

ADJUDICATION MEMORANDUM #4

TO: Adjudication Section and Region Staff

FROM: Jeff Peppersack, Water Allocation Bureau Chief

SUBJECT: Domestic and/or Stockwater Claims

REVISED: October 30, 2013



The definition of domestic use for purposes of both the adjudication statute and the exception to the ground water appropriation permit requirement is set forth at Section 42-111, Idaho Code, which provides:

(1) For purposes of sections 42-221, 42-227, 42-230, 42-235, 42-237a, 42-242, 42-243 and 42-1401A, Idaho Code, the phrase "domestic purposes" or "domestic uses" means:

(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.

(2) For purposes of the sections listed in subsection (1) of this section, domestic purposes or domestic uses shall not include water for multiple ownership subdivisions, mobile home parks, commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in subsection(1)(b) of this section.

(3) Multiple water rights for domestic uses or domestic purposes, as defined in this section, shall not be established or exercised in a manner to satisfy a single combined water use or purpose that would not itself come within the definition of a domestic use or purpose under this section. The purpose of this limitation is to prohibit the diversion and use of water, under a combination of domestic purposes or domestic uses as defined in this section, to provide a supply of water for a use that does not meet the exemption of section 42-227, Idaho Code, and is required to comply with the mandatory application and permit process for developing a right to the use of water pursuant to Title 42, Chapter 2, Idaho Code.

Idaho Administrative Procedures Act (IDAPA) 37.03.01.030(d) (also known as the Adjudication Rules) provides domestic use includes single-ownership, multiple family domestic uses, so long as the total amount of water diverted does

not exceed 13,000 gallons per day. This rule continues to apply to part (1)(a) of the definition.

For uses meeting part (1)(b) definition:

1. All uses of ground water meeting the definition of domestic may be established by beneficial use.
2. Uses that meet the subsection (1)(b) definition may be claimed as domestic on the small domestic and/or stock form, and the filing fee is \$25.00.
3. In the SRBA, only uses meeting the definition of part (1)(a) qualify for the deferral procedure for small domestic and stockwater claims. Uses that can be claimed as domestic under part (1)(b) of the statute do not qualify for the deferral procedure. The order providing for the deferral procedure in the SRBA specifically refers to Section 42-1405(A), Idaho Code, as it appears in the 1988 Supplement to Idaho Code, before the new statute was adopted. Contrarily, uses meeting the definition of part (1)(b) in the Coeur d'Alene-Spokane River Basin Adjudication qualify for the deferral procedure.

Note the two subsections of the definition are mutually exclusive. Either the use meets the definition in subsection (1)(a), or it meets the definition in subsection (1)(b). Part (3) of Section 42-111, Idaho Code, prohibits division of one water use into multiple claims to bring each claim within the quantitative limitations of subsections (1)(a) and (b). This is commonly referred to as stacking domestic rights.

Note also that a domestic ground water right from low temperature geothermal water cannot be perfected by beneficial use after July 1, 1987. Section 42-233, Idaho Code recognizes the validity of domestic water rights for use of low temperature geothermal water perfected by beneficial use prior to July 1, 1987. The use completed after July 1, 1987 must be established by the filing of an application for permit and subsequent approval of the permit. For more information, see Adjudication Memo No. 54.

The following sections contain further discussion as to what uses will or will not qualify as domestic under the definition. For some examples of types of domestic claims, including examples where more than one use or home is claimed from the same well, see Appendix 1. The definition of stockwater use and the uses that will or will not qualify under that definition are addressed in part III below.

I. Subsection (1)(a) domestic uses:

- a. Campgrounds and organization camps: Based on statute and rules, there are five prerequisites, as described below. Uses that meet these prerequisites may be claimed on the small domestic and/or stock form with a \$25.00 fee, are exempt from the permit requirement, and are subject to the deferral procedure.
 - i. The total amount of water claimed to be diverted pursuant to the water right claimed can not exceed 13,000 gallons per day.

- ii. The total amount of land claimed to be irrigated can not exceed 1/2 acre per claim, and must be in connection with the campground. If multiple claims are filed, this may be considered stacking and recommendations would be limited to 1/2 acre of irrigation.
 - iii. Use must be for a campground or organization camp. This is not limited to "park and camp" campgrounds, but also includes campgrounds with trailer hook-ups and/or cabins or picnic/rest areas.
 - iv. The campground must be in single-ownership, but can be multiple family. Single-ownership means the entire campground for which water is claimed must be owned by the same person or group of people. Water for several vacation cabins, each owned by a different person or group of people, does not qualify as one campground use; separate claims must be filed for water use on properties owned by different persons.
 - v. The campground or organization camp must not be a commercial or business establishment. In other words, a campground owned by a non-profit organization or public agency qualifies. A campground operated for profit (such as a KOA campground), does not qualify.
 - vi. Note "owned by a group of people" means each member in the group is an owner of the entire facility. Individual ownership of individual parcels is not the same, even though all of them together can be said to own all of the parcels.
- b. Residential use: There are five prerequisites for a residential use to be claimed as a domestic use on the small domestic and/or stock form. These have a \$25.00 fee, and are exempt from the ground water mandatory permit requirement, and subject to the deferral procedure.
- i. The total amount of water claimed to be diverted pursuant to the water right claimed can not exceed 13,000 gallons per day.
 - ii. The total amount of land claimed to be irrigated can not exceed 1/2 acre, and must be in connection with the household. The 1/2 acre limitation is a per claim limitation, not a per residence limitation.
 - iii. The use must be for a residence or use in connection with the household.
 - iv. The residential facility must be in single-ownership, but can be multiple family. For example, two houses owned by the same person or group of people may be claimed on the small domestic and/or stock form if the use claimed otherwise qualifies.
 - v. The use can not be for a commercial or business establishment.
 - 1. This is the element of the definition that is the most difficult to define. Questions have arisen concerning whether residential rental property is a commercial use, whether property used for farm related activities is a commercial use, whether water for a business operated out of the owner's residence must be claimed as a commercial

use, etc. The focus will be on whether the use is primarily residential; if the use is primarily residential it will be deemed domestic even if it has some aspects that are arguably commercial.

- a. Single family houses: A house used as a residence by a single family is a domestic use, even if it is a rental. A house used solely for a business (such as some day care centers and some offices) is a commercial use. If the house is used as a residence, but the resident uses part the house for a business (such as a beauty shop in the basement or a lawn mower repair shop in the garage) the use is domestic.
- b. Multiple family buildings (duplexes, multiplexes, apartment buildings): A multiple family residence can be a domestic use if it otherwise meets the qualifications above (single ownership, etc.) even if some or all of the units are rentals.
- c. Non-profit boarding houses are domestic uses because they are primarily residential, but boarding houses operated for profit are commercial uses because they are primarily a business, even if the owner lives there.
- d. Mobile home courts (specifically excluded by statute) and hotels are commercial uses, even if the owner occupies one of the units.
- e. "Farmstead" uses are domestic uses. For example, if the claimant uses water for a home, plus an outbuilding for tractor maintenance, plus another outbuilding for storing potatoes, etc., the use is domestic if it otherwise meets the qualifications above (single ownership, etc.)

II. Subsection (1)(b) domestics: These uses may be claimed on the small domestic and/or stock form with a \$25.00 fee, and are exempt from the ground water mandatory permit requirement. They are not subject to the deferral procedure in the SRBA, but are deferrable in the Coeur d'Alene-Spokane River Basin Adjudication.

- a. There is only one prerequisite for a subsection (1)(b) domestic: the amount of water claimed can not exceed a diversion rate of 0.04 cfs and a diversion volume of 2500 gallons per day.
 - i. Of course, that's the easy part. The hard part is knowing what to say when a claimant asks, "How do I know how much water to claim?"
 - ii. The bottom line, as always, is the claimant should claim the amount used, and the only way to know the amount used is to measure it. However, the Environmental Protection Agency has a

publication called "Individual Water Supply Systems" (1982), which contains a table useful in estimating the amount of water used in various types of establishments. A version is reproduced in Appendix 2.

- iii. Claimants can claim an irrigation use as a subsection (1)(b) domestic. 2500 gallons is enough water to cover 8000 square feet of land (slightly less than 0.2 acres) to 0.50 inches deep. The application of 0.50 inches of water per day is more than sufficient for most lawn and landscape irrigation.
 1. If the claimed "domestic" use is for irrigation of more than 8000 square feet, the agent and/or claimant can consult the reference in Administrator's Miscellaneous Memorandum #16, *Crop Consumptive Use for Water Right Review*. This will help determine if 2500 gallons per day is sufficient to irrigate the area claimed.
 2. An example where this situation may apply is a claimant commenced irrigation use after the mandatory permit statute and irrigates less than 8000 square feet of land. The claimant may file a claim for domestic use and the agent would limit the use to less than 2500 gallons per day in the recommendation.

III. Stockwater

- a. Section 42-1401A(11), Idaho Code, defines stockwater as the use of water solely for livestock or wildlife where total use does not exceed 13,000 gallons per day, but domestic use can include livestock use. Uses that meet the stockwater definition may be claimed on the small domestic and/or stock form with a \$25.00 fee, are exempt from the permit requirement for ground water, and subject to the deferral procedure. Instream stockwater, of course from surface water, is exempt from the permit requirement in all circumstances and is subject to the deferral procedure. If the claimant wishes to claim an out-of-stream diversion associated with an instream stockwater use, the claimant must first file notice under Section 42-113(3)(c), Idaho Code, and then file their adjudication claim.
- b. Note that the small domestic and/or stock form may be used for domestic and/or stockwater claims. Stockwater use therefore can be, but does not have to be, claimed on the same form with domestic use. Stockwater use can also be a commercial or business use, since the definition of stockwater does not contain any commercial or business use limitation.
- c. Stockwater use may also include dairy use on the small domestic and/or stock form if it is in conjunction with stockwater use and the total use is 13,000 gallons per day or less. (In other words, if the claimant has a dairy, but someone else keeps the cows, then it is a commercial use that must be claimed on the irrigation and other form, even if the use is 13,000 gallons per day or less.) If the claim is for more than 13,000 gallons per day, it must be filed on the irrigation and other form, and the amount of water

claimed for dairy use should be stated separately from the amount of water claimed for stockwater use, and the dairy use should be listed as commercial use. For assistance determining quantity to claim and if the claimed stockwater use will meet the definition, see the table in the instructions attached to the claim form.

- IV. Small domestic and/or stock form claim fees
 - a. A flow chart for determining claim fees is in Appendix 3.
- V. Irrigation and other form domestic and stockwater uses
 - a. Domestic and stockwater uses that must be claimed on the irrigation and other form (usually because they exceed the 13,000 gallon per day limitation) should still be designated as domestic and stockwater use on the longer form.
 - b. Where a multiple unit residential facility is claimed on one form because it is in single ownership, but is claimed on the irrigation and other form because it is in excess of the 13,000 gallon per day limitation or the ½-acre irrigation limitation, the irrigation use should be claimed separately as irrigation, and the other uses should be claimed separately as domestic use.
 - c. Highway stations and national guard stations, used for storage and maintenance of vehicles and to provide restrooms for staff, do not qualify as domestic under subsection (1)(a) but may qualify under subsection (1)(b). They may be labeled as domestic uses for data entry purposes, whether or not they qualify as domestic under subsection (1)(b). They are not within the definition of domestic use for purposes of the deferral procedure.
 - d. Churches do not qualify as domestic under subsection (1)(a) but may qualify under subsection (1)(b). They may be labeled as domestic uses for data entry purposes. They are not within the definition of domestic use for purposes of the deferral procedure. This is true even if a house for the minister is included with the church, because the purpose of use is not primarily for a household.
 - e. The fee for domestic and stockwater claims that do not meet the statutory definition is \$50.00 per claim and \$100.00 per cfs. See IDAPA 37.03.01.35.04.a.

APPENDIX 1. Guidelines for recommending small domestic beneficial use claims (\$25.00 filing fee) with a ground water source in the SRBA and the CSRBA

Often, small domestic uses are exempt from permitting requirements. However, when the legislature refined the definition of domestic uses in Section 42-111, Idaho Code, in 1995, its statement of purpose said,

The exemption is not intended to provide a means by which several water uses, each individually meeting the definition of Section 42-111, can be utilized together to supply water for a use that requires a water right to be developed under the provisions of Section 42-229, or that could only have been developed under the constitution prior to March 25, 1963.

The legislature, in its statement of intent, went on to say,

The definition, as amended in 1990, was intended to allow a water right for a home with up to one-half acre of irrigation and/or a limited number of livestock, to enjoy some benefits of special consideration or reduced processing requirements under the law. The definition was also intended to allow a second home to be added to an existing water system and enjoy the same benefits. The definition was not intended to allow unrestricted development of a new water use by adding or combining 13,000 gallon per day increments.

The review of domestic claims, especially those from a single well with multiple domestic uses may be tied to whether the domestic use was developed as part of a subdivision. Section 50-1301(16), Idaho Code, sets forth the state's definition of a subdivision. In general, Section 50-1301(16), Idaho Code, states five or more lots divided with the intent for development is a subdivision. If presented with a multiple ownership scenario that does not coincide with an example below, consult the attorney assigned to the basin.

It is important to remember that more than one pump may be installed in a single well. Each pump represents a separate "system" and each system must have its own claim or claims.

Example 1

1 claim for 1 home from 1 or more wells. The home may or may not be in a subdivision as defined by Section 50-1301(16), Idaho Code.

For SRBA and CSRBA:
Recommend the claim for 1 home.
Add conditions N11 and N13 to the recommendation.

Example 2

1 claim for 2 or more homes from one well, single ownership of the homes. Homes are not in a subdivision as defined by Section 50-1301(16), Idaho Code. Well does not supply a mobile home park.

For SRBA and CSRBA:
1 recommendation can list all of the homes.
Add conditions N11 and N13 to the recommendation.
The total combined irrigation for all of the homes is limited to ½ acre.

Example 3

1 claim for 2 or more homes from one well, and homes are in multiple ownership.
Homes are not in a subdivision as defined by Section 50-1301(16), Idaho Code.
Well does not supply a mobile home park.

- For SRBA: If the claim was filed prior to the revision of the Adjudication Rules in 2007 (IDAPA 37, Title 03, Chapter 01) a separate claim was required for each home. If the claim was filed after 2007, see below.
- For SRBA late claims and CSRBA:
 - 1 recommendation can list up to 4 homes.* All owners should be listed separately.
 - Add conditions N11 and N13 to the recommendation.
 - The total combined irrigation for all of the homes is limited to ½ acre.
 - There must be no valid competing claims.
 - Reviewing agent needs to confirm person who filed claim has authority to file on behalf of other owners.

* If more than 4 homes are claimed, consult the attorney assigned to the basin to determine if homes are in a subdivision.

Example 4

Multiple claims for multiple homes (1 claim for each home) from one well, and homes are in multiple ownership.
Homes are not in a subdivision as defined by Section 50-1301(16), Idaho Code.
Well does not supply a mobile home park.

For SRBA and CSRBA: All claims with a priority date earlier than March 20, 1995, may be recommended. Conditions N11 and N13 apply.
Any claims with a priority date after March 20, 1995, must be evaluated to determine if a stacking of domestic rights has occurred.

Example 5

1 Claim for 2 or more homes from one well, and the homes are in single or multiple ownership.
Homes are in a subdivision as defined by Section 50-1301(16), Idaho Code.

For SRBA late claims and CSRBA:
1 recommendation can list 1 home with 13,000 gallons per day and up to one half (½) acre of irrigation.
Conditions N11 and N13 apply.
OR, multiple homes can be recommended on one claim under Section 42-111(1)(b).**

Example 6

Multiple claims for multiple homes (1 claim for each home) from one well, and the homes are in multiple ownership. Homes are in a subdivision as defined by Section 50-1301(16), Idaho Code.

For SRBA and CSRBA: A maximum of 1 claim may be recommended. Conditions N11 and N13 apply. All others must file an application for permit.

******A domestic use claimed under Section 42-111(1)(b), Idaho Code, has no limit on the number of homes served. The only limitations are the diversion rate cannot exceed 0.04 cfs and the volume diverted cannot exceed 2,500 gallons per day. Therefore, it may be possible that claims that cannot be recommended consistent with the examples above could be recommended as a “part b” domestic use. However, the claimant should be notified and offered the opportunity to file an Application for Permit for any claimed water uses that cannot be recommended with the 13,000 gallon per day limit unless the claimant specified the water use should be limited to 2,500 gallons per day.

When making a recommendation for a beneficial use claim for a water system with multiple homes, the earliest priority date that can be recommended is the date the last home was added to the system. The claimant should be contacted if there was a significant period of time between when the first home was added to the system and the last home was added to the system, and the if the earlier priority date has been claimed. The purpose of the contact is to give the claimant the opportunity to file an additional claim or claims or an application for permit.

Section 42-111(3), Idaho Code, addresses the stacking of domestic rights. Department staff with additional questions regarding evaluating claims for stacking domestic uses should consult the attorney assigned to the basin.

APPENDIX 2. PLANNING GUIDE FOR WATER USE

Type of Establishment Gallons per day:

Airports (per passenger) 3-5

Apartments, multiple family (per resident) 60

Bath Houses (per bather) 10

Camps:

Construction, semi permanent (per worker) 50

Day, with no meals served (per camper) 15

Luxury (per camper) 100-150

Resorts, day and night, with limited plumbing (per camper) 50

Tourist with central bath and toilet facilities (per person) 35

Churches (per person) 5

Cottages with seasonal occupancy (per resident) 50

Courts, tourist with individual bath units (per person) 50

Clubs:

Country (per resident member) 100

Country (per nonresident member present) 25

Dwellings:

Boardinghouses (per boarder) 50

Additional kitchen requirements for nonresident boarders 10

Luxury (per person) 100-150

Multiple-family apartments (per resident) 40

Rooming houses (per resident) 60

Single family (per resident) 50-75

Estates (per resident) 100-150

Factories (per person per shift) 15-35

Highway rest area (per person) 5

Hotels:

With private baths (2 persons per room) 60

Without private bath (per person) 50

Hospitals (per bed) 250-400

Institutions other than hospitals (per person) 75-125

Laundries, self-serviced (gallons per washing, i.e., per customer) 50

Motels:

With bath, toilet and kitchen facilities (per bed space) 50

With bed and toilet (per bed space) 40

Parks:

Overnight with flush toilets (per camper) 25

Trailers with individual bath units, no sewer connection (per trailer) 25

Trailers with individual bath units, connected to sewer (per person) 50

Picnic:

With bathhouses, showers and flush
toilets (per picnicker) 20

With toilet facilities only (per picnicker) 10

Type of Establishment Gallons per day:

Restaurants:

With toilet facilities (per patron) 7-10

Without toilet facilities (per patron) 2 1/2-3

With bars and cocktail lounge (additional quantity per patron) 2

Schools:

Boarding (per pupil) 75-100

Day with cafeteria, gym and showers (per pupil) 25

Day with cafeteria but no gym or showers (per pupil) 20

Day without cafeteria, gym or showers (per pupil) 15

Service stations (per vehicle) 10

Stores (per restroom) 400

Swimming pools (per swimmer) 10

Theatres:

Drive in (per car space) 5

Movie (per auditorium seat) 5

Workers:

Construction (per person per shift) 50

Day (school or offices per person per shift) 15

APPENDIX 3. Calculation of fees for claims meeting requirements of Section 42-111, Idaho Code

