

ADJUDICATION MEMORANDUM #32B

TO: Adjudication Staff

FROM: Carter Fritschle, Adjudication Section Manager *CF*

SUBJECT: Adding condition codes to adjudication recommendations

REVISED: August 9, 2013

The purpose of this memorandum is to serve as a guide for the use and importance of conditions and standard condition codes.

The Department uses conditions to further define the elements of water rights. Some conditions are unique to specific water rights and may require specific drafting to fit the circumstance (i.e., prior decree, water use agreement, historic practice, etc.).

Most commonly, however, the Department uses standard condition codes. The use of standard condition codes provides for consistent definition of water right elements and allows the Department to search for types of water rights. With standard condition codes, the Department can generate lists that may be used for various purposes. Watermasters and water districts may use the lists for assessment purposes and to determine regulated water rights within their boundaries. The Department depends on standard condition codes to administer water rights and send notices for water districts, water measurement districts, etc. Other areas of the Department, including the Hydrology section, often query standard condition codes to find enlargements and other types of water rights. Standard condition codes help the Department filter deferrable water rights (*de minimis* domestic & stockwater) from lists of water rights. The Department and the District Court also look to these condition codes for consistency in partial decrees.

Without consistency among codes and in using codes, none of the above can be accomplished with a high level of certainty. The Department queries by the standard condition code, not the text of the condition. With this in mind, agents should use utmost caution in editing conditions.

Unless the condition language indicates it should be edited (i.e., blanks in the condition language), agents should not edit standard conditions. For example, at the time of this writing, condition code N13 says, “The quantity of water under this right shall not exceed 13,000 gallons per day.” One of the most common changes made to N13 by novice agents is to change the limitation to 2,500 gallons per day. Condition code N06 says, “The quantity of water under this right shall not exceed 2,500 gallons per day.” Agents should not edit one condition when another standard condition is available. If questions arise as to whether a standard condition should be edited, staff should consult the Adjudication Section Manager.

As noted above, some standard conditions should be edited. For example, condition code X04 says, “Domestic use is for <#> homes.” The inclusion of the angle brackets and the lack of a number of homes indicate X04 should be edited to include the number of homes and the angle

brackets should be deleted. If domestic use is only for one home, the agent should use condition code X01. Agents should not edit condition X04 beyond what is indicated by the angle brackets.

If a non-standard condition is needed, staff should consult the Adjudication Section Manager.

This memorandum is divided into several sections to be more helpful. Some sections discuss specific types of water rights (i.e., domestic) and others discuss categories of conditions and why they are important. This memorandum is not meant to be all-inclusive, so agents should consult supervisors or Legal staff with additional questions.

A Workflow menu process, AJ Standard Conditions Export, should be used to generate an Excel spreadsheet of the current Adjudication and Water Right conditions.

CHECKLIST OF MOST COMMON CONDITIONS

The following conditions will likely be included on almost all active status recommendations:

Condition Code	Condition Text	Helpful tips
C18	This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.	Is automatically inserted once the recommendation is set to active in the ECVR summary page
PIN	Parcel No. _____	Should be used for all rights whenever possible. Can be modified to accommodate multiple parcels when the recommended place of use includes more than one parcel. Not commonly used for rights covering multiple ownership subdivisions, large irrigation projects or municipal rights but should be used for all other rights.
J01	Property is also known as Lot ____, Block ____, (subdivision name) .	Should be used for rights for one or more lots within a subdivision.

EXPLANATORY V. GENERAL CONDITIONS

For general purposes, Explanatory conditions will not appear on the face of the partial decree but will remain in the Department’s database. General conditions will appear on the face of the partial decree under “Other provisions necessary for definition or administration of this water right.” If a condition is necessary for water right administration, it should be a General condition as opposed to an Explanatory condition.

RECOMMENDING A PERMIT IN AN ADJUDICATION

There are four steps to recommending a permit in an adjudication:

1. The agent should notify the Water Right Permits section and determine when the license will be issued.
2. If the license will not be issued prior to the Director's Report filing, the agent should set the Basis of the recommendation as permit and include condition A01 on the recommendation. Unless claimed differently than the permit, the recommendation should reflect the permit as closely as possible.
 - a. A01 currently says, "This right is conditioned upon completion of the appropriation in accordance with the statutory procedure for appropriation of water rights. This right remains subject to all conditions set forth in the permit upon which this right is based, and will be subject to all conditions set forth in the license issued by IDWR upon completion of the statutory appropriation process."
3. The agent should notify the Adjudication Section Manager of the recommendation. The Adjudication Section Manager will file a Notice of Administrative Proceeding (NAP) with the District Court.
4. When the license is issued, the Department will file a Notice of Completed Administrative Proceeding (NCAP) with the District Court, which changes the recommendation to match the license.

ACCOMPLISHED TRANSFER, ENLARGEMENT AND EXPANSION CONDITIONS

See Adjudication Memorandum 16C for specific guidance.

CARRYING OVER CONDITIONS FROM LICENSES AND PRIOR DECREES

Many adjudication claims are based on previously determined water rights, such as licenses or decrees. Agents should not remove or alter conditions from the previously determined water right without first consulting the Adjudication Section Manager or appropriate Legal staff. For more discussion, see the section on Explanatory v. General conditions above. The Workflow menu process, AJ Conditions, should be used to generate an Excel spreadsheet of the current Adjudication and Water Right conditions.

Sometimes a claim based on beneficial use will be filed adjacent to a previously determined right. In such cases, it is not uncommon to see more restrictive conditions on the previously recorded right and subsequent recommendation than on the right based on beneficial use. Agents should not apply the licensing conditions to the beneficial use right without consulting the Adjudication Section Manager or appropriate Legal staff. So as a rule of thumb, do not add a Water Right license condition to a beneficial use recommendation, unless the beneficial use right is replacing the licensed right.

DISALLOWED WATER RIGHTS

Select P codes are used for disallowed water rights. Most of the P conditions consist of a General condition and a complimentary Explanatory condition. Both conditions should be included for any recommendation that will disallow the water right. Example: Conditions P01 and P11 (no lawful appropriation shown) should not be used for claims based on a license or

decree. This pair of conditions should be used for disallowing beneficial use rights. Be sure to check the usage description to insure you are applying the appropriate condition.

DOMESTIC (SINGLE, MULTI-USE AND WELL AGREEMENTS)

See Adjudication Memorandum 4 for specific guidance. There are specific condition codes that apply to domestic recommendations. These codes are often called the “N codes” because they begin with the letter N.

If the agent has questions as to whether a claim was filed as *de minimis*, he or she should check the receipt to determine if the claimant paid a \$25 claim fee or higher fee. If the claimant paid a \$25 claim fee, the claim should be recommended as *de minimis*. If the claimant paid a fee other than \$25, the claim should be investigated further to determine if the domestic use is *de minimis*.

If there are multiple *de minimis* claims for the same domestic place of use, such as water from more than one source, or if a *de minimis* claim is split, use condition code N19 in place of N13.

Condition codes that say the recommended use is not a determination of historical beneficial use should only be used on *de minimis* domestic and/or stockwater recommendations.

The table below lists the most commonly used condition codes for *de minimis* domestic recommendations:

Condition Code	Text	Helpful tips
N11/N13		Used when recommendation is for <i>de minimis</i> domestic. Both should be used together for recommendations based on beneficial use. Both codes should also be used together when recommending <i>de minimis</i> domestic and stockwater on the same recommendation.
N10/N12		Used when recommendation includes <i>de minimis</i> domestic with other uses except <i>de minimis</i> stockwater. Both should be used together for recommendations based on beneficial use.

X01	Domestic use is for 1 home.	Used when recommendation is for domestic use for 1 home.
X04	Domestic use is for <#> homes.	Used when recommendation is for domestic use for more than 1 home.
J01	Property is also known as Lot ___, Block ___, _(subdivision name)_.	Should be used when the Department knows the Lot #, Block designation and subdivision name.
PIN	Parcel No. _____	Should be used when the Department knows the parcel number or PIN.

FIRE

Generally there are no specific conditions added to adjudication recommendations, unless there were specific conditions added during licensing or with an approved transfer.

FORFEITURE

The period of non-use must always be documented in the recommendations. Either condition P01 or P31 must be included in the recommendation.

IRRIGATION (OVERLAPPING CONDITIONS MOST FREQUENTLY USED)

E conditions: Use E51 through E54 to limit combined diversion rate and/or diversion volume. Use E55 through E58 to limit combined acreage. If none of these conditions appear appropriate for the recommendation, consult the Adjudication Section Manager or appropriate Legal staff.

K conditions: Use K06 to limit the number of acres that may be irrigated in a single irrigation season under the right (always replace X27 with K06). K06 is always used with a permissible place of use when the original right was for less acres than described for the permissible place of use.

R conditions should be replaced with the appropriate E condition.

IRRIGATION RECOMMENDATIONS WITH LARGE POU

Condition 135 is inserted automatically whenever a large POU is created in the Claims Verification Record. The claim reviewer will need to change “SRBA District Court” to “CSRBA District Court” until the condition template is modified at the completion of the SRBA.

MINING

Generally there are no specific conditions added to adjudication recommendations, unless there were specific conditions added during licensing or with an approved transfer.

MUNICIPAL

Conditions 124 – 128 address the POU for municipal providers. Condition 135 is inserted automatically whenever a large POU is created in the Claims Verification Record. The condition should be deleted for recommendations that only have municipal and/or municipal storage purposes of use.

Conditions 208 – 211 address the accomplished changes in the PODs for municipal providers.

PONDS/STORAGE

Occasionally the volume of storage claimed may exceed the capacity of the storage reservoir or pond due to the historical practice of filling the reservoir or pond multiple times in a single year. If this practice can be verified, Condition 164 should be included in the recommendation to establish the capacity of the storage reservoir or pond independent of the total volume recommended.

PURPOSE OF USE CONDITIONS

Purpose of use conditions are used when non-irrigation uses are included on the recommendation. These frequently are not associated with a specific condition code.

SEASON OF USE CONDITIONS (ALSO CALLED SHOULDER REMARKS)

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. The shoulder conditions are: S35, S37-S42, S46 and S47.

SPLIT WATER RIGHTS

Condition P21 should be included in the recommendation for the child rights created by a split of a water right or claim (i.e., the parent right or claim).

Condition P22 should be included in the Parent record of a claim that has been split.

STOCKWATER

See Adjudication Memorandum 4 for specific guidance.

If the agent has questions as to whether a claim was filed as *de minimis*, he or she should check the receipt to determine if the claimant paid a \$25 claim fee or higher fee. If the claimant paid a \$25 claim fee, the claim should be recommended as *de minimis*. If the claimant paid a fee other than \$25, the claim should be investigated further to determine if the stockwater use is *de minimis*.

There is a special condition code for instream stockwater. Condition code N18 is used for all non-diverted stockwater rights.

Condition codes that say the recommended use is not a determination of historical beneficial use should only be used on *de minimis* domestic and/or stockwater recommendations.

The table below lists the most commonly used stockwater condition codes:

Condition Code	Text	Helpful tips
N11/N13		Used when recommendation is for <i>de minimis</i> stockwater. Both should be used together for recommendations based on beneficial use. Both codes should also be used together when recommending <i>de minimis</i> domestic and stockwater on the same recommendation.
N05/N08		Used when recommendation includes <i>de minimis</i> stockwater with other uses except <i>de minimis</i> domestic. Both should be used together for recommendations based on beneficial use.
X02	Stockwater use is for <10 range cattle>.	Used to describe number and type of stock.
J01	Property is also known as Lot ___, Block ___, _(subdivision name)_.	Should be used when the Department knows the Lot #, Block designation and subdivision name.
PIN	Parcel No. _____	Should be used when the Department knows the parcel number or PIN.

Note: All claims in which only a \$25.00 filing was paid require a condition limiting the right to either 13,000 gallons per day for Idaho Code § 42-111(a) domestic uses or 2,500 gallons per day for Idaho Code § 42-111(b) domestic uses. This applies to claims based on licenses and/or decrees as well as beneficial use claims.