

**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.

(“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

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.

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.

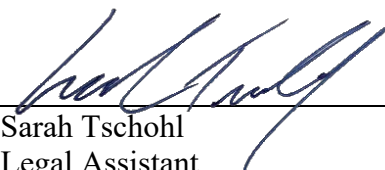


MAT WEAVER for GARY SPACKMAN
Acting Director

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:

<p>Soulen Livestock Co. & Soulen Grazing Association, LLC P.O. Box 827 Weiser, ID 83672</p> <p><i>Petitioners</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>Jerome & Jill Grandi 2294 Weiser River Rd. Weiser, ID 83672</p> <p><i>Livestock Grazing Permit Holder</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>David Maddox 1021 Lower Crane Rd. Weiser, ID 83672</p> <p><i>Livestock Grazing Permit Holder</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>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>	
<p>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</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 checked="" 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 Tschohl
Legal Assistant

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.

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.

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.

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-