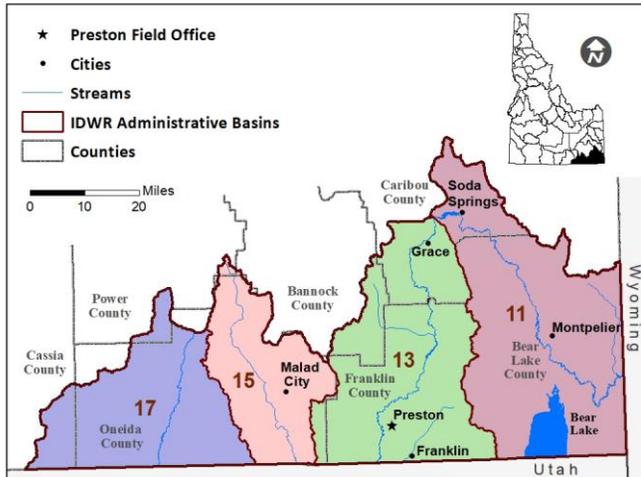


Bear River Basin Adjudication



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Why and what is an adjudication?

The purpose of the general adjudication of water rights is to make a complete and accurate record of all existing water rights. The term "adjudicate" means to settle judicially. A water right adjudication can be described as a "fair, comprehensive, technically correct and legally sufficient determination of existing water rights."

The Idaho Department of Water Resources is acting as an independent expert and technical assistant in the adjudication under state law. IDWR must have a complete and accurate list of all water rights to deliver water to those who are entitled, when disputes on use or delivery arise. Also, the list is needed in order to estimate how much water is available for future development of the water resource.

IDWR does not have a current, or complete listing of all water rights. There are a number of reasons for this. One is that for many years a water right was created simply by diverting the water and putting it to some beneficial use. There are thousands of these water rights which have never been recorded. A small number of water rights have a water right license from the state or a prior decree.

The reason for determining all water rights in one single large lawsuit is to obtain a single decree which is binding upon everyone. One court action is also necessary so there will not be a multiplicity of overlapping lawsuits. Existing decrees will not be invalidated. Rather, they will be updated and legally strengthened by being more accurate as the rights are incorporated into a comprehensive, basin-wide decree.

Another critically important reason for a general adjudication is it will give an Idaho State court "jurisdiction", or legal authority, to determine the water rights of the federal government and the Indian tribes in Idaho.

The federal government's water rights will be determined in a general basin-wide adjudication which will help identify all federal reserved rights so the state will be able to better plan and administer state rights.

An adjudication may seem like a burden to many water users. However, if the "Why?" of the adjudication is kept in mind, future generations of Idahoans will be grateful for the time and effort we are going through today to secure our water for tomorrow.

What is a claim?

There are two different types of filings that are often called "claims". The first is a "statutory claim" that was filed with IDWR to make a record

an existing beneficial use right. In 1978, a state law was enacted requiring persons with beneficial use rights (other than water rights used solely for domestic purposes) to record their water rights with IDWR. The purpose of the statute was to provide some means to make records of water rights for which there were no previous records. However, these records are merely affidavits of the water users, and do not result in a license, decree, or other confirmation of the water right. These recordings, although handy years later, were not confirmed in any way.

The other type of claim is a "Notice of Claim" to a water right that is filed with IDWR in water rights adjudications. An adjudication is a court action for the determination of **existing** water rights, which results in a decree that confirms and defines each water right. IDWR's application/permit/ license procedure is for purposes of establishing **new** water rights.

When an adjudication of a particular source is commenced, IDWR is required to notify the water users of the commencement of the adjudication, and notify the water users that they are required to file Notices of Claims for the water rights with IDWR. IDWR then investigates the Notices of Claims and prepares a report that is filed with the court. Ultimately a court decree of each claim filed confirms those water rights.

What is a water right?

The constitution and statutes of the State of Idaho declare all the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state, and ground waters of the state, to be **public waters**.

The constitution and statutes of the State of Idaho **guarantee the right** to appropriate the unappropriated public waters of the State of Idaho. When a right to the use of public waters is established by appropriation, a water right is established that is a real property right much like property rights in land. The constitution and statutes of the State of Idaho protect private property rights, including water rights.

A water right is the right to **divert** the **public waters** of the state of Idaho and put it to a **beneficial use**, establishing one's **priority date**.

A **priority date** is the date the water right was established. The "priority date" is the date water was first put to "beneficial use", unless the person filed with the state where the priority date starts at the filing date. Please refer to IDWR website for additional information on Surface and Ground Water (typically wells) permit requirements. The priority date is important because the priority date determines who gets water when

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there is shortage. If there is not enough water available to satisfy all of the water rights, then the persons with the oldest (or senior) water rights get their water rights satisfied first and so on in order until there is no water left. It is the persons with the newer (or junior) water rights who do not get water when there is not enough to satisfy all the water rights.

Beneficial uses include such uses as domestic, irrigation, stockwatering, manufacturing, mining, hydro-power, municipal, aquaculture, recreation, fish and wildlife, among others. The amount of the water right is the amount of water put to beneficial use.

A **diversion** is a structure for capturing the water before it is put to use. Typical diversion structures include pumps, headgates, ditches, pipelines, and dams, or some combination. A diversion is generally required to establish a water right. Some public agencies are authorized to acquire water rights without diversions. These water rights are called “instream flow” water rights, and are typically authorized for purposes of protecting some public interest in a natural stream or lake, such as recreation, wildlife, or natural beauty. A water right may also be acquired to water livestock directly from the stream, which are called “instream livestock” water rights.

Water law in Idaho is based on the **appropriation** doctrine, because water rights in Idaho are based upon diversion and beneficial use of water. The appropriation doctrine has also been called “first in time is first in right”, because the priority date determines who gets water when there is not enough to go around. The water right is also called an “appropriation”, and someone who has a water right is said to have “appropriated” water. Simply living next to a stream does not give one a water right.

You may also have heard of something called “riparian rights”. In some states, an owner of land has the right to make a “reasonable use” of ground water underneath the land, or water naturally flowing on, through, or along the borders of the land. A riparian right to make use of the water is not limited by priority date and it cannot be lost by non-use. **Idaho law does not recognize a “riparian right” to divert and use water.**

A water right under the law of the state of Idaho can be established only by appropriation, and once established, it cannot be lost provided the water is used.

I have heard the government is going to start monitoring my domestic well. Is this true?

IDWR does not have the need, the funding, or the staff to monitor all domestic wells. The monitoring scheme reports are not true.

IDWR has a drillers report for thousands of wells, but those reports are not by themselves a record of water rights. Inventorying and adjudicating the domestic wells is important to describe each person’s water right as a real property feature of their land. The adjudication inventory will also catalogue the domestic springs or wells that preceded driller’s reports or where a driller failed to report a constructed well.

I have a licensed water right. Do I need to go through the adjudication process?

Yes, filing a claim for an existing water license or prior decree is required. Changes to parts of a recorded right sometimes occur. The adjudication will update the water right description. In a few cases, the property owner ceased using and exercising the prior right. The adjudication will clear these once existing water rights from the inventory. IDWR makes a thorough examination and notifies any current owner about old recorded water rights. An important point is any unclaimed water right will cease to exist once the adjudication is complete. A slight exception is a domestic well that, at worst, loses only priority date by failing to file a claim in the adjudication.

How will I file a Notice of Claim?

An adjudication claim can be filed as soon as the Adjudication Court issues a Commencement Order. Property owners will receive a Commencement Notice instructing the owner to file a claim for any water right they have by a deadline that is not less than 90 days. The claim can be filed on-line through a computer connected to the Internet or on a claim form available from the IDWR website or from an IDWR office. You may prefer to hire an attorney or a technical expert to assist you in filing the claim. Assistance is available in the IDWR office in Preston. IDWR anticipates holding claim taking workshops in parts of the basins to lend assistance in filing claims.

Checklist of things to have ready when filing your claim:

1. ____If your water right has already been recorded with IDWR, do you have the water right identification numbers assigned by the department? Has your water right been decreed? If so, when and in what court?
2. ____Do you know the priority date of or water right? This is the date that water was first used on the property for some beneficial use such as irrigation, stock water, mining, or recreation regardless of who owns it now or in the past. If you lack documentation of your priority date, a good source may be a neighbor who has lived in the area for a long time. Another source could be electric bills or pump purchase receipts. Family records may have information on when your well or spring was first developed and used.
3. ____Do you have your County Parcel Number? Remember, a block and lot number are not sufficient. The legal description may be on your tax notice from the county assessor or on the deed to your property or other papers relating to your property. Otherwise, you need a legal description of your property including the Township, Range and Section to the nearest quarter-quarter. If you have a plat map of your subdivision or property it may be helpful to attach it to your Notice of Claim.
4. ____Do you know depth to water in your well and the horsepower of the pump in your well?
5. ____How much water have you diverted? There are conversions from gallons per minute (gpm), miners inches, and cubic feet per second (cfs). The claim should be in cfs. The quantity is the maximum rate rather than a total per day or year.
6. ____If there is more than one name on the claim form and the names have an “and” between them all parties must sign. If the names have an “or” or an “and/or” all named may sign, but only one named claimant must sign.
7. ____Have you enclosed the proper fee?

