



WATER-RIGHT DOCKET

Cedar Breaks National Monument

Docket No: 3

FEDERAL RESERVED WATER RIGHTS

State Water Rights Documentation

04-24-2000: Cedar Breaks National Monument Water Rights Settlement Agreement

**CEDAR BREAKS NATIONAL MONUMENT
WATER RIGHTS SETTLEMENT AGREEMENT**

This Agreement is made and entered into by the United States of America (United States) and the State of Utah (Utah).

RECITALS

A. The area of Cedar Breaks National Monument lies within both the Cedar City Valley drainage (Area 73) and the Upper Sevier River drainage (Area 61). Utah has initiated a statutory adjudication of water rights which includes the Cedar City Valley drainage entitled, "In the Matter of the General Determination of the Rights to the Use of Water, both Surface and Underground, within the Drainage Area of the Beaver River-Escalante Valley, and All Tributaries in Millard, Beaver, Iron, Washington, Kane and Garfield Counties in Utah," filed in Iron County Civil No. 630504415. This adjudication is commonly referred to as the Beaver River-Escalante Valley Adjudication and contains the majority of the Monument. The United States was joined as a party to the adjudication pursuant to the provisions of 43 U.S.C. § 666. A general "Statement of Water User's Claim" dated July 8, 1964 was filed by the United States which "claims all rights to use the waters within the area of this adjudication proceeding that it may have by reason of the withdrawal of public lands within that area and the reservation thereof for federal purposes." Paragraph 17g of Section IV of the Pre-Trial Order for the Escalante Valley Division, dated August 27, 1970, states: "Protestant [United States] asserts that it has certain water rights by reason of the withdrawal and reservation of public lands in this area. The Revised Determination does not recognize any such right, the State Engineer contends no such right exists. It is agreed between the parties that this issue would be reserved for determination until the court hears the final matters

relative to the Beaver River-Escalante Valley general adjudication proceedings." At this time there is no active statutory adjudication of water rights which includes the Upper Sevier River drainage. In order to remove causes of present and future controversy over use of water at Cedar Breaks National Monument, the United States and Utah have conducted negotiations regarding inchoate reserved water rights claims for Cedar Breaks National Monument.

B. These negotiations have resulted in the settlement of issues and recognition of the federal reserved water rights of the United States for Cedar Breaks National Monument, subject to certain conditions, as set forth herein. Specifically, the issue reserved under Paragraph 17g of Section IV of the Escalante Valley Division Pre-Trial Order as it relates to the water rights of Cedar Breaks National Monument is settled according to the terms contained herein. No other reserved water rights issues of the United States are settled by this Agreement.

AGREEMENT

NOW, THEREFORE, based on the mutual promises contained herein, the parties agree to the following:

1. Cedar Breaks National Monument was created from the earlier Sevier Forest Reserve (reserved by Presidential Proclamation of January 17, 1906, 34 Stat. 3187). The Monument was established by Presidential Proclamation No. 2054 (48 Stat. 1705), dated August 22, 1933; and the Acts of March 7, 1942, 56 Stat. 141 and June 30, 1961, 75 Stat. 198; and the National Park Service Establishment Act of August 25, 1916, 64 Stat. 535, 16 U.S.C. § 1, for the purposes described in those Acts and Proclamations, including the preservation of the spectacular cliffs, canyons, and features of scientific and educational interest, preservation of the area for scientific research, and, pursuant to the National Park

Service Establishment Act, for the conservation of "the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations" 16 U.S.C. § 1.

2. Subject to the provisions of paragraph 7 below, the United States has a reserved right to all water underlying, originating within or flowing through Cedar Breaks National Monument, including perennial, intermittent and ephemeral streams, springs, seeps, lakes, ponds, ground water, and other natural sources of water, pertaining or belonging to the reserved lands, that was unappropriated as of the dates of reservation of the lands now within the boundaries of the monument, which waters are to remain in a free flowing and natural condition, subject to present and future administrative uses necessary to fulfill reservation purposes and the conditions set forth in this agreement.

3. The aliquot part descriptions of these reserved lands are set forth in the applicable proclamations and legislation identified above, and in Appendix A. The date of priority for either in-situ or administrative uses of the United States' federal reserved water rights for Cedar Breaks National Monument will be the date on which the place of use was first reserved from the public domain for monument purposes.

4. The federal reserved water rights recognized hereby include all water rights of every nature and description derived from the federal reserved water rights doctrine, from all sources of water, both surface and underground, and includes all types and kinds of uses whatsoever, and encompasses all claims asserted by or through the United States for Cedar Breaks National Monument as now constituted. This federal reserved water right originates and is defined in federal law. Absent future Congressional or Presidential action, the federal reserved water rights for the lands now constituting

Cedar Breaks National Monument shall not be enlarged, expanded or re-quantified. The parties have not considered and make no agreement with respect to claims by the United States for reserved water rights for national forest purposes at Cedar Breaks National Monument under the Forest Service Organic Act of 1897, 16 U.S.C. Section 475.

5. The National Park Service has both state appropriative and federal reserved water rights at Cedar Breaks National Monument, which the State of Utah hereby acknowledges and recognizes as valid. Appendix B, which is attached hereto and made part of this Agreement, lists the diversion works and springs associated with federal reserved water rights on lands reserved from the public domain and existing state appropriative water rights held by the United States at Cedar Breaks National Monument. The Unnamed and Twin Springs are located on lands within the national monument. Following issuance of the decree in the general water adjudication confirming the federal reserved water right as set forth under Water Users Claim Number 73-1211, the state appropriative water right (Application A35622) shall be terminated. The table in Appendix B shows source of water, priority date, legal location, place of use, type of use, period of use, and existing diversion rates for each spring. Regardless of the basis of the right, the National Park Service may deplete up to 2 acre-feet per annum from the Sevier River basin (Area 61) and up to 3 acre-feet per annum from the Cedar City Valley drainage (Area 73), including water from the sources identified in Appendix B, to satisfy present and future requirements for the operation, administration and protection of Cedar Breaks National Monument, including but not limited to such uses as the construction and operation of visitor and staff facilities. In developing any waters set forth in this paragraph, the sources of water shall be within the boundaries of the monument.

6. The United States agrees to provide at least 180 days prior written notice to the State Engineer before developing and/or using any new source of water, not described in Appendix B, for administrative purposes associated with this federal reserved water right. Notification will include the location and means of diversion, the source, quantity, and diversion rate of water, depth and diameter of well (if applicable), the nature of use, the anticipated date the water will be placed in use, and a map depicting the proposed development. This information will be publicly available.

7. Except for those federal reserved water rights used for administrative purposes, as set forth in paragraph 5, the United States hereby expressly subordinates its federal reserved water rights for Cedar Breaks National Monument to all valid existing perfected water rights and approved applications with priority dates prior to January 1, 1998.

8. Utah shall establish a protection zone to protect wetland resources in the monument. This protection zone shall include all land east of and within one-quarter (1/4) mile of the monument boundary in Sections 24 and 25, T36S, R9W, Salt Lake Basin and Meridian as shown in Appendix C. The State Engineer will not approve applications for new water development within this protection zone unless the applicant can reasonably demonstrate to the State Engineer that the proposed development will not adversely affect or alter the wetlands within the monument in Sections 24 and 25 described above.

9. The United States may, to the extent and upon proof that specific diversions developed in the future are causing or may cause specific and significant adverse impacts to an identifiable resource or resources of Cedar Breaks National Monument, seek enforcement of the rights described herein through State or Federal law. This

notwithstanding, the rights described herein are subordinated to and shall be unenforceable against any water rights presently perfected or approved under State law with priority dates prior to January 1, 1998.

10. For those water sources encompassed within Cedar Breaks National Monument and tributary to the Cedar City Valley drainage (Area 73), the State Engineer will prepare a Proposed Determination for the Water Rights of Cedar Breaks National Monument, and the parties hereto will cooperate to obtain an interlocutory decree. If the parties are not successful in securing such interlocutory decree, this Agreement shall nevertheless remain binding among the parties hereto until a final decree is issued covering these water rights. There is no active water adjudication in the Upper Sevier River drainage (Area 61). When an adjudication is undertaken in this drainage area, the water rights within Cedar Breaks National Monument as set forth in this Agreement and tributary to the Sevier River, will be included in a Proposed Determination for submission to the Court. Until such time, the provisions of this Agreement related to Upper Sevier River drainage area shall be binding on the parties hereto.

11. If any provision of this Agreement is found to be unlawful and of no effect, the remaining provisions shall remain in effect and fully binding on the parties, and if necessary, the parties hereto shall resume negotiations to revise any such unlawful provision.

12. Upon a proper showing of necessity, the provisions of this Agreement may be modified only upon the mutual consent of the parties to this Agreement, which consent shall not be unreasonably withheld.

13. Because of the unique nature of Cedar Breaks National Monument, nothing in this Agreement shall constitute an admission, waiver or precedent as to any party for any

other federal reserved water right claim in the State of Utah.

14. Nothing in this Agreement shall be construed or interpreted to:

- a. in any way affect the water rights of the United States for agencies and interests other than Cedar Breaks National Monument;
- b. establish any standard to be used for the quantification of federal reserved water rights in any other judicial or administrative proceeding;
- c. limit in any way the rights of the parties or any person to litigate any issue or question not resolved by this Agreement;
- d. restrict the power of the United States to reserve water in the future, or to acquire additional rights to the use of water under the laws of Utah; or
- e. restrict the power of Utah or the State Engineer to allocate, administer, or distribute the waters of the State.

15. The water rights of the United States, as set forth and quantified herein, shall be protected under State law in the same manner as any water right originating under State law, without losing its character as or the attributes of a federal reserved water right as provided under federal law.

16. The provisions of this Agreement shall be taken into consideration by the State Engineer in acting upon applications, under State law, for new appropriations or change applications located adjacent to Cedar Breaks National Monument and shall be afforded the same consideration in such proceedings as state appropriative rights; however, the United States shall have the primary responsibility for protecting its own rights and for filing appropriate protests in any proceedings before the State Engineer.

17. Upon entry of a decree covering the water rights of the United States for Cedar Breaks National Monument, the Unnamed Spring and Twin Springs, described in Appendix B, will be administered with priority dates of September 5, 1925 for water right number 73-424 and August 22, 1933 for water right number 73-1211 for monument purposes, respectively, and the state appropriative water right under 73-1211 will be terminated.

18. Upon written request from the United States, the State Engineer will provide information regarding new diversions of water near Cedar Breaks National Monument.

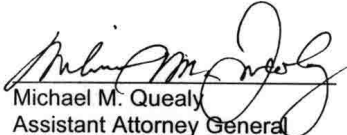
19. This Agreement is executed in duplicate. Each of the duplicate copies bearing original signatures shall be deemed an original.

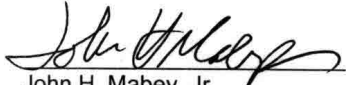
It being resolved and agreed to as delineated above, the undersigned parties express their mutual agreement hereto this 24 day of April, 2000.

For the State of Utah:


Kathleen Clarke
Executive Director, Department
of Natural Resources


Robert L. Morgan
State Engineer

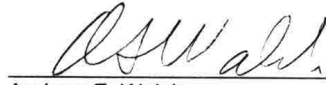

Michael M. Quealy
Assistant Attorney General
Chief, Natural Resources Division


John H. Mabey, Jr.
Assistant Attorney General

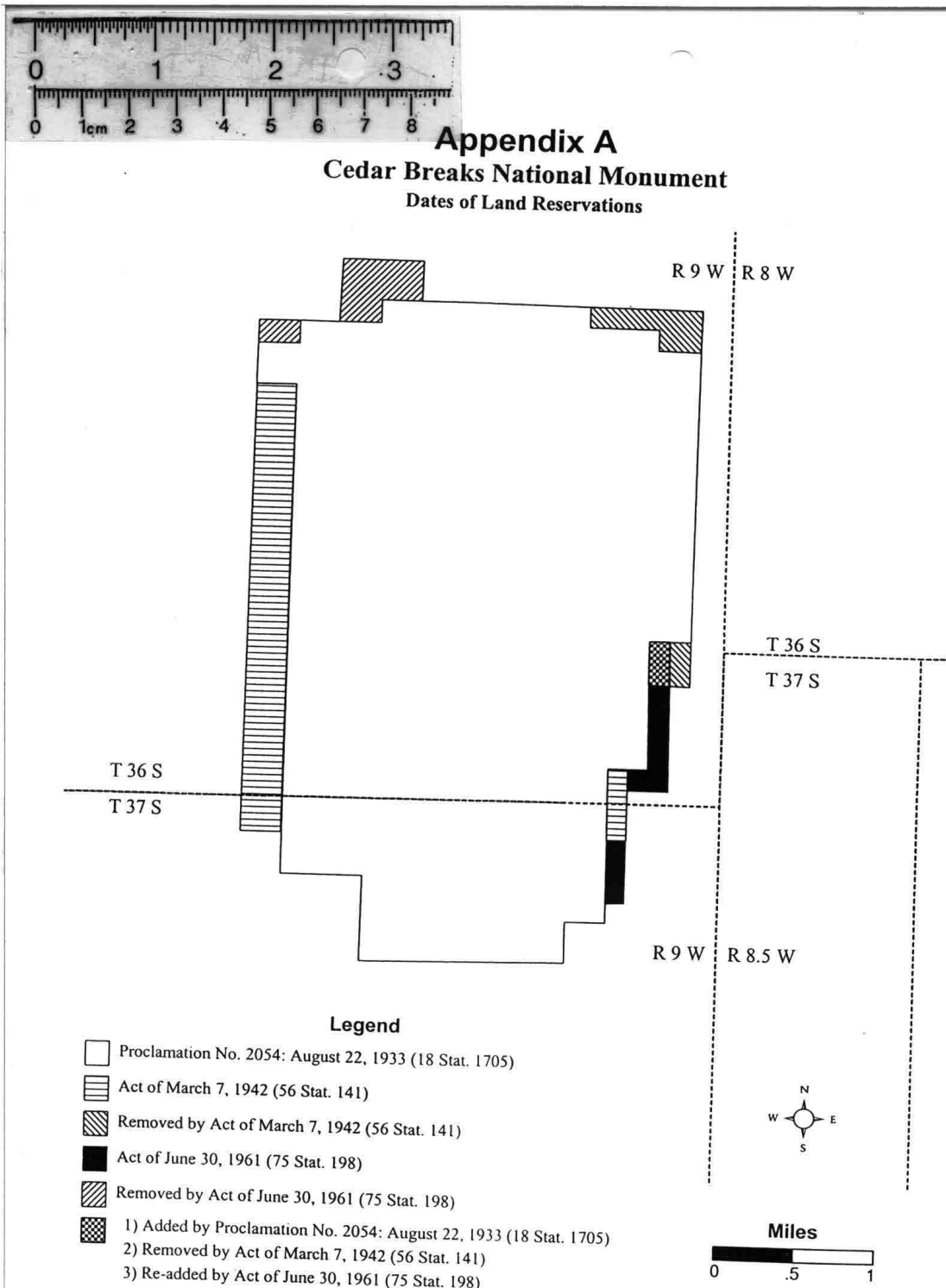
For the United States:


Tom Henry
Superintendent
Cedar Breaks National Monument


Donald Falvey
Superintendent
Zion National Park


Andrew F. Walch
Department of Justice


A. Scott Loveless
Office of the Solicitor

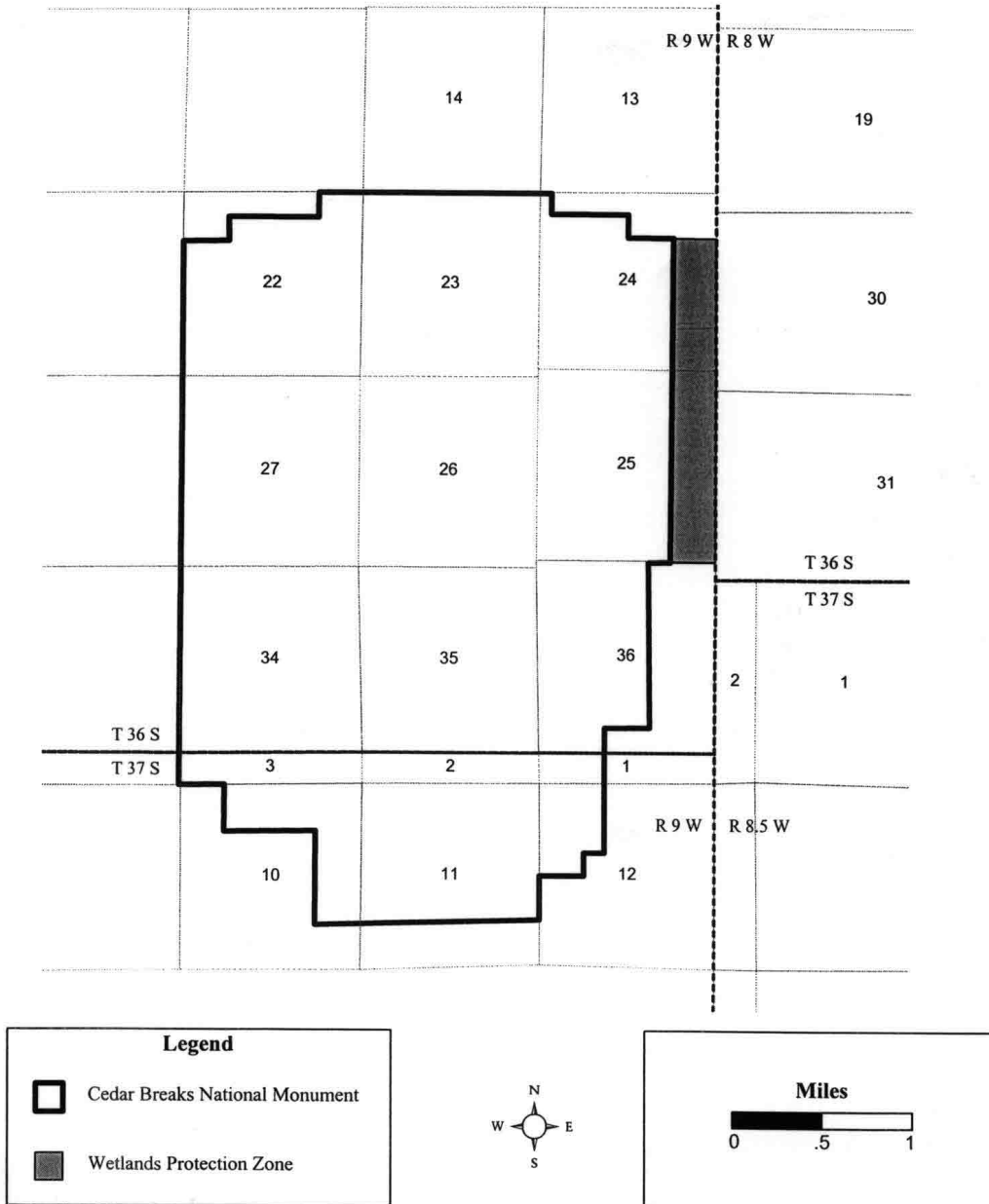


APPENDIX B

Currently Developed Water Rights at Cedar Breaks National Monument

WUC No.	Right Evidenced By	Priority Date and Purposes	Diversion Works	Water Source	Legal Location (Salt Lake Basin & Meridian)	Place of Use	Type of Use	Period of Use
73-424	CERT 1494	September 5, 1925 Monument Purposes	Concrete intake box, 2-3 in. pipeline, pump house, gravity flow to existing reservoir	Unnamed Spring (a.k.a. Blowhard Spring) (Piped and commingled with Twin Springs)	North 1906 ft. West 367 ft. from SE Corner. Sec. 10, T37S, R9W.	Within the Exterior Boundaries of the Monument	Domestic, Administrative and Visitor Center, Campground and Related Monument Purposes	01/01 - 12/31
73-1211	Federal Reserved Water Right Application A35622	August 22, 1933 Monument Purposes	Two collection systems and 600 ft. of 1" plastic pipe gravity flow to existing reservoir	Twin Springs (Piped and commingled with Blowhard Springs)	North 2590 ft. and East 1860 ft. from the SW Corner. Sec. 11, T37S, R9W.	Within the Exterior Boundaries of the Monument	Domestic, Administrative and Visitor Center, Campground and Related Monument Purposes	01/01 - 12/31

Appendix C
Wetlands Protection Zone
Cedar Breaks National Monument



Supporting Hydro Data

April 21, 1997

Notes on Cedar Breaks National Monument appropriate water rights:

According to Tom Henry, CEBR Superintendent, the springs from which CEBR collects water for administrative uses produces an (estimated) average of 20 gallons per minute throughout the year. Tom received this information from the maintenance personnel responsible for the water system.

20 gpm = 32.3 acre-feet per year.
For 6 months of the year, this would be 16.15 acre-feet.

Appropriative Rights

CEBR has two appropriative water rights on file

Twin Springs

Application 3522, Water User Claim Number 73-1211

0.02 cfs for "Sanitation facilities for 120,000 visitors per year at Cedar Breaks National Monument". Priority Date: September 20, 1963

Note: 0.02 cfs = 14.5 acre-feet per year

Blowhard Springs

Application 9386, Certificate 1494, Water User Claim 73-424

0.06 cfs for domestic and culinary purposes at Cedar Breaks Lodge

Priority date: September 5, 1925

Note: 0.06 cfs = 43.5 acre-feet per year

Note2: This water right has both the name of the USA-NPS and Utah Parks Department as owners according to records in the Utah Division of Water Rights. In order to change this, we will need to provide them with a copy of the deed that transferred the title to us from Utah Parks.

The NPS has enough water from the appropriative water rights at CEBR to meet even the largest estimates of demand for future administrative uses if the amounts listed are used in full. However, the individual I spoke with in the Utah Division of Water Rights said there are limits to these rights, which is the amount that was beneficially used at the time of application. This amount will be difficult to determine since accurate records of water use were not kept at this time.



Consumptive Use
Estimate
Prepared by Jeff Hughes

5% increase

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Cedar Breaks National Monument			Year	5% [^] visits/yr	Water use (gal/yr)	Water use (ac-ft/yr)
Visitation and Water Use			1997	626280	525000	1.61
J. Hughes 21-Apr-97			1998	657594	551250	1.69
			1999	690474	578813	1.78
			2000	724997	607753	1.87
			2001	761247	638141	1.96
			2002	799309	670048	2.06
Year	Visitation	% incrise	2003	839275	703550	2.16
1985	385400		2004	881239	738728	2.27
1986	425700	10.46	2005	925301	775664	2.38
1987	430800	1.15	2006	971566	814447	2.50
1988	477500	10.89	2007	1020144	855170	2.63
1989	480300	0.59	2008	1071151	897928	2.76
1990	417300	-13.12	2009	1124709	942825	2.89
1991	458000	9.27	2010	1180944	989966	3.04
1992	392600	-13.90	2011	1239991	1039464	3.19
1993	557800	42.08	2012	1301991	1091437	3.35
1994	711000	27.47	2013	1367090	1146009	3.52
1995	539100	-24.18	2014	1435445	1203310	3.69
1996	596457	10.64	2015	1507217	1263475	3.88
Average = 5.58 % increase/year			2016	1582578	1326649	4.07
Estimate of water use (1996)			2017	1661707	1392981	4.28
is 500,000 gallons/year			2018	1744792	1462630	4.49
			2019	1832032	1535762	4.71
			2020	1923633	1612550	4.95
			2021	2019815	1693177	5.20
Estimates of visitation and water use			2022	2120806	1777836	5.46
for 50 years using 5% increase per year			2023	2226846	1866728	5.73
			2024	2338188	1960065	6.02
			2025	2455098	2058068	6.32
			2026	2577853	2160971	6.63
			2027	2706745	2269020	6.97
			2028	2842083	2382471	7.31
			2029	2984187	2501594	7.68
			2030	3133396	2626674	8.06
			2031	3290066	2758008	8.47
			2032	3454569	2895908	8.89
			2033	3627298	3040703	9.33
			2034	3808663	3192739	9.80
			2035	3999096	3352376	10.3
			2036	4199051	3519994	10.8
			2037	4409003	3695994	11.3
			2038	4629453	3880794	11.9
			2039	4860926	4074833	12.5
			2040	5103972	4278575	13.1
			2041	5359171	4492504	13.8
			2042	5627129	4717129	14.5
			2043	5908486	4952986	15.2
			2044	6203910	5200635	16.0
			2045	6514106	5460667	16.8
			2046	6839811	5733700	17.6

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Linear increase

Cedar Breaks National Monument			Year	Linear ^ in visits/yr	Water use (gal/yr)	(acre-feet)
			1997	613740	514488	1.58
Visitation and Water Use			1998	632908	530557	1.63
J. Hughes	21-Apr-97		1999	652077	546625	1.68
			2000	671245	562694	1.73
			2001	690413	578762	1.78
			2002	709582	594830	1.83
Year	Visitation	% incrise	2003	728750	610899	1.88
1985	385400		2004	747918	626967	1.92
1986	425700	10.46	2005	767086	643036	1.97
1987	430600	1.15	2006	786255	659104	2.02
1988	477500	10.89	2007	805423	675173	2.07
1989	480300	0.59	2008	824591	691241	2.12
1990	417300	-13.12	2009	843760	707310	2.17
1991	456000	9.27	2010	862928	723378	2.22
1992	392600	-13.90	2011	882096	739447	2.27
1993	557800	42.08	2012	901264	755515	2.32
1994	711000	27.47	2013	920433	771583	2.37
1995	539100	-24.18	2014	939601	787652	2.42
1996	596457	10.64	2015	958769	803720	2.47
			2016	977937	819789	2.52
Average =	5.58	% increase	2017	997106	835857	2.57
Estimate of water use (1996)			2018	1016274	851926	2.62
is 500,000 gallons/year			2019	1035442	867994	2.66
			2020	1054611	884063	2.71
Linear increase in visitation and water use .			2021	1073779	900131	2.76
			2022	1092947	916199	2.81
Regression coefficients (visitation)			2023	1112115	932268	2.86
m = 19168.2762238			2024	1131284	948336	2.91
b = -37665307.4068			2025	1150452	964405	2.96
r = 0.718			2026	1169620	980473	3.01
r ² = 0.515			2027	1188788	996542	3.06
s(y) = 96274			2028	1207957	1012610	3.11
			2029	1227125	1028679	3.16
To calculate water use per person,			2030	1246293	1044747	3.21
use 1996 figures for visitation and			2031	1265462	1060815	3.26
water use. Assume all water used is			2032	1284630	1076884	3.31
for visitors (staff is small and has little			2033	1303798	1092952	3.36
impact on water use.			2034	1322966	1109021	3.40
500,000 gallons/596457 visitors =			2035	1342135	1125089	3.45
0.838283 gallons per visitor			2036	1361303	1141158	3.50
			2037	1380471	1157226	3.55
			2038	1399640	1173295	3.60
			2039	1418808	1189363	3.65
			2040	1437976	1205431	3.70
			2041	1457144	1221500	3.75
			2042	1476313	1237568	3.80
			2043	1495481	1253637	3.85
			2044	1514649	1269705	3.90
			2045	1533817	1285774	3.95
			2046	1552986	1301842	4.00

↳ Future needs
- Diversion

April 23, 1997

Cedar Breaks National Monument (CEBR). Named tributary streams within CEBR from:

U.S. Geological Survey map
Cedar Breaks National Monument, Utah
3736-W11249/4x3.5
1936, Scale = 1:15480

Creeks

Rattle Creek
Ashdown Creek
Arch Creek
Shooting Star Creek
Long Valley Creek (tributaries to)

Other drainages

Tri Story Canyon
Adams Canyon
Labyrinth Canyon
Highleap Canyon
Lavender Canyon
Columbine Canyon
Chessman Canyon
Bristlecone Canyon
Den Hollow
Jericho Canyon
Crescent Hollow
Slip Canyon

Ponds

Alpine Pond

Each of the above mentioned creeks and drainages have unnamed intermittent contributing tributaries shown on the map located within CEBR boundaries. CEBR management has acknowledged the existence of many springs within park boundaries that have important to wildlife and vegetation within the park. The park does not have an adequate database to name, locate or describe flow amounts of these springs. Arch Spring has been identified by park staff as an important spring

Several other intermittent drainages (unnamed on this map) which flow to the north, east, and west of CEBR and flow away from the canyon have headwaters beginning in CEBR.

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**Cedar Breaks National Monument
State Appropriative Water Rights**

WUC No.	Right Evidenced By	Priority Date	Diversion Works	Water Source	Legal Location (Salt Lake Basin & Meridian)	Type of Use	Period of Use	Diversion Rate (cfs)	Volume of Use (acre-feet/year)
73-424	CERT 1494	Sep 25, 1925	Concrete intake box and pipeline	Unnamed Spring	N10°54' W 1941 ft. from SW cor., Sec 11, T37S, R9W	Domestic and Culinary	01/01 - 12/31	0.06	1.534
73-1121	App. 35622	Sep 30, 1963	Concrete intake box and pipeline	Twin Springs	N 2590 ft. & E 1860 ft. from SW Cor. Sec. 11, T37S, R9W	Domestic (Sanitation for 120,000 visitors per year)	01/01 - 12/31	0.02	1.534

Note: Cedar Breaks NM presently comigles water from both springs. The volume of use listed for each spring is the present amount used for both springs combined.

Docket Information

Number of Documents in Docket 17

Documents Dated from 4/21/1997 to 4/21/1997

Docket Compiled: 2/2/2011