

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 17
DEPARTMENT OF WATER RESOURCES -- WATER RESOURCE BOARD

42-1701. CREATION OF DEPARTMENT OF WATER RESOURCES -- DIRECTOR -- QUALIFICATIONS -- DUTIES. (1) There is hereby created the department of water resources, which shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be an executive department of the state government.

(2) The executive and administrative authority of the department, except such authority as is specifically assigned by law to the water resource board, shall be vested in a director of the department of water resources who shall be: a licensed civil or agricultural engineer with not less than five (5) years of experience in the active practice of such profession; a registered geologist with not less than five (5) years of experience in the active practice of hydrology; or a hydrologist holding a bachelor's or advanced degree in hydrology from a college or university accredited by a nationally recognized accrediting organization and with not less than five (5) years of experience in surface water and ground water modeling, water delivery and water measurement. The director of the department of water resources shall also demonstrate experience and expertise in interpreting and applying Idaho water law and shall be familiar with irrigation and other water use practices in Idaho.

(3) The director may delegate such duties as are imposed upon him by law to an employee of the department of water resources whenever in the opinion of the director, such delegation is necessary for the efficient administration of his duties.

(4) The director shall organize the department into such divisions and other administrative subunits as may be necessary in order to efficiently administer the department. All employees of the department, except the director, shall be selected and appointed by the director in conformance with the provisions of chapter 53, title 67, Idaho Code.

(5) The director and/or employees of the department of water resources may make reasonable entry upon any lands in the state for the purpose of making investigations and surveys, or for other purposes necessary to carry out the duties imposed by law.

(6) (a) Any authorization or order of the Idaho public utilities commission, under the provisions of section 61-328, Idaho Code, approving the sale, assignment or transfer of hydropower water rights used in the generation of electric power shall be issued only upon such conditions as the director of the department of water resources shall require as necessary to prevent any change in use of water under the water rights held for hydropower purposes that would cause injury to any water rights existing on the date of the sale, assignment or transfer. Any such conditions shall ensure that the public interest, as it pertains to the use of water under the hydropower water rights, will not be adversely affected. Conditions, if any, imposed by the director shall be subject to review under section 42-1701A(4), Idaho Code.

(b) Subsection (6) (a) of this section may be satisfied by a written agreement between the holder of a water right held for hydropower purposes and the governor, which agreement has been ratified by the

legislature of the state of Idaho. The agreement between the governor and the Idaho power company dated October 15, 1984, and ratified by the legislature of the state of Idaho pursuant to section 42-203B, Idaho Code, and the subordination provisions relating to the Idaho power company's water rights satisfy subsection (6) (a) of this section.

[(42-1701) 1895, p. 215, sec. 7; reen. 1899, p. 282, sec. 6; reen. R.C., sec. 154; reen. C.L. 126:7; C.S., sec. 2983; I.C.A., sec. 41-1501; am. 1974, ch. 20, sec. 4, p. 533; am. 2000, ch. 224, sec. 3, p. 620; am. 2014, ch. 103, sec. 1, p. 304.]

42-1701A. HEARINGS BEFORE DIRECTOR -- APPEALS. (1) All hearings required by law to be held before the director of the department of water resources shall be conducted in accordance with the provisions of chapter 52, title 67, Idaho Code, and rules of procedure promulgated by the director.

(2) The director, in his discretion, may direct that a hearing be conducted by a hearing officer appointed by the director. In such event, the hearing officer shall have the duty to make a complete record of the evidence presented and duly received at the hearing and to prepare a recommended or preliminary order in accordance with chapter 52, title 67, Idaho Code, and rules of procedure promulgated by the director.

(3) Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person aggrieved by any action of the director, including any decision, determination, order or other action, including action upon any application for a permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. The director shall give such notice of the petition as is necessary to provide other affected persons an opportunity to participate in the proceeding. The hearing shall be held and conducted in accordance with the provisions of subsections (1) and (2) of this section. Judicial review of any final order of the director issued following the hearing shall be had pursuant to subsection (4) of this section.

(4) Any person who is aggrieved by a final decision or order of the director is entitled to judicial review. The judicial review shall be had in accordance with the provisions and standards set forth in chapter 52, title 67, Idaho Code.

[42-1701A, added 1980, ch. 238, sec. 1, p. 526; am. 1993, ch. 216, sec. 36, p. 619; am. 1994, ch. 450, sec. 2, p. 1435; am. 2003, ch. 138, sec. 1, p. 403.]

42-1701B. ENFORCEMENT PROCEDURE -- NOTICE -- CONSENT ORDER -- CIVIL ACTION. (1) Authority to commence actions. The director of the department of water resources is authorized and may commence and pursue enforcement actions to remedy the designated violations set out in title 42, Idaho Code.

(2) Notice. When the director commences an administrative enforcement action the notice of violation shall be served upon the alleged violator in person or by certified mail. The notice of violation shall identify the

alleged violation and shall specify each provision of the designated chapter, rule, permit, condition of approval or order which has been violated. The notice of violation shall state the remedy, including any demand to cease and desist, restoration and mitigation measures, and the amount of any civil penalty the director seeks for redress of the violation. Factors the director may consider in seeking the appropriate remedy include the impact of the violation and whether the violation was willful, a repeat violation for which the violator had been given a prior written warning, or the violator has otherwise refused to comply with the department's lawful directives. The notice of violation shall inform the person to whom it is directed of an opportunity to confer with the director or the director's designee in a compliance conference concerning the alleged violation.

(3) Response. A written response may be required within fourteen (14) days of the receipt of the notice of violation by the person to whom it is directed. If a recipient of a notice of violation contacts the department within fourteen (14) days of the receipt of the notice, the recipient shall be entitled to a compliance conference. The conference shall be held within twenty-one (21) days of the receipt of the notice unless a later date is agreed upon between the parties. If a compliance conference is not requested, the director may proceed with a civil enforcement action as provided in this section.

(4) Compliance conference and consent order. The compliance conference shall provide an opportunity for the recipient of a notice of violation to explain the circumstance of the alleged violation and, where appropriate, to present a proposal for remedying the damage caused by the violation and assuring future compliance. If the recipient and the director agree on a plan to remedy damage caused by the alleged violation and to assure future compliance, they may enter into a consent order formalizing their agreement. The consent order may include a provision providing for payment of any agreed civil penalty. The consent order shall be effective immediately upon signing by both parties and shall preclude a civil enforcement action for the same alleged violation. If a party does not comply with the terms of the consent order, the director may seek and obtain in any appropriate district court, specific performance of the consent order and other relief as authorized by law. If the parties cannot agree to a consent order within fifty-six (56) days after the receipt of the notice of violation, or if the recipient does not request a compliance conference, the director may commence and prosecute a civil enforcement action in the district court in accordance with this section.

(5) Civil enforcement actions.

(a) The director may initiate a civil enforcement action through the attorney general as provided in this section. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred, and may be brought against any person who is alleged to have substantially violated any provision of title 42, Idaho Code, or any rule promulgated pursuant to that title. The action may be brought to compel compliance with provisions of title 42, Idaho Code, or rules promulgated pursuant to that title. The director shall not be required to prosecute an administrative enforcement action before initiating a civil enforcement action.

(b) Nothing in this section shall preclude employees of the department designated by the director from issuing Idaho uniform citations or

written administrative orders directing persons to cease and desist as authorized by law.

(c) If the person who is the subject of the notice of violation fails to cease and desist the activity or activities constituting the alleged violation within the time limits set in the notice of violation, the director may seek, by and through the attorney general, injunctive relief in the district court pending the outcome of the administrative enforcement action.

(d) In an action brought against a person for diverting water without having obtained a valid water right to do so, the director need not allege or prove that irreparable injury to the state or to other water users will occur should the preliminary injunction not be issued or that the remedy at law is inadequate, and the preliminary injunction or permanent injunction shall issue without those allegations and without that proof.

(6) Penalties.

(a) Any person determined in a judicial civil enforcement action to have substantially violated any designated provision of title 42, Idaho Code, or any rule promulgated pursuant to that title, shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) per violation or one hundred fifty dollars (\$150) per day for a continuing violation, whichever is greater; except that persons determined to be in violation of section 42-351, Idaho Code, shall be liable for a civil penalty not to exceed:

(i) For nonirrigation uses, fifty dollars (\$50.00) per one-tenth (0.1) cubic feet per second of water or part thereof diverted per calendar day, or fifty dollars (\$50.00) per two tenths (0.2) of an acre foot of water or part thereof diverted to storage, up to a maximum penalty of fifty thousand dollars (\$50,000) per year for water illegally used or diverted;

(ii) For irrigation uses, three hundred dollars (\$300) annually for each acre irrigated, in whole or in part, by the illegal use or diversion.

(b) Civil penalties shall not be assessed for violations that have occurred more than twelve (12) months prior to the issuance of the notice of violation. The court shall determine the amount of the penalty based upon the willfulness of the violation, the economic value obtained by the violator and the damage to public resources and other water right holders. A method of recovery of the penalty shall be a civil enforcement action in and for the county where the violation occurred.

(c) All civil penalties collected under this section shall be paid into the water right[s] enforcement account established pursuant to section 42-1778, Idaho Code.

(d) Parties to an administrative enforcement action may agree to a civil penalty as provided in this subsection.

(7) No action taken pursuant to this section shall relieve any person from any civil liability and damages that may exist for injury or damage resulting to others.

(8) Upon request of the director, it shall be the duty of the attorney general to institute and prosecute civil enforcement actions pursuant to this section.

[42-1701B, added 1998, ch. 173, sec. 8, p. 607; am. 2003, ch. 165, sec. 2, p. 468.]

42-1702. DUTY TO SUPPLY INFORMATION. The director shall, free of charge, give any information desired by any person as to the proper method of measuring water, or of constructing an apparatus for such measurement, upon proper application being made; and shall give special instructions to all watermasters as to measurement of water so as to secure a just distribution of the same.

[(42-1702) 1895, p. 215, sec. 12; reen. 1899, p. 282, sec. 11; reen. R.C., sec. 157; reen. C.L. 126:8; C.S., sec. 2984; I.C.A., sec. 41-1502; am. 1974, ch. 20, sec. 5, p. 533.]

42-1703. ATTORNEY GENERAL TO ADVISE DIRECTOR. The director may require, and shall receive, from the attorney general of the state, advice upon any question of public interest arising in the performance of duties under this chapter, which advice shall be in writing when so desired. The director may employ counsel or may retain private counsel.

[(42-1703) 1895, p. 215, sec. 13; reen. 1899, p. 282, sec. 12; reen. R.C., sec. 158; reen. C.L. 126:9; C.S., sec. 2985; I.C.A., sec. 41-1503; am. 1974, ch. 20, sec. 6, p. 533.]

42-1704. DIRECTOR TO MAKE REPORT. The director shall make and render to the governor, annually, or oftener, if required, full and true reports of the work performed by the department, which reports shall contain any recommendations he may have to make in reference to legislation affecting the department.

[(42-1704) 1895, p. 215, sec. 14; reen. 1899, p. 282, sec. 13; reen. R.C., sec. 159; reen. C.L. 126:10; C.S., sec. 2986; I.C.A., sec. 41-1504; am. 1974, ch. 20, sec. 7, p. 533.]

42-1705. COOPERATION WITH UNITED STATES GEOLOGICAL SURVEY. The director of the department of water resources is hereby authorized to cooperate with the United States geological survey in the investigation of the water resources and gauging the flow of the streams of the state of Idaho so long as the federal government is engaged in making such measurements and surveys. To that end he is hereby authorized to make the necessary contract or contracts with the director of the United States geological survey whereby a part of the expenses incurred in the making of such surveys, gaugings and measurements may be paid by the state of Idaho, to an amount not to exceed the appropriation hereinafter made. Said contract or contracts shall provide among other things, that the United States geological survey shall furnish to the department of water resources complete and detailed reports of the results obtained by said survey, gaugings and measurements and copies of such original records, plats, notes and other data as shall be required by the department. Such reports, plats, notes, records and data shall be and become a part of the permanent records of the office of the department. All claims for expenses incurred or made hereunder shall be filed, examined, and when allowed, paid out of the state treasury in the same manner that other claims against the state are made, filed, examined and paid.

[(42-1705) 1919, ch. 173, sec. 1, p. 548; C.S., sec. 2987; I.C.A., sec. 41-1505; am. 1974, ch. 20, sec. 8, p. 533.]

42-1706. ADDITIONAL DUTIES OF DIRECTOR. The director of the department of water resources shall make or cause to be made careful measurements of the flow in cubic feet per second of the various streams in the state whose waters

are, or are likely to be, appropriated and used, through that part of the season which he may deem necessary or expedient, to afford information for irrigating purposes, commencing with those streams most used for irrigation. The director shall collect facts and make surveys to ascertain suitable locations for reservoirs upon streams where such reservoirs may be possible and beneficial, and shall, as far as possible, determine the cost of constructing such reservoirs, and all other facts possible in regard to quantity of water possible to be stored, the character and extent of land that may be reclaimed by the water from such reservoirs, together with all other information possible that may bear upon the subject. The director shall become familiar with the waterways and irrigable land in the state and the needs of the state as to irrigation matters, and all records of any such information shall be the property of the state and open to public inspection. The director shall keep full and complete records of all measurements of streams, surveys, examinations or other valuable information that may come into his possession concerning any of the duties of the department, and shall furnish reasonable information in regard to such measurements or surveys to the newspapers of the state upon proper request.

In addition to the duties prescribed in this chapter, the director shall perform such other professional duties as may be required of him by the governor, and shall give advice on any matters of a professional nature, when called upon by the governor to do so.

[(42-1706) 1895, p. 215, sec. 15; reen. 1899, p. 282, sec. 14; reen. R.C., sec. 160; reen. C.L. 126:11; C.S., sec. 2988; I.C.A., sec. 41-1506; am. 1974, ch. 20, sec. 9, p. 533.]

42-1709. INSPECTION AND OVERSIGHT ON COMPLAINT OR DIRECTOR'S DETERMINATION. (1) If any person or persons shall report in writing to the director that any dam, artificial barrier or embankment that stores or impounds water, except for those excluded in section 42-1711(b)(1) through (4), Idaho Code, or mine tailings impoundment structure used for storing tailings slurry is unsafe and endangering life or property, then it shall be the duty of the director to inspect, or cause to be inspected, such dam, artificial barrier or embankment or mine tailings impoundment structure as soon as possible, and, if he considers it unsafe, to proceed as provided in this chapter.

(2) If the director determines that the failure of any artificial barrier or embankment that stores or impounds water, except for those excluded in section 42-1711(b)(1) through (4), Idaho Code, would pose a threat of direct loss of life or significant property damage, the director shall regularly inspect and regulate it as a dam as provided in this chapter.

[(42-1709) 1895, p. 215, sec. 11; reen. 1899, p. 282, sec. 10; reen. R.C., sec. 156; reen. C.L. 126:14; C.S., sec. 2991; I.C.A., sec. 41-1509; am. 1974, ch. 20, sec. 10, p. 533; am. 1978, ch. 309, sec. 1, p. 786; am. 2016, ch. 206, sec. 1, p. 578.]

42-1710. INTENT OF LEGISLATURE -- CONSTRUCTION, MAINTENANCE AND OPERATION OF DAMS AND MINE TAILINGS IMPOUNDMENT STRUCTURES. It is the intent of the legislature by this act to provide for the regulation of construction, maintenance and operation of all dams, reservoirs and mine tailings impoundment structures exclusively by the state to the extent required for the protection of public safety. All dams, reservoirs and mine tailings impoundment structures in the state are under jurisdiction of the department of wa-

ter resources. The department of water resources, under the police power of the state, shall supervise the construction, enlargement, alteration, repair, maintenance, operation and removal of dams, reservoirs and mine tailings impoundment structures for the protection of life and property. The department of water resources may enter into agreements with other state agencies having jurisdiction over water storage structures to limit duplication of inspection, review and regulation of such structures.

[42-1710, added 1969, ch. 280, sec. 1, p. 833; am. 1974, ch. 20, sec. 11, p. 533; am. 1978, ch. 309, sec. 2, p. 786; am. 2000, ch. 78, sec. 1, p. 164.]

42-1711. DEFINITIONS. Unless the context otherwise requires, the following definitions govern the construction of this chapter.

(a) "Department" means the department of water resources.

(b) "Dam" means any artificial barrier or embankment, together with appurtenant works, constructed for the purpose of storing water or that stores water, which is ten (10) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the department, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum water storage elevation, and has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre-feet or more. The following are not included as regulated dams or are not considered dams for the purposes of sections 42-1710 through 42-1721, Idaho Code:

(1) Barriers in a canal used to raise or lower water therein or divert water therefrom.

(2) Fills or structures determined by the director to be designed primarily for highway or railroad traffic.

(3) Fills, retaining dikes or structures less than twenty (20) feet in height, which are under jurisdiction of the department of environmental quality or the department of agriculture, determined by the director of the department of water resources to be designed primarily for retention or treatment of municipal, livestock, or domestic wastes, or sediment and wastes from produce washing or food processing plants.

(4) Levees that store water regardless of storage capacity.

(c) "Levee" means a retaining structure alongside a natural lake which has a length that is two hundred (200) times or more greater than its greatest height measured from the lowest elevation of the toe to the maximum crest elevation of the retaining structure.

(d) "Reservoir" means any basin which contains or will contain the water impounded by a dam.

(e) "Owner" includes any of the following who own, control, operate, maintain, manage, or propose to construct a dam, reservoir or mine tailings impoundment structure:

(1) The state of Idaho and its departments, agencies, institutions and political subdivisions;

(2) The United States of America and any of its departments, bureaus, agencies and institutions; provided that the United States of America shall not be required to pay any of the fees required by section 42-1713, Idaho Code, and shall submit plans, drawings and specifications as required by section 42-1712, Idaho Code, for information purposes only;

(3) Every municipal or quasi-municipal corporation;

(4) Every public utility;

(5) Every person, firm, association, organization, partnership, business trust, corporation or company;

(6) The duly authorized agents, lessees, or trustees of any of the foregoing; or

(7) Receivers or trustees appointed by any court for any of the foregoing.

(f) "Alterations," "repairs," or either of them, mean only such alterations or repairs as may directly affect the safety of the dam, reservoir or mine tailings impoundment structure, as determined by the department.

(g) "Enlargement" means any change in or addition to an existing dam, reservoir or mine tailings impoundment structure, which raises or may raise the water storage elevation of the water impounded by the dam or mine tailings slurry impounded by the mine tailings impoundment structure.

(h) "Maximum water storage elevation" means the maximum design elevation of water surface which can be impounded by the dam or reservoir.

(i) "Storage capacity" means the total volume of storage at the maximum water storage elevation.

(j) "Days" used in establishing deadlines means calendar days including Sundays and holidays.

(k) "Certificate of approval" means a certificate issued by the director for all dams or mine tailings impoundment structures listing restrictions imposed by the director, and without which no new dams shall be allowed to impound water or mine tailings impoundment structures shall be allowed to impound mine tailings slurry.

(l) "Mine tailings impoundment structure" means any artificial embankment which is or will be more than thirty (30) feet in height measured from the lowest elevation of the toe to the maximum crest elevation constructed for the purpose of storing mine tailings slurry.

(m) "Lift construction" means mine tailings impoundment structure enlargement by raising the elevation of the structure on a continuous or recurring basis. Such practice will be considered under construction until the structure reaches its final crest elevation.

(n) "Mine tailings impoundment elevation" means the maximum elevation of stored mine tailings which can be obtained by the impounding structure.

(o) "Mine tailings slurry" means all slurry wastes from a mineral processing or mining operation.

(p) "Mine tailings storage capacity" means the total storage volume of the impounding area when filled with tailings to the maximum designed storage elevation.

(q) "Hazard" means the potential consequences to downstream life and property resulting from a dam failure and uncontrolled release of water, exclusive of the size or the physical condition of the dam or mine tailings impoundment structure. Hazard classifications shall be assigned to new and existing dams or mine tailings impoundment structures based on the severity of failure consequences to life and property.

(r) "Professional engineer" means a person who has been duly licensed as a professional engineer by the Idaho board of licensure of professional engineers and professional land surveyors under chapter 12, title 54, Idaho Code.

(s) "Artificial barrier or embankment" means any structure constructed to impede or obstruct the flow of water.

[42-1711, added 1969, ch. 280, sec. 2, p. 833; am. 1970, ch. 73, sec. 1, p. 187; am. 1974, ch. 20, sec. 12, p. 533; am. 1978, ch. 309, sec. 3, p.

786; am. 1987, ch. 98, sec. 1, p. 192; am. 1988, ch. 308, sec. 1, p. 963; am. 2000, ch. 78, sec. 2, p. 164; am. 2001, ch. 103, sec. 81, p. 320; am. 2004, ch. 180, sec. 1, p. 564; am. 2016, ch. 206, sec. 2, p. 578.]

42-1712. CONSTRUCTION, ENLARGEMENT, ALTERATION OR REPAIR OF DAMS -- SUBMISSION OF DUPLICATE PLANS, DRAWINGS AND SPECIFICATIONS. Owners who shall desire to construct, or enlarge, or alter or repair, meaning only such alterations or repairs as may affect the safety of the dam or reservoir, any dam, for the purpose of storing or appropriating or diverting any of the waters of this state, when the same is to be ten (10) feet or more in height and having a storage capacity of fifty (50) acre-feet or more, except as otherwise in this chapter provided, shall submit duplicate plans, drawings and specifications of the proposed work to the director, and construction of a new dam or enlargement, or alteration or repairs shall not be commenced until the owner has applied for and obtained written approval of the plans, drawings and specifications.

Owners of dams under construction on the effective date of this legislation and for which plans, drawings and specifications are required but have not been approved on or before the effective date of this legislation shall submit such plans, drawings and specifications for approval, with the fee established hereinafter. The director shall give notice to owners to submit plans, drawings and specifications, and failure to submit plans, drawings and specifications for approval within thirty (30) days of the date of mailing the notice shall be punishable as provided in this act, and construction shall be stopped upon issuance of an order by the director unless for good cause shown as determined by the director further time is allowed. The notice and/or order provided for in this paragraph may be given by certified mail and a return receipt signed by the owner or responsible company shall constitute prima facie evidence of service.

Upon receipt of the plans, drawings and specifications, the director shall give consideration thereto and shall approve or disapprove the same within the time provided in this section, and if he approves them, the director shall affix his approval thereto and return one (1) copy of each such plans, drawings and specifications, with his approval, to the party or parties proposing to construct the works.

Plans, drawings and specifications submitted to the director complete with fees shall be approved or disapproved in no more than sixty (60) days and in no less than fourteen (14) days after receipt. Defective plans, drawings and specifications made in a bona fide attempt to conform to the law and rules of the water resource board shall not be rejected but notice of defect shall be sent to the owner by certified mail. If within thirty (30) days of the date of mailing the notice the owner does not file amended and perfected plans, drawings and specifications, the plans, drawings and specifications shall be rejected and canceled unless for good cause shown the director allows the owner further time.

The construction of all dams under plans, drawings and specifications approved by the director shall be pursued with reasonable diligence to completion. In the event that an owner fails to commence actual construction and maintain reasonable construction progress of the dam under the plans, drawings and specifications approved by the director prior to or after the effective date of this act, such approval may be voided by the director one (1) year after such approval. Notice of the intent to void any such approval shall be sent by the director to the owner by certified mail and said owner

shall be allowed thirty (30) days within which to show cause why such approval should not be voided. The director may grant additional time within which to commence the construction under plans, drawings and specifications approved by the director upon a showing of reasonable cause. Plans, drawings and specifications for which approval has become void must be resubmitted for approval, with the fee therefor as hereafter provided, prior to commencing construction of any such dam.

The plans, drawings and specifications shall include the following information:

- (a) The name and address of the owner.
- (b) The location, type, size and height of the proposed dam or reservoir and appurtenant works.
- (c) The storage capacity of the reservoir.
- (d) Such other pertinent information as the director may require including the following:
 - (1) Data concerning subsoil and foundation conditions and materials entering into construction of the dam or reservoir.
 - (2) Investigations of, and reports on subsurface conditions involving such matters as exploratory pits, trenches, and adits, drilling, coring, geophysical surveys, tests to determine leakage rates, and physical tests to measure in place the properties and behavior of foundation materials at the dam or reservoir site.
 - (3) Investigation of and reports on the geology of the dam or reservoir site and its vicinity, possible geological hazards, availability and quality of construction materials, and other pertinent factors.

The plans, drawings and specifications shall be of such character and size setting forth such pertinent details and dimensions and in such form as the director requires. Plans, drawings and specifications which are submitted to the department shall be prepared by or under the direction of a professional engineer and authenticated by him as provided in section 54-1215, Idaho Code.

Where said dam is, in the opinion of the director, not of sufficient importance to have the provisions of the section apply to such dam, then the director shall have power, upon written application, to suspend the provisions of this section in regard to such dam.

The director shall prepare design and construction criteria for artificial barriers or embankments that store water, that are not dams as defined in this chapter, and shall supply such criteria upon request to any interested person to aid in constructing such artificial barriers or embankments. The use of such criteria shall in no way relieve the owner of responsibility for adequacy of design and construction procedures, nor be the basis of liability for any city or county that grants a permit related to construction of the artificial barrier or embankment pursuant to the provisions of chapter 65, title 67, Idaho Code.

[42-1712, added 1969, ch. 280, sec. 3, p. 833; am. 1974, ch. 20, sec. 13, p. 533; am. 2004, ch. 180, sec. 2, p. 566; am. 2016, ch. 206, sec. 3, p. 580.]

42-1713. FEES. Fees provided for in this chapter shall be required of all enumerated in the definition of owner. Fees for an enlargement to an existing dam or mine tailings impoundment structure shall be based upon the increase in storage capacity or tailings storage capacity. Fees for alterations or repairs of an existing dam or mine tailings impoundment structure

shall be based on an estimate, made by the director, of costs of inspections to be made, however, in no case shall such fees exceed that which would be required by the fee schedule for construction of the dam or mine tailings impoundment structure.

The fee for construction of a dam or mine tailings impoundment structure, or for enlarging an existing dam or mine tailings impoundment structure, shall be two hundred dollars (\$200) plus the following amount:

(a) For one thousand (1,000) acre-feet capacity or less, ten dollars (\$10.00) for each ten (10) acre-feet or part thereof.

(b) For over one thousand (1,000) acre-feet capacity but not exceeding ten thousand (10,000) acre-feet capacity, one thousand dollars (\$1,000) plus one dollar (\$1.00) for each ten (10) acre-feet or part thereof over the first one thousand (1,000) acre-feet capacity.

(c) For storage in excess of ten thousand (10,000) acre-feet, one thousand nine hundred dollars (\$1,900) plus twenty cents (20¢) for each ten (10) acre-feet or part thereof over the first ten thousand (10,000) acre-feet capacity. In no case, however, shall the fee be more than six thousand dollars (\$6,000).

All plans, drawings and specifications shall not be considered by the department until the filing fee is received. All moneys received by the department under the provisions of this chapter shall be deposited in the water administration fund created under section 42-238a, Idaho Code, and shall be available to the department in carrying out the provisions of this chapter. Fees submitted shall not be refunded.

[42-1713, added 1969, ch. 280, sec. 4, p. 833; am. 1970, ch. 73, sec. 2, p. 187; am. 1974, ch. 20, sec. 14, p. 533; am. 1978, ch. 309, sec. 4, p. 788; am. 1980, ch. 195, sec. 1, p. 431; am. 2004, ch. 169, sec. 1, p. 548.]

42-1714. RULES. The water resource board shall adopt and revise from time to time such rules as may be necessary for carrying out the provisions of sections 42-1710 through 42-1721, Idaho Code. The rules governing mine tailings and impoundment structures shall require the owner to provide an abandonment plan to assure that the site will be in a safe maintenance-free condition upon completion of the mining operation. The rules shall also require the owner to provide to the director a bond or other acceptable surety adequate to complete the abandonment plan if the owner abandons the site without conforming to the plan. The amount of the bond shall be determined by the director and shall be established to avoid duplication with sureties deposited with other governmental agencies. In lieu of any surety required hereunder, the owner may deposit cash and governmental securities with the director in an amount equal to that of the required surety on conditions as prescribed in the rules.

[42-1714, added 1969, ch. 280, sec. 5, p. 833; am. 1974, ch. 20, sec. 15, p. 533; am. 1978, ch. 309, sec. 5, p. 789; am. 2000, ch. 298, sec. 1, p. 1029.]

42-1715. INSPECTION DURING CONSTRUCTION, ENLARGEMENT, ALTERATION, REPAIR OR REMOVAL OF DAMS AND MINE TAILINGS IMPOUNDMENT STRUCTURES -- EFFECT OF NONCOMPLIANCE. During the construction, enlargement, repair, alteration, or removal of any dam, reservoir or mine tailings impoundment structure, the director shall make or cause to have made continuous or periodical inspections at state expense for the purpose of securing conformity with the approved plans and specifications, but shall require the owner to perform at

his expense such work or tests as necessary to disclose information sufficient to enable him to determine that conformity with the approved plans and specifications is being secured, which shall include adequate inspection, at owner's expense to verify compliance with approved plans, drawings and specifications.

The work of construction, enlargement, repair, alteration or removal of a dam, reservoir or mine tailings impoundment structure, for which approved plans, drawings and specifications are required, shall be under the responsible charge of a professional engineer who shall certify that such construction, enlargement, repair, alteration or removal was done in accordance with approved plans, drawings and specifications. If, after any inspections, investigations or examinations, or at any time as the work progresses, or at any time prior to issuance of a certificate of approval, it is found by the director that amendments, modifications or changes are necessary to insure safety, the director may order the owner to revise the plans and specifications. If conditions are revealed which will not permit the construction of a safe dam, reservoir or mine tailings impoundment structure, the approval may be revoked. In the event that conditions imposed may be waived or made less burdensome without sacrificing a proper margin of safety, the director may authorize an owner to revise the plans and specifications accordingly. If at any time during construction, enlargement, repair or alterations of any dam, reservoir or mine tailings impoundment structure the director finds that the work is not being done in accordance with the provision of the approval and the approved plans and specifications, he shall give a written notice and order by certified mail or by personal service to the owner. The notice and order shall state the particulars in which the approval and approved plans and specifications or the approval and approved plans and specifications as revised are not being or have not been complied with and shall order the immediate compliance with the approval and approved revised plans and specifications as the case may be. The director may order that no further work be done until such compliance has been effected and approved by him. A failure to comply with the approval and approved plans and specifications as originally approved or as revised shall render the approval subject to revocation by the director, if compliance is not made in accordance therewith after notice and order from him as provided in this chapter.

[42-1715, added 1969, ch. 280, sec. 6, p. 833; am. 1974, ch. 20, sec. 16, p. 533; am. 1978, ch. 309, sec. 6, p. 789; am. 2016, ch. 206, sec. 4, p. 582.]

42-1716. NOTICE OF COMPLETION -- FILING OF SUPPLEMENTARY DRAWINGS OR DESCRIPTIVE MATTER. Immediately upon completion of a new dam, reservoir or mine tailings impoundment structure or enlargement or repair of a dam, reservoir or mine tailings impoundment structure the owner shall give notice of completion to the director, and as soon thereafter as possible file with the director supplementary drawings or descriptive matter showing or describing the dam, reservoir or mine tailings impoundment structure as actually constructed, including the following:

- (a) A record of all grout holes and grouting.
- (b) A record of permanent location points and bench marks.
- (c) A record of tests of concrete or other material used in the construction of the dam, reservoir or mine tailings impoundment structure.

(d) Any other items which may be of permanent value and have a bearing on the safety and performances of the dam, reservoir or mine tailings impoundment structure.

In connection with the enlargement or repair of a dam, reservoir or mine tailings impoundment structure, the supplementary drawings and descriptive matter need apply only to the new work.

[42-1716, added 1969, ch. 280, sec. 7, p. 833; am. 1974, ch. 20, sec. 17, p. 533; am. 1978, ch. 309, sec. 7, p. 790.]

42-1717. JURISDICTION OVER SUPERVISION OF MAINTENANCE, OPERATION AND INSPECTION OF DAMS AND MINE TAILINGS IMPOUNDMENT STRUCTURES. Supervision over the maintenance and operation of dams, reservoirs and mine tailings impoundment structures insofar as necessary to safeguard life and property from injury by reason of the failure thereof is vested in the director of the department of water resources. The director shall at state expense inspect or cause to be inspected, as often as he thinks advisable, every dam used for holding water and mine tailings impoundment structure used for holding tailings slurry in this state; however, all dams or mine tailings impoundment structures regulated by the department shall be inspected at least once every five (5) years, and if after any such inspection such dam or mine tailings impoundment structure, in the opinion of the director, is unsafe, and life or property liable to be endangered by reason thereof, the director shall give written notice and order by certified mail or by personal service upon the owner or owners to remove or repair the same so as to make it safe. If such owner or owners shall neglect or refuse to remove or repair the same after notice to that effect has been given in writing by the director, the director may draw off all or part of such water from behind such dam, embankment or mine tailings slurry from behind mine tailings impoundment structure and keep said water or mine tailings slurry drawn off until such time as the orders shall be complied with. In determining whether or not a dam, reservoir or mine tailings impoundment structure or proposed dam, reservoir or mine tailings impoundment structure constitutes or would constitute a danger to life or property, the director shall take into consideration the possibility that the dam, reservoir or mine tailings impoundment structure might be endangered by overtopping, seepage, settlement, erosion, cracking, earth movement or other conditions which exist or might occur in any area in the vicinity of the dam, reservoir or mine tailings impoundment structure.

No action shall be brought against the state, the water resource board, the director, or the department of water resources or their respective agents or employees for the recovery of damages caused by the partial or total failure of any dam, reservoir or mine tailings impoundment structure or through the operation of any dam, reservoir or mine tailings impoundment structure upon the ground that such defendant is liable by virtue of any of the following:

(a) The approval of the dam, reservoir or mine tailings impoundment structure.

(b) The issuance or enforcement of orders relative to maintenance or operation of the dam, reservoir or mine tailings impoundment structure.

(c) Control and regulation of the dam, reservoir or mine tailings impoundment structure.

(d) Measures taken to protect against failure during an emergency.

(e) The use of design and construction criteria prepared by the department.

(f) The failure to issue or enforce orders, to control or regulate dams, or to take measures to protect against dam failure.

No action shall be brought by the state against the owner for pollution which may occur in the event that the director orders emergency dumping or bypassing.

Nothing in this part shall be construed to relieve an owner or operator of a dam, reservoir or mine tailings impoundment structure of the legal duties, obligations or liabilities incident to the ownership or operation of the dam, reservoir or mine tailings impoundment structure.

The findings and orders of the director and the certificate of approval of any dam, reservoir or mine tailings impoundment structure issued by the director are final and conclusive and binding upon all state agencies, regulatory or otherwise, as to the safety of design, construction, maintenance and operation of any dam, reservoir or mine tailings impoundment structure.

The director may require owners to keep records of, and to report on, maintenance, operation, staffing and engineering and geologic investigations, and the water resource board shall issue such rules as necessary to secure maintenance and operation and to require staffing and engineering and geologic investigations which will safeguard life and property. In addition, the owner of a dam, reservoir or mine tailings impoundment structure or his agent shall fully and promptly advise the department of any sudden or unprecedented flood or unusual or alarming circumstance or occurrence affecting the safety of the dam, reservoir or mine tailings impoundment structure. The director, from time to time, shall make inspections of dams, reservoirs and mine tailings impoundment structures at state expense for the purpose of determining their safety, but shall require owners to perform at their expense such work as necessary to disclose information sufficient to enable the director to determine conditions of dams, reservoirs, and mine tailings impoundment structures in regard to their safety and to perform at their expense other work necessary to secure maintenance and operation which will safeguard life and property.

[42-1717, added 1969, ch. 280, sec. 8, p. 833; am. 1974, ch. 20, sec. 18, p. 533; am. 1978, ch. 309, sec. 8, p. 791; am. 1987, ch. 225, sec. 1, p. 477; am. 2004, ch. 168, sec. 1, p. 546.]

42-1718. REMEDIAL MEANS FOR PROTECTION OF LIFE AND PROPERTY. The director shall immediately employ any remedial means necessary to protect life and property if either:

(a) The condition of any dam, reservoir or mine tailings impoundment structure is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order relative to maintenance or operation.

(b) Passing or imminent floods threaten the safety of any dam, reservoir or mine tailings impoundment structure.

In applying the remedial means provided for in this act, the department may in emergency do any of the following:

(a) Lower the water level by releasing water from the reservoir or lower mine tailings slurry level by releasing slurry from the mine tailings impoundment structure.

(b) Completely empty the reservoir.

(c) Take such other steps as may be essential to safeguard life and property.

The director shall continue in full charge and control of such dam or reservoir, or both, or mine tailings impoundment structure, or all, and its appurtenances, until they are rendered safe or the emergency occasioning the action has ceased.

If the cost of the emergency remedial action by the director for the protection of life and property exceeds the amount of money appropriated from the general fund specifically for that purpose, the additional costs may be defrayed by the issuance of deficiency warrants as may be authorized by the board of examiners. When so authorized, the state controller shall draw deficiency warrants against the general fund.

The cost and expenses of the remedial means provided in this act, including cost of any work done to render a dam, reservoir or mine tailings impoundment structure or its appurtenances safe, shall be recoverable by the state from the owner. If not paid within sixty (60) days of invoice, action may be brought by the director in the district court of the district wherein the dam, reservoir or mine tailings impoundment structure or any part thereof is situated. The funds recovered shall be returned to the general fund to offset the amount of the deficiency warrant.

No action shall be brought by the state against the owner for pollution which may occur in the event that the director orders emergency dumping or bypassing.

[42-1718, added 1969, ch. 280, sec. 9, p. 833; am. 1974, ch. 20, sec. 19, p. 533; am. 1978, ch. 309, sec. 9, p. 793; am. 1995, ch. 283, sec. 1, p. 944; am. 2003, ch. 32, sec. 23, p. 130.]

42-1719. ISSUANCE OF CERTIFICATES OF APPROVAL -- REVOCATION -- APPEAL. A certificate of approval shall be issued for all dams and mine tailings impoundment structures, new or existing, upon a finding that the dam or reservoir is safe to impound water or the mine tailings impoundment structure is safe to impound mine tailings slurry within the limitations prescribed in the certificate. Upon written request by an owner for a certificate of approval, the director shall within fourteen (14) days inspect or cause to be inspected and issue a certificate if he finds that the dam, reservoir or mine tailings impoundment structure is safe to impound water or tailings slurry within the limitations prescribed in the certificate. Pending the issuance of a certificate of approval, the owner of a new dam, reservoir or mine tailings impoundment structure shall not, through action or inaction, cause the dam or reservoir to impound water or mine tailings impoundment structure to impound mine tailings slurry.

Each certificate of approval issued may contain such terms and conditions as the director may prescribe. The director may revoke any certificate of approval whenever he determines that the dam, reservoir or mine tailings impoundment structure constitutes a danger to life and property. Whenever he deems such action necessary to safeguard life and property, the director may also amend the terms and conditions of any such certificate by issuing a new certificate containing the revised terms and conditions. The owner of a dam, reservoir or mine tailings impoundment structure for which a certificate of approval has been issued shall not, through action or inaction, cause the dam or reservoir to impound water or mine tailings impoundment structure to impound mine tailings slurry after the certificate terminates unless a new certificate is issued for the dam, reservoir or mine tailings impoundment structure. Those inflows that cannot be diverted may still be allowed to enter the structure, but the lowest possible level must

be maintained until safety of the structure is assured. A new certificate shall be issued upon a finding by the director that the dam or reservoir is safe to impound water or mine tailings impoundment structure is safe to impound tailings slurry within the limits prescribed in the certificate.

No action shall be brought by the state against the owner for pollution which may occur in the event that the director orders emergency dumping or bypassing.

With respect to written consent for use of a dam which has been issued and which is in effect prior to the effective date of this act or mine tailings impoundment structure which has been issued and which is in effect prior to the effective date of amendment, the director shall issue a new certificate of approval, which shall supersede the previous written consent for use, or shall contain such terms and conditions as the director may prescribe or shall revoke the existing written consent for use if he finds that the dam or reservoir is not safe to impound water or that the mine tailings impoundment structure is not safe to impound mine tailings slurry.

Before any certificate of approval is revoked, the director shall hold a hearing. Written notice of the time and place of the hearing shall be mailed, at least twenty (20) days prior to the date set for the hearing, to the holder of the certificate. Any interested persons may appear at the hearing and present their views and objections to the proposed action. The hearing shall be conducted in accordance with section 42-1701A(1) and (2), Idaho Code. Any party aggrieved by the final order of the director may seek judicial review thereof pursuant to section 42-1701A(4), Idaho Code.

[42-1719, added 1969, ch. 280, sec. 10, p. 833; am. 1974, ch. 20, sec. 20, p. 533; am. 1978, ch. 309, sec. 10, p. 794; am. 1980, ch. 238, sec. 15, p. 546.]

42-1720. VIOLATIONS OF CHAPTER -- PENALTIES. (1) Every person who violates any of the provisions of this chapter, or of any order of the director or of any rule of the water resource board where a copy of the order or rule has been served upon said person by certified mail as herein provided, and said person fails to comply therewith within the time herein provided, or within ten (10) days of such service if not otherwise provided, shall be guilty of a misdemeanor. In the event of a continuing violation, each day that the violation continues constitutes a separate and distinct offense.

(2) Any person who willfully obstructs, hinders, or prevents the director, the department or its agents or employees from performing the duties imposed by this chapter or who willfully resists the exercise of the control and supervision conferred by this chapter upon the director, the department or its agents or employees is guilty of a misdemeanor.

(3) Any owner or any person acting as a director, officer, agent or employee of an owner, or any contractor or agent or employee of a contractor who engages in the construction, enlargement, repair, alteration, maintenance or removal of any dam, reservoir or mine tailings impoundment structure, who knowingly does work or permits work to be executed on the dam, reservoir or mine tailings impoundment structure without an approval or in violation of or contrary to any approval as provided for in this chapter, or any inspector, agent or employee of the department who has knowledge of such work being done and who fails to immediately notify the director thereof, is guilty of a misdemeanor.

(4) Whenever any party or parties feel themselves aggrieved by the determination of the director in refusing to approve any plan or specification

as mentioned in this chapter, or by any order of the director, such party or parties may seek a hearing before the director in accordance with section 42-1701A(3), Idaho Code, if a hearing has not already been held, and may seek judicial review in accordance with section 42-1701A(4), Idaho Code, of any final order of the director issued following a hearing.

(5) When the director of the department of water resources determines that any person is in substantial violation of any provision of this chapter or any rule, certificate, condition of approval or order issued or promulgated pursuant to this chapter, the director may commence an administrative enforcement action by issuing a written notice of violation in accordance with the provisions of section 42-1701B, Idaho Code.

[42-1720, added 1969, ch. 280, sec. 11, p. 833; am. 1974, ch. 20, sec. 21, p. 533; am. 1978, ch. 309, sec. 11, p. 795; am. 1980, ch. 238, sec. 16, p. 547; am. 1998, ch. 173, sec. 9, p. 610.]

42-1721. INITIAL CONSTRUCTION, LIFT CONSTRUCTION, ENLARGEMENT, OR ALTERATION OF TAILINGS IMPOUNDMENT STRUCTURES -- SUBMISSION OF DUPLICATE PLANS, DRAWINGS AND SPECIFICATIONS. Owners who shall desire to construct, or enlarge, or alter or repair, meaning only such alterations or repairs as may affect the safety of the structure, any mine tailings impoundment structure for the purpose of storing mine tailings slurry when the same is to be more than thirty (30) feet in height shall submit duplicate plans, drawings and specifications of the proposed work to the director, and construction of the new mine tailings impoundment structure, alteration or repair shall not be commenced until the owner has applied for and obtained written approval of the plans, drawings and specifications.

Owners of mine tailings impoundment structures upon which construction, lift construction, enlargement or alteration is under way on July 1, 1978, and for which plans, drawings and specifications would be required if such work had commenced subsequent to July 1, 1978, shall submit plans, drawings and specifications with respect to that portion of the work to be performed subsequent to July 1, 1978, as are required, together with the fee established hereinafter. In the event that the owner fails to submit such plans, drawings and specifications contemplated by this paragraph within sixty (60) days, the director shall give notice to owners to submit plans, drawings and specifications, and failure to submit plans, drawings and specifications within thirty (30) days of the date of mailing the notice shall be punishable as provided in this chapter. Construction, lift construction, enlargement, or alteration which is under way on July 1, 1978 may be stopped upon issuance of an order by the director for good cause shown, as determined by the director. The notice and/or order provided for in this paragraph shall state the good cause for stoppage determined by the director and shall be given by personal service or certified mail and a return receipt signed by the owner or responsible company shall constitute prima facie evidence of service.

Upon receipt of the plans, drawings and specifications, the director shall give consideration thereto and shall approve or disapprove the same within the time provided in this section, and if approved, the director shall affix his approval thereto and return one (1) copy of such plans, drawings and specifications, with his approval, to the party or parties proposing to construct the works.

Plans, drawings and specifications submitted to the director complete with fees shall be approved or disapproved in no more than sixty (60) days and

in no less than fourteen (14) days after receipt. Defective plans, drawings and specifications made in a bona fide attempt to conform to the law and rules and regulations of the water resource board shall not be rejected but notice of defect stating in detail the defect or defects found in the plans, drawings or specifications shall be sent to the owner by certified mail. If within thirty (30) days of the date of mailing the notice the owner does not file amended plans, drawings and specifications, the plans, drawings and specifications shall be rejected and cancelled unless, for good cause shown, the director allows the owner further time.

The construction of all mine tailings impoundment structures under plans, drawings and specifications approved by the director shall be pursued with reasonable diligence to completion, taking into consideration the nature of and purpose for which said construction, lift construction, enlargement or alteration is made.

The plans, drawings and specifications shall include the following information:

- (a) The name and address of the owner.
- (b) The location, type, size and height of the proposed mine tailings impoundment structure and appurtenant works.
- (c) The storage capacity of the impoundment area.
- (d) Such other pertinent information as the director may require consistent with good engineering practice including the following:
 - (1) Data concerning subsoil and foundation conditions and materials entering into construction of the mine tailings impoundment structure.
 - (2) Investigations of, and reports on subsurface conditions involving such matters as exploratory pits, trenches, and adits, drilling, coring, geophysical surveys, tests to determine leakage rates, and physical tests to measure in place the property and behavior of foundation materials at the impoundment structure site.
 - (3) Investigation of and reports on the geology of the impoundment structure site and its vicinity, possible geological hazards, availability and quality of construction materials, and other pertinent factors.

The plans, drawings and specifications shall be of such character and size setting forth such pertinent details and dimensions and in such form as the director requires consistent with good engineering practice. Plans, drawings and specifications which are submitted to the department shall be prepared by or under the direction of a professional engineer who is entitled to practice the profession of engineering pursuant to chapter 12, title 54, Idaho Code.

Where said mine tailings impoundment structure is, in the opinion of the director, not of sufficient importance to have the provisions of the section apply to such structure, then the director shall have power, upon written application, to suspend the provisions of this section in regard to such structure.

[42-1721, added 1978, ch. 309, sec. 12, p. 796.]

42-1730. STATEMENT OF PURPOSE. The legislature finds and declares that:

- (1) The water resources and waterways of Idaho constitute a valuable renewable resource;
- (2) The welfare of the people of Idaho is dependent upon conservation, development and optimum use of our water resources and waterways;

(3) State regulation of development and use of our water resources and waterways is necessary to ensure water is available to meet the present and future needs of the people of Idaho;

(4) The development of Idaho's water resources for hydropower, irrigation, domestic, commercial, municipal, industrial and other uses in a manner that considers competing uses and values provides important benefits to the people of Idaho;

(5) Comprehensive planning is necessary to minimize conflicts between competing uses and to ensure optimal protection of all beneficial uses of water;

(6) A single state agency should formulate a comprehensive state water plan;

(7) Selected rivers possessing outstanding fish and wildlife, recreational, aesthetic, historic, cultural, natural or geologic values should be protected for the public benefit and enjoyment;

(8) Section 401 of the federal clean water act gives the state certification authority to regulate activities licensed or permitted by federal agencies to insure the protection of the quality of state water; and

(9) The comprehensive state water plan required by this chapter shall not alter any existing responsibilities, jurisdiction or planning functions of state agencies established by state or federal law.

[42-1730, added 1988, ch. 370, sec. 3, p. 1091.]

42-1731. DEFINITIONS. For the purpose of this chapter:

(1) "Alteration" means any activity using mechanized equipment that moves or overturns gravel or earth.

(2) "Board" means the Idaho water resource board.

(3) "Comprehensive state water plan" means the plan adopted by the board pursuant to section 42-1734A, Idaho Code, or a component of such plan developed for a particular water resource, waterway or waterways and approved by the legislature.

(4) "Dredge or placer mining" means any dredge or other placer mining operation to recover minerals with the use of a dredge boat or sluice washing plant whether fed by bucket line as a part of such dredge or by a separate dragline or any other method including, but not limited to, suction dredges which are capable of moving more than two (2) cubic yards per hour of earth material.

(5) "Hydropower project" means any development which uses a flow of water as a source of electrical or mechanical power, or which regulates the flow of water for the purpose of generating electrical or mechanical power. A hydropower project development includes all powerhouses, dams, water conduits, transmission lines, water impoundments, roads, and other appurtenant works and structures.

(6) "Interim protected river" means a waterway designated pursuant to section 42-1734D or 42-1734H, Idaho Code, as protected for up to two (2) years while a component of the comprehensive state water plan is prepared for that waterway.

(7) "Natural river" means a waterway which possesses outstanding fish and wildlife, recreation, geologic or aesthetic values, which are free of substantial existing man-made impoundments, dams or other structures, and of which the riparian areas are largely undeveloped, although accessible in places by trails and roads.

(8) "Protected river" means a waterway protected in the comprehensive state water plan by designation as either a natural river or a recreational river.

(9) "Recreational river" means a waterway which possesses outstanding fish and wildlife, recreation, geologic or aesthetic values, and which might include some man-made development within the waterway or within the riparian area of the waterway.

(10) "Riparian area" means that area within one hundred (100) feet of the mean highwater mark of a waterway.

(11) "State agency" means any board, commission, department or executive agency of the state of Idaho.

(12) "Stream bed" means a natural water course of perceptible extent with definite bed and banks, which confines and conducts the water of a waterway which lies below and between the ordinary high water mark on either side of that waterway.

(13) "Waterway" means a river, stream, creek, lake or spring, or a portion thereof, and shall not include any tributary thereof.

[42-1731, added 1988, ch. 370, sec. 3, p. 1092.]

42-1732. IDAHO WATER RESOURCE BOARD. Pursuant to the provisions of article 15, section 7, of the constitution of the state of Idaho, there is hereby established as the constitutional water agency within the department of water resources the Idaho water resource board which shall consist of eight (8) appointed members. The eight (8) appointed members shall be qualified electors of the state, no more than four (4) of whom shall be members of the same political party. Appointment of board members shall be made solely upon consideration of their knowledge, interest and active participation in the field of reclamation, water use or conservation and no member shall be appointed a member of the board unless he shall be well informed upon, interested in, and engaged actively in the field of reclamation, water use or conservation of water. Four (4) of these members shall be appointed at large and no more than three (3) of the eight (8) members shall be residents of a single district. To insure representation of water users of all geographic locations of the state, one (1) member shall be appointed from each of the following districts:

District No. 1 which shall consist of the counties of Boundary, Bonner, Kootenai, Shoshone, Benewah, Latah, Clearwater, Nez Perce, Lewis and Idaho;

District No. 2 which shall consist of the counties of Adams, Valley, Washington, Payette, Gem, Boise, Canyon, Ada, Elmore and Owyhee;

District No. 3 which shall consist of the counties of Camas, Gooding, Jerome, Twin Falls, Cassia, Blaine, Lincoln, Minidoka, Lemhi, Custer and Butte;

District No. 4 which shall consist of the counties of Clark, Fremont, Jefferson, Madison, Teton, Bingham, Bonneville, Power, Bannock, Caribou, Oneida, Franklin and Bear Lake.

All appointments shall be made by the governor with the advice and consent of the senate. As soon as practicable after passage of this act, the governor shall appoint all eight (8) members; four (4) members shall be appointed to terms which will expire on January 1, 1967, four (4) members shall be appointed to terms which will expire on January 1, 1969, and thereafter all appointments shall be to four (4) year terms. Any vacancy caused by death, removal, disqualification, or resignation, shall be filled by the

governor for the unexpired term caused by the vacancy. The appointed members shall be compensated as provided by section 59-509(h), Idaho Code.

[42-1732, added 1965, ch. 320, sec. 2, p. 901; am. 1974, ch. 20, sec. 22, p. 533; am. 1980, ch. 247, sec. 42, p. 612.]

42-1733. ORGANIZATION. The business of the board shall be conducted as follows:

(a) The first meeting of the board shall be held in the city of Boise within thirty (30) days following its appointment and thereafter the board shall hold no less than four (4) regular meetings annually on dates and at places set by the board. The board shall maintain its principal office in Ada county. Special meetings of the board may be held by call of the chairman, four (4) of the members of the board, or the governor. A majority of board members at any meeting shall constitute a quorum for the transaction of any business. No notice shall be required for regular, special or adjourned meetings, providing the time and place of the meeting is fixed at a meeting at which all of the board members are in attendance. Otherwise, five (5) days written or telegraphic notice setting out the time, place and purpose of the meeting shall be required. Any meeting of the board at which all of the members are present shall be as valid as if held pursuant to notice. Members may waive notice in writing either before or at the time of the meeting.

(b) All meetings at which official action is taken by the board shall be open to the public; the board may hold executive sessions at which no official action is taken.

(c) At its first meeting the board shall elect one (1) of its members chairman and one (1) of its members vice chairman. Such officers shall hold their respective offices for a period of two (2) years and until their successors are elected and qualified. Should a vacancy occur in either office, the board shall elect a member to fill such vacancy for the remainder of the term.

(d) The chairman shall preside at all meetings of the board, perform the normal duties of that office and such other duties as may be required of him by the board.

(e) The vice chairman shall possess all of the powers and perform all of the duties of the chairman in the event of the death, absence, disability or refusal to act on the part of the chairman, and such authority shall extend until a new chairman has been elected and qualified. He shall also perform such other duties as may be required of him by the board.

(f) The board shall select a secretary who may be a member of the board. The secretary shall be responsible for full and accurate minutes of all meetings of the board, a record of its proceedings, and every ruling, order and decision made by it. He shall also perform such other duties as may be required of him.

(g) The board shall adopt a seal having upon it the words, "Idaho water resource board," which shall be placed in the care and custody of the director.

(h) Each member of the board shall, before entering upon the discharge of his official duties, file with the secretary of state the statutory oath of office to which, and as a part thereof, shall be added a declaration of the political party to which said board member belongs.

[42-1733, added 1965, ch. 320, sec. 3, p. 901; am. 2001, ch. 183, sec. 17, p. 627.]

42-1734. POWERS AND DUTIES. The board shall, subject to the provisions of chapter 52, title 67, Idaho Code, have the following powers and duties:

(1) To have and exercise all of the rights, powers, duties and privileges vested by article XV, section 7, of the constitution of this state in the water resource agency, and the water resource board, herein created, is hereby constituted the water resource agency;

(2) To institute judicial proceedings to have water rights established by court decree on any stream, lake or underground water basin; in such proceedings court costs of the action, including the survey and determination of water uses by the director of the department of water resources, shall be borne by the state;

(3) To appear, when requested by the governor, on behalf of and represent the state in matters related to its duties in any proceeding, negotiation, or hearing involving the federal government or other state; provided, however, that compact commissions now established by law shall continue to act but in so doing shall report to it;

(4) To accept, receive, initiate, investigate, consider and promote such water projects as it deems to be in the public interest;

(5) To generate and wholesale hydroelectric power at the site of production if such power production is connected with another purpose for such project;

(6) To file applications and obtain permits in the name of the board, to appropriate, store, or use the unappropriated waters of any body, stream, or other surface or underground source of water for specific water projects. Such filings and appropriations by the board, or any water rights owned or claimed by the board, shall be made in the same manner and subject to all of the state laws relating to appropriation of water, with the exception that the board will not be required to pay any fees required by the laws of this state for its appropriations. The filings and appropriations by the board shall be subject to contest or legal action the same as any other filing and appropriation, and such filings and appropriations shall not have priority over or affect existing prior water rights of any kind or nature; provided that the board shall have the right to file for water rights with appropriate officials of other states as trustee for project users, and to do all things necessary in connection therewith;

(7) To finance said projects with revenue bonds or such moneys as may be available;

(8) To acquire, purchase, lease, or exchange land, rights, water rights, easements, franchises and other property deemed necessary or proper for the construction, operation and maintenance of water projects;

(9) To exercise, in accordance with the provisions of title 7, chapter 7, Idaho Code, the right of eminent domain to acquire property necessary for the construction of projects, both land and water;

(10) To cooperate in all water studies, planning, research, or activities with any state or local agency in this state, or any other state or any federal agency and to enter into contracts with federal, state and local governmental agencies to effect this purpose;

(11) To present to the governor for presentation to the legislature not later than the 30th of November prior to the convening of a regular legislative session the final report containing the complete plans, costs and feasibility estimates for any water project which the board recommends that the state construct in accordance with the comprehensive state water plan; and to construct any water project specifically authorized by the legislature;

(12) To enter into contracts with political subdivisions, municipal entities, individuals and others for the rehabilitation and repair of existing irrigation projects and irrigation facilities, the sale and/or lease of water, use of water, water storage, electric power, or other service, to turn over projects to water users after pay-out and to lease facilities, sell, lease or dispose of surplus facilities subject to the provisions of applicable law;

(13) To enter into contracts to effect the purposes of this chapter;

(14) To sue and be sued;

(15) To study and examine pollution of rivers, streams, lakes and ground water, and to advise, cooperate and counsel with the state board of environmental quality in a manner designed to avoid inhibition of economic development and at the same time insure the right of the people to comfortably enjoy our water resources and accomplish the establishment of water quality criteria;

(16) To call upon any other state agency for cooperation, assistance or use of information available to such agency; provided, however, if such agency is required to make substantial expenditures in responding to such request, appropriate arrangements for compensation may be accomplished;

(17) To issue revenue bonds for the rehabilitation and repair of existing irrigation projects and irrigation facilities, and for water projects, pledge any revenues available to the board to secure said bonds, exclusive of any revenues derived from legislative appropriations, provided that any amounts received from loan repayments regardless of the source of funds for the loan may be pledged, and pool revenues from one (1) or more projects constructed, financed or operated by the board, or existing irrigation project or facilities rehabilitated or repaired by the board;

(18) To formulate and recommend, prior to each session of the legislature, proposed legislation that may be necessary to assist it in effecting a proper plan for conservation, development and utilization of water resources and waterways and to report to each session of the legislature on the public business entrusted to its care and the financial affairs of the board. In the period between legislative sessions, the board shall deposit with the legislative council statements describing all actions taken and projects undertaken by it;

(19) To issue procedural and operative rules as may be necessary for the conduct of its business;

(20) To appoint advisory boards when deemed desirable to aid in the execution of its powers;

(21) To take such other action as may be necessary to carry out its duties and powers under this chapter and the constitution of the state of Idaho;

(22) To loan without prior legislative approval, the proceeds of the sale of revenue bonds to the local water project sponsor or sponsors; to enter into lease, sale or loan agreement; and to purchase all or a portion of, or participate in, loans, originated by private lending institutions.

[42-1734, added 1965, ch. 320, sec. 4, p. 901; am. 1974, ch. 20, sec. 23, p. 533; am. 1977, ch. 172, sec. 1, p. 441; am. 1981, ch. 90, sec. 1, p. 125; am. 1988, ch. 370, sec. 4, p. 1093; am. 2001, ch. 103, sec. 82, p. 322; am. 2003, ch. 80, sec. 1, p. 254.]

42-1734A. COMPREHENSIVE STATE WATER PLAN. (1) The board shall, subject to legislative approval, progressively formulate, adopt and implement a

comprehensive state water plan for conservation, development, management and optimum use of all unappropriated water resources and waterways of this state in the public interest. The comprehensive state water plan shall consist of: Part A -- statewide policies, goals and objectives; and Part B -- component water plans for individual waterways, river basins, drainage areas, river reaches, ground water aquifers or other geographic designations. As part of Part B of the comprehensive state water plan, the board may designate selected waterways as protected rivers as provided in this chapter. The comprehensive state water plan shall be based upon studies and public hearings in affected areas at which all interested parties shall be given the opportunity to appear, or to present written testimony in response to published proposals for such policy programs and proposed designations. A minimum of sixty (60) days shall be allowed between publication of a proposal and the date on which no further testimony on the proposal will be accepted. All comments in writing shall be preserved as a part of the record of the board. In adopting a comprehensive state water plan the board shall be guided by these criteria:

- (a) Existing rights, established duties, and the relative priorities of water established in article XV, section 3, of the constitution of the state of Idaho, shall be protected and preserved;
- (b) Optimum economic development in the interest of and for the benefit of the state as a whole shall be achieved by integration and coordination of the use of water and the augmentation of existing supplies and by protection of designated waterways for all beneficial purposes;
- (c) Adequate and safe water supplies for human consumption and maximum supplies for other beneficial uses shall be preserved and protected;
- (d) Subject to prior existing water rights for the beneficial uses now or hereafter prescribed by law, minimum stream flow for aquatic life, recreation and aesthetics and the minimization of pollution and the protection and preservation of waterways in the manner hereafter provided shall be fostered and encouraged and consideration shall be given to the development and protection of water recreation facilities;
- (e) Watershed conservation practices consistent with sound engineering and economic principles shall be encouraged.

(2) The board may develop a comprehensive state water plan in stages based upon waterways, river basins, drainage areas, river reaches, ground-water aquifers, or other geographic considerations. The component of the comprehensive state water plan prepared for particular water resources and waterways shall contain, among other things, the following:

- (a) A description of the water resources and waterway or waterways that are the subject of the plan, including pertinent maps detailing the geographic area of the plan;
- (b) A description of the significant resources of the water resources and waterway or waterways;
- (c) A description of the various existing and planned uses for these resources including currently undeveloped areas of the waterway and future plans for those areas, with a discussion of the advantages and disadvantages associated with each planned use; and
- (d) A discussion of goals, objectives, and recommendations for improving, developing, or conserving the water resources and waterway or waterways in relation to these resources, including an examination of how different uses will promote the overall public interest, a statement as to the goals the plan expects to achieve, and an analysis of how

any specific recommendations further those goals. A description of the methodology used in developing the plan shall be included.

(3) The description of the resources and uses in subsections (2) (b) and (2) (c) of this section shall contain, among other things:

- (a) navigation;
- (b) power development;
- (c) energy conservation;
- (d) fish and wildlife;
- (e) recreational opportunities;
- (f) irrigation;
- (g) flood control;
- (h) water supply;
- (i) timber;
- (j) mining;
- (k) livestock watering;
- (l) scenic values;
- (m) natural or cultural features;
- (n) domestic, municipal, commercial and industrial uses; and
- (o) other aspects of environmental quality and economic development.

(4) The comprehensive state water plan may designate protected rivers. Designations shall be based upon a determination by the board that the value of preserving a waterway for particular uses outweighs that of developing the waterway for other beneficial uses and shall specify whether a protected river is designated as a natural or recreational river. The plan may also describe those water resources and waterways which are not designated as protected rivers.

(5) In designating a natural river, the board shall prohibit the following activities:

- (a) construction or expansion of dams or impoundments;
- (b) construction of hydropower projects;
- (c) construction of water diversion works;
- (d) dredge or placer mining;
- (e) alterations of the stream bed; and
- (f) mineral or sand and gravel extraction within the stream bed.

(6) In designating a recreational river, the board shall determine which of the activities listed in subsection (5) of this section shall be prohibited and may specify the terms and conditions under which activities that are not prohibited may go forward.

(7) Any prohibition or terms and conditions imposed pursuant to subsections (5) and (6) of this section shall remain in effect until the legislature acts upon the recommendation of the board as provided in section 42-1734B, Idaho Code, or until the legislature revokes its earlier approval of a protected river by law.

[42-1734A, added 1988, ch. 370, sec. 5, p. 1096; am. 1998, ch. 63, sec. 1, p. 221.]

42-1734B. BOARD PROCEDURES FOR ADOPTING A COMPREHENSIVE STATE WATER PLAN. (1) Prior to the adoption of the comprehensive state water plan or any component of the comprehensive plan, the board shall conduct hearings in the manner provided in section 42-1734A, Idaho Code.

(2) In the preparation, adoption, and implementation of the comprehensive state water plan, the board shall encourage the cooperation, participation, and assistance of state agencies. The board also shall solicit eco-

conomic, energy, environmental, and other technical studies and recommendations from state agencies with particular expertise. All agencies of the state of Idaho shall cooperate with the board by providing requested existing information and studies pertaining in any manner to any matters which are the subject of this act. The board shall have discretion to balance all factors relevant to the formulation, adoption and implementation of the comprehensive state water plan and implementation and the designation of protected rivers.

(3) Any state agency may petition the board to amend the comprehensive state water plan. The board shall review any petition filed pursuant to this section within six (6) months after it is filed and shall either commence action to amend the comprehensive plan or set forth its reasons for denying the request in writing.

(4) All state agencies shall exercise their duties in a manner consistent with the comprehensive state water plan. These duties include but are not limited to the issuance of permits, licenses, and certifications; provided, however, that nothing in this chapter shall be construed to affect the authority of any state agency with respect to activities not prohibited by the comprehensive state water plan. The designation of a waterway as a natural or recreation river shall not preclude the department of health and welfare from establishing water quality standards for such waterway.

(5) When a comprehensive state water plan is adopted, copies thereof shall be filed in the office of the governor and director of the department of water resources, and published and distributed generally.

(6) The comprehensive state water plan and any component thereof developed for a particular waterway or waterways is subject to review and amendment by the legislature of the state of Idaho by law at the regular session immediately following the board's adoption of the comprehensive state water plan or component thereof.

(7) The board shall submit all subsequent changes to the legislature as provided in section 7, article XV, of the constitution of the state of Idaho. The board shall also use best efforts to provide notice of all subsequent changes to each member of the legislature on or before the first day of the regular legislative session following the change.

(8) The board shall review and reevaluate Part A of the comprehensive state water plan, or any one (1) or more of the component water plans comprising Part B of the comprehensive state water plan, upon the adoption of a concurrent resolution of the legislature directing the review or requesting a specific amendment to the plan. The board also may undertake the review in response to a petition for amendment filed pursuant to subsection (3) of this section, or upon the board's own initiative, as determined necessary by the board. Amendments to Part A or Part B of the comprehensive state water plan shall be adopted in the same manner as the original plan.

(9) A protected river designated by the board shall not become a final part of the comprehensive state water plan until approved by law. If the legislature does not approve a protected river by law at the regular session immediately following the board's designation of such protected river, then the designation of such protected river shall terminate and any prohibition or terms and conditions imposed on such protected river pursuant to subsection (5) or (6) of section 42-1734A, Idaho Code, shall be terminated ten (10) days following the end of the session. The failure to approve a protected river shall not operate to invalidate a comprehensive plan or component thereof. Nothing in this subsection shall prevent the legislature,

however, from approving such protected river and reinstating or modifying such prohibitions or terms and conditions in a subsequent session.

(10) After adoption of a comprehensive plan or component thereof, the board shall administer the implementation of the plan.

[42-1734B, added 1988, ch. 370, sec. 5, p. 1098; am. 1998, ch. 63, sec. 2, p. 223; am. 2017, ch. 131, sec. 1, p. 308.]

42-1734C. STATUS OF COMPREHENSIVE STATE WATER PLAN BEFORE FEDERAL AGENCIES. The comprehensive state water plan required by this chapter shall be submitted to the federal energy regulatory commission, and the pacific northwest electric power and conservation planning council, and any other federal agencies as the state water plan for the conservation, development, management and optimum use of the state of Idaho's water resource.

[42-1734C, added 1988, ch. 370, sec. 5, p. 1099.]

42-1734D. DESIGNATION OF INTERIM PROTECTED RIVERS. (1) Prior to the adoption of a comprehensive plan for a waterway, the board may designate a waterway as an interim protected river. Any state agency may petition the board to designate a waterway as an interim protected river. The board shall promulgate procedural rules for designation of interim protected rivers. The rules shall provide adequate notice to interested parties of any petitions filed or actions contemplated pursuant to this act.

(2) The board shall determine whether the nominated waterway merits designation as an interim protected river. The board shall accept or reject a nomination within six (6) months after it is filed. There shall be no review of any board decision rejecting or accepting a nomination for an interim protected river. Designation of a waterway as an interim protected river shall be based upon a determination that:

(a) It is probable that the waterway would be designated a protected river in the comprehensive state water plan; and

(b) Interim protected river status is necessary to protect the values that would support such waterway's designation as a protected river in a comprehensive state water plan.

(3) In designating a waterway for interim protected river status, the board shall indicate which of the activities listed in subsection 42-1734A(5), Idaho Code, shall be prohibited.

(4) Interim protected river status shall remain in effect until the earliest of:

(a) The adoption of a comprehensive state water plan for the waterway designated as an interim protected river;

(b) Two (2) years following the designation of an interim protected river unless extended by law;

(c) The revocation of a waterway's interim protected river status by law.

(5) Any person may petition the board for a determination that a particular proposed action or project will not significantly impair the values supporting a waterway's designation as an interim protected river. The board shall consider among other things environmental impact statements, technical studies and any other relevant comments or recommendations prepared by the petitioner for use before other state or federal agencies. The board may also consider any other relevant information. If the board determines that the proposed action or project will not significantly impair the values supporting a waterway's designation as a protected river, then this

section shall not apply to such action or project, except that the board, after consultation with relevant state agencies, may impose appropriate conditions on such action or project. An aggrieved party may seek judicial review of the board's decision pursuant to chapter 52, title 67, Idaho Code.

(6) If a waterway is designated as an interim protected river, then the board shall proceed to prepare a comprehensive state water plan for the waterway. The board shall in preparing the state comprehensive water plan for the waterway consider, after review of all relevant factors contained in section 42-1734A, Idaho Code, whether the designation should continue or whether modification of the designation is warranted.

(7) If the designation of a waterway as an interim protected river is either revoked by law, or terminated as provided in this section, then the waterway shall not be eligible for designation as an interim protected river for a period of two (2) years following the revocation or termination of its interim protected river status.

[42-1734D, added 1988, ch. 370, sec. 5, p. 1099; am. 1993, ch. 216, sec. 37, p. 620.]

42-1734E. REMEDIES. (1) The attorney general, at the request of the board, shall commence a civil action to enjoin any person violating any provision of this chapter and to recover actual damages in that amount required to restore a protected river and its riparian area to a condition reasonably comparable to that existing prior to the violation.

(2) It shall be the duty of the attorney general to institute and prosecute all enforcement actions provided for in this chapter.

[42-1734E, added 1988, ch. 370, sec. 5, p. 1100.]

42-1734F. RIGHTS NOT AFFECTED. (1) No provision of this chapter, or any rules or regulations promulgated pursuant to this chapter, shall in any way limit, restrict, or conflict with approved applications for the appropriation of water or with vested property rights existing on the date a waterway is designated for protected river status or interim protected river status. For the purpose of this chapter, nonvested rights shall include, but not be limited to, pending applications for state mining permits or mineral leases, and pending applications for the appropriation of water.

(2) No provision of this chapter, or any rules or regulations promulgated pursuant to this chapter shall bar a water user or his agent from cleaning, maintaining or replacing a water diversion structure existing on or before the date a river is designated as protected. A water user or his agent may remove any obstructions from the stream channel, if such obstruction interferes with the delivery of, or use of, water under any existing water right. The provisions of this section do not relieve a person from complying with any other applicable laws.

(3) Nothing in this act shall prevent or restrict the relicensing of existing hydropower projects that have been previously licensed by the federal energy regulatory commission and which have generated electricity. Any designation of waterways as interim protected rivers or protected rivers shall not affect the operation or relicensing, including but not limited to the expansion of capacity which does not enlarge existing boundaries or project impoundments of any hydropower project existing and that has been previously licensed by the federal energy regulatory commission and which have generated electricity as of the date of the designation.

[42-1734F, added 1988, ch. 370, sec. 5, p. 1100.]

42-1734G. WATER RIGHTS. No provisions of this chapter, or any rules or regulations promulgated pursuant to this chapter, shall be construed to establish a water right. Any water rights necessary to fulfill the purposes of this chapter shall be obtained pursuant to the provision of chapter 2 or chapter 15, title 42, Idaho Code.

[42-1734G, added 1988, ch. 370, sec. 5, p. 1101.]

42-1734H. DESIGNATION OF PARTICULAR RIVERS AS INTERIM PROTECTED RIVERS. (1) The board shall designate the following waterways as interim protected rivers pursuant to section 42-1734D, Idaho Code:

(a) Priest River, from the Canadian Border to the confluence of Priest Lake;

(b) South Fork of the Boise River, from Anderson Ranch Dam to Neal Bridge;

(c) Snake River, from Section 5, Township 11 South, Range 20 East, B.M. to King Hill;

(d) The following waterways within the Payette River Basin:

1. North Fork of the Payette River, from Cabarton Bridge to Banks;

2. South Fork of the Payette River, from the Sawtooth Wilderness Boundary to Banks;

3. Main Payette River, from Banks to Black Canyon Dam; and

(e) Henry's Fork of the Snake River from its point of origin at Henry's Lake to the point of its confluence with the backwaters of Ashton Reservoir.

(2) The board shall determine which of the activities listed in subsection (5) of section 42-1734A, Idaho Code, shall be prohibited.

[42-1734H, added 1988, ch. 370, sec. 5, p. 1101.]

42-1734I. DESIGNATION UNDER FEDERAL LAW. Designation of a waterway as a protected river pursuant to this chapter shall not be a basis for seeking inclusion of such waterway in the national wild and scenic rivers system pursuant to 16, United States Code section 1273(a) (ii) unless the act designating the waterway as a protected river specifically requests the governor to seek inclusion of the waterway in the national wild and scenic rivers system.

[42-1734I, added 1988, ch. 370, sec. 5, p. 1101.]

42-1735. APPOINTMENT OF COUNSEL -- HEARING OFFICERS. The board may appoint legal counsel or may retain private counsel independent of the counsel appointed by the director of the department.

The board may utilize hearing officers during any hearing processes which are assigned to the board by law.

[42-1735, added 1965, ch. 320, sec. 5, p. 901; am. 1974, ch. 20, sec. 24, p. 533.]

42-1736B. WATER RESOURCE POLICY ACTIONS. (1) All future filings, permits and decrees on the unappropriated waters of this state shall be determined with respect to the effect such filings, permits and decrees will have on the minimum daily flow of the affected stream or river, or on the maintenance level of the affected lake or reservoir.

(2) All water plans and development projects proposed by the water resource board shall be subject to review and approval of the legislature, except that those projects funded from the water resource board revolving de-

velopment account of less than five hundred thousand dollars (\$500,000) need not have prior legislative approval.

(3) In further recognition of the authority granted by law to the water resource board by the provisions of section 42-1734, Idaho Code, and in further recognition of the right of the legislature to review and approve the actions of the water resource board, the water resource board is specifically directed:

- (a) To inventory all of the unappropriated waters of this state;
 - (b) To recommend to the legislature appropriations in trust for the people of Idaho for specific purposes;
 - (c) To develop a list of specific proposals for storage of any unappropriated waters of this state, which proposals shall show location, costs, and proposed uses and benefits;
 - (d) To take all necessary actions to assure that Idaho citizens shall not be denied the right to divert and appropriate to beneficial uses, under the provisions of article XV of the constitution of the state of Idaho, the unappropriated waters of this state.
- [42-1736B, added 1978, ch. 345, sec. 2, p. 886.]

42-1737. BOARD APPROVAL -- CRITERIA -- HEARINGS -- APPEALS -- DEFINING A MISDEMEANOR -- INJUNCTIONS. (a) All project proposals involving the impoundment of water in a reservoir with an active storage capacity in excess of ten thousand (10,000) acre-feet, or the diversion of natural flow water appropriated pursuant to section 42-234, Idaho Code, for a managed recharge project in excess of ten thousand (10,000) acre-feet on an average annual basis, shall be submitted to the board for its approval or disapproval. No construction shall be commenced on any such project nor shall any diversion be permitted prior to receipt of board approval as herein provided and the board may institute injunctive proceedings to halt such construction or diversion. In the event a project is disapproved, this fact shall be certified by the board to the director of the department and such certification shall constitute the petition for cancelation of permit required by section 42-302, Idaho Code, and, pursuant to such certification, the procedure for cancelation of permit issued for such project shall be carried forward by said director.

(b) In determining whether a project proposal shall be approved, or disapproved, the board shall be guided by the following criteria:

- 1. Conserving the highest use of the water for all purposes.
- 2. The maximum economic development of the waters involved.
- 3. The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.
- 4. That sufficient water is available for appropriation for beneficial use.
- 5. The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.
- 6. That all vested and inchoate rights to the waters of this state or to the use thereof have been protected by the issuance of a permit for the project by the director of the department.
- 7. The state water plan and water policy formulated under other laws of this state.

(c) The board shall by regulation, establish procedures for notice and hearing on those project proposals which must be submitted to the board and may authorize hearings by hearing officers. The board or its hearing of-

ficer shall have power to administer oaths and to require the attendance of such witnesses and the production of such books, records and papers as it may desire at any hearing and for that purpose the board may issue a subpoena for any witnesses or a subpoena duces tecum to compel the production of any books, records or papers which shall be served and returned in the same manner as a subpoena in a civil case. In case of any disobedience or neglect to obey a subpoena or subpoena duces tecum it shall be the duty of the district court in any county of this state in which such disobedience, neglect or refusal occurs, or any judge thereof, on application by the board, to compel obedience by proceedings for contempt as in the case of a subpoena issued by a regularly constituted court. The sponsor of a project who appears before the board shall have similar powers and shall have the right to be represented by counsel. If the sponsor does not appear at the appointed time, and his absence is without sufficient cause, the board shall have the right to proceed in his absence or may consider absence to constitute an admission of facts contrary to the position of the sponsor. The board shall make findings of fact and conclusions of law leading to its approval or disapproval.

(d) Any sponsor of a project which has been disapproved shall have the right to have the proceedings of the board reviewed by the district court in the county of his residence. With the exception that judicial review may be had by the district court of the county of the residence of the sponsor, such judicial review shall be accomplished in accordance with the provisions of chapter 52, title 67, Idaho Code.

[42-1737, added 1965, ch. 320, sec. 7, p. 901; am. 1969, ch. 469, sec. 3, p. 1346; am. 1974, ch. 20, sec. 26, p. 533; am. 1980, ch. 238, sec. 17, p. 548; am. 1993, ch. 216, sec. 38, p. 621; am. 2009, ch. 240, sec. 1, p. 740.]

42-1738. VESTED WATER RIGHTS PROTECTED -- POLICY OF PROJECT OPERATION AFTER PAY-OUT DEFINED. The board shall have no power or authority to do, and shall be and is prohibited from doing, any thing or act which would modify, set aside or alter any existing right or rights to the use of water or the priority of such use as established under existing laws except where the board acquires the consent of the owner or exercises the right of eminent domain as herein provided. It is the policy of the legislature to favor those projects with contractual agreements which provide that, upon completion of revenue bond pay-out, the project will revert to the ownership and management of that group or entity, public or private, which has paid for the project.

[42-1738, added 1965, ch. 320, sec. 8, p. 901.]

42-1739. BOND AUTHORIZATION. The Idaho water resource board is authorized, for the purpose of carrying out the lawful powers granted it by the laws of this state, to contract indebtedness and issue revenue bonds evidencing such indebtedness in conformity with this chapter.

[42-1739, added 1965, ch. 319, sec. 1, p. 898.]

42-1740. PURPOSES. All revenue bonds authorized under the terms of this act may be issued and sold from time to time and in such amounts as are deemed necessary to provide sufficient funds for carrying out all its powers and, without limiting the generality thereof, shall include the following: acquisition of water rights, rehabilitation and repair of existing irrigation projects and irrigation facilities, and construction, maintenance, repair and operation of water projects, engineering and other costs for investi-

gation and promotion of water projects, fiscal and legal expenses, cost of issuance of bonds including printing and advertising expenses, the establishment of bond reserves, and payment of interest on bonds.

[42-1740, added 1965, ch. 319, sec. 2, p. 898; am. 1981, ch. 90, sec. 2, p. 128; am. 2005, ch. 362, sec. 3, p. 1149.]

42-1741. FORM. Revenue bonds shall bear such date or dates, mature at such time or times, bear interest at a rate or rates, be payable at such place or places, be in such form either coupon or registered or both, carry such registration privileges and be subject to such terms of redemption as the Idaho water resource board shall by resolution determine.

[42-1741, added 1965, ch. 319, sec. 3, p. 898; am. 1970, ch. 133, sec. 5, p. 309.]

42-1742. SPECIAL FUNDS. Bonds issued under the provisions of this act shall be payable solely out of revenues of the Idaho water resource board. Such bonds shall be authorized by resolution, which resolution shall create a special fund or funds into which the Idaho water resource board shall obligate and bind the board to set aside and pay any part or parts of, or all of, or a fixed proportion of, or a fixed amount of the available revenue of the board sufficient to pay the principal of and interest on such bonds as the same shall become due and, if deemed necessary, to maintain adequate reserves therefor. No appropriated moneys shall be paid into such special fund or funds provided that any loan repayments to the Idaho water resource board, regardless of the source of funds for the loan, may be deposited to such fund or funds. Such fund or funds shall be drawn upon for the sole purpose of paying the principal of and interest on bonds issued pursuant to this act.

The bonds shall be negotiable instruments within the provisions and intent of the negotiable instrument laws of this state even though they shall be payable solely from such special fund or funds. The bonds and any coupons attached thereto shall state upon their face that they are payable solely from such special fund or funds. If the board fails to set aside and pay into such fund or funds the payments provided for in such resolution, the holder of any such bonds may bring suit to compel compliance with the provisions of the resolution.

[42-1742, added 1965, ch. 319, sec. 4, p. 898; am. 2003, ch. 80, sec. 2, p. 256.]

42-1743. COVENANTS. The board may provide such covenants as it may deem necessary to secure and guarantee the payment of the principal of and interest on such bonds, including but not limited to covenants to create reserve accounts and to authorize the deposit of certain moneys therein for the purpose of securing and guaranteeing the payment of such principal and interest, to appoint a state or national bank or trust company as trustee for the bondholders to hold, invest and disburse moneys set aside and pledged to pay and guarantee the payment of such bonds and/or as a trustee for safeguarding the disbursing of the proceeds of the sale of such bonds, to fix such powers and duties of such trustee or trustees as may be found necessary to carry out the purpose of this act, and to make any and all other covenants not inconsistent with the provisions of this act which in the judgment of the board will increase the marketability of such bonds. The board may also provide that revenue bonds payable out of the same source or sources may be later issued on a parity with any revenue bonds being issued and sold. The provisions of

this act and any resolution or resolutions providing for the authorization, issuance and sale of such bonds shall constitute a contract with the holders of such bonds and the provisions thereof shall be enforceable by any owner or holder of such bonds by any appropriate suit, action or proceeding in any court of competent jurisdiction.

[42-1743, added 1965, ch. 319, sec. 5, p. 898.]

42-1744. ISSUANCE. Such bonds shall be signed on behalf of the board by the chairman of the board and shall be attested by the secretary of the board, one of which signatures may be a facsimile signature, and shall have the seal or facsimile seal of the board impressed or imprinted thereon. All interest coupons attached thereto may be signed with the facsimile signatures of such officials. Such bonds shall be sold in the manner and at such price as the board shall deem advisable, either at public or private sale.

[42-1744, added 1965, ch. 319, sec. 6, p. 898.]

42-1745. WARRANTS. The board may also issue revenue warrants for the same purposes for which they may issue revenue bonds and the provisions of this act relating to the terms, conditions, covenants, issuance and sale of revenue bonds shall be applicable to such revenue warrants.

[42-1745, added 1965, ch. 319, sec. 7, p. 898.]

42-1746. FUNDING, REFUNDING BONDS. The board may by resolution, from time to time, provide for the issuance of funding or refunding revenue bonds to fund or refund any outstanding revenue or other warrants or bonds, and any premiums thereon, and coupons evidencing interest upon any such bonds at or before the maturity or first optional redemption date of such coupons, warrants or bonds, and may combine various outstanding revenue warrants and parts or all of various series and issues of outstanding revenue bonds and matured coupons in the amount thereof to be funded or refunded. Revenue bonds may be refunded only at maturity, upon call for redemption in accordance with their terms or with consent of the holder.

The board shall create a special fund or funds for the sole purpose of paying the principal of and interest on such funding or refunding revenue bonds, into which fund the board shall obligate and bind the board to set aside and pay any part or parts of, or all of, or a fixed proportion of, or a fixed amount of the available revenue of the board sufficient to pay such principal and interest as the same shall become due, and if deemed necessary to maintain adequate reserves therefor.

Such funding or refunding bonds shall be negotiable instruments within the provisions and intent of the negotiable instrument laws of this state.

The board may exchange such funding or refunding bonds for the warrants, bonds, and coupons being funded or refunded, or it may sell such funding or refunding bonds in the manner and at such price as the board shall deem to be in the best interest of the state, either at public or private sale, or may both exchange and sell.

The provisions of this act relating to the terms, conditions, covenants, issuance, and sale of revenue bonds shall be applicable to such funding or refunding bonds except as may be otherwise specifically provided in this section.

[42-1746, added 1965, ch. 319, sec. 8, p. 898.]

42-1747. TAX EXEMPTION. Bonds issued pursuant to the authority contained in this act shall be exempt from taxation under the Idaho Income Tax law.

[42-1747, added 1965, ch. 319, sec. 9, p. 898.]

42-1748. CONSTRUCTION OF ACT. This act shall be authority for the issuance of the bonds and warrants hereby authorized, and shall be liberally construed to accomplish its purposes. Any restrictions, limitations or regulations relative to the issuance of such bonds or warrants contained in any other act shall not apply to the bonds or warrants issued under this act. Any act inconsistent herewith shall be deemed modified to conform with the provisions of this act for the purpose of this act only.

[42-1748, added 1965, ch. 319, sec. 10, p. 898.]

42-1749. COMPELLING ISSUANCE. In the event that any official required to participate in any act leading to the issuance of such bonds shall refuse to perform such act alleging as his reason illegality of the bonds to be issued, the board may institute judicial proceedings to compel such step to be taken and legality of the bonds to be determined.

[42-1749, added 1965, ch. 319, sec. 11, p. 898.]

42-1750. REVOLVING FUND -- PUBLIC POLICY AND PURPOSE. It is in the public interest and it is the public policy of this state, in which there are vast areas of arid land, to develop and to financially assist in and support the development of the water resources of this state through the construction of water projects, including the rehabilitation, improvement, or extension of existing systems or facilities relating thereto, and to achieve that end, to create an Idaho water resource board revolving development fund to be used for that purpose.

[42-1750, added 1969, ch. 333, sec. 1, p. 1051.]

42-1751. DEFINITIONS. As used in this act, unless the context requires otherwise:

(a) "Board" means Idaho water resource board.

(b) "Irrigation district," "canal or irrigation company," "water users' association," "municipal corporation," or "municipality," mean such entities created and existing under the laws of the state of Idaho.

(c) "Construction" means the construction, in whole or in part, of a new project, or the improvement or renovation, in whole or in part, of an existing project, or both such construction and improvement or renovation.

(d) "Project" means any project by means of which water shall be utilized or benefits accrue within this state for purposes within the limitations of this act.

(e) "Revolving fund" means Idaho water resource board revolving development fund.

[42-1751, added 1969, ch. 333, sec. 2, p. 1051.]

42-1752. ESTABLISHMENT OF IDAHO WATER RESOURCE BOARD REVOLVING DEVELOPMENT FUND. There is hereby established in the state treasury a special fund to be known as the Idaho water resource board revolving development fund. All money in the fund is appropriated continuously to the board to be used and administered by it for the purpose of developing the state's water re-

sources, and shall not be subject to the provisions of the Standard Appropriations Act of 1945 or section 67-3516, Idaho Code.

[42-1752, added 1969, ch. 333, sec. 3, p. 1051.]

42-1753. SOURCE OF FUND. Funds borrowed from the revolving development fund, together with interest due thereon, shall be repaid to the board and placed in the revolving fund together with receipts and revenues of any type and nature derived from any project constructed, operated, or maintained, in whole or in part, with moneys from the revolving fund, revenues received over and above the cost of projects financed by revenue bonds, revenues collected by or on behalf of water user entities for the purpose of repaying indebtedness under applicable statutory authority, revenues received from the sale of state land acquired by the board for water projects, surplus revenues from the sale of Carey Act (Title 43 USCA s. 641) lands, revenues received from the lease of water rights, fees received from water deliveries which are in excess of costs on projects sponsored by the board, gifts or grants from any source when the same are made for purposes consistent with those for which the revolving fund is established, and moneys from any other appropriate source.

[42-1753, added 1969, ch. 333, sec. 4, p. 1051; am. 2005, ch. 362, sec. 4, p. 1150.]

42-1754. ALLOCATION OF FUND. The Idaho water resource board revolving development fund shall be allocated for use:

(a) To the board for a project which it deems to be "in the public interest" and which, in its opinion, further implements any extant Idaho state water plan, in such amounts as are necessary for preparation of a feasibility study of the project, engineering services in preparing designs and specifications, and for construction of the project.

(b) As loans from the revolving development fund which may be approved by the board and made to irrigation districts, canal or irrigation companies, water users' associations, municipal or private corporations, or, in special cases when approved by the board, to individuals to finance project costs, provided, however, that no loans shall be made to finance feasibility studies except as a part of overall project costs.

(c) To establish reserve accounts or guarantee funds in the state treasury to aid in the funding of water projects. Interest earned on such moneys invested by the state treasurer shall be paid into the water resource board revolving development fund.

(d) To the board to finance joint ventures for project construction with federal agencies, neighboring states, legal subdivisions of the state, private corporations, or other organizations, and including the costs of feasibility studies, investigations, and other preparatory expenses, for purposes consistent with those for which the fund is established, and the board is authorized to use the fund for these purposes.

(e) To the board to finance feasibility studies, investigations, and other preparatory expenses for projects it intends to fund through the sale of revenue bonds or through use of funds from other sources.

(f) To the board for payment of costs associated with the issuance and repayment of the board's revenue bonds.

[42-1754, added 1969, ch. 333, sec. 5, p. 1051; am. 1979, ch. 154, sec. 1, p. 469; am. 2005, ch. 362, sec. 5, p. 1150.]

42-1755. PROJECTS -- PLANS AND COST ESTIMATES -- REPAYMENT CONTRACTS -- TITLE. When a project has been selected by the board to be constructed by the board with money made available from the revolving fund, the board shall cause plans and cost estimates of such project to be prepared and the board is authorized to enter into a contract or contracts for construction of such project after legislative approval. The board shall insure that water developed or conserved by any such project shall be utilized or benefits accrue within this state, and it shall enter into appropriate repayment contracts with the project water users. The board shall assess against any project water user such charge as, in the opinion of the board, is necessary and reasonable for the maintenance and operation of the project during the repayment period and for repayment to the revolving fund of the amount allocated therefrom for making the feasibility study and for construction of the project, including costs for engineering services, design, specifications, and other preparatory expenses. All money allocated to the project from the revolving fund shall be repaid as determined by the board, provided that the repayment period shall not exceed 60 years.

Title to all projects constructed by the board with money from the revolving fund shall vest in the board. At the end of the repayment period, the board shall make a determination, guided by the principles set forth in the act under which it operates, as to whether or not it is in the public interest to turn title to such project over to the users of such project. Its action shall be based upon such determination, and the board is specifically authorized to convey title to the project to those who use the water from such project if it finds this to be in the public interest.

[42-1755, added 1969, ch. 333, sec. 6, p. 1051.]

42-1756. LOANS FROM ACCOUNT -- APPLICATION -- INVESTIGATION -- APPROVAL -- REPAYMENT -- STATEMENT -- FILING -- DEFAULT. (1) Any irrigation district, canal or irrigation company, water users' association, municipal corporation, municipality, private corporation, aquifer protection district, or, in special cases approved by the board, an individual may file an application with the board for a loan from the revolving account for the purpose of financing project costs. Such application shall be filed in such manner, and shall be in such form and be accompanied by such information as may be prescribed by the board; provided, however, that any such application filed with the board under the provisions of this act, shall:

- (a) Describe the nature and purpose(s) of the proposed project.
- (b) Set forth or be accompanied by a plan for development of the proposed project, together with such engineering and economic feasibility data and estimated costs of construction as may be required by the board.
- (c) State whether money other than that for which application is made to the board will be used for project costs, and whether such money is available or has been sought for this purpose.
- (d) Show that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands, and has or can acquire all water rights necessary for the construction, operation and maintenance of the proposed project, or that there exists sufficient water available for appropriation by proof of a permit issued by the director of the department of water resources.

(2) Upon receipt of an application, the board shall evaluate and, if it deems it to be necessary, investigate all aspects of the proposed project

and the proposed construction thereof. As a part of such investigation, the board shall determine whether the plan for development of the project is satisfactory. If the board determines that the plan is unsatisfactory, it shall return the application to the applicant and may make such recommendations to the applicant as are considered necessary to make the plan satisfactory.

(3) The board may approve a loan for project costs if after investigation (if this is deemed necessary,) and evaluation it finds that:

- (a) The plan does not conflict with any extant Idaho state water plan;
- (b) The proposed project is feasible from an engineering standpoint and economically justified, with studies showing a favorable benefit to cost ratio;
- (c) The plan for development of the proposed project is satisfactory;
- (d) The applicant is qualified and responsible;
- (e) There is reasonable assurance that the borrower can repay the loan; and
- (f) That money in the revolving account is available for the loan.

(4) If the board approves a loan, the board and the applicant or applicants shall enter into an agreement for repayment to the revolving account of money loaned therefrom, together with interest thereon at reasonable rates as determined by the board. The agreement shall further provide that repayment of the loan, together with interest thereon, shall commence no later than one (1) full year after construction of the project is completed, and that repayment shall be completed within the time period specified by the board; provided that repayment to reserve accounts or guarantee funds shall be made as provided by order of the board. The repayment period shall not exceed sixty (60) years, except that the board may extend the time for making repayment in the event of emergency or hardship. Such agreement shall also provide for such assurances of, and security for, repayment of the loan as are considered necessary by the board.

(5) The state shall have a lien upon a project constructed with money from the revolving account for the amount of the loan, together with the interest thereon. This lien shall attach to all project facilities, equipment, easements, real property and property of any kind or nature associated with the project and all water rights associated in any way with the project. The board shall file a statement of the loan, its amount, terms and a description of the project with the county recorder of each county in which the project or any part thereof is located. The county recorder shall record the lien in a book kept for the recording of liens and it shall be indexed as other liens are required by law to be indexed. The lien shall be valid until paid in full or otherwise discharged. The lien shall be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens as set forth in chapter 1 of title 6, Idaho Code, chapter 13 of title 45, Idaho Code, and related provisions of the statutes of this state.

(6) If an applicant fails to comply with the repayment contract, its interest in the project may be conveyed to a successor upon approval by the board, which may contract with the qualified successor in interest of the original obligor for repayment of the loan, together with the interest thereon, and for succession to its rights and obligations in any contract with the board.

(7) The state shall have a lien on any or all projects which the board improves or renovates with money from the revolving account, and such lien shall be valid and continue in effect until such funds, together with interest thereon, have been paid in full and the lien discharged. The board

shall file a statement of the lien, and the lien shall be foreclosed upon all project property and rights as provided in subsection (5) of this section.

[42-1756, added 1969, ch. 333, sec. 7, p. 1051; am. 1978, ch. 345, sec. 12, p. 895; am. 1979, ch. 154, sec. 2, p. 470; am. 2006, ch. 126, sec. 1, p. 362; am. 2006, ch. 304, sec. 2, p. 941.]

42-1757. MEMBERS OF BOARD -- CONFLICTS OF INTEREST. No member of the board shall participate in the action of the board, nor be present during the board's deliberations, concerning an application for a loan by an entity in which such board member is an officer, agent or employee, or in which such board member has any interest.

[42-1757, added 1969, ch. 333, sec. 8, p. 1051.]

42-1758. RULES AND REGULATIONS. The board may make such rules and regulations consistent with this act as it considers necessary to carry out the provisions of this act.

[42-1758, added 1969, ch. 333, sec. 9, p. 1051.]

42-1759. ANNUAL REPORT AND FINANCIAL STATEMENT TO GOVERNOR AND LEGISLATURE. An annual report shall be made to the governor and the legislature prior to each November following the close of the year, describing the work accomplished by use of the revolving development fund and including a complete financial statement.

[42-1759, added 1969, ch. 333, sec. 10, p. 1051.]

42-1760. WATER MANAGEMENT ACCOUNT. (1) There is hereby created and established in the trust and agency fund the water management account. All moneys in the account are appropriated continuously to the water resource board to be used and administered by it for the purposes specified in subsection (2) of this section, and shall not be subject to the provisions of the standard appropriations act of 1945 or section 67-3516, Idaho Code.

(2) The board may expend, loan or grant moneys from the water management account for new water projects or the rehabilitation of existing water projects limited to the following purposes: reclamation, upstream storage, offstream storage, aquifer recharge, reservoir site acquisition and protection, water supply, water quality, recreation, and water resource studies, including feasibility studies for qualifying projects.

(a) Expenditures may be made from the account to provide public moneys for participation in any project constructed with funds from the water resource board revolving development account provided by section 42-1756, Idaho Code.

(b) Grants and loans may be made by the board from the account for any project in the public interest for the projects authorized by this section; no single grant shall exceed \$50,000 unless legislative approval has been obtained.

(3) The director of the department of water resources shall assist the board in any way the board deems necessary to fulfill the policy and purpose of the water management account, including technical evaluation of proposed projects and coordination in state and federal agencies.

[42-1760, added 1978, ch. 356, sec. 1, p. 939; am. 1988, ch. 217, sec. 1, p. 412.]

42-1761. WATER SUPPLY BANK CREATED. The water resource board shall have the duty of operating a water supply bank. The water supply bank shall make use of and obtain the highest duty for beneficial use from water, provide a source of adequate water supplies to benefit new and supplemental water uses, and provide a source of funding for improving water user facilities and efficiencies.

[42-1761, added 1979, ch. 193, sec. 1, p. 560.]

42-1762. RULES AND REGULATIONS -- ACQUISITION OF WATER RIGHTS. (1) The water resource board shall adopt rules and regulations governing the management, control, delivery and use and distribution of water to and from the water supply bank in compliance with chapter 52, title 67, Idaho Code.

(2) The board may contract with lessors and lessees to act as an intermediary in facilitating the rental of water. The board may purchase, lease, or otherwise obtain decreed, licensed or permitted water rights to be credited to the water supply bank. The use to which the owner is entitled under the water right shall be reduced by the portion of the water right leased to the bank. The water rights may be retained in the water supply bank for a period as determined by the board, all under such provisions as are specified in the terms of the purchase or lease.

[42-1762, added 1979, ch. 193, sec. 2, p. 560; am. 1990, ch. 318, sec. 1, p. 869.]

42-1763. RENTALS FROM BANK -- APPROVAL BY DIRECTOR. The terms and conditions of any rental of water from the water supply bank must be approved by the director of the department of water resources. The director of the department of water resources may reject and refuse approval for or may partially approve for a less quantity of water or may approve upon conditions any proposed rental of water from the water supply bank where the proposed use is such that it will reduce the quantity of water available under other existing water rights, the water supply involved is insufficient for the purpose for which it is sought, the rental would cause the use of water to be enlarged beyond that authorized under the water right to be rented, the rental will conflict with the local public interest as defined in section 42-202B, Idaho Code, or the rental will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates. The director shall consider in determining whether to approve a rental of water for use outside of the state of Idaho those factors enumerated in subsection (3) of section 42-401, Idaho Code.

[42-1763, added 1979, ch. 193, sec. 3, p. 561; am. 1990, ch. 318, sec. 2, p. 869; am. 1992, ch. 101, sec. 1, p. 319; am. 2003, ch. 298, sec. 5, p. 813.]

42-1763B. INTERIM AUTHORITY FOR RENTAL OF WATER TO AUGMENT FLOWS FOR LISTED ANADROMOUS FISH. (1) Legislative findings and intent regarding rental of water by the U.S. bureau of reclamation in the Snake River basin within Idaho to augment lower Snake River flows for anadromous fish listed under the endangered species act. The legislature finds that the U.S. bureau of reclamation proposes to release up to four hundred twenty-seven thousand (427,000) acre feet of leased or uncontracted water diverted from the Snake River basin to reservoir storage above Lewiston, and to lease or acquire

up to sixty thousand (60,000) acre feet of consumptive natural flow water rights diverted and consumed below Milner dam and above Swan Falls dam from the mainstem of the Snake River to augment flows downstream of Hells Canyon dam during 2005 and through December 31, 2034. The state of Idaho is experiencing serious drought conditions and it is therefore uncertain whether this water will be available for rental for flow augmentation purposes in all years. The legislature further finds that authorization of this legislation is necessary for approval and implementation of the Snake River Water Rights Agreement of 2004 (Mediator's Term Sheet dated April 20, 2004, and submitted on that date to the SRBA Court in SRBA Consolidated Subcase 03-10022 and SRBA Consolidated Subcase 67-13701, with all appendices to the document), as approved, ratified, and confirmed by the 108th Congress of the United States in the "Snake River Water Rights Act of 2004," Pub. L. No. 108-447 (H.R. 4818), 118 Stat. 3431 to 3441 (December 8, 2004). Therefore, the legislature authorizes the U.S. bureau of reclamation to lease storage and natural flow water rights through the state water supply bank and local rental pools under the limited conditions of this section. Any rentals of water for flow augmentation under any other provision of law, including section 42-108A, Idaho Code, shall be subject to the limitations and conditions of this section and the Snake River Water Rights Agreement of 2004.

(2) Rental of water by the U.S. bureau of reclamation.

(a) Notwithstanding the legislative approval required in section 42-108, Idaho Code, any storage water released and any natural flow water rights leased or acquired by the bureau within the state of Idaho for listed anadromous fish pursuant to this section must be rented through the water bank operated by the Idaho water resource board pursuant to sections 42-1761 through 42-1764, Idaho Code, or, in the case of storage water releases, through local rental committees, created pursuant to section 42-1765, Idaho Code, under their respective water bank rules.

(b) For any rental of water pursuant to this section, the director shall not be required to determine under section 42-1763, Idaho Code, whether the water supply is sufficient for the purpose for which it is sought, whether the rental would cause the use of water to be enlarged beyond that authorized under the water right to be rented, whether such use is in the public interest, or whether such use is consistent with the factors enumerated under subsection (3) of section 42-401, Idaho Code.

(3) Conditions on water rentals.

(a) Any water made available under this section shall be obtained only from willing lessors. Any water rented under this section from sources located within a basin having a local rental committee established pursuant to section 42-1765, Idaho Code, or section 42-1765A, Idaho Code, shall be rented pursuant to this section only through the local rental committee.

(b) Storage water made available under this section shall be limited to four hundred twenty-seven thousand (427,000) acre feet annually, and natural consumptive flow water shall be limited to not more than the sixty thousand (60,000) acre feet annually, that accrue to natural flow water rights, acquired or leased by the U.S. bureau of reclamation pursuant to the terms of the Snake River Water Rights Agreement of 2004. These amounts shall be reduced by other water the U.S. bureau of reclamation provides for flow augmentation for listed anadromous fish from the Snake River basin above Lewiston.

(c) In no event shall the release of water under this section cause the water surface of Lake Cascade to be below the elevation required to maintain a storage volume of three hundred thousand (300,000) acre feet, fifty thousand (50,000) acre feet of which is dead space, which is currently estimated to be at an elevation of four thousand eight hundred nine and two-tenths (4,809.2) feet. In addition, the state of Idaho shall pursue a shaping agreement for any uncontracted water released from Lake Cascade under this section.

(d) The rental or use of water under this section shall be in compliance with any permit, applicable water quality rule and regulation or other requirements of the clean water act, shall not cause jeopardy to other species in the state of Idaho, and shall not result in significant adverse impacts to recreational uses of the waters of the Snake River basin in Idaho. The state of Idaho shall not require any restriction, modification, or condition on the diversion, storage, use, discharge of water, or land use to remedy or address violations of water quality standards or other clean water act requirements to the extent the rental or use of water by the U.S. bureau of reclamation under this section causes the violations.

(e) The U.S. bureau of reclamation shall submit a report to the director by January 15 of each year describing the time, volume and purpose of water provided for listed anadromous fish from the Snake River basin above Lewiston during the past year and shall report on the plan for the spring and summer chinook by April 1 and on the plan for the fall chinook by July 15 of each year.

(f) All water rented or used by the U.S. bureau of reclamation under this section from above Hells Canyon dam must be used for power production purposes within the state of Idaho.

(g) All water rented or used by the U.S. bureau of reclamation under this section shall be subject to the terms and conditions contained in the Snake River Flow Component of the Snake River Water Rights Agreement of 2004.

(h) Nothing herein shall entitle the U.S. bureau of reclamation to rent or use water for flow augmentation upon termination or expiration of the permission given in this section.

(4) Nothing in this section shall be construed to alter, or authorize the U.S. bureau of reclamation to modify in any way its existing contractual obligations, or to constitute a finding by the legislature that the rental or use of storage water or natural flow water rights for flow augmentation for listed anadromous fish or any other species is a beneficial use of water, that it is in the public interest, or whether such use injures existing water rights.

(5) This section shall not become effective until the director certifies to the governor that the U.S. bureau of reclamation's applications to transfer water right numbers 4616, 4617, 4618, 4623, 4625, 4626, 4627, 4628, 4629, 4630, 4631, 4632, 4633 and 4636, and to amend water right permit numbers 25-07004 and 63-3618 will be withdrawn, or held in abeyance while this section is in effect, and the governor further certifies that the biological opinions required by the Snake River Water Rights Agreement of 2004 have been issued.

(6) This act shall be null, void and of no force and effect upon the expiration or termination of the Snake River Flow Component of the Snake River Water Rights Agreement of 2004. In addition, it is the intent of the leg-

islature to consider the repeal of this section in the event that any of the provisions of the Snake River Flow Component of the Snake River Water Rights Agreement of 2004 are modified or declared arbitrary, capricious or otherwise unlawful or set aside by any federal court or there is a finding of jeopardy by any federal court in regard to any biological opinions for projects operated by the U.S. bureau of reclamation in the Snake River basin in Idaho.

[42-1763B, added 1996, ch. 282, sec. 1, p. 912; am. 2000, ch. 222, sec. 2, p. 616; am. 2001, ch. 394, sec. 1, p. 1372; am. 2002, ch. 349, sec. 1, p. 997; am. 2005, ch. 149, sec. 1, p. 462; am. 2005, ch. 400, sec. 1, p. 1363.]

42-1764. SUBSTITUTION FOR TRANSFER PROCEEDING -- RIGHTS NOT SUBJECT TO FORFEITURE -- NO DEDICATION OF RIGHTS. (1) The approval of a rental of water from the water supply bank may be a substitute for the transfer proceeding requirements of section 42-222, Idaho Code.

(2) Water rights obtained by the board or by a local committee appointed by the board and credited to the water supply bank are not subject to forfeiture for nonuse pursuant to section 42-222(2), Idaho Code, while retained in or rented from the water supply bank. The five (5) year period of nonuse for forfeiture of a water right shall begin to accrue upon removal of a right from the bank by the owner of the right if a period of nonuse did not occur prior to the date of acceptance of the right into the bank. The five (5) year period of nonuse shall continue to accrue if a period of nonuse occurred prior to the effective date of acceptance of the right into the bank and the right was not beneficially used while in the bank.

(3) The rental of water rights from the water supply bank shall not constitute a dedication to the lands of any renter since the rental or distribution of water by the water bank is only incidental to its primary purposes listed in section 42-1761, Idaho Code.

[42-1764, added 1979, ch. 193, sec. 4, p. 561; am. 1990, ch. 318, sec. 3, p. 869.]

42-1765. LOCAL COMMITTEES -- RENTAL OF STORED WATER -- APPORTIONMENT OF RENTAL PROCEEDS. The water resource board may appoint local committees, including water district advisory committees as provided in section 42-605(6), Idaho Code, to facilitate the rental of stored water. When so appointed, the committee shall have the authority to market stored water between consenting owners and consenting renters under rules and regulations adopted by the board. The director of the department of water resources may approve a general lease which the local rental committee may utilize to meet the approval requirements enumerated in section 42-1763, Idaho Code.

In exercising its authority under this section, the local rental committee, if also the advisory committee of a water district, shall determine, in advance, at the annual meeting of water users of the water district held pursuant to section 42-605, Idaho Code, each year, that portion of the proceeds for the year from the lease of stored water to be paid to consenting contract holders of the storage water rights as reimbursement for their costs and that portion to be retained by the district in which the committee is located. Any proceeds retained by a district shall be used exclusively by the advisory committee of the water district for public purposes as set forth in section 42-613A, Idaho Code, and as provided by resolutions adopted by the water users of the district.

[42-1765, added 1979, ch. 193, sec. 5, p. 562; am. 1986, ch. 78, sec. 2, p. 236; am. 1992, ch. 339, sec. 22, p. 1030.]

42-1765A. LEMHI RIVER BASIN -- LOCAL RENTAL COMMITTEE. (1) The water resource board will appoint a local rental committee to facilitate operation of the water supply bank within the Lemhi river basin comprised of the Lemhi river and all tributary water sources. Section 42-1765, Idaho Code, and the board's water supply bank rules applicable to the operation of a storage water rental pool shall apply to the operation of the water supply bank in the Lemhi river basin, except as inconsistent with this section.

(2) When so appointed, the local rental committee for the Lemhi river basin shall have authority to rent natural flow water rights between consenting owners and consenting renters.

(3) Rights to the use of water for a portion of the approved period of use under a water right may be accepted into the water supply bank and rented out to satisfy the board's minimum stream flow water right authorized under section 42-1506, Idaho Code, provided the owner demonstrates to the satisfaction of the director that there will be an equivalent reduction in the extent of beneficial use made under the right.

[42-1765A, added 2001, ch. 373, sec. 2, p. 1310.]

42-1766. APPEALS PROCEDURE FOR WATER RIGHT HOLDERS. (1) During the period of a lease, any water right holder who determines that the lease is causing a water right to which the holder is entitled, to be deprived of water to which it may be otherwise entitled, may petition the director of the department of water resources to revoke or modify the lease. Upon such a petition, the director shall cause an investigation to be made and may hold hearings or gather information in some other manner. In the event that the director finds that an interference is occurring, he may revoke or require the lease to be modified to insure that no injury to other water rights occurs.

(2) Any person feeling aggrieved by a decision or action of the director shall be entitled to contest the action of the director pursuant to section 42-1701A(3), Idaho Code.

[42-1766, added 1979, ch. 193, sec. 6, p. 562; am. 1980, ch. 238, sec. 18, p. 549.]

42-1767. APPROVAL OF PROJECTS -- AUTHORITY OF WATER USERS TO CONTRACT WITH BOARD -- AUTHORIZING THE BOARD'S ACQUISITION OF INTEREST IN PROJECTS. Irrigation districts, canal companies, irrigation companies, water user associations and water associations are authorized to hold elections, subject to the provisions of section 34-106, Idaho Code, for the purpose of submitting a question to their qualified voters, members or stockholders, as the case may be, as to whether the district, company or association should finance the projects and facilities through the Idaho water resource board for the purposes set forth in section 42-1740, Idaho Code. A two-thirds (2/3) vote is required to approve the project. Any irrigation district, canal company, irrigation company, water user association or water association, is hereby authorized to enter into any agreement or agreements with the board with respect to an approved project within the state of Idaho, including but not limited to, agreements providing for the sale, lease or other transfer of title to real and personal property or providing for the maintenance or operation of projects rehabilitated or repaired, or pertaining to the loan or grant of funds for such projects, and

said irrigation district, canal company, irrigation company, water user association or water association is hereby authorized to levy assessments as may be necessary therefor. The statutory rights and duties of any such entity shall not in any way be limited or diminished due to any such agreement or agreements with the board. In the event the board acquires an ownership interest, the board shall not assume any liabilities thereon as a result of such transfer of ownership, provided however, that it shall not acquire any voting rights in any irrigation district, canal company, water user's association or similar entity as a result thereof.

[42-1767, added 1981, ch. 90, sec. 3, p. 128; am. 1995, ch. 118, sec. 58, p. 473.]

42-1775. DECLARATION OF POLICY AND PURPOSE. The welfare and well-being of the people of the state of Idaho is dependent upon the conservation, development and optimum use of the state's water resources. Water development involves extensive planning, special studies, public support and efficient implementation. The people of Idaho declared their intention to develop the state's water resources in the Idaho constitution, article 15, section 7, providing for a state water plan. Funding by the state of Idaho will insure timely implementation of water projects in the public interest.

[42-1775, added 1979, ch. 325, sec. 1, p. 884.]

42-1776. WATER RESOURCES CONSERVATION AND DEVELOPMENT TRUST ACCOUNT. There is hereby created and established in the agency asset fund the water resources conservation and development trust account. All moneys in the account are to be utilized by the Idaho water resources board, upon appropriation by the legislature, to conduct water project feasibility and engineering studies authorized in conjunction with the powers and duties of the board as provided in section 42-1734, Idaho Code, and to secure revenue bonds authorized by section 42-1739, Idaho Code.

The state treasurer is directed to invest all moneys in the account. All interest or other income occurring from such investment shall accrue to the account.

In the event that a project is approved subsequent to a feasibility study funded from the account, the funds expended from the account shall be included as a cost of the project to be repaid to the fund through repayments contracted by the board. It shall be the duty of the board to specify such repayment provisions without regard to the source of funding of the project.

[42-1776, added 1979, ch. 325, sec. 2, p. 884.]

42-1777. WATER RESOURCES ADJUDICATION FUND. (1) A water resource adjudication fund is hereby created and established in the state treasury. The state controller may establish multiple fund details within the fund to account for fees collected from different adjudications. Fee moneys in the fund are to be utilized by the department of water resources, upon appropriation by the legislature, to pay the costs of the department attributable to general water rights adjudications conducted pursuant to chapter 14, title 42, Idaho Code.

The state treasurer is directed to invest all moneys in the fund. All interest or other income accruing from such investment shall accrue to the appropriate fund detail.

(2) Fee moneys in the fund may also be utilized by the judiciary, upon appropriation by the legislature, to pay for judicial expenses directly re-

lating to each adjudication including, but not limited to, compensation and expenses of special masters appointed by the Idaho supreme court or by the district court, compensation and expenses of clerical staff of the district court, and publication, notice and mailing costs incurred by the district court.

[42-1777, added 1985, ch. 18, sec. 4, p. 31; am. 1986, ch. 220, sec. 24, p. 582; am. 2006, ch. 400, sec. 5, p. 1224.]

42-1778. WATER RIGHTS ENFORCEMENT ACCOUNT. (1) The water rights enforcement account is hereby created and established in the agency asset fund.

(2) All moneys in the water rights enforcement account are reserved, set aside, appropriated and made available until expended as may be directed by the director of the department of water resources in carrying out a water rights enforcement program.

[42-1778, added 1986, ch. 313, sec. 9, p. 774.]

42-1779. STATEWIDE COMPREHENSIVE AQUIFER PLANNING AND MANAGEMENT EFFORT. Pursuant to the provisions of Idaho law and legislative funding approval, the Idaho water resource board and the Idaho department of water resources shall conduct a statewide comprehensive aquifer planning and management effort over a ten (10) year period of time beginning in fiscal year 2009. Funding for the statewide comprehensive aquifer planning and management effort shall be used for technical studies, facilitation services, hydrologic monitoring, measurement and comprehensive plan development as well as for personnel costs, operating expenses and capital outlay associated with the statewide comprehensive aquifer planning and management effort.

[42-1779, added 2008, ch. 134, sec. 2, p. 377.]

42-1780. AQUIFER PLANNING AND MANAGEMENT FUND -- SECONDARY AQUIFER PLANNING, MANAGEMENT AND IMPLEMENTATION FUND. (1) The aquifer planning and management fund is hereby created in the state treasury. Pursuant to appropriation, moneys in the fund shall be used for technical studies, facilitation services, hydrologic monitoring, measurement and comprehensive plan development as well as for personnel costs, operating expenditures and capital outlay associated with the statewide comprehensive aquifer planning and management effort. The state treasurer shall invest the idle moneys of the fund, and the interest earned on such investments shall be retained by the fund.

(2) There is hereby created in the state treasury, the secondary aquifer planning, management and implementation fund, hereinafter referred to as the secondary fund. The secondary fund shall consist of moneys appropriated to the fund, moneys voluntarily contributed by water users or through water delivery entities or districts having authority to contribute, or through contributions, gifts or grants from any other source, and any other moneys that may hereafter be provided by law. All moneys in the secondary fund shall be used for the purposes for which the moneys were provided through appropriation, contribution or otherwise, and moneys in the secondary fund are appropriated continuously to the water resource board for technical studies, project management services, hydrologic monitoring, measurement and comprehensive plan development, as well as for personnel costs, operating expenditures, capital outlay and water projects associated

with the statewide comprehensive aquifer planning and management effort, and shall not be subject to the provisions of the standard appropriations act of 1945 or the provisions of section 67-3516, Idaho Code. The state treasurer shall invest the idle moneys of the fund, and the interest earned on such investments shall be retained by the fund.

[42-1780, added 2008, ch. 321, sec. 3, p. 890; am. 2010, ch. 356, sec. 1, p. 934.]