

TITLE 42  
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 14  
ADJUDICATION OF WATER RIGHTS

42-1401. LEGISLATIVE INTENT. The legislature finds and declares that the state laws and procedures for the adjudication of rights to the use of water need to be modified:

(1) to provide a statutory procedure for incorporating a negotiated agreement between a federal reserved water right claimant and the state of Idaho into an adjudication;

(2) to provide a more efficient method for adjudications;

(3) to assure that state laws and procedures provide a fair and impartial forum for the adjudication of the rights of all claimants; and

(4) to assure that state laws and procedures are adequate as a matter of federal law to adjudicate all water rights claimed to have been established under federal law and to administer such rights.

[42-1401, added 1986, ch. 220, sec. 2, p. 560; am. 1994, ch. 454, sec. 1, p. 1445.]

42-1401A. DEFINITIONS. The following terms are defined for purposes of this chapter as follows:

(1) "Claimant" means any person asserting ownership of rights to the use of water within the state of Idaho or on whose behalf ownership of rights to the use of water is asserted.

(2) "Department" means the Idaho department of water resources.

(3) "Director" means collectively the director of the Idaho department of water resources and the Idaho department of water resources.

(4) "Domestic use" is defined in section 42-111, Idaho Code.

(5) "General adjudication" means an action both for the judicial determination of the extent and priority of the rights of all persons to use water from any water system within the state of Idaho that is conclusive as to the nature of all rights to the use of water in the adjudicated water system, except as provided in section 42-1420, Idaho Code, and for the administration of those rights.

(6) "Party" means any person who is a claimant or any person who is served or joined.

(7) "Person" means an individual, a partnership, a trust, an estate, a corporation, a municipal corporation, the state of Idaho or any political subdivision, the United States, an Indian tribe, or any other public or private entity, except that "person" does not include the director of the department or the department.

(8) "Private adjudication" means an action commenced in accordance with section 42-1404, Idaho Code, for the judicial determination of both the extent and priority of the rights of named persons to the use of water from any water system within the state of Idaho, for which a general adjudication has not been commenced or completed, that binds only those persons joined in the action and for the administration of such rights.

(9) "Purchaser" means any successor in interest of a claimant, whether the interest is acquired by purchase, gift, inheritance, or other means.

(10) "Supplemental adjudication" means an action commenced in accordance with section 42-1424, Idaho Code, for the judicial determination of

both the extent and priority of the rights of a person to the use of water from any water system within the state of Idaho which has been adjudicated in a general adjudication or in a private adjudication.

(11) "Stock watering use" means the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen thousand (13,000) gallons per day.

(12) "Water system" includes all rivers, streams, lakes, springs, ground waters, or other sources within this state, including any river system or other source, as used in 43 U.S.C. section 666.

[42-1401A, added 1986, ch. 220, sec. 3, p. 560; 1986, ch. 234, sec. 1, p. 645; am. 1990, ch. 319, sec. 6, p. 875; am. 1994, ch. 454, sec. 2, p. 1445; am. 1996, ch. 186, sec. 1, p. 585; am. 1997, ch. 374, sec. 2, p. 1194.]

42-1401B. ROLE OF THE DIRECTOR IN AN ADJUDICATION. (1) The director's role under this chapter is as an independent expert and technical assistant to assure that claims to water rights acquired under state law are accurately reported in accordance with the procedures of chapter 14, title 42, Idaho Code. 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.

(2) The director shall not be a claimant on behalf of the state or any subdivision of the state in an adjudication.

(3) The director shall not be a party to an adjudication.

[42-1401B, added 1994, ch. 454, sec. 3, p. 1446.]

42-1401C. ROLE OF STATE AGENCIES OTHER THAN THE IDAHO DEPARTMENT OF WATER RESOURCES IN AN ADJUDICATION. (1) Each state agency, and the Idaho water resource board may file a claim and appear separately in any adjudication through the attorney general. This section shall not apply to the Idaho department of water resources.

(2) The attorney general may appear in any adjudication and shall represent the position of the state of Idaho.

[42-1401C, added 1994, ch. 454, sec. 4, p. 1447.]

42-1401D. JURISDICTIONAL LIMITATION. Review of an agency action of the department of water resources, which is subject to judicial review or declaratory judgment under the provisions of chapter 52, title 67, Idaho Code, shall not be heard in any water rights adjudication proceeding commenced under this chapter. Venue and jurisdiction over any such action pending on the effective date of this section, or initiated subsequent thereto, shall be in the district court as authorized under the provisions of section 67-5272, Idaho Code, without regard to any other provision of law.

[42-1401D, added 2001, ch. 31, sec. 2, p. 48.]

42-1402. DECREED RIGHTS APPURTENANT TO LAND -- WATER RIGHTS ESTABLISHED UNDER FEDERAL LAW EXCEPTED. In allotting the waters of any water system by the district court according to the rights and priorities of those using such waters, such allotment shall be made to the use to which such water is beneficially applied, except where water rights established under federal law are involved, in which case the allotment shall be made in accordance with federal law. The right confirmed by such decree or allotment

shall be appurtenant to and shall become a part of the land on which the water is used, and such right will pass with the conveyance of such land, and such decree shall describe the land to which such water shall become so appurtenant. The amount of water so allotted shall never be in excess of the amount actually used for beneficial purposes for which such right is claimed, or in the case of a water right established under federal law, in excess of that amount determined by federal law.

[(42-1402) 1903, p. 223, sec. 38; reen. R.C., sec. 4621; am. 1913, ch. 35, sec. 1, p. 133; C.L., sec. 4621; C.S., sec. 7033; I.C.A., sec. 41-1302; am. 1969, ch. 279, sec. 2, p. 822; am. 1986, ch. 220, sec. 4, p. 561; am. 1994, ch. 454, sec. 5, p. 1447.]

42-1403. CERTIFIED COPIES OF ALLOTMENTS. It shall be the duty of the clerk of the district court in each of the counties of this state to prepare at the expense of the county, and transmit without delay to the department of water resources by express or registered mail, a certified copy of the allotments of the various streams, made by the district court and now on file in the offices of the district court in the various counties of the state: provided, that said clerk may, in place of such transcript, transmit such original records of such decrees as are recorded in books kept for that purpose. Immediately upon receipt of said transcripts or said original records, it shall be the duty of the department to record them in its files, and to classify and arrange said decrees by placing all the rights to water of one stream and its tributaries together, and the department shall send to each watermaster a certified copy of the allotments made by the district court of all the streams within his district. And when an allotment of the waters of a stream shall be made by the district court, the clerk of such district court shall immediately prepare, at the expense of the county, and transmit to the department of water resources, a certified copy of the decree allotting such waters. The director may issue an abstract of decreed water right which shall describe the elements of a water right as contained in the water right decree.

[(42-1403) 1903, p. 223, sec. 39; reen. R.C. & C.L., sec. 4622; C.S., sec. 7034; I.C.A., sec. 41-1303; am. 1994, ch. 454, sec. 6, p. 1447.]

42-1404. PRIVATE ACTIONS FOR ADJUDICATION OF WATER RIGHTS. (1) Any claimant may file suit in the district court for the county in which the point of diversion or place of use of the claimed right is located for the purpose of adjudicating rights to the use of water from any water system for which a general adjudication has not been commenced or completed. The claimant shall set forth in his complaint the claimed water right in a notice of claim form furnished by the director. The claimant shall join all claimants of rights to the use of water from the water system whose joinder is necessary to resolve the dispute over rights to the use of water from the water system. The claimant shall also publish notice of the action in the manner specified in subsection (2) (b) of section 42-1408A [42-1408], Idaho Code.

(2) Any party who may be injured and who objects to the water right claimed by the claimant shall, within forty-five (45) days of the date of first publication of notice, file with the district court written notice of such objection stating the reasons for the objection. A copy of the objection shall be served upon the claimant, all other parties of record in the action, the watermasters, and the director.

(3) Any claimant of a right to the use of water from the water system being adjudicated shall be entitled to intervene and have the claimed right adjudicated. Any such claimant requesting intervention shall set forth the claimed water right in a notice of claim form furnished by the director. The court may request a director's report of the director, as described in section 42-1411, Idaho Code, as to those rights to be determined. The director shall advise the district court as to whether the director will commence an examination of the water system in accordance with the provisions of section 42-1410, Idaho Code. If the director elects not to conduct an examination, the adjudication shall proceed based on the description of the water right in the notice of claim form. Each claimant shall have the burden of proof of establishing each element of a water right described in the claimants notice of claim form.

(4) The director shall provide to the court an estimate of the costs that will be incurred in conducting the examination and in preparing the director's report and an approximate time when the director's report will be completed. The court shall order the claimants of the rights to be determined to submit a notice of claim to the director in accordance with section 42-1409, Idaho Code, except that the fee as described in section 42-1414, Idaho Code, shall not apply. Upon the completion of claims-taking, the director shall bill each claimant for a claim fee equal to that claimant's proportionate share of the total estimated cost to the state relative to that claimant's share of the total amount of water claimed by all claimants or for an amount as determined by the court. Any notice of claim for a water right for which the fee is unpaid after thirty (30) days from billing by the director shall be incomplete and may be rejected. Prior to filing of the report with the court, the claimants shall pay the balance of the department's verified costs or be refunded any unused estimated costs advanced to the department in the same proportion as described above. In the event that a claimant shall contest the department's costs, the court shall then determine the reasonable costs to be paid by each claimant.

(5) Notice of the filing of the director's report shall be given and objections to the director's report shall be made and heard as provided in sections 42-1411 and 42-1412, Idaho Code.

(6) The decree, which shall be entered pursuant to section 42-1412, Idaho Code, shall contain or incorporate a statement of each element of a water right as stated in subsection (2) of section 42-1411, Idaho Code, as applicable. The decree shall also determine all other matters necessary for the efficient administration of the water rights. The decree shall be conclusive as to the rights determined in the proceeding only as to those persons party to the proceeding.

(7) Any party who has appeared and is aggrieved by the decree of the district court may appeal in accordance with the Idaho appellate rules.

[42-1404, added 1986, ch. 220, sec. 5, p. 562; am. 1994, ch. 454, sec. 7, p. 1448.]

42-1405. GENERAL ADJUDICATION -- PUBLIC INTEREST. (1) Five (5) or more or a majority of the users of water from any water system may petition the director to request the attorney general to file an action to commence a general adjudication. If the director deems that the public interest and necessity will be served by a determination of the water rights of that water system, the director shall request the attorney general to file an action to commence the general adjudication.

(2) If the director deems that the public interest and necessity will be served by a determination of the water rights of any water system, the director, upon his own initiative, may request the attorney general to file an action to commence a general adjudication.

[42-1405, as added by 1969, ch. 279, sec. 4, p. 822; am. 1986, ch. 220, sec. 7, p. 565; am. and redesig. 1994, ch. 454, sec. 10, p. 1452.]

42-1406. GENERAL ADJUDICATION -- CONTENTS OF PETITION. (1) A petition for a general adjudication shall contain among other things, the following:

(a) a description of the proposed boundaries of the water system to be adjudicated and administered;

(b) a statement of why the public interest and necessity would be served by a general adjudication;

(c) a list of counties where the water system proposed to be adjudicated and administered is located and a designation of whether all or only a portion of the county is included within the boundaries of the proposed general adjudication;

(d) a description of the general method proposed to ascertain and to serve claimants not disclosed following completion of the service required by paragraphs (a) through (d) of subsection (2) of section 42-1408, Idaho Code; and

(e) a prayer for relief requesting the district court to enter an order that commences the general adjudication.

(2) A petition for entry of an order commencing a general adjudication shall be captioned: "In Re the General Adjudication of Rights to the Use of Water From the ..... Water System." Such action shall have no other caption.

[(42-1406) 1986, ch. 220, sec. 8, p. 566; am. and redesig. 1994, ch. 454, sec. 12, p. 1453.]

42-1406B. NORTHERN IDAHO WATER RIGHTS ADJUDICATIONS -- COMMENCEMENT. (1) 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. Therefore, the director of the department of water resources is authorized to petition the district court to commence adjudications within the terms of the McCarran amendment, 43 U.S.C. section 666, of the water rights from surface water and ground water sources in northern Idaho through initiation of three (3) proceedings, provided that each petition includes a request for the deferral of the adjudication of domestic and stock water rights as defined by subsections (4) and (11) of section 42-1401A, Idaho Code, and a request that a commencement order be issued only if the court determines it is possible to defer the adjudication of domestic and stock water rights as defined by subsections (4) and (11) of section 42-1401A, Idaho Code, within the terms of the McCarran amendment. Separate petitions shall be filed for water rights adjudications for each of the following river basins, and related ground water sources whether or not hydraulically connected to a surface water source, within Idaho: the Coeur d'Alene-Spokane river basin, the Palouse river basin, and the Clark Fork-Pend Oreille river basins, which do not include basin 98. The filing of each petition shall be contingent on legislative funding approval. Each petition shall describe the boundaries of the water source or water sources to be adjudicated.

(2) The adjudication shall be brought in any district court in which any part of the water source is located or before a court of special jurisdiction for water right adjudications. Unless otherwise ordered by the supreme court, special jurisdiction for the water rights general adjudications authorized by this section shall reside in the Snake River Basin Adjudication district court of the fifth judicial district of the state of Idaho, in and for the county of Twin Falls. The clerk of the district court in which the petition is filed shall send to the supreme court a true and certified copy of the petition. The supreme court, by order, shall assign the judge to preside over the general adjudication. Venue of the general adjudication shall be determined by order or rule of the supreme court and venue of hearings under the general adjudication shall be determined by order of the presiding judge.

(3) Upon issuance of an order by the district court which authorizes the director to commence an investigation and determination of the various water rights to be adjudicated from the water source or water sources, and which defines the boundaries of the source or sources within the state to be adjudicated, the director of the department of water resources shall proceed in the manner provided under the provisions of chapter 14, title 42, Idaho Code, to the extent not inconsistent with the provisions of this section.

[42-1406B, added 2006, ch. 222, sec. 1, p. 661; am. 2008, ch. 149, sec. 1, p. 434; am. 2008, ch. 159, sec. 1, p. 456.]

42-1407. GENERAL ADJUDICATION -- VENUE -- NOTICE OF FILING -- COMMENCEMENT ORDER. (1) A general adjudication shall be brought in any district court in which any part of the water system within the state of Idaho is located. The clerk of the district court in which the petition is filed shall send to the supreme court a true and certified copy of the petition. The supreme court, by order, shall assign the judge to preside over the general adjudication. Venue of the general adjudication shall be determined by order or rule of the supreme court and venue of hearings under the general adjudication shall be determined by order of the presiding judge.

(2) The director shall prepare, in plain and concise language, and publish a notice of filing of a petition for entry of an order commencing a general adjudication for three (3) consecutive weeks in a newspaper of general circulation published in each county in which any part of the water system proposed to be adjudicated is located. If there is no newspaper published within a county, then the notice shall be published in a newspaper having general circulation in that county. The date set for hearing on the petition shall not be less than twenty (20) days after the last date of publication. The director shall serve the notice of filing a petition on the United States and on the state of Idaho. The director shall file affidavit(s) of service of the notice of filing with the district court upon completion of service.

(3) The notice of filing shall contain:

- (a) a description of the boundaries of the water system proposed for the general adjudication;
- (b) a statement of the date, place, and time of hearing before the district court;
- (c) a concise statement of the matters proposed to be considered before the district court; and
- (d) a statement that the district court will hear evidence and legal argument from any person in response to any matter raised by the petition.

(4) With respect to a general adjudication commenced pursuant to section 42-1405, Idaho Code, if the district court determines that the public interest and necessity will be served by a general adjudication, the district court shall enter an order that includes the following:

- (a) a provision that commences the general adjudication;
- (b) a description of the boundaries of the water system for which a general adjudication is commenced;
- (c) a list of counties where the water system to be adjudicated and administered is located and a designation of whether all or only a portion of the county is included within the boundaries of the general adjudication;
- (d) a provision that requires all claimants to file a notice of claim or negotiated agreement for all water rights from the water system, except that the court may exclude those types of water rights designated in paragraph (a) of subsection (1) of section 42-1420, Idaho Code;
- (e) a determination of the method of service for claimants not disclosed following completion of the service required by paragraphs (a) through (d) of subsection (2) of section 42-1408, Idaho Code; and
- (f) a statement that the files of the district court will contain affidavits of service and other documents stating the persons served with a copy of the notice of order commencing the general adjudication.

(5) Upon entry of a commencement order, the general adjudication shall proceed in accordance with this chapter.

(6) Promptly upon entry of the commencement order, the clerk of the district court shall send a certified copy of the order to the director, and shall serve notice of entry of the order on all persons appearing before the court in accordance with the Idaho rules of civil procedure.

[(42-1407) 1986, ch. 220, sec. 9, p. 566; am. and redesig. 1994, ch. 454, sec. 13, p. 1454.]

42-1408. SERVICE OF NOTICE OF ORDER COMMENCING A GENERAL ADJUDICATION. (1) Upon entry of a district court's order commencing a general adjudication, the director shall prepare a notice of order, using plain and concise language, that contains the following information or enclosures:

- (a) an order commencing a general adjudication has been entered, the date of entry of the order, and the district court that entered the order;
- (b) an illustration of the boundaries of the water system to be adjudicated and administered;
- (c) that section 42-1409, Idaho Code, requires in a general adjudication all claimants, except as specifically excluded by law, to file for each water right, a notice of claim on a form furnished by the director; failure to file a required notice of claim will result in a court determination that no water right exists for the use of water for which the required notice of claim was not filed;
- (d) a notice of claim is required for any water right license and for any water right permit on file for which the director requires a permit holder to file a notice of claim in accordance with section 42-1409, Idaho Code; a notice of claim may be filed for any other water right permit;
- (e) a notice of claim is not required for a water right evidenced by an application on file with the department;

(f) a notice of claim, if the court order excludes any uses from an adjudication, may be filed for the excluded use prior to the filing of the director's report with the district court and the right will be determined, even though a notice of claim is not required;

(g) a notice of claim is not required for any person who receives water solely by virtue of ownership of shares of stock in, or by being located within the boundaries of, a water delivery organization, if the water delivery organization holds legal title to the water right and if the water delivery organization files a notice of claim;

(h) the date set by the director for filing a timely notice of claim, which shall not be less than ninety (90) days after service;

(i) that section 42-1409A, Idaho Code, imposes substantial restrictions on the filing of amended or late notices of claim;

(j) the locations at which the notice of claim forms will be available;

(k) section 42-1414, Idaho Code, requires each claimant, other than those exempted by federal law, to pay a variable fee to the director with a notice of claim; failure to pay the fee will result in rejection of the notice of claim; failure to file a timely notice of claim will result in the assessment of a late fee in the amount of fifty dollars (\$50.00) or fifteen per cent (15%) of the original filing fee, whichever is greater;

(l) section 42-1409, Idaho Code, requires that all purchasers of a water right inquire of the director whether a notice of claim has been filed, and if not, to file a notice of claim, except as specifically excluded by law, and that all claimants and purchasers provide the director written notice of any change in ownership, along with some evidence of ownership or of any change in mailing address; and

(m) the files of the district court will contain affidavits of service or other documents stating the persons served with a copy of the notice of order.

(2) The director shall serve copies of the notice of order as follows:

(a) the director shall serve the notice of order on the state of Idaho and the United States;

(b) the director shall serve the notice of order on claimants other than the persons in paragraph (a) of subsection (2) of this section, initially by publication once a week for three (3) consecutive weeks in a newspaper of general circulation published in each county in which any part of the water system, which is the subject of the general adjudication, is located. If there is no newspaper published within a county, then the copies shall be published in a newspaper having general circulation in that county;

(c) the director shall post the notice of order in each county courthouse, county recorder's office, and county assessor's office in which any part of the water system is located. The director shall complete the posting on or before the date of the last publication within each county;

(d) the director shall serve the notice of order by ordinary mail on each person listed as owning real property on the real property assessment roll within the boundaries of the water system to be adjudicated at the address listed on the real property assessment roll; and

(e) the director shall file a copy of the notice of order commencing a general adjudication in the office of the county recorder in each county in which any part of the water system is located; notwithstanding the provisions of section 5-505, Idaho Code, the notice, from the time it is



filed with the recorder for record, is constructive notice of the contents thereof within the county in which the notice is recorded, to subsequent purchasers and mortgagees.

(3) The director shall send the notice of order by ordinary mail to all persons who submit a written request to the director to be notified of the commencement of an adjudication. The director may circulate copies in any additional manner the director deems appropriate.

(4) Upon expiration of the period for filing notices of claims, the director shall conduct a second round of service in conformance with this subsection. The director shall compare the notices of claims with department records and other information reasonably available to determine whether there are any rights to water from the water system for which no notice of claim was filed. In the event the director determines that not all claimants have filed claims, the director shall make a reasonably diligent effort in accordance with the court order to determine the land to which the possible claim is appurtenant, the last known owner of that land, and the last known address of that owner. The director shall prepare a second round notice of order. The director shall serve this notice on the last known owner in accordance with the court order. The notice shall contain the information specified in subsection (1) of this section, except that the notice shall state a final date for filing notices of claims. The final date shall be an additional period of time, in no case less than ninety (90) days from the date the notice is served, in which the notice of claim must be received by the director.

(5) The director shall file with the district court such proof of service as may be required to demonstrate compliance with the above requirements.

[(42-1408) 1986, ch. 220, sec. 10, p. 568; 1986, ch. 230, sec. 2, p. 624; am. 1991, ch. 84, sec. 1, p. 188; am. and redesign. 1994, ch. 454, sec. 14, p. 1455.]

42-1409. NOTICE OF CLAIM. (1) The director shall prepare and furnish on request a standard notice of claim form.

The notice of claim form shall include the following:

- (a) the name and address of the claimant;
- (b) the source of water;
- (c) the quantity of water claimed:
  - (i) the quantity of water claimed to be used for water rights acquired under state law shall describe the rate of diversion or, for an instream flow claim, a rate of water flow in cubic feet per second or the annual volume of diversion of water for use or storage in acre-feet per year, or both;
  - (ii) the quantity of water claimed for water rights established under federal law shall describe for each and every purpose the rate of present and future water diversion or, in the case of an instream flow claim the rate of flow in cubic feet per second or annual volume of present and future diversion in acre-feet per year or both;
- (d) the date of priority claimed:
  - (i) the date of priority claimed for water rights acquired under state law shall be from any license, permit, or decree; or if the right is not based upon a license, permit, or decree, then the date when the water was first applied to beneficial use;

- (ii) the date of priority claimed for water rights established under federal law shall be determined in accordance with federal law;
  - (e) the number thereof, if founded upon a right on file with the department; or if the right is founded upon judicial decree not on file with the department, then the title of the court and cause, number of the action and the date of entry;
  - (f) the legal description of the existing point(s) of diversion; if the claim is for an instream flow, then a legal description of the beginning and ending points of the claimed instream flow;
  - (g) the purpose(s) of use and the period of use:
    - (i) the purpose(s) of use for water rights acquired under state law shall describe each purpose of use and the period of the year when water is used for each purpose;
    - (ii) the purpose(s) of use for a water right established under federal law shall describe the purposes for which the water included in the claim is presently being used, if at all, and the period of the year when water is necessary for the designated purposes;
  - (h) a legal description of the place of use:
    - (i) the legal description of the place of use for water rights acquired under state law shall describe the land where the water is beneficially used; if one (1) of the purposes of use is irrigation, then the number of irrigated acres within each forty (40) acre subdivision, except as provided in section 42-219, Idaho Code;
    - (ii) the legal description of the place of use for a water right established under federal law shall describe the federal reservation and the existing or proposed place of use for each consumptive use;
  - (i) the dates of any changes or enlargements in use for water rights acquired under state law, including the dimension of the diversion works as originally constructed and as enlarged;
  - (j) conditions on the exercise of any water right included in any decree, license, approved transfer application or other document; and
  - (k) such remarks and other matters as are necessary for definition of the right, for clarification of any element of a right or for administration of the right by the director.
- (2) With respect to any water right for which a change was approved by the director pursuant to section 42-211 or 42-222, Idaho Code, after filing the notice of claim and prior to filing of the director's report, the claimant shall amend the notice of claim consistent with the determination of the director on the change.
- (3) Each claimant, through submission of a claim, shall solemnly swear or affirm under penalty of perjury that the statements contained in the notice of claim or amended notice of claim are true and correct.
- (4) All claimants of water rights that are included in a general adjudication shall file with the director a notice of claim for all water rights, except for those types of water rights designated in paragraphs (a) through (d) of subsection (1) of section 42-1420, Idaho Code.
- (5) Any person who fails to submit a required notice of claim shall be deemed to have been constructively served with notice of a general adjudication by publication and mailing as required by section 42-1408, Idaho Code.

(6) Each purchaser of a water right from the water system shall inquire of the director whether a notice of claim has been filed, and if not, shall file a notice of claim in accordance with this section. All claimants and purchasers shall provide the director written notice of any change in ownership or of any change in mailing address during the pendency of a general adjudication. All purchasers shall submit some evidence of ownership along with the notice of change of ownership.

(7) At least one hundred twenty (120) days prior to filing of the director's report with the court, the director may notify each holder of a permit or license to appropriate water from the water system, for which proof of beneficial use was filed after entry of the court's order commencing a general adjudication, to file a notice of claim within thirty (30) days of mailing of the notice. The director shall notify the holder of the permit or license by certified mail at the most recent address shown in the records of the department.

(8) The district court or director may extend the time for filing a notice of claim.

[42-1409, added 1986, ch. 220, sec. 11, p. 570; am. 1994, ch. 454, sec. 15, p. 1457; am. 1994, ch. 455, sec. 1, p. 1479; am. 1997, ch. 374, sec. 3, p. 1196; am. 2007, ch. 187, sec. 1, p. 545.]

42-1409A. AMENDMENT OF NOTICE OF CLAIMS -- LATE NOTICE OF CLAIMS. (1) A claimant may amend a notice of claim or file a late notice of claim at any time prior to the final date for filing notices of claim in the notice of second round service as provided in subsection (4) of section 42-1408, Idaho Code.

(2) A claimant may amend the name and address of a claimant at any time.

(3) A claimant may amend a notice of claim or file a late notice of claim after the final date for filing notices of claims in the notice of second round service for good cause shown to the district court or the director.

(4) No amendments to a notice of claim or late notices of claim shall be allowed except as authorized in subsection (1), (2) or (3) of this section.

[42-1409A, added 1994, ch. 454, sec. 16, p. 1460.]

42-1410. EXAMINATION OF WATER SYSTEM AND OF CLAIMS. (1) Upon entry of the court's order commencing a general adjudication, or as provided in section 42-1404 or 42-1424, Idaho Code, the director shall commence an examination of the water system, the canals and ditches and other works, and the uses being made of water diverted from the water system for water rights acquired under state law. The examination shall continue in a manner and for such a period of time as the director determines is necessary to evaluate the extent and nature of each water right for which a notice of claim under state law has been filed. The director may conduct any fact-finding hearing necessary for a full and adequate disclosure of the facts.

(2) The director and other employees of the department shall have authority to go upon all lands, both public and private, for the purpose of investigating the uses of water from any water source and may require the cooperation of the claimant in investigating the claimant's water use. The employee investigating the claimant's use shall make a reasonable effort to contact the claimant to schedule a date and approximate time for the examination. If the well or diversion works are located in a building other than an unlocked structure used solely for housing the well or other diversion works in which there is no reasonable expectation of privacy, the employee shall only enter the building in the absence of a court order after requesting and

receiving the permission of the claimant or other occupant. The director may request the district court to issue an order compelling inspection and subpoenas requiring the attendance of any witness or the production of documents in accordance with the Idaho rules of civil procedure.

(3) Any maps prepared by the director shall be available for inspection at the offices of the department and any other locations the director may designate, for the purpose of assisting any claimant in preparing and filing claims and objections to the director's report.

[42-1410, added 1986, ch. 220, sec. 12, p. 572; am. 1994, ch. 454, sec. 17, p. 1461.]

42-1411. REPORT OF THE DIRECTOR. (1) The director shall prepare a director's report on the water system. The director may file the director's report in parts as the director deems appropriate. The director may include such explanatory material as he deems appropriate in the director's report. Such explanatory material shall not impose any conditions or restrictions on the rights reported and shall not be subject to objection. This explanatory material shall not be used to support any notice of claim, objection to a notice of claim, or response to an objection.

(2) The director shall determine the following elements, to the extent the director deems appropriate and proper, to define and administer the water rights acquired under state law:

(a) the name and address of the claimant;

(b) the source of water;

(c) the quantity of water used describing the rate of water diversion or, in the case of an instream flow right, the rate of water flow in cubic feet per second or annual volume of diversion of water for use or storage in acre-feet per year as necessary for the proper administration of the water right;

(d) the date of priority;

(e) the legal description of the point(s) of diversion; if the claim is for an instream flow, then a legal description of the beginning and ending points of the claimed instream flow;

(f) the purpose of use;

(g) the period of the year when water is used for such purposes;

(h) a legal description of the place of use; if one (1) of the purposes of use is irrigation, then the number of irrigated acres within each forty (40) acre subdivision, except that the place of use may be described using a general description in the manner provided under section 42-219, Idaho Code, which may consist of a digital boundary as defined in section 42-202B, Idaho Code, if the irrigation project would qualify to be so described under section 42-219, Idaho Code;

(i) conditions on the exercise of any water right included in any decree, license, or approved transfer application; and

(j) such remarks and other matters as are necessary for definition of the right, for clarification of any element of a right, or for administration of the right by the director.

(3) The director may include such general provisions in the director's report, as the director deems appropriate and proper, to define and to administer all water rights.

(4) The director shall file the director's report with the district court, and the director's report shall be a part of the record. Upon filing with the court, the director's report, except for the explanatory material

referred to in subsection (1) of this section, shall constitute prima facie evidence of the nature and extent of the water rights acquired under state law. The unobjected to portions of the director's report shall be decreed as reported.

(5) Each claimant of a water right acquired under state law has the ultimate burden of persuasion for each element of a water right. Since the director's report is prima facie evidence of the nature and extent of the water rights acquired under state law, a claimant of a water right acquired under state law has the burden of going forward with the evidence to establish any element of a water right which is in addition to or inconsistent with the description in a director's report. Any party filing an objection to any portion of the director's report shall have the burden of going forward with the evidence to rebut the director's report as to all issues raised by the objection. Provided however, that a claimant objecting to the director's recommended place of use described by a digital boundary or other similar technology shall not be required to produce digital boundary or other similar technology-generated evidence in order to meet the burden provided by this section. Places of use described using digital boundaries or other similar technology-based descriptions shall not be entitled to any greater weight than descriptions by metes and bounds, the number of irrigated acres within each forty (40) acre subdivision, or other method adequate for the description of water rights. Any other party to the proceeding may submit evidence in opposition to the objector's position and in support of the director's report. All such proceedings shall be governed by the Idaho rules of civil procedure and Idaho rules of evidence.

(6) The director shall file an original of the director's report with the district court. The director shall also distribute for display and review at least one (1) copy of the director's report to the office of the clerk of the district court for each county in which any part of the water system is located. The director shall also serve on each claimant or the claimant's attorney whose water right is listed in the director's report a notice of filing of the director's report. Notice shall be sent to the last known address of the claimant or the claimant's attorney. The notice shall be prepared by the director using plain and concise language and shall include:

(a) a statement that the director's report of the various water rights acquired under state law has been filed with the district court, naming the district court (s) to which the report was filed;

(b) a copy of that portion of the report setting forth the claimant's water right;

(c) a statement that a complete copy of the director's report is available for inspection, listing the locations at which the director's report is available, which shall include the office of the clerk of the district court for each county in which any part of the water system is located, the offices of the department, and any other locations the director may designate;

(d) a statement that all or a portion of the director's report is available upon request at the offices of the department, subject to payment of a reasonable fee to cover costs of reproduction and mailing;

(e) a statement that any claimant may file objections to any portion of the director's report with the district court specified in the notice and must mail a copy of the objection to the director, and to the claimant of each claimed right objected to, if the objector is not also the claimant of the right for which the objection is filed;

(f) the date prior to which all objections must be filed, which shall not be less than sixty (60) days for any director's report containing five hundred (500) claims or less, one hundred twenty (120) days for any director's report containing more than five hundred (500) claims and not more than five thousand (5,000) claims, and one hundred eighty (180) days for any director's report containing more than five thousand (5,000) claims; the above-stated periods of time shall commence on the date of service by mail of the notice of filing;

(g) a statement that claimants may file responses with the court to objections filed against their claims, and that a copy of any response must be mailed to the director and to the objector;

(h) the date prior to which all responses to objections must be filed with the court, which shall not be less than sixty (60) days following receipt of a copy of the objection; and

(i) a statement that any part of the report to which no objections are filed shall be decreed by the district court and the time and location set for the hearing at which the unobjected parts of the report will be decreed, which time shall not be less than sixty (60) days following the expiration of the period for filing objections.

(7) The director shall file an affidavit with the district court demonstrating compliance with the notice requirements of subsection (6) of this section.

[42-1411, added 1986, ch. 220, sec. 13, p. 573; am. 1994, ch. 454, sec. 18, p. 1461; am. 1994, ch. 455, sec. 2, p. 1481; am. 1996, ch. 186, sec. 2, p. 586; am. 1997, ch. 374, sec. 4, p. 1198; am. 2002, ch. 12, sec. 1, p. 14; am 2002, ch. 13, sec. 1, p. 17; am. 2002, ch. 306, sec. 3, p. 873; am. 2003, ch. 167, sec. 1, p. 472.]

42-1411A. SERVICE OF NOTICE OF AND DETERMINATION OF WATER RIGHTS ESTABLISHED UNDER FEDERAL LAW. (1) The district court shall determine the water rights established under federal law in accordance with the procedures established in this section.

(2) The district court shall determine the following procedures for water rights established under federal law:

(a) The contents of a notice of water right claims established under federal law;

(b) The method of service of the notice of water right claims established under federal law;

(c) The location of any depositories of notices of claim for water rights established under federal law, if the district court determines that claim depositories are necessary to provide other claimants reasonable access to the notices of claims established under federal law.

(3) The district court shall be guided by the following three (3) principles in establishing the procedures required in this section:

(a) The purpose of this notice is to provide notice to other claimants of the filing of water rights established under federal law comparable to the notice of filing for water rights acquired under state law;

(b) The procedures shall not impose any burden greater than the burden placed upon the director to prepare, file, and serve the notice of filing for a director's report; and

(c) The procedure shall comply with the McCarran amendment, 43 USC 666.

(4) Any claimant of a water right established under federal law shall serve all such notices of claim on the other claimants in accordance with the procedures established by the district court.

(5) Any claimant may contract with the director to perform all or any portion of the service required in this section. The director shall require in any contract that the cost of the services provided by the director are reimbursed by the claimant of a water right established under federal law.

(6) The United States, if it filed any notices of claim for a water right established under federal law, and any other claimants of such water rights, shall file an affidavit demonstrating proof of service in compliance with this section.

(7) The district court shall provide at least sixty (60) days for filing objections to water rights established under federal law where the number of those water rights are five hundred (500) or less, at least one hundred twenty (120) days where the number of these water rights are more than five hundred (500) and not more than five thousand (5,000), and at least one hundred eighty (180) days where the number of these water rights are more than five thousand (5,000).

(8) Any claimant who desires to object to a claim established under federal law shall file an objection with the district court within the time specified in the notice of water right claims established under federal law. The claimant shall also send a copy of the objection to the claimant whose claim is the subject of the objection and to the director. Any claimant may file a response to an objection.

(9) The notice of claim, objection, and responses to an objection shall identify the issues to be litigated.

(10) If a claimant of a water right established under federal law has filed notices of claim for one (1) water use based upon state and federal law, the district court shall develop procedures, after an opportunity for hearing, for coordination of the determination of such claims based upon state and federal law.

(11) The district court shall conduct the trial without a jury on an objection or any group of objections in accordance with the Idaho rules of civil procedure.

(12) Each claimant of a water right established under federal law has the ultimate burden of persuasion for each element of a water right. Since no independent review of the notice of claim has occurred as provided for water rights acquired under state law in a director's report, a claimant of a water right established under federal law has the burden of going forward with the evidence to establish a prima facie case for the water right established under federal law. All such proceedings shall be governed by the Idaho rules of civil procedure and Idaho rules of evidence.

(13) The district court shall enter a partial decree that contains or incorporates a statement of each element of a water right as stated in subsection (1) of section 42-1409, Idaho Code, as applicable, and that contains such general provisions, remarks, and other matters as are necessary for definition of the right, for clarification of any element of a right, or for administration of the right by the director.

(14) If no objections are filed to a notice of claim for a water right established under federal law, the claimant shall appear at a hearing scheduled by the district court and shall demonstrate a prima facie case of the existence of the water right established under federal law prior to entry of a decree for such claimed water right established under federal law. If the

claimant fails to present a prima facie case of the existence of the water right established under federal law, then the district court shall enter an order determining that the claimed water right does not exist.

(15) Any party may appeal in accordance with the Idaho rules of civil procedure.

(16) The attorney general shall represent the state of Idaho in all matters regarding claims to water rights established under federal law, including, but not limited to, filing objections to water right claims established under federal law.

[42-1411A, added 1994, ch. 454, sec. 19, p. 1464; am. 1994, ch. 455, sec. 3, p. 1483; am. 1996, ch. 186, sec. 3, p. 588.]

42-1412. OBJECTIONS -- RESPONSES TO OBJECTIONS -- HEARING BEFORE DISTRICT JUDGE -- ENTRY OF FINAL DECREE. (1) Any claimant who desires to object to a water right, or to a general provision in the director's report, shall file an objection with the district court within the time specified in the notice of filing of the director's report. The claimant shall also send a copy of the objection to the claimant whose water right claim is the subject of the objection and to the director.

(2) The director may file with the district court a supplemental report to any objection to the director's report within the time specified in the notice of filing of the report. The director shall file with the district court the original of the notice of claim. The director shall mail a copy of the supplemental report to the objector and the claimant whose right is the subject of the objection. A claimant may file with the district court a response to any objection filed with respect to the claimant's water right within the time specified in the notice of filing of the report. If a party other than the claimant or the objector desires to participate in the proceeding concerning a particular objection, the party shall file a response to the objection that states the position of the party. In addition, any party may intervene in any objection proceeding in accordance with rules of practice and procedure established by the district court.

(3) The notice of claim, objections, and responses to objections, shall identify the issues to be heard for water rights acquired under state law.

(4) Following expiration of the period for filing objections and responses thereto, the district court shall hear and determine the objections to any water right or to any general provision in the director's report. The court shall before any trial, however, order a settlement conference to determine whether the matter can be settled. The court may request the director to conduct a further investigation and to submit a supplemental report for any water right acquired under state law that is the subject of an objection. In addition, the district court or a party may request the director or his designee to present the basis for the recommendations in the director's report.

(5) The district court or special master shall conduct the trial without a jury on an objection or any group of objections in accordance with the Idaho rules of civil procedure.

(6) The district court shall enter a partial decree determining the nature and extent of the water right which is the subject of the objection or other matters which are the subject of the objection. The decree shall contain or incorporate a statement of each element of a water right as stated in subsections (2) and (3) of section 42-1411, Idaho Code, as applicable. The decree shall also contain an express statement that the partial decree



is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights. Upon entry of the decree, the clerk of the district court shall send a certified copy of the decree to the director in accordance with section 42-1403, Idaho Code. The clerk of the district court shall notify the objector and claimant of each right as to which an objection was determined by the district court of entry of the decree in the manner provided in the Idaho rules of civil procedure.

(7) Not less than sixty (60) days after the expiration of the period for filing objections, the director shall file with the district court a statement of those portions of the director's report for which no objection was filed. Following hearing, the district court shall enter a partial decree as to those portions of the director's report for which no objection has been filed. However, the district court may exclude unobjected claims from this list if the unobjected claim may be affected by the outcome of a contested matter. The decree shall contain or incorporate a statement of those elements of a water right contained in the director's report for water rights acquired under state law. Upon entry of the decree, the clerk of the district court shall send a certified copy of the decree to the director in accordance with section 42-1403, Idaho Code. The clerk of the district court shall notify each claimant of entry of the decree in the manner provided in the Idaho rules of civil procedure.

(8) Upon resolution of all objections to water rights acquired under state law, to water rights established under federal law, and to general provisions, and after entry of partial decree(s), the district court shall combine all partial decrees and the general provisions into a final decree.

(9) The district court may extend or shorten the time for filing any objection to the director's report or any response to an objection.

[42-1412, added 1986, ch. 220, sec. 14, p. 575; am. 1987, ch. 158, sec. 1, p. 308; am. 1994, ch. 454, sec. 20, p. 1466; am. 1994, ch. 455, sec. 4, p. 1486; am. 1997, ch. 374, sec. 5, p. 1200; am. 2002, ch. 13, sec. 2, p. 19.]

42-1413. FILING OF FINAL DECREE. (1) When a decree has become final in an adjudication in which the director filed a report, the director shall file a certified copy of the decree or a transcript thereof in the office of the county recorder of each county in which the place of use or point of diversion of the water rights contained in the decree is located.

(2) Upon entry of a final decree, the director shall administer the water rights by distributing water in accordance with the final decree and with title 42, Idaho Code.

(3) When a decree has become final in an adjudication in which the director has not filed a report, the clerk of the district court in which the decree is entered shall file a certified copy of the decree or a transcript thereof in the office of the county recorder for each county in which the place of use or point of diversion of the water rights decreed is located, and shall send a certified copy of the decree to the director as required in section 42-1403, Idaho Code.

(4) The transcript of decree shall contain the following:

- (a) title of the district court;
- (b) name of the case;
- (c) the case number;
- (d) names of each party;

- (e) date of entry;
- (f) the description of the boundaries of the water system, which is the subject of the general adjudication;
- (g) a statement that the decree is entered in the records of the clerk of the district court;
- (h) a statement that information as to the rights decreed is available at the offices of the department; and
- (i) such other information as may be necessary to assist any person searching the title of a parcel to find the decree.

(5) A decree or transcript recorded pursuant to this section from the time it is filed with the recorder for record, is constructive notice of the contents of the decree within the county in which the decree or transcript is recorded to subsequent purchasers and mortgagees.

(6) Notwithstanding the filing of a certified copy of the decree or a transcript thereof in the office of the county recorder, only the legal description of an irrigation district's boundaries recorded in compliance with title 43, Idaho Code, shall constitute conclusive proof of the district's boundaries. The decree shall not be construed to define, limit or otherwise affect the apportionment of benefits to lands within an irrigation district pursuant to chapter 7, title 43, Idaho Code. A notice consistent with this subsection shall be filed with the certified copy of the decree or a transcript thereof.

[42-1413, added 1986, ch. 220, sec. 15, p. 577; am. 1994, ch. 454, sec. 21, p. 1469; am. 2003, ch. 167, sec. 2, p. 475.]

42-1414. FEES FOR FILING NOTICE OF CLAIMS WITH THE DIRECTOR. (1) In order to provide an adequate and equitable cost-sharing formula for financing the costs of adjudicating water rights the department of water resources shall accept no notice of claim required under the provisions of section 42-1409, Idaho Code, unless such notice of claim is submitted with a filing fee based upon the fee schedule set forth below. Failure to pay the variable water use fee in accordance with the timetable provided shall be cause for the department to reject and return the notice of claim to the claimant. The fee schedule set forth below applies to adjudication proceedings commenced or enlarged on or after January 1, 1985.

(a) Flat fee per claim filed:

(i) Claims for domestic and/or stock watering rights REPLACE DOL TAG HERE \$25.00

Provided however, and notwithstanding any other provision of law, fees for stock watering right claims, regardless of the number of claims filed, shall only be imposed on the first four (4) claims per claimant, and there shall be no other fees or costs imposed for such claims.

(ii) Claims for all other rights REPLACE DOL TAG HERE \$50.00

(b) Additional variable water use fee for claims filed based upon acreage, power generating capacity, c.f.s., or equivalent volume of water:

(i) Irrigation use (one fee irrespective of number of claims):

REPLACE DOL TAG HERE \$1.00 per acre

(ii) Power: REPLACE DOL TAG HERE \$3.50 per kilowatt of capacity (manufacturer's nameplate rating), or \$250,000, whichever is less

(iii) Aquaculture: REPLACE DOL TAG HERE \$10.00 per c.f.s.

(iv) Municipal, industrial, commercial, mining, heating, cooling: REPLACE DOL TAG HERE \$100.00 per c.f.s.

(v) Public instream flow, public lake level maintenance, wildlife: REPLACE DOL TAG HERE \$100.00 per c.f.s.

(c) All fees collected by the department pursuant to this section shall be placed in the water resources adjudication account established in section 42-1777, Idaho Code.

(2) If a claimant increases in an amended notice of claim the amount of water claimed, the amount of land irrigated, or the kilowatt capacity of the generating facility, the claimant shall pay upon filing the amended notice of claim an additional variable fee in accordance with the rates set forth in subsection (1) of this section. Claimants shall be entitled to a return of filing fees or late fees only where the fee was miscalculated at the time the original or amended notice of claim was filed.

(3) If a claimant files a notice of claim after the date set by the director in the notice mailed or served in accordance with subsections (2), (3), or (4) of section 42-1408, Idaho Code, or with subsection (7) of section 42-1409, Idaho Code, the claimant shall pay the fee set forth in subsection (1) of this section, and in addition, the amount of fifty dollars (\$50) or fifteen percent (15%) of the original filing fee, whichever is greater. The director may waive the late processing fee or a portion thereof for good cause.

[42-1414, as added by 1971, ch. 153, sec. 1, p. 753; am. 1972, ch. 23, sec. 1, p. 28; am. 1985, ch. 18, sec. 3, p. 30; am. 1994, ch. 454, sec. 22, p. 1469; am. 1994, ch. 455, sec. 5, p. 1488; am. 1996, ch. 186, sec. 4, p. 590; am. 2006, ch. 222, sec. 2, p. 661; am. 2008, ch. 148, sec. 1, p. 433; am. 2017, ch. 162, sec. 1, p. 385.]

42-1415. ENFORCEMENT OF FILING FEES. After filing of the director's report in a general adjudication, the director may prohibit in accordance with chapter 3, title 42, Idaho Code, the diversion and use of water in satisfaction of a right claimed or decreed in the adjudication upon the failure of the claimant to comply with the schedule for payment of variable fees as set forth in subsection (1) of section 42-1414, Idaho Code.

[42-1415, added 1986, ch. 220, sec. 16, p. 578; am. 1994, ch. 454, sec. 23, p. 1470.]

42-1416B. CLAIM FOR EXPANDED USE IN CRITICAL GROUND WATER AREA -- TERMINATION OF WATER AVAILABILITY. (1) Within any critical ground water area designated pursuant to section 42-233a, Idaho Code, a claim to the expanded use of a ground water right, which use was expanded in violation of the mandatory permit requirements, may be decreed in a general water rights adjudication if the expansion occurred after the designation of the critical ground water area, before the commencement of the adjudication, and before the date of enactment of this section. The priority date for the right decreed shall be June 30, 1985.

(2) Water shall be deemed unavailable to fill the rights for expanded use, even if decreed in the adjudication, unless the director finds that a management program exists which will, within a time period acceptable to the director, limit the average annual water withdrawals from the aquifer designated in the critical ground water area to no more than the average annual recharge to the aquifer.

(3) Within two (2) years after a decree determining the water rights within a critical ground water area becomes final, but not sooner than four (4) years from the date of enactment of this section, the director of the de-

partment of water resources shall make a finding as to whether an adequate management program exists to bring withdrawals into balance with recharge.

(4) If the director finds that an adequate management program to bring withdrawals into balance with recharge does not exist, the director shall order all holders of rights to expanded use of ground water within the area to cease or reduce withdrawal of water until such time as the director determines that withdrawals have been brought into balance with recharge and sufficient ground water is available to resume or increase withdrawals. The director's order shall be issued before September 1 and shall be effective beginning with the following growing season.

(5) For purposes of this section, the following definitions shall apply:

(a) "Expanded use" means an increase in the number of acres irrigated, or other additional use, under a valid ground water right without any increase in the rate of diversion or volume of water diverted.

(b) "Management program" means a program to recharge the aquifer, limit withdrawals from the aquifer or provide surface water supplies for all, or a portion, of the land irrigated with water withdrawn from the aquifer, including any actions designed to bring withdrawals into balance with the average annual recharge to the aquifer.

(c) "Recharge" refers to all processes, natural or artificial, which add water to the aquifer.

(d) "Withdrawal" refers to all processes, natural or artificial, which take water from the aquifer.

(6) The hearing and judicial review provisions of section 42-1701A, Idaho Code, shall apply to any findings and orders issued by the director pursuant to this section.

(7) Nothing contained in this section shall be construed to limit the authority of the director of the department of water resources to administer and enforce any other ground water laws of the state.

[42-1416B, added 1989, ch. 212, sec. 1, p. 521.]

42-1417. GENERAL ADJUDICATION -- INTERIM ADMINISTRATION OF WATER RIGHTS. (1) The district court may permit the distribution of water pursuant to chapter 6, title 42, Idaho Code:

(a) in accordance with the director's report or as modified by the court's order;

(b) in accordance with applicable partial decree(s) for water rights acquired under state law;

(c) in accordance with applicable partial decree(s) for water rights established under federal law.

(2) The district court may enter the order only:

(a) upon a motion by a party;

(b) after notice by the moving party by mail to the director and each claimant of water from the water system or portion thereof that could reasonably be determined to be adversely affected by entry of the order; and

(c) upon a determination by the court, after hearing, that the interim administration of water rights in accordance with the report, or as the report is modified by the court's order, and in accordance with any partial decree(s), is reasonably necessary to protect senior water rights.

(3) Immediately upon entry of the court's order of interim administration of water rights, the clerk of the district court shall mail a certified

copy of the order to the director, and the director shall immediately give notice of the order to the watermaster of the water districts affected by the order.

(4) After entry of the district court's order for interim administration, the director may form a water district pursuant to chapter 6, title 42, Idaho Code.

[42-1417, added 1986, ch. 220, sec. 17, p. 578; am. 1987, ch. 158, sec. 2, p. 310; am. 1994, ch. 454, sec. 25, p. 1471.]

42-1418. APPEALS. An appeal may be taken to the supreme court from an order, partial decree, or decree of the district court in any adjudication proceeding as provided by rule or order of the supreme court.

[42-1418, added 1986, ch. 230, sec. 3, p. 626.]

42-1419. ENTRY OF AN ORDER COMMENCING A GENERAL ADJUDICATION ON A SPECIAL DOCKET -- CONSTRUCTIVE NOTICE -- FILING OF CERTIFIED COPY OF ORDER IN OTHER COUNTIES. (1) The clerk of the district court shall enter an order commencing a general adjudication on a special docket for water right adjudications in addition to any other district court record.

(2) From the time of docketing and not before, any order commencing a general adjudication is constructive notice of the contents thereof, within the county in which the order is docketed, to subsequent purchasers and mortgagees.

(3) The director shall file a true and certified copy of any order commencing a general adjudication with the district court for each county of this state where the water system to be adjudicated is located. The clerk of the district court shall file and docket the same as provided in subsection (1) of this section. From the time of such docketing and not before, the order so docketed is constructive notice of the contents thereof within the county in which the order is docketed to subsequent purchasers and mortgagees.

[42-1419, added 1986, ch. 220, sec. 19, p. 579.]

42-1420. BINDING EFFECT OF DECREE -- EXCEPTIONS. (1) The decree entered in a general adjudication shall be conclusive as to the nature and extent of all water rights in the adjudicated water system except that the following described water rights shall not be lost by failure to file a notice of claim:

- (a) a water right for domestic use or stock watering use, specifically excluded from the general adjudication by court order;
- (b) a water right application for permit filed under chapters 2 or 15, title 42, Idaho Code;
- (c) a water right permit issued under chapters 2 or 15, title 42, Idaho Code, unless the director required the permit holder to file a notice of claim in accordance with subsection (7) of section 42-1409, Idaho Code;
- (d) a water right license issued under chapter 2 or 15, title 42, Idaho Code, if proof of beneficial use had not been filed on the date of commencement of the general adjudication, unless the director required the license holder to file a notice of claim in accordance with subsection (7) of section 42-1409, Idaho Code; and
- (e) a claim to a water right established under federal law, if the priority of the right claimed is later than and junior to the date of entry of the order commencing the general adjudication.

(2) The exceptions from the conclusive effect of a decree in a general adjudication stated in subsection (1) above shall not apply to any water right for which a notice of claim or negotiated agreement is filed.

[42-1420, added 1986, ch. 220, sec. 20, p. 580; 1986, ch. 230, sec. 4, p. 626; am. 1994, ch. 454, sec. 26, p. 1472; am. 1996, ch. 186, sec. 5, p. 591.]

42-1421. PROCEDURES FOR ADJUDICATION OF UNPERFECTED WATER RIGHTS INITIATED UNDER STATE LAW -- DIRECTOR'S JURISDICTION. (1) All persons claiming a water right based on an application or permit on the date of entry of the order commencing a general adjudication are not required to file a notice of claim unless required in accordance with subsection (7) of section 42-1409, Idaho Code. If the director approves the application in whole or in part during the pendency of a general adjudication and prior to filing the director's report, the director shall notify the permit holder of the pendency of the general adjudication. A permit holder who is not required by the director to file a notice of claim in accordance with subsection (7) of section 42-1409, Idaho Code, may file a notice of claim at any time prior to filing the director's report.

(2) All persons claiming a water right based on a water right license existing on the date of entry of the order commencing a general adjudication shall file a notice of claim.

(3) The district court shall decree any claimed water right for which proof of beneficial use has not been filed, but shall state that the right is conditioned upon completion of the appropriation in accordance with the laws of the state governing the appropriation of water and that the decreed right shall be subject to the terms of the license to appropriate water that is ultimately issued.

(4) The director retains jurisdiction of all applications, permits and licenses under chapter 2, 3, 6 or 15, title 42, Idaho Code, to take action authorized by the conditions contained in any permit or license or by applicable law and action on any application for transfer under section 42-222, Idaho Code.

(5) The director retains jurisdiction of all decreed water rights under chapters 2, 3 and 6, title 42, Idaho Code, to take action authorized by the conditions of any decree or by applicable law, including action on any application for transfer under section 42-222, Idaho Code.

(6) The director retains jurisdiction of all beneficial use water rights under chapters 2, 3 and 6, title 42, Idaho Code, to take action authorized by applicable law.

[42-1421, added 1986, ch. 220, sec. 21, p. 580; am. 1994, ch. 454, sec. 27, p. 1472; am. 1996, ch. 186, sec. 6, p. 591.]

42-1422. SPECIAL MASTER -- APPOINTMENT -- POWERS AND DUTIES -- COMPENSATION -- DISQUALIFICATION -- REVIEW OF SPECIAL MASTER'S REPORT. (1) The district court may appoint one (1) or more special masters in any general adjudication.

(2) The district court shall specify the powers and duties of a special master in the order of reference. The compensation and disqualification of a special master shall be governed by order or rule of the supreme court.

(3) Objections to and hearing on the special master's report shall be governed by rule 53(e) of the Idaho rules of civil procedure.

[42-1422, added 1986, ch. 230, sec. 5, p. 627; am. 1994, ch. 454, sec. 28, p. 1473.]

42-1423. ATTORNEYS FEES AND COSTS AGAINST THE STATE OF IDAHO, ANY STATE AGENCY OR ANY OFFICER OR EMPLOYEE. No judgment for costs or award of attorneys fees against the state of Idaho, any state agency, or any officer or employee of the state of Idaho shall be allowed in any water rights adjudication proceeding pursuant to this chapter. The state of Idaho expressly refuses to waive its sovereign immunity to the imposition of any judgment for costs or award of attorney fees. The state of Idaho, state administrative agency, or any officer or employee shall not be required to pay any fees other than those provided in section 42-1414, Idaho Code, for appearing in a proceeding brought under this chapter or any appeal of a matter arising from such proceeding.

[42-1423, added 1994, ch. 454, sec. 30, p. 1473.]

42-1424. SUMMARY SUPPLEMENTAL ADJUDICATION OF WATER RIGHTS. (1) Where an adjudication of a water system has been commenced prior to July 1, 1986, or where an adjudication of a water system has been commenced pursuant to subsection (3) of section 42-1404, Idaho Code, resulting in a decree of any court of competent jurisdiction, and thereafter it appears that any claimant having the right to the use of any part of those waters was not included in the decree as a party, and the right was not determined thereby, or that a claimant subsequent to the decree has acquired any right to the use of those waters, the claimant may bring an action to have such right adjudicated in the manner specified in subsection (3) of this section.

(2) Where a general adjudication of a water system has been commenced or enlarged after July 1, 1986, pursuant to section 42-1405 or 42-1406, Idaho Code, resulting in a decree of any court of competent jurisdiction, and thereafter, it appears that a claimant subsequent to the decree has acquired any right to the use of those waters, or that a claimant who possesses a water right designated in paragraphs (a) through (d) of subsection (1) of section 42-1420, Idaho Code, did not have those water rights determined, the claimant may bring an action to have those water rights adjudicated in the manner specified in subsection (3) of this section.

(3) The following procedure shall be used for any supplemental adjudication:

(a) A claimant may bring an action in the district court that originally heard the general adjudication to conduct a supplemental adjudication of the water rights of the claimant; and

(b) The claimant shall, in his complaint, set forth his acceptance as binding upon him of all prior applicable decrees and the findings of fact and conclusions of law upon which they are based, shall request the commencement of a supplemental adjudication and shall set forth the claimed water right in a notice of claim form furnished by the director and attached to the complaint. Thereupon, the district court shall issue a summons and it shall be served upon the state of Idaho and the United States; and

(c) After return of service of summons, the claimant shall cause to be published once a week for not less than three (3) weeks, a notice of the pendency and purpose of the action in such newspaper or newspapers as the judge of the district court may order, which notice shall contain the title of the court and the cause, the name and post-office address

of the claimant, the date of priority of the water right claimed, the source of the water supply, the amount of water claimed, in general the nature of the water use, the approximate location of the point of diversion, and the place of use; and

(d) Any person who may be injured and who objects to the water right claimed by the claimant, as described in the published notice, shall, within forty-five (45) days of the date of the first publication of notice, file with the district court written notice of such objection stating the reasons for the objection. A copy of the objection shall be served upon the claimant, upon all other parties of record in the action, the watermasters, and the director; and

(e) The district court may request that the director determine the water rights in accordance with the procedures set forth in sections 42-1410 through 42-1413, Idaho Code; and

(f) The director, within thirty (30) days after the district court requests the director to prepare a director's report in accordance with sections 42-1410 through 42-1413, Idaho Code, shall file with the court notification as to whether the director will conduct an examination of the water rights claimed in the complaint in accordance with the procedures set forth in sections 42-1410 through 42-1413, Idaho Code; and

(g) Notification to the court that the director will proceed in accordance with sections 42-1410 through 42-1413, Idaho Code, shall include an approximation of the time when the director's report will be completed, and an estimate of the director's costs that will be incurred in conducting the examination and in preparing the reports; and

(h) The claimant shall then be required to advance to the director, the estimated costs to be incurred by the director in conducting the examination and in preparing the reports. Prior to the filing of the director's report with the court, the claimant shall pay the balance of the director's verified costs or be refunded any unused estimated costs advanced to the director. In the event that the claimant shall contest the director's costs, the court shall then determine the reasonable costs to be paid by the claimant; and

(i) The director shall file the report with the court upon completion and shall send a copy thereof to all parties to the action. Objections to the report of the director and hearing upon the objections shall be in accordance with the provisions of section 42-1412, Idaho Code; and

(j) For those cases in which the director notifies the district court that the director does not intend to proceed in accordance with sections 42-1410 through 42-1413, Idaho Code, the cause may thereafter be brought on for hearing in open court, and any claimant having filed a timely objection with the court may appear and defend against the claim.

(4) The court's decree shall determine the rights of the claimant in accordance with the proof submitted but subject to the terms of the original decree or decrees. The decree shall contain or incorporate a statement of each element of a water right as stated in subsections (2) and (3) of section 42-1411, Idaho Code, as applicable. The decree shall also determine all other matters necessary for the efficient administration of the water rights. Whereupon water shall be distributed to the claimant in accordance therewith and in the same manner as though the claimant's right had been included in the decree or decrees.



(5) Any person who has appeared in the action may appeal in accordance with the Idaho appellate rules from the decree entered in the action hereby authorized to be brought.

[(42-1424) 1911, ch. 224, sec. 1, p. 708; am. 1915, ch. 34, sec. 18, p. 112; reen. C.L., sec. 4623a; C.S., sec. 7036; I.C.A., sec. 41-1305; am. 1981, ch. 265, sec. 3, p. 562; am. 1986, ch. 220, sec. 6, p. 563; am. 1986, ch. 230, sec. 1, p. 621; am. and redesig. 1994, ch. 454, sec. 8, p. 1449; am. 1997, ch. 374, sec. 6, p. 1201.]

42-1425. ACCOMPLISHED TRANSFERS. (1) Legislative findings regarding accomplished transfers and the public interest.

(a) The legislature finds and declares that prior to the commencement of the Snake River basin adjudication, and the northern Idaho adjudications, many persons entitled to the use of water or owning land to which water has been made appurtenant either by decree of the court or under provisions of the constitution and statutes of this state changed the place of use, point of diversion, nature or purpose of use, or period of use of their water rights without compliance with the transfer provisions of sections 42-108 and 42-222, Idaho Code.

(b) The legislature finds that many of these changes occurred with the knowledge of other water users and that the water has been distributed to the right as changed. The legislature further finds and declares that the continuation of the historic water use patterns resulting from these changes is in the local public interest provided no other existing water right was injured at the time of the change. Denial of a claim based solely upon a failure to comply with sections 42-108 and 42-222, Idaho Code, where no injury or enlargement exists, would cause significant undue financial impact to a claimant and the local economy. Approval of the accomplished transfer through the procedure set forth in this section avoids the harsh economic impacts that would result from a denial of the claim.

(c) The legislature further finds and declares that examination of these changes by the director through the procedures of section 42-222, Idaho Code, would be impractical and unduly burdensome. The more limited examination of these changes provided for in this section, constitutes a reasonable procedure for an expeditious review by the director while ensuring that the changes do not injure other existing water rights or constitute an enlargement of use of the original right.

(2) Any change of place of use, point of diversion, nature or purpose of use or period of use of a water right by any person entitled to use of water or owning any land to which water has been made appurtenant either by decree of the court or under the provisions of the constitution and statutes of this state, prior to November 19, 1987, the date of commencement of the Snake River basin adjudication, and prior to January 1, 2006, for the northern Idaho adjudications authorized by section 42-1406B, Idaho Code, may be claimed in the applicable general adjudication even though the person has not complied with sections 42-108 and 42-222, Idaho Code, provided no other water rights existing on the date of the change were injured and the change did not result in an enlargement of the original right. Except for the consent requirements of section 42-108, Idaho Code, all requirements of sections 42-108 and 42-222, Idaho Code, are hereby waived in accordance with the following procedures:

(a) If an objection is filed to a recommendation for accomplished change of place of use, point of diversion, nature or purpose of use or period of use, the district court shall remand the water right to the director for further hearing to determine whether the change injured a water right existing on the date of the change or constituted an enlargement of the original right. After a hearing, the director shall submit a supplemental report to the district court setting forth his findings and conclusions. If the claimant or any person who filed an objection to the accomplished transfer is aggrieved by the director's determination, they may seek review before the district court. If the change is disallowed, the claimant shall be entitled to resume use of the original water right, provided such resumption of use will not cause injury or can be mitigated to prevent injury to existing water rights. The unapproved change shall not be deemed a forfeiture or abandonment of the original water right.

(b) This section is not applicable to any claim based upon an enlargement of use.

[42-1425, added 1994, ch. 454, sec. 31, p. 1474; am. 1996, ch. 186, sec. 7, p. 592; am. 2006, ch. 222, sec. 3, p. 662.]

42-1426. ENLARGEMENTS -- WAIVER OF MANDATORY PERMIT REQUIREMENTS. (1) Legislative findings regarding enlargements:

(a) The legislature finds that prior to the commencement of the Snake River basin adjudication and subsequent to the mandatory permit system provided in sections 42-201 and 42-229, Idaho Code, persons entitled to the use of water or owning any land to which water has been made appurtenant by decree, license or constitutional appropriation have, through water conservation and other means, enlarged the use of said water without increasing the rate of diversion and without complying with the mandatory permit system adopted by the legislature. Enlargements have been done with the knowledge of other water users, and water has been distributed based upon the right as enlarged. Junior water users made appropriations based upon a water system that reflected these enlarged uses. Thus, the legislature further finds and declares that it is in the public interest to waive the mandatory permit requirements for these enlargements in use prior to the commencement of a general adjudication, so long as such enlargements in use did not increase the rate of diversion of the original water right or exceed the rate of diversion for irrigation provided in section 42-202, Idaho Code, after the enlargement of use, and the enlargement of use did not reduce the quantity of water available to other water rights existing on the date of the enlargement in use.

(b) The legislature further finds that it is in the public interest to waive certain statutory provisions for the appropriation of water that has been diverted and applied to beneficial use to insure the economic and agricultural base in the state of Idaho as it existed on the date of the commencement of the Snake River basin adjudication and to maintain historic water use patterns existing on that date.

(2) The mandatory permit requirements of sections 42-201 and/or 42-229, Idaho Code, are waived, and a new water right may be decreed for the enlarged use of the original water right based upon the diversion and application to beneficial use, with a priority date as of the date of completion of the enlargement of use for any enlargement occurring on or before November

19, 1987; provided however, that the rate of diversion of the original water right and the separate water right for the enlarged use, combined, shall not exceed the rate of diversion authorized for the original water right; and further provided, that the enlargement in use did not injure water rights existing on the date of the enlargement of use. An enlargement may be decreed if conditions directly related to the injury can be imposed on the original water right and the new water right that mitigate any injury to a water right existing on the date of enactment of this act. If injury to a water right later in time cannot be mitigated, then the new right for the enlarged use shall be advanced to a date one (1) day later than the priority date for the junior water right injured by the enlargement. It is further provided that any such enlargement of use allowed in a general adjudication shall not constitute an abandonment or forfeiture of the original water right to the extent of current use.

(3) The director shall publish a notice of enlargement of water right for all water rights recommended under this section. The notice shall contain a summary of the notice of claim and shall be published in the same manner as notices for applications to appropriate water in section 42-203A, Idaho Code. Any person who has filed an application for a water right prior to the enactment of this act or who has been issued a permit for a water right prior to enactment of this act but who has not filed a claim in an adjudication shall have thirty (30) days from the date of last publication of the notice of enlargement of a water right under this section to file a petition with the department of water resources to assert any claimed injury from the enlargement. No appeal of the determination of the department shall be allowed. If the applicant or permittee is dissatisfied with the determination of the department on any claim of injury, the sole remedy is to intervene in the general adjudication and assert their claim of injury in an objection to the water right.

[42-1426, added 1994, ch. 454, sec. 32, p. 1475; am. 2000, ch. 311, sec. 1, p. 1048.]

42-1427. DESCRIPTIONS OF WATER RIGHTS -- REPORTING AND DECREERING ELEMENTS OF A DECREED OR LICENSED WATER RIGHT. (1) Legislative findings:

(a) The legislature finds that existing water rights are not uniformly described. Many old water rights were simply defined by source, priority date and diversion rate. Over time, the legislature and courts have made this original description of a water right more specific by the addition of other elements. Because of the increasing demand for water, it is important that the elements of a water right be standardized to allow for fair and efficient administration of the limited water supply. One (1) purpose of chapter 14, title 42, Idaho Code, is to establish, through an adjudication a uniform description for surface water rights, ground water rights and water rights which include storage.

(b) Because of the passage of time it is not possible to establish with any degree of certainty the undefined elements of a decreed or licensed water right as they existed on the date the right was established, because water delivery has occurred based upon the historic water use patterns and custom, and because attempts to define elements of a water right based upon unknown conditions in existence on the date of the establishment of the water right could result in significant impacts upon the claimant, the local economy and tax base, the legislature finds that it is in the public interest to provide a mechanism to decree

previously undefined elements of existing water rights based upon conditions existing on the date of commencement of the adjudication provided the claimant is not exceeding any previously determined and recorded element of the decreed or licensed water right.

(2) If a licensed or decreed water right does not describe all of the elements of a water right required in section 42-1409, Idaho Code, the director shall include in his report recommendations for those elements not defined by the prior license or decree based upon the extent of beneficial use of the water right as of the date of the commencement of an adjudication.

[42-1427, added 1994, ch. 454, sec. 33, p. 1476; am. 1994, ch. 455, sec. 6, p. 1489.]

42-1428. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

[(42-1428) 1986, ch. 220, sec. 23, p. 582; am. and redesign. 1994, ch. 454, sec. 29, p. 1473.]