

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 4
APPROPRIATIONS FOR USE OUTSIDE STATE

42-401. APPLICATIONS FOR USE OF PUBLIC WATERS OUTSIDE THE STATE. (1) The state of Idaho is dedicated to the conservation of its public waters and the necessity to maintain adequate water supplies for the state's water requirements. The state of Idaho also recognizes that under appropriate conditions the out-of-state use of its public waters is not in conflict with the public welfare of its citizens or the conservation of its waters.

(2) Any person, firm or corporation or any other entity intending to withdraw water from any surface or underground water source in the state of Idaho for use outside the state or to change the place or purpose of use of a water right from a place in Idaho to a place outside the state shall file with the department of water resources an application for a permit to do so, subject to the requirements of [chapter 2, title 42](#), Idaho Code.

(3) In order to approve an application under this chapter, the director must find that the applicant's use of water outside the state is consistent with the provisions of section [42-203A](#)(5), Idaho Code. In addition, the director shall consider the following factors:

- (a) The supply of water available to the state of Idaho;
- (b) The current and reasonably anticipated water demands of the state of Idaho;
- (c) Whether there are current or reasonably anticipated water shortages within the state of Idaho;
- (d) Whether the water that is the subject of the application could feasibly be used to alleviate current or reasonably anticipated water shortages within the state of Idaho;
- (e) The supply and sources of water available to the applicant in the state where the applicant intends to use the water; and
- (f) The demands placed on the applicant's supply in the state where the applicant intends to use the water.

(5) By filing an application to use waters outside the state, the applicant shall submit to and comply with the laws of the state of Idaho governing the appropriation and use of water and any future changes to the water right.

(6) The director is empowered to condition the permit to insure that the use of water in another state is subject to the same regulations and restrictions that may be imposed upon water use in the state of Idaho.

(7) Upon submittal of the application, the applicant shall designate an agent in the state of Idaho for reception of service of process and other legal notices.

(8) The director may, as a condition to the approval of an application under this chapter, require that the applicant shall file a certificate from the proper officer or official of the state where the water shall be used, showing to the satisfaction of the director that the intended use would be beneficial, and that the intended appropriation is feasible.

[42-401, added 1990, ch. 141, sec. 3, p. 316; am. 2014, ch. 245, sec. 1, p. 614.]

42-402. APPLICATION AND PERMIT. The application for permit and the permit issued thereon as provided in section [42-401](#), shall be in accordance with

the laws of the state of Idaho, relative to the filing of application for permit and the obtaining of permit to appropriate the public waters of the state of Idaho.

[(42-402) 1915, ch. 111, sec. 2, p. 254; reen. C.L., sec. 3265o; C.S., sec. 5596; I.C.A., sec. 41-402.]

42-403. PROOF OF COMPLETION OF WORKS. Proof of completion of works under such permit shall be made in accordance with the laws of the state of Idaho relative to proof of completion under a permit to appropriate the public waters of the state of Idaho, as to all works of diversion under such permit: provided, that the department of water resources may as a condition to the issuance of a certificate of completion under such proof require from the officer or official mentioned in section [42-401](#) a certificate to the effect that the proper public records of such sister state show the works to have been completed under said permit, said certificate to show in second feet the capacities of the various conduits constructed and to show in acre feet the capacities of reservoir, if any there be, constructed in such sister state under said permit.

[(42-403) 1915, ch. 111, sec. 3, p. 254; reen. C.L., sec. 3265p; C.S., sec. 5597; I.C.A., sec. 41-403; am. 1951, ch. 80, sec. 2, p. 149.]

42-404. LICENSE. The department of water resources shall issue a license in accordance with the laws of the state of Idaho relative to the issuance of license under a permit, upon receipt of such proof as will satisfy the department as to application of the waters to beneficial use, and may as a condition of granting any such license require a certificate from the officer or official mentioned in section [42-401](#), to the effect that the proper public records of such sister state show that beneficial use has been made of the waters sought to be appropriated under said permit, said certificate to show the extent of such use in second feet. If such use is for irrigation, such certificate shall give a description by legal subdivisions of the land which is irrigated by such water. If such use is for power purposes such certificate shall describe the location of the point of use.

[(42-404) 1915, ch. 111, sec. 4, p. 254; reen. C.L., sec. 3265q; C.S., sec. 5598; I.C.A., sec. 41-404; am. 1951, ch. 80, sec. 3, p. 149.]

42-405. IDAHO LAWS CONTROLLING. Appropriations of water made under the provisions of this chapter shall be subject to the laws of the state of Idaho relative to administration, control and distribution of public waters, so long as said waters appropriated in accordance herewith shall remain within the state of Idaho: provided further, that such rights in their entirety shall be subject to all laws of the state of Idaho which have been or may be passed from time to time relative to the appropriation and control of public waters, to the end that such rights may be upon a parity with water rights within the state of Idaho.

[(42-405) 1915, ch. 111, sec. 5, p. 254; reen. C.L., sec. 3265r; C.S., sec. 5599; I.C.A., sec. 41-405.]

42-406. RULES AND REGULATIONS. The department of water resources is empowered to make such rules and regulations as may be necessary to the proper administration of the provisions of this chapter.

[(42-406) 1915, ch. 111, sec. 6, p. 254; compiled and reen. C.L., sec. 3265s; C.S., sec. 5600; I.C.A., sec. 41-406.]

42-407. APPEAL FROM DEPARTMENT'S DECISION. Whenever any person or persons feel themselves aggrieved by the determination or decision of the department of water resources relative to the granting of permit, the issuance of certification of proof of completion or the issuance of license, as hereinbefore provided for, such person or persons may request a hearing pursuant to section [42-1701A](#)(3), Idaho Code, if a hearing on the matter has not been held, or, if a hearing has been held, may seek judicial review pursuant to section [42-1701A](#)(4), Idaho Code.

[(42-407) 1915, ch. 111, sec. 7, p. 254; reen. C.L., sec. 3265t; C.S., sec. 5601; I.C.A., sec. 41-407; am. 1980, ch. 238, sec. 13, p. 544.]