#### Presented by the Idaho State Bar Real Property Section and Water Law Section

# Real Property and Water Law 101 in Practice

May 13, 2021 Live Webcast



Approved by the Idaho State Bar for 2.0 CLE Credits (NAC Approved)

#### **Program Agenda**

9:00 a.m. Real Property 101 in Practice

Cynthia Melillo, Cynthia A. Melillo, PLLC

10:00 a.m. Water Law 101 in Practice

Candice McHugh, McHugh Bromley, PLLC

11:00 a.m. Program Concludes

This program was produced in 2021. Since the law is constantly changing, you are cautioned to use this information only as a starting point for your own research and are urged to consult applicable resources to determine the current state of the law. Similarly, since the application of law is dependent upon each particular fact pattern, you should always independently research the particular issues in any case.

#### About the Speakers

#### Cynthia Melillo Cynthia A. Melillo, PLLC Boise, Idaho

**Cynthia A. Melillo** is the owner of Cynthia A. Melillo PLLC, a small law firm dedicated to helping clients achieve their goals and obtain the results they are seeking. Cynthia has over 20 years of experience providing legal assistance to real estate developers, small businesses and telecommunications providers. Cynthia uses her experience, knowledge and enthusiasm for her work to become an integral part of her clients' businesses. She works closely with her clients in developing strategies and creative solutions to meet each client's unique needs.

Cynthia was a 2007 recipient of the Tribute to Women in Industry award, a 2010 Idaho Business Review Idaho Women of the Year, and a 2013 Idaho Business Review Leaders in Law honoree. She has served on the Executive Committee for the Leukemia and Lymphoma Society Light the Night Walk in 2011 and 2012, she served on the College of Western Idaho Foundation Board, she is an officer of the University of Southern California Alumni Chapter of Idaho and is on the board of the Italian American Club of Boise.

#### Candice McHugh McHugh Bromley, PLLC Boise, Idaho

Candice McHugh is a founding member of McHugh Bromley, a law firm that focuses on water law and administrative law. She currently serves as counsel representing municipal interests in a variety of areas throughout the state of Idaho as well as representing private water users. Prior to that she was co-counsel representing groundwater users on Idaho's Eastern Snake Plain in four of Idaho's significant conjunctive management delivery call cases. She was a deputy attorney general representing the Idaho Department of Water Resources for 7 years prior to entering private practice. She is the only private attorney to actively litigate all five of Idaho's conjunctive management delivery calls cases.



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#### MAIN TOPICS TO BE COVERED

- Agreement must be in writing
- ▶ Identifying the parties to the transaction
- Identifying the property to be conveyed
- Purchase Price/Earnest Money
- Due Diligence
- Representations and warranties
- Closing conditions and closing documents
- Misc. Provisions



## Purchase and Sale Agreement MUST be in writing

"Statute of Frauds. Idaho Code Section 9-503. Transfers of real property to be in writing. No estate or interest in real property, other than for leases for a term not exceeding one (1) year, nor any trust or power over or concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing."

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#### **Identifying the Parties**

- ▶ **Seller.** The seller must be the record holder of title.
- **Buyer.** You need to determine how buyer wants to take title.
- ▶ **Verification.** ALWAYS verify the existence of any entity party on the Secretary of State's website.



## Identifying the Property



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#### What is being conveyed

- Real Estate
- You MUST properly describe the real property to be conveyed.
  - Legal Description
    - Metes and bounds
    - ▶ Lot and Block
  - Street Address
  - ► Tax Parcel Number
  - General Description

- Other Property
- Items appurtenant to real estate
  - Water rights
  - ► Mineral rights
  - Easements
- Improved real property
  - ▶ Fixtures/personal property
  - Leases and contracts







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#### Purchase Price and Earnest Money

- Purchase Price:
  - ▶ Set price
  - ▶ Price/Acre
    - ▶ Verified by survey
    - ► Subject to deductions for unusable acreage?
- ► Earnest Money
  - Purpose
  - ► Amount
  - ► Refundable/non-refundable
  - ▶ Applicable to Purchase Price
  - ► Additions to Deposit
  - ▶ Who holds it



#### **DUE DILIGENCE**

- ▶ What does Buyer need to know about the Property?
  - Physical condition of the property
    - ► Environmental reports
    - Soils studies
    - ▶ Condition of buildings
  - ▶ Title and Survey Issues
    - Use Restrictions
    - Easements
    - Leases
  - Zoning
  - Economic Issues
    - Operating costs
    - Taxes



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#### DUE DILIGENCE (CONT.)

- ▶ Which party is responsible for providing information?
- ▶ Which party is responsible for costs of obtaining information?
- ▶ How much time is needed to obtain or review information?
- Will buyer need any governmental approvals?
- Will the property need to be subdivided/created?
- ▶ What triggers approval of the property at the end of due diligence?
- What role will you play?
- Pay attention to deadlines!





REPRESENTATIONS AND WARRANTIES

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## What are representations and warranties?

- ➤ A representation is an assertion as to a fact, true on the date the representation is made, that is given to induce another party to enter into a contract or take some other action.
- A warranty is a promise of indemnity if the assertion is false.



#### "As-is, Where-is"

Seller may refuse to give any representations and warranties:

PURCHASER ACKNOWLEDGES THAT THE PROPERTY IS BEING SOLD "AS IS, WHERE IS" AND "WITH ALL FAULTS" WITHOUT ANY OBLIGATION OF SELLER TO PERFORM ANY REPAIRS, IMPROVEMENTS, MAINTENANCE OR OTHER WORK TO THE PROPERTY OR ANY PART THEREOF, AND WITHOUT, ANY WARRANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, STATUTORY, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF FITNESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY, TENANTABILITY, OR ENVIRONMENTAL CONDITION, EXCEPT FOR THE LIMITED WARRANTIES OF TITLE CONTAINED IN THE DEED. EXCEPT FOR THE LIMITED WARRANTIES OF TITLE CONTAINED IN THE DEED, SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATIONS AND WARRANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, STATUTORY, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, WITH RESPECT TO THE PROPERTY, INCLUDING ANY REPRESENTATIONS BY ANY BROKERS OR SALESMEN WITH RESPECT TO THE PROPERTY.



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#### Common Representations and Warranties

Authority.

Enforceability.

Proceedings.

Contravention.

Compliance.

Litigation.

Insolvency.

Liens and Assessments.

Defects.

No Hazardous Substances.

Utilities.

Zoning.



### Things to consider when drafting Representations and Warranties

- ▶ Remember these are statements of fact as to a point in time. Don't make representations that the property is free of defects and will be free of defects until some point in the future. You can't know that.
- Make sure your client can actually make that representation.
- Limit representation to your client's knowledge or during a certain period of time.
- ► Try to limit to statements of fact that are not easily discoverable by buyer with reasonable due diligence.



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#### Some examples:

- No tenant or occupant of the property has ever used, generated, processed, stored, disposed of, released or discharged any hazardous substance on or about the Property
- There is no litigation pending or threatened affecting Seller or the Property
- ► The Property is in compliance with all laws
- Neither Seller nor, to Seller's knowledge, any tenant or occupant during Seller's ownership of the Property, has ever used, generated, processed, stored, disposed of, released, or discharged any Hazardous Substance on, under or about the Property in violation of Environmental laws
- There is no litigation pending affecting Seller or the Property and to Seller's knowledge, no such litigation has been threatened
- Seller has not received any written notice from any governmental authority that the Property is not in compliance with any applicable laws.



#### What does Seller's knowledge mean?

▶ References to "the best of Seller's knowledge," "Seller's knowledge," "to the best of Seller's actual knowledge" and such other similar phrases shall refer only to the current actual knowledge of \_\_\_\_\_\_\_, and shall not be construed, by imputation or otherwise, to refer to the knowledge of any affiliate of Seller, to any property manager, to any other partner, officer, agent, manager, representative or employee of Seller or any affiliate thereof.

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## Conditions to Closing; Closing Documents

What needs to happen in order to close and what do you need to close?



#### **Some Common Conditions**

- Satisfaction of General Review Period.
- 2. Financing.
- 3. Satisfaction with Condition of Title.
- 4. Governmental Approvals.
- 5. Property Consists of a Legal Lot.
- 6. Deliveries at Closing.
- 7. Seller's Representations.



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#### **Closing Deliveries**

#### Seller's Deliveries

- Deed
- Bill of Sale
- Assignment of Leases
- General Assignment
- Other
  - ► Estoppel Certificates
  - ► Easements/Covenants
  - ► Title company documents

#### **Buyer's Deliveries**

- Purchase Price
- Assignments
- Other
  - ▶ Loan documents
  - ▶ Title company documents



#### Misc. Provisions

- Review the Boilerplate Provisions
- Default/Remedies
- Notices
- Assignment
- Casualty/Condemnation



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## Water Law 101 Idaho Water Law Section May 13, 2021

Candice M. McHugh, Esq.

MºHUGH BROMLEY

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#### Topics to be Addressed

- What is a Water Right
- How do you get a Water Right
  - Adjudication
  - Administrative Process
- What Happens When You Own a Water Right
- What is the Difference between a Water Right and Shares in an Irrigation Entity



#### Water Law Fundamentals

- The citizens of Idaho own the water resources within the State
- Water rights are real property
- A water right is created and maintained by controlling water and placing it to a "beneficial use"
- The State of Idaho recognizes most water use as beneficial, so long as it is not wasteful



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#### When is a Water Right Required?

- Idaho Code § 42-201(2)
  - No person shall use the public waters of the state of Idaho except in accordance with the laws of the state of Idaho. No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists.
- Not required for domestic groundwater use
  - Idaho Code § 42-111



#### **Elements of a Water Right**

- Source
  - Groundwater
  - Surface water
- Priority date
  - Usually the date of application or first use
- Quantity
  - Rate of flow and/or
  - Volume

- Period of Use
  - Limited (e.g. irrigation season)
  - Year 'round
- Purpose of Use
  - This is the beneficial use
- Point of Diversion
- Place of Use



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#### **Accurately Describing Water Rights**

- Elements of a water right
  - Priority Date
  - Source
  - Quantity
  - Purpose of Use
  - Point of Diversion
  - Place of Use



#### **Priority Date**

- "Priority of appropriations shall give the better right as between those using the water" of the state. Art. XV, § 3, Idaho Const. "As between appropriators, the first in time is first in right." Idaho Code § 42-106.
- I.C. 42-607 It is the duty of the watermaster to distribute water to supply the prior rights of others.
- Claiming the earliest priority date possible strengthens and stabilizes the water users water supply.

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#### Source

- Groundwater
- Surface water: rivers, streams, lakes, springs
- In the Matter of Distribution of Water Ro Water Right Nos. 36-2551 and 36-7694, IDWR, Docket No. CM-DC-2011-004 (Rangen Delivery Call)
  - Decreed Source:
    - Martin-Curren Tunnel. Tributary: Billingsley Creek
    - "Administration must comport with the unambiguous terms of the SRBA decrees... Rangen is limited to only that water discharging from the Curren Tunnel."



#### Quantity

- Cubic Feet Per Second (CFS) A rate of flow approximately equal to 448.8 gallons per minute and also equals 50 miner's inches. IDAPA 37.03.02.10.07
  - 1 miner's inch = 0.02 cfs.
- Acre-Feet (AF) A volume of water sufficient o cover 1 acre of land 1 foot deep and is equal to 43,560 cubic feet. IDAPA
  37.03.02.010.01.
- Municipal uses from ground water do not include volume limits. (Adjudication Memo 34)
- Beneficial use the measure and limit of the water right.
- Claim the maximum amount that is needed for beneficial use.
  - I.C. 42-220 "no ... decree of the court allotting such water shall be issued confirming the right to the use of more than 1 second foot to water for each fifty (5) acres of land so irrigated, unless it can be shown to the satisfaction of the department...."
- For administrative purposes, the senior user may need less than their decreed quantities.



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#### Quantity con't.

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#### **Point of Diversion**

• The location on the public source of water form which water is diverted. Examples are pump intake, headgate, well locations and cam locations. IDAPA 37.03.02.10.24.



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#### Purpose of Use

- Irrigation
- Stockwater
- Domestic
- Wildlife with a diversion
- Aesthetic
- Recreation
- Commercial/Industrial
- Recharge
- Other ...



#### Place of Use

- By Legal Description OR
- "Digital boundary" means the boundary encompassing and defining an area consisting of or incorporating the place of use or permissible place of use for a water right prepared and maintained by the department of water resources using a geographic information system in conformance with the national standard for spatial data accuracy or succeeding standard. I.C. 42-202B(2).



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#### Municipality v. Municipal Provider

- "Municipality" means a city incorporated under section 50-102, Idaho Code, a county, or the state of Idaho acting through a department or institution. I.C. 42-202B(4)
- "Municipal provider" means:
  - (a) A municipality that provides water for municipal purposes to its residents and other users within its service area;
  - (b) Any corporation or association holding a franchise to supply water for municipal purposes, or a political subdivision of the state of Idaho authorized to supply water for municipal purposes, and which does supply water, for municipal purposes to users within its service area; or
  - (c) A corporation or association which supplies water for municipal purposes through a water system regulated by the state of Idaho as a "public water supply" as described in section 39-103(12), Idaho Code. I.C. 42-202B(5)
  - Example: Utility, Home Owner's Association



#### **Who Issues Water Rights**



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#### **Water Right Documents**

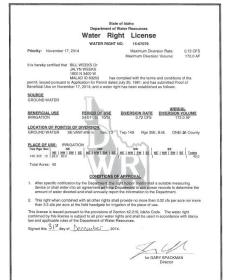
#### **Administrative Documents**

- Application for Permit
- Permit
- Proof of Beneficial Use
- License
- Decree
- Transfer Application
- Change in Ownership
- Notice of Security Interest

#### **Court Documents**

- Claim
- Amended Notice of Claim
- Director's Report
- Objection
- Response
- Special Master's Report
- Partial Decree
- Final Unified Decree





SRBA Decree

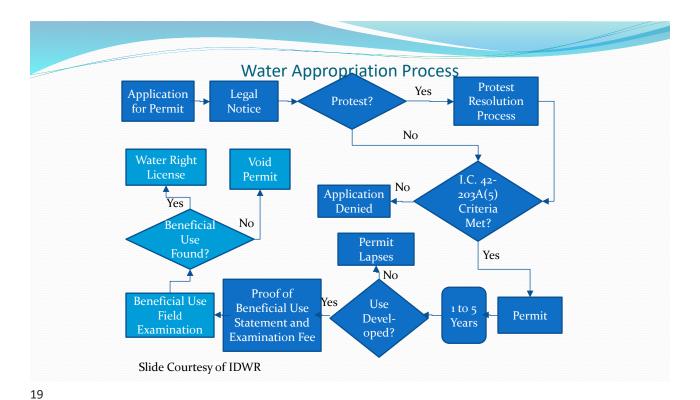
IDWR License

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#### **Idaho Department of Water Resources**

- Administrative Function
  - Permits
  - Licenses
  - Transfers
  - · Change of Ownership
  - Security Interests
- Distribution in times of shortage (Delivery Calls)
- Contested Case Hearings (Protests)





#### **Idaho's Adjudication Court**

#### Adjudicates Water Rights

- Confirms and decrees water rights that were previously decreed or licensed
- Confirms and decrees historic water rights that have not been previously recorded
- THE ONLY FORUM to decree historic water rights



- Why Adjudicate Water Rights
  - Security
    - Idaho Code § 55-101(1)
  - Predictability
  - Administration
- Types of Adjudications
  - Private
    - Idaho Code § 42-1404
  - General
    - Idaho Code § 42-1408

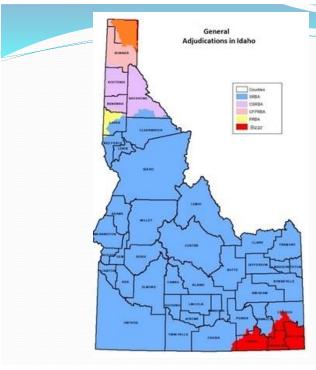


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#### Idaho's Adjudications

- Will proceed as a general adjudication
  - Idaho Code § 42-1406B(1)
- Jurisdiction is with the Fifth Judicial District Court in Twin Falls (SRBA District Court)
  - Idaho Code § 42-1406B(2)





- SRBA
  - Effectively complete
- CSRBA
  - Ongoing
- PRBA
  - 2015 commencement
- Bear
  - · Initial discussions
- CFPRBA
  - Not scheduled



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#### Participation and Deferment

- Who must participate?
  - State water users, Federal government, Tribes
- Who may defer?
  - Domestic and stockwater users
    - Idaho Code § 42-1406B(1)
      - Defer at your own risk
  - Bear River and Clark Fork Differ



#### Idaho's Adjudication Court

- District Court Judge
  - Eric Wildman
- Special Masters
  - Brigette Bilyeu
  - Theodore (Ted) Booth
- Staff
  - Diana Delaney Case Administrator
  - Janet Connell Deputy Clerk and Assistant to Special Masters
  - Julie Murphy Deputy Clerk
  - Paul Harrington Staff Attorney



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#### **Process and Procedure**

- Informal Process
  - Preliminary Director's Report
  - Notice of Error
  - Public Meeting
- Formal Process I.C. 42-1411
  - Director's Report I.C.
  - Prima Facie Evidence
  - Objection and Response Period
  - Initial Hearings
  - Trial
  - Unobjected Director's Reports



#### **Process and Procedure**

- Formal Process State Based
  - Objection Period
    - Idaho Code § 42-1411(6)(f)
      - 60 days from filing of Director's Report for 500 claims or less
      - 120 days from filing of Director's Report for 501 5000 claims
      - 180 days from filing of Director's Report for 5000 claims or more
  - Response Period
    - Idaho Code § 42-1411(h)
      - No less than 60 days from the filing of any objection
  - Unobjected Recommendations
    - Idaho Code § 42-1411(i)
      - May be partially decreed no less than 60 days from the objection deadline
  - Initial Hearings
  - Standard Form 5
  - Trial



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#### Administrative Order 1 (AO1)

- Standard Forms AO<sub>1</sub>(4)
- Claims
- Objections Standard Form 1
- Responses
- Pre-Trial and Status Conference
- Dispositive Motions



#### Technology and Remote Hearings

- Video Teleconference available at IDWR's Northern Region Office.
  - AO1(12)
- Teleconference Calls
  - Judge Wildman: 1-215-446-0193 Participation Code: 406128#
  - Special Masters: 1-215-446-0193
     Participation Codes:
     Brigette Bilyeu 926509#
     Ted Booth 675342#



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#### **How to Identify the Water Rights**

- Ask the seller
- Consult IDWR database and/or region
  - Western Boise
  - Southern Twin Falls
  - Eastern Idaho Falls
  - Northern Coeur d'Alene
- Ask a water rights expert, attorney, engineer, consultant

#### **Ownership**

- Can own a water right on another's property
- Can sell property but reserve the water right
  - Water Right Special Warranty Deeds
- Can own property with the right to use another entity's water rights
  - Canal shares



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## Determining the Validity or Value of a Water Right

- Has it been lost to forfeiture in whole or in part?
- What is its priority date relative to other water rights on the source?
- Is it subject to a curtailment order?



#### When You Have A Water Right

- Idaho Code Title 42 Chapter 6 Water Distribution
  - Priority Matters
  - Watermasters
  - Water Districts
- Idaho Code Title 42 Chapter 12 Maintaining Ditches
- Idaho Code 42-701 Measuring Devices

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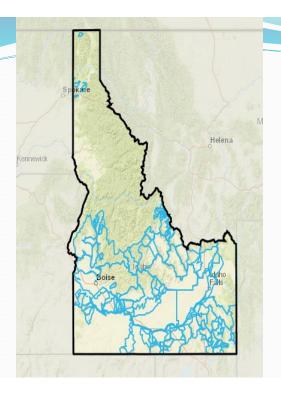
#### **Water Districts**

Idaho Code 42-604. CREATION OF WATER DISTRICTS. The director of the department of water resources shall divide the state into water districts in such manner that each public stream and tributaries, or independent source of water supply, shall constitute a water district: .... provided, that this section shall not apply to streams or water supplies whose priorities of appropriation have not been adjudicated by the courts having jurisdiction thereof.

••••

Each water district created hereunder shall be considered an instrumentality of the state of Idaho for the purpose of performing the essential governmental function of distribution of water among appropriators under the laws of the state of Idaho.





#### 99 active districts

~19 water districts formed or modified in the Eastern Snake Plain and Upper Salmon Basin since 2002



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#### **Water District Composition**

- Vary in geographical size and number of users
- Watermaster may be full or part time
- Watermasters may be water professionals or water users
- Large Water Districts maintain business offices (WD63
   Boise, WD37 Big Wood), small districts operate from home
- State watermasters work from IDWR regional or field offices (WD01)



#### **Forfeiture**

- Idaho Code § 42-222(2)
  - The rights to the use of water shall be lost or forfeiture if unused for a period of 5 years
  - Full and partial forfeiture
  - Use it or lose it!
- Idaho Code § 42-222(4)
  - Extensions of time to avoid forfeiture



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#### **Abandonment**

- Intent Based
- Can Happen Immediately
- Examples
  - Removing headgates
  - Plowing under ditches
  - Cutting electrical lines
  - Removing pumps



#### **Transfers**

- Idaho Code § 42-222 Changes in
  - Point of diversion
  - Place of use
  - Period of use
  - Nature of use
- Water rights can be transferred off the land that may be the collateral on a loan



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#### **Curtailment**

- Surface Water
  - Most surface water is curtailed at some point in the year on a seasonal basis. Priority date matters.
- Groundwater
  - Curtailment will occur, usually on a region-wide basis and can be seasonal or permanent
    - Spring Users permanent
    - Surface Water Coalition seasonal



#### **Conjunctive Management**

- Conjunctive Management Legal and hydrologic integration of administration of the diversion and use of water under water rights from surface and ground water sources, <u>including</u> areas having a common ground water supply. IDAPA 37.03.11.10.03.
  - In other words: when IDWR distributes water between surface and ground water rights.
- The Eastern Snake Plain Aquifer is the only area determined (by rule) to have a common ground water supply. IDAPA 37.03.11.50



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Form 42-248/42-1409(6) Rev. 1/15	DEI	STATE O PARTMENT OF W	F IDAHO ATER RESOURCES		
	Notice of	Change in W	ater Right Owner	rship	
<ol> <li>List the numbers of all w or adjudication claim, ch are not sure if the water r</li> </ol>	ck "Fes" in the	"Split?" column. If the	ords to be changed. If you on water right is leased to the W see #6 of the instructions.	ily acquired a Vater Supply I	portion of the water right Bank, check "Yes". If you
Water Right/Claim No.	Splir?	Leased to Water Supply Bank?	Water Right/Claim No.	Split?	Leased to Water Supply Bank?
	Yes 🗆	Yes 🗆		Yes 🗆	Yes 🗆
	Yes 🗆	Yes 🗆		Yes	Yes 🗆
	Yes   Yes	Yes □ Yes □		Yes  Yes	Yes □ Yes □
	Yes 🗆	Yes 🗆		Yes	Yes 🗆
Previous Owner's Name:			•		
		rent water right holder/clai	mant		
<ol> <li>New Owner(s)/Claimant(</li> </ol>	New owner(s	s) as listed on the conveya	sce document Name o	consector	and or and/or
Mailing address		City		State	ZIP
Telephone		Emvi			
☐ The water rights or	laims were divi claims were divi	ded as specifically iden ided proportionately bas	he division occur? ified in a deed, contract, or o ed on the portion of their plac	ther conveya ce(s) of use ac	nce document. equired by the new owner.
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completed IRS Form W-1 rights with multiple own	iated with the w for payment to its must specify	rater right. Payment of the best be issued to an owner. It a designated lessor, using the best best best best best best best bes	wnership of a water right wil evenue generated from any r A new owner for a water right ng a completed <u>Lessor Desiz</u> , compensation for any rental	rental of a least tunder lease : mation form.	sed water right requires a shall supply a W-9. Water Beginning in the calendar
document must incl plat map, survey u and/or claim listed; pling fee (see instr o 3.55 per unif) o 3.100 per zpi o No fee is rec   If waster right(s) are If S Form W-9.	veyance docume ude a legal descr ap or aerial pho bove (if necessar ictions for furthe idod water right, water right, uired for pending leased to the Wat	ent — warranty deed, or iption of the property or tograph which clearly ray to clarify division of er explanation): g adjudication claims. ter Supply Bank AND th	UTRED items:  uitclaim deed, court decree, description of the water righ shows the place of use and j water rights or complex prop are are multiple owners, a Les indual owner or designated le	n(s) if no land point of diver perty descripti	i is conveyed.  sion for each water right ions).  on form is required.
	sew owner/claimar	at Title	, if applicable		Date
Signature: Signature of:	sew owner/claimar	ot Title	, if applicable		Date
For IDWR Office Use Only:					
Receipted by	Date		pt No.		ipt Azut.
Active in the Water Supply I Name on W-9	ank? Yes 🗌 No	If yes, forward:  Approved by	o the State Office for processing  Processed by	W Da	-9 received? Yes No No
, Table 102 11°7			- Jocessed by		-

#### **Security Interest**

- Idaho Code § 42-248(6)
  - Notice of Security Interest
    - IDWR shall provide Bank notification for:
      - Changes of ownership
      - Any proposed or final agency action



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			OF IDAHO WATER RESOURCES			
	and a reque or final action	est to be notified of a ch on to amend, transfer, o	erest in a Wate ange in ownership or an r otherwise modify the w ion. Incomplete forms will be a	y proposed rater right(s)		
1.	Water Right/Claim No.	Water Right/Claim No.	Water Right/Claim No.	Water Right/Claim No.		
	CONTRACT OF water rights or clai	ecurity interest. This may less SALE or other legal doc ins in question, WITH Al- per water right or adjudica	oc a copy of a DEED of TI rument indicating your inter TTACHED LEGAL DESC tion claim. olding Security Interest	est in the property and	•	Filed in the region where the water right is located along with a \$25 filing fee
4.	Name of Water Right Own	Email ner/Claimant(s)				
	Expiration Date of Notifica					
	Is this a Renewal of Reque		□ YES □ NO			
6. 7.	Signature(s) of Security Int Title, if applicable	terest Holder(s)				
6. 7. For Reco	Title, if applicable  Office Use Only	Date	Receipt No	Fee		

#### **Irrigation Shares**

- Review Entity Articles and Bylaws
- Personal Property or Real Property?
  - Personal property UCC 1
  - Real property Appurtenance clause
- Best Practice
  - Possession



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#### Multiple Domestic Wells

- Wells for "domestic" purposes do not require a water right, if:
  - Meet the "domestic" definition, Idaho Code § 42-111
    - (a) Homes, organization camps, public campgrounds, or livestock
      - ½ acre irrigation; 13,000 gallons per day (0.02 cfs)
    - (b) <u>Multiple ownership subdivisions</u>, mobile home parks, commercial, or business establishments
      - o.o4 cfs and 2,500 gallons per day



#### **Domestic Well Agreements**

- First piece of advice: Don't share a domestic well.
- Second piece of advice: If you share a domestic well, get it in writing!



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#### Minimum Stream Flows

- Idaho Code §§ 42-1501 et seq.
  - Shall only be appropriated and held by the Idaho Water Resource Board



#### Conjunctive Management

- Conjunctive Management Legal and hydrologic integration of administration of the diversion and use of water under water rights from surface and ground water sources, <u>including</u> areas having a common ground water supply. IDAPA 37.03.11.10.03.
  - In other words: when IDWR distributes water between surface and ground water rights.
- The Eastern Snake Plain Aquifer is the only area determined (by rule) to have a common ground water supply. IDAPA 37.03.11.50

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## GROUND WATER MANAGEMENT AREA

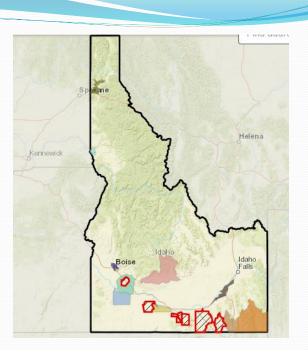
#### **Ground Water**

#### **Management Areas**

- Section 42-233a, Idaho Code, defines a "critical ground water area" as any ground water basin, or designated part thereof, not having sufficient ground water to provide a reasonably safe supply for irrigation of cultivated lands, or other uses in the basin at the then current rates of withdrawal, or rates of withdrawal projected by consideration of valid and outstanding applications and permits, as may be determined and designated, from time to time by the Director.
- Section 42-233b, Idaho Code, authorizes the Director to designate a "ground water management area" which is defined as any ground water basin or designated part thereof which the Director has determined may be approaching the conditions of a critical ground water area.
- IDAPA Rule 37.03.11.06

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Ground Water
Management
Areas
and
Critical Ground
Water Areas
in Idaho



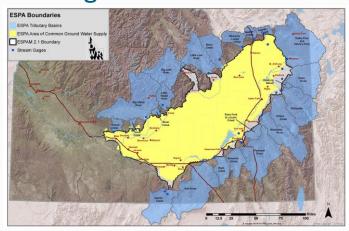
Critical Ground Wa	ter Areas
	Date
	Designated
Oakley Fan	
Artesian City	1/16/1962
Cottonwood	1/16/1962
Oakley-Kenyon	1/16/1962
West Oakley Fan	1/19/1982
Raft River	7/23/1963
Blue Gulch	12/9/1970
Curlew Valley	3/15/1976
Cinder Cone Butte	5/7/1981

Ground Water Management Areas						
	Date					
	Designated					
Grand View-Bruneau	10/29/1982					
Mountain Home	11/9/1982					
Banbury Hot Springs	4/12/1983					
Twin Falls	1/11/1984					
Boise Front	6/15/1987					
Big Wood River	6/28/1991					
Southeast Boise	10/14/1994					
Bear River	8/12/2001					
Rathdrum Prairie	12/11/2002					
Lewiston Plateau	5/20/2013					
Malad Valley	11/4/2015					
Eastern Snake River Plain	11/2/2016					

Rescinded Ground Water Management Areas							
	Date Designated	Date Rescinded					
Bancroft-Lund	10/21/1991	8/31/2004					
Lindsay Creek	3/5/1992	5/20/2013					
American Falls	8/3/2001	11/2/2016					
Thousand Springs	8/3/2001	11/2/2016					

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#### New Ground Water Management Area in Idaho



Form 42-248-42-1409(6) Rev. 1/15	DEPARTMENT	NTE OF IDAHO OF WATER RESOURCES				TE OF IDAHO	
List the numbers of all wat or adjudication claim, chec	er rights and/or adjudication o k "Fes" in the "Split?" colum	in Water Right Owne aim records to be changed. If you is If the water right is leased to the	only acquired a pe	ortion of the water right nk, check "Yes". If you		OF WATER RESOURCES EE IN ADDRESS	
Water Right/Claim No.	Spint Leased to the Water Supp.  Spint Supply Bo Yes Yes Yes	nk? Water Right Claim No.	Spiit?	Leased to Water Supply Bank? Yes □	address of the owners	motify the Department of a change in of record for the listed water rights. wate print or type)	
	Yes Yes Yes		Yes 🗆	Yes  Yes	Water Right Number(s):		
	Yes Ves [		Yes 🗆	Yes 🗆 Yes 🗎	Name(s):		
Previous Owner's Name:     New Owner(s)/Claimant(s)	Name of current water right h  New owner(s) as listed on the		connector	nd   or   and/or	Old Mailing Address:		
Multing address		City	State Z31				
☐ The water rights or of  5. Date you acquired the wate  6. If the water right is leased Supply Bank leases associo completed IRS Form W-9 rights with multiple owner	sims were divided as specifica- nims were divided proportion r rights and/or claims listed ab- to the Water Supply Bank chi ted with the water right. Pays for payment to be issued to an s must specify a designated le-	By identified in a deed, contract, or tely based on the portion of their pl	isco(s) of use acquirell reassign to the rental of a lease this under lease shape the ignation form. Be	ired by the new owner.  new owner any Water d water right requires a ell supply a W-9. Water ginning in the collendar	New Mailing Address:  Telephone Number:  Email:  Signature(s) of Owner(s)		
document must inclu    Har map, survey mu andiere laim listed al    Filing fee (see instruct    \$25 per sandivi   \$100 per spit    No fee is requi   If water right(s) are le	syance document — warranty for a legal description of the pro- por aerial photograph who one (if necessary to clarify di- tions for further explanation). fed water right, stater right, seater right.	deed, quitelaim deed, court decre- operty or description of the writer in clearly shows the place of use an ision of water rights or complex po	ght(s) if no hind is I point of diversi- operty description essor Designation	conveyed.  In for each water right (s).  form is required.	Date:  Send a signed original to your closest #  IDWR Northern Region 7600 M Misseal Dr. Suist 100 Cover d'Allen, D. 8315-7763	a your title if on behalf of company or organization.)  Coglored offlice:  IDWR Western Region.  275 Airport Way  Baise, ID 82 705-5082	
Signature:	w owner/dismatt  w owner/dismatt.  Date  If you  Appen	Title, if applicable  Title, if applicable  Title, if applicable  Receipt No  Servand to the State Office for processin day  Processed by  Processed by	De Receipt	to .	Cours 762-2000 (2008) 762-2000 (DWR Eastern Region 900 N. Styline Dr., Suite A Maho Falls, DJ A0402-1718 (2008) 225-7161	poule, 17.8 x 10x-x 10x, (208) 334-2190  IDWR Southern Region 650 Addison Ave W. Suite 500 7win Falls, ID 83301-5858 (208) 736-3033	

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#### **Security Interests**

- Idaho Code § 42-248(6)
  - "Any person having a security interest in a water right and desiring to be notified by the department regarding the filing of a change in ownership... or of any proposed or final action... shall make the request upon a form provide by the department..."
- Any security interests on file with IDWR?

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#### **Irrigation Shares**

- Certificated?
- Review entity Articles and Bylaws
- Best practice possession





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#### Resources

- Idaho Code Title 42
- IDWR Administrative Rules
  - IDAPA 37.03.01 Adjudication Rules
  - IDAPA 37.03.02 Beneficial Use Examination Rules
- IDWR Adjudication Memos
- IDWR Claims Investigation Handbook
- Administrative Order 1
- idwr.Idaho.gov
- srba.Idaho.gov
- csrba.Idaho.gov



380 South 4<sup>th</sup> Street, Suite 103 Boise, Idaho 83702 (208) 287-0991

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