

ADJUDICATION MEMORANDUM #18

TO: Adjudication Staff

FROM: Carter Fritschle, Adjudication Section Manager *CF*

SUBJECT: Changes in Address/Ownership

REVISED: December 26, 2014

I. Changes in Address

Section 42-1409(6), Idaho Code, and SRBA Court Administrative Order 1 (A.O.1) require claimants to file written notice of a change in address while the adjudication of a claim is pending. When a partial decree is issued for a claim, the responsibility for maintenance of the IDWR record for the water right comes under Section 42-248, Idaho Code. The minimum requirements for a notice of change in address are as follows:

- a. Reporting areas for which a director's report has not been submitted to the district court:
 - i. IDWR must receive written notice. It can be on an IDWR form or a simple letter. The exception is when IDWR has learned or determined the change in address is not one of location but change of postal delivery address from rural route or high contract (HC), for instance, to a grid or street or road address. In this specific instance, IDWR can make the change to the contact information without written notice from the claimant(s).
 - ii. The notice should include the claim number(s) and claimant name. This information is required to make sure we are changing the address on the correct claim(s).
 - iii. The notice must include the new mailing address. The new telephone number and old address should be included, but the notice should not be considered incomplete if these elements are missing. An email address may also be included.
 - iv. The notice must be signed by the claimant or by authority of the claimant. It can be signed by any of the following:
 1. Any of the persons listed as claimant on the notice of claim;
 2. The claimant's attorney if the notice of appearance is completed on the notice of claim, or if a notice of appearance has been filed with

the court (the docket sheet lists notices of appearance filed with the court).

3. Any other person if a copy of a power of attorney is included that indicates that person's authority to act on behalf of the claimant; and
 4. A person, other than the claimant, who signed and had authority to sign the notice of claim, such as a trustee.
 - v. The notice does not have to be notarized.
 - vi. When a change in address has been received, it should be reviewed by the office receiving the notice to make certain it meets the minimum requirements. If the minimum requirements have been met, then the new address should be data-entered by the office receiving the notice, and the claimant's name and new address should have a label Current Owner. The change is made to the existing contact record(s) and not by creating new contacts.
 - vii. The address change document is scanned and profiled in IDWR's database to each of the water right numbers affected. After initial data-entry, the notice should be marked "data-entered" and forwarded to the IDWR office that has the original claim file.
 - viii. The notice of change in address should be kept in the claim file. If the notice of change in address does not meet the minimum requirements, seek further correspondence from the sender, and keep any correspondence in the claim file. Once the minimum requirements have been met, then the new address should be entered with the Current Owner label.
 - ix. A copy of the change in address, if it applies to records maintained by any other section within the Water Allocation Bureau, shall be sent to the Water Right Permits Section.
 - x. A copy of the changed claim (or recommendation) with the new owner's name should be sent to the seller. If it is known the previous owner is deceased or mail will be undeliverable to the previous owner, it is not necessary to attempt notification of the previous owner. (If the new owner and previous owner share the same address, it is not necessary to send multiple notices.)
- b. Reporting areas for which a director's report has been submitted to the District court and prior to issuance of a partial decree:
A.O.1 requires all claimants in a reporting area where a director's report has been submitted to the court to give notice of a change in address to IDWR whether the reported claim has an objection or not. Data entry should be handled as in reporting areas for which director's reports have not been filed with one

exception. The district court should be notified by Notice of Completed Administrative Proceeding (NCAP) of any change in address.

II. Changes in ownership

Section 42-1409(6), Idaho Code, and A.O.1 require a purchaser of a water right during a pending adjudication to file a written notice of change in ownership with IDWR, and further provides that the purchase must submit some evidence of the change in ownership with the notice. Section 42-1401A(10), Idaho Code, and A.O.1 define a purchaser as “any successor in interest of a claimant, whether the interest is acquired by purchase, gift, inheritance or other means.”

- a. Reporting areas for which a director’s report has not been submitted to the district court
 - i. IDWR must receive written notice. It can be on an IDWR form or in a letter.
 - ii. Evidence of the change in ownership must accompany the notice. For a detailed review of what types of documents are acceptable, see Records Memorandum No. 9.
 - iii. The notice should include the water right number, the name of the former claimant(s), the name(s) of the new claimant(s), and the new claimant’s mailing address. The new claimant’s telephone number and the former claimant’s address are desirable but not necessary. An email address may be included.
 - iv. The name(s) on the deed or other acceptable documented conveyance determines the name(s) in IDWR’s database. Contact names should be kept consistent across IDWR’s database. For example, IDWR receives a deed for John Mathew Doe. Existing records show John M. Doe as a right holder. After investigation, IDWR determines John M. Doe and John Mathew Doe are the same person. IDWR should data-enter the change of ownership John M. Doe to be consistent with other records. No new contact should be made. (Note: There may be special circumstances where the name(s) on the deed or other conveyance document will not match the name(s) of the claimant. Consult the Adjudication Section manager for specific instructions.)
 - v. The notice must be signed. The change in ownership form need only be signed by one person. However, data entry will reflect language on the deed. For example, if the deed cites the new owners as “Jack and/or Mary Smith,” IDWR’s database should reflect “Jack and/or Mary Smith.”
 - vi. The ownership change documents are scanned and profiled in IDWR’s database to each of the water right numbers affected. After initial data-entry, the notice should be marked “data-entered” and forwarded to the IDWR office that has the original claim file.

- vii. The notice of change in ownership should be kept in the claim file. If the notice of change in ownership does not meet the minimum requirements, seek further correspondence from the sender, and keep any correspondence in the claim file. Once the minimum requirements have been met, the new owner(s) should be entered with the Current Owner label. A copy of the change in ownership, if it applies to records maintained by any other section within the Water Allocation Bureau, shall be sent to the Water Right Permits section.
 - viii. A copy of the changed claim (or recommendation) with the new owner's name should be sent to the seller. In the case of a split to the water right(s) claimed by the seller(s), the new claimant is to receive the director's report with a Notice of Completed Administrative Proceeding (NCAP).
- b. Reporting areas for which a director's report has been submitted to the district court and prior to issuance of a partial decree:

A.O.1 requires all claimants in a reporting area where a director's report has been submitted to the court to give notice of a change in ownership to IDWR whether the reported claim has an objection or not. Data entry and minimum requirements for form completion are as in reporting areas for which director's reports have not been filed.
- c. Data entry for claim and recommendation records in the Adjudication database:
 - i. The new claimant, if not already existing in the contacts, and new address should be data-entered by the receiving office with a Current Owner code. The initial claimant and old address should remain in the database with a Director's Report Owner code. The Current Owner should match in both the claim and recommendation records. Tracking owners between the initial claimant and the current owner is not required. For previously recorded water rights (licenses, decrees, statutory claims), the owner of that record should be kept as an Original Owner.
 - ii. After a decree for the recommendation is issued, tracking the ownership change in the Adjudication records is no longer necessary and the change of ownership documents should be forwarded to the Water Allocations section. The records are then prepared for the Update Partial Decree Workflow process when the processing of the decree does occur.
- d. Notice of change does not meet minimum requirements:
 - i. If the notice of change in ownership does not meet the minimum requirements, and IDWR is confident the new owner appears to own the place of use, complete the following steps for the claim and recommendation records while waiting for complete documentation:

1. The new claimant should be data-entered with a Present Owner code, and the old claimant and the old address should remain in the database with a Current Owner code.
 2. The ownership change document is scanned and profiled in IDWR's database to each of the water right numbers affected. After initial data-entry, the notice should be marked "data-entered" and forwarded to the IDWR office that has the original claim file.
 3. The notice of change in ownership should be kept in the claim file. Once the minimum requirements have been met, the Present Owner code should be changed to Current Owner and the previous owners should be changed to the Original Owner code.
 4. A copy of the change in ownership, if it applies to records maintained by another section within the Water Allocation Bureau, shall be sent to the Water Right Permits Section.
- ii. If the notice of change in ownership does not include sufficient information to identify the water right as to which ownership has changed, or if there is insufficient information to determine if the new owner is only claiming part of the original notice of claim, seek further correspondence before any data entry.
 - iii. A copy of the changed claim (or recommendation) with the new owner's name should be sent to the seller. In the case of a split to the water right(s) claimed by the seller(s), the new claimant is to receive the director's report with a Notice of Completed Administrative Proceeding (NCAP).

III. Change in ownership resulting in split notices of claim, and filing fees

- a. Reporting areas for which a director's report has not been submitted to the district court:
 - i. If the property description on the document submitted with the change of ownership does not include all of the property listed as the place of use, then the notice of claim may have to be split. A reviewer of the change in ownership must proceed cautiously, if the split is suspicious, before investing needlessly in data entry for the splits. In the case of a suspicious split, investigate with seller or buyer about the circumstances of the sale before processing the change.
 - ii. If the minimum requirements for a notice of change in ownership have been met, and it can be determined by examining the original claim and the notice of change in ownership how the claim should be split, process the change in ownership.
 - iii. To process the change in ownership, follow the instructions in the Split or Renumber Claim Workflow application. The system will create the corresponding number of new water right records for each of the splits.

The new claims and recommendations are initially mirrors of the parent (original) recommendation. Corresponding data entry will be required to define the water right elements of each split as well as GIS shapefiles for both point of diversion (POD) and place of use (POU). A remark is added automatically in Workflow to both the parent water right describing the splits from it and in each of the new water right numbered splits describing the water right from which it came. The pedigree for the split is also created from the split in Workflow.

- iv. The new notices of claim should be sent to the owners for review. If any corrections are made, the corrected claim should be signed and returned within 30 days. The corrected claim should be processed as an amended notice of claim. If no response is received, it will be assumed the split notices of claim are correct.

NOTE: Although there are now two notices of claim where there was originally only one, no additional flat fee will be due. An additional variable fee may be due from one or the other if the total amount of water claimed, the total amount of acres irrigated, or the total kilowatt capacity of the new claims exceeds the amount on the original claim. The additional fee is to be paid by the claimant who is claiming the additional acreage, water, or kilowatts.

For example, Claimant A owns an 80-acre tract, files a notice of claim for 60 inches for 60 acres, 30 in the first quarter-quarter and 30 in the second. Claimant A sells one forty-acre tract to Claimant B. Two new notices of claim forms are prepared, each 30 inches for 30 acres. Claimant B revises his notice to claim 40 inches for 40 acres but Claimant A resubmits his as prepared. An additional \$10 variable fee is owed because 70 irrigated acres are now being claimed instead of 60. Claimant B owes the extra fee because the extra acreage was claimed on Claimant B's notice of claim form.

In another example, Corporation A files a notice of claim for a 100 cfs water right for commercial purposes and sells part of the water right to Corporation B, and the claimants disagree as to how much of the water right Corp A conveyed to Corp B. (This situation may arise where there is either an express reservation of a portion of the water right by the seller, or an express conveyance of a portion of the water right to the buyer, but the deed is ambiguous as to how much was conveyed.) Corp A is claiming 50 cfs of the 100 cfs water right and Corp B is claiming 60 cfs of the 100 cfs water right. Since Corp A paid full fees at the time the original claim was filed, Corp B must pay the variable fee for the extra 10 cfs.

Note that where a claim is split and there is no increase in the fees, the old claimant will have paid the full fee for both of the new water rights and the new claimant will not have paid for any. If the old claimant thinks they are entitled to some compensation due to this fact, they must work it out with the buyer, not with IDWR.

Data entry of splits for the claims will apply to any applicable recommendations that may be in the working stages of becoming a recommendation in a director's report. The split of the claim produces two new claims and recommendations.

- v. If there is insufficient information to process the split, seek further correspondence with the new claimant. Any correspondence should be kept with the claim file.
- b. Reporting areas for which a director's report has been submitted to the district court and prior to issuance of a partial decree:
Data entry and minimum requirements for splitting the water right are the same as before submission of the director's report. However, IDWR should notify the district court of the splits via a Notice of Completed Administrative Proceeding (NCAP).
- i. An NCAP with the amended director's report is sent to the court for each water right. The title of the document (caption) includes the parent right number with the subsequent split numbers (children). The attachment for the parent water right is no more than a printout listing the parent and its children. There should be a director's report for each child created by the split. Each parent right requires an NCAP.