBA partial decrees to information in IDWR's water rights database. Fields compared included Name and Address, Source, Quantity, Priority Date, Point of Diversion, Purpose and Period of Use, and Place of Use. We found no discrepancies, although the Names on the partial decrees are abbreviated to USDI BLM, IDAHO STATE OFFICE, whereas IDWR's database refers to the Names as UNITED STATES OF AMERICA ACTING THROUGH USDI BUREAU OF LAND MANAGEMENT, IDAHO STATE OFFICE.

IDWR stores digitized water right places of use ("POU") in its geographic information system ("GIS"). We verified the digitized POU for each of the water rights listed on Exhibit A matches the POU described in the water rights database. No discrepancies were found. To complete our analysis, we then used GIS to overlay the digitized POU for each water right in Exhibit A onto the digital boundaries of the Crane Creek Allotment and neighboring grazing allotments.¹

Crane Creek Allotment Analysis

Based on digital overlay, the POUs for the following water rights exist completely within the Crane Creek Allotment:

67-12395, 67-12396, 67-12400, 67-12401, 67-12427, 67-12429, 67-12443, 67-12445, 67-12447, 67-12740, 67-12744, 67-12746², 67-12747, 67-12749, 67-12750, 67-12753, 67-12754, 67-13008, 67-13009, 67-13010, and 67-13013.

¹ The digital shapes of the allotment boundaries were created by U.S. Department of the Interior, Bureau of Land Management with a publication date of 06-30-2017 and downloaded from the website https://gis.blm.gov/arcgis/rest/services/range/BLM_Natl_Grazing_Allotment/MapServer

² The inclusion of 67-12764 was clearly a typographical error as 67-12764 is out of sequence with the other water rights and no valid water right exists under this number. For purpose of this analysis, we are substituting 67-12746 for 67-12764.

Water rights 67-12399, 67-12431, 67-12433, 67-12435, and 67-12743, authorize water use from either a spring or a stream where the point of diversion or the instream stockwater use reach is entirely within the Crane Creek allotment. However, because the decrees list the places of use for these rights in quarter-quarters or government lots, small portions of the decreed place of use tracts (less than 1.5 acres) for each of these rights extend outside the Crane Creek Allotment boundary. Based on IDWR's review, water from the decreed sources and points of diversion or instream use reaches would not be conveyed to – or used in – the portions of the place of use tracts outside the Crane Creek Allotment boundary.

POUs for the following water rights exist partially within the Crane Creek Allotment and partially outside the Crane Creek Allotment:

67-12397, 67-12398, 67-12405, 67-12408, 67-12409, 67-12437, 67-12508, 67-12509, 67-12741, 67-12742, 67-12745, 67-13006, 67-13014, 67-13015 and 67-13140.

The analysis below describes water rights from Exhibit A having all or portions of their authorized POU's outside the Crane Creek Allotment.

(Boundary Water Rights, All Split between Two or More Allotments)

67-12397:

Water right 67-12397 is an instream stockwater right on the Weiser River. The POU is T12N, R4W, Sec 22, NESE & SESE and Sec 27, NENE & NWNE. The POU for water right 67-12397 is a stretch of the Weiser River that is the boundary of the Crane Creek Allotment. The Mann Creek Allotment is on the opposite side of the river from the Crane Creek Allotment. It appears this stretch of the Weiser River, and therefore this water right, can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America except for a narrow stretch bordering the Weiser River owned by the Friends of Weiser River Trail.

67-12398:

Water right 67-12398 is an instream stockwater right on the Weiser River. The POU is T12N, R4W, Sec 15, NESW, SWSW, SESW; T12N, R4W, Sec 22, NENE, NWNE, SENE, NENW, NWNW, SWNW, and SENW. The POU for water right 67-12398 is a stretch of the Weiser River that is the boundary of the Crane Creek Allotment. The Mann Creek Allotment and Thousand Springs Allotment are on the opposite side of the river from the Crane Creek Allotment. It appears this stretch of the Weiser River, and therefore this water right, can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America except for a narrow stretch bordering the Weiser River owned by the Friends of Weiser River Trail.

67-12405

Water right 67-12405 is an instream stockwater right on the Weiser River. The POU is T12N, R4W, Sec 28, NWSE, SWSE. The POU for water right 67-12405 is a stretch of the Weiser River that is the boundary of the Crane Creek Allotment. The Mann Creek Allotment is on the opposite side of the river from the Crane Creek Allotment. It appears this stretch of the Weiser River, and therefore this water right, can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America except for a narrow stretch bordering the Weiser River owned by the Friends of Weiser River Trail.

Exhibit 6

67-12408

Water right 67-12408 is an instream stockwater right on an unnamed stream, tributary to Weiser River. The POU is T11N, R4W, Sec 3, SWNE. The POU for water right 67-12408 is a stretch of the Weiser River that is the boundary of the Crane Creek Allotment. The Mann Creek Allotment is on the opposite side of the river from the Crane Creek Allotment. It appears this stretch of the Weiser River, and therefore this water right, can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America except for a narrow stretch bordering the Weiser River owned by the Friends of Weiser River Trail.

67-12409

Water right 67-12409 is an instream stockwater right on the Weiser River. The POU is T11N, R4W, Sec 3, SWNE, NWSE, and SWSE. The POU for water right 67-12409 is a stretch of the Weiser River that is the boundary of the Crane Creek Allotment. The Lund FFR Allotment and Mann Creek Allotment are on the opposite side of the river from the Crane Creek Allotment. It appears this stretch of the Weiser River, and therefore this water right, can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America except for a narrow stretch bordering the Weiser River owned by the Friends of Weiser River Trail.

67-12508

Water right 67-12508 is an instream stockwater right on the Weiser River. The POU is T12N, R4W, Sec 11, SWNE. The POU for water right 67-12508 is a stretch of the Weiser River that is the boundary of the Crane Creek Allotment. The Carr Individual Allotment is on the opposite side of the river from the Crane Creek Allotment. It appears this stretch of the Weiser River, and therefore this water right, can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America except for a narrow stretch bordering the Weiser River owned by the Friends of Weiser River Trail.

67-12741

Water right 67-12741 is an instream stockwater right on Crane Creek. The POU is T12N, R3W, Sec 25, NENW, SENW, NESW, SESW. The POU for water right 67-12741 is a stretch of Crane Creek that is the boundary of the Crane Creek Allotment. The Paddock Valley Allotment is on the opposite side of the creek from the Crane Creek Allotment. It appears this stretch of Crane Creek, and therefore this water right, can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America.

67-12745

Water right 67-12745 is an instream stockwater right on an unnamed stream, tributary to Crane Creek. The POU within Crane Creek Allotment is T11N, R3W, Sec 3, L2(NWNE), SWNE, L3(NENW), L4(NWNW); T11N, R3W, Sec 4, L1(NENE); T12N, R3W, Sec 33, NESE, SESE; and T12N, R3W, Sec 34, NWSW, SWSW, SESW. The POU described as T11N, R03W, Sec 3, SENE and NESE are in both the Crane Creek Allotment and Paddock Valley Allotment. Therefore, this water right can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America.

Exhibit 6

67-13014

Water right 67-13014 is an instream stockwater right on an unnamed stream, tributary to the Weiser River. The POU is T12N, R4W, Sec 26, NENW, NWNW; and T12N, R4W, Sec 27, NENE. The POU for water right 67-13014 is a stretch of the Weiser River that is the boundary of the Crane Creek Allotment. The Mann Creek Allotment is on the opposite side of the river from the Crane Creek Allotment. It appears this stretch of the Weiser River, and therefore this water right, can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America except for a narrow stretch bordering the Weiser River owned by the Friends of Weiser River Trail.

67-13015

Water right 67-13015 is an instream stockwater right on an unnamed stream, tributary to the Weiser River. The POU is T12N, R4W, Sec 27, NWNE. The POU for water right 67-13015 is a stretch of the Weiser River that is the boundary of the Crane Creek Allotment. The Mann Creek Allotment is on the opposite side of the river. It appears this stretch of the Weiser River, and therefore this water right, can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America except for a narrow stretch bordering the Weiser River owned by the Friends of Weiser River Trail.

(Misc. Issues)**67-12437**

Water right 67-12437 describes the source as a spring, tributary to the Weiser River. The POU is T12N, R4W, Sec 26, SWSE. The POU is within the Crane Creek Allotment and extends into an undesignated area outside the Crane Creek Allotment. The entire POU is managed by Bureau of Land Management, United States of America.

67-12509

Water right 67-12509 is an instream stockwater right on the Weiser River. The POU is T12N, R4W, Sec 10, NENE, SWNE, SENE; T12N, R4W, Sec 11, NWNW. The POU for water right 67-12509 is a stretch of the Weiser River that is the boundary of the Crane Creek Allotment. The Carr Individual Allotment and Thousand Springs Allotment are on the opposite side of the river from the Crane Creek Allotment. It appears this stretch of the Weiser River, and therefore this water right, can be accessed from multiple allotments. Part of the POU area within the Crane Creek Allotment is owned by Soulen Livestock Co and part is managed by Bureau of Land Management, United States of America. Part of the area outside Crane Creek Allotment is managed by Bureau of Land Management, United States of America and part of the area is owned by Friends of Weiser River Trail.

67-12742

Water right 67-12742 is an instream stockwater right on Crane Creek. The POU is T11N, R3W, Sec 7, NENE, NWNE; T11N, R3W, Sec 8, NENE, NWNE, NENW, NWNW; T11N, R3W, Sec 9, SWNE, SENE, NWNW, SWNW, SENW. The POU for water right 67-12742 exists on Crane Creek Allotment, Bear Creek Allotment, and Paddock Valley Allotment. It is not clear if the right is intended to be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America.

Exhibit 6

67-13006

The POU for water right 67-13006 places one of five quarter-quarters (QQs) outside the Crane Creek Allotment on private property. POU T12N, R04W, S19, Lot 3 (NWSW) is five miles to the west of the remaining four QQs. There are four separate parcels within this QQ, individually owned by Angelea M Halvorson, Brian Roe, Hagen Farms, Inc, and Donna G Stout. The remaining 4 QQs are within the Crane Creek Allotment. POU's T12N, R4W, S24, SWNE, SENW, NESE, NWSE, are managed by the Bureau of Land Management, United States of America. The identified legal description would make sense if the Range was changed to R03W. This would place the QQ adjacent to the remaining water right.

67-13140

The POU for water right 67-13140 is an instream stockwater right on Crane Creek, tributary to the Weiser River. The POU is T11N, R3W, Sec 2, NWNE, NENW, NWNW, SWNW; T11N, R3W, Sec 3, SENE, SWSW, SESW, NESE, NWSE, SWSE; T11N, R3W, Sec 10, NWNW; T12N, R3W, Sec 35, NENE, SENE, NESE, SWSE, SESE. The POU for water right 67-13140 exists on Crane Creek Allotment and Paddock Valley Allotment. It is not clear if the right is intended to be accessed from one or both allotments. The entire POU is managed by Bureau of Land Management, United States of America.

67-12748 (not listed on Exhibit A)

Exhibit A of Soulen Livestock Co's "Verified Petition for Order to Show Cause" lists water right 67-12749 twice. In Exhibit A, Soulen Livestock Co water rights 67-15233 and 67-15234 are both associated with 67-12749. This appears to be a typographical error on Exhibit A. Based on the numbering sequences and POU locations, it appears 67-15233 should correlate with 67-12748. Water right 67-15234 is correctly associated with water right 67-12749.

Water right 67-12748 is an instream stockwater right on Cougar Canyon, tributary to Crane Creek. POU's T11N, R3W, Sec 3, (L1)NENE, (L2) NWNE, SENE are within the Crane Creek Allotment. However, because the decree lists the place of use for this right in quarter-quarters and government lots, a small portion (less than 0.7 acres) of the decreed place of use in T11N, R03W, Sec 3, SENE, extends into the Paddock Valley Allotment. Based on IDWR's review, water from the instream use reach would not be used in the portions of the place of use tracts outside the Crane Creek Allotment boundary. The entire POU is managed by Bureau of Land Management, United States of America.

-end-

EXHIBIT 7

Declaration of Gary Spackman

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF CERTAIN BASIN 65
AND 67 WATER RIGHTS, IN THE NAME OF
THE UNITED STATES OF AMERICA
ACTING THROUGH THE DEPARTMENT OF
INTERIOR, BUREAU OF LAND
MANAGEMENT

Docket No. P-OSC-2021-002

**ORDER PARTIALLY GRANTING
PETITION; ORDER TO SHOW
CAUSE**

(PADDOCK VALLEY ALLOTMENT)

BACKGROUND

On September 16, 2021, Soulen Livestock Co. and Soulen Grazing Association, LLC (collectively, “Petitioners”) filed with the Idaho Department of Water Resources (“Department”) a *Verified Petition for Order to Show Cause* (“Petition”).¹ Petitioners ask the Department to issue an order pursuant to Idaho Code § 42-224(1) “to show cause why the Water Rights [(see Petition Exhibit A, yellow columns)]” on the federal grazing allotment known as the Paddock Valley Allotment (“Allotment”) “have not been lost through forfeiture pursuant to Idaho Code § 42-222(2).” *Petition* at 1.²

Petitioners assert that the water rights listed in the yellow columns of Exhibit A (“BLM Water Rights”) are owned by the United States of America acting through the Department of Interior, Bureau of Land Management (“BLM”). *Id.* ¶ 1; *see Petition* Ex. A. Additionally, Petitioners assert that the points of diversion and places of use for the BLM Water Rights are located on the Allotment. *Petition* ¶ 3. Petitioners claim that no other water rights, other than the water rights owned by Soulen Livestock Co., share “the same place of use or point of diversion” as the BLM Water Rights. *Id.* ¶ 4.

Petitioners maintain that Soulen Grazing Association has, for at least the last five years, held a valid BLM grazing permit for livestock grazing on the Allotment. *Id.* ¶ 5; *see Petition* Ex. B. Petitioners assert that Soulen Grazing Association’s livestock have grazed on the Allotment “each year of the permit term.” *Petition* ¶ 6. Petitioners claim that Soulen Grazing Association’s members have “regularly visited the Allotment each grazing season of use and at other times outside the season of use each year for more than the past five years.” *Id.* ¶ 7. Petitioners allege that “[a]t no time over the past five years have Petitioners, their officers, employees, or agents

¹ When submitting the Petition, Petitioners failed to include copies of the exhibits referenced in the Petition. Petitioners submitted the supporting exhibits (Exhibit A and Exhibit B) to the Department on September 23, 2021.

² On the same day, Petitioners also filed a second verified petition, seeking an order to show cause why certain BLM water rights on the federal grazing allotment known as the Crane Creek Allotment have not been lost through forfeiture. *See Verified Petition for Order to Show Cause, In re Basin 67 Water Rts., In Name of U.S. Dep’t of Interior, Bureau of Land Mgmt.*, No. P-OSC-2021-001 (Idaho Dep’t of Water Res. Sep. 16, 2021), <https://idwr.idaho.gov/wp-content/uploads/sites/2/legal/P-OSC-2021-001/20210916-Verified-Petition-for-Order-to-Show-Cause.pdf> [hereinafter Crane Creek Petition].

ORDER PARTIALLY GRANTING PETITION; ORDER TO SHOW CAUSE (PADDOCK VALLEY ALLOTMENT) – 1

witnessed, read about, or heard of the existence of livestock owned or controlled by the BLM” on the Allotment to use water under the BLM Water Rights. *Id.* ¶ 8, at 2. Petitioners allege that at no time since Soulen Grazing Association has been authorized to use the Allotment “has either Petitioner, their members or their agents or employees ever witnessed, read about, or heard of the BLM applying the [BLM] Water Rights to the beneficial use of watering livestock that the BLM owns or controls on the Allotment.” *Id.* ¶ 10. Petitioners assert that no agency relationship exists between Petitioners and the BLM “for the purpose of acquiring water rights for the BLM on the Allotment.” *Id.* ¶ 11. The Petition is verified by Harry C. Soulen, President of Soulen Livestock Co. and manager of Soulen Grazing Association, LLC. *Id.* at 3–4.

To comply with the statutory service requirements of Idaho Code § 42-224(4),³ the Department submitted a Freedom of Information Act (“FOIA”) request to the BLM on September 23, 2021, for a copy of all active grazing permits on the Paddock Valley Allotment and the adjoining Crane Creek Allotment. On October 8, 2021, in response to the Department’s FOIA request, the BLM sent copies of four grazing permits. One permit sent by the BLM matches Permit No. 1101236, issued March 4, 2016, that Petitioners filed as Exhibit B. On October 21, 2021, the BLM confirmed that they sent one permit in error and that it is not currently active. The remaining two permits, sent by the BLM, are active Crane Creek Allotment grazing permits held by the following: Jerome and Jill Grandi, and David Maddox.

APPLICABLE LAW

Idaho Code § 42-224 states in pertinent part:

(1) Within thirty (30) days of receipt by the director of the department of water resources of a petition or other information that a stockwater right has not been put to beneficial use for a term of five (5) years, the director must determine whether the petition or other information, or both, presents prima facie evidence that the stockwater right has been lost through forfeiture pursuant to section 42-222(2), Idaho Code.⁴ If the director determines the petition or other information, or both, is insufficient, he shall notify the petitioner of his determination, which shall include a reasoned statement in support of the determination, and otherwise disregard for the purposes of this subsection the other, insufficient, information.

(2) If the director determines the petition or other information, or both, contains prima facie evidence of forfeiture due to nonuse, the director must within thirty (30) days issue an order to the stockwater right owner to show cause before the director

³ Idaho Code § 42-224(4) was amended during the Second Regular Session of the Sixty-sixth Idaho Legislature, effective March 24, 2022. Both prior to and after the 2022 amendment, the service requirements outlined within Idaho Code § 42-224(4) are substantially the same regarding the persons who must be served a copy of an order to show cause issued by the Department.

⁴ Prior to the 2022 amendment of Idaho Code 42-224(1), the Director was not required by law to determine, within a period of 30 days, whether a stockwater right has been put to beneficial use for a term of five years. In this matter, the Department considers the start of the newly codified 30-day requirement to be March 24, 2022, the day the statutory amendment went into effect.

why the stockwater right has not been lost through forfeiture pursuant to section 42-222(2), Idaho Code.⁵ Any order to show cause must contain the director's findings of fact and a reasoned statement in support of the determination.

I.C. § 42-224(1)–(2) (current version as amended in 2022). Therefore, to issue an order to show cause as Petitioners have requested, the Director must conclude that the Petition makes a “prima facie showing” that the BLM has not put its BLM Water Rights to beneficial use for at least five years. “Prima facie” is defined by *Black’s Law Dictionary* as: “Sufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue <a prima facie showing>.” *Prima facie*, *Black’s Law Dictionary* (11th ed. 2019).

FINDINGS OF FACT

After careful review of the Petition (including Exhibit A and Exhibit B), the Department’s associated research memorandum,⁶ and Petitioners’ concurrently filed Crane Creek Petition, the Director issues the following findings:

1. Petitioners requested the Department issue an order to the BLM to show cause why the BLM’s Water Rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2). *See Petition* at 1. The following is a list of the water rights at issue: 65-19685, 65-19750, 65-19812, 65-19814, 65-19816, 65-19818, 65-19820, 65-19822, 65-19824, 65-19894, 65-19897, 65-20003, 65-20010, 65-20011, 65-20012, 65-20015, 65-20055, 65-20057, 65-20059, 65-20061, 65-20063, 65-20065, 65-20067, 65-20069, 65-20071, 65-20370, 65-20388, 65-20390, 65-20464, 65-20468, 65-20469, 65-20471, 65-20472, 65-20475, 65-20476, 65-20477, 65-20478, 65-20479, 65-20480, 65-20484, 65-20486, 65-20487, 65-20488, 65-20489, 65-20597, 67-12386, 67-12751, 67-12752, 67-12775, 67-12776, 67-12777, 67-12809, 67-12810, 67-12841, 67-12900, 67-12999, 67-13085, 67-13086, 67-13141, 67-13142, 67-13147, 67-13148. *See Petition* Ex. A; *Memorandum*.

2. Using the Department’s water rights database, the Department reviewed the places of use for the Water Rights. *See Memorandum* at 1.

3. Petitioners’ allegations in the Petition are specific to non-use within the Allotment and do not extend to use beyond the Allotment. *See Petition* at 1–2.

⁵ Prior to the 2022 amendment of Idaho Code 42-224(2), the Director was not required by law to issue an order to show cause within 30 days of his determination. *See generally supra* note 4.

⁶ For the Director to give a reasoned statement supporting a determination in favor of or opposing forfeiture pursuant to Idaho Code § 42-222(2), Department staff utilized the Department’s water right files and database to thoroughly review, analyze, and document the locations of the places of use for the water rights listed in Exhibit A of the Petition. *See* Mem. from Glen Gardiner & Craig Saxton, Water Allocations Analyst and Adjudication Section Manager, Idaho Dep’t of Water Res., to Shelley Keen, Water Allocation Bureau Chief, Idaho Dep’t of Water Res. 1 (Nov. 9, 2021) (attached to this Order as Attachment A) [hereinafter *Memorandum*].

4. Based on the Memorandum, the Director finds that the places of use for the following water rights, are entirely within the Allotment: 65-19685, 65-19812, 65-19814, 65-19818, 65-19820, 65-19822, 65-20003, 65-20010, 65-20011, 65-20012, 65-20015, 65-20055, 65-20057, 65-20059, 65-20061, 65-20063, 65-20065, 65-20067, 65-20069, 65-20071, 65-20390, 65-20464, 65-20468, 65-20475, 65-20476, 65-20477, 65-20479, 65-20480, 65-20487, 65-20488, 65-20489, 65-20597, 67-12386, 67-12751, 67-12775, 67-12809, 67-12810, 67-12841, 67-13085, 67-13086, 67-13141, 67-13142, 67-13147, and 67-13148. *See Memorandum* at 1.

5. Harry C. Soulen is an officer and member in Soulen Livestock Co. and Soulen Grazing Association, LLC. *Petition* at 3–4. The allegations in the Petition attribute observations of nonuse of water in the Allotment to the officers and members of Soulen Livestock Co. and Soulen Grazing Association, LLC. *Id.* at 1–2. Accordingly, the Director finds that Harry C. Soulen’s statements are based on personal knowledge.

6. As described in footnote 2 above, on September 16, 2021, Petitioners filed the Crane Creek Petition. The Crane Creek Petition is similar to the Petition, except it contains specific allegations related to the Crane Creek Allotment. Within the Crane Creek Petition, Harry C. Soulen, an officer and member in Soulen Livestock Co. and Soulen Grazing Association, LLC, alleges nonuse of water by the BLM. Petitioners’ allegations in the Crane Creek Petition are specific to non-use within the Crane Creek Allotment and do not extend to use beyond the Crane Creek Allotment. *See Crane Creek Petition* at 1–2.

7. The Crane Creek Petition attributes allegations of non-beneficial use of water, authorized by federal water rights within the Crane Creek Allotment, to the officers and members of Soulen Livestock Co. and Soulen Grazing Association, LLC. *Crane Creek Petition* ¶¶ 8–10. Accordingly, the Director finds that Harry C. Soulen’s statements in the Crane Creek Petition are based on personal knowledge.⁷

8. Based on the Memorandum, the Director finds that the place of use for water right 67-12752 is entirely within both the Allotment and the Paddock Valley Allotment. *Memorandum* at 3.

9. The Director finds that some of the water rights at issue have a place of use that extends beyond both the Allotment and the Crane Creek Allotment. The water rights with a place of use that extends beyond the boundaries of the Allotment and the Crane Creek Allotment are: 65-20469, 65-20471, 65-20472, 65-20484, 65-19750, 65-19816, 65-19824, 65-19894, 65-19897, 65-20370, 65-20388, 65-20478, 65-20486, 67-12776, 67-12777, 67-12900, and 67-12999. *See Memorandum* at 2–5.

10. The Director has not received written evidence that a principal/agent relationship existed, during the five-year period calculated pursuant to Idaho Code § 42-224(1), between the BLM

⁷ The Crane Creek Petition is also addressed in the Director’s *Order Partially Granting Petition; Order to Show Cause (Crane Creek Allotment)*. Order Part. Granting Pet.; Order to Show Cause (Crane Creek Allot’t), *In re Basin 67 Water Rts., In Name of U.S. Dep’t of Interior, Bureau of Land Mgmt.*, No. P-OSC-2021-001 (Idaho Dep’t of Water Res. Apr. 25, 2022), <https://idwr.idaho.gov/wp-content/uploads/sites/2/legal/P-OSC-2021-001/P-OSC-2021-001-20220425-Order-to-Show-Cause-Crane-Creek>.

and any Paddock Valley Allotment or Crane Creek Allotment livestock grazing permit or lease holders for the purpose of maintaining the BLM Water Rights.

ANALYSIS

Forfeiture is disfavored in Idaho law. *Application of Boyer*, 73 Idaho 152, 159, 248 P.2d 540, 544 (1952) (“Forfeitures are abhorrent and all intendments are to be indulged against a forfeiture.”). To make a prima facie showing that the BLM has not beneficially used water authorized by its water rights for five years, for each water right at issue here, Petitioners must present sufficient evidence establishing forfeiture over the entire place of use—not just those portions of the place of use within the Allotment. The Department’s Memorandum, which includes an analysis of its associated due diligence investigation, clarifies that some of the places of use of the BLM Water Rights extend beyond the boundaries of the Allotment and the related Crane Creek Allotment. *See Memorandum* at 2–5. As noted in finding 3 and 6 above, Petitioners do not offer evidence of BLM’s non-use of water beyond the boundaries of the Allotment and the Crane Creek Allotment. Therefore, the Petition, even when combined jointly with the Crane Creek Petition, does not include sufficient evidence for the Director to issue an order to show cause to the extent that Petitioners have requested.

The Department must limit the scope of an order to show cause issued in this matter to those BLM Water Rights with a place of use that is located entirely within the property boundaries for which the Department has received supporting statements alleging non-use of water. Accordingly, for those BLM Water Rights that have a place of use that is located either entirely or partially outside of the Allotment and the Crane Creek Allotment (see finding 9 above), Petitioners have failed to make a “prima facie showing” in accordance with Idaho Code § 42-224 that the BLM has not beneficially used water authorized by its water rights for five years. However, Petitioners’ statements based on personal knowledge (see findings 5 and 7 above), when combined with the analysis within the Department’s Memorandum, amount to a “prima facie showing” in accordance with Idaho Code § 42-224 that the BLM has not beneficially used water authorized by its water rights that have a place of use entirely within the Allotment and the Crane Creek Allotment within the last five years.

CONCLUSION OF LAW

The Director concludes that the “prima facie showing” burden of proof, set forth in Idaho Code § 42-224, has been satisfied to the extent that he should partially grant Petitioners’ request and issue an order to the BLM to show cause before the Director why those BLM Water Rights that have a place of use entirely within the Allotment and the Crane Creek Allotment have not been lost through forfeiture pursuant to Idaho Code § 42-222(2).

ORDER

Based on the foregoing, the following are HEREBY ORDERED:

1. The *Verified Petition for Order to Show Cause* at issue is GRANTED for ONLY the following water rights: 65-19685, 65-19812, 65-19814, 65-19818, 65-19820, 65-19822, 65-20003, 65-20010, 65-20011, 65-20012, 65-20015, 65-20055, 65-20057, 65-20059, 65-20061,

ORDER PARTIALLY GRANTING PETITION; ORDER TO SHOW CAUSE (PADDOCK VALLEY ALLOTMENT) – 5

Exhibit 7

65-20063, 65-20065, 65-20067, 65-20069, 65-20071, 65-20390, 65-20464, 65-20468, 65-20475, 65-20476, 65-20477, 65-20479, 65-20480, 65-20487, 65-20488, 65-20489, 65-20597, 67-12386, 67-12751, 67-12752, 67-12775, 67-12809, 67-12810, 67-12841, 67-13085, 67-13086, 67-13141, 67-13142, 67-13147, and 67-13148.

2. The *Verified Petition for Order to Show Cause* at issue is DENIED for the following water rights: 65-20469, 65-20471, 65-20472, 65-20484, 65-19750, 65-19816, 65-19824, 65-19894, 65-19897, 65-20370, 65-20388, 65-20478, 65-20486, 67-12776, 67-12777, 67-12900, and 67-12999.

3. In accordance with Idaho Code § 42-224(2), the United States of America acting through the Department of Interior, Bureau of Land Management must show cause before the Director of the Idaho Department of Water Resources why the following stockwater rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2): 65-19685, 65-19812, 65-19814, 65-19818, 65-19820, 65-19822, 65-20003, 65-20010, 65-20011, 65-20012, 65-20015, 65-20055, 65-20057, 65-20059, 65-20061, 65-20063, 65-20065, 65-20067, 65-20069, 65-20071, 65-20390, 65-20464, 65-20468, 65-20475, 65-20476, 65-20477, 65-20479, 65-20480, 65-20487, 65-20488, 65-20489, 65-20597, 67-12386, 67-12751, 67-12752, 67-12775, 67-12809, 67-12810, 67-12841, 67-13085, 67-13086, 67-13141, 67-13142, 67-13147, and 67-13148.

4. In accordance with Idaho Code § 42-224(6), the United States of America acting through the Department of Interior, Bureau of Land Management has 21 days from completion of service of this order to request in writing a hearing pursuant to Idaho Code § 42-1701A(1)–(2). If the United States requests such a hearing, it must also serve a copy of the request upon the petitioners and the livestock grazing permit holders listed on the included certificate of service.

5. In accordance with Idaho Code § 42-224(7), if the United States fails to respond to the above order to show cause within 21 days, the stockwater rights for which the *Verified Petition for Order to Show Cause* has been partially granted shall be considered forfeited, and the Director shall issue an order within 14 days stating the stockwater rights have been forfeited pursuant to Idaho Code § 42-222(2).

6. In accordance with Idaho Code §§ 42-224(1) and 42-224(4), Soulen Livestock Co., Soulen Grazing Association, LLC, and all active Paddock Valley Allotment and Crane Creek Allotment livestock grazing permit or lease holders will be served a copy of this order.

DATED this 25th day of April 2022.


GARY SPACKMAN
Director

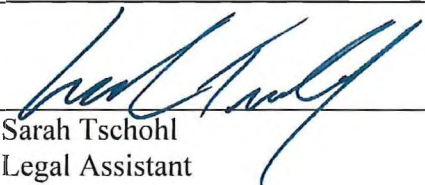
ORDER PARTIALLY GRANTING PETITION; ORDER TO SHOW CAUSE (PADDOCK VALLEY ALLOTMENT) – 6

Exhibit 7

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of April 2022, I caused to be served a true and correct copy of the foregoing *Order Partially Granting Petition; Order to Show Cause (Paddock Valley Allotment)*, by the method indicated below, upon the following:

Soulen Livestock Co. & Soulen Grazing Association, LLC P.O. Box 827 Weiser, ID 83672 <i>Petitioners</i>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
Jerome & Jill Grandi 2294 Weiser River Rd. Weiser, ID 83672 <i>Livestock Grazing Permit Holder</i>	<input checked="" type="checkbox"/> Certified U.S. Mail with return receipt <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
David Maddox 1021 Lower Crane Rd. Weiser, ID 83672 <i>Livestock Grazing Permit Holder</i>	<input checked="" type="checkbox"/> Certified U.S. Mail with return receipt <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
USDI BLM Idaho State Office 1387 S. Vinnell Way Boise, ID 83709 <i>Stockwater Right Owner</i>	<input checked="" type="checkbox"/> Certified U.S. Mail with return receipt <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
<i>Courtesy Copy:</i> United States Department of Justice Environment and Natural Resources Division 550 W. Fort St., MSC 033 Boise, ID 83724 William G. Myers III HOLLAND & HART LLP P.O. Box 2527 Boise, ID 83701 wmyers@hollandhart.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email <input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email


Sarah Tschohl
Legal Assistant

ORDER PARTIALLY GRANTING PETITION; ORDER TO SHOW CAUSE (PADDOCK VALLEY ALLOTMENT) – 7

Exhibit 7

Memorandum

To: Shelley Keen

Prepared by: Glen Gardiner & Craig Saxton

Date: November 9, 2021

Re: Review of Federal water rights within the Paddock Valley Allotment (#370) which were identified in Exhibit A of Soulen Livestock Co's Verified Petition for Order to Show Cause.

Comparison of Partial Decrees to IDWR Database Records and Shapefiles

On September 16, 2021, Soulen Livestock Company and Soulen Grazing Association, LLC ("Soulen") petitioned the Director of the Idaho Department of Water Resources ("IDWR") to issue a show cause order pursuant to Idaho Code § 42-224(1) for a list of water rights "located on a federal grazing allotment known as the Paddock Valley Allotment (#370)." Soulen's petition refers to the list of water rights as Exhibit A. For each of the water rights in Exhibit A, we compared information on the SRBA partial decree to information in IDWR's water rights database. Fields compared included Name and Address, Source, Quantity, Priority Date, Point of Diversion, Purpose and Period of Use, and Place of Use. We found no discrepancies, although the Names on the partial decrees are abbreviated to USDI BLM, IDAHO STATE OFFICE, whereas IDWR's database refers to the Names as UNITED STATES OF AMERICA ACTING THROUGH USDI BUREAU OF LAND MANAGEMENT, IDAHO STATE OFFICE.

IDWR stores digitized water right places of use ("POU") in its geographic information system ("GIS"). We verified the digitized POU for each of the water rights listed in Exhibit A matches the POU described in the water rights database. No discrepancies were found. To complete our analysis, we then used GIS to overlay the digitized POU for each water right in Exhibit A onto the digital boundaries of the Paddock Valley Allotment and neighboring grazing allotment¹:

Paddock Valley Allotment Analysis

Based on digital data, the POUs for the following water rights exist completely within the Paddock Valley Allotment:

65-19685, 65-19812, 65-19814, 65-19818, 65-19820, 65-19822, 65-20003, 65-20010, 65-20011, 65-20012, 65-20015, 65-20055, 65-20057, 65-20059, 65-20061, 65-20063, 65-20065, 65-20067, 65-20069, 65-20071, 65-20390, 65-20464, 65-20468, 65-20475, 65-20476, 65-20477, 65-20479, 65-20480, 65-20487, 65-20488, 65-20489, 65-20597, 67-12386, 67-12751, 67-12775, 67-12809, 67-12810, 67-12841, 67-13085, 67-13086, 67-13141, 67-13142, 67-13147, 67-13148.

¹ The digital shapes of the allotment boundaries were created by U.S. Department of the Interior, Bureau of Land Management with a publication date of 06-30-2017. The digital allotment boundaries can be downloaded from the website https://gis.blm.gov/arcgis/rest/services/range/BLM_Natl_Grazing_Allotment/MapServer

Exhibit 7

POUs for the following water rights exist partially within the Paddock Valley Allotment and partially outside the Paddock Valley Allotment:

65-20469, 65-20471, 65-20472, 65-20484, 65-19750, 65-19816, 65-19824, 65-19894, 65-19897, 65-20370, 65-20388, 65-20478, 65-20486, 67-12752, 67-12776, 67-12777, 67-12900, 67-12999.

The analysis below describes water rights in Exhibit A having all or portions of the authorized POU's exist outside the Paddock Valley Allotment boundary.

(Water Rights extending onto Paddock Valley Reservoir)

The unnamed streams identified as the source for rights 65-20469, 65-20471, 65-20472, and 65-20484, appear to be sources of water supplying Paddock Valley Reservoir. Stock have access to this water from the decreed POU when the reservoir is full enough to extend into the decreed POU.

65-20469

Water right 65-20469 is an instream stockwater right on an unnamed stream, tributary to Little Willow Creek. The POU is T11N, R2W, Sec 32, NESE, and is within the boundary of Paddock Valley Allotment except for the area extending onto Paddock Valley Reservoir. The portion of the POU not within the reservoir is managed by Bureau of Land Management, United States of America. The area within Paddock Valley Reservoir is owned by Little Willow Irrigation District.

65-20471

Water right 65-20471 is an instream stockwater right on an unnamed stream, tributary to Little Willow Creek. The POU is T10N, R2W, Sec 5, (L4)NWNW, SENW, and is within the boundary of Paddock Valley Allotment. An area within the POU extends onto Paddock Valley Reservoir. The portion of the POU not within the reservoir is managed by Bureau of Land Management, United States of America. The owner within Paddock Valley Reservoir is unidentified in IDWR's digital layer.

65-20472

Water right 65-20472 is an instream stockwater right on an unnamed stream, tributary to Little Willow Creek. The POU is T10N, R2W, Sec 5, SENE, and is within the boundary of Paddock Valley Allotment. An area within the POU extends onto Paddock Valley Reservoir. The portion of the POU not within the reservoir is managed by Bureau of Land Management, United States of America. The owner within Paddock Valley Reservoir is unidentified in IDWR's digital layer.

65-20484

Water right 65-20484 is an instream stockwater right on an unnamed stream, tributary to Little Willow Creek. The POU is T10N, R2W, Sec 17, SWNE, SENE, and is within the boundary of Paddock Valley Allotment, extending across Paddock Valley Reservoir, onto land on the opposite side. The portion of the POU not within the reservoir is managed by Bureau of Land Management, United States of America. The owner within Paddock Valley Reservoir is unidentified in IDWR's digital layer.

(Within both Paddock Valley and Crane Creek Allotment)**67-12752**

Water right 67-12752 is an instream stockwater right on an unnamed stream, tributary to Crane Creek. The POU is described as T12N, R3W, Sec 35, SESE and is in both the Paddock Valley Allotment and Crane Creek Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

(Boundary Water Rights, All Split between Two or More Allotments)**65-19750**

Water right 65-19750 is for a spring, tributary to Holland Gulch. The POU is T10N, R3W, Sec 11, SENW, and is in both the Paddock Valley Allotment and Holland Gulch Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

65-19816

Water right 65-19816 is for a spring, tributary to Dry Creek. The POU is 9N, R2W, Sec 23, NENW, and is in both the Paddock Valley Allotment and Willow Ridge Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

65-19824

Water right 65-19824 is for a spring, tributary to Dry Creek. The POU is T9N, R2W, Sec 27, SENE, and is in both the Paddock Valley Allotment and Willow Ridge Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

65-19894

Water right 65-19894 is an instream stockwater right on an unnamed stream, tributary to Little Willow Creek. The POU described as T10N, R1W, Sec 7, SESW, SWSE, and T10N, R1W, Sec 18, NENE, SENE is within the Paddock Valley Allotment. POU described as T10N, R1W, Sec 17, SWNW, SENW, SWNE, SENE, NWSE, NESE is within the Willow Ridge Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

65-19897

Water right 65-19897 is an instream stockwater right on Indian creek, tributary to Little Willow Creek and an unnamed stream, tributary to Indian Creek. The POU described as T10N, R1W, Sec 30, SWNE, SENW, SWSW, SWSE, NWSE, NESE, SESE, SESW, (L2)SWNW, NWSW: T10N, R1W, Sec 31, (L2)SWNW, SENE, NESW, (L1)NWNW is within the Paddock Valley Allotment. The POU described as T10N, R1W, Sec 28, SESW; T10N, R1W, Sec 32, SWNW, SENE, NWNW, NWNE, NENW; T10N, R1W, Sec 33, NWNW, NENW, SENW, NWSW, NWSE, NESW, SWNE, SWNW is within the Willow Ridge Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

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65-20370

Water right 65-20370 is an instream stockwater right on an unnamed stream, tributary to Indian Creek. The POU described as T10N, R1W, Sec 30, SENE, NENE, SWNE is within the Paddock Valley Allotment. The POU described as T10N, R1W, Sec 27, SWNE; T10N, R1W, Sec 28, SENW, SWNW, SWNE, SENE, NWSW, NWNW, NENW; T10N R1W, Sec 29, NWSE, NESE, NENE, NWNW, NESW, SESW, NWNE, NENW, NWSW, SWNE, SWNW; T10N, R1W, Sec 30, SENE, NENE, SWNE is within the Willow Ridge Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

65-20388

Water right 65-20388 is an instream stockwater right on an unnamed stream, tributary to Little Willow Creek. The POU described as T10N, R1W, Sec 6, SESW, SWSE, SESE are within the Paddock Valley Allotment. The POU described as T10N, R1W, Sec 5, SWSW, is within Paddock Valley Allotment and Minnie Allotment. The POU described as T10N, R1W, Sec 5, SESW, is in the Minnie Allotment. The POU described as T10N, R1W, Sec 8, NWNE is in the Foothills Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

65-20478

Water right 65-20478 is an instream stockwater right on George Way Gulch, tributary to Little Willow Creek and an unnamed stream, tributary to George Way Gulch. The POU described as T10N, R1W, Sec 18, NWSW(L3), SWSW(L4), SESW; T10N, R1W, Sec 19, NENE, NWNE, SENE, NENW; T10N, R1W, Sec 13, SWNE, NESW, NESE, NWSE is within the Paddock Valley Allotment. The POU described as T10N, R1W, Sec 20, SWNW is in the Willow Ridge Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

65-20486

Water right 65-20486 is an instream stockwater right on Dry Creek, tributary to Big Willow Creek and an unnamed stream, tributary to Dry Creek. The POU described as T9N, R1W, Sec 6, NENE, (L2)NWNE, SWNE, SENE, (L3)NENW, SENW, NESW, (L6)NWSW, SESW, NWSE, SWSE; T10N, R1W, Sec 31, NESE, NWSE, SWSE, SESE within the Paddock Valley Allotment. The POU described as T9N, R1W, Sec 4, NWSW; T9N, R1W, Sec 5, NENE, NWNE, NENW, SWNW, NESW, SWSW, SESW, NESE, NWSE; T10N, R1W, Sec 32, NESW, SWSW, SESW, NWSE, SWSE, SESE is within the Willow Ridge Allotment. The POU described as T9N, R1W, Sec 6, (L7)SESE; T9N, R1W, Sec 7, NWNE, NENW is in both Paddock Valley Allotment and Willow Ridge Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

67-12776

Water right 67-12776 is an instream stockwater right on an unnamed stream, tributary to Crane Creek. The POU is described as T12N, R2W, Sec 29, SWNW, SENW, NWSW are within the Paddock Valley Allotment. The POU in T12N, R2W, Sec 29, SWNE is in both Paddock Valley Allotment and Crane Creek Individual Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

Exhibit 7

67-12777

Water right 67-12777 is an instream stockwater right on an unnamed stream, tributary to Crane Creek. The POU described as T12N, R2W, Sec 29, SWSE is in the Paddock Valley Allotment. The POU described as T12N, R2W, Sec 29, NWNE, SWNE, NWSE is within both Paddock Valley Allotment and Crane Creek Individual Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America, except for a portion of T12N, R2W, Sec 29, NWNE which extends onto Crane Creek Reservoir. The area within the boundary of Crane Creek Reservoir is owned by the Tracy B Baker Trust.

67-12900

Water right 67-12900 is an instream stockwater right on Crane Creek, tributary to Weiser River. The POU described as T12N, R2W, Sec 29, NWNE, NWNW is within the Paddock Valley Allotment. The POU described as T12N, R2W, Sec 29, NWNE is in both Paddock Valley Allotment and Crane Creek Individual Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America, except for portions of each quarter/quarter which extend onto Crane Creek Reservoir. The area within the boundary of Crane Creek Reservoir is owned by the Tracy B Baker Trust.

67-12999

Water right 67-12999 is an instream stockwater right on an unnamed stream, tributary to South Crane Creek. The POU described as T10N, R1W, Sec 6, SENW is in the Paddock Valley Allotment. The POU described as T10N, R1W, Sec 6, (L3)NENW is in both Paddock Valley Allotment and Minnie Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

-end-

EXHIBIT 8

Declaration of Gary Spackman

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF CERTAIN BASIN 79
WATER RIGHTS, IN THE NAME OF THE
UNITED STATES OF AMERICA ACTING
THROUGH THE UNITED STATES
DEPARTMENT OF AGRICULTURE, FOREST
SERVICE

Docket No. P-OSC-2021-003

**ORDER PARTIALLY GRANTING
PETITION; ORDER TO SHOW
CAUSE**

(COW CREEK ALLOTMENT)

BACKGROUND

On September 24, 2021, Gill Family Ranches, LLC (“Petitioner”) filed with the Idaho Department of Water Resources (“Department”) a *Verified Petition for Order to Show Cause* (“Petition”) related to certain Basin 79 water rights. Petitioner asked the Department to issue an order pursuant to Idaho Code § 42-224(1) “to show cause why the Water Rights [(see Exhibit A)] have not been lost through forfeiture pursuant to Idaho Code [§] 42-222(2).” *Petition* at 1.

Petitioner asserts that the water rights listed in Exhibit A (“Forest Service Water Rights”) are owned by the United States of America acting through the Department of Agriculture, Forest Service (“Forest Service”). *Id.* ¶ 1; and *see also* Exhibit A. Additionally, Petitioner asserts that the “points of diversion or places of use” for the Forest Service Water Rights are on a federal grazing allotment identified by the Forest Service as the Cow Creek Allotment (“Allotment”). *Id.* ¶ 3. Petitioner claims that no other water rights share “the same place of use, source, and point of diversion” as the Forest Service Water Rights. *Id.* ¶ 4.

Petitioner maintains that it has, for at least the last five years, held a valid Forest Service grazing permit for livestock grazing on the Allotment. *Id.* ¶ 5; and *see also* Exhibit B. Petitioner asserts that its livestock has grazed on the Allotment “each year of the permit term.” *Id.* ¶ 6. Petitioner claims that its employees, officers, and family of its officers and employees have “regularly visited the Allotment, which borders Petitioner’s private property, each grazing season of use and at other times outside the season of use each year for more than the past five years.” *Id.* ¶ 7. Petitioner alleges that “[a]t no time over the past five years has Petitioner, its officers, employees, their families, or agents, witnessed or heard of the existence of livestock owned or controlled by the Forest Service on the Allotment either to graze or to use water under the [Forest Service] Water Rights.” *Id.* ¶ 8, at 2. Petitioner alleges that at no time since it has had use of the area “has Petitioner ever witnessed or heard of the Forest Service applying the [Forest Service] Water Rights to the beneficial use of watering livestock the Forest Service owns or controls on the Allotment.” *Id.* ¶ 10. Petitioner asserts that no agency relationship exists between Petitioner and the Forest Service “for the purpose of acquiring water rights for the Forest Service on the Allotment.” *Id.* ¶ 11. The Petition is verified by Marty I. Gill, manager of Gill Family Ranches, LLC. *Id.* at 3.

ORDER PARTIALLY GRANTING PETITION; ORDER TO SHOW CAUSE – 1

To comply with the statutory service requirements of Idaho Code § 42-224(4), the Department submitted a Freedom of Information Act (“FOIA”) request to the Forest Service on September 27, 2021, for a copy of all active grazing permits on the Cow Creek Allotment. On September 29, 2021, in response to the Department’s FOIA request, the Forest Service sent a copy of two redacted grazing permits. One permit sent by the Forest Service matches Permit No. 01045, issued April 29, 2015, that Petitioner filed as Exhibit B. The second permit, sent by the Forest Service, is held in the name of Rex Baker.¹

APPLICABLE LAW

Idaho Code § 42-224(1) states:

Whenever the director of the department of water resources receives a petition making prima facie showing, or finds, on his own initiative based on available information, that a stockwater right has not been put to beneficial use for a term of five (5) years, the director shall expeditiously issue an order to the stockwater right owner to show cause before the director why the stockwater right has not been lost through forfeiture pursuant to section 42-222(2), Idaho Code.

Therefore, to issue an order to show cause as Petitioner has requested, the Director must conclude that the Petition makes a “prima facie showing” that the Forest Service has not put its Forest Service Water Rights to beneficial use for at least five years. “Prima facie” is defined by *Black’s Law Dictionary* as: “Sufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue <a prima facie showing>.” *Prima facie*, *Black’s Law Dictionary* (11th ed. 2019).

FINDINGS AND PRELIMINARY CONCLUSIONS

After careful review of the Petition and the Department’s water right files and database, the Director issues the following findings and preliminary conclusions:

1. Petitioner asked the Department to issue an order to the Forest Service to show cause why the Forest Service’s Water Rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2). *See Petition* at 1. The following is a list of the water rights at issue: 79-4134, 79-4138, 79-4139, 79-4149, 79-4165, 79-4212, 79-4234, 79-4235, 79-4236, 79-4237, 79-4238, 79-4239, 79-4240, 79-4324, 79-4325, 79-4327, 79-4328, 79-4329, 79-4330, 79-4333, 79-4334, 79-4335, 79-4336, 79-4337, 79-4338, 79-4339, 79-4340, 79-4341, 79-4342, 79-4343, 79-10505, 79-10506, 79-10507, 79-10508, 79-10509, 79-10510, 79-10511, 79-10512, 79-10513, 79-10514, 79-10515, 79-10519, 79-10559, 79-10568, 79-10572, 79-10573, 79-10611, 79-10612, 79-10720, 79-10722, 79-13647, 79-13658, 79-13664, and 79-13679. *See Exhibit A*; and *see also* Memorandum from Glen

¹ The Forest Service redacted the address for Rex Baker on the grazing permit they produced. The Department obtained an address, updated on June 3, 2021, for Rex Baker through the online Idaho County Parcel Viewer.

Gardiner & Craig Saxton, Water Allocations Analyst and Adjudication Section Manager, Idaho Dep't of Water Res., to Shelley Keen, Water Allocation Bureau Chief, Idaho Dep't of Water Res. 1–2 (Oct. 21, 2021) (attached to this Order as Attachment A) [hereinafter Memorandum].

2. Petitioner's allegations only relate to the Forest Service's lack of beneficial use of water within the boundaries of the Allotment. Petitioner does not make allegations relating to the Forest Service's use of water outside of the boundaries of the Allotment. *See Petition* at 1–2.
3. Using the Department's water rights database, the Director reviewed the place of use for the Forest Service Water Rights. *See Memorandum* at 1.
4. Based on the Memorandum, the Director finds that some of the Forest Service Water Rights have a place of use that extends beyond the Allotment. Petitioner's allegations, however, are specific to non-use within the Allotment and do not extend to use beyond the allotment. *Petition* at 1–2. Forfeiture is disfavored in Idaho law. *Application of Boyer*, 73 Idaho 152, 159, 248 P.2d 540, 544 (1952) (“Forfeitures are abhorrent and all intendments are to be indulged against a forfeiture.”). To make a prima facie showing that the Forest Service has not put its water rights to beneficial use for at least five years, Petitioner must make allegations that would establish forfeiture over the entire place of use—not just those portions of the place of use within the Allotment. The Director concludes that because some of the Forest Service Water Rights have a place of use that extends beyond the Allotment and because Petitioner did not make allegations about the Forest Service's water use outside the Allotment, Petitioner has failed to make a “prima facie showing” that the Forest Service has not put those water rights to beneficial use for at least five years. The water rights at issue with a place of use that extends beyond the boundaries of the Allotment are: 79-4149, 79-4338, 79-10511, 79-10514, 79-10515, 79-10559, 79-10573, 79-10611, and 79-13658. *Memorandum* at 2.
5. Based on the Memorandum, the Director finds that the following water rights at issue have a place of use that is entirely within the Allotment: 79-4134, 79-4138, 79-4139, 79-4165, 79-4212, 79-4234, 79-4235, 79-4236, 79-4237, 79-4238, 79-4239, 79-4240, 79-4324, 79-4325, 79-4327, 79-4328, 79-4329, 79-4330, 79-4333, 79-4334, 79-4335, 79-4336, 79-4337, 79-4339, 79-4340, 79-4341, 79-4342, 79-4343, 79-10505, 79-10506, 79-10507, 79-10508, 79-10509, 79-10510, 79-10512, 79-10513, 79-10519, 79-10568, 79-10572, 79-10612, 79-10720, 79-10722, 79-13647, 79-13664, and 79-13679. *Id.* at 1.
6. Marty I. Gill is an officer of Gill Family Ranches, LLC. *Petition* at 3. The Petition makes specific allegations related to the Allotment attributable to the officers of Gill Family Ranches, LLC. *Id.* at 1–2. Accordingly, the Director concludes that Marty I. Gill's statements are based on personal knowledge and therefore establish a “prima facie showing” (in accordance with Idaho Code § 42-224) that the Forest Service has not put water rights that have a place of use entirely within the Allotment to beneficial use within the last five years.

ORDER PARTIALLY GRANTING PETITION; ORDER TO SHOW CAUSE – 3

Exhibit 8

7. The Director concludes that he should partially grant Petitioner's request and issue an order to the Forest Service to show cause before the Director why the Forest Service water rights that have a place of use entirely within the Allotment have not been lost through forfeiture pursuant to Idaho Code § 42-222(2).

ORDER

Based on the foregoing, the following are HEREBY ORDERED:

1. The Petition for an order to show cause why the Forest Service's water rights at issue here have not been lost through forfeiture, pursuant to Idaho Code § 42-222(2), is GRANTED for ONLY the following water rights: 79-4134, 79-4138, 79-4139, 79-4165, 79-4212, 79-4234, 79-4235, 79-4236, 79-4237, 79-4238, 79-4239, 79-4240, 79-4324, 79-4325, 79-4327, 79-4328, 79-4329, 79-4330, 79-4333, 79-4334, 79-4335, 79-4336, 79-4337, 79-4339, 79-4340, 79-4341, 79-4342, 79-4343, 79-10505, 79-10506, 79-10507, 79-10508, 79-10509, 79-10510, 79-10512, 79-10513, 79-10519, 79-10568, 79-10572, 79-10612, 79-10720, 79-10722, 79-13647, 79-13664, and 79-13679.
2. The Petition for an order to show cause why the Forest Service's water rights at issue here have not been lost through forfeiture, pursuant to Idaho Code § 42-222(2), is DENIED for the following water rights: 79-4149, 79-4338, 79-10511, 79-10514, 79-10515, 79-10559, 79-10573, 79-10611, and 79-13658.
3. The United States of America acting through the Department of Agriculture, Forest Service shall have 21 days from completion of service to request in writing a hearing pursuant to Idaho Code § 42-1701A. If the United States fails to timely respond to the order to show cause, the stockwater rights for which this petition has been granted shall be considered forfeited, and the Director shall issue an order declaring the stockwater rights forfeited pursuant to Idaho Code § 42-222(2). If the Forest Service files a request for a hearing, it shall also serve the request upon the parties listed on the included certificate of service.
4. In accordance with Idaho Code § 42-224(4), all active Cow Creek Allotment livestock grazing permit or lease holders will be served a copy of this order.

DATED this 27th day of October 2021.



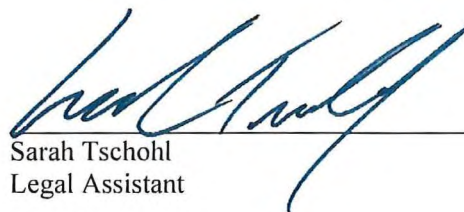
GARY SPACKMAN

Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of October 2021, I caused to be served a true and correct copy of the foregoing *Order Partially Granting Petition; Order to Show Cause*, by the method indicated below, upon the following:

William G. Myers III HOLLAND & HART LLP P.O. Box 2527 Boise, ID 83701 wmyers@hollandhart.com	<input checked="" type="checkbox"/> Certified U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<i>For Petitioner</i>	
Rex H. Baker P.O. Box 327 Lucile, ID 83542 <i>Livestock Grazing Permit Holder</i>	<input checked="" type="checkbox"/> Certified U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
USDA Forest Service 550 W Fort St., MSC 033 Boise, ID 83724 <i>Stockwater Right Owner</i>	<input checked="" type="checkbox"/> Certified U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
<i>Courtesy Copy:</i> United States Department of Justice Environment and Natural Resources Division 550 W. Fort St., MSC 033 Boise, ID 83724	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email



Sarah Tschohl
Legal Assistant

ORDER PARTIALLY GRANTING PETITION; ORDER TO SHOW CAUSE – 5

Memorandum

To: Shelley Keen

Prepared by: Glen Gardiner & Craig Saxton
GL *CS*

Date: October 21, 2021

Re: Review of Federal water rights within the Cow Creek Allotment (#104) which were identified in Exhibit A of Gill Family Ranches, LLC Verified Petition for Order to Show Cause.

Comparison of Partial Decrees to IDWR Database Records and Shapefiles

On September 24, 2021, Gill Family Ranches, LLC ("Gill") petitioned the Director of the Idaho Department of Water Resources ("IDWR") to issue a show cause order pursuant to Idaho Code § 42-224(1) for a list of water rights "located on a federal grazing allotment known as the Cow Creek Allotment (#104)." Gill's petition refers to the list of water rights in Exhibit A. For each of the water rights in Exhibit A, we compared information on SRBA partial decrees to information in IDWR's water rights database. Fields compared included Name and Address, Source, Quantity, Priority Date, Point of Diversion, Purpose and Period of Use, and Place of Use. We found no discrepancies, although the Names on the partial decrees list USDA FOREST SERVICE, whereas IDWR's database refers to the Names as UNITED STATES OF AMERICA ACTING THROUGH USDA FOREST SERVICE.

IDWR stores digitized water right places of use ("POU") in its geographic information system ("GIS"). We verified the digitized POU for each of the water rights listed on Exhibit A matches the POU described in the water rights database. No discrepancies were found. To complete our analysis, we then used GIS to overlay the digitized POU for each water right in Exhibit A onto the digital boundaries of the Cow Creek Allotment and neighboring grazing allotments.¹ (Sherwin Creek Allotment, Pittsburg Allotment, Sheep Creek Allotment, Papoose Allotment, and Race Creek Allotment).

Cow Creek Allotment Analysis

Based on digital overlay, the POUs for the following water rights exist completely within the Cow Creek Allotment:

79-4134, 79-4138, 79-4139, 79-4165, 79-4212, 79-4234, 79-4235, 79-4236, 79-4237, 79-4238, 79-4239, 79-4240, 79-4324, 79-4325, 79-4327, 79-4328, 79-4329, 79-4330, 79-4333, 79-4334, 79-4335, 79-4336, 79-4337, 79-4339, 79-4340, 79-4341, 79-4342, 79-4343, 79-10505, 79-10506, 79-10507, 79-10508, 79-10509, 79-10510, 79-10512, 79-10513, 79-10519, 79-10568, 79-10572, 79-10612, 79-10720, 79-10722, 79-13647, 79-13664, and 79-13679.

¹ The digital shapes of the allotment boundaries were created by U.S. Department of the Interior, Bureau of Land Management with a publication date of 06-30-2017 and downloaded from the website https://gis.blm.gov/arcgis/rest/services/range/BLM_Natl_Grazing_Allotment/MapServer

POUs for the following water rights exist partially within the Cow Creek Allotment and partially outside the Cow Creek Allotment:

79-4149, 79-4338, 79-10511, 79-10514, 79-10515, 79-10559, 79-10573, 79-10611, and 79-13658.

The analysis below describes water rights in Exhibit A with portions of their authorized POUs outside the Cow Creek Allotment. During the analysis of water right POU locations and Forest Service Allotments, a discrepancy was noted in the Forest Service Allotment boundaries. The boundaries of Cow Creek Allotment, Pittsburg Allotment and Sheep Creek do not align, causing the areas within the boundaries to overlap. In these areas, it is unknown if the water right POUs are intended for Cow Creek Allotment, Pittsburg Allotment, Sheep Creek Allotment or a combination of allotments. The Sherwin Creek Allotment, Papoose Allotment, and Race Creek Allotment boundaries align with the Cow Creek Allotment boundary.

79-4149:

Water right 79-4149 describes the source as a spring, tributary to sinks. The POU is T26N, R1E, Sec 18, SESW. The POU is within the Cow Creek Allotment, Sherwin Creek Allotment, and Pittsburg Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by US Forest Service, Nez Perce-Clearwater National Forest, United States of America.

79-4338:

Water right 79-4338 describes the source as Horner Springs, tributary to Little China Creek. The POU is T26N, R1E, Sec 17, SWSW. The POU is within Cow Creek Allotment and Sherwin Creek Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by US Forest Service, Nez Perce-Clearwater National Forest, United States of America.

79-10511:

Water right 79-10511 is an instream stockwater right on Kessler Creek, tributary to South Fork Race Creek. POU's T24N, R1W, Sec 1, NWNE; T25N, R1W, Sec 26, NESW, SESW, SWSE; T25N, R1W, Sec 35, NWNE, SWNE, SENE, NESE; T25N, R1W, Sec 36, NWSW, SWSW, SESW, SWSE are within the Cow Creek Allotment. POU T24N, R1W, Sec 1, NENE is within the Cow Creek Allotment, Race Creek Allotment, and an area with no allotment. It appears this POU's, and therefore this water right, can be accessed from multiple allotments. The POU's are managed by US Forest Service, Nez Perce-Clearwater National Forest, United States of America, except for part of T24N, R1W, Sec 1, NENE which is private land owned by Susan Lee O'Leary.

79-10514:

Water right 79-10514 is an instream stockwater right on West Fork Race Creek, tributary to Race Creek. POU's are T25N, R1E, Sec 30, SWNW; T25N, R1W, Sec 23, NWNE, SWNE, SENE; T25N, R1W, Sec 24, SWNW, NWSW, SWSW, SESW; T25N, R1W, Sec 25, NENE, NWNE, SENE, NESW are within the Cow Creek Allotment. POU's T25N, R1E, Sec 30 SENW, NESW are thin the Cow Creek Allotment and Race Creek Allotment. It appears these POU's, and therefore this water right, can be accessed from multiple allotments. The POU is managed by US Forest Service, Nez Perce-Clearwater National Forest, United States of America, except for part of T25N, R1E, Sec 30, SENW which is private land owned by Larry L Simonson.

Exhibit 8

79-10515:

Water right 79-10515 is an instream stockwater right on Bean Creek, tributary to West Fork Race Creek. POU's T25N, R1E, SEC 19, SENE; T25N R1E, Sec 20, SWNW, NWSW are in the Cow Creek Allotment. POU's T25N R1E, Sec 29, NWNE, SWNE, SENE, NESE, are in the Race Creek Allotment. POU's T20N, R1E, Sec 20, NESW, SESW are in both Cow Creek Allotment and Race Creek Allotment. It appears these POU's, and therefore this water right, can be accessed from multiple allotments. The POU is managed by US Forest Service, Nez Perce-Clearwater National Forest, United States of America.

79-10559:

Water right 79-10559 is an instream stockwater right on Corral Creek, tributary to Snake River. The POU's T26N, R1W, Sec 9, SWNE, SENE, NESE, SESE; T26N, R1W, Sec 10, SWSW; T26N, R1W, Sec 14, NWSW, SWSW, SESW; T26N, R1W, Sec 15, SWNE, NESW, NWNW, SENW, NESE, NWSE; T26N, R1W, Sec 23, NENE, NWNE, SENE, NENW; T26N, R1W, Sec 24, SWNW, NESW, NWSW, SESW, SWSE are within the Cow Creek Allotment, Pittsburg Allotment, and Sheep Creek Allotment. It appears these POU's, and therefore this water right, can be accessed from multiple allotments. The POU's are managed by US Forest Service, Wallowa-Whitman National Forest, United States of America, except for part of T26N, R1W, Sec 24, NWSW which is owned by Crooks Corral Mines, LLC.

79-10573:

Water right 79-10573 is an instream stockwater right on Lost Valley Creek, tributary to Kirkwood Creek. POU's T25N, R1W, Sec 3, SWNW, NESW, NWSW, NWSE, SWSE; T25N, R1W, Sec 10, NWNE, SWNE, SENE, NESE, SWSE, SESE; T25N, R1W, Sec 15, NWNE, SWNE, SENW, NESW, are within the Cow Creek Allotment. POU's T25N, R1W, Sec 3, SWNW, NWSW² are within both Cow Creek Allotment and Sheep Creek Allotment. It appears these POU's, and therefore this water right, can be accessed from multiple allotments. The POU is managed by US Forest Service, Wallowa-Whitman National Forest, United States of America.

79-10611:

Water right 79-10611 is an instream stockwater right on Clarks Fork, tributary to Sheep Creek. POU's T25N, R1W, Sec 27, NWSW, SWSW, SESW; T25N, R1W, Sec 28, SWNW, NESW, NWSW, NESE, NWSE; T25N, R1W, Sec 29, SWNE, SENE, NESW, NWSE are within the Cow Creek Allotment. T25N, R1W, Sec 29, SWNW, SENW³ are within both Cow Creek Allotment and Sheep Creek Allotment. It appears these POU's, and therefore this water right, can be accessed from multiple allotments. The POU is managed by US Forest Service, Wallowa-Whitman National Forest, United States of America.

79-13658:

Water right 79-13658 is an instream stockwater right on South Fork Race Creek, tributary to Race Creek. POU's T24N, R1W, Sec 3, SWSW, SESW, SWSE; T24N, R1W, Sec 10, NENE, NWNE; T24N, R1W, SEC 11, NENE, NWNE, NENW, NWNW; T24N, R1W, Sec 12, NENW, NWNW, SWNE, SENW are within both Cow Creek Allotment and Papoose Allotment. It appears these POU's, and therefore this water right, can be accessed from multiple allotments. The POU is managed by US Forest Service, Nez Perce-Clearwater National Forest United States of America. T24N, R1W, Sec 12, NENW, NWNE are partially within the Cow Creek Allotment, Papoose Allotment and partially on private land owned by JB Scott.

-end-

² In these two sections, the Cow Creek Allotment and Sheep Creek Allotment overlap.

³ In these two sections, the Cow Creek Allotment and Sheep Creek Allotment overlap.

EXHIBIT 9

Declaration of Gary Spackman

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF CERTAIN BASIN 79
WATER RIGHTS, IN THE NAME OF THE
UNITED STATES OF AMERICA ACTING
THROUGH THE DEPARTMENT OF
INTERIOR, BUREAU OF LAND
MANAGEMENT

Docket No. P-OSC-2021-004

**ORDER PARTIALLY GRANTING
PETITION; ORDER TO SHOW
CAUSE**

**(BUTCHER BAR AND CHINA
CREEK ALLOTMENTS)**

BACKGROUND

On October 15, 2021, Gill Family Ranches, LLC (“Petitioner”) filed with the Idaho Department of Water Resources (“Department”) a *Verified Petition for Order to Show Cause* (“Petition”). Petitioner asked the Department to issue an order pursuant to Idaho Code § 42-224(1) “to show cause why the Water Rights [(see Petition Exhibit A)] have not been lost through forfeiture pursuant to Idaho Code [§] 42-222(2).” *Petition* at 1.

Petitioner asserts that the water rights listed in Exhibit A (“BLM Water Rights”) are owned by the United States of America acting through the Department of Interior, Bureau of Land Management (“BLM”). *Id.* ¶ 1; *see Petition* Ex. A. Additionally, Petitioner asserts that the “points of diversion or places of use” for the BLM Water Rights are located on federal grazing allotments identified by the BLM as the Butcher Bar Allotment and the China Creek Allotment (“Allotments”). *Petition* ¶ 3. Petitioner claims that no other water rights share “the same place of use, source, and point of diversion” as the BLM Water Rights. *Id.* ¶ 4.

Petitioner maintains that it has, for at least the last five years, held a valid BLM grazing lease for livestock grazing on the Allotments. *Id.* ¶ 5; *see Petition* Ex. B. Petitioner asserts that its livestock have grazed on the Allotments “each year of the lease term.” *Petition* ¶ 6. Petitioner claims that its employees, officers, and family of its officers and employees have “regularly visited the Allotments, which borders Petitioner’s private property, each grazing season of use and at other times outside the season of use each year for more than the past five years.” *Id.* ¶ 7. Petitioner alleges that “[a]t no time over the past five years has Petitioner, its officers, employees, their families, or agents, witnessed or heard of the existence of livestock owned or controlled by the BLM on either Allotment. . . .” *Id.* ¶ 8, at 2. Petitioner alleges that at no time since it has had use of the area “has Petitioner ever witnessed or heard of the BLM applying the [BLM] Water Rights to the beneficial use of watering livestock the BLM owns or controls on either Allotment.” *Id.* ¶ 10. Petitioner asserts that no agency relationship exists between Petitioner and the BLM “for the purpose of acquiring water rights for the BLM on either Allotment.” *Id.* ¶ 11. The Petition is verified by Marty I. Gill, manager of Gill Family Ranches, LLC. *Id.* at 3.

ORDER PARTIALLY GRANTING PETITION; ORDER TO SHOW CAUSE (BUTCHER
BAR AND CHINA CREEK ALLOTMENTS) – 1

To comply with the statutory service requirements of Idaho Code § 42-224(4),¹ the Department submitted a Freedom of Information Act (“FOIA”) request to the BLM on October 15, 2021, for a copy of all active grazing permits or leases on the Butcher Block and China Creek Allotments. On October 29, 2021, in response to the Department’s FOIA request, the BLM sent a copy of one grazing lease. The lease sent by the BLM matches Lease No. 1105152, authorized September 30, 2015, that Petitioner filed as Exhibit B.

APPLICABLE LAW

Idaho Code § 42-224 states in pertinent part:

(1) Within thirty (30) days of receipt by the director of the department of water resources of a petition or other information that a stockwater right has not been put to beneficial use for a term of five (5) years, the director must determine whether the petition or other information, or both, presents prima facie evidence that the stockwater right has been lost through forfeiture pursuant to section 42-222(2), Idaho Code.² If the director determines the petition or other information, or both, is insufficient, he shall notify the petitioner of his determination, which shall include a reasoned statement in support of the determination, and otherwise disregard for the purposes of this subsection the other, insufficient, information.

(2) If the director determines the petition or other information, or both, contains prima facie evidence of forfeiture due to nonuse, the director must within thirty (30) days issue an order to the stockwater right owner to show cause before the director why the stockwater right has not been lost through forfeiture pursuant to section 42-222(2), Idaho Code.³ Any order to show cause must contain the director's findings of fact and a reasoned statement in support of the determination.

I.C. § 42-224(1)–(2) (current version as amended in 2022). Therefore, to issue an order to show cause as Petitioner has requested, the Director must conclude that the Petition makes a “prima facie showing” that the BLM has not put its BLM Water Rights to beneficial use for at least five years. “Prima facie” is defined by *Black’s Law Dictionary* as: “Sufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue <a prima facie showing>.” *Prima facie*, *Black’s Law Dictionary* (11th ed. 2019).

¹ Idaho Code § 42-224(4) was amended during the Second Regular Session of the Sixty-sixth Idaho Legislature, effective March 24, 2022. Both prior to and after the 2022 amendment, the service requirements outlined within Idaho Code § 42-224(4) are substantially the same regarding the persons who must be served a copy of an order to show cause issued by the Department.

² Prior to the 2022 amendment of Idaho Code 42-224(1), the Director was not required by law to determine, within a period of 30 days, whether a stockwater right has been put to beneficial use for a term of five years. In this matter, the Department considers the start of the newly codified 30-day requirement to be March 24, 2022, the day the statutory amendment went into effect.

³ Prior to the 2022 amendment of Idaho Code 42-224(2), the Director was not required by law to issue an order to show cause within 30 days of his determination. *See generally supra* note 2.

ORDER PARTIALLY GRANTING PETITION; ORDER TO SHOW CAUSE (BUTCHER BAR AND CHINA CREEK ALLOTMENTS) – 2

FINDINGS OF FACT

After careful review of the Petition and the Department's associated research memorandum,⁴ the Director issues the following findings:

1. Petitioner requested the Department issue an order to the BLM to show cause why the BLM's Water Rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2). *See Petition* at 1. The following is a list of the water rights at issue: 79-11259, 79-11261, 79-11372, 79-11373, 79-11374, 79-11376, 79-11756, and 79-11784. *See Petition* Ex. A; *Memorandum*.
2. Using the Department's water rights database, the Department reviewed the places of use for the BLM Water Rights. *Memorandum* at 1.
3. Petitioner's allegations only relate to the BLM's lack of beneficial use of water within the boundaries of the Allotments. Petitioner does not make allegations relating to the BLM's use of water outside of the boundaries of the Allotments. *See Petition* at 1–2.
4. Based on the Memorandum, the Director finds that the places of use for the following water rights, are entirely within the Allotments: 79-11372, 79-11373, 79-11374, 79-11376, 79-11756, and 79-11784. *See Memorandum*.
5. Marty I. Gill is an officer of Gill Family Ranches, LLC. *Petition* at 3. The allegations in the Petition attribute observations of nonuse of water in the Allotments to the officers of Gill Family Ranches, LLC. *Id.* at 1–2. Accordingly, the Director finds that Marty I. Gill's statements are based on personal knowledge.
6. Based on the Memorandum, the Director finds that some of the water rights at issue have a place of use that extends beyond the Allotments. The water rights with a place of use that extends beyond the boundaries of the Allotment are: 79-11259 and 79-11261. *Memorandum* at 2.
7. The Director has not received written evidence that a principal/agent relationship existed, during the five-year period calculated pursuant to Idaho Code § 42-224(1), between the BLM and any Butcher Bar Allotment or China Creek Allotment livestock grazing permit or lease holders for the purpose of maintaining the BLM Water Rights.

⁴ For the Director to give a reasoned statement supporting a determination in favor of or opposing forfeiture pursuant to Idaho Code § 42-222(2), Department staff utilized the Department's water right files and database to thoroughly review, analyze, and document the locations of the places of use for the water rights listed in Exhibit A of the Petition. *See* Mem. from Glen Gardiner & Craig Saxton, Water Allocations Analyst and Adjudication Section Manager, Idaho Dep't of Water Res., to Shelley Keen, Water Allocation Bureau Chief, Idaho Dep't of Water Res. 1 (Oct. 27, 2021) (attached to this Order as Attachment A) [hereinafter *Memorandum*].

ANALYSIS

Forfeiture is disfavored in Idaho law. *Application of Boyer*, 73 Idaho 152, 159, 248 P.2d 540, 544 (1952) (“Forfeitures are abhorrent and all intendments are to be indulged against a forfeiture.”). To make a prima facie showing that the BLM has not beneficially used water authorized by its water rights for five years, for each water right at issue here, Petitioner must present sufficient evidence establishing forfeiture over the entire place of use—not just those portions of the place of use within the Allotments. The Department’s Memorandum, which includes an analysis of its associated due diligence investigation, clarifies that some of the places of use of the BLM Water Rights extend beyond the boundaries of the Allotments. *See Memorandum*. As noted in finding 3 above, Petitioner does not offer evidence of BLM’s non-use of water beyond the boundaries of the Allotments. Therefore, the Petition does not include sufficient evidence for the Director to issue an order to show cause to the extent that Petitioner has requested.

The Department must limit the scope of an order to show cause issued in this matter to those BLM Water Rights with a place of use that is located entirely within the property boundaries for which the Department has received supporting statements alleging non-use of water. Accordingly, for those BLM Water Rights that have a place of use that is located either entirely or partially outside of the Allotments (see finding 6 above), Petitioner has failed to make a “prima facie showing” in accordance with Idaho Code § 42-224 that the BLM has not beneficially used water authorized by its water rights for five years. However, Petitioner’s statements based on personal knowledge (see findings 5 above), when combined with the analysis within the Department’s Memorandum, amount to a “prima facie showing” in accordance with Idaho Code § 42-224 that the BLM has not beneficially used water authorized by its water rights that have a place of use entirely within the Allotments within the last five years.

CONCLUSION OF LAW

The Director concludes that the “prima facie showing” burden of proof, set forth in Idaho Code § 42-224, has been satisfied to the extent that he should partially grant Petitioner’s request and issue an order to the BLM to show cause before the Director why those BLM Water Rights that have a place of use entirely within the Allotments have not been lost through forfeiture pursuant to Idaho Code § 42-222(2).

ORDER

Based on the foregoing, the following are HEREBY ORDERED:

1. The *Verified Petition for Order to Show Cause* at issue is GRANTED for ONLY the following water rights: 79-11372, 79-11373, 79-11374, 79-11376, 79-11756, and 79-11784.
2. The *Verified Petition for Order to Show Cause* at issue is DENIED for the following water rights: 79-11259 and 79-11261.

ORDER PARTIALLY GRANTING PETITION; ORDER TO SHOW CAUSE (BUTCHER BAR AND CHINA CREEK ALLOTMENTS) – 4

3. In accordance with Idaho Code § 42-224(2), the United States of America acting through the Department of Interior, Bureau of Land Management must show cause before the Director of the Idaho Department of Water Resources why the following stockwater rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2): 79-11372, 79-11373, 79-11374, 79-11376, 79-11756, and 79-11784.

4. In accordance with Idaho Code § 42-224(6), the United States of America acting through the Department of Interior, Bureau of Land Management has 21 days from completion of service of this order to request in writing a hearing pursuant to Idaho Code § 42-1701A(1)–(2). If the United States requests such a hearing, it must also serve a copy of the request upon the petitioner listed on the included certificate of service.

5. In accordance with Idaho Code § 42-224(7), if the United States fails to respond to the above order to show cause within 21 days, the stockwater rights for which the *Verified Petition for Order to Show Cause* has been partially granted shall be considered forfeited, and the Director shall issue an order within 14 days stating the stockwater rights have been forfeited pursuant to Idaho Code § 42-222(2).

6. In accordance with Idaho Code §§ 42-224(1) and 42-224(4), Gill Family Ranches, LLC will be served a copy of this order.

DATED this 25th day of April 2022.


GARY SPACKMAN
Director

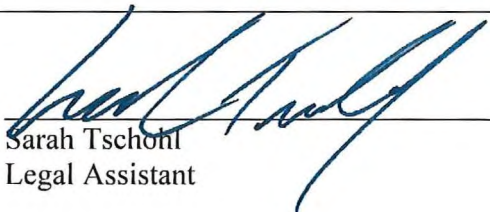
ORDER PARTIALLY GRANTING PETITION; ORDER TO SHOW CAUSE (BUTCHER BAR AND CHINA CREEK ALLOTMENTS) – 5

Exhibit 9

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of April 2022, I caused to be served a true and correct copy of the foregoing *Order Partially Granting Petition; Order to Show Cause (Butcher Bar and China Creek Allotments)*, by the method indicated below, upon the following:

<p>Gill Family Ranches, LLC 188 Gill Ranch Rd. P.O. Box 386 Lucile, ID 83542</p> <p><i>Petitioner</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email</p>				
<p>USDI BLM Idaho State Office 1387 S. Vinnell Way Boise, ID 83709</p> <p><i>Stockwater Right Owner</i></p>	<p><input checked="" type="checkbox"/> Certified U.S. Mail with return receipt <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email</p>				
<p><i>Courtesy Copy:</i></p> <table border="0"> <tr> <td data-bbox="228 1081 836 1262"> <p>United States Department of Justice Environment and Natural Resources Division 550 W. Fort St., MSC 033 Boise, ID 83724</p> </td> <td data-bbox="836 1081 1421 1262"> <p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email</p> </td> </tr> <tr> <td data-bbox="228 1291 836 1539"> <p>William G. Myers III HOLLAND & HART LLP P.O. Box 2527 Boise, ID 83701 wmyers@hollandhart.com</p> </td> <td data-bbox="836 1291 1421 1539"> <p><input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p> </td> </tr> </table>		<p>United States Department of Justice Environment and Natural Resources Division 550 W. Fort St., MSC 033 Boise, ID 83724</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email</p>	<p>William G. Myers III HOLLAND & HART LLP P.O. Box 2527 Boise, ID 83701 wmyers@hollandhart.com</p>	<p><input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>United States Department of Justice Environment and Natural Resources Division 550 W. Fort St., MSC 033 Boise, ID 83724</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email</p>				
<p>William G. Myers III HOLLAND & HART LLP P.O. Box 2527 Boise, ID 83701 wmyers@hollandhart.com</p>	<p><input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>				


Sarah Tschoni
Legal Assistant

ORDER PARTIALLY GRANTING PETITION; ORDER TO SHOW CAUSE (BUTCHER BAR AND CHINA CREEK ALLOTMENTS) – 6

Exhibit 9

Memorandum**To:** Shelley Keen**Prepared by:** Glen Gardiner & Craig Saxton**Date:** October 27, 2021**Re:** Review of Federal water rights within the Butcher Bar Allotment (#36138) and China Creek Allotment (#36191) which were identified in Exhibit A of Gill Family Ranches, LLC Verified Petition for Order to Show Cause.**Comparison of Partial Decrees to IDWR Database Records and Shapefiles**

On October 15, 2021, Gill Family Ranches, LLC ("Gill") petitioned the Director of the Idaho Department of Water Resources ("IDWR") to issue a show cause order pursuant to Idaho Code § 42-224(1) for a list of water rights "located on a federal grazing allotment known as the Butcher Bar Allotment (#36138) and China Creek Allotment (#36191)." Gill's petition refers to the list of water rights in Exhibit A. For each of the water rights in Exhibit A, we compared information on SRBA partial decrees to information in IDWR's water rights database. Fields compared included Name and Address, Source, Quantity, Priority Date, Point of Diversion, Purpose and Period of Use, and Place of Use. We found no discrepancies, although the Names on the partial decrees list USDI BLM, IDAHO STATE OFFICE, whereas IDWR's database refers to the Names as UNITED STATES OF AMERICA ACTING THROUGH USDI BUREAU OF LAND MANAGEMENT, IDAHO STATE OFFICE.

IDWR stores digitized water right places of use ("POU") in its geographic information system ("GIS"). We verified the digitized POU for each of the water rights listed in Exhibit A matches the POU described in the water rights database. No discrepancies were found. To complete our analysis, we then used GIS to overlay the digitized POU for each water right in Exhibit A onto the digital boundaries of the Butcher Bar Allotment, China Creek Allotment and neighboring grazing allotments (Wet Gulch Allotment)¹.

Butcher Bar Allotment Analysis

Based on digital overlay, the POU for the following water right exists completely within the Butcher Bar Allotment:

79-11756.

China Creek Allotment Analysis

Based on digital overlay, the POUs for the following water rights exist completely within the China Creek Allotment:

79-11374 & 79-11376.

¹ The digital shapes of the allotment boundaries were created by U.S. Department of the Interior, Bureau of Land Management with a publication date of 06-30-2017. The digital allotment boundaries can be downloaded from the website https://gis.blm.gov/arcgis/rest/services/range/BLM_Natl_Grazing_Allotment/MapServer

Exhibit 9

Analysis of Rights Within Both Subject Allotments

POUs for the following water rights exist partially within the Butcher Bar Allotment and partially within the China Creek Allotment.

79-11372:

Water right 79-11372 is an instream stockwater right on the Salmon River. The POU is T26N, R1E, Sec 34, (L1)NESE, (L2)SESE. China Creek flows through the POU described as T26N, R1E, Sec 34, (L1)NESE. Land north of China Creek is in the Butcher Bar Allotment. Land south of China Creek is in the China Creek Allotment. It appears this POU can be accessed from either the China Creek or Butcher Bar allotments. The entire POU is managed by Bureau of Land Management, United States of America.

79-11373:

Water right 79-11373 is an instream stockwater right on China Creek, tributary to the Salmon River. The POU is T26N, R1E, Sec 34, SENE, (L1)NESE. China Creek flows through the POU described as T26N, R1E, Sec 34, (L1)NESE. Land north of China Creek is in the Butcher Bar Allotment. Land south of China Creek is in the China Creek Allotment. It appears this POU can be accessed from either the China Creek or Butcher Bar allotments. The entire POU is managed by Bureau of Land Management, United States of America.

79-11784:

Water right 79-11374 is a spring, tributary to China Creek. The POU is T26N, R1E, Sec 34, (L1)NESE. China Creek flows through the POU. Land north of China Creek is in the Butcher Bar Allotment. Land south of China Creek is in the China Creek Allotment. It appears this POU can be accessed from either the China Creek or Butcher Bar allotments. The entire POU is managed by Bureau of Land Management, United States of America.

Analysis of Rights Outside the Subject Allotments

POUs for the following water rights exist entirely outside both the Butcher Bar Allotment and the China Creek Allotment.

79-11259:

Water right 79-11259 is an instream stockwater right on unnamed stream, tributary to the Salmon River. The POU is T26N, R1E, Sec 23, (L8)SWSW. This POU is entirely within the Wet Gulch Allotment. The POU is managed by Bureau of Land Management, United States of America.

79-11261:

Water right 79-11259 is an instream stockwater right on Wet Gulch, tributary to the Salmon River. The POU is T26N, R1E, Sec 26, (L1)NWNW. This POU is entirely within the Wet Gulch Allotment. The POU is managed by Bureau of Land Management, United States of America.

-end-

EXHIBIT 10

Declaration of Gary Spackman

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF CERTAIN BASIN 75
WATER RIGHTS, IN THE NAME OF THE
UNITED STATES

Docket No. P-OSC-2022-001

**ORDER PARTIALLY GRANTING
PETITION; ORDER TO SHOW
CAUSE**

**(FOURTH OF JULY CREEK
ALLOTMENT)**

BACKGROUND

On May 23, 2022, Jaycob J. and Sheyenne A. Smith (collectively, “Petitioners”) filed with the Idaho Department of Water Resources (“Department”) a *Verified Petition for Order to Show Cause* (“Petition”). Petitioners ask the Department to issue an order pursuant to Idaho Code § 42-224(1) “to show cause why the Water Rights”(see Petition Exhibit A) on the federal grazing allotment known as the Fourth of July Creek Allotment (“Allotment”) “have not been lost through forfeiture pursuant to Idaho Code Sec. 42-222(2).” *Petition* at 1.

Petitioners assert that the water rights listed in Exhibit A (“U.S. Water Rights”) are owned by the United States of America acting through the Department of Agriculture, Forest Service (“Forest Service”) and the Department of Interior, Bureau of Land Management (“BLM”) (collectively, “U.S.”). *Id.* ¶ 1; see *Petition* Ex. A. Additionally, Petitioners assert that each of the U.S. Water Rights solely have a stockwater beneficial use for less than 13,000 gallons a day and the points of diversion and places of use are located partially or entirely on the Allotment. *Petition* ¶ 2–3. Petitioners claim that no other water rights share “the same place of use, source, and point of diversion” as the U.S. Water Rights. *Id.* ¶ 4.

Petitioners maintain that they have, for at least the last five years, held a valid Forest Service grazing permit for cattle grazing on the Allotment. *Id.* ¶ 5; see *Petition* Ex. B. Petitioners assert that they have grazed on the Allotment “each year of the permit term.” *Petition* ¶ 6. Petitioners claim that their employees, officers, and families have “regularly visited the Allotment, which borders Petitioners’ leased property, each grazing season of use and at other times outside the season of use each year for more than the past five years.” *Id.* ¶ 7. Petitioners allege that “[a]t no time over the past five years have Petitioners, their officers, employees, their families, or agents witnessed or heard of the existence of livestock owned or controlled by the [U.S.]” on the Allotment to use water under the U.S. Water Rights. *Id.* ¶ 8. Petitioners allege that at no time since their family has been authorized to use the Allotment “have Petitioners ever witnessed or heard of the Federal government applying the Water Rights to the beneficial use of watering livestock the Federal government owns or controls on either [sic] Allotment.” *Id.* ¶ 10. Petitioners assert that no agency relationship exists between Petitioners and the U.S. “for the purpose of acquiring water rights for the Federal government on the Allotment.” *Id.* ¶ 11. The Petition is verified by both Jaycob J. and Sheyenne A. Smith. *Id.* at 3–4.

ORDER PARTIALLY GRANTING PETITION; ORDER TO SHOW CAUSE (FOURTH OF JULY CREEK ALLOTMENT) – 1

In an effort to comply with the statutory service requirements of Idaho Code § 42-224(4), the Department submitted Freedom of Information Act (“FOIA”) requests to the BLM and to the Forest Service on May 25, 2022, for a copy of all active grazing permits or leases on the Fourth of July Allotment. On May 27, 2022, in response to the Department’s FOIA request, the BLM sent a letter informing the Department that they have no responsive records. To date, the Forest Service has confirmed receipt of the Department’s FOIA request, but has not responded regarding the contents of the request.

APPLICABLE LAW

Idaho Code § 42-224 states in pertinent part:

(1) Within thirty (30) days of receipt by the director of the department of water resources of a petition or other information that a stockwater right has not been put to beneficial use for a term of five (5) years, the director must determine whether the petition or other information, or both, presents prima facie evidence that the stockwater right has been lost through forfeiture pursuant to section 42-222(2), Idaho Code. If the director determines the petition or other information, or both, is insufficient, he shall notify the petitioner of his determination, which shall include a reasoned statement in support of the determination, and otherwise disregard for the purposes of this subsection the other, insufficient, information.

(2) If the director determines the petition or other information, or both, contains prima facie evidence of forfeiture due to nonuse, the director must within thirty (30) days issue an order to the stockwater right owner to show cause before the director why the stockwater right has not been lost through forfeiture pursuant to section 42-222(2), Idaho Code. Any order to show cause must contain the director's findings of fact and a reasoned statement in support of the determination.

....

(14) This section applies to all stockwater rights except those stock water rights decreed to the United States based on federal law.

I.C. § 42-224(1)–(2), (14), *as amended* by H.B. 608 (2022). Therefore, to issue an order to show cause as Petitioners have requested, the Director must conclude that the Petition makes a “prima facie showing” that the U.S. has not put its U.S. Water Rights, decreed based on state law, to beneficial use for at least five years. “Prima facie” is defined by *Black’s Law Dictionary* as: “Sufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue <a prima facie showing>.” *Prima facie*, *Black’s Law Dictionary* (11th ed. 2019).

FINDINGS OF FACT

After careful review of the Petition and the Department's associated research memorandum,¹ the Director issues the following findings:

1. Petitioners requested the Department issue an order to the U.S. to show cause why the U.S.'s Water Rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2). *See Petition* at 1. The following is a list of the water rights at issue: 75-2225, 75-4236, 75-4241,² 75-7279, 75-7288, 75-7335, 75-7672, 75-11102, 75-13804, 75-13808, 75-13813, 75-13822, 75-13825, 75-13826, 75-13899, 75-13912. *See Petition* Ex. A; *Memorandum* at 2.
2. The Director has not received written evidence that a principal/agent relationship existed, during the five-year period calculated pursuant to Idaho Code § 42-224(1), between the BLM or the Forest Service and any Fourth of July Creek Allotment livestock grazing permit or lease holder(s) for the purpose of maintaining the U.S. Water Rights.
3. Based on the Memorandum, the Director finds that none of the 16 U.S. Water Rights at issue are based on federal law, and all of the water rights at issue are stockwater rights pursuant to Idaho Code § 42-1401A(11). *Memorandum* at 1, 3.
4. Using the Department's water rights database, the Department reviewed the places of use for the Water Rights. *Memorandum* at 1.
5. Petitioners' allegations in the Petition are specific to non-use within the Allotment and do not extend to use beyond the Allotment. *See Petition* at 1–2.
6. Based on the Memorandum, the Director finds that the places of use for the following water rights are entirely within the Allotment: 75-4241, 75-7279, 75-7288, 75-7335, 75-11102, 75-13808, 75-13813, 75-13822, 75-13826, 75-13899, and 75-13912. *See Memorandum* at 2.
7. The allegations in the Petition attribute observations of nonuse of water in the Allotment to Petitioners and their employees, officers, agents, and family members. *Id.* at 1–2. Accordingly, the Director finds that Petitioners' statements are based on personal knowledge.
8. The Director finds that all the BLM's and some of the Forest Service's water rights at issue have a place of use that extends beyond the Allotment. The water rights having all or

¹ For the Director to give a reasoned statement supporting a determination in favor of or opposing forfeiture pursuant to Idaho Code § 42-222(2), Department staff utilized the Department's water right files and database to thoroughly review, analyze, and document the basis of each water right and the locations of the places of use for the U.S. Water Rights listed in Exhibit A of the Petition. *See* Mem. from Craig Saxton & Shelley Keen, Adjudication Section Manager and Water Allocation Bureau Chief, Idaho Dep't of Water Res., to Gary Spackman, Director, Idaho Dep't of Water Res. 1 (June 21, 2022) (attached to this Order as Attachment A) [hereinafter *Memorandum*].

² Water rights 75-4241 and 75-4236 are statutory claims not made in or decreed by the Snake River Basin Adjudication ("SRBA"). Since both water rights are solely for stockwater use in an amount less than 13,000 gallons per day, they qualify for the SRBA *de minimis* stockwater claims deferral option.

portions of their place of use located beyond the boundaries of the Allotment are: 75-2225, 75-4236, 75-7672, 75-13804, and 75-13825. *See Memorandum* at 2–3.

ANALYSIS

Forfeiture is disfavored in Idaho law. *Application of Boyer*, 73 Idaho 152, 159, 248 P.2d 540, 544 (1952) (“Forfeitures are abhorrent and all intendments are to be indulged against a forfeiture.”). To make a prima facie showing that the U.S. has not beneficially used water authorized by its water rights for five years, for each water right at issue here, Petitioners must present sufficient evidence establishing forfeiture over the entire place of use—not just those portions of the place of use within the Allotment. The Department’s Memorandum, which includes an analysis of its associated due diligence investigation, clarifies that some of the places of use of the U.S. Water Rights extend beyond the boundaries of the Allotment. *See Memorandum* at 2–3. As noted in finding 5 above, Petitioners do not offer evidence of the U.S.’s non-use of water beyond the boundaries of the Allotment. Therefore, the Petition does not include sufficient evidence for the Director to issue an order to show cause to the extent that Petitioners have requested.

The Department must limit the scope of an order to show cause issued in this matter to only those U.S. Water Rights based on state law and with a place of use that is located entirely within the property boundaries for which the Department has received supporting statements alleging non-use of water. Accordingly, for those U.S. Water Rights that have a place of use that is located either entirely or partially outside of the Allotment (see finding 8 above), Petitioners have failed to make a “prima facie showing” in accordance with Idaho Code § 42-224 that the U.S. has not beneficially used water authorized by its water rights for five years. However, Petitioners’ statements based on personal knowledge (see finding 7 above), when combined with the analysis within the Department’s Memorandum, amount to a “prima facie showing” in accordance with Idaho Code § 42-224 that the U.S. has not beneficially used water authorized by its water rights that have a place of use entirely within the Allotment within the last five years.

CONCLUSION OF LAW

The Director concludes that the “prima facie showing” burden of proof, set forth in Idaho Code § 42-224, has been satisfied to the extent that he should partially grant Petitioners’ request and issue an order to the U.S. to show cause before the Director why those U.S. Water Rights based on state law and that have a place of use entirely within the Allotment have not been lost through forfeiture pursuant to Idaho Code § 42-222(2).

ORDER

Based on the foregoing, the following are HEREBY ORDERED:

1. The *Verified Petition for Order to Show Cause* at issue is GRANTED for ONLY the following water rights: 75-4241, 75-7279, 75-7288, 75-7335, 75-11102, 75-13808, 75-13813, 75-13822, 75-13826, 75-13899, and 75-13912. All these water rights are held by the United States of America acting through the Department of Agriculture, Forest Service.

ORDER PARTIALLY GRANTING PETITION; ORDER TO SHOW CAUSE (FOURTH OF JULY CREEK ALLOTMENT) – 4

2. The *Verified Petition for Order to Show Cause* at issue is DENIED for the following water rights: 75-2225, 75-4236, 75-7672, 75-13804, and 75-13825.

3. In accordance with Idaho Code § 42-224(2), the United States of America acting through the Department of Agriculture, Forest Service must show cause before the Director of the Idaho Department of Water Resources why the following stockwater rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2): 75-4241, 75-7279, 75-7288, 75-7335, 75-11102, 75-13808, 75-13813, 75-13822, 75-13826, 75-13899, and 75-13912.

4. In accordance with Idaho Code § 42-224(6), the United States of America acting through the Department of Agriculture, Forest Service has 21 days from completion of service of this order to request in writing a hearing pursuant to Idaho Code § 42-1701A(1)–(2). If the United States requests such a hearing, it must also serve a copy of the request upon the petitioners and all current Fourth of July Allotment livestock grazing permit or lease holders known to the United States.

5. In accordance with Idaho Code § 42-224(7), if the United States fails to respond to the above order to show cause within 21 days, the stockwater rights for which the *Verified Petition for Order to Show Cause* has been partially granted shall be considered forfeited, and the Director shall issue an order within 14 days stating the stockwater rights have been forfeited pursuant to Idaho Code § 42-222(2).

6. In accordance with Idaho Code §§ 42-224(1) and 42-224(4), Jaycob J. and Sheyenne A. Smith will be served a copy of this order.

DATED this 22nd day of June 2022.


GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of June 2022, I caused to be served a true and correct copy of the foregoing *Order Partially Granting Petition; Order to Show Cause (Fourth of July Creek Allotment)*, by the method indicated below, upon the following:

Alison C. Hunter
William G. Meyers III
HOLLAND & HART LLP
P.O. Box 2527
Boise, ID 83701
achunter@hollandhart.com
wmyers@hollandhart.com

- ☒ Certified U.S. Mail with return receipt
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

*Attorneys for Petitioners and Grazing Permit
Holders Jaycob J. and Sheyenne A. Smith*

USDA Forest Service
550 W Fort St., MSC 033
Boise, ID 83724

- ☒ Certified U.S. Mail with return receipt
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Stockwater Right Owner

USDI BLM
Idaho State Office
1387 S. Vinnell Way
Boise, ID 83709

- ☒ Certified U.S. Mail with return receipt
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Stockwater Right Owner

COURTESY COPIES TO:

John Murdock
U.S. Department of the Interior
Office of the Solicitor
Boise Field Office
960 South Broadway A venue, Suite 400
Boise, Idaho 83706-6240
john.murdock@sol.doi.gov

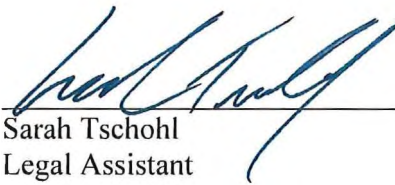
- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

ORDER PARTIALLY GRANTING PETITION; ORDER TO SHOW CAUSE (FOURTH OF JULY CREEK ALLOTMENT) – 6

Exhibit 10

David Negri
United States Department of Justice
Environment and Natural Resources
Division
550 W. Fort St., MSC 033
Boise, ID 83724
david.negri@usdoj.gov

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email


Sarah Tschohl
Legal Assistant

ORDER PARTIALLY GRANTING PETITION; ORDER TO SHOW CAUSE (FOURTH OF
JULY CREEK ALLOTMENT) – 7

Memorandum

To: Gary Spackman

Prepared by: Craig Saxton and Shelley Keen
CS SK

Date: June 21, 2022

Re: Review of Federal water rights within the Fourth of July Creek Allotment (#70213) which were identified in Exhibit A of Jacob J. Smith and Cheyenne A. Smith's *Verified Petition for Order to Show Cause*

Comparison of Partial Decrees to IDWR Database Records and Shapefiles

On May 23, 2022, Jacob J. Smith and Cheyenne A. Smith ("Smiths") submitted a *Verified Petition for Order to Show Cause* ("Petition") asking the Director of the Idaho Department of Water Resources ("IDWR") to issue a show cause order pursuant to Idaho Code § 42-224(1) for a list of water rights "located on a federal grazing allotment known as the Fourth of July Creek Allotment (#70213)." Smiths' petition refers to the list of water rights as Exhibit A.

Of the 16 water rights listed in Exhibit A, none are decreed based on federal law, ten are decreed in the Snake River Basin Adjudication ("SRBA") based on state law, four are water right licenses issued by IDWR pursuant to Idaho Code § 42-219, and two are "statutory claims" filed pursuant to Idaho Code § 42-243. Statutory claims have not been confirmed as valid water rights by a court of law or by IDWR. For convenience, they may be referred to as "water rights" in this memorandum.

For each of the water rights in Exhibit A, we compared information on the SRBA partial decree, original license document, or the original statutory claim document to the information in IDWR's water rights database. Data fields compared included Name and Address, Source, Quantity, Priority Date, Point of Diversion, Purpose and Period of Use, and Place of Use. We found no discrepancies in the decreed water rights, although the Names on the partial decrees are abbreviated to USDI BLM, IDAHO STATE OFFICE, whereas IDWR's database refers to the Names as UNITED STATES OF AMERICA ACTING THROUGH USDI BUREAU OF LAND MANAGEMENT, IDAHO STATE OFFICE. IDWR's database shows a different address for USFS rights based on statutory claim or license than what is listed on the original documents scanned into IDWR's document management system. The original documents list an address in Ogden, Utah, while IDWR's database shows the addresses have been updated to show a Boise, Idaho address.

IDWR stores digitized water right places of use ("POU") in its geographic information system ("GIS"). We verified the digitized POU for each of the water rights listed in Exhibit A matches the POU described in the water rights database. We found no discrepancies.

Water Right Ownership Review

The Petition asserts that the water rights listed in Exhibit A "are currently owned by the United States of America acting through the U.S. Department of Agriculture, Forest Service, or the U.S. Bureau of Land

Review of Federal Water Rights – Fourth of July Creek (#70213) – Jacob J. and Cheyenne A. Smith Verified Petition for Order to Show Cause

Exhibit 10

Management.” IDWR records show each of the rights listed in Exhibit A as being owned by the United States.

Water Right Place of Use Analysis

The Petition asserts that the water rights listed in Exhibit A have “places of use . . . partially or completely on a federal grazing allotment known as the Fourth of July Creek #70213 Allotment (“Allotment”) and managed by the Salmon-Cobalt Ranger District of the Salmon-Challis National Forest headquartered in Salmon, Idaho (“Forest Service”).” To evaluate whether the water rights listed in Exhibit A are used on the Fourth of July Creek Allotment as asserted, we used GIS to overlay the digitized POU for each water right in Exhibit A onto the digital boundaries of the Fourth of July Creek Allotment, neighboring grazing allotments, and parcels in private ownership.¹

Based on the digital data, the POUs for the following water rights are completely within the Fourth of July Creek Allotment:

75-4241	75-7335	75-13813	75-13899
75-7279	75-11102	75-13822	75-13912
75-7288	75-13808	75-13826	

POUs for the following five water rights from Exhibit A have all or portions of their authorized POUs outside the Fourth of July Creek Allotment boundary:

75-2225	75-7672	75-13825
75-4236	75-13804	

The analysis below describes water rights in Exhibit A having all or portions of the authorized POUs outside the Fourth of July Creek Allotment boundary:

75-2225

Water right 75-2225 is for stockwater use from a spring tributary to Kriley Creek. The POU is located in T24N, R22E, Section 32, NWSE, which is outside the boundary of the Fourth of July Creek Allotment. The POU is on BLM land, the majority being within the BLM’s Tower Creek Allotment.

75-4236

Water right 75-4236 is a statutory claim for stockwater use and is diverted from Brown Spring tributary to sinks. The POU is located in T24N, R22E, Section 30, SWSE. The south ½ of the SWSE of Section 30 is within the boundary of the Fourth of July Creek Allotment. The north ½ of the SWSE of Section 30 is not within an allotment boundary. The north ½ of the SWSE of Section 30 includes privately owned land parcels in the name of Clark Jennison and Tef’s Family Revocable Trust.

75-7672

Water right 75-7672 is for stockwater and wildlife use and is diverted from a spring that sinks. Part of the POU is located in T23N, R22E, Section 10, SESE, which is entirely in the Fourth of July Creek

¹ The digital shapes of the allotment boundaries were created by U.S. Department of the Interior, Bureau of Land Management with a publication date of 06-30-2017. The digital allotment boundaries can be downloaded from the website https://gis.blm.gov/arcgis/rest/services/range/BLM_Natl_Grazing_Allotment/MapServer.

Exhibit 10

Allotment and, according to BLM data, also partly within the BLM's Badger Springs Allotment. The rest of the POU is in T23N, R22E, Section 15, NENW and NWNW, which is in BLM's Badger Springs Allotment.

75-13804

Water right 75-13804 is for stockwater use from East Kriley Spring tributary to sinks. The POU is located in T24N, R22E, Sec 32, SWNE, which is partly within the Fourth of July Creek Allotment, partly within the BLM's Tower Creek Allotment, and partly (less than one acre) within the Salmon-Challis National Forest but not within a grazing allotment.

75-13825

Water right 75-13825 is for stockwater use from Magpie Spring, which sinks. The POU is located in T24N, R22E, Section 31, SENE. Three-fourths (3/4) of the SENE of Section 31 is in the Fourth of July Creek Allotment. One-fourth (1/4) of the SENE of Section 31 is outside of the Fourth of July Creek Allotment and is split between the USFS Salmon-Challis National Forest and the Cheryl A. Hart Revocable Trust.

Idaho Code § 42-1401A(11) Analysis

The Petition also asserts that the water rights listed in Exhibit A "meet the requirements of Idaho Code Sec. 42-1401A(11) because the beneficial use is solely for stockwater in a quantity not to exceed 13,000 gallons per day."

The following ten water right from Exhibit A are decreed solely for stockwater use and have a condition stating that the use shall not exceed 13,000 gallons per day:

75-11102	75-13808	75-13813	75-13822
75-13826	75-13899	75-13912	75-2225
75-13804	75-13825		

Water rights 75-7279, 75-7288, and 75-7335 from Exhibit A are licenses solely for stockwater use. The authorized diversion rate on each of the licenses is 0.02 cfs, which would be less than 13,000 gallons per day if diverted continuously. They were not claimed or decreed in the SRBA. Stockwater rights that do not exceed 13,000 gallons per day qualify for the claim deferral option in the SRBA.

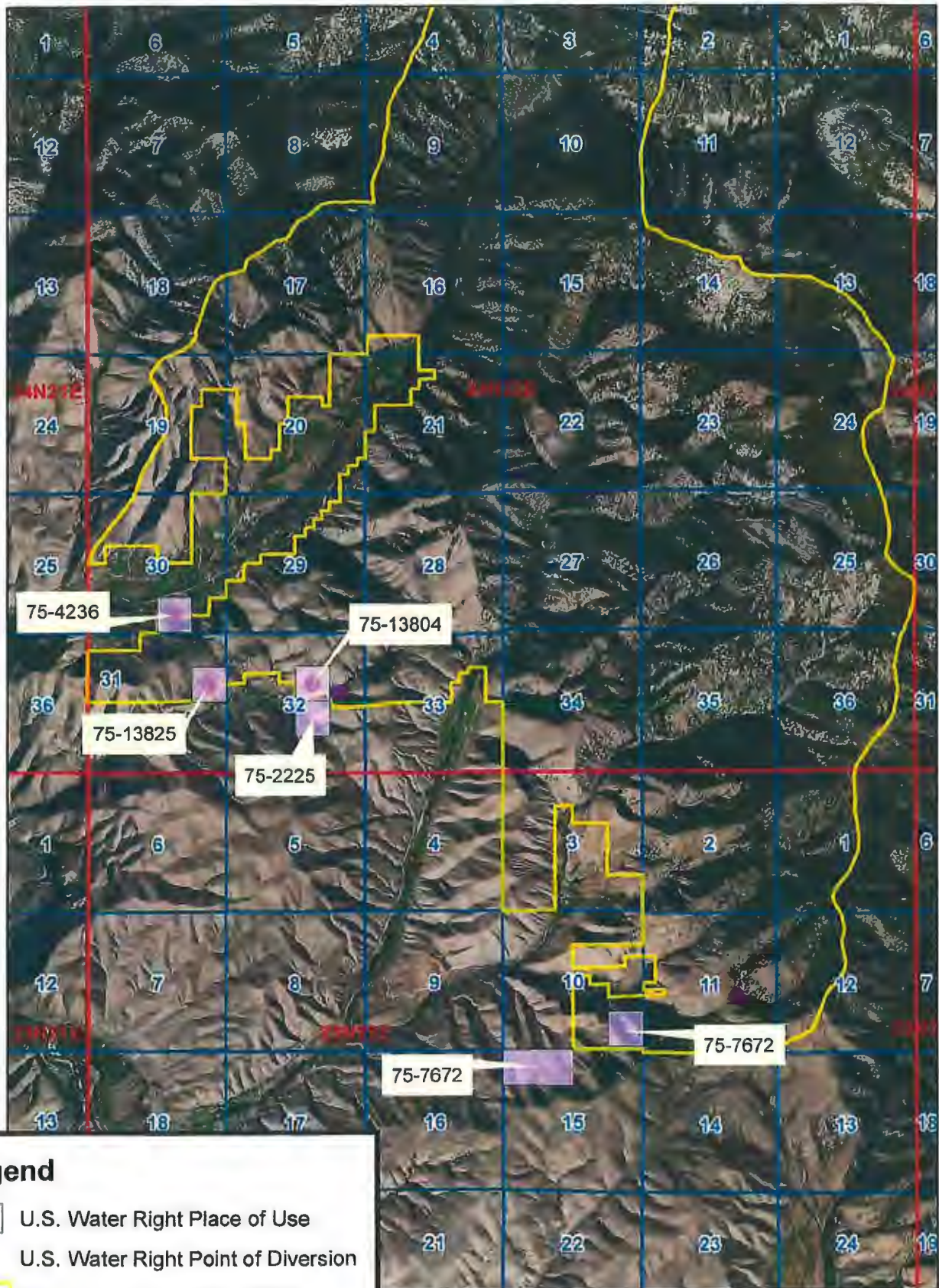
Licensed water right 75-7672 from Exhibit A lists two beneficial uses, stockwater and wildlife. Idaho Code § 42-1401A(11) defines stock watering use to include "water solely for livestock *or wildlife*" (*italics added*). The authorized diversion rate on the license is 0.02 cfs, which would be less than 13,000 gallons per day if diverted continuously. Because the permit for water right 75-7672 was issued in 2000, thirteen years after the commencement date of the SRBA, the license was not required to be claimed in the SRBA.

Water rights 75-4241 and 75-4236 from Exhibit A are statutory claims solely for stockwater use. The claimed diversion rate on each of the statutory claims is 0.02 cfs, which would be less than 13,000 gallons per day if diverted continuously. They were not claimed in the SRBA. Stockwater rights that do not exceed 13,000 gallons per day qualify for the claim deferral option in the SRBA.

Exhibit 10

Fourth of July Creek Allotment

Federal Water Rights NOT Entirely within the Fourth of July Creek Allotment



Legend

- U.S. Water Right Place of Use
- U.S. Water Right Point of Diversion
- Fouth_of_July_Creek_70213
- Township/Range

Exhibit 10

Fourth of July Creek Allotment

Federal Water Rights Entirely within the Fourth of July Creek Allotment

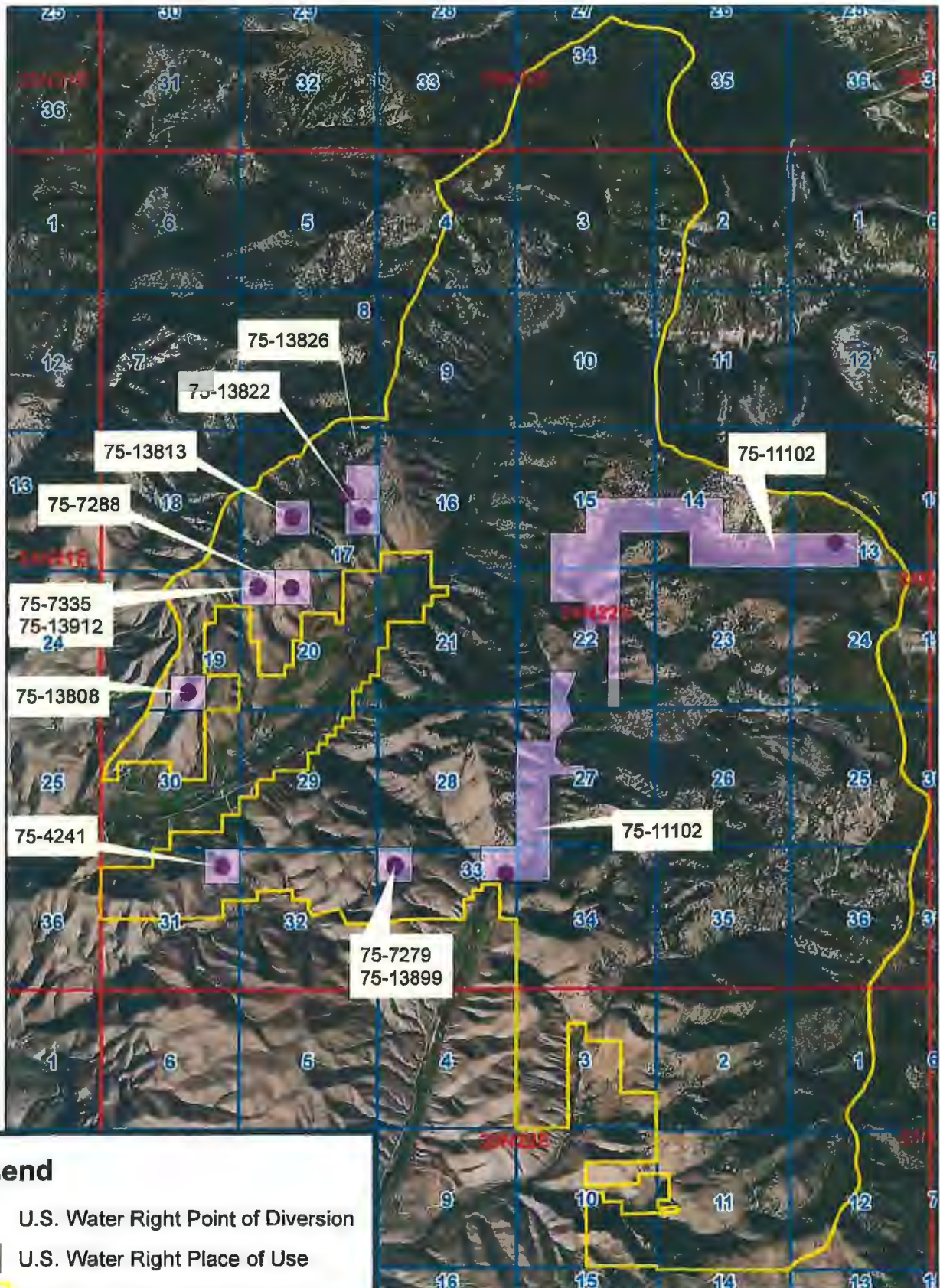


EXHIBIT 11

Declaration of Gary Spackman

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF CERTAIN BASIN 79
WATER RIGHTS, IN THE NAME OF THE
UNITED STATES OF AMERICA ACTING
THROUGH THE UNITED STATES
DEPARTMENT OF AGRICULTURE,
FOREST SERVICE

Docket No. P-OSC-2021-003

**ORDER WITHDRAWING ORDER TO
SHOW CAUSE; ORDER DISMISSING
PETITION**

(COW CREEK ALLOTMENT)

BACKGROUND

On September 24, 2021, Gill Family Ranches, LLC (“Petitioner”) filed with the Idaho Department of Water Resources (“Department”) a *Verified Petition for Order to Show Cause* (“Petition”) related to certain Basin 79 water rights. Petitioner asked the Department to issue an order pursuant to Idaho Code § 42-224(1) “to show cause why the Water Rights [(see Exhibit A)] have not been lost through forfeiture pursuant to Idaho Code [§] 42-222(2).” *Petition* at 1.

On October 27, 2021, the Director of the Department issued an *Order Partially Granting Petition; Order to Show Cause* (“Order to Show Cause”), ordering the United States of America acting through the Department of Agriculture, Forest Service (“Forest Service”) “to show cause before the Director why the Forest Service water rights that have a place of use entirely within the [Cow Creek] Allotment have not been lost through forfeiture pursuant to Idaho Code § 42-222(2).” *Order to Show Cause* ¶ 7, at 4. The Order to Show Cause gave the Forest Service, “21 days from completion of service to request in writing a hearing pursuant to Idaho Code § 42-1701A.” *Id.* ¶ 3, at 4. If the Forest Service does not timely respond, the Order to Show Cause dictates that the following Forest Service stockwater rights, entirely within the Cow Creek Allotment, shall be considered forfeited pursuant to Idaho Code § 42-222(2): 79-4134, 79-4138, 79-4139, 79-4165, 79-4212, 79-4234, 79-4235, 79-4236, 79-4237, 79-4238, 79-4239, 79-4240, 79-4324, 79-4325, 79-4327, 79-4328, 79-4329, 79-4330, 79-4333, 79-4334, 79-4335, 79-4336, 79-4337, 79-4339, 79-4340, 79-4341, 79-4342, 79-4343, 79-10505, 79-10506, 79-10507, 79-10508, 79-10509, 79-10510, 79-10512, 79-10513, 79-10519, 79-10568, 79-10572, 79-10612, 79-10720, 79-10722, 79-13647, 79-13664, and 79-13679 (“Forest Service Water Rights”). *See Id.* ¶¶ 7, 1, 3, at 4.

To comply with Idaho Code § 42-224(3), the Department served the Order to Show Cause via certified mail. The Forest Service signed for its certified mail copy of the Order to Show Cause on October 29, 2021. To comply with Idaho Code § 42-224(3)–(4), the Order to Show Cause was also sent via certified mail to Rex Baker, holder of an active Forest Service grazing permit on the Cow Creek Allotment. *See Id.* at 2, ¶ 4, at 4. Rex Baker signed for his certified mail copy of the Order to Show Cause on November 1, 2021.

ORDER WITHDRAWING ORDER TO SHOW CAUSE; ORDER DISMISSING PETITION
(COW CREEK ALLOTMENT) - 1

On November 8, 2021, the Department received a copy of a *Limited Agency Agreement for the Purposes of Establishing and Maintaining Stockwater Rights on National Forest Grazing Allotments in Accordance with the Laws of the State of Idaho* (“Agreement”) between Rex Baker and the Forest Service, authorized on November 8, 2021 (attached to this Order as Attachment A).

APPLICABLE LAW

Idaho Code § 42-224 states:

(1) Whenever the director of the department of water resources receives a petition making prima facie showing, or finds, on his own initiative based on available information, that a stockwater right has not been put to beneficial use for a term of five (5) years, the director shall expeditiously issue an order to the stockwater right owner to show cause before the director why the stockwater right has not been lost through forfeiture pursuant to section 42-222(2), Idaho Code.

....

(5) The stockwater right owner shall have twenty-one (21) days from completion of service to request in writing a hearing pursuant to section 42-1701A, Idaho Code. If the stockwater right owner fails to timely respond to the order to show cause, the stockwater right shall be considered forfeited, and the director shall issue an order declaring the stockwater right to be forfeited pursuant to section 42-222(2), Idaho Code.

However, Idaho Code § 42-224(10) limits the director of the Department from forfeiting certain stockwater rights:

The director shall not issue an order to show cause, and shall not proceed under the provisions of this section, where the holder or holders of any livestock grazing permit or lease on a federal grazing allotment asserts a principal/agent relationship with the federal agency managing the grazing allotment.

FINDINGS OF FACT

1. Rex Baker holds a valid and current Forest Service grazing permit for the Cow Creek Allotment. *See Order to Show Cause* at 2; *Agreement* at 1, ¶ 3, at 2.

2. The Agreement was entered into by Rex Baker and the Forest Service “for the purposes of establishing and maintaining stockwater rights to use water diverted from sources that are within grazing allotments located on NFS [(National Forest System)] lands . . .” *Agreement* at 1.¹

¹ While captioned as a “limited” agency agreement, it is “limited” only because it is for the narrow purpose of establishing and maintaining stockwater rights.

ORDER WITHDRAWING ORDER TO SHOW CAUSE; ORDER DISMISSING PETITION
(COW CREEK ALLOTMENT) - 2

3. The Agreement states that when Rex Baker's cattle are drinking water on the Cow Creek Allotment, Rex Baker is "acting as a limited agent for the United States for the purposes of establishing and maintaining stockwater rights for the United States within grazing allotments located on NFS lands," *Id.* ¶ 2, at 1.

CONCLUSIONS OF LAW

1. Idaho Code § 42-224(10) states, in relevant part, "The director ... shall not proceed under the provisions of this section, where the holder or holders of any livestock grazing permit or lease on a federal grazing allotment asserts a principal/agent relationship with the federal agency managing the grazing allotment."²

2. The Director concludes that Rex Baker, a Cow Creek Allotment livestock grazer and permit holder, established a principal/agent relationship with the Forest Service, the federal agency that manages the Cow Creek Allotment.

3. Because this principal/agent relationship was established, Idaho Code § 42-224(10) mandates that the Director not proceed under the provisions of Idaho Code § 42-224.

4. Having reviewed the Agreement, the Director concludes he should withdraw the Order to Show Cause and dismiss the Petition.

ORDER

IT IS HEREBY ORDERED that the *Order Partially Granting Petition; Order to Show Cause* is WITHDRAWN.

IT IS FURTHER ORDERED that the *Verified Petition for Order to Show Cause* is DISMISSED.

DATED this 12th day of November 2021.


GARY SPACKMAN
Director

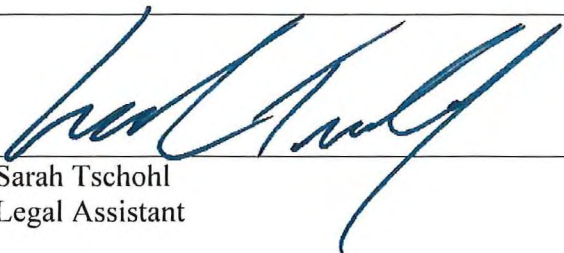
² The Agreement was executed after the Order to Show Cause was issued by the Director. See *Order to Show Cause* at 4; Agreement at 2. At the time it was issued, the Order to Show Cause was in accordance with Idaho Code § 42-224.

Exhibit 11

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of November 2021, I served a true and correct copy of the foregoing, *Order Withdrawing Order to Show Cause; Order Dismissing Petition (Cow Creek Allotment)*, by the method indicated below, upon the following:

William G. Myers III HOLLAND & HART LLP P.O. Box 2527 Boise, ID 83701 wmyers@hollandhart.com <i>For Petitioner</i>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Rex H. Baker P.O. Box 327 Lucile, ID 83542 <i>Livestock Grazing Permit Holder</i>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
USDA Forest Service 550 W Fort St., MSC 033 Boise, ID 83724 <i>Stockwater Right Owner</i>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
<i>Courtesy Copy:</i> United States Department of Justice Environment and Natural Resources Division 550 W. Fort St., MSC 033 Boise, ID 83724 david.negri@usdoj.gov	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email



Sarah Tschohl
Legal Assistant

ORDER WITHDRAWING ORDER TO SHOW CAUSE; ORDER DISMISSING PETITION
(COW CREEK ALLOTMENT) - 4

**LIMITED AGENCY AGREEMENT FOR THE PURPOSES OF ESTABLISHING AND
MAINTAINING STOCKWATER RIGHTS ON NATIONAL FOREST GRAZING
ALLOTMENTS IN ACCORDANCE WITH THE LAWS OF THE STATE OF IDAHO**

The U.S Forest Service, Department of Agriculture, ("Forest Service") and
Rex Baker ("Permittee," and together
 with the Forest Service the "Parties"), in consideration of the mutual acknowledgments and agreements
 below, and for the benefit of the Parties and the National Forest System ("NFS"), enter into this Limited
 Agency Agreement for the purposes of establishing and maintaining stockwater rights to use water
 diverted from sources that are within grazing allotments located on NFS lands in accordance with the
 Laws of the State of Idaho ("Agreement").

ACKNOWLEDGEMENTS

The Parties acknowledge the following:

1. The significant role of the livestock industry in the settlement, history, and culture of the State of Idaho;
2. The importance of stockwater rights to the livestock industry in the State of Idaho, to the Forest Service grazing program, to the Permittee's livestock operation, and to the association of water with NFS lands;
3. On March 24, 2020, Idaho Governor Brad Little signed into law Idaho House Bill 592 ("HB 592") with an effective date of July 1, 2020;
4. HB 592 amended state law to remove limitations on the Forest Service and permittees entering into agency agreements to exercise Forest Service stockwater rights on National Forest grazing allotments; and
5. Current or future grazing authorization is not impacted or restricted in any way by this Agreement.

AGREEMENTS

The Forest Service and the Permittee agree as follows:

1. The Parties wish to continue utilizing state-based stockwater rights obtained by the United States located on the grazing allotments listed in Exhibit A so that the use of water authorized under those rights for livestock watering, and of any subsequent stockwater rights obtained in accordance with State law, can be used by livestock owned by the Permittee for the term of the current federal grazing permit and any subsequent renewal or reissuance thereof by the Forest Service; and
2. The Parties agree that the availability of water on the listed grazing allotments is critical for the grazing management of the allotments, and when domestic livestock owned by the Permittee and located on the listed grazing allotments make use of water by drinking from places, or sources located on NFS lands, that such use will be deemed beneficial under Idaho state law, and is made by the Permittee acting as a limited agent of the United States for the purposes of establishing and maintaining stockwater rights for the United States within grazing allotments located on NFS lands, and for no other purposes.

Exhibit 11

GENERAL TERMS

1. This Agreement does not convey any right, title, or interest in any lands or resources owned by the United States. Nothing in this Agreement shall prevent the Forest Service from administering the use and occupancy of NFS land for livestock grazing, construction and maintenance of range improvements in accordance with applicable laws and regulations, nor does it extend the statutory and regulatory authority of the Forest Service beyond regulations of the use and occupancy of NFS land.
2. The Parties expressly agree that the mutual acknowledgements and agreements contained in this Agreement are supported by good and adequate consideration including, but not limited to, past and continuing use of water in accordance with the stockwater rights, held by the Forest Service, together with the construction and maintenance of associated range improvements.
3. This Agreement shall remain in effect throughout the term of the existing grazing authorization, new authorizations, and any renewals of grazing authorizations. This Agreement terminates only upon: (a) the expiration, termination, or revocation of the current grazing permit(s) held by the Permittee that is not renewed; or (b) upon 90-day written notice by either Party to the other of a desire to terminate the Agreement.
4. The terms of this Agreement may not be modified without the written consent of the Parties. If any paragraph or portion of this Agreement is deemed unenforceable, the remainder of this Agreement shall remain in full force and effect.
5. Subject to the termination clause above, the Parties agree to act in good faith and with fair dealings to fulfill, and not impede, the intent of this Agreement.
6. This Agreement shall become effective on the date of the last signature of the Parties thereafter.
7. The signators to this Agreement acknowledge that they (a) have read this entire document; (b) fully understand and agree with all the terms of this Agreement; (c) have knowingly, voluntarily, and in good faith entered into this Agreement; and (d) have the explicit authorization to execute and bind their respective entities or selves by this Agreement.

For the Permittee and/or Lessee (Agent):

Ray G. Beck

11/5/21
Date

For the Forest Service:

[Signature]
(Title of Authorized Officer)

11/8/21
Date

District Ranger (Office)

Salmon River Ranger District

Exhibit A

The following Forest Service Allotments on the Nez Perce - Clearwater National Forest are permitted to Rex Baker.

Cow Creek Allotment

EXHIBIT 12

Declaration of Gary Spackman

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF CERTAIN BASIN 67
WATER RIGHTS, IN THE NAME OF THE
UNITED STATES OF AMERICA ACTING
THROUGH THE DEPARTMENT OF
INTERIOR, BUREAU OF LAND
MANAGEMENT

Docket No. P-OSC-2021-001

**AMENDED ORDER PARTIALLY
GRANTING PETITION; AMENDED
ORDER TO SHOW CAUSE**

(CRANE CREEK ALLOTMENT)

GROUND FOR AMENDED ORDER

On April 25, 2022, the Director of the Idaho Department of Water Resources (“Department”) issued an *Order Partially Granting Petition; Order to Show Cause* in this matter. In it, the Director ordered the United States of America acting through the Department of Interior, Bureau of Land Management to show cause why the following stockwater rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2): 67-12395, 67-12396, 67-12399, 67-12400, 67-12401, 67-12427, 67-12429, 67-12431, 67-12433, 67-12435, 67-12443, 67-12445, 67-12447, 67-12740, 67-12741, 67-12743, 67-12744, 67-12745, 67-12746, 67-12747, 67-12748, 67-12749, 67-12750, 67-12753, 67-12754, 67-13008, 67-13009, 67-13010, 67-13013, and 67-13140. It has come to the Department’s attention that of the water rights subject to the order to show cause, the following water rights are based on federal law: 67-12427, 67-12429, 67-12431, 67-12433, 67-12435, 67-12443, 67-12445, and 67-12447. These federal water rights should not have been included in the list of water rights subject to the order to show cause. *See* Idaho Code § 42-224(14) (“This section applies to all stockwater rights except those stock water rights decreed to the United States based on federal law.”). Pursuant to Rule 760 of the Rules of Procedure of the Idaho Department of Water Resources (IDAPA 37.01.01.760), the Director hereby withdraws the April 25, 2022 order and replaces it with this *Amended Order Partially Granting Petition; Amended Order to Show Cause*. This amended order removes water rights 67-12427, 67-12429, 67-12431, 67-12433, 67-12435, 67-12443, 67-12445, and 67-12447 from the list of water rights subject to the order to show cause.

BACKGROUND

On September 16, 2021, Soulen Livestock Co. and Soulen Grazing Association, LLC (collectively, “Petitioners”) filed with the Department a *Verified Petition for Order to Show Cause* (“Petition”).¹ Petitioners ask the Department to issue an order pursuant to Idaho Code § 42-224(1) “to show cause why the Water Rights [(see Petition Exhibit A, “BLM Overlapping Water Rights”)]” on the federal grazing allotment known as the Crane Creek Allotment

¹ When submitting the Petition, Petitioners failed to include copies of the exhibits referenced in the Petition. Petitioners submitted the supporting exhibits (Exhibit A and Exhibit B) to the Department on September 23, 2021.

AMENDED ORDER PARTIALLY GRANTING PETITION; AMENDED ORDER TO SHOW
CAUSE (CRANE CREEK ALLOTMENT) – 1

Exhibit 12

(“Allotment”) “have not been lost through forfeiture pursuant to Idaho Code § 42-222(2).” *Petition* at 1.²

Petitioners assert that the water rights listed in Exhibit A, under “BLM Overlapping Water Rights” (“BLM Water Rights”) are owned by the United States of America acting through the Department of Interior, Bureau of Land Management (“BLM”). *Id.* ¶ 1; *see Petition* Ex. A. Additionally, Petitioners assert that the points of diversion and places of use for the BLM Water Rights are located on the Allotment. *Petition* ¶ 3. Petitioners claim that no other water rights, other than the water rights owned by Soulen Livestock Co., share “the same place of use or point of diversion” as the BLM Water Rights. *Id.* ¶ 4.

Petitioners maintain that Soulen Grazing Association has, for at least the last five years, held a valid BLM grazing permit for livestock grazing on the Allotment. *Id.* ¶ 5; *see Petition* Ex. B. Petitioners assert that Soulen Grazing Association’s livestock have grazed on the Allotment “each year of the permit term.” *Petition* ¶ 6. Petitioners claim that Soulen Grazing Association’s members have “regularly visited the Allotment each grazing season of use and at other times outside the season of use each year for more than the past five years.” *Id.* ¶ 7. Petitioners allege that “[a]t no time over the past five years have Petitioners, their officers, employees, or agents witnessed, read about, or heard of the existence of livestock owned or controlled by the BLM” on the Allotment to use water under the BLM Water Rights. *Id.* ¶ 8, at 2. Petitioners allege that at no time since Soulen Grazing Association has been authorized to use the Allotment “has either Petitioner, their members or their agents or employees ever witnessed, read about, or heard of the BLM applying the [BLM] Water Rights to the beneficial use of watering livestock that the BLM owns or controls on the Allotment.” *Id.* ¶ 10. Petitioners assert that no agency relationship exists between Petitioners and the BLM “for the purpose of acquiring water rights for the BLM on the Allotment.” *Id.* ¶ 11. The Petition is verified by Harry C. Soulen, President of Soulen Livestock Co. and manager of Soulen Grazing Association, LLC. *Id.* at 3–4.

To comply with the statutory service requirements of Idaho Code § 42-224(4),³ the Department submitted a Freedom of Information Act (“FOIA”) request to the BLM on September 23, 2021, for a copy of all active grazing permits on the Crane Creek Allotment and the adjoining Paddock Valley Allotment. On October 8, 2021, in response to the Department’s FOIA request, the BLM sent copies of four grazing permits. One permit sent by the BLM matches Permit No. 1101236, issued March 4, 2016, that Petitioners filed as Exhibit B. On October 21, 2021, the BLM confirmed that they sent one permit in error and that it is not

² On the same day, Petitioners also filed a second verified petition, seeking an order to show cause why certain BLM water rights on the federal grazing allotment known as the Paddock Valley Allotment have not been lost through forfeiture. *See Verified Petition for Order to Show Cause, In re Basin 65 & 67 Water Rts., In Name of U.S. Dep’t of Interior, Bureau of Land Mgmt.*, No. P-OSC-2021-002 (Idaho Dep’t of Water Res. Sep. 16, 2021), <https://idwr.idaho.gov/wp-content/uploads/sites/2/legal/P-OSC-2021-002/20210916-Verified-Petition-for-Order-to-Show-Cause.pdf> [hereinafter Paddock Valley Petition].

³ Idaho Code § 42-224(4) was amended during the Second Regular Session of the Sixty-sixth Idaho Legislature, effective March 24, 2022. Both prior to and after the 2022 amendment, the service requirements outlined within Idaho Code § 42-224(4) are substantially the same regarding the persons who must be served a copy of an order to show cause issued by the Department.

currently active. The remaining two permits, sent by the BLM, are active Crane Creek Allotment grazing permits held by the following: Jerome and Jill Grandi, and David Maddox.

APPLICABLE LAW

Idaho Code § 42-224 states in pertinent part:

(1) Within thirty (30) days of receipt by the director of the department of water resources of a petition or other information that a stockwater right has not been put to beneficial use for a term of five (5) years, the director must determine whether the petition or other information, or both, presents prima facie evidence that the stockwater right has been lost through forfeiture pursuant to section 42-222(2), Idaho Code. If the director determines the petition or other information, or both, is insufficient, he shall notify the petitioner of his determination, which shall include a reasoned statement in support of the determination, and otherwise disregard for the purposes of this subsection the other, insufficient, information.

(2) If the director determines the petition or other information, or both, contains prima facie evidence of forfeiture due to nonuse, the director must within thirty (30) days issue an order to the stockwater right owner to show cause before the director why the stockwater right has not been lost through forfeiture pursuant to section 42-222(2), Idaho Code. Any order to show cause must contain the director's findings of fact and a reasoned statement in support of the determination.

....

(14) This section applies to all stockwater rights except those stock water rights decreed to the United States based on federal law.

I.C. § 42-224(1)–(2), (14) (current version as amended in 2022). Therefore, to issue an order to show cause as Petitioners have requested, the Director must conclude that the Petition makes a “prima facie showing” that the BLM has not put its BLM Water Rights, decreed based on state law, to beneficial use for at least five years. “Prima facie” is defined by *Black’s Law Dictionary* as: “Sufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue <a prima facie showing>.” *Prima facie*, *Black’s Law Dictionary* (11th ed. 2019).

FINDINGS OF FACT

After careful review of the Petition (including Exhibit A and Exhibit B), the Department’s associated research memorandum,⁴ and Petitioners’ concurrently filed Paddock Valley Petition, the Director issues the following findings:

⁴ For the Director to give a reasoned statement supporting a determination in favor of or opposing forfeiture pursuant to Idaho Code § 42-222(2), Department staff utilized the Department’s water right files and database to thoroughly review, analyze, and document the locations of the places of use for the water rights listed in Exhibit A of the Petition. See Mem. from Glen Gardiner & Craig Saxton, Water Allocations Analyst and Adjudication

Exhibit 12

1. Petitioners requested the Department issue an order to the BLM to show cause why the BLM's Water Rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2). *See Petition* at 1. The following is a list of the water rights at issue: 67-12395, 67-12396, 67-12397, 67-12398, 67-12399, 67-12400, 67-12401, 67-12405, 67-12408, 67-12409, 67-12427, 67-12429, 67-12431, 67-12433, 67-12435, 67-12437, 67-12443, 67-12445, 67-12447, 67-12508, 67-12509, 67-12740, 67-12741, 67-12742, 67-12743, 67-12744, 67-12745, 67-12746,⁵ 67-12747, 67-12748,⁶ 67-12749, 67-12750, 67-12753, 67-12754, 67-13006, 67-13008, 67-13009, 67-13010, 67-13013, 67-13014, 67-13015, 67-13140. *See Petition* Ex. A; *Memorandum*.

2. The Director has reviewed the partial decrees for the BLM Water Rights. The following water rights are based on federal law: 67-12427, 67-12429, 67-12431, 67-12433, 67-12435, 67-12437, 67-12443, 67-12445, and 67-12447. In accordance with Idaho Code § 42-224(14), any further consideration of water rights based on federal law is unwarranted in this matter. The remaining water rights at issue are based on state law and subject to further consideration by the Director.

3. Using the Department's water rights database, the Department reviewed the places of use for the Water Rights. *Memorandum* at 1.

4. Petitioners' allegations in the Petition are specific to non-use within the Allotment and do not extend to use beyond the Allotment. *See Petition* at 1–2.

5. Based on the Memorandum, the Director finds that the places of use for the following water rights, are entirely within the Allotment: 67-12395, 67-12396, 67-12399, 67-12400, 67-12401, 67-12740, 67-12743, 67-12744, 67-12746, 67-12747, 67-12748, 67-12749, 67-12750, 67-12753, 67-12754, 67-13008, 67-13009, 67-13010, and 67-13013. *See Memorandum* at 1, 5.

6. Harry C. Soulen is an officer and member in Soulen Livestock Co. and Soulen Grazing Association, LLC. *Petition* at 3–4. The allegations in the Petition attribute observations of nonuse of water in the Allotment to the officers and members of Soulen Livestock Co. and Soulen Grazing Association, LLC. *Id.* at 1–2. Accordingly, the Director finds that Harry C. Soulen's statements are based on personal knowledge.

Section Manager, Idaho Dep't of Water Res., to Shelley Keen, Water Allocation Bureau Chief, Idaho Dep't of Water Res. 1 (Nov. 8, 2021) (attached to this Order as Attachment A) [hereinafter *Memorandum*].

⁵ Exhibit A of the Petition identifies water right 67-12764 as one of the BLM's overlapping water rights. The inclusion of water right 67-12764 appears to be a typographical error as 67-12764 is out of sequence with the other water rights listed in Exhibit A and the Department has no record of a water right with that number. *Memorandum* at 1 n.2. The intended water right number is believed to be 67-12746, as water right 67-12746 is a BLM water right with a point of use located within the Allotment. *Id.* at 1. In this matter, the Director will substitute water right 67-12746 in place of 67-12764, since this is most likely a simple transposition of numbers.

⁶ Exhibit A of the Petition includes water right 67-12749 twice. This appears to be another typographical error. Based on the Department's review, it is believed that the first reference to 67-12749 in Exhibit A should have been 67-12748. *See Memorandum* at 5. In this matter, the Director will substitute water right 67-12748 for the first reference to water right 67-12749.

7. As described in footnote 2 above, on September 16, 2021, Petitioners filed the Paddock Valley Petition. The Paddock Valley Petition is similar to the Petition, except it contains specific allegations related to the Paddock Valley Allotment. Within the Paddock Valley Petition, Harry C. Soulen, an officer and member in Soulen Livestock Co. and Soulen Grazing Association, LLC, alleges nonuse of water by the BLM. Petitioners' allegations in the Paddock Valley Petition are specific to non-use within the Paddock Valley Allotment and do not extend to use beyond the Paddock Valley Allotment. *See Paddock Valley Petition* at 1–2.

8. The Paddock Valley Petition attributes allegations of non-beneficial use of water, authorized by federal water rights within the Paddock Valley Allotment, to the officers and members of Soulen Livestock Co. and Soulen Grazing Association, LLC. *Paddock Valley Petition* ¶¶ 8–10. Accordingly, the Director finds that Harry C. Soulen's statements in the Paddock Valley Petition are based on personal knowledge.⁷

9. Based on the Memorandum, the Director finds that the places of use for three of the water rights, 67-12741, 67-12745, and 67-13140, are entirely within both the Allotment and the Paddock Valley Allotment. *Memorandum* at 3, 5.

10. The Director finds that some of the water rights at issue have a place of use that extends beyond both the Allotment and the Paddock Valley Allotment. The water rights with a place of use that extends beyond the boundaries of the Allotment and the Paddock Valley Allotment are: 67-12397, 67-12398, 67-12405, 67-12408, 67-12409, 67-12508, 67-12509, 67-12742, 67-13006, 67-13014, and 67-13015. *See Memorandum* at 2–5.

11. The Director has not received written evidence that a principal/agent relationship existed, during the five-year period calculated pursuant to Idaho Code § 42-224(1), between the BLM and any Crane Creek Allotment or Paddock Valley Allotment livestock grazing permit or lease holders for the purpose of maintaining the BLM Water Rights.

ANALYSIS

Forfeiture is disfavored in Idaho law. *Application of Boyer*, 73 Idaho 152, 159, 248 P.2d 540, 544 (1952) (“Forfeitures are abhorrent and all intendments are to be indulged against a forfeiture.”). To make a prima facie showing that the BLM has not beneficially used water authorized by its water rights for five years, for each water right at issue here, Petitioners must present sufficient evidence establishing forfeiture over the entire place of use—not just those portions of the place of use within the Allotment. The Department's Memorandum, which includes an analysis of its associated due diligence investigation, clarifies that some of the places of use of the BLM Water Rights extend beyond the boundaries of the Allotment and the related Paddock Valley Allotment. *See Memorandum* at 2–5. As noted in findings 4 and 7 above, Petitioners do not offer evidence of BLM's non-use of water beyond the boundaries of the

⁷ The Paddock Valley Petition is also addressed in the Director's *Order Partially Granting Petition; Order to Show Cause (Paddock Valley Allotment)*. Order Part. Granting Pet.; Order to Show Cause (Paddock Valley Allot't), *In re Basin 65 & 67 Water Rts., In Name of U.S. Dep't of Interior, Bureau of Land Mgmt.*, No. P-OSC-2021-002 (Idaho Dep't of Water Res. Apr. 25, 2022), <https://idwr.idaho.gov/wp-content/uploads/sites/2/legal/P-OSC-2021-002/P-OSC-2021-002-20220425-Order-to-Show-Cause-Paddock-Valley>.

Allotment and the Paddock Valley Allotment. Therefore, the Petition, even when combined jointly with the Paddock Valley Petition, does not include sufficient evidence for the Director to issue an order to show cause to the extent that Petitioners have requested.

The Department must limit the scope of an order to show cause issued in this matter to only those BLM Water Rights based on state law and with a place of use that is located entirely within the property boundaries for which the Department has received supporting statements alleging non-use of water. Accordingly, for those BLM Water Rights that have a place of use that is located either entirely or partially outside of the Allotment and the Paddock Valley Allotment (see finding 10 above), Petitioners have failed to make a “prima facie showing” in accordance with Idaho Code § 42-224 that the BLM has not beneficially used water authorized by its water rights for five years. However, Petitioners’ statements based on personal knowledge (see findings 6 and 8 above), when combined with the analysis within the Department’s Memorandum, amount to a “prima facie showing” in accordance with Idaho Code § 42-224 that the BLM has not beneficially used water authorized by its water rights that have a place of use entirely within the Allotment and the Paddock Valley Allotment within the last five years.

CONCLUSION OF LAW

The Director concludes that the “prima facie showing” burden of proof, set forth in Idaho Code § 42-224, has been satisfied to the extent that he should partially grant Petitioners’ request and issue an order to the BLM to show cause before the Director why those BLM Water Rights based on state law and that have a place of use entirely within the Allotment and the Paddock Valley Allotment have not been lost through forfeiture pursuant to Idaho Code § 42-222(2).

ORDER

Based on the foregoing, the following are HEREBY ORDERED:

1. The *Verified Petition for Order to Show Cause* at issue is GRANTED for ONLY the following water rights: 67-12395, 67-12396, 67-12399, 67-12400, 67-12401, 67-12740, 67-12741, 67-12743, 67-12744, 67-12745, 67-12746, 67-12747, 67-12748, 67-12749, 67-12750, 67-12753, 67-12754, 67-13008, 67-13009, 67-13010, 67-13013, and 67-13140.
2. The *Verified Petition for Order to Show Cause* at issue is DENIED for the following water rights: 67-12397, 67-12398, 67-12405, 67-12408, 67-12409, 67-12427, 67-12429, 67-12431, 67-12433, 67-12435, 67-12437, 67-12443, 67-12445, 67-12447, 67-12508, 67-12509, 67-12742, 67-13006, 67-13014, and 67-13015.
3. In accordance with Idaho Code § 42-224(2), the United States of America acting through the Department of Interior, Bureau of Land Management must show cause before the Director of the Idaho Department of Water Resources why the following stockwater rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2): 67-12395, 67-12396, 67-12399, 67-12400, 67-12401, 67-12740, 67-12741, 67-12743, 67-12744, 67-12745, 67-12746, 67-12747, 67-12748, 67-12749, 67-12750, 67-12753, 67-12754, 67-13008, 67-13009, 67-13010, 67-13013, and 67-13140.

AMENDED ORDER PARTIALLY GRANTING PETITION; AMENDED ORDER TO SHOW CAUSE (CRANE CREEK ALLOTMENT) – 6

4. In accordance with Idaho Code § 42-224(6), the United States of America acting through the Department of Interior, Bureau of Land Management has 21 days from completion of service of this order to request in writing a hearing pursuant to Idaho Code § 42-1701A(1)–(2). If the United States requests such a hearing, it must also serve a copy of the request upon the petitioners and the livestock grazing permit holders listed on the included certificate of service.

5. In accordance with Idaho Code § 42-224(7), if the United States fails to respond to the above order to show cause within 21 days, the stockwater rights for which the *Verified Petition for Order to Show Cause* has been partially granted shall be considered forfeited, and the Director shall issue an order within 14 days stating the stockwater rights have been forfeited pursuant to Idaho Code § 42-222(2).

6. In accordance with Idaho Code §§ 42-224(1) and 42-224(4), Soulen Livestock Co., Soulen Grazing Association, LLC, and all active Crane Creek Allotment and Paddock Valley Allotment livestock grazing permit or lease holders will be served a copy of this order.

DATED this 13th day of May 2022.



MAT WEAVER for GARY SPACKMAN
Acting Director

Exhibit 12

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of May 2022, I caused to be served a true and correct copy of the foregoing *Amended Order Partially Granting Petition; Amended Order to Show Cause (Crane Creek Allotment)*, by the method indicated below, upon the following:

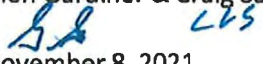
Soulen Livestock Co. & Soulen Grazing Association, LLC P.O. Box 827 Weiser, ID 83672	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
<i>Petitioners</i>	
Jerome & Jill Grandi 2294 Weiser River Rd. Weiser, ID 83672	<input checked="" type="checkbox"/> Certified U.S. Mail with return receipt <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
<i>Livestock Grazing Permit Holder</i>	
David Maddox 1021 Lower Crane Rd. Weiser, ID 83672	<input checked="" type="checkbox"/> Certified U.S. Mail with return receipt <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
<i>Livestock Grazing Permit Holder</i>	
USDI BLM Idaho State Office 1387 S. Vinnell Way Boise, ID 83709	<input checked="" type="checkbox"/> Certified U.S. Mail with return receipt <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
<i>Stockwater Right Owner</i>	
<i>Courtesy Copy:</i>	
David Negri United States Department of Justice Environment and Natural Resources Division 550 W. Fort St., MSC 033 Boise, ID 83724 david.negri@usdoj.gov	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
William G. Myers III HOLLAND & HART LLP P.O. Box 2527 Boise, ID 83701 wmyers@hollandhart.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email


 Sarah Tschohl
 Legal Assistant

AMENDED ORDER PARTIALLY GRANTING PETITION; AMENDED ORDER TO SHOW CAUSE (CRANE CREEK ALLOTMENT) – 8

Memorandum

To: Shelley Keen

Prepared by: Glen Gardiner & Craig Saxton


Date: November 8, 2021

Re: Review of Federal water rights within the Crane Creek Allotment (#361) which were identified as Exhibit A of Soulen Livestock Co's Verified Petition for Order to Show Cause.

Comparison of Partial Decrees to IDWR Database Records and Shapefiles

On September 16, 2021, Soulen Livestock Company and Soulen Grazing Association, LLC ("Soulen") petitioned the Director of the Idaho Department of Water Resources ("IDWR") to issue a show cause order pursuant to Idaho Code § 42-224(1) for a list of water rights "located on a federal grazing allotment known as the Crane Creek Allotment (#361)." Soulen's petition refers to the list of water rights as Exhibit A. For each of the water rights on Exhibit A, we compared information on SRBA partial decrees to information in IDWR's water rights database. Fields compared included Name and Address, Source, Quantity, Priority Date, Point of Diversion, Purpose and Period of Use, and Place of Use. We found no discrepancies, although the Names on the partial decrees are abbreviated to USDI BLM, IDAHO STATE OFFICE, whereas IDWR's database refers to the Names as UNITED STATES OF AMERICA ACTING THROUGH USDI BUREAU OF LAND MANAGEMENT, IDAHO STATE OFFICE.

IDWR stores digitized water right places of use ("POU") in its geographic information system ("GIS"). We verified the digitized POU for each of the water rights listed on Exhibit A matches the POU described in the water rights database. No discrepancies were found. To complete our analysis, we then used GIS to overlay the digitized POU for each water right in Exhibit A onto the digital boundaries of the Crane Creek Allotment and neighboring grazing allotments.¹

Crane Creek Allotment Analysis

Based on digital overlay, the POUs for the following water rights exist completely within the Crane Creek Allotment:

67-12395, 67-12396, 67-12400, 67-12401, 67-12427, 67-12429, 67-12443, 67-12445, 67-12447, 67-12740, 67-12744, 67-12746², 67-12747, 67-12749, 67-12750, 67-12753, 67-12754, 67-13008, 67-13009, 67-13010, and 67-13013.

¹ The digital shapes of the allotment boundaries were created by U.S. Department of the Interior, Bureau of Land Management with a publication date of 06-30-2017 and downloaded from the website https://gis.blm.gov/arcgis/rest/services/range/BLM_Natl_Grazing_Allotment/MapServer

² The inclusion of 67-12764 was clearly a typographical error as 67-12764 is out of sequence with the other water rights and no valid water right exists under this number. For purpose of this analysis, we are substituting 67-12746 for 67-12764.

Water rights 67-12399, 67-12431, 67-12433, 67-12435, and 67-12743, authorize water use from either a spring or a stream where the point of diversion or the instream stockwater use reach is entirely within the Crane Creek allotment. However, because the decrees list the places of use for these rights in quarter-quarters or government lots, small portions of the decreed place of use tracts (less than 1.5 acres) for each of these rights extend outside the Crane Creek Allotment boundary. Based on IDWR's review, water from the decreed sources and points of diversion or instream use reaches would not be conveyed to – or used in -- the portions of the place of use tracts outside the Crane Creek Allotment boundary.

POUs for the following water rights exist partially within the Crane Creek Allotment and partially outside the Crane Creek Allotment:

67-12397, 67-12398, 67-12405, 67-12408, 67-12409, 67-12437, 67-12508, 67-12509, 67-12741, 67-12742, 67-12745, 67-13006, 67-13014, 67-13015 and 67-13140.

The analysis below describes water rights from Exhibit A having all or portions of their authorized POU's outside the Crane Creek Allotment.

(Boundary Water Rights, All Split between Two or More Allotments)

67-12397:

Water right 67-12397 is an instream stockwater right on the Weiser River. The POU is T12N, R4W, Sec 22, NESE & SESE and Sec 27, NENE & NWNE. The POU for water right 67-12397 is a stretch of the Weiser River that is the boundary of the Crane Creek Allotment. The Mann Creek Allotment is on the opposite side of the river from the Crane Creek Allotment. It appears this stretch of the Weiser River, and therefore this water right, can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America except for a narrow stretch bordering the Weiser River owned by the Friends of Weiser River Trail.

67-12398:

Water right 67-12398 is an instream stockwater right on the Weiser River. The POU is T12N, R4W, Sec 15, NESW, SWSW, SESW; T12N, R4W, Sec 22, NENE, NWNE, SENE, NENW, NWNW, SWNW, and SENW. The POU for water right 67-12398 is a stretch of the Weiser River that is the boundary of the Crane Creek Allotment. The Mann Creek Allotment and Thousand Springs Allotment are on the opposite side of the river from the Crane Creek Allotment. It appears this stretch of the Weiser River, and therefore this water right, can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America except for a narrow stretch bordering the Weiser River owned by the Friends of Weiser River Trail.

67-12405

Water right 67-12405 is an instream stockwater right on the Weiser River. The POU is T12N, R4W, Sec 28, NWSE, SWSE. The POU for water right 67-12405 is a stretch of the Weiser River that is the boundary of the Crane Creek Allotment. The Mann Creek Allotment is on the opposite side of the river from the Crane Creek Allotment. It appears this stretch of the Weiser River, and therefore this water right, can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America except for a narrow stretch bordering the Weiser River owned by the Friends of Weiser River Trail.

Exhibit 12

67-12408

Water right 67-12408 is an instream stockwater right on an unnamed stream, tributary to Weiser River. The POU is T11N, R4W, Sec 3, SWNE. The POU for water right 67-12408 is a stretch of the Weiser River that is the boundary of the Crane Creek Allotment. The Mann Creek Allotment is on the opposite side of the river from the Crane Creek Allotment. It appears this stretch of the Weiser River, and therefore this water right, can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America except for a narrow stretch bordering the Weiser River owned by the Friends of Weiser River Trail.

67-12409

Water right 67-12409 is an instream stockwater right on the Weiser River. The POU is T11N, R4W, Sec 3, SWNE, NWSE, and SWSE. The POU for water right 67-12409 is a stretch of the Weiser River that is the boundary of the Crane Creek Allotment. The Lund FFR Allotment and Mann Creek Allotment are on the opposite side of the river from the Crane Creek Allotment. It appears this stretch of the Weiser River, and therefore this water right, can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America except for a narrow stretch bordering the Weiser River owned by the Friends of Weiser River Trail.

67-12508

Water right 67-12508 is an instream stockwater right on the Weiser River. The POU is T12N, R4W, Sec 11, SWNE. The POU for water right 67-12508 is a stretch of the Weiser River that is the boundary of the Crane Creek Allotment. The Carr Individual Allotment is on the opposite side of the river from the Crane Creek Allotment. It appears this stretch of the Weiser River, and therefore this water right, can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America except for a narrow stretch bordering the Weiser River owned by the Friends of Weiser River Trail.

67-12741

Water right 67-12741 is an instream stockwater right on Crane Creek. The POU is T12N, R3W, Sec 25, NENW, SENW, NESW, SESW. The POU for water right 67-12741 is a stretch of Crane Creek that is the boundary of the Crane Creek Allotment. The Paddock Valley Allotment is on the opposite side of the creek from the Crane Creek Allotment. It appears this stretch of Crane Creek, and therefore this water right, can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America.

67-12745

Water right 67-12745 is an instream stockwater right on an unnamed stream, tributary to Crane Creek. The POU within Crane Creek Allotment is T11N, R3W, Sec 3, L2(NWNE), SWNE, L3(NENW), L4(NWNW); T11N, R3W, Sec 4, L1(NENE); T12N, R3W, Sec 33, NESE, SESE; and T12N, R3W, Sec 34, NWSW, SWSW, SESW. The POU described as T11N, R03W, Sec 3, SENE and NESE are in both the Crane Creek Allotment and Paddock Valley Allotment. Therefore, this water right can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America.

Exhibit 12

67-13014

Water right 67-13014 is an instream stockwater right on an unnamed stream, tributary to the Weiser River. The POU is T12N, R4W, Sec 26, NENW, NWNW; and T12N, R4W, Sec 27, NENE. The POU for water right 67-13014 is a stretch of the Weiser River that is the boundary of the Crane Creek Allotment. The Mann Creek Allotment is on the opposite side of the river from the Crane Creek Allotment. It appears this stretch of the Weiser River, and therefore this water right, can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America except for a narrow stretch bordering the Weiser River owned by the Friends of Weiser River Trail.

67-13015

Water right 67-13015 is an instream stockwater right on an unnamed stream, tributary to the Weiser River. The POU is T12N, R4W, Sec 27, NWNE. The POU for water right 67-13015 is a stretch of the Weiser River that is the boundary of the Crane Creek Allotment. The Mann Creek Allotment is on the opposite side of the river. It appears this stretch of the Weiser River, and therefore this water right, can be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America except for a narrow stretch bordering the Weiser River owned by the Friends of Weiser River Trail.

(Misc. Issues)**67-12437**

Water right 67-12437 describes the source as a spring, tributary to the Weiser River. The POU is T12N, R4W, Sec 26, SWSE. The POU is within the Crane Creek Allotment and extends into an undesignated area outside the Crane Creek Allotment. The entire POU is managed by Bureau of Land Management, United States of America.

67-12509

Water right 67-12509 is an instream stockwater right on the Weiser River. The POU is T12N, R4W, Sec 10, NENE, SWNE, SENE; T12N, R4W, Sec 11, NWNW. The POU for water right 67-12509 is a stretch of the Weiser River that is the boundary of the Crane Creek Allotment. The Carr Individual Allotment and Thousand Springs Allotment are on the opposite side of the river from the Crane Creek Allotment. It appears this stretch of the Weiser River, and therefore this water right, can be accessed from multiple allotments. Part of the POU area within the Crane Creek Allotment is owned by Soulen Livestock Co and part is managed by Bureau of Land Management, United States of America. Part of the area outside Crane Creek Allotment is managed by Bureau of Land Management, United States of America and part of the area is owned by Friends of Weiser River Trail.

67-12742

Water right 67-12742 is an instream stockwater right on Crane Creek. The POU is T11N, R3W, Sec 7, NENE, NWNE; T11N, R3W, Sec 8, NENE, NWNE, NENW, NWNW; T11N, R3W, Sec 9, SWNE, SENE, NWNW, SWNW, SENW. The POU for water right 67-12742 exists on Crane Creek Allotment, Bear Creek Allotment, and Paddock Valley Allotment. It is not clear if the right is intended to be accessed from multiple allotments. The entire POU is managed by Bureau of Land Management, United States of America.

Exhibit 12

67-13006

The POU for water right 67-13006 places one of five quarter-quarters (QQs) outside the Crane Creek Allotment on private property. POU T12N, R04W, S19, Lot 3 (NWSW) is five miles to the west of the remaining four QQs. There are four separate parcels within this QQ, individually owned by Angelea M Halvorson, Brian Roe, Hagen Farms, Inc, and Donna G Stout. The remaining 4 QQs are within the Crane Creek Allotment. POU's T12N, R4W, S24, SWNE, SENW, NESE, NWSE, are managed by the Bureau of Land Management, United States of America. The identified legal description would make sense if the Range was changed to R03W. This would place the QQ adjacent to the remaining water right.

67-13140

The POU for water right 67-13140 is an instream stockwater right on Crane Creek, tributary to the Weiser River. The POU is T11N, R3W, Sec 2, NWNE, NENW, NWNW, SWNW; T11N, R3W, Sec 3, SENE, SWSW, SESW, NESE, NWSE, SWSE; T11N, R3W, Sec 10, NWNW; T12N, R3W, Sec 35, NENE, SENE, NESE, SWSE, SESE. The POU for water right 67-13140 exists on Crane Creek Allotment and Paddock Valley Allotment. It is not clear if the right is intended to be accessed from one or both allotments. The entire POU is managed by Bureau of Land Management, United States of America.

67-12748 (not listed on Exhibit A)

Exhibit A of Soulen Livestock Co's "Verified Petition for Order to Show Cause" lists water right 67-12749 twice. In Exhibit A, Soulen Livestock Co water rights 67-15233 and 67-15234 are both associated with 67-12749. This appears to be a typographical error on Exhibit A. Based on the numbering sequences and POU locations, it appears 67-15233 should correlate with 67-12748. Water right 67-15234 is correctly associated with water right 67-12749.

Water right 67-12748 is an instream stockwater right on Cougar Canyon, tributary to Crane Creek. POU's T11N, R3W, Sec 3, (L1)NENE, (L2) NWNE, SENE are within the Crane Creek Allotment. However, because the decree lists the place of use for this right in quarter-quarters and government lots, a small portion (less than 0.7 acres) of the decreed place of use in T11N, R03W, Sec 3, SENE, extends into the Paddock Valley Allotment. Based on IDWR's review, water from the instream use reach would not be used in the portions of the place of use tracts outside the Crane Creek Allotment boundary. The entire POU is managed by Bureau of Land Management, United States of America.

-end-

EXHIBIT 13

Declaration of Gary Spackman

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF CERTAIN BASIN 65
AND 67 WATER RIGHTS, IN THE NAME OF
THE UNITED STATES OF AMERICA
ACTING THROUGH THE DEPARTMENT OF
INTERIOR, BUREAU OF LAND
MANAGEMENT

Docket No. P-OSC-2021-002

**AMENDED ORDER PARTIALLY
GRANTING PETITION; AMENDED
ORDER TO SHOW CAUSE**

(PADDOCK VALLEY ALLOTMENT)

GROUND FOR AMENDED ORDER

On April 25, 2022, the Director of the Idaho Department of Water Resources (“Department”) issued an *Order Partially Granting Petition; Order to Show Cause* in this matter. In it, the Director ordered the United States of America acting through the Department of Interior, Bureau of Land Management to show cause why the following stockwater rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2): 65-19685, 65-19812, 65-19814, 65-19818, 65-19820, 65-19822, 65-20003, 65-20010, 65-20011, 65-20012, 65-20015, 65-20055, 65-20057, 65-20059, 65-20061, 65-20063, 65-20065, 65-20067, 65-20069, 65-20071, 65-20390, 65-20464, 65-20468, 65-20475, 65-20476, 65-20477, 65-20479, 65-20480, 65-20487, 65-20488, 65-20489, 65-20597, 67-12386, 67-12751, 67-12752, 67-12775, 67-12809, 67-12810, 67-12841, 67-13085, 67-13086, 67-13141, 67-13142, 67-13147, and 67-13148. It has come to the Department’s attention that of the water rights subject to the order to show cause, the following water rights are based on federal law: 65-19812, 65-19814, 65-19818, 65-19820, 65-19822, 65-20055, 65-20057, 65-20059, 65-20061, 65-20063, 65-20065, 65-20067, 65-20069, 65-20071 and 67-12386. These federal water rights should not have been included in the list of water rights subject to the order to show cause. *See* Idaho Code § 42-224(14) (“This section applies to all stockwater rights except those stock water rights decreed to the United States based on federal law.”). Pursuant to Rule 760 of the Rules of Procedure of the Idaho Department of Water Resources (IDAPA 37.01.01.760), the Director hereby withdraws the April 25, 2022 order and replaces it with this *Amended Order Partially Granting Petition; Amended Order to Show Cause*. This amended order removes water rights 65-19812, 65-19814, 65-19818, 65-19820, 65-19822, 65-20055, 65-20057, 65-20059, 65-20061, 65-20063, 65-20065, 65-20067, 65-20069, 65-20071 and 67-12386 from the list of water rights subject to the order to show cause.

BACKGROUND

On September 16, 2021, Soulen Livestock Co. and Soulen Grazing Association, LLC (collectively, “Petitioners”) filed with the Department a *Verified Petition for Order to Show Cause* (“Petition”).¹ Petitioners ask the Department to issue an order pursuant to Idaho Code §

¹ When submitting the Petition, Petitioners failed to include copies of the exhibits referenced in the Petition. Petitioners submitted the supporting exhibits (Exhibit A and Exhibit B) to the Department on September 23, 2021.

AMENDED ORDER PARTIALLY GRANTING PETITION; AMENDED ORDER TO SHOW CAUSE (PADDOCK VALLEY ALLOTMENT) – 1

Exhibit 13

42-224(1) “to show cause why the Water Rights [(see Petition Exhibit A, yellow columns)] on the federal grazing allotment known as the Paddock Valley Allotment (“Allotment”) “have not been lost through forfeiture pursuant to Idaho Code § 42-222(2).” *Petition* at 1.²

Petitioners assert that the water rights listed in the yellow columns of Exhibit A (“BLM Water Rights”) are owned by the United States of America acting through the Department of Interior, Bureau of Land Management (“BLM”). *Id.* ¶ 1; *see Petition* Ex. A. Additionally, Petitioners assert that the points of diversion and places of use for the BLM Water Rights are located on the Allotment. *Petition* ¶ 3. Petitioners claim that no other water rights, other than the water rights owned by Soulen Livestock Co., share “the same place of use or point of diversion” as the BLM Water Rights. *Id.* ¶ 4.

Petitioners maintain that Soulen Grazing Association has, for at least the last five years, held a valid BLM grazing permit for livestock grazing on the Allotment. *Id.* ¶ 5; *see Petition* Ex. B. Petitioners assert that Soulen Grazing Association’s livestock have grazed on the Allotment “each year of the permit term.” *Petition* ¶ 6. Petitioners claim that Soulen Grazing Association’s members have “regularly visited the Allotment each grazing season of use and at other times outside the season of use each year for more than the past five years.” *Id.* ¶ 7. Petitioners allege that “[a]t no time over the past five years have Petitioners, their officers, employees, or agents witnessed, read about, or heard of the existence of livestock owned or controlled by the BLM” on the Allotment to use water under the BLM Water Rights. *Id.* ¶ 8, at 2. Petitioners allege that at no time since Soulen Grazing Association has been authorized to use the Allotment “has either Petitioner, their members or their agents or employees ever witnessed, read about, or heard of the BLM applying the [BLM] Water Rights to the beneficial use of watering livestock that the BLM owns or controls on the Allotment.” *Id.* ¶ 10. Petitioners assert that no agency relationship exists between Petitioners and the BLM “for the purpose of acquiring water rights for the BLM on the Allotment.” *Id.* ¶ 11. The Petition is verified by Harry C. Soulen, President of Soulen Livestock Co. and manager of Soulen Grazing Association, LLC. *Id.* at 3–4.

To comply with the statutory service requirements of Idaho Code § 42-224(4),³ the Department submitted a Freedom of Information Act (“FOIA”) request to the BLM on September 23, 2021, for a copy of all active grazing permits on the Paddock Valley Allotment and the adjoining Crane Creek Allotment. On October 8, 2021, in response to the Department’s FOIA request, the BLM sent copies of four grazing permits. One permit sent by the BLM matches Permit No. 1101236, issued March 4, 2016, that Petitioners filed as Exhibit B. On October 21, 2021, the BLM confirmed that they sent one permit in error and that it is not

² On the same day, Petitioners also filed a second verified petition, seeking an order to show cause why certain BLM water rights on the federal grazing allotment known as the Crane Creek Allotment have not been lost through forfeiture. *See Verified Petition for Order to Show Cause, In re Basin 67 Water Rts., In Name of U.S. Dep’t of Interior, Bureau of Land Mgmt.*, No. P-OSC-2021-001 (Idaho Dep’t of Water Res. Sep. 16, 2021), <https://idwr.idaho.gov/wp-content/uploads/sites/2/legal/P-OSC-2021-001/20210916-Verified-Petition-for-Order-to-Show-Cause.pdf> [hereinafter Crane Creek Petition].

³ Idaho Code § 42-224(4) was amended during the Second Regular Session of the Sixty-sixth Idaho Legislature, effective March 24, 2022. Both prior to and after the 2022 amendment, the service requirements outlined within Idaho Code § 42-224(4) are substantially the same regarding the persons who must be served a copy of an order to show cause issued by the Department.

currently active. The remaining two permits, sent by the BLM, are active Crane Creek Allotment grazing permits held by the following: Jerome and Jill Grandi, and David Maddox.

APPLICABLE LAW

Idaho Code § 42-224 states in pertinent part:

(1) Within thirty (30) days of receipt by the director of the department of water resources of a petition or other information that a stockwater right has not been put to beneficial use for a term of five (5) years, the director must determine whether the petition or other information, or both, presents prima facie evidence that the stockwater right has been lost through forfeiture pursuant to section 42-222(2), Idaho Code. If the director determines the petition or other information, or both, is insufficient, he shall notify the petitioner of his determination, which shall include a reasoned statement in support of the determination, and otherwise disregard for the purposes of this subsection the other, insufficient, information.

(2) If the director determines the petition or other information, or both, contains prima facie evidence of forfeiture due to nonuse, the director must within thirty (30) days issue an order to the stockwater right owner to show cause before the director why the stockwater right has not been lost through forfeiture pursuant to section 42-222(2), Idaho Code. Any order to show cause must contain the director's findings of fact and a reasoned statement in support of the determination.

....

(14) This section applies to all stockwater rights except those stock water rights decreed to the United States based on federal law.

I.C. § 42-224(1)–(2), (14) (current version as amended in 2022). Therefore, to issue an order to show cause as Petitioners have requested, the Director must conclude that the Petition makes a “prima facie showing” that the BLM has not put its BLM Water Rights, decreed based on state law, to beneficial use for at least five years. “Prima facie” is defined by *Black’s Law Dictionary* as: “Sufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue <a prima facie showing>.” *Prima facie*, *Black’s Law Dictionary* (11th ed. 2019).

FINDINGS OF FACT

After careful review of the Petition (including Exhibit A and Exhibit B), the Department’s associated research memorandum,⁴ and Petitioners’ concurrently filed Crane Creek Petition, the Director issues the following findings:

⁴ For the Director to give a reasoned statement supporting a determination in favor of or opposing forfeiture pursuant to Idaho Code § 42-222(2), Department staff utilized the Department’s water right files and database to thoroughly review, analyze, and document the locations of the places of use for the water rights listed in Exhibit A of the Petition. *See* Mem. from Glen Gardiner & Craig Saxton, Water Allocations Analyst and Adjudication

Exhibit 13

1. Petitioners requested the Department issue an order to the BLM to show cause why the BLM's Water Rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2). *See Petition* at 1. The following is a list of the water rights at issue: 65-19685, 65-19750, 65-19812, 65-19814, 65-19816, 65-19818, 65-19820, 65-19822, 65-19824, 65-19894, 65-19897, 65-20003, 65-20010, 65-20011, 65-20012, 65-20015, 65-20055, 65-20057, 65-20059, 65-20061, 65-20063, 65-20065, 65-20067, 65-20069, 65-20071, 65-20370, 65-20388, 65-20390, 65-20464, 65-20468, 65-20469, 65-20471, 65-20472, 65-20475, 65-20476, 65-20477, 65-20478, 65-20479, 65-20480, 65-20484, 65-20486, 65-20487, 65-20488, 65-20489, 65-20597, 67-12386, 67-12751, 67-12752, 67-12775, 67-12776, 67-12777, 67-12809, 67-12810, 67-12841, 67-12900, 67-12999, 67-13085, 67-13086, 67-13141, 67-13142, 67-13147, 67-13148. *See Petition* Ex. A; *Memorandum*.

2. The Director has reviewed the partial decrees for the BLM Water Rights. The following water rights are based on federal law: 65-19750, 65-19812, 65-19814, 65-19816, 65-19818, 65-19820, 65-19822, 65-19824, 65-20055, 65-20057, 65-20059, 65-20061, 65-20063, 65-20065, 65-20067, 65-20069, 65-20071 and 67-12386. In accordance with Idaho Code § 42-224(14), any further consideration of water rights based on federal law is unwarranted in this matter. The remaining water rights at issue are based on state law and subject to further consideration by the Director.

3. Using the Department's water rights database, the Department reviewed the places of use for the Water Rights. *See Memorandum* at 1.

4. Petitioners' allegations in the Petition are specific to non-use within the Allotment and do not extend to use beyond the Allotment. *See Petition* at 1–2.

5. Based on the Memorandum, the Director finds that the places of use for the following water rights, are entirely within the Allotment: 65-19685, 65-20003, 65-20010, 65-20011, 65-20012, 65-20015, 65-20390, 65-20464, 65-20468, 65-20475, 65-20476, 65-20477, 65-20479, 65-20480, 65-20487, 65-20488, 65-20489, 65-20597, 67-12751, 67-12775, 67-12809, 67-12810, 67-12841, 67-13085, 67-13086, 67-13141, 67-13142, 67-13147, and 67-13148. *See Memorandum* at 1.

6. Harry C. Soulen is an officer and member in Soulen Livestock Co. and Soulen Grazing Association, LLC. *Petition* at 3–4. The allegations in the Petition attribute observations of nonuse of water in the Allotment to the officers and members of Soulen Livestock Co. and Soulen Grazing Association, LLC. *Id.* at 1–2. Accordingly, the Director finds that Harry C. Soulen's statements are based on personal knowledge.

7. As described in footnote 2 above, on September 16, 2021, Petitioners filed the Crane Creek Petition. The Crane Creek Petition is similar to the Petition, except it contains specific allegations related to the Crane Creek Allotment. Within the Crane Creek Petition, Harry C. Soulen, an officer and member in Soulen Livestock Co. and Soulen Grazing Association, LLC,

Section Manager, Idaho Dep't of Water Res., to Shelley Keen, Water Allocation Bureau Chief, Idaho Dep't of Water Res. 1 (Nov. 9, 2021) (attached to this Order as Attachment A) [hereinafter Memorandum].

AMENDED ORDER PARTIALLY GRANTING PETITION; AMENDED ORDER TO SHOW CAUSE (PADDOCK VALLEY ALLOTMENT) – 4

alleges nonuse of water by the BLM. Petitioners' allegations in the Crane Creek Petition are specific to non-use within the Crane Creek Allotment and do not extend to use beyond the Crane Creek Allotment. *See Crane Creek Petition* at 1–2.

8. The Crane Creek Petition attributes allegations of non-beneficial use of water, authorized by federal water rights within the Crane Creek Allotment, to the officers and members of Soulen Livestock Co. and Soulen Grazing Association, LLC. *Crane Creek Petition* ¶¶ 8–10. Accordingly, the Director finds that Harry C. Soulen's statements in the Crane Creek Petition are based on personal knowledge.⁵

9. Based on the Memorandum, the Director finds that the place of use for water right 67-12752 is entirely within both the Allotment and the Paddock Valley Allotment. *Memorandum* at 3.

10. The Director finds that some of the water rights at issue have a place of use that extends beyond both the Allotment and the Crane Creek Allotment. The water rights with a place of use that extends beyond the boundaries of the Allotment and the Crane Creek Allotment are: 65-19894, 65-19897, 65-20370, 65-20388, 65-20469, 65-20471, 65-20472, 65-20478, 65-20484, 65-20486, 67-12776, 67-12777, 67-12900, and 67-12999. *See Memorandum* at 2–5.

11. The Director has not received written evidence that a principal/agent relationship existed, during the five-year period calculated pursuant to Idaho Code § 42-224(1), between the BLM and any Paddock Valley Allotment or Crane Creek Allotment livestock grazing permit or lease holders for the purpose of maintaining the BLM Water Rights.

ANALYSIS

Forfeiture is disfavored in Idaho law. *Application of Boyer*, 73 Idaho 152, 159, 248 P.2d 540, 544 (1952) (“Forfeitures are abhorrent and all intendments are to be indulged against a forfeiture.”). To make a prima facie showing that the BLM has not beneficially used water authorized by its water rights for five years, for each water right at issue here, Petitioners must present sufficient evidence establishing forfeiture over the entire place of use—not just those portions of the place of use within the Allotment. The Department's Memorandum, which includes an analysis of its associated due diligence investigation, clarifies that some of the places of use of the BLM Water Rights extend beyond the boundaries of the Allotment and the related Crane Creek Allotment. *See Memorandum* at 2–5. As noted in findings 4 and 7 above, Petitioners do not offer evidence of BLM's non-use of water beyond the boundaries of the Allotment and the Crane Creek Allotment. Therefore, the Petition, even when combined jointly with the Crane Creek Petition, does not include sufficient evidence for the Director to issue an order to show cause to the extent that Petitioners have requested.

⁵ The Crane Creek Petition is also addressed in the Director's *Order Partially Granting Petition; Order to Show Cause (Crane Creek Allotment)*. Order Part. Granting Pet.; Order to Show Cause (Crane Creek Allot't), *In re Basin 67 Water Rts., In Name of U.S. Dep't of Interior, Bureau of Land Mgmt.*, No. P-OSC-2021-001 (Idaho Dep't of Water Res. Apr. 25, 2022), <https://idwr.idaho.gov/wp-content/uploads/sites/2/legal/P-OSC-2021-001/P-OSC-2021-001-20220425-Order-to-Show-Cause-Crane-Creek>.

Exhibit 13

The Department must limit the scope of an order to show cause issued in this matter to only those BLM Water Rights based on state law and with a place of use that is located entirely within the property boundaries for which the Department has received supporting statements alleging non-use of water. Accordingly, for those BLM Water Rights that have a place of use that is located either entirely or partially outside of the Allotment and the Crane Creek Allotment (see finding 10 above), Petitioners have failed to make a “prima facie showing” in accordance with Idaho Code § 42-224 that the BLM has not beneficially used water authorized by its water rights for five years. However, Petitioners’ statements based on personal knowledge (see findings 6 and 8 above), when combined with the analysis within the Department’s Memorandum, amount to a “prima facie showing” in accordance with Idaho Code § 42-224 that the BLM has not beneficially used water authorized by its water rights that have a place of use entirely within the Allotment and the Crane Creek Allotment within the last five years.

CONCLUSION OF LAW

The Director concludes that the “prima facie showing” burden of proof, set forth in Idaho Code § 42-224, has been satisfied to the extent that he should partially grant Petitioners’ request and issue an order to the BLM to show cause before the Director why those BLM Water Rights based on state law and that have a place of use entirely within the Allotment and the Crane Creek Allotment have not been lost through forfeiture pursuant to Idaho Code § 42-222(2).

ORDER

Based on the foregoing, the following are HEREBY ORDERED:

1. The *Verified Petition for Order to Show Cause* at issue is GRANTED for ONLY the following water rights: 65-19685, 65-20003, 65-20010, 65-20011, 65-20012, 65-20015, 65-20390, 65-20464, 65-20468, 65-20475, 65-20476, 65-20477, 65-20479, 65-20480, 65-20487, 65-20488, 65-20489, 65-20597, 67-12751, 67-12752, 67-12775, 67-12809, 67-12810, 67-12841, 67-13085, 67-13086, 67-13141, 67-13142, 67-13147, and 67-13148.
2. The *Verified Petition for Order to Show Cause* at issue is DENIED for the following water rights: 65-19750, 65-19812, 65-19814, 65-19816, 65-19818, 65-19820, 65-19822, 65-19824, 65-19894, 65-19897, 65-20055, 65-20057, 65-20059, 65-20061, 65-20063, 65-20065, 65-20067, 65-20069, 65-20071, 65-20370, 65-20388, 65-20469, 65-20471, 65-20472, 65-20478, 65-20484, 65-20486, 67-12386, 67-12776, 67-12777, 67-12900, and 67-12999.
3. In accordance with Idaho Code § 42-224(2), the United States of America acting through the Department of Interior, Bureau of Land Management must show cause before the Director of the Idaho Department of Water Resources why the following stockwater rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2): 65-19685, 65-20003, 65-20010, 65-20011, 65-20012, 65-20015, 65-20390, 65-20464, 65-20468, 65-20475, 65-20476, 65-20477, 65-20479, 65-20480, 65-20487, 65-20488, 65-20489, 65-20597, 67-12751, 67-12752, 67-12775, 67-12809, 67-12810, 67-12841, 67-13085, 67-13086, 67-13141, 67-13142, 67-13147, and 67-13148.

AMENDED ORDER PARTIALLY GRANTING PETITION; AMENDED ORDER TO SHOW CAUSE (PADDOCK VALLEY ALLOTMENT) – 6

4. In accordance with Idaho Code § 42-224(6), the United States of America acting through the Department of Interior, Bureau of Land Management has 21 days from completion of service of this order to request in writing a hearing pursuant to Idaho Code § 42-1701A(1)–(2). If the United States requests such a hearing, it must also serve a copy of the request upon the petitioners and the livestock grazing permit holders listed on the included certificate of service.

5. In accordance with Idaho Code § 42-224(7), if the United States fails to respond to the above order to show cause within 21 days, the stockwater rights for which the *Verified Petition for Order to Show Cause* has been partially granted shall be considered forfeited, and the Director shall issue an order within 14 days stating the stockwater rights have been forfeited pursuant to Idaho Code § 42-222(2).

6. In accordance with Idaho Code §§ 42-224(1) and 42-224(4), Soulen Livestock Co., Soulen Grazing Association, LLC, and all active Paddock Valley Allotment and Crane Creek Allotment livestock grazing permit or lease holders will be served a copy of this order.

DATED this 13th day of May 2022.



MAT WEAVER for GARY SPACKMAN
Acting Director

AMENDED ORDER PARTIALLY GRANTING PETITION; AMENDED ORDER TO SHOW
CAUSE (PADDOCK VALLEY ALLOTMENT) – 7

Exhibit 13

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of May 2022, I caused to be served a true and correct copy of the foregoing *Amended Order Partially Granting Petition; Amended Order to Show Cause (Paddock Valley Allotment)*, by the method indicated below, upon the following:

Soulen Livestock Co. & Soulen Grazing Association, LLC P.O. Box 827 Weiser, ID 83672 <i>Petitioners</i>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
Jerome & Jill Grandi 2294 Weiser River Rd. Weiser, ID 83672 <i>Livestock Grazing Permit Holder</i>	<input checked="" type="checkbox"/> Certified U.S. Mail with return receipt <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
David Maddox 1021 Lower Crane Rd. Weiser, ID 83672 <i>Livestock Grazing Permit Holder</i>	<input checked="" type="checkbox"/> Certified U.S. Mail with return receipt <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
USDI BLM Idaho State Office 1387 S. Vinnell Way Boise, ID 83709 <i>Stockwater Right Owner</i>	<input checked="" type="checkbox"/> Certified U.S. Mail with return receipt <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
<i>Courtesy Copy:</i>	
David Negri United States Department of Justice Environment and Natural Resources Division 550 W. Fort St., MSC 033 Boise, ID 83724 david.negri@usdoj.gov	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
William G. Myers III HOLLAND & HART LLP P.O. Box 2527 Boise, ID 83701 wmyers@hollandhart.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email


 Sarah Tschohl
 Legal Assistant

AMENDED ORDER PARTIALLY GRANTING PETITION; AMENDED ORDER TO SHOW CAUSE (PADDOCK VALLEY ALLOTMENT) – 8

Exhibit 13

Memorandum

To: Shelley Keen

Prepared by: Glen Gardiner & Craig Saxton

Date: November 9, 2021

Re: Review of Federal water rights within the Paddock Valley Allotment (#370) which were identified in Exhibit A of Soulen Livestock Co's Verified Petition for Order to Show Cause.

Comparison of Partial Decrees to IDWR Database Records and Shapefiles

On September 16, 2021, Soulen Livestock Company and Soulen Grazing Association, LLC ("Soulen") petitioned the Director of the Idaho Department of Water Resources ("IDWR") to issue a show cause order pursuant to Idaho Code § 42-224(1) for a list of water rights "located on a federal grazing allotment known as the Paddock Valley Allotment (#370)." Soulen's petition refers to the list of water rights as Exhibit A. For each of the water rights in Exhibit A, we compared information on the SRBA partial decree to information in IDWR's water rights database. Fields compared included Name and Address, Source, Quantity, Priority Date, Point of Diversion, Purpose and Period of Use, and Place of Use. We found no discrepancies, although the Names on the partial decrees are abbreviated to USDI BLM, IDAHO STATE OFFICE, whereas IDWR's database refers to the Names as UNITED STATES OF AMERICA ACTING THROUGH USDI BUREAU OF LAND MANAGEMENT, IDAHO STATE OFFICE.

IDWR stores digitized water right places of use ("POU") in its geographic information system ("GIS"). We verified the digitized POU for each of the water rights listed in Exhibit A matches the POU described in the water rights database. No discrepancies were found. To complete our analysis, we then used GIS to overlay the digitized POU for each water right in Exhibit A onto the digital boundaries of the Paddock Valley Allotment and neighboring grazing allotment¹:

Paddock Valley Allotment Analysis

Based on digital data, the POUs for the following water rights exist completely within the Paddock Valley Allotment:

65-19685, 65-19812, 65-19814, 65-19818, 65-19820, 65-19822, 65-20003, 65-20010, 65-20011, 65-20012, 65-20015, 65-20055, 65-20057, 65-20059, 65-20061, 65-20063, 65-20065, 65-20067, 65-20069, 65-20071, 65-20390, 65-20464, 65-20468, 65-20475, 65-20476, 65-20477, 65-20479, 65-20480, 65-20487, 65-20488, 65-20489, 65-20597, 67-12386, 67-12751, 67-12775, 67-12809, 67-12810, 67-12841, 67-13085, 67-13086, 67-13141, 67-13142, 67-13147, 67-13148.

¹ The digital shapes of the allotment boundaries were created by U.S. Department of the Interior, Bureau of Land Management with a publication date of 06-30-2017. The digital allotment boundaries can be downloaded from the website https://gis.blm.gov/arcgis/rest/services/range/BLM_Natl_Grazing_Allotment/MapServer

Exhibit 13

POUs for the following water rights exist partially within the Paddock Valley Allotment and partially outside the Paddock Valley Allotment:

65-20469, 65-20471, 65-20472, 65-20484, 65-19750, 65-19816, 65-19824, 65-19894, 65-19897, 65-20370, 65-20388, 65-20478, 65-20486, 67-12752, 67-12776, 67-12777, 67-12900, 67-12999.

The analysis below describes water rights in Exhibit A having all or portions of the authorized POU's exist outside the Paddock Valley Allotment boundary.

(Water Rights extending onto Paddock Valley Reservoir)

The unnamed streams identified as the source for rights 65-20469, 65-20471, 65-20472, and 65-20484, appear to be sources of water supplying Paddock Valley Reservoir. Stock have access to this water from the decreed POU when the reservoir is full enough to extend into the decreed POU.

65-20469

Water right 65-20469 is an instream stockwater right on an unnamed stream, tributary to Little Willow Creek. The POU is T11N, R2W, Sec 32, NESE, and is within the boundary of Paddock Valley Allotment except for the area extending onto Paddock Valley Reservoir. The portion of the POU not within the reservoir is managed by Bureau of Land Management, United States of America. The area within Paddock Valley Reservoir is owned by Little Willow Irrigation District.

65-20471

Water right 65-20471 is an instream stockwater right on an unnamed stream, tributary to Little Willow Creek. The POU is T10N, R2W, Sec 5, (L4)NWNW, SENW, and is within the boundary of Paddock Valley Allotment. An area within the POU extends onto Paddock Valley Reservoir. The portion of the POU not within the reservoir is managed by Bureau of Land Management, United States of America. The owner within Paddock Valley Reservoir is unidentified in IDWR's digital layer.

65-20472

Water right 65-20472 is an instream stockwater right on an unnamed stream, tributary to Little Willow Creek. The POU is T10N, R2W, Sec 5, SENE, and is within the boundary of Paddock Valley Allotment. An area within the POU extends onto Paddock Valley Reservoir. The portion of the POU not within the reservoir is managed by Bureau of Land Management, United States of America. The owner within Paddock Valley Reservoir is unidentified in IDWR's digital layer.

65-20484

Water right 65-20484 is an instream stockwater right on an unnamed stream, tributary to Little Willow Creek. The POU is T10N, R2W, Sec 17, SWNE, SENE, and is within the boundary of Paddock Valley Allotment, extending across Paddock Valley Reservoir, onto land on the opposite side. The portion of the POU not within the reservoir is managed by Bureau of Land Management, United States of America. The owner within Paddock Valley Reservoir is unidentified in IDWR's digital layer.

Exhibit 13

(Within both Paddock Valley and Crane Creek Allotment)**67-12752**

Water right 67-12752 is an instream stockwater right on an unnamed stream, tributary to Crane Creek. The POU is described as T12N, R3W, Sec 35, SESE and is in both the Paddock Valley Allotment and Crane Creek Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

(Boundary Water Rights, All Split between Two or More Allotments)**65-19750**

Water right 65-19750 is for a spring, tributary to Holland Gulch. The POU is T10N, R3W, Sec 11, SENW, and is in both the Paddock Valley Allotment and Holland Gulch Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

65-19816

Water right 65-19816 is for a spring, tributary to Dry Creek. The POU is 9N, R2W, Sec 23, NENW, and is in both the Paddock Valley Allotment and Willow Ridge Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

65-19824

Water right 65-19824 is for a spring, tributary to Dry Creek. The POU is T9N, R2W, Sec 27, SENE, and is in both the Paddock Valley Allotment and Willow Ridge Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

65-19894

Water right 65-19894 is an instream stockwater right on an unnamed stream, tributary to Little Willow Creek. The POU described as T10N, R1W, Sec 7, SESW, SWSE, and T10N, R1W, Sec 18, NWNW, NENE, SENE is within the Paddock Valley Allotment. POU described as T10N, R1W, Sec 17, SWNW, SENW, SWNE, SENE, NWSE, NESE is within the Willow Ridge Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

65-19897

Water right 65-19897 is an instream stockwater right on Indian creek, tributary to Little Willow Creek and an unnamed stream, tributary to Indian Creek. The POU described as T10N, R1W, Sec 30, SWNE, SENW, SWSW, SWSE, NWSE, NESE, SESE, SESW, (L2)SWNW, NWSW: T10N, R1W, Sec 31, (L2)SWNW, SENE, NESW, (L1)NWNW is within the Paddock Valley Allotment. The POU described as T10N, R1W, Sec 28, SESW; T10N, R1W, Sec 32, SWNW, SENE, NWNW, NWNE, NENW; T10N, R1W, Sec 33, NWNW, NENW, SENW, NWSW, NWSE, NESW, SWNE, SWNW is within the Willow Ridge Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

Exhibit 13

65-20370

Water right 65-20370 is an instream stockwater right on an unnamed stream, tributary to Indian Creek. The POU described as T10N, R1W, Sec 30, SENE, NENE, SWNE is within the Paddock Valley Allotment. The POU described as T10N, R1W, Sec 27, SWNE; T10N, R1W, Sec 28, SENW, SWNW, SWNE, SENE, NWSW, NWNW, NENW; T10N R1W, Sec 29, NWSE, NESE, NENE, NWNW, NESW, SESW, NWNE, NENW, NWSW, SWNE, SWNW; T10N, R1W, Sec 30, SENE, NENE, SWNE is within the Willow Ridge Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

65-20388

Water right 65-20388 is an instream stockwater right on an unnamed stream, tributary to Little Willow Creek. The POU described as T10N, R1W, Sec 6, SESW, SWSE, SESE are within the Paddock Valley Allotment. The POU described as T10N, R1W, Sec 5, SWSW, is within Paddock Valley Allotment and Minnie Allotment. The POU described as T10N, R1W, Sec 5, SESW, is in the Minnie Allotment. The POU described as T10N, R1W, Sec 8, NWNE is in the Foothills Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

65-20478

Water right 65-20478 is an instream stockwater right on George Way Gulch, tributary to Little Willow Creek and an unnamed stream, tributary to George Way Gulch. The POU described as T10N, R1W, Sec 18, NWSW(L3), SWSW(L4), SESW; T10N, R1W, Sec 19, NENE, NWNE, SENE, NENW; T10N, R1W, Sec 13, SWNE, NESW, NESE, NWSE is within the Paddock Valley Allotment. The POU described as T10N, R1W, Sec 20, SWNW is in the Willow Ridge Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

65-20486

Water right 65-20486 is an instream stockwater right on Dry Creek, tributary to Big Willow Creek and an unnamed stream, tributary to Dry Creek. The POU described as T9N, R1W, Sec 6, NENE, (L2)NWNE, SWNE, SENE, (L3)NENW, SENW, NESW, (L6)NWSW, SESW, NWSE, SWSE; T10N, R1W, Sec 31, NESE, NWSE, SWSE, SESE within the Paddock Valley Allotment. The POU described as T9N, R1W, Sec 4, NWSW; T9N, R1W, Sec 5, NENE, NWNE, NENW, SWNW, NESW, SWSW, SESW, NESE, NWSE; T10N, R1W, Sec 32, NESW, SWSW, SESW, NWSE, SWSE, SESE is within the Willow Ridge Allotment. The POU described as T9N, R1W, Sec 6, (L7)SESE; T9N, R1W, Sec 7, NWNE, NENW is in both Paddock Valley Allotment and Willow Ridge Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

67-12776

Water right 67-12776 is an instream stockwater right on an unnamed stream, tributary to Crane Creek. The POU is described as T12N, R2W, Sec 29, SWNW, SENW, NWSW are within the Paddock Valley Allotment. The POU in T12N, R2W, Sec 29, SWNE is in both Paddock Valley Allotment and Crane Creek Individual Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

67-12777

Water right 67-12777 is an instream stockwater right on an unnamed stream, tributary to Crane Creek. The POU described as T12N, R2W, Sec 29, SWSE is in the Paddock Valley Allotment. The POU described as T12N, R2W, Sec 29, NWNE, SWNE, NWSE is within both Paddock Valley Allotment and Crane Creek Individual Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America, except for a portion of T12N, R2W, Sec 29, NWNE which extends onto Crane Creek Reservoir. The area within the boundary of Crane Creek Reservoir is owned by the Tracy B Baker Trust.

67-12900

Water right 67-12900 is an instream stockwater right on Crane Creek, tributary to Weiser River. The POU described as T12N, R2W, Sec 29, NWNE, NWNW is within the Paddock Valley Allotment. The POU described as T12N, R2W, Sec 29, NWNE is in both Paddock Valley Allotment and Crane Creek Individual Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America, except for portions of each quarter/quarter which extend onto Crane Creek Reservoir. The area within the boundary of Crane Creek Reservoir is owned by the Tracy B Baker Trust.

67-12999

Water right 67-12999 is an instream stockwater right on an unnamed stream, tributary to South Crane Creek. The POU described as T10N, R1W, Sec 6, SENW is in the Paddock Valley Allotment. The POU described as T10N, R1W, Sec 6, (L3)NENW is in both Paddock Valley Allotment and Minnie Allotment. It appears this POU, and therefore this water right, can be accessed from multiple allotments. The POU is managed by Bureau of Land Management, United States of America.

-end-

EXHIBIT 14

Declaration of Gary Spackman

Exhibit 14

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF CERTAIN BASIN 79
WATER RIGHTS, IN THE NAME OF THE
UNITED STATES OF AMERICA ACTING
THROUGH THE DEPARTMENT OF
INTERIOR, BUREAU OF LAND
MANAGEMENT

Docket No. P-OSC-2021-004

**AMENDED ORDER PARTIALLY
GRANTING PETITION; AMENDED
ORDER TO SHOW CAUSE**

**(BUTCHER BAR AND CHINA
CREEK ALLOTMENTS)**

GROUND FOR AMENDED ORDER

On April 25, 2022, the Director of the Idaho Department of Water Resources (“Department”) issued an *Order Partially Granting Petition; Order to Show Cause* in this matter. In it, the Director ordered the United States of America acting through the Department of Interior, Bureau of Land Management to show cause why the following stockwater rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2): 79-11372, 79-11373, 79-11374, 79-11376, 79-11756, and 79-11784. It has come to the Department’s attention that water right 79-11784 is a water right based on federal law and should not have been included in the list of water rights subject to the order to show cause. *See* Idaho Code § 42-224(14) (“This section applies to all stockwater rights except those stock water rights decreed to the United States based on federal law.”). Pursuant to Rule 760 of the Rules of Procedure of the Idaho Department of Water Resources (IDAPA 37.01.01.760), the Director hereby withdraws the April 25, 2022 order and replaces it with this *Amended Order Partially Granting Petition; Amended Order to Show Cause*. This amended order removes water right 79-11784 from the list of water rights subject to the order to show cause.

BACKGROUND

On October 15, 2021, Gill Family Ranches, LLC (“Petitioner”) filed with the Department a *Verified Petition for Order to Show Cause* (“Petition”). Petitioner asked the Department to issue an order pursuant to Idaho Code § 42-224(1) “to show cause why the Water Rights [(see Petition Exhibit A)] have not been lost through forfeiture pursuant to Idaho Code [§] 42-222(2).” *Petition* at 1.

Petitioner asserts that the water rights listed in Exhibit A (“BLM Water Rights”) are owned by the United States of America acting through the Department of Interior, Bureau of Land Management (“BLM”). *Id.* ¶ 1; *see Petition* Ex. A. Additionally, Petitioner asserts that the “points of diversion or places of use” for the BLM Water Rights are located on federal grazing allotments identified by the BLM as the Butcher Bar Allotment and the China Creek Allotment (“Allotments”). *Petition* ¶ 3. Petitioner claims that no other water rights share “the same place of use, source, and point of diversion” as the BLM Water Rights. *Id.* ¶ 4.

AMENDED ORDER PARTIALLY GRANTING PETITION; AMENDED ORDER TO
SHOW CAUSE (BUTCHER BAR AND CHINA CREEK ALLOTMENTS) – 1

Exhibit 14

Petitioner maintains that it has, for at least the last five years, held a valid BLM grazing lease for livestock grazing on the Allotments. *Id.* ¶ 5; *see Petition* Ex. B. Petitioner asserts that its livestock have grazed on the Allotments “each year of the lease term.” *Petition* ¶ 6. Petitioner claims that its employees, officers, and family of its officers and employees have “regularly visited the Allotments, which borders Petitioner’s private property, each grazing season of use and at other times outside the season of use each year for more than the past five years.” *Id.* ¶ 7. Petitioner alleges that “[a]t no time over the past five years has Petitioner, its officers, employees, their families, or agents, witnessed or heard of the existence of livestock owned or controlled by the BLM on either Allotment. . . .” *Id.* ¶ 8, at 2. Petitioner alleges that at no time since it has had use of the area “has Petitioner ever witnessed or heard of the BLM applying the [BLM] Water Rights to the beneficial use of watering livestock the BLM owns or controls on either Allotment.” *Id.* ¶ 10. Petitioner asserts that no agency relationship exists between Petitioner and the BLM “for the purpose of acquiring water rights for the BLM on either Allotment.” *Id.* ¶ 11. The Petition is verified by Marty I. Gill, manager of Gill Family Ranches, LLC. *Id.* at 3.

To comply with the statutory service requirements of Idaho Code § 42-224(4),¹ the Department submitted a Freedom of Information Act (“FOIA”) request to the BLM on October 15, 2021, for a copy of all active grazing permits or leases on the Butcher Block and China Creek Allotments. On October 29, 2021, in response to the Department’s FOIA request, the BLM sent a copy of one grazing lease. The lease sent by the BLM matches Lease No. 1105152, authorized September 30, 2015, that Petitioner filed as Exhibit B.

APPLICABLE LAW

Idaho Code § 42-224 states in pertinent part:

(1) Within thirty (30) days of receipt by the director of the department of water resources of a petition or other information that a stockwater right has not been put to beneficial use for a term of five (5) years, the director must determine whether the petition or other information, or both, presents prima facie evidence that the stockwater right has been lost through forfeiture pursuant to section 42-222(2), Idaho Code. If the director determines the petition or other information, or both, is insufficient, he shall notify the petitioner of his determination, which shall include a reasoned statement in support of the determination, and otherwise disregard for the purposes of this subsection the other, insufficient, information.

(2) If the director determines the petition or other information, or both, contains prima facie evidence of forfeiture due to nonuse, the director must within thirty (30) days issue an order to the stockwater right owner to show cause before the director

¹ Idaho Code § 42-224(4) was amended during the Second Regular Session of the Sixty-sixth Idaho Legislature, effective March 24, 2022. Both prior to and after the 2022 amendment, the service requirements outlined within Idaho Code § 42-224(4) are substantially the same regarding the persons who must be served a copy of an order to show cause issued by the Department.

Exhibit 14

why the stockwater right has not been lost through forfeiture pursuant to section 42-222(2), Idaho Code. Any order to show cause must contain the director's findings of fact and a reasoned statement in support of the determination.

....

(14) This section applies to all stockwater rights except those stock water rights decreed to the United States based on federal law.

I.C. § 42-224(1)–(2), (14) (current version as amended in 2022). Therefore, to issue an order to show cause as Petitioner has requested, the Director must conclude that the Petition makes a “prima facie showing” that the BLM has not put its BLM Water Rights, decreed based on state law, to beneficial use for at least five years. “Prima facie” is defined by *Black’s Law Dictionary* as: “Sufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue <a prima facie showing>.” *Prima facie*, *Black’s Law Dictionary* (11th ed. 2019).

FINDINGS OF FACT

After careful review of the Petition and the Department’s associated research memorandum,² the Director issues the following findings:

1. Petitioner requested the Department issue an order to the BLM to show cause why the BLM’s Water Rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2). *See Petition* at 1. The following is a list of the water rights at issue: 79-11259, 79-11261, 79-11372, 79-11373, 79-11374, 79-11376, 79-11756, and 79-11784. *See Petition* Ex. A; *Memorandum*.

2. The Director has reviewed the partial decrees for the BLM Water Rights. The basis for water right 79-11784 is federal law. In accordance with Idaho Code § 42-224(14), further consideration of water right 79-11784 is unwarranted in this matter. The remaining water rights at issue are based on state law and subject to further consideration by the Director.

3. Using the Department’s water rights database, the Department reviewed the places of use for the BLM Water Rights. *Memorandum* at 1.

4. Petitioner’s allegations only relate to the BLM’s lack of beneficial use of water within the boundaries of the Allotments. Petitioner does not make allegations relating to the BLM’s use of water outside of the boundaries of the Allotments. *See Petition* at 1–2.

² For the Director to give a reasoned statement supporting a determination in favor of or opposing forfeiture pursuant to Idaho Code § 42-222(2), Department staff utilized the Department’s water right files and database to thoroughly review, analyze, and document the locations of the places of use for the water rights listed in Exhibit A of the Petition. *See* Mem. from Glen Gardiner & Craig Saxton, Water Allocations Analyst and Adjudication Section Manager, Idaho Dep’t of Water Res., to Shelley Keen, Water Allocation Bureau Chief, Idaho Dep’t of Water Res. 1 (Oct. 27, 2021) (attached to this Order as Attachment A) [hereinafter *Memorandum*].

Exhibit 14

5. Based on the Memorandum, the Director finds that the places of use for the following water rights, are entirely within the Allotments: 79-11372, 79-11373, 79-11374, 79-11376, and 79-11756. *See Memorandum.*

6. Marty I. Gill is an officer of Gill Family Ranches, LLC. *Petition* at 3. The allegations in the *Petition* attribute observations of nonuse of water in the Allotments to the officers of Gill Family Ranches, LLC. *Id.* at 1–2. Accordingly, the Director finds that Marty I. Gill’s statements are based on personal knowledge.

7. Based on the Memorandum, the Director finds that some of the water rights at issue have a place of use that extends beyond the Allotments. The water rights with a place of use that extends beyond the boundaries of the Allotment are: 79-11259 and 79-11261. *Memorandum* at 2.

8. The Director has not received written evidence that a principal/agent relationship existed, during the five-year period calculated pursuant to Idaho Code § 42-224(1), between the BLM and any Butcher Bar Allotment or China Creek Allotment livestock grazing permit or lease holders for the purpose of maintaining the BLM Water Rights.

ANALYSIS

Forfeiture is disfavored in Idaho law. *Application of Boyer*, 73 Idaho 152, 159, 248 P.2d 540, 544 (1952) (“Forfeitures are abhorrent and all intendments are to be indulged against a forfeiture.”). To make a prima facie showing that the BLM has not beneficially used water authorized by its water rights for five years, for each water right at issue here, Petitioner must present sufficient evidence establishing forfeiture over the entire place of use—not just those portions of the place of use within the Allotments. The Department’s Memorandum, which includes an analysis of its associated due diligence investigation, clarifies that some of the places of use of the BLM Water Rights extend beyond the boundaries of the Allotments. *See Memorandum.* As noted in finding 4 above, Petitioner does not offer evidence of BLM’s non-use of water beyond the boundaries of the Allotments. Therefore, the *Petition* does not include sufficient evidence for the Director to issue an order to show cause to the extent that Petitioner has requested.

The Department must limit the scope of an order to show cause issued in this matter to only those BLM Water Rights based on state law and with a place of use that is located entirely within the property boundaries for which the Department has received supporting statements alleging non-use of water. Accordingly, for those BLM Water Rights that have a place of use that is located either entirely or partially outside of the Allotments (see finding 7 above), Petitioner has failed to make a “prima facie showing” in accordance with Idaho Code § 42-224 that the BLM has not beneficially used water authorized by its water rights for five years. However, Petitioner’s statements based on personal knowledge (see findings 6 above), when combined with the analysis within the Department’s Memorandum, amount to a “prima facie showing” in accordance with Idaho Code § 42-224 that the BLM has not beneficially used water authorized by its water rights that have a place of use entirely within the Allotments within the last five years.

AMENDED ORDER PARTIALLY GRANTING PETITION; AMENDED ORDER TO SHOW CAUSE (BUTCHER BAR AND CHINA CREEK ALLOTMENTS) – 4

CONCLUSION OF LAW

The Director concludes that the “prima facie showing” burden of proof, set forth in Idaho Code § 42-224, has been satisfied to the extent that he should partially grant Petitioner’s request and issue an order to the BLM to show cause before the Director why those BLM Water Rights based on state law and that have a place of use entirely within the Allotments have not been lost through forfeiture pursuant to Idaho Code § 42-222(2).

ORDER

Based on the foregoing, the following are HEREBY ORDERED:

1. The *Verified Petition for Order to Show Cause* at issue is GRANTED for ONLY the following water rights: 79-11372, 79-11373, 79-11374, 79-11376, and 79-11756.
2. The *Verified Petition for Order to Show Cause* at issue is DENIED for the following water rights: 79-11259, 79-11261, and 79-11784.
3. In accordance with Idaho Code § 42-224(2), the United States of America acting through the Department of Interior, Bureau of Land Management must show cause before the Director of the Idaho Department of Water Resources why the following stockwater rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2): 79-11372, 79-11373, 79-11374, 79-11376, and 79-11756.
4. In accordance with Idaho Code § 42-224(6), the United States of America acting through the Department of Interior, Bureau of Land Management has 21 days from completion of service of this order to request in writing a hearing pursuant to Idaho Code § 42-1701A(1)–(2). If the United States requests such a hearing, it must also serve a copy of the request upon the petitioner listed on the included certificate of service.
5. In accordance with Idaho Code § 42-224(7), if the United States fails to respond to the above order to show cause within 21 days, the stockwater rights for which the *Verified Petition for Order to Show Cause* has been partially granted shall be considered forfeited, and the Director shall issue an order within 14 days stating the stockwater rights have been forfeited pursuant to Idaho Code § 42-222(2).
6. In accordance with Idaho Code §§ 42-224(1) and 42-224(4), Gill Family Ranches, LLC will be served a copy of this order.

DATED this 13th day of May 2022.



 MAT WEAVER for GARY SPACKMAN
 Acting Director

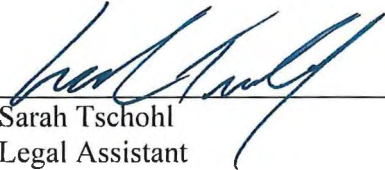
AMENDED ORDER PARTIALLY GRANTING PETITION; AMENDED ORDER TO
 SHOW CAUSE (BUTCHER BAR AND CHINA CREEK ALLOTMENTS) – 5

Exhibit 14

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of May 2022, I caused to be served a true and correct copy of the foregoing *Amended Order Partially Granting Petition; Amended Order to Show Cause (Butcher Bar and China Creek Allotments)*, by the method indicated below, upon the following:

Gill Family Ranches, LLC 188 Gill Ranch Rd. P.O. Box 386 Lucile, ID 83542 <i>Petitioner</i>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
USDI BLM Idaho State Office 1387 S. Vinnell Way Boise, ID 83709 <i>Stockwater Right Owner</i>	<input checked="" type="checkbox"/> Certified U.S. Mail with return receipt <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
<i>Courtesy Copy:</i> <div> David Negri United States Department of Justice Environment and Natural Resources Division 550 W. Fort St., MSC 033 Boise, ID 83724 david.negri@usdoj.gov </div> <div> William G. Myers III HOLLAND & HART LLP P.O. Box 2527 Boise, ID 83701 wmyers@hollandhart.com </div>	


 Sarah Tschohl
 Legal Assistant

AMENDED ORDER PARTIALLY GRANTING PETITION; AMENDED ORDER TO
 SHOW CAUSE (BUTCHER BAR AND CHINA CREEK ALLOTMENTS) – 6

Memorandum**To:** Shelley Keen**Prepared by:** Glen Gardiner & Craig Saxton**Date:** October 27, 2021**Re:** Review of Federal water rights within the Butcher Bar Allotment (#36138) and China Creek Allotment (#36191) which were identified in Exhibit A of Gill Family Ranches, LLC Verified Petition for Order to Show Cause.**Comparison of Partial Decrees to IDWR Database Records and Shapefiles**

On October 15, 2021, Gill Family Ranches, LLC ("Gill") petitioned the Director of the Idaho Department of Water Resources ("IDWR") to issue a show cause order pursuant to Idaho Code § 42-224(1) for a list of water rights "located on a federal grazing allotment known as the Butcher Bar Allotment (#36138) and China Creek Allotment (#36191)." Gill's petition refers to the list of water rights in Exhibit A. For each of the water rights in Exhibit A, we compared information on SRBA partial decrees to information in IDWR's water rights database. Fields compared included Name and Address, Source, Quantity, Priority Date, Point of Diversion, Purpose and Period of Use, and Place of Use. We found no discrepancies, although the Names on the partial decrees list USDI BLM, IDAHO STATE OFFICE, whereas IDWR's database refers to the Names as UNITED STATES OF AMERICA ACTING THROUGH USDI BUREAU OF LAND MANAGEMENT, IDAHO STATE OFFICE.

IDWR stores digitized water right places of use ("POU") in its geographic information system ("GIS"). We verified the digitized POU for each of the water rights listed in Exhibit A matches the POU described in the water rights database. No discrepancies were found. To complete our analysis, we then used GIS to overlay the digitized POU for each water right in Exhibit A onto the digital boundaries of the Butcher Bar Allotment, China Creek Allotment and neighboring grazing allotments (Wet Gulch Allotment)¹.

Butcher Bar Allotment Analysis

Based on digital overlay, the POU for the following water right exists completely within the Butcher Bar Allotment:

79-11756.

China Creek Allotment Analysis

Based on digital overlay, the POUs for the following water rights exist completely within the China Creek Allotment:

79-11374 & 79-11376.

¹ The digital shapes of the allotment boundaries were created by U.S. Department of the Interior, Bureau of Land Management with a publication date of 06-30-2017. The digital allotment boundaries can be downloaded from the website https://gis.blm.gov/arcgis/rest/services/range/BLM_Natl_Grazing_Allotment/MapServer

Analysis of Rights Within Both Subject Allotments

POUs for the following water rights exist partially within the Butcher Bar Allotment and partially within the China Creek Allotment.

79-11372:

Water right 79-11372 is an instream stockwater right on the Salmon River. The POU is T26N, R1E, Sec 34, (L1)NESE, (L2)SESE. China Creek flows through the POU described as T26N, R1E, Sec 34, (L1)NESE. Land north of China Creek is in the Butcher Bar Allotment. Land south of China Creek is in the China Creek Allotment. It appears this POU can be accessed from either the China Creek or Butcher Bar allotments. The entire POU is managed by Bureau of Land Management, United States of America.

79-11373:

Water right 79-11373 is an instream stockwater right on China Creek, tributary to the Salmon River. The POU is T26N, R1E, Sec 34, SENE, (L1)NESE. China Creek flows through the POU described as T26N, R1E, Sec 34, (L1)NESE. Land north of China Creek is in the Butcher Bar Allotment. Land south of China Creek is in the China Creek Allotment. It appears this POU can be accessed from either the China Creek or Butcher Bar allotments. The entire POU is managed by Bureau of Land Management, United States of America.

79-11784:

Water right 79-11374 is a spring, tributary to China Creek. The POU is T26N, R1E, Sec 34, (L1)NESE. China Creek flows through the POU. Land north of China Creek is in the Butcher Bar Allotment. Land south of China Creek is in the China Creek Allotment. It appears this POU can be accessed from either the China Creek or Butcher Bar allotments. The entire POU is managed by Bureau of Land Management, United States of America.

Analysis of Rights Outside the Subject Allotments

POUs for the following water rights exist entirely outside both the Butcher Bar Allotment and the China Creek Allotment.

79-11259:

Water right 79-11259 is an instream stockwater right on unnamed stream, tributary to the Salmon River. The POU is T26N, R1E, Sec 23, (L8)SWSW. This POU is entirely within the Wet Gulch Allotment. The POU is managed by Bureau of Land Management, United States of America.

79-11261:

Water right 79-11259 is an instream stockwater right on Wet Gulch, tributary to the Salmon River. The POU is T26N, R1E, Sec 26, (L1)NWNW. This POU is entirely within the Wet Gulch Allotment. The POU is managed by Bureau of Land Management, United States of America.

-end-