

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Please note that these Administrative Memorandums will include many memos that have become outdated due to changes in rules, statutes or current Department policy. Some memos have been amended or superseded by others, and some may no longer be applicable.

| RECORDS | | | |
|----------------|---|-----------------|------------------------------|
| No. | Title | Signed | Amended or Superseded |
| 1. | <u>Document Filing System</u> | 4-21-75 | 5-10-93 3-23-12 |
| 2. | <u>Approval of Watermaster Reports/Certificates of Appointment for Watermaster/Claim Review</u> | 6-23-75 | |
| 3. | <u>Protests</u> | 6-23-75 | |
| 4. | <u>Fees for Research Services</u> | 7-14-80 | 4-16-01 7-08-08 |
| 5. | <u>Fees for Computer Abstracts</u> | 12-12-80 | 4-30-81 |
| 6. | <u>Vault Security</u> | 1-28-82 | |
| 7. | <u>Fees for Copies</u> | 10-25-82 | 4-16-01 8-19-11 |
| 8. | <u>Policy on Data Entry of Water Rights</u> | 10-24-85 | |
| 9. | <u>Processing Notice of Change In Water Right Ownership and Associated Updates to Water Right Records</u> Guidance for the review and processing of notices to change WR ownership and for making associated updates | 8-5-08 | 5-21-15 |

BUREAU CHIEF'S MEMORANDUM

To: Water Allocations Bureau and Regions
 From: Jeff Peppersack 
 Re: **Organization of Water Right Files** (Supplement to Amended Records No. 1)
 Date: March 23, 2012

The information provided in this document does not supersede Administrative Memorandum Amended Records No. 1, Proper Order of Filing. The information in Amended Records No. 1 is still relevant. This supplemental memorandum is intended to reinforce the existing guidance and to provide direction for new document types and processing changes that have occurred since Amended Records No. 1 was issued.

| <p>❖ Examples of Documents filed on the left-side of the water right file.</p> <p>Documents that affect the status and elements of a water right are not mixed with other documents and correspondence in a water right file. Documents affecting the status and elements of a water right are filed on the left-side of the water right file in chronological order, with the most recent document on top. All supporting documents or supplements to applications submitted with a document affecting the status and/or elements of a water right should be retained on the left side of the file with the primary document. Cover letters are the exception.</p> | |
|--|---|
| Water Right Stages | Associated Applications, Forms & Approvals |
| Application | <ul style="list-style-type: none"> • Application for Permit to Appropriate Water • Assignment of Application for Permit • Withdrawal of Application for Permit |
| Permit | <ul style="list-style-type: none"> • Permit to Appropriate Water • Assignment of Permit • Application for Amendment of Permit • Statement of Completion for Submitting Proof of Beneficial Use • Request for Extension of Time to Submit Proof of Beneficial Use • Request to Reinstate a Permit Lapsed more than Sixty Days • Relinquishment of Permit • Application for Amendment for Licensing |
| License | <ul style="list-style-type: none"> • Water Right License |
| Statutory Claim | <ul style="list-style-type: none"> • Claim to a Water Right |
| Decree | <ul style="list-style-type: none"> • Decree or Partial Decree (document from court representing right) |
| Subsequent Actions | <ul style="list-style-type: none"> • Orders of the Department or Independent Hearing Officers which directly determine the status of a water right, or which changes existing elements of a water right. • Notice of Power of Attorney |

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| | <ul style="list-style-type: none"> • Notice of Change in Water Right Ownership • Proof Report (database representation of a water right record) • Notice of Security Interest in a Water Right • Application for Transfer of Water Right • Application for Transfer of Water Right – Point(s) of Diversion • Assignment of Application for Transfer • Transfer of Water Right • Request for Extension of Time to Complete Transfer • Application for Exchange of Water • Exchange of Water Right • Temporary Change Application • Notice of Diversion as an Alternative to Instream Stockwater Use • Application to Sell or Lease a Water Right to the Water Supply Bank • Water Supply Bank Lease Acceptance • Application to Rent Water From the Water Supply Bank • Water Supply Bank Rental Agreement • Water Supply Bank Request to Release or Lease Term Extension • Application for Extension of Time to Avoid Forfeiture of a Water Right • Resumption of Beneficial Use • Notice of Abandonment of Water Right |
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❖ **Examples of Documents filed on the right-side of the water right file.**

Documents and correspondence that provide additional information, review, or explanation regarding the development and changes to status or elements of the water right documented on the left-side of the file are filed on the right-side of the file.

| Type of Documents | More Explanation |
|-------------------|--|
| Correspondence | <ul style="list-style-type: none"> • All letters, notes and emails related to the water right along with any related attachments. Cover letters to applications or other forms are filed on the right-side, while the applications or forms as noted above are filed on the left-side of the file. • Documents received to supplement submitted applications should be retained with the explanatory correspondence filed on top; not filed with the application. Adding documents to the application after it has been submitted confuses the chronology of events. If multiple changes are proposed through correspondence and supplements, an Amended Application should be submitted to clarify the application details. |
| Staff Review | <ul style="list-style-type: none"> • Reports, memos or review analysis of various actions by department staff related to applications, actions or events during development and use of a water right. |
| Water District | <ul style="list-style-type: none"> • Water Master Comment forms, correspondence or other water district documents. |
| Legal Notice | <ul style="list-style-type: none"> • Correspondence, ads, affidavits of publication related to the advertising and public notice process. |
| Protest | <ul style="list-style-type: none"> • Notice of Protest forms or letters may be temporarily separated into a separate folder labeled "Protests" when multiple protests for a single matter |

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| | <p>are received. All related correspondence should be filed on the right-side of the water right file. These documents should be merged chronologically on the right-side of the water right file upon resolution of the protested matter per Amended Records No. 1.</p> <ul style="list-style-type: none"> • Department protest correspondence such as acknowledgement letters, protest withdrawal letters, pre-hearing conference notice, etc. • Other hearing documents such as attendance roster, recording notes, list of exhibits, exhibits, list of parties, etc. • Hearing Exhibits may be separated into a separate folder labeled "Exhibits" when multiple exhibits for a single matter are received. A target sheet is inserted in its place identifying the date, name and location of the documents. All related correspondence should be filed on the right-side of the water right file. |
| Petitions | <ul style="list-style-type: none"> • Petitions for Reconsideration of a Department approval or action, related correspondence, and any Withdrawal of Petitions. |
| Other Orders | <ul style="list-style-type: none"> • Orders of the Department or Independent Hearing Officers related to interim matters such as setting a matter for hearing, discovery or other procedural matters. • Orders or other legal documents issued by jurisdictions other than IDWR related to a water right. Decrees or Partial Decrees from an adjudication court are primary documents filed on the left-side. |
| Reports | <ul style="list-style-type: none"> • Beneficial Use Field Reports and other technical reports submitted separately from applications by staff and the public. |
| Address Information | <ul style="list-style-type: none"> • Change in Address form or letter, and other documentation received from the post office or returned mail. |
| Withdrawals | <ul style="list-style-type: none"> • Upon receipt of a Withdrawal of Applications for Permit, Amendment of Permit, Transfer or Exchange, the application is marked "Withdrawn" and moved to the right-side of the water right file directly beneath the withdrawal document. Withdrawn applications have no effect on the water right, so they no longer belong on the left-side of the file. The exception to this rule is a Withdrawal of Application for Permit because the water right application process ends and the entire file is scanned and destroyed. |
| Returned Mail | <ul style="list-style-type: none"> • Returned mail envelopes (contents can be discarded since a copy is already in the file) document the result of mailing and/or address information provided by post office stamps, notes or certified mail cards. The associated application or water right number should be noted on the face of the envelope along with subsequent action taken. |

❖ **Examples of items that should not be filed in water right files.**

Documents must be evaluated to determine if they should become part of the water right record. All relevant documents should be secured in the file, scanned and made available for public review. Some documents should not be part of the water right record.

| Type of Documents | More Explanation |
|--------------------------------|--|
| Discovery | <ul style="list-style-type: none"> • During the period between a protest conference and a scheduled hearing, the parties may engage in discovery. Orders authorizing discovery may or may not be issued. If they are, then they should be filed on the right-side of file as noted under Other Orders. <p>Discovery responses are normally exchanges between the parties without notice to IDWR. Discovery responses should not be made part of the water right record unless submitted as evidence at the hearing. Any discovery documents received prior to the hearing should be placed in a separate envelope and removed at the end of the protest process at the discretion of the hearing officer.</p> |
| Hearing Officer Notes | <ul style="list-style-type: none"> • Hearing officers keep notes related to protested matters they are considering for decision and resolution. These notes are generally retained by the hearing officer and should be returned to them if found in water right files at the conclusion of the process. There may be exceptions that will be determined by the hearing officer. |
| Legal Counsel | <ul style="list-style-type: none"> • Documents or communications from legal counsel advising staff on specific legal matters generally are not to be shared with the public as part of the water right record. There may be exceptions when legal staff participate in a water right process and provide information to the public through correspondence, etc. Documents from department legal staff should be evaluated carefully before being filed in a water right file. |
| Personal Financial Information | <ul style="list-style-type: none"> • Personal financial information should be marked out with a black permanent marker after reviewed and an explanatory memo has been placed in the file, so it is not publically shared when included in water right files. <p>Personal financial information includes, but is not limited to:</p> <ul style="list-style-type: none"> ○ Social Security numbers on any documents ○ Bank routing and account numbers on copies of checks ○ IRS W-9 forms received for Water Supply Bank Rental payments |
| Receipts | <ul style="list-style-type: none"> • Record Receipt ID number on the corresponding document and mail the printed receipt to the appropriate party. |
| Post-It Notes | <ul style="list-style-type: none"> • Post-It “sticky” notes are temporary notes for or from staff while processing a water right action and should be removed when the action is completed. Most “sticky” notes address staffing matters. If the contents of the note are important, staff should include the information in a standard memo to the file. Clerical staff should not be required to determine the value of these notes and should return the file to the reviewing staff to resolve. |
| Envelopes | <ul style="list-style-type: none"> • Envelopes from incoming mail should be discarded unless the only source of the address. A copy of a retained envelope can be placed in the file to be more visible and secure. (See Returned Mail from Examples of Documents filed on Right-side of File for other exception.) |
| Unidentifiable | <ul style="list-style-type: none"> • A document with no indication of what it represents, why it is part of the file, or where it originated should not be retained in the file. |

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| Research | <ul style="list-style-type: none"> Only relevant research documents that are clearly identified or included as attachments of a review memo or letter should be filed. |
| Loose | <ul style="list-style-type: none"> All relevant documents should be secured in the file. |
| Inappropriate Language | <ul style="list-style-type: none"> All department correspondence, email, memos, etc., should be written in a professional manner with the knowledge that they will become public record as part of the water right file. |

❖ **All documents should be filed in chronological order.**

Documents filed in a water right file are the story of the water right and must be filed in chronological order to provide a clear record of the right through time. Determining the correct location for a document (not to be confused with attachments that may be old and out of order) is an important part of water right record keeping.

| Document Type | More Explanation |
|-----------------|---|
| General | <ul style="list-style-type: none"> Each side of a water right file should have all documents filed in chronological order from the bottom up with the most recent documents on top. |
| Department | <ul style="list-style-type: none"> Documents created by department staff should be filed by the document date. |
| Outside Sources | <ul style="list-style-type: none"> Documents received from outside sources should be filed according to the earliest department date received stamp. For example, if both a region stamp and state office stamp are on the document, the earliest received date is used to file the document. If a document received from outside sources is <u>returned and subsequently resubmitted</u> to the department, the later department date received stamp on the document is used to file the document. The original date received stamp should be crossed out when a document is submitted a second time to avoid confusion. |

❖ **Examples of documents that cannot be filed in chronological order.**

Certain documents related to processing events cannot easily be stored in chronological order due to number or size and must be consistently accommodated by alternate means. When documents are separated from the chronology of the file, a target sheet is inserted in its place identifying the date, name, and location of the documents.

| Document Type | More Explanation |
|----------------------|--|
| Certified Mail Cards | <ul style="list-style-type: none"> A large number of certified mail cards showing delivery of a common item can be placed together in an envelope that is filed following the mailed item. |
| Large Maps | <ul style="list-style-type: none"> Large or oversized maps submitted with documents sometimes cannot be placed in the file and still be viewed. These maps can be labeled, dated, folded separately and placed within a large accordion file along with the water right file. |

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| Hearing Exhibits | <ul style="list-style-type: none"> • A large number of hearing exhibits can be placed together in an envelope or separate folder marked "Exhibits", as earlier noted, and placed into an accordion folder along with the water right file. |
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❖ **Use of the Support Data stamp on documents.**

Some processes affect more than a single water right. Copying and scanning can become a costly and inefficient use of time and resources. A support data stamp can be used to combine and simplify the process. It should be clear in all affected water right files that some action affecting the water right has occurred and where the documents are located. This practice doesn't preclude filing documents in all files when deemed more appropriate.

Support Data in File # _____. The support data stamp identifies the location of all documentation associated with a single process related to multiple water right files. The completed Support Data stamp informs anyone viewing the stamped document that other related documents, such as deeds, correspondence, etc., received prior to processing completion or final decision date of this action can be found in a single water right file. Only a copy of the processed form, or final approval or denial document is filed in the related water right files.

| Type of Documents | More Explanation |
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| Transfer, Exchange & Water Supply Bank | <ul style="list-style-type: none"> • Applications for Transfer, Applications for Exchange and Applications to Lease or Rent Water Rights to the Water Supply Bank may include multiple rights. All documents related to processing these applications are placed in the lowest numbered water right file. (Water Supply Bank Application Lease forms are related to a single right, but for processing and approval/denial are often combined when related to a common system.) • When the process reaches a conclusion, the approval or denial document is stamped with the Support Data stamp in the bottom right hand corner of the first page of the document and completed by entering the lowest numbered right number. Then the approval/denial document is copied for distribution to other related files and for scanning. <ul style="list-style-type: none"> ○ For approval documents with 20 or more pages, the complete original document will be filed in the lowest numbered water right file; scanned and profiled to each related water right number in its entirety. ○ A partial approval document will be distributed to all other water right files that includes: <ul style="list-style-type: none"> ▪ the first pages with a summary listing all affected rights, summary after changes and the approval signature ▪ the pages that specifically describe the individual water right elements and conditions ▪ any map attachments to the approval document. ○ The first page of the partial approval document will be clearly marked in the bottom right hand corner "Partial Approval Document. Complete document in File # <u>XX-XXXXX</u>." prior to copying and distribution to water right files. |

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| <p>Ownership</p> | <ul style="list-style-type: none"> • When a Notice of Change of Ownership or Security Interest (Notice) includes more than a single right, the Notice is stamped with the Support Data stamp in the bottom right hand corner of the document and completed by entering the lowest numbered affected water right number. When processing is completed, the entire Notice with all attachments is scanned and profiled to all affected rights, then filed in the lowest numbered water right file identified in the stamp. A copy of the stamped first page of the Notice is distributed to all other related files. • When water rights are split through an ownership change (one or a related group), the original stamped Notice is retained in the lowest numbered affected water right file as noted above. The affected portion under new ownership is assigned a new water right number(s), and the remaining, reduced portion of the right(s) remains under the original water right number(s). <p>During the split process a database comment is added to each split portion that identifies the original parent or resulting child right numbers. Proof Reports for each portion of the split right(s) reflecting the ownership changes are printed and filed on the top left-side of the water right files.</p> |
| <p>Post Approval/Denial Actions</p> | <ul style="list-style-type: none"> • Documents received after an approval or denial of an action affecting multiple rights should be reviewed to determine if they are related to the recent action or if they are simply correspondence related to one or more of the same rights. <ul style="list-style-type: none"> ○ If the documents are related to the recent approval or denial, such as a Petition for Reconsideration, all documents should be placed in the lowest numbered water right file, the Department may grant or deny the petition and/or may issue an amended approval. When the process reaches a conclusion, the amended approval or a denial of the petition is stamped with the Support Data stamp in the bottom right hand corner of the first page of the document and completed by entering the lowest numbered right number. Then the approval/denial document is copied for distribution to other related files and for scanning. ○ If the document is not part of an earlier action affecting multiple rights, a copy of the subsequent documents related to multiple files should be filed in each related water right file identified on the document. <ul style="list-style-type: none"> ▪ For efficiency, large documents or documents with multiple supplements related to multiple rights received separate from any other action may be stamped with the appropriate stamp and distributed similarly to the examples described above. |

❖ **Miscellaneous file maintenance items.**

Maintaining water right records is a primary function of the department. There are some common file maintenance items that should be consistent and will preserve the records in the best manner for future use.

| Maintenance Type | More Explanation |
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| Organization | <ul style="list-style-type: none"> • File organization should be completed following any action affecting a water right file. The person completing the final processing steps of an action is responsible for cleanup and proper organization of the documents within the file before forwarding it to other staff, another office, or the vault for storage. • Correspondence or documents that have attachments such as legal notices or affidavits should be filed with the letter or communicating document on top followed by the attachment. |
| Security | <ul style="list-style-type: none"> • Documents that have been made part of a water right file should not be removed by staff or by the public. These documents are also secured as part of the official water right record by microfilm or scanned document records for the water right and should be retained. |
| Settings | <ul style="list-style-type: none"> • Before punching holes in new documents to be added to a water right file, check the settings on the two-hole punch and verify that they are set correctly for best placement of documents in file folders. Documents should be offset from the center of the file by about a ¼ inch; left-side documents moved to the left and right-side documents moved to the right. This leaves about a ½ inch space in the middle of the file between the papers when secured on the prongs of the file. The file can be closed without curling or damaging documents in the center folding seam where they meet. |
| Multiple Folders | <ul style="list-style-type: none"> • When a file folder becomes thicker than one inch of documents, a second folder should be created. Files should be labeled "File 1 of ___", "File 2 of ___" and so on. The second entry shows number of total files (File 2 of 2) and will be adjusted as more folders are created. • All folders related to the same water right are placed together in an accordion file labeled according to standard file label protocol with a typed or printed water right number on the proper color coded label along with a barcode label identifying the same water right number. • When an accordion file is full, a second accordion file is created to hold additional folders. The accordion files must then be labeled in the same fashion as the folders noting "File 1 of 2" and so on. A single bar code label on the first accordion file is sufficient as the files should stay together. |
| Large Items | <ul style="list-style-type: none"> • Large documents or maps that are folded and placed on the prongs of a water right file should allow for the document to be opened and viewed without having to remove it and all the documents above it from the file. If this is not possible, place the large document or map within an envelope and attach the envelope to the file prongs or in a large accordion file along with the water right file. A target sheet is inserted in its place identifying the date, name and location of the documents, if they are filed separately. |

ADMINISTRATOR'S MEMORANDUM

To: Water Allocations Bureau and Regions

From: Norman C. Young *NW* Amended
Records No. 1

RE: PROPER ORDER OF FILING

Date: May 10⁷, 1993

Department staff have placed documents in water right files with the important documents (documents) located on the left side of the file folder, and other, less important documents (usually correspondence), filed on the right side. There is a dual purpose for the separation of these documents. Important documents can be found much more quickly if they are not mixed in with other documents and correspondence within the file.

A 1975 administrator's memorandum, identified as "Records No. 1," summarized document filing. The purpose of this memo is to modify and further explain standards for filing. A revised summary is attached to this memo.

Only the most important documents should be placed on the left side of a file. These documents include the application for permit, an approved permit or claim, power of attorney, assignments, orders and memorandum decisions, proof of beneficial use, extensions of time, amendments, and ultimately the license. Any orders which directly determine whether these documents will be approved or rejected should be filed on the left side. Also any orders which change the components of any approval should be filed on the left side. Orders of reinstatement or orders waiving or modifying conditions, approved transfers and ownership changes should be filed on the left side of a file.

Protests should be filed on the left side until issuance of a final decision. After a final decision is issued, the protests should be chronologically filed on the right side. Any interim orders setting the matter for hearing, related to discovery, or any other procedural matter should not be filed on the left side. Most all other documents should be filed on the right side in chronological order, including proof of publication. We do not need to change the old files, however.

Occasionally, documents in a large file cannot be filed chronologically. For instance, if there are multiple large exhibits from a hearing, or a large number of certified mail cards showing delivery to many parties, these documents can be separated from the general chronology and placed in an envelope

to be included in the file. If separated, however, a note should be placed on the document which precedes the date of the documents which were extracted, explaining that the extracted documents should be filmed in chronological order.

After final action, the clerical person preparing the documents is responsible for file order. Staff review sheets, unnecessary envelopes, interpersonal memos, computer printouts which are not exhibits or attachments should be discarded. Most memos to be retained should be written to the file.

If a water right is split, both the right and left sides of the file should be rearranged so documents related to each respective part at the right are together.

As documents are filed, please check the setting of your two hole punch. If the location of the punched holes is shifted to the right, the documents are crowded along the folding seam of the file folder, and the pages become curled, bent and torn.

A file with more than approximately an inch of documents is full and another file should be started, and both files placed in an accordion folder.

File
Document Filing Summary

| Left Side | Right Side |
|--|--|
| 1. Application for Permit | 1. Correspondence |
| 2. Power of Attorney | 2. Staff Analysis Sheet |
| 3. Assignments | 3. Field Exams |
| 4. Important Orders and Memorandum Decisions | 4. Applications for Permit which have been replaced by an amended application for permit |
| 5. Proof Of Beneficial Use | 5. Documents which have been replaced or withdrawn. |
| 6. Extensions of Time | 6. Water Master recommendations |
| 7. Amendments | 7. Affidavits of publication |
| 8. Licenses | 8. Affidavits of residence |
| 9. Transfers | |

ADMINISTRATOR'S MEMORANDUM
OPERATIONS DIVISION

TO: Districts
FROM: A. Kenneth Dunn
DATE: June 23, 1975
SUBJECT: Department policy regarding the following three items:

(1) The approval of watermaster reports may be done by district ~~engineers~~ ^{superintendents}. It is not necessary to send these reports to Boise for signature before they are sent on to the county for payment.

(2) The Certificates of Appointment of watermasters, flood control district commissioners, and other similar certificates must be signed by the Director, Bureau Chiefs or District Supervisors.

(3) We should not challenge a water rights claim submitted under the provisions of Section 42-225(a) of the Idaho Code when such claim is filed. However, if we have information which may aid the court or the department in later determining the validity of the right as claimed, that information should be placed in the file and a copy sent to the claimant. If, after filing a claim, the claimant proposes transfer of the water right, it then becomes our duty to determine all we can concerning the claim and we can deny the transfer if we feel that the claim is invalid.

A. Kenneth Dunn

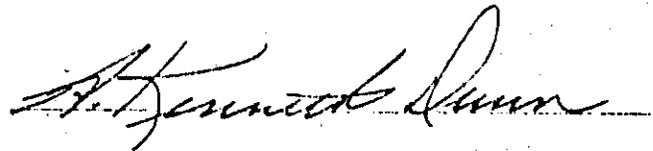
ADMINISTRATOR'S MEMORANDUM
OPERATIONS DIVISION

TO: District Engineers & Bob Fleenor

FROM: A. Kenneth Dunn

DATE: June 23, 1975

In the memorandum from Nathan Higer to Bob Haynes, which is attached, Nathan has reminded us of our responsibility to recognize and protect all water rights as fully as possible at any hearing where an individual claims that a permit, if granted, would interfere with a constitutional use right. We have the responsibility to obtain from the protestant, sufficient information on which we can base a judgment as to the extent and nature of that water right claimed. We should make certain that our hearing procedures are such that the protestants are aware of the necessity to establish their basis for protest. If they are claiming interference with a right that has been adjudicated or is covered by a permit or license, that right should be identified at the hearing. If, however, they are claiming under a constitutional use right, they must be prepared to establish that such right exists, the same as if they were in court. If they fail to do this, then we should inform them that the permit will be granted, subject to prior rights, whatever they may be.



ADMINISTRATOR'S MEMORANDUM

To: Water Management Division
From: Gary Spackman 
Date: July 8, 2008

Second Amended Records No. 4

Re: FEES FOR RESEARCH OR COMPUTER DATA SERVICES

This memo supercedes Records Memorandum No. 4 dated July 13, 1980 and Amended Records Memorandum No. 4 dated April 16, 2001.

Pursuant to Idaho Code § 42-221J, the Department is authorized to collect a fee for "tasks requiring in excess of one (1) hour research or for computerized data provided for public use." This memorandum describes services for which the Department can charge a fee and establishes the fee that can be charged.

The Department shall charge individuals, companies, or corporations for any records research or computer data services if the task exceeds one (1) hour per project. Computer data services may include data queries, analysis, or other data services if fees for the task are not already covered under Idaho Code § 42-221 or other statutory provision pertaining to Department responsibilities.

The Department will not charge a fee for research or computer data services under the following circumstances: (a) the Department has executed a reciprocal agreement with a city, county, state or federal government entities to provide similar information; (b) the Department has an express obligation created by statute, agreement, or memorandum of understanding to provide the specific information without charge; or (c) the information is being provided according to court order or is a response to discovery related to litigation.

The customer shall be informed of the fee schedule and the estimated total charge prior to the conduct of the research or computer data service. As an alternative, the customer should also be referred to the Department's website if the research can be completed through the Department's public search capabilities.

The hourly charge will be the hourly policy salary of typical Department personnel conducting the research. The present charge is \$56.00 per person hour plus extraordinary charges such as computer services. The \$56.00 per person hour fee was computed by averaging the policy salary of a water right senior agent and the policy salary of a section manager and adding on the associated benefits and indirect costs. A summary of the computations is attached.

The fee charged for research or computer data services will be routinely reviewed to determine whether the fees should be adjusted because of changes in policy hourly pay, benefits cost, or indirect costs. Any changes in the fees charged for these services should be reviewed and approved by the Division Administrator, but changes will not require reissuance of this memorandum.

In situations where the need for a fee is in question, the regional supervisor or section supervisor is responsible for the decision.

Research Fee Calculations

Fees for Department research services in Water Management Division are calculated by averaging the policy salary of a water right senior agent and the policy salary of a section manager and then adding associated benefits and indirect costs.

2009 benefits are computed at 21% of salary for benefits and \$8,700 per person for health insurance. Indirect costs are 43.84% of salary. Policy salary for a water right senior agent is \$26.75 per hour and policy salary for a section manager is \$36.21 per hour.

$$\text{Average Policy Salary} = (\$26.75 + \$36.21)/2 = \$31.48$$

$$\text{Benefits} = \$31.48 \times 0.21 = \$6.61$$

$$\text{Indirect} = \$31.48 \times 0.4384 = \$13.80$$

$$\text{Health Insurance} = \$8700/2080 = \$4.18$$

$$\text{Total} = \$31.48 + \$6.61 + \$13.80 + \$4.18 = \$56.07 \text{ (round to } \mathbf{\$56 \text{ per hour)}})$$

ADMINISTRATOR'S MEMORANDUM

Records No. 5

TO: Regional Offices and Water Allocation Section

FROM: Norman C. Young *ncy*

DATE: December 12, 1980

RE: Fees For Computer Abstracts.

Now that the state and regional offices have the capability to produce computer abstracts for requesting entities, a standard fee schedule has been prepared for certain tasks.

Shown below are:

(1) requests for which no fee will be charged and (2) requests for which a fee will be charged. Note that the lists are not exhaustive but rather provide a framework for making specific determinations.

REQUESTS FOR WHICH NO FEE WILL BE CHARGED

1) Abstract of water rights in the name of the requestor (e.g. Mr. Thomas E. Smith requests an abstract of all water rights in his name). An exception is that when more than 100 water rights are found, a charge will be assessed (e.g. all water rights in the name of the U.S. Department of Interior).

2) Abstract of water rights with P/D and/or P/U on lands of the requestor. An exception is that when more than 100 water rights are found, a charge will be assessed.

3) Abstract of water rights within a water district for a watermaster.

REQUESTS FOR WHICH A FEE WILL BE CHARGED

1) Abstract of water rights within an area of future interest (e.g. a prospective buyer, a realtor, or a lending institution may have a request prior to a purchase of property).

2) Abstract of water rights requested by an attorney in the interest of a client.

3) Abstract of water rights from a source appropriated by the requestor (e.g. Mr. Smith, who diverts from Spring Creek, may be curious about other rights from Spring Creek).

Where a fee is determined to be necessary, the charge can be calculated in one of two ways, depending on the number of water rights anticipated in the abstract. First, if more than 200 rights are anticipated, the abstract report should be requested via the state office by submitting a WATER RIGHTS

TO: Regional Offices and Water Allocation Section
FROM: Norman C. Young
DATE: April 30, 1981 *NCY*
PAGE: 2 (Amended) Administrator's Memorandum, Records No. 5

ABSTRACT REQUEST (see form, attached). Billing for these requests will then be based on actual computer costs and will be handled by state office personnel. Use caution when making these requests because in some cases the charge per water right can be as high as \$1.25. Second, if fewer than 200 rights are anticipated, the abstract can be requested in the standard manner and the charge will be \$0.50 for each water right that appears on the abstract, with a minimum charge of \$5.00.

MICROFICHE

For certain printouts, microfiche may be desired. The additional charge when microfiche is requested will be \$5.00 for set-up plus \$.025 per frame. Copies of the microfiche will cost \$.50 each. All microfiche orders will be processed by the records section in the state office.

DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ABSTRACT REQUEST

BILLING INFORMATION

BILLED TO:

OUTSIDE BILLING TO:

ELEMENT _____

ACCOUNT _____

BUREAU _____

REQUESTED BY: _____

SEARCH CRITERIA

Basin Number _____

Basin Number _____ & Source _____

Basin Number _____ & All Sources Except _____

County Number _____

County Number _____ & Source _____

County Number _____ & All Sources Except _____

Water Right Number(s) _____

Water Right Numbers - From _____ To _____

Water Right Numbers - From _____ To _____ &

Source _____

Water Right Numbers - From _____ To _____ &

All Sources Except _____

P/D Township _____ Range _____



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

ADMINISTRATIVE MEMORANDUM

TO: Department Staff Utilizing Water Right Files. Records No. 6
FROM: Norman C. Young *NCY*
DATE: January 28, 1982
RE: Vault Security

To better secure the water right files, the following guidelines have been established:

Security of the Vault

1. The Vault must be locked each day at the close of business.
2. To help prevent intrusion by unauthorized persons, the lower portion of the vault door will be kept closed.
3. Access to the vault normally will be through the vault clerk unless authorized by the supervisor of Water Allocation Section for a specific purpose. If the vault clerk is not available, the Records Supervisor or anyone else within the Water Allocation Section can provide assistance.

Security of the Files

1. Whenever a file is pulled for use outside the vault an outcard showing person the file is checked out to and the date must be immediately inserted in its place. This responsibility is given to the person pulling a file.
2. When the file is pulled, the reason the file is desired should be coded next to the initials of the requestor based on the following list of abbreviations:

| <u>REASON</u> | <u>CODE</u> |
|-------------------|-------------|
| Research | Res. |
| Licensing | Lic. |
| Extension of Time | Ext. |
| Amendment | Am. |
| Assignment | Assgn. |
| Correspondence | Cor. |
| Transfer | Tran. |
| Other | |

TO: Department Staff Utilizing Water Right Files.

DATE:

PAGE: 2

3. Most public access to the files will be via microfilm. If a customer desires to review a file which is not on microfilm, he or she must do so in full view of a staff member. The staff member that assists the customer is responsible to see that the files are returned to the vault fully intact.

MEMORANDUM

TO: Water Management Division

Amended Records No. 7

FROM: Jeff Peppersack 

DATE: August 19, 2011

RE: **CHARGES FOR COPIES**

This memo supersedes Records Memorandum No. 7 amended April 16, 2001

Recent changes to the Public Information Act require a change to the Department's charges for copies.

This memo addresses the charges for copies only. Should there be a need for research services, see Amended Records Memo No. 4.

Per Idaho Code § 9-338, every person has a right to examine and take a copy of any public record. Generally individuals, companies or government agencies seeking information requiring copies from the Department should reimburse the Department for the cost of the copies that exceed 100 pages. Exceptions include watermasters, government agencies from whom we regularly receive free copies, and other incidental requests which may assist the Department in carrying out its duties.

While Idaho code provides that the Department may charge for more than 2 hours of labor to copy documents, the Department will not implement a charge for labor at this time. The Department may reevaluate this decision at a later date if labor costs become excessive.

Current charges for copies of Department records are shown on the attached sheet. These charges are subject to change, so the latest published charges of the Department should be used for all copy types.

In addition, the fee for certification of copies of Department records as true and correct copies is **\$1.00** for each document.

In situations where the need to reimburse the Department for copies is in question, the regional manager or section manager is responsible for that decision.

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

CHARGES FOR COPIES

NOTE: No charge for the first 100 pages.

| TYPE OF COPY | FEE PER PAGE |
|-------------------------------------|---------------------|
| Black and white letter/legal copies | \$0.01 |
| Black and white 11x17 | \$0.02 |
| Color | \$0.06 |

Certified copies are \$1 per document (the note above does not apply).



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

ADMINISTRATIVE MEMORANDUM

TO: Regional Offices, Operations Bureau

FROM: Norm Young *NY*

DATE: October 24, 1985

Records
~~Permit~~ Processing No. 8

RE: Policy on Data Entry of Water Rights

The purpose of this memorandum is to outline a general policy for data entry of water right information into the computer.

Currently both regional and state office personnel enter water right data into the computer. As a general policy, the assignment of the data entry is determined by who has the original document. For example, when a new Application for Permit is received, the regional personnel will make the initial data entry. After the regional processing has been completed, the Application is forwarded to the state office for final processing. Once the permit has been approved, state office personnel will data enter the conditions of approval, proof due date, etc.

Any amendment or transfer received in the region on a right, (claims included) where the original has already been submitted to the State office, should be forwarded to the state office after completing the regional office processing. State office personnel will data enter the information changed by the amendment or transfer.

Exceptions to this policy include special projects which are assigned to the region.

ADMINISTRATOR'S MEMORANDUM

To: Water Management Division Staff Records No. 9
From: Jeff Peppersack 
Re: **PROCESSING NOTICES OF CHANGE IN WATER RIGHT OWNERSHIP AND ASSOCIATED UPDATES TO WATER RIGHT RECORDS**
Date: May 21, 2015

Table of Contents

| | | |
|---|---|----|
| 1 | Background | 2 |
| 2 | Change in Ownership | 2 |
| | 2.1 <i>Evidence of Ownership</i> | 3 |
| | 2.1.1 Quitclaim Deed..... | 3 |
| | 2.1.2 Grant Deed..... | 4 |
| | 2.1.3 Warranty Deed | 4 |
| | 2.1.4 Deed of Trust and Mortgage..... | 4 |
| | 2.1.5 Correction Deed | 4 |
| | 2.1.6 Other Types of Deeds..... | 4 |
| | 2.2 <i>Other Evidence of Ownership</i> | 4 |
| | 2.2.1 Contract of Sale..... | 5 |
| | 2.2.2 Purchase and Sales Agreement | 5 |
| | 2.2.3 Final Will and Testament | 5 |
| | 2.2.4 Title Insurance Policy..... | 5 |
| | 2.2.5 Court Decree | 6 |
| | 2.2.6 Tax Notices..... | 6 |
| | 2.2.7 Transfer | 7 |
| | 2.3 <i>Language Used to Convey or Exclude Water Rights</i> | 7 |
| | 2.4 <i>When is a Notice Required?</i> | 8 |
| | 2.5 <i>Ownership Change Forms and Filing Fees</i> | 9 |
| | 2.6 <i>Water Rights not Held by the Landowner</i> | 9 |
| | 2.7 <i>Reviewing and Processing Changes in Ownership</i> | 10 |
| | 2.8 <i>Example Situations</i> | 10 |
| | 2.9 <i>Processing Owner Changes Resulting in Split Rights</i> | 12 |
| 3 | Assignment of Applications, Permits, and Transfer Applications | 14 |
| | 3.1 <i>Application for Amendment of a Permit</i> | 15 |
| | 3.2 <i>Assignment of Permit for Power Purposes</i> | 15 |
| | 3.3 <i>Processing Assignments Resulting in Splits</i> | 15 |
| | 3.4 <i>Permits Pending in an Adjudication</i> | 15 |
| | 3.5 <i>Permit Not Assigned to New Landowner</i> | 15 |
| 4 | Notice of Security Interest | 16 |
| 5 | Change of Address | 17 |

1 Background

This memorandum provides guidance for the review and processing of notices to change water right owners and for making associated updates to water right records. Idaho Code §§ 42-248 and 42-1409(6) provide statutory requirements regarding notices to change ownership and associated updates to water right records. In addition, Idaho Department of Water Resources (Department) Administrative Rules and case law relating to conveyance of property and water rights may apply to review and processing of the notices.

It is important to maintain the proper owner names and addresses on all water right records of the Department to ensure that all water right owners are properly notified concerning any action proposed or completed by the Department. The guidance in this memo should be applied to water right applications, permits, licenses, decrees, claims, and recommendations for water rights. Circumstances not covered in this memo should be referred to the Department's legal staff for review.

There are several types of notices related to ownership and contact information for water right records. A Notice of Change in Water Right Ownership or an Assignment notifies the Department that the owner of a water right, application, or permit has changed. A Notice of Address Change notifies the Department that the address for an existing owner or contact has changed. A Notice of Security Interest notifies the Department that a security interest in a water right or permit exists. Upon proper notice, the Department is required to notify the security interest holder of any proposed or final changes to the water right. Each type of notice is discussed in detail in this memo.

2 Change in Ownership

A Notice of Change in Water Right Ownership is filed with the Department when a water right is conveyed, either with the land or separate from the land, to a new owner. The purpose of the notice is to inform the Department of the change so it may update its record of the current owner of the water right. It is important to note that Idaho Code §§ 42-248 and 42-1409(6), do not provide the Department with authority to change the legal ownership of a water right. Under the statutes, the Department only has authority to record a change in ownership that has already occurred through proper conveyance.

A perfected water right is real property, just like a parcel of land. Idaho Code § 55-101 defines real property to include land and water rights. Idaho Code § 42-101 provides that a water right shall not be considered as being a property right in itself, but shall be an appurtenance of the land. A water right is usually conveyed concurrently with the land as an appurtenance. Idaho Code § 42-220 provides in pertinent part as follows:

[A]ll rights to water confirmed under provisions of this chapter, or by any decree of court, shall become appurtenant to, and shall pass with a conveyance of, the land for which the right of use is granted.

The Idaho Supreme Court has confirmed that a water right is an appurtenance to the land on which it has been used and will pass with a conveyance of the land unless reserved in the deed:

[I]t is well established that a water right is an appurtenance to the land on which it has been used and will pass by conveyance of the land. A division of the land would divide the appurtenant water right in the same proportion as it divided the land. In this case the twenty acres of land was deeded *together with the appurtenances*. This conveyance would carry with it the water right appurtenant to the land at the time of the conveyance, unless it was specifically reserved in the deed or it could be clearly shown that it was known to both parties that the water right was not intended to be conveyed.

Russell v Irish, 20 Idaho 194, 198, 118 P 501, 502 (1911) (emphasis in original).

A perfected water right can also be separately conveyed by the same means that land is conveyed. A separate conveyance or an express reservation of the water right when the land is conveyed severs the water right as an appurtenance to the land.

2.1 Evidence of Ownership

Generally, some type of deed, contract of sale or other conveyance document is used to convey land and/or a water right to another party. It is important to review the entire document and ensure that attachments submitted are actually part of the deed or contract.

Recording of conveyance documents is provided for under Title 55, Idaho Code. The purpose for recording is to provide public notice of the content of the conveyance documents and to protect against other parties who may be dealing in the same property. Recording is not required in Idaho to convey property; the conveyance of title to real property is effective when a grantor executes and delivers a deed to a grantee. Idaho Code § 55-815 provides that an unrecorded instrument is valid between the parties to the instrument and to those who have notice of the instrument. Therefore, the Department can process a water right ownership change based on an unrecorded conveyance document.

Deeds are true conveyance documents and are the best evidence to demonstrate a change in the ownership of the land or the water right has taken place. There are several types of deeds that are often used to convey property. Common types of deeds are described below.

2.1.1 Quitclaim Deed

A quitclaim deed serves to convey any interest that may be held in property but does not contain any warranty of valid interest or title to the property. In other words, a quitclaim deed does not provide any assurance that the grantor has any interest in the property to convey. If other documentation exists that establishes that interest, then a quitclaim deed could be considered sufficient evidence of new ownership.

If a quitclaim deed were provided showing conveyance of the property from the last known recorded owner of the water right, there is some confidence that the grantor has an interest in the water right to convey. Therefore, the Department would process a water right ownership change based on the quitclaim deed. There is some risk of error, because the grantor may have sold the property to

someone else first. If conflicting information arises, a complete chain of title may be necessary to resolve questions.

2.1.2 Grant Deed

A grant deed contains warranties against prior conveyances or encumbrances. In other words, a grant deed provides assurance from the grantor that the property has not already been conveyed or encumbered. A water right ownership change based on a grant deed should be processed using the same guidance described for a quitclaim deed.

2.1.3 Warranty Deed

A warranty deed provides assurance that the grantor is the owner of the property and includes language that the grantor will defend title to the property. The Department will generally process a water right ownership change on the basis of land ownership unless there is additional information that brings ownership of the water right into question.

2.1.4 Deed of Trust and Mortgage

A deed of trust and a mortgage are not conveyance documents, but instead are two different ways to protect the interests of a lender in real property transactions. A deed of trust creates a lien and allows a trustee to foreclose on the property on behalf of the lender if the debt is not paid. A mortgage is also a security instrument that creates a lien on the property and allows the lender to foreclose in a court of law. A deed instead of a deed of trust or mortgage documents should be relied upon as evidence of ownership of the property. Deeds of trust and mortgages are acceptable to demonstrate a security interest in a water right for purposes of notification under Idaho Code § 42-248(6).

2.1.5 Correction Deed

A correction deed is used to correct minor errors on the original deed. A correction deed is not generally appropriate to correct significant errors or to add to a conveyance. Corrections may consist of pen-and-ink changes to the original deed, or a new deed, depending on the type of change. The grantor must execute the correction to be valid.

2.1.6 Other Types of Deeds

There are other types of deeds used to convey real property, such as a personal representative deed or a trustee deed. Most are some form of the deeds described above with modifications depending on the specific purpose and the status of the grantor. It is important to note that the title of the deed may not accurately describe the type of deed. The actual conveyance language, including warranties, will best characterize the type of deed.

2.2 Other Evidence of Ownership

Although deeds are the best and most common and certainly the preferred means for conveying real property, there are other documents that can be used as sufficient evidence of ownership of a water right. A contract for sale, final will

and testament, a court decree, and a title insurance policy are examples of documents that can be used as evidence of ownership of a water right. In addition, a change in the place of use through a transfer of water rights pursuant to Idaho Code § 42-222 can result in a change in ownership of a water right.

2.2.1 Contract of Sale

A contract of sale is an agreement between a buyer and seller for payment and other conditions of the sale. A contract of sale generally includes a schedule for payment by the buyer. Some contracts of sale have the seller maintaining legal title to the property until the contract has been completely paid off. In those cases, both buyer and seller should be listed as current owners of the property until the deed is conveyed to the buyer after the last payment is completed at the end of the contract. Once the property is deeded to the buyer, he/she can submit an ownership change notice to remove the seller as a current owner. The contract should be reviewed for other instructions regarding ownership. An alternative to listing both buyer and seller as current owners would be for the seller to provide notice of a security interest to the Department (see below for notice procedures).

2.2.2 Purchase and Sales Agreement

A generic purchase and sales agreement is not the same as a contract of sale of property; it is a preliminary document stating terms and conditions for the purchase of property. A purchase and sales agreement should not be considered sufficient evidence of ownership of property because it does not confirm that property has been conveyed.

2.2.3 Final Will and Testament

A final will and testament is another document that may suffice as evidence of ownership of property. It is important to read the text regarding conveyance of the property for exclusions or restrictions when reviewing for evidence of ownership. A well drafted will should provide the authority for the legal representative of the estate to issue some type of deed to transfer the property of the estate.

2.2.4 Title Insurance Policy

A title insurance policy can be used as evidence of ownership of property. The buyer acquires title insurance to protect against claims against the property. Title insurance policies name the insured and describe the property and the condition of title but do not convey title. If there is conflicting information, there is probably an instrument number listed in the policy for an actual deed which should be examined. A commitment for title insurance or other preliminary document should not be used as evidence of ownership of the property.

2.2.5 Court Decree

A court decree may also be used as evidence of property ownership. Divorce decrees and quiet title actions are examples of court rulings that may determine ownership of a parcel of land and/or a water right. Many court decrees require that the property at issue be transferred by deed. Any resultant deed will need to be reviewed before taking action to update the ownership records of the Department.

A court decree resulting from an adjudication of water rights will list the water right owner's name. In general, the decree can be used as evidence of ownership of the water right. Although ownership of a water right is not usually investigated by the Department in the adjudication claim investigation process, it is presumed the claimant is the owner of the water right. The exceptions to non-investigation by the Department are when competing claims are filed for the same water right or a Notice of Change in Water Right Ownership is filed with the Department during the pendency of the claim. If there are competing claims to the same water right (or an objection to the Department's recommendation based on ownership), the Department will make its recommendation to the court, and the court will make a final determination of ownership in the decree. If a Notice of Change in Water Right Ownership is filed with the Department during the pendency of the claim, the Department will review the evidence submitted and, if appropriate, update the claim records to ensure the water right is decreed in the name of the new owner.

Occasionally, a claim is filed in an adjudication of water rights and the place of use described under the water right is not owned by the claimant (at the time the claim is filed). If there are no competing claims to the same water right, nor ownership objections to the Department's recommendation, then the Department considers any subsequent court decree confirming the right to be a determination of ownership of the water right.

For the circumstances described above, the decree can be used as evidence of ownership of the water right, as of the date of the decree. However, there are circumstances that may lead to a different conclusion of ownership. For example, sometimes a change in ownership of a water right occurs during the pendency of a claim, but the new owner fails to submit a timely Notice of Change in Water Right Ownership as required by statute. This will result in the court decree being issued in the previous owner's name. In this circumstance, conveyance documents that post-date the filing of the claim but pre-date the decree can be sufficient evidence for a Notice of Change in Water Right Ownership filed after the date of the decree.

2.2.6 Tax Notices

Tax notices should not be used as evidence of ownership. The name on the tax notice does not necessarily indicate ownership. In addition, the tax notice generally does not provide a complete description of the

property and does not describe conveyances or exclusions associated with the property.

2.2.7 Transfer

A transfer of water rights pursuant to Idaho Code § 42-222 (for a change in place of use), once accomplished, can result in new ownership of the water right. However, there may be an agreement precluding a change in ownership as a result of the transfer.

2.3 *Language Used to Convey or Exclude Water Rights*

A deed or other conveyance document submitted as evidence of ownership of a water right should be reviewed for any language that may include or exclude specific water rights. The following examples confirm the conveyance of water rights with the land. It should be noted that the appurtenance language is not necessary to convey the water rights, but language excluding water rights is necessary if the seller intends to withhold any appurtenant water rights. In addition, specifically listing some of the appurtenant water rights, but not listing others, should not be interpreted to exclude the unlisted appurtenant rights from the conveyance.

The following examples merely restate the concept that water rights are conveyed with the land.

“... said premises, with their appurtenances...”

“...together with all water and water rights belonging to or appertaining to all the above described land.”

The next example describes a water right to be included, but should not be interpreted to mean the conveyance is limited to the described water right. All appurtenant water rights are still conveyed with the land. In addition, the described water right is not necessarily conveyed in its entirety; only the portion of the right appurtenant to the land is being conveyed.

“...together with all water rights, ditches and ditch rights used thereon or appurtenant thereto including but not limited to State of Idaho, Department of Water Resources Water Right No. 43-4221.”

The next example conveys a proportional share of a specific right or rights, but should not be interpreted to mean the conveyance is limited to the described right(s). All appurtenant water rights are still conveyed with the land.

“Together with prorata share of Rainey Creek water...appurtenant to above mentioned property.”

The next example conveys all appurtenant rights; however, a specific quantity is specified for one of the rights. The quantity specified may or may not be proportional to the land conveyed.

“Together with all water rights appurtenant thereto, including but not limited to 140 inches of decreed water.”

The next example conveys all of a particular right, but should not be interpreted to mean conveyance is limited to the described right. All appurtenant water rights are still conveyed with the land.

“And all rights to Water Right No. 43-4221...”

The following are examples that have been used to exclude a right or rights from conveyance with the land.

“...excluding water right no. 43-4221...”

“Excluding as non-appurtenant any and all water diverting from Raymond Creek.”

The next example appears to exclude all water rights from the conveyance.

“This property is conveyed dry without water shares.”

If the language is ambiguous in the conveyance document, clarification may need to be sought through other available documentation associated with the conveyance of the property. Use of a quitclaim deed could clarify ambiguities. Disputes would need to be resolved through a quiet-title action by a district court.

2.4 *When is a Notice Required?*

A notice is required for changes in ownership from one individual to another, from an individual to a business entity (even if the business is owned by the individual), or from one business entity to another (even if both businesses are owned by the same individual). The same would apply to trusts, partnerships or other organizations.

In some cases, an individual desires to add another person, such as a new spouse or child, as an owner of the water right. In other cases, an individual desires to remove a person as an owner of the water right (e.g. after a divorce). The Department cannot record a change in ownership of a water right unless accompanied by proper notice of the change, including sufficient evidence of the change. Adding or removing a name should be considered an ownership change subject to the filing fee and should not be processed without the appropriate evidence. One exception is the death of a spouse or other individual listed as an owner of the water right. The Department will accept a signed letter from the living spouse and a death certificate as sufficient evidence to remove the name of a deceased individual from a water right. Removal of the name of a deceased person should not require payment of the filing fee.

The death of an individual listed as an owner of a water right may result in a change in the ownership of a water right to a trust or beneficiary. Such a change is considered a change in ownership subject to the requirements of evidence and a filing fee.

Changes to a water right owner's name do not necessarily constitute a change in ownership of the water right. For example, an individual may make a name

change through marriage, divorce, or judicial petition. Another example is a name change for a business entity (not to be confused with a change to a different business entity). Such name changes do not constitute an ownership change and should not require payment of the filing fee. Changes to Department records can be made after proper notice and evidence of the change is received from the water right owner. Documentation for a name change to a business entity can be obtained from the Secretary of State's web site for a business entity search.

2.5 Ownership Change Forms and Filing Fees

The Department provides a form for notifying the Department of an ownership change. The new owners must submit the completed form with evidence of the ownership change and the appropriate filing fee. A filing fee is not required for a notice associated with a claim pending in an adjudication of water rights. Once the right is decreed, the statutory filing fee is required. The fee also applies to all other rights including those not claimed in a pending adjudication. The statutory filing fee is currently \$25 per water right or \$100 per right if the right is to be split based on the owner change. An application for transfer filed under Idaho Code § 42-222 accompanied by evidence of a change in ownership of a water right will not require a separate notice; however, the filing fee for the ownership change is required as described herein for the ownership change in addition to the fee required for the application for transfer.

2.6 Water Rights not Held by the Landowner

Water rights associated with a water delivery entity such as a canal company, irrigation district, or municipality are held in the name of the delivery entity and would not be subject to a change in ownership if a parcel of land within the service area is conveyed to a new owner. The same guidelines should be used for water rights acquired and held by a water users association or homeowners association.

Sometimes water rights are excluded from a conveyance of land and are no longer appurtenant to the land described as the place-of-use under the water right. This is often done in preparation for a transfer to be filed under Idaho Code § 42-222 by the original landowner, to change to a new place-of-use. In other cases, it may be intended that the water right remain unused at the original place-of-use and held under separate ownership to mitigate for some other water use at another location. Since these water rights are not appurtenant to the land, evidence of ownership of the land would not be sufficient to show ownership of the water right. These situations, if known to the Department, should be documented in the water right file for future reference.

The Idaho Supreme Court confirmed that a landowner could establish and own a water right developed on federal land leased and used in association with the landowner's deeded land (see *Joyce Livestock Co. v. U.S.*, 144 Idaho 1, 156 3d 502 [2007]). This decision applied to an instream stockwater right, but could also apply to other uses, such as a mining operation where federal land is leased and water rights are developed on the federal land for use in association with land owned by the mining operator. The lease agreements should be

reviewed for information regarding ownership of water rights developed as a result of the lease.

2.7 *Reviewing and Processing Changes in Ownership*

A notice to change ownership of a water right must be signed by the new owner and include appropriate evidence of ownership and fees as described above. A signature by at least one of the new owners or authorized representative should be considered sufficient for the notice. Review of the notice should start with a review of the existing records of the Department to determine the appropriate records to update.

For water right claims pending in an adjudication, updates need only be made to the adjudication record unless the record is based on a permit (see Assignment of Application or Permit below). The adjudication record contains the most recent contact information and will supersede the water right record once decreed.¹ If the Department receives a notice listing water rights (unclaimed or recently decreed) along with pending adjudication claims, a complete copy of the notice with all documentation should be forwarded to designated staff for processing and updating the appropriate records. Ensure that water right records have been properly updated by recent decree data before attempting to update the record with a new owner. Data entry to a pre-decree water right record will be overwritten when the decree data is moved from adjudication records. If the court has issued a partial decree, but the recommendation data has not been moved to the water right record, update the water right record and close the recommendation before processing an ownership change notice.

When processing ownership changes, there may be discrepancies between the information listed on the notice and the information on the deed or other conveyance document. The deed or other conveyance document should be the basis for the change. The deed or other conveyance document should be used to determine the owner's name (or names if multiple owners), name connectors, property descriptions and exclusions and split quantities. One exception is the current mailing address for the owner (see Change in Address below). Other information submitted with the notice should not be used as the basis for change, especially if it conflicts with information in the deed or other conveyance document.

2.8 *Example Situations*

Ownership changes for water rights authorizing domestic use are the most prevalent type of owner changes processed by the Department. Although processing can be fairly straightforward, situations arise that complicate processing because of the small size of domestic parcels and the general

¹ If the Department receives a notice to change ownership for a water right that is required to be claimed in a pending adjudication, the new owner should be notified of the requirement to file the claim. A separate notice to change ownership (and the associated fee) is not required to file a claim to the water right under the new owner's name. The fee submitted for the notice to change ownership can be credited towards the claim filing fee or refunded to the owner.

quarter-quarter section legal descriptions used for the associated water right records. A decree or a license describing a quarter-quarter section as the place-of-use for the water right could apply to a number of different domestic parcels within the same quarter-quarter. Department records indicating current and previous owner names can be used in comparison to the grantor's name listed on a deed conveying the property.

Sometimes the holder of a domestic water right subdivides his/her parcel and sells the vacant portion. If the new owner files a notice and provides a deed from the prior owner for land in the correct quarter-quarter, it could be processed in error because ownership of the portion of the parcel with the original domestic use is not changed. If information is available in the water right or claim file, it can be used to investigate further. Information such as parcel number, priority date (to indicate relative age of the home), and maps illustrating the locations are often helpful in determining the place-of-use associated with a particular right.

Large irrigated parcels are being split up for subdivisions in many parts of the state. As individual lots are sold within the subdivision, portions of appurtenant water rights are often inadvertently conveyed to the lot owners with the land. The original owners or developers may have had plans to sell or transfer the water rights for some other place of use, or they may have wanted to convey the entire right to a single community water supplier. They are unable to carry out their plans because they have already conveyed portions of the right when the lots were sold. In this situation, because they no longer own the water right (or portion), a quit-claim deed from the original owner or developer to a third party may not be effective to convey the right. If a water right was inadvertently conveyed to a lot owner, a quit-claim deed conveying the water right from the lot owner to the appropriate party can correct this situation.

Multiple water rights listing a permissible place of use (PPU) can present complications related to ownership changes. Since each of the rights is appurtenant to the commonly described place-of-use, the rights are generally conveyed together (in whole or in part). If the seller desires to convey only one of the rights with a subdivided parcel of land, the deed or other conveyance document must specify the right to be included (in whole or in part) and exclude the remaining rights from the conveyance.

Subdividing a large irrigated parcel can also lead to questions about the point(s) of diversion described under the water right. If a parcel is subdivided into multiple parts, then each new owner's portion of the water right should list all of the original points of diversion unless the conveyance document provides other instruction. If a new owner wants to add a point of diversion to one of the subdivided parts, a water right transfer under Idaho Code § 42-222 would be required.

Sometimes an error in the place-of-use listed on the water right is identified that prevents a new owner from proving ownership based on their deeds or other conveyance documents. Simple clerical errors initiated by the Department can be corrected through an administrative process for licenses or transfers issued

by the Department. The Department cannot change an error identified on a decree issued by a court. The court may provide for an error correction process or the new owner may need to pursue a motion to set-aside or amend the decree with the court. As an alternative, the new owner may choose to file a transfer pursuant to Idaho Code § 42-222 to change the place-of-use listed on the decree. The Department should carefully review the transfer to confirm that the transfer can proceed based on a simple clerical error. If not, authorization from the owner of the land listed on the water right might be required in order to process the transfer.

Occasionally, a water right is described through a decree or otherwise where the decree owner does not own, nor has ever owned, all the described parcels of land listed on the decree. This often happens where the landowner owns land adjacent to BLM or other federal or state land, but may occur in other situations. The deficient parcels are usually a very small percentage of the total land area described under the water right. If a notice is filed for the entire water right, and the new owner cannot provide documentation of ownership of the entire water right, and all efforts to work with the owner regarding splits, changes by the court, transfer, quit claim, or otherwise have been exhausted, then the notice could be processed by listing the new owner as the current water right owner without a split as long as Department records indicate that there are likely other owners based on information available to the Department. If sufficient information is available, the additional owner(s) could also be listed in the water right record. However, since the other owner(s) would not have filed a notice, the Department should not list them as “current” owner(s). The Department has historically listed an owner as “present” owner where there is some information indicating ownership, but where a notice with evidence has not been filed. This practice should not be used where there is a significant interest in the water right held by other owners. In addition, in the case of a future transfer of the water right, the ownership issue must be resolved prior to transferring any portion of the lands in question.

2.9 Processing Owner Changes Resulting in Split Rights

When land is subdivided the appurtenant water right(s) is also split or divided based on the appurtenant portion of the water right unless otherwise stated on the deed or other conveyance document. For example, if a water right completely covers a parcel of land and the land is subdivided into two equal parts and one or both parts are sold, then the water right would also be split into two equal parts.

Another example with a different result would be a water right covering only a portion of a parcel of land and the land is subdivided into two equal parts. Each subdivided portion of the land would only be conveyed a portion of the water right based on the amount that was appurtenant. The figure below illustrates the situation.

Owner Change Split



Parcel
320 acres

Water Right
5.5 cfs on 275 acres

Parcel split into two parts
(North and South)

Water Right split is:
 $115/275 = 42\%$ (North)
 $160/275 = 58\%$ (South)

Water rights with conditions limiting rate, volume, acres or some other limits should be adjusted to reflect the proportional amounts resulting from the split. In addition, digital shapes for the place of use and point of diversion should be updated to reflect the split in the Department's database.

Another PPU complication arises when a water right lists a place of use for irrigation of a number of acres, but the water right is conditioned to limit the number of acres that can be irrigated during a single irrigation season within the PPU. For example, a water right lists a PPU of 100 acres but is limited to irrigation use on any 60 acres within the PPU. If the 100-acre parcel is subdivided into two 50-acre parcels, then each parcel would be conveyed a 30-acre portion of the right to be used within the corresponding 50-acre parcel (unless the conveyance document specifies otherwise).

A deed or other conveyance document might list multiple owners, each with some specified undivided interest in the property. An undivided interest does not result in splitting the water right; the specified owners would all be listed as owners of the water right. Comments can be added to the Department's database to indicate the percentage specified for each owner.

Some conveyances create complications that cannot be easily resolved by splitting the right. For example, a conveyance that appears to split a domestic right for one home into two parts could, if split, create the misconception that two homes would be authorized under separate domestic rights. If the issue cannot be easily resolved, the right could show multiple owners, but should not be split. Some domestic rights may include more than one home, but are limited to a statutory volume of 13,000 gallons per day. If the right is split to

show one home for each part, a statement should be added to the record (in conditions) indicating that both (or all) parts are limited to 13,000 gallons per day in combination.

Another potentially challenging scenario is the splitting of small stockwater rights. The distribution of water to stock troughs may not be spread evenly across the authorized place of use. Consequently, splitting the water right proportionately according to the land base might not reflect the actual use. If it's clear from documentation in the water right file that stock troughs are not included in the split portion, then the stockwater use should not be split unless the deed or other conveyance document clearly specifies how to split the right. When the deed is not specific and when information in the water right file does not add clarity, the Department should split the right according to the proportionate division of the place of use, because the water right is appurtenant to the land.

In cases where a strictly proportionate split of a small stockwater right would result in a diversion rate expressed to the thousandth of a cfs, IDWR should define each right to the nearest hundredth of a cfs, even if the total of the split portions exceeds the original amount. All splits resulting in a diversion rate less than one hundredth of a cfs should be described as 0.01 cfs on the face of the water right; a condition can be added to the right describing the split diversion rate to the nearest thousandth of a cfs. Annual volume limits should be addressed similarly to the nearest tenth of a cfs, but not less than one tenth of a cfs. If the stockwater right being split includes the statutory volume limit of 13,000 gallons per day, a statement should be added to the record (in conditions) indicating that both (or all) parts are limited to a combined total of 13,000 gallons per day.

3 Assignment of Applications, Permits, and Transfer Applications

A water right permit is considered personal property, not real property. Water Appropriation rule 35.02(d) indicates an applicant's interest in an application for permit is also personal property. Other water right applications (e.g. transfer) before the Department are considered personal property as well. Since applications and permits are personal property, they are not conveyed as an appurtenance to the land. Conveyance is normally accomplished through an assignment by the application or permit owner. Conveyance could be accomplished in conjunction with a deed conveying land if the application or permit is specifically stated on the deed and the grantor (assignor) is the application owner or permit owner based on Department records.

The Department provides a form for filing an assignment of permit. A statutory filing fee, currently \$25, must accompany an assignment of permit. Water Appropriation rule 35.04(f) requires notice to the Department if an application for permit is assigned to a new owner, but there is no fee to file an assignment of an application. An application or permit can also be assigned by the owner to another party in a deed or through a bill of sale as long as appropriate language is included indicating the

assignment or conveyance of the application or permit with a notarized signature of the owner.

3.1 *Application for Amendment of a Permit*

An application for amendment of a permit filed pursuant to Idaho Code § 42-211 can suffice as notice of an owner change for a permit (without separate notice, but including the additional fee for an assignment), but it must include documentation conveying or assigning the permit as personal property from the permit holder of record to the new owner. A deed conveying the associated land is not sufficient (unless the permit is also specifically conveyed in the deed by the permit holder).

3.2 *Assignment of Permit for Power Purposes*

Idaho Code § 42-207 requires an assignment of a permit for power purposes to include qualifications of the new owner to show residency in the State of Idaho (for an individual) or qualifications to do business in Idaho (for a business entity). In addition, the statute requires that the assignment be made in good faith and not for purposes of speculation or delay.

3.3 *Processing Assignments Resulting in Splits*

An application or permit can be assigned in part. No additional fee is required to split a permit. The assignment should clarify the split portions including the associated place of use to be divided. If information cannot be obtained to split the application or permit, the ownership record can be updated to show more than one owner with comments in the database indicating multiple ownership. Resolution of the split portions for permits may need to wait until proof is submitted and a field exam conducted for licensing purposes.

3.4 *Permits Pending in an Adjudication*

For permits pending in an adjudication, updates to the ownership record should be made to both the adjudication and permit records since the permit record will not be superseded by a decree. The ownership record for a claim should not be updated on the basis of conveyance of the land unless the permit is also specifically conveyed in the deed or other conveyance document. An assignment of permit received by adjudication staff, once processed for a claim, should always be forwarded to water right staff for processing related to the permit record.

3.5 *Permit Not Assigned to New Landowner*

Many changes in land ownership occur without an assignment of a water right permit that is associated with the land. If water has been diverted and beneficially used, but not yet licensed, experience has shown that in most cases the seller of the property probably intended to convey the permit with the land. For reinstatements, proof submittal, or licensing amendments, the Department has accepted forms signed by the current landowner if the current landowner can show an appropriate interest in the property and the current landowner has not been able to contact the permit holder for an assignment.

The Department should attempt to contact the permit holder of record. Upon objection, the Department will hold an administrative hearing on the matter as necessary. See Administrative Memorandum - Permit Processing No. 10, dated December 1, 1988, for more information.

When proof of beneficial use or a request for reinstatement is submitted for a permit that was not assigned to the new landowner (or permit owner), the Department will not change the ownership of the permit without a notice of change, fee and sufficient evidence of ownership of the permit (e.g. a court decision in a bankruptcy proceeding determining ownership specifically for a permit), but will accept the signature of the new landowner for the filing as described above. Such evidence when filed with an application for amendment of a permit pursuant to Idaho Code § 42-211 (including licensing amendments) will *not* require a separate notice and fee as described in Section 3.1 above.

If the new landowner submits a notice of change and fee along with evidence of ownership of the land described as the place-of-use under the permit, the Department will consider the filing premature and hold processing of the owner change until licensing, at which time the Department will issue the license in the new owner's name. Because the filing is considered premature, a separate notice and fee is required even when filed in conjunction with an application for amendment of a permit.

4 Notice of Security Interest

A security interest in a water right can be acquired through a mortgage, deed of trust, contract or other agreement where the property (i.e. the water right or land with associated water right) is used to secure payment of an obligation such as a loan. Evidence of a security interest would be the mortgage, deed of trust, etc, identifying the property used as security.

Although notice to the Department is not required, any person or entity having a security interest in a water right and desiring notification from the Department regarding any proposed or final action or changes to the water right must file a Notice of Security Interest on a form provided by the Department with the appropriate fee of \$25 per water right. Note that, unlike a notice for change in ownership, a notice of security interest filed on a water right pending in an adjudication is not exempt from the filing fee.

A notice of security interest should be processed by adding the secured party to the water right or adjudication record with a "security interest" owner type. For water rights pending in an adjudication, updates need only be made to the adjudication record unless the record is based on a permit. The adjudication record contains the most recent contact information and will supersede the water right record once decreed. For permits, the security interest should be added to both the permit and adjudication records since the permit record will not be superseded by a decree. All correspondence relating to an action or change to the water right, claim, recommendation or permit must be copied to the secured party until the security interest expires or is terminated by the secured party. When a record is updated due to an ownership change, including splits or through a transfer, the security interest

owner should remain as part of the record(s) to ensure that they receive notice of the change through the Department's database workflow processes. A security interest can be removed from a record upon notice to the Department that the interest has terminated, or at the end of the designated term of the security interest.

5 Change of Address

Water right owners are required to notify the Department of changes in their mailing addresses. In addition, Water Appropriation rule 35.04 (f) requires notice to the Department if an applicant's address changes. Idaho Code § 42-248(3) provides, "The director of the department of water resources will be deemed to have provided notice concerning any action by the director affecting a water right or claim if a notice of the action is mailed to the address and owner of the water right shown in the records of the department of water resources at the time of mailing the notice." It is important to update the records accordingly once notice of an address change has been submitted to ensure water right owners receive notice of any action regarding their rights or applications.

The Department can receive notice through a Change of Address form submitted to the Department, or by a letter indicating the new address and signed by the owner(s) of the water right, claim, permit or application. Notice can also be accomplished through other Department forms (e.g. a water right transfer or well drilling application) indicating the new address with proper signature on the document. The Department can also update the address for a contact through notice provided by the Post Office. There is no fee for a change of address.

The Department does not process address changes submitted by email because it is difficult to know for certain who sent the email. Signed forms (or other signed documents) provide the appropriate level of certainty.

The Department's database was designed to share contact records between business processes in order to avoid duplication of records, to speed up data entry, and to maintain current records across all processes. Design of the database allows an address change to be updated through a single business process with automatic updates to linked records across multiple business processes. This update process requires data entry of the business process and file location where the paper notice can be found for future reference.