

ADMINISTRATOR'S MEMORANDUM

TO: WATER MANAGEMENT DIVISION STAFF

FROM: NORMAN C. YOUNG *NCY*

Transfer Processing No. 15
Adjudication Memo No. 33

DATE: JUNE 3, 1991

RE: TRANSFER APPLICATION PROCESSING & SRBA CLAIM AMENDMENTS
=====

This memo provides direction for amending adjudication claims and filing transfer applications related to both statutory rights (decreed rights, licenses and statutory claims) and Snake River Basin Adjudication (SRBA) claims.

When a statutory right is changed by an approved transfer, the adjudication claim that has been filed on the same statutory right must be amended. Section 42-1409(4), Idaho Code states in part:

"...with respect to any water right for which a change was approved by the director pursuant to sections 42-211 or 42-222, Idaho Code, after filing the notice of claim and prior to filing of the director's report, the claimant shall amend the notice of claim consistent with the determination of the director on the change."

Transfers involving both statutory rights and adjudication claims may fall within one of the following broad categories or scenarios:

- 1) Transfer filed for proposed change or changes made after commencement of adjudication and after filing of adjudication claim, where the adjudication claim matches the statutory right before making the change;

2) Transfer filed for a proposed change or changes made after the commencement of adjudication and after filing of adjudication claim, but the adjudication claim does not match the statutory right before making the change;

3) Transfer filed on an adjudication claim based on beneficial use (i.e.; there is no existing statutory right).

PROCESSING OF TRANSFER APPLICATIONS

In examples no. 1, a transfer application does not need to describe the adjudication claim. However, item A.1. of part 2 of the application should at least reference the adjudication claim number if one has been filed. **The regional office shall attach a copy of the appropriate adjudication claim proof report when forwarding the transfer application to the state office.** The remarks section of part 1 of the transfer application can be used to describe the relationship between the statutory right and adjudication claim.

In example no. 2, where the transfer proposes changes to a statutory right that is recorded differently by an adjudication claim, the transfer application should describe both the statutory right and the adjudication claim. The legal notice must also show the right as recorded by the original decreed/statutory right as well as recorded by the adjudication claim. An example of this advertising format is provided as attachment A. This procedure for filing and advertising transfers should also apply to those situations whereby the adjudication filing(s) claim an expansion of the statutory right based on one or more presumption clauses of Section 42-1416, Idaho Code. However, the Department will not

approve a transfer for the expanded portion of a right since Section 42-222, Idaho Code does not authorize the Department to approve changes which constitute an enlargement of the original right.

In example no. 3 above, where a change is proposed that is documented only by an adjudication claim, field examinations must be conducted by the regions to confirm the use claimed prior to making final recommendations and forwarding the transfer to the state office.

The Water Allocation Bureau shall forward a copy of each transfer within the SRBA to the Adjudication Bureau upon final approval or decision of the application.

ADJUDICATION CLAIM AMENDMENTS

In order to satisfy the requirements of Section 42-1409(4), Idaho Code and simplify the procedure for amending adjudication claims, each approved application for transfer will be treated as the Department's notice of an amendment to the adjudication claim. The Department therefore will not require transfer applicants to file separate adjudication claim amendments.

NOTICE OF PROPOSED CHANGE OF
WATER RIGHT NO. 37-0900

Notice is hereby given that John Doe of Somewhere, ID has applied to the Department of Water Resources to change the following described water right(s) pursuant to section 42-222 of Idaho Code.

WATER RIGHT AS RECORDED

Water Right No. 37-0900

Basis of Right: Decree to J. Jones in case of Jones vs. Smith, dated 12/9/1910 in 1st District Court, Idaho County.

Source: Snake River tributary to Columbia River

Priority Date:

Amount of Water:

Use:

Points of Diversion: SWSW, S22, T1N, R23E

Place of Use: 160 acres in

WATER RIGHT CLAIMED IN SNAKE RIVER BASIN

ADJUDICATION:

Water Right No. A37-0900

Name: A. Jackson

Basis of Right: Decreed Right 37-0900

Source: Snake River tributary to Columbia River

Priority Date:

Amount of Water:

Use:

Points of Diversion: SWSE, S22, T1N, R18E

Place of Use: 160 acres in NENE, NWNE, SWNE, NENW, S28, T1N, R18E.

WATER RIGHT NO. 37-0900 & ADJUDICATION CLAIM NO.

A37-0900 TO BE CHANGED AS FOLLOWS:

Points of diversion: SWSE, SESE, S22, T1N R18E

Place of Use: 150 acres in NENE, NENW, S28 T1N R18E;
SWSW, SESW, S22, T1N R18E.