

The Fundamentals Underlying Conjunctive Administration

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CAMP Advisory Committee

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**RIPARIAN DOCTRINE
VS.
PRIOR APPROPRIATION
DOCTRINE**

What is the Riparian Doctrine?

- A system of allocating water among those who possess land surrounding the water source.
- If you own land next to or above the water source, you have a right to use the water.
- Developed and used Primarily in Eastern United States.



Prior Appropriation Doctrine

- The first person to use a quantity of water from a water source for a beneficial use has the right to continue to use that quantity of water for that purpose.



Prior Appropriation Doctrine

- Subsequent users can use the remaining water for their own beneficial purposes provided that they do not impinge on the rights of previous users.
- “First in time, first in right”
- Primarily in Western United States.



Application in Idaho

- Idaho is a *prior appropriation* state.
- In times of water shortage, the earlier (prior) use receives water first.
- Idaho does not recognize *riparian* water uses.



Add'l Basic Premises – Public Waters

- Idaho law declares all waters of the state, when flowing in their natural channels, including natural springs, lakes, and ground waters of the state to be *public waters*.
- A *water right* is the right to divert the *public waters* of the State of Idaho and place them to a *beneficial use*.

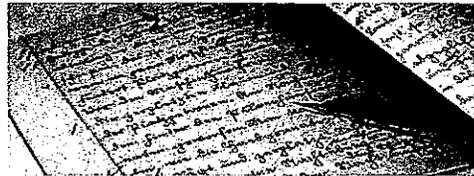
Public Waters Cont.

- When a right to the use of the *public water* is established by *appropriation*, the resulting *water right* is a real property right.
- The laws of the State of Idaho protect real property rights, including *water rights*.
- The real property right in water is secure so long as it is *beneficially* used.

How is a water right established in Idaho?

Constitutional Method

- a.k.a Grandfather Method or Beneficial Use Method.
- Two requirements:
 - Divert water.
 - Put water to beneficial use.
- No forms or recording



Permit Method

- Fill out an Application for Permit form and file with IDWR.
- Pay fee.
- Application is published.
- Hearing if protested.



Permit Method

- Once permit is approved, water user generally has 5 years to develop water system.
- Once water system is developed, they submit proof of diversion and beneficial use to IDWR.
- IDWR issues license confirming the use.
- Priority date is the date of the application for permit.

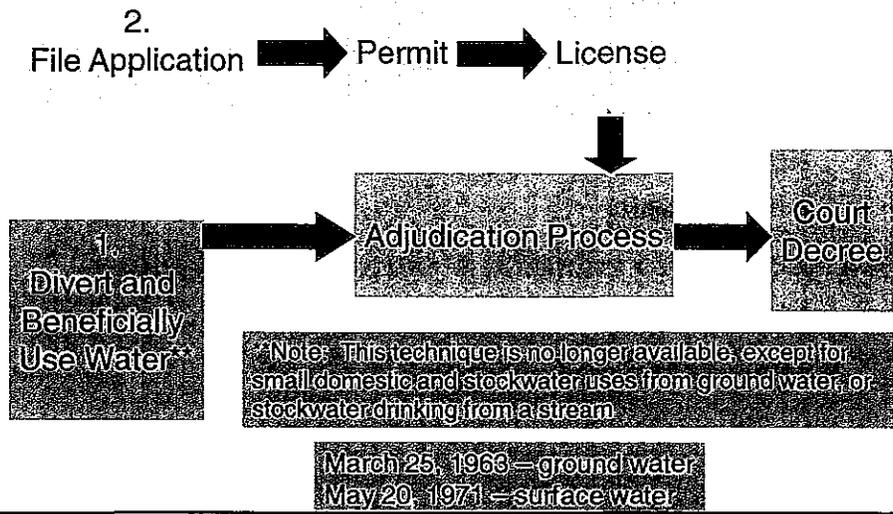
Permit Method

- Permit process now mandatory
 - Permit process was optional for a long time.
 - A permit has been necessary to establish a water right since 1963 for ground water and since 1971 for surface water.
- Exception to mandatory permit requirement:
 - Domestic uses using ground water.
 - In-stream stockwatering

Point worth emphasizing

- Small domestics are exempt from license requirements:
 - Homes, Livestock, Camps
 - 13,000 gallons per day.
 - Max of 1/2 acre of irrigation.
 - Any other small use
 - 0.04 cubic feet per second.
 - 2500 gallons per day.

Two ways to establish water rights in Idaho



Allocation in times of shortage

When Priority Principle will be invoked

- A senior water user who is not receiving enough water can invoke the priority principle to shut off an upstream junior water user.
 - “Make a Call”
- However, if shutting off the junior water user would be futile, the priority principal will not be invoked against the junior appropriator.
 - “Futile Call”

Burden of Proof

- When arguing a futile call, the burden of proof is on junior to show that its diversion is not interfering with a senior water user’s right.

Preferences in Times of Shortage

- The Idaho Constitution sets forth the following preference scheme:
 - Domestic uses over all other.
 - Agricultural over manufacturing uses.
 - Mining and milling uses over manufacturing or agricultural uses.

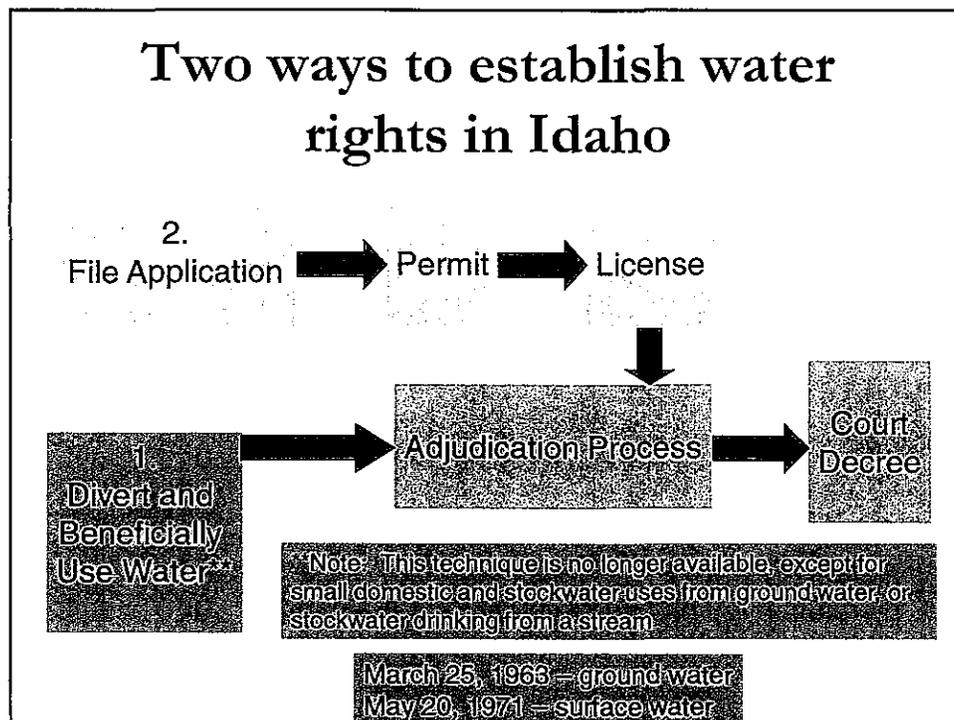
Preference in Times of Shortage

- Preference means right to condemn
 - Use preferences do not supersede the priority principle. A junior preferred use cannot simply take the water ahead of a senior non-preferred user.
 - Thus, a 1970 priority domestic user can condemn a manufacturing right, but requires payment of compensation.

Adjudications

Why adjudicate water rights?

- Before you can manage water, you must first know who is using the water.
 - Constitutional rights must be quantified.
 - Changed water rights must be clarified.
 - Unused water rights removed from the books.
 - Federal and tribal water rights must be determined.



What is Conjunctive Administration?

The Legal Definition:

“The legal and hydrologic integration of administration of the diversion and use of water under water rights from surface and ground water sources, including areas having a common ground supply.”

The Simplified Definition:

Determining how junior ground water rights impact senior surface water rights.

Hydraulic Connection Between Surface and Ground Water Rights

- Idaho law recognizes the connection between ground water rights and surface water rights.
- Idaho applies prior appropriation doctrine.
- Not the same in all states.

Didn't the SRBA Answer the Issue of Administration?

- Adjudication and Administration are separate tracks.
- Adjudications establish the basic building blocks upon which administration rests.

Why is Conjunctive Administration So Difficult?

- Water law originally was developed to manage surface water.
- Effects are immediate, visible and down-stream only stream only.
- With ground-water, the effects exist but are more difficult to identify.
 - Effects are spatially distributed.
 - Effects are spread out over time.

Models Are Critical Tools In Conjunctive Administration

- Because of this difficulty, a ground water model is key.
- A model helps inform how ground water uses impact surface water uses.

Questions to keep in mind during CAMP process

- What are the drivers to administration?
- What role can/will modeling play? Can modeling information help better inform water users?
- How will the model used for administration be developed?
- Are there solutions short of a call for conjunctive administration or curtailment?