

ADMINISTRATOR'S MEMORANDUM

Amended Transfer Processing No. 18

To: Water Allocation Bureau
Water Compliance Bureau
Regional Offices

From: Jeff Peppersack 

Re: **IDAHO CODE § 42-222A - TEMPORARY CHANGES TO WATER RIGHTS DURING DROUGHT CONDITIONS**

Date: May 14, 2014

This memo supersedes all prior versions of guidance to staff regarding temporary changes to water rights during drought conditions, including Transfer Processing Memo No. 17.

Section 42-222A, Idaho Code, authorizes the Director upon declaration of a drought emergency to approve temporary exchanges and temporary transfers. The code section provides that temporary exchanges are to be approved as provided in Section 42-240, Idaho Code. Hence, the sources of water involved in temporary exchanges must be surface water, since the code section does not provide for the exchange of ground water with another source.

Declaration of a drought emergency is intended to encourage and facilitate changes to established water rights to help water users during a drought. To this end, IDWR will give positive consideration to applications with the intent of approving those that do not enlarge use of water under a right, do not injure other water rights, are consistent with the conservation of water resources and are in the public interest. Because of the emergency nature of these applications, the statute contemplates a truncated review by IDWR with more emphasis on the recommendation of the local watermaster and the responsibility of the applicant to meet the above described criteria.

- IDWR has prepared a separate form for temporary transfers (form no. 42-222A) but has not prepared a separate form for temporary exchanges. Until a temporary exchange form is developed, staff should use the existing form for exchanges of water, marking the application as "temporary" on the Application for Exchange of Water form.
- IDWR staff should be willing to informally review ideas for temporary changes with water users and watermasters prior to the actual filing of an

application and fee to avoid, if possible, having to deny Temporary Change Applications.

- The same general considerations apply to a temporary change approval for a transfer or exchange as to an approval under Section 42-222, Idaho Code, or Section 42-240, Idaho Code, respectively.
- A temporary change cannot result in a new use of water or an enlargement of water use under the rights. An equal amount of use needs to be given up, usually in terms of acreage that will not have a full water supply during the period of the temporary transfer.
- A temporary change shall not be used to authorize construction of a new well or wells.
- Department staff should carefully consider the unstacking of water rights. In general, unstacked water rights result in enlargement in use, since the unstacked rights would likely be used as primary rights with more volume of water being diverted under the rights in combination. Temporary transfers of supplemental rights should be evaluated similar to transfers under Section 42-222, Idaho Code, keeping in mind that temporary changes shall only be approved to lands or uses which normally have a full supply except for a drought condition.
- IDWR can approve a temporary change to allow water to be moved from one field (perhaps alfalfa or pasture) that may still need water to another crop (such as potatoes). For example: IDWR could approve a temporary change to allow water to be moved from a finished grain crop to a different crop that is short of water due to drought with no alternate supply assuming that the right would authorize continued irrigation on the grain field after the grain crop is harvested (e.g. to establish a second crop). In this example, an approval should be conditioned to be effective only after the grain crop is harvested because water would not otherwise be used on the grain field for a period of time until harvest. Temporary approval should not be given if use of the right will result in the use of more water under the water right than authorized by the right.
- IDWR will consider temporary changes to allow rotation of water among canals provided there is no injury to other water users. The code section provides that temporary changes shall only be approved to lands or uses which normally have a full supply except for a drought condition. Temporary changes shall not be approved as a means to offset or delay the use of available storage water.
- If there is a watermaster who administers the rights on a water source, comments of the watermaster must be obtained and considered before approving a temporary change. Comments may be solicited and received in writing, by email, or through a phone call to the watermaster if followed by a memo to the file documenting the conversation. Delays or non-response from

watermasters will result in delays in processing applications. The watermaster should be informed that a non-response will be considered by the Department to be the watermaster's recommendation not objecting to approval of the proposed temporary transfer.

- An applicant is required to obtain and provide a copy of the written approval of an irrigation district or corporation before the Department will approve a change to water use represented by shares of stock or when the right or irrigation works to be used to make the change are owned or managed by an irrigation district.
- The approval document for Temporary Change Applications should be prepared as an Order Authorizing Temporary Change, examples of which the State Office has provided in the past to the regional offices. The order should be conditioned to specifically identify the authorized change including disclaimer conditions and an expiration date.
- Regional Managers are authorized to approve Temporary Change Applications and should send a copy to the applicant, the watermaster, the water right file(s) and the State Office.
- When the State Office approves a Temporary Change Application, the State Office will send a copy to the applicant, to the watermaster, to the water right file(s) and to the Regional office.
- Numbers will be assigned to temporary changes through an Excel spreadsheet maintained by the State Office to catalog and keep track of temporary changes.