


ADJUDICATION MEMORANDUM #16C

TO: Adjudication Staff

FROM: Jeff Peppersack, Water Allocation Bureau Chief 

SUBJECT: Reviewing Claims for Changes Based on Accomplished Transfers, Enlargements or Expansions

DATE: January 17, 2012

This memo supersedes Adjudication Memorandums #16A and #16B.

Section 42-222, Idaho Code, requires the department evaluate, among other issues, whether there would be injury to other water rights and whether there would be an enlargement in use of the original right. The department must also evaluate the validity of the right and ensure the applicant owns the right as part of its review. This guidance applies to changes filed as accomplished transfers under Section 42-1425, Idaho Code, enlargements under Section 42-1426, Idaho Code, or expansions under Section 42-1416B, Idaho Code.

The purpose of this memo is to provide guidance to Adjudication staff on how to review changes to water rights based on Sections 42-1416B, 42-1425 and 42-1426, Idaho Code. These statutes allow the department to recognize some limited changes made to pre-existing water rights, provided certain conditions are met, as discussed below.

Accomplished Transfers (Changes Based on Section 42-1425, Idaho Code)

Section 42-1425(a), Idaho Code, provides:

The legislature finds and declares that prior to the commencement of the Snake River basin adjudication, many persons entitled to the use of water or owning land to which water has been made appurtenant either by decree of the court or under provisions of the constitution and statutes of this state changed the place of use, point of diversion, nature or purpose of use, or period of use of their water rights without compliance with the transfer provisions of Sections 42-108 and 42-222, Idaho Code.

Section 42-1425(b), Idaho Code, continues:

The legislature finds that many of these changes occurred with the knowledge of other water users and that the water has been distributed to the right as changed. The legislature further finds and declares that the continuation of the historic water use patterns resulting from these changes is in the local public interest provided no other existing water right was injured at the time of the change. Denial of a claim based solely upon a failure to comply with Sections 42-108 and 42-222, Idaho Code, where no injury or enlargement exists, would cause significant undue financial impact to a claimant and the local economy. Approval of the accomplished transfer through the procedure set forth in this section avoids the harsh economic impacts that would result from a denial of the claim.

What changes can be made under Section 42-1425, Idaho Code?

The Department can recommend an accomplished change if it could be approved under Sections 42-108 and 42-222, Idaho Code. Changes to the following elements may be recognized as accomplished transfers:

- Place of Use (POU)
 - Previously recorded water rights (decree, license, sometimes statutory claims or posted notices)
 - If the reviewer determines the claimed POU is different than previously recorded for the water right, the change must have occurred prior to November 19, 1987, for SRBA claims. For the northern Idaho adjudications (i.e. the Coeur d'Alene-Spokane River Basin Adjudication, or CSRBA), the changes must have taken place prior to January 1, 2006.
 - The changes must be supported by information documenting the change, such as affidavits, crop reports, tax documents, aerial photos, power records, etc.
 - The changes can not constitute an enlargement of the right or injure other water users pursuant to Section 42-222, Idaho Code.
 - Water rights not previously recorded (beneficial use, sometimes statutory claims or posted notices)
 - The reviewer must determine the elements and extent of beneficial use as of the proposed or supported priority date.
 - The reviewer must then determine the extent of the change to the POU.
 - The change must have occurred prior to November 19, 1987, for SRBA claims. For the northern Idaho adjudications (i.e. the Coeur d'Alene-Spokane River Basin Adjudication, or CSRBA), the changes must have taken place prior to January 1, 2006.
 - The changes must be supported by information documenting the change, such as affidavits, crop reports, tax documents, aerial photos, power records, etc.
 - The changes can not constitute an enlargement of the right or injure other water users pursuant to Section 42-222, Idaho Code.
- Point of Diversion (POD) – without changing source
 - Previously recorded water rights (decree, license, sometimes statutory claims or posted notices)
 - If the reviewer determines the claimed POD is different than previously recorded for the water right, the change must have occurred prior to November 19, 1987, for SRBA claims. For the northern Idaho adjudications (i.e. the Coeur d'Alene-Spokane River Basin Adjudication, or CSRBA), the changes must have taken place prior to January 1, 2006. PODs where advances in technology describe the POD in a different tract are not identified as accomplished changes but they can be corrected in the adjudication process.
 - If the claimed POD is located within the same tract (10-acre or 40-acre) as the recorded POD, no change is necessary.

- Additional PODs can be recognized as an accomplished transfer, provided the additional POD(s) do not constitute an enlargement of the right or injure other water users, pursuant to Section 42-222, Idaho Code.
 - The changes must be supported by information documenting the change, such as affidavits, well logs, aerial photos, power records, etc.
 - The changes can not constitute an enlargement of the right or injure other water users pursuant to Section 42-222, Idaho Code.
 - Water rights not previously recorded (beneficial use, sometimes statutory claims or posted notices)
 - The reviewer must determine the location of the POD(s) as of the proposed or supported priority date.
 - The reviewer must then determine if there has been a change of POD.
 - The change must have occurred prior to November 19, 1987, for SRBA claims. For the northern Idaho adjudications (i.e. the Coeur d'Alene-Spokane River Basin Adjudication, or CSRBA), the changes must have taken place prior to January 1, 2006.
 - Additional PODs can be recognized as an accomplished transfer, , provided the additional POD(s) do not constitute an enlargement of the right or injure other water users, pursuant to Section 42-222, Idaho Code.
 - The changes must be supported by information documenting the change, such as affidavits, well logs, aerial photos, power records, etc.
 - The changes can not constitute an enlargement of the right or injure other water users pursuant to Section 42-222, Idaho Code.
 - If a claim is proposing an exchange of POD from one source to another, consult the attorney for the basin.
- Purpose of Use (also called Nature of Use)
 - Previously recorded water rights (decree, license, sometimes statutory claims or posted notices)
 - If the reviewer determines the claimed purpose is different than previously recorded for the water right, the change must have occurred prior to November 19, 1987, for SRBA claims. For the northern Idaho adjudications (i.e. the Coeur d'Alene-Spokane River Basin Adjudication, or CSRBA), the changes must have taken place prior to January 1, 2006.
 - The changes must be supported by information documenting the change, such as affidavits, crop reports, tax documents, aerial photos, power records, etc.
 - The changes can not constitute an enlargement of the right or injure other water users pursuant to Section 42-222, Idaho Code.
 - Generally a less consumptive water use cannot be changed to a more consumptive water use without injury to other water rights. The less consumptive water uses generally are mining, power, fish propagation, etc. More consumptive water uses generally are irrigation, municipal, storage, etc.
 - When recommending a change from one use to another, the reviewer should determine the historic consumptive use under the

- original use. The reviewer should limit consumption under the new use to the historic consumption of the original use.
- Water rights not previously recorded (beneficial use, sometimes statutory claims or posted notices)
 - The reviewer must determine the purpose of use as of the proposed or supported priority date.
 - The change must have occurred prior to November 19, 1987, for SRBA claims. For the northern Idaho adjudications (i.e. the Coeur d'Alene-Spokane River Basin Adjudication, or CSRBA), the changes must have taken place prior to January 1, 2006.
 - The changes must be supported by information documenting the change, such as affidavits, crop reports, tax documents, aerial photos, power records, etc.
 - The changes can not constitute an enlargement of the right or injure other water users pursuant to Section 42-222, Idaho Code.
 - Generally a less consumptive water use cannot be changed to a more consumptive water use without injury to other water rights. The less consumptive water uses generally are mining, power, fish propagation, etc. More consumptive water uses generally are irrigation, municipal, storage, etc.
 - When recommending a change from one use to another, the reviewer should determine the historic consumptive use under the original use. The reviewer should limit consumption under the new use to the historic consumption of the original use.
 - Period of Use (also called Season of Use)
 - Previously recorded water rights (decree, license, sometimes statutory claims or posted notices)
 - Generally, an accomplished change in Period of Use coincides with an accomplished change in Purpose of Use.
 - If the proposed change would increase the original consumptive use (i.e. irrigation to municipal), the reviewer should determine the historic consumptive use under the original use. The reviewer should only recommend the historic consumption of the original period of use for the accomplished period of use.
 - As with accomplished changes in purpose of use, the change must have occurred prior to November 19, 1987, for SRBA claims. For the northern Idaho adjudications (i.e. the Coeur d'Alene-Spokane River Basin Adjudication, or CSRBA), the changes must have taken place prior to January 1, 2006.
 - The changes must be supported by information documenting the change, such as affidavits, power records, etc.
 - The changes can not constitute an enlargement of the right or injure other water users pursuant to Section 42-222, Idaho Code.
 - Water rights not previously recorded (beneficial use, sometimes statutory claims or posted notices)

- The reviewer must determine the period of use as of the proposed or supported priority date.
- Generally, an accomplished change in Period of Use coincides with an accomplished change in Purpose of Use.
- If the proposed change would increase the original consumptive use (i.e. irrigation to municipal), the reviewer should determine the historic consumptive use under the original use. The reviewer should only recommend the historic consumption of the original period of use for the accomplished period of use.
- As with accomplished changes in purpose of use, the change must have occurred prior to November 19, 1987, for SRBA claims. For the northern Idaho adjudications (i.e. the Coeur d'Alene-Spokane River Basin Adjudication, or CSRBA), the changes must have taken place prior to January 1, 2006.
- The changes must be supported by information documenting the change, such as affidavits, power records, etc.
- The changes can not constitute an enlargement of the right or injure other water users pursuant to Section 42-222, Idaho Code.

What changes cannot be made under Section 42-1425, Idaho Code?

- Change in Source
 - An accomplished change in source is not acceptable because it is not provided for in Section 42-1425, Idaho Code. Additionally, an accomplished change in source introduces an additional diversion from the source that may injure junior water users.
 - It may be possible to have an accomplished change in POD that diverts shallow ground water adjacent to the original surface water source. Please note this is not a change in source, but an accomplished change in POD. The source is described as ground water tributary to the original surface water source. For analysis instructions, see Transfer Processing Memorandum #24, Transfer Processing Policies & Procedures.
 - For guidance on moving a POD from a tributary to the main channel, see the attorney assigned to the basin.
- Unstacking water rights
 - Water rights are stacked when multiple rights were developed on or transferred to the same POU for the same purpose of use. Unstacking occurs when a claimant proposes to move one of two or more stacked water rights to a new POU. This would allow additional acreage to be irrigated and increases the consumptive use. When multiple rights are authorized on the same POU, the reviewer should not recommend the water rights on separate tracts.
 - Unstacking water rights generally constitutes an enlargement (see Unstacking Overlapping POUs below).

Enlargements (Changes Based on Section 42-1426, Idaho Code)

Section 42-1426(1)(a), Idaho Code, provides:

The legislature finds and declares that prior to the commencement of the Snake River basin adjudication and subsequent to the mandatory permit system provided in Sections 42-201 and 42-229, Idaho Code, persons entitled to the use of water or owning any land to which water has been made appurtenant by decree, license or constitutional appropriation have, through water conservation and other means, enlarged the use of said water without increasing the rate of diversion and without complying with the mandatory permit system adopted by the legislature. Thus, the legislature further finds and declares that it is in the public interest to waive the mandatory permit requirements for these enlargements in use prior to the commencement of a general adjudication, so long as such enlargements in use did not increase a rate of diversion provided in Section 42-202, Idaho Code, after the enlargement of use, and the enlargement of use did not reduce the quantity of water available to other water rights existing on the date of the enlargement in use.

It is important to note that Section 42-1426(3), Idaho Code, requires advertisement of enlargements: “The notice shall contain a summary of the notice of claim and shall be published in the same manner as notices for applications to appropriate water in Section 42-203A, Idaho Code.”

What constitutes an enlargement under Section 42-1426, Idaho Code?

Enlargements are increased uses where the water user did not comply with the mandatory permit statute. Typically an enlargement is an increase in irrigated acres but it can apply to other elements, such as additional purposes for the same water. An enlargement may only be recommended if the diversion rate has not been increased but an enlargement can include additional diversion volume, even if consumptive use is increased.

If the use is located within a critical ground water area, it is an expansion under Section 42-1416B, Idaho Code, and should be reviewed under the requirements set forth in that section, and as described later in this memo.

If the enlargement claim is for anything other than irrigated place of use, consult the attorney for the basin.

When must the enlargement have occurred to be recognized?

An enlargement must have occurred after the mandatory permit statutes but on or before November 19, 1987. For ground water, the mandatory permit statute date is March 25, 1963. For surface water, the date is May 20, 1971.

If the enlargement occurred before the mandatory permit statutes, it could be recommended as a beneficial use right and not an enlargement.

What can be recommended under Section 42-1426, Idaho Code?

Enlargements are increases in beneficial use that have occurred after the mandatory permit statute for the source and on or before November 19, 1987, without an increase in diversion rate of the original right. There are four general types of enlargements:

- Additional purposes of use from what was recorded
- Increase in recorded use (increase in number of homes, acres, etc.)
- Increase in recorded period of use (from irrigation season to year-round use)
- Increase in recorded diversion volume

It may be helpful to look at enlargements by looking at the elements of a water right

- Purpose of Use
 - If the original purpose of use remains as developed and additional purposes are added, or the original purposes are increased, those purposes constitute an enlargement.
 - Examples of increases in purpose of use are: an increase in number of homes for domestic water rights, increased plant facilities for industrial water rights, etc.
 - If the original water right specifies the number of homes, size of the industrial plant, etc., and the claimant identified more than the original water right specified, the Department should review for enlargement.
 - If the original water right does not specify the number of homes, size of the industrial plant, etc., the Department can recognize the purpose of use as it existed at the adjudication's commencement, provided the original diversion rate of the right is not exceeded.
 - The original diversion rate, as with all enlargements, cannot be increased.
 - Adding a storage component to a water use can be an enlargement.
- Place of Use (POU)
 - An increase in irrigated acres constitutes an enlargement. Nearly all POU enlargement claims are for increased irrigated acres. See Appendix 1 for a list of examples.
 - As long as the beneficial use is not increased, increasing the number of 40-acre tracts in a water right does not constitute an enlargement in POU, but rather a change in POU. Depending on the timing, this might be an accomplished transfer.
- Point of Diversion (POD)
 - Additional PODs do not constitute an enlargement.
 - If the water user added a POD but did not increase the diversion rate, it is an accomplished transfer. If the water user added a POD and increased the diversion rate prior to the mandatory permit statute for the source, they should file an additional claim. If the water user added a POD and increased the diversion rate after the mandatory permit statute for the source, they should file an application for permit.
- Period of Use (also called Season of Use)

- Any use of water outside the established period of use for the water right is an enlargement.
- Enlargements in period of use can include domestic rights (i.e. decreed for 5/1 to 10/31 for a summer cabin but cabin is now occupied year-round).
- If the claimant is claiming irrigation use earlier or later than the established irrigation season for an area, that use of water may be an enlargement.
- Sometimes the standard season of use for an irrigation water right has changed and the Department now recognizes a longer season than previously recorded. In that case, the recommended season of use should reflect the original right's season of use, but include a so-called "shoulder remark" to reflect the currently recognized season of use. This is not treated the same as an enlargement, but the priority date for the extended part of the season is subordinated.
- There may be specialized shoulder language for each basin. Consult the Adjudication Section Manager for more information.
- Quantity
 - The original diversion rate of a water right cannot be increased, but an enlargement can recognize an increase in volume. There are cases where a water user diverted volume in excess of their water right without increasing diversion rate.
- Priority date
 - The priority date for the enlargement in use is the date of the enlargement and must be on or before November 19, 1987. Recommendations for enlargements should include a Condition C11 or its equivalent: "This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right."

Recommending claims based on enlargements pursuant to Section 42-1426, Idaho Code

- Enlargement recommendations require some specific conditions.
 - POU
 - If the enlargement is for irrigation:
 - The base right recommendation requires an acre limit
 - The enlargement recommendation must identify the number of acres enlarged from the base right
 - Both recommendations have a total combined acre limit
 - If the enlargement is for other than irrigation, conditions for the base and enlargement recommendations must be customized to best describe the situation.
 - For further guidance on conditioning a Permissible Place of Use (PPU), see the PPU section below.
 - Priority Date
 - The recommended priority date for an enlargement claim is the date supported by the evidence for the enlarged use, but must be on or before November 19, 1987.

- The recommended period of use for the enlargement would be the additional portion of the year not included in the base right.
 - Additional conditions
 - The base right recommendation must include a reference to the enlargement right, and the enlargement right recommendation must reference the base right.
- Advertising
 - Pursuant to Section 42-1426(3), Idaho Code, the enlargement recommendation must be published in the same manner as notices for applications to appropriate water in Section 42-203A, Idaho Code.

When Sections 42-1425 and 42-1426 Overlap

Permissible places of use or PPU

There are two general types of permissible place of use (PPU) claims: single right and multiple rights. A PPU provides flexibility by allowing a water user to irrigate the number of acres authorized under the right(s) within a larger described POU.

With a single right PPU, the claimant has one water right that is rotated from year to year to irrigate different acres within the PPU. For example, the claimant has 80 acres, and a water right for 40 inches (0.80 cfs) of water for 40 acres with a 1940 priority date. The claimant may rotate the water right to irrigate any 40 acres within a single irrigation season and claims the water right for the entire 80-acre tract. Again, so long as the right is limited to irrigation of any 40 acres within the 80 acres in a single irrigation season, then there is no enlargement or expansion (although there is a change in place of use, which should be analyzed for potential injury). For a discussion of how a single right PPU is recommended, see Appendix 1.

With a multiple right PPU, the claimant has several rights and the water is distributed through one system, and the entire POU has appurtenant water rights. For example, the claimant has 80 acres, and a water right for 80 inches (1.6 cfs) of water with a 1940 priority. The claimant has another 80 acres with a water right for 80 inches (1.6 cfs) of water with a 1950 priority date. The claimant files two claims, one for each water right, but claims the full 160 acres as the place of use of each water right. So long as each right is limited to irrigation of 80 acres within the 160-acre PPU in a single irrigation season, then there is no enlargement or expansion (although there is a change in place of use, which should be analyzed for potential injury). For a discussion of how a multiple right PPU is recommended, see Appendix 1.

The department can recommend a PPU where the claimant can show they diverted water as claimed prior to commencement of the adjudication. The change must not result in injury (or should be conditioned to prevent injury) and the recommendation should be conditioned to prevent an enlargement or expansion.

A combined diversion volume for ground water rights (and other rights where a diversion volume is required) should be determined and stated in conditions. The diversion volume for the individual rights may also be listed. If the rights are not sufficient to cover the entire POU, then

diversion volume should be determined based on the total number of acres that may be irrigated in a single season within the POU, rather than the total number of acres in the PPU. If there are surface rights that overlap multiple ground water rights, then the total diversion volume for the ground water rights only should be determined and stated in the remarks for ground water rights only, unless a volume limit would also be required for the surface water rights.

The POU would be the entire PPU, but each right should be conditioned to limit the right to the original number of acres irrigated. The recommendation(s) should include a condition in the following form: “This right is limited to the irrigation of ___ acres within the place of use described above in a single irrigation season.” This is currently the K06 condition.

If the sum of the individual right acre limits from the same source exceed the total number of acres within the PPU, the K06 condition may not be necessary for the most junior right(s). For example, if there are three water rights for 40 acres but they are appurtenant to an 80-acre POU, the three water rights should have a combined limit of 80 acres and conditioning should reflect an 80-acre PPU. The most senior water right should have a K06 condition limiting it to 40 acres. The next most senior water right should have a K06 condition limiting it to 40 acres. The third right, the junior one, would not necessarily have a K06 condition. There may be some extenuating circumstances for this type of situation, particularly if the rights are from different sources. See the attorney assigned to the basin for additional information.

If the sum of the individual right acre limits from the same source is less than the total number of acres within the PPU, a modified K06 condition will be necessary for all of the rights. That condition must list the total number of authorized irrigated acres within the permissible place of use in a single irrigation season. For example, if there are three water rights, each for separate 20-acre tracts, but appurtenant to an 80-acre POU, the three water rights should have a combined limit of 60 acres within the 80-acre PPU and conditioning should reflect an 80-acre PPU. Each water right should have a K06 condition limiting it to 20 acres within a single irrigation season.

Unstacking overlapping POUs

Unstacking of water rights from an overlapping POU should not be allowed, unless the recommendations can be conditioned to prevent injury and enlargement. The unstacked right, regardless of its origin, becomes a beneficial use right. There are two scenarios where unstacking may be recommended:

1. If the unstacking occurred before the mandatory permit statute went into effect for the source: The priority date for the beneficial use recommendation should be the date of the unstacking and no enlargement condition is necessary.
2. If the unstacking occurred on or after the mandatory permit statute went into effect for the source but on or before November 19, 1987, it could be an enlargement or an accomplished transfer, depending on the circumstances. If an enlargement, the priority date for the beneficial use recommendation should be the date of the unstacking and enlargement conditions are required. For more information, see the Adjudication Section Manager.

Example: A water user has a decreed surface water right for 80 acres. During a drought year, the water user obtained a licensed ground water right for the same 80 acres. The water user eventually acquired 80 acres which had never been irrigated that was adjacent to the 80 acres, and began using the ground water right exclusively on the newly acquired land. The acquisition of the dry 80 acres and application of water there occurred after March 25, 1963, but before November 19, 1987. The surface water from the original 80 acres was never used on the “new” 80 acres, so a PPU is not possible.

There are two possible scenarios here:

1. Accomplished transfer and enlargement
 - a. The supplemental ground water right becomes a primary right limited to the number of acres equivalent to its prior consumptive use. The claimant is required to provide documentation of consumptive use before the change consistent with Administrator’s Transfer Memorandum #24, *Transfer Processing Policies & Procedures*.
 - b. The remaining acres should be claimed and recommended as an enlargement with a priority date commensurate with the date of change. The recommendation should include Condition C11 or its equivalent: “This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right.”
2. Enlargement
 - a. Beneficial use ground water right may be recommended as an enlargement onto the “new” 80 acres, provided the priority date of the ground water right becomes the date the change occurred. The original ground water license is recommended as disallowed and the unstacked beneficial use ground water right is given a new number. (Note: If claimed under a new number, the Department should create a claim record under the license number and recommend it as disallowed.) The beneficial use right must also be conditioned with Condition C11 or its equivalent: “This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right.”

Expansions

Section 42-1416B(1), Idaho Code, provides:

Within any critical ground water area designated pursuant to Section 42-233a, Idaho Code, a claim to the expanded use of a ground water right, which use was expanded in violation of the mandatory permit requirements, may be decreed in a general water rights adjudication if the expansion occurred after the designation of the critical ground water area, before the commencement of the adjudication, and before the date of enactment of this section. The priority date for the right decreed shall be June 30, 1985.

What constitutes an expansion under Section 42-1416B(1), Idaho Code?

Expansions are uses in critical ground water areas where the water user did not comply with the mandatory permit statute. Typically an expansion is an increase in irrigated acres but it can apply to other elements, such as additional purposes for the same water. An expansion may only be recommended if the diversion rate has not been increased. As opposed to enlargements, recommendations for expansions cannot include additional diversion volume.

The expansion statute works similar to the enlargement statute, with some notable exceptions:

- The claimant does not need to show the specific date the expansion occurred, but only that the expansion occurred on or before November 19, 1987;
- The expansion statute does not apply to an increase in season of use;
- The claimant must show that the expansion was accomplished without an increase in diversion volume; and
- It results in a priority date of June 30, 1985. However, the development must have been completed on or before commencement of the adjudication.

Other Considerations

Supplemental

Supplemental rights are generally not identified when making recommendations for adjudication claims. However, some water rights have conditions that describe them as supplemental to other rights serving the same POU, even if the term supplemental is not used. If a water right has previously been identified as supplemental, it should be recommended with those conditions.

Alternate points of diversion for municipal or other large POU

Claims with Alternate Points of Diversion conditions are generally municipal rights where multiple PODs are claimed as accomplished transfers. The PODs claimed are in addition to the POD(s) that was used to perfect the right, and are frequently spread over an extensive geographical area. The PODs must be part of an interconnected distribution system that is used to supply the municipal service area.

Example: A municipal water right was developed from a single POD (well), was claimed and is being recommended with multiple PODs through an accomplished transfer. Condition 208 or its equivalent should be included in the recommendation: “To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from _____ Well No. _ located in T___, R___, S___, ____.” Typically, the municipal provider refers to the various wells by name or number. The name used by the municipal provider is used to fill in the first blank, and if the provider uses numbers to identify the wells, that number is used to fill in the second blank. If the wells are only identified by name, that name should be used to fill in the first blank and “No. _” should be deleted.

Example: A municipal water right was developed from more than one POD (well), was claimed and is being recommended with PODs through an accomplished transfer that are in addition to the wells used when the right was perfected. Condition 209 or its equivalent should be included in the recommendation: “To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from _____ Well No. _ located in T ___, R ___, S ___, _____, _____ Well No. _ located in T ___, R ___, S ___, _____ and _____ Well No. _ located in T ___, R ___, S ___, _____.”

Example: A municipal water right was developed from a POD (well) that was abandoned when a replacement well was drilled. The original POD for the right was informally transferred to a replacement well. The right was claimed and is being recommended as an accomplished transfer to add multiple PODs to the right. Condition 210 or its equivalent should be included in the recommendation: “To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from _____ Well No. _ located in T ___, R ___, S ___, _____ which was replaced by _____ Well No. _ located in T ___, R ___, S ___, _____.”

Note: Recommendations for irrigation districts or other large water delivery organizations that rely on ground water supplied from multiple wells may also need to be examined to see if Alternate Points of Diversion conditions are required. Consult the attorney assigned to the basin.

Appendix 1 – Recommending Permissible Places of Use (PPU)

PPU: Single right

In this example, a right licensed for 40 acres is now claimed to be used in a rotation on 80 acres. The department can recommend a PPU if the right is only used to irrigate a specific 40 acres within the overall 80 acres in a single irrigation season. The 40 acres that are irrigated can change each irrigation season, but not within an irrigation season, meaning the claimant can not irrigate the north 40 from 4/1 thru 6/30 and then the south 40 from 7/1 to 10/31.

<u>Water Right</u>	<u>Acres</u>	<u>Priority</u>	<u>Source</u>	<u>Rate</u>	<u>Volume</u>	
67-1000	40	1940	ground water	0.8 cfs	160 af	claimed POU is 80 ac

Recommend right for the claimed 80-acre place of use.

- Add K06 (or equivalent) to recommendation:

This right is limited to the irrigation of 40 acres within the place of use described above in a single irrigation season

- Add C05 (or equivalent) to recommendation:

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

PPU: Two rights from the same source where rights do not exceed 0.02 cfs per acre

<u>Water Right</u>	<u>Acres</u>	<u>Priority</u>	<u>Source</u>	<u>Rate</u>	<u>Volume</u>	
67-1000	80	1940	ground water	1.6 cfs	320 af	claimed POU is 160 ac
67-1001	80	1950	ground water	1.6 cfs	320 af	claimed POU is 160 ac

Recommend each right for the claimed 160-acre place of use.

- Add K06 (or equivalent) to both rights:

This right (67-1000) is limited to the irrigation of 80 acres within the place of use described above in a single irrigation season.

This right (67-1001) is limited to the irrigation of 80 acres within the place of use described above in a single irrigation season.

- Add E55 (or equivalent) to each recommendation:

Right Nos. 67-1000 and 67-1001 are limited to the irrigation of a combined total of 160 acres in a single irrigation season.

- Add C05 (or equivalent) to each recommendation:

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

There is no need for a diversion rate limiting condition because the sum of the two licensed diversion rates do not exceed 0.02 cfs per acre on the recommended POU.

There is no need for a diversion volume limiting condition because the sum of the two licensed diversion volumes does not exceed the 4.0 af per acre field headgate requirement used for this example.

PPU: Two rights from the same source where rights exceed 0.02 cfs per acre

Two licensed rights where the sum of the combined diversion rate exceeds 0.02 cfs per acre. There is no overlap between the original POUs.

<u>Water Right</u>	<u>Acres</u>	<u>Priority</u>	<u>Source</u>	<u>Rate</u>	<u>Volume</u>	
67-1000	120	1940	ground water	2.4 cfs	480 af	claimed POU is 136 ac
67-1001	40	1950	ground water	0.8 cfs	160 af	claimed POU is 136 ac

Recommend each right for the claimed 136-acre place of use.

- Add K06 (or equivalent) to 67-1000 but not 67-1001:

This right (67-1000) is limited to the irrigation of 120 acres within the place of use described above in a single irrigation season.

- Add E55 (or equivalent) to each recommendation:

Right Nos. 67-1000 and 67-1001 are limited to the irrigation of a combined total of 136 acres in a single irrigation season.

- Add E60 (or equivalent) to each recommendation:

Right Nos. 67-1000 and 67-1001 are limited to a total combined diversion rate of 2.72 cfs and to a total combined annual diversion volume of 544 af. (NOTE: The applicant can provide a Hubble analysis to support a diversion rate greater than 0.02 cfs per acre.)

- Add C05 (or equivalent) to each recommendation:

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

PPU: Two rights from more than one source where rights exceed 0.02 cfs per acre and 4 af per acre

Two rights where the sum of the combined diversion rate and volume exceed IDWR standards.

NOTE: At least 36 acres from the two rights could not have overlapped prior to the accomplished transfer. Otherwise, this would be an enlargement.

<u>Water Right</u>	<u>Acres</u>	<u>Priority</u>	<u>Source</u>	<u>Rate</u>	<u>Volume</u>	
67-1000	100	1940	surface water	2.0 cfs	400 af	claimed POU is 136 ac
67-1001	80	1950	ground water	1.6 cfs	320 af	claimed POU is 136 ac

Recommend each right for the claimed 136-acre place of use.

- Add K06 (or equivalent) to each recommendation:

This right (67-1000) is limited to the irrigation of 100 acres within the place of use described above in a single irrigation season.

This right (67-1001) is limited to the irrigation of 80 acres within the place of use described above in a single irrigation season.

- Add E55 (or equivalent) to each recommendation:

Right Nos. 67-1000 and 67-1001 are limited to the irrigation of a combined total of 136 acres in a single irrigation season.

- Add E60 (or equivalent) to each recommendation:

Right Nos. 67-1000 and 67-1001 are limited to a total combined diversion rate of 2.72 cfs and to a total combined annual diversion volume of 544 af. (NOTE: The applicant can provide a Hubble analysis to support a diversion rate greater than 0.02 cfs per acre.)

- Add C05 (or equivalent) to each recommendation:

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

Both rights when used in combination are limited to 0.02 cfs per acre, and to the field headgate diversion volume of 4.0 af per acre.

PPU: Two rights from the same source with an enlargement

Beneficial use right where diversion volume and rate exceed IDWR standards.

<u>Water Right</u>	<u>Acres</u>	<u>Priority</u>	<u>Source</u>	<u>Rate</u>	<u>Volume</u>	
67-1000 (Base)	120	1940	ground water	2.4 cfs	480 af	claimed POU is 136 ac
67-1001 (Enlg.)	16	1980	ground water	0.28 cfs	64 af	claimed POU is 136 ac

Recommend each right for the claimed 136-acre place of use.

- Add K06 (or equivalent) to 67-1000:

This right is limited to the irrigation of 120 acres within the place of use described above in a single irrigation season

- Add K01 (or equivalent) to 67-1000:

Right No. 67-1001 is an enlargement of this right pursuant to Section 42-1426, Idaho Code.

- Add C11 (or equivalent) to 67-1001:

This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right.

- Add K09 (or equivalent) to 67-1001:

This right is for an enlargement of 16 acres within the place of use described for this right.

- Add K02 (or equivalent) to 67-1001:

This right is based upon an enlargement of Right No. 67-1000 pursuant to Section 42-1426, Idaho Code.

- Add E55 (or equivalent) to each recommendation:

Right Nos. 67-1000 and 67-1001 are limited to the irrigation of a combined total of 136 acres in a single irrigation season.

- Add E60 (or equivalent) to each recommendation:

- Right Nos. 67-1000 and 67-1001 are limited to a total combined diversion rate of 2.4 cfs and to a total combined annual diversion volume of 544 af.

- Add C05 (or equivalent) to 67-1000:

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.