

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 2
APPROPRIATION OF WATER -- PERMITS, CERTIFICATES, AND LICENSES -- SURVEY

42-201. WATER RIGHTS ACQUIRED UNDER CHAPTER -- ILLEGAL DIVERSION AND APPLICATION OF WATER -- USES FOR WHICH WATER RIGHT NOT REQUIRED -- EXCLUSIVE AUTHORITY OF DEPARTMENT. (1) All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter and not otherwise. And after the passage of this title, all the waters of this state shall be controlled and administered in the manner herein provided. Such appropriation shall be perfected only by means of the application, permit and license procedure as provided in this title; provided, however, that in the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of this act, it may be perfected under such method of appropriation.

(2) No person shall use the public waters of the state of Idaho except in accordance with the laws of the state of Idaho. No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists.

(3) Notwithstanding the provisions of subsection (2) of this section or section [42-229](#), Idaho Code, water may be diverted and used at any time, with or without a water right:

(a) To extinguish an existing fire on private or public lands, structures, or equipment, or to prevent an existing fire from spreading to private or public lands, structures, or equipment endangered by an existing fire;

(b) For forest practices as defined in section [38-1303](#)(1), Idaho Code, and forest dust abatement. Such forest practices and forest dust abatement use is limited to two-tenths (0.2) acre-feet per day from a single watercourse; or

(c) For the immediate cleanup or removal of hazardous substances or petroleum, as defined in section [39-7203](#), Idaho Code, that is part of an emergency response by a state emergency response team or local emergency response authority to a release, as defined in section [39-7103](#), Idaho Code, to protect public health or the environment. The Idaho department of environmental quality, in coordination with the Idaho office of emergency management, shall report to the Idaho department of water resources within seventy-two (72) hours the location, need, and expected duration of the emergency response and shall consult the director of the Idaho department of water resources on maintaining delivery of existing water rights during cleanup or removal operations.

(4) For purposes of subsection (3)(b) of this section, no person shall divert water from a canal or other irrigation facility while the water is lawfully diverted, captured, conveyed, used or otherwise physically controlled by the appropriator.

(5) If water is to be diverted from a natural watercourse within a water district, or from a natural watercourse from which an irrigation delivery entity diverts water, a person diverting water pursuant to subsection (3)(b) of this section shall give notice to the watermaster of the intent

to divert water for the purposes set forth in said subsection. In the event that the water to be diverted pursuant to subsection (3) (b) of this section is not within a water district, but an irrigation delivery entity diverts water from the same natural watercourse, the required notices shall be given to said irrigation delivery entity. For uses authorized in subsection (3) (a) of this section, notice shall not be required but may be provided when it is reasonable to do so.

(6) A water right holder who determines that a use set forth in subsection (3) of this section 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 order cessation of or modification of the use to prevent injury to a water right. 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 injury is occurring to a water right, he may require the use to cease or be modified to ensure that no injury to other water rights occurs. A water right holder 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.

(7) This title delegates to the department of water resources exclusive authority over the appropriation of the public surface and ground waters of the state. No other agency, department, county, city, municipal corporation or other instrumentality or political subdivision of the state shall enact any rule or ordinance or take any other action to prohibit, restrict or regulate the appropriation of the public surface or ground waters of the state, and any such action shall be null and void.

(8) Notwithstanding the provisions of subsection (2) of this section, a municipality or municipal provider as defined in section [42-202B](#), Idaho Code, a sewer district as defined in section [42-3202](#), Idaho Code, or a regional public entity operating a publicly owned treatment works shall not be required to obtain a water right for the collection, treatment, storage or disposal of effluent from a publicly owned treatment works or other system for the collection of sewage or stormwater where such collection, treatment, storage or disposal, including land application, is employed in response to state or federal regulatory requirements. If land application is to take place on lands not identified as a place of use for an existing irrigation water right, the municipal provider or sewer district shall provide the department of water resources with notice describing the location of the land application, or any change therein, prior to land application taking place. The notice shall be upon forms furnished by the department of water resources and shall provide all required information.

(9) Notwithstanding the provisions of subsection (2) of this section, a person or entity operating a canal or conduit for irrigation or other beneficial uses authorized by a water right that permits water to be diverted from a natural watercourse for such purposes shall not be required to obtain an additional water right for the incidental use of that same water where the water is diverted for irrigation or other beneficial use and thereafter used to generate hydroelectricity in the canal or conduit, if (a) the use for hydroelectric purposes does not increase the rate of diversion of water from the natural watercourse, and (b) the person or entity has the right to generate electricity under a license or exemption issued under the federal power act, a lease of power privileges or other authorization, agreement or contract with reclamation or other federal, state or local governmental agency. The

incidental hydropower use shall be junior to and fully subordinated to all existing and future uses and shall be nonconsumptive. To qualify for this exemption, the person or entity must give written notice to the department of water resources and the watermaster describing the hydropower use, location and capacity of the project upon completion of the project. The notice must include a copy of the order or document authorizing the project. The notice must also certify that the incidental use of water for hydropower purposes under the existing water right meets all the requirements of this subsection.

[(42-201) 1903, p. 223, sec. 41; am. R.C. & C.L., sec. 3252; C.S., sec. 5568; I.C.A., sec. 41-201; am. 1971, ch. 177, sec. 2, p. 843; am. 1986, ch. 313, sec. 2, p. 765; am. 2000, ch. 291, sec. 1, p. 1007; am. 2006, ch. 256, sec. 1, p. 793; am. 2008, ch. 320, sec. 1, p. 887; am. 2012, ch. 218, sec. 1, p. 596; am. 2016, ch. 139, sec. 1, p. 405; am. 2019, ch. 211, sec. 1, p. 641; am. 2020, ch. 6, sec. 1, p. 6.]

42-202. APPLICATION TO APPROPRIATE WATER -- CONTENTS -- FILING FEES -- DISPOSITION OF FEES -- RECORD OF RECEIPTS. (1) For the purpose of regulating the use of the public waters and of establishing by direct means the priority right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, shall, before commencing of the construction, enlargement or extension of the ditch, canal, well, or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel, make an application to the department of water resources for a permit to make such appropriation. Provided however, if the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned or managed by an irrigation district, no such application may be approved by the director of the department of water resources without the consent of such corporation or irrigation district. Such application must set forth:

- (a) The name and post-office address of the applicant.
- (b) The source of the water supply.
- (c) The nature of the proposed use or uses and the period of the year during which water is to be used for such use or uses.
- (d) The location of the point of diversion and description of the proposed ditch, channel, well or other work and the amount of water to be diverted and used.
- (e) The time required for the completion of construction of such works and application of the water to the proposed use.

(2) An application proposing an appropriation of water by a municipal provider for reasonably anticipated future needs shall be accompanied by sufficient information and documentation to establish that the applicant qualifies as a municipal provider and that the reasonably anticipated future needs, the service area and the planning horizon are consistent with the definitions and requirements specified in this chapter. The service area need not be described by legal description nor by description of every intended use in detail, but the area must be described with sufficient information to identify the general location where the water under the water right is to be used and the types and quantity of uses that generally will be made.

(3) Whenever it is desired to appropriate and store flood or winterflow waters, the applicant shall specify in acre feet the quantity of such flood or winterflow waters which he intends to store, but for irrigation purposes he shall not claim more than five (5) acre feet of stored water per acre of land to be irrigated, nor, in the event of the filing of an application claiming both normal flow and flood water and winterflow water, shall the total amount of water claimed exceed the equivalent of a continuous flow during the irrigation season of more than one (1) cubic foot per second for each fifty (50) acres of land to be irrigated, or more than five (5) acre feet of stored water for each acre of land to be irrigated.

(4) The application shall be accompanied by a plan and map of the proposed works for the diversion and application of the water to a beneficial use, showing the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipelines, wells and all other works proposed to be used by them in the diversion of the water, and the area and location of the lands proposed to be irrigated, or location of place of other use.

(5) If the application involves more than twenty-five (25) cubic feet per second of water or the development of more than five hundred (500) theoretical horsepower, or impoundment of water in a reservoir with an active storage capacity in excess of ten thousand (10,000) acre feet, the applicant may be required by the director of the department of water resources to furnish a statement of the financial resources of the corporation, association, firm or person making the application, and the means by which the funds necessary to construct the proposed works are to be provided, and the estimated cost of construction; and if such application is made by a corporation, the amount of its capital stock, how much thereof has been actually paid in, and the names and places of residence of its directors; and if for the generation of power or any other purpose than irrigation or domestic use, the purpose for which it is proposed to be used, the nature, location, character, capacity and estimated cost of the works, and whether the water used is to be and will be returned to the stream, and if so, at what point on the stream.

(6) In case the proposed right of use is for agricultural purposes, the application shall give the legal subdivisions of the land proposed to be irrigated, with the total acreage to be reclaimed as near as may be; provided, that no one shall be authorized to divert for irrigation purposes more than one (1) cubic foot of water per second of the normal flow for each fifty (50) acres of land to be so irrigated, or more than five (5) acre feet of stored water per annum for each acre of land to be so irrigated, unless it can be shown to the satisfaction of the department of water resources that a greater amount is necessary. Provided further, that the plan of irrigation submitted shall provide for the distribution of water to within not more than one (1) mile of each legal subdivision of the land proposed to be reclaimed by the use of such water; provided also, that in the case of all ditches designed to have a capacity of ten (10) cubic feet per second or less, such map showing the location of such ditch, and the place of use of such water, or the location of the lands to be irrigated, may be upon blanks furnished by the department of water resources.

(7) No application shall be accepted and filed by the department of water resources until the applicant shall have deposited with the department a filing fee as in this chapter provided.

(8) All moneys received by the department of water resources under the provisions of this chapter shall be deposited with the state treasurer, and such sums as may be necessary shall be available for the payment of the ex-

penses of the department of water resources incurred in carrying out the provisions of this chapter.

(9) Such expense shall be paid by the state controller in the manner provided by law, upon vouchers duly approved by the state board of examiners, for the work performed under the direction of the department of water resources. The department of water resources shall keep a record of all filing fees received in connection with applications for permits to appropriate public waters.

(10) Provided further, that rights initiated prior to the enactment of this amendment, so far as it pertains to flood and winterflow waters, shall not be affected thereby.

(11) Provided further, that water rights held by municipal providers prior to July 1, 1996, shall not be limited thereby.

[(42-202) 1903, p. 223, sec. 1; am. 1905, p. 357, sec. 1; reen. R.C., sec. 3253; am. 1913, ch. 37, sec. 1, p. 136; reen. C.L., sec. 3253; C.S. sec. 5569; am. 1929, ch. 281, sec. 1, p. 675; I.C.A., sec. 41-202; am. 1935, ch. 145, sec. 1, p. 353; am. 1967, ch. 374, sec. 1, p. 1079; am. 1973, ch. 184, sec. 1, p. 428; am. 1994, ch. 180, sec. 83, p. 482; am. 1996, ch. 297, sec. 1, p. 968; am. 2012, ch. 120, sec. 1, p. 335.]

42-202A. TEMPORARY APPROVAL -- APPLICATION -- CRITERIA -- EXCEPTIONS. (1) Any person, association or corporation hereafter intending to use the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, for a minor use of short duration may make application to the department of water resources for temporary approval.

(2) Application for temporary approval shall be upon forms provided by the department of water resources and shall be accompanied by a fifty dollar (\$50.00) fee.

(3) The director of the department of water resources is not required to publish notice of the application pursuant to the provisions of section [42-203A](#), Idaho Code, and is not required to make findings as provided in section [42-203A](#) or [42-203C](#), Idaho Code. The director may, however, give notice of an application as he determines appropriate and may grant a temporary approval upon completion of the application form, payment of the filing fee, a determination by the director that the temporary approval can be properly administered, a determination that other sources of water are not available, a determination that approval is in the public interest and a determination that the temporary approval will not injure public values associated with the water source or any other water right. If the temporary approval is within a water district, the director shall seek and consider the recommendations of the watermaster before granting a temporary approval. The director may issue a temporary approval with the conditions determined by the director to be necessary to protect other water rights and the public interest.

(4) The recipient of any temporary approval issued pursuant to the provisions of this act shall assume all risk that the diversion and use of the water may injure other water rights, or otherwise not comply with the criteria described in section [42-203A](#)(5), Idaho Code. Any applicant for a temporary approval who is aggrieved by a denial of the director of a temporary approval pursuant to this act may file an application to appropriate water as provided in section [42-202](#), Idaho Code.

(5) A temporary approval shall only be granted for a use not intended to become an established water right:

- (a) For prevention of flood damage;
- (b) For ground water recharge;
- (c) For ground or surface water remediation; or
- (d) For any other use which will not exceed a total diverted volume of five (5) acre feet for the duration of the approval.

Approval of the uses set forth herein shall not exceed one (1) year. "Remediation" is defined to be the removal of hazardous substances or petroleum, as those terms are defined in section [39-7203](#), Idaho Code, from water in response to state or federal health and safety requirements. Approvals issued under the provisions of this section constitute a waiver of the mandatory permit requirements of section [42-201](#) (2), Idaho Code, and do not create a continuing right to use water. Temporary approvals shall not be issued as an interim water supply for a use which requires a continuing water supply.

(6) The provisions of this section do not require a temporary approval:

- (a) before diverting and using water to extinguish or prevent the spread of an existing wildfire on private or public lands, facilities or equipment, including the use of water by personnel engaged in fighting an existing wildfire, or
- (b) for reservoir flood control authorized by state or federal laws.

[42-202A, added 1993, ch. 255, sec. 1, p. 880; am. 2017, ch. 210, sec. 1, p. 513.]

42-202B. DEFINITIONS. Whenever used in this title, the term:

(1) "Consumptive use" means that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to nonrecoverable water vapor, incorporated into products, or otherwise does not return to the waters of the state. Consumptive use is not an element of a water right. Consumptive use does not include any water that falls as precipitation directly on the place of use. Precipitation shall not be considered to reduce the consumptive use of a water right. "Authorized consumptive use" means the maximum consumptive use that may be made of a water right. If the use of a water right is for irrigation, for example, the authorized consumptive use reflects irrigation of the most consumptive vegetation that may be grown at the place of use. Changes in consumptive use do not require a transfer pursuant to section [42-222](#), Idaho Code.

(2) "Digital boundary" means the boundary encompassing and defining an area consisting of or incorporating the place of use or permissible place of use for a water right prepared and maintained by the department of water resources using a geographic information system in conformance with the national standard for spatial data accuracy or succeeding standard.

(3) "Local public interest" is defined as the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource.

(4) "Municipality" means a city incorporated under section [50-102](#), Idaho Code, a county, or the state of Idaho acting through a department or institution.

(5) "Municipal provider" means:

- (a) A municipality that provides water for municipal purposes to its residents and other users within its service area;
- (b) Any corporation or association holding a franchise to supply water for municipal purposes, or a political subdivision of the state of Idaho

authorized to supply water for municipal purposes, and which does supply water, for municipal purposes to users within its service area; or

(c) A corporation or association which supplies water for municipal purposes through a water system regulated by the state of Idaho as a "public water supply" as described in section [39-103](#)(12), Idaho Code.

(6) "Municipal purposes" refers to water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled or obligated to supply to all those users within a service area, including those located outside the boundaries of a municipality served by a municipal provider.

(7) "Planning horizon" refers to the length of time that the department determines is reasonable for a municipal provider to hold water rights to meet reasonably anticipated future needs. The length of the planning horizon may vary according to the needs of the particular municipal provider.

(8) "Reasonably anticipated future needs" refers to future uses of water by a municipal provider for municipal purposes within a service area which, on the basis of population and other planning data, are reasonably expected to be required within the planning horizon of each municipality within the service area not inconsistent with comprehensive land use plans approved by each municipality. Reasonably anticipated future needs shall not include uses of water within areas overlapped by conflicting comprehensive land use plans.

(9) "Service area" means that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes. For a municipality, the service area shall correspond to its corporate limits, or other recognized boundaries, including changes therein after the permit or license is issued. The service area for a municipality may also include areas outside its corporate limits, or other recognized boundaries, that are within the municipality's established planning area if the constructed delivery system for the area shares a common water distribution system with lands located within the corporate limits. For a municipal provider that is not a municipality, the service area shall correspond to the area that it is authorized or obligated to serve, including changes therein after the permit or license is issued.

[42-202B, added 1996, ch. 297, sec. 2, p. 970; am. 1997, ch. 373, sec. 1, p. 1188; am. 2000, ch. 132, sec. 36, p. 344; am. 2002, ch. 306, sec. 1, p. 870; am. 2003, ch. 298, sec. 1, p. 806; am. 2004, ch. 258, sec. 1, p. 733; am. 2005, ch. 167, sec. 15, p. 526.]

42-203A. NOTICE UPON RECEIPT OF APPLICATION -- PROTEST -- HEARING AND FINDINGS -- APPEALS. (1) Upon receipt of an application to appropriate the waters of this state, the department of water resources shall prepare a notice in such form as the department may prescribe, specifying: (a) the number of the application; (b) the date of filing thereof; (c) the name and post-office address of the applicant; (d) the source of the water supply; (e) the amount of water to be appropriated; (f) in general the nature of the proposed use; (g) the approximate location of the point of diversion; and (h) the point of use. The department shall also state in said notice that any protest against the approval of such application, in form prescribed by the department, shall be filed with the department within ten (10) days from the last date of publication of such notice.

(2) The director of the department of water resources shall cause the notice to be published in a newspaper printed within the county wherein the point of diversion lies or, in the event no newspaper is printed in said county, then in a newspaper of general circulation therein. When the application proposes a diversion in excess of ten (10) c.f.s. or one thousand (1,000) acre feet, the director shall cause the notice to be published in a newspaper or newspapers sufficient to achieve statewide circulation. Any notice shall be published at least once each week for two (2) successive weeks.

(3) The director of the department shall also cause notice of the application to be accessible from the department's internet homepage beginning on or before the date the application is first published in the newspaper as described in subsection (2) of this section, and ending no sooner than the deadline for protesting the application, consistent with subsection (1) of this section. Notice accessible from the internet homepage may be represented by an abstract, summary, or other such representation that includes all the information required by subsection (1) of this section for notice of an application. The notice published in the newspaper pursuant to subsection (2) of this section shall be the official notice. Errors or omissions in the notices accessible from the internet homepage shall not invalidate the published notice.

(4) Any person, firm, association or corporation concerned in any such application may, within the time allowed in the notice of application, file with said director of the department of water resources a written protest, together with the statutory filing fee as provided in section [42-221](#), Idaho Code, against the approval of such application, which protest shall state the name and address of protestant and shall be signed by him or by his agent or attorney and shall clearly set forth his objections to the approval of such application. Hearing upon the protest so filed shall be held within sixty (60) days from the date such protest is received. Notice of this hearing shall be given by mailing notice not less than ten (10) days before the date of hearing and shall be forwarded to both the applicant and the protestant, or protestants, by certified mail. Such notice shall state the names of the applicant and protestant, or protestants, the time and place fixed for the hearing and such other information as the director of the department of water resources may deem advisable. In the event that no protest is filed, then the director of the department of water resources may forthwith approve the application, providing the same in all respects conforms with the requirements of this chapter, and with the regulations of the department of water resources.

(5) Such hearing shall be conducted in accordance with the provisions of section [42-1701A](#)(1) and (2), Idaho Code. The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such: (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section [42-202B](#), Idaho Code, or (f) that it is

contrary to conservation of water resources within the state of Idaho, or (g) that it 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 of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions. Provided however, that minimum stream flow water rights may not be established under the local public interest criterion, and may only be established pursuant to [chapter 15, title 42](#), Idaho Code. The provisions of this section shall apply to any boundary stream between this and any other state in all cases where the water sought to be appropriated has its source largely within the state, irrespective of the location of any proposed power generating plant.

(6) Any person or corporation who has formally appeared at the hearing, aggrieved by the judgment of the director of the department of water resources, may seek judicial review thereof in accordance with section [42-1701A](#)(4), Idaho Code.

[(42-203A) C.S., sec. 5569A, as added by 1929, ch. 212, sec. 1, p. 429; I.C.A., sec. 41-203; am. 1935, ch. 145, sec. 2, p. 353; am. 1967, ch. 374, sec. 2, p. 1079; am. 1969, ch. 469, sec. 1, p. 1346; am. 1978, ch. 306, sec. 1, p. 767; am. 1980, ch. 238, sec. 2, p. 527; am. and redesisg. 1985, ch. 17, sec. 1, p. 23; am. 1990, ch. 141, sec. 4, p. 317; am. 1994, ch. 64, sec. 1, p. 122; am. 2003, ch. 298, sec. 2, p. 808; am. 2011, ch. 170, sec. 1, p. 488.]

42-203B. AUTHORITY TO SUBORDINATE RIGHTS -- NATURE OF SUBORDINATED WATER RIGHT AND AUTHORITY TO ESTABLISH A SUBORDINATION CONDITION -- AUTHORITY TO LIMIT TERM OF PERMIT OR LICENSE. (1) The legislature finds and declares that it is in the public interest to specifically implement the state's power to regulate and limit the use of water for power purposes and to define the relationship between the state and the holder of a water right for power purposes to the extent such right exceeds an established minimum flow. The purposes of the trust established by subsections (2) and (3) of this section are to assure an adequate supply of water for all future beneficial uses and to clarify and protect the right of a user of water for power purposes subordinated by a permit issued after July 1, 1985, or by an agreement, to continue using the water pending approval of depletionary future beneficial uses.

(2) A water right for power purposes which is defined by agreement with the state as unsubordinated to the extent of a minimum flow established by state action shall remain unsubordinated as defined by the agreement. Any portion of the water rights for power purposes in excess of the level so established shall be held in trust by the state of Idaho, by and through the governor, for the use and benefit of the user of the water for power purposes, and of the people of the state of Idaho; provided, however, that application of the provisions of this section to water rights for hydropower purposes on the Snake river or its tributaries downstream from Milner dam shall not place in trust any water from the Snake river or surface or ground water tributary to the Snake river upstream from Milner dam. For the purposes of the determination and administration of rights to the use of the waters of the Snake river or its tributaries downstream from Milner dam, no portion of the waters of the Snake river or surface or ground water tributary to the Snake river upstream from Milner dam shall be considered. The rights held in trust shall

be subject to subordination to and depletion by future upstream beneficial users whose rights are acquired pursuant to state law, including compliance with the requirements of section [42-203C](#), Idaho Code.

(3) Water rights for power purposes not defined by agreement with the state shall not be subject to depletion below any applicable minimum stream flow established by state action. Water rights for power purposes in excess of such minimum stream flow shall be held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho. The rights held in trust shall be subject to subordination to and depletion by future consumptive upstream beneficial users whose rights are acquired pursuant to state law, excluding compliance with the requirements of section [42-203C](#), Idaho Code.

(4) The user of water for power purposes as beneficiary of the trust established in subsections (2) and (3) of this section shall be entitled to use water available at its facilities to the extent of the water right, and to protect its rights to the use of the water as provided by state law against depletions or claims not in accordance with state law.

(5) The governor or his designee is hereby authorized and empowered to enter into agreements with holders of water rights for power purposes to define that portion of their water rights at or below the level of the applicable minimum stream flow as being unsubordinated to upstream beneficial uses and depletions, and to define such rights in excess thereof as being held in trust by the state under subsection (2) of this section. Such agreements shall be subject to ratification by law. The contract entered into by the governor and the Idaho power company on October 25, 1984, is hereby found and declared to be such an agreement, and the legislature hereby ratifies the governor's authority and power to enter into this agreement.

(6) The director shall have the authority to subordinate the rights granted in a permit or license for power purposes to subsequent upstream beneficial depletionary uses. A subordinated water right for power use does not give rise to any claim against, or right to interfere with, the holder of subsequent upstream rights established pursuant to state law. The director shall also have the authority to limit a permit or license for power purposes to a term, which may be in the form of a fixed date or by reference to a federal energy regulatory commission (FERC) license or other authorization issued or contract executed, in connection with the power project.

Subsection (6) of this section shall not apply to licenses which have already been issued as of July 1, 1985.

(7) The director, in the exercise of the authority to limit a permit or license for power purposes to a term, shall, for purposes of determining such term, consider any of the following factors, among others:

- (a) The term of any power purchase contract which is, or reasonably may become, applicable to, such permit or license;
- (b) The policy of the Idaho public utilities commission (IPUC) regarding the term of power purchase contracts as administered by the IPUC under and pursuant to the authority of the public utility regulatory policy act of 1978 (PURPA);
- (c) The term of any FERC license granted, or which reasonably may be granted, with respect to any particular permit or license for power purpose;
- (d) Existing downstream water uses established pursuant to state law.

The term shall be determined at the time of issuance of the permit, or as soon thereafter as practicable if adequate information is not then available. The term shall commence upon application of water to beneficial use. The term, once established, shall not thereafter be modified except in accordance with due process of law prior to expiring.

(8) If a term is established by the director by reference to the hydropower project's FERC license, the term shall automatically extend to run concurrently with any annual renewals of the project's FERC license. Prior to the issuance of a subsequent or new FERC license for the project, the director may review the water right license and may issue an order canceling all or any part of the use, establishing a new term, or revising, adding or deleting conditions under which the water right may be exercised. The order shall take effect on the date the current term, as may be extended through annual renewals, expires. If the director does not issue such an order, the term shall automatically extend to a length equal to the project's subsequent or new FERC license and any original conditions on the water right license shall remain in effect.

(9) If a term is established by the director but the term is not established by reference to a hydropower project's FERC license, the director may review the water right license prior to the expiration of the term and may issue an order canceling all or any part of the use, establishing a new term of years, or revising, adding or deleting conditions under which the water right may be exercised. The order shall take effect on the date the current term expires. If the director does not issue such an order, the term shall automatically extend to a length equal to the original term and any original conditions on the water right license shall remain in effect.

[42-203B, added 1985, ch. 17, sec. 2, p. 25 and ch. 224, sec. 1, p. 537; am. 1986, ch. 117, sec. 1, p. 309; am. 2013, ch. 45, sec. 1, p. 94.]

42-203C. HYDROPOWER WATER RIGHT -- CRITERIA FOR REALLOCATION -- WEIGHT -- BURDEN OF PROOF. (1) If an applicant intends to appropriate water which is held in trust by the state of Idaho pursuant to subsection (5) of section [42-203B](#), Idaho Code, the director shall consider, prior to approving the application, the criteria established in section [42-203A](#), Idaho Code, and whether the proposed use, individually or cumulatively with other existing uses, or uses reasonably likely to exist within twelve (12) months of the proposed use, would significantly reduce the amount of trust water available to the holder of the water right used for power production that is defined by agreement pursuant to subsection (5) of section [42-203B](#), Idaho Code, and, if so, whether the proposed reduction is in the public interest.

(2) (a) The director in making such public interest determinations for purposes of this section shall consider:

- (i) The potential benefits, both direct and indirect, that the proposed use would provide to the state and local economy;
- (ii) The economic impact the proposed use would have upon electric utility rates in the state of Idaho, and the availability, foreseeability and cost of alternative energy sources to ameliorate such impact;
- (iii) The promotion of the family farming tradition;
- (iv) The promotion of full economic and multiple use development of the water resources of the state of Idaho;
- (v) In the Snake River Basin above the Murphy gauge whether the proposed development conforms to a staged development policy of

up to twenty thousand (20,000) acres per year or eighty thousand (80,000) acres in any four (4) year period.

No single factor enumerated above shall be entitled to greater weight by the director in arriving at this determination.

(b) The burden of proof under the provisions of this section shall be on the protestant.

[42-203C, added 1985, ch. 17, sec. 3, p. 26; am. 1986, ch. 117, sec. 2, p. 311.]

42-203D. REVIEW OF PERMITS -- OPPORTUNITY FOR HEARING. (1) The director of the department of water resources shall review all permits issued prior to July 1, 1985, which propose to divert water held in trust by the state of Idaho pursuant to subsection (5) of section [42-203B](#), Idaho Code, except to the extent a permit has been put to beneficial use prior to July 1, 1985, to determine whether they comply with the provisions of section [42-203C](#), Idaho Code. If the department finds that the proposed use is allowed under section [42-203C](#), Idaho Code, then the department shall enter an order continuing the permit. If the department finds that the proposed use is not allowed under section [42-203C](#), Idaho Code, then the department shall either cancel the permit or impose the conditions required to bring the permit into compliance with section [42-203C](#), Idaho Code.

(2) The department shall provide an opportunity for hearing in accordance with section [42-1701A](#), Idaho Code, and [chapter 52, title 67](#), Idaho Code, for each holder of a permit that is proposed either to be cancelled or made subject to new conditions.

[42-203D, added 1985, ch. 17, sec. 4, p. 27; am. 1986, ch. 117, sec. 3, p. 311; am. 1993, ch. 216, sec. 32, p. 612.]

42-204. EXAMINATION -- PERMIT -- COMMENCEMENT OF WORK -- EXTENSIONS -- APPEAL. (1) On receipt of the application, which shall be of a form prescribed by the department of water resources, it shall be the duty of that department to make an endorsement thereon of the date of its receipt and to examine said application and ascertain if it sets forth all the facts necessary to show the location, nature and amount of the proposed use. If upon such examination the application is found defective, it shall be the duty of the department of water resources to return the same for correction or to correspond with the applicant to obtain the needed information or amendments. If the application is returned to the applicant or the department shall request additional information and the applicant fails to return the corrected application or to supply the needed information within thirty (30) days, the department may void the record of said application and notify the applicant of such action. If the corrected application is returned or the information is supplied after thirty (30) days, such corrected application shall be treated in all respects as a new application, and the priority of the right initiated shall be determined by the date of receipt in the office of the department of the corrected application or additional information; provided, that upon request, and good cause appearing therefor, the director of the department of water resources may grant an extension of time within which to return the corrected application or supply needed information. All applications that comply with the provisions of this chapter and with the regulations of the department of water resources shall be numbered in such manner as will aid in their identification, and it shall be the duty of the

department to approve all applications made in proper form that contemplate the application of water to a beneficial use: provided, that the department may deny any such application, or may partially approve and grant a permit for a lesser quantity of water than applied for, or may grant a permit upon conditions as provided in this chapter.

(2) The department of water resources shall issue a permit for any approved application, make a record of the approval and provide a copy of the permit to the applicant, who shall be authorized, on receipt thereof, to proceed with the construction of the necessary works for the diversion of such water and to take all steps required to apply the water to a beneficial use and perfect the proposed appropriation.

(3) The provisions of this subsection shall not apply to permits held by municipal providers for reasonably anticipated future needs. For all other permits, the department shall require that actual construction work and application of the water to full beneficial use shall be complete within a period of five (5) years from the date of such approval, but may limit permit development to a shorter period than requested in the application, and the permit shall set forth the date when beneficial application of the water to be diverted by such works shall be made. Sixty (60) days before the date set for the completion of the appropriation of water under any permit, the department shall forward a notice to the permit holder by certified mail at the permit holder's address of record of the date for such completion, which said notice shall advise the permit holder of the necessity of submitting a statement of completion showing proof of beneficial use or a request for an extension of time on or before said date. The department may approve a timely request for an extension of time in the following circumstances:

(a) In cases where the permit holder is prevented from proceeding with construction, work, or application of water to full beneficial use by the permit holder's failure to obtain necessary consent or final approval or rejection from the federal government because of the pendency of an application for right-of-way or other matter within the jurisdiction of the United States, by state, county, city or other local government permitting or administrative action or process related to the permit holder's land or water development, or by litigation related to the permit holder's land or water development, the department of water resources, upon proper showing of the existence of any such condition, and being convinced that said permit holder is proceeding diligently and in good faith, shall extend the time so that the amount of time lost by such delays shall be added to the time given in the original permit, or in any subsequent grant of extension pursuant to paragraph (b), (c), (d), or (f) of this subsection, for each and every action required.

(b) The time for completion of works and application of the water to full beneficial use under any permit involving the diversion of more than twenty-five thousand (25,000) acre-feet in one (1) irrigation season for a project of no less than five thousand (5,000) acres may, upon application to the director of the department of water resources supported by a showing that additional time is needed on account of the time required for organizing, financing and constructing works of such large size, be extended by the director of the department of water resources for up to twelve (12) years beyond the initial development deadline contained in the permit, or beyond a grant of extension pursuant to the provisions of paragraph (a) of this subsection: Provided,

that no such extension shall be granted unless the permit holder for such extension shall show that there has been actually expended toward the construction of said diversion, including expenditures for the purchase of rights-of-way and property in connection therewith, at least one hundred thousand dollars (\$100,000).

(c) The time for completion of works and application of the water to full beneficial use under any permit involving the construction of a reservoir of more than ten thousand (10,000) acre-feet capacity or for the appropriation of water to be impounded in such reservoir of more than ten thousand (10,000) acre-feet capacity may be extended by the director of the department of water resources upon application to the director if the permit holder establishes that the permit holder has exercised reasonable diligence and that good cause exists for the requested extension.

(d) The time for completion of works and application of the water to full beneficial use: (i) under any permit authorizing the diversion of two (2) or more cubic feet per second of water or the development or cultivation of one hundred (100) or more acres of land or (ii) under any permit that, when combined with another permit, authorizes the diversion of two (2) or more cubic feet per second of water or the development or cultivation of one hundred (100) or more acres of land, provided the permits have a common or combined diversion and distribution system, are owned by the same permit holder, and are approved within five (5) years of each other may be extended by the director of the department of water resources upon application by the permit holder for an additional period up to ten (10) years beyond the initial development deadline contained in the permit, or beyond a grant of extension pursuant to the provisions of paragraph (a) of this subsection, provided the permit holder establishes that the permit holder has exercised reasonable diligence and that good cause exists for the requested extension.

(e) In connection with permits held by the United States, or the Idaho water resource board, whether acquired as the original applicant by assignment or otherwise, the director of the department of water resources may extend the time for completion of the works and application of the water to full beneficial use for such additional period or periods of time as the director may deem necessary upon an extension request supported by a showing that such additional time is required by reason of the status of plans, authorization, construction fund appropriations, construction, or any arrangements that are found to be requisite to completion of the construction of such works.

(f) In all other situations not governed by these provisions, the department may grant one (1) extension of time, not exceeding five (5) years beyond the date originally set for completion of works and application of the water to full beneficial use, or beyond any grant of extension pursuant to the provisions of paragraph (a) of this subsection, upon request for extension received on or before the date set for completion, provided good cause appears therefor.

(4) For permits held by municipal providers for reasonably anticipated future needs, the permit development period shall correspond to the planning horizon authorized by the permit, which may not be extended. During the permit development period, the municipal provider shall periodically submit to the department incremental statements of completion showing proof of beneficial use consistent with the provisions of section [42-217](#), Idaho Code.

Each such incremental statement shall document the extent of application of water to beneficial use during the most recent reporting interval. Each incremental statement shall be prepared by a certified water rights examiner, unless the permit holder is not asserting any additional increment of beneficial use during that reporting interval. The department shall set and may later adjust the duration of any reporting interval for any permit, which shall be made a condition of the permit, to any duration not shorter than five (5) years. Sixty (60) days before the end of each reporting interval, the department shall forward a notice to the municipal provider by certified mail to its address of record specifying the date the incremental statement is due. Unless an extension of the deadline for the incremental statement is requested by the municipal provider prior to the deadline, and the extension is approved by the director upon a showing of good cause, failure to timely submit an incremental statement shall result in a lapse of that portion of the permit that has not previously been licensed or for which an incremental statement of completion showing proof of beneficial use has not been submitted. Such lapsed permit portion may be reinstated only in accordance with the provisions of section [42-218a](#), Idaho Code. For reasonably anticipated future needs permits existing on July 1, 2020, the department shall have one (1) year from July 1, 2020, either to issue a license, where proof already has been submitted, or to modify the permit to conform to the provisions of this section by establishing future reporting intervals for periodic proof statements, by establishing the date for the final proof statement corresponding with the end of the planning horizon authorized by the existing permit, and by updating approval conditions to clarify whether information that must be submitted with proof of beneficial use is due at each reporting interval or only with the final proof statement.

(5) Any permit holder aggrieved by the decision of the department of water resources regarding its request for extension may request a hearing before the director in accordance with section [42-1701A](#) (3), Idaho Code, for the purpose of contesting the decision and may seek judicial review pursuant to section [42-1701A](#) (4), Idaho Code, of any final decision of the director following the hearing.

(6) Subject to the provisions for reinstatement as provided in section [42-218a](#), Idaho Code, a permit holder who fails to comply with the provisions of this section within the time or times specified shall be deemed to have relinquished all rights under its permit or, in the case of a permit held by a municipal provider for reasonably anticipated future needs, the permit holder shall be deemed to have relinquished all rights under any portion of the permit that has not previously been licensed or for which an incremental statement of completion showing proof of beneficial use has not been submitted.

(7) The provisions of this section as it becomes effective on July 1, 2021, shall apply to all existing permits pending before the department of water resources on July 1, 2021. Permits pending before the department on July 1, 2021, are entitled to the maximum qualifying extension available pursuant to the provisions of this section regardless of whether the permittee received a prior extension under subsection (3) (f) of this section.

[42-204, added 1903, sec. 2, p. 223; am. 1905, sec. 2, p. 357; reen. R.C., sec. 3254; am. 1911, ch. 64, sec. 1, p. 184; am. 1915, ch. 133, sec. 1, p. 289; reen. C.L., sec. 3254; C.S., sec. 5570; am. 1923, ch. 135, sec. 1, p. 196; I.C.A., sec. 41-204; am. 1935, ch. 145, sec. 3, p. 353; am. 1941, ch. 161, sec. 1, p. 320; am. 1949, ch. 127, sec. 1, p. 222; am. 1963,

ch. 214, sec. 1, p. 618; am. 1967, ch. 374, sec. 3, p. 1079; am. 1980, ch. 238, sec. 3, p. 529; am. 1982, ch. 62, sec. 1, p. 122; am. 1986, ch. 313, sec. 3, p. 765; am. 1989, ch. 96, sec. 1, p. 223; am. 2013, ch. 82, sec. 1, p. 201; am. 2020, ch. 164, sec. 1, p. 477; am. 2021, ch. 162, sec. 1, p. 459.]

42-204A. APPROPRIATION OF GROUND WATER FOR SUPPLEMENTAL IRRIGATION USE. (1) The intent of this section is to conserve ground water resources and secure the maximum use and benefit from surface water resources in Idaho by requiring that permits to appropriate ground water to irrigate land with surface water rights for irrigation be conditioned to require use of available surface water as the primary irrigation supply and use of ground water as a supplemental water supply when surface water is not available. Surface water rights include decreed, licensed, claimed, or permitted water rights diverted from surface sources, such as springs, streams, rivers, drains, or lakes.

(2) When the department of water resources receives an application to appropriate ground water, as defined in section [42-230](#)(a), Idaho Code, for irrigation purposes, it shall determine whether the proposed place of use:

- (a) Has appurtenant surface water rights for irrigation purposes; or
- (b) Is entitled to distribution of surface water from an irrigation district, canal company, ditch users association, or other water delivery entity for irrigation purposes and whether the entity's distribution system is capable of delivering the water to the land.

(3) When the department finds the proposed place of use meets the criteria of subsection (2) of this section and the requirements of section [42-203A](#)(5), Idaho Code, have been met, the department shall condition the permit for irrigation from ground water to:

- (a) Require use of all surface water rights identified in subsection (2) of this section when irrigating the proposed place of use and limit the use of ground water to those times when the surface water supply is not reasonably sufficient to irrigate the place of use or is not available due to drought, curtailment by priority, or the seasonal startup and shutoff or maintenance schedules for surface water deliveries; and
- (b) Prohibit the diversion and use of ground water for irrigation purposes if use of surface water is intentionally discontinued or reduced or is not deliverable due to nonpayment of annual assessments levied by the water delivery entity.

(4) The department may elect to not condition a permit pursuant to subsection (3) of this section if the department finds that:

- (a) The appurtenant surface water rights for irrigation are not distributed by a water delivery entity identified by subsection (2)(b) of this section and the applicant demonstrates that the use of surface water for irrigation is not necessary to protect the local public interest or to conserve water resources in the state of Idaho; or
- (b) The application is submitted in connection with a proposed or approved mitigation plan or ground water management plan that allows the diversion of ground water to irrigate land with appurtenant surface water rights.

(5) This section, and any determinations by the department concerning the appropriation of ground water as provided in this section, shall be binding upon the applicant and the applicant's successors and assigns in any proceedings before all other state and local governmental entities.

[42-204A, added 2023, ch. 97, sec. 1, p. 292.]

42-205. ISSUANCE OF PERMIT -- RESTRICTIONS -- PREFERENCE. (1) No permit shall be issued by the department of water resources of the state of Idaho, for the appropriation of water for power purposes, nor shall any such permit be assigned, transferred, mortgaged, sold or conveyed to any person, firm or corporation except in accordance with the provisions of this act.

(2) Water cannot be appropriated for hydropower development uses within or using existing man-made irrigation facilities without the permission of the owner thereof.

(3) When competing applications for a permit have been filed prior to the effective date of this act for the additional use for hydropower purposes that would utilize facilities that are owned or controlled by the holder of an existing water permit, license, decree, or established constitutional water usage, the director shall give preference to the application of the owner of the existing rights or his agent.

[42-205, added 1937, ch. 142, sec. 1, p. 233; am. 1947, ch. 66, sec. 1, p. 106; am. 1981, ch. 206, sec. 1, p. 372.]

42-206. RESIDENCE A REQUISITE FOR ISSUANCE. No permit to appropriate water for power purposes in the state of Idaho shall hereafter be granted to any person or association of persons not an actual bona fide resident or residents of the state of Idaho, nor to any corporation or partnership unless organized or qualified to do business in and under the laws of the state of Idaho.

[42-206, added 1937, ch. 142, sec. 2, p. 233; am. 1947, ch. 66, sec. 2, p. 106; am. 1986, ch. 217, sec. 1, p. 554.]

42-207. SALE, TRANSFER, ASSIGNMENT OR MORTGAGE OF PERMIT. Whenever the holder of a permit to appropriate water for power purposes within the state of Idaho, desires to sell, assign, transfer or mortgage such permit so held by him, he shall file with the director of the department of water resources a copy of the deed, bill of sale, assignment, mortgage or other document of transfer, together with such proof as the director of the department of water resources may require that the new owner, holder or assignee of such permit, or the mortgagee, or one or more of the trustees under any mortgage trust indenture, possesses the qualifications set forth in section [42-206](#), [Idaho Code,] and that such transfer is made in good faith, and not for purposes of speculation or delay; and the sale, transfer, assignment or mortgaging of any such permit except as herein provided shall be void, it being the express intention of the legislature to prohibit the transfer of permits to appropriate water for power purposes by mortgaging the same or otherwise, except in accordance with the provisions of this act.

[42-207, added 1937, ch. 142, sec. 3, p. 233; am. 1947, ch. 66, sec. 3, p. 106.]

42-208. CANCELLATION OR REVOCATION FOR NONCOMPLIANCE. Every permit to appropriate water for power purposes hereafter issued by the director of the department of water resources shall have plainly printed thereon, that the same is issued subject to the provisions of this act and in the event of its sale, transfer, assignment or of its being mortgaged without a compliance

with the provisions of this act, such permit shall be immediately canceled and revoked by the director of the department of water resources.

[42-208, added 1937, ch. 142, sec. 4, p. 233; am. 1947, ch. 66, sec. 4, p. 106.]

42-209. EFFECT OF ILLEGAL TRANSFER. Every permit to appropriate water for power purposes that shall be sold, transferred, assigned or mortgaged in violation of the provisions of this act shall be immediately canceled, and the transfer thereof shall not be binding on the state of Idaho.

[42-209, added 1937, ch. 142, sec. 5, p. 233; am. 1947, ch. 66, sec. 5, p. 106.]

42-210. APPLICATION OF ACT. The provisions of this act shall not apply to any municipal corporations within the state.

[42-210, added 1937, ch. 142, sec. 6, p. 233.]

42-211. AMENDED APPLICATION OR PERMIT -- APPEALS. Whenever a permit has been issued pursuant to the provisions of this act, and the permit holder desires to change the place, period, or nature of the intended use, or make other substantial changes in the method of diversion or proposed use or uses of the water, he shall file an application for amendment upon forms to be furnished by the department of water resources together with the statutory fee for filing and recording same, and upon receipt thereof it shall be the duty of the department of water resources to examine same and if approval thereof would not result in the diversion and use of more water than originally permitted and if the rights of others will not be adversely affected thereby, the director of the department of water resources shall approve said application and return an approved copy to the permit holder. The director of the department of water resources shall give such notice to other affected water users as he deems appropriate and may grant the amendment, in whole or in part or upon conditions, or may deny same. Notice of partial approval or conditions or denial of an amendment shall be forwarded to the applicant by certified mail and shall be subject to judicial review as hereafter provided. The priority of the right established pursuant to a permit which has been amended under these provisions shall date from the date of the original application for permit, provided the permit holder has complied with other provisions of this act.

In connection with any application on which permit has not been issued, amendments may be made by indorsement by the applicant or his agent on the original application, which indorsement shall be initialed and dated. If the amendment will result in the use of more water than originally asked, the priority of the right shall be changed to the date of said amendment. The applicant shall also be required to pay any additional filing fee as a result of an amendment of the rate of diversion or volume of storage requested in such amended application. If amendment is made after publication of notice of the original application, said notice shall be republished following amendment, upon payment by the applicant of the statutory fee for republication as in this act provided.

The notice shall be published in the same manner as provided by section [42-203](#), Idaho Code, for publication of notice of an application for permit. Protests to the application for amendment may be filed with and heard by the

director in the same manner as provided by section [42-203](#), Idaho Code, for protests to an application for a permit.

If a protest is filed and a hearing on the protest held, any person aggrieved by the final decision of the director following the hearing may seek judicial review thereof pursuant to section [42-1701A](#)(4), Idaho Code.

If no protest is filed and the director grants the amendment in part or on conditions or rejects the amendment without a hearing, the applicant may request a hearing pursuant to section [42-1701A](#)(3), Idaho Code, for the purpose of contesting the action of the director and following the hearing and the issuance of a final decision by the director may seek judicial review thereof pursuant to section [42-1701A](#)(4), Idaho Code.

[(42-211) 1907, p. 314, sec. 1; reen. R.C. & C.L., sec. 3255; C.S., sec. 5571; I.C.A., sec. 41-205; am. 1967, ch. 374, sec. 4, p. 1079; am. 1980, ch. 238, sec. 4, p. 531.]

42-212. DIVERSION OF PRIVATE WATERS. The department of water resources is hereby prohibited from issuing or granting permits to divert or appropriate the waters of any lake not exceeding five (5) acres in surface area at highwater mark, pond, pool or spring in this state, which is located or situated wholly or entirely upon the lands of a person or corporation, except to the person or corporation owning said land, or with his or its written permission, executed and acknowledged as required for the conveyance of real estate.

[(42-212) 1911, ch. 230, sec. 1, p. 782; reen. C.L., sec. 3255a; C.S., sec. 5572; I.C.A., sec. 41-206.]

42-213. DIVERSION OF PRIVATE WATERS -- APPLICANTS MUST SHOW RIGHT OF WAY. All applications to the department of water resources for permits to divert or appropriate the waters of any lake, pond, pool or spring shall state whether such lake, pond, pool or spring is wholly or entirely upon the land of any person or corporation other than the applicant, and, in the event that it is, such application shall state that the applicant has the written permission from such owner, executed and acknowledged as required by the provisions of the preceding section to divert or appropriate such water.

[(42-213) 1911, ch. 230, sec. 2, p. 783; reen. C.L., sec. 3255b; C.S., sec. 5573; I.C.A., sec. 41-207.]

42-217. PROOF OF APPLICATION TO BENEFICIAL USE. (1) On or before the date set for the beneficial use of waters appropriated under the provisions of this chapter, or the date set for submission of an incremental statement of completion showing proof of beneficial use, the permit holder shall submit a statement on a form furnished by the department of water resources that the permit holder has used such water for the beneficial purpose allowed by the permit. The statement shall include:

- (a) The name and post office address of the permit holder;
- (b) The permit number;
- (c) A description of the extent of the use;
- (d) In the case of a municipal provider, a description of the current service area;
- (e) The source of the water used; and

(f) Such other information as shall be required by the department's form.

(2) Such written statement shall include fees as provided in subsection K. of section [42-221](#), Idaho Code, or a field examination report prepared by a certified water right examiner. For permits held by a municipal provider for reasonably anticipated future needs, such statements shall be provided in accordance with section [42-204](#)(4), Idaho Code.

(3) Upon receipt of such written statement and the fee as required in section [42-221](#), Idaho Code, the department shall examine, or cause to be examined:

(a) The place where such water is diverted and used and, if the use is for irrigation, the area and location of the land irrigated and the nature of all the improvements which have been made as a direct result of such use.

(b) The capacities of the ditches or canals or other means by which such water is conducted to such place of use and the quantity of water that has been beneficially applied for irrigation or other purposes.

(4) The department or the person making such examination under the direction of the department shall prepare and file a report of the investigation: provided, that whenever an irrigation project is developed in the name of an association, company, corporation, irrigation district or the United States as provided in section [42-219](#), Idaho Code, proof of beneficial use shall be made by the permit holder. The lands upon which the water has been used need not be described by legal subdivisions, but may be described as provided in section [42-219](#), Idaho Code, and it shall only be necessary to show in such cases that the quantity of water beneficially applied for irrigation has been applied within the limits of the project.

[42-217, added 1903, sec. 7, p. 223; reen. R.C., sec. 3260; am. 1913, ch. 36, sec. 1, p. 134; am. 1915, ch. 94, sec. 1, p. 216; reen. C.L., sec. 3260; C.S., sec. 5577; I.C.A., sec. 41-211; am. 1967, ch. 374, sec. 8, p. 1079; am. 1979, ch. 138, sec. 1, p. 434; am. 1986, ch. 242, sec. 1, p. 658; am. 1996, ch. 297, sec. 3, p. 971; am. 1998, ch. 332, sec. 1, p. 1066; am. 2020, ch. 164, sec. 2, p. 480.]

42-217a. CERTIFIED WATER RIGHT EXAMINER. The director shall adopt all necessary rules and regulations setting forth the procedures and requirements for qualification of licensed professional engineers or geologists to become certified water right examiners.

An initial application fee of two hundred dollars (\$200) shall be paid by those applying for certification with an annual renewal fee of fifty dollars (\$50.00). All certificates of appointment shall expire on March 31 of each year and thereafter are void unless renewed. The fees collected shall be transmitted to the state treasurer for deposit in the water administration account.

Employees of the department shall be exempt from the requirements of this section.

[42-217a, added 1987, ch. 97, sec. 1, p. 192.]

42-218. PROOF OF APPLICATION TO BENEFICIAL USE -- EXTENSION OF TIME. Whenever a less period of time than the maximum prescribed in section [42-204](#) has been granted by the department of water resources for making proof of beneficial use, upon a satisfactory showing being made by the

permit holder, the department can extend the time for making such proof of beneficial use, but in no case shall such extension or extensions, including the original time granted, exceed the maximum prescribed in section [42-204](#). The department shall grant no extension unless the application therefor be filed with it prior to the date upon which the proof of beneficial use was required to be made under the original terms of the permit.

[(42-218) 1913, ch. 47, sec. 1, p. 154; am. by implication, 1915, ch. 94, sec. 1, p. 216; adding a proviso extending the maximum period of ten years in some cases; compiled and reen. C.L., sec. 3260a; C.S., sec. 5578; I.C.A., sec. 41-212; am. 1967, ch. 374, sec. 9, p. 1079.]

42-218a. LAPSE OF APPLICATION FOR FAILURE TO REQUEST EXTENSION OR SUBMIT PROOF OF APPLICATION TO BENEFICIAL USE -- NOTICE OF LAPSING. (1) A permit upon which the proof of beneficial use, or an incremental statement of completion showing proof of beneficial use, has not been submitted, or a request for extension of time has not been received on or before the date set for such proof or incremental statement, shall lapse and be of no further force nor effect. For a permit held by a municipal provider for reasonably anticipated future needs, such lapse shall not apply to any portion of the permit that has been previously licensed or for which an incremental statement of completion showing proof of beneficial use has been submitted. Notice of said lapsing shall be sent by the department to the permit holder at the address of record by regular mail.

(2) Within sixty (60) days after such notice of lapsing, the department may, upon a showing of reasonable cause, reinstate the permit with the priority date advanced a time equal to the number of days that said showing is subsequent to the date set for proof.

(3) In connection with a proof of beneficial use statement submitted more than sixty (60) days after such notice of lapsing, the director shall require all of the following items to be submitted to the department:

(a) A report prepared by a certified water right examiner as the result of an examination to clearly confirm and establish the extent of the beneficial use of water established in connection with the permit during the time authorized by the permit and any extensions of time previously approved. The report shall be on the form or forms specified by the director and shall provide the information specified in section [42-217](#), Idaho Code, for confirming beneficial use and such other information as may be required by the director.

(b) A statement of reasonable cause for filing a late proof of beneficial use.

(c) A reinstatement fee of two hundred fifty dollars (\$250).

Upon finding that beneficial use had occurred during the authorized period and upon a showing of reasonable cause for filing a late proof of beneficial use, the director may reinstate the permit with the priority date advanced to the day that proof of beneficial use was received.

(4) The original priority date of a lapsed permit shall not be reinstated except upon a showing of error or mistake of the department.

[42-218a, added 1967, ch. 374, sec. 10, p. 1079; am. 1983, ch. 157, sec. 1, p. 435; am. 2011, ch. 171, sec. 1, p. 490; am. 2020, ch. 164, sec. 3, p. 481.]

42-219. ISSUANCE OF LICENSE -- PRIORITY. (1) Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license corresponding to the beneficial use. Such license shall state the name and post office address of such user, the purpose for which such water is used and the quantity of water that may be used, which in no case shall be an amount in excess of the amount that has been beneficially applied. For permits held by a municipal provider for reasonably anticipated future needs, a license may be issued incrementally for an amount corresponding to the beneficial use demonstrated to the satisfaction of the department in each incremental statement of completion showing proof of beneficial use submitted pursuant to section [42-204\(4\)](#), Idaho Code, which amount, together with any previously licensed portion of said permit, shall not exceed the initial quantity authorized under the permit. The final incremental license at the end of the planning horizon shall be issued for an amount corresponding to the beneficial use. The director shall condition the license to prohibit any transfer of the place of use outside the service area, as defined in section [42-202B](#), Idaho Code, or to a new nature of use of amounts held for reasonably anticipated future needs together with such other conditions as the director may deem appropriate.

(2) If such use is for irrigation, such license shall give a description, by legal subdivisions, of the land irrigated by such water, except that the general description of a place of use described in accordance with subsection (5) or (6) of this section may be described using a digital boundary, as defined in section [42-202B](#), Idaho Code. If the use is for municipal purposes, the license shall describe the service area as provided in section [42-202B\(9\)](#), Idaho Code.

(3) Such license shall bear the date of the application for, and the number of, the permit under which the works from which such water is taken were constructed, the date when proof of beneficial use of such water was made, and also the date of the priority of the right confirmed by such license.

(4) The date of priority confirmed by the license shall be the date of the application for the permit for the construction of the works from which the water is taken, and to which the right relates, provided there has been no loss of priority under the provisions of this chapter. Whenever proof of the beneficial application of water shall be offered subsequent to the date stated in the permit, or in any authorized extension thereof, when such beneficial application shall be made, the proof shall be taken, if received by the department within the sixty (60) days prescribed in the preceding section. If the proof taken is satisfactory to the department of water resources, a license shall be issued by the department the same as though proof had been made before the date fixed for such beneficial application. The priority of the right established by the proof shall not date back to the date of the application for the permit to which the right would relate under the provisions of this chapter, but shall bear a date subsequent to the date of the application, a time equal to the difference between the date set in the permit, or extension thereof, for such beneficial application of water and the date of proof.

(5) For irrigation projects where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or within irrigation districts organized and existing as such under the laws of the state of Idaho, the license issued shall be issued to the persons, association, company, corporation or irrigation district owning the project, and final proof may be made by such owners for the benefit of the entire project. It shall not be necessary to give a description of the land by legal subdivisions, but a general description of the entire area under the canal system shall be sufficient. The water diverted and the water right acquired thereby shall relate to the entire project, and the diversion of the water for the beneficial use under the project shall be sufficient proof of beneficial use without regard as to whether each and every acre under the project is irrigated or not.

(6) For an irrigation project developed under a permit held by an association, company, corporation or the United States to divert and deliver or distribute surface water under any annual charge or rental for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres, the license issued shall be issued to the permit holder. For the place of use description in the license issued for the irrigation project, it shall be sufficient to provide a general description of the area within which the total number of acres developed under the permit are located and within which the location of the licensed acreage can be moved provided there is no injury to other water rights.

(7) Subject to other governing law, the location of the acreage irrigated within a generally described place of use, as defined in accordance with subsections (5) and (6) of this section and as filed with the department pursuant to section [43-323](#), Idaho Code, may be changed without approval under the provisions of section [42-222](#), Idaho Code. However, the change shall not result in an increase in either the rate of flow diverted or in the total number of acres irrigated under the water right and shall cause no injury to other water rights. If the holder of any water right seeks to challenge such a change, the challenge may be brought only as an action initiating a contested case before the department, pursuant to the administrative procedure act, [chapter 52, title 67](#), Idaho Code. Nothing in this section shall be construed to grant, deny or otherwise affect an irrigation district's authority to deliver water to areas outside the boundaries of such district.

(8) In the event that the department shall find that the applicant has not fully complied with the law and the conditions of permit, it may issue a license for that portion of the use that is in accordance with the permit or may refuse issuance of a license and void the permit. Notice of such action shall be forwarded to the permit holder by certified mail. The applicant may contest such action by the department pursuant to section [42-1701A](#)(3), Idaho Code.

[42-219, added 1903, sec. 8, p. 233; reen. R.C., 3261; modified by 1913, ch. 47, sec. 1, p. 154, and 1915, ch. 94, sec. 2, p. 216; compiled and reen. C.L., sec. 3261; C.S., sec. 5579; am. 1925, ch. 44, sec. 1, p. 61; I.C.A., sec. 41-213; am. 1967, ch. 374, sec. 11, p. 1079; am. 1980, ch. 238, sec. 5, p. 533; am. 1996, ch. 297, sec. 4, p. 972; am. 1998, ch. 332, sec. 2, p. 1067; am. 2002, ch. 306, sec. 2, p. 871; am. 2011, ch. 210, sec. 1, p. 591; am. 2020, ch. 164, sec. 4, p. 481.]

42-220. EFFECT OF LICENSE. Water right licenses shall be binding upon the state as to the right of such licensee to use the amount of water mentioned therein and shall be prima facie evidence as to such right; and all

rights to water confirmed under the provisions of this chapter, or by any decree of court, shall become appurtenant to, and shall pass with a conveyance of, the land for which the right of use is granted. The right to continue the beneficial use of such waters shall never be denied nor prevented for any cause other than the failure, on the part of the user or holder of such right, to pay the ordinary charges or assessments which may be made or levied to cover the expenses for the delivery or distribution of such water, or for other reasons set forth in this title: provided, that when water is used for irrigation, no such license or decree of the court allotting such water shall be issued confirming the right to the use of more than one (1) second foot of water for each fifty (50) acres of land so irrigated, unless it can be shown to the satisfaction of the department of water resources in granting such license, and to the court in making such decree, that a greater amount is necessary, and neither such licensee nor anyone claiming a right under such decree, shall at any time be entitled to the use of more water than can be beneficially applied on the lands for the benefit of which such right may have been confirmed, and the right to the use of such water confirmed by such license shall always be held subject to the local or community customs, rules and regulations which may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules or regulations have for their object the economical use of such water.

[42-220, added 1903, sec. 9, p. 223; 1905, ch. 166, sec. 1, p. 174; reen. R.C. & C.L., sec. 3262; C.S., sec. 5580: I.C.A., sec. 41-214; am. 2020, ch. 164, sec. 5, p. 483.]

42-221. FEES OF DEPARTMENT. The department of water resources shall collect the following fees, which shall constitute a fund to pay for legal advertising, the publication of public notices and for investigations, research, and providing public data as required of the department in the performance of its statutory duties:

A. For filing an application for a permit to appropriate the public waters of this state:

1. For a quantity of 0.2 c.f.s. or less or for a storage volume of 20 acre feet or less \$100
2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s. or for a storage volume greater than 20 acre feet but not exceeding 100 acre feet \$250
3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 2,000 acre feet \$250 plus \$40.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 1.0 c.f.s. or 100 acre feet.
4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s. or for a storage volume greater than 2,000 acre feet but not exceeding 10,000 acre feet \$1,010 plus \$20.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.
5. For a quantity greater than 100.0 c.f.s. but not exceeding 500.0 c.f.s., or for a storage volume greater than 10,000 acre feet but not exceeding 50,000 acre feet \$2,610 plus \$10.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 100 c.f.s. or 10,000 acre feet.

6. For a quantity greater than 500 c.f.s., or for a storage volume greater than 50,000 acre feet \$6,610 plus \$2.00 for each additional 1.0 c.f.s. or part thereof or 100 acre feet or part thereof over the first 500.0 c.f.s. or 50,000 acre feet.
- B. For filing an application for an extension of time within which to resume the use of water under a vested water right \$100
- C. For filing application for amendment of permit \$100
- D. 1. For filing claim to use right under section [42-243](#), Idaho Code \$100
2. For filing a late claim to use a water right under section [42-243](#), Idaho Code, where the date filed with the department of water resources or, the postmark if mailed to the department of water resources, is:
 - i. After June 30, 1998 \$250
 - ii. After June 30, 2005 \$500
 - iii. For every ten (10) years after June 30, 2005, an additional \$500
- E. For filing an assignment of permit \$25.00
- F. For readvertising application for permit, change, exchange, or extension to resume use \$50.00
- G. For certification, each document \$1.00
- H. For making photocopies of office records, maps and documents for public use A reasonable charge as determined by the department.
- I. For filing request for extension of time within which to submit proof of beneficial use on a water right permit \$50.00
- J. For tasks requiring in excess of one (1) hour research or for computerized data provided for public use A reasonable charge as determined by the department.
- K. For filing proof of beneficial use of water and requests for water right license examinations, a fee based upon the rate of diversion claimed in the proof of beneficial use:
 1. For a quantity of 0.2 c.f.s. or less, or for a storage volume of 20 acre feet or less \$50.00 except no fee shall be charged for domestic use for which a permit is not required.
 2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s., or for a storage volume greater than 20 acre feet, but not exceeding 100 acre feet \$100
 3. For a quantity greater than 1.0 c.f.s., or for a storage volume greater than 100 acre feet \$100 plus \$25.00 for each additional c.f.s. or part thereof, or 100 acre feet or part thereof, over the first 1.0 c.f.s. or 100 acre feet with a maximum fee not to exceed \$600.
- L. For filing a protest or request to intervene in a protested matter \$25.00
- M. For filing an application to alter a stream channel pursuant to [chapter 38, title 42](#), Idaho Code:
 1. Application for recreational dredge permits by residents of the state \$10.00
 2. Application for recreational dredge permits by nonresidents of the state \$30.00
 3. Other applications \$20.00
- N. For receipt of all notices of application within a designated area, a reasonable annual charge as determined by the department.

O. For filing an application to change the point of diversion, place, period or nature of use of water under a vested water right:

1. For a quantity of 0.2 c.f.s. or less, or for a storage volume of 20 acre feet or less \$200
2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s., or for a storage volume greater than 20 acre feet but not exceeding 100 acre feet \$500
3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 2,000 acre feet \$500 plus \$80.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 1.0 c.f.s. or 100 acre feet.
4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s., or for a storage volume greater than 2,000 acre feet but not exceeding 10,000 acre feet \$2,020 plus \$40.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.
5. For a quantity greater than 100 c.f.s. but not exceeding 500 c.f.s., or for a storage volume greater than 10,000 acre feet but not exceeding 50,000 acre feet \$5,220 plus \$20.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 100 c.f.s. or 10,000 acre feet.
6. For a quantity greater than 500 c.f.s., or for a storage volume greater than 50,000 acre feet \$13,220 plus \$4.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 500 c.f.s. or 50,000 acre feet.
7. For any application to change the nature of use of water under one (1) or more vested water right(s), an additional fee of \$250 shall apply.
8. For an application to change only the legal description for the place of use or the point of diversion when there will be no physical change in the location of the place of use or the point of diversion and no unauthorized physical change in the location of the place of use or the point of diversion has occurred inconsistent with the decree, license or transfer defining the water right, the total filing fee shall be \$50.00 per water right.

P. For filing a notice of land application of effluent as required by section [42-201](#)(8), Idaho Code \$150

All fees received by the department of water resources under the provisions of this chapter shall be transmitted to the state treasurer for deposit in the water administration account.

[(42-221) 1903, p. 223, sec. 10; reen. R.C. & C.L., sec. 3263; C.S., sec. 5581; am. 1923, ch. 53, sec. 1, p. 60; I.C.A., sec. 41-215; am. 1941, ch. 116, sec. 1, p. 228; am. 1967, ch. 374, sec. 12, p. 1079; am. 1968 (2nd E.S.), ch. 25, sec. 1, p. 47; am. 1971, ch. 151, sec. 1, p. 750; am. 1978, ch. 143, sec. 1, p. 323; am. 1980, ch. 151, sec. 1, p. 320; am. 1981, ch. 147, sec. 2, p. 253; am. 1983, ch. 61, sec. 2, p. 141; am. 1985, ch. 226, sec. 1, p. 540; am. 1986, ch. 242, sec. 2, p. 657; am. 1986, ch. 313, sec. 4, p. 763; am. 1990, ch. 319, sec. 2, p. 870; am. 1994, ch. 64, sec. 2, p. 123; am. 1997, ch. 305, sec. 1, p. 908; am. 1998, ch. 79, sec. 1, p. 282; am. 2000, ch. 177, sec. 1, p. 445; am. 2011, ch. 172, sec. 1, p. 491; am. 2012, ch. 218, sec. 2, p. 597; am. 2018, ch. 42, sec. 1, p. 105.]

42-222. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER UNDER ESTABLISHED RIGHTS -- FORFEITURE AND EXTENSION -- APPEALS. (1) Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided. Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same, obtain any consent required in section [42-108](#), Idaho Code, and if otherwise proper to provide notice of the proposed change in a similar manner as applications under section [42-203A](#), Idaho Code. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication. Upon the receipt of any protest, accompanied by the statutory filing fee as provided in section [42-221](#), Idaho Code, it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed change and the watermaster shall notify the director of the department of water resources of his recommendation on the application, and the director of the department of water resources shall not finally determine the action on the application for change until he has received from such watermaster his recommendation thereof, which action of the watermaster shall be received and considered as other evidence. For applications proposing to change only the point of diversion or place of use of a water right in a manner that will not change the effect on the source for the right and any other hydraulically-connected sources from the effect resulting under the right as previously approved, and that will not affect the rights of other water users, the director of the department of water resources shall give only such notice to other users as he deems appropriate.

When the nature of use of the water right is to be changed to municipal purposes and some or all of the right will be held by a municipal provider to serve reasonably anticipated future needs, the municipal provider shall provide to the department sufficient information and documentation to establish that the applicant qualifies as a municipal provider and that the reasonably anticipated future needs, the service area and the planning horizon are consistent with the definitions and requirements specified in this chapter. The service area need not be described by legal description nor by description of every intended use in detail, but the area must be described with sufficient information to identify the general location where the water under the water right is to be used and the types and quantity of uses that generally will be made.

When a water right or a portion thereof to be changed is held by a municipal provider for municipal purposes, as defined in section [42-202B](#), Idaho Code, that portion of the right held for reasonably anticipated future needs at the time of the change shall not be changed to a place of use outside the

service area, as defined in section [42-202B](#), Idaho Code, or to a new nature of use.

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section [42-202B](#), Idaho Code, the change will not 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, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section [42-202B](#), Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right. The director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area. The transfer of the right to the use of stored water for irrigation purposes shall not constitute an enlargement in use of the original right even though more acres may be irrigated, if no other water rights are injured thereby. A copy of the approved application for change shall be returned to the applicant and he shall be authorized upon receipt thereof to make the change and the original water right shall be presumed to have been amended by reason of such authorized change. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter set forth. Provided however, minimum stream flow water rights may not be established under the local public interest criterion, and may only be established pursuant to [chapter 15, title 42](#), Idaho Code.

(2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter; except that any right to the use of water shall not be lost through forfeiture by the failure to apply the water to beneficial use under certain circumstances as specified in section [42-223](#), Idaho Code. The party asserting that a water right has been forfeited has the burden of proving the forfeiture by clear and convincing evidence.

(3) Upon proper showing before the director of the department of water resources of good and sufficient reason for nonapplication to beneficial use of such water for such term of five (5) years, the director of the department of water resources is hereby authorized to grant an extension of time extending the time for forfeiture of title for nonuse thereof, to such waters for a period of not to exceed five (5) additional years.

(4) Application for an extension shall be made before the end of the five (5) year period upon forms to be furnished by the department of water resources and shall fully describe the right on which an extension of time to resume the use is requested and the reasons for such nonuse and shall be ac-

accompanied by the statutory filing fee; provided that water rights protected from forfeiture under the provisions of section [42-223](#), Idaho Code, are exempt from this requirement.

(a) Upon the receipt of such application it shall be the duty of the director of the department of water resources to examine the same and to provide notice of the application for an extension in the same manner as applications under section [42-203A](#), Idaho Code. The notice shall fully describe the right, the extension which is requested and the reason for such nonuse and shall state that any person desiring to object to the requested extension may submit a protest, accompanied by the statutory filing fee as provided in section [42-221](#), Idaho Code, to the director of the department of water resources within ten (10) days of the last date of publication.

(b) Upon receipt of a protest it shall be the duty of the director of the department of water resources to investigate and conduct a hearing thereon as in this chapter provided.

(c) The director of the department of water resources shall find from the evidence presented in any hearing, or from information available to the department, the reasons for such nonuse of water and where it appears to the satisfaction of the director of the department of water resources that other rights will not be impaired by granting an extension of time within which to resume the use of the water and good cause appearing for such nonuse, he may grant one (1) extension of five (5) years within which to resume such use.

(d) In his approval of the application for an extension of time under this section the director of the department of water resources shall set the date when the use of water is to be resumed. Sixty (60) days before such date the director of the department of water resources shall forward to the applicant at his address of record a notice by certified mail setting forth the date on which the use of water is to be resumed and a form for reporting the resumption of the use of the water right. If the use of the water has not been resumed and report thereon made on or before the date set for resumption of use such right shall revert to the state and again be subject to appropriation, as provided in this section.

(e) In the event the director of the department of water resources determines that a proposed extension of time within which to resume use of a water right shall not be approved as provided in this section, he shall deny same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(5) Any person or persons feeling themselves aggrieved by the determination of the department of water resources in approving or rejecting an application to change the point of diversion, place, period of use or nature of use of water under an established right or an application for an extension of time within which to resume the use of water as provided in this section, may, if a protest was filed and a hearing held thereon, seek judicial review pursuant to section [42-1701A](#)(4), Idaho Code. If no protest was filed and no hearing held, the applicant may request a hearing pursuant to section [42-1701A](#)(3), Idaho Code, for the purpose of contesting the action of the director and may seek judicial review of the final order of the director following the hearing pursuant to section [42-1701A](#)(4), Idaho Code.

[(42-222) 1903, p. 223, sec. 11; am. 1905, p. 27, sec. 1; am. 1907, p. 507, sec. 1; reen. R.C., sec. 3264; am. 1915, ch. 34, sec. 1, p. 103; am. 1917, ch. 166, sec. 1, p. 495; C.L., sec. 3264; C.S., sec. 5582; am. 1921, ch. 146, sec. 1, p. 334; I.C.A., sec. 41-216; am. 1933, ch. 193, sec. 1, p. 382; am. 1943, ch. 53, sec. 2, p. 101; am. 1945, ch. 63, sec. 1, p. 79; rep. and reen. 1969, ch. 303, sec. 2, p. 905; am. 1980, ch. 238, sec. 6, p. 534; am. 1981, ch. 147, sec. 3, p. 255; am. 1982, ch. 202, sec. 1, p. 531; am. 1986, ch. 313, sec. 5, p. 769; am. 1988, ch. 153, sec. 1, p. 273; am. 1990, ch. 141, sec. 5, p. 319; am. 1994, ch. 64, sec. 3, p. 125; am. 1996, ch. 297, sec. 5, p. 973; am. 1996, ch. 333, sec. 1, p. 1128; am. 1997, ch. 373, sec. 2, p. 1189; am. 2000, ch. 85, sec. 1, p. 181; am. 2003, ch. 298, sec. 3, p. 809; am. 2004, ch. 62, sec. 1, p. 280; am. 2020, ch. 296, sec. 1, p. 849.]

42-222A. TEMPORARY CHANGES DURING DROUGHT CONDITIONS. (1) Upon declaration of a drought emergency for an area designated by the director of the department of water resources and approved by the governor of the state of Idaho, the director of the department of water resources is authorized to allow temporary changes to the use of water rights consisting of temporary transfers to change point of diversion, place and purpose of use of valid existing water rights or temporary exchanges of water authorized to be diverted under water rights, as provided in section [42-240](#), Idaho Code, when the director of the department of water resources determines that such change(s) can be accomplished in accordance with the provisions of this section.

(2) Application for a temporary change shall be made upon forms provided by the department of water resources and shall be accompanied by an application fee of fifty dollars (\$50.00) per application.

(3) The director of the department of water resources is not required to publish notice of the proposed change pursuant to the provisions of section [42-211](#), [42-222](#)(1) or [42-240](#), Idaho Code, and is not required to make findings as provided in said sections. A temporary change may be approved upon completion of the application form, payment of the filing fee and a determination by the director of the department of water resources that the proposed change can be properly administered and there is no information that the change will injure any other water right. If the water right to be changed is administered by a watermaster within a water district, the director of the department of water resources shall obtain and consider the recommendations of the watermaster before approving the temporary change application.

(4) All temporary changes approved pursuant to the provisions of this section shall expire on the date shown in the approval which shall not be later than December 31 of the year in which the emergency transfer approval is made and thereafter the water right shall revert to the point of diversion and place of use existing prior to the temporary change. Nothing herein shall be construed as approval to authorize the construction of a new well as a new point of diversion.

(5) The recipient of an approved temporary change issued pursuant to this section shall assume all risk that the diversion and use of the water may cause injury to other water rights, that the change constitutes an enlargement in use of the original right, that the use is not consistent with the conservation of water resources within the state of Idaho and that such use is not in the local public interest. Any applicant for a temporary change who

is aggrieved by a denial by the director of the department of water resources of a temporary change pursuant to this section may request a hearing pursuant to the provisions of section [42-1701A](#)(3), Idaho Code, and may seek judicial review of the final order of the director pursuant to the provisions of section [42-1701A](#)(4), Idaho Code.

(6) Temporary changes shall only be approved for the purpose of providing a replacement water supply to lands or other uses which normally have a full water supply except for a drought condition. Temporary changes may not be approved to provide water for new projects or to allow expansion of the use of water under existing water rights. If the right to use the water, the diversion works or the water delivery system is represented by shares of stock in a corporation or if such right, diversion works or delivery system is owned or managed by an irrigation district, no change in point of diversion or place or nature of use of such water shall be made or allowed without the written consent of such corporation or irrigation district.

[42-222A, added 1993, ch. 161, sec. 1, p. 411; am. 2001, ch. 126, sec. 1, p. 447.]

42-222B. IRRIGATION CORPORATION BOUNDARY ADJUSTMENTS. (1) A change to the generally described place of use of a water right held by any corporation organized for the operation, control, or management of an irrigation project or canal system may be made without applying for a change in use of the corporation's water right under the provisions of section [42-222](#), Idaho Code. The corporation must file with the department of water resources a map portraying the changes to the generally described place of use within which the corporation's water rights will be exercised. For this filing requirement, it is sufficient to provide a drawing on a seven-and-one-half (7.5) minute quadrangle map having a scale of one to twenty-four thousand (1:24,000) that shows the changes to the generally described place of use to include each quarter-quarter section within which irrigation occurs. The corporation may alternatively submit a digital file depicting a map that shows the boundaries of the generally described place of use, delineated at a minimum scale of one to twenty-four thousand (1:24,000), with a defined projection, and in a format that can be opened using standard geographic information system software and includes each quarter-quarter section within which irrigation occurs.

(2) The director shall review the change to the generally described place of use filed with the department to verify that it will not result in an increase in either the rate of flow diverted or in the total number of acres irrigated as authorized by the water right, shall not result in an enlargement of other water rights within the place of use of the corporation's water rights, and shall cause no injury to other water rights. Upon request from the director, the corporation shall submit information to support the director's inquiry regarding the review criteria.

(3) Following the director's review and approval or denial, if the holder of any water right or the corporation seeks to challenge the director's decision, the challenge may be commenced only by requesting a hearing pursuant to [42-1701A](#)(3), [title 42](#), Idaho Code, thereby initiating a contested case before the department, pursuant to the administrative procedures act, [chapter 52, title 67](#), Idaho Code.

[42-222B, added 2021, ch. 156, sec. 1, p. 432.]

42-223. EXCEPTIONS OR DEFENSES TO FORFEITURE. A right to the use of water shall not be lost by forfeiture pursuant to the provisions of section [42-222](#), Idaho Code, for a failure to apply the water to beneficial use under the conditions specified in any subsection of this section. The legislature does not intend through enactment of this section to diminish or impair any statutory or common law exception or defense to forfeiture existing on the date of enactment or amendment of this section, or to preclude judicial or administrative recognition of other exceptions or defenses to forfeiture recognized in Idaho case law or other provisions of the Idaho Code. No provision of this section shall be construed to imply that the legislature does not recognize the existence or validity of any common law exception or defense to forfeiture existing on the date of enactment or amendment of this section.

(1) A water right appurtenant to land contracted in a federal cropland set-aside program shall not be lost or forfeited for nonuse during the contracted period. The running of any five (5) year period of nonuse for forfeiture of a water right shall be tolled during the time that the land remains in the cropland set-aside program.

(2) A water right held by a municipal provider to meet reasonably anticipated future needs shall be deemed to constitute beneficial use, and such rights shall not be lost or forfeited for nonuse unless the planning horizon specified in the license has expired and the quantity of water authorized for use under the license is no longer needed to meet reasonably anticipated future needs.

(3) A water right shall not be lost or forfeited by a failure to divert and apply the water to beneficial use if the water is not needed to maintain full beneficial use under the right because of land application of waste for disposal purposes including, but not limited to, discharge from dairy lagoons used in combination with or substituted for water diverted under the water right.

(4) A water right shall not be lost or forfeited by a failure to divert and apply the water to beneficial use if the reason for the nonuse of the water is to comply with the provisions of a ground water management plan approved by the director of the department of water resources pursuant to section [42-233a](#) or [42-233b](#), Idaho Code.

(5) A water right shall not be lost or forfeited by a failure of the owner of the right to divert and apply the water to beneficial use while the water right is placed in the water supply bank or is retained in or rented from the water supply bank pursuant to sections [42-1761](#) through [42-1765A](#), Idaho Code, or while the water right is leased pursuant to sections [43-335](#) through [43-342](#), Idaho Code, or sections [42-2501](#) through [42-2509](#), Idaho Code, or while use of the water is made under any other provision of law authorizing the rental or lease of water rights.

(6) No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from circumstances over which the water right owner has no control. Whether the water right owner has control over nonuse of water shall be determined on a case-by-case basis.

(7) No portion of a water right held by an irrigation district, a Carey Act operating company, or any other company, corporation, association, or entity which holds water rights for distribution to its landowners, shareholders or members shall be lost or forfeited due to nonuse by such landowners, shareholders or members, unless the nonuse is subject to the control of such entity.

(8) No portion of a water right held by an irrigation district shall be lost, forfeited or subject to forfeiture as a result of the exclusion of land from the district pursuant to [chapter 11, title 43](#), Idaho Code, so long as any five (5) year period of nonuse following the exclusion does not result from circumstances over which the district has control.

(9) No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from a water conservation practice, which maintains the full beneficial use authorized by the water right, as defined in section [42-250](#), Idaho Code.

(10) No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from the water right being used for mitigation purposes approved by the director of the department of water resources including as a condition of approval for a new water right appropriation approved pursuant to section [42-203A](#), Idaho Code, a water right transfer approved pursuant to section [42-222](#), Idaho Code, a water exchange approved pursuant to section [42-240](#), Idaho Code, or a mitigation plan approved in accordance with rules promulgated pursuant to section [42-603](#), Idaho Code.

(11) No portion of any water right with a beneficial use related to mining, mineral processing or milling shall be lost or forfeited for nonuse, so long as the nonuse results from a closure, suspension or reduced production of the mine, processing facility or mill due in whole or in part to mineral prices, if the mining property has a valuable mineral, as defined in section [47-1205](#), Idaho Code, and the water right owner has maintained the property and mineral rights for potential future mineral production.

(12) No portion of any water right shall be lost or forfeited for nonuse if, after the five (5) year period of nonuse, use of the water is resumed prior to a claim of right by a third party. A third party has made a claim of right if the party has:

- (a) Instituted proceedings to declare a forfeiture;
- (b) Obtained a valid water right authorizing the use of such water with a priority date prior to the resumption of use; or
- (c) Used the water made available by nonuse pursuant to an existing water right.

[42-223, added 2000, ch. 85, sec. 3, p. 185; am. 2002, ch. 343, sec. 1, p. 961; am. 2003, ch. 166, sec. 1, p. 470; am. 2004, ch. 178, sec. 1, p. 560; am. 2008, ch. 239, sec. 1, p. 719; am. 2020, ch. 296, sec. 2, p. 852.]

42-224. FORFEITURE OF STOCKWATER RIGHTS. (1) Within thirty (30) days of receipt by the director of the department of water resources of a petition or other information that a stockwater right has not been put to beneficial use for a term of five (5) years, the director must determine whether the petition or other information, or both, presents prima facie evidence that the stockwater right has been lost through forfeiture pursuant to section [42-222](#)(2), Idaho Code. If the director determines the petition or other information, or both, is insufficient, he shall notify the petitioner of his determination, which shall include a reasoned statement in support of the determination, and otherwise disregard for the purposes of this subsection the other, insufficient, information.

(2) If the director determines the petition or other information, or both, contains prima facie evidence of forfeiture due to nonuse, the director must within thirty (30) days issue an order to the stockwater right owner to show cause before the director why the stockwater right has not been lost through forfeiture pursuant to section [42-222](#)(2), Idaho Code. Any order to

show cause must contain the director's findings of fact and a reasoned statement in support of the determination.

(3) The director must serve a copy of any order to show cause on the stockwater right owner by personal service or by certified mail with return receipt. Personal service may be completed by department personnel or a person authorized to serve process under the Idaho rules of civil procedure. Service by certified mail shall be complete upon receipt of the certified mail. If reasonable efforts to personally serve the order fail, or if the certified mail is returned unclaimed, the director may serve the order by publication by publishing a summary of the order once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the point of diversion is located. Service by publication shall be complete upon the date of the last publication.

(4) If the order affects a stockwater right where all or a part of the place of use is on federal or state grazing lands, the director must mail by certified mail with return receipt a copy of the order to show cause to the holder or holders of any livestock grazing permit or lease for said lands. However, the director shall not issue an order to show cause where the director has or receives written evidence signed by the principal and the agent, prior to issuance of said order, that a principal/agent relationship existed during the five (5) year term mentioned in subsection (1) of this section or currently exists between the owner of the water right as principal and a permittee or lessee as agent for the purpose of obtaining or maintaining the water right.

(5) The director may consider multiple stockwater rights held by a single owner in a single order to show cause.

(6) The stockwater right owner has twenty-one (21) days from completion of service of the order to show cause to request in writing a hearing pursuant to section [42-1701A](#)(1) and (2), Idaho Code.

(7) If the stockwater right owner fails to timely respond to the order to show cause, the director must issue an order within fourteen (14) days regarding forfeiture stating the stockwater right has been forfeited pursuant to section [42-222](#)(2), Idaho Code.

(8) If the stockwater right owner timely requests a hearing, the hearing shall be in accordance with section [42-1701A](#)(1) and (2), Idaho Code, and the rules of procedure promulgated by the director. Following the hearing, the director must issue an order regarding forfeiture that sets forth findings of fact, conclusions of law, and a determination of whether the stockwater right has been forfeited pursuant to section [42-222](#)(2), Idaho Code. The director must issue the order regarding forfeiture no later than forty-five (45) days after completion of the administrative proceeding.

(9) Any order determining that a stockwater right has been forfeited pursuant to subsection (7) or (8) of this section shall have no legal effect except as provided for in subsection (11) of this section. No judicial challenge to an order determining that a stockwater right has been forfeited pursuant to subsection (7) or (8) of this section shall be allowed except within the civil action authorized in subsections (10) and (11) of this section.

(10) Within sixty (60) days after issuance of an order by the director determining that a stockwater right has been forfeited, the state of Idaho, by and through the office of the attorney general, must initiate a civil action by electronically filing in the district court for the fifth judicial district, Twin Falls county, the following: a complaint requesting a declaration that the stockwater right is forfeited; certified copies of the or-

der regarding forfeiture; and the record of the administrative proceeding. A copy of the complaint and accompanying documents shall be served on the stockwater right holder who shall be named as the defendant in the action, all parties to the administrative proceeding, and any holder or holders of livestock grazing permits or leases for the place of use of the stockwater right for which the director possesses an address. Any person may move to intervene in the action pursuant to the Idaho rules of civil procedure, but only if such a motion is filed at least twenty-one (21) days before the date set for the hearing under the scheduling order.

(11) After the initiation of the civil action required by this section, the proceedings in the district court shall be like those in a civil action triable without right to a jury, provided that the department of water resources shall not be a party to the civil action but may appear as a witness to explain the basis for the director's forfeiture determination. In any such proceeding, the director's order determining forfeiture shall constitute prima facie evidence that the right has been forfeited but shall not change the standard of proof for forfeiture of the water right established by section [42-222](#)(2), Idaho Code.

(12) At the conclusion of the action, the district court shall issue an order determining whether the stockwater right has been forfeited pursuant to section [42-222](#), Idaho Code. If the district court determines that the stockwater right has been forfeited, the court shall also enter a judgment that the stockwater right has been forfeited.

(13) For purposes of this section, the following terms have the following meanings:

(a) "Stockwater right" means water rights for the watering of livestock meeting the requirements of section [42-1401A](#)(11), Idaho Code.

(b) "Stockwater right owner" as used in this section means the owner of the stockwater right shown in the records of the department of water resources at the time of service of the order to show cause.

(14) This section applies to all stockwater rights except those stockwater rights decreed to the United States based on federal law.

[42-224, added 2020, ch. 253, sec. 1, p. 738; am. 2022, ch. 215, sec. 1, p. 686.]

42-226. GROUND WATERS ARE PUBLIC WATERS. The traditional policy of the state of Idaho, requiring the water resources of this state to be devoted to beneficial use in reasonable amounts through appropriation, is affirmed with respect to the ground water resources of this state as said term is hereinafter defined and, while the doctrine of "first in time is first in right" is recognized, a reasonable exercise of this right shall not block full economic development of underground water resources. Prior appropriators of underground water shall be protected in the maintenance of reasonable ground water pumping levels as may be established by the director of the department of water resources as herein provided. In determining a reasonable ground water pumping level or levels, the director of the department of water resources shall consider and protect the thermal and/or artesian pressure values for low temperature geothermal resources and for geothermal resources to the extent that he determines such protection is in the public interest. All ground waters in this state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same for beneficial use. This act shall not

affect the rights to the use of ground water in this state acquired before its enactment.

Any application for a water permit that seeks to transfer ground water outside the immediate ground water basin as defined by the director of the department of water resources for the purpose of irrigating five thousand (5,000) or more acres on a continuing basis or for a total volume in excess of ten thousand (10,000) acre feet per year, the application must first be approved by the director of the department of water resources and then by the Idaho legislature. Each shall give due consideration to the local economic and ecological impact of the project or development so proposed.

[42-226, added 1951, ch. 200, sec. 1, p. 423; am. 1953, ch. 182, sec. 1, p. 277; am. 1980, ch. 186, sec. 1, p. 413; am. 1987, ch. 347, sec. 1, p. 742.]

42-227. DRILLING AND USE OF WELLS FOR DOMESTIC PURPOSES EXCEPTED. The excavation and opening of wells and the withdrawal of water therefrom for domestic purposes shall not be subject to the permit requirement under section [42-229](#), Idaho Code; providing such wells and withdrawal devices are subject to inspection by the department of water resources and the department of environmental quality and providing further that the drilling of such wells shall be subject to the licensing provisions of section [42-238](#), Idaho Code. Rights to ground water for such domestic purposes may be acquired by withdrawal and use.

[42-227, added 1951, ch. 200, sec. 2, p. 423; am. 1970, ch. 187, sec. 1, p. 541; am. 1978, ch. 324, sec. 1, p. 819 ; am. 2001, ch. 103, sec. 79, p. 318.]

42-228. DRILLING AND USE OF WELLS FOR DRAINAGE OR RECOVERY PURPOSES EXCEPTED. The excavation and opening of wells and the withdrawal of water therefrom for the sole purpose of improving or preserving the utility of land by draining them shall not be forbidden or governed by this act, and, likewise, there shall be excepted from the provisions of this act the excavation and opening of wells and withdrawal of water therefrom by canal companies, irrigation districts, and other owners of irrigation works for the sole purpose of recovering ground water resulting from irrigation under such irrigation works for further use on or drainage of lands to which the established water rights of the parties constructing the wells are appurtenant; providing that the drilling of such wells shall be subject to the licensing provisions of section [42-238](#), Idaho Code.

[42-228, added 1951, ch. 200, sec. 3, p. 423; am. 1970, ch. 187, sec. 2, p. 541.]

42-229. METHODS OF APPROPRIATION. The right to the use of ground water of this state may be acquired only by appropriation. Such appropriation may be perfected by means of the application permit and license procedure as provided in this act; provided, however, that in the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of this act it may be perfected under such method of appropriation. All proceedings commenced prior to the effective date of this act for the acquisition of rights to the use of ground water under the provisions of sections [42-201](#)--[42-225](#), Idaho Code, may be completed under the provi-

sions of said sections and rights to the use of ground water may be thereby acquired. But the administration of all rights to the use of ground water, whenever or however acquired or to be acquired, shall, unless specifically excepted herefrom, be governed by the provisions of this act.

[42-229, added 1951, ch. 200, sec. 4, p. 423; am. 1963, ch. 216, sec. 1, p. 623.]

42-230. DEFINITIONS. (a) "Ground water" is all water under the surface of the ground whatever may be the geological structure in which it is standing or moving.

(1) All ground water having a temperature of greater than eighty-five (85) degrees Fahrenheit and less than two hundred twelve (212) degrees Fahrenheit in the bottom of a well shall be classified and administered as a low temperature geothermal resource pursuant to section [42-233](#), Idaho Code.

(2) All ground water having a temperature of two hundred twelve (212) degrees Fahrenheit or more in the bottom of a well shall be classified as a geothermal resource pursuant to section [42-4002](#), Idaho Code, and shall be administered as a geothermal resource pursuant to [chapter 40, title 42](#), Idaho Code.

(b) "Well" is an artificial excavation or opening in the ground more than eighteen (18) feet in vertical depth below land surface by which ground water of any temperature is sought or obtained.

(c) "Well driller" is any person or group of persons who excavate or open a well or wells for compensation or otherwise upon the land of the well driller or upon other land. Well driller does not include those persons who construct a well on their own property for their own use without the aid of any power driven mechanical equipment.

(d) "Well drilling" or "drilling" for purposes of this chapter is the act of constructing a new well or deepening or modifying an existing well by any percussion, rotary, boring, digging, jetting, or augering method.

(e) "Water right" is the legal right, however acquired, to the use of water for beneficial purposes.

(f) "Operator" is the employee of the well driller who, through his work at the drilling site, causes the well to be drilled.

(g) "Low temperature geothermal resource well" means a well which is capable of producing a low temperature geothermal resource from which fluids can be produced which have value by virtue of the heat contained therein.

[42-230, added 1951, ch. 200, sec. 5, p. 423; am. 1970, ch. 187, sec. 3, p. 541; am. 1971, ch. 149, sec. 1, p. 739; am. 1980, ch. 209, sec. 1, p. 479; am. 1987, ch. 347, sec. 2, p. 743; am. 1990, ch. 319, sec. 3, p. 872.]

42-231. DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES. In addition to other duties prescribed by law, it shall be the duty of the director of the department of water resources to conduct investigations, surveys and studies relative to the extent, nature and location of the ground water resources of this state; and to this end, the director of the department of water resources may, on behalf of the state of Idaho enter into cooperative investigations, researches, and studies with any agency or department of the government of the United States, or any other state or public authority of this state, or private agencies or individuals. It shall likewise be the duty of the director of the department of water resources to control the

appropriation and use of the ground water of this state as in this act provided and to do all things reasonably necessary or appropriate to protect the people of the state from depletion of ground water resources contrary to the public policy expressed in this act.

[42-231, added 1951, ch. 200, sec. 6, p. 423; am. 1953, ch. 182, sec. 2, p. 277.]

42-232. GROUND WATER RECHARGE PROGRAM -- NEGOTIATIONS WITH BUREAU OF RECLAMATION. The director of the department of water resources is hereby authorized and directed to institute negotiations with the United States bureau of reclamation and the senators and representatives representing the state of Idaho in the congress of the United States for purposes of examining the possibility of incorporating an artificial ground water recharge program or project into those water projects for withdrawal of waters from ground water basins in the Coltman area of Bonneville County, the Menan Buttes area in Madison county, or any other area contemplated by the bureau of reclamation, which have been authorized by congress as a part of the Salmon Falls Creek irrigation project located in Twin Falls county.

[42-232, added 1978, ch. 366, sec. 3, p. 957.]

42-233. LOW TEMPERATURE GEOTHERMAL RESOURCE. (1) The right to the use of low temperature geothermal resources of this state shall be acquired by appropriation, except as provided in subsection (2) of this section. The appropriation may be perfected by means of the application, permit and license procedure as provided in this chapter for ground water, provided that low temperature geothermal resources shall be utilized primarily for heat value and secondarily for the value as water. Usage of a low temperature geothermal resource primarily for reasons other than heat value is not a beneficial use of the resource, unless the director of the department of water resources exempts the proposed use. The director may exempt a proposed use if the director concludes:

- (a) The proposed use will not detrimentally affect existing water rights, including water rights for low temperature geothermal water;
- (b) The proposed use will not diminish the temperature of or artesian pressure of the low temperature geothermal aquifer; and
- (c) There is no economically viable source of water having a bottom hole temperature of eighty-five (85) degrees or less in a well available.

(2) The use of low temperature geothermal resources for the development and operation of oil and gas wells permitted under section [47-316](#), Idaho Code, shall not be subject to the provisions of this chapter. However, the director of the department of water resources may initiate a contested case in accordance with the provisions of [chapter 52, title 67](#), Idaho Code, and the rules of procedure promulgated by the department, if the department has reason to believe that an oil and gas well will cause, is causing or has caused significant negative impacts to pressure, temperature, quality necessary for beneficial use or quantity of water available to water rights existing at the time of the development of the oil and gas well or to a water resource that can be beneficially used. The evidence of causation must come from the department or be credible information from a water right or a geothermal resource permit holder existing at the time of the development of the oil and gas well. It shall be the burden of the entity operating the oil and gas well to establish that it will not cause, is not causing and has

not caused significant negative impacts to pressure, temperature, quality necessary for beneficial use or quantity of water available to existing water rights existing at the time of the development of the oil and gas well or to a water resource that can be beneficially used. If the director determines that the well will cause, is causing or has caused significant negative impacts to pressure, temperature, quality necessary for beneficial use or quantity of water available to a water right existing at the time of the development of the oil and gas well or to a water resource that can be beneficially used, the director may order the operator to take measures to mitigate those impacts.

(3) Any owner of a well who engages in the drilling, redrilling, modifying or deepening of any low temperature geothermal well shall file with the director of the department of water resources a surety bond or cash bond in the penal sum of not less than five thousand dollars (\$5,000) or more than twenty thousand dollars (\$20,000) as determined by the director of the department of water resources based on the temperature, depth and pressure of the resource, the size and depth of the well, and any other relevant factors. The surety or cash bond shall be conditioned upon the proper compliance with the provisions of this chapter and [chapter 40, title 42](#), Idaho Code, and rules and regulations promulgated pursuant thereto. The bond shall remain in effect for one (1) year following completion of drilling, redrilling, modifying or deepening of the well or until released in writing by the director, whichever occurs first.

(4) All permits, licenses, decreed rights and valid claims to a right to the use of ground water which would be classified as a low temperature geothermal resource having a priority date prior to July 1, 1987, remain valid and the bond provisions of subsection (3) of this section are not applicable unless the well from which the right diverts water is modified or deepened. The provisions of this section shall not be applicable to all permits, licenses and rights to the use of geothermal resources as defined in [chapter 40, title 42](#), Idaho Code, which would be classified as a low temperature geothermal resource under this section, issued or proclaimed prior to July 1, 1987, and the bond provisions of subsection (3) of this section are not applicable to such wells.

[42-233, added 1987, ch. 347, sec. 3, p. 744; am. 1988, ch. 311, sec. 1, p. 968; am. 2012, ch. 111, sec. 4, p. 305; am. 2017, ch. 271, sec. 29, p. 709; am. 2019, ch. 51, sec. 1, p. 139.]

42-233a. "CRITICAL GROUND WATER AREA" DEFINED -- PUBLIC HEARINGS -- PUBLICATION OF NOTICE -- GRANTING OR DENIAL OF APPLICATION -- APPEAL. "Critical ground water area" is defined as any ground water basin, or designated part thereof, not having sufficient ground water to provide a reasonably safe supply for irrigation of cultivated lands, or other uses in the basin at the then-current rates of withdrawal, or rates of withdrawal projected by consideration of valid and outstanding applications and permits, as may be determined and designated, from time to time, by the director of the department of water resources.

Upon the designation of a "critical ground water area," it shall be the duty of the director of the department of water resources to conduct a public hearing in the area concerned to apprise the public of such designation and the reasons therefor. Notice of the hearing shall be published in two (2) consecutive weekly issues of a newspaper of general circulation in the area immediately prior to the date set for hearing.

In the event an area has been designated as a "critical ground water area" and the director of the department of water resources desires to remove such designation or modify the boundaries thereof, he shall likewise conduct a public hearing following similar publication of notice prior to taking such action.

When a "critical ground water area" is designated by the director of the department of water resources, or at any time thereafter during the existence of the designation, the director may approve a ground water management plan for the area. The ground water management plan shall provide for managing the effects of ground water withdrawals on the aquifer from which withdrawals are made and on any other hydraulically connected sources of water.

In the event an application for permit is made with respect to an area that has not been designated as a critical ground water area, the director of the department of water resources shall forthwith issue a permit in accordance with the provisions of section [42-203A](#) and section [42-204](#), Idaho Code, provided said application otherwise meets the requirements of such sections; and further provided that if the applicant proposes to appropriate water from a ground water basin or basins in an amount which exceeds ten thousand (10,000) acre-feet per year either from a single or a combination of diversion points, and the director determines that the withdrawal of such amount will substantially and adversely affect existing pumping levels of appropriators pumping from such basin or basins, or will substantially and adversely affect the amount of water available for withdrawal from such basin or basins under existing water rights, the director may require that the applicant undertake such recharge of the ground water basin or basins as will offset that withdrawal adversely affecting existing pumping levels or water rights.

In the event an application for permit is made in an area which has been designated as a critical ground water area, if the director of the department of water resources from the investigation made by him on said application as herein provided, or from the investigation made by him in determining the area to be critical, or from other information that has come officially to his attention, has reason to believe that there is insufficient water available subject to appropriation at the location of the proposed well described in the application, the director of the department of water resources may forthwith deny said application; provided, however, that if ground water at such location is available in a lesser amount than that applied for, the director of the department of water resources may issue a permit for the use of such water to the extent that such water is available for such appropriation.

The director may require all water right holders within a critical ground water area to report withdrawals of ground water and other necessary information for the purpose of assisting him in determining available ground water supplies and their usage.

The director, upon determination that the ground water supply is insufficient to meet the demands of water rights within all or portions of a critical ground water area, shall order those water right holders on a time priority basis, within the area determined by the director, to cease or reduce withdrawal of water until such time as the director determines there is sufficient ground water. Water right holders participating in an approved ground water management plan shall not be subject to administration on a time priority basis as long as they are in compliance with the ground water management plan.

Any applicant dissatisfied with the decision of the director of the department of water resources may appeal to the district court in the manner provided for in section [42-237e](#), Idaho Code.

[42-233a, added 1951, ch. 200, sec. 9; am. 1953, ch. 182, sec. 5, p. 277; am. 1963, ch. 216, sec. 2, p. 623; am. 1967, ch. 187, sec. 1, p. 616; am. 1978, ch. 366, sec. 2, p. 956; am. 1995, ch. 286, sec. 1, p. 949; am. 2000, ch. 85, sec. 5, p. 185; am. 2018, ch. 41, sec. 1, p. 103.]

42-233b. GROUND WATER MANAGEMENT AREA. "Ground water management area" is defined as any ground water basin or designated part thereof which the director of the department of water resources has determined may be approaching the conditions of a critical ground water area. Upon designation of a ground water management area the director shall publish notice in two (2) consecutive weekly issues of a newspaper of general circulation in the area.

When a ground water management area is designated by the director of the department of water resources, or at any time thereafter during the existence of the designation, the director may approve a ground water management plan for the area. The ground water management plan shall provide for managing the effects of ground water withdrawals on the aquifer from which withdrawals are made and on any other hydraulically connected sources of water.

Applications for permits made within a ground water management area shall be approved by the director only after he has determined on an individual basis that sufficient water is available and that other prior water rights will not be injured.

The director may require all water right holders within a designated water management area to report withdrawals of ground water and other necessary information for the purpose of assisting him in determining available ground water supplies and their usage.

The director, upon determination that the ground water supply is insufficient to meet the demands of water rights within all or portions of a water management area, shall order those water right holders on a time priority basis, within the area determined by the director, to cease or reduce withdrawal of water until such time as the director determines there is sufficient ground water. Water right holders participating in an approved ground water management plan shall not be subject to administration on a time priority basis so long as they are in compliance with the ground water management plan.

[42-233b, added 1982, ch. 90, sec. 1, p. 165; am. 2000, ch. 85, sec. 6, p. 187; am. 2016, ch. 297, sec. 1, p. 848.]

42-234. GROUND WATER RECHARGE -- AUTHORITY OF DEPARTMENT TO GRANT PERMITS AND LICENSES. (1) It is the policy of the state of Idaho to promote and encourage the optimum development and augmentation of the water resources of this state. The legislature deems it essential, therefore, that water projects designed to advance this policy be given maximum support. The legislature finds that the use of water to recharge ground water basins in accordance with Idaho law and the state water plan may enhance the full realization of our water resource potential by furthering water conservation and increasing the water available for beneficial use.

(2) The legislature hereby declares that the appropriation of water for purposes of ground water recharge shall constitute a beneficial use of water. The director of the department of water resources is authorized to is-

sue permits and licenses for the purpose of ground water recharge, pursuant to the provisions of this chapter and in compliance with other applicable Idaho law and the state water plan.

(3) The director of the department of water resources may regulate the amount of water which may be diverted for recharge purposes and may reduce such amount, even though there is sufficient water to supply the entire amount originally authorized by permit or license. To facilitate necessary financing of an aquifer recharge project, the director may fix a term of years in the permit or license during which the amount of water authorized to be diverted shall not be reduced by the director under the provisions of this subsection.

(4) To ensure that other water rights are not injured by the operations of an aquifer recharge project, the director of the department of water resources shall have the authority to approve, disapprove or require alterations in the methods employed to achieve ground water recharge. In the event that the director determines that the methods of operation are adversely affecting existing water rights or are creating conditions adverse to the beneficial use of water under existing water rights, the director shall order the cessation of operations until such alterations as may be ordered by the director have been accomplished or such adverse effects otherwise have been corrected.

(5) The legislature further recognizes that incidental ground water recharge benefits are often obtained from the diversion and use of water for various beneficial purposes. However, such incidental recharge may not be used as the basis for claim of a separate or expanded water right. Incidental recharge of aquifers which occurs as a result of water diversion and use that does not exceed the vested water right of water right holders is in the public interest. The values of such incidental recharge shall be considered in the management of the state's water resources.

[42-234, added 1978, ch. 366, sec. 1, p. 955; am. 1994, ch. 433, sec. 1, p. 1397; am. 2009, ch. 242, sec. 1, p. 743.]

42-235. DRILLING PERMITS. Prior to beginning construction of any well, or changing the construction of any well, the driller or well owner shall obtain a permit from the director of the department of water resources to protect the public health, safety and welfare and the environment, and to prevent the waste of water or mixture of water from different aquifers. There shall be a seventy-five dollar (\$75.00) charge for the permit if the well is to be used for domestic or monitoring purposes. If the well is to be used for other than domestic or monitoring purposes, the charge for the permit shall be two hundred dollars (\$200). All moneys received pursuant to this section shall be credited to the water administration account. The director may provide a blanket drilling permit for site specific monitoring programs which will determine the quality, quantity, temperature, pressure or other attributes of aquifers. The application for a blanket permit shall include a design proposal prepared by a licensed engineer or licensed geologist which shall describe the overall drilling program and all relevant technical features of the wells to the satisfaction of the director. Progress reports, completion and other data may be required as provided by rule. The fee for the blanket permit shall be one hundred dollars (\$100) plus an additional fifty dollars (\$50.00) per well. A driller or well owner violating any provision of this section shall be guilty of a misdemeanor and shall also be subject to the enforcement procedures of section [42-1701B](#), Idaho Code.

[42-235, added 1987, ch. 347, sec. 4, p. 745; am. 1990, ch. 164, sec. 1, p. 361; am. 1996, ch. 267, sec. 1, p. 868; am. 1998, ch. 173, sec. 1, p. 596.]

42-237. ABANDONMENT OF WATER RIGHT -- CHANGE OF POINT OF DIVERSION AND PLACE OF USE. The provisions relating to loss of water rights by nonuse and abandonment, as set forth in section [42-222](#), shall apply to ground water rights. The provisions of section [42-222](#), relating to change of point of diversion and change of place of use of water, shall be applicable to waters accruing from water rights, provided, that the withdrawal of waters from the same ground water supply at another location in lieu of withdrawal at the original location shall be considered a change of point of diversion.

[42-237, added 1951, ch. 200, sec. 12(14), p. 423; am. 1953, ch. 182, sec. 7, p. 277.]

42-237a. POWERS OF THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES. In the administration and enforcement of this act and in the effectuation of the policy of this state to conserve its ground water resources, the director of the department of water resources in his sole discretion, is empowered:

a. To require all flowing wells to be so capped or equipped with valves that the flow of water can be completely stopped when the wells are not in use.

b. To require both flowing and nonflowing wells to be so constructed and maintained as to prevent the waste of ground waters through leaky wells, casings, pipes, fittings, valves or pumps either above or below the land surface.

c. To prescribe uniform scientific methods to determine water levels in and calculate waters withdrawn from wells.

d. To go upon all lands, both public and private, for the purpose of inspecting wells, pumps, casings, pipes, and fittings, including wells used or claimed to be used for domestic purposes.

e. To order the cessation of use of a well pending the correction of any defect that the director of the department of water resources has ordered corrected.

f. To commence actions to enjoin the illegal opening or excavation of wells or withdrawal or use of water therefrom and to appear and become a party to any action or proceeding pending in any court or administrative agency when it appears to the director of the department of water resources that the determination of such action or proceeding might result in depletion of the ground water resources of the state contrary to the public policy expressed in this act.

g. To supervise and control the exercise and administration of all rights to the use of ground waters and in the exercise of this discretionary power he may initiate administrative proceedings to prohibit or limit the withdrawal of water from any well during any period that he determines that water to fill any water right in said well is not there available. To assist the director of the department of water resources in the administration and enforcement of this act, and in making determinations upon which said orders shall be based, he may establish a ground water pumping level or levels in an area or areas having a common ground water supply as determined by him as hereinafter provided. Water in a well shall not be deemed available to fill a water right therein if withdrawal therefrom of the amount called for by

such right would affect, contrary to the declared policy of this act, the present or future use of any prior surface or ground water right or result in the withdrawing of the ground water supply at a rate beyond the reasonably anticipated average rate of future natural recharge. However, the director may allow withdrawal at a rate exceeding the reasonably anticipated rate of future natural recharge if the director finds it is in the public interest and if it satisfies the following criteria:

1. A program exists or likely will exist which will increase recharge or decrease withdrawals within a time period acceptable to the director to bring withdrawals into balance with recharge.
2. Holders of senior rights to use ground water will not be caused thereby to pump water from below the established reasonable pumping level or levels.

In connection with his supervision and control of the exercise of ground water rights the director of the department of water resources shall also have the power to determine what areas of the state have a common ground water supply and whenever it is determined that any area has a ground water supply which affects the flow of water in any stream or streams in an organized water district, to incorporate such area in said water district; and whenever it is determined that the ground water in an area having a common ground water supply does not affect the flow of water in any stream in an organized water district, to incorporate such area in a separate water district to be created in the same manner provided for in section [42-604](#) of [title 42](#), Idaho Code. The administration of water rights within water districts created or enlarged pursuant to this act shall be carried out in accordance with the provisions of [title 42](#), Idaho Code, as the same have been or may hereafter be amended, except that in the administration of ground water rights either the director of the department of water resources or the watermaster in a water district or the director of the department of water resources outside of a water district shall, upon determining that there is not sufficient water in a well to fill a particular ground water right therein by order, limit or prohibit further withdrawals of water under such right as hereinabove provided, and post a copy of said order at the place where such water is withdrawn; provided, that land, not irrigated with underground water, shall not be subject to any allotment, charge, assessment, levy, or budget for, or in connection with, the distribution or delivery of water.

h. To order the installation and maintenance of approved measuring devices consistent with the purposes of section [42-701](#), Idaho Code.

[42-237a, 1951, ch. 200, sec. 15, as added by 1953, ch. 182, sec. 8, p. 277; am. 1977, ch. 258, sec. 1, p. 757; am. 1987, ch. 347, sec. 5, p. 745; am. 1994, ch. 430, sec. 2, p. 1390; am. 1994, ch. 450, sec. 3, p. 1436.]

42-237e. APPEALS FROM ACTIONS OF THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES. Any person dissatisfied with any decision, determination, order or action of the director of the department of water resources made pursuant to this act may, if a hearing on the matter already has been held, seek judicial review pursuant to section [42-1701A](#)(4), Idaho Code. If a hearing has not been held, any person aggrieved by the action of the director or watermaster may contest such action pursuant to section [42-1701A](#)(3), Idaho Code.

[42-237e, 1951, ch. 200, sec. 19, as added by 1953, ch. 182, sec. 8, p. 277; am. 1980, ch. 238, sec. 8, p. 537; am. 2021, ch. 36, sec. 1, p. 89.]

42-237f. ADJUDICATION OF WATER RIGHT. The provisions of sections [42-1401](#)--[42-1405](#), Idaho Code, relative to adjudication of water rights shall be applicable to all water rights acquired under this act.

[42-237f, 1951, ch. 200, sec. 20, as added by 1953, ch. 182, sec. 8, p. 277.]

42-237h. DUTIES OF THE ATTORNEY GENERAL. It shall be the duty of the attorney general to institute and prosecute civil enforcement actions or injunctive actions as provided in this chapter and to prosecute actions or proceedings for the enforcement of any criminal provisions of this chapter. The attorney general may delegate the authority and duty under this section to prosecute criminal actions to the prosecuting attorney of the county in which such a criminal action may arise.

[42-237h, added 1987, ch. 347, sec. 7, p. 747.]

42-238. WELL DRILLERS' LICENSES AND OPERATOR PERMITS. (1) The director of the department of water resources is hereby vested with the duties relating to the licensing of well drillers and operators of well-drilling equipment as provided for in this act so as to protect the ground water resources against waste and contamination. Qualifications for well drillers and operators of well-drilling equipment shall be adopted by rule of the water resource board.

(2) It shall be unlawful for any person to drill a well in Idaho, including wells excepted under sections [42-227](#) and [42-228](#), Idaho Code, without first complying with the provisions of this chapter. It shall be unlawful for any person to abandon a well in Idaho without first obtaining a driller's license or receiving a waiver of the license requirement from the director of the department of water resources. Authorization is required from the director prior to the abandonment and the person abandoning the well shall submit to the director a report describing the abandonment.

(3) For the purpose of this act, a "person" shall be defined as any individual who drills or abandons any well for himself or another in this state; it shall also be defined as any firm, copartnership, corporation or association that drills or abandons, or contracts to drill or abandon, any well for hire or otherwise in this state.

(4) A driller's license shall be obtained by filing with the director an application in writing on a form provided by the director accompanied by a two hundred dollar (\$200) application fee.

(5) The director shall require that an applicant for a driller's license successfully pass a written or oral examination and be required to submit references and other detailed information describing past drilling experience to allow the director to determine if the applicant is qualified to drill wells in the state.

(6) The water resource board may adopt rules for licensing and renewal of licenses of well drillers in compliance with [chapter 52, title 67](#), Idaho Code. The board is authorized to adopt rules on professional responsibility and continuing education requirements, not to exceed twenty (20) hours during each licensing period. Notwithstanding other provisions of this chapter, the director may refuse to issue or renew a driller's license permanently or for a designated period of time if the driller has previously constructed wells improperly or constructed a well without a valid driller's license. The rules may also allow for the director to issue a license with

limitations on the type, size or depth of wells the applicant is authorized to construct. A copy of the proposed rules for licensing of well drillers shall be furnished to each well driller holding a current license at the time such proposed rules are promulgated or modified. The rules shall provide for the consideration of such factors as the applicant's:

- (a) Knowledge of Idaho water laws and the rules of the water resource board in connection with the drilling of wells, including proper well construction standards and procedures;
- (b) Knowledge of the various types of drilling tools and their use;
- (c) General knowledge of underground geology and ground water hydrology and their relation to well construction;
- (d) Ownership or access to equipment capable of adequately constructing a well;
- (e) Knowledge of types of well casing and their use;
- (f) Knowledge of special well-drilling problems and their solution, including additional requirements for licensing for drillers who construct wells in areas of drilling concern or for the production of low temperature geothermal resources as defined in section [42-233](#), Idaho Code, and for the production of geothermal resources as provided in [chapter 40, title 42](#), Idaho Code;
- (g) Previous drilling experience; and
- (h) History of compliance with well-drilling laws and rules.

(7) If it is determined that the applicant for a driller's license is not qualified, the director shall deny the application. If it is determined that the applicant is qualified, a license shall be issued upon the filing with the director of a surety bond or cash bond in the penal sum of not less than five thousand dollars (\$5,000), or more than twenty thousand dollars (\$20,000), as determined by the director based on the applicant's history of compliance with well-drilling laws and rules, the size and depth of the wells the applicant proposes to drill, the complexity of the wells, the resource to be recovered, the area of operation of the applicant, and other relevant factors the director determines are in the public interest. The surety or cash bond shall be conditioned upon the proper compliance with the provisions of this chapter, [chapter 40, title 42](#), Idaho Code, and rules promulgated pursuant thereto. Such bond shall be made payable to the director.

(8) Employees of drilling firms, copartnerships, corporations or associations are authorized to operate drilling equipment for the driller after obtaining an operator's permit from the director. Such employees shall be designated as operators.

- (a) A driller is responsible for adequate supervision of the operators during the construction of each well. A driller shall be responsible for the work of the operators employed by the driller.
- (b) An operator shall operate drilling equipment only for the driller listed on the operator's permit.
- (c) An operator's permit shall be obtained by filing with the director an application in writing on a form provided by the director accompanied by a twenty-five dollar (\$25.00) application fee.
- (d) The applicant for an operator's permit shall successfully complete a written or oral examination.
- (e) The water resource board may adopt rules for the issuance, revocation and renewal of an operator's permit in accordance with [chapter 52, title 67](#), Idaho Code. The board is also authorized to adopt rules on professional responsibility and continuing education requirements not

to exceed twenty (20) hours during each permitting period. The rules shall consider such factors as:

- (i) Knowledge of Idaho water laws and the rules of the water resource board in connection with the drilling of wells;
- (ii) Demonstrated previous compliance with well-drilling laws and rules including well construction standards; and
- (iii) General understanding of well-drilling equipment, well construction techniques, basic geology and map reading.

(9) Driller's licenses and operator's permits issued under this section shall expire on March 31 in the second year after issuance or upon revocation of the license by the director as provided for in this act. The driller's license can be renewed effective April 1 of every other year upon written application on forms provided by the director and the filing of a one hundred dollar (\$100) renewal fee plus a fifteen dollar (\$15.00) renewal fee for each operator employed by the licensed driller. Drillers renewing licenses in 1997 shall be assessed a licensing fee prorated monthly based upon the annual fee schedule. Thereafter, driller licenses and operator permits will be renewed upon expiration for a two (2) year period. Documents demonstrating compliance with the continuing education requirements of the rules shall be submitted to the director along with other license and permit renewal documents. The renewal request must be accompanied by a new bond or evidence that the previous bond is still in effect. The renewal may then be granted by the director if he determines that the driller or operator has complied with the rules promulgated pursuant to this act. The fees collected for the licensing of well drillers and permitting of operators are nonrefundable and shall be deposited in the water administration fund with the state treasurer with other fees collected by the director.

(10) The licensed driller and permitted operators shall have a card on hand provided by the director to indicate that the driller or operator is presently licensed or permitted at all times when he is operating the drilling equipment. The director may also require other identification to be posted on the drilling equipment as he deems helpful in the administration of this act.

(11) Well driller's report. In order to enable a comprehensive survey of the extent and occurrence of the state's ground water resource, every well driller is hereby required to keep available for inspection at the well site a daily well log and pertinent data concerning each well, and its construction or abandonment, that is constructed or abandoned under the driller's direction in Idaho, including wells excepted under sections [42-227](#) and [42-228](#), Idaho Code, and to complete a report on forms furnished by the director. These reports shall be properly prepared and signed by the driller and deposited with the director within thirty (30) days following the completion of the well. When the driller signs the report, the driller shall attest that all information on the report is accurate to the best of the driller's knowledge and that the driller has met all minimum well construction standards, low temperature geothermal resource well construction standards, geothermal resource well construction standards and area of drilling concern standards as adopted by the water resource board. The reports shall become a permanent record in the office of the director for hydrologic and geologic analysis and research and shall be available for public use. The report shall include such data as the director deems necessary to provide the information that will be valuable for future reference and study.

(12) Well construction standards. The water resource board shall adopt minimum standards for new well construction, modification and abandonment of existing wells, low temperature geothermal resource well construction and geothermal well construction in this state under the provisions of [chapter 52, title 67](#), Idaho Code. Such standards shall require each well to be so constructed as to protect the ground water of the state from waste and contamination and may include additional requirements for wells drilled in "areas of drilling concern" as designated in accordance with subsection (15) of this section. Every licensed well driller will be furnished a copy of the adopted standards by the director and will be required to construct or abandon each well in compliance with the adopted standards.

(13) Violations. When the director of the department of water resources determines that any person is in substantial violation of any provision of this section or any rule, permit, condition of approval or order issued or promulgated pursuant to this section, 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. Failure of the driller to comply with the provisions of section [42-238](#)(11), Idaho Code, will allow the director to proceed to collect the necessary data on the well or wells in any manner available to him, and the cost of this data collection may be charged against the driller's bond in the amount of the expenses incurred up to the total amount of the bond.

(a) Failure of the driller to comply with the provisions of section [42-238](#)(11), Idaho Code, is also cause for the director to revoke an active license, or refuse to renew a license, until such time as the well driller's report or reports are properly completed and on file in the office of the director. If it is found that a driller has intentionally submitted inaccurate or false information in the signed well driller's report as provided in subsection (11) of this section, or has failed to file a report within the time frame required, the driller shall be liable for a civil penalty as provided in section [42-1701B](#), Idaho Code. In addition, this shall be cause for the director to suspend an active license for a period not in excess of one (1) year or to not renew a license.

(b) Failure of the driller to comply with the provisions of section [42-238](#)(12), Idaho Code, will allow the director to proceed to repair, reconstruct or abandon a well so that it complies with the adopted minimum standards of well construction and abandonment, and the costs of this work may be charged against the driller's bond in the amount of the expenses incurred up to the total amount of the bond.

(c) Failure of the driller to comply with the provisions of section [42-238](#)(12), Idaho Code, is also cause for the director to revoke an active license or refuse to renew a license until such time as the well driller has repaired or reconstructed the well or wells so that they meet the adopted minimum standards. Any driller, well owner or well pump installer causing a well to be altered or modified so as to not meet the construction standards provided for under this section shall be deemed to have violated the provisions of this section and shall be subject to the enforcement provisions of section [42-1701B](#), Idaho Code. The director may also require that the well driller present evidence to show that he and his equipment are now capable of constructing a well in a proper manner before the license is renewed.

(14) Appeals. Refusal to issue, refusal to renew, or revocation of a well driller's license or operator's permit by the director shall be cause for the well driller to seek a public hearing before the water resource board. No formal petition shall be required from the affected driller or operator, but a simple statement, in writing, requesting a hearing shall be sufficient. The board shall notify the driller or operator and the director of the date set for the hearing, which shall be at least fifteen (15) days after the notice is sent by certified mail to the well driller or operator at his address of record with the department. A certified transcript of the proceedings and the evidence received at such hearing shall be maintained by the board. The board shall affirm, modify or reject the director's decision and make its decision in the form of an order to the director. The hearing shall be conducted in accordance with [chapter 52, title 67](#), Idaho Code, and rules of practice and procedure adopted by the water resource board. Any party to the hearing may seek judicial review of any final order of the water resource board pursuant to [chapter 52, title 67](#), Idaho Code.

(15) Drilling in a designated "area of drilling concern." The director of the department of water resources may designate, as he determines necessary, "areas of drilling concern" on an aquifer-by-aquifer basis within which drillers must comply with the additional requirements of this section. The director shall designate "areas of drilling concern" to protect public health and to prevent waste or contamination of ground or surface water because of factors such as aquifer pressure, vertical depth of the aquifer, warm or hot ground water, or contaminated ground or surface waters. It is unlawful for any person not meeting the requirements of this subsection to drill a well for any purpose in a designated "area of drilling concern." Any person drilling a new well or deepening or modifying an existing well for any purpose in an "area of drilling concern" as designated by the director as herein provided shall comply with the following additional requirements:

- (a) Additional bonding requirements, as determined by the director, to ensure that the well is constructed or abandoned in compliance with the adopted standards for well construction.
- (b) Additional experience and knowledge in drilling wells encountering warm water or pressurized aquifers as required by rules adopted by the water resource board.
- (c) Document that specialized equipment needed to drill wells in "areas of drilling concern," as determined by the director, is or will be available to the driller.
- (d) Provide a notice of intent to drill, deepen or modify a well; submit plans and specifications for the well and a description of the drilling methods that will be used, as required by the director; and receive the written approval of the director before commencing to drill, deepen, or modify any well in a designated "area of drilling concern."

Prior to designating an "area of drilling concern," the director shall conduct a public hearing in or near the area to determine the public interest concerning the designation. Notice of the hearing shall be published in two (2) consecutive weekly issues of a newspaper of general circulation in the area prior to the date set for hearing.

In the event an area has been designated as an "area of drilling concern" and the director of the department of water resources desires to remove such designation or modify the boundaries thereof, he shall likewise conduct a public hearing following similar publication of notice prior to taking such action.

[42-238 as reen. by 1967, ch. 339, sec. 1, p. 977; am. 1970, ch. 187, sec. 4, p. 541; am. 1971, ch. 149, sec. 2, p. 730; am. 1974, ch. 20, sec. 1, p. 533; am. 1980, ch. 238, sec. 9, p. 538; am. 1987, ch. 347, sec. 8, p. 748; am. 1990, ch. 366, sec. 1, p. 999; am. 1993, ch. 216, sec. 33, p. 613; am. 1997, ch. 361, sec. 1, p. 1062; am. 1998, ch. 173, sec. 2, p. 597; am. 2021, ch. 65, sec. 1, p. 197.]

42-238a. WATER ADMINISTRATION ACCOUNT. There is hereby created in the state treasury a special account known as the water administration account. All fees and other moneys collected by the director of the department of water resources pursuant to sections [42-221](#), [42-238](#), [42-1713](#), [42-3905](#), [42-4003](#), and [42-4011](#), Idaho Code, shall be deposited in the water administration account. All moneys deposited in the water administration account are hereby appropriated to the director for the purpose of the administration of the provisions of [title 42](#), Idaho Code, and no moneys received in the account shall be disbursed by the state treasurer unless the voucher for such disbursement contains the certificate of the director that such voucher is for an expense incurred in the administration of the provisions of [title 42](#), Idaho Code.

[42-238a, 1951, ch. 200, sec. 23, as added by 1953, ch. 182, sec. 10, p. 277; am. 1968 (2nd E.S.), ch. 25, sec. 2, p. 47; am. 1974, ch. 20, sec. 2, p. 533; am. 1987, ch. 158, sec. 3, p. 311; am. 2021, ch. 36, sec. 6, p. 89.]

42-239. INTERPRETATION. The executive and judicial departments of the state shall construe the provisions of this act, wherever possible in harmony with the provisions of [title 42](#), Idaho Code, as amended; and nothing herein shall be construed contrary to or in conflict with the provisions of article 15 of the Constitution; and except where otherwise provided in this act, the provisions of said [title 42](#), Idaho Code, as amended, shall continue to govern ground water rights in this state.

[42-239, added 1951, ch. 200, sec. 15(25), p. 423; am. 1953, ch. 182, sec. 11, p. 277.]

42-240. APPLICATION FOR RIGHT TO EXCHANGE WATER -- FILING FEE -- NOTICE -- PROTEST -- HEARING -- APPROVAL OR DENIAL -- APPEAL. (1) Any person holding a right for the use of surface water may make application to the director of the department of water resources to exchange water authorized to be diverted under the right with the same or a different source, or with water authorized to be diverted under one (1) or more other rights from the same source or another surface water source. If the application proposes an exchange with water under another water right, the application shall be accompanied by an agreement in writing subscribed by the person proposing the exchange and each person or organization owning rights to water with whom the exchange is proposed to be made.

(2) The application shall be upon forms furnished by the department and shall contain such information as shall enable the director to determine the nature of the proposed exchange, and shall be accompanied by the statutory filing fee provided under section [42-221](#), Idaho Code, for an application to change a vested water right.

(3) Upon receipt of the application, it shall be the duty of the director to examine the same and, if otherwise proper, to cause notice of the pro-

posed exchange to be published in the same manner as applications under section [42-203A](#), Idaho Code. The notice shall fully describe the nature of the proposed exchange of water and shall advise that anyone who wishes to protest shall file notice of protest in accordance with the provisions of section [42-203A](#), Idaho Code.

(4) Upon the receipt of any protest it shall be the duty of the director to investigate the same and to conduct a hearing thereon. The director shall also advise the watermaster of the district in which the exchange is proposed, if a district exists, and the watermaster shall notify the director of the watermaster's recommendations on the application. The director shall not take final action on the application or exchange until the director has received the recommendations of the watermaster, including recommended conditions necessary for the exchange of water to be properly administered and regulated.

(5) The director shall examine all the evidence and available information and shall approve the exchange in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the exchange does not constitute an enlargement in use of the original right or rights, the exchange is consistent with the conservation of water resources within the state of Idaho, the exchange is in the local public interest as defined in section [42-202B](#), Idaho Code, and the exchange will not 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. Unless otherwise provided in a written agreement between the applicant and other right holders, the director shall condition approval of an exchange so that the exchange will not be operative during times when water is not available to satisfy the exchange, and that during these times the right to use water automatically reverts to the place of use authorized under the water rights. A copy of the approved application for exchange shall be provided to the applicant and the watermaster, and the applicant shall be authorized upon receipt thereof to make the exchange in accordance with the conditions set forth by the director. Should an approved exchange thereafter be discontinued, the applicant or the applicant's successor in interest must so notify the director and the district watermaster.

(6) In the absence of a contrary agreement by the parties to an exchange, when the director has approved a right to exchange storage water for the natural flow of a stream or other water supply, the storage water shall be delivered in preference to any exchange rights subsequently approved using the same storage water right.

(7) Any person or persons feeling themselves aggrieved by a final order or final action of the director under this section may, if a protest was filed and hearing held thereon, seek judicial review pursuant to section [42-1701A](#)(4), Idaho Code. If no protest was filed and no hearing held, the applicant may request a hearing pursuant to section [42-1701A](#)(3), Idaho Code, for the purpose of contesting the action of the director and may seek judicial review of the final order of the director following the hearing pursuant to section [42-1701A](#)(4), Idaho Code.

[42-240, added 1998, ch. 424, sec. 2, p. 1340; am. 2003, ch. 298, sec. 4, p. 812.]

42-241. PURPOSE. The future growth and development of the state is dependent upon effective management and efficient use of the state's water re-

sources. The purpose of this act is to provide adequate records of water right claims for efficient administration and to aid in the proper planning for the future use of the state's water resources.

[42-241, added 1978, ch. 345, sec. 4, p. 887.]

42-242. DEFINITIONS. Whenever used in this act, the terms:

(1) "Person" shall mean an individual, partnership, association, public or private corporation, city or other municipality, county, state agency, or the state of Idaho, and the United States of America when claiming water rights established under the laws of the state of Idaho.

(2) "Notice in writing" means a notice substantially in the following form:

WATER RIGHTS NOTICE

Every person, including but not limited to an individual, partnership, association, public or private corporation, city or other municipality, county, state agency or the state of Idaho, and the United States of America, when claiming water rights established under the laws of the state of Idaho, is hereby notified that all water rights or claimed water rights relating to the withdrawal or diversion of public surface or ground waters of the state for uses other than domestic purposes, except those water rights based upon authority of permit or license issued by the department of water resources or one of its predecessors or water rights which have previously been adjudicated by a court having jurisdiction of such matters, must be registered with the department of water resources, Boise, Idaho, not later than June 30, 1983. FAILURE TO REGISTER AS REQUIRED BY LAW WILL BE GROUNDS FOR INSTITUTING AN ACTION FOR FORFEITURE OF THE CLAIMED WATER RIGHT. For further information contact the Department of Water Resources, Boise, Idaho, for a copy of the act and an explanation thereof.

[42-242, added 1978, ch. 345, sec. 5, p. 887; am. 1990, ch. 319, sec. 4, p. 873.]

42-243. FILING OF CLAIMS OF RIGHTS ESTABLISHED BY DIVERSION AND USE -- FORM AND CONTENT OF CLAIM. In order to allow for the recording of historic uses of the waters of this state, any person using or claiming rights to the use of water for uses other than domestic purposes, which have heretofore been established by diversion and application to a beneficial use shall file a claim of such right with the department of water resources not later than June 30, 1983, or if mailed, shall be postmarked not later than June 30, 1983. Such claim shall be in affidavit form on forms furnished by the department of water resources and shall set forth:

- a. The name and post-office address of the claimant.
- b. The quantity of water claimed to have been used.
- c. The source of the water supply.
- d. The location of the point or points of diversion.
- e. The nature of the use and the period during each year when the water is used for such purposes.
- f. The priority of the right claimed which shall be determined by the date when the water was first applied to a beneficial use provided there has been no period of abandonment or nonuse or forfeiture of the water right since that date.

g. If water is claimed for irrigation, the legal description of the lands irrigated.

h. Such other information as shall be required by the blank form furnished by the department.

Such claim may be accompanied by maps showing the place of use, affidavits of witnesses familiar with the uses claimed, measurements of the water diverted and used, and such other information as the claimant may wish to submit.

If the claim is filed with the department of water resources later than June 30, 1983, or if it is mailed to the department of water resources and the postmark is later than June 30, 1983, the claim shall be classified as follows:

a. If the only use identified on the claim is domestic purposes, then the claim will be considered to be filed in a timely manner.

b. If the use(s) identified on the claim includes other than domestic purposes, then the claim shall be considered to be a late claim, with a unique filing fee as set forth in section [42-221](#), Idaho Code.

This section shall not apply to any water rights which are based on the authority of a permit or license issued by the department of water resources or one of its predecessors or water rights which have previously been adjudicated by a court having jurisdiction of such matters.

[(42-243) I.C., sec. 42-225a, as added by 1967, ch. 338, sec. 2, p. 974; am. and redesign. 1978, ch. 345, sec. 6, p. 888; am. 1983, ch. 61, sec. 1, p. 141; am. 1985, ch. 226, sec. 2, p. 542; am. 1990, ch. 319, sec. 5, p. 874; am. 1998, ch. 79, sec. 2, p. 284.]

42-244. RECORDING OF CLAIMS BY DEPARTMENT -- CORRECTIONS. Upon receipt of any claim submitted under this chapter, together with the statutory filing fee as set forth in section [42-221](#), Idaho Code, it shall be the duty of the department of water resources to file and to maintain a record of such claim, which shall be available for public inspection during all normal office hours. The department shall also cause a notice to be published once a week for two (2) consecutive weeks in a newspaper published and of general circulation in the county where the water is claimed to be diverted, if there is such a newspaper, otherwise in a newspaper of general circulation in the county, which said notice shall set forth such information as shall apprise the public of the nature of the claim which has been filed. At any time after the filing of a claim under the previous section, any person who disagrees that a right has been established as set forth in said claim may file an exception thereto in duplicate, in affidavit form, accompanied by such proof as said person deems appropriate. An exception filed shall be made a part of the file of the claim in the department of water resources and shall be considered the same as other evidence in said file. A copy of an exception filed shall be forwarded to the claimant by the department of water resources. Such claims may be corrected by the claimant only by filing of an amended claim in the same form as the original, which shall be recorded and numbered by the department the same as the original, and for which no additional filing fees shall be required.

[(42-244) I.C., sec. 42-225b, as added by 1967, ch. 338, sec. 3, p. 974; am. and redesign. 1978, ch. 345, sec. 7, p. 889.]

42-245. FAILURE TO FILE CLAIM WAIVES AND RELINQUISHES RIGHT. Any person claiming the right to divert or withdraw and use waters of the state who fails to file a claim as provided in section [42-243](#), Idaho Code, shall be conclusively deemed to have waived and relinquished any right, title or interest in said right.

The provisions of this section shall not apply if a claim to the right is filed in a general water rights adjudication proceeding commenced under the provisions of [chapter 14, title 42](#), Idaho Code.

[42-245, added 1978, ch. 345, sec. 8, p. 889; am. 1988, ch. 152, sec. 1, p. 272; am. 1994, ch. 63, sec. 1, p. 121; am. 2020, ch. 146, sec. 1, p. 447.]

42-246. FILING OF CLAIM NOT DEEMED ADJUDICATION OF RIGHT -- EVIDENCE. The filing of a claim does not constitute an adjudication of any claim to the right to use of waters as between the water use claimant and the state, or as between one (1) or more water use claimants and another or others. A statement of claim filed pursuant to section [42-243](#), Idaho Code, shall be admissible in a general adjudication of water rights as evidence of the times of use and the quantity of water the claimant was withdrawing or diverting as of the year of the filing, if, but only if, the quantities of water in use and the time of use when a controversy is mooted are substantially in accord with the times of use and quantity of water claimed in the claim. A claim shall not otherwise be evidence of the priority of the claimed water right.

[42-246, added 1978, ch. 345, sec. 9, p. 890.]

42-248. NOTIFICATION OF CHANGE IN OWNERSHIP OF A WATER RIGHT OR CHANGE OF ADDRESS OF A WATER RIGHT OWNER -- NOTICE OF ACTION AFFECTING A WATER RIGHT. (1) All persons owning or claiming ownership of a right to use the water of this state, whether the right is represented by decree of the court, by claim to a water right filed with the department of water resources or by permit or license issued by the director of the department, shall provide notice to the department of any change in ownership of any part of the water right or of any change in the owner's mailing address. Notice shall be provided within one hundred twenty (120) days of any change using forms acceptable to the director.

(2) The department may rely on the name and address of the owner of the water right shown in the records of the department when sending notice of any action related to that water right.

(3) The filing of an application to change a water right under the provisions of section [42-211](#) or section [42-222](#), Idaho Code, showing a change in address of the owner of the right or accompanied by evidence documenting any change in ownership of the water right, shall be deemed compliance with this section provided the requirements of subsections (5) and (6) of this section are met. The fee requirements of subsection (4) of this section shall apply in addition to the filing fee that may be required in connection with an application to change a water right under the provisions of section [42-211](#) or [42-222](#), Idaho Code.

(4) A filing fee of twenty-five dollars (\$25.00) per right shall accompany a notice of change of water right ownership, provided that the fee shall be one hundred dollars (\$100) per right if a request is made to change the department's records to reflect a division in the ownership of the water right. No fee is required for a notice of change of ownership of a claim pending in

a water rights adjudication. A notice of change of ownership of all or part of a water right not accompanied by the required filing fee is incomplete and shall be returned without processing to the person who submitted the notice.

(5) A notice of change of water right ownership of all or part of a water right shall be accompanied by deeds, court decrees, or other evidence of conveyance of the water right and how the water right is divided if the change divides the water right among multiple owners.

(6) If the person filing the notice of a change of water right ownership does not own the land identified as the place of use for the water right, the notice shall be accompanied by evidence that written notice of the change of water right ownership has been mailed or hand-delivered to the landowner of record, as identified in the records of the county recorder.

(7) If the department receives the required notice, fee, and satisfactory evidence of conveyance of the water right as required in subsection (5) of this section, and evidence that the notice requirements of subsection (6) of this section, if applicable, have been met, the department shall update the ownership information in the water right records maintained by the department. If any required information is not provided, the department shall return the notice of change of ownership to the person filing the notice.

(8) Any action by the department updating the ownership of a water right in the department's records or returning the notice of change of ownership to the person filing the notice is not a determination of water right ownership, is not an administrative action subject to challenge under the Idaho administrative procedure act, [chapter 52, title 67](#), Idaho Code, and is not subject to a request for hearing pursuant to section [42-1701A](#), Idaho Code. Water right ownership disputes arising from a notice of change of water right ownership under this section must be resolved either in a water rights adjudication or in an action to quiet title pursuant to section [6-401](#), Idaho Code.

(9) Any person having a security interest in a water right and desiring to be notified by the department regarding the filing of a change in ownership of that water right or of any proposed or final action to amend, transfer or otherwise modify that water right shall make the request upon a form provided by the department accompanied by a fee of twenty-five dollars (\$25.00) per right. The request shall be accompanied by evidence of the security interest including the expiration date of the security interest or other date defining the end of the period for which notification is requested. The request for notification shall expire at the end of the requested notification period unless renewed on a form provided by the department and accompanied by a renewal fee of twenty-five dollars (\$25.00) per right. The holder of a security interest requesting notification under this subsection shall provide notice to the department within sixty (60) days if the security interest is terminated prior to the end of the requested notification period.

[42-248, added 1996, ch. 149, sec. 1, p. 487; am. 2000, ch. 313, sec. 1, p. 1052; am. 2011, ch. 172, sec. 2, p. 493; am. 2021, ch. 157, sec. 1, p. 433.]

42-250. WATER CONSERVATION. (1) The legislature finds that voluntary water conservation practices and projects can advance the policy of the state of Idaho to promote and encourage the conservation, development, augmentation and utilization of the water resources of this state. The legislature deems it appropriate, therefore, to encourage and support voluntary water conservation practices and projects.

(2) For purposes of this section, "water conservation practice" means any practice, improvement, project or management program, that results in the diversion of less than the authorized quantity of water while maintaining the full beneficial use(s) authorized by the water right. Water conservation practices include, but are not limited to, practices that result in reductions in consumptive use as defined in section [42-202B](#), Idaho Code, reductions in conveyance losses, and reductions in surface and seepage losses occurring at the place of use.

(3) For the purposes of this section, "conserved water" means the quantity of water that is no longer diverted as a result of a water conservation practice. Conserved water shall not include quantities of water not diverted due to decreases in beneficial use.

[42-250, added 2003, ch. 166, sec. 2, p. 471.]

42-251. APPROPRIATION OF UNAPPROPRIATED FLOWS FOR LEMHI BASIN STREAM FLOW MAINTENANCE -- LEGISLATIVE FINDINGS OF FACT CONCERNING HISTORIC USE OF HIGH FLOWS IN THE LEMHI RIVER BASIN AND NEED FOR PROTECTION AND EFFECTIVE MANAGEMENT OF SUCH USE. (1) Legislative Findings.

(a) In the absence of storage reservoirs in the Lemhi Basin, the diversion of "high water or flood water" onto irrigated land in the spring developed as a way of holding water underground within the basin, which would later contribute to the flows in the Lemhi River and its tributaries.

(b) The 1982 Lemhi Basin Decree recognized the practice of diverting "high water or flood water" onto irrigated lands. It defined "high water or flood water" as "natural flow of water over and above the amount required to fulfill (1) existing quantified rights as shown in the decree of water rights and (2) any future rights that may be established pursuant to statutory procedures of the state of Idaho." Proposed Findings of Water Rights, In the Matter of the General Determination of the Rights to the Use of the Surface Waters and Tributaries from Whatever Source of the Lemhi River Drainage Basin, Civil No. 4948, Feb. 16, 1982, at 3, paragraph n. The Lemhi Decree included a conclusion of law stating the practice "of diverting so called 'high waters or flood waters' in addition to the quantified rights as described in the recommended decree of water rights (and future rights that may be established pursuant to statutory procedures) [is] allowed provided: (a) the waters so diverted are applied to beneficial use. (b) the existing quantified rights (including future appropriations of water) are first satisfied."

(c) Based on the conclusions of law in the Lemhi Basin Decree, many Lemhi Basin irrigators filed claims in the Snake River Basin Adjudication (SRBA) seeking water rights for their historic "high water or flood water" practice.

(d) On January 3, 2012, the SRBA Court affirmed the Special Master's Report and Recommendation finding that "Idaho case law precludes the high flow claimants from seeking to establish high flow water rights in the SRBA as a matter of law." Memorandum Decision and Order on Challenge at 11, Subcase Nos. 74-15051, In re SRBA Case No. 39576. Although the SRBA Court disallowed the high flow claims, it reaffirmed the Lemhi Basin Decree conclusion of law regarding "high water or flood water" use through its Partial Decree pursuant to I.R.C.P. 54(b) of the Basin 74 High Flow General Provision (Basin 74 General Provision). Basin 74 General Pro-

vision provides: "The following general provision shall govern the use of 'High Flow' surface water for irrigation use within the Lemhi Basin: The practice of diverting high flows in the Lemhi Basin, in addition to diverting decreed and future water rights that may be established pursuant to statutory procedures of the State of Idaho, is allowed provided (a) the waters so diverted are applied to beneficial use. (b) existing decreed rights and future appropriations of water are first satisfied."

(e) Since the early 1990s Lemhi irrigators, with the assistance of state agencies, have led an effort to protect and enhance salmon runs in the Lemhi River Basin, including but not limited to providing passage flows for salmon, screening diversion works and implementing habitat improvement projects.

(f) The long-term goal of the Lemhi irrigators is to conserve, restore, and enhance sufficient habitat to sustain viable fish populations in the Lemhi River Basin while protecting private property rights and preserving and enhancing the farming and ranching lifestyle and economy of the Lemhi River Basin.

(g) In 2001, the Idaho Legislature enacted section [42-1506](#), Idaho Code, at the request of the Lemhi Basin irrigators. This statute authorized the Idaho Water Resource Board to appropriate a minimum stream flow in the lower reach of the Lemhi River for the purpose of providing fish passage and for protection of Lemhi water users from enforcement actions under the Endangered Species Act.

(h) Use of high flows under the Basin 74 General Provision is not a protected property interest under Idaho law. Because the SRBA Court disallowed all "high water or flood water" claims, a conflict developed between irrigators who rely on the use of high flows under the Basin 74 General Provision and persons desiring to appropriate high flow for new uses.

(i) The legislature finds (1) that the use of Lemhi River Basin high flow for holding water underground to augment the natural flow of the Lemhi River later in the irrigation season is a beneficial use of water; and (2) that it is in the public interest to protect through the appropriation process the entitlements to divert and use high flows under the Basin 74 General Provision for efficient administration of such uses and to aid in the proper planning for future development of the water resources of the Lemhi River Basin.

(j) The Lemhi Basin stream flow maintenance applications provided for in this section are based upon the historic practice recognized by the Basin 74 High Flow General Provision, and therefore, are not intended to nor shall be construed as establishing a precedent for issuance of any future water rights in the State of Idaho.

(2) Stream Flow Maintenance Applications. Lemhi irrigators who hold irrigation water rights decreed in the SRBA, and claim authority to divert and use Lemhi Basin high flows for stream flow maintenance pursuant to the Basin 74 General Provision may file an application for permit with the department of water resources to convert such use into a protectable water right on or before July 1, 2024. The application shall be upon forms provided by the department. The department shall process the application as provided in section [42-203A](#), Idaho Code.

(3) Quantity of Right. The quantity of a stream flow maintenance water right shall be limited to the historic high flow use under the Basin 74 General Provision ancillary to irrigation water rights decreed in the SRBA, but

not to exceed the ditch capacity of the decreed irrigation water rights on August 25, 2014.

(4) Proof of Beneficial Use. The department may consider as part of its beneficial use examination for licensing of a permit under this section a permit holder's past historic diversions of high flow under the Basin 74 General Provision.

(5) Comprehensive Settlement. All applications filed under this section shall be subject to the terms and conditions of the Lemhi Basin Comprehensive Settlement Agreement Between the Idaho Water Resource Board, Idaho Department of Fish and Game, Idaho Office of Species Conservation and Various Lemhi Water Users, including but not limited to the following conditions:

(a) Regardless of their priority dates, stream flow maintenance water rights shall include a condition requiring them to cease diversion while the McFarland Campground minimum stream flow water right established pursuant to section [42-1506A](#), Idaho Code, is being exercised.

(b) Regardless of priority date, the water supply legally available to stream flow maintenance water rights created under this section that divert from a common source shall be distributed proportionately among the stream flow maintenance water rights diverting from the common source, except as otherwise provided for in the Lemhi Basin Comprehensive Settlement Agreement Between the Idaho Water Resource Board, Idaho Department of Fish and Game, Idaho Office of Species Conservation and Various Lemhi Water Users. For purposes of this section each tributary administered as a separate source pursuant to the SRBA Basin 74 Separate Streams General Provision is a common source. The mainstem Lemhi River and all tributaries in Basin 74 not listed in the SRBA Basin 74 Separate Streams General Provision are a common source.

(6) Notice - How Given - Requirements. To ensure all persons claiming authority to divert or withdraw and use water under the Basin 74 General Provision are notified of the provisions of this section, the department of water resources is directed to give notice of the provisions of this section as follows:

(a) By regular mail upon all persons within Idaho department of water resources Administrative Basin 74 who currently own an irrigation water right decreed in the SRBA a notice in writing of the existence of this section;

(b) By publishing a notice in writing in a prominent and conspicuous place in at least one (1) newspaper of general circulation in Lemhi County, for at least one (1) day a month for three (3) consecutive months;

(c) By posting a written notice, with the cooperation of the Lemhi County commission, in a prominent and conspicuous location in the Lemhi County courthouse;

(d) By providing sufficient number of copies of the notice and declaration to the Lemhi County treasurer for enclosure with each mailing of one (1) or more statements of taxes due issued in 2023; and

(e) By such other means the director of the department in his discretion determines will carry out the purposes of this section.

[42-251, added 2022, ch. 290, sec. 1, p. 921.]