



# **The Fundamentals Underlying Conjunctive Administration**

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CAMP Advisory Committee

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## **RIPARIAN DOCTRINE VS. PRIOR APPROPRIATION DOCTRINE**

## What is the Riparian Doctrine?

- A system of allocating water among those who possess land surrounding the water source.
- If you own land next to or above the water source, you have a right to use the water.
- Developed and used Primarily in Eastern United States.



## Prior Appropriation Doctrine

- The first person to use a quantity of water from a water source for a beneficial use has the right to continue to use that quantity of water for that purpose.



## Prior Appropriation Doctrine

- Subsequent users can use the remaining water for their own beneficial purposes provided that they do not impinge on the rights of previous users.
- “First in time, first in right”
- Primarily in Western United States.



## Application in Idaho

- Idaho is a *prior appropriation* state.
- In times of water shortage, the earlier (prior) use receives water first.
- Idaho does not recognize *riparian* water uses.



## Add'l Basic Premises – Public Waters

- Idaho law declares all waters of the state, when flowing in their natural channels, including natural springs, lakes, and ground waters of the state to be *public waters*.
- A *water right* is the right to divert the *public waters* of the State of Idaho and place them to a *beneficial use*.

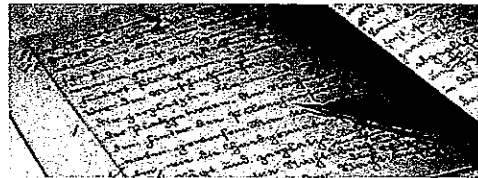
## Public Waters Cont.

- When a right to the use of the *public water* is established by *appropriation*, the resulting *water right* is a real property right.
- The laws of the State of Idaho protect real property rights, including *water rights*.
- The real property right in water is secure so long as it is *beneficially* used.

## How is a water right established in Idaho?

### Constitutional Method

- a.k.a Grandfather Method or Beneficial Use Method.
- Two requirements:
  - Divert water.
  - Put water to beneficial use.
- No forms or recording



## Permit Method

- Fill out an Application for Permit form and file with IDWR.
- Pay fee.
- Application is published.
- Hearing if protested.



## Permit Method

- Once permit is approved, water user generally has 5 years to develop water system.
- Once water system is developed, they submit proof of diversion and beneficial use to IDWR.
- IDWR issues license confirming the use.
- Priority date is the date of the application for permit.

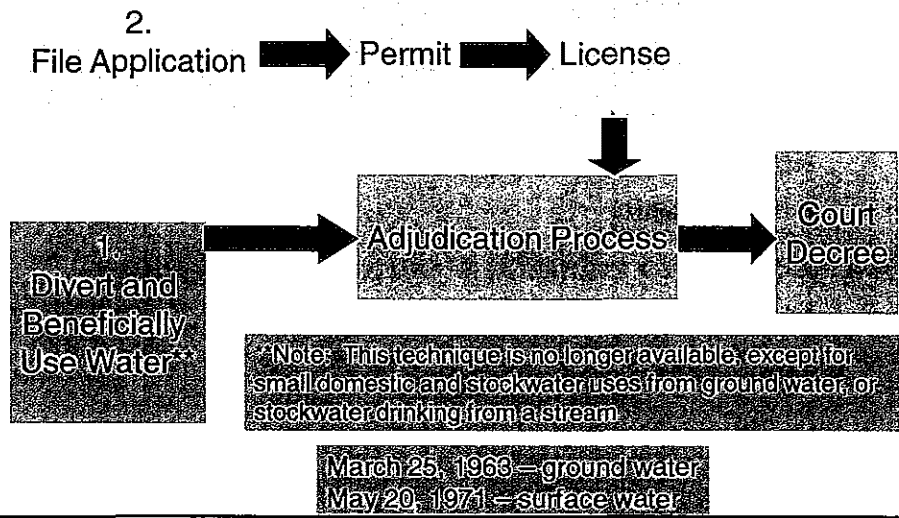
## Permit Method

- Permit process now mandatory
  - Permit process was optional for a long time.
  - A permit has been necessary to establish a water right since 1963 for ground water and since 1971 for surface water.
- Exception to mandatory permit requirement:
  - Domestic uses using ground water.
  - In-stream stockwatering

## Point worth emphasizing

- Small domestics are exempt from license requirements:
  - Homes, Livestock, Camps
    - 13,000 gallons per day.
    - Max of 1/2 acre of irrigation.
  - Any other small use
    - 0.04 cubic feet per second.
    - 2500 gallons per day.

## Two ways to establish water rights in Idaho



## Allocation in times of shortage



### **When Priority Principle will be invoked**

- A senior water user who is not receiving enough water can invoke the priority principle to shut off an upstream junior water user.
  - “Make a Call”
- However, if shutting off the junior water user would be futile, the priority principal will not be invoked against the junior appropriator.
  - “Futile Call”

### **Burden of Proof**

- When arguing a futile call, the burden of proof is on junior to show that its diversion is not interfering with a senior water user’s right.

## Preferences in Times of Shortage

- The Idaho Constitution sets forth the following preference scheme:
  - Domestic uses over all other.
  - Agricultural over manufacturing uses.
  - Mining and milling uses over manufacturing or agricultural uses.

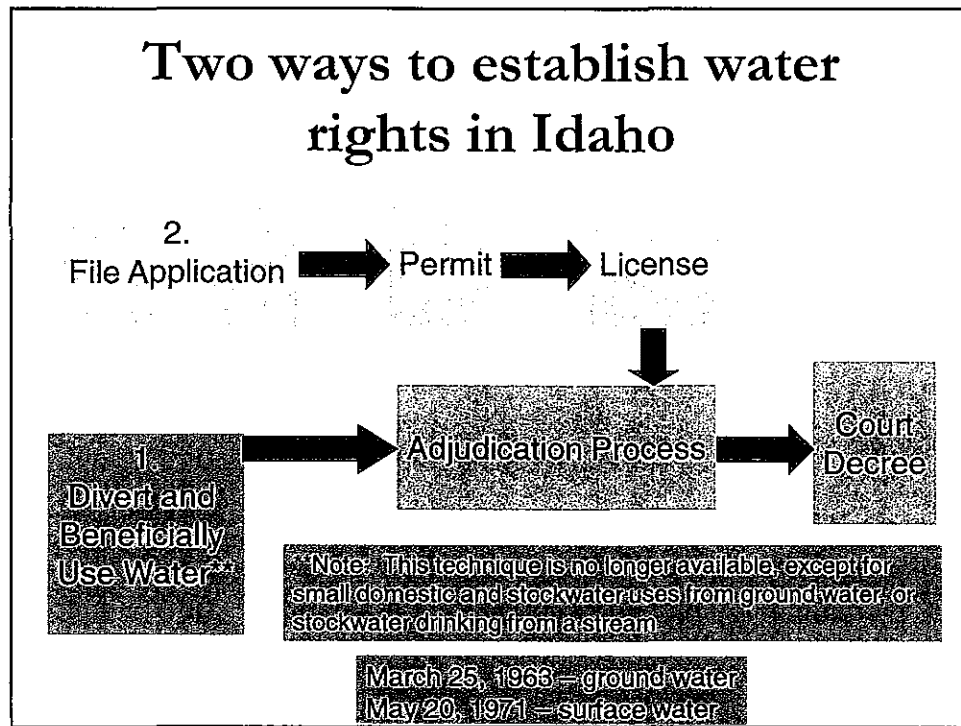
## Preference in Times of Shortage

- Preference means right to condemn
  - Use preferences do not supersede the priority principle. A junior preferred use cannot simply take the water ahead of a senior non-preferred user.
  - Thus, a 1970 priority domestic user can condemn a manufacturing right, but requires payment of compensation.

# Adjudications

## Why adjudicate water rights?

- Before you can manage water, you must first know who is using the water.
  - Constitutional rights must be quantified.
  - Changed water rights must be clarified.
  - Unused water rights removed from the books.
  - Federal and tribal water rights must be determined.



## What is Conjunctive Administration?

## **The Legal Definition:**

“The legal and hydrologic integration of administration of the diversion and use of water under water rights from surface and ground water sources, including areas having a common ground supply.”

## **The Simplified Definition:**

Determining how junior ground water rights impact senior surface water rights.

## **Hydraulic Connection Between Surface and Ground Water Rights**

- Idaho law recognizes the connection between ground water rights and surface water rights.
- Idaho applies prior appropriation doctrine.
- Not the same in all states.

## **Didn't the SRBA Answer the Issue of Administration?**

- Adjudication and Administration are separate tracks.
- Adjudications establish the basic building blocks upon which administration rests.

## **Why is Conjunctive Administration So Difficult?**

- Water law originally was developed to manage surface water.
- Effects are immediate, visible and down-stream only stream only.
- With ground-water, the effects exist but are more difficult to identify.
  - Effects are spatially distributed.
  - Effects are spread out over time.

## **Models Are Critical Tools In Conjunctive Administration**

- Because of this difficulty, a ground water model is key.
- A model helps inform how ground water uses impact surface water uses.

## Questions to keep in mind during CAMP process

- What are the drivers to administration?
- What role can/will modeling play? Can modeling information help better inform water users?
- How will the model used for administration be developed?
- Are there solutions short of a call for conjunctive administration or curtailment?