

Water Rights & Real Estate

Preserving the Past, Serving the Present, Ensuring the Future



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Presentation Topics

- IDWR Agency Overview
- How Water Rights are Acquired & Administered
- Northern Idaho Water Rights Adjudication Update
- Conveyance of a Water Right
- Considerations When Buying or Selling Properties
- Internet Tools and Information Resources

Idaho Department of Water Resources

MISSION: To serve the citizens of Idaho by ensuring that water is conserved and available for the sustainability of Idaho's economy, ecosystems, and resulting quality of life.

What is a Water Right?

- The constitution and statutes of the State of Idaho declare all the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state and groundwaters of the state, to be public waters.
- A water right is the right to divert public waters and put them to a beneficial use in accordance with one's priority date. See I.C. § 42-230

Idaho is a Prior Appropriation State

- “First in time is first in right.”
- The earlier (senior) priority date rights must be satisfied before the later (junior) priority date rights can be delivered.
- This becomes important when the source (available supply of water) is not sufficient to meet the current demand.
- A water right allows the private use of Idaho’s public water.

Beneficial Use Water Rights

- Beneficial use (aka constitutional or posted notice) water rights were developed without going through the permit process.
- The majority of senior water rights in Idaho were likely developed by this method.
- A water right adjudication is the only process available to secure the priority date of an early beneficial use water right.

Mandatory Permit Dates

- Dates water right permits became mandatory:
 - March 25, 1963 – Ground water diversions (except for domestic and/or livestock uses as defined in I.C. § 42-111)
 - May 20, 1971 – Surface water diversions (except for watering livestock directly from streams as defined in I.C. § 42-113)
- Note: The domestic and/or livestock water uses that are defined in I.C. § 42-111 are also referred to as *de minimis* water uses.

Water Right Permits & Licenses

- Date of application & payment is date of priority
- Application for Permit is advertised in local publication for 2 consecutive weeks
- If protests are filed and cannot be resolved between parties, then IDWR must hold a hearing
- Once permit is issued, the permit holder is given a period of up to 5 years to complete water appropriation
- Upon completion, permit holder submits “Proof of Beneficial Use”, and a field examination is performed to ensure that water is being used as described in permit
- IDWR then issues a water right license that describes the appropriation that has been completed

What is an Adjudication?

- Process to catalog and confirm through the court all water rights and to which property those water rights belong, binding all property owners and parties (including individuals, companies, Tribes, the US, and State agencies) to the court decree of those water rights.
- Only process by which water rights can be recorded with priority back-dated to time of first water use.

Why Adjudicate Water Rights?

- Water is a valuable resource in Idaho.
- Supplies are not always sufficient to meet demands.
- Grandfather (beneficial use) rights must be determined
- Changes to water rights must be clarified



Balancing the Water Checkbook

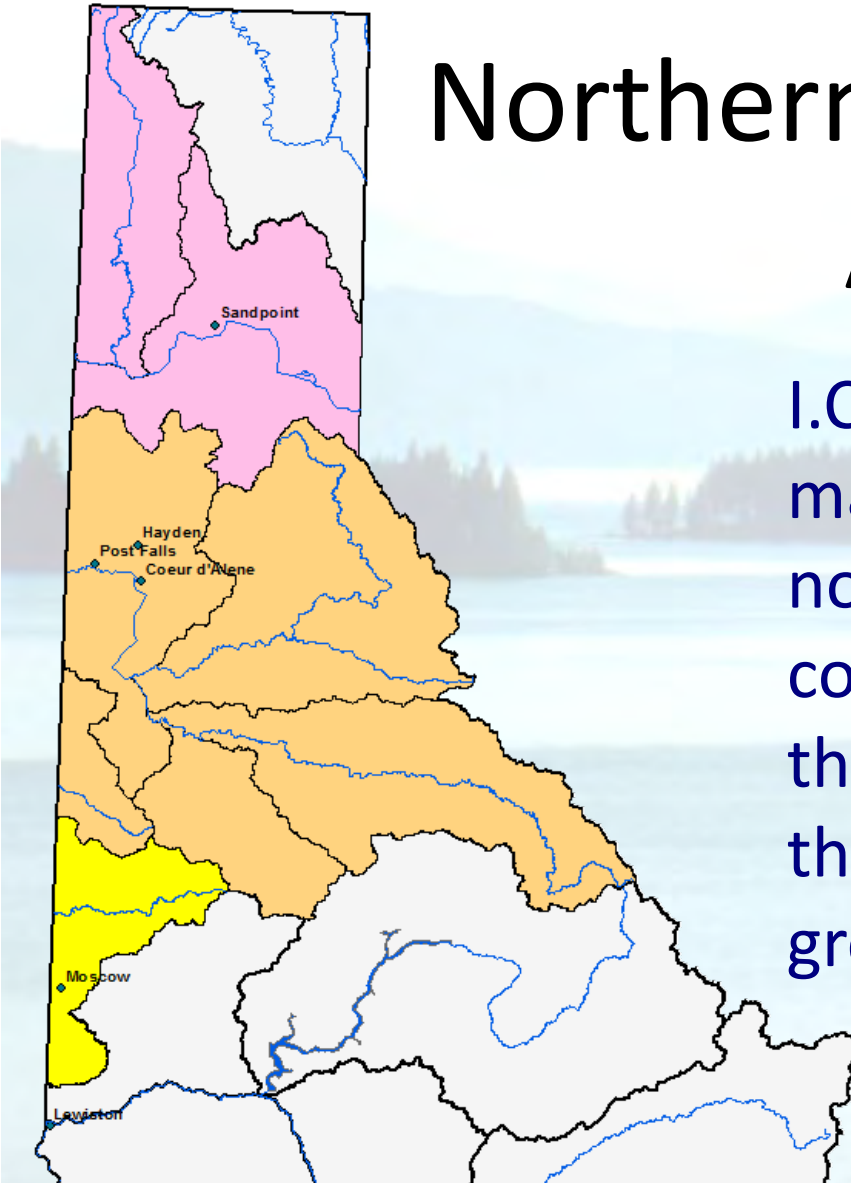


How the Adjudication Affects Water Right Holders

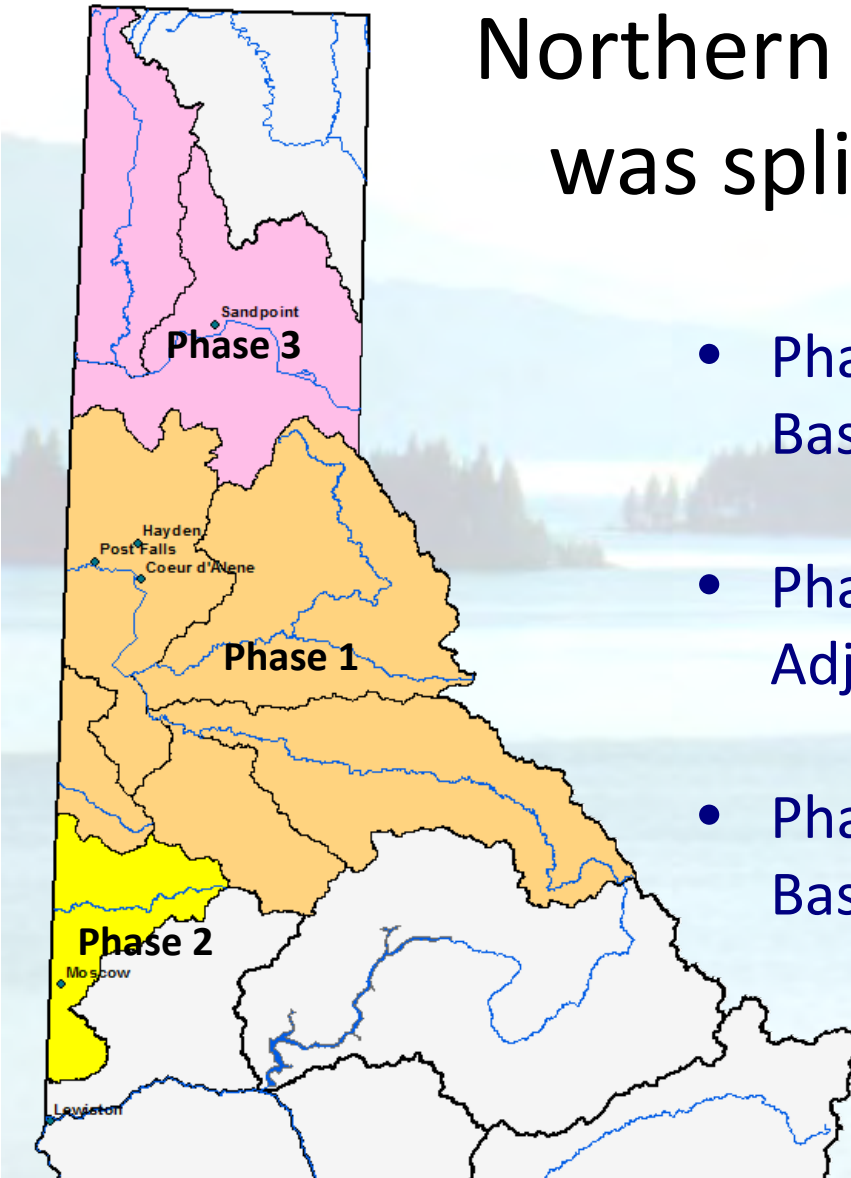
- All water uses in the Adjudication areas, except for small domestic and/or stockwater, must be recorded.
 - Municipalities and municipal providers are responsible for filing their claims.
 - Water users can choose to defer (postpone) filing for small Domestic & Stockwater rights. (I. C. § 42-111)
- The Court will issue a “partial decree” for each claim that appears in the Director’s Report.
- Delivery of water (if or when required) will be based on the partial decree for each right.

Northern Idaho Water Rights Adjudications

I.C. § 42-1406B: “Effective management of the waters of northern Idaho requires that a comprehensive determination of the nature, extent and priority of the rights of users of surface and ground water be determined.”

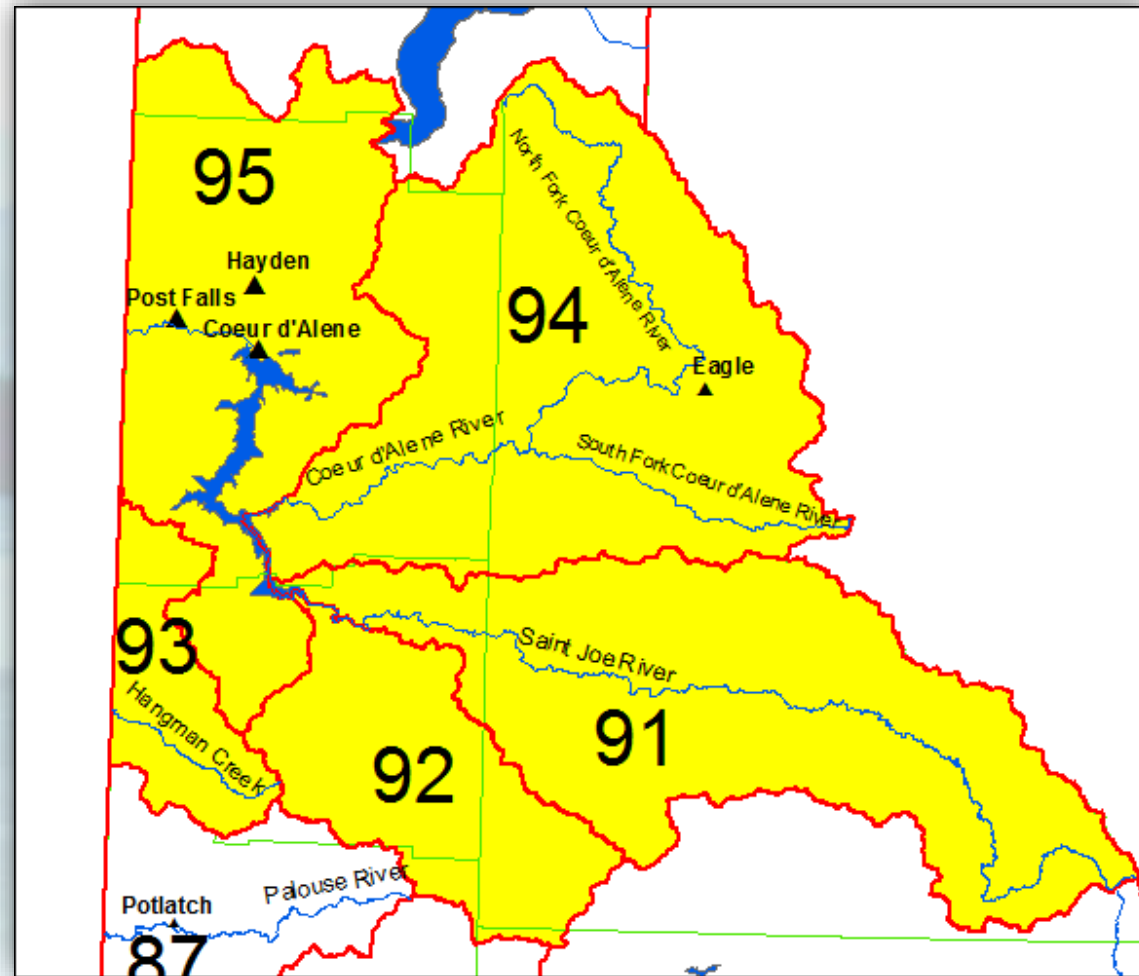


Northern Idaho Adjudication (NIA) was split into three (3) phases:



- Phase 1 - Coeur d'Alene-Spokane River Basin Adjudication (CSRBA)
- Phase 2 - Palouse River Basin Adjudication (PRBA)
- Phase 3 - Clark Fork-Pend Oreille River Basin Adjudication (CFPRBA)

Phase 1 – Basins 91-95



Coeur d'Alene-Spokane River Basin (CSRBA)

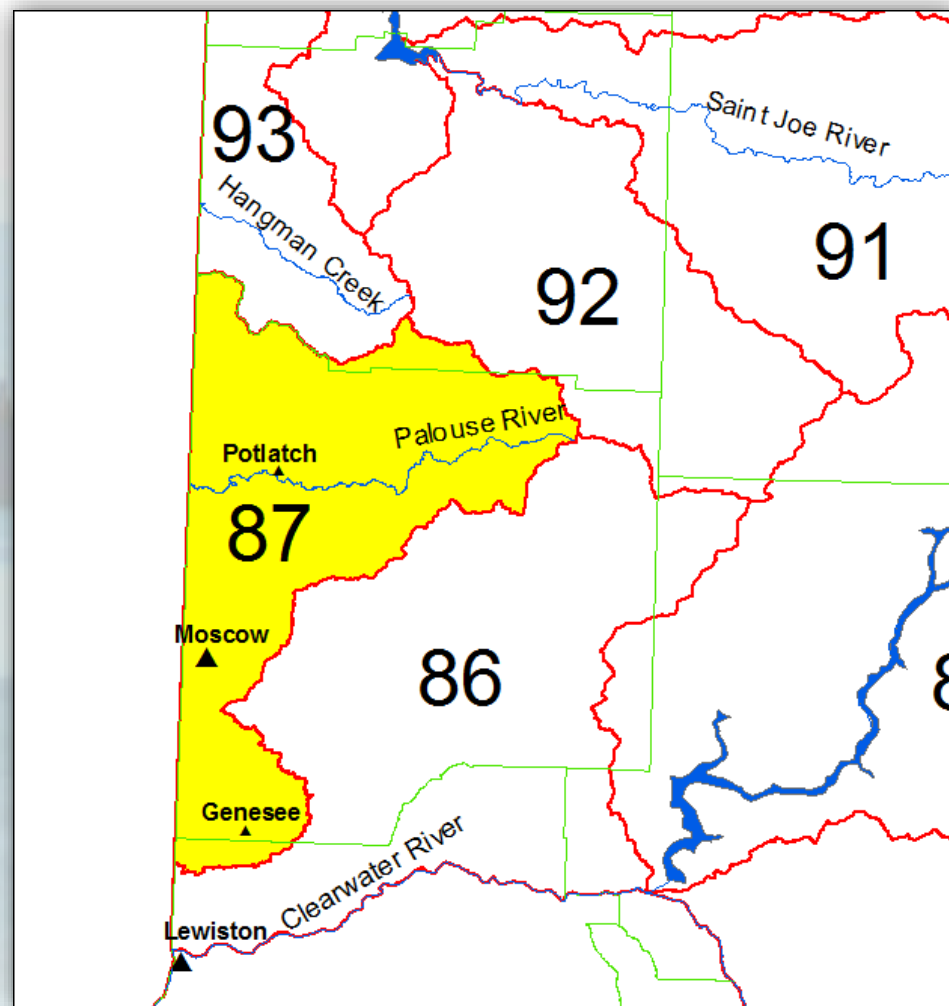
Current Status of Coeur d'Alene-Spokane River Basin Adjudication (CSRBA)

- Director's Report for last remaining basin in CSRBA (Basin 95 Part 2) filed February 26, 2019
- 13,157 total claims reported to the Court with 12,073 claims now decreed
- All subcases in Basins 91-94 have been resolved

Outstanding Issues

- Basin 95: 19 Objections to 12 subcases remain
- Federal Reserve Claims: 284 Tribal Claims & 265 USFS Claims
 - Litigation of Bureau of Indian Affairs' (BIA) claims on behalf of Coeur d'Alene Tribe has been stayed to allow parties to continue mediation
 - Parties have reached resolution to USFS Federal Reserved claims and are finalizing recommendations
- Avista Power Claims & Maintenance of Lake CDA levels

Phase 2 – Basin 87



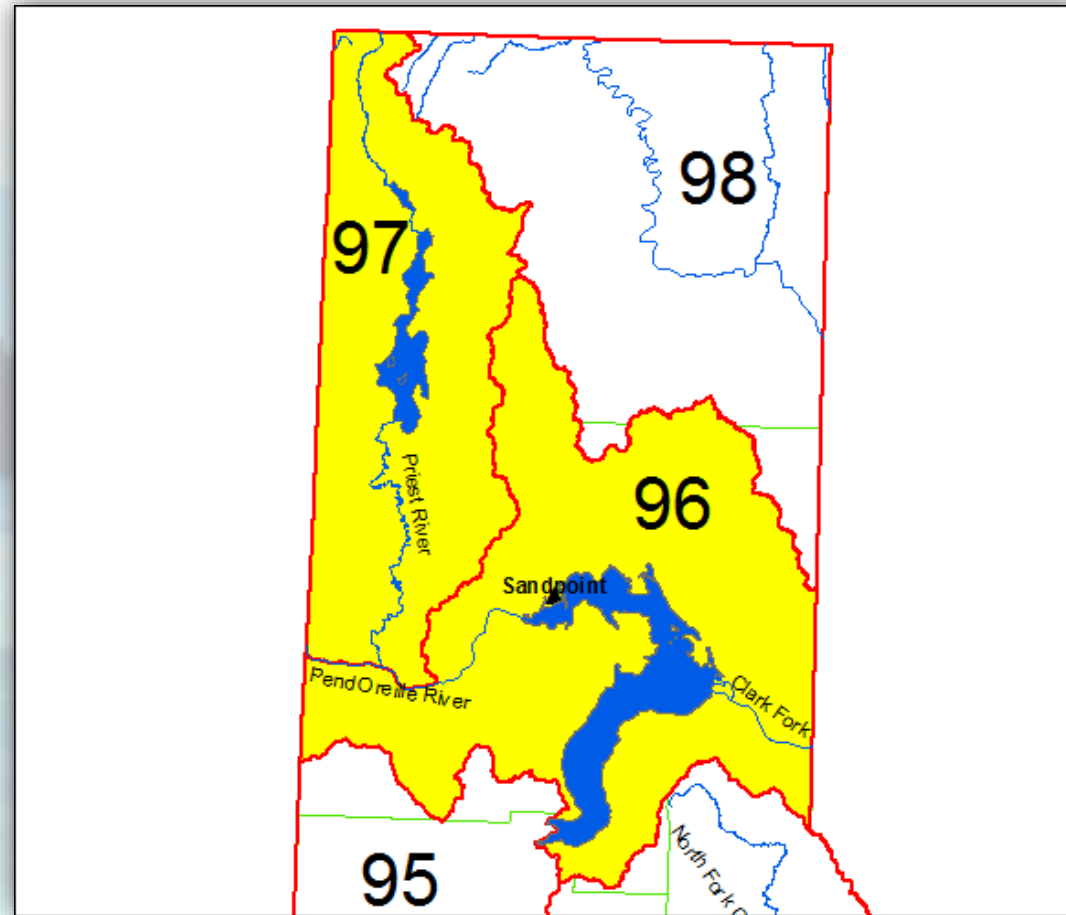
Palouse River Basin (PRBA)

Current Status of Basin 87

Palouse River Basin Adjudication (PRBA)

- Commencement Order issued March 1, 2017
 - IDWR assisted over 650 customers with filing 665 claims during 6-day claim filing workshop at Latah County Fairgrounds in Moscow, ID
- Director's Report filed August 2, 2021
 - Included recommendations for 1,987 state-based claims and abstracts for 197 claims based on federal law
- Deadline for filing objections is January 10, 2022
- Responses due by April 8, 2022
- Hearing on uncontested claims July 19, 2022

Phase 3 – Basins 96 and 97

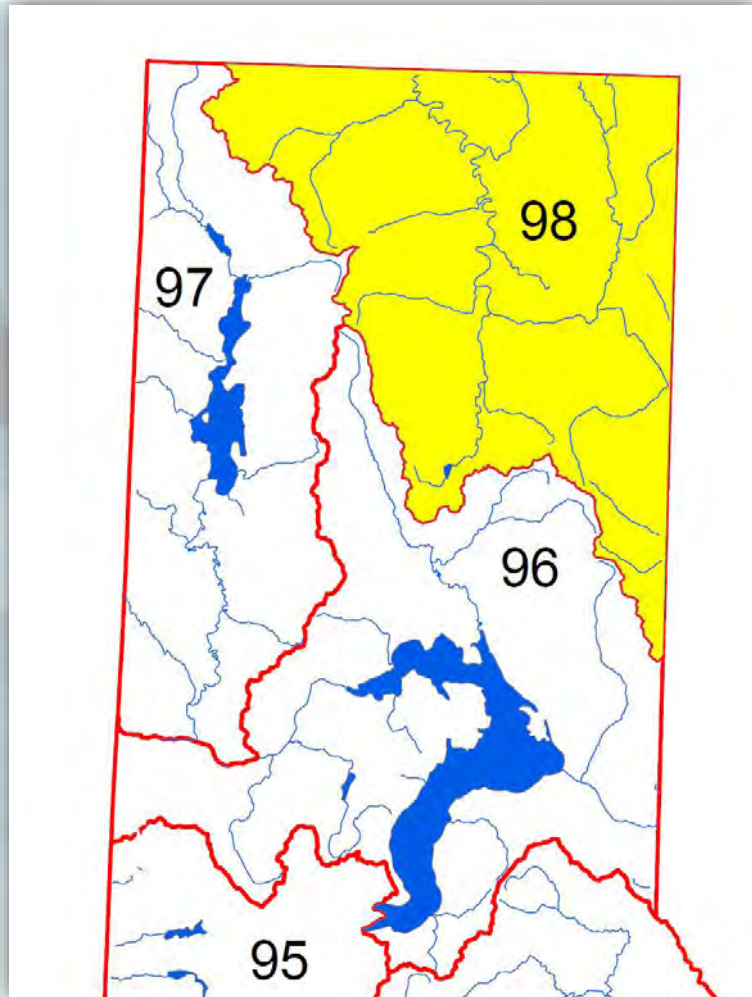


Clark Fork-Pend Oreille River Basin (CFPRBA)

Current Status of Clark Fork-Pend Oreille River Basin Adjudication (CFPRBA)

- IDWR received funding authority from 2020 Legislature
- Commencement Order for the CFPRBA entered June 15, 2021
- Allows deferral of small domestic & stockwater rights (I.C. § 42-111)
- Appeal filed by United States July 27, 2021
 - Appeal pending & awaiting decision by Idaho Supreme Court to take up
 - Primary reason for concern is lack of sunset date for deferral of claims
- Commencement Notices for Basin 97 mailed September 3, 2021
- Commencement Notices for Basin 96 (Group 1) mailed January 18, 2022
 - Three additional mailing groups scheduled for later this year

Adjudicate the Kootenai River Basin?



- Last remaining basin awaiting adjudication in the state
- Funding not yet approved by Idaho State Legislature

Previous IDWR Public Outreach

- Boundary County Commission – August 5, 2019
- Kootenai Tribe – September 9, 2019
- Public Meetings – September 10, 2019

Conveyance of a Water Right



How a Change in Property Ownership Affects a Water Right

- A water right is appurtenant to the place of use and will remain with that property unless specifically excluded from the sale at time of conveyance.
- The purchaser of a property containing a water right/claim is responsible for submitting a Notice of Change in Water Right Ownership to IDWR within 120 days of taking ownership. (I. C. § 42-248)
- Conveyance of a property served by municipal water provider or water delivery association does not necessarily convey ownership of any portion of that water right.

What to Consider When Researching a Property for Sale or Purchase

- What is the source of water serving the property?
 - Is it served by surface water or groundwater (well)?
- Does a water right currently exist on the property?
 - Has a water right already been established through permitting/licensing process or prior adjudication?
 - Was a water right established on the property through “beneficial use” prior to the mandatory permit statutes?
 - If a water right does exist, will it be included with the conveyance of the property?

Additional Considerations

- If a water right was previously established, has it been claimed in the adjudication? Does it need to be?
 - Water Right Licenses in which proof of beneficial use was submitted after June 15, 2021, are not required to file a claim (CFPRBA). All others must be claimed.
 - Deferrable domestic and/or stockwater uses are not required to be claimed, but it is highly recommended.
 - If a water right was previously established through beneficial use, but not claimed, is evidence of that use available?
- Is the property served by a shared well or water delivery association?

If Property is Served by Shared Well

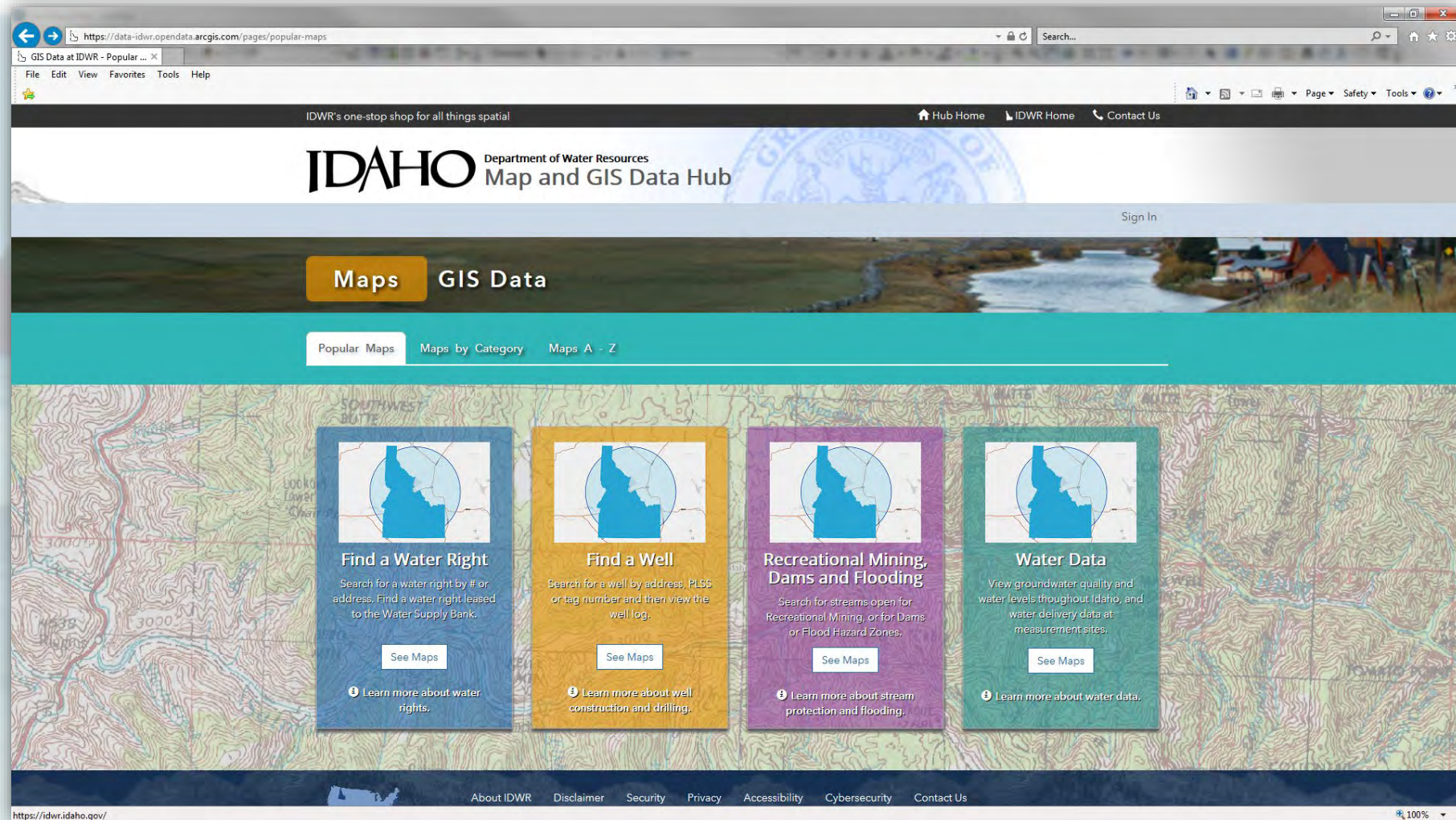
- What easements are in place for access to the well site?
- Has a shared well agreement been drafted?
- Who is responsible for well maintenance expenses?
- Are there any quantity or purpose of use limitations?



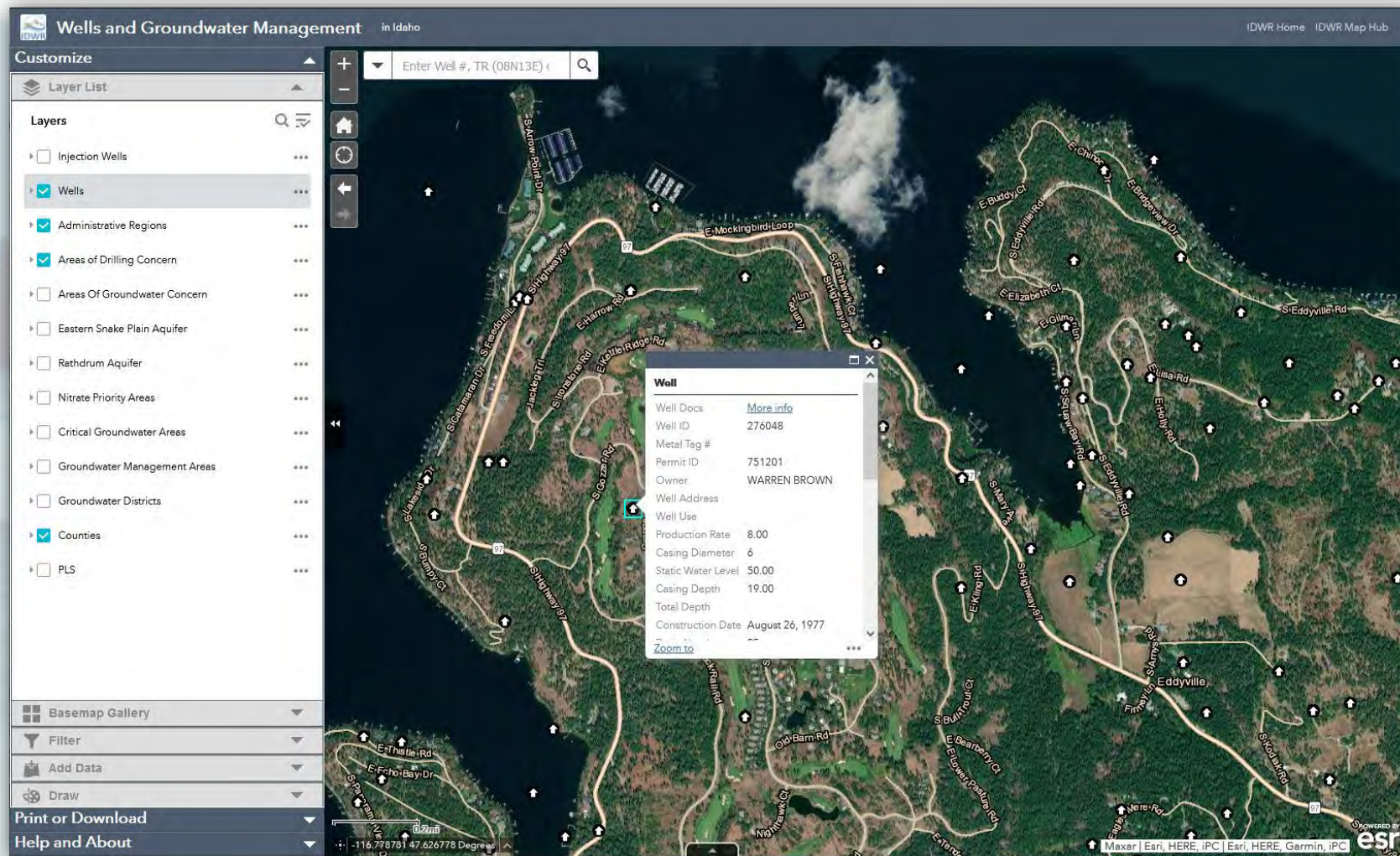
Internet Access

- IDWR
www.idwr.idaho.gov
- CSRBA Court
www.csrba.idaho.gov
- PRBA Court
www.prba.idaho.gov
- CFPRBA Court
www.cfprba.idaho.gov

Helpful Tools on IDWR Website



Wells and Groundwater Management



Questions?



Thank you.