

DEPARTMENT OF
WATER RESOURCES

Counsel for the Coeur d'Alene Tribe

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

Objector.

OBJECTOR'S SECOND REQUESTS FOR DISCOVERY TO THE STATE OF IDAHO

To: RESPONDENT, State of Idaho, and its attorney of record, Steven Strack, Office of the Attorney General, State of Idaho, P.O. Box 83720, Boise, Idaho 83720-0010.

Please respond and answer these discovery requests in the time periods allowed under Idaho law.

GENERAL INSTRUCTIONS

Please refer to the General Instructions and Definitions contained in Objector's First Requests for Discovery to Idaho, such instructions and definitions are hereby incorporated herein to control these requests and interrogatories as if expressly set forth herein.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 14: Please admit that the State of Idaho considers the St. Joe River, from its mouth to a point at or near $\frac{3}{4}$ of a mile east of St. Joe City, to be navigable.

ANSWER:

REQUEST FOR ADMISSION NO. 15: Please admit that documents attached hereto as Attachment "1," bates numbers CDAT OBJ-7173 0159 to CDAT OBJ-7173 0162, are admissible, true, accurate, and correct copies of documents (or in other words are "authentic" and/or "genuine" within the meaning of I.R.E. 901), also known as Attachment 2 to the State of Idaho Department of Lands' Navigable Waters Procedure manual.

ANSWER:

REQUEST FOR ADMISSION NO. 16: Please admit that the State of Idaho regulates encroachments on the navigable portion of the St. Joe River located outside the current exterior boundary of the Coeur d'Alene Indian Reservation.

ANSWER:

REQUEST FOR ADMISSION NO. 17: Please admit that the elevation below which the State of Idaho regulates encroachments referred to in Request for Admission No. 16 is 2128 feet.

ANSWER:

REQUEST FOR ADMISSION NO. 18: Please admit that the point $\frac{3}{4}$ of a mile east of St. Joe City is upstream of the current location of St. Maries, Idaho.

ANSWER:

REQUEST FOR ADMISSION NO. 19: Please admit that Idaho does not assert chapter 11 of title 42 of the Idaho Code is applicable to lands owned by the United States in trust for the benefit of an Indian Tribe.

ANSWER:

REQUEST FOR ADMISSION NO. 20: Please admit that documents previously produced, bates numbers CDAT OBJ-7173 0007 to CDAT OBJ-7173 0023; CDAT OBJ-7173 0044 to CDAT OBJ-7173 0057; CDAT OBJ-7173 0061 to CDAT OBJ-7173 0097, are admissible, true, accurate, and correct copies of documents (or in other words are “authentic” and/or “genuine” within the meaning of I.R.E. 901), and are public records and reports within the meaning of I.R.E. 901(b)(7).

ANSWER:

REQUEST FOR ADMISSION NO. 21: Please admit that the point $\frac{3}{4}$ of a mile east of St. Joe City is upstream from Claimants’ points of diversion for water right claims 91-7102 and 91-7173.

ANSWER:

REQUEST FOR ADMISSION NO. 22: Please admit that the State of Idaho does not assert ownership of any of the submerged lands of the St. Joe River lying within the exterior boundaries of the Coeur d’Alene Indian Reservation.

ANSWER:

REQUEST FOR ADMISSION NO. 23: Please admit that the State of Idaho does not assert ownership of any of the submerged lands underlying navigable waters within 1000 feet of Claimants’ points of diversion for either claim nos. 91-7102 or 91-7173.

OBJECTOR’S SECOND REQUESTS
FOR DISCOVERY TO IDAHO - 3

ANSWER:

REQUEST FOR ADMISSION NO. 24: Pursuant to I.R.C.P. 36, please admit that the documents attached hereto as Attachment “2,” bates numbers CDAT OBJ-7173 0638 – CDAT OBJ-7173 0649, are admissible, true, accurate, and correct copies of documents (or in other words are “authentic” and/or “genuine” within the meaning of I.R.E. 901) which reflect IDWR’s *Instructions for Filing Notice of Claim to a Water Right Acquired under State Law in the General Adjudication of Rights to the Use of Water from the Coeur d’Alene-Spokane River Basin Water System.*

ANSWER:

REQUEST FOR ADMISSION NO. 25: Pursuant to I.R.C.P. 36, please admit that the documents attached hereto as Attachment “3,” bates numbers CDAT OBJ-7173 0650 – CDAT OBJ-7173 0657, are admissible, true, accurate, and correct copies of documents (or in other words are “authentic” and/or “genuine” within the meaning of I.R.E. 901) which reflect IDWR’s *Instructions for Filing Notice of Claim to a Water Right Acquired under State Law for Domestic and/or Stockwater Purposes Where Daily Use is Less than 13,000 Gallons Per Day in the General Adjudication of Rights to the Use of Water from the Coeur d’Alene-Spokane River Basin Water System.*

ANSWER:

REQUEST FOR ADMISSION NO. 26: Pursuant to I.R.C.P. 36, please admit that the documents attached hereto as Attachment “4,” bates numbers CDAT OBJ-7173 0658 – CDAT OBJ-7173 0673, are admissible, true, accurate, and correct copies of documents (or in other words are “authentic” and/or “genuine” within the meaning of I.R.E. 901) which reflect subchapter 2.3 - Duties and Responsibilities of Water Rights Claimants in IDWR’s *Adjudication Handbook.*

ANSWER:

REQUEST FOR ADMISSION NO. 27: Pursuant to I.R.C.P. 36, please admit that the documents attached hereto as Attachment “5,” bates numbers CDAT OBJ-7173 0674 – CDAT OBJ-7173 0683, are admissible, true, accurate, and correct copies of documents (or in other words are “authentic” and/or “genuine” within the meaning of I.R.E. 901) which reflect IDWR’s *Beneficial Use Examination Rules.*

ANSWER:

INTERROGATORIES

INTERROGATORY NO. 7: If your answer to any of the Requests for Admission is anything other than an unqualified “admit” identify and describe in detail the facts upon which you rely in making your responses, all individuals with knowledge regarding such facts, and all documents relating in any way to your response(s).

ANSWER:

INTERROGATORY NO. 8: Please list, by applicant name and encroachment ID #, any encroachments, encroachment permits, and/or encroachment applications the Idaho Department of Lands has on file for the St. Joe River. Please identify those encroachments, permits, and/or applications that are located within the current exterior boundaries of the Coeur d’Alene Reservation.

ANSWER:

INTERROGATORY NO. 9: Please state the furthest point upstream that the waters of the St. Joe River are affected by the operation of the dam at Post Falls, Idaho.

ANSWER:

INTERROGATORY NO. 10: Please state the furthest point upstream that the State of Idaho regulates encroachments.

ANSWER:

INTERROGATORY NO. 11: Please state the furthest point upstream that the State of Idaho asserts the St. Joe River is navigable.

ANSWER:

INTERROGATORY NO. 12: Please state the elevation that Idaho asserts and/or believes to be the ordinary high water mark of the St. Joe River from the mouth of the St. Joe River to the point

approximately ¾ of a mile east of St. Joe City. Please state the asserted/believed ordinary high water mark at claimants' points of diversion, if different.

ANSWER:

INTERROGATORY NO. 13: Please state the factual basis for your answer to Interrogatory No. 12.

ANSWER:

INTERROGATORY NO. 14: Please state the elevation below which the State of Idaho requires an encroachment permit for docks, water withdrawal structures, or other encroachments located on the navigable portion of the St. Joe River outside the current boundary of the Coeur d'Alene Indian Reservation.

ANSWER:

INTERROGATORY NO. 15: Please explain the factual basis for the state's determination and use of the elevation referenced in interrogatory no. 14 as the elevation below which the State regulates encroachments on the St. Joe River.

ANSWER:

INTERROGATORY NO. 16: If "[t]he State of Idaho . . . has not established a presumed OHWM for the St. Joe River," please explain the Idaho Department of Land's asserted authority for regulating encroachments and/or issuing encroachment permits on the St. Joe River, below the elevation stated in Interrogatory No. 14 or otherwise.

ANSWER:

INTERROGATORY NO. 17: Please explain whether the Idaho Department of Lands must first determine that the specific location of an encroachment is navigable before asserting the authority to regulate and/or require a permit for that encroachment or whether the Department asserts the authority to regulate all encroachments on a navigable waterbody, regardless of whether it is navigable in fact at the specific location of a particular encroachment.

ANSWER:

INTERROGATORY NO. 18: Please explain—aside from the exceptions listed in your answer to Interrogatory No. 1 regarding Request for Admission No. 13 (quoting *Sebern v. Moore*, 44 Idaho 410 (1927))—whether IDWR requires permits and/or licenses have a point of diversion from a public water source. [Please review page 4 of attachment no. 5 prior to answering this interrogatory].

ANSWER:

INTERROGATORY NO. 19: Please explain—aside from the exceptions listed in your answer to Interrogatory No. 1 regarding Request for Admission No. 13 (quoting *Sebern v. Moore*, 44 Idaho 410 (1927))—whether IDWR requires water right claims in an adjudication to have a point of diversion from a natural water source. [Please review page 3 of attachment Nos. 2 and 3 prior to answering this interrogatory].

ANSWER:

INTERROGATORY NO. 20: Please state the name(s) of State of Idaho employees who are competent to testify as to the level of the ordinary high water mark (OHWM) of the St. Joe River from its mouth to the point approximately $\frac{3}{4}$ of a mile east of St. Joe City.

ANSWER:

INTERROGATORY NO. 21: Does the State of Idaho assert ownership of any submerged lands underlying navigable waters within 1000 feet of Claimants' point of diversion in either subcase 91-7102 or 91-7173? If so, state the factual basis for the State's asserted ownership.

ANSWER:

INTERROGATORY NO. 22: Does the State of Idaho assert ownership of any submerged lands underlying navigable waters of the St. Joe River within the current boundary of the Coeur d'Alene Reservation? If so, state the factual basis for the State's asserted ownership.

ANSWER:

OBJECTOR'S SECOND REQUESTS
FOR DISCOVERY TO IDAHO - 7

INTERROGATORY NO. 23: Please specifically identify documents produced as part of the State of Idaho's response to Objector's First Requests for Discovery to the State of Idaho in response to request for production No. 2 which evidence the OHWM of the St. Joe River.

ANSWER:

INTERROGATORY NO. 24: Please list, by applicant name and encroachment ID number, any encroachment permits the State of Idaho has issued, at any time, within 1000 feet of Claimants' point of diversion.

ANSWER:

INTERROGATORY NO. 25: Please state whether the State of Idaho has received any encroachment permit applications for encroachments to the bed and banks of the St. Joe River, within the current exterior boundaries of the Coeur d'Alene Indian Reservation, from the date of July 28, 1998 to the present date. If so, please list the applicant names and addresses, as well as the encroachment ID numbers for those applications.

ANSWER:

INTERROGATORY NO. 26: Please state whether the State of Idaho has issued any encroachment permits upon the submerged bed and banks of the St. Joe River, within the current exterior boundaries of the Coeur d'Alene Indian Reservation, from the date of July 28, 1998 to the present date. If so, please list the applicant names and addresses, as well as the encroachment ID numbers for those encroachments.

ANSWER:

INTERROGATORY NO. 27: If the State of Idaho has issued such encroachment permits referenced in interrogatory no. 26, please explain the basis for doing so. If it has not, please state the reason(s) for such non-issuance.

ANSWER:

INTERROGATORY NO. 28: Please list, by claim number, claims in the Coeur d'Alene-Spokane River Basin Adjudication that (1) have a claimed source as Coeur d'Alene Lake or the St. Joe River; and (2) are located within the current exterior boundaries of the Coeur d'Alene Reservation.

RESPONSE:

INTERROGATORY NO. 29: Please list, by water right number, IDWR water use permits and/or licenses that (1) have been issued since July 28, 1998; (2) have a listed source as Coeur d'Alene Lake or the St. Joe River; and (3) are located within the current exterior boundaries of the Coeur d'Alene Reservation.

RESPONSE:

INTERROGATORY NO. 30: Please explain how IDWR and/or the State of Idaho define the term "natural water source" as it is used on page 3 of attachment nos. 2 and 3, as well as page 5-4 of attachment no. 4. Please list any documents relied upon in coming to this definition.

RESPONSE:

INTERROGATORY NO. 31: Please explain how IDWR and/or the State of Idaho define the term "public water source" as it is used on page 4 of attachment no. 5. Please list any documents relied upon in coming to this definition.

RESPONSE:

INTERROGATORY NO. 32: Does IDWR and/or the State of Idaho consider the terms "natural water source" and/or "public water source" to have a different meaning than the term "natural watercourse" as used in I.C. § 42-201 or "natural channel" as defined in I.C. § 42-101 ("natural channels, including the waters of all natural springs and lakes within the boundaries of the state . . .")? If different, please explain how the terms differ and how they are similar.

RESPONSE:

INTERROGATORY NO. 33: Please list the name(s) of the employees of the State of Idaho that investigated claim no. 91-7173.

RESPONSE:

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 8: Please produce any documents you assert support your factual and/or legal basis in answering the above Requests for Admission and Interrogatories.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9: Please produce true, accurate, and correct copies of all encroachment back-files the Idaho Department of Lands has on file for the St. Joe River.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10: Please produce true, accurate, and correct copies of encroachment permits the Idaho Department of Lands has on file for the St. Joe River.

RESPONSE:

REQUEST FOR PRODUCTION NO. 11: Please produce true, accurate, and correct copies of encroachment permit applications the Idaho Department of Lands has on file for the St. Joe River.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12: Please produce true, accurate, and correct copies of encroachment permit applications the State of Idaho has received for the St. Joe River, within the current exterior boundaries of the Coeur d'Alene Indian Reservation, from the date of July 28, 1998 to the present date.

RESPONSE:

Respectfully submitted this 10th day of June, 2016.

HOWARD FUNKE & ASSOCIATES, P.C.

By: Howard Funke
Howard Funke, Of the Firm
Attorneys for the Coeur d'Alene Tribe

Certificate of Service

I hereby certify that on the 10th day of June, 2016, a copy of the foregoing Objector's Second Requests for Discovery to the State of Idaho was served on the following counsel of record and other entities via email and/or hard-copy via first class mail, postage pre-paid:

Via Facsimile:

Clive Strong
Steven Strack
Office of the Attorney General
State of Idaho
P.O. Box 83720
Boise, Idaho 83720-0010
F- (208) 854-8071

Counsel for Respondent State of Idaho

Via U.S. Postal Service, Postage Pre-paid:

Norman Semanko
Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
P.O. Box 829
Boise, Idaho 83701-0829

Counsel for Claimant(s) and Respondent NIWRA members

U.S. Department of Justice
Environment & Nat'l Resources
550 W. Fort St., MSC 033
Boise, Idaho 83724

Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Marcella J. Harrison
Marcella J. Harrison

ATTACHMENT "1"

LAKES CONSIDERED NAVIGABLE FOR STATE TITLE PURPOSES

<u>NO.</u>	<u>NAME</u>	<u>COUNTY</u>	<u>AUTHORITY FOR DESIGNATION</u>
1.	Alturas Lake	Blaine	State
2.	Anderson Lake	Kootenai	State
3.	Bear Lake	Bear Lake	State, Coast Guard
4.	Beaver Lake	Bonner	State
5.	Bell's Lake	Benewah	State
6.	Benewah Lake	Benewah	State
7.	Black Lake	Kootenai	State
8.	Blue Lake	Bonner	State
9.	Blue Lake	Kootenai	State
10.	Bonner Lake	Boundary	State
11.	Boulder Lake	Valley	State
12.	Box Lake	Valley	State
13.	Brush Lake	Boundary	State
14.	Cave Lake	Kootenai	State
15.	Chase Lake	Bonner	State
16.	Chatcolet Lake	Benewah	State, Coast Guard
17.	Cocolalla Lake	Bonner	State
18.	Coeur d'Alene Lake	Kootenai	State, Coast Guard
19.	Fernan Lake	Kootenai	State, Coast Guard
20.	Fish Lake	Clearwater	State
21.	Glidden Lake	Shoshone	State
22.	Granite Lake	Bonner	State
23.	Granite Lake	Valley	State
24.	Hauser Lake	Kootenai	State
25.	Hayden Lake	Kootenai	State
26.	Henry's Lake	Fremont	State
27.	Herman Lake	Boundary	State
28.	Hidden Lake	Kootenai	State, Coast Guard
29.	Kelso Lake	Bonner	State
30.	Killarney Lake	Kootenai	State
31.	Louie Lake	Valley	State
32.	Medicine Lake	Kootenai	State
33.	Mirror Lake	Bonner	State
34.	Mud Lake	Jefferson	State
35.	Payette Lake	Valley	State
36.	Payette Lake, Little	Valley	State
37.	Payette Lake, Upper	Valley	State
38.	Pend Oreille Lake	Bonner	State, Coast Guard, Federal Court (194 Fed. Rep. 643, 600 F. Supp. 802), State Court (54 Idaho 700)

<u>NO.</u>	<u>NAME</u>	<u>COUNTY</u>	<u>AUTHORITY FOR DESIGNATION</u>
39.	Perkins Lake	Blaine	State
40.	Perkins Lake	Boundary	State
41.	Priest Lake	Bonner	State
42.	Priest Lake, Upper	Bonner	State
43.	Redfish Lake	Custer	State
44.	Redfish Lake, Little	Custer	State
45.	Riordan Lake	Valley	State
46.	Robinson Lake	Boundary	State
47.	Rose Lake	Kootenai	State
48.	Round Lake	Benewah	State
49.	Round Lake	Bonner	State
50.	Samuels Lake	Bonner	State
51.	Sheppard Lake	Bonner	State
52.	Spirit Lake	Kootenai	State
53.	Stanley Lake	Custer	State
54.	Stevens Lake, Upper	Shoshone	State
55.	Stevens Lake, Lower	Shoshone	State
56.	Swan Lake	Kootenai	State
57.	Thompson Lake	Kootenai	State
58.	Turtle Lake	Benewah	State
59.	Twin Lake, Lower	Kootenai	State
60.	Twin Lake, Upper	Kootenai	State
61.	Warm Lake	Valley	State
62.	Williams Lake	Lemhi	State

RIVERS CONSIDERED NAVIGABLE

<u>NO.</u>	<u>NAME</u>	<u>TYPE OF NAVIGABILITY</u>	<u>SECTION (B.M.)</u>	<u>AUTHORITY</u>
1.	Blackfoot	Title	E boundary T3S, R38E	State
2.	Boise	Title	All	State, State Court (94 Idaho 121)
3.	Boise, Middle Fork	Title	Through T5N, R8E	State
4.	Boise, North Fork	Title	Through T5N, R7E	State
5.	Boise, South Fork	Title	Through T3N, R11E	State
6.	Buffalo	Title	Through S21, T13N, R44E	State
7.	Clark Fork	Title	All	State, Coast Guard (to a entrance into point 4 miles above Pend Oreille Lake)
8.	Clearwater	Title	All	State, Coast Guard, State Court (29 Idaho 401, 438)
9.	Clearwater, Middle Fork	Title	All	State
10.	Clearwater, North Fork	Title	Through T40N, R7E	State, Coast Guard (upstream to Beaver Creek)
11.	Coeur d'Alene	Title, R/W	Through T51N, R3E	State, State Court (12 Idaho 723)
12.	Eagle Creek	Right-of-Way		State Court (20 Idaho 695)
13.	Kootenai	Title	All	State, Coast Guard (from Canadian border to Bonners Ferry)
14.	Lochsa	Title	Through T33N, R7E	State
15.	Moyie	Title	All	State, Federal Court (157 Supp. 931)
16.	Pack	Title	Downstream from NPPR bridge to its mouth	Coast Guard
17.	Payette	Title	All	State
18.	Payette, N Fork	Title	To Payette Lake	State
19.	Payette, S Fork	Title	Through T9N, R9E	State
20.	Pend Oreille	Title	All	State, Coast Guard
21.	Priest	Title	All	State
22.	Pritchard Creek	Right-of-Way		State Court (20 Idaho 695)
23.	St. Joe	Title	Through T45N, R7E (mouth to hwy. bridge 3/4 mile east of St. Joe City)	State, Coast Guard
24.	St. Maries	Title	Through S9, T45N, R2W	State
25.	Salmon	Title	Through T10N, R13E	State, State Court (26 Idaho 745, 99 Idaho 793)
26.	Salmon, Middle Fork	Title	Through S12, T14N, R9E	State
27.	Salmon, South Fork	Title	Through T20N, R6E	State
28.	Selway	Title	Through T32N, R7E	State
29.	Silver Creek	Right-of-Way		State Court (96 Idaho 360)
30.	Snake	Title, R/W	All	State, Coast Guard (Idaho-Washington border to Guffy Dam Site), Federal Court (227 US 229), State Court (29 Idaho 438)

<u>NO.</u>	<u>NAME</u>	<u>TYPE OF NAVIGABILITY</u>	<u>SECTION (B.M.)</u>	<u>AUTHORITY</u>
31.	Snake, Henry's Fork	Title	All	State
32.	Spokane	Title	Cd'A Lake to Post Falls Dam	State, Federal Court (775 F.2d 305)

ATTACHMENT "2"

**INSTRUCTIONS FOR FILING
NOTICE OF CLAIM
TO A WATER RIGHT
ACQUIRED UNDER STATE LAW
IN THE GENERAL ADJUDICATION OF RIGHTS TO THE USE OF
WATER FROM THE COEUR D'ALENE-SPOKANE RIVER BASIN
WATER SYSTEM**

PLEASE TYPE OR PRINT CLEARLY

WATER RIGHT

A water right allows the private use of Idaho's public water. When properly recorded, a water right gives you the right to divert a specific amount of water from its source for a beneficial purpose. (Some examples are: irrigation, domestic, stockwater, industry, and power production). There are many other beneficial uses of water also recognized by Idaho law.

CLAIMANT

A claimant is any person or organization that diverts water for beneficial use from a location within the adjudication boundaries of the Coeur d'Alene-Spokane River Basin. This includes streams, springs, lakes, ground water, developed water, wastewater, or any other source of water within the boundaries of the Coeur d'Alene-Spokane River Basin in Idaho.

PERMIT REQUIREMENTS

The permit system for establishing a water right became mandatory for uses developed from ground water after March 25, 1963 (except for single family domestic or stockwater uses that do not exceed 13,000 gallons per day) and for uses developed from surface water after May 20, 1971 (except for watering stock directly from streams). If your water use began after March 25, 1963 for ground water or after May 20, 1971 for surface water, and it is not one of the exceptions noted above, and a water right was not perfected under the permit system, an "Application for Permit" form should be filed instead of this claim.

COMPLETE THE CLAIM FORM

Please complete all applicable items on the claim form. A claim that is incomplete will not be accepted and will be returned to you for the missing information.

CLAIMANT'S NAME ON EACH PAGE

A space is provided at the bottom of the second and the remaining pages of the claim form for the last name of the claimant. If the claimant is an organization, the organization name is entered in this space. Please be sure that the name is entered on each page of the claim form, and on any additional attached sheets. This will prevent part of the claim form from being lost if it becomes separated during processing. Do not enter an Identification Number. If more space is required for any item, enter the information in Remarks (Item 13) or attach additional sheets. Be sure to identify all of the attachments to the claim form in Remarks (Item 13).

THIS CLAIM IS FOR YOUR WATER RIGHT

The claim you submit is your statement of what you believe is your water right. The instructions are supplied to help you detail your water right.

NAME AND ADDRESS

Item 1: Enter full name, mailing address and telephone number of the claimant(s). If more space is required for additional names, addresses, and telephone numbers, write these on another sheet of paper and attach it to the claim form. If the names on the claim have an "and" between them, all of the named parties must sign the claim. If the names on the claim have an "or" or an "and/or" between them, all of the parties may sign the claim, but only one of the named parties must sign the claim. If the claimant is in the process of selling the property on which this water right is claimed, enter the new owner's name and address in Remarks (Item 13).

DATE OF PRIORITY

Item 2: Enter the priority date by month, day, and year. Spell out the month. If the basis of your claim is a decree, permit, or license the priority date is the date shown on the decree, permit, or license. If the basis of your claim is beneficial use, enter the date the water was first applied to that use. If the exact date is not known, indicate your best estimate of that date since this is an important part of the claim to a water right. If the basis of your claim is a posted notice, the priority date is the date of posting, if the water right was diligently developed after the posting of the notice, and has been used continuously. Include with your claim, a certified copy of the posted notice from the county recorder's office where the posted notice is recorded. **ONLY ONE PRIORITY DATE CAN BE SHOWN ON A CLAIM.** Water rights with different priority dates must be filed on separate claim forms because each is a separate water right.

SOURCE OF WATER SUPPLY

Item 3: If your source of water is a well, place a "check" in the space to the left of "Ground Water" and go to Item 4. If your source of water is not ground water, place a "check" in the space next to "Other", and enter the name of the stream, lake, drain ditch, or spring you use as your source of water on line (a). Use the name shown on the U.S. Geological Survey quadrangle map. If unnamed, enter as unnamed stream, unnamed lake, or unnamed drain. If the source is an unnamed spring, enter "spring" for the source. Enter the first named stream or lake downstream to which the source is a tributary to on line (b). If the source sinks before entering another stream or lake, enter "sinks" for tributary to. Water from a well does not require an entry for tributary to. Only one source is allowed per claim, except when more than one source is being used for a single delivery system.

Examples of water sources and tributaries:

Source of water supply (a) Spokane River
which is tributary to (b) Columbia River

Source of water supply (a) unnamed drain
which is tributary to (b) Sand Creek

Source of water supply (a) spring
which is tributary to (b) sinks

Source of water supply (a) ground water
which is tributary to (b)

LOCATION OF POINT OF DIVERSION

Item 4: The point of diversion is the location at which the water is diverted from a natural water source (this includes drain ditches and wells). Enter the township, range and section in which the point of diversion is located. Also, describe the location of the point of diversion to the 40-acre tract (quarter-quarter section) or government lot within a section. Enter the county in which the point of diversion is located in the appropriate space. List the Parcel Number or Parcel Identification Number (PIN) as assigned by the county assessor for the parcel where the water is diverted unless no Parcel Number or PIN is recorded for the property at the point of diversion. You may also enter GPS coordinates for the point of diversion if they are available. Only one point of diversion may be entered per claim unless the claim is for a single delivery system with more than one point of diversion, or the claim is for a single licensed or decreed water right that covers more than one water delivery system. If your system has more than one point of diversion, enter the additional point(s) of diversion in the appropriate space. If the point of diversion is in a platted subdivision, and the plat has been recorded in the county recorder's office for the county in which the subdivision is located, include the name of the subdivision, the lot, and the block number in Remarks (Item 13).

Examples describing the point of diversion:

Location of point of diversion is:

Township 51N, Range 3W, Section 12, SE $\frac{1}{4}$ of SW $\frac{1}{4}$, or Govt. Lot B.M., County of Kootenai

Location of point of diversion is:

Township 49N, Range 6W, Section 36, $\frac{1}{4}$ of $\frac{1}{4}$, or Govt. Lot 3, B.M., County of Kootenai

DESCRIPTION OF DIVERSION WORKS

Item 5: Describe as completely as possible using information reasonably available to you, the means used to divert the water. Include the major components of the water delivery system such as dams, reservoirs, ditches, wells, pumps, pipelines, headgates, or any feature that is essential to your diversion system. Include the dimensions of the components as originally constructed, and if the system has been altered or enlarged since it was originally constructed, include the new dimensions. If changes or enlargements have occurred, indicate the date(s) the changes were made.

PURPOSE AND USE

Item 6: Enter the purpose(s) for which the water is being used. Enter the day of the year the use begins and the day of the year the use ends each year. If the water is used all year, the dates would be from January 1 to December 31. The length of the irrigation season varies with location within the state. Use the map labeled "Suggested Irrigation Seasons" located on the last page of the instructions to determine the suggested length of the irrigation season for your area. For diversion from a surface water source or a well, the amount of water entered is in cubic feet per second (cfs). For water rights that include storage, the amount of water for the storage portion of the right is entered in acre feet. This amount is usually the amount of water that can be removed from the reservoir, or the active storage capacity of the reservoir.

CALCULATION OF THE AMOUNT DIVERTED

If you know the number of gallons per minute (gpm) your system produces, you can calculate the cubic feet per second (cfs) it produces by dividing the gpm by 448.8 ($\text{gpm} / 448.8 = \text{cfs}$). Or, if you know the number of Idaho miner's inches of water you divert, you can calculate the cfs amount by dividing the number of miner's inches by 50 ($\text{miner's inches} / 50 = \text{cfs}$). Round the amount you calculate to the nearest 0.01 cfs. Most water rights have the following cfs amounts: Irrigation use, 0.02 cfs (1 miner's inch) for each irrigated acre. Systems irrigating 5 acres or less may have 0.03 cfs per acre. Domestic use, 0.04 cfs for one household with up to $\frac{1}{2}$ acre of lawn or garden irrigation. One household with in-house use only may be less. Stockwater use, see TABLE 1.

Some systems may be capable of producing more water than the amounts shown for the

preceding uses. You may claim the amount of water that your system actually produces, provided the water is put to beneficial use. If your irrigation requirements are greater than the amounts shown, an "Excessive Irrigation Flow" form should be completed and submitted with your claim. To obtain this form, contact one of the Department offices.

Examples of purposes, dates, and amounts of water use:

		(dates are inclusive)		(cfs)		(acre feet)
For <u>Irrigation</u>	Purposes from	<u>3-15</u> to <u>11-15</u>	amount	<u>6.54</u>	or	—
For <u>Irrigation Storage</u>	Purposes from	<u>11-16</u> to <u>3-14</u>	amount	—	or	<u>100</u>
For <u>Irr. From Storage</u>	Purposes from	<u>3-15</u> to <u>11-15</u>	amount	—	or	<u>100</u>
For <u>Industrial</u>	Purposes from	<u>1-1</u> to <u>12-31</u>	amount	<u>1.72</u>	or	—
For <u>Stockwater</u>	Purposes from	<u>1-1</u> to <u>12-31</u>	amount	<u>0.05</u>	or	—

TABLE 1, RECOMMENDED DIVERSION RATES FOR STOCKWATER

No. of head	In cubic feet per second (cfs)			
	Dairy cows	Other cattle, horses & mules	Hogs	Sheep & goats
0 - 25	0.02	0.02	0.02	0.02
26 - 50	0.04	0.02	0.02	0.02
51 - 100	0.07	0.03	0.02	0.02
101 - 200	0.13	0.05	0.02	0.02
201 - 300	0.20	0.07	0.02	0.02
301 - 400	0.26	0.09	0.03	0.02
401 - 500	0.33	0.12	0.04	0.02
501 - 600	0.39	0.14	0.05	0.03
601 - 700	0.46	0.16	0.05	0.03
701 - 800	0.52	0.19	0.06	0.03
801 - 900	0.58	0.20	0.07	0.04
901 - 1000	0.65	0.23	0.08	0.04

For chickens, round to the next highest 100 and multiply this number by 0.0000018.
For turkeys, round to the next highest 100 and multiply this number by 0.0000033.

If you have more than 1000 head of stock (other than poultry), round the number of head to the next highest 100, and multiply this number by one of the following factors:

For dairy cows, multiply by 0.00065
For other cattle, horses, or mules, multiply by 0.00022
For hogs, multiply by 0.000074
For sheep or goats, multiply by 0.000037

Round the amount you calculate to the nearest 0.01 cfs and enter this amount in the appropriate space on your claim. You may claim 0.01 cfs even if your calculated amount is less than 0.01 cfs.

TOTAL QUANTITY CLAIMED

Item 7: Enter the total amount of water diverted for all the uses shown in Item 6. The total quantity claimed should not exceed the diversion capacity of the system, nor the total of all the uses.

NON-IRRIGATION USES

Item 8: Describe uses other than irrigation as fully as possible. For power generation, include the total head in feet and the nameplate generating capacity in kilowatts (KW). For fish propagation, include the number of raceways and their dimensions. For domestic, include the number of households connected to the system. For commercial or industrial, include the name of the product that is manufactured or processed. For stockwater, include the maximum number of each type of stock watered annually pursuant to the water right claimed.

Examples of non-irrigation uses:

Hydropower generation, 200' head, 100 KW generator.

Fish hatchery with 5 raceways, raceways are 50' x 100' x 3' deep.

Domestic use in a subdivision with 75 lots.

Potato processing plant and feedlot with 5000 head cattle.

DESCRIPTION OF PLACE OF USE

Item 9: Enter the legal description of the place where the water is being used. The township is entered in the box below "TWN"; the range is entered in the box below "RNG"; and the section number is entered in the box below "SEC". The other boxes represent 40-acre tracts or government lots within each section. If the use is irrigation, enter the number of acres irrigated in each 40-acre tract or government lot. If the use is other than irrigation, place the letter symbol (see Table 2) for the use in the appropriate box(es) to show the location of the place of use. If the place of use is a government lot, the lot number should be included in the box (see example). If the Parcel Number or PIN for the place of use is different from the one entered for the point of diversion, enter the Parcel Number(s) or PIN(s) for the place of use.

TABLE 2, USE SYMBOLS

Stockwater - S	Domestic - D	Fish Propagation - H	Industrial - I
Cooling - L	Wildlife - W	Recreation - R	Heating - G
Aesthetic - J	Commercial - C	Power - P	Fire Protection - F
Municipal - M	Mining - X	Ground Water Recharge - E	

Example : (From Map of Project on page 8)

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10S	23E	24												20			40	28	88
		25	40			Lt 5 43													83
	24E	30					7	Lt 3 32	Lt 4 45	Lt 5 42									126
		30					S	Lt 3 D&C		Lt 5 S									

Parcel (PIN) no(s) 12N34W-56-7890 Total number of acres irrigated 297**LOCATION OF PLACE OF USE****Item 10:** Enter the county (or counties, if more than one) in which the place of use is located.**OWNERSHIP OF PROPERTY****Item 11:** If you own the property listed as the place of use put a "check" in the space after the "Yes". If you do not own the property listed as the place of use put a "check" after "No", and describe in Remarks (Item 13) the authority you have to claim this water right.

Examples: Power of attorney, lessee (renter), trustee, estate administrator, or the land is within the service area of an irrigation district or company. Also, a claimant that does not own the property listed as the place of use (except for a municipality, water utility, irrigation district, or ditch company) must list the name(s) and address(es) of the owner(s) in Remarks (Item 13).

DESCRIBE OTHER WATER RIGHTS**Item 12:** If other water rights owned by you or others are used at the same place and for the same purposes, the other rights overlap this right, and they must be described. If the other water right has a water right number assigned by the Idaho Department of Water Resources (IDWR), this number is a sufficient description. If the other water right does not have a number assigned by the IDWR, this other right should be described completely on an attached sheet of paper. If no other water rights are used at the same place and for the same purpose as the right you are claiming, place a "check" after "None".

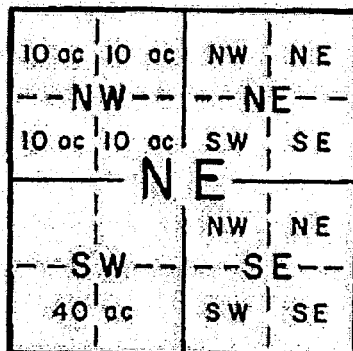
REMARKS

Item 13: Use this space to enter information that requires more space than is provided on the claim form. This would include additional names and addresses (Item 1), names and addresses of new owners (Item 1), subdivision plat information (Item 4), points of injection and redirection (Item 4), and if the claimant is not the owner, the authority for claiming this water right and the owner's name and address (Item 12). Also, include any relevant information that was not specifically requested on the claim form that would further define or describe this water right. If additional space is needed a separate sheet of paper may be used and attached to the claim.

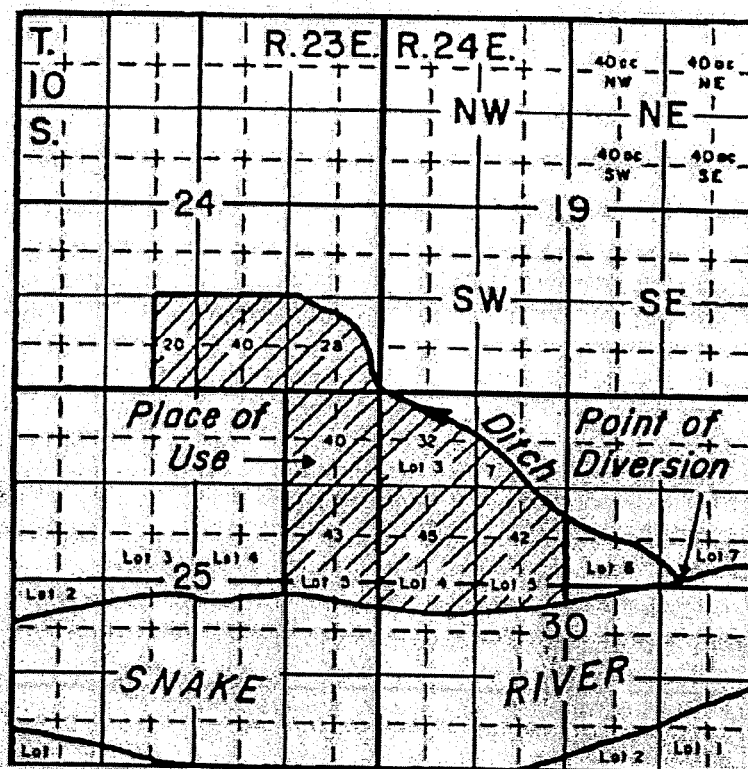
Be sure to identify all documents submitted with the claim form in this Remarks section. This is essential so additional information submitted by you does not become separated from the claim form.

MAP OF PROJECT

Attach an aerial photograph or topographic map showing clearly the point of diversion, place of use, section number, township, and range number, unless unavailable. Otherwise sketch the elements above on the grid below. At the scale of 2 inches equaling one mile, each small square represents a 10-acre tract. If you have used a different scale for your sketch, please indicate the scale that you used.



The NE 1/4 of Section 19 (160 acres) has been enlarged to show the quarter-quarter sections (10-acre tracts).



BASIS OF CLAIM

Item 14: Indicate by placing a "check" in the appropriate space the basis on which you are filing your claim. If no record of your water use is in the Department's files, you probably have a Beneficial Use right (see Permit Requirements) and no Idaho Department of Water Resources (IDWR) Water Right Number can be entered. If the basis of your claim is a "Claim to a Water Right" form (Statutory Claim) you filed with the Department, you have a Beneficial Use claim, and you should enter the IDWR Water Right Number assigned to that claim. If the basis of your claim is a Posted Notice, provide a certified copy of the posted notice as described in Item 2. If the basis of your claim is a water right License issued by the Department, enter the IDWR Water Right Number assigned to that license. If the basis of your claim is an approved Permit, enter the IDWR Water Right Number assigned to that permit. If the basis of your claim is a Decree, and the decreed right was assigned a water right number by the Department, enter the water right number in the space after IDWR Water Right Number. This is NOT the order of priority number that was assigned by the decree. If an IDWR Water Right Number was not assigned to your decreed water right, enter the Court, the Case Number, the Decree Date, and the Plaintiff vs. Defendant or the name of the decree as it is commonly known.

SIGNATURE(S)

Item 15: Before signing your claim, read the document "How You Will Receive Notices in the Coeur d'Alene-Spokane River Basin Adjudication" which can be obtained at any IDWR office, or it can be viewed and printed with the Domestic and/or Stockwater claim form on IDWR's web page.

After you have read and understood the document, place a "check" in the appropriate space indicating that you do or do not wish to pay a small annual fee for a subscription to receive monthly copies of the docket sheet.

Enter the number of attachments in the space provided.

NOTICE OF APPEARANCE

Item 16: If you want the notices required by law that are associated with this claim to be mailed to your attorney instead of you, have your attorney complete Item 16.

FILING FEES

Each claim submitted must include the filing fee. The filing fee for domestic and/or stockwater use claims diverting less than 13,000 gallons of water per day is \$25.00. The flat fee for filing all other claims filed is \$50.00 per claim. An additional variable filing fee based upon acreage, power generating nameplate capacity, cubic feet per second (cfs) amount, or an equivalent volume of storage water is required for claims for water uses other than domestic and/or stockwater uses diverting less than 13,000 gallons of water per day. Use Table 3 to calculate the variable fee. Add the calculated variable fee to the \$50.00 flat fee to determine the total fee for the claim. The exceptions are fire protection or ground water recharge which have a \$50.00 flat fee, and no variable fee.

Examples for a single claim to a water right with single source and same priority date:

Single family domestic and stockwater use, less than 13,000 gallons per day in total	\$25
100 acres irrigation, domestic and stockwater as above	\$150
Fish propagation, 4.2 cfs	\$92
Multiple family domestic, 1.6 cfs, irrigation of yards and gardens, 14 acres	\$224

TABLE 3, VARIABLE FEE SCHEDULE

Irrigation:	\$1.00 per acre
each acre is charged only once.	
Power generation:	\$3.50 per kilowatt of capacity
(manufacturer's nameplate rating), or \$250,000.00, whichever is less.	
Aquaculture:	\$10.00 per cfs
Domestic, stockwater in excess of 13,000 gallons per day:	\$100.00 per cfs
Municipal, industrial, commercial, mining, heating, cooling:	\$100.00 per cfs
Public instream flow, public lake level maintenance, wildlife:	\$100.00 per cfs
Exceptions: No variable fee is charged for fire protection or ground water recharge.	

For a public entity claiming water for more than one public purpose, the variable fee per cfs is charged once per cfs claimed. The fee is charged on the largest of the amounts claimed. Public purposes include instream flows, lake levels, wildlife, aesthetic beauty, and recreation uses claimed by a public entity.

The filing fee must accompany this claim. Make checks payable to the Idaho Department of Water Resources. You should keep the yellow copy of the claim form for your records. Send the fee along with the white copy of the claim form to one of the following offices:

Northern Region

Idaho Dep of Water Resources
7600 Mineral Dr. Ste. 100
Coeur d'Alene, ID 83815-7763
Phone (208) 762-2800
FAX (208) 762-2819

Eastern Region

Idaho Dep of Water Resources
900 N. Skyline Dr. Ste. A
Idaho Falls, ID 83402-1718
Phone (208) 525-7161
FAX (208) 525-7177

Southern Region

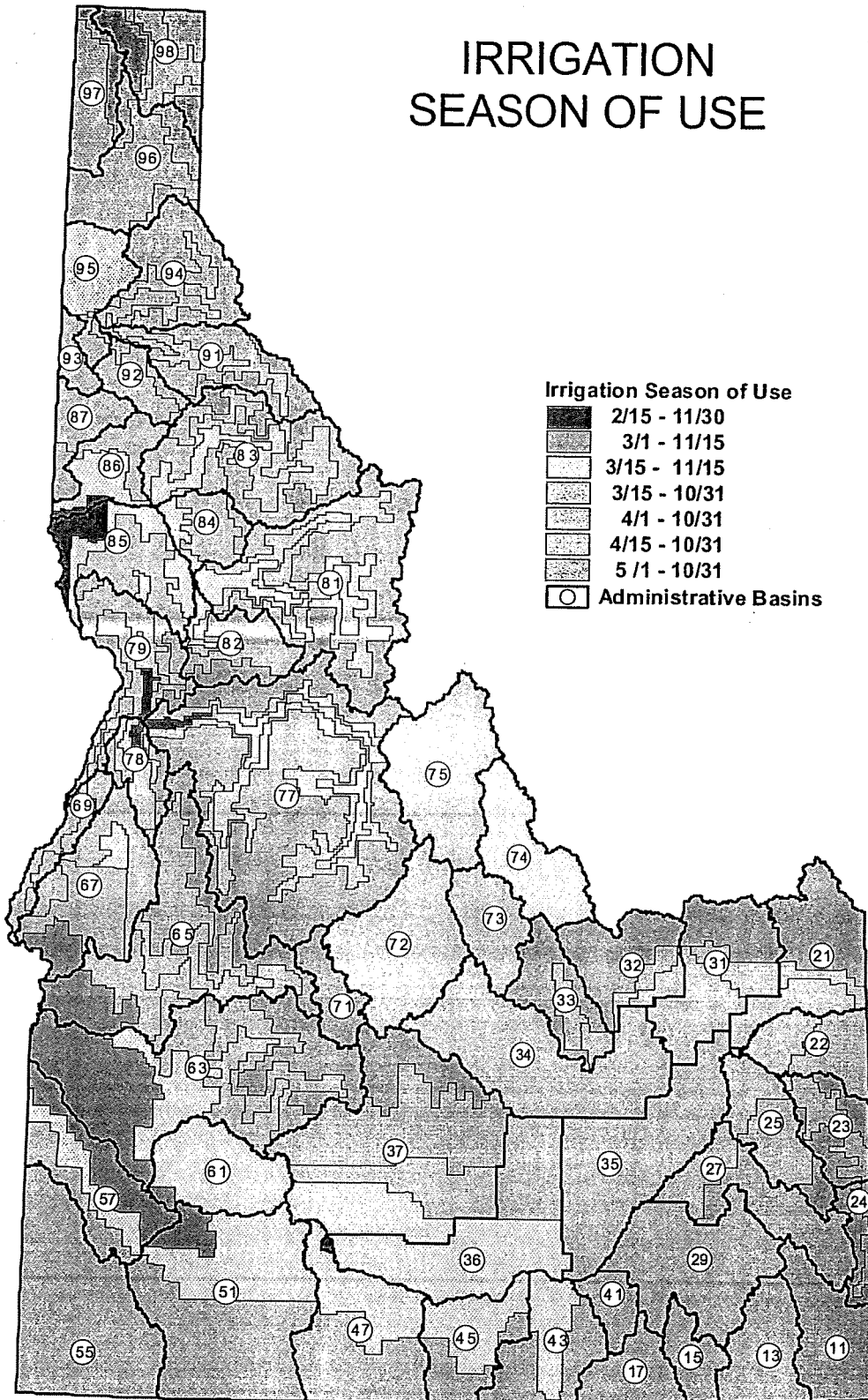
Idaho Dep of Water Resources
Ste. 00
Twin Falls, ID 83301-
Phone (208) 736-3033
FAX (208) 736-3037

Western Region

Idaho Dep of Water Resources
2735 Airport Way
Boise, ID 83705-5082
Phone (208) 334-2190
FAX (208) 334-2348

If you need additional information or assistance in completing the claim form, you may visit one of the Department's offices.

IRRIGATION SEASON OF USE



ATTACHMENT "3"

**INSTRUCTIONS FOR FILING
NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW
FOR DOMESTIC AND/OR STOCKWATER PURPOSES WHERE
DAILY USE IS LESS THAN 13,000 GALLONS PER DAY**

**IN THE GENERAL ADJUDICATION OF RIGHTS TO THE USE OF
WATER FROM THE COEUR D'ALENE-SPOKANE RIVER BASIN
WATER SYSTEM**

PLEASE TYPE OR PRINT CLEARLY

WATER RIGHT

A water right allows the private use of Idaho's public water. When properly recorded, a water right gives you the right to divert a specific amount of water from its source for a beneficial purpose. (There are many beneficial uses of water recognized by Idaho law; however, only domestic and/or stockwater uses may be claimed on this form.)

CLAIMANT

A claimant is any person or organization that diverts water for beneficial use from a location within the adjudication boundaries of the Coeur d'Alene-Spokane River Basin. This includes streams, springs, lakes, ground water, developed water, wastewater, or any other source of water within the boundaries of the Coeur d'Alene-Spokane River Basin in Idaho.

DAILY USE IS LIMITED TO 13,000 GALLONS PER DAY OR LESS

This claim form is to be used by claimants of domestic and/or stockwater uses where the daily use is less than 13,000 gallons per day. Generally, this includes the water used by a single family residence with up to 1/2 acre of lawn and/or garden irrigation, or the water used by up to: 370 head of dairy cows, 1000 head of other cattle and/or horses and mules, 3250 head of hogs, or 6500 head of sheep and/or goats. Any combination of stockwater and single family or multiple-family use with single-ownership that does not exceed 13,000 gallons per day may also use this claim form.

PERMIT REQUIREMENTS

The permit system for establishing a water right became mandatory for water use developed from ground water after March 25, 1963 (except for single family domestic or stockwater uses that do not exceed 13,000 gallons per day) and for uses developed from surface water after May 20, 1971 (except for watering stock directly from streams). If your water use began after March 25, 1963 for ground water or after May 20, 1971 for surface water, and it is not one of the exceptions noted above, and a water right was not perfected under the permit system, an "Application for Permit" form should be filed instead of this claim. If the system is for domestic use for more than one household, and the houses are not under single ownership, you have the following options: Each

owner may file a separate claim for their own water right on Form No. 42-1409-2. Or one water right may be claimed that shows all of the uses on Form No. 42-1409-1. If you want to claim a water right for watering stock directly from a stream, or if your claim includes a storage amount, such as a stock pond, you must file a claim on Form No. 42-1409-1.

COMPLETE THE CLAIM FORM

Please complete all applicable items on the claim form. A claim that is incomplete will not be accepted and will be returned to you for the missing information.

CLAIMANT'S NAME ON EACH PAGE

A space is provided at the bottom of the second page of the claim form for the last name of the claimant. If the claimant is an organization, the organization name is entered in this space. Please be sure the name is entered on each page of the claim form, and on any additional attached sheets. This will prevent part of the claim form from being lost if it becomes separated during processing. Do not enter an Identification Number. If more space is required for any item, enter the information in Remarks (Item 13) or attach additional sheets. Be sure to identify all of the attachments to the claim form in Remarks (Item 13).

THIS CLAIM IS FOR YOUR WATER RIGHT

The claim you submit is your statement of what you believe is your water right. The instructions are supplied to help you detail your water right.

NAME AND ADDRESS

Item 1: Enter full name, mailing address and telephone number of the claimant(s). If more space is required for additional names, addresses, and telephone numbers, write these on another sheet of paper and attach it to the claim form. If the names on the claim have an "and" between them, all of the named parties must sign the claim. If the names on the claim have an "or" or an "and/or" between them, all of the named parties may sign the claim, but only one of the named parties must sign the claim. If the claimant is in the process of selling the property on which this water right is claimed, enter the new owner's name and address in Remarks (Item 13).

DATE OF PRIORITY

Item 2: Enter the priority date by month, day, and year. Spell out the month. If the basis of your claim is a decree, permit, or license the priority date is the date shown on the decree, permit, or license. If the basis of your claim is beneficial use, enter the date the water was first applied to that use. If the exact date is not known, indicate your best estimate of that date since this is an important part of the claim to a water right. If the basis of your claim is a posted notice, the priority date is the date of posting, if the right was diligently developed after the posting of the notice, and has been used continuously. Include with your claim, a copy of the posted notice from the county recorder's office where the posted notice is recorded. **ONLY ONE PRIORITY DATE CAN BE SHOWN ON A CLAIM.** Water rights with different priority dates must be filed on separate claim forms because each is a separate water right.

SOURCE OF WATER SUPPLY

Item 3: If your source of water is a well, place a "check" in the space to the left of "Ground Water" and go to Item 4. If your source of water is not ground water, place a "check" in the space next to "Other", and enter the name of the stream, lake, drain ditch, or spring you use as your source of water on line (a). Use the name shown on the U.S. Geological Survey quadrangle map. If unnamed, enter as, unnamed stream, unnamed lake, or unnamed drain. If the source is a spring without a name, enter "spring" for the source. Enter the first named stream or lake downstream to which the source is a tributary to on line (b). If the source sinks before entering another stream or lake, enter "sinks" for tributary to. Only one source is allowed per claim, except when more than one source is being used for a single delivery system.

Examples of water sources and tributaries:

Source of water supply (a) Cougar Creek
which is tributary to (b) Coeur d'Alene Lake

Source of water supply (a) spring
which is tributary to (b) sinks

LOCATION OF POINT OF DIVERSION

Item 4: The point of diversion is the location at which the water is diverted from a natural water source (this includes drain ditches and wells). Enter the township, range and section in which the point of diversion is located. Also, describe the location of the point of diversion to the 40-acre tract (quarter-quarter section) or government lot within a section. Enter the county in which the point of diversion is located in the appropriate space. List the Parcel Number or Parcel Identification Number (PIN) as assigned by the county assessor for the parcel where the water is diverted unless no Parcel Number or PIN is recorded for the property at the point of diversion. You may also enter GPS coordinates for the point of diversion if they are available. Only one point of diversion may be entered per claim unless the claim is for a single delivery system with more than one point of diversion, or the claim is for a single licensed or decreed water right that covers more than one water delivery system. If your system has more than one point of diversion, enter the additional point(s) of diversion in the appropriate space. If the point of diversion is in a platted subdivision, and the plat has been recorded in the county recorder's office for the county in which the subdivision is located, include the name of the subdivision, the lot, and the block number in Remarks (Item 13).

Examples describing the point of diversion:

Location of point of diversion is:

Township 51N , Range 3W , Section 12 , SE ¼ of SW ¼, or Govt. Lot __ B.M., County of Kootenai

Location of point of diversion is:

Township 49N , Range 6W , Section 36 , __ ¼ of __ ¼, or Govt. Lot 3 , B.M., County of Kootenai

DESCRIPTION OF DIVERSION WORKS

Item 5: Describe as completely as possible the means used to divert the water. Include the major components of the water delivery system such as wells, pumps, pipelines, headgates, ditches, collection boxes, troughs, or any other feature that is essential to your diversion system. Include the dimensions of the components as originally constructed, and if the system has been altered or enlarged since it was originally constructed, include the new dimensions. If changes or enlargements have occurred, describe the changes or enlargements and indicate the date(s) that the changes were made.

PURPOSE AND USE

Item 6: The purpose(s) for which the water is being used is limited to domestic and/or stockwater for claims filed on this claim form. Enter the day of the year the use begins and the day of the year the use ends each year. If the water is used all year, the dates would be from January 1 to December 31. The amount of water should be entered in cubic feet per second (cfs). For a reference, 0.02 cfs is approximately equal to 9 gallons per minute. Most water rights have the following amounts: Domestic use, 0.04 cfs for one household with up to 1/2 acre of lawn or garden irrigation (one household with in-house use only may be less). Stockwater use, see TABLE 1. Some systems may be capable of producing more water than the amounts shown for the preceding uses. You may claim the amount of water (in cfs) that your system actually produces provided the water is put to beneficial use.

Example of purposes, dates, and amounts of water use:

		Month/Day		Month/Day		(cfs)
For	<u>Domestic</u>	purposes	from	<u>1-1</u>	to	<u>12-31</u>
					amount	<u>0.04</u>
For	<u>Stockwater</u>	purposes	from	<u>1-1</u>	to	<u>12-31</u>
					amount	<u>0.02</u>

(both dates are inclusive)

TABLE 1. RECOMMENDED DIVERSION RATES FOR STOCKWATER

In cubic feet per second (cfs).

No. of head	Dairy cows	Other cattle, horses & mules	Hogs	Sheep & goats
0 - 25	0.02	0.02	0.02	0.02
26 - 50	0.04	0.02	0.02	0.02
51 - 100	0.07	0.03	0.02	0.02
101 - 200	0.13	0.05	0.02	0.02
201 - 300	0.20	0.07	0.02	0.02
301 - 400	0.24 *	0.09	0.03	0.02
401 - 500		0.12	0.04	0.02
501 - 600		0.14	0.05	0.03
601 - 700		0.16	0.05	0.03
701 - 800		0.19	0.06	0.03
801 - 900		0.20	0.07	0.04
901 - 1000		0.23 *	0.08	0.04

For chickens, round to the next highest 100 and multiply this number by 0.0000018.
For turkeys, round to the next highest 100 and multiply this number by 0.0000033.

If you have more than 1000 head of hogs, sheep, or goats, round the number to the next highest 100, and multiply this number by one of the following factors:

For hogs, multiply by 0.000074

For sheep or goats, multiply by 0.000037

Round the amount you calculate to the nearest 0.01 cfs and enter this amount in the appropriate space on your claim. You may claim 0.01 cfs even if your calculated amount is less than 0.01 cfs.

* If you have more than; 370 head of dairy cows, or 1000 head of other cattle, horses, or mules, or 3250 head of hogs, or 6500 head of sheep and/or goats, or 130,000 chickens, or 72,200 turkeys you probably use more than 13,000 gallons of water per day. Form No. 42-1409(2)a is used for claims when the amount of water diverted exceeds 13,000 gallons per day.

TOTAL QUANTITY CLAIMED

Item 7: Enter the total amount of water diverted for all the uses shown in Item 6. The total quantity claimed cannot exceed the diversion capacity of the system, or the total of the individual uses.

DESCRIPTION OF USES

Item 8: Describe the uses of the water as fully as possible. Examples: Domestic, enter the number of households connected to the system. Stockwater, enter the number and kind of livestock. If you are claiming domestic use for more than one home, each house must be owned by the same individual or organization.

EXAMPLES:

Domestic, 1 home; Stockwater, 100 head cattle.

Domestic, 1 home; Stockwater, 85 head cattle, 10 head horses.

DESCRIPTION OF PLACE OF USE

Item 9: The place of use is the location in which the water is used. Enter township, range, and section of the place of use. Also, describe the place of use to 40-acre tract (quarter-quarter section) or government lot within a section. If the water is used at the same location that it is diverted, the legal description of the place of use would be the same as the legal description of the point of diversion described in Item 4. "Check" one of the uses (Domestic, Stock, Domestic and Stock) which best describes your water use. The use "checked" should be the same as the use(s) entered in Item 6. A space is provided if your place of use is in two 40 acre tracts. However, if your water is used in more than two 40-acre tracts, it might be easier to file your claim on Form No. 42-1409-1. If the Parcel Number or PIN for the place of use is different from the one entered for the point of diversion, enter the Parcel Number(s) or PIN(s) for the place of use.

PLACE OF USE COUNTY

Item 10: Enter the county (or counties, if more than one) in which the place of use is located.

OWNERSHIP OF PROPERTY

Item 11: If you own the property listed as the place of use put a "check" in the space after the "Yes". If you do not own the property listed as the place of use put a "check" after "No", and describe in Remarks (Item 13) the authority you have to claim this water right. Examples: Power of attorney, lessee (renter), trustee, or estate administrator. Also, if you do not own the place of use, list the name(s) and address(es) of the owner(s) in Remarks (Item 13).

DESCRIBE OTHER WATER RIGHTS

Item 12: If other water rights owned by you or others are used at the same place and for the same purposes, the other rights overlap this right, and they must be described. If the other water right has a water right number assigned by the Idaho Department of Water Resources (IDWR), this number is a sufficient description. If the other water right does not have a number assigned by the IDWR, this other right should be described completely on an attached sheet of paper. If no other water rights are used at the same place and for the same purpose as the right you are claiming, place a "check" after "None".

REMARKS

Item 13: Use this space to enter information that requires more space than is provided on the claim form. This would include additional names and addresses (Item 1), names and addresses of new owners (Item 1), subdivision plat information (Item 4), and the authority for claiming this water right (Item 11). Also, include any relevant information that was not specifically requested on the claim form that would further define or describe this water right. If additional space is needed a separate sheet of paper may be used and attached to the form.

Be sure to identify all documents submitted with the claim form in this Remarks section. This is essential so additional information submitted by you does not become separated from the claim form.

BASIS OF CLAIM

Item 14: Indicate by placing a "check" in the appropriate space the basis on which you are filing your claim. If no record of your water use is in the Department's files, you probably have a **Beneficial Use** claim (see PERMIT REQUIREMENTS), and no Idaho Department of Water Resources (IDWR) Water Right Number can be entered. If the basis of your claim is a "Claim to a Water Right" form you filed with the Department, you have a Beneficial Use claim, and you should enter the **IDWR Water Right Number** assigned to that claim. If the basis of your claim is a Posted Notice, provide a copy of the **posted notice** as described in Item 2. If the basis of your claim is a water right **License** issued by the Department, enter the IDWR Water Right Number assigned to that license. If the basis of your claim is an approved **Permit**, enter the IDWR Water Right Number assigned to that permit. If the basis of your claim is a **Decree**, and the decreed right was assigned a water right number by the Department, enter the water right number in the space after IDWR Water Right Number. This is NOT the order of priority number that was assigned by the decree. If an IDWR Water Right Number was not assigned to your decreed water right, enter the Court, the Decree Date, and the Plaintiff vs. Defendant or the name of the decree, as it is commonly known.

SIGNATURE(S)

Item 15: Before signing your claim, read the document "How You Will Receive Notices in the Coeur d'Alene-Spokane River Basin Adjudication" which can be obtained at any IDWR office, or it can be viewed and printed with the Domestic and/or Stockwater claim form on IDWR's web page.

After you have read and understood the document, place a "check" in the appropriate space indicating that you do or do not wish to pay a small annual fee for a subscription to receive monthly copies of the docket sheet.

Enter the number of attachments in the space provided.

Item 16: If you want the notices required by law that are associated with this claim to be mailed to your attorney instead of you, have your attorney complete Item 16.

FILING FEE

Each claim submitted must include the filing fee. The filing fee for domestic and/or stockwater use claims diverting less than 13,000 gallons of water per day is \$25.00. If you are claiming a water use based on a water right permit, license, decree or statutory claim, including a copy of the document will expedite the processing of your claim.

Make checks payable to the Idaho Department of Water Resources.

Send the fee along with the original claim form to one of the following offices:

Eastern Region
Idaho Dep of Water Resources
900 N. Skyline Dr. Ste. A
Idaho Falls, ID 83402-1718

Southern Region
Idaho Dep of Water Resources
Ste. 00
Twin Falls, ID 83301-

Northern Region
Idaho Dep of Water Resources
7600 Mineral Dr. Ste. 100
Coeur d'Alene, ID 83815-7763

Western Region
Idaho Dep of Water Resources
2735 Airport Way
Boise, ID 83705-5082

If you need additional information or assistance in completing the claim form, you may visit one of the Department's offices.

ATTACHMENT "4"

SUBCHAPTER 2.3 - DUTIES AND RESPONSIBILITIES OF WATER RIGHTS CLAIMANTS

A. Duty to File Notice of Claim

1. Claimants of rights to water from the water system are required by statute to file a notice of claim (see subchapter 2.4).

NOTE that "claimant" is defined by statute as a person claiming ownership of a right to use water. A person using water owned by another and who does not claim ownership of the right is not considered a claimant.

EXAMPLE: Where a person receives water by virtue of ownership of shares of stock in a water delivery organization, and the water delivery organization holds legal title to the water right, the claimant is the water delivery organization, not the stockholder.

2. There are some water rights for which a notice of claim is not required to be filed.
 - a. A notice of claim is not required for stockwater and/or domestic uses if the determination of such uses is excluded from the adjudication by the commencement order (see subchapter 2.1-D).
 - i. Stockwater use is defined by statute as the use of water solely for livestock or wildlife where total use is not in excess of 13,000 gallons per day.
 - ii. Domestic use is defined by statute as the use of water for homes, organization camps, public campgrounds, livestock, and for any other purpose in connection therewith, including irrigation of up to 1/2 acre of land, if total use is not in excess of 13,000 gallons per day. Domestic use does not include water for multiple ownership subdivisions, mobile home parks, commercial or business establishments.
 - iii. A notice of claim is required to be filed for stockwater and domestic uses that do not fall within the above definitions.
 - b. A notice of claim is not required for water rights based on an application or permit as of the date of entry of the commencement order. See title 42, chapter 2, Idaho Code as to applications for permits and permits to appropriate water.

- i. At least 120 days prior to filing the director's report (see subchapter 2.6-A & B), the director may require a notice of claim to be filed for water rights based upon a permit for which proof of beneficial use was filed after entry of the commencement order.
 - ii. If the director requires a notice of claim to be filed, the director will notify the claimant at the most recent address shown by the department's records.
 - c. A notice of claim need not be filed for a water right arising under federal law if the priority date claimed is subsequent to the date of entry of the commencement order.
3. Notices of claims may be filed for water rights for which a notice of claim is not required to be filed.
- a. A notice of claim for a water right based on an application for permit may not be filed until the application has been approved by the director.
 - b. The director is required to notify a person whose application is approved prior to filing the director's report of the pendency of the adjudication.
4. ANY PERSON FAILING TO FILE A REQUIRED NOTICE OF CLAIM WILL BE DEEMED TO HAVE FORFEITED THE WATER RIGHT UPON COMPLETION OF THE ADJUDICATION (see Idaho Code § 42-1420).

B. Duty to Timely File Notice of Claim

1. The director is to set forth deadlines for filing notices of claims in the notice of commencement (see subchapter 2.2) which shall not be less than 90 days following service of the notice of commencement.
2. Late-filed claims will be accepted at any time prior to filing the director's report (see subchapter 2.6-A & B), but a late filing fee may be applicable (see subchapter 2.3-E.2).
3. Notices of claims will not be accepted by the director after the director's report is filed. Persons who fail to file a notice of claim prior to filing the director's report will have to petition the court for permission to file a late claim, and will have to provide such notice to other claimants as the court directs.

C. Duty to File Change in Address

1. Claimants are required to notify the director in writing of a change in the claimant's address.
2. Claimants who fail to file a change in address will be considered to have been constructively served with notices sent to the previous address, even if the notice is not in fact received by the claimant.

D. Duty of Purchasers

1. Persons purchasing a water right after the commencement of a general adjudication have a duty to inquire of the director whether a notice of claim has been filed.
 - a. NOTE that a notice of commencement is filed with the county recorder and a copy of the commencement order is filed with the district court clerk for each county wholly or partly within the water system for purposes of providing record notice to purchasers of real property of the commencement of the adjudication (see subchapter 2.2-B).
 - b. CLIENTS PURCHASING REAL PROPERTY SHOULD BE ADVISED TO INQUIRE AT THE DEPARTMENT AS TO THE POSSIBLE EXISTENCE OF APPURTENANT WATER RIGHTS, THE PENDENCY OF A GENERAL ADJUDICATION, AND WHETHER A NOTICE OF CLAIM HAS BEEN FILED FOR ANY AND ALL APPURTENANT WATER RIGHTS.
 - c. As noted above, any person who fails to file a required notice of claim in a general adjudication forfeits the water right.
2. Persons purchasing a water right after the commencement of a general adjudication for which a notice of claim was filed have a duty to notify the director in writing of the name and address of the new owner.
 - a. A notice of change in ownership must be accompanied by some evidence of the change in ownership. A copy of the conveyance, an affidavit of the grantor, a property tax statement or other similar document would be acceptable.
 - b. Purchasers failing to file a change in ownership will be deemed to have been constructively served with notices sent to the previous owner, even if the notice is not in fact received by the purchaser.

3. "Purchaser" is defined by statute as any successor in interest to a claimant, whether the interest is acquired by purchase, gift, inheritance, or other means.

E. Fees

1. Filing Fees

- a. Claimants are required to submit a filing fee along with the notice of claim. The fee consists of a flat fee and an additional variable fee; the fee schedule is set forth in Appendix V.

EXAMPLE: A claimant submits two claims, one for irrigation of 50 acres with a May 19, 1900 priority, one for a supplemental water right to irrigate the same 50 acres with a June 10, 1927 priority. The fee consists of two flat fees of \$50.00 each, plus a \$50.00 variable fee based upon 50 acres, for a total of \$150.00.

EXAMPLE: A claimant submits two claims, one for irrigation of 50 acres in Section 15 with a May 19, 1900 priority, one for irrigation of 75 acres in Section 16 with a June 10, 1927 priority. The fee consists of two flat fees of \$50.00 each, plus a variable fee of \$125.00 based upon 125 acres, for a total of \$225.00.

EXAMPLE: A water delivery organization files a claim for irrigation of lands within the service area of the water delivery organization, and pays the filing fee. An individual files a claim for a supplemental water right for 50 acres of land that is served by the water delivery organization. The total fee for the individual is a flat fee of \$50.00; the variable per acre fee has already been paid by the water delivery organization.

EXAMPLE: A claimant submits one claim for domestic use in a single family residence, including irrigation of a 1/4 acre yard. The total fee is \$25.00.

EXAMPLE: A claimant submits a claim for 0.1 cfs for use in 4 unit residence. The total fee is \$50.00.

EXAMPLE: A claimant submits one notice of claim for a water right with a June 10, 1927 priority that is used in one residence, to water 100 head of range cattle, and to irrigate 96 acres. The fee

consists of one flat fee of \$50.00, plus a variable fee of \$96.00 based on 96 acres, for a total of \$146.00.

- b. The statute provides that variable fees in excess of \$1000 may be spread out over as many as five annual payments, with 10% annual interest on the unpaid balance.

It is expected that extended payment will be permitted where total fee equals or exceeds \$1000. The first payment is due upon filing.

- c. In the SRBA it is expected that claims-taking will be done in stages on a sub-basin by sub-basin basis. With respect to claimants with claims in more than one sub-basin, fees for claims in each sub-basin will be due for claims in that sub-basin at the time of filing claims in that sub-basin. Variable fee payments will also be calculated separately on the basis of claims for each sub-basin.

2. Late Filing Fees

Claimants are required to pay an additional fee if a notice of claim is not filed by the date set forth in the first notice mailed to the claimant (see subchapter 2.2-B & C as to commencement notices). The late fee is \$50 or 15% of the original filing fee, whichever is greater. The late fee may be waived by the director or the district court for good cause.

EXAMPLE: If Claimant A receives a mailed notice in the first round of service which sets forth a July 2 deadline, and Claimant A files July 25, Claimant A will be subject to the late fee, even if Claimant A receives another notice in the second round of service.

EXAMPLE: If Claimant B is not mailed a notice in the first round of service and later receives a mailed notice in the second round of service setting forth a September 2 deadline, only a claim filed after September 2 will be subject to the late fee.

- 3. A fee may be applicable when a notice of claim is amended (see subchapter 2.4-F).
- 4. Failure to pay an applicable fee when due will result in rejection of the claim by the director, unless the claimant is exempt under federal law. Failure to pay an extended variable fee payment coming due after filing of the director's report will result in nondelivery of water.

SUBCHAPTER 2.4 - NOTICES OF CLAIMS

A. Notice of Claim Forms

1. Notices of claims are to be submitted on forms prepared by the director; the contents of the forms are specified by statute.
2. The forms are to be made available at a number of locations, which locations are to be listed in the notice of commencement (see subchapter 2.2).
3. One form is prepared for use by claimants of rights acquired under state law. Such rights include:

a. Permitted or licensed rights

Permitted or licensed rights are water rights commenced or perfected in accordance with title 42, chapters 2 or 15, Idaho Code. See subchapter 2.3-A.2.b as to claims to water rights based on permits or applications for permit.

b. Decreed rights

A decreed right is a water right determined by a judgment or decree of a court setting forth the elements of the water right.

c. Historic use rights

Historic use rights include:

- i. water rights perfected by application of water to beneficial use prior to the effective date of the mandatory permit system (May 20, 1971 with respect to surface water, March 25, 1963 with respect to groundwater) and recorded with the department by June 30, 1988. See Idaho Code §§ 42-201, -229, and -241 to -247.
- ii. water rights based on the pre-1903 posted notice statutes, and recorded with the department by June 30, 1988. An appropriator was required to post and record a notice setting forth specified information. Diversion works would then have to be completed and water applied to beneficial use with due diligence. If the requirements of the statute were satisfied, the priority date of the right related back to the date of posting. A posted notice is evidence of the intent to appropriate water, but it is not

evidence of application of water to beneficial use nor due diligence in completing the appropriation.

iii. water rights for domestic purposes as defined by Idaho Code § 42-230(d), from a groundwater source and perfected by application of water to beneficial use, regardless of when the right was perfected and regardless of whether the right was recorded with the department. See Idaho Code §§ 42-227 and -242.

iv. water rights for domestic purposes as defined by Idaho Code § 42-230(d), from a surface source and perfected by application of water to beneficial use prior to May 20, 1971, regardless of whether the right was recorded with the department.

v. water rights for instream stock watering, perfected by application of water to beneficial use, regardless of when the right was perfected or whether the right was recorded with the department. See Idaho Code §§ 42-113, -230(d), and -242.

4. One form is prepared for use by federal reserved rights claimants.

5. An agreement between the state and the federal reserved rights claimants setting forth federal reserved rights may be substituted for a notice of claim.

B. Elements of Form for Rights Acquired Under State Law

1. Name and Address of Claimant

Notices to be sent to the claimant in the course of the adjudication will be sent to person and address listed, unless a written notice of change in address, written notice of change in ownership, or written notice of representation by an attorney is filed with the department.

The name of the claimant for multiple claims should be identical on each claim. Where the claimant is the owner of the place of use, the name on the claim should be identical to the name on county records of ownership of the place of use. Where it is not possible to follow both of the two guidelines in this paragraph, the first should be followed.

2. Date of Priority

The priority date must be shown by month, day and year. Water rights with different priorities must be filed on separate forms since each is a separate water right.

If a claim is based on a permit, license, or decree, the priority date is the priority shown on the permit, license, or decree.

If a claim is based on a posted notice, the priority date is the date of posting. A certified copy of the posted notice from the county recorder's office where the posted notice is recorded should accompany the notice of claim.

If a claim is based on historic use (not pursuant to the posted notice statutes), the priority date is the date water was first put to beneficial use. If the exact date is not known, the date should be estimated based on the claimant's best knowledge. Written evidence supporting the priority date claimed should accompany the notice of claim. For examples, see part D.4.e below.

NOTE that continuous nonuse for a period of five years may affect the priority date of the water right. See Idaho Code § 42-222 and cases decided thereunder, see also § 42-1416.

3. Source of Water

The name of the stream, stream tributary, lake or spring from which water is diverted must be stated. The name of a surface source should be the same name shown on U. S. Geological Survey quadrangle maps, unless overwhelming evidence of all water users using the same source contradicts the U.S.G.S. name. If the source is unnamed, the claimant should state "unnamed stream," "unnamed lake," or "spring". The claimant should also list the first named stream downstream to which the source is tributary.

If water is obtained from a well, the source may be listed simply as ground water. Note however that rights to ground water may be administered in conjunction with surface water rights where ground water withdrawals directly impact a surface source.

The same source name should be used for multiple claims for the same source.

4. Point of Diversion

The point of diversion is the point at which water is diverted from a natural water source. The point at which a claimant's ditch connects to someone else's ditch is not the point of diversion.

The location of the point of diversion must be described to the nearest 40 acre tract (quarter-quarter section) or government lot within a section, and reasonable effort should be made to describe the point of diversion to the nearest 10 acre tract (quarter-quarter-quarter section) within a quarter-quarter section or government lot. Township number, range number and county must also be indicated. If the point of diversion is located in a subdivision, a plat of which has been recorded in the county recorder's office for the county in which the subdivision is located, the claimant should in addition enter the lot number, block number, subdivision name, and the county where the plat is recorded.

If there is more than one point of diversion, the legal description for each point of diversion must be indicated. If there is more than one point of diversion with the same legal description, the number of points of diversion should be indicated in parentheses next to the legal description.

Note that government lot numbers are used in the public land survey system to describe portions of sections which do not contain a full 640 acres, which are usually found along the edges of townships and ranges. The legal description is the government lot number, the 10 acre tract and 40 acre tract descriptions are projections used for convenience.

EXAMPLE :

Section 12
T. 17 N.
R. 6 E.
Valley County

NWNW	NENW	NWNE	LOT ^{Yx} 1
SWNW	SENW	SWNE	LOT 2
NWSW	NESW	NWSE	LOT 3
SWSW	SESW	SWSE	LOT 4

Points of diversion X and Y would be described on the notice of claim form as T. 17 N., R. 6 E., Section 12, NE1/4 of NE1/4 of NE1/4, Govt. Lot 1., Valley County (2).

With respect to public instream flow claims, a legal description of the beginning and ending points of the claimed instream flow must be set forth. Public instream flows arising under state law are those established pursuant to Idaho Code §§ 42-1501 to -1505, 67-4301 to -4312, and 67-4403.

5. Description of Diversion Works and Changes or Enlargements in Use

The diversion works must be described in the space provided, including types and dimensions. Typical types of diversion works include dams, reservoirs, ditches (state if lined and/or covered), pipelines, pumps and/or headgates (state if automatic, equipped with locks, or equipped with measuring devices), wells (state depth and surface casing diameter as to each), etc.

If water use has been changed in any way since the right was first appropriated, the date of each change must be stated and each change described. For purposes of the notice of claim form, "change in use" includes changes in point of diversion, place of use, purpose of use, and period of use (see below).

If water use has been enlarged since the right was first appropriated, the date of each enlargement must be stated and each enlargement described. For purposes of the notice of claim form, "enlargement in use" includes an increase in place of use (for example, an increase in number of acres irrigated) or amount of water used. If the diversion works have been changed or enlarged, a description of the diversion system and the dimension of works prior to each change should be included.

If the space provided on the form is not sufficient, the description should be made on a separate piece of paper and attached to the notice of claim.

NOTE that appropriators have the right to change use absent injury to other appropriators, and changes after May 26, 1969 require prior approval of department. See Idaho Code §§ 42-108 and -222, and cases decided thereunder.

NOTE also that an expansion in use may be a second water right with a later priority; Idaho Code § 42-1416(2) may also apply.

6. Purpose and Period of Use

Each purpose for which water is used must be listed; typical purposes include irrigation, mining, power generation, fire protection, fish propagation, industrial, stock watering, and domestic. Stock watering use and domestic use are defined by statute; the definitions are set forth at subchapter 2.3-A.2.a. Domestic and stock watering uses that do not meet the statutory definitions should be labeled "non-excludable domestic" or "non-excludable stock watering".

If the use is other than irrigation, the use should be described as fully and completely as possible. If the use is stock watering, the type and number of each type of stock must be indicated; if the use is domestic, the number of households served must be indicated. If the space provided is not sufficient, the description should be made on separate sheet of paper and attached to the notice of claim.

Claims to water rights for storage purposes should be broken down into components, with the ultimate use of the stored water indicated. Instream reservoirs have two components, storage and diversion from storage; offstream reservoirs have three components, diversion to storage, storage and diversion from storage. Detention of water in a holding pond that can be filled in less than 24 hours need not be claimed as storage, since such structures are used primarily for controlling an irregular flow of water.

The period of use for each purpose for which water is used must also be listed. Period of use is the time of year when water is being used. The period of use for irrigation can be determined from the diagram in Appendix II. The diagram set forth in Appendix II is a factfinding tool utilized by the department which may be updated as further data becomes available. If a period of use for irrigation in excess of the times shown in Appendix II is claimed, data supporting the period of use should be submitted with the notice of claim.

The period of use for stock watering and domestic is generally year-round. The period of use for filling reservoirs is generally year-round, but the filling of reservoirs is subject to certain conditions. Storage is year-round, and the period for diversion from storage is based on the ultimate use of the water stored.

EXAMPLE: Purposes and periods of use for an instream reservoir, where stored water is used for irrigation of lands in T. 4 S., R. 17 E., should be listed as:

Storage for irrigation	1/1 to 12/31
Irrigation from storage	4/1 to 11/1

EXAMPLE: Purposes and periods of use for an offstream reservoir, where stored water is used for irrigation of lands in T. 4 S., R. 17 E., should be listed as:

Diversion to storage	1/1 to 12/31
Storage for irrigation	1/1 to 12/31
Irrigation from storage	4/1 to 11/1

7. Quantity of Water

Quantity of water refers to the amount of water beneficially used. The quantity of water claimed for each purpose claimed must be listed, and the total amount of water claimed must be stated also. The quantity of water stored should be stated in acre feet; direct diversions should be listed in cubic feet per second. A formula for converting gallons per day to cubic feet per second is set forth in Appendix IV.

If the claim is based upon a decree, license, permit, or posted notice, the amount of water claimed should not exceed the amount of water set forth in the decree, license, permit, or posted notice. The total amount of water claimed may not exceed the capacity of the diversion works, but the quantity of water claimed may exceed the capacity of storage works where a right to refill is established based upon the amount of water ultimately used. In no case may the total amount of water claimed exceed the amount of water actually used.

Typical amounts for typical uses are listed in Appendix IV. The tables set forth in Appendix IV are fact-finding tools utilized by the department which may be updated as further data becomes available. If an amount in excess of the amounts set forth in Appendix IV is claimed, data supporting the amount claimed should be submitted with the notice of claim.

EXAMPLE: If a claimant uses water for one single family residence, to irrigate 96 acres, and to water 100 head of range cattle, the amount of water claimed should not exceed:

1.92 cfs - irrigation
.04 cfs - domestic
.03 cfs - stock watering
<u>1.99 cfs - total</u>

8. Annual Volume of Consumptive Use

The statute defines consumptive use as the amount of water that does not remain in the water system after use or is not returned to the water system through return flows or seepage, whether or not treatment for purposes of maintaining water quality is required before the water may be returned to the water system. The statute further provides that consumptive use for an irrigation water right shall be based upon the most water consumptive crop that can be grown in the area during the period of the year when water is used for irrigation, and that consumptive use is included as a rebuttable presumption in a decree only for purposes of transfers pursuant to Idaho Code § 42-222.

Annual volume of consumptive use for irrigation may be estimated using the diagram in Appendix III. First, determine annual volume of consumptive use per acre from the diagram. Then, multiply that number by the number of acres irrigated to determine the maximum annual volume of consumptive use.

The diagram in Appendix II was prepared by the department from R. G. Allen & C. E. Brockway, Estimating Consumptive Irrigation Requirements for Crops in Idaho, University of Idaho Water & Energy Research Institute (August 1983). The diagram in Appendix III is a fact-finding tool utilized by the department and may be updated as additional data becomes available. If consumptive use for irrigation in excess of the amount as determined from the diagram is claimed, data supporting the consumptive use claimed should be submitted with the notice of claim.

Domestic, stock watering, and instream uses are consumptive, but the consumptive amounts are so small that the consumptive amount is deemed de minimus and no consumptive use need be stated.

EXAMPLE: Use for irrigation (54 acres), domestic, and stock watering in Section 10, T. 2 S., R. 39 E., B.M. The maximum annual volume of consumptive use is 2.5 acre-feet per acre. 2.5 times 54 equals 135 acre feet.

9. Place of Use

The place of use refers to the lands where water is used. The place of use for each purpose for which water is used must be entered on the notice of claim form using the grid set forth below. Each box in the grid represents a 40 acre tract of land. The township number is entered in the box below "T", the range number in the box below "R", and the section number in

the box below "S". Be sure to include north (N) or south (S) designations with the township number, and east (E) or west (W) designations with the range number. If the use is for irrigation purposes, the number of acres irrigated within each 40 acre tract is entered in the appropriate box. If the use is for purposes other than irrigation, a letter matching the use is placed in the appropriate box.

EXAMPLE: Use for irrigation (96 acres) in the NE1/4, use for domestic in the SE1/4 NW1/4, and use for stock watering in the S1/2 SW1/4, all in Section 16, T. 4 N., R. 3 E., B.M.

T	R	S	NE				NW				SW				SE				Total
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	3E	16	40	30	20	6				D			S	S					96

This would indicate that 40 acres are irrigated in the NE1/4 NE1/4, 30 acres in the NW1/4 NE1/4, 20 acres in the SW1/4 NE1/4, and 6 acres in the SE1/4 NE1/4; that domestic use is made in the SE1/4 NW1/4; and that stock watering use is made in the S1/2 SW1/4; all in Section 16, T. 4 N., R. 3 E., B.M.

The county of place of use must also be stated, and the claimant must indicate whether the claimant owns the lands listed as the place of use, in the spaces provided on the notice of claim.

Special note with respect to irrigation districts and irrigation projects covering an area of 25,000 acres or more: A license or decree of a right for such entities may set forth the place of use using a general description of the area served by the diversion system; however, the place of use must be set forth by 40 acre tract in the notice of claim for purposes of administering the filing fee.

10. Other Water Rights

Other water rights used at the same place of use and for the same purposes as the right claimed must be described. If the other right has a water right number, the number is a sufficient description. If the other right does not have a number, the other right should be completely described in an attachment.

11. Water Right Number and Basis of Right

All water right applications, permits, and licenses, all water rights set forth in a decree which has been filed with the department, and all historic use rights recorded with the department, are assigned a water right number, and this number is to be stated on the form. If the water right is based on a decree not on file with the department, then the title of the court, the case name, the number of the case and the date of entry of the decree is to be stated.

A claim to a water right acquired under state law may be based upon a permit, license, decree, posted notice, or beneficial use. See part A.3 above as to types of water rights that may be acquired under state law.

12. Remarks

The form provides space for any other relevant information not specifically asked in the form. If the space is not sufficient, remarks should be set forth on a separate piece of paper and attached to the notice of claim.

13. Diagram

Space is provided for the claimant to sketch the point of diversion, place of use, section number, and township and range number.

14. Signature

The notice of claim must be signed by the claimant before a notary public. If the claimant is an individual, the claimant's spouse (if any) should also sign. Someone with a "power of attorney" may sign for the claimant; a copy of the power of attorney should be submitted with the notice of claim.

If the claimant is an organization, an authorized agent of organization must sign and the title or authority of the agent must be set forth.

15. A sample notice of claim is set forth in Appendix VI.

C. Elements of Form for Rights Reserved Under Federal Law

1. Notice of claim forms for rights reserved under federal law must list the elements listed in part 2 below. However, a particular element may not be applicable with respect to the particular right claimed. In such cases, the claimant should enter N/A and state the reason why the element is not applicable.

2. a. Name and Address of Claimant

Same as part B.1 above.

b. Date of Priority

The priority of federal reserved rights is the date the reservation was established. If lands were added to a reservation after the establishment date, then the priority date for waters claimed for the lands later added is the date the additional lands were made part of the reservation.

c. Source of Water

Same as part B.3 above.

d. Existing Points of Diversion

Existing points of diversion should be described as set forth in part B.4 above. A description of the existing diversion works, particularly the depth of wells, should also be included as set forth in part B.5 above. Although federal law as to limitations on points of diversion for federal reserved rights has yet to be developed, this information is necessary for administration of water rights arising under state law and is valuable for development of state water management plans.

With respect to minimum streamflow claims, a legal description of the beginning and ending points of the claimed instream flow must be set forth.

e. Quantity of Water and Purpose for which Water Claimed

Since federal reserved rights are quantified based on the amount of water necessary for the primary purposes for which a reservation was established, the notice of claim must list each such purpose claimed, and the amount of water necessary for each purpose. And, since federal reserved rights are not based on actual use, the claim should include all waters claimed for such purposes, not just present uses.

f. Purposes of Present Uses

Although quantification of federal reserved rights is based on the amount of water necessary for the primary purposes for which a reservation was established, the use of water so quantified is not

ATTACHMENT "5"

Table of Contents

37.03.02 - Beneficial Use Examination Rules

000. Legal Authority (Rule 0).	2
001. Title And Scope (Rule 1).	2
002. -- 003. (Reserved).	2
004. Applicability (Rule 4).	2
005. -- 009. (Reserved).	2
010. Definitions (Rule 10).	2
011. -- 024. (Reserved).	4
025. Authority Of Representative (Rule 25).	4
026. -- 029. (Reserved).	4
030. Qualification, Examination And Appointment Of Certified Water Right Examiner (Rule 30).	4
031. -- 034. (Reserved).	5
035. Examination For Beneficial Use (Rule 35).	5
036. -- 039. (Reserved).	7
040. Water Measurement (Rule 40).	7
041. -- 044. (Reserved).	8
045. Drawings, Map, And Schematic Diagram (Rule 45).	8
046. -- 049. (Reserved).	8
050. License Examination Fee (Rule 50).	8
051. -- 054. (Reserved).	9
055. Penalty (Rule 55).	9
056. -- 999. (Reserved).	9

IDAPA 37
TITLE 03
CHAPTER 02

37.03.02 - BENEFICIAL USE EXAMINATION RULES

000. LEGAL AUTHORITY (RULE 0).

The director of the Department of Water Resources adopts these rules under the authority provided by Section 42-1805(8), Idaho Code. (7-1-93)

001. TITLE AND SCOPE (RULE 1).

The 1986 Idaho Legislature amended Sections 42-217 and 42-221, Idaho Code to require a license examination fee be submitted together with the written proof of beneficial use or that a field examination report prepared by a certified water right examiner be submitted together with the written proof of beneficial use. The amended statutes also provided that field examinations could be conducted by certified water right examiners appointed by the director. (7-1-93)

01. Examination Requirements. The examination requirements listed are intended as a guide to establish acceptable standards to determine the extent of application of water to beneficial use. The requirements are not intended to restrict the application of other sound examination principles by water right examiners. The director will evaluate any deviation from the standards hereinafter stated as they pertain to the review of any given examination. Water right examiners are encouraged to submit new ideas which will advance the art and provide for the public benefit. (7-1-93)

02. Rules. These rules shall not be construed to deprive or limit the director of the Department of Water Resources of any exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount or character of data, or information which may be required by the director from any owner of a water right permit or authorized representative for the proper administration of the law. (7-1-93)

002. -- 003. (RESERVED).

004. APPLICABILITY (RULE 4).

01. Proof of Beneficial Use. These rules apply to all permits for which proof of beneficial use is not yet due and has not been submitted to the department except as exempted in Rule Subsection 004.04. (7-1-93)

02. Examination. These rules apply to all permits for which an examination has not been conducted except as exempted in Rule Subsection 004.04. (7-1-93)

03. Re-Examination. These rules apply to all permits which have been examined but the license has not been issued due to a request for a re-examination by the permit holder except as exempted in Rule Subsection 004.04. (7-1-93)

04. Examination Fee. The examination fee requirements of these rules do not apply to a permit for single family domestic use, stockwatering, or other small uses for which the use does not exceed four one-hundredths (0.04) cfs or four (4) AF/year. The examination fee is required for multiple use permits which exceed four one-hundredths (0.04) cfs or four (4) AF/year even though single family domestic use or stockwater use is included as one (1) of the uses on the permit. (7-1-93)

005. -- 009. (RESERVED).

010. DEFINITIONS (RULE 10).

Unless the context otherwise requires, the following definitions govern these rules. (7-1-93)

01. Acre-Foot (AF). A volume of water sufficient to cover one (1) acre of land one (1) foot deep and is equal to forty three thousand, five hundred sixty (43,560) cubic feet. (7-1-93)

02. Acre-Foot/Annum. An annual volume of water that may be diverted under a given use or right. (7-1-93)

03. **Amendment.** A change in point of diversion, place, period or nature of use or other substantial change in the method of diversion or use of a permitted water right. (7-1-93)
04. **Capacity Measurement.** The maximum volume of water impounded in the case of reservoirs or the maximum rate of diversion from the source as determined by actual measurement of the system during normal operation. (7-1-93)
05. **Certified Water Right Examiner.** An employee of the Department, or a representative of the permit holder who is a professional engineer or professional geologist, qualified and registered in the state of Idaho who has the knowledge and experience necessary to satisfactorily complete water right field examinations as determined by the Director, and who has been appointed by the Director, Idaho Department of Water Resources as a certified water right examiner. A certified water right examiner is commonly termed a field examiner, water right examiner or examiner. (7-1-93)
06. **Conveyance Works.** The ditches, pipes, conduits or other means by which water is carried or moved from the point of diversion to the place of use. Storage works, if any, such as a dam can be considered part of the conveyance works. (7-1-93)
07. **Cubic Foot Per Second (CFS).** A rate of flow approximately equal to four hundred forty-eight and eight tenths (448.8) gallons per minute and also equals fifty (50) miner's inches. (7-1-93)
08. **Department.** The Idaho Department of Water Resources. (7-1-93)
09. **Director.** The director of the Idaho Department of Water Resources. (7-1-93)
10. **Duty of Water.** The quantity of water necessary when economically conducted and applied to land without unnecessary loss as will result in the successful growing of crops. (7-1-93)
11. **Examination or Field Examination.** An on-site visit to determine the extent of application of water to beneficial use and to determine compliance with terms and conditions of the water right permit. (7-1-93)
12. **Expansion.** The diversion and/or use of more water than originally allowed by the permit including application of water to a larger tract of land than originally permitted. (7-1-93)
13. **Field Report.** The form provided by the Department upon which the examiner records the data gathered and describes the extent of diversion of water and application to beneficial use. The report is fully termed beneficial use field report and is also termed a field examination report. (7-1-93)
14. **Headworks or Diversion Works.** The constructed barriers or devices on the source of water (surface water or ground water) by which water can be diverted from its natural course of flow and/or measured. (7-1-93)
15. **License.** The certificate issued by the director in accordance with Section 42-219, Idaho Code confirming the extent of diversion and beneficial use of the water that has been made in conformance with the permit conditions. (7-1-93)
16. **License Examination Fee.** The fee required in Section 42-221K, Idaho Code, and is also termed an examination fee. (7-1-93)
17. **Legal Subdivision.** A tract of land described by the government land survey and usually is described by government lot or quarter-quarter, section, township and range. A lot and block of a subdivision plat recorded with the county recorder may be used in addition to the government lot, quarter-quarter, section, township and range description. (7-1-93)
18. **Measuring Device.** A generally accepted structure or apparatus used to determine a rate of flow or volume of water. Examples are weirs, meters, and flumes. Less typical devices may be accepted by the Director on a case-by-case basis. (7-1-93)

19. **Nature of Use.** The characteristic use for which water is or is sought to be applied. Examples are domestic, irrigation, mining, industrial, fish propagation, power generation, municipal, etc. (7-1-93)

20. **Period of Use.** The time period during which water under a given right can be beneficially used. (7-1-93)

21. **Permit Holder or Owner.** The person, association, or corporation to whom a permit has been issued or assigned as shown by the records of the Department. (7-1-93)

22. **Permit or Water Right Permit.** The water right document issued by the director authorizing the diversion and use of unappropriated public water of the state or water held in trust by the state. (7-1-93)

23. **Place of Use (P.U.).** The location where the beneficial use is made of the diverted water. (7-1-93)

24. **Point of Diversion (P.D.).** The location on the public source of water from which water is diverted. Examples are pump intake, headgate, well locations, and dam locations. (7-1-93)

25. **Project Works.** A general term which includes diversion works, conveyance works, and any devices which may be used to measure the water or to apply the water to the intended use. Improvements which have been made as a result of application of water, such as land preparation for cultivation, are not a part of the project works. (7-1-93)

26. **Proof of Beneficial Use.** The submittal required in Section 42-217, Idaho Code. This submittal is commonly termed proof. (7-1-93)

27. **Source.** The name of the water body at the point of diversion. Examples are Snake River, Smith Creek, ground water, spring, etc. (7-1-93)

011. -- 024. (RESERVED).

025. AUTHORITY OF REPRESENTATIVE (RULE 25).

01. **Proof of Beneficial Use.** When the proof of beneficial use, field report, and drawings are filed by the water right examiner on behalf of an owner, written evidence of authority to represent the owner shall be filed in the form of an affidavit with the proof, field report and drawings. (7-1-93)

02. **Responsibility.** It is the responsibility of the permit holder or authorized representative to submit proof of beneficial use and provide for the timely submission of a completed field report by the due date in acceptable form to the director by either paying the required examination fee to the department or by employing a certified water right examiner. (7-1-93)

026. -- 029. (RESERVED).

030. QUALIFICATION, EXAMINATION AND APPOINTMENT OF CERTIFIED WATER RIGHT EXAMINER (RULE 30).

01. **Consideration.** Any professional engineer or geologist qualified and registered in the state of Idaho who has the knowledge and experience necessary to satisfactorily complete water right field examinations as determined by the director shall be considered for appointment as a water right examiner upon application to the director. The application shall be in the form prescribed by the director and shall be accompanied by a non-refundable fee in the amount provided by statute. (7-1-93)

02. **Information.** The director may require an applicant for appointment to the position of water right examiner to provide detailed information of past experience, provide references, and to satisfactorily complete a written or oral examination. (7-1-93)

03. **Denial.** If the director determines an applicant is not qualified, the application will be denied and

returned to the applicant. If the director determines an applicant is qualified, a certificate of appointment will be issued. (7-1-93)

04. Expiration. Every water right examiner certificate of appointment shall expire March 31 of each year unless renewed by application in the manner prescribed by the director. A non-refundable fee in the amount provided by statute shall accompany an application for renewal. (7-1-93)

05. Refusal or Revocation. An appointment or renewal may be refused or revoked by the director at any time upon a showing of reasonable cause. A party aggrieved by an action of the director may request an administrative hearing pursuant to Section 42-1701A(3), Idaho Code. (7-1-93)

06. Reconsideration. An application for appointment or renewal which has been refused or revoked by the director may not be reconsidered for six (6) months. (7-1-93)

07. Liability. The state of Idaho shall not be liable for the compensation of any water right examiner other than department employees. The permit holder shall be responsible for costs associated with proof submittal including examination and field report preparation. (7-1-93)

08. Examinations. Department employees who have the knowledge and experience necessary to satisfactorily complete water right field examinations as determined by the director, may be appointed as water right examiners for the purpose of completing water right examinations during the course and scope of their employment with the department. Upon termination of employment with the department, such examiners, unless reappointed as a non-department certified examiner under provisions of these rules, are not authorized to conduct field examinations. The fee provisions of these rules are waived for appointments of department employees. (7-1-93)

09. Ingress or Egress Authority. Appointment as a water right examiner does not grant ingress or egress authority to non-department examiners and does not convey authority unless explicitly prescribed in these rules. (7-1-93)

10. Reports. The director will not accept a field examination report prepared by a certified water right examiner who has any past or present interest, direct or indirect, in either the water right permit, the land or any enterprise benefiting, or likely to benefit, from the water right. Among those that the director will presume to have an actual or potential conflict of interest and from whom he will not accept a field examination report are the following: (7-1-93)

a. The person or persons owning the water right permit or the land or enterprise benefiting from the water right permit, members of their families (spouse, parents, grandparents, lineal descendants including those that are adopted, lineal descendants of parents; and spouse of lineal descendants), and their employees. (7-1-93)

b. The person or persons, who sold or installed the diversion works or distribution system. (7-1-93)

11. Money Received. All moneys received by the department under the provisions of these rules shall be deposited in the water administration fund created under Section 42-238a, Idaho Code. (7-1-93)

031. -- 034. (RESERVED).

035. EXAMINATION FOR BENEFICIAL USE (RULE 35).

01. Field Report. (7-1-93)

a. All items of the field report must be completed and must provide sufficient information for the director to determine the extent of the water right developed in order for the report to be acceptable to the director. (7-1-93)

b. Permitted uses partially developed by the permit holder shall be described. Permitted uses which were not developed by the permit holder shall be noted. Uses determined to exist which are not authorized by the permit being examined shall also be noted. (7-1-93)

c. A concise description of the diversion works and a general description of the distribution works shall be given. This description must trace the water from the point of diversion to and including the place of use and the return to a public water source, if any. The make, capacity, serial number and model number of all pumps, boosters or measuring devices associated with the point of diversion at the source of the water supply shall be described on the field report. (7-1-93)

d. Any interconnection of the water use being examined with other water rights or with other conveyance systems shall be described on the field report. Any reservoir, diversion dam, headgate, well, canal, flume, pump and other related structure shall be included. This description shall be in the form of a concise word picture of the storage of water, if stored, its release, redirection and conveyance to the place of use. A schematic diagram of the project works shall also be provided in the field report. (7-1-93)

e. If water is returned to a public water source after use, a legal description of the point where the water is returned and source to which discharge is made shall be provided. Examples of uses which generally have an effluent discharge include fish propagation and power facilities. (7-1-93)

f. The method of compliance with each condition of approval of a permit shall be shown on the field report by the examiner. (7-1-93)

g. If the water is used for irrigation, the boundaries of the various irrigated areas and the location of the project works providing water to each shall be platted on the proof maps and the full or partial acreage in each legal subdivision of forty (40) acres or government lot shall be shown. (7-1-93)

h. Irrigated acreage shall be shown on the field report to the nearest whole acre in a legal subdivision except the acreage shall be shown to the nearest one-tenth (0.10) acre for permits covering land of five (5) acres or less. (7-1-93)

i. Where a permit has been developed as separate distribution systems from more than one point of diversion, the separate areas irrigated from each point of diversion shall be shown on the proof maps as described herein before and the legal subdivisions embracing the irrigated areas for each such respective point of diversion together with the total irrigated area shall be described. (7-1-93)

j. The field examiner does not need to show total volume of water for municipal and fire protection uses on the field report unless the project works provide for storage of water. (7-1-93)

k. The total number of holding/rearing ponds and the dimensions and volume of the ponds shall be shown on the field report for fish rearing or fish propagation use. The annual volume shall be calculated based on the changes of water per hour. (7-1-93)

l. Information shall be submitted concerning the beneficial use that has been made of the water unless the purpose of use is for irrigation. For example, for stockwater use, the number and type of stock watered shall be provided. Similar indications of the extent of beneficial use shall be provided for all other non-irrigation uses. (7-1-93)

m. Information on the period during each year that the water is used shall be described for each use. (7-1-93)

n. For permits having more than one use, the diversion rate measured for each use shall be described. (7-1-93)

o. The amount (rate and/or volume) of water shall be limited by the smaller of the permitted amount, the amount upon which the license examination fee is paid, the capacity of the diversion works or the amount beneficially used, including any statutory limitation of the duty of water. (7-1-93)

p. Suggested amendments shall be noted on the field report when the place of use, point of diversion, period or nature of use is different from the approved permit or from previously approved amendments. (7-1-93)

q. An aerial photo must accompany field reports involving ten (10) or more irrigated acres unless waived by the director. If existing photos are not available, the director will accept a USGS Quadrangle map at the largest scale available. (7-1-93)

02. Field Report Acceptability. (7-1-93)

a. All field reports shall be prepared by or under the supervision of certified water right examiners. The report must be properly endorsed with an engineer or geologist seal and signature. Field reports received from certified water right examiners will be accepted if the report includes all the information required to complete the report and provides the information required by Rule Subsection 035.01. (7-1-93)

b. Field reports not completed as required by these rules will be returned to the certified water right examiner for completion. If the date for submitting proof of beneficial use has passed, the penalty provisions of Rule 055 shall apply. (7-1-93)

c. If the director determines that a field report is acceptable but that additional information is needed to clarify the field report, he will notify the certified water right examiner in writing of the information required. If the additional information is not submitted within thirty (30) days or within the time specified in the written notice, the priority date of the permit will be advanced one (1) day for each day the information submittal is late. Failure to submit the required information within one (1) year of the date of the department's request is cause for the director to take action to cancel the permit. (7-1-93)

d. Field reports which indicate that a measuring device, required as a condition of approval of the permit, has not been installed, are not acceptable and will be returned to the examiner unless the measuring device requirement has been formally waived by the director. (7-1-93)

03. General. (7-1-93)

a. For irrigation purposes, the duty of water shall not exceed five (5) acre feet of stored water for each acre of land to be irrigated or more than one (1) cubic foot per second for each fifty (50) acres of land to be irrigated unless it can be shown to the satisfaction of the director that a greater amount is necessary. (7-1-93)

b. For irrigated acreage of five (5) acres or less, a rate of diversion not in excess of three one-hundredths (0.03) cfs per acre may be allowed on the license to be issued by the director. (7-1-93)

c. Conveyance losses of water from the point of diversion to the place of use which are determined by actual measurement may be allowed by the director if the loss is determined by the director to be reasonable. (7-1-93)

d. The duty of water described in Rule 035.03.a. may be exceeded if the department has authorized a greater diversion rate when the permit was issued and good cause acceptable to the director has been demonstrated. (7-1-93)

e. For irrigation systems which cover more than twenty-five thousand (25,000) acres, the field report does not need to describe the irrigated land by legal subdivision, but may be described generally as the lands under the project works if the total irrigated acres has been accurately determined and is shown on the field report. The amount of water beneficially used under such projects must be shown on the field report. (7-1-93)

04. Requests. Requests to the department for computerized data, copies, or other information involving research of department records must be accompanied by a fee as required in Section 42-221, Idaho Code. (7-1-93)

036. -- 039. (RESERVED).

040. WATER MEASUREMENT (RULE 40).

01. Measurement Terminology. (7-1-93)

a. Rate of flow measurements shall be shown in units of cubic feet per second (cfs) with three (3) significant figures and no more precision than hundredths. (7-1-93)

b. Volume measurements shall be shown in units of acre-feet (AF) with three (3) significant figures, and no more precision than tenths. (7-1-93)

02. **Rate of Diversion.** The rate of diversion measurement shall be conducted as close as reasonably possible to the source of supply and shall be measured with the project works fully in place operating at normal capacity. For example, if a sprinkler system is used for irrigation purposes, discharge from the pump must be measured with the sprinkler system connected. (7-1-93)

03. **Measurements.** Water measurements may be made by vessel, weir, meter, rated flume, reservoir capacity table or other accepted standard method of measurement. The field report shall describe the method used in making the measurement, the date when made, the name of the person making the measurement, the legal description of the location where the measurement was taken and shall include sufficient information, including current meter notes, rating tables, and/or calibration information to enable the director to check the quantity of water measured in each case. (7-1-93)

04. **Unacceptable Measurements.** Theoretical diversion rates or theoretical carrying capacities are not acceptable as a measure of the rate of diversion except for some diversion systems where an exception is granted by the director. Systems for which a measuring device, access port, or certified water measurement is not a permit requirement, are considered exempt from this rule. (7-1-93)

05. **Method.** Rate of flow measurements shall be determined using equipment and methods capable of obtaining an accuracy of plus or minus ten percent (10%). (7-1-93)

041. -- 044. (RESERVED).

045. DRAWINGS, MAP, AND SCHEMATIC DIAGRAM (RULE 45).

The following provisions shall apply to the submittal of drawings, maps, photos and the schematic diagrams.

(7-1-93)

01. **Submittal of Drawings, Maps, Photos and Schematic Diagrams.** Drawings, maps, photos and schematic diagrams used as an attachment to the field report shall be on eight and one-half by eleven (8 1/2 x 11) inch paper whenever possible. A margin of two (2) inches at the top and one-half (1/2) inch on the other three (3) sides should be provided. (7-1-93)

02. **Attachment Sheets.** Attachment sheets shall depict information on one (1) side only. (7-1-93)

03. **Scale of Map.** The map depicting the point of diversion and place of use shall be of a reasonable scale but not less than two (2) inches equals one (1) mile. The map shall show the location of the point(s) of diversion to the nearest forty (40) acre tract or to a ten (10) acre tract for springs. The location of ditches, canals, mainlines, distribution systems and the place of use by forty (40) acre tract must be shown. (7-1-93)

04. **Drawings.** Drawings need to generally depict the size and type of diversion works, measuring device, conveyance system, water application method, and the location of any measurements taken. (7-1-93)

05. **Photographs.** Photographs of the diversion works, the typical distribution works and other prominent features of the system shall be provided with the field report. (7-1-93)

046. -- 049. (RESERVED).

050. LICENSE EXAMINATION FEE (RULE 50).

01. **Examinations Conducted by Department Certified Water Right Examiners.** (7-1-93)

a. The examination fee shall be payable to the Department of Water Resources unless the field

examination is conducted by a non-department water right examiner. (7-1-93)

b. The department will not conduct an examination for which the fee has not been paid to the department unless exempted in Rule Subsection 004.04. (7-1-93)

c. A license shall not be issued for an amount of water in excess of the amount covered by the examination fee. Subsequent to the examination and prior to a license being issued, the director will notify the permit holder that the licensed amount will be limited because an insufficient examination fee was paid. The permit holder will be allowed thirty (30) days after the notice is mailed to pay the additional examination fee, along with a late payment penalty of twenty-five dollars (\$25) or twenty percent (20%) of the amount of the additional required fee whichever is more. If payment is received within the thirty (30) day period, the rate or volume licensed shall not be reduced by reason of the examination fee. If payment is not received within the thirty (30) day period, the rate or volume licensed shall be limited by the original examination fee paid. For the purpose of determining advancement of priority for late fee as provided in Section 42-217, Idaho Code, fees shall not be considered as having been paid until paid in full, including any subsequent fee. (7-1-93)

d. Excess examination fees are non-refundable. (7-1-93)

e. An examination fee equal to the initial examination fee paid to the department shall be paid for a re-examination made at the request for the permit holder except upon a showing of error by the department on the initial examination. (7-1-93)

02. Examinations Conducted by Non-Department Certified Water Right Examiners. (7-1-93)

a. The examination fee required by Section 42-217, Idaho Code is not applicable for examination conducted by or under the supervision of non-department certified water right examiners. (7-1-93)

b. A permit holder may change from one (1) non-department certified water right examiner to another but may not choose to have the examination conducted by the department after selecting a non-department examiner. (7-1-93)

051. -- 054. (RESERVED).

055. PENALTY (RULE 55).

01. Permits for Which Proof Has Been Submitted Prior to the Effective Date of These Rules. The submittal required is the examination fee or a statement. (7-1-93)

a. Failure to submit within sixty (60) days of notification by the director, either the license examination fee or a statement verifying that a non-department certified water right examiner has been retained to conduct the examination is cause to advance the priority of the permit one (1) day for each day the submittal is late. The submittal is late beginning on the 61st day after notification by the director that submittal is due. (7-1-93)

b. Failure to submit either the license examination fee or an acceptable field examination report prepared by or under the supervision of a certified water examiner within one (1) year of the sixty-first (61st) day after notification by the director that the submittal is due is cause for the director to reject the proof of beneficial use and lapse the permit. (7-1-93)

02. Permits for Which Proof Has Not Been Submitted. The submittal required is the proof and the examination fee or the proof and a completed field report. (7-1-93)

a. Failure to submit either the license examination fee or an acceptable field examination report prepared by or under the supervision of a certified water right examiner by the proof due date is cause to lapse the permit pursuant to Section 42-218a, Idaho Code, unless an extension of time pursuant to Section 42-204, Idaho Code, extending the proof of beneficial use due date has been approved. (7-1-93)

056. -- 999. (RESERVED).

Subject Index

A
Acre-Foot (AF) 2
Acre-Foot/Annum 2
Applicability 2
Authority Of Representative 4

C
Capacity Measurement 3
Certified Water Right Examiner 3
Consideration, Qualification,
Examination & Appointment of
Certified Water Right Examiner 4
Conveyance Works 3
Cubic Foot Per Second (CFS) 3

D
Definitions, IDAPA 37.03.02,
Beneficial Use Examination
Rules 2
Denial, Qualification, Examination &
Appointment of Certified Water
Right Examiner 4
Drawings, Map, & Schematic
Diagram 8
Duty of Water 3

E
Examination Fee, Applicability 2
Examination For Beneficial Use 5
Examination or Field Examination 3
Examination Requirements 2
Examinations Conducted by
Department Certified Water Right
Examiners, License Examination
Fee 8
Examinations Conducted by Non-
Department Certified Water Right
Examiners, License Examination
Fee 9
Examinations, Qualification,
Examination & Appointment of
Certified Water Right Examiner 5
Expansion 3
Expiration, Qualification, Examination
& Appointment of Certified Water
Right Examiner 5

F
Field Report 3
Field Report Acceptability,
Examination for Beneficial Use 7
Field Report, Examination for
Beneficial Use 5

H
Headworks or Diversion Works 3

I
Information, Qualification,
Examination & Appointment of
Certified Water Right Examiner 4

Ingress or Egress Authority,
Qualification, Examination &
Appointment of Certified Water
Right Examiner 5

L
Legal Subdivision 3
Liability, Qualification, Examination &
Appointment of Certified Water
Right Examiner 5
License Examination Fee 3, 8

M
Measurement Terminology, Water
Measurement 7
Measurements, Water Measurement 8
Measuring Device 3
Method, Water Measurement 8
Money Received, Qualification,
Examination & Appointment of
Certified Water Right Examiner 5

N
Nature of Use 4

P
Penalty 9
Period of Use 4
Permit Holder or Owner 4
Permit or Water Right Permit 4
Permits for Which Proof Has Been
Submitted Prior to the Effective Date
of These Rules, Penalty 9
Permits for Which Proof Has Not Been
Submitted, Penalty 9
Place of Use (P.U.) 4
Point of Diversion (P.D.) 4
Project Works 4
Proof of Beneficial Use 4
Proof of Beneficial Use,
Applicability 2
Proof of Beneficial Use, Authority of
Representative 4

Q
Qualification, Examination &
Appointment Of Certified Water
Right Examiner 4

R
Rate of Diversion, Water
Measurement 8
Reconsideration, Qualification,
Examination & Appointment of
Certified Water Right Examiner 5
Refusal or Revocation, Qualification,
Examination & Appointment of
Certified Water Right Examiner 5
Responsibility, Authority of
Representative 4

S
Scale of Map, Drawings, Map, &
Schematic Diagram 8
Source 4
Submittal of Drawings, Maps, Photos &
Schematic Diagrams 8

U
Unacceptable Measurements, Water
Measurement 8

W
Water Measurement 7