


ADJUDICATION MEMORANDUM #41

TO: Adjudication Bureau Staff

FROM: Don Shaff, Adjudication Bureau Chief 

SUBJECT: Finality of Administrative Decisions for Licenses and Transfers

REVISED: July 7, 2009

This memo seeks to answer the question, “Can IDWR recommend the adjudication claim differently than the administrative decision (license or transfer) for the claimed water right?”

Generally, IDWR must recommend the adjudication claim consistent with a previous administrative decision, such as a license or transfer on a licensed or decreed water right. However, a water right can be recommended differently than stated on a license or transfer if a subsequent administrative action has modified the previous water right record, or:

- a) The right is forfeited or abandoned, in whole, or in part,
- b) The difference can be deemed an accomplished transfer (See Section 42-1425, Idaho Code, for applicable dates),
- c) The descriptions on the license or transfer are incomplete (See Section 42-1427, Idaho Code), or
- d) The license or transfer was issued with a source of ground water but no annual diversion volume limit (See Adjudication Memorandum #34).

If the options above do not resolve a discrepancy on the license or transfer, adjudication staff should request the Water Allocation Bureau Chief consider amending the license or transfer. Adjudication staff should route the request through the Adjudication Bureau Chief to allow monitoring of the submitted requests. The Water Allocation Bureau Chief will determine if a subsequent change in the license or transfer is warranted based on the individual case. If a change is warranted, IDWR will issue an amended license or transfer.

Questions have arisen regarding the finality of transfers where elements of the water right are copied from the existing record without review. Finality of the transfer is generally only applicable to those elements specifically addressed in the transfer. For example, a claim filed for an accomplished change in place of use can still be recommended with the change in POU if the transfer only addressed point of diversion.

This can also apply to transfers on statutory claims. For example, if a statutory claim had a priority date of 1902 and a transfer was approved only for POU, the recommended priority date would be the date supported by the evidence submitted. Here again, the finality of the transfer is applicable only to those elements specifically addressed in the transfer.

See the Adjudication Bureau Chief for additional guidance on specific situations that deviate from these general conditions.