

ADJUDICATION MEMO #47

TO: Adjudication Staff Approved: DRT

FROM: Dave Tuthill NCY

DATE: February 7, 2000

RE: Accomplished Transfers and Enlargements in Basin 74

Prior to Sara Denniston's departure, she was presented the question as to whether claimants whose rights were decreed in the Lemhi decree (Basin 74) may claim enlargements or accomplished transfers in the SRBA. It was her opinion that Lemhi adjudication claimants are entitled to claim accomplished transfers and enlargements in the SRBA.

The following is a chronology of events:

- Aug. 13, 1970     The Lemhi Adjudication was initiated.
- Jul. 9, 1974     The Department filed proposed findings on all waters rights in the Lemhi River Basin as of April 1, 1972.
- Dec. 30, 1982    The district judge entered a partial decree in the Lemhi Adjudication.
- Oct. 14, 1992    The district court ruled that the partial decree be considered final.

Thus, the question is whether the fact that the decree was not made final until 1992 prevent the Lemhi basin water users from claiming pre-1987 accomplished transfers and enlargements. The director's report and the partial decree were based on the state of the water rights as they existed prior to 1982. The partial decree was deemed final in 1992 apparently without any further factual investigation. Therefore, factually it is quite possible that accomplished transfers or enlargements may have occurred in the Lemhi basin prior to 1987.

Furthermore, the accomplished transfer and enlargement statutes did not exist in the early 1970s when the Department conducted investigations on the Lemhi basin. Therefore, the Department could not consider any transfers not approved under 42-222 in making its recommendations in the Lemhi adjudication. Thus, the Lemhi decree is not binding as to the existence of any accomplished transfers or enlargements.

The accomplished transfer and enlargement statutes merely refer to transfers having occurred "prior to the commencement of the Snake River basin adjudication." This language seems to indicate that the Legislature intended to give its retroactive approval to *all* (non-injury causing) transfers that occurred prior to 1987. It would appear to defeat the Legislature's intent to deprive a certain group of people the benefit of these statutes merely because the timing of the court's paperwork.