

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 38
ALTERATION OF CHANNELS OF STREAMS

42-3801. LEGISLATIVE INTENT -- STREAM CHANNELS -- ALTERATION. The legislature of the state of Idaho hereby declares that the public health, safety and welfare requires that the stream channels of the state and their environments be protected against alteration for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality. No alteration of any stream channel shall hereafter be made unless approval therefor has been given as provided in this act.

[42-3801, added 1971, ch. 337, sec. 1, p. 1304.]

42-3802. DEFINITIONS. Whenever used in this act, the term:

(a) "Person" means any individual, partnership, company, corporation, municipality, county, state or federal agency, or other entity proposing to alter a stream channel.

(b) "Alter" means to obstruct, diminish, destroy, alter, modify, relocate, or change the natural existing shape or direction of water flow of any stream channel within or below the mean high watermark thereof.

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

(d) "Stream channel" means a natural watercourse of perceptible extent, with definite bed and banks, which confines and conducts continuously flowing water. Ditches, canals, laterals and drains that are constructed and used for irrigation or drainage purposes are not stream channels.

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

(f) "Director" means the director of the Idaho department of water resources.

(g) "Plans" means maps, sketches, engineering drawings, word descriptions and specifications sufficient to describe the extent, nature and location of the proposed stream channel alteration and the proposed method of accomplishing same.

(h) "Mean high watermark" means a water level corresponding to the natural or ordinary high watermark and is the line which the water impresses on the soil by covering it for sufficient periods of time to deprive the soil of its terrestrial vegetation and destroy its value for commonly accepted agricultural purposes.

[42-3802, added 1971, ch. 337, sec. 2, p. 1304; am. 1974, ch. 20, sec. 33, p. 533; am. 1994, ch. 292, sec. 1, p. 912; am. 2004, ch. 191, sec. 2, p. 601.]

42-3803. ALTERATION OF CHANNELS -- PERMIT REQUIRED -- PLANS. (a) No person shall engage in any project or activity which will alter a stream channel without first applying to and receiving a permit therefor from the director. Such application shall be submitted not less than sixty (60) days prior to the intended date of commencement of construction of such stream channel alteration and shall be upon forms to be furnished by the director or in such other form as deemed appropriate by memorandum of agreement with other state and federal agencies and shall be accompanied by plans of the proposed stream channel alteration and the statutory filing fee.

(b) The board shall provide that each permit granted shall show whether it constitutes a permit from the department of lands as authorized by the department of lands, or whether an additional permit from the department of lands shall be required.

(c) The board may adopt, revise and rescind such rules and regulations and issue such general orders as may be necessary to effectuate the purposes and policy of this chapter within the limitations and standards set forth in this chapter. Rules, regulations and orders adopted or issued pursuant to this section may include, but are not limited to, minimum standards to govern projects or activities for which a permit or permits have been received under this chapter and regulations governing procedures for processing applications and issuing permits under this chapter. Minimum standards and procedural regulations shall not be adopted pursuant to this section until after they have been offered for review and comment to other state agencies having an interest in activities regulated under this chapter. Any standards, rules, regulations and orders adopted or issued pursuant to this section shall be promulgated in accordance with the provisions of chapter 52, title 67, Idaho Code, to the extent that the provisions of chapter 52, title 67, Idaho Code, are not inconsistent herewith.

(d) The board may, by regulation, dispense with procedural requirements for permit application and approval contained in this chapter for projects and activities which, in all respects, at least meet minimum standards adopted pursuant to this section.

[42-3803, added 1971, ch. 337, sec. 3, p. 1304; am. 1972, ch. 137, sec. 1, p. 303; am. 1974, ch. 20, sec. 34, p. 533; am. 1976, ch. 150, sec. 1, p. 539; am. 1994, ch. 292, sec. 2, p. 913.]

42-3804. APPLICATION -- REVIEW BY DIRECTOR. Upon the receipt of any application with accompanying plans, it shall be the duty of the director to examine same and to furnish copies of the application and plans to, and consult with, other state agencies having an interest in the stream channel to determine the likely effect of the proposed stream channel alteration upon the fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality values of the stream. The director shall furnish a copy of each application and all accompanying materials to the department of lands. Within twenty (20) days of the receipt of copies of such application and plans from the director, such other state agencies shall notify the director whether the proposed stream channel alteration will have an unreasonably detrimental effect upon these stream values and shall include with such notification recommendations of alternate plans, if any, determined by such agency to be reasonable to accomplish the purpose of the proposed stream channel alteration without adversely affecting such stream values.

[42-3804, added 1971, ch. 337, sec. 4, p. 1304; am. 1974, ch. 20, sec. 35, p. 533; am. 1976, ch. 150, sec. 2, p. 540.]

42-3805. DECISION OF DIRECTOR -- HEARING -- REVIEW BY DISTRICT COURT. Based upon his own investigation and the recommendations and alternate plans of other state agencies, the director shall prepare and forward to the applicant his decision approving the application in whole or in part or upon conditions, or rejecting the application. With regard to applications which could, if issued, affect endowment lands, the director shall deny such applications upon the objection of the state department of lands, or modify the same as recommended by the department. Within fifteen (15) days of the

date of mailing of the decision, the applicant shall notify the director if it refuses to modify its plans in accordance with such decision or that it requests a hearing before the board thereon. If requested, such hearing shall be held in accordance with the provisions of chapter 52, title 67, Idaho Code, and rules adopted by the board. The board shall have power to administer oaths and to require the attendance of such witnesses and the production of such books, records and papers as it may desire at the hearing, and for that purpose, the board may apply to the court for subpoena for any witnesses or a subpoena duces tecum to compel the production of any books, records or papers which shall be served and returned in the same manner as a subpoena in a civil case. In case of any disobedience or neglect to obey a subpoena or subpoena duces tecum, it shall be the duty of the district court in any county of this state in which disobedience, neglect or refusal occurs, or any judge thereof, on application by the board, to compel obedience by proceedings for contempt. Upon the conclusion of the hearing and completion of any investigation conducted by the director the board shall enter its findings in writing approving the decision of the director on the application and plans in whole or in part, or upon conditions, or rejecting the decision of the director on said application and plans for such proposed stream channel alteration.

A copy of the board's findings on the director's decision shall be mailed to the applicant and to each person or organization who appeared at the hearing and gave testimony in support of or in opposition to the proposed stream channel alteration. Any applicant or other person appearing at a hearing shall have the right to have the proceedings of the board and the decision of the director reviewed by the district court in the county where the stream channel alteration is proposed. With the exception that the matter may be reviewed by the district court in the county where the stream channel alteration is proposed, judicial review shall be had pursuant to chapter 52, title 67, Idaho Code.

[42-3805, added 1971, ch. 337, sec. 5, p. 1304; am. 1974, ch. 20, sec. 36, p. 533; am. 1976, ch. 150, sec. 3, p. 541; am. 1980, ch. 238, sec. 21, p. 550; am. 1993, ch. 216, sec. 39, p. 622.]

42-3806. EXISTING RIGHTS UNAFFECTED -- WHERE PERMIT NOT REQUIRED. This act shall not operate or be so construed as to impair, diminish, control or divest any existing or vested water rights acquired under the laws of the state of Idaho or the United States, nor to interfere with the diversion of water from streams under existing or vested water right or water right permit for irrigation, domestic, commercial or other uses as recognized and provided for by Idaho water laws.

No permit shall be required by the state or any agency or political subdivision thereof, from a water user or his agent to clean, maintain, construct in, or repair any stream channel, diversion structure, canal, ditch, drain or lateral. No permit shall be required by the state or any agency or political subdivision thereof, from a water user or his agent to remove any obstruction from any stream channel, if such obstruction interferes with, or is likely to interfere with, the delivery of, or use of, water under any existing or vested water right, or water right permit.

Nothing in this section shall be construed to affect the provisions of chapter 10, title 46, Idaho Code, or to exempt a water user or his agent from compliance with any applicable local flood plain ordinance adopted pursuant to section 46-1022, Idaho Code.

[42-3806, added 1971, ch. 337, sec. 6, p. 1304; am. 2004, ch. 191, sec. 3, p. 602; am. 2011, ch. 261, sec. 1, p. 707.]

42-3807. RESERVOIRS -- PORT DISTRICTS -- EXEMPT. This act shall not apply to any existing, proposed, or future reservoir projects. This act shall not apply to that portion of any continuous waterway system which will float commercial tug and barge vehicles to ports handling transoceanic traffic, and which is within or adjacent to any port district now existing or hereafter formed under the provisions of title 70, Idaho Code.

[42-3807, added 1971, ch. 337, sec. 7, p. 1304.]

42-3808. EMERGENCIES -- WAIVER BY DIRECTOR. When emergency situations exist requiring immediate action to protect life or property including growing crops, the director may waive the provisions of this act upon request; providing, however, that the extent of stream channel alteration shall be limited only to that amount of work deemed necessary by the director to safeguard life or property including growing crops during the period of emergency.

[42-3808, added 1971, ch. 337, sec. 8, p. 1304.]

42-3809. PENALTY FOR VIOLATION -- ENFORCEMENT PROCEDURE -- INJUNCTIVE RELIEF. (1) Any person who violates any of the provisions of this chapter, any regulation, rule, order or standard of the board promulgated pursuant to section 42-3803, Idaho Code, or of any order or condition of approval of the director issued pursuant thereto, where a copy of the order has been served upon said person in person or by certified mail and said person fails to comply therewith within the time therein provided, or within ten (10) days of such service if not otherwise provided, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred fifty dollars (\$150) nor more than five hundred dollars (\$500); provided further, that each day such violation of an order or condition of approval has taken place shall constitute a separate offense punishable by a fine of not less than one hundred fifty dollars (\$150) for each day until such activity is abated or voluntarily ceased. Any stream channel alteration engaged in by any person without approval having been obtained therefor as prescribed in this act is hereby declared to be a public nuisance and shall be subject to proceedings for immediate abatement.

(2) When the director of the department of water resources determines that any person is in substantial violation of any provision of this chapter or any rule, permit, certificate, condition of approval or order issued or promulgated pursuant to this chapter, the director may commence an administrative enforcement action by issuing a written notice of violation in accordance with the provisions of section 42-1701B, Idaho Code. Provided however, that no civil or administrative proceeding may be brought to recover for a violation of any provision of this chapter or a violation of any rule, permit or order issued or promulgated pursuant to this chapter, more than two (2) years after the director had knowledge or ought reasonably to have had knowledge of the violation. The director shall have authority and it shall be his duty to seek a temporary injunction from the appropriate district court to restrain a person from altering a stream channel until approval therefor has been obtained by the person as provided in this act.

[42-3809, added 1971, ch. 337, sec. 9, p. 1304; am. 1972, ch. 137, sec. 2, p. 303; am. 1974, ch. 20, sec. 37, p. 533; am. 1978, ch. 327, sec.

1, p. 822; am. 1980, ch. 331, sec. 2, p. 855; am. 1994, ch. 292, sec. 3, p. 914; am. 1998, ch. 173, sec. 10, p. 611; am. 2012, ch. 121, sec. 1, p. 337.]

42-3810. RESTORATION OF STREAM CHANNEL -- MITIGATION OF DAMAGES. Any party convicted of unlawful stream channel alteration shall, in addition to the penalties provided for in section 42-3809 of this act, be directed by the court to restore the stream channel to as near its original condition as possible or to effect such other measures as recommended by the director toward mitigation of damages.

[42-3810, added 1971, ch. 337, sec. 10, p. 1304.]

42-3811. VIOLATION OF ACT A MISDEMEANOR. Any person who violates any provision of this act or who violates any regulation, rule, order or standard of the board or director relating to the use of vacuum or suction dredges capable of moving two (2) or less cubic yards of material per hour shall be guilty of a misdemeanor.

[42-3811, added 1980, ch. 331, sec. 3, p. 856.]

42-3812. ENFORCEMENT OF AUTHORITY. The director of the department of water resources is hereby vested with the power and authority to enforce the provisions of chapter 38, title 42, Idaho Code, and rules and regulations promulgated pursuant to it. The director may delegate to employees of the department of water resources authority to issue Idaho uniform citations, as provided for by the rules of the court for magistrates division of the district court and district court, to violators of the provisions of chapter 38, title 42, Idaho Code, and rules and regulations promulgated pursuant to it.

[42-3812, added 1980, ch. 331, sec. 4, p. 856; am. 1994, ch. 292, sec. 4, p. 914.]