

ADJUDICATION MEMO # 48

TO: Adjudication Staff
FROM: Dave Tuthill
DATE: December 29, 2000
RE: Guidance for Recommendations in Basin 43

This memorandum provides guidance for adjudication recommendations in Basin 43.

A. Situations where Raft River water rights are claimed to be diverted via wells:

Some claimants in Basin 43 have identified well heads as points of diversion for Raft River water rights, based on the theory that pumpage of wells in the basin has in some cases depleted flows of the river. Because the ground water source is not the same as the Raft River source, IDWR will not consider a change from the original point of diversion on the river to a well head to have occurred via an accomplished transfer.

However, IDWR will make a recommendation in the SRBA for a Raft River water right even though it has not been used for many years, if the reason for non-use is unavailability of water. Thus, a claimant could file a claim for ground water from a well, using as a basis of the water right a ground water license, or beneficial use (if the use began prior to March 25, 1963). In addition, the claimant may file a claim for Raft River water, identifying the last-used point of diversion from the river.

In the situation where the original source of the water right was the Raft River, the IDWR recommendation will take the following form:

1. Source: Raft River.
2. P/D: Show the original p/d from the Raft River, unless the diversion was moved to another location by an administrative or accomplished transfer.
3. P/U: Limited to P/U in decree or license. (Use caution in allowing accomplished places of use – just the fact that a $\frac{1}{4}$ $\frac{1}{4}$ is identified in the decree does not indicate that 40 acres were originally irrigated there.) In some situations it is possible that an accomplished transfer has occurred without enlargement.
4. Rate of flow: Limited to rate of flow in decree or license.
5. Volume: None.

If the point of diversion from Raft River has not been used in many years, it might be appropriate for the examiner to include the following remark:

The point of diversion described above represents an unused facility due to infrequent availability of water. Before water may be diverted under this water right, the wateruser must file a transfer to establish an active point of diversion, or show that an easement and means to convey water from the diversion to the place of use exists.

B. Guidance for Critical Ground Water Area Expansion Claims:

1. Eligibility for a recommendation as valid:
 - a. Base water right is valid.
 - b. Acreage has increased.
 - c. Expanded acreage is identified in a separate claim.
 - d. Do not recommend when:
 - Not irrigated prior to 1987.

2. Form of Recommendation:
 - a. Source: Ground water
 - b. Date of Priority: June 30, 1985
 - c. P/D: Wellhead location.
 - d. P/U: Limited to enlarged acres within the POU.
 - e. Rate of flow: Pro rata flow rate for the additional acres.
 - f. Remarks: Combined rate of flow limitation limits to the original rate of flow – no additional flow rate allowed by this right.
 - g. Volume: Limited to volume for original acres.
 - h. Note: Pursuant to Section 42-1416b, Idaho Code, water rights decreed under this provision must conform to the following:
 1. Water shall be deemed unavailable to fill the rights for expanded use, even if decreed in the adjudication, unless the director finds that a management program exists which will, within a time period acceptable to the director, limit the average annual water withdrawals from the aquifer designated in the critical ground water area to no more than the average annual recharge to the aquifer.
 2. Within two (2) years after a decree determining the water rights within a critical ground water area becomes final, but not sooner than four (4) years from the date of enactment of this section, the director of the department of water resources shall make a finding as to whether an adequate management program exists to bring withdrawals into balance with recharge.
 3. If the director finds that an adequate management program to bring withdrawals into balance with recharge does not exist, the director shall order all holders of rights to expanded use of ground water within the area to cease or reduce withdrawal of water until such time as the director determines that withdrawals have been brought into balance with recharge and sufficient ground water is available to resume or increase withdrawals. The director's order shall be issued before September 1 and shall be effective beginning with the following growing season.