


ADJUDICATION MEMORANDUM #21

TO: Adjudication Bureau Staff

FROM: Don Shaff, Adjudication Bureau Chief 

SUBJECT: Expansions in Critical Ground Water Areas

REVISED: March 18, 2009

Section 42-1416B, Idaho Code, permits a person to file an adjudication claim for an expansion in a critical ground water area if the expansion happened:

- After designation of the critical ground water area,
- Before entry of a commencement order in a general adjudication, and
- Before the date of enactment of this section (March 29, 1989).

For the SRBA, this means an expansion must have taken place before November 19, 1987. In adjudications subsequent to the SRBA, the expansion must have taken place before March 29, 1989. The flow chart included on the next page can provide some assistance with determining validity of the expansion and review of an expansion claim.

The priority date for all such rights decreed shall be June 30, 1985, or the date of the expansion if the expansion happened after June 30, 1985.

The original right could be a decreed right, a licensed right, or a beneficial use right established prior to the mandatory permit system. The original right could also be a permit approved as of March 29, 1989, or the date of entry of the adjudication commencement order, whichever date is earlier. The original right claimed to have been expanded cannot be a beneficial use right in violation of the mandatory permit statute, or an application for permit approved after March 29, 1989, or the date of entry of the adjudication commencement order, whichever date is earlier.

Expansion includes any increase in irrigated acreage or additional purposes of use. It does not include an increase in the rate of diversion or volume of water diverted.

The statute also contains some provisions as to administration of these water rights once decreed. Even if the right is decreed, water will be deemed unavailable to fill these rights unless the director finds a management program exists which will limit average annual ground water withdrawals to no more than the average annual recharge to the aquifer. The director is required to make this finding within two years after the decree becomes final.

