

**WSWC-WestFAST Non-Tribal Federal Water Rights Workgroup
Stock Water Rights for Grazing Cattle on Federal Lands**

October 24, 2018

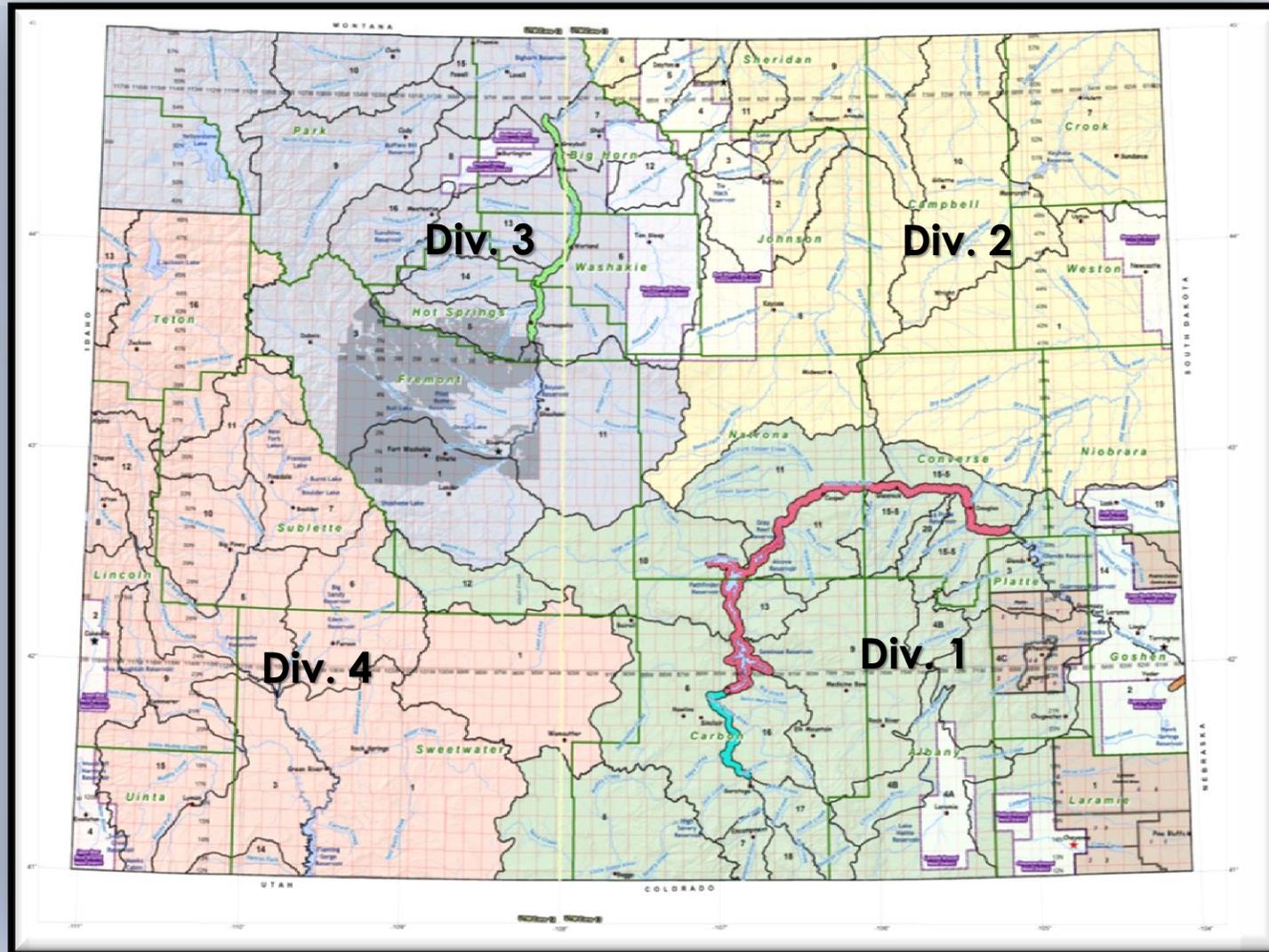
Wyoming Stock Water Rights on Federal Land

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Wyoming Water Administration

- ❖ Water is administered in accordance with the prior appropriation doctrine: “Priority of appropriation for beneficial uses shall give the better right.”
- ❖ Water in Wyoming is the property of the state. A water right is a “usufructuary” right and also a real property right. Beneficial use is the basis, the measure and the limit of the right.
- ❖ The State Engineer is charged with general supervision of waters of the State - responsibility for permitting water use and administering interstate and intrastate streams and rivers.
- ❖ The Board of Control, made up of the State Engineer and the four Division Superintendents, primarily acts on adjudications, changes in point of diversion, changes in use or place of use, and transfers of adjudicated rights.

Wyoming Water Divisions



The Water Right Process in Wyoming

– In a Nutshell

- ❖ A permit must be obtained from the State Engineer prior to building a facility, drilling a well, or putting water to use. Wyo. Stat. §§ 41-4-501, -504, -930. There are no exceptions. Once put to the permitted beneficial use, the water right is adjudicated by the Board of Control.

Application is submitted to Surface Water or Groundwater Division of SEO (establishes priority date). Application is not advertised.



Application is reviewed by staff, may be revised, and becomes a permit when approved. The permittee proceeds to make beneficial use.



Once water is put to beneficial use, proof (field inspection) is taken by SEO staff. Use must be made in accordance with the permit.



Proof comes before Board of Control for adjudication after advertisement. Certificate of adjudication issued to the landowner where the use is made.

Stock Water Document Examples

FORM U.W. 5
REV. 3/06
FILING FEE SCHEDULE
ON REVERSE SIDE
\$25.00
\$18.06

STATE OF WYOMING
OFFICE OF THE STATE ENGINEER
HERSCHLER BLDG., 4-E CHEYENNE, WYOMING 82002
(307) 777-6163

APPLICATION FOR PERMIT TO APPROPRIATE GROUND WATER
APPLICATION FOR WELLS AND SPRINGS
Note: Only springs flowing 25 gallons per minute or less, where the proper use is domestic and/or stock watering, will be considered as ground water appropriations.

Temporary Filing No. U.W. 28-9-458

NOTE: Do not fold this form. Use typewriter or print neatly with black ink. ALL ITEMS MUST BE COMPLETED BEFORE APPLICATION IS ACCEPTABLE.

FOR OFFICE USE ONLY
PERMIT NO. U.W. 173178
WATER DIVISION NO. 2 DISTRICT 9
U.W. DISTRICT Sheridan County

POWDER RIVER WATER GAP - BLM
Bur. of Land Mgmt. Phone: 8280/8203
WY (STATE) (ZIP)
CLAUDBORNE K. ROWLEY (CITY) Phone: (307) 673-1297

1. Name of applicant(s)
a) CLAUDBORNE K. ROWLEY - Bur. of Land Mgmt.
b) U.S. Dept. of Interior, Sheridan, WY
c) 1709 Sagebrush Dr., Cheyenne, WY

2. Address of applicant(s) (MAILING ADDRESS)
1709 SAGEBRUSH DR., SHERIDAN, WY 82801 Phone: (307) 673-1297

3. Name & address of agent to receive correspondence and notices (MAILING ADDRESS) (CITY)
1709 SAGEBRUSH DR., SHERIDAN, WY 82801

4. Use to which the water will be applied:
 Domestic
 Stock Watering
 Irrigation
 Municipal
 Industrial
 Miscellaneous
 Coated Methane
 Monitor, Observation

Use of water in 3 single family dwellings or less, noncommercial watering of lawns and gardens totalling one acre or less. Number of houses served? 2
Normal livestock use at four tanks or less within one mile of well or spring. Stockwatering pipelines and commercial feedlots are a miscellaneous use. Number of stock tanks? 2
Watering of commercially grown crops (large-scale lawn watering of golf courses, cemeteries, recreation areas, etc.) is miscellaneous use.
Use of water in incorporated Towns and Cities. Note 1: use of water in unincorporated towns, subdivisions, improvement districts, mobile home parks, etc. is classified as miscellaneous use. Note 2: a permit may be required by the Wyoming Department of Environmental Quality (WDEQ) if the well will be classified as a public water supply under the WDEQ's rules and regulations.
Long term use of water for the manufacture of a product or production of oil/gas or other minerals (or field water flood operations, power plant water supply, etc.) (Describe in REMARKS)
Any use of water not defined under previous definitions such as stock water pipelines, subdivisions, mine dewatering, mineral oil exploration drilling, potable supplies in office, etc. Describe in Remarks. Note: a permit may be required by the WDEQ if the well will be classified as a public water supply under the WDEQ's rules and regulations.
Water produced in the production of coal bed methane gas. Note: wells used in the production of coal bed methane will require a permit from the Wyoming Oil and Gas Conservation Commission. Note: a WDEQ permit may be required Test Well: (Describe in REMARKS)
Note: a WDEQ permit may be required

5. Location of the well or spring: (NOTE: Quarter-quarter (40 acre subdivision) MUST be shown. EXAMPLE: SE 1/4 NW 1/4 of Sec. 12, Township 14 North, Range 66 West)
County NE, 1/4 SW 1/4 of Sec. 30, T. 57 N., R. 76 W. of the 6th P.M. (W.R.M.)
Sheridan
Resurvey Location: Tract _____ Block _____ of the _____ (or Lot) 11
Subdivision (or Adm'n) of _____

6. Estimated depth of the well or spring is 300 feet. Estimated production interval is 275 ft. to 290 ft.

THE STATE OF WYOMING
Certificate of Construction of Reservoir

WHEREAS, U. S. Department of Agriculture Forest Service
the Turner # F. S. 9-260-1 Stock Reservoir, Permit No. 5420 Stk. Res. located in Sheridan County, Wyoming; and
T. 42 N., R. 73 W., Campbell

Whereas, the proof of construction sets forth that said reservoir has been completed in accordance with the terms of said permit to a capacity sufficient to impound 1.52 acre-feet of water; and that the source of the quantity of water authorized to be stored in the Turner # F. S. 9-260-1 Stock Reservoir is obtained from Turner Dry Lake Bed, trib. Turner Draw, trib. Satas Creek, trib. Antelope Creek, trib. So. Fork Cheyenne River on which the reservoir is located, _____ Section 32

NOW KNOW YE, That the State Board of Control, under the provisions of the Statutes of Wyoming, has by an order duly made and entered on the 12th day of March, A. D. 19 71, in Order Record No. 18, Page 546, determined the priority and capacity of said reservoir as follows:
Name of Owner U. S. Department of Agriculture, Address P. O. Box 129, Douglas
Date of Priority September 30, 1965; Total available storage capacity in the Turner # F. S. 9-260-1 Stock Reservoir, as constructed under provisions of Permit No. 5420 Stk. Res. is 1.52 acre-feet.
The right to store water is limited to such an amount as shall be beneficially used, not to exceed one filling annually of said reservoir, for stock _____ use.

IN TESTIMONY WHEREOF, I, FLOYD A. BISHOP, A. D. 19 71, and caused the seal of said Board to be hereunto affixed.
12th day of March

ATTEST:
Angel A. Christensen
Ex-officio Secretary

Floyd A. Bishop
President

Stock Water Rights: Generally

- ❖ Anyone may apply for and receive a permit for stock water use. Does not need to be the landowner or the stock owner. *Scherck v. Nichols*, 95 P.2d 74 (Wyo. 1939).
- ❖ Applicant must obtain access to the land separately. The permit does not grant the right to use or cross the property of another.
- ❖ The permit holder can transfer or assign the permit to another which should then be recorded with the SEO. An assignment form is provided.
- ❖ There is no statutory process in Wyoming to recognize federal reserved rights claims for stock rights, or any other federal reserved water right, except the general stream adjudication statute. Wyo. Stat. § 1-37-106.

Stock Water Rights: Surface Water

- ❖ Direct flow: Stock use is the normal watering of livestock, excludes feedlots which are classified as a miscellaneous use. Generally, the expected acre-feet of use for beef cattle is 0.0168 acre-feet per head per year (15 gallons per day).
- ❖ Stock reservoirs
 - ✓ Capacity cannot exceed 20 AF and height of dam cannot exceed 20 feet. Wyo. Stat. § 41-3-301. Permitted under regular reservoir rules if larger.
 - ✓ Relaxed filing requirements such as maps and relaxed penalty provisions for noncompliance. No requirement for licensed land surveyor or engineer. Wyo. Stat. § 41-4-507.
- ❖ The maximum time period allowed by statute for the completion of construction and the completion of application of water to beneficial use from a surface water source is 5 years. State Engineer may extend for good cause. Wyo. Stat. § 41-4-506.
- ❖ A water right is not required for domesticated stock animals that drink out of a natural stream or natural lake. But the stock owner cannot make a call to satisfy a water right.
- ❖ In the administration of water rights on any stream and in the consideration of any applications for permits, the State Engineer may require that water be provided to meet reasonable demands for instream stock use. Wyo. Stat. § 41-3-306.

Stock Water Rights: Groundwater

- ❖ Stock and domestic uses are a preferred right over all other uses, regardless of priority. The preference is limited to .056 cfs or 25 gpm. The preference does not include municipal use or if water held for sale. Wyo. Stat. § 41-3-907.
- ❖ All springs where use is for stock watering and the yield is under 25 gpm are permitted and considered as groundwater. Over 25 gpm are considered surface water. Wyo. Stat. § 41-3-902.
- ❖ Other wells interfering with stock wells can be ordered off unless the interference is mitigated. Wyo. Stat. § 41-3-911.
- ❖ The maximum time period allowed by statute for the completion of construction and the completion of application of water to beneficial use from a groundwater well is 3 years. Wyo. Stat. § 41-3-934.

Stock Water Rights Adjudication

- ❖ When a water right is adjudicated, it is adjudicated in the name of the landowner where the use is made. If the use is made on multiple lands (stock pipelines and tanks), the adjudication is made in the names of the multiple landowners. The water right is attached to the land or place of use. Wyo. Stat. § 41-3-101; *White v. Board of Land Comm'rs*, 592 P.2d 76 (Wyo. 1979).
- ❖ Surface water
 - ✓ Stock reservoirs are not typically adjudicated unless requested by the landowner. They will be inspected to ensure that they are constructed within the terms of the permit and then incorporated into a tabulation of water rights.
 - ✓ If the reservoir provides for more than just stock use, it must be adjudicated.
 - ✓ Other direct flow diversions like ditches are adjudicated, but they are typically associated with additional uses.
- ❖ Groundwater
 - ✓ Stock rights are not required to be adjudicated. The appropriator or the State Engineer can initiate adjudication. Wyo. Stat. § 41-3-935.
 - ✓ Relaxed adjudication requirements, such as not requiring a map prepared by licensed surveyor or engineer.
- ❖ Both surface and groundwater rights subject to abandonment after five years of nonuse. Wyo. Stat. §§ 41-3-401, -402. 9

Stock Water Rights Changes

❖ Surface water:

- ✓ The State Engineer can grant changes to permits in limited situations upon petition by the permit holder (limited to area of original permit). Wyo. Stat. § 41-4-514. If change involves use of the property of another, consent of the property owner is required.
- ✓ The Board of Control can grant changes to adjudicated water rights regarding the place of use, type of use, point of diversion or means of conveyance upon petition by the water right owner. Wyo. Stat. §§ 41-3-104, 114. Petitions require proof of land ownership.

❖ Groundwater: Upon petition by the appropriator, the State Engineer can grant limited changes to unadjudicated stock rights, even if placed to beneficial use. Board of Control can grant changes to adjudicated rights. Wyo. Stat. § 41-3-917. Both require proof of land ownership.

Wyoming MOUs With BLM and USFS

MEMORANDUM OF UNDERSTANDING

between the

STATE OF WYOMING STATE ENGINEER'S OFFICE

and the

USDI, BUREAU OF LAND MANAGEMENT, WYOMING STATE OFFICE

MEMORANDUM OF UNDERSTANDING

Between The

STATE OF WYOMING STATE ENGINEER'S OFFICE

And The

USDA, FOREST SERVICE

ROCKY MOUNTAIN REGION AND INTERMOUNTAIN REGION

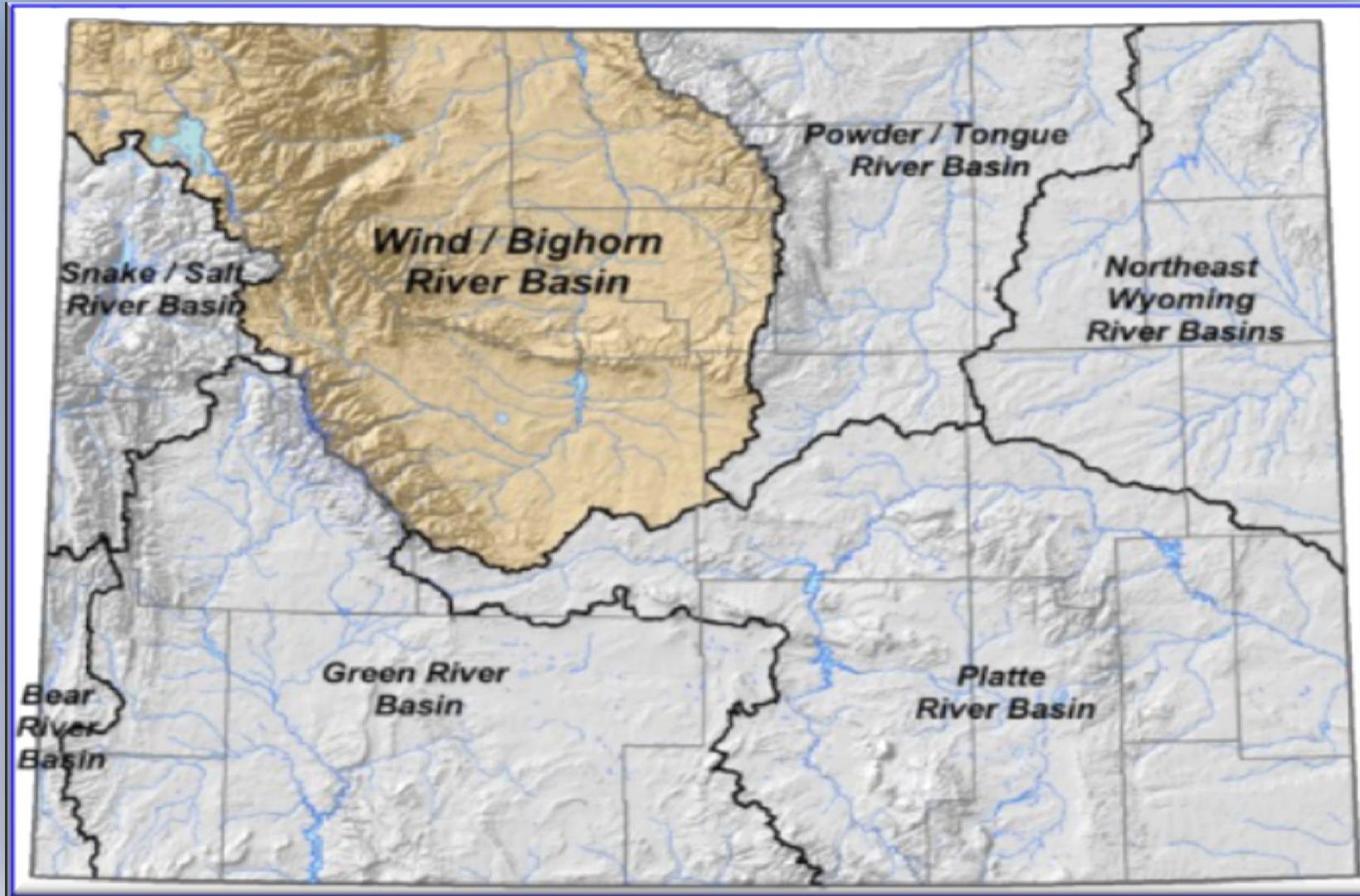
WY MOUs With BLM and USFS

- ❖ Generally designed to strengthen cooperative working relationship.
 - ✓ Similar MOU with BLM in 1973, and correspondence with USFS in late 1970s.
- ❖ WY SEO agrees to provide notice of permit applications or petitions filed regarding water uses on or derived from federal land and allows 30 days for comment.
 - ✓ Also provide notice if permit holder intends to abandon permit.
- ❖ Generally identify when a permit will be issued to the federal agency, the applicant, or both as co-applicants.
- ❖ Generally, permit applications for stock use on federal land identify the applicant and the agency as co-applicants.
- ❖ Federal agencies agree to seek the consent of grazing lease holder before seeking a change or abandonment of a water right on a grazing allotment.

MOU Decision Matrix

Application Processing When Bureau of Land Management (BLM) Lands are Involved						
Applicant	Action		Issue without 30-Day Notice to Comment	Provide 30-Day Notice to Comment	BLM Co-Applicant	Other Action
	Permit Application	Request				
BLM	Any		Yes	No	N/A	
Non-BLM	Oil & Gas/Mineral Development		Yes	No	No	Mail BLM Copy of Permit
Non-BLM	Non- Oil & Gas/Mineral Development		No	Yes	Yes	
Non-BLM	POU on BLM and Non-BLM		No	Yes	Case-by-Case Determination	
Non-BLM	Temporary/Time Limited		Yes	No	No	Mail BLM Copy of Permit
Non-BLM		Cancel/Abandon	No	Yes	N/A	
BLM		Cancel / Abandon / Change	N/A	N/A	N/A	BLM must provide evidence that they sought consent of the grazing lease holder.

Big Horn General Adjudication



Big Horn General Adjudication

- ❖ Adjudicated all federal and state water rights in Wyoming's Big Horn River Basin.
- ❖ All non-tribal federal rights quantified as part of the Phase II settlement, originally 1983, finally in 2005.
- ❖ Recognizes numerous stock watering rights on federal land:
 - ✓ Stock driveway rights including stock reservoirs.
 - ✓ Numerous stock rights on BLM specifically described.
 - ✓ Discrete and general stock watering rights on Forest Service land. "The United States shall have the right to water stock with a priority date of June 12, 1960, in any stream, lake or other source on the" Shoshone National Forest/Big Horn National Forest.
 - ✓ Lengthy tabulations with descriptions and adjudicated quantities.
 - ✓ Uses can be changed by action through the Board of Control.

Big Horn General Adjudication: Examples

Bureau of Land Management: Stock Driveway Instream Consumptive Uses

DECREE PAGE	ITEM #	PERMIT	SOURCE	DRIVEWAY	LOCATION	EST.	CATTLE	HORSES	SHEEP	QUANTITY CFS
157	2	C13 IF.	Bear Creek	128	T41N R88W S4 SWSW, NESW	4/17/1929	250	5	3100	0.44
157	3	C14 IF.	Buffalo Creek	128	T43N R89W S10 SWSW; S24 NWNW	7/7/1932	250	5	3100	0.22
157	4	C15 IF.	Bu							
157	5	C16 IF.	No							

Big Horn National Forest: Discrete Water Uses

DECREE PAGE	ITEM #	PERMIT	TYPE	FACILITY	SOURCE	T.	R.	S.	QTR. QTR.	TRACT/USE LOT	AMOUNT	PERIOD	PRIORITY DATE
638	1			FNGR P 3 SWD	SNOWBANK	55N	89W	31		Stock	0.1 af	July-Oct	11/1/1982
641	8			DRY GRNT SWD	GRANITE C	54N	89W	27		Stock	0.004 cfs	July-Sept	11/1/1982
639	1			LONG PRK SWD	LONG PK SP	54N	90W	23		Stock	0.002 cfs	June-Oct	11/1/1982



Thank you!
Questions?

Contact Information:

Chris Brown

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