

WATER LAW BASICS:
How to Answer Six Common Questions
About Water Law

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(1) WHAT IS A WATER RIGHT?

- A water right is a real property right
 - Idaho Code § 55-101: Real property consists of "Lands, possessory rights to land, ditch and water rights, . . ."
- A water right is also an appurtenance to real property.
- A water right is just as its name suggests—a right to use the State of Idaho's water for a specific use.
 - Idaho's water is owned by the people of the State of Idaho.
- A water right must be used for a recognized beneficial use—What constitutes a beneficial use could be added to, but generally speaking, these are the most common beneficial uses:
 - Irrigation; Commercial; Industrial; Domestic; Recreation & Aesthetics; Ground Water Recharge.
 - One of more unique beneficial uses is a municipal use—It covers virtually all kinds of beneficial uses (irrigation, domestic, commercial, industrial, etc.).



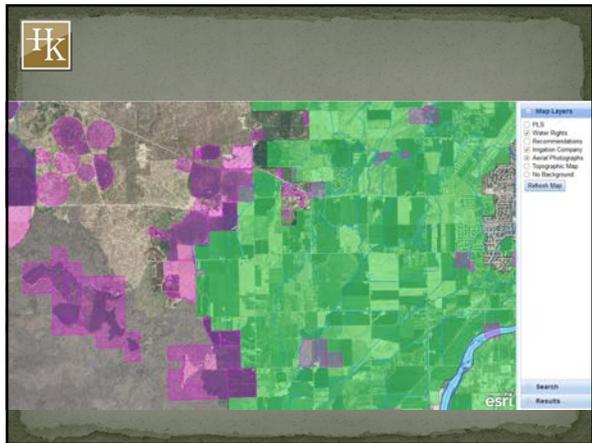
(1) WHAT IS A WATER RIGHT?

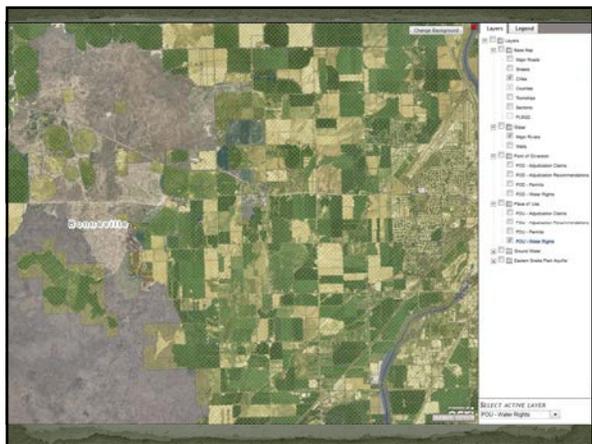
- What does a water right look like? Other than the owner of the water right, there are seven elements:

Element	Example
Source	Snake River
Point of Diversion	Twp. 1N, R38E, Sec. 4, NW1/4NW1/4
Priority Date	June 1, 1940
Nature of Use	Irrigation
Diversion and/or Volume	1.5 cfs
Period (Season) of Use	April 1 st - October 31 st
Place of Use	Twp. 1N, R38E, Sec.4, NW1/4 NW1/4 (40 acres); SW 1/4NW 1/4 (40 acres)

HK (2) I'M LOOKING AT PURCHASING SOME PROPERTY, DOES IT HAVE ANY WATER RIGHTS?

- IDWR's simple irrigation right map:
 - <http://maps.idwr.idaho.gov/IrrigationRightsFinder/Map>
- IDWR's advanced water right map:
 - <http://maps.idwr.idaho.gov/mapall/>
- IDWR's water right search page:
 - <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>
- Ask current owner (but get a better answer than "yeah, it has good water rights")





HK (4) WHAT IS THE DIFFERENCE BETWEEN A CANAL COMPANY AND AN IRRIGATION DISTRICT?

- A canal company is an entity formed to (1) obtain a water right, and (2) deliver the water to the company's shareholders.
 - Stockholders are assessed each year for operation and maintenance expenses.
 - Ownership of stock in the company represents an undivided interest in the canal company's assets, the most important of which is the water right.
- The canal company owns the water right.
- Irrigation Districts are the functional equivalent of a private canal company, except they are a quasi-municipal entity.
- Rights to use of irrigation district water is evidenced by ownership of designated land within the district rather than stock ownership.
- Similar to a canal company, the irrigation district owns the water right, not individual patrons within the district.

HK (5) DO I NEED A WATER RIGHT FOR MY DOMESTIC WELL?

- Generally speaking, the answer is NO.
- Idaho Code § 42-111(a) provides that a homeowner can use water without a water right as long as the use does not exceed 13,000 gallons per day, and the irrigation associated with the home cannot be more than 1/2 acre.
- Sometimes, a water right is necessary.
 - Big yards/pasture
 - Multiple homes with different ownership



HK (6) WHAT IS THE SRBA?

- The Snake River Basin Adjudication is a considered a classic "general stream adjudication" in which all claims to water rights in the Snake River and its tributaries had to be filed in the SRBA or be forever lost.
 - ADUDICATION = INVENTORY
- Commenced on November 19, 1987.
- Covers approximately 87% of the state.
- Nearly 160,000 claims were filed.
- In February of this year, the last basins were closed to claims taking.