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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Mayfield Ranch Estates, LLC

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF PERMITS 61-12096
IN THE NAME OF BOWNS CREEK
PROPERTIES LLC, 63-32499 IN THE
NAME OF MAYFIELD TOWNSITE LLC,
AND 63-35473 IN THE NAME OF
MAYFIELD RANCH ESTATES, LLC

**MAYFIELD RANCH'S OPENING
BRIEF**

Mayfield Ranch Estates, LLC ("Mayfield Ranch"),¹ by and through its counsel of record, Givens Pursley LLP, and pursuant to the Hearing Officer's May 12, 2026 *Request for Briefs* ("*Request*") and Rule of Procedure 562 (IDAPA 37.01.01.562), files this opening brief concerning the questions of law set forth in the *Request*.

INTRODUCTION

Juniper Station Farm, LLC ("Juniper") initiated the above-captioned matter by filing separate petitions to cancel the following water permits:

Permit No.	Owner
61-12096	Bowns Creek Properties LLC
63-32499	Mayfield Townsite, LLC
63-35473	Mayfield Ranch Estates, LLC

¹ On January 20, 2026, Mayfield Ranch LLC conveyed its interest in the water permit no. 63-35473 and the related planned community project to Mayfield Ranch Estates, LLC, which is in the process of filing a Notice of Change in Water Right Ownership with the Department.

On April 10, 2026, the Hearing Officer issued an order consolidating all three matters on grounds that Juniper’s petitions to cancel the three permits “are nearly identical and raise similar legal questions.” *Order Consolidating Proceedings and Notice of Prehearing Conference* (“*Consolidation Order*”) at 2 (Apr. 10, 2026). The Hearing Officer ordered that Juniper’s petitions to cancel “are consolidated for the purpose of deciding common questions of law.” *Id.*²

After soliciting proposed questions of law from the parties, the Hearing Officer requested briefing on the following issues:

1. Does Idaho Code § 42-301 establish permit requirements independent of and in addition to any conditions listed on a permit to appropriate water issued by the Department?
2. If Idaho Code § 42-301 establishes an independent requirement for a permit holder to commence work, when must the permit holder commence work?
3. If Idaho Code § 42-301 establishes an independent requirement for a permit holder to file a bond, what is the amount of the bond?
4. How do the 1967 and 2020 amendments to Idaho Code § 42-204 affect Idaho Code § 42-301, specifically the provisions in Idaho Code § 42-301 about commencing work, filing a bond, and completing one-fifth of the construction work within one-half of the time allowed for completion of such construction work?
5. If the amendments to Idaho Code § 42-204 have eliminated the requirements that a permit holder commence project construction within one year, file a bond, and complete one-fifth of the construction work within one-half of the time allowed for completion of such construction work, is Idaho Code § 42-301 still applicable?
6. Idaho Code § 42-301 states that a permit may be cancelled if the permit holder “shall fail to complete the entire construction work within the time specified in his permit.” Idaho Code § 42-204(6) states that “a permit holder who fails to comply with the provisions of this section within the time or times specified shall be deemed to have relinquished all rights under its permit.” If the relinquishment described in Section 42-204(6) is automatic,

² Each of Juniper’s petitions to cancel was coupled with a request for hearing. The Hearing Officer did not consolidate the requests for hearing on the three permits, which “will be addressed in separate proceedings, subsequent to this consolidated contested case.” *Consolidation Order* at 2.

is there any practical utility in the process created by Chapter 3, Title 42, for a proposed project that is not completed by the proof due date established in the permit?

Request at 2.

Each issue is addressed in turn below.

LEGAL STANDARDS

The issues in the Hearing Officer's *Request* are pure questions of law that require statutory interpretation. The standard for statutory interpretation is well-settled:

The objective of statutory interpretation is to derive the intent of the legislative body that adopted the act. Statutory interpretation begins with the literal language of the statute. Provisions should not be read in isolation, but must be interpreted in the context of the entire document. The statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings. It should be noted that the Court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. When the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and the Court need not consider rules of statutory construction.

3G AG LLC v. Idaho Dep't of Water Res., 170 Idaho 251, 261, 509 P.3d 1180, 1190 (2022). In addition, Idaho Code Section 73-113(1) provides that “[t]he literal words of a statute are the best guide to determining legislative intent, and Section 73-113(3) provides that words and phrases must be “construed according to the context and approved usage of the language.” Every word and provision of a statute must be given effect “so that none will be void, superfluous, or redundant.” *Darrow v. White*, 172 Idaho 272, 280, 531 P.3d 1169, 1177 (2023) (quoting *Estate of Stahl v. Idaho State Tax Comm’n*, 162 Idaho 558, 562, 401 P.3d 136, 140 (2017)).

When the statutory language is unambiguous, no further analysis should be undertaken and “the expressed intent of the legislature shall be given effect.” I.C. § 73-113(1). Statutory language is ambiguous when reasonable minds might differ as to its meaning, not necessarily

when parties merely present differing interpretations as to its meaning. *City of Idaho Falls v. H-K Contractors, Inc.*, 163 Idaho 579, 582, 416 P.3d 951, 954 (2018). When language is ambiguous such that the statute is capable of more than one conflicting construction, “the reasonableness of the proposed interpretations shall be considered,” with those interpretations disfavored which render the statute a nullity or lead to absurd results. I.C. § 73-113(2).

ARGUMENT

I. Does Idaho Code § 42-301 establish permit requirements independent of and in addition to any conditions listed on a permit to appropriate water issued by the Department?

Idaho Code section 42-301 does not establish permit conditions independent of, or in addition to, conditions identified in a water permit. The plain language of the statute merely provides a mechanism for a junior permit holder to request that the Department cancel a permit on certain grounds related to requirements imposed by other statutes or stated on the face of the permit. It does not create permit requirements separate from those found in Idaho’s permitting statutes or on the face of a permit.

Section 42-301 states in full:

If the holder of a permit to appropriate the public waters shall fail to comply with the requirements of his permit as to the commencing of work or the filing of bond thereunder, or the completion of one-fifth (1/5) of the construction work within one-half (1/2) the time allowed for the entire completion of such construction work, or shall fail to complete the entire construction work within the time specified in his permit, said permit may be cancelled and voided by the department of water resources as hereinafter provided at the instance of any person or persons holding any permit for the diversion of water from the same stream, such permit postdating the permit which is sought to be cancelled.

The statute's current language is nearly identical to when it was originally enacted in 1909.³ Parsing this language in a grammatically correct manner, the statute's plain reading is:

If the holder of a permit to appropriate the public waters

[A] shall fail to comply with the requirements of his permit
as to

- [1] the commencing of work or
- [2] the filing of bond thereunder, or
- [3] the completion of one-fifth (1/5) of the
construction work within one-half (1/2) the time
allowed for the entire completion of such
construction work, or

[B] shall fail to complete the entire construction work
within the time specified in his permit,

said permit may be cancelled and voided by the department of water resources as hereinafter provided at the instance of any person or persons holding any permit for the diversion of water from the same stream, such permit postdating the permit which is sought to be cancelled.

I.C. § 42-301 (emphases, enumeration, and formatting changes added). This is the only grammatically correct reading of Section 42-301. The phrase "shall fail" is used twice and, in both cases, is followed by one or more associated bases by which a permit holder can challenge another's permit. The double use of the phrase "shall fail" creates two separate categories of grounds for cancellation: one for failure to "comply with the requirements of his permit," and the other for failure to complete construction "within the time specified in his permit."

As shown in the parsed version of the statute above, the statute provides four specific grounds for canceling a permit which this brief will refer to in shorthand as:

1. "Commencement" ([A][1] above);
2. "Bonding" ([A][2] above);
3. "One-Fifth Work" ([A][3] above); and

³ The only differences between the two are: (1) the 1909 version references the State Engineer rather than the Department; and (2) the 1909 version sets off the last clause in a parenthetical rather than with a comma. 1909 Idaho Sess. Laws, § 1 p. 300 (H.B. No. 223).

4. “Completion” ([B] above).

In short, the statute allows the Department to cancel a permit only if the holder [A] fails to comply with requirements of the permit related to [1] Commencement, [2] Bonding, or [3] One-Fifth Work, or [B] fails to complete construction within the time specified in the permit for Completion. Section 42-301’s plain language does not create additional permit requirements, but rather refers to permit requirements contained elsewhere in Idaho’s statutes or on the face of the permit.

While the “time specified in his permit” is readily ascertainable by looking at the permit itself, the “requirements of his permit” arguably could also include other statutory requirements related to permits not expressly stated on the face of a permit. In fact, when Section 42-301 was enacted, its Commencement, Bonding, One-Fifth Work, and Completion provisions mirrored similar provisions in Idaho’s water permitting statutes (now codified in Idaho Code Section 42-204). But the permitting statutes required only the One-Fifth Work and Completion requirements to be put on the face of a permit. *See* 1905 Idaho Sess. Laws, § 2, pp. 360-61 (S.B. No. 63) (quoted in relevant part below). A conservative reading of Section 42-301’s “requirements of his permit” includes statutory requirements related to permits whether or not they are on the face of the permit.

Regardless of whether “requirements of his permit” refers to the general law governing permits or only to requirements expressly stated on permits, there is no question that Section 42-301 does not establish permit requirements. Rather, it provides specific grounds for challenging permits based on requirements that once existed under other statutes (*i.e.*, predecessors to today’s permitting statute, Idaho Code Section 42-204), many of which no longer exist or apply. For this reason, the history of Sections 42-204 and 42-301 are instructive.

The history of the relevant provisions in Sections 42-204 and 42-301 is summarized in the following table and described in more detail below:

Year	Permitting (now Section 42-204)	Permit Cancellation (now Section 42-301)	Exhibit to this Brief⁴
1903	Enactment of One-Fifth Work and Completion requirements. 1903 Idaho Sess. Laws, § 2 p. 226 (H.B. No. 146)	Enactment of One-Fifth Work ground for cancellation. 1903 Idaho Sess. Laws, § 3 p. 227 (H.B. No. 146)	A
1905	Enactment of Commencement and Bonding requirements. 1905 Idaho Sess. Laws, § 2 p. 361 (S.B. No. 63)		B
1909		Enactment of Commencement, Bonding, One-Fifth Work, and Completion grounds for cancellation. 1909 Idaho Sess. Laws, § 1 p. 300 (H.B. No. 223)	C
1967	Elimination of Bonding and One-Fifth Work requirements. 1967 Idaho Sess. Laws, ch. 374, § 3, pp. 1089, 1091–92 (H.B. No. 293)		D
1982	Amendment of Commencement deadline from 60 days to one-year from permit approval. 1982 Idaho Sess. Laws, ch. 62, § 1 p. 124 (S.B. No. 1246)		E
2020	Elimination of Commencement deadline. 2020 Idaho Sess. Laws, ch. 164, § 1, p. 479 (S.B. No. 1316)		F

In 1903, the Idaho Legislature enacted the predecessor to Idaho’s water permitting statute in Idaho Code Section 42-204. 1903 Idaho Sess. Laws, pp. 223-27 (H.B. No. 146, § 2). This statute included the original One-Fifth Work and Completion requirements for permits. 1903 Idaho Sess. Laws, p. 226 (H.B. No. 146, § 2). It also included a precursor to Section 42-301’s

⁴ For the Hearing Officer’s convenience, copies of the Idaho Legislature’s Session Laws cited in this table are attached as exhibits to this brief as indicated. Only the Session Laws are cited later in this brief, without reference to the exhibits.

cancellation provisions, which contained only the One-Fifth Work ground for cancellation. 1903 Idaho Sess. Laws, p. 227 (H.B. No. 146, § 3).

The permitting statute was amended in 1905 to add, among other things, the Commencement and Bonding requirements. 1905 Idaho Sess. Laws, p. 361 (S.B. No. 63, § 2). Thus, when Section 42-301 was enacted in 1909, Idaho's statutory permitting provisions required in relevant part:

In his endorsement of approval on any [permit] application, the State engineer shall require that actual construction work shall be completed within a period of five years from date of such approval and that one-fifth of such work of construction shall be done within one-half the period of time allowed for the completion of such works [*i.e.*, Completion and One-Fifth Work]

Every holder of a permit which shall be issued under the terms and conditions of an application filed hereafter appropriating 25 cubic feet or less per second, must, within 60 days from the date upon which said permit issues from the office of the State Engineer, commence the excavation or construction of the works by which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted through no fault of the holder of such permit by circumstances over which he has no control [*i.e.*, Commencement].

Every holder of a permit which shall be issued under the terms and conditions of an application filed hereafter, appropriating more than 25 cubic feet per second, must, within 60 days from the date upon which the said permit issues from the office of the State engineer, file with the State engineer a bond in an amount to be fixed by the State engineer, not exceeding ten thousand (\$10,000) dollars, in form and sufficiency of sureties to be approved by him, conditioned upon faithfully carrying to completion the works of diversion as specified in said permit; the amount of the bond to be fixed by the State engineer within the limits hereinbefore prescribed [*i.e.*, Bonding].

Id.

The One-Fifth Work and Bonding permit requirements remained substantially the same until the Idaho Legislature removed them in 1967. 1967 Idaho Sess. Laws, ch. 374, § 3, pp. 1089, 1091-92. (H.B. No. 293). Then, in 1982, the Idaho Legislature changed the

Commencement requirement to one year from the date of permit issuance. 1982 Idaho Sess. Laws, ch. 62, § 1, p. 124 (S.B. No. 1246). The Legislature completely eliminated the Commencement requirement altogether in 2020. 2020 Idaho Sess. Laws, ch. 164, § 1, p. 479 (S.B. No. 1316). Section 42-204(3) continues to contain a Completion requirement, although as discussed below the Idaho Legislature has substantially changed it over time by allowing extensions. *See* I.C. § 42-204(3).

The upshot of all this is that the Commencement, Bonding, One-Fifth Work, and Completion grounds for cancellation in Section 42-301 were enacted when permits were required by complementary statute to comply with such requirements. Over time, the Idaho Legislature has entirely eliminated the Commencement, Bonding, and One-Fifth Work requirements for permits but has not eliminated those grounds for permit cancellation in Section 42-301, perhaps because some permits with those requirements may have remained after the requirements were eliminated from the permitting statute.

Simply put, Section 42-301 never imposed independent requirements for permit holders. When it was enacted in 1909, existing law (what is now Section 42-204) required permits to contain Commencement, Bonding, One-Fifth Work, and Completion requirements. Section 42-301 merely mirrored those requirements and provided a mechanism by which affected junior water right holders could seek permit cancellation for non-compliance. Section 42-301 did not impose additional requirements on permits.⁵

In summary, Section 42-301 does not contain independent requirements for permit holders, but rather provides an enforcement mechanism to challenge a permit if the One-Fifth

⁵ It would be inequitable, at least, to hide permitting requirements in Chapter 3 of Title 42, when all other permitting requirements are set forth in Chapter 2 of Title 42.

Work, Commencement, Bonding, or Completion requirements were imposed by the permitting statutes or were specified on the face of a permit. Because Section 42-301 is unambiguous, its plain meaning should be applied without engaging in further statutory construction. *Callies v. O'Neal*, 147 Idaho 841, 847, 216 P.3d 130, 136 (2009).

II. If Idaho Code § 42-301 establishes an independent requirement for a permit holder to commence work, when must the permit holder commence work?

As discussed above, Section 42-301 does not establish an independent requirement for commencing work on a water permit. The only work commencement requirement was supplied by Section 42-204 (and its predecessors) from 1905 until 2020. From 1905 until 1982, Section 42-204 and its predecessors required permit holders to commence work within 60 days of permit issuance. 1905 Idaho Sess. Laws, p. 361 (S.B. No. 63, § 2). Then, from 1982 to 2020, permit holders had one year after permit issuance to commence work. 1982 Idaho Sess. Laws, ch. 62, § 1 p. 124 (S.B. No. 1246). Since 2020, however, there has been no statutory requirement that permit holders commence work within any designated period of time. 2020 Idaho Sess. Laws, ch. 164, § 1, p. 479 (S.B. No. 1316).

III. If Idaho Code § 42-301 establishes an independent requirement for a permit holder to file a bond, what is the amount of the bond?

As discussed above, Section 42-301 does not establish an independent requirement for permit holders to file a bond. Instead, the only bonding requirement relevant to permits was imposed by earlier versions of Section 42-204. *See, e.g.*, 1905 Sess. Law, p. 361 (S.B. No. 63, § 2). That requirement was eliminated in 1967. 1967 Idaho Sess. Laws, ch. 374, § 3, pp. 1091-92

(H.B. 293). No Idaho statute currently requires a bond for water permits or sets any particular bond amount.⁶

IV. How do the 1967 and 2020 amendments to Idaho Code § 42-204 affect Idaho Code § 42-301, specifically the provisions in Idaho Code § 42-301 about commencing work, filing a bond, and completing one-fifth of the construction work within one-half of the time allowed for completion of such construction work?

The 1967 and 2020 amendments to Section 42-204 brought about the waning applicability of Section 42-301. As discussed above, Section 42-301 only applies to the extent that the Commencement, Bonding, One-Fifth Work, or Completion grounds for cancellation are applicable to a permit. Section 42-301's applicability has diminished over time as most of those grounds have been eliminated by the Idaho Legislature.

In 1967, the Idaho Legislature eliminated requirements for bonding and completing one-fifth of work from Section 42-204. 1967 Idaho Sess. Laws, ch. 374, § 3, pp. 1089, 1091-92 (H.B. No. 293). To the extent that any permits still remain that are subject to such requirements, Section 42-301's companion Bonding and One-Fifth Work provisions may still have application. However, this seems unlikely as these requirements were eliminated from statute nearly 60 years ago.

By contrast, the Commencement provision in Section 42-301 presumably continues to have life since the requirement to commence work by a certain deadline remained in Section 42-204 until 2020 and some existing permits may have a work commencement date expressly stated. At some point, however, the Department may stop issuing permits with a work commencement date (if it hasn't already) since the statutory requirement no longer exists. When

⁶ Idaho Code Section 42-233(3) requires the filing of bonds with the Department before drilling, redrilling, modifying or deepening of any low temperature geothermal well, and sets a bond amount between five and twenty thousand dollars.

no permits remain with such a provision, Section 42-301's Commencement provision also will become ineffective.

Concerning the Completion ground in Section 42-301, Section 42-204(3) still requires the Department to include a deadline for completion of construction and application of water to beneficial use. However, that requirement must be read consistently with the rest of Section 42-204(3), which allows for extensions of time (discussed further below). In short, the Completion ground in Section 42-301 has no further practical effect.

In summary, Section 42-301 enables junior permit holders to challenge a senior permit if the senior permittee failed to comply with certain requirements related to its permit, whether imposed by statute or expressly stated on the face of the permit. The 1967 and 2020 amendments to Section 42-204 mean that Section 42-301's practical utility is diminished if not practically eliminated as the Idaho Legislature has abolished and limited permit requirements that can form the grounds for challenges under Section 42-301.

V. If the amendments to Idaho Code § 42-204 have eliminated the requirements that a permit holder commence project construction within one year, file a bond, and complete one-fifth of the construction work within one-half of the time allowed for completion of such construction work, is Idaho Code § 42-301 still applicable?

Section 42-301 may still be applicable in circumstances where a permit holder is required by conditions on the face of the permit to commence project construction within one year, file a bond, and complete one-fifth of the construction work within one-half of the time allowed for completion of such construction work.

As explained above, it seems unlikely that any permits today require filing a bond or completing one-fifth of the construction work within one-half of the time allowed for completion, considering that these permit requirements were eliminated in 1967. But some

existing permits probably contain conditions requiring the permit holder to commence project construction within one year of permit approval since that provision was not removed from Section 42-204 until 2020.

In any case, because these requirements are no longer in the general law governing permits, a junior permit holder could only challenge a senior permit on such grounds under Section 42-301 if those requirements are stated directly on the face of a permit.

VI. Idaho Code § 42-301 states that a permit may be cancelled if the permit holder “shall fail to complete the entire construction work within the time specified in his permit.” Idaho Code § 42-204(6) states that “a permit holder who fails to comply with the provisions of this section within the time or times specified shall be deemed to have relinquished all rights under its permit.” If the relinquishment described in Section 42-204(6) is automatic, is there any practical utility in the process created by Chapter 3, Title 42, for a proposed project that is not completed by the proof due date established in the permit?

The process for canceling a permit in Chapter 3, Title 42, based on an alleged failure to “complete the entire construction work within the time specified in [a] permit” has no practical utility because of the automatic relinquishment required by Section 42-204(6).

Section 42-204(6) states:

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

(Emphasis added).

By its plain language, Section 42-204(6)’s automatic relinquishment occurs only if the permit holder fails to comply with the rest of Section 42-204’s provisions. The relevant portions

of Section 42-204 include, among other things, provisions requiring that “actual construction work and application of the water to full beneficial use shall be complete within a period of five (5) years from the date of such [permit] approval” but also allowing permit holders to seek and obtain extensions of time to submit “a statement of completion showing proof of beneficial use.” I.C. § 42-204(3). Thus, relinquishment under Section 42-204(6) occurs automatically only if the permit holder has not completed construction and beneficial use within any time period prescribed by Section 42-204(3), including extensions.

By contrast, Section 42-301 allows cancellation of a permit if the permit holder “shall fail to complete the entire construction work within the time specified in his permit.” This language (enacted in 1909) must be read consistently with Section 42-204(3)’s extension provisions (enacted after 1909). To read them consistently, Section 42-301’s provision for cancellation based on the “time specified in the permit” must allow for extensions to the time provided under Section 42-204(3). An alternate reading would improperly nullify the extension provisions in Section 42-204(3). I.C. § 73-113(2) (“Interpretations which would render the statute a nullity, or which would lead to absurd results, are disfavored.”); *Eby By & Through Eby v. Newcombe*, 116 Idaho 838, 841, 780 P.2d 589, 592 (1989) (“[I]t is incumbent upon this Court to give the statute an interpretation that will not effectively nullify it[.]”).

If Sections 42-204 and 42-301 cannot be read consistently, Section 42-204 must control. “When two statutes are in conflict, the one enacted later in time governs and the specific statute will control over the general statute.” *In re Est. of Wiggins*, 155 Idaho 116, 123, 306 P.3d 201, 208 (2013). Here, the extension provisions in Section 42-204(3) were enacted subsequent to Section 42-301, and are more specific than the general statement in Section 42-301 concerning Completion “within the time specified in his permit.” The first extension provision was enacted

in 1911, and allowed for extensions up to a total of five years from the permit approval date if the initial period was less than five years. 1911 Idaho Sess. Laws, ch. 64, § 1, p. 186. This occurred only two years after the enactment of Section 42-301, suggesting the Legislature was well aware of Section 42-301's language yet did not consider this new extension provision to be inconsistent. The Legislature added and altered various extension provisions over the years, most recently in 2021, when it clarified language in Section 42-204(3)(a) authorizing extensions for litigation "related to the permit holder's land or water development." 2021 Idaho Sess. Laws, ch. 162, § 1, p. 460 (H.B. 268). These extension provisions were enacted subsequent to, and with more specificity than, Section 42-301's general statement about Completion. Thus, Section 42-204's provisions govern a permit holder's deadline for completing the construction of works and beneficial use of water.

Because Section 42-301's provision allowing cancellation based on the "time specified in the permit" must account for the extensions provided under Section 42-204(3), and because permit relinquishment is automatic under Section 42-204(6) for failure to comply with Section 42-204 "within the time or times specified" (*i.e.*, including extensions), there is no more practical utility to Section 42-301's provisions allowing challenges to a permit on Completion grounds.

CONCLUSION

For the foregoing reasons, Mayfield Ranch respectfully requests that the Hearing Officer determine:

1. Section 42-301 does not establish permit requirements independent of and in addition to any conditions listed on a permit;

2. Section 42-301 does not establish an independent requirement for a permit holder to commence work, and no other Idaho statute currently dictates when a permit holder commence work;
3. Section 42-301 does not establish an independent requirement for a permit holder to file a bond, and no other Idaho statute currently requires a bond for a water permit or of any particular amount;
4. The 1967 and 2020 amendments to Section 42-204 diminished the practical applicability of Section 42-301 by eliminating the Commencement, Bonding, and One-Fifth Work requirements for water permits, thereby reducing (and potentially eliminating) those grounds for challenge in Section 42-301;
5. Section 42-301 may still be applicable to the extent that permits contain Commencement, Bonding, or One-Fifth requirements, which may be a limited number.
6. There is no practical utility to Section 42-301's Completion ground for challenging a permit given 42-204(6)'s automatic relinquishment provisions that take into account extensions granted under Section 42-204(3).

DATED June 26, 2026.

GIVENS PURSLEY LLP



By: _____
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of June, 2026, a true and correct copy of the foregoing was filed electronically with the Idaho Department of Water Resources (file@idwr.idaho.gov) and served by email as indicated below.

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By _____
Michael P. Lawrence

RECEIVED

Jun 26, 2026

DEPARTMENT OF
WATER RESOURCES

EXHIBIT A
1903 Idaho Sess. Laws (H.B. No. 146)

GENERAL LAWS
OF THE
STATE OF IDAHO

PASSED AT THE SEVENTH SESSION

OF THE
STATE LEGISLATURE.

PUBLISHED BY AUTHORITY OF THE
SECRETARY OF STATE.

BOISE, IDAHO.
STATESMAN PRINTING CO.
1903.

or comb of the Big Hole mountain range, thence following along the top or comb of said mountains in a southeasterly direction to the Wyoming line, thence north along said Wyoming State line to the dividing line between Bingham and Fremont counties, thence westerly along said dividing line between said counties to the place of beginning, shall be attached to and become a part of the county of Fremont, upon a majority of the qualified electors so declaring, as in section 2 provided.

SEC. 2. At the next general election the qualified electors who have resided for ninety days prior to said election in that portion of Bingham county proposed to be cut off from said county and annexed to Fremont county, by section 1 of this act, shall vote upon the question of the division or thus cutting off of Bingham county and the annexation of said territory to Fremont county, said vote shall be by ballot in the following form, to wit;

For division and annexation, Yes.—

Against division and annexation, Yes.—

The vote shall be returned and canvassed as provided for by law in such cases; and this act shall take effect only in case a majority of said qualified electors of said territory, voting on said question, shall vote in the affirmative: *Provided*, That Fremont county shall be held liable to pay such relative portion of all the indebtedness and liabilities of Bingham county existing at the time the vote on said division or annexation shall be officially declared by the commissioners of Bingham county, as the assessed valuation of the property in said territory so cut off, according to the assessor's roll of 1903 bears to the assessed valuation of the property in the entire territory of the said county of Bingham.

SEC. 3. All acts and parts of acts in conflict with this act are hereby repealed.

Approved the 6th day of March, 1903.

HOUSE BILL NO. 146.

AN ACT

TO REGULATE THE APPROPRIATION AND DIVERSION OF THE PUBLIC WATERS AND TO ESTABLISH RIGHTS TO THE USE OF SUCH WATERS AND THE PRIORITY OF SUCH RIGHTS.

Be it enacted by the Legislature of the State of Idaho:

SECTION 1. For the purpose of regulating the use of the public waters and of establishing by direct means the priority of right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters or lakes or other public waters in the State of Idaho, shall, before commencing the construction enlargement or extension or change in the point of diversion of the ditch, canal or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any water into a natural channel, make an application to the State Engineer for a permit to make such appropriation. Such application must set forth: (1) the name and postoffice address of the applicant, (2) the source of the water supply, (3) the nature of the proposed use, (4) the location and description of the proposed ditch, channel or other work and the amount of water to be diverted and used, (5) the time required for the completion of construction of such works, which in no case shall exceed five years from the date of approval of application, (6) the time required for the complete application of the water to the proposed use, which must be within four years after the date set for the completion of such works.

The application shall be accompanied by a plan and map in duplicate of the proposed works for the diversion and application of the water to a beneficial use, showing the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipe lines, and all other works proposed to be used by them in the diversion of the water, and the area and location of the lands proposed to be irrigated. If such application is filed by a corporation it shall state (1) the amount of its capital stock, how much thereof has been actually paid in, and the names and places of residence of its directors, (2) the financial resources of the corporation or person making the application, and the means by which the funds necessary to construct the proposed works are to be provided. If for the generation of power or any other purpose than irrigation or domestic use, the purpose for which it is proposed to be used, the nature, location, character, capacity and estimated cost of the works, and whether the water used is to be and will be re-

turned to the stream, and if so, at what point on the stream. In case the proposed right of use is for agricultural purposes, the application shall give the legal subdivisions of land proposed to be irrigated, with the total acreage to be reclaimed as near as may be: *Provided*, That no one shall be authorized to divert for irrigation purposes more than one cubic foot of water per second for each fifty acres of land to be so irrigated, unless it can be shown to the satisfaction of the State Engineer that a greater amount is necessary: *Provided, further*, That the plan of irrigation submitted shall provide for the distribution of water to within not more than one mile of each legal subdivision of the land proposed to be reclaimed by the use of such water: *Provided also*, That in the case of all ditches designed to have a capacity of ten cubic feet per second or less, such map showing the location of such ditch and the place of use of such water or the location of the lands to be irrigated, may be upon blanks furnished by the State Engineer.

SEC. 2. On receipt of this application, which shall be of a form prescribed by the State Engineer, it shall be the duty of that officer to make an endorsement thereon of the date of its receipt, and to make a record of such receipt in some suitable book in his office. It shall be his duty to examine said application and ascertain if it sets forth all the facts necessary to show the location, nature and amount of the proposed use. If upon such examination, the application is found defective, it shall be the duty of the State Engineer to return the same for correction within thirty days from the receipt of such application, and the date of such return, with the reasons therefore, shall be endorsed on the application and a record made thereof in a book kept for recording the receipt of such applications. A like record shall be kept of the date of the return of corrected applications, but such corrected application shall be returned to the State Engineer within a period of sixty days from the date endorsed thereon by the State Engineer: *Provided*, That if be returned after such period of sixty days, such corrected application shall be treated in all respects as an original application.

All applications which shall comply with the provisions of this act and with the regulations of the State Engineer's office shall be numbered consecutively, and shall be re-

corded in a suitable book kept for that purpose, and it shall be the duty of the State Engineer to approve all applications made in proper form which contemplate the application of the water to a beneficial use.

The approval of an application shall be endorsed thereon, and a record made of such endorsement in the State Engineer's office. The application so endorsed shall constitute a permit, and shall be returned to the applicant, and he shall be authorized on receipt thereof, to proceed with the construction of the necessary works for the diversion of such water, and to take all steps required to apply the water to a beneficial use and to perfect the proposed appropriation. In his endorsement of approval on any application, the State Engineer shall require that actual construction work shall be completed within a period of five years from date of such approval and that one-fifth of such work of construction shall be done within one-half the period of time allowed for the completion of such works. He may limit the application to a less period of time for the completion of work than is asked for, and likewise the perfecting of the proposed right for a less period than is named in the application, and such endorsement shall give the date when such work shall be completed, also the date when beneficial application of the water to be diverted by such works shall be made for the purpose intended.

Any applicant feeling himself aggrieved by the endorsement made by the State Engineer upon his application, may appeal therefrom to the district court of the county in which the point of diversion of the proposed appropriation shall be situated.

Such appeal shall be within sixty days from the return of the application by the State Engineer and shall be perfected when the applicant shall have filed in the office of the clerk of such district court a copy of the application certified by the State Engineer as a true copy, together with the petition to such court setting forth the appellant's reason for appeal. Such appeal shall be heard and determined upon such competent proof as shall be adduced by appellant, and such like proofs as shall be adduced by the State Engineer or some person duly authorized in his behalf. The maps accompanying such applications must contain the name of the proposed work, and, when it is possible,

the number of the permit. They must, in addition, have the name or names of the applicant or applicants, and when the proposed works have a capacity of more than twenty-five second feet, a certificate of the surveyor giving the date of the survey, his name and post office address. It shall be the duty of the State Engineer to examine these maps or plats, and to ascertain if they agree with the description contained in the application, and when found to agree, to approve the same, file one copy in his office and return the other, approved to the party filing them.

SEC. 3. If the holder of a permit, at the expiration of one-half the time set for the completion of such works, shall not have completed at least one-fifth of the work of construction as contemplated in the application for such permit to construct such works, any person or persons holding any permit for the diversion of waters from the same stream (such permit post-dating the permit for the diversion of water through such unfinished works as aforesaid) may, on or before such date set for the doing of such one-half of such work of construction, petition the State Engineer to cancel such prior permit. Upon receipt of such petition, which shall clearly set forth the facts in relation to the condition of such unfinished work, and be certified to by a well known and competent engineer, the State Engineer shall make or cause to be made an examination of such works, and if he is satisfied that less than such one-fifth of the work of construction of such works has been done on such date, he shall cancel the permit issued for the diversion of water by means of such works, and shall at once notify the holder of such permit by registered mail of such action, stating the reason why such cancellation was made; and if the State Engineer shall refuse to cancel such permit, he shall at once, and by registered mail, so notify the person filing such petition.

Either of the parties feeling themselves aggrieved by the action of the State Engineer may appeal therefrom to the district court of the county in which the point of diversion of the works in question is situated. Such appeal shall be within sixty days from the receipt of the notice of such action of the State Engineer, and if the petitioner to such State Engineer shall file the appeal, the holder of the permit in question shall be the defendant, and if

the holder of such permit which has been cancelled shall be the appellant, the party who petitioned for such cancellation shall become the defendant in such appeal, and such appeal shall be perfected when the appellant shall have filed in the office of the clerk of such district court a copy of such petition to the State Engineer and a copy of the decision of such Engineer, certified to by such Engineer as true copies, together with the petition to such court setting forth the appellants reason for appeal. .

SEC. 4. On or before the date set for the completion of works for the diversion and application of water under any permit, the holder of such permit, or his assign shall be prepared to submit proof of the completion of such works to the State Engineer.

Such holder of such permit shall first notify the State Engineer that he is prepared to submit such proof of completion of such works. Such notice to the State Engineer shall be given by registered mail and at least sixty days before the date set for the completion of such works, and shall be on a form furnished by such Engineer, and shall state (1) the name of the person or corporation holding the permit under which such works are constructed, (2) the postoffice address of such person or the place of business of such corporation, (3) the number of such permit, and the date set for the completion of such works under the same, (4) the use for which said water is intended, (5) whether or not such works will be fully completed on the date set for such completion, and the amount of water which such works are capable of conducting to the place of intended use in accordance with the plans of the same accompanying the application for such permit, (6) if for irrigation, the amount of, and the description of the lands for which said water is available according to such plans. In case of all canals or other works designed to divert and carry more than 50 cubic feet per second of water, the facts set forth in such notice to the State Engineer shall be certified to by a well known and competent irrigation engineer.

Upon receipt of such notice by the State Engineer, such engineer shall immediately order its publication for a period of four weeks in some newspaper designated by the person sending such notice and published in the county in which such works are situated. Such published notice

shall also state the date when such proof of completion shall be submitted to such engineer, and the place where the same shall be submitted, and such publication shall be at the expense of the person making such proof.

Such person or persons establishing such proof of completion may offer the affidavits of competent engineers in relation to the grades, dimensions and capacity of such works, and the amount and location of land to which water can be delivered for irrigation. And the State Engineer may, in the case of canals designed to divert fifty cubic feet per second or more, demand that profiles and cross-sections showing the grade of and the finished condition of such works to be filed with him in support of the claims which may be made in relation to the finished condition of such works by the person or persons holding such permit. And in the case of works capable of diverting, on the date set for such completion, the full amount of water for which such works were intended, such State Engineer shall have authority to order the water turned into such works for the purpose of measuring the same.

SEC. 5. On or before the date set for receiving such proof of completion, the State Engineer shall make or cause to be made, a full inspection and examination of the works constructed, and shall make or cause to be made a report on their condition, ascertaining and stating whether or not they conform to the terms of the application and permit and are capable of diverting the amount of water intended, and he shall ascertain how much water such works are capable of diverting and conducting to the place of intended use at the time of such proof of completion, and he shall issue a certificate to the holder of such permit or his assigns, which certificate shall set forth (1) the name of the holder of the permit under which the works were constructed, (2) the number of such permit, (3) the date of the application for the same, (4) the postoffice address of such holder, (5) the condition of such works, (6) the purpose for which they were constructed, (7) the quantity of water which can be diverted by the same and conducted to the place of intended use, (8) and if such water is to be used for irrigation, a description of the lands for which water is made available by such works. The State Engineer shall file such report, and make a record in books kept

in his office for the purpose, of all the facts in relation to the condition of such works and their capacity on the date of such proof of completion.

Whenever it shall be desired to enlarge or extend existing works, or complete works not completed on the date set for such completion. All applications for a permit to make such enlargement, extension or completion shall be filed with the State Engineer, the same as for original construction, and the priority of all rights resulting from such enlargement, extension or completion shall relate to such application.

SEC. 6. Whenever any person or persons feel themselves aggrieved by the determination of the State Engineer in relation to the question of completion of works constructed under a permit issued by him, such person or persons may appeal to the courts: *Provided*, That such appeal shall be taken within sixty days from the date of the certificate relating to such completion by such engineer, and shall be perfected when the appellant shall have filed in the office of the clerk of the district court a copy of the certificate certified by the State Engineer as a true copy together with the petition to such court setting forth the appellants reason for appeal. Such appeal shall be heard and determined upon such competent proof as shall be adduced by appellant and such like proofs as shall be adduced by the State Engineer or some person authorized in his behalf.

SEC. 7. On or before the date set for the beneficial use of waters diverted under the provisions of this act, which in no case shall be more than four years from the date set for the completion of any canal or other works designed to divert and conduct the public waters of the State to a place of use, or the date for the enlargement or extension or the completion of works for such purpose, the person or persons using such water shall submit proof that they have used such water for the beneficial purpose for which the diversion of such water was intended. Such user of such water shall first notify the State Engineer that he is prepared to prove that such water has been beneficially applied to the purpose for which it was intended. Such notice to the State Engineer shall state (1) the name and postoffice address of such user, (2) the use to which such water has

been applied, (3) the amount used, (4) the place of such use, and, if for irrigation, the description by legal subdivisions, of the lands so irrigated, (5) the name of the canal or ditch or other works by which such water is conducted to such place of use, (6) the relation or understanding upon which the right to take water from such works is based, (7) the source of supply from which such water is diverted, and, (8) the date of the priority which such user is prepared to establish.

Such notice and such written proof as may be required to be submitted by such user shall be upon forms furnished by the State Engineer and such statements shall be sworn to by such user and be supported by the affidavits of two disinterested witnesses.

Upon receipt of such notice by the State Engineer, such engineer shall order its publication in some newspaper designated by such user and published in the county in which the major portion of such land is situated, for a period of four weeks, and shall fix a date when such proof shall be submitted and name a place where such proof will be received.

Such date shall be subsequent to the completion of such publication, and such engineer shall, on or before the date set for such final proof, examine, or cause to be examined. (1) the place where such water is used, and if the use is for irrigation, shall ascertain the area and location of the land irrigated and the nature of all the improvements which have been made as a direct result of such use, (2) the capacities of the ditches or canals or other means by which such water is conducted to such place of use and the quantity of water which has been beneficially applied for irrigation or other purposes. And the State Engineer or the person making such examination under the direction of such engineer shall also, on the date set for such final proof, receive the written statements made by the person or persons submitting such proof and the affidavits of the witnesses, which statements and affidavits, together with a report of the investigation which he is instructed to make, shall be forwarded at once to the State Engineer: *Provided*, That whenever several of such final proofs shall be offered from the same locality, such engineer shall arrange, whenever practicable, to have such notices for pub

lication combined, and to have such examinations made by the same person and on the same date as near as may be with a view of minimizing the expense of taking such proofs, and such publication shall be at the expense of the person or persons submitting such proof.

SEC. 8. Upon receipt by the State Engineer of all the evidence in relation to such final proof, it shall be his duty to carefully examine the same, and if he is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, he shall issue to such user or users a license confirming such use. Such license shall be issued under the seal of the office of the State Engineer and such license shall state the name and postoffice address of such user, the purpose for which such water is used, the quantity of water which may be used, which in no case shall be an amount in excess of the amount that has been beneficially applied. If such use is for irrigation, such license shall give a description by legal subdivisions of the land which is irrigated by such water.

Such license shall bear the date of the application for, and the number of the permit under which the works from which such water is taken were constructed, and the date of the completion of such works, and the capacity of such works on such date of completion, and the date when proof of beneficial use of such water was made; and also state the date of the priority of the right confirmed by such license, which shall be the date of the application for the permit for the construction of the works from which such water is taken and to which such right relates.

And all the licenses which relate to the same permit and which bear the same date of priority shall be numbered alike and shall belong to the same class, and all the rights relating to the same source of supply shall be numbered numerically in the order of the priority of such rights: *Provided*, That whenever proof of the beneficial application of water shall be offered subsequent to the date stated in the permit when such beneficial application shall be made, such proof shall be taken, and, if satisfactory to the State Engineer, a license shall be issued by such engineer the same as though such proof had been made before such date fixed for such beneficial application, but the priority of the

right established by such proof shall not date back to the date of the application for the permit to which such right would relate under the provisions of this act, but shall bear a date which shall be subsequent to the date of such application a time equal to the difference between the date set in such permit for such beneficial application of such water and the date of such proof.

SEC. 9. Such license shall be binding upon the State as to the right of such license to use the amount of water mentioned therein, and shall be prima facie evidence as to such right; and all rights to water confirmed under the provisions of this act, or by any decree of the court, shall become appurtenant to and shall pass with conveyance of the land for which the right of use is granted. And the right to continue the beneficial use of such waters shall never be denied nor prevented from any cause other than the failure on the part of the user or holder of such right to pay the ordinary charges or assessment which may be made or levied to cover the expenses for the delivery or distribution of such water, or for other reasons set forth in this act: *Provided*, That when water is used for irrigation, no such license or decree of the court allotting such waters shall be issued confirming the right to the use of more than one second foot of water for each fifty acres of land so irrigated, and neither such license nor any one claiming a right under such decree shall at any time be entitled to the use of more water than can be beneficially applied on the lands for the benefit of which such right may have been confirmed, and the right to the use of such water confirmed by such license shall always be held subject to the local or community customs, rules and regulations which may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules or regulations have for their object the economical use of such water.

SEC. 10. Upon the issuance of a certificate by the State Engineer in relation to the completion of any canal, ditch or other works constructed under the provisions of this act, a fee, to cover the expense of the examination of such works, shall be paid to the State Engineer by the person or persons submitting the proof of such completion. For all ditches or canals having a capacity of ten (10) cubic

feet per second or less, such fee shall be (5) five dollars. For all ditches or canals having a capacity of more than ten (10) cubic feet per second, such fee shall be at the rate of thirty (30) cents for each second foot of such capacity.

For examining the ditches and lands of the user at the time of making final proof of the application of water, a fee of two (2) dollars shall be paid to the State Engineer at the time of making such proof for each legal subdivision of forty (40) acres or fraction thereof to which such water may have been applied. For examining the ditches or other works and the place where such water is used, when such use is not for irrigation, a fee of five (5) dollars shall be paid the State Engineer at the time of making such examination and taking the proof of such use: *Provided*, That in the case of water used for irrigation where two or more users, whose lands join or who take water from the same common lateral, join in the publication of the notice of their intention to make such proof of application, a fee of one (1) dollar for each legal subdivision of forty (40) acres or fraction thereof receiving such water shall be paid to the State Engineer at the time of making such proof. For making certified copies of any papers on file in his office the State Engineer shall charge a fee at the rate of twenty (20) cents per folio. All fees received by the State Engineer under the provisions of this act shall be recorded in a fee book and shall at once be turned over to the State Treasurer and placed in the general fund of the State.

SEC. 11. All rights to the use of water acquired under this act or otherwise, shall be lost and abandoned by a failure, for the term of two years, to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through non-use or abandonment, such right to such water shall revert to the State and be again subject to appropriation under this act: *Provided, however*, That any person owning any land to which water has been made appurtenant either by a decree of the court or under the provisions of this act may voluntarily abandon the use of such water in whole or in part on the land which is receiving the benefit of the same, and transfer the same to other land. Such person desiring to change the place of use of such water shall first make

application to the State Engineer, stating fully in such application the reasons for making such transfer. Such application shall describe the land, the use of the water on which is to be abandoned, and shall describe the land to which it is desired to have such right transferred, and if such water is to be conducted to such land through another canal or lateral or from a different point of diversion than the one described in the license or decree of the court confirming such right, such facts shall be fully set out in such application, and, if the State Engineer shall require it, a plat showing the location of such land and ditches or canals or points of diversion shall be furnished by such applicant, and upon receipt of such application, the State Engineer shall examine the same and shall, provided, no one shall be injured by such transfer, issue to such applicant under the seal of his office a certificate authorizing such transfer, which certificate shall state the name of the applicant and shall contain a copy of the license or an abstract of the decree confirming the right to the use of water upon the land from which it is desired to transfer such right and a description of the land to which such right is transferred. And a fee of one dollar shall be paid the State Engineer by such applicant for such certificate of transfer issued by him, and such application and certificate shall be recorded by such State Engineer in a book kept for that purpose, and a notice that such transfer has been authorized shall be sent by the State Engineer to the water commissioner of the district in which such land is situated, and such water commissioner shall notify the water master of the stream furnishing water for the irrigation of such lands of the transfer of such use, and such water master shall not thereafter divert onto the lands, the water for which has been so abandoned, any of such water, but shall divert such water from such stream so that it may be used on the lands to which such right has been transferred.

SEC. 12. Any person desiring to protest against the statements made by the person or persons submitting proof of the beneficial application of water in the published notice of their intention to submit such proof, shall file a statement with the State Engineer on or before the date set for such proof, stating clearly the reason for such protest, and stating the reason, if any, why a license should

not be issued confirming the right claimed. Such protest shall be based solely upon the statements in such notice and shall be sworn to by such protestant.

In issuing a license confirming any right to use water for beneficial purposes, the State Engineer shall be governed in his actions by the records relating to works from which such water is taken which may be on file in his office, and by the reports of the examination of such works, the place where such water is used, and the extent of such use as made by such engineer or his representative. And such license may confirm such claim in whole or in part, or such license may be refused, such determination depending upon the extent to which such claim is supported by such records, and such examination of the conditions relating to such use made on the ground under the authority of such State Engineer. If the State Engineer shall refuse to issue a license, the reasons for such refusal shall be recorded in a book kept for the purpose: *Provided*, That any one feeling himself aggrieved by the statements contained in the license issued by the State Engineer, or his refusal to issue such license may appeal therefrom to the district court of the county in which the place of use of the water claimed shall be situated. Such appeal shall be within sixty days from the date of such license or the refusal to issue such license, and shall be perfected when the appellant shall have filed in the office of the clerk of such district court a copy of the license, or, if such license shall not have been issued, a copy of the statement made by the State Engineer giving the reasons why such license was not issued, a copy of the protests against the issuing of such license filed in the State Engineer's office, and a copy of the report of the examination of the place of use of such water made under the authority of the State Engineer, and of other documentary proof in relation to such use which may be filed in the office of such engineer. Such copies of licenses, reports, protests and other proof shall be certified by the State Engineer as true copies. Such copies shall be filed in the office of such clerk together with a petition to such court setting forth the appellant's reason for appeal. Such appeal shall be heard and determined upon such competent proof as shall be adduced by appellant, and such like

proofs as shall be adduced by the State Engineer or some person duly authorized in his behalf.

SEC. 13. For the purpose of administering and controlling the public waters, the State of Idaho is hereby divided into three water divisions denominated water division No. 1, water division No. 2, water division No. 3.

SEC. 14. Water division No. 1 shall consist of all lands within this State drained by the Snake river and its tributaries as far west as American Falls, and all lands within this State drained by Bear river and its branches, and by other streams flowing on the slope of the Salt Lake basin.

SEC. 15. Water division No. 2 shall consist of all lands in this State drained by Snake river and its tributaries on the south side from Bruneau river and by the Snake river and its tributaries on the north side from American Falls to and including the Malad river, also all lands in this State drained by the streams flowing toward and sinking near the northern edge of the Snake river plains, and the lands in this State drained by the Salmon river and its tributaries as far west as the south fork of said river.

SEC. 16. Water division No. 3 shall consist of all lands within this State drained by the Snake river and its tributaries on the south side from the mouth of the Bruneau river to, and including the Owyhee river, and by the Snake river and its tributaries on the north side from the mouth of the Malad river to and including the Clearwater river, excepting that portion of the water shed of the Salmon river included in water division No. 2, and all that portion of the State lying north of the watershed of said Clearwater river.

SEC. 17. There shall be appointed one water commissioner for each of the water divisions by this act created, who shall be appointed by the Governor, with the consent of the Senate, and who may be removed for cause.

SEC. 18. One of said water commissioners first appointed, shall be appointed to hold office for a period of six years, one shall be appointed to hold office for four years, and one for two years, or until their successors are appointed and shall have qualified; but at the expiration of the first said terms of said office, said water commissioners shall each be appointed to hold office for a period of six years, or until their successors are appointed and shall have qualified.

Such water commissioners shall possess such theoretical knowledge of the science of hydraulics as will enable him to supervise the construction of such measuring devices as may be necessary to place in any ditch, canal or stream for the proper measurement of the water. He shall be acquainted with the streams of his district and shall be capable of instructing the water master who may be placed in charge of such streams in all matters in relation to the distribution of the water of such streams in accordance with the priorities of the rights of those using such waters.

SEC. 19. Each commissioner shall reside in the water division for which he is appointed. The commissioner of each water division shall have immediate direction and control of the acts of the water masters and of the distribution of water from all the streams to the canals diverting therefrom in his division, and shall perform such duties as shall devolve upon him as a member of the Board of Irrigation. He shall also, under the general supervision of the State Engineer, execute the laws relative to the distribution of water in accordance with the rights of priority of appropriation.

SEC. 20. Said water commissioners shall each be paid ten dollars per day for every day actually consumed in the performance of his duties as such water commissioner: *Provided*, That no commissioner shall be employed in the duties of his office for more than one hundred and eighty days during each year.

For services performed as a member of the Board of Irrigation he shall be paid by the State Treasurer upon warrants drawn by the State Auditor for the time actually spent in performing his duties as a member of such board as shown by an itemized bill certified to by the State Engineer.

For services performed in supervising the distribution of the public waters of the streams within his division he shall be paid by the county in which such duties are performed, and shall present a sworn statement to the board, of county commissioners at a regular meeting of said board, which statement shall show the time spent and the duties performed, and the said board shall pay such bill by issuing to said commissioner a warrant drawn on the current expense fund of the county.

SEC. 21. Before entering upon the duties of his office

such water commissioner shall take and subscribe an oath before some officer authorized by the laws of the State to administer oaths, to faithfully perform the duties of his office, and file with the Secretary of State said oath and his official bond in the penal sum of five thousand dollars, with not less than two sureties to be approved by the Governor of the State, and conditioned for the faithful discharge of the duties of his office.

SEC. 22. There is hereby constituted a State Board of Irrigation composed of the State Engineer and the water commissioners of the three water divisions. Said board shall have an office with the State Engineer in the capitol at Boise, and shall hold one meeting each year for the transaction of such business as may come before it, the first meeting to begin on the first Monday in April, 1903, but each meeting thereafter shall begin on the first Monday in March: *Provided*, No meeting of said board shall exceed five days. The State Engineer shall be ex-officio president of said board, and shall have the right to vote on all questions coming before it, and a majority of all the members of the said board shall constitute a quorum to transact business: *Provided*, That all acts of said board shall be approved by a majority of its members. The commissioner of water division No. 3, shall be the secretary of the State Board of Irrigation, and it shall be his duty to keep a full, true and complete record of the transactions of said board. Such meeting of such State Board of Irrigation may be held at any place in the irrigated portion of the State which may be selected by the State Engineer for such meeting, and such board of irrigation shall provide rules and regulations in relation to making of proof of completion of works constructed under the provisions of this act and of the proof of application of the water as provided for in this act, and shall also devise all needful rules for the distribution of water from the streams in accordance with the priorities of the rights of the users thereof. And such commissioners shall, on or before the first day of December of each year submit to the State Engineer a report of work done by them in their districts, and shall recommend such changes in the irrigation laws and rules and regulations governing the diversion of water as would, in their judgment, be beneficial to the people of the State.

SEC. 23. The board of irrigation shall divide the State into water districts, said water districts to be so constituted as to secure the best protection to the claimants for water, and the most economical supervision on the part of the State, the water districts which shall be first created are those which will embrace the streams whose waters have already been allotted by the district court the distribution of which shall, by the provisions of this act, be under the control of the water commissioners of the divisions in which such stream or streams are situated. Other districts shall be created from time to time as the appropriations and priorities thereof from the streams of the State shall be confirmed or adjudicated: *Provided*, That when any company or association owning irrigation works whose water supply is not distributed under a sale or rental thereof, shall petition the water commissioner to appoint a water master to take charge of the distribution of water from such works, such water master shall be appointed and he shall deliver to each user the quantity of water to which he may be entitled; and such water master so appointed shall be paid for such services in the manner provided in Sections 28 and 29 of this act: *Provided*, In the case of a stream whose waters have been allotted when the distance between the extreme points of diversion on such stream is not more than twenty miles, the users of water from such stream may elect a water master to distribute the water of such stream and fix his compensation therefor in the manner provided in Section 24 of this act for the election of water masters.

SEC. 24. For each water district created under the provisions of this act, there shall be appointed on or before the first day of March of each year, one water master, who shall be appointed by the commissioner of the division in which the water district is situated. Each water master shall hold office for one year or until his successor is appointed and shall have qualified. The said water commissioner may at any time remove any water master for failure to perform his duty as such water master, upon complaint in that respect being made to him in writing.

Before entering upon the duties of his office, said water master shall take and subscribe an oath before some officer authorized by the laws of the State to administer oaths, to faithfully perform the duties of his office and shall file

with the clerk of the district court in the county in which said water master resides, said oath and his official bond in penal sum of five hundred (\$500.00) dollars, with not less than two sureties to be approved by the Judge of the probate court of the county in which he resides, and conditioned for the faithful discharge of the duties of his office: *Provided*, That any vicinity or neighborhood, the inhabitants of which use the waters of any ditch, stream or spring for the purpose of irrigation, or have or claim a common right to the waters of any ditch stream or spring for such purpose, provided the waters so claimed or used have not been allotted to the individual users thereof, shall constitute a water district, and a majority of such water users having such common right may annually on the third Monday of February at a meeting of such inhabitants, elect a water master for such district whose duty it shall be to superintend the distribution of such waters among those having such common right or accustomed to participate in such common use. The water master of the district, or if there be no water master, or upon his failure or neglect to do so, any six residents of the district entitled to such common right must give three days' public notice of the time and place of such election, by placing printed or written notices thereof in three of the most public places in the district, said meeting must be opened at 10 o'clock in the forenoon, and the majority of those present who are entitled to such common right may organize the same and determine the manner of such election and whether the same be by ballot or otherwise.

The water master must execute to the county in which his district is situated, and file in the office of the county recorder for the benefit of any person who may be injured by his wanton or illegal act or commission as such, a bond in the sum of five hundred (500) dollars, with two sufficient sureties which shall be approved by the judge of the probate court of the county in which such district is situated, and conditioned for the faithful and impartial discharge of his duties as water master of his district, and any person so injured may have an action on such bond in his own name for his actual damages. Such water master may employ one or more deputies as authorized by the inhabitants of his district claiming such common right as aforesaid, and he is liable for their wanton or il-

legal acts upon his official bond, and before entering upon their duties the water master and his deputies must take and subscribe an oath before any magistrate, to faithfully discharge the duties of their office, and they may receive such compensation, to be paid in such manner as may be agreed upon with such users and shall have the same power as the water masters appointed by the water commissioners under the provisions of this section; and said elected water master shall be under the direction and authority of the said water commissioner.

Such water master and his deputies must regulate the distribution of water among the several ditches of his districts, and among the several water users who are entitled and accustomed to the use thereof, according to their respective rights and necessities, and when the quantity of water is not sufficient to afford a full supply to those entitled or accustomed to use the same, according to the usage of the district, such water master and his deputies must regulate the quantity used by each person, and the time at, and during which each person may use the same; and such customs or usage must be upheld by the said water commissioners and by the courts of the State when such customs have for their object the economical distribution of the waters of such district: *Provided*, Nothing in this section must be so construed as to interfere with the vested rights of individual companies or corporations, or in any manner to interfere with the rights of individuals, companies or corporations, to the use and control of water, the right to the use of which is or may be their private property.

SEC. 25. All water masters shall make reports to the water commissioners of their division as often as may be deemed necessary by said commissioners. Said reports shall contain the following information: The amount of water necessary to supply all the ditches, canals and reservoirs, of that district, the amount of water actually coming into the district to supply such ditches, canals or reservoirs, whether such supply is on the increase or decrease; what ditches, canals and reservoirs are at times without their proper supply, and the probability as to what the supply will be during the period before the next report will be required, and such other information as the water commissioner of that district may suggest. Said water

commissioner shall carefully file and preserve such reports, and shall from them ascertain what ditches, canals and reservoirs are and what are not receiving their proper supply of water and if it shall appear that in any district of that division any ditch, canal or reservoir is receiving water whose priority post-dates that of the ditch, canal or reservoir in another district as ascertained from his registrar, he shall at once order such post-date ditch, canal or reservoir shut down and the water given to the elder ditch, canal or reservoir, his orders being directed at all times to the enforcement of priority of appropriation according to his tabulated statement of priorities, to the whole division and without regard to the district within which the ditches, canals or reservoirs may be located. The reports of water masters to the water commissioners of irrigation shall be filed and kept in the office of the State Engineer.

SEC. 26. It shall be the duty of said water master to divide the water in the natural stream or streams of his district among the several ditches taking water therefrom according to the prior rights of each respectively in whole or in part and to shut and fasten, or cause to be shut and fastened, under the direction of the water commissioner of his water district the head gates of ditches heading in any of the natural streams of the district, when, in times of scarcity of water, it is necessary so to do by reason of priority of rights of others taking water from the same stream, or its tributaries. Every person who shall wilfully waste water for irrigation, or who shall wilfully open, close, change or disturb, or interfere with any head gate or water box or measuring device without authority shall be fined a sum not exceeding one hundred (100) dollars, or be imprisoned in the county jail for a term not to exceed six months or by both such fine or imprisonment. The water masters or their assistants, within their district, shall have power to arrest any person or persons offending, and turn them over to the sheriff or the nearest peace officer of the county in which such offense is committed and immediately upon delivering such person so arrested into the custody of either of such officers, it shall be the duty of the water master making such arrest to immediately, in writing and under oath, make complaint be-

fore the proper justice of the peace or the probate judge of such county against the person so arrested.

SEC. 27. Said water masters shall not begin their work until they have been called upon by two or more owners or managers of ditches, or persons controlling ditches, in the several districts by application in writing, stating that there is a necessity for the use of water, and they shall not continue performing services after the necessity therefor shall cease.

SEC. 28. Said water master shall have power, in case of emergency, with the approval of the water commissioner to employ suitable assistants to aid him in the discharge of his duties, who shall take the same oaths as the water master, and shall obey his instructions and shall be entitled to not to exceed three (3.00) dollars per day for every day he is employed, to be paid upon certificates of the water commissioner in the same manner as provided for the payment of water masters: *Provided*, That not more than one assistant shall be appointed to each twenty miles of the stream whose waters have been allotted.

SEC. 29. Water masters herein provided for shall each be entitled to pay at the rate of not to exceed four dollars per day for each day he shall be actually employed in the duties of his office. Said water master shall make up a sworn statement which shall be verified by the water commissioner, which statement shall show the number of days said water master had devoted to the distribution of such water, and the number of days his assistant or assistants have devoted to the same purpose, and such statement shall also show the volume of water, stated in cubic feet per second he has by virtue of the allotment of said waters, delivered to each user each day, and shall describe the lands to which said water was so delivered. The pay for the services of said water master shall be a charge against the land of the users to which said water was so delivered, the amount charged to each user bearing the same proportion to the total expense for the services of said water master and his assistants as the volume of water received by said user bears to the total volume delivered to all users by the said water master and his assistants. This statement which shall show the proper distribution of the said expenses among the various users, shall be filed with the auditor and recorder of the county or

counties in which the said water was delivered: *Provided*, That when any portion of the allotted waters are distributed by said water master to the canal of any duly organized canal company, the amount of the expense chargeable for such services shall be a charge against such canal, and the amount of such charge to be paid by the county in the manner herein provided, shall be charged as a tax against such canal, which tax shall be collected in the manner provided by law for the collection of other taxes, and that no canal in this State shall be exempt from the payment of such a tax.

SEC. 30. A bill, based upon such statement for the services performed by the said water master and his assistants shall be presented at a regular meeting of the board of county commissioners who shall order a warrant issued to said water master or his assistants on the current expense fund of the county. The auditor and recorder of said county shall add to the amounts charged to the land of the users and to such ditches to which said water was delivered, to the taxes of said land or ditches, as may be, for the following year, which shall be collected along with other taxes and be turned into the current expense fund of the county.

SEC. 31. The appropriator of any of the public waters of the State shall maintain, to the satisfaction of the water commissioner of the district in which such appropriation is made, a substantial head gate at the point where the water is diverted, which shall be of such construction that it can be locked and kept closed by the water master or other officer in charge; and such appropriation shall construct and maintain, when required by the water commissioner, a rating flume or other measuring device as near the head of such ditch as is practicable, for the purpose of assisting the water master in determining the amount of water that may be diverted into said ditch from the stream. Plans for such rating flumes or other measuring devices shall be furnished by the State Engineer. It shall also be the duty of those taking water from a stream whose waters have been allotted, to place at suitable intervals on said stream, under the direction of the water commissioner of the division in which such stream is situated, suitable measuring devices, so that the flow of such stream may be properly measured. If any user or appropriator of public

waters that may or may not have been allotted, should neglect or refuse to put in such head gates or measuring devices as will provide for the proper distribution of said water according to the rights of the several parties entitled to the use thereof, after ten days' notice to do so by the water commissioner, it shall be the duty of said commissioner to put in such head gates, flumes or measuring devices at the expense of the county where the expense is incurred, and said water commissioner shall make up a sworn statement of the cost of such head gates, flumes or measuring devices, which shall be presented to the board of county commissioners at their first regular meeting after the performance of such work, and said county commissioners shall present a bill of costs to the owners of said ditch or ditches: *Provided*, That if the owner of any such ditch shall refuse or neglect for ten days after the presentation of such bill of costs to pay the same, or any other charge made against such ditch or the owner thereof under the provisions of this act, the water commissioner shall order the head gate of such ditch closed and locked, and such head gate shall remain closed and locked until such charge or charges shall be paid.

SEC. 32. Such water commissioner shall, in the distribution of water from the streams to the canals, be governed by this act and the practices followed by the irrigators on the various streams and under the various ditches in his district where such practices have for their object the economical use of the common water supply, but, for the better discharge of his duties, he shall have full authority to enforce such other regulations as may be devised by the Board of Irrigation as will secure the equal and fair distribution of water and tend to reduce the waste or loss from seepage or evaporation during irrigation to the minimum, or increase the efficiency of the quantities allotted to the irrigators.

SEC. 33. It shall be the duty of the State Engineer or some qualified assistant to proceed, as soon as may be after the passage of this act, to make an examination of the streams of the State (beginning with those whose waters have not yet been allotted), and the works diverting water therefrom, said examination to include the measurement of the discharge of said streams and the carrying capacity of the various ditches and canals diverting water

therefrom; an examination of the irrigated lands, and an approximate measurement of the lands irrigated or susceptible of irrigation, from the various ditches and canals, which said observations and measurements shall be reduced to writing and make a matter of record in his office, and it shall be the duty of the State Engineer to make or cause to be made, a map or plat on a scale of not less than one inch to the mile, showing, with substantial accuracy, the course of the stream, the location of each ditch or canal diverting water therefrom, and the legal subdivisions of land which have been irrigated, and shall also note on such map the lands which are susceptible of irrigation from the ditches and canals already constructed. And such examination shall be made as rapidly as possible to include all the streams used for irrigation in the State. And the State Engineer shall indicate on such map the lands, the water rights for which have been adjudicated by the courts, noting on each tract the number of the priority of such rights, and whenever an application for a permit to appropriate water from a stream shown on such map shall be allowed, such engineer shall indicate on such map the line of such canal or ditch or other works, and indicate by appropriate colors the lands to be irrigated by such works, and shall note thereon the number of such permit. And whenever proof is made that water has been beneficially applied from such works to any of such lands, and license shall be issued for the same as in this act provided, the number of such license so issued shall be at once noted on such map on the sub-division of such lands to which such license shall relate, and all these and other facts relating to the development of irrigation on such stream shall be carefully posted on such map.

SEC. 34. In cases where the waters of any stream used for irrigation, domestic or milling purposes have, by a decree of a court of competent jurisdiction, been adjudicated and allotted, it is hereby made the duty of the water commissioner of the district in which such stream is situated, within three months after the taking effect of this act, to forthwith institute an action in the district court of the county wherein such decree was entered and recorded, or if in more than one county, then in the county to be selected by such water commissioner, against any and all persons claiming a right to the use of the waters of said

stream or streams or either of them for purposes of irrigation, or for domestic or other purposes, and which persons shall not, for any reason, have been included in, or his right shall not have been settled and adjudicated by said decree, and against each and every party to said decree who shall claim or assert any right in addition, or of a date subsequent to the date of such decree. In entitling said action, it shall be sufficient to refer to the defendants as "all claimants of a right to the use of the water of (giving the name of the stream as given in said decree) whose rights have not yet been adjudicated." Service of summons upon said parties shall be by publication in a newspaper of general circulation published in the county where such decree is entered and through which said stream flows, and if in more than one county, then in some newspaper of general circulation published in each of said counties, in the same manner and for the same length of time as is now provided for publication of summons out of the district court, except that no affidavit to obtain order for publication of said summons, and no order for publication of the same shall be required, and the affidavit of the publisher, proprietor, business manager or editor of such newspaper that such summons has been duly published in such newspaper at least once a week for a period of not less than one month shall be conclusive evidence of such publication and of due service of said summons upon each and every of the defendants.

SEC. 35. Upon the filing of the said complaint by the said water commissioner, any person or persons, parties to said decree or claiming any right or rights thereunder, may appear by complaint in intervention, or answer, and contest the right of any or all of the parties defendant in said action to use the waters of said stream or any part or portion thereof, and the proceedings henceforth shall be conducted in the same manner as actions for the adjudication of water rights upon the streams of this State, and the decree rendered in said action shall be deemed a part of and supplementary to the original decree, to be enforced in the same manner. The costs and disbursements incurred by said water commissioner in the prosecution of said action, including a reasonable attorney's fee to be allowed by the court, shall be included in the sworn state-

ment provided by law to be filed by the water commissioner with the auditor and recorder of the county or counties through or into which said stream or streams shall flow, and shall be apportioned, collected and paid in the same manner as the expenses of water master and his deputies are apportioned, collected and paid, and the same shall constitute a lien upon real estate in the same manner and to the same extent as such expenses of the water master and his deputies.

SEC. 36. During the time that said action shall be pending, and prior to a final adjudication therein, the use of the water of said stream or streams by the defendants in said action shall be under the control of the water commissioner, and, upon the application of the water master of such stream, shall be authorized to issue all needful orders and directions and prescribe all needful rules for the distribution of water to said defendants; pending a final determination of said action: *Provided*, Nothing herein contained shall be construed as depriving any person aggrieved of his right to apply for an injunction to restrain the defendants or one or more of them from the use of said water.

SEC. 37. Whenever suit shall be filed in the district court for the purpose of adjudicating the priorities of rights to the use of water from any stream in the State and before such adjudication is made, the judge of such court shall request the State Engineer to make an examination of such stream and the canals and ditches diverting water therefrom and of all the land being irrigated by such canals and ditches and other works and the lands susceptible of reclamation therefrom in the manner provided in section thirty-three (33) of this act, and such State Engineer shall prepare a map showing such stream, canal and ditches and the lands thereunder as provided in such section and a statement which shall give the condition of such works, their capacity and the amount of land irrigated from each of such canals, ditches or other works and other essential features in relation to the reclamation of the lands tributary to such stream. And such map and statement shall be accepted as evidence in the determination of such rights by such court, and a copy of such map and statement shall be placed on file in the office of the State Engineer.

Whenever the State Engineer shall make such examination at the request of the court or the judge thereof, the actual cost of making such examination by the State Engineer or his assistant and of preparing such maps and statement as shown by sworn statement of such costs prepared by such State Engineer, shall be paid by the persons interested in such suit for the determination of such priorities, the amount of such costs to be prorated by such court to the persons whose rights have been adjudicated by such suit. In case the State Engineer has already made such examination as provided in Section (33) of this act, he shall be requested by the court or the judge to furnish a certified copy of the records of the examination, which shall be brought up to date by a further examination on the ground by such engineer if need be, and such certified copies of such records shall be filed and received as evidence in such case as in this section provided.

SEC. 38. In allotting the waters of any stream by the district court according to the rights and priorities of those using such waters, such allotment shall be made to the use to which such water is beneficially applied, and when such water is used for irrigation, the right confirmed by such decree or allotment shall be appurtenant to and shall become a part of the land which is irrigated by such water, and such right will pass with the conveyance of such land, and such decree shall describe the land to which such water shall become so appurtenant. And the amount of water so allotted shall never be in excess of the amount actually used for beneficial purposes for which such right is claimed: *Provided*, That in the case of works capable of diverting more water than is applied to a beneficial purpose at the time the rights of the person or persons owning or using such works are adjudicated by the court, the right only to the water beneficially applied at the time of making such allotment shall be confirmed by the court, and the court shall ascertain the amount of water which can be diverted through such works in excess of such quantity beneficially applied, and shall set a time when such amount shall be applied to the beneficial purpose for which it is intended, which time shall not exceed four years from the date of the decree issued by such court under such adjudication, and any person using any of such

water which was not beneficially applied at the time of such adjudication shall, before the expiration of the time set for such beneficial application, make proof of such beneficial use in the manner provided in Section seven (7) of this act, and such right, when confirmed in the manner provided in this act shall relate to the priority established by such court, and if such application of any of such water shall be made subsequent to such date, then the priority of the right to the use thereof shall be determined in the manner provided in Section eight (8) of this act.

SEC. 39. Within thirty days from the passage of this act, it shall be the duty of the clerk of the district court in each of the counties of this State to prepare at the expense of the county and transmit without delay to the State Engineer by express or registered mail, a certified copy of the allotments of the various streams made by the district court and now on file in the offices of the district court in the various counties of the State: *Provided*, That said clerk may, in place of such transcript, transmit such original records of such decrees as are recorded in books kept for that purpose.

Immediately upon receipt of said transcripts or said original records, it shall be the duty of the State Engineer to record them in a book kept for that purpose and to classify and arrange said decrees by placing all the rights to water of one stream and its tributaries together, and he shall send to each water commissioner a certified copy of the allotments made by the district court of all the streams within his district.

And when an allotment of the waters of a stream shall be made by the district court, the clerk of such district court shall immediately prepare, at the expense of the county and transmit to the State Engineer a certified copy of the decree allotting such waters.

SEC. 40. Upon receipt by such water commissioner of such certified copies of such decrees of allotment, such commissioner shall arrange all the decrees relating to each separate stream, and number them in the order of their priorities and shall cause them to be printed in a neat pamphlet form and shall supply each user of water on such stream with a printed copy of such decree.

And such water commissioner shall, on or before the first day of January of each year thereafter, cause to be

printed a list of all decrees or licenses which may be issued from time to time to the users of water from any stream within his district, such list to state the name of the person to which such decree or license has been granted, the date of the priority, of the right, the amount of water granted, the description of the land to which it is supplied, and the number of such decrees or licenses, which numbers shall be in the order of the priorities of the rights under decrees or licenses, and each user of water on such stream shall be provided with a copy of such list of rights, and the expense of printing such decrees and such lists of rights shall be borne by the users of water on such streams and shall be charged to such users as a part of the expenses of distributing water to such users, and shall be paid in the manner provided for the payment of the expenses and compensation of the water masters.

SEC. 41. All rights to divert and use the waters of this State for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this act. And after the passage of this act, all the waters of this State shall be controlled and administered in the manner herein provided, and all acts or parts of acts which may be in conflict with this act are hereby repealed.

SEC. 42. Whereas an emergency exists this act shall take effect and be in force from and after its passage and approval by the Governor.

Approved March 11th, 1903.

HOUSE BILL NO. 151.

AN ACT

FIXING THE SALARY AND COMPENSATION OF CERTAIN OFFICERS OF THE EXECUTIVE DEPARTMENT OF THE STATE AND COMPENSATION OF THE JUSTICES OF THE SUPREME COURT.

Be it enacted by the Legislature of the State of Idaho:

SECTION 1. The Governor, Secretary of State, State Auditor, State Treasurer, Attorney General and Superintendent of Public Instruction, shall, during their continuance in office, receive for their services compensation as follows:—

Governor, five thousand dollars per annum; Secretary of State, two thousand four hundred dollars per annum; State Auditor, two thousand four hundred dollars per

RECEIVED

Jun 26, 2026

DEPARTMENT OF
WATER RESOURCES

EXHIBIT B
1905 Idaho Sess. Laws (S.B. No. 63)

GENERAL LAWS

OF THE

STATE OF IDAHO

PASSED AT THE EIGHTH SESSION

OF THE

STATE LEGISLATURE.

PUBLISHED BY AUTHORITY OF THE
SECRETARY OF STATE.

BOISE, IDAHO.
STATESMAN PRINTING CO.
1905.

pose, and such sale or transfer shall be noted on the record of original brands in the office of the State recorder.

SEC. 17. All acts and parts of acts in conflict herewith are hereby repealed.

SEC. 18. Whereas, an emergency exists this act shall be in force and effect from and after its passage and approval.

Approved on the 7th day of March, 1905.

SENATE BILL NO. 63.

AN ACT

TO AMEND SECTIONS 1, 2, 19, AND 37 OF AN ACT ENTITLED: "AN ACT TO REGULATE THE APPROPRIATION AND DIVERSION OF THE PUBLIC WATERS AND TO ESTABLISH RIGHTS TO THE USE OF SUCH WATERS AND THE PRIORITY OF SUCH RIGHTS," APPROVED MARCH 11, 1903.

Be It Enacted By the Legislature of the State of Idaho:

SECTION 1. That section 1 of an act entitled, "An act to regulate the appropriation and diversion of the public waters and to establish rights to the use of such waters and the priority of such rights," approved March 11, 1903, be amended to read as follows:

Section 1. For the purpose of regulating the use of the public waters and of establishing by direct means the priority of right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters or lakes or other public waters in the State of Idaho, shall, before commencing the construction, enlargement or extension or change in the point of diversion of the ditch, canal, or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel make an application to the State engineer for a permit to make such appropriation. Such application must set forth: (1) The name and postoffice address of the applicant, (2) the source of the water supply, (3) the nature of the proposed use, (4) the location and description of the proposed ditch, channel or other work and the amount of water to be diverted and used, (5) the time required for the completion of construction of such works, which in no case shall exceed five years from the date of approval of appli-

cation, (6) the time required for the complete application of the water to the proposed use, which must be within four years after the date set for the completion of such works.

The application shall be accompanied by a plan and map in duplicate of the proposed works for the diversion and application of the water to a beneficial use, showing the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipe lines, and all other works proposed to be used by them in the diversion of the water and the area and location of the lands proposed to be irrigated. If such application is filed by a corporation it shall state (1) the amount of its capital stock, how much thereof has been actually paid in, and the names and places of residence of its directors, (2) the financial resources of the corporation or person making the application, and the means by which the funds necessary to construct the proposed works are to be provided. If for the generation of power or any other purpose than irrigation or domestic use the purpose for which it is proposed to be used, the nature, location, character, capacity and estimated cost of the works, and whether the water used is to be and will be returned to the stream, and if so, at what point on the stream. In case the proposed right of use is for agricultural purposes, the application shall give the legal sub-divisions of land proposed to be irrigated, with the total acreage to be reclaimed as near as may be: *Provided*, That no one shall be authorized to divert for irrigation purposes more than one cubic foot of water per second for each fifty acres of land to be so irrigated, unless it can be shown to the satisfaction of the State Engineer that a greater amount is necessary: *Provided, further*, That the plan of irrigation submitted shall provide for the distribution of water to within not more than one mile of each legal sub-division of the land proposed to be reclaimed by the use of such water: *Provided, also*, That in the case of all ditches designed to have a capacity of ten cubic feet per second or less, such map showing the location of such ditch and the place of use of such water or the location of the lands to be irrigated, may be upon blanks furnished by the State engineer.

No permit shall issue under any application filed hereafter until the applicant shall have deposited with the

State engineer a filing fee of one dollar, if the quantity of water claimed is one cubic foot or less per second, and if the quantity of water claimed is in excess of one cubic foot per second, the fee to be so deposited by the applicant shall be increased ten cents for each additional cubic foot or fraction thereof: *Provided*, That no filing fee shall be required in the case of any application which is in effect or a refiling of a previous application upon which the required fee was paid at the time of the original filing.

The State engineer shall make and keep in a suitable book a record of all filing fees received in connection with applications for permit to appropriate public waters, and said record shall set out; (1) the name of the applicant, (2) the number of the application, (3) the quantity of water filed on, (4) the amount of the fee received, and (5) the date of receipt of said fee.

SEC. 2. That section 2 of said act be amended to read as follows:

Section 2. On receipt of this application, which shall be of a form prescribed by the State engineer, it shall be the duty of the officer to make an endorsement thereon of the date of its receipt and to make a record of such receipts in some suitable book in his office. It shall be his duty to examine said application and ascertain if it sets forth all the facts necessary to show the location, nature and amount of the proposed use. If upon such examination, the application is found defective, it shall be the duty of the State engineer to return the same for correction within thirty days from the receipt of such application, and the date of such return, with the reasons therefor, shall be endorsed on the application and a record made thereof in a book kept for recording the receipt of such applications. A like record shall be kept of the date of the return of corrected applications, but such corrected application shall be returned to the State engineer within a period of sixty days from the date endorsed thereon after such period of sixty days, such corrected application shall be treated in all respects as an original application. All applications which shall comply with the provisions of this act and with the regulations of the State engineer's office shall be numbered consecutively, and shall be recorded in a suitable book kept for that purpose, and it shall be

the duty of the State engineer to approve all applications made in proper form which contemplate the application of the water to a beneficial use.

The approval of an application shall be endorsed thereon, and a record made of such endorsement in the State engineer's office. The application so endorsed shall constitute a permit, and shall be returned to the applicant, and he shall be authorized on receipt thereof, to proceed with the construction of the necessary works for the diversion of such water, and to take all steps required to apply the water to a beneficial use and to perfect the proposed appropriation. In his endorsement of approval on any application, the State engineer shall require that actual construction work shall be completed within a period of five years from date of such approval and that one-fifth of such work of construction shall be done within one-half the period of time allowed for the completion of such works. He may limit the application to a less period of time for the completion of such works than is asked for, and likewise the perfecting of the proposed right for a less period than is named in the application, and such endorsement shall give the date when such work shall be completed, also the date when beneficial application of the water to be diverted by such works shall be made for the purpose intended.

Any applicant feeling himself aggrieved by the endorsement made by the State engineer upon his application may appeal therefrom to the district court of the county in which the point of diversion of the proposed appropriation shall be situated.

Such appeal shall be within sixty days from the return of the application by the State engineer and shall be perfected when the applicant shall have filed in the office of the clerk of such district court a copy of the application certified by the State engineer as a true copy, together with the petition to such court, setting forth the appellant's reason for appeal. Such appeal shall be heard and determined upon such competent proof as shall be adduced by appellant, and such like proofs as shall be adduced by the State engineer or some person duly authorized in his behalf. The maps accompanying such applications must contain the name of the proposed work, and, when it is possible the number of the permit. They must

in addition, have the name or names of the applicant or applicants, and when the proposed works have a capacity of more than twenty-five second feet, a certificate of the surveyor giving the date of the survey, his name and postoffice address. It shall be the duty of the State engineer to examine these maps or plats, and to ascertain if they agree with the description contained in the application, and when found to agree, to approve the same, file one copy in his office and return the other, approved to the party filing them.

Every holder of a permit which shall be issued under the terms and conditions of an application filed hereafter appropriating 25 cubic feet or less per second, must, within 60 days from the date upon which said permit issues from the office of the State Engineer, commence the excavation or construction of the works by which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted through no fault of the holder of such permit by circumstances over which he has no control.

Every holder of a permit which shall be issued under the terms and conditions of an application filed hereafter, appropriating more than 25 cubic feet per second, must, within 60 days from the date upon which the said permit issues from the office of the State engineer, file with the State engineer a bond in an amount to be fixed by the State engineer, not exceeding ten thousand (\$10,000) dollars, in form and sufficiency of sureties to be approved by him, conditioned upon faithfully carrying to completion the works of diversion as specified in said permit; the amount of the bond to be fixed by the State engineer within the limits hereinbefore prescribed.

The holder of any permit who shall fail to comply with the provisions of this section within the time or times specified shall be deemed to have abandoned all right under his permit.

SEC. 3. That section 19 of said act be amended to read as follows:

SEC. 19. Each commissioner shall reside in the water division for which he is appointed. The commissioner of each water division shall have immediate direction and control of the acts of the water masters and of the distri-

bution of water from all the streams to the canals diverting therefrom in his division, and shall perform such duties as shall devolve upon him as a member of the Board of irrigation. He shall also, under the general supervision of the State engineer, execute the laws relative to the distribution of water in accordance with the rights of priority of appropriation.

He shall also, when so directed by the State engineer, receive proof of completion, and make inspection and examination as provided in section 5 of this act, of works for the diversion and application of water under any permit, where the point of diversion of said works is located within the boundaries of his division; and he shall also, when so directed by the State engineer, receive proof of beneficial use of waters diverted under the provisions of this act in cases where the majority of the lands benefitted by the diversion works in question lie within the boundaries of his division.

SEC 4. That section 37 of said act be and the same is hereby amended to read as follows:

Section 37. Whenever suit shall be filed in the district court for the purpose of adjudicating the priority of rights to the use of water from any stream in the State and before such adjudication is made, the judge of such court shall request the State engineer to make an examination of such stream and the canals and ditches diverting water therefrom, and of all the land being irrigated by such canals and ditches and other works, and the lands susceptible of reclamation therefrom, in the manner provided in section 33 of this act. and such State engineer shall prepare a map showing such stream, canal and ditches and the lands thereunder as provided in said section, and a statement which shall give the condition of such works, their capacity and the amount of land irrigated from each of such canals, ditches or other works, and other essential features in relation to the reclamation of the lands tributary to such stream. And such map and statement shall be accepted as evidence in the determination of such rights by such court, and a copy of such map and statement shall be placed in file in the office of the State engineer.

Whenever the State engineer shall make such examination at the request of the court or the judge thereof, he

shall make out, in duplicate, an itemized statement showing the cost of making such examination and survey, specifying the amount of each item for labor, supplies and other expenses, and the name of the person or company entitled to payment therefor, and shall verify the same by his oath, and by the oath of any person or of persons having actual knowledge of the facts contained in such statement, and shall forward such statement to the State Auditor, who shall present the same to the State Board of Examiners and, if allowed by them, in whole or in part, the Auditor shall draw warrants on the general fund in favor of the parties entitled thereto and the Treasurer shall pay the same out of said fund. The sum so allowed by the State Board of Examiners shall be forthwith certified by the State Auditor to the judge and clerk of the court in which said suit shall be pending, and the same shall constitute a part of the costs and disbursements in said cause; and the court, at the time of entry of final judgment in said cause, shall adjudge and determine the proportionate amount of such cost of examination and survey to be paid by each of the parties to said suit; and the respective sums so apportioned, are hereby declared to be a lien upon the lands and water rights of the said parties, and the said respective sums shall be entered by the auditors of the proper counties upon the assessment roll of the county in which the property is situated, opposite the names of the parties, respectively, required to pay the same, and said sums shall be collected in the same manner and at the same time as other taxes are collected and shall be placed in a separate fund. to be remitted to the State Treasurer at the same time that other taxes are remitted, to be by said Treasurer placed in the general fund. In case the State engineer has already made such examination as provided in section 33 of this act he shall be requested by the court or the judge to furnish a certified copy of the records of the examination, which shall be brought up to date by further examination of the ground by such engineer if need be, and such certified copies of such records shall be filed and received as evidence in such case as in this section provided.

Approved on the 9th day of March, 1905.

RECEIVED

Jun 26, 2026

EXHIBIT C
1909 Idaho Sess. Laws (H.B. No. 223)

DEPARTMENT OF
WATER RESOURCES

GENERAL LAWS
OF THE
STATE OF IDAHO

PASSED AT THE TENTH SESSION

OF THE
STATE LEGISLATURE

PUBLISHED BY AUTHORITY OF THE
SECRETARY OF STATE

BOISE, IDAHO
SYMS-YORK COMPANY
PRINTERS & BINDERS
1909

charges for the use of such bridge on such terms and conditions and under such regulations as may be contracted for by said Board and the person or persons, corporation or corporations, or their assigns, building such bridge, and in case of a bridge crossing a stream or canyon on the boundary line of counties, the grant, power and authority hereinbefore mentioned must be ordered and authorized by a majority vote of the Board of County Commissioners of each county.

SEC. 2. This Act shall have force and effect in such cases only as the Board of County Commissioners find that the cost of such bridge will exceed the sum of Twenty-five Thousand Dollars (\$25,000.00).

SEC. 3. All acts or parts of acts in conflict herewith are hereby repealed.

Approved Mar. 11, 1908.

HOUSE BILL NO. 108.

AN ACT

AMENDING SECTIONS 538 AND 540 OF THE POLITICAL CODE, REVISED CODES OF IDAHO, REGARDING SUMMER NORMAL SCHOOLS.

Be It Enacted By the Legislature of the State of Idaho:

SECTION 1. That Sections 538 and 540 of the Political Code, Revised Codes of Idaho, be and the same are hereby amended to read as follows:

Section 538. The length of the annual term of each of said schools shall not be less than six (6) weeks, the date of opening of the schools to be fixed by the Commission of Summer Normal Schools.

Section 540. Said Commission is authorized to expend for the expense of conducting each of said schools, not to exceed one thousand dollars per annum of the money hereby appropriated by the State of Idaho, together with all sums received as enrollment fees.

SEC. 2. All acts and parts of acts in conflict with this Act are hereby repealed.

Approved March 11, 1909.

HOUSE BILL NO. 223.

AN ACT

PROVIDING A MEANS AND MANNER FOR THE CANCELLATION AND VOIDING OF PERMITS TO APPROPRIATE

THE PUBLIC WATERS OF THE STATE OF IDAHO IN CASES WHEREIN THE PERMIT HOLDER FAILS TO COMPLY WITH THE REQUIREMENTS OF HIS PERMIT AS TO THE DATE OF COMMENCING WORK OR THE FILING OF BOND, OR THE COMPLETION OF ONE-FIFTH OF THE CONSTRUCTION WORK WITHIN ONE-HALF THE TIME ALLOWED FOR THE COMPLETION OF THE WHOLE, OR THE FINAL COMPLETION OF THE CONSTRUCTION WORK, REPEALING SECTION 3256 OF THE CIVIL CODE OF THE REVISED CODES OF IDAHO AND DECLARING AN EMERGENCY.

Be It Enacted By the Legislature of the State of Idaho:

SECTION 1. If the holder of a permit to appropriate the public waters shall fail to comply with the requirements of his permit as to the commencing of work or the filing of bond thereunder, or the completion of one-fifth (1-5) of the construction work within one-half ($\frac{1}{2}$) the time allowed for the entire completion of such construction work, or shall fail to complete the entire construction work within the time specified in his permit, said permit may be cancelled and voided by the State Engineer as hereinafter provided at the instance of any person or persons holding any permit for the diversion of water from the same stream (such permit post dating the permit which is sought to be cancelled).

SEC. 2. Any person as above specified desiring the cancellation of a permit shall file with the State Engineer a petition clearly setting forth the facts upon which he bases his prayer for cancellation, plainly stating wherein the holder of the permit, which is sought to be cancelled, has failed to comply with the law and with the requirements of his permit. Upon receipt of such petition, the State Engineer shall issue a notice, naming the petitioner as contestant and all persons, shown by the records of the State Engineer's office to have any claim of title or interest in the permit sought to be cancelled as contestees, and requiring all contestees to appear at his office on a day to be specified therein, which day shall be not less than sixty (60), nor more than ninety (90) days from the date of the notice, and show cause, by affidavit, if any there be, why said permit should not be cancelled. Such notice shall be sent by registered mail, addressed to every person named therein at his last known post office address. On the day set for the hearing the contestant and such contestees as have filed the affidavit hereinbefore required of them, shall file such affidavits in support of their respective allegations as they may desire, and the State Engineer may require such additional

evidence and may make personally or cause to be made by an engineer whom he may designate, such personal examination of the work done under the permit in question, as he may deem necessary to enable him to render a fair decision: *Provided*, That before making or causing such examination to be made the State Engineer shall estimate the cost of such examination and shall require the contestant to deposit a sum equal to such estimate and if after the making of such examination it is found that the amount so deposited is in excess of the cost of such examination the State Engineer shall return such excess to the contestant. For the purpose of producing additional testimony in making investigations, the State Engineer may continue the hearing to such time, not exceeding thirty (30) days, as would seem to him advisable. After receipt of the affidavits and other evidence introduced, and the report of any engineer designated by him to inspect the works, the State Engineer shall as soon as practicable render his decision and on the day of rendition give notice thereof by registered mail to the contestant and all contestees whether they have appeared in the proceedings or not, at the last known postoffice address, which notice shall state that any party aggrieved by the decision shall have ninety (90) days from the date of the notice in which to commence action or appeal as hereinafter provided for, in the district court of the county in which the intended diversion point under the permit sought to be cancelled is located.

SEC. 3. Any party aggrieved by said decision may within ninety (90) days from the date of said notice, appeal to the proper district court as hereinbefore defined from the decision of the State Engineer, or may commence an action in said court for the determination of the questions involved in the proceedings before the State Engineer. In case he shall appeal the same shall be taken in the manner following:

The party aggrieved shall, within the time prescribed for the taking of such appeal, file notice with the State Engineer, stating that he appeals from the said decision to the said court, naming it, and notifying all parties in the proceedings before the State Engineer to appear at the next term of the said district court, stating the date thereof, to show cause why the said decision of the State Engineer shall not be vacated and annulled. The party appealing shall, at the same time, pay to the State Engineer a fee of three dollars (\$3.00) for the transmission of all papers, maps and proceedings before the said engineer to said district court. The State Engineer shall thereupon transmit all papers in

the proceedings before him to the clerk of the proper district court. The clerk of the district court shall demand a fee of seven dollars (\$7.00) from the appellant before filing said papers and in case the same is not paid upon demand, he shall return said papers to the State Engineer, who shall proceed as though no appeal had been taken. The appellant shall forthwith, after filing said notice of appeal, deliver personally, or send by registered mail, a copy of said notice to each person who appeared in the proceedings before the State Engineer, and serve said notice personally or by publication on all parties who did not so appear. Said personal service or service by publication shall be made in the same manner as is or may be provided by law for the service of summons in a civil action, and the order for such publication shall be made by the judge of the court to which the appeal is taken or by the probate judge of the county. Proof of service of such notice, either by affidavit or written admission, shall be filed on or before the first day of the term to which said appeal is taken. If through insufficiency of time, or for any other reason satisfactory to the judge of said District Court, it is made to appear that the appellant has not had sufficient time to perfect his appeal, or has been unable, after due negligence, to complete service of his notice of appeal, personally or by publication, prior to the first day of said term of court, the said judge may continue the cause to the next term of said court, and order an alias notice of appeal specifying the first day of the said next term as the time of appearance, and said notice shall be served personally or by publication in all respects as the original on parties not served with said original. Service shall be deemed complete, when the date of the service or the date of the last publication occurs at least ten (10) days prior to the first day of the term, to which said appeal is taken. The court shall set the appeal for hearing on a day to be fixed by him and the same shall be heard on the papers transmitted by the State Engineer. Judgment shall be rendered affirming or reversing said decision, and the papers, together with the decision of the court, shall be returned by the clerk to the State Engineer, who shall be governed in his final disposition of said contest by the said judgment.

SEC. 4. In case the party aggrieved by the decision of the State Engineer elects to bring suit instead of appealing, he shall file in the proper district court a complaint in the nature of a suit to quiet title, either to or against the permit in controversy, as the case may be, within ninety (90) days from the date of said notice of decision by the said

engineer. The clerk, on the filing of said complaint, shall forthwith notify the State Engineer of the fact that said complaint has been filed, and on receipt of said notice the State Engineer shall make a note of the fact on his records, and desist from proceeding further in the case until judgment is rendered in such suit. Said suit and all proceedings had therein, shall be prosecuted and conducted in the same manner as in actions to quiet title to real estate, the necessary changes in the pleadings being made. The party aggrieved by the decision of the State Engineer shall be plaintiff and all other parties to the proceedings before the State Engineer, whether they have appeared in such proceedings or not, shall be defendants. Maps and similar exhibits but not affidavits used before the State Engineer may be introduced in evidence on being identified as having been so used in said proceedings. On the rendition of judgment a copy thereof shall be certified to the State Engineer, who shall conform his records thereto. The action provided for in this Section may be brought without first proceeding in the office of the State Engineer in the manner prescribed in Section 2 of this Act.

SEC. 5. Either party to an appeal from the State Engineer, or to an action to quiet title as hereinbefore provided for, may appeal to the Supreme Court of the State of Idaho from the judgment of the District Court within sixty (60) days from the date of the said judgment and not afterward.

SEC. 6. In case the decision of the State Engineer shall be adverse to the contestant and in case no appeal has been taken and no action commenced in the District Court within ninety (90) days from said notice of decision, as hereinbefore provided for, said State Engineer shall cause to be spread upon the record copy of the permit in question an order of cancellation, which order shall be final and shall determine said permit to be cancelled and voided, by reason of the facts established on the hearing of the contest.

SEC. 7. Whenever the State Engineer shall deem it advisable to clear the records of his office of permits, the owners of which have failed or neglected to comply with the law and the requirements of said permits as to the date of commencing of work of the filing of bond thereunder, or the completion of one-fifth (1-5) of the construction work within one-half ($\frac{1}{2}$) the time allowed for the completion of such construction work, or the final completion of such construction work, and has reason to believe that any permit or permits are subject to cancellation as in this Act provided, he may cause the water commissioner of the

division in which the intended diversion point or points under such permit or permits are located to prepare and file in the office of the State Engineer a petition or petitions for cancellation in the manner hereinbefore provided. In such contest the water commissioner so filing the petition shall be deemed the contestant, but he shall not be held for costs or damages in any proceedings whatsoever provided for under this Act, nor shall he be required to allege that he is the owner and holder of a permit post dating the permit sought to be cancelled.

SEC. 8. Section 3256 of the Civil Code, Revised Codes of Idaho, is hereby repealed.

SEC. 9. An emergency existing therefor, this Act shall be in force from and after its passage and approval.

Approved March 11, 1909.

HOUSE BILL NO. 308.

AN ACT

LEVYING AND REQUIRING THE COLLECTION OF A SPECIAL AD VALOREM TAX FOR THE PAYMENT OF INTEREST UPON CERTAIN BONDS ISSUED BY THE STATE OF IDAHO AS THE SAME BECOMES DUE AND ALSO FOR THE PAYMENT OF THE PRINCIPAL OF SUCH BONDS AT MATURITY OR AT ANY TIME AFTER THE SAME BECOME PAYABLE, CREATING A GENERAL INTEREST AND SINKING FUND AND REPEALING THOSE PROVISIONS OF CERTAIN ACTS BY WHICH SPECIAL TAXES ARE LEVIED, OR CERTAIN MONEYS SET ASIDE FOR THE PAYMENT OF THE INTEREST UPON THE PRINCIPAL OF SUNDRY BONDS OF THE STATE OF IDAHO.

Be It Enacted By the Legislature of the State of Idaho:

SECTION 1. That for the purpose of providing moneys for the payment of the interest upon those certain bonds of the State of Idaho, hereinafter mentioned, as the same becomes due, and also for the payment of the principal of such bonds, at maturity, or at any time after such principal becomes payable under the provisions of the respective acts authorizing their issuance and sale, an ad valorem tax of one-half ($\frac{1}{2}$) mill on each one dollar (\$1.00) of the assessed valuation of all property in the State of Idaho, not exempt from taxation, is hereby levied for each and every year until all of such bonds and the interest thereon are fully paid or redeemed, that the same shall be collected

RECEIVED

Jun 26, 2026

DEPARTMENT OF
WATER RESOURCES

EXHIBIT D
1967 Idaho Sess. Laws (H.B. No. 293)

GENERAL LAWS OF THE STATE OF IDAHO



PASSED AT THE THIRTY-NINTH SESSION
OF THE STATE LEGISLATURE
1967

Convened January 2, 1967

Adjourned March 31, 1967

Idaho Official Directory and Roster of State Officials and Members
of State Legislature Follows the Index.

PUBLISHED BY AUTHORITY OF THE
SECRETARY OF STATE

EDSON H. DEAL

Secretary

Boise, Idaho

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Caldwell, Idaho

when the authority to do so is vested in the department by court order or legally authorized parental relinquishment.

SECTION 16. The provisions of this act are hereby declared to be separable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

SECTION 17. This act shall be in full force and effect from and after July 1, 1967.

Approved April 10, 1967.

CHAPTER 374

(H. B. No. 293, As Amended in the Senate)

AN ACT

AMENDING SECTION 42-202, IDAHO CODE, RELATING TO APPLICATIONS TO APPROPRIATE WATER, BY PROVIDING FOR APPROPRIATION OF GROUND WATER, BY PROVIDING FOR THE CONTENT OF APPLICATIONS, BY PROVIDING FOR A FINANCIAL STATEMENT OF THE APPLICANT ON APPLICATIONS FOR STORAGE IN EXCESS OF TEN THOUSAND ACRE FEET, BY PROVIDING FOR A FILING FEE AS PROVIDED IN THIS ACT; AMENDING SECTION 42-203, IDAHO CODE, RELATING TO NOTICE OF APPLICATIONS, HEARINGS, FINDINGS AND APPEALS, BY PROVIDING FOR PUBLICATION OF NOTICE BEFORE ISSUING ANY PERMIT, BY PROVIDING FOR CONSIDERATION OF PROTESTS AND HEARINGS UNDER THE PROVISIONS OF CHAPTER 52, TITLE 67, IDAHO CODE, BY PROVIDING FOR CONSIDERATION OF ACTIONS OF THE IDAHO WATER RESOURCE BOARD, BY PROVIDING FOR CONDITIONAL APPROVAL; AMENDING SECTION 42-204, IDAHO CODE, RELATING TO EXAMINATION OF APPLICATIONS, THE ISSUING OF PERMITS AND TIME FOR COMPLETION OF APPLICATION TO BENEFICIAL USE, BY PROVIDING FOR CORRECTIONS OR ADDITIONAL INFORMATION ON APPLICATIONS, BY PROVIDING FOR APPROVAL UNDER THE PROVISIONS OF SECTION 42-203, IDAHO CODE, BY PROVIDING FOR TIME TO COMPLETE WORKS AND APPLY WATER TO FULL BENEFICIAL USE, BY ELIMINATING PROVISIONS FOR COMPLETION OF ONE-FIFTH OF SUCH WORK IN ONE-HALF OF THE TIME,

BY PROVIDING FOR NOTICE BY THE DEPARTMENT SIXTY DAYS BEFORE PROOF IS DUE, BY PROVIDING FOR EXTENSIONS OF THE TIME ALLOWED, BY ELIMINATING THE PROVISIONS FOR A BOND IN CONNECTION WITH PERMITS FOR WATER IN EXCESS OF TWENTY FIVE CUBIC FEET PER SECOND; AMENDING SECTION 42-211, IDAHO CODE, RELATING TO AMENDMENT OF APPLICATIONS AND PERMITS, BY PROVIDING FOR APPLICATION TO AMENDMENT TO BE FILED WITH THE DEPARTMENT OF RECLAMATION, BY PROVIDING FOR APPEALS; REPEALING SECTION 42-214, IDAHO CODE, RELATING TO PROOF OF COMPLETION OF WORKS; REPEALING SECTION 42-215, IDAHO CODE, RELATING TO REPORT BY DEPARTMENT OF RECLAMATION ON COMPLETION OF WORKS AND ISSUANCE OF CERTIFICATE OF COMPLETION OF WORKS; REPEALING SECTION 42-216, IDAHO CODE, RELATING TO APPEAL OF DEPARTMENT'S DECISION IN RELATION TO COMPLETION OF WORKS; AMENDING SECTION 42-217, IDAHO CODE, RELATING TO PROOF OF APPLICATION OF WATER TO BENEFICIAL USE, BY ELIMINATING PROVISIONS FOR PUBLICATION OF NOTICE OF INTENT TO MAKE PROOF, BY ELIMINATING PROVISIONS FOR AFFIDAVITS OF WITNESSES; AMENDING SECTION 42-218, IDAHO CODE, RELATING TO EXTENSIONS OF TIME FOR PROOF OF APPLICATION TO BENEFICIAL USE, BY PROVIDING FOR EXTENSIONS WHERE LESS TIME WAS ALLOWED THAN PERMITTED IN SECTION 42-204, IDAHO CODE; AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY ADDING A NEW SECTION THERETO FOLLOWING SECTION 42-218, TO BE KNOWN AND DESIGNATED AS SECTION 42-218a, PROVIDING FOR LAPSE OF APPLICATION FOR FAILURE TO REQUEST EXTENSION OF TIME OR SUBMIT PROOF OF APPLICATION TO BENEFICIAL USE AND PROVIDING FOR NOTICE OF LAPSING; AMENDING SECTION 42-219, IDAHO CODE, RELATING TO ISSUANCE OF LICENSES OF WATER RIGHTS AND THEIR PRIORITY, BY ELIMINATING PROVISIONS FOR THE DATE OF COMPLETION OF WORKS, BY ELIMINATING PROVISIONS FOR MULTIPLE LICENSES UNDER PERMITS; AMENDING SECTION 42-221, IDAHO CODE, RELATING TO FEES OF THE DEPARTMENT OF RECLAMATION, BY PROVIDING A NEW SCHEDULE OF FEES TO BE CHARGED BY THE DEPARTMENT; REPEALING SECTION 42-232, IDAHO CODE, RELATING TO APPLICATIONS TO APPROPRIATE GROUND WATER; REPEALING SECTION 42-233, IDAHO CODE, RELATING TO EXAMINATION OF APPLICATIONS TO APPROPRIATE GROUND WATER; REPEALING SECTION 42-234, IDAHO

CODE, RELATING TO TIME OF COMPLETION OF WORK, PERMITS, AND CANCELLATION OF PERMITS TO APPROPRIATE GROUND WATER; REPEALING SECTION 42-235, IDAHO CODE, RELATING TO PROOF OF COMPLETION OF WORKS AND APPLICATION TO BENEFICIAL USE OF WATER UNDER PERMITS ISSUED TO APPROPRIATE GROUND WATER; REPEALING SECTION 42-236, IDAHO CODE, RELATING TO THE FORM AND CONTENT OF LICENSE CONFIRMING THE RIGHT TO USE GROUND WATER.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-202, Idaho Code, be, and the same is hereby amended to read as follows:

42-202. APPLICATION TO APPROPRIATE WATER — CONTENTS — FILING FEES — DISPOSITION OF FEES—RECORD OF RECEIPTS.—For the purpose of regulating the use of the public waters and of establishing by direct means the priority right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters, ~~or~~ lakes or *ground water*, or other public waters in the state of Idaho, shall, before commencing of the construction, enlargement or extension ~~or change in the point of diversion~~ of the ditch, canal, *well*, or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel, make an application to the department of reclamation for a permit to make such appropriation. Such application must set forth:

1. The name and post office address of the applicant.
2. The source of the water supply.
3. The nature of the proposed use *or uses and the period of the year during which water is to be used for such use or uses.*
4. The location *of the point of diversion* and description of the proposed ditch, channel, *well* or other work and the amount of water to be diverted and used.
5. The time required for the completion of construction of such works, ~~which in no case shall exceed five years from the date of approval of the application.~~
- ~~6. The time required for the complete and~~ application

of the water to the proposed use, ~~which must be within six years after the date set for the completion of such works.~~

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

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

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

In case the proposed right of use is for agricultural purposes, the application shall give the legal subdivisions of the land proposed to be irrigated, with the total acreage

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

No application shall be accepted and filed by the department of reclamation until the applicant shall have deposited with the department a filing fee of five dollars, if the ~~quantity of water claimed is one cubic foot or less per second, and if the quantity of water claimed is in excess of one cubic foot per second, the fee to be so deposited by the applicant shall be increased twenty five cents for each additional cubic foot or fraction thereof: provided, that where flood and winterflow water for storage purposes is claimed, the fee to be paid by applicant on the filing of the application shall be five dollars, if the quantity claimed is two hundred fifty acre feet, or less, and if the quantity of water claimed is in excess of two hundred fifty acre feet the fee to be paid by the applicant shall be increased twenty five cents for each additional two hundred fifty acre feet or fraction thereof as in this act provided.~~

All moneys received by the department of reclamation under the provisions of this chapter shall be deposited with the state treasurer, and such sums as may be necessary shall be available for the payment of the expenses of the department of reclamation incurred in carrying out the provisions of this chapter.

Such expense shall be paid by the state auditor in the manner provided by law, upon vouchers duly approved by the state board of examiners, for the work performed under the direction of the department of reclamation. The department of reclamation shall ~~make and keep in a suitable book~~ a record of all filing fees ~~received in connection with~~

applications for permits to appropriate public waters, ~~and said record shall set out:-~~

- ~~1. The name of the applicant;~~
- ~~2. The number of the application;~~
- ~~3. The quantity of water filed on;~~
- ~~4. The amount of the fee received; and~~
- ~~5. The date of receipt of said fee.~~

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

SECTION 2. That Section 42-203, Idaho Code, be, and the same is hereby amended to read as follows:

42-203. NOTICE UPON RECEIPT OF APPLICATION —~~PROTEST—~~HEARING AND FINDINGS —~~RECORD OF PROCEEDINGS—~~APPEALS.—On and after the passage, approval and effective date of this section, upon receipt of an application to appropriate the waters of this state, ~~where such application involves the development of more than five hundred theoretical horse power, or where for any other beneficial use or purpose such application involves more than twenty five cubic feet of water per second, the commissioner of reclamation, in compliance with the provisions of this section and with the rules and regulations of the department of reclamation, shall, within ten days from the time of receipt of such application, issue prepare a notice signed by the commissioner and in such form as the department may prescribe, specifying the number of the application and the date of filing thereof, the name and post-office address of the applicant, the source of the water supply, the amount of water to be appropriated, in general the nature of the proposed use, the approximate location of the point of diversion, and the point of use, stating in said notice that any protest against the approval of such application, in form prescribed by the department, shall be filed with the department within forty ten days from the last date of publication of such notice. The commissioner state reclamation engineer shall cause the notice to be served on the applicant, and upon such service, the applicant shall cause the same to be published within ten days from the date of such service in a newspaper printed within the county wherein the point of diversion lies, or in the event no newspaper is printed in said county, then in a newspaper of general circulation therein. This notice shall be published at least once each week for three two~~

successive weeks. ~~Applicant shall cause due proof of such publication to be filed in the department.~~

Any person, firm, association or corporation concerned in any such application may, within the time allowed in the notice of application, file with said ~~commissioner~~ *state reclamation engineer* a written protest against the approval of such application, which protest shall state the name and address of protestant and shall be signed by him or by his agent or attorney and shall clearly set forth his objections to the approval of such application. Hearing upon the protest so filed shall be held within sixty days from ~~the issuance of notice of application~~ *the date such protest is received*. Notice of this hearing shall be given by mailing notice not less than ten days before the date of hearing and shall be forwarded to both the applicant and the protestant, or protestants, by ~~registered~~ *certified* mail. Such notice shall state the names of the applicant and protestant, or protestants, the time and place fixed for the hearing and such other information as the ~~commissioner~~ *state reclamation engineer* may deem advisable. In the event that no protest is filed, then the ~~commissioner~~ *state reclamation engineer* may forthwith approve the application, providing the same in all respects conforms with the requirements of this chapter, and with the regulations of the department of reclamation.

Such hearing shall be conducted before the ~~commissioner of reclamation~~ *state reclamation engineer* under rules and regulations to be promulgated by the department of reclamation *under the provisions of Chapter 52, Title 67, Idaho Code*. ~~Technical rules of pleading and evidence need not be applied. The commissioner may adjourn such hearing from time to time upon application of the applicant or the protestant, or protestants, but no adjournment shall exceed a reasonable length of time. Any person or corporation who has formally appeared in said hearing shall have the right to subpoena witnesses who shall testify under oath at said hearing. The commissioner may, in his discretion, appoint an engineer or other competent person to make an examination and investigation of all facts material and relevant in behalf of the State and make report of his findings, in person, under oath or by affidavit, at the time of the hearing. The commissioner shall have authority to administer oaths to such witnesses as appear before him to give testimony, provided each of the parties appearing at said hearing shall pay in advance to the commissioner the costs of taking and transcribing the testimony.~~

~~of such witnesses as they may desire to produce, or of such evidence as may be offered by them, to be estimated by the commissioner at or before the time set for the hearing, together with any other costs which may be incurred at such hearing. Any party desiring a transcript of the proceedings at such hearing shall be required to pay any additional costs that may be incurred therefor. The commissioner~~ *state reclamation engineer* shall find and determine from the evidence presented what use or uses the waters sought to be appropriated can be and are intended to be applied, and where such proposed use is such that it will reduce the quantity of water under existing water rights, or that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or where it appears to the satisfaction of the department that such application is not made in good faith, is made for delay or speculative purposes, that the applicant has not sufficient financial resources with which to complete the work involved therein, ~~or if a renewal permit, that such applicant has not proceeded diligently in applying the waters involved therein to any beneficial use or purpose or that approval of applications referred to the Idaho water resource board under the provisions of Section 42-1737 would not be in the public interest or would conflict with the establishment or execution of a state water plan or policy, the commissioner~~ *state reclamation engineer* may reject such application and refuse issuance of permit therefor, or may partially approve and grant permit for a less quantity of water than applied for, ~~or may grant permit upon conditions. Upon the approval of any application in whole or in part, the fees prescribed by section 42-202 shall be paid to the department prior to the issuance of any permit thereon.~~ The provisions of this section shall apply to any boundary stream between this and any other state in all cases where the water sought to be appropriated has its source largely within the state, irrespective of the location of any proposed power generating plant.

~~A full and complete record of all proceedings had before the commissioner on any hearing had and all testimony shall be taken down by a reporter appointed by the commissioner, and the parties shall be entitled to be heard in person or by attorney or by agent. Any person or corporation who has formally appeared at the hearing, feeling aggrieved by the judgment of the commissioner~~ *state reclamation engineer* may appeal therefrom to the district court of the county in which the point of diversion of the proposed appropriation shall be situated. Such appeal shall be taken

within sixty days from the ruling or action of the ~~commissioner~~ *state reclamation engineer* and shall be perfected ~~when~~ the appellant shall have filed in the office of the clerk of such district court a copy of the application, certified by the ~~commissioner~~ *state reclamation engineer* as a true copy, together with the petition to such court setting forth the appellant's reason for appeal. A copy of such petition shall be served upon all persons or corporations adversely affected who appeared at the hearing. Such appeal shall be heard and determined upon such competent proof as shall be adduced or offered by the department of reclamation or some person duly authorized in its behalf. ~~That~~ Upon hearing of said cause, the district court shall have jurisdiction to reverse and remand said cause for further hearing before the ~~commissioner of reclamation~~ *state reclamation engineer* or dismiss said cause, or may affirm the ruling of the ~~commissioner of reclamation~~ *state reclamation engineer*, or may modify the decision appealed from in any manner which the said district judge shall deem to comport with equity and justice.

A copy of said judgment shall be transmitted to the ~~commissioner of reclamation~~ *state reclamation engineer* within five days after its rendition.

An appeal by any party aggrieved lies from a final judgment of the district court in said cause to the Supreme Court of the state of Idaho and the practice and procedure that now obtains or that may be enacted hereafter by law and the rules of the Supreme Court of the state shall apply in all appeals from any final judgment of the district court as aforesaid.

SECTION 3. That Section 42-204, Idaho Code, be, and the same is hereby amended to read as follows:

42-204. EXAMINATION — PERMIT — COMMENCEMENT OF WORK — BOND — EXTENSIONS.—On receipt of the application, which shall be of a form prescribed by the department of reclamation, it shall be the duty of that department to make an endorsement thereon of the date of its receipt, and to make a record of such receipt in some suitable book in its office. ~~It shall be the duty of the department~~ to examine said application and ascertain if it sets forth all the facts necessary to show the location, nature and amount of the proposed use. If upon such examination the application is found defective, it shall be the duty of the department of reclamation to return the same for correction ~~within thirty days from the receipt of such application, and~~

~~the date of such return, with the reason therefor, shall be endorsed on the application, and a record made thereof in a book kept for recording the receipt of such applications or to correspond with the applicant to obtain the needed information or amendments. A like record shall be kept of the date of the return of corrected applications, but such corrected applications shall be returned to the department of reclamation within a period of sixty days from the date endorsed thereon by the department: provided, that if it be returned after such period of sixty days such corrected application shall be treated in all respects as an original application. If the application is returned to the applicant or the department shall request additional information and the applicant fails to return the corrected application or to supply the needed information within thirty days, the department may void the record of said application and notify the applicant of such action. If the corrected application is returned or the information is supplied after thirty days, such corrected application shall be treated in all respects as a new application, and the priority of the right initiated shall be determined by the date of receipt, in the office of the department, of the corrected application or additional information; provided, that upon request, and good cause appearing therefor, the state reclamation engineer may grant an extension of time within which to return the corrected application or supply needed information. All applications which shall comply with the provisions of this chapter and with the regulations of the department of reclamation shall be numbered consecutively in such manner as will aid in their identification, and shall be recorded in a suitable book kept for that purpose, and it shall be the duty of the department to approve all applications, made in proper form, which contemplate the application of water to a beneficial use: provided, that the department may deny any such application, or may refuse to grant a renewal of same where it appears to the satisfaction of the department that such application is not made in good faith, is made for delay or speculative purposes, that the applicant has not sufficient financial resources with which to complete the work involved therein, or if a renewal permit that such applicant has not proceeded diligently in applying the waters involved therein to any beneficial use or purpose, or that the water supply itself is insufficient for the purpose for which it is sought to be appropriated partially approve and grant permit for a lesser quantity of water than applied for, or may grant permit upon conditions as provided in the preceding section.~~

The approval of an application shall be endorsed thereon,

and a record made of such endorsement in the department of reclamation. The application so endorsed shall constitute a permit, and a copy thereof shall be returned to the applicant, and he shall be authorized, on receipt thereof, to proceed with the construction of the necessary works for the diversion of such water, and to take all steps required to apply the water to a beneficial use and perfect the proposed appropriation. In its endorsement of approval on any application the department shall require that actual construction work *and application of the water to full beneficial use* shall be complete within a period of five years from the date of such approval, ~~and that one fifth of such work of construction shall be done within one half the period of time allowed for the completion of such works,~~ but may limit the application to a less period of time for the completion of such works than is asked for, ~~and likewise the perfecting of the proposed right for a less period than is named~~ in the application, and such endorsement shall give the date when such work shall be completed, ~~also the date when beneficial application of the water to be diverted by such works shall be made for the purposes intended;~~ *Sixty days before the date set for the completion of the appropriation of water under any permit, the department shall forward a notice to the applicant by certified mail at his address of record of the date for such completion, which said notice shall advise the applicant of the necessity of submitting an affidavit of completion or a request for an extension of time on or before said date;* Provided that:

1. In cases where the applicant is prevented from proceeding with his work by his failure to obtain necessary consent or final approval or rejection from the federal government because of the pendency of an application for right of way or other matter within the jurisdiction of the United States, or by litigation of any nature which might bring his title to said water in question, the department of reclamation upon proper showing of the existence of any such condition, and being convinced that said applicant is proceeding diligently and in good faith, shall extend the time so that the amount of time lost by such delays shall be added to the time given in the original permit for each and every action required.

2. The time for completion of works *and application of the water to full beneficial use* under any permit involving the construction of a reservoir of more than 200,000 acre feet capacity or for the appropriation of water to be impounded in such reservoir of more than 200,000 acre feet

capacity, or a diversion of more than 25,000 acre feet in one (1) irrigation season for a project of no less than 5,000 acres, may upon application to the state ~~commissioner of~~ reclamation *engineer* supported by a showing that additional time is needed on account of the time required for organizing, financing and constructing works of such large size, be extended by the state ~~commissioner of~~ reclamation *engineer* for an additional period of seven (7) years, but not to exceed twelve (12) years in all from the date of permit, ~~and that extension of time for completion of works under this proviso shall automatically extend the time for completion of the twenty percent (20%) required to be done in half (1/2) the time, and for making proof of application of water to beneficial use:~~ Provided, that no such extension shall be granted unless the applicant for such extension shall show that there has been actually expended toward the construction of said reservoir or diversion (including expenditures for the purchase of rights of way and property in connection therewith) at least \$100,000.

3. In connection with permits held by the United States, *or the Idaho water resource board*, whether acquired as the original applicant, by assignment or otherwise, the state reclamation engineer may extend the time for completion of the works *and application of the water to full beneficial use* for such additional period or periods of time as he may deem necessary upon application supported by a showing that such additional time is required by reason of the status of plans, authorization, construction fund appropriations, construction, or any arrangements which ~~the secretary of the interior or his authorized representative has~~ are found to be requisite to completion of the construction of such works. ~~The extension of time for completion of works under this provisions shall automatically extend the time for completion of the one fifth required to be done in half the time, and for making proof of application of water to beneficial use.~~

4. *In all other situations not governed by these provisions the department may grant one extension of time, not exceeding 5 years beyond the date originally set for completion of works and application of the water to full beneficial use, upon request for extension received on or before the date set for completion, provided good cause appears therefor.*

Any applicant feeling himself aggrieved by the endorsement made by the department of reclamation upon his application may appeal therefrom to the district court of the

county in which the point of diversion of the proposed appropriation shall be situated. Such appeal shall be taken within sixty days from the return of a *copy* of the application by the department of reclamation, and shall be perfected when the applicant shall have filed in the office of the clerk of such district court a copy of the application, certified by the department of reclamation as a true copy, together with the petition to such court, setting forth the appellant's reason for appeal. Such appeal shall be heard and determined upon such competent proof as shall be adduced by the appellant, and such like proof as shall be adduced by the department or some person duly authorized in its behalf.

~~The maps accompanying such applications must contain the name of the proposed work, and, when it is possible, the number of the permit. They must in addition, have the name or names of the applicant or applicants, and when the proposed works have a capacity of more than twenty-five second feet, a certificate of the surveyor giving the date of the survey, his name and post office address. It shall be the duty of the department of reclamation to examine these maps or plats, and to ascertain if they agree with the description contained in the application, and when found to agree, to approve the same, file one copy in its office and return the other, approved, to the party filing them.~~

Every holder of a permit which shall be issued under the terms and conditions of an application filed hereafter appropriating twenty-five cubic feet or less per second must, within sixty days from the date upon which said permit issues from the office of the department of reclamation, commence the excavation or construction of the works by which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted through no fault of the holder of such permit by circumstances, over which he has no control.

~~Every holder of a permit, except the United States acting through the bureau of reclamation, of the department of the interior, which shall be issued under the terms and conditions of an application filed hereafter, appropriating more than twenty-five cubic feet per second must, within sixty days from the date upon which the said permit issues from the office of the department of reclamation, file with the department a bond in an amount to be fixed by the department, not exceeding \$10,000, in form and sufficiency of sureties to be approved by the department, conditioned upon faithfully carrying to completion the works of diversion as specified in said permit; the amount of the bond to be~~

~~fixed by the department within the limits hereinbefore prescribed.~~

The holder of any permit who shall fail to comply with the provisions of this section within the time or times specified shall be deemed to have abandoned all rights under his permit.

SECTION 4. That Section 42-211, Idaho Code, be, and the same is hereby amended to read as follows:

~~42-211. AMENDED APPLICATION AND OR PERMIT—APPEALS. Whenever application has been made for a permit to appropriate water for irrigation, or whenever a permit has been issued and the applicant or permit holder desires to change the place of intended use of the water or correct the description of the lands to be irrigated, he shall file a request therefor with the department of reclamation, which shall thereupon note the application on the record of the original application or permit, and shall issue a new permit, noting the amendment therein, and specifying that it is issued as an amendment to the original. The right to the use of water under the amended permit shall date from the time of the original permit: provided, an additional amount of water is not asked for, and except where the rights of others are adversely affected by such changes, in which case it shall date from the filing of the application for the amendment. Whenever a permit has been issued pursuant to the provisions of this act, and the permit holder desires to change the place, period, or nature of the intended use, or make other substantial changes in the method of diversion or proposed use or uses of the water, he shall file an application for amendment upon forms to be furnished by the department of reclamation, together with the statutory fee for filing and recording same, and upon receipt thereof it shall be the duty of the department of reclamation to examine same and if approval thereof would not result in the diversion and use of more water than originally permitted and if the rights of others will not be adversely affected thereby, the state reclamation engineer shall approve said application and return an approved copy to the permit holder. The state reclamation engineer shall give such notice to other affected water users as he deems appropriate and may grant the amendment, in whole or in part or upon conditions, or may deny same. Notice of partial approval or conditions or denial of an amendment shall be forwarded to the applicant by certified mail and shall be subject to judicial review as hereafter provided. The priority of the right established pursuant to a permit which has~~

been amended under these provisions shall date from the date of the original application for permit, provided the permit holder has complied with other provisions of this act.

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

Any person or persons feeling themselves aggrieved by the determination of the department of reclamation in approving or rejecting an application to amend an application or permit as provided in this act, may, within sixty (60) days from the date of the refusal or approval, appeal to the district court for the county in which the use of water is being made. Such appeal shall be perfected when the appellant shall have given written notice of such appeal to the department of reclamation and shall have filed in the office of the clerk of the district court a copy of the application for amendment, certified by the department as true copy and having endorsed thereon the order of the department granting or refusing to grant same, together with a petition to such court setting forth the appellant's reason for such appeal and evidence of service of notice of appeal on the department. Such appeal shall be heard and determined upon such competent proof as shall be adduced by the appellant, such like proofs as shall be adduced by the department of reclamation, and other parties appearing in said action in said district court.

SECTION 5. That Section 42-214, Idaho Code, be, and the same is hereby repealed.

SECTION 6. That Section 42-215, Idaho Code, be, and the same is hereby repealed.

SECTION 7. That Section 42-216, Idaho Code, be, and the same is hereby repealed.

SECTION 8. That Section 42-217, Idaho Code, be, and the same is hereby amended to read as follows:

42-217. PROOF OF APPLICATION TO BENEFICIAL USE.—On or before the date set for the beneficial use of waters diverted under the provisions of this chapter, ~~which in no case shall be more than six years from the date set for the completion of any canal or other works designed to divert and conduct the public waters of the state to a place of use, or the date for the enlargement or extension or the completion of works for such purpose,~~ the person or persons using such water shall submit proof that they have used such water for the beneficial purpose for which the diversion of such water was intended. ~~Such user of such water shall first notify the department of reclamation that he is prepared to prove that such water has been beneficially applied to the purpose for which it was intended. Such notice to the department proof~~ shall state:

1. The name and post-office address of such user.
2. The use to which such water has been applied.
3. The amount used *together with a statement of the manner in which the quantity of water was determined and the qualifications of the person making such determination.*
4. The place of such use, and if for irrigation, the description by legal subdivisions of the land so irrigated.
5. The name of the canal or ditch or other works by which such water is conducted to such place of use.
6. The relation or understanding upon which the right to take water from such works is based.
7. The source of supply from which such water is diverted; ~~and,~~
8. The date of the priority which such user is prepared to establish; ~~and,~~
9. *Such other information as shall be required by the blank form furnished by the department.*

~~Such notice and such~~ written proof as may be required to be submitted by such user shall be upon forms furnished by the department of reclamation, and such statements shall be sworn to by such user ~~and be supported by the affidavits of two disinterested witnesses.~~

Upon receipt of such ~~notice proof~~ by the department of

reclamation the department shall ~~order its publication in some newspaper designated by such user and published in the county in which the major portion of such land is situated, for a period of four weeks, and shall fix a date when such proof shall be submitted and name a place where proof will be received. Such date shall be subsequent to the completion of such publication, and the department shall, on or before the date set for such final proof, examine, or cause to be examined:~~

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

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

The department or the person making such examination under the direction of the department shall ~~also, on the date set for such final proof, receive the written statements made by the person or persons submitting such proof, and the affidavits of the witnesses, which statements and affidavits, together with~~ prepare and file a report of the investigation which the department is instructed to make, shall be forwarded at once to the department: provided, that whenever several of such final proofs shall be offered from the same locality, the department shall arrange, whenever practicable, to have such notices for publication combined, and to have such examinations made by the same person and on the same date, as near as may be, with a view of minimizing the expense of taking such proofs, and such publication shall be at the expense of the person or persons submitting such proof: provided also, that whenever irrigation systems cover more than 25,000 acres, ~~that proof of beneficial use may be made at any time within a period of ten years from the date set for the completion of the works, and in all such cases, proof of beneficial use may be made by the persons, company or corporation constructing the irrigation works on behalf of the project, and in such cases, the lands upon which the water has been used need not be described by legal subdivisions, but may be described generally as the lands under the irrigation system, and it shall only be necessary to show in such cases that the quantity of water beneficially applied for irrigation has been applied within the limits of the project.~~

SECTION 9. That Section 42-218, Idaho Code, be, and the same is hereby amended to read as follows:

42-218. PROOF OF APPLICATION TO BENEFICIAL USE—EXTENSION OF TIME.—Whenever a less period of time than the maximum prescribed in ~~the preceding section 42-204~~ has been granted by the department of reclamation for making proof of beneficial use, upon a satisfactory showing being made by the permit holder, the department can extend the time for making such proof of beneficial use, but in no case shall such extension or extensions, including the original time granted, exceed the maximum prescribed in ~~the preceding section 42-204~~. The department shall grant no extension unless the application therefor be filed with it prior to the date upon which the proof of beneficial use was required to be made under the original terms of the permit, ~~or within thirty days after such date.~~

SECTION 10. That Chapter 2, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a new section following Section 42-218, to be known and designated as Section 42-218a, Idaho Code, and to read as follows:

42-218a. LAPSE OF APPLICATION FOR FAILURE TO REQUEST EXTENSION OR SUBMIT PROOF OF APPLICATION TO BENEFICIAL USE — NOTICE OF LAPSE.—A permit upon which the proof of beneficial use has not been submitted, or a request for extension of time has not been received on or before the date set for such proof, shall lapse and be of no further force nor effect. Notice of said lapsing shall be sent by the department to the applicant at the address of record by regular mail provided: that within sixty days after such notice of lapsing the department may, upon a showing of reasonable cause, reinstate the permit with the priority date advanced a time equal to the number of days that said showing is subsequent to the date set for proof. The original priority date of a lapsed permit shall not be reinstated except upon a showing of error or mistake of the department.

SECTION 11. That Section 42-219, Idaho Code, be, and the same is hereby amended to read as follows:

42-219. ISSUANCE OF LICENSE — PRIORITY. — Upon receipt by the department of reclamation of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully com-

plied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use. Such license shall be issued under the seal of the office of the department of reclamation, and shall state the name and post-office address of such user, the purpose for which such water is used, the quantity of water which may be used, which in no case shall be an amount in excess of the amount that has been beneficially applied. If such use is for irrigation, such license shall give a description, by legal subdivisions, of the land which is irrigated by such water. Such license shall bear the date of the application for, and the number of, the permit under which the works from which such water is taken were constructed; ~~the date of the completion of such works, the capacity of such works on such date of completion; the date when proof of beneficial use of such water was made, and also the date of the priority of the right confirmed by such license, which shall be the date of the application for the permit for the construction of the works from which such water is taken, and to which such right relates provided there has been no loss of priority under the provisions of this chapter.~~ ~~All the licenses which relate to the same permit and which bear the same date of priority shall be numbered alike, and shall belong to the same class, and all the rights relating to the same sources of supply shall be numbered numerically in the order of the priority of such rights:~~ provided, that whenever proof of the beneficial application of water shall be offered subsequent to the date stated in the permit, or in any authorized extension thereof, when such beneficial application shall be made, such proof shall be taken, *if received by the department within the sixty days prescribed in the preceding paragraph*, and if satisfactory to the department of reclamation, a license shall be issued by the department the same as though such proof had been made before such date fixed for such beneficial application, but the priority of the right established by such proof shall not date back to the date of the application for the permit to which such right would relate under the provisions of this chapter, but shall bear a date which shall be subsequent to the date of such application, a time equal to the difference between the date set in such permit, or extension thereof, for such beneficial application of such water and the date of such proof: provided, however, that upon irrigation projects where the canals constructed cover an area of 25,000 acres or more, or within irrigation districts organized and existing as such under the laws of the state of Idaho, the license

issued shall be issued to the persons, association, company or corporation or irrigation district owning the project, and final proof may be made by such owners for the benefit of the entire project and it shall not be necessary to give a description of the land by legal subdivisions but a general description of the entire area under the canal system shall be sufficient, and the water diverted and the water right acquired thereby shall relate to the entire project and the diversion of the water for the beneficial use under the project at any time within a period of ten years shall be sufficient proof of beneficial use without regard as to whether each and every acre under the project is irrigated or not.

In the event that the department shall find that the applicant has not fully complied with the law and the conditions of permit, it may issue a license for that portion of the use which is in accordance with the permit, or may refuse issuance of a license and void the permit. Notice of such action shall be forwarded to the permit holder by certified mail and shall be subject to appeal under the provisions of Section 42-224, Idaho Code.

SECTION 12. That Section 42-221, Idaho Code, be, and the same is hereby amended to read as follows:

~~42-221. FEES OF DEPARTMENT.—Upon the issuance of a certificate by the department of reclamation in relation to the completion of any canal, ditch or other works constructed under the provisions of this chapter, a fee, to cover the expense of the examination of such works, shall be paid to the department by the person or persons submitting the proof of such completion. For all ditches or canals having a capacity of ten cubic feet per second or less, such fee shall be five dollars. For all ditches or canals having a capacity of more than ten cubic feet per second, such fee shall be at the rate of five dollars for the first ten second feet and thirty cents for each additional second foot of such capacity. For examining the ditches and lands of the user at the time of making final proof of the application of water, a fee of two dollars shall be paid to the department, at the time of making such proof, for each legal subdivision of forty acres or fraction thereof to which such water may have been applied. For examining the ditches or other works and the place where such water is used, when such use is not for irrigation, a fee of five dollars shall be paid to the department at the time of making such examination and taking the proof of such use: provided, that in the case of water used for irrigation, where two~~

~~or more users whose lands join or who take water from the same common lateral, join in the publication of the notice of their intention to make such proof of application, a fee of one dollar for each legal subdivision of forty acres or fraction thereof receiving such water shall be paid to the department at the time of making such proof; provided further, that in the case of water used for irrigation, where the right sought is additional to an existing water right, and where the department of reclamation is not required to make an examination of the ditches or the lands of the user in order to determine that the water has been applied to a beneficial use, no fee for examining the ditches or lands of the user shall be paid to the department; and this proviso shall apply to rights already initiated, as well as rights to be hereafter acquired. For making certified copies of any papers on file in his office, the department shall charge a fee at the rate of twenty cents per folio. The department of reclamation shall collect the following fees which shall constitute a fund to pay for legal advertising, the publication of public notices and for investigations required of the department in connection with the issuance of permits and licenses as provided in this chapter:~~

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

1. *For a quantity of 0.5 c.f.s. or less or for a storage volume of 50 acre feet or less*\$ 10.00
2. *For a quantity greater than 0.5 c.f.s. but not exceeding 1.0 c.f.s. or for a storage volume greater than 50 acre feet but not exceeding 100 acre feet*\$ 20.00
3. *For a quantity greater than 1.0 c.f.s but not exceeding 17 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 1,700 acre feet*\$ 20.00
plus \$5.00 for each additional c.f.s or part thereof or 100 acre feet or part thereof over the first 1.0 c.f.s. or 100 acre feet.
4. *For a quantity in excess of 17.0 c.f.s. or 1,700 acre feet*\$100.00

B. For filing application for change of point of diversion, place, period, or nature of use of water; for exchange of water; or for an extension of time within which to resume the use of water under a vested right:

1. *For a quantity of 0.5 c.f.s. or less or for a storage volume of 50 acre feet or less*\$ 10.00
2. *For all other amounts*\$ 20.00
- C. *For filing application for amendment of permit*\$ 5.00
- D. *For filing claim to use right*\$ 10.00
- E. *For readvertising application for permit, change, exchange, or extension to resume use*\$ 10.00
- F. *For certification, each document*\$ 1.00
- G. *For making photo copies of office records, maps and documents for public use* A reasonable charge as determined by the department.

All fees received by the department of reclamation under the provisions of this chapter shall ~~be recorded in a fee book, and shall~~ at once be turned over to the state treasurer and placed in the general fund of the state.

SECTION 13. That Section 42-232, Idaho Code, be, and the same is hereby repealed.

SECTION 14. That Section 42-233, Idaho Code, be, and the same is hereby repealed.

SECTION 15. That Section 42-234, Idaho Code, be, and the same is hereby repealed.

SECTION 16. That Section 42-235, Idaho Code, be, and the same is hereby repealed.

SECTION 17. That Section 42-236, Idaho Code, be, and the same is hereby repealed.

Approved April 10, 1967.

CHAPTER 375

(H. B. No. 361 As Amended)

AN ACT

REPEALING AND REENACTING SECTION 31-3113, IDAHO CODE, RELATING TO SALARIES OF PROSECUTING ATTORNEYS, BY FIXING THE SALARIES OF PROSECUTING

RECEIVED

Jun 26, 2026

DEPARTMENT OF
WATER RESOURCES

EXHIBIT E
1982 Idaho Sess. Laws (S.B. No. 1246)

GENERAL LAWS
OF THE
STATE OF IDAHO



PASSED BY
THE SECOND REGULAR SESSION OF THE
FORTY-SIXTH IDAHO LEGISLATURE

Convened January 11, 1923
Adjourned March 24, 1922

Idaho Official Directory and Roster of State Officials and Members
of State Legislature follows the Index.

PUBLISHED BY AUTHORITY OF THE
SECRETARY OF STATE

PETE T. CENARRUSA
Secretary of State
Boise, Idaho

Printed by The Caxton Printers, Ltd.
Caldwell, Idaho



SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to November 1, 1981.

Approved March 15, 1982.

CHAPTER 62
(S.B. No. 1246)

AN ACT

RELATING TO APPLICATIONS FOR APPROPRIATION OF WATER; AMENDING SECTION 42-204, IDAHO CODE, TO PROVIDE A PERIOD OF ONE YEAR FOR THE COMMENCEMENT OF WORK UPON A PERMIT AND DIRECTING NOTIFICATION OF HOLDERS OF EXISTING PERMITS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-204, Idaho Code, be, and the same is hereby amended to read as follows:

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

contemplate the application of water to a beneficial use: provided, that the department may deny any such application, or may partially approve and grant permit for a lesser quantity of water than applied for, or may grant permit upon conditions as provided in the preceding section.

The approval of an application shall be indorsed thereon, and a record made of such indorsement in the department of water resources. The application so indorsed shall constitute a permit, and a copy thereof shall be returned to the applicant, and he shall be authorized, on receipt thereof, to proceed with the construction of the necessary works for the diversion of such water, and to take all steps required to apply the water to a beneficial use and perfect the proposed appropriation. In its indorsement of approval on any application the department shall require that actual construction work and application of the water to full beneficial use shall be complete within a period of five (5) years from the date of such approval, but may limit the application to a less period than is named in the application, and such indorsement shall give the date when beneficial application of the water to be diverted by such works shall be made. Sixty (60) days before the date set for the completion of the appropriation of water under any permit, the department shall forward a notice to the applicant by certified mail at his address of record of the date for such completion, which said notice shall advise the applicant of the necessity of submitting an affidavit of completion or a request for an extension of time on or before said date; Provided that:

1. In cases where the applicant is prevented from proceeding with his work by his failure to obtain necessary consent or final approval or rejection from the federal government because of the pendency of an application for right of way or other matter within the jurisdiction of the United States, or by litigation of any nature which might bring his title to said water in question, the department of water resources upon proper showing of the existence of any such condition, and being convinced that said applicant is proceeding diligently and in good faith, shall extend the time so that the amount of time lost by such delays shall be added to the time given in the original permit for each and every action required.

2. The time for completion of works and application of the water to full beneficial use under any permit involving the construction of a reservoir of more than two hundred thousand (200,000) acre feet capacity or for the appropriation of water to be impounded in such reservoir of more than two hundred thousand (200,000) acre feet capacity, or a diversion of more than twenty-five thousand (25,000) acre feet in one (1) irrigation season for a project of no less than five thousand (5,000) acres, may upon application to the director of the department of water resources supported by a showing that additional time is needed on account of the time required for organizing, financing and constructing works of such large size, be extended by the director of the department of water resources for an additional period of seven (7) years, but not to exceed twelve (12) years in all from the date of permit: Provided, that no such extension shall be granted unless the applicant for such extension shall show that there has been actually expended toward the construction of said reservoir or diversion (including expenditures for the purchase of rights of way and

property in connection therewith) at least one hundred thousand dollars (\$100,000).

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

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

Any applicant feeling himself aggrieved by the indorsement made by the department of water resources upon his application may request a hearing before the director in accordance with section 42-1701A(3), Idaho Code, for the purpose of contesting the indorsement and may seek judicial review pursuant to section 42-1701A(4), Idaho Code, of any final decision of the director following the hearing.

Every holder of a permit which shall be issued under the terms and conditions of an application filed hereafter appropriating twenty-five (25) cubic feet or less per second must, within ~~sixty-(60)-days~~ one (1) year from the date upon which said permit issues from the office of the department of water resources, commence the excavation or construction of the works by which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted through no fault of the holder of such permit by circumstances, over which he has no control.

The director shall, prior to July 1, 1982, notify holders of permits existing on the effective date of the act of the provisions of this act. Notice shall be by mail to the permit holder's last known address. Existing permit holders shall have one (1) year from the date of mailing to meet the provisions of this section.

The holder of any permit who shall fail to comply with the provisions of this section within the time or times specified shall be deemed to have abandoned all rights under his permit.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 15, 1982.

IN THE SENATE

SENATE BILL NO. 1246

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

RELATING TO APPLICATIONS FOR APPROPRIATION OF WATER; AMENDING SECTION 42-204, IDAHO CODE, TO PROVIDE A PERIOD OF ONE YEAR FOR THE COMMENCEMENT OF WORK UPON A PERMIT AND DIRECTING NOTIFICATION OF HOLDERS OF EXISTING PERMITS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-204, Idaho Code, be, and the same is hereby amended to read as follows:

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

The approval of an application shall be indorsed thereon, and a record made of such indorsement in the department of water resources. The application so indorsed shall constitute a permit, and a copy thereof shall be returned to the applicant, and he shall be authorized, on receipt thereof, to proceed with the construction of the necessary works for the diversion of such water, and to take all steps required to apply the water to a bene-

1 ficial use and perfect the proposed appropriation. In its indorsement of
2 approval on any application the department shall require that actual con-
3 struction work and application of the water to full beneficial use shall be
4 complete within a period of five (5) years from the date of such approval,
5 but may limit the application to a less period than is named in the appli-
6 cation, and such indorsement shall give the date when beneficial applica-
7 tion of the water to be diverted by such works shall be made. Sixty (60)
8 days before the date set for the completion of the appropriation of water
9 under any permit, the department shall forward a notice to the applicant by
10 certified mail at his address of record of the date for such completion,
11 which said notice shall advise the applicant of the necessity of submitting
12 an affidavit of completion or a request for an extension of time on or
13 before said date; Provided that:

14 1. In cases where the applicant is prevented from proceeding with his
15 work by his failure to obtain necessary consent or final approval or rejec-
16 tion from the federal government because of the pendency of an application
17 for right of way or other matter within the jurisdiction of the United
18 States, or by litigation of any nature which might bring his title to said
19 water in question, the department of water resources upon proper showing of
20 the existence of any such condition, and being convinced that said appli-
21 cant is proceeding diligently and in good faith, shall extend the time so
22 that the amount of time lost by such delays shall be added to the time
23 given in the original permit for each and every action required.

24 2. The time for completion of works and application of the water to
25 full beneficial use under any permit involving the construction of a reser-
26 voir of more than two hundred thousand (200,000) acre feet capacity or for
27 the appropriation of water to be impounded in such reservoir of more than
28 two hundred thousand (200,000) acre feet capacity, or a diversion of more
29 than twenty-five thousand (25,000) acre feet in one (1) irrigation season
30 for a project of no less than five thousand (5,000) acres, may upon appli-
31 cation to the director of the department of water resources supported by a
32 showing that additional time is needed on account of the time required for
33 organizing, financing and constructing works of such large size, be
34 extended by the director of the department of water resources for an addi-
35 tional period of seven (7) years, but not to exceed twelve (12) years in
36 all from the date of permit: Provided, that no such extension shall be
37 granted unless the applicant for such extension shall show that there has
38 been actually expended toward the construction of said reservoir or diver-
39 sion (including expenditures for the purchase of rights of way and property
40 in connection therewith) at least one hundred thousand dollars (\$100,000).

41 3. In connection with permits held by the United States, or the Idaho
42 water resource board, whether acquired as the original applicant, by
43 assignment or otherwise, the director of the department of water resources
44 may extend the time for completion of the works and application of the
45 water to full beneficial use for such additional period or periods of time
46 as he may deem necessary upon application supported by a showing that such
47 additional time is required by reason of the status of plans, authoriza-
48 tion, construction fund appropriations, construction, or any arrangements
49 which are found to be requisite to completion of the construction of such
50 works.

51 4. In all other situations not governed by these provisions the
52 department may grant one (1) extension of time, not exceeding five (5)

1 years beyond the date originally set for completion of works and applica-
2 tion of the water to full beneficial use, upon request for extension
3 received on or before the date set for completion, provided good cause
4 appears therefor.

5 Any applicant feeling himself aggrieved by the indorsement made by the
6 department of water resources upon his application may request a hearing
7 before the director in accordance with section 42-1701A(3), Idaho Code, for
8 the purpose of contesting the indorsement and may seek judicial review pur-
9 suant to section 42-1701A(4), Idaho Code, of any final decision of the
10 director following the hearing.

11 Every holder of a permit which shall be issued under the terms and
12 conditions of an application filed hereafter appropriating twenty-five (25)
13 cubic feet or less per second must, within ~~sixty-(60)-days~~ one (1) year
14 from the date upon which said permit issues from the office of the depart-
15 ment of water resources, commence the excavation or construction of the
16 works by which he intends to divert the water, and must prosecute the work
17 diligently and uninterruptedly to completion, unless temporarily inter-
18 rupted through no fault of the holder of such permit by circumstances, over
19 which he has no control.

20 The director shall, prior to July 1, 1982, notify holders of permits
21 existing on the effective date of the act of the provisions of this act.
22 Notice shall be by mail to the permit holder's last known address. Existing
23 permit holders shall have one (1) year from the date of mailing to meet the
24 provisions of this section.

25 The holder of any permit who shall fail to comply with the provisions
26 of this section within the time or times specified shall be deemed to have
27 abandoned all rights under his permit.

28 SECTION 2. An emergency existing therefor, which emergency is hereby
29 declared to exist, this act shall be in full force and effect on and after
30 its passage and approval.

RECEIVED

Jun 26, 2026

DEPARTMENT OF
WATER RESOURCES

EXHIBIT F
2020 Idaho Sess. Laws (S.B. No. 1316)

GENERAL LAWS
OF THE
STATE OF IDAHO



**PASSED AND PUBLISHED BY
THE SECOND REGULAR SESSION OF THE
SIXTY-FIFTH IDAHO LEGISLATURE**

**Convened January 6, 2020
Adjourned March 20, 2020**

Volume 1

**Idaho Official Directory and Roster of State Officials and
Members of State Legislature follows the Index.**

**Chairman Lakey
Senate Judiciary & Rules
Chairman Chaney
House Judiciary, Rules & Administration**

CHAPTER 163
(S.B. No. 1287)

AN ACT

RELATING TO BARBER AND COSMETOLOGY SERVICES; AMENDING SECTION 54-5821, IDAHO CODE, TO PROVIDE FOR THE RETROACTIVE REINSTATEMENT OF A BARBER SCHOOL OR COSMETOLOGY SCHOOL'S LICENSE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-5821, Idaho Code, be, and the same is hereby amended to read as follows:

54-5821. RENEWAL AND REINSTATEMENT OF LICENSE AND REGISTRATION. All licenses or registrations issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal and fees. License or registration renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code. A barber school or cosmetology school licensed under the provisions of this chapter that fails to renew on or before the expiration date may request retroactive reinstatement to the date of expiration as provided in this section. If the board finds that such school has paid the renewal fee within ninety (90) days of the failure to renew, there being no other cause for the school's license to have been lapsed or canceled, and the school has paid all costs and penalties related to the license renewal and reinstatement required by law or rule, the board may retroactively renew said license to the date of expiration of the previous license. The school may continue to operate during the time period required by the board for consideration of the reinstatement request.

Approved March 17, 2020

CHAPTER 164
(S.B. No. 1316)

AN ACT

RELATING TO WATER; AMENDING SECTION 42-204, IDAHO CODE, TO PROVIDE THAT CERTAIN PERMITS MAY BE GRANTED UPON CONDITIONS SET FORTH IN SPECIFIED LAW, TO REVISE PROVISIONS REGARDING CONSTRUCTION WORK AND THE APPLICATION OF WATER TO FULL BENEFICIAL USE, TO PROVIDE FOR EXTENSIONS OF TIME, TO PROVIDE FOR PERMITS HELD BY MUNICIPAL PROVIDERS FOR REASONABLY ANTICIPATED FUTURE NEEDS, TO PROVIDE A PROCEDURE, TO REVISE PROVISIONS REGARDING AGGRIEVED PERMIT HOLDERS, TO REMOVE PROVISIONS REGARDING THE EXCAVATION AND CONSTRUCTION OF CERTAIN DIVERSION WORKS, TO PROVIDE FOR THE RELINQUISHMENT OF CERTAIN RIGHTS, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 42-217, IDAHO CODE, TO REVISE PROVISIONS REGARDING PROOF OF APPLICATION TO BENEFICIAL USE; AMENDING SECTION 42-218a, IDAHO CODE, TO REVISE PROVISIONS REGARDING LAPSES OF PERMITS; AMENDING SECTION 42-219, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE ISSUANCE OF LICENSES; AND AMENDING SECTION 42-220, IDAHO CODE, TO CLARIFY THAT CERTAIN PROVISIONS SHALL APPLY TO WATER RIGHT LICENSES AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-204, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

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

(1a) In cases where the applicant permit holder is prevented from proceeding with his construction, work, or application of water to full beneficial use by his the permit holder's failure to obtain necessary consent or final approval or rejection from the federal government because of the pendency of an application for right-of-way or other matter within the jurisdiction of the United States, by state, county, city or other local government permitting or administrative action or process related to the applicant's permit holder's land or water development,

or by litigation of any nature which might bring his the permit holder's title to said water in question, the department of water resources, upon proper showing of the existence of any such condition, and being convinced that said applicant permit holder is proceeding diligently and in good faith, shall extend the time so that the amount of time lost by such delays shall be added to the time given in the original permit, or in any subsequent grant of extension pursuant to ~~subsection (2), (3), (4) or (6)~~ paragraph (b), (c), (d), or (f) of this subsection, for each and every action required.

(2b) The time for completion of works and application of the water to full beneficial use under any permit involving the diversion of more than twenty-five thousand (25,000) acre-feet in one (1) irrigation season for a project of no less than five thousand (5,000) acres, may, upon application to the director of the department of water resources supported by a showing that additional time is needed on account of the time required for organizing, financing and constructing works of such large size, be extended by the director of the department of water resources for up to twelve (12) years beyond the initial development deadline contained in the permit, or beyond a grant of extension pursuant to the provisions of ~~subsection (1)~~ paragraph (a) of this subsection: Provided, that no such extension shall be granted unless the applicant permit holder for such extension shall show that there has been actually expended toward the construction of said diversion, including expenditures for the purchase of rights-of-way and property in connection therewith, at least one hundred thousand dollars (\$100,000).

(3c) The time for completion of works and application of the water to full beneficial use under any permit involving the construction of a reservoir of more than ten thousand (10,000) acre-feet capacity or for the appropriation of water to be impounded in such reservoir of more than ten thousand (10,000) acre-feet capacity, may be extended by the director of the department of water resources upon application to the director if the permittee permit holder establishes that the permittee permit holder has exercised reasonable diligence and that good cause exists for the requested extension.

(4d) The time for completion of works and application of the water to full beneficial use under any permit involving the diversion of two (2) or more cubic feet per second or the development or cultivation of one hundred (100) or more acres of land may be extended by the director of the department of water resources upon application by the permittee permit holder for an additional period up to ten (10) years beyond the initial development deadline contained in the permit, or beyond a grant of extension pursuant to the provisions of ~~subsection (1)~~ paragraph (a) of this subsection, provided the permittee permit holder establishes that the permittee permit holder has exercised reasonable diligence and that good cause exists for the requested extension.

(5e) In connection with permits held by the United States, or the Idaho water resource board, whether acquired as the original applicant, by assignment or otherwise, the director of the department of water resources may extend the time for completion of the works and application of the water to full beneficial use for such additional period or periods of time as he the director may deem necessary upon application an extension request supported by a showing that such additional time is required by reason of the status of plans, authorization, construction fund appropriations, construction, or any arrangements which that are found to be requisite to completion of the construction of such works.

(6f) In all other situations not governed by these provisions, the department may grant one (1) extension of time, not exceeding five (5) years beyond the date originally set for completion of works and application of the water to full beneficial use, or beyond any grant of extension pursuant to the provisions of subsection (1) paragraph (a) of this subsection, upon request for extension received on or before the date set for completion, provided good cause appears therefor.

(4) For permits held by municipal providers for reasonably anticipated future needs, the permit development period shall correspond to the planning horizon authorized by the permit, which may not be extended. During the permit development period, the municipal provider shall periodically submit to the department incremental statements of completion showing proof of beneficial use consistent with the provisions of section 42-217, Idaho Code. Each such incremental statement shall document the extent of application of water to beneficial use during the most recent reporting interval. Each incremental statement shall be prepared by a certified water rights examiner, unless the permit holder is not asserting any additional increment of beneficial use during that reporting interval. The department shall set and may later adjust the duration of any reporting interval for any permit, which shall be made a condition of the permit, to any duration not shorter than five (5) years. Sixty (60) days before the end of each reporting interval, the department shall forward a notice to the municipal provider by certified mail to its address of record specifying the date the incremental statement is due. Unless an extension of the deadline for the incremental statement is requested by the municipal provider prior to the deadline, and the extension is approved by the director upon a showing of good cause, failure to timely submit an incremental statement shall result in a lapse of that portion of the permit that has not previously been licensed or for which an incremental statement of completion showing proof of beneficial use has not been submitted. Such lapsed permit portion may be reinstated only in accordance with the provisions of section 42-218a, Idaho Code. For reasonably anticipated future needs permits existing on July 1, 2020, the department shall have one (1) year from July 1, 2020, either to issue a license, where proof already has been submitted, or to modify the permit to conform to the provisions of this section by establishing future reporting intervals for periodic proof statements, by establishing the date for the final proof statement corresponding with the end of the planning horizon authorized by the existing permit, and by updating approval conditions to clarify whether information that must be submitted with proof of beneficial use is due at each reporting interval or only with the final proof statement.

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

~~Every holder of a permit which shall be issued under the terms and conditions of an application filed hereafter appropriating twenty-five (25) cubic feet or less per second must, within one (1) year from the date upon which said permit issues from the office of the department of water resources, commence the excavation or construction of the works by which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted through no fault of the holder of such permit by circumstances, over which he has no control.~~

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

SECTION 2. That Section 42-217, Idaho Code, be, and the same is hereby amended to read as follows:

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

- ~~1.(a) The name and post-office post office address of the permit holder.;~~
- ~~2.(b) The permit number.;~~
- ~~3.(c) A description of the extent of the use.;~~
- ~~4.(d) In the case of a municipal provider, a revised estimate of the reasonably anticipated future needs, a revised description of the current service area, and a revised planning horizon, together with appropriate supporting documentation.;~~
- ~~5.(e) The source of the water used.;~~ and
- ~~6.(f) Such other information as shall be required by the blank form furnished by the department's form.~~

~~(2) Such written proof as may be required to be submitted by such user shall be upon forms furnished by the department of water resources and statement shall include fees as provided in subsection K. of section 42-221, Idaho Code, or a field examination report prepared by a certified water right examiner. For permits held by a municipal provider for reasonably anticipated future needs, such statements shall be provided in accordance with section 42-204(4), Idaho Code.~~

~~(3) Upon receipt of such proof written statement and the fee as required in section 42-221, Idaho Code, by the department of water resources the department shall examine, or cause to be examined:~~

- ~~1.(a) The place where such water is diverted and used, and, if the use is for irrigation, he shall ascertain the area and location of the land irrigated and the nature of all the improvements which have been made as a direct result of such use.~~
- ~~2.(b) The capacities of the ditches or canals or other means by which such water is conducted to such place of use, and the quantity of water which that has been beneficially applied for irrigation or other purposes.~~

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

~~Holders of permits who have submitted proof of beneficial use but have not had their project examined for beneficial use shall submit the fee required in section 42-221, Idaho Code, within sixty (60) days of notification by the director of the department of water resources that a license examination fee is required. Failure to submit the fee in the time allowed shall be cause for the director to advance the date of priority of the permit one (1) day for each day that the fee is late; provided that if the fee is not fully paid within one (1) year of the time it is due, the director of the department of water resources may consider the proof of beneficial use for the permit to be incomplete and lapse the permit, as provided in section 42-218a, Idaho Code.~~

SECTION 3. That Section 42-218a, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

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

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

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

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

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

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

SECTION 4. That Section 42-219, Idaho Code, be, and the same is hereby amended to read as follows:

42-219. ISSUANCE OF LICENSE -- PRIORITY. (1) Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with

and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license ~~confirming such~~ corresponding to the beneficial use. Such license shall state the name and ~~post-office~~ post office address of such user, the purpose for which such water is used and the quantity of water ~~which that~~ that may be used, which in no case shall be an amount in excess of the amount that has been beneficially applied. ~~A license may be issued to a municipal provider for an amount up to the full capacity of the system constructed or used in accordance with the original permit provided that the director determines that the amount is reasonably necessary to provide for the existing uses and reasonably anticipated future needs within the service area and otherwise satisfies the definitions and requirements specified in this chapter for such use. For permits held by a municipal provider for reasonably anticipated future needs, a license may be issued incrementally for an amount corresponding to the beneficial use demonstrated to the satisfaction of the department in each incremental statement of completion showing proof of beneficial use submitted pursuant to section 42-204(4), Idaho Code, which amount, together with any previously licensed portion of said permit, shall not exceed the initial quantity authorized under the permit. The final incremental license at the end of the planning horizon shall be issued for an amount corresponding to the beneficial use. The director shall condition the license to prohibit any transfer of the place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use of amounts held for reasonably anticipated future needs together with such other conditions as the director may deem appropriate.~~

(2) If such use is for irrigation, such license shall give a description, by legal subdivisions, of the land ~~which is~~ irrigated by such water, except that the general description of a place of use described in accordance with subsection (5) or (6) of this section may be described using a digital boundary, as defined in section 42-202B, Idaho Code. If the use is for municipal purposes, the license shall describe the service area and ~~shall state the planning horizon for that portion of the right, if any, to be used for reasonably anticipated future needs as provided in section 42-202B(9), Idaho Code.~~

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

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

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

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

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

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

SECTION 5. That Section 42-220, Idaho Code, be, and the same is hereby amended to read as follows:

42-220. EFFECT OF LICENSE. Such license Water right licenses shall be binding upon the state as to the right of such licensee to use the amount of water mentioned therein, and shall be prima facie evidence as to such right; and all rights to water confirmed under the provisions of this chapter, or by any decree of court, shall become appurtenant to, and shall pass with a conveyance of, the land for which the right of use is granted. The right to continue the beneficial use of such waters shall never be denied nor prevented for any cause other than the failure, on the part of the user or holder of such right, to pay the ordinary charges or assessments which may be made or levied to cover the expenses for the delivery or distribution of such water, or for other reasons set forth in this title: provided, that when water is used for irrigation, no such license or decree of the court allotting such water shall be issued confirming the right to the use of more than one (1) second foot of

water for each fifty (50) acres of land so irrigated, unless it can be shown to the satisfaction of the department of water resources in granting such license, and to the court in making such decree, that a greater amount is necessary, and neither such licensee nor ~~any-one~~ anyone claiming a right under such decree, shall at any time be entitled to the use of more water than can be beneficially applied on the lands for the benefit of which such right may have been confirmed, and the right to the use of such water confirmed by such license shall always be held subject to the local or community customs, rules and regulations which may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules or regulations have for their object the economical use of such water.

Approved March 17, 2020

CHAPTER 165
(S.B. No. 1357)

AN ACT

RELATING TO JUDGES; AMENDING SECTION 59-502, IDAHO CODE, TO REVISE THE SALARY OF JUSTICES OF THE SUPREME COURT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 59-502, Idaho Code, be, and the same is hereby amended to read as follows:

59-502. SALARIES OF JUDGES. (1) Commencing on July 1, 201~~9~~20, the salary of the justices of the supreme court shall be one hundred fifty-five ~~seven thousand two~~ eight hundred dollars (~~\$155,200~~157,800) per annum.

(2) Commencing on July 1, 2018, judges of the court of appeals shall receive an annual salary in an amount of ten thousand dollars (\$10,000) less than the annual salary of a supreme court justice.

(3) Commencing on July 1, 2017, district judges shall receive an annual salary in an amount of six thousand dollars (\$6,000) less than the annual salary of a judge of the court of appeals.

(4) Commencing on July 1, 2017, magistrate judges shall receive an annual salary in an amount of twelve thousand dollars (\$12,000) less than the annual salary of a district judge.

(5) Salaries shall be paid on regular pay periods not less frequently than monthly as determined by order of the supreme court as due out of the state treasury, but no justice of the supreme court or judge of the district court or magistrate shall be paid his salary, or any part thereof, unless he shall first take and subscribe an oath that there is not in his hands any matter in controversy not decided by him, which has been finally submitted for his consideration and determination thirty (30) days prior to his taking and subscribing said oath.

Approved March 17, 2020