



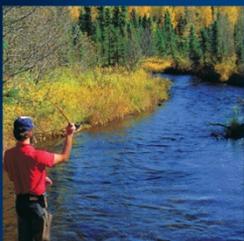
# Water Rights as They Pertain to Well Drilling

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Presented by Shelley Keen

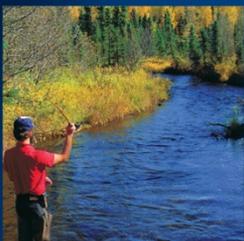
Date January 6, 2009





## Discussion Outline

- What is a water right?
- Who owns the ground water?
- When is a water right required?
- Water rights and drilling permits
- Exceptions to the “water right first” policy
- Some advantages and disadvantages of the domestic exemption
- How long does it take to get a new water right?
- Where is it difficult to get a new water right?
- What about temporary water uses?
- Where can I get more information about water rights?



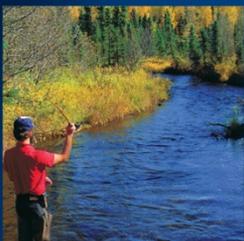
## What is a water right?

- A water right is authorization to use water in a prescribed manner, not to own the water itself. Without diversion and beneficial use, there is no water right.
- Each water right has defined elements, including:
  - Priority date
  - Quantity
  - Point of diversion
  - Place of use
  - Purpose of use
  - Season of use



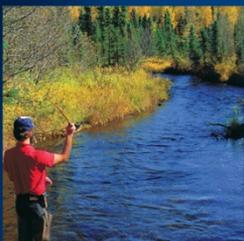
## What is a water right?

- Our system of water rights is intended to minimize competition and protect the public interest.
  - We all use water in various ways. Those uses impact the water supply through depletion and/or pollution.
  - Actions affecting water at one location are evident at other locations.
- **In a time of shortage, the first in time is the first in right**



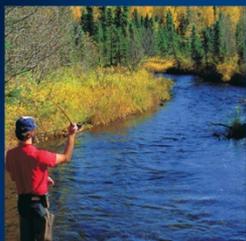
## Who owns the ground water?

- **Idaho Code § 42-226**– “All ground waters in this state are declared to be the property of the state, whose duty it shall be to supervise the appropriation and allotment to those diverting the same for beneficial use.”



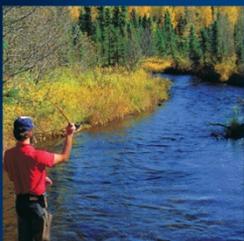
## When is a water right required?

- **Idaho Code § 42-201(2)** – “No person shall use the public waters of the state of Idaho except in accordance with the laws of the state of Idaho. No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists.”



Water rights are required for ground water appropriations – since 1963

- **Idaho Code § 42-229** – “The right to the use of ground water of this state may be acquired only by appropriation. Such appropriation may be perfected by means of the application, permit and license procedure as provided in this act . . . .”

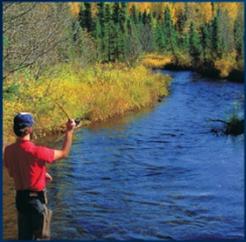


## Drilling permits and water rights

- A drilling permit issued pursuant to Idaho Code § 42-235 is not a water right permit. The two are separate items.
- IDWR normally requires a water right approval before issuing a drilling permit.

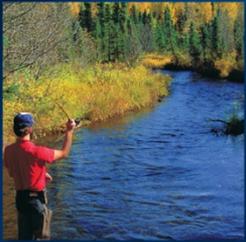
## Why does IDWR require a water right before issuing a drilling permit?

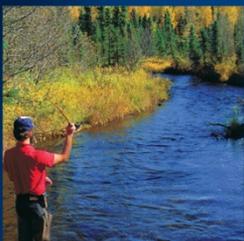
- In the past, some people would begin diverting and using water from a new well without ever getting the required water right.
- By requiring the water right before authorizing well construction, IDWR can ensure compliance with the water right requirement.
- There are a few important exceptions to the “water rights first” policy



# When can I drill a well without waiting for a water right application to be processed?

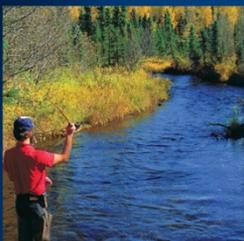
- Exception no. 1: Water right transfers
  - Water right points of diversion (wells or headgates) are described to the nearest 40-acre subdivision (quarter-quarter section) of the Public Land Survey System. Some are described to the nearest 10-acre tract.
  - Adding another point of diversion or moving the point of diversion to another tract (40-acre or 10-acre depending on how the current point of diversion is defined) requires approval from IDWR. The change is called a “transfer.”





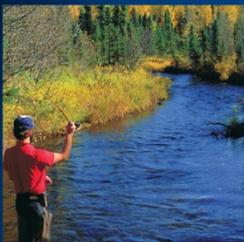
## Exception no. 1: Water right transfers continued

- Replacing a well within the same 40-acre tract or 10-acre tract described on the water right does not require a water right transfer approval from IDWR. In this case, a drilling permit can be issued without a transfer approval.
- Drilling permits issued for replacement wells will require proper decommissioning of the well that is replaced.



## Exception no. 2: The domestic exemption

- **Idaho Code § 42-227** – “The excavation and opening of wells and the withdrawal of water therefrom for domestic purposes shall not be subject to the permit requirement under section 42-229, Idaho Code . . . Rights to ground water for such domestic purposes may be acquired by withdrawal and use.”



## What is domestic use?

- Idaho Code § 42-111 defines domestic purposes for Idaho Code § 42-227
  - (a) The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day, or
  - (b) any other uses, if the total use does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day.



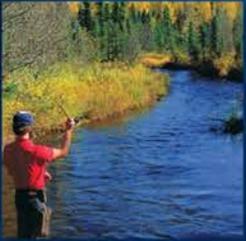
## Domestic use continued

- Multiple ownership subdivisions and multiple ownership business developments do not qualify
- Exemptions cannot be “stacked”



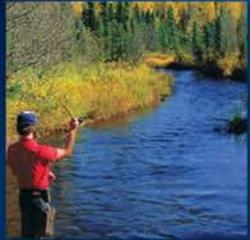
## The start card program

- Although a water right permit is not required for a domestic well, a well construction permit is required
- To expedite the issuance of drilling permits for domestic wells, well drillers can use “start cards” instead of long-form drilling permit applications
  - Pre-pay the application fee
  - When ready to drill, complete the card, fax it to IDWR, and start drilling
  - Usually limited to a 6-inch completed well to divert cold water for single-family residential use.
  - Not available for Part B domestic use (0.04 cfs and 2500 gpd)
- IDWR has discretion to, and usually does, limit the use of start cards within a concern area



## Domestic exemption not available for low temp. geothermal water

- **Idaho Code § 42-233** – “The right to the use of low temperature geothermal resources of this state shall be acquired by appropriation. The appropriation may be perfected by means of the application, permit and license procedure as provided in this chapter for ground water, provided that low temperature geothermal resources shall be utilized primarily for heat value and secondarily for the value as water . . .



## Low temp. geothermal wells continued

- To get a water right permit to use the low temperature geothermal resource (85° to 212°) for domestic or other non-heating purposes, the applicant must show that there is no reasonable alternative
- No start cards for low temperature geothermal resource wells



## IDWR's position regarding the domestic exemption

- IDWR has not conducted a comprehensive study of the cumulative impact of the domestic exemption.
- IDWR has not recommended changing the exemption criteria
- IDWR administers the current exemption

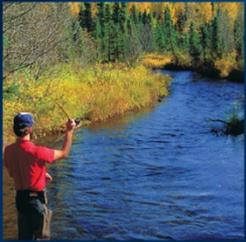


## Some advantages of the domestic exemption

- Quick, simple, convenient method to obtain water
- Less expensive to administer

## Some disadvantages of the exemption

- Does not allow for evaluation of the cumulative effects of small diversions on the water supply
  - Especially important for critical ground water areas, ground water management areas, and moratorium areas
- Does not allow for protests or other public input



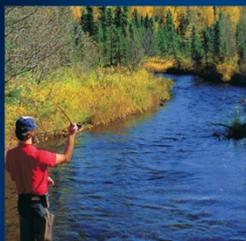
## More disadvantages of the exemption

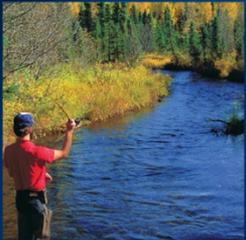
- Potentially prone to abuse by those who would use more water than the statutory limits
- Results in a proliferation of wells
  - Even carefully constructed wells are potential conduits for contaminants into the ground water supply



## Administrative challenges that could accompany a change to the exemption

- About 4500 new wells are drilled for exempt domestic uses each year
- IDWR processes about 400 applications for new water rights, mainly non-domestic uses, each year.
- Processing more than 10X the current number of applications, maintaining paper and electronic files, conducting field examinations, etc., would require more space, more equipment, and a much larger staff.





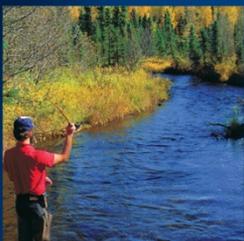
## More administrative challenges for a change to the exemption

- If the domestic exemption is removed, the only opportunity to establish a lawn or garden with a new home in a critical ground water area or ground water management area may be through the transfer process.
  - IDWR's transfer backlog already exceeds the number it can process in one year.



## How long does it take to get a new water right or a transfer?

- Best case for applications not protested
  - 4 to 6 weeks
- Typical for applications not protested
  - 3 to 4 months
- Protested applications
  - 1 to 2 years



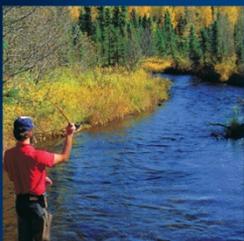
## Criteria for New Water Rights

- Must not reduce the quantity of water available to existing right holders (injury)
- Water supply must be sufficient for the proposed use
- Must be in the public interest
- Must have the financial resources to complete the project



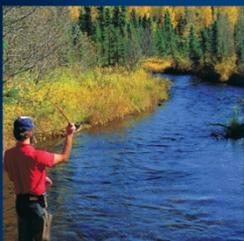
## Criteria for new water rights continued

- Must not be for delay or speculation
- Must not conflict with the conservation of water resources in Idaho
- Must not adversely affect the local economy of the basin where the water originates



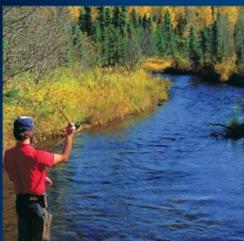
## Criteria for Transfers

- Must not reduce the quantity of water available to existing right holders (injury)
- Must not enlarge the water right
- Must be in the public interest
- Must not conflict with the conservation of water resources in Idaho
- Must not adversely affect the local economy of the basin where the water originates



## Where is it difficult to get a new water right?

- Critical Ground Water Areas (CGWAs) – Ground water supply is not sufficient for current water rights and/or pending water right applications, i.e. the ground water is being mined
- Ground Water Management Area (GWMA) – Approaching CGWA conditions
- Moratorium areas established to:
  - Protect existing water rights
  - Insure compliance with the law
  - Prevent reduction of flows below an established minimum flow



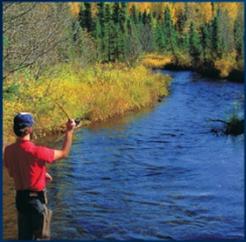
## Critical Ground Water Areas

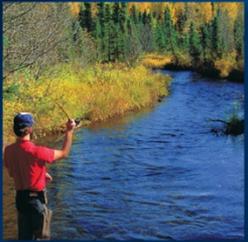
Primarily a southern Idaho phenomenon

- Artesian City (in Twin Falls and Cassia Counties)
- Blue Gulch (in Owyhee and Twin Falls Counties)
- Cinder Cone Butte (in Elmore County)
- Cottonwood (in Cassia County)
- Curlew Valley (in Power and Oneida Counties)
- Oakley – Kenyon (in Cassia County)
- Raft River (in Cassia, Power, and Oneida Counties)
- West Oakley Fan (in Cassia County)

## Ground Water Management Areas

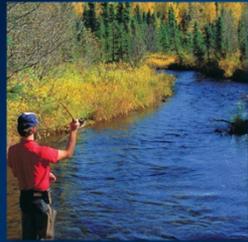
American Falls	(in Power, Bannock, and Bingham Counties)
Banbury Hot Springs	(in Gooding and Twin Falls Counties)
Bear River	(Bear Lake, Franklin, Caribou, Oneida, and Bannock Counties)
Big Wood River	(in Elmore, Camas, Gooding, and Blaine Counties)
Boise Front	(in Ada County)
Bruneau – Grandview	(in Owyhee County)
Lindsay Creek	(in Nez Perce County)
Mountain Home	(in Ada and Elmore Counties)
Rathdrum Prairie	(in Kootenai and Bonner Counties)
Southeast Boise	(in Ada County)
Twin Falls	(in Twin Falls, Gooding, and Jerome Counties)





## Moratorium Areas

- Eastern Snake River Plain, including tributary basins such as the Big Lost River basin.
- Bancroft-Lund Area



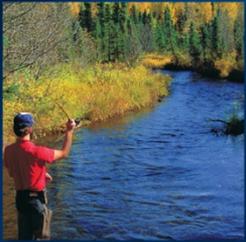
## What about temporary water uses?

- Ground water remediation projects
- Exploration wells
- Research wells
- Construction projects

Either the short duration or lack of a beneficial use make these a poor fit for the water appropriation statutes.

## Three options for temporary water uses

- Part B of the domestic exemption for uses not exceeding 0.04 cfs (18 gpm) and 2,500 gallons per day [Idaho Code § 42-111(1)(b)]
- Temporary permits for projects not exceeding one year and 5 acre-feet [Idaho Code § 42-202A]
- MOUs for ground water remediation and other public interest projects not resulting in a beneficial use







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