

## MEMORANDUM

TO: DAVE TUTHILL  
FROM: PETER ANDERSON  
RE: CUSTOMIZED SEASON OF USE  
DATE: DECEMBER 18, 1998

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### INTRODUCTION

Over the summer and this fall IDWR developed new general recommendations for the irrigation season of use based upon the latitude and elevation of the irrigation water use. The use of general season of use parameters for purposes of recommendation is authorized by Idaho Code § 42-1401B, which provides, in part, that:

The director shall make recommendations as to the extent of beneficial use and administration of each water right under state law and may use uniform parameters for quantification of beneficial use recommended for rights within climatic regions of the state.

IDWR excepted from its intention to recommend the uniform irrigation season of use those water rights that have been decreed or licensed with an explicit season. At public meetings held on October 15 and 16, 1998, IDWR stated a further exception, as follows:

For situations where an irrigator has specific evidence to support an expanded season, IDWR will consider the expanded season.

Although IDWR developed uniform parameters for its irrigation season of use recommendations, it recognized exceptions for the licensed and decreed season of use, and for situations where the irrigator has specific evidence supporting an expanded season.

The reason for the exceptions lies in the difference between IDWR's recommendation and the actual water right. The legislature wisely allowed IDWR to make its recommendations based upon uniform parameters. The use of uniform parameters recognizes that evidence of actual irrigation season may be hard to find; that the State cannot afford to closely investigate the irrigation season for every right; that claimants may not have the legal, factual and financial wherewithal to prove their particular irrigation season at trial; and that in most cases irrigation water use in an area begins and ends at approximately the same time. The actual water rights, however, may not be accurately described by the uniform parameters. In Idaho, water rights are determined by the extent of historic beneficial use, which may be evidenced by a license or decree. Historic use may extend past the uniform parameters in IDWR's recommendations. If so, the actual water right may have an irrigation season that extends outside the uniform parameter. The exceptions allow IDWR to conform its recommendations more closely to the actual water right in appropriate circumstances.

The question posed is how and when will IDWR consider specific evidence of a longer irrigation season.

## DISCUSSION

### General Standard:

1. Claimant's Burden.

The first rule to be applied to claims for an irrigation season longer than the standard season for an area is that the claimant bears the burden of bringing the information to IDWR's attention. Although the statute puts the initial investigatory burden on IDWR in Idaho Code § 42-1410, the authorization to use uniform parameters effectively limits the extent to which IDWR must investigate irrigation season of use. If the claimant wants IDWR to recommend something other than the uniform season, the claimant must bring the necessary information to IDWR's attention.

2. Evidence of Actual Use.

The second rule to be applied is that the claimant must bring substantial, competent evidence that water has been used historically at times outside the uniform season. To be competent the evidence must be from a reasonably reliable historical source. Personal testimony of old time water use should come from an old timer, not from a new owner whose "understanding" is that water was always used this way. Types of possible evidence include historic diaries or journals, newspaper accounts, historic letters, affidavits of individuals that also establish credibility and source of knowledge, or conversations with individuals that also establish the same. Evidence of physical circumstances that suggest that water was used during the extended period would also be helpful, such as historic weather reports and records, stream flow records and other evidence of watershed characteristics. The evidence should be produced and presented in a way that establishes that it is credible.

3. Evidence that the Use is Beneficial.

The third rule to be applied is that the claimant must bring substantial, competent evidence that water use outside the uniform season is beneficial. This evidence will primarily need to be based on agricultural science. Possible sources for this type of evidence include county agents or ASC crop specialists. However, the claimant may be able to bring sufficient evidence of the physical circumstances to allow IDWR to determine whether or not the historic, extended use was beneficial.

## CONCLUSION

IDWR must make its own conclusions regarding whether or not the information brought forward by a claimant is sufficient to support a recommendation of early season or late season beneficial use. The hurdle for the claimant in this regard is high. The

standard irrigation season established by IDWR is very generous. **If an agent is faced with a question regarding irrigation season of use they would be well served to discuss the issue with their legal liaison.**