

ADMINISTRATIVE MEMORANDUMS INDEX

As of January 25, 2016

Please note that these Administrative Memorandums will include many memos that have become outdated due to changes in rules, statutes or current Department policy. Some memos have been amended or superseded by others, and some may no longer be applicable.

MULTIPLE PROGRAMS

No.	Title	Signed	Amended or Superseded
1.	Descriptions of Places of Use	12-13-04	03-18-10
2.	Forfeiture Review Period	3-5-12	

ADMINISTRATOR'S MEMORANDUM

(Multiple Programs #1)
(Adjudication Memo # 50)

TO: Water Management Division Staff

FROM: Jeff Peppersack 

SUBJECT: Descriptions of Places of Use

REVISED: March 18, 2010

IDWR describes places of use (POU) for water right records in two primary ways:

1. For most water rights, IDWR's standard is to use the Public Land Survey (PLS). Locations described in this tabular manner typically include township, range, section, government lot and/or quarter-section and quarter-quarter section. As necessary, the description may also include a tract, a mineral survey, or a homestead entry survey.
2. In addition to using the PLS, IDWR can use a shapefile to describe the POU's polygon outline. The shapefile is typically incorporated in the IDWR Enterprise Database via the Spatial Database Engine (SDE).

Having both tabular and spatial POU information benefits IDWR and the public in many ways. The dual information optimizes opportunities for the public to access information about IDWR programs and improves department efficiency and accuracy in administration of water rights.

Section 42-219, Idaho Code, allows for the inclusion of a digital boundary when issuing licenses describing the service areas for qualifying irrigation entities. The SRBA District Court has also decreed digital boundaries pursuant to Section 42-1411, Idaho Code, for similar qualifying irrigation entities.¹ Sections 42-202, 42-219, and 42-222, Idaho Code, allow for a generally described service area for municipal providers as defined in Section 42-202B, Idaho Code. IDWR maintains shapefiles in SDE for these digital boundaries and generally described service areas. For query and display purposes only, PLS information will be generated automatically from the SDE shapefiles.

Attachment A to this memorandum identifies the mechanisms for displaying and changing spatial and tabular POU descriptions, as well as conditions for generally described service areas, for water delivery entities. Digital boundaries created pursuant to Sections 42-219 and 42-1411, Idaho Code, shall continue to be archived in SDE and IDWR's Document Management System (commonly referred to as PCDocs).

IDWR will ensure POU descriptions for water rights include spatial and tabular data, along with applicable conditions.

¹ The CD of the digital boundary on file with the SRBA District Court will be the official record of the authorized POU unless altered by subsequent administrative procedure pursuant to Section 42-222, Idaho Code, or by subsequent filing pursuant to Section 43-323, Idaho Code.

Attachment A. POU Descriptions for Water Delivery Organizations

Organization	Authorizing Legislation	Tabular	Tabular	Tabular	Spatial	Spatial Change Document	Spatial	Remark Text Statement
	Sections of Idaho Code	Initial Requirement	Change Document	Reporting	Initial Requirement	Document	Reporting	
Municipal Use								
Municipality	42-219, 42-222, 42-202B(5)(a)	Derive from spatial boundary	Re-derived from changed boundary	Print/list as an option	Boundary not required but included in database for informational purposes	Provider submits new service area	Polygon for informational purposes	Footnote 1
Municipal Server such as United Water	42-219, 42-222, 42-202B(5)(b)	Derive from spatial boundary	Re-derived from changed boundary	Print/list as an option	Boundary not required but included in database for informational purposes	Provider submits new service area	Polygon for informational purposes	Footnote 2
Water and Sewer District	42-219, 42-222, 42-202B(5)(b)	Derive from spatial boundary	Re-derived from changed boundary	Print/list as an option	Boundary not required but included in database for informational purposes	Provider submits new service area	Polygon for informational purposes	Footnote 3
Other	42-219, 42-222, 42-202B(5)(c)	Derive from spatial boundary	Re-derived from changed boundary	Print/list as an option	Boundary not required but included in database for informational purposes	Provider submits new service area	Polygon for informational purposes	Footnote 4
Irrigation Use								
Irrigation District	42-219, 42-222, 43-323	Derive from spatial boundary	Re-derived from changed boundary	Print/list as an option	Digital boundary - formally tied to water right	District submits new service area	Polygon as description of service area	Footnote 5
Organization that delivers water to 25K or more acres	42-219, 42-222	Derive from spatial boundary	Re-derived from changed boundary	Print/list as an option	Digital boundary - formally tied to water right	Change boundary via transfer	Polygon as description of service area	Footnote 6
Organization that delivers surface water to more than 5 users	42-219, 42-222	Derive from spatial boundary	Re-derived from changed boundary	Print/list as an option	Digital boundary - formally tied to water right	Change boundary via transfer	Polygon as description of service area	Footnote 7
Other	42-219, 42-222	Identify specific acres authorized for irrigation	Transfer	Always print/list acres by PLS	Specific acres authorized for irrigation	Change POU via transfer	Polygon(s) identifying acres authorized for irrigation in POU	Footnote 8

Footnotes

- 1 Place of use within service area of the City of _____ municipal water supply system as provided for under Idaho law.
- 2 Place of use within service area of _____ as provided for under Idaho Law. Place of use generally described as city limits of _____ and surrounding area.
- 3 Place of use within service area of _____ as provided for under Idaho Law. Place of use generally described as _____.
- 4 Place of use within service area served by the public water supply system of _____. Place of use generally located within T(), R(), S().
- 5 Place of use within the boundary of _____, pursuant to Section 43-323, Idaho Code.
- 6 Place of use within area served by _____.
- 7 Place of use within area served by _____.
- 8 (No text remark needed.)

ADMINISTRATOR'S MEMORANDUM

Multiple Programs Memo No. 2

To: Regional Offices
Water Allocation Bureau

From: Gary Spackman 

Re: **FORFEITURE REVIEW PERIOD**

Date: March 5, 2012

Idaho Code § 42-222(2) provides that all rights to the use of water shall be lost and forfeited by a failure for the term of five years to apply it to the beneficial use for which it was appropriated. Idaho Code § 42-222(3&4) provides that the Department may grant an extension for an additional five years for good cause shown if an application for extension is made before the end of the five year period. Idaho Code § 42-223 provides for exceptions or defenses to forfeiture. Experience in the Snake River Basin Adjudication (SRBA) and other court cases have provided additional guidance on the subject of forfeiture. In general, forfeiture is not favored; however, the Department has a responsibility to review water rights to determine if forfeiture has occurred prior to approving (or denying) certain applications affecting existing water rights.

In 1999, the SRBA court issued a decision tolling the forfeiture period for a water right during the time period that a claim is pending in the adjudication. The Department has presumed that water rights are not forfeited for non-use during the five-year period following issuance of a partial decree. For many water rights decreed in the SRBA, the initial five-year period has ended or will end soon, and Department employees are increasingly faced with questions regarding a cut-off date to determine if forfeiture has occurred and when action must be taken to protect a water right from forfeiture. For example, if a partial decree is issued during the middle of the irrigation season, is it appropriate to assume that five full irrigation seasons of non-use (in addition to the first partial season) must pass before the right is considered to be forfeited? If so, would the right holder need to initiate some action to protect the right from forfeiture prior to the end of the five full seasons, or prior to the beginning of the sixth irrigation season, or some other time? In the past, the Department has presumed that resumption at the beginning of the sixth season would prevent forfeiture on the basis that junior irrigation rights would not have had opportunity to establish some reliance on the unused water during the non-irrigation season. What if the need for irrigation water is further delayed in the sixth season due to a wet spring?

The purpose of this memo is to address the timing questions that arise during forfeiture review by providing Department employees with a simple and uniform forfeiture review period. This memo applies to forfeiture review associated with applications to lease a water right to the Water Supply Bank, applications for extension of time to avoid forfeiture, and applications for transfer of a water right. This memo applies to both irrigation and non-irrigation water rights.

The Department will presume that beneficial use under a water right during a portion of a calendar year or any defense or protection from forfeiture applicable during a portion of a calendar year will apply to the entire calendar year. For example, if an irrigation right is used to establish a cover crop at the beginning of an irrigation season and is not used during the remainder of the irrigation season; the right will be considered protected from forfeiture through December 31 of that calendar year. Likewise, if an irrigation right is decreed at the beginning of a calendar year (prior to the beginning of the irrigation season) and is not used at any time during the irrigation season, the right will still be considered protected from forfeiture for that entire calendar year.

The Department will also presume that resumption of beneficial use under a water right for a portion of a calendar year or any defense or protection initiated during a calendar year will apply to the entire calendar year. For example, if an irrigation right is used to establish a fall crop at the end of an irrigation season, even if the right was not used earlier during the irrigation season, the right will be considered protected from forfeiture for that calendar year. Likewise, if an application for lease to the Water Supply Bank is submitted before the end of a calendar year and eventually approved and the right is not used at any time during that calendar year, the right will be considered protected from forfeiture for that calendar year.

Strict application of Idaho Code § 42-222(4) would require an application for extension of time to avoid forfeiture to be submitted prior to the end of the fifth unprotected year of non-use. However, the Department wishes to avoid questions and conflicts surrounding the timing of resumption during an irrigation season and to maintain simple and uniform guidance to Department employees. Therefore, the Department will presume that resumption of beneficial use or any defense or protection, including filing an extension of time to avoid forfeiture, initiated before the end of the sixth calendar year will prevent a finding of forfeiture by the Department.

As an example, if an irrigation right is decreed in the SRBA in January, 2004 and water is not used during 2004, 2005, 2006, 2007, 2008 and 2009, then resumption or action initiating a defense or protection from forfeiture must occur prior to the end of the calendar year in 2010. The 2004 calendar year is considered protected since the decree was issued during that year. The years 2005 through 2009 represent the five year period of non-use. The Department would not find forfeiture if use resumed before the end of calendar year 2010. An application to lease the water right to the Water Supply Bank or other action initiating a defense or protection from forfeiture would apply similarly¹.

As another example, if an extension of time to avoid forfeiture is granted for five years, the Department will presume that resumption of beneficial use or any defense or protection initiated before the end of the sixth calendar year will prevent a finding of forfeiture by the Department. Continuing with the example above, if an application for extension of time to avoid forfeiture was submitted in 2010 and the Department granted an extension for the years 2010, 2011, 2012, 2013 and 2014, then resumption or other action initiating a defense or protection from forfeiture must occur prior to the end of calendar year 2015. Note that, pursuant to Idaho Code § 42-222(4), the Department would still be required to provide notice at least 60 days prior to the end of 2014 that resumption and a report is due by December 31, 2014. However, the Department would not find forfeiture if resumption of beneficial use or

¹ Filing an application for transfer does not toll the statutory period for forfeiture of a water right due to non-use.

other action initiating a defense or protection from forfeiture occurred prior to the end of calendar year 2015.

This memo does not change Department policy on partial forfeiture. Forfeiture of a portion of a water right may occur if beneficial use is reduced for the statutory period as applied under the guidance of this memo. When discussing forfeiture issues, Department employees and water users should be mindful that any Department decision or action where forfeiture may be an issue can be contested and certain facts may lead to a different conclusion in an administrative hearing, or judicial review.