

# WATER RIGHTS FOR DAIRY PRODUCTION IN IDAHO

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Water rights in Idaho have been a major focus for the past two years. In Idaho, water rights are a “first in time, first in right” legal procedure. They are also administered by type of usage: first is domestic, second is agriculture, and third is industry.

In Idaho, about 95% of the water used is for agriculture. This includes both surface water (rivers, lakes, springs) and groundwater (aquifers). For south central Idaho, surface water sources were mostly developed prior to the 1950’s and the groundwater sources after the 1950’s. As a result, the older surface water rights that depend on the overflow of aquifers in the form of spring flows around the Snake River Canyon have been a major source of conflict, which has affected farmers and livestock operators alike.

Until recently, most water used for livestock was tied to the domestic/stock water permit. However, these permits carry a limit of 13,000 gallons per day, which, for all practical purposes, limits them to approximately 300 head of feedlot type cattle. With the increased size of dairy operations, this limit can easily be exceeded and dairymen were required to find additional water rights.

Since the mid 1980’s, South Central Idaho has been under a well-drilling moratorium (except for domestic). Since new wells cannot be drilled, someone who needs water must purchase a well permit from someone else and receive a transfer. This process is both costly and time consuming. The price of water has increased four-fold in the last ten years, as has the time it takes to complete the transfer. Because of this situation, dairymen have been watching their water consumption even more close than normal. They have also been more careful in their selection of land to expand. By purchasing farmland that has a groundwater right for crops, dairymen just have to get an exchange of use permit. Thus, in the past few years, water availability has become a more critical component of site selection and waste handling systems design.

Water right issues have always been a part of South Idaho's agriculture. In recent years, these issues have come to the forefront as supplies dwindled and drought situations lingered. The past seven years have been described as a one-in-five-hundred-year drought. The drought has been most notable in the groundwater supplies that rely on natural and incidental recharge. With lower annual precipitation, less water has been able to percolate into the aquifer. Also, with less water in irrigation storage, less has been available for farmers to use and less has been seeping out of the irrigation systems. As farmers improve their irrigation efficiency and use fewer open ditches, less water is lost to the aquifer and well levels continue to decline.

While groundwater supplies have not been replenished, groundwater pumping has not slowed. The result is an accelerated lowering of the aquifer water table and reduction of spring flows. For the most part, most of the spring flows have water rights attached to them and they tend to be more senior than the groundwater pumping rights. Since the dairy industry is relatively new, many of their water rights are junior and could be subject to curtailment should a "water call" be made. And that happened.

In the winter of 2003, a senior water right holder had springs feeding their aquaculture facility nearly dry up. They contended that all the wells above them that had priority dates after approximately 1967 caused the problem and asked the regulators to shut the wells down. In Idaho, the Department of Water Resources is responsible for investigating the call and taking appropriate action. In concern for what this could do to local counties, a county government appointed organization representing six surrounding counties requested an economic analysis be conducted on what this type of curtailment would cost the local economy.

The resulting economic analysis report, issued in March of 2004, caused a major change in what was to happen to settle water disputes. The report was challenged by several organizations, including surface water users who commissioned their own report. Another report was conducted by out-of-state economists at the request of state legislators. All reports agreed that there would be an impact; however, the projected degree of loss differed. The net result was the formation of an interim legislative committee to develop ways to reduce the economic loss and get the state back into some type of water balance by reducing groundwater demands.

South Central Idaho is highly dependent on production agriculture as its economic base. It is also highly integrated; for example, we raise sugar beets and

have local processing plants. This is also true for potatoes and potato processing. The local dairy industry is even more integrated. The dairymen rely on the farmers to produce the forage. The farmers rely on the dairies to buy the forage. Everyone relies on local milk processing. Thus, a curtailment of one sector reverberates through the whole economy.

Dairies would suffer an even more direct problem if curtailment occurred. Nearly two-thirds of the dairies' agriculture water permits were granted after the 1967 priority date. In South Central Idaho we could have had to eliminate 140+ thousand cows. Not a pretty prospect.

The Department of Water Resources and the state legislators recognized this as a disaster in the making and have made major policy decisions to stop the economic drain. The local economies have held up well but unfortunately, individuals that suffered the losses have not gotten the relief they deserve with their senior rights. The state is trying several programs to lessen the demand. Most notable of these programs are the direct buyout of water rights from willing sellers and a partnership with USDA for an expanded Conservation Reserve Program (CRP) to pay people to not farm irrigated land. They recognize the need to dry up farmland, realizing it will have an economic impact but the impact will be spread out enough that entire communities should not be devastated.

Water rights are a contentious item in irrigated parts of the world. In an effort to keep water within the state and communities, laws protect those rights in various ways. Priorities based on the date water was put to beneficial use, what the use is, and what economic good is derived can all be used to determine the value of the water right. Some agriculture rights are part of a land deed (not separable), while others are separate from the land and can be traded or sold. Many surface water rights used for irrigation are held by irrigation companies; users of this water just own shares in a company and have no direct water right. Groundwater rights generally are separate from land and are real property that is routinely sold. In areas where groundwater supply is short, Idaho has a transfer policy that is contingent on where the water diversion is in relation to areas that are in short supply. In South Central Idaho if you divert any distance from the original well location, there is a good chance you will not be allowed to pump the full amount you purchased if the new diversion site is closer to areas of short spring supplies. The objective is to protect areas close to the surface water springs that are vulnerable to a change in groundwater diversion. Since we now know that the groundwater is over-allocated, the only logical rule is one that restricts diversions. This is a way to reduce use when a change of use is

contemplated. The only problem is that it has escalated the price of water and made it more difficult to transfer water.

Several years ago the state started forming “groundwater districts”. The major job of groundwater districts is to measure water use and protect holders of water rights. This also means they have to keep their patrons within their water rights. With the problems of water calls, groundwater districts have found themselves negotiating with surface water users on diversions. They have had to find replacement water to lower the impact on surface users. The final outcome is that all groundwater users are paying for continued pumping of certain junior users. Whether this practice continues will most likely be determined by the price of water. If water costs continue to increase, all groundwater users may not be able to afford supporting some junior users and we may see some lands retired from irrigated agriculture.