



State of Idaho

DEPARTMENT OF WATER RESOURCES

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MEMORANDUM

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

TO: WATER MANAGEMENT DIVISION STAFF

FROM: NORM YOUNG *NY*

RE: 1) ADJUDICATION CLAIMS TOLLING FORFEITURE
2) FISH PROPAGATION FACILITY VOLUME

DATE: MARCH 24, 2000

Adjudication Memo #4647
Permit Processing Memo #18
Transfer Processing Memo #22
Licensing Memo #11

On December 29, 1999, the Snake River Basin Adjudication (SRBA) district court issued its *Order on Challenge (Consolidated Issues) of "Facility Volume" Issue and "Additional Evidence" Issue*, Subcase Nos. 36-02708, et al., In Re SRBA, Case No. 39576. In that decision the SRBA district court determined, among other things that:

1. "Once a claimant files a claim in the SRBA, for a particular water right, the forfeiture provisions of I.C. § 42-222(2) are also tolled for purposes of establishing forfeiture, so long as the claimant continues to prosecute the claim to a partial decree."

2. Facility volume is not an element of a water right for fish propagation. While a facility volume condition could be carried over from a license into a partial decree, an additional remark would be added to the partial decree indicating that the condition has no effect on the use of the right.

Water Management Division will implement this decision as follows:

Adjudication Bureau:

1. Agents investigating water use in the SRBA shall only investigate water use prior to the date the water right claim was filed with IDWR for purposes of determining whether forfeiture has occurred. Field examinations made, photographs taken, or other evidence of non-use of a water right after the date a claim was filed with IDWR shall not be used in preparing the recommendation on the claim for the Director's Report.

2. Facility volume conditions will not be included in the Director's Report for fish propagation claims whether or not the claim is based upon an existing license that includes the facility volume condition.

Water Allocation Bureau:

1. Filing a claim and participating in the SRBA does not prevent a water user from making use of his/her water right. Therefore, in the context of transfer or other applicable administrative proceedings, IDWR will continue to consider nonuse of water after the filing of an SRBA claim as relevant to whether forfeiture has occurred.

2. Facility volume conditions will not be included in new permits for fish propagation and will not be carried over from a permit to the resulting license. IDWR will not, on its own initiative, endeavor to enforce a facility volume condition associated with any existing right.

Except as specifically discussed in this memorandum, IDWR standards regarding the investigation of SRBA water right claims and the processing of administrative applications remains unchanged.