

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.

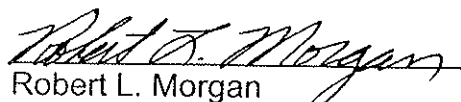
18. Upon written request from the United States, the State Engineer will provide information regarding new diversions of water near Cedar Breaks National Monument.

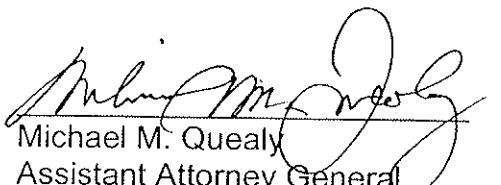
19. This Agreement is executed in duplicate. Each of the duplicate copies bearing original signatures shall be deemed an original.

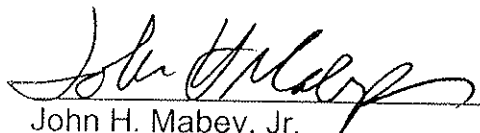
It being resolved and agreed to as delineated above, the undersigned parties express their mutual agreement hereto this 24 day of April, 2000.

For the State of Utah:

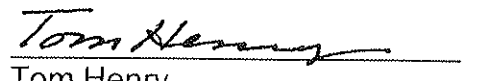

Kathleen Clarke
Executive Director, Department
of Natural Resources

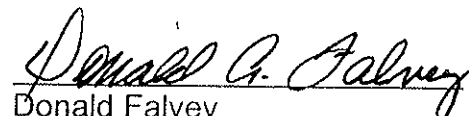

Robert L. Morgan
State Engineer

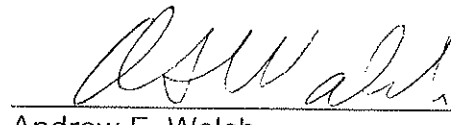

Michael M. Quealy
Assistant Attorney General
Chief, Natural Resources Division


John H. Mabey, Jr.
Assistant Attorney General

For the United States:


Tom Henry
Superintendent
Cedar Breaks National Monument


Donald Falvey
Superintendent
Zion National Park

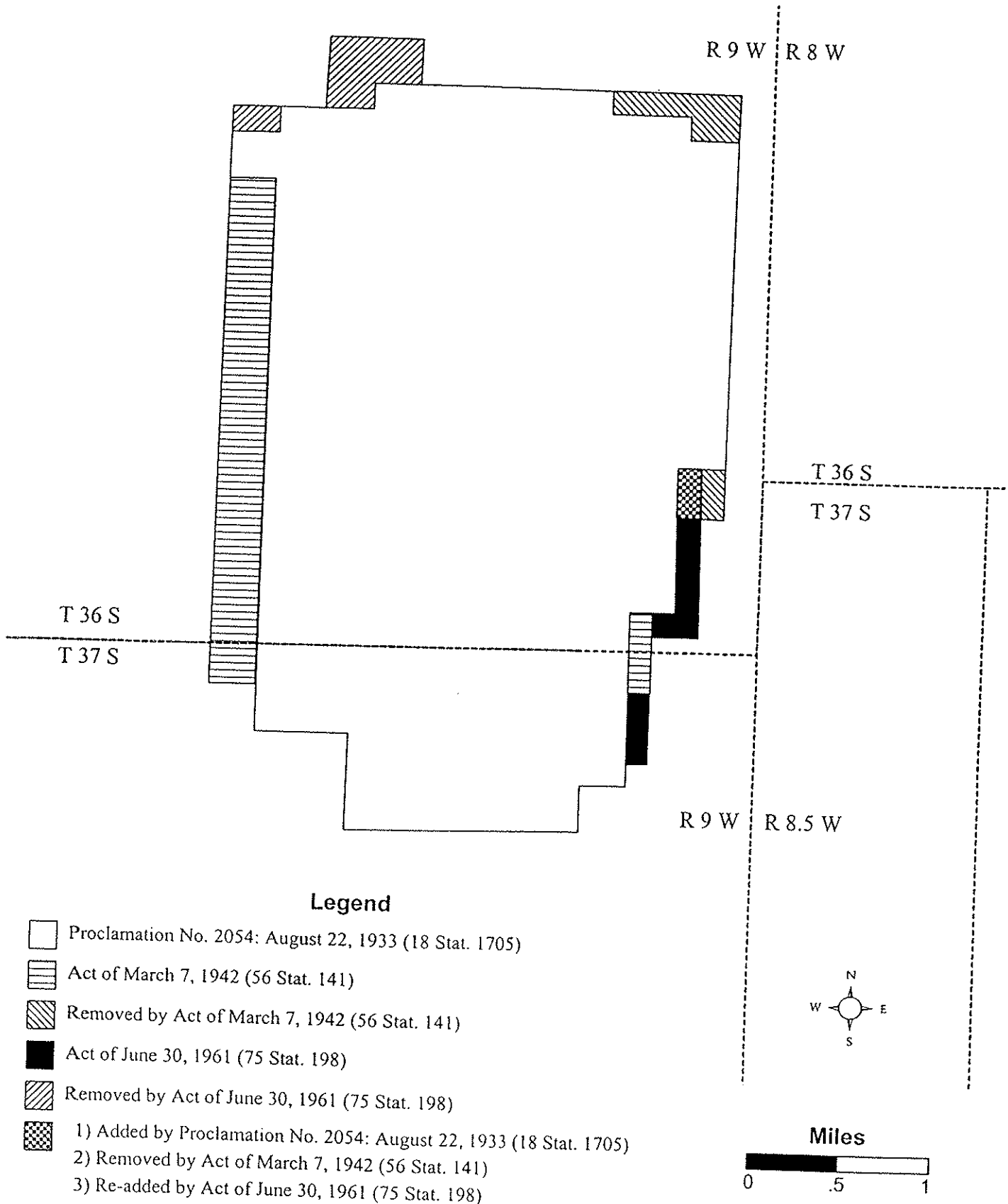

Andrew F. Walch
Department of Justice


A. Scott Loveless
Office of the Solicitor

Appendix A

Cedar Breaks National Monument

Dates of Land Reservations



APPENDIX B

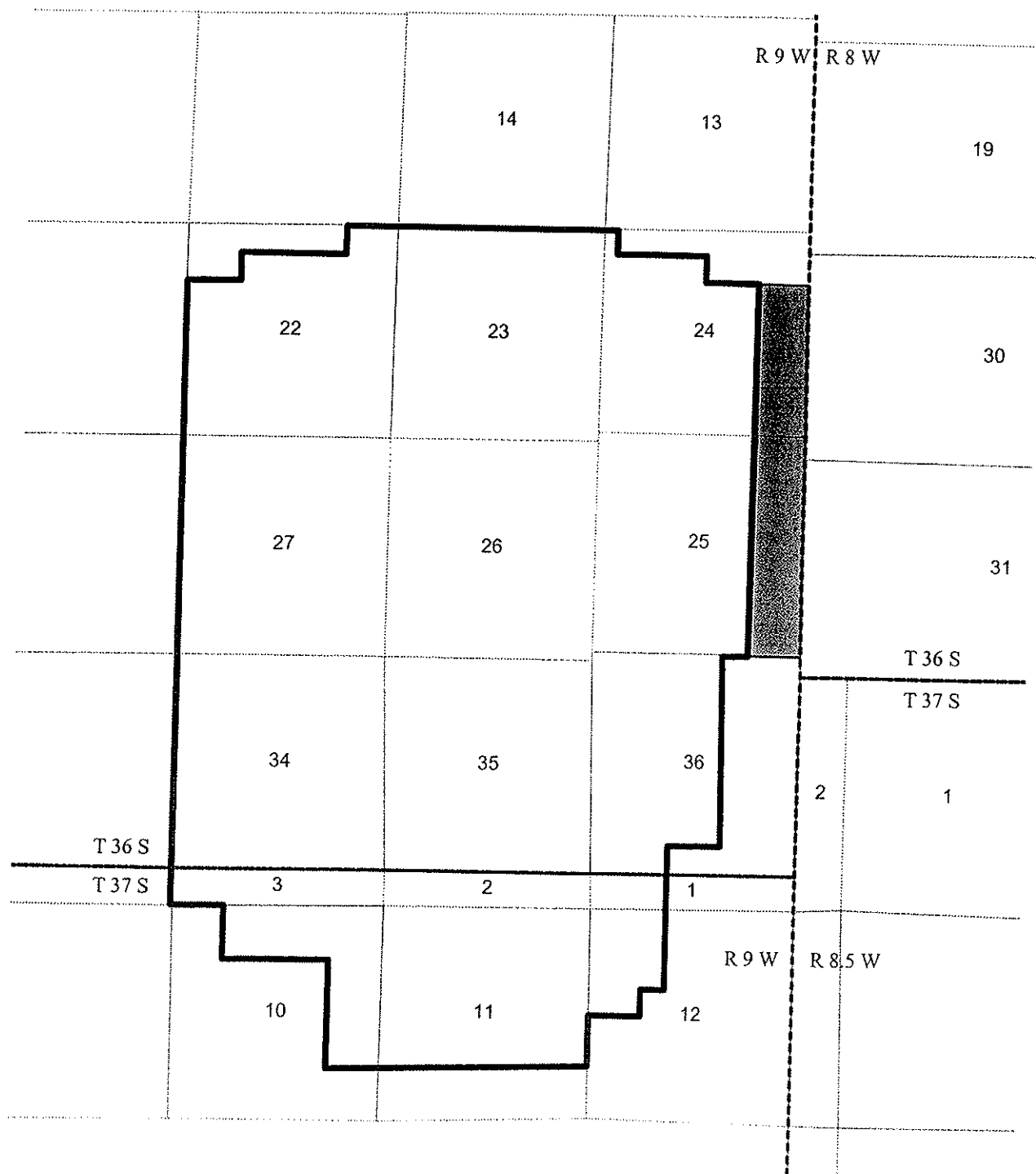
Currently Developed Water Rights at Cedar Breaks National Monument

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 and 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

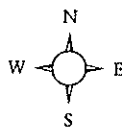
Wetlands Protection Zone

Cedar Breaks National Monument

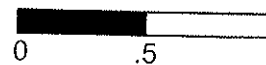


Legend

-  Cedar Breaks National Monument
-  Wetlands Protection Zone



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Appendix A

Cedar Breaks National Monument

Dates of Land Reservations

