


ADJUDICATION MEMORANDUM #17

TO: Adjudication Staff

FROM: Don Shaff, Adjudication Bureau Chief 

SUBJECT: Deferral of Domestic and Stockwater Claims

REVISED: March 3, 2009

In both the Snake River Basin Adjudication (SRBA) and the Coeur d'Alene-Spokane River Basin Adjudication (CSRBA), the United States of America and the State of Idaho entered into stipulations agreeing deferral of small domestic and stockwater claims does not divest Idaho courts of jurisdiction over the United States. These agreements paved the way for allowing small domestic and stockwater claims to be deferred in these adjudications. The deferral process has been approved by both the SRBA district court and the CSRBA district court. Both courts have issued orders adopting special procedures for the deferral of small domestic and stockwater (D&S) claims.

This memo describes which water rights are eligible for deferral for each adjudication and the consequences of a decision to file (or not to file) a notice of claim for a small D&S water right. Please note the stipulation and order will not result in excluding small D&S claims; rather, the adjudication of such claims will be indefinitely postponed until a need to adjudicate such claims arises.

It is important to note there is no difference between the SRBA and CSRBA in the deferral of small stockwater claims. Such claims are deferrable in both the SRBA and the CSRBA.

I. Summary of Procedure

A. Definition of Domestic - SRBA

The SRBA district court deferral order applies the deferral procedure to small domestic and stockwater uses, as defined by Section 42-1401A(5) and (12), Idaho Code, as provided in the 1988 supplement to the Idaho Code. The definition of domestic at 42-1401A(5), Idaho Code, in turn references 42-111, Idaho Code. It is important to remember when the order adopting the stipulation was entered in the SRBA in 1987, the definition of domestic was different than it is today. In 1990, the Idaho legislature changed the definition of domestic to contain a two part definition. The current definition provides, in relevant part:

42-111. DOMESTIC PURPOSES DEFINED. (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.

See Adjudication Memorandum #4 for a detailed discussion of the definition of stockwater and each part of the definition of domestic. Subpart (b) of this definition was added in 1990. Therefore, only domestic uses which meet subpart (a) of the domestic definition qualify for deferral in the SRBA. Domestic uses which meet the subpart (b) qualify for the domestic and stockwater form and the \$25.00 fee, but do not qualify for deferral.

Under this procedure, all water right holders are joined in the adjudication (served with the commencement notice), and will therefore be parties in the adjudication and will be bound by decrees entered in the adjudication. The deferral procedure therefore does not affect the notice and joinder stage of the adjudication.

The deferral procedure does affect the claims-taking stage of the adjudication. Notices of claims for small D&S uses may, but do not have to, be filed at this time. A water right meeting the definition of small D&S as defined in 1988 will not be forfeited for failure to file a notice of claim in the SRBA at this time. The owner of a small D&S right may file a motion with the district court at a later date to have a small D&S water right adjudicated if the need arises.

There are two limitations that apply when the owner of a small D&S water right seeks to have the right adjudicated at a later date.

- The water right owner will only be allowed to claim a water right that comes within the statutory definition of a small D&S claim. Anything in excess of the statutory definition for which a notice of claim is not filed will be deemed to have been forfeited.
- The extent of the small D&S water right is limited by actual beneficial use.

There is no presumption that a small D&S use is entitled to a water right for the full 13,000 gallons per day.

B. Definition of Domestic - CSRBA

The CSRBA district court deferral order applies the deferral procedure to small domestic and stockwater uses, as defined in 2008 by Section 42-1401A(4) and (11), Idaho Code.

As in the SRBA, both subparts (a) and (b) qualify for the domestic and stockwater form and the \$25.00 fee. In the CSRBA, uses meeting the definition of subpart (a) and subpart (b) qualify for deferral; in the SRBA, only subpart (a) qualified for deferral. The definition of stockwater remains unchanged. See Adjudication Memorandum #4 for a detailed discussion of the definition of stockwater and each part of the definition of domestic.

As with the SRBA:

- All water right holders are joined in the adjudication (served with the commencement notice), and will therefore be parties in the adjudication and will be bound by decrees entered in the adjudication. The deferral procedure therefore does not affect the notice and joinder stage of the adjudication.
- The deferral procedure does affect the claims-taking stage of the adjudication. Notices of claims for small D&S uses may, but do not have to, be filed at this time. A water right meeting the definition of small D&S as defined in 2008 will not be forfeited for failure to file a notice of claim in the CSRBA at this time. The owner of a small D&S right may file a motion with the district court at a later date to have a small D&S water right adjudicated if the need arises.
- There are two limitations that will apply when the owner of a small D&S water right seeks to have the right adjudicated at a later date.
 - i. The water right owner will only be allowed to claim a water right that comes within the statutory definition of a small D&S claim. Anything in excess of the statutory definition for which a notice of claim is not filed will be deemed to have been forfeited.
 - ii. The extent of the small D&S water right is limited by actual beneficial use.

There is no presumption a small D&S use is entitled to a water right for the full 13,000 gallons per day.

II. “I may, but I don’t have to. So should I?”

Only the claimant can make the decision to defer filing a claim for small D&S water rights. Here are some factors the claimant may consider:

- The claim fee for a small D&S use is only \$25.00. If the small D&S use is adjudicated later, the claimant may be required to pay the department’s cost of investigating and preparing a report on the water right claimed. It will almost certainly cost more to do it later than to do it now.
- The deferral procedure will affect administration of water rights pursuant to decrees entered in the adjudications. The owner of a small D&S water right must agree to have the water use adjudicated before the owner can seek administration of the water right or approval of a change in use (such as a change in point of diversion, change in place of use, change in nature of use, etc.) of the water right.

- By filing a \$25.00 claim, the water user will be included in mailings and notices related to the adjudication. To ensure the claimant receives notice of the filing of the director's report if they do not want to file a claim, they can get a subscription to the docket sheet through the CSRBA district court.
- If the claimant's water use might exceed the deferral limitations, the claimant should not assume they will meet the deferral procedure. In such cases, the claimant should be encouraged to file a claim on the irrigation and other claim form. If the claimant chooses to defer filing a claim for a water use that is later determined to exceed deferral limitations, the only possible water use that may be recommended is a small D&S use.
- If the claimant needs further information, there is an informational brochure on the Northern Idaho Adjudication webpage (http://www.idwr.idaho.gov/water/North_Id_Adju/).
- If the claimant is still in doubt, they can be encouraged to consult their attorney or consultant.

III. Late Fees for Late Filed Small D&S Claims in SRBA and CSRBA

Pursuant to order of the SRBA District Court, there are no late fees for the late filing of a small D&S claim. The Department will continue this approach in the CSRBA and will not charge late fees for the filing of late small D&S claims.